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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

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

v.

American International Industries et al.

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2023-CP-40-04072
	)	
MICHAEL L. PERRY AND LONNIE L. LONG,	)	<i>In Re: Asbestos Personal Injury Litigation</i>
	)	Coordinated Docket
	)	
Plaintiffs,	)	<u>JOHNSON & JOHNSON DEFENDANTS'</u>
	)	<u>OPPOSITION TO PLAINTIFFS' MOTION</u>
vs.	)	<u>IN LIMINE NO. 21 TO EXCLUDE THE</u>
	)	<u>TESTIMONY OF DR. DAVID WEILL</u>
AMERICAN INTERNATIONAL INDUSTRIES, ET AL.,	)	
	)	
Defendants.	)	

Defendants Johnson & Johnson (“J&J”), LLT Management LLC, Johnson & Johnson Holdco (NA) Inc. (“Holdco”), and Kenvue, Inc. (“Kenvue”), (collectively “J&J Defendants”), submit this brief in response to Plaintiffs’ Motion in Limine No. 21 to exclude the testimony of Dr. David Weill (PLF MIL #21). As set forth below, Plaintiffs’ motion is without merit and should be denied.

INTRODUCTION

Plaintiffs seek the wholesale preclusion of Dr. Weill’s causation opinions concerning Mr. Perry under the exact same basis for which his testimony was limited in the *Payne* and *Plant* case. In so doing, Plaintiffs misconstrue both the substance and data underlying Dr. Weill’s proffered opinions. Following the review of case specific materials, medical and scientific literature, testing, and expert reports, Dr. Weill was unable to identify any asbestos exposure that elevated Mr. Perry’s risk of mesothelioma, and thus he concluded that Mr. Perry’s mesothelioma was a naturally occurring disease. Yet, Plaintiffs claim his opinions lacks sufficient foundation, putting forth nearly identical arguments from the *Payne* and *Plant* case. The fundamental flaw in Plaintiffs’ quest to exclude these opinions is that they **completely** ignore the significant work Dr. Weill has

done to overcome each one of this Court's prior foundational criticisms of his opinions. In concluding that Dr. Weill, and others, did not have sufficient information to testify as to the cause of mesothelioma, this Court made three separate observations:

- (1) These doctors have not made an attempt to determine the products at issue contained asbestos at all.
- (2) They did not make an attempt to determine the fiber type of asbestos potentially associated with any talc product at issue in this case.
- (3) These doctors have not reviewed any studies relating to the products at issue in this case either purporting to demonstrate the presence or lack of presence of asbestos in the products or for purposes of determining the amount of asbestos released from the normal and expected use of these products.

(See Ex. A, February 28, 2023, *Payne/Plant* MIL Order, pgs 3-4.) Notably, this Court did not find that Dr. Weill was unqualified to render his opinions; rather, this Court focused on what he had not reviewed, or made efforts to determine, in reaching his causation opinions. When investigating the cause of Mr. Perry's mesothelioma, however, Dr. Weill took great care to avail himself of additional information and data he had not reviewed in *Payne* and *Plant* which directly correlate to each one of the substantive areas of inquiry this Court previously found lacking. Thus, the same limitation of his causation opinion is not warranted here, and Plaintiffs' motion should be denied.

STANDARD OF REVIEW

Rule 702 of the South Carolina Rules of Evidence provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." The trial court must act as a gatekeeper over scientific evidence and make three preliminary findings before expert testimony may be admitted. *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (Toal, C.J.). In determining admissibility of expert testimony, the court must make three

inquiries: First, the court must determine whether ‘the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.’” *Graves v. CAS Med. Sys. Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) (quoting *Watson*, 389 S.C. at 446, 699 S.E.2d at 175). “Second, the expert must have ‘acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter,’ although he ‘need not be a specialist in the particular branch of the field.’” *Id.* Third, “the substance of the testimony must be reliable.” *Id.* The reliability prong is the “central feature” of the analysis. *Id.* (citing *White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009)). If the proffered expert testimony is scientific in nature, the court must determine the reliability prong under the factors set forth in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999). *See Graves*, 401 S.C. at 74, 735 S.E.2d at 655. South Carolina courts look to four factors: “(1) the publication and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.” *Id.* (quoting *Council*, 335 S.C. at 19, 515 S.E.2d at 517).

ARGUMENT

I. Dr. Weill is Well Qualified to Offer a Causation Opinion.

Dr. Weill is a licensed and board-certified physician in pulmonary disease. (*See Ex. B*, July 11, 2024, *Weill Perry Rep.*, pg. 130.) He is a Professor of Medicine at Tulane University Medical School. (*See Ex. C*, *Weill Curriculum Vitae*, Pg. 3.) Dr. Weill has authored numerous publications on various aspects of lung disease and published a paper examining exposure to asbestos and lung function in Libby Montana.¹ (*Id.* at 10.) He has authored two book chapters/monographs related

¹ Weill D, Dhillon G, Freyder L, Lefante J, and Glindmeyer H. Lung function, radiologic changes, and exposure: analysis of ATSDR data from Libby, Montana. *European Respiratory Journal* 2011 Aug;38(2):376-83.

to asbestos and the clinical aspects of asbestos associated diseases.² (*Id.* at 14.) He has testified twice in front of the United States Senate regarding various aspects of asbestos related diseases. (*Id.* at 7) Dr. Weill was Chairman of the Monticello Conference on Elongated Mineral Particles (“EMPs”) in 2017, where one of the topics of discussion was human exposure, effects and risks associated with EMPs. (*Id.* at 120-121; 130.)

II. Dr. Weill’s Opinion that Mr. Perry’s Mesothelioma Was Not Caused By Asbestos In Cosmetic Talc – and thus a Naturally Occurring Disease – is Reliable and Supported by Data.

Plaintiffs do not like Dr. Weill’s causation opinion, and therefore obfuscate both the basis for his opinions and what his actual opinions are with respect to Mr. Perry. Dr. Weill opines that, even assuming trace levels of asbestos, Mr. Perry’s exposure to talc did not cause or contribute to elevating the risk for his mesothelioma. (*See* Ex. B at 130-131.) Plaintiffs attack the foundation of Dr. Weill’s opinion that Mr. Perry had no asbestos exposure from cosmetic talc by arguing he “strategically ignore[ed] all evidence” and that the “fatal flaw of this methodology is that Dr. Weill is completely in the dark” about “Johnson & Johnson’s own documents.” (*See* Pl.’s Motion No. 21 at 10.) As to the latter argument, review of internal company documents is not a “methodology” from which a pulmonologist could reliably base his expert opinion on medical causation. Moreover, Dr. Weill did the absolute opposite of “strategically ignoring all evidence” when he reviewed not only a significant number of literature and studies, **but also reviewed every single one of Plaintiffs’ expert reports that contain testing data** – the very reports, data and opinions which will be proffered by Plaintiffs in support of their position that there is asbestos in talc.

² Weill D. Asbestos and asbestos-related diseases. Hunter’s Diseases of Occupation, 10th Edition, Editors: Baxter, Aw, Cockcroft, Durrington, and Harrington, 2010; Weill D. The Clinical Aspects of the Asbestos Associated Diseases. Asbestos and Its Diseases, 1st Edition, Editors: Craighead and Gibbs, 2008.

Specifically, Dr. Weill relied on the following, as fully set out in his report:

- **Epidemiological studies:**

- o Dr. Weill reviewed and relied upon significant epidemiological evidence. (*See* Ex. B at 119.) He reviewed peer reviewed literature about cosmetic talc miners and millers where no asbestos was detected in the talc and the conclusions were consistently reached that exposure to cosmetic talc is not associated with the development of mesothelioma. (*Id.* at 124-128.)

- **Background asbestos exposure:**

- o Dr. Weill reviewed and relied upon substantial evidence concerning background exposures to asbestos from the ambient air in reaching his conclusion that exposure to talc does not cause mesothelioma. (*See* Ex. B at 71-72.) Dr. Weill reviewed and relied upon peer reviewed literature concerning the cumulative exposure to asbestos in the US population. (*Id.* at 71.) This evidence informed his opinion that background levels of retained asbestos fibers do not cause disease, given that there is no excess risk of developing any asbestos disease from environmental exposures of people in the general population. (*Id.* at 71.)

- **Testing of Talcum Powder Products for Asbestos**

- o Dr. Weill reviewed and relied upon the expert reports and opinions of Defendants' experts and Plaintiffs' experts in this case. He specifically reviewed and relied upon the following Plaintiffs' expert reports: R. Mark Bailey, PG., Dr. William E. Longo, PhD., and Dr. Steven P. Compton, PhD. (*See* Ex. B at 3-4.)
- o Dr. Weill reviewed all of Dr. Longo's MAS Analytical reports submitted in this case where he tested Johnson & Johnson products from all three source mines for Johnson & Johnson cosmetic talcum powder products sold in the United States: Italy, Vermont and China. (*Id.* at 2-3.)
- o Dr. Weill reviewed the reports of Defendants' experts that contained testing data and opined the cosmetic talcum powder at issue is free from asbestos, and that the hypothetical exposure experienced by Mr. Perry did not present any significant risk towards his development of mesothelioma. Dr. Weill reviewed reports and data of Defendants' experts that any hypothetical exposure to asbestos from talcum powder products at issue would be substantially less than Mr. Perry's ambient exposure and presented no significance towards the development of mesothelioma. (*Id.*)
- o Dr. Weill reviewed information about the cosmetic talc deposits at issue in this litigation which informed his opinion that cosmetic talc deposits are

consistently reported in the peer-reviewed medical and scientific literature to be free of asbestos. (*Id.* at 124-126.)

- o Dr. Weill considered testing of Johnson & Johnson products for asbestos by both Plaintiffs' experts and Defendants' experts. (Ex. D, July 18, 2024, David Weill Dep., 44:3-7.) In reaching his causation conclusions with respect to Mr. Perry, he took Plaintiffs' experts asbestos findings in cosmetic talcum powder into account.

- **Impact of Fiber Types on Risk of Mesothelioma**

- o Dr. Weill reviewed animal inhalation studies which corroborated the view that low-dose chrysotile exposures do not cause mesothelioma. (*Id.* at 103-108.)
- o Dr. Weill reviewed and relied upon significant literature concerning the impact of different asbestos fiber types on the risk of asbestos related diseases. (*Id.* at 75-96. He reviewed numerous studies in mining and manufacturing contexts that formed the basis of his opinion that mesothelioma risks appear only when significant amphibole exposure occurs, and that low-dose chrysotile exposure does not cause mesothelioma. (*Id.* at 96-101.)

By reviewing a substantial set of medical and scientific literature, as well as Plaintiffs' expert reports and testing data, Dr. Weill made significant efforts to determine whether or not the cosmetic talcum powder products at issue contained asbestos, the fiber type of asbestos potentially associated with the cosmetic talc products at issue in this case, and to further educate himself on studies pertaining to the presence or absence of asbestos or the amount of asbestos, if any, released into the air upon use of cosmetic talc. Dr. Weill followed the blueprint set by this Court in the *Payne* and *Plant* case, and thus has far overcome the foundational challenge presented by Plaintiffs.

III. Dr. Weill's Opinion that Mr. Perry's Mesothelioma Developed Spontaneously / Naturally Occurring is Reliable and Supported by Data.

It is well settled in South Carolina that the differential diagnosis methodology is "a process of identifying a cause by "eliminate the likely causes until the most probable one is isolated." *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 75, 735 S.E.2d 650, 656 (2012) (internal citations omitted). In examining all available evidence of Mr. Perry's alleged asbestos exposures, Dr. Weill

was unable to find any exposure that elevated his risk for mesothelioma. (Ex. D, 17:17-21.) Thus, because he could not find an external exposure that caused his disease, Dr. Weill concluded that Mr. Perry's mesothelioma was a naturally occurring disease, resulting from intrinsic factors specific to Mr. Perry. (Ex. D, 15:7-13.) Dr. Weill opined that there was a series of genetic mutations that necessarily occurred in order for Mr. Perry to be diagnosed with mesothelioma. However, because Mr. Perry did not have any germline testing conducted, Dr. Weill could not opine as to any specific mutation. (Ex. D, 15:15-16:15.) While Mr. Perry's *tumor* was tested and found to not harbor a BAP-1 mutation, that result was not indicative one way or the other as to whether he had other germline mutations, and thus did not have any implication on Dr. Weill's opinion. (Ex. D, 16:16-24.) Moreover, Dr. Weill did not rely on Mr. Perry's family history of cancer as a basis for his causation opinion. (Ex. D, 18:13-17.)

With respect to cancer development, Dr. Weill noted as follows:

Cancer occurs after the accumulation of mutations to the DNA in cells. It is initiated by driver gene mutations, which are caused by: (1) heritable mutations; (2) environmental exposures; and (3) replication errors. (Tomasetti 2015, 2017; Carbone 2019). It is well-established in the medical and scientific literature that all cancers, including mesothelioma can arise spontaneously due to internal replication errors and without an external cause, such as asbestos exposure.

(Ex. B at 118.) Thus, gene mutations are either inherited, caused by environmental exposures or due to internal replication errors. In this case, Dr. Weill opined that Mr. Perry was not exposed to asbestos at a level sufficient to elevate his risk (i.e. no environmental exposure) and did not conclude that his family's history of cancer played a role in Mr. Perry's mesothelioma development. Thus, after ruling out the other potential causes, Dr. Weill necessarily concluded that Mr. Perry's cancer was naturally occurring due to a series of genetic mutations. Dr. Weill further explained his conclusion of the etiology of Mr. Perry's mesothelioma:

23 Q. Other than not having any external risk

24 factors, is there anything else that you would
 25 identify that indicates to you that Mr. Perry's
 1 mesothelioma was spontaneous?
 2 A. That's the definition of a spontaneous
 3 tumor, not being able to identify any external
 4 factors which elevated the risk, and I didn't see
 5 those in this case, unless one of these exposures or
 6 any exposure becomes more further characterized.
 7 At this time I can't say more likely than
 8 not that any exposure he would have gotten would
 9 have elevated his risk of disease.

(Ex. D, 18:23-19:9.) Furthermore, Dr. Weill clarified that when he opined Mr. Perry's mesothelioma was "spontaneous," he was using that term interchangeably with "naturally occurring" and "idiopathic mesothelioma." (Ex. D, 15:21-24.) Plaintiffs take issue with his use of "spontaneous" and "idiopathic" interchangeably, calling it "incorrect" – yet their criticism is notably devoid of any authority.

Plaintiffs concede there is scientific literature supporting the proposition there are cases of mesothelioma which cannot be attributed to asbestos exposure. (See Pl. MIL No. 21 at 5-7.) Furthermore, Plaintiffs do not rebut Dr. Weill's well-founded opinion with any scientific literature concluding that mesothelioma *cannot* occur spontaneously. Nor did they submit any conflicting testimony from their experts. To the contrary, Plaintiffs' expert, Dr. Arnold Brody, has testified many times that any form of cancer, including mesothelioma, can occur spontaneously. (See Ex. E, *Garcia*, March 20, 2024, Brody Trial Tr. 137:12-138:14; Ex. F, February 22, 2021, Brody *Hirshberg* Dep., 28:10-13.) Instead, Plaintiffs focus much of their argument on an entirely different expert who is not in this case – Dr. Suresh Moolgavkar – and his opinion in a different case concerning the background rate for spontaneous mesothelioma. (See Pl. MIL No. 21 at 7-8.) This is an odd red herring, as nowhere in Dr. Weill's expert reports does he offer the same opinion. (See *generally* Ex. B (Report) and Ex. G (July 12, 2024, Weill *Perry* Supp. Report.)) Plaintiffs also

erroneously claim that Dr. Weill affirmatively opines that “77% of mesotheliomas in women are spontaneous,” which they claim is based on publications by Bertram Price, and then spend a page and a half arguing why Price was wrong. (See Pl. MIL No. 21 at 8-9.) Nowhere in Dr. Weill’s report or deposition does he proffer that opinion. Plaintiffs clearly cut and pasted an argument from another expert motion that is inapplicable to Dr. Weill.

Importantly, this Court in *Payne* and *Plant* did not preclude Dr. Weill from giving his general opinion regarding the rates of mesothelioma which are “spontaneous” or “naturally-occurring.” (See Ex. A at 4.) Instead, Dr. Weill was precluded from giving his specific causation opinion that the specific plaintiffs’ mesotheliomas most likely developed spontaneously or were naturally occurring. While Plaintiffs were forced to acknowledge that Dr. Weill had reviewed Plaintiffs’ expert reports (which Dr. Weill had not done in *Payne* and *Plant*), they still try to create an issue by saying that he had not reviewed “any of the raw data of any expert.” (See Pl.’s MIL No. 21 at 5.) Yet, as set forth above, Dr. Weill not only reviewed “evidence” about asbestos content of talcum powder products, but he also reviewed all of Plaintiffs’ experts testing data on the talcum powder products at issue.

Any difference of opinion between Plaintiffs’ experts and J&J Defendants’ experts on spontaneous mesothelioma or the rate of mesothelioma not exposed to asbestos is not a basis for preclusion but fodder for cross-examination. After ruling out talcum powder as the cause of Mr. Perry’s mesothelioma and noting that there is no clinical evidence that Mr. Perry had any exposure to asbestos, Dr. Weill logically concluded that Mr. Perry’s mesothelioma was most likely spontaneous or naturally occurring. J&J Defendants are entitled to explore that possibility with Dr. Weill and on cross examination of Plaintiffs’ experts and need not establish with certainty that

these factors proximately caused Mr. Perry's injuries. Dr. Weill should be allowed to proffer his well-informed opinion.

III. Dr. Weill's Assumption of Hypothetical Trace Levels of Asbestos in Talcum Powder is Proper for His Analysis of Potential Risk.

In reaching his specific causation opinions as a medical expert, Dr. Weill did not make any conclusions about whether or not there is asbestos in talcum powder. Instead, Dr. Weill assumed that cosmetic talc was contaminated with trace levels of asbestos, a worst-case scenario, to determine whether or not there is an excess of mesothelioma from that exposure. (Ex. D, 39:16-40:14.) When he was looking at the worst-case scenario for exposure to asbestos in talcum powder, Dr. Weill considered epidemiological studies, the FDA's risk assessment for consumer use of talc, medical literature about background levels of asbestos exposure, peer-reviewed literature³ and the opinions of Drs. Barlow and Pierce. (Ex. D, 40:14-41:15.)

In attacking his assumption on a worst-case exposure, Plaintiffs argue that the FDA's risk assessment is not a reliable source because the FDA was "consistently misled" and that "internal memorandum confirmed that the levels of impurities in four of the talcs incorporated into Defendants' products were well above 0.1%." (See Pl.'s MIL No. 21 at 13.) In addition to being wrong, Plaintiffs' arguments are better suited for the jury when attacking the weight of the document and are not reasons for wholesale exclusion of his assumption of asbestos exposure in talcum powder. Moreover, as to Plaintiffs' latter argument, the J&J talc used by Mr. Perry was sourced from Vermont and China. The talc sources discussed by Plaintiffs – United Sierra, Alabama, Sierra talc and Desert talc – are not relevant to J&J Defendants. (Ex. H, June 24, 2024,

³ Burns AM, Barlow CA, Banducci AM, Unice KM, Sahmel J. Potential Airborne Asbestos Exposure and Risk Associated with the Historical Use of Cosmetic Talcum Powder Products. Risk Anal. 2019 Oct; 39(10):2272-2294.

Perry Longo Dep., 52:19-25; 64:2-7.) This argument is more appropriately addressed during cross-examination of Dr. Weill rather than excluding his assumption entirely on an in limine request.

CONCLUSION

For all the reasons discussed above, J&J Defendants respectfully requests that the Court deny Plaintiffs' Motion *in Limine* to Exclude the Testimony of Dr. David Weill, in its entirety.

Respectfully submitted,

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Columbia, South Carolina

July 29, 2024

88792910.v1

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
SARAH J. PLANT and PARKER PLANT,	)	C/A NO. 2022-CP-40-01265
	)	
Plaintiff,	)	<i>In Re:</i>
	)	Asbestos Personal Injury Litigation
v.	)	Coordinated Docket
	)	
AVON PRODUCTS, INC., et al.	)	
	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
KELLY PAYNE CLARK and SHANNON PAYNE LANCASTER, as Co-Executors of the Estate of SHELBY LINVILLE PAYNE, Deceased,	)	C/A NO. 2022-CP-40-01281
	)	
Plaintiffs,	)	<i>In Re:</i>
	)	Asbestos Personal Injury Litigation
v.	)	Coordinated Docket
	)	
3M COMPANY et al.	)	
	)	
Defendants.	)	

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE THE TESTIMONIES OF DR. GREGORY DIETTE, DR. DAVID WEILL & DR. ALLEN FINEGOLD

Plaintiffs in both of the above-captioned cases moved this Court, pursuant to Rules 702 and 403 of the South Carolina Rules of Evidence, for an Order excluding the expert testimonies of Dr. Gregory Diette, Dr. David Weill and Dr. Allen Finegold. The Court finds that the motion is well taken and should be, and therefore is, GRANTED IN PART and DENIED IN PART. Each

of these experts will be excluded from testifying at trial about the cause of mesothelioma in either Ms. Plant or Ms. Payne. Each of these experts will be excluded from testifying at trial that either Ms. Plant or Ms. Payne's mesothelioma was "idiopathic" or "spontaneous" or "naturally-occurring". These experts will be permitted to otherwise testify about talc and asbestos to the extent it falls within their qualifications, disclosure and subject to trial objections to specific questions.

RELEVANT FACTS

Drs. Diette, Weill and Finegold are medical doctors offered by multiple defendants including, Avon Inc. ("Avon"), Chanel, Inc. ("Chanel"), Colgate Palmolive, Inc. for Mennen ("Mennen"), Whittaker Clark & Daniels ("WCD") and Color Techniques, Inc. to give expert testimony in both of the above-captioned cases. They intend to opine that both Ms. Plant and Ms. Payne's mesotheliomas are not the result of exposure to asbestos, but instead occurred "spontaneously" or were "naturally occurring".

APPLICABLE LAW

Rule 702 of the South Carolina Rules of Evidence provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." The trial court must act as a gatekeeper over scientific evidence and make three preliminary findings before expert testimony may be admitted. *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). The Court must find "that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable." *Id.* at 446-47, 699 S.E.2d at 175. "In South Carolina, a trial court minding the Rule 702 gate must assess not only (1) whether the expert's *method* is reliable (i.e., valid), but also (2) whether

the *substance* of the expert’s testimony is reliable.” *State v. Warner*, 430 S.C. 76, 86, 842 S.E.2d 361, 365–66 (Ct. App. 2020), *aff’d in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022). A trial court does not abuse its discretion under Rule 702 by excluding the testimony of medical experts whose conclusions were not supported by the data and experiments upon which they relied. *Id.* (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). ““A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.”” *Id.* (quoting *Joiner*, 522 U.S. at 146).

Courts evaluating the admissibility of scientific expert evidence “must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.” *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508 (S.C. 1999). In considering the admissibility of scientific evidence the Court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684 (S.C. 2009) (citing *Council*, 335 S.C. at 19).

This type of evidence is also subject to attack for relevancy and prejudice. *Id.* at 19–20, 515 S.E.2d at 517.

- a. *Drs. Diette, Weill and Finegold may not offer opinions about the cause of Ms. Plant or Ms. Payne’s mesothelioma.*

The Court finds that these doctors have not made an attempt to determine the products at issue contained asbestos at all. They did not make an attempt to determine the fiber type of asbestos potentially associated with any talc product at issue in this case. Furthermore, these doctors have not reviewed any studies relating to the products at issue in this case either purporting to demonstrate the presence or lack of presence of asbestos in the products or for purposes of

determining the amount of asbestos released from the normal and expected use of these products. These doctors do not have any information sufficient to testify in these two particular cases about the cause of mesothelioma in either Sarah Plant or Shelby Payne.

- b. *Drs. Diette, Weill and Finegold may offer testimony about talc and asbestos generally, including testimony about their opinions relative to the rates of “spontaneous” or “idiopathic” mesotheliomas in women.*

The Court does not preclude at this time opinions regarding the rates of mesothelioma cancer in women which are “spontaneous” or “naturally-occurring”.

CONCLUSION AND ORDER

WHEREFORE after reviewing the evidence submitted and arguments of counsel, both through the briefs and oral argument, this Court GRANTS IN PART and DENIES IN PART the Plaintiffs’ Motion to Exclude Drs. Diette, Weill and Finegold. These experts will not be permitted to testify about the cause of either Shelby Payne or Sarah Plant’s mesothelioma cancer, or testify that either womans’ cancer was “spontaneous” “idiopathic” or “naturally-occurring”.

AND IT IS SO ORDERED.

This Order memorializes an earlier ruling of Febraury 15, 2023 and acknowledges all objections made thereto.

[JUDGE’S E-SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Sarah J Plant , plaintiff, et al vs Avon Products Inc , defendant, et al

Case Number: 2022CP4001265

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-02-28 16:23:50 page 5 of 5

ELECTRONICALLY FILED - 2023 Feb 28 4:45 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265
ELECTRONICALLY FILED - 2024 Jul 29 2:31 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3 MICHAEL L. PERRY and

4 LONNIE L. LONG,

Plaintiffs,

5 vs.

Case No.: 2023-CP-40-04072

6 AMERICAN INTERNATIONAL

7 INDUSTRIES; et al.,

8 Defendants.

9 VIDEO TELECONFERENCE

10 DEPOSITION OF: WILLIAM EDWARD LONGO, Ph.D.

11 DATE: Tuesday, July 16, 2024

12 TIME: 11:48 a.m.

13 TIME ENDED: 3:31 p.m.

14 LOCATION: Suwanee, Georgia

15 REPORTED BY: YVONNE R. THURSTON-BOHANNON

16 Registered Merit Reporter,

17 Certified Realtime Reporter

Page 50 1 Calculations." Do you see that, sir? 2 A. Yes, I do. 3 Q. And it states here, "Mr. Perry 4 testified that for each of the talcum powder 5 products that he personally used, he was able to 6 give an estimate for the number of containers he 7 used per year, for each of the talcum powder 8 products." 9 Do you see that, sir? 10 A. I do. 11 Q. Okay. And we already talked about 12 this, but this container calculation is, again, 13 based on Mr. Perry's estimation of his annual 14 purchase of certain products, correct? 15 A. Correct. 16 Q. So we have here -- the first one listed 17 is Johnson's Baby Powder. "Mr. Perry stated that 18 he used Johnson's Baby Powder from approximately 19 1974/1975 to 2019." 20 Is that your recollection of his 21 testimony, sir? 22 A. Yes. 23 Q. And in 1975 Mr. Perry would have been 24 six. That means he was born in '69. I'm no 25 mathematician, but I got that one right. Is that	Page 52 1 sir? 2 A. I cannot see that. 3 Q. Okay. Let me -- let me -- do you see 4 that now, sir? 5 A. I can. I used 15 ounce because that's 6 what he said he primarily -- that he used. 7 Q. Okay. 8 A. It's not going to change anything other 9 than increase the amount of talcum powder he was 10 exposed to -- 11 Q. Okay. 12 A. -- because it's not 15 ounce and it's 13 24 ounces or 21 ounces. It's just -- it's not 14 going to change the number of containers. 15 Q. I understand, sir. 16 We're going to go back to Exhibit 1M. 17 I'd like to go to Shower to Shower next, but I want 18 to ask one more question. 19 If the range of bottles that you -- or 20 the date range of his purchases starts in 1984, do 21 you agree that any bottles that are included in 22 your bottle estimate would not include any Italian 23 talc? 24 A. I would -- this is Vermont and -- and 25 Chinese.
Page 51 1 correct? 2 A. That's correct. 3 Q. And therefore to be conservative, the 4 start year for the container calculation -- or your 5 container calculation is 1984 when he was 15 years 6 old; is that correct? 7 A. That is correct. 8 Q. Okay. So the numbers that you're 9 giving here would have been for the years 1984 10 through -- or to 19 -- 2019; is that fair? 11 A. That's fair. 12 Q. Okay. And he did -- he testified that 13 he use -- he bought about ten Johnson Baby Powder 14 containers per year; is that correct? 15 A. Correct. 16 Q. And doing the math there, that's 350 17 Johnson's Baby Powder 15 ounce containers. Do you 18 see that, sir? 19 A. I do. 20 Q. Why did you use 15 ounce containers? 21 A. Because that's what he stated that he 22 used, and it just so happens those -- those 23 exhibits you showed me were 15 ounce containers. 24 Q. Well, if you can go back to Exhibit 25 Number 3, do you see that is a 24 ounce container,	Page 53 1 Q. Okay. Shower to Shower, if we go down 2 to your calculation here, it's the same 3 calculation. It's ten Shower to Shower containers 4 per year. Do you see that? 5 A. Yes, sir, because that's -- he said it 6 was the same as his Johnson Baby Powder. 7 Now, I didn't -- I just saw a typo 8 which I always seem to find them when we're sitting 9 here in a deposition and I'm looking at. The 10 Shower to Shower comes in 13 ounce containers, not 11 11 ounce. 12 Q. Okay. Other than -- other than that 13 change, do you see any other things that you'd want 14 to change about the Shower to Shower calculation? 15 A. Not as I'm sitting here right now. 16 Q. Dr. Longo, do you recall that Mr. Perry 17 actually stated under oath that he never bought 18 Shower to Shower? 19 A. Well, so hold on. Let me go back. 20 I'm trying to find out -- here we go. 21 Let me just read what he said. 22 Well, it was in 20 -- yeah, second -- 23 there is -- it was -- he would have stopped using 24 it in 2010, not 20 -- not 2019, and according to 25 Mr. Perry, he said his mother bought it.

Page 62 1 user in human experimentation that Johnson & 2 Johnson did to see what exposures are for heavy 3 users, and it was either 27 or 28 grams. That's 4 the highest I've seen. 5 Q. You understand that Mr. Perry testified 6 that he began using Johnson & Johnson talc in 1974, 7 correct? 8 A. Yeah, that's when he remembers he was 9 putting it on when he was a child. 10 Q. And so -- 11 A. Six years old, five years old. 12 Q. And he stopped using any Johnson & 13 Johnson talcum powder sometime in 2019, correct? 14 A. That's what he stated. 15 Q. And he testified he used -- we already 16 went over that. 17 In 1974 when he started using Johnson & 18 Johnson talc products, that was -- that would have 19 been Vermont talc, correct? 20 A. Yes, it would. 21 Q. And from 1974 through part of 2003 with 22 the exception of a short time period that I'm going 23 to talk about in a moment, Vermont was the only 24 source of any Johnson & Johnson -- Johnson talc 25 powder that Mr. Perry would have used, correct?	Page 64 1 BY MR. COWAN: 2 Q. So given his dates of use -- and maybe 3 we can short circuit this -- are you going to come 4 into trial and testify that Mr. Perry was exposed 5 to Italian talc from Johnson & Johnson? 6 MR. ADAMS: Object to the form. 7 THE WITNESS: No, I'm not. 8 BY MR. COWAN: 9 Q. Okay. Then let's move on. 10 (Longo Exhibit 8, Dr. Longo's Slide on 11 Round 1, marked for identification.) 12 BY MR. COWAN: 13 Q. Okay. Let's move on to your testing, 14 and I -- I've got in front of you something I've 15 marked as Exhibit 8, and I'll just represent to 16 you, sir, this slide that starts with round one and 17 a bunch of bottles here. Do you see that? 18 A. Yes. 19 Q. Okay. You used this slide during a 20 trial a long time ago called Cabibi. Do you 21 recognize this slide? 22 MR. ADAMS: Object to the form. 23 THE WITNESS: It's called what? What 24 was the trial called? 25 BY MR. COWAN:
Page 63 1 A. That's correct, except for 1980 when 2 the Vermont mine was on strike and it would have 3 been Italian for that one year or half a year, 4 whatever that was. 5 Q. Well, I was just about to ask you that, 6 sir. Do you know how long that strike was? 7 A. Pretty much everybody agrees it's about 8 a year, but I don't have the exact dates. I don't 9 try to -- I don't try to feed that in when -- if I 10 was going to split out the mines. 11 Q. So, Dr. Longo, have you read 12 Mr. Bailey's affidavit concerning this very issue? 13 It's been on your reliance -- reliance list before. 14 A. Yeah, it's been a while. 15 Q. There were exhibits in that affidavit 16 that supported Mr. Bailey's statement that that 17 mine strike was only from December of 1979 until 18 February of 1980. Do you recall that? 19 MR. ADAMS: Object to the form. 20 THE WITNESS: I don't recall that, but 21 I have not done the research on that. And as I was 22 stating, I typically don't when I break out the 23 mines say somebody has used it -- used both during 24 Italian and Vermont, during the Vermont and the 25 Chinese. I never try to factor in that 1980 time.	Page 65 1 Q. I think the name of the person was 2 called Cabibi. It was in 2019. Do you recall 3 using this slide or something similar that showed 4 the bottles from round one? 5 A. I don't recall the case, but I remember 6 seeing that slide. 7 Q. Okay. And these might sound like 8 really simple questions, but I am not saying that 9 this has anything to do with you, sir, but what 10 bottles are involved in round one in prior 11 testimony it's been kind of unclear to me, so I 12 just want to make sure we're talking about the same 13 bottles for round one versus round two versus your 14 chrysotile testing, et cetera. Okay? 15 A. Sure. 16 Q. Okay. So in round one that involved a 17 bunch of containers of talc that you all at MAS 18 received from different plaintiffs counsel, 19 correct? 20 A. Three plaintiffs counsels. 21 Q. Yeah. 22 And you also bought one bottle off the 23 shelf yourself, correct? We already talked about 24 that. 25 A. We -- I bought a lot more, but for

Page 162 1 defendants in this case; is that correct? 2 A. That's correct. 3 Q. Are you able to tell us what product 4 was tested in that testing? 5 A. No. 6 Q. And that's because why? 7 A. I'm not relying on it and -- for any of 8 the -- any of the defendants. It was mistakenly 9 produced, so I'm clawing it back. 10 Q. Okay. Are you offering any other case 11 specific opinions with respect to Chanel products 12 other than the ones discussed today or disclosed in 13 your notes and reliance materials? 14 A. I think we've covered them all. 15 MS. DANG: All right. Just like the 16 other defendants, I'm going to reserve Chanel's 17 rights to ask any follow-up questions following any 18 tissue testing. 19 THE WITNESS: I hate to cut you off, 20 but it's 3:29 and I have a doctor's appointment. 21 MR. COWAN: Thank you for your time. I 22 know you have to leave. 23 I just want to put on the record, 24 again, J&J is reserving its rights to bring -- 25 MR. ADAMS: You already said that. You	Page 164 1 you some information too, so it wouldn't have been 2 right for me to push too hard to -- 3 MR. ADAMS: All right. Thanks. We'll 4 figure out -- 5 MR. COSMICH: Sounds good. 6 MR. ADAMS: Thanks. 7 MR PECK: And, Ben, this is Tim Peck. 8 As you know, I'm not permitted to ask questions of 9 experts, but I -- I do have a statement to make, 10 but I can reserve that until we come back. 11 MR. ADAMS: Okay. Thank you. 12 I think we can go off the record. 13 (Off-the-record discussion.) 14 THE COURT REPORTER: Do you want a copy 15 of the transcript? 16 MR. ADAMS: Yes, please. 17 (The deposition was concluded at 18 3:31 p.m.) 19 20 21 22 23 24 25
Page 163 1 already said that. 2 Dr. Longo, you can -- 3 MR. COWAN: Dr. Longo, can leave. 4 MR. ADAMS: -- free to go. Free to go. 5 MR. COWAN: That's fine. I want to 6 make clear Dr. Longo you can leave. 7 (Dr. Longo disconnected from Zoom.) 8 MR. COWAN: I want to make clear on the 9 record that J&J is not just reserving its rights to 10 reopen this deposition for tissue digestion issues, 11 but that the deposition was -- was started late and 12 ended earlier and that there's more time on the 13 clock. 14 So that's all. Thank you. 15 MR. GREENE: For the record Avon joins. 16 MR. ADAMS: Does anyone else have 17 questions who didn't get a chance to go today just 18 for scheduling purpose? 19 MR. COSMICH: Yeah, Ben. John Cosmich. 20 I've got three products, but, you know, we'll -- 21 we'll talk later. 22 MR. ADAMS: Okay. Thanks. I just 23 wanted to make sure we weren't done except for 24 the -- 25 MR. COSMICH; yeah, and I think I owe	Page 165 1 CERTIFICATE OF REPORTER 2 I, Yvonne R. Thurston-Bohannon, Registered 3 Merit Reporter, Certified Realtime Reporter, and 4 Notary Public for the State of South Carolina at 5 Large, do hereby certify: 6 That the reading and signing of the 7 foregoing deposition by the witness is waived. 8 That the foregoing transcript was taken 9 before me on the date and at the time and location 10 stated on page 1 of this transcript; that the 11 deponent was duly sworn to testify to the truth, 12 the whole truth and nothing but the truth; that the 13 testimony of the deponent and all objections made 14 at the time of the examination were recorded 15 stenographically by me and were thereafter 16 transcribed; that the foregoing deposition as typed 17 is a true, accurate and complete record of the 18 testimony of the deponent and of all objections 19 made at the time of the examination to the best of 20 my ability. 21 I further certify that I am neither related 22 to nor counsel for any party to the cause pending 23 or interested in the events thereof. 24 Witness my hand, I have hereunto affixed my 25 official seal July 17, 2024, at Columbia, Richland County, South Carolina.  Yvonne R. Thurston-Bohannon Registered Merit Reporter, CRR My Commission expires May 6, 2025

WEILL CONSULTING GROUP

July 11, 2024

L. Lucy Brandon Willson
 Willcox & Savage, P.C.
 440 Monticello Ave., Suite 2200
 Norfolk, Virginia 23510
 Counsel for Avon and Johnson & Johnson

Re: Michael L. Perry and Lonnie L. Long v. American International Industries, et al.

Dear Ms. Willson,

I had the opportunity to review the materials that you sent to me regarding Michael Perry. Specifically, I reviewed the following:

DOCUMENTS REVIEWED

1.	Transcript of the Deposition of Michael Perry, Volume I	10/10/23
2.	Transcript of the Deposition of Michael Perry, Volume II	10/11/23
3.	Transcript of the Deposition of Michael Perry, Volume III	10/12/23
4.	Transcript of the Deposition of Michael Perry, Volume IV	10/13/23
5.	Complaint, First Amended Complaint, Second Amended Complaint	8/4/23
6.	Work History Affidavit	8/2/23
7.	Social Security Administration, Itemized Statement of Earnings of Michael Perry (1979-2000)	N/A
8.	Mr. Perry's Responses to Defendants' Standard Interrogatories	9/13/23
9.	Mr. Perry's Responses to Defendants' Master Set of Interrogatories and Requests for Production	9/13/23
10.	Medical University of South Carolina – Radiology	Various
11.	South Carolina Diagnostic Imaging - Radiology	Various
12.	Roper St. Francis Physician Partners – Radiology	Various
13.	Palmetto Digestive - Radiology	6/5/23
14.	Medical University of South Carolina – Pathology	Various
15.	Roper St. Francis Physician Partners – Pathology	7/5/23
16.	Roper St. Francis Physician Partners – Treatment	Various
17.	Palmetto Digestive – Treatment	6/26/23
18.	Charleston Oncology – Treatment	7/7/23
19.	Medical University of South Carolina – Treatment	Various
20.	Social Security Administration, Itemized Statement of Earnings of Michael Perry (1987-2023)	N/A

Michael L. Perry and Lonnie L. Long v. American International Industries, et al.

21.	Mr. Perry's First Supplemental Responses to Defendants' Master Set of Interrogatories and Requests for Production (Ex.2)	6/10/24
22.	Mr. Perry's First Supplemental Responses to Defendants' Master Set of Interrogatories and Requests for Production	6/10/24
23.	Report of Matthew S. Sanchez, Ph.D.	6/6/24
24.	Report of Alan M. Segrave, P.G.	6/17/24
25.	Report of Christy A. Barlow, Ph.D.	6/18/24
26.	Report of Jennifer S. Pierce, Ph.D.	6/19/24
27.	Report of R. Mark Bailey, PG, Misc. Avon products, (Laboratory Report #374669)	12/27/21
28.	Report of R. Mark Bailey, PG, Brenntag Specialties/Barretts Minerals Talc	06/12/15
29.	Report of R. Mark Bailey, PG, Analysis of Avon Cotillion talc for the presence of asbestos, (Laboratory Report #367569)	12/16/19
30.	Report of R. Mark Bailey, PG, Avon Soft Musk & Topaze Perfumed Talc Product Testing, (Laboratory Report #375235)	10/13/21
31.	Report of R. Mark Bailey, PG, To A Wild Rose Laboratory Test Results, (Laboratory Report #388408)	01/19/24
32.	Murphy, North Carolina Talc Chart of Documents for Mark Bailey, PG	08/20/21
33.	Expert Report of R. Mark Bailey, P.G. on Asbestos in Talc Products from the Fontane Mine, Val Germanasca, Italy	06/12/20
34.	Expert Report of R. Mark Bailey, P.G. on Asbestos in Talc Products from the Hammondsville Mine, Vermont. USA	11/16/20
35.	Report of William E. Longo, Ph.D., CEO, Talcum Powder Analysis Jeannine Henderson – Avon Wild Country, (MAS Project M71698)	10/25/23
36.	Report of William E. Longo, Ph.D. and Mark W. Rigler, Ph.D., Analysis of Avon Night Magic Talcum Powder, (M68319)	01/00/19
37.	Avon talcum Powder Analysis with both Automated FESEN and ATEM, (MAS Project M66289)	03/12/19
38.	Report of William E. Longo, Ph.D., Chinese Talc Research Samples, (MAS Project M71109-M71111)	09/16/20
39.	Report of William E. Longo, Ph.D., Avon Occur Perfumed Talc, (MAS Project M71261)	08/18/21
40.	Report of William E. Longo, Ph.D., Talcum Powder Analysis of Avon and Clinique Containers, (MAS Project M71171)	09/05/21
41.	Report of William E. Longo, Ph.D., CEO, Montana Micro-Talc 1745 Retain Samples, (MAS Project M71523)	06/10/22
42.	Report of William E. Longo, Ph.D., CEO, Avon Split, (MAS Project M71543)	07/01/22
43.	Report of William E. Longo, Ph.D., CEO, Wild Rose 1965, Cotillion 1961, & Persian Wood 1958, (MAS Project M71550)	07/01/22
44.	Report of William E. Longo, Ph.D., CEO, Pfizer Treasure Mine Talc Analysis, (MAS Project M71549)	07/01/22
45.	Report of William E. Longo, Ph.D., CEO, Talc Ore Samples Collected from the Eclipse Mine in Death Valley: Analyzed for Amphibole	07/12/22

Michael L. Perry and Lonnie L. Long v. American International Industries, et al.

	Asbestos by Transmission Electron Microscopy, (MAS Project M71564)	
46.	Report of William E. Longo, Ph.D., CEO, Rita Chapman Avon Powder Containers, (MAS Project M71570)	09/08/22
47.	Supplemental Report of William E. Longo, Ph.D., CEO, Avon Talcum Powder Container Analysis for Asbestos, (MAS Project M71570)	09/30/22
48.	Report of William E. Longo, Ph.D., CEO, Avon Powder Products, (MAS Project M71387 & M71587)	11/15/22
49.	Report of William E. Longo, Ph.D., CEO, Avon Powder Products, (MAS Project M71560 & M71562)	11/15/22
50.	Report of William E. Longo, Ph.D., Avon Products, (MAS Project M65215, M65218 & M65227)	11/15/22
51.	Supplemental Report of William E. Longo, Ph.D., CEO, Avon Powder Products, (MAS Project M71560 & M71562)	11/19/22
52.	Report of William E. Longo, Ph.D., CEO, Avon Somewhere Powder, (MAS Project M71654)	09/20/23
53.	Report of William E. Longo, Ph.D., CEO, Avon Split, (MAS Project M71582)	09/21/23
54.	Report of William E. Longo, Ph.D., CEO, Avon Talcum Powder Analysis, (MAS Project M71548)	09/21/23
55.	Report of William E. Longo, Ph.D., CEO, Solomon, Beth – Talc Splits, (MAS Project M71743 & M71754)	02/16/24
56.	Report of William E. Longo, Ph.D., Avon Unforgettable Perfumed Talc, (MAS Project M66289)	04/21/17
57.	Report of Steven P. Compton, Ph.D., Investigation of Italian Talc Samples for Asbestos, (MVA11730)	08/01/17
58.	Report of Steven P. Compton, Ph.D., Investigation of Vermont Talc Samples for Asbestos, (MVA12588)	04/23/18
59.	Report of Steven P. Compton, Ph.D., Investigation of Montana Talc (American International Industries Microtalc 1745) for Asbestos, (MVA12478)	03/15/19
60.	Report of Steven P. Compton, Ph.D., Examination of Avon Talcum Powder for Asbestos Gail Welch Case, (MVA13016)	05/29/20
61.	Report of Steven P. Compton, Ph.D., Examination of 907 Talc Powder for Asbestos, (MVA15428)	01/26/24
62.	Report of Steven P. Compton, Ph.D., Examination of Vintage Avon Bunny Fluffpuff Talc in Rabbit-shaped Puff Container for Asbestos, (MVA14584)	05/19/23
63.	Report of Steven P. Compton, Ph.D., Examination of Vintage Avon Unforgettable Talc in Shaker container for Asbestos, (MVA14584)	05/19/23
64.	Report of Jennifer S. Pierce, M.S., Ph.D. for Avon Products, Inc.	06/19/24
65.	Report of R. Mark Bailey, PG, TEM Analytical Test Report of Johnson & Johnson Baby Powder, (Laboratory Report #369243)	05/06/21
66.	Report of R. Mark Bailey, PG, New York/RT Vanderbilt, (Laboratory Report #371415)	09/08/21

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67.	Affidavit of R. Mark Bailey re: Kayme A. Clark, et al. v. Johnson & Johnson, et al., with Exhibits 1-16	10/30/23
68.	Report of Christy A. Barlow, Ph.D. for Johnson & Johnson	06/18/24
69.	Fourth Supplemental MDL Report of William E. Longo, Ph.D., CEO, Analysis of Non-Historical J&J's Talcum Powder Consumer Product Containers and J&J Chinese Historical Talc Retain Samples, with Tables attached	04/29/24
70.	Second Supplemental Report of William E. Longo, Ph.D., Mark W. Rigler, Ph.D., and William B. Egeland, M.S., P.G., Below the Waist Application of Johnson & Johnson Baby Powder, (MAS Project 14-1852)	01/00/18
71.	Report of William E. Longo, Ph.D., William B. Egeland, M.S., P.G., and Martin Bennett, Talcum Powder Application to Baby and Diaper Change II: A Hygiene, (Revision 1)	06/28/19
72.	Report of William E. Longo, Ph.D., William B. Egeland, M.S., P.G., and Martin Bennett, Johnson's Baby Powder Application to Baby and Diaper Change: A Hygiene Study Supplemental	05/00/20
73.	Declaration of William Longo, Ph.D., with Exhibits A and B	09/21/21
74.	Imaging Studies	Various

CASE STATISTICS

Re: <u>Michael L. Perry and Lonnie L. Long v. American International Industries, et al.</u>	
Court: Fifth Judicial Circuit, Court of Common Pleas, County of Richland, State of South Carolina, No. 2023-CP-40-04072	
Plaintiffs' Counsel: Dean Omar Branham Shirley, LLP and Kassel McVey	
Full Name: Michael Lawrence Perry ¹	
DOB: [REDACTED]	Diagnosis Date: July 2023 ³
Alleged Diagnosis: Mesothelioma ⁴	Height: 6' 2" Weight: 205 lbs.
Nature of Alleged Exposure: Non-Occupational and Occupational	

CASE REPORTINGS**Background**

Mr. Perry attended Riverton Elementary School, Riverton Middle School, Riverton High School, University of Illinois, and College of Charleston. (1 @ p. 19)

Mr. Perry's mother was a computer programmer. (1 @ p. 22)

¹ (6 @ p. 1)

² (6 @ p. 1)

³ (8 @ p. 5)

⁴ (8 @ p. 5)

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Mr. Perry's father was a mechanic and inspector at Springfield Capital Airport. (1 @ pp. 22-23; 2 @ p. 284) Mr. Perry's father wore a uniform at work and came home in his street clothes. (4 @ p. 880) Mr. Perry testified that his father showered at work, "making sure that whatever he may have touched in an avionic or an aviation platform was left behind." (4 @ p. 882)

Mr. Perry was a non-smoker. (8 @ p. 9) Mr. Perry's parents smoked. (2 @ pp. 249, 286)

Mr. Perry's mother had small cell lung cancer. (2 @ p. 249) Mr. Perry's father had prostate cancer. (2 @ p. 249) Mr. Perry's maternal grandmother had colon cancer; and his paternal grandfather had pancreatic cancer. (2 @ p. 249)

Alleged Non-Occupational Exposure

I. Automotive Repair

Mr. Perry performed automotive repairs, from 1984 until 1987. (6 @ p.1) Mr. Perry attested that work with brakes and gaskets released visible dust into the air that he breathed. (6 @ p. 1)

Mr. Perry purchased automotive parts from AutoZone and NAPA. (1 @ p. 124)

A. Brakes

Mr. Perry used Bendix, NAPA, and Rayloc brakes. (6 @ p. 1) Mr. Perry worked with disc and drum brakes. (1 @ pp. 115-116) Mr. Perry did approximately 70 brake jobs on a 1979 Honda Accord and on a 1976 Chevrolet pickup truck. (1 @ pp. 113-114, 122-123; 3 @ pp. 608-609) On these two vehicles, Mr. Perry had issues with the pads cracking and falling off of disc brakes. (3 @ pp. 608-623)

Mr. Perry blew out brake residue with his mouth or with an air compressor. (1 @ p. 118) Mr. Perry testified that blowing out brakes created a haze of residue. (1 @ pp. 118-19) Mr. Perry sanded brakes prior to installation, which created a haze, and he breathed the dust. (1 @ pp. 119-121)

B. Gaskets

Mr. Perry used NAPA automotive gaskets. (6 @ p. 1) Mr. Perry removed two head gaskets. (1 @ pp. 123-124)

II. Body Powder

In his discovery responses, Mr. Perry provided the following: [Mr. Perry] has "located approximately five partially used talcum powder products from Michael Perry's home. These products are: 1. Two bottles of Johnson's Baby Powder; 2. One bottle of Avon Deep Woods; 3. Two bottles of Clubman powder.

A proper chain of custody is maintained for the above products. At this time, [Mr. Perry] does not intend to perform any testing of these products based on agreements with counsel for Johnson &

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Johnson and Avon. AII is in default for its Clubman powder, and therefore, those bottles will not be tested at this time.” (21 @ p. 17)

A. Application to Mr. Perry

Mr. Perry testified, “I was a normal baby that had cloth diapers. So, diaper rash was – just like me and many millions of children that have diaper rash, I’m sure I was treated with some type of powder to eradicate my diaper rash...it certainly was never a topic of our conversation, in hindsight, of what products I was treated for diaper rash.” (2 @ pp. 306-307)

Mr. Perry showered with his mother, and his mother applied powder to him after showering. (1 @ pp. 53-54, 58) Mr. Perry’s family was brand-loyal to Johnson & Johnson’s baby powder. (1 @ p. 88) Mr. Perry’s mother applied Shower to Shower powder to Mr. Perry. (1 @ p. 111)

B. Mr. Perry’s Personal Application

Mr. Perry used Johnson & Johnson’s baby powder, from 1974 until 2019. (1 @ pp. 40-41) Mr. Perry purchased ten or more bottles of Johnson & Johnson’s baby powder per year. (1 @ pp. 41-42) Mr. Perry also testified that he purchased two or three containers of Johnson & Johnson’s baby powder per month. (2 @ pp. 316-317) Mr. Perry used Johnson & Johnson’s baby powder because he was allergic to deodorant. (1 @ p. 89)

Mr. Perry used Clubman powder from 1974 until 2019. (1 @ pp. 40-41) Mr. Perry purchased ten or more bottles of Clubman powder per year. (1 @ pp. 41-43) Twice a month, Mr. Perry used Clubman powder when he got his hair cut. (4 @ pp. 787-788, 892) Mr. Perry testified, “Clubman, I remember clear as a small child when my father was taking me to the barbershop. And it was always a joy. We’d go there very couple weeks. And at the very, very end of my haircut, the barber...would reach around me and I’d be in the middle...and he would shake the Clubman down into the horsehair brush and then wiggle it a little bit. And then he would start wiping Clubman all over me, down my neck and so forth.” (1 @ pp. 93-94)

Mr. Perry used Old Spice powder in the 1980s and 1990s. (1 @ p. 41) Mr. Perry used his father’s Old Spice powder when he and his father went fishing. (1 @ p. 51)

From the 1990s through the mid-2000s, Mr. Perry used Ammens powder for rashes and jock itch. (1 @ pp. 48-49) Mr. Perry purchased several containers of Ammens power per year. (1 @ p. 49)

Mr. Perry used Gold Bond powder from the 1990s through 2019. (1 @ p. 43) Mr. Perry purchased several containers of Gold Bond powder per year. (1 @ p. 43) Mr. Perry applied Gold Bond powder to his shoes multiple times per day. (2 @ pp. 341-343) Mr. Perry’s face was a couple of feet from his shoes during application, and Mr. Perry breathed the powder. (1 @ pp. 96-97)

Mr. Perry used Equate powder from the early 2000s until 2019. (1 @ p. 50)

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Mr. Perry's "vanity fragrances" were Ralph Lauren, Calvin Klein Obsession, Drakkar Noir, and Stetson. (1 @ p. 64) Mr. Perry was "more targeted with administering" his more expensive, designer, vanity powders. (4 @ pp. 887-888) Mr. Perry used the same amount of powder with his vanity powders as his other powders, but he was careful not to spill the vanity powders. (4 @ pp. 889-890) Mr. Perry rotated his vanity powders. (1 @ pp. 99-100) Regarding which powder brand Mr. Perry used, he testified, "it really depended on what my day was going to be like. If I was just going to be out on the farm, it was something that was more like the Johnson & Johnson's baby powder. If it was something that I was doing to be going out in the professional area, I would start off with Johnson & Johnson's baby powder; but then there would also be one of my fragranced powders used as well." (1 @ pp. 79-80) Mr. Perry testified, "Johnson's baby powder and Clubman were always my go-to for so many other reasons. So, I was always buying more of that than I was scented powders." (1 @ pp. 46-47)

In the 1980s, Mr. Perry received gifts of Stetson powder. (1 @ pp. 47-48)

Mr. Perry used Ralph Lauren powder from the 1990s through 2019. (1 @ p. 45)

Mr. Perry used Calvin Klein Obsession powder from the 1990s through 2019. (1 @ pp. 44-45) Mr. Perry bought less than six containers of Obsession powder per year. (1 @ pp. 45-46)

Mr. Perry used Drakkar Noir powder from the 1990s until 2019. (1 @ pp. 46-47) Mr. Perry purchased six or more containers of Drakkar Noir powder each year. (1 @ p. 46)

From 1974 until 2019, Mr. Perry applied powder to his neck, underarms, torso, genitalia, legs, and feet. (1 @ pp. 35-37) Mr. Perry used body powder daily, multiple times a day. (1 @ p. 79) Mr. Perry testified that the amount of times he applied powder depended on how many showers he took in a day. (4 @ p. 759) Mr. Perry showered a minimum of twice a day, "if it's really hot outside, it could be three times." (1 @ p. 61) Mr. Perry testified, "I would apply the product into my hand. It would be three or four shakes into my hand. And then apply it from my neck down to my groin and then feet." (1 @ p. 61) Mr. Perry used four or five heaping tablespoons of powder, and he was very liberal with the product. (4 @ pp. 752-753, 762-763) Mr. Perry noticed that his skin changed colors when he applied powder. (4 @ p. 753) When Mr. Perry applied powder, there was a white cloud of powder that he breathed. (1 @ pp. 64-65)

Regarding how long powder application took, Mr. Perry testified, "it really depended on how much time was available. I mean, sometimes, if I had a lot of time, I would enjoy the exhilarating feel of those powders on my body. Sometimes, if I didn't have enough, I was a little bit faster at it. But I couldn't, I couldn't put a time of it took so many seconds or so many minutes to do that." (2 @ pp. 307-308)

Mr. Perry testified that it was impossible to apply powder neatly, recalling, "because it's an airborne powder. And once it comes out of the bottle, it creates this big haze all over. And so, if there is a clean way of doing it, I certainly didn't learn that." (1 @ pp. 62-63) Mr. Perry testified, "I'd have to chase my white footprints all the way out the bathroom, down the hall, into the kitchen. It would be all over the place." (1 @ p. 63) Mr. Perry's childhood bathrooms had carpets. (1 @ p. 63) Mr. Perry's daily chores included cleaning the house, which included the bathroom and

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vacuuming. (1 @ pp. 63-64) Mr. Perry emptied the vacuum bag, recalling, “there would be this big haze of dust and debris that was coming out of that bag.” (1 @ p. 74)

Mr. Perry played hockey during summers from 1976 through the mid-1980s. (2 @ pp. 203-205) Mr. Perry had a bottle of Johnson & Johnson’s baby powder in his hockey bag. (1 @ p. 60) Mr. Perry put Clubman powder in his hockey gear. (4 @ pp. 892, 904) Mr. Perry testified, “before I put my equipment on, my shoulder pads, my leg pads, I would always squirt the body powder in there as I’m putting it on before the game.” (1 @ p. 60)

During high school, Mr. Perry swam year-round. (2 @ pp. 202-203) Mr. Perry applied powder after he swam. (1 @ p. 60)

Mr. Perry conducted sailboat tour for five or six years in the 1990s. (1 @ pp. 49-50) Mr. Perry lived on the boat. (2 @ p. 270) Mr. Perry looked inside the engine room as part of his daily routine. (4 @ pp. 736-737) Mr. Perry testified that he used Johnson & Johnson’s baby powder, “if I was on the sailboat and I had to jump into the engine room, I would put the talc onto my hands, because I needed to have dry hands as I was working on the different parts of the motor. I would have it on my face. Was trying to keep the moisture from coming down into my eyes. And so, I would smear this all over my face, all over my hands, so I would have dry hands while I was working on the engine or anything that had electronics that I needed to stay dry for.” (1 @ pp. 88-89) Mr. Perry also used Clubman powder on his hands, arm, and face when he worked in his boat’s engine room. (4 @ pp. 892-893) Mr. Perry also used Gold Bond powder on his hands in the engine room. (1 @ pp. 95-96) Mr. Perry testified, “it was a source of a lot of fights with shooting Gold Bond at each other, over the top of your head because I’m sailing with all these guys and so when we would all be together; it was like sometimes like a big fraternity. And it wasn’t uncommon for someone to get a big glob of Gold Bond right in the middle of their head just being a bunch of frat boys.” (1 @ p. 95) Mr. Perry testified, “when I was traveling with all the other captains and we would – and it was more times than not there would be some type of dry-powder fight and the area would be completely full of powder. And we would all be coughing, sneezing, laughing.” (4 @ p. 58)

Mr. Perry had a farm in the early-2000s. (1 @ p. 50) Mr. Perry testified, “as I was working on the farm, it would usually take a couple different treatments or uses of body powder during the afternoon. And then certainly when I would go out for the evening feedings with the horses, there would be another treatment. And then the final one would be before I’d go to bed at night. I’d take my shower to get cleaned off and then put the baby powder back on me.” (1 @ pp. 59-60) Mr. Perry testified, on the farm, “the Johnson & Johnson products and Equate products were part of our culture on a ... multi-day routine.” (1 @ pp. 89-90)

Mr. Perry purchased powder products at Walgreens, Walmart, Eckerd’s, Rite Aid, CVS, Food Lion, and Piggly Wiggly. (1 @ pp. 81-82; 4 @ p. 886)

C. Mr. Perry’s Mother’s Application

Mr. Perry’s mother used Cotillion, Skin So Soft, Bird of Paradise, Soft Musk, Topaz, White Linen, Johnson & Johnson’s baby powder, Shower to Shower, Cashmere Bouquet, and Chanel No. 5 powders. (1 @ p. 53)

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From the 1970s until 2008, Mr. Perry was present when his mother applied Johnson & Johnson's baby powder and Shower to Shower powder. (1 @ pp. 56-57) Mr. Perry's mother put Johnson & Johnson's baby powder on her skin first and then applied scented powder. (3 @ pp. 442-443) Mr. Perry testified, "mom's always go-to powder was the Johnson & Johnson's baby powder and the Shower to Shower. Depending on what her day was going to comprise, very similar to how mine was, she would choose what fragrant powder she was going to put on as well. So, her favorite was the Cotillion, Birds of Paradise, Chanel, I would say would probably be her top three, because I remember smelling them so much. But the Johnson & Johnson products were always her go-to, no matter what was going to be on her body." (1 @ p. 84) Mr. Perry smelled Shower to Shower powder and Johnson's baby powder on his mother. (1 @ p. 107)

Cashmere Bouquet was one of Mr. Perry's mother's preferred powders. (4 @ p. 881) Mr. Perry recalled Cashmere Bouquet in a shaker container and also in a vessel with a puff. (4 @ pp. 882-884)

Mr. Perry observed his mother applying powder between 1974 and 2010. (1 @ p. 54) As a child, Mr. Perry was present daily while his mother got ready. (1 @ p. 66) Into the 1970s, Mr. Perry was present when his mother got ready five days a week. (1 @ pp. 66-67) During his junior and senior years of college, Mr. Perry went home on weekends and sat with his mother while she "held court" in the bathroom and got ready including during her powder application. (4 @ pp. 878-879)

After showering, Mr. Perry's mother put three or four shakes on her neck down the body. (1 @ pp. 70-71) Mr. Perry's mother put four or five pats on her body when applying powder with a puff. (2 @ p. 394) Mr. Perry testified, "almost all of the powders had poofs to them. And then depending on how silly I was, I would be the recipient of getting hit in the face or on the top of the head with a puff as well." (1 @ p. 72) Mr. Perry's mother's powder application took several seconds. (2 @ p. 394) When Mr. Perry's mother applied powder, "it was a big, cloudy haze in the bathroom when she would put that on." (1 @ p. 71) Mr. Perry smelled powder when his mother applied powder. (1 @ p. 72)

Regarding Mr. Perry's mother's powder application in his first childhood bathroom, Mr. Perry was "extremely close. It was a very, very small bathroom. So, contact was very, very easy. Just right here would be enough space to reach out from the tub to the toilet where mom would be at." (1 @ p. 68) When Mr. Perry's mother got a larger bathroom, Mr. Perry was a few feet from his mother's powder application, and he could reach out and touch his mother. (1 @ pp. 69-70)

D. Mr. Perry's Father's Application

Mr. Perry's father used Old Spice, Avon Deep Woods, and Avon Musk powders. (1 @ p. 73) Mr. Perry's father completed his morning routine before Mr. Perry started his day. (1 @ p. 73)

E. Mr. Perry's Husband's Application

Mr. Perry was present when his husband applied Equate, Johnson & Johnson's baby powder, and other fragrant powders, including Ralph Lauren and Clubman. (1 @ pp. 90-93)

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Mr. Perry applied Johnson & Johnson's baby powder and Equate powder to his husband. (3 @ pp. 454-455) Applying powder to his husband took "a minute or two or less." (2 @ p. 319)

Alleged Occupational Exposure⁵**I. Hotel Work**

From the age of 15 until the late 1990s, Mr. Perry worked at the Holiday Inn Holidome. (6 @ p. 3) Mr. Perry continued to work in the hospitality industry, testifying, "hospitality is ... in my blood. I live and breathe hospitality." (1 @ p. 24)

A. Sheetrock, Joint Compound

Mr. Perry testified that, in the 1980s, sheetrock was constantly changed at the Holidome. (1 @ pp. 127-128) Mr. Perry inspected finished work as other work was ongoing. (2 @ pp. 275-276) Mr. Perry was present when work was done, and he saw dust from the work. (1 @ p. 129)

Mr. Perry recalled sheetrock work at a Hampton Inn in the early 2000s. (1 @ pp. 133-134) Mr. Perry observed others sanding joint compound, and the work created dust. (4 @ p. 843) When the work was performed, Mr. Perry observed visible dust in the air and on the ground. (1 @ pp. 134-135) Mr. Perry testified, "I was in the dust zone... I was always seeing people around." (4 @ p. 843) Mr. Perry testified "drywall dust would just filter everywhere throughout the hotel." (4 @ pp. 843-844)

In 2000 or 2001, Mr. Perry was present when sheetrock was ripped out of an Embassy Suites hotel. (1 @ pp. 129-130)

B. Ceiling Materials

Mr. Perry recalled a ceiling collapse at a Homewood Suites between 2014 until 2017. (1 @ pp. 132-133)

C. Library Work

⁵ In his discovery responses, Mr. Perry provided the following: "At the outset of his case, upon reasonable information and belief at that time, [Mr. Perry] believed he was exposed to asbestos through his employment at various hotel locations where asbestos and asbestos-containing products may have been removed, replaced, and present in certain facilities, including but not limited to asbestos-containing drywall demolition and remodel work. He worked at the Holidome Holiday Inn from the age of approximately 15 years old and worked his way up to Resident Manager by the late 1990s. Efforts to discover this information thus far have not yielded any information and [Mr. Perry has] been unable to locate any evidence that [Mr. Perry] was exposed while working as a hotel manager. [Mr. Perry] no longer believes that this work as a hotel manager was a source of his asbestos exposure." (22 @ p. 2)

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While Mr. Perry worked for Embassy Suites, some of the hotel's furniture was stored in a library next door to the hotel. (1 @ pp. 130-131) Mr. Perry went into the library more than twice a month. (2 @ pp. 278-279) From a newspaper article, Mr. Perry discovered that the library contained asbestos. (4 @ p. 876) In the library, Mr. Perry saw people moving things around, storing items, and stacking items, and he saw dust from these activities. (4 @ pp. 875-876) Workers hit the ceiling while moving items. (1 @ p. 131) The ceiling was starting to cave in at the library. (1 @ p. 131) Mr. Perry did not see any pipe insulation or any renovation or demolition work in the library. (4 @ pp. 876-877)

MEDICAL HISTORY**History of Present Illness:**

Mr. Michael Perry is a 53-year-old male never smoker with a past medical history significant for anxiety, asthma, GERD, diverticulitis s/p colectomy, HLD and PTSD. He states he had Covid in January. He had a significant cough at that time. He recovered from the Covid however the cough persisted. He was treated with a course of antibiotics without any significant improvement. He had a CXR which revealed a left pleural effusion. A follow-up chest CT was obtained 6/21/23 which reports numerous enlarged cardiophrenic lymph nodes including an index node measuring 1.6 x 1.3 cm. There are several pleural deposits in the left lung with index deposit measuring 2.8 x 0.9 cm along the lateral left upper lobe and index implants along the anterior left upper lobe measuring 3.5 x 1.3 cm. There is a small left pleural effusion. With associated pleural deposits including the index deposit along the left posterior lower lobe measuring 4.5 x 1.3 cm. He was seen at Roper by Dr. Kline and was taken to the OR 6/30/23 for a left VATS pleural biopsy and PleurX placement. His pathology returned most compatible with mesothelioma, favor epithelioid. He presents today for a second opinion regarding his diagnosis and treatment. He is also scheduled to see Dr. Rangel today with medical oncology. He has not yet had a PET/CT but is scheduled for one 7/18/23.

Mr. Perry denies any direct asbestos exposure however he did use a lot of talc throughout his life as a swimmer. He also used to work at Embassy Suites adjacent to the old county library which apparently had a lot of asbestos in the walls.

Past Medical History:

Anxiety, Asthma, GERD, Diverticulitis s/p colectomy, Hyperlipidemia, PTSD,

Smoking History:

<u>Source</u>	<u>Description</u>
Discovery	Mr. Perry was a non-smoker (8 @ p. 9).
Medical Records	Mr. Perry was never a smoker (10).

MEDICAL RECORDS SUMMARY

Radiology Reports:

Medical University of South Carolina (10)
South Carolina Diagnostic Imaging (11)
Roper St. Francis Physician Partners (12)
Palmetto Digestive (13)

<u>Date</u>	<u>Facility</u>	<u>Study</u>	<u>Summary</u>
2/8/03	10	CT, abdomen w/ contrast	Focal inflammatory changes within the mesentery, left side of the abdomen adjacent to the left paracolic gutter. A small amount of fluid is seen in that region as well. There is no evidence of distinct mass or abscess, however.
2/8/03	10	CT, pelvis w/ contrast	1. Sigmoid diverticulosis. 2. Mesenteric inflammatory changes, mild in the left paracolic gutter region with a small amount of free intraperitoneal fluid as well. There is no distinct abscess noted. Etiologies for this appearance could include early diverticulitis, inflammatory bowel disease.
2/8/013	10	X-ray, abdomen	No evidence of acute abdominal obstruction. No evidence of free peritoneal gas.
2/27/15	11	MRI, lumbar spine w/o contrast	L5-S1 shallow protrusion converts to extrusion right intraforaminally, with moderate right and mild left exit crowding and deflection L5. Mild spondylosis otherwise.
3/2/15	11	MR, sacrum w/o contrast	1. Multicompartmental Tarlov cyst at S2/S2-3. 2. Previously documented L5-S1 protrusion which becomes an extrusion intraforaminally on the right.
5/19/17	12	Ultrasound, thyroid	1. Echotexture: homogeneous 2. Size: normal 3. Nodules: sub-centimeter cysts bilaterally 4. Suspicion: benign
2/22/18	12	X-ray, abdomen	At least one left renal calculus is seen as noted on prior CT. No ureteral calculus is identified.
9/28/18	12	X-ray, abdomen	There appears to be 1 view of stone of the lower view of the left kidney. There are possibly some new stones of the interpolar region of the left kidney. Stool could account for this. Although these appearances could be made by overlying stool.
8/22/19	12	X-ray, abdomen	Redemonstrated left nephrolithiasis. The calcification over the upper pole seen on the prior study is not appreciated on the current exam and an additional calcific density of the

<u>Date</u>	<u>Facility</u>	<u>Study</u>	<u>Summary</u>
			interpolated region may reflect an additional stone versus bowel contents.
8/22/19	12	Ultrasound, testicular	1. Normal ultrasound of the testicles without evidence of orchitis, torsion, epididymitis. 2. Bilateral epididymal cysts, left larger than right.
3/1/21	12	CT, abdomen, pelvis w/o contrast	1. Mild right hydroureteronephrosis due to an obstructing 2 mm calculus in the distal right ureter, just proximal to the ureterovesical junction. 2. Additional non-obstructing bi-lateral renal calculi 3. Colonic diverticulosis
6/5/23	13	Colonoscopy	Routine screening in a patient with a family history of colon cancer. Patient has sigmoid diverticulosis and some localized inflammation of the sigmoid colon. No large hemorrhoids.
6/16/23	12	CXR	New slight left pleural fluid with lobular left pleural densities laterally and with new abnormal soft tissue density overlying the left hilum suspicious for mass or adenopathy. Follow-up chest CT with IV contrast would be useful for further investigation.
6/21/23	12	CT, chest w/ contrast	1. Numerous left-sided pleural-based lesions/deposits and enlarged left cardiophrenic lymphadenopathy. Findings are worrisome for malignancy. Recommend further evaluation with tissue sampling. Follow PET/CT may also be considered to optimize tissue sampling target. 2. Small left pleural effusion, suspected malignant.
7/5/23	12	CXR	Interval placement of a left basilar PleurX drainage catheter. Decreased size of the pleural fluid on this side. There is a small apical pneumothorax. Slightly increased interstitial predominant opacities in the left lung which may be due to some symmetric edema and atelectasis. The right lung appears clear.
7/14/23	10	Lung Ventilation Perfusion	No scintigraphic evidence of pulmonary embolism Differential perfusion of 33% to the left lung and 67% to the right lung.
7/17/23	10	MRI, chest w/wo contrast	Left-sided mesothelioma centered posteriorly and extending circumferentially to involve the lateral, anterior and medial pleural space. Tumor deposits likely involve the pre-vascular fat of the superior mediastinum and epicardial fat with abutment of the pericardial sac. No definite evidence of diaphragmatic or chest wall involvement.

<u>Date</u>	<u>Facility</u>	<u>Study</u>	<u>Summary</u>
			Tumor deposit demonstrates circumferential abutment of approximately 50% of the left subclavian artery proximally.
7/17/23	10	MRI, brain w/wo contrast	Examination slightly limited by artifact. Within this limitation, no nodular enhancement. Linear enhancement near the ependyma of the right greater than left peritrial region is likely vascular in nature. If prior imaging is available, comparison could be made. Left posterior scalp lipoma incidentally noted with mild thickening of the nasopharyngeal soft tissue may be reactive. Correlate with examination.
7/18/23	10	PET CT, skull base to mid-thigh	Widespread hypermetabolic nodular left pleural thickening with probably left paramediastinal, pericardial and pericardiophrenic involvement. Additionally, a hypermetabolic chest wall lesion between the left lateral fifth and sixth ribs as well as a hypermetabolic focus in the left lateral seventh rib are also suspicious for disease involvement. Incidental small hiatal hernia with ill-defined hypermetabolic activity in the region of the distal thoracic esophagus, which is nonspecific and often associated with reflux esophagitis. Consider correlation with patient history and/or endoscopy for further evaluation. Extensive colonic diverticulosis with long segment hypermetabolic thickening throughout the rectum, which is non-specific though may represent uncomplicated diverticulitis. Consider correlation with patient history and/or colonoscopy.
8/8/23	10	CXR	Endotracheal tube tip projects 5.7 cm above the carina. Post-operative chest with left lung predominant interstitial and confluent airspace opacities. Small left pleural effusion. Trace left pneumothorax with small volume subcutaneous gas in the left lateral chest wall tissues.
8/9/23	10	Bilateral complete venous duplex scan	No evidence of thrombus in the bilateral lower extremity venous system were imaged.
8/9/23	10	Limited bilateral / unilateral duplex scan	Left upper extremity venous duplex scan reveals no evidence of venous thrombosis of the veins assessed.
8/9/23	10	CXR	Small left hydropneumothorax with similar left lung predominant interstitial and confluent airspace opacities.

<u>Date</u>	<u>Facility</u>	<u>Study</u>	<u>Summary</u>
8/9/23	10	CXR	No significant interval changes in the small left hydropneumothorax with left lung predominant interstitial and alveolar opacities. Gaseous distension of the stomach. Similar positioning of lines and tubes.
8/10/23	10	CXR	Increased left lung diffuse airspace opacities with no significant interval change in the small left hydropneumothorax. Interval increase in left chest wall subcutaneous emphysema. Unchanged positioning of support apparatus.
8/11/23	10	CXR	Similar appearance of left lung diffuse airspace disease with no significant interval change in the small left hydropneumothorax. Slight interval increase in left neck subcutaneous emphysema. Unchanged left chest wall subcutaneous emphysema.
8/11/23	10	CXR	Interval removal 1 of the left chest tube. Decreased airspace opacities in the left lung. Similar size of left hydropneumothorax. Similar positioning of remaining left chest tubes.
8/12/23	10	CXR	Low lung volumes with interval worsening of diffuse left-sided airspace opacities. Decreased gaseous component of the left hydropneumothorax.
8/13/23	10	CXR	Interval removal of one left chest tube with similar size of the left hydropneumothorax. Remaining lines and tubes in unchanged position. Decreased left-sided airspace opacities with improved aeration of the left lung.
8/14/23	10	CXR	Similar sized left hydropneumothorax.
8/15/23	10	CXR	Similar left lower atelectasis Slight decreased size of left pneumothorax.
8/16/23	10	Bilateral complete venous duplex scan	Normal venous flow characteristics. All deep veins assessed are patent. There is no evidence of deep vein thrombosis bilaterally.

<u>Date</u>	<u>Facility</u>	<u>Study</u>	<u>Summary</u>
9/29/23	10	CT, chest w/ contrast	Postsurgical changes of left posterolateral thoracotomy, left pleurectomy, mediastinal lymph node dissection and left hemidiaphragmatic reconstruction with small localized hydropneumothorax. No visible residual pleural nodularity in comparison to prior PET and chest CT/MRI.
12/5/23	10	CT, chest w/ contrast	Decreased left effusion and resolution of left gas component without suspicious pleural thickening or enhancement. No suspicious pulmonary nodule or thoracic adenopathy. Healing/subacute nondisplaced left lateral 5 th -7 th rib fractures.

Pathology Reports:

Medical University of South Carolina (14)
Roper St. Francis Physician Partners (15)
Palmetto Digestive Health Specialists (20)

<u>Date</u>	<u>Facility</u>	<u>Specimen/Procedure</u>	<u>Findings</u>
3/20/03	14	Biopsy, colon (31124663)	Colon, clinically sigmoid, biopsy Benign colonic mucosa with lymphoid aggregates.
2/27/10	15	Resection, Sigmoid colon	Sigmoid colon, partial resection: Diverticulitis
6/9/23	20	Biopsy, Sigmoid colon (S23-01247)	Diverticular Disease Associated Colitis. Negative for infectious organisms, dysplasia or malignancy
7/5/23	15	Biopsy, pleura (SR23-3043)	A. Pleura, left, biopsies: Non-small cell malignancy, most compatible with malignant mesothelioma. See microscopic description. B. Pleura, left, biopsy for frozen section: Non-small cell malignancy, most compatible with malignant mesothelioma. See microscopic description. Microscopic description: A-B Sections (including frozen section slides) demonstrate an infiltrative non-small cell malignancy comprised of moderate to markedly atypical cells arranged predominantly in infiltrative sheets with prominent nucleoli. Keratinization is absent. Gland formation is not identified. Overtly sarcomatoid differentiation or features of a high-grade sarcoma are not

<u>Date</u>	<u>Facility</u>	<u>Specimen/Procedure</u>	<u>Findings</u>
			appreciated. To further differentiate the lineage of these malignant cells, a panel of qualitative immunohistochemical stains (with appropriate positive controls) was performed on block A2: Cytokeratin AE1/3: Positive Cytokeratin 7: Positive Cytokeratin 5/6: Positive Calretinin: Positive WT1: Positive Desmin: Negative PSA: Negative CK20: Negative SOX10: Negative TTF-1: Negative Overall, co-expression of cytokeratins and mesothelial markers favors mesothelioma with extensively epithelioid features. There is no evidence of a pulmonary non-small cell carcinoma or metastatic colorectal carcinoma. Despite the prominent nucleoli, findings argue against metastatic prostatic adenocarcinoma. There is no evidence of metastatic melanoma. The frozen section diagnosis is confirmed.
7/12/23	14	Biopsy, pleura (SC23-01020) (outside case, SR23-3043)	A. Pleura, labeled as “left”, biopsy: -Epithelioid mesothelioma, see comment -Immunohistochemical stains -Calretinin: Positive -CK 5/6: Positive -CK7: Positive -AE1/AE3: Positive -WT-1: Positive -CD45: Negative -CK20: Negative -Desmin: Negative -PSA: Negative -Sox-10: Negative -TTF-1: Negative -Immunohistochemical Stains (MUSC): -P16: lost in cells of interest -BAP-1: intact

<u>Date</u>	<u>Facility</u>	<u>Specimen/Procedure</u>	<u>Findings</u>
			B. Pleura, labeled as “left”, biopsy: Epithelioid mesothelioma, see comment COMMENT: Slides reviewed objectively without bias in consultation with Dr. Harley, who concurs with diagnosis. These diagnosis correlate with those of the outside pathologist.
7/24/23	14	Biopsy, lymph node (FN23-01856)	Lymph node, 4R, Bronchoscopic-guided, fine needle aspiration Negative for malignant cells
7/24/23	14	Biopsy, lymph node (FN23-01854)	Lymph node, Level 7, Bronchoscopic-guided, fine needle aspiration Negative for malignant cells
7/24/23	14	Biopsy, lymph node (FN23-01855)	Specimen is unsatisfactory for evaluation.
8/8/23	14	Biopsies, Various (SP23-18720)	A. Soft tissue, labeled as “Tumor Implant”, excision: Epithelioid Mesothelioma B. Fibroadipose tissue, labeled as “Port Site 1”, excision: Mesothelioma present in inflamed skin and subcutaneous tissue. C. Rib, labeled as “6 th ”, resection: -One of two lymph nodes with metastatic mesothelioma (1/2). -Benign muscle -Benign bone with trilineage hematopoiesis D. Lymph node, labeled as “Level 10”, lymphadenectomy: -One benign lymph node (0/1) E. Lymph nodes, labeled as “Level 9”, lymphadenectomy: -Three benign lymph nodes -Mesothelioma present in surrounding soft tissue. F. Diaphragm, labeled as “implant”, excision: -invasive mesothelioma -Mesothelioma involves a cauterized margin -Transdiaphragmatic extension not identified G. Lymph nodes, labeled as “Level 7”, lymphadenectomy: -Four benign lymph nodes (0/4) H. Lung, labeled as “left lower lobe”, lobectomy: -Lung tissue with invasive mesothelioma involvement of visceral pleura.

<u>Date</u>	<u>Facility</u>	<u>Specimen/Procedure</u>	<u>Findings</u>
			-One of one intraparenchymal lymph node positive for metastatic mesothelioma (1/1) -Surgical margins negative for mesothelioma. I. Pleura, pleurectomy: -Histologic type: Epithelioid mesothelioma -Histologic grade: High grade •Nuclear atypia score: 2 •Mitotic count score: 3 (15 per 2 mm²) •Nuclear grade: 2 •Necrosis: present -Tumor focality: Diffuse -Tumor site: Parietal pleura, visceral pleura, diaphragm -Tumor size: Unable to be determined -Tumor extent: Diffuse, involving left lower lobe, diaphragm -Margin status: Negative in this specimen J. Lymph node, labeled as “Level 5”, lymphadenectomy: K. Skin, fibroadipose tissue, labeled as “Port Site 2”, excision L. Skin, fibroadipose tissue, labeled as “Port Site 3” excision Pathologic stage classification (pTNM, AJCC 8th edition): pT3 pN1 Number of lymph nodes examined: 12 Number of lymph nodes involved: 2

Medical Encounters:

Roper St. Francis Physician Partners (16)

Palmetto Digestive (17)

Charleston Oncology (18)

Medical University of South Carolina (19)

<u>Date</u>	<u>Facility</u>	<u>Document</u>	<u>Summary</u>
1/20/14	17	Procedure	Colonoscopy. Diverticulosis of colon.
9/9/16	16	Office Visit	Patient presents for second opinion of back pain, leg numbness and weakness. He can certainly have a 2-level anterior discectomy and fusion. If he opts not to proceed with surgery, he would need continued pain medical management for this condition.
8/9/17	17	Procedure	Colonoscopy. Moderate diverticulosis of the sigmoid colon.
8/29/17	16	Office Visit	Follow-up from ED visit for right-sided flank pain. Kidney stone that passed.
3/6/19	16	Procedure	Vascular Aortic Iliac procedure. Unilateral Duplex exam found a patent aorta without focal widening or stenosis. The iliac arteries were patent and without focal widening. This exam is negative for abdominal aortic aneurysm as noted.
3/1/21	16	Office Visit	Acute and severe right-sided flank pain. Kidney stone. Patient will proceed with trial of passage.
12/28/22	16	Office Visit	Family history – father has prostate cancer. Prostate screens have been normal for the patient. Most recent PSA have had a modest rise.
6/5/23	17	Procedure	Colonoscopy. Granularity, friability and melanosis in the sigmoid colon. Mild diverticulosis of the sigmoid colon.
6/16/23	16	Office Visit	Patient reports night sweats, unexplained fever and unintentional weight loss. Night sweats and weight loss could indicate serious pathology.
6/21/23	16	Office Visit	CT results discussed. Worrisome for malignancy.
6/26/23	17	Office Visit	Patient presents with a complaint of rectal bleeding. Colonoscopy done on 5/06/23. Will schedule a second colonoscopy to have another look, as patient is very concerned.
6/30/23	16	Procedure	Left thoracoscopy, pleural biopsies, left pleurX catheter insertion.
7/7/23	18	Office Visit	Patient presents for initial consultation regarding mesothelioma. He drains PleurX every other day. He denies known asbestos exposure. Results from chest CT raise concern for left cardiophrenic lymphadenopathy. Patient has at least stage II disease,

<u>Date</u>	<u>Facility</u>	<u>Document</u>	<u>Summary</u>
			unclear if it is resectable at this time. He also has mild hepatitis of unclear significance at this time.
7/12/23	16	Office Visit	Patient presents for post-op check. Called earlier in the week with pain and redness around PleurX. 5-day course of antibiotics has cleared up any redness and pain.
7/24/23	19	Procedure	Flexible bronchoscopy with airway exam. EBUS TBNA stations 4R, 7, 11L.
8/8/23-8/16/23	19	Hospitalized	Patient presents for procedures: 1. Bronchoscopy with therapeutic aspiration of secretions. 2. Resection of left 6th rib 3. Left extended pleurectomy and decortication 4. Mediastinal lymph node dissection of stations 5,7,9. 5. Intraoperative heated betadine x 45 mins 6. Multiple pneumorrhaphy 7. Left lower lobe wedge resections 8. Reconstruction of diaphragm 9. Excision of old incision sites
9/8/23	19	Consult	Consult for radiation therapy to the left pleural space. IMRT to deliver treatment. He will receive 50 Gy over 5 weeks.
9/13/23	19	Treatment	C1D1 adjuvant Cisplatin + Pemetrexed.
9/27/23	19	Treatment	C1D15 adjuvant Cisplatin + Pemetrexed today, plan for 4-6 cycles.
9/29/23	19	Office Visit	Patient progressing well post-bronchoscopy and tolerating treatment. Severe nausea and emesis with initial treatment.
10/25/23	19	Office Visit	Oncology follow-up. Proceed with cycle 3 adjuvant Cisplatin + Pemetrexed today, plan for 4-6 cycles.
11/8/23	19	Office Visit	New patient visit radiation oncology. Cancer staging: Staging form – Malignant Pleural Mesothelioma, AJCC. 8 th Edition. Pathologic: Stage IIIA (pT3, pN1, cM0) Patient to undergo CT simulation in January when chemotherapy is completed.
11/15/23	19	Office Visit	Proceed with cycle 4 adjuvant Cisplatin + Pemetrexed today, plan for 6 cycles.
11/17/23	19	Video Visit	Palliative care for pain/symptom management.

Michael L. Perry and Lonnie L. Long v. American International Industries, et al.**Expert Reports****I. Dr. Sanchez**

Dr. Sanchez reported the following: “In my expert opinion, Johnson & Johnson talcum powder and talc from the source mines was and is free of asbestos. This opinion is offered to a reasonable degree of scientific certainty. This opinion is based on my expertise, education, training, and experience in analyzing materials, including talc, for possible asbestos content. This opinion is supported by my own site visits to both Val Germanasca Italy and Guangxi China, testing that I have conducted of the relevant talcs and upon my review, analysis, and interpretation of decades of study conducted by scientists in academia, federal government, and industry. This opinion is also supported by my review, analysis, and interpretation of the available analytical testing data on Johnson & Johnson talcum powder.” (23 @ p. 30)

II. Mr. Segrave

Mr. Segrave provided the following summary of opinions: “Bureau Veritas North America (BVNA) tested talc ore from Val Chisone, Italy and Guangxi, China (Report A1512004). Additional non-talc rocks were also tested. No asbestos was observed.

- BVNA testing results of samples collected at the Nancy Jordan Mine in Murphy, North Carolina indicated no asbestos was observed in these samples (Report A1510172).

- On May 1, 2019, BVNA tested 6 samples of Microtalc 1745 sample retains received January 30, 2018, from American International Industries (AII). The samples were analyzed at BVNA in accordance with EPA/600/R-93/116 using polarized light microscopy (PLM) and analytical transmission electron microscopy (ATEM), including energy dispersive spectroscopy (EDS) and selected area electron diffraction (SAED), as well as x-ray diffraction (XRD). No regulated amphibole or chrysotile asbestos was observed in the samples (Report A1905013, Crudge).

- BVNA tested Argonaut ore and related samples from Vermont collected by Dr. Gunter (Report A1906129). No asbestos was observed.

- In February 2018, J3 Resources tested several samples relevant to the Hitchcock ore (collected by Mr. Fitzgerald) and an Italian sample (collected by Mr. Segrave). Both samples did not contain regulated asbestos. The third sample (collected by Mr. Segrave in Yancey County, North Carolina) was confirmed to contain regulated asbestiform anthophyllite.

- Mr. Fitzgerald, in my opinion, erroneously depicts the talc at Willow Creek, Montana as being co-located with the asbestos-containing rocks he found. Since the talc mined is up to several hundred feet below the surface, it is very unlikely the talc was contaminated by asbestos from these surficial deposits.

- Mr. Fitzgerald’s test results from 141 and 1615 ore are not of scientific significance and represent background levels.

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- Dr. Compton's identification of anthophyllite from MVA11730 Italian Talc report is erroneous. None of the zone axis electron diffraction patterns index correctly to anthophyllite. This was confirmed using the Weiss zone law. In addition, morphologically, the fibers depicted in the photomicrographs are diagnostic of cleavage fragments or talc ribbons with some showing kinks in the fiber and sharp bends.
- Based on my evaluation of the MVA12588 testing of Argonaut Vermont bulk samples, it is my opinion that: (i) MVA erroneously identified talc, cummingtonite, pryiboles or jimthompsonite as anthophyllite for all samples; (ii) the tremolite identified by TEM in sample AD0548 shows a cleavage fragment population and is indicative of non-talc rock; (iii) the ISO 10312 protocol used cannot determine asbestiform or non-asbestiform habit for a mineral species; (iv) the ISO 10312 method cited was not followed for the required criteria to identify amphibole, the analysis is not reliable, repeatable or reproducible for concluding these samples contain asbestos.
- MVA testing of the 53 Microtalc samples (MVA12478) does not show any significant level of amphibole or serpentine above background levels. The majority of samples tested (89%) do not show any observed amphibole or serpentine; and of the six samples where there are indications, all have less than four fibers or are statistically consistent with zero. In fact, five of the six samples are erroneously identified leaving only one tremolite fiber observed. This fiber does not have dimensions consistent with asbestos. Based on these results, in my opinion, the entire sample set of 53 samples does not contain asbestos.
- Based on my evaluation of the MVA Scientific report, MVA15428, dated January 22, 2024, where five split talc samples, representing 'Sugarloaf' Brazilian talc were analyzed for asbestos content, it is my opinion that: (i) PLM testing performed by MVA did not confirm any populations of amphibole or chrysotile asbestos using the criteria outlined in the method EPA/600/R-93/116 for PLM; (ii) TEM 'filtering and liquid nitrogen preparations' are not validated for talc and do not cite an actual method; (iii) TEM row spacing is below the 0.53 value for amphiboles and uncalibrated per ISO 10312; (iv) zone axis was not performed on the suspect fibers consistent with ISO 10312; (v) the amphibole fiber population counted by TEM has dimensions consistent with cleavage fragments and not asbestos; (vi) the average TEM concentration for all samples is 25.0 str/mm² and is well below the clearance criteria of 70 str/mm² under the AHERA criteria.
- Based on my review of MAS M71009, M71110, M71111 Chinese talc samples (September 16, 2020): (i) TEM results show that all samples did not confirm amphibole or chrysotile to levels greater than 0.90 str/mm² where these results are all less than the clearance level of 70 str/mm²; (ii) no indication that interlaboratory exchange with different lab or analysts was performed to validate results; (iii) one sample tested by MAS was held by MVA Scientific and transferred to MAS for further testing without permission from the owner, Mr. Alan Segrave.
- In the June 10, 2022, MAS M71523 testing of six Montana Microtalc 1745 Retains, (i) no amphibole asbestos was confirmed in all six samples by TEM; (ii) false positive results of chrysotile is apparent, given the results by ISO PLM lacking the correct optical data; (iii) point counting was not utilized as the preferred methodology consistent with the ISO 22262-1 method; (iv) the use of 1.560 RI oil further illustrates additional evidence that Dr. Longo continues to misidentify elongate talc as chrysotile; (v) the values reported by PLM may well be below the

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detection limits of a point count; (vi) TEM analysis did not confirm chrysotile within the sample; (vii) based on the errors and reported results, additional work by TEM is in order for confirmation of chrysotile and without this data, the current analysis is not reproducible nor reliable.

- MAS M71549 testing of five Pfizer Treasure Mine talc samples, July 1, 2022, for Dean Omar Branham Shirley, LLP, (i) no amphibole asbestos was confirmed in any of the five; (ii) for the five samples a false positive result of chrysotile is apparent, given the results by ISO PLM and CSM HLS (PLM) lack the optical data and repeat analysis to confirm at the levels reported where point counting was not utilized as the preferred methodology to quantify low levels of asbestos; (iii) the values reported by PLM may well be below the detection limits of a point count; (iv) TEM analysis did not confirm chrysotile within the sample; (v) no past or current methodology for the analysis of asbestos in talc adopted the CSM/HLS technique and I have not seen any precision or accuracy data at the levels reported; (vi) based on the errors and reported result additional work by TEM as stated in the MAS reports is in order for confirmation of chrysotile and without this data, the current analysis is not reproducible nor reliable.

- MAS M71564 testing of three of five Eclipse Mine talc samples, July 12, 2022, for Kazan, McClain, Satterley & Greenwood: (i) in my opinion the tremolite/richterite amphibole particles identified by TEM constitute a non-asbestiform cleavage population of amphibole particles and are not asbestos in three of the 5 samples collected; (ii) the TEM amphibole populations of the three samples analyzed by MAS do not indicate dimensions that have been demonstrated to give rise to mesothelioma per Chatfield; and PLM analysis was not performed to verify particles display additional population characteristics to support the asbestiform habit; (iii) the location where samples were taken at the 'Eclipse Mine' are not representative of the talc actually mined from this location approximately 40-50 years earlier, and the report indicates tailings and other debris outside of the working horizons of the mine; (iv) the talc at this site was never used in cosmetic talc production by Avon or any other cosmetic talc manufacturer to my knowledge.

- MAS testing of Osmanthus (M71743) and PurTalc (M71754) (i) no amphibole asbestos was confirmed in the samples; (ii) a false positive result of chrysotile is apparent, given the result by ISO 22262-1 (PLM) and CSM HLS (PLM) lacks the optical data and repeat analysis to confirm at the levels reported where point counting was not utilized as the preferred methodology to quantify low levels of asbestos; (iii) the use of 1.560 RI oil further illustrates additional evidence that Dr. Longo continues to misidentify elongate talc as chrysotile; (iv) the values reported by PLM may well be below the detection limits of a point count; (v) TEM analysis did not confirm chrysotile within the sample; (vi) no past or current methodology for the analysis of asbestos in talc adopted the CSM/HLS technique and I have not seen any precision or accuracy data at the levels reported; (vii) based on the errors and reported result additional work by TEM as stated in the MAS report is in order for confirmation of chrysotile and without this data, the current analysis is not reproducible nor reliable.

- I have reviewed Mr. Bailey's report dated June 12, 2015 concerning southwest Montana talc, I agree with Mr. Bailey's assessment that the talc from this region can be considered free of asbestos.

