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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.

RECORD ON APPEAL - VOL. XX

RECORD ON APPEAL INDEX

VOLUME I

Orders:

Order Granting Default Against AII, October 3, 2023 1

Order Denying AII's Motion to Lift Default, November 2, 2023 4

Form 4 Order denying Janssen, Johnson & Johnson Holdco, Inc, and Kenvue's Motion to Dismiss, July 2, 2024 9

Form 4 Order granting Motion to Compel, July 2, 2024 11

Order Granting Joint Motion Requesting the Division of Plaintiff Michael L. Perry's Tissue, July 10, 2024 13

Order Regarding AII's Financial Discovery, August 8, 2024 17

Order on Plaintiffs' Motion to Compel and Motion for Sanctions against Defendants Kenvue, Inc and Johnson & Johnson Holdco (NA) Inc., August 9, 2024 20

Order on AII's Post-trial Motions, December 11, 2024 24

Order on Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc., and Kenvue, Inc.'s Post Trial Motions, December 11, 2024 68

Amended Order on Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc.; and Kenvue, Inc's Post Trial Motions, March 2, 2025 154

Order on Remand from the South Carolina Court of Appeals regarding Defendants Johnson & Johnson's Motion to Reconsider or to Alter and Amend this Court's December 11, 2024 Order, March 2, 2025 240

Verdict Form:

Verdict Form, August 19, 2024 259

Pleadings:

Plaintiff's Summons and Complaint, August 4, 2023 263

Johnson & Johnson's Answer to Complaint, September 7, 2023 414

LTL Management's Answer to Complaint, September 7, 2023 448

VOLUME II

Plaintiff's First Amended Complaint, November 30, 2023 480

Johnson & Johnson's Answer to Amended Complaint, December 6, 2023 617

LTL Management's Answer to Amended Complaint, December 6, 2023 651

Plaintiff's Second Amended Complaint with Exhibits, February 1, 2024 683

Johnson & Johnson's Answer to Second Amended Complaint, February 16, 2024 815

LLT Management, LLC Answer to Second Amended Complaint, February 16, 2024 850

Johnson & Johnson's Holdco (NA) Answer to Second Amended Complaint, July 17, 2024 883

Kenvue Inc's Answer to 2nd Amended Complaint, July 17, 2024 917

VOLUME III

Motions, Supporting Memoranda:

PreTrial Motions, Supporting Memorandums:

Kenvue, Janssen, and J&J Holdco's Motion to Dismiss & Exhibits, February 16, 2024 951
Ex A – 4/23/23 Kenvue S-1 1127
Ex B - *Ochoa v 3 M* – Order 1120
Ex C – *Henderson v Taylor-Seidenback* Order 960
Ex E – *LaSalle v. Am Int'l* – Order 1284
Ex F – *Yandell v J&J* – Order 961
Ex G – *Egli v J&J* – Order 1277

Johnson & Johnson Defendants Motion for Partial Summary Judgment, June 11, 2024 1292
Ex A – Michael Perry Vol 1 Deposition Excerpts 1302

Plaintiffs' Response in Opposition to Defendants Johnson & Johnson Holdco (NA) Inc. and Kenvue, Inc.'s Motion to Dismiss (and exhibits attached thereto), June 28, 2024 1306
Ex 1 – Special Verdict Form from *Lee v. Johnson & Johnson* 1323
Ex 2 – Verdict Form and Special Interrogatory, *Garcia v. Avon Products, Inc.,* 1327
Ex 3 – Order in *Garcia/Salcedo* in Cook County, Illinois, 2/26/2024 1333
Ex 4 – New Jersey (Middlesex Cty.) Hearing Transcript 5/24/2023 1335
Ex 5 – New Jersey Order 6/1/2023 1377
Ex 6 – Louisiana Hearing Transcript/Order 9/29/2023 1381
Ex 7 – Pennsylvania Order 10/20/2023 1388
Ex 8 – New Jersey (Atlantic Cty.) Order 9/27/2023 1390
Ex 9 – Order Denying J&J Defendants' Motion to Dismiss, 4/10/24. 1409
Ex 10 - Plaintiffs' Responses to Defendants' Standard Interrogatories, 9/13/23 1415

Ex 11 - List of Providers and Facilities....1426
Ex 12 - Kenvue (Mongon) depo. 8/14/2023....1428

VOLUME IV

Ex 13 - Kenvue (Ruh) depo. 8/16/2023....1473
Ex 14 – Transcript of JJCI (Goodridge) 2/14/2022....1511
Ex 15 – JJCI (Goodridge) depo. 12/20/2021....1557
Ex 16 - Donald McGraw Declaration 9/18/2023....1604
Ex 17 - Kenvue SEC S-4 8/3/2023....1629
Ex 18 - Kenvue, Inc. SEC Form S-1 1/4/2023....1637
Ex 19 – Old JJCI Annual Report (filed in NC) 4/5/2021....1660
Ex 20 – Johnson & Johnson Form 10k 2018....1662
Ex 21 – **(a)-(e),** Certificates 10/12/2021....1673
Ex 22 - J&J/LTL (Kuffner) depo. 11/9/2023....1707
Ex 23 – New JJCI/Holdco Report (filed in NC) 4/5/2023....1729
Ex 24 – Janssen Pharmaceuticals Annual Report (filed in NC) 3/28/2023....1731
Ex 25 – LTL Management LLC Articles of Formation (NC) 10/12/2021....1734
Ex 26 – J&J Project Plato approval memo 10/11/2021....1738
Ex 27 - Draft of J&J's Product List for the FDA, 12/5/11....1750
Ex 28 - Product List, undated (listing all baby powders under the same category: "baby powder").....1757

Plaintiffs' Response in Opposition to Defendants Johnson & Johnson, Inc. and LLT Management, LLC's Motion for Partial Summary Judgment (and exhibits attached thereto), July 8, 2024 — Pursuant to Plaintiff Counsel agreement only the below exhibits are to be included in the Record on Appeal....1784
Ex 01 – M. Perry Video Deposition, 10/10/2023....1801
Ex 21 - Dana, "A Text-book of Mineralogy"....1848
Ex 128 - Peretti, "Geology and Genesis of the Talc Deposits in the Pinerolese" 1966....1858
Ex 134 - Report of Dr. James Webber, 7/11/2022....1868
Ex 257- J&J Resp. to Requests for Admission, 7/26/2021....1889
Ex 258 - Old JJCI Responses to Requests for Admission, 7/26/2021....1906
Ex 259 - J&J Audit Testing of Windsor 66 for Asbestos 6/28/1977; J&J letter to R. Miller 2/23/1978; J&J Raw Material Spec. RM08006 1/7/1992; J&J Raw Material Spec. RM08006, 9/23/1997....1917
Ex 260 - Tran. of J&J (Dr. Hopkins), 7/22/2019....1938

VOLUME V

Ex 261 - International Agency for Research on Cancer (IARC) Monograph, "Asbestos," 2012....1967
Ex 262- J&J Resp. to Interrog. (*Chapman*), 5/30/2018....1981
Ex 263 - J&J (Dr. Hopkins) depo., 4/11/2018....1992
Ex 264 - Gillson, "Origin of the Vermont Talc Deposits," Econ. Geo., 1927....2080
Ex 265- J&J letter "Talc/Asbestos", 9/5/1972....2103
Ex 266 - Affidavit of R. Mark Bailey, 10/30/2023....2113

Ex 267 - Report of Dr. Mark Rigler, 11/6/2023 2145
Ex 268 - J&J memo 1/3/1974 (TEM is "the only absolute proof"). 2197
Ex 269 - J&J internal memo, 5/16/1973 2199
Ex 270 - Decl. of Dr. Hopkins, 7/7/2016 2201
Ex 271 - Demonstrative Chart Summarizing Battelle Italian Results; Battelle Reports 2208
Ex 272 - J&J memo "Preliminary Evaluation", 11/1/1967 2229
Ex 273 - J&J internal memo, 4/15/1969 2244
Ex 274 - Demonstrative of J&J's Internal Documents 1957-2004; Transcript showing its admission 2247
Ex 275- Decades of Evidence" (1948-2020) Demonstrative Chart, 3/31/2021 2258
Ex 276 - Letter from Dr. Blount on her 1991 paper, 2/10/1992 2279
Ex 277 - J&J internal memorandum, 10/16/1997 2282
Ex 278 - NIOSH "Summary of Plant Observation Reports and Evaluation", 3/1979 2288
Ex 279 - Depo. of Steven Mann (J&J), 2/15/2021 2306
Ex 280 - Dr. Reynolds report to J&J, 3/1974 (Dartmouth). 2377
Ex 281 - J&J "Proposed Specs For Analyzing Talc For Asbestos", 5/22/1973 2412
Ex 282 - J&J letter, 2/18/1975 2422
Ex 283 - J&J memo, 11/24/1976 2424
Ex 284 - J&J memo "Talc Program", 6/7/1971 2426
Ex 285 - J&J memo "Windsor Minerals and Talc", 4/26/1973 2428
Ex 286 - J&J PowerPoint, 4/28/1997 2432
Ex 287 - J&J PowerPoint, 8/18/1997 2436
Ex 288 -, J&J memo on NIOSH study 2439
Ex 289 - J&J memo "Management Authorization for Additional Talc Safety Studies", 3/3/1975 2449
Ex 290 - J&J memo "Talc/Powder Program and Strategy", 3/17/1975 2452
Ex 291 - J&J "Antagonisitc Personalities" memo, 11/29/1972 2455
Ex 292 - CTFA meeting minutes, 2/4/1975 2459
Ex 293 - J&J letter to FDA 9/6/1974; J&J letter to the CTFA 12/17/1974 2464

VOLUME VI

Ex 294 - Dr. Langer to J&J, 11/10/1971 2468
Ex 295 - Dr. Hutchinson report to McCrone/J&J 2473
Ex 296 - J&J letter to the CTFA (to be forwarded to the FDA), 3/15/1976 2517
Ex 297 - Depo. of J&J (Musco), 3/8/2019 2520
Ex 298 - J&J advertisement 1965 2533
Ex 299 - J&J guidebook for physicians and nurses, 6/10/1976. 2535
Ex 300 - J&J purity claim support, 2/10/1974 2585
Ex 301- McCrone letter to Zeitz, 11/05/1975 2588

Motions in Limine, Memos, Replies and Trial Submissions:

Plaintiffs' Motion in Limine No. 17 to Exclude the Testimony of Dr. Gregory Diette (and exhibits attached thereto), July 11, 2024 2593
Ex 01 – Diette Report, 6/27/24 2606

Ex 02 – Diette Supplemental Report, 7/2/24 2705
Ex 03 – Diette Deposition, 2/3/23....2744
Ex 04 – McDonald & McDonald, Mesothelioma*: Is there A Background*?....2779
Ex 05 – McDonald & McDonald, Mesothelioma*: The epidemiology of mesothelioma in historical context* *2791*
Ex 06 – Hillerdal, *Mesothelioma: cases associated non-occupational and low does exposure*....*2803*
Ex 07 – Wiggins, *BTS Statement on malignant mesothelioma in UK.*....2813
Ex 08 – Moore, *Malignant mesothelioma* 2833
Ex 09 – Dail and Hammar's Pulmonary Pathology....2845
Ex 10 – Teta, *US mesothelioma patterns…* *2849*
Ex 11 – Tan, *Projection of mesothelioma mortality in Britain.*. *2860*
Ex 12 – Delgermaa, *global mesothelioma deaths reported to World Health.*....*2868*
Ex 13 – Report of Dr. David Madigan, 2/1/21 2882
Ex 14 – Moolgavkar, *Pleural and peritoneal mesotheliomas in SEER.*....*2907*
Ex 15 – Moolgavkar Reporting, *Hirshberg* *2918*
Ex 16 – MUSC Medical Record 2921
Ex 17 – Dr. Diette Depo Transcript, 7/3/24....2923
Ex 18 – No exhibit reference ....

VOLUME VII

Ex 19 – Playne/Plant MIL Hearing Transcript, 2/14/23....2951

Plaintiffs' Motion in Limine No. 20 Regarding Admissibility of Documents Without Sponsoring Witness (and exhibits attached thereto), July 10, 2024 3031
Ex 01 – Stipulation regarding J&J Documents Produced....3036

Plaintiffs' Motion in Limine No. 22 Motion for Evidentiary Sanctions Against Johnson & Johnson, LLT Management LLC, Johnson & Johnson Holdco (NA) Inc., and Kenvue, Inc. Based on Spoliation of Evidence (and exhibits thereto), July 10, 2024 3041
Ex 01 – Deposition of M. Perry, Vol 1 3081
Ex 02 – McBrayer Order, 11/5/21 3128
Ex 03 - Battelle Report 2/29/1956 3141
Ex 04 – Report of Dr. Webber, 6/10/21....3186
Ex 05 – Demonstrative summarizing reports of asbestos from 1957 to 2004....3225
Ex 06 – Demonstrative on findings of asbestos minerals 696 samples years 1967 to 1988 3233
Ex 07 – Memo from J&J 's Dr. Nash, 7/29/1971 3254
Ex 08 - Memorandum from J&J's D.R. Petterson 4/26/1973 3257
Ex 09 - Memorandum from Dr. Nashed 10/23/1973....3261
Ex 10 - Ernest F. Fullam Inc. report to (codefendant) Whittaker, Clark & Daniels, Inc. 3264
Ex 11 - Luzenac report on Argonaut 5/23/2002 3270
Ex 12 - Blount, A.M., *Amphibole Content of Cosmetic and Pharmaceutical Talcs*....*3273*
Ex 13 - Steffen et. al. Serious ovarian cancer caused by exposure to asbestos....3282
Ex 14 - Report of Dr. Rigler 6/11/2021....3296
Ex 15 - Excerpt of Mark Bailey's Report on Vermont talc 11/16/2020....3306

Ex 16 - Moline, J., et. al., *Mesothelioma associated with the use of cosmetic talc* *3328*
Ex 17 - Emory, TS. *Malignant mesothelioma following repeated exposures to cosmetic talc*.....*3336*
Ex 18 – Talc and Asbestos – J&J (Madigan) 3343
Ex 19 - J&J notebook 8/10/1972 (reporting tremolite "fibers 3364

VOLUME VIII

Ex 20 - J&J memo 4/19/1973 (noting tremolite fibers in four JBP samples). 3367
Ex 21 – J&J responses to Interrogatories, *Breakell v. 3M* 3369
Ex *22* - CSMRI report 4/14/1971.....3505
Ex 23 - CSMRI report 7/7/1971.....3501
Ex 24 - CSMRI report 2/26/1973.....3515
Ex 25 - J&J memo 7/9/1971 at pg. 4 3522
Ex 26 - Dr. Langer to J&J 11/10/1971 3530
Ex 27 - J&J memo 9/9/1975 3535
Ex 28 - J&J memo 10/3/1975 3539
Ex 29 - Excerpt of report of Dr. Hutchins 1972 3543
Ex 30 - McCrone report 10/27/1972.....3568
Ex 31 - McCrone report 2/11/1974.....3572
Ex 32 - McCrone report 3/11/1974.....3574
Ex 33 - McCrone report 7/8/1974.....3578
Ex 34 - McCrone report 7/1/1975.....3582
Ex 35 - McCrone report 11/5/1975.....3588
Ex 36 - Windsor Mineral, 5/24/1976 3591
Ex 37 - Dr. Reynolds report 3/1974 at pg. 6 3593
Ex 38 - EMV Associates report 4/4/1977 3628
Ex 39 - RJ Lee report 3/14/1988.....3631
Ex 40 - Dr. Blount to J&J attorney 4/23/1998 3635
Ex 41 - Excerpt of the J&J designee Dr. Hopkins 7/22/2019 3637
Ex 42 - J&J's responses to discovery (excerpt) in Eggers.....3644
Ex 43 - Expert report of Dr. Sanchez report 7/30/2021 3672
Ex 44 - Excerpts of) Mineralogy and Morphology of Amphiboles 3703
Ex 45 - *Misidentification of Asbestos in Talc* by J&J's Mr. Ashton 1977.....3718
Ex 46 - J&J's TM7024 8/21/1995.....3735
Ex 47 - McCrone to J&J (Windsor Mineral) 8/22/1985 3746
Ex 48 - J&J (Windsor Mineral) to McCrone 9/10/1985 3749
Ex 49 - McCrone to J&J (Windsor Mineral) 10/8/1985 3751
Ex 50 - McCrone to J&J 12/17/1990. 3753
Ex 51 - McCrone to Cyprus Windsor Minerals 11/26/1990 3759
Ex 52 - ASTM D6620-19, Standard Practice for Asbestos Detection Limit Based on Counts (2019).....3770
Ex 53 - EPA, Region III Fact Sheet, Quality Control Tools: Blanks (2009) 3782
Ex 54 - McCrone Standard Operating Procedure 3/24/1987 3785
Ex 55 - Email from Ruark Lanham, FDA Divisional Recall Coordinator, 10/17/2019 3791
Ex 56 - Decl. of Dr. Sanchez 3/29/2021 3793

Ex 57 - Letter from RJ Lee 10/28/2019 3797
Ex 58 - Excerpt of Dr. Van Orden 3/12/2020 3802
Ex 60 - McCrone to J&J 1/28/1987 3805
Ex 61 - McCrone 6/25/1995 3809
Ex 62 - Executive Summary of Preliminary Recommendations by the Interagency Working Group on asbestos in Consumer Products, 1/6/2020 3812
Ex 63 - CSMRI to J&J 5/18/1971 3819
Ex 64 - J&J "Assay of Talc in Baby Powder, 5/14/1971 3823
Ex 65 - J&J report 10/1980 3825
Ex 66 - RJ Lee to Mr. Ashton of J&J 3/9/2004 3831
Ex 67 - McCrone on JBP 8/19/1971 3833
Ex 68 - McCrone 1/7/1972 3842
Ex 69 - Dr. Pooley 2/3/1972 3845
Ex 70 - J&J internal document 12/20/1972 3852
Ex 71 - EMV Associates for J&J 6/3/1983 3854
Ex 72 - RJ Lee 5/23/1989 3859
Ex 73 - McCrone to Luzenac 1/24/1994 3861
Ex 74 - McCrone to Luzenac 6/25/1995 3863
Ex 75 - Mr. Ashton to Dr. Hildick-Smith 4/9/1969 3866

VOLUME IX

Ex 76 - Dr. Hildick-Smith regarding Dr. Cooper, 7/30/1971 3869
Ex 77 – J&J Alternate Domestic Talc Sources 04/15/1969 3872
Ex 78 - J&J's privilege log (excerpt) from the deposition of Nancy Musco 2/15/2019 3875
Ex 79 - Deposition of Nancy Musco (excerpt) 2/15/2019 3902
Ex 80- J&J memorandum on the *Westfall* case 7/15/1981 3977
Ex 81 - J&J on *Jolly* case 12-3-1982 3980
Ex 82 - J&J list of inhalation complaints 6/17/1985 3982
Ex 83 - Schedule I to J&J-Cyprus contract 12/30/1988 3987
Ex 84 - Luzenac to J&J 10/17/1994 3990
Ex 85 - Ex. 21 to the deposition of James Mittenthal 10/18/2018 3993
Ex 86 - McCrone to Dr. Hutchinson, 10/5/1972 3995
Ex 87 - Report of Dr. Sanchez in Hirshberg (excerpt) 4/2/2021 3997
Ex 88 - CSMRI to J&J 8/13/1971 4026
Ex 89 - J&J's Interrogatory Responses, *Eggers v. Colgate-Palmolive Co.*, ... 4029
Ex 90 - CSMRI to J&J 6/8/1973 4087
Ex 91 - McCrone report to J&J without percentages 10/27/1972 4094
Ex 92 - Dr. Hopkins deposition (excerpt) 8/16/2017 4098
Ex 93 - Deposition of James Mittenthal 10/18/2018 4102
Ex 94 - Deposition of J&J designee James Mittenthal (Vol. 3 of 3) dated 10/19/2018 4114
Ex 95 - *Coker* legal hold 10/6/1997 4132
Ex 96 - *Krushinski* legal hold 11/11/1999 4137
Ex 97 - J&J trip report 11/23/1993 4140
Ex 98 - George Lee files 7/1988 4145

Ex 99 - Talc Closet Cleanout 1/20/2000 and (d) J&J's file on all phone calls and correspondence it had with the FDA that no longer exists. 4150
Ex 100 - John O'Shaughnessy deposition (excerpt) 6/22/2021....4152
Ex 101 - J&J designee Dr. Hopkins deposition (excerpt) 8/15/2017....4220
Ex 102 - J&J marketing Power Point 4/28/1997 4230
Ex 103 - J&J marketing Power Point 8/18/1997 4234
Ex 104 – J&J on antagonistic personalities 11/29/1972 4237
Ex 105 - J&J's Vernon Zeitz 5/5/1975....4240
Ex 106 - J&J to FDA 9/6/1974 4255
Ex 107 - J&J to Dr. Estrin 12/17/1974 4258
Ex 108 - Testimony of Dr. Sanchez (excerpt) 5/22/2018....4260
Ex 109 - J&J re: Dutch Organization 9/20/1973 4263
Ex 110 - J&J's summary of submissions to the FDA 1971-1979....4271
Ex 111 - J&J letter to the CTFA (to be sent to the FDA) 3/15/1976....4285
Ex 112 - Dr. Hopkins deposition (excerpt) 8/17/2017....4287
Ex 113 - Dr. Hopkins deposition (excerpt) 4/11/2018 4297
Ex 114 - Dr. Langer to Mt. Sinai 3/17/1976....4305
Ex 115 - Pfizer memorandum on media coverage 3/25/1976....4310
Ex 116 - J&J regarding meeting with Don Ferry 10/2/1974....4312
Ex 117 - J&J on booklet 10/8/1974 4314
Ex 118 - J&J on trip to Italy 10/31/1974 4317
Ex 119 - J&J to UK confirming decision not to publish 11/26/1974....4320

VOLUME X

Ex 120 - Deposition of Nancy Musco 4322
Ex 121 - Roger Miller Affidavit (*Edley*) 7/3/1987....4378
Ex 122 - J&J interrogatory responses 5/23/2000 at #17....4384
Ex 123 - O'Shaughnessy Deposition, 6/30/21....4396
Ex 124 - J&J employee William Ashton's Affidavit 5/8/1989 4522
Ex 125 - J&J's Interrogatory Responses, Eggers v. Colgate-Palmolive Co., ...4531
Ex 126 - J &J revealed approximately 500 additional TEM evaluations were performed at #16 4536
Ex 127 - J&J Press Release, Oct. 29, 2019....4542
Ex 128 - Deposition of Walgreen's designee Rudy Kucera (excerpt) 2/26/21 4546
Ex 129 - Hopkins Testimony, *Herford*, 11/3/17....4554
Ex 130 - Hearing, *Hirshberg v. Johnson & Johnson*....*4564*
Ex 131 - J&J's Second Supplemental Responses to Certain of Plaintiff's First Set of Interrogatories, *Eggers v. Colgate Palmolive Co*....*4573*
Ex 132 - Webber Deposition, 5/31/2017....4580
Ex 133 - Deposition of J&J designee James Mittenthal (Vol. 1 of 3) dated 9/24/2018 4591
Ex 134 – Pl's McBrayer Motion....4648
Ex 135 – 10/28/2021 Transcript of Record....4688

VOLUME XI

Plaintiffs' Motion in Limine No. 23 to Exclude Expert Hearsay Opinions (and exhibits attached thereto), July 10, 2024 4793
Ex 01 - Deposition Testimony of Dr. Matthew Sanchez, *Hirshberg v. Johnson & Johnson* 4800
Ex 02 - Expert Report of Matthew Sanchez PhD for Johnson & Johnson 4809
Ex 03 - Van Gosen, et al., *Using the geologic setting of talc deposits as an indicator of amphibole asbestos content* (2004) 4849
Ex 04 – Deposition Testimony of Dr. Matthew Sanchez ("Dr. Sanchez Depo."), *Hirshberg v. Johnson & Johnson, et al.*, King County, Washington, dated April 5, 2021 4870
Ex 05 – Email from J&J's Counsel stating Dr. Sanchez could not locate the e-mail he testified about, dated 4/15/10 4875

J&J Defendants' Motion in Limine to Partially Exclude Opinions of Dr. Steven Haber with exhibits, July 10, 2024 4877
Ex A - Plaintiffs' Fact & Expert Witness Designation at 2-5, *Perry*, June 10, 2024 4886
Ex B – Haber Depo., *Garcia*, July 27, 2021 4901
Ex C – Haber Depo., *Chapman*, Sept. 6, 2022 4910
Ex D – Haber Depo., *Roy*, Jan. 13, 2022 4915
Ex E – Haber Depo., *Moore*, Nov. 24, 2021 4926
Ex F- Haber Depo., *Hirshberg*, Feb. 23, 2021 4930
Ex G - Haber Depo., *Perry*, June 24, 2024 4934
Ex H - Order in *Lynne Roy v. Colgate-Palmolive Co., et al.*, No. 2020-02718 (La. Dist. Ct. May. 4, 2023) 4944

J&J Defendants' Motion in Limine No. 2 to Exclude Each and Every Exposure/Cumulative Dose Causation Opinions, July 10, 2024 – no exhibits 4969

J&J Defendants' Motion in Limine No. 5 to Exclude Plaintiffs' Summary Evidence Charts, with exhibits, July 10, 2024 4989
Ex A - Decades of Evidence" chart 4997
Ex B – *Perry*, June 24, 2024, Haber Dep. 5014
Ex C – Dr. Haber's Reference List 5019
Ex D – five-page summary compilation entitled "J&J's Internal Documentation 5096

J&J Defendants' Motion in Limine No. 8 to Exclude evidence, argument, regarding Certain Advertising Campaigns that Focused on Babies and the Mother-Infant Bond, with exhibits, July 10, 2024 5102
Ex A - Baby Camp PowerPoint 5107
Ex B – Vol. I, Michael L. Perry Dep., October 10, 2023 5110
Ex C – Vol. II, Michael L. Perry Dep., October 11, 2023, ... 5116
Ex D – Supplemental Answers to Master Interrogatories, June 10, 2024 5120
Ex E - Feb. 26, 2019 Trial Tr., *Rimondi, et al. v. BASF Catalysts LL, et al.*, Superior Court of New Jersey, Middlesex County, Law Division, Docket No. MID-2912-17AS 5139

Plaintiffs'. Motion in Limine No. 22 – Ex. 60 – McCrone Letter, July 11, 2024 5174

VOLUME XII

Plaintiffs' Motion in Limine No. 19 to Exclude the 1986 Letter From H.W. Swanson to Phillippe Douillet (and exhibits attached thereto), July 15, 2024.....5178
Ex 01 - Swanson Letter" and attachments parts IV to VII 5186

J&J Defendants' Motion in Limine to Partially Exclude the Opinions of Dr. David Madigan with exhibits A to BB, July 23, 2024 –.....5339
Ex A - July 15, 2024 *Perry* Madigan Dep excerpts.....5353
Ex B - July 16, 2024 *Perry* Longo Dep excerpts.....5369
Ex C - Madigan May 1, 2024, Report, *Talc, Asbestos, and Mesothelioma* *5377*
Ex D – *Zimmerman* Madigan Dep. excerpts.....5395
Ex E – *Lanzo* Madigan Dep. excerpts.....5399
Ex F – *Citizen* Madigan Dep. excerpts.....5411
Ex G - Compton 05/07/20 *Lopez* Dep. excerpts 5416
Ex H - Moline 06/11/20 *Lopez* Dep. excerpts.....5427
Ex I - Gordon, et al., *Asbestos in Commercial Cosmetic Talcum Powder as a Cause of Mesothelioma in Women*, J. Occup. & Envir. Health (2014) ("Gordon 2014") 5432
Ex J - Steffen et al., *Serous Ovarian Cancer Caused by Exposure to Asbestos and Fibrous Talc in Cosmetic Talc Powders—A Case Series*, J. Enviro. Occupational Medicine (2020) 5450
Ex K - MAS Chart of J&J Testing at 1 (M65205-001).....5464
Ex L - Longo 9/21/19 *Weirick* Tr. Excerpt 5501
Ex M - *Davis* Madigan Dep. excerpts.....5505
Ex N - Longo Expert Report 5513
Ex O - 10/30/23 *Lanzo* Longo Dep. excerpts 5526
Ex P - 4/25/2024 *Clark* Madigan Dep. excerpts.....5530
Ex Q - Madigan General Report 5534
Ex R - *Alfaro v. Imerys Talc Am. Inc.*, 2017 WL 3668610, at *9 (Cal. Ct. App. Aug. 25, 2017).....5560
Ex S - *Barlow v. ACandS, Inc.*, Consolidated No. 24X11000783, at 16–17 (Bal. Cir. Ct. Nov. 13, 2015) .....
Ex T - *Greene v. ACandS, Inc.*, Consolidated No. 24X16000314, (Bal. Cir. Ct. May 16, 2017).....5574
Ex U - *Nosse v. ArvinMeritor, Inc.*, LASC No. BC603354, Motion Hearing Tr. 41:16–24 (Cal. Super. Ct. Jun. 29, 2016).....5578
Ex V - *Schoeniger v. Colgate-Palmolive Co.*, Dkt. No. MID-L-5869-16AS, Mot. Hr'g Tr. (N.J. Super. Ct. Oct. 19, 2017).....5598
Ex W - *Fishbain v. Colgate-Palmolive Co.*, Dkt. No. MID-L-5633-13 AS, Ruling at 7 (N.J. Super. Ct. Aug. 6, 2015) 5630
Ex X - *Ingham* Madigan Dep. Excerpts.....5647
Ex Y - *Ingham* Madigan Tr. Excerpts 5653
Ex Z - Garcia, Madigan *Asbestos and Mesothelioma* Report 5658

VOLUME XIII

Ex AA - 2/7/2020 *Birch* Madigan Dep. excerpts....5678
Ex BB - *Hamilton* Madigan Dep. excerpts....5684

J&J Defendants' Motion in Limine to Exclude Evidence of or Reference to Tissue Testing with exhibits, July 23, 2024....5689
Ex A - Email Correspondences....5694
Ex B - Email Correspondences....5710
Ex C - Order Granting Joint Motion. On July 14, 2024....5715
Ex D – Longo Dep., *Perry*, July 16, 2024 excerpts....5720

Plaintiffs' Consolidated Response in Opposition to Defendants' Motions in Limine to Exclude or Limit Causation Testimony of Plaintiffs' Experts Witnesses (and exhibits attached thereto), July 24, 2024 – 5725
Ex 01 - Jolly v. General Electric Co., No. 2016-CP-42-1592 (S.C. Com. Pl. Dec. 15, 2017)....5758
Ex 02 – Garvin v Agco Order 11/14/14....5798
Ex 03 - Brody Depo., Voelker v. Alfa Laval, Inc., 5/8/15....5839
Ex 04 - Brody Dep., Bodine v. 3M Company, 11/13/14....5868
Ex 05 - Larson v. Bondex Int'l, No. 09-69123....5889
Ex 06 - Dr. Haber curriculum vitae....5895
Ex 07- Dr. Haber report 6/11/2021....5906
Ex 08 - Dr. Haber (Exhibit D) Johnson & Johnson General Report 10/27/2023....5909
Ex 09 - Dr. Haber report 11/8/2023 – Exhibit C....5933

VOLUME XIV

Ex 10 - Haber Report, 3/30/23....6030
Ex 11 – Declaration of Dr. Longo, Prudencio v. Johnson & Johnson (5/13/21)....6191
Ex 12 - Transcript of Proceedings, In Re Johnson & Johnson Powder Products Marketing, Sales Practices ("J&J Daubert Hearing")- 6209
Ex 13 - Declaration of William Longo, Ph.D., Anderson v. Avon Products, Inc.....6219
Ex 14 – Letter, Krishnamoorthi to Hahn (3/3/20)....6259
Ex 15 - Steffen, Serous Ovarian Cancer Caused by Exposure to Asbestos and Fibrous Talc in Cosmetic Talc Powders – A Case Series (2020). 6264
Ex 16 - Order, Ingham v. Johnson & Johnson (6/4/18) 6278
Ex 17- Excerpt Transcript of Proceedings, Henry v. Brenntag (9/14/18)....6286
Ex 18 - Notice of Ruling on Defendants' Motions in Limine, Blinkinsop v. Albertsons Companies, Inc. (2/26/19) 6298
Ex 19 - Transcript of Trial Proceedings, Zimmerman v. Whittaker Clark & Daniels (4/22/21) 6305
Ex 20 - Excerpt of Transcript of Proceedings, Chapman v. Avon Products, Inc. (12/12/22)....6323
Ex 21 - Johnson & Johnson Baby Products Company correspondence from W. Ashton to J.P. Grange, Subject: Talc Asbestos, L. Paoletti (9/26/84)....6328
Ex 22 - Decades of Evidence summary chart 6346
Ex 23 - Bird, A Review of the Talc Industry's Influence on Federal Regulation and Scientific Standards for Asbestos in Talc....6363

Ex 24- Chart of Johnson & Johnson Positive Testing.....6417
Ex 25 - Dr. Madigan report "Asbestos and Mesothelioma" 4/1/2023.....6423
Ex 26- Dr. Madigan report "Talc, Asbestos and Mesothelioma" 9/1/2023.....6444
Ex 27 - Dr. Madigan report "Talc and Asbestos – J&J" 9/21/2021.....6459
Ex 28 - Kanarek, Asbestos in Talc and Mesothelioma: Review of the Causality Using Epidemiology, Med. Res. Archives, Vol. 8 (5): 2020.....6485
Ex 29- IARC Monograph "Asbestos" 2012 at pgs. 219, 234, 280, 293, 294.....6499
Ex 30- Magnani, "Italian Consensus Conference on Malignant Mesothelioma of the Pleura. Epidemiology, Public Health and Occupational Medicine Related Issues," Med Lav 2015.....6508
Ex 31 - Consensus Report: Asbestos, asbestosis, and cancer: the Helsinki criteria for diagnosis and attribution.....6517
Ex 32- Consensus Report: Asbestos, asbestosis, and cancer: the Helsinki criteria for diagnosis and attribution 2014, Scand J Work Environ Health.....6524

VOLUME XV

Ex 33 - Guide for Ship Scrappers: Tips for Regulatory Compliance, p. 2-6 (Summer 2000).....6536
Ex 34 - OSHA Website, Safety and Health Topics: Asbestos, https://www.osha.gov/SLTC/asbestos,.....6547
Ex 35 - IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Vol. 14, Asbestos, § 5.2.....6553
Ex 36 - National Cancer Institute Mesothelioma Fact Sheet.....6556
Ex 37 - NIOSH Revised Recommended Asbestos Standard 1976.....6568
Ex 38 - WHO Air Quality Guidelines, Chapter 6.2 Asbestos.....6581
Ex 39 - CPSC Ban of Consumer Patching Compounds Containing Respirable Free-Form Asbestos,.....6596
Ex 40 - Landrigan et al., The Hazards of Chrysotile Asbestos: A Critical Review, IND HEALTH 37:271-280, 275 (1999).....6610
Ex 41- Hillerdal, Mesothelioma: Cases Associated with Non-Occupational and Low Dose Exposures, OccUP ENVIRON MED 56:505-513, 510 (1999).....6621
Ex 42 - Welch, Asbestos Exposure Causes Mesothelioma, But Not **This** Asbestos Exposure: An Amicus Brief to the Michigan Supreme Court, INT J OccUP ENVIRON HEALTH 13:318-327 (2007).....6631
Ex 43 - Joyce Rost v. Ford Motor Company, No. 56 EAP 2014 (Pa. April 7, 2015).....6642
Ex 44 - Iwatsubo, et al, Pleural Mesothelioma: Dose-Response Relation at Low Levels of Asbestos Exposure in a French Population-based Case-Control Study, AM J EPID 148(2):122-142 (1998).....6685
Ex 45 - Rodelsperger et al., Asbestos and Man-Made Vitreous Fibers as Risk Factors for Diffuse Malignant Mesothelioma: Results From a German Hospital-Based Case-Control Study, AM J INDUS MED 39: 262-275, 262 (2001).....6696
Ex 46 - Rolland, Risk of pleural mesothelioma: A French population-based case-control study (1998-2002) (Oct. 20, 2006).....6711
Ex 47 - A. Lacourt et al., Occupational and non-occupational attributable risk of asbestos exposure for malignant pleural mesothelioma, Thorax, published online, at Table 4 (Feb. 7, 2014).....6714

Ex 48 - Dr. Markowitz, Asbestos-Related Lung Cancer and Malignant Mesothelioma of the Pleura: Selected Current Issues, Semin Respir Crit Care Med 36:334-346, 336, Table 1 (2015) 6725
Ex 49 - Smith and Wright, Chrysotile Asbestos Is the Main Cause of Pleural Mesothelioma, AM J IND MED 30:252-266, 255 (1996).....6739
Ex 50 - Kanarek, Mesothelioma from Chrysotile Asbestos: Update, ANN EPIDEMIOL 21:688-697, 695 (2011) 6756
Ex 51 - R.P. Everatt et al., Occupational Asbestos Exposure Among Respiratory Cancer Patients in Lithuania, Am. J. Indus. Med., Supplement 50:455-463 (2007).....6767
Ex 52 - M.T. Madkour, Environmental exposure to asbestos and the exposure-response relationship with mesothelioma, E. Mediterranean Health J. 15(1):25-38 (2009) 6777
Ex 53 - Bianchi, Latency periods in asbestos-related mesothelioma of the pleura, EUR J CANCER PREV 6:162-166 (1997). 6792

VOLUME XVI

Plaintiffs' Response to Johnson & Johnson Defendants' Motion in Limine to Partially Exclude the Opinions of Dr. Steven Haber (and exhibits attached thereto), July 24, 2024 6798
Ex 01 - Trial Tr., 2/27/23, Plant v. Avon Prods, Inc., S.C. Court of Common Pleas, Richland Cty, at 682-769 6781

VOLUME XVII

Ex 02 – Haber Aff., 4/4/24, Newton, at 1-2.....7178
Ex 03 - Haber, supra, Malignant Mesothelioma: A Clinical Study of 238 Cases.....7366
Ex 04 - Trial Transcript, Chapman v. Avon Products, Inc., No. 22STCV05968 (Oct. 26, 2022), at 180:23-187:4.....7374
Ex 05 - Trial Transcript, Chapman v. Avon Products, Inc. (October 27, 2022), at 45:3-11 7427
Ex 06 - Excerpts of Trial Transcript, Hirshberg v. Johnson & Johnson, No. 20-2-05603-1 SEA (May 10, 2021).....7478
Ex 07 - Excerpts of Trial Transcript, Chatfield v. Avon Products, Inc., No. 21CV40522 (Feb. 26, 2023). 7529
Ex 08 - Judgment, Roy v. Colgate-Palmolive Co., No. 2020 – 02718 (May 4, 2023....7545
Ex 09 - Reasons for Judgment, Roy v. Colgate-Palmolive Co., No. 2020 - 02718 (May 4, 2023).....7551
Ex 10 - Excerpts of Trial Transcript, Salcedo v. Johnson & Johnson (March 25, 2024) 7572
Ex 11 – Haber Dep., 11/15/21, Moore, at 248:2-21.....7596
Ex 12 - Ghio and Roggli, Letter to the Editor: Talc Should Not Be Used in Pleurodesis in Patients with Nonmalignant Pleural Effusions.....7661

VOLUME XVIII

Ex 13 - Haber Dep., Vol. II, 11/24/21, Moore, at 463:25-464:5.....7664
Ex 14 - Hinch to Luckewicz, 12/18/87 (acknowledging that TEM limit of detection is 0.003% compared to XRD at 0.5%).....7729

Ex 15 - Report of CTFA Talc Subcommittee on Method to Detect Chrysotile and Tremolite in Talc, 12/10/73 7733
Ex 16 - Practical Aspects of Talc and Asbestos, at 409 (Nov. 1978)....7741
Ex 17 - Lemen, Asbestos in Brakes: Exposure and Risk of Disease, Am J Indus Med 45:229-237, 234 (2004) 7751
Ex 18 - Rohl, Consumer Talcums and Powders: Mineral and Chemical Characterization 261 (1976). 7761
Ex 19 - Rohl, Consumer Talcums and Powders: Mineral and Chemical Characterization 261 (1976). 7792
Ex 20 - Rohl Asbestos in Talc, Env Health Persp J, 9:129-132, 129 (Dec 1974 7798
Ex 21 - Dana, A Textbook of Mineralogy, at 678 7803
Ex 22 - Pfizer Technical Report for Ceramic Materials, Jan. 1967 7813
Ex 23 - Moline, J., et. al., Mesothelioma associated with the use of cosmetic talc (2020);....7819
Ex 24 - Emory, TS, et al., Malignant mesothelioma following repeated exposures to cosmetic talc: A case series of 75 patients (June 2020 7827
Ex 25 - Consensus Report: Asbestos, asbestosis, and cancer: the Helsinki criteria for diagnosis and attribution, Scand J Work Environ Health, 23:311-316, 311 (1997) 7834
Ex 26 - Hearing Transcript, Henderson, at 2:7-12 (denying the defendants' motion). 7842
Ex 27 - Hearing Transcript, Hirshberg v. Johnson & Johnson (April 29, 2021), at 132:16-23 7846
Ex 28 - Relevant excerpts of the Position Statement of the Societies of Epidemiology 6/4/2012 7851
Ex 29 - Relevant excerpts of the IARC Monograph on Asbestos 2012, at 219, 234, 238,280, 293, 294 7879
Ex 30 - Kanarek, Asbestos in Talc and Mesothelioma: Revie of the Causality Using Epidemiology, Med. Res. Archives, Vol. 8 (5) (2020). 7891
Ex 31 - Magnani, "Italian Consensus Conference on Malignant Mesothelioma of the Pleura. Epidemiology, Public Health and Occupational Medicine Related Issues," Med Lav 5:106, 325-332, at 328 (2015). 7905

J&J Defendants' Opposition to Plaintiffs' Motion in Limine No. 15 to Exclude Any Speculative Testimony that Blames Laboratory Contamination for the Presence of Asbestos in a Talc Sample with exhibits, July 24, 2024....7914
Ex A – Dep. of R. Mark Bailey, P.G., *Garcia v. Colgate-Palmolive Co.*, May 23, 2018 ("Garcia Bailey Dep.) excerpts 7922
Ex B - Dep. of Matthew Sanchez, Ph.D., *Hirshberg v. Johnson & Johnson*, March 1, 2021) ("*Hirshberg* Bailey Dep.") excerpts....7926
Ex C - Curriculum Vitae for Matthew S. Sanchez, Ph.D.....7932

J&J Defendants' Opposition to Plaintiffs' Motion in Limine No. 17 to Preclude the Testimony of Dr. Gregory Diette with exhibits, July 24, 2024 7939
Ex A - Diette *Perry* Rep. excerpts 7949
Ex B - February 28, 2023, *Payne*/*Plant* MIL Order 8048

Ex C - Diette's *Perry* Supp. Ex. Rep 8054
Ex D - Garcia, March 20, 2024, Brody Trial Tr. excerpts 8093
Ex E - February 22, 2021, Brody *Eggers* Dep. excerpts 8098
Ex F – Diette Dep., July 3, 2024 excerpts 8102

VOLUME XIX

J&J Defendants' Opposition to Plaintiffs' Motion in Limine No.19 to Exclude the 1986 Letter from H.W. Swanson to Phillippe Douillet with exhibits, July 24, 2024 8016
Ex A - FDA's certificate of authenticity and 1986 FDA Response.....8114
Ex B - 2018.11.09 *Boyd-Bostic* Trial excerpts 8305
Ex C - 11/15/72 letter to Dr. Goudie (DX7052).....8309
Ex D - 2024.05.23 *Lee* Trial excerpts 8311
Ex E - 2024.03.22 *Garcia* trial excerpts 8316

VOLUME XX

J&J Defendants' Opposition to Plaintiffs' Motion in Limine No. 22 Seeking Evidentiary Sanctions Based on Spoliation of Evidence with exhibits, July 24, 2024 8320
Ex 1 to 11- (Hood) Johnson & Johnson Defendants memorandum in opposition and supporting exhibits, October 25, 2021 8325
McBrayer Order 8917

VOLUME XXI

J&J Defendants' Reply in Support of Omnibus Motion in Limine No. 5 to Exclude Plaintiffs' Summary Evidence Charts with exhibits, July 29, 2024 8929
Ex A - January 6, 2024, Kuffner *Eggers* Dep. excerpts 8934
Ex B – Eggers- Def J&J March 21 Supplemental Response to Plainififf's First Set of Interrogatories and Request for Production.....8941
Ex C - August 11, 2022, *Payne* Pfizer Dep. excerpts 9403

VOLUME XXII

J&J Defendants' Opposition to Plaintiffs' Motion in Limine No. 21 to Exclude Testimony of Dr. David Weill with exhibits, July 29, 2024.....9412
Ex A - February 28, 2023, *Payne*/*Plant* MIL Order 9424
Ex B - July 11, 2024, Weill *Perry* Rep. 9434
Ex C - Weill Curriculum Vitae 9565
Ex D - July 18, 2024, David Weill Dep. excerpts 9581
Ex E - *Garcia*, March 20, 2024, Brody Trial Tr. excerpts.....9587
Ex F - February 22, 2021, Brody *Hirshberg* Dep. excerpts 9591
Ex G - July 12, 2024, Weill *Perry* Supp. Report 9594
Ex H - June 24, 2024 *Perry* Longo Dep. excerpts.....9597

J&J Defendants' Motion in Limine to Exclude Evidence of or Reference to Tissue Testing with exhibits, August 1, 2024 9601
Ex A –J&J Defs.' MTE 9605
Ex B - Geyer Affidavit. 9611
Ex C - Longo Dep., *Perry*, July 16, 2024 9615

Ex D - 7/31/24 K. Bueno Email Correspondence....9620

J&J Defendants' Mode of Trial Motion Regarding Successor Liability and Amalgamation, August 3, 2024....9622

J&J Defendants Objection to Plaintiffs' Proposed Instructions on Parties in Default and Conditional Motion to Sever with exhibits, August 3, 2024....9626
Ex 1 – 8/2/24 email to Atty McVey....9630

J&J Defendants Objection to Plaintiffs' Proposed Order regarding Plaintiffs' Motion in Limine No. 22 Based on Spoliation of Evidence with exhibit, August 3, 2024....9637
Ex A – 8/3/24 email with attachment....9640
Ex B – Redline comparison of proposed order to Hood (McBrayer) order....9658

J&J Defendants' Objection to Plaintiff Efforts to Submit to the Jury Evidence of Successor Liability or Amalgamation Issued for the Court but Unrelated to Plaintiffs' Products Liability Claims with exhibit, August 6, 2024....9670

J&J Defendants' Proffer of Evidence re: Mr. Perry's Exposure to Asbestos in the Library while working at Embassy Suites with exhibits, August 6, 2024....9674
Ex A - Dep. of Michael Perry excerpts....9678
Ex B - July 11, 2023 Office Visit, DX12000.398....9692
Ex C - Dr. Haber Report....9697
Ex D - January 18, 2024 Testimony of William Longo....9707

J&J Defendants' Memorandum related to Procedure and Evidence for Successor Liability with exhibits, August 6, 2024....9713
Ex A – Deposition Designations of Mongon....9722
Ex B - Deposition Designations of Ruh....9767
Ex C – Proposed Joint Stipulation....9789
Ex D - Dep. of M. Perry excerpts....9792
Ex E - Notice of Commencement of Chapter 11 Case and Meeting of Creditors....9798
Ex F - 8/5/2024 Trial Tr. Excerpts....9804

J&J Defendants' Objection to Sanctions Order, August 8, 2024....9810

VOLUME XXIII

J&J Defendants' Motion for Mistrial with exhibits, August 10, 2024....9813
Ex A – *Hood-McBrayer* 11/02/2021 Spoliation Order....9828
Ex B - *Perry* 7/30/2024 Tr excerpts....9841
Ex C – 08/05/2024 Trial Tr excerpts....9868
Ex D - 08/10/2024 Trial Tr. excerpts....9875
Ex E - 2019 Health Hazard Evaluation of Johnson's Baby Powder ("HHE")....9894

VOLUME XXIV

Ex F - Sanchez Report on Longo Samples....9907

VOLUME XXV

Ex G - Longo Affidavit 10407

Ex G - Longo Affidavit (CONTINUED) 10584
Ex H - PowerPoint Slides (Kuffner-1940s Talc). 10655
Ex I - 8/7/2024 Tr. Transcript (Longo) 10658

VOLUME XXVI

J&J Defendants' Proposed Jury Charges and Verdict Form, Exhibit A, August 11, 2024 10663
Ex A – Perry v. American Int'l 8/7/2024 Transcript (Day 3). 10667

VOLUME XXVII

Ex A – Perry v. American Int'l 8/7/2024 Transcript (Day 3). (Continued) 10907

Plaintiffs' Response to J&J's Motion for Mistrial (and exhibits attached thereto), August 12, 2024 11019
Ex 1 – Email exchange 8/1/2024 -8/4/2024 11031

J&J Defendants' Submission of Law Regarding Proper Causation Standard, August 12, 2024 11038

J&J Defendants' Proffer of Evidence re: The 1986 FDA Citizen Petition Response with exhibits, August 12, 2024 11041
Ex A – 1986 FDA Response 11046
Ex B - 85 Fed. Reg. 51035, 51035 (August 19, 2020) 11237
Ex C - 11/9/2018 *Boyd-Bostic* Trial Tr. excerpts 11239
Ex D - 5/23/2024 *Lee* Trial Tr excerpts 11243
Ex E - 3/22/2024 *Garcia* Trial Tr excerpts 11248
Ex F - 12/17/2019 *Forrest* Trial Tr. excerpts 11252

J&J Defendants' Proffer of Evidence re: The "Health Hazard Evaluation of Johnson Baby Powder" with exhibits, August 12, 2024 11259
Ex A – 2019 Health Hazard Evaluation of Johnson's Baby Powder (HHE) 11262
Ex B - 3/14/2024 Dep. of Dr. Kuffner, Newton excerpts 11275

J&J Defendants' Memorandum regarding Successor Liability with exhibits, August 12, 2024 11294
Ex A – Deposition Designations Thibaut Mongon, 8/14/2023 11307
Ex B – Deposition Designations of Paul Ruh, 8/16/2023 11333

J&J Defendants' Objections to Plaintiffs' Requested Jury Charges with Exhibits, August 12, 2024 11354
Ex A – Plaintiffs' Requested Jury Charges 11359

J&J Defendants' Objections to Plaintiffs' Proposed Verdict Form with exhibits, August 12, 2024.....11390
Ex A – Plaintiffs' Proposed Verdict Form.....11394

VOLUME XXVIII

J&J Defendants' Proffer of Evidence regarding Dr. Kuffner's Excluded Testimony on Winchite with exhibits, August 13, 2024.....11399
Ex A - 8/9/2024 Tr. Transcript (Kuffner) excerpts.....11403
Ex B - Sanchez Report on Longo Samples.....11409

VOLUME XXIX

Ex B – Sanchez Report on Longo Samples (continued).....11900
Ex C - Longo Affidavit.....12086
Ex D - PowerPoint Slides (Kuffner-1940s Talc).....12157
Ex E - 8/7/2024 Tr. Transcript (Longo).....12160

J&J Defendants' Motion and Memorandum in Support of Motion for Directed Verdict with exhibits, August 13, 2024.....12164

J&J Defendants' Objections to the Court's Final Jury Charges and Related Final Court Verdict Form, August 14, 2024.....12199

J&J Defendants' Motion for Mistrial with exhibits, August 15, 2024 -14 pgs.....12203
Ex A - Perry Trial Transcript, 8/14/2024 excerpt.....12207
Ex B - Perry Trial Transcript, 8/14/2024 excerpt.....12213

Plaintiffs' Trial Brief on Successor Liability of The Johnson & Johnson Defendants (and exhibits attached thereto), August 22, 2024.....12217
Ex 01 - J&J & Old JJCI Resp. to Interrog. (*Leavitt*) 3/21/2018.....12242
Ex 02 -J&J & Old JJCI Resp. to Interrog. (*Rimondi*) 7/5/2018.....12259
Ex 03 - Old JJCI Resp. to RFAs (*Garcia*) 7/26/2021.....12264
Ex 04 - Trans. of J&J (Hopkins) 7/22/2019 at 20:11-17.....12275
Ex 05 - Trans. of Mr. Kim 10/22/2021 at 45, 85, 87-89, 90-91.....12283
Ex 06 - J&J (Kuffner) depo. 11/9/2023 excerpts.....12295
Ex 07-. J&J Project Plato approval memo 10/11/2021.....12317
Ex 08 - J&J e-mail 10/5/2021.....12329
Ex 09 - JJCI (Goodridge) depo. 12/20/2021 at 312:8-9.....12331
Ex 10 - Kenvue (Mongon) depo. 8/14/2023 at 22:6-11.....12357

VOLUME XXX

Ex 11 - Kenvue (Ruh) depo. 8/16/2023 excerpts.....12402
Ex 12 -Transcript of New JJCI (Goodridge) 2/14/2022 excerpts.....12425
Ex 13 - Mr. Kim Declaration 4/4/2023 at ¶ 24.....12471
Ex 14 - Donald McGraw Declaration (with PowerPoint) 9/18/2023.....12482
Ex 15 – Bankruptcy Court Dismissal Order dated 8/11/2023.....12507
Ex 16 - 16(a)-(e), Agreements and Certificates 10/12/2021.....12519

Ex 17- J&J "Project Plato Master Q&A" 10/10/2021 at 9 (instructing employees to state that the Texas Two Step "has no impact on our operations." 12553
Ex 18 - Old JJCI Annual Report (NC) 4/5/2021 (listing Michelle Goodridge as president and director with Kevin Neat as Treasurer 12569
Ex 19 - New JJCI Annual Report (NC) 4/14/2022 12571
Ex 20 - Dr. Kuffner depo. 10/30/2021 at 32:5-7, 32:12-15 12573
Ex 21 - Continued Video-Recorded Deposition of Kenvue Inc. and Johnson & Johnson Holdco (NA) Inc. (through John Kim, Esq.), 8/10/24, at 60:22-25...12597
Ex 22 - New Jersey Certificate of Amendment 12/16/2022 12705
Ex 23 - Donald McGraw depo. 9/28/2023. New JJCI 3.0 was initially incorporated in Nevada in June 2022 before converting to a Delaware corporation in January 2023 12707
Ex 24 - New JJCI 3 Certificate (NV);.....12791
Ex 25 - New JJCI 3 Certificate of Conversion (DE). 12793
Ex 26 - Kenvue, Inc. SEC Form S-1 1/4/2023 12795
Ex 27 - Kenvue SEC Prospectus 9/18/2023 12818
Ex 28 - Kenvue LinkedIn profile compilation. 12824
Ex 29 - Kenvue SEC S-4 8/3/2023.. 12858
Ex 30- Kenvue SEC S-4 9/6/2023.....12866
Ex 31 - Johnson & Johnson Form 10k for the year 2018 12872
Ex 32 - Order on Plaintiffs' Motion to Compel and Motion for Sanctions Against Defendants Kenvue, Inc. and Johnson & Johnson Holdco (NA) Inc., 8/9/24 12883
Ex 33 - Oral and Videotaped Deposition of James Mittenthal as Defendant Kenvue Inc. 30(b)(6) Representative, Vol. I, 7/26/24, at 38:19-39:7 12888
Ex 34 - Video-Recorded Deposition of Kenvue Inc. (through James P. Mittenthal), Vol. II, 7/30/24, at 313:8-314:7.....12897

VOLUME XXXI

Ex 35 - Mass. SOS filing 3/14/2022 12911
Ex 36 – Business Corp Annual Report for J&J Holdco, 12/31/2022.....12914
Ex 37- Mittenthal Outline for Perry/ Kenvue Deposition—updated 7/25/2024, at pgs. 37-38.....12916
Ex 38 - Draft of J&J's Product List for the FDA, 12/5/11.....12955
Ex 39 - Product List, undated (listing all baby powders under the same category: "baby powder"). 12962

Post Trial Motions & Memos:

Plaintiffs' Trial Brief, Ex. 10 – Dep. of Thibaut Mongon, August 22, 2024.....12989

Plaintiffs' Trial Brief, Ex. 13 – Decl. of John Kim, August 22, 2024 13034

Plaintiffs' Trial Brief, Ex. 15 – Decl. of Donald McGraw, August 22, 2024.....13045

Plaintiffs' Trial Brief, Ex. 21 – Dep. of John Kim, August 22, 2024.....13057

Plaintiffs' Trial Brief, Ex. 34 – Kenvue Depo. (Mittenthal), Vol. II, 7/30/24 13165

J&J Defendants' Motions for JNOV, New Trial Absolute Based on Errors of Law, New Trial Absolute based on the Thirteenth Juror Doctrine, and New Trial nisi Remittitur with exhibits, August 26, 2024 13179
Ex A - Trial Transcripts excerpts 13274
Ex B – Weill Kuffner (Valadez) Tr. excerpts 13390
Ex C – *Salcedo* Tr. excerpts 13398
Ex D – Arnoldy Brody (Hirshberg) 2/22/2021 excerpt.....13402
Ex E – Longo Dep. (Yerkes/Hofmaister), 01/18/2024 excerpts 13407

VOLUME XXXII

Ex F – Perry Pre-Trial Transcript excerpts 13412

Motion to Substitute Pecos River Talc, LLC as a Party Defendant for LLT Management LLC f/k/a LTL Management, LLC, August 26, 2024 13438

J&J Defendants' Motion for Setoff and Motion for Production of Settlement, August 26, 2024.....13441

J&J Defendants' Motion to Stay Execution on Judgment, August 26, 2024 13448

J&J Defendants' Reply to Substitute Pecos River Talc, LLC as a Party Defendant for LLT Management, LLC f/k/a LTL Management, LLC, September 9, 2024.....13453
Ex 1 – Declaration of John Kim 13456
Ex A – Amended and Restated Funding Agreement.....13461

Plaintiffs' Consolidated Response to Defendants' Motion for Setoff and Production of Plaintiffs' Settlement Agreements, September 13, 2024 13478

Plaintiffs' Consolidated Response to Defendants' Motions to Stay Execution of Judgment (and exhibits attached thereto), September 13, 2024.....13483
Ex 01 – Perry v. American Int'l Trial Transcript (Day 6), 8/13/24.....13488

VOLUME XXXIII

Plaintiffs' Response in Opposition to Defendants Johnson & Johnson, LLT Management, LLC, Johnson & Johnson Holdco (NA) Inc., and Kenvue, Inc.'s Motions for JNOV, New Trial Absolute Based on Errors of Law, New Trial Absolute Based on the Thirteenth Juror Doctrine, and New Trial Nisi Remittitur (and exhibits attached thereto), September 13, 2024 13636
Ex 01 – TT 8/5/24 excerpts.....13742

VOLUME XXXIV

Ex 02 – TT 8/6/24, excerpts 14046
Ex 03 - TT 8/7/24, excerpts 14391

VOLUME XXXV (beginning 14546)

Ex 04 – TT 8/9/24, excerpts 14743

VOLUME XXXVI (beginning 15046)

Ex 05 – TT 8/12/24, excerpts 15117
Ex 06 – TT 8/13/24, excerpts 15448

VOLUME XXXVII

Ex 07 – TT 8/14/24 excerpts 15596
Ex 08 - TT 8/15/24 excerpts 15867

VOLUME XXXVIII

Ex 09 - Pre-Trial Hearing, 7/30/24 excerpts 16048
Ex 10 - Trial Ex. 611 16294
Ex 11 - Punitive Damages Verdict Form, 8/19/24 16301
Ex 12 - Plaintiffs' Trial Exhibit No. 72-Chart-Decades of Evidence of Asbestos in Johnson & Johnson Products) 16306
Ex 13 - Plaintiffs' Trial Exhibit No. 3 16323
Ex 14 – Plaintiff Trial Exhibit No 62 16327
Ex 15 - Plaintiffs' Trial Exhibit No. 106 16329
Ex 16 - Plaintiffs' Trial Exhibit No. 49 16332
Ex 17 - Plaintiffs' Trial Exhibit No. 7 16338
Ex 18 –Plaintiffs' Trial Exhibit No. 136 16341
Ex 19 - Plaintiffs' Trial Exhibit No. 193 16344
Ex 20 - Plaintiffs' Trial Exhibit No. 194 16347
Ex 21 –Plaintiffs' Trial Exhibit No. 196 16385
Ex 22 - Plaintiffs' Trial Exhibit No. 111 16389
Ex 23 - Plaintiffs' Trial Exhibit No. 113 16408
Ex 24 - Plaintiffs' Trial Exhibit No. 191 16411
Ex 25 - Plaintiffs' Trial Exhibits Nos. 92-94 16421
Ex 26 - Plaintiffs' Trial Exhibits Nos. 117-118 16427
Ex 27 - Plaintiffs' Trial Exhibit No. 181 16435
Ex 28 - Plaintiffs' Trial Exhibit No. 203 16441
Ex 29 - Plaintiffs' Trial Exhibit No. 10 16443
Ex 30 - Plaintiffs' Trial Exhibit No. 90 16451
Ex 31 - Plaintiffs' Trial Exhibit No. 55 16453
Ex 32 - Plaintiffs' Trial Exhibit No. 61 16462
Ex 33 - Plaintiffs' Trial Exhibit No. 5 16464
Ex 34 - Deposition of Gregory Diette, 2/3/23, at 80:13-2 16466
Ex 35 - *Jolly v. General Electric Co.*, Order denying Defs' Post Trial Motions 16501

VOLUME XXXIX

Ex 36 - *Garvin v. Agco Corp.*, Order denying in part and granting in part Def Crane Co's Motion for Post Trial Relief, 11/10/14 16541

Ex 37 - *Tort Law—Expert Testimony in Asbestos Litigation—District of South Carolina Holds the Every Exposure Theory Insufficient to Demonstrate Specific Causation Even if Legal Conclusions Are Scientifically Sound*, 131 Har. L. Rev. 658 (Dec. 2017).....16582
Ex 38 – Order granting Joint Motion requesting the Division of PL Perry Tissue, 7/10/24 16591
Ex 39 – Video Deposition of William E Longo 8/6/24.....16596
Ex 40 - Johnson & Johnson Defendants' Witness List 16630
Ex 41 - Letter from Donald Kennedy, Commissioner of Food and Drugs, dated 1/11/1979 16636
Ex 42 - Goudie, Examination of Johnson & Johnson's Baby Powder (10/27/72) 16645
Ex 43 - Chart of Decades of Evidence of Asbestos Content in Johnson & Johnson Products at pp. 1 – 10.....16649
Ex 44 - "Swanson Letter" and attachments (parts 44-2 to 44-7) 16666
Ex 45 - J&J Defendants' Objections to the Court's Final Jury Charges and Related Final Court Verdict Form, 8/14/24.....16861
Ex 46 - Johnson & Johnson Defendants Proposed Verdict Form, ... 16866
Ex 47 - Notice of Joint Stipulation, 7/31/24 16876
Ex 48 - *Lee v. Johnson & Johnson, et al.*, No. 23CV40369, Circuit Court of Multnomah County, Oregon, Special Verdict Form, 6/3/24 16879
Ex 49 - *Salcedo v. Avon*, 4/19/24, Cook County, Illinois Circuit Court) 16883
Ex 50 - *Vanklive*, 12/9/21, Alameda County Superior Court.).....16890
Ex 51 - *Chapman v. Avon Products*, 12/14/22, Los Angeles Superior Court).....16898
Ex 52 -*Plant v. Whitake Clark & Daniels*, 3/3/23, South Carolina Court of Common Pleas 16922
Ex 53 – Hood-McBrayer Spoliation Order, 11/5/21 16926
Ex 54 - Email Exchange from Kim Bueno, Re: Perry Trial Schedule, 8/3/24 16939

VOLUME XL

J&J Defendants' Renewed Motion for Directed Verdict and Nonsuite as a Matter of Law and J&J Defendants' Memorandum in Support Thereof regarding Successor Liability and in Opposition to Plaintiffs' Requests with exhibits, September 19, 2024 – 16957
Ex A –*LaSalle*- Order granting Defendants J&J Holdco and Kenvue Motion to Dismiss, 9/12/2023 16973
Ex B – *Egli* – 10/26/23 Order on Motion to Quash 16982
Ex C – Yandell – 8/15/2023 Order on Motion to Quash 16990
Ex D – Johnson & Johnson SEC Form 8-K, 05/17/2024 17000
Ex E - 08/23/2023 J&J Announces Final Result of Exchange Offer and Finalize Separation from Kenvue, Inc. 17004
Ex F – Johnson & Johnson SEC Schedule to Amendment No.4 – Tender Offer Statement.....17008

Plaintiffs' Response to J&J Defendants' Renewed Motion for Directed Verdict and Nonsuit as a Matter of Law Regarding Successor Liability (and exhibits attached thereto), September 20, 2024 – (Exhibits referenced refer to Plaintiff's Trial brief on Successor Liability 17013

J&J Defendants' Objections to Plaintiffs' Proposed Order, and Supplemental Memorandum Supporting Johnson & Johnson Defendants' Post Trial Filings with exhibits, October 7, 2024 17027
Ex 1 – C. Brown letter to Honorable Jean Toal, 10/7/2024 17030
Ex 2 – Proposed Order 1 – does not rule on Successor Liability 17033
Ex 3 – Proposed Order 2 – rules on Successor Liability 17046

J&J Defendants Objection to Proposed Order on Successor Liability and Further Memorandum in Support of J&J Defendants' JNOV and Other Legal Positions with exhibits, November 8, 2024 17059
Ex A – Plaintiffs' Proposed Order on Successor Liability 17077

J&J Defendants' Motion to Reconsider, December 23, 2024 17096

Plaintiffs' Response to J&J Defendants' Motion to Reconsider (and exhibits attached thereto), February 21, 2025 17105
Ex 01 – JJ Defendants Mode of Trial Motion re. Successor Liability and Amalgamation, 8/3/24 17118
Ex 02 - TT 8/5/24, excerpts 17123
Ex 03 - Hearing on Post-Trial Motions, Vol. II, 9/25/24 excerpts 17132
Ex 04 – Verdict Form, 8/19/24 17138
Ex 05 – TT 8/13/24 excerpts 17143
Ex 06 - J&J Defendants' Objections to the Court's Final Jury Charges and Related Final Court Verdict Form 17153
Ex 07 - J&J Defendants' Objections to Plaintiffs' Proposed Verdict Form, 8/12/24 17158
Ex 08 - Order on Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc.; and Kenvue, Inc.'s Post-Trial Motions, 12/11/24 17168
Ex 09 – TT 8/6/24 excerpts 17255
Ex 10 – TT 8/7/204 excerpts 17264
Ex 11 - Mongon Depo., 8/14/23, 55:3-12 17274

VOLUME XLI

Transcripts:

Pre-Trial Hearing Transcript, July 30, 2024 17280

Trial Transcripts Vols I – VIII, August 5, 2024 to August 14, 2024 17525
Vol 1, August 5, 2024 17525

VOLUME XLII (beginning 17780)

Vol 2, August 6, 2024 17828
Vol 3, August 7, 2024 18172

VOLUME XLIII (beginning 18280)
Vol 4, August 9, 2024 18523

VOLUME XLIV (beginning 18780)
Vol 5, August 12, 2024 18896
Vol 6, August 13, 2024 19226

VOLUME XLV (beginning 19280)
Vol 7, August 14, 2024 19281
Vol 8, August 15, 2024 19643

VOLUME XLVI
Post Trial Hearing Transcripts Vols I & II 19823
Vol I, September 24, 2024 19823
Vol II, September 25, 2024 19981

Other:

Johnson & Johnson Defendants' Witness List, 7/20/2024 20022
J&J Defendants' Proposed Jury Charges and Verdict Form, August 11, 2024 20027
J&J Defendants' Notice of Appeal with exhibits, January 10, 2025 20190

VOLUME XLVII
J&J Defendants' Supplemental Notice of Appeal, March 3, 2025 20295
Supersedeas Bond, March 19, 2025 20405

Email Correspondence: .....
Re: Perry Trial Schedule, July 29-August 2, 2024 20410
Re: Perry-Outstanding Issues, August 4, 2024 20422
Re: Perry Trial Schedule, August 6-10, 2024 20424

Depositions: 20429
Deposition of Dr. William Longo, 8/6/24 20429
Deposition of Michael Perry, Vol. I, 10/10/23 20438
Deposition of Michael Perry, Vol. IV, 10/13/23 20616
Deposition of Gregory B. Diette, M.D., 7/3/24 20738

VOLUME XLVIII
Deposition of David Weill, M.D., 7/18/24 20765

Trial Exhibits:

Plaintiffs' Exhibit 10 20816
Plaintiffs' Exhibit 40 20823
Plaintiffs' Exhibit 49 20825
Plaintiffs' Exhibit 72 20830

Plaintiffs' Exhibit 117 20846
Plaintiffs' Exhibit 289 20849
Plaintiffs' Trial Ex. 4274 20855

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

ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
MICHAEL L. PERRY and LONNIE L. LONG, Plaintiffs, v. AMERICAN INTERNATIONAL INDUSTRIES; et al., Defendants.	)	Case No.: 2023-CP-40-04072

JOHNSON & JOHNSON DEFENDANTS RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 22 SEEKING EVIDENTIARY SANCTIONS BASED ON SPOLIATION OF EVIDENCE

As Plaintiffs' Motion notes, they filed a nearly identical motion in *Hood (McBrayer) v. Acme Markets, Inc., et al.*, C/A No. 2020-CP-10-03946 ("McBrayer/Hood"). Johnson & Johnson submitted a memorandum in opposition and supporting exhibits on October 25, 2021, which are attached hereto as **Exhibits A through A-11**. Defendants Johnson & Johnson; LLT Management, LLC f/k/a LTL Management, LLC; Kenvue, Inc.; and Johnson & Johnson Holdco (NA), Inc. ("J&J Defendants") respectfully incorporate by reference, adopt, and assert the arguments raised in that opposition brief herein in their entirety.

The Court held a hearing on the McBrayer/Hood Plaintiff's motion October 28, 2021. On November 5, 2021, the Court issued an Order granting that motion. The Court's Order is attached hereto as **Exhibit B** ("the McBrayer Order").

As detailed herein, the Court erred in several respects in issuing the McBrayer Order. Therefore, for the reasons stated in the opposition brief filed by J&J in the McBrayer/Hood matter (which, again, J&J Defendants adopt, incorporate by reference, and reassert in full in this matter)

ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

and herein Plaintiffs' motion should be denied. The McBrayer Order erred in the following respects:

I. J&J Defendants had no duty to preserve the documents and materials at issue.

First, J&J Defendants had no duty for large-scale preservation of documents unless and until mass tort litigation became reasonably foreseeable. The Court erred in holding to the contrary in the McBrayer Order.

As J&J Defendants explained in their briefing and as several courts have held, such mass litigation—and plaintiffs' recent requests for all historic testing and samples—did not become reasonably foreseeable until 2016 at the earliest. Accordingly, the broad, large-scale duty to preserve all documents related to talc testing advocated by Plaintiffs did not attach to J&J Defendants before 2016 and cannot be applied to the documents and materials on which Plaintiffs base their sanctions motion. *See* J&J's Memo in Opp. at 15 (citing cases supporting this argument). J&J Defendants' alleged knowledge that "the FDA was concerned about the presence of asbestos in talc and considering regulation of the talc industry," its alleged general knowledge "that asbestos disease was latent," and/or its purported unsuccessful attempt to obtain talc samples from Luzenac in 1994 due to Luzenac's retention policy, *see* Order at 7, did not trigger a duty for J&J Defendants to preserve all talc-related documents and materials for litigation. The Court's reliance on these points was error.

Second, Plaintiff failed to show—and the Court failed to find—that the "blanks" or TEM bench sheets were in J&J Defendants' possession, custody, or control. *See* Rule 34, SCRCP. Rather, as J&J Defendants explained in their briefing, those materials were discarded by third parties and never made available to J&J Defendants. *See* J&J's Memo in Opp. at 18–20. The Court appeared to assume materials from all testing purportedly "commissioned" by J&J

ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Defendants was in J&J Defendants' possession, custody, or control. This assumption was erroneous and an improper basis for awarding spoliation sanctions against J&J.

Finally, any duty to retain documents generated by Old JJCI after 1979, when J&J stopped manufacturing cosmetic talcum powder products, would have belonged to Old JJCI and cannot be imputed to J&J. The McBrayer Order failed to address this point.

II. Plaintiffs never requested that J&J produce the "blanks" in this case.

The McBrayer Order failed to acknowledge that Plaintiff never even requested that J&J produce the "blanks" in that matter. Plaintiffs have not made such a request in this matter either. Accordingly, the "blanks" are not relevant or material to Plaintiffs' claims. J&J cannot be sanctioned for failing to preserve materials that Plaintiffs did not even request and that are, therefore, not relevant to the parties' dispute. *See* J&J's Memo in Opp. at 16.

III. Plaintiffs failed to establish the requisite culpability of willfulness or bad faith.

Plaintiffs' motion should also be denied because they have not established the requisite culpability—that J&J failed to preserve evidence willfully or in bad faith. The McBrayer Order found only that "Plaintiff need not prove that the spoliation was intentional to justify an adverse inference instruction" and that "there is ***some evidence*** that [J&J] acted in bad faith ***in relation to certain matters*** connected to the reporting and preservation of its testing." Order at 10. The Court applied an incorrect standard, however. Plaintiff must prove that J&J discarded specific materials ***in bad faith***—not merely that "there is some evidence" that J&J allegedly acted in bad faith at some unidentified time and in some unidentified manner. *See Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (requiring bad faith, willfulness, or callous disregard of the rights of other litigants).

ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Although the Court attempted to distinguish the sanctions it issued in McBrayer/Hood from "death penalty sanctions," such as default or dismissal, the ordered sanctions had the effect of striking one or more of J&J's defenses and therefore required a showing of bad faith. To the extent the Court found evidence of bad faith is not required, it committed an error of law. To the extent the Court found J&J destroyed evidence in bad faith, its finding was unsupported by any evidence. Any destruction or discarding of evidence took place pursuant to third parties' retention policies, as J&J explained in its briefing. *See* J&J's Memo in Opp. at 18–20.

Therefore, because Plaintiffs have not made the requisite showing of culpability their motion should be denied.

IV. Plaintiffs have not shown any prejudice.

Plaintiffs have failed to demonstrate that any purported loss of evidence is prejudicial to Plaintiffs. In the McBrayer Order, the Court agreed with J&J as to historical testing samples, but it failed to address this point as to the "blanks" or TEM bench sheets. Plaintiffs may prove their claims through evidence available from other sources and cannot establish that the alleged missing evidence would have helped them prove their claims or might reasonably support the adverse inferences they requested. *See* J&J's Memo in Opp. at 10.

V. The evidence is not sufficiently important.

Finally, the Court erred in finding J&J "has not argued that this underlying data are unimportant." Order at 3. To the contrary, J&J argued the data is not essential to this case and that, "given the numerous trials that have taken place without these materials, . . . plaintiff cannot credibly argue that any alleged destruction of the materials at issue warrants spoliation sanctions." J&J's Memo in Opp. at 6.

ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Conclusion

For these reasons and all the reasons stated by J&J in its briefing and/or oral arguments in the McBrayer/Hood matter, which are incorporated herein in full, the Court should decline to impose spoliation sanctions against J&J Defendants.

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

IN THE COURT OF COMMON PLEAS OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR CHARLESTON COUNTY, SOUTH CAROLINA

ANGELA M. HOOD, Individually and as Personal Representative of the Estate of MARY B. MCBRAYER,	)	**C/A No. 2020-CP-10-03946**
	)	**In Re: Asbestos Products Liability Litigation**
Plaintiff,	)	
v.	)	
ACME MARKETS, INC., et al.	)	
Defendants.	)	

DEFENDANT JOHNSON & JOHNSON'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR EVIDENTIARY SANCTIONS BASED ON SPOLIATION OF EVIDENCE

Defendant Johnson & Johnson ("J&J") respectfully submits this opposition to plaintiff's motion for evidentiary sanctions.

PRELIMINARY STATEMENT

On October 12, 2021, Johnson & Johnson Consumer Inc. ("Old JJCI") completed an internal corporate restructuring. As a result of that restructuring, Old JJCI ceased to exist and two new companies were created. The first new company is named LTL Management LLC ("LTL"). The second new company, like the former company, is named Johnson & Johnson Consumer Inc. ("New JJCI"). LTL is the entity responsible for all talc-related claims asserted against Old JJCI, J&J, or any of their affiliates (excluding talc-related claims for which the exclusive remedy is provided under workers' compensation statutes and similar laws). LTL is the entity responsible for the talc-related claims asserted in this case.

On October 14, 2021, LTL filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of North Carolina ("Bankruptcy Court"). Upon that filing, the automatic stay under section 362 of the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Bankruptcy Code became effective immediately. A Notice of Suggestion of Bankruptcy (the "Notice") was filed in this case on October 15, 2021. That Notice informed the parties and the Court of LTL's chapter 11 filing and LTL's position regarding the scope of the automatic stay—that it applies to all talc-related claims against Old JJCI, New JJCI, J&J, and their other corporate affiliates, among other parties that share an identity of interest with LTL concerning talc-related claims and/or against whom fixing talc-related liabilities would be tantamount to fixing those liabilities against LTL.

In response to litigation conduct at odds with the scope of the stay, (i) on October 18, 2021, LTL filed in the Bankruptcy Court an Emergency Motion to Enforce the Automatic Stay ("Stay Motion"); and (ii) on October 21, 2021, LTL filed in the Bankruptcy Court an adversary complaint and motion for an order declaring that the automatic stay applies to certain actions against non-debtors or preliminarily enjoining such actions against non-debtors and granting a temporary restraining order pending a final hearing (the "Adversary Proceeding"). In the Adversary Proceeding, LTL seeks a declaration that the stay applies not only to LTL and Old JJCI, but to New JJCI, J&J, other of their corporate affiliates, identified retailers, insurance companies, and certain others (collectively, the "Protected Parties").

On October 22, 2021, the Bankruptcy Court issued an oral ruling confirming that all talc-related claims asserted against Old JJCI and LTL are stayed pursuant to the automatic stay under section 362 of the Bankruptcy Code. The Bankruptcy Court did not enter a temporary restraining order against claims asserted against the other Protected Parties but set a hearing on LTL's request for a preliminary injunction for November 4 and 5, 2021. The Bankruptcy Court will then consider further, whether by virtue of the application of the automatic stay or otherwise, talc-related claims against New JJCI, J&J and the other Protected Parties are

automatically stayed pursuant to section 362(a) of the Bankruptcy Code or should be enjoined pursuant to section 105(a) of the Bankruptcy Code.

J&J maintains that the automatic stay applies to it and any other Protected Parties in this case. J&J objects to any further proceedings against it and any other Protected Parties. J&J reserves all rights under applicable law with respect to any violations of the automatic stay. In the event that the Bankruptcy Court determines on November 5, 2021, or thereafter, that talc-related claims against J&J or any of the other Protected Parties are automatically stayed, any actions taken in the interim in violation of the stay will be null and void as a matter of law.

INTRODUCTION

Plaintiff's motion should be denied even if it were procedurally proper. Over the last several years, J&J has spent an enormous amount of time and resources producing millions of pages of documents in connection with litigation regarding the alleged risks of Johnson's Baby Powder. This voluminous production includes extensive records related to decades' worth of routine talc testing for the possible presence of contaminants, including asbestos. J&J has also made available for testing hundreds of product samples dating back to the early 1900s. As a result, plaintiff has access to a massive amount of documents and physical samples pertaining to the mineralogical content of talc – more than she could ever test or use at trial.

Despite the availability of copious samples and testing materials, plaintiff claims that J&J "destroyed" evidence by failing to ensure the retention of: (1) all underlying data pertaining to historical talc testing conducted by third-party testing facilities over the course of the last ***half-century***; (2) all historical talc samples; and (3) hypothetical "blanks," or empty filters, that may potentially have been used by third-party laboratories to control for laboratory contamination in certain talc tests conducted decades ago. (Pl.'s Mot. at 13-17.) Based on these allegations,

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

plaintiff asks the Court to: (1) bar J&J from introducing certain evidence that Johnson's Baby Powder does ***not*** contain asbestos; and (2) instruct the jury that it may presume that any unproduced historic talc testing data and samples ***did*** contain asbestos that was not the result of laboratory contamination. (*Id.* at 34-35.) In short, plaintiff seeks an order partially relieving her of her burden of proof in this litigation. This request should be strongly rejected for several reasons.

First, J&J did not have a duty to preserve any of the historical materials that plaintiff claims were spoliated. According to plaintiff, J&J had a general duty to preserve all materials potentially relevant to the issue of asbestos in talc going back to the 1960s. But J&J was not involved in ***any*** lawsuits alleging that cosmetic talc powder causes mesothelioma until 1996. And even after that date, the small number of isolated cases over the next two decades did not trigger a widespread duty to retain all testing-related materials and samples of talcum powder.[1]

In part for this reason, two courts overseeing other talc cases have recently ***rejected*** very similar requests for spoliation sanctions, holding that J&J and Old JJCI did not have a duty to preserve many of the same historical talc testing materials and samples at issue in plaintiff's motion. *See, e.g.*, Hr'g Tr. ("*Rimondi* Hr'g Tr.") 17:17-22:25, *Rimondi v. BASF Catalysts, LLC*, No. MID-2912-17AS (N.J. Super. Ct. Law Div. Feb. 22, 2019) (Ex. 1) (rejecting argument that J&J and Old JJCI "should have . . . preserved talc samples, grids and other testing evidence" dating back to the 1960s because of the existence of historical talc litigation, and instead finding that J&J did not have "a duty to retain [the historical] materials at issue"); Order Regarding Mots. in Lim., for Summ. J., & for Missing Evid. Instrs. ("*Hayes* Order") at 33, 37-38, *Hayes v.*

[1] In addition, any duty to retain documents generated by Old JJCI after 1979, when J&J stopped manufacturing cosmetic talcum powder products, would have belonged to Old JJCI and cannot be imputed to J&J.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Colgate-Palmolive Co., No. 16-CI-003503 (Ky. Cir. Ct. Apr. 12, 2019) (Ex. 2) (finding that a "general awareness" of the potential risks of talc and the existence of historical talc cases in the 1970s, 1980s and 1990s "did not give rise to a duty to preserve . . . evidence" related to allegations that asbestos in Johnson's Baby Powder causes mesothelioma).

Second, even if plaintiff could demonstrate that spoliation occurred, she would not be entitled to any sanctions because she lacks any evidence that J&J willfully destroyed samples or underlying testing materials. Under South Carolina law, where a sanction would essentially deny a defendant "the opportunity to present a defense," courts have generally held that there must be "some element of bad faith, willfulness, or callous disregard of the rights of other litigants in order to justify imposition of such a sanction." *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154 (Ct. App. 1990) (quoting 4A J. Moore, J. Lucas & D. Epstein, *Moore's Federal Practice* ¶ 37.03[2], at 89 (2d ed. 1990)). Plaintiff cannot establish the requisite culpability here because the evidence shows that the historical testing data, historical talc samples and so-called testing "blanks" at issue were discarded by third-party testing facilities pursuant to regular document retention practices long before relevant consumer litigation was initiated. Three different courts overseeing talc cases have recognized as much, *see, e.g.*, *Rimondi* Hr'g Tr. 20:15-17; *Hayes Order* at 38; Trial Tr. Day 2 (AM Session) ("*Hirshberg* Trial Tr.") 116:9-14, *Hirshberg v. Johnson & Johnson*, No. 20-2-05603-1 SEA (Wash. Super. Ct. May 4, 2021) (Ex. 3), and this Court should do the same.

Third, because plaintiff cannot demonstrate that any loss of the historical testing materials, samples and data at issue in her motion has prejudiced her ability to prove her claims or that the information she claims was lost is unavailable from other sources, the draconian adverse inference and evidence sanctions sought by plaintiff would unfairly punish J&J, relieve

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

plaintiff of her burden of proof and reward plaintiff with a windfall. J&J and Old JJCI have produced hundreds of talc samples dating back to the early 1900s, as well as voluminous talc testing documents. Thus, the materials that plaintiff claims are missing are duplicative of the evidence in the record. Further, plaintiff ***never even asked*** for some of the evidence on which her motion is based, including "blank" filters potentially used by third-party testing facilities in conducting historical talc tests, belying any claim that such materials are essential to this case. Finally, given the numerous trials that have taken place without these materials (including trials that resulted in plaintiff verdicts), plaintiff cannot credibly argue that any alleged destruction of the materials at issue warrants spoliation sanctions.

For all of these reasons, discussed further below, plaintiff's motion should be denied.

BACKGROUND

Plaintiff's spoliation allegations appear to involve three categories of materials: (1) underlying data and/or "bench sheets" for historical talc tests dating back to the 1950s (*see* Pl.'s Mot. at 7-15); (2) historical talc samples (*see id*. at 17-18); and (3) "blanks" (i.e., filters) that may have been used in historical talc testing to control for laboratory contamination (*see id*. at 15-17).

A. Historical Talc Testing Data And Materials

J&J (and Old JJCI) have – over the last half-century – routinely sent talc samples to various third-party laboratories, including McCrone Environmental Services, Inc. ("McCrone") and RJ Lee Group, for transmission electron microscopy ("TEM"), which tests for the presence of asbestos and other contaminants. Plaintiff asserts that J&J and Old JJCI discarded the underlying data from certain TEM tests, which she refers to as "bench sheets." (Pl.'s Mot. at 10-12.) A TEM bench sheet is the work paper used by a TEM technician when reviewing a sample via TEM. The TEM bench sheet is used to prepare the actual letter report that communicates the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

results of the TEM analysis, which reports plaintiff acknowledges have been produced. (*See id*.) Notably, the Talc Supply Agreement utilized by Old JJCI only required McCrone, its third-party testing laboratory, to send Old JJCI a copy of the TEM report ultimately produced for samples tested; McCrone was not required to send Old JJCI the bench sheets created in connection with the TEM process. *See* JNJ 000066588 (Talc Supply Agreement between Windsor Minerals Inc, and Johnson & Johnson Baby Products Company, Jan. 6, 1989) (Ex. 4). Nonetheless, some TEM bench sheets did come to be in the possession of J&J or Old JJCI, and they have been produced in this litigation. Indeed, plaintiff attaches such an exemplar bench sheet as an exhibit to her motion. (*See* Pl.'s Mot., Ex. 50, at Bates Nos. JOJO-MA90013-0005-0007.) Plaintiff argues that the exemplar bench sheet is inconsistent with the TEM report issued for the same test because it identified a single anthophyllite fiber, and TEM reports only indicate if five or more asbestos fibers are found. (*See* Pl.'s Mot. at 10-15.) Plaintiff speculates that other TEM bench sheets related to TEM testing conducted in the 1970s, 1980s and 1990s may similarly show that fewer than five asbestos fibers were counted in talc samples reported as negative for asbestos. (*See id.*) But even assuming that is correct, such materials would be wholly cumulative of the TEM bench sheets that plaintiff already possesses.

B. Historical Talc Samples

Plaintiff also contends that J&J "fail[ed] to maintain talc samples" that could be used "for future analysis," including the talc samples that third-party laboratories such as McCrone tested using TEM. (Pl.'s Mot. at 17-18.) Pursuant to TEM testing protocols, however, tested talc samples were generally maintained by the third-party laboratories for a set period of time consistent with the testing facilities' retention policies before they were disposed of in the ordinary course of business, as plaintiff concedes. (*See id.* at 17-18, 21.) Notably, to the extent

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

the ***results*** of the testing completed by the third parties were provided to J&J or Old JJCI – and many such documents have been produced to plaintiffs in talc litigation – there is no evidence that J&J was provided with any of the tested talc samples themselves or had a business reason to take possession of such samples.

Nonetheless, J&J and Old JJCI made reasonable searches for any talc samples in their possession, custody or control and identified hundreds of samples covering many decades, a number of which have been produced in the talc litigation and are available to plaintiff and her experts in this case.[2] In addition, talc samples have been produced by non-party talc supplier Imerys Talc America, Inc. and non-party Pharma Tech Industries.

Plaintiff also appears to argue that J&J (and Old JJCI) improperly failed to retain ***every*** historical talc sample ever in its possession, regardless of whether it was the subject of a talc test. (*See* Pl.'s Mot. at 17-18 (asserting that "J&J had an endless number of talc bottles to draw from to preserve for future analysis" but "fail[ed] to maintain talc samples").) But, as set forth above, plaintiff and her experts have access to – and have the ability to test – substantial numbers of talc samples produced by J&J and have provided no basis to suggest that additional historical samples would provide different information.

C. Testing "Blanks" Used To Identify Laboratory Contamination In Historical Talc Tests.

Plaintiff has also pointed to certain historical documents from McCrone and other third-party testing facilities that plaintiff claims show the presence of asbestos fibers in Johnson's Baby Powder – but also state that the subtrace findings identified were likely the result of laboratory contamination, rather than present in the talc sample itself. *See, e.g.*,

[2] A copy of the inventory of produced talc samples, which was created in connection with the federal talc MDL proceeding, is attached as Exhibit 5.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

JNJTALC000287007 (July 8, 1974 letter from McCrone research physicist reporting "low levels of asbestiform minerals [that] are so low that they might well [have] be[en] caused by contamination either in the processing from air contamination or in our laboratory") (Ex. 6); JNJ 000314361 (May 21, 1987 letter from Vice President of McCrone indicating that monitoring of Windsor Minerals' talc products had only revealed "two occasions on which some suspicious material was detected," one of which "involved possible chrysotile contamination in an air sample and the contamination source was subsequently pinpointed as a deteriorating clutch in some mechanical equipment") (Ex. 7).

Plaintiff seeks to preclude J&J from referencing the clear language in these and other similar testing documents that asbestos identified in historical talc samples was the product of laboratory contamination based on the assertion that J&J "has no documentation" for plaintiff to "refute" "claims of 'laboratory contamination.'" (Pl.'s Mot. at 15-16.) Specifically, plaintiff contends that it is a "standard practice amongst laboratories" testing for asbestos to use "blanks" – i.e., "filter[s] placed near [the] talc samples being tested to capture any contaminants in the air." (*Id*. at 15.) Accordingly, plaintiff assumes that all of the relevant talc testing that reported lab contamination must have involved the use of "blanks" that could confirm whether such contamination had occurred. But even if this were the case, there is zero evidence that such "blanks" were ever in the possession, custody or control of J&J (or Old JJCI). Moreover, plaintiff has never requested the production of such "blanks" in connection with this case.

ARGUMENT

It is uniformly recognized that a "party seeking sanctions based on the spoliation of evidence must establish . . . that the alleged spoliator had a duty to preserve [the] evidence." *Turner v. United States*, 736 F.3d 274, 282 (4th Cir. 2013). In addition, South Carolina courts

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

consider three factors before imposing discovery sanctions as a general matter: (1) "the precise nature of the discovery and the discovery posture of the case"; (2) "willfulness"; and (3) the "degree of prejudice." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 82 (S.C. 2011) (citation omitted).

Where a sanction would essentially deny a defendant "the opportunity to present a defense," South Carolina courts have required that there must be "some element of bad faith, willfulness, or callous disregard of the rights of other litigants in order to justify imposition of such a sanction." *Balloon Plantation*, 303 S.C. at 154 (quoting 4A J. Moore, J. Lucas & D. Epstein, *Moore's Federal Practice* ¶ 37.03[2], at 89 (2d ed. 1990)). Moreover, when a party seeks an adverse inference instruction as a sanction for spoliation of evidence, that party "must be prepared to make a showing that the document or evidence might reasonably have supported whatever presumption is being requested of the fact finder." *Pringle v. SLR, Inc. of Summerton*, 382 S.C. 397, 405 (Ct. App. 2009) (citation omitted). The requirement for such a showing makes sense given that an adverse inference instruction – or any sanction – for a discovery violation is plainly inappropriate absent a showing that a party is prejudiced by the missing evidence. *See, e.g.*, *id.* (sanctions not warranted where "in view of the evidence already presented, the [lost evidence] would not have provided any additional information" to prove plaintiff's claim); *Jamison v. Ford Motor Co.*, 373 S.C. 248, 270-71 (Ct. App. 2007) (sanctions not warranted where plaintiff "demonstrated no prejudice"); *CFRE*, 395 S.C. at 84 (sanctions not warranted where plaintiff "suffered no prejudice as a result" of defendant's discovery violations).

Finally, even if discovery sanctions are appropriate, courts generally require that the sanction imposed "be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of a case." *Jamison*, 373 S.C.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

at 270 (citation omitted). As plaintiff's own authority notes, any sanctions imposed should be "just under the circumstances" and designed to "protect the rights of discovery provided by the rules." *Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 395 (S.C. 1990).

The Court should deny plaintiff's motion pursuant to these principles because: (1) J&J did not engage in any spoliation; (2) even if it had, its conduct was not done in "bad faith, willful[ly], or [with] callous disregard of the rights of other litigants"; and (3) plaintiff cannot establish any prejudice from the loss of this evidence.

I. PLAINTIFF CANNOT DEMONSTRATE THAT J&J HAD A DUTY TO RETAIN THE ALLEGEDLY DISCARDED MATERIALS AT ISSUE.

Plaintiff's motion should be denied first and foremost because she cannot establish that J&J "had a duty to preserve" the evidence in question. *Turner*, 736 F.3d at 282.[3] It is well-recognized – and plaintiff does not dispute – that "[a] party seeking sanctions based on the spoliation of evidence must establish" first and foremost "that the alleged spoliator had a duty to preserve [the] material evidence [at issue]." *Id.*; *see Vulcan Materials Co. v. Massiah*, 645 F.3d 249, 259 (4th Cir. 2011) ("adverse inference [sanction] 'requires a showing that the party knew the evidence was relevant to some issue at trial'") (citation omitted); *Grayson Consulting, Inc. v. Cathcart*, Nos. 2:07-cv-02992-DCN, 2:07-cv-00593-DCN, 2013 WL 3946203, at *7 (D.S.C. July 31, 2013) ("[T]he party must have been under a duty to preserve the evidence at the time it was altered or destroyed."); *Larios v. Lunardi*, 442 F. Supp. 3d 1299, 1305 (E.D. Cal. 2020) ("Rules against spoliation are rooted in litigants' 'duty to preserve evidence which [they know],

[3] Spoliation cases in South Carolina "have been few and far between." Kevin Eberle, *Spoliation in South Carolina*, 19 S.C. Law. 26, 28 (2007). J&J is not aware of any that directly address the question of when a duty arises to retain documents. Where state-court precedent is lacking, it is appropriate to "look to federal interpretation for guidance." *Hueble v. S.C. Dep't of Nat. Resources*, 416 S.C. 220, 229 (2016); *see, e.g.*, *Senate ex rel. Leatherman v. McMaster*, 425 S.C. 315, 323-24 (S.C. 2018) ("survey[ing] federal jurisprudence" to answer novel question of South Carolina law); *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 122 (Ct. App. 1998) (looking to "federal case law" to resolve "discovery abuse motion[]").

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

or reasonably should know, is relevant in [an] action.'") (citation omitted), *aff'd*, 856 F. App'x 704 (9th Cir. 2021); *cf. S.C. Dep't of Revenue v. Meenaxi, Inc.*, 417 S.C. 639, 659 n.7 (Ct. App. 2016) (rejecting spoliation argument "because [a]ppellant failed to show that the State destroyed the [evidence] in bad faith or that the machines processed an exculpatory value apparent before they were destroyed"); *Trask v. Beaufort Cnty.*, 392 S.C. 560, 572 (Ct. App. 2011) (assuming third-party spoliation were actionable tort, it would require "knowledge . . . of a potential civil action" and that item destroyed "would be considered evidence in such a lawsuit").

Importantly, "a party is not required to preserve ***all*** its documents but rather only documents that the party knew or should have known were, or could be, relevant to the parties' dispute." *Blue Sky Travel & Tours, LLC v. Al Tayyar*, 606 F. App'x 689, 698 (4th Cir. 2015) (emphasis added). Thus, a party's duty to preserve "does not require the preservation of all potential evidence or '***every single scrap of paper***' in a business." *Best Buy Stores, L.P. v. Developers Diversified Realty Corp.*, 247 F.R.D. 567, 570-71 (D. Minn. 2007) (emphasis added) (citation omitted) (no duty to preserve database of information in searchable format due to cost of maintaining the database and because, given quantity of information on database, it "would have been potentially relevant to virtually any litigation involving [the party]"). After all, "[r]equiring a litigant to preserve ***all*** documents, regardless of their relevance, would cripple parties who are often involved in litigation or are under the threat of litigation." *AMC Tech., LLC v. Cisco Sys., Inc.*, No. 11-cv-3403 PSG, 2013 WL 3733390, at *3 (N.D. Cal. July 15, 2013) (emphasis added).

Plaintiff argues that J&J had a general duty to preserve all talc testing data and talc samples since at least the 1960s, a half-century before cosmetic talc litigation began in earnest and those materials were requested by talc plaintiffs, because "J&J knew it was at risk of

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

litigation related to injuries caused by inhaling the [asbestos] in [Johnson's Baby Powder]" "[b]y 1969." (Pl.'s Mot. at 18.) This argument fails for multiple reasons.

First, the initial case alleging mesothelioma based on the use of Johnson's Baby Powder – the *Howard* action[4] – was not filed until ***1996***. Contrary to plaintiff's assertion, the historical "litigation" related to "inhaling" talc (*see* Pl.'s Mot. at 18) involved entirely different and irrelevant allegations and therefore could not possibly have given rise to a duty to preserve in connection with consumer mesothelioma actions. For example, plaintiff points to J&J and Old JJCI's alleged awareness in 1981 of the *Westfall* case pending in Rhode Island. (*See id.* at 19.) But the plaintiff in that case alleged that he developed mesothelioma from inhaling ***industrial-grade*** talc while involved in the manufacture of rubber and rubberized products. *See* Williams Aff. ¶ 15(a). Industrial talc is "different from the cosmetic talc" used in Johnson's Baby Powder in a number of ways, "including that industrial talc was a different grade of talc" and was "processed and handled" in a different manner. *Id.* ¶ 9.[5] Plaintiff's claim that "over 900 plaintiffs had alleged asbestos injury" by 1989 fails for similar reasons. (Pl.'s Mot. at 19). Those suits, too, all involved industrial talc exposure. *See* Decl. of John O'Shaughnessy, ¶ 8, *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig*, MDL No. 2738 (D.N.J. Sept. 30, 2021) (Ex. 9). In short, and as plaintiff herself recognizes, ***none*** of

[4] *Howard* was filed in Michigan state court and alleged mesothelioma based on ***both*** occupational and other exposures. Aff. of Gene M. Williams in Supp. of Defs.' J&J and JJCI's Opp'n to Pls.' Mot. for Evid. & Issue Sanctions Due to Spoliation of Evid. by Defs. J&J and JJCI ("Williams Aff.") ¶ 7 n.2, *Leavitt v. Johnson & Johnson*, No. RG17882401 (Cal. Super. Ct. Dec. 5, 2018) (Ex. 8). The only J&J entity involved in the case was dismissed less than a year later. *Id.*

the historical cases identified in her motion filed prior to 1997 specifically alleged mesothelioma from exposure to Johnson's Baby Powder. (Pl.'s Mot. at 19.)[6]

Two courts overseeing talc cases have expressly rejected the argument that the existence of these historical talc cases created a duty to preserve materials related to testing of cosmetic talc for asbestos. In the *Rimondi* case, a New Jersey state court held that J&J and Old JJCI did not have a duty to retain documents related to talc testing until recently – i.e., when the steady increase of cosmetic talc litigation involving mesothelioma and ovarian cancer allegations indicated that J&J and Old JJCI should reasonably anticipate substantial product-liability litigation involving their cosmetic talc products. *See Rimondi* Hr'g Tr. 18:12-20:8. In so holding, the court specifically rejected the plaintiffs' arguments that documents speculating about the possibility of litigation in the 1960s or the filing of claims unrelated to asbestos and/or mesothelioma in the late 1970s and 1980s were sufficient to trigger a duty to preserve talc materials. *Id*. As the court explained, the *Westfall* case, and the handful of other 1980s talc lawsuits cited by plaintiff here, did not trigger any general duty to preserve because they involved "alleged exposures to industrial" talc and/or claims of talcosis "not at issue" in cosmetic talc litigation. *Id.* 19:12-15.

Similarly, in *Hayes*, another talc case, a Kentucky state court rejected the argument that J&J and Old JJCI had a duty to preserve evidence prior to the recent groundswell of litigation alleging that cosmetic talc products cause asbestos-related illnesses. *Hayes* Order at 37-38. In so holding, the court noted that "the 1970s and 1980s talc cases . . . involved either industrial talc or talcosis, and did not involve cosmetic talc or mesothelioma." *Id*. at 37. The court explained

[6] Plaintiff's reference to privilege log entries and other isolated documents (many of which discuss industrial talc cases) (Pl.'s Mot. at 19) does not alter the analysis. None of those documents supports plaintiff's unfounded suggestion that J&J had broad, sweeping retention obligations that spanned more than three decades, or that it was on notice that talc plaintiffs would ever seek underlying materials from testing.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

that because "[t]hese cases . . . involved issues different from the presence or absence of asbestos in Johnson & Johnson's cosmetic talcum powder products . . . they did not give rise to a duty to preserve the evidence" related to allegations that Johnson's Baby Powder is contaminated with asbestos and causes mesothelioma. *Id.* at 38.

Second, even the filing of a few isolated cases alleging mesothelioma from the use of Johnson's Baby Powder in the late 1990s – which were followed by a handful of similar actions over the next two decades – could not have created a broad duty on the part of J&J or Old JJCI to retain all documents and materials that might theoretically have some tangential relevance to future consumer talc litigation. As courts across the country have recognized, the existence of a limited number of "isolated product liability" cases is not "good cause to implement ongoing, large scale document preservation measures" applicable to all future cases that may arise. *In re Ethicon, Inc. Pelvic Repair Sys. Prod. Liab. Litig.*, 299 F.R.D. 502, 513, 517 (S.D. W. Va. 2014). Instead, a general duty to preserve in mass tort litigation is triggered, at the earliest, when a steady increase in filed cases "suggest[s] the looming prospect of substantial product liability litigation" involving a particular product. *Id.* at 517; *see also Brigham Young Univ. v. Pfizer, Inc.*, 282 F.R.D. 566, 572 (D. Utah 2012) (rejecting plaintiff's argument that Pfizer's duty to preserve evidence arose "not only from an awareness of [the present] action" but also from "Pfizer's litigation with other parties"). Accordingly, it was not until 2016, when mesothelioma litigation concerning consumer talc products became widespread, that ***any*** duty to preserve documents or materials related to this case could possibly have been triggered.

Third, any duty to retain the historical talc samples plaintiff claims were spoliated would not have been triggered, if at all, until 2017-2018, when talc plaintiffs began seeking talc samples in connection with litigation. As noted above, courts have held that a party's duty to preserve

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

"does not require the preservation of all potential evidence or '***every single scrap of paper***' in a business." *Best Buy Stores, L.P.*, 247 F.R.D. at 570-71 (emphasis added) (citation omitted). Rather, "the scope of this duty is confined to what is reasonably foreseeable to be relevant to the action." *AMC Tech.*, 2013 WL 3733390, at *3 (no duty to preserve documents that were "only tangentially related" to the litigation). After all, "[r]equiring a litigant to preserve ***all*** documents, regardless of their relevance, would cripple parties who are often involved in litigation or are under the threat of litigation." *Id*. (emphasis added).

None of the legal holds instituted by J&J or Old JJCI in connection with isolated asbestos-related consumer cases filed in the late 1990s and 2000s required the preservation of all historic samples that were tested – much less every sample that existed – because there was no reasonable expectation that such information would be sought by plaintiffs in litigation.[7] Indeed, it was not until 2017-2018 that requests for all talc samples and related materials were first made. *See* Williams Aff. ¶ 14. Accordingly, if J&J had a duty with respect to any of these materials, that duty only arose in the last several years. And, as noted above, plaintiff has ***never*** to this day issued a request for the production of "blanks" that may have been used in conjunction with historical talc testing. As a result, J&J and Old JJCI had no reason (until talc plaintiffs' counsel began filing similar spoliation motions last year) to believe that such "blanks" – to the extent they were created and maintained by third-party testing facilities at all – were relevant to any talc plaintiff's claims and should have been preserved.

[7] Plaintiff asserts in her briefing that J&J's corporate representative on document retention issues, James Mittenthal, has testified that no legal holds were issued by J&J or Old JJCI until the late 1990s. (Pl.'s Mot. at 22.) This is a misrepresentation of the record. Mr. Mittenthal merely stated at his deposition that J&J had not been able to locate documentation of talc-related litigation holds prior to that time, but that did not mean that "a hold wasn't issued." (*See* Dep. of James Peter Mittenthal 490:1-7, *Leavitt v. Johnson & Johnson*, No. RG17882401 (Cal. Super. Ct. Oct. 19, 2018) (Ex. 10).) In any event, the issuance of litigation holds in historical talc cases has no bearing on the substance of plaintiff's spoliation allegations here.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

The only cases cited by plaintiff in support of her claim of duty do ***not*** support her sweeping argument that J&J and Old JJCI had an all-encompassing obligation to essentially preserve all testing data and samples since at least the 1960s. As an initial matter, neither of those cases ***mentions*** the duty to preserve evidence or when such a duty might arise. In any event, both cases are factually inapposite. In *Gathers ex rel. Hutchinson v. S.C. Elec. & Gas Co.*, 311 S.C. 81 (Ct. App. 1993) (per curiam) (cited in Pl.'s Mot. at 27-29), the defendant "discarded" evidence that might have supported the existence of a product defect. *Id.* at 83. The defendant then moved to strike the plaintiff's expert's testimony about a potential defect as he "did not have a sufficient factual foundation" for his opinion. *Id.* at 82. The appellate court affirmed denial of the motion, noting that the expert could rely upon "circumstantial evidence" and infer that the lost evidence "would have been adverse" to the defendant when forming his opinions. *Id.* at 83. Importantly, this case had nothing to do with whether a ***jury*** could presume that evidence was adverse to a party – the court was only considering whether the ***expert*** could draw an "inference" about the lost evidence based on "circumstantial evidence." *Id.* And in *Stokes v. Spartanburg Regional Medical Center*, the defendant's duty to preserve was not an issue before the court because there, the defendant ***consented*** to the proposed adverse inference instruction. 368 S.C. 515, 519, 522 (Ct. App. 2006) ("The trial judge agreed to the [adverse inference instruction], and [defendant] did not object."). Neither of these cases remotely suggests – much less holds – that a defendant has a duty to preserve evidence "even when a lawsuit ha[s] not been filed and *even* litigation was not yet clearly anticipated." (Pl.'s Mot. at 28.)

In sum, J&J did not have a duty to preserve any of the materials that plaintiff claims were spoliated. For this reason alone, plaintiff's motion should be denied.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

II. PLAINTIFF CANNOT ESTABLISH THAT J&J ENGAGED IN THE INTENTIONAL OR BAD-FAITH LOSS OF EVIDENCE.

Even if J&J had engaged in spoliation, plaintiff's request for any sanctions would still fail because J&J did not willfully or intentionally destroy any evidence. As noted above, where the "effect" of the proposed discovery sanction would "be the same as granting judgment by default or dismissal," there ***must*** be "some showing of willful disobedience or gross indifference to the rights of the adverse party." *Orlando v. Boyd*, 320 S.C. 509, 511 (S.C. 1996) (citation omitted); *see also Jamison*, 373 S.C. at 271 (trial court was correct to deny sanctions where there was "no evidence [defendant] acted in bad faith with the willful disobedience or gross indifference required for a sanction that would be tantamount to default judgment").

Plaintiff cannot possibly show that J&J destroyed any evidence in "bad faith, willful[ly], or [with] callous disregard of the rights of other litigants." *Balloon Plantation*, 303 S.C. at 154 (citation omitted). For one thing, plaintiff does not even attempt to claim that J&J was ever in possession of allegedly discarded historic talc tasting samples, TEM bench sheets or "blanks." To the contrary, she tacitly concedes that such materials were created by (and/or in the possession of) third-party testing facilities such as McCrone, not J&J. (*See, e.g.*, Pl.'s Mot. at 18.)

Moreover, even assuming that the loss of this evidence could be imputed to J&J (which only manufactured talc until 1978), plaintiff would still not be able to establish that J&J acted in bad faith because, as the documents cited by plaintiff make clear, the materials were discarded in the ordinary course of business pursuant to written retention policies. (*See* Pl.'s Mot., Ex. 60, at JNJTALC000387137 (showing that talc samples tested by McCrone were discarded after 30 days pursuant to a written policy); Pl.'s Mot. at 22-23 (conceding that historical talc samples in the possession of J&J's talc suppliers were discarded pursuant to written retention policies).)

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

While plaintiff appears to suggest that J&J should have instructed third-party testing facilities and talc suppliers to adopt longer retention policies for these and other testing materials (*see* Pl.'s Mot. at 18), three different courts overseeing talc cases have already concluded that such conduct did ***not*** rise to the level of "intentional bad faith or even negligent [] spo[liation]." *Rimondi* Hr'g Tr. 20:15-17; *see also Hayes* Order at 38 ("The [c]ourt also does not find that [the plaintiff] has shown a reasonable jury could conclude the evidence was lost or destroyed intentionally and in bad faith" because, inter alia, "the samples and related materials were discarded pursuant to standard retention policies."); *Hirshberg* Trial Tr. 116:9-14 (refusing request for adverse inference instruction based on J&J and Old JJCI's alleged spoliation of the same historical testing materials at issue here because the plaintiffs could not show that the loss of this evidence was "intentional and willful").[8]

Plaintiff is also unable to establish that J&J intentionally "fail[ed] to maintain documentation on blanks" that may have been used to test contamination in connection with historical talc testing. (Pl.'s Mot. at 17.) For starters, as noted above, plaintiff has no evidence that "blanks" were used in the specific historical talc tests with which they are concerned. And even if they were, such "blanks" would have been created by – and would be in the possession of – the third-party testing facilities that performed the talc testing. Nor is there any evidence that these hypothetical materials were ever made available to J&J. Rather, as already discussed, plaintiff concedes that third-party testing facilities such as McCrone had written document destruction policies providing that testing materials would be discarded in the ordinary course of

[8] There is also no truth to plaintiff's argument that J&J engaged in bad-faith or intentional conduct by "discard[ing] testing when [J&J] sold Windsor Mineral[s] to Cyprus in 1989." (Pl.'s Mot. at 22 n.119.) As the *Hayes* court recognized, there is no evidence that Windsor Minerals' destruction of its mining documents "was a bad faith effort to avoid discovery" because the documents were merely "destroyed in anticipation of the closing of the mine where they were kept." *Hayes* Order at 38.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

business. (*See id.* at 17-18.) As a result, it is highly likely that any "blanks" that were created in connection with historical talc testing were innocently disposed of pursuant to such laboratory policies, foreclosing any claim of "intentional bad faith or even negligent[] spo[liation]." *Rimondi* Hr'g Tr. 20:15-17; *see also Hayes* Order at 38 (similar).[9]

For these reasons, too, plaintiff's motion should be denied.

III. PLAINTIFF CANNOT ESTABLISH THAT SHE IS PREJUDICED BY THE LOSS OF ANY EVIDENCE.

It is axiomatic that under South Carolina law, a party seeking an adverse inference instruction "must be prepared to make a showing that the document or evidence might reasonably have supported whatever presumption is being requested of the fact finder." *Pringle*, 382 S.C. at 405 (citation omitted). Thus, South Carolina courts have held that where a party is "not prejudiced by [a defendant]'s" discovery violation, sanctions are not appropriate. *See, e.g.*, *CFRE*, 395 S.C. at 83; *see also Baughman v. Am. Tel. & Tel. Co.*, 298 S.C. 127, 130 (S.C. 1989) (considering sanction "too severe" where "[party] was not prejudiced by" the discovery violation). Moreover, South Carolina courts have made clear that spoliation sanctions should not be awarded where it is clear that "the [spoliated evidence] in question would not have provided any ***additional information***" for plaintiff to make her claims – i.e., where the spoliated evidence is cumulative. *Pringle*, 382 S.C. at 405 (emphasis added); *see also Baughman*, 298 S.C. at 130 (party "[c]learly[] . . . was not prejudiced" by the opposing parties' failure to answer interrogatories where party was still able to take "lengthy depositions" of opposing parties).

[9] Plaintiff also asserts that because J&J "knew by the 1970s that testing data regarding asbestos in baby powder was of great interest to regulators, consumers, litigants, and medical professionals," it "made a decision to retain results that were stated in a particular manner favorable to its defense." (Pl.'s Mot. at 33.) But this argument is contrary to plaintiff's claim that J&J has produced internal documents and testing that ***support*** her position that J&J's products were contaminated with asbestos. (*See, e.g.*, *id.* at 4 (asserting that plaintiff can "establish[] the asbestos content of the talc in JBP through numerous sources, including" "J&J and its consultants' reports from the 1950s to 2000s," "J&J's admissions," "third-party testing," and "recent tests of vintage JBP samples") (footnote omitted).)

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Contrary to plaintiff's claims, she has not demonstrated ***any*** prejudice as a result of the allegedly destroyed evidence – let alone the degree of prejudice that would preclude her from trying her case.

First, plaintiff claims that the discarded historical talc samples would be different from the talc samples plaintiff already has. But there is no factual basis to suggest that any discarded historical talc samples are different from the abundance of samples in plaintiff's possession. In fact, that is one of the very reasons the *Rimondi* court rejected the plaintiffs' request for spoliations. While the plaintiffs argued that missing talc samples hindered their ability to prove their claims, the court reasoned that they "nonetheless ha[d] an availability of samples that span decades of usage of the product as alleged by Mr. Rimondi." *Rimondi* Hr'g Tr. 22:2-7. In addition, "the court f[ou]nd[] persuasive the testimony of Dr. [William] Longo" – a frequent talc plaintiffs' expert – "wherein . . . he basically says . . . the mines really don't change over a long period of time." *Id.* 22:7-10. Thus, "while one may not have the samples that correspond with the documents that were produced in" the *Rimondi* case, that did not unfairly prejudice the plaintiffs' ability to prove their claims. *See id.* 22:11-22; *see also* Trial Tr. Vol. XX 4106:4-10, *Lanzo v. Cyprus Amax Minerals Co.*, No. MID-7385-16AS (N.J. Super. Ct. Law Div. Feb. 28, 2018) (Ex. 11) (Dr. Longo testifying that the "mine doesn't change over time," so it's not necessary to "get the exact same cans or bottles or plastic bottles" – or talc samples – "during any particular time that somebody used it."). Accordingly, as the *Rimondi* court found, there is no reason to believe that ***these*** specific missing samples would be any different from the ***plethora*** of other samples plaintiff has access to.

Second, plaintiff contends that "blanks" that may or may not have been used by third-party consultants in conducting historical talc testing are essential to her "ability to refute" J&J's

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

argument that certain positive asbestos tests were the result of lab contamination. (Pl.'s Mot. at 15, 31.) Plaintiff's actions belie her true feelings, however. Given that plaintiff did not even bother to request this evidence in discovery, she obviously does not believe these "blanks" are crucial to her claim. *See Henderson v. Tyrrell*, 910 P.2d 522, 533 (Wash. Ct. App. 1996), *as amended on denial of reconsideration* (Mar. 14, 1996) (rejecting spoliation allegations based on destruction of car involved in crash giving rise to lawsuit where the party alleging spoliation failed to pursue inspection of the car, undermining its importance to the suit); *Everhardt v. La. Dep't of Transp. & Dev.*, 978 So. 2d 1036, 1045 (La. Ct. App. 2008) (affirming denial of spoliation sanctions where the defendant "made no attempt to examine the truck" involved in the accident giving rise to the case "prior to it being sold for scrap materials"). In truth, talc plaintiffs have long had access to historic testing results reporting lab contamination as a source of identified asbestos fibers; yet, no previous talc plaintiff has insisted that any "blanks" created in conjunction with these tests were necessary to fairly try his or her case. There is no reason why this case would be any different.

Lastly, plaintiff argues that she needs access to all of the bench sheets and/or underlying data created in connection with historical TEM testing in order to demonstrate that the samples identified as having "no quantifiable asbestos" may have included a very small number of asbestos fibers. (*See, e.g.*, Pl.'s Mot. at 11, 32.) But this claim is belied by other statements in plaintiff's motion – for example, her assertion that consultants such as McCrone reported testing results as "not quantifiable" when fewer than five asbestos fibers ***were*** present. (*Id.* at 10 (citation omitted).) Indeed, plaintiff's motion attaches ***produced TEM bench sheets*** that plaintiff claims make this very point. (*Id*. at 10-11; *see also* Pl.'s Mot., Ex. 50, at Bates No. JOJO-MA90013-0005.) Moreover, plaintiff asserts that there are "***hundreds*** of tests" supporting her

theory of the case – i.e., that Johnson's Baby Powder supposedly contained asbestos. (Pl.'s Mot. at 6 (emphasis added); *see also id.* at 5 ("J&J and its own consultants repeatedly reported asbestos in the talc in JBP.").) In short, plaintiff's own motion makes clear that she possesses the evidence necessary to criticize historical talc testing results, and that any more evidence would be cumulative.

CONCLUSION

For the foregoing reasons, J&J respectfully requests that the Court deny Plaintiff's Motion for Evidentiary Sanctions Based On Spoliation of Evidence.

Respectfully Submitted,

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October 25, 2021
Mount Pleasant, South Carolina

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

EXHIBIT 1

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NO. MID-2912-17AS
APPELLATE DOCKET NO._____

RICARDO RIMONDI AND PILAR RIMONDI,

Plaintiffs,

v.

BASF CATALYSTS LLC, et al.,

Defendants.

MOTIONS

Place: Middlesex County Courthouse
56 Paterson Street
New Brunswick, New Jersey 08903

Date: Friday, February 22, 2019

BEFORE:
HON. ANA C. VISCOMI, J.S.C.

TRANSCRIPT ORDERED BY:
ALLISON BROWN, ESQ.
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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Cyprus Amax Minerals Company

THE COURT: Good morning. We are here with regard to Ricardo and Pilar Rimondi versus BASF Catalyst et al., Docket Number 2912-17, continuing in limine matters prior to the commencement of this trial which is Monday, February 25.

May I have appearances, please, on behalf of the plaintiff.

MS. COOPER: Yes, your Honor. This is Monica Cooper with the Lanier Law Firm for plaintiffs.

MR. COTILLETTA: Good morning, your Honor. Joseph Cotilletta.

THE COURT: Thank you.

On behalf of the defendants, beginning with Cyprus Amax Minerals Company.

MR. McMEEKIN: Good morning, your Honor. John McMeekin on behalf of Cyprus Amax Mineral Company.

MR. GOLDSTEIN: And good morning, your Honor. Sebastian Goldstein on behalf of Cyprus Amax Minerals.

MR. GARSON: Good morning, your Honor. Sam Garson on behalf of -- on behalf of Cyprus Amax Mineral Company.

THE COURT: See, I jinxed you.

And now on behalf of the defendants Johnson & Johnson and Johnson & Johnson Consumer Incorporated.

MR. GARDE: Good morning, your Honor. John Garde of McCarter & English.

MS. BROWN: Good morning, your Honor. Alli Brown for the J&J defendants, with my colleague Jed Winer from my office as well.

MR. WINER: Good morning, your Honor.

THE COURT: Good morning and welcome back.

So as I indicated, the court has, off the record, the court has several rulings to put on the record as a result of a series of motions that were argued in the past few days. The first is the motion by the defendant Cyprus Amax Minerals Company for reconsideration of this court's December 21, 2018, order which denied its motion for summary judgment. And I won't go over the arguments in depth placed by counsel on the record. It's a matter of the record already. They need not be recited again. Just some discussions with regard to that.

So back on December 21, 2018, the court did hear the motion for summary judgment. There had been a series of cases in which this court granted Cyprus Amax Minerals Company's summary judgment. And this was after the court's granting directed verdict in the Lanzo trial of Cyprus Amax Minerals Company.

However, in this motion, in opposition to the motion for summary judgment back in December of 2018,

opposition filed by the Lanier firm, this is the first time that the court had seen evidence submitted to oppose that motion, which were affirmative pleadings by Cyprus Amax Minerals Company in the context of declaratory judgment action wherein it is indicated that it is indeed a successor company and it is seeking the benefit of insurance policies. It was on that basis that the court denied the motion for summary judgment, and that is a matter of the record.

Now, in this motion for reconsideration of this court's order, the moving party, CAMC, raises three points as a basis for reconsideration; one is the jurisdictional action, jurisdictional matter which is the subject of appeal in a separate matter; the Huff versus, I think Arkema is the first name plaintiff, which is presently on appeal; the issue of successor liability, and then that there is something new for the court to consider and that is the deposition testimony of CAMC corporate representative Patrick Downey, that deposition being noticed and taken after the motion for summary judgment.

So on a motion for reconsideration, what is proper before the court is, to consider it is basically that based upon the record in the prior motion, motion for summary judgment, that the court either heard in

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

its analysis that it is not applying the law correctly or that there is something new that was not available in advance. So the court does not consider the issues of jurisdiction or successor liability which are being raised for the first time now, although one could say, could argue that the reason why successor liability is being raised now is as a result of the opposition, but certainly there was the opportunity to raise that in the reply that had been submitted.

So having reviewed the motions, the oppositions and other -- and the reply and arguments of counsel herein, and I did spend quite a bit of time reviewing this and analyzing it, looking at Mr. Downey's deposition, but essentially certainly Mr. Downey's deposition on this issue could have been taken before one could argue, although alternatively one could also state that until the opposition was filed which brought this whole issue into question about the affirmative pleadings, that it was not something that CAMC was in a position to have to address.

The court essentially relies on its ruling of December 21, 2018, which denied the motion for summary judgment, denies reconsideration; in essence, all that Mr. Downey presents is a corporate representative's

version of what those pleadings mean and his knowledge as a corporate representative thereof. And so in context of the pre -- alleged pre 1992 exposures, CAMC remains in this case, and so the motion for reconsideration is denied and I will provide you a copy of the order.

MR. McMEEKIN: Thank you, your Honor.

THE COURT: Thank you.

MR. McMEEKIN: Your Honor, may I address the court?

THE COURT: Of course.

MR. McMEEKIN: We will be filing a motion for stay and motion to sever CAMC.

THE COURT: Okay.

MR. McMEEKIN: We have a copy of it here. We have not yet filed it with the court. We will file it and you can hear it whatever time you'd like to.

THE COURT: Well, I'd like to do it today. Have you provided a copy of this to plaintiffs?

MR. McMEEKIN: We have not, your Honor. We were waiting for your Honor's ruling.

THE COURT: I know, but I don't want to take up the jury's time on Monday and if you need to go to the appellate division by way of emergent relief, I'd like to take care of it today. So if you could provide

a copy -- excuse me -- to plaintiffs' counsel and I have conference calls at 3 o'clock on a separate asbestos matter that I need to take care of; how about we have oral argument at -- later on this morning if we could, if plaintiffs are ready; otherwise, we could do it at 1 o'clock or 1:30.

MR. COTILLETTA: I'm sorry, your Honor. I just need to make a call to somebody, so we could argue before the afternoon and that's fine with us. I just need to make a call.

THE COURT: Why don't you do that now.

MR. COTILLETTA: Thank you, judge.

THE COURT: Do you want to take the papers with you?

MR. COTILLETTA: Yes, judge. Thank you.

THE COURT: How about we take -- how much time do you need, 15 minutes?

MR. COTILLETTA: 15 minutes would be great, judge. Thank you.

THE COURT: 15-minute break. Provide counsel those papers, if you could provide my copy, and then file it with the clerk in due course.

That is extra orders?

MR. McMEEKIN: I'll swap you.

COURT CLERK: Off the record, judge?

THE COURT: Off the record.

(Brief recess.)

THE COURT: So we're back on the record with the next motion.

MS. COOPER: I'm sorry, your Honor. May I grab Mr. Cotilletta?

THE COURT: If he's still on the phone leave him on the phone, right?

MS. COOPER: That's fine, your Honor.

THE COURT: I mean, go ahead. If he needs to be on the phone that's fine, but if he's not on the phone you can bring him back in.

How about some water there?

MR. McMEEKIN: It was the coffee that did it.

MS. COOPER: I don't know where he went, your Honor, so --

THE COURT: Okay. We'll continue. Do you want to excuse yourself to get water?

MR. McMEEKIN: No, I'm fine, your Honor.

THE COURT: Next is a motion to preclude the testimony of Alice Blount. This was filed by the defendants. Essentially the defendants contend that although the plaintiffs identified Alice Blount as a fact witness, that due to the nature of her testimony and her area of expertise that she is, in fact, an

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

expert.

The plaintiffs designated Dr. Blount as a fact witness back, I believe, in April of last year, 2018. And they did not receive any objections from the defendants prior to the filing of the motion for -- to bar.

The defendants assert that her testimony, in addition to being expert testimony in nature, constitute inadmissible hearsay for which there's no exception; also indicate that her 1990, 1991 article with regard to the testing that she did that when she was deposed she talked about acquiring the Sample I which was the Sample I designated as a Johnson & Johnson product, baby powder product in 1996, so there were some issues there; also argued that the methodology that she utilized was not adopted by EPA, OSHA, or NIOSH, and so therefore, it creates a concern under the recent Accutane decision and argued relevancy.

In opposition to this motion, the plaintiffs assert that she is a fact witness; that the court has heard her testimony before and allowed it in the context of a fact witness; and that she is elderly and unavailable living at Rutland, Vermont, and so that her deposition is appropriate to be played as a fact

witness under Rule 416:1(c) also, that her methodology is incorporated as an ISO methodology.

So I've considered the arguments by counsel and also including the various attempts by the plaintiffs at the court's direction to contact Dr. Blount to ascertain her availability and I've been -- we were advised yesterday by counsel that she responded to, I think an e-mail request, she says I'm 82 years old and I live in Rutland, Vermont.

So the issue at play here is that when her deposition was taken, which was sometime after the Lanzo trial, was taken by Mr. Lanier and there were counsel present for Johnson & Johnson, counsel present for Imerys Talc America, but CAMC asserts herein that there was no counsel present on behalf of CAMC and therefore, that that testimony certainly cannot be used as to CAMC.

In reviewing the case law and the court rules and the evidence rules, so this court first looks to 414 -- excuse me 416:1C which provides, "Except as otherwise provided by 414:9E, the deposition of a witness, whether or not a party, may be used by any party for any purpose, against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof. If the court

finds that the appearance of the witness cannot be obtained because of death or other inability to attend or testify such as age, illness, infirmity or imprisonment or is out of the state or because the party offering the deposition has been unable, on the exercise of reasonable diligence, to procure the witness's attendance by Subpoena, provided, however, that the absence of the witness was not procured or caused by the offering party, deposition of an absent but not unavailable witness may also be so used.

"If, upon application and notice, the court finds that such exceptional circumstances exist, it's to make such use desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court."

So while one could argue of the similarity and motive in defending against any deposition against Imerys and CAMC, the court does not do that. The court permitted this testimony in the Henry trial and finding that she was part of the story. She was a consultant at one point in time for Johnson & Johnson. There was communication between her and Johnson & Johnson relative to her testing. And so the court will permit her testimony under 416:1C.

She is of that age, 82, where she's not an

active 82-year-old and she does live out of state. I don't think that the Subpoena requirement there to compel an 82-year-old to travel would be appropriate. The plaintiffs certainly sought to try to procure her testimony voluntarily. But the court will permit her testimony to be used as to the defendant Johnson & Johnson only.

I understand that there have been designations by both sides and that the court had, when it played the video in the Henry case, had read to the jury a stipulation with regard to that testimony and that would be something the court would consider herein as appropriate. But the motion to otherwise preclude her testimony is denied, and we'll get you copies of the orders.

If you give me a moment, I have two more motions.

Two more motions were filed by the plaintiff seeking sanctions. First is the motion for sanctions due to discovery abuse and spoliation of evidence by the defendant Johnson & Johnson and Johnson & Johnson Consumer Incorporated.

In moving for sanctions, this motion is essentially divided into three parts where the plaintiffs contend that there were discovery abuses

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

that are sanctionable.

So first was with regard to the scheduling of the deposition of Johnson & Johnson's corporate designee, Dr. John Hopkins. The court has discussed that extensively herein and noted that we're dealing with national litigation, not with regard -- only with regard to the allegation that talc was contaminated with asbestos and caused mesothelioma, but that talc caused ovarian cancer.

So if you look at the responsibilities of Johnson & Johnson's corporate designee in that regard in connection with both discovery depositions and trial testimony, they are tremendous responsibilities, and the parties have to coordinate the scheduling of this deposition.

So certainly this deposition didn't happen earlier. The court had ordered it happen by February 4 and that date did not occur. But what happened was that Dr. Hopkins was called to testify in connection with a trial out in California. So while this court had entered an order, the court does not see the fact that that deposition did not occur on that date as a violation, willful violation of an order by the defendant Johnson & Johnson, but merely recognizing what all of us judges recognize is that we have to take

into consideration that certainly a deposition, discovery deposition does not trump the requirement of producing a witness for purposes of live testimony at trial.

Second area that the defendants -- plaintiffs assert that sanctions should be awarded by the court as against Johnson & Johnson is the contention that J&J defendant's deficient Interrogatory responses and/or request for production of document responses. And there was significant -- a lot of that deals with the issue of the time period that Mr. Rimondi spent in Peru and deriving as much information as possible, discovery as possible.

And so Mr. Bernardo was here from Skadden, Arps yesterday and he detailed painstakingly the attempts to comply with discovery for an entity that no longer essentially exists, as of 30 years ago, that documents were then moved off-site and in accordance with document retention policies, were ultimately destroyed well before any litigation contemplated someone outside of this country pursuing a cause of action for alleged exposure that occurred 30, 40 years prior in another country, not the United States.

Documents were provided to counsel. I understand from Mr. Bernardo, if I understood

correctly, that there were initial document production all across that involved redactions, but that ultimately they determined that it was better to provide documents unredacted and then deal with the issues and so that's what they did. So they took it upon themselves to do a second production of all these documents.

The court is satisfied that there was a diligent response to discovery, and sometimes documents don't exist and you just have to live with that. Not only was there diligent efforts to provide discovery, but then to create documents and provide them, documents that they did not have to create which showed in categories of types of documents, where they're -- essentially creating a comprehensive index of the production of documents which they are not required to do. So certainly the efforts to produce were reasonable and diligent, and there is no basis for which the court to sanction the defendant in that regard.

Next, the final area in this section, this motion, is that the J&J defendants, February 1, 2019, filing of Dr. Gibbs' and Weill's supplemental expert reports and reliance materials are out of time, and they are. The court's already ruled upon that. But

certainly what would be the court's decision in that regard, not to sanction but to bar, and so that's what the court has done, and essentially ruled those out of time.

The sanctions that were requested were comprehensive. I won't read all of them. They take up an entire page. But they include the ultimate sanction of dismissal of pleadings with prejudice, not being able to produce corporate representative, Dr. Hopkins', prior or live testimony.

So plaintiffs have failed to meet their burden as to why this court should impose any sanctions as to any of these issues. It is their burden to meet. And the motion for sanctions due to alleged discovery abuses and spoliation of evidence by Johnson & Johnson is denied. We'll provide you a copy of that order.

Which leaves us one more motion. In this motion, plaintiffs seek an adverse inference instruction due to the alleged spoliation of evidence by defendants Johnson & Johnson, Johnson & Johnson Consumer Incorporated, Imerys Talc America Incorporated and Cyprus Amax Minerals Company. Imerys Talc America has filed for bankruptcy, so the court will not address that aspect of this motion.

So in essence what this motion says is that

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

back in 1969, as to the J&J entities, that they should have been aware of pending litigation and essentially preserved talc samples, grids and other testing evidence. I asked counsel for the plaintiff during oral argument, are you saying that there was the obligation of Johnson & Johnson and Cyprus Amax Minerals, as the case might be, that every testing sample had to be preserved going back to 1969. I don't know that I ever received an answer to that. And I certainly haven't been able to find any law that would require that.

So if you go back to 1969, according to the plaintiffs, Johnson & Johnson was aware of danger relative to inhalation of the, quote, spicule, closed quote, or, quote, needle-like crystals of tremolite in its talc, and on the basis of that one document, they assert that there should have been a litigation hold at that time.

I haven't been able to find any case law that goes back to 1969 that would require something of that nature.

We move forward in time as to other examples. I think we next come to the Westfall case which we've heard a lot about. That matter, which was filed in Rhode Island, involved industrial talc, and Johnson &

Johnson was not brought into that case until, I believe, 1982, and then they were dismissed in 1983. So by virtue of them being brought in, although they were involved prior to 1982 as a consultant, I understand, it is the assertion of the plaintiffs that a litigation hold should have been in place at that time.

The plaintiffs assert that as an active participant in Westfall, J&J knew that talc samples, talc ore samples, identification of purchasers and suppliers of talc and identification of source ore mines were paramount. And it should be noted that that case involved alleged exposures to industrial talc which is not at issue herein, but rather cosmetic talc is.

After the Westfall case there are a series of other cases, I think the next cases don't come up until 1996. So with regard to Johnson & Johnson, the plaintiffs assert that there was a legal duty to maintain those samples, assert the same as it relates to CAMC, and find that sanctions are warranted because of defendants' intentionally spoliated relevant evidence and documentary evidence for decades.

I'm sorry, I discussed Westfall. There was also the Gambino case of 1983. That case involved

talcosis, did not involve mesothelioma or an asbestos-related illness for that matter.

As to CAMC, CAMC asserts it was not formed until 1993 and it was not in the talc business. Also assert that the plaintiffs have presented no evidence that CAMC destroyed any materials relevant to this lawsuit, much less bad faith or even negligently. The court would agree in that regard.

As to defendant Johnson & Johnson asserts that the plaintiffs can't demonstrate J&J had a duty to retain materials at issue, and can't establish that J&J defendants acted intentionally in bad faith or even negligently, nor is there any evidence of extreme prejudice to the plaintiffs.

So the court finds that essentially the plaintiffs have failed to meet their burden of proof as to intentional bad faith or even negligently spoiling evidence; in fact, I saw the summary of samples that were produced in this case. I was provided by plaintiffs' counsel, as part of this motion, another copy brought to the court yesterday where these are samples that go back, I think there might be one in the late 1800s, but certainly in the early 1900s through present of Johnson & Johnson's Baby Powder that had been produced or had been made available.

Unlike the first Johnson & Johnson case that this court tried where no samples were requested by plaintiffs, in the Lanzo matter, I know that in Johnson & Johnson's Answers to Interrogatories they did indicate samples were available, but plaintiffs never requested them. Plaintiffs at that point had given Dr. Longo samples that three plaintiffs' firms had acquired through the eBay system.

We move forward -- in that case, understanding it's on appeal so I won't say that much, but as to Imerys Talc America, not CAMC but just to show the distinction, Imerys Talc America erroneously indicated in Answers to Interrogatories that it did not have any samples, and yet through their corporate designee it was learned that they did have samples. So there was a distinction there as to what happened.

So in Henry, samples were provided by Johnson & Johnson, additional samples, not through eBay. These were provided by J&J and counsel had the ability, or rather, plaintiffs had the ability to present their defense based upon samples that were not obtained through eBay. And there are even more samples that were provided herein. I think, because there's ongoing testing, ultimately the court had to cut it off at some point to move forward. I think there's about 50 or so

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

that ultimately were tested here.
And in determining this issue of prejudice because the plaintiffs have indicated they're prejudiced because those samples were not retained, they nonetheless have an availability of samples that span decades of usage of the product as alleged by Mr. Rimondi. And also the court finds persuasive the testimony of Dr. Longo wherein, I'm trying to look for that quote, but he basically says, hey, the mines really don't change over a long period of time.
And so while one may not have the samples that correspond with the documents that were produced in these cases, although there is cross-examination there for plaintiffs with regard to those documents and the meaning of what a non-detect is and what is the level of sensitivity in the testing, those are all cross-examination that the jury can then consider; but with this testimony of Dr. Longo indicated that the mines don't change, the mines don't change over the course of decades, then the plaintiffs have the ability to have testing done on a whole series of available samples that span the decades.
So the court denies the motions seeking sanction -- adverse inference due to spoliation of evidence. Certainly if the plaintiffs are inclined to

renew it at the close of the case they may do so, if they feel that circumstances are appropriate, but at this point the court finds that the plaintiff has not met their burden in that regard as to the J&J defendants and Cyprus Amax Minerals. Thank you. I'll provide a copy of that order.
All right. So I think what we come to is, I do want to discuss, when do you think we'll be able to hear that motion, Mr. Cotilletta?
MR. COTILLETTA: We're ready.
THE COURT: Okay. I left it in the back. Give me a moment and I'll bring it right back. Just go off the record.
(Off the record.)
THE COURT: Next before the court is a motion that was filed this morning, and this is by the defendant CAMC to stay this action or in the alternative, to sever the claims against the defendants CAMC, Cyprus Amax Minerals Company.
Who will argue this motion on behalf of the moving party?
MR. McMEEKIN: Your Honor, John McMeekin, on behalf of defendant Cyprus Amax Minerals Company.
THE COURT: Thank you. On behalf of the plaintiffs?