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- I have reviewed Mr. Bailey's report concerning the Fontane, Italy talc. Mr. Bailey outlines general geology and mineralogy found in the Piedmont region of Italy. In referencing talc, specifically the presence of asbestos at the talc mines of Val Chisone, I disagree with his opinions.
- Mr. Bailey erroneously concludes that the complex geology of the Chester dome area, in Vermont is also applicable to the surrounding talc bodies and does not account for pressure and temperature (P-T) and deformational changes on the flanks of the dome where the talc is located. The presence of tremolite/actinolite in rocks other than talc, do not indicate the presence of asbestos in talc at Hammondsville. Testing both historically and recently do not indicate the presence of asbestos in talc ore at Hammondsville. Mr. Bailey has not interpreted the geology of talc formation correctly and offers no testing of his own to verify the presence of asbestos in talc ore. He cites no evidence that exposure to asbestos occurred at the mine or mill.
- Mr. Bailey erroneously concludes that the talc derived from Murphy, North Carolina 'is consistently contaminated with tremolite/actinolite minerals, ranging in form from prismatic to asbestiform.' He also cites regional geology that incorporates other rock units not associated with the talc. Historical testing does reveal tremolite, however, the majority of the testing indicates the mineral and not the asbestiform habit. There is no indication any of this material was manufactured in the product.
- Therefore, Mr. Bailey's opinions outlined in his report concerning asbestos in the Hitchcock mine(s) are misleading and erroneous.
- Whittaker, Clark & Daniels, Inc. (WCD) purchased talc from mining concerns that used x-ray diffraction (XRD), polarized light microscopy (PLM), and transmission electron microscopy (TEM) with selected area electron diffraction (SAED). Through independent laboratories WCD regularly re-tested talc it sold to the cosmetic market for the presence of amphibole, serpentine, and other minerals.
- The cosmetic talc bodies in Val Chisone, Italy; Murphy, North Carolina; southwest Montana; Alpine, Alabama; southern Vermont; and Guangxi, China sourced by WCD did not have the petrology, pressure, and temperatures conducive to forming asbestos.
- I have reviewed independent laboratory test results commissioned by WCD using the CTFA J4-1 XRD/Microscopy technique for 309 XRD charts, including 140 tests for 141 talc, 88 tests for 1615 talc, and 81 tests for 643/2450 talc. Upon my re-examination of the XRD scans used for these determinations, I agree with the original results in BVNA Report A1404077. I conclude from the results of these tests that there is no evidence that WCD distributed asbestos-contaminated talc from 1971-1998.
- I have reviewed independent laboratory test results commissioned by WCD using the CTFA J4-1 XRD/Microscopy technique for 1,002 XRD charts from 12 different WCD codes. Minerals were verified on the charts, charts were examined for any phases present, and all regulated asbestos if detected were verified. All samples contained talc. Few differences were found with the original interpretations. I conclude from the results of these tests that there is no evidence that WCD

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distributed asbestos-contaminated talc from 1971-1990. I agree with the original results in BVNA Report A1605211.

- Theodore Hubbard from WCD has testified that if talc testing indicated the potential presence of asbestos, 'it would not be sold to a cosmetics account whatsoever.'
- It is important to remember that re-testing of purchased talc by WCD in particular as a distributor verified previous test results of mining companies regarding the mineral content and percentage of talc constituents.
- Regarding the 1745 USP (United States Pharmacopeia) talc sourced from the Treasure and Regal Montana talc mines, the U.S.P./Pharmaceutical Grade designation indicates that USP certification from the mine included scheduled frequency of testing using XRD and TEM for any amphibole or serpentine in the ore sold as a finished product. Any positive findings would have resulted in a product recall which never occurred.

A series of rather improbable events need to occur repeatedly for asbestos contamination to be present in a finished product. It would be extremely unlikely mineralogically and geologically over the life of the product that individual containers that Mr. Perry applied or was in proximity to would be contaminated with asbestos. There are no testing results to show that the containers Mr. Perry claims to have used or was in proximity to indicate the presence of amphibole or serpentine asbestos, and therefore no evidence that asbestos was present in these products. Further, without any testing of the products at issue, there is no way to determine, to a reasonable degree of scientific certainty, that either Equate powder, Avon Bird of Paradise, Cotillion, Skin So Soft, Soft Musk, Timeless, Topaze, Men's Musk, Deep Woods, and Spicy Talc body powders, talc supplied by IMI Fabi or Chanel No. 5 body powder products Mr. Perry used or was in proximity to ever contained asbestos.

It is my opinion that the testing program performed by mining companies and independent laboratories relied upon by distributors (such as Vi-Jon, IMI Fabi and WCD) as well as manufacturers was a proactive, forward-thinking program to characterize asbestos in talc. XRD, TEM and SAED were used to characterize talc and testing protocols were continually developed and refined to provide accurate data. These protocols and the testing program exceeded compliance criteria for Federal and State regulations during the relevant time-period, beginning in the early 1970s. In fact, the techniques used contained the fundamental elements of modern-day testing. These elements include analyst training, use of several analytical techniques with written standard operating procedures, intra- and inter-analyst quality control re-analysis, use of prepared well-characterized standards, and oversight by quality control personnel.

In conclusion, it is unlikely Mr. Perry would have been exposed to asbestos from the use of or proximity to Equate powder, Avon Bird of Paradise, Cotillion, Skin So Soft, Soft Musk, Timeless, Topaze, Men's Musk, Deep Woods, and Spicy Talc body powders, talc supplied by IMI Fabi or Chanel No. 5 body powder products. Based on the information presented to me about this case,

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there is no evidence that Mr. Perry used or was in proximity to talc that was contaminated with asbestos, and which allegedly may have been used in the above products.

Based on my review of the peer-reviewed literature referenced in this report, personal experience with identifying minerals as a microscopist, and field experience as a professional geologist, my opinions expressed and outlined in this report are held to a reasonable degree of scientific certainty. I reserve the right to amend or supplement my opinions once I have had an opportunity to review additional expert disclosures, reports, reliance documents, or further discovery submitted that is produced in this case or generated after the submission of this report.” (24 @ pp. 14-18, 21-22)

Mr. Segrave provided the following Vi-Jon Talc specific opinions: “• Montana talc is exceptionally pure and generally considered to be void of asbestos, including amphibole or serpentine varieties. In general, documents showing talc sales and testing records were sourced by Vi-Jon from Montana from 2005-2014. From 2003-2005 talc could have been sourced from Guangxi, China and Vermont (Argonaut).

- In my opinion, the testing practices utilized by suppliers and mining entities to Vi-Jon were designed to avoid the inclusion of asbestiform tremolite. This is evident in their testing program to determine total tremolite by XRD and to determine ‘fibrous tremolite’ by TEM/SAED examination, as well as infrared testing that met testing requirements of the J4-1 method. Serpentine asbestos is not found in these deposits.
- Vi-Jon suppliers regularly tested talc ore deposits for the presence of asbestiform varieties of various minerals using infrared and state-of-the-art techniques (XRD, TEM, and SAED). These methods are still used by commercial labs.
- Vi-Jon suppliers collaborated with external laboratories and government agencies for validation of their methodologies related to talc testing. Vi-Jon suppliers developed a progressive and comprehensive testing program for quantifying asbestos in talc.
- Vi-Jon suppliers’ methods as a whole (i) were vastly superior to reliance on a single analytical technique for determining the content of talc products; (ii) were superior to the analytical methods that were used by OSHA or by some other companies at the time; (iii) represented the state-of-the-art in talc testing, including for the presence of tremolite in both its asbestiform and non-asbestiform varieties at low detection levels. Vi-Jon suppliers continued to scrutinize its own testing methods and independently worked to improve those methods, including the use of infrared testing and the J4-1 testing protocol.
- It is important to remember that re-testing of talc by Vi-Jon suppliers after receipt of purchased talc from mining entities verified previous test results of mining companies regarding the mineral content and percentage of talc constituents.
- Based on my review of historic test results and other data provided in this case, there is no evidence that Vi-Jon talc used in the manufacture of Equate body powder, 2003-2016 was contaminated with asbestos.

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- It is unknown what talc was specifically used in the manufacture of Equate body powder, 2003-2016 product Mr. Perry allegedly used or was in proximity to its use.” (24 @ p. 86)

Mr. Segrave provided the following summary of Avon Talc specific opinions: “• I have reviewed five volumes of historical testing performed from 1972-2008 primarily by Avon and McCrone. To a lesser extent testing was also performed by Kobo, US Cosmetics, Mineral Pigments and Solutions, Cyprus Industrial Minerals and Rio Tinto. Testing by Avon utilized infra-red (IR) techniques for tremolite and Differential Thermal Analysis (DTA) for chrysotile. The IR technique cannot distinguish morphology and therefore cannot confirm the presence of asbestiform tremolite; further testing by optical microscopy would need to be completed to confirm.

- Based on my review of the historical testing, most tests did not indicate the presence of amphibole or chrysotile (703 tests by XRD and IR). A small number of tests (30) indicated the presence of tremolite where ten samples examined by optical microscopy confirmed ‘fibrous’ tremolite meeting the 3:1 aspect ratio definition described in the early 1970s. However, cleavage fragments may also occur in equivalent size ranges. Nevertheless, several testing records were listed as rejects by not meeting specifications. Thirteen (13) tests were also categorized as inconclusive. For example, I did not see tremolite or chrysotile test results, and where other specifications were not met, such as sulfur or bacteria content.

- United Sierra was a supplier to Avon and tested talc using XRD until 1972 when the southern Death Valley area, as well as talc supplied by Canada Talc from the Henderson mine in southeast Ontario was discontinued. In 1972-1976 the formulas indicate a blend of talc codes and do not include any Death Valley or Canada talc codes. In post 1976 Avon uses 752 (Olympic/Montana) talc and 762 (Chinese) talc.

- I have reviewed McCrone testing from November 1972-April 1973 based on testing referenced in the September 14, 1973 memo. The testing includes six results that purported to find tremolite. The McCrone records confirmed in three of the six instances that the tremolite was non-fibrous. The other three instances do not confirm the tremolite habit. These same records also rejected any findings of chrysotile. The records reviewed do not confirm anthophyllite or any other forms of asbestos.

- Based on my review of the historical Avon testing records the testing performed met or exceeded the J4-1 criteria through use of XRD, PLM, IR, DTA and TEM (post 1985) for the presence of amphibole and chrysotile in the talc ore sourced by Avon.

- Based on my review of Avon formula and ingredient cards for Bird of Paradise, Cotillion, Skin So Soft, Soft Musk, Topaze, and Men’s Musk products there is no indication that the talc sourced for these products contained amphibole or serpentine asbestos during the time period of Mr. Perry’s alleged use, or proximity to its use.

- The testing programs by Avon’s mining entities, suppliers, or laboratories met or exceeded the testing requirements in place during this time period and in fact are still in use today as a

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requirement. There are no testing results of the products Mr. Perry allegedly used that indicate the presence of amphibole or serpentine asbestos, and therefore no evidence that asbestos was present in these products.

- My review of plaintiff testing shows that it is overinclusive and may not be directly relevant to the talc sources in this case.

Based on Avon's interrogatory responses in the following excerpt, as well as the talc sources utilized by Avon, supports my opinion that the talc sourced by Avon did not contain asbestos.

Avon expected that its suppliers would test the raw grade cosmetic talc they supplied for asbestos, but Avon did not rely solely on its suppliers, and did its own testing as a quality assurance check that the talc did not contain asbestos. Avon's procedures required that certain critical testing like that for asbestos always be performed by Avon and not delegated solely to a supplier or vendor. To confirm that the suppliers had tested the talc for asbestos, Avon developed its own tests. In 1973, Avon's Analytical Laboratory developed a way to effectively test for tremolite impurities in talc by employing infrared spectroscopy and x-ray diffraction methods. During this same time period, Avon developed a similar method to test for chrysotile in talc using differential thermal analysis. See W. Luckewicz, B.S., Avon Products, Inc., Differential Thermal Analysis of Chrysotile Asbestos in Pure Talc and Talc Containing Other Minerals, J. Soc. Cosmet. Chem., 26, 4310437 (Sept. 1975) (discussing Avon's DTA testing method and reporting that in 200 talc samples tested, 'none were found to contain chrysotile asbestos at the detectable level').

Between March 1973 and March 1976, Avon analyzed 445 samples of talc, representing every shipment for Avon's use as well as every sample, for R&D evaluation as a potential new talc source, for the presence of serpentine chrysotile and amphibole tremolite. From approximately March 1973 to 1974, these analyses were performed by McCrone & Associates, an outside independent laboratory, using x-ray diffraction. In approximately 1974, Avon began analyzing the talc samples in-house using the infrared spectroscopy and differential thermal analysis methods it had developed. After Avon began analyzing talc samples in-house in approximately 1974, Avon continued to send samples to McCrone for confirmatory analyses in the event a positive result occurred.

Following the adoption of the J4-1 method by the CTFA in 1976, Avon did the following: Avon, as it had done since 1974, double checked every shipment of talc received from a supplier for tremolite, whether asbestiform or non-asbestiform, using infrared spectrometry (IR) (APAM 8.600-1). Avon also triple checked talc receipts through a 3rd party laboratory using x-ray diffraction and optical microscopy: the CTFA J4-1 method. Avon's protocols beginning in 1977 required that samples of talc received be tested every 10th shipment, or at least once every 6 months by this method. Avon also conducted quarterly audits of talc receipts received from a supplier and sent those to an outside lab for further testing for asbestos using CTFA J4-1 beginning in 1977. Avon also had outside laboratories on certain occasions test samples of raw cosmetic grade talc for asbestos by transmission electron microscopy. If any lot of talc received from a

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supplier tested positive for tremolite, whether asbestiform or non-asbestiform, Avon would not use that lot in the manufacture of any cosmetic talc product.

I have also reviewed five volumes of historical testing performed from 1972-2008 primarily by Avon and McCrone. To a lesser extent testing was also performed by Kobo, US Cosmetics, Mineral Pigments and Solutions, Cyprus Industrial Minerals and Rio Tinto. Testing by Avon utilized infra-red (IR) techniques for tremolite and Differential Thermal Analysis (DTA) for chrysotile. The IR technique cannot distinguish morphology and therefore cannot confirm the presence of asbestiform tremolite. Further testing by optical microscopy would need to be completed to confirm.

Based on my review of the historical testing, most tests did not indicate the presence of amphibole or chrysotile (703 tests by XRD and IR). A small number of tests (30) indicated the presence of tremolite where ten samples examined by optical microscopy confirmed 'fibrous' tremolite meeting the 3:1 aspect ratio definition described in the early 1970s. However, cleavage fragments may also occur in equivalent size ranges. Nevertheless, several testing records were listed as rejects by not meeting specifications. Thirteen (13) tests were also categorized as inconclusive. For example, I did not see tremolite or chrysotile test results, and where other specifications were not met, such as sulfur or bacteria content.

Based on my review of the historical Avon testing records the testing performed met or exceeded the J4-1 criteria through use of XRD, PLM, IR, DTA and TEM (post 1985) for the presence of amphibole and chrysotile in the talc ore sourced by Avon.

Based on formula cards for the Avon products Bird of Paradise, Cotillion, Skin So Soft, Soft Musk, Topaze, and Men's Musk, talc from Italy and Montana appears to be the primary talc source. Another source of talc specified for Avon products was from a Hitchcock property in North Carolina. I visited the remnants of the Nancy Jordan Mine, a Hitchcock property, located in North Carolina. My opinions for this cosmetic talc source are outlined in BVNA Report A1510172. In addition, other approved alternative blend talc sources may have included Alabama, Vermont, Canada, California, China, Venezuela, Spain and Brazil. As of 2001, talc was not an ingredient in the formula cards for the Skin So Soft and Soft Musk products.

United Sierra was a supplier to Avon and tested talc using XRD until 1972 when the Death Valley as well as talc supplied by Canada Talc was discontinued. In 1972-1976 the formulas indicate a blend of talc codes and do not include any Death Valley or Canada talc codes. In post 1976, Avon uses 752 (Olympic/Montana) talc and 762 (Chinese) talc." (24 @ pp. 89-103)

Mr. Segrave provided the following IMI Fabi Talc specific opinions: "Based on numerous records I have received and reviewed concerning IMI Fabi (Diana), LLC, 473 IMI Fabi, LLC, 474 IMI Fabi (USA), Inc. (IMI Fabi), I offer the following summary and opinions.

- Cosmetic talc produced by IMI Fabi for cosmetic purposes was sourced from Guangxi China and sold within the United States by two entities and described as follows:
 - IMI Fabi (Diana), LLC (2001-2004) Source: Huamei, Guangxi, China

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➤ IMI Fabi, LLC (2005- Present) Source: Huamei (2005 -2014) and (2014-Present) Guiguang, Guangxi, China (brighter color of talc)

- The geology of the Guangxi talc is described within this report (see Guangxi) and is not conducive to forming amphibole or serpentine.

- After reviewing all documents, I conclude that all testing has met or exceeded European Pharmacopeia (EP); British Pharmacopeia 2000 (BP); Japanese Pharmacopeia (JP); United States Pharmacopeia (USP) requirements including J4-1 criteria utilizing XRD for the presence or absence of amphibole or serpentine. In addition, the presence of amphibole or serpentine minerals including asbestos is not indicated in any testing document that I have reviewed. Additional documents also included testing of samples from the source talc ore, geological survey and testing of the source ore or finished products where X-ray diffraction (XRD), Infrared analyses (IR) and Analytical Transmission Electron Microscopy (ATEM) and SEM was utilized.

- Based on my review of the IMI Fabi documents concerning historical and current testing, the geology of the Guangxi region where cosmetic talc is sourced (see section on Guangxi) and my experience as a professional geologist as well as an expert in testing for asbestos, in my opinion the talc sourced by IMI Fabi does not contain asbestos, including amphibole and chrysotile.” (24 @ pp. 168-169)

Mr. Segrave provided the following summary of Chanel Talc specific opinions: “Talc spiked with chrysotile and tremolite (0.1% and 1.0%) testing for Manning Gross + Massenburg, LLP (STC2006003/A2005120, August 19, 2020) were analyzed by PLM and TEM to reveal the microscopical characteristics of these two minerals in two concentrations.

- One sample of Chanel No. 5 After Bath Powder for the Harpster case was tested for asbestos using accepted EPA PLM and TEM methodologies for bulk samples, as well as ISO 22262-2 density separation for bulk samples. No regulated amphibole or chrysotile was observed. Re-analyses of all samples was also performed, and no regulated amphibole or chrysotile was observed in any of the samples. Report STC2006014/A2009047, October 27, 2020.

- Five Chanel No. 5 product retains (report STC2006031/A2011112, December 14, 2020) and three Chanel Coco Mademoiselle (report STC2006031/A2011114, December 14, 2020), samples were prepared and tested using scanning electron microscopy and energy dispersive spectroscopy (SEM/EDS) elongate particles were examined. No regulated amphibole or chrysotile asbestos was observed in any of the samples. Results confirmed the particles as talc and not chrysotile.

- On April 7, 2023, I received a package via FedEx from the Law firm of Simon Greenstone Panatier, PC. I relinquished the package on April 7, 2023, to Bureau Veritas North America, Inc (BVNA), where the package was opened under a Class 10 hood and two Chanel containers were logged into the laboratory information management system (LIMS). In addition, On April 6, 2023, Ms. Lejla Blagojevic visited the MAS laboratory in Suwanee, Georgia where sample split aliquots of 9 various Chanel products were obtained. The samples were hand carried and transferred to BVNA., in Kennesaw, Georgia. The chain of custody documents for both sets of samples are attached at the end of this report. Preparation and testing were performed on the 11 samples using

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accepted methodologies as outlined in BVNA report A2304029. I also visited the laboratory on multiple occasions between April 7-May 5, 2023, where I personally examined the samples using polarized light microscopy (PLM), and analytical transmission electron microscopy (ATEM), that includes energy dispersive spectroscopy (EDS), and selected area electron diffraction (SAED). The results of my analyses agree with the results as reported by BVNA. No regulated amphibole or chrysotile asbestos was observed in these samples. Report STC2304007/A2304029, May 5, 2023.

- In October 2018, BVNA received eighteen samples of ore retains of SUPRA H from Manning Gross + Massenburg, LLP. The samples were split into approximately 10 g sub samples, where the B fraction was analyzed by BVNA and the A fraction was relinquished to Dr. Compton of MVA Scientific Consultants in Duluth, Georgia in November 2018. BVNA testing results showed no regulated asbestos, serpentine, or non-regulated amphibole (Report A1810394).

- In October 2018 and November 2018, BVNA received ten and two samples, respectively, of Chanel No. 5 Body Powder from Manning Gross + Massenburg, LLP. The samples were split into approximately 10 g sub samples, where the B fraction was analyzed by BVNA and the A fraction was relinquished to Dr. Compton of MVA Scientific Consultants in Duluth, Georgia in November 2018. The analysis confirmed primarily talc with mica and chlorite. No asbestos or non-regulated amphiboles or serpentine minerals were observed (Report A1811018).

- On November 9, 2018, I visited the MVA Scientific lab in Duluth, Georgia to retrieve a sample of Chanel No. 5 Bath Powder (labeled 12725 AD1174) for the Dobson case. The sample was hand-carried and received at the Maxxam Analytics laboratory in Kennesaw, Georgia on the same date. The sample was gravimetrically reduced, followed by PLM Point Count and TEM analyses. One non-asbestiform tremolite cleavage fragment was identified by both PLM and TEM. No regulated asbestos or non-regulated amphiboles were observed in the sample (Report A1811124).

- In November 2018, BVNA retrieved three split samples of Chanel No. 5 Bath Powder from MVA Scientific for the Ripley case. BVNA testing results showed no regulated asbestos or non-regulated amphibole (Report A1811138).

- In December 2018, BVNA retrieved twenty-one split samples of what is claimed to be Chanel No. 5 Bath Powder from MAS for the Ripley case. BVNA testing results showed tremolite cleavage fragments were confirmed in some of the samples. No regulated amphibole or serpentine asbestos was found in any of the samples (Report A1812172).

- On July 31, 2019 and August 1, 2019, I visited MAS where I examined samples from MAS project M69753. The structures previously identified as bundles by MAS lacked the characteristics of the asbestiform habit, for example splayed ends. Additional rotation of tremolite structures under the electron beam failed to reveal any morphological characteristic that could be confirmed as asbestiform (Report A1908021). See photomicrographs in Appendix A.

- AMA Labs tested Chanel No. 5 Talcum Powder (Sample Numbers 610828, 610231, 610598, 610976, 610983, and 610999). Testing utilized a Modified PLM ELAP 198.6/TEM ELAP 198.4 protocol. No asbestos was observed in any of the samples.

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- AMA Labs tested Chanel No. 5 Bulk Raw Talcum Retains (Sample Numbers 610230 and 610947). The testing method utilized was a Modified PLM ELAP 198.6/TEM ELAP 198.4 protocol. No asbestos was observed in any of the samples.
- Based on the data produced in the glove box release study for Chanel Bath Powder (MVA12725 dated August 31, 2018), the concentration values are overstated and do not represent real-world product application. Dr. Compton's derived index value of 0.00000156 is 1,117,820,591 times less than the highest index value in the EPA release study demonstrated the negligible result determined in this study consistent with background. The single sample collected and analyzed by Dr. Compton is not in compliance with the ISO method. The ISO method does not discriminate between asbestos and non-asbestos amphibole fibers. Dr. Compton did not follow the ISO method for fiber identification. The results calculated as a weight percent are below any standard that constitutes an asbestos-containing material and fiber levels found is well below the clearance criteria of 70 str/mm² for AHERA.
- Evaluation of Dr. Compton's MVA12910 Supra H Talc report (September 24, 2020) I found: (i) MVA erroneously identified talc as anthophyllite; (ii) the dimensions for the majority of these fibers are shorter than 5 microns and are consistent with cleavage fragments; (iii) the majority of samples tested (78%) did not reveal any regulated amphibole or chrysotile asbestos identified and collectively per Section 1.3 of the ISO 10312 all samples are less than 50 str/mm² and would not constitute a finding of asbestos even if the identified anthophyllite was correctly identified; (iv) the ISO 10312 protocol used cannot determine asbestiform or non-asbestiform habit for a mineral species; and (v) the ISO 10312 method cited was not followed for the required criteria to identify amphibole, the analysis is not reliable, repeatable or reproducible for concluding these samples contain asbestos.
- Testing of Chanel No. 5 MAS M69753 (21) Supplement, May 2019 (Original Report Dated January 2019 for Simon Greenstone Panatier, PC) was updated for the analysis of several samples by SEM analysis. Samples included M69753-003, 006, 011 and 017. Based on the SEM photomicrographs of tremolite outlined in pages 226, 337, 338, 339, 540, 850, 851, 854, 855, 856 and 857, respectively, all are indicative of cleavage fragments, and none display asbestiform characteristics.
- Based on my evaluation of the MAS M69785 testing results (May 7, 2020) of Chanel No. 5 retains, MAS M69784 (May 8, 2020) Ann Ripley containers, Coco Mademoiselle MAS M70266 (May 11, 2020), MAS M69753 Chanel No. 5 (4 out of 21) by HLS (February 26, 2020), Chanel Poudre Universelle Libre in MAS M70630 (August 6, 2020), MAS M71129 (August 13, 2020) Sharon Harpster sample, MAS 71179 Chanel Supra H retains (October 8, 2020), and testing of MAS M71194 Chanel Poudre Universelle Libre (April 12, 2021) Leanne Hurley's container, specific to the heavy density preparation for chrysotile: (i) Dr. Longo did not follow cited use of ISO 22262-1, PLM method and the results are not repeatable; (ii) reported ranges of optical properties instead of actual values using only one RI oil; (iii) failed to verify data, including proper dispersion staining colors, such as talc and other minerals using different immersion oils; (iv) concentration values of reported chrysotile would be readily observed by TEM as a secondary confirmation, however, this was not done; (v) the morphology of the particles identified by Dr.

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Longo as chrysotile lack the asbestiform criteria, as well as the proper dispersion staining colors as referenced in the ISO 22262-1 method used for the analysis. Some elongate particles of talc or cellulose are present; (vi) more likely than not the particles show refractive index and birefringence data consistent with talc or cellulose and not chrysotile.

- In the supplement reports MAS M69785 (July 31, 2020) of Chanel No. 5 Retains and M70266 (August 6, 2020) Coco Mademoiselle, Dr. Longo revised the two reports to correct the original weight percent values reported: (i) The supplemental reports indicate new values that are significantly lower than the original values, however, the percentage values reported remain erroneous due to misidentification; (ii) the original report and revised reports also do not show the weight data used to derive recovery weight percent values; (iii) it is unknown how much talc by weight was actually analyzed on the glass slide by PLM so it is impossible to determine weight percent; (iv) the reported values of BIR and refractive index (RI) values in the report are too high for chrysotile when comparing the Calidria mean refractive index values and are consistent with talc; (v) I reiterate, TEM secondary confirmation of chrysotile has not been performed and given the purported presence of chrysotile observed by PLM there is no reason TEM would not observe chrysotile.

- Based on my evaluation of MAS testing results of Chanel talcum products: MAS M71442 No. 5 Bath Powder (Daryl Yoder, May 26, 2022); M71530 Allure Body Powder, M71531 Coco Perfumed Powder, and M71568 No. 5 Bath Powder (December 16, 2022); and testing of Chanel No. 5 Bath Powders MAS Projects: M71521, M71522 and M71524 (September 1, 2022): (i) no amphibole asbestos was confirmed in any of the Chanel products (a single cleavage particle was reported in M71442 and a single tremolite or actinolite particles in M71522/M71524; (ii) a false positive result of chrysotile is apparent, given the result by ISO 22262-1 (PLM) and CSM HLS (PLM) lacks the optical data and repeat analysis to confirm at the levels reported where point counting was not utilized as the preferred methodology to quantify low levels of asbestos; (iii) the values reported by PLM may well be below the detection limits of a point count; (iv) TEM analysis did not confirm chrysotile within the sample; (v) no past or current methodology for the analysis of asbestos in talc adopted the CSM/HLS technique and I have not seen any precision or accuracy data at the levels reported; (vi) based on the errors and reported result additional work by TEM as stated in the MAS report is in order for confirmation of chrysotile and without this data, the current analysis is not reproducible nor reliable.

- Chanel used Italian talc sourced from Val Chisone until 1997 for Chanel No. 5 After Bath Powder. From 1997-2000 a blend of primarily Italian and some Australian talc was used for Chanel No. 5 After Bath Powder. Subsequently, Chanel No. 5 After Bath Powder was sourced from Guangxi, China. • It is unknown what talc was specifically used in the manufacture of Chanel No. 5 body powder Ms. Perry allegedly used in proximity to Mr. Perry.” (24 @ pp. 170-174)

III. Dr. Barlow

Dr. Barlow provided the following potential asbestos fiber exposures associated with use of Johnson & Johnson talcum powders: An exposure assessment was conducted to evaluate the potential for cumulative lifetime asbestos exposure associated with use of Johnson & Johnson

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talcum powders. Cumulative exposure to asbestos, expressed as fibers per cubic centimeter-years (f/cc-yr), was calculated using the following equation (Eq. 1) (Burns et al. 2019; USEPA 1989, 2009a):

$$CEC_{ENV} = C_{Task} \times E_T \times E_F \times E_D \times C_F \text{ (Eq. 1)}$$

Where:

CEC_{ENV} : Cumulative asbestos exposure over time on an environmental basis (f/cc-yr)

C_{Task} : Task-based personal airborne fiber concentration (f/cc)

E_T : Exposure time (minutes/use)

E_F : Exposure frequency (number of uses/year)

E_D : Exposure duration (years)

C_F : Conversion factor for the number of total minutes in a year (year/minutes)

For the purposes of this assessment, the results were presented in environmental years. An environmental year typically includes 8,760 hours per year, using 24 hours per day for 365 days. Expressing cumulative exposure as an environmental year allows for the direct comparison to ambient exposures to asbestos to the general population in the U.S. By comparison, an occupational year typically includes 2,080 working hours per year, using a 40-hour workweek and 52 workweeks per year.

Parameters and Assumptions

Task-Based Personal Airborne Fiber Concentration – C_{Task} (f/cc)

As described in the section above, there are a number of studies that reported both airborne dust and fiber concentrations for consumer use of body powder, similar to that described by Mr. Perry. As such, I reported exposure data from studies that reported direct and bystander exposure during application of loose powder using a sprinkle method and adult exposure during application of powder to another in Table 1. In order to make comparisons across the available studies, I converted all respirable dust results to estimated airborne fiber concentrations, as described in Burns et al. (2019). Studies that only presented respirable dust in terms of mg/m^3 first required conversion to mppcf; the NIOSH conversion factor expressed as 1 mppcf to $0.15 mg/m^3$ was used.

Next, a conversion to units of f/cc was required for total dust data expressed in mppcf. A conversion factor of 1.72 to 1 mppcf derived from concurrent airborne dust (mppcf) and fiber (f/cc) for talc millers reported in Dement and Zumwalde (1979) was used. The respirable dust conversions, along with all identified measured cosmetic talc exposure data related to body powdering, are reported in Table 1.

Michael L. Perry and Lonnie L. Long v. American International Industries, et al.**Table 1.** Summary of the representative dust and fiber exposure measurement data associated with application of cosmetic talcum powder to the body.

Study: Application Description	Powdering Time	Sample Duration	Measured Dust Conc. (mppcf) ^a	Measured Dust Conc. (mg/m ³) ^a	Measured PCM Fiber Conc. (f/cc)	Converted Asbestos Conc. (f/cc) ^b
<i>Direct Application of Body Powder – Sprinkle Method</i>						
Anderson 2017 ^{c, d}	13-47 s	6 m	--	1.46	0.23	0.00023
Gordon 2014	55 s	5 m	--	--	4.8	0.0048
Rasmussen 2019	NR	57±8 s	--	0.48	--	0.0055
Aylott 1979	15-80 s	5 m	--	1.13	--	0.013
Russell 1979	1.23±0.55 m	1.23±0.55 m	--	2.03	--	0.023
Miller 2022 ^e	1-3 m	15 m	--	--	0.084	--
<i>Adult Exposure During Application of Powder to Another</i>						
Moon 2011	30 s	5 m	--	0.00527	--	0.00006
Hildick-Smith 1976 ^f	10 s	1.25 m	0.14	--	--	0.00024
Dement 1972 ^c	5-15 s	2-3 m	--	--	1.65	0.0016
<i>Bystander to Application of Body Powder – Sprinkle Method</i>						
Gordon 2014	55 s	5 m	--	--	1.4	0.0014
Rasmussen 2019	NR	129 s	--	0.17	--	0.0020

^a Measured airborne dust concentration data converted to fiber using the following conversion ratios: 1 mppcf: 0.15 mg/m³ and 1.72 f/cc: 1 mppcf.

^b Applied the 0.1% asbestos factor.

^c Arithmetic mean of measured airborne concentration data calculated from reported data.

^d Sample duration per event was approximately 6 minutes.

^e Cosmetic talc spiked with 0.1 % asbestiform tremolite. Did not apply the 0.1 % asbestos factor.

^f Data were reported to the author via personal communication; it was reported that the dust concentrations for the simulated mother and infant were similar. Time weighted average was calculated for 10 s dusting time (0.243 mppcf) and 65 s settling time (0.124 mppcf) using the following equation $[(c1 \times t1) + (c2 \times t2) / (t1 + t2)]$.

In this assessment, with the exception of Miller et al. (2022), an upper bound ‘worst-case’ estimate of 0.1 percent asbestos in cosmetic talc was applied to the airborne PCM fiber concentrations. This is also the same value that was used in the 1985 U.S. Food and Drug Administration’s (FDA) risk assessment on the potential for cancer risk from consumer exposure to asbestos during the use of cosmetic talc (Brown 1985). The FDA explained, in response to a public letter, that based on the analysis of cosmetic talcum powders in 1977, that ‘cosmetic grades of talc are usually free of asbestiform particles,’ and when present, ‘the level was only 0.1 percent or less’ (Kennedy 1979: p. 3). The available measured data regarding the relationship between bulk asbestos content and airborne fiber concentrations are consistent with the results of my analysis using data reported in the peer-reviewed publications. For example, in 1988, Addison et al. (1988) measured the corresponding airborne particulate and fiber concentrations when soils containing 0.001, 0.01, 0.1 and 1 percent asbestos were made airborne. The results of this analysis showed a general trend of increasing airborne asbestos concentrations with increasing bulk content of asbestos, that is, a higher bulk asbestos content in the soil resulted in higher airborne fiber concentrations. It should be noted that this study was conducted in a glovebox, which is not representative of actual human exposures, and may overestimate airborne fiber concentrations. Despite the limited comparability of this study to the cosmetic use of talc, the normalized ratio of f/cc to mg/m³ values in my analysis

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was consistent with the measured data collected by Addison et al. (1988) for soils containing 0.1 percent asbestos, demonstrating further evidence supporting the approach used. Further, the results of workplace airborne concentration data for talcum powder containing less than 0.1% asbestos were estimated to be 0.01 fibers/cc in other peer-reviewed published literature, also consistent with the findings of my analysis (Mattenklott 2007; Moon et al. 2011). The airborne concentration values reported in Mattenklott (2007) are within the range of the estimated air concentrations associated with use of talcum powder products reported in Table 1.

Some exposure studies analyzed airborne fiber concentrations associated with the consumer use of cosmetic talcum powder using the NIOSH 7400 (PCM) and 7402 (PCM equivalent, PCME) methods. It is important to note that detection of measurable fibers via TEM analysis does not necessarily positively identify the presence of asbestiform mineral fibers. For example, as the NIOSH 7402 method explains, the presence of minerals chemically similar to asbestos (e.g., pyroxenes, massive amphiboles, and talc fibers) ‘may warrant the use of more powerful diffraction pattern analysis before positive identification can be made,’ because ‘high concentrations of background dust,’ such as talc, can ‘interfere with fiber identification’ (NIOSH 1994: p. 1, 5). Therefore, in an effort to eliminate any potential issues over the limitations of the analytical methods used to identify asbestos fibers, only the PCM data were used to calculate a cumulative, worst-case asbestos fiber exposure estimate for Mr. Perry.

Exposure Duration, Frequency, and Time – E_D (year), E_F (number of uses/year), and E_T (minutes/use)

Mr. Perry reportedly he used Johnson’s Baby Powder, among others, from 1974 or 1975 to 2019. He testified that he used Johnson’s Baby Powder after showering, for hockey and swimming, while working in the engine room on the sailboat, and while working on the farm. Mr. Perry did not specifically state how often he used Johnson’s Baby Powder or whether he used Johnson’s Baby Powder more than other powders. For this assessment, I assumed that he only used Johnson & Johnson powders, which will be an overestimate given his testimony.

Time: Mr. Perry estimated that it took ‘a minute or two or less’ to apply powder to himself after bathing, ‘a minute or two or less’ to apply powder to his husband, and ‘under a couple minutes,’ ‘more like maybe several, several, several, several seconds’ for his mother to apply powder to herself. Powdering times and sample durations reported in the studies identified in Table 1 varied based on the study design. The average of the maximum sample duration reported for studies that applied body powder was 4.6 minutes for studies that applied powder for up to 3.5 minutes. For this assessment, I assumed that application of powder took 4.6 minutes.

Frequency & Duration: Table 2 summarizes the frequency and duration of use of powder products described in the testimony. In cases where a range was given, I conservatively utilized the highest estimate.

Michael L. Perry and Lonnie L. Long v. American International Industries, et al.**Table 2.** Summary of the frequency of use of Johnson & Johnson powders, described by Mr. Perry.

Powders Used	Approximate Years	Frequency as Described	Total Uses (E_F * E_D)
Personal Use - Application by Mother	1974/1975 to 1976 (2 years)	every day, Monday through Friday Assumed 5 x per week	520
Personal Use - After Baths	Age 5/6/7 years - 2019 (43 years)	2 x per day, sometimes 3 x per day Assumed 2 x per day	31390
Assumed 1976 - 2019			
Personal Use - For Sports	1976 - 1984 (8 years)	<u>Late Oct./early Nov. - Feb.:</u> 1 x per day for hockey Assumed 120 x per year	960
	1984 - 1988 (4 years)	<u>Late Oct./early Nov. - Feb.:</u> 1 x per day for hockey <u>Year-round:</u> 1 x per day for swimming Assumed 485 x per year	1940
Personal Use - Farm Work	2003 - 2019 (16 years)	"a couple times" in the afternoons and again in the evening Assumed 3 x per day	17520
Use on Husband	2002/2003 - 2019 (17 years)	No testimony Assumed 1 x per day	6205
Bystander to Mother's Use	1974/1975 - 1976 (2 years)	every day, 7 x per week	730
	1976 - 1991 (15 years)	Monday through Friday, 5 x per week	3900
	1991 - 2010 (19 years)	1 week per month	1596

Summary

Based on the parameters discussed above, a cumulative, worst-case asbestos fiber exposure estimate for Mr. Perry's consumer use of Johnson & Johnson talcum powders ranged from 0.0002 to 0.04 f/cc-yr (Table 3).

Michael L. Perry and Lonnie L. Long v. American International Industries, et al.**Table 3.** Cumulative Exposure Potential from Use of Johnson & Johnson Talcum Powders.

Study	C_{Task} (f/cc)	E_T (min/use)	E_F * E_D (total uses)	CEC (f/cc-yr)
<i>Personal Use – After Baths, For Sports, Farm Work</i>				
Anderson 2017	0.00023	4.6	52330	1.E-04
Gordon 2014	0.00480	4.6	52330	2.E-03
Rasmussen 2019	0.00550	4.6	52330	3.E-03
Aylott 1979	0.01296	4.6	52330	6.E-03
Russell 1979	0.02328	4.6	52330	1.E-02
Miller 2022	0.08400	4.6	52330	4.E-02
<i>Use On Husband</i>				
Moon 2011	0.00006	4.6	6205	3.E-06
Hildick-Smith 1976	0.00024	4.6	6205	1.E-05
Dement 1972	0.00165	4.6	6205	9.E-05
<i>Bystander to Mother's Use</i>				
Gordon 2014	0.00140	4.6	6226	7.E-05
Rasmussen 2019	0.00200	4.6	6226	1.E-04

My estimate of Mr. Perry's cumulative worst-case exposure potential is consistent with or lower than estimates of lifetime cumulative asbestos exposure potential at the ambient or background concentrations experienced by the general U.S. population. Lifetime ambient cumulative exposure ranges from approximately 0.002 to 0.4 f/cc-yr over a 70-year lifetime, based on the range of measured asbestos-specific airborne concentrations for both indoor and outdoor ambient exposures and the number of hours per day, on average, that a person spends indoors and outdoors (Burns et al. 2019).

Cumulative ambient exposure was calculated over a period of 70 years using the following equation: ((indoor airborne concentration x 20 hours/day + outdoor airborne concentration x 4 hours/day) / 24 hours/day) x 70 years. Indoor ambient airborne concentration ranged from 0.00003 to 0.006 f/cc; outdoor ambient airborne concentration ranged from 0.00003 to 0.0047 f/cc (ATSDR 2001; Lee et al. 2008; Nolan et al. 2001). Moreover, my estimate of Mr. Perry's cumulative exposure potential was also several orders of magnitude lower than the cumulative exposure associated with a working lifetime cumulative exposure at the current OSHA PEL for asbestos of 4.5 f/cc-yr [i.e., 0.1 f/cc as an eight-hour TWA x 45 years]. This estimate was substantially lower than the chrysotile no-observed-adverse-effect-level (NOAEL) estimated for pleural mesothelioma of 250 to 379 f/cc-yr (Beckett et al. 2023; Pierce et al. 2008; Pierce et al. 2016), the anthophyllite asbestos NOAEL estimated for pleural mesothelioma of 4 to 6 f/cc-yr (Beckett et al. 2023), and the tremolite NOAEL estimated for pleural mesothelioma of 0.5 to 2.6 f/cc-yr (Finley et al. 2012). Even if I used the maximum PCME concentration reported for the various exposure scenarios to calculate Mr. Perry's cumulative worst-case exposure potential, the estimates would be lower than both the cumulative asbestos exposure potential associated with a working lifetime at the current OSHA PEL for asbestos and the chrysotile, anthophyllite, and tremolite asbestos NOAELs estimated for pleural mesothelioma. Likewise, my estimates of Mr. Perry's cumulative worst-case exposure potential using PCME concentrations reported in Anderson et al. (2017) and the corrected PCME estimates presented in Longo (2019a; 2019d; 2018b) are within the range presented in Table 4 (Appendices 2-4).

Michael L. Perry and Lonnie L. Long v. American International Industries, et al.**Table 4.** Summary of Benchmark Analysis

Does Mr. Perry's cumulative, worst case asbestos exposure estimate for consumer use of Johnson & Johnson Talcum Powders exceed...		
Lifetime ambient exposure levels	0.002 - 0.4 f/cc-yr	NO
Tremolite NOAELs for mesothelioma	0.5 - 2.6 f/cc-yr	NO
Lifetime exposure at the EPA Clearance Level	0.7 f/cc-yr	NO
OSHA PEL over a working lifetime	4.5 f/cc-yr	NO

Summary of Opinions:

1) The physico-chemical nature of the particles greatly influences the risk of developing mesothelioma. The chemistry, geometry, and biological reactivity of talc particles in cosmetic talcs are different from asbestos fibers. Likewise, cleavage fragments are not reactive and are distinctly and functionally different from asbestos fibers.

2) Increased rates in the development of mesothelioma associated with exposure to cosmetic talc have not been reported in the numerous experimental and epidemiological studies that have evaluated the carcinogenic potential of cosmetic talc.

3) Mr. Perry reportedly used Johnson & Johnson talcum powders. Based on the available evidence, Mr. Perry was unlikely to have been exposed to any measurable asbestos from his use of Johnson & Johnson talcum powders. However, even using a worst-case assumption that trace asbestos could theoretically have been found in the Johnson & Johnson talcum powders, any associated asbestos exposure potential would have been well within (or below) the corresponding cumulative background or ambient levels of asbestos found in the air in the U.S., and below the cumulative asbestos exposure potential associated with working at the current OSHA PEL for asbestos over 45 years.” (25 @ pp. 27-33)

IV. Dr. Pierce

Dr. Pierce provided the following overview of her opinions: “(1) The weight of the evidence does not support that cosmetic talcum powders contain asbestiform minerals.

(2) It is generally accepted that the development of asbestos-related cancer is not associated with exposure to talc that does not contain asbestiform minerals. However, if one were to assume that a cosmetic talcum powder product contained asbestiform minerals, the asbestos-related disease risk associated with that product is dependent on the chemical and physical properties of the asbestiform minerals present.

(3) Even if one assumed that Avon cosmetic talcum powder products contained a trace level of asbestiform minerals, Mr. Perry's hypothetical exposure would have been (1) well below the cumulative asbestos exposure that is permitted by the federal government (in the occupational

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setting), (2) below that associated with breathing ambient air, and (3) far too low to increase his risk of asbestos-related disease.

(4) Many cases of pleural mesothelioma are not related to asbestos exposure. As such, Mr. Perry's disease may be unrelated to asbestos. If asbestos related, any hypothetical asbestos exposure that Mr. Perry may have experienced as a result of Avon products would not have increased his risk of developing mesothelioma." (26 @ p. 37)

Dr. Pierce provided the following: "Mr. Perry's Hypothetical Bystander Exposure from Application of Talcum Products by His Mother:

Based on my review of the materials provided in this case, it is my understanding that Mr. Perry has alleged bystander exposure through his mother's use of Avon talcum powders. For the purposes of estimating Mr. Perry's hypothetical cumulative exposure associated with Avon talcum powders, I have relied upon the exposure factors detailed below.

Frequency

Mr. Perry's Mother's Personal Talcum Powder Use (1974 or 1975-2010) Avon Talcum Powders – personal use (1974 or 1975-1988 or 2010)

Mr. Perry testified that he first observed his mother apply Avon body powders in 1974 or 1975 and the last time he observed his mother apply Avon was in 2010 (Vol. I: p. 53-54). However, he later confirmed that his mother stopped her use of Avon products when he was in high school which he graduated from in 1988 (Int. #1; Vol. III: p. 478). Mr. Perry testified that his mother used the following products: Avon Cotillion, Avon Skin So Soft, Avon Birds of Paradise, Avon Soft Musk, Avon Topaz, Avon Timeless, White Linen, Johnson and Johnson Baby Powder, Johnson and Johnson Shower to Shower, Cashmere Bouquet, and Chanel No. 5 (Vol. I: p. 53; Vol. III: p. 470-471). He later indicated that his mother used the fragrance powders Avon Cotillion, Avon Skin So Soft, Avon Birds of Paradise, Avon Soft Musk, Avon Topaz, Avon Timeless, White Linen, Chanel No. 5 and Cashmere Bouquet in rotation after she applied Johnson and Johnson Baby Powder (Vol. III: p. 470-472). He explained that Shower to Shower was also a product that his mother used prior to applying other fragranced powders (Vol. III: p. 507-508). He explained that after his mother showered in the morning she dried off, and 'immediately' applied body powder, and then she applied makeup (Vol. I: p. 70, l. 18). He confirmed that her routine was the same regardless of the body powder she used (Vol. I: p. 71).

1974 or 1975-1976: At the North Osborne Home

Mr. Perry's confirmed that he was around five years old, which was approximately 1974, when he first recalled being around his mother when she applied talcum powder (Int. #1; Vol. I: p. 36). He testified that '[a]s a child' he spent 'every day' in the bathroom while his mother got ready at the North Osborne residence, where he resided until 1976 (Vol. I: p. 66, l. 15, p. 83; Vol. II: p. 267-268). He testified that he was 'extremely close' to his mother when she applied powder product in the North Osborne residence bathroom (Vol. I: p. 68, l. 14; Vol. II: p. 267-268).

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Based on the testimony it is my understanding that Mr. Perry's mother used the following Avon products during this time: Cotillion (puff applicator), and Skin So Soft (shaker applicator). It was unclear from the testimony if Mr. Perry's mother used Avon Topaz, Birds of Paradise, Soft Musk or Timeless at the North Osborne Street residence. It is also my understanding that Mr. Perry's mother used Cashmere Bouquet at this residence (Vol. I: p. 55-56).

Mr. Perry testified that he did not know how long his mother used Avon Cotillion, but he did recall that she used the powder at the North Osborne Street home (Int. #1; Vol. II: p. 267-269; Vol. III: p. 459-460, 466-468). Mr. Perry confirmed that his mother used fragrance powders daily and Cotillion was one of the fragrance powders that his mother used but he did not know how often his mother used Cotillion compared to other fragrance powders (Vol. III: p. 470). He explained that his mother used a puff to apply Cotillion powder (Vol. III: p. 472-473).

Mr. Perry confirmed that his mother kept Skin So Soft in his mother's bathroom of the North Osborne home (Vol. I: p. 23; Vol. II: p. 268-269; Vol. III: p. 459-460, 475, 525). Mr. Perry testified that his mother used Avon Skin So Soft '[s]imilar' to the other fragranced powders (Vol. III: p. 477, p. 478, l. 3). He indicated that his mother applied Skin So Soft 'similar' to the other fragrance powders (Vol. III: p. 478, l. 18). He estimated that the Skin So Soft container had a shaker applicator (Vol. III: p. 478, l. 23).

- Lower-Bound (1975-1976, inclusive): Based on Mr. Perry's testimony indicating that his mother applied body powder in his presence 'every day' from 1974 or 1975 until they moved out of the North Osborne Street residence in 1976 (Int. #1; Vol. I: p. 36, 66, l. 15, p. 83; Vol. II: p. 267-269; Vol. III: p. 459-460, 466-468, 475, 483, 505-506, 525), I estimated that Mr. Perry was in his mother's presence when she applied powders to herself one time per day from 1975 through 1976 (inclusive), for a total of two years. According to Mr. Perry's testimony, his mother applied Avon Cotillion, Avon Skin so Soft and Cashmere Bouquet at this residence; it is unclear from the testimony whether she applied other fragrance powders at this home. Therefore, for the purposes of this assessment, I estimated that his mother used the three powders that Mr. Perry identified with the same frequency and that two out of the three powders used by his mother were manufactured by Avon. This equates to a total of 487 applications (i.e., 2 years x 1 application/day x 365 days/year x 2/3). Further, based on Mr. Perry's testimony that Avon Cotillion was applied with a puff applicator and Avon Skin so Soft was applied with a shaker applicator (Vol. III: p. 472-473, 478, 480, 483-484), I estimated that half of the Avon applications were with a puff and half with a shaker applicator. This equates to a total of 244 puff applications (i.e., 487 x 1/2) and 244 shaker applications (i.e., 487 x 1/2) of Avon powder.

- Upper-Bound (1974-1976, inclusive): Based on Mr. Perry's testimony indicating that his mother applied body powder in his presence 'every day' from 1974 or 1975 until they moved out of the North Osborne Street residence in 1976 (Int. #1; Vol. I: p. 36, 66, l. 15, p. 83; Vol. II: p. 267-269; Vol. III: p. 459-460, 466-468, 475, 483, 505-506, 525), I estimated that Mr. Perry was in his mother's presence when she applied powders to herself one time per day from 1974 through 1976 (inclusive), for a total of three years. I assumed that in addition to Avon Cotillion, Avon Skin so Soft, and Cashmere Bouquet, that his mother also applied Avon Birds of Paradise, Avon Soft Musk, Avon Topaz, and Avon Timeless at this residence, for a total of seven products applied at this residence. I estimated that she used all the powders with the same frequency, and that six out

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of the seven powders used by his mother were manufactured by Avon. This equates to a total of 939 applications (i.e., 3 years x 1 application/day x 365 days/year x 6/7). Further, based on Mr. Perry's testimony that both Avon Cotillion and Avon Birds of Paradise were applied with a puff applicator while Avon Skin So Soft, Avon Topaz and Avon Soft Musk were applied with a shaker applicator (Vol. III: p. 472-473, 478, 480, 483-484), I estimated that 2/5 of the applications were with a puff and 3/5 with a shaker applicator. This equates to a total of 376 puff applications (i.e., 939 x 2/5) and 563 shaker applications (i.e., 939 x 3/5) of Avon powder.

1977-1979: 4143 Cessna Lane

Mr. Perry testified that he lived at 4143 Cessna Lane from 1976 until 1991 or 1992 and recalled that he was in the bathroom when his mother got ready '[c]ertainly Monday through Friday' (Vol. I: p. 66, p. 67, l. 6; Vol. II: p. 268). Based on the testimony it is my understanding that Mr. Perry's mother used the following Avon products during this time: Cotillion (puff applicator), Skin So Soft (shaker applicator), Avon Birds of Paradise (puff applicator) and Avon Soft Musk (shaker applicator). It was unclear in the testimony if Mr. Perry's mother used Avon Topaz or Timeless at the Cessna Lane residence. It is also my understanding that Mr. Perry's mother used Cashmere Bouquet at this residence (Vol. I: p. 55-56).

Mr. Perry testified that his mother used Avon Cotillion at the 4143 Cessna Lane residence, where she resided from 1976 to 1991 (Int. #1; Vol. II: p. 267-269; Vol. III: p. 459-460, 466-468). Mr. Perry confirmed that his mother used fragrance powders daily and Cotillion was one of the fragrance powders that his mother used but he did not know how often his mother used Cotillion compared to other fragrance powders (Vol. III: p. 470). He explained that his mother used a puff to apply Cotillion (Vol. III: p. 472-473).

Mr. Perry confirmed that his mother kept Skin So Soft in her bathroom at the Cessna Lane residence (Vol. I: p. 23; Vol. II: p. 268-269; Vol. III: p. 459-460, 475, 525). He indicated that his mother applied Skin So Soft 'similar' to the other fragrance powders (Vol. III: p. 478, l. 18). He testified that she applied Skin So Soft with a shaker applicator (Vol. III: p. 478, l. 23). Mr. Perry indicated that the Birds of Paradise container was stored on the bathroom vanity in the Cessna Lane residence (Vol. I: p. 23; Vol. II: p. 268-269; Vol. III: p. 459-460, 525, p. 475). Mr. Perry testified that Birds of Paradise came with a puff applicator (Vol. III: p. 480). Mr. Perry indicated that his mother kept Soft Musk underneath the vanity in the Cessna Lane residence (Vol. I: p. 23; Vol. II: p. 268-269; Vol. III: p. 459-460, 525, p. 475). He testified that the Soft Musk had a 'very, very simple' container with a rotating cap on the top for shaker application (Vol. III: p. 481, l. 18).

- Lower-Bound (1977-1979, inclusive): Based on Mr. Perry's testimony that he was in the bathroom while his mother got ready '[c]ertainly Monday through Friday' (Vol. I: p. 66, p. 67, l. 6; Vol. II: p. 268), I estimated that Mr. Perry was in his mother's presence five times per week when she applied talcum powder from 1977 through 1979 (inclusive), for a total of three years. According to Mr. Perry's testimony, his mother applied Avon Cotillion, Avon Skin so Soft, Avon Soft Musk, Avon Birds of Paradise and Cashmere Bouquet at this residence; it is unclear from the testimony whether she applied other fragrance powders at this home during this time. Therefore, for the purposes of this assessment, I assumed that his mother used all the powders that Mr. Perry identified with the same frequency and that four out of the five powders used by his mother during

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this time were manufactured by Avon. This equates to a total of 624 applications (i.e., 3 years x 5 application/week x 52 weeks/year x 4/5). Further, based on Mr. Perry's testimony both Avon Cotillion and Avon Birds of Paradise were applied with a puff applicator while Avon Skin So Soft and Avon Soft Musk were applied with a shaker applicator (Vol. III: p. 472-473, 478, 480-481, 483-484),

I estimated that half of the applications were with a puff and half with a shaker applicator. This equates to a total of 312 puff applications (i.e., 624 x 1/2) and 312 shaker applications (i.e., 624 x 1/2) of Avon powder.

- Upper-Bound (1977-1979, inclusive): Based on Mr. Perry's testimony that he was in the bathroom while his mother got ready '[c]ertainly Monday through Friday' (Vol. I: p. 66, p. 67, l. 6; Vol. II: p. 268), I estimated that Mr. Perry was in his mother's presence five times per week when she applied talcum powder from 1977 through 1979 (inclusive), for a total of three years. I assumed that in addition to Avon Cotillion, Avon Skin so Soft, Avon Soft Musk, Avon Birds of Paradise, and Cashmere Bouquet, that his mother also applied Avon Topaz and Avon Timeless at this residence, for a total of seven products applied at this residence. I estimated that she used all the powders with the same frequency, and that six out of the seven powders used by his mother were manufactured by Avon. This equates to a total of 669 applications (i.e., 3 years x 5 applications/week x 52 weeks/year x 6/7). Further, based on Mr. Perry's testimony both Avon Cotillion and Avon Birds of Paradise were applied with a puff applicator while Avon Skin so Soft, Avon Topaz and Avon Soft Musk were applied with a shaker applicator (Vol. III: p. 472-473, 478, 480, 483-484), I estimated that 2/5 of the applications were with a puff and 3/5 with a shaker applicator. This equates to a total of 268 puff applications (i.e., 669 x 2/5) and 401 shaker applications (i.e., 669 x 3/5) of Avon powder.

1980- June 1988 or June 1991: 4143 Cessna Lane

Mr. Perry testified that he lived at 4143 Cessna Lane from 1976 until 1991 or 1992 and recalled that he was in the bathroom when his mother got ready '[c]ertainly Monday through Friday' (Vol. I: p. 66, p. 67, l. 6; Vol. II: p. 268). Mr. Perry testified that he first observed his mother apply Avon body powders in 1974 or 1975 and the last time he observed his mother apply Avon was in 2010 (Vol. I: p. 53-54). However, he later confirmed that his mother stopped her use of Avon products when he was in high school which he graduated from in 1988 (Int. #1; Vol. III: p. 478).

Based on the testimony it is my understanding that Mr. Perry's mother used the following Avon products during this time: Cotillion (puff applicator), Skin So Soft (shaker applicator), Avon Birds of Paradise (puff applicator) and Avon Soft Musk (shaker applicator). It was unclear in the testimony if Mr. Perry's mother used Avon Topaz or Timeless at the Cessna Lane residence. It is also my understanding that Mr. Perry's mother used Cashmere Bouquet at this residence (Vol. I: p. 55-56). Mr. Perry testified that he first observed his mother apply Chanel No. 5 body powder at this residence in the 'early [19]80s' and the last time he observed his mother apply this product was in 2007 or 2008 (Vol. I: p. 54, p. 55, l. 9; Vol. II: p. 387). Mr. Perry also testified that his mother used White Linen from the 1980s to the early '[19]90s' (Vol. I: p. 57, l. 23; Vol. III: p. 429, 431).

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- Lower-Bound (1980-June 1988, inclusive): Based on Mr. Perry's testimony that he was in the bathroom while his mother got ready '[c]ertainly Monday through Friday' (Vol. I: p. 66, p. 67, l. 6; Vol. II: p. 268), and that his mother stopped using Avon products when he was in high school which he graduated from in 1988 (Int. #1; Vol. III: p. 478), I estimated that Mr. Perry was in his mother's presence five times per week when she applied talcum powder from 1980 through June 1988 (inclusive), for a total of eight and a half years. According to Mr. Perry's testimony, his mother applied Avon Cotillion, Avon Skin So Soft, Avon Soft Musk, Avon Birds of Paradise, Cashmere Bouquet, Chanel and White Linen at this residence; it is unclear from the testimony whether she applied other fragrance powders at this home during this time. Therefore, for the purposes of this assessment, I assumed that his mother used all the powders that Mr. Perry identified with the same frequency and that four out of the seven powders used by his mother during this time were manufactured by Avon. This equates to a total of 1,263 applications (i.e., 8.5 years x 5 application/week x 52 weeks/year x 4/7). Further, based on Mr. Perry's testimony both Avon Cotillion and Avon Birds of Paradise were applied with a puff applicator while Avon Skin So Soft and Avon Soft Musk were applied with a shaker applicator (Vol. III: p. 472-473, 478, 480-481, 483-484), I estimated that half of the applications were with a puff and half with a shaker applicator. This equates to a total of 632 puff applications (i.e., 1,263 x 1/2) and 632 shaker applications (i.e., 1,263 x 1/2) of Avon powder.

- Upper-Bound:

- (1980-1984, inclusive): Based on Mr. Perry's testimony that he was in the bathroom while his mother got ready '[c]ertainly Monday through Friday' (Vol. I: p. 66, p. 67, l. 6; Vol. II: p. 268), I estimated that Mr. Perry was in his mother's presence five times per week when she applied talcum powder from 1980 through 1984 (inclusive), for a total of five years. I assumed that in addition to Avon Cotillion, Avon Skin So Soft, Avon Soft Musk, Avon Birds of Paradise and Cashmere Bouquet, that his mother also applied Avon Topaz and Avon Timeless at this residence, for a total of seven products applied at this residence during this time (i.e., I estimated that she did not start using Chanel and White Linen products until 1985). I estimated that she used all the powders with the same frequency, and that six out of the seven powders used by his mother were manufactured by Avon. This equates to a total of 1,114 applications (i.e., 5 years x 5 applications/week x 52 weeks/year x 6/7). Further, based on Mr. Perry's testimony both Avon Cotillion and Avon Birds of Paradise were applied with a puff applicator while Avon Skin So Soft, Avon Topaz and Avon Soft Musk were applied with a shaker applicator (Vol. III: p. 472-473, 478, 480, 483-484), I estimated that 2/5 of the applications were with a puff and 3/5 with a shaker applicator. This equates to a total of 446 puff applications (i.e., 1,114 x 2/5) and 669 shaker applications (i.e., 1,114 x 3/5) of Avon powder.

- (1985- June 1991, inclusive): Similarly, I estimated that Mr. Perry continued to be in his mother's presence five times per week when she applied talcum powder from 1985 through 1991 (inclusive), for a total of six and a half years. I assumed that in addition to Avon Cotillion, Avon Skin So Soft, Avon Soft Musk, Avon Birds of Paradise and Cashmere Bouquet, that his mother also applied Avon Topaz, Avon Timeless, Chanel and White Linen at this residence, for a total of nine products applied at this residence during this time. I estimated that she used all the powders with the same frequency, and that six out of the nine powders used by his mother were manufactured by Avon. This equates to a total of 1,127 applications (i.e., 6.5 years x 5 applications/week x 52 weeks/year

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x 6/9). Further, based on Mr. Perry's testimony both Avon Cotillion and Avon Birds of Paradise were applied with a puff applicator while Avon Skin so Soft, Avon Topaz and Avon Soft Musk were applied with a shaker applicator (Vol. III: p. 472-473, 478, 480, 483-484), I estimated that 2/5 of the applications were with a puff and 3/5 with a shaker applicator. This equates to a total of 451 puff applications (i.e., $1,127 \times 2/5$) and 676 shaker applications (i.e., $1,127 \times 3/5$) of Avon powder.

- This equates to 896 puff applications (i.e., $446 + 451$ puff applications) and 1,345 shaker applications (i.e., $669 + 676$ shaker applications).

July 1991-June 1993: During College

Mr. Perry testified that he first observed his mother apply Avon body powders in 1974 or 1975 and the last time he observed his mother apply Avon was in 2010 (Vol. I: p. 53-54). However, he later confirmed that his mother stopped her use of Avon products when he was in high school which he graduated from in 1988 (Int. #1; Vol. III: p. 478). Mr. Perry testified that when he stayed at campus housing during his junior and senior year of college from approximately 1991 or 1992 to 1993, he still visited home on the weekends and when he visited on the weekends he still sat and talked with his mother when she applied body powder (Vol. IV: p. 878-879).

Based on the testimony it is my understanding that Mr. Perry's mother also applied Cashmere Bouquet, Chanel and White Linen during this time (Vol. I: p. 54-57; Vol. II: p. 387; Vol. III: p. 429, 431, 434-435, 509; Vol. IV: p. 899-900).

- Lower-Bound (July 1991-June 1993, inclusive): Based on Mr. Perry's testimony that he did not observe his mother apply Avon powders after 1988 (Int. #1, Vol. III: p. 478), I assumed that he was not in her presence when she applied Avon powder.
- Upper-Bound (July 1991-June 1993, inclusive): Based on Mr. Perry's testimony that he was in his mother's presence when she applied powder on the weekends when he visited her during college (Vol. I: p. 23, 54-55; Vol. II: p. 267-269; Vol. III: p. 387, 459-460, 466-468, 475, 483, 509, 525; Vol. IV: p. 878-879, 899-900), I estimated that Mr. Perry was in his mother's presence eight times per month when she applied talcum powder from July 1991 through June 1993 (inclusive), for a total of two. I assumed that Mr. Perry's mother applied Avon Cotillion, Avon Skin so Soft, Avon Soft Musk, Avon Birds of Paradise, Avon Topaz, Avon Timeless, Cashmere Bouquet, Chanel and White Linen during this time, for a total of nine products. I estimated that she used all the powders with the same frequency, and that six out of the nine powders used by his mother were manufactured by Avon. This equates to a total of 128 applications (i.e., $2 \text{ years} \times 8 \text{ applications/month} \times 12 \text{ months/year} \times 6/9$). Further, based on Mr. Perry's testimony both Avon Cotillion and Avon Birds of Paradise were applied with a puff applicator while Avon Skin so Soft, Avon Topaz and Avon Soft Musk were applied with a shaker applicator (Vol. III: p. 472-473, 478, 480, 483-484), I estimated that 2/5 of the applications were with a puff and 3/5 with a shaker applicator. This equates to a total of 51 puff applications (i.e., $128 \times 2/5$) and 76 shaker applications (i.e., $128 \times 3/5$) of Avon powder.

July 1993-1996: While He Lived on a Boat

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Mr. Perry testified that he first observed his mother apply Avon body powders in 1974 or 1975 and the last time he observed his mother apply Avon was in 2010 (Vol. I: p. 53-54). However, he later confirmed that his mother stopped her use of Avon products when he was in high school which he graduated from in 1988 (Int. #1; Vol. III: p. 478). Mr. Perry testified that his mother visited him when he lived full-time on the boat from spring 1993 to 1996 during which time she brought body powders with her (Vol. II: p. 270, 354-355; Vol. III: p. 499-500). He did not testify as to how often his mother visited him while he lived on the boat.

Based on the testimony it is my understanding that Mr. Perry's mother also applied Cashmere Bouquet and Chanel during this time (Vol. I: p. 54-56; Vol. II: p. 387; Vol. III: p. 509; Vol. IV: p. 899-900).

- Lower-Bound (July 1993-1996, inclusive): Based on Mr. Perry's testimony that he did not observe his mother apply Avon powders after 1988 (Int. #1, Vol. III: p. 478), I assumed that he was not in her presence when she applied Avon powder.

- Upper-Bound (July 1993-1996, inclusive): No information was provided regarding the frequency with which Mr. Perry was in the vicinity of his mother while he resided on a sailboat. Therefore, for the purposes of my assessment, I estimated that he was in his mother's presence at the same frequency as when he was in college. Therefore, I estimated that Mr. Perry was in his mother's presence eight times per month when she applied talcum powder from July 1993 through 1996 (inclusive), for a total of three and a half years. I assumed that Mr. Perry's mother applied Avon Cotillion, Avon Skin So Soft, Avon Soft Musk, Avon Birds of Paradise, Avon Topaz, Avon Timeless, Cashmere Bouquet and Chanel during this time, for a total of eight products. I estimated that she used all the powders with the same frequency, and that six out of the eight powders used by his mother were manufactured by Avon. This equates to a total of 252 applications (i.e., 3.5 years x 8 applications/month x 12 months/year x 6/8). Further, as described above, I estimated that 2/5 of the applications were with a puff and 3/5 with a shaker applicator. This equates to a total of 101 puff applications (i.e., 252 x 2/5) and 151 shaker applications (i.e., 252 x 3/5) of Avon powder.

1997-1999: In South Carolina Before His Mother's Retirement

Mr. Perry testified that he observed his mother apply body powders when she visited him in South Carolina, where he resided at various residences from approximately 1996 to 2020 (Vol. I: p. 76-77, 103-105; Vol. III: p. 543; Vol. IV: p. 656-657). He explained that when his mother worked from 1996 to 2000, she had six weeks of vacation per year, and that his mother visited him in South Carolina for about three weeks every year, and he visited his mother for the other threeweeks (Vol. II: p. 392-393). As described previously, Mr. Perry testified that the last time he observed his mother apply Avon products was in 2010 (Vol. I: p. 53-54). However, he later confirmed that his mother stopped her use of Avon products when he was in high school which he graduated from in 1988 (Int. #1; Vol. III: p. 478).

Mr. Perry testified that he observed his mother apply Avon Skin So Soft, Avon Cotillion, and Avon Birds of Paradise, when she visited him in South Carolina (Vol. I: p. 103-104, 107-108). He also confirmed that his mother stopped using Skin So Soft the same time she stopped using Cotillion

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(Vol. III: p. 478). Based on the testimony it is my understanding that Mr. Perry's mother also applied Cashmere Bouquet and Chanel during this time (Vol. I: p. 54-56, 103-104, 106-107; Vol. II: p. 387, 390-391, 393-394; Vol. III: p. 509; Vol. IV: p. 899-900).

- Lower-Bound (1997-1999, inclusive): Based on Mr. Perry's testimony that he did not observe his mother apply Avon powders after 1988 (Int. #1, Vol. III: p. 478), I assumed that he was not in her presence when she applied Avon powder.

- Upper-Bound (1997-1999, inclusive): Mr. Perry testified that during this time, when he resided in South Carolina and prior to his mother's retirement in 2000, he spent six weeks of vacation per year with his mother (Vol. II: p. 392-393). No information was provided regarding the frequency with which Mr. Perry was in the vicinity of his mother during these vacations. Therefore, for the purposes of my assessment, I estimated that he was in his mother's vicinity when she applied talcum powder products one time per day, every day during these visits from 1997 through 1999 (inclusive) for a total of three years. I assumed that Mr. Perry's mother applied Avon Cotillion, Avon Skin So Soft, Avon Soft Musk, Avon Birds of Paradise, Avon Timeless, Cashmere Bouquet and Chanel during this time, for a total of eight products. I estimated that she used all the powders with the same frequency, and that five out of the seven powders used by his mother were manufactured by Avon. This equates to a total of 90 applications (i.e., 3 years x 6 weeks/year x 7 applications/week x 5/7). Further, as described above, I estimated that 2/5 of the applications were with a puff and 3/5 with a shaker applicator. This equates to a total of 36 puff applications (i.e., 90 x 2/5) and 54 shaker applications (i.e., 90 x 3/5) of Avon powder.

2000-2007: In South Carolina After His Mother's Retirement

Mr. Perry testified that he observed his mother apply body powders when she visited him in South Carolina, which he resided at various residences from approximately 1996 to 2020 (Vol. I: p. 76-77, 103-105; Vol. III: p. 543; Vol. IV: p. 656-657). Mr. Perry indicated that after his mother retired in 2000, he saw his mother 'every month' for '[one] week' when he lived in South Carolina (Vol. II: p. 382, l. 15, p. 391, l. 17, 387-388). He explained that when his mother visited him, she applied the body powders in the bathroom while he stood in the doorway and talked to her (Vol. I: p. 104-105). Mr. Perry testified the last time he observed his mother apply Avon products was in 2010 (Vol. I: p. 53-54). However, he later confirmed that his mother stopped her use of Avon products when he was in high school which he graduated from in 1988 (Int. #1; Vol. III: p. 478).

Based on the testimony it is my understanding that Mr. Perry's mother also applied Cashmere Bouquet and Chanel during this time (Vol. I: p. 54-56, 103-104, 106-107; Vol. II: p. 387, 390-391; Vol. III: p. 509; Vol. IV: p. 899-900).

- Lower-Bound (2000-2007, inclusive): Based on Mr. Perry's testimony that he did not observe his mother apply Avon powders after 1988 (Int. #1, Vol. III: p. 478), I estimated that he was not in her presence when she applied Avon powder.

- Upper-Bound (2000-2007, inclusive): Mr. Perry testified that during this time, when he resided in South Carolina and following his mother's retirement in 2000, he saw his mother 'every month' for '[one] week' (Vol. II: p. 382, l. 15, p. 391, l. 17, 387-388). No information was provided

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regarding the frequency with which Mr. Perry was in the vicinity of his mother during these visits. Therefore, for the purposes of my assessment, I estimated that he was in his mother's vicinity when she applied talcum powder products one time per day, every day during these visits from 2000 through 2007 (inclusive), for a total of eight years. I assumed that Mr. Perry's mother applied Avon Cotillion, Avon Skin so Soft, Avon Soft Musk, Avon Birds of Paradise, Avon Timeless, Cashmere Bouquet and Chanel during this time, for a total of seven products. I estimated that she used all the powders with the same frequency, and that five out of the seven powders used by his mother were manufactured by Avon. This equates to a total of 480 applications (i.e., 8 years x 12 weeks/year x 7 applications/week x 5/7). Further, as described above, I estimated that 2/5 of the applications were with a puff and 3/5 with a shaker applicator. This equates to a total of 192 puff applications (i.e., 480 x 2/5) and 288 shaker applications (i.e., 480 x 3/5) of Avon powder.

2008-2010: In South Carolina After His Mother's Retirement

Mr. Perry testified that he observed his mother apply body powders when she visited him in South Carolina, which he resided at various residences from approximately 1996 to 2020 (Vol. I: p. 76-77, 103-105; Vol. III: p. 543; Vol. IV: p. 656-657). Mr. Perry indicated that after his mother retired in 2000, he saw his mother 'every month' for '[one] week' when he lived in South Carolina (Vol. II: p. 382, l. 15, p. 391, l. 17, 387-388). He explained that when his mother visited him, she applied the body powders in the bathroom while he stood in the doorway and talked to her (Vol. I: p. 104-105). Mr. Perry testified the last time he observed his mother apply Avon products was in 2010 (Vol. I: p. 53-54). However, he later confirmed that his mother stopped her use of Avon products when he was in high school which he graduated from in 1988 (Int. #1; Vol. III: p. 478).

Based on the testimony it is my understanding that Mr. Perry's mother also applied Cashmere Bouquet during this time (Vol. I: p. 55-56, 103-104, 106-107; Vol. III: p. 509; Vol. IV: p. 899-900).

- Lower-Bound: Based on Mr. Perry's testimony that he did not observe his mother apply Avon powders after 1988 (Int. #1, Vol. III: p. 478), I estimated that he was not in her presence when she applied Avon powder.

- Upper-Bound (2008-2010, inclusive): Mr. Perry testified that during this time, when he resided in South Carolina and following his mother's retirement in 2000, he saw his mother 'every month' for '[one] week' (Vol. II: p. 382, l. 15, p. 391, l. 17, 387-388). Mr. Perry testified the last time he observed his mother apply Avon products was in 2010 (Vol. I: p. 53-54); therefore, I estimated that Mr. Perry's mother ceased using Avon products at the end of 2010. No information was provided regarding the frequency with which Mr. Perry was in the vicinity of his mother during these visits. Therefore, for the purposes of my assessment, I estimated that he was in his mother's vicinity when she applied talcum powder products one time per day, every day during these visits. I assumed that Mr. Perry's mother applied Avon Cotillion, Avon Skin so Soft, Avon Soft Musk, Avon Birds of Paradise, Avon Topaz, Avon Timeless and Cashmere during this time, for a total of seven products. I estimated that she used all the powders with the same frequency, and that six out of the seven powders used by his mother were manufactured by Avon. This equates to a total of 216 applications (i.e., 3 years x 12 weeks/year x 7 applications/week x 6/7). Further, as described above, I estimated that 2/5 of the applications were with a puff and 3/5

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with a shaker applicator. This equates to a total of 86 puff applications (i.e., $216 \times 2/5$) and 130 shaker applications (i.e., $216 \times 3/5$) of Avon powder.

The total number of applications of Avon products (by applicator), applied by Mr. Perry's mother in the vicinity of Mr. Perry is shown below in Table 3.

Table 3. Total Number of Applications of Avon Products in the Vicinity of Mr. Perry

Time Period	Lower-Bound		Upper-Bound	
	Puff	Shaker	Puff	Shaker
1974 or 1975-1976	244	244	376	563
1977-1979	312	312	268	401
1980-June 1988 or June 1991	632	632	896	1,345
July 1991-June 1993	0	0	51	76
June 1993-1996	0	0	101	151
1997-1999	0	0	38	57
2000-2007	0	0	202	302
2008-2010	0	0	86	130
Total	1,188	1,188	2,018	3,025

Therefore, I estimated that the number of puff applications of Avon powder that Mr. Perry's mother hypothetically applied to herself in his presence ranged from 1,188 to 2,018 puff applications. Further, I estimated that the number of shaker applications of Avon powder that Mr. Perry's mother hypothetically applied to herself in his presence ranged from 1,188 to 3,025 shaker applications.

Duration

- Lower-Bound: I have estimated that Mr. Perry remained in the area in which his mother applied Avon powder products for a total of 5 minutes (including the time for powder application).
- Upper-Bound: I have estimated that Mr. Perry remained in the area in which his mother applied Avon powder products for a total of 30 minutes (including the time for powder application). This is consistent with the estimated time required for 99% of the phase contrast microscopy-equivalent (PCME) airborne fibers to settle out of the air (Sahmel et al. 2015).

It is important to note that the upper-bound duration of 30 minutes is extremely conservative, as it assumes that Mr. Perry remained in place (with minimal air disturbance) for 30 minutes following each instance in which his mother applied talcum powder to herself. Increasing one's distance from the source (or site of application) would result in a decrease in actual exposure (Donovan et al. 2011).

Intensity

Puff Applications

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- Summary of Estimated Hypothetical Asbestos Exposures Associated with the Use of Puff Cosmetic Talcum Product Applicators

- o Short-Term Exposures

Aylott et al. (1979) collected 24 short-term (5 min) air samples during the one time application of loose face powder using an applicator puff. The range of respirable dust concentration reported was <0.1 to 1.7 mg/m³ (Chinese, Italian and Italian micronized talc combined); this equates to a range of asbestos concentrations of <0.0006 to 0.010 f/cc. The overall arithmetic mean concentration based on short-term samples from Aylott et al. (1979) for puff application is 0.004 f/cc. Gordon et al. (2014) collected three short-term (3.3 to 4 or 5 min) air samples during six applications of adult body powder a puff applicator; the total application time was one minute. The overall range of asbestos concentration for all samples was from 3.5 to 6 f/cc.

As described previously, the results of Gordon et al. (2014) (1) have not been confirmed by two other research teams evaluating the same product, and (2) are up to 12,500-fold higher than the results of Anderson et al. (2017). Given these discrepancies, I have excluded the results of Gordon et al. (2014) from my analysis of Mr. Perry's hypothetical short-term (lower-bound) exposure.

- o Long-Term Exposures

Aylott et al. (1979) collected six longer term air samples (durations: 20 minutes), each sample comprising four applications of face powder with a puff applicator. Respirable dust concentrations ranged from 0.1 to 0.4 mg/m³ (Chinese, Italian and Italian micronized talc combined). Assuming a trace level of contamination, this equates to asbestos concentrations ranging from 0.0006 f/cc to 0.0023 f/cc.

Given the upper-bound assumption of a 30-minute duration of exposure per application, it was necessary to estimate 30-minute time-weighted average (TWA) concentrations based on the longer-term data from Aylott et al. (1979) and the short-term data from Gordon et al. (2014) that would account for concentration decay based on fiber settling. Using the equation below, where t is the decay time (min), $C(t)$ is the fiber concentration at time t (f/cc), C_0 is the fiber concentration at $t=0$ (f/cc), and the best fit decay coefficient presented by Sahmel et al. (2015) ($k = 0.143$), I modeled the decay curve (using 30 second intervals) for the fiber concentrations reported in each study and then calculated a 30-minute TWA concentration for each sample:

$$C(t) = C_0 \exp(-kt)$$

The resulting mean 30-minute TWA concentrations derived from Aylott et al. (1979) ranged from 0.0004 f/cc to 0.0016 f/cc, and from Gordon et al. (2014) ranged from 1.21 f/cc to 2.19 f/cc. The air sampling data was found to follow a log-normal distribution, which is best described by the geometric mean (EPA 1994a; AIHA 2015; Waters et al. 2015). The overall geometric mean 30 min TWA for puff application based on the data was 0.009 f/cc.

The values for intensity that I estimated are very conservative, and likely overestimate Mr. Perry's exposure (assuming a trace level of contamination), based on the results of Miller et al. (2022) and

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Miller et al. (2024). As described previously, in our 2022 publication, my colleagues and I spiked talcum powder with 0.005% tremolite asbestos by weight; this level of asbestos would not be detected by the CFTA J4-1 method, however, it is still below that reportedly detected in some talcum products by Stoiber et al. (2020). During puff application, one sample collected during the first 15-minutes was above the LOD for TEM; the mean PCME value for samples collected during the first 15-minutes was 0.001 f/cc. During the second 15-minutes all samples were below the LOD for TEM, and therefore the PCME value was 0 f/cc. For samples collected over the entire 30-minute sampling period the mean PCME value was 0.001 f/cc. These values are well below those estimated in my assessment.

In addition, we spiked talcum powder with 0.1% tremolite asbestos by weight, the practical limit of detection for the CTFA J-41 method. Products containing asbestos at this level should theoretically test positive for the presence of asbestos (and therefore, would not have been sold to a cosmetic client). These simulations, therefore, represent a true ‘upper-bound’ assessment of exposure. The corresponding mean 30-minute PCME concentration based on this simulation was 0.005 f/cc, which is below the upper-bound value I used in my upper-bound assessment.

Furthermore, more recently we determined worst-case 30-minute TWAs associated with the adult puff application of body powder (Miller et al. 2024). Measurements from the puff application of talcum powder were taken from Aylott et al. (1979), Gordon et al. (2014), and Miller et al. (2022). Based on this analysis (Miller et al. 2024) we determined that the geometric mean 30-minute TWA associated with puff application was 0.006 f/cc, which is below the upper-bound value used in my assessment.

Applicability of the Intensity Data to Avon Products

As demonstrated by the testing of Avon Cotillion, Avon Topaze, Avon Birds of Paradise, and Avon Soft Musk, which are at issue in this case, as well as other Avon products (see Appendix C) conducted by both plaintiff and defense experts, this assumption of 0.1% is overly conservative. Taking the product testing results at face value, the vast majority of Avon products were either non-detect for asbestos fibers or were found to contain asbestos fibers far below 0.1%. Indeed, for the products at issue in this case, the asbestos concentrations in the bulk materials used in the Miller et al. (2022) study exceeded those reported by Dr. Longo and Asbestos TEM Laboratories, in all cases but one (Longo 11/15/22).

For the remaining sample, the maximum concentration reported by Dr. Longo in Avon Topaz was 0.1% (Longo 11/15/22), which is one of the bulk concentrations specifically evaluated by Miller et al. (2022). Nonetheless, this finding of asbestos reported by Dr. Longo was not confirmed by two other laboratories that evaluated the same products (Bailey 10/13/21; Segrave 3/6/2023; Segrave 1/17/2024), nor by the FDA in their 1975 testing (Eiermann 1976). This supports that the exposure data that I relied upon for my analysis are applicable in this case, and likely overestimate Mr. Perry’s hypothetical exposure associated with his mother’s use of Avon products.

Furthermore, Dr. Longo has testified to the following: • On October 3, 2023, Dr. Longo testified that a talcum powder would need to contain between 2 and 4 million structures per gram to result

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in detectable air concentrations (Deposition of Dr. Longo in the Lanzo matter 10/3/2023: p. 90-91).

- On February 1, 2024, Dr. Longo testified 1.31 million asbestos structures was the lowest bulk concentration that has resulted in airborne asbestos levels above his laboratory's limit of detection (Deposition of Dr. Longo in the Ketchepaw matter 2/1/24: p. 27-28).

Notably, not one of the Avon products at issue in this case had a reported bulk concentration of asbestos fibers that exceeded 1.31 million structures per gram. Therefore, based on Dr. Longo's previous testimony, there is no reason to suspect that the exposure associated with the use of these products would be measurable.

- Evaluation of Exposure to Bystanders

Donovan et al. (2011) summarized bystander exposures associated with a variety of work practices, and used two mathematical models to characterize the relationship between the breathing zone concentration at the emission source and distance from the source (Donovan et al. 2011). Based on their modeling results, the following approach as a 'rule of thumb' was proposed: for persons 1–5 feet from the source, airborne asbestos concentrations can be roughly approximated at 50% of the source concentration; 35% at >5–10 feet, 10% for >10–30 feet, and less than 1% at distances greater than 30 feet. Furthermore, using the Keil and Ten Berge (Keil 2000) model, which was intended to provide an 'upper bound' estimate of the expected concentration relationships between the source and the bystander, the concentrations for distances exceeding 50 feet were expected to be less than 0.0001% of that measured at the source. As such, Donovan et al. (2011) stated that 'there is virtually no impact of the asbestos emitted from a point source, for OSHA fibers, at distances greater than 50 feet' (Donovan et al. 2011: p. 67).

Based on the results of Donovan et al. (2011), any hypothetical asbestos exposure that Mr. Perry may have experienced as a result of being in the vicinity of his mother during talcum powder application would have been lower than the hypothetical exposure experienced by his mother.

- Lower-Bound: I estimated that the airborne concentration of asbestos generated in the breathing zone of Mr. Perry's mother was 0.004 f/cc (the arithmetic mean for short-term samples based on Aylott et al. (1979). I have also estimated that Mr. Perry was within 5 feet of his mother when she applied Avon talcum powder with a puff applicator. Based on the results of Donovan et al. (2011), the resulting hypothetical asbestos concentration in the breathing zone of Mr. Perry would have been equivalent to 50% of that of his mother or 0.002 f/cc (i.e., $0.004 \text{ f/cc} \times 50\% = 0.002 \text{ f/cc}$).
- Upper-Bound: I estimated that the airborne concentration of asbestos generated in the breathing zone of Mr. Perry's mother was 0.009 f/cc (the geometric mean 30 min TWA for puff application based on Aylott et al. (1979) and Gordon et al. (2014)). I have also estimated that Mr. Perry was within 5 feet of his mother when she applied Avon talcum powder with a puff applicator. Based on the results of Donovan et al. (2011), the resulting hypothetical asbestos concentration in the breathing zone of Mr. Perry would have been equivalent to 50% of that of his mother or 0.0045 f/cc (i.e., $0.009 \text{ f/cc} \times 50\% = 0.0045 \text{ f/cc}$).

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Using these factors, Mr. Perry's hypothetical cumulative asbestos exposure (standardized over a work year) associated with his mother's personal puff applications of Avon powders was estimated as follows:

Avon Cotillion & Avon Birds of Paradise (body powders)– mother's personal use

Lower-Bound:

$$0.002 \frac{f}{cc} \times 1,188 \text{ applications} \times \frac{5 \text{ min}}{\text{application}} \times \frac{1 \text{ work day}}{480 \text{ min}} \times \frac{1 \text{ work year}}{250 \text{ days}} = 0.000099 \frac{f}{cc} \times \text{years}$$

Upper-Bound:

$$0.0045 \frac{f}{cc} \times 2,018 \text{ applications} \times \frac{30 \text{ min}}{\text{application}} \times \frac{1 \text{ work day}}{480 \text{ min}} \times \frac{1 \text{ work year}}{250 \text{ days}} = 0.0023 \frac{f}{cc} \times \text{years}$$

Therefore, Mr. Perry's total hypothetical bystander exposure to asbestos from his mother's puff applications of Avon talcum powder would have ranged from 0.000099 f/cc-years to 0.0023 f/cc-years.

Shaker Applications

- Summary of Estimated Hypothetical Asbestos Exposures Associated with the Use of Shaker Cosmetic Talcum Product Applicators

- o Short-Term Exposures

Aylott et al. (1979) collected 43 short-term (5 min) air samples during the one-time application of adult dusting powder using a shaker applicator. The range of respirable dust concentrations reported was 0.3 to 3.3 mg/m³ (Chinese, Italian and Italian micronized talc combined); this equates to a range of asbestos concentrations of 0.001 f/cc to 0.02 f/cc. The overall arithmetic mean concentration based on short-term samples from Aylott et al. (1979) for shaker application is 0.007 f/cc. Russell et al. (1979) reported summary data on 44 short-term (1.23 min) samples during the one-time application of adult dusting powder. The reported average respirable dust concentration was 2.03 mg/m³; this equates to an airborne fiber concentration of 0.012 f/cc. Gordon et al. (2014) collected 4 short-term (5 min) samples during five consecutive applications of adult body powder, for total application time of one minute. The airborne asbestos concentrations reported by Gordon et al. (2014) ranged from 1.2 f/cc to 2.9 f/cc.

As described previously, the results of Gordon et al. (2014) (1) have not been confirmed by two other research teams evaluating the same product, and (2) are up to 12,500-fold higher than the results of Anderson et al. (2017). Therefore, I have excluded the results of Gordon et al. (2014) from my analysis of Mr. Perry's hypothetical short-term (lower-bound) exposure. Additionally, it was not possible to review the distribution of the data in Russell et al. (1979), as only summary data was provided, therefore, the data from this study was excluded from the analysis for short-term samples.

- o Long-Term Exposures

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Aylott et al. (1979) collected 11 air samples (durations: 20 minutes), each sample consisting of four consecutive shaker applications of talcum powder. Respirable dust concentrations ranged from 0.3 mg/m³ to 2.5 mg/m³; this equates to asbestos concentrations ranging from 0.002 f/cc to 0.01 f/cc. Anderson et al. (2017) collected 20 longer-term (48 min) samples during eight consecutive hand applications of adult body powder; the airborne asbestos concentrations ranged from 0 f/cc to 0.0039 f/cc. Gordon et al. (2014) collected 4 short-term (5 min) samples during five consecutive applications of adult body powder, for total application time of one minute. The airborne asbestos concentrations ranged from 1.2 f/cc to 2.9 f/cc.

Given the upper-bound assumption of a 30-minute duration of exposure per application, it was necessary to estimate a 30 minute time-weighted average (TWA) concentrations based on the longer-term data from Aylott et al. (1979) and the short-term data from Gordon et al. (2014) that would account for concentration decay based on fiber settling. The data reported by Anderson et al. (2017) were assumed to be representative of the 30 min TWA. Using the equation below, where t is the decay time (min), $C(t)$ is the fiber concentration at time t (f/cc), C_0 is the fiber concentration at $t=0$ (f/cc), and the best fit decay coefficient presented by Sahmel et al. (2015) ($k = 0.143$), I modeled the decay curve (using 30 second intervals) for the fiber concentrations reported in each study and then calculated a 30-minute TWA concentration for each sample:

$$C(t)=C_0\exp(-kt)$$

The resulting 30 minute TWA concentrations derived from Aylott et al. (1979) ranged from 0.001 f/cc to 0.01 f/cc, and from Gordon et al. (2014) ranged from 0.41 f/cc to 0.97 f/cc. The air sampling data were found to follow a log-normal distribution, which is best described by the geometric mean (EPA 1994a; AIHA 2015; Waters et al. 2015). The overall geometric mean 30 min TWA for shaker application based on the data from Aylott et al. (1979), Gordon et al. (2014) and Anderson et al. (2017) was 0.004 f/cc. However, according to Miller et al. (2022), the mean 30-minute PCME concentration based on the simulated application of talcum powder spiked with 0.1% tremolite asbestos by weight (0.013 f/cc) exceeded this value; therefore, for the purposes of my assessment, I have relied on the Miller et al. (2022) analysis (Miller et al. 2022). More recently we determined worst-case 30-minute TWAs associated with the adult shaker application of body powder (Miller et al. 2024). Measurements from the shaker application of talcum powder were taken from Aylott et al. (1979), Russell et al. (1979), Gordon et al. (2014), Anderson et al. (2017), Steffen et al. (2020), and Miller et al. (2022). Based on this analysis we determined that the geometric mean 30-minute TWA associated with shaker application was 0.006 f/cc, which is below the upper-bound value used in my assessment. Using these factors, Mr. Perry's hypothetical cumulative asbestos exposure (standardized over a work year) associated with his mother's application of Avon powder was estimated as follows:

- Lower-Bound: I estimated that the airborne concentration of asbestos generated in the breathing zone of Ms. Perry's mother was 0.007 f/cc (the arithmetic mean for short-term samples based on Aylott et al. (1979). I have also estimated that Mr. Perry was within 5 feet of his mother when she applied Avon talcum powder with a shaker applicator. Based on the results of Donovan et al. (2011), the resulting hypothetical asbestos concentration in the breathing zone of Mr. Perry would

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have been equivalent to 50% of that of his mother or 0.0035 f/cc (i.e., $0.007 \text{ f/cc} \times 50\% = 0.0035 \text{ f/cc}$).

- Upper-Bound: I estimated that the airborne concentration of asbestos generated in the breathing zone of Mr. Perry's mother was 0.013 f/cc, which is equivalent to the mean 30-minute PCME concentration based on this simulated application of talcum powder spiked with 0.1% tremolite asbestos by weight (Miller et al. 2022). I have also estimated that Mr. Perry was within 5 feet of his mother when she applied Avon talcum powder with a shaker applicator. Based on the results of Donovan et al. (2011), the resulting hypothetical asbestos concentration in the breathing zone of Mr. Perry would have been equivalent to 50% of that of his mother or 0.0065 f/cc (i.e., $0.013 \text{ f/cc} \times 50\% = 0.0065 \text{ f/cc}$).

Applicability of the Intensity Data to Avon Products

As described above, as demonstrated by the testing of Avon Cotillion, Avon Topaze, Avon Birds of Paradise, and Avon Soft Musk, which are at issue in this case, as well as other Avon products (see Appendix C) conducted by both plaintiff and defense experts, this assumption is overly conservative. Taking the product testing results at face value, the vast majority of Avon products were either non-detect for asbestos fibers or were found to contain asbestos fibers far below 0.1%. Indeed, for the products at issue in this case, the asbestos concentrations in the bulk materials used in the Miller et al. (2022) study exceeded those reported by Dr. Longo and Asbestos TEM Laboratories, in all cases but one (Longo 11/15/22).

For the remaining sample, the maximum concentration reported by Dr. Longo in Avon Topaz was 0.1% (Longo 11/15/22), which is one of the bulk concentrations specifically evaluated by Miller et al. (2022). Nonetheless, this finding of asbestos reported by Dr. Longo was not confirmed by two other laboratories that evaluated the same products (Bailey 10/13/21; Segrave 3/6/2023; Segrave 1/17/2024), nor by the FDA in their 1975 testing (Eiermann 1976). This supports that the exposure data that I relied upon for my analysis are applicable in this case, and likely overestimate Mr. Perry's hypothetical exposure associated with his mother's use of Avon products. Furthermore, Dr. Longo has testified to the following:

On October 3, 2023, Dr. Longo testified that a talcum powder would need to contain between 2 and 4 million structures per gram to result in detectable air concentrations (Deposition of Dr. Longo in the Lanzo matter 10/3/2023: p. 90-91).

- On February 1, 2024, Dr. Longo testified 1.31 million asbestos structures was the lowest bulk concentration that has resulted in airborne asbestos levels above his laboratory's limit of detection (Deposition of Dr. Longo in the Ketchepaw matter 2/1/24: p. 27-28).

Notably, not one of the Avon products at issue in this case had a reported bulk concentration of asbestos fibers that exceeded 1.31 million structures per gram. Therefore, based on Dr. Longo's previous testimony, there is no reason to suspect that the exposure associated with the use of these products would be measurable.

- Evaluation of Exposure to Bystanders

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As previously described, Donovan et al. (2011) summarized bystander exposures associated with a variety of work practices, and used two mathematical models to characterize the relationship between the breathing zone concentration at the emission source and distance from the source (Donovan et al. 2011). Based on their modeling results, the following approach as a ‘rule of thumb’ was proposed: for persons 1–5 feet from the source, airborne asbestos concentrations can be roughly approximated at 50% of the source concentration; 35% at >5–10 feet, 10% for >10–30 feet, and less than 1% at distances greater than 30 feet. Furthermore, using the Keil and Ten Berge (Keil 2000) model, which was intended to provide an “upper bound” estimate of the expected concentration relationships between the source and the bystander, the concentrations for distances exceeding 50 feet were expected to be less than 0.0001% of that measured at the source. As such, Donovan et al. (2011) stated that ‘there is virtually no impact of the asbestos emitted from a point source, for OSHA fibers, at distances greater than 50 feet’ (Donovan et al. 2011: p. 67).

Based on the results of Donovan et al. (2011), any hypothetical asbestos exposure that Mr. Perry may have experienced as a result of being in the vicinity of his mother during talcum powder application would have been lower than the hypothetical exposure experienced by his mother.

Using these factors, Mr. Perry’s hypothetical cumulative asbestos exposure (standardized over a work year) associated with his mother’s personal shaker applications of Avon talcum powder products was estimated as follows:

Avon Skin so Soft, Avon Soft Musk, & Avon Topaz (body powder) – mother’s personal use

Lower-Bound:

$$0.0035 \frac{f}{cc} \times 1,188 \text{ applications} \times \frac{5 \text{ min}}{\text{application}} \times \frac{1 \text{ work day}}{480 \text{ min}} \times \frac{1 \text{ work year}}{250 \text{ days}} = 0.00017 \frac{f}{cc} \times \text{years}$$

Upper-Bound:

$$0.0065 \frac{f}{cc} \times 3,025 \text{ applications} \times \frac{30 \text{ min}}{\text{application}} \times \frac{1 \text{ work day}}{480 \text{ min}} \times \frac{1 \text{ work year}}{250 \text{ days}} = 0.0049 \frac{f}{cc} \times \text{years}$$

Therefore, Mr. Perry’s total hypothetical bystander exposure to asbestos from his mother’s personal shaker applications of Avon talcum powders (assuming a trace level of contamination) would have ranged from 0.00017 f/cc-years to 0.0049 f/cc-years.