MR. COTILLETTA: Your Honor, Joseph Cotilletta from the Lanier Law Firm.
THE COURT: Thank you.
Will the J&J entities be taking a position on this?
MR. GARDE: We will, your Honor. John Garde of McCarter and English.
THE COURT: Thank you. Whenever you're ready.
MR. McMEEKIN: May I proceed, your Honor?
THE COURT: Yes.
MR. McMEEKIN: Your Honor, by way of background, and your Honor is aware of this but for the record purposes, Imerys Talc America Inc. was a defendant in this and other pending talc litigation in New Jersey and around the country. Imerys Talc America and other Imerys entities filed for Chapter 11 bankruptcy on February 13.
I have raised with your Honor at conference call we had preliminary to setting motions for argument that it was our position that this court lacked jurisdiction at all by virtue of the filing of the bankruptcy. The plaintiffs had not moved to lift the stay and that the court could not proceed forward at all in this case.

THE COURT: Okay. Are you now making that argument on behalf of ITA or CAMC or both?
MR. McMEEKIN: I'm going to make it on behalf of CAMC, your Honor.
THE COURT: Okay.
MR. McMEEKIN: So for that purpose I had raised the issue and your Honor advised you disagree with that position.
Proceeded forward to today and your Honor has denied the motion for reconsideration.
THE COURT: Summary judgment.
MR. McMEEKIN: As to summary judgment, correct, your Honor.
At this point, your Honor, the liabilities which CAMC has sought to be held liable for are related claims to the Imerys Talc America bankruptcy. The motion we have pending before your Honor is a motion to sever and -- I'm sorry, a motion to stay and if not, a motion to sever CAMC out of the case by virtue of both the pendency of the bankruptcy and the relatedness of the claims, but also the prejudice which CAMC has by virtue of Imerys Talc America filing for bankruptcy.
Your Honor, I will dispense with the factual background of the case. Your Honor is very well aware of it and all the other records substantiate what the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 26

factual record is as to the claims; but very briefly, they involve exposure to talc from 1960 until after 1993 when CAMC came into business.

One of the issues that's going to have to be dealt with with this court and with this jury is how to address the bankruptcy of Imerys Talc America. The claims as to CAMC are related, but we are going to have to talk with the jury about the bankruptcy because the claims against CAMC go past 1993 and it is CAMC's position that those claims would have been the responsibility of Imerys Talc America, that Imerys Talc America should be published to the jury as to that liability, and the jury will be told or should be told about the bankruptcy of Imerys Talc America and how it applies to this case.

Further, your Honor, to the extent that there is argument or assertions as to Cyprus Mines Corporation and what liabilities went where, we'll have to talk with the jury about those liabilities. Our position is those liabilities would have flowed to Imerys Talc America, Imerys Talc America's predecessors, and that the jury will be involved in a determination of the bankruptcy. That is why the bankruptcy court has very wide discretion and jurisdiction over relatedness claims.

Page 27

So, your Honor, I think we are in a position where there will be undue prejudice to both the plaintiffs and the defendants in this case if CAMC was compelled to continue on in this litigation. For that reason, we are asking CAMC be severed out, it could be severed out without prejudice for a determination of what, if any, liabilities would befall to it or a determination by the bankruptcy court as to the scope of relatedness.

I say the scope of relatedness because we are only about a week after the bankruptcy has been filed. It is unreasonable to expect for CAMC, the nonmoving party in bankruptcy, to be able to get its arms around the ramification of Imerys Talc America having filed for bankruptcy in such a short time.

And we cite to the Borough of Glassboro case where the court can balance the equities including the probability of success on appeal and the interest in avoiding irreparable harm and hardship to the parties. Your Honor has remarked in this case and other cases about the value of the jury's time, the value to the litigants and the values to the court about prolonged proceedings. There is clearly a hardship that would fall if, at some point during this trial, the court determined that there was a relatedness and this case

Page 28

was removed. It would be the defendant's position at that point that if a stay was entered it applies to the entire case, not just to the case against CAMC. And so it would require, at that point, a mistrial.

So we raise these issues to the court for purposes of a stay of the proceedings, but certainly that CAMC could be severed out without prejudice.

There is also additional prejudice to CAMC, your Honor; for example, Mr. Downey, Cyprus Amax Mineral's corporate designee, is himself tied up in the bankruptcy. We don't have the ability to -- he's not a New Jersey resident. We don't have the ability to compel him to appear. He was properly designated as CAMC's corporate designee at a time when CAMC and Imerys Talc America, neither of them were in bankruptcy. Imerys Talc America's filing for bankruptcy is a severe prejudice to CAMC in terms of how it is able to defend the case.

Your Honor, for the reasons we have articulated, we think the prejudice is grave. We think the impact to the trial, to the court and the jury's schedule is significant, having to publish to the jury issues of bankruptcy which are not within the jury's purview. But also I'd raise, your Honor, there's even been issues today with your Honor's rulings that impact

Page 29

the difference between CAMC and Johnson & Johnson. For example, Dr. Blount's video, it would be very difficult to say that this can only be considered as to Johnson & Johnson but it has to do with the potential finding of asbestos in talc and that period that would have been the Imerys talc. So again, the jury is going to be wrestling with these issues that are beyond the scope of the jurisdiction of this court and are very clearly within the related scope of the bankruptcy that is currently pending in the State of Delaware.

THE COURT: Thank you.

MR. McMEEKIN: Thank you, your Honor.

THE COURT: Mr. Cotilletta.

MR. COTILLETTA: Thank you, your Honor.

I'm in a unique position because we are likewise seeking a stay but on different grounds, and we object to their and oppose their stay because our stay is different. Our stay conceivably, and we have to get the application to the court, I don't think we have them up here yet, but one for the stay and one for the consolidation. And so it's possible that if the appellate division was going to take this into consideration for our case, that they would decide in a matter of days as opposed to this which is seeking essentially another court, out of state court, to

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

assume jurisdiction on not just this case on a national basis that would affect all cases where plaintiffs' firms have sued CAMC in this -- I'm talking about in this jurisdiction, not just the Lanier Law Firm but other firms. And so I have to oppose the stay on that ground because it's indefinite.

Mr. Rimondi and any other case Lanier has with CAMC will never see the light of day because apparently they'll be moving for a similar motion and to have bankruptcy subsumed into CAMC on all their cases.

And the other issue, judge, is that they cited three exhibits; one of them's a bankruptcy filing, it's Exhibit A. It doesn't mention CAMC. They're a separate entity. They've always argued that. And they've argued there was a liability split. There's a lot of information that's not put in this motion that makes it really hard to -- for me to be able to argue what they're saying. They're saying a lot of different things that I don't know what's going on in the bankruptcy docket. I don't know if they made any motions in the bankruptcy docket to seek the court's jurisdiction and to say that the debtor's estate is included with CAMC's liabilities in cosmetic talc litigation.

Likewise, with the issue of Pat Downey, there's no exhibit to that. Right now it's all speculation. What evidence do they have that Pat Downey is now subsumed as a part of that and they don't have control? They've always produced him both as a corporate representative of ITA and CAMC. I don't see any evidence why they don't have control of Mr. Downey because he's been produced in both of those capacities. He did it in this case as well.

The issue of severance, it's the same reasons. There's speculation right now, and they would need to produce more evidence to be able to make a full determination as to whether or not a severance is appropriate.

Those are my objections and my opposition. Thank you.

THE COURT: Thank you. Mr. Garde.

MR. GARDE: Your Honor, on behalf of Johnson & Johnson, I'm only here to argue about Rimondi and the issue as this application relates to the Rimondi matter which is scheduled for trial on Monday.

Johnson & Johnson has no objection to a severance of CAMC provided it's only CAMC and the moving forward to trial on Monday. That's our position.

THE COURT: Thank you.

When the Imerys Talc America, Imerys Talc Vermont, and Imerys Talc Canada bankruptcy was filed and we had our conference call very early on after that occurred and I had indicated at that time the concern that CAMC was not listed as a separate entity that would be provided that protection; similar to two other Imerys Talc's iterations that are not covered for which we have cases here; namely, Imerys Talc U.S.A. and Imerys Talc Italy.

So now CAMC is before this court and with this filing the court has reviewed the submission and feels that a stay of the entire proceeding is not appropriate. The way that this court has dealt with bankruptcies in the past, based upon its understanding of bankruptcy laws, is that essentially the court is deprived of jurisdiction from that entity that has filed for bankruptcy but that the case moves forward.

So a stay of this entire proceeding would not be appropriate. However, the court agrees with CAMC that it is up to the bankruptcy court to determine the relatedness of CAMC to ITA, Imerys Talc America, Imerys Talc Vermont.

The court has had the benefit of having Imerys Talc America and CAMC before it for about three

years. Both entities have shared local counsel, national counsel, corporate designee and in the organizational hierarchy structure of the Cyprus entities and Luzenac and Imerys Talc America, they all seem to flow. At least that has been the contention.

So I am of the opinion that this court at this point does not have jurisdiction, that in terms of relatedness it's up to a bankruptcy judge to determine, and so that severance of the CAMC claim in this case is appropriate and I will sign the order in that regard.

MR. McMEEKIN: Thank you, your Honor.

THE COURT: So, counsel, I'm going to make sure you get a copy of this now so that you can do whatever is necessary.

Off the record.

(Off the record.)

(Luncheon recess taken from 12:30 p.m. to 1:50 p.m.)

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

AFTERNOON SESSION

THE COURT: We're back on the record and I just want to do a quick overview of what we have left to do this afternoon, not in any particular order. Blount designations; review of the preliminary charges to the jury real quickly, including the proposed charge relative to Imerys Talc America and CAMC. I think there was supposed to be some kind of a stipulation, or that might be related to the Blount designation which would be read to the jury in advance of the video being played, and then the voir dire of the jurors as to what they've been doing for the past few weeks in relation to keeping up with media and whatever may have happened on the Today show today.

Is there anything else we need to cover before Monday?

MS. BROWN: Not for us, your Honor.

MS. COOPER: Your Honor, we just want to make the court aware, we spoke with Brian Rimondi, one of Mr. Rimondi's sons. He was hospitalized this morning, so we will keep the court updated. We don't really know how long that might be or exactly the situation, but just wanted to let the court know he is hospitalized currently.

THE COURT: Okay. If you can give us an

update on Monday.

MR. COTILLETTA: I'll let the court know.

THE COURT: Thank you. And I know that at three o'clock today your IT people are going to be able to go into the high tech courtroom to set up.

MS. BROWN: Thank you, judge.

THE COURT: We needed to take care of something first, Mr. Cotilletta, so that you could leave to take care of other matters. What are we taking care of?

MR. COTILLETTA: Okay. Well, first thing, judge, may I approach with the applications that we have to give to the court regarding the emergency appeal?

THE COURT: It's just a copy. Sure. You have a copy for counsel?

MS. BROWN: Yes.

THE COURT: How many copies do you have there?

MR. COTILLETTA: I was told I have to give the court one for stay and one for the consolidation, so I'm not sure why there's four here.

THE COURT: I only want one of each.

COURT OFFICER: (Handing.)

THE COURT: Thank you.

So what was it that we needed to entertain before so that you could go?

MR. COTILLETTA: So there is two stipulations that would be a part of preliminary charges. One of them dealt with the fact that now CAMC and Imerys Talc are out of the case, and the second one is a stipulation regarding essentially who the proper entities for the foreign exposures based on the stipulation that my firm and Skadden, Arps had entered into this court had so ordered earlier in October of 2018.

THE COURT: Okay. Now, for the first one that deals with what we're going to tell the jury about Imerys Talc America and Cyprus Amax Minerals Company, which one am I looking at?

MR. COTILLETTA: So you have one that doesn't have a red marking on it. That is J&J's proposal. One that I have, the one that I gave the court is the one with the red marking. And we generally agree that there needs to be a charge.

Plaintiffs' position, we want to keep it very simple. Not explain why they're out. I think that's the fairest way to do it. Just say they're out of the case and you're not to consider why they're out of the case and leave it at that. If we start talking about

bankruptcies or legal technicalities, it can be prejudicial.

THE COURT: All right. So, for the record, what the plaintiffs have proposed is the following: "Imerys Talc America and CAMC are no longer defendants in this case. You are not to speculate as to why Imerys Talc America and CAMC are no longer defendants in this case."

Proposal by the defendant J&J, JJCI: "Imerys Talc America and Cyprus Amax Minerals Company are no longer defendants in this case due to technical legal issues. Imerys Talc America and Cyprus Amax Mineral Company did not settle with or pay money to the plaintiffs. You are not to speculate as to why Imerys Talc America and Cyprus Amax Mineral Companies are no longer defendants in this case."

So why do you object to the proposal which is just telling them they're no longer in this case, you're not to speculate why, they are going to think that there was a settlement and that could be prejudicial, if you think about it, it really cuts both ways. So they could think oh, well, then there's something to this case, and be prejudicial to the plaintiff; in second regard, they might think if they were to find, for example, that the plaintiff had

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

proven its case, that oh, well, they have settled already with regard to one, so, you know, that might affect your damages.

MR. COTILLETTA: And I understand that, it cuts either way. The reason why I don't like the language from Johnson & Johnson's proposal is because it may -- right now what you and I just said seems to be, it could be bounced and go one way or the other.

If you look at the Johnson & Johnson proposal, they might think of it as, well, if they're not in the case anymore and there's no settlement, then the plaintiff doesn't have a legitimate case, plaintiff is not bringing legitimate cases to some of the co-defendants. And that's the fear I have is that there might be speculation in the jury's mind that we're just suing whoever.

MS. BROWN: And I appreciate that, judge. And due to a technical legal issue was meant to address just that point to just kind of say it's a technicality.

THE COURT: We could say due to technical legal issues related to those two entities.

MS. BROWN: That's fine, too.

THE COURT: So that just hones in on them that it was a technical legal issue as it related to

those two.

MS. BROWN: That's fine as well.

MR. COTILLETTA: That's fine, judge.

THE COURT: Okay. So you're going to add that to the language?

MS. BROWN: Judge, if it's helpful, we can send Shirley and, of course, a copy to plaintiffs, an updated copy, whatever's easier.

THE COURT: Yeah. If you wouldn't mind, in addition to Shirley, could you copy my law clerk?

MS. BROWN: Of course.

THE COURT: Because Shirley has the flu. I don't know if she's going to be in on Monday.

MS. BROWN: Of course.

THE COURT: Thank you.

MS. BROWN: We'll say due to technical legal issues related to those two entities.

THE COURT: Right.

MS. BROWN: Okay.

THE COURT: Let's look at the second, which was: "In this case plaintiffs allege exposure to Johnson's Baby Powder in Peru from 1960 to 1992. Johnson & Johnson Consumer Incorporated states that Johnson's Baby Powder sold in Peru from 1960 to 1992 was safe, did not contain asbestos and did not cause

plaintiff's mesothelioma.

"However, plaintiffs and defendants agree that for purposes of this case, Johnson & Johnson Consumer Incorporated, a United States company, is the proper defendant and the company that would satisfy any judgment arising from exposure to Johnson's Baby Powder.

"This stipulation should be considered only for the purpose of determining who is the proper party to be sued and who would satisfy a judgment and for no other purpose."

Why are we telling them this, or whatever variation you may agree upon, now rather than at the end of the trial right before the charge?

MR. COTILLETTA: My only concern is if we start talking about the facts of the case in opening, the fear that I have is that the jurors might think in their head, wait a minute, there's Peruvian exposure here, there's U.S. companies. They failed to sue the Peruvian company. Why isn't there a Peruvian entity in this case?

And so I know that takes a little bit of thought to get there for the jurors. We do have some jurors with advanced degrees and things like that, so I'm thinking they're going to reach that point and say

why isn't there a Peruvian entity?

I get it, judge. I know that for sure it should be in the closing. I have proposed to Miss Brown we should do it in the beginning, too, just because we don't know how, what they're going to think of that and that's a risk.

THE COURT: Do you agree to this language?

MS. BROWN: I agree to the language on mine.

THE COURT: The one that I just read?

MS. BROWN: Yes. I, too, share the views that this is better at the end. Frankly, I don't think we need a charge on this at all, but I was willing to work with Mr. Cotilletta and the court's decision on when it should be read.

THE COURT: Okay. So the plaintiff, you wanted to add J&J to this?

MR. COTILLETTA: Right.

THE COURT: How did you want yours to read?

MR. COTILLETTA: It would read the same way except where it says Johnson & Johnson Consumer Inc., it would say Johnson & Johnson and Johnson & Johnson Consumer Inc., and then everything where there's issues in the singular would be pleural.

THE COURT: Okay. Has there been any kind of stipulation -- so in Lanzo, ultimately I granted the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

motion for directed verdict on a motion at the end to let out J&J because JJCI was a wholly owned subsidiary that indicated that to the extent that there would be any liability, they would be responsible for it. Do we have a similar situation here; rather than starting this trial with both, can we narrow it down, or is that not possible?

MS. BROWN: So, your Honor, from our point of view I think it is possible and it's even cleaner here, frankly, in most cases. And the reason for that is that for the 1960 to 1992 Peruvian exposure period we entered a stip that Mr. Bernardo spoke about yesterday and we said JJCI will assume liability, if any, for that period of time.

So that covers what sometimes, as your Honor has grappled with, can be a difficult situation for those earlier years, and certainly by the time he gets to the United States in '92, JJCI is already the entity that would be responsible.

So from our point of view, it is very clearly, given this foreign stip, just JJCI, and I offered a stipulation to that effect and it has not gotten anywhere.

MR. COTILLETTA: So the issue is there's been some movement on the national level with information we

received since Lanzo. I had that meet and confer with Skadden. They didn't know the answer at that time and that was what is the liability split. J&J, my understanding from documents I reviewed, there seems to be that they were actually independently liable in the very beginning before they had these divisions. And they were like, we don't know the answer, we'll get back to you. So they amended their Interrogatory responses.

In the Rimondi case there's two sets of supplemental Interrogatories. There's one I call supplemental Interrogatories regarding Peru and there's supplemental Interrogatories regarding U.S. exposures. So for that Interrogatory Number 16, and that was where I told them they need to make an amendment, the question asks, "Identify where your cosmetic or personal hygiene products including but not limited to those identified by plaintiffs or any fact witness in this case were manufactured, assembled and distributed and by whom, name and address."

And then it says, answer to Interrogatory Number 16, "By agreement of the parties at the April 26, 2018, meet and confer, between plaintiffs' counsel and J&J's counsel, plaintiffs are providing" -- excuse me -- "defendants are providing an amended response to

the Interrogatory with respect to Johnson's Baby Powder only."

Then it states that they have a reasonable and good faith belief that the following entities were responsible for manufacture and distribution of Johnson's Baby Powder during the following periods. The first bullet point, 1894 to 1972, Johnson & Johnson. Second bullet point, 1972 to 1979, Johnson & Johnson Baby Products Company, a division of Johnson & Johnson.

And then the third bullet point is where it carries on to what eventually would be JJCI and that one is '79 to '81, Johnson & Johnson Baby Products Company, which is actually then an actual separate entity.

And so if you take that with the fact that in one of our clauses talks about that the stipulation we entered into with Skadden was in exchange for a stipulation that the defendants, that's defined as J&J and JJCI, accept liability for Johnson's brand talcum powder sold in Peru.

So the issue going back from yesterday, the issue we had with Skadden was we wanted to avoid the apparent manufacturer doctrine and piercing the corporate veil. So what they said was okay, we really

would like JJCI to be responsible in these kind of cases and the only way we're going to agree to this is if you agree they accept liability. Darron and I had a back and forth with Mr. Bernardo about it, and eventually we concluded that we would contain a provision that would allow us to still go after Johnson & Johnson because I said hey, wait, you guys have it in here that the Johnson's Baby Powder the plaintiffs identified in this case through the entirety of their exposure that from '60 to '72 was J&J, and potentially also between '72 and '79. They said okay, and that's how we got to the agreement.

So I don't disagree that JJCI would be responsible from '79 on. I think it's unclear and I don't feel necessarily comfortable agreeing to letting them out at this point; however, I can agree to circle back towards the end of the case to try to see if that's something we could do instead of having there be motion practice. I would like some facts to come out more than what the Interrogatories are showing if you think that Mr. Hopkins -- Dr. Hopkins is going to say at trial something that's contradictory.

THE COURT: What about a signed stipulation from someone that's authorized to bind the company and as I read these proposed stipulations, whether it's the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

defendants' or whether it's the plaintiffs' request to add J&J, correct me if I'm wrong, Mr. Rimondi also alleges exposure to talc post 1992.

MR. COTILLETTA: Correct.

THE COURT: So if we read this to the jury at the beginning you really have to address post '92; otherwise they are thinking oh, well, then what about post '92, right? I mean, even though you have opening statements and I'm telling them opening statements is not evidence, then the court presents a stipulation which they must, you know, consider, and it doesn't address post '92 exposure.

MR. COTILLETTA: So I don't know if I, maybe I never said this to you. I did have initial thoughts to have a stipulation that had a sentence in there somewhere in that that broke down the liability. It says from -- from 1960 to 1992 would be Johnson & Johnson, I don't know if that carries '79, from '79 or so on it would be JJCI. I don't know if I ever actually officially proposed that to you, but I did have a sentence in a draft, judge, that I would be okay with adding a sentence in with that.

MS. BROWN: I think these discussions sort of highlight that a charge like this is not appropriate in the beginning of the case. And to the extent that

they're going to rely on Interrogatories which, frankly, I would contend don't apply where we allowed them not to go have to sue the Peruvian entities, in exchange JJCI would accept liability, but it seems that at a bare minimum on the eve of openings this is not a charge that should happen Monday. And to the extent that Mr. Cotilletta feels, during the course of his case, he has established liability as to J&J, then this is perhaps better visited at the charge conference.

MR. COTILLETTA: Just one second, judge.

MS. BROWN: I mean, if I could --

MR. COTILLETTA: You know, I obviously don't want to burden everybody with back and forth. Maybe we can just have a simple stipulation that says something like, I don't know, there are no improper parties at this point based on the exposure, something like that. I mean, I don't know, judge.

MS. BROWN: Anything like that now is going to suggest there's something improper. I understand the concern of plaintiffs, right. They are trying to cure the fact that we had an agreement that they didn't have to sue J&J Peru. I understand that. And it may be appropriate in the charges that they get at the end to explain, JJCI or J&J Peru is not here and there's nothing wrong with that. But once we start going

beyond the Peru period about which entity, I think we're paying more attention to the liability piece --

THE COURT: Right. Whereas, as opposed to at the end of the case before your charge, you know, they now will have heard all of the evidence and so that they know that this alleged exposure for which plaintiff is seeking judgment on their behalf, it runs from 1960 through sometime here in the United States and then we're just highlighting for them this one portion of, by the way, here's what we've stipulated to relative to that time period.

MS. BROWN: Agreed, your Honor.

THE COURT: Look, think about it over the weekend. If you feel that -- to read this to the jury in either form in the court's mind begs the question well, what about post 1992. So they're going to sit there and wonder throughout the trial well, why are they giving us, why are we hearing evidence, wasting our time regarding about after they came to the United States when they just told us about that 32-year time period outside of this country.

MS. BROWN: Yes. We're happy to work with you as it gets closer to the charge conference on something more appropriate. Thanks, judge.

THE COURT: That's how we're going to resolve

that.

Is there anything else we need to take care of before you need to go?

MR. COTILLETTA: No, judge. I know you mentioned preliminary charges. Are you going through like kind of the --

THE COURT: Preliminary charges, I'm going to go through them right now. First is 1.11 which is, discusses the role of the jury, judge and attorneys, right. Number 1.25, that's the optional charge regarding or concerning video recorded testimony which we have in this case. Then the prohibition, preliminary charge 1.11 B, prohibition regarding discussion of the case; 1.11 C, jurors not to do independent research; 1.15, preliminary instruction before trial regarding jurors taking notes; preliminary -- 1.23, preliminary instructions regarding jurors taking -- submitting questions.

And what I've added to the preliminary charge, the model one, is the sentence as it reads in the model charge is "in this trial, after the lawyers have asked their own questions of each witness." What we have tailored that to is "their own questions of witnesses testifying on technical or complex issues." So that, for example, if the plaintiff takes the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

witness stand or any other fact witness, they're not going to be submitting questions with regard to any of that testimony.

And this charge highlights that they're not here as the third party in the room. They are here to understand the testimony. So if there's anything that they don't understand, only then, and it also highlights for them not to take it personally if you don't ask the question, you know, all of that.

1.11 E is outline of the order of the events, so I just go through opening statements, evidence, and then closing statements. I'm not giving a charge with regard to settled defendants 'cause there aren't any, although that would be the time period to talk about Imerys Talc America, CAMC. And then we're letting them know there's a jury of eight, and then after the court's charge at the end of the case we will select alternates, but they all have to pay attention.

Then I'm supposed to discuss scheduling, and we'll go over that briefly again with them; and then the final preliminary charge is cell phone, pagers, other wireless communication devices. All right.

MS. BROWN: Judge, before that would it be appropriate to ask about recent news or after?

THE COURT: I think the issue with regard to

recent news is why don't we -- want to do it one by one at sidebar.

MS. BROWN: Okay.

THE COURT: Part of that inquiry is if they say that they have --

MS. BROWN: Exactly.

THE COURT: -- is have you spoken with any of the other jurors in relation to that, so keep that in mind that that's something we want to ask. And then hopefully there are no issues.

MS. BROWN: Hopefully.

MS. COOPER: After all this.

MR. COTILLETTA: I didn't know it was the Today show.

THE COURT: Did you hear what happened in a criminal trial down in Monmouth County? Monmouth County is the next county down. There was a murder trial that was going on, 21 days in, this young woman whose body has not been found, and someone who was a childhood friend that supposedly they were going to run off together, supposedly, he is the one that's been on trial for her murder. Someone testified, someone that makes movies, a friend of his, about meeting with him and wherein he told him, hey, this is supposedly an idea for a movie, and supposedly tells him everything

that had happened.

So 21 days in, the State, I think, had just a few more witnesses left and they were going to rest and as has happened to me in one of my cases, one of the jurors goes on Facebook that night and says, sitting in this murder trial LMAO. So the judge went -- it was brought to the attention of the judge. The judge called the juror to the sidebar, ultimately released that juror. That juror claims, based upon the time that it was posted, that it was her sister using her account. But then I think there may have been discussions with another juror because a second juror was released as well.

MS. COOPER: Had to be, to release both of them, it would have to be they conferred with each other.

MS. BROWN: They have enough people to keep losing that many, though?

MS. COOPER: Did that bust the panel?

THE COURT: No.

Yeah, and the first juror afterward gave an interview --

MS. BROWN: Oh my God.

THE COURT: -- what it was like sitting on that trial.

MS. BROWN: I'm sure no one saw that.

MS. COOPER: Did he do that immediately after while the jury is still on or when the trial was over?

THE COURT: No. The minute he got bounced he gave an interview.

MS. COOPER: So inappropriate.

THE COURT: So, we'll talk to them on Monday.

MS. BROWN: Thank you. Thanks, judge.

THE COURT: If any one of them has seen it and has discussed it, we have to deal with that.

MS. BROWN: Okay.

MS. COOPER: Yes, your Honor.

THE COURT: Hopefully after all the excitement we've had now, we won't have anymore on Monday.

Okay. So those are the preliminary charges.

MS. BROWN: Thank you, your Honor.

MR. COTILLETTA: Awesome. Thank you, your Honor. See you on Monday.

THE COURT: Get some sleep.

MR. COTILLETTA: I don't know.

THE COURT: Okay. We next turn to Dr. Blount. So you're going to submit the revised --

MS. BROWN: I am.

THE COURT: -- instruction about telling the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

jury about CAMC and Imerys Talc America.
MS. BROWN: Yes. And actually, with your Honor's permission, I'll just head back now and we'll get that to you.
THE COURT: Okay.
MS. BROWN: Mr. Winer will handle the Blount depositions.
Thank you, judge. We'll see you Monday.
THE COURT: Thank you.
You don't need to stand unless you want to.
MS. COOPER: We've been working so hard over the weekend. Or not the weekend, the...
THE COURT: Since during the lunch break. May feel like the weekend.
MR. WINER: Your Honor --
THE COURT: Again, for the record, could you spell your last name?
MR. WINER: Jed Winer, from Weil, Gotschal and Manges, for the Johnson & Johnson defendants.
Miss Cooper and I have met and conferred over the lunch break and I am pleased to report that we have -- lunch break consisting of an Atkins bar and a PowerBar, I believe. But we have made significant progress, so we have substantially narrowed down the issues.

The first thing I can report is we have agreed on an instruction that should be read to the jury --
THE COURT: Prior to.
MR. WINER: -- prior to the video being played. And I'll just put it on the record if that's okay.
THE COURT: Sure.
MR. WINER: That number one, after Dr. Blount's deposition was taken, Johnson & Johnson requested Dr. Blount provide any documents or data concerning testing she has done of Johnson & Johnson products since the 1991 paper. Dr. Blount responded that she did not maintain any such documents or data.
And then number two, Dr. Blount did not permit any of the parties to test the Johnson's Baby Powder bottle that she brought to her deposition.
So we have agreed on that.
THE COURT: Okay. You can send that to Shirley and Greyson. That would be great.
MR. WINER: Certainly. I think with that I'll get into the few objections that we have, and then I know Miss Cooper has some as well.
So with respect to the plaintiffs' designations, our first objection is on page 23 of the

transcript.
THE COURT: Before you go there, I'm going to raise this. You can be seated. I don't know if previously on page 16, the plaintiffs have an objection to line 6 through 25. Have you removed that?
MR. WINER: That was actually our objection.
THE COURT: Yes. That's what I meant, the defendants.
MR. WINER: I didn't think it was relevant but...
THE COURT: I have issues beyond that having nothing to do with relevance, and if you don't mind that I express them.
So the first time I heard this I actually was offended by it insofar as, you know, that old joke in the '50s and '60s that women went to college to get an M-R-S degree. And I know that that was not the intent of Mr. Lanier. But if you read this, I mean, and it makes no difference that there are no women on this jury, but if you read this, with all due respect, I mean, it's a cute story of how they met, but that's not what's coming out here in this.
I don't know if you agree or disagree, but, you know, to say now you've also got, if I remember the story correct, you've also got a husband at the

University of Wisconsin. Yes, that's right. It's not on your resume. How did you find your husband when you were looking at rocks? You know, I mean, no offense, but I don't think it belongs. I don't think it belonged back in the '50s or '60s whenever she went and graduated -- 1970s. I don't think it belonged then and it doesn't belong now.
So I really suggest you consider removing this. If you want to say it's with regard to relevancy that's fine, but I find it offensive. And that's not just from a woman's perspective, from a professional's perspective, you know. But regardless of whether you agree or disagree with her testing and all of that, I mean, this is someone who got a master's of science in geology and a Ph.D. in geology in the 1970s and, you know, that was trailblazing at the time. I'm sure she encountered a lot of issues because of her gender, not studying in what was a recognized woman's field, you know.
MS. COOPER: Absolutely.
THE COURT: So I think you should reconsider that.
MS. COOPER: I will have it removed. Absolutely, your Honor.
THE COURT: Thank you. So I think you were

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

talking about page 23.
MR. WINER: Yes, your Honor.
THE COURT: Okay.
MR. WINER: On page 23, and sort of to your Honor's comment you just made, I have tried to narrow the instances where we feel strongly about some of the lawyer commentary that went on during this deposition.
THE COURT: Like we sat on the porch and had pie.
MR. WINER: Some of this stuff, yeah, I would submit is a little over the top. But the first one relates to that on the bottom of page 23 where counsel refers to having Dr. Blount autograph the 1991 paper. I don't see how that's relevant and certainly I think it's prejudicial.
MS. COOPER: I'm sorry. Were you done, Mr. Winer?
MR. WINER: Just for the record, that same issue comes up again on page 36 where counsel says that this, you signed your name the same way for me at the bakery, in the coffee shop in Rutland, Vermont when I had you autograph your article. I think it's unnecessary and it's prejudicial.
MS. COOPER: Your Honor, what I would suggest, starting with page 23, is taking out I got

your autograph copy, didn't I, starting at, I got an autograph copy, didn't I, and taking that line out.
So just pointing out she signed it. Not that it's an autographed copy or anything like that, as far as that's concerned. But I do think it's important to point out that it is the same person that signed this document that signed it back in the past and that is the relevance that I see there.
As far as cutting down on page 36 --
THE COURT: So what you're saying is, judge, we need to leave in that part that I got the amphibole content cosmetic and pharmaceutical talc to publish in 1991. Is that correct? Yeah, it looks like it. And I made you sign it. That's right, you did.
Because you're trying to say then that relates to, on 36, all right, then there's one other letter that I found interesting what's marked as exhibit number, I can't read that part in red, I'm looking specifically at a letter that someone wrote, Alice Blount, Ph.D., minerals. Is that you? Yes. Is that your signature? Yes. In fact, you signed your name in 1998 just about -- okay.
So what you're trying to do just is verify that the '91 paper that she signed and this 2000 -- and this other letter that she signed, that it's the same

person that's authored them.
MS. COOPER: Yes, your Honor, that would be the purpose.
MR. WINER: I don't think there's any dispute about the authenticity of the '91 article or the other letter. So I don't really see how it's relevant that he's having her sign things. To me, it suggests undue importance to the jury that she's signing these things as though he's going to keep them in some collector's box.
THE COURT: 1998 -- wait. The 1998 letter or whatever that is, she signed it back in '98. Is that right?
MS. COOPER: Yes, your Honor.
THE COURT: So rather than showing it to her and asking her is this your signature, which he could have done, he's just comparing what she signed, a copy of the 1991 article with her signature now in 1998. Is that right?
MS. COOPER: Yes. I believe in that part of the deposition he is just comparing that it's the same signature. And, your Honor, I'm more than willing to cut out line 11 on 36 to 16, talking about the bakery.
THE COURT: Please. Okay. All right. I get that. I mean, it could have been done differently, but

it wasn't. The other way around it is that, you know, no one is objecting to or questions the authenticity of the 1991 article being hers and this 1998 letter being hers.
There's two ways of doing it. I don't mind your way as long as we get rid of the objectionable issues which really implies like some sort of, not that he was trying to exercise undue influence on her, but it shows an undue familiarity with one party over another that we want to avoid.
MS. COOPER: Absolutely, your Honor.
THE COURT: Okay. Where do we go to now?
MR. WINER: Okay. The next issue is on page 40 of the transcript, relates to an exhibit, Exhibit Number 9, which is what appears to be a printout from the website that purports to be related to Johnson & Johnson, but it's clearly not something that the witness had ever seen. And counsel basically just walked through and apparently asked questions about setting up the context, you know, this stuff is used on babies and, you know, trying to build up this whole thing where there's really no foundation with the fact witness.
He can ask her about her testing, but to start going through lines from a blog post and trying

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

to make an argument about whether they are accurate or not, I don't think is appropriate with a fact witness like that, particularly when she hadn't seen it before.

MS. COOPER: And, your Honor, first of all, as to the exhibit, I believe it is an admission by a party opponent because it is from the J&J's blog and it is their post. We've spoken about taking off this is the stuff used on babies and we've taken out any reference to her expertise. But I do think that it is setting up context for this last sentence which is since the 1970s it's been asbestos-free and then her saying it does have asbestos, so it's --

THE COURT: I understand what you're saying, but doesn't she say that anywhere else or is it all predicated on this article that she's never seen and basically it's Mr. Lanier reading in the document is what's happening.

MR. WINER: I'm sorry, your Honor. On page 42 he asks the appropriate question which is, based upon what you did, was Johnson & Johnson's Baby Powder in the 1970s, you know, did it have asbestos. That's the appropriate question.

THE COURT: And that question really stands alone, because throughout this deposition talk about her 1991 test and her paper, and I think that there's

also reference throughout this deposition about her reaching out to the J&J attorneys. This is almost like a non-sequitur here to this article that she has never seen and it's essentially Mr. Lanier reading in the document. And you're saying it's J&J and it's a party admission. Well, bringing it, try bringing it in throughout the trial, not through this witness who's never seen it.

MS. COOPER: Absolutely, your Honor. Can we agree to have it just from 42, line 3 to line 10, which is starting with Dr. Blount, based on what you know or you know from what you did.

THE COURT: Right.

MS. COOPER: Asking just the relevant question.

THE COURT: You want to end it at 9 or 10?

MS. COOPER: At 10, please.

THE COURT: Okay. Any objection to that?

MR. WINER: No, your Honor.

THE COURT: Okay. Is that it for the defense objections?

MR. WINER: Just a couple more.

THE COURT: I saw blue and got excited. I didn't see we pick up on yellow again.

MR. WINER: I guess maybe then it does make

sense, if we're going to go in the order.

THE COURT: Why don't we do it that way for continuity on reference.

MR. WINER: Sure.

MS. COOPER: I believe we had gotten actually through all of the ones and we were able to agree.

MR. WINER: Even better.

MS. COOPER: We had been working, let me double check with Mr. Winer. We had gotten through 79, page 79.

THE COURT: That's remarkable progress. Thank you.

MR. WINER: You're welcome.

MS. COOPER: It's the PowerBars.

MR. WINER: Actually, I think that is it.

The one, only issue I would raise, and I don't mean to put Miss Cooper on the spot since we've reached agreement on pretty much everything now, the additional counters that you had proposed this morning I don't think are necessary 'cause I think they were really in response to some things that we have agreed to cut.

MS. COOPER: And I would have to disagree just because I believe that they were initially designated as well. So starting on 86, which is the --

THE COURT: You know what, we don't need this on the record. Why don't we go off the record.

(Proceedings adjourn at 2:49 p.m.)

CERTIFICATION

I, ANDREA F. NOCKS, C.S.R., License Number 30XI00157300, an Certified Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript to the Best of my knowledge and ability.

Andrea Nocks CCR CRR

ANDREA F. NOCKS February 22, 2019
CERTIFIED COURT REPORTER DATE
MIDDLESEX COUNTY COURTHOUSE

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

EXHIBIT 2

Entered 16-CI-003503 04/12/2019 David L. Nicholson, Jefferson Circuit Clerk

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

No. 16-CI-003503

JEFFERSON CIRCUIT COURT
DIVISION TEN (10)
JUDGE ANGELA MCCORMICK BISIG

CYNTHIA HAYES, as Executrix of the Estate of DONNA ANN HAYES — PLAINTIFF

vs.

ORDER REGARDING MOTIONS IN LIMINE, FOR SUMMARY JUDGMENT, AND FOR MISSING EVIDENCE INSTRUCTIONS

COLGATE-PALMOLIVE COMPANY, *et al.* — DEFENDANTS

* * * * *

This matter is before the Court on a number of motions. The first is a Motion by Defendant Cyprus Amax Minerals Company ("CAMC") for Summary Judgment filed on October 30, 2018. Plaintiff Cynthia Hayes, as Executrix of the Estate of Donna Ann Hayes ("Cynthia"), filed a Response on January 7, 2019. CAMC filed a Reply on January 25, 2019. The second is a Motion by Defendant Colgate-Palmolive Company ("Colgate") for Summary Judgment filed on October 30, 2018. Cynthia filed a Response on January 7, 2019. Colgate filed a Reply on January 28, 2019, as well as a Notice of Supplemental Authority on February 22, 2019. The third is a Motion by Defendant Johnson & Johnson for Summary Judgment filed on October 30, 2018. Cynthia filed a Response on January 7, 2019. Johnson & Johnson filed a Reply on January 21, 2019.

The fourth is a Motion by Cynthia for a Missing Evidence Instruction against Colgate. The Motion was filed on December 7, 2018. Colgate filed a Response on January 11, 2019.

OO : 00001 of 00042

Entered 16-CI-003503 04/12/2019 David L. Nicholson, Jefferson Circuit Clerk

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Cynthia filed a Reply on February 8, 2019. The fifth is a Motion by Cynthia for a Missing Evidence Instruction against Johnson & Johnson. The Motion was filed on December 7, 2018. Johnson & Johnson filed a Response on January 11, 2019. Cynthia filed a Reply on February 8, 2019. The remaining Motions are motions in limine filed by a number of parties to this action.

The Court heard oral argument on February 28 and March 1, 2019. Cynthia was represented by the Honorable Paul J. Kelley, the Honorable Paul J. Ivie, the Honorable J. Eric Kiser, and the Honorable J. Garrett Cambron. Colgate was represented by the Honorable Meredith M. Shaw, the Honorable Matthew W. Breetz, and the Honorable Nathan Guest. Johnson & Johnson was represented by the Honorable Matthew L. Bush, the Honorable Katie Kinsey, the Honorable Nina Trovato, the Honorable R. Scott Masterson, and the Honorable Richard T. Bernardo. CAMC was represented by the Honorable Todd P. Greer. The matter now stands submitted. The Court, having considered the written memoranda, oral argument, record in the case, and being otherwise sufficiently advised, rules as follows.

BACKGROUND

In this asbestos case, Plaintiff Cynthia alleges that her decedent, Donna Ann Hayes ("Donna"), developed malignant mesothelioma as a result of her use of asbestos-containing cosmetic talcum powder products, including Defendant Johnson & Johnson's Shower-to-Shower product and Defendant Colgate's Cashmere Bouquet product. Cynthia maintains that these products were manufactured with asbestos-containing talc provided by Defendant CAMC and its predecessors-in-interest. CAMC, Colgate and Johnson & Johnson have moved for summary judgment in their favor. Cynthia has moved for missing evidence instructions against Colgate and Johnson & Johnson. Various parties have also filed a number of motions in limine ahead of the jury trial scheduled to begin in this matter on July 16, 2019.

OO : 000002 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

CAMC'S MOTION FOR SUMMARY JUDGMENT

1. *CAMC's Argument*

CAMC argues that it cannot be liable for Cynthia's claims. First, CAMC asserts it cannot have direct liability because it never mined, milled, sold or distributed talc. Second, CAMC also contends that as a matter of law it does not have successor-in-interest liability for Cynthia's claims. According to CAMC, the original importer, processer, and supplier of the talc at issue was an entity known as Charles Mathieu, Inc. ("Charles Mathieu"). CAMC asserts that in 1979, an entity known as Cyprus Mines purchased assets from subsidiaries of Charles Mathieu but expressly did not assume any of those companies' liabilities. CAMC contends that Cyprus Mines' talc assets and liabilities were later transferred to an entity known as Cyprus Talc in 1992 and ultimately ended up with Imerys Talc America, Inc.

CAMC maintains that it was formed in 1993 when two entities known as Cyprus Minerals and AMAX merged. CAMC contends that although Cyprus Mines became its subsidiary as a result of that merger, Cyprus Mines had divested its talc assets and liabilities before CAMC came into existence. CAMC also maintains that because it did not purchase Cyprus Mines, and because no fraud, merger, consolidation, or continuation of Cyprus Mines' business via CAMC occurred, CAMC cannot be responsible for Cyprus Mines' liabilities.

2. *Cynthia's Argument*

Cynthia argues that Charles Mathieu was the exclusive importer of Italian talc and operated through 1979. Cynthia contends that all talc used to manufacture Cashmere Bouquet through 1979 was provided exclusively by Charles Mathieu. According to Cynthia, Cyprus Mines took on Charles Mathieu's liabilities resulting from that conduct when Cyprus Mines purchased Charles Mathieu's assets in 1979 and simply continued Charles Mathieu's operations.

OO : 000003 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

Cynthia maintains that CAMC then assumed Cyprus Mines' liabilities that had originated with Charles Mathieu, as well as Cyprus Mines' own liabilities arising from its provision of talc for Cashmere Bouquet from 1979 to 1992, when Cyprus Mines merged with AMAX in 1993 to create CAMC. Cynthia further asserts that CAMC also has its own liability because it sold talc from its Hamm underground mine to Johnson & Johnson from 1991 to 2003.

3. *Summary Judgment Standard*

Civil Procedure Rule 56.03 authorizes summary judgment "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03. The Court must view the record "in a light most favorable to the party opposing the motion, and all doubts are to be resolved in his favor." Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 480 (Ky. 1991).

Summary judgment is proper when "it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." Paintsville Hosp. Co. v. Rose, 683 S.W.2d 255, 256 (Ky. 1985) (quoting Roberson v. Lampton, 516 S.W.2d 838, 840 (Ky. 1974)). The term "impossible" is used in a practical sense and not in an absolute sense. Perkins v. Hausladen, 828 S.W.2d 652 (Ky. 1992).

When considering a motion for summary judgment, the "focus [of the court] should be on what is of record rather than what might be presented at trial." Welch v. Am. Publ'g Co. of Kentucky, 3 S.W.3d 724, 730 (Ky. 1999). "The party opposing summary judgment cannot rely on their own claims or arguments without significant evidence in order to prevent a summary judgment." Hallahan v. The Courier-Journal, 138 S.W.3d 699, 705 (Ky. App. 2004). The non-movant cannot defeat a properly supported summary judgment motion "without presenting at

OO : 000004 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

least some affirmative evidence showing that there is a genuine issue of material fact for trial." Steelvest, 807 S.W.2d at 482. Even if a trial court believes the party opposing the motion for summary judgment may not succeed at trial, "it should not render a summary judgment if there is any issue of material fact." Id. This is because it is the court's duty to examine the evidence, "not to decide any issue of fact, but to discover if a real issue exists." Id.

4. *Direct Liability*

The Court first finds that there is no evidence of record to support a finding of direct liability against CAMC. CAMC presents affidavit testimony of its authorized representative Patrick Downey that CAMC never sold, milled, mined, or processed talc at any time. Motion, Ex. C ¶ 2. And while Cynthia disputes this by asserting that CAMC supplied talc to Johnson & Johnson from a mine known as the Hamm mine, the record does not support that contention. Rather, the testimony relied upon by Cynthia establishes only that the Hamm mine was an approved source of talc for Johnson & Johnson's products, not that Johnson & Johnson in fact sourced talc from that mine. Response, Ex. 13 at 1235:2-1238:13. The witness relied upon by Cynthia also disagreed that talc had been provided to Johnson & Johnson from the mine. Id. at 1237:16-1238:9. Accordingly, because there is no evidence of record to support a finding that CAMC mined, milled, processed or sold any of the talc at issue, there is no basis upon which CAMC may be held directly liable for Cynthia's claims.

5. *Successor-in-Interest Liability*

Nor does the Court find that the record presents a basis upon which CAMC could be held responsible for the liabilities of either Cyprus Mines or Charles Mathieu arising out of their provision of talc for manufacture of the products at issue. As an initial matter, although Cynthia contends that CAMC became responsible for Cyprus Mines' liabilities—and thus also for

OO : 000005 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

liabilities originating with Charles Mathieu—when CAMC merged with Cyprus Mines, the testimony she relies upon does not support the existence of any such merger. Rather, the testimony states that CAMC was created by the "merger of Cyprus *Minerals* Company and a company called Amax." Response, Ex. 7 at 1430:1-14 (emphasis added). As such, there is no basis to find that CAMC may have assumed the liabilities of Cyprus Mines by virtue of a merger with that entity.

Moreover, the uncontroverted evidence of record indicates that CAMC is in fact the parent corporation of Cyprus Mines. Motion, Ex. C ¶ 6. A parent corporation such as CAMC bears no responsibility for the liabilities of its subsidiaries absent a showing that piercing of the corporate veil is warranted. See Inter-Tel Techs., Inc. v. Linn Station Props., LLC, 360 S.W.3d 152, 170-71 (Ky. 2012) (finding parent and grandparent corporations responsible for liabilities of their wholly-owned subsidiary where the requirements for veil piercing were satisfied). Here, Cynthia has made no showing that the corporate veil should be pierced to hold CAMC responsible for the liabilities of its subsidiary Cyprus Mines.

In addition, because CAMC is the parent of Cyprus Mines rather than a successor to that entity, the successor-in-interest doctrine does not provide a basis to find that CAMC assumed the liabilities of Cyprus Mines. See Parker v. Henry A. Petter Supply Co., 165 S.W.3d 474, 478 (Ky. App. 2005) (noting that the successor-in-interest doctrine applies where there is a purchasing corporation and a selling corporation); Excel Energy, Inc. v. Cyprus Amax Coal Sales Corp., No. 3:98CV-713, 2008 WL 4127417, at *2 (W.D. Ky. Sept. 4, 2008) ("For successor liability, there must be only one surviving corporate entity."). Finally, Cyprus Mines' liabilities were in any event assumed by an entity known as Cypress Talc on June 5, 1992, before CAMC came into existence. Motion, Ex. C at Ex. A § 4. Thus, there is no basis to find that

OO : 000006 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

CAMC may be responsible for Cyprus Mines' liabilities, whether originating from Cyprus Mines' own conduct or from its alleged assumption of the liabilities of Charles Mathieu. Accordingly, because there is no genuine issue of material fact that CAMC does not have direct or indirect liability for Cynthia's claim and because it would therefore be impossible for Cynthia to prevail against CAMC at trial, CAMC's Motion for Summary Judgment is GRANTED.

COLGATE'S MOTION FOR SUMMARY JUDGMENT

1. *Colgate's Argument*

Colgate argues there is no basis to find that its product Cashmere Bouquet was responsible for Donna's illness. Colgate asserts its experts have opined that Cashmere Bouquet never contained asbestos and that even use of talcum powder with trace amounts of asbestos would not pose any danger. Colgate contends that epidemiological studies further show a source mine for the talc used in Cashmere Bouquet reported zero cases of mesothelioma among its miners and millers, and that FDA testing did not find asbestos or a risk from cosmetic talcum powder. Colgate thus asserts the evidence of record demonstrates its product did not contain asbestos and could not have caused Donna's disease.

Colgate further argues that even if Cynthia could show that some containers of Cashmere Bouquet were contaminated with asbestos, she cannot show that the containers actually used by Donna were tainted. Colgate asserts that Donna's reliance on purported test results finding asbestos in the source mines at issue likewise would show only that some containers of Cashmere Bouquet contained asbestos, not that the containers used by Donna were contaminated. Colgate also asserts that the test results are questionable, and that the overwhelming majority of its talc samples tested negative for asbestos. Colgate further points to testimony by plaintiffs' experts in other cases that the amount of asbestos in talc mines is

OO : 000007 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

sporadic, occasional, and varied, and that not all Italian talc contained asbestos. Colgate contends that Cynthia's expert also testified there is no statistically sound method to determine whether asbestos was present in particular containers. Colgate thus contends the jury could only speculate that the Cashmere Bouquet used by Donna was tainted with asbestos.

Colgate further maintains that even if Cynthia could show Donna used Cashmere Bouquet contaminated by asbestos, Cynthia cannot show that any such contamination was a substantial factor in causing Donna's illness. Colgate asserts that Cynthia's experts concede no epidemiological studies have found an increased risk of mesothelioma from use of cosmetic talcum powder, and that studies in fact show no incidences of mesothelioma in miners and millers at the Italian talc mines. Colgate also points out that the FDA concluded in 1986 that cosmetic talc presented a lower risk of asbestos exposure than ambient background exposure. Colgate contends that Cynthia therefore has no evidence asbestos in cosmetic talcum powder can cause mesothelioma.

Colgate further argues that Cynthia also cannot prevail because her expert testified he cannot quantify the amount of asbestos to which Donna was exposed. Colgate maintains that Donna's potential exposure to asbestos as a result of her husband's work in an automobile repair shop further prevents her from showing that asbestos in Cashmere Bouquet caused her illness.

Finally, Colgate argues that at a minimum, it is entitled to summary judgment as to Cynthia's claim for punitive damages. Colgate asserts that as soon as it became aware of the potential dangers of asbestos contamination in the early 1970's, it developed and implemented a state of the art testing protocol to ensure that talc in Cashmere Bouquet was not contaminated. Colgate also contends the FDA has determined that cosmetic talcum powder is generally

OO : 000008 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

recognized as safe. Colgate thus maintains that no reasonable jury could conclude Colgate exhibited wanton or reckless disregard for the lives of its customers.

2. *Cynthia's Argument*

Cynthia argues the evidence of record establishes that Donna used Cashmere Bouquet from the early 1960s until the 1990s, including a ten-year span when she used the product on a daily basis. Cynthia asserts that evidence of record also indicates that asbestos was present in the talc ore used to make Cashmere Bouquet as confirmed by historical and contemporary testing. According to Cynthia, expert testimony further demonstrates that significant amounts of asbestos were present in Cashmere Bouquet, that the same fiber types were found in Donna's lymph tissue, and that Donna's use of asbestos-containing talcum powder was a substantial factor in causing her illness. Cynthia contends this evidence presents a genuine issue of material fact as to whether Cashmere Bouquet contained asbestos and whether Donna's exposure to that product was a substantial factor in her development of mesothelioma.

Cynthia further argues that she is not required to present tests of the actual bottles used by Donna to prevail at trial. Rather, Cynthia maintains she only needs to show circumstantial evidence that Donna was exposed to Cashmere Bouquet and that Cashmere Bouquet was contaminated with asbestos. Cynthia contends she meets that standard with the opinions of her expert that the likelihood of asbestos exposure after using ten bottles of Cashmere Bouquet is 99.99% and that Donna's use of over 100 bottles of Cashmere Bouquet results in an essentially 100% statistical likelihood of exposure. According to Cynthia, this is particularly true given that talc and asbestos were located in Donna's lung and lymph tissue. Cynthia therefore maintains the evidence of record is sufficient to establish that Donna was exposed to asbestos in Cashmere Bouquet.

OO : 000009 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Cynthia further argues that she is also not required to demonstrate the level of asbestos to which Donna was exposed. According to Cynthia, Colgate itself had a zero-tolerance policy providing that no level of asbestos exposure was safe. Cynthia also points to her expert's opinion that anyone exposed to a carcinogen with no safe level of exposure is at risk of developing cancer, regardless of dose.

Finally, Cynthia also contends the evidence of record is sufficient to submit the issue of punitive damages to the jury. According to Cynthia, that evidence shows Colgate knew of the dangers of asbestos exposure and that its talc sources and Cashmere Bouquet contained asbestos. Cynthia maintains that Colgate nonetheless was consciously indifferent regarding that contamination, as evidenced by its failure to remove the product from shelves, substitute a safe non-talc alternative, share test results with the FDA, or warn consumers of the potential danger. Cynthia asserts that Colgate instead knowingly adopted an insufficient testing methodology.

3. *Presence of Asbestos in Cashmere Bouquet*

To prevail on an asbestos claim, the plaintiff must first show that the defendant's product contained asbestos. Here, Colgate asserts there is no evidence of record to support a finding that its product, Cashmere Bouquet, contained asbestos. Indeed, Colgate points to evidence that could support a reasonable conclusion that Cashmere Bouquet did not contain asbestos. For example, Colgate cites to studies from 1973, 1976, and 2012 reporting no asbestos in either Cashmere Bouquet or cosmetic-grade talc and talcum powder samples. See, e.g., Motion, Ex. 22 at HHS00000200-04 (indicating no reporting of tremolite or chrysotile for Cashmere Bouquet samples, *i.e.* samples 7, 81, and 165); id., Ex. 23 at HHS00000155-57 (indicating no reporting of tremolite or chrysotile for Cashmere Bouquet samples, *i.e.* samples 81 and 165).

OO : 000010 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

Colgate further notes that studies also did not find asbestos in the mines in Italy, Montana, and North Carolina used to source talc for the manufacture of Cashmere Bouquet. Id., Ex. 11 ¶¶ 25-26 (referencing studies that did not find asbestos in Italian mines, including testing of samples collected by Dr. Sanchez); id. ¶¶ 19-23 (noting studies finding no asbestos in Montana talc mines); id. at ¶ 27 (stating that expert is unaware of "any published literature indicating the presence of chrysotile or anthophyllite asbestos or tremolite asbestos in" Italian, Montana, or North Carolina talc). Colgate also points to deposition testimony that none of its talc samples ever failed an asbestos test, as well as documents of its third-party testing laboratory indicating that the vast majority of samples tested negative for asbestos. Id., Ex. 35 at 278:8-18 & Ex. 48. Further supporting Colgate's position is its expert's opinion that Cashmere Bouquet did not contain asbestos, and epidemiological studies showing no cases of mesothelioma among miners and millers working in the Italian mines used to source talc for Cashmere Bouquet. Id., Ex. 11 at ¶ 28 (stating "opinion that Cashmere Bouquet talcum powder ***did not*** contain asbestos") (emphasis in original); id., Exs. 36-39.

While this evidence could support a reasonable conclusion that Cashmere Bouquet did not contain asbestos, Cynthia points to evidence in the record that could support a reasonable conclusion that Cashmere Bouquet did contain asbestos. For example, Cynthia presents evidence that Cashmere Bouquet tested positive for asbestos. Response, Ex. 59 at 692:3-13, 697:3-24, Ex. 63 at 123:25-124:15, & Ex. 71. Cynthia also notes a statement by the FDA in 1986 that "some cosmetic talc produced in the 1960s and early 1970s did contain asbestiform minerals." Motion, Ex. 21 at FDA00003601.

Similarly, Cynthia answers Colgate's contention that the Italian mines did not contain asbestos with contradictory test results indicating that the mines did contain asbestos. See, e.g.,

OO : 000011 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

Response, Ex. 26, Ex. 28, Ex. 41 at CAMC-Herford-000119, 121, & Ex. 42 at 4 (indicating asbestos fiber content of up to .68% by weight in Italian talc). She presents similar evidence regarding the presence of asbestos in Montana and North Carolina talc. Id., Ex. 48 & Ex.55 at 25. It is thus apparent that while Colgate's evidence suggests Cashmere Bouquet did not contain asbestos, Cynthia has presented contradictory evidence suggesting that asbestos was present in Cashmere Bouquet. Accordingly, in construing the evidence in the light most favorable to Cynthia, the Court cannot find that it would be impossible for her to prove at trial that Cashmere Bouquet contained asbestos. To the contrary, the record demonstrates a question of material fact as to the presence of asbestos in Cashmere Bouquet that must be resolved by the jury.

4. *Causation – Lack of Evidence Regarding Product Used by Donna*

To prevail against Colgate at trial, Cynthia must also show that Cashmere Bouquet was a legal cause of Donna's mesothelioma, *i.e.* that Cashmere Bouquet was a "substantial factor in bringing about" Donna's illness. Bailey v. North Am. Refractories Co., 95 S.W.3d 868, 871 (Ky. App. 2001). However, Cynthia is not required to present direct evidence that Cashmere Bouquet caused Donna's mesothelioma. Rather, she may also establish legal causation "'by a quantum of circumstantial evidence from which a jury may reasonably infer that the product was a legal cause of the harm.'" Id. at 872-73. "These inferences, however, must be reasonable, that is they must 'indicate the *probable*, as distinguished from a *possible* cause.'" Id. at 873 (emphasis in original).

The question of legal causation is generally one of fact for the jury, unless "the facts are undisputed and susceptible of but one inference." Id. at 872. Thus, the question for the Court on summary judgment is whether, when viewed in the light most favorable to the non-moving party and with all doubts resolved in her favor, "'the evidence as to the facts makes an issue upon

OO : 000012 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

which the jury may reasonably differ as to whether the conduct of the defendant has been a substantial factor in causing the harm to the plaintiff.'" Pathways, Inc. v. Hammons, 113 S.W.3d 85, 92 (Ky. 2003).

Colgate argues that Cynthia cannot show Cashmere Bouquet was a legal cause of Donna's illness because Cynthia has no evidence the containers of product used by Donna actually contained asbestos. Colgate points to past tests of Cashmere Bouquet that did not reveal asbestos and the testimony of plaintiffs' experts in other cases that the presence of asbestos in talc mines can be variable, sporadic, and occasional. Reply, Ex. 61 at 53:20-24, Ex. 62 at 521:9-12, Ex. 63 at 140:13-23, & Ex. 64 at 135:8-136:16. Colgate also relies upon the testimony of Cynthia's expert Dr. Egilman that a lack of uniformity in the asbestos contamination of talc contributes to the difficulty in designing a statistically sound model to determine the presence of asbestos in particular containers of talcum powder. Motion, Ex. 46 at 701:8-15.

However, Cynthia presents affidavit testimony by Dr. Egilman indicating that because testing revealed asbestos in 50-60% of Colgate cosmetic talcum powder samples, the likelihood of being exposed to asbestos fibers after using ten bottles of Cashmere Bouquet is more than 99%. Response, Ex. 94 ¶ 66. Dr. Egilman calculated that based upon Donna's testimony, she used between 104 and 180 bottles of Cashmere Bouquet during her life. Response, Ex. 127. Dr. Egilman also states that in Donna's case, the likelihood of exposure to asbestos in Cashmere Bouquet is effectively 100% because talc and asbestos were found in Donna's lung and lymph tissue.[1] Response, Ex. 94 ¶ 66. Notably, Dr. Egilman also opines that the fibers found in

[1] As discussed below, the Court will hold a *Daubert* hearing regarding the admissibility of the opinions of Dr. Poye, Dr. Dodson, and Dr. Taragin. See infra at 39-41. To the extent Dr. Egilman's exposure opinion may be based upon the tissue digestion analysis or other efforts of these experts, Colgate may move for exclusion of that opinion should the Court determine the experts' opinions are inadmissible following the *Daubert* hearing.

OO : 000013 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

Donna's tissue were in fact a "finger print" of materials found in Cashmere Bouquet. Id. at ¶ 62 ("[T]he talc and asbestos found in Mrs. Hayes' lung and lymph tissue is a 'finger print' matching the talc and asbestos found in . . . Colgate talcum powder products."). Construed in the light most favorable to Cynthia, this evidence is sufficient to raise a genuine issue of material fact as to whether the containers of Cashmere Bouquet used by Donna contained asbestos.

5. *Causation – Lack of Evidence of Asbestos Levels in Cashmere Bouquet*

Colgate also contends that Cynthia cannot demonstrate legal causation because she cannot show a probability that the level of asbestos in Cashmere Bouquet, if any, was sufficient to cause mesothelioma. For example, Colgate points out that Cynthia's expert Dr. William Longo testified he cannot provide a "quantifiable number" of the amount of asbestos present in any bottle of Cashmere Bouquet. Motion, Ex. 51 at 43:11-17. Colgate also relies upon testimony by Cynthia's expert Dr. Jacqueline Moline agreeing that "there are exposures to asbestos that are so slight or trivial that [she] would not as a medical expert be prepared to assign that exposure as a substantial contributing cause of the development of the disease." Id., Ex. 53 at 76:14-20. Colgate also submits affidavit testimony by its expert Jennifer Sahmel that even assuming trace amounts of asbestos were present in Cashmere Bouquet, "any associated asbestos exposure potential would be well within the corresponding cumulative lifetime background or ambient levels of asbestos found in the air in the U.S." Motion, Ex. 41 ¶ 25. Similarly, Colgate also points to a 1986 statement by the FDA that its scientists "concluded that the risk from a worst-case estimate of exposure to asbestos from cosmetic talc would be less than the risk from environmental background levels of exposure to asbestos (non-occupational exposure) over a lifetime." Motion, Ex. 21 at FDA00003602.

OO : 000014 of 000042

Entered 16-CI-003503 04/12/2019 David L. Nicholson, Jefferson Circuit Clerk

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

However, Cynthia again presents contradictory evidence. For example, she points to her expert's opinion that the expected asbestos level in Cashmere Bouquet would have been well above background levels. Response, Ex. 81 ¶¶ 46-47 (stating that exposure to asbestos in Cashmere Bouquet "would be substantially above background" and that Donna's exposure to Cashmere Bouquet in particular "caused her to be exposed to fibrous amphibole asbestos well above background or ambient levels.").

Moreover, Cynthia also points out that Colgate itself adopted a zero-tolerance policy regarding the presence of asbestos in its products because it assumed there was no safe level of exposure, as well as the opinion of her own expert that there is no safe level of exposure. Response, Ex. 82 at 341:25-342:2; id., Ex. 96 at 141:24-142:1 ("As a public health professional, I would not state that there is any safe level of exposure to asbestos."); id., Ex. 94 ¶ 63 ("It is important to recognize that once it is established that a substance (asbestos) is a carcinogen with no safe level of exposure, . . . anyone exposed to that substance is at risk of contracting cancer irrespective of the dose."). Although Colgate presents case law from other jurisdictions rejecting the position that even minimal asbestos exposure can cause mesothelioma, Kentucky courts have declined to find that position untenable as a matter of law for purposes of summary judgment. See CertainTeed Corp. v. Dexter, 330 S.W.3d 64, 78 (Ky. 2010) (finding that trial court properly granted new trial where jury failed to apportion liability to "empty chair" defendants whose asbestos products were shown to be present in plaintiff's working environment, given expert's opinion that "*every single exposure* to asbestos would have been the legal cause of [plaintiff's] illness.") (emphasis in original); Landreth v. Brake Supply Co., No. 2015-CA-000006, 2017 WL 2392522, at *6 (Ky. App. June 2, 2017) ("For purposes of summary judgment, we disagree that a single exposure to a known carcinogen can never be sufficient to establish legal causation."); see

OO : 000015 of 000042

Entered 16-CI-003503 04/12/2019 David L. Nicholson, Jefferson Circuit Clerk

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

also Bailey, 95 S.W.3d at 873 and n.5. Accordingly, Cynthia's evidence that asbestos in Cashmere Bouquet exceeded background levels and that any exposure could cause mesothelioma is sufficient to avoid summary judgment.

Finally, Cynthia also presents several expert opinions explicitly finding that Cashmere Bouquet was a substantial factor in causing Donna to contract mesothelioma. See, e.g., Response, Ex. 94 ¶ 65 ("It is my opinion to a reasonable degree of medical probability that Donna Hayes' exposure to . . . Colgate Palmolive Company's Cashmere Bouquet . . . was a substantial factor in causing her to contract malignant mesothelioma."). As such, the Court cannot find that it would be impossible for a reasonable jury to conclude that asbestos in Cashmere Bouquet, even if minimal, was a substantial factor in Donna's development of mesothelioma. See Bailey, 95 S.W.3d at 873 (reversing summary judgment for defendant on asbestos claim, including because plaintiff's expert opined that defendant's product was a substantial contributing factor to plaintiff's illness).

6. *Causation – Alternative Exposure Theories and Lack of Epidemiological Studies*

Alternative exposure theories, such as Colgate's allegation that Donna may have been exposed to asbestos while laundering her husband's clothes, also do not entitle Colgate to summary judgment. The existence of other possible contributing factors does not foreclose a finding that the product at issue was also a substantial contributing factor. Landreth, 2017 WL 2392522 at *6 ("[T]he mere existence of other possible contributing factors, or that [decedent's] combined exposures were all substantial contributing factors, would not preclude the fact-finder from inferring liability as to any individual defendant. At the very least, that question is not properly presented on a motion for summary judgment."). As such, the opinions of Cynthia's experts stating that Cashmere Bouquet was a substantial contributing cause to Donna's

OO : 000016 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

mesothelioma is sufficient to overcome summary judgment, even if there may also have been other contributing factors.

The alleged lack of epidemiological studies drawing a connection between use of cosmetic talcum powder and mesothelioma also does not warrant summary judgment in Colgate's favor. Although epidemiological studies may be the best proof that a substance likely causes a particular illness, other evidence may also be used to demonstrate such a connection. See Hyman & Armstrong, P.S.C. v. Gunderson, 279 S.W.3d 93, 105 (Ky. 2008) ("'Unquestionably, epidemiological studies provide the best proof of the general association of a particular substance with particular effects, but it is not the only scientific basis on which those effects can be predicted.'"). Here, Cynthia's experts rely on other forms of evidence in concluding that asbestos in cosmetic talcum powder can cause mesothelioma, including animal studies, human case reports, and the correlation between the fibers and talc found in both the products at issue and Donna's lymph and lung tissue. Response, Ex. 94 ¶¶ 33-34, 62-63. Accordingly, because Cynthia presents evidence sufficient to raise genuine issues of material fact as to the presence of asbestos in Cashmere Bouquet and whether such asbestos was a substantial contributing factor to Donna's development of mesothelioma, summary judgment is not warranted.

7. *Punitive Damages*

Finally, Colgate asserts that even if summary judgment is not warranted as to the entirety of Cynthia's claims, summary judgment should nonetheless be granted on her claim for punitive damages. Under Kentucky law, punitive damages may be recovered only upon a showing of negligence "'accompanied by wanton or reckless disregard for the lives, safety, or property of others.'" Nissan Motor Co., Ltd. v. Maddox, 486 S.W.3d 838, 840 (Ky. 2016). "Where the

OO : 000017 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

potential for harm is great and directly evident, Kentucky has found that a reckless disregard for the rights of others may be inferred from the negligent act." Peoples Bank of Northern Kentucky, Inc. v. Crowe Chizek & Co. LLC, 277 S.W.3d 255, 268 (Ky. App. 2008).

Colgate argues it cannot be found to have acted wantonly or with reckless disregard because it utilized x-ray diffraction, optical microscopy, and transmission electron microscopy to examine samples for the presence of asbestos and would not use talc if any indication of asbestos contamination appeared. Motion, Ex. 33 at 581:17-21, Ex. 34 at 18:18-23, & Ex. 8 at 137:17-21, 215:3-11. Colgate also cites evidence of record that the FDA generally recognizes talc as safe for certain purposes. Id., Ex. 24 at 15861 & Ex. 19 at 311.

However, Cynthia presents evidence that could support findings Colgate was aware by 1971 that asbestos may be present in talc and that exposure to asbestos-containing commercial products could result in health hazards, but did not warn consumers of a potential presence of asbestos in its talc products. Response, Ex. 63 at 71:14-19 (testifying to awareness in 1971 of potential for asbestos in talc); id., at 247:14-248:11 (testifying no warnings were placed on Cashmere Bouquet); id., Ex. 107 at 25. Cynthia also points to evidence that Colgate may have used an ineffective method to test for asbestos despite knowing that more accurate testing methods were available. Id., Ex. 32 at 6 (noting that transmission electron microscopy is "the best, most reliable method" and sensitive to a level of 0.1%); id., Ex. 111 at 2 (noting that J4-1 testing method used instead by Colgate failed to find asbestos in 6 out of 7 tests of spiked talc).

Both the knowing distribution of products with known dangerous defects and the knowing use of inadequate testing methods may serve as the basis for an award of punitive damages. Owens-Corning Fiberglas Corp. v. Golightly, 976 S.W.2d 409, 411 (Ky. 1998) (affirming award of punitive damages where evidence supported finding that defendant

OO : 000018 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

knowingly sold and distributed asbestos-containing products without warning labels, despite awareness of the health hazards presented by asbestos); Nissan Motor Co., 486 S.W.3d at 845 (holding that punitive damages may be warranted upon a showing of "extremely bad conduct, such as continuing to distribute a product with known dangerous defects or where the manufacturer knows that the federal testing is invalid."). Thus, although Colgate's evidence shows efforts taken to prevent the distribution of asbestos-contaminated talc, Cynthia's evidence that Colgate may have continued to knowingly distribute a potentially dangerous product without warnings and to knowingly use an ineffective method to detect asbestos could lead a reasonable juror to conclude punitive damages are warranted. Accordingly, Colgate is not entitled to summary judgment as to Cynthia's claim for punitive damages.

In sum, the evidence of record is sufficient to raise genuine issues of material fact as to whether Donna was exposed to asbestos in the course of her use of Cashmere Bouquet and as to whether such exposure was a substantial contributing factor to her development of mesothelioma. The evidence of record is also sufficient to raise a genuine issue of material fact as to whether Colgate's conduct with respect to the sale of Cashmere Bouquet was negligent and accompanied by a wanton or reckless disregard for the lives or safety of others.[2] Accordingly, Colgate's Motion for Summary Judgment is DENIED.

JOHNSON & JOHNSON'S MOTION FOR SUMMARY JUDGMENT

1. *Johnson & Johnson's Argument*

Johnson & Johnson argues that Cynthia has failed to produce evidence its talcum powder products contained asbestos. Johnson & Johnson asserts its own evidence shows the products

[2] Colgate is free to seek reconsideration of this determination made upon consideration of the summary judgment briefing following the close of proof at trial.

OO : 000019 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

did not contain asbestos, including evidence that Johnson & Johnson required suppliers to provide asbestos-free talc and sourced talc from asbestos-free mines. Johnson & Johnson further points to evidence that the FDA tested its products and found them uncontaminated, as did third-party testing and audits. Johnson & Johnson contends that test results relied upon by Cynthia are not relevant because they show only findings of "tremolite" or "amphiboles" rather than asbestos, were taken from mines not used by Johnson & Johnson, or do not indicate whether the testing was of industrial or cosmetic talc.

Johnson & Johnson also argues that Cynthia has no evidence to establish that the Johnson & Johnson products actually used by Donna were contaminated by asbestos. Johnson & Johnson asserts that years of negative test results foreclose a showing that contamination of its products was sufficiently prevalent or pervasive to infer that Donna used contaminated product. Johnson & Johnson also contends Cynthia lacks an expert to provide testimony regarding the statistical significance of any such prevalence.

Johnson & Johnson further argues that Cynthia cannot rely on the opinion of her expert Dr. Longo to establish Donna's exposure to asbestos in Johnson & Johnson's products. Johnson & Johnson contends that Dr. Longo's opinion is based upon testing of samples drawn from vintage talcum powder containers obtained from eBay or law firms that represent plaintiffs in talc litigation. Johnson & Johnson asserts it is common for collectors to obtain such vintage containers and refill them with talcum powder manufactured by a different company, raising significant questions about the authenticity of the samples. Johnson & Johnson also maintains that the testing methodology used by Dr. Longo is flawed because it cannot distinguish between asbestiform and non-asbestiform fibers. Johnson & Johnson asserts that Cynthia also cannot rely

OO : 000020 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

on the opinion of her expert Lee Poye because he was unaware of the source of the samples he tested and did not test samples actually used by Donna.

Johnson & Johnson further argues that Cynthia cannot rely upon her tissue digestion analysis experts to establish causation. According to Cynthia, those experts testified they cannot identify the origin of asbestos found in Donna's tissues, and that the dust found in her tissues was consistent with welding or friction product exposure.

Johnson & Johnson further argues that Cynthia's causation expert Dr. Jacqueline Moline has not calculated Donna's level of exposure to asbestos in Johnson & Johnson products or whether it was above background levels, despite testifying that asbestos exposure must exceed background levels to be a substantial cause of mesothelioma. Johnson & Johnson contends Dr. Moline therefore has no basis to opine that Donna's mesothelioma was caused by Johnson & Johnson's products.

Johnson & Johnson also argues that Cynthia's conspiracy claim must be dismissed because she does not plead any actionable conduct by Johnson & Johnson, and because Cynthia seeks to impose liability based upon Johnson & Johnson's constitutionally protected petitioning of governmental bodies and related public information campaigns. Johnson & Johnson maintains that Cynthia's fraudulent misrepresentation claim must also be dismissed because Cynthia does not identify any representations or misrepresentations by Johnson & Johnson in her pleading. Finally, Johnson & Johnson contends that Cynthia cannot recover punitive damages because Johnson & Johnson tested its talc on a regular basis with the most sophisticated methods available, and that any presence of asbestos in its talc would therefore be entirely unintentional despite best efforts to prevent it.

OO : 000021 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

2. *Cynthia's Argument*

Cynthia argues that the evidence of record shows asbestos was present in the Italian and Vermont mines used to source Johnson & Johnson's talc. Cynthia contends that historical testing also demonstrates Johnson & Johnson's Shower to Shower and Baby Powder products contained asbestos. Cynthia maintains that experts in this case have opined that Donna was exposed to asbestos above background levels in Johnson & Johnson's talcum powder products, and that such exposure was a substantial factor in Donna's development of mesothelioma.

Cynthia asserts she is not required to demonstrate that the containers actually used by Donna contained asbestos, but rather that she may prove her case with circumstantial evidence supporting a reasonable inference that Johnson & Johnson's products were a legal cause of Donna's illness. Cynthia contends it would be unfair to require her to produce the bottles actually used by Donna because Johnson & Johnson indicated the product was safe and Donna therefore did not keep the bottles.

Cynthia asserts that her experts' testing is reliable because it was based upon authentic containers of Johnson & Johnson product taken from Johnson & Johnson itself or from verified bottles of the company's products. Cynthia argues that she is not required to present a perfect chain of custody but rather only a reasonable probability that the containers tested contained authentic Johnson & Johnson product. Cynthia notes that her expert Dr. Longo states the samples he tested were factory original samples, that nothing suggests they are not authentic, and that there is no evidence they have been or could be tampered with.

Cynthia also asserts that her conspiracy claim is viable because Johnson & Johnson, along with other defendants, endeavored to design testing deliberately intended not to detect asbestos. Cynthia further argues that her fraudulent misrepresentation claim is viable because

OO : 000022 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

Johnson & Johnson falsely denied that its products contained asbestos and failed to warn consumers of the dangers. Cynthia contends that these causes of action may proceed because her claims are not based upon petitioning of the government but rather upon Johnson & Johnson's concealment of the hazards in its products.

Cynthia also asserts that her claim for punitive damages should be submitted to the jury. According to Cynthia, the evidence of record demonstrates Johnson & Johnson knew its talcum powder products contained asbestos and were hazardous, yet knowingly relied upon inadequate testing methods, pressured and controlled scientific research, concealed the dangerous nature of its products, and failed to warn consumers.

3. *Presence of Asbestos in Johnson & Johnson Cosmetic Talcum Powder Products*

The Court finds that there is a genuine issue of material fact as to whether Johnson & Johnson's Shower to Shower and Baby Powder products contained asbestos. The talc used in the manufacture of those products was mined in Italy, Vermont, and China. Motion, Ex. 3 ¶¶ 46, 55, 61. Although Johnson & Johnson presents affidavit testimony of its expert Dr. Sanchez opining that the Italian mines did not and do not contain asbestos, as noted above Cynthia presents contradictory evidence that Italian mines did contain asbestos. Id. at ¶ 46; supra at 11-12. Cynthia also presents evidence to contradict Johnson & Johnson's proof that asbestos was not present in the Vermont mines. Compare Motion, Ex. 3 ¶ 55 (opining that Vermont talc was not and is not contaminated by asbestos) and Response, Ex. 40 at JNJMX68_000002667 (noting presence of asbestiform minerals in Vermont talc samples), Ex. 43 (reporting findings of up to medium amounts of asbestos in Vermont talc samples), & Ex. 48 at 3 (reporting up to 4.5% asbestos by weight in Vermont talc samples). This competing evidence is sufficient to raise a

OO : 000023 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

genuine issue of material fact as to whether asbestos was present in the mines from which talc was sourced for the manufacture of Johnson & Johnson's cosmetic talcum powder products.

The evidence of record is also sufficient to raise a genuine issue of material fact as to whether asbestos was also present in the products themselves. On the one hand, Johnson & Johnson points to evidence in the record that its products did not contain asbestos, such as historical FDA and third-party testing that did not reveal asbestos in Johnson & Johnson's products, the FDA's finding that asbestos warnings were not required for talcum powder, and Johnson & Johnson's requirement that all talc be tested and certified as asbestos-free by suppliers. Motion, Ex. 3 ¶¶ 95, 98-100, Ex. 4, & Ex. 7.

On the other hand, Cynthia points to evidence of record that could lead a reasonable juror to conclude that Johnson & Johnson's cosmetic talcum powder products did contain asbestos. For example, Cynthia points out that Johnson & Johnson's expert Dr. Sanchez has previously testified he did not disagree that asbestos had been found in Johnson & Johnson Baby Powder. Response, Ex. 83 at 3038:1-10. Cynthia also cites to a finding by her expert Dr. Longo that a sample of Johnson & Johnson's Baby Powder ordered to be produced from Johnson & Johnson's historical archives contained "millions of asbestos structures per gram of talc." Response, Ex. 77 ¶ 19. Dr. Longo also opines that his testing of 20 of 35 samples of Shower to Shower and Baby Powder revealed the presence of asbestos. Id. at ¶ 22. Dr. Longo therefore concludes that users of these products were likely exposed to asbestos. Id. at ¶ 45.

Johnson & Johnson objects to Cynthia's reliance on Dr. Longo's opinions on a number of grounds. First, Johnson & Johnson asserts that Dr. Longo testified the transmission electron microscopy method used in testing the products cannot determine whether a fiber is asbestiform or non-asbestiform. Motion, Ex. 15 at 1172:4-9 ("You can't say it's asbestiform and

OO : 000024 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

nonasbestiform. You're absolutely correct for a single fiber."). However, Dr. Longo also testified that he can determine whether the sample contains asbestos by looking at the sample more broadly and applying certain rules regarding length, aspect ratio, and the presence of parallel sides in the fibers. Id. at 1172:13-17. Read in the light most favorable to Cynthia, Dr. Longo's testimony establishes only that while he could not designate a single fiber as asbestiform or non-asbestiform, he can conclude from consideration of the sample more broadly whether or not asbestos is present.

Johnson & Johnson also contends that Dr. Longo's opinions are unreliable because they are based upon testing of samples whose authenticity cannot be established. Johnson & Johnson notes that Dr. Longo relies on samples obtained from plaintiffs' law firms or that were purchased on eBay. Motion, Ex. 12 at 47:25-48:7, 52:5-9. However, "'it is unnecessary to establish a perfect chain of custody or to eliminate all possibility of tampering or misidentification, so long as there is persuasive evidence that 'the reasonable probability is that the evidence has not been altered in any material respect.'" Muncy v. Commonwealth, 132 S.W.3d 845, 849 (Ky. 2004). Here, Dr. Longo testified that 25 of the samples were in what he believes are factory-sealed containers, that examination of the containers under a microscope did not reveal evidence of tampering, that it would be practically impossible to replace original powder with substitute powder, that the contents were consistent with known Johnson & Johnson product, and that nothing suggests the samples were inauthentic. Motion, Ex. 12 at 48:10-14, 56:20-58:18; Response, Ex. 77 ¶¶ 29-35. This evidence is sufficient to support a reasonable finding that the containers have not been altered or tampered with in any material respect.

Moreover, "a gap in the chain of custody usually goes 'to the weight of the evidence rather than to its admissibility.'" Muncy, 132 S.W.3d at 849. As such, Johnson & Johnson's

OO : 000025 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

concerns regarding the authenticity of the samples tested by Dr. Longo are more properly addressed by cross-examination rather than by exclusion of Dr. Longo's opinions. Accordingly, because the Court finds that the evidence of record is sufficient to raise a genuine issue of material fact as to whether Johnson & Johnson's products contained asbestos, Johnson & Johnson is not entitled to summary judgment.

4. *Causation*

Cynthia has also presented evidence sufficient to raise a genuine issue of material fact as to whether Donna's use of Johnson & Johnson's talcum powder products was a legal cause of her mesothelioma. As noted above, Kentucky law does not bar reliance upon expert opinion that even minimal asbestos exposure can cause mesothelioma. Supra at 15-16. Cynthia therefore is not required to produce evidence that Donna was exposed to a threshold dose of asbestos in Johnson & Johnson's products in order to prevail.

Moreover, Cynthia produces expert opinions that Donna's mesothelioma was caused by exposure to asbestos in Johnson & Johnson's cosmetic talcum powder products. For example, Cynthia's expert Dr. Egilman opines that there is more than a 99% chance Cynthia was exposed to asbestos in her use of those products. Response, Ex. 101 ¶ 66. Dr. Egilman also expressly concludes "to a reasonable degree of medical and scientific probability that Donna Hayes' mesothelioma was caused by her lifelong exposure to asbestos in talc and talcum powders sold by Johnson & Johnson" and that such exposure was a "substantial factor in causing her to contract malignant mesothelioma." Id. at ¶ 65. Dr. Egilman further states that fibers found in Donna's lung and lymph tissue are consistent with those found in Johnson & Johnson's cosmetic talcum powder products, and indeed are a "finger print" matching those products. Id. at ¶ 62. Finally, as noted above Donna's exposure to other potential sources of asbestos does not

OO : 0000262 of 0000442

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

foreclose a finding that her use of Johnson & Johnson's products was also a substantial factor in her illness. As such, the evidence of record raises a genuine issue of material fact as to whether Donna was exposed to asbestos in Johnson & Johnson's cosmetic talcum powder products and whether any such exposure was a substantial factor in her development of mesothelioma.

5. *Conspiracy*

Johnson & Johnson argues that Cynthia's allegations are not sufficiently specific to state a claim for conspiracy. To prevail on a conspiracy claim, the plaintiff "must show an unlawful/corrupt combination or agreement between the alleged conspirators to do by some concerted action an unlawful act." Peoples Bank, 277 S.W.3d at 261. Similarly, a claim for concert of action against manufacturers is viable if the plaintiff can prove "that the manufacturers acted tortiously, pursuant to a common design, or rendered substantial assistance to others to accomplish a tortious act." Id. Here, Cynthia alleges in her Complaint that Johnson & Johnson and the other defendants worked together to control industry standards, disseminate false information, and conceal and ignore health and safety issues raised by their products. Complaint ¶¶ 82-87. These allegations are sufficiently specific to state a claim for civil conspiracy.

However, Cynthia's civil conspiracy claim fails as a matter of law to the extent it is based upon Johnson & Johnson's advocacy before the FDA. As recognized by the *Noerr-Pennington* doctrine, the Petition Clause of the First Amendment bars subjecting a party to liability for engaging in non-sham efforts to influence governmental action. Grand Communities, Ltd. v. Stepner, 170 S.W.3d 411, 414 (Ky. App. 2004). Although originating in the context of antitrust claims based upon petitioning of legislative and executive bodies, the doctrine also protects the petitioning of administrative agencies. Id. The doctrine has also been expanded to protect not only against antitrust liability, but also against tort liability. Id. at 416 (affirming dismissal of

OO : 000027 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

tort claims based upon defendant's efforts to persuade municipality to annex property and his subsequent appeal of a municipal zoning decision).

Under this doctrine, Johnson & Johnson cannot be subjected to tort liability for non-sham efforts to influence decisions of the FDA or other governmental bodies. Thus, those portions of Cynthia's conspiracy claim based upon the Defendants' alleged advocacy before the FDA, including advocacy for certain testing methodologies and against asbestos warnings on talcum powder products, must be dismissed.[3] See Complaint ¶ 77.

However, the Court disagrees with Johnson & Johnson's contention that the protections of the *Noerr-Pennington* doctrine also extend to Johnson & Johnson's alleged public information campaign. A party's orchestration of a public information campaign may be protected by the *Noerr-Pennington* doctrine when the campaign is aimed at influencing government action. See Noerr, 365 U.S. at 143 (finding public information campaign activity protected where it was aimed at influencing government action). Here, Cynthia does not allege that Johnson & Johnson engaged in a public information campaign to influence government action, but rather that it did so for the purpose of deceiving the public. See Complaint ¶¶ 86 (alleging that Defendants attempted to control the dissemination of information, distorted results, and released invalid information in a "plan of deception intended to deprive the public at large . . . of alarming

[3] Although the protections of the *Noerr-Pennington* doctrine do not extend to mere "sham" efforts to influence government action, Cynthia has not presented evidence to support a finding that Johnson & Johnson's alleged advocacy before the FDA was a sham effort. To be a sham effort, the conduct must be objectively baseless, *i.e.* "'no reasonable [proponent] could realistically expect success on the merits.'" Id. at 415. There can be no finding that Johnson & Johnson's efforts were objectively baseless since it appears those efforts were successful insofar as the FDA did not require talcum powder to carry an asbestos warning. See E. R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 144 (1961) (finding efforts to influence government action genuine because those efforts were successful).

OO : 000028 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

medical and scientific findings."). Accordingly, Johnson & Johnson's alleged public information campaign does not fall within the protections of the *Noerr-Pennington* doctrine.

6. *Fraud*

Finally, Johnson & Johnson argues that Cynthia's fraud claim must be dismissed because Cynthia does not allege any misrepresentation by Johnson & Johnson. The Court disagrees. In her Complaint, Cynthia alleges that the Defendants knowingly and intentionally disseminated false statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses allegedly caused by use of talcum powder. Complaint ¶ 84. Cynthia also alleges that the Defendants failed to warn of the potential presence of and safety risks from asbestos in their products. Id. at ¶ 83. Cynthia supports this allegation with Johnson & Johnson's admission that it did not place such warnings on its products. Response, Ex. 113 at 3. Accordingly, the Court does not find Cynthia's allegations insufficient to state a cause of action for fraud.

7. *Punitive Damages*

Finally, Johnson & Johnson argues that it is entitled to summary judgment as to Cynthia's claim for punitive damages. However, Cynthia presents evidence that could lead a reasonable juror to find that Johnson & Johnson was aware of the health hazards of asbestos, had reason to believe asbestos was present in its products, and yet did not place warnings on those products. Response, Ex. 73 (informing Johnson & Johnson's counsel that trace levels of asbestos were detected in Johnson & Johnson's Vermont talc); id., Ex. 113 at 3. Cynthia also presents evidence that could support a finding that Johnson & Johnson knowingly used less effective testing methods that would not detect the presence of asbestos in its products. Response, Ex. 90 at 1945:8-16 (indicating that Johnson & Johnson used the J4-1 testing method). As noted above, such facts may support an award of punitive damages. Supra at 18-19.

OO : 000029 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

In sum, Cynthia presents sufficient evidence of record to raise genuine issues of material fact as to whether Johnson & Johnson's cosmetic talcum powder products contained asbestos and whether exposure to such asbestos in the course of Donna's use of those products was a substantial factor in her development of mesothelioma. Moreover, Cynthia's allegations are sufficient to state claims for civil conspiracy and fraud. However, pursuant to the *Noerr-Pennington* doctrine, Johnson & Johnson may not be held liable for its alleged advocacy before the FDA. Finally, the evidence of record is also sufficient to submit Cynthia's claim for punitive damages to the jury.[4] Accordingly, Johnson & Johnson's Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART. To the extent Cynthia's claims are based upon Johnson & Johnson's advocacy before the FDA, those claims are DISMISSED WITH PREJUDICE. Summary judgment is denied as to the remainder of Cynthia's claims against Johnson & Johnson.

MOTION FOR MISSING EVIDENCE INSTRUCTION AGAINST COLGATE

1. *Cynthia's Argument*

Cynthia argues that she is entitled to a missing evidence instruction because Colgate destroyed evidence it knew would be relevant to asbestos litigation regarding Cashmere Bouquet. Cynthia contends Colgate referenced potential litigation in a 1979 request for testing of its talcum powder products for asbestos. Cynthia also asserts that Colgate had a policy requiring preservation of testing samples, but allowed third-party testing vendors to destroy samples according to their own policies. Cynthia maintains that Colgate also nonetheless destroyed historical testing samples and associated grids containing asbestos fibers, as well as

[4] Johnson & Johnson is free to seek reconsideration of this determination made upon consideration of the summary judgment briefing following the close of proof at trial.

OO : 000030 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

related documentary materials and internal documents discussing asbestos testing. Cynthia contends that although the absence of this evidence alone is sufficient to allow an inference of intentional bad-faith destruction, Colgate also admits in its discovery responses that the destruction was intentional. Cynthia argues that she will face undue prejudice in the absence of a spoliation instruction, given that Colgate's defense to her claims is that Cashmere Bouquet historically did not contain asbestos.

2. *Colgate's Argument*

Colgate argues that Cynthia cannot show Colgate had a duty to preserve documents and physical evidence or that it destroyed such materials in bad faith. Colgate asserts that it discarded documents and product samples in the ordinary course of business, and that other courts have rejected the contention that Colgate had a duty to preserve that evidence before a Cashmere Bouquet asbestos claim was first filed in 2008. Colgate also maintains that neither a general concern over litigation nor alleged positive tests for asbestos are sufficient to give rise to a duty to preserve evidence. Colgate further notes that it sold the right to manufacture and sell Cashmere Bouquet to another company in 1995, and has not manufactured or sold the product itself in more than twenty years.

Colgate also notes that it has produced a significant amount of information including all available formula cards, purchasing specifications and orders, shipping invoices, laboratory notebook pages, and documents from its third-party testing vendor, as well as hundreds of testing results. Colgate further states it has made current and former employees available for more than thirty days of depositions. Colgate asserts that Cynthia has no proof it destroyed any evidence in bad faith or in an effort to avoid its discovery obligations.

3. *Standard*

OO : 000131 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

Under Kentucky law, the issue of destroyed or missing evidence is addressed by evidentiary rules and missing evidence instructions. Monsanto Co. v. Reed, 950 S.W.2d 811, 815 (Ky. 1997). A missing evidence instruction is warranted if a reasonable juror could conclude that a party "'intentionally and in bad faith lost or destroyed'" evidence material to the case. Univ. Med. Ctr., Inc. v. Beglin, 375 S.W.3d 783, 787 (Ky. 2011) (quoting approved missing evidence instruction). Direct proof of intentional and bad faith spoliation of such evidence is not required. Rather, "the requisite elements giving rise to the missing evidence inference may be proven, like virtually any other factual issue, by circumstantial evidence and reasonable inferences." Id. at 789.

However, where the loss or destruction of the evidence at issue is the result of mere negligence, natural events such as floods or fires, or "destruction in the normal course of file maintenance," the necessary element of bad faith is absent and the missing evidence instruction should not be given. Id. at 791. Moreover, no instruction is warranted if the loss or destruction occurred before litigation was ongoing or could reasonably be anticipated. See id. (noting that "[n]o missing evidence inference is proper when evidence was destroyed long before litigation was anticipated."); see also id. at 789 ("'The inference depends, of course, on a showing that the party had notice that the documents were relevant at the time he failed to produce them or destroyed them.'"). The decision to grant or deny a missing evidence instruction is within the Court's discretion. Id. at 791 (reviewing trial court grant of missing evidence instruction for abuse of discretion).

4. *Duty to Preserve*

The parties do not appear to dispute that Colgate once held evidence that was material to the issues in this case, including whether Cashmere Bouquet contained asbestos. Such evidence

OO : 000032 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

included physical samples of raw talc and finished Cashmere Bouquet product, grids and other materials relating to the testing of those samples, and the asbestos-related document file of at least one former employee. The parties also do not appear to dispute that Colgate no longer has that evidence. See Motion, Ex. 32 at 4; id. at 10-13 ("Colgate also responds that it has discarded talc samples in the ordinary course of business . . ."); id., Ex. 33 at 4-5; id., Ex. 34 at 120:13-121:15 (testimony by former Colgate employee Dr. Simko that he destroyed his file of asbestos-related materials at the time of his retirement).

However, the Court does not find that Colgate had a duty to preserve that evidence at the time it was discarded or destroyed. As noted above, the duty to preserve evidence arises only when a party anticipates or reasonably should anticipate litigation. See Beglin, 375 S.W.3d at 791. Here, the alleged destruction of evidence occurred between the 1970s and the 1990s. Motion at 8-9; Response at 1. Cynthia first asserts that Colgate had a duty to preserve evidence at that time because it knew its product contained asbestos that presented health hazards. However, Colgate notes that it had no reason to anticipate litigation on that basis because in 1986 the FDA concluded "the risk from a worst-case estimate of exposure to asbestos from cosmetic talc would be less than the risk from environmental background levels of exposure to asbestos." Response, Ex. 7 at 2. Colgate notes that it also did not in fact face any claims related to the alleged presence of asbestos in Cashmere Bouquet until 2008. Under these circumstances, the Court does not find that Colgate's alleged general awareness that Cashmere Bouquet may be hazardous created a sufficiently concrete expectation of litigation to give rise to a duty to preserve all potentially material evidence.

Nor is the Court persuaded that a reference to a potential legal case in a 1979 Colgate request for asbestos testing of its talcum products demonstrates that Colgate was under such a

OO : 000033 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

duty. In that letter, Colgate sought testing of its talcum powder products for asbestos "for a potential legal case." Motion, Ex. 29. However, as Colgate notes, the letter does not relate to Cashmere Bouquet but rather to three other Colgate talcum powder products. Moreover, the letter mentions only "potential" litigation, and the record contains no evidence as to what the claims presented in such litigation might be or whether it was ever filed. Although a closer call, the Court also finds that this letter is not sufficient to establish that Colgate anticipated or should have anticipated litigation regarding the presence of asbestos in Cashmere Bouquet at the time the evidence was discarded. Thus, because there is no basis to find that Colgate had a duty to preserve the missing evidence, a missing evidence instruction is not warranted.

5. *Intentional and Bad Faith Destruction*

A missing evidence instruction is also not warranted because there is no support for a finding that Colgate discarded the evidence in bad faith. As noted above, a missing evidence instruction is warranted only if a reasonable juror could conclude that the evidence was lost or destroyed in bad faith. Beglin, 375 S.W.3d at 787. Here, Cynthia does not point to any direct evidence of bad faith, nor does she present circumstantial evidence of bad faith aside from the mere fact that the evidence at issue is missing.

Moreover, the proof indicates that the samples and documents were discarded in the ordinary course of business pursuant to Colgate's document retention policies. See Motion, Ex. 32 at 12 (stating in interrogatory response that talc samples were discarded "in the ordinary course of business"); id., Ex. 37 at QE-CPC00001904 (indicating that Colgate's policy was to preserve records relating to cosmetic products "for not less than 36 consecutive months"); Response, Ex. 18 at MK-CPC-00001117, 1128 (indicating that Colgate maintained research reports, correspondence, and general files for 5 years). The discarding of samples, related testing

OO : 000034 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

materials, and the asbestos file in conformity with Colgate's normal document preservation policies before any litigation was filed or anticipated cannot serve as the basis for a missing evidence instruction. Beglin, 375 S.W.3d at 791 ("[O]ther common types of cases where the instruction will not be warranted include . . . destruction in the normal course of file maintenance . . . .").

In addition, Colgate further explains that it had no reason to preserve the missing evidence because it sold the rights to manufacture and sell Cashmere Bouquet to another company in 1995, more than 13 years before any claim alleging the presence of asbestos in Cashmere Bouquet was filed. Accordingly, because there is no evidence that Colgate anticipated or should have anticipated litigation at the time the evidence was discarded, and because there is also no proof that the evidence was discarded in bad faith, Cynthia's Motion for a Missing Evidence Instruction against Colgate is DENIED. Cynthia may renew her Motion at the conclusion of proof at trial if she believes the evidence presented warrants such an instruction.

MOTION FOR MISSING EVIDENCE INSTRUCTION AGAINST JOHNSON & JOHNSON

1. *Cynthia's Argument*

Cynthia argues that beginning in 1969, Johnson & Johnson was aware that it faced litigation regarding tremolite and asbestos in its talcum powder products. Cynthia points to additional litigation thereafter that she alleges also gave rise to a duty to preserve evidence. Cynthia contends that Johnson & Johnson nonetheless destroyed talc samples in accordance with its own retention schedule and allowed its suppliers and agents to destroy talc samples and other material in accordance with their retention schedules. Cynthia also asserts that Johnson & Johnson's subsidiary Windsor Minerals destroyed relevant documents upon its 1989 sale of a mine to another entity. Cynthia asserts that Johnson & Johnson's bad faith destruction of

OO : 000035 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

evidence may be inferred from its knowledge of potential litigation to which that evidence would have been relevant.

2. *Johnson & Johnson's Argument*

Johnson & Johnson argues that it did not have a duty to preserve evidence prior to the 1996 filing of the first claim alleging mesothelioma from use of Johnson & Johnson's cosmetic talcum powder products. Johnson & Johnson asserts that the earlier cases relied upon by Cynthia involved either industrial rather than cosmetic talc or talcosis rather than mesothelioma. Johnson & Johnson contends the cases therefore did not give rise to a duty to preserve evidence regarding asbestos testing of talc and product samples.

Johnson & Johnson also argues that the sporadic filing of a few cases claiming mesothelioma from its cosmetic talcum powder products beginning in 1996 also did not give rise to a duty to preserve such evidence. Johnson & Johnson contends that an obligation to preserve evidence arises in the context of mass tort litigation only where a steady increase in filed cases suggests a looming prospect of substantial litigation regarding a particular product. Johnson & Johnson asserts that did not occur with respect to claims of mesothelioma arising from its cosmetic talcum powder products until 2016.

Johnson & Johnson further argues that Cynthia offers no proof evidence was destroyed intentionally or in bad faith. Johnson & Johnson asserts that the missing count sheets were in the possession of third-party vendors and that the sheets were destroyed pursuant to those vendors' document retention policies. Johnson & Johnson also contends that documents at Windsor's mine were not destroyed to avoid discovery but rather in connection with that mine's closing.

Johnson & Johnson further maintains that Cynthia has not shown any prejudice from loss of the evidence at issue. According to Johnson & Johnson, an instruction going to the heart of a

OO : 0000836 of 0000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

critical issue in this case, namely whether asbestos was present in Johnson & Johnson's cosmetic talcum powder products, would be grossly disproportionate given the lack of any prejudice to Cynthia as a result of the lost evidence. Johnson & Johnson also asserts that it has produced a number of samples that would not differ from the lost samples, and that the lost mining records relate to mining operations rather than the mineralogy of the talc mined.

3. *Duty to Preserve*

The Court does not find that Johnson & Johnson had a duty to preserve the evidence at issue. As noted above, a party has a duty to preserve evidence only when litigation is ongoing or can reasonably be anticipated. Beglin, 375 S.W.3d at 791. Cynthia first relies on a 1969 Johnson & Johnson letter stating that "it is not inconceivable that we could become involved in litigation in which pulmonary fibrosis or other changes might be rightfully or wrongfully attributed to our powder formulations." Motion, Ex. 18. Notably, however, the statement was made by a doctor rather than by an employee that might be expected to be responsible for assessing Johnson & Johnson's litigation risks. Moreover, the doctor also states in the letter that Johnson & Johnson has "never been faced with any litigation involving either skin or lung penetration by our talc formulations." Id. Finally, the doctor's statement that litigation is "not inconceivable" falls short of a statement sufficient to support a finding that litigation was reasonably anticipated. Thus, the Court does not find this document sufficient to support a finding that Johnson & Johnson had a duty to preserve evidence in 1969.

The Court also agrees with Johnson & Johnson's contention that the 1970s and 1980s talc cases also did not give rise to a reasonable anticipation of litigation regarding the asbestos content of cosmetic talc. As Johnson & Johnson notes, these cases involved either industrial talc or talcosis, and did not involve cosmetic talc or mesothelioma. See Response Ex. 4 ¶ 15; id. at ¶

OO : 000037 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

9 (asserting that industrial talc differs from cosmetic talc in grade, processing and handling); Motion, Ex. 21 (noting that 1984 Vanderbilt case involved industrial talc). These cases therefore involved issues different from the presence or absence of asbestos in Johnson & Johnson's cosmetic talcum powder products. As such, they did not give rise to a duty to preserve the evidence Cynthia alleges is lost or destroyed.

Finally, the Court also does not find that the cases in the later 1990s gave rise to a duty to preserve evidence. Admittedly, those cases involved claims of mesothelioma arising from use of Johnson & Johnson's cosmetic talcum powder products. See Response, Ex 4 ¶ 7; Motion, Ex. 26. However, discovery in the cases was very limited and Johnson & Johnson was dismissed from the actions before trial. Response, Ex. 4 ¶¶ 6-7 and n.2. Thus, there was no reason the cases should have caused Johnson & Johnson to have a reasonable anticipation of additional future litigation regarding those issues. Accordingly, the Court does not find that Johnson & Johnson had a duty to preserve the evidence at issue.

4. *Intentional and Bad Faith Destruction*

The Court also does not find that Cynthia has shown a reasonable jury could conclude the evidence was lost or destroyed intentionally and in bad faith. As Cynthia acknowledges, the samples and related materials were discarded pursuant to standard retention policies. See id. at 791; Motion at 9, 15; id., Ex. 30. Nor is there evidence that the 1979 destruction of mining documents by Johnson & Johnson's subsidiary Windsor was a bad faith effort to avoid discovery. Rather, those documents were destroyed in anticipation of the closing of the mine where they were kept. Response, Ex. 2 ¶¶ 12-16. Moreover, the documents did not relate to relevant matters such as the mineralogy or testing of the talc mined but rather to details regarding the underground mining operations such as location of the mine, shafts, and ore and mining

OO : 000038 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

methods employed within the mine. Accordingly, because the Court does not find that Johnson & Johnson had a duty to preserve the evidence at issue or that a reasonable jury could find the evidence was destroyed intentionally and in bad faith, Cynthia's Motion for a Missing Evidence Instruction against Johnson & Johnson is DENIED. Cynthia may renew her Motion at the conclusion of proof at trial if she believes the evidence warrants such an instruction.

MOTIONS IN LIMINE

In the interest of judicial economy, the Court addresses the numerous pending Motions in Limine as follows:

Number	Motion	Ruling	Basis
1	Defendants' Motions To Exclude Dr. William Longo	DENIED	The objections raised are more properly addressed by cross-examination than exclusion of witness.
2	Defendants' Motions to Exclude Dr. Steven Compton	DENIED	The objections raised are more properly addressed by cross-examination than exclusion of witness.
3	Colgate's Motion to Exclude Testing and Opinions of Non-Testifying Experts	GRANTED	Hearsay; relevance; lack of proper foundation.
4	Plaintiff's Motion in Limine to Exclude Dr. Matthew Sanchez	DENIED	The objections raised are more properly addressed by cross-examination than exclusion of witness.
5	Plaintiff's Motion to Exclude Reference to FDA Positions and Reference to FDA Regulation of Talc	DENIED	Information is relevant and reliable.
6	Plaintiff's Motion to Exclude Evidence that FDA Regulates Talc Industry	DENIED	Information is relevant and reliable.
7	Colgate's Motion to Exclude Evidence of Unauthenticated Talcum Powder	DENIED	Authenticity of samples can be addressed on cross-examination; the evidence is best available given the historical nature of claims.

OO : 000039 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

Number	Motion	Ruling	Basis
8	Defendants' Motion to Exclude Dr. Jacqueline Moline	GRANTED IN PART, DENIED IN PART	Granted as to information regarding 40 other asbestos plaintiffs not parties to this case on grounds of lack of relevance. Remainder denied.
9	Defendants' Motion Regarding Dr. David Egilman	GRANTED IN PART, DENIED IN PART	Granted on grounds of lack of relevance as to: 1) asphyxiation deaths; 2) ovarian cancer; 3) mesothelioma caused by asbestos-free talc; 4) Dr. Egilman's own talc testing; and 5) lack of alternative exposure sources. Remainder denied.
10	Plaintiff's Motion to Exclude Dr. Stanley Geyer	DENIED	The objections raised are more properly addressed by cross-examination than exclusion of witness.
11	Plaintiff's Motion to Exclude Dr. Alan Gibbs	DENIED	The objections raised are more properly addressed by cross-examination than exclusion of witness.
12	Plaintiff's Motion to Exclude Dr. John Bailey	DENIED	The objections raised are more properly addressed by cross-examination than exclusion of witness.
13	Colgate's Motion to Exclude Dr. Lee Poye	PENDING DAUBERT HEARING	The record at this time is insufficient for the Court to exercise its gatekeeper function to measure the proffered opinion against the standards of reliability and relevance.
14	Colgate's Motion to Exclude Dr. Ronald Dodson	PENDING DAUBERT HEARING	The record at this time is insufficient for the Court to exercise its gatekeeper function to measure the proffered opinion against the standards of reliability and relevance.
15	Colgate's Motion to Exclude Dr. Jerrold Abraham	GRANTED IN PART, DENIED IN PART	Granted as to testimony regarding opinions of other experts; however, Dr. Abraham may testify that Donna Hayes had mesothelioma.
18	Plaintiff's Motion to Exclude Alternative Theories of Exposure	DENIED	The information is relevant.
19	Plaintiff's Motion to Exclude Dr. Mark Taragin	PENDING DAUBERT HEARING	The record at this time is insufficient for the Court to exercise its gatekeeper function to measure the proffered opinion against the standards of reliability and relevance.

OO : 000040 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Number	Motion	Ruling	Basis
20	Plaintiff's Motion to Exclude Dr. Mossman	DENIED	The objections raised are more properly addressed by cross-examination than exclusion of witness.

ORDER

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Motion of the Defendant, Cyprus Amax Minerals Company, for Summary Judgment is **GRANTED**. The claims of Plaintiff Cynthia Hayes, as Executrix of the Estate of Donna Hayes, against CAMC are **DISMISSED WITH PREJUDICE**.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Motion of the Defendant, Colgate-Palmolive Company, for Summary Judgment is **DENIED**.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Motion of the Defendant, Johnson & Johnson, for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART**. To the extent Cynthia's claims are based upon Johnson & Johnson's advocacy before the FDA, those claims are **DISMISSED WITH PREJUDICE**. Summary judgment is denied as to the remainder of Cynthia's claims against Johnson & Johnson.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Cynthia's Motion for a Missing Evidence Instruction against Colgate is **DENIED**.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Cynthia's Motion for a Missing Evidence Instruction against Johnson & Johnson is **DENIED**.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Parties' Motions in Limine are addressed as indicated supra at 39-41. The Parties may utilize the Court's motion docket for the scheduling of a *Daubert* hearing in conformity with those rulings.

OO : 000041 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
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Finally, pursuant to KRE 611 and in consideration of the standard two-week service period of Jefferson County jurors, the Court reiterates that it **WILL LIMIT TRIAL** of this matter to a maximum length of three weeks.

IT IS SO ORDERED this____day of _____, 2019.

/s/ HON. ANGELA MCCORMICK. BISIG
electronically signed
4/12/2019 2:30:56 PM

JUDGE ANGELA MCCORMICK BISIG
DIVISION TEN (10)
JEFFERSON CIRCUIT COURT

cc: Counsel of Record

OO : 000042 of 000042

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT 3

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

WENDI J. HIRSHBERG and RICHARD,)
HIRSHBERG, Wife and Husband,)
Plaintiffs,)
vs.) Cause No. 20-2-05603-1 SEA
JOHNSON & JOHNSON, et al.,)
Defendants.)

JURY TRIAL - VIA ZOOM
The Honorable Suzanne Parisien Presiding
May 4, 2021 - Morning Session

(All participants appeared via videoconference.)

TRANSCRIBED BY: Marjorie Jackson, CET
Court-Certified Legal Transcription

APPEARANCES
(ALL PARTICIPANTS APPEARING VIA VIDEO CONFERENCE)

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INDEX OF PROCEEDINGS

PAGE
Colloquy..... 4
Jury Voir Dire..... 23
Discussion re Jury Instructions..... 113

-o0o-
May 4, 2021 - Morning Session

THE BAILIFF: -- starting here in just a moment.

THE COURT: All right. Good morning. That is not me with echoing. Is that better? That's better. All right. No. I have take --

THE BAILIFF: Hello.

THE COURT: Okay. Sorry about that, folks. All right. Good morning. All right. We have a lot of ground to cover.

Here's the first issue, which is problematic, which is that yesterday I learned later in the day that not one of you practiced doing all the voir dire yesterday and all the arguments is a Washington Bar admittee, nor was there any of your sponsors on our -- in trial yesterday. They weren't present.

So that is not going to work. Pro hac vice isn't just some formality that we just sign, and if they actually supervise you, oh well, maybe they do, maybe they don't. It doesn't work that way. And so here again this morning, I don't see a single Washington State Bar admitted attorney. So that needs to be fixed.

Do you folks need a couple of minutes to get your sponsoring attorney in court with us today?

MS. DEAN: That would be terrific, Your Honor.

THE COURT: Great.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

MS. DEAN: And I'll tell you --
THE COURT: Go ahead.
MS. DEAN: Johnson & Johnson raised the issue in our last meeting with Judge Cahan, which was April 7th, I believe, about whether we could dispense of that. And so we have an order on that. That's why that happened.
THE COURT: Well, great.
MS. DEAN: We can adjust if you'd like us to, but we did ask first.
THE COURT: No, I don't -- I am going to fully follow out any order of course signed by Judge Cahan. I just didn't know that. There's just too many orders, and no one brought that to my attention. Can someone tell me what the order says or point me to it so I know what she ruled on the issue?
THE BAILIFF: Or the date it was filed.
THE COURT: Or the date it was filed. You said April 7th, is that right, Ms. Dean?
MS. DEAN: My memory is that we asked for a pretrial hearing where it was brought up by Johnson & Johnson on April -- I'm looking at my calendar so I can be more specific. I actually think I'm a week off. It was on April 15th.
And one of the issues that came up, I don't know if there is an order, but there's certainly a transcript, is that

there was the question by Taryn -- and her last name is escaping me, but it's Johnson & Johnson's local -- whether they could dispense of that, and the Court said yes. And so we then told Weinstein and Kutscher [sic] the same thing, that we might really need their advice on some particular things, but that they didn't need to be here daily. So that's my best memory based on just piecing this together solely based on memory.
THE COURT: Okay. I need to know that. That is definitely not the way that I run my courtroom, but I respect Judge Cahan and respect -- no, more importantly, not my personal respect of her, which is high, but that she signed an order.
I want some kind of an order. I want some verification that this went before her and she actually made a ruling. Does anyone -- I can -- if you don't have one, if it's not reflected in an order, please let me know, and I will just reach out to her to confirm that this actually occurred and that was her understanding.
MS. DEAN: So I drafted the order for that day, which is why I'm fairly confident it's not in the order, because mainly what we were looking for was direction on doing a preliminary set of exhibits and meet and confers, and I don't think -- it was something Johnson & Johnson brought up, so I'm almost positive it's not in the order. But I can

email Taryn as we speak to confirm my memory, and then, you know, and confirm both that that occurred and that there's not an order so that we can at least let you know.
THE COURT: All right. And was Judge Cahan's ruling to the effect of complete sweeping that it doesn't matter for the duration of this trial whether or not Washington admitted attorneys are present in the courtroom?
MS. DEAN: Yeah, the request made by Johnson & Johnson is whether they needed to appear daily for trial. And my memory is she said no, that's not necessary. I'm familiar -- you know, I'm familiar with these attorneys. It's fine. Now, I'm paraphrasing, and it is candidly not -- it was something where I emailed our folks to say you have a little bit more flexibility, but it wasn't our issue.
So even if it's not changing the ruling, if you would prefer it, I suspect we can adjust that that's why you didn't see folks yesterday, or even Thursday I don't think anybody when we had all the MILs, I don't think anybody.
THE COURT: All right. Well, I didn't -- it didn't dawn on me yesterday.
THE BAILIFF: Thursday there were.
THE COURT: Thursday there were.
MS. DEAN: Oh, sorry.
THE COURT: But yesterday there were not. Again, I just need to know if there's an order, and if so, please forward

it to me. And if not, I just need you guys to put in a blurb what your understanding was of her oral ruling, and I will reach out to Judge Cahan and confirm. She may or may not remember. But this is very important to me personally, and I want to follow what she does. But to the extent that there's any space that wasn't ruled upon by her, I'm going to insert my understanding of the rules, which are quite different from -- maybe from hers. All right. So that's the first issue.
The second issue is the email list. So I can't be emailing -- I don't want to receive emails anymore with 31 people on them. It's not appropriate. So if you folks want to set up automatic forwarding, that anything that comes out of my court from Mr. Hodgman or myself, that you forward it to anyone you want, you may do that.
But as far as direct communications to me -- and by that, that's what happens at evenings after 4:30 or on the weekends, when you are sending me things directly or sending things to Mr. Hodgman, there should be no more than six people on an email thread. Two attorneys per side, and perhaps a legal assistant or a paralegal, whatever you want, but three per side. I can't imagine why you would need to have more than that. And if you do need to blast it out to more people, that is certainly well within your right to forward it to anybody you want.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 9

You know, last night I got I don't know how many automatic replies. "I'm in trial. I can't -- I have a family emergency." People I've never even seen or heard of. I didn't even recognize their name. I do not want to be sending emails to people who are not appearing before me, or at least, like I say, one assistant back at the office or a paralegal, but not 31 people.

So let us know please who you want your six -- you know, the three people you want on your side to get regular emails, and let Mr. Hodgman know, and we'll move forward from there. If there is a tech person that you're using, that can be an additional person. So, but only if the additional person is a tech person. And frankly, they don't need to know my rulings on motions in limine. But if you are more comfortable having them on that, that's fine.

All right, so those are the two issues, more of housekeeping matters.

On a more substantive note, I received the emails last night, and I also received Plaintiffs' trial brief on the FDA jury instruction, Dr. Gordon motion in limine, adverse inference, et cetera, and then I got response from Johnson & Johnson, and I want to go through that.

So I already mentioned yesterday that the FDA instruction that you agreed upon is going in. The instruction now that I would like to discuss is the jury instruction on asbestos

Page 10

that was not agreed upon. But I have tweaked the version that came to me. I feel it's important to give an initial understanding to the jury that this -- that they are part of this case, frankly, will be the very definitions of asbestos and how that experts define it differently and, in fact, Johnson & Johnson might as well. They need to understand that. So this instruction is not perfect, but I think it's pretty good.

And Mr. Hodgman, you don't have it yet, but this -- it's really -- to the extent, Ms. Dean, that you haven't, or Mr. Adams, you haven't sent Plaintiffs' trial brief in a Word version, I don't know if you have or not. That brief that I'm referring to.

MS. DEAN: We did something I think a little bit better. Mr. Wyatt was kind enough to take just the two jury instructions, put them in a Word document, and then put the source of authority in it. And so I just sent that in Word.

THE COURT: Right.

MS. DEAN: I didn't think you'd need the spoliation brief.

THE COURT: No. Thank you. All right. So here's what I'm going to do, if you want to follow along, folks. It's pretty basic. So I'm on page 10 of that brief, and it is Plaintiffs' -- it says, "Jury instruction relating to asbestos." Let me know when you folks have it in front of you so you can follow along.

Page 11

MR. ADAMS: I'm there.

THE COURT: Okay.

MS. DEAN: Close.

THE COURT: Close, okay.

MS. DEAN: I got the document open.

THE COURT: All right. That's a good start.

MS. DEAN: Okay. I'm there. Thank you, Your Honor.

THE COURT: Terrific. All right. So we're at the first -- we're on line 8 or 7. Asbestos has been defined by workers, et cetera. That entire paragrass [sic] -- paragraph, excuse me, as written to me, from lines 7 through 12, is solid and it is going to remain.

After that, the next sentence is, "This case does not involve the asbestos cloth industry or the asbestos cement industry. Rather, this is just an example to show that asbestos can have different definitions."

All right. So let me let you -- so maybe we'll take a pause here, and now with this additional instruction, do you folks feel ready to make a record about the preliminary instructions that we -- that I've already discussed yesterday with this one additional one? Or would you like to have it as a complete packet in front of you before you talk about it?

MS. DEAN: For Plaintiffs, my suspicion is that we're going to have very little to say, and I can be more succinct

Page 12

if I get the complete packet, because I probably will have one to two minutes' worth of comments. And so doing a minute now or a minute later --

THE COURT: Okay. All right.

MS. BROWN: That will be easier for us, too, Judge.

THE COURT: All right. Sure. So let's wait -- we'll wait until Mr. Hodgman has an opportunity to fix this one with that added sentence. And then I know he already has all of the other ones. Sure.

MS. BROWN: And, Judge, that's the end of it? That's where you're going to end it? It looks like there were proposals beyond it. That's it?

THE COURT: Yeah, let me -- I want to look one more time at the proposal beyond -- my understanding is that this -- that first paragraph, the only objection Johnson & Johnson had to it was that you thought the reference to cloth and cement pipe would cause confusion, right? That was the --

MS. BROWN: I understand, Judge, yeah.

THE COURT: According to this brief from Ms. Dean, that was the only objection that you folks noted. I'm using the word objection informally. That was the only issue that you thought may be a problem; was that right?

MS. BROWN: As referenced in what Ms. Dean wrote, yes, Your Honor. We object generally to instructing on the definition of asbestos. But I just wanted to confirm, my

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 13

most significant objections would have come with the language that follows. And I understand the Court to be saying you're not getting into that.
THE COURT: Right, I'm not.
MS. BROWN: Okay. So we'll make a record of our objection --
THE COURT: Yep.
MS. BROWN: -- just to that paragraph, but I wanted to be heard if you were going to get into some of the other ones. It sounds like not.
THE COURT: Nope. My point really isn't to be -- to give them -- the way to preliminarily to give them, you know, the amphibole groups, tremolite. They don't need to know that now. They're going to hear so much of it. I want to put in their mind early on, though, that an issue in this case is probably going to be about how it's defined and that it changes depending on the context. That's all I'm trying to do. So there will be plenty of opportunity later on for you folks to fill in the picture for them. But that's all I want them to know right away.
So Mr. Hodgman is going to fix that, and then he'll send you the complete packet that we discussed yesterday with this additional one. And then you folks will have an opportunity to put your exceptions or objections on the record.

Page 14

All right. So that is that issue. The other issue that the Court worked on last evening, most importantly is -- not most important, second to most important, is the motion in limine 21 with Dr. Gordon.
I went back through that again. And having seen the context, I agree with Ms. Dean that a leave of absence for 10 months where he didn't sever his employment is not the same as if he worked there continuously. It's just not the same.
So in addition, I also thought that the way that the questions were cued up for him about, "Have you ever testified before other than as an expert," I thought that was, frankly -- I don't want to use the word misleading, but potentially confusing, and I don't think that it is -- shows him to be lying under oath, so --
MS. BROWN: Your Honor, can I be heard on that?
THE COURT: I'm speaking. Ms. Brown, I'm not sure why you're speaking when I'm speaking. I promise, I am not going to speak when you speak, and I'm not going to cut you off mid-sentence. I will let you speak afterwards.
Ms. Reynolds, good morning. I don't think I know you.
MS. REYNOLDS: Good morning, Your Honor.
THE COURT: Can you tell me, remind me who you are and who you're here on behalf of, just because I don't recognize you.

Page 15

MS. REYNOLDS: Yes, Your Honor. My name's Rachel Reynolds. I am local counsel for the Johnson & Johnson entities, and I am with Lewis Brisbois in Seattle.
THE COURT: All right. Terrific. Nice to see you.
All right. So having read the brief, going back to my ruling, I had already ruled that, you know, discussions about his prior alleged involvement 30 years ago in some kind of potentially criminal behavior and his participation in the witness protection program allegedly for, I don't know, 10 months or so, is not appropriate given that it was 30 years ago and not related to his credentials.
So I have -- that is a more full ruling on Dr. Gor- -- the Motion in Limine No. 21 related to Dr. Gordon. You know, if it comes up, if you believe that there is an issue that you -- is not within my ruling -- he may say something, he may -- a lot of things happen at trial. If you think that there is appropriate ways to impeach him based upon my ruling on this motion in limine, all you need to do is say, "Your Honor, we need to address something with you outside the presence of the jury." We'll send them off to break land, and we'll hash it out. And there very well may be an area that you can -- that there is fodder for impeachment, but it's not going to be as it's been presented to me.
Ms. Brown, feel free to comment.
MS. BROWN: Thank you, Your Honor. And I apologize to the

Page 16

Court for interrupting.
I did not understand there to be an opportunity for additional briefing on this, and so I just wanted to be heard. It sounds like the Court considered some additional information from the plaintiffs.
I understood the Court's ruling to be certainly that the money laundering, Mafia, the remote history of what he pled to, the arrest, would not be coming in. But the Court was very clear that this is an expert who is putting his credentials before the jury, and that the Court felt that if -- that there would be appropriate inquiry into the credentials.
What we have discovered, Your Honor, is that Dr. Gordon has testified that he worked, not employed, not employed in some capacity, not on retainer, but that he worked continuously in that role at Mount Sinai for -- from the 1980s to the present period of time. As the Court knows because we put it in our briefing papers, when he was ordered by a New Jersey court to testify under oath about those very allegations, right, the very claims that he worked continuously, that it appears on his resumé for that period of time, that he withdrew from the case and was forced to pay sanctions because he would not answer those questions.
We have a record, Your Honor. It's sworn testimony. I

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

understood the Court's ruling to be if it is demonstrably false on credentials, the Court would allow us to inquire about it. And what we have is sworn testimony from Dr. Gordon that says, due to his criminal cooperation he would be unable to work as a doctor. He would be unable to work as an expert witness. He would be relocated outside the state of New York.

And then we have a resumé that shows him there the entire time and testimony that says not he was on leave, not that he was affiliated, but that he was working in that capacity for 30 years. And I would submit to the Court that's squarely within Your Honor's original ruling that we have evidence that he has given false testimony about his credentials, which is what he is putting before the Court.

Now, I believe Ms. Dean is representing she has some kind of knowledge about paid leave. When he was ordered by a New Jersey court to answer those questions under oath, he didn't give that information. That information is solely coming from counsel. We haven't seen any evidence of that. It's Ms. Dean's word. He himself has not testified to that at all.

And so, Your Honor, I would submit based on the transcript that we have where he says, I cannot work as a doctor for the period of time we don't know how long; I cannot be in the state of New York, and I cannot serve as an expert

witness due to this cooperation. When you pair that with his resumé that shows this continuous employment and his testimony that he worked in that capacity for 30 years, we have evidence of inconsistent statements that we should be allowed to inquire about on cross-examination.

THE COURT: All right. Well, I don't know what this agreement is that he signed in New Jersey. It's an order. I don't know. I can't spend any more time on this issue. My ruling is what I just said it is. It doesn't mean depending upon how he answers questions that you can't inquire. But you can't inquire about the witness protection program 30 years ago, money laundering 30 years ago.

If you believe that his resumé is -- or what he has testified to about his employment is false and you can prove it, you will ask for leave, and we will address it outside the presence of the jury. I cannot script this for you folks. I believe my ruling has been clear about what is allowable and what is not. But the gray area appears to be statements he may have made about continuous employment. That's something, we'll find out how it comes in, and you can work on it.

If it goes to his credentials and is demonstrably false, you can cross-examine him on it. That's all I can say on this topic for now, but it's not going to be done in the presence of the jury until I make a specific ruling. Fair

enough?

MS. BROWN: Thank you, Your Honor.

THE COURT: All right. That is the ruling on Dr. Gordon. Oh, it's now 9:15, so I'm not going to make 25 people wait for us. So we will begin our final round of jury selection. I believe that will leave us with time to deal with the spoliation issue when that concludes before we commence.

Is there anything that you folks think that needs to be heard right now before we begin with our final round of voir dire?

MS. DEAN: Two very brief things.

THE COURT: Sure.

MS. DEAN: First, I worked all night on my opening. I'd very much want to say there's a lot missing and there was every reason to keep it, and I did not. I destroyed it. I can table the issue of litigation so that it doesn't have to be decided by opening just to give the Court a little bit more time if that is helpful. And I just wanted you to know that.

THE COURT: Okay.

MS. DEAN: Second, the parties agreed at first to an hour and a half per side for opening. I went back to Johnson & Johnson and said, so that we can get it done in an afternoon, will you be okay with an hour and fifteen minutes. They said yes. I, just for planning purposes, want

to know if you have any concerns with that time frame?

THE COURT: No.

MS. DEAN: Okay.

THE COURT: I like that you folks are agreeing. Here's what I'm going to tell you. We're going to release the jurors today maybe 4:10. I'm happy to keep them an extra 10 on day one, but that's all.

So we're going to start at 1 o'clock. I'm going to read them preliminary -- you know, as I said before, kind of administrative instructions, how, what to expect, you know, how we do things. That they can take notes, that they can ask questions, all those things.

And I've never timed myself. I don't know, it's probably 10 minutes. Maybe it's more. I don't know. Mr. Hodgman always tells me I talk more than I think. He's probably right. But I'm not going to try to do that.

And I'm going to read the preliminary instructions. I think there were, what, seven? I haven't counted them, but there aren't that many. That takes me a few minutes as well. And then we're going to roll right into opening and then take -- an afternoon recess will be between openings.

And, you know, so here's what we'll -- you know, well, here's what we're going to do: When I'm done with preliminary instructions, I will look at the clock, and whatever is left, you know, we'll whack it up. So, you

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 21

know, let's say I finish -- let's say 1:20. That means minus 15 minutes for a break. That's the math there. They get a 15-minute break, and if it's -- you know, and then 4:10, that's the absolute maximum we're going to use to dismiss them on day one. And then whenever that is, you smack it in half.

MS. DEAN: Okay.

THE COURT: Does that make sense?

MS. DEAN: Thank you. Yes, that makes sense.

THE COURT: All right. Great. All right. Anything else, Ms. Brown, before we bring in our jurors? Last thoughts?

MS. BROWN: Not for us, Your Honor. I'm checking with my colleagues but no, I don't think for J&J, thank you.

THE COURT: All right. Great. Let's bring our esteemed potential jurors.

THE BAILIFF: (Inaudible).

THE COURT: Oh, cool. I'm so sorry. I thought I gave it to you. I'm sorry. Here you go.

THE BAILIFF: And then I do have a couple updates on jurors, folks. We did have -- we did lose one overnight.

THE COURT: Knew that would happen. Thank goodness we had this third panel.

THE BAILIFF: All right. Juror No. 20 has informed me that he hurt his back. He's getting it -- having a doctor's appointment today, and is no longer available.

Page 22

Juror No. 41 from yesterday afternoon's panel who did not appear, she has self-excused herself. She has a work conflict that she believes is more important, so she's told me she would not be participating.

And finally, No. 52 from this afternoon -- sorry, No. 53, Seung, S-E-U-N-G, Nam, N-A-M, is disqualified because they aren't -- due to immigration status.

With that, I will bring in my few unknowns --

THE COURT: Okay.

THE BAILIFF: -- sitting in my waiting room.

THE COURT: All right.

THE BAILIFF: Starting with galaxy tab S4.

THE COURT: Okay. And hang on a second, though. I see someone new that I don't recognize.

THE BAILIFF: This is Mr. Menitove it looks -- I'll change his name.

THE COURT: Okay. Yeah, let's get your right name on there, and let's get you off of mute, and let's say hello.

MR. MENITOVE: Good morning, Your Honor. Mike Menitove.

THE COURT: Okay. Good morning. All right. And are you going to be doing this round for Ms. Brown?

MR. MENITOVE: Yes.

THE COURT: Okay.

MR. MENITOVE: For Johnson & Johnson.

THE COURT: Okay.

Page 23

MR. MENITOVE: (Inaudible) round.

THE COURT: Terrific. Okay. Whenever you're ready, Mr. -- and you said it's a couple of unknowns coming in?

THE BAILIFF: Yes.

THE COURT: Okay. Great.

THE BAILIFF: All right. Galaxy tab S4 is my first one.

THE COURT: Thank you. Okay, thank you.

Good morning. Can you hear me, sir? Oh, you're connecting to audio.

Was this the one that was unknown?

THE BAILIFF: Yes.

THE COURT: Yes, okay.

THE BAILIFF: I'm also bringing in one called Angelida [phonetic].

THE COURT: Okay.

THE BAILIFF: I don't know who she is.

THE COURT: Galaxy tab S4, can you let us know your name or your juror number?

PROSPECTIVE JUROR: 48.

THE COURT: Juror No. 48. And what's your name, please?

PROSPECTIVE JUROR: Jaden Chavez [phonetic].

THE COURT: Okay. Great. Thank you. Appreciate that. Good morning to you. Juror No. -- I don't know, Angelida, can you let us know your juror number or your name, please, sir?

Page 24

PROSPECTIVE JUROR: It's Rob Ashenbrenner [phonetic]. I'm not sure about the juror number. I didn't bring it.

THE COURT: No worries. No worries. My bailiff can get that for us. Don't worry about that.

THE BAILIFF: 37.

THE COURT: 37. And, sir, it's quite blurred. Is there a way to fix that so we can see you with some clarity?

PROSPECTIVE JUROR: (Inaudible).

THE COURT: Hey, that looks great. Good morning to you. Nice to see you.

PROSPECTIVE JUROR: Good morning.

THE COURT: All right.

THE BAILIFF: I'm bringing in another one.

THE COURT: Okay.

THE BAILIFF: Labeled themselves as the meeting ID.

THE COURT: Okay. Good morning, sir. Can you give us your last name? The one gentleman who just joined us with a phone number 950. Sir, can you hear me? Hi. Good after-- yep, that was you. Now we've lost video. If you could let us know your last name, that would be great.

PROSPECTIVE JUROR: Mikemi, M-I --

THE COURT: I can't --

PROSPECTIVE JUROR: Mikemi.

THE COURT: What's the last name, sir?

PROSPECTIVE JUROR: Mikemi.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

THE BAILIFF: Mikemi.
THE COURT: Mikemi.
PROSPECTIVE JUROR: M-I-K-E-M-I.
THE COURT: Okay. Juror No. 62. All righty.
THE BAILIFF: All right. Oh, Mary Lou. Here's Mary Lou.
THE COURT: Okay.
THE BAILIFF: Not sure who Mary Lou is.
THE COURT: Okay. We'll find out. Good morning. Juror Mary Lou, when you can hear me, good morning to you, and please turn on your video and let us know your last name. Mary Lou, may I trouble you to please unmute yourself and let us know your last name, and please turn your video on? Juror who just joined, Mary Lou, can you please unmute yourself?
All right. Let's let everyone else in, and if we can't figure out her identity, we'll figure it out.
Was that Mary Lou? No, okay. Juror No. -- let's see. Do you --
PROSPECTIVE JUROR: Hi there.
THE COURT: Hi. Good morning. Tell me your name, sir.
PROSPECTIVE JUROR: Can you hear me?
THE COURT: I can. Oh, Mary Lou, there you are.
PROSPECTIVE JUROR: Hey, Lou.
THE COURT: All right. Tell me, sir, what's your last name?

PROSPECTIVE JUROR: Hello?
THE COURT: Yes, good morning, sir. Can you hear me?
PROSPECTIVE JUROR: Good morning. Yes.
THE COURT: Terrific.
PROSPECTIVE JUROR: Mary -- Mary Lou is my wife.
THE COURT: Okay. I just need -- can I --
PROSPECTIVE JUROR: And so our computer is logged to her name.
THE COURT: I understand. Can I get your last name, please?
PROSPECTIVE JUROR: Payne [phonetic].
THE BAILIFF: Juror No. 6.
THE COURT: Juror No. 6. Terrific. Juror No. 63, you're all tossed about.
THE BAILIFF: And I also wanted to verify his name. I think I messed up.
THE COURT: Sure. Juror No. 6, can you tell us your last name?
THE BAILIFF: 63.
PROSPECTIVE JUROR: Payne.
THE COURT: I'm sorry, 63 -- I'm sorry, Mr. Hodgman, tell me who you need clarification on.
THE BAILIFF: Juror No. 63 with the horizontal --
THE COURT: Sure. Juror 63, can you turn your video so that we can see you straight up? You are upside down -- or

sideways. Oh, nice to see you. All right. Can you tell me your last name, sir, juror 63? You're on mute as well.
PROSPECTIVE JUROR: My last name is B-R-U-C-H.
THE COURT: Great. Thank you. Good morning to you.
PROSPECTIVE JUROR: Good morning.
THE COURT: All right. And folks, if I've already addressed you and gotten your right number, you can put yourself on mute, and that would be helpful. Thank you so much. Good morning. We've got a new juror joining us. Mr. Lambert [phonetic], you are going to be Juror No. --
THE BAILIFF: It's coming in a moment.
THE COURT: Okay. No problem. Good morning, Juror 61.
PROSPECTIVE JUROR: Thank you.
THE COURT: Good morning, Juror No. 60. Good morning, Juror No. 58. Good morning, Juror No. 52. Juror No. 57, good morning. Good morning, Juror No. 51. I see we are in the process of having Juror No. 52 join us and Juror No. 49 and Juror No. 50. Good morning to all of you. Nice to see you. Juror No. 49, good morning to you. Could I have you -- there you go. I just wanted to make sure we can see you. Thank you.
THE BAILIFF: All right. So Juror No. 50, Nina, is the only one without video that is left.
THE COURT: Okay. Juror No. 50, can you turn your video on for us? Juror 50, can you hear us? Can you hear me, I

should say? Can you unmute yourself and let us know you can hear me?
THE BAILIFF: All right. I guess I'll bounce No. 50.
THE COURT: Yeah, okay. Juror No. 52, still with us? Okay. Is that everyone? Yes.
THE BAILIFF: That's everyone that's joined.
THE COURT: Okay. Hey, good morning, everyone. Isn't this fun? Tongue in cheek. I'm very, very happy to see you all. I'm very happy to have you here in my courtroom.
Juror No. 52, we've lost video. So I will wait until Juror 52 is back on video. As you can tell, it's very important that we all be able to see one another. All right. Juror 52, are you with us? All right. I'm going to assume you are. Okay.
So I'm Judge Parisien, and welcome to my courtroom. And I'm very happy to have you. I want to make sure that you folks can all hear me okay. So if you can hear me okay, just nod your head. Terrific. If at any time you can't hear me or anyone else -- and by anyone else I mean the attorneys or your fellow jurors -- please let us know. It's super important that we can all hear one another.
We are making a record of this proceeding just as we would be doing were you here in my courtroom. You can see on your screen my courtroom, that's West 355 here at the King County courthouse downtown. I'm here. My courtroom door is open

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

just as it would be if we were actually all together. But we have an audio recording system. It's called FTR, For The Record, and it's recording every single thing that's happening during this jury selection process. The process of selecting jurors is every bit as important as the actual trial, so we have a -- we record it all, and so that's why it's important that we can all hear each other and that everyone speak nice and loud.

Let me first say thank you for being here. That's probably the most important thing that I want to convey. Jury duty has always been an incredibly important critical way that we serve our country. Most of us are not -- do not -- are not able or do not want to serve in the military. Really, this is how we serve our country other than that and paying taxes.

So it's always been important. Right now where we are in our -- in the world with this pandemic, jury service is frankly even more important and more of a way of serving your country than it ever has been.

This is a civil case, as you know from the questionnaire. And I want to thank you all for filling out the questionnaire. This is a civil case as opposed to a criminal case.

But what I want to convey to you is just how important your participation in this process is right now. As you can

probably imagine, we have a backlog of criminal cases -- maybe you read about it -- not just here, of course, around the whole country. And it's staggering. And there are people literally waiting in jail to have a trial.

And so every trial that gets out, particularly a civil case, is helping unclog our system so that we can put our fullest of attentions when we can more safely gather together because criminal trials more importantly have to be done in person for constitutional reasons. Every trial that goes out on a Zoom, on a civil case, is actually helping the criminal justice system get back on its feet. So I want you to know that what you are doing here matters.

So we are going to ask you some questions pretty soon. I have a few more instructions to give you, but pretty soon I'm going to turn it over to the attorneys, and they're going to ask you questions about whether or not this is the right trial for you and whether you can be fair and impartial and whether you can serve with us.

Before I do that, though, I'm going to swear you in because part of the jury selection process, literally, it's called voir dire. That's the French term for jury selection process. And that term voir dire means to speak the truth. And of course we require that you do that, and so that that happens, can you please all raise your right hand, and my clerk, Mr. Havlis, will swear you in.

THE CLERK: You and each of you do solemnly swear or affirm that you will truthfully answer such questions as may be asked of you by or under the direction of the Court, touching upon your qualifications to act as jurors in this cause? If you so swear or affirm, please nod in the affirmative and say, "I do."

PROSPECTIVE JUROR: I do.

THE COURT: All right. I'm watching a lot of heads bob. Awesome.

PROSPECTIVE JUROR: I do.

THE COURT: All right. Terrific. Thank you, everyone. So let me give you a bit of a -- I want to give you a bit of a road map of how we're going to have our time together here. We will probably be done here by 11:00, maybe even a few minutes earlier.

And here's the important part: We've already done yesterday a full day of voir dire with other panels. Of course, ordinarily we'd have you all in one big room. Perhaps some of you have been lucky enough to have served on a jury before. And, you know, we would have 120 people in one big room, and we'd go through this whole question/answer period at one fell swoop. We don't do that now because of the pandemic. We are doing it on Zoom. The entire trial will be on Zoom.

But if you are -- so you folks are our final round in this

trial. So what that means is that when we are done here at 11 o'clock, we will be -- the attorneys will make -- and I will be working on final jury selection and going through all the panels. We will let you know by noon if you have been selected to serve on this trial.

The important part for you to know, though, is that if you have been selected, we're going to be starting at 1 o'clock. So you'll have time for lunch from 12:00 to 1:00 or thereabouts, and then we'll be starting at 1:00. I know it may seem like wow, so sudden. It'll be so fast. But really, it's the exact same way it would be were you here in my courtroom, which is in olden days, pre-COVID, we'd pick a jury, and then we'd get started right away. So it's no different. So I just want you to know that.

So I want to talk a little bit about these proceedings that we're doing on Zoom. I have done many, many, many, many Zoom trials, and here's what I can tell you, because I talk to all my jurors individually after every trial: Jurors love, love doing jury trials on Zoom for obvious reasons, right. You don't have to deal with traffic. You don't have to commute. You don't have to sit in uncomfortable courtroom chairs. People say they don't feel quite as stressed being in the courthouse. There's a lot of different reasons. But people really love it.

And what I have noticed is it's incredibly effective and

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

efficient, and jurors are every bit as engaged in this process. But because of the advantages for you, let me tell you what some of the rules are, which is, I need you folks to act as if you are sitting right there in my courtroom.

What that means is right now for the next hour and a half, and of course if you are selected to be a juror for the rest of the trial, you need to be on video, present with us, not multitasking. You should have no devices out now. You shouldn't be scrolling through emails. You shouldn't be sending texts. You shouldn't be on Instagram or have any other browser open, doing any research about this case or about the people or about the issues. You need to be as if you are sitting in my courtroom fully attentive and fully engaged with us this entire time.

As I mentioned earlier, we are making an audio recording of every single thing that goes on during this voir dire process. Please don't make any recordings yourself. And also, please don't take any screen shots. We will take one screen shot and one screen shot only of you folks, and that's only to give to the attorneys to help them as they put together all the different panels to associate names with juror numbers so they can remember who said what.

So that's the only use for it. We won't even keep it afterwards. But please don't take any photos, screen shots of this proceeding.

All right. So I told you that this is a civil case. I'm going to have the attorneys introduce themselves to you, and then I'm going to give you some more instructions, and I'm going to turn it over to the attorneys to ask you questions.

Whenever you're ready, counsel.

MR. ADAMS: Good morning, everybody. My name's Ben Adams. I'm a lawyer representing Wendi Hirshberg in this case. Thank you all for coming out today and showing up. We really, really, really appreciate it.

MR. MENITOVE: Good morning, everyone. My name's Mike Menitove along with my colleague, Alli Brown, who you'll get to meet if you end up doing our jury. We're here on behalf of Johnson & Johnson. And we also thank you for joining us here today and participating in this process.

THE COURT: All right. Thank you, counsel.

All right, folks. So in the questionnaire, it was mentioned, but I'm going to say it again, it's a civil case. Of course, that's as opposed to a criminal case. And it's brought by Plaintiffs Wendi Hirshberg and Richard Hirshberg against the defendants Johnson & Johnson and Johnson & Johnson Consumer, Inc.

Plaintiff Wendi Hirshberg was diagnosed with cancer. Her cancer is in the lining of her lung, and it's called mesothelioma. Plaintiff believes her cancer was caused by asbestos from her use of talc products, including body and

baby powders. Plaintiff believes that this cancer will end her life.

Defendants state that their products are safe, do not contain asbestos, and deny that they caused or contributed to Plaintiff's mesothelioma. So that's a bit about the case.

Now I want to talk to you -- the reason why you folks are here is because really your questionnaire, which again I thank you for doing it, I know it was lengthy, but it really helps us kind of streamline this process, you didn't raise any obvious hardships on your questionnaire, or if you did, it didn't qualify as a hardship to me.

So let me tell you briefly what's a hardship to me. Every judge gets to define that themselves. I believe with every fiber of my being that serving on a jury is an absolute privilege, and I will talk to you more about that later. Not only a privilege, but something that you will thoroughly enjoy. And I will talk to you more about that later, too.

That said, certainly things come up for people, and a trial may not be something they can do at this time. Let me tell you what a hardship might be. Let's say you have prepaid, preplanned travel coming up between now and the 28th of May. That would be a hardship.

If you have children at home who are remote learning and you have to support them and help them, that would be a

hardship.

If you are the primary caretaker for vulnerable adults or other folks who need your care, and there's no one that can provide respite care for you, that would be a hardship.

And the last hardship is my least favorite, and that is a financial hardship. Many folks simply don't have employers that compensate them, or missing work would mean that they would be unable to pay their primary bills. Primary bills is your rent and utilities. That's a primary bill. We certainly don't want anyone to financially have to experience that.

But let me just also say that if serving on this jury means that you'll have less money at the end of the month, that's not a hardship. That's an inconvenience. And of course serving your country is an inconvenience, so that is not a hardship. So that's how I define hardship.

Let me tell you more about the schedule in this trial. As I say, if you are selected, we're going to be starting today at 1 o'clock. Testimony will conclude, meaning you will have the case for your deliberations sometime on the 26th, later in the day, or on the 27th. That's our best guesstimate. And I should let you folks know, I run a very tight ship. And when I say best guesstimate, you can be rest assured that unless something extenuating occurs, that's going to be our schedule. That means that you folks,

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

the jurors, whoever you may be, who are on this case, will begin deliberations either late on the 26th or on the 27th.

Let me also say that we do not have trial on Fridays. So you won't have to be here on this Friday or next Friday, the 14th, or the 21st. So those are your days to do whatever you would ordinarily do.

Our hours are -- trial hours are pretty strict and pretty firm; 9:00 to 4:00. You know, every now and again I may ask your indulgence to go to 4:10 if we're trying to finish up a witness or a few last words. But really you can count that your day will end at 4:00 or 4:10 every single day. We take a morning break, usually around 10:30, a 15-minute break. Then we take an hour for lunch from 12:00 to 1:00, and then we take an afternoon break at about 2:30, again, for 15 minutes. So that's your trial day.

And the important thing to note, though, is that -- I mentioned that we don't meet on Fridays. The possible exception would be deliberations. So, again, of course the Court does not control deliberations, right. That's for our -- whoever's in that jury room, that's -- you folks determine how long you deliberate.

But let's say you get the case on the morning of the 27th, and, you know, you folks decide, well, a bunch of us -- you know, we want to come back and finish if we're not done on the 27th which often happens. You would come back on the

28th. That's up for you folks to decide. I know that that's Friday before Memorial Day. Perhaps people have plans.

Well, what I want to say is that once you are -- once you are deliberating, you folks, the jurors, control your schedule. So certainly you could say -- the presiding juror would say, "Hey, you know, Your Honor, we're -- a lot of us have plans. We're not going to deliberate Friday the 28th. We'll be back on Tuesday," because, of course, Monday is Labor Day.

But what I want to convey is that the testimony and the evidence will be completed either the 26th or 27th, and after that it's more up to you folks to decide your deliberation schedule. So that's our schedule.

So you've now heard what I define to be a hardship. And if you think, based on the schedule of this case and based on what I've told you my parameters for hardship are, that you cannot serve and that you have a hardship, please raise your hand. And if you could keep your hand up until I call your number, that would be helpful for me.

So Juror No. 51 and 49 and 6. Have I missed anybody? Forty-nine, 6 -- oh, I'm sorry, 61, thank you, and 51. Okay. Four people. All right.

If I could start -- just have a very brief statement of why you think you have a hardship, Juror No. 6. I can't

hear you, sir. Okay.

PROSPECTIVE JUROR: Can you hear me?

THE COURT: Yes. Thank you.

PROSPECTIVE JUROR: Okay. Me and my wife take care of my grandso, and that's four days a week. And my wife has appointments and things she has to do, and I will have to have my grandson.

THE COURT: Oh.

PROSPECTIVE JUROR: He is eight months old.

THE COURT: Okay. Oh, eight months old, okay. That's all hands on deck. All right. Thank you, sir. I'm going to excuse you and I appreciate your service. You can leave our call now. Thank you very much.

Juror No. 49 --

PROSPECTIVE JUROR: Oh. Thank you.

THE COURT: -- can you tell me in a concise way what your hardship is?

PROSPECTIVE JUROR: I have a kindergartner that I would need to pick up every day at 2:00.

THE COURT: So it's pick up from school?

PROSPECTIVE JUROR: Correct. I drop him off early in the morning and I have to pick him up by 2:00 every day. I don't have additional help to pick him up.

THE COURT: Okay. So you don't have a friend you could lean on to do a pick-up for you?

PROSPECTIVE JUROR: Not with that extended time. I'm not sure if I would be able to find someone that would be able to do it every day.

THE COURT: All right. Thank you. I'm glad your kindergartner is back in school. That's awesome. All right. I'm going to release you. Thank you for your participation. I appreciate it. Stay healthy and well.

Juror No. --

PROSPECTIVE JUROR: Thank you.

THE COURT: -- 51, can you tell us what your hardship is?

PROSPECTIVE JUROR: Yes. I'm the divorced parent of a child who has Autism Level 1. The other parent lives out of state and, during when the trial would be, I need to fly down to take custodial time with my child, by which I'll be caring for him while he has his (inaudible) schooling.

THE COURT: Great. Understood. Thank you Juror 51. I'm going to excuse you for hardship. Appreciate that. I hope your travels go well and that you and your family stay healthy and well.

Juror No. --

PROSPECTIVE JUROR: Thank you.

THE COURT: -- 61?

PROSPECTIVE JUROR: I have -- I have a minor thing, which is reservations at a cabin in the woods next week that I forgot to talk about that I've already paid for.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 41

But the bigger thing is I have to help my daughter move from New Mexico to Missouri starting the 29th of May and I will be on the road that first week of June, so I would -- so if deliberations went into that section, I would need to miss that.

THE COURT: All right. Understood. Thank you, Juror 61. Travel safely. I hope you stay healthy and well. I hope you get to serve another time.

PROSPECTIVE JUROR: All right. Thank you.

THE COURT: All right. Thank you very much.

All right. Folks, now what I'm going to do, in the questionnaire you may have seen a very lengthy list of potential witnesses and you were asked in that questionnaire whether or not you recognized any of those folks who -- whether you knew them or thought you knew them. And it's very important that I make sure that you don't, so I'm just going to ask you.

My questions for all of you will be the same, which is the first question is: Did you review that list of potential witnesses? And the second question is: Can you confirm that you don't believe you know any of them?

So I'm going to start. Juror 37, can you confirm with me that you read the list and that you don't know anyone?

PROSPECTIVE JUROR: I read it and, yes, I don't know anybody on that list.

Page 42

THE COURT: I appreciate that. Thank you.

Juror 57, can you confirm that you read it and don't know anyone?

PROSPECTIVE JUROR: Yes, I read it and I do not know anyone on the list.

THE COURT: Thank you.

Juror 58, can you do the same for me?

PROSPECTIVE JUROR: Yes. I read it and I do not recognize anybody.

THE COURT: Thank you.

Juror No. 60?

PROSPECTIVE JUROR: Confirmed. I read and do not recognize the names.

THE COURT: I appreciate that.

Juror 63? Uh-oh, you're on mute.

PROSPECTIVE JUROR: Okay.

THE COURT: I can hear you now. Did you read that, sir?

PROSPECTIVE JUROR: Okay.

THE COURT: Yep.

PROSPECTIVE JUROR: I read it and I don't know anybody.

THE COURT: All right. Thank you so very much.

Juror No. 62? You're on mute.

PROSPECTIVE JUROR: I've read it and I do not recognize any of the names.

THE COURT: All right. Thank you.

Page 43

Juror No. 56?

PROSPECTIVE JUROR: I've read it and I have not recognized any of the names on there.

THE COURT: All right. Juror No. 48?

PROSPECTIVE JUROR: I've read it and I don't recognize anybody.

THE COURT: Thank you.

Juror No. 52?

PROSPECTIVE JUROR: I read it and don't know anybody.

THE COURT: Great. All right. Thank you, everyone.

And just so you know, I know there was a long list. You were probably thinking, "Whoa, we'll be here forever." We won't be here forever, you know the dates of the trial. All of those people on there is the possible universe of folks who may testimony. They may not.

Trials are moving, changing entities in and of themselves and many times attorneys make decisions throughout trial to not call folks. So that's just the list of everyone that might appear, but don't necessarily expect that you will hear from everyone. All right. Thank you all for doing that.

The last instruction that I'm going to give you, and it's a super important one and then I'm going to turn it over to the attorneys, just so you know, we are not asking you questions to embarrass you or to pry into your private

Page 44

affairs, just to determine whether or not you will be unbiased and without preconceived ideas which might affect the case.

If there's a question that you would rather answer outside the presence of your fellow jurors, we can move them to the waiting room and have you respond without everyone present. It will still be on record, by the way, but it's much more private. If you need to do that, you can, just let us know.

We need you, of course, to be open and straightforward with your answers, rather than answering in the way that you feel the lawyers and I expect you to answer. I promise you, there are no right or wrong answers here.

It's really important that you discharge your duty without discrimination, meaning that bias regarding the race, color, religious beliefs, national origin, sexual orientation, gender, or disability of any party, any witness, and/or the lawyers should play no role in the part of your exercise of your judgment throughout this entire trial, starting with right now.

These are what we call conscious biases and when answering the questions it's very important, even if it's uncomfortable for you to share that, that you let us know these views as you go through this process.

However, the more subtle tendency at work here that we

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

all have to be aware of is really much, much more subtle, and that is unconscious biases. And the best way to kind of discuss that, you know, as it's -- as part of human nature, understandably, we make quick decisions throughout our day on all kinds of parts of our lives. And sometimes we rely, you know, on generalities or stereotypes. And while that may serve us in our everyday life, we can't do that during trials and during jury selection. We can't be in any way moved by our own biases.

And so that is something -- your decisions must be based solely on an open-minded, fair consideration of the evidence that will come before you during trial, and that starts really now, doing our very, very best to be conscious of and aware of not just prejudice and bias but implicit unconscious ones as well.

All right. So with that I'm going to turn it over to the attorneys.

MR. ADAMS: Good morning, everybody. Again, my name's Ben Adams. I'm Wendi Hirshberg's lawyer and the lawyer for her family in this case. I'm going to have a couple questions for you today.

Thank you so much for coming again. I know it's an inconvenience. Thank you for filling out those questionnaires. I know it took time. We really appreciate that.

Before I just jump in to questions, I want you all to know that my No. 1 goal today is for you all to talk to me and be as talkative at possible. I totally get that this is sort of an awkward and unfamiliar, you know, situation for people to be on Zoom with strangers and lawyers, you know, and a judge, and people might feel a little bit uncomfortable with public speaking.

I want to just let you know that I'm not going to, you know, do some of those things maybe you saw lawyers on TV do, where they argue with everyone and fight with everybody and kind of attack people. I'm not going to do that at all, and so just put that out of your mind and try to feel relaxed and just speak as openly and honestly as you can and everything will be good.

First topic is you were asked if you knew anyone in the -- any witnesses in the trial. Do any of you know any of each other? And if you do, please raise your hand. Seeing no hands.

Do any of you have a financial interest in the company Johnson & Johnson? And what I mean by that is like you own a lot of stock in the company, a family member works for the company, anything like that where you might think, "Boy, if there's a big verdict in this case, it's going to hurt me or my family financially." Does anyone have anything like that? And if so, please raise your hands. Seeing no hands.

Next topic. In this case it's a civil case, and so if my side proves our case -- my side, Wendi Hirshberg's side -- if and only if we prove our case, we will ask the jury to put money in a verdict for harms and losses that we say a family has suffered. So money in a verdict for harms and losses that a person has suffered.

There are two types of general categories of what are called money damages. Number 1 is the type of money damage that comes with a receipt, things like medical bills, lost earnings, paycheck-type losses, things that come with a receipt.

You will hear there's a second type of money damage that does not come with a receipt. It's things like pain and suffering, there's no receipt to measure that; loss, if your spouse is sick and passes away, loss of love of a spouse; mental suffering, anguish, things like that, they don't come with a receipt.

Many, many people say, "If I'm on the jury and you prove your case, I can do the first type. I can do the medical bills, I can do the lost wages, those come with a receipt, I can do that. But the other type that don't come with a receipt, pain and suffering, I just can't do that. And there are all kinds of reasons, it won't fix the problem, things like that."

What I want to know is if anybody feels like, "Based on

my belief system, I wouldn't be able to put money in a verdict for these kinds of damages that don't come with a receipt, no matter what the evidence was." Does anyone feel like that, even just a little bit?

I'm seeing sort of some confused faces. I don't think I did the best job of explaining it.

If we prove our case and we ask: We would like the jury to put money in the verdict for a human loss, a loss of a human being, it doesn't come with a receipt, does anyone think, "I would be opposed to that because of my beliefs," or for any other reason? If so, please raise your hand, even if you feel that way just a little bit.

Okay. Juror No. --

THE COURT: I see Juror 48.

MR. ADAMS: -- 48 --

THE COURT: -- and Juror 37.

MR. ADAMS: -- 37. Anybody else? I don't see any more hands.

Okay. Juror No. 37, hello. Hi. Can you tell me what you're thinking on that?

PROSPECTIVE JUROR: Just I don't think you can put a value on a loss of a person or anything like that. It doesn't seem like you could put a price tag on that. That's my own personal (inaudible).

MR. ADAMS: Sure. In this case if you were on the jury,

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 49

that's like 99 percent of our case. It's almost all about that kind of loss. And again, it's only if we prove our case. But --

PROSPECTIVE JUROR: I mean, I understand punitive damages and things like that of that nature, but putting a price tag on a (inaudible) my only personal belief, so I think that's just priceless.

MR. ADAMS: Okay. Is that something that you don't think you would be able to do?

PROSPECTIVE JUROR: I would say so, yeah.

MR. ADAMS: Okay. Okay. Would you agree that this is probably not the right case for you since you have that personal belief?

PROSPECTIVE JUROR: I would say so, yes.

MR. ADAMS: Okay. Are you likely to change that personal belief just because I ask you to?

PROSPECTIVE JUROR: No. No. I don't think I'd be able to. Just, I mean, family's very important to me and something of that nature, I couldn't put a price on it.

MR. ADAMS: Okay.

PROSPECTIVE JUROR: Just there's just no way.

MR. ADAMS: Would it be okay with you if I asked the judge to excuse you from this case and maybe be on another case some day, would that be okay with you?

PROSPECTIVE JUROR: That would be fine.

Page 50

MR. ADAMS: Okay. Your Honor, I'd move for cause on Juror No. 37.

THE COURT: All right. Juror 37 -- I'm going to --

MR. ADAMS: Thanks for being honest.

THE COURT: -- speak to you for a moment, okay?

PROSPECTIVE JUROR: Yes.

THE COURT: I want to just understand a little bit better where you're coming from.

So let me say that it's very, very common, and I mean very common, for folks during this voir dire process to say, "Well, I had no idea how I would measure pain and suffering. I can't imagine how I would value things that are so difficult and have no, you know, set parameters. How could I do that?"

And what I want to say to you is that the jury instruction that I'm going to give on this does -- it specifically will state -- because the law will come from me, folks -- it will state that with regard to pain and suffering or these other, you know, non-receipt, to use Mr. Adams' word, damages, there's no standards that the Court will give you that govern this and that you have to be -- you are guided by your own judgment and the collective judgment and deliberations that go on between the jurors.

And what I want to tell you is that I know people will often say, "I can't do that," but yet when evidence comes in

Page 51

and they hear the case and then they speak with their fellow jurors during deliberations, it happens. People -- that's what makes -- that's part of what makes the jury process so amazing is that people are able to come to these decisions, as difficult as they may be, even though there's no fixed standard that the Court is going to give you.

And I just want to ask you whether that changes your response to Mr. Adams' question about your ability to do this?

PROSPECTIVE JUROR: I don't think it changes it. I just -- I don't know. Personally it's just to be able to put a money value on something and then all of a sudden that becomes president [sic] to where money value is due to, like you said, pain and suffering or something of that nature, to me it's more of a personal belief.

THE COURT: All right. I'm going to excuse --

PROSPECTIVE JUROR: I just can't cap that.

THE COURT: All right. I'm going to excuse you. Thank you, Juror No. 37.

PROSPECTIVE JUROR: Thanks.

THE COURT: I hope you and your family stay well.

PROSPECTIVE JUROR: Thank you.

THE COURT: Continue, Mr. Adams.

MR. ADAMS: Thank you, Your Honor.

Juror No. 48.

Page 52

PROSPECTIVE JUROR: Hello.

MR. ADAMS: I think you might have had a similar sentiment to Juror No. 37? Can you --

PROSPECTIVE JUROR: That is correct.

MR. ADAMS: -- tell us about that?

PROSPECTIVE JUROR: Yeah, that is correct. I have the same sentiment with Juror -- with the other juror. I just can't put a price money on all of those things. Life is a life. And it's kind of important where I grew up, our culture, I'm a Catholic, and I just can't -- I just can't find any reason why to put a price tag on someone else's life or, you know, someone else's life. It just doesn't equate.

As what the judge said, it might change later on, depending on what the evidence might show, but I don't want to be in a situation where in during the deliberation, since I don't know what price tag is -- what is a price tag in someone else's life, I won't be able to go ahead and make an intelligent decision on that his life is worth this much or her life is worth this much. So I'm kind of lost there.

MR. ADAMS: Okay. Appreciate that. It sounds like it's a pretty firm belief system for you, this -- these views that you had. And you mentioned religion and it sounds like it's a pretty strong view of yours. Is that fair or no?

PROSPECTIVE JUROR: That's pretty fair. You know, you

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 53

can say it's pretty fair as I don't really -- can't put a price on someone else's life. There's no way.
MR. ADAMS: Okay. Juror No. 48, will it be okay if I ask the judge to excuse you based on what you've told me from this specific case?
PROSPECTIVE JUROR: Yeah, that's okay.
MR. ADAMS: Okay. Your Honor, I would move for cause of Juror No. 48.
Thank you, sir.
THE COURT: All right. Juror No. 48, thank you for your willingness to serve. I hope you have the privilege of serving sometime soon in the future. And I hope that you and your family stay healthy and well. And you can leave our courtroom. Thank you.
PROSPECTIVE JUROR: Thank you so much. Hopefully some day I can serve.
MR. ADAMS: Does anyone else, now that they've sort of heard from Juror 37 and No. 48, does anyone else feel similarly, even if it's just a little bit? And if so, please raise your hand. Juror No. 57, and I don't see any other hands.
Juror No. 57, can you tell us what you're thinking?
PROSPECTIVE JUROR: I hadn't considered their points of view on trying to put the price on a life. I do believe that if we move forward with the case, I probably could use

Page 54

the evidence given in the trial to make a decision based on that, but it is something that I would have a hard time with, I think.
MR. ADAMS: Okay. Appreciate that. It's okay if you have a hard time with it if you can tell us that you can still do it.
PROSPECTIVE JUROR: Um-hum.
MR. ADAMS: Does that make sense?
PROSPECTIVE JUROR: Yes.
MR. ADAMS: Is it that you're going to have a hard time with it but you think you can still do it or --
PROSPECTIVE JUROR: Yes.
MR. ADAMS: -- you're going to have -- okay. All right. Appreciate that.
Anyone else have thoughts on that topic of putting money in a verdict for a human loss? If that is the instruction from the judge, if we move our case, of course -- if we don't prove our case, we don't want you to put a cent in the verdict. It's only if we prove it, okay?
But if we prove our case, is everyone okay considering money damages for a human loss that doesn't come with a receipt? And let me ask that a little differently. Can anyone not do that? If so, please raise your hand. Seeing no hands.
Okay. The next thing I want to ask people about is

Page 55

something called the burden of proof, that I know a lot of people have heard about. Usually we hear about it on TV in like a criminal lawsuit. It's the thing that they say is beyond a reasonable doubt. That's a criminal case, a jail-type case.
This is a civil case, as Judge Parisien told you. The burden of proof is significantly lower, you'll hear, in a civil case than a criminal case. And so the burden of proof in a civil case is called the preponderance of the evidence, more likely true than not true, so significantly lower than a criminal case.
Some people, lots of people, think, "Well, why should it be lower? Why shouldn't my side have to prove the case beyond a reasonable doubt? And it just doesn't seem fair that the burden of proof is lower."
Does anyone feel that way, even just a little bit? Okay.
THE COURT: If so, please raise your hand. Okay. Seeing no hands.
MR. ADAMS: Sorry.
THE COURT: Folks, I do that because I have to create a record, so that's why. I know it's annoying, but bear with me.
MR. ADAMS: Next question on that is a lot of people think, "Well, the burden of proof seems fine, but what if

Page 56

the person asks for a lot of money? Then maybe I'm going to want a little more proof. So if it's sort of a smaller case, preponderance standard seems fine, but if the person bringing the lawsuit asks for a whole lot of money, I'm going to want more proof."
Does anyone feel that way at all? If so, please raise your hand. Okay. Juror No. 56 and Juror No. 57 and Juror No. 63.
Juror No. 63, can you tell me what you're thinking about that?
PROSPECTIVE JUROR: Okay. So they're going -- so you're just going to ask for an extra amount of money, is that what you're saying?
MR. ADAMS: No. Sorry, I wasn't clear. If in this case we were to ask for a lot of money --
PROSPECTIVE JUROR: Yes.
MR. ADAMS: -- where we allege there's a lot of harm and we're going to ask for a lot of money, some people think, "Well, if you ask for a lot of money, I want you to prove your case to a higher degree than just a preponderance of the evidence." Do you see what I mean?
PROSPECTIVE JUROR: Yeah. I guess it would depend on the amount that you're asking for. I mean, like if you're asking for the medical bills and then like, you know, I don't know, like $50,000. But if you're asking for like

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 57

millions of dollars, I wouldn't -- I would -- I don't know how you'd prove that.
MR. ADAMS: Okay. If it were -- if it were the fact that we -- if it were the case that we were asking for millions of dollars, would that be something that you probably could not do as a juror, if the evidence --
PROSPECTIVE JUROR: That would be correct.
MR. ADAMS: Okay. So let me ask a better --
PROSPECTIVE JUROR: Yes.
MR. ADAMS: -- question. If the evidence --
PROSPECTIVE JUROR: Okay.
MR. ADAMS: -- supported it and we asked for millions of dollars, is that something that you still don't think you would be able to do?
PROSPECTIVE JUROR: If the evidence supported it, I could.
MR. ADAMS: Okay. Okay. Is there a number or sort of a cap in your mind that you couldn't go over no matter what the evidence was?
PROSPECTIVE JUROR: I mean, I would probably say like $100,000.
MR. ADAMS: Okay. So no matter what the evidence is, that's probably the highest you could go?
PROSPECTIVE JUROR: Yeah. Well, just because in my mind with -- how do I say this? In my knowledge about the talc

Page 58

and use of talc, my partner has been using it for 40 years. And the question is: How does it go and get from your body parts into your lungs? And that would be my question is: How is it getting from your area up into your lungs? And then how would you prove that scientifically? Does that make sense?
MR. ADAMS: It does, yeah. I'm trying to get at a little different question, though.
PROSPECTIVE JUROR: Oh. Got you.
MR. ADAMS: That let's say --
PROSPECTIVE JUROR: I have a (inaudible) attention span, so I'm sorry.
MR. ADAMS: No, no, no. It's fine. Let's say we have the evidence and we answer your questions. Are you still feeling like, "I just can't go above 100,000 no matter what"?
PROSPECTIVE JUROR: Oh, I see. I see. No. I could go above 100,000, yes. Yes, I could.
MR. ADAMS: Okay.
PROSPECTIVE JUROR: Is my cap --
MR. ADAMS: Is there --
PROSPECTIVE JUROR: I don't know if there would be a cap. I mean, it would depend on the evidence and your argument.
MR. ADAMS: Okay. You mentioned something about someone close to you using talcum powder and they didn't get sick?

Page 59

PROSPECTIVE JUROR: Correct.
MR. ADAMS: Do you think that is going to influence your opinion in the case to some degree?
PROSPECTIVE JUROR: To some degree it would, yes.
MR. ADAMS: Okay.
PROSPECTIVE JUROR: Just because she also -- knowing this case, she went out and purchased a couple of cases of it because she's not going to stop using it. So, I mean, that's my opinion on it.
MR. ADAMS: Okay. Is it fair to say, given your experience and your opinion, that maybe my side is starting a little bit behind in the case because you've already sort of made up your mind that this is probably safe?
PROSPECTIVE JUROR: Yes --
MR. ADAMS: Okay.
PROSPECTIVE JUROR: -- that would be correct.
MR. ADAMS: All right.
THE COURT: You have two minutes, Mr. Adams.
MR. ADAMS: Thank you, Your Honor.
Given that you've sort of already formed some opinions in this case, do you think it would be better for you to be on another case where you haven't formed any opinions?
PROSPECTIVE JUROR: Yes, I do, actually. Yes.
MR. ADAMS: Okay. Are you likely to just abandon all your opinions in this case if I ask you to?

Page 60

PROSPECTIVE JUROR: I don't know that I could, just because that's hard. I don't believe I could just -- I don't -- I basically have an opinion on it and that would be hard for me to let go of.
MR. ADAMS: Okay. Can you guarantee that you will let go of it to us today or no?
PROSPECTIVE JUROR: (Inaudible).
MR. ADAMS: Okay. Your Honor, I would move for cause on Juror No. 63, respectfully.
Thank you for answering all of my questions.
PROSPECTIVE JUROR: Sorry. Thank you.
THE COURT: All right. Before you -- Counsel, Mr. Menitove, would you -- would you like to question this juror or do you stipulate?
MR. MENITOVE: Yes, please, Your Honor.
THE COURT: Okay.
MR. MENITOVE: So Juror 63, we were talking earlier about damages and I think you said that, depending on what the evidence in the case showed, that might affect what damages figure you would be willing to agree to, right?
PROSPECTIVE JUROR: Correct.
MR. MENITOVE: So, you know, having not heard any evidence yet, I recognize you have some opinions coming in, but when you -- would the same be true that, when you actually hear the evidence in the case, you know, some of

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 61

these opinions you have coming in, you might be willing to change when confronted with some actual evidence?

PROSPECTIVE JUROR: Oh gosh. Possibly. I can't guarantee that. I just -- I mean, I've kind of discussed it with me wife, who uses it, and it's -- it would be hard for me to understand how the cancer got there.

THE COURT: All right. I'm going to excuse you, Juror No. 63, based on the questions of the lawyers. And thank you for your service with us this morning.

PROSPECTIVE JUROR: Okay.

THE COURT: I hope that you and your wife and the rest of your family stay healthy and well and that you get another opportunity to serve later on. Thanks again.

PROSPECTIVE JUROR: Thank you.

THE COURT: Juror No. 62 has his hand raised.

PROSPECTIVE JUROR: Pretty much in the same position as 62 -- or 63. I find that I have relatives that have used it forever, I believe it was used on me, so, I mean, I don't know how I'd react given the circumstances.

And, like you said, if you're asking for an exorbitant amount of money, I don't know how I'd feel about that, because I feel like it could go either way, like (inaudible) the evidence to present itself in such a way. But like I said, what she said.

MR. ADAMS: Your Honor, may I inquire or --

Page 62

THE COURT: Sure. Well, actually, no. It's -- it's defense counsel's turn. Thank you.

Juror 63, you're free to leave our courtroom. Thank you very much.

PROSPECTIVE JUROR: Thank you.

THE COURT: Mr. Menitove, it's your time period, you're in your 20 minutes here so let's use it.

MR. MENITOVE: Great. Thank you, Your Honor.

So hi, everyone. Mike Mentatove here again. Before we get into some more specific questions, I do just want to say at the outset, you know, while Mr. Adams and I, I think we'll have a lot of things to disagree about, one thing where we're in complete agreement is that we think, you know, each party here is entitled to be in front of a completely fair and impartial jury.

So this morning the judge, Mr. Adams, we've talked a little bit about bias, and that's a word that oftentimes has very negative connotation here. In connection with this process, there's no negative connotation. Everyone has life experiences that we're bringing to bear and, you know, it affects the way that we look at things, and there's absolutely nothing wrong with that.

So when we're asking about bias today, we're just asking whether you might have a leaning one way or another in favor of either side in the case before you've had the opportunity

Page 63

to hear any evidence. So like Mr. Adams did earlier, I just would like to encourage you all to be honest about any of those types of feelings that you might have sitting here today.

So one question for the group I wanted to raise at the outset, you know, you've heard from the judge's description of the case, the plaintiff here has, you know, a truly terrible disease that she believes will end her life. And given that fact, even if the plaintiffs ultimately don't prove their case, don't prove that her disease is attributable to use of Johnson & Johnson products, do you think you might have a difficult time sending the plaintiffs home with nothing, without any damages? Or, you know, is that something that would give you a hard time coming to that conclusion? So I'd just ask for a show of hands.

THE COURT: So Juror No. 57 and Juror No. 52 have raised their hands.

MR. MENITOVE: Right. So I'll follow up with -- first with Juror 57. The issue we're talking about, difficulty not awarding damages to the plaintiff even if you find that they haven't proved their case. Can you tell me a little more about your perspective on that issue, please?

PROSPECTIVE JUROR: Um-hum. So something that I think is affecting my perspective on this case is that I am an expectant mother, I'm five months pregnant, and that means

Page 64

that baby powder products are something that I am possibly using in my future. And the more that I've thought about it, the more that I have realized that if there was even the slightest evidence that there was any danger in using these types of products, I think that it would probably sway my decision in this kind case.

MR. MENITOVE: Okay. And when you refer to -- well, first off, congratulations.

PROSPECTIVE JUROR: Thank you.

MR. MENITOVE: And when you say even if the slightest bit of danger, I think is with a you said, what do you mean by that? Is it -- would you need some kind of scientific evidence, you know, showing that there's risk in using the product?

PROSPECTIVE JUROR: Yes. I mean, if there -- obviously if there was a very large risk, that would probably be evidence that would sway most of the jurors in this case. But in the kind of very careful situation that I'm in, where there's -- I would do anything for the child that I'm going to be raising soon -- if there was scientific evidence that there was even a low risk of that causing harm to a human, I think that that would be a problem for me.

MR. MENITOVE: So if I'm understanding you correctly, you wouldn't need definitive, you know, clear proof that, you know, a product was dangerous in order for there, say, to be

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

a warning about it --
PROSPECTIVE JUROR: Correct.
MR. MENITOVE: -- correct?
PROSPECTIVE JUROR: Yes.
MR. MENITOVE: So if I'm understanding you correctly, we talked about burdens before and the plaintiff in the case bears a burden by preponderance. Is it fair to say that, at least from your perspective, you know, maybe the plaintiff's required to -- not quite required to meet that burden in order for you to be concerned about the risk of the baby powder?
PROSPECTIVE JUROR: Correct.
MR. MENTATOVE: And from your perspective, you know, you'll hear evidence from both sides in the case, do you think Johnson & Johnson would have to prove to you that its baby powder didn't pose any risk at all?
PROSPECTIVE JUROR: Correct.
MR. MENITOVE: Rather than have the plaintiff prove that the product caused cancer or mesothelioma?
PROSPECTIVE JUROR: Correct.
MR. MENITOVE: So it seems like, you know, as an expectant mother, these are views that you hold pretty strongly; is that fair to say?
PROSPECTIVE JUROR: Yes.
MR. MENITOVE: So if I'm coming into this case as a

lawyer for Johnson & Johnson, it seems like maybe I'm a little bit behind in terms of your view of the case so far?
PROSPECTIVE JUROR: I would say that's fair.
MR. MENITOVE: And these views that you have about baby powder, is it fair to say that you'd have a difficult time setting those aside?
PROSPECTIVE JUROR: Yeah. I think so.
MR. ADAMS: Your Honor, we'd stip on 57.
THE COURT: I'm sorry?
MR. ADAMS: We'd stipulate on 57.
THE COURT: All right. Well, thank you for that but I'm going to do some work myself.
Juror No. 57, I'm going to ask you a question.
So, folks, the law is going to come from me. I know I said that before.
And the important thing that I want to ask you about, Juror 57, is that one of the instructions you'll get is about the burden of proof. And the burden of proof is always with the plaintiff. And the burden in this case is the preponderance of the evidence. It's their burden to prove, not Johnson & Johnson's burden to disprove, so that's a jury instruction that you will be getting from me.
And my question for you is: Will you be able to follow my jury instruction if that's one of them, that the defendant does not have the burden? Would you be able to

follow that in this case?
PROSPECTIVE JUROR: I'm not sure. I think that there would need to be proof that Johnson & Johnson is making sure that those products are safe for the people that are using them.
THE COURT: And I understand that. But the -- so I guess that's another way to segue, which is if I give you the law and you disagree with it, which is maybe what you're saying, would you be able to still follow the law or are you saying that if you disagree with it and it's not the way you think it should be, that you won't be able to apply the law? Is that what you're saying?
PROSPECTIVE JUROR: If I'm understanding correctly, yes.
THE COURT: All right. I'll excuse Juror 57. Thank you for your service, Juror 57. And I hope you have a nice, healthy, safe delivery and that you get to serve at another time with us. Thank you.
PROSPECTIVE JUROR: Thank you so much.
MR. MENITOVE: Thank you.
So I wanted to -- I think it was Juror 52 who also raised a hand in response to that last question.
PROSPECTIVE JUROR: I did. Could you restate the question?
MR. MENITOVE: Yeah. You know, it really involves, you know, difficulty setting aside sympathy I think for the

plaintiff. You know, she's experiencing a terrible disease. My question was: Even if the plaintiffs don't prove their case, prove that the disease is caused by exposure to Johnson's baby powder, would you have a difficult time, you know, sending the plaintiffs home without any financial reward at all, without any damages?
PROSPECTIVE JUROR: I would. My cousin's husband contracted mesothelioma and, you're right, that's an awful way to go. And it's an expensive way to go. So, yeah, I would have difficulty.
On the other hand, I would -- I suppose I would wish that they had made a stronger case too, so...
You asked if it would be difficult and I -- it would be to send them home without any compensation. But I think I could get past that empathy and stick to the, you know, to the way that the case was presented.
MR. MENITOVE: Sounds like, understandably so, this is -- this disease, you know, hits a little close to home --
PROSPECTIVE JUROR: Correct.
MR. MENITOVE: -- for you and it might be a painful subject for you to have to deal with on a day-to-day basis and ultimately have to deliberate about. Is that fair?
PROSPECTIVE JUROR: Yeah. There wouldn't -- it would not be easy, for sure.
MR. MENITOVE: So it seems like you -- fair to say you

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 69

have strong feels about this, about this subject coming into the case?
PROSPECTIVE JUROR: I have strong feels about the law and the importance of it, so yeah. I mean, illness happens. Corporate culpability is real. These are all -- this is all fairly well-tread ground. But, so yeah, I would say, of course, this is not going to be easy for anybody.
MR. MENITOVE: But if we're -- if you're here serving on a jury where, you know, the plaintiffs history of illness and pain and suffering will be discussed, is that going to be a subject matter that will be, you know, too painful for you to deal with?
PROSPECTIVE JUROR: Well, I hope not.
MR. MENITOVE: So a moment ago you made a reference to corporate culpability I think you said being well established. Are you -- what did you mean by that?
PROSPECTIVE JUROR: There is a very brief and substantial history of individuals abusing corporations. On the other hand, there's quite an extensive history of corporations abusing their political and economic power.
MR. MENITOVE: So in a dispute as this one is between individuals and, you know, a large multinational corporation, you know, as someone representing the corporation am I coming into the case from your perspective a little, a little behind the individuals?

Page 70

PROSPECTIVE JUROR: That's a tough call. I'd like to think that I'm more fair-minded than that.
MR. MENITOVE: But it seems, you know, you did refer to a long history of corporations that you said taking advantage of individuals. Is that -- is that a view you've held for a long time or something you've come to recently?
PROSPECTIVE JUROR: Well, it's not a feeling so much as it is just borne out by history.
MR. MENITOVE: And this view you have that it's been borne out by history that corporations are taking advantages of individuals, is that -- is that something you'd be able to set aside if you -- if you were selected --
THE COURT: Hang on a second. You've lost Juror 62. Ah, there you are.
Everything all right, Juror 62?
PROSPECTIVE JUROR: Unstable connection at times.
THE COURT: Oh, okay. Thank you.
Continue, Counsel.
MR. MENITOVE: And, Juror --
THE COURT: You've got three minutes left.
MR. MENITOVE: Thank you, Your Honor.
And I don't know if you caught the question, Juror 52, but I was asking if you'd be able to, in your judgment, completely set aside your view that corporations take advantage of individuals, in the event you were selected as

Page 71

a juror in this case.
PROSPECTIVE JUROR: I don't think how I feel about it changes the facts, the historical record. I think that, of course, as a juror, I would have to try to set that aside and stick to the case as it was presented.
MR. MENITOVE: And I appreciate that. But -- and I just want to make sure I understood your last answer. When you referred to the facts, as opposed to a feeling, did you mean the fact of corporations historically taking advantage of individuals?
PROSPECTIVE JUROR: Yes.
MR. MENITOVE: So that seems to me to be a firmly held belief on your part. And I'm not -- and, you know, I think a lot of people may have that view. I'm -- you know, I'm not offended in any way. But I do, you know, wonder if coming in -- you know, if you were in my shoes, coming into this case as a -- as a lawyer for a large company like Johnson & Johnson, should I have some concerns about your ability to be an impartial juror?
PROSPECTIVE JUROR: Well, I don't think so.
MR. MENITOVE: So your views about what's happened historically, you think that's not necessarily applicable to Johnson & Johnson?
PROSPECTIVE JUROR: Well, of course it's applicable to Johnson & Johnson, but that -- we're talking in

Page 72

generalities. And the case will, I assume, revolve around specificities. So regardless of my understanding of things that don't pertain to the case, my job as a juror would be to stick to the facts as presented.
MR. MENITOVE: And I appreciate that. But when you said generally -- I appreciate your point about generalities versus specifics, but I think you were saying that it's generally the case that you believe that Johnson & Johnson has taken advantage of individuals; is that right?
PROSPECTIVE JUROR: I think they have at times as a company, and I think that's been borne out by their -- by various settlements over the years.
But this is not a case about the nature of corporations or whether or not Johnson & Johnson is a good corporation. This is a case about an individual who has got a -- who has got cancer and thinks that a product manufactured by a company caused it. So that's what's -- as I understand it, that's what's at issue, not whether or not Johnson & Johnson has engaged in corporate malfeasance in the past.
THE COURT: So, Counsel --
MR. MENITOVE: You made a reference --
THE COURT: -- Counsel, you're out of time. Thank you. Mr. Adams.
MR. ADAMS: Thank you, Your Honor.
Juror No. 52, I just wanted to follow-up with you quickly.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Is that okay?
PROSPECTIVE JUROR: Sure.
MR. ADAMS: You mentioned that J&J has, at times, taken advantage of people. Since you haven't seen any of the facts or the evidence or the witnesses in this case, do you know whether or not J&J took advantage of Ms. Hirshberg?
PROSPECTIVE JUROR: I don't have an opinion on that.
MR. ADAMS: You can keep an open mind on that and listen to the evidence?
PROSPECTIVE JUROR: That's the job, I think, as I understand it.
MR. ADAMS: Okay. And can you do that job?
Uh-oh.
THE COURT: No. 52, we've lost you on video.
PROSPECTIVE JUROR: I know. My phone -- somebody is calling my phone. Sorry.
THE COURT: No problem. Nice to see you again.
PROSPECTIVE JUROR: There.
MR. ADAMS: I just want to make sure you can do that job. Can you listen to the evidence if you were selected as a juror on this case?
PROSPECTIVE JUROR: Yes.
MR. ADAMS: Okay. Thank you so much.
Juror No. 62, I know you had your hand raised, and I ran out of time. I just wanted to check back in with you on

what you were thinking when you raised your hand.
PROSPECTIVE JUROR: Well, you stated earlier that -- my understanding -- I have some knowledge of, like -- with settlements of Johnson & Johnson in the past. And, like I said, if you're asking -- like you said, if she's asking for an exorbitant amount of money, what kind of claim are you making? It is for hospital bills, or is it -- does this kind of thing just, like, (inaudible)?
MR. ADAMS: I think I understand what you're saying. The case is going. If the case were mostly about not hospital bills, mostly not about lost earnings --
PROSPECTIVE JUROR: Yeah, I did.
MR. ADAMS: Yeah. Not punitive either, but --
THE COURT: I want to be clear to everyone in this -- our jurors that we -- Washington does not allow for punitive damages. We are not a punitive-damage state.
Thank you. Go ahead, Counsel. Sorry for the interruption.
MR. ADAMS: Thank you, Your Honor.
The biggest part of this case, if we prove our case, from our perspective, is going to be that we're seeking money and a verdict for things that don't come with a receipt, noneconomic damages, like pain and suffering; the loss of a loved one; loss of enjoyment of life; loss of, you know, sort of feeling good in your mind; mental suffering,

anguish; anxiety, things like that. That's the biggest part of the case.
And I think what I'm hearing from you is you're sort of struggling with that. Do I have that right or am I not understanding?
PROSPECTIVE JUROR: It might come from what the woman said before was that if everybody has an experience with it and Johnson & Johnson (inaudible), basically, my understanding earlier with a settlement concerning talc and asbestos. I don't understand why this is coming to court. Isn't there a pool to put money in that Johnson & Johnson (inaudible) you?
MR. ADAMS: I don't know if you want me to answer that question, Judge. We're not allowed to get into facts of the case too much.
THE COURT: Yeah, we can't. Juror 62, I appreciate that that may be weighing on your mind.
I will say this, though, since we're on this point. It's a very good one that many questions that jurors have -- not now during this process -- you can ask the witnesses. So we have a process whereby during the trial you'll be able to ask questions. You submit them at the end of the testimony by that witness.
You submit them to my bailiff. And the attorneys and I, outside of your presence -- we will go over the questions and decide what can be asked. So many questions -- most

questions that jurors have of individual witnesses end up being asked. So it's a great way to get information -- extra information.
But your question is not one that can be answered right now in these proceedings. But thank you.
Go ahead, Mr. Adams.
MR. ADAMS: Juror No. 62, I guess the bottom, sort of, line is -- what I would like to know from you is whether you're feeling like because of, sort of, you're struggling with these types of money damages for things that don't come with a receipt, and some of the other things you said, whether you're sort of leaning towards one side at this point before there's been evidence. Are you feeling like you're leaning towards J&J's side, my side?
PROSPECTIVE JUROR: I guess I am particular. My -- I'm just -- if it's not punitive damage, then what would you call it? I mean, if that's the -- just taking away the last (inaudible) and that would be -- you know, if there's no measure -- like, if there's no measure to that? I mean, every experience has a monetary amount that you can apply.
Like, in insurance, like, if you lose a finger, there's a money amount to losing a finger or a hand or an arm. Do you understand?
MR. ADAMS: I do. In this state, as the judge will tell you, there won't be any fixed standards like that to measure

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

things. It'll -- it's really up to, sort of, the jury's discretion to weigh the evidence and use the tools -- the law that the judge gives you, the evidence that you see, and come up with a number as a group.

Is that something that you think you would not be able to do if the evidence supported it?

THE COURT: Juror 62, before you answer that, I'm going to say something that might help other folks, as well.

So, yes, there is no fixed standards with regard to pain and suffering and those types of damages. But the attorneys, very -- might or may not make suggestions to you during their closing arguments about what they feel is appropriate. Both sides might do that.

And, again, I would really just tell you my observations about jurors -- the collective wisdom and judgment and the evidence from the trial and at the end of it coming together and being able to quite often -- most of the time come to a decision on this.

And the other thing I would say, because I think it's important, is that there does not have to be complete 100 percent unanimous verdict. So on a civil case, 10 out of 12 of you will have to agree. That's what the law requires.

At the end of this trial, you'll get a big old pile of jury instructions and the very last one will be -- it's a verdict form -- a special verdict form. It's going to have

a series of questions. And so long as 10 out of 12 of you agree to the questions, each question -- and it doesn't have to be the same 12. It can be -- you know, I'm sorry -- the same 10. It can be one set of 10 on one question, one set of 10 on the other question, so long as 10 out of 12 agree on any given question, that is sufficient. So perhaps you can think about that.

Now you can answer Mr. Adams' question as to whether or not you can do this.

PROSPECTIVE JUROR: All right. If you were asking for a gratuitous amount, then that probably would weight on my decision.

MR. ADAMS: How would it weigh on your decision, do you think?

PROSPECTIVE JUROR: Well, probably just because I think that you're not asking for the necessities to cover one's expenses.

MR. ADAMS: Um-hmm. If I were asking more than an amount to cover medical bills and lost wages --

PROSPECTIVE JUROR: I would probably agree if you proved it. But if it was gratuitous...

MR. ADAMS: Different people might have different definitions of gratuitous, so I'm just trying to figure out is there, sort of --

PROSPECTIVE JUROR: It would bear on my decision.

MR. ADAMS: Okay. Is there --

PROSPECTIVE JUROR: My (inaudible). I don't know what that number is.

MR. ADAMS: Is there a number in your head that you couldn't go above?

PROSPECTIVE JUROR: I don't know what that number is.

MR. ADAMS: Okay. All right. I want to just quickly thank you for answering all my questions, 62. I really appreciate it.

I want to check in with Juror No. 56. And you've been sitting there patiently, sir. And I just want to check in and see kind of what you're thinking about some of the issues that have been discussed. We've talked about, you know, money damages, pain and suffering, cooperate conduct. Any thoughts you have on those issues that other jurors have discussed?

PROSPECTIVE JUROR: Well, specifically to your question -- you had asked something about preponderance of the evidence and whether or not you could levy a larger payout or whatever we want to call it there. And I think that the way the judicial system is set up, it does support degrees. That's why you have preponderance of the evidence versus, you know, in criminal cases where you would, you know -- presumption of innocence and then being able to instill reasonable doubt.

So I think in justice, there is a -- there's definitely levels in -- levels of how that evidence is weighed.

So with respect to a judgment, I think if you're talking about establishing guilt or establishing liability, the evidence is the same. But when you're looking at something that is outside of loss of wages, you know, something -- mental suffering, mental anguish, whatnot, that's something that you would have to -- I don't want to say that you would have to -- you would have to somehow prove that this person has suffered more.

But certainly in a case if you're going to be, you know, giving someone millions and millions of dollars, I think if the -- if the stakes are higher, definitely there's probably going to be more onus on proving that there was malicious intent or criminal intent or whatnot. I just think that that is a logical assumption.

With respect to corporations, historically I know corporations have some done some crappy things and whatnot. But, you know, with respect to this instance, I don't think that's really relevant. I mean, I don't have any other -- any other issues, outside of those two.

MR. ADAMS: I appreciate that. Let's say the law was -- and I'm -- if the judge instructed you on the law and said the burden of proof is exactly the same as the preponderance standard --

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 81

PROSPECTIVE JUROR: Um-hmm.
MR. ADAMS: -- no matter how much money we ask for -- millions, hundreds of millions, billions -- it doesn't matter what the number is. The standard of proof is still a preponderance of the evidence; more likely true than not.
PROSPECTIVE JUROR: Um-hmm.
MR. ADAMS: Is that a -- is that a legal instruction? It sounds like it -- it sounds like what you're saying is it sort of contradicts common sense and sort of your personal beliefs as well.
PROSPECTIVE JUROR: Well, no, not really. I did state -- I did state that, you know, the standard for this is always going to be the same. You know, like I said, if a person is guilty, a person is guilty -- or an entity is guilty.
Just with respect to the damages, you know, I kind of see the stakes are high; that, you know, there is a belief system that there should probably be more evidence or at least more evidence of damages, but --
MR. ADAMS: I see what you're saying. I get it.
PROSPECTIVE JUROR: Yeah.
MR. ADAMS: So you're saying, Look, if you're going to ask for a huge amount of money, you better have evidence to support it.
PROSPECTIVE JUROR: I would say a preponderance of the evidence, yes.

Page 82

MR. ADAMS: But if you only have evidence showing that you're entitled to a little bit of money, well, then you can't ask for a huge amount of money?
PROSPECTIVE JUROR: I just think it makes more sense to have the belief that if there was severe misconduct, or whatnot, that there would be severe penalties.
MR. ADAMS: Okay. What if -- hmm.
PROSPECTIVE JUROR: But, again, I agree that, you know, guilt is guilt. If you reach a certain level, that's that. So the rest is just a value judgment. I mean, if -- you know, someone who -- someone who does something -- if someone murders someone, they murder someone. It's the -- it doesn't matter what their intent is.
MR. ADAMS: Okay. I appreciate -- I appreciate you sharing that. I guess just my last question is: Should I -- if you're on the jury and I'm, you know, representing Ms. Hirshberg and her family, should I have any concerns with having you on my jury, or can you be fair and impartial?
PROSPECTIVE JUROR: I don't believe you should have any issues either way.
MR. ADAMS: Okay. Thank you so much.
PROSPECTIVE JUROR: Um-hmm.
MR. ADAMS: No. 58, I wanted to check in with you, as well. Hello.

Page 83

PROSPECTIVE JUROR: Yeah, hello.
MR. ADAMS: Do you have any thoughts on what your fellow jurors have said about these issues? What are you thinking over there? You're awfully quiet.
PROSPECTIVE JUROR: I don't want to say I'm not thinking much, but, I -- no, it seems pretty reasonable all the questions that people have been asking. I don't see, like, that I have any extreme conflicts or I can't think of any biases that would affect me in either direction. I mean I think I could serve fairly. But, yeah, I don't know.
MR. ADAMS: Okay. Are you able to, sort of, listen to the evidence as it comes in?
PROSPECTIVE JUROR: Yeah. Yeah, I do.
MR. ADAMS: And would you be able to weigh the evidence and, sort of, deliberate with your fellow jurors if you were -- if you were selected to serve?
PROSPECTIVE JUROR: Yeah, I could.
MR. ADAMS: Okay. And would you be able to follow the law from the judge?
PROSPECTIVE JUROR: Yes.
MR. ADAMS: Okay. Anyone else? I don't know how much time I have left, but the last question, sort of, for the whole group.
Well, actually, let me check in with Juror No. 60 just real quickly.

Page 84

Any further thoughts that you have on any of these issues?
PROSPECTIVE JUROR: No. I'm -- it's all sort of an interesting thing, and I'm really sort of curious to see how it would be structured for and against and what tools are given to help decide some of these gray value assessments.
MR. ADAMS: Thank you. Okay. Thank you all for your time. I really appreciate you answering my questions. Thank you.
THE COURT: Thank you, Mr. Adams.
Mr. Menitove.
MR. MENITOVE: Thank you, Your Honor.
I would like to finish up Juror 52, our conversation for before -- from before. And, you know, I thank you for humoring me. I know we've been talking about difficult issues. And I don't mean to pick on you quite so much. And I -- you know, I appreciate, too, we're discussing difficult issues and, you know, in an uncomfort- -- perhaps uncomfortable setting on Zoom. So I just wanted to thank you again for your time.
I did want to follow up, though, with the family member you were discussing who has mesothelioma. Has -- did that family member use talc or talc products?
PROSPECTIVE JUROR: You know, I don't know about that. He -- I really -- I don't know about his personal hygiene or postshower regimen.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

MR. MENITOVE: So you're not -- and you're not familiar with that family member being involved in any kind of litigation relating to mesothelioma?
PROSPECTIVE JUROR: No.
MR. MENITOVE: Given the feelings that you've talked about, about your family member who has the very same illness as the plaintiff in this case, you know, could those difficult feelings you have and you've discussed influence your judgment as a juror?
PROSPECTIVE JUROR: You know, I don't think so. I think -- so my early artistic background was in ceramics. And during that time I learned that talc is found naturally often in combination with asbestos. So it's not a -- it's not a bridge too far to think that talc could have some small percentage of asbestos in it.
Now, whether or not -- you know, I'm not -- so beyond that, I don't have an opinion about whether or not baby powder is dangerous.
MR. MENITOVE: Do you have, based on this prior knowledge -- do you have a view that it's -- if I'm under- -- let me start that again.
Do you have a view that it's likely more than not that there's asbestos in talc?
PROSPECTIVE JUROR: Well, like said, it occurs -- it occurred naturally in conjunction. So I don't use baby

powder.
MR. MENITOVE: Do you --
PROSPECTIVE JUROR: My wife -- my wife doesn't use baby powder, so...
MR. MENITOVE: And is it the case that you don't use baby powder -- is that related to a concern that there might be asbestos in the talc?
PROSPECTIVE JUROR: I have been exposed to so much -- such a wide variety of toxins and dusts over the years as an artist and a contractor that I don't need to add -- no need to add to the risk, you know.
MR. MENITOVE: You don't need to add to the risk. That suggests to me that you think that by using talc in these products does --
PROSPECTIVE JUROR: Yeah. I don't need to dust myself with fine particulate matter that lingers in the air -- I'll put it that way -- no matter how good it smells.
MR. MENITOVE: So this idea, though, that you have that there could be asbestos contamination in talc, is that something you'd be able to set aside, you know, once you start hearing the evidence if you were a juror in this case?
PROSPECTIVE JUROR: Well, I could set aside my feelings, but I can't set aside the scientific evidence that talc and asbestos are found together naturally in a mineral state. And, you know, not always -- not always in big percentages,

but frequently enough in small percentages. But I would have to think that there would be some possibility that baby powder would have some asbestos in it.
MR. MENITOVE: And here, as a lawyer for Johnson & Johnson, would I have to prove to you that J&J's talc was free of asbestos?
PROSPECTIVE JUROR: How would you do that? I mean, electron microscopy of a representative sampling of baby powder? I don't know how you could prove that. Exposure --
MR. MENITOVE: Just setting aside the means, you know, as how the evidence is presented, coming in as juror, is it -- you know, is it your view, if you were a juror in this case, that Johnson & Johnson would need to prove to you that its product was asbestos-free; that its talc was asbestos-free?
PROSPECTIVE JUROR: No. My understanding is that the burden of proof is on the plaintiff.
MR. MENITOVE: And so even though you have a view, it seems like coming in, that there's a potential link between talc and asbestos, would you be able to completely set aside that view and hold the plaintiff to the burden of establishing that there's asbestos in J&J's talc?
PROSPECTIVE JUROR: Well, they'd have to prove that it was not only there, but it had been ingested into their lungs in a quantity significant enough to cause mesothelioma.
MR. MENITOVE: I want to circle back on the -- on the -- I

just want to make sure I, you know, understand your feelings about your family member we've discussed at length. And it's the last question I will ask about this.
You know, given that you have a personal connection to the disease at issue, which we'll be hearing about a lot, you know, is it perhaps true that this wouldn't be the right case for you to be a juror on?
PROSPECTIVE JUROR: Well, no. I think I -- I think I could listen to the facts. I could listen to the facts as presented. And I think I could make an assessment.
MR. MENITOVE: So you're confident that you could be completely impartial as a juror if you were selected?
PROSPECTIVE JUROR: I -- yeah. That's the job.
MR. MENITOVE: Juror 52, I thank you very much for listening to all my questions and talking to me at length.
PROSPECTIVE JUROR: Sure. Yeah.
MR. MENITOVE: Thank you for your time and for your candor and all your responses.
I don't know quite how much time I have left, but, you know, I have a -- the panel has gotten a little smaller, and I -- Your Honor, I don't think I have any further questions. Thank you.
THE COURT: Yeah. No reason to use time if you don't need it. That's great.
All right. All right, folks. Thank you for all of your

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 89

time this morning. As I told you, we're going to stick right to our schedule. We will get in -- we will -- excuse me -- we will be getting back to you no later than 12:00 noon. It might be earlier, a little bit, as to whether or not you've been selected to sit on this jury.

And if you have been fortunate enough to be selected, we will see you back at 1:00.

If we don't see you back at 1:00, I really appreciate hearing from you.

One of the parts of my job I love the most, frankly, is this process. I'm always so humbled by people's willingness to think of things, turn themselves inside out, answer really hard questions in such a thoughtful way. And I learned so much from just hearing what folks say. It's really the highlight of my job.

So if we don't see you on this jury, I hope that you have the privilege sometime soon of serving on another case. I know that you'll find it to be incredibly meaningful and powerful and engaging. I hear those words over and over and over again from jurors, and it always makes me so happy. So I hope you have that experience again.

In the meantime, I hope that all five of you stay really healthy and well, and you and your family, as well. And I thank you again for your time.

Here's a really important and final instruction before I

Page 90

let you leave me. In the next hour or so, do not -- do not discuss this case with anyone. Do not discuss the issues in this case with anyone, the people in this case with anyone. None of it. Please don't -- and by "do not discuss," I mean no social media communications, no tweeting, no Instagramming, no Snapchatting, no Facebook posts, none of it. It is so important that you not expose yourself to any external opinions or information about this case or about the issues in this case.

Lastly, and most importantly, do not do any outside research. Now is not the time to start looking up what is mesothelioma and anything related to this case, anything related to burden of proof, none of it. No research of any sort.

So those are my final instructions to you. And we'll be in touch shortly. Thanks, again.

PROSPECTIVE JUROR: Will we need to be in touch via email?

THE COURT: Yes. Mr. Hodgman will communicate with you, like I say, no later than noon.

PROSPECTIVE JUROR: Great.

THE COURT: Thank you all.

PROSPECTIVE JUROR: Thank you.

MR. MENITOVE: Thank you.

THE COURT: All right, folks. Mr. Hodgman is going to send out the list of the folks who are on our panel. I'm

Page 91

going to -- right now we're going to randomly select the three people who will serve as our alternates so that you know that when you go into making peremptory challenges.

I want to make sure you understand how we do things, again, in my courtroom, which is that you do not lose your -- you don't need to use your -- excuse me -- you don't need to use your peremptories specific to any given alternate. So we have enough jurors to, I believe -- unless we've lost some during this process. I don't think we have -- four each.

THE BAILIFF: Yes. We have 25 remaining jurors.

THE COURT: Thank you, Mr. Hodgman.

We have 25 remaining jurors, so enough to do four peremptories each, as opposed to the minimum that we're required to give you, which is three. So I'm going to give you some extras, four each.

And we only exercise peremptory challenges inside the box. So you'll get a -- Mr. Hodgman is going to send it to you quite shortly, and it will tell you who is in our box -- our box of 15. And you take your peremptories one at a time. Plaintiff goes first. Then I will ask Defense whether they have any objection to the use of that peremptory challenge based on GR 37. If the answer is no, then we move to Defense. They pick their next -- they pick their peremptory challenge. I ask the same question of Plaintiff. Do you

Page 92

have any objection to their use of that challenge based on GR 37? And then we go round and round.

If somebody goes, Yes, I object to the use of that challenge. I believe that that juror is being, you know, challenged peremptorily due to -- fill in the blank -- some characteristic -- you know, race, gender, whatever it might be. And then we would have a colloquy about that, get it on the record. And then we'd -- I'd make a decision of whether or not they could use that challenge in that way or not. And then we just keep going back and forth until both sides have exercised their four challenges.

And at that point, that is our jury. And the last thing I would say is if you accept the panel as it is but later you don't -- you never lose a peremptory challenge. So you can accept it in one round and then come back later on in the next round and you still have your challenge. You don't lose it. So everyone gets four peremptory challenges, regardless of whether or not you at some point pass on a challenge and accept the panel as they are. Does that make sense?

MR. ADAMS: I have a question, Your Honor, if I can.

THE COURT: Yes.

MR. ADAMS: If we strike one of the first 12, do -- does one of the alternates move into the 12?

THE COURT: Nope. The alternates will always be the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 93

alternates. So it's going to be 1 through 15 will be our alternate so that I'm going to -- I'm going to pick it right now. So if, you know -- if you strike Juror No. 6, but our alternates are 7, 12, and 9, the alternates are still 7, 12, and 9.

MR. ADAMS: Okay. So we're going to get --

THE COURT: I can hear people rattling in the background --

MR. ADAMS: I know.

THE COURT: -- which is quite distracting.

MR. ADAMS: Sorry.

THE COURT: Tell me again your question.

MR. ADAMS: The four strikes are for the first 15 --

THE COURT: We only take --

MR. ADAMS: -- and the alt- --

THE COURT: So listen to me again. We only exercise peremptory challenges to people in the box. So they would be -- you wouldn't be exercising a peremptory on a juror that's not even in the box. So if it's Juror 79 -- I'm just throwing out a random number -- who is not one of the 15 people who are currently in our box -- it's a visualization. Just pretend -- look at my courtroom. Pretend they're in that box.

MR. ADAMS: I under- --

THE COURT: You'd only be exercising peremptory to people

Page 94

in the box.

MR. ADAMS: I understand. Okay. Is the order that we have now staying the same?

THE COURT: Yeah.

MR. ADAMS: In other words, can we rely on the first 15? Okay. I got it. Sorry, Your Honor.

THE COURT: So you don't need to -- and you don't need to rely on your records, because I know it's quite confusing. There's something that's very confusing when they're not all here in front of you. I totally get that. I promise you that you will -- once you get this from Mr. Hodgman, it will be very clear to you how we do it. Okay?

MR. ADAMS: Thank you so much.

THE COURT: No worries. So I'm going to wait until that gets sent. And when that is sent, that will be when we take our 15-minute recess. And then you folks will have an opportunity to figure out what you want to do with your peremptories.

And, also, you should be prepared. We're going to -- before we -- before we take our lunch recess at noon, after we go through our peremptories, I will need you folks to make any objections or exceptions to the preliminary jury instructions that Mr. Hodgman sent. I believe there are nine of them.

Right now I'm going to have my clerk pull out three people

Page 95

out of my random box here. You can't see it, but it's really, really cool. And we'll pull out three folks. It needs some WD-40 on that. All right.

THE BAILIFF: No. 12.

THE COURT: That's one of our alternates.

THE BAILIFF: No. 7, No. 2.

THE COURT: All right. 7, 12, and 2.

All right, folks. Yes, thank you.

All set?

THE BAILIFF: Yes. Thank you.

THE COURT: All right.

THE BAILIFF: I'm going to clarify something for you folks. I just sent an email. In my haste to get this out, the jury box diagram, I forgot to include someone in seat number one. I sent an update.

THE COURT: So is there -- the new ones are already in the email?

THE BAILIFF: Yeah.

THE COURT: Great. All right. Check your email. Get your box. It's 11:03. We'll see you back at 11:18, everyone. Thank you.

(Recess)

THE CLERK: Back on the record.

THE COURT: All right. Welcome back, everyone. Okay. All right. I am going to just confirm so we all have the

Page 96

same understanding. I'm sure we do.

But, so right now our box is as follows:

Juror No. 21 is seated in seat number 1.

Juror No. 2 is in seat number 2.

Juror No. 22 is in seat number 3.

Juror No. 23 is in seat number 4.

Juror No. 25 is in seat number 5.

Juror No. 26 is in seat number 6.

Juror No. 7 is in juror seat number 7.

Juror No. 8 is in seat number 8.

Juror No. 9 is in seat number 9.

Juror No. 30 is in seat number 10.

Juror No. 34 is in seat number 11.

Juror No. 35 is in seat number 12.

And Jurors 13, 14, and 15 are all seated in their respective juror chair.

Okay. Is there anyone for Defense going to join us?

MS. BROWN: And I'm sorry, Your Honor. We are just printing out the list. We had a different order. We thought they were going to be seated in the number order.

Could we just have five minutes to rearrange our chart here?

THE COURT: No. It's just not that complicated. So take a look at the chart that I gave you. You have a lot of people there. Someone can be moving it around.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 97

So we need to get started. We have things to do, and we are quickly encroaching upon 12:00.
MS. BROWN: (Inaudible) Your Honor.
THE COURT: Got it.
MS. BROWN: Thank you, Judge.
THE COURT: Okay. All right. Mr. Adams.
MR. ADAMS: Thank you, Your Honor.
Plaintiffs thank and excuse Juror No. 30, who is in seat 10.
THE COURT: All right. Thank you.
MR. ADAMS: (Inaudible).
THE COURT: Okay. And does the plaintiff -- I'm sorry.
Does Defense have any GR 37-related objection to the use of a peremptory challenge on Juror No. 30?
MS. BROWN: No, Your Honor, we do not. Thank you.
THE COURT: All right. Thank you.
So that means that Juror No. 34 will -- no. I'm sorry. That means that Juror No. -- excuse me, Juror No. 38 will -- 36. We've got Juror 36 is still present with us. Yes.
Juror No. 36, Jeffrey Maybee is now seated in seat number 10.
Whenever you're ready, Counsel.
MS. BROWN: Thank you, Your Honor.
The defense would thank and excuse Juror No. 21, who I

Page 98

believe is seated in seat 1.
THE COURT: Yeah. All right. And here's the great thing. We don't have to thank anybody because they're not here.
MS. BROWN: (Inaudible) old habit.
THE COURT: I know. I know it is. No worries. Okay.
So any objection to the use of that challenge by Plaintiff -- I'm sorry, by Defense. Excuse me.
MR. ADAMS: No, Your Honor.
THE COURT: Okay. So that means that Juror No. 38, James Vawter, becomes Juror No. 1.
Whenever you're ready, Mr. Adams.
MR. ADAMS: Your Honor, Plaintiffs accept the jury as constituted.
THE COURT: All right. Thank you.
Whenever you're ready, Counsel.
MS. BROWN: I'm sorry. Thank you, Your Honor. I wasn't sure.
We would excuse Juror No. 9, Judge.
THE COURT: Okay. Any objections to the use of a challenge on Juror No. 9?
MR. ADAMS: No, Your Honor.
THE COURT: Okay. So that would leave us with Juror No. 43, Raymond Vance (phonetic), now moving into seat number 9.
MR. ADAMS: And, Your Honor, we'll excuse Juror No. 43 in

Page 99

seat number 9, Mr. Raymond Vance.
THE COURT: Okay. Any objection to the use of a challenge on this juror, Ms. Brown?
MS. BROWN: No, Your Honor. Thank you.
THE COURT: Okay. That would bring us to Juror No. 45, Eric Chin (phonetic). And Mr. Chin will now be seated in seat number 9.
MS. BROWN: And, Your Honor, we would excuse Juror No. 25 in seat 5.
THE COURT: All right. Any objection to the use of that peremptory, Mr. Adams?
MR. ADAMS: No, Your Honor.
THE COURT: Okay. So that would give us -- Juror No. 47 will now sit in seat number 5. That's Michael Bishop.
MR. ADAMS: Your Honor, we'll thank and excuse -- I guess we're not thanking -- but Juror No. 47 in seat number 5, Mr. Bishop.
THE COURT: Okay. Any objection to that challenge?
MS. BROWN: No, Your Honor.
THE COURT: No, okay.
MS. BROWN: (Inaudible).
THE COURT: Thank you. That gives us -- Juror No. 52 will sit in seat number 5.
MS. BROWN: And, Your Honor, we'll excuse Juror No. 52, please.

Page 100

THE COURT: Okay. Any objection to the peremptory challenge of Juror 52?
MR. ADAMS: No, Your Honor.
THE COURT: Okay. That means Juror No. 56 will be now seated in seat number 5.
This is your final peremptory.
MR. ADAMS: Yes, Your Honor. Plaintiffs will excuse Juror No. 14 sitting in seat 14, Mr. Daud.
THE COURT: Okay. Any objection to that challenge?
MR. ADAMS: Yes, Your Honor. We would object as that being a back strike, and not permitted by the statute.
THE COURT: Okay. And that's Juror No. 14, right?
MS. BROWN: Correct.
THE COURT: And that juror, Daud Feroze, can you tell me your -- articulate the basis for your objection to that challenge?
MS. BROWN: And --
MR. ADAMS: Your Honor --
MS. BROWN: Your Honor, I just wanted to be clear that my objection was not -- was to the back striking of that juror, which we understood is not permitted by the statute.
THE COURT: I have no idea what back striking is. I've never heard that term before. So...
MS. BROWN: So --
THE COURT: So you (inaudible) up juror -- if you are

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 101

making a challenge to their use of their peremptory challenge, that's pursuant to GR 37.

And so I'm sure you have GR 37 in front of you. I don't. I'm going to pull it up.

MS. BROWN: Yeah. And, Your Honor, my objection is actually to 4.44.210, Peremptory challenges, how taken, which states that once a party has passed for cause, they can no longer exercise a peremptory strike.

And so Mr. Adams had passed for cause, and now is no longer able to go back and strike the panel that he accepted pursuant to the statute.

THE COURT: No. That's not my understanding, Counsel. Let me pull it up.

You never lose your peremptory -- you never lose one of your peremptory challenges. So let me --

MS. BROWN: Sure, Your Honor.

THE COURT: Hang on a second. Let me just pull it up. Okay?

MS. BROWN: Okay. And I can just read the part that I'm referring to.

THE COURT: If you don't mind, if I could just -- if you'd give me a moment to pull it up, that is really the best way for me to look at it myself. Thank you.

So just tell me the -- tell me the statute, please. This is RCW?

Page 102

MS. BROWN: 4.44.210.

THE COURT: 4.44.210.

MS. BROWN: Yes, Your Honor.

THE COURT: Okay. Just give me a moment, and I will pull it up. Okay.

MS. BROWN: Okay.

THE COURT: So because Juror 40 -- and I'm sorry. Is it --

MS. BROWN: Fourteen, Your Honor.

MR. ADAMS: Fourteen.

THE COURT: Okay. Because Juror 14 was already on the panel when Mr. Adams accepted the panel, he can no longer now challenge that juror, and could only challenge new additions that you have brought on. Is that your position?

MS. BROWN: Yes, Your Honor.

THE COURT: All right. That's correct.

MS. BROWN: Yes, Your Honor. (Inaudible).

THE COURT: All right.

MR. ADAMS: And, Your Honor, our response, if we may?

THE COURT: Sure.

MR. ADAMS: Is we raised this issue with the Court, I think yesterday. We raised the issue of passing and strike backs, or it was either yesterday or the day before. And the Court said it was allowed, and J&J made no objection, and so we've relied on that.

Page 103

Our position is that J&J has absolutely waived any objection to this because we raised the issue. The Court advised the parties. J&J stood silent, and now J&J has waited to re-raise an issue that it waived previously.

And so I never would have -- I never would have passed the panel and not exercised my strike if J&J had not waived that issue.

MS. BROWN: May I be heard, Your Honor?

THE COURT: Yes. And I want to be clear that I did not understand what you were asking. My understanding was, if you accept the panel, do you lose your peremptory?

And the answer is no, you don't.

But if you've accepted the panel as is, I just assume you meant if -- someone else they add on, you don't like, do I lose my peremptory if I go around and accept the chal- -- if I go one round and accept the panel? And that's what I was responding to.

So, and I'll let Counsel speak.

But to the extent that the question wasn't clear to me, or my answer wasn't based on the question you thought you were asking, that's why you got the answer you did.

Ms. Brown.

MS. BROWN: Thanks, Judge. And just on that score, to respond to the suggestion that we had we had waived something, I went back and looked at the transcript to make

Page 104

sure I was clear on Your Honor's direction, and I understood Your Honor to be answering exactly the way the Court just said, and that really comports with our understanding of the statute.

And so consistent with that, we understood the Court to be directing us consistent with the statute, and that's how we proceeded.

MR. ADAMS: My memory, just for the record, is that I said something about how, if we pass on the first eight jurors, and then a new juror is seated, are we allowed to go back to the first eight, or ten, or whatever number I used that we passed.

My understanding was that we were told we could, and J&J did not object.

It's really unfortunate that J&J waited, and now we've really been prejudiced by it. I think it's pretty clear waiver. Certainly that's our position.

I never would have passed, had I known that I couldn't strike Juror No. 14. So --

MS. BROWN: Your Honor, this is the statute, and this is the rule of the jurisdiction in which we're holding this trial.

And if you go back and you look at the transcript, while the question from Plaintiffs was not clear, the Court was super clear that you never lose a peremptory. You have it.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 105

That's what you said, Judge. But the way you answered the question is fully consistent with the statute.
And I really resist the suggestion that this is somehow J&J's fault here. We checked carefully the statute. We checked carefully the Court's rulings, and we've struck according.
THE COURT: Yeah. I agree.
To the extent there was any miscommunication, I'm not sure how that happened.
But it's not something that they should be said to have waived. We had a discussion, sound like there was a misunderstanding. But the statute's clear. And they're not bound by a misunderstanding.
So just so that we're clear, you still have a challenge, Mr. Adams, one peremptory left, but it can't be as to the -- can't be used on Juror No. 14, who was already accepted, he or she. I'm not sure.
MR. ADAMS: I just need one second, Your Honor. And then --
THE COURT: Yeah. Take your time.
MR. ADAMS: Your Honor, Plaintiffs will thank and excuse Juror No. 45 in seat 9, Mr. Chin.
THE COURT: Okay. So Juror No. 45.
Is there any objection to the use of a challenge on Juror 45?

Page 106

MS. BROWN: Yes, Your Honor. On the very same basis. The panel had been accepted; and, according to the statute, the plaintiffs no longer have the right to strike anyone who was on that panel, but only someone who comes onto the jury after that. So we would object to that proposed strike for the same reasons.
MR. ADAMS: I don't believe we had passed before Mr. Chin was added to the jury, Your Honor.
THE COURT: And that's what I can't remember. I usually make a note of that, but I didn't.
But we can figure this out by -- with the helpful guidance of our clerk.
Can you go back? It will just be on the -- can't we just go back and listen to testimony?
THE CLERK: Sure. But I think you're -- I don't think he -- my recollection is he did not -- he only passed that one time.
THE COURT: Yes. It was only one pass.
THE CLERK: And he didn't exercise his peremptories after that to the other (inaudible). So I do want to go back and listen to this, Your Honor.
THE COURT: Sorry. And, Mr. Havlis, I am not -- I'm not clear what you're saying.
THE CLERK: I'm sorry. (Inaudible) inarticulate.
THE COURT: No. It wasn't you're inarticulate. I just

Page 107

didn't -- I'm not sure whether or not Juror No. 45 was on the panel when Mr. Adams accepted the panel as they were comprised.
THE CLERK: I don't believe (inaudible).
THE COURT: That he was. You think he's a new person?
THE CLERK: Correct.
THE COURT: Okay. That's my recall, but I'm not sure. And I'd like to be sure.
I'm hearing one thing from Ms. Brown, and one thing from Mr. Adams. Is that right?
MS. BROWN: Yes, Your Honor. We're double checking, too. I agree (inaudible).
THE COURT: Okay.
MS. BROWN: But that is our understanding. We're triple checking with our folks here.
THE COURT: All right. My erstwhile clerk is going to go back.
MS. BROWN: You passed.
MR. ADAMS: Your Honor, we remember. I passed on 43, Mr. Vance. I didn't want to strike a juror to put Mr. Vance on the jury. He was 43.
Mr. Chin is 45. I absolutely did not pass with Mr. Chin.
THE COURT: Well, we're about -- Mr. Adams, we are about to find out.
THE CLERK: Okay. I believe Plaintiffs' counsel is

Page 108

correct. Plaintiffs' counsel excused Juror 43. Juror 45 then took --
THE COURT: Took that place.
THE CLERK: -- that place.
THE COURT: But this -- sorry. Go ahead.
THE CLERK: Sorry. And then Defense counsel went on and excused, I believe Juror 25 in seat number 5. And there was sort of that back and forth about 47 and 52. So I mean, I can listen to it all. But he didn't pass on 45.
THE COURT: All right. Thank you. Okay. So thank you. That is extremely helpful.
So Juror 45 -- you wanted to exercise your challenge as to Juror 45, Mr. Adams, correct?
MR. ADAMS: Correct.
THE COURT: All right. And since we've looked at the record, and you are right, so that puts us now with Juror No. Fifty -- sorry. We've used 56.
Juror No. 58 is our next juror. And Juror No. 58 would now be seated in seat number 9.
And you have your final challenge.
MR. ADAMS: J&J, there are no more challenges.
MS. BROWN: I don't think I do, Judge.
THE COURT: Everyone gets four challenges.
MS. BROWN: Didn't I already exercise four? I did, Your Honor. I did exercise four.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

THE COURT: Five, six -- yeah. Sorry. My mistake. My bad. Thank you. Let me just double count my numbers again. Yeah. Okay.

All right. I'm going to read off to you my record so that we can make sure all are consistent.

In seat number 1 is Juror 38.

In seat number 2 is Juror No. 2.

In seat number 3 is Juror 22.

In seat number 4 is Juror 23.

In seat number 5 is Juror 56.

In seat number 6 is Juror 27.

Seat number 7 -- no. Sorry. Juror -- seat number 6, not Juror 26?

THE CLERK: You said 27.

THE COURT: Oh, I said 27. My bad.

Seat number 6 is Juror 26.

Seat number 7 is Juror 7.

Seat number 8 is Juror 8.

Seat number 9 is Juror 58.

Seat number 10 is Juror 36.

Seat number 11 is Juror 34.

Seat number 12 is Juror 35.

And seats 13, 14, and 15 remain as Juror No. 13, 14, and 15.

Is that what you folks have?

MR. ADAMS: Yes, Your Honor.

MS. BROWN: Yes, Your Honor.

THE COURT: All right. Great. That is our jury.

And Mr. Hodgman will send them an email letting them know they have been selected, and to report back at 1:00.

We need to discuss at least a preliminary discussion about spoliation again, because I want to make sure, but I want to have Ms. Dean here of course before we have that discussion, since it sounds like she's presenting your opening statement, correct?

MR. ADAMS: Correct.

THE COURT: All right.

MR. ADAMS: She's right here.

THE COURT: Great. Before we do that, is there anything else that you folks believe needs to happen between now and when our jurors come back at 1:00?

MR. WYATT: Your Honor, I just alerted Mr. Bernardo, who will be addressing the spoliation issues for us.

And if it please the Court, we could address the preliminary instructions now and make that record --

THE COURT: Oh, thank you.

MR. WYATT: -- if Plaintiffs are ready to do that as well.

THE COURT: Sorry. That's more important. Sorry. I had forgotten about that. Thank you for the reminder.

All right. Does Plaintiff have any objections and/or

exceptions to the Court's preliminary instructions, number 1 through 9?

MS. DEAN: Yes, Your Honor.

I'm going to move because we're both in the same space. I apologize for doing that.

THE COURT: No problem.

MS. DEAN: So yes. We had three instructions that we sought, one relating to the ruling that there is not evidence within a reasonable degree of scientific certainty of a third-party exposure, which still allowed for arguments that we could not prove our case, but mirrored the decision made by Judge Cahan. We have a record of the specific instruction.

And then we had two instructions relating to an adverse inference. Given the information that was briefed, including information that was representing to the Court yesterday didn't exist in our brief about 900 lawsuits filed, regulatory pressure that testing in 2017 wasn't provided, we think that's appropriate for a preliminary, but understand the Court has denied both, and just wanted to make our record.

As for what is being read, the agreement that Mr. Wyatt and I made is that, as long as we are not precluded from -- at the close of the evidence making arguments that things need to be adjusted -- which is something that I think the

Court (inaudible) at the very beginning -- that the remainder of the instructions are helpful as a preliminary outline of the case.

THE COURT: All right. Thank you. And I'll just confirm one more time that I will --

MS. DEAN: Oh, I --

THE COURT: I think I've already -- I'm sorry.

MS. DEAN: You're muted.

THE COURT: Oh.

MR. WYATT: No. I hear Your Honor.

THE COURT: I don't think I am. Okay. Everyone else hear me?

MR. WYATT: Yes, Your Honor.

THE COURT: All right. If Ms. Dean can't hear me, I'm not sure why that is.

Can you hear me, Ms. Brown?

MS. BROWN: I can.

MS. DEAN: Is everyone else --

MS. BROWN: (Inaudible) for some reason on my screen it shows up as if you're muted, but I can still hear you. Maybe that's Ms. Dean's confusion.

THE COURT: Well, either she can hear me or not, depending on what's my screen doesn't matter.

You can't hear me still?

MS. DEAN: I can now. I couldn't hear anyone.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 113

THE COURT: All right.
MS. DEAN: And it was showing that you were muted. I think it was on my end. I fixed it. But I was --
THE COURT: It does show that I'm muted, because I'm not using my computer audio. I'm using the FTR system. So it will always show that I'm muted.
MS. DEAN: I apologize. I figured it out. Sorry. But I couldn't hear for a moment.
THE COURT: Okay. No problem. And I am going to tell the jurors -- I think I've already told them all, but when you do four different panels, I'm not sure if I did or not.
But I will make very clear to them that the instructions that are binding and that will govern their deliberations are that which I will give them at the end of trial.
I expect right now that these nine will be in those when I submit the final set. But if things change and shift, these instructions will as well. So all right. Thank you.
Mr. Wyatt, any objections to these instructions and/or exceptions to those not being offered on a preliminary basis?
MR. WYATT: Thanks, Your Honor. And I appreciate the clarification. That was our understanding.
And some of these are -- you know, we shortened the instructions for sake of brevity.
THE COURT: Right.

Page 114

MR. WYATT: And we may want longer ones at the end.
THE COURT: Yeah.
MR. WYATT: But with that understanding, just two objections quickly.
On instruction 5, the first sentence relates to negligence, and we're objecting to the jury being instructed on negligence concepts.
Our position is that negligence theories are subsumed under the WPLA, which should be governing here because Plaintiffs can't show that substantially all of Ms. Hirshberg's alleged exposures occurred prior to 1981.
There's case law saying that any negligence theory is subsumed by the WPLA product liability claim, that's Macias v. Saberhagen Holdings, 175 Wn. 2nd 402.
And then the other objection is simply to the definition of asbestos, instruction number 9. As the Court knows, we opposed instruction on this mainly because we think it's a little too dense to cover with the jury in instruction.
We have a related concern that we've expressed previously that the jury will feel sort of license to adopt any definition it wants to, rather than kind of figure out which is the right one.
We do still have some concerns about the reference to (inaudible) and byproducts, although I acknowledge the Court has created a cautionary language there as well.

Page 115

And then just separately, Your Honor, I think there were two -- I don't know that these will come out in reading the instructions, but I believe there were two typos in instruction number 9. I think the word "thing" at the end of line five should be "thin."
THE COURT: End of line five, three, four, five, which might require very long -- yes. Thank you for fixing -- for finding that. We will fix that.
MR. WYATT: Yes, Your Honor. And I believe actually the next word as well should be "highly," L-Y, instead of "highlight."
THE COURT: Yes. A thin, highly flexible. Yeah. Thank you for finding that. Okay. Mr. Hodgman will make that change, I'm sure.
MR. WYATT: Thank you, Your Honor. That's it for the instructions.
THE COURT: Okay. All right. So spoliation, the -- I want to just cover enough of this ground to make sure that we have an agreement about openings. And it may be -- not it may be. It will be that there may be -- that we will be further looking at this issue as evidence comes in. But for now, let me just get all of my notes here. Here we are. Okay.
And I want to say that I appreciated Plaintiffs' effort to come to some compromise. And I know someone was objecting

Page 116

yesterday, oh, we shouldn't be bartering with evidence; this comes in, we'll agree to that. I disagree with that.
I fundamentally asked you folks to look at it in a creative way to come to some solution yourself. And I didn't see any -- from Johnson & Johnson you had any give or take on this, so I don't know if there was one.
But I just want to commend the effort by Plaintiffs to try to figure this out without Court involvement.
All right. So I am very clear that the Court's not going to be offering an adverse inference simply because of the law, the high bar in our state -- and that is of course the Cook v. Tarbert Logging, 2015 Division 3 opinion -- because there has to be evidence that it must be intentional and willful.
However, Plaintiff may inquire about the lack of testing evidence that exists in this case, and that prior samples, prior grids were not able to be given to their experts for analysis, because that is factual.
What I do not want -- what I do not want is a mini trial about discovery obligations and litigation holds. To me, that is for the Court to decide. That would be -- that's a legal issue. Were there discovery violations? And did those rise to a level of a spoliation instruction?
I'm not giving a spoliation instruction. It is at this point that I want to restate what I have said a couple of

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

times, but it bears stating right here and now, that this is not a matter that should have been brought up as a motion in limine because there would have -- there could have been, frankly, a multiple-day hearing, quite honestly, just on this issue as to the record and history of alleged destruction and/or nonretention of samples and grids.

That could have been a multi-day hearing, and that didn't happen because it wasn't requested.

And to request a spoliation instruction, which basically is, in this Court's opinion, oftentimes an insurmountable burden for the party subjected to a spoliation instruction, and that this is not something that should have been left to the last few days before trial.

That said, it's clear that there may be questioning of witnesses about the lack of testing -- lack of samples that were tested that were not retained and/or couldn't have been provided to Plaintiff to give to their experts.

Does everyone understand that very fundamental point that I've just made?

MS. DEAN: I think so. I have one point of clarification, if I may.

THE COURT: Sure.

MS. DEAN: And I also just want to be able to state on the record that our motions in limine were filed in the first half of April, and that this motion we believe which was

asking for an adverse inference has turned into a motion by Defendant to preclude a lot of evidence that they haven't (inaudible).

And so Washington law requires motions in limine to be specific and evidentiary rulings, particularly if they're exclusion-based, to be with the actual evidence in mind.

And so my concern is that, while getting direction from the Court is very helpful, Johnson & Johnson's effort off the record yesterday to state things that I can prove untrue without any context or briefing is premature.

The other thing I would just note very quickly is that I think there's also something this Court's talked about quite a few times about opening the door. So here's what I was thinking about a lot last night.

And I know I got heated at the end of the day yesterday (inaudible) I think we all get tired and frustrated, and after hearing three J&J lawyers say things that I thought were a little off in a row.

But here's the quintessential part of my problem. If they try to say that in 1971 to 1985 there was no reason to keep these samples that our expert wants -- which is what they've said. They have represented to this Judge many, many times. I think, even without even talking about courts, there's 900 reasons why they needed this information, and that there's got to be a way to impeach them if they try to suggest that

this vital information isn't around for benign reasons.

And so I think we can be (inaudible) about that. I think there's a way to do it without saying that they were actual court cases.

But for Johnson & Johnson to do what they've done here -- Judge, we have hundreds of thousands of records here. How many deal with testing? They refuse to engage on that question with me.

I've asked because you told us to meet with them (inaudible). Let's see if we can work this out. No information. They tell you that it was just routine not to keep these.

I have records that show they were vital, important, and that they had (inaudible) reasons because people were asking. And it can be as simple as people were asking about this. You had directly hundreds of people asking you about this. There was a reason to keep it.

But I at least like to keep open the idea that, one, if you're going to rule on this -- and this is why we sent you two emails back to back, I apologize -- but that Musco and Mittenthal summary was to kind of respond to the fact that J&J made a bunch of claims about what was in there that truly were off and super incomplete.

And so I think it's smart because of -- because context matters, and because Washington law requires it, to make

these decisions not in a vacuum, but on actual evidence.

And also, I just -- I think there's going to be a real issue opening the door that, if there's a suggestion 95 percent of their testing information completely doesn't exist, and in another 4 percent big things are missing, if the suggestion is that's routine, that we say, oh, the regulators were asking about that, there were other individuals asking you about that -- that was more than two minutes.

But I think I can completely navigate the issue on opening, but I just really want to have an opportunity to look at the concrete and work on it together.

THE COURT: All right. Response?

MR. WYATT: Your Honor, may I? Thank you, Your Honor. And I will be brief.

I just want to point out what Your Honor described is exactly what we were trying to communicate. In other words, fair game. Ask questions about whether or not certain results still exist or don't exist.

But what we object to -- and I just want to make sure the record is clear, and I think it's consistent with Your Honor's ruling -- is to ask questions or present evidence suggesting somehow that the absence of those materials violated some legal obligation or duty is inconsistent with the law, and is tantamount to a spoliation adverse

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

inference.
And as Your Honor rightly pointed out, these issues do take time. And I don't want to go back and forth.
And, Your Honor, I apologize if my advocacy was a little overzealous last night. But I will say it's personally frustrating to hear testimony that's so taken out of context and twisted. And that's my very concern about what might happen. And I think we'll address these issues as they come up.
But just to the point that Ms. Dean made -- and again, I'm just going to give one example, because they asked me last night, and they told Your Honor that I should correct the record, and there's nothing to be corrected.
Plaintiffs claimed yesterday that J&J did not produce test results, despite being repeatedly asked, until 2017. And that's not correct.
Plaintiffs sent me as their evidence for that testimony of Nancy Musco, who is a corporate representative, who I personally prepared and tendered for deposition. The notice for which I tendered Ms. Musco had nothing to do with what documents J&J produced or didn't produce.
They had a completely different subject. They note here about it had to do with a written interrogatory response.
The deposition was so contentious and strayed so far from the notice that I had to contact the judge so that the

second day could take place in the courtroom with the judge's supervision.
The testimony the plaintiffs relied on was where the witness was asked directly, witness, can you point to a single case in which Johnson & Johnson turned over testing in cases prior to 2017?
There was a lot of back and forth that Your Honor would see on the transcript where the witness said, I didn't investigate that.
I objected that that was not within the scope of the notice.
She said twice, I can't answer that, because she didn't look at it.
I preserved the objection, and as I'm required to do, I permitted her to answer in her individual capacity if she knew the answer.
And after making it clear, she said, no, I'm not aware of any case in which testing was produced prior to 2017.
Your Honor, I went through this whole long explanation, because this is very consistent with what Your Honor was saying. Trying to give these headlines and get into discovery is very, very misleading, very confusing, and as you can just understand from the one example I gave, can be very misleading (inaudible) jury to think that something was done wrong when it wasn't.

So I just want to use that one example to show Your Honor how, you know, if I say something's not correct, and Ms. Dean says it's correct, there really are two sides to that. And as Your Honor, I'm sure, doesn't want this case to get back and forth about what I just described.
But again, I wanted to give you that example. Because as you hear efforts to get -- and I'd like Your Honor to be conscious of Mr. Mittenthal and Nancy Musco, because these were witnesses that were tendered to testify, particularly Mr. Mittenthal. He was tendered to testify about document collection in discovery.
Plaintiffs' counsel here didn't take that deposition. It was taken in another case. And I think it would be entirely inappropriate for any of that testimony to come in to the jury.
So again, Your Honor, I appreciate your ruling. And I just wanted to point out that one piece, because I expect that this is going to come up again, and I just think it's important for Your Honor to understand the details of this and how they obviously relate to other issues like it.
THE COURT: All right. So my understanding is these two witnesses, Musco and Mittenthal, are the ones that are going to be the prime candidates where this issue about document retention, or lack thereof, or document destruction, and grids, and lack thereof, is going to be with these two

witnesses, right?
MS. DEAN: Your Honor, yes. And it's a little broader than that. And the other thing --
THE COURT: Well, Ms. Dean, I have got to keep us laser beam focused, because it's now 12:00.
MS. DEAN: I got it.
THE COURT: I've got to give my lower bench a full hour for lunch, and we have folks coming in close to 1:00. So we're already running behind.
So it's not that I'm trying to --
MS. DEAN: (Inaudible).
THE COURT: -- cut you off. I just -- you've got to let me finish. So I am speaking now.
It's a yes-or-no answer. Is it these two witnesses that this issue is going to be explored or want to be explored by you?
MS. DEAN: It is also with the corporate representative, Dr. Nicholson, who knows about the subject, and Musco, who was a corporate representative on the subject. I can show the jury something --
THE COURT: I don't --
MS. DEAN: I'm --
THE COURT: Okay.
MS. DEAN: Yeah.
THE COURT: So these three --

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 125

MS. DEAN: (Inaudible).
THE COURT: Those three witnesses, Nicholson, Musco, and I'm going to say his name wrong, Mittenthal, those three; is that right?
MS. DEAN: Mittenthal.
THE COURT: Mittenthal?
MS. DEAN: Yes, Your Honor. Mittenthal.
THE COURT: Okay. And are these three witnesses -- I assume, are they coming tomorrow? When are they coming? So I --
MS. DEAN: So you have the --
THE COURT: Transcript.
MS. DEAN: -- (inaudible). So that is (inaudible) contacts for Musco, Mittenthal. And you should have those today.
THE COURT: Okay.
MS. DEAN: And the summaries are what we emailed yesterday.
THE COURT: Okay. I haven't looked at any of that. I spent all last night on these other issues.
So I'm just trying to -- I'm trying to give us an idea -- a schedule. Because I want to discuss this further, if we can, the specific, you know, inquiries in this area so that we don't -- that we're not, you know, having every second objection, objection, objection, side bar, side bar, side

Page 126

bar, side bar. I'm sure we're going to have some of those.
But I'd like to revisit this before the testimony. And again, some of this may not be the perfect subject for a motion in limine because it's not specific enough. I get that.
But I just want to make sure that we will have an opportunity to look at this again, once I look at the lines and the deposition designations before you get into this issue of evidence.
MS. DEAN: I think that works, Your Honor.
THE COURT: Okay.
MS. DEAN: Like I said, unless -- unless I cannot talk about the suit, I can't -- you know, there's a lot of ways to talk about how they had a lot of reasons to know without ever talking about litigation holds or counsel.
Now, I do plan on in opening noting that the corporate representative for discovery indicated that the documents were -- when the documents were provided. That has nothing to do with litigation, but when we got the (inaudible).
And, you know, there was a claim made that, when Nancy Musco mentioned that date, she wasn't acting as a corporate representative. Page 13 to her attachment directly undermines that claim.
But I think we can handle these things as you have the context. So when Mr. Bernardo is saying, I was there, she

Page 127

wasn't a corporate representative, I mean, I can show you right now page 13 --
THE COURT: Yeah. We're not showing -- no one's going to show me anything right now.
I want to get us to a place where you can make the opening statement that you would like to make that does not violate my rules. And the opening statement, to the extent it's going to discuss the destruction or lack of retention, whatever word you folks want to use that is consistent with the evidence -- which I don't know, because you only know that, not me -- but you may refer to the fact that the testing, the grids, whatever, don't exist.
MS. DEAN: Got it.
THE COURT: But I know that you're clear that you're not going to say, and the destruction of them, at least not right now, violated numerous Court orders and other discovery violations. I know that you're not going to say that, because I'm -- you just aren't going to say that. Correct?
MS. DEAN: Correct.
THE COURT: Okay.
MS. DEAN: The documents are not here, and they're important.
THE COURT: Yeah.
MS. DEAN: And Johnson & Johnson knew they should have

Page 128

kept them. Not because of litigation, but because of the stuff I showed you during the first (inaudible). They knew it was vital, they knew it mattered, that kind of stuff.
THE COURT: All right.
MS. DEAN: No.
MR. WYATT: And, Your Honor.
THE COURT: Yes.
MR. WYATT: I'm sorry. I just want to state for the record my objection.
What Ms. Dean seems to be suggesting that she may say in her opening has something to do with when documents were produced in discovery. And again, it is the defendants' position that this is not a case about discovery, whether this case or any other case.
So I just want to note my objection. I don't want to belabor it.
Ms. Dean will say what she will, and Your Honor can address it later.
THE COURT: All right. Again, discovery violations are not for the jury to consider. It's not their place to consider them. It is the Court who rules as a matter of law as to whether or not there was a duty to preserve evidence. And I'm taking this straight out of case law.
Whether a duty to preserve evidence exists is a question of law, so it's not an issue for the jury to determine this.

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

MS. DEAN: Yeah. That's an entirely unrelated issue to discovery being destroyed. That is just -- Johnson & Johnson admitted (inaudible) you can use their admissions as -- admissions by a party opponent. It's an entirely unrelated issue.

But, and I, even before your ruling, was going to avoid talking about these issues to give us --

THE COURT: Okay.

MS. DEAN: -- a little bit of time.

THE COURT: But I did want to give you the opportunity to discuss that piece about what you can say about the fact that they don't exist. Because that is factual. And so I wanted to give you that if you wanted to put that into your opening.

All right. We're going to take -- be in recess now. We're going to return at 1:08. And we'll be a little bit behind for our jurors, but I need to give my lower bench a full hour. And we'll come.

I've already told you how we're going to do the math on this. The second my preliminary instructions are done being given to the jury, you know, whatever is left between that and 4:00, minus a 15-minute break, will be split in half. And I'll email it to you, or Mr. Hodgman will, so you know how many minutes you have. Fair enough?

MS. DEAN: Your Honor, if there are any questions about

each other's slides, we are going to be exchanging those in about five minutes.

THE COURT: Great.

MS. DEAN: I would be (inaudible) discussing them off the record. But is there any hope to discuss those with the Court at 1:00?

THE COURT: I can't imagine that the two of you or four of you or six of you are going to be able to agree to each other's presentations, your slide presentation. I just can't imagine that.

You can send me an email directly to me. I can tell you that you better figure out a way to agree, because we're not -- I am not going to spend an hour going through your slide presentations. I can't do it, and I won't do it.

So to the extent you can't come to some agreement, if it's a huge stack of slides that you want a ruling on, we're probably not going to get to it. So do your best effort to agree.

You can send them to me, the dispute. I will not -- I hope to not have a running box of 20 emails when I have other work to do during the lunch hour as well.

All right. Thank you, everyone.

MR. WYATT: Thank you, Your Honor.

MR. ADAMS: Thank you, Your Honor.

(Conclusion of May 4, 2021, morning proceedings)

C E R T I F I C A T E

STATE OF WASHINGTON)
)
COUNTY OF KING)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings or legal recordings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the electronic recording directly from the trial court conducting the hearing; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of May, 2021.

Marjorie Jackson, CET

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EXHIBIT 4

CONFIDENTIAL

TALC SUPPLY AGREEMENT

BETWEEN

WINDSOR MINERALS INC.

AND

JOHNSON & JOHNSON BABY PRODUCTS COMPANY,

A DIVISION OF

JOHNSON & JOHNSON CONSUMER PRODUCTS, INC.

DATED

JANUARY 6, 1989

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

TABLE OF CONTENTS

Section					Page
1.	Seller's Covenants				3
2.	Term of Agreement				4
	(a)	Initial Term			4
	(b)	Additional Terms			4
3.	Exclusivity; Minimum Purchases				5
	(a)	Buyer's Requirements			5
	(b)	Shear Disc			6
	(c)	Minimum Purchases			10
		(i)	Initial Term-First Five Years		10
		(ii)	Initial Term-Second Five Years		11
4.	Price				11
	(a)	Base Price			11
	(b)	Annual Price Adjustment			12
		(i)	Definitions		13
			(A)	Adjusted Price	13
			(B)	Base Deflator	13
			(C)	New Deflator	14
			(D)	Base Market Basket Price	14
			(E)	New Market Basket Price	14
			(F)	Market Basket Price Determination	14
		(ii)	Price Adjustment Factors		15
			(A)	GNP Factor	15
			(B)	Market Basket Factor	15
		(iii)	Adjustment Formula		15
		(iv)	Substitute Deflators		16
		(v)	Resetting Deflators, Prices		16
	(c)	Additional Price Adjustment			17
	(d)	Price Reopeners			17
	(e)	Hardship			18
		(i)	Buyer's Hardship		20
		(ii)	Seller's Hardship		23
5.	Orders; Payment				23
	(a)	Purchase Estimates			23
	(b)	Orders			24
	(c)	Cooperation; Priority			24
	(d)	Title; Risk; Mode of Delivery			25
	(e)	Payment			25

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Section			Page
6.	Specifications; Quality		25
	(a)	Source	25
	(b)	Quality Standards	27
	(c)	Good Manufacturing Procedures and Standard Operating Procedures	28
	(d)	Price Adjustments	28
		(i) Final Product Specifications	28
		(ii) Mining Regulations	29
		(iii) Cost Savings	30
		(iv) Column Flotation	32
	(e)	Ship-to-Stock Certification Requirements	32
	(f)	Inspection, Acceptance	33
		(i) Non-Microbiological Specifications	33
		(ii) Microbiological Specifications	34
		(iii) Event of Non-Conformance	35
	(g)	Buyer's Remedies for Non-Conformance	36
	(h)	Future Collaboration	37
7.	Secrecy		37
8.	Termination		38
	(a)	Bankruptcy	38
	(b)	Breach	39
	(c)	Sale of Assets or Business	39
9.	Force Majeure		41
	(a)	Events of Force Majeure	41
	(b)	Buyer's Force Majeure	42
	(c)	Seller's Force Majeure	43
	(d)	Limitation	44
10.	Seller's Indemnity		44
11.	Buyer's Indemnity		45
12.	Promotion		46
13.	Warranty; Apportionment		47
	(a)	Warranty	47
	(b)	Apportionment	47
14.	Product Development		49
15.	Miscellaneous		51
	(a)	Parties in Interest; Assignment	51
	(b)	Notices	51
	(c)	Entire Agreement	52
	(d)	Modification	53
	(e)	Waiver	53
	(f)	Governing Law	53

(g) Severability..... 53
(h) Headings..... 54
(i) Mutual Negotiation..... 54
(j) Obligations of Buyer..... 54

EXHIBITS

Exhibit A Good Manufacturing Procedures; Standard Operating Procedures
Exhibit B Arbitration
Exhibit C Sample Hardship Calculation
Exhibit D Argonaut and Hammondsville Ore Bodies
Exhibit E Quality Standards
Exhibit F Ship-to-Stock Certification Requirements

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

TALC SUPPLY AGREEMENT

THIS TALC SUPPLY AGREEMENT, is made and entered into this sixth day of January, 1989 (the "Agreement"), between WINDSOR MINERALS INC., a Vermont corporation ("Seller"), and JOHNSON & JOHNSON BABY PRODUCTS COMPANY, a division of JOHNSON & JOHNSON CONSUMER PRODUCTS, INC., a New Jersey corporation ("Buyer").

W I T N E S S E T H

WHEREAS, Johnson & Johnson, a New Jersey corporation (the parent of Buyer), has agreed to sell, and Cyprus Mines Corporation, a Delaware corporation, (the parent of Seller, referred to herein as "Cyprus") has agreed to purchase, all the capital stock of Seller, pursuant to an Agreement dated January 6, 1989 (the "Windsor Agreement");

WHEREAS, Seller, to date, has sold to Buyer and its corporate affiliates, all of Buyer's United States cosmetic talc requirements;

WHEREAS, Buyer sells cosmetic grade talc products in the consumer market which are manufactured from the talc Buyer purchases from Seller;

WHEREAS, Buyer desires to maintain the quality of the cosmetic talc products it produces, and therefore desires to continue to receive high quality talc from ore sources which it has qualified, or from new sources which are owned or controlled by Seller or its affiliates and approved by Buyer, which high quality talc is used by Buyer for cosmetic applications, as the term "cosmetic" is defined in the Food, Drug and Cosmetic Act, 21 U.S.C.A. § 321 (1972) (the "Talc").

WHEREAS, Seller desires to continue to sell and deliver, and Buyer desires to continue to purchase, pay for and receive Buyer's domestic requirements for Talc on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Seller's Covenants. Seller covenants to Buyer that, during the term of this Agreement, Seller shall: (a) keep proper books of record and account relating to Buyer's purchases of Talc from Seller in which true entries shall be made of its transactions in accordance with generally accepted accounting principles and the provisions of this Agreement; and (b) maintain its mining properties and processing facilities in good repair, working

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

order and condition to the extent necessary to perform Seller's obligations hereunder.

2. Term of Agreement.

(a) Initial Term. The initial term of this Agreement (the "Initial Term") shall commence on the later of the date first above written or the Closing Date specified in the Windsor Agreement (the "Commencement Date"), and, unless sooner terminated pursuant to the terms of Agreement, shall expire at the close of business on December 31, 1998. For the purposes of this Agreement, the term "Calendar Year" shall mean the twelve (12) month period commencing on any January 1 and ending on the subsequent December 31.

(b) Additional Terms. Prior to March 31, 1998, or such later date as the parties may agree, Buyer and Seller shall conclude good faith negotiations concerning amendments or modifications to this Agreement, if any, which shall apply to an additional term of five (5) years from and after January 1, 1999 (the "Additional Term"). In the event that the parties shall agree to enter into an Additional Term, the term of this Agreement may be extended for such Additional Term on the terms and conditions set forth in this Agreement, as modified by any valid amendment hereto. In the event that Buyer and Seller fail to execute a valid amendment extending this Agreement for the Additional Term on or before March 31, 1998, Buyer shall have the

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

right to solicit bids from, and to negotiate (before July 31, 1998) a talc supply agreement to be effective from and after January 1, 1999, with any third party; provided, however, that prior to entering into a talc supply agreement with such third party, Seller shall have the right, on or before October 1, 1998, to meet the terms and conditions which Buyer has reached with such third party. In the event that Seller's offer is substantially equivalent to or is more favorable than such third party's terms and conditions, Buyer shall enter into a talc supply agreement with Seller commencing January 1, 1999.

3. Exclusivity; Minimum Purchases.

(a) Buyer's Requirements. Subject to the provisions of Section 3(c) hereof, Buyer shall purchase from Seller, and Buyer shall cause all of its United States Affiliates (as such term is defined in Section 8(c) hereof) to purchase from Seller, one hundred percent (100%) of the Talc requirements of Buyer and Buyer's Affiliates for products manufactured by Buyer and Buyer's Affiliates in the United States during the first five (5) years of the Initial Term, and not less than ninety-eight percent (98%) of the Talc requirements of Buyer and Buyer's Affiliates for products manufactured by Buyer and Buyer's Affiliates in the United States during the second five (5) years of the Initial Term. (For the purposes of this Agreement, the term "Buyer" shall include Buyer's Affiliates; and the phrase "manufactured by Buyer" shall include, without limitation, the production or

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

manufacture by, for, or on behalf of, or by license or other authority of, Buyer or Buyer's Affiliates.) The assignment of this Agreement to a third party purchaser shall be a precondition to any sale of Buyer's business or assets, or the business or assets of any of Buyer's Affiliates utilizing Talc in the manufacture of consumer products, or the sale of any line of consumer products belonging to Buyer or Buyer's Affiliates. Seller shall not unreasonably withhold its consent to the assignment of this Agreement by Buyer to a third party purchaser. Provided that Buyer is not in default under the provisions of Section 5(b) hereof, Seller agrees to use its best reasonable commercial efforts to ensure Seller's ability to fill purchase orders submitted by Buyer pursuant to Section 5(b) hereof prior to committing to fill orders for third party purchasers of floated talc products from Seller's West Windsor Mill. Buyer agrees to make available to Price Waterhouse, on a confidential basis, such documentation as may be necessary in order to permit such third party to verify Buyer's compliance with Buyer's purchase requirements pursuant to this Section 3(a).

(b) Shear Disc. The Talc heretofore sold by Seller to Buyer has been manufactured using a process referred to herein as the "Shear Disc Process". That certain piece of equipment used to manufacture the Talc heretofore sold by Seller to Buyer is referred to herein as the "Shear Disc Device". Title to the Shear Disc Process and the Shear Disc Device remained in Buyer pursuant to the Windsor Agreement, and Buyer hereby agrees to

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

license the Shear Disc Process and the Shear Disc Device to Seller without fee, cost or royalty. The parties recognize that affiliates of Seller own equipment utilizing technology similar to that utilized by the Shear Disc Process. Notwithstanding the continued or future use of such similar equipment and technology by affiliates of Seller, Seller has agreed that during the Initial Term or any Additional Term hereof, Seller shall utilize Buyer's Shear Disc Device only in the manufacture of cosmetic talc products for sale to Buyer and Buyer's affiliates; provided, however, that Seller may use the Shear Disc Process or the Shear Disc Device at Seller's West Windsor Mill to produce talc products for any customer utilizing such products in non-cosmetic talc applications; and provided, further, that nothing contained herein shall preclude the use by Seller of any proprietary technology or intellectual property owned by Seller or Seller's Affiliates (as such term is defined in Section 8(c) hereof) for any purpose, whether such technology or intellectual property is similar or dissimilar to the Shear Disc Process or the Shear Disc Device. In addition, nothing contained in this Section 3(b) shall in any way restrict or impair Seller's right to use, disclose, or otherwise deal with any trade secret, information, data or other intellectual property proprietary to Buyer which: (a) at the time of the disclosure is generally available to the public or thereafter becomes generally available to the public, by publication of otherwise, through no act of Seller; or (b) Seller can show was in its possession prior to the time of the disclosure to it and was not acquired, directly or indirectly,

from Buyer or any other source bound by a confidentiality agreement with Buyer; or (c) Seller can show was received by it as a matter of lawful right after the time of disclosure from a third party who did not acquire it from Buyer or any of its parent, affiliate or subsidiary companies under an obligation of confidentiality.

During the Initial Term and any Additional Term hereof, Seller agrees to: (i) service, repair and maintain the Shear Disc Device as necessary to maintain it in good working order for the benefit of Buyer, to keep it free of all claims, pledges, liens, encumbrances, levies, attachments, security interests, or other claims affecting title thereto; and (ii) operate the Shear Disc Device in accordance with the Good Manufacturing Procedures and Standard Operating Procedures developed and practiced by Seller prior to the Commencement Date, a copy of which is attached hereto as Exhibit "A" and is by this reference incorporated herein. Such procedures may be amended from time to time as Buyer and Seller may mutually agree in writing in accordance with Sections 6(c) and 15(d) hereof.

Seller recognizes that the Shear Disc Device and its use are confidential and proprietary to Johnson & Johnson, and constitute a valuable trade secret of Johnson & Johnson. In accordance with the provisions of Section 7 hereof, but subject to the pre-existing availability of similar technology, equipment and processes, Seller agrees to take reasonable precautions during

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

the Initial Term hereof: (A) to maintain such trade secret status; (B) not to license or disclose the Shear Disc Device or the Shear Disc Process to any third party; and (C) not to duplicate in whole or in part any portion of the Shear Disc Device except as may be required for the repair or maintenance of the same of the benefit of Buyer. Buyer agrees that during the Initial Term hereof, it shall not license or disclose the Shear Disc Device or the Shear Disc Process to any third party. In the event that the parties are unable before March 31, 1998 to extend this Agreement for an Additional Term, Buyer shall have the right to disclose to third parties the existence of the Shear Disc Device and the Shear Disc Process from and after April 1, 1998. In the event that Buyer concludes an agreement for the supply of Talc from a third party, Buyer shall grant Seller a perpetual license to use the Shear Disc Device and the Shear Disc Process for the purpose of continuing to produce talc products for non-cosmetic talc applications. The consideration for such license shall be One Dollar ($1.00).

Buyer shall indemnify, defend and hold harmless Seller from and against all claims, actions, damages, costs and expenses (including attorneys' fees) arising out of any cause of action or proceeding against Seller claiming infringement, violation or other interference with any patent, trademark, trade name, trade secret or other intellectual property belonging to any third party.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

(c) Minimum Purchases.

(i) Initial Term - First Five Years. Seller recognizes Buyer's difficulty in predicting its Talc requirements scheduling more than six (6) months in advance. However, so long as Seller is not in default hereunder, Buyer shall purchase one hundred percent (100%) of Buyer's United States requirements for cosmetic talc. In no event shall Buyer purchase and receive less than fifty thousand (50,000) tons of Talc pursuant to this Agreement during the first five (5) years of the Initial Term. In the event that Buyer shall fail to purchase and receive such minimum quantity within said period, then: (A) Seller shall be relieved of its obligation to give priority to Buyer's requirements as provided in Section 3(a) hereof; and (B) Buyer shall pay to Seller within thirty (30) days following the end of the fifth year of the Initial Term an amount of damages equal to the product of: (1) the Base Price (as such term is defined in Section 4(b) hereof) applicable to purchases of less than ten thousand (10,000) tons of Talc per year during the fifth year of the Initial Term, multiplied by (2) the amount by which Buyer's minimum purchase obligation during the first five (5) years of the Initial Term (50,000 tons) exceeds the actual amount of Talc purchased by Buyer during the first five (5) years of the Initial Term, multiplied by (3) a factor of zero point six nine four (0.694). The following mathematical equation describes the amount of the foregoing damages:

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Payment = Base Price in Year Five x (50,000 tons - Actual Total Purchases in Years One through Five) x 0.694.

However, in the event that Buyer shall notify Seller of Buyer's intent to cancel or terminate this Agreement during the first five (5) years of the Initial Term, the foregoing damages shall be payable upon the effective date of such cancellation or termination, and the Base Price applicable to the foregoing formula shall be the Base Price in effect upon the effective date of cancellation or termination.

(ii) Initial Term - Second Five Years. During the second five (5) years of the Initial Term, Buyer shall have the right to purchase up to two percent (2%) of Buyer's United States cosmetic talc requirements from a supplier other than Seller, which supplier has qualified its ore source with Buyer in accordance with the provisions of Section 6(a) hereof.

4. Price.

(a) Base Price. The price which Buyer shall pay to Seller for the first ten thousand (10,000) tons of Talc purchased by Buyer during the first year of the Initial Term shall be Four Hundred Dollars ($400) per ton (the "Base Price"). In any Calendar Year during the Initial Term, Buyer

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

shall receive a discount from the Base Price of five percent (5%) per ton for each ton of Talc purchased in excess of ten thousand (10,000) tons per Calendar Year, but less than twelve thousand (12,000) tons per Calendar Year; and a discount from the Base Price of ten percent (10%) per ton for each ton of Talc purchased in excess of Twelve Thousand (12,000) tons per Calendar Year. The following table illustrates the Base Price in effect during the first Calendar Year of the Initial Term, and the discounts applicable thereto:

Tons Per Year	1989 Price
0-10,000	$400
10,001-12,000	$400 less 5% (for $380 incremental tons)
12,000+	$400 less 10% (for $360 incremental tons)

Any discount to which Buyer may be entitled shall be reflected in Seller's invoices given in accordance with Section 5 (e) hereof.

(b) Annual Price Adjustment. Except as set forth in Section 4(d) hereof, the price to be paid by Buyer shall be increased or decreased as of the first day of each Calendar Year from and after January 1, 1990 (each such date to be referred to herein as an "Anniversary Date"), from the price paid by Buyer in the immediately preceding Calendar Year in accordance with a formula giving equal weight to: (a) the proportionate increase or decrease in the published Gross National Product Implicit

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Price Deflator (the "Deflator"), as most recently published for the third quarter of each Calendar Year in the Survey of Current Business by the United States Department of Labor, Bureau of Labor Statistics; and (b) the proportionate increase or decrease in the average price of those cosmetic, non-pharmaceutical talcs sold by Cyprus during the last six (6) months of any Calendar Year, excluding sales to Buyer, which products are represented by industry code "Z" in Cyprus' sales and accounting system (the "Market Basket"). Seller and Cyprus shall be responsible for calculating the annual price adjustment as of the Anniversary Date as soon after such Anniversary Date as possible, but in no event later than March 1 of each Calendar Year. The formula to be used to make the annual adjustment is set forth in Section 4(b)(iii) hereof.

(i) Definitions. For the purposes of this Agreement, the following terms shall have the following meaning:

(A) Adjusted Price. The "Adjusted Price" shall mean the price which results from the annual adjustment of the Base Price. The Adjusted Price shall be reset annually in accordance with Section 4(b)(iii) hereof.

(B) Base Deflator. The "Base Deflator" shall mean the Deflator most recently published for the third

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

quarter of 1988 to be 122.3, using the base figure 1982 = 100. The Base Deflator shall be reset annually in accordance with Section 4(b)(v) hereof.

(C) New Deflator. The "New Deflator" is defined for the purpose of this Agreement to be the Deflator most recently published for the third quarter of the Calendar Year immediately preceding the Anniversary Date.

(D) Base Market Basket Price. The "Base Market Basket Price" shall be the average price of those products qualifying for inclusion in the Market Basket during the last six (6) months of the 1988 Calendar Year. The Base Market Basket Price shall be reset annually in accordance with Section 4(b)(v) hereof.

(E) New Market Basket Price. The "New Market Basket Price" shall be the average price of those products qualifying for inclusion in the Market Basket during the last six (6) months of the Calendar Year immediately preceding the Anniversary Date.

(F) Market Basket Price Determination. The Base Market Basket Price and the New Market Basket Price shall be determined by dividing the gross sales revenue derived from Seller's shipments of products qualifying for inclusion in the Market Basket during the last six (6) months of the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

applicable Calendar Year by the total tonnage of such shipments. Such gross sales revenue shall exclude freight charges from Seller's plant or warehouse to customers. However, no deduction from gross sales revenue shall be made for sales commissions and distributor discounts. Seller shall be responsible for determining the Base Market Basket Price and New Market Basket Price; provided, however, that Buyer may request an audit of Seller's determinations. If requested by Buyer, Seller shall retain Price Waterhouse to perform such an audit, and all expenses thereof shall be borne equally by Seller and Buyer.

(ii) Price Adjustment Factors.

(A) GNP Factor. The "GNP Factor" shall be determined by dividing the New Deflator by the Base Deflator.

(B) Market Basket Factor. The "Market Basket Factor" shall be determined by dividing the New Market Basket Price by the Base Market Basket Price.

(iii) Adjustment Formula. As of each Anniversary Date, subject to the exceptions set forth in Section 4(d) hereof, the Base Price shall be made equal to the product of: (a) the Base Price, multiplied by (b) one-half (1/2) of the arithmetic sum of the GNP Factor and the Market Basket

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Factor. The following mathematical equation describes the foregoing annual price adjustment:

Adjusted Price = Base Price x [(Market Basket Factor + GNP Factor) x 0.50].

Immediately after the annual price adjustment has been made as of the Anniversary Date in accordance with the foregoing equation, the Base Price shall be made equal to the Adjusted Price just determined.

(iv) Substitute Deflators. If any Deflator is not reasonably susceptible to the application described in this Section 4, or if any Deflator is discontinued entirely, then the parties shall in good faith agree upon a suitable substitute Deflator which provides a substantially equivalent standard for annual price adjustment purposes.

(v) Resetting Deflators, Prices. Immediately after the annual price adjustment has been made as of the Anniversary Date in accordance with Sections 4(b)(i) - (iv) hereof, the Base Deflator shall be made equal to the New Deflator which was in effect on such Anniversary Date; and the Base Market Basket Price shall be made equal to the New Market Basket Price which was in effect on such Anniversary Date. Thus, the yearly increase or decrease in the GNP Factor shall always reflect the proportionate annual increase or decrease

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

in the Gross National Product Implicit Price Deflator during the preceding twelve (12) month period ending at the end of the the third quarter of the Calendar Year just ending; and the yearly increase or decrease in the Market Basket Factor shall always reflect the proportionate increase or decrease in the average price of the Market Basket during the last six (6) months of the Calendar Year just ending, as compared to the average price of the Market Basket during the last six (6) months of the previous Calendar Year.

(c) Additional Price Adjustment Seller intends to close its Hammondsville Mine during the term hereof. Upon the date on which Hammondsville ore ceases to comprise at least twenty percent (20%) of the Talc sold to Buyer, the Base Price shall be reduced by the amount of Eight Dollars and Fifty Cents ($8.50) per ton. If Hammondsville ore is subsequently re-introduced to Talc sold to Buyer such that it comprises at least twenty percent (20%) of the Talc sold to Buyer, and such re-introduction is made at Buyer's request or in order for Seller to maintain the quality of Talc sold to Buyer, then the Base Price shall be increased by the amount of Eight Dollars and Fifty Cents ($8.50) per ton on the effective date of such re-introduction.

(d) Price Reopeners. On the Anniversary Date in 1992, 1995 and 1998, the annual price adjustment procedure set forth in Section 4(b) hereof shall be superseded by the reopener provisions of this Section 4(d). On each such Anniversary Date,

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

the Base Price effective on the Commencement Date shall be increased or decreased by the same ratio as the New Market Basket Price determined on such Anniversary Date bears to the Base Market Basket Price effective as of the Commencement Date. The new Base Price determined in accordance with the foregoing sentence shall be referred to herein as the "Reopener Price." In no event shall the Reopener Price determined pursuant to this Section 4(d) in 1992, 1995 and 1998 exceed or fall below the Base Price applicable in 1991, 1994 and 1997, respectively, by more than twenty percent (20%). The following mathematical equation describes the foregoing price reopener formula:

Reopener Price = Base Price at Commencement Date x (New Market Basket Price at Anniversary Date/Base Market Basket Price at Commencement Date), subject to 20% limitation.

Immediately after the Reopener Price has been determined on the Anniversary Date in accordance with the foregoing equation, the Base Price shall be made equal to the Reopener Price just determined.

(e) Hardship. Buyer and Seller recognize that market and industry conditions change, and that the price adjustment formulae set forth in this Section 4 may inadvertently create substantial hardship for either party. If, at any time during the first calendar quarter of any Calendar Year from and after January 1, 1995, in the reasonable business judgment of one

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

party, continued performance pursuant to such price adjustment formulae would cause substantial economic hardship to such party's business or operations, then the affected party shall give notice to the other party of such hardship. (For the purposes of this Section 4(e), the phrase "substantial economic hardship" shall mean, in the case of Seller, that the Base Price resulting from any adjustment required herein results in a price to Buyer which is less than the sum of: (a) Seller's fully-allocated operating cost to produce Talc at Seller's West Windsor mill facility, which cost shall include depreciation but exclude corporate overhead allocations from affiliates of Seller (the "Cost"), plus (b) fifteen percent (15%) of such Cost. Notice of hardship may be given only once by each party during the Initial Term of this Agreement, unless an arbitrator shall have determined that no hardship existed at the time of such party's previous notice. The provisions of this Section 4(e) shall not apply to the Additional Term, unless the parties shall so agree in accordance with Section 2(b) hereof.

Each party shall continue to abide by the price adjustment formulae set forth in this Section 4 for a period of one (1) year following such notice of hardship. During such one (1) year period, Buyer and Seller may investigate potential purchases and sales of talc from and to third parties; provided, however, that no firm contractual obligations are entered into therefor. In addition, during such one (1) year period, Buyer and Seller shall enter into good faith negotiations to determine a mutually

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

agreeable Base Price and adjustment formulae to be effective from and after the conclusion of such negotiations. In the event of dispute between Buyer and Seller as to the existence of the hardship claimed by the other party, the parties shall submit such question for arbitration in accordance with the terms and conditions set forth in Exhibit "B" attached hereto and by this reference incorporated herein. Such submission shall be made within thirty (30) days following the date of notice of hardship given by the affected party. The only issue which the arbitrator shall determine shall be the existence or non-existence of the hardship claimed by the affected party.

(i) Buyer's Hardship. In the event that mutually acceptable price adjustments and adjustment formulae have not been determined within six (6) months from the date of Buyer's notice of hardship, Buyer, at its sole option, shall give notice of its intent to: (A) continue to perform in accordance with the Base Price and the price adjustment formulae as re-negotiated by the parties; or (B) terminate this Agreement on the first anniversary of Buyer's notice of hardship. In the event that Buyer gives notice of its intent to continue to perform in accordance with the Base Price and the price adjustment formulae as re-negotiated by the parties, then the Base Price and price adjustment formulae as re-negotiated shall be effective retroactively to the date of Buyer's notice of hardship, and Seller shall issue a credit

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

to Buyer in the form mutually agreed to by Buyer and Seller as part of their negotiations.

In the event that Buyer elects to terminate this Agreement, it shall pay to Seller a lump sum amount equivalent to seventy percent (70%) of Seller's discounted lost profits through the expiration of the Initial Term. Seller's annual lost profits shall be discounted by a factor of fifteen percent (15%) per annum (the "Discount Factor"). Such payment shall be made within thirty (30) days following the effective date of termination, and shall be equivalent to seventy percent (70%) of: (I) the product of (a) the proposed Base Price last offered by Seller during negotiations with Buyer which is applicable to purchases of nine thousand eight hundred (9,800) tons of Talc per Calendar Year (the "Offer Price") escalated by a factor of four percent (4%) multiplied by (b) the amount by which Buyer's purchases of Talc in the Calendar Year in which Buyer's termination of this Agreement is effective falls below nine thousand eight hundred (9,800) tons multiplied by a factor of 0.694 (the "Lost Profit Factor"); plus (II) for each Calendar Year remaining in the Initial Term, the product of (y) the Offer Price escalated by a factor of four percent (4%) per annum multiplied by (z) nine thousand eight hundred (9,800) tons multiplied by the Lost Profit Factor multiplied by the Discount Factor. The Discount Factors applicable to the foregoing formula shall be 0.85 as of the second anniversary

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

of Buyer's notice of hardship, and 0.6775 as of the third anniversary of Buyer's notice of hardship. The following mathematical equation describes the amount payable to Seller by Buyer within thirty (30) days following the effective date of termination:

(A) Payment = 0.70 x {[(Offer Price x 1.04^1) x (9,800 tons - Actual Total Purchases in Calendar Year of Termination) x 0.694]}, in the event that Buyer's notice of termination is given during the first calendar quarter of 1997;

(B) Payment = 0.70 x {[(Offer Price x 1.04^1) x (9,800 tons - Actual Total Purchases in Calendar Year of Termination) x 0.694] + [(Offer Price x 1.04^2) x 9,800 tons x 0.694 x 0.85]}, in the event that Buyer's notice of termination is given during the first calendar quarter of 1996; and

(C) Payment = 0.70 x {[(Offer Price x 1.04^1) x (9,800 tons - Actual Total Purchases in Calendar Year of Termination) x 0.694] + [(Offer Price x 1.04^2) x 9,800 tons x 0.694 x 0.85] + [(Offer Price x 1.04^3) x 9,800 tons x 0.694 x 0.675]}, in the event that Buyer's notice of termination is given during the first calendar quarter of 1995.

Two sample calculations of the amount payable to Seller by Buyer in the event of Buyer's termination of this Agreement pursuant to

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

this Section 4(e)(i) are set forth on Exhibit "C" attached hereto and by this reference incorporated herein.

(ii) Seller's Hardship. In the event that mutually acceptable price adjustments and adjustment formulae have not been determined within six (6) months from the date of Seller's notice of hardship hereunder, Seller, at its sole option, shall give notice of its intent to: (a) terminate this Agreement on the first anniversary of Seller's notice of hardship; or (b) continue to perform in accordance with the Base Price and the price adjustment formulae as re-negotiated by the parties. In the event that Seller shall give notice of its intent to continue to perform in accordance with the Base Price and the price adjustment formulae as negotiated by the parties, then the Base Price and price adjustment formulae as re-negotiated shall be effective retroactively to the date of Seller's notice of hardship, and Buyer shall issue a credit to Seller in the form mutually agreed to by the parties as part of their negotiations.

5. Orders; Payment.

(a) Purchase Estimates. In order to assist Seller in its production planning, prior to the first day of each calendar quarter, Buyer shall provide Seller with a non-binding good faith estimate of Buyer's talc requirements for the subsequent twelve month period.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

(b) Orders. Not less than five (5) calendar days prior to the first business day of each calendar month, Buyer shall submit to Seller binding purchase orders covering the next succeeding six (6) months. Orders for the first three (3) months of such six (6) month period may not be cancelled or modified by Buyer; provided, however, that Buyer and Seller may agree to minor scheduling or delivery modifications. Buyer may modify any of such six (6) month orders with respect to only the last three (3) months of such six (6) month period by delaying acceptance of Seller's Talc deliveries by not more than forty-five (45) days. The parties intend for the procedure set forth in this Section 5(b) to provide a rolling six month order schedule. To the extent possible, consistent with Buyer's production requirements, Buyer's six (6) month purchase orders shall specify deliveries by Seller representing approximately equal monthly shipments over such six (6) month period.

(c) Cooperation; Priority. Seller shall use its best reasonable commercial efforts to provide Buyer with priority in Seller's production scheduling from Seller's West Windsor Mill in accordance with Section 3(a) so long as Buyer is not in default hereunder and has satisfied its order requirements as set forth in this Section 5, and its minimum purchase requirements as set forth in Section 3(c) hereof.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

(d) Title; Risk; Mode of Delivery. Title to and risk of loss of Talc shall pass from Seller to Buyer upon loading of Talc into rail cars F.O.B. Ludlow, Vermont, or into bulk trucks F.O.B. West Windsor, Vermont. Buyer may, at its election, take delivery of Talc in flexible intermediate bulk bags at an additional price to be negotiated by the parties; provided, however, that Seller has available both the equipment and the capacity necessary to supply Talc in flexible intermediate bulk bags. Any increase in the price which results from Buyer's acceptance of Talc in flexible intermediate bulk bags shall be realized by Buyer as a direct addition to the Base Price for Talc sold to Buyer in flexible intermediate bulk bags. [redacted] responsible for the quality and cleanliness of any transportation vessel supplied to Seller by Buyer at Ludlow, Vermont or elsewhere for loading and transportation of Talc purchased by Buyer.

(e) Payment. Seller shall invoice Buyer on the date of each shipment of Talc from Ludlow, Vermont or West Windsor, Vermont. Buyer shall pay Seller the purchase price for all Talc purchased by it not later than thirty (30) days following the date of Seller's invoice.

6. Specifications; Quality.

(a) Source. Seller covenants that all Talc sold to Buyer hereunder shall be produced solely from the Argonaut or

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Hammondsville ore bodies (as the same are described in Exhibit "D" attached hereto and by this reference incorporated herein), or from such other deposits as may be approved by Buyer, in all cases employing selective mining techniques carefully designed to avoid ore contaminants. Buyer and Seller acknowledge that the Argonaut and Hammondsville ore bodies are qualified and approved by Buyer for Buyer's cosmetic talc applications, subject to such selective mining techniques. Ore bodies or ore sources which may in the future become qualified and approved by Buyer shall be shown on a revised Exhibit "D" hereto. Buyer and Seller agree to cooperate in the qualification and approval of new ore sources suitable for the production of Buyer's consumer talc products. Seller shall provide Buyer with samples and laboratory test data showing that ore from one or more new sources meets Buyer's specifications, and Buyer shall use its best reasonable efforts to verify and confirm such data and to qualify and approve such new ore sources as may meet Buyer's requirements, including, without limitation, Buyer's organoleptic requirements. Buyer shall grant such qualification or approval as expeditiously as possible, and in no event shall any such approval or qualification be unreasonably withheld. All testing by Buyer in the qualification of new ore sources shall be performed in good faith in accordance with those methods and procedures heretofore developed by Buyer to identify desirable attributes of talc ore bodies, which methods and procedures shall not be changed by Buyer without Seller's prior written consent, which consent shall not be unreasonably withheld. Seller shall have the right to

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

request that testing for qualification of any new ore source be repeated. Notwithstanding the foregoing, Buyer shall have the right to test talc product samples supplied by Seller's competitors at any time during the term of this Agreement, and to qualify the ore source from which such sample derives; provided, however, that in the event Buyer qualifies an ore source owned or controlled by a third party, Buyer shall inform Seller of such event within thirty (30) days thereof. Nothing set forth in this Section 6(a) shall limit: (a) Seller's right to attempt to qualify ore sources owned or controlled by Seller; or (b) Buyer's obligations to purchase Talc pursuant to the terms of this Agreement.