Overall, assuming a trace level of contamination in every Avon talcum powder product that Mr. Perry’s mother ever applied in his vicinity, Mr. Perry’s total hypothetical exposure to asbestos fibers resulting from this product would range from 0.00027 f/cc-years to 0.0072 f/cc-years.

Overview of Fiber Resuspension

After asbestos fibers are released into the air, the estimated mean time required for 99% of the phase contrast microscopy-equivalent (PCME) airborne fibers to settle out of the air is 30 minutes (Sahmel et al. 2015b). Once a fiber (or any shape particle) has settled out of the air and onto a surface (e.g., clothing, flooring, other surfaces), it is held there by a number of forces (e.g.,

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London-van der Waals forces, electrostatic forces, surface tension) (Esmen 1996). Very few studies have evaluated the potential for resuspension following the settling of fibers on surfaces (Esmen 1996; EPA 2009; Kominsky and Freyberg 1991; Kominsky et al. 1990).

Esmen (1996) studied the adhesion and resuspension of fibrous particles through theoretical considerations and laboratory experiments (e.g., by applying high velocity airstreams to surfaces covered in dust). His findings supported the conclusion that fibers which are adhered to a surface will require air speeds of at least 10 m/s to become re-suspended into the air. Similarly, the U.S. EPA has published a series of studies which evaluated the resuspension of fibers from indoor surfaces due to human activity (i.e., walking and vacuuming) (2009). For example, the U.S. EPA reported that for small particles, with aerodynamic diameters of 5 to 10 μm , the emission factor (i.e., mass released divided by mass available) ranged from 0.0 to 0.1 (p. 27).

The U.S. EPA (2009) further stated that, based on previous studies: ‘resuspending dust from bare floors requires substantial turbulence from either stomping or very fast walking to provide the energy to both release particles from the surface and elevate them into the air sufficiently to add to the air concentration. Low pile, indoor-outdoor carpeting also provided essentially immeasurable air concentration levels’ (p. 2).

In 1990, Kominsky et al. evaluated the effectiveness of high-efficiency particulate air (HEPA) filtered dry vacuuming and HEPA-filtered hot water extraction for the removal of asbestos fibers from carpet, as well as the potential for airborne asbestos resuspension during carpet cleaning activities (Kominsky et al. 1990). Carpeting was artificially contaminated with 1 million structures per ft^2 (low loading) and 1 billion structures per ft^2 (high loading), using ‘a spray-applied dispersion of Calidria chrysotile asbestos in distilled water’ (p. 501). While wet cleaning reduced the level of asbestos contamination in the carpet by approximately 70%, dry vacuuming had no significant effect on the level of asbestos contamination (suggesting that the forces associated with dry vacuuming were not sufficient to overcome the forces responsible for fiber adhesion). Airborne asbestos concentrations were evaluated during both cleaning techniques using the Asbestos Hazard Emergency Response Act (AHERA) transmission electron microscopy (TEM) method, for fibers $> 0.5 \mu\text{m}$ in length. While airborne asbestos concentrations ($> 0.5 \mu\text{m}$) increased during cleaning, these measurements were largely dominated by very short fibers, which as previously discussed, are far too short to be pathogenic. As noted by the authors, ‘Approximately 17% of the particles found in the carpet were less than $1.0 \mu\text{m}$ in length, whereas approximately 85% of the fibers observed in the air were less than $1.0 \mu\text{m}$ ’ (Kominsky et al. 1990, p. 503).

Kominsky and Freyberg (1991) performed a very similar analysis to the evaluation performed by Kominsky et al. (1990), and not surprisingly, their results were highly consistent with the earlier study. According to Kominsky and Freyberg (1991), of the structures that were used to contaminate the carpeting samples, at least approximately 7% exceeded $5 \mu\text{m}$ in length (based on their Figure 2). For the low loading events, the carpet was contaminated with 100 million structures per ft^2 , of which approximately 7 million structures per ft^2 exceeded $5 \mu\text{m}$ in length. For the high loading events, the carpet was contaminated with 1 billion structures per ft^2 , of which approximately 70 million structures per ft^2 exceeded $5 \mu\text{m}$ in length. Of the 2,839 structures resuspended during carpet cleaning, 2,757 (97.1%) were chrysotile and 8 (0.03%) were amphibole; the rest were determined to be ‘ambiguous.’ The authors reported that 84% of the chrysotile

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structures were less than 1.0 μm in length, and only nine of the structures were longer than 5 μm . Furthermore, for the low loading event, while 60% of the asbestos fibers used to contaminate the carpet were greater than 1.1 μm in length, over 85% of the fibers observed in the air during carpet cleaning were less than 1.1 μm in length. Based on their results, the authors concluded that ‘These data suggest that the larger asbestos particles either remained in the carpet or were prevented from escaping into the air by the carpet cleaning activity’ (Kominsky and Freyberg 1991, p. 5).

Given these findings regarding fiber adhesion, any additional hypothetical exposure that Mr. Perry may have experienced as a result of fibers that had previously settled onto surfaces would have been negligible.

Comparison of Mr. Perry’s Hypothetical Cumulative Asbestos Exposure Associated with Avon Talcum Powders to Relevant Benchmarks

It is common practice to compare reconstructed exposures with benchmark values such as lifetime exposure at the occupational exposure limit (OEL), disease thresholds or typical, total, lifetime ambient cumulative exposures (AIHA 2009). In my assessment, I have compared Mr. Perry’s hypothetical cumulative exposure associated with Avon products to such benchmark values.

A Working Lifetime at the Current OSHA Permissible Exposure Limit

While there are no federal standards that limit the concentrations of asbestos to which the general public can be exposed, since 1971 the Occupational Safety and Health Administration (OSHA) has set legally enforceable occupational exposure limits for asbestos in the workplace. The current OSHA Permissible Exposure Limit (PEL) for asbestos is 0.1 f/cc, as an 8-hour time weighted average (TWA) concentration. Assuming that a person was exposed at the OSHA PEL for an 8 hour workday, before and after which they incurred no additional exposure on that calendar day, the resulting 24 hour TWA asbestos concentration to which that person was exposed can be estimated to be 0.033 f/cc. While not directly comparable (because any potential consumer exposure associated with cosmetic talcum products would be extremely limited in duration, and the OSHA PEL is designed to protect workers as opposed to consumers), this OSHA PEL-equivalent 24 hour TWA asbestos concentration exceeds all of the estimated asbestos concentrations shown in Table 2, with the exception of those reported by Gordon et al. (2014).

Furthermore, the cumulative exposure over a working lifetime at the current Permissible Exposure Limit is 4.5 f/cc-years (i.e., 0.1 f/cc x 45 years). Mr. Perry’s hypothetical cumulative exposure to asbestos associated with Avon products is between approximately 625- and 16,729-fold below the cumulative occupational exposure that is currently acceptable in the United States.

Mr. Perry’s total hypothetical exposure to asbestos associated Avon Products throughout his lifetime (0.00027 f/cc-years to 0.0072 f/cc-years) is lower than the NOAELs for chrysotile, amosite, and crocidolite (Beckett et al. 2023).

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Mr. Perry's total hypothetical exposure to asbestos associated with Avon products throughout his lifetime (0.00027 f/cc-years to 0.0072 f/cc-years) is lower than the NOAEL for anthophyllite asbestos.

By applying this potency differential to the 'best estimate' mesothelioma NOAEL for chrysotile, it would be expected that the mesothelioma NOAEL for tremolite would be in the range of 9 to 22 f/cc-years (Beckett et al. 2023).

Mr. Perry's total hypothetical exposure to asbestos associated with Avon products throughout his lifetime (0.00027 f/cc-years to 0.0072 f/cc-years) is lower than the NOAEL for tremolite asbestos (Beckett et al. 2023).

In summary as described herein, any hypothetical asbestos exposure that Mr. Perry may have experienced as a result of his mother's use of Avon products would have been (1) well below the cumulative asbestos exposure that is permitted by the federal government (in the occupational setting), (2) below that associated with breathing ambient air, and (3) far too low to increase his risk of asbestos-related disease. Furthermore, as described by Lewis et al. (2023), the epidemiological evidence does not support an increased risk of mesothelioma in barbers, hairdressers and cosmetologists, who are arguably the most frequent users of cosmetic talc-containing products.

My conclusions are consistent with several recent epidemiological evaluations that have reported no excess risk of mesothelioma in cosmetic talc miners and millers (Finley et al. 2017; Pira et al. 2017; Wergeland et al. 2017; Fordyce et al. 2019). My conclusions are also supported by the 1985 FDA's Quantitative Risk Assessment Committee's (QRAC) position that for infants who are routinely dusted with talcum powder for a period of two years, 'the added human risk of lung cancer and mesothelioma from possible asbestos in talc is less than 10-8 [1 in 100 million] lifetime risk and quite possibly orders of magnitude less' (Brown 1985).

Furthermore, while asbestos consumption in the United States is a significant predictor of male pleural mesothelioma incidence lagged 30 years ($p < 0.0001$; $R = 0.67$; Figure 1), there is no relationship between asbestos consumption and female pleural mesothelioma incidence ($p = 0.197$; $R = 0.19$; Figure 2), nor is there a relationship between cosmetic talc consumption and pleural mesothelioma incidence ($p = 0.122$, $R = 0.23$; Figure 3) (Virta 2010; 2014; SEER 2023). This supports that cosmetic talc exposure is not a risk factor for pleural mesothelioma." (26 @ pp. 84-111)

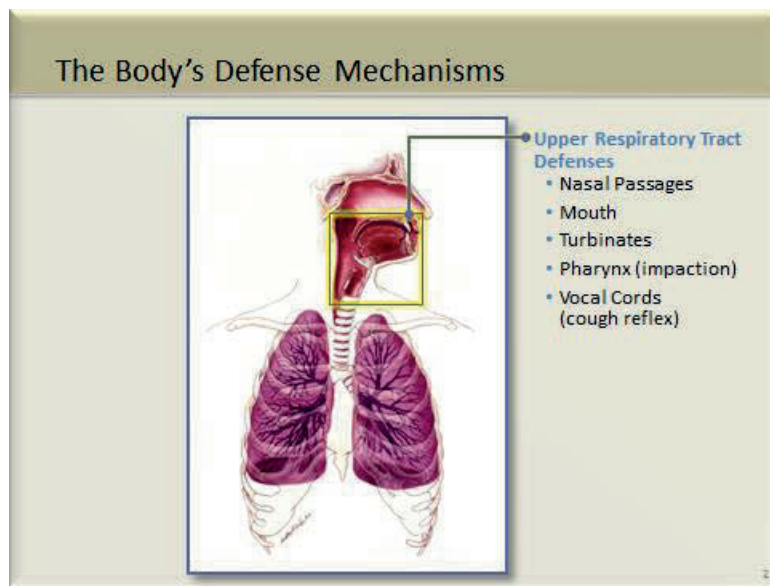
DISCUSSION: ASBESTOS AND THE LUNGS

Lung Anatomy and Defense Mechanisms

The lung is exposed to, and equipped to handle, a wide variety of substances present in the environment. By explaining the way in which the lung protects itself, it will become clear that each exposure does not adversely affect pulmonary health. There are three broad categories of defense mechanisms: (1) physical barriers in the nasal cavity and upper respiratory system to block fiber penetration; (2) processes in the trachea and bronchi that prevent fibers from reaching deep into the lung; and (3) cellular defense within the deep regions of the lung and pleura.

Physical Defenses:

When they are inhaled, fibers or particles initially encounter physical defense systems that filter particulate matter.

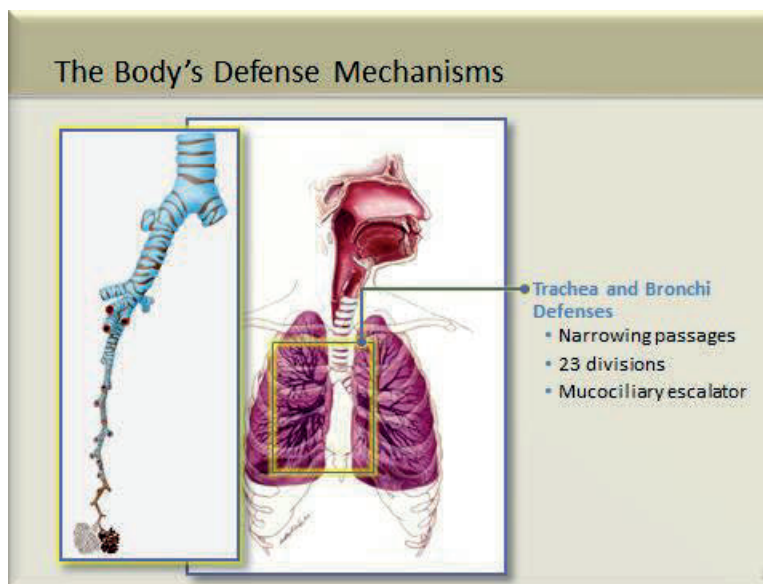


The first line of defense is created in the nose and the mouth where a filtering system exists that physically blocks inhaled fibers from going any deeper. For any fibers that make it past, they must next navigate the nasal cavity in which intricate bony structures called turbinates exist. These are shelves of bone that intrude into the nasal cavity producing four groove-like air passages. These are covered with mucus-producing goblet cells. Secreted mucus from these cells covers the nasal cavity and serves as a filter, by trapping airborne particles, especially those larger than 2 to 3 micrometers in aerodynamic diameter.

Fibers that make it past the defenses in the nasal cavity then encounter the pharynx where impaction blocks fibers. Below that the vocal chords provide defense by initiating a cough reflex when contacted by fibers.

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The physical defenses continue in the trachea and in the bronchi of the lung as the passages divide (in 23 divisions) and become progressively narrower.



The different physical and chemical properties of the distinct types of asbestos fibers effect the body's ability to clear the fibers.¹ Asbestos is a generic term for a group of naturally occurring minerals that occur in an asbestiform habit. There are two different groups – amphibole asbestos and serpentine asbestos. Amphibole asbestos includes the commercial forms crocidolite and amosite and the non-commercial forms tremolite asbestos, actinolite asbestos and anthophyllite asbestos. Serpentine asbestos includes chrysotile. Amphibole asbestos fibers are composed of straight, fibers with parallel sides and exhibit high tensile strength, flexibility, long fiber length and fine fiber width with splayed ends. Chemically, amphibole asbestos fibers are acid insoluble, do not break down after inhalation, and may persist in tissue for decades. In contrast, chrysotile asbestos fibers are comprised of bundles of curled flexible fibers that are acid soluble and break down after inhalation with rapid clearance from the body. (Case 2011; Attanoos 2020). Although chrysotile is the only form of serpentine asbestos, the characteristics and health effects of chrysotile mined in different areas varies. Calidria chrysotile is a unique, short, amphibole asbestos free fiber mined in the New Idria serpentine deposition in California. Calidria chrysotile is not likely to cause mesothelioma because: (1) the absence of tremolite contamination (Pooley 1991, Millette 2009, Pooley 2009, Van Baalen 2009); (2) the fiber characteristics²; (3) no reported cases of asbestos-related lung diseases in the miners and millers (Coleman 1996) or an increased incidence of mesothelioma around the deposit (Moolgavkar & Chang 2021); and (4) no increase in fibrosis or mesotheliomas in animal inhalation studies (see discussion later in this report).

There is a significant distinction between the carcinogenic potential of asbestiform and non-asbestiform fibers (also called cleavage fragments or elongated mineral particles). Non-asbestiform amphiboles include riebeckite, cummingtonite/grunerite, tremolite, anthophyllite, and actinolite and non-asbestiform serpentine minerals include lizardite and antigorite. As I

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published in 2018, while “there have been decades of research about the health effects of asbestos, lack of precision with terminology and clear definitions of [elongated mineral particles] have impeded the scientific community’s ability to properly characterize health effects attributable to specific types of” elongated mineral particles. (Weill 2018).³ Unlike asbestiform fibers, cleavage fragments lack the “high strength and flexibility of asbestiform fibers.” (Mossman 2008). Because amphibole asbestos fibers degrade into long, thin fibrils and cleavage particles degrade into short, thick fragments, they each impact the lung differently. Cleavage fragments are generally too wide to penetrate into the deep parts of the lung and more likely to be deposited in the upper airways, particularly when longer than 5 microns. If shorter than 5 microns, as is commonly the case, there is compelling scientific evidence that suggests that, even if they shared the same dimensions as those of asbestos fibers, that these smaller particles have no pathologic effect, either in terms of fibrosis or mesothelioma development. (Berman 2003; Berman 2008; Roggli 2015; Roggli 2019)

Asbestos fiber bundles tend to split longitudinally into thinner fibers, a hazardous feature, and is not a characteristic of non-asbestiform minerals.

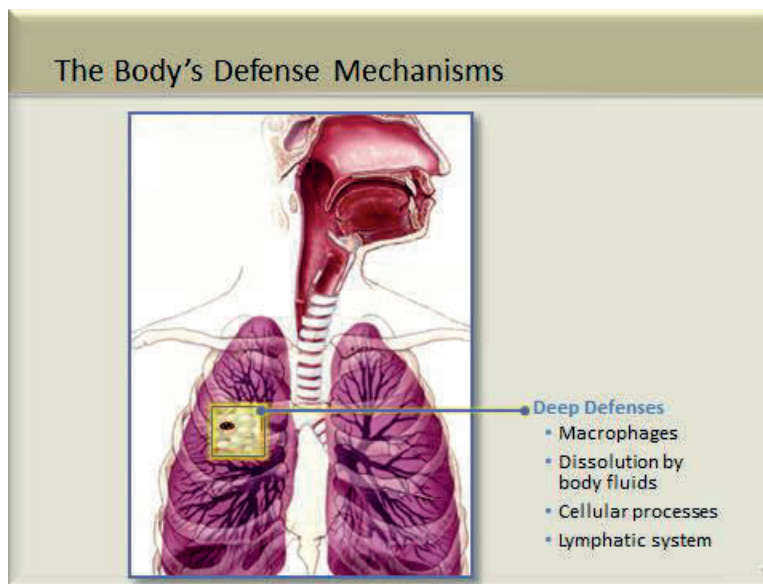
Cells lining these airways have tiny, hair-like structures (“cilia”) that are covered by a mucus gel layer. These cells move back and forth in order to transport inhaled substances toward the mouth where they can eventually either be expectorated or swallowed. This system is commonly known as the mucociliary escalator. The following diagrams demonstrate this process.

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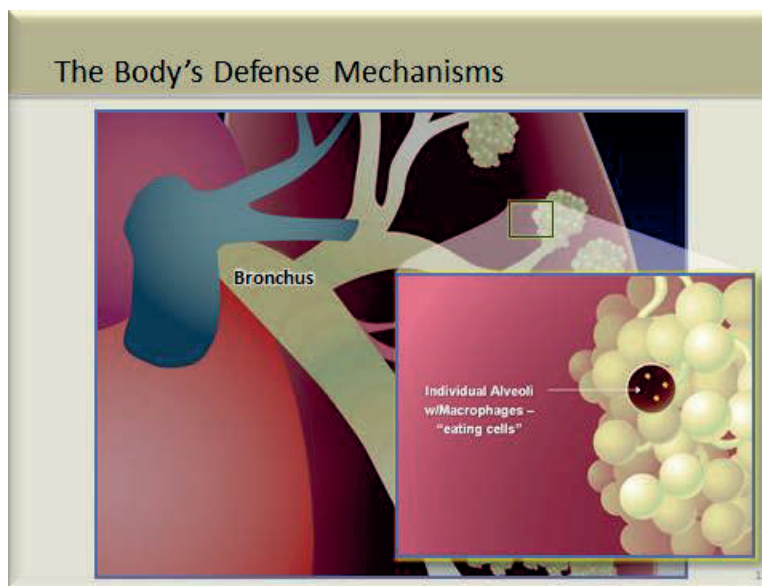
Cellular Defenses:

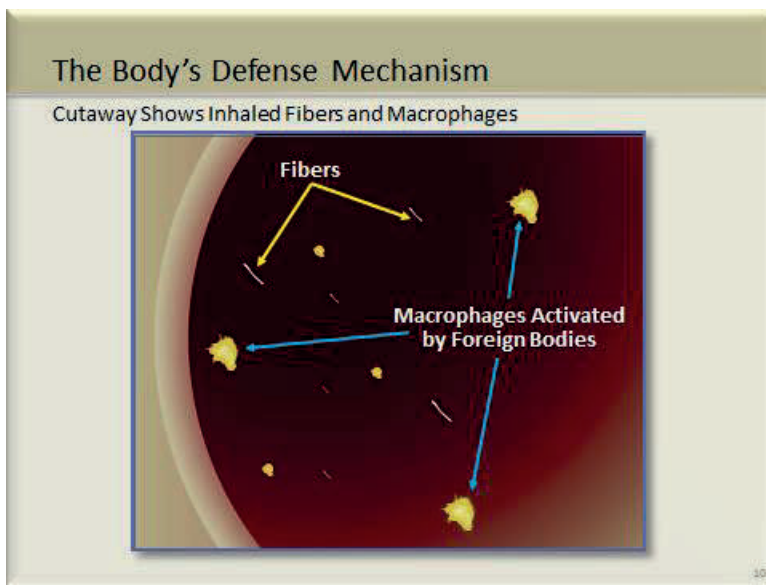
Any fibers that reach the alveoli, alveolar ducts, and respiratory bronchioles encounter another set of defense strategies by which the body protects itself.



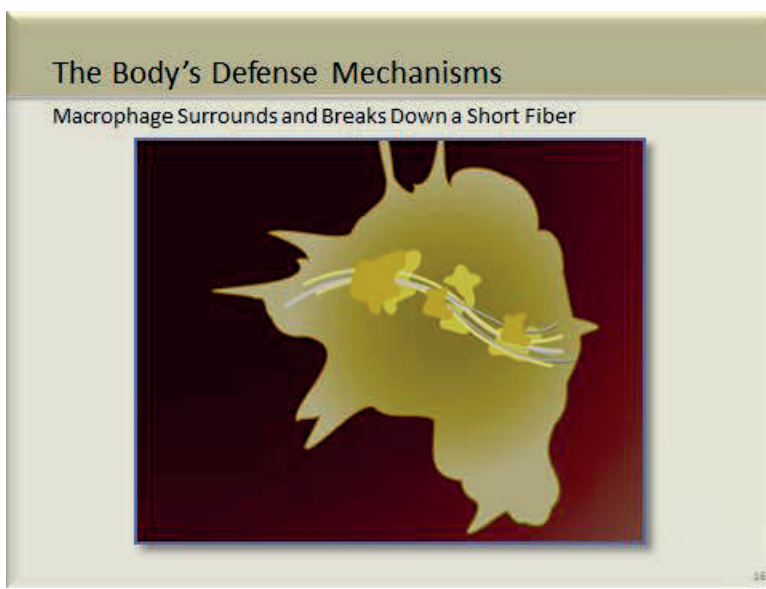
Macrophages, the “Eating Cells”

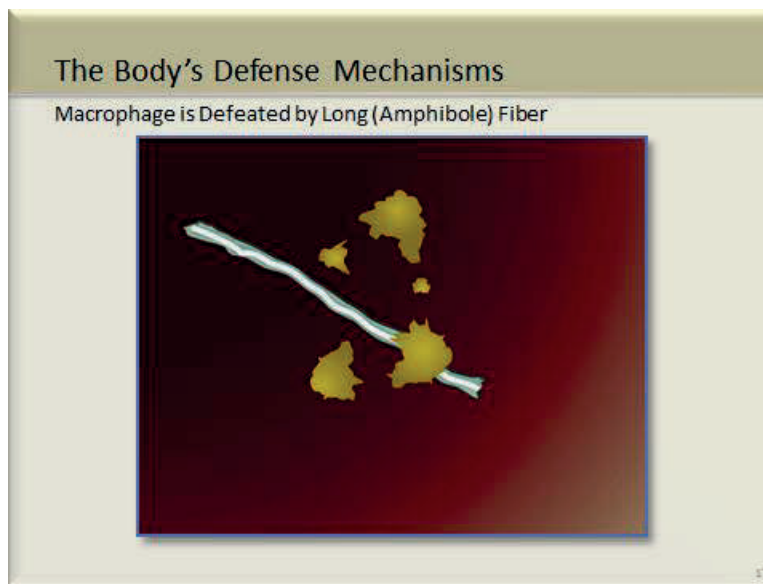
The deepest regions of the lung, the alveoli, contain specialized cells called macrophage cells, sometimes referred to as “eating cells.” An alveolar macrophage is a cell in the lung which engulfs inhaled particles and destroys them using enzymatic digestion. This process relies on the release of enzymes and oxidants that aid in destruction of the inhaled particle or fiber. An important part of the macrophage function is to bring the break-down products of the degradation process to the lymphatic circulation through which the cellular debris is brought out of the body.



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Because of the nature of their composition, chrysotile fibers have greater susceptibility to successful digestion by the macrophages and other biologic processes of the body. Thus, unlike amphibole fibers, chrysotile fibers tend to clear rapidly from the lung and thus lack biopersistence. (Wagner 1974; Churg 1993, 1994; Attanoos 1997; Bernstein 2003,⁴ Bernstein 2013).





Cellular Repair Mechanisms

Another significant part of the cellular defense of the lung is repair. When the lung is exposed to a substance, inflammation occurs, and the lung tissue then returns to normal using a system of repair mechanisms. Inflammation results as the lung tissue reacts to the enzymes that are released from the macrophages and is an integral part of the lung's defense system. Inflammation occurs constantly in response to a variety of insults and is a normal part of the lung response to a variety of inhaled substances, both asbestos and non-asbestos particulates.

Protective Antioxidant Reaction

Retained fibers may cause the release of oxidants. At low exposure levels, the released oxidants may (but do not necessarily) lead to low-grade, temporary inflammation. Such inflammation is a protective, beneficial response that acts to remove the insulting agent and to prevent potential tissue damage. The body also produces antioxidants. As the name implies, antioxidants "inactivate" oxidants (Walters 2008), acting as brakes on the inflammatory process. Antioxidants work in a variety of ways, including by chemically altering oxidants into non-harmful or less harmful substances. (Bargagli 2009, Comhair 2002).

The existence in the body of oxidants and the consequent antioxidant defense is thus a constant process at work in the body. (Day 2008, at 356). The combined result of these defense mechanisms is that the body is capable of dealing with the inhalation of asbestos fibers without anything other than a transitory reaction, until a threshold level of fiber burden is reached:

Whether every single asbestos fiber ... that remains in the lung actually elicits production of cytokines and oxidants, or whether there is a minimum number of fibers ... required to initiate or sustain these processes is unknown, but in either case it is clear from epidemiologic, fiber burden, and experimental studies that the lung is able to deal with a considerable number of fibers and particles without

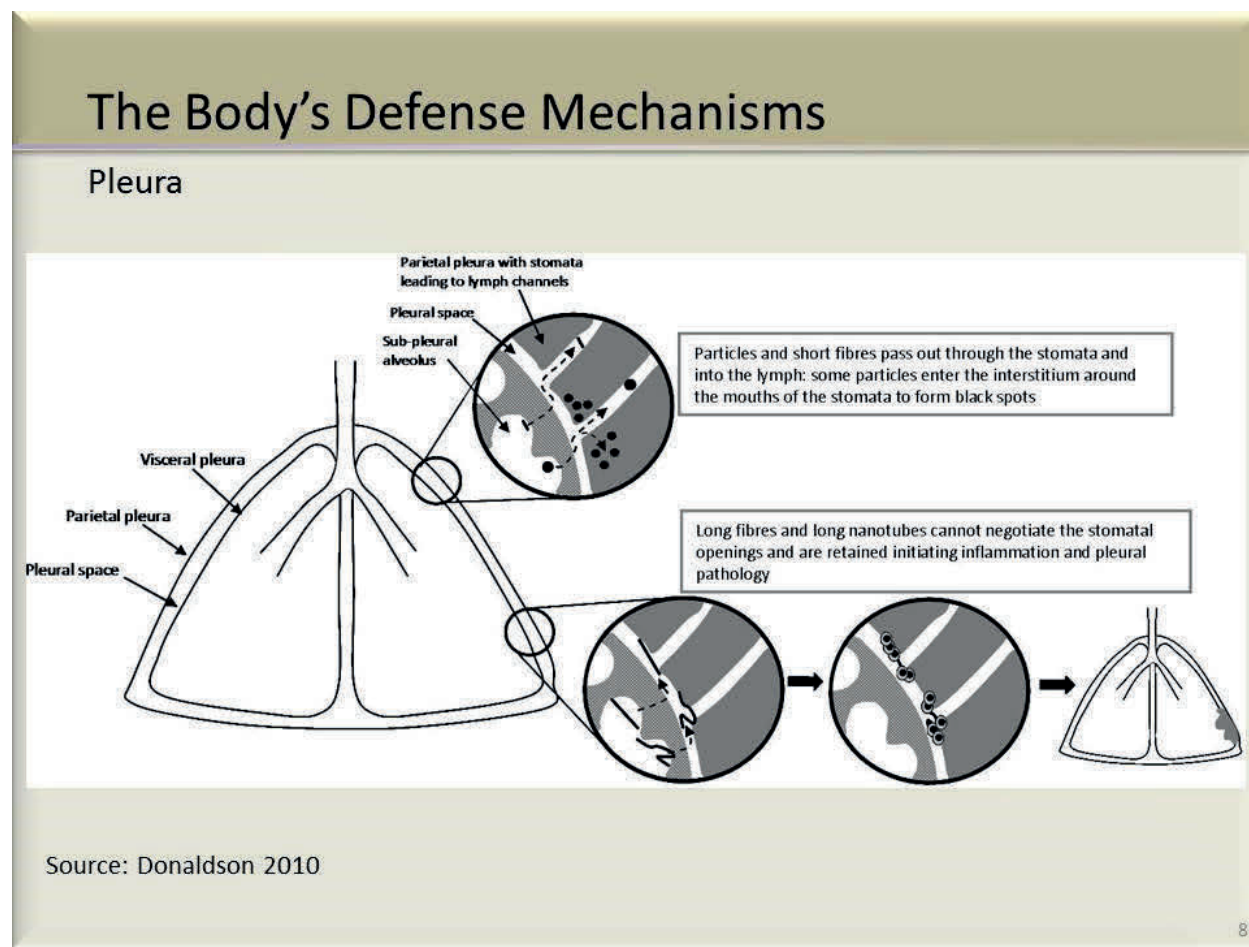
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detectable molecular or pathogenic events or the development of fibrosis.
(Mossman 1998, at 1675, emphasis added).

In other words, lung tissue will show no “detectable molecular or pathogenic events” despite the presence of “a considerable number of fibers” in lung tissue. It is only when too many oxidants are present, i.e., after the threshold is reached, that “high levels of [oxidants] may overwhelm antioxidant defenses, resulting in oxidant-mediated injury or cell death.” (Comhair 2002, at L249).

Defenses in the Pleura:

Although the biologic processes in the lung have been relatively well-characterized, fewer studies have focused on the pleura. Yet it is apparent that defenses continue to operate there. First, inflammatory processes which may result in tissue scarring (which is a defense) occur in the pleura. In addition, the lymphatic system operates in the pleura and is the major vehicle of fiber removal. Long durable fibers may be preferentially retained in the pleura because of their inability to “negotiate the stomatal openings” leading to the lymphatic drainage system. (Donaldson 2010, Figure 12). In contrast, short fibers can leave the pleura through stomatal openings. (Donaldson 2010).



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Second, like the lung, the pleura contains a population of macrophages. As explained above, short fibers that enter the pleural space typically leave through the stomatal or can efficiently be cleared by macrophages. In contrast, long fibers have the ability to block the stomatal openings, which may lead to the accumulation of pleural macrophages attempting to phagocytose these retained fibers, frustrated phagocytosis and further inflammation. (Donaldson 2010).

Researchers in Belgium and France collected thoracoscopic biopsy samples from anthracotic “black spots” on the parietal pleura and determined asbestos content by transmission electron microscopy. In exposed subjects, significant fiber concentrations of amphibole asbestos were found in the black spots with almost a quarter of the fibers being greater than 5 microns in length. (Boutin, 1996), The researchers discovered that long amphibole asbestos fibers were concentrated in the black spots (i.e., the location of the stomata) and could explain why the parietal pleura is the target organ for pleural mesothelioma. Amphibole asbestos fibers accounted for over 95% of the fibers found in the black spots on the parietal pleura with crocidolite and amosite being the most common in subjects with a history of occupational exposure to asbestos. The concentration of amphibole asbestos in the black spots was significantly higher than in other locations in the parietal pleura which could explain inconsistencies in previous reports in which tissue sampling was random. “This study demonstrates that, whatever route they followed, long amphibole fibers concentrate in the same structures of the parietal pleura that trap other particles such as coal dust.” (*Id.* at 449).

Subsequent published research has confirmed the Boutin study conclusion that long durable fibers like amosite collect and retain at the stomata on the parietal pleura causing persistent inflammation whereas short fibers do not. Murphy, et al., 2011 (“Our data confirmed the hypothesis that, although a proportion of all deposited particles passes through the pleural, the pathogenicity of long CNTs and other fibers arise as a results of length-dependent retention at the stomata on the parietal pleura”); Poland, et al., 2012 (similar results in a peritoneal injection model); Chernova, et al., 2017 (pleural installation of either long CNTs or long amosite fibers into the pleural cavity of mice induces mesothelioma); Schinwald, et al., 2012 (intrapleural injection study where long fiber amosite (various lengths enriched with fibers greater than 10 microns) caused pleural inflammation while short amosite fibers did not).

Suzuki and others analyzed pleural tissue and pleural tumor and reported primarily short fiber chrysotile in these specimens. The authors postulated that these short fibers should not be ignored when establishing causation of mesothelioma. (Suzuki 2002, 2005). However, there are numerous issues with these studies. First, the authors used a non-standard technique to analyze inappropriate specimens with no controls for comparison. It is improper to use tumor tissue for analysis, which comprised most of the tissue analyzed in these studies. Tumor tissue begins from a single mutated cell that accumulate over time to billions of mutated cells and any fiber that reaches the tumor tissue necessarily arrived after the development of the tumor. Further, it is improper to compare tumor tissue with normal pleural tissue. The only proper comparison for mesothelioma tumor tissue would be other pleural based tumors that are not asbestos-related. Finally, the vast majority of short chrysotile fibers detected were less than one micron in length, which raises the possibility of contamination during the analysis. (EPA 2003; Roggli 2015).

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Disease Occurs Only When the Defenses are Overwhelmed:

The result of these defenses is summarized as follows:

It is particularly important to realize that most airborne dust is not inhaled into the intrathoracic airways (it is deposited in the upper airway), that few fibers entering the trachea reach the alveoli to be retained in the lung interstitium, and that, following interstitial retention, there is a slow dissolution and removal of fibers which varies considerably between chrysotile (serpentine) and the various amphiboles. (DeVuyst 2002 at 151, emphasis added).

Thus, most occupational exposures result in relatively few fibers being retained in the lung tissue (unless the lung defense mechanisms are overwhelmed). Inhaled fibers are largely blocked by the defenses of the nasal passages, mouth, turbinates, pharynx, vocal cords, trachea and bronchi. The “few fibers” that do penetrate deeper encounter several other defenses, which act on all fiber types, but are particularly effective at removing chrysotile. (Bernstein 2003).

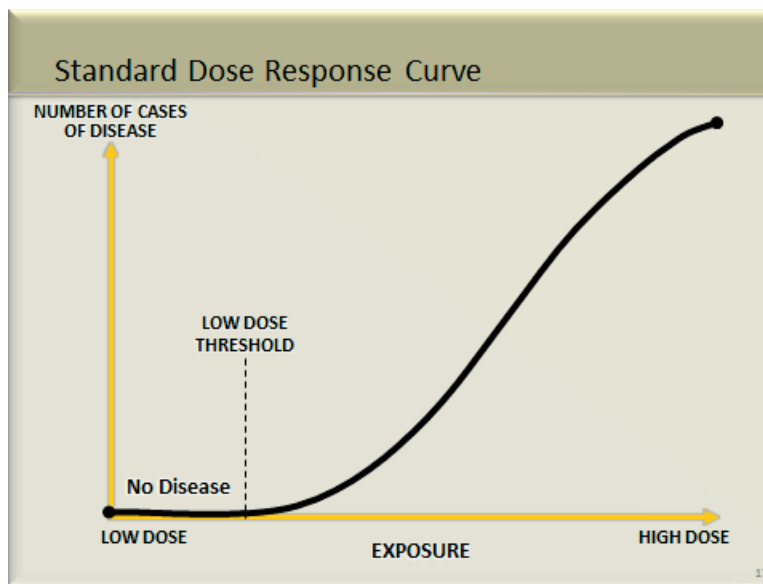
As a result, smaller doses of asbestos, particularly chrysotile, are not clinically significant. Furthermore, because the lung defense system operates to expel particles from the lung, the lungs are constantly removing particles that may have been inhaled. Thus, continuing inhalations of small doses do not increase risk of disease.

Only exposures that defeat the pulmonary system defenses are potentially clinically significant. To do so the exposures must be at a high enough concentration over a sufficiently long duration to result in a dose from lifetime cumulative exposure that causes disease. For this reason the concept of dose-response or dose-responsiveness is important in pulmonary medicine.

Dose-Response

The Concept of Dose-Response in Medicine

Dose-responsiveness means that the risk of developing a disease is dependent on the total dose received. Further, the most accepted model associated with dose-responsiveness is that of a threshold, as illustrated in the following diagram.



All of the asbestos-related diseases are dose dependent, meaning that as the dose increases above a certain threshold the likelihood of developing the disease increases.

Mesothelioma is no different in this respect. The precise threshold where disease risk is elevated is not known, but we do know that there must be a minimum threshold of lifetime cumulative exposure before the risk of disease is increased.

Background Levels of Retained Asbestos Fibers Do Not Cause Disease:

One obvious reason we know a threshold exists below which asbestos does not cause disease is that there is no excess risk of developing any asbestos disease from environmental exposures of people in the general population.

It has been well known since at least the early 1970s that background exposures to asbestos from the ambient air that are present in individuals without occupational exposure to asbestos pose no risk of asbestos-related disease. (National Academy of Sciences, 1971 at page 31) (“At present, there is no evidence that the small number of fibers found in most members of the general population effect health or longevity”). For instance, Churg writes in his textbook that “everyone in the population carries a fairly substantial burden of asbestos fibers in their lungs ... 40 million fibers of chrysotile, 40 million fibers of tremolite, and 400,000 fibers of amosite or crocidolite in the lungs of the general population of Vancouver, along with 40,000 asbestos bodies.” (Churg 1998, at 293). Historical ambient airborne asbestos levels in U.S. cities of 0.02 f/cc or 0.03 f/cc have been reported (Mangold 1982, Mangold 1983), and background levels that can range to 0.008 and 0.003 f/cc have been reported in other sources. (WHO 1998, ATSDR 2001). Based on research by Dr. Nicholson at Mt. Sinai (Nicholson, 1987), the ATSDR estimated that a cumulative background exposure for a 70 year old human would be in the range of 0.002-0.4 fiber-years. (ATSDR, 2001 at page 151). As opposed to occupational exposures, which occur only during working hours, all of these exposures are constant. Yet this “ambient exposure” has not been associated with disease, even by public health agencies that employ the precautionary principle. (ATSDR 2001, at 159); (see also Pass, et al, 2019 at page 1864. “. . . it is generally

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accepted in the scientific community that background levels of exposure, such as those found in the lungs of almost all individuals, do not increase the risk of mesothelioma.”)

A more recent study has examined the incidence rates of mesothelioma in females living in urban versus rural areas in the United States. The purpose of the study “was to determine whether variations in ambient asbestos concentrations have influenced pleural mesothelioma risks in females (who generally lack historic occupational asbestos exposure relative to males).” (Glynn 2018 at page 454). In contrast to the incidence rates for mesothelioma among males who are much more likely to have had occupational exposure asbestos, there was no statistically significant difference in the incidence rates for mesothelioma among females between rural and urban areas. According to the authors, “the results suggest that differences in ambient asbestos concentrations, which had been reported to be 10-fold or greater across regions in the United States, have not influenced the risk of pleural mesothelioma.” (*Id.* at 454)

We also know that the dose response curve is not linear because of a large body of epidemiological investigation of brake workers that is discussed later in this report. These chrysotile exposures do not cause an elevated rate of mesothelioma.

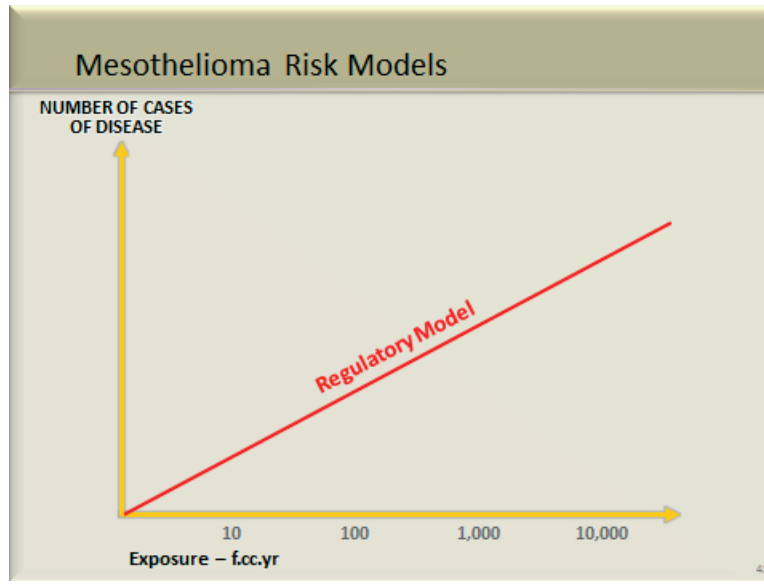
Public Health Extrapolations Purposely Overestimate Risk

There have been a number of public health agencies interested in setting exposure limits in order to protect the general population from developing disease. To do so, these agencies project risks employing what is sometimes known as the precautionary principle. This process differs substantially from a forensic examination of causation in an individual case governed by standards of reasonable scientific certainty.

For instance, a 1986 OSHA regulation noted that “OSHA is not required to support the finding that a significant risk exists with anything approaching scientific certainty” and therefore “use[s] conservative assumptions in interpreting data with respect to carcinogens, risking error on the side of over-protection rather than under-protection.” (OSHA 1986). In fact the OSHA cancer policy embedded in federal regulations mandates that “no determination will be made that a ‘threshold’ or ‘no-effect’ level of exposure can be established for a human population exposed to carcinogens in general, or to any specific substance.” (Federal Register Tuesday, January 22, 1980 at page 5286). As an example, the EPA 1986 asbestos risk model predicted 500 cases (range 100-2,500) female mesotheliomas in Thetford Mines, while 10 pleural mesotheliomas were actually observed. (Camus 2002).

Rather than use the standard S-shaped dose response curve, described above, public health estimates achieve a conservative estimate that errs on the side of overprotection by employing what is known as the linear, no threshold model. The linear model employed in creating precautionary risk models is illustrated by the following diagram.

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The model assumes that exposure to even one fiber of asbestos causes disease, which, as was explained above, is not scientifically accurate. The assumption is purposely made for modeling purposes so that the analysis will overestimate risk consistent with precautionary principles.

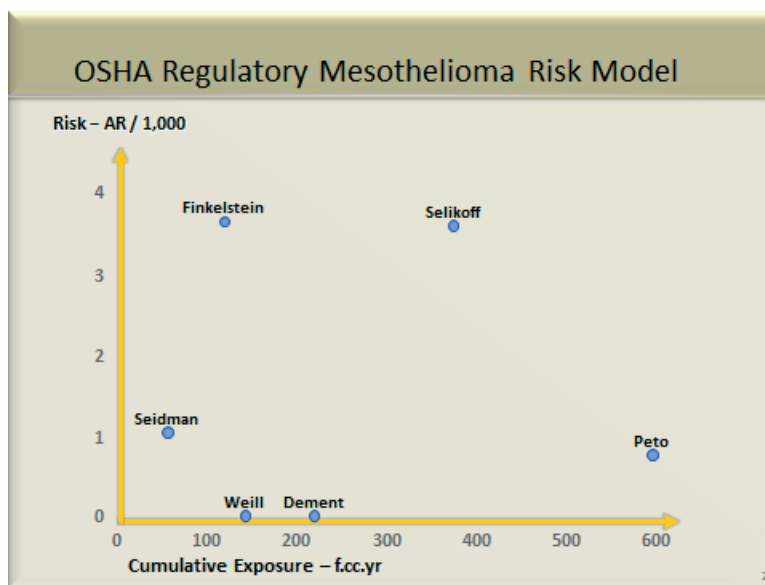
To achieve this conservative estimate that erred on the side of overprotection, OSHA relied on the data from six studies identified below.

Michael L. Perry and Lonnie L. Long v. American International Industries, et al.**Studies Used in the OSHA Model**

STUDY	Average Daily Exposure (f/cc)	Average Duration (year)	Average Cumulative Exposure (f*yr/cc)	Cohort Size	Number of Meso Deaths	Total Deaths	PMR	AR (/1000)	Amphiboles Range
Selikoff <i>et al.</i> 1979	15	25	375	17,800	180	2,271	7.93%	3.69	25-75% Amosite
Seidman <i>et al.</i> 1979	35	1.5	52.5	820	14	528	2.65%	1.08	95-100% Amosite
Weill <i>et al.</i> 1979	21.2	7.4	157	5,645	2	601	0.33%	0.02	0.2%
Peto 1980	30	20	600	679	7	239	2.93%	0.86	2.5-15% Crocidolite
Finkelstein 1983	9	12	108	241	11	58	18.97%	3.79	10-50% Crocidolite
Dement <i>et al.</i> 1983	6.5	34	221	768	1	308	0.32%	0.03	0.02%

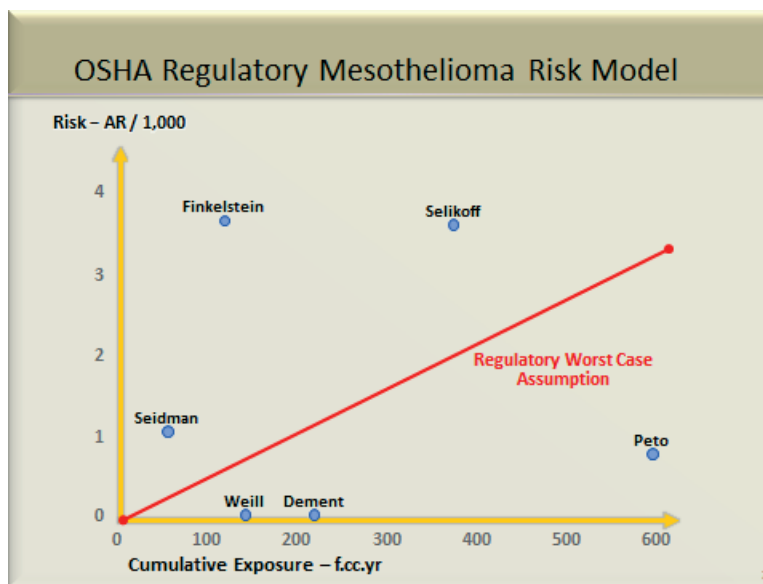
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The data from these studies can be plotted on a dose chart as follows:



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The regulatory model requires assuming exposures below the level of observation, roughly 52 fiber years, are causative and assuming a dose response relationship that is a straight line.



This process thus extrapolates high level exposures all the way back to no exposure levels or low exposure levels. In short, it assumes risk of disease would theoretically be elevated for even a single asbestos fiber. We know, however, that this is not true given the exposure of individuals in the general population and exposure in low-dose occupational settings, such as auto mechanics.

Therefore, the public health agencies' use of a linear model does produce errors on the side of overprotection, but these assessments are surely not proof of a causal relationship. Studies have demonstrated that a similar dose-response prediction, that done by the EPA (which relied on only four studies used by OSHA (Finkelstein 1983, Peto 1980, Seidman 1979, and Selikoff 1979) greatly overstated the risk of both mesothelioma and lung cancer. (Camus 1998, Camus 2002).

Thresholds

Because the body contains very robust defenses, risk of asbestos-related disease arises only when inhaled asbestos exceeds the capacity of those defenses. As Cugell and Kamp wrote in their article, "Asbestos and the Pleura: A Review," which appeared in the journal *Chest*:

At the present time, essentially all adverse effects on health from asbestos are due to the inhalation of fibers in concentrations sufficient to overwhelm the normal pulmonary defense and clearance mechanisms. (Cugell 2004, at 1105).

The levels of lifetime asbestos exposure sufficient to cause mesothelioma vary based on the fiber type of the exposure. As explained later in this report, pure chrysotile fibers are not a proven cause of human mesothelioma. The chrysotile fiber component of any end product thus cannot be said to contribute to cause human mesothelioma.

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Excess risk of mesothelioma from chrysotile exposure has been demonstrated only in mining and milling situations where particularly high tremolite or other fiber contamination exists. Yet even for this kind of “contaminated” chrysotile, the threshold is likely to be at least hundreds of fiber years. As to the levels documented to increase the risk, average cumulative exposure of the mesothelioma cases was approximately 600 fiber years in the Quebec Miners and millers (Hodgson 2000, at Table 1), and 226 fiber years in the studies by Camus of women living near Quebec Mines. (Case 2002). This is the level of demonstrable risk, sometimes referred to as the lowest observable effects level. (LOEL) Whether risks exist below that level, and at what precise cumulative lifetime exposure, cannot be determined by available objective data and requires making assumptions to construct models that become increasingly less reliable the further they deviate from the range where objective data demonstrates excess risk.

Because of the greater potency of amphiboles, the amphibole threshold for mesothelioma is quite likely lower.

Historical Development of Knowledge on Mesothelioma Causation

This section contains a brief overview of the history of asbestos research with a focus on mesothelioma. Historical review puts into context statements made over the years. Scientific recognition of a link between asbestos exposure and mesothelioma occurred later than it did for other asbestos-related diseases. As with any exploration of a newly identified disease, early study may produce concerns of potential risk that, while understandable at the time, are not borne out by subsequent research.

Before the 1960s: Focus on Asbestosis, Lung Cancer, and High Exposure Occupations

Before the 1960s, asbestos research had focused primarily on asbestosis and lung cancer, diseases that were thought to be an occupational concern only in mining and manufacturing settings where sustained exposures to high fiber release occurred.

Asbestosis is a nonmalignant parenchymal fibrotic lung disease caused by inhalation of asbestos fibers. The term asbestosis came into use in the 1920s and by the 1930s its association with high levels of asbestos exposure was established. (Merewether 1930, Dreessen 1938). End use of asbestos products was not identified as a concern. Rather these studies focused on the occupational hazards in textile manufacturing and other settings where high levels of potential exposure existed. By the 1930s medical research had begun that led to adoption of widely-accepted occupational exposure limits in the 1930s, 1940s, and 1950s. These exposure limits were expressed as 5 million particles per cubic foot on an 8-hour time-weighted average (“5 mppcf 8-hr TWA”), a total dust measurement by impinger technology that did not distinguish fiber type.

Studies proposing a link between lung cancer and asbestos exposure appeared in the 1930s, and the link was firmly established in a workplace-exposed population by Sir Richard Doll in

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1955. (Doll 1955). Doll's work associated the risk with asbestosis and exposures above the 5 mppcf occupational exposure standard.

Shortly after the publication of the Doll study in Great Britain, Dr. Herbert Stokinger who was the chief toxicologist for the United States Public Health Service and served as Chairman of the TLV Committee for the American Conference of Governmental Industrial Hygienists, authored an article in which he contrasted the experience in the United States and Canada versus England insofar as lung cancer and asbestos workers was concerned:

"It is of more than passing interest that the higher rate of cancer in asbestos workers in England is not paralleled in the United States or in Canada, according to Lanza. Because of this difference may lie in the type of asbestos; asbestos is a fibrous form of several different species of minerals, a point often disregarded." (Stockinger, 1956 at page 178).

The 1960s: Initial Studies and Calls for Further Research

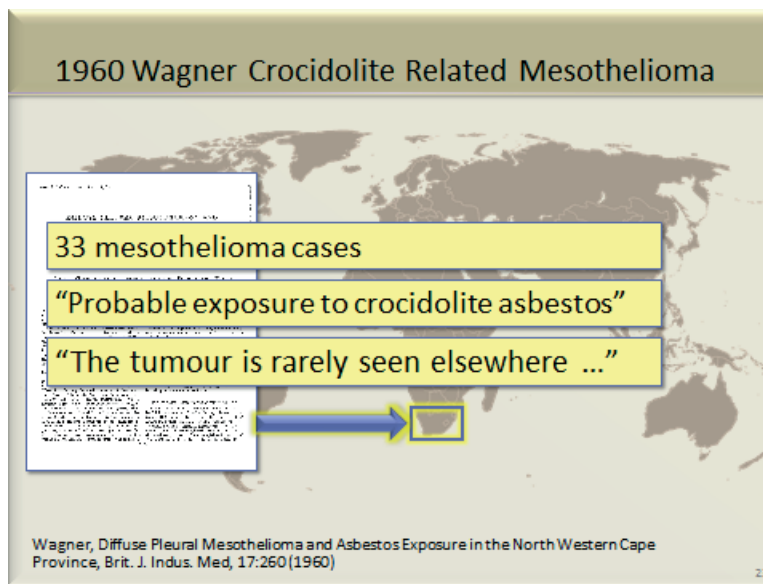
For mesothelioma, only a few case reports predate Dr. Wagner's 1960 case series reporting 33 cases in South Africa's crocidolite mining region. The authors noted that the observed mesotheliomas were in individuals with probable exposure to Cape Blue Crocidolite Asbestos.

Dr. Wagner provided an update at the New York Academy of Sciences Meeting in 1964 noting the following:

"A puzzling feature of the South African investigations is that although the country produces approximately the same amount of crocidolite, amosite and chrysotile (if Swaziland is included), no case of mesothelioma has been reported from either of the other areas in spite of an intensive investigation. This is particularly remarkable because on the edge of the amosite mining area, crocidolite also occurs, sometimes in the same seams. The mining and milling methods are similar and the chance of environmental exposure seems to be the same." (JC Wagner, 1965, at 576-577)

Dr. Wagner also commented on developments regarding other fiber types and possible association with mesothelioma:

" . . . In Britain, it has not been possible to obtain positive, clear evidence implicating a single type of asbestos as in South Africa, since the majority of cases have been exposed where several types of asbestos were used. However, definitive evidence of crocidolite exposure has been established in a majority of cases, and no indisputable case of pure chrysotile exposure has yet been discovered." (*Id.* at 578).

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A case series or case report cannot establish causation. Yet, it can be the impetus for further research and raise public health concerns. Dr. Wagner's report did just that. Subsequent study has confirmed a high rate of mesothelioma associated with both crocidolite mining, (Berry 2012, Rees 2001, White 2008) and the manufacture and use of certain crocidolite products. (Talcott 1989).

The recurring theme that the asbestos health risks experienced in the United States and Canada was somehow different than in Great Britain and South Africa perhaps because of differences among fiber type was also expressed in a report on asbestosis issued by the section on nature and prevalence, Committee on Occupational Diseases of the Chest for the American College of Chest Physicians in Diseases of the Chest in January 1964. In describing possible sequelae and complications, the committee made the following observation:

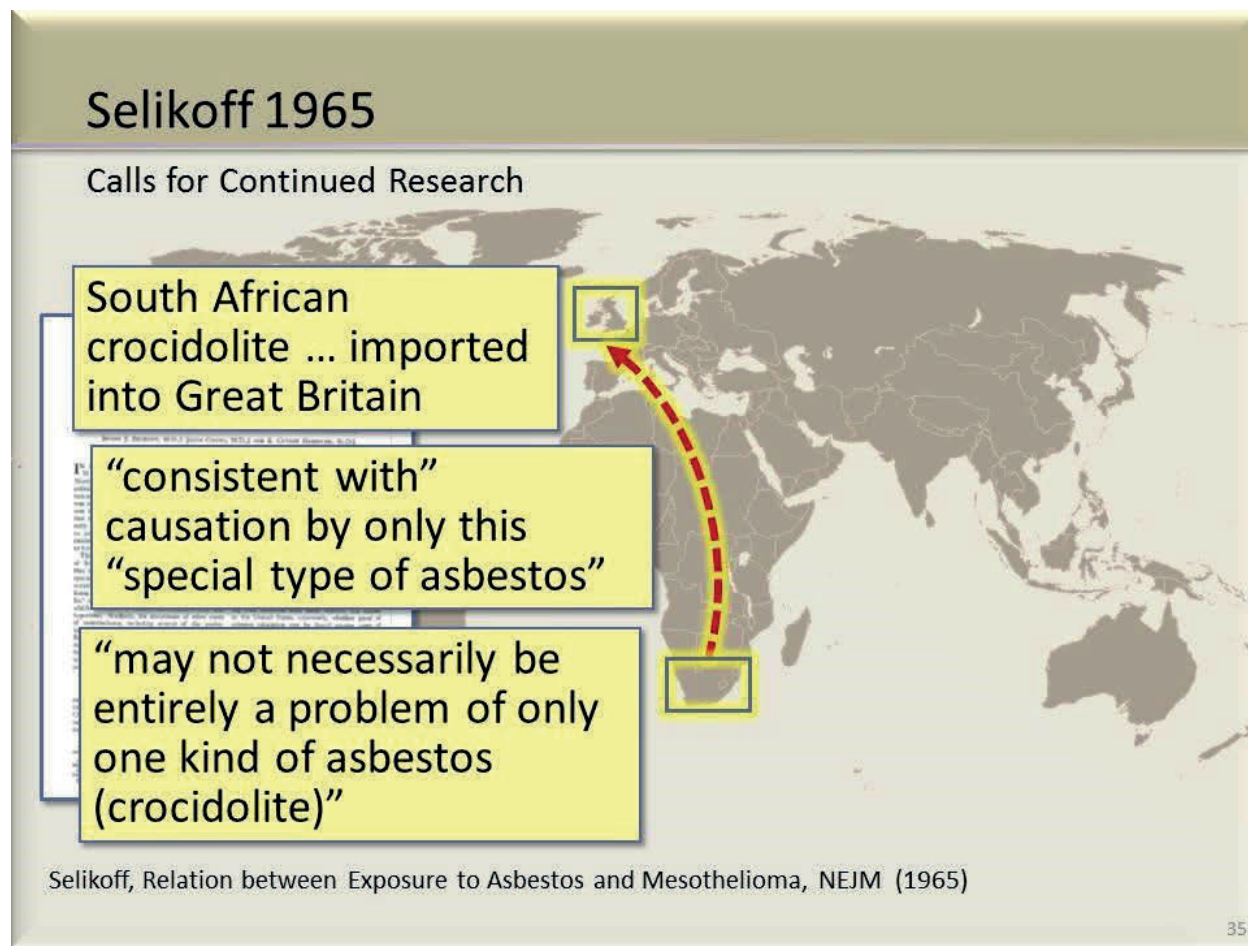
"In the medical literature, there are more articles favoring a positive relationship between cancer of the lung and asbestosis than denied it. While it has been reported that there may be an enhanced prevalence of pulmonary neoplasia in some asbestos industries (e.g. crocidolite or amosite), were in some locations (e.g. South Africa, England), this does not appear to apply for the chrysotile industry in North American. This comment applies both with respect to intrapulmonary new growths and to pleural mesothelioma." (Id. at 109.)

Also in the early 1960s Dr. Selikoff and his colleagues established a cohort of 17,800 members of the insulation workers' union that they would follow over the decades to come. (Selikoff 1965a). These workers used amosite and chrysotile to make insulation and the authors began reporting increased incidence of disease including mesothelioma. The cohort would be important to mesothelioma research as well.

In 1964 Dr. Selikoff convened a conference about the biological effects of asbestos exposure, the proceedings of which were published in 1965. Dr. Selikoff noted that there were cases then occurring outside of South Africa consistent with crocidolite exposure, but postulated that

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mesothelioma causation may not be entirely due to crocidolite exposure, but also to other forms of asbestos fiber exposure.



The working group on asbestos and cancer for the International Union Against Cancer (UICC) met at the close of the New York Academy of Sciences Symposium on Asbestos in 1964 and issued a report with recommendations on future research. Its initial recommendation was that the importance of fiber type on the risk of developing asbestosis, carcinoma of the lung and mesothelioma and other tumors be investigated. In order to do so, it recommended that studies of mining and other populations exposed to only one type of fiber be undertaken, including chrysotile in Canada and Italy, crocidolite in Australia, and amosite, chrysotile and crocidolite in South Africa. The committee noted that in the case of mesothelioma evidence from several countries suggested that exposure to crocidolite may be of particular importance, and cautioned that it could not be concluded that only this type of fiber was concerned with these tumors. The Committee recommended that further investigation into other fiber types was needed.

In addition to the focus on mesothelioma, studies in the 1960s also determined that occupational risks for all asbestos-related diseases arose at lower exposures than the old 5 mppcf standard. New technology capable of measuring lower-level exposures and differentiating fibers from other forms of dust began to be employed. These results were reported as fibers per cubic

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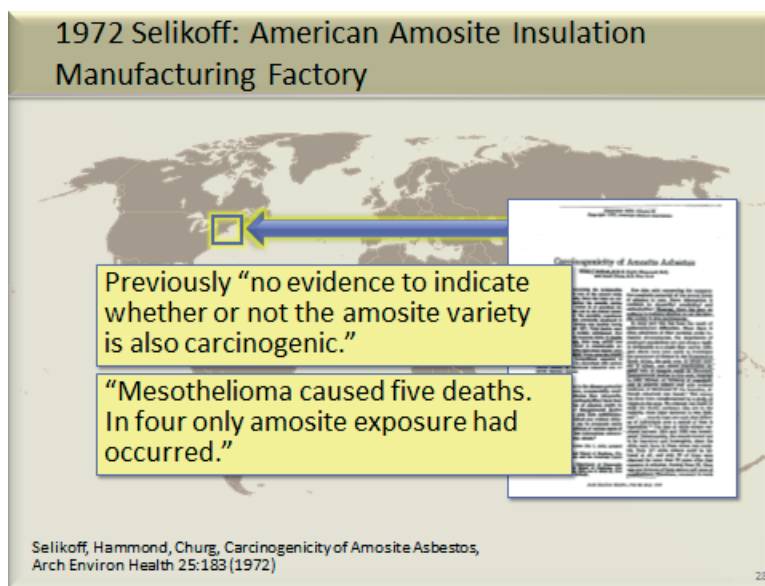
centimeter (“f/cc.”). In rough approximation, 5 mppcf converts to 30 f/cc, although the conversion rate can be variable depending on the processes measured.

While evidence was rapidly accumulating at the end of the 1960s of a significant risk of mesothelioma among insulators exposed to mixed fiber including amosite asbestos, such concerns did not extend to the use of asbestos-containing friction products. For example, at the International Conference on Pneumoconiosis in Johannesburg 1969, research was highlighted demonstrating that much of the asbestos in asbestos-containing brakes was transformed into a non-fibrous substance during the braking process, prompting Dr. Selikoff to comment that “brake linings do not constitute a hazard.” (Proceedings of the International Pneumoconiosis Conference Johannesburg, 1970 at 51).

The 1970s: Significant Early Study Identifies Risk and Prompts Regulatory Action

By the early 1970s it was evident that asbestos insulators had a high rate of mesothelioma. In the Selikoff cohort of 17,800 insulators, 380 deaths had occurred as of a report in press in 1971, and 22 of those deaths had been from mesothelioma (6 pleural and 16 peritoneal), which was an alarmingly high rate from such a rare disease. Subsequently, at a symposium for the Finnish government, Dr. Selikoff reported 425 deaths, with 27 of those deaths of mesothelioma (7 pleural, 20 peritoneal) (Selikoff 1972).

Dr. Selikoff’s work was not limited to insulators. In 1972 Dr. Selikoff published a study of workers at an amosite product manufacturing plant. In this study there were a total of five mesothelioma deaths (2 pleural, 3 peritoneal), four of whom were known to be exposed only to the amosite type of asbestos.



Also in the early 1970s, researchers at McGill University lead by Dr. J. Corbett McDonald published a first report on what has become one of the largest and most closely followed cohorts of approximately 11,000 chrysotile miners and millers working in the mining regions of Quebec. The McGill study of the Quebec chrysotile miners and millers was initiated in response

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to the recommendations of the UICC in 1964. This cohort would be followed over the next three decades as it aged, and would provide important data on mesothelioma causation. The 1971 McDonald report identified three pleural mesothelioma deaths among the 2,457 deaths that had occurred in the Quebec cohort by this date.

1971: Quebec Chrysotile Miners and Millers

3 mesothelioma deaths among 2,457 deaths so far in the cohort

Mortality in the Chrysotile Asbestos Mines and Mills of Quebec
J. Corbett McDonald, M.D., Allan B. McDonald, M.D., Graham W. Cole, M.D., Jack Shusterman, and Charles E. Slaughter, M.A., Montreal

Persons born between 1951 and 1959 in the Quebec mines among whom were traced, 30 from 1,087 (2.7%) deaths before the end of 1969 were the just that level and duration of the overall mortality was lower than the population of Quebec but in their category comprising 5% of the population the rate was 25% higher than the general population.

There are two main mining areas, one at Thetford Mines and neighbouring towns of Black Lake and Broughton, and the other at Asbestos. The Thetford area was developed by many different companies, but with amalgamation the number has now been reduced to six. At Asbestos, the mining has been carried out since 1952 by one large company which also operates a small factory in the town for the manufacture of mineral asbestos products. There is a small mine owned by another company a few miles away.

Concern for the health effects of asbestos has paralleled growth in its production, and the most available evidence was reviewed fully by Wright in 1969. The first cases of diffuse pulmonary fibrosis after prolonged exposure were noted by Murray in 1907, and by 1930 asbestos was recognized as an important occupational hazard. Controls included since then have reduced considerably the dust concentration to which workers in the mines, mills, and primary members

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McDonald 1971

McDonald's early reports on the Quebec cohort alerted the scientific and medical community to a possible mesothelioma risk from chrysotile.

Yet there was something about the Quebec results that was not fully understood at the time. The authors wrote, "This is probably more than would be expected in a comparable number of deaths in the general population, but quite out of line with the findings of Selikoff et al in insulation workers and those of Newhouse in a London asbestos factory." The magnitude of the difference could be inferred from comparing the percentage of deaths from mesothelioma among the three cohorts (as of this date): 5% of deaths in the Selikoff insulator cohort, 4.5% of deaths in the Newhouse asbestos factory cohort, and 0.1% of deaths in the McDonald Quebec chrysotile/miller cohort. [22 mesotheliomas among 380 deaths] . . ." (McDonald 1971, at 685). Dr. Selikoff's group independently documented that the mesothelioma rate in Thetford Mines, Quebec, although elevated, was "decidedly less" than among insulators. (Nicholson 1979, at 20).

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Dr. Margaret Becklake, an influential pulmonologist at McGill University and the founder of the Respiratory Epidemiology and Clinical Research Unit there, authored a state-of-the-art review article in the American Review of Respiratory Diseases in 1976. In discussing the epidemiology of the association between asbestos exposure and mesothelioma, Dr. Becklake noted that there are important fiber differences in mesothelioma risks, with the greatest risk associated with crocidolite, less with amosite, and apparently even less with chrysotile. She also noted that with amosite and chrysotile, there appeared to be a higher risk in manufacturing than in mining and milling. She noted these were the conclusions reached by the Advisory Committee on Asbestos Cancers at the Lyon, France Meeting of the International Agency for Research on Cancer. (In its report on the Advisory Committee on Asbestos Cancers to the Director of IARC published as part of the proceedings the Biological Effects Of Asbestos Symposium, IARC 1973, the Committee noted that there is evidence for an important difference in risks in different occupations and with the type of asbestos insofar as mesothelioma is concerned, with the risk greatest for crocidolite, less with amosite and apparently less with chrysotile). Dr. Becklake went on to comment on the influence of fiber type and the nature of exposure on biological response:

“Despite the difficulties in making between study comparisons, a consensus has emerged, outlined in a carefully reasoned paper by Kleinfeld (1973), and in the conclusion of the Advisory Committee on Asbestos Cancers (IARC, Biological Effects of Asbestos of Cancer 1973), It is believed that there are gradients in the mesothelioma-producing potential, related to fiber type (greatest with crocidolite, less with amosite, and with chrysotile, least with anthophyllite) and to occupation (e.g. for amosite, greatest in insulation workers compared to miners). Gradients and fibrogenic capability of the different fibers, less clear, may also be present, with crocidolite leading chrysotile whereas gradients in lung cancer risk may be more closely related to the nature of the exposure with production leading mining, at least for chrysotile.” (*Id.* at 216).

It would require more study over the coming decades to appreciate the role of veins of tremolite and other minerals that occurred in proximity to the chrysotile deposits and resulted in so-called contaminated chrysotile that was significant in assessing certain mining and milling populations.

The 1970s were also a time of substantial experimental work. Although some animal studies occurred in the 1960s, and additional work has continued to be done, the 1970s were a time of considerable animal experimentation.

Animal studies and biological experimentation are informative, but are not necessarily reliable guides for determining the timing of the process that results in asbestos-related diseases in humans. The asbestos inhalation animal studies conducted in the 1970s and 1980s typically examined the effects of exposure to asbestos that was orders of magnitude higher than the level of exposure for even the most highly exposed workers. Such studies may not even be useful in demonstrating how the lung will eventually react to extremely high cumulative asbestos exposures because they involve the breakdown of clearance mechanisms as a result of lung overload associated with high extremely lung fiber burden. In fact, even as late as 2011, “few

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inhalation experiments exist at non-overloading concentrations using particle and fiber mixtures.” (Mossman, 2011 at page 83). Consequently, animal inhalation studies conducted historically have little or no value in determining how the lung will react to more realistic exposure levels experienced by humans, because exposure at such high levels will make the lung defense mechanisms completely ineffective (i.e., lung overload). Indeed, the purpose of using such high doses is to overwhelm those defense mechanisms immediately so that researchers can study the effects of asbestos without waiting for years to see those results.⁵

Nevertheless, for policy reasons, animal studies thus figured prominently in early public health agency statements warning of a risk of mesothelioma. For example, IARC’s explanation of its initial classification of asbestos as a Group 1 carcinogen began with the statement “all types of commercial asbestos that have been tested are carcinogenic” in animal experiments.⁶

Early Animal Studies Wagner 1974

Br. J. Cancer (1974) 29, 252

THE EFFECTS OF THE INHALATION OF ASBESTOS IN RATS

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Received 9 September 1973. Accepted 10 October 1973

Summary.—Two experiments in which SPF Wistar-Kyoto rats were exposed to dust clouds of the ILO standard reference dusts, amosite, crocidolite, and chrysotile, were described. All the rats which continued to progress after removal from exposure were examined at the end of the study. In experiment 1, only a few adenomas and none of the tumours which metastasized, 16 occurred after exposure to amosite, 16 occurred after exposure to crocidolite and 4 with Canadian chrysotile, with only one rat dying of asbestosis. The adenomas and lung tumours.

WAGNER, Berry and Timbrell (1972) reported the results of experiments in which rats were inoculated intraperitoneally with samples of asbestos. In the discussion it was mentioned that two experiments in which rats had been exposed to dust clouds of the ILO standard reference dusts had been carried out, and the results of these are now presented. Some preliminary results of one of these experiments were reported by Wagner (1972). In both experiments the rats were exposed to similar dust concentrations and the dose varied by exposing rats for various lengths of time. The main aim was to establish the relationship between the development of malignant tumours in the lungs and the dose and type of asbestos dust. In addition, the amount of fibrosis was assessed.

MATERIALS AND METHODS

Commons derived rats of the Wistar-Kyoto strain were used which had been bred at the Unit from SPF stock given to us by the Imperial Chemical Industries, Pharmaceutical Division at Alderley Edge, Cheshire in 1964 and 1965.

Inhalation experiments with rats produce mesotheliomas after amosite, crocidolite, and chrysotile exposures in heavy concentrations.

But only Canadian chrysotile produced rat mesothelioma, not chrysotile from Rhodesia (no tremolite).

If anything, the animal experiments of the 1970s and 1980s help us understand how the body’s defenses are able to deal with low-dose exposures without inducing the kinds of biological reactions that increase risk of disease.⁷ Thus, high-dose animal studies support the proposition that no harmful events occur despite some amount of fiber burden in the lung.

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The limited causal inferences possible from animal studies is demonstrated in the writings of Dr. Wagner. He recognized fairly early the relatively low hazard presented by chrysotile, which was further supported by the detection of no mesotheliomas in rats after exposure to Rhodesian chrysotile with no tremolite asbestos. (Wagner, 1971; Wagner, 1974). Notwithstanding the results of his rat studies (including his 1974 rat study), he ultimately concluded that chrysotile fibers do not cause mesothelioma. (Wagner 1991, at 402). Not only were the animals exposed to used concentrations of chrysotile that resulted in lung overload and, therefore, artificially created results including cancer, the concentration of dust in these early animal inhalation studies was initially measured in mass and it was not until Dr. Davis published in the late 1970s that for an equal mass, there was a much greater concentration of chrysotile fibers. This meant that the early experiments which found roughly similar numbers of cancer in animals exposed to commercial amphibole versus chrysotile for an equal mass of exposures did not actually dose the animals with a similar concentration in fibers per cc. (Davis, 1978). Another of the early animal researchers, Dr. Craighead, wrote in 1989, “there is no good evidence that ‘pure’ mineral chrysotile specifically causes the tumor.” (Craighead 1989). Later in this report, I identify and discuss significant animal studies that have been published.

The 1970s was also a decade of further developments in epidemiology. Studies were appearing suggesting that chrysotile was not as dangerous as other forms of asbestos. As one early researcher put it, the risks of chrysotile in product manufacturing appeared to be minimal consistent with what was known about the greater danger of the amphiboles, although there was still a “dearth” of data. (Weiss 1977). Data would continue to accumulate in the coming decades.

The 1980s: Differences in Fiber Type Potency Begin to be Understood

More data became available in the 1980s. Among the studies published in that decade was a 1982 report by Acheson which looked at two groups of women who manufactured gas masks during World War II. One group primarily used crocidolite while the other used chrysotile. Acheson found that the group working at the crocidolite factory suffered from an excess rate of mesothelioma, while those working at the chrysotile factory did not.

Two Factories in Lancaster County, England

Leyland

Blackburn

Acheson 1982: Women who made gas masks from chrysotile and crocidolite

British Journal of Industrial Medicine 1982;39:366-380

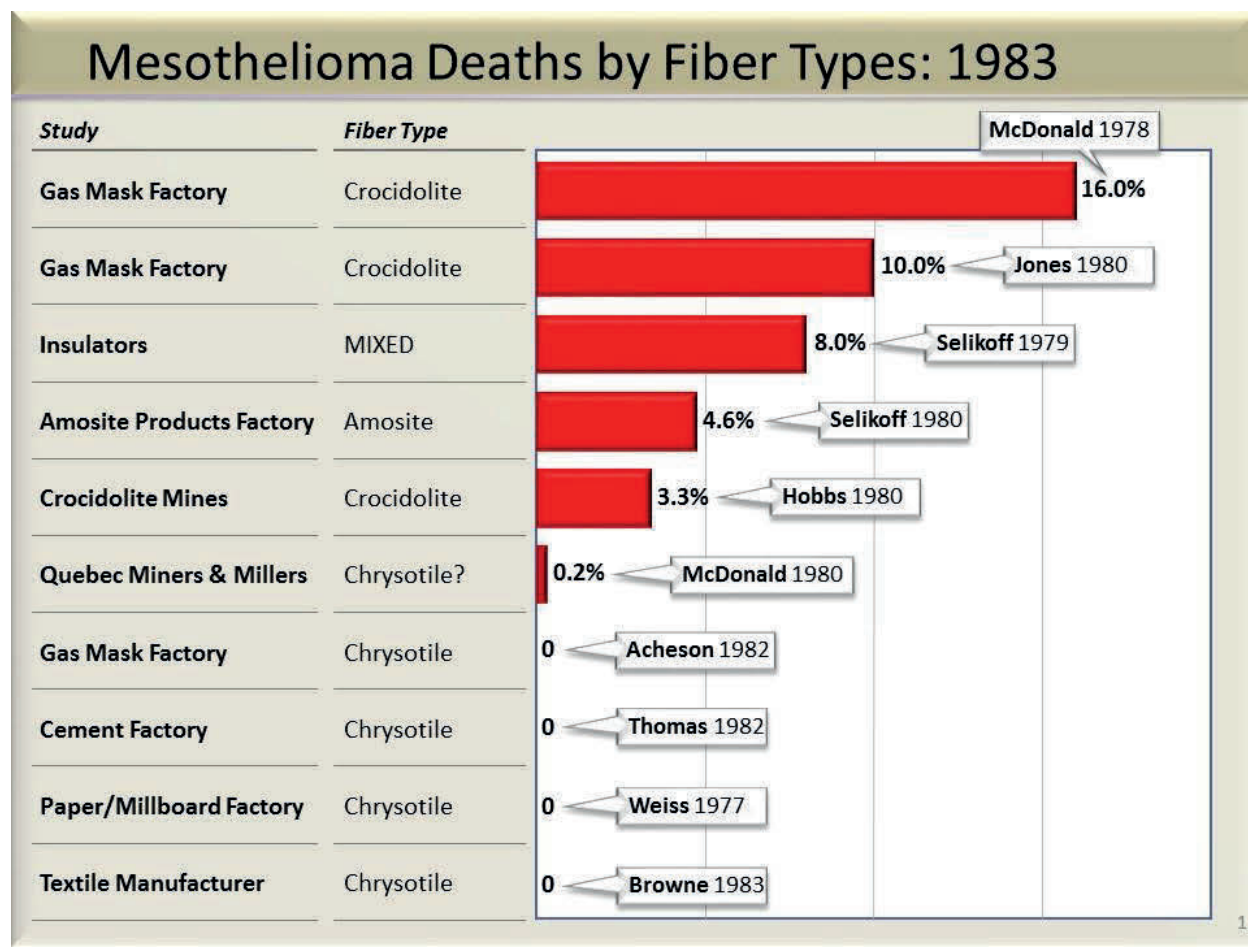
Mortality of two groups of women who manufactured gas masks from chrysotile and crocidolite: a 40-year follow-up

J D ACHESON, M J GARDNER, E C FORD, and J ACHESON

Abstract: Two groups of women were exposed to asbestos in the manufacture of gas masks in Lancashire between 1942 and 1945. One group was exposed to chrysotile and the other to crocidolite. The study was designed to assess the mortality of these two groups of women. The results show that the mortality of the crocidolite group was significantly higher than that of the chrysotile group. The probable explanation for the differences between Leyland and Blackburn lies in the different nature of the exposures in the two factories. The most obvious difference was that at Leyland crocidolite was the principal type of fibre."

Acheson, Mortality of two groups of women who manufactured gas masks from chrysotile and crocidolite asbestos: a 40-year follow-up, Brit J Indust Med (1982)

By 1983, a clear pattern was emerging. Mesothelioma deaths were associated with amphibole exposures. The following chart shows the percentage of deaths that could reliably be attributed to chrysotile and to amphiboles in studies available at that point.



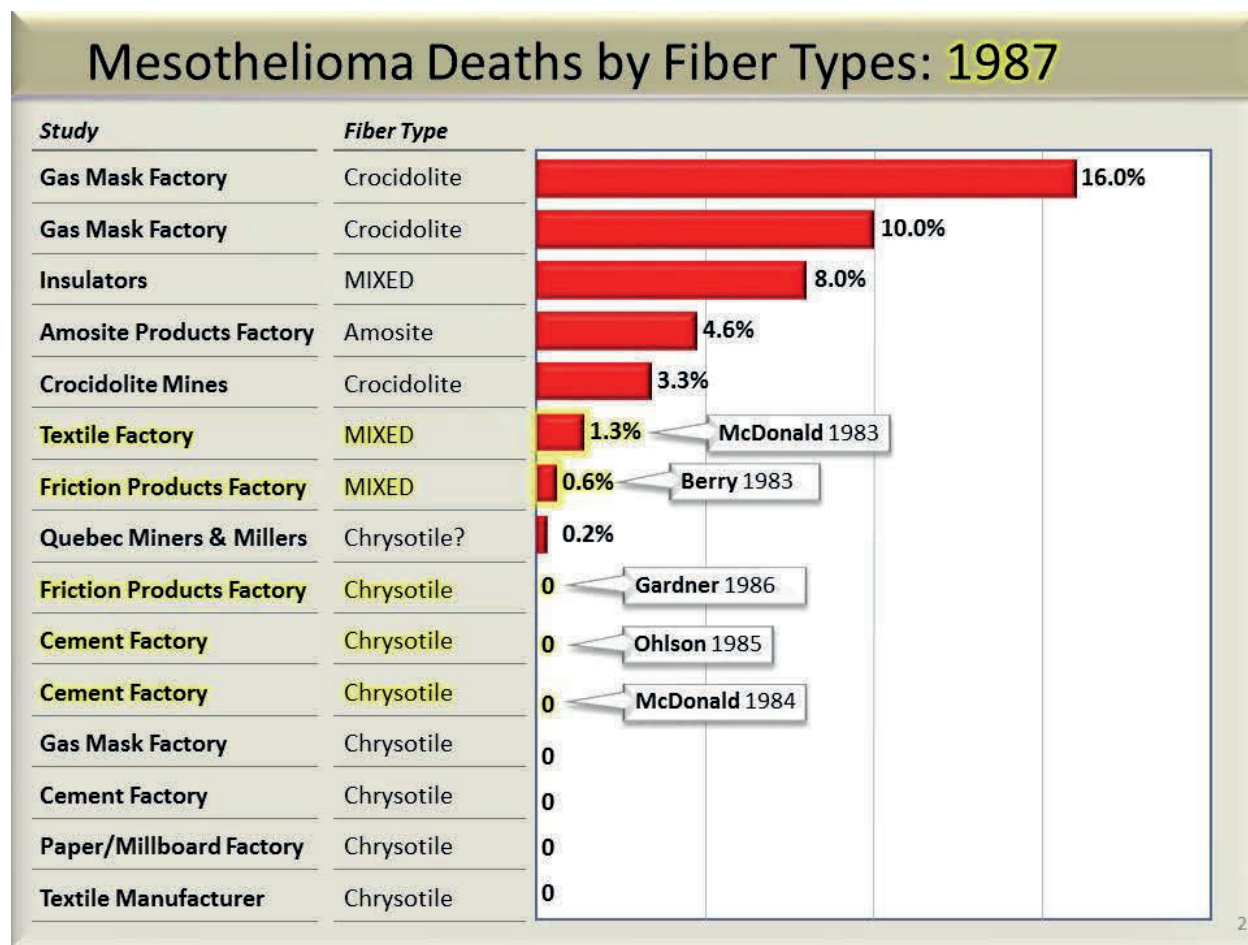
The mixed exposure of the insulators in the Selikoff cohort of insulation workers was to amphiboles and chrysotile. As discussed elsewhere in this report, many pipe covering products contained amosite, and spray insulation often contained crocidolite or amosite. In the Thomas study, the authors identified two pleural mesotheliomas, but attributed them to crocidolite use that had ceased in 1936, and suggested their “reassuring” findings were consistent with studies suggesting that chrysotile “may not be a serious hazard so far as mesothelioma [is] concerned.” (Thomas 1982, at 273, 275). The Browne study reported on five British manufacturing plants. All mesotheliomas (74 peritoneal, 66 pleural, and 4 undetermined) occurred in plants using amphibole asbestos. No mesotheliomas occurred in Plant E, which used only chrysotile. (Browne 1983).

The developing trend of the studies was characterized by the authors of a report on 13,460 workers in a British friction materials factory. Eleven pleural mesotheliomas were reported, but were attributed to periods when crocidolite was used in the factory or could not be attributed to chrysotile only. The authors concluded their report by referencing the Thomas study cited above and observing as follows: “The study reported in this paper, together with that at the asbestos cement factory, show that chrysotile was used in manufacturing industry with no detectable effect on mortality during a period when workers in factories processing amphiboles were

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experiencing high excess mortality due to lung cancer, mesothelioma, and other cancers.” (Berry 1983, at 7).

As the decade progressed, additional studies of mining and manufacturing populations appeared. Thus, by the late 1980s the pattern was becoming even clearer, as shown in the following chart.



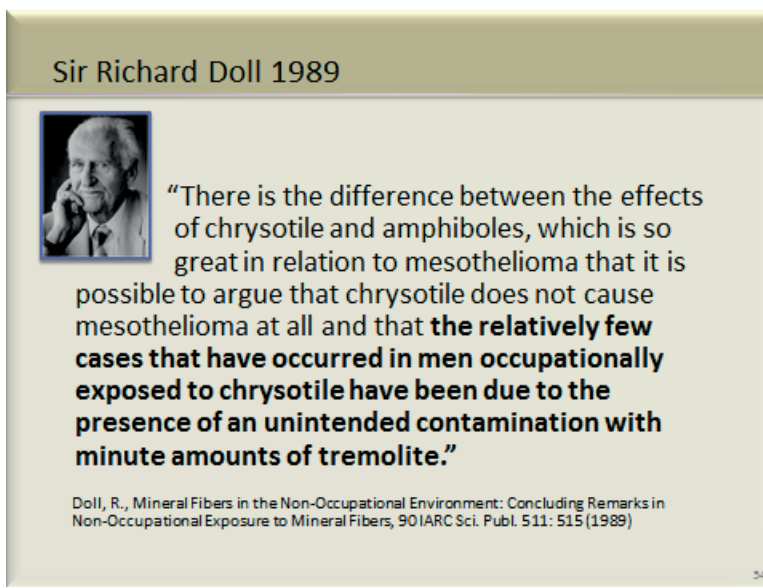
The McDonald 1983 study reported on a South Carolina textile plant that was located within a few hundred meters of the U.S. Naval Base in Charleston, South Carolina, which was very active leading up to and during WWII, with 1359 vessels worked on at the shipyard during the war years. (McDonald, 1983; Bernstein 2013). Additional studies about that plant by Dement in 1983 and 1994 and Hein in 2007 are discussed in a later section of this report. McDonald identified one mesothelioma, a peritoneal case in which there had been no autopsy.⁸ The study reports that less than 2,000 pounds of crocidolite was used annually from the early 1950s until 1972. Ohlson (1985) was a Swedish study concluding that 10 to 20 fiber years of exposure to chrysotile appeared not to increase risk of disease.

In 1985, Dr. Wagner received the Charles S. Mott Prize, considered one of the most prestigious awards in cancer research, and in his speech, among other things, he emphasized the importance

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of assessing the significance of the selective retention of fibers and hypothesized that the diseases associated with exposure to mineral fibers are due to the fibers that are retained in the lungs, citing Dr. Pooley's continuing development of "more and more sophisticated methods for identifying, quantifying and measuring fibers in tissue." (Wagner 1986 at p. 1906). Dr. Wagner noted that this is particularly relevant where the significant mineral or minerals retained in the lungs have not been recorded or are a minimal fraction of the dust samples – such as in the chrysotile miners and millers. While acknowledging that research continues, he concluded that "evidence points to exposure to the amphiboles, or material containing amphibole, as being more hazardous than exposure to uncontaminated chrysotile fibers." (Wagner 1986 at p. 1911).

Sir Richard Doll, the foremost epidemiologist of the twentieth century, best articulated what the studies were demonstrating in a 1989 publication, *Mineral Fibres in the Non-Occupational Environment: Concluding Remarks* at the International Agency for Research on Cancer Research ("IARC") in Lyon, France. He postulated that the difference in fiber type potency was so large that a case could be made that chrysotile did not in fact cause mesothelioma.



The 1990s: Differences in Fiber Type and Size Potency Further Elucidated

The view on chrysotile as the 1990s began can further be understood from Dr. Wagner's report to an international conference in 1990. He expressed that using the term "asbestos" for both amphiboles and chrysotile had regrettably led to confusion in assessing the potential of each to cause disease.

There are as we all know, a group of fibrous minerals that can be split longitudinally and have commercial uses. These are chrysotile, crocidolite, amosite, tremolite/actinolite and anthophyllite. The term "asbestos" was originally used for chrysotile. If this had been maintained and the other materials referred to as the amphibole fibres, the present confusion in assessing the risk hazard would not have occurred. In the amphiboles the risk hazard depends on the ultimate length diameter ratio of the fibre and this has been clarified with the

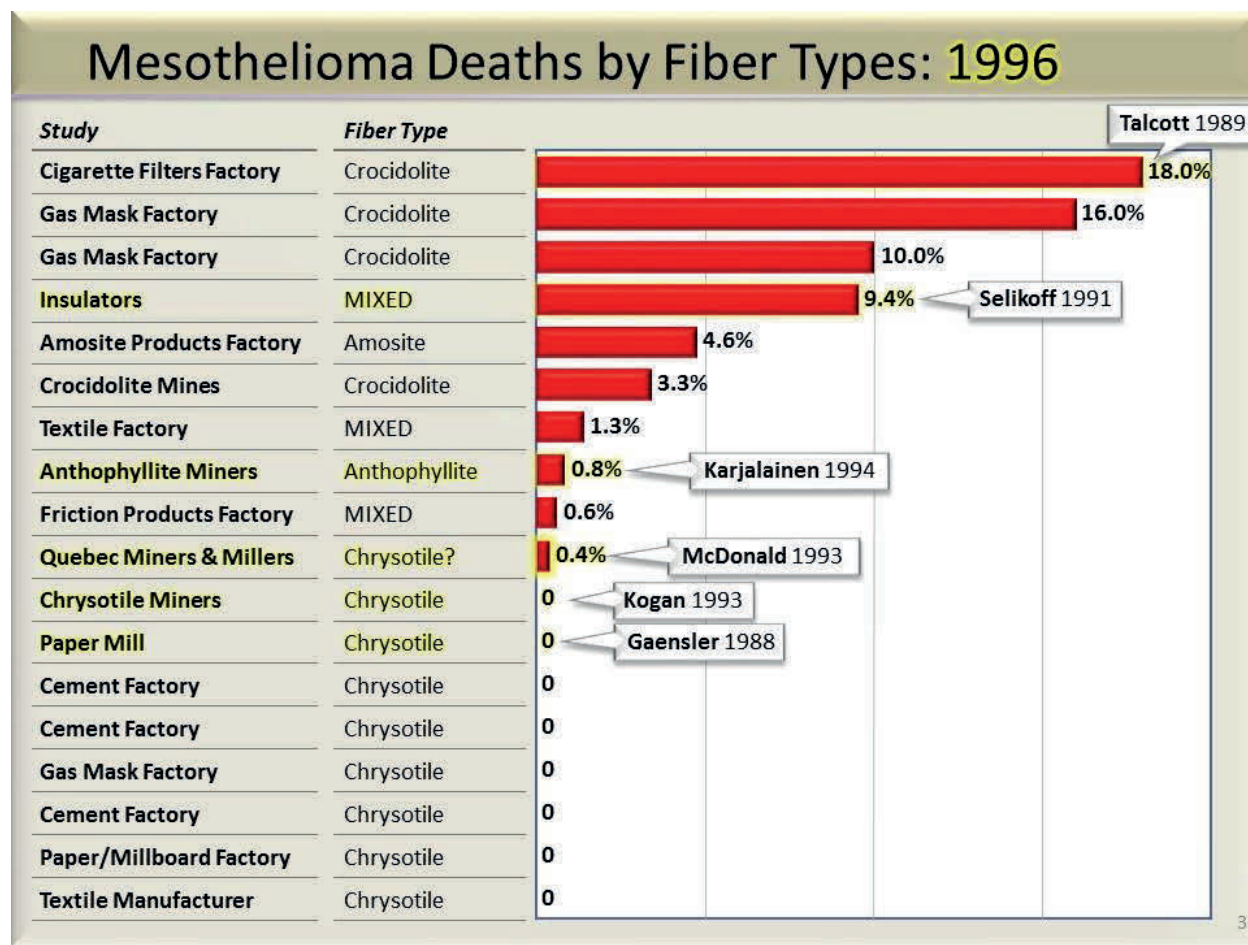
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studies of the biological effects of tremolite, an amphibole with a widespread occurrence in the earth's crust, usually as a contaminant of chrysotile, talc, anthophyllite, and other minerals. . . . The present opinion is that exposure to chrysotile has a much milder effect than the amphiboles, and that the association with mesotheliomas is minimal. (Wagner 1990, at 23).

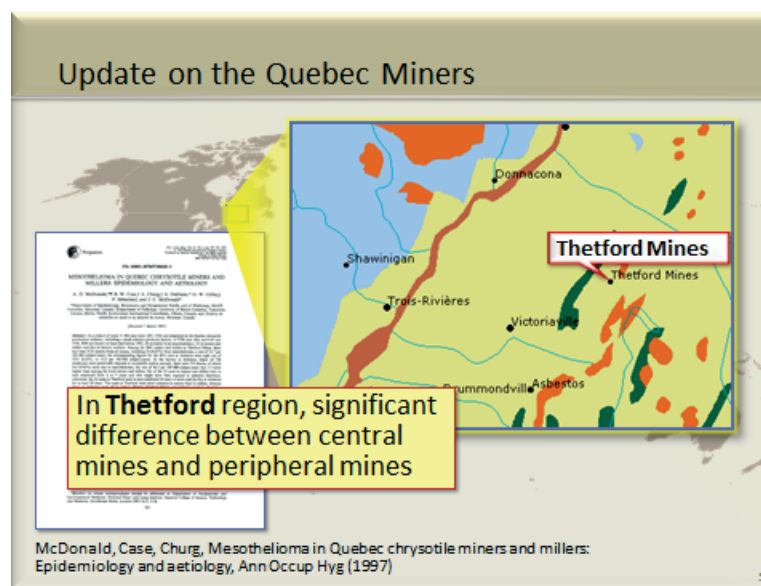
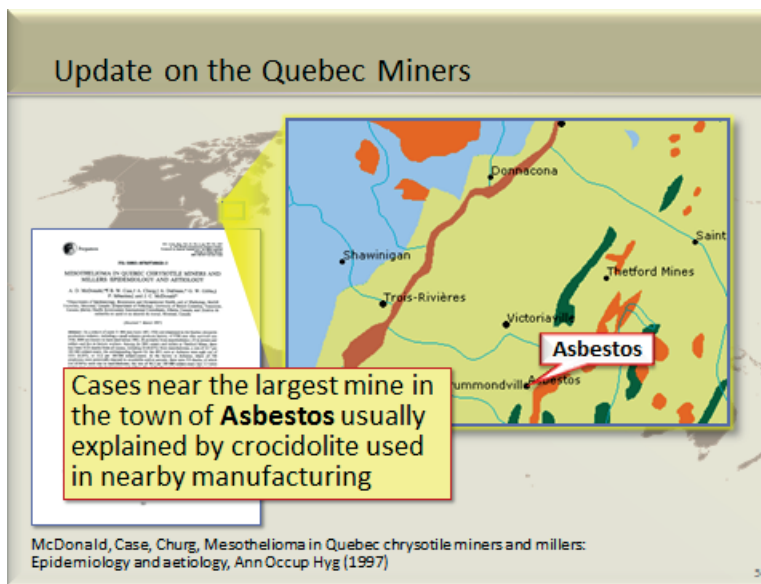
In a 1991 article Dr. Wagner explained that crocidolite is the most potent form of asbestos in causing mesothelioma, that amosite appeared less potent, and that tremolite was also an established cause. He wrote about tremolite contamination of chrysotile leading to some cases (a reference to mining studies), but commented on the paucity of evidence for chrysotile causation.

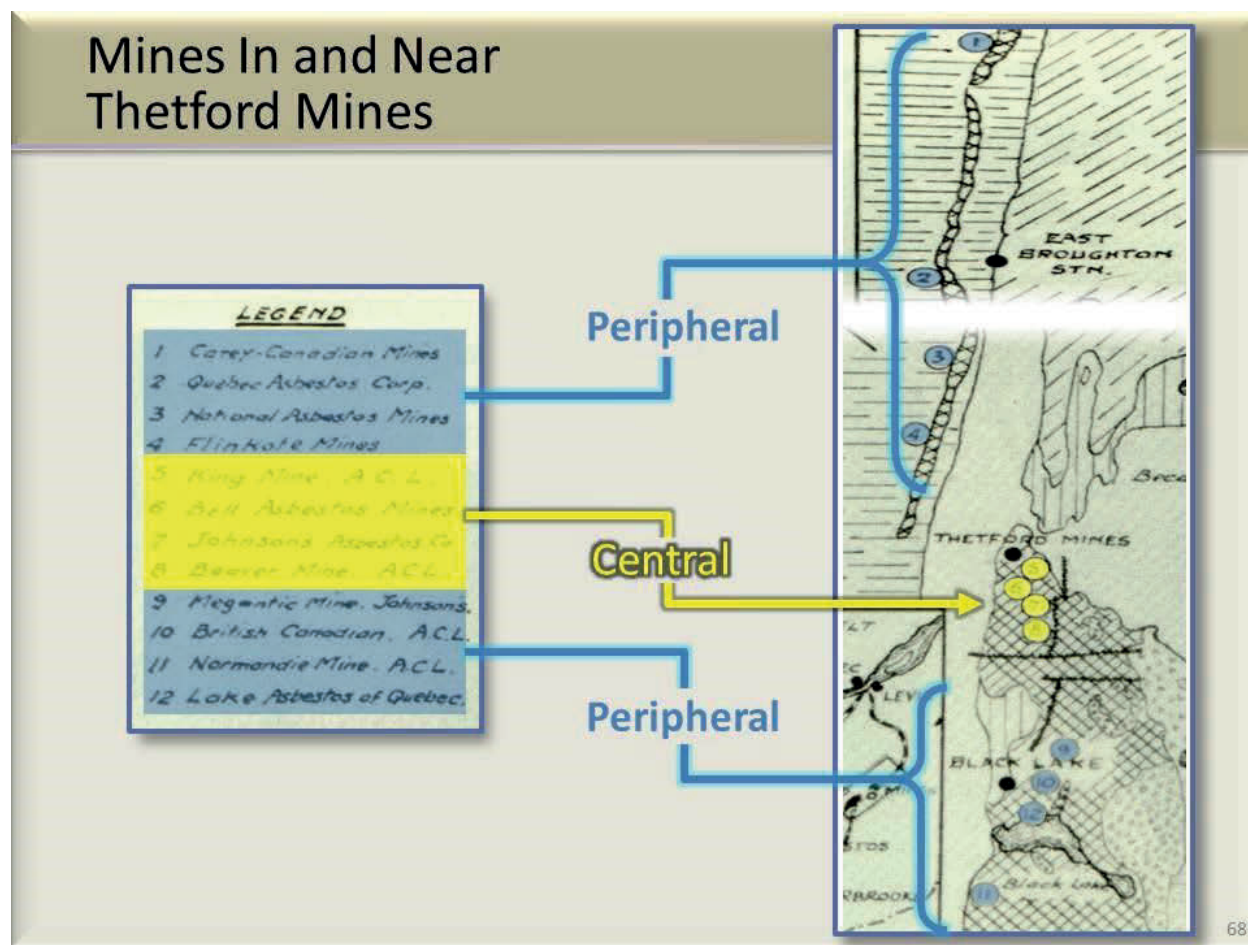
There have been cases due to exposure to tremolite, and the closely related fibers actinolite and richterite. In most cases tremolite usually occurs as a contaminant of chrysotile, and more rarely with vermiculite and talc. There is no clear evidence that exposure to uncontaminated chrysotile or anthophyllite is associated with these tumours. (Wagner 1991, at 402).

As the 1990s progressed, researchers acquired more data confirming the fiber type differences. Crocidolite used in paper and cigarette filter manufacture was shown to cause a very high proportion of deaths. (Talcott 1989). Moreover, as with the Acheson gas mask study, scientists continued to note high rates of mesothelioma among amphibole-exposed workers and an absence of mesothelioma among workers performing the same tasks in factories that used chrysotile. (Gaensler 1988, Jones 1996, McDonald 2006). In the 1990s the Selikoff insulator cohort was also updated showing that the death rate was approaching 10% as the insulators aged. It was clear that the amosite-containing insulation products that they had used were responsible for the high death rate.



In 1996, the focus of the historical development of knowledge turned back to Canada. As mentioned previously, McDonald raised questions about chrysotile in the 1970s with his report of an excess rate of the disease in the Quebec Mining population. The McDonald group continued to follow the cohort through the 1990s. By then it was clear why the overall mesothelioma rate had been so much lower. The cases creating an excess mesothelioma rate correlated either with work in factories where amphiboles were also processed (as for military gas masks which had to be crocidolite to meet UK requirements in World War II), or they arose at an elevated rate in the central mines of the town of Thetford Mines. The following graphics illustrate the findings of these studies.





McDonald, McDonald: Chrysotile, Tremolite and Carcinogenicity. Ann Occup Hyg 1997

"In the peripheral mines, there was little or no evidence of increased risk for any of the five cancers [including mesothelioma]. The hypothesis that, because of the difference in distribution of fibrous tremolite, cancer risks in the central area would be greater than in the periphery was thus substantiated."

McDonald, Case, Churg, Mesothelioma in Quebec chrysotile miners and millers: Epidemiology and aetiology, Ann Occup Hyg (1997)

What made the central mines unique was its relatively high tremolite level. The excess risk arose only in the central mines, not the peripheral mines. (McDonald 1997).

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Significantly, fiber burden content of Canadian chrysotile miners and millers showed that levels of tremolite were an order of magnitude higher than found among the users of products from asbestos and that chrysotile and tremolite levels do not correlate with mesothelioma even in end users with heavy exposure. (Churg 1994). Churg further demonstrated that a considerably greater burden of chrysotile contaminated with tremolite than of amosite or crocidolite is required to produce any particular disease by comparing the lungs analyzed from the Quebec miners and millers and the Pacific Northwest shipyard workers and insulators. Specifically for mesothelioma, the difference is almost 200-fold between chrysotile plus tremolite versus amosite (see Table below adapted from Table 9.10 of Churg 1998). These findings support the epidemiological data demonstrating that chrysotile is a much weaker mesothelial carcinogen than other fiber types. (Churg 1998).

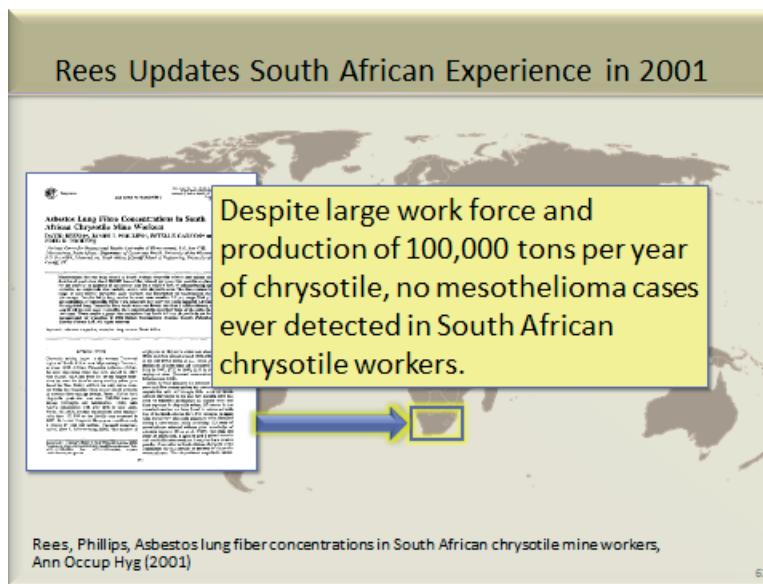
<u>Geometric Mean Fiber Concentration by Disease in Workers with Heavy Amosite or Chrysotile Exposure</u>			
	Chrysotile Miners and Millers		Shipyard Workers and Insulators
<u>Disease</u>	<u>Chrysotile</u>	<u>Tremolite</u>	<u>Amosite</u>
Asbestosis	30	140	10.0
Airway Fibrosis	27	120	4.30
Mesothelioma	34	180	0.90
Pleural Plaques	15	75	1.40
Lung Cancer	13	49	1.10
No Disease	2	9	0.70

Values as millions of fibers per gram of dry lung.

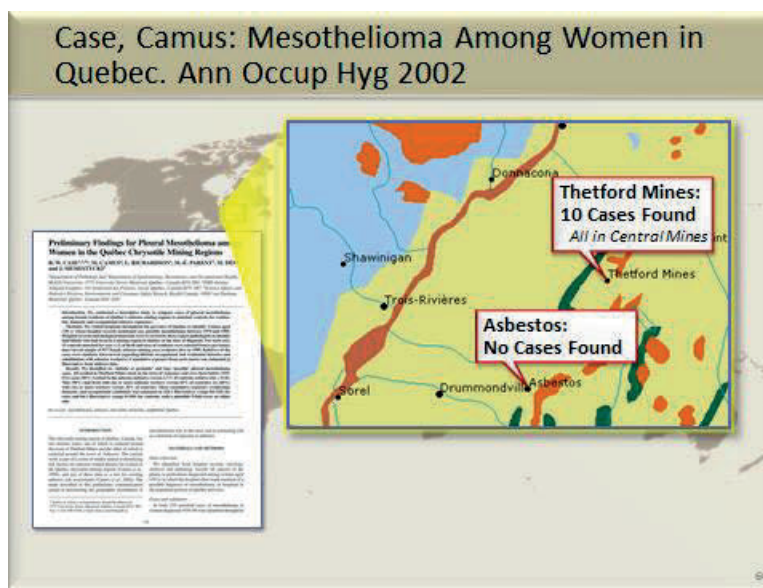
The 2000s: Quantification of Fiber Potency

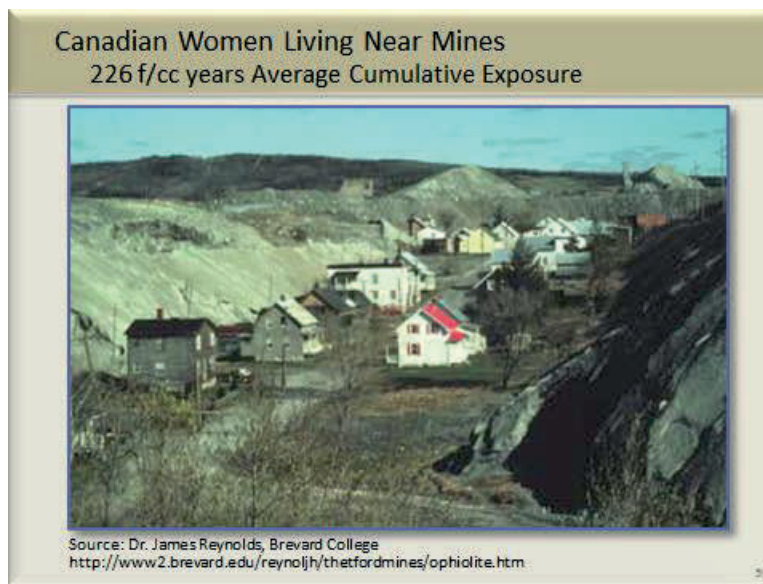
Significant new information published in this century has further demonstrated the low likelihood that chrysotile fibers cause human mesothelioma.

In 2001, Rees found no cases of mesothelioma among South African chrysotile miners despite the fact that industry produces 100,000 tons of chrysotile in that region. The lack of mesothelioma cases in this cohort was thought to be due to the fact that the chrysotile mine was not known to be contaminated with tremolite. Similarly, a 2008 review of mesothelioma in South Africa reported similar findings. (White 2008). A 2012 publication updated this analysis, and reported similar findings. “South Africa, despite the substantial output and large numbers exposed, mesothelioma attributable to exposure to chrysotile-only has not been convincingly documented.” (Phillips 2012).

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In 2002, Camus and Case found 10 cases of mesothelioma among women in the mining region of Quebec, Canada. None of these cases occurred near Canada's largest chrysotile mine in the town of Asbestos; rather, all occurred in women who were living near the central mines in the town of Thetford Mines. (Case 2002, Camus 2002). Significantly, although both areas have tremolite contamination and massive exposures in the population near the mines (reporting a mean cumulative exposure of 226 f/cc-years (range 84-525 f/cc-years)), the central mines have an unusually high tremolite level, some seven times higher than the levels in the town of Asbestos. (Begin 1992; Case 2002). Thus, it appears that both high exposure and high tremolite levels are necessary to cause an increased rate of mesothelioma in chrysotile-exposed populations.



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The study published by McDonald in 2004 of the Libby amphibole cohort provided additional evidence that amphibole contamination of certain chrysotile deposits was the likely cause of a low rate of mesothelioma in chrysotile miners and millers. McDonald, et al. found that vermiculite miners exposed to Libby amphibole fibers as a contaminant of the vermiculite deposit had significantly elevated deaths from mesothelioma—4.21% of deaths versus .4% of deaths among Quebec chrysotile miners and millers (Liddell, 1997) providing further evidence that amphibole fibers (tremolite in particular) are likely to be disproportionately responsible for cancer mortality among persons exposed to high cumulative exposures to commercial chrysotile.

The animal studies appearing in the 2000s are also consistent with the epidemiology showing the lack of mesothelioma-causing potential from low-dose chrysotile exposure. For example, a 2008 study by NIOSH scientists sums up the literature as follows: “The lack of pathologic findings with low-dose exposure is consistent with other studies of chrysotile exposure in animals. In several recent studies, rats exposed to chrysotile fibers at higher doses than in the present study produced no pathology.” (Stettler 2008, at 69).

The 2000s also brought further elucidation of the causal mechanisms related to mesothelioma, although the exact processes that lead to mesothelioma are not yet fully understood.⁹ Asbestos causes DNA damage, which ultimately can lead to cellular release of mutagenic reactive oxygen species (ROS) and nitrogen oxygen species (NOS). (Xu 2002, Destro 2006). “The mutagenic effect of asbestos fibers at low doses is still unknown.” (Huang 2011, at 226).

There is now little disagreement that asbestos can induce genetic mutations and that these mutations do not cause cancer in a single step (or injury) but rather in multiple steps through a biological pathway. Given the long latency period of mesothelioma (and all asbestos-related diseases), these multiple steps take many years to occur, in some cases as long as 50 years. These steps, as in non-malignant disease, are not necessarily put into motion as a result of each and every cell contact with an asbestos fiber, but rather only when the normal inflammation

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and repair process becomes disrupted. The exact reason why an aberrant (i.e. cancerous) pathway is initiated is not entirely understood, but it is safe to opine that it does not happen with every cell injury due to every asbestos inhalation. If this opinion were not true, even background exposure to asbestos (which is common in the general non-occupationally exposed population) would regularly lead to cancer development in the broad population, an occurrence that does not happen.

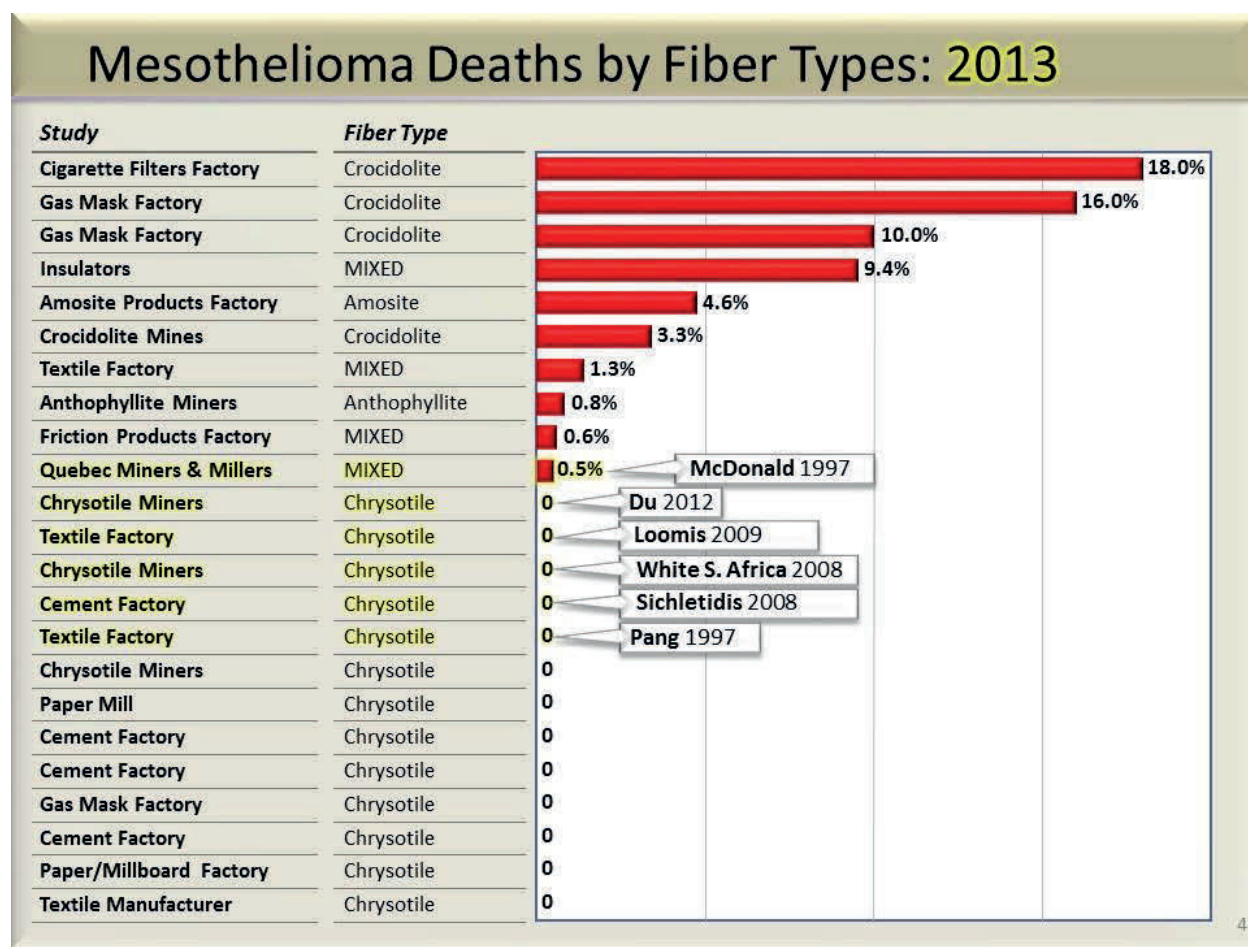
The differences in fiber type potency support the notion that not every fiber should be viewed the same way when assessing risk for human disease. Instead, dose and fiber type (among other factors) should be carefully considered when determining whether there is, or was, a potential for a harmful effect from a given exposure. There is now a significant body of literature characterizing the differences in pathogenic potential between the asbestos fiber types.¹⁰

In short, it has become clear over the last several decades that chrysotile fibers do not contribute to mesothelioma risk. It is well accepted that amphiboles, whether alone or as contaminants at a high level, are the cause of mesothelioma.

The Current Status of Knowledge on Mesothelioma Causation

The Risk Correlates to High Amphibole Exposure:

Mesothelioma risks appear only when significant amphibole exposure occurs. A summary of relevant studies in mining and manufacturing contexts appear in the following graphic.



The Loomis 2009 reference¹¹ in this chart represents only the two chrysotile textile plants reported on in this study where no mesotheliomas occurred (“Plant 1 Davidson” and “Plant 2 Charlotte”). Mesotheliomas were reported at two other plants, but confounding amphibole exposure issues exist as to both.¹²

Populations with significant amphibole exposure, such as insulators, have high death rates from mesothelioma. But repeated studies, even in highly exposed chrysotile populations, fail to document an elevated rate of mesothelioma that can reliably be attributed to chrysotile fibers. (Weiss 1977, Thomas 1982, Acheson 1982, Browne 1983, Berry 1983, (and Newhouse 1989), McDonald 1984, Ohlson 1985, Gardner 1986, Gaensler 1988, Pang 1997, Kogan 1993, Rees 1999, Sichletidis 2008, Du 2012, Szeszenia-Dabrowska 2015)

As will be explained below, end user studies of chrysotile friction products further support the lack of potency of chrysotile fibers and make it abundantly clear that low dose exposure to chrysotile products does not cause mesothelioma.

Chrysotile (even when contaminated by tremolite) Has Low Potency

We now have a far more complete picture of mesothelioma causation. Proving a negative is virtually impossible, but—as shown above—many studies report an absence of an elevated mesothelioma rate in cohorts that would be expected to show an elevated rate if chrysotile fibers were a mesothelioma-causing agent. Arguments that pure chrysotile fibers cause mesothelioma rely primarily on case reports, studies without detailed occupational histories, or unscientific analysis. Indeed, the “ability of chrysotile to cause human mesothelioma continues to be debated as epidemiologic studies have not provided definitive results.” (Pass 2019, at p. 1864). These arguments will be addressed in the section of this report discussing the chrysotile causation argument.

For pure chrysotile fibers there is simply no epidemiological study reporting an increased relative risk. Further, chrysotile fibers in gasket and packing materials are encapsulated any exposures associated with gasket or packing removal would be the definition of low-dose chrysotile exposures. For example, Mangold 2006 reported that the “highest average 8-hour TWA concentration measured for workers manipulating asbestos gaskets during this study was 0.030 f/cc (during gasket removal and flange face scraping onboard a naval ship).” Similarly, removing and replacing asbestos valve packing did not exceed 0.016 f/cc. The authors concluded that in most cases, “the concentrations were not distinguishable from ambient levels of asbestos in the ships or the general environment”. (Mangold 2006).

Even when chrysotile is contaminated with tremolite asbestos, a low-dose exposure is not sufficient to cause mesothelioma. In 2012, Finley and coauthors evaluated the exposure-response relationship for tremolite asbestos and mesothelioma in high exposure settings, such as mining, and developed estimates of tremolite asbestos exposure for various product use scenarios. The authors estimated a lowest-observed-adverse-effect level (LOAEL) for mesothelioma of 35-73 f/cc year. They then estimated cumulative tremolite asbestos exposures for a career auto mechanic to be 0.028 f/cc year and non-occupational use of joint compound to be 0.0006 f/cc-year. (Finley 2012).

Also, in this century, sophisticated epidemiological analysis has developed models to assess the relative mesothelioma-causing potential of various fiber types and sizes. The evidence firmly establishes that short structures less than 5, and likely less than 10, microns in length are not potent for causing mesothelioma. (Berman 2008b, ATSDR 2003 and numerous cites therein, Roggli 2015 and numerous cites therein). This is important when considering arguments sometimes made that short fiber chrysotile can “translocate” to the pleura. Short chrysotile particles are ubiquitous, as shown below.

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Asbestos in Everyday Environment

Drinking Water



- **Normally:**
Up to 1 million fibers/liter¹
- **Median:**
32,000 fibers/liter²

1. Exposure to Asbestos from Drinking Water in the United States, Cincinnati, OH, USEPA, Office of Research & Development, EPA-600/1-79-028, 1979.
2. Neuberger, M., et al. Asbestos Concentrations in Drinking Water; Asbestos cement pipes and geogen sources in Austria, Zentralbl Hyg Umweltmed 198:293-306.

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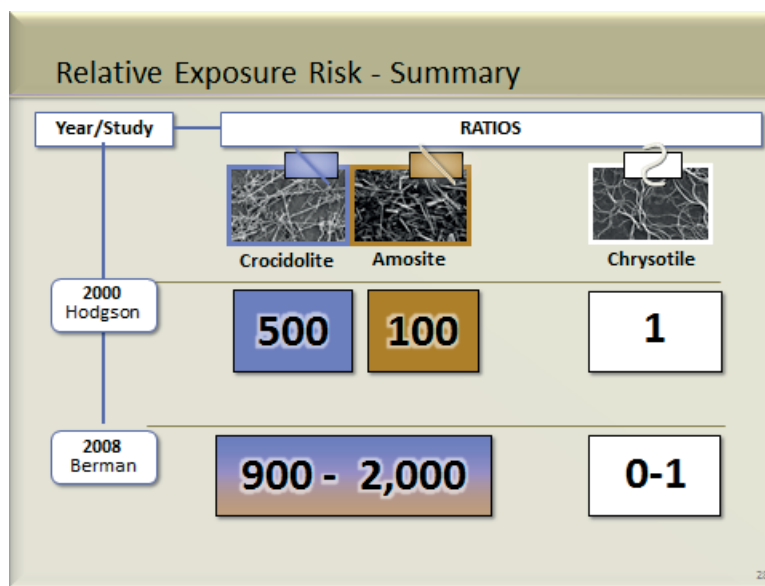
Thus, arguments relying on the presence of short chrysotile fibers in the pleura do not demonstrate chrysotile causation. Studies finding short fibers generally lack controls. Thus, it is not established that the levels reported exceed background. For this and other reasons these studies have been criticized strongly in the literature. (Roggli 2015, Roggli 2014, at 268, Roggli 2004, at 327-28; Churg 1998, at 290).

Modern statistical methods have also allowed scientists to evaluate potency. In 2000, Hodgson and Darnton used models that assume that risks demonstrated in high exposure populations exposed to high tremolite-contaminated chrysotile ores apply to pure chrysotile fibers (an assumption that likely overestimates the risk from pure chrysotile, which again is not a proven cause of human mesothelioma). The theoretical risk thus derived for chrysotile fibers is hundreds of times lower than the potency of amphibole fibers. The Hodgson and Darnton quantitative risk assessment of mesothelioma calculates the relative potency of crocidolite to amosite to chrysotile as 500 to 100 to 1. (Hodgson 2000).¹³

Berman 2008 employed meta-analysis to evaluate the data and reached similar conclusions:

The hypothesis that chrysotile and amphibole asbestos are equally potent was strongly rejected for all metrics. In the metrics examined, chrysotile is estimated as being non-potent for three metrics and 900 or 2,000 times less potent than amphibole asbestos in the remaining two analyses. The hypothesis that chrysotile has zero potency for mesothelioma is accepted for all metrics. (Berman 2008b, at 58).

The following chart summarizes these findings.

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The preceding graphic illustrates the current information on comparative potency, with the important caveat that the chrysotile potency factor assumes that risks demonstrated in high exposure populations exposed to high tremolite-contaminated chrysotile ores apply to pure chrysotile fibers.¹⁴

In 2018, Garabrant and Pastula analyzed mesothelioma mortality in cohorts of workers exposed to crocidolite, amosite, and chrysotile to estimate asbestos fiber potency for mesothelioma using the method of Hodgson and Darnton (2000). The authors relied on the original 17 cohort studies from Hodgson and Darnton in their analysis, along with 3 updates of those studies and 3 new asbestos cohort studies published since 2000. (Garabrant 2018). The authors considered their estimates of relative potency of 1:88:376 for chrysotile:amosite:crocidolite was not appreciably different than Hodgson and Darnton in 2000.

A minimal contribution of commercial chrysotile exposure to the development of pleural mesothelioma is underscored by the report of Hodgson, et al. published in the British Journal of cancer in 2005 estimating the expected burden of mesothelioma mortality in Great Britain from 2002 to 2050. Hodgson along with the research team that included Julian Peto, gave zero weight to chrysotile exposure in either the non-clearance model or the long clearance model utilized to predict the future mesothelioma mortality burden in Great Britain. (Hodgson 2005). Dr. Julian Peto subsequently presented a report at the International Mesothelioma Interest Group Conference in Cape Town, South Africa on the worldwide epidemiology of mesothelioma, noting that “national mesothelioma rates reflect historic amphibole consumption, and show no correlation with chrysotile consumption.” (Peto, 2014). In an even more recent study by a number of researchers, including John Hodgson and Julian Peto from the London School of Hygiene and Tropical Medicine, as well as the British Health and Safety Laboratory, conducted a population based study of pleural mesothelioma patients with occupational histories and measured asbestos lung burdens in occupationally exposed workers and in the general population (Gilham, 2016). Asbestos fibers longer than 5 microns were counted by transmission electron microscopy in lung samples. The researchers calculated a lifetime mesothelioma risk estimated at 0.020% per 1,000 amphibole (amosite and crocidolite) fibers per gram of dry lung tissue. The

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concentration of chrysotile in lung tissue (less than 2% of the counted asbestos fiber) was too low for its effect on risks to even be estimated.

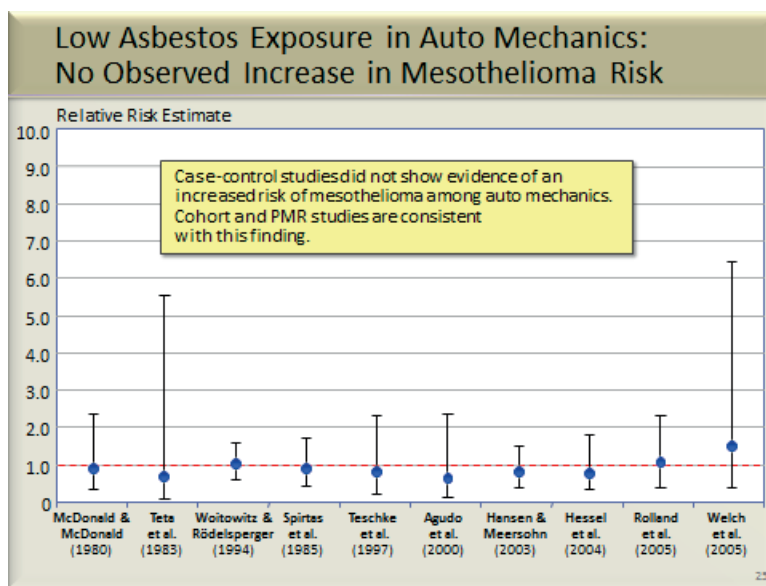
Low-Dose Chrysotile Exposure Does Not Cause Mesothelioma

Substantial study has been directed at determining whether excess rates of mesothelioma occur from use of products made from commercial chrysotile that produce low cumulative lifetime exposures. For example, a 2009 case-control study by the British Health and Safety Executive, which has described itself as “the largest published study of mesothelioma risk in relation to lifetime occupational exposure” (Rake 2009, at 7), reported that work with brakes or gaskets was “not associated with significantly increased risk.” (Rake 2009, at 4).

The products for which low dose exposures have been studied most extensively are friction products. If low-dose exposure to chrysotile end products caused mesothelioma, these friction product studies should have demonstrated an elevated risk. The result is quite to the contrary.

Asbestos has been used in brake linings for many years. Case reports raised concerns that automobile mechanics that performed brake repair may be at increased risk of developing asbestos-associated disease. (Langer 1982). Of course, case reports can merely raise questions. Case-control studies, cohort studies, and other sophisticated epidemiological tools must be employed to determine whether an elevated risk of excess disease actually exists. As one of the authors of an early case report raising concerns later explained, the studies that have examined the issue rigorously have demonstrated that the asbestos fiber release while performing brake repairs is not associated with an increased risk of developing mesothelioma. (Langer 2003).

To constitute an elevated risk, a study must show a risk greater than 1 with a confidence interval that does not include 1. The case control studies of auto mechanics are summarized in the following graphic in which the computed risk is shown with a blue dot, and the confidence interval is displayed as a bracketed line.¹⁵



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The findings of these studies are further corroborated by meta-analysis—a sophisticated epidemiological method for combining data from several studies. In a meta-analysis published by Wong in 2001, the mesothelioma relative risk for automobile mechanics was 0.90 (95% confidence interval 0.66 – 1.23). A similar finding was expressed in the meta-analysis by Goodman in 2004 and again in the updated meta-analysis by Garabrant in 2016.

In other words, the data shows that auto mechanics do not develop mesothelioma at a greater rate than the general population. The data, thus, supports the conclusion that the products they use (including asbestos friction products and gaskets) are not causes of mesothelioma, and that exposures at or below the levels produced from those products are not associated with mesothelioma.¹⁶

Pleural Plaques

The presence of pleural plaques is strongly associated with commercial amphibole asbestos (amosite, crocidolite) in lung tissue, but not with chrysotile or non-commercial amphibole asbestos (Churg 1982; Churg 1993; Churg 1994; Warnok 1982; Dotson 1997).

Asbestos Products Encountered in Various Occupations

I have general knowledge about the types of asbestos products encountered in various occupations. First and foremost, given what science now knows about dose and fiber type, it is scientifically unsupportable to consider all products containing asbestos as having the same potential to cause disease. To quote Irving Selikoff, a pioneer in the study of asbestos and mesothelioma:

It is inadequate to speak now of ‘asbestos workers’. With the growth of asbestos utilization, including rapid multiplication of the number and variety of its applications, it would perhaps be more accurate to categorize workmen exposed to asbestos as ‘asbestos textile workers’, ‘asbestos insulation workers’, ‘asbestos miners’, ‘asbestos mill workers’, ‘asbestos-cement workers’, etc. The different occupations vary widely in important respects; in intimacy, intensity and duration of exposure, in variety and grade of asbestos used, in working conditions, in concomitant exposure to other dusts or inhalants. (Selikoff 1965a, at 139 emphasis added).

Selikoff’s statement is equally applicable today. When you have seen one asbestos-containing product, you have seen one asbestos-containing product, but no more. Rather, the potential danger from an asbestos product depends on its nature and how it is used.

Friable Insulation Products:

As the studies discussed above demonstrate, exposure to friable asbestos products produces disease. The asbestos-mesothelioma association is particularly strong in occupations that involved heavy amphibole asbestos exposure, such as shipyard workers and insulators. In fact, approximately 10% of insulators, the occupation that worked most regularly with these products,

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died from mesothelioma. (Selikoff 1991). What was it that made these products so lethal in causing mesothelioma?

First and foremost, it was their friable nature. They easily produced a fine powder of asbestos fibers. In some circumstances the fiber release could climb into the hundreds or thousands of f/cc. (Harries 1968, Harries 1971a, Harries 1971b). Moreover, these products were not manufactured with encapsulating materials that would adhere to liberated fibers and diminish both their ability to remain airborne for long periods and their capacity to defeat the defenses of the body's upper respiratory system. Without encapsulates that would have caused the long fibers to tumble, they could instead join the laminar flow by maintaining a narrow aerodynamic diameter despite their length. In short, the massive exposures from these products were capable of overwhelming the body's defenses.

For example, samples collected in the British naval shipyard showed an average concentration of 226 f/cc for sprayed crocidolite asbestos and 419 f/cc during removal of pipe lagging. (Harries 1971a, at 237-38). Samples reported in 1968 are as high as 1,040 f/cc for "removal of amosite sections" and as high as 1,906 f/cc for removal of [crocidolite] sprayed asbestos. (Harries 1968, at 139).

Secondly, many of the friable pipe-covering and insulating products were made from the amphibole forms of asbestos. As discussed in the section of this report dealing with fiber type, amphibole asbestos is a proven potent cause of mesothelioma. Amosite is the most common fiber type associated with mesothelioma among United States workers due in part to its incorporation into insulation. (Roggli 2004, at 108, Roggli, 2002, Pavlisko 2014, at p. 85).

Discussion of Animal Studies

A 2009 study published by NIOSH scientists is helpful in understanding what animal inhalation studies on the whole demonstrate about the low-dose chrysotile exposure issue.¹⁷ The NIOSH scientists write: "The lack of pathologic findings with low-dose exposure is consistent with other studies of chrysotile exposure in animals. In several recent studies, rats exposed to chrysotile fibers at higher doses than in the present study produced no pathology." (Stettler 2008, at 69).

Similarly, a recent study summarizing the pathological response stated: "Following such exposures, chrysotile asbestos produces neither a pathological response in the lung nor in the pleural cavity at doses up to 5000 times the US TLV for chrysotile." (Bernstein 2013, at 163). Thus, on the whole, the animal literature corroborates the view that low-dose chrysotile exposures do not cause mesothelioma.

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The following chart identifies some of the significant animal inhalation studies that have taken place. Others are discussed in the footnotes.

Study	Species/Mode	Results
Wagner 1974	Rats ¹⁸	Crocidolite: mesothelioma after 1 day of exposure. Amosite: mesothelioma after 1 day of exposure Rhodesian (Zimbabwe) Chrysotile (UICC A): no cases after two years of exposure (longest period of exposure) Canadian Chrysotile (UICC B): mesothelioma cases only after one year of exposure.
Reeves¹⁹ 1974	Rabbits Guinea pigs Gerbils Mice Rats	Chrysotile exposure at a mean of approximately 47.9 mg/m ³ , 16 hours per week for two years produced one mesothelioma in rats, but no cases in other animals.
Wagner 1980	Rats ²⁰ Inhalation	SFA Chrysotile: one case after 3 months Chrysotile Grade 7: no cases after one year Canadian Chrysotile (UICC B): no cases after one year
Barry 1983	Rats	Rats were exposed to 9 mg/m ³ (a massive dose) of grade 4 chrysotile for 1 hour, for 7 hours, for 7 hours per day for 5 days, or for seven hours per day, 5 days per week for 3 months, with fibers reaching epithelial, interstitial and the endothelial compartments of the alveolar tissue after 7 hours of exposure and no inflammatory reactions observed after inhalation for 1 hr, 1 day or 5 days.
Platek 1985	Monkeys Rats	A NIOSH study in which rats and monkeys were exposed for 7 hours per day, 5 days per week for up to 18 months to 1 milligram of short chrysotile per cubic meter of air. ²¹ Rats were studied and compared to nonexposed rats at 1, 3, 6, 12, 18, and 24 months after exposures started; monkeys' lungs were biopsied 28 months after initial exposure. After 18 months of exposure, no statistically significant differences in histochemical data [chemical analyses of lung tissue for markers of cell damage and fibrosis] were seen between the exposed and control groups of rats, and no compound-related [i.e., asbestos-related] lesions, including fibrosis, were observed. Histopathologic evaluation of the lung biopsy tissue showed the presence of asbestos bodies adjacent to the terminal bronchioles of the asbestos-exposed monkeys and there were no observed fibrosis in pulmonary tissue. Although the rats in this study had to be killed for examination, the monkeys' lungs were biopsied and the monkeys were maintained for future observation (see Stettler 2008 below).
Muhle 1987	Rats	After inhalation exposures of one year, no mesotheliomas among rats exposed to Calidria asbestos.

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		In a parallel intraperitoneal injection study, abdominal cavity tumors recorded by the different fibers tested (would decrease in frequency): Canadian chrysotile > crocidolite > glass fiber > Calidria chrysotile = saline > titanium dioxide (granular controlled dust). Accordingly, the observed tumor rate after peritoneal injections of 0.5 mil of Calidria chrysotile was equal to that observed with saline. ²²
Goldstein 1990	Baboons	After “relatively high” levels of exposure with a dust residence time of more than 5 years to either chrysotile, amosite or crocidolite, mesotheliomas were reported in the amosite and crocidolite groups, but not in the chrysotile group.
Hesterberg 1991²³	Hamsters	No mesotheliomas from Canadian chrysotile.
Hiroshima 1993	Baboons	Inhalation exposure to amosite, UICC A chrysotile, and crocidolite for 6 hours per day, 5 days per week for between 8.5 and 49 months produced mesotheliomas in the crocidolite and amosite groups, but not in the chrysotile group.
Quinlan 1994	Rats	Rats were exposed to room air and concentrations of 0.1 mg/m ³ (i.e. comparable to levels encountered by workers before enactment of laws governing asbestos concentrations in the workplace) and 7 to 10 mg/m ³ of crocidolite in two different experiments. Experiment 1 rats were exposed for 6 h/d, 5d/w for a total of 10 days and Experiment 2 rats were exposed for 6 h/d, 5d/w for a total of 20 days. Analysis of the data generated from two experiments demonstrated dose-dependent patterns in gene expression, inflammation, and pulmonary fibrosis. Inflammation and fibrotic lesions were restricted to the high-dose group at 20 days. Compared to control rats, the rats exposed to levels of crocidolite fibers comparable to human occupational exposure levels showed no statistical difference at any time for any of the ‘markers’ studied.
Quinlan 1995	Rats	Rats were exposed at time periods from 3 to 20 days after inhalation of two airborne concentrations (0.18 and 8.2 mg/m ³ air) of chrysotile asbestos. Indicators of inflammation, increased cell proliferation, and pulmonary fibrosis were not observed at lower concentrations.
Ilgren 1997²⁴	Rats	Long-term inhalation study of Calidria chrysotile produced no lung fibrosis whereas rats exposed to Jeffrey chrysotile fiber and UICC/B chrysotile fiber from Quebec contaminated with amphibole produced fibrosis.
Ilgren 1998	Rats	Re-analysis of the results of a NIEHS long-term inhalation study not previously published produced no mesotheliomas

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		above control levels following exposure to Calidria, UICC/B chrysotile, and Jeffrey chrysotile.
Bernstein 2004	Rats	Five-day lung inhalation biopersistence study of Brazilian chrysotile. At 2 days, 2 weeks, 3 months, 6 months and 12 months post exposure, the lungs from groups of rats were analyzed by confocal microscopy. Fibers longer than 20 microns were cleared with a halftime of 1.3 days, most likely by dissolution and breakage into shorter fibers. Shorter fibers were also rapidly cleared from the lung with fibers 5 to 20 microns clearing even more rapidly (halftime equals 2.4 days) than those shorter than 5 microns in length (halftime equals 23 days).
Bernstein 2005	Rats	Inhalation biopersistence and histopathology examination one year after cessation of the five-day exposure to Calidria and pure tremolite. Calidria fibers longer than 20 microns were cleared with a halftime of 7 hours and within 2 days post-exposure, all long fibers had dissolved/disintegrated into shorter pieces. The fibers between 5 and 20 microns in length were cleared with a half-time of 7 days. The fibers/objects shorter than 5 microns in length were cleared with a half-time of 64 days, which is faster than that reported for insoluble nuisance dust such as titanium oxide. No evidence of any inflammatory reaction at any time to the Calidria fiber. Tremolite asbestos, used as a positive control, was found to have essentially an infinite half-time with the development of lung fibrosis within 90 days cessation of exposure.
Bernstein 2006	Rats	Rats were exposed to Brazilian chrysotile for 90 days with a 92 day recover period. Only the rats exposed to the highest concentration of Brazilian chrysotile (8,941 total fibers/cm ³ with 207 fibers L > 20 µm/cm ³) produced slight fibrosis whereas the rats exposed to a lower level (3,413 fibers/cm ³ with 76 fibers L > 20 µm/cm ³) resulted in no lung fibrosis. The authors note that “this study clearly shows that at [] an exposure concentration 5000 times greater than the U.S. threshold limit value of 0.1f(WHO)/cm ³ , chrysotile produces no significant pathological response.”
Stettler 2008	Monkeys	The monkeys that survived from the Platek 1985 studies were reported upon by NIOSH in this study. Those that survived 11½ years after the initial study ended were then biopsied again. Though the mean chrysotile concentration ranged of 27-95 million fibers per gram of (dried) lung tissue remained 13 years after exposure had started, “[n]o lesions attributable to the inhalation exposure were

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		noted.” (Stettler 2008, at 63). The geometric mean fiber length was 3.5 μm with 35% of the fibers being > 5 μm in length. Since an average pair of dried normal lungs weighs about 40 grams (Churg 1991), this means that there was a fiber burden of at least a billion fibers for both whole lungs. ²⁵
Bernstein 2020a	Rats	Interim results of a 90-day inhalation study of rats exposed to brake dust (BD), TiO_2 , chrysotile, crocidolite and amosite for 6 h/d, 5d/week for 13 weeks followed by lifetime observation. In the BD groups few fibers longer than 20 microns were observed in the lungs at the end of exposure and no fibers greater than 20 microns at 90 days post exposure. In the chrysotile groups, means of 204,000 and 290,00 fibers (L>20 microns)/lung were measured at 89 days. By 180 days, means of 1 and 3.9 fibers were counted on the filter corresponding to 14,000 and 55,000 fibers (L>20 microns)/lung. In the crocidolite and amosite groups mean lung concentrations were 9,055,000 and 11,645,000 fibers (L>20 microns)/lung at 89 days. At 180 days, the means remained similar. The BAL results provide an initial indication of the differential response between the different exposure types.
Bernstein 2020b	Rats	Interim results of pathological and persistence results of the Bernstein 2020a study reported above. In the BD groups, no significant pathological response was observed at any time. Chrysotile showed weakening of its matrix, breaking into short fibers and particles that can be cleared, with no peribronchiolar inflammation and occasional very slight interstitial fibrosis. The histopathology and the confocal analyses clearly differentiate the pathological response from amphibole asbestos compared to that from the BD and chrysotile.
Bernstein 2021	Rats	Final results from Bernstein 2020a and 2020b reported above with life-time post-exposure observation, which showed a significant fundamental difference in pathological response and tumorigenicity between BD or from chrysotile alone in comparison to amosite and crocidolite. BD showed no significant pathological or tumorigenic response in the respiratory track compared to the control group at exposure concentrations and deposited doses well above those at which human have been exposed. Chrysotile was not biopersistent, breaking into particles and short fibers which can be cleared by alveolar macrophages and continue to dissolve. There was no peribronchiolar inflammation, occasional very-slight interstitial fibrosis and no exposure-related tumorigenic

response. Crocidolite and amosite induced persistent inflammation, microgranulomas, persistent fibrosis and a dose-related lung tumor response.

Evaluation of Chrysotile Causation Arguments

It is not controversial that amphibole asbestos has historically elevated the mesothelioma risk. There has been, however, significant discussion about whether chrysotile asbestos confers the same risk or any risk, and under what setting that risk might or might not occur.

Often, such statements appear in public health agency publications such as the World Health Organization-sponsored IARC Monograph 100C, where qualitative statements are made without an attempt to assess the dose at which the real world risk arises. Of course, whether chrysotile, with or without tremolite contamination, causes mesothelioma in mining situations where cumulative exposures are into the hundreds or thousands of fiber years is not probative of whether chrysotile end products are capable of causing mesothelioma. Moreover, the public health perspective (quite properly) employed by the agencies making these kinds of statements means that they can and often are based on analysis that does not employ the same rigor and methodology as would be employed in determining causation to reasonable scientific certainty.

Publications that put forth various arguments for chrysotile causation typically rely on similar arguments. Accordingly, in this section of the report I shall review one recent such article: the 2011 article by Kanarek titled “Mesothelioma from Chrysotile Asbestos: Update.”

The Kanarek article has several shortcomings. First, Kanarek’s method assures he will discuss only evidence he claims supports his chrysotile causation argument. He purposely excludes from his update any evidence (of which there is an abundance as explained earlier in this report) indicating a lack of causation. Instead, his methods section states, “A worldwide literature review was conducted ... for well documented chrysotile asbestos associated mesothelioma cases.” (Kanarek 2011, at 688).

Second, the focus of this “method” is “cases,” not statistically increased risk. Case reports merely raise issues for future investigation. They cannot properly form the foundation for determination of increased relative risk, the first step in cause determination based on epidemiology. Kanarek did not apply epidemiologic principles to find statistically significant increased risk. So what he ends up with is merely a compilation of cases from case reports or from cases included in various cohort studies or case-control studies.

An example shows how misleading this kind of selective approach can be. Kanarek’s discussion of brake workers relies on a single, old case report by Langer. Kanarek omits the numerous later studies that report no statistically significant association between chrysotile and mesothelioma risk. As explained in the tables below, Langer, himself, concluded from this wealth of data that asbestos brakes do not increase mesothelioma risk. Yet Kanarek’s “update” cites Langer’s old statement, not his more recent conclusions.

Third, Kanarek reaches conclusions contrary to those of the authors he cites, and repeatedly gets the facts wrong. For example, he characterizes as “informative” results that the authors of the

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Smailyte study characterized as “noninformative.” He characterizes the Cai review article as a cohort study and also implies that antigorite is chrysotile even though authors of the study he cites (Baumann) explain it is structurally different. Kanarek also mischaracterizes and confuses studies; for instance, he confuses the Shiqu study with the Yano study.

Fourth, Kanarek’s article often assumes, and at times argues,²⁶ that if a person’s exposure to asbestos was reported to be predominantly chrysotile, the chrysotile must therefore be the cause of his mesothelioma regardless of amphibole exposures. Such an argument based on this “predominant chrysotile fallacy” is unscientific and cannot be the basis for making causal claims. It has been characterized as follows:

[The argument is] that if workers are exposed to a mixture of asbestos fibres in which chrysotile predominates, then it is the chrysotile that is responsible for any deleterious health effects. . . . An analogous argument would be that a drunken lager-lout cannot have been intoxicated by alcohol because that is only a small percentage of the brew. (Liddell 1997, at 8-9).

Many of the arguments presented against the ‘amphibole hypothesis’ in connection with mesothelioma are variants on the basic theme that it is simply unbelievable that such a small component of the exposure could be responsible for the observed risk. . . . Low levels of amphiboles *do* have a disproportionate effect. (Hodgson 2000, at 588 (emphasis on word “do” in original)).

In short, it is fallacious to assume that the amphibole component of an exposure cannot be responsible for the disease observed.

Kanarek has characterized the sources he relies upon by study type in his Table 1. Although his update is really just an effort to compile cases, it is useful to review his sources using his designation. His discussion of “cases” contains both incomplete and misleading characterization or descriptions, as well as a failure to assess accurately and update appropriately the material he cites:

Studies Characterized as Case Reports by Kanarek		
Studies	Kanarek’s Claim	Proper Understanding
Acheson 1982	Acheson reported “one [mesothelioma] in the chrysotile-only Blackburn group” (Kanarek 2011, at 692).	The authors write: “[T]he pattern of mortality is consistent with the view that mesothelioma . . . is particularly associated with exposure to crocidolite. . . . We have reason to believe that the Blackburn patient with pleural mesothelioma in our material transferred to [a factory using crocidolite].” (Acheson 1982, at 347).
Champion 1971	A 32-year-old mesothelioma patient “‘‘had been exposed only to chrysotile.’” (Kanarek 2011, at 691).	The author suggests exposure from heavy environmental dust from mines and workshops. (Champion 1971, at 823). Crocidolite was used in those

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		workshops. (McDonald 1978). Moreover, a case in a 32-year old is highly unusual.
Egilman 2010	Egilman reported a case of “peritoneal mesothelioma in a mill worker from a tremolite-free Canadian asbestos mine.” (Kanarek 2011, at 691).	The worker had a questionable occupational history and diagnosis. The study author’s opinions are not reliable. ²⁷
Langer 1982	Report of “mesothelioma in a man whose sole exposure to asbestos was to the chrysotile during brake maintenance and repair.” (Kanarek 2011, at 690).	The author states the risk of mesothelioma among brake workers “seems to be low but mortality data have yet to be thoroughly evaluated.” (Langer 1982, at 1103). In 2003, after extensive evaluations had occurred, Langer wrote: “Brake installers and maintenance workers appear to exhibit no increased risk of mesothelioma.” (Langer 2003, at 75).
Yano 2009	A mesothelioma case was reported in an asbestos worker who had grown up near an asbestos plant. “Only chrysotile was used in the plant.” (Kanarek 2011, at 694-95).	“[T]he vast majority of the fibers found in the lung tissue of a biopsy sample was tremolite ...” (Yano 2009, at 285). Yano and co-authors later published: “Although initially characterized as amphibole-free exposures, it is now clear that, at least at some points in time, the chrysotile used in this factory contained small amounts of tremolite... Although small percentages in absolute terms, given what we know about the relative potency of tremolite and chrysotile, the tremolite in this environment could be sufficient to drive mesothelioma risk.” (Courtice 2015, 4). In 2018, the authors again reiterated that “the vast majority of asbestos in the workplace was chrysotile whereas almost all of the fibers identified in lung tissues were tremolite with only exceptional instances of chrysotile.” (Yano 2018, at 39).

As with case reports, case series also cannot establish statistically significant association. Nevertheless, Kanarek claims that the following cases series or “cases” support his argument.

Studies Characterized as Case Series or “Cases” by Kanarek		
Studies	Kanarek’s Claim	Proper Understanding
Camus 2002	In “the area of the Quebec chrysotile mines of Thetford and Asbestos Canada	This is one of two papers of which both Camus and Case were authors. As is clear

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	[t]en pleura and one peritoneal mesothelioma cases were found in a survey of 817 female residents.” (Kanarek 2011 at 691).	from the two papers, the excess cases occurred only when tremolite was elevated, namely from the central Thetford mines. In the largest chrysotile mines in the city of Asbestos, tremolite, although present, was not elevated enough to cause excess cases of mesothelioma. (Camus 2002, Case 2002).
Cullen 1991	Two mesothelioma cases in individuals “who had exposure to chrysotile asbestos in Zimbabwe’s mines or mills.” (Kanarek 2011, at 693).	A subsequent report noted substantial amphiboles in chrysotile from Zimbabwe. (Kohyama 1996, at 526).
Everatt 2007	Reported one case with occupational exposure to chrysotile. (Kanarek 2011, at 693).	The authors state “no asbestos related occupational cancers have ever been diagnosed in Lithuania.” (Everatt 2007, at 463). A diagnosis issue arises because the diagnosis was based on cytology, because diagnosis by cytology is “fraught with hazards.” (Roggli 2004, at 241). The authors made no claim that this was an above-background rate of mesothelioma. The person with occupational chrysotile exposure had fewer chrysotile fibers in his lung than both non-occupationally exposed subjects and occupationally exposed workers. (Everatt 2007, at 461, Table V).
Finkelstein 2010	Reported “six mesothelioma cases in the Connecticut Raybestos plant” whose workers “were exposed to chrysotile asbestos.” (Kanarek 2011, at 690).	The report actually claimed only 5 had worked at the plant based on the records of the asbestos plaintiffs’ lawyer who co-authored the study. (Finkelstein 2010). The medical literature reports issues related to the transparency of the data and case materials pointing to amphibole exposures among these cases. (Teta 2011). Additionally, McDonald documented the plant’s use of amphiboles. (McDonald 1983, McDonald 1984).
Mirabelli 2008	Found 27 mesotheliomas among people who worked in and around the Balangero, Italy, mine to be “further evidence to the carcinogenicity of tremolite-free chrysotile.” (Kanarek 2011, at 692).	Mirabelli 2008 is methodologically limited in that it is essentially a case series assembled retrospectively and analyzed entirely without controls; there is very little information about exposure. (Case 2008). Moreover, the mine and

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		surrounding areas are contaminated by the amphibole tremolite and balangeroite (which exhibits characteristics similar to crocidolite). See discussion of Balangero studies in Table below. In 2019, Ferrante, Mirabelli and others reported the cancer mortality and mesothelioma incidence in 974 male workers employed at the Balangero mine from 1946 to 2013. The authors observed a RR = 1.019 per each 100 f/mL-y increment in cumulative exposure for mesothelioma, demonstrating high levels of exposure required to induce mesothelioma (notwithstanding the contamination/co-exposures detailed below).
Mann 1966	See O'Donnell 1966 entry below, which reports on the same cases.	
O'Donnell 1966	Reported five cases of mesothelioma in a "Pennsylvania chrysotile textile factory." (Kanarek 2011, at 690).	The author reports that chrysotile was used "almost exclusively," implying amphibole use. (O'Donnell 1966, at 1148). See "predominant chrysotile fallacy" discussion above.
Wolf 1987	Reported 32 mesothelioma cases diagnosed between 1968 and 1984 at an Illinois hospital. "Two large chrysotile asbestos product manufacturing plants were within 4.8 km of the hospital [and therefore] had a clear high exposure to chrysotile." (Kanarek 2011, at 689).	The authors wrote that "raw asbestos was shipped into this region from both Canada and South Africa, the latter a major source of crocidolite asbestos. The residential and working populations might have actually been exposed to a mixture of these fibers." (Wolf 1987, at 2148). See "predominant chrysotile fallacy" discussion above.
Sturm 1994	This East German study "clearly points to the mesothelioma-inducing potential of chrysotile asbestos from Russia." (Kanarek 2011, at 692).	The study contained no occupational history. What was really used behind the iron curtain is not clear. ²⁸

Dr. Kanarek reviewed several case-control studies to include cases in support of his hypothesis that exposure to chrysotile increases the risk for developing mesothelioma; however, the studies he relied upon were either misinterpreted by Kanarek or were flawed, as the following table will show.

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Studies Characterized as Case-Control Studies by Kanarek		
Studies	Kanarek's Claim	Proper Understanding
Aguilar-Madrid 2010 ²⁹	Study of 119 pleural mesotheliomas in Mexican workers. "Asbestos used in Mexico is overwhelmingly chrysotile imported from Canada." (Kanarek 2011, at 691).	The authors report only that in Mexico (as in the United States) "the major type of asbestos" is chrysotile. (Aguilar-Madrid 2010, at 247). They reported exposure to "all forms of asbestos," including thermal insulation, but the authors assumed, insupportably, that mesothelioma was attributed to the major fiber type, chrysotile. See "predominant chrysotile fallacy" discussion above. The analysis in this article reflects the "precautionary principle." (Aguilar-Madrid 2010, at 249). This is a reference to the public health approach discussed elsewhere in this report.
Rogers 1991	Australian study with "a subgroup of 25 [mesothelioma] cases (23 pleural and 2 peritoneal) where only chrysotile was found in the lungs... . Two of the cases had a definite history of exposure only to chrysotile, 11 had a history of mixed exposure, and 10 had no documented history of asbestos exposure, and 2 had no available history." (Kanarek 2011, at 694).	The authors conclude: "It is difficult to assess the risks associated with chrysotile alone, due to the almost universal mixed exposure to amphibole and chrysotile." (Rogers 1991, at 1920). Rogers later commented that the chrysotile causation association in the 1991 article lacked biologic plausibility. (Rogers 1994, at 638.) Rogers emphasized his data cannot be used to identify a significant risk from chrysotile. (Rogers 1994, at 637).
Baumann 2007, 2011 ³⁰	Study of mesothelioma cases in New Caledonia where "[t]he only significant factor . . . was serpentine (the base rock of chrysotile asbestos) in the soil There are also locations on the island with a tremolite-actinolite type of asbestos. The odds ratio (OR) for the serpentine (antigorite) area was great . . . as compared with the tremolite-actinolite area." (Kanarek 2011, at 693).	The serpentine was antigorite, not chrysotile: "The two serpentines chrysotile and antigorite have very similar chemical composition but different structures. Antigorite presents lathes that splinter, whereas chrysotile has a coiled structure. Recent works showed the cytotoxicity of antigorite fibers <i>in vivo</i> (Pugnaroni, 2010)." (Baumann 2011, at 699). In two of the three areas studied the most significant mineral was tremolite. In the third area it was antigorite, and tremolite was also present. (Baumann 2011, at 697-698).
Pan 2005	"Serpentine is the base mineral of chrysotile asbestos. . . . The authors conclude that they confirmed their hypothesis of proximity to nonoccupational asbestos (serpentine) was associated with	This was an ecological study, not a case-control study. Others have discussed amphibole asbestos exposure as the potential issue in California residential exposures. (Case 2011, at 18). Pan's use of patients' address on date of diagnosis rather

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malignant mesothelioma” in California. (Kanarek 2011, at 690-691).	than on date of exposure is a significant limitation of this study. (Brodkin 2006, at 573, Case 2011, at 18). Workers may have had occupational exposures that were not documented.

Finally, Kanarek’s discussion of the cohort studies from which he selected cases is fraught with more mischaracterizations, misstatements, and flawed interpretations. Perhaps the most striking example is Kanarek’s assertion that one “study is informative concerning chrysotile asbestos exposure and mesothelioma risk.” (Kanarek 2011, at 693). The authors themselves state precisely the opposite: “Our study is noninformative concerning asbestos exposure and mesothelioma risk.” (Smailyte 2004, at 68). Other flaws are summarized in the table below.

Studies Characterized as Cohort Studies by Kanarek		
Studies	Kanarek’s Claim	Proper Understanding
Dement 1994 and Hein 2007	“Hein [adds] a third mesothelioma to the two certified by Dement.” Although crocidolite was used, “the predominant exposure to workers at this plant was to chrysotile asbestos.” (Kanarek 2011, at 689).	Repeated studies (Green 1997, Sebastien 1989, Case 2000, Pooley 1986) document above-background levels of amphibole exposures in workers at the plant. See “predominant chrysotile fallacy” discussion above.
Loomis 2009	The study reported that “according to available records” only chrysotile was used in the Marshville, North Carolina, plant where four mesothelioma cases occurred. (Kanarek 2011, at 689-690).	Dr. Dement was a co-author of this study. Data from fiber burden analysis of one of the cases indicates amphibole exposure, ³¹ shedding light on the study’s findings, as fiber burden analysis did for Dement’s earlier study of the Charleston plant. Ample documentation in sources not accessed by the authors exists showing crocidolite- and amosite-containing UNARCO products were made at the Marshville plant. ³²
Mancuso 1983, 1988	The cohort’s “railroad occupational exposures to asbestos were only to chrysotile. Fourteen mesotheliomas were found.” (Kanarek 2011, at 690).	Mancuso 1983 reports that both amosite and chrysotile were identified in samples obtained from old locomotives. Multiple letters to the editor point out flaws in Mancuso’s study. (McDonald, 1989, Churg 1990, Ohlson 1989). Findings of

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		fiber burden studies demonstrate amphiboles in the lungs of railroad workers. ³³ Additionally, Mancuso's assumptions about when amphiboles were used in the railroad industry were erroneous. (Langer 1998).
Dell 1995	Nine mesothelioma deaths in a cohort of workers from a New Jersey plastics manufacturing plant. "Asbestos, 'usually chrysotile,' ... was used as a filler in the plastic molding process." (Kanarek 2011, at 690).	The authors expressed concern that the neighboring asbestos products manufacturing facility confounded the study. (Dell 1995, at 381-82). Moreover, the authors note the asbestos in the factory was "usually chrysotile," acknowledging that amphiboles were present. (Dell 1995, at 374). Thus, Kanarek's reliance reflects the "predominant chrysotile fallacy" discussed above.
McDonald 1997	33 mesotheliomas in the cohort of chrysotile miners and millers at the Thetford mines in Quebec. Autopsied lung specimens showed the amphibole tremolite. "Whether it was the chrysotile or the chrysotile-tremolite combination that caused the mesothelioma cases is irrelevant." (Kanarek 2011, at 691).	The McDonald studies are widely cited as showing that only massive exposure to chrysotile increases risk for developing mesothelioma and that the increase occurs only in locations where unusually amphibole product manufacture occurred or high tremolite concentrations exist (the central mine in the Thetford Mines region.) ³⁴ In chrysotile end products, tremolite, if any exists, is below the levels of detection in standard bulk analysis, so whether chrysotile fibers themselves can cause mesothelioma is both relevant and significant in considering whether users of chrysotile end products have a demonstrably increased risk of mesothelioma.
Balangero studies (Piolatto 1990, Pira 2009, Mamo and Costa 2004, Turci 2009)	Mesotheliomas observed in workers of "an open air chrysotile mine located in Balangero, Italy." The asbestos was "at least 99%	Gunter 2007 explains: "there is an estimated 10% tremolite in the tailings" surrounding the mine. (Gunter 2007, at

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	chrysotile, [with] a fibrous silicate known as balangeroite, account[ing] for 0.2% to 0.5%.” (Kanarek 2011, at 692). “Mesotheliomas were also observed in workers in a textile plant in Turin that “used the chrysotile mined in Balangero.” (Kanarek 2011, at 692).	480). Tremolite/actinolite is the most abundant asbestos fiber found in the Lanzo Valley. (Fornero 2009, at 1014). Crocidolite was also processed at Balangero and was identified in the lung tissues from Balangero workers used in the region. (Browne 2001; Pooley, 1990). See “predominant chrysotile fallacy” discussion above. Balangeroite³⁵ (pictured at the left³⁶) has also been considered a potential factor in causing the mesothelioma identified in this region. (Piolatto 1990, at 813). “Little is at present known about [balangeroite’s] adverse effects in humans, although they can be suspected as its morphology is similar to those of amphiboles and it has several characteristics in common with crocidolite asbestos, including durability, cell toxicity and the oxidant activity of the fibres.” (Pira 2009, at 808).
		
	Above: Balangeroite	
Smailyte 2004	“[T]he study is informative concerning chrysotile asbestos exposure and mesothelioma risk with one observed case and 0.3 expected” in two asbestos-cement pipe factories. (Kanarek 2011, at 693).	The authors actually say the opposite: “Our study is noninformative concerning asbestos exposure and mesothelioma risk with one observed case and 0.3 expected.” (Smailyte 2004, at 68).
Madkour 2009	Report of mesothelioma risk in people living near a plant in Egypt that currently uses chrysotile in manufacturing cement pipes. (Kanarek 2011, at 693).	Current usage is not the issue with mesothelioma, which is caused by exposures occurring 30 or more years in the past. Asbestos factories in this part of Egypt historically used crocidolite and amosite as well as chrysotile. (Gaafar 2007).
Shiqu 1990	Three mesotheliomas observed in a Chinese plant in Chongquin, where	Shiqu was a poster presentation of a mining population, not the

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	“through its history, chrysotile was the only type of asbestos used in the plant,” which obtained its chrysotile from two mines in Sichuan, China. (Kanarek 2011, at 694).	Chongquin plant Kanarek describes. Kanarek may have confused the Shiqu study with Yano 2001. High levels of tremolite are known to occur in Chinese chrysotile: “Ten asbestos samples from the . . . Shimian mine of Sichuan province [were examined]. . . . All of the chrysotile samples contained amphibole fibres as an impurity. Tremolite was identified from every deposit .” (Tossavainen 2001, at 146-147).
Cai 2001	Reported four mesothelioma deaths in Chinese miners. (Kanarek 2011, at 694).	Cai 2001 is a review article, not a cohort study. Chinese chrysotile is contaminated with tremolite. (Tossavainen 2001,) at 146-147.
Yano 2001	“Two cases of malignant mesothelioma, one pleural and the other peritoneal, were found” in a study of a plant in Chongqin, China, whose workers were “exposed to chrysotile only.” (Kanarek 2011, at 694).	In 2009, the authors reported on the results of a fiber burden study: “[T]he vast majority of the fibers found in the lung tissue of a biopsy sample was tremolite” (Yano 2009 at 285). One of the two cases was a pleural mesothelioma with a reported latency of 13.8 years, which is unusually short for attribution to this exposure source, and the other was a peritoneal mesothelioma.³⁷ Yano has subsequently published that their initial characterization of the cohort as “amphibole-free” was incorrect. The type of Chinese chrysotile used by the cohort Yano studied contained amphiboles, particularly tremolite “sufficient to drive mesothelioma risk.” (Courtice 2015, at 4). Both Yano 2001 and 2009 detail high exposures to asbestos in this cohort. Guo and

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		others have raised concerns about the accuracy of diagnosis of mesothelioma in China (Guo 2016).
Huilan and Zhiming 1987, 1993	“Two pleural mesothelioma deaths were documented in this chrysotile-only exposed cohort” of Chinese factory workers. (Kanarek 2011, at 695).	The authors reported on lung cancer and did not report separately on mesothelioma. Tremolite contaminates Chinese chrysotile. (Tossavainen 2001).

In summary, I have considered the arguments that chrysotile fibers cause mesothelioma and that use of low dose chrysotile products causes mesothelioma. They do not alter my opinions. Based upon the overwhelming scientific data, chrysotile fibers are not an established cause of mesothelioma and low dose exposures to chrysotile end products do not cause or contribute to cause mesothelioma.

SPONTANEOUS MESOTHELIOMA

Cancer occurs after the accumulation of mutations to the DNA in cells. It is initiated by driver gene mutations, which are caused by: (1) heritable mutations; (2) environmental exposures; and (3) replication errors. (Tomasetti 2015, 2017; Carbone 2019). It is well-established in the medical and scientific literature that all cancers, including mesothelioma can arise spontaneously due to internal replication errors and without an external cause, such as asbestos exposure. These internal replication errors accumulate with age and as a consequence, like most cancers, age is a strong risk factor for mesothelioma. Age specific incidence rates of mesothelioma increase continuously with age, with the risk of mesothelioma increasing approximately eightfold for every doubling of age. (Moolgavkar 2009, 2017; NIH/NCI; WHO; ACS).

With respect to mesothelioma and asbestos exposure, investigators have correlated the incidence of mesothelioma reported by the Surveillance, Epidemiology, and End Results (SEER) registries and the trends of asbestos usage reported by the United States Geological Survey in the United States. Analysis of this data demonstrates that pleural mesothelioma in men between 1973 and 2013 is correlated to the commercial usage of asbestos in the United States with an appropriate lag of 30 to 40 years. In contrast, trends in the incidence of pleural mesothelioma in women and peritoneal mesothelioma in men and women between this timeframe show little or no association with commercial asbestos use, providing further support that these mesotheliomas are less likely to be caused by asbestos exposures. This data also indicates that there is a background rate of mesothelioma and are therefore used as a surrogate of the prevalence of background or spontaneous cases of mesothelioma. (Price 1997, 2004, 2009; Weill 2004; Moolgavkar 2009, 2017; Teta 2008). Henley and others confirmed these findings after combining the data from the National Program for Cancer Registries and SEER between 2003 and 2008 and reporting that female pleural mesothelioma rates were flat and male rates continued to decline. (Henley 2013). Trends in some European countries also reflect that a large fraction of peritoneal mesotheliomas are unrelated to asbestos exposure. (Hemminki & Li 2003; Burdorf 2007).

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Epidemiological studies report that a substantial fraction of mesothelioma have no history of exposure to asbestos, with a larger fraction of female cases reporting no exposure. (Peterson et al., 1984; Pelnar, 1988; Spirtas et al. 1994; Teschke et al., 1997; Agudo 2000; Rake 2009). Many epidemiological studies further estimate the population-attributable fractions for asbestos and mesothelioma. (See Table below adapted from Attanoos 2018). These studies provide further support that the fraction of spontaneous mesotheliomas is greater among women than men and greater in the peritoneum than the pleura. (see also Aguilar-Madrid 2010; Lacourt 2010; Camiade 2013).

Mesotheliomas Attributable to Asbestos			
Author (Year)	Source(s)	Country	Mesotheliomas Attributable to Asbestos
Spirtas (1994)	US Cancer Registries Veteran Administration Hospital	United States	88% (male, pleural)
			58% (male, peritoneal)
			23% (female, pleural + peritoneal)
Price & Ware (2009)	SEER	United States	78% (male, both)
			<10% (female, both)
Rake (2009)	UK Cancer Registry Physician Records	United Kingdom	86% (male, both)
			38% (female, both)
Offermans (2014)	Netherlands Cohort Study	the Netherlands	32-34% (both, both)
Lacourt (2013)	Population Case-Control Study	France	87% (male, both)
			65% (female, both)
Gorini (2002)	Tuscany Registry	Italy	85% (male, both)
			26% (female, both)
Gennaro (2005)	Liguria Mesothelioma Registry	Italy	85% (male, both)
			42.5% (female, both)
Marinaccio (2012)	Italian Mesothelioma Registry	Italy	86% (male, pleural)
			63% (female, pleural)

In addition to the robust scientific evidence discussing above detailing no temporal trends between asbestos usage and incidence of mesothelioma in women in the United States and other European countries, other sources of evidence establishing a background rate of mesothelioma comes from: (1) the incidence of mesotheliomas in children without appropriate latency for asbestos-related mesotheliomas (Fraire 1988; Cooper 1989; Kashanskiy 2010; Orbach 2020); (2) mesothelioma cases in individuals with no history of asbestos exposures despite extensive investigation of their exposure histories and/or fiber burden analyses within the range of the normal population (Kraynie 2016; de Ridder 2016); and (3) mesotheliomas arising in laboratory and wild animals, such as lions, cats, horses, birds, and sharks (Maekawa 1975; Attanoos 2018; Carbone 2019). Overall, the scientific literature establishes that there is a definite proportion of mesotheliomas that are not attributable to prior asbestos exposure, with the fraction greater in the

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United States than in European countries, more in women than in men, and greater in peritoneal than pleural mesotheliomas.

What is Asbestos?**Asbestiform vs. non-asbestiform minerals**

Asbestos is the commercial designation for 6 fibrous minerals of two broad types: serpentine and amphibole. Chrysotile is the only type of serpentine asbestos, while there are several different amphibole asbestos fibers. It is important to note that there are important differences even among various asbestos fiber types and considerable evidence that different types of asbestos have different potentials to cause disease. While many epidemiologic studies have demonstrated an association between asbestos exposure and mesothelioma, the asbestos-mesothelioma association is particularly strong in occupations that involved heavy amphibole asbestos exposure, such as shipyard workers and insulators.

The message of these studies is simple: different asbestos fiber types have different potential to cause disease.

As discussed previously, asbestos is a commercial designation for 6 fibrous minerals of two broad types: serpentine and amphibole. Most amphibole minerals though occur as “non-asbestiform” minerals, a designation that is important because they have different characteristics that have human health implications.

Monticello Conference⁴⁰

I was Chairman of the Monticello Conference on Elongated Mineral Particles in 2017 and was Managing Editor of the Proceedings of the Conference published in Toxicology and Applied Pharmacology. Although there have been decades of research about the health effects of asbestos, lack of precision with terminology and clear definition of Elongate Mineral Particles (EMP) have impeded the scientific community’s ability to properly characterize health effects attributable to specific types of EMPs. A clear consensus of Monticello attendees supported the need to develop a sense of what specific parameters cause toxicity and to focus future efforts on developing new approaches, including in vitro, animal, and human studies, that lead to a greater understanding of the potential of certain EMPs to cause disease. There was broad agreement that the term “elongate mineral particles” is overly inclusive and does not speak specifically about the human health effects of the substances categorized under this umbrella term.

Highlighted below are some of the conclusions grouped by each of the Monticello Conference scientific sessions:

Defining EMPs

- The use of aspect ratio alone should be avoided in EMP characterization.
- The term EMP does not alone imply elevated risk for an asbestos related disease.

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- The terms “fibrous” and “asbestos” are not synonymous. Asbestos is fibrous, but all fibrous minerals are not asbestos.

Effects and Mechanisms

- There was broad consensus that what happens at the lung level is based on a population of fibers getting to the deep part of the lung and not based on one EMP interacting with one lung cell.
- For EMPs that are long and durable, decreasing widths result in increasing carcinogenic potential.
- EMPs with length less than 5 microns present insignificant risk for EMP-related cancer.
- Sufficiently high and prolonged inhalation exposures to some respirable EMPs, notably including amphibole asbestos fibers, can increase risk of inflammation-mediated diseases including malignant mesothelioma, pleural diseases, fibrosis, and lung cancer. Chronic inflammation sustained by ongoing activation of the NLRP3 inflammasome plays a crucial causal role, enabling immune cells to produce the potent proinflammatory cytokines IL-1 β and IL-18, consistent with the previous understanding that had identified upregulation of reactive oxygen species (ROS) as playing a central role in creating and maintaining a pro-inflammatory environment in these diseases and others.
- The physical characterization of retained EMPs from the lungs is extremely important in providing information regarding the etiology of the disease they may produce. It is now accepted that the biological effects fibers may produce in lung tissue once deposited are closely related to their concentration but more critically to their variation in length and diameter. In order to assess the disease risk of exposure to EMPs, it is necessary to accurately describe their lengths and diameter distribution. Microscopic examination of lung burden and respirable airborne dust samples EMPs are therefore among the most important investigations necessary to assess the risks of exposure to EMPs and provide an understanding of the manner in which they can produce a disease response.

Human Exposure, Effects, and Risks

- Thresholds exist for excess disease risk from the inhalation of EMPs. Subthreshold exposures do not result in human disease development.
- The scientific community needs to be disease specific when discussing the potential health impacts of EMPs. For example, mesothelioma, lung cancer, pleural diseases, and asbestosis may be caused by exposures that vary by specific fiber populations. Research needs to focus specifically on individual diseases rather than assuming a certain exposure type could or could not lead to excess risk of developing any of the malignant and non-malignant diseases.
- Recent evidence was presented that did not provide support to the hypothesis that exposure to cosmetic talc is associated with development of pleural mesothelioma.
- There is no published evidence that exposure to cleavage fragments cause asbestos-like diseases.
- There is sufficient evidence that BAP1 mutations leads to a higher propensity for humans to develop mesothelioma.

Cleavage Fragments

There is a considerable body of literature about the health effects of cleavage fragments derived from amphibole minerals, specifically whether they can cause human disease. (Addison, 2008; Gamble, 2008; Mossman, 2008; Williams, 2013). I will discuss the physical and chemical properties of asbestos fibers and cleavage fragments, particularly as they are important to the development of human lung disease.

Cleavage fragments result through the physical manipulation of non-asbestiform particles and are sometimes difficult to distinguish from amphibole asbestos fibers using standard counting procedures. Asbestos fibers, characterized as long, thin needle-like structures, can clearly be pathogenic, whereas the pathogenicity of the cleavage fragments has not been proven, and, in fact, there exists persuasive evidence that they are not.

Although the non-asbestiform and asbestos amphiboles are chemically similar, they differ with regards to morphology. Asbestiform amphiboles are made up of fiber bundles that run parallel to each other, which when they split, form single fibrils. Each individual fibril is long, thin, and very flexible. Non-asbestiform amphiboles are not unidirectional fibers but run in two or more different planes, forming a prism. These non-asbestiform structures do not break down into fibers or fibrils but instead into cleavage fragments that are thick and short and therefore not likely to be inhaled into the more distant (or deep) parts of the lung.

If one then compares more closely asbestiform and non-asbestiform amphiboles, they differ with respect to three important characteristics: surface properties, tensile strength, and dissolution. First, surface properties. The outside surface of asbestiform fibers is smooth and free of defects and is very strong, largely because there are no crevices or cracks in the fiber surface that can be subject to degradation strategies present after inhalation into the lung. This is not the case in non-asbestiform structures that have mechanical planes that can be exploited and lead to degradation. Secondly, the tensile strength of the asbestos amphibole fiber is great, largely because of the inherent flexibility of the fiber, and has made it useful as a commercial product in a variety of settings. This is different from cleavage products which are inflexible and brittle, making them vulnerable to a variety of physical stresses. Finally, dissolution properties. Amphibole asbestos fibers are very difficult to degrade by the body's natural defense system, because they are relatively resistant to dissolution in the acidic environment that results when inhaled particles and fibers are attacked by the body's defenses, primarily the macrophage. This is a different situation than found with cleavage fragments that have surface defects or cracks that make these fragments amenable to degradation in an acidic environment. In other words, the cleavage fragments have a very limited biopersistence (or the ability to remain in the lung) as compared to the long, thin amphibole asbestos fibers.

These differences in biopersistence were pointed out in an article by Ilgren in 2004 when he noted a few important factors:

- The tensile strength of amphibole asbestos fibers is 20-115 times greater than the non-asbestiform amphibole variety with the difference becoming greater as width decreases.

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- When cleavage fragments are deposited in the lung alveoli and attacked by macrophages, the cleavage fragment begins to dissolve.
- Cleavage fragments are inflexible due to more surface defects and therefore more susceptible to chemical dissolution, which is in contrast to the amphibole fibers that are defect-free and better able to resist acid attack.
- Biopersistence is an important factor in carcinogenesis and the lack of biopersistence of cleavage fragments gives a biologic explanation for lack of cancer –causing characteristics

These findings were similar to those of Nolan et al. (1991) who compared activity of tremolite cleavage fragments with that of samples of tremolite-actinolite asbestos.

Particles less than 5 microns are not pathogenic. Highlighting this point, an EPA in 2003, a group of experts reviewed the available literature to devise a protocol to assess asbestos-related risk. The expert panel generally agreed with the development of a protocol that considered, for purposes of evaluating asbestos-related risk, that fibers less than 0.5 microns in diameter and greater than 5 microns in length were more important in disease development. Fibers with greater diameters were believed to be unlikely to be inhaled to the more distal parts of the lung. These conclusions were subsequently published in the peer-reviewed literature (Berman 2008).

There have been several cohorts exposed to cleavage fragments that have been studied. The occupational settings for these epidemiological studies included gold, nickel, and taconite miners, as well as talc and pottery workers and tunnel diggers. In each of these cohorts studied, the effect of a variety of amphibole cleavage fragments was examined. In each of these cohorts, no excess mesothelioma, lung cancer, or pneumoconiosis risk could be shown.

The largest study of workers exposed to non-asbestiform amphiboles has been the Homestake gold mining cohort. In this study, there was no excess lung cancer risk identified. In fact, as exposure levels increased, the lung cancer risk trended toward a decrease, indicating no association of exposure with lung cancer development. Importantly, there were no mesothelioma deaths in this group. Other studies of cohorts exposed to cleavage fragments have not demonstrated an increased risk of mesothelioma; Ontario gold and nickel miners, Minnesota taconite miners, Swedish dolomite limestone miners and millers, Enoree vermiculite miners and millers, New York hard rock tunnel diggers, Kennicott copper miners, Sparta marble quarry workers and residents, nephrite jade workers, (Ilgren, 2004). The health risks associated with cleavage fragments, therefore, should not be confused with those present due to amphibole asbestos exposure.

In 2018, Garabrant and Pastula analyzed mesothelioma mortality in cohorts of workers using the method of Hodgson & Darnton 2000 to estimate fiber potency. Included in the analysis were non-asbestiform elongate mineral particles (EMPs) in taconite iron ore and South Dakota gold mining. In the taconite studies, there was no association between mesothelioma and non-asbestiform amphibole EMP's, which were found only in the eastern Mesabi range.⁴¹ Gold mining EMPs were reportedly non-potent for mesothelioma.

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Even further, cleavage fragments are naturally occurring and do not meet the true definition of an asbestos fiber. Therefore, they are designated as “non-asbestiform” and have fundamentally different properties than amphibole asbestos. Currently, there is no existing evidence that cleavage fragments of non-asbestiform fibers are pathogenic for the reasons that I reviewed above, and there is no animal or human data that implicates these fragments as a cause of disease (ATSDR, 2003; Klein, 1993; National Research Council, 1984; OSHA 1992, Veblen and Wylie, 1993; Wylie, 1987, Mossman, 2008; Gamble 2008; Addison 2008; Cyphert, 2016, Roggli 2018; Roggli 2019; Wylie 2019).

What is talc?**Industrial vs. cosmetic**

There are two general grades of commercial talc: industrial and cosmetic. Cosmetic talc consists of pure “platiform” talc and is sourced from a variety of mines around the world. These mines have no fibrous asbestos that can be measured. Bulk analyses of six historical cosmetic talcum powders was performed by Pierce and colleagues in 2017 and their findings did not support the presence of asbestiform minerals in these products.

Pleurodesis

Pleurodesis is a procedure that involves placing talc into the chest cavity in order to treat various chest conditions. There has been no scientific literature showing an increased risk of mesothelioma using this treatment. (Chappell, 1979; Lange, 1988; Viskum, 1989, Kolschman, 2005; Shaw and Agarwal, 2004; Hunt 2007; Finley, 2017; Feller-Kopman 2018). The evaluation of any potential mesothelioma risk associated with pleurodesis was evaluated by Finley who concluded that no mesotheliomas were observed in any of the over 300 patients with follow-up ranging from 14 to 40 years.

Cosmetic talc deposits are consistently reported in the peer-reviewed medical and scientific literature to be free of asbestos

In order to determine the content of the talc, one needs to understand where the talc is sourced from and what is known about the specific mines. Different companies got their talc from different mines. For example, Colgate used talc from Italy, Montana, and North Carolina while Johnson and Johnson sourced its talc from Italy, China, and Vermont. I will next discuss what is known about each of these mines.

Italy

Pooley *et al.* (1972) conducted a mineralogical evaluation of the Val Germanasca and found no asbestos in the talc. In its 2010 monograph, IARC described the talc from Val Germanasca as “pure” and noted that tests of this talc found no asbestos. Coggiola, *et al.* (2003) reported the talc to be “free from asbestiform fibers” and Pira, *et al.* (2017) similarly reported the study involved an “asbestos-free talc mine.”

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Montana

Southwestern Montana Talc, a region that includes the former Willow Creek and Beaverhead mines is known for “[h]igh-purity talc ores.” Olson (1976)

Gamble (1982) conducted an epidemiological study of miners and millers working with Montana talc. Using TEM, the talc was found to contain no asbestos, and there was no evidence of any asbestos related disease.

In 2010, IARC showed no reports of serpentine, tremolite or anthophyllite present in Montana talc.

NIOSH commissioned a study in which 125 samples of talc were tested for possible asbestos contamination. Four of the samples were from the American Talc Company, talc sourced from Willow Creek, Montana. No asbestos contamination was found in any of them.

North Carolina

There is no evidence of any asbestos in talc mined from the Regal mine located in the Murphy Marble belt of North Carolina. Olson (1976) discusses the Regal mine located in “southwestern most North Carolina” which is known for its “[h]igh-purity talc ores”. Dr. Blount (1991) found no asbestiform minerals.

China

I understand that J&J sourced talcum powder from Guangxi, China. Data and testing have consistently demonstrated that cosmetic grade talc sourced from this deposit have not contained asbestiform fibers. In 2009, the FDA conducted sampling of cosmetic talcum powders, including talcum powder from Guangxi, China and J&J baby powder, and did not detect any asbestos. In 2019, the FDA reported 0.00002% chrysotile asbestos that was less than 2 microns in length from product sampling of J&J baby powder. Repeat testing on this bottle and on the lot of talcum powder failed to reproduce these results and did not detect any asbestos.

Vermont

“As a result of unanswered questions concerning the toxicity of talc free of both asbestiform minerals and significant quantities of free silica, the National Institute for Occupational Safety and Health undertook an industry-wide study (cohort mortality study, industrial hygiene study, and cross-sectional medical examination) of Vermont talcs meeting these criteria (i.e. low free silica and no asbestiform minerals).” (Selevan 1979). Published literature has consistently reports no asbestos in Vermont cosmetic talc. (Selevan, 1979; Boundy, 1979, IARC 2010)

NIOSH also studied tremolitic talc and issued a report entitled "Talc containing Asbestos." NIOSH also studied talc miners and millers in Vermont, who mined pure, platy, cosmetic grade talc. Vermont talc was said not to contain amphibole cleavage fragments and other components

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that appear in Vanderbilt talc (i.e. minor talc fiber). NIOSH would later issue the Vermont report under the title "Talc not containing Asbestos".

NIOSH concluded that the small lung cancer excess observed in Vermont was not linked to the dust because dust levels were about the same or higher in the mill, and most of the lung cancer cases were found among the miners. Hence, no exposure/response relationship could be seen. In Vermont, the excess was said to be likely due to smoking or some other "undetermined" cause. Past exposure levels of Vermont talc workers were considered to "far exceed" the then existing OSHA and Mining Enforcement and Safety Administration standard of 20 mppcf for non-fibrous talc, and sufficiently high to induce pneumoconiosis. (Selevan 1979). In 2020, Rossner and coauthors evaluated historical worker exposures to respirable dust in the Vermont talc mines and mills, which reportedly contained no asbestos and less than 0.25% or less than 1% crystalline silica. (Rossner, 2020). They obtained respirable dust sampling data collected for workers in the Vermont mines and mills from mining company records and the Mine Safety and Health Administration inspections. They reported that "nearly 700 respirable dust samples collected for 44 job categories at 7 site locations over an approximate 30-year period were analyzed." The highest observed exposures included mining jobs and milling jobs, which included average respirable dust concentrations that exceeded occupational exposure limits. Millers in Vermont generally had greater lifetime dust exposures than miners.

IARC

In 2010, IARC reported the "carcinogenic effect of exposure to talc not contaminated by asbestos fibres has been investigated in five independent but relatively small cohort studies of talc miners and millers in Austria, France, Italy, Norway and the USA." (IARC 2010, p. 407). The studies of talc miners and millers "were considered to provide the best source of evidence." (IARC 2010, p. 412). Table 2.1 sets forth cohort studies of mortality from and incidence of cancer in populations occupationally exposed to non-asbestiform talc, and specifically addresses the Austrian, French, Italian, Norwegian, and Vermont cohorts discussed above. (IARC 2010, 319-326).

Exposure to Cosmetic Talc Does Not Increase the Mesothelioma Risk**Experimental Studies**

There is scientific evidence that the biological activity of asbestiform and non-asbestiform structure is different, and these differences explain why non-asbestiform minerals are not associated with disease (Addison and McConnell, 2008; Agency for Toxic Substances and Disease Registry (ATSDR), 2001; American Thoracic Society (ATS), 1990; CPSC, 1988; Gamble and Gibbs, 2008; Occupational Safety and Health Administration (OSHA), 1992; Vu, 1993; Mossman 2008; Wylie 2019). Likewise, cosmetic talc has not been associated with mesothelioma. (Attanoos 2019; Roggli 2020; Attanoos 2020)

Animal studies have shown that talc differs from asbestos in terms of effect (Wehner 1977; EPA Airborne Asbestos Health Assessment Update, 1984; EPA Health Assessment for Talc, 1992; Gamble and Gibbs, 2007; Price 2010; IARC 2010; IARC 2012; Wagner 1975; Lynch 2022).

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Study	Species/Mode	Results
Wehner 1977, 1979	Syrian golden hamsters Inhalation	No lesions in studied tissue
Wagner 1979	Rats Inhalation	One lung adenoma in control group, no lung adenomas among rats exposed for 3 or 6 months, and two lung adenomas among 24 rats exposed for 12 months.
Trautwein 1967	Chinchillas Intratracheal Instillation	No excess tumors, but two animals died from acute respiratory effects

Human Studies (Epidemiology)

It is clear from the epidemiologic studies available that exposure to talc, even high exposure levels associated with its mining and milling, does not lead to excess mesothelioma risk. Analysis of cosmetic talc miners and millers include studies that evaluated risk of mesothelioma in four cohorts: Italy (Rubino 1976, 1979, Coggiola 2003, Pira 2017, Ciocan 2021), Norway (Wergeland 1990, 2017), France/Austria (Wild 2002), and Vermont (Selevan 1979, Fordyce 2019). The IARC working group considered the studies of talc miners and millers “to provide the best source of evidence.” (IARC 2010). Mesothelioma risk was not increased in these mining cohorts, suggesting that consumer use of cosmetic talc products, associated with far lower exposures than those that occur in a talc mining situation, would also pose no risk of mesothelioma.

Italian talc miners and millers working the Piedmont region of Italy were studied from 1921 through 2013. Talc exposures were high enough to induce pneumoconiosis, reportedly at cumulative exposures up to 12,750 mppcf/years. (Rubino 1976; Coggiola 2003). Pneumoconiosis was likely due to silica dust. (Coggiola 2003). Although there were two peritoneal cancer deaths, both were from neoplasms “other than mesothelioma”. (Pira 2017). In 2021, Ciocan and others reported that after a detailed review of the medical records, the specific causes of the two deaths from peritoneal cancer were peritoneal carcinomatosis and retroperitoneal tumor. (Ciocan, 2021). There were no mesotheliomas among those studied, or among individuals age 85 or older who were excluded due to unreliability of death certificate diagnoses. (Pira 2017; Marsh 2019, Ciocan 2021).

In 2019, Fordyce, et al. updated and expanded the cohort of Vermont talc miners and millers studied by NIOSH. Mortality due to malignant neoplasms was not elevated and there was no statistical increase of respiratory cancers, including lung cancer. The authors identified Some of these cohorts were the central part of a meta-analysis published by Finley in 2017 one mesothelioma, with the death certificate explicitly mentioning exposure to asbestos. The authors further note that this individual was employed as a talc worker for less than five years and the death occurred 30 years following employment. The single mesothelioma reported by Fordyce (2019) does not represent an increased risk of mesothelioma. (Fordyce, Letter to the Editor: Response to Finkelstein Re: the Fordyce et al. Vermont Talc Miners and Millers Cohort Study

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Update, 2020; Fordyce, Letter to the Editor: Misrepresentation by Egilman et al., of the Fordyce et al. (2019) Vermont Talc Miners and Millers Cohort Study Update, 2020).

Reviews

Finley and colleagues published a meta-analysis examining whether exposure to cosmetic talc is a risk factor for pleural mesothelioma (Finley, 2017). The study by Finley included 3 epidemiological studies, including cosmetic talc miner and miller cohorts from Italy, Norway, France and Austria (Coggiola, 2003; Wergeland, 1990; Wild, 2002). These cohorts comprised 99,022 person-years of observation and no mesotheliomas were observed across any of the studies. Approximately four mesotheliomas were expected.

Also, in 2017, Wergeland and Pira published updates to the Norwegian and Italian cohorts, contributing an additional 14,322 person-years of observation. The Italian cohort follow-up period was extended 19 years (Pira, 2017), and the Norwegian cohort was extended 24 years (Wergeland, 2017). In neither of the updated cohorts did any of the study subjects develop a pleural cancer, agreeing with the findings of Finley and colleagues (Finley, 2017)

In 2019, Marsh, Finley and colleagues updated the power analysis to include the updates to the Italian and Norwegian cohorts, which provided an additional 14,322 person-years of observation for a pooled total of 113,344 person-years in the cohorts. (Marsh, 2019). The pooled analysis restricted the pooled cohort to workers with a latency period of 30 or more years. There were no reported pleural cancer or mesothelioma cases in any cohort. The authors concluded that the epidemiological evidence from the cosmetic talc miner and miller cohort studies does not support the hypothesis that exposure to cosmetic talc is associated with the development of pleural cancer/mesothelioma. (Barlow 2018; Boffeta 2018; Garabrant 2018; Marsh 2020; Ierardi 2020).

In 2018, Garabrant and Pastula analyzed mesothelioma mortality in cohorts of workers using the method of Hodgson & Darnton 2000 to estimate fiber potency. Included in the analysis were seven cohort studies of talc miners, in which there were “no mesothelioma deaths that were plausibly related to mine exposure.” Two mesotheliomas reported by Honda (2002) did not involve cosmetic talc and were “not attributed to talc exposure because of short latency, short duration of work, and alternative asbestos exposures.” The authors concluded that talc was non-potent for mesothelioma.

In 2020, Ierardi and Marsh updated the power analysis to include the Vermont cohort reported on by Selevan (1979) and the updated and expanded Vermont cohort reported on by Fordyce (2019), providing an additional 17,170 person-years of observation for a pooled total of 130,514 person-years in the cohorts. (Ierardi, 2020). The authors noted that the “work history characteristics of the one mesothelioma case, which included mention of prior asbestos exposure on the case’s death certificate, do not support a causal link with cosmetic talc exposure” and continued to conclude that “the epidemiological evidence from the cosmetic talc miner/miller cohort studies does not support the hypothesis that cosmetic talc exposures are associated with an increased risk of pleural mesothelioma.”

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In 2020, Marsh and Ierardi used pooled data from international cosmetic talc miner/miller cohorts to “determine whether hypothesized increased mesothelioma risks are consistent with the observed data.” (Marsh, 2020). The authors utilized a confidence interval function analysis and calculated the probability that “the true mesothelioma SMR is at or above 2.0, or at or above 3.0 is 0.0096 and 0.0005, respectively.” Thus, a mesothelioma SMR greater than or equal to 2.0 is not compatible with the observed pooled data. (Marsh 2020).

In 2021, Ierardi and others performed a quantitative weight of evidence analysis using Bradford Hill. The authors detailed that the overall probability of causality for cosmetic talc and mesothelioma was approximately 1.29% and concluded that this low probability of causality supports the conclusion that cosmetic talc is not related to the development of mesothelioma. (Ierardi 2021).

In 2022, Ierardi and others updated its pooled cohort of international cosmetic talc miner and miller cohorts to include the updated Italian cohort data reported by Ciocan and others. The pooled cohorts generated a total observational time of 135,524.38 person-years, with 4.14 mesotheliomas expected and only one case of mesothelioma confirmed in the pooled cohort to date. The authors conclude that the current epidemiological evidence from cosmetic talc miner/miller cohort studies does not support the hypothesis that cosmetic talc is associated with an increased risk of mesothelioma (Ierardi 2022).

Also in 2022, Lynch and others conducted a systematic review similar to those of IARC to assess the potential pulmonary carcinogenicity of inhaled talc in humans. The authors concluded that based on the integration of evidence from animal experiments, mechanistic evaluations, and epidemiological studies all of reasonable methodological quality, it is unlikely that talc and cosmetic talcum powders at human-relevant exposures cause human pulmonary cancers, including mesothelioma. (Lynch, 2022).

In sum, no case control epidemiologic studies exist that show any association between exposure to cosmetic talc and mesothelioma despite occupational exposures sufficiently high to induce pneumoconiosis. Case reports and case series alone cannot show a causal association between cosmetic talc and mesothelioma.⁴²

Risk Assessment

In 1985, the FDA conducted a risk assessment for consumer use of talc, assuming a worst-case estimate of 0.1% asbestos in talc and concluded that the risk would be less than background exposures to asbestos over a lifetime. (Burns, 2019). In 2019, Burns updated the previous FDA assessment, incorporating more recent published literature associated with consumer use of talc. Assuming an asbestos content of 0.1% Burns calculated a cumulative asbestos exposure potential ranging from 0.0000021 to 0.0096 f/cc-yr. (Burns 2019). This is significantly below the upper range of cumulative background calculated by the ATSDR of 0.4 f/cc-yr, and would not increase the risk of mesothelioma. (ATSDR 2001, Burns 2019).