(b) Quality Standards. Seller covenants that all Talc sold to Buyer shall conform to the quality standards set forth in Exhibit "E" attached hereto and by this reference incorporated herein, including without limitation the specifications set forth in BPC specification #8-006, a copy of which is included in Exhibit "E". Buyer and Seller recognize that the standards set forth in Exhibit "E" may require modification from time to time to conform to applicable governmental regulations. Such specifications may also be modified by the mutual agreement of the parties as evidenced by a writing made and entered into in accordance with Section 15(d) hereof.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

(c) Good Manufacturing Procedures and Standard Operating Procedures. Seller covenants that all Talc sold to Buyer shall have been manufactured in conformance with the Good Manufacturing Procedures and Standard Operating Procedures set forth in Exhibit "A", as the same are required to be modified from time to time to conform to applicable governmental regulations. Such specifications may also be modified to meet the reasonable needs of Buyer or Seller, which modifications shall be determined by the mutual agreement of the parties as evidenced by a writing made and entered into in accordance with Section 15(d) hereof.

(d) Price Adjustments. Buyer and Seller have agreed that certain costs of meeting and complying with changes in Buyer's specifications shall be allocated to the parties as follows:

(i) Final Product Specifications. All costs incurred by Seller in meeting and complying with changes in Buyer's final product specifications, which changes are required by rules or regulations promulgated by federal, state or local governmental agencies or bodies having the authority to do so, shall be for Buyer's account in the form of price increases sufficient to offset Seller's annual increased out-of-pocket expenses, or higher unit costs from lost productivity, plus additional depreciation. Buyer and Seller agree to negotiate in good faith price adjustments to compensate Seller for additional costs incurred by Seller in

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

meeting and complying with changes in Buyer's final product specifications, which changes are required or requested by Buyer for reasons other than that such changes are required by governmental agencies. Any price adjustment made pursuant to this Section 6(d)(i) shall be in the form of a permanent increase to the Base Price; and the amount of any such increase shall be included in the Base Price for escalation or reopener purposes pursuant to Sections 4(b) and 4(d) hereof.

(ii) Mining Regulations. All costs incurred by Seller in meeting and complying with any newly-promulgated regulations pertaining directly and solely to mining, mine safety and health practices and procedures, shall be for Seller's account. However, Buyer and Seller shall share equally, on a case-by-case basis, all costs incurred by Seller in meeting and complying with any rule or regulation promulgated by federal, state or local governmental agencies or bodies having the authority to do so, which requires Seller to conduct more difficult or more expensive mining, milling or other beneficiation methods, procedures or practices in order to meet Buyer's specifications; provided, however, that Buyer shall have no obligation to share such costs until such costs exceed, on a cumulative basis, Ten Dollars ($10) per ton of beneficiated talc; and provided, further, that Buyer shall have no obligation to share such costs once Buyer's portion

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

of such costs exceed, on a cumulative basis, Forty Dollars ($40) per ton of beneficiated talc. Buyer shall realize its portion of such costs in the form of a permanent increase to the Base Price, and the amount of Buyer's portion of such costs shall be included in the Base Price for escalation and reopener purposes pursuant to Sections 4(b) and 4(d) hereof. Within sixty (60) days following the effective date of an increase to the Base Price pursuant to this Section 6(d)(ii), Buyer may request that Price Waterhouse verify that the sum of Buyer's and Seller's portions of such increase reasonably reflects the cost of complying with any such newly-promulgated rule or regulation.

(iii) Cost Savings. One Hundred Percent (100%) of any cost savings realized as a result of operating efficiencies or productivity gains made by Seller after the Commencement Date, or as a result of any other operating changes instituted by Seller which do not require Buyer's prior approval hereunder, shall be for Seller's sole account. However, in the event that Seller realizes cost savings by virtue of Seller's utilization of ore sources qualified pursuant this Section 6 but not located in Vermont, or by virtue of its implementation of changes in the Good Manufacturing Procedures and Standard Operating Procedures set forth in Exhibit "A", or in the BPC specification #8-006, which changes were suggested by either party and accepted by

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

both parties, then such cost savings shall be allocated as follows on a case-by-case basis:

(A) Where no capital investment is necessary to implement a particular cost-saving change, or where the capital investment necessary to implement such change is less than Ten Thousand Dollars ($10,000), Seller shall realize one hundred percent (100%) of such cost savings for the first twelve (12) months following that date which the parties agree to have been the date of permanent implementation of such cost-saving change. After such initial twelve (12) month period, or after Seller has recovered the full cost of such capital investment, whichever is later, Buyer and Seller shall share equally in such cost savings, with Buyer realizing such cost savings through a permanent reduction in the Base Price.

(B) Where the capital investment necessary to implement a particular cost-saving change exceeds Ten Thousand Dollars ($10,000), Buyer and Seller agree to negotiate in good faith an equitable sharing of the realized cost savings, recognizing that the party or parties making such capital investment must recover the investment made.

The amount of any cost savings which permanently reduces the Base Price pursuant to this Section 6(d)(iii) shall be included in the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Base Price for escalation and reopener purposes pursuant to Sections 4(b) and 4(d) hereof.

(iv) Column Flotation. As of the date first above written, Seller is installing and/or testing a flotation system at its West Windsor grinding facility which is different from that historically utilized by Seller, which flotation system may result in quantifiable cost savings to Seller. Notwithstanding any other provision of this Section 6(d), after Seller, in its reasonable judgment, shall have recovered the full cost of the design, construction, installation and testing of such flotation system (assuming Seller's cost of capital to be ten percent (10%) per annum), then Seller shall share such cost savings with Buyer. After Seller shall have recovered such costs, Buyer shall realize such cost savings through a one time, permanent reduction in the Base Price equivalent to thirty-three percent (33%) of the realized unit cost savings as reasonably determined by Seller.

Not using

(e) Ship-to-Stock Certification Requirements. Seller shall comply with the ship-to-stock certification requirements attached hereto as Exhibit "F", and by this reference incorporated herein.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

(f) Inspection, Acceptance.

(i) Non-microbiological Specifications. Seller shall take and prepare a composite sample from those silos at Seller's West Windsor milling facility which are or which will be dedicated to the storage of Talc prior to final shipment of such to Buyer (the "Certification Sample"), in accordance with the methods and procedures practiced by Seller on the date of this Agreement, or as refined or codified pursuant to Section 6(h) hereof. The Certification Sample shall be split into three (3) sealed portions and retained for use in the event of dispute concerning the conformity of any shipment to Buyer's non-microbiological specifications. Two (2) sealed portions of the Certification Sample shall be retained by Seller, and one sealed portion shall be forwarded immediately to Buyer. Buyer shall test each sample for contamination immediately upon receipt of the same in accordance with Buyer's practices on the date of this Agreement, as such practices may be modified from time to time by the mutual agreement of the parties. Such testing shall be at Buyer's sole expense. All sealed portions of the Certification Sample shall be retained by Buyer and Seller in accordance with their respective established practices.

In the event that Buyer conducts analytical testing on the Certification Sample for non-microbiological parameters, Buyer shall forward the results of such tests to Seller as soon as possible. In the event of dispute between the parties concerning

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

conformance to any of Buyer's non-microbiological specifications as described on Exhibit "E", Buyer shall give written notice of such dispute to Seller as soon as possible. Immediately after such notice, each party agrees to submit its sealed portion of the Certification Sample to a mutually satisfactory third party laboratory. Seller shall also submit to the laboratory a third untested, sealed portion of the Certification Sample. Such laboratory shall determine, in its judgment, whether the shipment conforms with Buyer's specifications as evidenced by the Certification Sample. The decision of the third party laboratory shall be final, and all costs and expenses pertaining to such testing by the third party laboratory shall be shared equally.

(ii) Microbiological Specifications. On a daily basis, Seller shall take and prepare for microbiological examination samples from each production shift at Seller's West Windsor milling facility (the "Shift Sample"), in accordance with the methods and procedures practiced by Seller on the date of this Agreement, or as refined or codified pursuant to Section 6(h) hereof, and shall send a portion of the Shift Sample to Buyer. Buyer shall give written notice of any non-conformance of the Shift Samples to any of Buyer's microbiological specifications as described on Exhibit "E" as soon as possible, but in no event later than fourteen (14) calendar days following shipment of each Shift Sample to Buyer, or shall waive its right to claim any non-conformance of Seller's Talc with Buyer's microbiological specifications. Seller shall not release for

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

shipment to Buyer any Talc contained within a silo for which Seller has not received Buyer's approval for all Shift Samples relating to such silo.

(iii) Event of Non-Conformance. Seller, within a reasonable period of time after the final determination of a non-conformance, shall: (i) arrange for return to Seller or an Affiliate of Seller (as such term is defined in Section 8(c) hereof), at Seller's sole cost and expense, such Talc as is finally determined to be out of conformance with Buyer's specifications; (ii) replace such Talc as is finally determined to be out of conformance with Buyer's specifications; and (iii) compensate Buyer for the freight costs of any truckload or carload rejected for non-conformance in accordance with this Section 6(f). Upon return of non-conforming Talc to Seller or Seller's Affiliates, Seller or Seller's Affiliates may: (a) sell such non-conforming Talc to any third party utilizing talc in non-cosmetic applications; or (b) re-process such non-conforming Talc, or blend such non-conforming Talc with other talcs manufactured by Seller or Seller's Affiliates, and sell such re-processed or blended talc to any third party customer, including those customers utilizing talc in cosmetic applications; provided, however, that in either of the foregoing cases, such resold, reprocessed or blended talc no longer shall be: (i) identifiable as talc once supplied to Buyer; or (ii) otherwise associated with the name of Buyer or Buyer's Affiliates. No Talc rejected by Buyer shall be resold to

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Buyer. Upon the resale or other disposal of non-conforming Talc to a third party, Seller shall provide written verification to Buyer that such sale or other disposal was made in accordance with this Section 6(f).

(g) Buyer's Remedies for Non-Conformance. In the event that Talc sold by Seller fails to conform to the quantity or quality requirements set forth in Section 5 hereof and this Section 6, and said non-conformity is not corrected within forty-five (45) days following notice by Buyer, Seller may elect, if commercially practicable, to substitute product from those other approved sources described in Exhibit "D", whether or not such sources are owned or leased by Seller or Seller's affiliates, at a delivered price equal to Buyer's delivered cost for Talc from Seller's West Windsor Mill. Such substitution shall be made with Buyer's prior written consent, which consent shall not be unreasonably withheld. In the event that Seller is unable to supply an acceptable substitute Talc: (a) Buyer may be relieved of its obligations under Section 3(a) hereof to buy Talc exclusively from Seller; (b) Buyer's minimum purchase obligations pursuant to Section 3(c) hereof shall be reduced by the amount of Talc thereafter bought from third parties during such period of non-conformance; and (c) Seller may, at Seller's sole option terminate this Agreement without liability for such termination. Except in the case of Seller's fraud, willful misconduct or gross negligence, and except as otherwise provided in Section 13(b) hereof, Buyer's remedies for non-conformance of goods as set

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

forth in this Section 6(g) shall be the sole and exclusive remedy for non-conformance available to Buyer.

(h) Future Collaboration. The parties recognize that the operation of Seller as a business entity no longer under common ownership with Buyer may necessitate adjustments in the methods used to assure the quality of Talc delivered hereunder. Accordingly, Buyer and Seller agree that for a two-year period after the Commencement Date, they will collaborate to refine and codify current methods and practices such that the quality standards described on Exhibit "E" in effect from time to time may be reliably achieved and verified. Any such refinements and codifications shall be made by the mutual agreement of Buyer and Seller in accordance with Sections 6(c) and 15(d) hereof.

7. Secrecy. Except as otherwise provided in this Agreement or as otherwise required by law, each party shall hold as confidential, and shall neither use for its own benefit nor disclose, directly or indirectly, to third parties any information disclosed by or received from the other party and pertaining to the other party's business and affairs, including without limitation: raw materials and finished product specifications, standards and tests; procedures, methods and costs involved in mining and manufacture; prices and quantities of product purchased; quantities of raw materials and quantities of finished product held in inventory at any location; manufacturing schedules; quantity of unfilled purchase orders on

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

hand from time to time; purchase volume forecasts and/or plans; new or proposed products; and experience data on product and manufacturing performance.. The provisions of this Section 7 shall survive the termination or expiration of this Agreement for a period of five (5) years following such termination or expiration. Nothing contained in this Section 7 shall in any way restrict or impair the right of either party to use, disclose, or otherwise deal with any information or data which: (a) at the time of the disclosure is generally available to the public or thereafter becomes generally available to the public, by publication of otherwise, through no act of either party; or (b) the party can show was in its possession prior to the time of the disclosure to it and was not acquired, directly or indirectly, from the other party or any other source bound by a confidentiality agreement with the other party; or (c) the party can show was received by it as a matter of lawful right after the time of disclosure from a third party who did not acquire it from the other party or any of its parent, affiliate or subsidiary companies under an obligation, the party is free to disclose it to other.

8. Termination. This Agreement may be terminated by either party in the following circumstances:

(a) Bankruptcy. Termination shall be effective immediately upon notice to the terminated party if the terminated party: (i) files or has filed against it a petition under the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Federal Bankruptcy Code or any other comparable law which is not dismissed or stayed within thirty (30) days; (ii) makes an assignment for the benefit of creditors or has a receiver appointed for it; or (iii) otherwise takes advantage of laws designed for the relief of debtors.

(b) Breach. In the event that one party materially breaches any representation, warranty, covenant or agreement in this Agreement (except for the minimum purchase requirements set forth in Section 3(c) hereof) or fails to conform to the quantity and quality requirements set forth in Sections 5 and 6 hereof, the non-breaching party may give notice of its intent to terminate, stating therein the grounds therefor. The party receiving the notice shall have ninety (90) days from the date of receipt thereof to cure said breach. In the event such breach is cured, such notice of termination shall be of no force or effect. In the event such breach is not cured, and is not the result of an Event of Force Majeure (as such term is defined in Section 9 hereof), and does not give rise to remedies available to the parties elsewhere in this Agreement, this Agreement shall, without more, terminate at the end of said ninety (90) day period.

(c) Sale of Assets or Business. For the purpose of this Agreement, the term "Parent" shall mean Johnson & Johnson, a New Jersey corporation, or Cyprus Minerals Company, a Delaware corporation; and the term "Affiliate" shall mean any entity which

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

is fifty percent (50%) or more owned by a Parent, any entity which is fifty-percent (50%) or more owned by an Affiliate, or any operating division of any Parent or Affiliate.

This Agreement may be terminated by Buyer in the event that Cyprus Minerals Company or any of its Affiliates, shall transfer or sell all or a substantial portion of the assets of, or the business of, its United States Talc business to a third party who is not a Parent or an Affiliate; provided, however, that Buyer's notice of termination therefor must be given at least one (1) year prior to the effective date of such termination, and must be given within one (1) year from the date on which such transfer or sale shall close; and provided, further, that Buyer shall not terminate this Agreement unless and until it shall have determined, in the good faith exercise of its reasonable and prudent business judgment that such transfer or sale would create a substantial possibility of a material and adverse affect on the security and quality of Buyer's long term talc supply. The factors which Buyer may consider in the good faith exercise of its reasonable and prudent business judgment shall include, without limitation: the quality of maintenance of, and level of continued capital investment in, Seller's mines and mills; the quality of cosmetic Talc sold by Seller; the quality and experience of Seller's key management, including production and quality assurance personnel; and the effect of such sale or transfer upon the public's perception of Johnson & Johnson, the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Affiliates of Johnson & Johnson, or the end-use products of such entities.

9. Force Majeure.

(a) Events of Force Majeure. If either party shall be prevented by any Event of Force Majeure (as defined below) from the timely performance of any of its obligations hereunder, save and except the making of payments as provided herein, the obligation of performance shall be excused and shall not be a ground for cancellation or termination or default. The party suffering the Event of Force Majeure shall use reasonable diligence to remedy such, but shall not be required to contest the validity of any law or regulation or any action or inaction of civil or military authority, or to prevent or settle any strike or labor dispute. As used herein, the term "Event of Force Majeure" shall mean any cause, act or occurrence beyond a party's reasonable control, including, without limitation: laws or regulations, action or inaction of civil or military authority; inability to obtain any license, permit or other authorization that may be required; unusually severe weather; mining casualty; unavoidable mine or mill shutdown; damage to, or destruction of mine or mill, plant or facility; fire, explosion, or flood; insurrection; riot; labor disputes; delay in transportation; and acts of God. Should any of these events occur to Seller, Seller may reduce the quantities of Talc it is obligated to deliver hereunder and allocate the reduced supply,

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

whenever practical on a pro rata basis, among all of its cosmetic talc customers as Seller in its sole discretion deems appropriate, or cease deliveries entirely without any liability whatsoever for any such delivery of reduced amounts of Talc or no delivery of Talc; provided, however, that Buyer may purchase, from any third party sources approved by Buyer, such portion of Buyer's normal requirements as may be unfulfilled as a result of Seller's pro rata allocation and Seller's inability to supply Talc from alternate sources pursuant to Section 9(c) hereof. Such purchases shall reduce Buyer's minimum purchase obligations pursuant to Section 3(a) and 3(c) hereof by the amount of such purchases.

(b) Buyer's Force Majeure. Should Buyer suffer an Event of Force Majeure thereby affecting Buyer's ability to accept deliveries of Talc, Buyer may reduce the quantities of Talc it orders or accepts. In the event Buyer reduces the quantity of Talc it accepts for a period of greater than sixty (60) days, Seller may reduce the quantities of Talc it is obligated to deliver hereunder or cease deliveries entirely in an amount equal to such reduction by Buyer without any liability for such delivery of reduced amounts of Talc or no delivery of Talc. In the event that Buyer reduces the quantity of Talc it accepts for a period of greater than one hundred and eighty (180) days, Seller, at its option, may terminate this Agreement. Buyer's minimum purchase obligation pursuant to Section 3(a) hereof shall not be reduced by the quantity of Talc not accepted by Buyer

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

during an Event of Force Majeure; provided, however, that the Initial Term of this Agreement shall be extended for a period equal to the duration of Buyer's Event of Force Majeure, if necessary, to enable Buyer to meet such minimum purchase obligations.

(c) Seller's Force Majeure. Should Seller suffer an Event of Force Majeure thereby affecting Seller's ability to make deliveries of Talc from Seller's West Windsor Mill, Seller shall use reasonable efforts to supply Buyer with Talc for Buyer's domestic talc requirements from another source qualified by Buyer in accordance with Section 6(a) hereof, whether or not owned or controlled by Seller; provided, however, that in the event that more than one such source of Talc has been qualified by Buyer, Buyer may prioritize such sources and accept deliveries of alternate Talc from such sources in accordance with such prioritization; and provided, further, that Seller shall have no liability in the event of its inability, by reason of unavailability, to supply Talc from an alternate source with a priority higher than that from which Seller is able to supply alternate Talc. Seller's obligation to supply Talc from alternate sources shall be limited to the extent to which Talc is commercially available from qualified sources in quantities sufficient to meet Buyer's requirements. For a period of one hundred and twenty (120) days, the price of alternate Talc to be delivered to Buyer shall be the same as the delivered price to Buyer of Talc delivered from Seller's West Windsor Mill on the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

calendar day preceding the cessation or reduction of deliveries therefrom. On or before the expiration of such one hundred and twenty (120) day period, Seller shall notify Buyer of: (i) its intent to continue supplying Buyer with alternate Talc at the delivered price for Talc delivered from the West Windsor Mill, or (ii) its intent to declare an Event of Force Majeure and indicate Seller's permanent inability to supply Talc. In the event that Seller shall declare an Event of Force Majeure in accordance with this Section 9(c): (A) Seller shall continue to supply alternate Talc to Buyer at the price in effect during the preceding one hundred and twenty (120) day period for an additional sixty (60) days; (B) this Agreement shall then terminate at the close of business on such sixtieth (60th) day; and (C) Seller shall have no further obligation or liability whatsoever pursuant to this Agreement.

(d) Limitation. The provisions of this Section 9 shall not be invoked merely to delay or suspend deliveries of Talc to Buyer, or to delay or suspend acceptance of, or payment for, Talc delivered to Buyer, absent, in the good faith estimation of the party invoking such provisions, an Event of Force Majeure.

10. Seller's Indemnity. Seller shall indemnify, defend and hold harmless Buyer, and its affiliates, and each of their respective directors, officers, employees, and agents from and against all liabilities arising out of any violation by Seller of any law, ordinance, regulation or rule or the order of any court or

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

administrative agency, and from and against all liabilities arising out of any claim by an employee, agent, or contractor of Seller arising in connection with this Agreement; provided, however, that Seller shall not indemnify Buyer for any such liabilities to the extent that such liabilities arise from: (i) the acts or omissions of Buyer; or (ii) the acts or omissions of Seller which were directed by Buyer. The provisions of this Section 10 shall survive the termination or expiration of this Agreement.

11. Buyer's Indemnity. Buyer shall indemnify, defend and hold harmless Seller, and its affiliates, and each of their respective directors, officers, employees, and agents from and against all liabilities arising out of any violation by Buyer of any law, ordinance, regulation or rule or the order of any court or administrative agency, and from and against all liabilities arising out of any claim by an employee, agent, or contractor of Buyer arising in connection with this Agreement; provided, however, that Buyer shall not indemnify Seller for any such liabilities to the extent that such liabilities arise from: (a) the acts or omissions of Seller; or (b) the acts or omissions of Buyer which were directed by Seller. In addition, Buyer shall indemnify, defend and hold harmless Seller, and its affiliates, and each of their respective directors, officers, employees and agents from and against all liabilities arising out of any product liability-based claim, suit, demand or cause of action directed against Seller or any of Seller's affiliates: (i)

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

arising out of the sale of cosmetic talc products to consumer markets, which products were manufactured by Seller prior to the date first above written; or (ii) for which Buyer is directly or indirectly responsible as a result of Buyer's possession, use or processing of Talc delivered to Buyer pursuant to this Agreement, or as a result of Buyer's manufacture, shipment and sale of Talc-containing product (including without limitation, baby powder and adult powder) derived from Talc delivered to Buyer pursuant to this Agreement; provided, however, that Buyer shall have no obligation of indemnification pursuant to this Section 11 in the event that the Talc delivered to Buyer hereunder did not conform to the specifications for such Talc then in effect, and such variance from such specifications was a material contributing factor in the claim, suit, demand or cause of action being asserted. For the purposes of this Section 11, the term "Buyer" shall include Buyer and Buyer's Parent and Affiliates as such terms are defined in Section 8(c). The provisions of this Section 11 shall survive the termination or expiration of this Agreement.

12. Promotion. Each party hereby warrants that it will not use any trademark, trade name or representation of the products or services of the other party or its affiliates, or refer directly or indirectly to the other party, its affiliates, or the products or services of the other party or its affiliates, without in any case obtaining the prior written permission of the other party.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

The provisions of this Section 12 shall survive the termination or expiration of this Agreement.

13. Warranty; Apportionment.

(a) Warranty. Seller represents and warrants that all Talc sold by Seller shall conform to the quality standards set forth in Exhibit "E." SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, IN FACT OR BY LAW, WHETHER OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR OTHERWISE. Buyer represents and warrants, based on its expertise in the industry and its intimate familiarity with selective mining techniques of qualified ore bodies, the Good Manufacturing Procedures and Standard Operating Procedures described on Exhibit "A", and the sampling and testing methods described therein, as the same may be modified by the mutual agreement of the parties pursuant to Section 6(c) hereof, that such mining practices, processing procedures and testing methods, if practiced by Seller in the manner practiced by Seller on the date of this Agreement, are adequate to produce talc products meeting the specifications for Talc set forth in Exhibit "E".

(b) Apportionment. Buyer and Seller agree that liability for damages alleged to have been suffered by Buyer and Seller arising out of an alleged breach of the foregoing warranty shall be apportioned as follows:

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

(i) Seller shall indemnify Buyer for any cost, loss, damage or expense suffered by Buyer in the event that Buyer can demonstrate that either: (A) the Certification Sample proves that Seller's Talc did not meet the specifications therefor as described on Exhibit "E" except for the microbiological specifications set forth therein, before title to such Talc passed to Buyer, and the variance from such specifications was a material contributing factor in the claim, suit, demand or cause of action being asserted; or (B) that Seller failed to sample and test Talc in accordance with the sampling and testing methods described on Exhibit "A" in the manner practiced by Seller on the date of this Agreement or as modified by the mutual agreement of the parties pursuant to Section 6(c) hereof, and that Seller's failure to so sample and test Talc was a material contributing factor in the claim, suit, demand or cause of action being asserted; provided, however, that Seller's obligation to indemnify Buyer shall not exceed Twenty Million Dollars ($20,000,000) in the absence of Seller's gross negligence or willful misconduct, and Forty Million Dollars ($40,000,000) in the event of Seller's gross negligence or willful misconduct;

(ii) Seller shall be solely liable in the event that Buyer can demonstrate a shipment of Seller's Talc failed to conform, as evidenced by the Shift Sample, to the microbiological quality standards set forth in Exhibit "E" before title to such Talc passed from Seller to Buyer;

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

provided, however, that Seller's liability pursuant to this Section 13(b)(ii) shall be limited to replacement of Talc and reimbursement of certain of Buyer's freight costs in accordance with Sections 6(f) and 6(g) ~~hereof;~~

(iii) Buyer shall be solely liable for, and shall indemnify Seller for, any cost, loss, damage or expense suffered by Buyer or Seller arising out of the failure of Buyer's finished products to conform to the microbiological quality standards established therefor, as the same may be amended from time to time; and

(iv) Buyer shall indemnify Seller for any cost, loss, damage or expense suffered by Seller in the event that the Certification Sample proves that Seller's Talc met the specifications therefor, as described on Exhibit "E", before title to such Talc passed to Buyer.

Nothing contained in this Section 13(b) shall be construed to limit or conflict with the terms and conditions set forth in Sections 10 and 11 hereof, which shall be construed consistently with or in addition to the obligations set forth in this Section 13(b).

14. Product Development. Buyer and Seller acknowledge that Buyer's talc marketing expertise and Seller's technical expertise may be used to the mutual benefit of the parties. Therefore,

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Buyer and Seller may agree to collaborate in the development of new body powders, toiletries or other talc-containing consumer products. In the event that Seller shall develop a new, proprietary, talc-containing body powder or toiletry, Seller shall provide to Buyer under mutually satisfactory obligations of confidentiality, sufficient information concerning such application to permit Buyer to determine Buyer's interest in further collaboration therein. Buyer shall have ninety (90) days following the date of Seller's disclosure to determine Buyer's interest in such collaboration. In the event Buyer and Seller collaborate in the development of a new application, Buyer shall have the exclusive right to market the same, and Seller shall be the exclusive supplier of talc therefore pursuant to the terms and conditions set forth herein. Any additional terms which may be required by the parties but which are not addressed herein shall be negotiated to the mutual satisfaction of Buyer and Seller. In the event that Buyer and Seller fail to agree upon any material additional term, Buyer and Seller may proceed independently with the development, marketing and sale of the new product in question, subject to any patent, trade mark, trade secret or other intellectual property rights or interests of Seller in such new product, and subject further to any obligation of confidentiality between the parties.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

15. Miscellaneous

(a) Parties in Interest; Assignment. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Agreement is not made for the benefit of any person, firm, corporation or other entity not a party hereto, and nothing in this Agreement shall be construed to give any person, firm, corporation or other entity, other than the parties hereto and their respective successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof. This Agreement may not be assigned or transferred in whole or in part by any party hereto without the prior written consent of the other party, and any attempt to assign or transfer this Agreement or any part thereof in violation of this Section 15(a) shall render such attempted assignment or transfer void and of no effect. Notwithstanding the foregoing, Seller may assign this Agreement to any of its Affiliates upon giving notice of such assignment to Buyer.

(b) Notices. Any notice, request, consent, waiver or other communication required or permitted to be given hereunder shall be effective only if made or given in writing and shall be deemed sufficiently given only if delivered in person or sent by telegram, cable, telecopier, or by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

If to Seller:

Windsor Minerals Inc.
c/o Cyprus Mines Corporation
9100 East Mineral Circle
Englewood, Colorado 80112
Attn: Vice President - Industrial Minerals

With concurrent copy to:

Cyprus Mines Corporation
9100 East Mineral Circle
Englewood, Colorado 80112
Attn: General Counsel

If to Buyer:

J & J Baby Products Company
c/o Johnson & Johnson Consumer Products, Inc.
501 George Street
New Brunswick, New Jersey 08903
Attn: Director of Procurement

With concurrent copy to:

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, New Jersey 08933
Attn: General Counsel

or to such other person or address as such party may have specified in a notice duly given as provided herein. Such notice or communication shall be deemed to have been given as of the date of delivery or transmission.

(c) Entire Agreement. This Agreement (including the Exhibits attached hereto and incorporated herein) constitutes the entire agreement and understanding of the parties relating to the subject matter hereof, and the same shall supersede all prior and

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to the subject matter hereof.

(d) Modification. This Agreement cannot be changed and no performance, term or condition may be waived in whole or in part except by a writing executed by a duly authorized officer of Buyer and Seller.

(e) Waiver. Except as specifically set forth herein, failure or delay by either party hereto to require performance of any provision of this Agreement shall not affect its right to require full performance thereof at any time thereafter, and the waiver of a breach of any provision shall not constitute a waiver of any breach of any other provision or of the same provision at any time thereafter.

(f) Governing Law. The terms and conditions of this Agreement shall be interpreted in accordance with and construed pursuant to the Uniform Commercial Code as from time to time in effect in the State of Vermont.

(g) Severability. The unenforceability or invalidity of any Section or provision of this Agreement shall not affect the enforceability or validity of the balance of this Agreement.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

(h) Headings. All headings of this Agreement have been inserted for convenience of reference only, and are not to be considered a part of this Agreement, and shall in no way affect the interpretation of any of the provisions of this Agreement.

(i) Mutual Negotiation. This Agreement and the language contained herein have been arrived at by the mutual negotiation of the parties. Accordingly, no provision hereof shall be construed against one party or in favor of another party merely by reason of draftsmanship.

(j) Obligations of Buyer. With respect to any covenant, obligation or agreement to be performed hereunder by Buyer, Buyer shall perform, or cause an affiliate of Buyer to perform, the same.

IN WITNESS, WHEREOF, the parties have caused this Agreement to be executed effective as of the day and year first set forth above.

WINDSOR MINERALS INC.,
a Vermont corporation

By: _____

Title: Executive Vice President

JOHNSON & JOHNSON BABY PRODUCTS COMPANY, a division of JOHNSON & JOHNSON CONSUMER PRODUCTS, INC., a New Jersey corporation

By: _____

Title: President

TSAGBBOB

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

WINDSOR MINERALS, INC.

Current

Good Manufacturing Procedures

and

Standard Operating Procedures

November 25, 1987

Good Manufacturing Procedures - Bagging

Bagging Procedures	001
Decontamination of Pallets	002
Cosmetic Bulk Loading	003
Transfers of Bagged Product	005
Fuller Kenyon Microbiologic	006
Cleaning the Inline Magnet (Cosmetic Grade Bag/Bulk Conveying Line	007
Cleaning Bag Machine Air Pads	008
Export Container Capacities	009
Silo Change Procedures	010

Good Manufacturing Procedures - Clerk

Bagging and Shipping Orders	002
Sample Requests	016
Shipping	018
Silo Book and Silos	019
Silo Clearance Forms	020
Talc Transfer Slips	021

Good Manufacturing Procedures - Crusher

Argonaut Ore Blending with Hammondsville ore	001

Good Manufacturing Procedures - Flotation

Flotation Start-up	001
Flash Dryers	002
Additional Cleaning Responsibilities for Flotation Operators	004
Shut-Down Chlorination	008
Start-up Chlorination	009

Good Manufacturing Procedures - General

Handling of Confidential Information	005
Accidents - First-Aid	010
Foreign Material in 66 Product	011
Control of Foreign Material in 66 Product	012

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Good Manufacturing Procedures - Maintenance

Start-up of Repaired Equipment	005
Handling of Chlorine Tanks and Related Equipment	006
Handling Procedures for Chlorine Leakage	007
Microbial Filter Inspection and Maintenance	009
Microbial Control for Flash Dryer Dust Collector	011
Maintenance for 1 and 2 Dust Collector	012
Maintenance of Ultraviolet Units	015

Good Manufacturing Procedures - Quality Control & Mill

Changing Existing Mill and Quality Control Assurance Policies and Procedures	001

Good Manufacturing Procedures - Supervision

Supervisor's Responsibilities	001
Operations for Supervisors	002
Production Quality Control - Grade 66 - Color	007
Samples - Missing	008
Operational Checks Dust Collectors	009
Production Quality Control - Grade 66 - Insols	010
Filling and Emptying Grade 66 Silos	011
Production Quality Control - Grade 96 - Color	012
Production Quality Control - Grade 96 - Insols	013
Silo Conditions	017
Overseas Container Inspection	018

Good Manufacturing Procedures - Warehousing

Inventory Parts and Supplies - Need	001
Inventory Parts and Supplies - Withdrawal	002
Inventory Parts and Supplies - Control	003
Material Requisition	008

Good Manufacturing Procedures - Wet Mill

Wet Mill Chlorination	001
Wet Mill Start-up procedure	002
Cleaning AB & CD Third Stage Cleaner Concentrate Magnet	005
Shut-down Chlorination	008
Start-up Chlorination	009

Standard Operating Procedures

Arsenic Testing	QA-001
Chlorine	QA-002
Washing and Care of SPEC 20 CUVETS	QA-003
Shift End Lab Clean-up	QA-004
Orion Analog pH Meter Electrode	QA-005
Water Still Cleaning	QA-006

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Filter Cake Color	QA-007
Color (Reflectance)	QA-008
Lab Printouts and Distribution	QA-009
Laboratory Supervisor	QA-010
Laboratory Technician	QA-011
Laboratory Personnel Training	QA-012
Lab Notebook Use	QA-013
Quality Assurance Department	QA-014
Reporting Test Analysis Results	QA-015
Silo "C" of "A" Batch File	QA-016
Acid Insols - Tails and Ore	QA-017
Insol, MgC)3 - Leco Determinator	QA-018
Water Soluble Iron	QA-019
Brainweigh Electronic Balance - PM	QA-020
LABCONCO Fume Hood - PM	QA-021
LECO Routine Maintenance	QA-022
Calibration of pH Meter	QA-023
Sartorius Analytical Balance - PM	QA-024
Alpine Air Jet Sieve - PM	Qa-025
Ro-Tap Testing Sieve Shaker - PM	QA-026
Sub-Sieve Sizer - Calibration and Maintenance	QA-027
Bausch and Lomb Spectronic 20 - PM	QA-028
Scott Volumeter - PM	QA-029
Monitek Trubidimeter Maintenance	QA-030
Filter Cake Moisture	QA-031
Ore Moisture	QA-032
pH of Talc	QA-033
Daily 66 Preparation and Testing	QA-034
Bagged Shipments - 66 and 96 Grade	QA-035
Sample Collection	QA-037
MSHA Parallel Samples for Fiber	QA-038
Microbial Samples for Royston	QA-039
Railcar Shipments	QA-040
Silo Composites	QA-041
Asbestos - Transmission Electron Microscopy	QA-042
NPDES Water Quality Monitoring	QA-043
Asbestos - X-Ray Diffraction Samples	QA-044
Frequency of Analysis - Cosmetic	QA-045
Ro-Tap Sieve Analysis	QA-048
Oil Absorption of Pigments	QA-049
pH - Water Sample	QA-050
Total Suspended Solids	QA-051
Turbidity	QA-052
Master Equipment List	QA-053

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ARBITRATION

All matters submitted for arbitration in accordance with Section 4(e) of the Agreement to which this Exhibit B is attached (the "Agreement") shall be determined as follows:

1. Notice. The party desiring arbitration shall give written notice of its desire to the other party. The parties shall promptly exchange all documents and information relevant to the dispute and the issue presented. Except as otherwise provided herein, arbitration shall be held under the commercial Rules of the American Arbitration Association then in effect.

2. Appointment of Arbitrator. Within fifteen (15) calendar days following the expiration of the aforementioned thirty (30) day period, Buyer and Seller shall agree on a single arbitrator (the "Arbitrator"). The arbitrator shall be impartial and disinterested and qualified by training and experience in the particular matter which is the subject of arbitration. In the event Buyer and Seller do not agree upon the Arbitrator within such fifteen (15) calendar days, the parties shall jointly request, immediately upon expiration of such fifteen (15) calendar day period, that the Arbitrator be appointed by a Judge of the United States District Court for the District of Vermont.

3. Rules of Procedure. Upon appointment the Arbitrator shall promptly proceed to investigate, hear, and arbitrate the issues raised by the parties under Section 4(e) of the Agreement, completing the same within sixty (60) calendar days after appointment. The Arbitrator may follow any rules of procedure which he deems appropriate, including the rules for discovery, pleadings and briefs. The Arbitrator may order reasonable discovery, including presentation of evidence and testimony by independent experts or witnesses, or establish any other procedure which will aid in the expedited resolution of the dispute.

4. Hearing and Award. The Arbitrator may, on reasonable notice to the parties, hold hearings of witnesses or arguments and copies of all documents to be considered by the Arbitrator shall be furnished to each party; provided, however, that the other party may request that documents designated as confidential be viewed in camera by the Arbitrator and disclosed only as necessary to allow the other party full opportunity to respond. The Arbitrator may conduct the hearing or hearings in such manner as he deems necessary to hear and understand the dispute, and to ensure that each party is given equal opportunity to present evidence on the dispute. The Arbitrator may hear any witnesses and consider any exhibits presented by either of the parties or may call his own witnesses. A stenographic record of the hearing will be taken; and the Arbitrator shall base his decision upon

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

the terms of the Agreement, applicable law, and the testimony, briefs and documentation supplied by the parties. Each party shall, within twenty (20) calendar days following receipt of the stenographic record, submit its post-hearing brief setting forth its proposed findings of fact and conclusion. The Arbitrator shall make a written determination of the existence of hardship within fifteen (15) calendar days after receipt of such briefs, setting forth in reasonable detail the Arbitrator's basis for his determination. The decision of the Arbitrator shall be conclusive and binding on each party and may be enforced by any court having jurisdiction thereof.

5. Expense of Arbitration. All expenses incurred by the Arbitrator, including reasonable compensation to the Arbitrator, and the fees and expenses of attorneys or experts who may be retained by the Arbitrator, and any investigation which may be made by the Arbitrator, shall be borne equally by the parties hereto.

6. Continuation of Agreement. The pendency of any such arbitration shall not in any manner or to any extent affect or abridge the respective rights and obligations of the parties under the Agreement, including but not limited to the continued performance thereof.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

JNJ 000066650

SAMPLE HARDSHIP CALCULATION

(For use in the event of termination of the Agreement pursuant to Section 4(e)(i) thereof.)

Example No. 1.

1. Assume notice of hardship is given on January 1, 1995, and is followed by notice of termination. Termination is effective on January 1, 1996.

2. Assume the Offer Price is $400.00 per ton, and no deliveries of Talc are made on January 1, 1996.

3. Buyer's payment to Seller, due within thirty days following January 1, 1996, shall be:

$$0.70 \times \{[(\$400 \times 1.04^{1}) \times (9{,}800 - 0) \times 0.694] + [(\$400 \times 1.04^{2}) \times 9{,}800 \times 0.694 \times 0.85] + [(\$400 \times 1.04^{3}) \times 9{,}800 \times 0.694 \times 0.6775]\} = \$5{,}182{,}564$$

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Example No. 2.

1. Assume notice of hardship is given on March 31, 1996, and is followed by notice of termination. Termination is effective on March 31, 1997.

2. Assume the Offer Price is $400.00 per ton, and Buyer purchases 2500 tons of Talc between January 1, 1997 and March 31, 1997.

3. Buyer's payment to Seller, due within thirty days following March 31, 1997, shall be:

$$0.70 \times \{[(\$400 \times 1.04^{1}) \times (9{,}800 - 2500) \times 0.694] + [(\$400 \times 1.04^{2}) \times 9{,}800 \times 0.694 \times 0.85]\} = \underline{\$3{,}226{,}048}$$

JNJ 00006665

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

"EXHIBIT D"

AG8801281

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

WINDSOR MINERALS, INC.
ARGONAUT AND HAMMONDSVILLE ORE BODIES

MINING PROPERTY	M-Tons - As of Nov. 25, 1987 PROVEN	PROBABLE	POSSIBLE
Argonaut			
Smith Lease			
West	500	500	-
East	1100	600	400
Hammondsville			
Fee	1744	2535	-
Gallowhur Lease	500	-	-
TOTAL	3844	3635	400

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

"EXHIBIT E"

AG8801281

WINDSOR MINERALS, INC.

Requirements Regarding Production and Testing of Grade 66 Talc

QUALITY STANDARDS

The agreement of the Johnson & Johnson Baby Products Company (BPC) to purchase Grade 66 is additionally conditioned on the following requirements:

1. It is important to recognize that Grade 66 Talc as provided to BPC faces some uniquely restrictive limits which affect the methods and chemicals used in its preparation. In addition, restrictive Vermont water quality standards impinge on the use of processing aids in the beneficiation process.

   Johnson & Johnson cosmetic talc is currently and must continue to be asbestos free as defined from time to time by appropriate governmental agencies and the Cosmetic Toiletries, Fragrance Association (CTFA) and

   No experimentation in reagentry, Ph modifiers, flocculants de-foamers, etc. may be conducted which leads to contamination of certified product in the least degree.

2. All of the talc is to be produced via the methods and process currently used by Windsor Minerals including the avoidance of contaminating materials by means of carefully controlled selective mining of qualified ore bodies and the proprietary methodology known as the shear disc. The Good Manufacturing Procedures (GMP's) and the Standard Operating Procedures (SOP's) developed and in use by Windsor Minerals at the time this Agreement is concluded must continue to be followed and the necessary records of proof must be maintained and made immediately available on request to an appropriate representative of the BPC.

3. All of the talc is to be produced solely from ore bodies which have been approved by the BPC. Currently, the Hammondsville and Argonaut ore bodies are approved for carefully controlled selective mining for ore for use in the preparation of Grade 66 Talc.

4. All talc shipments are to be handled in the manner and utilizing the dedicated silos, trailers, and transfer systems currently used at Windsor Minerals. The Standard Operating Procedures as to microbiological safety must be followed and certification of compliance provided. The silos and bulk trailers may not be used for storage or transport of any other material and are to be carefully protected against water and or microbiological contamination.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

5. Shipments may only be made from silos whose contents:

   a. Strictly conform to the physical, chemical, microbiological standards expressed in BPC Raw Material Specification #21005, Windsor V-66 Talc, which may be revised from time to time as conditions require.

   b. Have been tested for conformance to specifications through the use of test methods (TM'S) and techniques provided in detail by the BPC as referenced in the talc specification above. Records of all tests and results are to be compiled in bound notebooks and retained as the GMP'S and SOP'S require.

   c. Have been held in impound pending the receipt of all relevant approvals and the release of the material via a silo release form signed by any appropriate representative of the producing company.

      The details of analytical and microbiological assays and tests for each examination made during the course of production shall be cross-referenced to silo numbers and retained for not less than 36 months.

6. Representative samples of the ground ore feeding the process and finished product produced therein shall be taken on a continuous composite basis, accumulated as monthly samples and a split of these samples, retained and the balance appropriately marked and coded, sent to:

   McCrone Environmental Services, Inc.
   1412 Oakbrook Drive, Suite 100
   Norcross, GA. 30093
   Attention of James R. Millette, Ph.D.

   McCrone Services is to conduct examination for the presence of deleterious minerals species via Transmission Electron Microscopy.

   The testing to follow the practice as conducted for Windsor Minerals in the past. A copy of the resulting McCrone report is to be provided directly from the McCrone organization to the Manager of Quality Assurance, Johnson & Johnson Baby Products, Royston, Georgia.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

7. If State or Federal regulations or anticipated regulations in the judgement of the BPC require testing for additional or different mineral species, the appropriate tests will be added to the above requirement upon request of the BPC.

8. If in the judgement of the BPC new or different tests or examinations become necessary to insure the safety and quality of Grade 66 Talc, the BPC and the seller will meet together to determine the methods and reporting requirements.

9. Changes in water supplies or fuels may not be made without thorough examinations relative to microbiological and chemical factors and prior approval of the BPC.

10. Grade 66 Talc when supplied in bags must be handled following the methods established and in use by Windsor Minerals for bacteriacidal treatment of pallets, papers, and containers or trucks.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

BABY PRODUCTS COMPANY

MATERIAL SPECIFICATION

SUBJECT: WINDSOR 66 TALC

APPLICABLE PRODUCT(S): See Below

LOCATION: Royston, PCA, Kolmar

INTERIM(S) AFFECTED:

REVISION DATE	DESCRIPTION OF CHANGE	AUTHORIZATION
1/29/87	Page 2, Section 13, Packaging and Q.A. page 2 updated. Johnson's Baby Lotion with Baby Powder added as an applicable product.	BCR 009656
6/10/87	Page 2, Section 12, Microbial Requirement revised.	BCR 009822
6/16/87	Page 2, Section 12, Microbial Requirement Test Method updated.	BCR 009987
3/1/88	Q.A. page 1 of 2, Section 2A, updated.	BCR 010629
10/14/88	Specification updated.	BCR 011080
11/2/88	Specification updated. MSDS added. Q.A. page added.	BCR 011111

APPLICABLE PRODUCTS

Baby Lotion w/Baby Powder
Baby Powder
Shower to Shower

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

M/ IAL SPECIFICATION

SUBJECT: WINDSOR 66 TALC

DESCRIPTION / PROPERTIES & REQUIREMENTS

1. A hydrous magnesium silicate (also called magnesium acid metasilicate), a fine white lustrous powder, slippery, adherent to skin with no foreign odor or grittiness.

2.	ASBESTOS (CTFA/J4-1)(TM 7024).....	None detected. Asbestos is defined to be the fibrous serpentine, chrysotile and the fibrous forms of the amphibole group as represented by amosite, anthophylitte, crocidolite, tremolite and actinolite.
3.	MOISTURE (TM 7164)	NMT 0.15%
4.	SOLUBILITY BY ACID (TM 7165)	NMT 2.0%
5.	MAGNESITE ($MgCO_3$)%..... (TM 7171 or TM 7077)	NMT 1.10% $MgCO_3$
6.	BULK DENSITY (TM 7166)	20.5 to 25.5 lb./cu. ft. or metric equivalent at Windsor Minerals.
	COLOR (TM 7170 or TM 7071).....	White as compared to a previously accepted lot or minimum of 85.5 reflectance reading.
	FINENESS (TM 7070 or TM 7167).....	Through 60 mesh, 100%. Through 100 mesh, at least 99.7%, through 200 mesh, at least 98.5%.
9.	HEAVY METALS (TM 7168)	NMT 10 ppm
10.	ARSENIC (TM 7169)	NMT 2 ppm
11.	WATER SOLUBLE IRON (USP)	Pass Test
12.	MICROBIAL REQUIREMENT (TM 7807)	Samples taken from Windsor trucks or bags shall contain no detectable harmful microorganisms and the total count shall be no greater than 50 microorganisms per gram of product.
13.	PACKAGING	In suitable bags to protect contents from loss, contamination and deterioration in normal shipment and storage. Pallets of bagged material must be either stretch wrapped or covered with corrugated and secured with straps. Each bag shall contain 50 lbs. or metric equivalent. Bulk shipments will be made in BPC approved railcars and trailers.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

MATERIAL SPECIFICATION

BABY PRODUCTS COMPANY

SUBJECT: WINDSOR 66 TALC

14. MARKING ..... Each bag shall be marked with:

Contents Name, Supplier Name, Supplier Lot No.
Net Weights
Purchaser's Code

Bulk shipments are identified by the individual number of the particular trailer or railcar.

15. STORAGE ..... If stored in bags, keep in dry area. Suitable bulk silos (for BPC): Buttler electro-fused polymer utilizing white flint-flex powder #531-7010 manufactured by DuPont.

16. RAILCAR LOADING & SAMPLING ..... Railcar loading, unloading and sampling shall be in accordance with the approved Baby Products Procedure BQCP #85..

17. CERTIFICATE OF ANALYSIS ..... A silo source analytical certificate will provide numerical analytical results required in items 3, 4, 5, 6, 7, 8 and 10 of this specification. Items # 9 and 11 will be reported as pass/fail. These results are obtained from a silo composite sample which is comprised from samples taken at eight hour intervals during the filling of the silo. The silo source analytical certificate will reference the railcar or trailer number(if a trailer is used to ship directly to Royston).

The certificate of analysis and the railcar/ or trailer seal log required as per BQCP #85 will accompany the preshipment samples to Royston and will be sent to the Royston Microbiology Laboratory.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

TAL SPECIFICATION

SUBJECT: WINDSOR 66 TALC

1B. FREQUENCY OF CHARACTERISTICS TO BE TESTED

No.	Characteristic	T.M.	Frequency
2A.	Asbestos(a)	CTFA/J4-1	Per Note 1A
2B.	(b)	TM 7024	Per Note 1B
3.	Moisture	7164	Certified per 2
4.	Solubility by Acid	7165	Certified per 2
5.	Magnesite ($MgCO_3$)%	7171 or 7077	Certified per 2
6.	Bulk Density	7166	Certified per 2
7.	Color	7170 or 7071	Certified per 2
8.	Fineness	7167 or 7070	Certified per 2
9.	Heavy Metals	7168	Certified per 2
10.	Arsenic	7169	Certified per 2
11.	Water Soluble Iron	USP	Certified per 2
12.	Microbial Requirement	7807	Every lot-See 3

NOTE:

1A. A composite sample is made from every two completed silos, labeled with silo numbers and production dates and forwarded to J & J Baby Products for x-ray diffraction. Results are reported to Windsor Minerals.

1B. Quarterly composite samples of above silo samples will be evaluated by TM 7024 by BPC and data reported to Windsor Minerals.

2. Certificates of Analysis are received from Windsor Minerals with each pre-shipment microbial sample. Analytical testing frequencies.

Tested on silo composite after each silo is filled.

3. Microbial

a. Microbial testing performed on flash dried sample every 8 hrs. (Royston is used as the testing lab.)

b. Microbial testing will be conducted on the pre-shipment composite sample of each railcar taken as per BQCP #85.

19. ACCEPTANCE ..... There shall be no change in the supplier's process or composition of the material without prior notification to and approval of JOHNSON & JOHNSON. Any non-conformance to the specified Description / Properties & Requirements, shall be cause for rejection.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

P.O. Box 660 Windsor, Vermont 05089
Phone: (802) 484-7763

MATERIAL SAFETY DATA SHEET

CODE 29 CFR	DATE ISSUED	ISSUED BY
Per OSHA 1910.1200	9/13/85	R.N. Miller

SECTION I - IDENTIFICATION OF MATERIAL

CHEMICAL NAME OR COMPOSITION	HAZARD RATING PER H.M.I.S OF N.P.C.A.	
Beneficiated Grade Talc Product	[illegible]	1
TRADE NAME & SYNONYMS	[illegible]	0
GRADE 66 TALC	REACTIVITY	0
CHEMICAL FAMILY: Hydrous Magnesium Silicate, Magnesium Carbonate	PERSONAL PROTECTION	E
MOLECULAR FORMULA: $H_2O \cdot 3MgO \cdot 4SiO_2$, $MgCO_3$	*AVOID MASSIVE INHALATION	

SECTION II - SIGNIFICANT COMPONENTS AND CONTAMINANTS

	COMPONENTS	WEIGHT PERCENT	EXPOSURE LIMITS TWA (8 HOUR)
	COMPOUND NAME N/A		TLV
	COMPOSITION AND CONTAMINANTS Talc - Non fibrous CAS# - 14807-96-6	± 98.0	20MPPCF - OSHA 2mg/M³ - ACGIH
	Magnesite CAS #-546-90-0	± 2.0	5mg/M³ - OSHA 5mg/M³ - ACGIH as Nuisance Dust
	NOTE: Does not contain asbestiform minerals and contains less than 1% Crystalline Silica.		

SECTION III - PHYSICAL DATA

APPEARANCE AND ODOR

Fine White Powder - Slight Earthy Odor

BOILING POINT	FREEZING POINT	SPECIFIC GRAVITY	ODOR THRESHOLD
N/A	N/A	± 2.8	Not Known

VAPOR PRESSURE (MM OF MERCURY)	PH	EVAPORATION RATE
N/A	± 8.4	N/A

VAPOR DENSITY (AIR = 1)	SOLUBILITY IN WATER
	Insoluble

SECTION IV - FIRE AND EXPLOSION HAZARD DATA

FLASH POINT (SPECIFY METHOD)	FLAMMABILITY CLASS	FLAMABLE (EXPLOSIVE) LIMITS (PERCENT BY VOLUME)	
		LOWER LIMIT	UPPER LIMIT
N/A	Nonflammable	N/A	N/A

FIRE EXTINGUISHING MEDIA

Will not burn.

SPECIAL FIRE FIGHTING PROCEDURES

N/A

UNUSUAL FIRE AND EXPLOSION HAZARDS

None -

E-8

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

SECTION V - HEALTH HAZARD DATA

)XICITY

Acute oral toxicity (rat) produced no toxic effects at maximum gavage levels of 40 ml/kg of 15% suspension.

HEALTH EFFECTS/ FIRST AID PROCEDURES	EYES — As particulate can cause irritation if introduced into the eye — flush eyes with water or normal saline — if irritation persists, see physician.
	SKIN — No adverse effects from contact during use — may have drying effect. As with any mineral, should not be in contact with broken skin.
	INHALATION — Massive accidental powder aspiration has been treated with parenteral cortico steroids and antibiotics with supportive therapy sympathiometic drugs and oxygen. Get prompt medical attention.
	INGESTION Non-Toxic

SECTION VI - REACTIVITY DATA

GENERAL REACTIVITY

Inert/Stable

INCOMPATABILITY (MATERIALS TO AVOID)

None

HAZARDOUS DECOMPOSITION PRODUCTS

Does Not Decompose

HAZARDOUS POLYMERIZATION	CONDITIONS TO AVOID
☐ WILL OCCUR ☒ WILL NOT OCCUR	None Known

SECTION VII - SPILL PROCEDURES DISPOSAL REQUIREMENTS

STEPS TO BE TAKEN IN CASE MATERIAL IS RELEASED OR SPILLED

Dry vacuuming is preferred. Sweeping should be done so as to avoid excessive dust generation.

WASTE AND CONTAINER DISPOSAL METHODS

Wet down, store with other non-hazardous waste. Dispose in accordance with prevailing regulations.

SECTION VIII - SPECIAL PROTECTION INFORMATION (SPECIFY IN DETAIL)

	EYE PROTECTION	RESPIRATORY PROTECTION	GLOVES	VENTILATION	OTHER
ROUTINE	Safety Glasses	Not Required	Not Required	Maintain Use Area Below TLV Standard	
NON-ROUTINE OR EMERGENCY	Sealed Safety Glasses	OSHA or NIOSH Approved NOSP Mouth Respirator	Not Required	Avoid Massive Inhalation Use Respirator	

SECTION IX - SPECIAL REQUIREMENTS

STORAGE REQUIREMENTS / LABELING / MEDICAL AND ENVIRONMENTAL SURVEILLANCE

No Special Requirements

SECTION X - NOTES

MANUFACTURERS NAME

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

E-9

EMERGENCY PHONE NUMBER
(802) 484-7763

INFORMATION PHONE NUMBER
(802) 484-7761

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Johnson & Johnson

BABY PRODUCTS COMPANY

QUALITY ASSURANCE PAGE - RESTRICTED FOR J & J USE ONLY

SUBJECT: WINDSOR 66 TALC

1. FREQUENCY OF CHARACTERISTICS TO BE TESTED

No.	Characteristic	T.M.	Frequency
2A.	Asbestos(a)	CTFA/J4-1	Per Note 1A
2B.	(b)	TM 7024	Per Note 1B
3.	Moisture	7164	Certified per 2
4.	Solubility by Acid	7165	Certified per 2
5.	Magnesite ($MgCO_3$)%	7171 or 7077	Certified per 2
6.	Bulk Density	7166	Certified per 2
7.	Color	7170 or 7071	Certified per 2
8.	Fineness	7167 or 7070	Certified per 2
9.	Heavy Metals	7168	Certified per 2
10.	Arsenic	7169	Certified per 2
11.	Water Soluble Iron	USP	Certified per 2
12.	Microbial Requirement	7807	Every lot-See 3b

NOTE:

1A. A composite sample is made from every two completed silos, labeled with silo numbers and production dates and forwarded to J & J Baby Products for x-ray diffraction. Results are reported to Windsor Minerals.

1B. Quarterly composite samples of above silo samples will be evaluated by TM 7024 by BPC and data reported to Windsor Minerals.

2. Certificates of Analysis are received from Windsor Minerals with each pre-shipment microbial sample. Analytical testing frequencies.

   Tested on silo composite after each silo is filled.

3. Microbial

   a. Microbial testing performed on flash dried sample every 8 hrs.(Royston is used as the testing lab.)

   b. Microbial testing will be conducted on the pre-shipment composite sample of each railcar taken as per BQCP #85.

4. Baby Products acceptable limit on samples taken from railcars or trucks at the receiving point is between 20.5 to 27.0 lb./cu. ft.

5. The microbial requirements on page 2, item 12 are not an accept/reject criteria for talc received in bags at PCA for use in Johnson's Baby Lotion with Baby Powder.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

WINDSOR MINERALS, INC.
Johnson & Johnson Ship To Stock Certification Requirements

I. Partnership

The most important requirement for a successful Ship to Stock Program is the establishment of a quality partnership between the two companies. The establishment of close interface and mutual trust must be created.

In this partnership, the Supplier must accept total responsibility for the material he is supplying. Both parties must demonstrate a willingness to work together. Also they must understand that sound, strictly enforced management systems combined with team attitude can be the prime contributor to product acceptance and use.

As part of this partnership, STS representatives at both locations will be selected to manage the program.

II. Access

Customer access to the Supplier's plant is an absolute for Ship to Stock. A definition of total access is that the customer be given complete access to any part of the Supplier's operations which pertains to the manufacture, control, and distribution of the material being supplied.

Agreement must be reached that with reasonable notification, customer representatives will be allowed access to conduct applicable audits, surveys, inspections, etc. that are necessary to determine if the systems are in place to support the receipt of material without inspection.

Areas covered include:

- The Physical Plant
- The Manufacturing/Quality Systems
  - SOP's
  - Quality Procedures and Testing
  - Control Procedures
  - Proprietary Information (Subject to Secrecy Agreements)
- Internal Audits
- Documentation Systems

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

III. Manufacturing/Quality Systems

A Ship to Stock Supplier must be able to demonstrate having the control systems in place to consistently supply acceptable material on every lot such that incoming inspection is not necessary.

During the Supplier Survey, the Survey Team will review each component of the control system and determine if the systems are adequate.

Examples of the systems surveyed are:

- Specification control
- Raw Material control
- Processing control
- Product acceptance control
- Material storage control
- Shipping procedures
- Documentation retention/retrieval
- Lot traceability
- Quality program management
- Testing capability
- GMPS
- Personnel training and certification

IV. Corrective Action Systems

The Supplier shall have a corrective action system for responding to problems. Corrections to problems are to be documented. Operating procedures are to be designed to activate corrective action.

V. Supplier Responsiveness

The Supplier shall have an excellent history for responsiveness to problems. He must have an organized system for responding to problems and he must have the technical expertise to provide the proper support.

VI. Systems Design

An indicator of what constitutes a Ship to Stock Supplier is how his systems are designed.

Systems must be preventative to become a Certified Supplier. Statistical process control and process validation will be used where applicable. Internal audits are to be conducted to verify the systems.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

VII. Certificate of Analysis

The Supplier must supply all pertinent material characteristic data currently used to release the product at the customers facility. This includes all analytical and microbial data.

The Certificate of Analysis must arrive prior to or with the shipment of material and must have lot traceability.

VIII. Quality Improvement Process

For a company to be certified, an organized system for quality improvement will be in evidence.

IX. Training

The ability to show evidence of a trained work force is another requirement to become certified as a STS Supplier.

Individuals in critical decision-making positions must be trained and qualified for those functions. Personnel must undergo a formal training program and be certified. Personnel should also be recertified at set intervals. Certification must be documented.

X. Audits

As part of the program maintenance requirements, the customer must be allowed to conduct review audits of the procedures and systems agreed upon during qualification. (Ex: release procedures, documentation procedures, manufacturing quality plan, etc.)

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT 5

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Research & Development	JBP001	Johnson's baby baby powder	1994	Plastic bottle	2 1/4" x 1 3/4" x 6"	9 oz./255 g.	Full	talc, fragrance	Made in U.S.A.
Research & Development	JBP002	Johnson's baby powder	No date	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	talc, fragrance	Made in U.S.A.
Research & Development	JBP003	Johnson's baby powder blossoms	1996	Plastic bottle	3 1/4" x 2 1/2" x 8 1/4"	500 g.	Full	No ingredients listed	Philippines
Research & Development	JBP004	Johnson's baby powder double protection	No date	Plastic bottle	3" x 2 1/2" x 7 1/4"	350 g.	Full	Foreign language label includes English words Talc, zinc oxide 1.1%, magnesium stearate, fragrance	Foreign Language
Research & Development	JBP006	Johnson's baby powder	1996	Plastic bottle	2 1/2" x 2" x 6"	9 oz./255 g.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP007	Johnson's BABY POWDER	No date	Tin can	1 3/4" x 1 1/2" x 4 1/4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP008	Johnson's BABY POWDER	1942	Cardboard cylinder	1 1/2" x 3"	1 3/4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP009	Johnson's BABY POWDER	No date	Tin can	1 3/4" x 1 3/4" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP010	Johnson's BABY POWDER	1949	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP011	Johnson's BABY POWDER	1941	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc and Boric Acid	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

See Endnotes

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Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP012	Johnson's BABY POWDER	1950	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP013	Johnson's BABY POWDER	1953	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP014	Johnson's BABY POWDER	1935	Tin can	1 1/4" x 1 1/4" x 3 1/2"	2 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP015	Johnson's BABY POWDER	1928	Tin can	4 1/4" x 1 3/4"	4 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP016	Johnson's BABY POWDER	No date	Cardboard cylinder	1 1/2" x 3"	1 3/4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP017	Johnson's BABY POWDER	1935	Tin can	1 1/4" x 1 1/4" x 3 1/2"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP018	Johnson's BABY POWDER	1946	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 3/4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP019	Johnson's BABY POWDER	1943	Cardboard cylinder	1 1/2" x 3"	1 3/4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP020	Johnson's BABY POWDER	1949	Tin can	1 1/2" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP021	Johnson's BABY POWDER	1950	Tin can	1 3/4" x 1 3/4" x 4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP022	Johnson's Toilet and Baby Powder	1925	Tin can	1" x 1" x 1 3/4"	No volume listed	Full	Antiseptic Borated Talcum	Made in U.S.A.
Marketing	JBP023	Johnson's BABY POWDER	1928	Tin can	1 14" x 1 1/4" x 2 1/2"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP024	Johnson's Toilet and Baby Powder	No date	Paper envelope	4 1/2" x 3" x 1/16"	No volume listed	Full	Antiseptic Perfumed Talcum	No information

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP025	Johnson's Toilet and Baby Powder	No date	Paper envelope	4 3/4" x 3"	No volume listed	Full	Antiseptic Borated Talcum	Made in U.S.A.
Marketing	JBP026	Johnson's Toilet and Baby Powder	No date	Paper envelope	4 3/4" x 3"	No volume listed	Half full	Antiseptic Borated Talcum	Made in U.S.A.
Marketing	JBP027	Johnson's BABY POWDER	No date	Cardboard box	1" x 6" x 6"	3 dozen samples, no volume listed	Full	No ingredients listed	Made in U.S.A.
Marketing	JBP028	Johnson's BABY POWDER	No date	Tin can	1 1/2" x 1 1/2" x 4 1/2"	4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP029	Johnson's BABY POWDER	1955	Tin can	1 1/2" x 5"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP030	Johnson's BABY POWDER	No date	Tin can	2 1/2" x 5 3/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP031	Johnson's BABY POWDER	No date	Cardboard cylinder	2 1/2" x 5 1/2"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP032	Johnson's BABY POWDER	1942	Tin can	1 1/2" x 1 1/2" x 4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP033	Johnson's Toilet and Baby Powder	1912	Tin can	3/4" x 3/4" x 1 3/4"	No volume listed	Full	Antiseptic Perfumed Talcum	No information
Marketing	JBP034	Johnson's Toilet and Baby Powder	1912	Tin can	3/4" x 3/4" x 1 3/4"	No volume listed	Full	Antiseptic Perfumed Talcum	No information
Marketing	JBP035	Johnson's Toilet and Baby Powder	1918	Tin can	1 3/4" x 1 3/4" x 3 3/4"	No volume listed	Full	Antiseptic Borated Talcum	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP036	Johnson's BABY POWDER	1955	Tin can	1 3/4" x 1 3/4" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP037	Johnson's BABY POWDER	1955	Tin can	1 3/4" x 1 3/4" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP038	Johnson's BABY POWDER	1952-1953	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP039	Johnson's BABY POWDER	1949	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP040	Johnson's BABY POWDER	1949	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP041	Johnson's Toilet and Baby Powder	1918	Tin can	1 3/4" x 1 3/4" x 4"	113 g.	Full	Antiseptic Borated Talcum	Made in U.S.A.
Marketing	JBP042	Johnson's BABY POWDER	1942	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP043	UNSCENTED Johnson's BABY AND TOILET POWDER	No date	Tin can	1 3/4" x 1 3/4" x 4 1/4"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP044	UNSCENTED Johnson's BABY AND TOILET POWDER	No date	Tin can	1 3/4" x 1 3/4" x 4"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP045	Johnson's Toilet and Baby Powder	1926	Tin can	1 3/4" x 1 3/4" x 4"	No volume listed	Full	Antiseptic Borated Talcum	Made in U.S.A.
Marketing	JBP046	Johnson's BABY POWDER	1941	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP047	Johnson's BABY POWDER	1939	Tin can	1 3/4" x 1 3/4" x 4"	4 1/8 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP048	UNSCENTED Johnson's BABY AND TOILET POWDER	No date	Tin can	1 3/4" x 1 3/4" x 4"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP049	Johnson's BABY POWDER	1928	Tin can	1 3/4" x 1 3/4" x 4"	No volume listed	Full	Borated Talcum	Made in U.S.A.

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

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Marketing	JBP050	Johnson's BABY POWDER	1939	Tin can	1 3/4" x 1 3/4" x 4"	4 1/8 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP051	Johnson's BABY POWDER	1942	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 3/4 oz.	Full	Talc and boric acid	Made in U.S.A.
Marketing	JBP052	Johnson's BABY POWDER	1953	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP053	Johnson's BABY POWDER	1928	Tin can	1 3/4" x 1 3/4" x 4"	4 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP054	Johnson's BABY POWDER	No date	Tin can	1 1/2" x 1 1/2" x 4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP055	Johnson's BABY POWDER	1939	Tin can	1 1/4" x 1 1/4" x 3 1/2"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP056	Johnson's BABY POWDER	1944	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP057	Johnson's Toilet and Baby Powder	1925	Tin can	1 3/4" x 1 3/4" x 4"	No volume listed	Full	Antiseptic Borated Talcum	Made in U.S.A.
Marketing	JBP058	Johnson's BABY POWDER	1955	Tin can	1 3/4" x 1 3/4" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP059	Johnson's BABY POWDER	1945	Tin can	1 3/4" x 1 3/4" x 4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP060	Johnson's BABY POWDER	1939	Tin can	1 1/4" x 1 1/4" x 3 1/2"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP061	Johnson's BABY POWDER	1953	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP062	Johnson's BABY POWDER	1936	Tin can	1 1/2" x 1 1/2" x 4"	4 1/8 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP063	Johnson's BABY POWDER	1953	Tin can	1 1/2" x 1 1/2" X 4 1/4"	4 oz.	Full	Talc	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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EXHIBIT A

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Marketing	JBP064	Johnson's BABY POWDER	1955	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP065	Johnson's BABY POWDER	1934	Tin can	1 1/4" x 1 1/4" x 3 1/2"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP066	Johnson's BABY POWDER	1928-1939	Tin can	1 3/4" x 1 3/4" x 4"	4 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP067	Johnson's BABY POWDER	1952	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP068	Johnson's BABY POWDER	1949	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 oz.	Full	Talc and boric acid	Made in U.S.A.
Marketing	JBP069	Johnson's BABY POWDER	1941	Tin can	1 3/4" x 1 3/4" x 4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP070	Johnson's BABY POWDER	No date	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 3/4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP071	Johnson's Antiseptic Baby Powder	1917	Tin can	1 3/4" x 1 3/4" x 3 3/4"	No volume listed	Full	Boro-Salicyiated Talcum	Made in U.S.A.
Marketing	JBP072	Johnson's BABY POWDER	1955	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP073	Johnson's BABY POWDER	1941	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP074	Johnson's BABY POWDER	1936	Tin can	1 3/4" x 1 3/4" x 4"	4 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP075	Johnson's BABY POWDER	1946	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 3/4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP076	Johnson's BABY POWDER	1944	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 3/4 oz.	Empty	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP077	Johnson's BABY POWDER	No date	Cardboard cylinder	2 1/2" x 5 1/2"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP078	Johnson's BABY POWDER	1943	Tin can	2 1/2" x 6"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP079	Johnson's Baby and Toilet Powder	1928	Tin can	3" x 4" x 4"	2 dozen samples; no volume listed	16 of 24 full	Borated Talcum	Made in U.S.A.
Marketing	JBP080	Johnson's baby powder	1965	Cardboard cylinder	4" x 2"	6 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP081	Johnson's baby powder FOR HOSPITAL USE ONLY	1964	Plastic bottle	2" x 1 1/2" x 4 1/2"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP082	Johnson's baby powder	1965	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1.5 oz.	Full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP083	Johnson's baby powder	1978	Plastic bottle	3 1/4" x 2 3/4" x 7 3/4"	24 oz.	Three-quarters full	talc, fragrance	Made in U.S.A.
Marketing	JBP084[4]	Johnson's baby powder	1978	Plastic bottle	2 3/4" x 2 1/2" x 6 3/4"	14 oz.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP085	Johnson's baby powder	1978	Plastic bottle	3 1/4" x 2 3/4" x 7 3/4"	24 oz.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP086	Johnson's baby powder	1967	Plastic bottle	2 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP087	ECONOMY SIZE Johnson's baby powder	1967	Plastic bottle	2 1/2" x 2 3/4" x 7 3/4"	14 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP088	Johnson's baby powder	1965-1966	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP089	Johnson's baby powder	1967	Plastic bottle	1 3/4" x 1 1/2" x 5 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP090	FAMILY SIZE Johnson's baby powder	1967-1968	Plastic bottle	3 1/4" x 3" x 8"	24 oz.	Half full	Talc	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP091	Johnson's baby powder	1965	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP092	ECONOMY SIZE Johnson's baby powder	1967	Plastic bottle	2 3/4" x 2 1/4" x 7 3/4"	14 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP093	FAMILY SIZE Johnson's baby powder	1966-1967	Plastic bottle	3 1/2" x 2 3/4" x 7 3/4"	24 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP094	Johnson's baby powder	1978	Plastic bottle	3 1/2" x 3" x 8"	24 oz.	Three-quarters full	talc, fragrance	Made in U.S.A.
Marketing	JBP095	Johnson's baby powder	1973	Plastic bottle	3 1/2" x 3" x 7 3/4"	24 oz.	Half full	talc, fragrance	Made in U.S.A.
Marketing	JBP096	Johnson's baby powder	1978	Plastic bottle	3" x 2 1/2" x 7"	14 oz.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP097	Johnson's baby powder	1972	Plastic bottle	3 1/2" x 2 3/4" x 7 3/4"	24 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP098	ECONOMY SIZE Johnson's baby powder	1967	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Half full	Talc	Made in U.S.A.
Marketing	JBP099	Johnson's baby powder HOSPITAL PACKAGE NOT FOR RESALE	1970	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP100	Johnson's baby powder	1965	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Three-quarters full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP101	Johnson's baby powder	1973	Plastic bottle	1 3/4" x 1 1/4" x 3 1/2"	2 oz.	Half full	Talc	Information covered by label
Marketing	JBP102	Johnson's baby powder	1965	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP103	Johnson's baby powder	1973	Plastic bottle	1 3/4" x 1 1/2" x 3 1/2"	2 oz.	Full	Ingredients covered by label	Made in U.S.A.

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP104	Johnson's baby powder FOR HOSPITAL USE ONLY	1967	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP105	Johnson's baby powder	1973-1975	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP106	Johnson's baby powder FOR HOSPITAL USE ONLY	1967	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Three-quarters full	Talc	Made in U.S.A.
Marketing	JBP107	Johnson's baby powder	1973	Plastic bottle	2" x 1 1/2" x 4 3/4"	4 oz.	Full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP108	Johnson's baby powder FOR HOSPITAL USE ONLY	1965	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP109	TRIAL SIZE Johnson's baby powder	1965	Plastic bottle	1" x 1" x 2 3/4"	1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP110	Johnson's baby powder	1978	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP111	Johnson's baby powder	1970	Plastic bottle	1 3/4" x 1 1/4" x 3 1/2"	2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP112	TRIAL SIZE Johnson's baby powder	1964	Plastic bottle	1" x 1" x 2 3/4"	1/2 oz.	Three-quarters full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP113	Johnson's baby powder	1967	Plastic bottle	1" x 1" x 2 3/4"	1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP114	TRIAL SIZE Johnson's baby powder	1965	Plastic bottle	1" x 1" x 2 3/4"	1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP115	TRIAL SIZE Johnson's baby powder	1966	Plastic bottle	1" x 1" x 2 3/4"	1/2 oz.	Three-quarters full	Talc	Made in U.S.A.
Marketing	JBP116	Johnson's baby powder FOR HOSPITAL USE ONLY	No date	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP117	TRIAL SIZE Johnson's baby powder	1966	Plastic bottle	1" x 1" x 2 3/4"	1/2 oz.	Half full	Talc	Made in U.S.A.
Marketing	JBP118	Johnson's baby powder	1978	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP119	NEW Johnson's baby powder	1963	Plastic bottle	2 1/2" x 2 1/4" x 7 3/4"	14 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP120	Johnson's baby powder	No date	Tin can	1 1/4" x 1 1/4" x 3 1/2"	1 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP121	Johnson's BABY POWDER	No date	Cardboard cylinder	1 3/4" x 4 1/4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP122	Johnson's BABY POWDER	No date	Cardboard cylinder	3 3/4" x 5 1/2"	10 oz.	Empty	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP123	Johnson's BABY POWDER	1943	Cardboard box	2 1/2" x 2 1/2" x 5 1/2"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP124	Johnson's BABY POWDER	1940	Tin can	2 1/2" x 2 1/4" x 4 3/4"	10 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP125	Johnson's BABY POWDER	No date	Tin can	2 1/2" x 2 1/4" x 4 3/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP126	Johnson's BABY POWDER	1932	Tin can	1 3/4" x 1 1/2" x 4"	4 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP127	Johnson's BABY POWDER	1955	Tin can	2 1/4" x 2 1/4" x 5 3/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP128	Johnson's BABY POWDER	1953	Tin can	2 1/4" x 2 1/4" x 5 1/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP129	Johnson's BABY POWDER	No date	Tin can	2 1/2" x 2 1/2" x 4 3/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP130	Johnson's BABY POWDER	1943	Cardboard box	2 1/2" x 2 1/4" x 5 1/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP131	Johnson's BABY POWDER	1941	Tin can	2 1/4" x 2 1/4" x 5"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

See Endnotes

Created for Purposes of Litigation

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP132	Johnson's BABY POWDER	1945	Tin can	2 1/2" x 2 1/4" x 4 3/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP133	Johnson's baby powder	1960	Tin can	2 1/4" x 2 1/4" x 5 3/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP134	Johnson's BABY POWDER	1949	Tin can	2 1/2" x 2 1/2" x 5 1/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP135	Johnson's BABY POWDER	1963	Tin can	2 1/4" x 2 1/4' x 5 1/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP136	Johnson's Toilet and Baby Powder	1923	Tin can	1 3/4" x 1 1/2" x 4"	Volume covered by label	Full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP137	Johnson's BABY POWDER NEW ECONOMY SIZE	1958	Tin can	2 1/4" x 2 1/4" x 7 1/4"	12 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP138	Johnson's BABY POWDER NEW ECONOMY SIZE	1959	Tin can	2 1/4" x 2 1/4" x 7"	12 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP139	Johnson's BABY POWDER NEW ECONOMY SIZE	1958	Tin can	2 1/4" x 2 1/4" x 7 1/4"	12 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP140	Johnson's BABY POWDER NEW ECONOMY SIZE	1959	Tin can	2 1/4" x 2 1/4" x 7"	12 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP141	Johnson's BABY POWDER	1945	Tin can	2 1/4" x 2 1/4" x 5 1/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP142	Johnson's BABY POWDER	1949	Tin can	2 1/4" x 2 1/4" x 5 3/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP143	Johnson's BABY POWDER	No date	Tin can	2 1/4" x 2 1/4" x 5 1/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP144	Johnson's BABY POWDER	1950	Tin can	2 1/4" x 2 1/4" x 5 1/2"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP145	Johnson's BABY POWDER	1939	Tin can	2 1/2" x 2 1/4" x 4 3/4"	10 oz.	Full	Borated Talcum	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP146	Johnson's BABY POWDER	1939	Tin can	2 1/2" x 2 1/4" x 4 3/4"	10 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP147	Johnson's BABY POWDER	No date	Tin can	2 1/2" x 2 1/2" x 5"	10 oz.	Empty	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP148	Johnson's BABY POWDER	1941	Tin can	2 1/2" x 2 1/4" x 4 3/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP149	Johnson's BABY POWDER	1944	Tin can	2 1/2" x 2 1/2" x 4 3/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP150	Johnson's BABY POWDER	1944	Tin can	2 1/2" x 2 1/2" x 5"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP151	Johnson's BABY POWDER	1942	Tin can	2 1/4" x 2 1/4" x 5 1/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP152	Johnson's BABY POWDER	1935	Tin can	2 1/2" x 2 1/2" x 4 3/4"	10 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP153	Johnson's BABY POWDER	No date	Tin can	2 1/2" x 2 1/2" x 5"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP154	Johnson's BABY POWDER	No date	Tin can	2 3/4" x 2 1/2" x 5"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP155	Johnson's BABY POWDER	1955	Tin can	2 1/4" x 2 1/4" x 5 3/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP156	Johnson's BABY POWDER	1955	Tin can	2 1/4" x 2 1/4" x 5 3/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP157	Johnson's BABY POWDER	1955	Tin can	2 1/2" x 2 1/2" x 5 3/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP158	Johnson's BABY POWDER	1945	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP159	Johnson's Toilet and Baby Powder	1918	Tin can	1 3/4" x 1 3/4" x 3 1/2"	No volume listed	Empty	Antiseptic Perfumed Talcum	No information

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP160	Johnson's BABY POWDER	1932	Tin can	1 3/4" x 1 3/4" x 4 1/4"	4 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP161	Johnson's Baby Powder	1960	Tin can	1 1/4" x 1 1/4"x 3 1/2"	1 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP162	Johnson's Toilet and Baby Powder	1917	Tin can	1 3/4" x 1 3/4" x 3 1/2"	4 oz.	Full	Antiseptic Perfumed Talcum	No information
Marketing	JBP163	Johnson's Toilet and Baby Powder	No date	Tin can	1 1/2" x 1 3/4" x 3 1/2"	4 oz.	Full	Antiseptic Perfumed Talcum	No information
Marketing	JBP164	Johnson's baby powder	No date	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Empty	Talc	Made in U.S.A.
Marketing	JBP165	Johnson's baby powder	1965	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP166	ECONOMY SIZE Johnson's baby powder	1962	Tin can	3 1/4" x 2 1/2" x 7 1/4"	Volume covered by packaging	Full	Covered by packaging	Covered by packaging
Marketing	JBP167	Johnson's baby powder	1960	Tin can	2 1/4" x 2 1/4" x 7 1/4"	12 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP168	Johnson's BABY POWDER FOR HOSPITAL DISPENSING ONLY	1957	Tin can	2 1/4" x 2 1/4" x 6"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP169	ECONOMY SIZE Johnson's baby powder	1966	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP170	ECONOMY SIZE Johnson's baby powder	1965	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Half full	Talc	Made in U.S.A.
Marketing	JBP171	ECONOMY SIZE Johnson's baby powder	1965	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Half full	Talc	Made in U.S.A.
Marketing	JBP172	Johnson's baby powder	1973-1975	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Half full	talc, fragrance	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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EXHIBIT A

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Marketing	JBP173	Johnson's baby powder	1978	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Three-quarters full	talc, fragrance	Made in U.S.A.
Marketing	JBP174	NEW Johnson's baby powder	1964	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Three-quarters full	Talc	Made in U.S.A.
Marketing	JBP175	Johnson's baby powder	1972	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP176	Johnson's baby powder	1972	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Three-quarters full	Talc	Made in U.S.A.
Marketing	JBP177	ECONOMY SIZE Johnson's baby powder	1966	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP178	NEW Johnson's baby powder	1964	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Half full	Talc	Made in U.S.A.
Marketing	JBP179	Johnson's BABY POWDER	1955	Tin can	2 1/2" x 2 3/4" x 5 3/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP180	Johnson's BABY POWDER FOR HOSPITAL DISPENSING ONLY	1957	Tin can	2 1/2" x 2 3/4" x 5 3/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP181	Johnson's BABY POWDER	1955	Tin can	2 1/2" x 2 3/4" x 5 3/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP182	Johnson's baby powder HOSPITAL PACKAGE NOT FOR RESALE	1970	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Three-quarters full	Talc	Made in U.S.A.
Marketing	JBP183	Johnson's baby powder	1965	Plastic bottle	2 1/4" x 2" x 6"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP184	Johnson's baby powder FOR HOSPITAL USE ONLY	1965-1966	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Three-quarters full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP185	NEW Johnson's baby powder	1964	Plastic bottle	2 1/2" x 2" x 7 3/4"	14 oz.	Half full	Talc	Made in U.S.A.
Marketing	JBP186	Johnson's baby powder	1973-1975	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Half full	talc, fragrance	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Created for Purposes of Litigation

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	JBP187	Johnson's baby powder	1965-1966	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP188	Johnson's baby powder	1967	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP189	Johnson's baby powder	No date	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Half full	talc, fragrance	Made in U.S.A.
Marketing	JBP190	Johnson's baby powder FOR HOSPITAL USE ONLY	1967	Plastic bottle	2 1/2" x 1 3/4" x 6 1/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP191	Johnson's baby powder FOR HOSPITAL USE ONLY	1965-1966	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Half full	Ingredients covered by label	Made in U.S.A.
Marketing	JBP192	Johnson's baby powder FOR HOSPITAL USE ONLY	1964	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Half full	Talc	Made in U.S.A.
Marketing	JBP193	Johnson's baby powder FOR HOSPITAL USE ONLY	1967	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Half full	Talc	Made in U.S.A.
Marketing	JBP194	Johnson's baby powder	1965	Cardboard canister	4 1/4" x 2 1/4"	6 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP195	Johnson's baby powder	No date	Cardboard canister	4 1/4" x 2 1/4"	6 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP208	Johnson's baby powder	1978	Plastic bottle	3 1/4" x 2 1/2" x 8 1/4"	24 oz.	Empty	talc, fragrance	Made in U.S.A.
Marketing	JBP209	Johnson's baby powder	1973-1975	Plastic bottle	3 1/4" x 2 1/2" x 7 3/4"	24 oz.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP210	FAMILY SIZE Johnson's baby powder	1966-1967	Plastic bottle	3 1/4" x 3" x 8"	24 oz.	Half full	Talc	Made in U.S.A.
Marketing	JBP211	Johnson's baby powder	1973-1975	Plastic bottle	2 1/2" x 2 1/4" x 7 3/4"	14 oz.	Three-quarters full	talc, fragrance	Made in U.S.A.
Marketing	JBP212	Johnson's baby powder	1978	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Half full	talc, fragrance	Made in U.S.A.

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Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

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Marketing	JBP213	Johnson's baby powder	1978	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP214	NEW Johnson's baby powder	No date	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP215	Johnson's baby powder FOR HOSPITAL USE ONLY	1964	Plastic bottle	2 1/4" x 2" x 6 1/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP216	Johnson's baby powder	1960	Tin can	1 3/4" x 1 3/4" x 5"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP217	Johnson's BABY POWDER	1959	Tin can	2 1/4" x 2 1/4" x 5 3/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP218	Johnson's BABY POWDER	1953	Tin can	2 1/4" x 2 1/4" x 5 1/4"	9 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP219	Johnson's Baby and Toilet Powder	No date	Tin can	1 3/4" x 1 3/4" x 4 1/4"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP220	Johnson's Toilet and Baby Powder	1918	Tin can	1 1/2" x 1 1/2" x 4 1/4"	No volume listed	Full	Antiseptic Perfumed Talcum	No information
Marketing	JBP221	Antiseptic Baby Powder	1915	Tin can	1 3/4" x 1 3/4" x 3 1/2"	No volume listed	Full	Boro-Salicyiated Talcum	Made in U.S.A.
Marketing	JBP222	Johnson's BABY POWDER	1928	Tin can	1 1/4" x 1 1/4" x 1 3/4"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP223	Johnson's BABY POWDER	No date	Cardboard Cylinder	2" x 4"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP224	Johnson's Toilet and Baby Powder	1914	Tin can	1 3/4" x 1 3/4" x 3 1/2"	4 oz.	Full	Antiseptic Perfumed Talcum	Made in U.S.A.
Marketing	JBP225	Johnson's BABY POWDER	1935	Tin can	2 1/4" x 2 1/4" x 4 3/4"	10 oz.	Full	Borated Talcum	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

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Marketing	JBP226	Johnson's BABY POWDER	1953	Tin can	2 1/4" x 2 1/4" x 5 1/4"	9 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP227	Johnson's medicated powder	No date	Tin can	1 3/4" x 1 3/4" x 4 3/4"	4 oz.	Full	No ingredients listed	Made in U.S.A.
Marketing	JBP228	Johnson's BABY POWDER	No date	Cardboard cylinder	2" x 4 3/4"	4 1/8 oz.	Half full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP229	Johnson's Baby and Toilet Powder	No date	Tin can	1 1/2" x 1 1/2" x 4"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP230	UNSCENTED Johnson's BABY POWDER	1930	Tin can	1 3/4" x 1 3/4" x 4"	4 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP231	Johnson's BABY POWDER	1944	Cardboard cylinder	2" x 4 1/2"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP232	NEW Johnson's baby powder	1964	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP235	Johnson's Baby Powder	1959	Tin can	1 3/4" x 1 3/4" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP236	Johnson's baby powder FOR HOSPITAL USE ONLY	1964	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP237	Johnson's baby powder HOSPITAL PACKAGE NOT FOR RESALE	1970	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP238	Johnson's baby powder	1967	Plastic bottle	2 1/4" x 2" x6 1/4"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP239	Johnson's Baby Powder	1959	Tin can	1 3/4" x 1 3/4" x 5"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP240	Johnson's BABY POWDER FOR HOSPITAL DISPENSING ONLY	No date	Tin can	1 3/4" x 1 3/4" x 5"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP241	Johnson's baby powder	1978	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	talc, fragrance	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Marketing	JBP242	Johnson's baby powder	1970	Plastic bottle	1 3/4" x 1 1/4" x 3 1/2"	2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP243	Johnson's BABY POWDER	1952	Tin can	1 1/2" x 1 1/2" x 3 3/4"	1 1/2 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP245	Johnson's BABY POWDER	1942	Tin can	1 1/2" x 1 1/2" x 3 3/4"	1 3/4 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP246	TRIAL SIZE Johnson's baby powder	1964	Plastic bottle	1" x 1" x 2 3/4"	1/2 oz.	Full	Ingredients covered by label	Information covered by label
Marketing	JBP247	TRIAL SIZE Johnson's baby powder	1967	Plastic bottle	1" x 1" x 2 3/4"	1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP248	Johnson's baby powder	No date	Plastic bottle	2 3/4" x 2 1/4" x 7"	14 oz.	Half full	talc, fragrance	Made in U.S.A.
Marketing	JBP264	Johnson's BABY POWDER	1945	Tin can	4 1/2" x 4 1/2" x 2"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP265	Johnson's BABY POWDER	1940	Cardboard cylinder	2 3/4" x 5 1/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP266	Johnson's baby powder	1960	Tin can	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP267	Johnson's BABY POWDER	1943	Cardboard box	2 1/2" x 2 1/2" x 5 1/4"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP268	NEW Johnson's baby powder	1964	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP269	Johnson's baby powder	No date	Plastic bottle	1 3/4" x 1 3/4" x 4 3/4"	4 oz.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP270	Johnson's BABY POWDER	1932	Tin can	5 1/4" x 4 1/4" x 2 1/4"	4 oz.	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP271	Johnson's BABY POWDER	1940	Tin can	5 1/2" x 4 1/2" x 2"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Marketing	JBP272	Johnson's BABY POWDER	1948	Tin can	6" x 4 1/4" x 1 1/2"	1 1/2 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP274	Johnson's Antiseptic Baby Powder PERFUMED	1896	Tin can	1 3/4" x 1 3/4" x 4 1/4"	No volume listed	Full	Illegible due to damaged label	No information
Marketing	JBP275	Johnson's baby powder	No date	Plastic bottle	1 3/4" x 1" x 3 1/2"	2 oz.	Full	No ingredients listed	No information
Marketing	JBP276	Johnson's baby powder	No date	Plastic bottle	1 3/4" x 1" x 3 1/2"	2 oz.	Full	No ingredients listed	No information
Marketing	JBP277	Johnson's baby powder	1960	Tin can	1 1/2" x 1 1/2" x 3 3/4"	1 1/2 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP279	Johnson's BABY POWDER	1955	Tin can	1 3/4" x 1 3/4" x 4 3/4"	4 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP280	Johnson's BABY POWDER	1944	Cardboard cylinder	3" x 5 1/2"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP281	Johnson's BABY POWDER	1942	Tin can	5 1/4" x 4 1/2" x 2"	4 1/8 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP282	Johnson's baby powder	1978	Plastic bottle	1 3/4" x 1 1/2" x 4 3/4"	4 oz.	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP283	Johnson's BABY POWDER	1959	Tin can	2 1/4" x 2 1/4" x 6"	9 oz.	Full	Talc	Made in U.S.A.
Marketing	JBP284	Johnson's BABY POWDER	1940-1949	Cardboard cylinder	2 3/4" x 6"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP285	Johnson's Toilet and Baby Powder	1918	Cardboard cylinder	2 1/4" x 3"	4 oz.	Empty	Antiseptic Perfumed Talcum	No information
Marketing	JBP287	Johnson's BABY POWDER	1952	Tin can	1 3/4" x 1 3/4" x 4"	4 oz.	Full	Talc and Boric Acid	Made in U.S.A.

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

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Marketing	JBP288	Johnson's BABY POWDER	1930	Tin can	1 3/4" x 1 /4" x 4"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	JBP289	Johnson's Toilet and Baby Powder	1924	Tin can	3 1/4" x 3 1/4" x 1 1/4"	No volume listed	Full	Antiseptic Borated Talcum	Made in U.S.A.
Marketing	JBP290	Johnson's BABY POWDER	1940-1949	Cardboard box	2 1/2" x 2 1/2" x 5 1/2"	10 oz.	Full	Talc and Boric Acid	Made in U.S.A.
Marketing	JBP292	Johnson's Toilet and Baby Powder	1910-1939	Tin can	1" x 1" x 1 3/4"	No volume listed	Full	Antiseptic Borated Talcum	No information
Marketing	JBP293	UNSCENTED Johnson's BABY POWDER	1930	Tin can	1 3/4" x 1 3/4" x 4"	4 oz.	Full	Borated Talcum	Made in U.S.A.
Quality Assurance	JBP294	Johnson's baby powder	1984	Plastic bottle	5" x 2 1/4" x 6 3/4"	Two 9 oz. bottles in cardboard box	Full	talc, fragrance	Made in U.S.A.
Quality Assurance	JBP295	Johnson's baby powder	1984	Plastic bottle	5" x 2 1/4" x 6 3/4"	Two 9 oz. bottles in cardboard box	Full	talc, fragrance	Made in U.S.A.
Marketing	JBP296	Johnson's Baby and Toilet Powder	No date	Envelope	5" x 1/8" x 3"	No volume listed	Full	Borated Talcum	Made in U.S.A.
Marketing	STS001	MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER with Baking Soda	1982	Plastic curved bottle	3 1/2" x 1 1/2" x 7"	8 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS002	IMPROVED! Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980	Plastic curved bottle	3 1/2" x 1 1/2" x 7 1/4"	8 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

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Marketing	STS003	Shower to Shower body powder	1969	Plastic curved bottle	2 1/2" x 1 1/4" x 5 3/4"	4 oz.	Three-quarters full	No ingredients listed	No information
Marketing	STS004	Shower to Shower body powder	1968	Plastic curved bottle	2 3/4" x 1 3/4" x 5 3/4"	4 oz.	Full	No ingredients listed	No information
Marketing	STS005	MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER with Baking Soda	1982	Plastic curved bottle	2 3/4" x 1 1/4" x 5 3/4"	4 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS006	NEW! DEODORANT PROTECTION Shower to Shower body powder	1972-1974	Plastic curved bottle	3 3/4" x 1 3/4" x 7 1/4"	8 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	Made in U.S.A.
Marketing	STS007	Shower to Shower body powder	1969	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	12 1/2 oz.	Half full	No ingredients listed	No information
Marketing	STS008	Shower to Shower body powder	1969	Plastic curved bottle	4 1/2" x 1 1/2" x 8"	12 1/2 oz.	Half full	No ingredients listed	No information
Marketing	STS009	MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER with Baking Soda	1982	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS010	Shower to Shower body powder	1968	Plastic curved bottle	4 1/2" x 1 1/2" x 8"	12 1/2 oz.	Half full	No ingredients listed	No information
Marketing	STS011	NEW SPICE SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch	1985	Plastic curved bottle	3 1/2" x 1 /12" x 7"	8 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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EXHIBIT A

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Marketing	STS012	HERBAL Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980	Plastic curved bottle	4 1/2" x 1 1/2" x 8"	13 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS013	HERBAL Shower to Shower DEODORANT BODY POWDER with Baking Soda	1976	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Half full	Talc, sodium bicarbonate, fragrance	Made in U.S.A.
Marketing	STS014	Shower to Shower DEODORANT BODY POWDER with Baking Soda	1978	Plastic curved bottle	2 3/4" x 1 1/4" x 5 3/4"	4 oz.	Full	Talc, sodium bicarbonate, fragrance	No information
Marketing	STS015	MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER with Baking Soda	1982	Plastic curved bottle	3 1/2" x 1 1/2" x 7 1/4"	8 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS016	IMPROVED! Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980-1981	Plastic curved bottle	4 1/2" x 1 3/4" x 8 1/4"	13 oz.	Half full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS017	NEW Shower to Shower DEODORANT BODY POWDER	1974	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	Made in U.S.A.
Marketing	STS018	NEW SPICE SCENT Shower to Shower DEODORANT BODY POWDER with Baking Soda and Corn Starch	1985	Plastic curved bottle	3 1/2" x 1 /12" x 7"	8 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS019	IMPROVED! Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980	Plastic curved bottle	4 1/2" x 1 1/2" x 8"	13 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

See Endnotes

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Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

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Marketing	STS020	Shower to Shower body powder	1967	Plastic curved bottle	2 1/2" x 1 1/4" x 5 3/4"	4 oz.	Full	Ingredients covered by label	No information
Marketing	STS021	Shower to Shower DEODORANT BODY POWDER with Baking Soda	1975	Plastic curved bottle	2 1/2" x 1 1/4" x 5 3/4"	4 oz.	Half full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS022	NEW! DEODORANT PROTECTION Shower to Shower body powder	1973	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Three-quarters full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS023	MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER with Baking Soda	1982	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS024	TRIAL SIZE Shower to Shower DEODORANT BODY POWDER with Baking Soda	1978	Plastic bottle	1 3/4" x 1 3/4 x 3 3/4"	1 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS025	Shower to Shower body powder	1971	Plastic curved bottle	2 1/2" x 1 1/4" x 5 3/4"	4 oz.	Three-quarters full	Ingredients covered by label	No information
Marketing	STS026	IMPROVED! HERBAL Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980	Plastic curved bottle	4 1/2" x 1 1/2" x 8"	13 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS027	IMPROVED! Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	STS028	Shower to Shower body powder	1966	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	No volume listed	Half full	Ingredients covered by label	No information
Marketing	STS029	Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980-1981	Plastic curved bottle	3 1/2" x 1 1/2" x 7 1/4"	8 oz.	Three-quarters full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS030	MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER with Baking Soda	1982	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS031	Shower to Shower body powder	1969	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	12.5 oz.; Twin Pack	Full	No ingredients listed	No information
Marketing	STS032	Shower to Shower body powder	1972	Plastic curved bottle	3 1/2" x 1 1/2" x 7 3/4"	8 oz.	Half full	No ingredients listed	No information
Marketing	STS033	Shower to Shower body powder	1968	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	12 1/2 oz.	Full	No ingredients listed	No information
Marketing	STS034	Shower to Shower body powder	1967	Cardboard box	5" x 5" x 2"	No volume listed	Full	No ingredients listed	No information
Marketing	STS035	Shower to Shower body powder	1972	Plastic curved bottle	3 1/2" x 1 1/2" x 7 1/4"	7 1/2 oz.	Half full	No ingredients listed	No information
Marketing	STS036	Shower to Shower DEODORANT BODY POWDER with Baking Soda	1975	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	Made in U.S.A.

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	STS037	IMPROVED! Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980	Plastic curved bottle	3" x 1 3/4" x 7"	8 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS038	Shower to Shower body powder	1968	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	12 1/2 oz.	Full	No ingredients listed	No information
Marketing	STS039	Shower to Shower body powder	1966	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	12 1/2 oz.	Full	No ingredients listed	No information
Marketing	STS040	NEW Shower to Shower DEODORANT BODY POWDER	1974	Plastic curved bottle	3 1/2" x 1 1/2" x 7 1/4"	8 oz.	Half full	Ingredients covered by label	Made in U.S.A.
Marketing	STS041	NEW! DEODORANT PROTECTION Shower to Shower body powder	1972-1974	Plastic curved bottle	3 1/2" x 1 1/2" x 7 1/4"	8 oz.	Half full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS042	Shower to Shower body powder	1969	Plastic curved bottle	3 1/2" x 1 1/2" x 7 1/4"	7 1/2 oz.	Full	No ingredients listed	No information
Marketing	STS043	Shower to Shower body powder	1966	Plastic curved bottle	3" x 1 3/4" x 7"	7 1/2 oz.	Full	No ingredients listed	No information
Marketing	STS044	IMPROVED! Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980-1981	Plastic curved bottle	2 1/2" x 1 1/2" x 5 3/4"	4 oz.	Full	Ingredients covered by label	No information
Marketing	STS045	Shower to Shower DEODORANT BODY POWDER with Baking Soda	1975	Plastic curved bottle	3" x 1 3/4" x 7"	8 oz.	Half full	Talc, Sodium Bicarbonate, Fragrance	Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

See Endnotes

Created for Purposes of Litigation

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	STS046	NEW Shower to Shower DEODORANT BODY POWDER	1974	Plastic curved bottle	2 3/4" x 1 1/4" x 5 3/4"	4 oz.	Full	Ingredients covered by label	No information
Marketing	STS047	IMPROVED! Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980-1981	Plastic curved bottle	3" x 1 1/4" x 5 3/4"	4 oz.	Half full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS048	NEW REGULAR SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch	No date	Plastic curved bottle	2 1/2" x 1 1/2" x 5 3/4"	4 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS049	Shower to Shower DEODORANT BODY POWDER with Baking Soda	1978	Plastic curved bottle	3" x 1 3/4" x 7"	8 oz.	Half full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS050	Shower to Shower body powder	1968	Plastic curved bottle	3" x 1 3/4" x 7"	7 1/2 oz.	Half full	No ingredients listed	No information
Marketing	STS051	Shower to Shower body powder	1971	Plastic curved bottle	3 1/2" x 1 3/4" x 7 1/4"	7 1/2 oz.	Full	No ingredients listed	No information
Marketing	STS052	Shower to Shower body powder	1972	Plastic curved bottle	3 1/2" x 1 3/4" x 7 1/4"	7 1/2 oz.	Full	No ingredients listed	No information
Marketing	STS053	Shower to Shower body powder	1971	Plastic curved bottle	3" x 1 3/4" x 7"	7 1/2 oz.	Full	No ingredients listed	No information

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	STS054	NEW! DEODORANT PROTECTION Shower to Shower body powder	1972-1974	Plastic curved bottle	2 1/2" x 1 1/2" x 5 3/4"	4 oz.	Half full	talc, sodium bicarbonate, fragrance	Made in U.S.A.
Marketing	STS055	REGULAR SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch	1983	Plastic curved bottle	3 1/2" x 1 1/2" x 7 1/4"	8 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS056	Shower to Shower body powder	1968	Plastic curved bottle	3 1/4" x 1 3/4" x 7 1/4"	7 1/2 oz.	Half full	No ingredients listed	No information
Marketing	STS057	Shower to Shower DEODORANT BODY POWDER with Baking Soda	1975	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Half full	Talc, Sodium Bicarbonate, Fragrance	Made in U.S.A.
Marketing	STS058	Shower to Shower body powder	1972	Plastic curved bottle	2 1/2" x 1 1/2" x 5 3/4"	4 oz.	Full	No ingredients listed	No information
Marketing	STS059	NEW Shower to Shower DEODORANT BODY POWDER	1974	Plastic curved bottle	4 1/2" x 1 1/2" x 8"	13 oz.	Full	Ingredients covered by label	No information
Marketing	STS060	Shower to Shower body powder	1968	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	12 1/2 oz.	Full	No ingredients listed	No information
Marketing	STS061	IMPROVED! HERBAL Shower to Shower DEODORANT BODY POWDER with Baking Soda	1980	Plastic curved bottle	4 1/2" x 1 3/4" x 8"	13 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	STS062	MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER with Baking Soda	1982	Plastic curved bottle	2 1/2" x 1 1/2" x 5 3/4"	4 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	No information
Marketing	STS063	Shower to Shower DEODORANT BODY POWDER with Baking Soda	1975	Plastic curved bottle	3 1/2" x 1 1/2" x 7 1/4"	8 oz.	Half full	Talc, Sodium Bicarbonate, Fragrance	Made in U.S.A.
Marketing	STS064	TRAVEL SIZE REGULAR SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch	No date	Plastic bottle	1 1/2" x 3/4" x 3 3/4"	1 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS065	REGULAR SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch SPICE SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch	1986	Plastic curved bottle	7 1/4" x 1 3/4" x 7 1/4"	Two 8 oz. bottle in cardboard box	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS066	Shower to Shower body powder	1968	Cardboard cylinder	1 3/4" x 2 3/4"	1/2 oz.	Full	No ingredients listed	No information
Marketing	STS067	FREE SAMPLE REGULAR SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch FREE SAMPLE MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch	1983	Packet	6" x 1/16" x 3 1/2"	.13 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Marketing	STS068	FREE SAMPLE REGULAR SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch FREE SAMPLE MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch	1983	Packet	6" x 1/16" x 3 1/2"	.13 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS069	FREE SAMPLE REGULAR SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch FREE SAMPLE MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch	1983	Packet	6" x 1/16" x 3 1/2"	.13 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Marketing	STS070	TRAVEL SIZE SPICE SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch TRAVEL SIZE MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch MORNING FRESH SCENT Shower to Shower DEODORANT BODY POWDER With Baking Soda and Corn Starch	No date	Plastic curved bottle	6" x 1 3/4" x 7 1/4"	One 8-oz. and two 1-oz. bottles	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	No information
Research & Development	RR001	Writing on rock: Blast Aug (illegible)	No date	Rock	5 1/2" x 3" x 2 3/4"	N/A	N/A	N/A	N/A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

See Endnotes

Created for Purposes of Litigation

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

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Research & Development	RR002	Rock w/no writing	No date	Rock	9 1/2" x 4 1/2" x 3 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR003	Writing on rock: Haichen Sept '91, Korea Diluent	1991	Rock	4 1/2" x 3" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR004	Writing on rock: Illegible	No date	Rock	5 3/4" x 3 3/4" x 1 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR005	Writing on rock: China Guping 1983	1983	Rock	3 1/2" x 2 1/2" x 1 1/4"	N/A	N/A	N/A	N/A
Research & Development	RR006	Typed label on bag: Soap stone chips (Finex) Sample No. 2 J&J	No date	Rock	5" x 2" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR007	Writing on rock: Haichen #1 6-15-86 Via Mexico, China on reverse	1986	Rock	5 1/4" x 4 3/4" x 4"	N/A	N/A	N/A	N/A
Research & Development	RR008	Writing on rock: VT 1965	1965	Rock	8 1/2" x 4 1/4" x 4 1/4"	N/A	N/A	N/A	N/A
Research & Development	RR009	Rock w/no writing	No date	Rock	3 1/4" x 2 3/4" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR010	Rock w/no writing	No date	Rock	4" x 1 3/4" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR011	Writing on rock: Italy	No date	Rock	4 1/4" x 2" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR012	Rock w/no writing	No date	Rock	6 3/4" x 4 3/4" x 1 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR013	Writing on rock: Madoc 1967	1967	Rock	4 1/4" x 3" x 2 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR014	Writing on bag containing rock: J.T. Roberts Jr. I am really … (other illegible text)	No date	Rock	2 3/4" x 2 3/4" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR015	Rock w/no writing	No date	Rock	4 1/2" x 4" x 3 1/2"	N/A	N/A	N/A	N/A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Research & Development	RR016	Rock w/no writing	No date	Rock	6 1/2" x 5" x 2 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR017	Rock w/no writing	No date	Rock	3" x 2 3/4" x 3"	N/A	N/A	N/A	N/A
Research & Development	RR018	Rock w/no writing	No date	Rock	4 1/2" x 4 1/4" x 3"	N/A	N/A	N/A	N/A
Research & Development	RR019	Rock w/no writing	No date	Rock	6" x 4" x 3 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR020	Rock w/no writing	No date	Rock	7" x 4" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR021	Rock w/no writing	No date	Rock	2 3/4" x 2 3/4" x 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR022	Rock w/no writing	No date	Rock	3 1/2" x 2 3/4" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR023	Rock w/no writing	No date	Rock	4 1/2" x 3" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR024	Writing on rock: Illegible	No date	Rock	3" x 2" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR025	Rock w/no writing	No date	Rock	3 1/2" x 2" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR026	Writing on rock: Illegible	No date	Rock	3 1/2" x 2 3/4" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR027	Rock w/no writing	No date	Rock	4 1/4" x 2 1/2" x 2"	N/A	N/A	N/A	N/A
Research & Development	RR028	Rock w/no writing	No date	Rock	4 3/4" x 2" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR029	Writing on rock: Rajasthan	No date	Rock	7" x 2 1/4" x 2 1/4"	N/A	N/A	N/A	N/A
Research & Development	RR030	Rock w/no writing	No date	Rock	5 1/2" x 3" x 1 1/4"	N/A	N/A	N/A	N/A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

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Research & Development	RR031	Writing on rock: Hi Liaonirg 1986 via Brettzer (illegible)	No date	Rock	5 1/4" x 3 3/4" x 3"	N/A	N/A	N/A	N/A
Research & Development	RR032	Writing on rock: Willow Creek Montana 1969	No date	Rock	5 3/4" x 4 1/2" x 3"	N/A	N/A	N/A	N/A
Research & Development	RR033	Writing on rock: Ashton	No date	Rock	7 1/2" x 4 1/4" x 2 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR034	Writing on rock: Warm Springs Death Valley 1972	No date	Rock	5" x 4 1/2" x 2"	N/A	N/A	N/A	N/A
Research & Development	RR035	Writing on rock: Zambia Sept. 1983 (illegible)	No date	Rock	7" x 4" x 1 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR036	Rock w/no writing	No date	Rock	4 1/4" x 3 1/4" x 3"	N/A	N/A	N/A	N/A
Research & Development	RR037	Rock w/no writing	No date	Rock	7" x 3" x 2"	N/A	N/A	N/A	N/A
Research & Development	RR038	Rock w/ sticker typed 715	No date	Rock	4 1/2" x 4" x 2"	N/A	N/A	N/A	N/A
Research & Development	RR039	Rock w/no writing	No date	Rock	6 1/2" x 4" x 1 1/4"	N/A	N/A	N/A	N/A
Research & Development	RR040	Rock w/no writing	No date	Rock	4 1/4" x 1 3/4" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR041	Rock w/no writing	No date	Rock	3 3/4" x 2 1/2" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR042	Rock w/no writing	No date	Rock	3 1/4" x 2 1/2" x 2 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR043	Rock w/no writing	No date	Rock	5 1/2" x 5 1/2" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR044	Rock w/no writing	No date	Rock	4 1/2" x 3 1/2" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR045	Rock w/no writing	No date	Rock	2 1/2" x 2" x 1 1/2"	N/A	N/A	N/A	N/A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

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Research & Development	RR046	Rock w/no writing	No date	Rock	5 3/4" x 4" x 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR047	Rock w/no writing	No date	Rock	4 3/4" x 4 3/4" x 2 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR048	Rock w/no writing	No date	Rock	4" x 2" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR049	Rock w/no writing	No date	Rock	3" x 2 3/4" x 2"	N/A	N/A	N/A	N/A
Research & Development	RR050	Rock w/no writing	No date	Rock	5" x 3" x 2"	N/A	N/A	N/A	N/A
Research & Development	RR051	Rock w/no writing	No date	Rock	4 1/4" x 3" x 2"	N/A	N/A	N/A	N/A
Research & Development	RR052	Rock w/no writing	No date	Rock	3 1/4" x 2 1/2" x 2"	N/A	N/A	N/A	N/A
Research & Development	RR053	Rock w/no writing	No date	Rock	3 1/2" x 2" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR054	Writing on rock: Pit (other illegible text)	No date	Rock	4" x 3" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR055	Rock w/no writing	No date	Rock	2 1/2" x 2 1/4" x 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR056	Rock w/no writing	No date	Rock	2 3/4" x 1 1/4" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR057	Rock w/no writing	No date	Rock	2 1/2" x 2 1/2" x 3/4"	N/A	N/A	N/A	N/A
Research & Development	RR058	Rock w/no writing	No date	Rock	2 1/2" x 1 3/4" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR059	Rock w/no writing	No date	Rock	7 1/2" x 4 1/4" x 3 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR060	Rock w/no writing	No date	Rock	2" x 3/4" x 1/2"	N/A	N/A	N/A	N/A

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Research & Development	RR061	Rock w/no writing	No date	Rock	2 1/4" x 1" x 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR062	Container Label: Kwangsi Talc - Highest Grade Cosmetic & Pharmaceutical Two rocks w/no writing Vial 1 w/label: Osmanthus Kwangsi Talc Lot 1209 JJKK 10-9-85 Vial 2 w/label: Baby Powder Lot No. 100 Kwangsi Talc Lot No. 1209 J&J KK 9-30-85 Vial 3 w/label: Korean Vial 4 w/label: Italian Vial 5 w/label: V66	No date	Container and vials	5" x 2 1/2"	No volume listed	N/A	Talc	N/A
Research & Development	RR065	Writing on rock: Liaomin RRC. (illegible)	No date	Rock	8 3/4" x 2 1/4" x 3 1/4"	N/A	N/A	N/A	N/A
Research & Development	RR066	Writing on rock: Montana	No date	Rock	4 1/2" x 2 3/4" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR067	Writing on rock: Yiehsien	No date	Rock	5 3/4" x 2 1/2" x 2 1/4"	N/A	N/A	N/A	N/A
Research & Development	RR068	Rock w/no writing	No date	Rock	2 1/4" x 2" x 1"	N/A	N/A	N/A	N/A
Research & Development	RR069	Writing on rock: China Yishin 1975 (illegible)	No date	Rock	6" x 3 1/2" x 2"	N/A	N/A	N/A	N/A
Research & Development	RR070	Writing on rock: Udaipur 1975	No date	Rock	5 1/2" x 3 1/4" x 2 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR071	Writing on rock: Zimbabwe Dec. 1982 2516-13	No date	Rock	5" x 3 1/2" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR072	Writing on rock: Korean Rock Sept 1991	No date	Rock	6" x 6" x 3"	N/A	N/A	N/A	N/A

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBIT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
Research & Development	RR073	Rock w/no writing	No date	Rock	2" x 2" x 1 1/2"	N/A	N/A	N/A	N/A
Research & Development	RR074	Writing on rock: Tremolite Gouvrneve Talc Deposit (illegible)	No date	Rock	4" x 3 3/4" x 1 3/4"	N/A	N/A	N/A	N/A
Research & Development	TPWDR001	Talc Finex	No date	Plastic bag	4 1/2" x 4" x 1/2"	150 g.	N/A	Talc	N/A
Research & Development	TPWDR002	Typed label on bag: Italian Talc ** Charles B. Chrystal Co., 25 Ann St., New York, NY 10038 Tele: 212/227-2151 Fax: 212/233-7916	No date	Plastic bag	2" x 1/16" x 2 1/2"	No volume listed	N/A	Talc	N/A
U.K. Facility[5]	"U.K. Facility 1"*	Johnson's Baby and Toilet Powder	Late 1940s	Metal	4 1/4" h. x 1 7/8" w. x 1 7/8" d.	N/A	Full	Borated Talcum	Made in Gt. Britain
U.K. Facility	"U.K. Facility 2"*	Johnson's Baby Powder	Early 1950s	Metal	4" h. x 2 3/8" d.	N/A	Empty	"Made of an extremely fine quality talc pure boric acid and very mildly perfumed. It contains no stearate of zinc or orris root."	Made in England

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products and/or Talc Samples Identified in Offsite Storage As of January 19, 2018[2]

EXHIBT A

Department Name	Sample Number	Label	Date on Container or Wrapping	Medium	Approximate Dimensions[3]	Container Volume (oz./g.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made
U.K. Facility	"U.K. Facility 3"*	Johnson's Baby Powder	Late 1950s	Metal	4 1/8" h. x 2 3/8" d.	N/A	Full	"Made of an extremely fine quality talc, borated and very mildly perfumed. It contains no stearate of zinc or orris root."	Made in Gt. Britain
U.K. Facility	"U.K. Facility 4"*	Johnson's Baby Powder	October 1966	Metal; paper label	4 3/4" h. x. 1 7/8" w. x 1 7/8" d.	3 1/2 oz./ 99 g.	Full	Sterilized Talc, Sodium Sesquicitrate	Made in England

[1]As used in this inventory, “historical” refers to products that were manufactured prior to 2014 and talc that may have been used in those products.

[2]This inventory contains historical samples of Johnson's® Baby Powder or Shower to Shower® and/or talc that may have been used in the same.

[3]Width x Depth x Height or Diameter x Height.

[4]Per the Agreed Order, sample JBP084 was divided in an effort to comply with an instruction given by a court in another case prior to entry of the Agreed Order. Plaintiffs and defendants each received two ounces.

[5]Samples designated with a single asterisk were obtained by John Hopkins just before the closing of defendants' U.K. facility. It is defendants' understanding that these samples were in a glass showcase at the U.K. facility until it closed in or about 1999.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

EXHIBIT B

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
"New Artifact Donated on 9/19/17"	Johnson's Baby Powder	N/A	Cardboard; metal	N/A	4 1/8 oz.	Empty	Talc and Boric Acid	Johnson & Johnson; New Brunswick N.J. Chicago ILL; Made in U.S.A.
"New Museum 1"	Johnson's Baby Powder	N/A	Metal	N/A	9 oz.	Empty	talc and boric acid	Johnson & Johnson; New Brunswick, N.J. Chicago, Ill
"New Museum 3"	Regular Scent Shower to Shower Deodorant Body Powder with Baking Soda and Corn Starch	N/A	Plastic	N/A	13 oz.	Empty	talc, corn starch, sodium bicarbonate, fragrance	Personal Products Company
"New Museum 4"	Johnson's Baby Powder	N/A	Metal	N/A	4 1/2 oz.	Empty	talc and boric acid	Johnson & Johnson; New Brunswick, N.J. Chicago, Ill
2014.001.0082	Johnson's® Industria Argentina polvo de fécula	1979	Plastic	N/A	Illegible	One-third full	Label in Spanish	Johnson & Johnson de Argentina S.A.C.e.; Darwin 471 - Buenos Aires; Prod. Aut. S.S.P.; Cert. No 29.544 "A"
2014.001.0086	Polvo A Base De Fécula Johnson's*	1978	Plastic	N/A	100 g.	Empty	N/A	Johnson & Johnson de Uruguay S.A.; Aut. Lab No. 381; Ind. Uruguaya Cont. Neto 100 grs; *Marca de Fabrica
2014.001.0124	Johnson's baby powder	1975	Plastic	N/A	600 g.	Empty	N/A	Johnson & Johnson PTY., LTD. Sydney; D4028; © J&J; Made in Australia
2014.001.0142	Teal Shower to Shower Talc with Deodorant	1972	Plastic	N/A	7.5 oz. net	Empty	Talc	Johnson & Johnson Ltd.
2014.001.0143	Shower to Shower Deodorant Body Powder	N/A	Plastic	N/A	200 g.	Empty	Sodium Bicarbonate	Johnson & Johnson; Australia PTY LTD. Sydney 04028; * Trade Mark © J&J
2014.001.0145	Johnson's baby powder	1983-1989	Plastic	N/A	375 g.	Full	"highest quality talc"	Johnson & Johnson; Australia PTY LTD.; 154 Pacific Hwy. St. Lenards. 2065; * Trade Mark © J&J 1983
2014.001.0162	New Nouveau Shower to Shower Deodorant Body Powder	N/A	Plastic	N/A	8 oz.; 227 g.	Empty	N/A	Johnson & Johnson Limited; Montreal & Toronto - Canada
2014.001.0380	Red Cross Borated Toilet Powder	N/A	Metal	N/A	N/A	Full	N/A	Johnson & Johnson, New Brunswick, N.J.
2014.001.0382	Abandoned Raritan Talcum Powder Borated for Toilet Use; For the Nursery	N/A	Metal	N/A	N/A	Full	N/A	Johnson & Johnson, New Brunswick, N.J.
2014.001.0389	Johnson's Medicated Powder for Baby and all the Family	1957	Metal	N/A	4 oz.	Full	hexachlorophene, para-chloro-meta-xylenol, bentonite, kaolin and talc	Johnson & Johnson, New Brunswick, N.J.
2014.001.0395	Shower to Shower Deodorant Body Powder	N/A	Plastic	N/A	8 oz.	Full	covered by museum label	Johnson & Johnson; New Brunswick, N.J.; Made in U.S.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
2014.001.0396	Shower to Shower Morning Fresh™; Fraicheur Matinale	N/A	Plastic	N/A	8 oz.	Full	N/A	Distributed in Canada by Johnson & Johnson Inc.; Montreal H1N 2G4; Made in U.S.A.
2014.001.0397	Shower to Shower Deodorant Body Powder	1978	Plastic	N/A	8 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	Johnson & Johnson; New Brunswick, N.J.; Made in U.S.A.
2014.001.0398	Shower to Shower body powder	1968	Cardboard	N/A	1/2 oz.	Full	N/A	Johnson & Johnson; New Brunswick, N.J.; *Trademark © J&J; 195501BA
2014.001.0399	Shower to Shower Original Fresh with chamomile; Fraicheur Originale with chamomile	N/A	Plastic	N/A	8 oz.	Full	cornstarch, talc, sodium bicarbonate, fragrance, tricalcium phosphate, polysaccharides, aloe barbadensis extract, extrait de camomile (anthernis nobilis)	Johnson & Johnson Consumer Companies, Inc.; Johnson & Johnson, Inc. Montreal
2014.001.0400	Herbal Trial Size Shower to Shower Deodorant Body Powder with Baking Soda	1978	Plastic	N/A	1 oz.	Full	talc, sodium Bicarbonate, Fragrance	Personal Products Company
2014.001.0403	Spice Scent Shower to Shower	1987/1989	Plastic	N/A	200 g.	Full	N/A	Johnson & Johnson Australia PTY. LTD.; 154 Pacific Hwy St. Leonards 2065; * Trade Mark © J&J 1987
2014.001.0421	Johnson's baby powder	N/A	Plastic	N/A	100 g.	Full	N/A	Johnson & Johnson; Made in Italy; © J&J; Amersfoort-Brussels
2014.001.0499	Johnson's baby powder	N/A	Plastic	N/A	14 oz.	Full	N/A; label partially in foreign language	Johnson & Johnson; Manufactured by Johnson & Johnson (H.K.) Ltd. Under the license of Johnson & Johnson in the Republic of China.
2014.001.0501	Herbal Shower to Shower Deodorant Body Powder with Baking Soda	N/A	Plastic	N/A	8 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	Johnson & Johnson; New Brunswick, N.J.; Made in U.S.A.
2014.001.0502	Spice Scent Shower to Shower Deodorant Body Powder With Baking Soda and Corn Starch	N/A	Plastic	N/A	8 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	Personal Products Company, Milltown, N.J. 08850 © PPC
2014.001.0612	Johnson's baby powder; poudre pour bébés Johnson's	1977	Plastic	N/A	4 oz.; 113 g.	Full	N/A	Johnson & Johnson Limited; Montreal & Toronto Canada; Made in Canada; © J&J
2014.001.0621	New Shower to Shower Deodorant Body Powder	N/A	Plastic	N/A	8 oz.	Empty	N/A	Johnson & Johnson Limited, Montreal & Toronto - Canada

See endnotes.

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Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

EXHIBIT B

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
2014.001.0690	talco Johnson's* para criancas	1979	Plastic	N/A	200 g.	One-third full	talco	Johnson & Johnson A.U.; Industria E Comercio; © J&J '79; Rod. Pres. Dutra. Km 157 - Sao Jose dos Campos - SP; CGC 61.192.571/0002-40 - Industria Brasilerira; Reg. S.N.F.M.F.n. H T 34/64; *Marca de Ind. E Com.
2014.001.0757	Polvilho Antisseptico Johnson's	1966	Metal; plastic	N/A	N/A	Full	Hyamina - 10x ,.50g, Diclorofeno 0,10g, Hexaclorofeno 0,10, Oxido de zinco 5,00g, Acido salicilico 0,20g, Excipiente q.s.p. 100g	Johnson & Johnson; AV.DO Estado, 5459, S. Paulo - C.G.C. 61.192.571/1 - Lic. Pelo S.N.F.M.F. SOB o 941, EM 28/12/66; Farmaceutico Responsavel: Fermino Yamashiro - Pesco Liquido 90 g - Industria Brasileria
2014.001.0887	Talco Johnson Para Niños; Johnson's Baby Powder	N/A	Metal	N/A	255 g.	Empty	Talc; Talco	Johnson & Johnson; New Brunswick, New Jersey; Fabricado En La Republica Dominicana
2014.001.0939	Johnson's baby powder	1980	Plastic	N/A	99 g.	Full	N/A	Johnson & Johnson LTD Slough; Made in England
2014.001.0953	Johnson's® talco para niños	N/A	Plastic	N/A	100 g.	Full	Label in Spanish	Johnson & Johnson; Cali Columbia
2014.001.0955	Johnson's Polvo Medicinal para el bebé y para toda la familia	N/A	Metal	N/A	113 g.	Full	Label in foreign language: Talc, hexachlorophene, bentonite, parachloro, …..	Johnson & Johnson, New Brunswick, N.J.
2014.001.0959	Nuevo Shower to Shower	N/A	Plastic	N/A	N/A	Empty	Label in foreign language	Johnson & Johnson Columbia
2014.001.1363	Johnson's baby powder	1979	Plastic	N/A	14 oz.	Full	Talc and fragrance	Johnson & Johnson; New Brunswick, N.J. 08903; Made In U.S.A. © J&J
2014.001.1364	Johnson's talco para niños	N/A	Plastic	N/A	400 g.	Full	Talco	Johnson & Johnson; New Brunswick N.J. E.U.A.; Hecho En Venezuela; Johnson & Johnson de Venezuela, S.A.
2014.001.2007	Johnson's baby powder	1977	Plastic	N/A	100 g.	Full	Label in foreign language	Johnson & Johnson; Amersfoort-Brussels; Made in Italy
2014.001.2021	Johnson's baby powder	N/A	Plastic	N/A	220 g.	Full	Label in foreign languages	Label in foreign languages
2014.001.2030	Johnson's baby powder	1979	Plastic	N/A	45 g.	Empty	talc	Bahan Aktip; Indonesia
2014.001.2108	Johnson's baby powder	1980	Plastic	N/A	N/A	Full	Label in foreign language	Greece
2014.001.2120	Johnson's talco para bebé	1980	Plastic	N/A	4 oz.	Empty	talco	Johnson & Johnson S.A.; Hecho En Guatemala

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
2014.001.2436	Johnson's Baby Powder	1945	Metal	N/A	4 1/8 oz.	Full	Talc and Boric Acid	Johnson & Johnson; New Brunswick, N.J. Chicago, ILL; Made in U.S.A.
2014.001.2437	Johnson's Baby Powder	1945	Metal	N/A	10 oz.	Full	Talc and Boric Acid	Johnson & Johnson; New Brunswick, NJ Chicago, ILL
2014.001.2438	Johnson's Baby Powder	11/15/1943	Cardboard	N/A	10 oz.	Full	Talc and Boric Acid	Johnson & Johnson; New Brunswick, NJ Chicago, ILL; Made in U.S.A.
2014.001.2439	Johnson's Baby Powder - For Hospital Dispensing Only	1957	Metal	N/A	9 oz.	Full	Talc	New Brunswick, New Jersey; Made in U.S.A.
2014.001.2441	Johnson's Antiseptic Baby Powder	1896	Metal	N/A	N/A	Full	talc	Johnson & Johnson; New Brunswick, N.J.
2014.001.2442	Johnson's Toilet and Baby Powder	1920s	Metal	N/A	N/A	Full	Antiseptic Borated Talc	Johnson & Johnson (GTBritain) Ltd.; Slough & London; Made in Gt. Britain
2014.001.2443	Johnson's Antiseptic Talcum Powder Perfumed for Toilet And Nursery	N/A	Metal	N/A	N/A	Full	N/A	Johnson & Johnson, New Brunswick, N.J.
2014.001.2444	Johnson's Toilet and Baby Powder for Toilet And Nursery	1906	Metal	N/A	N/A	Full	Antiseptic Perfumed Talcum	Johnson & Johnson; New Brunswick, N.J., U.S.A.
2014.001.2445	Johnson's Toilet and Baby Powder for Toilet And Nursery	N/A	Metal	N/A	N/A	Full	Antiseptic Perfumed Talcum	Johnson & Johnson; New Brunswick,; N.J., U.S.A.
2014.001.2447	Johnson's Baby Powder	1942	Cardboard	N/A	4 1/8 oz.	Full	Talc, borated and very mildly perfumed	Johnson & Johnson; New Brunswick, N.J. Chicago, ILL; Made in U.S.A.
2014.001.2448	Johnson's Toilet and Baby Powder for Toilet And Nursery	1916-1936	Metal	N/A	N/A	Full	Borated Talc	Johnson & Johnson; New Brunswick, N.J., U.S.A.
2014.001.2449	Johnson's Baby Powder	N/A	Metal	N/A	1 1/2 oz.	Full	Talc	Johnson & Johnson; New Brunswick, N.J. Chicago, ILL; Made in U.S.A.
2014.001.2450	Johnson's Toilet and Baby Powder for Toilet And Nursery	N/A	Metal	N/A	N/A	Empty	Antiseptic Perfumed Talc	Johnson & Johnson; New Brunswick; N.J., U.S.A.
2014.001.2451	Johnson's Antiseptic Baby Powder Perfumed	1896-1912	Metal	N/A	N/A	Full	N/A	Johnson & Johnson; New Brunswick, N.J.
2014.001.2452	Johnson's Toilet and Baby Powder	1910	Metal	N/A	N/A	Full	Antiseptic Perfumed Talc	Johnson & Johnson; New Brunswick; N.J. U.S.A.; No. 117 - Guaranteed by Johnson & Johnson under the Food and Drugs Act, June 30, 1906
2014.001.2453	Johnson's Baby Powder	1940-1943	Metal	N/A	N/A	Empty	Talc and Boric Acid	Johnson & Johnson; New Brunswick, N.J.; Chicago, ILL; Made in U.S.A.
2014.001.2454	Johnson's Baby Powder	1/28/1944	Cardboard; metal	N/A	10 oz.	Full	Talc and Boric Acid	Johnson & Johnson; New Brunswick, N.J. Chicago, ILL; Made in U.S.A.

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Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

EXHIBIT B

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
2014.001.2455	Johnson's baby powder	1970	Plastic - No top	N/A	2 oz.	Two-thirds full - No cap	Talc	Johnson & Johnson; New Brunswick, N.J. 08903; Made U.S.A. © J&J
2014.001.2456	Johnson's baby powder	1962	Metal	N/A	Economy Size	Full	Talc 12 1/2 Ozs.	New Brunswick, N.J. Made in U.S.A.; © J&J '60
2014.001.2457	baby talco Johnson's	N/A	Plastic	N/A	N/A	Empty	Talco	Johnson & Johnson; creato per I piccoli; ottimo per I grandi
2014.001.2458	Johnson's talco para niños	N/A	Plastic	N/A	245 g.	One-quarter full, or less	"talco"	Avenida; Emante Izlapalapa No 557; Mexicp 13. D F; Hecho En Mexico Por; Johnson & Johnson De Mexico SA DE CV
2014.001.2459	Johnson's baby puder	1987	Plastic	N/A	200 g.	Full	Talcum 99.8%, Aromaticu,	Johnson & Johnson; Spreitenbach AG
2014.001.2460	Johnson's baby powder purest protection	1963	Plastic	N/A	14 oz.	Full	Talc	Johnson & Johnson; New Brunswick, New Jersey; Made in the U.S.A.
2014.001.2461	Johnson's Baby Powder with aloe & vitamin e pure cornstarch	2001	Plastic	N/A	1 1/2 oz.	Full	Cornstarch	Johnson & Johnson Consumer Products, Inc.; Skillman, New Jersey
2014.001.2462	Johnson's baby powder	N/A	Plastic	N/A	200 g.	One half full	Talc, Zea Mays, Parfum	Johnson & Johnson Ltd.; Maidenhead SL6 3UG and Tallaght, Dublin 24; Made in UK.; 119012
2014.001.2463	Johnson® baby powder	1996-2003	Plastic	N/A	4 oz.; 113 g.	Full	Talc, Fragrance	Johnson & Johnson Consumer Products Company; Division of Johnson & Johnson Consumer Companies, Inc.; Skillman, NJ 08558-9418; © J&J CCI 1996 Made in U.S.A. 3011EK
2014.001.2464	Johnson's® baby powder Lavender & Chamomile	2000-2003	Plastic	N/A	15 oz.; 425 g.	Full	Zea Mays (Corn) Starch, Tri-Calcium Phosphate, Fragrance (Lavender, Chamomile)	Johnson & Johnson Consumer Products Company; Division of Johnson & Johnson Consumer Companies, Inc.; Skillman, NJ 08558-9418; © J&J CCI 2000 Made in U.S.A.; 712400
2014.001.2500	Johnson's baby corn starch	1979	Plastic	N/A	8 oz.	Full	Corn Starch, Tricalcium Phosphate, Fragrance.	Johnson & Johnson; Baby Products Company; Skillman, New Jersey 08558; Made in U.S.A. © BPC 1979; 4051 BG
2014.001.3026	Shower to Shower body powder	N/A	N/A	N/A	N/A	Full	N/A	Made in Jamaica
2014.001.3136	Johnson's baby powder - For Hospital Use Only	1966	Plastic	N/A	4 oz.	Full	Talc	Johnson & Johnson; New Brunswick, New Jersey; Made in U.S.A.

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

EXHIBIT B

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
2014.001.3146	Johnson's baby powder	1970-1975	Cardboard	N/A	N/A	Empty	Label in foreign language	Johnson & Johnson; remainder of label in foreign languages
2014.001.3157	Johnson's baby powder	1976	Plastic	N/A	100 g.	Empty	talc	Johnson & Johnson (Kenya) Ltd; Made in Kenya
2014.001.3179	Johnson's baby powder	1982	Plastic	N/A	50 g.	Empty	Label in foreign language	Johnson & Johnson; '60
2014.001.3191	baby talco Johnson's	1979	Plastic	N/A	100 g.	Empty	Label in foreign language	Johnson & Johnson; © J&J; Marchio en Febbnco
2014.001.3201	Johnson's baby powder	1982	Plastic	N/A	4 oz.	Full	N/A	Johnson & Johnson Baby Products Company; Made in Jamica
2014.001.3206	Shower to Shower body powder	N/A	Plastic	N/A	N/A	Full	hexachlorophene	N/A
2014.001.3214	Johnson's baby powder	1979/1982	Plastic	N/A	100 g.	Full	Talc and fragrance	Johnson & Johnson Ireland Ltd.; 1979; Made in the Republic of Ireland
2014.001.3232	Shower to Shower body powder	N/A	Plastic	N/A	N/A	Empty	N/A	Johnson & Johnson Limited Bombay 26; *Trademark - Made in India; © Johnson & Johnson 1971
2014.001.3234	Johnson's Medicated Powder for Baby and all the Family	1962	Metal	N/A	N/A	Full	bithionol, parachlorometaxylenol, boric acid, base with talc, kaolin and bentonite	Johnson & Johnson of India Private Ltd.
2014.001.3239	Johnson's baby powder	1972	N/A	N/A	N/A	Full	talc	Johnson & Johnson Limited; Made in India; © J&J 68
2014.001.3254	Johnson's talco para bebé	1980	N/A	N/A	N/A	Empty	talco	Johnson & Johnson; Qcaluz-de-Baxo; La Briado En Portugal
2014.001.3298	Johnson's baby powder	1970-1980	Plastic	N/A	4 oz.	Full	Talc	Made in the Philippines by; Johnson & Johnson (Phil.) Inc.; Makati, Rizal
2014.001.3417	Johnson's baby powder	1980	Plastic	N/A	110 g.	Full	Talc	Johnson & Johnson (N.Z.) Ltd. Auckland
2014.001.3444	Johnson's baby powder	1978	Plastic	N/A	227 g.	Empty	N/A	Johnson & Johnson Pakistan LTD; Karachi
2014.001.3448	Johnson's baby powder With Increased Perfume	N/A	Plastic	N/A	125 g.	Empty	talc	Johnson & Johnson Pakistan LTD; Karachi
2014.001.3454	Johnson's® talco para niños	1977	Plastic	N/A	113 g.	Full	Talco	Johnson & Johnson; Producio Peruano R.I. 10142; Reg. Man. No. 315955
2014.001.3468	Johnson's baby powder	1975	Plastic	N/A	99 g.	Empty	N/A	© Johnson & Johnson LTD Slough; Made in England
2014.001.3482	Johnson's baby powder	1980	Plastic	N/A	113 g.	Full	Talc	Made by Johnson & Johnson (Trinidad) Ltd.; Barataria, Trinidad & Tobago; © J&J 1985

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
2014.001.3708	Johnson's® talco para niños	1978	Plastic	N/A	113 g.	Full	Talco	Johnson & Johnson; de Venezuela S.A.; Hecho en Valencia; EDO Carabobo - Venezuela
2014.001.3718	Johnson's baby powder	1979	Plastic	N/A	110 g.	Full	Talc	Johnson & Johnson; remainder of label in foreign languages
2014.001.3787	Johnson's baby powder	1978	Plastic	N/A	200 g.	Full	Talcum 99.8%, Aromaticum	Johnson & Johnson Spreitenbach AG; Made in Italy; © J&J
2014.001.3918	Johnson's baby powder	1980-1984	Plastic	N/A	4 oz.	Full	N/A	Johnson & Johnson; Manufactured by Johnson & Johnson Taiwan Ltd.; ". . ." is the trade mark used in Taiwan under license of Johnson & Johnson, U.S.A.
2014.001.3921	Johnson's baby powder	1982	N/A	N/A	24 oz.	Full	Label in foreign language	Johnson & Johnson; Manufactured by Johnson & Johnson Taiwan Ltd.; ". . ." is the trade mark used in Taiwan under license of Johnson & Johnson, U.S.A.
2014.001.3923	Shower to Shower	1972	Plastic	N/A	180 nsu.	Full	Label in foreign language	Label in foreign language
2014.001.3934	Johnson's baby powder	1980	Plastic	N/A	375 nsu.	Full	N/A	N/A
2014.001.3939	Johnson's baby powder	1980	Plastic	N/A	N/A	Empty	Label in foreign language	Johnson & Johnson; remainder of label in foreign languages
2014.001.3958	Johnson's talco para niños	N/A	Plastic	N/A	N/A	Empty	talco	Johnson's products para la higiene infantil; Johnson & Johnson S.A.; Madrid-16
2014.001.3976	Johnson's baby puder	1972	Plastic	N/A	227 g.	Full	Talcum Steril. Natrii citras	Johnson & Johnson LTD. Slough; Made In England
2014.001.4042	Shower to Shower Deodorant Body Powder	N/A	Plastic	N/A	8 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	Personal Products Company, Lillington, N.J. 08850 © PPC
2014.001.4043	Herbal Shower to Shower Deodorant Body Powder	N/A	Plastic	N/A	8 oz.	Full	Talc, Corn Starch, Sodium Bicarbonate, Fragrance	Personal Products Company, Lillington, N.J. 08850 © PPC
2014.001.4316	Johnson's baby powder; Johnson's baba-poeier	1980	Plastic	N/A	100 g.	Full	N/A	By Johnson & Johnson (PTY) LTD.; Dawn, East London; Voortrekker Rd; Made in South Africa
2014.001.5101	Johnson's baby powder	1985	Plastic	N/A	9 oz.	Full	Talc, Fragrance	Johnson & Johnson; Baby Products Co.; Skillman, NJ 08858; Made in U.S.A.; © J&J BPC `1985; 3021DT

Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

EXHIBIT B

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
2014.001.5102	Johnson's baby powder	1985	Plastic	N/A	9 oz.	Full	Talc, Fragrance	Johnson & Johnson; Baby Products Co.; Skillman, NJ 08858; Made in U.S.A.; © J&J BPC `1985; 3021DT
2014.001.5506	New Shower to Shower	N/A	Plastic	N/A	1 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	Johnson & Johnson; New Brunswick, N.J. 08903 Made in U.S.A.
2014.001.5507A	Johnson's Medicated Powder for Baby and all the Family	N/A	Metal	N/A	4 oz.	Full	hexachlorophene, para-chloro-meta-xylenol, bentonite, kaolin and talc	Johnson & Johnson, New Brunswick, N.J.
2014.001.5507B	Johnson's Medicated Powder for Baby and all the Family	N/A	Metal	N/A	4 oz.	Full	hexachlorophene, para-chloro-meta-xylenol, bentonite, kaolin and talc	Johnson & Johnson, New Brunswick, N.J.
2014.001.5512	Johnson's Medicated Powder for Baby and all the Family	N/A	Metal	N/A	9 oz.	Full	hexachlorophene, para-chloro-meta-xylenol, bentonite, kaolin and talc	Johnson & Johnson, New Brunswick, N.J.
2014.001.5513	Johnson's Medicated Powder for Baby and all the Family	N/A	Metal	N/A	9 oz.	Full	hexachlorophene, para-chloro-meta-xylenol, bentonite, kaolin and talc	Johnson & Johnson, New Brunswick, N.J.
2014.001.5555	New Shower to Shower	N/A	Plastic	N/A	1 oz.	Full	Talc, Sodium Bicarbonate, Fragrance	Johnson & Johnson; New Brunswick, N.J. 08903 Made in U.S.A.
2014.001.5557	Johnson's Medicated Powder for Baby and all the Family	1957	Metal	N/A	4 oz.	Full	hexachlorophene, para-chloro-meta-xylenol, bentonite, kaolin and talc	Johnson & Johnson, New Brunswick, N.J.
2014.001.5812	Johnson's Baby Powder	N/A	Metal	N/A	4 oz.	Empty	Borated Talc	Johnson & Johnson Limited Montreal; Made in Canada
2014.001.5830	Johnson's Baby and Toilet Powder	1940	N/A	N/A	N/A	Almost full	Borated Talcum	Johnson & Johnson (Gt. Britain) Limited.; Slough & Gargrave; Made in Gt. Britain
2014.001.5859	Johnson's baby powder	N/A	Cardboard	N/A	N/A	Full	Label in foreign language	N/A
2014.001.5862	Johnson's Toilet and Baby Powder for Toilet And Nursery	1930	Metal	N/A	N/A	Almost full	Antiseptic Borated Talc	Johnson & Johnson; New Brunswick, N.J. U.S.A.; Made in U.S.A
2014.001.5863	Polvo Johnson's Para Niños	1930	Metal	N/A	N/A	Full	talco boratado	Johnson & Johnson; New Brunswick, N.J.E.U.A.; Frabricado En E.U.A.
2014.001.5864	Polvo Johnsons Para Niños	1930	Metal	N/A	N/A	Full	talco boratado	Johnson & Johnson; New Brunswick, N.J.E.U.A.; Frabricado En E.U.A.
2014.001.6011	Johnson's Baby Powder for Toilet and Nursery	1904	Cardboard	N/A	"Minature Size"	Full	N/A	Johnson & Johnson; New Brunswick, N.J.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
2014.013.0019	Johnson's Baby Powder	N/A	Metal	N/A	4 1/8 oz.	Almost empty	Talc and Boric Acid	Johnson & Johnson; New Brunswick, N.J. Chicago ILL; Made in U.S.A.
2014.013.0020	Johnson's Antiseptic Baby Powder	N/A	Metal	N/A	N/A	Never contained product - 100th Anniversary Commemorative Tin	N/A	N/A
2014.036.0007	Johnson's baby powder	1963	Cardboard; metal; plastic	N/A	2 oz.	Almost empty	talc	Johnson & Johnson; New Brunswick, New Jersey; Made in U.S.A.
2014.036.0008	Johnson's Antiseptic Baby Powder for Toilet and Nursery	N/A	Metal	N/A	N/A	Never contained product - 100th Anniversary Commemorative Tin	N/A	N/A
2014.043.0001	Johnson's baby powder	1980	Plastic	N/A	4 oz.	Empty	talc	Johnson & Johnson; New Brunswick, New Jersey; Made in U.S.A.
2014.045.0001	Johnson's baby powder	1960	Metal	N/A	1 1/2 oz.	Almost full	Talc	Johnson & Johnson; New Brunswick, New Jersey; Made in U.S.A.
2015.001.2201	Johnson's Antiseptic Baby Powder	1994	Metal	N/A	N/A	Never contained product - 100th Anniversary Commemorative Tin	N/A	N/A
2015.001.2218	Johnson's Baby Powder	N/A	Metal	N/A	4 oz.	Full	Talc and Boric Acid	Johnson & Johnson; New Brunswick, N.J. Chicago, ILL; Made in USA
2015.001.3445	Johnson's Baby Powder	N/A	Metal	N/A	N/A	Full	Borated Talcum	Johnson & Johnson, Limited; Montreal, Canada; Made in Canada
2015.001.3446	Johnson's Toilet and Baby Powder	1921	Metal	N/A	4 oz.	Full	Antiseptic Borated Talc	Johnson & Johnson, Limited; Montreal, Canada; Made in Canada
2015.001.3447	Johnson's Baby Powder	1950s	Metal	N/A	4 oz.	Full	Talc and Boric Acid	Johnson & Johnson, Limited; Montreal, Canada; Made in Canada
2015.001.3448	Johnson's Baby Powder	N/A	Metal	N/A	N/A	Full	N/A	Johnson & Johnson (Gt. Britain) Limited.; Slough & Gargrave; Made in Gt. Britain
2015.001.3449	Johnson's Baby Powder	N/A	Metal	N/A	N/A	Full	talc	Johnson & Johnson (Gt. Britain) Limited.; Slough & Gargrave; Made in Gt. Britain

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Created for Purposes of Litigation

Inventory of Historical[1] Talcum Powder Products Identified at the Johnson & Johnson Museum As of January 19, 2018[2]

Museum Number	Label	Date[3]	Medium	Approximate Dimensions	Container Volume (oz./g./nsu.)	Approx. Contents of Container	Ingredients Listed	Information re: Place Made or Dist.
2015.001.3450	Johnson's Baby Powder	N/A	Cardboard	N/A	4 1/8 oz.	Half full	Talc and Boric Acid	Johnson & Johnson; New Brunswick, N.J. Chicago, ILL; Made in U.S.A.

[1]As used in this inventory, "historical" refers to products that were manufactured prior to 2014.

[2]This inventory contains historical samples of Johnson's® Baby Powder or Shower to Shower®.

[3]Approximate date, based on markings on the container or reasonably available information.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Inventory of Historical[1] Johnson's® Baby Powder Samples Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date of Manufacture	Lot Number	Quantity[2, 3]	Sample Number
2012	2362RB	0.5	4
2012	2622RB	0.5	5
2012	2372RB	1	42
2012	2402RB	1	43
2012	2412RA	1	44
2012	2422RA	1	45
2012	2492RB	1	46
2012	2502RA	1	47
2012	2542RA	1	48
2012	2552RA	1	49
2012	2562RA	1	50
2012	2572RB	1	51
2012	2612RB	1	52
2012	2622RA	1	53
2012	3202RB	0.5	949
2012	3342RB	0.5	950
2012	3472RB	0.5	951
2012	3482RB	0.5	952
2012	2912RA	1	961
2012	2922RA	1	962
2012	2932RA	1	963
2012	3032RA	1	964
2012	3042RA	1	965
2012	3052RA	1	966
2012	3062RA	1	967
2012	3072RA	1	968
2012	3102RA	1	969
2012	3132RA	1	970
2012	3142RA	1	971
2012	3172RA	1	972
2012	3182RA	1	973
2012	3192RA	1	974

[1]As used in this inventory, "historical" refers to products that were manufactured prior to 2014 and talc used in those products.

[2]As used in this column, "1" indicates a full, sealed container of Johnson's® Baby Powder ranging in weight from 1.5 oz. to 22 oz. Samples designated "0.5" were transferred from their original containers to sterile 5 oz. cups and range in weight from approximately 2 oz. to 5 oz.

[3]To the extent that PTI Royston, LLC, has multiple samples of Johnson's® Baby Powder from the same lot, in general only one has been included in this inventory.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Created for Purposes of Litigation

Inventory of Historical[1] Johnson's® Baby Powder Samples Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date of Manufacture	Lot Number	Quantity[2, 3]	Sample Number
2012	3322RA	1	975
2012	3332RA	1	976
2012	3452RA	1	977
2012	3462RA	1	978
2013	3543RB	0.5	214
2013	0023RB	0.5	661
2013	0093RB	0.5	663
2013	0103RB	0.5	664
2013	0143RB	0.5	665
2013	0163RB	0.5	666
2013	0173RB	0.5	667
2013	0253RB	0.5	668
2013	0353RB	0.5	669
2013	0033RA	1	679
2013	0043RA	1	680
2013	0073RA	1	681
2013	0113RB	1	682
2013	1083RA	1	683
2013	0213RA	1	684
2013	0223RA	1	685
2013	0233RA	1	686
2013	0243RB	1	687
2013	0303RA	1	688
2013	0313RA	1	689
2013	0313RA	1	690
2013	0323RA	1	691
2013	0363RA	1	692
2013	0373RA	1	693
2013	3113RB	0.5	728
2013	0953RB	0.5	736
2013	0983RB	0.5	737
2013	1153RB	0.5	738

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Created for Purposes of Litigation

Inventory of Historical[1] Johnson's® Baby Powder Samples Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date of Manufacture	Lot Number	Quantity[2, 3]	Sample Number
2013	3043RA	1	739
2013	3053RA	1	740
2013	3123RA	1	741
2013	3153RA	1	742
2013	3163RA	1	743
2013	3173RA	1	744
2013	3193RB	1	745
2013	3223RA	1	746
2013	3233RA	1	747
2013	3243RA	1	748
2013	3253RA	1	749
2013	3263RA	1	750
2013	3293RA	1	751
2013	3293RB	1	752
2013	0993RA	1	804
2013	1003RA	1	805
2013	1013RA	1	806
2013	1023RA	1	807
2013	1053RA	1	808
2013	1063RA	1	809
2013	1073RA	1	810
2013	1093RA	1	811
2013	1123RA	1	812
2013	1133RA	1	813
2013	1143RA	1	814
2013	1193RA	1	815
2013	2263RB	0.5	816
2013	2403RB	0.5	817
2013	2413RB	0.5	818
2013	2523RB	0.5	819
2013	2603RB	0.5	820
2013	2033RB	0.5	821

[1]As used in this inventory, "historical" refers to products that were manufactured prior to 2014 and talc used in those products.

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Created for Purposes of Litigation

Inventory of Historical[1] Johnson's® Baby Powder Samples Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date of Manufacture	Lot Number	Quantity[2, 3]	Sample Number
2013	2043RB	0.5	822
2013	2173RB	0.5	823
2013	3293RA	1	824
2013	3293RB	1	825
2013	3303RA	1	826
2013	3313RA	1	827
2013	3363RA	1	828
2013	3373RA	1	829
2013	3383RA	1	830
2013	3393RB	1	831
2013	3443RA	1	832
2013	3453RA	1	833
2013	3463RA	1	834
2013	3473RA	1	835
2013	3503RA	1	836
2013	3513RA	1	837
2013	3523RA	1	838
2013	3533RA	1	839
2013	3543RA	1	840
2013	2203RA	1	841
2013	2213RA	1	842
2013	2273RA	1	843
2013	2283RA	1	844
2013	2313RA	1	845
2013	2323RA	1	846
2013	2333RB	1	847
2013	2423RA	1	848
2013	2463RA	1	849
2013	2473RA	1	850
2013	2483RA	1	851
2013	2493RA	1	852
2013	2533RA	1	853

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Created for Purposes of Litigation

Inventory of Historical[1] Johnson's® Baby Powder Samples Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date of Manufacture	Lot Number	Quantity[2, 3]	Sample Number
2013	2543RA	1	854
2013	2553RA	1	855
2013	2563RA	1	856
2013	2593RB	1	857
2013	2623RA	1	858
2013	2633RA	1	859
2013	1973RA	1	860
2013	1983RA	1	861
2013	1993RA	1	862
2013	2003RA	1	863
2013	2053RA	1	864
2013	2063RA	1	865
2013	2073RB	1	866
2013	2103RA	1	867
2013	2113RA	1	868
2013	2123RA	1	869
2013	2133RA	1	870
2013	2143RB	1	871
2013	2183RA	1	872
2013	2193RA	1	873
2013	2683RB	0.5	874
2013	2703RB	0.5	875
2013	2743RB	0.5	876
2013	2773RB	0.5	877
2013	2953RB	0.5	878
2013	1713RB	0.5	879
2013	1723RB	0.5	880
2013	1963RB	0.5	881
2013	0423RB	0.5	882
2013	0433RB	0.5	883
2013	0443RB	0.5	884
2013	0463RB	0.5	885

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Created for Purposes of Litigation

Inventory of Historical[1] Johnson's® Baby Powder Samples Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date of Manufacture	Lot Number	Quantity[2, 3]	Sample Number
2013	1283RB	0.5	886
2013	2663RA	1	887
2013	2733RB	1	888
2013	2803RB	1	889
2013	2823RB	1	890
2013	2833RA	1	891
2013	2873RA	1	893
2013	2883RA	1	894
2013	2893RA	1	895
2013	2903RA	1	896
2013	2913RA	1	897
2013	2963RB	1	898
2013	2983RB	1	899
2013	3023RA	1	900
2013	3033RA	1	901
2013	1643RA	1	902
2013	1653RA	1	903
2013	1683RA	1	904
2013	1693RA	1	905
2013	1703RA	1	906
2013	1753RB	1	907
2013	1763RB	1	908
2013	1773RA	1	909
2013	1783RA	1	910
2013	1893RA	1	911
2013	1903RA	1	912
2013	1913RA	1	913
2013	1923RA	1	914
2013	1933RA	1	915
2013	2383RA	1	916
2013	0393RA	1	917
2013	0453RB	1	918

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Created for Purposes of Litigation

Inventory of Historical[1] Johnson's® Baby Powder Samples Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

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2013	0493RA	1	919
2013	0503RA	1	920
2013	0513RA	1	921
2013	0523RA	1	922
2013	0533RA	1	923
2013	0563RA	1	924
2013	0573RA	1	925
2013	0583RA	1	926
2013	0593RA	1	927
2013	0603RA	1	928
2013	0633RA	1	929
2013	0643RA	1	930
2013	0653RA	1	931
2013	0663RA	1	932
2013	0673RA	1	933
2013	0703RA	1	934
2013	0713RA	1	935
2013	0723RA	1	936
2013	1203RA	1	937
2013	1213RA	1	938
2013	1223RA	1	939
2013	1233RA	1	940
2013	1263RA	1	941
2013	1273RA	1	942
2013	1293RA	1	943
2013	1303RA	1	944
2013	1333RA	1	945
2013	1343RA	1	946
2013	1373RA	1	947
2013	1403RA	1	948
2013	0803RB	0.5	956
2013	0873RB	0.5	957

[1]As used in this inventory, "historical" refers to products that were manufactured prior to 2014 and talc used in those products.

[2]As used in this column, "1" indicates a full, sealed container of Johnson's® Baby Powder ranging in weight from 1.5 oz. to 22 oz. Samples designated "0.5" were transferred from their original containers to sterile 5 oz. cups and range in weight from approximately 2 oz. to 5 oz.

[3]To the extent that PTI Royston, LLC, has multiple samples of Johnson's® Baby Powder from the same lot, in general only one has been included in this inventory.

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Created for Purposes of Litigation

Inventory of Historical[1] Johnson's® Baby Powder Samples Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date of Manufacture	Lot Number	Quantity[2, 3]	Sample Number
2013	0953RB	0.5	958
2013	1573RB	0.5	959
2013	1613RB	0.5	960
2013	0023RA	1	979
2013	0733RA	1	993
2013	0743RA	1	994
2013	0773RA	1	995
2013	0783RA	1	996
2013	0793RA	1	997
2013	0813RB	1	998
2013	0843RA	1	999
2013	0853RA	1	1000
2013	0863RA	1	1001
2013	0913RA	1	1002
2013	0923RA	1	1003
2013	0933RA	1	1004
2013	0943RA	1	1005
2013	1413RA	1	1006
2013	1413RB	1	1007
2013	1423RA	1	1008
2013	1433RA	1	1009
2013	1443RA	1	1010
2013	1503RA	1	1011
2013	1513RA	1	1012
2013	1543RA	1	1013
2013	1553RA	1	1014
2013	1563RA	1	1015
2013	1583RB	1	1016
2013	1633RA	1	1017

[1]As used in this inventory, "historical" refers to products that were manufactured prior to 2014 and talc used in those products.

[2]As used in this column, "1" indicates a full, sealed container of Johnson's® Baby Powder ranging in weight from 1.5 oz. to 22 oz. Samples designated "0.5" were transferred from their original containers to sterile 5 oz. cups and range in weight from approximately 2 oz. to 5 oz.

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Created for Purposes of Litigation

Inventory of Historical[1] Talc Samples[2, 3] Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date	Lot Number	Sample Number
2009	H12049-21	288
2009	H11239-21	290
2009	H01070-21	291
2009	H12239-21	303
2009	H12149-21	304
2010	H12040-21	20
2010	H12070-21	30
2010	H11190-21	52
2010	H11210-21	54
2010	H11050-21	57
2010	H10300-21	61
2010	H01260-21	289
2010	H02010-21	292
2010	H01300-21	293
2010	H02250-21	294
2010	H03230-21	295
2010	H02050-21	296
2010	H10190-21	297
2010	H03170-21	298
2010	H01100-21	299
2010	H03300-21	300
2010	H04150-21	301
2010	H01160-21	302
2010	H04280-21	305
2010	H05190-21	306
2010	H006040-21	307
2010	H06080-21	308
2010	H04290-21	309
2010	H03080-21	310
2010	H05120-21	311
2010	H05160-21	312
2010	H07010-21	313

[1]As used in this inventory, "historical" refers to products that were manufactured prior to 2014 and talc used in those products.

[2]All Samples of talc listed on this inventory range in weight from approximately 3.5 oz. to 4.3 oz. (i.e., 100 g to 123 g).

[3]To the extent that PTI Royston, LLC, has multiple samples of talc from the same lot, only one has been included in this inventory.

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Inventory of Historical[1] Talc Samples[2, 3] Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date	Lot Number	Sample Number
2010	H06240-21	314
2010	H06280-21	315
2010	H05070-21	316
2010	H06060-21	317
2010	H06260-21	318
2010	H07110-21	319
2010	H06100-21	320
2010	H06160-21	321
2010	H07090-21	322
2010	H10250-21	323
2010	H10050-21	324
2010	H08100-21	325
2010	H08130-21	326
2010	H08050-21	327
2010	H08230-21	328
2010	H07280-21	329
2010	H10010-21	330
2010	H09260-21	331
2010	H08150-21	332
2010	H09150-21	333
2010	H10090-21	334
2010	H09070-21	335
2010	H09130-21	336
2011	H11081-21	1
2011	H03281-21	2
2011	H09191-21	3
2011	H10121-21	4
2011	H10221-21	5
2011	H10231-21	6
2011	H10041-21	7
2011	H09151-21	8
2011	H09301-21	9

[1]As used in this inventory, "historical" refers to products that were manufactured prior to 2014 and talc used in those products.

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Inventory of Historical[1] Talc Samples[2, 3] Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date	Lot Number	Sample Number
2011	H10061-21	10
2011	H09201-21	11
2011	H07011-21	12
2011	H09171-21	13
2011	H03191-21	14
2011	H09261-21	15
2011	H08071-21	16
2011	H05021-21	17
2011	H08201-21	18
2011	H09041-21	19
2011	H08221-21	21
2011	H10021-21	22
2011	H06281-21	23
2011	H08241-21	24
2011	H06241-21	25
2011	H08121-21	26
2011	H07221-21	27
2011	H07151-21	28
2011	H03111-21	29
2011	H08011-21	31
2011	H04011-21	32
2011	H05111-21	33
2011	H03131-21	34
2011	H06101-21	35
2011	H08141-21	36
2011	H05211-21	37
2011	H03051-21	38
2011	H07091-21	39
2011	H07081-21	40
2011	H05191-21	41
2011	H05311-21	42
2011	H05261-21	43

[1]As used in this inventory, "historical" refers to products that were manufactured prior to 2014 and talc used in those products.

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Inventory of Historical[1] Talc Samples[2, 3] Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date	Lot Number	Sample Number
2011	H04261-21	44
2011	H01111-21	45
2011	H07301-21	46
2011	H02111-21	47
2011	H05061-21	48
2011	H03081-21	49
2011	H04171-21	50
2011	H12190-21	51
2011	H02031-21	53
2011	H04091-21	55
2011	H07181-21	56
2011	H06291-21	58
2011	H12300-21	59
2011	H9091-21	60
2011	H11181-21	62
2011	H12061-21	64
2011	H12091-21	65
2011	H11261-21	67
2011	H11161-21	68
2011	H12041-21	70
2011	H11221-21	74
2011	H12191-21	78
2012	H05212-21	63
2012	H12301-21	66
2012	H02132-21	69
2012	H05092-21	71
2012	H04082-21	72
2012	H03072-21	73
2012	H05022-21	75
2012	H03232-21	76
2012	H05172-21	77
2012	H01222-21	79

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Inventory of Historical[1] Talc Samples[2, 3] Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date	Lot Number	Sample Number
2012	H03252-21	80
2012	H02022-21	81
2012	H02192-21	82
2012	H04112-21	83
2012	H09132-21	84
2012	H06232-21	85
2012	H10012-21	86
2012	H05262-21	87
2012	H07012-21	88
2012	H02052-21	89
2012	H06182-21	90
2012	H08102-21	91
2012	H12281-21	92
2012	H07192-21	93
2012	H07102-21	94
2012	H08292-21	95
2012	H08172-21	96
2012	H07162-21	97
2012	H09012-21	98
2012	H08192-21	99
2012	H09022-21	100
2012	H08042-21	101
2012	H09272-21	102
2012	H10122-21	103
2012	H12102-21	104
2012	H12282-21	110
2012	H12032-21	128
2012	H10062-21	131
2012	H10302-21	136
2012	H11042-21	143
2013	H04123-21	105
2013	H03143-21	106

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Inventory of Historical[1] Talc Samples[2, 3] Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date	Lot Number	Sample Number
2013	H08023-21	107
2013	H05073-21	108
2013	H05053-21	109
2013	H05213-21	111
2013	H04053-21	112
2013	H07033-21	113
2013	H09123-21	114
2013	H06133-21	115
2013	H08133-21	116
2013	H06213-21	117
2013	H07243-21	118
2013	H02063-21	119
2013	H02253-21	120
2013	H04263-21	121
2013	H10213-21	122
2013	H07183-21	123
2013	H10113-21	124
2013	H06283-21	125
2013	H08283-21	126
2013	H06103-21	127
2013	H03213-21	129
2013	H05303-21	130
2013	H01243-21	132
2013	H01313-21	133
2013	H10023-21	134
2013	H09103-21	135
2013	H04213-21	137
2013	H05163-21	138
2013	H05143-21	139
2013	H06053-21	140
2013	H10303-21	141
2013	H08163-21	142

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Inventory of Historical[1] Talc Samples[2, 3] Identified by PTI Royston, LLC, As of January 19, 2018

EXHIBIT C

Date	Lot Number	Sample Number
2013	H11153-21	144
2013	H06083-21	145
2013	H01173-21	146
2013	H03053-21	147
2013	H12093-21	148
2013	H12203-21	167
2013	H12173-21	180
2013	H12113-21	181
2013	H11273-21	183

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

EXHIBIT D

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

LIST OF PLAINTIFFS' LAW FIRMS[1]

Allan Berger and Associates
Allred, Brotherson & Harrington, P.C.
Anapol Weiss
Anastopoulo Law Firm
Andrews Thornton Higgins Razmara LLP
Andrus Wagstaff, P.C.
Ashby & Geddes
Ashcraft & Gerel
Aylstock, Witkin, Kreis & Overholtz, PLLC
Bachus & Schanker LLC
Bailey Peavy Bailey Cowan Heckaman, PLLC
Barnes Law Group, LLC
Baron & Budd, P.C.
Bathgate, Wegener & Wolf
Baum, Hedlund, Aristei & Goldman, P.C.
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
Becker Law Group
Becnel Law Firm, LLC
Belluck & Fox L.L.P.
Bergstresser & Pollock PC
Berke Law Firm, PA
Bernstein Liebhard LLP
Bevan & Associates LPA, Inc.
Bisnar and Chase
Blasingame, Burch, Garrard & Ashley, P.C.
Blizzard & Nabers, LLP
Bohrer Law Firm, LLC
Boodell & Domanskis, LLC
Boucher LLP
Branch Law Firm
Brayton Purcell LLP

[1] Names based on complaints for talc personal injury actions against one or more of defendants.

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EXHIBIT D

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

Brian E. Adorno Attorney at Law, LLC
Brookman, Rosenberg, Brown Sandler
Brown Chiari LLP
Burg Simpson Eldredge Hersh & Jardine, P.C.
Burns Charest LLP
Buzin Law, P.C.
Campbell & Associates
Capretz & Associates
Cates Mahoney, LLC
Cellino & Barnes, P.C.
Chappell, Smith & Arden, P.A.
Cheeley Law Group
Childers, Schlueter & Smith, LLC
Clark, Robb, Mason, Coulombe Buschman & Charbonnet
Clayeo C. Arnold, APC
Clifford Law Offices, P.C.
Coady Law Firm
Cohen & Malad, LLP
Cohen, Placitella & Roth, P.C.
Colley Shroyer & Abraham Co. LLC
Cooney And Conway
Corrie Yackulic Law Firm, PLLC
Crumley Roberts, LLP
Cuneo Gilbert & LaDuca, LLP
D'Amato Law Firm, P.C.
Daniel & Associates, LLC
Danziger & De Llano, LLP
D'Arcy Johnson Day, P.C.
Davis & Crump
Dean Omar Branham
Deblase Brown Eyerly LLP
DeFeo & Kolker LLC
Delise & Hall
Dickson Kohan & Bablove LLP
Domengeaux Wright Roy & Edwards, LLC
Don Barrett P.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT D

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

Dugan Law Firm, PLC
Dwyer Williams Potter
Early, Lucarelli, Sweeney & Meisenkothen
Eddie Foster
Eisenberg, Rothweiler, Winkler Eisenberg & Jeck, P.C.
Ely Law, LLC
Environmental Litigation Group, PC
Farris, Riley & Pitt, LLP
Farrise Firm PC
Fay Law Group PLLC
Fears Nachawati Law Firm
Feldman & Pinto
Ferraro Law Firm, P.A.
Fitzgerald Knaier, LLP
Fitzgerald Law Group, LLC
Fleming, Nolen & Jez, LLP
Flint Law Firm LLC
Fox and Farley
Frazer Law LLC
Gainsburgh, Benjamin, David, Meunier & Warshauer, LLC
Galante & Bivalacqua LLC
Gary T. Mantkowski Co., L.P.A.
Geoffrey B. Gompers & Associates, P.C.
George & Farinas, LLP
Gibbs Law Group LLP
Girardi & Keese
Glenn LoeWenthal, PC
Goetz, Baldwin & Geddes, P.C.
Goldberg & Osborne LLP
Goldberg, Persky & White, P.C.
Goldenberg Heller Antognoli & Rowland, P.C.
Goldenberglaw, PLLC
Golomb & Honik, PC
Gori Julian & Associates, P.C.
Goza & Honnold, LLC
Greer, Russell, Dent & Leathers, P.A.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
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IN RE JOHNSON & JOHNSON TALCUM POWDER PRODUCTS
MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION
MDL NO. 16-2738 (FLW) (LHG)

Grossman & Moore, PLLC
Gustafon Gluek
Habush Habush & Rottier S.C.
Hafeli Staran & Christ , P.C.
Haffner Law PC
Hagens Berman Sobol Shapiro LLP
Harrison Davis Steakley Morrison Jones, PC
Hart McLaughlin & Eldridge
Hatch, James & Dodge, P.C.
Hausfeld
Heard Robins Cloud LLP
Hedrick Law Firm
Helmsdale Law, LLP
Herman Gerel, LLP
Heygood, Orr & Pearson
Hillard Munoz Gonzales, LLP
Hobson & Bradley
Holland Law Firm
Holland, Groves, Schneller & Stolze, LLC
Hollis Law Firm P.A.
Hollis, Wright, Clay & Vail, P.C.
Horton Law Firm
Hovde, Dassow, & Deets, LLC
Huber, Slack, Thomas & Marcelle, LLP
Hughes Law Firm, PLLC
Hurley McKenna & Mertz
Hutton & Hutton
Jacobs & Crumpler, P.A.
Jamie A. Johnston, P.C.
Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C.
Jeansonne & Remondet
Jeffrey R. Lessin & Associates, P.C.
Joel E. Brown & Associates, P.C.
John B. Ostrow, P.A.
Johnson Becker, PLLC
Johnson Law Group

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT D

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

Jones Ward PLC
Karon LLC
Karsman, McKenzie & Hart
Karst & von Oiste LLP
Kassel McVey Attorneys At Law
Kazan, McClain, Satterley & Greenwood
Keefe Bartels LLC
Kelley Uustal, PLC
Kibbey and Wagner
Kiesel Law, LLP
King and Ballow
Kline & Specter, P.C.
Kuharski Levitz & Giovinazzo
Landry & Swarr, L.L.C.
Langdon & Emison
Lanier Law Firm, PLLC
Law Office of Eusi H. Phillips
Law Office of Grant D. Amey, LLC
Law Office of Haytham Faraj
Law Office of John D. Sileo, LLC
Law Office of Marion D. Floyd
Law Office of Roger "Rocky" Walton, P. C.
Law Office of Terence J. Sweeney
Law Offices of Eric H. Weinberg
Law offices of James S. Rogers
Law Offices of Kruskell
Law Offices of Lee W. Davis
Law Offices of Richard R. Barrett, PLLC
Law Offices of Wayne E. Ferrell, Jr., PLLC
Lenze Kamerrer Moss, PLC
Levin Simes LLP
Levy Baldante Finney & Rubenstein
Levy Konigsberg, LLP
Lewis Saul & Associates, P.C.
Lieff Cabraser Heimann & Bernstein, LLP
Lipsitz and Ponterio LLC

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
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EXHIBIT D

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

Locks Law Firm, LLC
Lundy, Lundy, Soileau & South, LLP
Marlin & Saltzman LLP
Martinian & Associates, Inc.
Mary Alexander & Associates, P.C.
Massimo & Pawetta, P.C.
Maune Raichle Hartley French & Mudd, LLC
Mauro, Savo, Camerino, Grant & Schalk, P.A.
McDermott & Hickey, LLC
McEldrew Young
McGlynn, Glisson & Mouton
McGowan, Hood & Felder, LLC
McKoon, Williams, Atchley & Stanley, PLLC
McNulty Law Firm
Megargel & Eskridge Co., LPA
Meierhenry Sargent, LLP
Meirowitz & Wasserberg, LLP
Menges Law LLC
Merson Law PLLC
Messa & Associates, P.C.
Meyers & Flowers, LLC
Michael Hingle & Associates, LLC
Miller Legal, LLP
Milstein Adelman, LLP
Moll Law Group
Montrose Law LLP
Morelli Law Firm, PLLC
Morgan & Morgan, P.A.
Morris Bart, LLC
Morris Law Firm
Motley Rice LLC
Murray Law Firm
Napoli Bern Ripka Shkolnik & Associates, LLP
Napoli Shkolnik & Associates, LLP
Napoli Shkolnik LLC
Napoli Shkolnik, PLLC

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EXHIBIT D

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

Nass Cancelliere Brenner
Neal & Harwell, PLC
Neblett, Beard & Arsenault
Nix Patterson & Roach
O'Brien Law Firm
Oldfather Law Firm
Onder, Shelton, O'Leary & Peterson, LLC
Panish, Shea & Boyle
Parker Waichman, LLP
Patrick Miller, LLC
Paul LLP
Paul Reich & Myers PC
Pendley, Baudin & Coffin, LLP
Phillips & Paolicelli, LLP
Plymale Law Firm
Pogust Braslow & Millrood, LLC
Porter & Malouf, PA
Pourciau Law Firm, LLC
Powers Rogers & Smith LLP
Pratt & Associates
Pratt & Tobin, P.C.
Pribanic & Pribanic, LLC
Prim Law Firm, PLLC
Provost Umphrey Law Firm
Pulaski Law Firm
Remer & Georges-Pierre, PLLC
Rheingold Giuffra Ruffo & Plotkin
Rheingold Valet Rheingold McCartney & Giuffra
Richardson Richardson Boudreaux
Riley Williams & Piatt, LLC
Robbins Ross Alloy Belinfante
Robins Cloud LLP
Robinson, Calcagnie, Robinson, Shapiro, Davis, Inc.
Ross Feller Casey, LLP
Ross Law Offices, P.C.
Ruckdeschel Law Firm, LLC

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EXHIBIT D

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

Salkow Law, APC
Sanders Phillips Grossman, LLP
Sanders, Viener Grossman, LLP
Sangisetty Law Firm, LLC
Satterley & Kelley
Saunders & Walker, P.A.
Schlesinger Law Offices, P.A.
Schmidt & Sethi, PC
Schroeder Maundrell Barbiere & Powers
Scovern Law
Seeger Weiss LLP
Seidman Margulis & Fairman, LLP
Shaw Cowart, LLP
Shelby Lucado, LLC
Shrader & Associates, LLP
Sieben Polk P.A.
Sill Law Group, PLLC
Simmons Hanly Conroy LLC
Simon Greenstone Panatier Bartlett P.C.
Skikos, Crawford, Skikos & Joseph
Skikos, Crawford, Skikos, Joseph & Millican
Slack & Davis LLP
Southerland Law Firm, PLLC
Standly Hamilton, LLP
Stanley Law Group
Steve Merritt Law
Stewart & Stewart
Stone Granade & Crosby PC
Sugarman Law, LLC
Sullo & Sullo, LLP
Summers & Johnson, P.C.
Summers, Rufolo & Rodgers, P.C.
Sutter & Gillham, PLLC
Sutton, Alker & Rather, LLC
Szaferman, Lakind, Blumstein & Blader, P.C.
The Alarid Law Firm, P.C.

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT D

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MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION
MDL NO. 16-2738 (FLW) (LHG)

The Brandi Law Firm
The Cheek Law Firm
The Cuffie Law Firm
The Deaton Law Firm
The Diaz Law Firm, PLLC
The Dugan Law Firm
The Dugan Law Firm, APLC
The Early Law Firm, LLC
The Hannon Law Firm, LLC
The Kruger Law Firm
The Law Firm of Joseph H. Low IV
The Law Offices of Peter G. Angelos
The Law Offices of Sean M. Cleary, P.A.
The Levensten Law Firm, P.C.
The Madalon Law Firm
The Miller Firm, LLC
The Pate Law Firm
The Penton Law Firm
The Pointe
The Potts Law Firm, LLP
The Reardon Law Firm, P.C.
The Ruth Law Team
The Simon Law Firm, PC
The Smith Law Firm, PLLC
The Whitehead Law Firm, LLC
The Zevan and Davidson Law Firm
Thornton Law Firm LLP
TorHoerman Law LLC
Tracey & Fox
Tracey Law Firm
Unglesby Law Firm
Usry, Weeks & Matthews, APLC
Ventura Law
Wagstaff & Cartmell, LLP
Wallace & Graham
Walton Telken Foster, LLC

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT D

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

Waters & Krause, LLP
Waters, Kraus & Paul
Watts Guerra LLP
Weinstein Courture PLLC
Weitz & Luxenberg, P.C
Wexler Wallace LLP
White & Weddle, P.C.
Wilentz, Goldman & Spitzer, P.A.
Will Davidson LLP
Will Ferguson & Associates
William G. Colvin, PLLC
Williams Declark Tuschman Co., L.P.A
Wilson Law PA
Worthington & Caron, P.C.
Wylder Corwin Kelly LLP
Yearout & Traylor, P.C.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT E[1]

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

JOINT CATALOGUE

LABORATORY CONTROL NO.	SAMPLE IDENTIFICATION NO.	LABEL ON ORIGINAL CONTAINER	DATE ON ORIGINAL CONTAINER	QUANTITY ON LABEL OF ORIGINAL CONTAINER	ACTUAL QUANTITY IN ORIGINAL CONTAINER	QUANTITY IN ORIGINAL CONTAINER OR NEW RECEPTACLE AFTER DIVISION
2018_____-_____						
2018_____-_____A						
2018_____-_____B						
2018_____-_____C						

Observer for plaintiffs hereby acknowledges receipt of 2018_____-_____A, _____ of original Sample 2018_____-_____.
(weight)

_____ _____
Observer for Plaintiffs Date

Observer for defendants hereby acknowledges receipt of 2018_____-_____B, _____ of original Sample 2018_____-_____.
(weight)

_____ _____
Observer for Defendants Date

Laboratory technician hereby acknowledges that all remaining material from Sample 2018_____-_____ was

(check one): ☐ replaced in its original container ☐ transferred to a new receptacle (2018_____-_____C).

_____ _____
Laboratory Technician Date

[1] This form is an Exhibit to the Agreed Order and Stipulation Regarding the Johnson & Johnson Defendants' Production of Talcum Powder Products and Talc Samples ("Agreed Order"). Terms used herein have the same meaning as defined in the Agreed Order.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT E[1]

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

JOINT CATALOGUE

LABORATORY CONTROL NO.	MUSEUM SAMPLE IDENTIFICATION NO.	LABEL ON ORIGINAL CONTAINER	DATE ON ORIGINAL CONTAINER	QUANTITY ON LABEL OF ORIGINAL CONTAINER	ACTUAL QUANTITY IN ORIGINAL CONTAINER	QUANTITY TRANSFERRED TO NEW RECEPTACLE
2018_____-_____M						

Observer for plaintiffs hereby acknowledges that unselected Museum Sample _____, _____ was transferred to 2018_____-_____M.
(weight)

_____ _____
Observer for Plaintiffs Date

Observer for defendants hereby acknowledges that unselected Museum Sample _____, _____ was transferred to 2018_____-_____M.
(weight)

_____ _____
Observer for Defendants Date

Laboratory technician hereby acknowledges that unselected Museum Sample _____, _____ was transferred to 2018_____-_____M.
(weight)

_____ _____
Laboratory Technician Date

[1] This form is an Exhibit to the Agreed Order and Stipulation Regarding the Johnson & Johnson Defendants' Production of Talcum Powder Products and Talc Samples ("Agreed Order"). Terms used herein have the same meaning as defined in the Agreed Order.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT E[1]

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

JOINT CATALOGUE

The parties hereby acknowledge that on this ___ day of _____, _____, the Samples selected for division were divided and produced fairly and pursuant to all terms of the Agreed Order. That parties further acknowledge that the full contents of unselected Museum Samples were transferred to new receptacles fairly and pursuant to all terms of the Agreed Order.

_____ _____
Observer for Plaintiffs Date

_____ _____
Observer for Defendants Date

The Laboratory technician hereby acknowledges that he or she divided, transferred, labeled, catalogued and produced all Sample material fairly, using good laboratory practices and in accordance with all terms of the Agreed Order.

_____ _____
Laboratory Technician Date

[1] This form is an Exhibit to the Agreed Order and Stipulation Regarding the Johnson & Johnson Defendants' Production of Talcum Powder Products and Talc Samples ("Agreed Order"). Terms used herein have the same meaning as defined in the Agreed Order.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

EXHIBIT 6

RECEIVED
JUL 12 1974
W. NASHED
JOHNSON & JOHNSON

walter c. mccrone associates, inc.
CONSULTING: ULTRAMICROANALYSIS • MICROSCOPY • SMALL PARTICLE PROBLEMS • SOLID-STATE CHEMISTRY

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

8 July 1974

Dr. Robert Rolle
Johnson and Johnson
Research Center
501 George Street
New Brunswick, New Jersey 08901

Dear Dr. Rolle:

We have analyzed 21 samples of talc to determine the content of asbestiform materials in those samples. Of the 21 samples which we analyzed, 17 were production run samples and 4 were other type samples. In this latter group of 4, one sample, 740159, contained 2 small chrysotile fibers while the other 3 samples did not show any asbestiform fibers whatsoever.

Of the 17 production samples, 10-22-73 to 10-26-73, showed only one probable amphibole asbestiform. We did find another fiber which was backed with a talc plate and therefore an electron diffraction pattern could not be obtained from this fiber. In sample 12-1-73 to 12-7-73 we found one small chrysotile fiber. In sample 1-7-74 to 1-11-74 we found one tremolite fiber and one probable chrysotile. In sample 1-28-74 to 2-2-74 we found one chrysotile fiber and, finally, in sample 2-18-74 to 2-24-74 we found two small chrysotile fibers. These were the only fibers that we found using electron microscopy and electron diffraction which were confirmed as asbestos or probable asbestos.

The fibers that we did find were generally quite small; say less than 1/2 micrometer long. The remainder of the samples showed mostly high quality talc with, in some cases, a little rolled talc but it was quite obviously rolled talc rather than amphibole fibers or chrysotile fibers.

In general these low levels of asbestiform minerals are so low that they might well be caused by contamination either in the processing from air contamination or in our laboratory. Only in one case did we find as many as two fibers in the production samples and these were quite small. The type of fibers that one would normally get from automotive break line wear debris which could well be circulated in the atmosphere and could have inadvertantly fallen out in the sample preparation or in the processing of these materials.

Thank you for consulting McCrone Associates. If there are any questions regarding this report or the data contained therein please feel free to contact me.

Very truly yours,

Gene R. Grieger
Research Physicist

GRG:nkn
enclosure
ref:MA2546

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
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EXHIBIT 7

6/1/87 copy to Art.

RECEIVED
MAY 26 1987
W. M.

Rare

mccrone associates, inc.
CONSULTING: ULTRAMICROANALYSIS • MICROSCOPY • SMALL PARTICLE PROBLEMS • SOLID-STATE CHEMISTRY

21 May 1987

Mr. Donald M. Benninger
Armstrong World Industries, Inc.
P. O. Box 3001
Lancaster, Pennsylvania 17604

Dear Mr. Benninger:

Re: Windsor Minerals, Inc.

Roger Miller of Windsor Minerals has asked that I write to you to confirm that we have been monitoring Windsor's talc products for a number of years.

Our first project with Windsor was opened in September 1971. Since that date we have continuously monitored composite samples for Windsor using transmission electron microscopy, the most sensitive technique for fine asbestos fibers. This work was performed in the Chicago laboratories of Walter C. McCrone Associates, Inc. until 1984. In June of 1984 the decision was made to centralize all asbestos related analyses in the Norcross, Georgia facilities of McCrone Environmental Services, Inc., a wholly owned subsidiary of McCrone Associates, Inc. The Windsor Minerals work was accordingly transferred to our Georgia laboratory where it is still a continuing project.

Throughout this entire period I can only recall two occasions on which some suspicious material was detected. The first involved possible chrysotile contamination in an air sample and the contamination source was subsequently pinpointed as a deteriorating clutch in some mechanical equipment. The second occasion was so novel that it was written up in our publicity brochure published around 1975-76. I have enclosed a copy of this brochure so that you may see more details of this event (pg. 4). Suffice it to say that amidst mutterings of "that inspector is no longer with us", the Illinois EPA wrote to Windsor Minerals to the effect that they were satisfied that Windsor's product is free of asbestos. That has always been our opinion and continues to be our opinion based on over 15 years of closely examining this product.

Sincerely,

Ian M. Stewart

Ian M. Stewart
Vice President

IMS:jkb
Enclosure

cc: Mr. Roger Miller - Windsor Minerals
Dr. Jim Millette - MES - Atlanta

850 PASQUINELLI DRIVE • WESTMONT, ILLINOIS 60559 • 312-887-7100

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP400472

EXHIBIT 8

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Los Angeles, CA 90071
Telephone: +1 213 443 4355
Facsimile: +1 213 443 4310

Attorneys for Defendants
JOHNSON & JOHNSON and
JOHNSON & JOHNSON CONSUMER INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

TERESA ELIZABETH LEAVITT and DEAN J. McELROY,

Plaintiffs,

v.

JOHNSON & JOHNSON; et al.,

Defendants.

Case No. RG17882401

AFFIDAVIT OF GENE M. WILLIAMS IN SUPPORT OF DEFENDANTS JOHNSON & JOHNSON AND JOHNSON & JOHNSON CONSUMER INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR EVIDENCE AND ISSUE SANCTIONS DUE TO SPOLIATION OF EVIDENCE BY DEFENDANTS JOHNSON & JOHNSON AND JOHNSON & JOHNSON CONSUMER INC.

Action filed: November 14, 2017
Trial Date: December 10, 2018

[Assigned to the Honorable Brad Seligman, Department 23]

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

STATE OF TEXAS)

COUNTY OF HARRIS) ss.:

Gene M. Williams, being duly sworn, deposes and says as follows:

1. My name is Gene M. Williams. I am over the age of twenty-one and of sound mind.

2. I am currently a partner with the law firm Shook, Hardy & Bacon L.L.P. in its Houston, Texas office. I was previously a shareholder with the law firm MehaffyWeber, P.C. in Beaumont, Texas. For at least the last 21 years, I have represented Johnson & Johnson and certain of its subsidiaries, including Johnson & Johnson Consumer Inc., in various matters, including but not limited to personal injury lawsuits in which a variety of different claims have been made relating to Johnson's® Baby Powder and Shower to Shower®.

3. In my capacity as an attorney for Johnson & Johnson in the above referenced matters, I am competent to testify about the matters in this affidavit. I base my testimony on my personal recollection and on a review of reasonably available pleadings and other court documents. The facts stated herein are true and correct to the best of my knowledge, information and belief.

4. I submit this affidavit in support of Defendants Johnson & Johnson and Johnson & Johnson Consumer Inc.'s Opposition to Plaintiffs' Motion for Evidence and Issue Sanctions Due to Spoliation of Evidence By Defendants Johnson & Johnson and Johnson & Johnson Consumer Inc. (the "Johnson and Johnson defendants") and to apprise the Court of the historical development of litigation against one or more

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Johnson & Johnson entities alleging that the inhalation of Johnson's® Baby Powder or Shower to Shower® caused mesothelioma.

5. I was retained by Johnson & Johnson Consumer Companies Inc. in 1997 in connection with the case of *Darlene Coker, and spouse Roy Coker vs. Bill Thames Pharmacy Inc., et al.; (No. 13-157746)*, which was filed in Beaumont, Texas on September 27, 1997. The *Coker* complaint alleged that the plaintiff developed mesothelioma from exposure to Johnson's® Baby Powder. My client was dismissed by plaintiffs without prejudice on or about January 29, 1999.

6. The *Coker* case did not involve significant discovery of any Johnson & Johnson defendants – and certainly not of the broad scope or scale of discovery that has been requested in connection with the above-referenced lawsuit or by other of the numerous lawsuits that have been filed against the Johnson & Johnson defendants regarding Johnson's® Baby Powder and/or Shower to Shower® over the last approximately two years.

7. During my work on the *Coker* case, I became generally aware of some earlier cases brought against one or more Johnson & Johnson entities, including the *Westfall*, *Gambino*, and *Ritter* cases, which are referred to in Plaintiffs' Motion.[1] While I did not represent the company in these other cases, based on my recollection and a review of reasonably available pleadings and other court documents, I am aware of only one other

1. No Johnson & Johnson entity was a defendant in *Ritter*. Rather, Cyprus Mines Corp., an indemnified successor-in-interest to the Windsor Minerals Inc.'s' mining operations, was the named defendant.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

earlier case – the *Howard* case[2] – in which plaintiffs alleged that Johnson's® Baby Powder or Shower to Shower® caused mesothelioma. Further, my recollection and understanding is that none of these earlier cases involved discovery of the scope or scale of the discovery that has been requested in connection with the above-referenced lawsuit or by other of the numerous lawsuits that have been filed against the Johnson & Johnson defendants regarding Johnson's® Baby Powder and/or Shower to Shower® over the last approximately two years.

Description of Historical Litigation

8. Over the years, Johnson & Johnson and/or one or more of its subsidiaries (the "Johnson & Johnson Companies") were involved in a variety of personal injury lawsuits involving talc. Based on my recollection and understanding, litigation involving claims of mesothelioma fell into two distinct groups: (1) industrial talc cases and (2) Johnson's® Baby Powder cases.

9. During the 1980s and 1990s, the vast majority of the personal injury lawsuits involved alleged exposure to industrial talc in the workplace. While neither I nor my firm handled the bulk of those cases, we were involved in some cases and were generally aware of others. In connection with my representation of Johnson & Johnson, I have learned from a variety of sources that industrial talc is different from the cosmetic talc used in Johnson's® Baby Powder or Shower to Shower®, including that

2. Based on a review of reasonably available pleadings and court documents, in August 1996, Johnson & Johnson Consumer Products Co. Inc. ("JJCPI") was first served by amended complaint in a Michigan case entitled *Wilbur Howard, as personal representative of the Estate of Joyce Cain v. A.I.I. Clubman Co., et al.* The amended complaint alleged that various occupational and other exposures caused the alleged mesothelioma. JJCPI was one of several defendants in the case, including Schad Boiler Setting Company and W.R. Grace & Company. JJCPI was dismissed from the case on July 8, 1997, which was before the *Coker* case discussed above was filed.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

industrial talc was a different grade of talc which was processed and handled in a manner different from cosmetic talc. As I recall, the alleged liability in these industrial talc cases was premised on Johnson & Johnson's ownership (until 1989) of Windsor Minerals Inc., which had mines that sourced talc for industrial use and mines that sourced talc for cosmetic use. It also is my recollection and understanding that Johnson & Johnson was typically one of many defendants in these cases, was generally not the focus of plaintiffs' claims, and that discovery in those cases was therefore quite limited in scope and scale.

10. Based on my recollection and a review of reasonably available pleadings and other court documents, one or more of the Johnson & Johnson Companies were also named sporadically in a small number of isolated cases alleging that Johnson's® Baby Powder caused mesothelioma beginning in or around 1996.

11. As discussed in paragraphs 5-7 above, the 1997 *Coker* case in which I represented Johnson & Johnson was one of the first cases in which plaintiffs alleged mesothelioma caused by Johnson's® Baby Powder.

12. During the two decades since the *Howard* case (from 1996 until the middle of 2016), one or more of the Johnson & Johnson Companies were involved in approximately a dozen additional cases in which plaintiffs alleged that Johnson's® Baby Powder caused mesothelioma.[3]

13. The Johnson & Johnson Companies were typically one of many defendants in these Johnson's® Baby Powder mesothelioma cases, and they were usually dismissed

3. These isolated, one-off cases did not involve the Shower to Shower® product.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

relatively early in the case. These cases did not involve significant discovery of any Johnson & Johnson defendants – certainly not the broad scope or scale of discovery that has been requested in connection with the above-referenced lawsuit or by other of the numerous lawsuits that have been filed against the Johnson & Johnson defendants regarding Johnson's® Baby Powder and/or Shower to Shower® over the last approximately two years. Nor did any discovery efforts in the cases focus on all historical samples, testing grids, count sheets, or other testing materials, other than possibly a letter report or certificate of analysis.

14. It was not until the second half of 2016 that the filing of cases alleging that use of Johnson's® Baby Powder or Shower to Shower® had caused mesothelioma began to accelerate, when more than 100 cases were filed and a large number of ovarian cancer cases were consolidated in a federal MDL proceeding assigned to the United States District Court for the District of New Jersey. And, it was not until 2017-2018 that discovery from the Johnson & Johnson Companies began to focus on all historical samples, testing grids, and other testing-related materials beyond individual letter test reports.[4]

Specific Cases Identified in Plaintiffs' Motion

15. Although neither I nor my firm represented the company in the cases referenced specifically in Plaintiffs' Motion, based on my recollection and a review of reasonably available pleadings and other court documents, the *Westfall*, *Gambino*, and *Ritter* cases

4. Based on my recollection, there were some other sporadic cases involving Johnson's® Baby Powder or Shower to Shower® that made allegations of conditions allegedly caused by talc or fragrance, e.g., talcosis or rash. Further, the first lawsuit alleging ovarian cancer due to exposure to talcum powder was not filed until December 2009. These types of cases did not involve allegations or discovery similar to the allegations or discovery at issue in this case.

did not involve allegations that Johnson's® Baby Powder or Shower to Shower® had caused mesothelioma.

a. The *Westfall* case involved, among other defendants, Windsor Minerals Inc., then a subsidiary of Johnson & Johnson. The case alleged exposure to industrial talc while working in a rubber manufacturing plant. The case was filed in Rhode Island in 1979, but Windsor Minerals Inc. was not named in the case until 1982 and was dismissed from the case on timeliness grounds in 1983. Attached hereto as Exhibits 1 and 2 are copies of the Fourth Amended Complaint and summary judgment decision, respectively, in *Westfall*.

b. The *Gambino* case was filed in New Jersey in 1983 and involved an allegation of talcosis due to exposure to Johnson's® Baby Powder. There was no allegation in that case that the talc at issue was contaminated with asbestos or that it caused an asbestos-related disease. Attached hereto as Exhibit 3 is a copy of the Complaint in *Gambino*.

c. The *Ritter* case was filed in Missouri in or about October 1993. The case alleged talcosis due to exposure to industrial talc while working in the manufacture of roofing shingles. Attached hereto as Exhibit 4 is a copy of the First Amended Complaint in *Ritter*.

FURTHER THE AFFIANT SAYETH NOT

Gene M. Williams

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Sworn to and Subscribed before me
this 5th day of December, 2018.

Cheryl J. Shaddix
Notary Public

My commission expires: 1/31/2022

CHERYL J SHADDIX
3103249
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
JANUARY 31, 2022

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT 1

VTC:EG 5/4/83

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

DAVID HOWARD WESTFALL, IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF THOMAS HOWARD WESTFALL AND IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF BETTY E. WESTFALL	
VS.	C.A. No. 79-0269 Plaintiff hereby demands trial by jury
WHITTAKER, CLARK & DANIELS, METROPOLITAN TALC COMPANY, INC., WINDSOR MINERALS INC., itself and as successor to EASTERN MAGNESIUM TALC COMPANY INC., OMYA, INC., itself and as successor to VERMONT TALC COMPANY, INC., and EASTERN MAGNESIA TALC COMPANY and ENGELHARD CORPORATION	

FOURTH AMENDED COMPLAINT

1. The Plaintiff David H. Westfall is a resident of the State of Rhode Island and is the duly appointed Administrator of the Estates of Thomas Howard Westfall and Betty E. Westfall, deceased, late of the County of Providence, State of Rhode Island, under letters of administration of the County of Providence, State of Rhode Island, dated September 12, 1979 and March 17, 1980, respectively.

2. The Defendant Whittaker, Clark & Daniels (hereinafter Whittaker) is a corporation duly organized and existing under the laws of the State of New Jersey and having its principal place of business in the State of New Jersey. Said Defendant has the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Honorable Court.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

3. The Defendant Metropolitan Talc Company, Inc. (hereinafter Metropolitan) is a corporation duly organized and existing under the laws of the State of New Jersey. Said Defendant has the necessary minimum contacts within the State of Rhode Island to subject it to the jurisdiction of this Honorable Court.

4. The Defendant Windsor Minerals Inc., is a corporation duly organized and existing under the laws of Vermont, and is the successor corporation by merger, purchase or otherwise to Eastern Magnesia Talc Co., Inc., with the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Honorable Court. At all times relevant hereto the Defendant Windsor Minerals Inc. and/or its predecessor Eastern Magnesia Talc Co., Inc. manufactured and/or distributed talc to Uniroyal, Inc. for usage in its plant in Providence, Rhode Island.

5. The Defendant OMYA, Inc. is a corporation duly organized and existing under the laws of Vermont, and is the successor corporation by merger, purchase, or otherwise to Vermont Talc Co, Inc., with the necessary minimum contacts with the State of Rhode Island to be subject to the jurisdiction of this Honorable Court. At all times relevant hereto the Defendant OMYA, Inc. and/or its predecessor Vermont Talc Co., Inc., manufactured and/or distributed talc to Uniroyal, Inc. for usage in its plant, in Providence, Rhode Island.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

6. The Defendant Eastern Magnesia Talc Company is a Delaware corporation wholly owned by Engelhard Corporation, with the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Honorable Court. During the period 1967 through 1975, the Defendant Eastern Magnesia Talc Company, and/or its successors by merger, purchase or otherwise, manufactured and/or distributed talc to Uniroyal, Inc. for usage in its plant in Providence, Rhode Island.

7. The Defendant Engelhard Corporation is a Delaware Corporation with its principal place of business in the State of New Jersey. Engelhard Corporation has the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Court. Engelhard Corporation is the owner of the defendant Eastern Magnesia Talc Company.

8. The amount in controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs. Jurisdiction is vested in this Court by virtue of 28 U.S.C. §1332.

9. Between 1946 and 1975, Plaintiff Thomas H. Westfall was employed at Uniroyal located in the City of Providence, State of Rhode Island, where he was involved in the manufacture of rubber and rubberized products.

10. In the course of his employment Plaintiff's decedent Thomas Westfall worked with talc, which product was distributed,

marketed and sold to Uniroyal by the Defendant Whittaker.

11. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

12. The Defendant Whittaker negligently distributed and sold said talc in that it:

a. Negligently failed to warn persons who worked with this talc, including the Plaintiff's decedent Thomas Westfall, of the danger to persons using said product.

b. Negligently failed to warn persons who worked with said product, including the Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective devices to prevent the ingestion of talc particles.

e. Otherwise negligently distributed, marketed and sold said product.

13. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

14. As a direct and proximate result of said Defendant Whittaker's negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

15. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

16. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

17. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David H. Westfall, as Administrator of the Estate of Thomas Howard Westfall and as Administrator of the Estate of Betty F. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Whittaker, Clark & Daniels in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT II

1. Paragraphs 1 through 10 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. At the time Defendant Whittaker distributed, marketed and sold talc to Uniroyal, it impliedly warranted to potential and actual users of said product that it was safe and fit for the purpose intended and was of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and was not merchantable.

4. As a direct and proximate result of Defendant Whittaker's breach of its implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries

to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas Howard Westfall and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Whittaker, Clark & Daniels in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT III

1. Paragraphs 1 through 10 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. The product distributed, marketed and sold by Defendant Whittaker to Uniroyal was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma

3. At the time Plaintiff's decedent Thomas Westfall used said product, he was unaware of its danger nor could he have been aware of the products propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant Whittaker's distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David Howard Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the Estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas Howard Westfall and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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against the Defendant Whittaker, Clark & Daniels in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT IV

1. Paragraphs 1 through 8 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. In the course of his employment Plaintiff's decedent Thomas Westfall worked with talc, which product was manufactured and/or distributed and/or marketed and/or sold by the Defendant Metropolitan.

3. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

4. The Defendant Metropolitan negligently manufactured, marketed, distributed and sold said talc in that it:

a. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of the danger to persons using said product.

b. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2021 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective masks or other protective devices to prevent the ingestion of talc particles.

e. Negligently failed to use due care to cause to be made reasonable research as to the effects or side effects of said product, all of which were known, or in the exercise of due care should have been known to Defendant.

f. Negligently failed to give adequate warning of said defects or side effects of said product or of the potential hazards of using the same.

g. Negligently failed to adequately test said product before presenting the same to the public.

5. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

6. As a direct and proximate result of Defendant Metropolitan's negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

7. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

8. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

9. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas Westfall and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Metropolitan Talc Company, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00)

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2021 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Dollars, plus interest and costs.

COUNT V

1. Paragraphs 1 through 3 of Count IV are hereby incorporated by reference as if set forth fully at length herein.

2. At the time Defendant Metropolitan manufactured, distributed, marketed and sold the talc in question, it impliedly warranted to potential and actual users of said product that it was safe and fit for the purpose intended and was of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and was not merchantable.

4. As a direct and proximate result of Defendant Metropolitan's breach of its implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plain-

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

tiff's decedent was alive and as a result of his death, the Plaintiff Betty E. Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas Howard Westfall, and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Metropolitan Talc Company, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT VI

1. Paragraphs 1 through 3 of Count IV are hereby in-

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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corporated by reference as if set forth fully at length herein.

2. The product manufactured, distributed, marketed and sold by Defendant Metropolitan was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma.

3. As the Plaintiff's decedent Thomas Westfall used said product, he was unaware of its dangers nor could he have been aware of the product's propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant Metropolitan's manufacture, distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty E. Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium,

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the estate of Thomas Howard Westfall and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Metropolitan Talc Company, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT VII

1. Paragraphs 1 through 8 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. In the course of his employment Plaintiff's decedent Thomas Westfall worked with talc, which product was manufactured

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

and/or distributed and/or marketed and/or sold by the Defendant Windsor Minerals, Inc. and/or its predecessor Eastern Magnesia Talc Co. Inc.

3. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

4. The Defendant Windsor Minerals, Inc. and/or its predecessor, Eastern Magnesia Talc Co. Inc., negligently manufactured, marketed, distributed and sold said talc in that it:

a. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of the danger to persons using said product.

b. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective masks or other protective devices to prevent the ingestion of talc particles.

e. Negligently failed to use due care to cause to

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

be made reasonable research as to the effects or side effects of said product, all of which were known, or in the exercise of due care should have been known to Defendant.

f. Negligently failed to give adequate warning of said defects or side effects of said product or of the potential hazards of using the same.

g. Negligently failed to adequately test said product before presenting the same to the public.

5. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

6. As a direct and proximate result of Defendant Windsor Minerals Inc and/or its predecessor Eastern Magnesia Talc Co. Inc., negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

7. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

8. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

9. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the Estate of Thomas Howard Westfall, and as the Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgement against the Defendant Windsor Minerals, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT VIII

1. Paragraphs 1 through 3 of Count VII are hereby incorporated by reference as if set forth fully at length

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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herein.

2. At the time Defendant Windsor Minerals, Inc. and/or its predecessor Eastern Magnesia Talc Co., Inc manufactured, distributed, marketed and sold the talc in question, it impliedly warranted to potential and actual users of said product that it was safe and fit for the purpose intended and as of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and as not merchantable.

4. As a direct and proximate result of Defendant Windsor Minerals, Inc. and/or its predecessor Eastern Magnesia Talc Co., Inc.'s breach of the implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's was alive, he and the Plaintiff Betty E. Westfall, incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent as alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the estate of Thomas H. Westfall and as the Administrator of the estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Windsor Minerals, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT IX

1. Paragraphs 1 through 3 of Count VII are hereby incorporated by reference as if set forth fully at length herein.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

2. The product manufactured, distributed, marketed and sold by Defendant Windsor Minerals, Inc., and/or its predecessor Eastern Magnesia Talc Co., Inc. was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma.

3. As the Plaintiff's decedent Thomas Westfall used said product, he was unaware of its dangers nor could he have been aware of the product's propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant Windsor Minerals, Inc. and/or its predecessor Eastern Magnesia Talc Co., Inc.'s manufacture, distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David E. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas H. Westfall, and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Windsor Minerals, Inc., in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT X

1. Paragraphs 1 through 8 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. In the course of his employment Plaintiff's de-

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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cedent Thomas Westfall worked with talc, which product was manufactured and/or distributed and/or marketed and/or sold by the Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc.

3. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

4. The Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc. negligently manufactured, marketed, distributed and sold said talc in that it:

a. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of the danger to persons using said product.

b. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective masks or other protective devices to prevent the ingestion of talc particles.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

e. Negligently failed to use due care to cause to be made reasonable research as to the effects or side effects of said product, all of which were known, or in the exercise of due care should have been known to Defendant.

f. Negligently failed to give adequate warning of said defects or side effects of said product or of the potential hazards of using the same.

g. Negligently failed to adequately test said product before presenting the same to the public.

5. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

6. As a direct and proximate result of Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc.'s negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permament injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

7. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

8. By reason of the foregoing, both while the Plain-

tiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

9. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the Estate of Thomas Howard Westfall, and as the Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant OMYA, INC., in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XI

1. Paragraphs 1 through 3 of Count X are hereby incor-

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

porated by reference as if set forth fully at length herein.

2. At the time Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc., manufactured, distributed, marketed and sold the talc in question, it impliedly warranted to potential and actual users of said product that it was safe and fit for the purpose intended and was of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and was not merchantable.

4. As a direct and proximate result of Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc.'s breach of the implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall, incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered

a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the estate of Thomas H. Westfall and as the Administrator of the estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant OMYA, INC., in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XII

1. Paragraphs 1 through 3 of Count X are hereby incorporated by reference as if set forth fully at length herein.

2. The product manufactured, distributed, marketed and

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

sold by Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc. was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma.

3. As the Plaintiff's decedent Thomas Westfall used said product, he was unaware of its dangers nor could he have been aware of the product's propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc.'s manufacture, distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas H. Westfall, and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant OMYA, INC., in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XIII

1. Paragraphs 1 through 8 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. In the course of his employment Plaintiff's decedent Thomas Westfall worked with talc, which product was manufactured and/or distributed and/or marketed and/or sold by the Defendant

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Eastern Magnesia Talc Company.

3. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

4. The Defendant Eastern Magnesia Talc Company negligently manufactured, marketed, distributed and sold said talc in that it:

a. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of the danger to persons using said product.

b. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective masks or other protective devices to prevent the ingestion of talc particles.

e. Negligently failed to use due care to cause to be made reasonable research as to the effects or side effects of said product, all of which were known, or in the exercise of due care should have been known to Defendant.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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f. Negligently failed to give adequate warning of said defects or side effects of said product or of the potential hazards of using the same.

g. Negligently failed to test adequately said product before presenting the same to the public.

5. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

6. As a direct and proximate result of the Defendant Eastern Magnesia Talc Company's negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

7. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

8. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

9. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the Estate of Thomas Howard Westfall, and as the Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Eastern Magnesia Talc Company, in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XIV

1. Paragraphs 1 through 3 of Count XIII are hereby incorporated by reference as if set forth fully at length herein.

2. At the time Defendant Eastern Magnesia Talc Company, manufactured, distributed, marketed and sold the talc in question, to impliedly warranted to potential and actual users

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

of said product that it was safe and fit for the purpose intended and was of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and was not merchantable.

4. As a direct and proximate result of Defendant Eastern Magnesia Talc Company's breach of the implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall, incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a

result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the estate of Thomas H. Westfall and as the Administrator of the estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Eastern Magnesia Talc Company, in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XV

1. Paragraphs 1 through 3 of Count XIII are hereby incorporated by reference as if set forth fully at length herein.

2. The product manufactured, distributed, marketed and sold by Defendant Eastern Magnesia Talc Company and/or its predecessor Vermont Talc Co., Inc. was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma.

3. As the Plaintiff's decedent Thomas Westfall used

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

said product, he was unaware of its dangers nor could he have been aware of the product's propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant Eastern Magnesia Talc Company's manufacture, distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived the

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ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas H. Westfall, and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Eastern Magnesia Talc Company, in the sum of One Million Two Hundred Fifty Thousand ($1,250.000.00) Dollars, plus interest and costs.

COUNT XVI

1. Paragraphs 1 through 9 of Count XIII are incorporated herein by reference as if set forth fully.

2. Defendant Engelhard Corporation ("Engelhard") is the sole owner of defendant Eastern Magnesia Talc Company ("EMT"). At all times material hereto, Engelhard has wholly dominated, controlled, and manipulated the affairs of EMT for Engelhard's own benefit, pleasure, and ends.

3. The relationship between Engelhard and EMT is such that there is no separate corporate identity of EMT, apart from its owner, Engelhard.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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4. By virtue of its position as the corporate alter ego of EMT, Engelhard is liable to plaintiff on the same theories and to the same extent EMT is liable to plaintiff for the injuries and death suffered by plaintiff's decedents, as delineated in Counts XIII, XIV, and XV of this complaint.

5. Because of its liability to plaintiff as aforesaid, Engelhard has engaged in improper activities intended to harass, oppress, intimidate, and obstruct the plaintiff from pursuing his cause of action herein. Among other things, Engelhard has:

a. instituted legal action against an expert employed by plaintiff in this action, when Engelhard knew that there was no valid basis for such legal action in fact or in law, purely for the purpose of intimidating the expert and coercing him to curtail his work for plaintiff;

b. attempted, pursuant to the groundless legal action instituted against plaintiff's expert, to invade plaintiff's counsel's files and obtain trial preparation materials both from plaintiff's counsel and plaintiff's expert;

c. otherwise sought to hinder and obstruct this litigation through intimidation and coercion of witnesses and other improper means.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the Estate of Thomas Howard Westfall, and as the Administrator of the Estate of Betty E. Westfall, on behalf of said estates

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

and on behalf of the beneficiaries of said estates demands judgment against the Defendant Engelhard Corporation for compensatory damages in the sum of One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00), plus interest and costs, and punitive damages in the sum of One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00).

DAVID HOWARD WESTFALL

By his Attorneys,
One Smith Hill
Providence, RI 02903
(401)272-1110

R. DANIEL PRENTISS

VINCENT T. CANNON

CERTIFICATION

I hereby certify that a true copy of the within was mailed to John F. Dolan, Esq., 101 Dyer St., Providence, RI 02903; William A. Curran, Esq., 1210 Turks Head Bldg., Providence, RI 02903; Benjamin V. White, Esq., 20 Washington Place, Providence, RI 02903; Michael G. Sarli, Esq., 2200 Fleet National Bank Bldg., Providence, RI 02903; Robert Lovegreen, Esq., 2200 Fleet National Bank Bldg., Providence, RI 02903; Edward P. Leibensperger, Esq., Federal Reserve Plaza, 600 Atlantic Ave., Boston, MA 02210, on this day of , 1983.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

JNJTALC000688078

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT 2

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

571 F.Supp. 304
United States District Court, D. Rhode Island.

David Howard WESTFALL, in his capacity as Administrator of the Estate of Thomas Howard Westfall, and in his capacity as Administrator of the Estate of Betty E. Westfall

v.

WHITTAKER, CLARK & DANIELS, METROPOLITAN TALC CO., INC. Pfizer, Inc., Omya, Inc. and Windsor Minerals, Inc.

C.A. No. 79-0269B.

Sept. 7, 1983.

Synopsis

Action was commenced against unknown and known suppliers of talc to decedent's employer to recover damages for pleura mesothelioma, a form of lung cancer caused by exposure to asbestos. Subsequently, motion to add named defendants and eliminate references to John Doe corporation was granted. On objections to magistrate's report and recommendations as to motions for summary judgment of defendants, the District Court, Francis J. Boyle, Chief Judge, held that three-year delay in serving previously unknown defendants in wrongful death action was unreasonable, even though these unknown defendants were properly added to complaint subsequent to expiration of statute of limitations, and thus unknown defendants were not duly served as required by statute and were entitled to judgment in their favor.

Ordered accordingly.

West Headnotes (4)

[1] **Limitation of Actions**
Retroactive Operation

A 1981 amendment changing limitations period in wrongful death actions from two years to three years was not retroactively applicable. R.I.Gen.Laws 1956, § 10-7-2.

Cases that cite this headnote

[2] **Limitation of Actions**
Computation of time

A 1982 amendment to wrongful death statute expressly made retroactive by legislature could not aid plaintiff in maintaining action against corporations which it formerly referred to as John Doe corporations, in that 1982 amendment applies only to those deaths caused by any wrongful act, neglect or default which could not in exercise of reasonable diligence be discoverable within three years after death of such person, while decedent had discovered that he was victim of tortious conduct at very latest by date on which his original complaint was filed, and, when decedent died less than two months later of same disease alleged in complaint, the date of discovery did not change. R.I.Gen.Laws 1956, §§ 10-7-2, 10-7-2 note.

Cases that cite this headnote

[3] **Federal Civil Procedure**
Identification of Parties; Fictitious Names

In federal diversity action in district of Rhode Island, John Doe pleadings must be allowed where requirements of statute are met. R.I.Gen.Laws 1956, § 9-5-20.

2 Cases that cite this headnote

[4] **Limitation of Actions**
Defects or irregularities in process or service

Three-year delay by decedent, who had commenced his action against known and unknown suppliers of talc to his employer to recover damages for pleura mesothelioma, a form of lung cancer caused by exposure to asbestos, in serving previously unknown defendants in wrongful death action was unreasonable, even though they were properly added to complaint subsequent to expiration of statute of limitations, and thus unknown defendants were not duly served as required by statute, warranting judgment in their favor. R.I.Gen.Laws 1956, § 9-5-20.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

3 Cases that cite this headnote

Attorneys and Law Firms

*305 R. Daniel Prentiss, Providence, R.I., for plaintiff.

Benjamin V. White, III, Providence, R.I., Edward Leibensperger, Nutter, McClennan & Fish, Boston, Mass., for defendant Windsor Minerals, Inc.

Michael G. Sarli, Robert W. Lovegreen, Providence, R.I., for defendant Whittaker, Clark & Daniels.

John F. Dolan, Providence, R.I., for defendant Omya, Inc.

William A. Curran, Providence, R.I., for defendant Metropolitan Talc Co., Inc.

OPINION

FRANCIS J. BOYLE, Chief Judge.

This civil action is presently before the Court on objections of the Plaintiff and Defendant Windsor Minerals, Inc. (hereinafter Windsor) to the Magistrate's report and recommendations as to the Motions for Summary Judgment of Defendant Omya, Inc. (hereinafter Omya) and Defendant Windsor. The Magistrate recommended that Defendant Omya's Motion for Summary Judgment be granted, and that Defendant Windsor's be denied. The issue, pared down to its simplest form, is whether Plaintiff's claims against these two Defendants are time barred.

A brief chronology of the pleadings is necessary to an understanding of the questions *306 presented. On May 24, 1979, Thomas Howard Westfall and his wife, Betty E. Westfall, commenced this action to recover damages for pleural mesothelioma, a form of lung cancer caused by exposure to asbestos. Mr. Westfall alleged that he contracted the disease as a result of his inhalation of talc from 1946 to 1975, when he worked at the Uniroyal, Inc. plant in Providence, Rhode Island. Jurisdiction is based on diversity of citizenship. The original Defendants were Whittaker, Clark & Daniels (an alleged supplier of talc to Uniroyal), and "John Doe Corporation." Less than two months later, on July 10, 1979, Mr. Westfall died of pleural mesothelioma. July 10, 1979 was also the date on which Defendant Whittaker, Clark & Daniels filed a third-party complaint against Metropolitan Talc Company, Inc. and Pfizer, Inc.

On November 1, 1979, an amended complaint was filed substituting Betty Westfall, in her capacity as administratrix of her husband's estate, as named Plaintiff, and adding Metropolitan Talc Company, Inc. and Pfizer, Inc. as Defendants. Like the original complaint, the first amended complaint included three counts against "John Doe Corporation." Shortly thereafter, on November 17, 1979, Mrs. Westfall died and a second amended complaint was filed by the Westfalls' son, David Howard Westfall, in his capacity as administrator of the estates of his parents, as named Plaintiff in the action.

On May 24, 1982, Plaintiff again moved to amend his complaint. This motion was granted on June 14, 1982, and on June 18, 1982 the third amended complaint added Defendants Windsor Minerals, Inc. and Omya, Inc., and eliminated all references to "John Doe Corporation."

As the first of many arguments, both Windsor and Omya assert that the Rhode Island wrongful death statute in force at the time of Mr. Westfall's death applies to bar Plaintiff's action against them. Mr. Westfall died on July 10, 1979. At that time, the last sentence of R.I.Gen.Laws § 10–7–2 read, in pertinent part: "Provided, that every such action shall be commenced within two (2) years after the death of such person[.]" R.I.Gen.Laws § 10–7–2 (1969 Reenactment). Windsor and Omya were added as Defendants in this action on June 18, 1982, more than two years after Mr. Westfall's death.

[1] On May 12, 1981, before the two-year statutory period had run on Plaintiff's cause of action, R.I.Gen.Laws § 10–7–2 was amended, changing the limitations period from two years to three years. *See* 1980 R.I.Pub.Laws ch. 198, § 1. Plaintiff contends that this amendment applies retroactively, permitting the filing of an action up to three years after a decedent's death. If Plaintiff's contention were to prevail, no further inquiry would be necessary since Windsor and Omya were added as Defendants within three years of Mr. Westfall's death. Based on Rhode Island law, however, this Court finds that the May 12, 1981 amendment to the wrongful death statute cannot be applied retroactively.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

The general rule applicable to all statutes of limitations with regard to the issue of retroactivity is "well-settled in Rhode Island." *Skaba v. Capasso*, 117 R.I. 512, 514, 368 A.2d 570, 571 (1977). In *Fiske v. Briggs*, 6 R.I. 557 (1860), the Rhode Island Supreme Court noted that "the general doctrine to be gathered from the decisions, both English and American, is, that the courts consider the language of these statutes of limitation, and make them retrospect, or otherwise, as the intention of the legislature is to be gathered from their language...." *Id.* at 563–64. In *Rotchford v. Union Railroad Co.*, 25 R.I. 70, 54 A. 932 (1903), the court followed what it acknowledged to be "a familiar rule of construction that statutes of limitations are held to be prospective only in their operation, unless by their express terms or by necessary implication they shall be held to express the legislative intent that a retroactive effect is to be given to them." *Id.* at 72, 54 A. at 933. The "general doctrine" referred to in *Fiske*, and the "familiar rule of construction" referred to in *Rotchford* must still be applied to questions of retroactivity in the interpretation of Rhode Island ***307** statutes of limitations. *See Skaba v. Capasso*, 117 R.I. at 514, 368 A.2d at 571; *Twomey v. Carlton House of Providence, Inc.*, 113 R.I. 264, 268, 320 A.2d 98, 100 (1974); *Hester v. Timothy*, 108 R.I. 376, 382, 275 A.2d 637, 640 (1971).

Furthermore, the law in Rhode Island is equally clear with respect to the statute of limitations for wrongful death actions. As summarized by the First Circuit in *Cadieux v. International Telephone & Telegraph Corp.*, 593 F.2d 142 (1st Cir.1979):

> the Rhode Island Supreme Court has consistently refused to read exceptions into the statute of limitations, reasoning that the time limit is a condition on the existence of a legislatively created cause of action unknown to the common law and therefore not subject to judicial alteration or expansion. *Short v. Flynn* [118 R.I. 441], 374 A.2d 787 (R.I.1977); *Nascimento v. Phillips Petroleum Co.*, 115 R.I. 395, 346 A.2d 657 (1975); *Tillinghast v. Reed*, 70 R.I. 259, 38 A.2d 782 (1944).

Id. at 144. The First Circuit's analysis is undoubtedly correct in light of a Rhode Island Supreme Court memorandum decision one year later in which the court cited *Short v. Flynn*, and *Tillinghast v. Reed*, stating:

> we are of the opinion that in a wrongful death action, the two year period within which the action must be brought constitutes a condition of limitation upon the created right itself and not merely a limitation affecting the remedy. The statute permits of no exception to this requirement.

Santelle v. Miriam Hospital, 414 A.2d 191, 191 (R.I.1980).

Turning to the 1981 amendment then, it is first necessary to examine the language used in order to determine whether by "express terms" or "necessary implication" it was intended to apply retroactively. R.I. General Laws § 10–7–2, as amended on May 12, 1981, reads thus:

> *Action by executor or administrator—Persons benefited —Commencement of action—Minimum recovery* — Every such action shall be brought by and in the name of the executor or administrator of such deceased person, whether appointed or qualified within or without the state, and the amount recovered in every such action shall one-half (½) thereof go to the husband or widow, and one-half (½) thereof to the children of the deceased, and if there be no children the whole shall go to the husband or widow, and if there be no husband or widow, to the next of kin, in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate. Provided, that every such action shall be commenced within three (3) years after the death of such person; and provided, further, whenever any person or corporation is found liable under 10–7–1 to 10–7–4, inclusive, he or it shall be liable in damages in the sum of not less than twenty-five thousand dollars ($25,000).

1980 R.I.Pub.Laws ch. 198, § 1.

Clearly, there is no express language in this amended version of the statute to make it retroactive. Plaintiff argues, however, that the statute necessarily implies retroactive application. The thrust of Plaintiff's argument is that because the amendment does not use words such as "after the cause of action *shall* accrue," or "after such person *shall* die," it should not be held to apply

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

prospectively only. In support of this proposition, Plaintiff cites *Fiske v. Briggs*, 6 R.I. 557 (1860), *Rotchford v. Union Railroad Co.*, 25 R.I. 70, 54 A. 932 (1903), and *Twomey v. Carlton House of Providence, Inc.*, 113 R.I. 264, 320 A.2d 98 (1974).

At issue in *Fiske* was whether the statute of limitations for an action of debt upon a judgment was retroactive. The statute provided that such actions shall be commenced and sued "within twenty years, next after the cause of said action." 6 R.I. at 562. The court held that "there was nothing in this language to indicate a purpose to confine the operation of this act to causes of action which should accrue after the passage of the act," and distinguished the statutory language from that in "*Williamson v. Field*, ..., 'after such action ***308** *shall* accrue,' which was held in that case to refer to such action as should thereafter accrue[.]" (emphasis by the court) *Id.* at 562–63.

In *Rotchford*, a newly enacted statute of limitations for personal injury actions provided that "[A]ctions of the case for injuries to the person shall be commenced and sued within two years next after the cause of action *shall accrue*, and not after." (emphasis added) 25 R.I. at 70, 54 A. at 932. Based in part on the legislature's use of the words "shall accrue" and the fact that the *Fiske* court had emphasized such a distinction, the court held that the statute in question was prospective only in operation. *Id.* at 72–73, 54 A. at 933.

Plaintiff also relies on *Twomey*, in which the 1971 amendment to the statute of limitations affecting injuries to the person was in question. In *Twomey*, the trial justice had held that the 1971 amendment, which enlarged the two-year limitation period to three years, did not apply retroactively. *Id.* 113 R.I. at 266, 320 A.2d at 99. The express language used by the legislature to describe the new limitations period was "within three (3) years next after the cause of action *shall accrue*[.]" (emphasis added) *Id. See* 1971 R.I.Pub.Laws ch. 200. Citing *Fiske* and *Rotchford*, and noting that the 1971 amendment included an express provision that it would not apply retroactively, the *Twomey* court upheld the trial justice's determination that the amendment operated prospectively only. *Id.* at 268, 320 A.2d at 99–100. [1]

While Plaintiff's argument that the 1981 amendment does not use such words as "after the cause of action shall accrue" and hence should apply retroactively is an appealing one, it fails to take into account the important distinction that the Rhode Island Supreme Court has consistently made between wrongful death actions and causes of action that were known at common law. The causes of action at issue in *Fiske* (action of debt on a judgment), *Rotchford* (personal injury), and *Twomey* (personal injury) were not created by statute, but were known at common law. In fact, the court in *Twomey* pointed out this distinction in a footnote, indicating that had the cause of action been created by statute, it would have presented an entirely different issue than that before the court. *See* 113 R.I. at 269–70 n. 5, 320 A.2d at 101 n. 5.

In *Tillinghast v. Reed*, 70 R.I. 259, 38 A.2d 782 (1944), the Rhode Island Supreme Court characterized the wrongful death statute as one which created an entirely new right of action that did not exist at common law, and held that the limitations period was a condition imposed upon the right of action, providing for "no exception as to the time within which the action shall be commenced." *Id.* at 264–65, 38 A.2d at 783–84. The court reiterated this position in *Nascimento v. Phillips Petroleum Co.*, 115 R.I. 395, 346 A.2d 657 (1975), and held further that "the provisions of § 10–7–2 providing that 'every such action shall be commenced within two (2) years after the death of such person' are clear and unequivocal and require no further interpretation or construction by us." *Id.* at 399, 346 A.2d at 659. *See also Dempsey v. State*, 451 A.2d 273, 273 (R.I.1982) (subsequent change to amount or elements of damage in wrongful death statute is substantive and must be applied prospectively only). [2] Accordingly, ***309** the 1981 amendment to the Rhode Island wrongful death statute does not apply retroactively.

Plaintiff next argues that the 1982 amendment to the wrongful death statute, expressly made retroactive by the legislature, applies under the circumstances here alleged. The 1982 amendment provides:

> "It is further provided, ..., that in respect to any death caused by any wrongful act, neglect or default which could not in the exercise of reasonable diligence be discoverable within three (3) years after the death of such person, an action hereunder shall be commenced within three (3) years of the time that the wrongful act, neglect or default should, in

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

> the exercise of reasonable diligence, have been discoverable."

1982 R.I.Pub.Laws ch. 435, § 1. Section 2 of the amendment provided that it would take effect upon passage (May 21, 1982) and would apply to all wrongful death actions for which the wrongful act, neglect or default became discoverable after a date three (3) years prior to the effective date of the amendment. 1982 R.I.Pub.Laws ch. 435, § 2.

Plaintiff asserts that his cause of action against Windsor and Omya became discoverable during April of 1982. On May 24, 1982, Plaintiff sought to amend his complaint in order to add Windsor and Omya as defendants in this action. Therefore, Plaintiff argues, discovery was made within the period of retroactivity established by the 1982 amendment, and suit was brought within three years thereafter.

The Magistrate below considered this argument, but recommended that the 1982 amendment would be unconstitutional as applied in this case. He based his report on *William Danzer & Co. v. Gulf & Ship Island R.R.*, 268 U.S. 633, 45 S.Ct. 612, 69 L.Ed. 1126 (1925), in which the Supreme Court held that a statute of limitations, if applied retroactively to revive a cause of action based on a legislatively created liability, would unconstitutionally deprive the defendant of property without due process of law. *See id.* at 637, 45 S.Ct. at 613.

[2] This Court finds it unnecessary to reach the constitutionality of the 1982 amendment, either in general, or as applied to the facts of this particular case, in that the Plaintiff's reliance on the discovery rule with respect to Defendants Windsor and Omya is misplaced. The "discovery" referred to in the 1982 amendment to the wrongful death act is the discovery of a wrongful act, neglect or default which caused a death, and not the discovery of a particular defendant. *See generally Wilkinson v. Harrington*, 104 R.I. 224, 243 A.2d 745 (1968) (adoption of discovery rule in medical malpractice actions). *See also Richman v. United States*, 709 F.2d 122, 123 (1st Cir.1983) (where plaintiff knew of injury but failed to inquire and learn of defendant's fault, statute of limitations not tolled). Mr. Westfall had discovered that he was the victim of tortious conduct at the very latest by May 24, 1979, the date on which his ***310** original complaint was filed. In addition, it is clear from Plaintiff's initial inclusion of John Doe Corporation as a defendant, that Plaintiff knew at that time that there were possibly other defendants responsible to him. When Plaintiff died less than two months later of the same disease alleged in the complaint, that date of discovery did not change. By its terms, the 1982 amendment to the wrongful death statute applies only to those deaths "caused by any wrongful act, neglect or default which could *not* in the exercise of reasonable diligence be discoverable within three (3) years *after the death* of such person, ..." (emphasis added). Mr. Westfall's death clearly does not fall within this description. Therefore the 1982 amendment cannot aid Plaintiff in maintaining this action against Windsor and Omya.

Plaintiff's penultimate argument is that by naming a John Doe Corporation in his original complaint, pursuant to R.I.Gen.Laws § 9–5–20, he tolled the statute of limitations. Section 9–5–20 provides as follows:

> Whenever the name of any defendant or respondent is not known to the plaintiff, the summons and other process may issue against him by a fictitious name, or by such description as the plaintiff or complainant may select; and if duly served, it shall not be abated for that cause, but may be amended with or without terms as the court may order.

Defendant Windsor argues that the Federal Rules of Civil Procedure do not authorize "John Doe" pleadings, but instead require this Court to look to the provisions of Fed.R.Civ.P. 15(c) to determine whether the amendment adding Windsor and Omya meets the conditions necessary to relate back to the original complaint. Rule 15(c) provides:

> Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

> and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The majority of circuits that have considered this issue undoubtedly support Windsor's contention. *See, e.g., Britt v. Arvanitis,* 590 F.2d 57, 61 (3d Cir.1978) (New Jersey statute permitting fictitious name practice was merely procedural and not available to plaintiff in federal diversity action under rule of *Hanna v. Plumer,* 380 U.S. 460, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965) and in light of Fed.R.Civ.P. 15(c)); *Sassi v. Breir,* 584 F.2d 234, 235 (7th Cir.1978) (naming of "John Doe" defendant in complaint does not toll statute of limitations, but constitutes change of parties and must comply with requirements of Fed.R.Civ.P. 15(c)); *Craig v. United States,* 413 F.2d 854, 856 (9th Cir.), *cert. denied,* 396 U.S. 987, 90 S.Ct. 483, 24 L.Ed.2d 451 (1969) (only way to substitute accurate name of defendants after statute of limitation has run is compliance with Fed.R.Civ.P. 15(c), and Rule 15(c) does not permit pleading of fictitious parties). A particularly compelling rationale for not allowing John Doe pleadings in a federal diversity action is the resulting inability to initially determine complete diversity of the parties where one or more of them is an unknown entity. Plaintiff, however, urges this Court to analyze the issue in light of *Marshall v. Mulrenin,* 508 F.2d 39 (1st Cir.1974).

In *Marshall,* the First Circuit considered a conflict between a Massachusetts statute permitting liberal amendments as to parties and pleadings and Fed.R.Civ.P. 15(c). The Massachusetts statute at that time provided as follows:

> *311 The court may, at any time before final judgment, except as otherwise provided, allow amendments introducing a necessary party or changing the form of the action, and may allow any other amendment in matter of form or substance in any process, pleading or proceeding, which may enable the plaintiff to sustain the action for the cause for which it was intended to be brought, or enable the defendant to make a legal defence.

Mass.Gen.Laws Ann. ch. 231, § 51.[3] The *Marshall* court determined that this was not a conflict between two strictly procedural rules, in which case the Supreme Court's ruling in *Hanna v. Plumer,* 380 U.S. 460, 465, 85 S.Ct. 1136, 1140, 14 L.Ed.2d 8 (1965) would have required that the federal rule of procedure supersede the state rule. The court held that although the Massachusetts statute was "cast in procedural terms," it had "a direct substantive effect," and "[w]e believe the federal court must recognize it." 508 F.2d at 44.

In *Santiago v. Becton Dickinson & Co., S.A.,* 539 F.Supp. 1149 (D.P.R.1982), the court relied on *Marshall* to uphold the application of Puerto Rico Rule of Civil Procedure 15.5 in a federal diversity action. *Id.* at 1152–53. Rule 15.5 allows a plaintiff to use a fictitious name to identify a defendant whose name is unknown at the time of filing the original complaint. *Id.* at 1152.[4] The court acknowledged the many circuits that require application of Fed.R.Civ.P. 15(c) under these circumstances, but went on to note that "[o]ur Circuit, ..., has adopted a different position in determining which rule is applicable when jurisdiction hinges on diversity." *Id.* at 1152–53. The court refused to base a dismissal of the complaint against two defendants on the fact that their names were added after the statute of limitations had run. *Id.* at 1155.

The facts at issue in *Santiago* are strikingly similar to those involved in this action. In *Santiago,* two injured workers claimed to have been intoxicated during the course of their employment by a dye used in the manufacture of band-aids. *Id.* at 1151. Likewise, Plaintiff in the action before this Court alleges that Mr. Westfall contracted pleural mesothelioma at his place of employment as a result of talc used in the manufacture of rubber products. In both cases, plaintiffs identified unknown defendants in their original complaints as the manufacturers of the harmful products that allegedly caused their injuries. Plaintiffs later amended their complaints, identifying two manufacturers by name after the statutes of limitations had run. In *Santiago,* the manufacturers submitted

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

affidavits that they received no notice of the action until after the statute had run. *Id.* Similarly, in *Marshall,* plaintiffs amended their complaint to add "new and unnotified defendants after the statute had run[,]" after having named the wrong defendants in their original complaint. 508 F.2d at 40–41. Assuming *arguendo* that Defendants Windsor *312 and Omya had no notice of Mr. Westfall's action prior to the running of the statute of limitations, all three of these results are in direct contravention of the requirements of Fed.R.Civ.P. 15(c), which mandates that a party to be brought in by amendment receive such notice of the action that he will not be prejudiced in maintaining his defense.

[3] Defendant Windsor points out that the statutes at issue in *Marshall, Santiago,* and the case at bar each contain slightly different terms and provisions. The Massachusetts statute is conceivably the broadest, liberally allowing amendments as to parties, process and pleadings at any time before final judgment. The Puerto Rico statute, like the Rhode Island statute, however, relates solely to the naming of John Doe defendants in an original complaint and the later substitution of actual names. The major distinguishing feature of R.I.Gen.Laws § 9–5–20 is the requirement that a defendant must be "duly served" before the amended complaint will be deemed to relate back to the date of the original complaint. Windsor argues that because of this requirement § 9–5–20 is not a pure tolling statute. All three statutes, however, have been construed as providing a means by which plaintiffs may toll the statute of limitations where a defendant's name is unknown at the time the original complaint is filed. *See Santiago,* 539 F.Supp. at 1153 (construing Puerto Rico Rule of Civil Procedure 15.5); *Covel v. Safetech, Inc.,* 90 F.R.D. 427, 429 (D.Mass.1981) (construing Mass.R.Civ.P. 15(c)); *Sousa v. Casey,* 111 R.I. 623, 633, 306 A.2d 186, 191–92 (1973) (construing R.I.Gen.Laws § 9–5–20). It is beyond question that all three statutes have the same substantive effect of allowing previously unnotified defendants to be brought into an action after the applicable statute of limitations has run. Finding no significant distinctions between the totality of circumstances in the case at bar, and those in *Marshall* and *Santiago,* this Court is compelled to follow the reasoning of the First Circuit and the District of Puerto Rico and hold that in a federal diversity action in the District of Rhode Island, John Doe pleadings must be allowed where the requirements of R.I.Gen.Laws § 9–5–20 are met.

Defendant Omya argues that even if R.I.Gen.Laws § 9–5–20 applies in a federal diversity suit, Plaintiff's reliance on it in this action is misplaced. Omya contends that § 9–5–20 does not apply where the defendant is an unknown person or entity, but only where the plaintiff knows the defendant's identity but does not know his name at the time of filing the complaint. Omya does not cite any case law in support of this position.

In *Santiago,* the court pointed out that the notes relating to Puerto Rico Rule of Civil Procedure 15.5 indicate "that it does not refer to unknown persons or entities but rather to defendants whose identity is known but whose name at the moment of filing the complaint is unknown to plaintiffs." 539 F.Supp. at 1153. There are no such legislative notes interpreting § 9–5–20, and cases construing the statute do not address this issue. In light of Plaintiff's description of John Doe Corporation in his original complaint, however, it is unnecessary to decide this issue. In paragraph 3 of the complaint, Defendant John Doe Corporation is described as:

> a corporation duly organized and existing under the laws of a state other than Rhode Island with the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Honorable Court. At all times relevant hereto Defendant John Doe Corporation manufactured and/or distributed talc to Uniroyal, Inc. for usage in its plant in Providence, Rhode Island.

This Court is satisfied that such a description is sufficient to show that the Defendant John Doe Corporation was not a person or an entity entirely unknown to Plaintiff. As noted *supra,* the plaintiffs in *Santiago* initially described defendant manufacturers in a similar fashion, and the court there found that "a review of the entire original complaint shows that when they filed it they knew that there existed entities that produced, distributed and sold the dye to *313 their employer whose names at that time were unknown to them." 539 F.Supp. at 1154. By the same token, Plaintiff in this action knew there were entities that manufactured and/or distributed talc to Uniroyal, Inc. for use in its Providence plant during the 30-year period Mr.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Westfall was employed there, but did not know all of their names at the time the original complaint was filed.

In support of the Magistrate's recommendation, Defendant Omya next argues that if R.I.Gen.Laws § 9–5–20 applies, Plaintiff's complaint against it should nonetheless be dismissed because the original complaint and subsequent amendments refer to only one John Doe Corporation. Omya contends that § 9–5–20 requires a fictitious designation for each separate defendant whose name is not known, therefore Plaintiff can substitute only Defendant Windsor for the John Doe Corporation in the complaint. The Magistrate accepted this argument and recommended that Omya's motion for summary judgment be granted and that Windsor's be denied. Understandably, Windsor argues with vigor against this result.

Section 9–5–20 does not set forth any particular language that must be used in a complaint filed pursuant to its provisions. In *Sousa v. Casey,* 111 R.I. 623, 306 A.2d 186 (1973), the plaintiff, pursuant to § 9–5–20, filed a complaint against "John Doe, John Smith, John Jones, et al., fictitious names of certain police officers of the City of Providence ... the true names and identity of said police officers being unknown to the plaintiff at this time." *Id.* at 625, 306 A.2d at 188. Defendant Omya submits that the Rhode Island Supreme Court in *Sousa* "delineated" this format as the proper procedure to be followed under the statute. This Court notes that the *Sousa* court neither expressly condoned nor condemned the particular wording of that complaint. Rather, the court impliedly approved the language when it held that the plaintiff had succeeded in tolling the statute of limitations by filing a complaint against unknown defendants. 111 R.I. at 633, 306 A.2d at 192.

In construing § 9–5–20, this Court must first look to the intent of the Rhode Island legislature. *Berthiaume v. School Committee of the City of Woonsocket,* 397 A.2d 889 (R.I.1979). Unfortunately, there is no legislative history of the statute from which to discern that intent. In *Berthiaume,* the court pointed out: "That intent is discovered from an examination of the language, nature, and object of the statute." *Id.* at 892. (*citing Nolan v. Representative Council,* 73 R.I. 498, 502, 57 A.2d 730, 732 (1948)). As noted *supra,* the language of § 9–5–20 does not expressly provide appropriate wording to be used in describing unknown defendants. The *Sousa* court indicated, however, that the nature and object of the statute is to allow a plaintiff to toll the statute of limitations by filing a complaint against fictitious defendants until the plaintiff learns the names of the defendants. 111 R.I. at 632–34, 306 A.2d at 192.

In addition to examining the language, nature and object of § 9–5–20, this Court must also "adhere to the canon that statutes should not be construed to achieve meaningless or absurd results. *See In re Crepeau-Cross,* 385 A.2d 658, 660 (R.I.1978); *State v. Sprague,* 113 R.I. 351, 355, 322 A.2d 36, 38 (1974)." *Berthiaume,* 397 A.2d at 892. Omya's interpretation of the statute allowing the substitution of only one defendant per "John Doe Corporation," would force an absurd and patently unjust result if applied in this case. The entirely fortuitous circumstance that Windsor was named first and Omya was named second in Plaintiff's third amended complaint should, in Omya's estimation, compel the conclusion that Windsor must continue to defend itself in this lawsuit, while Omya escapes further litigation. Furthermore, this Court notes, without deciding, that a routine application of Omya's analysis would seem to effectively preclude the use of § 9–5–20 by products liability plaintiffs who do not know the names of the manufacturers of alleged harmful products. The meaning ascribed to the statute by Omya would unfairly force such plaintiffs to divine how many manufacturers of a product there might be prior to any discovery. If a plaintiff happens to ***314** guess that there are three, and through timely discovery learns that there are four, Omya's reasoning would leave the plaintiff with no recourse against the fourth defendant if the statute of limitations had run. This result contravenes the underlying tolling purpose of § 9–5–20 as interpreted in *Sousa.*

Perhaps the more prudent course for all plaintiffs under these circumstances would be to insert the words "et al" after "John Doe Corporation" in their original and subsequent amended complaints. The purposeful liberalization of pleadings and procedure that has occurred on both a state and federal level, however, and the unambiguous Rhode Island law of statutory construction strongly militate against such a triumph of form over substance. As stated by the Rhode Island Supreme Court in *Wilkinson v. Harrington,* 104 R.I. 224, 243 A.2d 745 (1968), "[n]o statute should be construed to bring about a patently inane result; moreover, we have often said the legislature could never be presumed to have intended to enact laws which are absurd, unjust or

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

unreasonable." *Id.* at 239, 243 A.2d at 753 (*citing State v. Haggerty*, 89 R.I. 158, 151 A.2d 382 (1959). *See also Beaudoin v. Petit*, 409 A.2d 536, 540 (R.I.1979); *State v. Sprague*, 113 R.I. 351, 355, 322 A.2d 36, 38 (1974)). Accordingly, this Court upholds Plaintiff's substitution of both Windsor and Omya for "John Doe Corporation" in his third amended complaint.

Finally, this Court must consider whether Plaintiff has complied with the requirement of § 9–5–20 that fictitiously named defendants be "duly served." In *Sousa v. Casey*, the Rhode Island Supreme Court discussed this prerequisite as follows:

> Section 9–5–20 further provides that the "summons and other process" must be duly served and that it may be amended with or without terms as the court may order. However, there is nothing in our statute which says that the service must be made within the statute of limitations. Service must be made within a reasonable time after a complaint has been filed, absent a showing by the plaintiff that such delay was excusable. *See Caprio v. Fanning & Doorley Constr. Co.*, 104 R.I. 197, 199–200, 243 A.2d 738, 740 (1968).

111 R.I. at 632–33, 306 A.2d at 192. In *Caprio*, which did not involve the use of § 9–5–20, Plaintiff was injured in a motor vehicle collision. Knowing who the defendants were, she filed her complaint on the last day of the two-year statute of limitations then in effect, but took over a year to issue summonses and process and serve the defendants. 104 R.I. at 197–98, 243 A.2d at 739. The court held:

> In the circumstances of this case we cannot say that plaintiff issued process within a reasonable time after she filed her complaint ... more than a year had elapsed from the time she filed her complaint to the time she issued process. Nor can we say that plaintiff has presented evidence which would justify rendering the aforesaid delay excusable.

Id. at 200, 243 A.2d at 740.

More recently, the Rhode Island Supreme Court had occasion to apply this standard in *Curtis v. Diversified Chemicals*, 440 A.2d 747 (R.I.1982). Although the court did not specifically refer to § 9–5–20 in its opinion, it did refer to one of plaintiff's wrongful death actions listing eleven defendants, "as well as 'John Does I–VII' and 'Other Unknown Defendants.' " *Id.* at 748. The precise issue before the court was whether plaintiffs' six, seven, and eight month delays in serving process on the defendants were unreasonable. *Id.* The court upheld the trial justice's determination that the delays were unreasonable, explaining its decision thus:

> In this case plaintiffs presented no evidence to justify the delays except for the testimony that their attorney desired to serve all defendants at the same time. Even this excuse does not explain the amount of time plaintiffs took to obtain the names of registered agents or the addresses of some of the defendants. Obviously, much of this information was readily available to plaintiffs. Telephone calls to the Secretary of State's office would have easily and quickly yielded the ***315** names and addresses of registered agents of all domestic corporations and those registered to do business in the state. Additionally, plaintiffs themselves had set forth the addresses of some of the out-of-state defendants in one of their complaints and, under Rule 4(e)(2), could have served process on those defendants by mail without having first obtained the court's permission.... Basing our analysis on the facility with which names and addresses could have been obtained and service effectuated as well as the evidence presented below, we cannot say that the Superior Court justice was clearly wrong in finding that the delays were unreasonable. Neither can we say that he was clearly wrong

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

> in rejecting as inexcusable plaintiffs' explanation for the delays.

Id. at 749.

Plaintiff argues that all of these cases involved situations where the identities and names of the defendants were known to the plaintiffs. This analysis is accurate, with the exception of the facts in *Curtis,* where plaintiff sued "John Does I–VII." The distinction is unimportant, however, in light of the fact that the *Curtis* court did not consider the difficulty in ascertaining the identity of a John Doe defendant, nor did the plaintiff raise it as a possible reason to excuse her delays in service in that case. This Court accepts Plaintiff's contention that a "reasonable time" within which a known defendant should be served under Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure, is not necessarily the same as a "reasonable time" within which an unknown defendant should be served pursuant to § 9–5–20. With these principles in mind, the Court must now determine whether Plaintiff's delay in serving Omya and Windsor was unreasonable, and if so, whether Plaintiff has "presented evidence which would justify rendering the aforesaid delay excusable." *Caprio,* 104 R.I. at 200, 243 A.2d at 740.

[4] Plaintiff commenced this lawsuit on May 24, 1979. Defendants Windsor and Omya were not served with process until June, 1982, more than three years after the filing of the original complaint. This Court finds that such a delay in service is patently unreasonable. Bearing in mind that efforts to ascertain the identity of John Doe defendants would justify a somewhat greater delay than otherwise, the crucial question nonetheless is whether Plaintiff has justified rendering an approximately three-year delay in service excusable.

Defendants Omya and Windsor assert that Plaintiff did not undertake any discovery until August of 1981. Indeed, more than two years had elapsed from the time the original complaint was filed when Plaintiff served its first sets of interrogatories on Defendants Whittaker, Clark & Daniels, Pfizer, and Metropolitan Talc Company in August, 1981. In one of his memoranda, Plaintiff states in passing that "[d]iscovery was ongoing throughout 1980 and 1981." What discovery was ongoing in 1980, however, is impossible to discern. Plaintiff has submitted no affidavits or evidence in support of this contention, and no further explanation of what discovery took place in 1980 appears in the memoranda filed in this action. All other accounts by Plaintiff of the difficulties encountered in the discovery process begin with the August 1981 interrogatories.

Plaintiff has set forth in great detail the problems that arose in trying to identify the type and origin of the talc that allegedly caused Mr. Westfall's mesothelioma. Only after filing Motions to Compel did Plaintiff begin to receive documents and responses to interrogatories from Defendants Whittaker, Pfizer and Metropolitan. This discovery led to the realization that Uniroyal had used three types of talc at its Providence plant—Italian, Montana and Vermont. Further discovery "began to point toward Vermont talc as the likely source of his asbestos-contaminated talc exposure" and "a geologist was consulted in April, 1982 to determine the location of the Vermont mines operating and producing talc during the 1940s and 1950s." (Plaintiff's Memorandum in Opposition to Motions of Defendants Windsor ***316** Minerals, Inc. and Omya, Inc. for Summary Judgment at 4.)

This Court is aware that, unlike the plaintiff in *Curtis,* Plaintiff in this action had to do more than simply ascertain the names of registered agents in Rhode Island for known corporate defendants. Furthermore, Plaintiffs' proffered excuse of troublesome and intricate discovery procedures is a more reasonable one than that rejected in *Curtis,* a desire to serve all defendants simultaneously. The Court appreciates the complexity of the discovery that was necessary in this action. Plaintiff's dissertation on discovery difficulties, however, does not offer a reason for waiting more than two years to even begin discovery. Clearly, discovery was the key to identifying the unknown suppliers of talc to Uniroyal. Astute and painstaking discovery eventually revealed 1) that a producer of Vermont talc was possibly liable to Plaintiff, and 2) who the producers of Vermont talc were during Plaintiff's period of employment. There is ample reason to believe that if Plaintiff had begun discovery earlier in the course of this litigation, the approximately three-year delay in serving Windsor and Omya would not have occurred.

This Court is compelled to find that the delay in serving Defendants Windsor and Omya was unreasonable. The problems Plaintiff had to surmount in the discovery process do not justify waiting more than two years after filing a lawsuit to engage in any discovery whatsoever, and consequently cannot justify a three-year delay in service

of process. Therefore, Defendants Windsor and Omya were not "duly served" as required by § 9–5–20, and their Motions for Summary Judgment are hereby granted.

All Citations

571 F.Supp. 304

Footnotes

1 Although the plaintiff's action in *Twomey* was barred by the statute of limitations in effect when it was commenced, the court ultimately sustained plaintiff's appeal on the basis of a 1973 amendment to the statute. 113 R.I. at 273, 320 A.2d at 103. The court held that "the manifest legislative intent to give retroactive effect to the limitations enlargement requires us to adjudicate the case according to the law now existing, and the prior judgment, although correct when rendered, must therefore be set aside." *Id.*, 320 A.2d at 103.

2 Plaintiff submits that the cases of *Menna v. Mathewson*, 48 R.I. 310, 137 A. 907 (1927) and *Britto v. Fram Corporation*, 93 R.I. 426, 176 A.2d 81 (1961) undercut the strength of the Rhode Island Supreme Court's traditional characterization of wrongful death actions as created by statute, and the court's consequent refusal to apply amendments to the statute retroactively. In *Menna*, the Rhode Island Supreme Court held that the Workmen's Compensation Act created a right of action, and the time within which a suit must be brought operates as a limitation on the right itself, and not just the remedy. 48 R.I. at 312, 137 A. at 138. In *Britto* the respondent argued that a 1960 amendment to the Workmen's Compensation Act should not apply retroactively to the petitioner's case because it was enacted subsequent to the time petitioner incurred his work-related disease. 93 R.I. at 433–34, 176 A.2d at 84–85. *See* P.L.1960, ch. 94; R.I.Gen.Laws § 28–34–4 (1979 Reenactment); R.I.Gen.Laws § 28–35–57 (1979 Reenactment). The amendment provided that the time period within which to file a claim would not begin to run until the employee knew or should have known of the existence of the injury or disease and its causal relationship to his employment. 93 R.I. at 432, 176 A.2d at 84. This change, respondent asserted, was substantive and not merely procedural and should not apply retroactively. *Id.* at 433–34, 176 A.2d at 84–85. The court held "[t]here is no merit in this contention. The amendment was not designed to create a new right. Rather the legislature intended to and did redefine the circumstances which would give rise to a right already existing." *Id.* at 434, 176 A.2d at 85.

Plaintiff's argument that the 1981 and 1982 amendments to the wrongful death statute should be subject to the same reasoning is, at first blush, persuasive. This Court is not convinced, however, that it is free to disregard the more recent pronouncements of the Rhode Island Supreme Court in *Nascimento* and *Dempsey*, and the First Circuit in *Cadieux*, specifically relating to the wrongful death statute.

3 This statute has since been codified in Mass.R.Civ.P. 15(c), permitting an even more liberal amendment practice. The court in *Covel v. Safetech, Inc.*, 90 F.R.D. 427 (D.Mass.1981) noted:

> Although the remainder of Mass.R.Civ.P. 15 is substantially identical to Fed.R.Civ.P. 15, the Reporters' Notes to Mass.R.Civ.P. 15(c) confirm that "Massachusetts practice is more liberal than Federal Rule 15(c) in allowing amendments adding or substituting party defendants after expiration of the period of limitations," 43A Mass.Gen.L.Ann. at 171. The decision to reaffirm the longstanding Massachusetts rule in what was otherwise substantially a verbatim adoption of the Federal Rules of Civil Procedure manifests a deliberate choice by the Massachusetts Supreme Judicial Court and indicates the strength of the Commonwealth's substantive interest in the matter ... Indeed, in contrast with the predecessor statute, Mass.Gen.L. c. 231, § 51, which declared that the court "may allow" an amendment adding a transactionally related defendant to relate back, Mass.R.Civ.P. 15(c) is in form categorical, saying simply that "the amendment (including an amendment changing a party) relates back to the original pleading."

Id. at 429–30.

4 Puerto Rico Rule of Civil Procedure 15.5 provides that "[w]here the name of a defendant is not known to the plaintiff, he shall so state in the complaint designating him by any name in the proceeding and upon learning his real name, he shall make amendment in the pleading or proceeding." P.R.Laws Ann., Tit. 32 App. II R. 15.5.

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT 3

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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Attorney(s): BRIGIANI, GELZER, COHEN AND SCHNEIDER, P.A.
Office Address & Tel. No.: 603 Cranbury Road, East Brunswick, New Jersey 08816
Attorney(s) for Plaintiff(s) (201) 257-0700

Plaintiff(s)

ANTHONY GAMBINO and ROSE MARIE GAMBINO, his wife,

vs.

Defendant(s)

JOHNSON & JOHNSON BABY PRODUCTS COMPANY.

SUPERIOR COURT OF NEW JERSEY

LAW *DIVISION*

MIDDLESEX *COUNTY*

Docket No. L-064208-83

CIVIL ACTION

Summons

The State of New Jersey, to the Above Named Defendant(s):

YOU ARE HEREBY SUMMONED in a Civil Action in the Superior Court of New Jersey, instituted by the above named plaintiff(s), and required to serve upon the attorney(s) for the plaintiff(s), whose name and office address appears above, an answer to the annexed complaint within 35 *days after the service of the summons and complaint upon you, exclusive of the day of service. If you fail to answer, judgment by default may be rendered against you for the relief demanded in the complaint. You shall promptly file your answer and proof of service thereof in duplicate with the Clerk of the Superior Court, P. O. Box 1300, Trenton, New Jersey 08625, in accordance with the rules of civil practice and procedure.*

An individual who is unable to obtain an attorney may communicate with the New Jersey State Bar Association by calling toll free 800-792-8315 (within New Jersey) or 609-292-1701 (from out of state). You may also communicate with a Lawyer Referral Service or, if you cannot afford to pay an attorney, call a Legal Services Office. The phone numbers for the county in which this action is pending are: Lawyer Referral Service 828-0053 *, Legal Services Office* 249-7600 *. Persons who reside in New Jersey may also call their county Lawyer Referral Service* 828-0053 *, or Legal Services Office* 249-7600.

Dated: October 20, , 83 .

Clerk of the Superior Court

Name of defendant to be served: W. Lewis Bambrick
Address for service: Johnson & Johnson Baby Products Company
501 George Street
New Brunswick, New Jersey 08903

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Recorded and Filed: Superior Court of New Jersey
October 12, 1983 - W. Lewis Bambrick, Clerk

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ATTORNEYS FOR Plaintiffs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:MIDDLESEX COUNTY

Plaintiff

ANTHONY GAMBINO and ROSE MARIE GAMBINO, his wife,

vs.

Defendant

JOHNSON & JOHNSON BABY PRODUCTS COMPANY.

Docket No. L-064208-83

CIVIL ACTION

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff, Anthony Gambino, residing at #99 Hillcrest Avenue, Somerset, in the Township of Franklin, County of Somerset and State of New Jersey, by way of complaint against the defendant, says:

FIRST CLAIM FOR RELIEF

1. At all times herein mentioned, defendant, Johnson & Johnson Baby Products Company, was engaged in the manufacture, testing and introduction into interstate and intrastate commerce for sale, products, including product known as Johnson's Baby Powder Purest Protection, which said product was recommended,

sold, distributed and delivered by defendant to stores, supermarkets, drug stores, hospitals and to the general public.

2. For many years prior to April of 1982, defendant did manufacture and sell and plaintiff did purchase and use the product manufactured, packaged and sold by defendant known as Johnson's Baby Powder Purest Protection.

3. In April of 1982, during the course of hospital examination, it was determined that plaintiff was suffering from nodular infiltration in his chest.

4. Upon information and belief, plaintiff's illness and disease is one that is talcosis, or has been caused by talcosis, as a result of the long term use of defendant's product aforementioned.

5. As a result of the foregoing, plaintiff has sustained severe and permanent injuries to his lungs, body, nervous system and many parts of his body affected thereby, has lost, been deprived of and will be deprived of all or a major portion of his earning capacity, has required and will require medical, nursing and similar attendance and services throughout his life to prevent further injuries and diseases, has required and will require medications, has suffered and will in the future suffer pain and mortification related to his disabilities, and has been and will be deprived of the opportunity to enjoy the activities, pleasures and attributes of a normal adult life, all to his great pecuniary damage.

WHEREFORE, plaintiff demands judgment against the defendant on the First Claim for Relief, for damages and costs of suit.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#23CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

SECOND CLAIM FOR RELIEF

1. All of the allegations contained in the First Claim for Relief are repeated herewith as though set forth at great length and in entirety.

2. Defendant had superior knowledge regarding said Johnson's Baby Powder Purest Protection, and its effect upon the user and plaintiff relied on said knowledge in using said product.

3. As a direct result of the use of said product, plaintiff has sustained the illness herein complained of.

4. Defendant breached its warranty to plaintiff for fitness and use intended by its product, causing plaintiff's illness, which defendant warranted it would not do.

WHEREFORE, plaintiff demands judgment against the defendant on the Second Claim for Relief for damages, together with appropriate interest and costs of suit.

THIRD CLAIM FOR RELIEF

1. All of the allegations contained in the First and Second Claims for Relief are repeated herewith as though set forth at great length and in entirety.

2. Defendant knowingly and recklessly caused a dangerous and toxic product to be placed upon the market and failed to advise and caution the general public and prospective users of the dangers inherent in its product.

WHEREFORE, plaintiff demands judgment against the defendant on the Third Claim for Relief, both compensatory and punitive, together with appropriate interest and costs of suit.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

FOURTH CLAIM FOR RELIEF

1. All of the allegations contained in the First, Second and Third Claims for Relief are repeated herewith as though set forth at great length and in entirety.

2. The product, Johnson's Baby Powder Purest Protection, was defective when manufactured and distributed by defendant, for which defendant has become strictly liable to the plaintiff for the injuries sustained thereby.

3. More specifically, the product was defective for purposes of strict liability in tort, even if manufactured correctly, because it is a dangerous product and was placed in the hands of the users without a suitable warning.

WHEREFORE, plaintiff demands judgment against the defendant on the Fourth Claim for Relief, for damages and costs of suit.

Plaintiff, Rose Marie Gambino, residing at #99 Hillcrest Avenue, Somerset, in the Township of Franklin, County of Somerset and State of New Jersey, by way of complaint against the defendant, says:

FIFTH CLAIM FOR RELIEF

1. All of the allegations contained in the First, Second, Third and Fourth Claims for Relief are repeated herewith as though set forth at great length and in entirety.

2. At all times mentioned in this Complaint and thereafter, plaintiff, Rose Marie Gambino, was the wife of plaintiff, Anthony Gambino.

3. As a result of the foregoing, plaintiff has lost and will lose the services, companionship, society and consortium of her husband, Anthony Gambino.

WHEREFORE, plaintiff, Rose Marie Gambino, demands judgment against the defendant on the Fifth Claim for Relief, for damages, appropriate interest and costs of suit.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury on all issues herein.

BRIGIANI, GELZER, COHEN AND SCHNEIDER, P.A.
Attorneys for Plaintiffs

By: _____
SEYMOUR GELZER

Dated: October 11, 1983

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

EXHIBIT 4

2/8/94

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTSERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

THOMAS RITTER and MARIE RITTER, Plaintiff,	)	
v.	)	Case No. 93-5121-CV-SW-8
CYPRUS MINES CORP., Registered Agent: CT Systems, LUZENAC AMERICA, INC., Registered Agent: Corporate Company, MILWHITE, INC., Registered Agent: Corporation Company, 417 Spring Street, Little Rock, Arkansas 72201, Defendants.	)	

FIRST AMENDED COMPLAINT

COUNT I

Comes now Plaintiff, Thomas Ritter, and for his cause of action against Cyprus Mines Corporation states as follows:

1. That plaintiff is a resident of Cherokee County, Kansas, residing at 821 Joplin Street in Galena, Kansas, and defendant Cyprus Mines Corporation is a corporation organized under the laws of the state of Vermont, and its has appointed as its registered agent CT Systems, 148 College St., Burlington, Vermont 05401.

2. That Cyprus Mines Corporation does business in the State of Missouri and that the causes of actions stated herein arose out of that business and the tortious acts complained of took place in Jasper County, Missouri, and that this court has jurisdic-

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

tion over the defendant pursuant to § 506.500 RSMo. and that venue is proper in Jasper County under § 508.010.

3. Beginning in approximately November, 1945, the Plaintiff, Thomas Ritter, was employed by Tamko Roofing in Joplin, Jasper County, Missouri. His duties included unloading and cleaning railroad freight cars carrying talchydrous magnesium ciliate (hereinafter called talc). The talc was used in the manufacturing of roofing shingles and talc dust was present in the air throughout the plant. Defendant was constantly exposed to heavy concentrations of talc dust that was manufactured and/or sold by defendant Cyprus Mines Corp, while working at Tamko Roofing in Joplin, Missouri, from the time he began work in 1945 until he terminated his employment with Tamko Roofing on May 4, 1984. Plaintiff did not discover and could not have reasonably discovered that his health problems were caused by exposure to talc until January of 1990.

4. That the Defendant, Cyprus Mines Corporation, manufactured and/or sold talc over a period of many years to Tamko Roofing Company for use in Joplin, Missouri, and that at the time of the sale, said defendant knew and anticipated that the product would be used in Joplin, Jasper County, Missouri.

5. At the time of the exposure of Plaintiff, Thomas Ritter, to the talc, the talc was in substantially the same condition as at the time of manufacture and/or sale.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

6. That the talc was in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing

apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

7. That the cumulative exposure to the product over many years directly caused or directly contributed to cause serious and irreparable damage to the plaintiff, including talc pneumoconiosis; that plaintiff's breathing capacity is severely diminished requiring his use of concentrated oxygen through a nasal cannula; that as a result the plaintiff is permanently and totally disabled and that his condition is permanent and progressive.

8. That as a direct result of the exposure described above, plaintiff has in the past and will in the future incur substantial medical costs.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for his costs in this action, and for such further and different relief as the court deems proper.

COUNT II

Comes now the Plaintiff, Thomas Ritter, and for Count II of his cause of action against Defendant, Cyprus Mines Corporation states as follows:

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

9. Plaintiff states and reallages paragraphs 1 through 5 and 7 through 8 of his complaint as if set forth fully herein.

10. That Defendant, Cyprus Mines Corporation, was negligent in the manufacture, distribution, and sale of the product in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

11. That the negligence of the defendant described above directly cause or contributed to cause plaintiff to suffer the serious injuries and damages described above.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for his costs in this action, and for such further and different relief as the court deems proper.

COUNT III

Comes now the Plaintiff, Thomas Ritter, and for Count III of his cause of action against Defendant Cyprus Mines Corporation states as follows:

12. Plaintiff incorporates by reference paragraphs 1 through 5 and 7 through 8 of his complaint as if set forth fully herein.

13. That defendant Cyprus Mines Corporation made warranties, both express and implied, that the talc was of

marketable quality and fit for the purpose for which it was intended but that defendant breached its warranties in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

14. That as a direct result of the aforesaid breach of warranty, Thomas Ritter suffered the severe injuries described above.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against Defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for its costs of this action, and for such further and different relief as the court deems proper.

COUNT IV

Comes now Plaintiff, Marie Ritter, and for Count IV of this cause of action against Cyprus Mines Corporation states as follows:

15. Plaintiff, Marie Ritter, states and realleges paragraphs 1 through 5 and 7 through 8 as if set forth fully herein.

16. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

17. That the talc was in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

18. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT V

Comes now Plaintiff, Marie Ritter, and for Count V of this cause of action against Cyprus Mines Corporation states as follows:

19. Plaintiff, Marie Ritter, states and realleges paragraphs 1 through 5 and 7 through 8 as if set forth fully herein.

20. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

21. That Defendant, Cyprus Mines Corporation, was negligent in the manufacture, distribution, and sale of the product in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing

apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

22. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT VI

Comes now Plaintiff, Marie Ritter, and for Count VI of this cause of action against Cyprus Mines Corporation states as follows:

23. Plaintiff, Marie Ritter, states and realleges paragraphs 1 through 5 and 7 through 8 as if set forth fully herein.

24. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

25. That defendant Cyprus Mines Corporation made warranties, both express and implied, that the talc was of marketable quality and fit for the purpose for which it was intended but that defendant breached its warranties in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

26. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT VII

Comes now Plaintiff, Thomas Ritter, and for his cause of against Luzenac America, Inc. states:

27. That Defendant Luzenac America, Inc. is a corporation doing business in the State of Missouri and subject to service of process in the State of Missouri, having its principal place of business in Denver, Colorado. Defendant has appointed as its

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

registered agent, Corporate Company, 1600 Broadway, Suite 1450, Denver, Colorado 80202. This court has jurisdiction over the defendant pursuant to § 506.500 RSMo. and Bennett v. Rapid American Corp., 816 S.W.2d 677 (Mo. en banc 1991).

28. Plaintiff incorporates by reference paragraphs 1 through 18 of his complaint as if set forth fully herein.

29. That at sometime, unknown to plaintiff, the Defendant Luzenac America, Inc. purchased the assets of Defendant Cyprus Mines Corporation that were used in the manufacture of talchydrous magnesium ciliate or merged with Cyprus Mines Corporation and as part of said transaction agreed to assume all of the liabilities of Cyprus Mines Corporation arising out of the manufacture and sale of talchydrous magnesium ciliate.

30. That by reason of the facts as stated above, Luzenac Of America is liable to the plaintiff for the damages sustained by the plaintiff.

WHEREFORE, Plaintiff, Thomas Ritter, prays for a judgment against Luzenac America, Inc. for an amount that is fair and reasonable, for his costs in this action, and for such further and different relief as the court deems proper.

COUNT VIII

Comes now Plaintiff, Marie Ritter, and for her cause of this action against Luzenac America, Inc. states as follows:

31. Plaintiff states and reallges paragraphs 1 through 18 of this complaint as if set forth fully herein.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

32. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

33. That as a direct result of the injury to Plaintiff, Thomas Ritter, Plaintiff, Marie Ritter, has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

34. That at sometime, unknown to plaintiff, the Defendant Luzenac America, Inc. purchased the assets of Defendant Cyprus Mines Corporation that were used in the manufacture of talchydrous magnesium ciliate and as part of said purchase agreed to assume all of the liabilities of Cyprus Mines Corporation arising out of the manufacture and sale of talchydrous magnesium ciliate.

35. That by reason of the facts as stated above, Luzenac American, Inc. is liable to the plaintiff for the damages sustained by the plaintiff.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Luzenac America, Inc. in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT IX

Comes now Plaintiff, Thomas Ritter, and for his cause of action against Milwhite, Inc. states as follows:

36. That plaintiff is a resident of Cherokee County, Kansas, residing at 821 Joplin Street in Galena, Kansas, and

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

defendant Milwhite, Inc. is a corporation authorized to do business in the state of Arkansas and organized under the laws of the state of Arkansas, and has as its appointed registered agent Corporation Company, 417 Spring Street, Little Rock, Arkansas 72201.

37. That Milwhite, Inc. does business in the State of Missouri and that the causes of actions stated herein arose out of that business and the tortious acts complained of took place in Jasper County, Missouri, and that this court has jurisdiction over the defendant.

38. Beginning in approximately November, 1945, the Plaintiff, Thomas Ritter, was employed by Tamko Roofing in Joplin, Jasper County, Missouri. His duties included unloading and cleaning railroad freight cars carrying talchydrous magnesium ciliate (hereinafter called talc). The talc was used in the manufacturing of roofing shingles and talc dust was present in the air throughout the plant. Defendant was constantly exposed to heavy concentrations of talc dust that was manufactured and/or sold by defendant Milwhite, Inc., while working at Tamko Roofing in Joplin, Missouri, from the time he began work in 1945 until he terminated his employment with Tamko Roofing on May 4, 1984. Plaintiff did not discover and could not have reasonably discovered that his health problems were caused by exposure to talc until January of 1990.

39. That the Defendant, Milwhite, Inc., manufactured and/or sold talc over a period of many years to Tamko Roofing Company for use in Joplin, Missouri, and that at the time of the

sale, said defendant knew and anticipated that the product would be used in Joplin, Jasper County, Missouri.

40. At the time of the exposure of Plaintiff, Thomas Ritter, to the talc, the talc was in substantially the same condition as at the time of manufacture and/or sale.

41. That the talc was in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

42. That the cumulative exposure to the product over many years directly caused or directly contributed to cause serious and irreparable damage to the plaintiff, including talc pneumoconiosis; that plaintiff's breathing capacity is severely diminished requiring his use of concentrated oxygen through a nasal cannula; that as a result the plaintiff is permanently and totally disabled and that his condition is permanent and progressive.

43. That as a direct result of the exposure described above, plaintiff has in the past and will in the future incur substantial medical costs.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against defendant Milwhite, Inc. in an amount that is fair and reasonable, and for his costs in this action, and for such further and different relief as the court deems proper.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

COUNT X

Comes now the Plaintiff, Thomas Ritter, and for Count II of his cause of action against Defendant, Milwhite, Inc. states as follows:

44. Plaintiff states and reallages paragraphs 36 through 40 and 42 through 43 of Count IX of his complaint as if set forth fully herein.

45. That Defendant, Milwhite, Inc., was negligent in the manufacture, distribution, and sale of the product in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not

be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

46. That the negligence of the defendant described above directly cause or contributed to cause plaintiff to suffer the serious injuries and damages described above.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against defendant Milwhite, Inc. in an amount that is fair and reasonable, and for his costs in this action, and for such further and different relief as the court deems proper.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

COUNT XI

Comes now the Plaintiff, Thomas Ritter, and for Count III of his cause of action against Defendant Milwhite, Inc. states as follows:

47. Plaintiff states and reallages paragraphs 36 through 40 and 42 through 43 of Count IX of his complaint as if set forth fully herein.

48. That defendant Milwhite, Inc. made warranties, both express and implied, that the talc was of marketable quality and fit for the purpose for which it was intended but that defendant breached its warranties in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should

have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

49. That as a direct result of the aforesaid breach of warranty, Thomas Ritter suffered the severe injuries described above.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against Defendant Milwhite, Inc. in an amount that is fair and reasonable, and for its costs of this action, and for such further and different relief as the court deems proper.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

COUNT XII

Comes now Plaintiff, Marie Ritter, and for Count IV of this cause of action against Milwhite, Inc. states as follows:

50. Plaintiff, Marie Ritter, states and realleges paragraphs 36 through 40 and 42 through 43 of Count IX as if set forth fully herein.

51. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

52. That the talc was in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should

have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

53. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Milwhite, Inc. in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

COUNT XIII

Comes now Plaintiff, Marie Ritter, and for Count V of this cause of action against Milwhite, Inc. states as follows:

54. Plaintiff, Marie Ritter. states and realleges paragraphs 36 through 40 and 42 through 43 of Count IX as if set forth fully herein.

55. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

56. That Defendant, Milwhite, Inc., was negligent in the manufacture, distribution, and sale of the product in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

57. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Milwhite, Inc. in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

COUNT XIV

Comes now Plaintiff, Marie Ritter, and for Count VI of this cause of action against Milwhite, Inc. states as follows:

58. Plaintiff, Marie Ritter, states and realleges paragraphs 36 through 40 and 42 through 43 of Count IX as if set forth fully herein.

59. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

60. That defendant Milwhite, Inc. made warranties, both express and implied, that the talc was of marketable quality and fit for the purpose for which it was intended but that defendant breached its warranties in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in

the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

61. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Milwhite, Inc. in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

Respectfully submitted

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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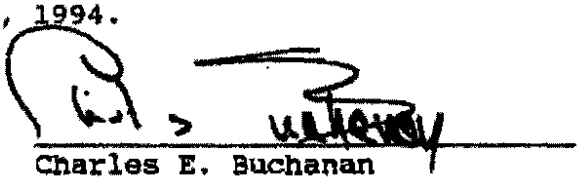
By:

ATTORNEYS FOR PLAINTIFF

I hereby certify that a true and correct copy of the foregoing was deposited in the U.S. Mail, postage prepaid to Michael J. Patton, TURNER, REID, DUNCAN, LOOMER & PATTON, P. O. Box 4043, Springfield, MO 65808; Robert P. Numrich, EVANS & DIXON, City Center Square, Suite 2000, 1100 Main St., Kansas City, MO 64105 on this 8th day of February, 1994.



Charles E. Buchanan

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED 2020 Jul 24 6:19 PM CST IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT CASE #2020-CC-03946

EXHIBIT 9

ELECTRONICALLY FILED 2021-08-20 16:17:09 PM CENTRAL

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: JOHNSON & JOHNSON TALCUM POWDER PRODUCTS MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	)	MDL Docket No. 2738

DECLARATION OF JOHN O'SHAUGHNESSY

1. My name is John O'Shaughnessy. I submit this declaration in support of defendants' August 20, 2021 letter brief seeking to quash a request for corporate representative testimony in connection with talc litigation. The facts stated herein are based on my own personal knowledge, as well as my review of materials in the possession of Johnson & Johnson ("J&J") and Johnson & Johnson Consumer Inc. ("JJCI") (collectively, "the J&J defendants").

2. I was hired as a Senior Attorney to J&J in 1987. In 1992, my job title changed to Assistant General Counsel, and I remained in that position until my retirement on May 1, 2018. In my role as counsel, I was responsible for managing the defense of litigation against the J&J defendants, including litigation related to claims of injury allegedly stemming from exposure to industrial talc products, as well as from the use of cosmetic talcum powder products.

3. Although litigation related to cosmetic talcum powder products did not become widespread until the last two to three years of my career, J&J and its subsidiaries have been involved in cases alleging a variety of injuries stemming from exposure to industrial and cosmetic talc products since the late 1970s. In performing my role as legal counsel, I was aware, at least in general terms, of earlier product liability litigation related to talc in which J&J and/or its subsidiaries

were involved, including talc-related litigation that predated my tenure at the company.

4. To the best of my recollection, talc-based personal injury litigation involving the J&J defendants has generally fallen into three categories: (1) cases alleging respiratory injuries, such as mesothelioma and talcosis, based on exposure to industrial talc; (2) cases alleging such respiratory injuries based on exposure to cosmetic talcum powder; and (3) cases alleging ovarian cancer based on exposure to cosmetic talcum powder.

5. Gene Williams, who is a partner at the law firm Shook, Hardy & Bacon, and has served as J&J's outside litigation counsel for years, previously prepared an affidavit in connection with a state-court talc case that documents the historical development of litigation against J&J and/or its subsidiaries related to talc exposure. (*See* Affidavit of Gene M. Williams, *Leavitt v. Johnson & Johnson*, No. RG17882401 (Cal. Super. Ct. Dec. 5, 2018) ("Williams Affidavit") (attached as Ex. 1).) The Williams Affidavit is generally consistent with my understanding of, and in some respects has refreshed my recollection regarding, the development of talc litigation.

6. **Industrial Talc Cases**: The majority, though not all, of talc cases involving the J&J defendants filed in the 1980s and 1990s involved allegations of injury as a result of exposure to industrial talc. J&J's involvement in these cases was based on its ownership of Windsor Minerals, Inc. ("Windsor"), a company that owned and operated talc mines and was sold by J&J in 1989. (*Id.* ¶ 9.)

7. The first industrial talc case involving a J&J entity that I can recall is *Westfall v. Whittaker, Clark & Daniels*, which was filed in the District of Rhode Island in 1979. (*Id.* ¶ 15(a).) My understanding, consistent with the Williams Affidavit, is that the *Westfall* case involved allegations that the plaintiff contracted

mesothelioma from inhaling asbestos-contaminated talcum powder at work. Windsor was named as a defendant in 1982. (*Id.*)

8. J&J and/or Windsor was named in a number of other personal injury lawsuits related to industrial talc exposure throughout the 1980s. As of December 1988, when a list of pending litigation was prepared in connection with Windsor's then-imminent sale, Windsor was named as a party in five different litigations involving a total of 982 plaintiffs. (*See* Stock Purchase Agreement (attached as Ex. 2).) In addition, Windsor was subject to potential liability in connection with 467 additional lawsuits involving a total of 1,827 "rubber/tire industry" plaintiffs who filed suit against the Engelhard Corporation ("Engelhard") and/or one of its subsidiaries due to Engelhard's assertion that Windsor was "responsible for any liability due to exposure to talc provided to the rubber and tire industry." (*Id.*) After the sale of Windsor in 1989, J&J continued to be named in a number of lawsuits alleging injury based on exposure to industrial talc throughout the 1990s and into the 2000s.