QUALIFICATIONS – DAVID WEILL, M.D.

To prepare this report I rely on my background, and experience as a medical doctor and pulmonologist, as well as relevant research and scientific literature I have studied at length both for this review and over the course of my career. I am board-certified in pulmonary disease. I have authored numerous publications on various aspects of lung disease and published a paper examining exposure to asbestos, radiographic changes, and lung function in Libby, Montana. In addition, I have testified in front of the United States Senate on two occasions and in the Texas State Legislature regarding various aspects of asbestos related diseases. I also was Chairman of the Monticello Conference on Elongated Mineral Particles in 2017 and was Managing Editor of the Proceedings of the Conference published in Toxicology and Applied Pharmacology.

THE PULMONOLOGIST’S PERSPECTIVE

Pulmonologists treat patients with diseases of the respiratory system. Accordingly, we have specialized knowledge of the physiology, biology, and disorders of the respiratory system. We also must maintain specialized knowledge of the epidemiology of respiratory disease—which is among the subjects upon which we are tested to obtain board certification.

Understanding disease causation is essential to our diagnostic duties. Pulmonologists can face diagnostic situations where there is a broad differential diagnosis (a number of potential diseases consistent with the symptoms of the patient). To focus diagnostic investigation more narrowly, the pulmonologist must be able to obtain an accurate and comprehensive occupational history from the individual being evaluated. The ability to use information from an occupational history turns on having an understanding of industrial hygiene and epidemiology.

In short, pulmonologists must know which occupational exposures to various substances are medically significant and which are not.

CONCLUSION

Especially with regard to talc and potential health risks, terminology is very important and that substances are assigned risk based on their specific individual properties. Using less rigor with terminology can lead to a misunderstanding of the health risk to humans, a situation that has occurred with regard to talc. This has occurred not only due to imprecise asbestos definitions but also due to poor understanding of the limits of asbestos analytical techniques.

Given what is known about Mr. Perry’s exposure situation and given the medical literature regarding the mineralogy and epidemiology of talc exposure, I can conclude that Mr. Perry’s exposure to talc did not contribute to elevating the risk for mesothelioma development.

I evaluated Plaintiff’s allegations that the cosmetic talc products at issue in this case contain asbestos, including a review of the studies and opinions of Plaintiff’s experts from MAS, and

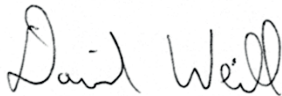
Michael L. Perry and Lonnie L. Long v. American International Industries, et al.

MVA, along with Mr. Bailey, which allege that certain cosmetic talc is contaminated with trace levels of asbestos, including tremolite asbestos, anthophyllite asbestos, and chrysotile asbestos as set forth in their reports identified above. I also reviewed the studies and opinions of experts including Dr. Sanchez and Mr. Segrave, who conclude that the cosmetic talc at issue is free of asbestos. Additionally, I reviewed risk assessments for consumer use of talc including those identified in my report and reference list.

Based on my review of these and other materials, including animal studies, human epidemiology, and clinical studies, it is my opinion that the cosmetic talcum powder products at issue in this case do not cause or contribute to cause mesothelioma. Further, my opinion that the cosmetic talc products at issue in this case do not cause mesothelioma remains true even if they are hypothetically contaminated with trace levels of asbestos, including tremolite asbestos, anthophyllite asbestos, and/or chrysotile as Plaintiff claims.

Should more information become available regarding this individual, I would like to review that information as well. The opinions expressed by me in this report are to a reasonable degree of medical certainty, and I reserve the right to amend my report if new information becomes available. My reference list is attached to this report as a separate document.

Sincerely,



David Weill, M.D.
Board Certified in Pulmonary Disease

Curriculum Vitae

David Weill, M.D.

Current Position

Title: Principal, Weill Consulting Group

Work Address:

Telephone (office):

E-Mail:

License No: ME 130463 (FL); 304283 (LA)

Place of Birth: New Orleans, LA

Citizenship: U.S.

Marital Status: Married

Undergraduate Education:

1985 Bachelor of Arts, Political Science, Tulane University, New Orleans, LA
Cum Laude

Graduate Education:

1990 M.D., Tulane University Medical School

Postdoctoral Training:

06/90-06/93 Internship and Residency in Internal Medicine, Parkland Hospital,
University of Texas-Southwestern

07/93-06/96 Fellowship in Pulmonary and Critical Care Medicine and Lung
Transplantation, University of Colorado at Denver and Health Sciences
Center (UCDHSC)

Honors and Awards:

2019 The Grace Rose Foundation, Medical Professional of the Year
2010 Cystic Fibrosis Research Institute, Professional of the Year

Licensure and Certification:

1993-2003 American Board of Internal Medicine, Internal Medicine
1996 Diplomate in Pulmonary Disease (recertified until 2026)
2006 Diplomate in Critical Care Medicine

Grants:**Present/Pending:**

- 2011-2014 National Institutes of Health, RC4, RFA-OD-10-005
Genome Transplant: A non-invasive sequencing-based method for
detecting acute and chronic rejection of solid organ transplants
Co-investigator, 5% effort (Principal Investigators: Hannah
Valantine/Steve Quake)
- 2011-2013 National Institutes of Health, Program Project Grant
Elafin Therapy of Lung Disease
Co-investigator (Principal Investigator: Marlene Rabinovitch)
- 2010-2012 National Institutes of Health, NHLBI, R34RFA-HL-10-016
Antibody-mediated rejection in lung transplantation
Principal investigator, 2.5% effort
- 2008-2012 APT Pharmaceuticals, Inc., CIS001
- The goal of this study is to assess the effectiveness of inhaled cyclosporine
in preventing chronic rejection following lung transplantation.
Dr. Weill is the site Principal Investigator
5% effort, \$ 275,351 direct costs/yr
- A multi-center, randomized, double-blind, placebo-controlled study to
demonstrate the efficacy and safety of cyclosporine inhalation solution
(CIS) in improving bronchiolitis obliterans syndrome-free survival
following lung transplantation
- 2009-2011 Translational Therapeutics Development Center
Cystic Fibrosis Foundation Therapeutics, Inc MILLA09Y0
Dr. Weill is the Co-Principal Investigator
(Principal Investigator: Carlos Milla)
- The major goal of this project is to establish infrastructure support for a
clinical trials network related to cystic fibrosis.

- 2008-2011 Program for Adult Care Excellence
Cystic Fibrosis Foundation, WEILL08ACO
Dr. Weill is the Principal Investigator
- The major goal of this project is to enhance the training of adult physicians in the care of adult patients with cystic fibrosis.
- 2007-2011 National Institutes of Health
A Multi center Prospective Cohort Study Examining the Role of Protein C in Early ARDS
Co-investigator (Principal Investigator: Ann Weinacker)
- Goal: Participate in a multicenter trial examining primary graft injury after lung transplantation
Responsibilities: Coordinate patient selection and monitoring with the PI
- 2010-2011 Cystic Fibrosis Center Grant
Cystic Fibrosis Foundation C011-09
Dr. Weill is the Co-Principal Investigator (Principal Investigator: Carlos Milla)
- The major goal of this project is to provide infrastructure support to the Stanford Cystic Fibrosis Center.

Appointments:

Professional:

- 07/96-11/99 Medical Director, Lung and Heart – Lung Transplant Program
Medical City Hospital
Dallas, TX

Academic:

- 01/2021-present Professor of Medicine
Tulane University Medical School
- 04/2017-06/2019 Professor of Medicine and Surgery
Morsani College of Medicine
University of South Florida Health
- 08/01/11-07/01/16 Professor of Medicine
Stanford University School of Medicine
- 05/01/06-07/31/11 Associate Professor of Medicine
Medical Director, Lung and Heart – Lung Transplant Program
Stanford University School of Medicine
- 12/31/05-04/30/06 Acting Associate Professor
Stanford University School of Medicine
- 06/02-11/05 Associate Professor of Medicine

	Associate Director, Lung and Heart – Lung Transplant Program
	University of Colorado Health Sciences Center
12/99-05/02	Associate Professor of Medicine
	Medical Director, Lung and Heart – Lung Transplant Program
	University of Alabama – Birmingham

Other Appointments:

06/17-06/19	Executive Advisor, Tampa Transplant Institute at Tampa General Hospital Tampa General Hospital/University of South Florida Health
12/05-10/15	Director, Center for Advanced Lung Diseases Medical Director, Lung and Heart-Lung Transplant Program, Stanford University Medical Center
09/08-07/13	Director, Adult Cystic Fibrosis Program, Stanford University School of Medicine

Editorial Board Memberships:

1999-2009	Associate Editor, The Journal of Heart and Lung Transplantation
2018-2019	Editor, Pulse Newsletter, International Society of Heart and Lung Transplantation
2017-2018	Managing Guest Editor, Special Issue, The Monticello Workshop on Elongate Mineral Particles, Toxicology and Applied Pharmacology

Peer Review Activities:

2017- Present	Toxicology and Applied Pharmacology
2014- Present	American Journal of Respiratory and Critical Care Medicine
2014- Present	Journal of Toxicology and Environmental Health
2014- Present	Thorax
2014- Present	Critical Reviews in Toxicology
2013- Present	The New England Journal of Medicine
1996- Present	The Journal of Heart and Lung Transplantation
1996- Present	American Journal of Transplantation
1996- Present	The Journal of Chronic Obstructive Pulmonary Disease
1996- Present	Chest
1996- Present	Clinical Transplantation

Major Committee and Service Responsibilities (Administration)**Divisional:**

2007- 2008	<i>Search Committee</i> , Director, Adult Cystic Fibrosis Program, Stanford
2004- 2005	<i>Finance Committee</i> , Division of Pulmonary and Critical Care, University of Colorado Health Sciences Center

Departmental:

2010- 2012 *Strategic Planning Committee*, Department of Medicine, Stanford

SOM:

2008-Present *Quality Council (Co-Chair)*, Transplantation PPEC, Stanford
 2013-2015 *Search Committee Chair*, Surgical Director, Lung Transplantation,
 Cardiothoracic Surgery, Stanford
 2010-2012 *Faculty Fellow*, Stanford
 2008-2011 *Quality Council*, Cardiothoracic Surgery, Stanford

 2006-2007 *Search Committee, Head*, Thoracic Surgery, Cardiothoracic Surgery,
 Stanford
 2007 *Hand Hygiene Physician Task Force*, Stanford
 2006 *Search Committee*, Pediatric Pulmonary Biology Center Faculty Member,
 Stanford
 2002- 2005 *Antimicrobial Subcommittee*, Pharmacy and Therapeutics Committee,
 University of Colorado Health Sciences Center

Leadership Roles:

2009-2015 Director, Center for Advanced Lung Disease, Stanford University Medical
 Center
 2005-2015 Medical Director, Lung and Heart – Lung Transplant Program, Stanford
 University Medical Center
 2008-2013 Director, Adult Cystic Fibrosis Center, Stanford University Medical
 Center

Professional Society**Leadership Roles:**

2019-2021 Member, Working Group, Recipient Selection Consensus Document,
 ISHLT
 2008-2016 Member, Medical Advisory Board, California Transplant Donor Network
 2014-2016 Past Chair, Pulmonary Transplantation Council, International Society of
 Heart and Lung Transplantation
 2012-2014 Chair, Pulmonary Transplantation Council, International Society of Heart
 and Lung Transplantation
 2014-2015 Section Editor, ISHLT's reference guide for the work-up and diagnosis of
 common syndromes in thoracic organ transplant recipients
 2009-2011 Vice-Chair, Pulmonary Transplantation Council, International Society of
 Heart and Lung Transplantation

2008-2011 Pulmonary Council Leader, Standard and Guidelines Committee,
International Society of Heart and Lung Transplantation

Meeting Session Chairman

Novel Mechanisms in Chronic Lung Allograft Dysfunction, International Society of Heart and Lung Transplantation, April 7, 2017
Advances in Immunosuppression, International Society of Heart and Lung Transplantation, San Diego, April 14, 2014
ISHLT Academy: Core Competencies in Lung Transplantation, International Society of Heart and Lung Transplantation, San Diego, April 13, 2011
The Lung Allocation System, International Society of Heart and Lung Transplantation, Paris, April 23, 2009
Advances in Immunosuppression, International Society of Heart and Lung Transplantation, San Francisco, April 27, 2009
Controversies in Cardiothoracic Transplantation, Cardiothoracic Transplantation: An International Update, Vail, CO, February 22, 2003
Clinical Lung Transplantation, International Society for Heart and Lung Transplantation, Osaka, Japan, April 6, 2000

Committee:

2017 Committee Member, Identifying Collaborative Clinical Research Priorities in Lung Transplantation, National Heart, Lung, and Blood Institute/AATS
2007- Present Abstract Reviewer, International Meeting, International Society of Heart and Lung Transplantation
2014-2016 Member, Thoracic Committee, United Network for Organ Sharing
2008- 2010 Member, Communications Committee, International Society of Heart and Lung Transplantation
2006-2008 Member, Membership and Professional Standards Committee, United Network for Organ Sharing
2005-2006 Member, National Lung Review Board, United Network for Organ Sharing
2003 Member, Working Group on Primary Lung Graft Failure, International Society of Heart and Lung Transplantation
2001 Member, Maximizing Cadaveric Organ Utilization, American Society of Transplantation

Teaching Record:

Curriculum Development:

Lung Transplant Fellowship
Stanford University Medical Center
2005-2015

Lung Transplant Fellowship
University of Colorado Health Sciences Center
2002-2005

Lung Transplant Fellowship
University of Alabama – Birmingham
1999-2002

Governmental Consulting:

United States Senate
Environment and Public Works
The Heath Effects of Asbestos
June 2007

United States Senate
Judiciary Committee Testimony
Asbestos and Mixed Dust Disease
February 2005

Texas State Legislature Testimony
House Bill 8 Regarding Asbestos and Silica
March 2005

Scientific Consulting:

Chair, Scientific Advisory Board
National Stone, Sand, and Gravel Association
2012-present

Member, Scientific Advisory Board
GlycosBio
2018-present

Member, Scientific Advisory Board
Kallaco
2020-present

Member, Strategic Advisory Board
ZEPHYRx
2021-present

Advisory Councils:

Member, The Center for Entrepreneurship
Wake Forest University

2020-present

Publications:

Peer-Reviewed Articles

1. **Weill D.** Proceedings of the Monticello II Conference on Elongate Mineral Particles. Environmental Research 2023 Aug; 230:1-2
2. Leard LE, Holm AM, Valapour M, Glanville AR, Attawar S, Aversa M, Campos SV, Christon LM, Cypel M, Dellgren G, Hartwig MG, Kapnadak SG, Kolaitis NA, Kotloff RM, Patterson CM, Shlobin OA, Smith PJ, Solé A, Solomon M, **Weill D**, Wijzenbeek MS, Willemse BWM, Arcasoy SM, Ramos KJ. Consensus document for the selection of lung transplant candidates: An update from the International Society for Heart and Lung Transplantation. J Heart Lung Transplant. 2021 Nov;40(11):1349-1379.
3. Cochrane AB, Lyster H, Lindenfeld J, Doligalski C, Baran D, Yost C, Shullo M, Schweiger M, **Weill D**, Stuckey L, Ivulich S, Scheel J, Peters L, Colvin M, Dawson K, Girgis R, Weeks P, Tse T, Russell S, Flattery M, Jennings D, Kittleson M, Miller T, Khuu T, Claridge T, Uber P, Ford K, Ensor CR, Simpson K, Dipchand A, Page RL 2nd.. Report from the 2018 consensus conference on immunomodulating agents in thoracic transplantation: Access, formulations, generics, therapeutic drug monitoring, and special populations J Heart Lung Transplant. 2020 Oct;39(10):1050-1069
4. Sethi, JS, Bugajski A, Patel KN, Davis NM, Wille KM, Qureshi MR, Banday MM, Lin M, Emani V, Weill D, Tumin D, Hayes D, Sharma N. Recipient Age Impacts Long-Term Survival in Adult Cystic Fibrosis Subjects after Lung Transplantation. ANNALSATS 2020, Aug 14
5. Kheir F, Alkhatib A, Berry GJ, Daroca P, Diethelm L, Rampolla R, Saito S, Smith DL, **Weill D**, Bateman M, Abdelghani R, Lasky JA. Employing Bronchoscopic Lung Cryobiopsy and a Genomic Classifier in the Multidisciplinary Diagnosis of Diffuse Interstitial Lung Diseases Chest. 2020 May 25:S0012-3692(20)31499-9
6. **Weill D.** Proceedings of the Monticello Conference on Elongate Mineral Particles. Toxicol Appl Pharmacol 2018 Dec 15;361:1-2
7. National Heart, Lung, and Blood Institute and American Association of Thoracic Surgery Workshop: Identifying Collaborative Clinical Research Priorities in lung transplantation. Mulligan MS, **Weill D**, Davis RD, Christie JD, Farjah F, Singer JP, Hartwig M, Sanchez PG, Kreisel D, Ware LB, Bermudez C, Hachem RR, Weyant MJ, Gries C, Awori Hayanga JW, Griffith BP, Snyder LD, Odum J, Craig JM, Aggarwal NR, Reineck LA. J Thorac Cardiovasc Surg 2018 Aug 18. pii: S0022-5223(18)32135-4
8. **Weill D.** Lung transplantation: indications and contraindications. J Thorac Dis 2018;10(7):4574-4587
9. Hachem RR, Kamoun M, Budev MM, Askar M, Ahya VN, Lee JC, Levine DJ, Pollack MS, Dhillon GS, **Weill D**, Schechtman KB, Leard LE, Golden JA, Baxter-Lowe L,

- Mohanakumar T, Tyan DB, Yusen RD. Human leukocyte antibodies after lung transplantation: Primary Results of the HALT Study. *Am J Transplant*. 2018 Apr 24
10. Snell GI, Yusen RD, **Weill D**, Strueber M, Garrity E, Reed A, Pelaez A, Whelan TP, Perch M, Bag R, Budev M, Corris PA, Crespo MM, Witt C, Cantu E, Christie JD. Report of the ISHLT Working Group on Primary Lung Graft Dysfunction, part I: Definition and Grading – A 2016 Consensus group statement of the International Society for the Heart and Lung Transplantation *J Heart Lung Transplant*. 2017 Oct;36(10):1097-1103
 11. Cantu E, Diamond JM, Suzuki Y, Lasky J, Schaufler C, Lim B, Shah R, Porteous M, Lederer DJ, Kawut SM, Palmer SM, Snyder LD, Hartwig MG, Lama VN, Bhorade S, Bermudez C, Crespo M, McDyer J, Wille K, Orens J, Shah PD, Weinacker A, **Weill D**, Wilkes D, Roe D, Hage C, Ware LB, Bellamy SL, Christie JD; Lung Transplant Outcomes Group. *Am J Respir Crit Care Med*. 2017 Sep 5
 12. Pasupneti S, Patel K, Mooney JJ, Chhatwani L, Dhillon G, **Weill D**. Lung transplantation following death by drowning: a review of the current literature. *Clin Transplant*. 2016 Oct
 13. Mooney JJ, **Weill D**, Boyd JH, Nicolls MR, Bhattacharya J, Dhillon GS. Effect of Transplant Center Volume on Cost and Readmissions in Medicare Lung Transplant Recipients. *Ann Am Thorac Soc*. 2016 Apr 11
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 15. Yang RL, Kurian AW, Winton LM, **Weill D**, Patel K, Kingham K, Wapnir IL. Addressing inherited predisposition for breast cancer in transplant recipients. *J Surg Oncol*. 2016 Feb.
 16. Cantu E, Suzuki Y, Diamond JM, Ellis J, Tiwari J, Beduhn B, Nellen JR, Shah R, Meyer NJ, Lederer DJ, Kawut SM, Palmer SM, Snyder LD, Hartwig MG, Lama VN, Bhorade S, Crespo M, Demissie E, Wille K, Orens J, Shah PD, Weinacker A, **Weill D**, Wilkes D, Roe D, Ware LB, Wang F, Feng R, Christie JD. Lung Transplant Outcomes Group. Protein Quantitative Trait Loci Analysis Identifies Genetic Variation in the Innate Immune Regulator TOLLIP in Post-Lung Transplant Primary Graft Dysfunction Risk. *Am J Transplant*. 2015 Dec.
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21. Maxwell BG, Levitt JE, Goldstein BA, Mooney JJ, Nicolls MR, Zamora M, Valentine V, **Weill D**, Dhillon GS. Impact of the lung allocation score on survival beyond 1 year. *Am J Transplant*. 2014 Oct;14(10):2288-94.
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26. Diamond JM, Lederer DJ, Kawut SM, Lee J, Ahya VN, Bellamy S, Palmer SM, Lama VN, Borhade S, Crespo M, Demissie E, Sonnett J, Wille K, Orens J, Sha PD, Weinacker A, **Weill D**, Kohl BA, Deutschman CC, Arcasoy S, Shah AS, Belpierio JA, Wilkes D, Reynolds JM, Ware LB, Christie JD. Elevated plasma long pentraxin-3 levels and primary graft dysfunction after lung transplantation for idiopathic pulmonary fibrosis. *Am J Transplant* 2011 Nov;11(11):2517-22.
27. Liu V, **Weill D**, Bhattacharya J. Racial Disparities in Survival After Lung Transplantation. *Arch Surg* 2011 Mar;146(3):286-93.
28. Liu V, Bhattacharya J, **Weill D**, Hunt S, and Hlatky MA. Persistent racial disparities in survival following heart transplantation. *Circulation* 2011 Apr 19;123(15):1642-9. *My primary role in this study was to provide significant editing to the manuscript. I also took the primary responsibility for answering the reviewers' questions.*
29. **Weill D**, Dhillon G, Freyder L, Lefante J, and Glindmeyer H. Lung function, radiologic changes, and exposure: analysis of ATSDR data from Libby, Montana. *European Respiratory Journal* 2011 Aug;38(2):376-83.
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31. Deuse T, Sista R, **Weill D**, Haddad F, Dhillon G, Robbins RC, and Reitz BA. Review of heart-lung transplantation at Stanford. *Ann Thorac Surg* 2010 Jul; 90(1):329-37. *My primary role in this study was to provide significant editing to the manuscript. I also took the primary responsibility for answering the reviewers' questions.*

32. Chang W, Wei K, Jacobs SS, Upadhyay D, **Weill D**, and Rosen GD. SPARC suppresses apoptosis of idiopathic pulmonary fibrosis fibroblasts through constitutive activation of beta-catenin. *J Biol Chem.* 2010 Mar 12;285(11):8196-206. *My role in this study was to take the primary role in collecting the clinical data for analysis. My secondary role was to heavily edit the manuscript.*
33. Liu V, Zamora MR, Dhillon GS, and **Weill D**. Increasing Lung Allocation Scores Predict Worsened Survival among Lung Transplant Recipients. *American Journal of Transplantation* 2010 Apr;10(4):915-20.
34. Liu V, Dhillon GS, and **Weill D**. A multi-drug regimen for respiratory syncytial virus and parainfluenza virus infections in adult lung and heart-lung transplant recipients. *Transpl Infect Dis* 2010 Feb;12(1):38-44.
35. Choi JY, Khansaheb M, Joo NS, Krouse ME, Robbins RC, **Weill D**, and Wine JJ. Substance P stimulates airway submucosal gland secretion mainly via a CFTR – dependent process. *Journal of Clinical Investigation* 2009 May;119(5):1189-200. *My role in this study was to take the primary role in collecting the clinical data for analysis. My secondary role was to heavily edit the manuscript.*
36. Valentine VG, **Weill D**, Lombard GA, LaPlace SG, Seoane L, Taylor DE, Dhillon GS. A Single Institution Study Evaluating the Utility of Surveillance Bronchoscopy Following Lung Transplantation. *Journal of Heart and Lung Transplantation* 2009 Jan;28(1):14-20. *My primary role in this study was to provide significant editing to the manuscript. I also took the primary responsibility for answering the reviewers' questions.*
37. Dhillon GS, Levitt J, Mallidi H, Valentine VG, Gupta MR, Sista R, and **Weill D**. Impact of Hepatitis B core antibody positive donors in lung and heart-lung transplantation: an analysis of the United Network for Organ Sharing database. *Transplantation* 2009; 88:842-846.
38. Valentine VG, **Weill D**, Raper B, Lombard GA, LaPlace SG, Bonvillain RW, Seoane L, Taylor DE, Dhillon GS. Ganciclovir for Cytomegalovirus: A Call for Indefinite Prophylaxis in Lung Transplantation. *Journal of Heart and Lung Transplantation* 2008 Aug;27(8):875-81. *My primary role in this study was to provide significant editing to the manuscript. I also took the primary responsibility for answering the reviewers' questions.*
39. Leung M, Rachakonda L, **Weill D**, and Hwang P. Outcomes of Sinus Surgery before Lung Transplantation for Cystic Fibrosis. *American Journal of Rhinology* 2008 Mar – Apr; 22(2): 192 – 6. *My role in this study was to take the primary role in collecting the clinical data for analysis. My secondary role was to heavily edit the manuscript.*
40. Mulligan MS, Shearon TH, **Weill D**, Pagani FD, Moore J, and Murray S. Heart and Lung Transplantation in the United States, 1997-2006. *American Journal of Transplantation* 2008 Apr; 8(4 Pt 2):977-87. *My primary role in this study was to provide significant editing to the manuscript. I also took the primary responsibility for answering the reviewers' questions.*
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- Working Group on Primary Lung Graft Dysfunction Part II: Definition. A Consensus Statement of the International Society for Heart and Lung Transplantation. *Journal of Heart and Lung Transplantation* 2005 Oct; 24(10):1454-9.
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 46. **Weill D**, Lock BJ, Wewers DL, Young KR, Zorn GL, Early L, Kirklin JK, and McGiffin DC. Combination prophylaxis with ganciclovir and cytomegalovirus immune globulin after lung transplantation: Effective CMV prevention following daclizumab induction. *American Journal of Transplantation* 2003; 3(4):492-496.
 47. **Weill D**, Dey GC, Hicks RA, Young KR, Zorn GL, Kirklin JK, Early L, and McGiffin DC. A positive donor gram stain does not predict outcome following lung transplantation. *Journal of Heart and Lung Transplantation* 2002; 21(5):555-8.
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Oral Presentations (competitive)

1. Dhillon GS, Zamora MR, Roos JE, Sheahan D, Sista RR, Van der Starre P, **Weill D**, Nicolls MR. Lung Transplant Airway Hypoxia: A Diathesis to Fibrosis? American Thoracic Society Annual Meeting, New Orleans, May 2010.
2. **Weill D**, Young R, and McGiffin DC. A Positive Donor Gram Stain Does Not Predict the Development of Pneumonia, Oxygenation, or Duration of Mechanical Ventilation Following Lung Transplantation, International Society of Heart and Lung Transplantation, April, 2001.
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Invited Extramural Lectures and Presentations

April 2016	The Preoperative Selection of Lung Transplant Candidates with Malignancy, ISHLT, Washington D.C.
February 2016	The Lung Allocation Score: Morbidity, Mortality, and Resource Utilization, The Methodist Hospital, Houston, Texas
April 2014	The Report on Recipient Selection Consensus Document, ISHLT, San Diego, CA
May 2008	Lung Transplantation: Where We Have Been and Where We Are Going, Stanford University, Medical Grand Rounds
March 2008	Expanding the Donor Pool, Plenary Session, Transplant Growth and Collaborative Meeting, Department of Health and Human Services
December 2006	Cytomegalovirus Infections Following Lung Transplantation, Stanford University, Medical Grand Rounds
February 2006	Lung Transplantation 2006, University of California – Davis, Pulmonary Grand Rounds
December 2004	An Update on Lung Transplantation, University of West Virginia Medical School, Pulmonary Grand Rounds
September 2004	Current Aspects of Lung Transplantation, University of Texas-Southwestern, Pulmonary Grand Rounds
June 2003	Post Transplant Thoracic Malignancies, Texas Transplant Society Annual Meeting
June 2003	An Update on Bronchiolitis Obliterans Syndrome, University of Southern California Medical School, Pulmonary Grand Rounds
March 2003	Expanding the Donor Pool, International Meeting, American Society of Transplant Physicians and Surgeons

February 2003	Lung Transplantation for COPD: Two Lungs, One, or None, Cardiothoracic Transplantation: An International Update, Vail, CO
November 2002	Photopheresis in Lung Transplantation, Johns Hopkins Medical School
October 2002	Lung Transplantation: An Update, University of Colorado Health Sciences Center, Medical Grand Rounds
February 2002	Expanding the Donor Pool, Oregon Health Sciences Center Transplant Grand Rounds
February 2002	Cytomegalovirus Infections in Thoracic Transplantation, University of Texas – San Antonio Transplant Grand Rounds
December 2001	An Update on Immunosuppression, Indiana University/Methodist Hospital Transplant Grand Rounds
February 2001	Lung Transplantation for Bronchioloalveolar Carcinoma, Cardiothoracic Transplantation 2001: An International Update
July 2000	Current Aspects of Lung Transplantation. Medical Grand Rounds, University of Alabama- Birmingham
September 2000	Late Complications Following Lung Transplantation, Lung Transplantation 2000, Mount Sinai Medical Center
June 1997	Tolerance to Acute Lung Injury, Louisiana State University Pulmonary Grand Rounds

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David Weill, M.D.
July 18, 2024

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND FOR THE FIFTH JUDICIAL COURT
_____X

MICHAEL L. PERRY and LONNIE L. C/A NO.
LONG, 2023-CP-40-04072

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES, et al.

CERTIFIED COPY

Defendants.

_____X

VIDEOCONFERENCE DEPOSITION
OF
DAVID WEILL, M.D.

* * *

Taken by Plaintiff
July 18, 2024

* * *

Reported in Stenotype by: Peter DeCrescenzo,
Registered Professional Reporter

David Weill, M.D.
July 18, 2024

Page 14 1 additional case specific documents you reviewed in 2 the Perry case; is that correct? 3 (Plaintiffs' Exhibit 7 was introduced.) 4 A. Yes. 5 Q. Okay. Great. Have you reviewed any other 6 case specific materials outside of the materials 7 listed in the first -- the original and supplemental 8 report? 9 A. No. 10 Q. Did you ever talk to any of Mr. Perry's 11 physicians? 12 A. No. 13 Q. Any witnesses in the case? 14 A. No. 15 Q. Everything you know about the facts of the 16 Perry case from the documents listed in the two 17 reports; correct? 18 A. Yes. 19 Q. What did you understand to be your 20 assignment in this case when you were retained? 21 A. It was not explicitly told to me, but I 22 understood it to mean, first, to determine whether 23 or not this gentleman, in fact, suffered from a 24 pleural mesothelioma, which I think he did. 25 And then second, to determine whether or	Page 16 1 you find anything in Mr. Perry's medical records 2 indicating evidence of genetic change or mutation? 3 A. No. 4 Q. Did you see that Mr. Perry had genetic 5 testing for BAP1? 6 A. I saw that the tumor was tested for BAP1, 7 and I mentioned that in my report as well. And the 8 BAP1 was said to be intact then, so no mutation. 9 Q. And what does it mean to you when you see 10 a mesothelioma patient where the BAP1 was intact? 11 A. Well, if it's tumor testing, that is 12 tissue testing, I don't have a -- I don't believe it 13 has any implication one way or the other. The 14 testing that I would be looking for would be blood 15 testing for germline mutations. 16 Q. So a finding of an intact BAP1 in the 17 tumor is not indicative one way or the other whether 18 or not the individual has any germline mutation to 19 their BAP1? 20 A. Yes. Correct. 21 Q. So then based on that, the fact that the 22 BAP1 was intact in Mr. Perry's tumor would not 23 factor into your opinion -- 24 A. Correct. 25 Q. -- because -- okay.
Page 15 1 not any exposure he would have gotten to talcum 2 powder would have elevated his risk. 3 Q. Okay. And so based on your review, it's 4 your opinion that Mr. Perry does, in fact, have 5 pleural mesothelioma? 6 A. Yes. 7 Q. Do you have any opinions as to the cause 8 of Mr. Perry's mesothelioma, based on your review of 9 the materials? 10 A. I think that this was a naturally 11 occurring disease due to intrinsic factors specific 12 to Mr. Perry. I don't think that there was an 13 exposure that caused his disease. 14 Q. And you said based on intrinsic factors. 15 Are there any specific intrinsic factors 16 that you believe caused his mesothelioma? 17 A. I can only say that there was a series of 18 genetic mutations that occurred, but I can't be any 19 more specific than that, or be able to name them 20 without any additional testing that was performed. 21 Q. And when you say naturally occurring is 22 that the same as spontaneous mesothelioma? 23 A. I'm using those terms interchangeably with 24 also the idiopathic mesothelioma. 25 Q. Got it. Just wanted to make sure. Did	Page 17 1 A. Yeah. Sorry. I answered before you were 2 done. 3 Q. No. My question was done. I was adding 4 on unnecessarily, so thank you. 5 And then I believe, based on your 6 statement that you didn't see any intrinsic 7 exposures that would have increased Mr. Perry's risk 8 of developing mesothelioma, causing him to develop 9 it, you weren't able to identify any asbestos 10 exposure that Mr. Perry had that would've 11 contributed to his development of mesothelioma? 12 MS. BUENO: Objection. Form. 13 A. I actually -- 14 Q. I'm going to take that question back 15 because it's very, very wordy. 16 A. Okay. 17 Q. Based on your review of Mr. Perry's 18 records, were you able to identify any exposure to 19 asbestos? 20 A. None that I thought elevated his risk for 21 the disease, no. 22 Q. You noted in your review Mr. Perry's 23 family history of colon cancer, and that his father 24 had prostate cancer? 25 A. Yes.

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Page 18 1 Q. Did either of those have any relevance to 2 your opinions in this case? 3 A. No. 4 Q. Do you intend to testify at trial that 5 Mr. Perry had a family history of cancer that you 6 considered in forming your opinion that his 7 mesothelioma was spontaneous? 8 A. I'll answer that question this way. I'll 9 note that he had a family history of it. If you're 10 asking whether or not I'm going to point to this as 11 a family cancer syndrome, if you'll use that 12 terminology, then the answer is no, I won't. 13 Q. How, if at all, does Mr. Perry's family 14 history of cancer factor into your opinions in this 15 case? 16 A. It doesn't. I just noted it for 17 completeness sake in my report, but it doesn't. 18 Q. Okay. Did you see any evidence in the 19 medical records that any doctor believed that 20 Mr. Perry's mesothelioma was spontaneous? 21 A. I -- I didn't see that any of the doctors 22 commented on the cause of it one way or the other. 23 Q. Other than not having any external risk 24 factors, is there anything else that you would 25 identify that indicates to you that Mr. Perry's	Page 20 1 Q. Yeah. 2 A. -- I'm reluctant to answer the question 3 until you pose it. 4 Q. Outside of the fact that you were unable 5 to identify any external exposure that put Mr. Perry 6 at risk for developing mesothelioma, was there 7 anything else, in your review of materials that you 8 either saw or didn't see, that would indicate to you 9 that Mr. Perry's mesothelioma was spontaneous? 10 MS. BUENO: Objection. Form. 11 A. No. 12 Q. And you said there was no exposure that 13 you could say, to a reasonable degree of medical 14 certainty, caused his mesothelioma. I want to ask 15 you a similar question. 16 Is it your opinion, to a reasonable degree 17 of medical certainty, that Mr. Perry's mesothelioma 18 was spontaneous? 19 A. That is my opinion. 20 MS. BUENO: Objection. Form. 21 A. Yeah. 22 Q. As far as external risk factors or risk 23 factors for mesothelioma, what did you look for and 24 see in Mr. Perry's records? 25 A. The same things that I would identify
Page 19 1 mesothelioma was spontaneous? 2 A. That's the definition of a spontaneous 3 tumor, not being able to identify any external 4 factors which elevated the risk, and I didn't see 5 those in this case, unless one of these exposures or 6 any exposure becomes more further characterized. 7 At this time I can't say more likely than 8 not that any exposure he would have gotten would 9 have elevated his risk of disease. 10 Q. And I just wanted to make sure that the 11 only thing, from your review of the medical records, 12 is there anything else you saw or didn't see that 13 indicates Mr. Perry's mesothelioma was spontaneous, 14 beyond there being no external factors? 15 MS. BUENO: Objection. Form. 16 A. I'm not sure I understand the question. 17 Do you mind rephrasing? 18 Q. From your review of the materials, was 19 there anything -- other than the fact that you were 20 unable to identify an external risk factor or 21 risk -- I want to make this clean, and I think I'm 22 kind of putting the same question that's going to 23 give you the same response. 24 A. I think I know where you're headed, but 25 I --	Page 21 1 as -- as established risk factors for mesothelioma 2 development, namely significant amphibole exposure, 3 number one; number two, erionite exposure; and, 4 number three, therapeutic radiation exposure. 5 Q. That's what I anticipated. The first one 6 I want to talk about is you didn't see any 7 significant history of amphibole exposure. 8 What type of exposure would you need to 9 see in order to attribute it to somebody's 10 mesothelioma? 11 A. Depending on the particular asbestiform 12 amphibole that we would be talking about, I would 13 have to see exposure types that were consistent with 14 what's been reported in the medical literature as 15 elevating the risk of the disease. 16 And so when one talks about amosite, 17 tremolite, or crocidolite, I consider what's in the 18 medical literature, and what's been shown to 19 increase the risk for mesothelioma, and I didn't see 20 that in this case. 21 Q. And for tremolite, what level, based on 22 your review of the medical literature, would you be 23 looking for? 24 A. So tremolite exposures have been best 25 characterized I think by Dr. Finley, Brent Finley's

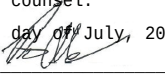
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Page 38 1 here today, that we either haven't discussed or you 2 haven't provided in either of your reports? 3 A. No. 4 Q. So the trial in this case is set in the 5 beginning of August in Columbia, South Carolina. 6 Are you planning to attend live and in person and 7 testify in this case? 8 A. That's certainly my intention, yes. 9 Q. Anything you have that would prohibit you 10 from being able to go to South Carolina in the -- I 11 think it's August 5th is the start date. 12 So those two weeks of August. Anything 13 prohibiting you from going to South Carolina? 14 A. I'll make it work. 15 Q. I'm just making sure you don't have some 16 big trip or something. 17 A. No. I'm dropping my daughter off at 18 college during that time period. But, again, I'll 19 make it work. 20 Q. Okay. I want to go back to your 21 overarching opinion that we've talked about, that 22 the talcum powder products didn't contain asbestos, 23 and Mr. Perry's use of those products did not expose 24 him to asbestos. 25 That's based on other expert reports, the	Page 40 1 A. That's not exactly my -- that's not 2 exactly my opinion. So I don't testify about 3 whether or not there's asbestiform minerals present 4 in the talcum powder or not. That's outside of my 5 realm of expertise. 6 I make the assumption that there might be 7 a small amount, just worst case scenario. I'm not 8 testifying that there is a small amount. I'm just 9 using that as worst case scenario to determine 10 whether or not there's excess risk, even if that's 11 present. 12 So I don't testify about whether there is 13 or there isn't asbestiform amphibole present in the 14 talcum powder. 15 Q. What are you assuming as a worst case 16 scenario level of asbestos in talcum powders that 17 Mr. Perry was exposed to? 18 A. Well, I -- first, I -- I consider the 19 epidemiology when I'm looking at disease causation, 20 so I'm not looking so much at the levels that are 21 present. 22 In other words, I look to see if there is 23 any indication from human epidemiology whether 24 there's a risk present to exposure of this type. I 25 certainly consider the levels that Pierce and Barlow
Page 39 1 case specific materials that you reviewed in this 2 case. 3 Any other materials that you would be 4 relying on for that particular opinion? 5 A. No. 6 Q. And when we're talking about case specific 7 materials, that would be when it comes to that the 8 product didn't contain asbestos, and Mr. Perry's use 9 of those products didn't expose him to asbestos, we 10 would be talking about the expert reports of other 11 folks. 12 Anything else? 13 A. With my report and the -- and the 14 reference list, that you have the universe of what I 15 rely on. 16 Q. Got it. And that may have been where it 17 was a poor question. I just want to talk 18 specifically about the fact that the talcum powder 19 products didn't contain asbestos -- 20 A. Yeah. 21 Q. -- and therefore Mr. Perry's use of those 22 products didn't expose him to asbestos, that 23 particular opinion -- 24 A. That's -- can I interrupt? 25 Q. Uh-huh.	Page 41 1 and -- have determined, and the medical literature 2 has shown, the exposure levels to be at or below 3 background. But when it -- when it gets to 4 causation, I'm looking at human epidemiology to make 5 that opinion, not so much a level. 6 Q. And when you say human epidemiology, when 7 it comes to talc cases, what specific studies would 8 you be pointing to? 9 A. Well, again, using worst case scenario, 10 which would be at the source, which would be the 11 mine, there's no indication that that elevates the 12 risk, even the people that mine the talc. 13 And, secondly, there's -- there's not any 14 epidemiology to show that talcum powder elevates the 15 risk of the disease. 16 Q. So we've got the epidemiological studies 17 regarding talc miners. 18 Are there any other studies or 19 publications related to epidemiological studies of 20 talc exposure that you would rely on? 21 A. No. Those are the most important ones. 22 MS. FORBES-KING: Sir, I think those are 23 all of my questions that I have for you. 24 I'm not sure if anybody else on the line 25 has any questions for Dr. Weill.

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Page 42 1 MS. BUENO: This is Kim Bueno. I have a 2 couple of quick follow ups, but I'm happy to let 3 somebody else proceed, if you have questions first. 4 Okay. Hearing no one. 5 EXAMINATION 6 BY MS. BUENO: 7 Q. Dr. Weill, just a couple of questions for 8 you. I'm looking at your report, the very first 9 one, which was marked for the record as Exhibit 10 Number 6. 11 And if you'll turn with me to page two of 12 that report, am I correct that this is a list of 13 materials that you reviewed and considered before 14 authoring your opinions in this case? 15 A. Yes. 16 Q. And starting on number 23 on page two, it 17 looks like you reviewed reports of Dr. Sanchez and 18 Dr. Segrave; is that correct? 19 A. Yes. 20 Q. And you understand that those experts are 21 testing experts for Johnson & Johnson and Avon 22 respectively; correct? 23 A. Yes. 24 MS. FORBES-KING: Objection. 25 Q. You also reviewed reports, starting at	Page 44 1 Q. Okay. Great. I just want to make sure 2 there's no confusion. 3 So is it true to say then that you did 4 consider testing of Johnson & Johnson products for 5 asbestos by both plaintiffs' and defendants' experts 6 in this particular matter? 7 A. Yes. 8 Q. Same question as it relates to Avon, so 9 there's no confusion. You were asked whether or not 10 you had reviewed testing of Avon talc products for 11 asbestos. 12 If we consider the expert reports that you 13 reviewed, would the answer to that question be yes 14 or no? 15 A. I -- I reviewed that testing by expert 16 witnesses. 17 Q. And did you take into account, as part of 18 your opinions, the findings of plaintiffs' experts 19 indicating that they found trace amounts of asbestos 20 in talcum products manufactured by both Johnson & 21 Johnson and Avon? 22 MS. FORBES-KING: Objection. 23 A. Yes. 24 Q. Will you turn with me now to the invoice 25 that was discussed in this case. I don't think it
Page 43 1 number 27, for Dr. Mark Bailey who is a geologist, 2 mineralogist for plaintiffs. 3 You understand that? 4 A. Yes. 5 Q. And then it looks like you also reviewed a 6 series of reports from Dr. Longo, that's starting -- 7 it appears at number 35 on page two and going into 8 page three, that's up through number 55; is that 9 correct? 10 A. Yes. 11 Q. And is it your understanding that 12 Dr. Longo is a testing expert for the plaintiffs? 13 A. Yes. 14 Q. And you were asked a question by 15 plaintiff's counsel about whether or not you had 16 reviewed testing of Johnson & Johnson talc products 17 for asbestos, and I believe you answered no to that. 18 Just to clarify, did you indeed review 19 expert reports where testing of Johnson & Johnson 20 products was discussed and considered? 21 A. I -- I took that question to mean -- the 22 company testing of the -- of the product, not so 23 much expert testing of the product. So if I 24 misunderstood the question, then that's what I -- 25 that's how I answered it.	Page 45 1 was marked as an exhibit, but do you have that in 2 front of you, Dr. Weill? 3 A. No. 4 Q. Okay. At the bottom of the invoice 5 there's a note, and it says this represents one half 6 of total bill in this matter. 7 A. Uh-huh. 8 Q. Are you familiar with those kind of 9 annotations in your billing? 10 A. Yes. 11 Q. And tell us what that means. 12 A. That just means likely that their -- their 13 half of the bill went to Avon, and half of the bill 14 went to Johnson & Johnson. 15 Q. And so to be clear, if it indicates on the 16 bill that you submitted to Johnson & Johnson that 17 there was six hours of time by you on this matter, 18 would it be fair to say that the amount of work you 19 had done as of the date of this invoice, May 23rd, 20 would actually be double that? 21 A. Yes. 22 Q. Okay. Just to make sure we're clear. 23 So if there had been 12 hours of time then 24 from May 23rd of 2024, how much additional time 25 since then do you believe you spent on Mr. Perry's

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1 STATE OF NORTH CAROLINA 2 MECKLENBURG COUNTY 3 4 C E R T I F I C A T E 5 6 I, Peter DeCrescenzo, Registered 7 Professional Reporter and Notary in and for the 8 aforesaid county and state, do hereby certify that 9 the foregoing pages are an accurate transcript of 10 the deposition of David Weill, M.D., which was taken 11 on behalf of plaintiff by me in machine shorthand 12 and transcribed by computer-aided transcription. 13 The witness and parties did not reserve 14 the signing of the deposition by the witness. 15 I further certify that I am not 16 financially interested in the outcome of this 17 action, a relative, employee, attorney or counsel of 18 any of the parties, nor am I a relative or employee 19 of such attorney or counsel. 20 This 18th day of July, 2024 21  22 Peter DeCrescenzo, Registered Professional Reporter 23 24 25	Page 50

Page 1

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

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

REPORT OF PROCEEDINGS at the trial of
the above-entitled cause before the Honorable
Patrick J. Sherlock, Judge of the said Court, at
Richard J. Daley Center, 50 West Washington
Street, Room 2007, Chicago, Illinois, commencing
at 10:20 a.m. on the 20th day of March, 2024.

Reported by: Deborah Habian, CSR, CRR, RMR
License No. 084-02432

Page 134 1 A. Yeah, that's a calculated percent 2 likelihood as to -- 3 MS. DIWAN: Objection, your Honor, as 4 to "risk." 5 THE COURT: Overruled. 6 THE WITNESS: Right. So certain 7 scientists -- it's not my field -- but 8 epidemiologists and certain health professionals 9 calculate the likelihood of getting a disease. 10 That's a risk in a -- after a certain kind of 11 exposure. 12 BY MS. DEAN: 13 Q. And you've said I think 16 times today 14 that the likelihood of getting this disease is 15 small even among high groups, right? 16 A. That's right. 17 Q. Very different question. Instead of 18 looking forward at risk, I want to look at a 19 patient who just got told they have mesothelioma 20 and looking back at what's the cause, okay? 21 A. Sure. 22 Q. Knowing what we know about individual 23 susceptibility, has the scientific community 24 looked at the issue that even the lowest	Page 136 1 where they exist? 2 A. Well, sure, as one -- right, because 3 what you know is that asbestos, as an 4 environmental exposure, impedes a number of 5 genes, not only the growth control genes, but 6 the genes that run the death pathway and other 7 important genes like that, sure. 8 Q. We haven't talked about this yet, but 9 in addition to asbestos being a complete 10 carcinogen that promotes and initiates cancer 11 and harms our defenses, do they also just 12 inherently create more replication, more 13 opportunities for that error? 14 A. Yeah, they do. Asbestos initiates 15 through several different mechanisms, 16 particularly inflammation and its ability to 17 attract other cells, causes cell division. I 18 mean, we've written a whole series of papers in 19 my laboratory about how asbestos causes those 20 cells to grow. In fact, the most recent 21 paper -- I think you were going to show 22 it -- how asbestos causes scarring and cancer, 23 we looked at some data that we got on these 24 animals that inhaled asbestos for a short time
Page 135 1 exposures create a significant connection to 2 mesotheliomas as the cause of mesothelioma? 3 A. Yes, there are a number of different 4 scientific papers that describe, quote/unquote, 5 low exposures that have caused mesotheliomas, 6 sure. 7 Q. The second type of thing I want to talk 8 about here is replication. Is there a body of 9 literature that discusses the fact that even 10 without an environmental exposure, even without 11 inheriting anything from your parents, that just 12 as our cells divide in a natural background rate 13 of division, an error can occur? 14 A. Right. As we all get older, we develop 15 what are called endogenous -- that is 16 internal -- errors, just automatically and from 17 a variety of different reasons that we can go 18 through. But their replication just can lead to 19 endogenous errors, typically, not ending up in a 20 cancer, but the fact that they develop, yes. 21 Q. Even if you have a replication error, 22 given that you have to have multiple errors to 23 result in a cancer, would you still consider 24 asbestos exposure or environmental exposures	Page 137 1 and looked at the pleura. And the mesothelial 2 cells were obviously dividing at an increased 3 rate within 48 hours after exposure, and it 4 lasted for eight days. 5 So for -- I mean, these are short-term 6 experiments, but the answer to your question 7 does asbestos inhalation help regulate cell 8 division and increase rates of division, the 9 answer is yes. And we know, as I showed you, 10 dividing cells are more likely to become cancer 11 cells. 12 Q. Is the rate in which replication occurs 13 related to how often you would expect a 14 natural-occurring spontaneous mesothelioma? 15 A. So because they're so rare, naturally 16 occurring spontaneous from our endogenous 17 errors, they occur. Any kind of cancer can be 18 spontaneous. What controls that is hard to say. 19 I really can't answer that question very well. 20 Q. Is the fact that -- let me start off 21 with more basic questions. 22 Are certain cancers known to occur 23 spontaneous or naturally occurring more than 24 others?

38 (Pages 134 to 137)

Page 138 1 A. Yes. There are some cancers that can 2 be spontaneous. You don't know the cause. As I 3 say, any kind of cancer can be spontaneous from 4 endogenous errors, but some are more likely to 5 develop than others. And that's typically based 6 on the known background rate of their stem 7 cells. I showed you some stem cells in the 8 lung. I showed you the ones that make new 9 epithelial cells on the air space surface. 10 Every population of cells in our body 11 has stem cells from which those cells develop. 12 The rate of stem cells appears from several 13 papers in the literature, to answer your 14 question, yes. 15 Q. Given what we know about mesothelioma, 16 would the presence of a natural-occurring, 17 spontaneous mesothelioma in your opinion be 18 something that's typical, occasional, rare or 19 very rare? 20 A. Oh, I would expect it to be very rare 21 because of the very low rate of stem cell 22 division in that tissue. 23 Q. Do you mind if I steal the clicker 24 back?	Page 140 1 A. Yeah, right here (indicating). 2 Q. And is that part of why the idea that a 3 person that has mesothelioma just naturally 4 occurring would be exceedingly rare in your 5 opinion? 6 A. Exceedingly rare. Particularly if 7 there's an asbestos exposure in that person's 8 history, it wouldn't make much sense to be 9 talking about spontaneous tumors. 10 Q. Are you aware of anyone in the 11 published literature that indicates that with a 12 documented, repeated history of exposure to 13 asbestos and the right latency period that you 14 would ever call that -- 15 (Reporter interruption.) 16 Q. (Continuing) -- who would say that 17 somebody has a natural-occurring, spontaneous 18 meso when they have a documented, repeated 19 history of exposure to asbestos? 20 A. Yeah, I don't know of anyone who's ever 21 said that. Certainly no one has published that. 22 And I think the reason is because if a 23 biostatistician tried to calculate the 24 likelihood of getting a mesothelioma from
Page 139 1 A. (Tendering to counsel.) 2 Q. Thank you. What are we looking at 3 here? 4 A. This is a graph from a well-known paper 5 that was published in Science magazine. 6 Remember I told you about Science magazine. 7 So they got this paper in Science by 8 demonstrating that tumors, the rate of growth of 9 tumors is dependent on the rate of cell division 10 in that tumor. That is -- I'm sorry, in that 11 tissue, the stem cell story that I just told 12 you. 13 So if you look in the upper right-hand 14 corner, those cells are more likely -- those 15 areas are more likely to develop tumors, and 16 they have a more robust or more active cell 17 division of their stem cell population, all the 18 way down to the lower left-hand corner 19 (indicating) where you find fewer stem cell 20 divisions and fewer cancers. And if you were to 21 put the mesothelioma cells on that graph, they 22 would be in the lower left-hand corner. 23 Q. Can you give us an idea using your 24 pointer?	Page 141 1 something other than asbestos in the face of an 2 asbestos exposure, you wouldn't be able to 3 calculate that. The chances would be so small. 4 Q. On a related subject, I'd like to ask 5 you to assume some things so I can ask you some 6 questions about it, okay? 7 A. Yeah. 8 Q. I want you to assume that there's an 9 expert that's going to come that was hired by 10 Johnson & Johnson by the name of Dr. Tanix. I 11 want you to assume that he contends that women 12 have natural-occurring, spontaneous 13 mesotheliomas three to five times more often 14 than men. Can you assume that for me? 15 MS. DIWAN: Your Honor, objection as to 16 what the defense case is or testimony will be. 17 THE COURT: Overruled. 18 THE WITNESS: Yes, I can assume that. 19 BY MS. DEAN: 20 Q. Is there any biologic reason as a 21 person who's studied biology your whole career 22 why women would have their bodies failing 23 without an environmental cause three to five 24 times more often than men?

1 REPORTER CERTIFICATE

2

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

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

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

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

18 IN WITNESS WHEREOF, I do hereunto set
19 my hand this 21st day of March, 2024.

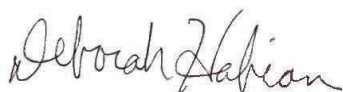
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DEBORAH HABIAN, CSR, RMR, CRR, CLR
IL CSR NO. 084-02432
MO CCR NO. 1409

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IN 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,)

) No. 20-2-05603-1 SEA

VS.)

)
JOHNSON & JOHNSON, et al.,)

)
Defendants.)

)

VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION

OF

ARNOLD BRODY, PH.D.

Witness located in
Boca Raton, Florida

(ALL PARTICIPANTS APPEARING VIA VIDEOCONFERENCE)

DATE TAKEN: FEBRUARY 22, 2021

REPORTED BY: ANITA W. SELF, RPR, CCR #3032

1 length, but they -- we show varying fiber lengths. In
2 other words, there were short fibers and long fibers
3 binding to the membranes, and interacting with the
4 membranes. And so, I think that's the point that I
5 was trying to make right there.

6 Q. Okay.

7 And if we turn over to page -- let's see --
8 page No. 10, paragraph 18.

9 A. Okay.

10 Q. "Any form of cancer can occur spontaneously
11 that is without an external cause," and that would
12 include mesothelioma, correct?

13 A. That's right.

14 Q. And that's, in part, because cells are
15 replicating. Obviously cells, depending on the organ,
16 can replicate at a faster rate or a slower rate, but
17 as they replicate, there are errors, and if they're
18 not caught, the errors accumulate as mutations,
19 correct?

20 A. That's correct.

21 Q. And an accumulation of mutations from these
22 internal errors in cell replication can, in some
23 individuals, result in cancer, correct?

24 A. That's right.

25 MS. DEAN: Object to form. Overly broad.

1 CERTIFICATE

2
3 STATE OF WASHINGTON)
) ss.
4 COUNTY OF KING)
5
6

7 I, ANITA W. SELF, a Certified Shorthand
8 Reporter in and for the State of Washington, do
9 hereby certify that the foregoing transcript is true
10 and accurate to the best of my knowledge, skill and
11 ability.

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 and seal this 5th day of March 2021.

14
15
16 *Anita W. Self*
17 _____

18 ANITA W. SELF, RPR, CCR #3032
19
20
21
22
23
24
25



WEILL CONSULTING GROUP

July 12, 2024

L. Lucy Brandon Willson
 Willcox & Savage, P.C.
 440 Monticello Ave., Suite 2200
 Norfolk, Virginia 23510
 Counsel for Avon and Johnson & Johnson

Re: Michael L. Perry and Lonnie L. Long v. American International Industries, et al.

Supplemental Report

Dear Ms. Willson,

I had the opportunity to review the additional materials that you sent to me regarding Michael Perry. Specifically, I reviewed the following:

DOCUMENTS REVIEWED

1.	Mr. Perry's Objections and Responses to Defendants' Consolidated Supplemental Interrogatories	7/8/24
2.	Medical University of South Carolina – Radiology	4/29/24
3.	Medical University of South Carolina – Treatment	Various

CASE STATISTICS

Re: <u>Michael L. Perry and Lonnie L. Long v. American International Industries, et al.</u>	
Court: Fifth Judicial Circuit, Court of Common Pleas, County of Richland, State of South Carolina, No. 2023-CP-40-04072	
Plaintiffs' Counsel: Dean Omar Branham Shirley, LLP and Kassel McVey	
Full Name: Michael Lawrence Perry	
DOB: [REDACTED]	Diagnosis Date: July 2023
Alleged Diagnosis: Mesothelioma	Height: 6' 2" Weight: 205 lbs.
Nature of Alleged Exposure: Non-Occupational and Occupational	

Michael L. Perry and Lonnie L. Long v. American International Industries, et al.

In his discovery responses, Mr. Perry reported the following: “Mr. Perry’s paternal grandfather’s name was Loren Austin Perry. His date of birth was January 21, 1906...Mr. Perry’s paternal grandfather did not have mesothelioma. Mr. Perry’s paternal grandfather died in 1974, and Mr. Perry was born in 1969. Mr. Perry had almost zero contact with his grandfather and has no memory of his grandfather or what he did for a living. Upon Mr. Perry’s reasonable information and belief at this time, he believes his paternal grandfather worked as a fabricator, but only knows this because his father told him this when he was very young. Mr. Perry’s paternal grandfather was retired before Mr. Perry was even born.

Mr. Perry does not know why there is a single reference to his paternal grandfather having mesothelioma in his record. He does not remember ever telling his doctor that his grandfather had mesothelioma and does not believe he did tell him that. Mr. Perry’s grandfather was a lifetime smoker and died of lung cancer.” (1 @ pp. 1-2)

Mr. Perry reported that he has never been diagnosed with testicular cancer, and never received chemotherapy before his mesothelioma diagnosis. (1 @ p. 2) Mr. Perry reported that any reference to testicular cancer in his medical records was an error. (1 @ p. 2)

Mr. Perry reported that his PTSD diagnosis pre-dated his mesothelioma diagnosis and is not a damage being claimed as a result of his mesothelioma. (1 @ pp. 2-3) Mr. Perry’s claims related to his pain and suffering are related to his damages stemming from and since his mesothelioma diagnosis. (1 @ pp. 2-3)

Mr. Perry had an additional five chemotherapy treatments, and he has had six chemotherapy treatments in total. (1 @ p. 3) Mr. Perry also had 25 radiation treatments since his deposition. (1 @ p. 3) Mr. Perry’s next CT scan is scheduled for the end of July, and is part of his regular, ongoing monitoring for his mesothelioma. (1 @ p. 3)

MEDICAL RECORDS SUMMARY**Radiology Reports:**

Medical University of South Carolina (2)

<u>Date</u>	<u>Facility</u>	<u>Study</u>	<u>Summary</u>
4/29/24	2	CT, chest w/ contrast	Similar postsurgical changes in the left chest with trace pleural effusion. Pleural thickening in the left upper medial chest is slightly prominent compared to 12/5/23 and is nonspecific.

Medical Encounters:

Medical University of South Carolina (3)

<u>Date</u>	<u>Facility</u>	<u>Document</u>	<u>Summary</u>
12/27/23	3	Treatment	Final cycle of Cisplatin/Pemetrexed (cycle 6).
1/18/24	3	Office Visit	Palliative care visit. Treatment focused.
2/28/24	3	Office Visit	Palliative care visit. Treatment focused.
3/27/24	3	Office Visit	Completion of radiation treatment. Patient is doing well at this time.
4/2/24	3	Office Visit	Follow-up. Recovering well from radiation toxicities.
5/1/24	3	Office Visit	Continue surveillance. CT in 12 weeks.
5/29/24	3	Office Visit	Palliative care visit. Focusing on quality of life. Currently on surveillance.

CONCLUSION

My opinions remain the same.

Should more information become available regarding this individual, I would like to review that information as well. The opinions expressed by me in this report are to a reasonable degree of medical certainty, and I reserve the right to amend my report if new information becomes available.

Sincerely,



David Weill, M.D.

Board Certified in Pulmonary Disease

Page 1

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3 MICHAEL L. PERRY and

4 LONNIE L. LONG,

Plaintiffs,

5 vs.

Case No.: 2023-CP-40-04072

6 AMERICAN INTERNATIONAL

7 INDUSTRIES; et al.,

8 Defendants.

9 VIDEO TELECONFERENCE

10 DEPOSITION OF: WILLIAM EDWARD LONGO, Ph.D.

11 DATE: Tuesday, July 16, 2024

12 TIME: 11:48 a.m.

13 TIME ENDED: 3:31 p.m.

14 LOCATION: Suwanee, Georgia

15 REPORTED BY: YVONNE R. THURSTON-BOHANNON

16 Registered Merit Reporter,

17 Certified Realtime Reporter

Page 50 1 Calculations." Do you see that, sir? 2 A. Yes, I do. 3 Q. And it states here, "Mr. Perry 4 testified that for each of the talcum powder 5 products that he personally used, he was able to 6 give an estimate for the number of containers he 7 used per year, for each of the talcum powder 8 products." 9 Do you see that, sir? 10 A. I do. 11 Q. Okay. And we already talked about 12 this, but this container calculation is, again, 13 based on Mr. Perry's estimation of his annual 14 purchase of certain products, correct? 15 A. Correct. 16 Q. So we have here -- the first one listed 17 is Johnson's Baby Powder. "Mr. Perry stated that 18 he used Johnson's Baby Powder from approximately 19 1974/1975 to 2019." 20 Is that your recollection of his 21 testimony, sir? 22 A. Yes. 23 Q. And in 1975 Mr. Perry would have been 24 six. That means he was born in '69. I'm no 25 mathematician, but I got that one right. Is that	Page 52 1 sir? 2 A. I cannot see that. 3 Q. Okay. Let me -- let me -- do you see 4 that now, sir? 5 A. I can. I used 15 ounce because that's 6 what he said he primarily -- that he used. 7 Q. Okay. 8 A. It's not going to change anything other 9 than increase the amount of talcum powder he was 10 exposed to -- 11 Q. Okay. 12 A. -- because it's not 15 ounce and it's 13 24 ounces or 21 ounces. It's just -- it's not 14 going to change the number of containers. 15 Q. I understand, sir. 16 We're going to go back to Exhibit 1M. 17 I'd like to go to Shower to Shower next, but I want 18 to ask one more question. 19 If the range of bottles that you -- or 20 the date range of his purchases starts in 1984, do 21 you agree that any bottles that are included in 22 your bottle estimate would not include any Italian 23 talc? 24 A. I would -- this is Vermont and -- and 25 Chinese.
Page 51 1 correct? 2 A. That's correct. 3 Q. And therefore to be conservative, the 4 start year for the container calculation -- or your 5 container calculation is 1984 when he was 15 years 6 old; is that correct? 7 A. That is correct. 8 Q. Okay. So the numbers that you're 9 giving here would have been for the years 1984 10 through -- or to 19 -- 2019; is that fair? 11 A. That's fair. 12 Q. Okay. And he did -- he testified that 13 he use -- he bought about ten Johnson Baby Powder 14 containers per year; is that correct? 15 A. Correct. 16 Q. And doing the math there, that's 350 17 Johnson's Baby Powder 15 ounce containers. Do you 18 see that, sir? 19 A. I do. 20 Q. Why did you use 15 ounce containers? 21 A. Because that's what he stated that he 22 used, and it just so happens those -- those 23 exhibits you showed me were 15 ounce containers. 24 Q. Well, if you can go back to Exhibit 25 Number 3, do you see that is a 24 ounce container,	Page 53 1 Q. Okay. Shower to Shower, if we go down 2 to your calculation here, it's the same 3 calculation. It's ten Shower to Shower containers 4 per year. Do you see that? 5 A. Yes, sir, because that's -- he said it 6 was the same as his Johnson Baby Powder. 7 Now, I didn't -- I just saw a typo 8 which I always seem to find them when we're sitting 9 here in a deposition and I'm looking at. The 10 Shower to Shower comes in 13 ounce containers, not 11 11 ounce. 12 Q. Okay. Other than -- other than that 13 change, do you see any other things that you'd want 14 to change about the Shower to Shower calculation? 15 A. Not as I'm sitting here right now. 16 Q. Dr. Longo, do you recall that Mr. Perry 17 actually stated under oath that he never bought 18 Shower to Shower? 19 A. Well, so hold on. Let me go back. 20 I'm trying to find out -- here we go. 21 Let me just read what he said. 22 Well, it was in 20 -- yeah, second -- 23 there is -- it was -- he would have stopped using 24 it in 2010, not 20 -- not 2019, and according to 25 Mr. Perry, he said his mother bought it.

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1 user in human experimentation that Johnson &
2 Johnson did to see what exposures are for heavy
3 users, and it was either 27 or 28 grams. That's
4 the highest I've seen.
5 Q. You understand that Mr. Perry testified
6 that he began using Johnson & Johnson talc in 1974,
7 correct?
8 A. Yeah, that's when he remembers he was
9 putting it on when he was a child.
10 Q. And so --
11 A. Six years old, five years old.
12 Q. And he stopped using any Johnson &
13 Johnson talcum powder sometime in 2019, correct?
14 A. That's what he stated.
15 Q. And he testified he used -- we already
16 went over that.
17 In 1974 when he started using Johnson &
18 Johnson talc products, that was -- that would have
19 been Vermont talc, correct?
20 A. Yes, it would.
21 Q. And from 1974 through part of 2003 with
22 the exception of a short time period that I'm going
23 to talk about in a moment, Vermont was the only
24 source of any Johnson & Johnson -- Johnson talc
25 powder that Mr. Perry would have used, correct?

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1 A. That's correct, except for 1980 when
2 the Vermont mine was on strike and it would have
3 been Italian for that one year or half a year,
4 whatever that was.
5 Q. Well, I was just about to ask you that,
6 sir. Do you know how long that strike was?
7 A. Pretty much everybody agrees it's about
8 a year, but I don't have the exact dates. I don't
9 try to -- I don't try to feed that in when -- if I
10 was going to split out the mines.
11 Q. So, Dr. Longo, have you read
12 Mr. Bailey's affidavit concerning this very issue?
13 It's been on your reliance -- reliance list before.
14 A. Yeah, it's been a while.
15 Q. There were exhibits in that affidavit
16 that supported Mr. Bailey's statement that that
17 mine strike was only from December of 1979 until
18 February of 1980. Do you recall that?
19 MR. ADAMS: Object to the form.
20 THE WITNESS: I don't recall that, but
21 I have not done the research on that. And as I was
22 stating, I typically don't when I break out the
23 mines say somebody has used it -- used both during
24 Italian and Vermont, during the Vermont and the
25 Chinese. I never try to factor in that 1980 time.

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1 BY MR. COWAN:
2 Q. So given his dates of use -- and maybe
3 we can short circuit this -- are you going to come
4 into trial and testify that Mr. Perry was exposed
5 to Italian talc from Johnson & Johnson?
6 MR. ADAMS: Object to the form.
7 THE WITNESS: No, I'm not.
8 BY MR. COWAN:
9 Q. Okay. Then let's move on.
10 (Longo Exhibit 8, Dr. Longo's Slide on
11 Round 1, marked for identification.)
12 BY MR. COWAN:
13 Q. Okay. Let's move on to your testing,
14 and I -- I've got in front of you something I've
15 marked as Exhibit 8, and I'll just represent to
16 you, sir, this slide that starts with round one and
17 a bunch of bottles here. Do you see that?
18 A. Yes.
19 Q. Okay. You used this slide during a
20 trial a long time ago called Cabibi. Do you
21 recognize this slide?
22 MR. ADAMS: Object to the form.
23 THE WITNESS: It's called what? What
24 was the trial called?
25 BY MR. COWAN:

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1 Q. I think the name of the person was
2 called Cabibi. It was in 2019. Do you recall
3 using this slide or something similar that showed
4 the bottles from round one?
5 A. I don't recall the case, but I remember
6 seeing that slide.
7 Q. Okay. And these might sound like
8 really simple questions, but I am not saying that
9 this has anything to do with you, sir, but what
10 bottles are involved in round one in prior
11 testimony it's been kind of unclear to me, so I
12 just want to make sure we're talking about the same
13 bottles for round one versus round two versus your
14 chrysotile testing, et cetera. Okay?
15 A. Sure.
16 Q. Okay. So in round one that involved a
17 bunch of containers of talc that you all at MAS
18 received from different plaintiffs counsel,
19 correct?
20 A. Three plaintiffs counsels.
21 Q. Yeah.
22 And you also bought one bottle off the
23 shelf yourself, correct? We already talked about
24 that.
25 A. We -- I bought a lot more, but for

Page 162 1 defendants in this case; is that correct? 2 A. That's correct. 3 Q. Are you able to tell us what product 4 was tested in that testing? 5 A. No. 6 Q. And that's because why? 7 A. I'm not relying on it and -- for any of 8 the -- any of the defendants. It was mistakenly 9 produced, so I'm clawing it back. 10 Q. Okay. Are you offering any other case 11 specific opinions with respect to Chanel products 12 other than the ones discussed today or disclosed in 13 your notes and reliance materials? 14 A. I think we've covered them all. 15 MS. DANG: All right. Just like the 16 other defendants, I'm going to reserve Chanel's 17 rights to ask any follow-up questions following any 18 tissue testing. 19 THE WITNESS: I hate to cut you off, 20 but it's 3:29 and I have a doctor's appointment. 21 MR. COWAN: Thank you for your time. I 22 know you have to leave. 23 I just want to put on the record, 24 again, J&J is reserving its rights to bring -- 25 MR. ADAMS: You already said that. You	Page 164 1 you some information too, so it wouldn't have been 2 right for me to push too hard to -- 3 MR. ADAMS: All right. Thanks. We'll 4 figure out -- 5 MR. COSMICH: Sounds good. 6 MR. ADAMS: Thanks. 7 MR PECK: And, Ben, this is Tim Peck. 8 As you know, I'm not permitted to ask questions of 9 experts, but I -- I do have a statement to make, 10 but I can reserve that until we come back. 11 MR. ADAMS: Okay. Thank you. 12 I think we can go off the record. 13 (Off-the-record discussion.) 14 THE COURT REPORTER: Do you want a copy 15 of the transcript? 16 MR. ADAMS: Yes, please. 17 (The deposition was concluded at 18 3:31 p.m.) 19 20 21 22 23 24 25
Page 163 1 already said that. 2 Dr. Longo, you can -- 3 MR. COWAN: Dr. Longo, can leave. 4 MR. ADAMS: -- free to go. Free to go. 5 MR. COWAN: That's fine. I want to 6 make clear Dr. Longo you can leave. 7 (Dr. Longo disconnected from Zoom.) 8 MR. COWAN: I want to make clear on the 9 record that J&J is not just reserving its rights to 10 reopen this deposition for tissue digestion issues, 11 but that the deposition was -- was started late and 12 ended earlier and that there's more time on the 13 clock. 14 So that's all. Thank you. 15 MR. GREENE: For the record Avon joins. 16 MR. ADAMS: Does anyone else have 17 questions who didn't get a chance to go today just 18 for scheduling purpose? 19 MR. COSMICH: Yeah, Ben. John Cosmich. 20 I've got three products, but, you know, we'll -- 21 we'll talk later. 22 MR. ADAMS: Okay. Thanks. I just 23 wanted to make sure we weren't done except for 24 the -- 25 MR. COSMICH; yeah, and I think I owe	Page 165 1 CERTIFICATE OF REPORTER 2 I, Yvonne R. Thurston-Bohannon, Registered 3 Merit Reporter, Certified Realtime Reporter, and 4 Notary Public for the State of South Carolina at 5 Large, do hereby certify: 6 That the reading and signing of the 7 foregoing deposition by the witness is waived. 8 That the foregoing transcript was taken 9 before me on the date and at the time and location 10 stated on page 1 of this transcript; that the 11 deponent was duly sworn to testify to the truth, 12 the whole truth and nothing but the truth; that the 13 testimony of the deponent and all objections made 14 at the time of the examination were recorded 15 stenographically by me and were thereafter 16 transcribed; that the foregoing deposition as typed 17 is a true, accurate and complete record of the 18 testimony of the deponent and of all objections 19 made at the time of the examination to the best of 20 my ability. 21 I further certify that I am neither related 22 to nor counsel for any party to the cause pending 23 or interested in the events thereof. 24 Witness my hand, I have hereunto affixed my 25 official seal July 17, 2024, at Columbia, Richland County, South Carolina.  Yvonne R. Thurston-Bohannon Registered Merit Reporter, CRR My Commission expires May 6, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2023-CP-40-04072
	)	
MICHAEL L. PERRY AND LONNIE L. LONG,	)	<i>In Re: Asbestos Personal Injury Litigation</i>
	)	Coordinated Docket
	)	
Plaintiffs,	)	<u>JOHNSON & JOHNSON DEFENDANTS'</u>
	)	<u>MOTION TO RECONSIDER J&J</u>
vs.	)	<u>DEFENDANTS' MOTION TO EXCLUDE</u>
	)	<u>EVIDENCE OF OR REFERENCE TO</u>
AMERICAN INTERNATIONAL INDUSTRIES, ET AL.,	)	<u>TISSUE TESTING</u>
	)	
Defendants.	)	

Defendants Johnson & Johnson (“J&J”), LLT Management LLC, Johnson & Johnson Holdco (NA) Inc. (“Holdco”), and Kenvue, Inc. (“Kenvue”), (collectively “J&J Defendants”) respectfully request the Court reconsider its ruling denying J&J Defendants’ motion to exclude any evidence or testimony related to tissue testing in this case. J&J Defendants hereby adopt and incorporate by reference their previously filed motion to exclude.

BACKGROUND

On July 23, 2024, J&J Defendants filed a Motion to Exclude Tissue Testing, seeking to exclude any evidence or testimony related to tissue testing in this case. *See Ex. A*, J&J Defs.’ MTE. At the time of the original filing, the tissue had still not been divided and J&J Defendants’ pathologist, Dr. Stanley Geyer, was not in possession of any materials to conduct the necessary testing.

During the Pretrial Hearing, on July 30, 2024, J&J Defendants learned for the first time that the tissue had been divided and sent to each party’s experts that morning. Upon learning this information, J&J Defendants urged the Court to still exclude the testing because there would not be enough time for the experts to complete the digestion, draft reports, and sit for depositions

before the end of trial. In response, the Court denied the motion and stated, “[w]ell if it can’t get done, we’ll revisit it, but I’m denying this motion.” Pretrial Hearing Tr., at 227:12-13.

On July 31, 2024, after receiving Mr. Perry’s tissue, Dr. Geyer provided J&J Defendants with an affidavit detailing his inability to perform a tissue digestion before the conclusion of trial. See **Ex. B**, Geyer Affidavit. In his affidavit, Dr. Geyer explained that the tissue digestion process requires 9-14 working days and it would be unlikely that he could prepare a fiber burden analysis report before August 14. See *id.* at ¶¶ 8, 9. This timeframe is consistent with Plaintiffs’ expert’s, Dr. Longo, recent testimony that he needs two to three weeks to perform the analysis. See **Ex. C**, Longo Dep., *Perry*, July 16, 2024, at 18:4-19:3.

Following receipt of Dr. Geyer’s affidavit, J&J Defendants immediately contacted Plaintiffs to provide them with a copy of the affidavit. See **Ex. D**, 7/31/24 K. Bueno Email Correspondence. J&J Defendants also informed Plaintiffs that they would ask the Court to revisit its ruling and requested that Plaintiffs provide the following information: (1) whether Dr. Longo has confirmed that he can do the digestion this week; and (2) if so, when Dr. Longo will complete his report and be available for a deposition before trial. As of this filing, Plaintiffs have still not responded.

ARGUMENT & AUTHORITY

The Supreme Court has clarified that a party may file a motion to reconsider “when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). “It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court alter or amend the judgment, but also as a vehicle to seek reconsideration of issues and arguments.” *Id.* at 21. “A motion under Rule 59(e) long has

been viewed as motion for reconsideration despite the absence of those words from the rule.” *Id.* (internal quotations omitted). As a result, “a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Id.* at 778-79.

As stated in J&J Defendants’ original motion to exclude, the clock has run out through no fault of J&J Defendants. Because the tissue was only divided and sent to the party’s respective experts less than a week before the start of trial, J&J Defendants’ expert is unable to perform the digestion. Conversely, Plaintiffs refuse to confirm whether their expert will be able to complete the testing in time for trial. Such an unknown creates a pathway for Plaintiffs to present surprise evidence on the eve of or, worse yet, during trial. Allowing only Plaintiffs to introduce late-produced, highly scientific evidence and opinions that have not and cannot be analyzed or cross examined by J&J Defendants prior to the start of trial has “the undue tendency to suggest a decision on an improper basis.” *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). J&J Defendants would be left with no avenue to rebut the results of Plaintiffs’ testing. This kind of surprise evidence from an expert witness introduced during trial is the exact type of *unfair* prejudice that Rule 403 was meant to exclude. *See State v. Collins*, 409 S.C. 524, 536, 763 S.E.2d 22, 28 (2014) (“[T]he standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE is whether there is a danger of unfair prejudice that substantially outweighs the probative value of the evidence.”).

CONCLUSION

For the foregoing reasons, J&J Defendants respectfully request that the Court reconsider its ruling denying J&J Defendants’ motion to exclude evidence or testimony about testing of Mr. Perry’s tissue.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Defendants Johnson & Johnson, Inc.; LLT Management, LLC, formerly known as LTL Management, LLC; Kenvue, Inc.; and Johnson & Johnson Holdco (NA), Inc.

Columbia, South Carolina

August 1, 2024

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2023-CP-40-04072
	)	
MICHAEL L. PERRY AND LONNIE L. LONG,	)	<i>In Re: Asbestos Personal Injury Litigation</i>
	)	Coordinated Docket
	)	
Plaintiffs,	)	<u>JOHNSON & JOHNSON DEFENDANTS'</u>
	)	<u>MOTION IN LIMINE TO EXCLUDE</u>
vs.	)	<u>EVIDENCE OF OR REFERENCE TO</u>
	)	<u>TISSUE TESTING</u>
AMERICAN INTERNATIONAL INDUSTRIES, ET AL.,	)	
	)	
Defendants.	)	

Defendants Johnson & Johnson (“J&J”), LLT Management LLC, Johnson & Johnson Holdco (NA) Inc. (“Holdco”), and Kenvue, Inc. (“Kenvue”), (collectively “J&J Defendants”) respectfully move the Court to exclude any evidence or testimony related to tissue testing in this case. Despite the best efforts of the Parties, the tissue has not yet been divided, let alone delivered to the parties’ respective experts. There is not adequate time for the parties to conduct tissue testing and complete necessary discovery before trial. The Court should exclude evidence of tissue testing entirely.

BACKGROUND

Plaintiffs allege that Plaintiff Michael Perry (“Mr. Perry”) was exposed to asbestos from his use of Johnson’s Baby Powder and that this exposure was a substantial factor in his development of mesothelioma. On August 8, 2023, Mr. Perry underwent surgery for mesothelioma.

On June 20, 2024, J&J Defendants contacted Plaintiffs to request assistance in obtaining Mr. Perry’s tissue from the hospital so that J&J Defendants could conduct a tissue digestion. See **Ex. A**, Email Correspondences, p. 14. Plaintiffs responded by asserting that they wished to conduct

their own testing as well. *See id* at p. 13. Over the next three weeks, J&J Defendants repeatedly followed up with Plaintiffs in an attempt to reach an agreement on a tissue division order (“Order”) as required by the hospital to obtain Mr. Perry’s tissue. *See id* at pp. 4–13. Finally, on July 8, 2024, the parties reached an agreement and intended to file the Order designating Plaintiffs’ expert Dr. William Longo and J&J Defendants’ expert Dr. Victor Roggli as the individuals conducting the tissue digestion. *See id* at p. 4.

That same day, however, J&J Defendants learned that Dr. Roggli, was no longer able to complete the digestion before trial. *See id* at pp. 1–2. Because of this development, and the fact that the pretrial hearing was three weeks away, J&J Defendants suggested that neither side test the tissue. *See id*. Plaintiffs disagreed and threatened to file the Order, despite knowledge that Dr. Roggli was no longer available to conduct his own testing. *See id* at p. 1. J&J Defendants immediately identified an alternative pathologist who had the capability to analyze the tissue prior to trial. *See Ex. B*, Email Correspondences, p. 3. The parties subsequently revised the Order to reflect the new expert who would perform the tissue testing for J&J Defendants. On July 9, 2024, the parties filed the Order with this Court.

On July 10, 2024, this Court entered the Order, appointing the Medical University of South Carolina Department of Pathology and Laboratory Medicine (“MUSC”) as the independent third-party responsible for dividing the blocks of lung tissue for digestion and sending it to the parties’ experts. *Ex. C*, Order Granting Joint Motion. On July 14, 2024, Plaintiffs confirmed that the Order had been sent to MUSC. *See Ex. B*, Email Correspondences, p. 2. J&J Defendants again followed up with Plaintiffs regarding the timing of the tissue division. *See id* at p. 1.

At the time of this filing, the tissue has still not been divided and J&J Defendants’ pathologist is not in possession of any materials to conduct testing on Mr. Perry’s tissue. On July

16, 2024, Plaintiffs’ expert Dr. Longo conceded it would take him at least two to three weeks to complete the tissue testing. See **Ex. D**, Longo Dep., Perry, July 16, 2024, at 18:4-19:3. But even such timetable, Dr. Longo admitted, was “optimistic.” *Id.* Without being in possession of any of the necessary materials to conduct a tissue digestion less than two weeks from the start of trial, there is simply not enough time for the tissue to be divided, sent to experts, analyzed, reports drafted, and depositions taken.

ARGUMENT & AUTHORITY

It is well established that the trial court has broad discretion in granting motions *in limine*. This authority is based on the Court's inherent power to admit or exclude evidence from trial, and its decision will not be overturned unless there is a clear abuse of that discretion. *Landry v. Hilton Head Plantation Prop. Owners Ass'n, Inc.*, 317 S.C. 200, 205, 452 S.E.2d 619, 621 (Ct. App. 1994). The trial judge is given broad discretion in ruling on questions concerning the relevancy of evidence, and her decision will be reversed only if there is a clear abuse of discretion. *State v. Jeffcoat*, 279 S.C. 167, 303 S.E.2d 855 (1983).

Rule 403 provides that relevant evidence should be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE; see also *Jamison v. Ford Motor Co.*, 373 S.C. 248, 269, 644 S.E.2d 755, 766 (Ct. App. 2007). “Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.” *State v. Williams*, 430 S.C. 136, 151 (2020) (citing *State v. Wilson*, 345 S.C. 1, 7 (2001)). The decision of whether to admit expert testimony is within the sound discretion of the trial court, and a ruling will not be reversed absent an abuse of that discretion. *State v. White*, 372 S.C. 364, 373 (2007).

The clock has run out through no fault of J&J Defendants. Allowing Plaintiffs to introduce late-produced, highly scientific evidence and opinions that have not and cannot be analyzed or cross examined by J&J Defendants prior to the start of trial has “the undue tendency to suggest a decision on an improper basis.” *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). J&J Defendants would have no avenue to rebut the results of Plaintiffs’ testing. This kind of surprise evidence from an expert witness introduced during trial is the exact type of *unfair* prejudice that Rule 403 was meant to exclude. *See State v. Collins*, 409 S.C. 524, 536, 763 S.E.2d 22, 28 (2014) (“[T]he standard is not simply whether the evidence is prejudicial; rather, the standard under Rule 403, SCRE is whether there is a danger of unfair prejudice that substantially outweighs the probative value of the evidence.”). Accordingly, this Court is justified in prohibiting Plaintiffs from discussing tissue testing performed by Dr. Longo and/or introducing the results of his testing.

CONCLUSION

For the foregoing reasons, J&J Defendants respectfully request that the Court exclude any evidence or testimony about testing of Mr. Perry’s tissue.

[Signature Page to Follow]

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Johnson & Johnson, Inc. (“J&J”); LTL Management, LLC (“LTL”) f/k/a LTL Management, LLC; Johnson & Johnson Holdco (NA), Inc. (“Holdco”); and Kenvue, Inc.

Columbia, South Carolina

July 23, 2024

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

MICHAEL L. PERRY and
LONNIE L. LONG,

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES; et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2023-CP-40-04072

Affidavit of Dr. Stanley J. Geyer

Personally appeared before me, Stanley J. Geyer, who first being duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) and am competent to testify to the matters contained in this Affidavit.
2. I am a citizen and resident of Allegheny County, Pennsylvania.
3. All of the statements in this Affidavit are based upon my personal knowledge.
4. I am a Medical Doctor specializing in pathology. I am a pathologist with Geyer Pathology Services, LLC.
5. On 30 July 2024 FedEx delivered a package to my home office, with the tracking number 7775 6944 5920. The return address on the package is Kathy Felix, Dean Omar Branham, 302 N Market Street, Suite 300, Dallas, TX 75202.
6. The package contained an "Anatomic Pathology Packing List" identifying 9 "containers" labeled SP23-18720 A1, SP23-18720 A3, SP23-18720 A5, SP23-18720 A7, SP23-18720 A9, SP23-18720 H2, SP23-18720 H4, SP23-18720 H6, and SP23-18720 H8. The package contained 9 paraffin blocks bearing the same labels shown in the packing list and each bearing

the name "Perry Michael L". A corresponding pathology report demonstrates that slides SP23-18720 A1, SP23-18720 A3, SP23-18720 A5, SP23-18720 A7, SP23-18720 A9 were prepared from a specimen designated as "soft tissue, labeled as 'tumor implant.'" The blocks labeled SP23-18720 H2, SP23-18720 H4, SP23-18720 H6, and SP23-18720 H8 appear to correspond to a specimen designated in the pathology report as "Lung, labeled as 'Left Lower Lobe, Lobectomy.'" I did not receive any pathology slides in this matter.

7. To perform a competent fiber burden analysis I must prepare hematoxylin and eosin (H&E)-stained slides for microscopic examination to select tissue most suitable for fiber burden analysis. I can obtain and review the necessary H&E-stained slides within one to two (1-2) work days of receiving approval to obtain the staining.

8. After a review of the stained slides, tissue will be selected within one work (1) day from the paraffin blocks for fiber burden analysis. The selected tissue will be deparaffinized using a standard operating procedure, requiring three to four (3-4) work days. The deparaffinized tissue will be washed and filtered and the dried filters will be placed on a grid or grids, a process that requires an additional work day or two (1-2). The grids will then be examined by electron microscopy for the detection and identification of asbestos fibers, if asbestos fibers are present, requiring an additional two to three (2 to 3) work days. Preparation of a report to document the methods and the findings will require an additional one to two work days (1 to 2). Thus, from the time permission is obtained to prepare stained slides until a final fiber burden analysis report is prepared requires an estimated 9 to 14 work days.

9. Given the timeline described above, it would be unlikely that I can prepare a fiber burden analysis report before 14 August 2024.

I hereby declare under penalty of perjury that the foregoing statements made by me are true and correct.

FURTHER AFFIANT SAYETH NOT.

Executed this 31st day of July 2024.

Stanley J. Geyer
Stanley J. Geyer

SWORN to and subscribed before me

This 31st day of July, 2024.

Diane J. Parks (L.S.)

Notary Public for PA, ALLEGHENY County

My Commission Expires: 9-9-25

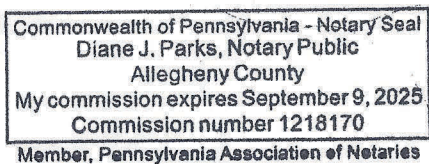


Exhibit C

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3 MICHAEL L. PERRY and

4 LONNIE L. LONG,

Plaintiffs,

5 vs.

Case No.: 2023-CP-40-04072

6 AMERICAN INTERNATIONAL

7 INDUSTRIES; et al.,

8 Defendants.

9 VIDEO TELECONFERENCE

10 DEPOSITION OF: WILLIAM EDWARD LONGO, Ph.D.

11 DATE: Tuesday, July 16, 2024

12 TIME: 11:48 a.m.

13 TIME ENDED: 3:31 p.m.

14 LOCATION: Suwanee, Georgia

15 REPORTED BY: YVONNE R. THURSTON-BOHANNON

Registered Merit Reporter,

16 Certified Realtime Reporter

25 MR. ADAMS: He did answer the question.

CERTIFICATE OF REPORTER

I, Yvonne R. Thurston-Bohannon, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the reading and signing of the foregoing deposition by the witness is waived.

That the foregoing transcript was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal July 17, 2024, at Columbia, Richland County, South Carolina



Yvonne R. Thurston-Bohannon
Registered Merit
Reporter, CRR
My Commission expires
May 6, 2025

Exhibit D

From: Kim Bueno
Sent: Wednesday, July 31, 2024 2:53 PM
To: Theile McVey; Rachel Gross; 'Ben Adams'
Cc: Amy Pepke; Chris Cowan; Mitch Brown; Blake Williams; Matt Bogan
Subject: Perry-- Dr. Geyer Affidavit and Motion to Revisit Tissue Testing MIL
Attachments: Notarized Geyer Affidavit RE Michael Perry.pdf

Counsel,

Today we received the attached affidavit from Dr. Geyer explaining his inability to perform a tissue digestion before trial. This is not due to lack of effort. Dr. Geyer explains that the tissue digestion process requires 9-14 working days. This timeframe is similar to Dr. Longo's recent testimony that he needs two to three weeks to perform the analysis. See July 16, 2024 Longo dep. at 37:15-20. Dr. Longo admitted this timeframe was "optimistic." *Id.* at 37:21-38:3.

During yesterday's pretrial hearing, I raised concern about the experts' ability to complete tissue digestions before trial. The Court responded, "Well, if it can't get done, we'll revisit it, but I'm denying this motion." (July 30 transcript at 227:12-13). We intend to ask the Court to revisit her ruling. We will file a motion tomorrow. Please let us know the following information:

- 1) Has Dr. Longo confirmed he can do the digestion this week?
- 2) If so, when will he complete his report and sit for a deposition before trial?

Thanks,

Kim

Kim Bueno
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	Case No.: 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re: Asbestos Personal Injury Litigation</i>
Plaintiffs,	)	Coordinated Docket
	)	
v.	)	<u>JOHNSON & JOHNSON DEFENDANTS'</u>
	)	<u>MODE OF TRIAL MOTION</u>
AMERICAN INTERNATIONAL	)	<u>REGARDING SUCCESSOR LIABILITY</u>
INDUSTRIES; et al.,	)	<u>AND AMALGAMATION</u>
	)	
Defendants.	)	
	)	

Defendants Johnson & Johnson; LLT Management, LLC f/k/a LTL Management, LLC; Kenvue, Inc. ("Kenvue"); and Johnson & Johnson Holdco (NA), Inc. (Holdco) (collectively "J&J Defendants") hereby respectfully file this Mode of Trial Motion pertaining to Plaintiffs' equitable claims of successor liability and amalgamation.

I. Successor liability and amalgamation are matters of law for the Court.

J&J Defendants filed their Motion to Dismiss Kenvue and Holdco on February 16, 2024, arguing that Plaintiffs had not alleged facts supporting successor liability. These arguments were incorporated into the J&J Defendants' Motion for Summary Judgment, filed June 11, 2024. The Court denied the motion to dismiss on July 2, 2024 and denied the motion for summary judgment at the pretrial hearing on July 30, 2024. At that time, J&J Defendants indicated they would file the present mode of trial request.

As has been the long-standing tradition in this state, "[w]hen a complaint raises both legal and equitable issues and rights, the legal issues are determined by a jury while equitable issues are for the judge." *JASDIP Properties SC, LLC v. Est. of Richardson*, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct. App. 2011) (citation omitted)

Although South Carolina has not yet explicitly determined whether successor liability is an equitable matter of law, many other states have. *See Rosales v. Thermex-Thermatron, Inc.*, 67 Cal. App. 4th 187, 196, 78 Cal. Rptr. 2d 861, 866 (1998) (“We believe the question whether it is fair to impose successor liability is exclusively for the trial court.”); *Wilkerson v. C.O. Porter Mach. Co.*, 237 N.J. Super. 282, 303–04, 567 A.2d 598, 609 (Law. Div. 1989) (“As a mixed question of law and fact, successor status is for the court and not a jury.”); *Alsco, Inc. v. Fatty's Bar, LLC*, 166 Idaho 516, 526, 461 P.3d 798, 808 (2020) (“Cases involving claims of successor liability thus require a trial judge to weigh the competing equities of the case and make a reasoned and informed decision.”); *Smith v. Kelley*, 484 Mass. 111, 125, 139 N.E.3d 314, 326 (2020) (“successor liability is an equitable remedy aimed at fairness and justice.”); *Wells Fargo Vendor Fin. Servs., LLC v. Nationwide Learning, LLC*, 56 Kan. App. 2d 259, 264, 429 P.3d 221, 229 (2018) (“The doctrine of successor liability is an equitable doctrine.”). Accordingly, this Court should find that successor liability is an equitable claim.

As to amalgamation, the Supreme Court of South Carolina has explicitly held that amalgamation is an equitable claim “to be decided by the trial court, not by the jury.” *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. IMK Dev. Co., LLC*, 435 S.C. 109, 120, 866 S.E.2d 542, 548 (2021).

II. This Court should order separate proceedings of the legal and equitable claims.

Hence, the Court should order separate proceedings of the legal and equitable claims to prevent jury confusion on issues that are ultimately the Court’s to decide. *C & S Real Est. Servs., Inc. v. Massengale*, 290 S.C. 299, 301-02, 350 S.E.2d 191, 193 (1986) holding modified by *Johnson v. S. Carolina Nat. Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987). It would be irrelevant and confusing and unduly prejudicial for the jury to hear such evidence. Depending on the jury’s

verdict and determinations on liability, such a phase may also prove unnecessary, thereby serving judicial economy. Even with a liability determination against the J&J Defendants, a separate equitable phase of trial will allow the dismissal of the jury before any evidence or arguments on the equitable issues left for the Court.

Further, in *Johnson v. South Carolina National Bank*, 354 S.E.2d 895 (1987) the South Carolina Supreme Court made clear that legal and equitable claims may not be tried together in a single proceeding unless the claims shared “common” facts. The *Johnson* case discusses that when there are legal claims (here, products liability claims) and equitable claims (here, e.g., successor liability and amalgamation), the legal claims should be tried first to the jury, followed by the equitable claims by the court. Here, paragraphs 30-41 of the attached amended complaint are NOT common to the legal claims involving Mr. Perry. Mr. Perry’s products liability claims have nothing to do with those allegations, and those allegations are thus not “common” to the legal claims he has made for products liability, etc. As a result, separate proceedings are required by law.

Conclusion

For these reasons, Plaintiffs’ claims of successor liability and amalgamation should be determined by the Court in a separate proceeding aside from the jury.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for J&J Defendants.

Columbia, South Carolina
August 3, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2023-CP-40-04072
	)	
MICHAEL L. PERRY AND LONNIE L. LONG,	)	<i>In Re: Asbestos Personal Injury Litigation</i>
	)	Coordinated Docket
	)	
Plaintiffs,	)	<u>J&J DEFENDANTS’ OBJECTION TO</u>
	)	<u>PROPOSED INSTRUCTION ON PARTIES</u>
vs.	)	<u>IN DEFAULT AND CONDITIONAL</u>
	)	<u>MOTION TO SEVER</u>
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, ET AL.,	)	
	)	
Defendants.	)	
	)	

Defendants Johnson & Johnson, Inc. (“J&J”); LLT Management, LLC (“LLT”); Johnson & Johnson Holdco (NA), Inc. (“Holdco”); and Kenvue, Inc. (collectively, “J&J Defendants”) respectfully submit this memorandum objecting to Plaintiffs’ proposed jury charge request regarding Defendant American International Industries’ (“A-I-I”) liability given their default in the instant proceeding. (**Exhibit 1** 8.2.24 email from Atty. McVey). The Court stated in a responsive email that it is prepared to read the instruction requested in Exhibit 1. The J&J Defendants object and submit the counter proposal to Plaintiffs’ proposed instructions, as detailed below.