9. **Cosmetic Talc – Mesothelioma and Other Respiratory Injury Cases**: It is my understanding that the J&J defendants began to be named in cases involving allegations of respiratory injury caused by the use of cosmetic talcum powder products in the early 1980s. The first such case mentioned in the Williams Affidavit, and that I can recall, is *Gambino v. Johnson & Johnson Baby Prods. Co.*, which was filed in New Jersey state court in 1983. (*See* Williams Affidavit ¶ 15(b).) According to the Williams Affidavit, that case involved allegations of talcosis (*id.*), which is consistent with my general recollection.

10. The first case alleging mesothelioma as a result of exposure to the J&J defendants' cosmetic talcum powder products identified in the Williams Affidavit is *Howard as rep. of Cain v. A.I.I. Clubman Co.*, which involved claims against JJCI (known at the time as Johnson & Johnson Consumer Products Inc.) and other

defendants in Michigan state court in 1996. (*See id.* ¶ 7.) The following year, similar allegations were made in *Coker v. Bill Thames Pharmacy, Inc.*, filed in Texas state court. (*See id.* ¶¶ 5-6.) The J&J defendants were involved in approximately a dozen additional cases alleging mesothelioma as a result of exposure to cosmetic talcum powder products in the late-1990s, 2000s, and early-2010s. (*Id.* ¶ 12.)

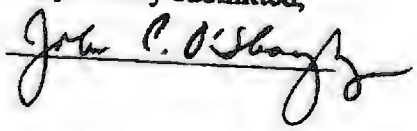
11. It is my recollection, consistent with the Williams Affidavit, that the number of actions involving allegations of mesothelioma resulting from exposure to cosmetic talc increased significantly in the mid-2010s, with a substantial number of mesothelioma cases filed around that time (*see id.* ¶ 14) and the number of cases steadily growing in the few years that followed.

12. **Cosmetic Talc – Ovarian Cancer Cases**: While widespread ovarian cancer litigation against the J&J defendants began in the last several years, a limited number of ovarian cancer cases were filed prior to that time. The first such case of which I am aware is *Berg v. Johnson & Johnson*, which was filed in federal court in South Dakota in 2009 and tried to a jury verdict in 2013.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 30th, 2021

Respectfully submitted,



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CLERK OF THE SUPREME COURT
STATE OF NEVADA
Case No: 84037 Docket No: 84037

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CASE #: 20CR003946

EXHIBIT 1

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JOHNSON & JOHNSON CONSUMER INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

TERESA ELIZABETH LEAVITT and DEAN J. McELROY,

Plaintiffs,

v.

JOHNSON & JOHNSON; et al.,

Defendants.

Case No. RG17882401

AFFIDAVIT OF GENE M. WILLIAMS IN SUPPORT OF DEFENDANTS JOHNSON & JOHNSON AND JOHNSON & JOHNSON CONSUMER INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR EVIDENCE AND ISSUE SANCTIONS DUE TO SPOLIATION OF EVIDENCE BY DEFENDANTS JOHNSON & JOHNSON AND JOHNSON & JOHNSON CONSUMER INC.

Action filed: November 14, 2017
Trial Date: December 10, 2018

[Assigned to the Honorable Brad Seligman, Department 23]

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Johnson & Johnson entities alleging that the inhalation of Johnson's® Baby Powder or Shower to Shower® caused mesothelioma.

5. I was retained by Johnson & Johnson Consumer Companies Inc. in 1997 in connection with the case of *Darlene Coker, and spouse Roy Coker vs. Bill Thames Pharmacy Inc., et al.; (No. 13-157746)*, which was filed in Beaumont, Texas on September 27, 1997. The *Coker* complaint alleged that the plaintiff developed mesothelioma from exposure to Johnson's® Baby Powder. My client was dismissed by plaintiffs without prejudice on or about January 29, 1999.

6. The *Coker* case did not involve significant discovery of any Johnson & Johnson defendants – and certainly not of the broad scope or scale of discovery that has been requested in connection with the above-referenced lawsuit or by other of the numerous lawsuits that have been filed against the Johnson & Johnson defendants regarding Johnson's® Baby Powder and/or Shower to Shower® over the last approximately two years.

7. During my work on the *Coker* case, I became generally aware of some earlier cases brought against one or more Johnson & Johnson entities, including the *Westfall*, *Gambino*, and *Ritter* cases, which are referred to in Plaintiffs' Motion.[1] While I did not represent the company in these other cases, based on my recollection and a review of reasonably available pleadings and other court documents, I am aware of only one other

1. No Johnson & Johnson entity was a defendant in *Ritter*. Rather, Cyprus Mines Corp., an indemnified successor-in-interest to the Windsor Minerals Inc.'s' mining operations, was the named defendant.

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earlier case – the *Howard* case[2] – in which plaintiffs alleged that Johnson's® Baby Powder or Shower to Shower® caused mesothelioma. Further, my recollection and understanding is that none of these earlier cases involved discovery of the scope or scale of the discovery that has been requested in connection with the above-referenced lawsuit or by other of the numerous lawsuits that have been filed against the Johnson & Johnson defendants regarding Johnson's® Baby Powder and/or Shower to Shower® over the last approximately two years.

Description of Historical Litigation

8. Over the years, Johnson & Johnson and/or one or more of its subsidiaries (the "Johnson & Johnson Companies") were involved in a variety of personal injury lawsuits involving talc. Based on my recollection and understanding, litigation involving claims of mesothelioma fell into two distinct groups: (1) industrial talc cases and (2) Johnson's® Baby Powder cases.

9. During the 1980s and 1990s, the vast majority of the personal injury lawsuits involved alleged exposure to industrial talc in the workplace. While neither I nor my firm handled the bulk of those cases, we were involved in some cases and were generally aware of others. In connection with my representation of Johnson & Johnson, I have learned from a variety of sources that industrial talc is different from the cosmetic talc used in Johnson's® Baby Powder or Shower to Shower®, including that

2. Based on a review of reasonably available pleadings and court documents, in August 1996, Johnson & Johnson Consumer Products Co. Inc. ("JJCPI") was first served by amended complaint in a Michigan case entitled *Wilbur Howard, as personal representative of the Estate of Joyce Cain v. A.I.I. Clubman Co., et al.* The amended complaint alleged that various occupational and other exposures caused the alleged mesothelioma. JJCPI was one of several defendants in the case, including Schad Boiler Setting Company and W.R. Grace & Company. JJCPI was dismissed from the case on July 8, 1997, which was before the *Coker* case discussed above was filed.

industrial talc was a different grade of talc which was processed and handled in a manner different from cosmetic talc. As I recall, the alleged liability in these industrial talc cases was premised on Johnson & Johnson's ownership (until 1989) of Windsor Minerals Inc., which had mines that sourced talc for industrial use and mines that sourced talc for cosmetic use. It also is my recollection and understanding that Johnson & Johnson was typically one of many defendants in these cases, was generally not the focus of plaintiffs' claims, and that discovery in those cases was therefore quite limited in scope and scale.

10. Based on my recollection and a review of reasonably available pleadings and other court documents, one or more of the Johnson & Johnson Companies were also named sporadically in a small number of isolated cases alleging that Johnson's® Baby Powder caused mesothelioma beginning in or around 1996.

11. As discussed in paragraphs 5-7 above, the 1997 *Coker* case in which I represented Johnson & Johnson was one of the first cases in which plaintiffs alleged mesothelioma caused by Johnson's® Baby Powder.

12. During the two decades since the *Howard* case (from 1996 until the middle of 2016), one or more of the Johnson & Johnson Companies were involved in approximately a dozen additional cases in which plaintiffs alleged that Johnson's® Baby Powder caused mesothelioma.[3]

13. The Johnson & Johnson Companies were typically one of many defendants in these Johnson's® Baby Powder mesothelioma cases, and they were usually dismissed

3. These isolated, one-off cases did not involve the Shower to Shower® product.

relatively early in the case. These cases did not involve significant discovery of any Johnson & Johnson defendants – certainly not the broad scope or scale of discovery that has been requested in connection with the above-referenced lawsuit or by other of the numerous lawsuits that have been filed against the Johnson & Johnson defendants regarding Johnson's® Baby Powder and/or Shower to Shower® over the last approximately two years. Nor did any discovery efforts in the cases focus on all historical samples, testing grids, count sheets, or other testing materials, other than possibly a letter report or certificate of analysis.

14. It was not until the second half of 2016 that the filing of cases alleging that use of Johnson's® Baby Powder or Shower to Shower® had caused mesothelioma began to accelerate, when more than 100 cases were filed and a large number of ovarian cancer cases were consolidated in a federal MDL proceeding assigned to the United States District Court for the District of New Jersey. And, it was not until 2017-2018 that discovery from the Johnson & Johnson Companies began to focus on all historical samples, testing grids, and other testing-related materials beyond individual letter test reports.[4]

Specific Cases Identified in Plaintiffs' Motion

15. Although neither I nor my firm represented the company in the cases referenced specifically in Plaintiffs' Motion, based on my recollection and a review of reasonably available pleadings and other court documents, the *Westfall*, *Gambino*, and *Ritter* cases

4. Based on my recollection, there were some other sporadic cases involving Johnson's® Baby Powder or Shower to Shower® that made allegations of conditions allegedly caused by talc or fragrance, *e.g.*, talcosis or rash. Further, the first lawsuit alleging ovarian cancer due to exposure to talcum powder was not filed until December 2009. These types of cases did not involve allegations or discovery similar to the allegations or discovery at issue in this case.

did not involve allegations that Johnson's® Baby Powder or Shower to Shower® had caused mesothelioma.

a. The *Westfall* case involved, among other defendants, Windsor Minerals Inc., then a subsidiary of Johnson & Johnson. The case alleged exposure to industrial talc while working in a rubber manufacturing plant. The case was filed in Rhode Island in 1979, but Windsor Minerals Inc. was not named in the case until 1982 and was dismissed from the case on timeliness grounds in 1983. Attached hereto as Exhibits 1 and 2 are copies of the Fourth Amended Complaint and summary judgment decision, respectively, in *Westfall*.

b. The *Gambino* case was filed in New Jersey in 1983 and involved an allegation of talcosis due to exposure to Johnson's® Baby Powder. There was no allegation in that case that the talc at issue was contaminated with asbestos or that it caused an asbestos-related disease. Attached hereto as Exhibit 3 is a copy of the Complaint in *Gambino*.

c. The *Ritter* case was filed in Missouri in or about October 1993. The case alleged talcosis due to exposure to industrial talc while working in the manufacture of roofing shingles. Attached hereto as Exhibit 4 is a copy of the First Amended Complaint in *Ritter*.

FURTHER THE AFFIANT SAYETH NOT

Gene M. Williams

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Sworn to and Subscribed before me
this 5th day of December, 2018.

Cheryl J. Shaddix
Notary Public

My commission expires: 1/31/2022

CHERYL J SHADDIX
3163248
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
JANUARY 31, 2022

ELECTRONICALLY FILED 2020-12-04 6:19 PM CRIMINAL DISTRICT COURT DALLAS COUNTY, TEXAS CASE #F-2030246

EXHIBIT 1

VTC:EG 5/4/83

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

DAVID HOWARD WESTFALL, IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF THOMAS HOWARD WESTFALL AND IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF BETTY E. WESTFALL

VS.

WHITTAKER, CLARK & DANIELS, METROPOLITAN TALC COMPANY, INC., WINDSOR MINERALS INC., itself and as successor to EASTERN MAGNESIUM TALC COMPANY INC., OMYA, INC., itself and as successor to VERMONT TALC COMPANY, INC., and EASTERN MAGNESIA TALC COMPANY and ENGELHARD CORPORATION

C.A. No. 79-0269
Plaintiff hereby demands trial by jury

FOURTH AMENDED COMPLAINT

1. The Plaintiff David H. Westfall is a resident of the State of Rhode Island and is the duly appointed Administrator of the Estates of Thomas Howard Westfall and Betty E. Westfall, deceased, late of the County of Providence, State of Rhode Island, under letters of administration of the County of Providence, State of Rhode Island, dated September 12, 1979 and March 17, 1980, respectively.

2. The Defendant Whittaker, Clark & Daniels (hereinafter Whittaker) is a corporation duly organized and existing under the laws of the State of New Jersey and having its principal place of business in the State of New Jersey. Said Defendant has the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Honorable Court.

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3. The Defendant Metropolitan Talc Company, Inc. (hereinafter Metropolitan) is a corporation duly organized and existing under the laws of the State of New Jersey. Said Defendant has the necessary minimum contacts within the State of Rhode Island to subject it to the jurisdiction of this Honorable Court.

4. The Defendant Windsor Minerals Inc., is a corporation duly organized and existing under the laws of Vermont, and is the successor corporation by merger, purchase or otherwise to Eastern Magnesia Talc Co., Inc., with the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Honorable Court. At all times relevant hereto the Defendant Windsor Minerals Inc. and/or its predecessor Eastern Magnesia Talc Co., Inc. manufactured and/or distributed talc to Uniroyal, Inc. for usage in its plant in Providence, Rhode Island.

5. The Defendant OMYA, Inc. is a corporation duly organized and existing under the laws of Vermont, and is the successor corporation by merger, purchase, or otherwise to Vermont Talc Co, Inc., with the necessary minimum contacts with the State of Rhode Island to be subject to the jurisdiction of this Honorable Court. At all times relevant hereto the Defendant OMYA, Inc. and/or its predecessor Vermont Talc Co., Inc., manufactured and/or distributed talc to Uniroyal, Inc. for usage in its plant, in Providence, Rhode Island.

6. The Defendant Eastern Magnesia Talc Company is a Delaware corporation wholly owned by Engelhard Corporation, with the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Honorable Court. During the period 1967 through 1975, the Defendant Eastern Magnesia Talc Company, and/or its successors by merger, purchase or otherwise, manufactured and/or distributed talc to Uniroyal, Inc. for usage in its plant in Providence, Rhode Island.

7. The Defendant Engelhard Corporation is a Delaware Corporation with its principal place of business in the State of New Jersey. Engelhard Corporation has the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Court. Engelhard Corporation is the owner of the defendant Eastern Magnesia Talc Company.

8. The amount in controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs. Jurisdiction is vested in this Court by virtue of 28 U.S.C. §1332.

9. Between 1946 and 1975, Plaintiff Thomas H. Westfall was employed at Uniroyal located in the City of Providence, State of Rhode Island, where he was involved in the manufacture of rubber and rubberized products.

10. In the course of his employment Plaintiff's decedent Thomas Westfall worked with talc, which product was distributed,

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marketed and sold to Uniroyal by the Defendant Whittaker.

11. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

12. The Defendant Whittaker negligently distributed and sold said talc in that it:

a. Negligently failed to warn persons who worked with this talc, including the Plaintiff's decedent Thomas Westfall, of the danger to persons using said product.

b. Negligently failed to warn persons who worked with said product, including the Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective devices to prevent the ingestion of talc particles.

e. Otherwise negligently distributed, marketed and sold said product.

13. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

14. As a direct and proximate result of said Defendant Whittaker's negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

15. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

16. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

17. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been

greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David H. Westfall, as Administrator of the Estate of Thomas Howard Westfall and as Administrator of the Estate of Betty F. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Whittaker, Clark & Daniels in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT II

1. Paragraphs 1 through 10 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. At the time Defendant Whittaker distributed, marketed and sold talc to Uniroyal, it impliedly warranted to potential and actual users of said product that it was safe and fit for the purpose intended and was of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and was not merchantable.

4. As a direct and proximate result of Defendant Whittaker's breach of its implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries

to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

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CASE #DC-20-19946

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas Howard Westfall and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Whittaker, Clark & Daniels in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT III

1. Paragraphs 1 through 10 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. The product distributed, marketed and sold by Defendant Whittaker to Uniroyal was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma

3. At the time Plaintiff's decedent Thomas Westfall used said product, he was unaware of its danger nor could he have been aware of the products propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant Whittaker's distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of

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BY: ANDREA SANCHEZ

wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David Howard Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the Estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas Howard Westfall and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment

against the Defendant Whittaker, Clark & Daniels in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT IV

1. Paragraphs 1 through 9 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. In the course of his employment Plaintiff's decedent Thomas Westfall worked with talc, which product was manufactured and/or distributed and/or marketed and/or sold by the Defendant Metropolitan.

3. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

4. The Defendant Metropolitan negligently manufactured, marketed, distributed and sold said talc in that it:

a. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of the danger to persons using said product.

b. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles

due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective masks or other protective devices to prevent the ingestion of talc particles.

e. Negligently failed to use due care to cause to be made reasonable research as to the effects or side effects of said product, all of which were known, or in the exercise of due care should have been known to Defendant.

f. Negligently failed to give adequate warning of said defects or side effects of said product or of the potential hazards of using the same.

g. Negligently failed to adequately test said product before presenting the same to the public.

5. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

6. As a direct and proximate result of Defendant Metropolitan's negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

7. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall

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incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

8. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

9. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas Westfall and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Metropolitan Talc Company, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00)

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Dollars, plus interest and costs.

COUNT V

1. Paragraphs 1 through 3 of Count IV are hereby incorporated by reference as if set forth fully at length herein.

2. At the time Defendant Metropolitan manufactured, distributed, marketed and sold the talc in question, it impliedly warranted to potential and actual users of said product that it was safe and fit for the purpose intended and was of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and was not merchantable.

4. As a direct and proximate result of Defendant Metropolitan's breach of its implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plain-

tiff's decedent was alive and as a result of his death, the Plaintiff Betty E. Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas Howard Westfall, and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Metropolitan Talc Company, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT VI

1. Paragraphs 1 through 3 of Count IV are hereby in-

corporated by reference as if set forth fully at length herein.

2. The product manufactured, distributed, marketed and sold by Defendant Metropolitan was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma.

3. As the Plaintiff's decedent Thomas Westfall used said product, he was unaware of its dangers nor could he have been aware of the product's propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant Metropolitan's manufacture, distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty E. Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium,

guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the estate of Thomas Howard Westfall and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Metropolitan Talc Company, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT VII

1. Paragraphs 1 through 8 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. In the course of his employment Plaintiff's decedent Thomas Westfall worked with talc, which product was manufactured

and/or distributed and/or marketed and/or sold by the Defendant Windsor Minerals, Inc. and/or its predecessor Eastern Magnesia Talc Co. Inc.

3. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

4. The Defendant Windsor Minerals, Inc. and/or its predecessor, Eastern Magnesia Talc Co. Inc., negligently manufactured, marketed, distributed and sold said talc in that it.

a. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of the danger to persons using said product

b. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective masks or other protective devices to prevent the ingestion of talc particles.

e. Negligently failed to use due care to cause to

be made reasonable research as to the effects or side effects of said product, all of which were known, or in the exercise of due care should have been known to Defendant.

f. Negligently failed to give adequate warning of said defects or side effects of said product or of the potential hazards of using the same.

g. Negligently failed to adequately test said product before presenting the same to the public.

5. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

6. As a direct and proximate result of Defendant Windsor Minerals Inc and/or its predecessor Eastern Magnesia Talc Co. Inc., negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

7. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

8. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the

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Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

9. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the Estate of Thomas Howard Westfall, and as the Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgement against the Defendant Windsor Minerals, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT VIII

1. Paragraphs 1 through 3 of Count VII are hereby incorporated by refetence as if set forth fully at length

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herein.

2. At the time Defendant Windsor Minerals, Inc. and/or its predecessor Eastern Magnesia Talc Co., Inc manufactured, distributed, marketed and sold the talc in question, it impliedly warranted to potential and actual users of said product that it was safe and fit for the purpose intended and as of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and as not merchantable.

4. As a direct and proximate result of Defendant Windsor Minerals, Inc. and/or its predecessor Eastern Magnesia Talc Co., Inc.'s breach of the implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's was alive, he and the Plaintiff Betty E. Westfall, incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent as alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered

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a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the estate of Thomas H. Westfall and as the Administrator of the estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Windsor Minerals, Inc. in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT IX

1. Paragraphs 1 through 3 of Count VII are hereby incorporated by reference as if set forth fully at length herein.

2. The product manufactured, distributed, marketed and sold by Defendant Windsor Minerals, Inc., and/or its predecessor Eastern Magnesia Talc Co., Inc. was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma.

3. As the Plaintiff's decedent Thomas Westfall used said product, he was unaware of its dangers nor could he have been aware of the product's propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant Windsor Minerals, Inc. and/or its predecessor Eastern Magnesia Talc Co., Inc.'s manufacture, distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered

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a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David E. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas R. Westfall, and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Windsor Minerals, Inc., in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT X

1. Paragraphs 1 through 8 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. In the course of his employment Plaintiff's de-

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cedent Thomas Westfall worked with talc, which product was manufactured and/or distributed and/or marketed and/or sold by the Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc.

3. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

4. The Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc. negligently manufactured, marketed, distributed and sold said talc in that it:

a. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of the danger to persons using said product.

b. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective masks or other protective devices to prevent the ingestion of talc particles.

e. Negligently failed to use due care to cause to be made reasonable research as to the effects or side effects of said product, all of which were known, or in the exercise of due care should have been known to Defendant.

f. Negligently failed to give adequate warning of said defects or side effects of said product or of the potential hazards of using the same.

g. Negligently failed to adequately test said product before presenting the same to the public.

5. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

6. As a direct and proximate result of Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc.'s negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permament injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

7. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

8. By reason of the foregoing, both while the Plain-

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tiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

9. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the Estate of Thomas Howard Westfall, and as the Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant OMYA, INC., in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XI

1. Paragraphs 1 through 3 of Count X are hereby incor-

porated by reference as if set forth fully at length herein.

2. At the time Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc., manufactured, distributed, marketed and sold the talc in question, it impliedly warranted to potential and actual users of said product that it was safe and fit for the purpose intended and was of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and was not merchantable.

4. As a direct and proximate result of Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc.'s breach of the implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall, incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered

a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the estate of Thomas H. Westfall and as the Administrator of the estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant OMYA, INC., in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XII

1. Paragraphs 1 through 3 of Count X are hereby incorporated by reference as if set forth fully at length herein.

2. The product manufactured, distributed, marketed and

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sold by Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc. was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma.

3. As the Plaintiff's decedent Thomas Westfall used said product, he was unaware of its dangers nor could he have been aware of the product's propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant OMYA, INC. and/or its predecessor Vermont Talc Co., Inc.'s manufacture, distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty B. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas

Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty B. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas H. Westfall, and as Administrator of the Estate of Betty B. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant OMYA, INC., in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XIII

1. Paragraphs 1 through 8 of Count I are hereby incorporated by reference as if set forth fully at length herein.

2. In the course of his employment Plaintiff's decedent Thomas Westfall worked with talc, which product was manufactured and/or distributed and/or marketed and/or sold by the Defendant

Eastern Magnesia Talc Company.

3. In or about October of 1977 the Plaintiff's decedent Thomas Westfall ceased all employment due to disability caused by a mesothelioma, a fatal disease caused by exposure to talc.

4. The Defendant Eastern Magnesia Talc Company negligently manufactured, marketed, distributed and sold said talc in that it:

a. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of the danger to persons using said product.

b. Negligently failed to warn persons who worked with this talc, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a potentially fatal lung disease, to wit, mesothelioma.

c. Negligently failed to warn persons using said product, including Plaintiff's decedent Thomas Westfall, of its propensity to cause a fatal disease by the ingestion of particles due to regular exposure to talc.

d. Negligently failed to warn persons working with talc to wear protective masks or other protective devices to prevent the ingestion of talc particles.

e. Negligently failed to use due care to cause to be made reasonable research as to the effects or side effects of said product, all of which were known, or in the exercise of due care should have been known to Defendant.

f. Negligently failed to give adequate warning of said defects or side effects of said product or of the potential hazards of using the same.

g. Negligently failed to test adequately said product before presenting the same to the public.

5. At all times herein mentioned, Plaintiff's decedent Thomas Westfall was in the exercise of due care for his own personal safety.

6. As a direct and proximate result of the Defendant Eastern Magnesia Talc Company's negligence as aforesaid, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

7. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

8. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

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9. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the Estate of Thomas Howard Westfall, and as the Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Eastern Magnesia Talc Company, in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XIV

1. Paragraphs 1 through 3 of Count XIII are hereby incorporated by reference as if set forth fully at length herein.

2. At the time Defendant Eastern Magnesia Talc Company, manufactured, distributed, marketed and sold the talc in question, to impliedly warranted to potential and actual users

of said product that it was safe and fit for the purpose intended and was of merchantable quality, utility and safety.

3. In fact, said product was dangerous when used and was neither safe nor fit for the purpose intended and was not merchantable.

4. As a direct and proximate result of Defendant Eastern Magnesia Talc Company's breach of the implied warranties, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall, incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David E. Westfall and Gail Greene, his children and as a

result of his death, said wife and children were deprived of the support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the estate of Thomas H. Westfall and as the Administrator of the estate of Betty B. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Eastern Magnesia Talc Company, in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XV

1. Paragraphs 1 through 3 of Count XIII are hereby incorporated by reference as if set forth fully at length herein.

2. The product manufactured, distributed, marketed and sold by Defendant Eastern Magnesia Talc Company and/or its predecessor Vermont Talc Co., Inc. was defective and unreasonably dangerous to potential and actual users in that it has a propensity to cause mesothelioma.

3. As the Plaintiff's decedent Thomas Westfall used

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said product, he was unaware of its dangers nor could he have been aware of the product's propensity to cause mesothelioma upon a reasonable inspection.

4. As a direct and proximate result of the Defendant Eastern Magnesia Talc Company's manufacture, distribution, marketing and sale of this defective product, Plaintiff's decedent Thomas Westfall suffered severe and permanent injuries to his body and mind, nerves and nervous system, endured extreme mental and physical pain and suffering, was unable to perform his usual activities, suffered a loss of wages and earning capacity and eventual death on July 10, 1979.

5. By reason of the foregoing, while the Plaintiff's decedent was alive, he and the Plaintiff Betty E. Westfall incurred expenses for medical and nursing treatment, medicines, hospitalization care and the like.

6. By reason of the foregoing, both while the Plaintiff's decedent was alive and as a result of his death, the Plaintiff Betty Westfall, until the time of her death, suffered a loss of the society, affection, comfort, consortium, guidance and love previously provided by the Plaintiff's decedent Thomas Westfall.

7. At the time of his death the Plaintiff's decedent left him surviving the Plaintiff Betty E. Westfall, his wife, and David H. Westfall and Gail Greene, his children and as a result of his death, said wife and children were deprived the

support, maintenance, care, guidance, love, society, affection, comfort and consortium and protection furnished by the said Thomas Westfall and they sustained great pecuniary loss thereby, and the estate of said Thomas Westfall has been greatly diminished by reason of his funeral and burial expenses and by reason of the loss of assets and savings he would have accumulated had he lived.

WHEREFORE, Plaintiff David Westfall, as Administrator of the Estate of Thomas H. Westfall, and as Administrator of the Estate of Betty E. Westfall, on behalf of said estates and on behalf of the beneficiaries of said estates demands judgment against the Defendant Eastern Magnesia Talc Company, in the sum of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars, plus interest and costs.

COUNT XVI

1. Paragraphs 1 through 9 of Count XIII are incorporated herein by reference as if set forth fully.

2. Defendant Engelhard Corporation ("Engelhard") is the sole owner of defendant Eastern Magnesia Talc Company ("EMT"). At all times material hereto, Engelhard has wholly dominated, controlled, and manipulated the affairs of EMT for Engelhard's own benefit, pleasure, and ends.

3. The relationship between Engelhard and EMT is such that there is no separate corporate identity of EMT, apart from its owner, Engelhard.

4. By virtue of its position as the corporate alter ego of EMT, Engelhard is liable to plaintiff on the same theories and to the same extent EMT is liable to plaintiff for the injuries and death suffered by plaintiff's decedents, as delineated in Counts XIII, XIV, and XV of this complaint.

5. Because of its liability to plaintiff as aforesaid, Engelhard has engaged in improper activities intended to harass, oppress, intimidate, and obstruct the plaintiff from pursuing his cause of action herein. Among other things, Engelhard has:

a. instituted legal action against an expert employed by plaintiff in this action, when Engelhard knew that there was no valid basis for such legal action in fact or in law, purely for the purpose of intimidating the expert and coercing him to curtail his work for plaintiff;

b. attempted, pursuant to the groundless legal action instituted against plaintiff's expert, to invade plaintiff's counsel's files and obtain trial preparation materials both from plaintiff's counsel and plaintiff's expert;

c. otherwise sought to hinder and obstruct this litigation through intimidation and coercion of witnesses and other improper means.

WHEREFORE, Plaintiff David Westfall, as the Administrator of the Estate of Thomas Howard Westfall, and as the Administrator of the Estate of Betty E. Westfall, on behalf of said estates

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and on behalf of the beneficiaries of said estates demands judgment against the Defendant Engelhard Corporation for compensatory damages in the sum of One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00), plus interest and costs, and punitive damages in the sum of One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00).

DAVID HOWARD WESTFALL

By his Attorneys,
One Smith Hill
Providence, RI 02903
(401)272-1110

R. DANIEL PRENTISS

VINCENT T. CANNON

CERTIFICATION

I hereby certify that a true copy of the within was mailed to John F. Dolan, Esq., 101 Dyer St., Providence, RI 02903; William A. Curran, Esq., 1210 Turks Head Bldg., Providence, RI 02903; Benjamin V. White, Esq., 20 Washington Place, Providence, RI 02903; Michael G. Sarli, Esq., 2200 Fleet National Bank Bldg., Providence, RI 02903; Robert Lovegreen, Esq., 2200 Fleet National Bank Bldg., Providence, RI 02903; Edward P. Leibensperger, Esq., Federal Reserve Plaza, 600 Atlantic Ave., Boston, MA 02210, on this day of , 1983.

EXHIBIT 2

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571 F.Supp. 304
United States District Court, D. Rhode Island.

David Howard WESTFALL, in his capacity as Administrator of the Estate of Thomas Howard Westfall, and in his capacity as Administrator of the Estate of Betty E. Westfall
v.
WHITTAKER, CLARK & DANIELS, METROPOLITAN TALC CO., INC. Pfizer, Inc., Omya, Inc. and Windsor Minerals, Inc.

C.A. No. 79–0269B.
|
Sept. 7, 1983.

Synopsis

Action was commenced against unknown and known suppliers of talc to decedent's employer to recover damages for pleura mesothelioma, a form of lung cancer caused by exposure to asbestos. Subsequently, motion to add named defendants and eliminate references to John Doe corporation was granted. On objections to magistrate's report and recommendations as to motions for summary judgment of defendants, the District Court, Francis J. Boyle, Chief Judge, held that three-year delay in serving previously unknown defendants in wrongful death action was unreasonable, even though these unknown defendants were properly added to complaint subsequent to expiration of statute of limitations, and thus unknown defendants were not duly served as required by statute and were entitled to judgment in their favor.

Ordered accordingly.

West Headnotes (4)

[1] **Limitation of Actions**
Retroactive Operation

A 1981 amendment changing limitations period in wrongful death actions from two years to three years was not retroactively applicable. R.I.Gen.Laws 1956, § 10–7–2.

Cases that cite this headnote

[2] **Limitation of Actions**
Computation of time

A 1982 amendment to wrongful death statute expressly made retroactive by legislature could not aid plaintiff in maintaining action against corporations which it formerly referred to as John Doe corporations, in that 1982 amendment applies only to those deaths caused by any wrongful act, neglect or default which could not in exercise of reasonable diligence be discoverable within three years after death of such person, while decedent had discovered that he was victim of tortious conduct at very latest by date on which his original complaint was filed, and, when decedent died less than two months later of same disease alleged in complaint, the date of discovery did not change. R.I.Gen.Laws 1956, §§ 10–7–2, 10–7–2 note.

Cases that cite this headnote

[3] **Federal Civil Procedure**
Identification of Parties;Fictitious Names

In federal diversity action in district of Rhode Island, John Doe pleadings must be allowed where requirements of statute are met. R.I.Gen.Laws 1956, § 9–5–20.

2 Cases that cite this headnote

[4] **Limitation of Actions**
Defects or irregularities in process or service

Three-year delay by decedent, who had commenced his action against known and unknown suppliers of talc to his employer to recover damages for pleura mesothelioma, a form of lung cancer caused by exposure to asbestos, in serving previously unknown defendants in wrongful death action was unreasonable, even though they were properly added to complaint subsequent to expiration of statute of limitations, and thus unknown defendants were not duly served as required by statute, warranting judgment in their favor. R.I.Gen.Laws 1956, § 9–5–20.

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3 Cases that cite this headnote

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OPINION

FRANCIS J. BOYLE, Chief Judge.

This civil action is presently before the Court on objections of the Plaintiff and Defendant Windsor Minerals, Inc. (hereinafter Windsor) to the Magistrate's report and recommendations as to the Motions for Summary Judgment of Defendant Omya, Inc. (hereinafter Omya) and Defendant Windsor. The Magistrate recommended that Defendant Omya's Motion for Summary Judgment be granted, and that Defendant Windsor's be denied. The issue, pared down to its simplest form, is whether Plaintiff's claims against these two Defendants are time barred.

A brief chronology of the pleadings is necessary to an understanding of the questions ***306** presented. On May 24, 1979, Thomas Howard Westfall and his wife, Betty E. Westfall, commenced this action to recover damages for pleural mesothelioma, a form of lung cancer caused by exposure to asbestos. Mr. Westfall alleged that he contracted the disease as a result of his inhalation of talc from 1946 to 1975, when he worked at the Uniroyal, Inc. plant in Providence, Rhode Island. Jurisdiction is based on diversity of citizenship. The original Defendants were Whittaker, Clark & Daniels (an alleged supplier of talc to Uniroyal), and "John Doe Corporation." Less than two months later, on July 10, 1979, Mr. Westfall died of pleural mesothelioma. July 10, 1979 was also the date on which Defendant Whittaker, Clark & Daniels filed a third-party complaint against Metropolitan Talc Company, Inc. and Pfizer, Inc.

On November 1, 1979, an amended complaint was filed substituting Betty Westfall, in her capacity as administratrix of her husband's estate, as named Plaintiff, and adding Metropolitan Talc Company, Inc. and Pfizer, Inc. as Defendants. Like the original complaint, the first amended complaint included three counts against "John Doe Corporation." Shortly thereafter, on November 17, 1979, Mrs. Westfall died and a second amended complaint was filed by the Westfalls' son, David Howard Westfall, in his capacity as administrator of the estates of his parents, as named Plaintiff in the action.

On May 24, 1982, Plaintiff again moved to amend his complaint. This motion was granted on June 14, 1982, and on June 18, 1982 the third amended complaint added Defendants Windsor Minerals, Inc. and Omya, Inc., and eliminated all references to "John Doe Corporation."

As the first of many arguments, both Windsor and Omya assert that the Rhode Island wrongful death statute in force at the time of Mr. Westfall's death applies to bar Plaintiff's action against them. Mr. Westfall died on July 10, 1979. At that time, the last sentence of R.I.Gen.Laws § 10–7–2 read, in pertinent part: "Provided, that every such action shall be commenced within two (2) years after the death of such person[.]" R.I.Gen.Laws § 10–7–2 (1969 Reenactment). Windsor and Omya were added as Defendants in this action on June 18, 1982, more than two years after Mr. Westfall's death.

[1] On May 12, 1981, before the two-year statutory period had run on Plaintiff's cause of action, R.I.Gen.Laws § 10–7–2 was amended, changing the limitations period from two years to three years. *See* 1980 R.I.Pub.Laws ch. 198, § 1. Plaintiff contends that this amendment applies retroactively, permitting the filing of an action up to three years after a decedent's death. If Plaintiff's contention were to prevail, no further inquiry would be necessary since Windsor and Omya were added as Defendants within three years of Mr. Westfall's death. Based on Rhode Island law, however, this Court finds that the May 12, 1981 amendment to the wrongful death statute cannot be applied retroactively.

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The general rule applicable to all statutes of limitations with regard to the issue of retroactivity is "well-settled in Rhode Island." *Skaba v. Capasso,* 117 R.I. 512, 514, 368 A.2d 570, 571 (1977). In *Fiske v. Briggs,* 6 R.I. 557 (1860), the Rhode Island Supreme Court noted that "the general doctrine to be gathered from the decisions, both English and American, is, that the courts consider the language of these statutes of limitation, and make them retrospect, or otherwise, as the intention of the legislature is to be gathered from their language...." *Id.* at 563–64. In *Rotchford v. Union Railroad Co.,* 25 R.I. 70, 54 A. 932 (1903), the court followed what it acknowledged to be "a familiar rule of construction that statutes of limitations are held to be prospective only in their operation, unless by their express terms or by necessary implication they shall be held to express the legislative intent that a retroactive effect is to be given to them." *Id.* at 72, 54 A. at 933. The "general doctrine" referred to in *Fiske,* and the "familiar rule of construction" referred to in *Rotchford* must still be applied to questions of retroactivity in the interpretation of Rhode Island ***307** statutes of limitations. *See Skaba v. Capasso,* 117 R.I. at 514, 368 A.2d at 571; *Twomey v. Carlton House of Providence, Inc.,* 113 R.I. 264, 268, 320 A.2d 98, 100 (1974); *Hester v. Timothy,* 108 R.I. 376, 382, 275 A.2d 637, 640 (1971).

Furthermore, the law in Rhode Island is equally clear with respect to the statute of limitations for wrongful death actions. As summarized by the First Circuit in *Cadieux v. International Telephone & Telegraph Corp.,* 593 F.2d 142 (1st Cir.1979):

> the Rhode Island Supreme Court has consistently refused to read exceptions into the statute of limitations, reasoning that the time limit is a condition on the existence of a legislatively created cause of action unknown to the common law and therefore not subject to judicial alteration or expansion. *Short v. Flynn* [118 R.I. 441], 374 A.2d 787 (R.I.1977); *Nascimento v. Phillips Petroleum Co.,* 115 R.I. 395, 346 A.2d 657 (1975); *Tillinghast v. Reed,* 70 R.I. 259, 38 A.2d 782 (1944).

Id. at 144. The First Circuit's analysis is undoubtedly correct in light of a Rhode Island Supreme Court memorandum decision one year later in which the court cited *Short v. Flynn,* and *Tillinghast v. Reed,* stating:

> we are of the opinion that in a wrongful death action, the two year period within which the action must be brought constitutes a condition of limitation upon the created right itself and not merely a limitation affecting the remedy. The statute permits of no exception to this requirement.

Santelle v. Miriam Hospital, 414 A.2d 191, 191 (R.I.1980).

Turning to the 1981 amendment then, it is first necessary to examine the language used in order to determine whether by "express terms" or "necessary implication" it was intended to apply retroactively. R.I. General Laws § 10–7–2, as amended on May 12, 1981, reads thus:

> *Action by executor or administrator—Persons benefited —Commencement of action—Minimum recovery* — Every such action shall be brought by and in the name of the executor or administrator of such deceased person, whether appointed or qualified within or without the state, and the amount recovered in every such action shall one-half (½) thereof go to the husband or widow, and one-half (½) thereof to the children of the deceased, and if there be no children the whole shall go to the husband or widow, and if there be no husband or widow, to the next of kin, in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate. Provided, that every such action shall be commenced within three (3) years after the death of such person; and provided, further, whenever any person or corporation is found liable under 10–7–1 to 10–7–4, inclusive, he or it shall be liable in damages in the sum of not less than twenty-five thousand dollars ($25,000).

1980 R.I.Pub.Laws ch. 198, § 1.

Clearly, there is no express language in this amended version of the statute to make it retroactive. Plaintiff argues, however, that the statute necessarily implies retroactive application. The thrust of Plaintiff's argument is that because the amendment does not use words such as "after the cause of action *shall* accrue," or "after such person *shall* die," it should not be held to apply

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prospectively only. In support of this proposition, Plaintiff cites *Fiske v. Briggs,* 6 R.I. 557 (1860), *Rotchford v. Union Railroad Co.,* 25 R.I. 70, 54 A. 932 (1903), and *Twomey v. Carlton House of Providence, Inc.,* 113 R.I. 264, 320 A.2d 98 (1974).

At issue in *Fiske* was whether the statute of limitations for an action of debt upon a judgment was retroactive. The statute provided that such actions shall be commenced and sued "within twenty years, next after the cause of said action." 6 R.I. at 562. The court held that "there was nothing in this language to indicate a purpose to confine the operation of this act to causes of action which should accrue after the passage of the act," and distinguished the statutory language from that in "*Williamson v. Field,* ..., 'after such action ***308** *shall* accrue,' which was held in that case to refer to such action as should thereafter accrue[.]" (emphasis by the court) *Id.* at 562–63.

In *Rotchford,* a newly enacted statute of limitations for personal injury actions provided that "[A]ctions of the case for injuries to the person shall be commenced and sued within two years next after the cause of action *shall accrue,* and not after." (emphasis added) 25 R.I. at 70, 54 A. at 932. Based in part on the legislature's use of the words "shall accrue" and the fact that the *Fiske* court had emphasized such a distinction, the court held that the statute in question was prospective only in operation. *Id.* at 72–73, 54 A. at 933.

Plaintiff also relies on *Twomey,* in which the 1971 amendment to the statute of limitations affecting injuries to the person was in question. In *Twomey,* the trial justice had held that the 1971 amendment, which enlarged the two-year limitation period to three years, did not apply retroactively. *Id.* 113 R.I. at 266, 320 A.2d at 99. The express language used by the legislature to describe the new limitations period was "within three (3) years next after the cause of action *shall accrue*[.]" (emphasis added) *Id. See* 1971 R.I.Pub.Laws ch. 200. Citing *Fiske* and *Rotchford,* and noting that the 1971 amendment included an express provision that it would not apply retroactively, the *Twomey* court upheld the trial justice's determination that the amendment operated prospectively only. *Id.* at 268, 320 A.2d at 99–100. [1]

While Plaintiff's argument that the 1981 amendment does not use such words as "after the cause of action shall accrue" and hence should apply retroactively is an appealing one, it fails to take into account the important distinction that the Rhode Island Supreme Court has consistently made between wrongful death actions and causes of action that were known at common law. The causes of action at issue in *Fiske* (action of debt on a judgment), *Rotchford* (personal injury), and *Twomey* (personal injury) were not created by statute, but were known at common law. In fact, the court in *Twomey* pointed out this distinction in a footnote, indicating that had the cause of action been created by statute, it would have presented an entirely different issue than that before the court. *See* 113 R.I. at 269–70 n. 5, 320 A.2d at 101 n. 5.

In *Tillinghast v. Reed,* 70 R.I. 259, 38 A.2d 782 (1944), the Rhode Island Supreme Court characterized the wrongful death statute as one which created an entirely new right of action that did not exist at common law, and held that the limitations period was a condition imposed upon the right of action, providing for "no exception as to the time within which the action shall be commenced." *Id.* at 264–65, 38 A.2d at 783–84. The court reiterated this position in *Nascimento v. Phillips Petroleum Co.,* 115 R.I. 395, 346 A.2d 657 (1975), and held further that "the provisions of § 10–7–2 providing that 'every such action shall be commenced within two (2) years after the death of such person' are clear and unequivocal and require no further interpretation or construction by us." *Id.* at 399, 346 A.2d at 659. *See also Dempsey v. State,* 451 A.2d 273, 273 (R.I.1982) (subsequent change to amount or elements of damage in wrongful death statute is substantive and must be applied prospectively only). [2] Accordingly, ***309** the 1981 amendment to the Rhode Island wrongful death statute does not apply retroactively.

Plaintiff next argues that the 1982 amendment to the wrongful death statute, expressly made retroactive by the legislature, applies under the circumstances here alleged. The 1982 amendment provides:

> "It is further provided, ..., that in respect to any death caused by any wrongful act, neglect or default which could not in the exercise of reasonable diligence be discoverable within three (3) years after the death of such person, an action hereunder shall be commenced within three (3) years of the time that the wrongful act, neglect or default should, in

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> the exercise of reasonable diligence, have been discoverable."

1982 R.I.Pub.Laws ch. 435, § 1. Section 2 of the amendment provided that it would take effect upon passage (May 21, 1982) and would apply to all wrongful death actions for which the wrongful act, neglect or default became discoverable after a date three (3) years prior to the effective date of the amendment. 1982 R.I.Pub.Laws ch. 435, § 2.

Plaintiff asserts that his cause of action against Windsor and Omya became discoverable during April of 1982. On May 24, 1982, Plaintiff sought to amend his complaint in order to add Windsor and Omya as defendants in this action. Therefore, Plaintiff argues, discovery was made within the period of retroactivity established by the 1982 amendment, and suit was brought within three years thereafter.

The Magistrate below considered this argument, but recommended that the 1982 amendment would be unconstitutional as applied in this case. He based his report on *William Danzer & Co. v. Gulf & Ship Island R.R.,* 268 U.S. 633, 45 S.Ct. 612, 69 L.Ed. 1126 (1925), in which the Supreme Court held that a statute of limitations, if applied retroactively to revive a cause of action based on a legislatively created liability, would unconstitutionally deprive the defendant of property without due process of law. *See id.* at 637, 45 S.Ct. at 613.

[2] This Court finds it unnecessary to reach the constitutionality of the 1982 amendment, either in general, or as applied to the facts of this particular case, in that the Plaintiff's reliance on the discovery rule with respect to Defendants Windsor and Omya is misplaced. The "discovery" referred to in the 1982 amendment to the wrongful death act is the discovery of a wrongful act, neglect or default which caused a death, and not the discovery of a particular defendant. *See generally Wilkinson v. Harrington,* 104 R.I. 224, 243 A.2d 745 (1968) (adoption of discovery rule in medical malpractice actions). *See also Richman v. United States,* 709 F.2d 122, 123 (1st Cir.1983) (where plaintiff knew of injury but failed to inquire and learn of defendant's fault, statute of limitations not tolled). Mr. Westfall had discovered that he was the victim of tortious conduct at the very latest by May 24, 1979, the date on which his ***310** original complaint was filed. In addition, it is clear from Plaintiff's initial inclusion of John Doe Corporation as a defendant, that Plaintiff knew at that time that there were possibly other defendants responsible to him. When Plaintiff died less than two months later of the same disease alleged in the complaint, that date of discovery did not change. By its terms, the 1982 amendment to the wrongful death statute applies only to those deaths "caused by any wrongful act, neglect or default which could *not* in the exercise of reasonable diligence be discoverable within three (3) years *after the death* of such person, ..." (emphasis added). Mr. Westfall's death clearly does not fall within this description. Therefore the 1982 amendment cannot aid Plaintiff in maintaining this action against Windsor and Omya.

Plaintiff's penultimate argument is that by naming a John Doe Corporation in his original complaint, pursuant to R.I.Gen.Laws § 9–5–20, he tolled the statute of limitations. Section 9–5–20 provides as follows:

> Whenever the name of any defendant or respondent is not known to the plaintiff, the summons and other process may issue against him by a fictitious name, or by such description as the plaintiff or complainant may select; and if duly served, it shall not be abated for that cause, but may be amended with or without terms as the court may order.

Defendant Windsor argues that the Federal Rules of Civil Procedure do not authorize "John Doe" pleadings, but instead require this Court to look to the provisions of Fed.R.Civ.P. 15(c) to determine whether the amendment adding Windsor and Omya meets the conditions necessary to relate back to the original complaint. Rule 15(c) provides:

> Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied

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> and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The majority of circuits that have considered this issue undoubtedly support Windsor's contention. *See, e.g., Britt v. Arvanitis,* 590 F.2d 57, 61 (3d Cir.1978) (New Jersey statute permitting fictitious name practice was merely procedural and not available to plaintiff in federal diversity action under rule of *Hanna v. Plumer,* 380 U.S. 460, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965) and in light of Fed.R.Civ.P. 15(c)); *Sassi v. Breir,* 584 F.2d 234, 235 (7th Cir.1978) (naming of "John Doe" defendant in complaint does not toll statute of limitations, but constitutes change of parties and must comply with requirements of Fed.R.Civ.P. 15(c)); *Craig v. United States,* 413 F.2d 854, 856 (9th Cir.), *cert. denied,* 396 U.S. 987, 90 S.Ct. 483, 24 L.Ed.2d 451 (1969) (only way to substitute accurate name of defendants after statute of limitation has run is compliance with Fed.R.Civ.P. 15(c), and Rule 15(c) does not permit pleading of fictitious parties). A particularly compelling rationale for not allowing John Doe pleadings in a federal diversity action is the resulting inability to initially determine complete diversity of the parties where one or more of them is an unknown entity. Plaintiff, however, urges this Court to analyze the issue in light of *Marshall v. Mulrenin,* 508 F.2d 39 (1st Cir.1974).

In *Marshall,* the First Circuit considered a conflict between a Massachusetts statute permitting liberal amendments as to parties and pleadings and Fed.R.Civ.P. 15(c). The Massachusetts statute at that time provided as follows:

> ***311** The court may, at any time before final judgment, except as otherwise provided, allow amendments introducing a necessary party or changing the form of the action, and may allow any other amendment in matter of form or substance in any process, pleading or proceeding, which may enable the plaintiff to sustain the action for the cause for which it was intended to be brought, or enable the defendant to make a legal defence.

Mass.Gen.Laws Ann. ch. 231, § 51.[3] The *Marshall* court determined that this was not a conflict between two strictly procedural rules, in which case the Supreme Court's ruling in *Hanna v. Plumer,* 380 U.S. 460, 465, 85 S.Ct. 1136, 1140, 14 L.Ed.2d 8 (1965) would have required that the federal rule of procedure supersede the state rule. The court held that although the Massachusetts statute was "cast in procedural terms," it had "a direct substantive effect," and "[w]e believe the federal court must recognize it." 508 F.2d at 44.

In *Santiago v. Becton Dickinson & Co., S.A.,* 539 F.Supp. 1149 (D.P.R.1982), the court relied on *Marshall* to uphold the application of Puerto Rico Rule of Civil Procedure 15.5 in a federal diversity action. *Id.* at 1152–53. Rule 15.5 allows a plaintiff to use a fictitious name to identify a defendant whose name is unknown at the time of filing the original complaint. *Id.* at 1152.[4] The court acknowledged the many circuits that require application of Fed.R.Civ.P. 15(c) under these circumstances, but went on to note that "[o]ur Circuit, ..., has adopted a different position in determining which rule is applicable when jurisdiction hinges on diversity." *Id.* at 1152–53. The court refused to base a dismissal of the complaint against two defendants on the fact that their names were added after the statute of limitations had run. *Id.* at 1155.

The facts at issue in *Santiago* are strikingly similar to those involved in this action. In *Santiago,* two injured workers claimed to have been intoxicated during the course of their employment by a dye used in the manufacture of band-aids. *Id.* at 1151. Likewise, Plaintiff in the action before this Court alleges that Mr. Westfall contracted pleural mesothelioma at his place of employment as a result of talc used in the manufacture of rubber products. In both cases, plaintiffs identified unknown defendants in their original complaints as the manufacturers of the harmful products that allegedly caused their injuries. Plaintiffs later amended their complaints, identifying two manufacturers by name after the statutes of limitations had run. In *Santiago,* the manufacturers submitted

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affidavits that they received no notice of the action until after the statute had run. *Id.* Similarly, in *Marshall,* plaintiffs amended their complaint to add "new and unnotified defendants after the statute had run[,]" after having named the wrong defendants in their original complaint. 508 F.2d at 40–41. Assuming *arguendo* that Defendants Windsor ***312** and Omya had no notice of Mr. Westfall's action prior to the running of the statute of limitations, all three of these results are in direct contravention of the requirements of Fed.R.Civ.P. 15(c), which mandates that a party to be brought in by amendment receive such notice of the action that he will not be prejudiced in maintaining his defense.

[3] Defendant Windsor points out that the statutes at issue in *Marshall, Santiago,* and the case at bar each contain slightly different terms and provisions. The Massachusetts statute is conceivably the broadest, liberally allowing amendments as to parties, process and pleadings at any time before final judgment. The Puerto Rico statute, like the Rhode Island statute, however, relates solely to the naming of John Doe defendants in an original complaint and the later substitution of actual names. The major distinguishing feature of R.I.Gen.Laws § 9–5–20 is the requirement that a defendant must be "duly served" before the amended complaint will be deemed to relate back to the date of the original complaint. Windsor argues that because of this requirement § 9–5–20 is not a pure tolling statute. All three statutes, however, have been construed as providing a means by which plaintiffs may toll the statute of limitations where a defendant's name is unknown at the time the original complaint is filed. *See Santiago,* 539 F.Supp. at 1153 (construing Puerto Rico Rule of Civil Procedure 15.5); *Covel v. Safetech, Inc.,* 90 F.R.D. 427, 429 (D.Mass.1981) (construing Mass.R.Civ.P. 15(c)); *Sousa v. Casey,* 111 R.I. 623, 633, 306 A.2d 186, 191–92 (1973) (construing R.I.Gen.Laws § 9–5–20). It is beyond question that all three statutes have the same substantive effect of allowing previously unnotified defendants to be brought into an action after the applicable statute of limitations has run. Finding no significant distinctions between the totality of circumstances in the case at bar, and those in *Marshall* and *Santiago,* this Court is compelled to follow the reasoning of the First Circuit and the District of Puerto Rico and hold that in a federal diversity action in the District of Rhode Island, John Doe pleadings must be allowed where the requirements of R.I.Gen.Laws § 9–5–20 are met.

Defendant Omya argues that even if R.I.Gen.Laws § 9–5–20 applies in a federal diversity suit, Plaintiff's reliance on it in this action is misplaced. Omya contends that § 9–5–20 does not apply where the defendant is an unknown person or entity, but only where the plaintiff knows the defendant's identity but does not know his name at the time of filing the complaint. Omya does not cite any case law in support of this position.

In *Santiago,* the court pointed out that the notes relating to Puerto Rico Rule of Civil Procedure 15.5 indicate "that it does not refer to unknown persons or entities but rather to defendants whose identity is known but whose name at the moment of filing the complaint is unknown to plaintiffs." 539 F.Supp. at 1153. There are no such legislative notes interpreting § 9–5–20, and cases construing the statute do not address this issue. In light of Plaintiff's description of John Doe Corporation in his original complaint, however, it is unnecessary to decide this issue. In paragraph 3 of the complaint, Defendant John Doe Corporation is described as:

> a corporation duly organized and existing under the laws of a state other than Rhode Island with the necessary minimum contacts within the State of Rhode Island to be subject to the jurisdiction of this Honorable Court. At all times relevant hereto Defendant John Doe Corporation manufactured and/or distributed talc to Uniroyal, Inc. for usage in its plant in Providence, Rhode Island.

This Court is satisfied that such a description is sufficient to show that the Defendant John Doe Corporation was not a person or an entity entirely unknown to Plaintiff. As noted *supra,* the plaintiffs in *Santiago* initially described defendant manufacturers in a similar fashion, and the court there found that "a review of the entire original complaint shows that when they filed it they knew that there existed entities that produced, distributed and sold the dye to ***313** their employer whose names at that time were unknown to them." 539 F.Supp. at 1154. By the same token, Plaintiff in this action knew there were entities that manufactured and/or distributed talc to Uniroyal, Inc. for use in its Providence plant during the 30-year period Mr.

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Westfall was employed there, but did not know all of their names at the time the original complaint was filed.

In support of the Magistrate's recommendation, Defendant Omya next argues that if R.I.Gen.Laws § 9–5–20 applies, Plaintiff's complaint against it should nonetheless be dismissed because the original complaint and subsequent amendments refer to only one John Doe Corporation. Omya contends that § 9–5–20 requires a fictitious designation for each separate defendant whose name is not known, therefore Plaintiff can substitute only Defendant Windsor for the John Doe Corporation in the complaint. The Magistrate accepted this argument and recommended that Omya's motion for summary judgment be granted and that Windsor's be denied. Understandably, Windsor argues with vigor against this result.

Section 9–5–20 does not set forth any particular language that must be used in a complaint filed pursuant to its provisions. In *Sousa v. Casey,* 111 R.I. 623, 306 A.2d 186 (1973), the plaintiff, pursuant to § 9–5–20, filed a complaint against "John Doe, John Smith, John Jones, et al., fictitious names of certain police officers of the City of Providence ... the true names and identity of said police officers being unknown to the plaintiff at this time." *Id.* at 625, 306 A.2d at 188. Defendant Omya submits that the Rhode Island Supreme Court in *Sousa* "delineated" this format as the proper procedure to be followed under the statute. This Court notes that the *Sousa* court neither expressly condoned nor condemned the particular wording of that complaint. Rather, the court impliedly approved the language when it held that the plaintiff had succeeded in tolling the statute of limitations by filing a complaint against unknown defendants. 111 R.I. at 633, 306 A.2d at 192.

In construing § 9–5–20, this Court must first look to the intent of the Rhode Island legislature. *Berthiaume v. School Committee of the City of Woonsocket,* 397 A.2d 889 (R.I.1979). Unfortunately, there is no legislative history of the statute from which to discern that intent. In *Berthiaume,* the court pointed out: "That intent is discovered from an examination of the language, nature, and object of the statute." *Id.* at 892. (*citing Nolan v. Representative Council,* 73 R.I. 498, 502, 57 A.2d 730, 732 (1948)). As noted *supra,* the language of § 9–5–20 does not expressly provide appropriate wording to be used in describing unknown defendants. The *Sousa* court indicated, however, that the nature and object of the statute is to allow a plaintiff to toll the statute of limitations by filing a complaint against fictitious defendants until the plaintiff learns the names of the defendants. 111 R.I. at 632–34, 306 A.2d at 192.

In addition to examining the language, nature and object of § 9–5–20, this Court must also "adhere to the canon that statutes should not be construed to achieve meaningless or absurd results. *See In re Crepeau-Cross,* 385 A.2d 658, 660 (R.I.1978); *State v. Sprague,* 113 R.I. 351, 355, 322 A.2d 36, 38 (1974)." *Berthiaume,* 397 A.2d at 892. Omya's interpretation of the statute allowing the substitution of only one defendant per "John Doe Corporation," would force an absurd and patently unjust result if applied in this case. The entirely fortuitous circumstance that Windsor was named first and Omya was named second in Plaintiff's third amended complaint should, in Omya's estimation, compel the conclusion that Windsor must continue to defend itself in this lawsuit, while Omya escapes further litigation. Furthermore, this Court notes, without deciding, that a routine application of Omya's analysis would seem to effectively preclude the use of § 9–5–20 by products liability plaintiffs who do not know the names of the manufacturers of alleged harmful products. The meaning ascribed to the statute by Omya would unfairly force such plaintiffs to divine how many manufacturers of a product there might be prior to any discovery. If a plaintiff happens to ***314** guess that there are three, and through timely discovery learns that there are four, Omya's reasoning would leave the plaintiff with no recourse against the fourth defendant if the statute of limitations had run. This result contravenes the underlying tolling purpose of § 9–5–20 as interpreted in *Sousa.*

Perhaps the more prudent course for all plaintiffs under these circumstances would be to insert the words "et al" after "John Doe Corporation" in their original and subsequent amended complaints. The purposeful liberalization of pleadings and procedure that has occurred on both a state and federal level, however, and the unambiguous Rhode Island law of statutory construction strongly militate against such a triumph of form over substance. As stated by the Rhode Island Supreme Court in *Wilkinson v. Harrington,* 104 R.I. 224, 243 A.2d 745 (1968), "[n]o statute should be construed to bring about a patently inane result; moreover, we have often said the legislature could never be presumed to have intended to enact laws which are absurd, unjust or

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unreasonable." *Id.* at 239, 243 A.2d at 753 (*citing State v. Haggerty,* 89 R.I. 158, 151 A.2d 382 (1959). *See also Beaudoin v. Petit,* 409 A.2d 536, 540 (R.I.1979); *State v. Sprague,* 113 R.I. 351, 355, 322 A.2d 36, 38 (1974)). Accordingly, this Court upholds Plaintiff's substitution of both Windsor and Omya for "John Doe Corporation" in his third amended complaint.

Finally, this Court must consider whether Plaintiff has complied with the requirement of § 9–5–20 that fictitiously named defendants be "duly served." In *Sousa v. Casey,* the Rhode Island Supreme Court discussed this prerequisite as follows:

> Section 9–5–20 further provides that the "summons and other process" must be duly served and that it may be amended with or without terms as the court may order. However, there is nothing in our statute which says that the service must be made within the statute of limitations. Service must be made within a reasonable time after a complaint has been filed, absent a showing by the plaintiff that such delay was excusable. *See Caprio v. Fanning & Doorley Constr. Co.,* 104 R.I. 197, 199–200, 243 A.2d 738, 740 (1968).

111 R.I. at 632–33, 306 A.2d at 192. In *Caprio,* which did not involve the use of § 9–5–20, Plaintiff was injured in a motor vehicle collision. Knowing who the defendants were, she filed her complaint on the last day of the two-year statute of limitations then in effect, but took over a year to issue summonses and process and serve the defendants. 104 R.I. at 197–98, 243 A.2d at 739. The court held:

> In the circumstances of this case we cannot say that plaintiff issued process within a reasonable time after she filed her complaint ... more than a year had elapsed from the time she filed her complaint to the time she issued process. Nor can we say that plaintiff has presented evidence which would justify rendering the aforesaid delay excusable.

Id. at 200, 243 A.2d at 740.

More recently, the Rhode Island Supreme Court had occasion to apply this standard in *Curtis v. Diversified Chemicals,* 440 A.2d 747 (R.I.1982). Although the court did not specifically refer to § 9–5–20 in its opinion, it did refer to one of plaintiff's wrongful death actions listing eleven defendants, "as well as 'John Does I–VII' and 'Other Unknown Defendants.' " *Id.* at 748. The precise issue before the court was whether plaintiffs' six, seven, and eight month delays in serving process on the defendants were unreasonable. *Id.* The court upheld the trial justice's determination that the delays were unreasonable, explaining its decision thus:

> In this case plaintiffs presented no evidence to justify the delays except for the testimony that their attorney desired to serve all defendants at the same time. Even this excuse does not explain the amount of time plaintiffs took to obtain the names of registered agents or the addresses of some of the defendants. Obviously, much of this information was readily available to plaintiffs. Telephone calls to the Secretary of State's office would have easily and quickly yielded the ***315** names and addresses of registered agents of all domestic corporations and those registered to do business in the state. Additionally, plaintiffs themselves had set forth the addresses of some of the out-of-state defendants in one of their complaints and, under Rule 4(e)(2), could have served process on those defendants by mail without having first obtained the court's permission.... Basing our analysis on the facility with which names and addresses could have been obtained and service effectuated as well as the evidence presented below, we cannot say that the Superior Court justice was clearly wrong in finding that the delays were unreasonable. Neither can we say that he was clearly wrong

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> in rejecting as inexcusable plaintiffs' explanation for the delays.

Id. at 749.

Plaintiff argues that all of these cases involved situations where the identities and names of the defendants were known to the plaintiffs. This analysis is accurate, with the exception of the facts in *Curtis,* where plaintiff sued "John Does I–VII." The distinction is unimportant, however, in light of the fact that the *Curtis* court did not consider the difficulty in ascertaining the identity of a John Doe defendant, nor did the plaintiff raise it as a possible reason to excuse her delays in service in that case. This Court accepts Plaintiff's contention that a "reasonable time" within which a known defendant should be served under Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure, is not necessarily the same as a "reasonable time" within which an unknown defendant should be served pursuant to § 9–5–20. With these principles in mind, the Court must now determine whether Plaintiff's delay in serving Omya and Windsor was unreasonable, and if so, whether Plaintiff has "presented evidence which would justify rendering the aforesaid delay excusable." *Caprio,* 104 R.I. at 200, 243 A.2d at 740.

[4] Plaintiff commenced this lawsuit on May 24, 1979. Defendants Windsor and Omya were not served with process until June, 1982, more than three years after the filing of the original complaint. This Court finds that such a delay in service is patently unreasonable. Bearing in mind that efforts to ascertain the identity of John Doe defendants would justify a somewhat greater delay than otherwise, the crucial question nonetheless is whether Plaintiff has justified rendering an approximately three-year delay in service excusable.

Defendants Omya and Windsor assert that Plaintiff did not undertake any discovery until August of 1981. Indeed, more than two years had elapsed from the time the original complaint was filed when Plaintiff served its first sets of interrogatories on Defendants Whittaker, Clark & Daniels, Pfizer, and Metropolitan Talc Company in August, 1981. In one of his memoranda, Plaintiff states in passing that "[d]iscovery was ongoing throughout 1980 and 1981." What discovery was ongoing in 1980, however, is impossible to discern. Plaintiff has submitted no affidavits or evidence in support of this contention, and no further explanation of what discovery took place in 1980 appears in the memoranda filed in this action. All other accounts by Plaintiff of the difficulties encountered in the discovery process begin with the August 1981 interrogatories.

Plaintiff has set forth in great detail the problems that arose in trying to identify the type and origin of the talc that allegedly caused Mr. Westfall's mesothelioma. Only after filing Motions to Compel did Plaintiff begin to receive documents and responses to interrogatories from Defendants Whittaker, Pfizer and Metropolitan. This discovery led to the realization that Uniroyal had used three types of talc at its Providence plant—Italian, Montana and Vermont. Further discovery "began to point toward Vermont talc as the likely source of his asbestos-contaminated talc exposure" and "a geologist was consulted in April, 1982 to determine the location of the Vermont mines operating and producing talc during the 1940s and 1950s." (Plaintiff's Memorandum in Opposition to Motions of Defendants Windsor ***316** Minerals, Inc. and Omya, Inc. for Summary Judgment at 4.)

This Court is aware that, unlike the plaintiff in *Curtis,* Plaintiff in this action had to do more than simply ascertain the names of registered agents in Rhode Island for known corporate defendants. Furthermore, Plaintiffs' proffered excuse of troublesome and intricate discovery procedures is a more reasonable one than that rejected in *Curtis,* a desire to serve all defendants simultaneously. The Court appreciates the complexity of the discovery that was necessary in this action. Plaintiff's dissertation on discovery difficulties, however, does not offer a reason for waiting more than two years to even begin discovery. Clearly, discovery was the key to identifying the unknown suppliers of talc to Uniroyal. Astute and painstaking discovery eventually revealed 1) that a producer of Vermont talc was possibly liable to Plaintiff, and 2) who the producers of Vermont talc were during Plaintiff's period of employment. There is ample reason to believe that if Plaintiff had begun discovery earlier in the course of this litigation, the approximately three-year delay in serving Windsor and Omya would not have occurred.

This Court is compelled to find that the delay in serving Defendants Windsor and Omya was unreasonable. The problems Plaintiff had to surmount in the discovery process do not justify waiting more than two years after filing a lawsuit to engage in any discovery whatsoever, and consequently cannot justify a three-year delay in service

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of process. Therefore, Defendants Windsor and Omya were not "duly served" as required by § 9–5–20, and their Motions for Summary Judgment are hereby granted.

All Citations

571 F.Supp. 304

Footnotes

1 Although the plaintiff's action in *Twomey* was barred by the statute of limitations in effect when it was commenced, the court ultimately sustained plaintiff's appeal on the basis of a 1973 amendment to the statute. 113 R.I. at 273, 320 A.2d at 103. The court held that "the manifest legislative intent to give retroactive effect to the limitations enlargement requires us to adjudicate the case according to the law now existing, and the prior judgment, although correct when rendered, must therefore be set aside." *Id.,* 320 A.2d at 103.

2 Plaintiff submits that the cases of *Menna v. Mathewson,* 48 R.I. 310, 137 A. 907 (1927) and *Britto v. Fram Corporation,* 93 R.I. 426, 176 A.2d 81 (1961) undercut the strength of the Rhode Island Supreme Court's traditional characterization of wrongful death actions as created by statute, and the court's consequent refusal to apply amendments to the statute retroactively. In *Menna,* the Rhode Island Supreme Court held that the Workmen's Compensation Act created a right of action, and the time within which a suit must be brought operates as a limitation on the right itself, and not just the remedy. 48 R.I. at 312, 137 A. at 138. In *Britto* the respondent argued that a 1960 amendment to the Workmen's Compensation Act should not apply retroactively to the petitioner's case because it was enacted subsequent to the time petitioner incurred his work-related disease. 93 R.I. at 433–34, 176 A.2d at 84–85. *See* P.L.1960, ch. 94; R.I.Gen.Laws § 28–34–4 (1979 Reenactment); R.I.Gen.Laws § 28–35–57 (1979 Reenactment). The amendment provided that the time period within which to file a claim would not begin to run until the employee knew or should have known of the existence of the injury or disease and its causal relationship to his employment. 93 R.I. at 432, 176 A.2d at 84. This change, respondent asserted, was substantive and not merely procedural and should not apply retroactively. *Id.* at 433–34, 176 A.2d at 84–85. The court held "[t]here is no merit in this contention. The amendment was not designed to create a new right. Rather the legislature intended to and did redefine the circumstances which would give rise to a right already existing." *Id.* at 434, 176 A.2d at 85.

Plaintiff's argument that the 1981 and 1982 amendments to the wrongful death statute should be subject to the same reasoning is, at first blush, persuasive. This Court is not convinced, however, that it is free to disregard the more recent pronouncements of the Rhode Island Supreme Court in *Nascimento* and *Dempsey,* and the First Circuit in *Cadieux,* specifically relating to the wrongful death statute.

3 This statute has since been codified in Mass.R.Civ.P. 15(c), permitting an even more liberal amendment practice. The court in *Covel v. Safetech, Inc.,* 90 F.R.D. 427 (D.Mass.1981) noted:

> Although the remainder of Mass.R.Civ.P. 15 is substantially identical to Fed.R.Civ.P. 15, the Reporters' Notes to Mass.R.Civ.P. 15(c) confirm that "Massachusetts practice is more liberal than Federal Rule 15(c) in allowing amendments adding or substituting party defendants after expiration of the period of limitations," 43A Mass.Gen.L.Ann. at 171. The decision to reaffirm the longstanding Massachusetts rule in what was otherwise substantially a verbatim adoption of the Federal Rules of Civil Procedure manifests a deliberate choice by the Massachusetts Supreme Judicial Court and indicates the strength of the Commonwealth's substantive interest in the matter ... Indeed, in contrast with the predecessor statute, Mass.Gen.L. c. 231, § 51, which declared that the court "may allow" an amendment adding a transactionally related defendant to relate back, Mass.R.Civ.P. 15(c) is in form categorical, saying simply that "the amendment (including an amendment changing a party) relates back to the original pleading."

Id. at 429–30.

4 Puerto Rico Rule of Civil Procedure 15.5 provides that "[w]here the name of a defendant is not known to the plaintiff, he shall so state in the complaint designating him by any name in the proceeding and upon learning his real name, he shall make amendment in the pleading or proceeding." P.R.Laws Ann., Tit. 32 App. II R. 15.5.

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EXHIBIT 3

JNJ5

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Attorney(s): BRIGIANI, GELZER, COHEN AND SCHNEIDER, P.A.
Office Address & Tel. No.: 603 Cranbury Road, East Brunswick, New Jersey 08816
Attorney(s) for Plaintiff(s) (201) 257-0700

Plaintiff(s)

ANTHONY GAMBINO and ROSE MARIE GAMBINO, his wife,

vs.

Defendant(s)

JOHNSON & JOHNSON BABY PRODUCTS COMPANY.

SUPERIOR COURT OF NEW JERSEY

LAW *DIVISION*

MIDDLESEX *COUNTY*

Docket No. L-064208-83

CIVIL ACTION

Summons

The State of New Jersey, to the Above Named Defendant(s):

YOU ARE HEREBY SUMMONED in a Civil Action in the Superior Court of New Jersey, instituted by the above named plaintiff(s), and required to serve upon the attorney(s) for the plaintiff(s), whose name and office address appears above, an answer to the annexed complaint within 35 *days after the service of the summons and complaint upon you, exclusive of the day of service. If you fail to answer, judgment by default may be rendered against you for the relief demanded in the complaint. You shall promptly file your answer and proof of service thereof in duplicate with the Clerk of the Superior Court, P. O. Box 1300, Trenton, New Jersey 08625, in accordance with the rules of civil practice and procedure.*

An individual who is unable to obtain an attorney may communicate with the New Jersey State Bar Association by calling toll free 800-792-8315 (within New Jersey) or 609-292-1191 (from out of state). You may also communicate with a Lawyer Referral Service or, if you cannot afford to pay an attorney, call a Legal Services Office. The phone numbers for the county in which this action is pending are: Lawyer Referral Service 828-0053 *, Legal Services Office* 249-7600 *. Persons who reside in New Jersey may also call their county Lawyer Referral Service* 828-0053 *or Legal Services Office* 249-7600.

Dated: October 20, , *19* 83 .

Clerk of the Superior Court

Name of defendant to be served: W. Lewis Bambrick
Address for service: Johnson & Johnson Baby Products Company
501 George Street
New Brunswick, New Jersey 08903

Recorded and Filed: Superior Court of New Jersey
October 12, 1983 - W. Lewis Bambrick, Clerk

BRIGIANI, GELZER, COHEN & SCHNEIDER , P.A.
603 CRANBURY ROAD
EAST BRUNSWICK, N. J. 08816
(201) 257-0700
ATTORNEYS FOR Plaintiffs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:MIDDLESEX COUNTY

Plaintiff

ANTHONY GAMBINO and ROSE MARIE GAMBINO, his wife,

vs.

Defendant

JOHNSON & JOHNSON BABY PRODUCTS COMPANY.

Docket No. L-064208-83

CIVIL ACTION

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff, Anthony Gambino, residing at #99 Hillcrest Avenue, Somerset, in the Township of Franklin, County of Somerset and State of New Jersey, by way of complaint against the defendant, says:

FIRST CLAIM FOR RELIEF

1. At all times herein mentioned, defendant, Johnson & Johnson Baby Products Company, was engaged in the manufacture, testing and introduction into interstate and intrastate commerce for sale, products, including product known as Johnson's Baby Powder Purest Protection, which said product was recommended,

sold, distributed and delivered by defendant to stores, supermarkets, drug stores, hospitals and to the general public.

2. For many years prior to April of 1982, defendant did manufacture and sell and plaintiff did purchase and use the product manufactured, packaged and sold by defendant known as Johnson's Baby Powder Purest Protection.

3. In April of 1982, during the course of hospital examination, it was determined that plaintiff was suffering from nodular infiltration in his chest.

4. Upon information and belief, plaintiff's illness and disease is one that is talcosis, or has been caused by talcosis, as a result of the long term use of defendant's product aforementioned.

5. As a result of the foregoing, plaintiff has sustained severe and permanent injuries to his lungs, body, nervous system and many parts of his body affected thereby, has lost, been deprived of and will be deprived of all or a major portion of his earning capacity, has required and will require medical, nursing and similar attendance and services throughout his life to prevent further injuries and diseases, has required and will require medications, has suffered and will in the future suffer pain and mortification related to his disabilities, and has been and will be deprived of the opportunity to enjoy the activities, pleasures and attributes of a normal adult life, all to his great pecuniary damage.

WHEREFORE, plaintiff demands judgment against the defendant on the First Claim for Relief, for damages and costs of suit.

SECOND CLAIM FOR RELIEF

1. All of the allegations contained in the First Claim for Relief are repeated herewith as though set forth at great length and in entirety.

2. Defendant had superior knowledge regarding said Johnson's Baby Powder Purest Protection, and its effect upon the user and plaintiff relied on said knowledge in using said product.

3. As a direct result of the use of said product, plaintiff has sustained the illness herein complained of.

4. Defendant breached its warranty to plaintiff for fitness and use intended by its product, causing plaintiff's illness, which defendant warranted it would not do.

WHEREFORE, plaintiff demands judgment against the defendant on the Second Claim for Relief for damages, together with appropriate interest and costs of suit.

THIRD CLAIM FOR RELIEF

1. All of the allegations contained in the First and Second Claims for Relief are repeated herewith as though set forth at great length and in entirety.

2. Defendant knowingly and recklessly caused a dangerous and toxic product to be placed upon the market and failed to advise and caution the general public and prospective users of the dangers inherent in its product.

WHEREFORE, plaintiff demands judgment against the defendant on the Third Claim for Relief, both compensatory and punitive, together with appropriate interest and costs of suit.

FOURTH CLAIM FOR RELIEF

1. All of the allegations contained in the First, Second and Third Claims for Relief are repeated herewith as though set forth at great length and in entirety.

2. The product, Johnson's Baby Powder Purest Protection, was defective when manufactured and distributed by defendant, for which defendant has become strictly liable to the plaintiff for the injuries sustained thereby.

3. More specifically, the product was defective for purposes of strict liability in tort, even if manufactured correctly, because it is a dangerous product and was placed in the hands of the users without a suitable warning.

WHEREFORE, plaintiff demands judgment against the defendant on the Fourth Claim for Relief, for damages and costs of suit.

Plaintiff, Rose Marie Gambino, residing at #99 Hillcrest Avenue, Somerset, in the Township of Franklin, County of Somerset and State of New Jersey, by way of complaint against the defendant, says:

FIFTH CLAIM FOR RELIEF

1. All of the allegations contained in the First, Second, Third and Fourth Claims for Relief are repeated herewith as though set forth at great length and in entirety.

2. At all times mentioned in this Complaint and thereafter, plaintiff, Rose Marie Gambino, was the wife of plaintiff, Anthony Gambino.

3. As a result of the foregoing, plaintiff has lost and will lose the services, companionship, society and consortium of her husband, Anthony Gambino.

WHEREFORE, plaintiff, Rose Marie Gambino, demands judgment against the defendant on the Fifth Claim for Relief, for damages, appropriate interest and costs of suit.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury on all issues herein.

BRIGIANI, GELZER, COHEN AND SCHNEIDER, P.A.
Attorneys for Plaintiffs

By: _____
SEYMOUR GELZER

Dated: October 11, 1983

EXHIBIT 4

2/8/94

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTSERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

THOMAS RITTER and MARIE RITTER, Plaintiff, v. CYPRUS MINES CORP., Registered Agent: CT Systems, LUZENAC AMERICA, INC., Registered Agent: Corporate Company, MILWHITE, INC., Registered Agent: Corporation Company, 417 Spring Street, Little Rock, Arkansas 72201, Defendants.	)	Case No. 93-5121-CV-SW-8

FIRST AMENDED COMPLAINT

COUNT I

Comes now Plaintiff, Thomas Ritter, and for his cause of action against Cyprus Mines Corporation states as follows:

1. That plaintiff is a resident of Cherokee County, Kansas, residing at 821 Joplin Street in Galena, Kansas, and defendant Cyprus Mines Corporation is a corporation organized under the laws of the state of Vermont, and its has appointed as its registered agent CT Systems, 148 College St., Burlington, Vermont 05401.

2. That Cyprus Mines Corporation does business in the State of Missouri and that the causes of actions stated herein arose out of that business and the tortious acts complained of took place in Jasper County, Missouri, and that this court has jurisdic-

tion over the defendant pursuant to § 506.500 RSMo. and that venue is proper in Jasper County under § 508.010.

3. Beginning in approximately November, 1945, the Plaintiff, Thomas Ritter, was employed by Tamko Roofing in Joplin, Jasper County, Missouri. His duties included unloading and cleaning railroad freight cars carrying talchydrous magnesium ciliate (hereinafter called talc). The talc was used in the manufacturing of roofing shingles and talc dust was present in the air throughout the plant. Defendant was constantly exposed to heavy concentrations of talc dust that was manufactured and/or sold by defendant Cyprus Mines Corp, while working at Tamko Roofing in Joplin, Missouri, from the time he began work in 1945 until he terminated his employment with Tamko Roofing on May 4, 1984. Plaintiff did not discover and could not have reasonably discovered that his health problems were caused by exposure to talc until January of 1990.

4. That the Defendant, Cyprus Mines Corporation, manufactured and/or sold talc over a period of many years to Tamko Roofing Company for use in Joplin, Missouri, and that at the time of the sale, said defendant knew and anticipated that the product would be used in Joplin, Jasper County, Missouri.

5. At the time of the exposure of Plaintiff, Thomas Ritter, to the talc, the talc was in substantially the same condition as at the time of manufacture and/or sale.

6. That the talc was in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing

apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

7. That the cumulative exposure to the product over many years directly caused or directly contributed to cause serious and irreparable damage to the plaintiff, including talc pneumoconiosis; that plaintiff's breathing capacity is severely diminished requiring his use of concentrated oxygen through a nasal cannula; that as a result the plaintiff is permanently and totally disabled and that his condition is permanent and progressive.

8. That as a direct result of the exposure described above, plaintiff has in the past and will in the future incur substantial medical costs.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for his costs in this action, and for such further and different relief as the court deems proper.

COUNT II

Comes now the Plaintiff, Thomas Ritter, and for Count II of his cause of action against Defendant, Cyprus Mines Corporation states as follows:

9. Plaintiff states and reallages paragraphs 1 through 5 and 7 through 8 of his complaint as if set forth fully herein.

10. That Defendant, Cyprus Mines Corporation, was negligent in the manufacture, distribution, and sale of the product in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

11. That the negligence of the defendant described above directly cause or contributed to cause plaintiff to suffer the serious injuries and damages described above.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for his costs in this action, and for such further and different relief as the court deems proper.

COUNT III

Comes now the Plaintiff, Thomas Ritter, and for Count III of his cause of action against Defendant Cyprus Mines Corporation states as follows:

12. Plaintiff incorporates by reference paragraphs 1 through 5 and 7 through 8 of his complaint as if set forth fully herein.

13. That defendant Cyprus Mines Corporation made warranties, both express and implied, that the talc was of

marketable quality and fit for the purpose for which it was intended but that defendant breached its warranties in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing

apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

14. That as a direct result of the aforesaid breach of warranty, Thomas Ritter suffered the severe injuries described above.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against Defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for its costs of this action, and for such further and different relief as the court deems proper.

COUNT IV

Comes now Plaintiff, Marie Ritter, and for Count IV of this cause of action against Cyprus Mines Corporation states as follows:

15. Plaintiff, Marie Ritter, states and realleges paragraphs 1 through 5 and 7 through 8 as if set forth fully herein.

16. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

17. That the talc was in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing

apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

18. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT V

Comes now Plaintiff, Marie Ritter, and for Count V of this cause of action against Cyprus Mines Corporation states as follows:

19. Plaintiff, Marie Ritter, states and realleges paragraphs 1 through 5 and 7 through 8 as if set forth fully herein.

20. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

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21. That Defendant, Cyprus Mines Corporation, was negligent in the manufacture, distribution, and sale of the product in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing

apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

22. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT VI

Comes now Plaintiff, Marie Ritter, and for Count VI of this cause of action against Cyprus Mines Corporation states as follows:

23. Plaintiff, Marie Ritter, states and realleges paragraphs 1 through 5 and 7 through 8 as if set forth fully herein.

24. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

RoA_08791

25. That defendant Cyprus Mines Corporation made warranties, both express and implied, that the talc was of marketable quality and fit for the purpose for which it was intended but that defendant breached its warranties in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

26. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Cyprus Mines Corporation in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT VII

Comes now Plaintiff, Thomas Ritter, and for his cause of against Luzenac America, Inc. states:

27. That Defendant Luzenac America, Inc. is a corporation doing business in the State of Missouri and subject to service of process in the State of Missouri, having its principal place of business in Denver, Colorado. Defendant has appointed as its

registered agent, Corporate Company, 1600 Broadway, Suite 1450, Denver, Colorado 80202. This court has jurisdiction over the defendant pursuant to § 506.500 RSMo. and Bennett v. Rapid American Corp., 816 S.W.2d 677 (Mo. en banc 1991).

28. Plaintiff incorporates by reference paragraphs 1 through 18 of his complaint as if set forth fully herein.

29. That at sometime, unknown to plaintiff, the Defendant Luzenac America, Inc. purchased the assets of Defendant Cyprus Mines Corporation that were used in the manufacture of talchydrous magnesium ciliate or merged with Cyprus Mines Corporation and as part of said transaction agreed to assume all of the liabilities of Cyprus Mines Corporation arising out of the manufacture and sale of talchydrous magnesium ciliate.

30. That by reason of the facts as stated above, Luzenac Of America is liable to the plaintiff for the damages sustained by the plaintiff.

WHEREFORE, Plaintiff, Thomas Ritter, prays for a judgment against Luzenac America, Inc. for an amount that is fair and reasonable, for his costs in this action, and for such further and different relief as the court deems proper.

COUNT VIII

Comes now Plaintiff, Marie Ritter, and for her cause of this action against Luzenac America, Inc. states as follows:

31. Plaintiff states and reallges paragraphs 1 through 18 of this complaint as if set forth fully herein.

E-FILED 2012 Jul 24 6:19 PM CIRCUIT CLERK ST. LOUIS COUNTY, MO 12SL-CC03946

32. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

33. That as a direct result of the injury to Plaintiff, Thomas Ritter, Plaintiff, Marie Ritter, has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

34. That at sometime, unknown to plaintiff, the Defendant Luzenac America, Inc. purchased the assets of Defendant Cyprus Mines Corporation that were used in the manufacture of talchydrous magnesium ciliate and as part of said purchase agreed to assume all of the liabilities of Cyprus Mines Corporation arising out of the manufacture and sale of talchydrous magnesium ciliate.

35. That by reason of the facts as stated above, Luzenac American, Inc. is liable to the plaintiff for the damages sustained by the plaintiff.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Luzenac America, Inc. in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT IX

Comes now Plaintiff, Thomas Ritter, and for his cause of action against Milwhite, Inc. states as follows:

36. That plaintiff is a resident of Cherokee County, Kansas, residing at 821 Joplin Street in Galena, Kansas, and

defendant Milwhite, Inc. is a corporation authorized to do business in the state of Arkansas and organized under the laws of the state of Arkansas, and has as its appointed registered agent Corporation Company, 417 Spring Street, Little Rock, Arkansas 72201.

37. That Milwhite, Inc. does business in the State of Missouri and that the causes of actions stated herein arose out of that business and the tortious acts complained of took place in Jasper County, Missouri, and that this court has jurisdiction over the defendant.

38. Beginning in approximately November, 1945, the Plaintiff, Thomas Ritter, was employed by Tamko Roofing in Joplin, Jasper County, Missouri. His duties included unloading and cleaning railroad freight cars carrying talchydrous magnesium ciliate (hereinafter called talc). The talc was used in the manufacturing of roofing shingles and talc dust was present in the air throughout the plant. Defendant was constantly exposed to heavy concentrations of talc dust that was manufactured and/or sold by defendant Milwhite, Inc., while working at Tamko Roofing in Joplin, Missouri, from the time he began work in 1945 until he terminated his employment with Tamko Roofing on May 4, 1984. Plaintiff did not discover and could not have reasonably discovered that his health problems were caused by exposure to talc until January of 1990.

39. That the Defendant, Milwhite, Inc., manufactured and/or sold talc over a period of many years to Tamko Roofing Company for use in Joplin, Missouri, and that at the time of the

sale, said defendant knew and anticipated that the product would be used in Joplin, Jasper County, Missouri.

40. At the time of the exposure of Plaintiff, Thomas Ritter, to the talc, the talc was in substantially the same condition as at the time of manufacture and/or sale.

41. That the talc was in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged

exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

42. That the cumulative exposure to the product over many years directly caused or directly contributed to cause serious and irreparable damage to the plaintiff, including talc pneumoconiosis; that plaintiff's breathing capacity is severely diminished requiring his use of concentrated oxygen through a nasal cannula; that as a result the plaintiff is permanently and totally disabled and that his condition is permanent and progressive.

43. That as a direct result of the exposure described above, plaintiff has in the past and will in the future incur substantial medical costs.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against defendant Milwhite, Inc. in an amount that is fair and reasonable, and for his costs in this action, and for such further and different relief as the court deems proper.

COUNT X

Comes now the Plaintiff, Thomas Ritter, and for Count II of his cause of action against Defendant, Milwhite, Inc. states as follows:

44. Plaintiff states and reallages paragraphs 36 through 40 and 42 through 43 of Count IX of his complaint as if set forth fully herein.

45. That Defendant, Milwhite, Inc., was negligent in the manufacture, distribution, and sale of the product in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not

be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

46. That the negligence of the defendant described above directly cause or contributed to cause plaintiff to suffer the serious injuries and damages described above.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against defendant Milwhite, Inc. in an amount that is fair and reasonable, and for his costs in this action, and for such further and different relief as the court deems proper.

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COUNT XI

Comes now the Plaintiff, Thomas Ritter, and for Count III of his cause of action against Defendant Milwhite, Inc. states as follows:

47. Plaintiff states and reallages paragraphs 36 through 40 and 42 through 43 of Count IX of his complaint as if set forth fully herein.

48. That defendant Milwhite, Inc. made warranties, both express and implied, that the talc was of marketable quality and fit for the purpose for which it was intended but that defendant breached its warranties in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should

have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

49. That as a direct result of the aforesaid breach of warranty, Thomas Ritter suffered the severe injuries described above.

WHEREFORE, Plaintiff Thomas Ritter prays for a judgment against Defendant Milwhite, Inc. in an amount that is fair and reasonable, and for its costs of this action, and for such further and different relief as the court deems proper.

COUNT XII

Comes now Plaintiff, Marie Ritter, and for Count IV of this cause of action against Milwhite, Inc. states as follows:

50. Plaintiff, Marie Ritter, states and realleges paragraphs 36 through 40 and 42 through 43 of Count IX as if set forth fully herein.

51. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

52. That the talc was in a defective condition and unreasonably dangerous when put to a reasonably anticipated use in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should

have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

53. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Milwhite, Inc. in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT XIII

Comes now Plaintiff, Marie Ritter, and for Count V of this cause of action against Milwhite, Inc. states as follows:

54. Plaintiff, Marie Ritter, states and realleges paragraphs 36 through 40 and 42 through 43 of Count IX as if set forth fully herein.

55. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

56. That Defendant, Milwhite, Inc., was negligent in the manufacture, distribution, and sale of the product in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in the use of the product; that defendant knew or should

have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

57. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Milwhite, Inc. in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

COUNT XIV

Comes now Plaintiff, Marie Ritter, and for Count VI of this cause of action against Milwhite, Inc. states as follows:

58. Plaintiff, Marie Ritter, states and realleges paragraphs 36 through 40 and 42 through 43 of Count IX as if set forth fully herein.

59. That Marie Ritter is and at all relevant times has been the lawful wife of Thomas Ritter.

60. That defendant Milwhite, Inc. made warranties, both express and implied, that the talc was of marketable quality and fit for the purpose for which it was intended but that defendant breached its warranties in the following respects:

a. That when talc is inhaled, it causes numerous severe, disabling, and fatal diseases including talc pneumoconiosis an untreatable condition of the lungs and other diseases to the body, lungs, and respiratory system.

b. That defendant formulated their product with talchydrous magnesium ciliate which constituted a concealed defect which made the product unreasonably dangerous and unfit for the use for which it was intended.

c. That the defect in the product was concealed; that the defendant was sophisticated in the manufacture and use of the product; that the plaintiff was unsophisticated and did not know about the concealed danger in

the use of the product; that defendant knew or should have known of the danger and that the plaintiff would not be able to discover the danger of the product; that the defendant failed to warn the plaintiff that prolonged exposure to the product could result in serious bodily harm and death.

d. That defendant failed to warn the plaintiff of the risk of serious bodily harm or death if a breathing apparatus was not used during prolonged exposure to the product.

e. That the product was sold by defendant, knowing that the intended use of the product would expose workers to dust from the product thereby causing a substantial risk of serious bodily harm or death and that said product because of that risk was not suited for its intended use and said product was therefor defective.

61. That as direct result of the aforesaid injury to Plaintiff, Thomas Ritter, Plaintiff Marie Ritter has been damaged in that she lost the services and companionship of her husband and they are not able to enjoy the activities that they previously enjoyed as husband and wife.

WHEREFORE, Plaintiff, Marie Ritter prays for a judgment against Defendant Milwhite, Inc. in an amount that is fair and reasonable, and for her costs in this action, and for such further and different relief as the court deems proper.

Respectfully submitted

CHARLES BUCHANAN, #23185
ATTORNEY AT LAW
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320 W. 4th Street
P. O. Box 759
Joplin, Missouri 64802-0759
Telephone: 417-781-5690

By: _____

ATTORNEYS FOR PLAINTIFF

I hereby certify that a true and correct copy of the foregoing was deposited in the U.S. Mail, postage prepaid to Michael J. Patton, TURNER, REID, DUNCAN, LOOMER & PATTON, P. O. Box 4043, Springfield, MO 65808; Robert P. Numrich, EVANS & DIXON, City Center Square, Suite 2000, 1100 Main St., Kansas City, MO 64105 on this 8th day of February, 1994.

_____
Charles E. Buchanan

EXHIBIT 2

E-FILED 2020 Jul 24 6:19 PM CT
CLERK OF THE SUPREME COURT
STATE OF NEVADA
Case No: 82246
Docket No: 82246

EXHIBIT "I"

Windsor has been named as a defendant in various lawsuits which allege injuries relating to exposure to asbestos and/or talc primarily by rubber/tire industry employees. The following cases are currently pending:

Caption	No. of Parties	Venue
Adkins, Sammie v. A.P. Green	474 Plaintiffs 205 Defendants	Summit County, Ohio ALV 88-07-2398
Akers v. A.C.&.S., Inc.	229 Plaintiffs 205 Defendants	Summit County, Ohio ALV 88-07-2234
Andonian v. A.C.&.S., Inc.	277 Plaintiffs 177 Defendants	Summit County, Ohio ALV 88-6-1731
Miller v. A.C.&.S., Inc.	1 Plaintiff 170 Defendants	Summit County, Ohio ALV 88-4-1087
Henry v. Acoustic, Inc., et al.	1 Plaintiff Multiple Defendants	Court of Common Pleas, Philadelphia, PA No. 4013

In addition to the foregoing, Windsor has been notified by attorneys for Engelhard Corp. (Englehard), that Engelhard and/or its subsidiary, Eastern Magnesia Talc Co. (EMTC) have been named as defendants in various lawsuits which also allege injuries due to exposure to asbestos and/or talc by rubber/tire industry employees. Engelhard asserts that Windsor is responsible for any liability due to exposure to talc provided to the rubber and tire industry by Eastern Magnesia Talc Co. prior to July 24, 1967.

EXHIBIT
J&J-446.111

PROTECTED DOCUMENT RoA_08811 ITA-Sabatelli-000784

Responsibility for the aforementioned liability is currently disputed by Windsor. The actions pending against Engelhard and/or EMTC as of December 14, 1988 as are follows:

Court	Total Number of Actions	Total Number of Plaintiffs
U.S. District Court Northern District Ohio	434	434
Court of Common Pleas Summit County Ohio	17	1,305
Court of Common Pleas Montgomery County Pennsylvania	3	3
U.S. District Court Eastern District Pennsylvania	13	85
Total:	467	1,827

In addition, Windsor is aware that an attorney in California has indicated that there exists numerous claims for injuries to tireworkers employed in various tire plants around the country due to exposure to asbestos and/or talc. It is believed that the lawsuits mentioned above are part of this "tireworker" litigation.

12/30/88

(3647S)

EXHIBIT
J&J-446.112

PROTECTED DOCUMENT RoA_08812 ITA-Sabatelli-000785

Probate proceedings to determine mineral rights of Bugbee heirs.

Interstate Commerce Commission proceedings and appeal relating the Amtrak condemnation of a portion of the Connecticut River Line of Guilford Transportation Inc.

Two continuing workers compensation cases.

Labor grievances in arbitration regarding collective bargaining.

EXHIBIT
J&J-446.113

PROTECTED DOCUMENT

ITA-Sabatelli-000786

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
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EXHIBIT 10

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
---O0O---

TERESA ELIZABETH LEAVITT
and DEAN J. MCELROY,
Plaintiffs,
vs.
JOHNSON & JOHNSON, et al.,
Defendants.
_____/

No. RG17882401

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
---O0O---

PUI FONG and THAI WONG,
Plaintiff,
vs.
JOHNSON & JOHNSON, et al.,
Defendants.
_____/

JCCP CASE NO. 4674
No. BC675449

TRIAL PRESERVATION
VIDEOTAPED DEPOSITION OF JAMES PETER MITTENTHAL
(PMQ/COR Johnson & Johnson; Johnson & Johnson Consumer, Inc.)

VOLUME III, Pages 444 - 602

Taken before EARLY K. LANGLEY, B.A., RMR, RSA, CLR
CSR No. 3537

October 19, 2018

Aiken Welch Court Reporters
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I N D E X

	PAGE
JAMES PETER MITTENTHAL	449
DIRECT EXAMINATION BY MR. SWANSON (Cont'd)	449
CROSS-EXAMINATION BY MR. COX	586
REDIRECT EXAMINATION BY MR. SWANSON	592
RECROSS-EXAMINATION BY MR. COX	599

E X H I B I T S

EXHIBIT NO.		PAGE
Exhibit 38	4/15/69 memo re Alternate Domestic Talc Sources	457
Exhibit 39	Defendant Johnson & Johnson Consumer Inc.'s September 2018 Amended Responses to Plaintiffs' LAOSD Standard Interrogatories - Fong case	469
Exhibit 40	USDC District of Rhode Island, deposition of Roger N. Miller, 10/29/82, in the Westfall v Whittaker, Clark & Daniels case	471
Exhibit 41	Superior Court New Jersey, Middlesex County, Gambino v Johnson & Johnson Baby Products Company, Complaint and Demand for Trial by Jury	477
Exhibit 42	8/6/18 letter, K. Frazier, Shook, Hardy & Bacon, to J. Satterley, with attached privilege log	483

Exhibit 43	11/23/93 memo, R. Denton to W. Ashton, Trip Report, Talc Validation Team Meeting, 11/16/93 Windsor, Vermont	494
Exhibit 44	10/17/94 letter, Luzenac America letterhead, to J. O'Shaughnessy	501
Exhibit 45	Superior Court, San Diego, Selby v Johnson & Johnson, Defendant Johnson & Johnson Consumer Products, Inc.'s Response to Plaintiffs' Requests for Admission	504
Exhibit 46	Superior Court, Alameda County, Leavitt v Johnson & Johnson, Defendant Johnson & Johnson's June 11, 2018 Amended Responses to Plaintiffs' Requests for Production of Documents Set 3	531

DEPOSITION OF JAMES PETER MITTENTHAL

BE IT REMEMBERED, that pursuant to Notice, and on October 19, 2018, commencing at the hour of 9:01 a.m., in the offices of Kazan, McClain, Satterley & Greenwood, 55 Harrison Street, Suite 400, Oakland, California 94607, before me, EARLY LANGLEY, a Certified Shorthand Reporter, State of California, personally appeared JAMES PETER MITTENTHAL, produced as a witness in said action, and being previously duly sworn, was thereupon examined as a witness in said cause.

---oOo---

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Also present:

Jonathan Jaffe
ESI Consultant
Jim Partridge
Tele-Video Production Services

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

--oOo--
P R O C E E D I N G S
--oOo--

THE VIDEOGRAPHER: We are on the record at 11 -- excuse me. We are on the record at 9:01 a.m.

This marks -- today's date is October 19, 2018.

This is the continuation of the deposition of James Mittenthal. This is Volume III, Disk Number 1.

Counsel, you may proceed.

MR. SWANSON: Thank you.

JAMES PETER MITTENTHAL
previously sworn as a witness,
testified as follows:

DIRECT EXAMINATION BY MR. SWANSON (Cont'd):

Q. Good morning, Mr. Mittenthal.

A. Good morning.

Q. Your deposition is continuing now, and are you ready to go forward today?

A. Yes.

Q. Any reason you can't give your best testimony?

A. No.

Q. Okay. So I want to ask you a couple follow-ups on one of the legal holds. So if you'd go to Exhibit 1A, and that's Tab 1A in your binder.

Do you have that in front of you?

A. Yes, I do.

Q. Now, this is the 2' -- I think it's the current or most recent Johnson & Johnson legal hold notice in asbestos-related talc litigation; correct?

A. Yes.

Q. And I wanted -- I want to go through a little bit on this notice. It looks like there is some kind of software that notes -- a notice is sent via an email, I guess; is that right? This notice that -- is that how it gets sent to recipients?

A. Yes.

Q. Okay. And there is some kind of software that's related to this in terms of them acknowledging receipt in various things; is that right?

A. Yes.

Q. And does that software track certain kinds of information in terms of when they receive it and acknowledge receipt and that sort of thing?

A. Yes.

Q. And does the software -- and what's the name of the software?

A. Exterro.

Q. And it says, "Visit the legal hold manager compliance portal, legal hold manager."

And does the software track who the intended recipient -- recipients are?

A. Of what?

Q. Of the hold. In other words, to whom it's sent?

A. Yes.

Q. And I notice there's a section in here that tells recipients that they can suggest other recipients of the hold.

Did you see that?

A. Can you reference me to that section? Yes. I see it.

Q. Yes. "Suggest other custodians."

Do you see that?

A. Yes.

Q. And does the software track who gets suggested?

A. It's my understanding that the company can add those people to the list and that they would be tracked.

Q. Does the software track when each recipient acknowledges receipt of the hold?

A. I believe it does.

Q. Okay. And does the software track who was trained on legal holds, or what the -- anything -- information about the recipients of the hold's training?

A. From my fact finding, I have other vehicles, eUniversity, other modules unrelated to Exterro that track training. And I can pull out my notes for those.

Q. We may do that later.

But so that the -- you're not aware that this software actually would have that information; correct?

A. Correct.

Q. Okay. I noticed that it -- it states here in the first page that "the instruction is within seven days, please visit the legal hold manager compliance portal," and "review and acknowledge this notice."

Now, what is triggered with -- what triggers the seven days? At the point they open

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

that email, the recipient of the soft -- of the email regarding this legal hold? In other words, I work for Johnson & Johnson, I get an email with this legal hold notice. If I didn't open my email for several days, does that seven days start running when I open my email?

A. I would -- I would be guessing. My -- I would -- I have a sense of how it works, but I -- I'm not -- I would need to do further research to determine that.

Q. I'm interested in what your -- I don't want you to guess, but, based on your experience, what is your expectation?

A. My expectation would be from the -- from the date sent.

Q. From the date the email gets sent?

A. Yes.

Q. Okay. Do you know why they give seven days for that? Couldn't somebody -- for example, if I'm an employee and I open the email immediately and I see that there's this legal hold notice, why so long before I have to acknowledge that I've gotten the legal hold notice?

MR. COX: Object to the form of the question.

THE WITNESS: I mean, it calls for speculation on my part, but perhaps someone is out of the office on a plane traveling over a long weekend. It would give them an opportunity to get in front of a place where they can operate the Chrome browser and access the portal.

BY MR. SWANSON:

Q. Okay. That's -- you're assuming that, correct, based on your experience?

A. Those would be -- as I mentioned, I don't know the precise reasons seven days was chosen. I can only speak to why there may be some days given in terms of the time period.

Q. Okay. Now, isn't it true that obviously the longer that you wait to require acknowledgment, the greater the chances that some document could get destroyed that should have been preserved under the notice; correct?

MR. COX: Object to the form.

BY MR. SWANSON:

Q. Well, let's say if you gave 30 days, right, so any period that you wait beyond what's minimally necessary to acknowledge receipt of that increases the likelihood that documents that are subject to the hold get destroyed; true?

MR. COX: Object to the form.

THE WITNESS: Well, I'm not sure if it's a philosophical or legal distinction. But if I see the email, I can -- I'm able to comply even before I acknowledge compliance. So the email tells me that there's something going on and that I have something I should or should not be doing.

The acknowledgment obviously is a formal indication that I read and understood. It doesn't mean I can't be doing those things before I even can formally comply with the -- with the notice.

BY MR. SWANSON:

Q. Right. But the idea of having the receipt acknowledgment is so that the company can track who knew when; right?

A. Well, I don't know if I can speculate to all the motives. It certainly gives the company a sense of -- from an overall perspective who has -- who has acknowledged and, therefore, a way to understand who needs to be followed up on, who needs to have their manager contacted, who needs additional action taken.

Q. Right. Now, if somebody gets it and they don't acknowledge it and they wait the maximum period -- let's say this person doesn't have good

intentions, and you said, you know, you're assuming somebody is going to -- they see the email, they can comply anyway. But until they acknowledge it, the company has no way of knowing if somebody actually read it and looked at it, and, furthermore, if somebody had an intention to get rid of something within that window of seven days, that would give them the opportunity to do it before they even acknowledge receipt; correct?

A. Well --

MR. COX: Object to the form.

Go ahead.

THE WITNESS: I'm sorry.

The company does not know that the person has formally acknowledged until they do so. But this -- the system operates against the backdrop of all the training and records management awareness and legal hold awareness so that the automated portion of it that I get a legal hold and I'm responding to it formally is just a part of the overall duties and expectations and training for every custodian. And so it's understood that if I get a notice, it's not the first time I've ever heard of a -- what a legal hold is and what my responsibilities are.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

MR. SWANSON: I'm going to move to strike that last answer as being nonresponsive.

(Whereupon, Plaintiff's Exhibit 38 was marked for identification.)

BY MR. SWANSON:

Q. Mr. Mittenthal, I'm handing you Exhibit 38 to your deposition.

Do you have Exhibit 38 in front of you?

A. I do.

Q. And this is a Johnson & Johnson document dated April 15, 1969, and the subject matter is "alternative domestic source" -- "talc sources."

Do you see that?

A. "Alternate domestic talc sources."

Q. "Alternate" -- thank you -- "domestic talc sources."

You have been asked about this document before; correct?

Do you remember this document?

A. I frankly don't recall.

Q. Okay. You see here in paragraph -- paragraph 3 here that -- well, the author of this is a T.M. Thompson, M.D., and he's writing to William Ashton, W.H. Ashton, at Johnson & Johnson; correct?

A. Well, I see that's what's written on the document, yes.

Q. That's what the document says.

And Mr. Thompson tells Mr. Ashton, "We have been concerned to a much greater extent with regard to possible dangers relative to inhalation of the talc with a spicule or needle-like crystalline structure as compared to the flat platelet-type of crystalline structure."

Do you see that?

A. Yes.

Q. Then he goes on to talk about how there are reports in the literature of talcosis.

Do you see that? Right after that sentence.

A. I'm looking for...

Q. There are reports in the literature?

A. Oh, yes. Yes. Yes.

Q. Okay.

If you go towards the bottom, the second-to-last sentence. It says, "In the past we have applied" -- oh, wait. "Furthermore." Do you see that halfway through that paragraph? "Furthermore we have occasionally received inquiries from various individuals including

General Johnson and several pediatricians expressing concern over the possibility of adverse effects on the lungs of babies or mothers who might inhale any substantial amounts of our talc formulations. In the past we have replied to the effect that, since our talc is essentially all of the platelet-type of crystalline structure and is of a size which would not be likely to enter the pulmonary alveoli, we would not regard the usage of our powders as presenting any hazard."

Do you see that?

A. Yes, I do.

Q. And then next sentence says, "Obviously, if we do not" -- "if we do include tremolite in more than unavoidable trace amounts, this sort of negation of such inquiries could no longer pertain."

Do you see that?

A. Yes.

Q. And then if you look at the next page, the second paragraph, you see where it says -- author says, "Since pulmonary diseases including inflammatory fibroplastic and neoplastic types appear to be on the increase, it would seem to be prudent to limit any possible content of tremolite

in our powder formulations to an absolute minimum. To the best of my knowledge, we have never been faced with any litigation involving either skin or lung penetration in our formulas."

Then it talks about they were "faced with more or less serious problem resulting from what we have considered to have been unjust accusation of danger due to the presence of small amount of boric acid in our talc."

Do you see that?

MR. COX: Object to the form of the question.

THE WITNESS: Yes.

BY MR. SWANSON:

Q. It says, you see the sentence here, "It is conceivable that a similar situation might eventually arise if it became known that our talc formulations contained any significant amount of tremolite. Since the usage of these products is so widespread and the existence of pulmonary disease is increasing, it is not inconceivable that we could become involved in litigation in which pulmonary fibrosis or other changes might be rightfully or wrongfully attributed to inhalation of our powder formulations. It might be that

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 461

someone in the law department should be consulted with regard to the defensibility of our position in the event that such a situation should ever arise."

Do you see that?

A. "Could ever arise," yes.

Q. "Could ever arise." Thank you.

So in -- as of April 15, 1969, people in the research and development department, Mr. Ashton in -- at Johnson & Johnson was aware -- anticipating at least the possibility of litigation from tremolite-contaminated talc and allegations of lung disease resulting from that; true?

MR. COX: Object to the form of the question. Mischaracterizes the document.

THE WITNESS: I'm not in a position to say. I'm not familiar with this document. I'm not -- it's beyond my scope to make any assessment of its content.

BY MR. SWANSON:

Q. Well, you're the person who's here to talk about legal holds and you're also here to talk about the documents that have been produced in this case and whether or not these are authentic

Page 462

documents.

This is an authentic Johnson & Johnson document; correct?

A. I can't say one way or the other.

Q. Well, what is it about -- this was -- you can see that this is Johnson & Johnson's Bates numbers; correct?

A. I frankly -- oh, yes. I do see a Bates number on it.

Q. So you know that that was produced by Johnson & Johnson in this case; true?

A. I would want to study it further and verify that, but I do see a Bates number on it.

Q. All right. Well, you understand you were noticed, you were -- have been produced as the corporate representative to talk about the authenticity -- authenticity of these documents and whether or not they're business records.

You understand that; right?

A. I understand that was part of my notice, yes.

Q. Okay. So what is it about this document that makes you unable to say whether or not that is an authentic Johnson & Johnson business record?

MR. COX: Object to the form of the

Page 463

question.

THE WITNESS: I -- I'm not familiar with the content. I'm not able to speak to what the content means in any sense of the scientific, factual, or business or medical sense. To the extent that this is an actual Bates number, and I can certainly confirm that, I have no reason to believe that -- nor does the company believe that there are documents that have been produced that are not authentic documents.

But in terms of the content, I can't speak to it.

Q. I'm not asking -- I'm asking you first whether or not this is an authentic business record of Johnson & Johnson. And you'll agree that it is; true?

MR. COX: Object to the form of the question.

THE WITNESS: No. The -- the -- the term "business record" is one that I -- I believe entails a legal judgment. And I think the first time you asked me you didn't say the -- I don't believe you said "business."

BY MR. SWANSON:

Q. Let me ask it differently. It's an

Page 464

authentic record of Johnson & Johnson; correct?

A. It -- it appears to be a document from the production, and if it is -- if that is the case, then the company has no reason to believe that it is not an authentic document.

Q. An authentic document that was created in Johnson & Johnson's regular course of business; true?

A. I don't know.

MR. SWANSON: Counsel, I want to meet and confer on this because he is designated to speak on these issues and we're talking about, you know, business record in the simplest sense: Is this authentic and is it something created in the regular course of their business. He needs to be able to talk about that. That's one of the noticed topics.

MR. COX: I think he is talking about that. I don't think --

MR. SWANSON: Well, he needs to be able to -- he isn't because he's saying, I don't know, I can't say.

MR. COX: Well, you're asking compound questions and I think he's trying to answer them the best he can.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 465

BY MR. SWANSON:
Q. Was this document, Exhibit 38, created in the regular course of Johnson & Johnson's business?
A. I simply don't have the information to answer that. It -- the -- based on the fact that it appears to be a document produced in this litigation, the company does not doubt -- have any special reason to question its authenticity, but I cannot speak to whether it's -- how it was created, whether it was in the ordinary course of business, whether it was in any sense of how the company chose to create its documents. It is -- the document population certainly contains many records created in the course of business. I'm not able to make a judgment as to this particular document as to the circumstances by which it was created.
Q. Do you have any reason to believe that any documents that are created that were produced in this case, in Leavitt or Fong, that are on Johnson & Johnson letterhead are not records that were created in the regular course of Johnson & Johnson's business?
MR. COX: Object to the form.

Page 466

THE WITNESS: I -- if -- to the extent that the regular course of business assumes a legal judgment, I'm not able to say one way or the other. I can say that amongst the information produced where there are records created in the course of the company's business operations, I cannot speak to the providence, the context, or the classification of this particular document.
BY MR. SWANSON:
Q. But it was created in Johnson & Johnson's business; correct? You just said that.
A. It was created in such a manner that the company has no reason to doubt its authenticity, to the extent that it was produced in this -- in this litigation.
Q. As a Johnson & Johnson record; correct?
A. I don't know what -- what does that mean, Johnson & Johnson?
Q. It means this is a Johnson & Johnson letter, correct, sent in their -- in the course of their business. This isn't somebody else's business; right? This is Johnson & Johnson's business we're talking about; right?
A. I -- I can agree with you that the words at the top say "Johnson & Johnson," but I'm not here, nor would I be able to make a judgment as to whether it's a business record created in the course of business and any other categorization of it.

Page 467

Q. Okay.
MR. SWANSON: We're going to have to meet and confer on that. He's not an adequate witness on this issue. These are really simple questions and he is tasked with doing that and he's not able to do it.
MR. COX: I disagree. I mean, I think he answered your question about authenticity and he answered your question about whether it was created in -- in connection with Johnson & Johnson's business. I think he's appropriately making a distinction in terms of the legal import of the term "business record," but I think he answered the question -- the other two questions you asked.
MR. SWANSON: Well, I left out the term "business record" and I started asking if it was created in the regular course of their business. That's not a highly legal term.
MR. COX: No. And I think he answered that question and said it was.

Page 468

MR. SWANSON: You're agreeing that it was correct, as counsel for Johnson & Johnson, on this document?
MR. COX: That that was -- that that's a Johnson & Johnson -- created in Johnson & Johnson's business, yes. Yes.
MR. SWANSON: Okay.
BY MR. SWANSON:
Q. All right. So, with regard to this document, is there -- was -- let me ask you this: Legal holds can be issued either because a lawsuit has been filed, correct, or because a company anticipates litigation; correct?
MR. COX: Object to the form of the question to the extent it calls for a legal conclusion.
BY MR. SWANSON:
Q. Those are two situations in which a legal hold could be...
A. And -- and I would concur, but there's many situations where a legal hold could be issued, and the law department makes that determination as to what to issue and when.
Q. But the legal holds themselves talk about anticipated, and, Johnson & Johnson's

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

documentation that I've seen, and I can't point you to the exact document, mention both litigation and anticipated litigation in terms of when holds are appropriate; correct?

A. Well, I've seen language like Johnson & Johnson -- or so and so is party to litigation. That I recall seeing in the notice.

Q. But you agree that anticipated litigation is sometimes a trigger for issuing a hold, correct, for a company?

A. In the hypotheticals, yes. Absolutely.

Q. Do you have any information that Johnson & Johnson issued a legal hold in 1969 in instructing Johnson & Johnson employees not to destroy documents relating to the testing of Johnson's Baby Powder or talc that was used in Johnson's Baby Powder for the presence of asbestos?

A. I have no information as to that.

Q. Is there anything that you're aware of that prevented anybody at Johnson & Johnson from issuing a hold on testing documents at this time in 1969?

A. I have -- I have no information one way or the other. That was not part of my research.

(Whereupon, Plaintiff's Exhibit 39 was

marked for identification.)

BY MR. SWANSON:

Q. Mr. Mittenthal, I'm handing you Exhibit Number 39.

Let your counsel see that for a moment.

Do you have Exhibit Number 39 in front of you?

A. Yes, I do.

Q. And these are Defendant Johnson & Johnson Consumer, Inc.'s September 2018 Amended Responses to Plaintiff's LAOSD Standard Interrogatories in the Fong case; correct?

A. I see that, yes.

Q. Okay. And if you go to page 21 of this document, Interrogatory Number 36, do you see the question is, "When did you first receive notice that any person including any agent" -- "employee or agent claimed injury as a result of exposure to asbestos or asbestos-containing product supplied by you?"

Do you see that?

A. Yes, I do.

Q. And then starting at the second sentence of the answer, "After reasonable investigation, defendant states that it has reasonable and good

faith belief that it first became aware of a claim of alleged exposure to asbestos with respect to defendant's talc in connection with Westfall v. Whittaker, Clark & Daniels, et al., Case Number 79-0269, in the United States District Court for the District of Rhode Island in which plaintiffs alleged injury was mesothelioma, and plaintiff was represented by Decoff & Grimm of Providence, Rhode Island. Defendant states that the J&J entity Windsor Minerals was voluntarily dismissed from the case."

Have you seen this before?

A. I've seen the interrogatory responses, yes.

Q. So you were aware that Johnson & Johnson, or its operating entity company, Windsor Minerals, was sued in the Westfall case; correct?

A. I'm aware of the question and the answer.

Q. Okay. Were you aware that -- were you aware that Johnson & Johnson's Windsor Minerals had been sued in the Westfall case?

A. I have a general understanding of that.

Q. And to your knowledge, when was that?

A. I'm not familiar with the precise date.

(Whereupon, Plaintiff's Exhibit 40 was

marked for identification.)

BY MR. SWANSON:

Q. Let me hand you Exhibit Number 40 to your deposition.

MR. COX: Do you have an extra copy of that, Mark?

Thank you.

BY MR. SWANSON:

Q. Do you have Exhibit 40 in front of you?

A. Yes.

Q. Okay. And I've just given you the -- here the first few pages of a transcript of a Roger Miller in the Westfall case.

Do you see that?

A. Yes.

Q. And you see that's the same case number, 790269?

A. Yes, I do.

Q. And what was the date of that deposition?

A. October 29, 1982.

Q. And if you go to the second page of this on appearances, do you see that Windsor Minerals was represented at the deposition?

A. I do.

Q. And you know that Windsor Minerals, Inc.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

was a subsidiary of Johnson & Johnson that supplied talc to Johnson & Johnson for Johnson's Baby Powder and cosmetic talc products; correct?

A. That's my general understanding.

Q. And from this information it's clear that Johnson & Johnson was aware of the lawsuit; true?

MR. COX: Object to the form of the question.

BY MR. SWANSON:

Q. From the interrogatory response that I provided you?

A. Well, it -- by inference it would appear that the company was aware by virtue of counsel.

Q. Okay. Right.

And -- okay. Did Johnson & Johnson instruct anyone at Windsor Minerals at that time to preserve or not destroy documents, information, or physical evidence related to talc from Windsor Minerals, Inc. Vermont mines --

MR. COX: Object to form.

BY MR. SWANSON:

Q. -- or related to products manufactured from talc that came from Windsor Minerals mines?

MR. COX: Object to the form of the question.

THE WITNESS: That was outside the scope of my investigation.

BY MR. SWANSON:

Q. Well, the scope of your investigation was to investigate talc hold issues; correct?

MR. COX: Object to the form of the question misstates the scope of the notice for which this witness has been tendered.

BY MR. SWANSON:

Q. You know from looking at the notice that we asked what efforts were made by Johnson & Johnson to preserve documents, correct --

MR. COX: Object to the form.

BY MR. SWANSON:

Q. -- as well as samples?

MR. COX: Object to the form of the question. Misstates what the notice says.

THE WITNESS: My understanding was that the -- my investigation was concerning consumer talc products.

BY MR. SWANSON:

Q. And what distinction are you making here about Westfall?

A. I have a general and limited understanding that Westfall did not involve a consumer talc product.

Q. And you got this from the lawyers, right, this understanding?

A. Yes.

Q. Did you also get an understanding that this came from the same mines where cosmetic talc was being mined?

MR. COX: Object to the form.

THE WITNESS: That was outside the scope of my investigation.

BY MR. SWANSON:

Q. I see. So you didn't ask that question or find the answer to that?

A. I asked -- I asked -- which question?

Q. Whether or not the mines that were involved in -- in the Westfall case issues were the same mines that were producing cosmetic talc for cosmetic talc products for Johnson & Johnson.

A. I -- I would not have viewed that as within the scope of my investigation.

Q. Speaking on behalf of Johnson & Johnson on the issue of legal holds and preservation of documents, are you aware of any legal hold being issued with respect to the Westfall case?

A. I'm -- I'm not aware of holds. I

requested holds that related to consumer talc. I received those holds. I'm not aware of other holds.

Q. Okay. You are aware of the Westfall case. You were made aware of that and you were specifically made aware of the fact that the case allegations itself weren't about a cosmetic talc product; true?

A. I have general knowledge of that, yes.

Q. But you didn't bother to find out whether or not the talc issues were related to these cases; true?

MR. COX: Object to the form.

THE WITNESS: I -- looking at the deposition notice and my responsibilities, I did not see that my investigation included understanding where talc came from. I was focused on responding to the deposition topics.

BY MR. SWANSON:

Q. You would agree with me, though, that if the area where the talc was being mined that's at issue in the Johnson case was an area where cosmetic talc was being mined and in addition it's a mesothelioma case, that there would be many, many overlapping issues with the cosmetic talc

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

case; correct?
MR. COX: Object to the form.
THE WITNESS: I know that -- that's a legal conclusion. I -- I think I'm being asked to provide, and I -- I just can't speak to that.
BY MR. SWANSON:
Q. You understand that mesothelioma results from inhalation typically; correct?
MR. COX: Object to the form. Beyond the scope of the notice.
THE WITNESS: I'm not an expert on the causes of mesothelioma.
BY MR. SWANSON:
Q. In any case, you're not aware of any legal hold notice, you've never heard of any legal hold notice being issued with respect to any type of talc prior to 1999; true?
A. I am not aware of any notices prior to 1999.
(Whereupon, Plaintiff's Exhibit 41 was marked for identification.)
BY MR. SWANSON:
Q. Handing you Exhibit 41 to your deposition. Do you have that in front of you?
A. I do.

Q. Have you seen -- now, Exhibit 41, you can see that this is a Johnson & Johnson Bates number at the bottom; correct?
A. Yes. I see what appear to be two different Bates numbers.
Q. And you recognize those are Bates numbers that Johnson & Johnson uses; you've seen those on other documents that they've produced from their records; correct?
A. Correct.
Q. And this is -- appears to be a complaint in a case called Anthony Gambino and Rose Marie Gambino, his wife v. Johnson & Johnson Baby Products Company; correct?
A. I see that.
Q. Were you aware of the Gambino case?
A. I don't recall it specifically.
Q. And if you go to the last -- if you go to -- well, on the first page, first claim of relief, and you can see that the product at issue is Johnson's Baby Powder Purest Protection.
Do you see that?
A. Yes.
Q. And, then, if you go to the second page, there is a mention in paragraph 2 that the

plaintiff alleges that they purchased the product.
Do you see that?
A. Yes.
Q. And do you see that Number 4, the plaintiff alleges talcosis from long-term use of Johnson's Baby Powder?
A. I see it.
Q. And in Number 5, they are alleging severe and permanent injuries from that exposure.
Do you see that?
A. Yes.
Q. Okay. If you go to the last page, you see the date of the complaint?
A. Yes.
Q. And what was the date of the complaint?
A. October 11, 1983.
Q. And Johnson & Johnson obviously was aware of this lawsuit; correct?
MR. COX: Object to the form.
THE WITNESS: Well, I have not seen this document before and can't speak to it. By -- by common sense, it would appear that Johnson & Johnson was aware of this.
BY MR. SWANSON:
Q. Right. Because this document -- I didn't

make this up or even get it off the Court's Web site or anything; I got it from Johnson & Johnson because that's their Bates number; right?
A. I see the Bates number, yes.
Q. And speaking on behalf of Johnson & Johnson on the issue of legal holds and preservation of documents and evidence, you are not aware of any legal hold being issued at the time of this Gambino case with respect to talc litigation issues and Johnson's Baby Powder; true?
MR. COX: Object to the form.
THE WITNESS: I have no information as to whether a hold was issued or not issued or what the circumstances were.
BY MR. SWANSON:
Q. Now, the reality is you're not aware of any legal hold being issued in any kind of talc litigation case prior to 1999. So, as the spokesperson for Johnson & Johnson, Johnson & Johnson did not issue a legal hold in response to this complaint; correct?
MR. COX: Object to the form of the question.
THE WITNESS: I'm sorry, are you asking me to -- to verify that statement or are you asking

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 481

me if I know it?
BY MR. SWANSON:
Q. I'm asking you to verify that.
A. I don't --
MR. COX: Object to the form.
THE WITNESS: I'm sorry.
I am not aware of holds prior to 1999, but I'm not speaking as to whether there were or were not holds issued.
BY MR. SWANSON:
Q. Well, sure you are. You are the representative. You are Johnson & Johnson sitting here speaking as Johnson & Johnson today, and I'm asking you about legal holds, and it's a noticed topic.
So did Johnson & Johnson issue a legal hold as a result of the Gambino case --
MR. COX: Object to the form of the question.
BY MR. SWANSON:
Q. -- in 1983?
MR. COX: Same objection.
THE WITNESS: That was -- that was not part of my investigation. I don't have that information.

Page 482

BY MR. SWANSON:
Q. So the answer is you don't know, it was your assignment, so there's two options: Either you don't know -- you did your investigation and there wasn't one, or it hasn't been produced or it's been destroyed or they never issued one.
Are there any other options I'm not thinking of?
MR. COX: Object to the form.
THE WITNESS: My objective was to identify the holds that were available. As far as the holds that weren't available, if there were any, I -- I can't speak to the absence of something as to why it was or wasn't there. I don't know one way or the other if there was a hold issued or not. I simply asked for the holds that were available.
BY MR. SWANSON:
Q. As Johnson & Johnson speaking today here, do you have any evidence of a hold as a result of the Gambino case in 1983?
A. I do -- I have not received a hold associated with that case.
Q. Okay. That's all I have about that. Put that in the stack.

Page 483

MR. SWANSON: Whoever's on the phone, one of you, please mute your phone.
MR. BERNARDO: This is Rich. Mine has been on mute.
MR. SWANSON: Okay.
This is a Fong privilege log.
(Whereupon, Plaintiff's Exhibit 42 was marked for identification.)
BY MR. SWANSON:
Q. Do you have Exhibit 42 in front of you?
A. Yes, I do.
Q. And you can see that this is a privilege log that was produced by Johnson & Johnson in the Fong case; correct?
A. Appears to be, yes.
Q. Have you seen this privilege log before?
A. I have not.
Q. So you didn't have anything to do with making it a privilege log; correct?
A. That's correct.
Q. Now I want to go through some -- you understand what the general purpose of a privilege log is; correct?
A. Yes.
Q. Okay. If you go to page 2 of this -- and

Page 484

I know the writing is small, but I -- you're pretty young and I assume you can read it.
A. Okay.
Q. Page 2. Tell me when you're there.
A. I'm on page 2.
Q. You see on page 2 it lists the document. There's various columns for this, and you can see there's -- including privilege log number, the Bates number, the date of the document, the author, the recipient, people who were copied, very -- sometimes a little bit of information about subject matter but not so much, and a privilege description and a privilege claim; correct?
MR. COX: Object to the form.
THE WITNESS: Yeah. I see those are the column headings on page 1.
BY MR. SWANSON:
Q. Okay. And if you go to page 2, you see the third one down, there's a document that -- about which Johnson & Johnson's claiming privilege dated 7/22/1981 from William Ashton to Frank Bolden.
Do you see that entry?
A. Yes, I do.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. If you just go to the right there, you see it says, "Memorandum prepared at the request of counsel pursuant to pending and anticipated talc litigation."

Do you see that?

A. Yes, I do.

Q. I don't know what pending talc litigation they're referring to.

Do you know if any legal holds were issued with respect to the pending talc litigation that's being referred to in that item from 1981?

MR. COX: Object to the form.

THE WITNESS: I don't know and I simply didn't investigate those types of notations from the privilege log.

BY MR. SWANSON:

Q. Okay. You're not aware of any being privilege log from 1981 related to talc litigation, are you?

A. I'm sorry. One more time, please.

Q. You're not aware of any talc litigation related legal hold being issued in 1981; correct?

A. I'm not aware of one. I did not receive one when I requested.

Q. Okay. The next item down, do you see

there's an entry for May 5, 1989?

A. Yes.

Q. And there's some kind of communication between Ira Dembro and William Ashton.

Do you see that?

A. I do.

Q. And, again, this indicates there's a memorandum prepared by counsel pursuant to pending and anticipated litigation prepared by counsel pursuant to pending and anticipated talc litigation; correct?

A. I see that, yes.

Q. Are you aware of any legal holds with respect to pending talc litigations being issued by Johnson & Johnson or one of its -- Johnson & Johnson broadly speaking, in 1989 as a result of whatever pending litigation is being referred to there?

MR. COX: Object to the form.

THE WITNESS: I'm not aware.

BY MR. SWANSON:

Q. Okay. Going to Page Number 4. Tell me when you're there.

A. Yes.

Q. Do you see at the top there are multiple

references to communications dated November 30, 1982, between a George Lee and an Edward Leibensperger?

A. I see that, yes.

Q. And date of communication is 11/30/1982; correct?

A. Well, the first four --

Q. That's what I am --

A. Yeah.

Q. Okay. And it refers to -- the first one says, "Letter from client to counsel providing materials in anticipation of litigation for counsel to provide legal advice regarding talc sample evidence."

Do you see that?

A. Yes.

Q. And then the next one says, "Attachment between counsel and client sent at counsel's request seeking legal advice regarding ongoing talc litigation."

Do you see that?

A. I do.

Q. So, as of November 30, 1982, whatever cases they're referring to these issues in, or anticipated cases, was any legal hold issued by

Johnson & Johnson?

MR. COX: Object to the form.

BY MR. SWANSON:

Q. For talc litigation-related information and documents?

MR. COX: Same objection.

THE WITNESS: I -- I simply don't have that information. I didn't view it as my scope to investigate these -- these privilege log notations.

BY MR. SWANSON:

Q. Well, you understood that we were asking you about Johnson & Johnson's attempt to preserve evidence related to talc issues; correct?

MR. COX: Object to the form.

THE WITNESS: Yes. With respect to the Fong and Leavitt cases.

BY MR. SWANSON:

Q. Okay. But you just didn't look at this thing.

But you asked for holds; right?

A. Yes, I did.

Q. Okay. And from what you saw, you're not aware of any holds before 1999; true?

A. That's true.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. And if you go down further at the bottom of the page, you see the reference to June 22, 1983?

A. Yes.

Q. You see again there's another communication and this one between Mr. Leibensperger and a John Beidler?

A. Yes.

Q. And copied is Roger Miller. You see that?

A. Yes.

Q. And this also refers to pending and anticipated talc litigation; correct?

A. Yes. Correct.

Q. Okay. So as of 1983 you're not aware of any talc litigation legal holds being issued by Johnson & Johnson; true?

MR. COX: Object to the form.

THE WITNESS: That's correct.

BY MR. SWANSON:

Q. Was there anything that prevented Johnson & Johnson from issuing holds as to any of these cases that we've talked about so far? The Gambino case, the Westfall case, or any of these cases that are referred to in this privilege log?

MR. COX: Object to the form.

THE WITNESS: So I would disagree that the absence of a hold means that a hold wasn't issued. I requested the holds that were available in consumer talc. As to whether holds were issued in these cases or the other circumstances surrounding the discovery process, I can't say one way or the other. I can't say that there wasn't a hold issued. I simply don't know.

BY MR. SWANSON:

Q. So as Johnson & Johnson, you don't know if there were holds on these issues; correct?

A. That's correct.

Q. Okay. And are you -- and that does suggest an issue I need to follow up on.

Are you saying that legal holds don't get retained by Johnson & Johnson?

MR. COX: Object to the form.

THE WITNESS: I -- I'm not saying that one way or the other.

BY MR. SWANSON:

Q. Are you aware of the destruction of legal holds by Johnson & Johnson?

A. I am not.

Q. Okay. If you could go to page 25 of this privilege log, please.

Are you there?

A. Yes.

Q. So if you see the second reference down, you see there was a communication from Roger N. Miller to a Frank Bolden and other individuals?

A. I do.

Q. And the date of this communication was November 7, 1977.

Do you see that?

A. Yes.

Q. And the privilege description says, "Attachment prepared at the request of counsel pursuant to pending and anticipated litigation regarding talc litigation."

Did I read that right?

A. Sounds right.

Q. Okay. And was any legal hold issued with respect to that case that you're aware of?

A. I'm not aware.

Q. Was there anything that prevented Johnson & Johnson from issuing a legal hold as to that talc litigation that you can think of?

MR. COX: Object to the form.

THE WITNESS: I don't know the circumstances of the case. I don't know

whether -- what holds were issued. I don't know the circumstances of the case.

BY MR. SWANSON:

Q. Now, you said that you were -- only prepared hold issues related to the Fong and Leavitt case or something along those lines; correct?

A. Well, I understood that my general charge was in reference to these two cases.

Q. Right. But you understand we're looking here at a privilege log from the Fong case; correct?

A. I understand that.

Q. So Johnson & Johnson already made the determination that it was required to give us a privilege log on documents that were related to these cases; correct?

A. When you say "these cases," you mean --

Q. Fong and Leavitt. This was issued in Fong. You see that; right?

A. Yes. I just didn't know what "these" was referring to.

Q. Okay. But that's a true statement; right?

A. Yes.

Q. Okay. The third item down you see there

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

was a communication from a Frank Bolden to Roger Miller December 6, 1978?

A. Yes.

Q. And, again, it says, "Attachment between counsel and client providing legal advice prepared by counsel pursuant to pending and anticipated litigation regarding talc litigation."

Did I read that right?

A. Yes.

Q. Okay. And with respect to that talc litigation that's referring to, do you have any information that a legal hold was issued?

A. I -- I don't know one way or the other.

Q. And, again, because you're saying "one way or the other," you understand that you were to talk about legal holds on behalf of Johnson & Johnson; correct?

A. Yes.

Q. And you made an inquiry about that to Johnson & Johnson; correct?

A. Yes.

Q. And they provided legal holds to you that go back to 1999; true?

A. Yes.

Q. And those are the same legal holds they

provided to us in this case; correct?

A. Yes.

Q. Okay. And those go back to 1999?

A. I believe I've answered that, yes.

Q. That's right. Okay.

I'm done with that one. Thank you.

(Whereupon, Plaintiff's Exhibit 43 was marked for identification.)

BY MR. SWANSON:

Q. Mr. Mittenthal, I'm handing you Exhibit 47 to your deposition.

Do you have that in front of you?

A. Yes, I do.

Q. Okay. And at the top, you see this is on Johnson & Johnson letterhead?

THE REPORTER: You got the wrong number.

MR. SWANSON: Oh, I did?

THE REPORTER: You're out of order.

MR. SWANSON: Okay. Let's start over on that, then.

Thank you, Early.

Let me redo that. I'm getting ahead of myself.

BY MR. SWANSON:

Q. I'm handing you Exhibit 43. That's a

correction. This was not Exhibit 47. Exhibit 43 to your deposition.

A. Thank you.

Q. You have Exhibit 43 in front of you?

A. I do.

Q. And that is correspondence on Johnson & Johnson letterhead; correct?

A. Appears to be, yes.

Q. And from an R. Denton to a W. Ashton and to a D. Jones; correct?

A. I haven't seen this document before, but I agree with you those are the words in the "to" and "from."

Q. And the date it's dated is November 23, 1993; correct?

A. Yes.

Q. And it says, "Subject: Trip report, talc validation team meeting November 16, 1993, Windsor, Vermont." Correct?

A. Yes. I see that.

Q. Okay. And I'm not going to read through this whole document. But I want to skip -- first of all, again, you're aware that Windsor Minerals was a subsidiary of Johnson & Johnson that mined talc that was used in Johnson & Johnson's baby

powder; correct?

MR. COX: Object to the form.

THE WITNESS: I have a general awareness of that.

BY MR. SWANSON:

Q. And if you go to Page Number 3 of this letter, you see that there's -- above that they're talking about mine tour highlights.

Is the heading there?

A. You mean down on the page.

Q. Yeah. That's right. Two-thirds of the way down the page.

A. Yes.

Q. And then in the last paragraph, there's a note.

Do you see that?

A. Yes.

Q. And the note says -- well, you go ahead and read that note, please.

What does the note say?

A. "Note: The specifics of the mining operation at Hammondsville are uncertain as most of the pre-Luzenac records were destroyed by the mine management staff just prior to the J&J divestiture and the Cyprus purchase. However,

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

several former Hammondsville miners are still employed at the Ham mine, and they provided us with useful information as to the nature of the underground works."

Q. Now, you're aware from your research that Windsor Minerals did testing of talc; true?

A. I recall that I have some notes to that effect.

Q. And you're also aware that Hammondsville was one of the main mines where the talc for Johnson & Johnson's baby powder was mined; correct?

MR. COX: Object to the form of the question.

THE WITNESS: I don't know the specific names of the mines.

BY MR. SWANSON:

Q. Okay. And do you know -- did you do any research -- had you been aware of this destruction of records from your research?

MR. COX: Object to the form.