J&J Defendants’ Objections

The J&J Defendants object to Plaintiffs’ proposed charge on A-I-I’s default because it fails to instruct the jury that the default was for procedural reasons, implying that there has been a determination of liability after consideration of the merits as to A-I-I. Because many allegations in the operative Complaint are directed against both A-I-I and the J&J Defendants, any implication that there has been a finding of liability on the merits would greatly prejudice the J&J Defendants. *See, e.g.*, 2d Am. Compl. ¶13 (alleging *all* defendants’ “talc powder products” exposed Plaintiff to asbestos through daily use); *id.* ¶6 (describing both J&J Defendants and A-I-I as “Product

Defendants” who “are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products, raw asbestos, raw asbestos talc, and/or asbestos-containing talc materials.”).

J&J Defendants Proposed Charge

The J&J Defendants request a different instruction in a form substantially as follows or having similar effect (that is, to prevent the default of one party from adversely affecting the interests of another non-defaulting party):

Prior to this trial, I issued an order holding A-I-I in default for failing to comply with certain deadlines. Because of A-I-I’s default, the law requires that A-I-I admit to the allegations in Plaintiffs’ complaint, and they are held liable to Plaintiffs. Therefore, as to A-I-I you will only be asked to determine the amount of damages owed to Plaintiffs by A-I-I. This finding is separate from, and should have no impact on, any remaining Defendants. You must not assume that because A-I-I has admitted to the allegations in the complaint because of my default Order, that the Plaintiffs’ allegations are admitted for any other defendant.

J&J Defendants’ Conditional Motion to Sever

Should the Court decline to make the above requested instruction or otherwise similarly fully protect the non-defaulting parties from any prejudice as a result of the default of one party, the J&J Defendants move to sever their action or order separate trials from their action against the defaulted Defendant. Rule 21 of the South Carolina Rules of Civil Procedure governing misjoinder and non-joinder of parties provides:

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Further, Rule 42(b) of the South Carolina Rules of Civil Procedure provides, in part, that “the court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or

third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues”

Under these rules and in the Court’s inherent discretionary powers, the Court should act via either proper instruction or via severance/separate trials to prevent the manifest prejudice that would otherwise result from Plaintiffs’ proposed charge in Exhibit 1. *See Lanzo v. Cyprus Amax Mins. Co.*, 467 N.J. Super. 476, 530, 254 A.3d 691, 722 (App. Div. 2021) (vacating jury verdict where adverse inference instruction against one defendant undermined co-defendant’s defense and trial court denied motion to sever: “The adverse inference instruction [against co-defendant] allowed the jury to infer the talc that [co-defendant] supplied was contaminated with asbestos. If that were the case, the jury could conclude that JJCI’s talc products were similarly contaminated.”).

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Blake T. Williams

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*Attorneys for Defendants Johnson & Johnson, Inc.; LLT
Management, LLC, formerly known as LTL Management, LLC;
Kenvue, Inc.; and Johnson & Johnson Holdco (NA), Inc.*

Columbia, South Carolina

August 3, 2024

Exhibit 1

Amy Pepke

From: Theile McVey <tmcvey@kassellaw.com>
Sent: Friday, August 2, 2024 2:04 PM
To: Diaz, Eva; Toal, Jean; Blake Williams; Trey Branham; Teresa Gilliland; Ben Adams; Kim Bueno; 'Rachel Gross'; Mitch Brown; Matt Bogan; Eileen Hindman; Meredith Keane; Chris Cowan; Amy Pepke; krozelsky@spencerfane.com; sgflynn@foxrothschild.com; mgeist@reedsmith.com
Subject: RE: Perry v. Johnson & Johnson, et al

Chief Justice Toal and Counsel, below is the charge we would ask the Court read to the jury prior to openings regarding All's default. We would also ask the Court order All to bring their financials including net worth documents to be produced Monday morning at trial. By copy of this email, I am notifying Counsel of my communication with the Court.

THE COURT HAS ALREADY DETERMINED THAT AMERICAN INTERNATIONAL INDUSTRIES, THE COMPANY RESPONSIBLE FOR CLUBMAN TALC PRODUCTS, IS LIABLE TO MICHAEL PERRY ON EACH OF THE CAUSES OF ACTION PLED AGAINST THEM IN THIS CASE, SPECIFICALLY: NEGLIGENCE, STRICT LIABILITY, FRAUD, CONSPIRACY AND IMPLIED WARRANTY OF MERCHANTABILITY. THE COURT HAS DETERMINED THAT CLUBMAN'S ASBESTOS-CONTAINING TALC PRODUCT WAS DEFECTIVE AND UNREASONABLY DANGEROUS AND WAS A SUBSTANTIAL FACTOR IN THE DEVELOPMENT OF MICHAEL PERRY'S MESOTHELIOMA. THE COURT HAS ALSO DETERMINED THAT AMERICAN INTERNATIONAL INDUSTRIES' CONDUCT WAS WILLFUL, WANTON, AND RECKLESS, MEANING AMERICAN INTERNATIONAL INDUSTRIES ACTED WITH A CONSCIOUS INDIFFERENCE TO THE RIGHTS AND SAFETY OF OTHERS.

WHILE THESE ARE ISSUES YOU MUST DECIDE AGAINST JOHNSON & JOHNSON, LLT MANAGEMENT LLC, JOHNSON & JOHNSON HOLDCO (NA), INC., AND KENVUE, INC, YOU ARE INSTRUCTED THAT AMERICAN INTERNATIONAL INDUSTRIES IS LIABLE TO THE PLAINTIFFS IN THIS CASE. YOUR ONLY TASKS AS TO AMERICAN INTERNATIONAL INDUSTRIES ARE TO (1) DETERMINE THE TOTAL AMOUNT OF DAMAGES THAT MICHEL PERRY AND LONNIE LONG HAVE SUFFERED AND (2) DETERMINE THE TOTAL AMOUNT OF PUNITIVE DAMAGES NECESSARY TO PUNISH AND DETER AMERICAN INTERNATIONAL INDUSTRIES FROM COMMITTING SIMILAR ACTS IN THE FUTURE.

Theile McVey

Kassel McVey

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From: Diaz, Eva <ediaz@sccourts.org>

Sent: Wednesday, July 31, 2024 10:16 AM

To: Blake Williams <blake.williams@nelsonmullins.com>; Trey Branham <tbranham@dobslegal.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ben Adams <badams@dobslegal.com>; Theile McVey <tmcvey@kassellaw.com>; Kim Bueno <Kim.Bueno@butlersnow.com>; 'Rachel Gross' <rgross@dobslegal.com>; Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Eileen Hindman <eileen.hindman@nelsonmullins.com>; Meredith Keane <meredith.keane@nelsonmullins.com>; Chris Cowan <Chris.Cowan@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; krozelsky@spencerfane.com; sgflynn@foxrothschild.com; mgeist@reedsmith.com

Subject: RE: Perry v. Johnson & Johnson, et al

Good morning all.

Chief Justice Toal will be adjourning early on August 8th to attend the investiture of Chief Justice Kittredge during trial next week. She will need to leave the courthouse at 3:30PM so please plan accordingly so she can leave before 3:30 with no rush.

Also, Tasha Bridenback, her next law clerk will be made aware of this. Her email, not sure if it is active yet, is Tbridenback@sccourts.org

Last, please do not deliver any exhibit binders to her home. The notebooks for exhibits tend to be extensive and she prefers having the exhibits delivered to her chambers. You can bring them with you on Monday and hand deliver to her.

Please let me know if you need anything. Also, I'm adding counsel for All/Clubman and Vi-Jon on this email.

Eva

Eva Diaz

Judicial Law Clerk

South Carolina Court Administration

1220 Senate Street, Suite 200

Columbia, SC 29201

ediaz@sccourts.org

Office: (803) 734-0833

From: Blake Williams <blake.williams@nelsonmullins.com>

Sent: Monday, July 29, 2024 12:25 PM

To: Diaz, Eva <ediaz@sccourts.org>

Cc: Trey Branham <tbranham@dobslegal.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ben Adams <badams@dobslegal.com>; Theile McVey <tmcvey@kassellaw.com>; Kim Bueno <Kim.Bueno@butlersnow.com>; 'Rachel Gross' <rgross@dobslegal.com>; Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Eileen Hindman <eileen.hindman@nelsonmullins.com>; Meredith Keane <meredith.keane@nelsonmullins.com>; Chris Cowan <Chris.Cowan@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>

Subject: RE: Perry v. Johnson & Johnson, et al

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Ms. Diaz,

J&J Defendants thank Plaintiffs' counsel for providing the Court with the parties' briefing in advance of our pretrial conference on Tuesday. Several pending motions were inadvertently omitted from the materials delivered to the Court. We have a supplemental notebook that includes the following, additional motions:

1. Johnson & Johnson Defendants' Motion *In Limine* to Partially Exclude the Opinions of Dr. David Madigan, filed on 7/23/24 after Dr. Madigan's deposition on 7/15/24.
2. Johnson & Johnson Defendants' Motion *In Limine* to Partially Exclude Certain Opinions of Dr. William Longo, filed on 7/23/24 after Dr. Longo's deposition on 7/16/24.
3. Johnson & Johnson Defendants' Motion *In Limine* to Exclude Evidence of or Reference to Tissue Testing, filed on 7/24/24.
4. Johnson & Johnson Defendants' Response to Co-Defendants' Motions *In Limine* to Bifurcate, filed on 7/23/24

Please let us know where we should have these hard copies sent. We would be glad to have a runner deliver them.

Thank you,

Blake T. Williams | Attorney at Law | Nelson Mullins Riley & Scarborough LLP

(p) 803.255.9597 (e) blake.williams@nelsonmullins.com

From: Theile McVey <tmcvey@kassellaw.com>

Sent: Friday, July 26, 2024 3:41 PM

To: Kim Bueno <Kim.Bueno@butlersnow.com>; 'Rachel Gross' <rgross@dobslegal.com>; TPeck@foxrothschild.com; sgflynn@foxrothschild.com; Ncherry@foxrothschild.com; lrussell@foxrothschild.com; kkolb@foxrothschild.com; jelliott@richardsonplowden.com; cberthelsen@richardsonplowden.com; HElliott@RichardsonPlowden.com; mmayden@richardsonplowden.com; phoover@richardsonplowden.com; SPugh@RichardsonPlowden.com; CMcQueen@RichardsonPlowden.com; wharte@richardsonplowden.com; ddobbels@polsinelli.com; jdavis@ycrlaw.com; mriddle@ycrlaw.com; tgandy@ycrlaw.com; aphillips@ycrlaw.com; klynes@ycrlaw.com; Matthew.Enenbach@kutakrock.com; Bl@maronmarvel.com; CLA@maronmarvel.com; FOcel@maronmarvel.com; kln@maronmarvel.com; ymcleod@maronmarvel.com; JRenner@maronmarvel.com; grouse@maronmarvel.com; cgourdine@maronmarvel.com; MMiller@maronmarvel.com; Carolyn Blackwell <Carolyn.blackwell@nelsonmullins.com>; Linda Wilson <Linda.wilson@nelsonmullins.com>; Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <matt.bogan@nelsonmullins.com>; Blake Williams <blake.williams@nelsonmullins.com>; Eileen Hindman <eileen.hindman@nelsonmullins.com>; Chris Cowan <Chris.Cowan@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; Robert.meriwether@cs-law.com; Jase.glenn@cs-law.com; rebecca.sanford@cs-law.com; sc-asbestos@cs-law.com; vmerassaint@spencerfane.com; jgray@spencerfane.com; wpurnell@spencerfane.com; smyoung@spencerfane.com; hlee@spencerfane.com; adickerson@spencerfane.com; krozelsky@spencerfane.com; stephen.hall@orrick.com; amalik@orrick.com; braphel@orrick.com; checkman@orrick.com; Melissa Geist <MGeist@ReedSmith.com>; talley@hpylaw.com; RByfield@hpylaw.com; bjowers@maynardnexsen.com; kjones@maynardnexsen.com; AGeddes@maynardnexsen.com; RCavalchire@maynardnexsen.com; cshoun@maynardnexsen.com; AWaring@maynardnexsen.com; lsmith@maynardnexsen.com; srabon@maynardnexsen.com; Elizabeth.ONeill@wbd-us.com; WBD.SCASBESTOS@wbd-us.com; Kimberly.Sullivan@wbd-us.com; sarah.wells@wbd-us.com; Ted.Roberts@wbd-us.com; Matt.Robusto@wbd-us.com; Brian.Zemil@wbd-us.com; Geoff.Pashke@wbd-us.com; Julie.wallace@wbd-us.com; Daddison@hallboothsmith.com; mdcarter@hallboothsmith.com; carlpierce@piercesloan.com; bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com; elizabethtaylor@piercesloan.com; daniellynch@piercesloan.com; trepierce@piercesloan.com; willearly@piercesloan.com; kristinhoward@piercesloan.com; caseyhewett@piercesloan.com;

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rlroberts@lbrblaw.com; ahook@lbrblaw.com; sbracy@lbrblaw.com

Cc: Trey Branham <tbranham@dobslegal.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ben Adams <badams@dobslegal.com>; Toal, Jean <JToal@sccourts.org>; Diaz, Eva <ediaz@sccourts.org>

Subject: Perry v. Johnson & Johnson, et al

Chief Justice Toal:

Today, we are delivering notebooks to you and Ms. Diaz with the motions as listed on the attached coversheets. If you have any questions or concerns or need any additional information, please let me know. By copy of this email, I am notifying Counsel for Defendants of my communication with the Court. Thanks, Theile

Theile McVey

Kassel McVey

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1330 Laurel Street

Columbia, South Carolina 29202

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https://link.edgепilot.com/s/e5052197/x3JC3mbwa0mNwxZzS_Ltuw?u=http://www.kasselmvey.com/

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analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.



|                                      |   |                                                      |
|--------------------------------------|---|------------------------------------------------------|
| STATE OF SOUTH CAROLINA              | ) | IN THE COURT OF COMMON PLEAS                         |
|                                      | ) |                                                      |
| COUNTY OF RICHLAND                   | ) | CIVIL ACTION NO. 2023-CP-40-04072                    |
|                                      | ) |                                                      |
| MICHAEL L. PERRY AND LONNIE L. LONG, | ) | <i>In Re: Asbestos Personal Injury Litigation</i>    |
|                                      | ) | Coordinated Docket                                   |
|                                      | ) |                                                      |
| Plaintiffs,                          | ) | <b><u>J&amp;J DEFENDANTS’ OBJECTION TO</u></b>       |
|                                      | ) | <b><u>PLAINTIFFS PROPOSED ORDER</u></b>              |
| vs.                                  | ) | <b><u>REGARDING PLAINTIFFS’ MOTION <i>IN</i></u></b> |
|                                      | ) | <b><u>LIMINE NO. 22 BASED ON SPOILIATION</u></b>     |
| AMERICAN INTERNATIONAL               | ) | <b><u>OF EVIDENCE</u></b>                            |
| INDUSTRIES, ET AL.,                  | ) |                                                      |
|                                      | ) |                                                      |
| Defendants.                          | ) |                                                      |
|                                      | ) |                                                      |

---

Defendants Johnson & Johnson, Inc. (“J&J”); LLT Management, LLC (“LLT”); Johnson & Johnson Holdco (NA), Inc. (“Holdco”); and Kenvue, Inc. (collectively, “J&J Defendants”) respectfully submit this objection to the proposed order granting Plaintiffs’ Motion *In Limine* No. 22 Based on Spoliation of Evidence submitted by Plaintiffs via email to the Court on August 3, 2024. **Ex. A** (8/3/2024 email with attachment), and would respectfully show as follows:

This Court entered an order on Plaintiffs’ same spoliation-related motion nearly three years ago in “the *Hood (McBrayer) v. Acme Markets, Inc., et al.* case.” Plaintiffs’ motion in this case seeks entry of the “***identical*** order and instruction to the jury be given in this matter.” P’s MIL No. 22 at 1 (emphasis added).

But the proposed order Plaintiffs submitted today is far from identical to the order this Court entered in *Hood (McBrayer)*. For example, the proposed order removes this Court’s requirements in *Hood (McBrayer)* that Plaintiffs provide evidence that Johnson & Johnson “destroyed” or “*unreasonably* failed to preserve” underlying testing data. Plaintiffs’ current proposed order would trigger the spoliation instruction on only a showing that t Johnson & Johnson

failed to preserve it. This substantive deviation from the *Hood (McBrayer)* order is reflected in this redline comparison

For talc tests performed by Johnson & Johnson that report a negative result for asbestos, including ‘no quantifiable asbestos’ or other similar language, if the evidence shows Johnson & Johnson ~~destroyed or unreasonably~~ failed to preserve underlying data related to the test, ~~the jury you~~ may presume that the missing data showed that asbestos fibers were present in Johnson & Johnson’s talc.<sup>1</sup>

This is not consistent with this Court’s *Hood (McBrayer)* order, Plaintiffs’ motion, or South Carolina law on spoliation. While Defendants respectfully maintain their objections to the entry of any spoliation order,<sup>2</sup> at a minimum, this Court should enter the same order in this case as it did in *Hood (McBrayer)*.<sup>3</sup>

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Blake T. Williams

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Kimberly G. Bueno – *Pro Hac Vice*

---

<sup>1</sup> A redline comparison of the proposed order to the *Hood (McBrayer)* order is attached for the Court’s ease of reference as **Exhibit B**.

<sup>2</sup> Defendants respectfully incorporate herein all their arguments and authorities offered in their oppositions filed in this case to Plaintiff’s Motion in Limine No. 22, as well as their prior briefing in *Hood (McBrayer)*.

<sup>3</sup> Defendants have submitted to the Court via email a proposed order to this effect.

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*Attorneys for Defendants Johnson & Johnson, Inc.; LLT  
Management, LLC, formerly known as LTL Management, LLC;  
Kenvue, Inc.; and Johnson & Johnson Holdco (NA), Inc.*

Columbia, South Carolina

August 3, 2024

Exhibit A

**Chris Cowan**

**From:** Theile McVey <tmcvey@kassellaw.com>  
**Sent:** Saturday, August 3, 2024 12:16 PM  
**To:** Toal, Jean; tbridenback@sccourts.org  
**Cc:** Diaz, Eva; Blake Williams; Trey Branham; Teresa Gilliland; Ben Adams; Kim Bueno; Rachel Gross; Mitch Brown; Matt Bogan; Eileen Hindman; Meredith Keane; Chris Cowan; Amy Pepke; sgflynn@foxrothschild.com  
**Subject:** RE: Perry v. Johnson & Johnson, et al  
**Attachments:** Perry order on spoliation of evidence.docx

Chief Justice Toal and Counsel:

Attached is the Plaintiffs' proposed order on their spoliation motion. Please let me know if you have any questions or concerns. Thanks, Theile

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-----Original Message-----

**From:** Toal, Jean <JToal@sccourts.org>  
**Sent:** Friday, August 2, 2024 4:03 PM  
**To:** Theile McVey <tmcvey@kassellaw.com>  
**Cc:** Diaz, Eva <ediaz@sccourts.org>; Blake Williams <blake.williams@nelsonmullins.com>; Trey Branham <tbranham@dobslegal.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ben Adams <badams@dobslegal.com>; Kim Bueno <Kim.Bueno@butlersnow.com>; Rachel Gross <rgross@dobslegal.com>; Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Eileen Hindman <eileen.hindman@nelsonmullins.com>; Meredith Keane <meredith.keane@nelsonmullins.com>; Chris Cowan <Chris.Cowan@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; krozelsky@spencerfane.com; sgflynn@foxrothschild.com; MGeist@reedsmith.com  
**Subject:** Re: Perry v. Johnson & Johnson, et al

Dear Ms McVey, Ms Flynn and all: My law clerk has left for the day. I will not be able to enter a formal order regarding in Default Defendant American International Industries until Monday. Ms McVey: Please draw an order for my signature requiring All to produce all net worth and financial information on Monday. I will be prepared to read to the jury Ms McVey's jury directive regarding All. Ms Flynn: Please send me any requested changes ASAP and I will consider them. Ms Flynn: I find no authority for a defaulted party to move, before the case is even tried, for a writ of certiorari to the SC Supreme Court or request a stay. If such could be done, a defaulting party could force a plaintiff to retry its case after trial against the non defaulting party. This defies logic. Please be prepared to go forward with this trial for your defaulted defendant this Monday morning at 9:30am. Best regards, Jean Toal Sent from my iPhone

On Aug 2, 2024, at 3:04 PM, Theile McVey <tmcvey@kassellaw.com> wrote:

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\* Chief Justice Toal and Counsel, below is the charge we would ask the Court read to the jury prior to openings regarding All's default. We would also ask the Court order All to bring their financials including net worth documents to be produced Monday morning at trial. By copy of this email, I am notifying Counsel of my communication with the Court.

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From: Diaz, Eva <ediaz@sccourts.org>

Sent: Wednesday, July 31, 2024 10:16 AM

To: Blake Williams <blake.williams@nelsonmullins.com>; Trey Branham <tbranham@dobslegal.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ben Adams <badams@dobslegal.com>; Theile McVey <tmcvey@kassellaw.com>; Kim Bueno <Kim.Bueno@butlersnow.com>; 'Rachel Gross' <rgross@dobslegal.com>; Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Eileen Hindman <eileen.hindman@nelsonmullins.com>; Meredith Keane <meredith.keane@nelsonmullins.com>; Chris Cowan <Chris.Cowan@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; krozelsky@spencerfane.com; sgflynn@foxrothschild.com; mgeist@reedsmith.com  
Subject: RE: Perry v. Johnson & Johnson, et al

Good morning all.

Chief Justice Toal will be adjourning early on August 8th to attend the investiture of Chief Justice Kittredge during trial next week. She will need to leave the courthouse at 3:30PM so please plan accordingly so she can leave before 3:30 with

no rush.

Also, Tasha Bridenback, her next law clerk will be made aware of this. Her email, not sure if it is active yet, is Tbridenback@sccourts.org<mailto:Tbridenback@sccourts.org>

Last, please do not deliver any exhibit binders to her home. The notebooks for exhibits tend to be extensive and she prefers having the exhibits delivered to her chambers. You can bring them with you on Monday and hand deliver to her.

Please let me know if you need anything. Also, I'm adding counsel for All/Clubman and Vi-Jon on this email.

Eva

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J&J Defendants thank Plaintiffs' counsel for providing the Court with the parties' briefing in advance of our pretrial conference on Tuesday. Several pending motions were inadvertently omitted from the materials delivered to the Court. We have a supplemental notebook that includes the following, additional motions:

- \* Johnson & Johnson Defendants' Motion In Limine to Partially Exclude the Opinions of Dr. David Madigan, filed on 7/23/24 after Dr. Madigan's deposition on 7/15/24.
- \* Johnson & Johnson Defendants' Motion In Limine to Partially Exclude Certain Opinions of Dr. William Longo, filed on 7/23/24 after Dr. Longo's deposition on 7/16/24.
- \* Johnson & Johnson Defendants' Motion In Limine to Exclude Evidence of or Reference to Tissue Testing, filed on



7/24/24.

\* Johnson & Johnson Defendants' Response to Co-Defendants' Motions In Limine to Bifurcate, filed on 7/23/24

Please let us know where we should have these hard copies sent. We would be glad to have a runner deliver them.

Thank you,

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Michael L Perry and Lonnie L Long,	)	C/A No. 2023-CP-40-04072
	)	
	)	
Plaintiff,	)	
v.	)	ORDER ON PLAINTIFFS' MOTION
	)	FOR EVIDENTIARY SANCTIONS
	)	AGAINST JOHNSON & JOHNSON
	)	BASED ON SPOILIATION OF
	)	EVIDENCE
	)	
American International Industries et al,	)	
	)	
Defendants.	)	
	)	

Before the Court is Plaintiff's Motion for Evidentiary Sanctions Against Johnson & Johnson Based on Spoliation of Evidence. The Court heard the exact motion in the *Hood v. Johnson & Johnson* C/A No 2020-CP-10-03946 and signed an Order on November 5, 2021. The Court received briefs from Plaintiffs and from Johnson & Johnson and heard argument from the parties on July 30, 2024. The motion is granted in part and denied in part.

BACKGROUND

Since at least the 1950s, Johnson & Johnson has personally 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.

Plaintiffs argue 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, Plaintiffs have 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. Plaintiffs also ask that Johnson and Johnson be precluded from arguing that the causation opinions of Plaintiffs' 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 evidence. In fact, Plaintiffs presented evidence that Johnson & Johnson and its consultants

recognized in the late '1960s and 1970s that there would be outrage if the public learned there was tremolite in baby powder, this underlying data was "vital information," and interpretation of the data would vary based on the expertise and interest of the analyst. J&J recommended consulting with "the law department" on this issue in 1969.

Plaintiffs argue that, without the underlying data for Johnson & Johnson's tests, it is impossible to determine what the results would have been if an accurate definition were applied, an accurate testing methodology used, and/or an accurate 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, including deletion of reference to "chrysotile asbestos."

Johnson & Johnson has not argued that this underlying data is unimportant. On the contrary, 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. Johnson & Johnson argues that, because Plaintiffs have the examples they 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. Johnson & Johnson required the use of blanks, but the testing data provided by Johnson & Johnson in discovery virtually never includes documentation concerning blanks.

Plaintiffs argue that Johnson & Johnson and its experts sometimes take the position that asbestos found in samples are the result of laboratory contamination. Plaintiffs have 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) Plaintiffs assume that blanks were used, and (2) there is no evidence the blanks were in Johnson & Johnson's possession, custody, or control. However, Plaintiffs provided evidence that Johnson & Johnson required the use of blanks, and Plaintiffs do 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. Plaintiffs make 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.

Plaintiffs claim that Johnson & Johnson generally attacks the number, diversity, and source of the talc samples that Plaintiffs' experts rely on as insufficient in number or not representative. Plaintiffs point out that Johnson & Johnson has also attempted to challenge reliance on samples of

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 in its custody after they went out for testing, and it had no responsibility to reclaim them. Johnson & Johnson also argues that Plaintiffs are 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 it became known that" 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 consult "the Law Department." 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 the 1930s that asbestos causes cancer and knew in 1971 that asbestos-related diseases were latent and might not be diagnosed until decades after exposure. Plaintiffs argue 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 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. 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-related disease, sold its product to hundreds of thousands of consumers over the lengthy period of time at issue here, and predicted impending litigation when the public learned of asbestos in its talc.

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

Plaintiffs have demonstrated that the missing testing data is relevant and that they are prejudiced by its absence. Even Johnson & Johnson and its experts have expressed in the past that this evidence is essential to evaluating test results. Plaintiffs have presented examples based on the few sample documents in Plaintiffs' 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 to Plaintiffs. 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 Plaintiffs are not prejudiced by the absence of additional talc samples because they and plaintiffs generally have a sufficient representative number of samples available to test. Johnson & Johnson cites the testimony of Plaintiffs' 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 Plaintiffs.

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 Plaintiffs' motion. Plaintiffs seeks an instruction

only as to the testing done by or at the direction of Johnson & Johnson since 1971. It does not 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, Plaintiffs 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** Plaintiffs' 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. For talc tests performed by Johnson & Johnson that report a negative result for asbestos, including 'no quantifiable asbestos' or other similar language, if the evidence shows Johnson & Johnson failed to preserve underlying data related to the test, you may presume that the missing data showed that asbestos fibers were present in Johnson & Johnson's talc.
2. For talc tests performed by Johnson & Johnson that report a positive result for asbestos, if Johnson & Johnson argues that the positive result was the result of lab contamination, you may presume the blanks were free of asbestos.

3. These instructions also apply to talc tests commissioned by Johnson & Johnson. 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, and 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, the Court **DENIES** Plaintiffs' motion 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 Plaintiffs have access to sufficient and representative talc samples for testing.

AND IT IS SO ORDERED.

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Michael L Perry and Lonnie L Long,	)	C/A No. 2023-CP-40-04072
	)	
	)	
Plaintiff,	)	
v.	)	ORDER ON PLAINTIFFS' MOTION
	)	FOR EVIDENTIARY SANCTIONS
	)	AGAINST JOHNSON & JOHNSON
	)	BASED ON SPOILIATION OF
	)	EVIDENCE
	)	
American International Industries et al,	)	
	)	
Defendants.	)	
	)	

Before the Court is Plaintiff's Motion for Evidentiary Sanctions Against Johnson & Johnson Based on Spoliation of Evidence. The Court heard the exact motion in the *Hood v. Johnson & Johnson* C/A No 2020-CP-10-03946 and signed an Order on November 5, 2021. The Court received briefs from Plaintiffs and from Johnson & Johnson and heard argument from the parties on July 30, 2024. The motion is granted in part and denied in part.

BACKGROUND

Since at least the 1950s, Johnson & Johnson has ~~itself~~ personally 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.

Plaintiffs argue 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, Plaintiffs have 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. Plaintiffs also ask that Johnson and Johnson be precluded from arguing that the causation opinions of Plaintiffs' 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 evidence. In fact, Plaintiffs presented evidence that Johnson & Johnson and its consultants

recognized in the late '1960s and 1970s that there would be outrage if the public learned there was tremolite in baby powder, this underlying data was “vital information,” and interpretation of the data would vary based on the expertise and interest of the analyst. J&J recommended consulting with “the law department” on this issue in 1969.

Plaintiffs argue that, without the underlying data for Johnson & Johnson’s tests, it is impossible to determine what the results would have been if ~~a different~~ an accurate definition were applied, ~~different~~ an accurate testing methodology used, and/or ~~different~~ an accurate 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, including deletion of reference to “chrysotile asbestos.”

Johnson & Johnson has not argued that this underlying data is unimportant. ~~In fact,~~ On the contrary, 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 Plaintiffs have the examples they 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. Johnson & Johnson required the use of blanks, but the testing data provided by Johnson & Johnson in discovery virtually never includes documentation concerning blanks.

Plaintiffs argue that Johnson & Johnson and its experts sometimes take the position that asbestos found in samples are the result of laboratory contamination. Plaintiffs have 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) Plaintiffs assume that blanks were used, and (2) there is no evidence the blanks were in Johnson & Johnson's possession, custody, or control. However, Plaintiffs provided evidence that Johnson & Johnson required the use of blanks, and Plaintiffs do 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. Plaintiffs make 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.

Plaintiffs claim that Johnson & Johnson generally attacks the number, diversity, and source of the talc samples that Plaintiffs' experts rely on as insufficient in number or not representative. Plaintiffs point out that Johnson & Johnson has also attempted to challenge reliance on samples of

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 in its custody after they went out for testing, and it had no responsibility to reclaim them. Johnson & Johnson also argues that Plaintiffs are 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~~ "if it became known that" 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 consult "the 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 the 1930s that asbestos causes cancer and knew in 1971 that asbestos-related diseases were latent and might not be diagnosed until decades after exposure. Plaintiffs argue 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 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. 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-related disease, sold its product to hundreds of thousands of consumers over the lengthy period of time at issue here, and predicted impending litigation when the public learned of asbestos in its talc.

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

Plaintiffs have demonstrated that the missing testing data is relevant and that they are prejudiced by its absence. Even Johnson & Johnson and its experts have expressed in the past that this evidence is essential to evaluating test results. Plaintiffs have presented examples based on the few sample documents in Plaintiffs' 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 to Plaintiffs. 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 Plaintiffs are not prejudiced by the absence of additional talc samples because they and plaintiffs generally have a sufficient representative number of samples available to test. Johnson & Johnson cites the testimony of Plaintiffs' 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 Plaintiffs.

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 Plaintiffs' motion. Plaintiffs seeks an instruction

only as to the testing done by or at the direction of Johnson & Johnson since 1971. It does not 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, Plaintiffs 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** Plaintiffs' 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. For talc tests performed by Johnson & Johnson that report a negative result for asbestos, including 'no quantifiable asbestos' or other similar language, if the evidence shows Johnson & Johnson ~~destroyed or unreasonably~~ failed to preserve underlying data related to the test, ~~the jury you~~ may presume that the missing data showed that asbestos fibers were present in Johnson & Johnson's talc.
2. ~~When Johnson & Johnson argues any positive tests for asbestos, For talc 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~~, that report a positive result for asbestos, if Johnson & Johnson argues that the positive result was the result of lab contamination, ~~the jury you~~ may presume the blanks were free of asbestos.

3. These instructions also apply to talc tests commissioned by Johnson & Johnson.

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, and 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** Plaintiffs’ motion 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 Plaintiffs have access to sufficient and representative talc samples for testing.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2023-CP-40-04072
	)	
MICHAEL L. PERRY AND LONNIE L. LONG,	)	<i>In Re: Asbestos Personal Injury Litigation</i>
	)	Coordinated Docket
	)	
Plaintiffs,	)	OBJECTION TO PLAINTIFFS' EFFORTS
	)	TO SUBMIT TO THE JURY EVIDENCE OF
vs.	)	SUCCESSOR LIABILITY OR
	)	AMALGAMATION ISSUES FOR THE
AMERICAN INTERNATIONAL	)	COURT BUT UNRELATED TO
INDUSTRIES, ET AL.,	)	PLAINTIFFS' PRODUCTS LIABILITY
	)	CLAIMS
Defendants.	)	
	)	

The J&J-related Defendants hereby object to evidence and argument going to the jury on issues that are to be decided by the Court – Successor Liability and Amalgamation.

None of these filings would be necessary had Plaintiffs merely pursued products liability claims. Instead, Plaintiffs unnecessarily seek to push the envelop, seeking successor liability and amalgamation¹ rulings. As noted at the pre-trial hearing when the Court denied the J&J-related entities' summary judgment motion, the successor liability issues and amalgamation issues are for the Court, not the jury. The Court's ruling was consistent with South Carolina Supreme Court precedent, which previously emphasized the equity nature of claims such as amalgamation. In *Peritus v. Front Roe Restaurants, Inc.*, 817 S.E.2d 273 (2018), the Court stated:

...corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that. For this reason, the single business enterprise theory requires a showing of more than the various entities' operations are intertwined. Combining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions. As with other methods of piercing the corporate form that have

¹ In response to the J&J-related Defendants' earlier Mode of Trial motion, Plaintiffs did not mention amalgamation, and appeared to only be advancing Successor Liability.

previously been recognized in South Carolina, equitable principles govern the application of the single business enterprise remedy, and this doctrine "is not to be applied without substantial reflection." *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008).

A ruling that these equitable issues should be submitted to a jury would be an immediately appealable "mode of trial" order. Instead of making such a ruling, the Court declined make any ruling prior to trial and jury selection and specifically reserved the issue until after trial. A jury was then empaneled. The J&J Defendants have objected, and hereby do object, to any introduction of these irrelevant issues, such as the J&J entities' incorporation, reorganization, bankruptcy, and the like to the jury. Such evidence, testimony or argument is irrelevant, unduly prejudicial, and confusing to the jury. It will serve only to distract from the products liability claims asserted by Plaintiffs and defenses thereto. This is especially true here because the issues surrounding successor liability are hotly contested and will result in a trial within a trial – further compounding the confusion and distraction to the jury.

There is no reason, aside from attempting to improperly taint the jury, for the Plaintiffs to submit argument or evidence to the jury regarding corporate organization, bankruptcy filings, times when companies were formed, or any similar evidence, all of which goes to successor liability and amalgamation. Mr. Perry did not and could not rely on any bankruptcy filing, never knew of any corporate reorganizations, etc., and to introduce argument and evidence to the jury on these types of issues will only, at best, confuse them. The jury will not be making any decisions regarding those issues, and even if the Court decides these issues later adversely to the J&J Defendants, the confusion and damage will have been done with the jury as to the products liability and fraud claims and defenses by allowing such evidence and arguments to be made to the jury. This will not be curable by instructions. The Court should reserve for its exclusive review all evidence and arguments relating to successor liability and amalgamation because that would

prevent the jury from hearing considering irrelevant information that would serve only to confuse them and unduly prejudice the J&J Defendants.

To the extent there is any relevance whatsoever to Mr. Perry's products liability or fraud claims, the relevance is manifestly outweighed by the prejudicial effect of such evidence and the confusion this will cause to the jury. This matter will be filled with error should the Plaintiffs be permitted to inject these issues before the jury. While there is a fraud claim asserted here, there can be no "reliance" by Mr. Perry on statements made, for example, by anyone to the FDA. Similarly, Mr. Perry could not have relied on bankruptcy filings that took place years after his diagnosis. The Court has ruled that Mr. Perry can talk about his reliance on brand messaging/marketing that he personally read and relied on. While respectfully, fraud should not be a claim at all here, such proof should be all the jury hears regarding that issue. Plaintiffs simply will not be able to prove, for example, that Holdco had anything to do with such brand messaging or marketing. Likewise, LLT. These are but examples.

The J&J Defendants thus object as stated herein and request that the Court take appropriate steps so that the jury only considers matters relevant and not unduly prejudicial respecting Mr. Perry's products liability and fraud claims related to his use of Johnson's Baby Powder.

The J&J Defendants request that their objections be sustained. The jury should not be exposed to these arguments and evidence.

Respectfully submitted,

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Columbia, South Carolina

August 5, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2023-CP-40-04072
	)	
MICHAEL L. PERRY AND LONNIE L. LONG,	)	<i>In Re: Asbestos Personal Injury Litigation</i>
	)	Coordinated Docket
	)	
Plaintiffs,	)	<u>JOHNSON & JOHNSON DEFENDANTS'</u>
	)	<u>PROFFER OF EVIDENCE RE:</u>
vs.	)	<u>MR. PERRY'S EXPOSURE TO</u>
	)	<u>ASBESTOS IN THE LIBRARY WHILE</u>
AMERICAN INTERNATIONAL INDUSTRIES, ET AL.,	)	<u>WORKING AT EMBASSY SUITES</u>
	)	
	)	
Defendants.	)	

Pursuant to S.C. R. Evid 103, Defendants Johnson & Johnson, Inc. (“J&J”); LLT Management, LLC (“LLT”); Johnson & Johnson Holdco (NA), Inc. (“Holdco”); and Kenvue, Inc. (collectively, the “J&J Defendants”) submit this proffer of excluded evidence related to Mr. Perry’s exposure to asbestos while he was working in Embassy Suites. As explained in Defendants’ Opposition to Plaintiff’s Motion in Limine No. 10 (incorporated by reference herein), Mr. Perry worked in the Embassy suites in the 2000s. Dep. of Michael Perry at 130 (Ex. A). The Embassy Suites used a library – which was later condemned by the County for being “full of asbestos” – next to the hotel as a storage facility. *Id.* at 130-131, 279-280, 849. In the library, workers were “constantly” moving furniture around and hitting the ceilings, causing the ceilings to start caving in. *Id.* at 130-132. Mr. Perry testified that he physically went into the library on a semi-regular basis, “may be more than two times per month”. *Id.* at 278-79. Once inside the library, Mr. Perry would remain for “a long period of time”. *Id.* at 278-79. In fact, outside of litigation and several months before his deposition in this matter, on July 11, 2023, Mr. Perry informed his physicians of the potential exposures at the library. (Ex. B. July 11, 2023 Office Visit, DX12000.398 (“He

also use to work at embassy suites adjacent to the old county library which apparently had a lot of asbestos in the walls.”)

In addition to eliciting the factual testimony outlined above, Defendants would have questioned Dr. Haber at length about the significance of Mr. Perry’s asbestos exposure in the library. Indeed, in his report, Dr. Haber states that Mr. Perry’s physician noted a “history of asbestos exposure from ‘working at the old library/Hotel Bennett downtown.’” (Ex. C., Dr. Haber Report at 7.)

Plaintiff has presented testimony from Dr. Stephen Haber and Dr. Arnold Brody that asbestos causes mesothelioma, and more specifically, that asbestos exposures above background level caused Mr. Perry to develop mesothelioma. What is more, Defendants received for the first time in the evening of August 5, 2024, a report from Dr. William Longo in which Dr. Longo has analyzed Mr. Perry’s lung tissue for asbestos content. In Mr. Perry’s tissue Dr. Longo claims to find winchite and tremolite. Significantly, Dr. Longo has testified that winchite and tremolite are asbestos fibers that can be found in building materials such as insulation, building fireproofing, and plasters. (Ex. D, January 18, 2024 Testimony of William Longo at 93:16-94:2.) This newly disclosed evidence provides a direct link to the dust at the library and the fibers found in Mr. Perry’s tissue. Defendants must be allowed to examine witnesses on this exposure.

The J&J Defendants should be allowed to fully present evidence of alternative sources of asbestos exposure other than cosmetic talc. Such evidence supports the J&J Defendants’ alternative asbestos exposure defense, as reflected in their Answer. *See* Def. J&J’s Answer to Pl.’s Second Am. Compl. at 26 (“If [Mr. Perry] sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposure to products of manufacturers not named as defendants in this action”).

The J&J Defendants' ability to present a full defense in this case is hampered by their inability to fully discuss all of Mr. Perry's asbestos exposures. The Court should reverse its ruling and allow the J&J Defendants to present the evidence outlined above.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Blake T. Williams

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*Attorneys for Defendants Johnson & Johnson, Inc.; LLT
Management, LLC, formerly known as LTL Management, LLC;
Kenvue, Inc.; and Johnson & Johnson Holdco (NA), Inc.*

Columbia, South Carolina

August 6, 2024

Exhibit A

1 STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND : FOR THE FIFTH JUDICIAL CIRCUIT
3 MICHAEL L. PERRY and :
4 LONNIE L. LONG, :
5 Plaintiffs, : C/A No.
6 v. : 2023-CP-40-04072
7 AMERICAN INTERNATIONAL :
8 INDUSTRIES, et al., :
9 Defendants. :

10

11 Video-Recorded Deposition of

12 MICHAEL L. PERRY

13 VOLUME I

14

15 Hampton Inn by Hilton Charleston Historic District

16 345 Meeting Street, Charleston, South Carolina

17 and

18 Via Zoom Videoconferencing

19

20 Tuesday, October 10, 2023

21 10:06 a.m.

22

23 Reported by:

24 Adam D. Miller, Registered Professional Reporter

25

1 A It would have been the Embassy Suites
2 Charleston, South Carolina.

3 Q Is it the one that's right next door?

4 A It's right next door.

5 Q What do you remember -- well, strike
6 that.

7 What years, approximately, do you
8 remember that work being done?

9 A 2000, 2001.

10 Q And what work do you remember being
11 done?

12 A Similar where the sheetrock was being
13 ripped out. That hotel had a lot of
14 water-intrusion issues. So we would always be
15 ripping out the sheetrock and replacing, trying
16 to find the leak so we could get it repaired and
17 put new sheetrock in.

18 Q Did you ever have to do anything with
19 the library next door?

20 A Yes. So the library right next door
21 to the Embassy Suites, adjacent from the hotel
22 that we're sitting in right now, was
23 condemned -- I found out later -- condemned by
24 the County because it was full of asbestos.

25 I would be sent in there because

1 furniture was stacked from the floor up to the
2 ceiling, trying to either remove furniture to
3 put into the hotel or put -- either put
4 furniture in there from the hotel or retrieve
5 furniture and put it back in the hotel.

6 Q Were you ever in that library when
7 work was actually being done?

8 A Yeah; because the -- there would be
9 workers over there constantly shoving and moving
10 things around.

11 Q Okay. Was it the same work at the
12 library that you remember, generally sheetrock
13 work?

14 A Well, no, they weren't doing
15 sheetrock work in the library; no.

16 Q Okay. What do you remember them
17 doing in the library?

18 A They would be moving -- because it
19 was kind of being used as a -- store everything
20 in there. So guys would go in there and push
21 stuff around. They may hit the ceiling. They
22 may hit the -- because the ceilings were
23 starting to cave in at that point in time. So
24 it was really just, you know, a free-for-all as
25 people would just bounce things around in.

1 Q Okay. So like a lot of storage of --

2 A Yeah.

3 Q -- stuff? Okay, got it.

4 How did your job at that Embassy

5 Suites in the old Citadel put you around this

6 renovation or repair work being done on the

7 sheetrock?

8 A Well, with the sheetrock replacement,

9 I took the knowledge that I had from the

10 previous job and I applied it. So when we'd

11 have to go in there, once again, proof did the

12 work get done, is it like now, is it new, does

13 it meet guest expectations; then I would go

14 ahead and sign off on it.

15 If it wasn't, then we would go ahead

16 and say: No, you need to go back and do this,

17 this, and this.

18 Q Got it.

19 A And then there would be the final

20 cleanup.

21 Q Got it. What was the next hotel you

22 were at?

23 A From there I was at the Homewood

24 Suites in Mount Pleasant, South Carolina.

25 Q What, what years do you remember

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I, ADAM D. MILLER, Registered
Professional Reporter, certify that the
foregoing is a true and accurate transcript
of the foregoing deposition, that the
witness was first sworn by me at the time,
place and on the date herein before set
forth.

I further certify that I am neither
attorney nor counsel for, not related to nor
employed by any of the parties to the action
in which this deposition was taken; further,
that I am not a relative or employee of any
attorney or counsel employed in this case,
nor am I financially interested in this
action.

/s/ Adam D. Miller
Registered Professional Reporter
and Notary Public

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

Video-Recorded Deposition of

MICHAEL L. PERRY

VOLUME II

Hampton Inn by Hilton Charleston Historic District
345 Meeting Street, Charleston, South Carolina
and

Via Zoom Videoconferencing

Wednesday, October 11, 2023

10:04 a.m.

Reported by:

Adam D. Miller, Registered Professional Reporter

1 different properties and had duties on-site?

2 **A** I did have an administrative duty
3 on-site; yes.

4 **Q** How frequent would that be, those
5 kind of trips to be in an actual site?

6 **A** I would be in five different hotels
7 every week.

8 **Q** We talked about some of those
9 properties yesterday. And I just want to walk
10 through those and have you clarify what exactly
11 you were doing with relation to each of those.

12 The first I have in my notes is the
13 Embassy Suites. So clarify for me what you were
14 doing with that property, the Embassy Suites in
15 Charleston.

16 **A** I was the hotel manager.

17 **Q** So that was in the 2000 to 2001 --

18 **A** Yes.

19 **Q** -- were you were GM?

20 And where -- and you said as part of
21 that there was storage in the library next door.
22 Can you clarify for us how many times you
23 physically went into that library?

24 **A** I don't recall the number of times.
25 But it would have been on a semi-regular basis.

1 **Q** Can you give an estimate as to what
2 semi-regular would be?

3 **A** I cannot.

4 **Q** Like two times a month? more than
5 that? less?

6 ATTORNEY GROSS: Object to form.

7 THE WITNESS: It may be more than two
8 times per month.

9 BY ATTORNEY WILLIAMS:

10 **Q** And when you did go in there, how
11 long would you be in there, generally?

12 **A** It really depended on what -- the
13 reason for being in there. If it was storing
14 furniture, it could take a little bit longer.
15 If it was pulling furniture out, it could be a
16 little bit longer as well.

17 **Q** Could it be hours at times, or was
18 it --

19 ATTORNEY GROSS: Object to form.

20 THE WITNESS: I don't recall. I
21 didn't have a watch with me. I wasn't
22 timing myself. But at times it could be a
23 long period of time.

24 BY ATTORNEY WILLIAMS:

25 **Q** And you mentioned that that building

1 was full of asbestos. How did you know that?

2 **A** I did not know that until after I
3 left that property.

4 **Q** Had did you find that out?

5 **A** Through an article that I saw in the
6 newspaper when the owner of that property,
7 Michael Bennett, announced that he was going to
8 make that into a hotel. And it referred to the
9 library as condemned for asbestos.

10 **Q** Do you know when that was that you
11 saw that article?

12 **A** I do not.

13 **Q** Okay. Not even a year, by chance?

14 **A** I can't answer --

15 ATTORNEY GROSS: Object to form.

16 BY ATTORNEY WILLIAMS:

17 **Q** All right. The next one I wanted to
18 ask you about was the Hampton Inn. And you
19 talked about work done to repair a ceiling
20 collapse and water damage.

21 Can you just clarify what your role
22 was in that process?

23 **A** Once again, the hotel had to be shut
24 down because of the massive damage. And so
25 since I lived in Charleston, the corporate

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I, ADAM D. MILLER, Registered
Professional Reporter, certify that the
foregoing is a true and accurate transcript
of the foregoing deposition, that the
witness was first sworn by me at the time,
place and on the date herein before set
forth.

I further certify that I am neither
attorney nor counsel for, not related to nor
employed by any of the parties to the action
in which this deposition was taken; further,
that I am not a relative or employee of any
attorney or counsel employed in this case,
nor am I financially interested in this
action.

/s/ Adam D. Miller
Registered Professional Reporter
and Notary Public

STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS
:
COUNTY OF RICHLAND : FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL L. PERRY and :

LONNIE L. LONG, :

Plaintiffs, : C/A No.

v. : 2023-CP-40-04072

AMERICAN INTERNATIONAL :

INDUSTRIES, et al., :

Defendants. :

Video-Recorded Deposition of

MICHAEL L. PERRY

VOLUME IV

Hampton Inn by Hilton Charleston Historic District
345 Meeting Street, Charleston, South Carolina
and

Via Zoom Videoconferencing

Friday, October 13, 2023

10:04 a.m.

Reported by:

Adam D. Miller, Registered Professional Reporter

1 **Q** All right. The library I'm going ask
2 about now, real quick. You were never around
3 anybody actually working in that library, were
4 you?

5 **A** There were people inside that library
6 were pushing things around. It really was used
7 as a storage facility. And so when I would be
8 in there, they could be in there poking things
9 around.

10 But they weren't doing work to
11 renovate or to maintain the building. It was
12 just used as a storage facility for furniture
13 and just stuff that the current owner had.

14 **Q** All right. And you don't know the
15 brands of the manufacturers of any of the
16 materials that were in that library, do you?

17 **A** I do not.

18 **Q** Do you know when any of those
19 materials were installed?

20 **A** I do not.

21 **Q** All right. Hampton Inn -- and this
22 is the one you're in now; right?

23 **A** Correct.

24 **Q** And you said something about some
25 drywall dust there. And I was -- is it from the

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Professional Reporter, certify that the
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I further certify that I am neither
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employed by any of the parties to the action
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attorney or counsel employed in this case,
nor am I financially interested in this
action.

/s/ Adam D. Miller
Registered Professional Reporter
and Notary Public

Exhibit B

07/11/2023 - Office Visit in Hematology Oncology at Hollings Cancer Center (continued)

Progress Notes (continued)

1. Numerous left-sided pleural-based lesions/deposits and enlarged left cardiophrenic lymphadenopathy. Findings are worrisome for malignancy. Recommend further evaluation with tissue sampling. Follow PET/CT may also be considered to optimize tissue sampling target.
2. Small left pleural effusion, suspected malignant.

Assessment and Plan: Mr. Perry is a 53 y.o. male with a past medical history of HLD, Asthma, GERD, Anxiety, Insomnia, PTSD, and Diverticulitis s/p partial colectomy who presents to the thoracic oncology multidisciplinary clinic today for an initial consultation regarding his recently diagnosed malignant pleural mesothelioma.

Suspected Malignant Pleural Mesothelioma: History as above. In brief, noted progressive chronic cough, weight loss and fevers over the past several months. Eventually saw PCP and underwent CXR on 6/16/23 which revealed a small left pleural effusion. CT Chest revealed numerous left-sided pleural deposits and left cardiophrenic lymphadenopathy concerning for malignancy. He underwent left PleurX, thoracoscopy and pleural biopsy on 6/30/2023 with final pathology read at OSH positive for malignant mesothelioma, epithelioid subtype.

I discussed with Mr. Perry and his husband today the suspected diagnosis of malignant pleural mesothelioma, which is incurable but is treatable with the intention of prolonging life and improving quality of life. As this is a very rare malignancy, we will plan to obtain his biopsy specimen for internal review/confirmation. PET/CT has also been ordered to complete staging. If this does prove to be epithelioid mesothelioma, I will discuss with Dr. Gibney whether he is a candidate for upfront resection vs neoadjuvant chemotherapy (cisplatin/pemetrexed). I will tentatively schedule a follow-up in 2 weeks and infusion in 3 weeks in case that is the final decision after the above results. He was able to ask and have questions answered, and I will update him once plan is finalized.

Follow-Up: RTC in 2 weeks with labs, and in 3 weeks with labs and potential infusion neoadjuvant Cis/Pem (pending staging and pathology review)

Christopher Rangel, MD
Assistant Professor of Hematology/Oncology
Hollings Cancer Center
Medical University of South Carolina

Time Factor Billing: The total amount of time spent with the patient was 60 minutes with greater than 50% spent in consultation, education, and coordination of care.

Electronically signed by Christopher A Rangel, MD at 7/17/2023 8:08 AM

07/11/2023 - Office Visit in Cardiothoracic Surgery at Hollings Cancer Center

Progress Notes

Progress Notes

Barry Gibney, DO at 7/11/2023 1530

Subjective:

Chief complaint: mesothelioma

07/11/2023 - Office Visit in Cardiothoracic Surgery at Hollings Cancer Center (continued)

Progress Notes (continued)

Mr. Perry is a 53 year old male never smoker with a past medical history significant for anxiety, asthma, GERD, diverticulitis s/p colectomy, HLD and PTSD. He states he had Covid in January. He had a significant cough at that time. He recovered from the Covid however the cough persisted. He was treated with a course of antibiotics without any significant improvement. He had a CXR which revealed a left pleural effusion. A follow up Chest CT was obtained 6/21/23 which reports numerous enlarged cardiophrenic lymph nodes including an index node measuring 1.6 x 1.3 cm. There are several pleural deposits in the left lung with index deposit measuring 2.8 x 0.9 cm along the lateral left upper lobe and index implants along the anterior left upper lobe measuring 3.5 x 1.3 cm. There is a small left pleural effusion. With associated pleural deposits including the index deposit along the left posterior lower lobe measuring 4.5 x 1.3 cm. He was seen at Roper by Dr. Kline and was taken to the OR 6/30/23 for a left VATS pleural biopsy and pleur-x placement. His pathology returned most compatible with mesothelioma, favor epithelioid. He presents today for a second opinion regarding his diagnosis and treatment. He is also scheduled to see Dr. Rangel today with medical oncology. He has not yet had a PET/CT but is scheduled for one 7/18/23.

Mr. Perry denies any direct asbestos exposure however he did use a lot of talc throughout his life as a swimmer. He also use to work at embassy suites adjacent to the old county library which apparently had a lot of asbestos in the walls.

Past Medical History:

Diagnosis	Date
• Asthma	
• Diverticulitis	
• GERD (gastroesophageal reflux disease)	
• Hyperlipidemia	
• PTSD (post-traumatic stress disorder)	

Past Surgical History:

Procedure	Laterality	Date
• COLON SURGERY		
• HERNIA REPAIR ventral with mesh		

Social History

Tobacco Use	
• Smoking status:	Never
• Smokeless tobacco:	Never
Substance Use Topics	
• Alcohol use:	Not Currently

Family History

Problem	Relation	Age of Onset
• Heart disease	Mother	
• Cancer ovarian, breast	Mother	
• Cancer	Father	

07/11/2023 - Office Visit in Cardiothoracic Surgery at Hollings Cancer Center (continued)

Progress Notes (continued)

prostate

Review of patient's allergies indicates:
No Known Allergies

Current Outpatient Medications:

- aspirin 1 mg/mL oral suspension, 81 mL., Disp: , Rfl:
- celecoxib (CELEBREX ORAL), 60 mg., Disp: , Rfl:
- gabapentin (Neurontin) 100 mg capsule, Take 1 capsule by mouth., Disp: , Rfl:
- simvastatin 20 mg/5 mL (4 mg/mL) oral suspension, 60 mg., Disp: , Rfl:
- sulfamethoxazole-trimethoprim (Bactrim DS) 800-160 mg tablet, Take 1 tablet by mouth 2 times daily., Disp: 14 tablet, Rfl: 0
- TEMAZEPAM ORAL, 15 mg., Disp: , Rfl:

Review of Systems

Constitutional: Negative for activity change (**active**), fatigue and unexpected weight change (**stable**).

HENT: Negative for trouble swallowing and voice change.

Eyes: Negative.

Respiratory: Positive for cough (**nonproductive**). Negative for shortness of breath.

Left sided pleur-x. Draining about 200-300 every 3 days.

Cardiovascular: Negative for chest pain, palpitations and leg swelling.

Gastrointestinal: Positive for anal bleeding.

Endocrine: Negative.

Genitourinary: Negative.

Musculoskeletal: Negative.

Skin: Negative.

Allergic/Immunologic: Negative.

Neurological: Negative.

Hematological: Negative.

Psychiatric/Behavioral: Negative.

BP 130/82 | Pulse 102 | Temp 37.6 °C (99.7 °F) (Temporal) | Ht 188 cm (6' 2") | Wt 96.1 kg (211 lb 12.8 oz) | SpO2 94% | BMI 27.19 kg/m²

Objective:

Physical Exam

Vitals reviewed.

Constitutional:

Appearance: Normal appearance.

HENT:

Head: Normocephalic.

Nose: Nose normal.

Cardiovascular:

Rate and Rhythm: Normal rate.

Pulses: Normal pulses.

Pulmonary:

Effort: Pulmonary effort is normal.

Breath sounds: Normal breath sounds.

07/11/2023 - Office Visit in Cardiothoracic Surgery at Hollings Cancer Center (continued)

Progress Notes (continued)

Comments: Left sided pleur-x. Dressing intact. No visible erythema or drainage

Abdominal:

Palpations: Abdomen is soft.

Musculoskeletal:

General: Normal range of motion.

Cervical back: Normal range of motion.

Skin:

General: Skin is warm.

Neurological:

General: No focal deficit present.

Mental Status: He is alert.

Psychiatric:

Mood and Affect: Mood normal.

Behavior: Behavior normal.

Thought Content: Thought content normal.

Judgment: Judgment normal.

Assessment / Plan:

Mr. Perry is a 53 year old male never smoker with a past medical history significant for anxiety, asthma, GERD, diverticulitis s/p colectomy, HLD and PTSD who has been found to have what appears to be an epithelioid mesothelioma of the left pleura. We still need to have his pathology reviewed and/ confirmed here at MUSC as well as /complete molecular testing. He needs to complete his staging with his PET scan 7/18/23. Should this be an epithelioid mesothelioma and be low volume we would consider proceeding with a pleurectomy. Should it be any other sub type then surgical resection would not be part of his treatment regimen.

Margaret M. Ramsden, ANP MSN

I have seen, examined, and discussed this patient with Ms. Ramsden and agree with the findings, assessment, and plan. Michael L Perry was diagnosed with epithelioid mesothelioma, after further workup was performed for a persistent cough. He has a pleurx in place, and drains it regularly. On exam he appears fit and demonstrates non-labored breathing. He has multiple VATS port sites that are healing well. Given the challenge of diagnosing mesothelioma we need to confirm the diagnosis pathologically by requesting the slides from the referral hospital for our review. Provided this is mesothelioma, and epithelioid cell variant, will next need to assess for BAP 1 mutation. If the BAP 1 mutation is present we will plan induction chemotherapy, but if absent we will review them through the lens of direct to surgery. He will need a chest MRI, PET scan, VQ scan, echo, stress test (he remains dyspneic, and is at risk for coronary complications with a major operation), and if a BAP 1 mutation is present I would plan intraoperative heated chemotherapy which would require ophthalmic review.

Barry C. Gibney, DO FACS
Associate Professor
Thoracic Surgery

Electronically signed by Barry Gibney, DO at 7/20/2023 1:05 PM

03/20/2003 - Historical Encounter in Historic Gastroenterology Dept

Exhibit C

Notes on Michael Perry, DOB Dec. 1969

Case specific data sources:

1. Expense records of CVS Pharmacy
2. Medical and expense records of Brian Lingerfelt, MD
3. Medical and expense records of Edgepark Medical Supplies
4. Medical and expense records of Medical University of South Carolina
5. Medical and expense records of Palmetto Digestive Disease Endoscopy Center
6. Medical and expense records of Roper Hospital
7. Medical and expense records of Roper St. Francis Health
8. Radiology from Medical University of South Carolina:
 - a. Single view, PA chest x-ray dated February 8, 2003
 - b. Abdominal CT dated February 8, 2003
 - c. Two-view chest x-ray dated June 16, 2023
 - d. Chest CT dated June 21, 2023
 - e. Single view, portable chest x-ray dated June 30, 2023
 - f. Ventilation/perfusion scan dated July 14, 2023
 - g. MRI Chest dated July 17, 2023
 - h. PET/CT scan dated July 18, 2023
 - i. Single view, portable chest x-rays dated August 8 to 12, 2023 (6)
 - j. Two-view chest x-ray dated August 11, 2023
 - k. Two-view chest x-ray dated August 13, 2023
 - l. Two-view chest x-ray dated August 14, 2023
 - m. Two-view chest x-rays dated August 15, 2023 (2)
 - n. Two-view chest x-ray dated September 1, 2023
 - o. Chest CT dated September 29, 2023
 - p. Chest CT dated December 5, 2023
9. Depositions of Mr. Perry dated October 10, 11, 12, and 13, 2023
10. Interview April 18, 2024

Past Medical History: Dr. Anthony Germinario is his PCP. His oncologist is Dr. Christopher Rangel. Dr. Sophia Mendoza is his palliative care physician. Dr. Barry Gibney is his chest surgeon. He receives most of his cancer care through MUSC. His current medications are gabapentin 400 mg three times daily and 600 mg at night, aspirin 81 mg daily, simvastatin 40 mg daily, OxyContin 5 mg every four hours, Klonopin 0.5 mg PRN, trazodone 200 mg nightly, temazepam 15 mg nightly, Pepcid PRN, Senokot 86 mg twice daily, Docusate 100 mg twice daily, and albuterol PRN. He has no known medication allergies.

In June 2023, he started experiencing respiratory symptoms and a drop in appetite. He underwent chest surgery by Dr. Kline at Roper St. Francis and was diagnosed with mesothelioma. He then went to MUSC and had open chest surgery by Dr. Gibney. He then had chemotherapy. He had his sixth cycle in January 2024 and then had 25 fractions of radiation therapy between February and March 2024. His physicians have been monitoring him about every three months. He reports that he will have a CT and appointment at the end of April 2024. He has not had any hospitalizations unrelated to his surgery and has not had any emergency room visits or urgent care visits.

He reports a history of dyslipidemia, GERD, allergic rhinitis, diverticular disease, and nephrolithiasis (2021). His past pulmonary history includes having “seasonal asthma and allergies” since middle school. His past surgical history includes bilateral meniscectomy (late 1980s), bilateral inguinal herniorrhaphies (2000’s), partial colectomy (2008) and L4-5 fusion (2017). Apart from his mesothelioma, he has never had any cancer.

He has no history of diabetes, hypertension, coronary artery disease, arrhythmia, thyroid disease, peptic ulcer disease, hepatitis, chronic liver disease, chronic kidney disease, bladder disease, BPH, arthritis, skin disease, venous thrombosis, anemia, migraines, Parkinson’s disease, neuropathy, bone disease, seizure disorder, stroke, sleep apnea, rheumatoid arthritis, lupus, scleroderma, COPD, chronic bronchitis, pneumonia, pneumoconiosis, fungal lung disease, active tuberculosis, sarcoidosis, penetrating chest wound, chest trauma, rib fracture, pneumoconiosis, or pneumothorax. She has never taken any fibrogenic medication. Apart from the treatment for his mesothelioma, he has never had any radiation therapy.

Social History: He was born in Springfield, Illinois in December 1969. He has one sibling (Michelle, born 1967). His father had worked as an airplane cockpit mechanic (avionics only) and then as an aviation inspector for corporate and private planes. His mother had worked as a computer programmer for an insurance company. He went to Riverton elementary school, middle school, and high school in Springfield. He graduated high school in 1988. He is a lifelong non-smoker. He never chewed tobacco. He denied any history of illicit drug use or alcoholism. He was never in the military. He married Lonnie Long in 2009 (they were together since around 2001). Currently, he resides in Johns Island, South Carolina with Lonnie. They have two pet dogs. He has never raised or kept birds. He reports that all of the homes he has lived in were relatively new and had not undergone any renovations. He reports that between around 1985 and 1988, he did more than a dozen brake jobs on two different vehicles, a Chevy pickup and a Honda Accord.

He did these either in the driveway or inside the garage. He did some grinding on the brakes before installing them.

Mr. Perry reports that he was an above average user of Johnson & Johnson's baby powder, in terms of amount and frequency. He used this product from around 1974 until around 2019. He applied it to his body 2 to 4 times a day. He applied this product to his upper and lower body, including his upper chest and back. When he was playing hockey between 1976 and 1984, he put Johnson & Johnson's baby powder inside his equipment, under his pads, in his socks, and inside of his skates. He played ice hockey for about four months each year, consisting of games and practices on the weekends and occasional weekdays. He estimated about 4 to 6 games/practices per month. After practices or games, he put Johnson & Johnson's baby powder inside the equipment and on his body. Between 1983 and 1988, he did swimming on a daily basis year-round. He put Johnson & Johnson's baby powder inside of his swim cap every day. After swimming, he applied more powder to mask the chlorine smell. In addition, about twice a week he and the other boys had "talc fights" in the locker room and he often had Johnson & Johnson's baby powder poured over him by other children in the locker room. Mr. Perry was involved in the Boy Scouts and about twice a month year-round, on Friday and Saturday nights, he put Johnson & Johnson's baby powder inside of his sleeping bag. At home, he put Johnson & Johnson's baby powder on his pillow and bed sheets a couple of times each week. He did not use Johnson & Johnson's baby powder as a dry shampoo. Mr. Perry spent a lot of time around saltwater, either sailing, kayaking, or swimming. He used Johnson & Johnson's baby powder on his upper chest, back, and arms before putting on his T-shirt after getting out of the water. When he was sailing, he would apply baby powder on his hands, head and face when going into the engine space. He used Clubman on a frequent and regular basis, almost daily. This was his "everyday" scented powder. He also used some vanity fragranced powders for going out, especially Polo. He used Gold Bond powder in his shoes from the 1990s until 2019. He used Equate powder in the 2000's, but not on a regular basis. He used Clubman powder from around 1974 until 2019. He used Ammens powder as needed for jock itch and chafing, from the 1990s to 2019.

Occupational History: In his early teenage years, he worked occasional summertime and hard time picking corn or beans. Between 1984 and 1991, Mr. Perry worked at the Holiday Inn in Springfield. He started as a lifeguard, then began working at the front desk, then supervisor, and then resident manager. From 1991 until 1998, he did charter boat work on a 40-foot sailboat. From 1999 until 2021, he did hotel work in South Carolina for Hilton (Hampton Inn and Embassy

Suites). From 2021 until 2023, he worked at the Market Pavilion Hotel and Grill 225 restaurant in Charleston, SC. After being diagnosed with mesothelioma, he reports that his job was terminated. He reports that in the 1988-1990 timeframe, they were doing some sheetrock work off and on at the Holiday Inn and that he may have on rare occasion walked near the area but there was plastic sheeting present and he was as far away as 300 to 400 feet. The dust was not a problem and guests were still using the hotel during this time frame.

He has never done any sandblasting, welding, jackhammering, commercial painting, stonecutting or masonry work, smelting, mining, metal working, pottery or ceramics manufacturing, butchery, glass manufacturing, cotton processing, drywall, sheetrock or plastering work, cement finisher, electronics manufacturing, foundry work, professional farming, dye manufacturing, rubber product manufacturing, railroad work, work as an insulator, pipefitter, electrician, boilermaker, plumber, millwright, or machinist, work as a dry cleaner, demolition work, work in a refinery, power plant, or paper mill, offshore work, or work in the plastics or textile industry. He has had no known occupational exposures to asbestos, silica, beryllium, chromium, cadmium, nickel, isocyanates, diesel exhaust fumes, radioactive materials, coal, arsenic, solvents, lead, benzene, carbon tetrachloride, or pesticides. He was never overcome by any gas, chemical or fume necessitating urgent medical care and had no prolonged absences from work due to injury or illness (except for being off work for three weeks after his back surgery).

Family History: His mother died from small cell lung cancer in 2010 at the age of 67. She was a cigarette smoker. She also had heart problems. He had a very close relationship with her and was routinely in the bathroom with her as she used various talcum powders, including Avon, J&J, Cashmere Bouquet, and Chanel #5. His father smoked cigarettes but is not deceased. He had prostate cancer at around age 71. He reports that his maternal grandmother had colon cancer in her 70s and his maternal grandfather had pancreatic cancer. His paternal grandfather had been a smoker and had "cancer" in the early 1970s but this was not mesothelioma. He denied any family history of mesothelioma, ophthalmic cancers, kidney cancers or melanoma. His paternal aunt (Rosetta, about five or six years older than his father) had breast cancer in the 1970s. His mother had uterine cancer in 1969 and required hysterectomy. His maternal grandmother had asthma. There is no family history of diabetes or stroke.

Review of Systems: GENERAL: Overall, he has lost about 50 pounds but has been able to gain back about 10 pounds recently. He is 74 inches tall and weighs 200 pounds. His appetite is still poor and he still experiences night sweats. Denied

fever. HEAD AND NECK: Denied blurred vision, itchy eyes, dry eyes, eye pain, or other visual complaint. Reports loss of taste. Denied tinnitus, diminished hearing, rhinorrhea, epistaxis, oral ulcers, mouth pain. CARDIOVASCULAR: Reported chest pain, orthopnea, and syncope (associated with chemotherapy) but denied palpitations or claudication. RESPIRATORY: Reported exertional dyspnea and cough but denied dyspnea at rest, sputum production, wheezing, or hemoptysis. Denied snoring or sleep apnea symptoms. GASTROINTESTINAL: Reported acid reflux symptoms, constipation, nausea and dysphagia but denied bloating, abdominal fullness, abdominal pain, vomiting, diarrhea, hematochezia, or melena. GENITOURINARY: Denied urinary frequency, pain, hematuria, dysuria or urgency. MUSCULOSKELETAL: Denied dependent edema, arthritis, and myalgia. DERMATOLOGIC: Denied rashes, sores, skin lesions, or eczema. NEUROLOGICAL: Reported weakness and loss of balance but denied numbness, headaches, or tremors. He feels very unstable on his feet. PSYCHIATRIC: Reported anxiety, loss of memory (from chemotherapy), forgetfulness and fatigue but denied depression. ENDOCRINE: Denied polyuria, polydipsia, or heat or cold intolerance. HEMATOLOGIC: Denied any bruising or bleeding. IMMUNE: Reported seasonal allergic rhinitis. Denied sneezing, pruritis, hives, or hay fever.

Medical Record Review:

February 25, 2010: Partial sigmoid colectomy for diverticulitis. No evidence of malignancy.

January 20, 2014: Colonoscopy with diverticulosis.

June 11, 2017: CT of the abdomen and pelvis revealed minimal lower zone atelectasis and evidence of diverticulitis.

June 19, 2017: Past medical history of asthma, GERD, and dyslipidemia. Noted to be a non-smoker and has no family history of stomach cancer. His occupation was property manager.

August 9, 2017: Colonoscopy with diverticular disease but no evidence of malignancy.

April 10, 2019: Noted to have a family history of colon cancer.

January 13, 2021: Office visit with Dr. Germinario. Noted to have a history of mild intermittent asthma, allergic rhinitis, diverticular disease, and chronic low back

pain. His past surgical history included inguinal herniorrhaphy in 2007. The family history reportedly included prostate cancer (father), liver cancer (MGF), colon cancer (MGM), mesothelioma (PGF), breast cancer (mother and maternal aunt), uterine cancer (mother), lung cancer (mother), and ovarian cancer (mother).

March 11, 2021: CT of the abdomen and pelvis revealed right hydroureteronephrosis secondary to calculus, diverticular disease and renal calculi. The lower thorax was “unremarkable.”

June 4, 2021: Follow-up with PCP, stable.

August 2, 2021: Urology follow-up, stable.

December 29, 2021: Follow-up with PCP, complained of fatigue.

February 11, 2022: Urology follow-up, stable.

June 28, 2022: Follow-up with PCP, stable.

December 28, 2022: Follow-up with PCP, stable.

June 5, 2023: Colonoscopy with no evidence of malignancy.

June 16, 2023: Follow-up with PCP, complaining of cough, shortness of breath, exertional dyspnea, weight loss and loss of appetite. Noted to have diminished breath sounds on the left. His chest x-ray revealed a lobular pleural thickening and a left pleural effusion, new compared to August 2019. There was also possible adenopathy.

June 21, 2023: CT of the chest revealed left pleural nodularity, a small left pleural effusion, and lymphadenopathy. Dr. Germinario referred him to Dr. Elizabeth Kline.

June 29, 2023: Thoracic surgery consultation by Dr. Kline. His mother was reported to have had a history of lung cancer. He was noted to have no known history of asbestos exposure. She recommended VATS with pleural catheter placement.

June 30, 2023: Left VATS with biopsy and pleural catheter by Dr. Kline. There were multiple “fleshy” masses of the parietal pleura and some on the visceral

pleura. The pathology revealed epithelioid mesothelioma, BAP1 intact. Pathology overread at MUSC confirmatory and recommended evaluation for childhood asbestos exposures.

July 7, 2023: Oncology evaluation by Dr. Brian Lingerfelt. Diagnosed with mesothelioma at age 53. He denied any known asbestos exposures. There was no mention of any family history of mesothelioma. His mother reportedly had ovarian cancer, lung cancer, and breast cancer. Treatment options included surgery versus chemo versus immunotherapy.

July 11, 2023: Thoracic surgery consultation by Dr. Barry Gibney at MUSC. He denied any direct asbestos exposures but was noted to have used “a lot of talc throughout his life.” There was also mention that he had worked at an Embassy Suites, adjacent to an old library, which reportedly had asbestos insulation in the walls. The pleural catheter was draining 200 to 300 mL daily. He was recommended to evaluate for BAP1 mutation, and undergo chest MRI, PET, echocardiogram, V/Q scan and stress test. The chest MRI revealed circumferential left-sided mesothelioma with tumor deposits involving the pre-vascular fat of the superior mediastinum and epicardial fat abutting the pericardial sac, but no definitive diaphragmatic or chest wall involvement. Tumor deposits encircled about 50% of the left subclavian artery. Oncology consultation by Dr. Christopher Rangel noted a history of asbestos exposure from “working at the old library/Hotel Bennett downtown” as well as from talc use. His mesothelioma was considered incurable.

July 14, 2023: V/Q lung scan showed differential perfusion of 33% on the left and 67% on the right.

July 17, 2023: The MRI of the head showed no evidence of malignancy.

July 18, 2023: His echocardiogram was normal. His PET scan showed abnormal uptake of the left pleura, pericardium, mediastinum, chest wall, and ribs. There was widespread hypermetabolic nodular pleural thickening on the left.

July 24, 2023: Bronchoscopy with EBUS was negative.

July 26, 2023: Oncology follow-up with Dr. Rangel. Noted not to have BAP1 mutation. The plan was for surgery with Dr. Gibney.

August 8, 2023: Left thoracotomy with pleurectomy and decortication, lymph node dissection, reconstruction of the diaphragm, resection of the left sixth rib, and intraoperative heated pleural lavage and PleurX removal by Dr. Gibney. The pathology (SP23-18720) revealed epithelioid mesothelioma, including soft tissue, lymph nodes and pleura (pT3pN1).

August 16, 2023: Discharged home.

September 1, 2023: Oncology follow-up for stage IIIa mesothelioma, recommended for adjuvant chemotherapy and radiation therapy consultation.

September 8, 2023: Radiation oncology consultation by Dr. Brian Lally. Felt to be at high risk for disease progression and recommended for IMRT 50 Gy over five weeks.

September 13, 2023: Cycle 1 (of 4-6) chemotherapy (cisplatin and pemetrexed).

September 27, 2023: Oncology follow-up. Symptoms include nausea, fatigue, chest pain and malaise. The plan was for radiation therapy prior to completion of the last cycle of chemotherapy.

September 29, 2023: Chest CT revealed post-operative changes.

October 15, 2023: Chest CT appeared stable.

October 18, 2023: Palliative care consultation by Dr. Sophia Arango Mendoza. He was noted to have a serious, life-limiting cancer with an estimated survival of 1-5 years. Mr. Parry appeared “distressed” and “tearful,” and had complaints of pain, weakness, and nausea. The plan was for opioids, antiemetics and anxiolytics.

October 25, 2023: Cycle 3.

November 8, 2023: Follow up with radiation oncologist, with plan to begin chemotherapy in January 2024.

November 15, 2023: Cycle 4.

November 17, 2023: Follow-up with palliative care. Symptoms included fatigue, loss of appetite, constipation, nausea and chest pain.

December 6, 2023: Cycle 5.

Summary: Mr. Perry is a 54-year-old lifelong non-smoker who was diagnosed with mesothelioma in June 2023 by thoracoscopic biopsy. In August 2023, he underwent thoracotomy with pleurectomy and decortication, confirming the diagnosis of mesothelioma, stage IIIa. He was BAP1 intact. He received six cycles of chemotherapy between September 2023 and January 2024, followed by radiation therapy in February/March 2024. His past medical history includes diverticular disease, dyslipidemia, GERD, and SAR/asthma.

Radiology Review: His February 2003 chest x-ray is normal. His CT from June 21, 2023 reveals lumpy bumpy left pleural thickening and a left pleural effusion consistent with mesothelioma. The pulmonary parenchyma appears normal with no evidence of diffuse interstitial pulmonary fibrosis. On the right, there are no pleural plaques or calcifications seen.

Document Review: I reviewed his deposition testimony. This was consistent with the information I obtained directly from him. He described his extensive and frequent use of Johnson & Johnson's baby powder, often more than once daily, from 1974 until 2019. He described his use of Clubman talcum powder on a frequent and regular basis, again for over 40 years. He described his use of Gold Bond talcum powder in his shoes on a frequent and regular basis. He described his use of designer-type fragranced talcum powders, including Ralph Lauren, Drakkar Noir, Calvin Klein Obsession, and Stetson, which he used on a rotational basis, sometimes several times per week. He reported limited use of Old Spice talcum powder. He used Ammens Medicated Powder on an as-needed basis from the 1990s until 2019. In the 2000's, he sometimes used Equate talcum powder. He described having done brake jobs on two vehicles in the mid-to-late 1980s. He reported that he had a very close relationship with his mother and spent time with her in their bathroom on a daily basis. The products that she used included Avon (Topaz, Birds of Paradise, Cotillion, and Skin So Soft), Cashmere Bouquet, Chanel #5, Estée Lauder White Linen and Johnson & Johnson baby powder and Shower-to-Shower. He witnessed clouds of dust as his mother used these products. His father had used several men's Avon talc products in the bathroom. On a frequent and regular basis, he helped clean and vacuum the bathroom.

Exhibit D

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

MICHAEL L. PERRY and
LONNIE L. LONG,

Plaintiffs,

vs.

Case No.: 2023-CP-40-04072

AMERICAN INTERNATIONAL
INDUSTRIES; et al.,

Defendants.

VIDEO TELECONFERENCE

DEPOSITION OF: WILLIAM EDWARD LONGO, Ph.D.

DATE: Tuesday, July 16, 2024

TIME: 11:48 a.m.

TIME ENDED: 3:31 p.m.

LOCATION: Suwanee, Georgia

REPORTED BY: YVONNE R. THURSTON-BOHANNON
Registered Merit Reporter,
Certified Realtime Reporter

1 Q. And I'm going to try and short circuit
2 this.

3 So with regard to the hotels that
4 you've -- that you know that Mr. Perry worked at
5 that had renovations going on while he was working
6 there, do you have any opinion as to whether or not
7 he was or was not exposed to asbestos during any of
8 those renovations?

9 A. I don't have enough information to
10 state that he was exposed or not exposed. What we
11 do know is when he was 15 years old -- so '69,
12 '79 -- 1984. I'm not aware if you're -- on the
13 renovations that he stated they were doing, you
14 know, taking -- putting up new gyp board and --
15 and -- and joint compound, et cetera, there's no
16 asbestos in the joint compound during that time
17 frame. No air sampling. I don't have any data
18 that I can look at and say this is an exposure.

19 So all the renovations in the hotels,
20 especially in the re -- going back in the rebuilds
21 where you're putting in new gypsum board or
22 drywall -- drywall didn't have asbestos in it, and
23 joint compound by then had been off the market. So
24 1978 as they all -- by then they all had to be off
25 the market. So I don't have enough data there or

1 enough information that I could testify that he had
2 any significant exposure to asbestos.

3 Q. Can you rule out that he had a
4 significant exposure to asbestos or you just don't
5 know --

6 A. Yeah, I mean, I could -- I could take a
7 guess, but I'm not -- but if I was going to
8 testify, rule it in or rule it out, I would have to
9 have some kind of -- I would have to have more
10 information. I can certainly rule out that any
11 joint compound or joint or -- or drywall going back
12 in would be asbestos free.

13 Unless -- you know, so they weren't
14 putting asbestos in that -- that material was
15 coming off the market -- it all had to be off the
16 market in 1978, any -- any joint compound that had
17 chrysotile in it.

18 Q. With regard to the -- the sheetrock and
19 the other materials that had to be replaced, they
20 were older materials obviously. Did you do any
21 sort of investigation concerning the multiple
22 hotels that Mr. Perry testified that he was working
23 in that had to have sheetrock replaced?

24 MR. ADAMS: Object to the form.

25 THE WITNESS: No, I didn't do any -- I

1 didn't do any -- any investigation other than how
2 would you investigate that unless you had samples.

3 The sheetrock was always -- for those
4 type of applications were -- are gypsum. You would
5 have to take air samples to understand if there was
6 any exposure or not. I'm just not -- I just don't
7 have the information I could say with any
8 reasonable degree of scientific certainty that he
9 would have had an exposure to asbestos containing
10 materials being torn out at the hotels.

11 BY MR. COWAN:

12 Q. Do you have an opinion -- moving on to
13 the brake work that Mr. Perry testified he did, do
14 you have an opinion whether it is more likely than
15 not that the Bendix brakes that he was using from
16 1984 to 1987 were asbestos containing brakes?

17 A. Now, that's different. Yes. I do have
18 an opinion, and they were. And, you know, the
19 12 -- the 12 brake jobs he did where he was using
20 compressed air to blow out the dust, that's an
21 exposure. And if he's grounding off sections --
22 small sections of the disc brakes -- not disc
23 brakes, but the drum brakes, that's also going to
24 cause an exposure.

25 So, yes, he would have been exposed to

1 CERTIFICATE OF REPORTER

2 I, Yvonne R. Thurston-Bohannon, Registered
3 Merit Reporter, Certified Realtime Reporter, and
4 Notary Public for the State of South Carolina at
Large, do hereby certify:

5 That the reading and signing of the
6 foregoing deposition by the witness is waived.

7 That the foregoing transcript was taken
8 before me on the date and at the time and location
9 stated on page 1 of this transcript; that the
10 deponent was duly sworn to testify to the truth,
11 the whole truth and nothing but the truth; that the
12 testimony of the deponent and all objections made
at the time of the examination were recorded
stenographically by me and were thereafter
transcribed; that the foregoing deposition as typed
is a true, accurate and complete record of the
testimony of the deponent and of all objections
made at the time of the examination to the best of
my ability.

13 I further certify that I am neither related
14 to nor counsel for any party to the cause pending
or interested in the events thereof.

15 Witness my hand, I have hereunto affixed my
16 official seal July 17, 2024, at Columbia, Richland
County, South Carolina.

17

18 <%18997,Signature%>
19 Yvonne R. Thurston-Bohannon
20 Registered Merit
Reporter, CRR
My Commission expires
May 6, 2025

21

22

23

24

25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2023-CP-40-04072
	)	
MICHAEL L. PERRY AND LONNIE L. LONG,	)	<i>In Re: Asbestos Personal Injury Litigation</i>
	)	Coordinated Docket
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>J&J DEFENDANTS' MEMORANDUM</u>
	)	<u>RELATED TO PROCEDURE AND</u>
AMERICAN INTERNATIONAL	)	<u>EVIDENCE FOR SUCCESSOR</u>
INDUSTRIES, ET AL.,	)	<u>LIABILITY</u>
	)	
Defendants.	)	
	)	

Defendants Johnson & Johnson, Inc. ("J&J"); LLT Management, LLC ("LLT"); Johnson & Johnson Holdco (NA), Inc. ("Holdco"); and Kenvue, Inc. (collectively, the "J&J Defendants") respectfully submit this bench brief following the in-court discussion on August 5, 2024 regarding evidence of bankruptcy, which is allegedly related to successor liability.¹

I. BANKRUPTCY-RELATED EVIDENCE SHOULD NOT BE PLACED BEFORE THE JURY.

A. Federal courts have exclusive jurisdiction over bankruptcy issues.

Federal courts have original and exclusive jurisdiction over bankruptcy. *See* 28 U.S.C. § 1334; *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 33-34 (2014) (describing original and exclusive jurisdiction and allocation of tasks between federal district courts and federal bankruptcy courts).

Courts around the country have repeatedly held that a state court jury does not have the jurisdiction to collaterally attack bankruptcies – which is the only thing that could happen if this

¹ The J&J Defendants incorporate all arguments made in the Johnson & Johnson Defendants' Mode of Trial Motion Regarding Successor Liability and Amalgamation, as if set forth fully herein.

evidence is put in front of the jury. *See Gonzales v. Parks*, 830 F. 2d 1033, 1035-36 (9th Cir. 1987) (“State courts are not authorized to determine whether a person’s claim for relief under a federal law, in a federal court, and within that court’s exclusive jurisdiction, is an appropriate one. *Such an exercise of authority would be inconsistent with and subvert the exclusive jurisdiction of the federal courts* by allowing state courts to create their own standards as to when persons may properly seek relief in cases Congress has specifically precluded those courts from adjudicating.”) (emphasis added); *see also Choy v. Redland Ins. Co.*, 127 Cal. App. 4th 789, 799 (2002) (“Congress’s authorization of certain sanctions for filing of frivolous bankruptcy petitions should be read as an implicit rejection of other penalties, including the kind of substantial damages awards that might be available in state court tort suits. Even the mere possibility of being sued in tort in state court could in some instances deter persons from exercising their rights in bankruptcy.”) (emphasis added); *Shiner v. Moriarty*, 706 A.2d 1228, 1238 (Pa. Super. Ct. 1998) (citing *MSR Expl., Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 916 (9th Cir. 1996)) (“The insertion of state tort standards into the bankruptcy process poses significant interference with federal regulation in that area, creating a situation ‘where the specter of additional litigation must haunt virtually every actor in a bankruptcy proceeding.’”). The Court should follow these cases by declining to allow the jury to evaluate bankruptcy evidence here.

B. Mr. Perry does not have standing to challenge a bankruptcy.

A person who seeks to appeal an order of the bankruptcy court must be “directly and adversely affected pecuniarily” by the order. *Cosmopolitan Aviation Corp. v. New York State Department of Transportation*, 763 F.2d 507, 513 (2d Cir.), cert. denied, 474 U.S. 1032 (1985) (quoting *Fondiller v. Robertson*, 707 F.2d 441, 442 (9th Cir.1983)). This rule of appellate standing is derived from former section 39(c) of the Bankruptcy Act of 1898, which permitted only a

“person aggrieved” to appeal an order of the bankruptcy court. 11 U.S.C. § 67(c) (1976) (repealed 1978). Although the present Bankruptcy Code does not contain any express restrictions on appellate standing, courts have broadly held that the “person aggrieved” standard is applicable to bankruptcy proceedings. *See, e.g., Cosmopolitan Aviation Corp.*, supra, 763 F.2d at 513; *In re El San Juan Hotel*, 809 F.2d 151, 154 (1st Cir. 1987) (“A litigant qualifies as a ‘person aggrieved’ if the order diminishes his property, increases his burdens, or impairs his rights.”); *Pignato v. Dein Host, Inc.*, 835 F.2d 402, 405 (1st Cir. 1987); *Fondiller*, supra (applying the aggrieved person test); *Palm Springs Owners Association v. Sweetwater*, 57 B.R. 743, 746 (D.Utah 1985) (defining an aggrieved person as someone who is “directly and adversely affected pecuniarily by an order of the bankruptcy court”). These decisions reflect the understandable concern that if appellate standing is not limited, bankruptcy litigation will become mired in endless appeals brought by the myriad of parties who are indirectly affected by every bankruptcy court order. *See In re El San Juan Hotel*, supra, 809 F.2d at 154; *Fondiller*, 707 F.2d at 443. Hence, a party to the bankruptcy proceedings is permitted to appeal a particular order only if the order directly affects his pecuniary interests. *See Kane v. Johns-Manville Corp.*, 843 F. 2d 636, 642 (2nd Cir. 1988).

But Mr. Perry does not fit these criteria. He is not an aggrieved person. But even if he was, there is no pending bankruptcy to challenge.

C. Bankruptcy-related evidence is not necessary to explain corporate identity or corporate structure.

Plaintiffs previously argued that they need to introduce detailed evidence of bankruptcies in order to educate the jury about the role of various defendants. *See Pl.’s Resp. to J&J Defs.’ Mot. In Limine No. 3 to Exclude All Evidence of and Reference to LLT Management, LLC’s Bankruptcy Proceedings*. Not so. The J&J Defendants have agreed to Plaintiffs’ counsel’s proposal to use deposition designations from Thibaut Mongon (CEO of Kenvue) and Paul Ruh

(CFO of Kenvue). Copies of the deposition designations are attached hereto as Exhibits A and B. The deposition designations discuss, at length, the corporate structure of the J&J Defendants. Evidence of the bankruptcy is superfluous. It accomplishes nothing, other than to unduly prejudice the J&J Defendants, for the jury to spend time listening to irrelevant, unnecessarily detailed, unnecessarily confusing evidence.

Defendants have offered not only to agree to deposition designations, they also proposed a stipulation explaining the role of the various defendants to avoid the problem of confusing the jury. The stipulation explained – in very clear language appropriate for a jury – that Johnson & Johnson manufactured, marketed, and sold Johnson’s Baby Powder from 1894 until the mid-1960s. *See* Proposed Joint Stipulation (Ex. C). Johnson’s Baby Powder was then manufactured by JJCI and a series of subsidiaries. *Id.* The stipulation then stated that “to the extent any J&J Defendant is found liable, LLT Management LLC is the entity that will accept liability”. *Id.*

Not only does bankruptcy evidence not help the jury answer any question on the verdict form, it serves only to confuse the jury and unduly prejudice defendants. The Court should not allow the presentation of such evidence to the jury.

D. Bankruptcy-related evidence cannot form the basis for Plaintiffs’ fraud claims.

i. Plaintiffs have not pled corporate reorganization or bankruptcy as a basis for their fraud claims.

S.C. R. of Civ. P. 9(b) requires a party to plead with particularity the circumstances constituting fraud. “[I]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” *Id.* Failure to allege all elements is fatal to a claim for fraud. *See Hansen v. DHL Laboratories*, 316 S.C. 505 (1994).

These requirements are fatal to any purported claim for fraud based on bankruptcy here. There are no allegations of fraud in Plaintiff's Second Amended Complaint related to bankruptcy, reorganization, or the like. Plaintiff's Second Amended Complaint states that Defendants "falsely represented facts, including the dangers of asbestos exposure to Plaintiff Michael L. Perry in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure." Second Am. Compl. at para 177. Instead, the only discussion of J&J Defendants filing bankruptcy or re-organizing relate to Plaintiff's allegations for successor liability – not to a separate cause of action. *Id.* at 36-37. Indeed, Plaintiff's motion to compel filed earlier today seemingly acknowledges this fact: "Kenvue and Holdco were sued due to corporate transactions that make them liable for the actions of a common successor, Old JJCI." Pl.'s Mot. to Compel and Mot. for Sanctions. at 1.

ii. Plaintiff has no evidence of reliance on any information related to the bankruptcy.

Under well-established South Carolina law, reliance on the allegedly fraudulent representation is an essential element of a fraud claim. *See Hanson v. DHL Laboratories, Inc.*, 316 S.C. 505 (1994) Mr. Perry last used Johnson's Baby Powder in 2019 – years before the bankruptcy was filed in 2021. *See* Dep. of M. Perry at 36:16-20; 319:19-21 (Ex. D); *see also* Notice of Commencement of Chapter 11 Case and Meeting of Creditors (Ex. E). In other words, Mr. Perry stopped using Johnson's Baby Powder two years before the bankruptcy was filed.

As a matter of timing, it is impossible for Mr. Perry to have relied on any information related to the bankruptcy to decide to use Johnson's Baby Powder, and then develop mesothelioma as a result.²

² Notably, Mr. Perry's own testimony further makes proof of reliance impossible. Mr. Perry testified that "I saw that there was a bankruptcy for Johnson & Johnson. And that was all I saw"

iii. Plaintiff has no evidence of damages based on the bankruptcy.

Just as Plaintiffs have no evidence of reliance on the bankruptcy, Plaintiffs have no evidence of any damage caused to Mr. Perry by the bankruptcy. The bankruptcy was dismissed *before* Mr. Perry was diagnosed with mesothelioma. The fact that there had previously been a pending bankruptcy does not, and could not, have contributed to Mr. Perry’s use of Johnson’s Baby Powder, Mr. Perry developing mesothelioma, or any other relevant event in this case.

Any argument that the bankruptcy is relevant to illustrate the J&J Defendants’ reprehensible conduct also fails. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 423 (2003) (“Due process does not permit courts . . . to adjudicate the merits of other parties’ hypothetical [punitive damage] claims against a defendant”); *id.* at 423 (“Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties’ hypothetical claims against a defendant under the guise of reprehensibility analysis.”); *id.* at 424 (“The reprehensibility guidepost does not permit courts to expand the scope of the case so that a defendant may be punished for any malfeasance.”); *id.* at 422 (“A Defendants’ dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages.”); *id.* at 422–23 (even conduct admitted to prove reprehensibility “must have a nexus to the specific harm suffered by the plaintiff,” and courts must “ensure the conduct in question”—conduct that did not harm the plaintiff but that is being admitted to show reprehensibility—“replicates the prior transgressions”); *Philip Morris USA v. Williams*, 549 U.S. 346, 353 (2007) (holding that “the Constitution’s Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties”).

when he conducted research about talcum powder lawsuits. Dep. of M. Perry at 261:18-23 (Ex. D).

II. PLAINTIFFS HAVE NOT YET FOLLOWED THE PROPER PROCEDURE FOR THE COURT TO MAKE THE EQUITABLE DETERMINATION THAT PLAINTIFFS ARE ENTITLED TO PURSUE SUCCESSOR LIABILITY.

“When a complaint raises both legal and equitable issues and rights, the legal issues are determined by a jury while equitable issues are for the judge.” *JASDIP Properties SC, LLC v. Est. of Richardson*, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct. App. 2011) (citation omitted). Correctly recognizing this law, the Court has agreed that any claims for amalgamation and successor liability are equitable and should not be tried to the jury. See 8/5/2024 Trial Tr. at 7:13-16 (Ex. F) (“To me, this is an amalgamation situation, and I don't think the jury needs to spend a moment about that.”); *id.* at 6:12-14 (“If there's any necessity for distinction, I view it as something that I would make a decision about and not the jury.”).

In order to allow the Court to make this determination, Plaintiffs must first proffer evidence in support of their position. Plaintiffs have made no such proffer.

The parties are seemingly in agreement that the Court should not make this determination until after the end of trial. On the first day of trial, Plaintiffs’ counsel stated, “I don’t want you to make a decision until after the trial is over. You don’t have to.” *Id.* at 25:4-7. The J&J Defendants agree that the Court should only make a decision as to the equitable claims after the trial is over.

Indeed, this is the proper procedure – the Court should allow the jury to make its determination on the product liability and fraud claims. If the jury returns a verdict for the plaintiff, then the Court should consider the equity claims. This process is supported by the South Carolina Supreme Court in *Johnson v. South Carolina National Bank*, 354 S.E.2d 895 (1987). In *Johnson*, the South Carolina Supreme Court advised against using a different sequence – stating that absent “most imperative circumstances”, the legal claim should be tried before the equitable claim. *Id.* (citing *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed. (2d) 988 (1959)).