THE WITNESS: I'm generally aware that records are destroyed from time to time in accordance with retention practices.

BY MR. SWANSON:

Q. Okay. That wasn't the question. I specifically -- I understand that you say you hadn't seen this document before, but were you aware from your research that at the time of the J&J divestiture in the Cyprus purchase or prior to that, which was 1989, for the record, there were -- that the most of the records were destroyed by the mine management staff?

MR. COX: Object to the form.

THE WITNESS: Well, I can read this document on first impression that it refers to pre-Luzenac records being destroyed by mine management. I did not investigate that issue. I don't know the circumstances of the destruction and under what business circumstances it was -- it was conducted.

BY MR. SWANSON:

Q. Okay. Do you know of all the testing records that have been there up until that point had been destroyed as of 1989 that were in the possession of the mine?

MR. COX: Object to the form.

THE WITNESS: Yeah. I have general notes as we've gone through on testing records. I cannot speak to any specific instances that would be in this document which I'm just seeing.

BY MR. SWANSON:

Q. And from your research on legal holds, you're not aware of any legal holds being in place at that time in 1989; correct?

MR. COX: Object to the form.

THE WITNESS: I'm not aware any.

BY MR. SWANSON:

Q. And the reason why there was no legal hold in place at that time is because Johnson & Johnson chose not to issue legal holds with respect to its talc litigation up to that point; true?

MR. COX: Object to the form. Mischaracterizes the earlier testimony.

THE WITNESS: I would disagree on two points. Number one, I'm not -- I believe I made it clear, I don't know if holds were issued or not, and I'm also aware that historic cases may be dispositions settled, litigated, come to their conclusion. I -- I'm not aware of relevant holds that would be in effect prior to 1999.

BY MR. SWANSON:

Q. And if there had been a hold in place for testing records and mining records prior to 1989 when these records were destroyed, they would have been preserved and retained at that point; correct?

MR. COX: Object to the form.

THE WITNESS: I mean, that -- that -- that calls for some degree of speculation. I -- the records you're speaking about I can't speak to there what happened to them. I know that what it says on the page here as you've had me read it, but I have not investigated the circumstances of this particular matter.

BY MR. SWANSON:

Q. You're not aware -- I mean, you keep raising the specter that you just aren't aware of any holds as if there could have been some holds from before. But you've told us that you're not -- you're not aware of any holds being destroyed by Johnson & Johnson; correct?

A. I'm not aware of any, no.

Q. That's right. And you're not aware of any hold releases being issued on talc litigation holds; correct?

A. Correct.

MR. SWANSON: That's all I have about that. Thank you.

MR. COX: Want to take a five-minute break

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

now, Mark?
MR. SWANSON: Sure. Yeah.
MR. COX: Okay.
THE VIDEOGRAPHER: This marks the end of Media Number 1 in Volume III of the deposition of James Mittenthal.
Off the record at 10:07 a.m.
(Recess taken.)
THE VIDEOGRAPHER: On the record at 10:20 a.m. This marks the start of Media Number 2, Volume III in the deposition of James Mittenthal.
You may proceed, Counsel.
(Whereupon, Plaintiff's Exhibit 44 was marked for identification.)
BY MR. SWANSON:
Q. Mr. Mittenthal, I'm going to hand you -- I'm handing your counsel first. Oh, actually, I have a separate copy there -- Exhibit 44 to your deposition.
Do you have that in front of you?
A. I do.
Q. And you've seen this letter before, correct, been shown it in a deposition?
A. I may have. I don't recall.

Q. You see that this appears to be correspondence from Luzenac America to Johnson & Johnson dated October 17, 1994?
A. Yes.
Q. And do you recognize the name of the recipient, Mr. O'Shaughnessy; is that correct?
A. I don't know how it's pronounced. I see that that's the recipient.
Q. Right. But you've seen his name on legal holds, correct, John O'Shaughnessy for Johnson & Johnson?
A. I've seen his name before.
Q. And it says, "Dear Mr. O'Shaughnessy, the following is in reply to your letter dated October 4, 1994, in reference to Ritter v. Cyprus, et al."
Do you see that?
A. Yes.
Q. And the Ritter case was a case in which Johnson & Johnson, or Cyprus, or Windsor Minerals was a defendant; correct? Have you heard of that case?
MR. COX: Object to the form.
THE WITNESS: I don't recall.
BY MR. SWANSON:

Q. Okay. You see that in the second sentence here. Second paragraph, second sentence says, "We did not begin to produce roofing-grade products from our local mines until 1970s. These mines are Clifton, Frostbite, Argonaut, Rainbow, and the Hammondsville mine."
Do you see that?
A. I do.
Q. And then you go to the second page. You see the first actual paragraph there starting with, "Testing was done on a monthly basis on the ore bodies we were mining"?
A. Yes.
Q. "Composites for the talc used for industrial as well as cosmetics were sent to McCrone Associates, an independent lab, for asbestiform analysis."
Do you see that?
A. I do.
Q. Now, I don't have the complaint in front of me, but are you aware of any legal holds being issued by Johnson & Johnson with respect to the Ritter case?
A. I'm not aware one way or the other.
MR. SWANSON: That's all I have about that one.

Thank you.
(Whereupon, Plaintiff's Exhibit 45 was marked for identification.)
MR. COX: Thanks. I'm handing you.
BY MR. SWANSON:
Q. I'm handing you Exhibit Number 45 to your deposition.
Do you have that in front of you?
A. Yes, I do.
Q. And do you see that this appears to be a discovery response of Johnson & Johnson Consumer Products, Inc. to a plaintiff's request for admission in a Marlene Selby and Lowell Selby -- Lowell Wayne Selby v. Johnson & Johnson case?
A. Yes.
Q. Okay.
And if you go to the last page, you see that these responses were verified on July 19, 1994, in San Francisco, California, according to the signature?
A. July 19, 1994.
Q. And if you go to the second page of these responses, do you see where the plaintiffs are requesting Johnson & Johnson to admit various

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

things, including that you engage in the production, manufacture, and/or packaging of Johnson's Baby Powder?

Do you see that Request Number 1?

A. Yes.

Q. Okay. And if you look at Request Number 2, it says, "You are aware that the plaintiffs requesting that Johnson & Johnson admit that they're aware that the aspiration of Johnson's Baby Powder may lead to bronchoconstriction."

Do you see that?

A. Yes.

Q. And then if you go to the fourth page, you see where the plaintiff is asking Johnson & Johnson to admit that you were aware that the aspiration of Johnson's Baby Powder may lead to fibrosis.

Do you see that?

A. Yes.

Q. Did Johnson & Johnson issue a legal hold notice in the Selby case in 1994, or at any time for the Selby case?

A. I'm not aware of whether or not a hold was issued for the Selby case.

Q. You have no information that a hold was

issued; correct?

A. One way or the other.

Q. When you say "one way or the other," again, you're not aware of any holds being destroyed, correct, by Johnson & Johnson?

A. Correct.

Q. And you're not ahold -- aware of a hold release ever being issued by Johnson & Johnson related in any way to talc litigation; correct?

A. I'm not aware that the -- of releases to the holds that I requested. In other words, the 1999 through 2017 holds that I requested I am not aware of releases applicable to those holds.

Q. Are you aware of releases applicable to other holds related to talc litigation for Johnson & Johnson?

A. I requested all holds applicable to cosmetic talc. I -- I don't recall if I requested every release ever issued.

Q. Okay. Well, this is clearly cosmetic talc issue, right, the Selby case; true? Johnson's Baby Powder is what they're talking about.

A. Yes.

Q. And so was the Gambino case. Remember that was a talcosis case --

A. Yes.

Q. -- back in 1983?

A. Yes.

Q. So those are consumer talc holds if there was a hold related to those talc -- let me start over.

If there was a hold related to those cases, it would be a cosmetic talc litigation hold; true?

A. True.

Q. Okay. And you asked for all those; right?

A. Yes, I did.

Q. And the oldest one you got is 1999?

A. Correct.

Q. And you're not aware of any hold releases ever being issued by Johnson & Johnson related to cosmetic talc litigation; correct?

A. Correct.

Q. Or any other talc litigation; true?

A. I have not seen any releases.

Q. Okay. That's all I have about that. Thank you.

I want to ask you a few questions about Johnson & Johnson International, and I probably should have asked some of these in the context of

what we were doing yesterday, but I've looked at the holds again in preparation for today, and we went over them in some detail yesterday, and I'd asked you questions about recipients of those legal holds for talc -- in talc litigation going back to 1999.

And do you have any information that Johnson & Johnson International ever received any of those holds?

A. As an entity?

Q. Yes.

A. I -- I don't have information with respect to that. I do understand that the 2017 hold was directed at people in international entities.

Q. And that was at the first hold that you're aware of that was directed to individuals at Johnson & Johnson International?

MR. COX: Object to the form.

THE WITNESS: Well, I'm not -- in terms of the precise name of the entity, I would have to double-check those entities. But I -- it's certainly in international locations for over -- overseas or OUS locations. That is the first ones I am aware of.

BY MR. SWANSON:

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 509

Q. I see. And I should have been clear in my question. My understanding is, Mr. Mittenthal, that there is -- there is an operating company of Johnson & Johnson called "Johnson & Johnson International."

Are you aware of that?

A. Well, I'm aware that the -- that the names of the entities change over time, and so I just want to make sure I'm using the right terminology that befits the time and place.

Q. Let me -- let me ask it a little more precisely. Try to. Are you aware of an entity called "Johnson & Johnson International" that was the recipient as an entity of legal holds?

A. I'm not aware.

Q. Are you aware of individuals who worked for an entity called -- an entity or division called "Johnson & Johnson International" who received any of the talc litigation legal holds?

A. I am aware that in 2017 people in -- that worked for international elements of the organization received litigation holds.

Q. When you say "worked for international elements of the organization," are you talking about people who worked domestically or, for

Page 510

example, people in the Philippines like we talked about yesterday?

A. The latter. People who were physically located in the Philippines or Hong Kong.

Q. Do you have any awareness that the most -- and you're talking about the most recent hold -- the current hold in asbestos cases; correct?

A. Yes.

Q. Okay. Are you aware of any individuals at a domestic unit of Johnson & Johnson that's called "Johnson & Johnson International" receiving legal holds?

A. A domestic unit that's called "International"?

Q. Yes.

A. I -- I wouldn't know that one way or the other.

Q. The way Chris is smiling it might be that I needed to do more research before I asked that question, but.

So are you -- did you -- and I don't want to redo what we've done with respect to your notes already, but with -- so keeping in mind that I'm just asking about an operating unit or division called "Johnson & Johnson International," and I'm

Page 511

not asking generally about operating units outside the United States like, you know, J&J Hong Kong, J&J Philippines, okay, so just keep -- let's keep that separate.

From the research that you've done, can you provide any information about what search -- inquiry search was done for documents that were documents that were kept, produced, retained by Johnson & Johnson International?

MR. COX: Object to the form.

THE WITNESS: I -- I can't speak to the -- to the entities per se. I know that my notes reflect the fact that there were documents from international operations that were housed in the United States and were searched as part of this effort.

BY MR. SWANSON:

Q. Okay. And would that be, for example, when we were talking about in the first volume of your deposition about the search that was done through the Philippines documents you had -- there was something in your notes about a hundred boxes being selected and then a Skadden associate going through those boxes and not really finding anything.

Page 512

Do you remember that generally?

A. I do.

Q. And is that what you're referring to as a search about an "outside of the U.S." entity but the search is actually physically being done in the United States in an archive in the United States?

A. Well, that hundred-box search -- that hundred-box search was actually performed overseas. So I am actually talking about other documents that were related to international operations but the documents themselves were stored in U.S. locations and searched there.

Q. I don't know if this will help, but the Johnson & Johnson International entity or operating unit is located in Brunswick, New Jersey.

Does that help you at all in terms of whether or not what information that you have about that from your research?

A. You know, in my research, I understand that -- and I have a list of company sources that were searched that was -- that was -- you know, we've talked about the archive, the various noncustodial and custodial sources that were

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

listed with my materials. To the extent that they were available to be searched, regardless of whether they were part of an international entity or a U.S. entity, I -- they were all searched, to my understanding.

Q. Well --

MR. SWANSON: I'm going to move to strike that.

I just -- it's a very particular question. I'm trying to get at.

BY MR. SWANSON:

Q. Which is what information specifically do you have about the operating unit, Johnson & Johnson International, which is in New Brunswick, New Jersey, searches being done of their documents, documents that they retained or archived or had on their computers? And if you have a list of sources that you're referring to that we can refer to -- if it helps you at all, you know, let's look at it.

A. Well, I'm certainly going to look at the list of noncustodial sources and see if there's anything specifically mentioned about company entities.

Q. For the record, that's a -- Exhibit Number

4 to your deposition; is that right?

A. That's right. I just have a general understanding that all documents that would have been available in the U.S. and potentially relevant were subject to search.

MR. SWANSON: Again, I'm going to move to strike as nonresponsive.

THE WITNESS: You know, I'm looking, for instance, on page 2 of Exhibit 4, contracts from the international contracts database. I'm just seeing an international reference there. I -- I...

BY MR. SWANSON:

Q. Can you provide any additional information about any search done -- other than your general impression that searches were done of all U.S. sources, do you have any information specifically as it relates to searches done with respect to Johnson & Johnson International, that you associate with Johnson & Johnson International?

A. Well, I have in my notes, for instance, that various people who I interviewed in international locations who I presume to be part of an international organization utilized enterprise global systems that would have stored

information in the U.S. relating to international facts or data.

So, for instance, the TrackWise system, the SCEPTRE system, other business systems were global in nature so that if I put something into that system in the Philippines or Hong Kong or China, it would have been stored essentially in the -- in the U.S. system.

Q. Do you know as of what year that was being stored in those databases, the first year?

A. You know, I have a chart that I've assembled that we marked yesterday. From what I know about those various business systems, the objective was not to necessarily understand when a system went global, but there are systems listed there that have international usage.

Q. Let me -- let me just try to cut it short because I don't want to...

Do any of those systems go back to the 1970s? In other words, were any of those systems utilized in the 1970s?

A. I have information in my notes that information may have been scanned and brought forward. There were not a lot of electronic systems in the '70s -- there were some -- but that

certain information was carried forward, brought into systems that have been migrated forward in our -- so I would not be surprised if there were systems today that had some information from those earlier times.

For instance, I know that there has been some scanning of -- occasional scanning of lab notebooks. So those were in paper form. Those went back many years. Those have now been brought forward, some of them, at least, into electronic systems.

Q. I appreciate what you're saying, which is some of the information got transferred forward from a long time ago paper -- paper-type documents from like the 1970s; correct?

But would those database systems that you're talking about being in use for Johnson & Johnson -- for domestic Johnson & Johnson's companies keeping track of and having documentation from Johnson & Johnson operating units outside the United States, those are recent platforms, correct, and the -- in terms of preserving those documents; correct?

MR. COX: Object to the form.

BY MR. SWANSON:

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. They don't go back to the 1970s.
A. Well, certainly many of the systems I investigated were in paper form in the '70s, and I -- it would be a one-by-one investigation to look at complaints, adverse events, the call center, the document control systems, the archiving system. I mean, each of those has a different story as to when it was -- what system went live when and what was migrated from a previous system where paper filings would. So it would be -- it's not a monolithic answer. Each system would have an answer as to...
Q. I understand. But what was -- you referred to some current systems. Since I don't have a handle on these names when you first answered the question, what were those systems you referred to?
A. The first ones I mentioned TrackWise.
Q. TrackWise. Were any of those in use -- was TrackWise in use by Johnson & Johnson in the 1970s or 1980s, 1990s, or even the early 2000s?
A. I believe TrackWise -- TrackWise went live relatively recently in about 2009. Well, ten years, nine years ago.
Q. Okay.

A. Approximately when -- around the time that certain operations were consolidated and a global talc specification was created. So there was a lot of that activity in that 2009 time frame, including, as I recall, the conversion to the TrackWise system.
Q. And what was the system before TrackWise?
A. I've got to check my notes.
Q. Okay. I'm going to have you hold that thought.
Let me ask. I think I do want to look at your notes for a moment here and ask you about -- a little bit more about the Philippines.
Do you have your paginated notes? It's Exhibit 26 and I think for the most part, those are -- actually, it would be over there, I believe, wouldn't it?
If you go to page 64 in the paginated notes, your paginated notes, which is Exhibit 26. You see here where it's -- there's a summary of your discussions with, was it Pamela Downs? Let's see, yes.
A. Yes.
Q. Pam Downs regarding searches in overseas location including the Philippines, Hong Kong.

Did you investigate what systems were in use at either of those locations, the Philippines or Hong Kong in the 1960s or '70s or '80s in terms of database systems or the systems for organizing and preserving documents?
A. I did not catalogue the systems in use at that time. I understood that what was available from the time frame that had been preserved from that time was in paper form or in a storage form that it could be put in a box and had been stored in a facility, and that that's the material that was -- that was -- that was searched and that there were indexes to that material.
I don't know that there were any electronic systems in use then. I did not catalogue that.
Q. We talked about this a little bit so I don't want to spend a lot of time on this, but this hundred boxes that got pulled, that was pulled based on key words, right, according to your notes, for the Philippines?
A. Yes. And what that indicated was that when they did the search and came up with nothing -- nothing based on the key word search of the index, they retrieved -- it may have been

101 boxes -- it was approximately a hundred boxes -- to go through to confirm from a sampling standpoint.
Q. I'm going to cut you off. I just asked you a real simple question and you gave me the full explanation again. And we talked about it last time, so I've just got a couple little pieces here to cover.
A. Okay.
Q. I don't mean to be rude or anything, but I want to move things along and I'm sure you do, too.
Okay. So the key words that were searched, were those only in English?
A. I don't know if the key words were only in English. I have an understanding that the -- that there was a general use of English for business documents and that there were English speakers there in the records staff who would have known if there were other foreign language issues. I don't know if there were other key words added in any other languages.
Q. Well, were the key words the same word -- these are different key words from the ERMS key words or the E-R-M-S key words that we spoke about

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

last time that are in Exhibit 6 to your deposition?

A. You know, I think the terms may have been the same, but because it was a different system -- it was an index, it may have been an Excel index or some other different format than ERMS -- and therefore, the precise way it was searched may have varied. I understand that the intent was to search the same type of information.

Q. Okay. But you don't know if there were -- whether or not there were any non-English words that were used; correct?

A. That's correct.

Q. Did you -- has this been produced to us, this index of key words?

MR. COX: Object to the form.

THE WITNESS: I'm not aware one way or the other.

BY MR. SWANSON:

Q. You didn't produce it for your deposition; true?

A. Correct.

Q. Now, these boxes that were selected, a hundred boxes, out of how many boxes were those selected?

A. I -- I don't know the total box count in all these facilities.

Q. That was not a random sampling; correct?

A. It was -- it was chosen by the attorneys. The methodology I'm not -- I'm not aware of.

Q. And is it true that any documents based on the search -- well, whatever documents there were there still -- strike that.

With respect to the Hong Kong search, again, it says there was "inbox site index."

Has that been produced?

A. I'm not aware of one way or the other.

Q. Okay. "Put together committee as per above."

What does that mean?

A. So, there were a list of people associated with the search, and those are actually listed in the later document, because these searches were prior -- prior to the specific Fong and Leavitt searches.

So my recent exhibit list additional efforts and list out those people.

Q. Okay. And we can pull that up if we need to, but let me -- let me ask you: It says that no responsive documents were found; correct?

A. Can you reference me to where we are?

Q. "Found none. No" -- "no boxes needed" -- it says, "No boxes needed to be opened." What was that -- that was based on what?

A. The searching of the index.

Q. Okay. And what -- and I apologize if I asked this. Was -- were the searches in the Hong Kong documents only done in English, as far as you know?

A. I -- I don't know. I do know that there was a committee of people involved with the search, and that committee would list people who would be aware of what documents would be in English and in other languages, and the search would have been calibrated accordingly.

MR. SWANSON: Move to strike as nonresponsive.

BY MR. SWANSON:

Q. Would you agree that if the search terms were English only, then English documents -- documents in English would be more likely to come up; right?

A. I -- I'm not sure I would say that because you have the index and you have the body of the documents, and the index terms could be in

English, the document could be in another language. I don't have the particulars on how the index was -- was developed. I have an understanding that the business language in use would have been English, but I don't know the nature of how the boxes were described and which languages were used.

Q. And when you say you have an understanding the business language being used, you mean English?

A. Yes.

Q. For business?

A. Yes.

Q. Is that what you're saying?

A. English was commonly used in the business, yes.

Q. So Johnson & Johnson -- and I think you referred to that in the Philippines, too; correct?

A. Yes.

Q. So Johnson & Johnson's operating companies -- in Philippines, in Hong Kong, Johnson & Johnson was using English in those for the most part; is that what you're saying?

A. I would say that English was widely used. I don't -- I can't speak to the ratios or the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

official adoption.

Q. Okay. Right. So but would you agree that manufacturers and suppliers to Johnson & Johnson in those foreign countries might not be using English?

A. I wouldn't want to speculate on how they communicated.

Q. Now, with respect to your subsequent discussion with Pam Downs and Laura -- I -- Giacino, or whatever her name was, did you learn anything more in terms of whether or not any documents were actually located at the Hong Kong location?

A. Well, I can make a blanket statement that what I did learn was in my notes and I --

Q. Well, let's go to your notes, then, and let's pull that -- I don't remember what exhibit that is offhand, but I believe --

A. It's right on top here, actually.

Q. Oh, it is.

A. 20.

Q. Okay. Great. And let's -- since we've got this in front of us, it looks like that's on the bottom of page 2 there's a reference to Hong Kong; correct?

A. Yeah. That is the first Fong reference.

Q. Okay. And is it correct that no documents were located with respect to Hong Kong?

A. Yes. So this -- this is in Category 4, and if I reference what that means, it says that this type of search was a company source that had not been searched before. So there were certain -- certain searches conducted in new areas, new searches, entirely new searches, and that was -- that further yielded nothing in that time frame.

Q. Do you know what the terms -- have you seen the offsite storage index and any electronic listings with respect to Hong Kong?

A. Have I -- have I seen it?

Q. Yeah.

A. No.

Q. Do you know what -- how detailed it is?

A. I have not -- I have not seen it.

Q. Do you know what search -- what search terms -- what specific -- do you know the specific individuals who did -- who looked at the storage indexes, who they were?

A. No. I know Ms. Downs and attorneys were part of the process. I don't know who -- who

actually --

Q. Do you know what their instructions or training was in terms of what they were looking for, the people who actually looked at the offsite storage indexes or any electronic listings?

A. Well, I don't know about their training. I know that they -- they were looking for the items detailed in the search criteria.

Q. And what was the year limit put on the search?

A. I don't know that they had a year limit. I know that they were aware of the time frame, as I recall, from 1970 to '84 -- or '71 -- '70 to '84.

Q. That's all I've got about that one. Although you probably hold on to that one because you may look at it again in a moment.

Do you know, with respect to the Korean talc that was being supplied to Johnson & Johnson Hong Kong and Johnson & Johnson Philippines, whether or not any searches for documents related to that talc supply in either Leavitt or Fong cases, or any other cases, for that matter, were done in English, and what languages they were done in? Let me ask you that way.

MR. COX: Object to the form.

THE WITNESS: I don't know the range of languages that were used in the search.

BY MR. SWANSON:

Q. Do you know whether or not the talc supplier from Korea's talc supply documents are in Korean or some other language?

A. I don't have that information. I did not research that.

Q. And you're aware from your review of the discovery and the responses to discovery in the Fong and Leavitt cases that the plaintiffs broadly asked for results of testing and testing documents related to talc that went into Johnson's Baby Powder, including from that manufactured overseas; correct?

MR. COX: Object to the form.

THE WITNESS: I'm generally aware that test results were requested.

BY MR. SWANSON:

Q. Okay. And we have been provided, and I don't know if you're aware of it, some Johnson & Johnson worldwide talc surveys from the late 1970s and early 1980s.

Have you seen those documents? And I

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

believe those may have been initially obtained or provided in the De La Cruz case?

A. I'm aware of those documents.

Q. Other than those documents, are you aware of the existence of any other talc testing-related documents for the testing of Korean talc for asbestos?

A. I'm not specifically aware one way or the other.

Q. And I believe I asked this yesterday, but you're not aware of a legal hold ever being issued with respect to Korean underlying testing documents, testing of Korean talc; true?

MR. COX: Object to the form.

THE WITNESS: I'm not aware of a -- of a...

Actually, I should rephrase. What I believe I said yesterday was that I'm not aware if there were holds sent to any international locations prior to 2017.

BY MR. SWANSON:

Q. Fair enough.

Are there any MSDS sheets that Johnson & Johnson has for Korean talc? I haven't seen any, but do you know from your research are there MSDS

sheets for Korean talc?

A. I mean, I'm just going to quickly tab through the noncustodial sources and see if I see any references to it. I don't recall any references to it.

Q. Just for the record, you're looking at Exhibit 4?

A. That's right.

Yeah. I can't tell from here. I'm not aware of any.

Q. Okay. You saw from your review of the discovery that the plaintiffs again asked for -- and we can go through the discovery, but I think you've looked at it, so if we need to, we will -- but that the plaintiffs have asked Johnson & Johnson, in the Leavitt case specifically, for all talc testing results going back to 1965 to the present.

Did you see that?

A. I'm aware of historical requests for testing.

Q. Do you -- are you aware in the Leavitt case those went out pretty far; correct?

Let me see if I can pull this out real quickly and show it to you.

MR. SWANSON: Might as well go ahead and mark it, Exhibit 46 to your deposition.

(Whereupon, Plaintiff's Exhibit 46 was marked for identification.)

BY MR. SWANSON:

Q. Do you have that in front of you?

A. Yes, I do.

Q. And you see this is defendant Johnson & Johnson's June 26, 2018, Amended Responses to Plaintiff's Request for Production of Documents, Set 3; correct?

A. Yes.

Q. And if you go to the Request Number 29 -- Request Number 29 and 30, you see that 29 asks for all the results of testing of talc or talc ore that was used for Johnson & Johnson cosmetic talc products from '65 -- 1965 to the present.

Do you see that?

A. Yes.

Q. And Number 30 asked essentially the same question for Johnson & Johnson's talc products, right, testing or testing results of Johnson & Johnson cosmetic talc products 1965 to the present; correct?

A. Yes.

Q. And you see that Johnson & Johnson has said that it has produced all documents; correct?

MR. COX: Object to the form.

THE WITNESS: I see that.

BY MR. SWANSON:

Q. Okay. It says it's identified and produced all documents in its possession, custody, or control.

So -- and these are verified; right? If you go to the last page or the second-to-last page, you see the verification; correct?

A. Yes.

Q. Who verified those?

A. Tina French.

Q. And you know who Tina French is; correct?

A. Yes.

Q. And she's empowered by Johnson & Johnson to verify those; correct?

A. Yes.

Q. And so if -- do you have information with respect to the level of completeness of -- let me see if I can ask this differently: Do you know of all the testing that would -- that was done from 1965 to the present that meets that description, how much of those testing results were produced in

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

the Leavitt case?
MR. COX: Object to the form.
BY MR. SWANSON:
Q. And I'm not talking about the documents that just exist now but of all the testing that was done from '65 to the present, those testing results, how many of those have actually been produced?
MR. COX: Objection.
BY MR. SWANSON:
Q. What percentage, anything like that.
MR. COX: Object to the form. Beyond the scope of the notice.
THE WITNESS: I'm not sure how I would have -- be able to understand what percentage were produced. Certainly the ones were produced that were -- the company could find.
BY MR. SWANSON:
Q. Right. So you -- right. And that's fine. And you can say you don't know. I mean, that's a perfectly fine answer in a deposition, as you know.
Okay. But they produced everything they had, according to their diligent search, according to that answer; right?

A. Yes.
Q. Okay. So if any document -- if any testing documents are missing that there is reason to believe existed, those documents would have been destroyed; correct?
MR. COX: Object to the form.
THE WITNESS: I -- I didn't understand the last question, I'm sorry.
BY MR. SWANSON:
Q. Well, hypothetically -- you said they produced all the documents in their possession, custody, or control. And they said that under oath; Johnson & Johnson said that and you've verified that.
My question is, if -- first of all, can you say what percentage of the documents reflecting all testing results from those periods were produced, whether it was more or less than 5 percent?
MR. COX: Object to the form.
THE WITNESS: I'm in no position to -- based on research or even research that I could do, I don't know how I could say what a percentage would be. I think the company's methodology, as in much discovery, is to look for the information

that it can find to identify it, or review it and produce it. I don't know how one would go about knowing what percentage of a hypothetical, historical population would have -- would have been calculated.
BY MR. SWANSON:
Q. Okay. So, to the extent that testing results have not been produced by Johnson & Johnson, that -- where the testing was done and at some point there was a testing result, that would be the result of destruction of the testing results; correct?
MR. COX: Object to the form.
THE WITNESS: I don't think that inevitably follows a "to be." That could be a -- that's a potential reason for why something wasn't produced if it was a disposition in the course of business.
BY MR. SWANSON:
Q. Right. Which means it would be -- and if those documents -- and we -- I'm not going to go back into all the holds and the retention schedules, but we talked about this yesterday. If something is not under a hold and it's no longer under retention by the retention schedule, it's

actually supposed to be disposed of; correct?
MR. COX: Object to the form.
THE WITNESS: It becomes a candidate for destruction.
BY MR. SWANSON:
Q. Right. And if, for example, a company like Johnson & Johnson has a cleanout policy annually that's a mandatory possible -- procedure, then, in fact, it would get destroyed; true?
MR. COX: Object to the form.
THE WITNESS: To the extent that it was agreed upon and signed off on, yes.
BY MR. SWANSON:
Q. I'd like to ask you some questions about the Legacy collections of documents. And we touched on this a little bit in the first volume of your deposition. And let me ask you about -- first of all, are those listed in noncustodial sources, I believe? Is that right?
A. Yes, they are, which is Exhibit 4.
Q. Okay. And you've got some information in your notes about this.
Did you prepare this document, "Noncustodial sources"?
A. I did not.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. It was prepared by counsel?
A. Yes.
Q. So looking at page 2 of Exhibit 4, it lists Legacy 1 and some information about that; correct?
A. Yes.
Q. And Legacy 1 was a document collection of talc-related documents that was put together in -- as a result or in connection with a 2009 South Dakota action, Berg v. Johnson & Johnson; correct?
A. That's my read of the description, yes.
Q. And that was a lawsuit alleging ovarian cancer as a result of the use of Johnson's Baby Powder; correct?
A. By its description.
Q. Do you -- do you know -- was a legal hold issued in that case? I think actually we may have seen -- is this Berg? Yeah, okay. I think we did see Berg from 2009. Yeah. Okay.
So I think I know the answer to that.
So that was a 2009 hold that we looked; is that right?
A. Yeah. You know, I'm going to actually just reach over and grab my list of holds so I've got that in front of me.

Q. Oh, yeah. So what exhibit is that for the record?
A. That is 21.
Q. Thank you.
And the Berg case was under a legal hold; is that right?
A. I have a legal hold from December 15th, '09.
Q. And a collection of documents was put together at that time?
A. At some point it was put together.
Q. Do you know -- do you remember the last time we talked about in some detail how the various inquiry and search steps related to documents that had become part of the sort of -- I forget what we're calling it, but the large sort of omnibus talc collection of documents, and we talked about those procedures with respect to the 1600 boxes being pulled and the ERMS and the filtering terms.
You remember that?
A. Yes.
Q. And what I'd like to ask you is about what -- how the searches were done, the inquiry and searches related to Legacy -- the Legacy 1

collection were done back in 2009 or '10 or whenever that was actually effectuated.
Do you have information about that?
A. I -- I don't. I have it represented that that was a monolithic collection that was preserved and carried forward. I don't have the search criteria for -- for that particular matter.
Q. Do you know how sources of documents were identified?
A. In Legacy 1?
Q. Yes.
A. No. As I mentioned, that was presented to me as a -- as a monolithic set. I mentioned in the first day that I had gone through and reviewed certain -- sampled and reviewed certain documents in a litigation review tool. I -- I pulled up a few Legacy 1 documents just to -- just to see them and get familiar with them. I certainly couldn't speak to where all -- they all came from.
Q. And it looks like -- interesting. I'm looking at these other Legacy collections and I think I'll just jump over to some of these others.
You see -- do you know why Legacy 4, for example, was -- how the numbering for the Legacy collections came about? For example, there were

some documents, it appears from the description here that are part of Legacy 4, that were gathered in the Ritter case.
Do you see that?
A. Yes.
Q. Do you know when those were gathered?
A. No, I do not.
Q. It says "primarily collected in connection with the Ritter case."
And then you were aware of the Coker case and the collection that came out of that; is that right? That's Legacy Number 2?
A. That's right.
Q. Does the -- and I know you don't have any holds prior to 1999, but does the existence of these Legacy collections to you suggest that there were legal holds in place?
MR. COX: Object to the form.
THE WITNESS: It does not necessarily follow that. And I -- as a hypothetical and maybe they collected for the purposes of accomplishing a hold. I know from -- in some cases that happens. I don't know if that's an indication or not of whether holds were issued.
BY MR. SWANSON:

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 541

Q. Looking at the Coker, the one that was collect -- the Legacy 2, it says it was a historical collection of materials primarily located in connection with the 1998 Texas action, Coker v. Bill Thames Pharmacy, Inc. et al.
Do you see that?
A. Yes.
Q. And that was a case where a woman had alleged that she developed malignant mesothelioma from airborne exposure to talcum powder, and that would be referring to either Johnson & Johnson Baby Powder or Shower to Shower; right?
A. I'd have to double-check, but apparently, yes.
Q. Okay. Speaking as to that collection that was gathered as a result of this Coker case that was filed in 1998, do you know what sources of -- do you know -- generally, can you talk about how the collection was created?
A. You know, I received a brief overview from counsel and then I was also referred to the letter that is marked as Exhibit 10 to familiarize myself with those materials.
Q. Okay. Without me reading this letter in detail right now, based on your understanding

Page 542

after having read it, do you know what sources were consulted to locate relevant documents that were collected and became Legacy 2?
A. Well, I did not personally verify this, but based on my read of the document, on page 2 there's a question about the document collection that occurred, and the text in the case that "the collection efforts involved identifying, collecting, and copying the reasonably available documents related to talc from employees identified in the memo," that collection which was referred to as "the '98 collection" contains a list of identified individuals below that.
Q. Okay. And you're looking at this list: John Hopkins, Bill Ashton, Regina Gallagher, Connie Seamen, James Molnar, Bob Russell, George Lee, and Bruce Semple?
A. Yes.
Q. Are you aware of anybody else who was consulted or -- for documents from whom documents were sought with respect to this -- the Coker case and the documents that became Legacy 2 collection?
A. Well, as I mentioned, I know basically my understanding comes from a read of the documents, and it does note that some documents came from other people. But beyond that, I don't have specific information, nor did I do a discrete investigation of this historical collection that was brought forward.
Q. And do you know specifically -- or what information do you have about the -- what was being sought and what indexes -- indices, electronic or paper, were consulted for that?
A. I don't have specific information beyond what -- what's in the letter.
Q. And do you know who actually did the search?
A. My understanding is that it was done under attorney supervision. Beyond that, I can't speak to who physically performed the search.
Q. Do you know if the search was done only through paper files or were there electronic searches done?
A. I'm reviewing the letter to see if there's any indications.
Yeah. It -- it's not clear from the letter what sources were consulted. There are -- there are certainly references to paper documents. I -- I can't ascertain the scope of the search from the letter.

Page 544

Q. And is your information about that collection limited to that letter?
A. There was a brief summary of it from -- from counsel, and then there's the materials that are in the Exhibit 4 table.
Q. Where it mentions the collection?
A. The noncustodial list, yes.
Q. When you say a summary from counsel, and I'm not specifically -- are you talking about some written summary as in, for example, what's written here in Exhibit 4, or something additional?
A. No. I was generally told that there was a case and I was being provided a letter about the case to educate me.
Q. Do you know whoever did the search, and I know -- whether, how narrowly or broadly their instruction was as to -- well, do you know how broadly or narrowly they interpreted what was relevant to the inquiry? For example, if there was a document with attachments and the attachments, for example, maybe one of the attachments doesn't match up some particular search terms or group of search terms, whether or not all of the attachments would be included?
A. I -- I don't have that information. I

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 545

mean, I understand from the memo certain searches were conducted with certain custodians and other sources where the documents were reasonably calculated to be, that they were put in boxes at some point. They were rearranged and reorganized. But that that collection has been preserved historically in a monolithic way and only -- only what's in this letter is what I know about how the collection was performed.

Q. And in looking at your noncustodial sources here, Legacy, the Legacy 4 collection.

MR. SWANSON: Oh, let me stop for a second.

Is it about time for a little break?

MR. COX: That sounds good.

MR. SWANSON: I think that's about the right time. Okay. And we'll have lunch coming, so. But we'll do some more testimony first. I think it's -- isn't it 11:30?

MR. COX: It is.

MR. SWANSON: Yeah. That's fine. Okay. Good.

THE VIDEOGRAPHER: This marks the end of Media Number 2, Volume III in the deposition of James Mittenthal.

Page 546

Off the record at 11:29.

(Recess taken.)

THE VIDEOGRAPHER: We are on the record at 11:52 a.m.

This marks the start of Media Number 3, Volume III in the deposition of James Mittenthal.

Counsel, you may continue.

BY MR. SWANSON:

Q. Okay. Let's see. Gather myself up here.

You have that letter in front of you. That was Exhibit 10 we were talking about, the Legacy 2 collection in the Coker case.

You remember that?

A. Yes.

Q. And that indicates on the first page that the case was actually filed in 1997; correct?

A. Yes.

Q. Okay. And was a legal hold issued in that case?

A. I don't have information about that.

Q. Now, you knew about this document and you asked for legal holds in this case.

Did you ask if there was a legal hold for this case?

A. I recall asking for all relevant legal holds from the context of consumer talc. I didn't specify this case individually.

Page 547

Q. We had spoken about the Gambino case and the Westfall case. Were any Legacy document collections created in connection with those cases?

A. Well, I'm not aware of a precise definition of a Legacy document collection. I know that in the noncustodial sources there are four designated groups of documents called Legacy 1 through 4 that have been denoted that for various reasons.

I don't -- I also understand that -- that the global put out -- the global talc production and, in addition to that, the specific productions for Leavitt and Fong were based on documents that were available, both through the ongoing collection process as well as the incorporation of Legacy 1 through 4.

I'm not aware of any distinct sets that have been created that are called "Legacy," anything else. But I know that the company used its best efforts to collect the information from whatever relevant sources were available and incorporated those Legacy cases as well.

Page 548

MR. SWANSON: Move to strike as nonresponsive.

BY MR. SWANSON:

Q. Was there -- do you have any information that documents were gathered in connection with the Westfall litigation that are part of the global talc production of documents?

A. You know, I have no specific tie-back from a document to a case. I have an understanding that the documents that have been produced in this case go back and in some cases many, many years to the '60s before that. I -- I can't tie a particular document to a particular prior case.

Q. Well, I mean, that's not really the case, is it, because you've got these descriptions of the Legacy collections and they tell you what cases those were in connection with; correct?

A. Well, I was -- I believe I was speaking of Legacy 1 through 4 as a carve-out to the general approach that the company took to comply with its production obligations.

Q. But you can tell from those Legacy collections in connection with what case they were done; correct?

A. I believe -- well, I --

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. It says right there, it says, "Coker" -- for Legacy 2, "Coker v. Bill Thames Pharmacy." It was primarily collected in connection with that.

A. Yes. I see that now. I just read through them, yes.

Q. And the Legacy collections, these were stored at attorneys' offices; correct? And we saw that -- you saw that with Legacy 2; correct?

A. I'm not able to respond in every case where they were stored. I know they were in attorney custody.

Q. Okay. But -- and if you would just answer the question, because you're talking about this huge gathering of documents over many, many years.

The question is simply now, are -- do you have any information that documents were gathered in connection with the Gambino case by Johnson & Johnson and became -- and are now part of the global talc collection of documents?

A. Other than Legacy 1 through 4, I cannot tie specific documents to historical -- historical cases, but I can speak to the fact that the document production goes back many, many years.

Q. Okay. I didn't ask about how far it goes back. I'm -- I've looked at the document

collection, I understand that. That's not responsive to my question.

So please answer the questions -- and you're putting a bunch of nonresponsive stuff in here and I want to get through this. So.

And, again, as to the Westfall case, same answer, you're not aware of any documents that are now part of the global talc production that were gathered initially during the period of the Westfall case; true?

A. I just want to make sure I understand the answer. I'm not aware of any documents that I can associate specifically with that -- with that case.

Q. And you don't know whether or not any of the documents that are part of the global talc production were gathered during that -- during that pending litigation, are you?

A. I have not done that particular investigation.

Q. So you're not aware of it; correct?

A. One way or the other.

Q. Well, do you have any reason to believe that there are documents related that were gathered during the period of the Westfall

litigation that are part of the global talc production?

A. My reasoning is just based on the understanding that the documents go back many, many years. That's the basis I have to understand that there may be documents from other cases that are a part of the global talc production.

Q. And when you say "maybe," that means you're speculating, true, as to those particular cases?

A. Well, I think by definition it is speculation.

Q. Okay. Thank you.

I want to go back to the testing results a little bit.

You're aware that testing for asbestos was done on a quarterly and annual basis; correct?

MR. COX: Object to the form.

THE WITNESS: I am aware that there are many types of testing and that included, for instance, quarterly testing.

BY MR. SWANSON:

Q. Did you make any attempt to -- did you make any attempt to determine the number of tests that were generated during the course of the

period from 1965 when we first asked for testing results to the present, testing for asbestos, that is, in the talc?

A. I did not investigate the number of tests performed and the -- and the particular date range.

Q. And can you say that even 1 percent of the testing results were produced in the Leavitt case?

MR. COX: Object to the form of the question.

THE WITNESS: I'm not in a position, nor did I conduct an investigation to ascertain percentages of -- of test results produced.

BY MR. SWANSON:

Q. And you didn't -- so you didn't do an audit; correct?

A. Well, as I mentioned, there's many types of test results. Even if I had attempted to do an audit, I might not have viewed testing categories in the -- as anyone else would have viewed them. It's -- there's -- a number of different types of testing analysis, certificates. I -- I don't have a specific parameter to even make that assessment.

Q. Well, for example, you know how many quarters there are in a year; right?

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

A. I -- I think so.
Q. Right. And you can multiply, so that if you -- if you could -- you could find out by asking Johnson & Johnson when it first started doing quarterly testing for certain types of quarterly tests; correct?
A. Well --
Q. For example, from the talc that came out of the mine, you could find that out; right?
A. That presupposes that I would be able to ascertain how many tests were done each quarter, which -- and even that information I don't -- I would have to understand how -- what I do know is that there are tests that were performed quarterly.
But how many tests, where the tests were performed, I have some information about that in my notes, but I can't specifically say where every quarterly test was done so that I could multiply it.
Q. Right. But you didn't try to figure that out. You didn't see whether or not in theory that could be done because you didn't do an audit; correct?
A. I didn't do an audit of the number of

tests done.
Q. Right. But hypothetically, you could go about trying to do that, correct, if you wanted to? You are telling us that that would be difficult and you're not sure if it could be done, but you can certainly think about how you would go about doing that and attempt to do that; correct?
MR. COX: Object to the form.
THE WITNESS: I mean, if we're talking hypothetically, I could -- I could -- you know, one -- not I, but one could attempt to conduct such an activity. I don't know if that information could be easily -- readily or even possibly ascertained, but one could go -- could go about an exercise to do that.
BY MR. SWANSON:
Q. I'm looking at Exhibit 6, and if you could pull that out, that's Tab 6 for you there. The next one in a row.
And looking through this -- and Exhibit 6, for the record, what is that again?
A. Those are to date -- or as of September 7, 2018, a list of search terms by which the ERMS system was -- was searched.
Q. Does that list include -- other than

perhaps as proper names, does it include any terms that are not in English?
MR. COX: Object to the form.
THE WITNESS: You know, I -- I can't interpret all of the terms. I can say that these -- that the terms are as you and I see them here are -- I don't -- many of them look like English words or names, but I can't necessarily interpret all the terms or verify if there's any that aren't in English.
BY MR. SWANSON:
Q. I want to go to your notes, the paginated notes that's Exhibit 26.
A. I got to pull that out again.
THE REPORTER: Here. That's it; right?
THE WITNESS: Looks good.
BY MR. SWANSON:
Q. We had touched on this yesterday. But if you go to page 42, these are your contemporaneous notes from interviewing an Uday Sharan; is that right?
A. Yes.
Q. And you were discussing with him documents related to Johnson & Johnson India and Johnson & Johnson Thailand; is that right?

A. Yes.
Q. And he told you that the Thailand has batch manufacturing records, raw materials, packaging materials, and that the standard document retention was -- it says five years. There's a question mark next to it.
Does that mean it was five years or around five years, do you remember?
A. He -- he estimated it was five years.
Q. Okay. Now, the Johnson & Johnson Thailand was making baby powder for distribution in Europe, correct, according to your notes?
A. According to my notes.
Q. And would you agree that the legal standards with respect to lawsuits and document retention and those sort of things are tougher in Europe, for example, or the United States, than they are in -- overseas in many countries like the Philippines?
MR. COX: Object to the form of the question. And beyond the scope of the notice.
THE WITNESS: I mean, it would call for some speculation. I mean, I know in Europe and other parts of the world there's -- there's certain privacy standards that are beyond those in

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

the U.S. I don't think it's an easily answerable question even as a hypothetical.

BY MR. SWANSON:

Q. Do you know if the standard, for example, the retention on these types of documents at J -- Johnson & Johnson Philippines, which as I understand makes Johnson's Baby Powder for the Philippines, Philippines consumption, are -- the retention period is as long?

MR. COX: Object to the form.

THE WITNESS: Yeah, I don't have specific information on that.

BY MR. SWANSON:

Q. Were -- just so that the record is clear, in Fong and Leavitt on these overseas searches, in Leavitt, are there contemporaneous records -- well, I should say, are there -- were there any records produced -- located with respect to Johnson & Johnson Philippines and the baby powder manufactured there contemporaneous with her exposure -- or alleged exposure in the 1966 to 1968 period in the Philippines with respect to the mining, milling, or manufacturing of the talc and the baby powder?

MR. COX: Object to the form.

THE WITNESS: I need to understand just a couple parts of your question better.

Were those -- were there contemporaneous documents located that were stored in those countries or that were relating to those countries but stored, let's say, in the United States?

BY MR. SWANSON:

Q. Yeah. Let me break it down a little bit more, and it would be -- it would be either. Are there any documents regarding the mining of the talc for use in Johnson's Baby Powder that was manufactured in the Philippines contemporaneous with her exposure, in other words, for that period 1966-1968?

A. You know, I'm going to look at the specific searches in that area. In terms of information stored in the U.S., there -- I can't speak to that. I have not looked at the global talc production or the specific Leavitt production.

There may -- I'm going to also consult the production summaries to see if there's anything written down about that. So I'm just going to look at those sources.

Q. And since I asked the question specific to

mines, let's throw in there milling and manufacturing since you're doing the search and then we can touch on anything you do find.

A. And I'm just applying my general understanding of your questions to these categories, that is not dispositive, but, for instance by your question, I would assume you don't care about, for the sake of this question, trade organization payments.

Q. Correct.

A. Or Workers' Comp.

Q. I'm asking about the mining, milling -- the mining of the talc, the milling of the talc, and the manufacturing of the baby powder with respect to the Johnson's Baby Powder that was manufactured in the Philippines from 1966 to 1968.

A. I'm sorry, I was reading Pam Downs' section as you were restating the question.

I just want to hear it one more time specific to the country.

MR. SWANSON: Can you read that, my clarification, back to him?

(Record read by the court reporter.)

THE WITNESS: You know -- and I'm not an expert on all the places where talc was mined and

manufactured and I'm not here to respond to that specifically. I'm just noting that in my Pamela Downs notes, it indicates for the Philippines that talc was not mined there but was manufactured there for a while.

BY MR. SWANSON:

Q. Right. And we had touched on this before, and I had informed you based on the discovery responses of Johnson & Johnson that the talc came from Korea.

A. Yes.

Q. So if you have the information about the mining and milling of Korean talc contemporaneous with Teresa Leavitt's exposure in the Philippines from 1966 to '68 that would be also responsive.

MR. COX: So why don't you take a look at what you need to look at and then answer his question.

THE WITNESS: I'm sorry. Take a look at what?

MR. COX: Why don't you take a look at whatever you need to look at and then answer Mr. Swanson's question.

MR. SWANSON: That's fine. Let me -- and I can re-ask the question later.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

BY MR. SWANSON:

Q. Let's just -- let me be clear about the totality of what I am asking and I'm going to ask as to the Philippines and Teresa Leavitt's exposure and I'm going to ask as to Hong Kong.

So for the Philippines, it's going to be the bottling of the talc related to Johnson & Johnson Philippines, the manufacturing, and it will be the mining and the milling of the talc that was used for that. And these are contemporaneous with her exposure. So '66 to '68 period, okay? So that talc would have come from Korea based on what Johnson & Johnson has told us. And then in the Fong case, it would be the Johnson & Johnson baby powder distributed in Hong Kong from 1971 to '83, contemporaneous with that period, and it would be the mining of the talc during that period, mining and milling of the talc during that same period. And that talc, from what we have been told, also came from Korea.

So it's whether or not there are any contemporaneous documents that have been located and produced for that.

A. So I want to -- I want to find the production requests.

Q. Now, the production requests --

Do you have the -- well, yeah. Go ahead and look at that.

A. Actually...

MR. SWANSON: Yeah. Why don't we do this, let's take our break and grab our lunch.

Obviously, since I've committed to a stop time, I don't want to, you know, run out my clock by taking the time to do this.

If you can sort of gather your thoughts during the break, that would be great.

Okay. Let's go ahead and go off the record.

THE VIDEOGRAPHER: Off the record at 12:17.

(Lunch break taken.)

THE VIDEOGRAPHER: On the record at 1:02.

You may continue, Counsel.

BY MR. SWANSON:

Q. Okay. Mr. Mittenthal, we've had our lunch break. Are you okay to continue?

A. Yes.

Q. Good. Before the break, I was asking you very specific questions -- or I was attempting to -- about the Fong and Leavitt cases and whether

or not documents related to the mining and milling of talc or the manufacturing of the baby powder contemporaneous with their exposure in Hong Kong and the Philippines -- and I'll separate them -- were located and produced.

Do you remember that?

A. Yes.

Q. Okay. And have you had an opportunity to look at anything else?

A. So I -- I did this for both Hong Kong and the Philippines: consulted my notes, specifically noncustodial sources, interview notes, including the interview notes with Pam Downs.

I looked at the chart that I had assembled that represented the follow-up collection efforts for Leavitt and Fong.

I then turned to the document production summaries and --

Are we on Fong or Leavitt at this point?

Q. Let's talk about Leavitt first and Johnson & Johnson Philippines, the manufacturing of that baby powder from '66 to '68 and the mining and milling from Korea that was used in that baby powder.

A. Well, I can't answer the questions with

respect to the specific entities of Johnson & Johnson. What I attempted to do was to understand the extent to which those questions have been asked for document production and that document responses have been provided.

To do so, with respect to Leavitt, I looked at this production summary which has been marked as Exhibit 14 and I looked first of all at the Set 3 which is -- has tabs that, in the document production responses that relate to just general questions about entities that supplied talc and mines that were sources of talc and the J&J Company's role in mining and processing of talc and the specified date range to see if there was anything specific to the contemporaneous time frames for Fong or Leavitt -- well, in this case, Leavitt -- or any indications of those overseas locations.

I looked -- as I mentioned, I looked in the RFP Set 3 for those and I looked specifically at responses on, I believe, starting on page 8 which is Request -- I'm sorry -- page 7, Request 22. And I did not see anything specific to the particulars of your question in terms of locations.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

I went to then RFP Set 7 which was specific to the Philippines and the aforementioned date ranges and I consulted to the responses to RFP Set 7 which begin in the binder that I have as tab N as in Nancy, and in the -- starting with page 1, Request 99, I reviewed those productions and production summaries, and, as noted, there were certain documents identified in response to that -- to those searches, including some that were designated confidential. In reviewing those, started with 99, continuing through page 2, I note that in response to RFP 103, "All documents regarding or reflecting the locations where Johnson's Baby Powder was manufactured which was supplied to the Philippines from 1965 through April 1968," there is an indication that there were documents produced and that the Exhibit 1, which is, I believe, a spreadsheet of -- containing the relevant Bates ranges under Tab 2, denotes the documents that were responsive to that.

I also continued going through Request 104 and noted the request for locations where Johnson's Baby Powder was manufactured which was available for purchase in the Philippines from

1966 through April 1968, and also noted documents that were provided in response in Exhibit 1, Tab 2. And then continued on through 104, 105, 106, 107. And then 107, which was documents regarding or reflecting what entities supplied talc that was used in Johnson's Baby Powder supplied to the Philippines from 1965 through April 1968. I noted that in Exhibit 1, Tab 3 there were other documents produced in response to that request, as well as Request For Production 108, which was similar, although instead of supplied to the Philippines, it was available for purchase in the Philippines from 1966 through 19' -- April 1968.

The documents were produced in that same exhibit, Exhibit 1, Tab 3. So that was -- those were the request for production categories that I consulted that yielded documents that had been produced that I believe are in the context of your question.

Q. All right. So you provided a lot of information there. We're going to have to break that down substantially.

You threw me off there. You were actually talking about -- you said Johnson & Johnson, and

maybe I just heard that, but you were actually looking at the Set 2 of request for production to Johnson & Johnson Consumer, Inc.; correct? That's the numbers you were referencing. They're fairly equivalent, but the numbering is different, so I just wanted to be clear. That's what you were just referencing when you were going through Set Number 7?

MR. COX: Look at the footer.

THE WITNESS: Oh. Yeah. I'm sorry, Johnson & Johnson Consumer, yes.

BY MR. SWANSON:

Q. And I didn't have that in front of me. So let me -- and you haven't reviewed the specific documents that were stated as being responsive to those requests; correct?

A. Correct. I noted on the first day that I had run various documents from the production to get an understanding of several hundred documents. I didn't review any of these production sets specifically for that goal.

Q. So, yeah, you kind of -- because I didn't have this in front of me, I wasn't looking at the same thing you were talking about.

So we're going to have to go through it

again even though you gave me that long answer.

Let's start with Request 103 on Set Number 7. That's reflecting the locations, okay? There were a list there of documents. Let's see.

And, I'm sorry, what was the other set that you were referring to, Set Number 5?

A. I believe it was Set 3, and that was just from the standpoint of making sure that in the -- sort of the general request for production that didn't specify a country, I wanted to confirm that there were no mentions of those countries in any of the responses. So I consulted RFP Set 3, the tabs that included 6, 7, 8.

Q. Okay.

A. Just to make sure there were no mentions.

Q. Okay. So let me -- and I'm not going to make too firm of a representation about exactly what has been produced. But let me start with just asking you, or confirming. You didn't review the specific documents that were -- that were identified as being produced to those requests we talked about. So, going back to my original question, if you can answer this because -- well, let me -- let me back up another step.

When I looked at your notes on the

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 569

Philippines in the Hong Kong -- and Hong Kong and looking at what I had looked at from the production in your notes, it looked to me like what had been -- what -- that, for example, Hong Kong they weren't related -- they weren't able to locate any responsive documents.

And, as to the Philippines -- and this is looking at page, I think, 64 of your notes -- saying that nothing had been found in the date range.

So that's where I started with this, is that you had nothing being found in that date range, so -- and you haven't reviewed specifically the documents that were produced in response to the request that you pointed out.

So are you aware of any manufacturing documents with respect to the Philippines Johnson's Baby Powder that were produced for that period from 1966 to 1968?

A. Well, I don't -- I'm interpreting these broadly. So I don't know what "supply" means. For instance...

Q. And "supply" does include manufacturing.

A. Okay. So, for instance, in 101, the documents regarding or reflecting location where

Page 570

Johnson's Baby Powder was manufactured which was supplied to the U.S. Navy in the Philippines in the date range.

So I conclude that that is a part of your question insofar as it relates to manufacturing.

Q. Yes. "Supply" includes manufacturing.

A. Okay. So, for instance, in page 2 of Tab -- I guess this is Set -- Set -- Set 7 --

Q. Uh-huh.

A. -- of -- in the -- in the notebook under Tab N, Number 103 on page 2, "documents regarding or reflecting location where Johnson's Baby Powder was manufactured which was supplied to the Philippines."

So that is "manufactured." There were documents provided that are reflected in Exhibit 1, Tab 2.

Q. Right. And that's regarding the location. Okay. I guess -- and partly I may need to get to the bottom of this by specifically looking through each and every document that was produced. What I am telling you is that I am not aware of documents specific to the manufacturing being produced for the Philippines for that '66 to '68 time frame. And I don't think the answer resolves that issue

Page 571

because the question is not phrased precisely that way and it's phrased broadly enough that it can include other documents. So.

But you haven't reviewed the specific documents that were produced; right?

A. I've sampled them. I have not reviewed them.

Q. Sampled them. Right.

A. Yes.

Q. And your initial -- your initial notes speaking to Pam Downs it indicated that there weren't any documents related to the manufacturing, correct?

MR. COX: Object to the form.

BY MR. SWANSON:

Q. During the -- during the relevant time period.

A. My notes from Ms. Downs covered the onsite searches of archive materials in the Philippines, so that -- that only covered that category of document searches.

Q. As to -- and what about as to the mining and milling by the Korean talc supplier. Do you have any -- has Johnson & Johnson produced documents regarding the mining and milling of the

Page 572

talc contemporaneous with Ms. Leavitt's exposure from '66 to '68?

A. Well, you know, I'm not the best person to interpret what's covered in some of these requests. It is possible that 103 would cover that.

Q. Okay. Let's -- I get that, and -- but that's a specific question. And, you know, whether or not there was a request that covered it, because simply you looking at what tabs were referenced in an Excel spreadsheet and the Bates numbers isn't going to tell you if something was produced specifically responsive to my question.

So -- and if you don't know the answer, that's fine, but I don't want a record that is unclear, so -- and if you don't know and we just need to look at it again, that's okay. But I don't have -- yeah. I think if you can just focus on the question -- and if you don't have the answer based on the information that you have, that's fine.

A. I've gathered a lot of information in anticipation of these topics, including all the productions, my notes. In response to the question at hand, I have tracked down what I think

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

is the best place to look to definitively answer the question. I have certainly not reviewed the documents to determine which ones are specifically responsive, but this is -- this is my best answer to where one would determine those documents that are in the context of your requests.

Q. And as to -- we're not going to get -- obviously get to the bottom of this right now in terms of the -- whether or not those documents are, but if those documents listed aren't regarding the manufacture during that time period of from '66 to '68 of Johnson's Baby Powder at the Philippines facility, then they weren't produced; correct?

MR. COX: Object to the form.

THE WITNESS: Well, once again, what you are asking for sounded a lot like this category. Now, as you said, the category may not be precisely those documents. There may be overlap. But it's the closest approximation of what you're looking for.

BY MR. SWANSON:

Q. I understand that. And that's the best you can do based on that. This is just the question, though, if those documents -- and I've

reviewed them and I haven't seen what I'm looking for here and that's why I'm asking. And, you know, there are a lot of documents, so it's possible I missed it.

But if those -- if those documents regarding the manufacture of the baby powder from '66 to '68 aren't listed among those documents in those tabs that are cited, then they were not produced; correct?

A. That would -- that would make sense.

Q. Okay. And if they hadn't been produced, assuming they hadn't been produced -- and I understand this is a hypothetical -- then they were destroyed at some point; correct?

MR. COX: Object to the form.

THE WITNESS: I mean, that -- that is one explanation. That is also a hypothetical as to what happened, why they weren't produced. They -- they -- there's other explanations.

BY MR. SWANSON:

Q. The other explanation would be what, that a -- not an adequate search was done?

MR. COX: Object to the form.

THE WITNESS: They could have been mislabeled. I'm, you know, in hypothetical land

here, but there are reasons why they -- they could have been misfiled in a different part of the warehouse. I mean, I'm just saying there are -- you know, there are errors in the process that occur from time to time in filing information.

BY MR. SWANSON:

Q. Same question as to Hong Kong. Did you look at Hong Kong to see if you had -- if Johnson & Johnson produced manufacturing documents contemporaneous with Ms. Fong's exposure?

A. So as I mentioned, I consulted my notes, including my typewritten notes, my follow-on with Pamela Downs, the noncustodial document listing. Then I further went to the production summaries for Fong, RFP Set 1. It speaks to mining entities, mines that produced talc for JPP in Hong Kong '70 through '84. Other -- the next four or five entries -- and I went to the corresponding sections, which I believe are in the Fong binder under discovery responses, Tab 3, Subtab C, and looked through -- well, I looked through -- just starting from the beginning, looked through 1, 2, 3, 4. I'm up through -- you know, it was -- it's more difficult to connect your question to the specific categories in Fong. I -- for instance, I

looked at Response 11, "testing of talc marketed in Hong Kong from '70 through '84." There were documents produced for that. I understand that to be part of the manufacturing process.

I looked at response -- Request For Production 12.

I haven't found other document categories that were produced that are directly reflective of your question in Fong, looking at -- looking through the production set.

Q. The same thing in Fong, you haven't looked at the actual documents that were produced under those categories related to Hong Kong manufacturing; correct? I mean, you see where some Bates numbers have been identified; correct?

A. Yes. And I sampled some documents. But I haven't looked at them for the eye to verifying what was there.

Q. Were -- just in terms of audio that was produced in the Leavitt and Fong matters, were the only audio records that were produced related to advertising?

A. You know, I was just checking the noncustodial sources to see if there's any additional information about that. I -- I don't

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

know for sure. An audio file could just be a computer file type that's present in a custodial production in a share directory. I can't speak to the extent to which there may be files that have audio in them.

Q. If you go to Exhibit Number 6 which are the archive search terms. You have -- it's Tab 6 in your binder.

A. Okay. Thank you.

Q. And these are the archive search terms that are used in the ERMS system to locate documents that may have relevant documents to the talc litigation, correct, that are Iron Mountain's archive documents and I believe some onsite collections, too; is that correct?

A. There are -- onsite there is a movable file system in the records-keeping facilities, and the ERMS would have covered that area as well as offsite storage.

Q. And this was the most recent list of archive search terms; true?

A. Yes.

Q. If you go to -- I don't these are numbered, but if you go to the third page of this, they're alphabetical, though, right, the search

terms, the way they're set out here?

A. Well, I don't know if the search descriptions or the terms are alphabetical. I believe it's the search titles, not the terms.

Q. Do you see the search term "fiber" anywhere in these archive search terms?

A. I don't see the term "fiber," but it may be there. As a quick go-through, I don't see it.

Q. That is a term which I don't see it in there and I've looked at it. That's a term that should be in there, shouldn't it, for talc litigation?

MR. COX: Object. Object to the form of the question. Beyond the scope of the notice.

BY MR. SWANSON:

Q. I mean, you told us that people would enter information about the boxes and the amount of information and descriptive information they would vary.

Isn't "fiber" a term that you'd want to look for if you were looking for documents relevant to asbestos talc litigation where there's an allegation that the tremolite that's being found in Johnson's Baby Powder is fibrous tremolite?

MR. COX: Object to the form. Beyond the scope of the notice.

THE WITNESS: You know, I didn't see that as my area to investigate under the scope of the notice. I will say that the composition of the searches is -- some of the attorneys have made their work product, and I have a general understanding that it's designed -- the totality of the search terms are designed to cast a very wide possible net. The search terms have been refined over time. They have been provided to the plaintiffs, as I understand. I -- I can't opine on whether a particular term would have been appropriate in the context of all the terms presented.

MR. SWANSON: Move to strike nonresponsive portions.

BY MR. SWANSON:

Q. If you -- if you see under Exhibit 6, there's a search term "mesothelioma"?

A. Yes.

Q. Okay. Do you know if this system is set up to do stem searches?

A. You know, I did not conduct a -- and I think we got into this on a previous day as well.

I don't -- I didn't understand -- seek to understand the search engine behind ERMS and how it does stem searches or fuzzy searches or if it's Google-like in the way it returns information.

BY MR. SWANSON:

Q. And it makes sense that "mesothelioma" could be misspelled by people; right?

MR. COX: Object to the form.

BY MR. SWANSON:

Q. It's a complicated enough word that one would expect that that could be misspelled; true?

MR. COX: Object to the form.

THE WITNESS: Yes. In general I would agree as a -- as a lay opinion.

BY MR. SWANSON:

Q. And you would want, then, search terms that would pick up possible misspellings, and one way to do that is to have what's sometimes called a "stem search"; correct?

A. For the sake of certain search engines, I would agree with you.

Q. And if you continue on here, if you look at -- if you look in the Ts, do you see the term "talc" in there?

A. Yes.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. There is no term "talcosis" in there, is there?
A. I wouldn't guarantee it, but I don't see it.
Q. I mean, most of these things from your view of this are alphabetical, right, even the search terms and the search description that generally are falling in the same alphabetical range; correct?
A. They appear to be alphabetized.
Q. Okay. If you go to the Cs, you've heard the term "cleavage fragment" when it comes to talc and testing talc for the presence of asbestos?
A. I -- I'm not sure if I know that expression or not.
Q. You haven't heard it?
A. I may have. I don't recall.
Q. It's something that the -- it's an element found in testing results -- or claimed in testing results that, for example, the tremolite that's being found or the anthophyllite is a cleavage fragment and not an asbestos fiber.
Have you heard about that controversy at all?
A. I'm not current on the technical details

of that.
Q. Assuming that I didn't misrepresent that to you, wouldn't it make sense that you would want the term "cleavage" in these archive search terms?
A. You know, once again, my understanding is that these search terms were designed to retrieve boxes that had been denoted a certain way to be sent to storage.
I don't -- I -- I'm not opining on whether a term like that would be appropriate to locate a box in this particular context.
Q. If you go to the Is -- turn to the Is here.
Are you there?
A. Yeah.
Q. "I-N"?
A. Yes.
Q. You see the term "inhalation" anywhere?
A. I -- I don't see the term "inhalation" on this page.
Q. Certainly you can agree with me that "inhalation" is a relevant term when -- a relevant term to the talc litigation; correct?
MR. COX: Object to the form.
THE WITNESS: As I mentioned before, it

may be relevant, but it may not be a criteria to retrieve a box.
BY MR. SWANSON:
Q. And -- now, you say it may not be a criteria to return a box.
The -- the information that you gave me about what were required terms on those boxes, if I remember right, was a date range, the retention cutoff period, and the department; correct? Those were required terms.
A. Well, the retention series.
Q. Okay. Retention series.
A. Which would then be driven off the date range, but yes.
Q. Okay. That's -- and then they were supposed to put in a textual or a narrative description of the contents of the box; correct?
A. Yes.
Q. And there were no hard-and-fast rules that you knew about that were consistent throughout the company in terms of exactly what information was in there; right?
A. As I recall, the department, each individual department, was responsible for how that information was entered based on the

requirements laid out by the SOP of the records department.
Q. So how did Johnson -- based on that and based on the issues that are -- would be relevant here, how did Johnson & Johnson go about determining the terms such as "fiber" and "inhalation" and "talcosis" and "cleavage" are not relevant? Because you don't know specifically what that individual is going to put in their textual description, do you?
MR. COX: Object to the form.
BY MR. SWANSON:
Q. And it's variable.
A. As I mentioned before, the search terms were designed to return a large overly inclusive set of boxes. The search terms have been refined over time and they've been -- the decision as to what goes into a search term is -- is a legal -- ultimately a legal decision.
Q. And they've been refined over time to make changes; correct?
A. Well, that -- I think that's the definition of "refined."
Q. And giving Johnson & Johnson's lawyers the benefit of the doubt in terms of creating that,

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

you would hope that the changes that were made over time were to improve this and make it catch more relevant documents; true?

MR. COX: Object to the form.

THE WITNESS: Well, "improve" is a -- is one rationale that there may have been other specific searches related to Leavitt and Fong that would have been added so it was -- the -- the search terms themselves reflect all of the cases and matters and needs that have been, up until that present time, encapsulated in the -- in the list.

BY MR. SWANSON:

Q. You're not saying this is a perfect list, are you?

A. I don't believe I said that.

Q. Okay. And you're not testifying either that -- you don't know one way or the other whether or not using the terms "talcosis," "fiber," "cleavage," "inhalation" would produce -- would catch more boxes of documents that had relevant information and documents in them; true?

A. That's a hypothetical. I'm not able to speak to that hypothetical, no -- or yes. I mean --

Q. Right. Because you -- you haven't audited that, have you?

A. "Audited" by meaning that I haven't --

Q. By adding -- nobody did an experiment, as far as you know. Johnson & Johnson hasn't audited this to add a search term like "fiber" and see if it would pick up anything else, has it?

A. I -- I don't know. That was beyond the scope of my inquiry for this matter.

MR. SWANSON: Okay. I'll keep to my promise.

MR. COX: Can we go off the record for a moment?

MR. SWANSON: Yes.

THE VIDEOGRAPHER: Off the record at 1:45.

(Off the record.)

THE VIDEOGRAPHER: On the record at 1:48. You may proceed, Counsel.

CROSS-EXAMINATION BY MR. COX:

Q. Mr. Mittenthal, I'm just going to ask you a few questions on behalf of the J&J defendants, okay?

A. Yes.

Q. Do you have an understanding of why you were asked to provide testimony in response to the

topics that were identified in plaintiff's deposition notice?

A. There were a number of different topics in the notice. They covered a number of different functional areas and departments, and my prior experience with the company and as a consultant, my knowledge of the information enabled me to go and speak to people in the various aspects of the company to gather the documentation to cohesively bring all the information together to be able to provide the best answers to those questions.

Q. Did you investigate all of the areas in which you were asked to provide testimony over the three days?

A. Yes, I did.

Q. Can you please describe how you did that investigation?

A. Well, I conducted at least -- I conducted four site visits. During that period, I spoke to various records managers and people with responsibility for document issues. Over time, I expanded the list of people that I interviewed to encompass nearly 40 people and nearly 70 single-spaced typewritten pages of notes.

I requested a number of documents,

including retention schedules, policies and procedures, other supporting materials. I asked for production summaries and built with that information timelines, applications listings, people listings of -- lists of legal holds which I requested, and better in order to understand the document population itself.

I loaded a litigation review tool on my computer and went through various aspects of the production, looked at the exhibit spreadsheets and the various tabs, and put Bates ranges in to look at the documents specifically.

I sampled several hundred documents.

I conducted follow-up interviews.

I -- probably in total I put together about ten different reference aids in order to be able to respond to the questions.

Q. You mentioned interviewing a number of people, nearly 40 people.

What disciplines or functional areas did those individuals cover?

A. They included people in the records function, in the quality function. And that's both supplier quality as well as internal quality control; records officers; IT people; procurement

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

people; people involved with the supply chain; people in the corporate organization, including records officers; third parties, including several vendors who were responsible for assisting in retrieving and staging documents. That brought the total to about close to 40.

Q. And you mentioned that the list of interviewees expanded over time.

Who determined which individuals you interviewed in connection with your fact-finding?

A. I did.

Q. How did you go about doing that?

A. Well, I asked to identify the records officer first. And then that led me to a records person who had more experience actually running the searches in the system, and then that brought me to the corporate records people.

I had previously experience with the corporate reports people, so I knew some of the people to ask and also some of the corporate IT people to ask.

And then, through the records officers at the consumer level, I was able to get names of other people involved with R&D and supply chain and supplier quality and, you know, sort of built

upon those lists additional names.

And then, with respect to the actual collection activities, I knew -- I knew from counsel who the vendors were and sought to interview the vendors.

And then, in terms of some of the follow-up, I found it necessary to speak to people in the corporate secretary's office to learn information about the additional searches conducted for the cases.

Q. Did you identify any individuals at any time during your investigation that you believed were important to your fact-finding but who you did not speak with?

A. I did not.

Q. Were there any questions during your interviews that you wanted to ask people that you were not permitted to ask?

A. There were not.

Q. How did you go about identifying the documents that you said you reviewed?

A. Well, with respect to the records officers, I knew that there were procedures -- and this goes back to my past experience with the company that there were procedures and schedules

at the corporate level as well as at the consumer level or the operating company level. And I knew which procedures were operational at the corporate level, the worldwide policies and supporting schedules. Through the results of my interviews at the consumer level, I learned of the existence of the consumer level schedules and their histories and requested those.

I was also -- also went to the legal team and requested the document productions, their request for interrogatories, the holds, the pleadings of other -- other materials in the case file to best educate myself, both about the nature of the Fong and Leavitt cases as well as the efforts to produce information to date.

Q. In terms of all of the efforts you've described involved in your preparation, over how long a period of time did that occur?

A. I started in the -- in the spring of 2018 approximately March -- in the March time frame. Some of the people I knew had come from earlier efforts in other matters. But my fact-finding in this case -- and I went to all those people, starting in March and interviewed them all going forward.

Q. And in total, how many hours were involved in your preparation to give testimony regarding the topics for which you were designated in the Leavitt and Fong cases?

A. At least 200.

MR. COX: I don't have any further questions.

Thank you, Mr. Mittenthal.

THE VIDEOGRAPHER: This concludes the deposition --

MR. SWANSON: Uh, uh, uh, uh --

THE VIDEOGRAPHER: Oh, I'm sorry. I was -- I was waiting -- I'm so sorry. I was waiting for a response. I saw nothing. I strike that.

MR. SWANSON: I need to take my seat again.

THE VIDEOGRAPHER: Yeah. So sorry.

MR. SWANSON: We're still on the record, aren't we?

Oh, funny.

REDIRECT EXAMINATION BY MR. SWANSON:

Q. I bet you're happy this is about done, huh?

A. Well --

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. I think we all are.
A. I will be happy when it is done.
Q. I just want to clarify some things from the testimony you just gave, and I will be brief.
When you -- you testified in June in the Hayes case; correct?
A. Yes.
Q. And in June, you said you were aware of the Leavitt case but you hadn't been asked to do any specific work with respect to that case.
Do you remember that testimony?
A. Yes.
Q. And you also said you didn't even know about the Fong case.
You remember that testimony in the Hayes case?
A. I didn't recall it, yes.
Q. So you hadn't done any work in these cases up until June; correct?
A. I would disagree that --
Q. Specific to these cases.
A. My work encompassed talc cases and they -- much of my preparation was in connection with Hayes which I supplemented with specific Fong and Leavitt investigation.

Q. Okay. If anyone were to get the impression that all of that work that you were doing was specific to the Leavitt and Fong cases, that would be the wrong impression from the testimony that you just gave in response to Mr. Cox's questions; correct?
A. Well, I -- that -- if that were the impression, that would be wrong.
Q. Right. And you talked about talking to 40 people, but, actually, once you were working on the Leavitt and Fong cases, you spent a few minutes speaking to Pam Downs -- and that was between Hayes and your Leavitt deposition -- and then this last time you spent an hour and a half speaking to Pam Downs, and I think, an hour or so speaking to Ms. -- Ms. French and Giacino; correct?
A. Yes. I spent -- well, I mean, in total the number of hours speaking to Ms. Downs and Ms. Giacino.
Q. Right. So that's about three hours total, and that's just two individuals, or three individuals you were speaking to, and those were the follow-up interviews that you just spoke about; right?

A. Those were interviews that were follow-ups.
Well, I hadn't spoken to Ms. Giacino before that.
Q. And none of those original interviews were done specifically -- of those 40 people were done specifically with the Leavitt and Fong cases in mind; true?
A. They were done with -- with the talc litigation in mind.
Q. Okay. That wasn't my question. They were not done specifically with Leavitt and Fong in mind, were they?
A. Correct.
Q. Everything that you've learned from these individuals you've spoken to, other than the attorneys for Johnson & Johnson, you've reflected in your contemporaneous notes; correct?
MR. COX: Object to the form.
BY MR. SWANSON:
Q. Except for the follow-up interviews where you didn't produce contemporaneous notes; is that correct?
MR. COX: Object to the form.
THE WITNESS: Well, what I've learned

encompasses not just my notes but the materials I've assembled. The policies and procedures, the supporting documents, that is part of what I learned.
BY MR. SWANSON:
Q. And I may have asked the question poorly.
But everything that you learned from speaking to people at Johnson & Johnson other than the lawyers who have information about document retention, document searches, document productions, the various platforms in which documents are kept, those are reflected in your contemporaneous notes that have been attached to this transcript; correct?
A. Yes.
Q. Except for the follow-up interviews, the very brief follow-up interview with Pam Downs before the Leavitt, the first volume of the Leavitt -- Leavitt and Fong deposition, and then you've got some notes that I wouldn't call "contemporaneous notes" that are summarized in a chart that you produced that you brought with you to this -- to the second volume of your deposition yesterday; true?
A. I'm sorry. I heard the words, but I

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

wasn't sure what the question was on the table at that point.

Q. Okay. The bottom line is, your -- if you spoke to somebody about these talc-related issues in the work that you just described to Mr. Cox, that's reflected in your contemporaneous notes except for a little bit of your follow-up conversations; correct?

A. I would generally agree.

MR. COX: Object to the form.

BY MR. SWANSON:

Q. Okay. And how much have you billed Johnson & Johnson for your work in this case?

A. It will be -- you mean the bills that have actually gone out the door? I don't know. It will be about close to probably a hundred thousand.

Q. Okay. That's $500 an hour for 200 hours?

A. Yes.

Q. I'm terrible at math.

And that's a hundred -- that's a hundred thousand dollars just in these two cases; correct?

MR. COX: Object to the form.

BY MR. SWANSON:

Q. Or does that include the prior work that

you were talking about?

A. That includes the prior work.

Q. Okay. Now, you mentioned that you -- and we talked about this last time a little bit -- that you actually looked through several hundred pages of documents that were responsive documents produced by Johnson & Johnson in Fong and Leavitt; correct?

A. Yes.

Q. And you're aware, though, that something like at least 250,000 different documents were produced; correct?

A. Yes.

Q. And, even though you've seen the responses to the requests for production and you've seen what was described abstractly in terms of the Excel spreadsheets and the various tabs and the Bates numbers, you didn't systematically go through the production and sort of audit the production and see if this was exactly what was produced in response to different requests, have you?

A. That's right. That was not something I viewed as my responsibility.

Q. And you have not audited -- even though

you asked for the holds, you haven't audited holds for Johnson & Johnson to find out whether or not there's been good compliance with those holds, have you?

MR. COX: Object to the form.

THE WITNESS: I've spoken to people in the records functions to understand how hold programs are delivered, how compliance is measured. I haven't audited individual holds.

MR. SWANSON: Move to strike nonresponsive portions.

That's all I have. Thank you.

MR. COX: One question.

MR. SWANSON: Okay. Do you want to come over here for it?

MR. COX: No, that's fine.

MR. SWANSON: You can bounce it off me. And he can look at me when he's answering.

RECROSS-EXAMINATION BY MR. COX:

Q. Mr. Mittenthal, did all the work you did for the Hayes case inform the testimony you've given in response to the topics in the deposition notices in the Leavitt and Fong cases?

A. Yes, it did.

MR. COX: That's all I have.

MR. SWANSON: Okay.

THE VIDEOGRAPHER: I'm afraid to say anything.

MR. SWANSON: You should be.

Let's go off the record.

THE VIDEOGRAPHER: This concludes the deposition of James Mittenthal.

Volumes II and III contain eight media disks. These originals are to be retained by Tele-Video Production Services. Telephone is (510) 893-0555.

Copies are available to interested parties unless otherwise stipulated.

Off the record at 2:05.

(Whereupon, the deposition was concluded at 2:05 p.m.)

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

SIGNATURE OF DEPONENT

I, the undersigned, JAMES PETER MITTENTHAL, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE
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JAMES PETER MITTENTHAL, Date

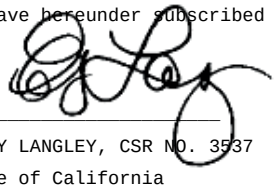
STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I, EARLY LANGLEY, a Certified Shorthand Reporter, State of California, do hereby certify:

That JAMES PETER MITTENTHAL, in the foregoing deposition named, was present and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken before me at said time and place, and was taken down in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings that took place;

IN WITNESS WHEREOF, I have hereunder subscribed my hand on October 22, 2018.



_____
EARLY LANGLEY, CSR NO. 3537
State of California

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EXHIBIT 11

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NO. MID-7385-16AS

STEPHEN LANZO, III, AND KENDRA LANZO,

Plaintiffs,

v.

CYPRUS AMAX MINERALS COMPANY, et al.,

Defendants.

TRIAL

(VOLUME XX)

Wednesday, February 28, 2018
9:25 a.m.
Middlesex County Courthouse
New Brunswick, New Jersey

B E F O R E:
H O N O R A B L E A N A C. V I S C O M I, JSC

REPORTED BY: ANDREA F. NOCKS, CCR, CRR

Job No. NJ2786584

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ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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INDEX

PAGE

WITNESS:
WILLIAM EDWARD LONGO

EXAMINATION BY:

MR. FALK 4058
MR. SATTERLEY 4072,4152
MS. BRANSCOME 4144

WITNESS:
JACQUELINE MOLINE

EXAMINATION BY:

MR. ELDER 4192
MR. BROCK 4196

EXHIBITS

EXHIBIT NO. DESCRIPTION ID EV

DX 5920 4060
Exhibit 1248 4074
Exhibit L-42 4105
L-41 4114
DX 8791 4147
C-18 4155
C-19 4156
C-20 4156
C-21 4158
Exhibit 8629 4229
Exhibit 8074 4235
Exhibit 8351 4239
DD 60 4253
Defendant's Exhibit 8672 4274
Exhibit 7114 4279

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

(Sidebar.)
THE COURT: Welcome back. I will talk to you later about this. I sprained it. Not good so, luckily it's not my right hand.
MR. FALK: That's my problem.
THE COURT: I know.
Mark, are we on sidebar? Sounds like it. Okay.
MR. MAIMON: Mark is hiding.
THE COURT: What else, for high tech, you know.
So you have a little bit more with Dr. Longo.
MR. FALK: Correct.
THE COURT: And then --
MR. SATTERLEY: My redirect.
THE COURT: So I need to decide that issue with regard to the document.
MS. BRANSCOME: I had thought the question was whether it would just be admitted. It has been shown. I thought the question was --
THE COURT: We have to deal with it on redirect.
MR. SATTERLEY: We originally made a motion to strike the testimony and the court

deferred that ruling because she wanted to review the case law and that's what our discussion was yesterday. And so I am prepared to do it, handle the redirect if your Honor overrules our objection, but we need to figure that out.
MS. BRANSCOME: My understanding was, you obviously know your ruling, but I thought you had ruled with respect to the motion to strike that the question was still open whether it was for identification purposes or admission.
THE COURT: Incorrect. I had reserved on all of that. I'm ready to rule on it to allow it in, so we're on the record, so...
MR. SATTERLEY: Are we on the record now?
THE COURT: Yes. We are on the record.
MR. SATTERLEY: Okay.
THE COURT: So I am going to allow it in.
MR. MAIMON: Into evidence or as a learned treatise?
THE COURT: Learned treatise.
MR. SATTERLEY: That doesn't come into evidence, it's displayed but not coming into

evidence, just as long as --
THE COURT: All right. We're set on that.
MR. MAIMON: Just so it's clear, our motion to strike the testimony is denied?
THE COURT: Is denied. Correct. Motion to strike is denied. It is a learned treatise. It's not being admitted into evidence so it's not going to go back to the jurors.
MR. SATTERLEY: I want to display but I'm not going to introduce --
THE COURT: Right.
MR. MAIMON: Understood.
THE COURT: We're waiting for the other juror, so there's nothing else.
MR. FALK: Time to hit the restroom.
THE COURT: Yes. Good idea.
(Sidebar.)
(Recess: 9:28 a.m. to 9:35 a.m.)
COURT OFFICER: Jury entering.
(Jury enters.)
THE COURT: Good morning. Good morning. Good morning. Please be seated.
This is the continued trial in the matter of Stephen and Kendra Lanzo versus Cyprus

Amax Minerals Company, et al., Docket Number 7385-16.
May I have appearances, please, on behalf of the plaintiffs.
MR. MAIMON: Thank you, your Honor. Good morning, everyone. Moshe Maimon, Joe Satterley and Denyse Clancy on behalf of Stephen and Kendra Lanzo.
THE COURT: On behalf of the defendants Cyprus Amax Minerals Company and Imerys Talc America Incorporated.
MR. McMEEKIN: Good morning, ladies and gentlemen of the jury. John McMeekin, Scott Elder and Eric Falk.
THE COURT: On behalf of the defendants Johnson & Johnson and Johnson & Johnson Consumer Incorporated.
MR. BROCK: Good morning, your Honor, and good morning. Kimberly Branscome, Matt Summers and Jack Frost.
THE COURT: Good morning.
So as you may recall, yesterday we had on plaintiff's witness corporate designee for Imerys, Julie Pier. She will return either later on today or tomorrow to complete her testimony.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Plaintiffs may call their witness.
MR. SATTERLEY: Dr. Longo is returning back. He's in cross-examination by Imerys and Cyprus.
THE COURT: Thank you.
Good morning, Dr. Longo.
THE WITNESS: Good morning, your Honor.
THE COURT: So it's been a few days since you've been here, so I'm going to ask the officer to re-administer the oath.
COURT OFFICER: State your name for the record.
THE WITNESS: William Edward Longo.
COURT OFFICER: Provide the spelling of your last name for the record.
THE WITNESS: L-o-n-g-o.
W I L L I A M E D W A R D L O N G O, sworn.
COURT OFFICER: Thank you. You may be seated.
THE COURT: Whenever you're ready, Mr. Falk.
MR. FALK: Thank you, your Honor.
CROSS-EXAMINATION BY MR. FALK:
Q. Dr. Longo, good morning, again.

A. Good morning, sir.
Q. Last week you talked with Miss Branscome and her magnet board about dates for various bottles.
Do you remember that?
A. Yes, sir.
Q. I want to focus in on two specific dates for the 17 containers for which you found amphibole particles in your August 2 report. Okay?
A. That's fine.
Q. I have looked through your chain of custody documents, your prior testimony on this issue, and am I correct that you have no documentation for any of those 17 containers that specifically dates them as having been manufactured from 1980?
A. That's correct.
Q. Second timeframe, 1989 to 2003, based on my review of everything, the only container that might fit in that timeframe, 1989 to 2003, is 65228-001, Table 4 of your report, and I think the information supplied to you is that it's 1995 or earlier. Am I correct?
A. That's correct. Johnson & Johnson said it was 1995 or earlier. There's actually a

date on that bottle that said 1994.
Q. Thank you.
And that particular container is one of the containers where you found Richterite, per your discussion with Miss Branscome last week, correct?
A. Richterite and tremolite, yes, sir.
Q. All right. Dr. Longo, let's pick up with where we were last week with Dr. Wiley.
We were talking a little bit last week about Dr. Wiley and her background.
Are you aware that she was asked by NIOSH to be a peer-reviewer for their publication Asbestos Fibers and Other Elongate Mineral Particles, State of the Science and Roadmap for Research?
A. No.
MR. FALK: Beth, can I have the roadmap, please.
BY MR. FALK:
Q. I'd like to show you what's been marked for Identification purposes as DX 5920.
Your Honor, may I approach?
THE COURT: Yes.
MR. FALK: Joe, could you bring that

up, please.
BY MR. FALK:
Q. Dr. Longo, I would ask you to turn your attention to DX 5920-19. It's Roman Numeral XVII. Joe, if you can go there.
MR. SATTERLEY: I'm confused. What page number are you going to?
MR. FALK: The Bates number is DX 5920-19. In the document itself the page number is Roman Numeral XVII.
BY MR. FALK:
Q. Tell me when you're there, Doctor.
A. I'm there.
Q. Joe, can we enlarge the bottom part where it says, "Peer-reviewers."
Can you see down at the bottom of the page it lists the peer-reviewers, correct?
A. That's correct.
Q. If you turn the page to 5920-20, Joe, could you do that, and there's Dr. Wiley, right?
A. Yes, sir.
Q. Now, you are aware that in 1992, OSHA amended its asbestos regulations to remove from those regulations non-asbestiform tremolite, non-asbestiform anthophyllite, and non-asbestiform

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

actinolite.
Are you aware of that?
A. Yes.
Q. Are you aware that Dr. Wiley was called upon by OSHA to testify at the hearings on that issue?
A. No.
Q. Now, last week when we were talking about Dr. Wiley, we talked a little bit about ASTM 5755.
Do you remember that?
A. Yes.
Q. Beth, can I have 5755, please.
Your Honor, just a moment. Apologies.
I'd like to show you what's been marked as DX 5942 and then also DX 6767.
Your Honor, may I approach?
THE COURT: Yes.
MR. FALK: For you.
THE COURT: Thank you.
BY MR. FALK:
Q. Joe, could we bring up DX 5942, ASTM 5755.
Want to go all the way down -- first

off, Dr. Longo, that's the settled dust test protocol you chaired the subcommittee that shepherded in this ASTM, correct?
A. Yes, sir. I wrote it.
Q. Okay.
A. Pretty much with the help of the subcommittee.
Q. Okay. Even better.
Joe, can we go down bottom right corner 3.1.1.
And under Terminology, you wrote, "Asbestiform: A special type of fibrous habit in which the fibers are separable into thinner fibers and ultimately into fibrils. This habit accounts for greater flexibility and higher tensile strength than other habits of the same mineral. For more information on asbestiform mineralogy, see references 1 through 3."
Did I read that correctly?
A. You did.
Q. All right. And Joe, could we go to the very last page, the references. Number 1.
Reference Number 1 is an article by Steel and Wiley, Mineralogical Characteristics of Asbestos in the book, Geology of Asbestos Deposits,

correct?
A. That's correct.
Q. And if you go to DX 6767, and Joe, if we can bring up the title of that, please. 6767. And the title and the authors.
And, Dr. Longo, DX 6767 is Dr. Wiley's article that's reference numbered 1 in 5755, correct?
A. That's correct.
Q. All right. ASTM is a prestigious organization, correct?
A. Yes, sir.
Q. Are you familiar with the book published by the ASTM in 2000, lead author Michael Beard, Advances in Environmental Measurement Methods For Asbestos?
A. Some of the articles, yes.
Q. Okay. Are you aware that Dr. Wiley published an article in that ASTM book?
A. No.
Q. Can we have, Beth, 6073.
Your Honor, may I approach?
THE COURT: Yes.
A. Thank you.
BY MR. FALK:

Q. Joe, can we just bring up the title and the author.
Little further down, Joe, you can see the reference listing also.
And, Dr. Longo, what you have in front of you is Dr. Wiley's article published in Michael Beard's ASTM textbook, correct?
A. That's what it states.
Q. The title of that is, "The Habit of Asbestiform Amphiboles: Implications for the analysis of bulk samples," correct?
A. That is correct.
Q. All right. Now, Dr. Longo, before we get into her 2016 publication which was showed to you last week, you are not going to tell this jury that Dr. Wiley's publications on asbestiform and non-asbestiform particles are publications that experts in the field of testing for asbestos would not review, refer, rely upon.
MR. SATTERLEY: Objection, your Honor.
THE COURT: Sustained.
MR. FALK: State that one at a time.
BY MR. FALK:
Q. You are not going to tell this jury

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

that Dr. Wiley's publications on asbestos and non-asbestiform are publications that experts in the field of asbestos testing would not read?

MR. SATTERLEY: Same objection, your Honor.

THE COURT: Overruled.

A. I'm not going to tell them that they're not going to read it, that's correct.

Q. Same question, experts in the field of testing for asbestos would review? You're not going to tell the jury that experts in the field would not review those publications?

A. I'm not going to tell them that they've not. I'm not going to tell them that they are. I can't speak for other experts. I don't know what other experts are thinking or what their point of views are.

Q. All right. Let's go to the 2016 article that's been previously identified as D 6770. I don't know if you have a copy with you.

A. I do. The one you gave me.

Q. All right. I didn't know if you brought it back.

Anybody else need a copy?

THE COURT: You're stuck with them.

BY MR. FALK:

Q. Now, Dr. Longo, in this article, Dr. Wiley analyzed 31 sets of data and four sets of summary data of asbestiform and non-asbestiform particles and came up with length and width criterion for populations of what she called abundant fibers of asbestos, correct?

A. That's correct.

Q. And that length and width criteria is length greater than five microns, width less than 0.25 microns, including width less than 0.155 microns, correct?

A. That is correct.

Q. Joe, can we go into the PowerPoint, please.

MR. SATTERLEY: Object, your Honor.

THE COURT: Sidebar.

(Sidebar.)

MR. SATTERLEY: I'm sorry.

THE COURT: What's the nature of the objection?

MR. SATTERLEY: Same objection. It hasn't been established this particular article, I understand he went to other articles, but this particular article is authoritative, is it a learned

treatise, or that it's the type of information that experts would reasonably rely upon.

THE COURT: Lay the foundation. Thank you.

(Sidebar ends.)

THE COURT: Objection sustained. Please rephrase.

BY MR. FALK:

Q. Dr. Longo?

A. Yes, sir.

Q. The 2016 article that is now in front of you, is that the type of article that experts in the field of testing for asbestos would rely on?

A. I can't speak for other experts. This is not an article that I would rely on in these matters. I disagree with the counting protocol. It --

MR. FALK: Your Honor, move to strike. I just asked him --

THE COURT: Did you finish the response as to whether or not experts would rely upon this in this field?

THE WITNESS: That part of the question, yes.

THE COURT: Thank you. So I'm going

to strike the rest of the testimony. Continue.

MR. FALK: Your Honor, may I now proceed?

THE COURT: Yes.

BY MR. FALK:

Q. Dr. Longo, I'd like to compare the particles from the 17 positive containers with Dr. Wiley's criteria.

MR. SATTERLEY: Objection, your Honor.

THE COURT: Sustained.

MR. FALK: Move on. Can I have DX 6745, please.

Your Honor, may I approach?

THE COURT: Yes.

BY MR. FALK:

Q. I'd like to show you, Dr. Longo, what's previously been marked as DX 6745, OSHA regulations.

THE COURT: Thank you.

MR. SATTERLEY: Can we just get the date? Is it 2012?

MR. FALK: Yes.

MR. SATTERLEY: Thank you.

BY MR. FALK:

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. Dr. Longo, you're familiar with those regulations, correct?
A. Yes, sir. Many parts of it.
Q. Could you turn to appendix J, which you can find at 6745.78.
A. Okay.
Q. And Joe, if we can just bring up the title now.
Just to make sure everyone's oriented, including the jury, this is appendix J, Polarized Light Microscopy For Asbestos, correct?
A. Correct.
Q. Could you turn to 6745.88, section 3.5.
Joe, could we go there, please?
MR. SATTERLEY: I didn't catch the last part.
MR. FALK: 6745.88. Analytical procedures.
If we could go to Number 5, Joe, could we highlight the last sentence, please, of Number 5. Next to last sentence, I'm sorry, Joe, my mistake, beginning with identification.
BY MR. FALK:
Q. OSHA says here in section 3.5,

"Identification of a particle of asbestos requires that it be asbestiform."
Did I read that correctly?
A. That's what it states.
Q. And could you go to the next page, .89, please. Joe, could we go there. And Joe, could we cull out the first sentence for the jury, please.
"For the purpose of regulation, the mineral must be one of the six minerals covered and must be in the asbestos growth habit."
Did I read that correctly?
A. You did.
Q. And Joe, could we go to the third to last sentence, beginning asbestos, and over on the right side. Could you cull out that sentence and the next sentence, please.
Then OSHA goes on to say, "Asbestos and asbestiform minerals are usually characterized in groups by extremely high aspect ratios greater than 100-to-1."
Did I read that correctly?
A. You did.
Q. And the next sentence says, "While aspect ratio analysis is useful for characterizing

populations of fibers, it cannot be used to identify individual fibers of intermediate to short aspect ratio."
Did I read that correctly?
A. Yes, sir, you did.
Q. And we go to .90, the next page, please. And Joe, the very first sentence in that last paragraph.
And then OSHA also says, in appendix J, "Care must be taken when analyzing by electron microscopy because the interferences are different from those in light microscopy and may structurally be very similar to asbestos."
Did I read that correctly?
A. That's what it states. Yes, sir.
MR. FALK: Your Honor, if I can just have a moment to confer with my colleague.
Your Honor, in the interest of time, nothing further.
THE COURT: Thank you. Redirect.
MR. SATTERLEY: Yes, your Honor.
REDIRECT EXAMINATION BY MR. SATTERLEY:
Q. Dr. Longo, picking up where counsel just left off, care must be taken. Did you take care, were you careful in your analysis with regards

to all the analysis of Johnson & Johnson products?
A. Yes, sir. There has been no suggestion that what we have identified by transmission light microscopy, the types of asbestos fibers in bundles we found were not exactly what we said.
Q. And counsel, if I can have the -- Mark, if I can get the Elmo -- showed you a page, OSHA regulation, 2012, page 89.
May I display, your Honor?
THE COURT: Yes.
BY MR. SATTERLEY:
Q. It has the chart, is this the identical chart to what we went over in the 1977 Campbell article?
A. It is.
Q. And did we talk about asbestiform, fiber, fibrous, we talked about that already, correct?
A. Yes, sir.
Q. Counsel asked you about Ann Wiley and he gave you an article and had you read it and then he showed you a couple other articles about Ann Wiley today.
Do you know Ann Wiley, know of her?

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

A. Know of her. I don't know her personally.
Q. And are you familiar with her involvement within the talc industry?
A. Yes.
Q. And what's your understanding, what's your knowledge about that?
A. She is a consultant for quite some time for Vanderbilt.
Q. For R.T. Vanderbilt, a talc company?
A. Yes, sir.
Q. And are you familiar with the fact that R.T. Vanderbilt had Ann Wiley become a tenured professor at the University of Maryland?
MR. FALK: Objection, your Honor.
THE COURT: Objection sustained.
BY MR. SATTERLEY:
Q. Let me hand you what's marked as Exhibit 1248.
May I approach, your Honor?
THE COURT: Yes.
BY MR. SATTERLEY:
Q. Is this a document 30 some odd years ago --
MR. FALK: Your Honor, sidebar?

THE COURT: Sidebar.
(Sidebar.)
MR. FALK: My objection to this, your Honor, is relevance. It doesn't establish the point that he's trying to make.
MR. SATTERLEY: The letter where they promoted her and the letter where they said it's the most important part of her tenure. She's worked for the talc industry for 30 something years. The main --
THE COURT: Wait.
MR. ELDER: Sorry.
THE COURT: Hold onto that thought. Go ahead.
MR. SATTERLEY: The main defense they're going to put forth through their experts, Matt Sanchez and others, is that Ann Wiley is the God of mineralogy, and this is important to put into context of her background that he's aware of.
THE COURT: Thank you.
MR. FALK: Your Honor, there's hearsay, lack of foundation, relevance. None of that's been established here. You heard my colleague whisper to me.
THE COURT: I didn't.

MR. FALK: There's no evidence that Dr. Longo's been aware of it outside of litigation either.
MS. BRANSCOME: I would also add, your Honor, attacking the credibility of Dr. Wiley, Mr. Falk actually did not get into any of the substance of her findings, I don't think it's appropriate with Dr. Longo. If what Mr. Satterley said is true and we present affirmative evidence of Dr. Wiley's conclusions, perhaps that would be appropriate, although I would still object to this particular document as hearsay and not establishing the point.
But the reality is Dr. Longo has not actually testified about any of the substance of Dr. Wiley's work at this point, and so this is just a pure credibility attack on a woman who's not here.
THE COURT: So for the record, this document, L-48, is a letter dated November 12, 1985, on University of Maryland letterhead from Luke Chang, the chairman, to a Mr. Thompson, Manager of Mineral Ceramics and Paper Division, R&D at Vanderbilt. "Thank you very much for your letter of evaluation of Ann Wiley. It will constitute the most important piece of document to be used in the

entire promotion and tenure process. I'm grateful to you."
So you want to use this?
MR. SATTERLEY: Just to establish that R.T. Vanderbilt assisted in getting her a promotion. That's it.
MR. FALK: I think Ms. Branscome's point is well taken. If I had been allowed to get into the details, maybe, but right now it's a nothing.
MR. SATTERLEY: The other two articles, he showed three articles. One he didn't get into the details, the other two he did.
MR. FALK: I was trying to lay the foundation for the 2016 article, which ultimately I was not successful.
THE COURT: Right. You didn't use the other two articles about her position on one of them, this goes to potential conflict or motive, so I'm going to allow it. You can use it.
(Sidebar ends.)
MR. SATTERLEY: May I proceed, your Honor?
THE COURT: Yes.
BY MR. SATTERLEY:

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. And, Dr. Longo, is this a letter dated November 12, 1985, from University of Maryland to R.T. Vanderbilt Company saying, the Chairman of the Department of Geology, it says -- by the way, did you know C.S. Thompson?
A. I know Slim Thompson.
Q. His nickname was Slim, correct?
A. Yes, sir.
Q. Was he a part of the ASTM committee work that you did back in the years ago?
A. Oh, yes.
Q. And it says, "Dear Mr. Thompson" -- I'm sorry. "Thank you very much for your letter of evaluation of Ann Wiley. It will constitute the most important piece of document to be used in the entire promotion and tenure process. I am grateful to you. Sincerely," and then the chairman, "Luke Chang," correct?
A. Correct.
Q. And your work on the ASTM, you said Slim Thompson, or Dr. Thompson, was involved in that as well?
A. He was.
Q. And did you and he butt heads with regard to certain issues on that committee work?

MR. FALK: Objection.
THE COURT: Sustained. How about rephrasing?
BY MR. SATTERLEY:
Q. Did you and he disagree?
A. The committee disagreed with his views on what should be in the ASTM 5557 dust method.
Q. And counsel also had you look at 5920.
A. Yes, sir.
Q. The NIOSH publication from a couple years ago called the roadmap.
Do you remember that?
A. I do.
Q. And, Mark, can we get the Elmo back again.
And he showed you this page right here. And Ann Wiley at the University of Maryland, are you aware if her involvement with R.T. Vanderbilt is disclosed at any point in time in this document?
MR. FALK: Objection.
THE COURT: Overruled.
A. Not that I'm aware of.

Q. Now I want to switch gears about what you and the J&J attorney talked about last week. One of the questions she asked you a few times was about the bottles, and whether or not those bottles were Mr. Stephen Lanzo's bottles. And she asked you that question and I think you said no. And what I wanted to ask you is a little bit different.
Of all the bottles you evaluated, all the J&J bottles, the containers, all the documents you looked at, is there anywhere, anything on the bottles that would tell Steve Lanzo or his mother you better maintain and keep in your custody this product for future testing?
MS. BRANSCOME: Objection.
THE COURT: Sustained.
BY MR. SATTERLEY:
Q. Is there anything in the documents that you saw that advised anything about the need for testing of the J&J products by the end user?
MS. BRANSCOME: Objection.
THE COURT: Overruled.
A. No. There's nothing on there that states that. Its use and -- use the material, then dispose of the empty bottle if you wish.
Q. Now, counsel also went over a list of

documents and several specific historical documents. I'm not going to go over all of them, I will touch upon a few of them. But one document already into evidence is 2455, January 3rd, 1974.
May I publish, your Honor? It's into evidence.
THE COURT: Yes.
BY MR. SATTERLEY:
Q. And this is from J&J, January 3rd, 1974. It says, "Over the past three years, there seems to have been general agreement that the transmission electron microscopy is the only absolute proof with electron diffraction for identification of asbestos in talc."
Are you familiar with this document?
A. I am.
Q. And did you employ the exact process that they say in 1974 is the only absolute proof for identification of asbestos in talc?
A. Yes. All the years I've been doing transmission electron microscopy I've picked the best method, the method that will give you all the information that XRD might give you and PLM give you, but both methods can't positively identify all the size fibers. So we didn't skip any steps. We

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

just went to the gold standard for the analysis since it covers everything that the other methods can give you at times. Plus more.

Q. Now, there was also a discussion and counsel for J&J said several times, called Exhibit 10005 your reliance list.

And may I publish DX 10005?

THE COURT: Yes.

BY MR. SATTERLEY:

Q. And it's got, that's the exhibit number, at the bottom, there.

Do you remember counsels calling this several time your reliance list?

A. Yes, sir.

Q. And was it a index used in binders at some other proceeding, some other depositions?

A. Yes. It was just to categorize the 3,000 or so documents. It was never a list I put together that I was relying on all 164 documents. It was just an index.

Q. Just so the record's clear, you didn't put this list together. It was put together by somebody else?

A. That's correct.

Q. You said there was, actually it's 167

documents on this particular list.

A. I didn't have the exact number, but it's 167, not 164. I misspoke.

Q. Counsel said, she showed you DX 7038, the -- this is the University of Cardiff document.

Do you remember that document?

A. Yes, sir. I do.

Q. And she said to you and suggested to you that you had reviewed it or it wasn't on this list.

Do you remember that?

A. I do.

Q. And if we look at number 45 -- by the way, this document is dated September the 8th, 1972, correct?

A. Yes, sir.

Q. If we look on the document that counsel was calling your reliance list but it's actually just an index, 45, does it say, "Exam of Italian mines, September 8, 1972"?

A. Yes, sir. It does.

Q. So whoever put this list together didn't put the University of College Cardiff before the date, correct?

A. That's correct.

Q. But it was on the index that somebody put together that made those binders, correct?

A. Correct.

Q. Also, counsel went to 7113, and that's a July 1976 document.

Do you remember that?

A. Yes, sir.

Q. And she went to one particular, one particular test, but she skipped over -- she didn't address, I should say, number 84, Shower to Shower Body Powder, Johnson & Johnson. It says non-detect.

Do you see that?

A. I do.

Q. And you have considerably reviewed with regard to sample number 84, TP-83B, which is already in evidence, correct?

A. Correct.

MR. SATTERLEY: And, your Honor, request permission to publish. It's already in evidence.

THE COURT: Yes. What is that again? What is the --

MR. SATTERLEY: I'm sorry. This is the description of the sample, this is TP-83B, dated 1974, January 2nd.

THE COURT: Thank you.

MS. BRANSCOME: Your Honor, may I have a moment? I'm not sure that one's been admitted.

MR. SATTERLEY: It has.

THE COURT: Take it down for a moment. It's up on the screen.

MR. SATTERLEY: That's the one that --

THE COURT: This is the document.

BY MR. SATTERLEY:

Q. While counsel is looking at that, does counsel mind if I proceed on to the next document or do you want me to wait? I'll wait.

MS. BRANSCOME: I can multi-task, but there are some limits. Give me one second.

MR. SATTERLEY: No problem.

MS. BRANSCOME: Okay. It is in, Joe. That was my fault.

MR. SATTERLEY: May I publish, your Honor?

THE COURT: Yes, please.

MS. BRANSCOME: Can I have a copy?

MR. SATTERLEY: I'll give it to you after I publish it, one or two minutes.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Mark, can I have the Elmo back up?
BY MR. SATTERLEY:
Q. Sample 84 in this document into evidence says it contains 107 fibers of tremolite actinolite per milligram, correct?
A. Correct.
Q. Is that a document you considered in this case?
A. Yes, sir.
Q. What's the significance of optical microscopy finding 107 tremolite actinolite fibers per milligram?
A. That demonstrates that that material has a very significant amount of asbestos fibers in there. Since optical microscopy will miss certain size of these types of fibers, so if you have that many by optical microscopy, transmission electron microscopy would give you the full picture, so that would be a higher concentration, in my opinion.
Q. And that's the Johnson & Johnson Shower to Shower body powder in the early 1970s, correct?
A. Correct.
Q. Counsel also asked you about 7053, and this is DX -- this is Defendant's Exhibit 7053.

Do you remember that discussion?
A. Yes.
Q. And she compared it to the list, whether it was on the list, and I think there was some discussion back and forth.
If we skip over to 7053.19, which is part of the Defendant's Exhibits, it is October 27, 1972, McCrone testing, correct?
A. Yes, sir.
Q. McCrone testing of Johnson & Johnson Baby Powder, correct?
A. Yes, sir.
Q. And if we look at item 50, item 50 of that index, McCrone examination of J&J Baby Powder on the very same day, correct?
A. Yes, sir.
Q. So you did consider the McCrone testing that's a part of 7053?
A. Yes, sir. I reviewed that.
Q. Counsel asked you about a 1986 letter which is from Swanson to a consumer.
Do you remember that letter to the consumer?
A. Yes, sir.
Q. And that's marked as 7214. And

counsel for J&J showed parts of that letter with you during your examination.
Do you remember that?
A. I do.
Q. And this, I want to go to the section counsel didn't talk with you about. And that's this portion right here, on the second page. It says, "By 1976, asbestos analytical methodology was sufficiently developed that the Cosmetic, Toiletry and Fragrance Association, CTFA, could issue a specification copy enclosed for cosmetic talc. This specification required that such talc be free of fibrous amphibole, e.g., asbestos in the form of asbestiform tremolite, using a CTFA method of analysis that is capable of detecting 0.5 percent of amphibole asbestos. This specification contributed to the continued improvement of cosmetic talc quality."
Do you see that?
A. Yes, sir. I do.
Q. And is that the CTFA J4-1 method?
A. That is. That's their XRD method for determining amphibole asbestos in talc.
Q. And so the letter to this consumer in 1986, a decade later, was talking about the fact

that the CTFA J4-1 method was the method that was being used, correct?
MS. BRANSCOME: Objection.
THE COURT: Overruled. You can answer.
A. Yes. With all its problems.
Q. And I was going to say, I don't know if we fully talked about, does the J4-1 method that's referenced in that document have significant problems for the identification of asbestos?
MS. BRANSCOME: Objection. Leading.
THE COURT: Objection sustained. Please rephrase.
BY MR. SATTERLEY:
Q. Tell us your opinions regarding the J4-1 method, Dr. Longo.
A. Well, it uses an XRD method and has a detection limit that the material has to have at least 0.5 percent asbestos in it. The problem with that in many of the samples, when you're dealing with these accessory minerals, the concentration isn't at .5 percent, it's much lower, even though it has significant fibers.
The second is that all these methods, analytical methods in the lab, you have to validate

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

them. Meaning if I say I'm going to have a .5 percent detection limit, I need to make samples of .5 percent and show that it can be reproducible.

The one time they did that they sent out seven samples to blind labs, labs that don't know how much are in there, of .5 percent approximately, and out of the seven, only one said they could detect it.

So the method has a myriad of problems for when you try to do X-ray diffraction for talc particles with asbestos. And it all has to do, interesting enough, is when they compress these powders to make a pellet and the pellet goes into the XRD, and when they compress it under, I think it's approximately 30,000 pounds, depending on which way the fibers rotate, you can't make that -- depends on how much intensity. So the XRD out of all the methods, in my opinion, is probably one of the most least sensitive methods for doing this type of work.

Q. Was that 1976 CTFA J4-1 method, was that two years after the, what we went over a few minutes ago, the January -- the Johnson & Johnson internal memorandum dated January 3rd, 1974, talking about TEM being --

A. Yes.

Q. -- the only way, only absolute proof with regard to identification of asbestos?

A. For identification of asbestos, and in talc, and the sensitivity, not only can it positively identify, it allows you at these very low levels for these accessory minerals, allows you to find if it's there or not to its detection limit.

Q. There was several letters and communications presented to you by Ian Stewart, and I think there was a discussion about your opinion about McCrone. And counsel talked to you about your opinion about McCrone. And I think you were about to use the word disappointed and then you stopped.

What is your opinion about McCrone, based upon all the information you've seen in this case?

A. What I was trying to say, I've known this lab for a long time. What I was disappointed in is the documentation that showed that McCrone was changing their results from detection of asbestos to non-detection even though they had it there. Because they were asked to rewrite the results in.

MS. BRANSCOME: Objection, your Honor.

THE COURT: Overruled.

BY MR. SATTERLEY:

Q. And you, historically you've had an opinion that McCrone's a good firm, a good consulting firm?

A. Yes, sir. And I still do. It's that part of the piece of that particular type of analysis I'm disappointed in. I certainly don't give a bad grade for the entire organization 'cause they do other things, but that was disappointing to see.

Q. The other document counsel presented you with was something from a website. This is 7462.

And, your Honor, may I display portions of this?

THE COURT: Yes.

BY MR. SATTERLEY:

Q. This is, appears it's been printed out on 9/18/2017.

Do you see that, Dr. Longo?

A. Yes, sir.

Q. And counsel read to you, showed you portions of this. I wanted to show you a portion she skipped over.

MS. BRANSCOME: Your Honor, may we have a quick sidebar?

THE COURT: Sidebar.

(Sidebar.)

MR. MAIMON: Over here.

MS. BRANSCOME: I don't have any problem with any of the content. I just didn't want you to go too far.

THE COURT: Understood. Thank you.

(Sidebar ends.)

MR. SATTERLEY: May I proceed, your Honor?

THE COURT: Yes, please.

BY MR. SATTERLEY:

Q. I want to show you a portion that counsel skipped over. It said, "Under the Federal Food Drug and Cosmetic Act, cosmetic products and ingredients with the exception of color additives do not have to undergo FDA's review or approval before they go on the market."

It says that, correct?

A. Yes, sir. It does.

Q. It says also, I think counsel read portions of this, it says, "Cosmetic companies have a legal responsibility for safety and labeling of

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

their products and ingredients, but the law does not require them to share their safety information with the FDA."

Correct?

A. That is correct.

Q. And you don't know, Dr. Longo, whether or not Johnson & Johnson shared any safety information with the FDA's over the years, correct?

A. That's correct. I don't have any knowledge about that.

Q. On the next page, there was a reference to the AMA lab up in Maryland.

Do you remember that discussion?

A. Yes, sir.

Q. And in this case, would you, you presented your photographs of the asbestos, correct?

A. Yes, sir.

Q. You presented your spectrum, the spectrum analysis, the chemistry analysis, correct?

A. That's correct.

Q. You presented your selected area electron diffraction so they could look at and see what it is?

A. That's correct.

Q. And you produced your count sheets

and the measurements and the length and width ratios, correct?

A. That is correct.

Q. You have presented all the documentation and chain of custody and everything so Johnson & Johnson could take a look at it?

A. Yes, sir. I did.

Q. And with regards to this AMA lab, for this 2009 discussion, do we have -- do you have any of that information?

A. No, sir.

Q. Do you have any photographs or spectrums or diffraction patterns or measurements?

A. No, sir. And not even how they even prepared the samples, 'cause that makes a big difference.

Q. And they say here, that with regards to the results, it says, "The results were limited, however, by the fact that only four talc suppliers submitted samples and by the number of products tested." And I want to stop there.

With regards to Johnson & Johnson baby product, was there one bottle, only one bottle tested?

A. According to this document, yes, sir.

Q. Okay. And it says, "For these reasons, while the FDA finds these results informative, they do not prove that most or all talc or talc-containing cosmetic products currently marketed in the United States are likely to be free of asbestos contamination."

Correct?

A. That is correct.

Q. As a scientist trying to understand whether or not there's asbestos in talc products, does this limited information assist you with sufficient scientific data to allow you to form opinions about the AMA information?

A. No. It does not.

Q. Counsel asked you about the Yamate method. Was the name George Yamate?

A. It was.

Q. You guys worked together, he worked under your direction?

A. We worked together.

Q. And this was DX 8585, and I think counsel showed this to you.

Do you remember that?

A. Yes, sir. I do.

Q. And counsel went back to the back on

some calculations to -- and she skipped over, counsel skipped over the counting rules, actually the TEM examination data collection.

Does it have a section on page 33 for that?

A. It does.

Q. And does it also have counting rules for single fibers?

A. Yes, sir.

Q. And does the Yamate method require all fibers to be counted?

A. It does.

Q. Does the Yamate method specifically set forth that count single entries -- fibers that touch and cross are counted separately?

A. Correct.

Q. Two or more fibers are counted as a bundle?

A. Correct.

Q. And does the Yamate method, counsel didn't talk with you about page 38 here, say that "scanning is continued until all structures are identified, measured, analyzed, and categorized in the grid opening"?

A. That is correct.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. Does the Yamate method put any time limits at all on a analyst's ability to count, measure, take photographs of the asbestos that is identified?
A. No. It does not.
Q. Counsel also talked with you about the New York lab, DD 0042. And this is DD 0042.
And does this document require that there be a counting and actual identification of the materials that are seen?
A. Yes, it does.
Q. Is there any time limit in the New York manual that counsel presented to you that you've got to stop after two hours or you've got to stop for some reason?
A. No. There is not.
Q. Counsel showed you the ASTM 7402 method, which is DX 8568. There it is right there. 8568.
And does the ASTM transmission electron microscope method 7402, that's 7402 there, does it require the counting of all particles that are identified?
A. Yes, sir. You have to identify each and every asbestos bundle that meets the criteria

for the 7402.
Q. It says, "Count all particles in diameter greater than 0.25 microns that meet the definition of a fiber aspect ratio 3-to-1 longer than five microns," correct?
A. Correct.
Q. Is there any time limit or any instruction to stop at a certain point in time when you're doing this TEM analysis under the ASTM?
A. No, sir. We had samples using the 7402 where it's taken us eight hours of microscopy time just to finish counting a sample with 40 grid openings because of the amount of analysis you have to do for each and every one of those fibers. You cannot have time limits on this type of analysis.
Q. Counsel also showed you an article from Millette, Jim Millette from 2015.
Do you remember that discussion?
A. Yes, sir.
Q. And this is page 16 of that article, talking about the mineralogic populations characteristics. And it says, "Trying to use two or more of these mineralogic characteristics would result in misclassifying up to 80 percent asbestos fibers."

Was that published upon by Dr. Millette a few years ago?
A. It was.
Q. And right below that, does it say, "Research by Wiley reported in 1985 showed that 50 percent of the fibers in a known amosite grunerite asbestos sample would not be counted if a 20-to-1 aspect ratio were used as a criterion."
Do you see that?
A. I do.
Q. And it says, "Comparison of the aspect ratio plots in the 1977 Bureau of Mines," is that the Campbell, with the green cover that we went over?
A. Yes, sir. It is.
Q. Okay. "Comparison of that to the '77 Bureau of Mines circular shows that a criterion of about 5-to-1 aspect ratio appears to be the best aspect ratio discriminator for asbestos versus non-asbestos fibers. The 5-to-1 aspect ratio is used in AHERA, ASTM methods D 6281, D 5755, D 5766, D 6480, and ISO 10312 and 13794."
Does it says that?
A. It says that. I agree with that.
Q. Is that significant with regards to

aspect ratio analysis; if you put the aspect ratio way, way high, do you misidentify -- you say it's not asbestos?
A. Yes. If you change the rules so you're only counting the bigger aspect ratios, if you change that rule, yes, you're going to eliminate the majority of what we find in these types of samples.
Q. Now, counsel -- may I approach, your Honor? I have a new board. I took a photograph of the magnet board and I made a poster.
You have seen this -- you saw it for a day-and-a-half or for several hours when you were being examined.
Do you remember that?
A. Yes, sir. I do.
Q. And counsel wrote the name, the first name of my law firm, Kazan, Simon Greenstone and Lanier firm when she was examining you regarding the samples, correct?
A. Yes, sir.
Q. And I think she described us as personal injury attorneys.
Do you remember that?
A. Yes, I do.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. You know that I represent people with mesothelioma. You've worked with me in the past, correct?
A. That is correct.
Q. And you know that Simon Greenstone represents people with mesothelioma, you've worked with them in the past, correct?
A. Yes, sir.
Q. And the Lanier law firm, you know they represent people with mesothelioma, you've worked with them in the past, correct?
A. That's correct.
Q. You haven't worked for me on any accident cases or slip-and-fall cases, have you?
A. No. I don't take cases like that.
Q. So with regards to the defense theory, I want to talk about this defense theory that somehow my law firm or me and this other law firm, the Simon Greenstone and this other law firm, Mr. Lanier's firm, got together or somehow intentionally contaminated these products.
Do you see any scientific evidence, based upon everything you've seen and analyzed in this, that would support a theory like that?
A. No. Actually the evidence is just

the opposite. If that was the intent, that the firms would contaminate so I would find it, then why did you send me so many that had nothing in it? And why did you send cans that were empty? It doesn't make any sense for that, for that to have happened based on just the gist and what we analyzed.
Q. If somebody was, I don't want to say crazy, if somebody was risky enough to lose their law license and submit fraudulent evidence to a court, is there anyplace I could go to buy a little anthophyllite, just a little bit of anthophyllite and a little bit of tremolite and mix it in with the existing bottles?
MS. BRANSCOME: Objection.
THE COURT: Hold on. Objection sustained. Please rephrase.
BY MR. SATTERLEY:
Q. Let me just -- is there anyplace that I could go you're aware of that I could buy just a little bit of anthophyllite with the exact length and width and just a little bit of tremolite and mix it in and do something to intentionally contaminate these products?
MS. BRANSCOME: Same objection.
THE COURT: Overruled.

A. Well, I guess if you knew how to purchase from the National Institutes of Standard and Technology and by their standards, and you knew the amount you could put in and mix it up, and maybe you had access to a TEM lab to make sure the concentrations are consistent. Not probable, but it would take you sometime for all you guys to pull this off.
Q. You know me, I'm not that smart, right?
A. I refuse to answer on the grounds that I know you.
Q. I'll withdraw the question. Let me move on.
Counsel showed you some -- or talked, and counsel went from -- J&J's counsel went from the magnet board over to a magnet board and would write 1 or would write a number with regard to certain samples.
You remember that?
A. Yes, sir.
Q. And in many of those instances there was, in some of those instances there was more than one asbestos fiber identified. For example, when counsel wrote Richterite 1, was there other asbestos

fibers identified in samples?
A. Yes, there was.
Q. And, for example, this is -- sample 65228, is that one of the three samples I submitted to you?
A. It is.
Q. Okay. And I have marked this as Exhibit L-42 and the photograph is already in evidence, but may I approach, your Honor?
THE COURT: Yes.
BY MR. SATTERLEY:
Q. Is this the count sheet that goes along with the 65228 sample that I sent?
A. It is.
Q. And by the way, while I'm up here, counsel removed the magnets off the board during the cross-examination, correct?
A. Correct.
Q. And with regards to these products, counsel asked you about dates and things like that, and talked about the difference between tin cans and plastic containers.
You remember that?
A. Yes.
Q. The information that you know about

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

the dates in which they manufactured the cans, the tin cans versus the plastics, can that assist in identifying the mine source of the product?

A. Well, yes, sir. The point is in my opinion, not that we have to get the exact same cans or bottles or plastic bottles during any particular time that somebody used it, but we get the cans and plastic bottles that come from the mine, that gives you the indication of what's in that mine. The mine doesn't change over time. It's what's in there. So yes, those --

Q. My three bottles, these three up there that I sent to you, we know two are in tin cans, and you said on cross-examination the tin cans were mid '60s or earlier, correct?

A. Correct.

Q. So would these be Italian mine product?

A. Yes.

Q. And we know the date of this product because it's right there on the product, right, 1994?

A. Correct.

Q. And so we know in 1994, based upon everything you reviewed, that the talc source was

Vermont in that timeframe, correct?

A. That is correct.

Q. And then the count sheet -- your Honor, I request to publish the count sheet that goes along with this one particular product.

THE COURT: Yes.

BY MR. SATTERLEY:

Q. Counsel wrote, I think counsel wrote Richterite on this product. But, in fact, you found more than just Richterite, correct?

A. Correct. The majority of the fibers we found were tremolite.

Q. You found, and you put, you measured the length, correct?

A. Correct.

Q. You measured the width?

A. Correct. That is correct.

Q. You did the aspect ratio calculation?

A. Correct.

Q. And you identified whether you did the chemistry, the EDS, correct?

A. Correct.

Q. Oh, right here, it's got a B tremolite, B tremolite, F Richterite, B tremolite, F tremolite. What does that mean?

A. F is for fiber, single fiber, and B is a bundle which would have multiple fibers. And as you can see, the Bs are usually the width, is always higher than a single fiber because you have multiple fibers together. So you're dealing with an asbestos structure that has these multiple fibers all put together in what, again, as I described a few days ago, sort of like a conductor in electrical cable where you have multiple wires spun around each other, that's what these bundles kind of remind me of.

Q. And I already introduced pictures of fibers versus bundles, but counsel raised the issue so I'd request to display L-11, your Honor.

THE COURT: Proceed.

BY MR. SATTERLEY:

Q. This is 65208, tremolite.

A. Yes.

Q. What is this part right here? What does this mean?

A. Well, we call it a bundle. If you look at the end of that, on the right-hand side diagonally on the top you can see that it's actually made up of individual fibers. On the top portion of that you have, you can see a single fiber and at the

end you can see what looks like multiple sticks or needles coming out of the end of the structure. That's a bundle. It's not one single fiber. And then the interior is dark. You can't see these fibers because it's too dense for the electrons to make it through, like you can with the single fibers.

So you have to look at the ends and you have to look at the sides. But just because of the size and what we know, single fibers, the size and the width, you have these bigger widths, and multiple fibers, that's a bundle.

Q. Is a bundle asbestiform?

A. Yes.

Q. Is a bundle, can a bundle be a cleavage fragment?

A. No. You can't -- think of breaking a bottle or smashing a rock. Certainly if it cleaves or breaks in the right plane you can get something that looks very similar to a single fiber. But now you're asking it to break and come together in multiple fibers all wrapped around, almost in a circular object. That's impossible. It can't happen when you smash rocks or smash glass. That's not how bundles are formed. This is asbestiform.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

When you have a bundle in my opinion, it is asbestiform.

Q. And we've already introduced numerous photographs. When the folks of the jury evaluate this and when other witnesses come, are the count sheets, do they distinguish fibers versus bundles?

A. They do.

Q. And so if there's any question with regard to whether something is a fiber or bundle, is your count sheets make that clear?

A. Every sample that was analyzed that had asbestos fibers in it, every one of the asbestos fibers or bundles we saw, we documented, gave it an F or B, and gave it the size so all the information is there.

MR. SATTERLEY: May I approach, your Honor?

THE COURT: Yes. Would this be a good time for a break?

MR. SATTERLEY: Okay.

THE COURT: Members of the jury, we're going to take the morning break now. Let the officer know whether you're going to stay here on this floor or go downstairs.

Remember the instructions I've

provided to you. They're taking care of that.

Please, no discussions with regard to this case, including the testimony that you have heard, and no research as to those issues either.

Enjoy your break. Please be ready to be back here at five after. Thank you.

(Jury exits.)

THE COURT: You may step down, Dr. Longo. I'll see everyone shortly.

(Recess: 10:45 a.m. to 11:08 a.m.)

COURT OFFICER: Jury entering.

(Jury enters.)

THE COURT: Please be seated.

Make sure cell phones are turned off.

MR. SATTERLEY: May I approach and put the board back up, your Honor?

THE COURT: Yes. I think you need to turn it a little bit for Dr. Longo.

THE WITNESS: Thank you, your Honor.

MR. SATTERLEY: May I proceed, your Honor?

THE COURT: Yes, please.

BY MR. SATTERLEY:

Q. I have handed you what's been marked as L-41. Is this a summary table of the samples,

including the count sheet summary, summary of the count sheets with regard to length, width, aspect ratio, for all the samples that you identified asbestos?

A. Yes.

MR. SATTERLEY: Your Honor, move into evidence L-41.

MS. BRANSCOME: I would object.

THE COURT: Sidebar.

(Sidebar.)

THE COURT: What's the basis for the objection?

MS. BRANSCOME: Basis for the objection is that it's a portion of an expert report unlike the photographs which we have admitted. Those are actually in evidence. It's an image that was taken. This is actually an expert's work product. I don't think it qualifies under the summary exception to the New Jersey rules or the Federal rules because we actually dispute portions of this, so it's not a summary exhibit where it's underlying accepted facts that are being combined for the jury's convenience. This is actually an expert's opinion.

MR. SATTERLEY: In response, your

Honor --

THE COURT: Hold on.

MR. FALK: Join.

THE COURT: Thank you.

MR. SATTERLEY: Under Rule 1006, summary, it says the contents relies on photographs which cannot be presented (inaudible) in the form of a chart summary or calculation. Originals or duplicates shall be made, read, examination or copy by both parties (inaudible). The judge may order they be produced in court.

All the documents are 600 some odd pages we've produced months ago, all the documents, all the photographs. This is just a summary table regarding the samples in question. Counsel cross-examined extensively and introduced all the photographs. All this does is associate each sample with the results. I think under 1006 this is an appropriate summary.

THE COURT: Anything further you haven't articulated?

MS. BRANSCOME: I would say the --

THE COURT: Go ahead.

MS. BRANSCOME: The rule that Mr. Satterley just cited is exactly the point. It's

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 4114

meant to be a summary of writings of photographs that cannot easily... I would object if he tried to submit the 700-page report.

THE COURT: The 700-page report clearly is not coming in.

MS. BRANSCOME: Right.

THE COURT: The photographs are one thing for the jury to consider. These are summary tables, and they qualify under Rule 1006 and I'll allow them for that purpose. Thank you.

(Sidebar ends.)

THE COURT: Exhibit is now admitted into evidence.

MR. SATTERLEY: Request permission to display, your Honor.

THE COURT: Yes.

BY MR. SATTERLEY:

Q. So the summary tables, so we understand -- if we could have the Elmo back up. Thank you.

While they're getting the Elmo up, the summary table, does it have the sample ID number for each of them?

A. Yes, sir. It does.

Q. And does it have the sample

Page 4115

description?

A. It does.

Q. And does it have the tremolite concentration and the fibrous type?

A. Actually that should be amphibole concentration because we have different types of amphiboles.

Q. Okay.

A. Tremolite, Richterite, actinolite.

Q. We've got up --

A. Anthophyllite.

Q. We've got up here the bundle that you described earlier, the photograph, and we've got the number 65208. If one wants to compare the photographs to the samples, is it -- do they all they have to do is go through the numbers here, 65208?

A. Yes, sir.

Q. 65208 right there?

A. Correct.

Q. So this right here, 65208-001, is described in the concentration and is here on this chart?

A. Correct. It would be the amphibole asbestos concentration per gram of talc and then the

Page 4116

last column would be overall, did we see the fibrous talc in the sample or not. Along with regular talc.

Q. And just so we're clear, I think counsel for J&J drew it out. You try to separate out the talc from the sample that remains, correct?

A. Correct.

Q. And did you identify, in some of these, fibrous talc that remained in the sample?

A. Correct. We did.

Q. And then if we go -- I'm not going to go through all of them. But, for example, the sample summary here, the structures, do you have the length and the width, aspect ratio, and the asbestos type for all the various samples for each product?

A. Correct. For each product that actually was positive for amphibole asbestos.

Q. And so --

A. 18 out of the 32.

Q. So the Kazan, McClain, Satterley, Greenstone samples are the first three samples. This is the -- is that correct?

A. That's correct.

Q. And this one, this table summary is the 1994 bottle. Is that 65208? I'm sorry.

A. I think it's 65228.

Page 4117

Q. Thank you for clarifying.

This is the summary of the tremolite, four tremolites and four Richterite there, right?

A. Yes, sir.

Q. And then we go to the other law firms and you have the same information, the lengths, the width, aspect ratio, and the types, correct?

A. That is correct.

Q. And is it your opinion all these structures that you described as tremolite and anthophyllite, are they all asbestos?

A. They all meet the asbestos definition for this type of analysis. Yes, sir.

Q. And 65 -- counsel spent some time with you talking about 66514, and on that particular sample did you identify and describe what's called ferro anthophyllite?

A. Yes, sir.

Q. And what is ferro anthophyllite?

A. That's asbestos. That's one of the anthophyllite asbestiforms.

Q. With regards to 65208, the sample we were just seeing the pictures of it, the number of tremolite versus Richterite is recorded on the summary chart, correct?

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

A. It is for 65208 there is one, two, three Richterite asbestos fibers.
Q. How many tremolite?
A. There are seven tremolite asbestos fibers.
Q. Actually you identify those as bundles, don't you?
A. Yes.
Q. Let me put that to the side.
Now, counsel introduced into evidence 10005, a thick set of photographs. You don't need to pull them out. I will just show them to you on the screen.
A. Okay.
Q. These are already in evidence and I want to -- these are the actual photographs that you guys took when they were being received. Is that accurate?
A. That's accurate.
Q. And so, for example, there was a discussion about whether one of the bottles was opened, and there was a little back and forth between sealed versus, you know, I guess plastic seal on it versus open, and in the photograph, does this photograph, which is 65228, the sample, one of

the samples that I sent to your firm, to your office, is it opened or closed?
A. The actual container is closed. What I was trying to say is if there is a plastic seal around the top, that's what I'm saying opened or not opened. The actual container where you twist it to line up the holes, they were closed in all cases.
Q. And just a couple more of these.
This is 10005-E65, a photograph. And is this a tin can?
A. It is. That's 66203 dash -- the light's kind of glaring on it. I think that's 001 or 002. If you could just -- there we go.
Q. 002?
A. 002.
Q. And we see here on the package it says, "Johnson's Baby Powder, Purest Protection, Johnson & Johnson."
Do you see that?
A. Yes, sir.
Q. And I take it, Dr. Longo, you have not been provided by anybody the dates in which the packages of them changed from -- went, for example, when it includes the word purest protection versus when they took those words off?

A. No, sir.
Q. So would it be fair to say that J&J would be in a better position than you to identify the dates of these packaging?
MS. BRANSCOME: Objection.
THE COURT: Objection sustained. Rephrase, please.
MR. SATTERLEY: Sure.
BY MR. SATTERLEY:
Q. Has it been your task to go back and compare or have you even had access to the marketing advertisement changes of the packages at all?
A. No. Not yet.
Q. And if you had that information, would that assist you in trying to date some of these products?
A. Yes, it would.
Q. This product here has -- this is 66352, and it's got a number at the top. It looks like, I can't read it, 1, 2, maybe 3 or 9, 4 RD.
Do you see that at the top?
A. Yes, sir.
Q. And in this particular one is there plastic over that?
A. There is.

Q. And this one, does it say on this one that you tested talc made in China?
A. It does.
Q. So we know, if we're trying to figure out -- may I approach again, your Honor, to the board?
THE COURT: Yes.
BY MR. SATTERLEY:
Q. We're trying to figure out the mine source of these. We know, you've told us already all the metal cans are from Italy mines, correct?
A. Yes, sir.
Q. And all of the recent ones, not recent, all the ones that have got plastic, could they be from a couple different mine sources, either Vermont or China?
A. Or Italy.
Q. Or Italy?
A. Yes, sir.
Q. And we know that because of the date, the '94 one would be Vermont, correct?
A. That's correct.
Q. And we know the one that's unopened that's got made in China is, according to J&J, from China, correct?

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

A. Correct.
Q. And if we go to this 66532, we go to the summary chart, did you find asbestos in 66352?
A. Dash 001, no. It was -- the amount of asbestos present, if present, was below our detection limit.
Q. And 66352-2, did you find asbestos?
A. We did.
Q. And if we go over to the next page, I apologize, 65352, once again, is that closed?
A. It is closed.
Q. Was this one of the ones that was sealed?
A. I'd have to look at the other photographs.
I don't see the wrapper around the edge on that.
Q. And once again, this one has 0835 RA, correct?
A. Correct.
Q. And does it say, right here, "Made in China"?
A. It does.
Q. Talc made in China?
A. Correct.

Q. And you found tremolite asbestos in this product?
A. Let me just get to the summary table.
Q. 66352-02 -- 002, I should say.
A. Yes, sir. We found a tremolite bundle, one tremolite bundle in that sample.
Q. The last photograph I was going to show you is 66514-001. There we go. A little better.
Do you see that?
A. Yes, sir.
Q. 66514, is that a plastic bottle?
A. It is.
Q. And does it still -- does it say, "Johnson's Baby Powder, Purest Protection, Johnson & Johnson," it's net nine ounces?
A. It does.
Q. And did you, if we compare this, the numbers to this, did you find asbestos in this plastic Johnson & Johnson Baby Powder?
A. We did. Yes.
Q. So if we go to 66514-001 on the summary, is this the one that you found all the anthophyllite in?
A. It is.