The proper process is that the Court should have the jury trial first on the products liability claims and lone fraud claim (which should be very limited to things Mr. Perry actually relied on, and which should have been, respectfully, already dismissed as a claim), and receive evidence on and determine the equitable claims thereafter, if such prove necessary. Any different procedure will constitute error.

Plaintiffs incorrectly argue the factual issues are common. They are not. Successor liability is a legal theory of vicarious liability, meaning that the J&J Defendant at issue would be liable for the manufacture and sale of Johnson's Baby Powder, even if performed by another. As outlined above, there is no issue for the jury to determine once the court determines whether there is successor liability. If the court determines that a J&J Defendant is liable under a theory of successor liability, there is no extra liability to be evaluated by the jury. On the other hand, if the Court determines that a J&J Defendant is not liable under a theory of successor liability, then there is no determination for the jury to make at all. Thus, there is no common issue that needs to be evaluated. Instead, the Court should allow the jury to reach its decision and then, if necessary, evaluate the equitable claims.

Respectfully submitted,

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Attorneys for Defendants Johnson & Johnson, Inc.; LLT Management, LLC, formerly known as LTL Management, LLC; Kenvue, Inc.; and Johnson & Johnson Holdco (NA), Inc.

Columbia, South Carolina

August 6, 2024

Exhibit A

SUPERIOR COURT OF NEW JERSEY.
MIDDLESEX COUNTY
DOCKET NO. MID-L-006108-21.
MID-L-002089-23

KIMBERLY NARANJO	)	VIDEOTAPED
(MID-L-006108-21)	)	
JUSTIN BERGERON, et al	)	DEPOSITION UPON
(MID-L-002089-23),	)	
	)	ORAL EXAMINATION
Plaintiff,	)	
	)	OF
- vs -	)	
	)	THIBAUT MONGON
KENVUE, INC., et al		
Defendant.		
- - - - -		

TRANSCRIPT OF DEPOSITION,
taken by and before KARA HACKETT,
Professional Reporter and Notary Public, at
the LAW OFFICES OF FAEGRE, DRINKER, BIDDLE &
REATH, 105 College Road East, Suite 300,
Princeton, New Jersey, on August 14, 2023,
commencing at 9:00 a.m.

2

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

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I N D E X

WITNESS	PAGE
THIBAUT MONGON	
By: Mr. Placitella	7, 160
By: Ms. Fournier	156

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A L S O P R E S E N T :

Dennis Mullin, Videographer
 Tracey Van Dillion, In-House Attorney for Kenvue
 Richard Golomb
 Via Zoom:
 Eric Pasternack
 Michelle Parfitt
 Mark Buha
 James Green
 Moshe Maimon
 Clay Thompson
 Michael Coren
 Aaron Chapman
 Harry Roth
 Leigh O'Dell
 Drew Renzi

5

E X H I B I T S

NUMBER	PAGE	DESCRIPTION	MARKED

(NO EXHIBITS WERE MARKED.)

6

PROCEEDINGS

THE VIDEOGRAPHER: We are now on the record. This begins video number one in the deposition of Thibaut Mongon in the matter of Naranjo v. Kenvue.

Today is Monday, August 14, 2023, and the time is approximately 9:08 a.m. This deposition is being taken at 105 College Road, Princeton, New Jersey.

The videographer is Dennis Mullin of Magna Legal Services. And our court reporter is Kara Hackett of Magna Legal Services.

Will counsel please state their appearances for the record.

MR. PLACITELLA: Christopher Placitella on behalf of the plaintiffs.

MS. FOURNIER: Kristen Fournier on behalf of the witness, Kenvue, and with me is Tracey Van Dillen, in-house counsel at Kenvue.

MR. GARDE: John Garde of McCarter English also on behalf of the defendant Kenvue.

MR. GOLOMB: Richard Golomb on behalf of plaintiff.

THE VIDEOGRAPHER: Could you actually just unmute us on Zoom, make sure they can hear us? And then if anyone needs to announce on there, otherwise, we can

7

have the court reporter swear in the witness.

THIBAUT MONGON, after having been duly sworn, was examined and testified as follows:

BY MR. PLACITELLA:

Q. Good morning.

A. Good morning.

Q. First, let me be sure I get the correct pronunciation of your name.

A. Mongon.

Q. Mongon. Okay. Good morning. My name is Chris Placitella. I'm here for purposes of taking your deposition.

Have you ever had your deposition taken before?

A. Yes, I have.

Q. And what kind of case?

A. In talc case.

Q. In a talc case. Oh, in the context of the bankruptcy?

A. Of the bankruptcy.

Q. Okay. I've read the deposition. Any time other than that?

A. No.

8

Q. Okay. I'm here, I'm going to try to be respectful of your time. If there's something that you don't know, please tell me that. If there's something that you don't have knowledge of, you can tell me that and I'll try to move on. Okay?

A. Okay.

Q. All right. I want to just start from the beginning with you're currently the CEO of Kenvue?

A. Correct.

Q. And as of when specifically?

A. As of May 4, 2023.

Q. 2023. And before that, you were chairman of Consumer Health. I'm sorry. Before that, you started out in Consumer Health in 2014?

A. I started in Consumer Health in 2014, correct.

Q. Correct. And you were chairman of Consumer Health Asia Pacific?

A. Asia Pacific.

Q. And you had that job until 2019?

A. '19.

Q. When you were chairman of Consumer Health Asia Pacific, what were your job responsibilities?

A. I was responsible for the development of the business in the Asia Pacific region.

Q. And what countries specifically?

9

A. Every country from India to all the way to Japan, down to Australia and New Zealand.

Q. Okay. And what specifically, what was your day-to-day responsibility? What would you do on a typical day?

A. My job was to oversee the development of the Consumer Health business in the region.

Q. Okay. And then in 2019 -- I'm sharing my password with Richard Golomb. Okay.

In 2019, you became the worldwide chairman of Consumer Health?

A. Correct.

Q. And what were your job responsibilities in that job?

A. My job was to oversee the development of the Consumer Health business worldwide.

Q. Worldwide. And where were you physically located at that point?

A. In New Jersey.

Q. In New Brunswick?

A. In New Brunswick, New Jersey.

Q. And is your office still in New Brunswick, New Jersey?

A. No. I moved to Skinman, New Jersey, on January 1st of this year.

10

1 **Q. And when you were the chairman of Consumer**
2 **Health, you were a member of the J&J Executive**
3 **Committee?**

4 A. Correct.

5 **Q. And are you still a member of the J&J**
6 **Executive Committee?**

7 A. No, I'm not anymore.

8 **Q. Did your membership in the Executive Committee**
9 **terminate when you began with Kenvue?**

10 A. Correct.

11 **Q. When you were in the Executive Committee, were**
12 **you responsible for strategic operations of Consumer**
13 **Health and allocation of resources?**

14 MS. FOURNIER: Objection.

15 THE WITNESS: I was responsible for the
16 development of the business. Yes.

17
18 BY MR. PLACITELLA:

19 **Q. And when you were part of the Executive**
20 **Committee in 2021, were you involved in the approval of**
21 **the reorganization of the Consumer Division?**

22 MS. FOURNIER: Objection.

23 THE WITNESS: What do you mean by the
24 reorganization of the Consumer Division?
25

12

1 **with the S1? You signed that?**

2 A. Yeah.

3 **Q. Okay. According to the S1, your compensation**
4 **is \$12,438,000 a year?**

5 MS. FOURNIER: Objection.

6 THE WITNESS: It's compensation. It's a
7 compensation that I could get if I hit my targets.
8

9 BY MR. PLACITELLA:

10 **Q. Okay. And it also indicates on the S1 that**
11 **you had personal use of the J&J planes and vehicles.**
12 **Does that continue to today as chairman of Kenvue?**

13 MS. FOURNIER: Objection.

14 THE WITNESS: No.
15

16 BY MR. PLACITELLA:

17 **Q. Okay. Can you tell me, did you review**
18 **anything in preparation for today's deposition?**

19 A. I did.

20 **Q. Okay. What did you review?**

21 A. I did review the public filings that we had
22 and the complaint.

23 **Q. What public filings?**

24 A. The S1, the S4, so this is what we reviewed.

25 **Q. And did you speak with anyone in preparation**

11

1 BY MR. PLACITELLA:

2 **Q. Would you recall, in 2021, there was a**
3 **reorganization of the Consumer Health sector of J&J?**

4 MS. FOURNIER: Objection.

5 THE WITNESS: It was not a reorganization of
6 the Consumer Health sector. Are you referring to the
7 restructuring of the JJCI?
8

9 BY MR. PLACITELLA:

10 **Q. Yes, sir.**

11 A. Okay. So, yes, I was.

12 **Q. Okay. And you approved that restructuring in**
13 **2021?**

14 A. I did approve it. Yes.

15 **Q. And are -- in fact, were you the highest**
16 **ranking J&J official that approved that restructuring?**

17 A. I think I was.

18 **Q. And are you also familiar with the -- I assume**
19 **you're also familiar with the Consumer Health spinoff,**
20 **which now became Kenvue?**

21 A. I am. Yes.

22 **Q. And were you familiar with that while you were**
23 **the chairman of Consumer Health?**

24 A. I was.

25 **Q. You, according to the S1 -- are you familiar**

13

1 **for today's deposition?**

2 A. Yes, I did.

3 **Q. And who is that?**

4 A. Kristen Fournier, Tracey Van Dillen, and Ally
5 Brown, our lawyers.

6 **Q. I'm sorry. Who?**

7 A. Ally Brown.

8 **Q. Okay. Ally Brown?**

9 A. Yeah.

10 **Q. Okay. And were they involved in your**
11 **preparation for today's deposition?**

12 A. Yes, we met.

13 **Q. So did you meet with anybody other than the**
14 **three of them?**

15 A. No, I did not.

16 **Q. Did you speak with anybody who was not a**
17 **lawyer in order to prepare for today's deposition?**

18 A. No, I did not.

19 **Q. Ms. Fournier is representing you here today?**

20 A. She is.

21 **Q. Okay. And she's representing Kenvue today?**

22 A. I don't know, but she's representing me.

23 **Q. Okay. And who is paying Ms. Fournier for**
24 **representing you today? Do you know?**

25 A. I don't know.

14

Q. You don't know if it's your company?

A. I don't know who is paying Ms. Fournier.

Q. Okay. And did you review any of the filings in the Middlesex County Superior Court involved with the motion to dismiss in this case?

A. No, I did not.

Q. Are there rules that you live by as the CEO when it comes to transferring assets between subsidiaries of the companies you're running?

MS. FOURNIER: Objection.

THE WITNESS: I'm not sure I understand your question. Can you repeat your question?

BY MR. PLACITELLA:

Q. Sure. Do you follow certain principles when you're determining how assets should be transferred between subsidiaries of the companies you're running?

MS. FOURNIER: Objection.

THE WITNESS: I'm not involved with this transfer, so I could not answer. I don't know.

BY MR. PLACITELLA:

Q. When you say "you're not involved", what do you mean?

A. I'm not involved with these transfers. When

16

known as LTL, did it also involve that transfer of assets from old JJCI to something known as New JJCI?

MS. FOURNIER: Objection.

THE WITNESS: I don't remember the exact details, but we did allocate some assets to this affiliate.

BY MR. PLACITELLA:

Q. I'm sorry?

A. To this affiliate.

Q. To what affiliate?

A. To LTL.

Q. LTL. Did all the other assets that were in old JJCI get transferred to New JJCI?

MS. FOURNIER: Objection.

THE WITNESS: Can you repeat the question?

BY MR. PLACITELLA:

Q. Sure. You allocated certain assets?

A. Correct.

Q. To LTL, right?

A. Correct.

Q. You had old JJCI? You know what I'm talking about when I say that?

A. Yes. Uh-huh.

15

these transfers happen, it's happened at the finance level.

Q. Okay.

A. So I'm not involved.

Q. Are there rules that you live by, as a CEO, when it comes to product safety?

A. What do you mean by "rules".

Q. Principles that you follow to protect the public health. Are there rules that you live by, as a CEO, when it comes to product safety?

A. Not specifically as a CEO. I would say as company, we put the quality and the safety of our products at the forefront of everything we do. Yes.

Q. Okay. And are you familiar with something known as Project Plato?

A. I am.

Q. And what do you know about Project Plato?

A. Project Plato was a project back in 2021, I think, to reorganize JJCI and create a subsidiary called LTL where the liabilities linked to talc-related products would reside.

Q. And what was your role in Project Plato?

A. I was one of the approvers of this reorganization.

Q. Okay. And in addition to creating the entity

17

Q. Then you had a new JJCI, correct?

A. Uh-huh.

Q. All the assets that were in old JJCI, were they then transferred to new JJCI, other than what you allocated to LTL?

A. I don't remember the details. I don't remember the details, but I believe so.

Q. Okay. Well, did you put the old assets of -- the assets of old JJCI anywhere other than in new JJCI?

MS. FOURNIER: Objection.

THE WITNESS: I don't remember that.

BY MR. PLACITELLA:

Q. You don't remember what?

A. If we put assets elsewhere. I don't think so, but I don't remember.

Q. Well, you were the -- you were the highest ranking J&J official, at the time, involved in this transaction?

Is that true?

MS. FOURNIER: Objection.

THE WITNESS: Correct.

BY MR. PLACITELLA:

Q. All right. And as you sit here today, you

18

1 don't remember what you did with the assets of old JJCI?

2 A. I don't remember all the details. Yes.

3 **Q. Okay. What about the assets that were used to**
4 **make Johnson's Baby Powder? Where did you put those?**

5 A. What do you mean by "the assets to make baby
6 powder".

7 **Q. The manufacturer marketing distribution assets**
8 **that were used to make baby powder, where did they go**
9 **after this restructuring that you were in charge of?**

10 A. Well, that stayed with JJCI.

11 **Q. New JJCI?**

12 A. New JJCI.

13 **Q. Okay. And who else was involved in approving**
14 **that decision, this restructuring?**

15 A. Well, there was a number of approvers. I
16 don't remember the list.

17 **Q. Okay. Do you remember any names?**

18 A. I don't remember. No.

19 **Q. Okay. Do you recall, at the time that this**
20 **happened, what was your position? What was your title?**

21 A. I was the worldwide chairman of Consumer
22 Health.

23 **Q. And were you also on the Executive Committee**
24 **at J&J at the time?**

25 A. I was.

20

1 privilege and form. If you're not going to do that,
2 then we will get the judge on the phone.

3 MS. FOURNIER: Good. I have been doing so,
4 and I've been telling you that if we continue to go to
5 stray on the topics that you said this deposition was
6 about, we should go to the court --

7 MR. PLACITELLA: It' about the transfer of
8 assets from LTL, I mean from JJCI all the way through
9 Kenvue, and I have the right to explore that.

10 MS. FOURNIER: And you are exploring right now
11 what happened prior, just so you know.

12 MR. PLACITELLA: No, I am not. No, I am not.

13
14 BY MR. PLACITELLA:

15 **Q. So when is the first time that you learned of**
16 **the decision to restructure the JJCI assets?**

17 MS. FOURNIER: Objection.

18 THE WITNESS: When did I hear? In the summer
19 2021.

20
21 BY MR. PLACITELLA:

22 **Q. July of 2021?**

23 A. I don't remember exactly.

24 **Q. Can you see that? There's nothing on the**
25 **screen?**

19

1 **Q. And what was the reason for this**
2 **restructuring, to your knowledge?**

3 MS. FOURNIER: Objection. Mr. Placitella,
4 that's not the purpose of this deposition, as you know,
5 and I've been letting you get some foundational
6 questions in. But if we're going to spend a ton of time
7 on the restructuring, which you have told her Honor
8 multiple times this is not the purpose of the depo, I'm
9 going to have to ask us to break and speak to the
10 Special Master to get some clarification on what we're
11 doing today.

12 MR. PLACITELLA: So is that a form objection?

13 MS. FOURNIER: It is objection to form and
14 then giving you a heads up that if you --

15 MR. PLACITELLA: Well, you can give me a heads
16 up, but I ask you -- excuse me, what's wrong with the
17 form of the question?

18 MS. FOURNIER: Actually, the issue is that
19 this is not relevant. It's not the basis for the
20 deposition. It's not what you committed to the court
21 that we are here to explore today.

22 MR. PLACITELLA: That's absolutely not true.
23 It is relevant and I will show how it's relevant. So I
24 would ask you, as pro hac vice admitted here, that you
25 follow New Jersey court rules, which is you object to

21

1 THE VIDEOGRAPHER: We'll go off the record.
2 Time is 9:25 a.m. We're going off the video record.

3
4 (Whereupon, a brief recess was taken to
5 address technical difficulties.)
6

7 THE VIDEOGRAPHER: The time is 9:32 a.m.
8 We're back on the video record.
9

10 BY MR. PLACITELLA:

11 **Q. Okay. In front of you, you have Kenvue-25.**
12 **Do you see that?**

13 A. I see Exhibit 42.

14 **Q. Right. And it's a July 19, 2021, meeting of**
15 **the board of directors of Johnson & Johnson, correct?**

16 A. Correct.

17 **Q. And did this pertain to Project Plato, this**
18 **meeting?**

19 A. It's the meeting of the board of directors.

20 **Q. Do you know what the purpose of this meeting**
21 **was?**

22 A. I don't remember the agenda. No.

23 **Q. And do you recall the board of directors**
24 **having a meeting in July of 2021 about Project Plato?**

25 MS. FOURNIER: Objection.

22

1 THE WITNESS: No, I don't.

2
3 BY MR. PLACITELLA:

4 **Q. You don't have a recollection of that?**

5 A. No.

6 **Q. What was your understanding of the purpose of**
7 **Project Plato?**

8 MS. FOURNIER: Objection.

9 THE WITNESS: Project Plato. Project Plato,
10 as I said, right, was the project to create a new entity
11 where we would allocate the talc liabilities.

12
13 BY MR. PLACITELLA:

14 **Q. Okay. And why did you do that?**

15 A. The objective was to create an entity and a
16 forum where the current and future plaintiffs could have
17 their claim resolved in what we thought was a fair and
18 equitable way.

19 **Q. And how did that benefit J&J?**

20 MS. FOURNIER: Objection.

21 THE WITNESS: In what sense?

22
23 BY MR. PLACITELLA:

24 **Q. Well, was it just for the plaintiffs or was**
25 **there a benefit to Johnson & Johnson for this**

24

1 **Johnson approving the restructuring, you had no sense of**
2 **what the 7th Amendment of the U.S. Constitution was?**

3 MS. FOURNIER: Objection to form.

4 THE WITNESS: I did not.

5
6 BY MR. PLACITELLA:

7 **Q. Okay. And were there any lawyers involved in**
8 **deciding that this restructuring should take place?**

9 A. This project was handled by the Law Department
10 of Johnson & Johnson.

11 **Q. Well, whose idea was it?**

12 A. I don't know.

13 **Q. That was never made known to you?**

14 A. No.

15 **Q. And who in the Law Department?**

16 A. The head of the Law Department at that time
17 was Mike Newman.

18 **Q. Do you know, was it his idea?**

19 A. I don't know.

20 **Q. Okay?**

21 MR. PLACITELLA: And are you able to get these
22 up on the screen or not?

23 THE VIDEOGRAPHER: I can try.

24 MR. PLACITELLA: You know what? We'll take a
25 break, but I want to just keep moving. We'll just do it

23

1 **restructuring?**

2 MS. FOURNIER: Objection.

3 THE WITNESS: The objective was to, as I said,
4 create this forum for plaintiff that would help them get
5 their claim resolved.

6
7 BY MR. PLACITELLA:

8 **Q. And take their 7th Amendment right away from**
9 **them?**

10 MS. FOURNIER: Objection.

11
12 BY MR. PLACITELLA:

13 **Q. Was that part of your objective as well?**

14 MS. FOURNIER: Objection.

15 THE WITNESS: I'm not sure what you are
16 talking about, but it was not part of the compensation.
17 No.

18
19 BY MR. PLACITELLA:

20 **Q. Do you know what the 7th Amendment is?**

21 A. No, I don't.

22 **Q. Of the U.S. constitutional right to trial by**
23 **jury, do you know what that is?**

24 A. I'm not familiar with it. No.

25 **Q. So, as the highest ranking member of Johnson &**

25

1 this way, for now.

2
3 BY MR. PLACITELLA:

4 **Q. Can you go to tab 26. Do you have it in front**
5 **of you?**

6 A. Yeah, I do.

7 **Q. Do you recall having a meeting -- let me ask**
8 **the question this way?**

9 **Was Janssen involved in the restructuring of**
10 **JJCI?**

11 MS. FOURNIER: Objection.

12 THE WITNESS: Johnson --

13
14 BY MR. PLACITELLA:

15 **Q. Janssen. You know who Janssen is, Janssen**
16 **Pharmaceutical?**

17 A. Uh-huh.

18 **Q. Were they involved in the restructuring?**

19 MS. FOURNIER: Objection.

20 THE WITNESS: Not that I'm aware of.

21
22 BY MR. PLACITELLA:

23 **Q. Okay. Do you know whether, at the time of the**
24 **restructuring, whether Janssen owned part of JJCI?**

25 MS. FOURNIER: Objection.

26

1 THE WITNESS: Not that I'm not aware of. No.

2
3 BY MR. PLACITELLA:

4 **Q. Do you know whether, as part of the**
5 **restructuring, Janssen transferred its interest in JJCI?**

6 MS. FOURNIER: Objection.

7 THE WITNESS: I'm not aware of it.

8
9 BY MR. PLACITELLA:

10 **Q. After the transfer of the assets from old JJCI**
11 **to new JJCI, was it business as usual for new JJCI? Did**
12 **anything change?**

13 MS. FOURNIER: Objection.

14 THE WITNESS: Are you talking from a business
15 point of view?

16
17 BY MR. PLACITELLA:

18 **Q. Yes. Yes?**

19 A. The Consumer Health segment -- the Consumer
20 Health segment did operate normally.

21 **Q. Normally. Nothing changed from the time there**
22 **was new JJCI from old JJCI.**

23 **Is that fair?**

24 MS. FOURNIER: Objection.

25 THE WITNESS: We did allocate some revenue

28

1 THE WITNESS: No, he was not. He was not.

2 BY MR. PLACITELLA:

3 **Q. Who is that?**

4 A. Who was in charge.

5 **Q. Yes?**

6 A. I don't know.

7 **Q. How would I find that out?**

8 A. You should ask the Finance Department of
9 Johnson & Johnson's.

10 **Q. Okay. And do you know whether a risk analysis**
11 **was done before that transfer took place? The asset**
12 **transfer from old JJCI to new JJCI?**

13 MS. FOURNIER: Objection.

14 THE WITNESS: What do you mean by "risk
15 analysis"?

16
17 BY MR. PLACITELLA:

18 **Q. Do you, generally, before you do an asset**
19 **transfer, perform any kind of risk analysis?**

20 MS. FOURNIER: Objection.

21 THE WITNESS: What kind of risk are you
22 talking about?

23
24 BY MR. PLACITELLA:

25 **Q. Litigation-related risks?**

27

1 streams to LTL, but the daily operations did not change.

2 BY MR. PLACITELLA:

3 **Q. Okay. And who was involved in the physical**
4 **transfer of the assets from old JJCI to new JJCI?**

5 MS. FOURNIER: Objection.

6 THE WITNESS: I don't know.

7
8 BY MR. PLACITELLA:

9 **Q. You have no idea?**

10 A. I have no idea.

11 **Q. Okay. What about the accounting, who was in**
12 **charge of the accounting for the transfer of the assets**
13 **from old JJCI to new JJCI?**

14 MS. FOURNIER: Objection.

15 THE WITNESS: I don't know. I believe it's
16 the Finance Department.

17
18 BY MR. PLACITELLA:

19 **Q. And who is that? Who is in charge?**

20 A. The Finance Department was led by Joe Wolk at
21 that time.

22 **Q. Okay. And was Joe Wolk then the person that**
23 **was in charge of making the changes in the accounting**
24 **systems to reflect the asset transfers?**

25 MS. FOURNIER: Objection.

29

1 A. That I'm not aware of.

2 **Q. Okay. At the time that new JJCI took the**
3 **assets, were the talc liability still on the books of**
4 **new JJCI?**

5 MS. FOURNIER: Objection to form.

6 THE WITNESS: I don't know.

7
8 BY MR. PLACITELLA:

9 **Q. Who would know that?**

10 A. I guess you should ask the Law Department of
11 J&J.

12 **Q. You wouldn't know, as the CEO, whether you**
13 **took on the talc liabilities of New JJCI?**

14 MS. FOURNIER: Objection to form.

15 THE WITNESS: I was not the CEO at that time.

16
17 BY MR. PLACITELLA:

18 **Q. Okay. What were you?**

19 A. I was the worldwide chairman of the Consumer
20 Health segment.

21 **Q. Okay. Who was the CEO of JJCI at that time?**

22 MS. FOURNIER: Objection.

23 THE WITNESS: I don't -- I don't remember.

24
25 BY MR. PLACITELLA:

30

Q. Where did the -- where did JJCI fit under your corporate structure?

MS. FOURNIER: Objection to form.

THE WITNESS: At -- JJCI is a legal entity. It's one of the legal entities we, Johnson & Johnson has.

BY MR. PLACITELLA:

Q. Okay. And you were above that? You oversaw new JJCI?

MS. FOURNIER: Objection.

THE WITNESS: No, it's not exactly how it works --

BY MR. PLACITELLA:

Q. How does it work?

A. -- at J&J. You have -- we run the business in three segments. I was responsible for one of the three segments. And then the business gets reported, for legal and financial reasons, through a number of different legal entities. But I'm not involved with the details of these legal entities. We don't manage the business. I don't look at the business through the lens of legal entities.

Q. Okay. So was New JJCI under your

32

Plato?

MS. FOURNIER: Objection.

THE WITNESS: That I don't remember exactly, Project Plato. But I remember it was July for Project Diamond.

BY MR. PLACITELLA:

Q. Okay. And you don't recall that you learned about Project -- well, let me strike that?

How did you learn about Project Diamond?

A. Joaquin Duato was my manager and told me about it.

Q. And what were the circumstances? Was it a phone call? A meeting? How did you find out?

A. In a meeting.

Q. A meeting?

A. Uh-huh.

Q. And where did that meeting take place?

A. In his office.

Q. In New Brunswick?

A. In New Brunswick.

Q. And was anyone there, other than the two of you?

A. No.

Q. All right. And what was your understanding,

31

jurisdiction?

MS. FOURNIER: Objection.

THE WITNESS: It was one of the legal entities of J&J.

BY MR. PLACITELLA:

Q. And was it a separate legal corporation within J&J?

MS. FOURNIER: Objection.

THE WITNESS: Yeah, it sets its own.

BY MR. PLACITELLA:

Q. Were you involved in something known as Project Diamond?

A. I was.

Q. What is Project Diamond?

A. Project Diamond was the project to separate the Consumer Health segment from Johnson & Johnson to create a new company, two new companies. Johnson & Johnson focused on pharmaceutical and medical devices and a new company focused on consumer health.

Q. Okay. And when did you first hear about Project Diamond?

A. In July of 2021.

Q. The same month that you learned about Project

33

in meeting with him, of the purpose of Project Diamond?

A. What I just told you. That the intent was to create two companies and Project Diamond was to create a new company focused on consumer health.

Q. Okay. And why? Why a new company?

A. To allow for focus on the pharmaceutical and medical device on one hand and the consumer health segment on the other hand.

Q. Well, what could you do with a spin off that you couldn't have done before?

MS. FOURNIER: Objection.

THE WITNESS: The spinoff allows you to be more focused on what it takes to win in the consumer health segment, be more what we call fit for purpose. And that's the intent behind the separation, being more focused.

BY MR. PLACITELLA:

Q. And you weren't that focused beforehand?

MS. FOURNIER: Objection.

THE WITNESS: When you are part of a larger organization, you don't have the focus and fit for -- fit for purpose, setup that you have when you are focused on one industry, if you will.

34

BY MR. PLACITELLA:

Q. Whose idea was Project Diamond?

A. I don't know.

Q. Was there anybody else involved in the planning of Project Diamond other than you and Mr. Duato?

MS. FOURNIER: Objection.

THE WITNESS: What do you mean by "planning".

BY MR. PLACITELLA:

Q. Well, did you have to put a plan in place in order to make Project Diamond become a reality?

A. We had.

Q. And who was involved in that plan?

A. When -- you had a number of J&J colleagues, external consultants working for months on the project.

Q. Why did they call it Project Diamond, by the way?

A. I don't know.

Q. Okay. Someone just said we're going to call it Project Diamond. You never asked why?

A. We have many -- each project in the company has a name.

Q. Okay. Are you aware of a time when the name JJCI was changed to Johnson & Johnson Holdco? Do you

36

A. I don't know. I don't think so.

Q. So you don't need -- who decides then that you can just change the name of a company within Johnson & Johnson?

MS. FOURNIER: Objection.

BY MR. PLACITELLA:

Q. Who has authority to make that decision?

A. I don't know. Probably be handled by the Law Department.

Q. Oh, so the lawyers can just decide to change the company name without consulting you, for example?

MS. FOURNIER: Objection.

THE WITNESS: These are legal entity names.

So, as I said, it's not the way we manage the business. We manage the business through a number of different legal entities that we do not look at every day.

BY MR. PLACITELLA:

Q. Okay. Can we just take five minutes to see if we can fix the technology here? Make things go a lot faster?

THE VIDEOGRAPHER: Time is 9:52 a.m. We're going off the video record.

35

recall that?

MS. FOURNIER: Objection.

THE WITNESS: No, I don't.

BY MR. PLACITELLA:

Q. You have no knowledge of that?

A. No.

Q. Okay. So while you were the chairman of Consumer Health, you have no knowledge of JJCI changing its name?

A. I don't recall. No.

Q. Before a company under your jurisdiction was allowed to change its name, was there a process you had to go through within Johnson & Johnson?

MS. FOURNIER: Objection.

THE WITNESS: You are talking about a legal entity changing name.

BY MR. PLACITELLA:

Q. Right. Yes?

A. I'm not sure about that.

BY MR. PLACITELLA:

Q. Did it have to get board approval in order to change the company name?

37

(Whereupon, a brief recess was taken off the record.)

THE VIDEOGRAPHER: The time is 10:04 a.m. We're back on the video record.

BY MR. PLACITELLA:

Q. Are you familiar with the transfer of the Consumer Health assets to Janssen? You're familiar with that transaction?

MS. FOURNIER: Objection.

THE WITNESS: No, I don't know.

BY MR. PLACITELLA:

Q. Do you know whether the assets of JJCI were ever transferred to Janssen?

A. No, I don't.

Q. You have no knowledge of that?

A. No.

Q. In the -- the transfer of the assets of JJCI to Janssen is not something that was ever made known to you.

Is that fair?

MS. FOURNIER: Objection.

38

THE WITNESS: Yeah, I don't know what you are referring to. I have no knowledge of that.

BY MR. PLACITELLA:

Q. No knowledge. Did there come a time when -- obviously, you don't know whether that was part of Project Diamond or not then, correct?

A. Yeah, I have no knowledge of that.

Q. Okay. Did there come a time -- do you know anything about the transfer of the assets of JJCI or Johnson & Johnson consumer to your company, Kenvue?

MS. FOURNIER: Objection.

A. Yeah, I know that -- I know that the Consumer Health business was spun off as Kenvue.

BY MR. PLACITELLA:

Q. But when you say "spun off", what do you mean by that?

A. We have done an IPO on May 4 of this year where Johnson & Johnson has issued shares to the public.

Q. So where did the assets that were transferred to Kenvue come from?

A. From Johnson & Johnson.

Q. From Johnson & Johnson? Any specific division within Johnson & Johnson?

A. Consumer Health.

40

A. Uh-huh. Yes.

Q. Was any type of valuation done by any investment banking firm as part of the process of the transfer of assets from Johnson & Johnson to Kenvue?

MS. FOURNIER: Objection.

THE WITNESS: I don't think so. I don't know. I don't think so.

BY MR. PLACITELLA:

Q. Did you ever employ Goldman Sachs as part of the evaluation of a potential transaction between Johnson & Johnson and Kenvue?

A. Goldman Sachs was involved in the transaction. Yes.

Q. And what was their involvement?

A. They advised Johnson & Johnson on the transactions, the nature of the transactions, and the execution of the transactions.

Q. And what kind of advice?

A. How to execute such a spinoff and execute it with the capital markets.

Q. And were talc liabilities part of the discussion with Goldman Sachs, to your knowledge?

MS. FOURNIER: Objection.

THE WITNESS: That I don't know.

39

Q. So the assets of Kenvue came from Johnson & Johnson Consumer Health?

A. The assets, I don't know exactly what you're referring to by "assets", but the brands were from Johnson & Johnson Consumer Health.

Q. So to your knowledge, before you took possession, you, Kenvue, took possession of the assets of Consumer Health; you're with me?

A. Uh-huh.

Q. Who owned those assets? Where did you get those assets from?

MS. FOURNIER: Objection.

BY MR. PLACITELLA:

Q. Who owned those assets?

A. Johnson & Johnson. Kenvue is a spinoff from Johnson & Johnson.

Q. Okay. So do you know what subsidiary inside Johnson & Johnson owned the Consumer Health assets prior to those assets being spun off to Kenvue?

A. A number of different legal entities.

Q. Which ones?

A. I don't know. JJCI is one of them. And we have a number of those around the world.

Q. That's all you know?

41

BY MR. PLACITELLA:

Q. You never recall talking about that in your prior deposition?

A. With Goldman Sachs?

Q. Uh-huh?

A. No.

Q. Okay. You're familiar with the S1? You said you reviewed that in preparation for today's deposition?

A. Uh-huh.

Q. Okay. The Janssen Pharmaceuticals is not mentioned anywhere in the S1, correct?

A. Not that I remember. No.

Q. If the assets were transferred, according to Johnson & Johnson's lawyers, from Janssen to Kenvue, why wouldn't Janssen be mentioned in the S1?

MS. FOURNIER: Objection.

THE WITNESS: I don't know.

BY MR. PLACITELLA:

Q. Well, is today the first time you're learning that Janssen transferred the assets to your company?

MS. FOURNIER: Objection.

THE WITNESS: Yeah, I'm not aware of that.

42

BY MR. PLACITELLA:

Q. Okay. Should that have been in the S1, if Janssen held the assets that were transferred to your company?

MS. FOURNIER: Objection.

THE WITNESS: I don't think so. I don't think it's of material importance for the public.

BY MR. PLACITELLA:

Q. So the public doesn't need to know where the assets came from?

MS. FOURNIER: Objection.

THE WITNESS: They know that they come from Johnson & Johnson. Which legal entity they come from, I don't think is relevant.

BY MR. PLACITELLA:

Q. Okay. Do you know, in the consolidated 10-Ks, how Johnson & Johnson reported the Consumer Health finances versus Janssen's finances?

MS. FOURNIER: Objection.

THE WITNESS: When? Before the spinoff.

BY MR. PLACITELLA:

Q. Yes?

44

Q. What exactly was transferred from Johnson & Johnson to Kenvue?

MS. FOURNIER: Objection.

BY MR. PLACITELLA:

Q. As part of the spinoff?

A. The brands, some employees, some manufacturing and distribution sites.

Q. Well, were all of the employees manufacturing? Well, let me start one at a time?

Were all the employees of Consumer Health transferred from Johnson & Johnson to Kenvue as part of this transaction?

A. Most of them.

Q. Which ones weren't?

MS. FOURNIER: Objection.

THE WITNESS: You may have some exceptions. I'm not aware, but people who were dedicated to Consumer Health were transferred to Kenvue.

BY MR. PLACITELLA:

Q. What about the marketing assets and the marketing distribution employees, were they all transferred from Consumer Health to Kenvue?

MS. FOURNIER: Objection.

43

A. You mean -- yeah, Johnson & Johnson reports in three segments.

Q. Okay. And if Janssen owns the entire Consumer Health assets, shouldn't that have been in the financial statements?

MS. FOURNIER: Objection. Form.

THE WITNESS: I don't know. I would refer to the Finance Department and Law Department.

BY MR. PLACITELLA:

Q. Okay. What lawyers were involved in the transfer of assets from Johnson & Johnson to Kenvue? What inside lawyers, in-house lawyers?

A. You know, a number of members of the Law Department.

Q. Which ones, do you recall?

A. I don't know who did that in particular.

Q. You don't remember any of the names? What about outside lawyers, remember any of the outside lawyers?

A. No.

Q. No. Okay. Did you deal with the lawyers in the context of the transfer of assets from inside -- from Johnson & Johnson to Kenvue?

A. No. No, I did not.

45

THE WITNESS: The marketing capabilities were transferred.

BY MR. PLACITELLA:

Q. Okay. What about the manufacturing capabilities?

A. Most of them were.

Q. Which ones weren't?

A. Some sites are used by other Johnson & Johnson segments and, so we have a manufacturing agreement, transitional manufacturing agreement with these sites in our Separation Agreement because they are not transferred to Kenvue, but they continue to produce for Kenvue.

Q. Okay. So let's just focus on the Johnson's Baby Powder brand?

A. Uh-huh.

Q. You're with me? Were all the employees involved in the manufacturing and marketing of Johnson's Baby Powder transferred from Johnson & Johnson to Kenvue?

A. I think so, yes.

Q. And what about, were all the manufacturing assets involved in the Johnson's Baby Powder transferred from Johnson & Johnson to Kenvue?

A. They were part of the new Kenvue base, yes.

46

Q. And all of the trademarks as well?

A. There's a trademark agreement with Johnson & Johnson.

Q. The Johnson's trademark, was that transferred? Or is that part of an agreement?

A. It's part of an agreement.

Q. All right. And you have the right to use the Johnson's trademark going forward at Inten Item?

A. Yes, we do.

Q. And what about the Johnson's brand, the Johnson's Baby brand, was that transferred to you at Kenvue?

MS. FOURNIER: Objection. Objection.

THE WITNESS: Johnson's Baby brand is part of the Kenvue portfolio.

BY MR. PLACITELLA:

Q. Okay. Before you took over or you assumed the assets of the Consumer Health sector of Johnson & Johnson, was that presented to a board at Kenvue?

A. There's a board for Kenvue. There's a new board for Kenvue.

Q. Yes?

A. And I don't remember exactly what was presented to the board.

48

THE WITNESS: Yeah. The spinoff was of the Consumer Health business.

BY MR. PLACITELLA:

Q. So that was entirely the decision of executives at Johnson & Johnson.

Is that fair?

A. I would say so.

Q. Was the subject of talc liabilities ever discussed at Kenvue before you took on the assets being transferred by Johnson & Johnson?

A. What do you mean by "discussed".

Q. Did you discuss it at the board level, talc liabilities?

MS. FOURNIER: Objection.

THE WITNESS: Before, you said before the --

MR. PLACITELLA: Before the transfer, physical transfer?

MS. FOURNIER: Objection.

THE WITNESS: No. The physical transfer happened when we spun off the company.

BY MR. PLACITELLA:

Q. All right. So did any executive or board member of Johnson -- of Kenvue have any say as to

47

Q. Were you present at the board meeting when the issue came up?

A. Yes. Which issue.

Q. The issue of considering whether Kenvue should take on the assets that Johnson & Johnson want to transfer to it?

MS. FOURNIER: Objection.

THE WITNESS: No. It's not how it happened because Kenvue was -- I don't think it happened like that.

BY MR. PLACITELLA:

Q. Well, did Kenvue, the corporation, have any say whatsoever on what assets were being transferred to it?

MS. FOURNIER: Objection.

BY MR. PLACITELLA:

Q. By Johnson & Johnson?

A. No, it was not a conversation.

Q. So no executive, no board member at Kenvue had anything to say about what assets were being transferred by Johnson & Johnson to Kenvue.

Is that fair?

MS. FOURNIER: Objection.

49

concerning whether or not they would be taking on talc liabilities?

MS. FOURNIER: Objection.

THE WITNESS: No.

BY MR. PLACITELLA:

Q. Okay. So is it fair to say the issue of talc liabilities was entirely under the control of Johnson & Johnson?

MS. FOURNIER: Objection.

THE WITNESS: What do you mean by "the issue of talc liabilities"?

BY MR. PLACITELLA:

Q. Where the talc liabilities would end up after the spinoff, that was entirely under the control of Johnson & Johnson?

A. Correct.

Q. Who at Kenvue was in charge of the physical transfer of the assets on the books from Johnson & Johnson to Kenvue?

MS. FOURNIER: Objection.

THE WITNESS: It's the Law Department and the Finance Department.

BY MR. PLACITELLA:

50

1 **Q. So Kenvue has its own Law Department and**
2 **Finance Department?**

3 A. Correct.

4 **Q. Who runs the Law Department at Kenvue now?**

5 A. Matt Orlando.

6 **Q. And who at the Finance Department?**

7 A. Paul Ruh.

8 **Q. What consideration was given by Kenvue to**
9 **Johnson & Johnson for the assets that Kenvue was**
10 **acquiring?**

11 MS. FOURNIER: Objection.

12 THE WITNESS: What do you mean by
13 "consideration"?

14
15 BY MR. PLACITELLA:

16 **Q. Money. How were they paid?**

17 A. So there was -- you should ask the Finance
18 Department for more details, that there was the payment
19 to J&J as part of the separation.

20 **Q. What was the payment? What form of payment?**

21 A. That, you should ask the Finance Department
22 that.

23 **Q. You don't know?**

24 A. I don't recall exactly the exact nature of
25 each payment.

52

1 A. Absolutely.

2 **Q. Did the physical location of any of the**
3 **manufacturer or marketing assets --**

4 MR. PLACITELLA: I don't know what that is.

5 THE VIDEOGRAPHER: It's on Zoom.

6 MR. PLACITELLA: If you're on Zoom, could you
7 mute yourself, please?

8
9 BY MR. PLACITELLA:

10 **Q. Well, let me narrow the question. Does the**
11 **physical location of any of the assets used in the**
12 **manufacturer or marketing -- and marketing of Johnson's**
13 **Baby Powder change after Kenvue took over those**
14 **operations?**

15 MS. FOURNIER: Objection.

16 THE WITNESS: The manufacturing and marketing,
17 it depends on the geography. So if you take
18 manufacturing, Johnson & Johnson had announced in 2022
19 that in 2023 we would transition from talc-based baby
20 powder to cornstarch baby powder worldwide. And so the
21 manufacturing has stopped in 2023. And so now the
22 Johnson's Baby Powder variant is based on cornstarch, is
23 manufactured on a different line.

24
25 BY MR. PLACITELLA:

51

1 **Q. Okay. So something to ask Paul Ruh?**

2 A. I would ask Paul Ruh.

3 **Q. Do you know what the value of the assets were**
4 **that were transferred from J&J to Kenvue as part of this**
5 **spinoff?**

6 A. No, I don't.

7 **Q. So do you know what your company is worth now?**

8 A. About \$45 billion.

9 **Q. 45 billion?**

10 A. Uh-huh.

11 THE REPORTER: Sorry, was that a yes?

12 A. Yes.

13
14 BY MR. PLACITELLA:

15 **Q. And has the value gone up or down since the**
16 **transfer?**

17 A. Yes, gone up.

18 **Q. Gone up?**

19 A. Yes. Since it's IPO. Since the IPO.

20 **Q. Since the IPO?**

21 A. Uh-huh.

22 **Q. Is it fair to say that Kenvue has held itself**
23 **out to investors as essentially the same company that**
24 **was operating the Consumer Health Division inside of**
25 **Johnson & Johnson?**

53

1 **Q. But at the time -- I'm just talking about the**
2 **time of the transfer, the day before and the day after.**
3 **Did the manufacturing and the marketing assets change at**
4 **all?**

5 MS. FOURNIER: Objection to form.

6 THE WITNESS: So I cannot talk about the exact
7 day, but I can tell you that the manufacturing of
8 talc-based baby powder has ceased this year. So what
9 Kenvue is doing is just manufacturing the cornstarch
10 variant of baby powder.

11 For the marketing and sales, it varies by
12 geography. In some countries, we have the same office
13 location, if you will. That was the Johnson & Johnson
14 Consumer Health Office location. In other countries, we
15 moved out of the former Johnson & Johnson Consumer
16 Health premise to a new office location at Kenvue. So
17 it varies by country, by geography.

18
19 BY MR. PLACITELLA:

20 **Q. Okay. Let me ask the question a different**
21 **way?**

22 **Was it Kenvue that ceased the manufacture of**
23 **talc-based baby powder worldwide, or was it Johnson &**
24 **Johnson?**

25 A. It was announced by Johnson & Johnson.

54

Q. But which company actually did it? Which company actually stopped it? Who owned the baby powder assets when it stopped?

MS. FOURNIER: Objection.

THE WITNESS: When it stopped? I don't know exactly when it stopped.

BY MR. PLACITELLA:

Q. Well, did it stop while you owned the assets?

A. I don't know exactly. I don't know the exact date.

Q. So you don't know whether you, Kenvue, stopped manufacturing talc-based baby powder or Johnson & Johnson?

A. I think it was before the IPO.

Q. It was before?

A. The IPO.

Q. How would we find out to know for sure? Do you have a record you could check?

MS. FOURNIER: Objection.

THE WITNESS: We could check the last day of manufacturing and see.

BY MR. PLACITELLA:

Q. Yes. Okay. And who would you check with?

56

selling, we have not been selling talc-based Johnson's Baby Powder in the United States for some time now.

MR. PLACITELLA: Am I able to share the screen?

THE VIDEOGRAPHER: I think so, yeah.

BY MR. PLACITELLA:

Q. Can you see that?

A. Yes, I can.

Q. You see this is on Amazon today? Says I can get delivered to my house Johnson's Baby Powder for August 17th and 18th. You see that?

A. Uh-huh, I do.

Q. Okay. And if you look at the back, does it say that that is the talc baby powder?

A. It does.

Q. Okay. And if I scroll down, those are Johnson & Johnson's advertisements?

MS. FOURNIER: Objection to form.

THE WITNESS: I don't know what it is.

BY MR. PLACITELLA:

Q. Well, it's a Johnson's brand. It says from the manufacturer?

A. It says from the manufacturer.

55

A. I would check with the Manufacturing Department.

Q. Okay. At the time -- at the time that the manufacture of talc-based baby powder ceased, was there a recall of all the talc-based baby powder on the shelves?

A. Not at all.

Q. Okay. So did Kenvue continue to sell talc-based baby powder as part of its operations after the IPO?

A. We continued to sell talc-based product that was in our inventory outside the U.S. and Canada. Yes.

Q. Well, you sold it over the Internet in the United States too, correct?

MS. FOURNIER: Objection to form.

THE WITNESS: I'm not aware of that. No.

BY MR. PLACITELLA:

Q. You don't know that?

A. No, I don't. No.

Q. Who would you ask to find out? Would you be surprised to know you were still selling talc-based baby powder in the United States?

MS. FOURNIER: Objection to form.

THE WITNESS: I know for sure that we are not

57

Q. Right. That's you, right? You're the manufacturer?

A. We are the manufacturer. Yes.

Q. Yeah. And you see where it says "from the manufacturer, great for kids and adults"?

A. I can see that. Yeah.

Q. So you're selling over the Internet on Amazon talc-based baby powered great for kids and adults as we sit here today?

MS. FOURNIER: Objection to form.

BY MR. PLACITELLA:

Q. Correct?

A. No, we don't.

Q. Okay?

A. If you go up, you will see that there is a.

Q. Where do you want me to go?

A. Yeah, ships from, sold by eBOSS. I don't know what this company is.

Q. Okay. What about here, where it says "visit the Johnson's Baby Store?"

Do you have a baby store online?

A. We should.

Q. Okay. Why don't we click on that?

MS. FOURNIER: So before you do that, can you

58

1 please go back, Mr. Placitella? For the record, we need
2 to put in the exact website that you pulled up so that
3 it's going to be very clear in the deposition.

4 MR. PLACITELLA: Yep, Amazon.

5 MS. FOURNIER: You're not just at Amazon. So
6 what is the URL of what you pulled up?

7 MR. PLACITELLA: I just went into Amazon.

8 MS. FOURNIER: So how did you go into Amazon?

9 MR. PLACITELLA: I went into the Amazon app
10 and typed in Amazon and typed in talc. We're going to
11 start all over again?

12 MS. FOURNIER: Let's go to the exact place
13 that you typed in so that we can get the precise URL for
14 the page that you're looking at.

15 MR. PLACITELLA: Okay. This is an Amazon app.
16 Right. You get it on any iPad, computer, right?

17 MS. FOURNIER: Right. And the specific page.

18 MR. PLACITELLA: And all I did was type in and
19 clicked on talc powder and you get to where you're going
20 to go.

21 MS. FOURNIER: Right. Which ad did you go to?

22 MR. PLACITELLA: Okay. Sorry, it's not my --
23 okay. So here we are. All right. And here we are.
24 Johnson's Baby Powder original. All right. That's
25 where we are, correct? All right?

60

1 **Q. Okay. So did you know that Amazon was linking**
2 **to the Johnson's Baby Store?**

3 A. I didn't know, but it doesn't surprise me.

4 **Q. So you don't -- you don't -- well, let's just**
5 **go back for a second. You see where there are the**
6 **reviews for your product on the bottom?**

7 A. Uh-huh. Yes, I do.

8 **Q. And you see where these reviews are being**
9 **provided by people inside the United States?**

10 A. I can see that.

11 **Q. So does that indicate to you that people**
12 **inside the United States are purchasing your product on**
13 **the Internet in the summer of 2023?**

14 A. It said so.

15 **Q. Okay?**

16 MS. FOURNIER: And Mr. Placitella, I'd ask
17 when you print, since you've decided to show him these,
18 you should also print out these customer reviews that
19 refer to things like, this is the first time I purchased
20 the non-talc version and it worked well. So if you
21 could print all of that out as well.

22 MR. PLACITELLA: Fine. I'll print that all
23 out.

24 MS. FOURNIER: Great.

25 MR. PLACITELLA: Okay.

59

1 MS. FOURNIER: Well, first of all, it is not
2 -- scroll down. See how you've now gone to a different
3 ad and a different location, because the seller
4 information is not the same. So if you're going to use
5 this, you should print it and we should attach it to the
6 deposition --

7 MR. PLACITELLA: Happy to do it.

8 MS. FOURNIER: -- as an exhibit.

9
10 BY MR. PLACITELLA:

11 **Q. Okay. Let's go into the Johnson's Baby Store.**
12 **That would be you, right, Mr. Mongon? Right? That's**
13 **you, Johnson's Baby Store?**

14 A. That should be.

15 **Q. Right. "Every parent wants the best products**
16 **for their baby." That's your ads, right? Right?**

17 A. It should be. Yes.

18 **Q. And if I go into Johnson's Baby Store and I**
19 **type in "talc", I get a whole bunch of products, right?**

20 A. Uh-huh. Yes.

21 **Q. And if I go to the last one here on the left,**
22 **for example, and I go to the back where it says**
23 **"ingredients", it will tell us what the ingredients are.**
24 **Right. Although, it's not very clear here, right?**

25 A. Yes.

61

1 MS. FOURNIER: Thanks.

2 MR. PLACITELLA: We'll do it on a break.

3
4 BY MR. PLACITELLA:

5 **Q. So, would now -- is today the first time you**
6 **learned that you're still selling talc-based baby powder**
7 **in the United States?**

8 MS. FOURNIER: Objection to form.

9 THE WITNESS: No, that's not what I said. I
10 continue to say that we don't sell Johnson's baby talc
11 powder in the United States. What you show me, that's
12 some resellers sell on Internet, seem to be selling on
13 the Internet Johnson's baby talc-based product.

14
15 BY MR. PLACITELLA:

16 **Q. Do you know whether it's in the Johnson's Baby**
17 **Store in your website on the Internet?**

18 A. No, I don't.

19 **Q. Okay. We'll take a break and I'll pull it up**
20 **for you. Okay?**

21 **So did you make presentations to potential**
22 **investors as part of this IPO?**

23 A. I did.

24 **Q. You did. And I want to show you. Can you**
25 **make sure you can see up there, Kenvue-15. Do you**

62

1 **recall making this presentation in July of 2023?**

2 MS. FOURNIER: Nothing's on the screen for me.

3 MR. PLACITELLA: Sorry.

4 THE WITNESS: I don't see it.

5 MR. PLACITELLA: Sorry.

6 THE WITNESS: I can see it now.

7
8 BY MR. PLACITELLA:

9 **Q. Got it. Recall making this presentation?**

10 A. Yes, I do.

11 **Q. I think there's a picture of you in here**
12 **somewhere. Is that you?**

13 A. It is me.

14 **Q. Okay. And on page 1510, can you see that?**
15 **There's a list of all the different brands?**

16 A. Some of the brands. Yeah.

17 **Q. Okay. Is there a reason why you left out baby**
18 **powder in this presentation?**

19 A. No, it's a sample of brands. You have the
20 Johnson's baby brand here.

21 **Q. Excuse me?**

22 A. You have the Johnson's baby brand here.

23 **Q. Is there a reason why you didn't list the**
24 **powder in the presentation to the investors?**

25 A. No.

64

1 **subsidiary, Johnson & Johnson Consumer Inc. of Delaware.**
2 **See that?**

3 A. I can see that.

4 **Q. What can you tell me about that? Why is that**
5 **listed as a subsidiary?**

6 MS. FOURNIER: Objection to form.

7 THE WITNESS: That is one of the legal
8 entities we are using.

9
10 BY MR. PLACITELLA:

11 **Q. Is that an entity that you formed after the**
12 **IPO? Or did that exist before the IPO?**

13 A. I don't know.

14 **Q. So you don't know whether Johnson & Johnson**
15 **Consumer Inc. is an entity that you inherited or one**
16 **that you created?**

17 MS. FOURNIER: Objection to form.

18 THE WITNESS: I see that it is an entity in
19 Delaware. That's what I can tell from this document.

20
21 BY MR. PLACITELLA:

22 **Q. Okay. There's also a number of Delaware**
23 **entities with the name Holdco in it. What can you tell**
24 **me about that, if anything?**

25 A. I cannot. I know that a number of legal

63

1 **Q. Something you didn't want them to focus on,**
2 **maybe?**

3 MS. FOURNIER: Objection to form.

4 THE WITNESS: No.

5 BY MR. PLACITELLA:

6 **Q. Okay. And you said that you reviewed the S4**
7 **in preparation for today, correct?**

8 A. Correct.

9 **Q. I'm going to just pull up the S4. In the S4,**
10 **on page 380, there -- well, let me go to the page**
11 **before. There is a section in the S4 called**
12 **"subsidiaries". You see that?**

13 A. I do.

14 **Q. Okay?**

15 MS. FOURNIER: Objection. Can we start with
16 the front page, just so that we know it's the first page
17 of the S4.

18 MR. PLACITELLA: Sure.

19
20 BY MR. PLACITELLA:

21 **Q. Is this the S4, sir?**

22 A. It is.

23 **Q. Okay. That's signed by you?**

24 A. It is.

25 **Q. All right. And you have listed it as a**

65

1 entities were created in preparation for the spinoff.

2 **Q. So did you take over those legal entities and**
3 **is that why they're listed as a subsidiary?**

4 MS. FOURNIER: Objection to form.

5 THE WITNESS: I don't know how it works.

6
7 BY MR. PLACITELLA:

8 **Q. Who can I ask these questions to, if you don't**
9 **know as the CEO?**

10 A. I would ask the Law Department.

11 **Q. Who specifically?**

12 A. I don't know. You should ask -- Matt Orlando
13 is the head of the Law Department. He would be able to
14 direct you to the right person.

15 **Q. Could you say that again, please?**

16 A. Matt Orlando, he's the head of the Law
17 Department.

18 **Q. Matt Orlando, okay. Is the JJCI -- do you**
19 **know whether this Johnson & Johnson Consumer Inc. is the**
20 **same company that was created as part of the**
21 **restructuring back in 2021?**

22 MS. FOURNIER: Objection to form.

23 THE WITNESS: I don't know.

24
25 BY MR. PLACITELLA:

66

1 **Q. I'm going to go to Kenvue-9. Do you have that**
2 **in front of you, sir?**

3 A. I do.

4 **Q. This is the S1 from January 2023?**

5 A. Yes.

6 **Q. And that's you listed on the front?**

7 A. It is.

8 **Q. And you signed this document?**

9 A. I did.

10 **Q. And what was the purpose of signing the**
11 **document?**

12 A. To register it with the SEC.

13 **Q. And were you attesting to the SEC and**
14 **potential investors that everything in here was true, to**
15 **the best of your knowledge?**

16 A. Correct.

17 **Q. I'm just going to ask you some questions. I**
18 **want to go to page -- it looks like 41. I'm just going**
19 **to ask you some questions about things I highlighted.**
20 **You say: "It's possible that various parties will seek**
21 **to bring and would be successful in bringing claims**
22 **against us, including raising allegations that we are**
23 **liable for the talc-related liabilities?"**

24 **Do you see that?**

25 A. I do.

68

1 information.

2 THE WITNESS: I guess that, you know, that was
3 put together by the Law Department.

4
5 BY MR. PLACITELLA:

6 **Q. Okay. So this statement was put together by**
7 **the Law Department?**

8 A. Yeah, the document was put together by the Law
9 Department.

10 **Q. So the Law Department said to you that there**
11 **was a scenario under which Kenvue would be held**
12 **responsible for talc liabilities?**

13 MS. FOURNIER: Objection. That's cause for
14 privileged and direct you not to answer anything that
15 the Law Department told you.

16 MR. PLACITELLA: Well, it's in a public
17 document and they said they got it from the Law
18 Department.

19 MS. FOURNIER: You can ask him about the
20 public document, but you can't ask him what the Law
21 Department told him. That's privileged.

22 MR. PLACITELLA: We'll raise that at a
23 different time.

24
25 BY MR. PLACITELLA:

67

1 **Q. What do you mean by that?**

2 A. I mean that you cannot prevent parties to
3 bring claims against us.

4 **Q. Why did you think people would be successful**
5 **in doing so?**

6 MS. FOURNIER: Objection to form.

7 THE WITNESS: Because you cannot prevent
8 people from naming the company.

9
10 BY MR. PLACITELLA:

11 **Q. Well, did you know that that was a likely**
12 **scenario when you took over, when you formed the**
13 **company, that you would be named in talc liability**
14 **cases?**

15 MS. FOURNIER: Objection to form.

16 THE WITNESS: Well, we can just likely show
17 that it's a scenario. Yes, it's a scenario. Yes. We
18 cannot prevent people from --

19
20 BY MR. PLACITELLA:

21 **Q. It's a scenario. Where did you -- what's the**
22 **basis for that information, that scenario? How did you**
23 **learn that?**

24 MS. FOURNIER: Objection. You can answer that
25 to the extent that you would not reveal privileged

69

1 **Q. The basis for the statements about you're**
2 **likely to be held responsible or you might be held**
3 **responsible, that information came from the Law**
4 **Department or somewhere else?**

5 A. No. I don't think these lines say that we are
6 held responsible, that we could be named in an action,
7 right, including raising allegation that we are liable.

8 **Q. And that may very well be successful. Doesn't**
9 **that say that?**

10 A. No. It says that it can be successful in
11 bringing claims against us. So in naming the company.

12 **Q. Okay. That some court would permit it, is my**
13 **point. You understood that?**

14 A. I'm not lawyers. I don't know that.

15 **Q. Further down on the page, it says: "We**
16 **presently sell talc-based Johnson's Baby Powder in**
17 **certain other markets around the world." See that?**

18 A. I do.

19 **Q. You told me about that, right?**

20 A. Yeah.

21 **Q. "Given this, we may be subject to additional**
22 **claims related to the sale of talc-based Johnson's Baby**
23 **Powder in markets where we presently sell this product."**
24 **See that?**

25 A. Okay.

70

Q. And then it says: "As well as additional claims related to the sale of talc-based baby powder in markets where we have discontinued this product?"

When you say "we", we're talking about Kenvue, correct?

MS. FOURNIER: Objection to form.

THE WITNESS: It depends if the decision was made before or after the separation.

BY MR. PLACITELLA:

Q. I'm sorry. I don't understand. What do you mean?

A. When we say we have discontinued this product, for example, in the case of the U.S. and Canada, the product has been discontinued a long time ago, before Kenvue was created.

Q. So what you're saying to the investors and the SEC here is, when you're talking about we may be sued for what we sold before, you're talking as if you were still JJCI.

Is that fair?

MS. FOURNIER: Objection to form.

THE WITNESS: I don't think we are saying that. We are saying that the product has been discontinued.

72

MS. FOURNIER: Objection to form.

THE WITNESS: Yes. That we could be named in litigation linked to talc-based Johnson's Baby Powder in markets where the product has been discontinued.

BY MR. PLACITELLA:

Q. Well, what would be the basis for it being named?

A. I don't know.

Q. Okay. When you say "the parties may be successful in bringing claims", under what theory? Do you have any idea?

MS. FOURNIER: Objection to form.

THE WITNESS: No, I don't.

BY MR. PLACITELLA:

Q. Okay. The S1 and the S4 talk about indemnity agreements you have with Johnson & Johnson concerning talc liabilities. Are you familiar with that?

A. Yes.

Q. Okay. What is your understanding of those agreements?

A. That Johnson & Johnson would defend and indemnify Kenvue for any liability linked to talc-related products in the U.S. and Canada.

71

BY MR. PLACITELLA:

Q. Well, see here's my -- it says: "As well as additional claims related to the sale of talc-based baby powder in markets where we have discontinued this product, such as in the United States and Canada?"

Who is the "we" you're talking about?

A. Some markets where Kenvue has discontinued the product after its IPO. In the case of the U.S. and Canada, the decision was made before Kenvue was created.

Q. But it says that you believe that you're going to be sued for products that were sold in the United States and Canada, correct?

MS. FOURNIER: Objection to form.

THE WITNESS: We said claims related to the sale in markets where we have discontinued this product.

BY MR. PLACITELLA:

Q. Right. Including the United States and Canada?

A. Uh-huh.

Q. Right. So you contemplated that you were going to be sued in the United States and Canada for products that were sold even before the Kenvue spinoff. Is that fair?

73

Q. Who negotiated -- is that by a written agreement?

A. I think so, yeah.

Q. Who negotiated that agreement on behalf of Kenvue?

A. What do you mean by "negotiated".

Q. When you have an agreement, you have to have two parties, right, to an agreement at least, right?

A. Yeah, the two Law Departments worked on the agreement.

Q. So who negotiated the agreement on your behalf at Kenvue to make sure you were adequately protected?

A. Our Law Department.

Q. Okay. Is that Mr. Olinder again?

A. Mr. Orlando is the head of that.

Q. Okay. Thank you. Is that something that Kenvue demanded as part of the IPO, that there be indemnity?

MS. FOURNIER: Objection to form.

THE WITNESS: No, that was part of the agreement and the --

BY MR. PLACITELLA:

Q. Was that something you wanted?

A. That's something that was part of the

74

1 transaction.

2 **Q. But it's something you wanted. You wanted**
3 **that protection?**

4 MS. FOURNIER: Objection to form.

5 THE WITNESS: We made sure in the agreement
6 that it was clear.

7
8 BY MR. PLACITELLA:

9 **Q. Yeah, but my question is: That was something**
10 **that Kenvue wanted. They wanted that protection.**

11 **Is that fair?**

12 MS. FOURNIER: Asked and answered.

13 THE WITNESS: It's not that we wanted or
14 didn't want. That's just the way it was.

15
16 BY MR. PLACITELLA:

17 **Q. So you don't care -- you didn't care one way**
18 **or the other whether there was indemnity?**

19 A. No, we do care that it's clearly mentioned in
20 the agreement what is indemnified and what is not.

21 **Q. Why do you care?**

22 A. To make sure that, in the future, if there is
23 any doubt about it, it's well written.

24 **Q. Well, were you concerned that the talc**
25 **liabilities would weigh negatively on Kenvue's finances?**

76

1
2 BY MR. PLACITELLA:

3 **Q. You didn't decide yet, as the CEO of the**
4 **company, whether you're going to swap out your shares?**

5 MS. FOURNIER: Asked and answered.

6 THE WITNESS: What.

7 MS. FOURNIER: I said asked and answered.

8
9 BY MR. PLACITELLA:

10 **Q. Well, do you think it's peculiar that you're**
11 **asking other investors to swap out their shares and you**
12 **haven't decided whether you're going to swap out your**
13 **shares?**

14 A. No. All my vested and unvested long-term
15 incentives are going to be automatically transferred to
16 Kenvue long-term incentives. So if that's your
17 question, yes, it is done. It will be done.

18 **Q. So you're going to swap out all of your**
19 **Johnson & Johnson shares for Kenvue shares?**

20 A. That's not what I said. I said that all my
21 vested and unvested long-term incentives in Johnson &
22 Johnson is going to be converted to Kenvue long-term
23 incentives.

24 **Q. So that means you'll continue to retain the**
25 **Johnson & Johnson stock, correct?**

75

1 MS. FOURNIER: Objection to form.

2 THE WITNESS: I was not concerned because it
3 was not a part of, you know -- it was clear that Johnson
4 & Johnson would indemnify Kenvue for any talc-related
5 liability in the U.S. and in Canada.

6 BY MR. PLACITELLA:

7 **Q. Right. Okay. I want to go back to the S4 for**
8 **a second. Something to show you on page 52 of the S4.**
9 **Now, the S4 is different than the S1. What's the**
10 **purpose of the S4?**

11 A. S4 is linked to the exchange offer that J&J is
12 making to J&J shareholders.

13 **Q. The swap? Basically, you can swap your J&J**
14 **shares for Kenvue shares?**

15 MS. FOURNIER: Objection.

16 THE WITNESS: You can exchange some of your
17 J&J shares for some Kenvue shares, if you want to.

18
19 BY MR. PLACITELLA:

20 **Q. Okay. And that's the purpose of the S4?**

21 A. S4 is the registration with the SEC.

22 **Q. Okay. By the way, are you going to swap out**
23 **your shares?**

24 MS. FOURNIER: Objection.

25 THE WITNESS; I've not made the decision.

77

1 MS. FOURNIER: Objection to form.

2 THE WITNESS: The ones I have in my personal
3 account, yes.

4
5 BY MR. PLACITELLA:

6 **Q. Okay. And all I was asking you, in asking**
7 **other stockholders to be involved or make an election to**
8 **invest in your company, you haven't decided whether**
9 **you're going to invest in your own company yet, right?**

10 MS. FOURNIER: Objection to form.

11 THE WITNESS: I have -- I have not decided.

12
13 BY MR. PLACITELLA:

14 **Q. Okay. It says here: "Although under the**
15 **separation agreement Johnson & Johnson has agreed to**
16 **indemnify Kenvue for the talc-related liabilities and**
17 **any costs associated with resolving such claims, Kenvue**
18 **cannot assure you that the indemnity from Johnson &**
19 **Johnson will be sufficient to protect Kenvue against the**
20 **full amount of these liabilities?"**

21 **Do you see that?**

22 A. I do.

23 **Q. What did you mean by that?**

24 A. That the Law Department including this
25 sentence to show that you can never 100 percent be sure.

78

1 But I see it as extremely, extremely unlikely given the
2 financial strength of Johnson & Johnson.

3 **Q. So is what you're saying here that the only**
4 **thing you're worried about talc liabilities is if**
5 **Johnson & Johnson can't pay the whole freight?**

6 MS. FOURNIER: Objection to form.

7 THE WITNESS: Can you repeat your question.

8
9 BY MR. PLACITELLA:

10 **Q. Yeah, sure. Are you saying here that the only**
11 **time a Kenvue investor, right, should worry about talc**
12 **liabilities is if Johnson & Johnson can't pay them?**

13 MS. FOURNIER: Objection.

14 THE WITNESS: I don't think that's what we are
15 saying. I think what we are saying here is a legally
16 correct way to say that you can never ensure that the
17 other party will be fully satisfied, will be able to
18 fully satisfy. Personally, I don't think it's a likely
19 possibility.

20
21 BY MR. PLACITELLA:

22 **Q. So that does not weigh into your consideration**
23 **at all about whether you're going to invest in your own**
24 **company, swapping out your Johnson & Johnson shares?**

25 A. None at all.

80

1 the same company. Kenvue is a different company from
2 Johnson & Johnson. We have our own board. We have our
3 own set of investors. We have a portfolio of brands and
4 operations and capabilities and employees. So that's
5 very clear. What we represent to the world, which is
6 the truth, is that the Consumer Health business of
7 Johnson & Johnson is now in Kenvue.

8
9 BY MR. PLACITELLA:

10 **Q. It's essentially the same?**

11 A. It's a different company.

12 **Q. It's essentially the same?**

13 MS. FOURNIER: Objection to form.

14
15 BY MR. PLACITELLA:

16 **Q. It's essentially the same business, correct?**

17 A. It's the same business, but in two different
18 companies.

19 **Q. Right. There's no difference other than the**
20 **fact that it's in two different companies, correct?**

21 MS. FOURNIER: Objection to form.

22 THE WITNESS: There are differences in terms of
23 how we organize, how -- the employees we have. Some of
24 the products are not exactly the same. Some products
25 have been discontinued, some products, new products have

79

1 **Q. Before issuing the S4, was any evaluation done**
2 **formally within Kenvue about its exposure to talc**
3 **liabilities?**

4 A. No.

5 **Q. None? And one of the reasons that you wanted**
6 **indemnity -- you're with me with indemnity?**

7 **One of the reasons you wanted indemnity was**
8 **because you were basically holding yourself out to the**
9 **world as the same company that historically manufactured**
10 **Johnson's Baby Powder, correct?**

11 MS. FOURNIER: Objection to form.

12 THE WITNESS: We are representing Kenvue for
13 what it is, which is a former Johnson & Johnson Consumer
14 Health business.

15
16 BY MR. PLACITELLA:

17 **Q. But my question is not that. Because you were**
18 **representing yourself to the world, including investors,**
19 **as being essentially the same company as the Consumer**
20 **Health business that was owned by Johnson & Johnson, you**
21 **wanted to make sure you had indemnity.**

22 **Is that fair?**

23 MS. FOURNIER: Objection to form.

24 THE WITNESS: So there are different things in
25 what you just said. We never represented that we were

81

1 been launched under Kenvue that were not part of Johnson
2 & Johnson. So it's not exactly the same. No.

3
4 BY MR. PLACITELLA:

5 **Q. The day after you did the IPO, it was**
6 **essentially the same exact company that existed the day**
7 **before the IPO, correct?**

8 MS. FOURNIER: Objection. Asked and answered.

9 THE WITNESS: Yeah, again, it's not the same
10 company.

11
12 BY MR. PLACITELLA:

13 **Q. Operationally, was it exactly the same company**
14 **the day before and the day after?**

15 MS. FOURNIER: Objection.

16 THE WITNESS: The operations were the same.
17 Yes.

18
19 BY MR. PLACITELLA:

20 **Q. Okay?**

21 MR. PLACITELLA: Do you want to take a break?
22 We've been going for a little bit.

23 MS. FOURNIER: We've been going for about an
24 hour. You've got about five more minutes on the hour,
25 but we can take a break. Ten minute break?

82

MR. PLACITELLA: Sure.

THE VIDEOGRAPHER: The time is 11:04 a.m.
We're going off the video record.

THE VIDEOGRAPHER: The time is 11:20 a.m.
We're back on the video record.

BY MR. PLACITELLA:

Q. Thank you. So I put up page 21 from the S4, which you talked about before. And on the bottom where I've highlighted, it talks about shareholder equity. Do you see that?

A. I do.

Q. Okay. And as of January 1, 2023, the value of the businesses for shareholder was 76 billion.

Is that correct?

MS. FOURNIER: Objection.

BY MR. PLACITELLA:

Q. Is that what it says?

A. I don't know what it's -- it's a value of the shareholders equity.

Q. Right. So to the shareholders, the value as of January 2023, when you announced the IPO, was \$76,804,000,000?

A. It's not the value. It's the difference

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MR. PLACITELLA: Unusual?

THE WITNESS: No, I don't find unusual the fact that I'm not in the ins and outs of the legal entities we operate through. I leave it to the Law Department.

BY MR. PLACITELLA:

Q. Is there some document, like delegation of authority, official document within Johnson & Johnson that says that they can transfer \$76 billion worth of assets through a subsidiary to another one without telling the person who's running the company that they're doing it?

MS. FOURNIER: Objection to form.

THE WITNESS: I think we are mixing two different things.

BY MR. PLACITELLA:

Q. Okay?

A. Everybody was well aware that we are spinning off the Consumer Health business and creating Kenvue. The details of how it's being done is handled by the Finance Department, by the Law Department, who are experts and who are interested to do it the right way.

Q. So that's my question. Was there a delegation

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between assets and liabilities.

Q. Right. So you took your total assets, everything you owned minus everything you owed, and the net equity in the company was \$76 billion plus, correct?

MS. FOURNIER: Objection to form.

THE WITNESS: That's the difference between the two. Yes.

BY MR. PLACITELLA:

Q. Okay. So are you saying, as you sit here today, you did not know that the day before you announced the IPO, that it was Janssen Pharmaceuticals that owned the \$76 billion in equity of the company you were running?

MS. FOURNIER: Objection.

THE WITNESS: No, I'm not aware of that.

BY MR. PLACITELLA:

Q. Do you find that unusual that you, as a CEO of this company, would not know that Johnson & Johnson was transferring \$76 billion worth of assets through other subsidiaries in order to get them to Kenvue?

MS. FOURNIER: Objection to form.

THE WITNESS: Your question is do I find it unusual.

85

of authority, an official document that says when you do something like that, that you don't have to tell the CEO of the company that you're doing it? You can just do it?

MS. FOURNIER: Objection.

THE WITNESS: I don't know if there is any type of document.

BY MR. PLACITELLA:

Q. Okay. Do you know what a delegation of authority document is, in the context of a corporation?

MS. FOURNIER: Objection.

THE WITNESS: I think I do, but I'm not aware of any of that.

BY MR. PLACITELLA:

Q. You're not aware of a delegation of authority document at Johnson & Johnson that would allow them to transfer \$76 billion of your company through another company without your knowledge?

MS. FOURNIER: Objection.

THE WITNESS: I don't think it's how it works, again, as I just explained.

BY MR. PLACITELLA:

86

1 **Q. Well, they didn't tell you how they did it.**
2 **Is that what you're saying?**

3 A. I'm sorry?

4 **Q. They didn't tell you how they did it?**

5 A. Yeah, how, it's the mechanics of the transfer
6 is handled by the Law Department and the Finance
7 Department.

8 **Q. So if Janssen owns \$76 billion worth of equity**
9 **in a company and transfers it to Kenvue, doesn't that**
10 **make the value of Janssen significantly lower after the**
11 **transfer?**

12 MS. FOURNIER: Objection.

13 THE WITNESS: I don't think -- again, we don't
14 look at it this way. I think you are mixing the
15 business transfer and the mechanics of the legal
16 entities.

17
18 BY MR. PLACITELLA:

19 **Q. Well, don't you think an investor would want**
20 **to know if you were moving \$76 billion worth of asset**
21 **from one subsidiary to another? Don't you think you**
22 **should put that somewhere in the SEC statements?**

23 MS. FOURNIER: Objection.

24 THE WITNESS: I don't know, but I believe that
25 it was not deemed material and important to be put in

87

1 the SEC material.

2
3 BY MR. PLACITELLA:

4 **Q. By whom was it not deemed material important?**

5 A. By the colleagues who put the materials
6 together.

7 **Q. Specifically who?**

8 A. Maybe the Law Department.

9 **Q. Now we're talking about the J&J Law Department**
10 **now?**

11 A. You are talking about the S4 here. That's the
12 Kenvue Law Department.

13 **Q. Well, where did the Kenvue Law Department get**
14 **the equity value, at the time the IPO was announced, at**
15 **\$76,804,000,000? Where did they get that information?**

16 A. They got it from the Finance Department.

17 **Q. And the Finance Department got it from where?**

18 A. From their books.

19 **Q. All right. I want to see if I can get a**
20 **little context to move things along. You had made**
21 **statements to the press and to people within your**
22 **company to assure them that talc-based baby powder was**
23 **safe for use on people's children, correct?**

24 MS. FOURNIER: Objection.

25 A. We maintained the safety of the product. Yes.

88

1 BY MR. PLACITELLA:

2 **Q. Okay. And you made those statements to your**
3 **employees?**

4 A. Correct.

5 **Q. Okay. And you made them to the public, you**
6 **personally?**

7 A. I don't recall making them to the public, but
8 I stand by the safety and the quality of the product.
9 Yes.

10 **Q. You personally assured your employees, even**
11 **the ones who were using the baby powder, that it was**
12 **safe and there was nothing to worry about, right?**

13 MS. FOURNIER: Objection.

14 THE WITNESS: We always stand by the safety of
15 the product. Yes.

16
17 BY MR. PLACITELLA:

18 **Q. Okay. And you actually referred them to**
19 **specific studies, medical studies to read, to let them**
20 **be assured of what you were saying was correct, true?**

21 A. We said -- I said that the science and medical
22 studies demonstrates the safety of the product. Yes.

23 **Q. But you actually said, "Here's the studies.**
24 **Go read them if you want to." Right?**

25 MS. FOURNIER: Objection to form.

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1 THE WITNESS: I don't remember pointing to a
2 specific document. No.

3
4 BY MR. PLACITELLA:

5 **Q. But you never read any of these studies**
6 **yourself?**

7 A. No.

8 **Q. Now, in 2010, you were working for Johnson &**
9 **Johnson, correct?**

10 A. Correct.

11 **Q. All right. And this is a document that was**
12 **produced by Johnson & Johnson dated June 14th, 2010. Do**
13 **you see that?**

14 A. I do.

15 **Q. Okay. And it's a document entitled "A Look At**
16 **the Baby GPU." Do you see that?**

17 A. I do.

18 **Q. Okay. And it describes the Johnson brand**
19 **trademark as "Johnson & Johnson's golden egg". Do you**
20 **see that?**

21 A. Yes, I do.

22 **Q. And did you understand that Johnson's to be --**
23 **the Johnson's brand to be the Johnson & Johnson's golden**
24 **egg?**

25 A. I was not part of Johnson & Johnson Consumer

90

1 Health at that point.

2 **Q. Well, is it still part of -- is it still**
3 **golden egg to you?**

4 MS. FOURNIER: Objection to form.

5 THE WITNESS: I wouldn't characterize it as
6 Johnson & Johnson's golden egg. That's not how I know
7 it or I talk about it.

8
9 BY MR. PLACITELLA:

10 **Q. Okay. Is it still an important brand to you?**

11 A. It is. It's a Johnson's brand. It's
12 important. Yes.

13 **Q. And you see on page six of the document in**
14 **front of you, Johnson & Johnson actually states that the**
15 **baby powder brand was the root for its expansion across**
16 **the globe?**

17 MS. FOURNIER: Objection to form.

18 THE WITNESS: I see that. Yes.

19
20 BY MR. PLACITELLA:

21 **Q. Okay. And is that consistent with your**
22 **understanding?**

23 A. No, I was not aware of it.

24 **Q. Okay. Now, the talc that was being used in**
25 **the Johnson's Baby Powder when you were the chair of**

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1 A. No, I have not.

2 **Q. Okay. And I want to show you specifically**
3 **page 17 of the document. Have you ever heard of the**
4 **company, by the way, SmartCube. Have ever used them?**

5 A. No, I have not.

6 **Q. I'm going to show you. Do you see where it**
7 **says "high asbestos content"?**

8 A. I do.

9 **Q. Do you see where it says: "Talc reserves in**
10 **China are characterized by their high asbestos/amphibole**
11 **content. This is likely to result in a shift by clients**
12 **to new sources requiring special gradients?"**

13 **Do you see that?**

14 A. I do.

15 **Q. Is this the first time that you learned that a**
16 **consultant for Johnson & Johnson told Johnson & Johnson**
17 **that the Chinese talc had high asbestos content?**

18 MS. FOURNIER: Objection to form.

19 THE WITNESS: I don't know what they are
20 referring to here.

21
22 BY MR. PLACITELLA:

23 **Q. Okay. You see underneath it where it says:**
24 **"In 2009, the Korean Food and Drug Administration", do**
25 **you see that?**

91

1 **Consumer Health, right, that talc came from China,**
2 **right?**

3 A. Not necessarily, no.

4 **Q. You don't know that it came from China?**

5 A. I know that we had different sources of talc.

6 **Q. What about the talc that was used in the**
7 **United States? Do you know that came from China?**

8 A. No, I don't.

9 **Q. Okay. And do you know, while you were the**
10 **chairman of the Asian Pacific sector, that the talc, the**
11 **talc was coming from a mine under your jurisdiction?**

12 MS. FOURNIER: Objection to form.

13 THE WITNESS: The talc for which.

14
15 BY MR. PLACITELLA:

16 **Q. Johnson's Baby Powder sold in Asia, let's say.**
17 **Was it coming from China?**

18 A. I think we had different sources.

19 **Q. Was one of them China?**

20 A. I don't remember.

21 **Q. You don't know as we sit here?**

22 A. I don't.

23 **Q. Okay. So I want to show you Kenvue-22. This**
24 **is a November 2nd, 2011, document; J&J APAC talc market**
25 **study. Have you ever seen this before?**

93

1 A. Yes, I do.

2 **Q. Was Korea under your jurisdiction? Were you**
3 **in charge of the operations in Korea?**

4 A. I was.

5 **Q. Okay. And did you know that the Korea Food**
6 **and Drug Administration reported high asbestos content**
7 **in the talc that came from China?**

8 A. No, I don't know that.

9 **Q. And did you know that they ultimately banned**
10 **talc-containing cosmetic products in Korea?**

11 MS. FOURNIER: Objection to form.

12 THE WITNESS: It just says here that it banned
13 sales of several cosmetic products using contaminated
14 talcs in South Korea.

15
16 BY MR. PLACITELLA:

17 **Q. Now, so let me just go back here. We'll just**
18 **try to create a timeline, all right? 2009, we just saw**
19 **that your consultant reported that the Korean FDA found**
20 **asbestos in Chinese talc?**

21 MS. FOURNIER: Objection to form.

22
23 BY MR. PLACITELLA:

24 **Q. Correct?**

25 A. I don't think that's what I read. It says

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1 that they found asbestos in some Chinese talc and then
2 some cosmetic talc products.

3 **Q. Okay. And then, in 2011, they actually gave a**
4 **report where they said that there was high levels of**
5 **asbestos in Chinese talc, right? That's what your**
6 **consultant said?**

7 MS. FOURNIER: Objection. Objection to form.

8
9 BY MR. PLACITELLA:

10 **Q. Right?**

11 A. Yeah. I don't think they were -- they were
12 not referring to J&J talc, right.

13 **Q. Well, how do you know that?**

14 A. Based on the document you showed me.

15 **Q. How do you know that?**

16 A. I don't know. It was not written.

17 **Q. So you were getting Chinese talc, but it just**
18 **wasn't referring to your talc. Is that what you're**
19 **saying?**

20 MS. FOURNIER: Objection to form.

21 THE WITNESS: In the document you've shown me,
22 just accept you did show me, it was not reference J&J.

23
24 BY MR. PLACITELLA:

25 **Q. Go back again?**

96

1 you see that?

2 A. I do.

3 **Q. All right. This is an e-mail from you,**
4 **correct? Let me blow it up for you. Right,**
5 **February 24, 2016?**

6 A. I read about that.

7 MS. FOURNIER: And before you ask any further
8 questions, let's go ahead and take a break and call the
9 Special Master about what the relevance to this is.

10 MR. PLACITELLA: Okay. Let's call the Special
11 Master.

12 THE VIDEOGRAPHER: Time is 11:40 a.m. We're
13 going off the video record.

14 (At this time, a short break was taken.)

15 THE VIDEOGRAPHER: Time is 11:59 a.m. We're
16 back on the video record.

17
18 BY MR. PLACITELLA:

19 **Q. You had previously testified in your prior**
20 **deposition that you were approached about Project Plato**
21 **about a month after the U.S. Supreme Court denied**
22 **Johnson & Johnson's petition for certiorari. Do you**
23 **recall that?**
24
25

95

1 MS. FOURNIER: Chris, let's go off the record.

2 What are we doing here? What does this have to do with
3 -- Yeah, go off.

4 THE VIDEOGRAPHER: The time is 11:37 a.m.
5 We're going off the video record.

6 THE VIDEOGRAPHER: The time is 11:38 a.m.
7 We're back on the video record.

8
9 BY MR. PLACITELLA:

10 **Q. All right. When you were working in the Asia**
11 **sector and running the Asia sector, right, you were**
12 **tracking the talc litigation in the United States, what**
13 **was going on, right?**

14 MS. FOURNIER: Objection to form.

15 THE WITNESS: I was made aware of the
16 litigation, yes, in the U.S.

17
18 BY MR. PLACITELLA:

19 **Q. And every time a verdict came down in the**
20 **United States, you were personally given notice of what**
21 **was going on, even though you were in Asia at the time,**
22 **correct?**

23 A. Yes. As part of the Executive Committee, we
24 were given regular updates on the litigation.

25 **Q. And you have in front of you Kenvue-16. Do**

97

1 MS. FOURNIER: Objection.

2 THE WITNESS: I don't recall the exact
3 sequence of events. No.

4
5 BY MR. PLACITELLA:

6 **Q. Do you recall testifying that you became aware**
7 **that the U.S. Supreme Court denied Johnson & Johnson's**
8 **petition in the Ingham case?**

9 A. I do.

10 **Q. Okay. And do you recall that happened in**
11 **approximately June of 2021?**

12 A. I don't recall exactly that.

13 **Q. Okay. And do you recall -- let me go to 24.**
14 **Exhibit 24 is a privilege log that was sent out by**
15 **Johnson & Johnson in the talc litigation, all right?**
16 **I'm not going to ask you specific questions about legal**
17 **advice, but just timing of things. Okay. And the first**
18 **thing I want to talk to you about is July 16th, 2021?**

19 A. I can't see anything.

20 THE VIDEOGRAPHER: It's not on the screen.

21 MS. FOURNIER: It's not on the screen.

22 MR. PLACITELLA: Hold on. My fault. Got it.
23 Sorry about that.

24 THE WITNESS: Now I can see it.
25

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1 BY MR. PLACITELLA:

2 **Q. July 16th, 2021, there was an e-mail from the**
3 **Assistant General Counsel Christopher Andrew to you. Do**
4 **you see that reflected?**

5 A. I see that. Yes.

6 **Q. Okay. And who was Christopher Andrew?**

7 A. He's part of the Law Department.

8 **Q. Okay. And it says: "To provide legal advice**
9 **regarding due diligence plan for proposed corporate**
10 **restructuring." Do you see that?**

11 A. I do.

12 **Q. That's the 19th. Now do you see before that,**
13 **there is a separate entry 7/16/2021. Do you see that?**

14 A. I see 2/27/19. Not 2021.

15 **Q. Right. See where, underneath that, it talks**
16 **about 03:00 p.m. e-mail 7/16/2021. It says, "draft**
17 **presentation created by" --**

18 THE VIDEOGRAPHER: Hang on. Let me get the
19 door. Go ahead.

20
21 BY MR. PLACITELLA:

22 **Q. -- J&J general counsel Christopher Andrew?**

23 A. I do.

24 **Q. Okay. It says: "Providing counsel's legal**
25 **advice regarding diligence plan for proposed corporate**

100

1 BY MR. PLACITELLA:

2 **Q. I'm just asking you what diligence plan is**
3 **being referred to?**

4 A. I don't remember.

5 **Q. Do you recall getting a presentation**
6 **concerning a diligence plan for the restructuring?**

7 A. I don't recall the details, though.

8 **Q. Does this refresh your memory of the timing of**
9 **when you first learned about the restructuring?**

10 MS. FOURNIER: Objection to form. Also, asked
11 and answered.

12 THE WITNESS: Project Plato, yeah, it's summer
13 2021.

14
15 BY MR. PLACITELLA:

16 **Q. Okay. Of July?**

17 A. It says July. Yes, July 16, July 19.

18 **Q. Now -- and then, I asked you before about**
19 **Kenvue-25, the July 19th board of directors' meeting**
20 **with various people present. Do you see that?**

21 A. I do.

22 **Q. All right. Does that -- if you put those two**
23 **things together, does that refresh your recollection**
24 **that Project Plato was discussed at the board of**
25 **directors' meeting on September 9 -- on July 19th, 2021?**

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1 **restructuring." Do you see that?**

2 A. Yep.

3 **Q. Okay. Does that refresh your recollection as**
4 **to when the first time you had any discussions about the**
5 **spinoff of the consumer health group?**

6 MS. FOURNIER: Objection to form.

7 A. That was linked to -- that has nothing to do
8 with the spinoff of the Consumer Health business.

9
10 BY MR. PLACITELLA:

11 **Q. Okay. Is this all having to do with Project**
12 **Plato?**

13 A. That's Project Plato. Yes, it is.

14 **Q. All right. So does that refresh your memory**
15 **that you had discussions as early as July 16, 2021,**
16 **about the subject of the restructuring?**

17 A. If that's what it says here, yes.

18 **Q. Okay. And it talked about a diligence plan.**
19 **What diligence plan is this referring to?**

20 MS. FOURNIER: Objection. Form. To the
21 extent you know without revealing conversations with
22 counsel.

23 MR. PLACITELLA: I don't want any legal advice
24 that was provided, okay?
25

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1 MS. FOURNIER: Objection to form.

2 THE WITNESS: I don't know if Project Plato
3 was discussed at this meeting.

4
5 BY MR. PLACITELLA:

6 **Q. Well, was it normal, by the way, to have a**
7 **board of directors' meeting and have all these other**
8 **management people attend? Was that a normal thing that**
9 **happened?**

10 A. I don't recall the agenda, but if you have
11 members of management like this, probably because we are
12 doing a business update to the board.

13 **Q. Okay. And would the business update include**
14 **projects like Project Plato?**

15 MS. FOURNIER: Objection to form.

16 THE WITNESS: No, it would not.

17
18 BY MR. PLACITELLA:

19 **Q. It would not, okay?**

20 MR. GARDE: I'm supposed to tell you Special
21 Master has called and has some additional questions. So
22 I don't know where you are and whatever you're doing.
23 Do you want to take a break now and deal with it or?

24 MR. PLACITELLA: If she's ready, I'm ready.

25 THE VIDEOGRAPHER: Time is 12:07 p.m. We're

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1 going off the video record.

2
3 (At this time, a short break was taken.)

4
5 THE VIDEOGRAPHER: Time is 12:15 p.m. We're
6 back on the video record.

7
8 BY MR. PLACITELLA:

9 **Q. I read your prior transcript. So I'm just**
10 **trying to move through this as fast as I can, be**
11 **respectful of your time. You approved the creation of**
12 **LTL and the corporate restructuring on October 11, 2021?**

13 A. Correct.

14 **Q. Okay. And then three days later, on**
15 **October 14th, LTL filed bankruptcy?**

16 A. Correct.

17 **Q. And at that time, Johnson & Johnson had a**
18 **series of press statements issued concerning the**
19 **bankruptcy.**

20 **Is that fair?**

21 A. I guess, yes.

22 **Q. And those press statements were actually**
23 **circulated inside of Johnson & Johnson?**

24 MS. FOURNIER: Objection to form.

25 THE WITNESS: Usually, when a press release is

103

1 -- before the press releases or at the time the press
2 release is released, there is an internal communication
3 of it.

4
5 BY MR. PLACITELLA:

6 **Q. Right. You had an embargoed press release**
7 **that was waiting there for the filing.**

8 **Is that fair?**

9 MS. FOURNIER: Objection to form.

10 THE WITNESS: I don't know about that.

11
12 BY MR. PLACITELLA:

13 **Q. I'll show you Kenvue-33. Have you ever seen**
14 **this embargo press release, October 14th, 2021?**

15 A. I don't remember, but maybe.

16 **Q. Okay. Less than a month later, you, Johnson &**
17 **Johnson announced the intention to separate the Consumer**
18 **Health business out to Kenvue.**

19 **Is that fair?**

20 A. In November 2021.

21 **Q. Okay. And you were involved in the work**
22 **leading up to that announcement?**

23 A. Correct.

24 **Q. What was your involvement?**

25 A. Preparing for the communication.

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1 **Q. Were there a series of meetings related to**
2 **that?**

3 A. I don't remember, but probably, yes. Yes.

4 **Q. Okay. Were there any minutes or documents**
5 **created about the announcement of the IPO before the**
6 **announcement was made internally?**

7 A. I don't remember.

8 **Q. Okay. Let me just skip ahead. I'm trying to**
9 **fill in. We're waiting to see what the court says on**
10 **certain things, so I'm just trying to fill in around it.**
11 **Is it fair that on August 11, 2022, you announced the**
12 **transition to all cornstarch baby powder for the United**
13 **States?**

14 A. Sorry. Can you repeat that question.

15 **Q. On August 11, 2022, you announced the**
16 **transition to all cornstarch baby products sold in the**
17 **United States For J&J talcum powder?**

18 MS. FOURNIER: Objection to form.

19 THE WITNESS: No. I think you are referring
20 to the announcement we made that we would transition the
21 talc-based version of Johnson's Baby Powder to
22 cornstarch based.

23
24 BY MR. PLACITELLA:

25 **Q. Correct?**

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1 A. Johnson's Baby Powder globally.

2 **Q. Right. And you did that on August 11th, 2022?**

3 A. Maybe, yeah.

4 **Q. Okay. And on what, on September -- strike**
5 **that?**

6 **In December 22nd, 2022, you changed the name**
7 **of JJCI to J&J Holdco, correct?**

8 MS. FOURNIER: Objection to form.

9 THE WITNESS: That I'm not aware of. No.

10
11 BY MR. PLACITELLA:

12 **Q. Okay. So let me just go to -- do you know who**
13 **John Kim is?**

14 A. Who?

15 **Q. John Kim. Do you know who he is?**

16 A. He's a member of the Law Department.

17 **Q. Okay. Did you have dealings with him when you**
18 **were working for J&J?**

19 A. Not directly, no.

20 **Q. He filed an affidavit with Judge Kaplan**
21 **indicating that in December 2022, new JJCI, that's the**
22 **company that you were in charge of, partly, correct?**
23 **They were under your jurisdiction, right?**

24 MS. FOURNIER: Objection to form.

25 THE WITNESS: That was one of the legal

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1 entities. Yes. Of the Consumer Health.

2
3 BY MR. PLACITELLA:

4 **Q. Changed its name to Johnson & Johnson Holdco**
5 **NA, Inc., a New Jersey corporation, right? Were you**
6 **aware of that?**

7 A. No.

8 **Q. Okay. And then it says that in -- so you**
9 **weren't part of any of the meetings or decisions**
10 **regarding that name change, just to be clear?**

11 A. No.

12 **Q. All right. He goes on to state in his**
13 **affidavit that "in early January '23, Holdco transferred**
14 **its consumer business assets to its parent entity." See**
15 **that?**

16 A. Okay.

17 **Q. Okay. And that's not something you knew**
18 **nothing about?**

19 A. No.

20 **Q. Okay. I want to show you a chart that was**
21 **attached to Mr. Kim's affidavit talking about the**
22 **organizational structure of LTL Management Inc?**

23 **Have you ever seen this chart before?**

24 A. No, I have not.

25 **Q. Do you see where it lists the parent entity of**

108

1 **Have you ever read the opinions by Judge**
2 **Kaplan in dismissing the bankruptcy?**

3 A. No, I have not.

4 **Q. Okay. He states in his opinion in early**
5 **January 2023, "Holdco spun off its Consumer Health**
6 **business to its parent entity, Janssen Pharmaceuticals,**
7 **Inc." Do you see that?**

8 A. I do.

9 **Q. As you sit here today, your testimony is you**
10 **knew nothing about that?**

11 A. No.

12 **Q. What was the reason why, while you were**
13 **working, while you were on the board of directors of**
14 **Johnson & Johnson, that you were tracking the results of**
15 **the talc trials?**

16 A. So I was not a member of the board of Johnson
17 & Johnson. I was a member of the Executive Committee of
18 Johnson & Johnson.