Q. 66514. Set the photographs to the side and go to a couple other items.
DX 6015 was a paper by Langer and Nolan.
Do you remember that?
A. I do.
Q. And that paper, it appeared to be a report. Are you aware of -- can I publish, your Honor, DX 6015?
THE COURT: Yes.
BY MR. SATTERLEY:
Q. Do you know whether this paper has been published in any peer-reviewed journal?
A. Not that I'm aware of. I've never seen it.
Q. And you said both Langer and Nolan are mineralogists, correct?
A. Yes, sir.
Q. And I think you talked briefly with counsel about the aspect ratio on the last page of this comparing asbestiform tremolite to tremolite in play sand. What is this and how is this significant?
A. Well, if you look at the aspect ratio, the average in what they call asbestiform

tremolite, which would be in their terminology asbestos, the aspect ratio is 10.9-to-1 on the average. So just round it off, it's 11-to-1 is their aspect ratio. As compared to the, they're calling tremolite in play sand that they were analyzing, that was non-asbestiform or non-asbestos. The average aspect ratio there is essentially 3.7 or 4-to-1. So they're looking at the difference of what they're calling asbestos aspect ratio verse non-asbestiform and asbestiform tremolite.
Q. So if I understand what you're saying, the one on the left is the 10.9-to-1, their, Langer and Nolan is saying it's asbestos at that aspect ratio, but the 3.7-to-1 is not asbestos?
A. Correct. That's their average.
Q. And by the way, does it have in this report that this report was possible by a grant from the Asbestos Institute of Canada?
A. Yes.
Q. Counsel asked you about -- I lost my exhibits here. Do I have any exhibits over there?
A. I don't know.
Q. Do you remember counsel showed you -- here they are -- two sheets of paper. One was related to Montclair High School, boys' locker room.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

This is DX 9560.
Do you remember that?
A. Yes, sir. I do.
MR. SATTERLEY: Your Honor, request permission to display.
THE COURT: Yes.
BY MR. SATTERLEY:
Q. Just so we understand, I think counsel said this was in 1991.
Is that correct, counsel, 1991?
MS. BRANSCOME: Yes.
BY MR. SATTERLEY:
Q. Okay. It says, "Packing material on FG blanket of duct insulation."
Do you know what FG is?
A. Typically for this type of terminology, it's fiberglass.
Q. And by the way, I think you said that earlier last week that you have participated in evaluating schools, how many times, for asbestos issues?
A. Thousands upon thousands all across the country, even from Hawaii to tens of thousands of schools.
Q. Have you been an expert retained by

Board of Educations, by school Boards of Education throughout the country historically over the last 20, 30 years?
A. Yes. Not only boards of education, but the State of Texas, the State of Hawaii, the State of Utah, Chicago school systems, the State of New York, the City of New York, and also we are the referee lab for the -- for product identification for the bankruptcies for, involving these various companies where we had to be the gatekeeper, yes, that's U.S. Gypsum, Autokote, or no, that's not W.R. Grace, Zonolite acoustical plastic, as we had developed all the product ID portion of that.
So I've worked across the country in all these schools and public buildings. So we have -- I have a pretty good idea what's in these, the types of materials that are used.
Q. In this particular one that counsel showed you, says Montclair High School, typo there, I believe, it says, "FG blanket insulation." At the bottom does it also have an area where someone could check off ACM?
A. ACM course, yes. An ACM course means asbestos-containing materials.
Q. And the exhibit counsel shared with

you, are any of the ACMs, asbestos-containing materials, checked off on this particular document?
A. No, sir. They are not.
Q. The other document counsel showed you is 9560, a 2000 asbestos shipping document from 7/23/2000.
Have you seen any -- well, number 1, by 2000, Mr. Lanzo had graduated from high school ten years, roughly ten years before this timeframe, correct?
A. That's correct.
Q. From an exposure standpoint, have you seen anything at all to suggest that Mr. Lanzo was exposed to the materials that are described in this document?
A. No. As I've testified to last week, I didn't see any evidence that he would have had any significant exposure while he was at the schools.
Q. Is it appropriate and proper, from an exposure standpoint, exposure to asbestos standpoint, to take a subsequent abatement, 10 or 12 or 14 years later and say, aha, that proves exposure?
A. No. That's not appropriate. Again, asbestos has to be disturbed in order to have an

exposure, as we discussed last time. Many, many, many, many schools across this country have asbestos in it.
Q. And have you seen or been provided any expert reports from any defense expert at all that suggests that there was exposure to Steve Lanzo at a school?
MS. BRANSCOME: Objection.
THE COURT: Overruled.
A. No, sir. I have not seen any reports of that nature.
Q. Final area with regards to the basement and the pipes.
Do you remember when Johnson & Johnson's lawyer asked you a question, sort of a hypothetical, if there was asbestos on the pipes, if the brother was swinging on the pipes, if insulation from the pipes the brother was swinging on released asbestos while Steve Lanzo was there, would that result in an exposure, and you said yes, it would?
A. Yes, it would. Definitely.
Q. I would like for you to assume the testimony in this case has been that there was no asbestos on the pipes in the family room and there was no swinging on asbestos insulation by his

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

stepbrother, and Steve Lanzo was not present when the swinging occurred on the metal pipes.
Would that result in an exposure?
A. No.
MS. BRANSCOME: Objection.
THE COURT: Overruled.
A. I'm sorry, your Honor.
THE COURT: That's okay. I overruled the objection. You can answer.
BY MR. SATTERLEY:
Q. Would that result in an exposure?
A. No. If you're swinging on metal pipes, there's nothing to disturb except the metal.
Q. You were asked about exposure, and counsel gave you a couple scenarios to the Johnson & Johnson Baby Powder. And counsel suggested, or said, what if he took a shower or used the product three or four times a day, would that result in a substantial --
MS. BRANSCOME: Objection.
THE COURT: Sidebar.
(Sidebar.)
MS. BRANSCOME: My objection is I never gave him hypotheticals. I walked through his report of the facts that he assumed to reach his own

conclusions. I did not actually ask him to quantify exposure in any way.
MR. SATTERLEY: I'll rephrase the question.
THE COURT: Thank you.
(Sidebar ends.)
MR. SATTERLEY: I'll rephrase the question.
BY MR. SATTERLEY:
Q. With regards to the facts that counsel walked you through or talked to you with, if Mr. Lanzo had taken showers three times a day in the summertime or four times a day and used the product three or four times a day, would that result in a substantial exposure?
A. In my opinion, yes.
Q. If he took a shower once a day and used the product once a day, would that result in a substantial exposure?
A. My opinion, yes.
Q. If he was playing hockey and -- you know, you read his deposition, did he play hockey and describe at his deposition taking showers after he played sports?
A. Yes, sir. He did.

Q. And did he describe using the product after he played sports?
A. Yes, sir. He did.
Q. And in each of those occasions when he used these products, these J&J products, do you have an opinion whether those resulted in substantial exposures?
A. My opinion is that using this product, that he would have more likely than not a substantial exposure.
Q. Substantial exposure to asbestos fibers, correct?
A. Correct. I can't say each and every time, but over this period, yes.
Q. Okay. And when you say from an exposure standpoint that this resulted in a substantial exposure to asbestos, what do you mean?
A. I mean that the -- if you could measure this, you would have concentration levels typically 10 to 20 times at least over background levels.
MS. BRANSCOME: Objection.
THE COURT: Overruled.
BY MR. SATTERLEY:
Q. Mr. Falk last week talked with you

about AHERA, and he mentioned and had you go through the fiber types.
Do you remember that?
A. Yes.
Q. And specifically, AHERA, that relates to schools, correct?
A. Correct. And relates to commercially added asbestos to products. It's not -- it's designed for construction asbestos products where the asbestos has been intentionally added.
Q. And with regards to that discussion with you Mr. Falk, on the various fiber types, chrysotile, amosite, crocidolite, in this case -- well, during your 30-year time period have you ever seen crocidolite in any school at all?
A. No.
MR. McMEEKIN: Objection.
THE COURT: Overruled.
BY MR. SATTERLEY:
Q. Have you ever seen crocidolite in insulation materials in schools?
A. Never.
Q. Has any of the information shared with you or the documents shared with you on cross-examination made you change your opinion that

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Mr. Lanzo was exposed to asbestos from Johnson & Johnson Baby Powder?
A. No. Nothing has changed my opinions.
Q. Have all the opinions you stated here today, Dr. Longo, been stated to a reasonable degree of scientific certainty?
A. Yes, sir.
MR. SATTERLEY: Thank you, sir. I appreciate you coming.
THE COURT: Sidebar.
(Sidebar.)
THE COURT: Okay. You're asking for recross.
MS. BRANSCOME: I have recross.
THE COURT: What areas are new that you feel that you're entitled to recross?
MS. BRANSCOME: Okay. I have another issue to raise in addition to that.
THE COURT: Okay.
MR. FALK: I do, too, your Honor.
THE COURT: Okay.
MS. BRANSCOME: Some of them are very minor, clarifying, R.T. Vanderbilt doesn't sell to J&J.
THE COURT: That was in relation to

the Wiley.
MS. BRANSCOME: Yes.
THE COURT: Okay.
MS. BRANSCOME: I think there's follow-ups on the FDA to rely, 2009 study. He asked him, he said they're not required to turn over information, I would like to explore that with him. I have a document that says, we specifically have a document that says we turned over information to FDA, collaboration with FDA was never something covered in direct and it was never covered on cross, that information sharing.
And the availability of information, then, let's see, he testified for the first time that he actually can trace the powder back to the mines. I have impeachment testimony that he said he has never done that and he does recognize even within a mine you would have different items, so that's new.
THE COURT: Okay.
MS. BRANSCOME: He talked about his count sheets. He brought up his count sheet for one of the fibers and I think I should explore, you know, what are the things he's recording on the count sheet and the preparation of count sheets that

he made that contemporaneously.
THE COURT: You had the opportunity to do that on cross. You had extensive cross. So that area I will not allow.
The other areas so far there may be objection and I'll hear them, I'm fine.
MS. BRANSCOME: And then he talked about the opening versus sealed, and he pointed out -- he actually put up a photo of one that he said was sealed, and I want to get very clearly that only four of them were sealed and those four did not contain asbestos. I have impeachment testimony on that.
THE COURT: You extensively went through him with that, so you're not going back on that.
MS. BRANSCOME: And then the big one I want to address, I think he has now blown the door open on schools. He has gone way beyond, even with the very narrow questions I was allowed to ask them on cross-examination, he's talked about his significant past experience. He has now given the answer directly elicited by plaintiff's counsel that he's never seen crocidolite in schools. I think I'm entitled to explore that entire area with Dr. Longo

now.
THE COURT: Okay. You join?
MR. FALK: Yes, I do.
THE COURT: I don't want to go into your separate things, but in terms of those.
MR. FALK: Absolutely.
MR. SATTERLEY: Yes, your Honor. I have no problem with R.T. Vanderbilt because I did bring it up, so I have no problem with that. I don't have a problem with -- I forgot the list, I apologize.
MS. BRANSCOME: It's the conveyance of information to FDA.
MR. SATTERLEY: I have a problem with that because the FDA document was, they used that extensively on direct examination or cross-examination. They could have anticipated all that. That's -- I don't believe that's -- I only used that document, nothing else. So I have a problem with that so, and I have a problem with also, the going back to the mines because the point of the board was she was throwing these down acting like they have no significance and all I was doing was demonstrating that they do have a significance, the metal cans, because of the date range, probably

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

talc. I think that's reasonable. And the ones that had the dates on it, to open it up to go back, she cross-examined him for a day-and-a-half. I did a two-and-a-half direct. She's also done extensive examination of the witness. At some point we have to streamline this.

THE COURT: You object to the last portion which is to go back relative to schools?

MR. SATTERLEY: Yes, your Honor. I only did the two documents she used and I asked does this demonstrate exposure. That's all.

THE COURT: Okay. So with regard to that, the Wiley you're going to go back to.

MS. BRANSCOME: That'll take me ten seconds.

THE COURT: With regard, I've already ruled on the sealing. You're not going back over that.

The FDA, I mean, you used that document extensively with him. You've already covered it.

MS. BRANSCOME: I don't need to go back to the document, your Honor. I'm just talking about the correspondence with it.

THE COURT: He didn't raise a new

issue on redirect in that regard, so you're not going to go back over that.

What was the next item?

MS. BRANSCOME: The next item was the first time Dr. Longo attributed the source. He said the metal cans came from Italy. He never said that before. He didn't say it and I can't anticipate that because that's --

THE COURT: Stop.

MS. BRANSCOME: He's attributed them for the first time, so it's just exploring --

THE COURT: That was going back to your testimony relative to the time periods.

MR. SATTERLEY: Exactly. Yes, your Honor.

THE COURT: Not your testimony. I apologize.

MS. BRANSCOME: I understand that.

THE COURT: Your questions with regard to the time periods with him on the witness stand, we're not going over that.

And the last area -- sorry. The last area with regard to those two documents on the schools, you laid the -- he laid the foundation with regard to that in terms of crocidolite, just that

area alone, you can go over that. Crocidolite in terms of the schools. We're not blowing this up into anything other besides the crocidolite in the schools.

MS. BRANSCOME: So, your Honor, may I make a proposal, because I understand --

THE COURT: Any time.

MS. BRANSCOME: -- you want this streamlined. I have one piece of published literature that I can use that will address the crocidolite in schools. And Dr. Longo said for the first time, elicited by counsel, that he has never seen a document --

THE COURT: I said that you can.

MS. BRANSCOME: But it was a broader statement. So I'm just saying, this article contains more than just crocidolite, but it is specific to New Jersey schools.

THE COURT: But you're going to just target the crocidolite aspect of that article.

MS. BRANSCOME: But it discusses the presence of asbestos in New Jersey public schools, and he said he has never seen a document showing that there was asbestos in schools. It's a public --

MR. SATTERLEY: No. He didn't say that.

THE COURT: He didn't say that. He was talking about crocidolite. He said there's asbestos all over the place.

MR. BROCK: He was asked the question have you ever seen a document that would -- he was tying it into exposure in this case, and he said he had never seen a document that showed -- that demonstrates the exposure could have occurred, and there are documents that would show that.

MR. SATTERLEY: No. That's not what he said.

THE COURT: Okay.

MS. BRANSCOME: He talked about thousands of school inspections that he has done and it's a piece of published literature. It's not a new exhibit to be admitted. And so I would ask that I can examine him on that article.

MR. SATTERLEY: I would object, your Honor.

THE COURT: I'm going to allow it in terms of crocidolite, not in terms of anything else 'cause that's the only thing that was new.

MR. FALK: I have two issues, your

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Honor. One relatively quick, one not so quick.
Plaintiff's 41 is now an exhibit and I'd like to go back into this now that it's an exhibit, and there's a total of 254 particles that were counted across the 17 containers, 254 found by Dr. Longo. I'd like to establish the dates and discuss what --
THE COURT: No. You had the opportunity to do that. You have his report so the fact that now this summary is in, no. What else?
MR. FALK: All right. And then I think they have opened the door for more questions with Dr. Wiley's 2016 article. They specifically referenced, and I had Mr. Elder write down the question because I'm having trouble, this is with regard to Dr. Millette's 2015 article and they culled out a section on that article, does it, the Millette article, say research by Wiley reported in 1985 show that 50 percent of fibers in a known amosite, grunerite, asbestos sample could not be counted if a 20-to-1 aspect ratio was used as a criterion, and the answer was yes.
THE COURT: You're allowed to pause.
MR. FALK: I think they opened the door now. They're using a Wiley definition from

1985 and yet I think that opens the door for her more recent publication in 2016. I don't think the rules allow you to say from the same author, this article I rely on, that article I don't. I mean, so they've opened the door, and I think I am now allowed to go into the 2016 analysis from what Dr. Wiley said and compare it to all those particles.
MR. SATTERLEY: May I, your Honor? First of all, just temporally, this couldn't have occurred because the Millette article is 2015, the Wiley article is a year later. They inject the Millette article on the cross-examination so they could have, if they wanted to, gone onto that section and specifically talk about Wiley, talk about the '85 article. That was all something they could anticipate. So that's not something new.
THE COURT: It's not new, so you're not going to cover that area.
Let's continue.
(Sidebar ends.)
THE COURT: Miss Branscome, whenever you're ready, recross.
MS. BRANSCOME: Yes, your Honor. May I just have one moment to locate the document?

THE COURT: Sure.
MS. BRANSCOME: Got it.
RECROSS-EXAMINATION BY MS. BRANSCOME:
Q. Okay. Just a few quick questions for you, Dr. Longo.
A. Yes, ma'am.
Q. I just had to get organized.
A. That's fine.
Q. I just want to touch on something briefly that was brought up at the very beginning of your redirect. Mr. Satterley asked you some questions about Dr. Wiley's connections with R.T. Vanderbilt.
Do you recall that?
A. Yes.
Q. And I believe you told the jury that R.T. Vanderbilt is a talc company. Is that correct?
A. It is. Yes.
Q. And you're aware, and I just, the jury maybe has heard R.T. Vanderbilt's name occasionally, but I just want to clarify, R.T. Vanderbilt does not produce cosmetic talc, correct?
A. Not out of the New York mines that I'm aware of, but other areas they do.
Q. But they are not, R.T. Vanderbilt is

not supplying cosmetic talc to Johnson & Johnson, correct?
A. Not that I'm aware of.
Q. And R.T. Vanderbilt has no corporate relationship in any way to Johnson & Johnson, correct?
A. I don't -- I don't know, but I don't know of any.
Q. Okay. All right. So I'd like to now turn to a subject that was raised at the very end of your redirect, we're book-ending it, starting at the beginning and jumping to the end, and you were talking about your experience inspecting schools for asbestos contamination.
Do you recall that, Dr. Longo?
A. No. It actually is different. Our experience is analyzing school samples from across the country to identify who manufactured them. It's called product ID. So they could send us acoustical plasters, fireproofing, ceiling tiles, and we had developed a technique to break them down as a material scientist, and then all these manufacturers had their own recipes. Every one of them had a fingerprint, so it was pretty straightforward for us.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

So I had the formulas for all the manufacturers that supplied asbestos-containing materials, not only the schools, the churches, what have you, and that was our job for a number of years.

Q. Okay. I appreciate the clarification, Dr. Longo.

So when the question was asked of you have you looked at asbestos in schools, and you said thousands of times, that didn't mean you were actually going to any of the schools to inspect them or collect materials, correct?

A. No. Other inspectors would go and pull all the samples per AHERA and send them to us from all the different asbestos-containing materials that are at each and every one of these schools. So we would get the floor tile, the ceiling tile, the thermal insulation, the acoustical plasters, the fireproofing if it's there, and then go through our system of analyzing it and breaking -- think of a cake. We're breaking the cake apart and looking for the materials that make up that cake, then match it to a formula.

Q. Okay. Thank you, Dr. Longo.

So when you are performing, you were

testing bulk samples. Is that correct?

A. Yes.

Q. And you told the jury that you had never seen crocidolite in schools. Is that correct?

A. Never once in all these samples that were sent to us did we see crocidolite.

Q. Okay. Thank you, Dr. Longo.

So now, what I'd like to hand you is marked DX 8791, and this one is just for Identification.

Here you go, your Honor.

THE COURT: Thank you.

BY MS. BRANSCOME:

Q. And what I handed you for convenience is an excerpt, and it comes actually from a published volume, Dr. Longo, of the annals of the New York Academy of Sciences.

Do you see that on the cover page?

A. I do.

Q. And this is, this particular volume, Volume 330, is titled, "The Health Hazards of Asbestos Exposure."

Do you see that on the cover?

A. I do.

Q. And this is edited by Dr. Irving J.

Selikoff and E. Cuyler, I'm not sure I'm pronouncing his first name correctly, Hammond.

Do you see that?

A. I do.

Q. And the jury has heard quite a bit about Dr. Selikoff and you'll have to forgive me, I can't recall if you talked about him, but do you know who Dr. Selikoff is?

A. I do.

Q. And are you familiar with the New York Academy of Sciences?

A. I am.

Q. And could you explain to the jury, what is the New York Academy of Sciences?

A. It is an organization that puts together conferences and has publications and it's what scientists will publish in. So they put together these, essentially it is a conference of different papers that are submitted, and Selikoff is one of the individuals that routinely does this.

Q. Okay. And he was the editor, but within this volume there would be independent articles, correct, Dr. Longo?

A. Correct.

Q. So what I'd like to do is I'd like to

focus you on one. It's actually page 587 of this book, but on your copy it's DX 8791. It's a library copy.

MR. SATTERLEY: I won't write on your stuff, I promise.

MS. BRANSCOME: Or you're going to have a university after you.

BY MS. BRANSCOME:

Q. So it's DX 8791.2. And, Jen, if we could just blow up the title and the authors.

Is that okay, your Honor? I'm sorry.

MR. SATTERLEY: Your Honor, may I consult with counsel, please?

MS. BRANSCOME: Is that all right, your Honor, if we publish the title?

THE COURT: Yes.

BY MS. BRANSCOME:

Q. So, Jen, if you want to pull up the first page so they can see what Dr. Longo was looking at, although I've been waving the book around.

So we see here on the screen, Dr. Longo, this is essentially the cover page, and we're looking at the article on page 587, and we zoom in, the title of this is, "Asbestos

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Contamination in United States Schools from the Use of Asbestos Surfacing Materials."

Do you see that, Dr. Longo?

A. I do.

Q. And we see the lead author on here is Dr. Nicholson.

Do you see that?

A. Yes.

Q. But we also see Dr. Rohl, and Dr. Rohl is someone the jury has heard about.

Are you familiar with Dr. Rohl?

A. I am.

Q. This is from the Environmental Sciences Laboratory at the Mount Sinai School of Medicine.

You see that?

A. I do.

Q. And then I think it may have been on the cover, but it's also at the very bottom of the document. This is actually from 1979.

Do you see that?

A. I do.

Q. I'm going to focus you on a specific part of this, but you can see from the beginning discussion this is discussing asbestos in New Jersey

schools, correct?

A. Correct.

Q. Okay. And then I want to just focus you on a very specific part of this article. I want to make sure I get my page numbers right.

On page 592, and, Jen, if we could blow up, not the full paragraph, it's starting in the middle of the paragraph.

And, Dr. Longo, I just want to focus you on a very specific sentence here. "Amphibole asbestos, either amosite or crocidolite, could also be present in the air of the schools or in the ambient air, but is much less commonly found."

Do you see that, Dr. Longo?

A. I do.

Q. And it says, "For example, only seven of the 64 bulk material samples in schools contained either of those minerals."

Do you see that?

A. I do.

Q. And then it says, "However, if present in the air sampled, such asbestos would add to those concentrations measured."

Do you see that, Dr. Longo?

A. I do.

MS. BRANSCOME: Thank you, and I have no further questions.

THE COURT: Thank you.

MR. SATTERLEY: I only have one question, your Honor.

THE COURT: Sure.

RE-REDIRECT EXAMINATION BY MR. SATTERLEY:

Q. Does this 1979 article in any way alter your opinion about Mr. Lanzo's exposures?

A. No.

MR. SATTERLEY: Thank you, sir. Those are all the questions I have.

THE COURT: Members of the jury, if you have any questions for Dr. Longo, now would be the time for you to submit them to me.

Officer, can you collect the questions, please.

Is anyone still writing? Okay. Take your time.

MR. BROCK: Your Honor, may we approach?

THE COURT: Sure.

(Sidebar.)

MR. BROCK: Your Honor, I wanted to politely, and without embarrassing her, ask that

Dr. Moline be excused from the courtroom while the juror questions are being asked. She's been in the courtroom during the testimony, I think that's appropriate for an expert, but she's on cross-examination. I don't think that she's entitled to have visibility to juror thinking to the extent that that might be expressed in questions while she's on cross-examination.

MR. MAIMON: Our rules are clear, your Honor. Experts can be present. And juror questions are no different than lawyer questions. They're questions for a witness. If a lawyer had asked the questions and they were appropriate, she could be present. There's no difference that they're juror questions.

THE COURT: Anything further? She can stay. She's entitled to stay.

MR. FALK: Your Honor, while we're up here, I'd like to, on the record, make an offer of proof of what I would have asked Dr. Longo with regard to Dr. Wiley's 2016 article for purposes of the record.

THE COURT: Go ahead.

MR. FALK: And, you know, what I would have done, your Honor, is we would have laid

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

out a foundation -- laid out the data that Dr. Wiley sets forth that bundled asbestos fibers are characterized by a length of greater than five microns with less than .25 microns, including widths less than 0.15 microns.

I then would have gone through each of the 17 containers that were tested positive, the 254 particles, and we would have pulled out those that met that definition. In total, that's six would have met the definition of greater than five in length, less than 0.25 in width. A total of zero would have met the definition of greater than five in length and less than .015 in width. And then going back to the six particles that met the first part of the definition, that would have been 2.4 percent. That's what I would have done.

THE COURT: Okay. The court made its rulings.

MR. FALK: Yes.

THE COURT: And you were served with Dr. Longo's report quite some time ago. You had the opportunity to cross-examine him. So the time to have done that was during cross-examination.

(Sidebar ends.)

THE COURT: Do we have any more?

Yes. Is anyone still writing? Are you still writing?

JUROR: No.

THE COURT: Okay.

(Sidebar.)

THE COURT: This is C-18. "How much inhalable asbestos is contained in a single fiber of tremolite?"

Is this more appropriate for Dr. Moline?

MS. BRANSCOME: I don't think that's appropriate. He actually did offer an inhalation study, which was my objection at one point, he did not present, and I'm not sure that he could answer this question without getting into expert work that he's doing that he did not actually present to this jury. I think it's slightly confusing. I am not -- I'm not sure you can even actually answer how much inhale-able asbestos is in a fiber. I think there's confusion.

MR. SATTERLEY: I was going to say, I don't necessarily disagree that it's a confusing question because a single fiber of tremolite would create a single exposure of one fiber. So I think there's confusion there, so I don't have a problem

with it not being asked.

THE COURT: I'm going to let it go.

C-19. "Dr. Longo, when you say that the bottles were closed, do you mean that you had to break some sort of luck -- lock? Luck -- lock in order for the round tops on the bottles to turn and be aligned to the holes?" Yes.

MR. FROST: That's an appropriate question.

MR. SATTERLEY: That is appropriate.

THE COURT: Yes. Okay.

Here is C-20. Four questions. "After modifying Blount's technique, you stated that your method was not sensitive enough for chrysotile, so TEM does not identify chrysotile? Is there another method sensitive enough for chrysotile?"

MR. SATTERLEY: That's a perfect question. She's paying attention.

THE COURT: Any thoughts?

MR. FALK: I understand what the juror's driving at. I think she's missing, he or she has misunderstood Dr. Longo's testimony in that regard, that --

MR. MAIMON: That's why it needs clarification.

MR. FALK: That's what I'm struggling with here, because chrysotile is clearly not an issue in this based on his own findings.

THE COURT: No. It isn't.

MR. FALK: I'm talking it through, I'm sorry.

THE COURT: Talking it through allowed. Okay. Just for the record.

MR. FALK: But I just wish the question was phrased a little tighter and I'd have no problems with it, but it offers way too much --

THE COURT: Well, chrysotile is not an issue in this case, as I recall.

MR. SATTERLEY: It is.

MR. MAIMON: There's evidence of chrysotile. He just testified that his method is sensitive for finding chrysotile.

THE COURT: We'll let him clarify this.

Number 2, "Using the 'heavy liquid density' method, the density of the middle layer is 2.85 grams per cubic centimeter. The density of chrysotile is 2.6 grams per cubic centimeter. Tremolite density, 3 to 3.2 grams per cubic centimeter, anthophyllite density, 2.85 to 3.2 grams

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

per cubic centimeter. Shouldn't chrysotile rise to the top after centrifuge? Did it?"

MR. SATTERLEY: Perfect question.

MR. MAIMON: She's paying attention to Miss Branscome's drawing.

THE COURT: Number 3, "What is Richterite?" Okay. That's fine.

Number 4, "Does ASTM 7402 state to count all particles or count all particles in a bundle? Does it include single fibers? Refer DX 8568."

MR. MAIMON: Perfectly fine.

THE COURT: Objection?

MR. BROCK: That's, I think that's a fact question.

MR. MAIMON: It clarifies what ASTM, the method that was used.

THE COURT: Right. I agree. It's a clarification. Okay.

Now, another question. This is another Richterite question, C-21. "Richterite question, meaning how it relate to the six regulated."

I'll just incorporate that into the others. Is that okay? All right.

(Sidebar ends.)

THE COURT: Members of the jury, again, thank you once again for these excellent questions.

So, Dr. Longo, jurors are permitted to submit questions for the court's consideration for you to clarify some testimony that perhaps they did not understand.

And so let us begin. Dr. Longo, when you say that the bottles were closed, do you mean that you had to break some sort of lock in order for the round tops on the bottles to turn and be aligned to the holes?

THE WITNESS: No. They were just closed shut. You could turn them and open them. They weren't sealed around the outside when it usually comes with the plastic.

THE COURT: So, two questions on Richterite. One is what is Richterite, and how does it relate to the six regulated minerals?

THE WITNESS: Richterite is a form of tremolite. When tremolite was formed in the ground billions of years ago, depending on what other elements are there, can be incorporated into it. So tremolite is known as a solid solution series.

So you have a pyramid. On the top you have tremolite and you can have actinolite, Winchite and Richterite. Just by adding a little bit of sodium or potassium to the chemical formula changes it from technically from tremolite to Richterite or Winchite. It is part of the regulated asbestos.

THE COURT: After modifying Blount's technique you stated that your method was not sensitive enough for chrysotile. So TEM does not identify chrysotile? Is there another method sensitive enough for chrysotile?

THE WITNESS: That's a very good question. TEM does measure chrysotile. Think of it as I'm looking for buoys and some of the buoys can float to the bottom of the sea and some can stay at the top. This method, the buoys that are chrysotile stay at the top of the mixture and the buoys that are tremolite, actinolite, and all the rest, because they're heavier, more mass, go to the bottom.

If you want to just determine for sure if you have chrysotile or not you have to use this method where you don't concentrate it. So instead of looking at 100 grid openings you may have to look at a thousand, because if you then don't

separate out the talc, you get so much on the TEM grids that it will cause them not to be able to see through them.

So we have to dilute the sample so far that you really change your detection limit. So we haven't come up with a method yet to concentrate just chrysotile, but that's a good question.

THE COURT: Using the -- wait, did you answer the last question, is another method sensitive enough for chrysotile?

THE WITNESS: Very poor explanation. Yes. TEM absolutely can identify chrysotile. We don't have a method to concentrate chrysotile so we have to use the old method, which is just dilute the sample to a very high degree so we don't overload it and then look at an awful lot of grid openings, typically anywhere from 800 to a thousand grid openings.

THE COURT: Using the heavy liquid density method, the density of the middle layer is 2.84 to 2.85 grams per cubic centimeter, the density of chrysotile is 2.6 grams per centimeter, tremolite density, 3 to 3.2 grams per cubic centimeter, anthophyllite density 2.85 to 3.2 grams per cubic centimeter. Shouldn't chrysotile rise to the top

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

after centrifuge, and did it?
THE WITNESS: Yes. Exactly. With all the talc. So we can't separate out the talc in the chrysotile using this method.
THE COURT: And finally, does ASTM, TEM 7402, state to count all particles or count all particles in a bundle? Does it include single fibers? And this is a reference, in case you need to see, Defense Exhibit 8568. Would you like to see that exhibit?
THE WITNESS: No. I don't need to. Thank you.
THE COURT: Okay.
THE WITNESS: The 7402 method TEM has very strict size criteria, so you can't count or analyze anything and say it's there, that it's less than five micrometers long, but more importantly that it's less than .25 micrometers wide. Because of the width most everything you're looking at in the 7402 is bundles. Some of the larger amphiboles on the width you do see, mostly all bundles, and you count everything. You have to determine how many fibers and bundles in there are non-asbestos and how many are asbestos, so we have to analyze everything in there.

THE COURT: Thank you very much, Dr. Longo.
THE WITNESS: Thank you, your Honor.
THE COURT: Thank you for being here and answering all of these questions.
MR. ELDER: Your Honor, before Dr. Longo steps down can we approach?
THE COURT: Sure.
(Sidebar.)
MR. ELDER: Sure. I was concerned about one of the questions and answers on his chrysotile, on whether it would float to the top. The question that your Honor asked him that the juror asked was can it float to the top and did it. Dr. Longo answered the question yes, you can't separate them out, but Dr. Longo did not look at chrysotile. So my concern is the way the record reads, it's as if he found chrysotile in the top and he did not.
So, in other words, the question was compound, and the answer on would it is yes, the answer on did it can only be that he doesn't know because it is undisputed that he did not look at or report chrysotile, and so there is a confusion -- confusing and I believe inaccurate question and

answer on our record that Dr. Longo found chrysotile when, in essence, he did not.
THE COURT: That's what I was trying to say to you, perhaps inartfully earlier, in terms of I didn't see chrysotile in the findings.
MR. SATTERLEY: I'm sorry, you got to --
THE COURT: I apologize.
MR. SATTERLEY: No, I'm just trying --
THE COURT: Did you hear what Mr. Elder said?
MR. SATTERLEY: I heard part of what he said, but I was more importantly wanted to listen to your Honor.
THE COURT: Okay. That's what I was concerned about in reading that question clear. So how about if I ask him to come back up to the witness stand and say, Dr. Longo, you do not identify chrysotile in any of your testing as it relates to the samples.
MR. SATTERLEY: I think the record is clear. Counsel cross-examined that --
THE COURT: Stop.
MR. SATTERLEY: The witness was clear

on the cross-examination that the method he didn't look for and identify chrysotile. The method can't do it. So I think the record is clear on that. There's been --
THE COURT: That's right. He did testify --
MR. MAIMON: He said he didn't look.
THE COURT: Right.
MR. SATTERLEY: It's not appropriate after jury questions to start cross-examining him. When Mr. Downey was here I could have come up and suggested four more questions to cross-examine --
THE COURT: Listen, if there's any misinformation then it's up to the court to not leave the jurors with that misinformation guiding them. But he did testify that he did not look for chrysotile.
MR. SATTERLEY: That's right.
THE COURT: So all you can do is in your closing statements emphasize that he testified he didn't look for chrysotile.
MR. MAIMON: It's in evidence, your Honor. He doesn't have any chrysotile there. The record is in.
MR. McMEEKIN: The transcript as it

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

reads right now is period, yes, it did. It would be chrysotile. Therefore, it's there.

THE COURT: Hold on.

MR. SATTERLEY: It's all about the weight. It is all about the 2.6 is less than 2.8. It's very clear. There's no confusion. Counsel cross-examined on the chrysotile issue. As your Honor correctly points out, they can close on this appropriately.

MR. ELDER: It's undisputed and we should look at if there's any question --

THE COURT: Let's look at the record.

(Discussion held off the record.)

THE COURT: Mr. McMeekin. He hasn't said a word in a while.

MR. McMEEKIN: I have to get on the record, otherwise she'll mistake me for Miss Clancy.

THE COURT: Or Mr. McMeegin.

MR. SATTERLEY: I'm learning.

MR. ELDER: Okay. Here's my concern, your Honor.

THE COURT: Let's read this into the record. All right. Again. Where am I going to begin? "Using the heavy liquid, shouldn't chrysotile rise to the top after centrifuge and did

it? Yes. Exactly. With all the talc. So can't separate the talc in" -- okay. So that was -- I read the question in the way that it was written, from which no one objected to my reading the question that way, so, yes --

MR. MAIMON: 'Cause the question was did it.

MR. SATTERLEY: Shouldn't chrysotile rise to the top after centrifuge? Yes. That's what it does. It rises --

THE COURT: And did it.

MR. SATTERLEY: With all the talc, he didn't say --

THE COURT: No. Look at the question that I asked.

MR. SATTERLEY: I understand that, your Honor.

MR. MAIMON: It's perfectly responsive.

MR. SATTERLEY: It's exactly with all talc, so you can't separate the talc and the chrysotile using this method. He didn't say I found chrysotile at the top.

THE COURT: Right. He didn't.

MR. SATTERLEY: No, he did not.

THE COURT: One person at a time. How many times do I need to say it?

MR. MAIMON: I think we just need the court to rule.

THE COURT: Yes, you do. So the court asked the question as it was phrased by the juror. Let me just confirm that I did not add something to it. All right.

This C-20, Question Number 2, I won't read the intro which goes through the heavy liquid density method. The question shouldn't chrysotile rise to the top after centrifuge? Did it? And so I added the word and, in the final, and the witness answered the question. There was no objection to the way that this was phrased.

So, counsel, I mean, I'm the one that raised a concern, no one had a concern. You can argue this now to the jury in summation. Okay.

MR. ELDER: Your Honor, just for my record --

THE COURT: Go right ahead.

MR. ELDER: -- the question as written by the juror ends in a question mark after shouldn't the chrysotile rise to the top. That is a question. The next question is did it. Question

mark. The way it was posed to Dr. Longo was shouldn't chrysotile rise to the top after centrifuge and did it. Dr. Longo answered the former of those questions. His answer to the latter of those questions is no, or he doesn't know because of his testing, and on this record, the response to the question shouldn't chrysotile -- shouldn't chrysotile rise to the top after centrifuge and did it is yes, exactly, with all the talc, leaving the impression that chrysotile, in fact, rose to the top, which is completely inaccurate. Dr. Longo doesn't know that.

We move to strike all of this or to recall Dr. Longo.

MR. FALK: The problem, your Honor, is the juror wrote it as two questions and that's where the confusion comes from.

THE COURT: I read this question to you. You did not object to the question.

MR. FALK: That's two questions, yes.

MR. MAIMON: Your Honor, this is ridiculous.

THE COURT: The court made its ruling. We're done. You can argue in summations.

Come back. Sorry. It's 12:24. I'm

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

going to release the jurors for lunch. Do we need any time on any documents, Dr. Moline when she returns?

MR. MAIMON: Not that I know of, your Honor.

MR. BROCK: I have a few PowerPoint slides I want to share with --

THE COURT: Counsel. Share at lunch. I'll give them an extra 15 minutes, all right?

MR. MAIMON: I just want to make sure we're done today, judge.

THE COURT: Yes. 12 -- does that say 12:25? All right. You know what, I'm going to tell them 1:30 because they're late getting back. All right.

(Sidebar ends.)

THE COURT: Members of the jury, we're going -- thank you very much, Dr. Longo. We've completed.

Members of the jury, we're going to take the lunch break now, so leave your notebooks here. Remember to wear your juror badges. Remember all the instructions I've provided to you during the course of this trial.

Feel free to bring back a beverage if

you like. Enjoy your lunch. Please, we're running on a tight ship today. If we could, please be ready 1:30 to come back up. Thank you. We appreciate it.

(Jury exits.)

THE COURT: All right. Off the record.

(Luncheon recess taken from 12:21 p.m. to 1:26 p.m.)

AFTERNOON SESSION

THE COURT: We're on the record outside the presence of the jury.

Mr. Brock has handed me the slides that he wishes to use with Dr. Moline.

Is there any objection to these?

MR. MAIMON: Yes, your Honor. The last page of the slides that you were presented, it's marked for Identification DD 0066.

THE COURT: Yes.

MR. MAIMON: And I was handed some additional --

THE COURT: Wait. I'm sorry. Dr. Moline, you can't be here at this time. Thank you.

Okay. Dr. Moline stepped out. You may continue. So you were handed records, you said.

MR. MAIMON: Thank you, your Honor.

So in conjunction with what is marked DD 0066, which is a list of title of Mr. Lanzo's schools, and I don't know how accurate any of this is, but that's besides the point, I was also handed a group of documents which are additional documents from the previously marked for Identification abatement records which are in addition to the two

pieces of paper that your Honor allowed Dr. Longo to be cross-examined about.

THE COURT: Are they the abatement records already indicated was not coming in?

MR. MAIMON: Yes.

MR. BROCK: I did not appreciate that the abatement records were excluded. I thought they were excluded for purposes of the witness we were discussing, so I would like to present argument on that.

THE COURT: I made the exclusion based upon the late production, as well as, I'm trying to remember --

MR. MAIMON: We had objected about late production, your Honor, James versus Ruiz this is a violation of, as well as the lack of any good faith basis from the defendants' own experts or any prima facie showing that Mr. Lanzo was exposed to asbestos in any of the schools.

In order to admit this, this is completely inappropriate unless you have a good faith basis to allege exposure, and simply saying that there was an abatement at some time and there was asbestos present does not afford the defendant the good faith basis to say that there was an

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

exposure, and all of their experts are silent on it, your Honor.

THE COURT: That was the -- I considered all of that when these were originally planned to be used, although it's being used with regard to another witness, my ruling was across the board based upon all of those issues. It was James versus Ruiz, it was a late production, and also none of your experts opined on it, and so you cannot co-opt the plaintiff's expert in using as your own and so you cannot use those records. If you wish to enter another objection on the record you may, but I've made my ruling.

MR. BROCK: Okay. There are a couple things I would like to say for the record then, please.

THE COURT: Sure.

MR. BROCK: Your Honor, first of all, I have gone back and looked at the New Jersey law with regard to what an opposing expert can and cannot do in a case. And I have looked at both the Graham and the Keffer cases that have been discussed by Mr. Maimon.

In the case of Fitzgerald versus Stanley Roberts, the court clarified its earlier

rulings in deferring ground and said that the Graham case was different inasmuch as what the opposing party was attempting to do in the Graham case was to bring a consulting expert to trial. Not a testifying expert, but a consulting expert. It's not clear how the opposing party found out about the consulting expert. It wasn't through the normal course of discovery, but they had the name.

And as I recall, what happened there, a number of defendants got out of the case. There was one defendant left. There was a consultant who would be favorable to one of the defendants and they sought to bring the witness to trial. And the court has -- that's what happened in the earlier case, in the malpractice case.

In the Fitzgerald case, which is 895 Atlantic 2d., 405, the court says that there's a distinction between a consulting expert and a testifying expert, and that if a disclosure is made in the context of an expert witness, the court specifically says by declaring that an expert witness will be produced at trial and providing the expert's identity and opinion to another party as required by the rules, the original proponent has waived his claim that the information is privileged

and we hold that access to the testifying witness is allowed and the adversary may produce a willing expert at trial.

In other words, you could use someone else's expert, you could bring them in and you could examine them and you could establish that -- I'm sorry about that -- if you could establish something that's helpful to your case, you would be permitted to do so.

So I don't think there is a prohibition under New Jersey law from establishing facts or even opinions through an opposing expert. So that's point number one.

Point number two, and we've talked about this a lot in this case with regard to the opportunity that a defendant should be given to cross-examine an opposing expert. And the law in New Jersey is clear that if an expert does not give weight to a factor thought important by the adverse party, and it doesn't necessarily reduce it to a net opinion, but the cases are very clear, the cross-examination is to be permitted challenging an expert's opinion.

In this case, Dr. Moline has testified on direct examination that she does not

think there was an exposure that would be sufficient to change her opinion. And she says in her expert report that one of the questions that she needs to answer in order to be able to give an opinion is that she needs to rule out other potential causes.

So other exposures is in that category and is in a category of things that we believe we should be permitted to examine about.

With regard to the issue of lateness, I would just refer the court back to the discussion that we had about the admissibility of the plaintiff's offer of a document that they obtained late. We don't know when they got it, but we know that it wasn't on the exhibit list. It came in through a FOIA request. And the court said at that time, it's subject to a FOIA request. As you know, sometimes unfortunately those things come in late. I'm sure we're going to deal with that as well.

And I think Miss Branscome made the comment then about the goose/gander rule and there needs to be some symmetry about this. We have been working diligently to get these records. We've had an associate that's run all over the State of New Jersey securing them. We have a certification for them, so there's not an issues about their

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

admissibility. And it goes to the heart of Dr. Moline's opinion that she is able to exclude other potential causes. That's the heart of the examination and the defense of the case whether we have an expert or not, and it's not our burden to prove the cause. It's our right, I guess it is, or I guess the way the structure of the case is, is to test the plaintiff's proof, and the testing of the plaintiff's proof is testing methodology, did she think about the right things, did she ask the right questions, did she do the right follow-up in terms of other potential exposures, and school records are part of that. She said on direct examination she would expect that there would be asbestos in schools. She said that on direct.

So I think we feel strongly that we should be permitted to examine on this. I mean, the idea that we're not going to be able to do something because it was produced late, there's a lot of things that have happened in this trial that have not necessarily been things that the parties had notice of. A lot of the exhibits that the plaintiffs used in this case we see them for the first time when we get here, but we take that as part of the trial process.

I know that in the context of how this case has come to trial, maybe it seemed like it was plenty of time to get it ready and get it going, but it really has been on a very, very fast track, and it's a new kind of case. It's a new litigation that's, you know, that is developing and --

THE COURT: This court has tried other talc cases. I don't know if you've been involved in other talc litigation. But the trial date was actually a date that was chosen by the parties, not by the court.

This case had been scheduled for November. You were backup to another trial. That trial resolved sometimes in September and it was the parties that said, judge, let's start in early January.

The court has made itself available at all times to deal with any issues that have come up late and they have come up late. Whether it be genetic mutation defense, whether it be the crocidolite defense. All on issues that, frankly that defendants did not follow-up on.

So we turn to these abatement records. Clearly in defending this case, that was something that the defendants should have been doing

all along. Did they inquire during Mr. Lanzo's deposition all the schools that he went into? Did the efforts start there to obtain these records? Clearly your experts were not forwarded these documents. And so under James versus Ruiz, aren't you now trying to use plaintiff's experts as your own?

MR. BROCK: I am trying, with the plaintiff's expert, to cross-examine on her methodology. Did she ask the right questions? Did she rule out other potential causes? Other potential causes include school records. It includes even environmental issues. It includes things that went on in the house. All of those things are potential alternate causes for this particular outcome.

And we are in a -- we're in a place where we have, we have an argument of an exposure to something that wasn't talc. That has to come from somewhere.

THE COURT: But do you have an exposure to something that wasn't talc in the following. Where is this based upon evidence in the record? At Mr. Lanzo's deposition, which took place early on when the complaint was filed, the court

back in December was asked for the opportunity to re-depose Mr. Lanzo and I provided two additional hours based upon what you wanted to cover.

Were there any questions of Mr. Lanzo that while he attended these schools, if these are, in fact, the schools that he attended, that the type of questions that one ordinarily elicits to determine whether or not there was any friable asbestos at that time rather than abatement records which, in some instances, abatements occurring decades after his attendance.

So where's the issue of any asbestos-containing products in the schools being disturbed at the time that he was there? Where is that based? 'Cause this needs to be evidence-based. It can't just be take all the abatement records and there you have proof.

MR. BROCK: We have records, your Honor, I'm happy to hand them up, but we have records that we wish to put into evidence today that cover the period of time 1989 or 1988 to 1991. That's the period of time when he is a senior in high school. We have high school records that show friable material within the school that we would like to examine Dr. Moline about.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

MR. MAIMON: Your Honor, if I can just be heard, I think --

THE COURT: Sure.

MR. MAIMON: -- that the citation, and I just brought it up, to Fitzgerald versus Roberts, 186 N.J. 286, decided by our Supreme Court in 2006, is not for the proposition cited by the defendant here. In that case there was an expert who had been retained by the plaintiff. Prior to trial, that expert changed his mind and it became known that he had changed his mind and his opinions were actually favorable to the defendant and the plaintiff said we're not going to call that expert. The defendant then retained that expert, brought him to trial, and the issue in front of the trial court and through the appeals was whether or not that was proper, and whether the Graham versus Gielchinsky case had precluded that.

Our Supreme Court said no, you don't have a monopoly on experts. If he's changed his mind and if the opinion is properly disclosed and it's there, then either party can call that expert and there is no privilege that attaches to this.

Dr. Moline, in her expert report and her deposition, did not give the opinion that they

want to elicit, and so it's completely in-opposite.

Number two, the assertion that FOIA requests and FOIA documents have not been pre-disclosed to the defendants is not accurate. In our pretrial submissions, which I believe were in late December because of the timing that we had, we listed the exact FOIA document that dealt with the Mine Safety Health Administration inspection of the Cyprus plant. We listed it. It was TP-89. We listed it in our exhibit list on our pretrial when the trial, when we started jury selection, counsel agreed between us we would exchange flash drives of the actual physical exhibits. This is not something that we didn't disclose.

The only things that we have had new are the things that the defendants produced to us new. If your Honor will recall, we had dumps upon dumps of documents on us in late November and late December by Johnson & Johnson totaling over a million pages. To the extent that we found something in them, they're their documents. They've known about them all the time. There's no surprise about this. In the middle of trial we received hard drives --

MR. SATTERLEY: February 5.

MR. MAIMON: -- from Imerys. February 5th we received hard drives from Imerys. We're doing our best to deal with their documents. The documents that we're using that are not on our exhibit list are their documents that were produced to us late, and so to assert that the plaintiffs are bringing surprises is also inaccurate.

MR. BROCK: Your Honor --

MR. MAIMON: Excuse me. I've been in this court, in this very courtroom, trying cosmetic talc cases. Now, this might be the first one against Johnson & Johnson, but it's not novel. The expert reports in this case by the defendant were due October --

THE COURT: 13.

MR. MAIMON: -- 13th. Not a one of them said there may be an exposure in a school, I'd like more. There's nothing in this record that gives the good faith basis that is required in order to assert an alternate exposure. If there were, as there have been in other cases, the court would say, well, there is a good faith basis there.

But counsel's failure in responding to the court's question about Mr. Lanzo being exposed to asbestos in any of his schools, forget

about whether or not it was present, whether or not an inspector at one point described it as friable, which means it's capable of being disturbed, but actually having an exposure there. And now to dump volumes of documents on this jury and overwhelm them which is saying look how much asbestos is present without a single expert to say that, A, there wasn't an exposure, and B, it was a substantial contributing factor to the disease is completely inappropriate.

These records need an expert to explain them as our court, Supreme Court has now acknowledged, based on the Appellate Division decision in James versus Ruiz, and the case law is very clear, you would need a fact witness to say there was exposure and it's all lacking.

THE COURT: That's why I inquired whether or not you inquired as to these issues --

MR. BROCK: We did.

THE COURT: -- with Mr. Lanzo.

MR. BROCK: In the follow-up deposition the questions were asked concentrating on the schools you went to before Montclair High School. Do you recall if there was ever any construction work, renovation work, things of that

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

nature, occurring in the schools while you were attending. He doesn't recall. Do you recall if any of the schools had exposed insulation or insulated pipes or anything of that nature in an area where you would have been? He says not that I observed.

But we know when we talked to -- when we look at the literature, it's in the literature. We know from experts, Dr. Moline will say this, I think, that patients or plaintiffs are not terrific historians with regard to their exposures. There are often times when people are exposed and they don't know they were exposed.

And there's an issue here beyond just the causation issue, your Honor, and that is that there is asbestos fibers claimed to be in the lymph nodes. Well, there could be something there that is related to causation, but it's also the case that you can have asbestos in your lymph nodes and that asbestos not have caused your disease. And so having an exposure whether or not it was above background level can be something that will be relevant to the jury. And it is for the jury to consider the evidence and to sort it out.

I am told the TP53 A and C, the FDA, FOIA was not on a list. It was not on a flash

drive.

MR. MAIMON: We have our conversations --

MR. BROCK: I know what the conversations was that we had with the court, which was things come in late. I don't remember anybody saying at that time that --

MR. MAIMON: I'm looking at our exhibit list and it's on there.

MR. BROCK: Okay. We can double check that, but my understanding is that it was not.

MR. MAIMON: In any event, your Honor, I agree with Mr. Brock. I agree that if he had a fact witness to show exposure that that would be appropriate. I agree that if he had an expert to explain, and maybe his expert can, that material in a lymph node can come from anywhere and not be related to causation, that he should be able to do that.

But that has nothing to do, number one, with the abatement records, and number two, he's got the wrong witness on the stand to do it. He can't do it through my expert, and the Fitzgerald case is in-opposite to that. He would have to have retained her, according to our Supreme Court's

decision in Fitzgerald, in order to do that and he hasn't.

MR. BROCK: Your Honor --

THE COURT: The court has made its ruling. I have also, one question. You inquired of Mr. Lanzo at his December depositions about the schools that he went to?

MS. BRANSCOME: No. This excerpt is January 16, 2017.

MR. SATTERLEY: December there's no questions about schools at all as far as I can recall.

THE COURT: Okay. So the court's made its ruling. You're not going to go into this for the reasons stated.

MR. BROCK: What about the records that have been admitted? Can I examine the witness on the exhibits that are in evidence?

THE COURT: The two?

MR. BROCK: Yes.

THE COURT: That depends. I mean, you're not going to use her as your expert.

MR. BROCK: Well, I mean, the point here is that she has said that her methodology is that she needs to rule out other possible causes

which includes other exposures. So if that's part of what she says is her methodology, then not having looked into the issue of whether or not there was exposure in schools is relevant. It's a relevant issue to cross-examination.

MR. MAIMON: I don't think that it would be inappropriate, your Honor, for Mr. Brock to inquire of Dr. Moline whether or not -- the same way they did of Dr. Longo, did you obtain --

THE COURT: That's what I indicated I would allow.

MR. MAIMON: Yes.

THE COURT: What was the designation of the FOIA document?

MR. MAIMON: TP-89, your Honor, was MSHA.

MR. BROCK: 53 A and C, I have.

MR. MAIMON: TP-89 is the FOIA request.

MS. BRANSCOME: Your Honor, I know you like typically one lawyer to speak to something, but may I clarify?

THE COURT: Sure.

MS. BRANSCOME: So there was the MSHA FOIA request and they are correct, that was on their

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

pretrial list. We even got a copy, I think, once we got their hard drive in mid January, whenever we exchanged hard drives, we did get a copy of the MSHA document.

What I was referring to that day at sidebar and the document that we were addressing at sidebar was TP53, either A or C. One of them had been admitted and one was being discussed right then. And those are the FOIA requests from FDA, and it was the FDA copy of their meeting minutes. It was a meeting with Johnson & Johnson, but it was FDA's internal meeting notes that we, as Johnson & Johnson, never had them, and the first time we saw them was in court.

MR. SATTERLEY: What's the number, please?

MS. BRANSCOME: I believe it was TP53 A and C. You had a placeholder in your exhibit list that contained some documents, but the meeting notes were not in the PDF and they're not identified on your pretrial exchange. And so the first time we saw them was in court. And that was the one that I was specifically saying that we would allow it to go forward, but we wanted to note for the court that we had records that would fall into the exact same

category, and so in terms of the timeliness of the disclosure, there is no difference.

THE COURT: Thank you. Okay.

Can we get the jurors? Let's bring Dr. Moline in.

Mr. Falk, you were questioning.

MR. MAIMON: I think it was Mr. Elder.

THE COURT: Mr. Elder. I apologize. You weren't finished. You were in the middle of one document, as I recall.

MR. ELDER: No. I was at a breaking point.

THE COURT: You were.

MR. ELDER: But I was questioning and --

THE COURT: Are you ready to continue?

MR. ELDER: I a.m.

COURT OFFICER: Jury entering.

(Jury enters.)

THE COURT: Please be seated. Make sure cell phones are turned off.

So Dr. Moline, you were here, what day was that?

THE WITNESS: Last Thursday.

THE COURT: We need to administer the oath again. It's been a while.

COURT OFFICER: State your name for the record.

THE WITNESS: Dr. Jacqueline Moline.

COURT OFFICER: Do you mind spelling your last name?

THE WITNESS: M-o-l-i-n-e.

COURT OFFICER: Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.

J A C Q U E L I N E M O L I N E, sworn.

THE COURT: Thank you.

Members of the jury, you may recall Dr. Moline was on the witness stand and we were in cross-examination by counsel for Imerys.

Whenever you're ready, Mr. Elder.

MR. ELDER: Thank you.

CONTINUED CROSS-EXAMINATION BY MR. ELDER:

Q. Good afternoon, Dr. Moline.

A. Good afternoon.

Q. I just have a few more questions for you today, and I want to go back to your testimony

about latency that you gave on direct. I don't want to repeat too much, but just to refresh us as to the concept of latency, would you agree that the concept of latency is the amount of time necessary between an exposure and the diagnosis of a disease?

A. I usually define it as the development of a disease rather, because sometimes there's an interval between when it develops and when someone actually has a diagnosis, but yes, it's otherwise correct.

Q. And just as a simple example, if someone were to smoke cigarettes, one month, and be diagnosed with lung cancer the following month, in terms of attributing the cause of that lung cancer to those cigarettes, we would say there was not enough latency, not enough time for, between the exposure and the disease for that exposure to have caused that disease. Is that fair?

A. If they just started smoking the prior month, correct.

Q. Okay. So that's just what the concept of latency is, in that simple example?

A. Correct.

Q. And you talked on direct about the latency of mesothelioma because that's what we're

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

talking about, and you would agree that the appropriate latency from the onset exposure, from the onset of exposure to the diagnosis of mesothelioma is a minimum of 15 years, right?

A. That's a number I've used in the past, although the Federal Government has revised it based on information to 11 years as a minimum that they have declared it, for example, for folks with the World Trade Center, based on the scientific literature. By convention, I have typically said 15 or longer.

Q. I think this is what you just said. You have testified that it is your opinion in the past that the appropriate latency, minimum latency is 15 years; fair?

A. I have said that in the past. But there's additional information that has become available and there are rare cases where it is less than 15.

Q. I just want to make sure that our record is clear.

THE COURT: Thank you.

BY MR. ELDER:

Q. And I've handed you the transcript, Dr. Moline, and it's dated June of 2007.

Do you see that?

A. Yes.

Q. And if you could turn to page 75 of that transcript at line 5.

A. Okay.

Q. And at page 75, line 5, you were asked the question, "You used the phrase appropriate latency in your report here. What do you believe the appropriate latency period is from onset of exposure to diagnosis in the case of mesothelioma?"

And could you read what your response was?

A. "There are reports in the literature in adults where there have been some cases that have been 15 years from the beginning of exposure, but more typically this is 20, 30, 40, 50."

Do you want me to continue?

Q. Yes, please.

A. "I have seen a patient who had an exposure 62 years before he developed mesothelioma. There's no upper bound. People tend to perhaps die of other causes before they might develop the mesothelioma. But the appropriate latency is a minimum of 15 years in my opinion."

MR. ELDER: That's all I have for you today. Thank you.

THE COURT: Mr. Brock, whenever you're ready.

MR. BROCK: Yes, your Honor. I'm ready. May I proceed?

THE COURT: Yes.

CROSS-EXAMINATION BY MR. BROCK:

Q. Good afternoon, Dr. Moline.

A. Good afternoon.

Q. My name is Mike Brock and we have not met before, have we?

A. We have not.

Q. Good afternoon.

I want to just go back to a few things that you said on your direct exam when you were here last week, and just to make sure that I understand a few things in terms of the context of what you're here to do.

You testified during your direct exam that you practice in the area, one of the areas of your practice is occupational medicine, correct?

A. Correct.

Q. And patients that you will see at your hospital are patients who will come to you sometimes to see if they have a disease and they may

want to know why, correct?

A. Well, sometimes they have a disease they want to know why. Sometimes they have had an exposure and want to know what they're at risk for.

Q. Okay. And that's one of the things that you do when you see patients is you help them to evaluate that issue, correct?

A. Correct.

Q. And part of your job is to determine if there is a patient with a disease state, what exposure might have occurred in their occupation or potentially outside of it, could be the cause such that you could potentially prevent them from continuing to have the disease or continuing to have the exposure, correct?

A. If I can identify and it's something that's ongoing, certainly, to prevent. If they have certain diseases I can't do anything about because the disease process is not going to be reversible. There are some instances where if you can remove them from the exposure they will no longer have symptoms of the disease.

Q. There are people that might have allergies that might be exposed to things that could be helped by removing allergens.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Would that be an issue that you would deal with?
A. Yes. I mean, I think about it, I've worked with a number of patients who have developed asthma and we try to figure out what exposures they might have that contributed to that.
Q. In Mr. Lanzo's case, that's not what happened, correct? In other words, in Mr. Lanzo's case, he came to you as a litigation referral, not as a patient who came in on referral from another physician or found his way to you for care and treatment, correct?
A. Correct.
Q. And to be clear, you are not one of Mr. Lanzo's treating physicians, are you?
A. I'm sorry. I didn't hear --
Q. You are not a treating physician as relates to Mr. Lanzo?
A. No. I am not.
Q. When you were describing his condition and describing for the members of the jury your interpretation of the medical records last week, you were doing that as an expert witness in litigation, correct?
A. Correct.

Q. You weren't here to represent to the jury that you are his treating physician, correct?
A. I never said that I was and I am not his treating physician.
Q. Okay. Well, let me just ask you about that.
If I could have 10004 A1, please.
May I approach, your Honor?
THE COURT: Sure. Thank you.
BY MR. BROCK:
Q. One quick question about this, Dr. Moline. Are these, have I handed you, Dr. Moline, the handwritten notes that you prepared of your first conversation with Mr. Lanzo?
A. Yes.
Q. And have you met with him on more than one occasion?
A. No.
Q. Single meeting?
A. Correct.
Q. The reason I was asking you about the issue of being a treating physician, if we can see DD 58, this is one of the slides that you showed to the jury when you were testifying.
Cull it up, please. DD 58.

You see this is the slide that you used in the discussion with the jury last week?
A. Yes.
Q. You see that?
And so when it says June and July of 2017, that would not be accurate, correct? You saw him in July, I believe?
A. I think that's referring to symptoms he had.
Q. Okay. So you're referring to symptoms, not a visit?
A. What this slide was to represent was the symptoms he had during this time period.
Q. All right.
A. I saw him once July 6.
Q. You had a single visit with him and you have those notes in front of you now; do you not?
A. Yes.
Q. And just, this is just for demonstrative purposes. If we can cull up the note that's 10004 A.1.1. I just want to review this very quickly.
So would you call this an intake note, or what would you refer to this as?

A. The note from my encounter.
Q. The note that you took of your visit. Okay.
And you record there that he's a 45-year-old finance, I don't know what, is there a word missing there maybe?
A. I could have said worker. I'm taking notes as I'm talking to somebody, so sometimes I may leave out an R or a word. But he works in finance.
Q. That wasn't a criticism. I was just asking maybe there's a word missing.
A. It's just -- it says what it says. He works in finance.
Q. You ought to see some of our notes.
A. Mine are almost legible and I'm a doctor, so that's pretty good.
Q. Congratulations.
What was your understanding of his employment status at the time that you met with him on July the 6th of 2017?
A. He was working.
Q. Did you understand from your conversation that he was actively at work in the business of finance?
A. Yes.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. Did he share with you that he was traveling to do his work 60, 70 percent of the time?
A. We definitely talked about his travel, and because there had been impacts with what he was able to do regarding his medical condition and the fact that he couldn't travel sometimes, and he also developed blood clots that can be attributed to when you have cancer, they're more likely, and air travel can make it worse, so we had talked in that context.
And when he had relocated to New Jersey, talked about the fact that there was travel associated with his job. I think he was trying to cut down on some of the travels.
Q. Coming back to my question: Did you learn from him in that meeting that with regard to his work time, he was on the road 60 to 70 percent of the time?
A. He definitely was traveling. I don't remember the exact percentage.
Q. Thank you.
Now, if we can go back to DD 58. To be clear, you and Northwell Health, in June and July of 2017, were not seeing Mr. Lanzo as a patient. I think we've said that. Just coming to the next

question. But is that correct?
A. Correct.
Q. So you would not have ordered any tests for him, correct?
A. Not in -- for the purposes of this evaluation, unless there was something emergent where it was a crisis.
Q. I didn't see that you had ordered any tests for him. Did you order tests for him?
A. I did not.
Q. And it's correct, is it not, that with regard to lung diseases, there are specialists in that field to treat for lung disease, correct?
A. Correct.
Q. For instance, there is a physician typed with the specialty of being a pulmonologist, correct?
A. That would be a lung specialist.
Q. Correct. And that's not you. You're not a lung specialist, correct?
A. I am not a pulmonologist. I tend to see a lot of folks who have occupational lung disease, but I am not a pulmonologist.
Q. Thank you.
You're not an oncologist, correct?

A. Correct.
Q. And an oncologist is one who has training and experience specifically with regard to treatment of cancer, correct?
A. Correct.
Q. You're not trained nor experienced as a radiologist, are you?
A. I have had some training in reading x-rays, but I am certainly not a radiologist.
Q. There are specialists who do nothing other than read CT scans, PET scans, and other types of film, correct?
A. Correct.
Q. And that's not you?
A. I like to be in the sun.
Q. They do sit in small dark rooms, don't they?
A. Hopefully their rooms get larger, but yes, they tend to be in dark rooms.
Q. Now, when Mr. Lanzo came to see you, you would have been aware at the time of that visit that he had filed a lawsuit claiming injury from exposure to baby powder, correct?
A. I knew he had followed -- filed a lawsuit, and I didn't know much detail about him

before I saw him.
Q. I am asking if you knew that the basic allegation of the case was exposure to talc?
A. To talcum powder, I believe I was aware of that. Yes.
Q. Now, you have never spoken to any of Mr. Lanzo's treating physicians, have you?
A. I have spoken to some of his treating physicians, but not specifically about Mr. Lanzo.
Q. Okay. Thank you.
Now, in terms of how you sort of spend your time and have spent your time over the past few years, I believe you have testified that you have been serving as an expert witness in asbestos litigation for over 20 years at this point, correct?
A. Correct.
Q. And all of your testimony in asbestos cases has been on behalf of plaintiffs; true?
A. Correct.
Q. And you've been working with Mr. Maimon's firm, law firm, Levy Phillips or Levy, they have other names, but you've been working with that firm for several years, correct?
A. Yes.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. And do you know how many times you have testified at a trial or in a deposition on behalf of Mr. Maimon's firm?
A. I wouldn't be able to give you an answer. I don't keep track of it that way.
MR. BROCK: If I can approach, your Honor?
THE COURT: Yes. Thank you.
BY MR. BROCK:
Q. With regard to keeping track, you do have to file, from time to time in some cases, your list of engagements, including when you have given depositions or testified at trial, correct?
A. Yes.
Q. And do you see that I have put here in front of you a document that you would have filed in another matter that gives your depositions and testimony, at least covering the period of time 2012 to 2016.
Do you see that?
A. It actually covers 2011 to 2016. The heading says 2012, but it actually is 2011.
Q. Thank you.
Your first entry here is a case actually for Mr. Maimon's firm going back to

February of 2011, correct?
A. Yes.
Q. But you were working with his firm long before that, weren't you?
A. I had been serving as a -- they had asked me to be an expert before that, yes.
Q. And if we just look at this document, your Honor, request permission to publish this. It's for demonstrative purposes only. Exhibit 44.
MR. MAIMON: I have a concern, your Honor.
THE COURT: Sidebar.
(Sidebar.)
MR. MAIMON: I'll be happy to get into the details of the cases, your Honor, if Mr. Brock wants to inquire into them.
MR. BROCK: I'm not willing to inquire into the cases. I'm just seeking to establish the number of cases where she is engaged.
MR. MAIMON: She can count up the numbers, but if we're going to start having names of cases, dates of cases, judges involved, the county involved --
THE COURT: I have no issue with using, for example, transcripts and identifying

other, by saying you previously testified on such and such date, but if you can cover up the case column and the judges involved, I don't have any problem.
MR. BROCK: Okay. I think I can do that. I can do these middle two columns and I won't do anything else. I'll show trial or deposition.
THE COURT: Which three?
MR. BROCK: The second column, the third column, second, third and fourth column.
THE COURT: Day, law firm and deposition/trial. That's fine.
(Sidebar ends.)
BY MR. BROCK:
Q. Okay. We could cull that up, the second, third and fourth columns, please.
While she's doing that, just to keep this moving, without referring --
THE COURT: Take that down, please.
BY MR. BROCK:
Q. Let's just run through it. If you'll just look at it there with me, please.
If you'll start with the first case, don't reference the case number, and just run down the list of the first page and if you will, describe

for the benefit of the jury, I can help you with this, I think, if I can have the Elmo. Thank you.
Now, this is the first page of the document; is it not?
A. Yes.
Q. And if you can just run down and for the benefit of the jury, cull out the cases that you have worked on this first page that would be with Mr. Maimon's firm, here it's listed as Levy Konigsberg.
THE COURT: We're not calling them out by name.
A. I don't understand how --
THE COURT: Calling them out would require the use of a name.
MS. BRANSCOME: By the date.
MR. BROCK: I'm sorry. I didn't mean to say that. Thank you.
BY MR. BROCK:
Q. I just want you to call out by the date and with the firm identified. Just run through those and I'll highlight them as you go.
A. I'm sorry. Are you asking me just to call out the ones that say Levy Konigsberg?
Q. You see the first one there that says

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

date, 2/8/2011, and it shows that it's trial testimony?
A. Yes.
Q. That would be the first one.
Then do you see, if we come down a little bit to 2/1/2012, you have trial testimony there, that would be the second one, correct?
A. Correct.
Q. If we come down to 10/16/13, we have another case where you've testified at trial.
Do you see that?
A. Yes.
Q. And then if we keep coming down a little bit to 4/2/14, you've given a deposition involving Mr. Maimon's firm.
Do you see that?
A. Yes.
Q. And if we keep coming down a little bit more --
A. You're going to have to move the sheet down 'cause I can't see.
Q. Thank you. I'll give you some help there.
How about that? Okay?
So that was 6/4 of 2014.

Do you see that?
A. Yes.
Q. And then 7/1 of '13 you gave another deposition for the Levy firm.
Do you see that?
A. Yes.
Q. And then 9/21/14 you testified at trial?
A. Yes.
Q. And then 1/23/2015 you testified at trial?
A. Yes.
Q. 11/14/14 you testified at trial.
Do you see that?
A. Yes.
Q. There's a firm there called the Lanier law firm. You've worked with them also, correct?
A. Yes.
Q. 1/26/15 you testified at trial for the Levy firm, correct?
A. Yes.
Q. 4/17/15 --
A. I'm sorry. Can you move it over a little?

Q. Yes, I can. Of course.
How about that?
A. Better.
Q. Thank you.
4/19/15, trial. And you've given a deposition on 4/17/15.
Do you see that at the top?
A. Yeah. They were different cases, but yes.
Q. I'm not asking about cases.
6/9/2015, deposition; 7/1/2015, deposition; 7/27, deposition; 7/29, deposition; coming down a little bit more, just to finish this out, 9/21, deposition; 10/28 -- I'm sorry, that was trial. 9/21 is trial, 10/28 is trial, 11/1 is trial. Is that correct?
A. Yes.
Q. I won't ask you anything about this 1/28 to 7/5, deposition and trial. 2/4/16, deposition; 3/7/16, trial; 4/5/16, deposition; 11/28/16, deposition. Is that right?
A. Yes.
Q. And I think I counted as we were going through it 23 times you've testified either at trial or deposition.

Does that sound right?
A. I wasn't counting, but I have no reason to dispute that.
Q. All right. And I think you've described in your earlier testimony that you charge for your time $550 an hour, correct?
A. For my time at trial and deposition, the institution charges it. Yes.
Q. Right.
But isn't it correct that for the time that you spend reviewing records and engaged in other activity that is not during work hours, you will bill directly for that, correct?
A. Yes.
Q. And in what year did you go over to Northwell Health?
A. 2010.
Q. 2002?
A. 2010.
Q. And you were obviously engaged in the expert witness business in asbestos cases at that time; true?
A. I was doing the litigation, yes.
Q. And when you came to Northwell they knew you were doing litigation, correct?

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

A. I had cleared it. Yes.
Q. And was the income that you would be bringing in from litigation a component of your negotiation with Northwell Health?
A. No.
Q. Was it part of your contract in any way?
A. No.
Q. And I think you said in another case you average between 250 and $300,000 per year from your work on asbestos-related matters, correct?
A. I have said that in the past. Yes.
Q. And this is reflective, I think you said, of about 35 percent of your current personal income?
A. At that time, yes.
Q. You remember saying that as recently as February 21st, 2018?
A. In response to a direct question, yes, I have said that in the past.
Q. Okay. Well, you said, when I asked the question, you said at that time. I just wanted to know if the answer that you gave very recently is an accurate one?
A. The answer to the question was an

accurate one. The question was have I said that in the past, and I said yes, I have said that in the past.
Q. So as it's related to the work that you do in litigation, specifically asbestos litigation, it constitutes about 35 percent of your current personal income?
A. Correct.
Q. And I think you have described in other matters that it's your general belief, though, that you don't have a specific calculation that you made somewhere in the range of 2 to $3 million testifying on behalf of plaintiffs in asbestos litigation?
A. Over 20 years, something around there.
Q. And I think you've also described in more recent years while you've been 2 to $300,000 a year, it's been even a little higher than that more recently?
A. Correct.
Q. Now, I want to turn, please, to an issue that you discussed with counsel last week and it is the topic of epidemiology.
Do you remember discussing that when

you were here last week?
A. Yes.
Q. And if we could look at DD 64, please. I think if we can just cull it up.
May I approach, your Honor?
THE COURT: Yes.
BY MR. BROCK:
Q. I'll hand you one in case you don't want to look at the screen.
Let me cover a couple of points, if I could, please.
Do you see there on DD 64 that we have written, "Epidemiological studies assess associations between exposure to a substance and disease in human populations"?
A. Yes.
Q. And do you agree with that?
A. Yes.
Q. And then the second thing that we have there is that epidemiology is the gold standard when it comes to determining what causes disease in human populations.
Do you agree with that?
A. Yes.
Q. And when we talk about epidemiology,

what we're referring to in general terms is the study of populations in terms of how populations are impacted potentially by exposures in comparison to an appropriate control group, correct?
A. In general, yes.
Q. In terms of thinking about epidemiology, you can set up a study and you can have what would be called events within the study, you can have disease within a study, but you wouldn't know if that was something that was just occurring as part of the background if you don't have an appropriate control group to compare the outcomes to. Is that a fair general description?
A. Well, you would have an observational study where you would be describing the impact of a particular exposure on a population. So it would be a descriptive study. But you wouldn't be able to make a comparison between what rates are without having a control.
Q. Say the last part again. I'm sorry. Just the last part of the answer you gave again?
A. You wouldn't be -- I don't know what I said. Maybe she can read it.
Q. We were talking about what the function of the control group is in the context of

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

an epidemiology study. And I think you were saying you won't know if a substance or an agent is having an affect unless you have a control group where you can see what might be happening in the absence of the exposure?

A. Well, that's not quite true. There are situations where you have individuals that have a particular exposure and there are so many people affected that you can look and in the observation you see that there's people being affected. If you're looking at rates, things like that, then you would have to have some type of comparison.

But epidemiology, if we think of the term epidemic, if we see this entire courtroom all of a sudden is befallen by some kind of toxin that we're breathing, we don't need a comparison group to know that none of us in the room can breathe.

Q. Right.

A. That would be a study of the fact that this courtroom is bad, and we don't need a comparison courtroom to say this courtroom isn't bad when 60 people are going to the emergency room.

Q. That's a fair statement.

Don't say the courtroom is bad. The judge is right there next to you. I know what

you're saying. I know what you're saying.

So you can have cases or situations where you can look at outcomes and draw conclusions from outcomes if the outbreak is severe enough, I guess is what you're saying in lay terms?

A. Correct.

Q. But when studies are designed to look at the impact of an agent or a substance, when those studies are designed, one of the things that good epidemiologists do is that they find the right control group to compare the exposed group to, correct?

A. Finding the right control group is harder than finding the group to study.

Q. Thank you.

Now, you described last week that from an occupational medicine standpoint in studying the impact that talc may have on the development of mesothelioma, that it's important to look at the miners and the millers when trying to determine if there is a disease related to exposure to talc, correct?

A. That's one of the groups where you would look, and you would also want to look and see if there were studies of people using it in

different forms.

Q. Well, when you were asked this question under oath, that is, with regard to the type of studies as an expert in occupational medicine being asked to tell or to testify if we have a substance, look at the population that's involved, you have said looking at the miners and the millers is where you would want to go. You've said that, haven't you?

A. That's where you would want to start from an occupational standpoint, sure.

Q. Because you have said, with regard to potential risk of mesothelioma from talc, that the folks that have the most exposure is where you would want to go, and that's the millers and the miners, correct?

A. The ones who are working with it day in, day out. But they're also working with it in different forms than what ends up being the finished product. I believe I also made the differentiation between the miners and millers and then the end users and the workers using the product that had been mined and milled, and the various studies that were done there and the differential rates of disease.

Q. Have you said the following under oath: "We look at the folks that have the most exposure because you go to the people who have the highest level of exposure to see if they're developing a disease."

Have you said that under oath?

A. Sounds like something I might have said.

Q. All right. And have you also said in connection with that: "So you go to the mine or the mill where the product is being made and you look to see is there disease in this mine or mill at a rate that's higher than you would expect to see in the population."

Have you testified to that under oath?

A. Most likely I have. I prefer to see what you're quoting I said, but --

Q. Sure.

A. -- and when I said it.

Q. Okay. I'm going to ask you to look at, if you can look at the first page, do you see that this is a transcript of testimony from 2/15 of 2012?

A. Yes.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. Do you see that?
A. Yes.
Q. If you will turn then, please, to page 1064 and go to line 15.
Do you have that?
A. Yes.
Q. Let's look at this question and answer. It says, the question is, "And with regard to those types of studies, as an expert in occupational medicine, can you tell us, is it important to look, if we have substance, look at the population that is involved in mining or milling that substance?"
Do you see that question?
A. Yes.
Q. And then your answer is, "Typically we look at the folks that have the most exposure, because you go to the people who have the highest level of exposure to see if they're developing a disease in the same way."
And then you talk about a controversy that --
MR. MAIMON: Can we read the full answer?
MR. BROCK: I am -- may I conduct my

exam?
MR. MAIMON: I think it's appropriate to read the answer.
THE COURT: It depends. Continue with your --
MR. BROCK: Yes.
BY MR. BROCK:
Q. Do you then say something about a controversy with regard to cell phones that may have been an issue at that point in time as an example?
You say, "There's a controversy right now about cell phones."
You see that?
A. Yes.
Q. And you talk about that's where one of the early studies was done, correct?
You say, "So they're looking" -- if you look over to line 5, "They are looking at the folks who have the exposure."
Do you see that?
A. You skipped a bunch of lines and now --
Q. Well, I was trying to keep us away from the cell phone discussion, but I'm happy to have that, too.

A. It just seems like it's out of context.
Q. Let's do the whole answer then.
"There's a controversy right now" -- may I display this, your Honor?
THE COURT: Sure. Just that portion, please.
MR. BROCK: Yes.
BY MR. BROCK:
Q. Okay. You've got the question, we've done the first few lines of the answer.
"Typically we look at the folks that have the most exposure, because you go to the people who have the highest level of exposure to see if they're developing a disease in the same way."
Then you say, "There's a controversy right now about cell phones. That's what I think about. And where is the first study that's been done, I don't have an opinion yet about the phones, but the first study that was done was done in Motorola. The company that makes cell phones. Because they were looking at workers over many, many years."
Do you see that?
A. Yes.

Q. "So they're looking at the folks who have the exposure. So you have to go to the mine or mill where the product is being made, and you look to see is there disease in this mine or mill at a rate that's higher than you would expect in the population"; correct?
A. Yes.
Q. And when we talk about seeing if you see something that's higher than in the population, you're referring to, in terms of epidemiology, your control group, correct?
A. Correct.
Q. "And then you also look and see are there differences in this particular mine or mill that could be compared to other mines or mills in other parts of the country, other parts of the world, and are the diseases that we're seeing in this mine or mill different from what we're seeing in this particular mine or mill."
Do you see that?
A. Yes.
Q. And that was your testimony on February the 15th, 2012, correct?
A. Correct.
Q. Now, do you recall, in 2015, being

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

asked the identical question, almost the identical question to the one that's right there and giving the same answer?

A. No.

Q. All right. Let's look at that. If we can have the cull-out.

When we're talking about mines or mills here in this transcript, we're talking about talc mines; are we not?

A. Yes.

THE COURT: Thank you.

BY MR. BROCK:

Q. Now, if you will see on the front page there, do you see that the date is January 23rd, 2015?

A. Yes.

Q. And do you see that you're asked almost the identical question --

A. I'm sorry. Can you tell me what page?

Q. Yes. I can do that. That's fair.

MR. MAIMON: Thanks.

MR. BROCK: 202, line 12. And if we could cull that up, please.

BY MR. BROCK:

Q. 202, line 12. All right. Can you see that okay?

A. Yes.

Q. All right. Almost the same question, "Why is it important, from an occupational medicine standpoint, to look at the issue if we have a substance and you look at a population involving the mining and the milling of the substance and you find disease?"

Do you see that?

A. Yes.

Q. And you say, "It's important for a number of reasons. When a product is used and it's dispersed throughout the country or the world, we don't have a group of folks that we might be aware of who have that exposure, so there are going to be people all over who might have had the exposure, but they're not collected in one place."

Do you see that?

A. Yes.

Q. But then you go on to say, that the miners who have had the exposure, they are collected in one place, aren't they?

A. Typically, yes.

Q. "When you have a group of workers who

work with a substance, in this particular case miners and millers who were working with the particular -- in the area, working with the product, then you look to see what's their experience -- what's their experience, because you say they're going to have exposure to this particular product."

Do you see that?

A. Yes.

Q. "It's a defined population. A closed group, so to speak. And you might know how long they've worked there and how many years it's been since they worked there that they developed the disease."

Do you see that?

A. Yes.

Q. And again, this is a case talking about talc; is it not?

A. Industrial talc, yes.

Q. Now, it would be an appropriate thing to do for a epidemiologist to design a study to look at outcomes in talc mines if they wanted to understand whether or not talc poses a risk of the development of mesothelioma.

Do you agree with that?

A. For talc miners, yes.

Q. And it's also the case, is it not, that you are familiar with the literature, some of the literature that relates to studies that have occurred with regard to talc miners and millers throughout the world; true?

A. Yes.

Q. And I believe that on your reliance list, or your list of materials that you furnished to us, you identified some studies that have been conducted in Italy, and Vermont, with regard to miners and millers in those mines; true?

A. Yes.

Q. And I want to look at those studies in a little more detail with you and talk about them.

If I could have Exhibit 8629, please.

Hang on to that, we're going to come back to that.

You are aware -- let me just discuss this. We'll see if we can find it. If not, we'll come back to it -- that Dr. Rubino and others, in 1976, published a paper with regard to the Val Germanasca and Chisone Valley talc mines in Italy, correct?

A. Yes.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. And do you recall that in that study, they collected data for workers who began work in the year 1921, and looked at workers who were in those mines as millers and miners who had been employed for at least one year involving a job that would cause them to have exposure to talc in the mines and the mills.

Do you remember that?

A. I don't know if it was one year or one month. I can't remember that. I don't have the study in front of me to be able to look.

Q. The other studies that are listed on your materials -- may I approach, your Honor?

THE COURT: Yes.

MR. BROCK: Thank you very much.

THE COURT: Is this now DX 8629?

MR. BROCK: 8629, yes, your Honor.

THE COURT: Thank you.

BY MR. BROCK:

Q. And you have it now, correct?

A. Yes.

Q. And this is a study that you are familiar with, correct?

A. A mortality study, correct.

Q. Yes.

And you discussed this actually with the jury last week; did you not?

A. I did.

Q. And in this study, is it correct that there are a number of authors?

A. Yes.

Q. Dr. Rubino, Dr. Scansetti, Dr. Piolatto, and Dr. Romano, correct?

A. Yes.

Q. And if we can just look at a couple of the details of this. These physicians were associated with Turin University in Italy, correct?

A. Yes.

Q. Is that University known as one of the most prestigious universities in Europe; do you know?

A. I have no personal knowledge of it, so I -- I can't comment.

Q. All right. That's fine. Thank you.

And the study we're talking about here is one in which the authors are working to examine 1514 talc miners and 478 talc millers, correct?

A. That sounds about right. I don't remember the exact numbers.

Q. And as we --

A. 1514, yes.

Q. As I was mentioning to you just a minute ago, if we could cull up 8629.1.9, so this would be on the first page. And over on the right-hand side, you see the sentence that starts the second paragraph, this is what I was asking you about a few minutes ago. "Data were collected for each worker who began work in the years between 1921 and 1950 and who has been employed for a year, at least one year, in a job involving exposure to talc in the mines or in the mills."

Do you see that?

A. Yes.

Q. And with regard to this study, you agree that not one single mesothelioma was found among the talc workers, correct?

A. In Rubino's study, that's correct.

Q. In this study, the one we're looking at right now, looking at the period of workers who began work from 1921 to 1950, there's not a single mesothelioma found amongst the talc workers, correct?

A. Correct.

Q. And if you look at, let's cull out

8629.1.5. And this is the beginning of the second paragraph.

Do you see where it says, "The study was conducted on a talc which is mineralogically very pure in its natural state. This is the type of material used in pharmaceutical and cosmetic talcs."

Do you see that?

A. Yes.

Q. And if we look at 8629.8.2. You'll have to turn over. There's some page numbers at the bottom. 8629, it says .1, if you'll turn over the page --

A. I don't have those page numbers.

Q. That's fine.

A. We can do the old-fashioned way and just say the page number.

Q. No, turn over to the last page.

A. Here's the last page you want me to turn to. The last page of the document is references. Do you mean the last page of text?

Q. Let me see what your last page is.

A. My last page is blank, but, so the last page, is this the page you want?

Q. Yes. I'm not asking you about the blank page.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

A. Okay.
Q. Are we clear on that?
A. That's fine. The last page of the manuscript is references.
Q. I'm not asking you about the blank page. Okay?
A. Okay.
Q. All right. If you look at the very first full paragraph at the top of the page, do you see where it says, "In this peer-reviewed article, talc specimens were found very commonly contaminated by chlorite."
Do you see that?
A. Yes.
Q. It's about one, two, three --
A. I see the line. It's just not on the screen.
Q. "No amphibole or chrysotile minerals were detected in any of the examined specimens."
Do you see that?
A. Yes.
Q. Now, we have this study in '76, and we have no cases of mesothelioma.
You're also aware that in 2003 there was an update to the Rubino study that was published

by Dr. Coggiola, I hope I'm pronouncing that close to right, and several other scientists from Italy, correct?
A. Yes.
Q. And that's going to be Exhibit 8074.
THE COURT: Thank you.
BY MR. BROCK:
Q. And you mentioned that the first paper that we looked at in '76 was a mortality study.
Do you remember saying that, a few minutes ago?
A. Yes.
Q. And the title to this study is, "An Update of a Mortality Study of Talc Miners and Millers in Italy."
Do you see that?
A. Yes.
Q. Now, to be clear, this study is not looking just at the disease state of mesothelioma for these talc miners and millers, correct?
A. Correct.
Q. They're looking at a wide range of potential outcomes for miners and millers in the mines, correct, that are associated with the mines?

A. They're looking at mortality. So it's -- it's a mortality study. The outcome is death, but so they're looking at the causes of death on death certificates.
Q. That's a fair statement.
In terms of the study that's being conducted, they're not just conducting a study to see was the death caused by mesothelioma. They're capturing other causes of the outcome, correct?
A. They're capturing other causes of death, yes.
Q. Yes.
And this paper was published in the American Journal of Industrial Medicine, correct?
A. Yes.
Q. And you're familiar with that journal, correct?
A. Yes.
Q. And if you could look at 8074.1.6, and can you find that there on the page?
THE COURT: I thought you said .6, counsel.
A. I don't know -- I don't have your --
Q. Okay.
A. It's in the abstract, but your

numerical numbering helps you, but it doesn't point to where it is on a page.
Q. Okay. I am asking you to look at 8074.1, page 1.
Do you see that?
A. Yes.
Q. And here we have culled out, as you mentioned from the abstract, that there was no excess -- excuse me. That the talc, this is 1.6, talc found here is free from asbestos fibers.
Do you see that?
A. It says, "Talc is free from asbestiform fibers."
Q. "Talc found here is free from asbestiform fibers," correct?
A. That's what it says.
Q. Thank you.
And then if you look down in the results section, just a little bit below that, where it says results, 1.7, this is still on page 1, again, "No excess was found for total cancer mortality nor mortality for lung cancer. No cases of mesothelioma was reported."
Do you see that?
A. Yes.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. And the paper also refers, on page 5, if you turn over to page .5, sorry about that, to a recent study by Wild, et al.
A. I'm sorry. Can you tell me what paragraph?
Q. Yeah, .5. And if you look on the left column, just below the table, it's at the end of the first paragraph. Just before the paragraph that begins, "The results."
A. Okay.
Q. See it?
A. Yes.
Q. "A recent study by Wild, et al., 2002, is consistent with our results, since the authors did not find any lung cancer excess mortality from talc exposure."
Do you see that?
A. Yes.
Q. And you know that the Wild study that is being referred to there is a study, I think from Austria. Was it Austria where that study was conducted?
A. Yes.
Q. Then if we stay with page .5, down at the conclusion section, do you see that in the

bottom right?
A. Yes.
Q. For us, it's .5.1. "In conclusion, no association was found between exposure to talc containing no asbestos fibers and lung cancer or pleural mesothelioma."
Do you see that?
A. Yes.
Q. And then one more study is the Pira study that was an updated cohort study in 2017.
You're familiar with that one also; are you not?
A. Yes.
Q. If I could see 8074 -- 8351.
THE COURT: Thank you.
BY MR. BROCK:
Q. And this study that you're looking at now, Exhibit 8351, this is the most current study of the Italian talc miners, correct?
A. It's the most recent, yes.
Q. And you agree that it's important to have up-to-date information regarding disease and worker populations for the purposes of understanding causation; true?
A. I'm -- I'm sorry. Can you repeat

that question?
Q. Let me ask it a different way.
Have you testified under oath that from an occupational medicine standpoint, it is important to you to have up-to-date materials regarding the disease and worker populations for the purposes of understanding causation?
A. Yes.
Q. Now, when we get to the study in 2017, if we can look at, on page 1 that you have there; 8351.1.3.
All right. And do you see that in this study the writers are describing that they're analyzing mortality from 1946 to 2013 of 1722 male workers in an asbestos-free talc mine. They go on to say how many miners and millers, 1166 for miners, 556 for millers, and they were employed in the mine during the 1946 to 1995 timeframe.
Do you see that?
A. So it's a different cohort from the first study. But yes.
Q. It is a different cohort, you're right. We're going to come back to that in a few minutes.
But this is the most recent study

with regard to the Italian mines, correct?
A. That I'm aware of, yes.
Q. And you mentioned the other day when you were testifying that you had a criticism of the study because the study protocol did not include outcomes past the age of 85.
Do you remember that?
A. Yes.
Q. Now, in a well-designed study, if there are going to be exclusions from the population, it's important to state the reason why, correct?
A. Well, it has to be a valid reason and you would have to explain why.
Q. And you agree that this is an article in the American College of Occupational and Environmental Medicine, correct?
A. That's the Journal of Occupational and Environmental Medicine.
Q. Yes. And it's -- but the journal is one that is within the American College of Occupational and Environmental Medicine, correct?
A. Well, that's the publisher, in essence. It's, the journal is the Journal of Occupational and Environmental Medicine.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. Okay. Are you a member of the American College of Occupational and Environmental Medicine?
A. I a.m.
Q. And if we look at the method section, which is on page 1, that's 8351.1, and if you come down on the second paragraph, do you have that there?
And I'm going to ask you, Jen, if you'll cull out the sentence that begins, "Because of low reliability."
THE COURT: Could we bring that down for a moment?
MR. BROCK: Sure.
THE COURT: Bring that down for a moment.
Sidebar.
(Sidebar.)
THE COURT: Could you ask, you've got to be careful, she's blowing it up and I saw --
MR. BROCK: I understand. I know.
THE COURT: So maybe if she could do it a different way.
MR. BROCK: Most of the things that we have are pretreated and I moved off of a

pretreated thing. Maybe I'll just have this read in.
THE COURT: I mean, do that.
MR. MAIMON: Thank goodness it wasn't me, judge.
THE COURT: Would you mind if we take the break after you finish?
MR. BROCK: This paper, sure. Thank you, judge.
(Sidebar ends.)
BY MR. BROCK:
Q. To keep this moving, in the second column, do the authors explain in this peer-review article, the second sentence, "Because of low reliability of cause of death Certification above age 85, the follow-up was truncated when cohort members reached that age."
Do they say that?
A. They do say that.
Q. Now, it's also the case, is it not, if you look over at page 5, that these authors report, if we cull up 5.2, please. If you look at the left-hand column, "The very long time."
Do you see that? It's on the left-hand column, and it's about 12 lines down.

A. Um-hum.
Q. Got it?
A. Um-hum.
Q. "The very long time since first employment in the present analysis, over 9,000 person years of observation, or 16 percent of the total, had more than 40 years since first employment, excludes the possibility that the lack of cases of mesothelioma is a consequence of insufficient latency."
Is that what these writers put in, in their publication?
A. Yes.
Q. And if we look at one more here, please, 5.3. This is still on your page 5. There's a sentence that begins, "In conclusion."
MR. MAIMON: What page again? I'm sorry.
MS. BRANSCOME: 5.
MR. BROCK: Page 5.
MR. MAIMON: Okay.
BY MR. BROCK:
Q. "In conclusion, we confirm previous results on lack of an association between exposure to talc, lung cancer, and malignant mesothelioma."

Do you see that?
A. Yes.
Q. Thank you.
Last question on this topic: All of the epidemiology studies that we've looked at, Rubino in '76, Coggiola in 2003, and Pira in 2017, concluded that the cosmetic talc miners and millers in Italy are not at increased risk of mesothelioma, correct?
A. Yes.
MR. BROCK: I think this is a good time for the break.
THE COURT: Members of the jury, we're going to take our 15 minute break now. Please let the officer know whether you're staying here on this floor or going downstairs.
Remember all the instructions I have provided to you. Please be ready to come back up no later than 25 after. Okay. Thank you.
(Jury exits.)
THE COURT: And we're off the record.
(Recess: 3:05 p.m. to 3:22 p.m.)
COURT OFFICER: Jury entering.
(Jury enters.)
THE COURT: Please be seated. Make

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

sure cell phones are turned off.
Mr. Brock, you may continue.
MR. BROCK: Thank you, your Honor.
BY MR. BROCK:
Q. Dr. Moline, I'm going to hand you a document, it goes with the 1976 Rubino study. So if you'll find that while I'm handing these out.
A. Thank you.
THE COURT: For this record, this is previously marked?
MR. BROCK: It was previously marked as PX 36, but we couldn't find PX 36, so I just put them in on mine. It was marked last week as DX 36, but that was not the right number.
THE COURT: DX 10690 is not the right number?
MR. BROCK: DX 10690 is the correct number.
THE COURT: Okay.
MR. BROCK: I thought you were asking me what the number was last week.
THE COURT: No. The correct number would be great.
MR. BROCK: I thought you asked me, it did have a different number last week, but we

couldn't figure it out.
BY MR. BROCK:
Q. Dr. Moline, can you see this?
JUROR: I can't.
A. Is it contained within this?
Q. Yes.
A. Okay. My X-ray vision isn't working today.
Q. How about that?
A. If I stand I can see it. I mean, I can stand for a couple minutes and look. I can't --
Q. Can't see it?
A. Can't see it.
Q. We've been working this out.
Can you see that?
A. I can, but I don't know if the jury can.
Q. Thank you.
MR. BROCK: Now, may I proceed, your Honor?
THE COURT: Sure.
BY MR. BROCK:
Q. All right. So last week when you were here to speak to the jury, you talked to them about Exhibit 10690.

You have that there?
A. This?
Q. Yes.
A. Yes.
Q. And you also talked to them about the 1976 Rubino study, correct?
A. Correct.
Q. And you had a criticism of the authors based on the description you gave of a paper that was presented in May of 1976, correct?
A. Yes.
Q. And the May 1976 paper that we are referring to is the one that we talked about, it says, "Draft subject to revision," at the top, but it's written out and in a presentation style, correct?
A. It's typed up. I don't --
Q. Okay.
A. I don't present things like this.
Q. You don't know, really, anything about the document other than what you can see from the four corners, correct?
A. Correct.
Q. And your criticism, as I appreciated what you were saying, is that the paper, the Rubino

paper, was published in 1976, correct?
A. Yes.
Q. And there was a meeting where a presentation was made about -- which is the subject of 10690, correct?
A. Yes.
Q. And your criticism, one of your criticisms of the authors was that when they made the presentation in the summer or in May of 1976, that you said there were some deaths that went missing.
Do you remember that?
A. Yes.
Q. You said they vaporized. Do you remember using that term?
A. Yes.
Q. Now, what I have put there in front of the jury is the table that you will find in this paper which is about, it's called Table Number 3. Can you find that?
A. Yes.
Q. And in Table Number 3, there are two sets of data; are there not?
A. Yes.
Q. And on the left-hand side is a

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

category called matched controls.
Do you see that?
A. Yes.
Q. And there is a follow-up duration there for the matched controls from 19 -- follow-up duration of 1921 to 1974.
Do you see that?
A. Yes.
Q. And that's 53 years, isn't it?
A. Yes.
Q. And the right side of this document, this table, as you look at it, is a different set of data, isn't it?
A. Yes.
Q. And, in fact, on the other side is a category called the Italian male population.
Do you see that?
A. Yes.
Q. And the follow-up duration for the Italian male population is only 23 years, correct?
A. Yes.
Q. Now, the document that we are looking at there, which is 10690 from which Table 3 is pulled, is the document that would have been presented, as far as you can tell from the record,

in May of 1976, correct?
A. Yes.
Q. And I think you mentioned to the jury last week that though the Rubino 1976 published study, that it was published in 1976, it was actually presented at the 60th annual meeting of the American Occupational Medical Association in April of 1975, correct?
A. The data was initially presented there, yes. It wasn't -- typically something will be presented at a medical conference and then it will be written up into a paper later.
Q. Sure. It's standard procedure when a study is completed, it doesn't always happen, but if it's a topic of interest, a group of authors or one of the authors might be invited to present their findings in summary form, ahead of publication?
A. Doesn't have to be that they're united. It may be -- sometimes you're asked to join a group that's talking about a particular topic and then it will, you often do present findings and then you can publish them later, but you note where it's been published or where you've spoken about it initially.
Q. You mentioned last week that the

results of the Rubino '76 paper had been presented in 1975.
Do you remember saying that?
A. Yes.
Q. And if we can then look -- and I just want to ask this question just for the record. Did you prepare defendant -- demonstrative Exhibit 59? If we can cull that up, please.
Did you do this yourself? DD 59.
You remember presenting this to the jury last week?
A. This was part of the direct examination.
Q. I want to know if you prepared this slide. That's my question.
A. I did not.
Q. Did you prepare any of the slides that were presented to the jury last week?
A. No.
Q. Did you have any input on the slides?
A. I looked to make sure that they had the correct titles, but I did not change content.
Q. Now, with regard to what you said about the missing, I think you called them, they're just gone, they vanished group, I'd like for you to

look at the paper which is Exhibit 8629. I'm going to swap with you in case we need to cull something out. It has the numbers at the bottom.
Do you see that?
Now, we've got, on the left-hand side as you look at the slide, a published mortality, March 1976, and on the right, the mortality speech, May of 1976.
Do you see that?
A. Yes.
Q. And then if we can go next to DD 60, I have some questions for you.
Now, this is the slide that you presented to the jury, correct?
A. Yes.
Q. Did you confirm these numbers before you appeared to testify?
A. I had looked through the tables. I had looked through them in the past. I don't know if I looked through them before this particular slide was created.
Q. Let me ask the question again: Did you confirm the numbers before you testified?
A. Every single number, I looked at certain -- I recall that esophageal cancers for

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

sure, and the lung cancers, yes.
Q. All right. Now, if we look at the published mortality, March of 1976, that's talking about the study where the comparison group is the -- is a small town close to the mines, correct, where they did matched controls.
Do you remember that?
A. Yes.
Q. That's what we're talking about right here, right, matched controls, right?
A. Yes.
Q. Okay. And this follow-up study that was done that's reflected in the paper is a different population, isn't it?
A. Of controls.
Q. It's a different population of controls. It's also a different population of study subjects, isn't it?
A. No. These are just the control -- this is just the control populations. This is --
Q. These are the events, right, and this is what's expected, right?
A. Okay.
Q. Now, when you said there are 59 dead workers missing, I want to look at the left-hand

side of the column, the published mortality speech, and I want to ask you to turn over to 8629.2.
THE WITNESS: Your Honor, can I step down and get my glasses 'cause this font is like beyond minuscule.
THE COURT: Sure.
BY MR. BROCK:
Q. I'd loan you mine, but it would probably blind you.
A. I think yours are probably stronger than mine.
Okay.
Q. You ready?
A. Um-hum.
Q. Now, can I get you to focus on Table 3 of the Rubino study.
Do you have that?
A. Yes.
Q. And can you tell the members of the jury, in the published paper, what is the number for all cause mortality that's listed in the paper?
MR. MAIMON: What page are we on, please?
MR. BROCK: .2. 8629.2, Table 3.
A. For --

Q. Table 3 --
A. "The vital status of 1346 miners and 438 millers was completed follow-up. As of -- on June 1974."
Q. I am asking you -- yes, please share with the members of the jury, for the category of miners, how many miners are indicated to be deceased in the published paper?
A. There were 704.
Q. That's the number that sits right here, isn't it? In the paper that was presented in May of 2000 -- excuse me, in May of 1996, in the presentation paper, the number of all cause mortality is the same as it is in the paper, isn't it?
A. Well, they --
Q. Is that true?
A. Well, they don't have the -- they have dead and then they have the known cause of death, so those are two different columns.
Q. This is a different issue. I am asking you if the all cause death number for the miners is 704 in the study, in the published paper?
A. Again, they say there's 704 dead, and known cause of death is 667.

Q. For all causes is it 704?
A. For known cause of death is 667. For total dead is 704.
Q. Thank you.
A. It doesn't say no cause.
Q. Thank you. Thank you. All right.
Now, if the total is 704 in the paper, published paper, and it's also 704 in the presentation of May 1976, there's nothing missing from all cause mortality in this table, is there?
A. Those numbers are the same numbers.
Q. Okay. Look down to the millers. And I'll ask you for the millers in Table 3, does it show mortality, total mortality to be 227?
A. Yes.
Q. That's this number right here, isn't it? All cause 227.
Do you see that?
A. Yes.
Q. Now, while we're here, you say in the slide that was put together for you, all cancers, 142.
Do you see that?
A. Yes.
Q. On the left-hand side. And all

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

cancers, if you take all tumors for the miners and all tumors for the millers is what; it's 142, isn't it?
A. Yes.
Q. Those numbers -- there's no one missing from that, is there?
A. No.
Q. It's fully transparent that this is the match control group out of the published paper, isn't it?
A. Those numbers are the same.
Q. Now, it's also correct, is it not, that the cancers that are reported for the matched controls, so let's take lung cancer, for instance, the total lung cancers for miners and millers in this particular study would be nine, correct?
A. Yes.
Q. Excuse me, it would be 13. It would be nine for the miners and four for the millers, correct?
A. Yes.
Q. And if you turn over to Table 8, you can see, can you not, that for lung cancer that those numbers are accurate; are they not?
A. Yes.

Q. There's a column that says, "Malignant neoplasms." That's cancer, right?
A. Yes.
Q. Nine in the published paper for the miners, four for the millers, correct?
A. Yes.
Q. Do you have any basis to say that any of this data is not accurate?
A. I have -- I have no -- I wasn't there to collect the data. I can't --
Q. No. That's not what I'm asking. I'm asking a different question.
Do you have any basis to say that this data misrepresents what's in the published paper?
A. Those three numbers are the same as what's in this paper.
Q. Do you have any basis to say that any of these numbers are not right?
A. I would have to compare each line.
Q. You haven't studied it?
A. I'm sorry?
Q. You haven't studied that issue?
A. I haven't memorized all the numbers. I would have to go back and look.

Q. Let's --
A. I have a recollection the numbers were different.
Q. Tell me what's different.
A. The esophageal cancers are different.
Q. Let's see if they are. In the published paper for esophageal -- let's do, first of all, let's do what's published here.
For esophageal you have 15 and 7, correct?
A. Yeah. I was looking at a different table. But yes.
Q. They match, don't they?
A. Not in the table on page -- on 10690.7 they don't.
Q. Let's look over, though, at the table we were on before. Look at Table 8. This is where the miners' data is, right, and then the millers is on -- the miners is on -- I'm sorry.
The combined data is on Table 8, isn't it, miners and millers?
A. The combined miners and millers is 22, and the total there is 15.
Q. No. This is miners. This is millers.

A. Okay.
Q. This is 22, the paper is 22?
A. In that table, yes.
Q. Yep. It's also 22 in the published paper?
A. Right. But not in another table.
Q. Well, I am looking at the table that is miners and millers observed expected deaths. We're talking about dead workers missing. That's what you claimed. I am asking you, does this misrepresent any dead workers?
A. In that table, no. In another table the numbers are different.
Q. And the table that you would say is different is which table? I just want to make sure I understand that.
A. At -- if I am looking, it's table -- it's 190.7.
Q. Okay. Which table number?
A. There's no table number.
Q. You're looking at -- you're looking at 10690?
A. Yeah.
Q. Okay. And there are some pages at the bottom. Tell me what page is at the bottom.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

10690 point what?
A. .7.
Q. Okay. So when you see 10690, those are the control numbers, aren't they?
A. It says miners at the top.
Q. Yes. But you understand that this is a different look at the data with a different cohort. This Italian mine population is not the matched controls. These numbers are not the same as what's in the published paper because it's a different control group, correct?
A. The cases shouldn't change regardless of the control group.
Q. It's a follow-up duration of 1951 to 1974. Do you know that in this piece right here that they're using five-year increments to study the data as opposed to what they do over here with the folks that they were looking at from the town?
A. I was looking at all exposures during -- and it was during the '51 to '74, yes.
Q. Let me just be clear on this. On the left-hand side of the document here, are you testifying under oath that the numbers under the matched controls are different than the published paper?

A. In that table they appear the same.
Q. Thank you.
If you look at the published paper and the work that was done in the published paper, there are not 59 dead workers missing, are there?
A. We'd have to add up all the various ones, but from those, the 704 is the same in both.
Q. How about the 227?
A. They're the same for all cause, but they didn't have death certificates so they didn't know -- they're calling different things. One they had death certificates whereby they knew the cause of death and one is all the dead people. So they don't know the cause of death in 40 or 50 of them.
Q. They only had what they had when they published the paper, right? And when they came forward to the meeting in May of 1976, they accurately presented the data that had been in the published paper, correct?
A. They presented the same total number, but they didn't present the same number of causes that they had enumerated in the paper.
Q. Are you now talking about over on the Italian male population side?
A. No. I was referring to the fact that

they said all causes and that they only had death certificates on a smaller number.
Q. Well, that was known back when the paper was published, though, wasn't it?
A. Yes.
Q. All right. I am asking you if you are describing for this jury any inconsistency between the numbers that are represented with regard to the match controls in the May 1976 paper and the published Rubino paper. That's my question, please.
A. Not that I see as I sit here right now.
Q. Thank you.
Now, if we could look at 10690.1.1. And this is a cull-out from page 1 of the draft of the paper that you've been talking about.
Do you have that there? Do you have it, Dr. Moline?
A. You're talking about the presentation?
Q. Yes.
A. Okay.
Q. When I said paper, I meant the presentation. Yes.
A. Okay.

Q. Do you have that?
And do you see here what the authors are writing is that, "It was suggested by the authors that one of the possible explanations for the observed difference was a lacking comparability between the two groups."
Do you see that? It's the highlighted piece.
A. Yes.
Q. And what they're saying is that there was a lower rate of overall mortality as well as from some of the specific causes of death, but the respiratory was found in exposed versus controls, and they're discussing here what they have done to take a different look at the issue. Isn't that correct?
A. They're concerned that their comparison group is not appropriate and they're looking at another comparison group of which their first comparison group would be a subset.
Q. And what we see on the right-hand side of the column is the -- look at the data when comparing the five-year incremental data of the Italian male population to occurrences or events or deaths that were in this period of time of the 1951

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

to '74, correct?
A. There's no breakdown in this table by year. It's just the total number of those 23 years.
Q. Now, in your work you mention that you have published some in the field of epidemiology, correct?
A. Yes.
Q. To be clear, you are not an epidemiologist, though, are you?
A. I -- no.
Q. And I think you mentioned you have done some work with regard to the World Trade Center, and I think you have a publication with regard to some of that work; do you not?
A. I have about 40 publications with regard to that.
Q. Okay. I am focused on -- let me just ask this question: In the paper that I show as the first author Stein, 2016, you and your fellow writers utilized a U.S. general population as your control group in terms of looking at the risk of -- risk to responders, correct?
Your control group, you looked at a national population?
A. The control group was because the

responders are national. We looked at a national control group. People came from 50 states to respond after the World Trade Center, so we looked at the national control.
Q. You're not expressing the opinion here today in this court that using a national population in Italy for the Italian male population study which is shown there on the right-hand side of that document was inappropriate or bad science, are you?
A. No.
Q. Now, after work was done later in 1976, there was a later publication, also by Rubino, that was published in 1979, correct?
A. Can you show me?
Q. Sure.
THE COURT: Thank you.
BY MR. BROCK:
Q. Okay. Is this a publication in dust and disease copyright -- well, it says 1979, by Rubino and Piolatto. If you look at .3, I think you'll see the authors.
A. Yes.
Q. And in this particular study do you know whether or not Drs. Rubino and Piolatto

continued to follow the protocol of using the national database as opposed to the match control that are over here on the left-hand side; do you know?
A. I would have to take a look at it.
Q. As you sit here today you don't know; true?
A. I don't recall what they were using for their comparison. It says, "Italian male population."
Q. All right. Now, you have testified that you would expect the number of deaths, in a mortality study or series of mortality studies, to go up over time in the context of a good epi study, correct?
A. If you're following the same group of folks, yes.
Q. And do you know that the number of deaths did go up as the studies progressed from 1979 to 2003 to 2017, as you would expect?
A. They're different. They're people from different time periods.
Q. Do you know if -- have you studied the issue to be able to say whether or not the number of deaths went up?

A. It's not the same people so I haven't been able to study. It's not following the same group. It's not the same folks employed during the same period of time, so I can't answer your question because that hasn't been a question that's been asked.
Q. Is it your testimony that beginning in 1979 and continuing through to 2017, that the groups being studied has changed?
A. The study from Coggiola says it's an update of a mortality study, yet it uses a different group of workers who are employed during a different period of time. So I am unclear who they're describing, since the first cohort was employed from 1921 to 1940 something; and the second study that they call an update is a study of folks who were employed for at least a year from '46 to '95.
Q. Exactly. That's exactly right.
So I am asking you if, beginning in 1979 when they began to use the five-year increment data, if you know, if the number of deaths went up as the studies continued to be conducted and the results came in 2003 and then again in 2017. I'm just asking you if you know.
A. I don't know if it was specified in

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

that way in the paper. It was just they divided them in terms of when they started.

Q. Thank you.

Can you see that?

A. Yes.

Q. Now, you would agree that apart from New York, that in the published peer-reviewed literature there have not been any mesotheliomas reported in the literature in association with millers and miners of talc?

A. Correct.

Q. And in a prior case, have you said, "There are mesotheliomas within New York State, but no mesotheliomas reported from talc miners and millers at any other location, whether it be Vermont, whether it be Italy, France, Austria, Australia; there are a few more countries, but it's been looked at extensively throughout the world, and apart from Upstate New York, there have not been any mesotheliomas reported in the literature that I am aware of."

Have you testified to that under oath?

A. Was that from 2012?

Q. It was.

A. Yes.

Q. And in 2012, you made reference in your direct examination to the reference to the talc man from, it was reference with regard to the Vermont mines, correct?

A. Yes.

Q. And the report of the talc man was in the public before you gave this testimony in 2012, wasn't it?

A. Yes.

Q. And as you described in your testimony, you would never rely on a single case report like that with no further information than you can glean from information about a single talc man to make any scientific conclusions, correct?

A. Well, I certainly wouldn't discount the fact that you have to look further, but I wouldn't make a conclusion from a simple description as it was in that paper.

Q. You would not, as an expert in this case, be able to reach any opinion to a reasonable degree of scientific certainty based on a sole description of a potential case called a talc man, correct?

A. Correct.

Q. Now, we are also in agreement, are we not, that there are no published epidemiological studies showing any increased risk of mesothelioma as a result of exposure to cosmetic talc; that's true, isn't it?

A. I am unaware of an epidemiologic study of cosmetic talc.

Q. I'll ask it again. I'm sorry.

Were you asking me a question? I apologize.

A. I was not.

Q. Okay. Was that an answer?

A. I believe it was.

Q. I thought you were saying it as though it was a question. Let me try it again.

There are no published epidemiological studies showing any increased risk of mesothelioma as a result of exposure to cosmetic talc, correct?

A. I am unaware of any epidemiologic studies that even seek to ask that question.

Q. And so the answer to my question is you're not aware of any epidemiologic studies that would show that, correct?

A. I'm not aware of any studies that

have looked at that question, and so therefore I am unaware of any studies that would be able to give information.

Q. We do know, we have this series of studies over here on the board that you have talked about in your testimony of miners and millers, that group of people who you have described as having high exposures to the substance. And we know in none of the peer-reviewed articles is there a single case of mesothelioma; true?

A. Yes.

Q. And that's true of United States, in Vermont; it's true in Norway, it's true in France, it's true in Austria, it's true in Italy for a series of studies, and it's true in Norway as relates to cosmetic talc; true?

A. Well, the Coggiola paper has four peritoneal cancers, peritoneal mesos in a table, so it's unclear what they're actually talking about. But apart from that, it is true.

Q. All right. When you say to us you know of no peer-reviewed literature that shows an increased risk of mesothelioma from exposure to talc, that study is part of what is known in the world about exposure to talc, isn't it?

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

A. From exposure to talc miners and millers.
Q. Miners and millers. And that's the group that you have said consistently is the group that needs to be studied because of their high level of exposures, correct?
A. That's what I said in 2012. Yes.
Q. You said it again in 2015, didn't you?
A. Yes.
Q. Let's look at a new exhibit, Defendant's Exhibit 8672, please.
THE COURT: Thank you.
BY MR. BROCK:
Q. This is a paper that you looked at with counsel in this case, and I want to make just one very quick point about this.
First of all, for the benefit of the jury, this is the paper of Dr. Gordon that was published in 2014, or it appears in 2014, and it's Exhibit 8672.
You have it there, don't you?
A. Yes.
Q. And I'd like to ask you just to turn to page 14 of the document, please. And do you see

in the bottom, the very end of the paper that, we can turn to page 14, if you can see that, page 14, and we'll look at 14.1.
And do you see that this describes in this paper that the work was paid for by attorneys for litigation purposes?
A. The work done, yes.
Q. And you know of Dr. Gordon as an expert in asbestos litigation, he's working in that area, correct?
A. I know Dr. Gordon. I mean, I've published papers with Dr. Gordon that have nothing to do with litigation. I used to work with him.
Q. Now, you know that Dr. Gordon's paper concerns a product called Cashmere Bouquet, correct?
A. Yes.
Q. And that Cashmere Bouquet, Cashmere Bouquet has never been a product of Johnson & Johnson, correct?
A. I believe it's from a different company.
Q. And it's not associated in any way with Johnson's Baby Powder, correct; it's not the same product as Johnson's Baby Powder, nor is it associated with Johnson & Johnson Shower to Shower,

correct?
A. Correct.
Q. And the talc that's used in Cashmere Bouquet is sourced from mines in Montana, North Carolina, and maybe for some periods of time in Italy, I'm not sure. I think you may have mentioned Italy at some point about Cashmere Bouquet; did you not?
A. I believe at some point it was Italy.
Q. Do you know what periods of time Cashmere Bouquet would have been sourced from Italy?
A. I don't know the exact years.
Q. Now, it's also the case that in the Gordon paper that we were just looking at, that there is reference to work that was done by Rohl and Langer back in 1976, correct?
A. Yes.
Q. And I think there's reference to there being a test of 20 products, correct?
A. They're relaying what was in the paper described by Rohl and Langer in 1976.
Q. And this paper reports that of the 20 products tested, ten were found to contain tremolite and anthophyllite, correct?
A. Yes.

Q. And you don't know which mines those ten came from, do you?
A. I do not.
Q. But you do know that Dr. Pooley looked at this issue and identified which ones were the positives for tremolite and anthophyllite and that none of them were Johnson & Johnson products, correct?
A. I'm sorry. I don't understand the question.
Q. Yes.
There were 20 products that were tested by Rohl and Langer in 1976. Are we in agreement on that?
A. Yes.
Q. All right. I think maybe you have described at one point in time that you're aware that the product that Dr. Gordon was looking at was not a J&J product, but that you didn't know which tests were positive and which were negative with regard to the Rohl and Langer work in 1976. Is that true?
A. I'm sorry. Can you rephrase the question? I'm sorry. I am just not following your question.

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Q. Yes. That's fair. Pass this up to you.
Your Honor.
THE COURT: Thank you.
BY MR. BROCK:
Q. Let me just take a step back, if I can. Probably confused everyone.
In the Gordon paper that you cited in your direct examination, you agree that the product that Dr. Gordon is looking at is Cashmere Bouquet and that's not a J&J product. We established that?
A. That's correct.
Q. Then, in that paper Dr. Gordon cites to a paper by Rohl and Langer from 1976, correct?
A. He's describing in his introduction what's been found by others, and that's -- yes, that's what he's describing.
Q. Okay. And when we -- and in the document that I have handed to you, do you see that there is a cover sheet there, it says, "Report of the examination of talc samples obtained from Mount Sinai hospital."
Do you see that?
A. Yes.
MR. BROCK: All right. Your Honor,

we would offer Exhibit 7114 at this time.
MR. MAIMON: I object.
THE COURT: Sidebar.
(Sidebar.)
MR. MAIMON: This is inappropriate cross-examination of this witness, your Honor. This is not a learned treatise, and it's not a matter that she discussed on direct, and I would object.
MR. BROCK: She relied on the Gordon paper, and in the Gordon paper there's citation to Rohl and Langer, and she has -- I can show her her testimony. She's testified she's not seen the key. There is a key to the Rohl and Langer work which shows that the products that tested positive were not J&J products. That's at page 7114.
THE COURT: Is that the copy --
MR. BROCK: You go to this and you get the numbers and you go back to the paper and you will see how the numbers are marked.
THE COURT: When you're referring to "the paper," you're referring to which paper?
MR. BROCK: I'm sorry. Thank you, your Honor. I'm referring to 7114 as the key to the Langer work.
THE COURT: Okay. So we start off

with the Gordon Millette paper.
MR. BROCK: Correct.
THE COURT: In that paper, which she's familiar with --
MR. BROCK: Yes.
THE COURT: -- in that paper it references Rohl and Langer.
MR. BROCK: Correct.
THE COURT: Which she has testified about.
MR. BROCK: Correct.
THE COURT: This now is the key.
MR. BROCK: This is the key.
THE COURT: Which is referenced in?
MR. BROCK: It's referenced in this document.
THE COURT: Which is DX --
MR. BROCK: 7114. It's referenced in this document that Dr. Pooley has the key to the Rohl and Langer results.
THE COURT: Okay. I -- what?
MR. MAIMON: First of all, in the published paper, the Gordon Millette, it refers to 20 samples that Rohl and Langer discussed in their paper. First of all, she didn't discuss that part

of the article at all, but this does not refer to 20 samples. This refers either to 39 samples on the back, or 21 samples at another point, or 18, or 21, I'm sorry, or 39.
MR. BROCK: It's the table of U.S. consumer counts.
MR. MAIMON: There's no foundation for this, your Honor. There's no foundation for this.
THE COURT: If you can lay the foundation with this witness, I'll allow it. You said you were referring to prior testimony.
MR. BROCK: In prior testimony she has said I could not do it without a key. This is the key. And she has not said she has seen this document, reviewed this document. I'm not representing that. I don't think -- I don't know if she has.
THE COURT: Just as an aside, how much more do you have with this witness?
MR. BROCK: I don't know. Probably -- I'd have to go back and look at my outline, I've got at least 30 minutes.
THE COURT: Well, we can't keep the jurors here till 5 o'clock. And then you have

ELECTRONICALLY FILED - 2021 Oct 25 7:17 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

redirect.
MR. MAIMON: I do.
THE COURT: I need to hear more about this, all right. So let's just let the jurors go and we'll -- well, I want to stay and have a discussion off the record about where we're going tomorrow.
(Sidebar ends.)
THE COURT: Members of the jury, we're going to conclude for today. So if you could please put your notebooks in the envelopes, along with the pens. They'll be in my chambers overnight.
We'll see you tomorrow morning at 9 a.m. Remember all the instructions I've provided to you during the course of this trial. Have a good night.
(Jury exits.)
THE COURT: You may step down.
We're off the record, and we've concluded for the day.
(Proceedings adjourn at 4:22 p.m.)

CERTIFICATE OF OFFICER

I CERTIFY that the foregoing is a true and accurate transcript of the testimony and proceedings as reported stenographically by me at the time, place and on the date as hereinbefore set forth.
I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney or counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Andrea Nocks CCR CRR
ANDREA NOCKS, CCR, CRR
Certificate No. XI001573

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL DISTRICT
ANGELA M. HOOD, Individually and as) Personal Representative of the Estate of) **MARY B. MCBRAYER**,)	C/A No. 2020-CP-10-03946
)	In Re: Asbestos Products Liability Litigation
Plaintiff,)	
)	
vs.)	**ORDER**
)	
ACME MARKETS, INC., et al.)	
)	
Defendants.)	

Before the Court is Plaintiff's Consolidated Motion for Evidentiary Sanctions Against Johnson & Johnson Based on Spoliation of Evidence.[1] The Court received briefs from Plaintiff and from Johnson & Johnson and heard extensive argument from the parties on October 28, 2021. The motion is granted in part and denied in part.

BACKGROUND

Since at least the 1950s, Johnson & Johnson has itself tested or directed others to test several hundred samples of its talcum powder products and the talc sources from which those products are made. For most of those tests, only summary reports of the results are available. In most cases, no underlying data remain that describes or depicts what the analyst saw during the test. These materials have been destroyed or discarded or were never collected. In addition, the talc samples that were tested have been destroyed and discarded.

[1] Plaintiff originally made this motion against Johnson & Johnson Consumer, Inc. ("JJCI"), but proceedings against that entity have been stayed by the bankruptcy court. This order is not directed at JJCI.

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Plaintiff argues that Johnson & Johnson is guilty of spoliation through its failure to preserve (1) underlying data that support (or fail to support) test reports, (2) control blanks or documentation about control blanks that would show whether laboratory air was contaminated with asbestos fibers, and (3) historical talc samples in its possession. Based on this alleged spoliation, Plaintiff has requested certain evidentiary sanctions in the form of jury instructions that the jury may presume that, when Johnson & Johnson is responsible for missing evidence, the missing evidence would not have supported Johnson & Johnson's position. Plaintiff also asks that Johnson and Johnson be precluded from arguing that the causation opinions of Plaintiff's experts are supported by tests of insufficient or unrepresentative talc samples.

THE MISSING DATA

Documentation of Testing and Analysis

Testing for asbestos often requires a complex and multilayered analysis. The analyst will collect several types of data during the process, including: (a) "bench sheets" or "count sheets," (b) photographs and/or (c) chemical analysis such as EDS data. Bench sheets report each particle examined: its chemistry (whether it is one of the asbestos types and which one), length, width, aspect ratio, and other features. Photographs show the particle's length and width, but also its shape, such as potential curvature, bundling, etc. And tests such as EDS data provides information on the chemical elements of the particle. The elemental makeup can then be compared to the reference standard for identification.

The parties and their experts have fundamental disagreements about the proper (1) definition for asbestos in the context of evaluating health effects, (2) methodology to detect the presence of trace levels of asbestos in talc and (3) interpretation of the data generated, including the chemistry, crystal structure, size and shape of the particles or structures examined. These disagreements can lead experts to reach different conclusions based on review of the same

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

evidence. In fact, Plaintiff presented evidence that Johnson & Johnson and its consultants recognized in the 1970s that this underlying data was "vital information" and interpretation of the data would vary based on the expertise and interest of the analyst.

Plaintiff argues that, without the underlying data for Johnson & Johnson's tests, it is impossible to determine what the results would have been if a different definition were applied, different methodology used, and/or different interpretation made. For example, as to methodology, evidence was presented that Johnson & Johnson instructed its testing consultants to use a counting protocol that permitted the presence of asbestos to be reported in a sample only if five fibers of the same type were counted, and Johnson & Johnson directed its testing consultants on the language to be used in testing reports.

Johnson & Johnson has not argued that this underlying data are unimportant. In fact, the evidence presented demonstrate that Johnson & Johnson testing consultant RJ Lee Group has taken the position that, to evaluate the accuracy of another analyst's report, it would need information on the number, chemistry, crystal structure, size, and shape of the particles. Rather, Johnson & Johnson argues that, because Plaintiff has the examples she used in making this motion, any other evidence she could obtain through the missing data would be cumulative.

Laboratory Control Blanks

Another type of data that is collected for such testing is data on control blanks. It is standard practice for laboratories to use "blanks" to control for possible contamination. A blank is a filter placed near talc samples being tested to capture any contaminants in the air. The practice allows labs to rule out the possibility that asbestos fibers found in the sample came from an outside source since any contamination from an outside source would appear in both the sample and in the blanks.

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Johnson & Johnson required the use of blanks, but the testing data provided by Johnson & Johnson in discovery virtually never includes documentation concerning blanks.

Plaintiff argues that Johnson & Johnson and its experts sometimes take the position that asbestos found in samples are the result of laboratory contamination. Plaintiff has identified specific instances in which documentation of blanks was available and did not support a finding of laboratory contamination. Johnson & Johnson argues that it should be allowed to use language in test reports that attribute asbestos to laboratory contamination without documentation of empty control blanks because (1) Plaintiff assumes that blanks were used, and (2) there is no evidence the blanks were in Johnson & Johnson's possession, custody, or control. However, Plaintiff provided evidence that Johnson & Johnson required the use of blanks, and Plaintiff does not appear to seek the physical blanks themselves, but rather documentation of their contents—as with the count sheets.

Talc Samples

Johnson & Johnson did not maintain the talc samples after they were tested. Its testing consultant McCrone offered to return the samples to Johnson & Johnson, but Johnson & Johnson did not take possession of the samples or ask that they be preserved. It is clear this offer had been made repeatedly and was made again in 1987. Plaintiff makes the point that Johnson & Johnson had access to the bulk of its product samples, and samples of its talc sources, but it chose to discard those products.

Plaintiff claims that Johnson & Johnson generally attacks the number, diversity, and source of the talc samples that Plaintiff's experts rely on as insufficient in number or not representative. Plaintiff points out that Johnson & Johnson has also attempted to challenge reliance on samples of

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Johnson's Baby Powder not obtained from it by claiming insufficient chain-of-custody and/or asbestos contamination during maintenance.

Johnson & Johnson argues that there is no evidence that these samples were ever its custody after they went out for testing, and it had no responsibility to reclaim them. Johnson & Johnson also argues that Plaintiff is not prejudiced by not having access to the lost samples, which will be discussed below.

JOHNSON & JOHNSON'S KNOWLEDGE OF AND RESPONSE TO PENDING OR ANTICIPATED LITIGATION

In 1969, Johnson & Johnson's Medical Director Dr. T.M. Thompson (a) advised Johnson & Johnson of the danger of inhaling "needle-like" tremolite, (b) recognized that "trace" amounts of tremolite in Johnson's Baby Powder were "unavoidable" and (c) noted that "furor" might arise if the public learned Johnson's Baby Powder "contained any significant amount of tremolite." He predicted Johnson & Johnson "could become involved in litigation" for pulmonary fibrosis and recommended Johnson & Johnson's "Law Department" evaluate the "defensibility of our position." Johnson & Johnson's privilege log asserts privilege based on pending or ongoing talc litigation as early as 1971 and throughout the 1970s. Johnson & Johnson argues that these early cases involved industrial talc rather than cosmetic talc and did not include allegations of mesothelioma. Johnson & Johnson asserts that the first mesothelioma case against it alleging exposure to Johnson's Baby Powder was in 1996.

Johnson & Johnson's corporate representative John Hopkins testified that the company knew since 1971 that asbestos-related diseases were latent and might not be diagnosed until decades after exposure. Plaintiff argues that, because Johnson & Johnson knew consumers would not develop disease until decades after using its product, it also knew that the talc samples in its possession might remain one of the only sources for vintage samples by the time an individual was

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

diagnosed with cancer. Johnson & Johnson's privilege log reveals that, as early as February 1971, Johnson & Johnson was communicating with its attorneys about talc samples in connection with both ongoing and anticipated litigation. Despite ongoing litigation and the depth of its knowledge, Johnson & Johnson failed to institute preservation policies until far too late.

The evidence shows that Johnson & Johnson did not institute a records retention policy until 1997. Johnson & Johnson also has no evidence that a legal hold was put in place for any talc litigation before the late 1990s, and Johnson and Johnson's position is that any legal hold would apply only to a single talc case. Although Johnson & Johnson sought and was unable to obtain talc samples for use in litigation from its talc supplier Luzenac in 1994 because of Luzenac's retention policy, Johnson & Johnson did not institute a legal hold on talc samples in its possession until 2017.

Johnson & Johnson's corporate designee on its discovery responses Nancy Musco testified that Johnson & Johnson was asked repeatedly in discovery for "any evidence" that the talc in Johnson's Baby Powder (*i.e.*, Johnson's Baby Powder or its talc sources) contained asbestos. Musco testified that Johnson & Johnson would respond with the company position, "That there is no asbestos in the cosmetic talc used for Johnson's Baby Powder." Musco testified that Johnson & Johnson could not identify a case prior to 2017 in which it had produced evidence related to the testing of its talc.

ANALYSIS

"The courts of South Carolina have long recognized that a party is entitled to favorable presumptions [in civil cases] about the contents of missing evidence when an opponent is responsible for the destruction of evidence that might otherwise be expected to have been relevant." *State v. Reaves*, 414 S.C. 118, 128, 777 S.E.2d 213, 218 (2015) (quoting Kevin R. Eberle, *Spoliation in South Carolina*, 19 S.C. LAWYER 26, 28 (2007)); *see also Gathers ex rel.*

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Hutchinson v. S.C. Elec. & Gas Co., 311 S.C. 81, 83, 427 S.E.2d 687, 689 (Ct. App. 1993) ("when a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party."). Just as a defendant should be allowed "to exculpate itself from liability because the plaintiff has barred it from obtaining evidence," *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 153, 714 S.E.2d 537, 542 (2011) (quoting Robert L. Tucker, *The Flexible Doctrine of Spoliation of Evidence: Cause of Action, Defense, Evidentiary Presumption, and Discovery Sanction*, 27 U. TOL. L. REV. 67, 75 (1995)), a defendant should not be allowed to escape liability by denying the plaintiff access to evidence.

The Duty to Preserve

The evidence supports the conclusion that a duty to preserve evidence was triggered by 1971 at the latest, when Johnson & Johnson had already been sued for personal injury caused by its talc. Two years before, Johnson & Johnson had been warned by its medical director that it faced the risk of litigation from tremolite fibers in Johnson's Baby Powder and that the Law Department should be informed. Also in 1971, Johnson & Johnson knew that the FDA was concerned about the presence of asbestos in talc and considering regulation of the talc industry, and Johnson & Johnson was also aware by this time that asbestos disease was latent, so that consumers using its product in 1971 would not develop asbestos-related cancers for decades.

Johnson & Johnson argues spoliation sanctions are normally applied in the context of discrete events, such a car accident where the plaintiff allows the car to be destroyed or where a furnace is destroyed after an accident. Johnson & Johnson argues that applying the doctrine in to conduct over decades and in the absence of a discrete event would be unfair. However, the analogy falls flat where Johnson & Johnson, with knowledge of the danger and the latency of asbestos-

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

related disease, sold its product to hundreds of thousands of consumers over the lengthy period of time at issue here.

Johnson & Johnson also argues that it cannot be guilty of spoliation going back to 1969 or 1971 because it was not sued in a mesothelioma case for exposure to Johnson's Baby Powder until 1996. But Johnson & Johnson's argument that the litigation must be identical to give rise to a duty to preserve evidence is not persuasive. Whether the talc at issue was industrial grade or cosmetic grade, Johnson & Johnson's corporate representative testified that it came from the same talc ore body. And any distinction between cancer in one part of the body versus another part of the body is inconsequential when both are triggered by asbestos. Any lawsuit alleging asbestos-related disease from exposure to its talc should have alerted Johnson & Johnson of the duty to preserve evidence related to asbestos in its talc sources and its talc products, particularly when Johnson & Johnson knew that asbestos had been found in its products and that low dose exposure to asbestos could cause latent disease.

Relevance and Prejudice

Plaintiff has demonstrated that the missing testing data is relevant and that she is prejudiced by its absence. Even Johnson & Johnson and its experts have expressed in the past that this evidence is essential to evaluating test results. Plaintiff has presented examples based on the few sample documents in Plaintiff's possession that show (1) some tests that report no quantifiable asbestos actually show that the analyst found an asbestos fiber in the sample, and (2) some tests where the analyst blamed asbestos in a sample on laboratory contamination had no asbestos in any laboratory blank and so no evidence to support the conclusion of laboratory contamination. The underlying test data, including documentation of blanks, is relevant and its absence is prejudicial

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

to Plaintiff. Johnson & Johnson's argument that any additional data would simply be cumulative is not credible. Underlying data for each test is necessary to evaluate the results of that test.

Johnson & Johnson has argued, however, that Plaintiff is not prejudiced by the absence of additional talc samples because she and plaintiffs generally have a sufficient representative number of samples available to test. Johnson & Johnson cites the testimony of Plaintiff's expert Dr. William Longo that sufficient talc samples were available to him for testing. Based on Johnson & Johnson's representations, I find that the absence of additional talc samples from Johnson & Johnson's historical testing does not prejudice Plaintiff.

Appropriate Sanctions

An appropriate sanction must "serve to protect the rights to discovery provided by the Rules." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Griffin*, 334 S.C. at 199, 511 S.E.2d at 719.

Plaintiffs have demonstrated substantial prejudice and that the conduct at issue has been going on for decades. Even after Johnson & Johnson admits it was involved in litigation with a plaintiff who alleged mesothelioma caused by exposure to Johnson's Baby Powder in 1996, Johnson & Johnson continued to deny that its product had ever contained asbestos and did not disclose its historical testing in discovery until 2017.

Johnson & Johnson argues that the loss of this evidence was not intentional, and so it should not be subject to what it claims is the equivalent of granting judgment by default or dismissal. First, Johnson & Johnson overstates the scope of Plaintiff's motion. Plaintiff seeks an instruction only as to the testing done by or at the direction of Johnson & Johnson since 1971. It does not

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

apply to any testing done by Johnson & Johnson's suppliers, for example, and the evidence shows that hundreds of such tests exist. Nor does it apply to any test performed or commissioned by Johnson & Johnson before 1971. The proposed instructions are not the equivalent of death penalty sanctions.

While there is some evidence that Johnson & Johnson acted in bad faith in relation to certain matters connected to the reporting and preservation of its testing, Plaintiff need not prove that the spoliation was intentional to justify an adverse inference instruction. *See Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990) (upholding trial court's spoliation instruction as appropriate sanction because there was no evidence of undue prejudice or intentional misconduct); *Stokes v. Spartanburg Reg. Med. Ctr.*, 368 S.C. 515, 521, 629 S.E.2d 675, 678–79 (Ct. App. 2006) (finding it reversible error to not include adverse inference instruction when two pieces of evidence were missing from hospital records, even though there was no evidence hospital acted intentionally and one of the records may never have been generated).

For these reasons, the Court **GRANTS** Plaintiff's motion for an adverse inference instruction concerning underlying testing data and blanks, and **IT IS HEREBY ORDERED** that the jury will be instructed that it may presume:

1) That when Johnson & Johnson introduces a test result, for tests performed by Johnson & Johnson or commissioned by Johnson & Johnson, that is negative for asbestos, reports "no quantifiable asbestos," or contains similar language, if the evidence shows Johnson & Johnson destroyed or unreasonably failed to preserve underlying data related to the test, the jury may presume that the missing data showed asbestos fibers were present.

2) When Johnson & Johnson argues any positive tests for asbestos, for tests performed by Johnson & Johnson or commissioned by Johnson & Johnson, were the result of lab contamination but Johnson & Johnson failed to retain evidence related to the "blanks" used as a control for such contamination, the jury may presume the blanks were free from asbestos.

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

These instructions are directly connected to the missing evidence and what it appears likely the evidence would have shown.

In addition, **IT IS HEREBY ORDERED** that Johnson & Johnson, its lawyers, or its experts are precluded from suggesting limitations to positive testing due to lack of underlying data when the underlying data does not exist because of Johnson & Johnson's conduct.

Finally, Plaintiff is instructed to inform defense counsel of what tests Plaintiff contends are included in the scope of this order in sufficient time for Johnson & Johnson to review before trial. Should the parties require any further clarity on import of this order, it can be discussed in context of specific testing.

Finally, the Court **DENIES** Plaintiff's with regard to talc samples. It is not clear whether these samples were within Johnson & Johnson's possession, custody, or control. Moreover, the Court notes Johnson & Johnson's argument that Plaintiff has access to sufficient and representative talc samples for testing.

AND IT IS SO ORDERED.

ELECTRONICALLY FILED - 2021 Nov 05 1:24 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003946
ELECTRONICALLY FILED - 2024 Jul 24 6:09 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Charleston Common Pleas

Case Caption: Angela M Hood , plaintiff, et al VS Acme Markets Inc , defendant, et al

Case Number: 2020CP1003946

Type: Order/Other

So Ordered

Jean H. Toal