19 **Q. Sorry. I stand corrected. Let me rephrase**
20 **the question?**

21 A. Yeah.

22 **Q. What was the reason, while you were a member**
23 **of the Executive Committee, why you were tracking the**
24 **results of the talc verdicts involving Johnson & Johnson**
25 **and JJCI?**

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1 **Johnson & Johnson Holdco as Janssen Pharmaceuticals?**

2 A. I think that's what he -- yes.

3 THE VIDEOGRAPHER: I'm sorry. You knocked
4 your mic off.

6 BY MR. PLACITELLA:

7 **Q. Oh, I knocked my mic. It's getting close to**
8 **lunch. I guess I'll have to hold it. Oh, here it is?**

9 **On this chart, in January of 2023, were you**
10 **working for any of the entities on this chart?**

11 A. In January of 2023, I was working for Johnson
12 & Johnson.

13 **Q. So Johnson & Johnson was the entity you were**
14 **working for? That's who was paying you?**

15 A. I don't know which legal entity is, but I was
16 working for the Johnson & Johnson company.

17 **Q. Okay. You were not working, at that point,**
18 **for Johnson & Johnson Holdco?**

19 A. I don't think so.

20 **Q. Okay?**

21 A. I'm not aware of the legal entity I'm attached
22 to.

23 **Q. I understand. I'm just going to show you**
24 **this. This comes directly from the opinion issued by**
25 **Judge Kaplan in his decision?**

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1 A. I was not tracking it. As part of regular
2 business, we would be given regular updates on ongoing
3 litigations regarding the company, including talc. The
4 other thing that, when an event was happening, like a
5 verdict, we would be made aware of it by the Law
6 Department.

7 **Q. Okay. And the reason you were being made --**
8 **why was it important for you to know those things?**

9 MS. FOURNIER: Objection to form.

10 THE WITNESS: Why was it important?

12 BY MR. PLACITELLA:

13 **Q. Yes?**

14 A. Because it was part of the important
15 litigation regarding the company.

16 **Q. Did it have an impact on your perspective of**
17 **the valuation of the company?**

18 MS. FOURNIER: Objection.

19 THE WITNESS: No. No.

21 BY MR. PLACITELLA:

22 **Q. Not at all?**

23 A. No. You should know that, if you have read my
24 previous testimony, that I was -- the litigation was
25 handled by the Law Department. So for me, I was focused

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on the operational management of the business.

Q. As it should be?

A. As it should be.

Q. Okay. But what happened in the lawsuits was still important to the management of the company, correct?

A. Absolutely. We need to understand what's going on in litigation regarding the --

Q. I mean, it ultimately led to your splitting the company up?

MS. FOURNIER: Objection to form.

A. No, it's not. What, these are two unrelated topics.

BY MR. PLACITELLA:

Q. Well, you say it's unrelated, but the fact that you had the pressure from the lawsuits caused you to restructure JJCI and attempt to put the liabilities in one place and the assets in the other, right?

MS. FOURNIER: Objection to form.

A. That's two different things. If you are talking about the restructuring of the JJCI and the creation of LTL, that was done with the objective to, as I said, to create this forum where plaintiffs could get their case considered and resolved in a fair and

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equitable way. That's what the creation of LTL was about.

BY MR. PLACITELLA:

Q. When you say "fair and equitable", fair and equitable to who?

A. For the plaintiffs.

Q. Oh, so you're not fair and equitable to Johnson & Johnson?

A. And for Johnson & Johnson, it would also be important.

Q. And who made the determination that it would be fair and equitable to the plaintiffs to take their right to a jury trial away from them?

MS. FOURNIER: Objection to form.

THE WITNESS: That's how the Law Department presented it.

BY MR. PLACITELLA:

Q. So that was a determination made by the Law Department?

A. Yes.

Q. It wasn't you as an executive at Johnson & Johnson saying: "This is how we're going to treat people fairly." It was the lawyers who said: "This is

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what we're going to do?"

MS. FOURNIER: Objection to form.

THE WITNESS: It was a recommendation from the department. Yes.

MR. PLACITELLA: Thank you. It's 12:30. It's a good breaking time, so let's break and maybe with a little work, I can shorten things up.

MS. FOURNIER: That's fine.

THE VIDEOGRAPHER: Time is 12:30 p.m. We're going off the video record.

(At this time, a short break was taken.)

THE VIDEOGRAPHER: The time is 01:37 p.m. We're back on the video record.

BY MR. PLACITELLA:

Q. All right. Good afternoon?

A. Good afternoon.

Q. I'll try not to keep you all afternoon. I put in front of you Kenvue-28, which is an October 5th, 2021, e-mail from you to Mr. Duato. Do you see that?

A. I do.

Q. Okay. Do you recognize that e-mail?

A. I do.

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Q. In that e-mail, and this was during the time that the -- what was the reason for this e-mail?

A. It was to give Joaquin Duato a view on adjustments to our plan for the following year.

Q. And when you say "adjustments to your plans", what do you mean by that?

A. Topics that were not included in the long-range financial plan and that would be included in the business plan for the following year.

Q. Okay. And do you have a formal business plan that you circulate every year?

A. Yes, we do.

Q. And did that formal business plan, at any point in time, mention the Project Plato or Project Diamond?

A. I don't remember if it did.

Q. Okay. In this e-mail to Mr. Duato, you indicate "Project Plato (no impact for the enterprise.)" What did you mean by that?

A. Because we were -- as part of Project Plato, we assigned some royalty streams that were previously in my P&L to LTL. So it was just to mention that these revenues would be taken out of the P&L I had responsibility for and moved to LTL. And so from a Johnson & Johnson point of view, there was no -- it was

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1 just a move from one P&L, the one I had responsibility
2 for, to another P&L that I didn't have responsibility
3 for.

4 **Q. Okay. So it was going to have no impact on**
5 **the entity you were responsible for?**

6 MS. FOURNIER: Objection.

7 THE WITNESS: No, it would not have no impact
8 on the Johnson & Johnson enterprise.

9
10 BY MR. PLACITELLA:

11 **Q. Overall?**

12 A. Overall. Because my business will not have
13 these revenues anymore, but another entity of Johnson &
14 Johnson would have these revenues. It's not like these
15 revenues disappeared for Johnson & Johnson.

16 **Q. Okay. Kenvue-29 is five days later, 10/10/21.**
17 **Project Plato master Q&A. Do you see that?**

18 A. I do.

19 **Q. Have you seen that before?**

20 A. Yes, I have.

21 **Q. And when did you see that before?**

22 A. It was probably when we were getting ready for
23 the announcement.

24 **Q. Okay. What announcement?**

25 A. Project Plato.

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1 **Q. I understand. But this is what's being told**
2 **to the employees, correct?**

3 MS. FOURNIER: Objection to form.

4 THE WITNESS: It's elements provided to
5 employees so they can answer questions.

6
7 BY MR. PLACITELLA:

8 **Q. Okay. In 29-5, the question is asked: "Does**
9 **this mean that JJCI will stop selling talc-based**
10 **Johnson's Baby Powder globally?" And what this -- this**
11 **is basically a primer? What would you call this? Q&A?**
12 **How should I refer to it?**

13 MS. FOURNIER: Objection to form.

14
15 BY MR. PLACITELLA:

16 **Q. This document?**

17 A. This document.

18 **Q. Yeah?**

19 A. Yeah. It's talking points.

20 **Q. Okay. Talking points?**

21 A. Uh-huh.

22 **Q. It says: "This action does not impact the**
23 **global availability of Johnson's Baby Powder." Correct?**

24 A. Correct.

25 **Q. There's a question 38: "What does this mean**

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1 **Q. Who was it intended for?**

2 A. It's intended for employees who may get
3 questions about the project and give them talking points
4 and elements so they can answer the questions.

5 **Q. Okay. And who drafted this, do you know?**

6 A. I don't know. Usually, it's done by the
7 Communications Department.

8 **Q. Okay. And what was the source of the**
9 **information in this Q&A? Where did the substantive**
10 **information come from?**

11 A. Usually, these are done between the
12 Communications Department and the Law Department.

13 **Q. From the Law Department?**

14 A. Uh-huh.

15 **Q. Okay. You indicate in 29-3 that -- the**
16 **question is: "What impact does this have on the**
17 **operations of Johnson & Johnson, JJCI, and other**
18 **affiliates?" Correct?**

19 A. Correct.

20 **Q. And you indicate "no impact, business as**
21 **usual", correct?**

22 A. I don't indicate, right? That's a Q&A put
23 together by the teams, not --

24 **Q. Well, that -- okay. It's not you?**

25 A. Yeah.

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1 **for employees of Johnson & Johnson?" And what is stated**
2 **is: "This has no impact on Johnson & Johnson's business**
3 **operations, including the Consumer Health sector, or**
4 **those employees who support the Johnson's brand**
5 **globally." Correct?**

6 A. Correct.

7 **Q. That includes the people who are involved in**
8 **the manufacturing and selling baby powder, correct?**

9 A. Correct.

10 **Q. And under question 39, it says: "Will this**
11 **have any impact on corporate structure?" What's**
12 **indicated is: "Accordingly, corporate structure will**
13 **not be impacted by this announcement. Employees**
14 **continue to work for Johnson & Johnson and roles and**
15 **responsibilities remain the same?"**

16 **Is that your understanding of what the**
17 **circumstances were?**

18 A. Yes. Correct. There was no impact for any
19 employee of Johnson & Johnson.

20 **Q. The question is: "Why is Johnson & Johnson**
21 **taking these actions instead of waiting to assess the**
22 **Bellwether cases in the multi district litigation and**
23 **what can be learned from them?" See that? Is there**
24 **anything in here that talks about being fair to the**
25 **claimants?**

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1 A. I think there are two valid points clearly
2 outlined.

3 **Q. There's nothing in here that talks about being**
4 **fair to the claimants, like you testified to today,**
5 **correct?**

6 MS. FOURNIER: Objection to form.

7 THE WITNESS: It doesn't mention these words.
8 No.

9
10 BY MR. PLACITELLA:

11 **Q. Okay. And it says: "If only a small fraction**
12 **of the pending cases yield these types of award, the**
13 **assets available to pay current and future claimants**
14 **could be exhausted. This, coupled with the excessive**
15 **associated legal costs would make continued litigation**
16 **unsustainable for any company?"**

17 **Does that includes Johnson & Johnson, sir?**

18 A. Any company. Yes.

19 **Q. So, what you're forecasting for the plaintiff,**
20 **for the employees is, if there are too many verdicts,**
21 **sizable verdicts, the assets of the company could be**
22 **exhausted, right?**

23 MS. FOURNIER: Objection to form.

24 THE WITNESS: I think what it says is that
25 there had been a number -- there had been arbitrary,

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1 MS. FOURNIER: Objection to form.

2 THE WITNESS: Again, I was not talking to
3 employees. These were talking points that were provided
4 to employees.

5
6 BY MR. PLACITELLA:

7 **Q. I thought you said before, these were talking**
8 **points for the employees to use if they were asked**
9 **questions.**

10 **Is that fair?**

11 A. As well. As well.

12 **Q. Right. So the employees were being told that,**
13 **if they're asked questions, they should say that the**
14 **assets of Johnson & Johnson could be exhausted?**

15 MS. FOURNIER: Objection to form.

16 THE WITNESS: I think there was a mention --
17 yes, there was a mention about that the assets available
18 to pay current and future payments could be exhausted.

19
20 BY MR. PLACITELLA:

21 **Q. Was that information ever included in any**
22 **financial statement put out by Johnson & Johnson? Any**
23 **10-K or anything like that?**

24 A. I don't know.

25 **Q. Should it have been, if that's the conclusion**

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1 extraordinary verdict in state courts and that
2 contradicted the science and yielded outside the -- and
3 that the assets to pay current and future claims could
4 be exhausted.

5
6 BY MR. PLACITELLA:

7 **Q. All right. Had you ever disclosed this**
8 **information to the investors or the SEC, that you were**
9 **forecasting that assets could be exhausted of Johnson &**
10 **Johnson?**

11 MS. FOURNIER: Objection to form.

12 THE WITNESS: I don't think we ever forecasted
13 anything.

14
15 BY MR. PLACITELLA:

16 **Q. Well, it says: "If only a small fraction of**
17 **the pending cases yield these type of awards" -- and**
18 **they're talking about extraordinary verdicts, right --**
19 **"the assets available to pay current and future**
20 **claimants could be exhausted." And you're talking about**
21 **Johnson & Johnson's assets, correct?**

22 A. I'm not sure what it was referring to.

23 **Q. Well, what did you mean by that, the assets**
24 **could be exhausted, when you were talking to your**
25 **employees?**

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1 **you came to?**

2 A. I don't know. I don't know. I'm not a
3 lawyer.

4 **Q. Okay. Kenvue-31. Let me just blow it up for**
5 **you. This is an e-mail that was sent around, dated**
6 **10/11, I guess, the very next day. The subject is**
7 **"project approval memorandum for approval today."**
8 **Correct?**

9 A. Correct.

10 **Q. And it was given to you and others, fair?**

11 A. Correct.

12 **Q. And it's asking for your approval of the**
13 **restructuring under Project Plato, correct?**

14 A. Correct.

15 **Q. And on the first page of the attached memo,**
16 **one of the things you're asked to approve is the**
17 **implementation of steps involving the restructuring that**
18 **will allow new JJCI to operate the consumer -- J&J**
19 **Consumer Health business in the United States without**
20 **interruption, correct?**

21 A. "Without interruption and provide LTL with the
22 opportunity to pursue a process to resolve current and
23 future claims in an equitable and efficient manner."
24 That's what's written here. Yes.

25 **Q. Okay. So I have a question, which is, since**

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1 you approved this, it says: "Step one, we request the
2 approval of the following activities in connection with
3 the restructuring. Step one, Janssen Pharmaceuticals,
4 Inc. forms Cure-A Holding Company, Inc. (Cure-A Holding
5 Co.) a New Jersey company that is treated as a C
6 corporation for federal income tax purposes?"

7 Do you know why that was created that way?

8 A. No, I don't.

9 Q. Okay. It then goes on to say, "JPI, that's
10 Janssen Pharmaceuticals," that's the company that was
11 making the drugs, right, the pharmaceutical division?

12 MS. FOURNIER: Objection to form.

13 THE WITNESS: That's a legal entity. That's
14 one of the legal entity that we use at J&J to --

15
16 BY MR. PLACITELLA:

17 Q. And they were involved in drugs and medical
18 devices. Is that fair?

19 A. If you talk about the pharmaceutical segment
20 of Johnson & Johnson as you talk about the consumer
21 health segment of Johnson & Johnson, absolutely. Yes.

22 Q. Okay?

23 A. Right.

24 Q. It says --

25 A. But here, it's about a legal entity. What are

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1 Q. But my point is, you didn't really spend a lot
2 of time before you approved this transaction, really
3 understanding the ins and outs of it?

4 MS. FOURNIER: Objection.

5 THE WITNESS: I did rely on the subject matter
6 experts who put together this recommendation.

7
8 BY MR. PLACITELLA:

9 Q. Did you previously testify that you spent
10 maybe 90 minutes on the whole thing, soup to nuts?

11 MS. FOURNIER: Objection.

12 THE WITNESS: I didn't spend 90 minutes. I
13 testified that it took me 90 minutes between the time I
14 received the e-mail and the time I approved it.

15
16 BY MR. PLACITELLA:

17 Q. Oh. So you got the e-mail with all the
18 information in this thing, and 90 minutes later, you
19 approved it?

20 A. Correct.

21 Q. Because you didn't do any independent analysis
22 of the fairness of this e-mail to the companies that you
23 were managing, true?

24 MS. FOURNIER: Objection.

25 THE WITNESS: I was aware of Project Plato

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1 the difference between the operational management and
2 the legal entity.

3 Q. Okay. It says, "JPI, that's Janssen
4 Pharmaceuticals, contributes 100 percent of ownership
5 interest in JJCI to Cure-A Holding Company?"

6 Do you see that?

7 A. I do.

8 Q. How much ownership interest did Janssen
9 Pharmaceuticals have in JJCI at the time of the
10 restructuring?

11 A. I don't know.

12 Q. Did you know that, before today, that JJCI was
13 owned by Janssen Pharmaceuticals?

14 A. No, I didn't.

15 Q. So you didn't spend a lot of time going over
16 this proposal, right? You basically rubber stamped it.
17 You didn't know all the details?

18 MS. FOURNIER: Objection.

19 THE WITNESS: No, these type of technical
20 details are handled by the Law Department. I rely on
21 colleagues who are experts in these areas; and so I
22 trust that they did the due diligence required to make
23 the right decision.

24
25 BY MR. PLACITELLA:

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1 since July, as we talked about earlier. And so I was
2 aware of the project and this type of memo shows me who
3 was involved in -- shows you who is involved in the due
4 diligence, summarizes the different steps, and so I had
5 no objection.

6
7 BY MR. PLACITELLA:

8 Q. Okay. I didn't see anything in this memo,
9 unless I missed it, about being fair to the claimant
10 that you talked about. Is there a different document,
11 internal document, amongst the management that talks
12 about the reason for doing this is to be fair to the
13 claimant?

14 A. I think you had it in the first paragraph.

15 Q. Please show me. Here?

16 A. "Choice of current and future claims in
17 equitable and efficient manner."

18 Q. Where does it say about being fair to the
19 claimants?

20 A. Yes, equitable and efficient.

21 Q. Well, doesn't that mean equitable and
22 efficient for Johnson & Johnson?

23 MS. FOURNIER: Objection to form.

24 THE WITNESS: It's for all parties, as I
25 understand it.

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1 BY MR. PLACITELLA:

2 **Q. Okay. Now I just want to back up a little bit**
3 **on the timeline of where we were, okay, to reorient**
4 **ourselves. Try to get through this as quickly as I can.**
5 **All right?**

6 **This morning, we went through the findings by**
7 **the Korean FDA. Recall that?**

8 A. I do.

9 **Q. Okay. And then we talked about the consultant**
10 **advising Johnson & Johnson of the high levels of**
11 **asbestos in Chinese talc. Recall that?**

12 MS. FOURNIER: Objection to form.

13 THE WITNESS: I do recall.

14
15 BY MR. PLACITELLA:

16 **Q. Okay. By the way --**

17 A. Remember that it was not all cosmetic talc
18 products, if I recall correctly, your document.

19 **Q. Right. You're fair. That's fair?**

20 A. And for the Chinese thing, it was not J&J's
21 talc specifically.

22 **Q. Okay. Well, here's the Answers to**
23 **Interrogatories labeled Kenvue-37 from 11/10/2017. You**
24 **were in charge of the Asia operations back then, right?**

25 MS. FOURNIER: Objection to form.

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1 A. Okay. Okay.

2 **Q. So you guys are looking at each other, you**
3 **want me to ask a different question? Okay. So the**
4 **reason I'm asking this is, if the talc was coming from**
5 **China beginning in 2010, do you know whether that's true**
6 **or not?**

7 A. I don't know.

8 **Q. Okay. So in 2000 and -- well, let me just go**
9 **to it. You had previously testified in the bankruptcy**
10 **hearings, correct? Yes?**

11 A. Yes.

12 **Q. Okay. And in that testimony, did you say that**
13 **you were aware of asbestos verdicts while you were**
14 **working in Asia? Talc verdicts?**

15 A. Absolutely.

16 **Q. Okay. And this is where we stopped before.**
17 **This is an e-mail from you on February 24, 2016, where**
18 **you write: "Dear colleagues." Who was this addressed**
19 **to? Who was supposed to get this?**

20 A. It's the consumer employees in Asia Pacific.

21 **Q. Okay. So everybody who worked for you --**

22 A. In Asia Pacific.

23 **Q. -- got this e-mail?**

24 A. Yes.

25 **Q. And what you told them and what happened is**

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1 THE WITNESS: I joined the business in 2014
2 with J&J.

3
4 BY MR. PLACITELLA:

5 **Q. Right. And according to the sworn Answers to**
6 **Interrogatories, the talc for Johnson & Johnson's Baby**
7 **Powder from 2010 on came from China. Do you have any**
8 **reason to dispute that?**

9 A. I don't know. What's this document.

10 **Q. It's Answers to Interrogatories, sworn Answers**
11 **to Interrogatories. See that?**

12 A. Yeah.

13 **Q. Okay. And according to these sworn answers,**
14 **you were getting your talc from China from 2010 forward,**
15 **correct? I'll go back to it?**

16 A. I don't know what I'm really looking at, at
17 all.

18 **Q. So 2010 to the present --**

19 A. I know what I'm reading, but you --

20 **Q. -- they're requiring --**

21 A. But you asked me to confirm if the talc was
22 coming from this source. The answer is I don't know,
23 and I'm not really sure what I'm looking at here.

24 **Q. Okay. Well, they are sworn answers. I don't**
25 **want to belabor if you don't know anything. Okay?**

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1 **you got news of a verdict in the United States, correct?**

2 A. Yeah, that much we tell here.

3 **Q. And you reached out to the employees to tell**
4 **them that "regardless of what the verdict said, our**
5 **product is safe based on 30 years of research and**
6 **scientific review." Correct?**

7 A. Correct.

8 **Q. And just to move it along, I'm going to show**
9 **you your testimony from January 19, 2022, on page 124.**
10 **And you were asked questions about what you were telling**
11 **shareholders, and you said that "our product is safe and**
12 **it does not contain asbestos." That's what you were**
13 **saying, correct?**

14 A. Correct.

15 **Q. And at that point in time, you never related**
16 **to anyone when you were telling the shareholders and**
17 **employees that the products contain asbestos, that your**
18 **own consultant told you in 2010 that the Chinese talc**
19 **contained asbestos, or 2011?**

20 MS. FOURNIER: Objection to form.

21 THE WITNESS: First of all, I'm not familiar
22 with the documents you showed me earlier, but I relied
23 on the conclusion of our medical safety team.
24
25

130

1 BY MR. PLACITELLA:

2 **Q. Well, didn't you previously testify that the**
3 **only person you could remember talking to was Susan**
4 **Nicholson?**

5 MS. FOURNIER: Objection to form.

6 THE WITNESS: Dr. Susan Nicholson was one of
7 the members of the Office of the Chief Medical Officer
8 who worked on these topics and was a trusted reference,
9 yes.

10
11 BY MR. PLACITELLA:

12 **Q. Okay. But she never did any of the testing on**
13 **the talc herself, correct?**

14 A. Her job is not to do the testing. Her job is
15 to review the literature, review the science, and have
16 an opinion on the safety of the product. That's what
17 the Chief Medical Officer office does.

18 **Q. Right. And have you ever reviewed any of her**
19 **testimony in the Middlesex County Superior Court?**

20 A. I have not.

21 **Q. Okay. You actually tracked -- there was a**
22 **case tried in the Middlesex County Court called Barden.**
23 **Do you recall that? Mr. Gorsky testified in that case?**

24 A. I don't remember that.

25 **Q. Well, you were tracking that case as it was**

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1 **progressing, weren't you?**

2 MS. FOURNIER: Objection to form.

3 THE WITNESS: I don't remember this exact
4 case.

5
6 BY MR. PLACITELLA:

7 **Q. In July -- well, here, let me just move this.**
8 **You know that in July of 2018, there was a verdict in**
9 **the Ingham case. That was something you were tracking,**
10 **correct?**

11 MS. FOURNIER: Objection to form.

12 THE WITNESS: The Ingham case? Yes, we got an
13 update on that one.

14
15 BY MR. PLACITELLA:

16 **Q. Right. And you knew that J&J was assessed**
17 **\$3.15 billion and JJCI \$990,000,000 in a verdict in that**
18 **case, correct?**

19 A. I remember the case was -- the verdict was
20 big.

21 **Q. Okay. And here's a memo from 1/31/2020 from a**
22 **Donna Lorenzen. Who's she?**

23 A. She's in the Communications Department.

24 **Q. All right. And this is to you. Now, at this**
25 **point, you are running the worldwide operation for**

132

1 **Consumer Health, correct?**

2 A. Correct.

3 **Q. Okay. And this memo goes to you. And the**
4 **subject is "informed talc news next week." Do you see**
5 **that?**

6 A. Yes, I do.

7 **Q. It states: "We expect to close the Barden**
8 **case on Tuesday, February 4, and receive a verdict from**
9 **the jury on the matter of punitive damages shortly. As**
10 **you recall, we lost the Barden case in September '19,**
11 **and we were ordered to pay \$37.3 million in compensatory**
12 **damages." Do you see that?**

13 A. I do.

14 **Q. Does that refresh your memory that you were**
15 **tracking the progress of the Barden case while you were**
16 **the CEO of Consumer Health?**

17 MS. FOURNIER: Objection to form.

18 THE WITNESS: So I was not the CEO, again, of
19 Consumer Health. I was the worldwide chairman.

20
21 BY MR. PLACITELLA:

22 **Q. I'm sorry, you're correct?**

23 A. And again, I was not tracking. The way it
24 works at J&J is the Law Department handles all the
25 communication. So as manager of the Consumer Health

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1 segment, I don't track everything. That's not my role.
2 That's not my responsibility. Whenever a case -- an
3 update requires to be made to the Executive Committee,
4 the department or when there is potential external
5 communication, the Communications Department as well
6 gives the respective executives an update on what
7 happened or what's about to happen. So it's not about
8 tracking. It's about being updated on the developments.

9 **Q. Okay?**

10 A. And getting an overview or background
11 information on what's happening.

12 **Q. Who decides what you and the Executive**
13 **Committee are being told about what's going on in the**
14 **litigation?**

15 A. The Law Department.

16 **Q. Were you aware that, internally, your company**
17 **was actually analyzing and tracking, for example,**
18 **Mr. Barden's exposure to baby powder and whether it**
19 **caused his mesothelioma?**

20 MS. FOURNIER: Objection to form.

21 THE WITNESS: No.

22
23 BY MR. PLACITELLA:

24 **Q. Do you know what an event report is?**

25 A. No, I don't.

134

1 **Q. You see the run date is 4/27/2018? See that**
2 **up in the upper right hand corner?**

3 A. I see it.

4 **Q. Okay. And the company mentioned is J&J**
5 **Consumer. And the date this information was entered was**
6 **March 29, 2017. Do you see that?**

7 A. I see that.

8 **Q. And it says: "Douglas Barden, plaintiff, used**
9 **and was exposed to asbestos-containing Johnson & Johnson**
10 **talc powder products, contracted mesothelioma. See**
11 **that?**

12 A. I can see that.

13 **Q. So as part of the information that was being**
14 **conveyed to you while you were being updated on the**
15 **Barden case, during the course of the case, did anyone**
16 **ever tell you that your own Medical Department was**
17 **looking at Barden's medical records to see if Johnson's**
18 **Baby Powder could have caused his mesothelioma?**

19 MS. FOURNIER: Objection to form.

20 THE WITNESS: No. It's not my responsibility,
21 so it was not part of the legal update.

22
23 BY MR. PLACITELLA:

24 **Q. Okay. Would that have been important for the**
25 **Executive Committee to know that you were litigating a**

135

1 **case two blocks away from the world headquarters and**
2 **that your own medical team was making an assessment and**
3 **concluding that Mr. Barden's mesothelioma could possibly**
4 **be caused by Johnson's Baby Powder?**

5 MS. FOURNIER: Objection to form.

6 THE WITNESS: Again, it's really -- the way it
7 works is that we have very competent technical teams,
8 whether the Law Department or the Office of the Chief
9 Medical Officer, who handle these cases and we trust
10 their expertise in these areas.

11
12 BY MR. PLACITELLA:

13 **Q. Okay. So for example, if I just go down to**
14 **the bottom of the next page -- the same page, you see**
15 **where it talks about categories and it says "serious**
16 **file type, adverse event modified, causality possible."**
17 **Do you see that?**

18 A. I see that.

19 **Q. That's nothing that was ever communicated to**
20 **you by the Law Department, correct?**

21 A. No.

22 **Q. Okay. Are you aware that on April 27, 2020,**
23 **the Federal MDL handed down a ruling denying Johnson &**
24 **Johnson's motion to exclude the medical evidence on**
25 **causation between Johnson's Baby Powder and ovarian**

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1 **cancer?**

2 MS. FOURNIER: Objection to form.

3 THE WITNESS: I'm not sure what you are
4 referring to.

5
6 BY MR. PLACITELLA:

7 **Q. Do you know that there was a big hearing**
8 **before the judge in Trenton and Johnson & Johnson was**
9 **trying to keep medical evidence out or have experts**
10 **stricken that were going to testify that Johnson's Baby**
11 **Powder caused ovarian cancer? Were you ever aware of**
12 **that?**

13 MS. FOURNIER: Objection to form.

14 THE WITNESS: Yeah, I might have been by --
15 yeah.

16
17 BY MR. PLACITELLA:

18 **Q. Okay. And were you made aware by the Legal**
19 **Department that Johnson & Johnson's effort to do that**
20 **failed?**

21 MS. FOURNIER: Objection to form.

22 THE WITNESS: That's probably part of the
23 updates.

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1 BY MR. PLACITELLA:

2 **Q. Okay. And am I correct, then, that on**
3 **February 9 -- I'm sorry -- on May 19th, 2020, Johnson &**
4 **Johnson removed asbestos-containing baby powder from the**
5 **U.S. markets?**

6 MS. FOURNIER: Objection to form.

7 THE WITNESS: I think you are mixing up many
8 things here.

9
10 BY MR. PLACITELLA:

11 **Q. Go ahead.**

12 A. First of all, we have always been clear that
13 our Johnson's Baby Powder does not contain asbestos. So
14 that's one thing.

15 The other thing is, where you are correct is
16 that, and I don't remember the exact date, but if you
17 mention it, it's probably true, that we announced in
18 2020 the discontinuation of talc-based Johnson's baby
19 product in the United States.

20 **Q. Okay?**

21 A. These are two very different things.

22 **Q. Fair enough. I misspoke. You say that there**
23 **was no asbestos in the baby powder, but you've never**
24 **actually looked at the Johnson & Johnson tests that**
25 **showed there's asbestos in the baby powder, have you?**

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MS. FOURNIER: Objection to form.

THE WITNESS: Correct. I rely on the experts in the company, whose job is to do that.

BY MR. PLACITELLA:

Q. Okay. Now -- and then, am I correct then, just for timeline, that in June 23rd, 2020, the Missouri Supreme Court upheld the Ingham verdict? Are you aware of that?

A. Can you repeat that.

Q. The Ingham verdict --

A. Yes.

Q. -- that you were being apprised of --

A. Yes.

Q. -- that ultimately went to the Missouri Supreme Court?

A. Oh, yeah, I remember that.

Q. Okay?

A. Yes.

Q. And that was upheld by the Missouri Supreme Court on June 23rd, 2020, correct?

A. I don't remember, but if you say so.

Q. Okay. And I'll ask Mr. Ruh the next question. Did that verdict, the upholding of that verdict, have a negative financial effect on Johnson & Johnson Consumer

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THE WITNESS: Again, I don't remember the exact day that we announced the discontinuation. Yes.

BY MR. PLACITELLA:

Q. Okay. And you were part of that decision, correct?

A. I was part of this decision. Yes, absolutely.

Q. And the reason for that decision was what?

A. The North America team came to me with a recommendation to discontinue the product. That was a small product for us. Volume had been declining all along after years of misrepresentation of the quality of our product with consumers, millions of dollars of advertisement by plaintiffs with allegations about the product. And so the volumes were down and so there was no point keeping the product on the market.

Q. Well, you say misrepresentations. And it wasn't just plaintiffs. There were juries that spoke and said that your product was harming people, true?

MS. FOURNIER: Objection to form.

THE WITNESS: Yes. The advertising, as I said, made an allegation that the product was unsafe. And we maintained that the product is safe.

BY MR. PLACITELLA:

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Health?

A. I think this verdict, we were very disappointed. And, if I recall correctly, that's when we had to book financially, the verdict in the books of the company.

Q. Okay. That's the one I was going to ask Mr. Ruh about. Why did you have to book the verdict then?

A. Because it was -- I'm not an expert in accounting, but I don't remember the exact words that need to be true to book it. But it was probable enough, I would say in my own words, to book it in the books.

Q. Okay. So that would have a negative financial effect on the company, correct?

A. That would have a negative impact on the company. Yes.

Q. Okay. And then in 2020, you also learned that the FDA was holding hearings concerning asbestos in talc, correct?

A. Was the FDA? Yes, absolutely. I don't remember the exact date, again, but I remember that the FDA had these hearings.

Q. All right. And then in the spring of 2020, you stopped selling talc-based baby powder in the United States and Canada, true? At least directly?

MS. FOURNIER: Objection to form.

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Q. Let me ask the question again. By that time, multiple juries had spoken and said your product was unsafe, true?

A. I don't know multiple juries. Again, I'm not in the details of the mitigation.

Q. The Ingham jury said your product was unsafe?

A. The Ingham jury. Yes.

Q. The Barden jury, right in your backyard, said the product was unsafe, right?

MS. FOURNIER: Objection to form.

THE WITNESS: That I'm not sure about.

BY MR. PLACITELLA:

Q. Remember, we just went over the document that showed the verdict in Middlesex County?

A. Yeah, you showed it to me. Yes.

Q. So the Barden jury spoke. They were New Jersey residents and from Middlesex County, where your corporate headquarters were, and they spoke and they said your product was unsafe, correct?

MS. FOURNIER: Objection to form.

THE WITNESS: So that's what they said. Yes.

BY MR. PLACITELLA:

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1 **Q. Okay. And we skip ahead for a year to**
2 **June 2021. And that's when the U.S. Supreme Court**
3 **denied your petition for certification, right?**

4 A. Yeah.

5 **Q. All right. And then the next month is when**
6 **you first had discussions about both the -- well, the**
7 **restructuring, right?**

8 MS. FOURNIER: Objection to form.

9 THE WITNESS: And discussion about Project
10 Plato. Yes, if that's what you are referring to.

11
12 BY MR. PLACITELLA:

13 **Q. Correct. And then how long after that did you**
14 **have discussions about the spinoff of JJCI to Kenvue?**

15 A. It was in summer '21 as well.

16 **Q. So after at least multiple juries had spoken,**
17 **your petition was denied to the Supreme Court. At that**
18 **point, in the same summer, you had discussions about**
19 **both the spinning off to Kenvue and the restructuring**
20 **and trying to move the liability to LTL, true?**

21 A. Correct.

22 **Q. For context now, in October of 2021, you**
23 **approved the creation of LTL and the restructuring and**
24 **the filing of the bankruptcy, true?**

25 A. No, not true.

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1 **you announced to the world that you were going to**
2 **spinoff the Consumer Health Division to Kenvue, true?**

3 A. Correct. Totally unrelated, but true.

4 **Q. And that was November 2021, correct?**

5 A. Correct.

6 **Q. And then you testified in court before Judge**
7 **Kaplan in February of 2022, correct?**

8 A. Correct.

9 **Q. And that was on a motion to dismiss?**

10 A. That was a -- I don't remember exactly what I

11 --

12 **Q. Whether the bankruptcy was going to be**
13 **dismissed or not?**

14 A. Yes.

15 **Q. Okay. And in that same month, you sold**
16 **\$8 million of your Johnson & Johnson stock, right?**

17 MS. FOURNIER: Objection.

18 THE WITNESS: I don't remember that detail.

19
20 BY MR. PLACITELLA:

21 **Q. You don't remember selling \$8 million of**
22 **Johnson & Johnson stock right around the time you were**
23 **testifying?**

24 A. I would need to look at the detail of that.

25 **Q. Okay. And at the end of -- in November of**

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1 **Q. Okay?**

2 A. So what I approved, as you have seen in the
3 memo, is a creation of LTL.

4 **Q. Okay?**

5 A. I didn't approve the bankruptcy of LTL.

6 **Q. I misspoke. I apologize?**

7 A. Let's be very clear.

8 **Q. You're 100 percent right. I apologize?**

9 **So you approved, on October 11th, the creation**
10 **of LTL?**

11 A. Correct.

12 **Q. And three days later, it filed for bankruptcy?**

13 A. Correct.

14 **Q. Who made that decision three days after you**
15 **approved it?**

16 MS. FOURNIER: Objection to form.

17 THE WITNESS: I think it was the board of LTL.

18
19 BY MR. PLACITELLA:

20 **Q. When you approved the creation of LTL, did you**
21 **have any idea of the plan that they were going to file**
22 **for bankruptcy three days later?**

23 A. I knew it was a possibility that the board of
24 LTL would make this decision. Yes.

25 **Q. Okay. And then less than 30 days after that,**

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1 **2022, you sold another \$4 million of Johnson & Johnson**
2 **stock, right?**

3 A. Correct.

4 **Q. Okay. And a couple of months later is when**
5 **all the assets got transferred over to Kenvue, right?**

6 A. Well, if the IPO took place in May 2023,
7 correct.

8 **Q. Okay. All right. I want to take a couple of**
9 **minutes because I want to focus myself down and I won't**
10 **be having that much longer. Okay?**

11 THE VIDEOGRAPHER: The time is 2:25 p.m.
12 We're going off the video record.

13
14 (At this time, a short break was taken?)

15
16 THE VIDEOGRAPHER: The time is 2:46 p.m.
17 We're back on the video record.

18
19 BY MR. PLACITELLA:

20 **Q. All right. I'm getting toward the end. So I**
21 **put up your testimony in a federal court from 2/15/2022**
22 **and just going to blow up the part I'm interested in.**
23 **It says: "Over the years, I've seen them, you know,**
24 **pursuing a different number of different avenues trying**
25 **to resolve this case." What did you see? What avenues**

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1 **did you see them trying to resolve the case?**

2 A. I felt that, you know, with the updates along
3 the years, the Law Department pursued multiple avenues
4 to try to solve the case; and not successfully.

5 **Q. What avenues?**

6 A. You talked about the Supreme Court hearing
7 that was denied at the federal level, the appeal to the
8 Missouri Supreme Court, the number of cases that were
9 litigated, so a number of cases.

10 **Q. So when you were saying that, you weren't**
11 **saying that they were trying to settle cases. You were**
12 **saying that there were a number of ways to try to stop**
13 **the litigation.**

14 **Is that fair?**

15 MS. FOURNIER: Objection to form.

16 THE WITNESS: To solve all these cases. Yes,
17 for these cases to be solved.

18
19 BY MR. PLACITELLA:

20 **Q. So I just want to be clear because I was a**
21 **little confused by your testimony. When you say "and**
22 **resolve the case", you meant in favor of J&J? In other**
23 **words, to stop the litigation completely, not to pay**
24 **people, correct?**

25 A. To provide -- yeah, to resolve the case. Yes.

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1 MS. FOURNIER: Objection to form.

2 THE WITNESS: Again, I don't know the detail.
3 I'm not a lawyer, so I don't know what it means, but
4 it's -- I don't know the exact terms of the case to find
5 a resolution for all these cases.

6
7 BY MR. PLACITELLA:

8 **Q. And resolution means settle or get the case**
9 **dismissed? That's what I'm trying to understand?**

10 MS. FOURNIER: Objection.

11 THE WITNESS: Yeah, find a solution for each
12 case.

13
14 BY MR. PLACITELLA:

15 **Q. What do you mean by that?**

16 A. You look at this, litigation has been going on
17 for a very long time. You have I don't know how many
18 cases going on, but many, many cases. In all these
19 years, very few have been -- have had the opportunity to
20 be resolved one way or another.

21 **Q. Okay. This was testimony was on the 15th of**
22 **February, 2022, right?**

23 A. Correct.

24 **Q. And was it the week before that, you sold your**
25 **\$8 million worth of stock?**

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1 **Q. Well, what were you made aware of, of them**
2 **trying to solve or settle the case on a global basis?**
3 **Is that what you're saying?**

4 MS. FOURNIER: Objection to form.

5 THE WITNESS: No, what I'm saying is that this
6 litigation has been going on for a long time and I know
7 the Law Department has pursued different avenues to
8 solve, to get this case resolved.

9
10 BY MR. PLACITELLA:

11 **Q. Meaning to stop the case, not to settle the**
12 **case?**

13 MS. FOURNIER: Objection to form.

14 THE WITNESS: Yeah. For the case to be --

15
16 BY MR. PLACITELLA:

17 **Q. Dismissed?**

18 A. Well, what do you mean by "stopped"?

19 **Q. To have the case dismissed? Be over?**

20 A. For the case to be, yeah, resolved one way or
21 another.

22 **Q. Okay. It's probably me because it's late in**
23 **the day. It wasn't to compensate people for their**
24 **injuries. It was to put an end to the litigation to get**
25 **it out of Johnson & Johnson's hair, right?**

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1 MS. FOURNIER: Objection.

2 THE WITNESS: I told you I would need to look
3 at the details.

4
5 BY MR. PLACITELLA:

6 **Q. Well, do you know that your stock sales are a**
7 **matter of public record, right?**

8 A. Yeah.

9 **Q. So let's assume it was sometime in the week,**
10 **two weeks before that. Then you testified in the**
11 **bankruptcy, correct?**

12 A. Correct.

13 **Q. Okay. And then, did Kenvue then -- well, did**
14 **J&J then file its 10-K two days after you testified in**
15 **the bankruptcy?**

16 A. That I don't know.

17 **Q. So I'm looking at the 10-K for 2022 for, I**
18 **guess, 2021, correct? And there's a section called**
19 **"risks related to plan separation of our consumer**
20 **business." Right?**

21 A. Yes.

22 **Q. And it talks about what the risks would be,**
23 **true?**

24 A. It says that: "The plan separation of the
25 company's Consumer Health business may not be completed

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on the terms or timeline currently contemplated, if at all."

Q. Okay?

A. "And may not achieve the expected results."

Q. Okay. And then in the continuation, you say: "Following the plan separation" -- when I say "you", I mean J&J -- "the price of shares of the company stock may fluctuate significantly." Correct? You say: "The company cannot predict the effect of the plan separation on the trading price and market value of the shares." Correct?

A. Yes.

Q. But you already sold \$8 million of shares before that was released to the public, didn't you?

MS. FOURNIER: Objection to form.

THE WITNESS: Yeah, I don't see the link between the two.

BY MR. PLACITELLA:

Q. Okay. Lastly, I want to go back to the J&J Baby Store. Remember, this is where we were before, and I did the search for talc. Can you see the search is still up there for talc?

A. Uh-huh.

Q. See that? And that was done here in your

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Q. It's on your online store. You know this is happening, right?

MS. FOURNIER: Objection to form.

THE WITNESS: No, I don't.

BY MR. PLACITELLA:

Q. It's in your online store. Let's just go to the back of this one. In your online store, you are selling Johnson's Baby Powder in the United States over the Internet that contains talc, correct?

MS. FOURNIER: Objection to form.

BY MR. PLACITELLA:

Q. That's what it said?

MS. FOURNIER: Objection to form.

THE WITNESS: No, we are not selling Johnson's Baby -- talc-based Johnson's Baby in the United States. And we have not sold it for some time now.

Q. Okay. When people in the United States are in Yonkers, for example, or others, and giving you reviews, that doesn't mean it's being sold in the United States?

A. I think if you look at one of the reviews, it will show.

Q. Sure. Sure. Which one do you want?

A. Go back, go down, scroll down.

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presence. Recall that?

A. That you did the search.

Q. Yeah?

A. Yeah, earlier today.

Q. Okay. Yeah. And if I scroll down, and I get to a thing, Johnson's Baby Powder for delicate skin. See that? Remember, we talked about what the ingredients were?

A. Yes.

Q. Okay. And some of this is cornstarch. We agree on that? Some of these products are cornstarch?

A. Correct.

Q. Okay. And then I go here on the Johnson & Johnson website, the Baby Store. I go to Johnson's Baby Powder. And this says "Johnson's Baby Powder original four pack." See that?

A. I can see that. Yes.

Q. Says I can get it delivered to my house by September 6th. See that?

A. Yes.

Q. Okay?

A. You also see that it's not sold by J&J.

Q. Yeah, but it's in your store, sir?

MS. FOURNIER: Objection to form.

BY MR. PLACITELLA:

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Q. Made in Taiwan?

A. Yeah.

Q. Do not purchase?

A. Keep going. Any legal -- so I'm not sure what you are looking at, but it seems to be a fraudulent.

Q. Well, it's fraudulent. I don't understand how you say it's fraudulent. It's on your website?

MS. FOURNIER: Objection to form.

BY MR. PLACITELLA:

Q. It's on your website. And does it not say here, "4 ounce container of baby powder, pure talc formula, clinically proven to be gentle and mild for your baby's skin"?

A. Yeah. To be very precise, this is something you find on Amazon at the price of \$49.80, which is outrageous when you look at the normal price for regular product. And that is sold by a company I've never heard about.

Q. Yeah. But, sir, it's advertised in the Johnson Baby Store?

A. So you cannot say it's sold by J&J.

Q. But, sir, it's your website, the Johnson's Baby Store, and it's listed on your website?

MS. FOURNIER: Objection. Asked and answered

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multiple times. Mischaracterizing a document, mischaracterizing his testimony. We have been through this. You can try to prove that Amazon is not J&J Baby Store.

MR. PLACITELLA: Excuse me. Excuse me. Excuse me. That is not a form objection. It is a speaking objection.

MS. FOURNIER: But I have gave a form objection enough times.

MR. PLACITELLA: Please, don't do this. Don't do this.

MS. FOURNIER: Objection to form. For the hundredth time, asked and answered.

MR. PLACITELLA: That's also not a permissible objection.

MS. FOURNIER: Objection to form. Asked and answered.

MR. PLACITELLA: That's also not a permissible objection.

MS. FOURNIER: Do it again. Ask your question again.

MR. PLACITELLA: Keep going. All right. Let's --

MS. FOURNIER: You've asked it, like, ten times at this point.

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A. That's something they will probably deal with, but that's -- I would assume they do that.

Q. Okay. When you leave here today -- when you leave here today, what actions are you going to take to make sure that talc-based baby powder are no longer available for sale in the United States of America?

MS. FOURNIER: Objection to form.

THE WITNESS: I think our Law Department will continue to do their job, which is to signal to Amazon that there is a fraudulent sale on their site.

BY MR. PLACITELLA:

Q. I'm asking you, now that you've seen this, what action will you take to make sure that talc-based baby powder is no longer available for sale in the United States?

MS. FOURNIER: Objection.

THE WITNESS: What I will do is, as I told you, to signal to our Law Department that there is a fraudulent activity going on, on the Internet.

BY MR. PLACITELLA:

Q. Okay. Thank you. Those are all the questions I have. Thank you?

MS. FOURNIER: I have some questions. All

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MR. PLACITELLA: Okay. That's a form objection?

MS. FOURNIER: Objection to form.

MR. PLACITELLA: Okay, good. Thank you.

MS. FOURNIER: Move on.

MR. PLACITELLA: Thank you.

BY MR. PLACITELLA:

Q. Sir, did we not find this product on the Johnson & Johnson Baby Store website on the Internet?

MS. FOURNIER: Objection to form.

THE WITNESS: No, we found that on Amazon.com.

BY MR. PLACITELLA:

Q. And have you ever sent a cease and desist order to Amazon telling them not to sell talc-containing baby powder?

A. That I don't know.

Q. Do you know that your lawyer told the federal court that you did that?

A. Well, that's -- I wouldn't be surprised because that's what our Law Department is responsible to do.

Q. And that's something that you wouldn't be told whether -- so how come it's still on the Internet then?

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right.

BY MS. FOURNIER:

Q. Mr. Mongon, does Kenvue have the same shareholders as J&J?

A. No, it doesn't.

Q. Does it have the same management structure as J&J?

A. No, it doesn't.

Q. Do you have a sense of how many people work for Kenvue?

A. About 22,000.

Q. And did those 22,000 people all come from JJCI?

A. No.

Q. Did they all come from J&J?

A. No, they don't.

Q. How many buildings does Kenvue operate around the world, if you know?

A. I don't know.

Q. Do you have a sense whether all those buildings were formerly JJCI buildings?

A. Oh, no, absolutely not. No.

Q. Were they all buildings owned by some J&J entity?

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1 A. It depends. As I said earlier, in some
2 buildings that are occupied by Kenvue today, used to be
3 J&J offices. In other geographies, we moved to a new
4 office. So it depends on the geography.

5 **Q. Are talc-based baby powders the same product**
6 **as cornstarch-based baby powders?**

7 A. No, it's a different formulation.

8 **Q. Are you aware of any allegations that**
9 **cornstarch-based baby powder contains asbestos as a**
10 **contaminant?**

11 A. No.

12 **Q. Has Kenvue ever sold talc-based baby powders**
13 **in the United States and Canada?**

14 A. No.

15 **Q. The other products of J&J Consumer that Kenvue**
16 **took on, has Kenvue continued all of those products?**

17 A. Not all of them. Certain products have been
18 discontinued and new products have been launched since
19 the IPO.

20 **Q. You were asked a question about the day before**
21 **the IPO and the day after the IPO about the business.**
22 **And you gave an answer that operationally, it was the**
23 **same. Do you remember that question and answer?**

24 MR. PLACITELLA: Objection. Leading.

25 THE WITNESS: Yes, this morning. Yes.

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1 **explains what you understand the indemnity to be?**

2 A. I think the S4 that we reviewed today is a
3 good document.

4 MS. FOURNIER: I have paper copies, but do you
5 want to just pull it up since you pulled it up on the
6 screen before?

7 MR. PLACITELLA: The S4?

8 MS. FOURNIER: Yes, the S4.

9 MR. PLACITELLA: What page do you want?

10 MS. FOURNIER: You were looking at page 52
11 with him.

12 MR. PLACITELLA: Hold on. Okay.

13 MS. FOURNIER: All right. So if you can blow
14 up the area that you highlighted and also the sentence
15 below it. That's great.

16
17 BY MS. FOURNIER:

18 **Q. Mr. Mongon, why don't you read into the record**
19 **the sentence or two that's right below the part that**
20 **Mr. Placitella focused on with you?**

21 A. "Although talc-based baby powder was
22 discontinued by Johnson & Johnson in the United States
23 and Canada in 2021 and Kenvue never manufactured or sold
24 it in those markets, Kenvue has been named in claims and
25 lawsuits. And Johnson & Johnson has agreed to indemnify

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1 BY MS. FOURNIER:

2 **Q. Can you just explain what you mean by**
3 **"operationally, it was the same"?**

4 A. Between the two days, between before and
5 after.

6 **Q. Exactly?**

7 A. If you take an external view on the
8 operations, there was no interruption between the day
9 before the IPO and the day after the IPO. So I'm very
10 proud and I'm very proud of the teams who have worked in
11 such a way, there has been no interruption or disruption
12 to the business linked to this separation.

13 **Q. And is that because Kenvue is the same exact**
14 **company as JJCI?**

15 A. As I said this morning, Kenvue is a different
16 company from JJCI or J&J Consumer Health.

17 **Q. And then, just one more question, switching**
18 **gears a little. You were asked some questions this**
19 **morning by Mr. Placitella about the indemnity that is**
20 **provided to Kenvue from J&J. Do you recall that series**
21 **of questions?**

22 A. I do.

23 **Q. Is there a particular public filing or**
24 **document that you believe sort of best captures or**
25

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1 Kenvue in those matters pursuant to the aforementioned
2 indemnity for the talc-related liability."

3 **Q. And is that the section of the S4 that you**
4 **were referring to?**

5 A. I think it explained very clearly what we have
6 told you.

7 MS. FOURNIER: Those are all my questions.

8 MR. PLACITELLA: Okay. A couple of questions.

9
10 BY MR. PLACITELLA:

11 **Q. The S4 swap that you're offering, for lack of**
12 **a better -- or exchange, how does that work in layman's**
13 **terms?**

14 A. Exchange. Johnson & Johnson will give you a
15 number of -- you will get -- you will receive a number
16 of Kenvue shares in exchange for a number of your
17 Johnson & Johnson shares.

18 **Q. Is it a one-for-one exchange?**

19 A. No.

20 **Q. How's it work?**

21 A. It has a ratio. So depending on the stock
22 price of each stock in the market, the average of the
23 stock price in the last three days of the exchange,
24 which is this week, it will determine the ratio that
25 will be offered to J&J shareholders.

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Q. So how would it work? Explain it to a layman. I have 100 shares of Johnson & Johnson. How many Kenvue shares am I going to get?

A. You don't know yet. At the end of the exchange period, you will be communicated the exact ratio depending on the price of the Kenvue share and the J&J share. So if the J&J share is worth \$100 and the Kenvue share is worth \$20, you will be given five shares. And there's also an element of discount that you get as part of this transaction.

Q. So the value is supposed to be roughly equal?

MS. FOURNIER: Objection to form.

THE WITNESS: The value --

BY MR. PLACITELLA:

Q. In other words, the value that you're giving up, the J&J share, and the value for the Kenvue share, the formula is supposed to be that they're roughly equal value?

A. It is approximately the same plus a discount to give you an additional incentive to tender your shares, your J&J shares.

Q. So you'll actually get a little more than an equal exchange?

A. At the date of the exchange. Yes.

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A. No, that's exactly what this exchange offer is about.

Q. To decrease their share? Is there anybody from Johnson & Johnson on the Kenvue board, by the way, now?

A. Yes.

Q. Who?

A. Two. Joe Wolk and Peter Fasolo.

Q. Okay. And how many people on the board in total?

A. Eleven.

Q. Should the S4 -- given what we saw on the Internet, should the S4 be amended to say Kenvue never intentionally sold Johnson's Baby Powder in these markets? Is that the fair way to say it?

MS. FOURNIER: Objection.

THE WITNESS: No, it's not. Kenvue does not sell and has never sold talc-based Johnson's Baby Powder in the U.S.

BY MR. PLACITELLA:

Q. How much talc-based baby powder is still on the shelves in U.S. stores?

MS. FOURNIER: Objection.

THE WITNESS: I don't know. But given the

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Q. Okay. So it sounds like a good deal. How come you're not jumping on it?

MS. FOURNIER: Objection to form.

THE WITNESS: I'm not -- I'm not a financial advisor. And so if you want more details on the transaction, you can ask our banks or J&J. I'm not giving you any advice and I'm not recommending anybody to take any action. So if you look at my conversations with employees or yourself or investors, we never make any recommendations. That's for you to make your own decision. That's a personal decision.

BY MR. PLACITELLA:

Q. Yeah. That's why I'm asking. Like, you're the CEO. You're going to get this good deal. You're running the company, but you're still having trouble making a decision. How come?

MS. FOURNIER: Objection.

THE WITNESS: That's my personal decision as it is a personal decision on every other exchange issued?

BY MR. PLACITELLA:

Q. Okay. Is it still Johnson & Johnson's intent to retain 90 percent of the shares of Kenvue?

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amount of time that has elapsed since we announced it, I believe it's a very small amount. I cannot tell you that there is no, but it's probably insignificant?

BY MR. PLACITELLA:

Q. When you were at J&J, they never issued a recall of all the talc-based baby powder in the United States, correct?

A. No.

Q. They did issue a recall of a lot that the FDA found asbestos in, correct?

A. These are two different things. There was a test that the FDA did a number of years ago and, out of abundance of precaution, while the test, our own internal tests were ongoing, we did recall this particular lot. The discontinuation of the product was not linked to the quality of the product. So there was no recall. They never recalled the product.

Q. My question was simply did you recall the lot of the product that the FDA found asbestos in? Yes or no?

A. We did recall it out of abundance of precaution as we were ongoing our own tests.

Q. Okay. Okay. And Kenvue itself has never issued a recall of the talc-based Johnson's baby product

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1 **that's on the shelves in the stores in the United**
2 **States, correct?**

3 MS. FOURNIER: Objection.

4 THE WITNESS: We have never recalled a product
5 that we have never sold. No, at Kenvue.

6 MR. PLACITELLA: That's all. Thank you.

7 MS. FOURNIER: I don't have additional
8 questions, but I do need to put a few things onto the
9 record before we officially go off.

10 So the first is to repeat what I already said
11 this morning, particularly since we did it again this
12 afternoon, that I'm going to object to the use of this
13 deposition around the questions concerning the website
14 unless or until they are printed out, the exact pages
15 that you were showing and landing on, and they're made
16 part of the record as an exhibit.

17 MR. PLACITELLA: Well, let's do it. You got
18 your tech people here. We'll do it.

19 MS. FOURNIER: I don't have my tech people
20 anywhere because I don't work at this firm.

21 MR. PLACITELLA: Well, no, a guy came in and
22 said, you need anything, we're at their -- counsel,
23 let's just do it when it's over.

24 MS. FOURNIER: We can certainly attempt to do
25 it when it's over.

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1 certainty, Chris, one way or the other, whether or not
2 that they are protected by the protective order or
3 confidentiality order in LTL. There are a couple of
4 documents I suspect were, because they are otherwise
5 privileged and there were certain decisions made in that
6 case. And so for the very same reason, I would say,
7 please, I'm putting you on notice that that protective
8 order holds, the confidentiality order holds, and I
9 would expect those portions of the deposition would not
10 otherwise be used or made public without sorting through
11 those issues.

12 So those are the three things I wanted to put
13 you on notice of.

14 MR. PLACITELLA: So let's do it this way.
15 We'll get the transcript, you'll look at it, you'll tell
16 me what pages and what documents, and then we'll have a
17 conversation.

18 MS. FOURNIER: Yep. Exactly. If we have to
19 go to the Court, we will. I wanted you to be aware.

20 MR. PLACITELLA: If we need to go to the
21 Court, we'll do it. Because I have no intention of
22 violating any order. I actually thought that -- well,
23 doesn't matter.

24 MS. FOURNIER: I don't know about the LTL
25 documents. I do know my position on the stock issue.

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1 MR. GARDE: We can try. It's not my office.

2 MS. FOURNIER: It's not my office or his
3 office or any of our offices, but it needs to be done
4 before you can use the portion of the deposition.

5 MR. PLACITELLA: That's your position.

6 MS. FOURNIER: Number two -- yes, I'm going to
7 take that position with the Court.

8 Number two, I'm going to take the position
9 that I'm going to ask the protective order that's in
10 place, the general protective order in the cases in New
11 Jersey, apply to the portions of the deposition related
12 to his personal stock. You asked questions to him about
13 his personal stock and his sales or decisions not to
14 sell the stock.

15 I understand that his compensation is publicly
16 disclosed, but his personal stock decisions are not.
17 And so unless or until you make a showing on that, I'm
18 going to ask that the protective order provided those
19 portions of the deposition. And you can have a debate
20 and a dispute about that, but I'm putting that on the
21 record so there can be no confusion and you don't
22 proceed in some way with having known that that was the
23 position I was taking.

24 And then the third is, there are particular
25 documents that you showed, and I do not know with

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1 And if we have to have a dispute about that or we have
2 to in the MDL, we will do that.

3 And then the website issues, we can see when
4 we close down the deposition if someone here can assist
5 us. If not, there's obviously a video that we can very
6 easily match up which pages you were pulling up.

7 MR. PLACITELLA: Well, I actually can do
8 screenshots of the pages.

9 MR. GARDE: As I say, this is not any of our
10 offices. So let me go and see if there's somebody here.

11 MR. PLACITELLA: I think I can just do
12 screenshots and send them to the court reporter. We can
13 go through the pages and agree to it and make life easy.

14 MS. FOURNIER: I think that's fine as a
15 starting point in a way to try to do this. And I took
16 enough notes of what was up there and who the sellers
17 were that I think I will recognize the pages that you're
18 pulling up.

19 MR. PLACITELLA: That's fine. What I'm not
20 trying to do is get sideways with you over protected
21 documents.

22 MS. FOURNIER: No, I understand.

23 MR. PLACITELLA: If there are.

24 MS. FOURNIER: That's why I'm making the
25 record.

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1 MR. PLACITELLA: It wasn't my understanding
2 that there were any, but I've been wrong before and I'll
3 be wrong again. So I will tell you, it will not be
4 distributed.

5 MS. FOURNIER: No.

6 MR. PLACITELLA: It'll go to us and you, and
7 you'll look at it, and we'll deal with it.

8 MS. FOURNIER: Right. Great. Thank you.

9 MR. GARDE: That's what counsel proposed.

10 MS. FOURNIER: Yep, perfect.

11 MR. PLACITELLA: No problem.

12 MS. FOURNIER: Thank you.

13 THE VIDEOGRAPHER: The time is 3:16 p.m. This
14 is the end of today's deposition. We're going off the
15 record.

16 (Witness excused.)

17 (Deposition concluded at 3:16 p.m.)
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1 CERTIFICATION

2
3

4 I, Kara Hackett, Professional Court
5 Reporter and Notary Public, do hereby certify that the
6 foregoing is a true and accurate transcript of the
7 stenographic notes taken by me in the aforementioned
8 matter.
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21 DATE: August 14, 2023
22 Kara Hackett
23 Court Reporter
24
25

Exhibit B

Ruh, Paul

Ruh, Paul 2023-08-16

Plaintiff Designations: 00:38:07

JNJ Counters: 00:01:43

Total Time: 00:39:50



8-16-23 - Ruh, Paul

Page/Line	Source	ID
7:05 - 7:23	Ruh, Paul 2023-08-16 (00:00:37)	8-16-23.1
7:05	Q. Good morning.	
7:06	A. Good morning.	
7:07	Q. The correct spelling, pronunciation of your	
7:08	last name is --	
7:09	A. Ruh.	
7:10	Q. Ruh. And where do you currently live?	
7:11	A. I live in Greenwich, Connecticut.	
7:12	Q. All right. And where are you from? Where'd	
7:13	you grow up?	
7:14	A. I was born and raised in Mexico.	
7:15	Q. Okay. You -- as I understand -- I want to	
7:16	talk a little bit about your education?	
7:17	You have a BS in engineering?	
7:18	A. Correct.	
7:19	Q. And an MBA from MIT?	
7:20	A. Correct.	
7:21	Q. Before you started at J&J, you worked for	
7:22	Mackenzie?	
7:23	A. Before J&J, I worked for Pepsi Cola.	
8:20 - 10:08	Ruh, Paul 2023-08-16 (00:02:24)	8-16-23.2
8:20	Q. Okay. And today you are the CFO of Kenvue,	
8:21	correct?	
8:22	A. Correct.	
8:23	Q. And you took that official CFO of Kenvue on in	
8:24	May 2023?	
8:25	A. I think the official date is January 1 of	
9:01	2023.	
9:02	Q. Okay. And what are your responsibilities as	
9:03	the CFO of Kenvue?	
9:04	A. I oversee the financial function of Kenvue,	
9:05	and I make sure that we have accurate financial	
9:06	statements.	
9:07	Q. And in May of '22 you became the CFO designate	
9:08	of Kenvue?	
9:09	A. That is correct.	
9:10	Q. What does the CFO designate do?	
9:11	A. The CFO designate is the CFO who is going to	
9:12	be the official CFO once Kenvue is formalized.	
9:13	Q. And what did you do as the CFO designate for	
9:14	Kenvue?	
9:15	A. There were several aspects of standing up	
9:16	Kenvue, and that included forming a new team, the	
9:17	operational separation, standing up new systems. And it	

8-16-23 - Ruh, Paul

Page/Line	Source	ID
9:18	was basically the work ahead of the separation and	
9:19	getting us ready to do it.	
9:20	Q. Okay. When you were the CFO designate of	
9:21	Kenvue, you did that for about a year?	
9:22	A. For about a year, yes.	
9:23	Q. Who was paying you?	
9:24	A. I don't know exactly what legal entity pays	
9:25	me, but I would say it's overall, Johnson & Johnson.	
10:01	Q. Who's paying you? Is Kenvue paying you today,	
10:02	or is Johnson & Johnson paying?	
10:03	A. Kenvue is paying me.	
10:04	Q. Before you became the CFO designate for	
10:05	Kenvue, you were the CFO for Johnson & Johnson	
	Consumer?	
10:06	A. Yes. For the consumer health sector, yes.	
10:07	Q. And that began around 2017?	
10:08	A. Yes.	
11:05 - 11:09	Ruh, Paul 2023-08-16 (00:00:17)	8-16-23.3
11:05	Q. So you were talking about your work as CFO for	
11:06	J&J Consumer Health.	
11:07	A. Yes. Correct.	
11:08	Q. Okay. Was JJCI under your domain when you had	
11:09	that job as CFO for J&J Consumer Health?	
11:11 - 11:12	Ruh, Paul 2023-08-16 (00:00:05)	8-16-23.4
11:11	THE WITNESS: I don't know. I don't recall	
11:12	the legal entity construct.	
11:15 - 12:06	Ruh, Paul 2023-08-16 (00:00:50)	8-16-23.68
11:15	Q. Do you remember Johnson & Johnson Consumer	
11:16	Inc.? Did you ever have anything to do with them?	
11:17	A. I was responsible for Johnson & Johnson	
11:18	consumer health sector.	
11:19	Q. Did that include the manufacture and sale of	
11:20	Johnson's Baby Powder?	
11:21	A. I'm not sure. It was probably on -- we sold	
11:22	baby powder. Yes. I don't know under what legal entity	
11:23	was produced, no.	
11:24	Q. But when you were the CFO, you were the CFO	
11:25	for whatever entity was selling baby powder.	
12:01	Is that fair?	
12:02	A. Yes.	
12:03	Q. But you don't know whether -- but you don't	
12:04	know as you sit here whether that was Johnson & Johnson	
12:05	Consumer or some --	

8-16-23 - Ruh, Paul

Page/Line	Source	ID
	12:06 A. -- other legal entity. Yes.	
12:15 - 12:19	Ruh, Paul 2023-08-16 (00:00:11)	8-16-23.5
	12:15 Q. Do you have knowledge of the Kenvue spinoff?	
	12:16 A. Yes.	
	12:17 Q. Did -- you signed off on the S One and the S	
	12:18 Four?	
	12:19 A. Yes, I did.	
13:23 - 14:08	Ruh, Paul 2023-08-16 (00:00:29)	8-16-23.6
	13:23 Q. In preparation for today's deposition, did you	
	13:24 review any documents?	
	13:25 A. I reread parts of S1, S4, and S8. Yes.	
	14:01 Q. What's the S8?	
	14:02 A. It's another document that we're filing with	
	14:03 the SEC.	
	14:04 Q. You filed already?	
	14:05 A. That we are in the process of filing.	
	14:06 Q. Okay.	
	14:07 A. I don't know if it's been filed already,	
	14:08 but --	
14:19 - 14:22	Ruh, Paul 2023-08-16 (00:00:14)	8-16-23.7
	14:19 Q. And what was in the S8 that was germane for	
	14:20 this deposition?	
	14:21 A. They're all similar documents. You've seen	
	14:22 the S1, S4. They're similar documents.	
16:01 - 16:06	Ruh, Paul 2023-08-16 (00:00:22)	8-16-23.8
	16:01 Q. Do you have an understanding of what the	
	16:02 purpose of today's deposition is?	
	16:03 A. I do.	
	16:04 Q. And what is that?	
	16:05 A. You have questions about Kenvue's role or	
	16:06 Kenvue's liabilities in the Johnson & Johnson cases.	
16:07 - 16:09	Ruh, Paul 2023-08-16 (00:00:08)	8-16-23.69
	16:07 Q. And who is -- do you know what entity is	
	16:08 paying for your defense at this deposition?	
	16:09 A. No, I don't know.	
16:10 - 16:13	Ruh, Paul 2023-08-16 (00:00:15)	8-16-23.70
	16:10 Q. When you were the CFO of consumer group for	
	16:11 J&J, were you paid by J&J, or some other entity?	
	16:12 A. I actually don't know. I just got my pay	
	16:13 stub.	
16:19 - 17:09	Ruh, Paul 2023-08-16 (00:00:48)	8-16-23.9
	16:19 Q. As a CFO, do you have a role when it comes to	

8-16-23 - Ruh, Paul

Page/Line	Source	ID
	16:20 mergers and acquisitions?	
	16:21 A. I do.	
	16:22 Q. And what is that role?	
	16:23 A. I oversee the financial and strategic logic	
	16:24 and soundness of the proposals.	
	16:25 Q. Do you have to identify and assess potential	
	17:01 risks related to the company you're contemplating	
	17:02 acquiring or merging with?	
	17:03 A. Yes.	
	17:04 Q. Could these risks be operational?	
	17:05 A. Yes.	
	17:06 Q. Reputational?	
	17:07 A. Yes.	
	17:08 Q. Litigation related?	
	17:09 A. Yes.	
17:19 - 17:24	Ruh, Paul 2023-08-16 (00:00:24)	8-16-23.10
	17:19 Q. In developing and implementing strategies, or	
	17:20 in doing that job, do you develop and implement	
	17:21 strategies to mitigate the risks related to the merger	
	17:22 or acquisition?	
	17:23 A. In early stages, it's all about assessing the	
	17:24 risks.	
25:02 - 25:08	Ruh, Paul 2023-08-16 (00:00:23)	8-16-23.11
	25:02 Q. Are there rules of disclosure that you live by	
	25:03 when preparing financial statements for the company that	
	25:04 you're working for?	
	25:05 A. Yes, there are.	
	25:06 Q. What are they?	
	25:07 A. It's based on generally accepted accounting	
	25:08 principles and SEC regulations as well.	
25:15 - 26:08	Ruh, Paul 2023-08-16 (00:01:14)	8-16-23.12
	25:15 Q. Okay. Would you tell them that you always	
	25:16 have to tell the truth?	
	25:17 A. Always.	
	25:18 Q. Okay. And that when you put something out to	
	25:19 the public or to the SEC, that you are in fact,	
	25:20 attesting to the truth that's in there?	
	25:21 A. Absolutely, yes.	
	25:22 Q. Now, have you ever heard of something known as	
	25:23 Project Plato?	
	25:24 A. Yes.	
	25:25 Q. When is the first time you heard of Project	
	26:01 Plato?	

8-16-23 - Ruh, Paul

Page/Line	Source	ID
	26:02 A. I don't know exactly. A couple of years ago, 26:03 two or three years ago. 26:04 Q. And how did you learn of Project Plato? 26:05 A. I was invited to a meeting. 26:06 Q. And who was at that meeting? 26:07 A. There was -- I think it was part of a legal 26:08 team, a current CEO.	
26:16 - 27:09	Ruh, Paul 2023-08-16 (00:01:12)	8-16-23.13
	26:16 Q. I don't want to know about legal advice. What 26:17 business information was discussed at that meeting? 26:18 A. It was related to the formation of a new legal 26:19 entity. And specifically, Plato was about the funding 26:20 of that legal entity. 26:21 Q. Do you know why they called it Plato? 26:22 A. No. 26:23 Q. And what was your -- did you ultimately become 26:24 more deeply involved in that project? 26:25 A. I was more involved in the funding of that 27:01 legal entity. 27:02 Q. When you say funding of that legal entity, 27:03 what do you mean? 27:04 A. The royalty streams that come out of some of 27:05 the brands, of the consumer health brands, that fund 27:06 that legal entity. 27:07 Q. When you say that legal entity, what are you 27:08 talking about? 27:09 A. It's LTL.	
34:16 - 34:19	Ruh, Paul 2023-08-16 (00:00:11)	8-16-23.61
	34:16 Do you remember what was 34:17 discussed at that meeting that was not legal advice? 34:18 A. It may have been other elements of Project 34:19 Plato.	
34:20 - 35:14	Ruh, Paul 2023-08-16 (00:01:26)	8-16-23.14
	34:20 Q. Do you have a specific recollection of what 34:21 elements? 34:22 A. I usually got involved in the funding 34:23 elements, and that's why I was probably invited. 34:24 Q. Okay. What was your role in determining what 34:25 assets should be allocated to LTL? 35:01 A. My role was to determine precisely what 35:02 assets, and what would be the potential royalty 35:03 stream -- of the value of that royalty stream. 35:04 Q. So it was your decision as to what assets	

8-16-23 - Ruh, Paul

Page/Line	Source	ID
	35:05 should be sent to LTL?	
	35:06 A. It was one of the recommendations, yes.	
	35:07 Q. And why did you recommend those specific	
	35:08 assets be transferred to LTL?	
	35:09 A. They're not transferred. It's not an asset	
	35:10 transfer. It's a royalty stream, so they get access to	
	35:11 that royalties. I don't know who actually owns the	
	35:12 stream.	
	35:13 Q. So LTL is not getting any assets then, they're	
	35:14 just getting the rights to money?	
35:16 - 35:16	Ruh, Paul 2023-08-16 (00:00:01)	8-16-23.67
	35:16 THE WITNESS: That's my understanding.	
37:20 - 37:22	Ruh, Paul 2023-08-16 (00:00:13)	8-16-23.15
	37:20 Q. Is it fair to say that other than those	
	37:21 royalty streams that were given to LTL, nothing else	
	37:22 changed as it related to the Consumer Health sector?	
37:24 - 37:25	Ruh, Paul 2023-08-16 (00:00:02)	8-16-23.16
	37:24 THE WITNESS: I'm not aware of any other	
	37:25 changes.	
38:18 - 38:20	Ruh, Paul 2023-08-16 (00:00:09)	8-16-23.17
	38:18 Q. What was your understanding of the purpose of	
	38:19 LTL?	
	38:20 A. To house the talc liabilities.	
39:06 - 39:09	Ruh, Paul 2023-08-16 (00:00:14)	8-16-23.18
	39:06 Q. The granting of royalty rights to LTL	
	39:07 didn't change the operations of the manufacture and sale	
	39:08 of baby powder at all.	
	39:09 Is that fair?	
39:11 - 39:12	Ruh, Paul 2023-08-16 (00:00:04)	8-16-23.19
	39:11 THE WITNESS: They did not change the	
	39:12 manufacturing.	
39:13 - 40:11	Ruh, Paul 2023-08-16 (00:01:29)	8-16-23.71
	39:13	
	39:14 BY MR. PLACITELLA:	
	39:15 Q. I want to show you Exhibit-28. And this is a	Exhibit.1
	39:16 memo dated 10/05/2021, subject 2022, adjusted view, and	Exhibit.1.1
	39:17 it's to Mr. Duato and yourself for Mr. Mongon, correct?	
	39:18 A. Yes.	
	39:19 Q. Are you familiar with this?	
	39:20 A. Yes.	
	39:21 Q. And it talks about Project Plato, correct?	Exhibit.1.2
	39:22 A. Yes.	

8-16-23 - Ruh, Paul

Page/Line	Source	ID
39:23	Q. And it says, Project Plato, no impact for the	
39:24	enterprise. What does that mean?	
39:25	A. It means that in the overall scheme of the	
40:01	combination of all the legal entities, or all the	
40:02	entities that Johnson & Johnson had, it's just a	
40:03	different stream. But it doesn't impact -- there's no	
40:04	outflow outside Johnson & Johnson.	
40:05	Q. I'm sorry. There's no outflow. What do you	Clear
40:06	mean?	
40:07	A. Outflow of revenues. So it's all inter	
40:08	company.	
40:09	Q. It's all inter company?	
40:10	A. Inter different legal entities within Johnson	
40:11	& Johnson. Yes.	
40:21 - 40:25	Ruh, Paul 2023-08-16 (00:00:09)	8-16-23.20
40:21	Q. That's what you mean by no impact on the	
40:22	enterprise?	
40:23	A. Yes. It's just intercompany it's -- instead	
40:24	of going here, it goes here.	
40:25	Q. So somebody's just moving the assets around?	
41:02 - 41:02	Ruh, Paul 2023-08-16 (00:00:01)	8-16-23.21
41:02	THE WITNESS: It's the flow.	
41:05 - 41:06	Ruh, Paul 2023-08-16 (00:00:05)	8-16-23.62
41:05	Q. The flow of the asset. But there is the	
41:06	potential -- I'm sorry?	
41:08 - 41:08	Ruh, Paul 2023-08-16 (00:00:01)	8-16-23.63
41:08	THE WITNESS: Yes.	
43:08 - 43:11	Ruh, Paul 2023-08-16 (00:00:17)	8-16-23.22
43:08	Q. Do you know whether the Johnson Baby Powder	
43:09	assets were transferred from one Johnson & Johnson legal	
43:10	entity to a new Johnson & Johnson legal entity? Had you	
43:11	ever heard that?	
43:13 - 43:20	Ruh, Paul 2023-08-16 (00:00:11)	8-16-23.23
43:13	THE WITNESS: They were transferred, yes.	
43:14		
43:15	BY MR. PLACITELLA:	
43:16	Q. Okay.	
43:17	A. I heard about that.	
43:18	Q. And do you recall that it was something known	
43:19	as Old JJCI and New JJCI? Have you ever heard that	
43:20	before?	
43:22 - 44:05	Ruh, Paul 2023-08-16 (00:00:21)	8-16-23.24

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	43:22 THE WITNESS: I don't know the specifics of	8-16-23.24
	43:23 the old or the new.	
	43:24	
	43:25 BY MR. PLACITELLA:	
	44:01 Q. Do you know that when that transfer took	
	44:02 place, whether anything operationally had changed as it	
	44:03 related to the sale, and marketing, and manufacturing of	
	44:04 Johnson's Baby Powder?	
	44:05 A. Not operationally, no.	
45:02 - 45:05	Ruh, Paul 2023-08-16 (00:00:17)	8-16-23.25
	45:02 Q. All right. Well, let's talk a little bit	
	45:03 about Project Diamond. When is the first time you heard	
	45:04 of Project Diamond?	
	45:05 A. Back in May, in the summer of '21.	
45:06 - 46:05	Ruh, Paul 2023-08-16 (00:01:27)	8-16-23.72
	45:06 Q. And what were the circumstances?	
	45:07 A. It was about the separation of the consumer	
	45:08 segment from Johnson & Johnson.	
	45:09 Q. Was it at a meeting that you learned, a phone	
	45:10 call, a memo? How did you learn?	
	45:11 A. My former manager called me to his office.	
	45:12 Q. And who was that?	
	45:13 A. Joe Walk.	
	45:14 Q. Joe Walk. And what did he say to you?	
	45:15 A. That we were formally starting the process of	
	45:16 the separation of Johnson & Johnson.	
	45:17 Q. And what was the reason expressed to you for	
	45:18 why that was happening?	
	45:19 A. To create two champions in the respective	
	45:20 industries. So Johnson & Johnson in the medical device	
	45:21 and pharmaceutical area, so in healthcare, and Consumer	
	45:22 Health in the consumer segment.	
	45:23 Q. And do you know who made that decision to do	
	45:24 that separation?	
	45:25 A. I understand that the proposal was made by the	
	46:01 leaders of Johnson & Johnson to the board.	
	46:02 Q. And when you say the leaders, what do you mean	
	46:03 by that?	
	46:04 A. It included my boss, current CEO, former CEO	
	46:05 of Johnson & Johnson.	
46:06 - 46:16	Ruh, Paul 2023-08-16 (00:00:47)	8-16-23.64
	46:06 Q. And do you know what the impetus was for that?	
	46:07 A. Yeah. To create two champions in respective	

8-16-23 - Ruh, Paul

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	46:08 areas, and to create focus on respective industries.	
	46:09 Q. Okay. But do you know what caused that	
	46:10 change, like, that change of heart?	
	46:11 A. I understand that that had been thought about	
	46:12 for some time before, so the moment was right. Given	
	46:13 the fact that the skills necessary to succeed in	
	46:14 Consumer Health are becoming more and more	
	specialized,	
	46:15 so much more consumer focused, much more digital in that	
	46:16 regard.	
47:01 - 47:17	Ruh, Paul 2023-08-16 (00:00:50)	8-16-23.26
	47:01 Q. There you go. Did there come a time when you	
	47:02 became deeply involved in that project?	
	47:03 A. Yes.	
	47:04 Q. How long after you had the conversation with	
	47:05 your boss did you become deeply involved in that	
	47:06 project?	
	47:07 A. Immediately.	
	47:08 Q. Immediately. How much of your time was taken	
	47:09 up from that point forward in May of '21, going forward	
	47:10 with Project Diamond?	
	47:11 A. It started probably with half of my time and	
	47:12 increasingly to maybe 80 -- percent of my time.	
	47:13 Q. And you indicated that in connection with	
	47:14 Project Diamond, you had many meetings with Goldman	
	47:15 Sachs.	
	47:16 Do you recall that?	
	47:17 A. Yes.	
49:06 - 49:24	Ruh, Paul 2023-08-16 (00:01:00)	8-16-23.27
	49:06 Q. I want to show	
	49:07 you Exhibit-12, which is an affidavit from our	
	49:08 declaration from John Kim. Do you know who he is?	
	49:09 A. John --	
	49:10 Q. John Kim? He was in the legal department at?	
	49:11 J&J?	
	49:12 A. I don't recall his name.	
	49:13 Q. He states in his affidavit to the court that	
	49:14 in December 2022, New JJCI changed its name to Johnson	
	&	
	49:15 Johnson Holdco NA Inc. See that?	
	49:16 A. Yes.	
	49:17 Q. Are you aware of that?	
	49:18 A. It's the first time I see it.	
	49:19 Q. First time?	

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	49:20 A. Yes.	
	49:21 Q. So you never knew, even though you were the	
	49:22 CFO, that they were changing names of the companies that	
	49:23 you were in charge of?	
	49:24 A. Correct.	
50:02 - 50:07	Ruh, Paul 2023-08-16 (00:00:29)	8-16-23.28
	50:02 Q. Do you know if this change happened in	
	50:03 December 2022, who were you working for at the time?	
	50:04 A. I was part of Johnson & Johnson because Kenvue	
	50:05 did not exist back then as a company.	
	50:06 Q. And JJCI, Johnson & Johnson Consumer, that was	
	50:07 under your purview at the time, correct?	
50:21 - 51:09	Ruh, Paul 2023-08-16 (00:00:45)	8-16-23.29
	50:21 THE WITNESS: I don't know specifically what	
	50:22 legal entities were under my purview. What I know is I	
	50:23 was the CFO of the Consumer Health health segment.	
	50:24	
	50:25 BY MR. PLACITELLA:	
	51:01 Q. That was -- in that segment was the	
	51:02 manufacturing sale of Johnson's Baby Powder. True?	
	51:03 A. I don't know what legal entities produced, but	
	51:04 ultimately we got the credits. The numbers fell under	
	51:05 my area of responsibility.	
	51:06 Q. Right. So when you were doing your financial	
	51:07 statements, the profits or losses related to baby powder	
	51:08 ultimately was charged to you?	
	51:09 A. To the sale of baby powder, yes.	
51:10 - 52:11	Ruh, Paul 2023-08-16 (00:01:20)	8-16-23.73
	51:10 Q. It goes on and indicates -- Mr. Kim goes on,	
	51:11 and his sworn affidavit indicates that in early January	
	51:12 2023 -- now, at that time, in January 2023, were you	
	51:13 working for J&J or Kenvue?	
	51:14 A. I was still working for Johnson & Johnson.	
	51:15 Q. So at that point, you were the CFO designate,	
	51:16 designate for Kenvue?	
	51:17 A. Yes.	
	51:18 Q. All right. It said Holdco and CFO of --	
	51:19 A. The Consumer Health segment of Johnson &	
	51:20 Johnson.	
	51:21 Q. I know you had a lot going on there?	
	51:22 A. Yes.	
	51:23 Q. Okay. In January 2023, it says Holdco	
	51:24 transferred its consumer business assets. That's	

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	51:25 something that you have purview over, right, the	
	52:01 consumer business assets?	
	52:02 A. The consumer business assets, yes.	
	52:03 Q. Right. To its parent entity. Do you know	
	52:04 about that?	
	52:05 A. I don't know how their assets were	
	52:06 transferred, no.	
	52:07 Q. All right. So even though you were the CFO in	
	52:08 charge of the consumer business assets, they never told	
	52:09 you that they were transferring those assets to another	
	52:10 entity, correct?	
	52:11 A. No.	
55:17 - 55:20	Ruh, Paul 2023-08-16 (00:00:20)	8-16-23.30
	55:17 Q. I want to show you what's Exhibit-12 doc 54,	
	55:18 which has been represented to the court as being an	
	55:19 organizational structure for Johnson & Johnson. Do you	
	55:20 see that?	
55:23 - 56:04	Ruh, Paul 2023-08-16 (00:00:22)	8-16-23.31
	55:23 BY MR. PLACITELLA:	
	55:24 Q. Okay. And see where it says Johnson &	
	55:25 Johnson, Janssen. Johnson & Johnson Holdco. See all	
	56:01 that?	
	56:02 A. I do, yes.	
	56:03 Q. Okay. In January of 2023, which of the	
	56:04 entities in these boxes were you working for?	
56:06 - 56:08	Ruh, Paul 2023-08-16 (00:00:07)	8-16-23.32
	56:06 THE WITNESS: For Johnson & Johnson, for sure,	
	56:07 but I don't know specifically for which other	
	56:08 subsidiary, where exactly my payroll came from.	
57:23 - 58:02	Ruh, Paul 2023-08-16 (00:00:18)	8-16-23.33
	57:23 I want to show you the J&J 10-K from 2022.	
	57:24 It's Kenvue-8.	
	57:25 A. Sorry, can you specify? Is it J&J 10-K?	
	58:01 Q. Yes.	
	58:02 A. Okay.	
58:12 - 59:07	Ruh, Paul 2023-08-16 (00:01:08)	8-16-23.34
	58:12 Q. On this page 14 of the 10-K, it talks about	
	58:13 the plan separation of the company's Consumer Health	
	58:14 business. See that?	
	58:15 A. Yes.	
	58:16 Q. It says in November 2021, the company	
	58:17 announced its intention to separate the company's	
	58:18 Consumer Health. You see that?	

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58:19	A. Yes.	
58:20	Q. Were you involved with that announcement?	
58:21	A. I was aware of it, yes. I don't remember.	
58:22	Q. With the intention to create a standalone,	
58:23	publicly traded company which was subsequently named	
58:24	Kenvue Inc. See that?	
58:25	A. Yes.	
59:01	Q. It then says, the plan separation is intended	
59:02	to qualify as a tax free transaction. What does that	
59:03	mean?	
59:04	A. That the shareholders of Johnson & Johnson	
59:05	would not incur in taxes as a result of the separation.	
59:06	Q. And how does that work?	
59:07	A. It's the way the separation was structured.	
59:10 - 59:13	Ruh, Paul 2023-08-16 (00:00:15)	8-16-23.35
59:10	Q. As far as you know, Project Diamond involved	
59:11	from what you were told, involved asset transfer from	
59:12	J&J to Kenvue?	
59:13	A. Yes.	
59:14 - 59:17	Ruh, Paul 2023-08-16 (00:00:14)	8-16-23.74
59:14	Q. Okay. I put up here, as Kenvue for the S1 for	
59:15	Kenvue. And you reviewed that and you signed off on it,	
59:16	correct?	
59:17	A. Correct.	
60:16 - 60:21	Ruh, Paul 2023-08-16 (00:00:33)	8-16-23.36
60:16	Q. Do you know -- so is it fair to say, as you	
60:17	sit here, you have no information about whether or not	
60:18	Janssen was compensated in any way in the spinoff?	
60:19	A. I don't know.	
60:20	Q. Do you know whether J&J was compensated in any	
60:21	way as part of the spinoff?	
60:22 - 60:25	Ruh, Paul 2023-08-16 (00:00:13)	8-16-23.83
60:22	A. Johnson & Johnson is getting	
60:23	cash that Kenvue raised and transferred as a	
60:24	consideration for the transaction. And as of today,	
60:25	they still own close to 90 percent of Kenvue stock.	
61:05 - 61:18	Ruh, Paul 2023-08-16 (00:00:52)	8-16-23.37
61:05	Q. And as of today, J&J still owns 90 percent?	
61:06	A. Correct.	
61:07	Q. But the reason you filed the S4 was part of	
61:08	the stock swap, for lack of a better term, correct?	
61:09	A. Split. Yes. Split.	
61:10	Q. Okay. Let's just talk about the separation	

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	61:11 for a second. So you have the J&J, the parent, right,	
	61:12 up here?	
	61:13 A. Uh-huh.	
	61:14 Q. And what happens in the separation is the	
	61:15 entire Consumer Health business is separated out to	
	61:16 Kenvue, correct?	
	61:17 A. Correct.	
	61:18 Q. Lock stock and barrel?	
61:21 - 62:13	Ruh, Paul 2023-08-16 (00:01:03)	8-16-23.38
	61:21 BY MR. PLACITELLA:	
	61:22 Q. Right?	
	61:23 A. It is separated.	
	61:24 Q. Right. All the employees go, correct?	
	61:25 A. Not all the employees went. Some employees	
	62:01 were actually shared.	
	62:02 Q. Shared, okay. Did all of the manufacturing	
	62:03 assets go, unless they were shared?	
	62:04 A. Yes.	
	62:05 Q. All of the marketing assets follow and go into	
	62:06 Kenvue?	
	62:07 A. Yes.	
	62:08 Q. What was left behind of the consumer health	
	62:09 sector after the separation of Kenvue? And when I say	
	62:10 left behind, I mean in J&J?	
	62:11 A. Everything under the Consumer Health sector	
	62:12 was transferred over. So anything related to the	
	62:13 assets, people, plants okay, the brands. And for that,	
62:14 - 62:14	Ruh, Paul 2023-08-16 (00:00:01)	8-16-23.84
	62:14 we pay the consideration.	
62:15 - 62:16	Ruh, Paul 2023-08-16 (00:00:17)	8-16-23.39
	62:15 Q. So as it related to the manufacture and sale	
	62:16 of Johnson's baby powder, was anything left behind?	
62:18 - 62:18	Ruh, Paul 2023-08-16 (00:00:02)	8-16-23.40
	62:18 THE WITNESS: Not that I'm aware of, no.	
62:21 - 62:21	Ruh, Paul 2023-08-16 (00:00:05)	8-16-23.76
	62:21 Q. Did Kenvue employ -- could Kenvue employ any	
62:22 - 62:23	Ruh, Paul 2023-08-16 (00:00:14)	8-16-23.77
	62:22 of its own consultants as part of the negotiating the	
	62:23 separation?	
62:25 - 63:01	Ruh, Paul 2023-08-16 (00:00:06)	8-16-23.41
	62:25 THE WITNESS: No, they were employed by	
	63:01 Johnson & Johnson.	

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64:24 - 65:02	Ruh, Paul 2023-08-16 (00:00:08)	8-16-23.42
64:24	Q. Okay. So it's the same exact company --	
64:25	A. No.	
65:01	Q. -- operationally as it was from before the	
65:02	separation?	
65:04 - 65:06	Ruh, Paul 2023-08-16 (00:00:02)	8-16-23.43
65:04	THE WITNESS: Right before the separation?	
65:05	Yes.	
65:06		
65:08 - 65:09	Ruh, Paul 2023-08-16 (00:00:09)	8-16-23.78
65:08	Q. Okay. Johnson's brand name was transferred to	
65:09	Kenvue. True?	
65:11 - 65:17	Ruh, Paul 2023-08-16 (00:00:18)	8-16-23.44
65:11	THE WITNESS: I don't believe that the	
65:12	Johnson's brand name was transferred to Kenvue. We	
	have	
65:13	the right to use the Johnson's brand name.	
65:14		
65:15	BY MR. PLACITELLA:	
65:16	Q. Okay. This is your S4?	
65:17	A. Yes.	
65:18 - 65:18	Ruh, Paul 2023-08-16 (00:00:04)	8-16-23.79
65:18	Q. Okay. I'm looking at page 64 of the S4.	
65:22 - 66:16	Ruh, Paul 2023-08-16 (00:01:12)	8-16-23.45
65:22	In connection with the separation, Johnson & Johnson has	
65:23	transferred ownership of the intellectual property	
65:24	rights related to the Johnson's brand to Kenvue.	
65:25	Is that correct?	
66:01	A. Yes.	
66:02	Q. And it says -- it also goes on to say that	
66:03	Kenvue has continued to use Johnson's brand even	
66:04	following the completion of the IPO, correct?	
66:05	A. Correct.	
66:06	Q. It also says, that Johnson has granted to	
66:07	Kenvue the non-exclusive, non-sublicensable,	
66:08	non-assignable, royalty free, fully paid up, worldwide	
66:09	license to use certain intellectual property rights by	
66:10	Johnson & Johnson that can be used in the conduct of its	
66:11	business, including the Johnson & Johnson name and	
66:12	signature, correct?	
66:13	A. Yes.	
66:14	Q. So in other words, you could use the name	
66:15	Johnson & Johnson consistent with your business purpose.	

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	66:16 and you don't have to answer to J&J anymore about that?	
66:18 - 67:03	Ruh, Paul 2023-08-16 (00:00:25)	8-16-23.46
	66:18 THE WITNESS: I don't know if we need to	
	66:19 answer to them anymore, but we can use it.	
	66:20	
	66:21 BY MR. PLACITELLA:	
	66:22 Q. You don't have to pay for it. You don't have	
	66:23 to give them royalty streams, nothing?	
	66:24 A. Correct.	
	66:25 Q. Okay. But before that, it actually says that	
	67:01 the property rights for the Johnson's brand was	
	67:02 transferred to you, correct?	
	67:03 A. Yes.	
67:04 - 67:13	Ruh, Paul 2023-08-16 (00:00:31)	8-16-23.80
	67:04 Q. Under the section of the discussing risks	
	67:05 related to Kenvue's business and industry, it says	
	67:06 Kenvue's brands are critical to his success, correct?	
	67:07 A. Yes.	
	67:08 Q. And that includes the Johnson's brand?	
	67:09 A. Yes.	
	67:10 Q. And damage to Kenvue's reputation or brands	
	67:11 could adversely affect Kenvue's business results of	
	67:12 operations or financial condition. See that?	
	67:13 A. Yes, sir.	
69:25 - 70:08	Ruh, Paul 2023-08-16 (00:00:31)	8-16-23.47
	69:25 Q. Did you start, when you started Kenvue, did	
	70:01 you start an entirely new accounting system?	
	70:02 A. No.	
	70:03 Q. Did you use the same accounting system that	
	70:04 was used for Consumer Health when you were the CFO of	
	70:05 Consumer Health at J&J?	
	70:06 A. Yes.	
	70:07 Q. Did you -- What physically happened? Did you	
	70:08 just move it from one server to another?	
70:10 - 71:04	Ruh, Paul 2023-08-16 (00:01:16)	8-16-23.48
	70:10 THE WITNESS: We created what is called a	
	70:11 clone, so it's copy. And then we start working on our	
	70:12 own financial statement, our financial system. And	
	70:13 Johnson & Johnson has their own. And there are a few	
	70:14 interconnections that are necessary because we're still	
	70:15 part owned by Johnson & Johnson.	
	70:16	
	70:17 BY MR. PLACITELLA:	

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70:18	Q. Okay. Well, I wanted to ask you some	
70:19	questions about that. So you cloned the system?	
70:20	A. Yes. Two different systems.	
70:21	Q. Right. And so Johnson and Johnson -- at the	
70:22	day that you did the spinoff, you and Johnson & Johnson	
70:23	had the same accounting records in your possession	
70:24	related to the Consumer Health division, correct?	
70:25	A. Yes.	
71:01	Q. And from that point forward -- so all of the	
71:02	historical information that was in the Johnson & Johnson	
71:03	accounting system was transferred over to you, as	
71:04	related to the Consumer Health division?	
71:06 - 71:19	Ruh, Paul 2023-08-16 (00:00:43)	8-16-23.81
71:06	THE WITNESS: Yes, related to the Consumer	
71:07	Health Division.	
71:08		
71:09	BY MR. PLACITELLA:	
71:10	Q. All the sales, all the expenses, all the	
71:11	assets, they were all cloned at that point?	
71:12	A. They were transferred. Yes. And cloned. And	
71:13	there are a few elements that cannot be literally	
71:14	transferred because they're allocations.	
71:15	Q. And then you say there are still connections	
71:16	between the systems?	
71:17	A. We have to make entries in the J&J system	
71:18	because we're still owned by, 90 -- percent by Johnson &	
71:19	Johnson.	
74:14 - 75:02	Ruh, Paul 2023-08-16 (00:00:55)	8-16-23.49
74:14	Q. And that closes tomorrow?	
74:15	A. It closes on Friday the 18th.	
74:16	Q. Sorry, Friday. What happens on Friday?	
74:17	A. It gets determined how many shareholders of	
74:18	Johnson & Johnson tendered their shares in exchange for	
74:19	Kenvue shares at a certain ratio.	
74:20	Q. How does Johnson & Johnson become less than a	
74:21	90 -- percent owner as a result of that transaction?	
74:22	A. By giving shareholders, Johnson & Johnson	
74:23	shareholders, their Kenvue shares in exchange for the	
74:24	J&J shares.	
74:25	Q. Well, that's how the investors get interest.	
75:01	But how does Johnson and Johnson's 90 -- percent	
	ownership	
75:02	decrease as a result of that transaction?	
75:04 - 75:10	Ruh, Paul 2023-08-16 (00:00:18)	8-16-23.50
Plaintiff Designations JNJ Counters		

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	75:04 THE WITNESS: Because they have converted J&J	8-16-23.50
	75:05 shares into Kenvue shares at a certain ratio.	
	75:06	
	75:07 BY MR. PLACITELLA:	
	75:08 Q. Okay. And that ratio will be determined as of	
	75:09 Friday?	
	75:10 A. Yes, that is correct. Yes.	
77:11 - 77:20	Ruh, Paul 2023-08-16 (00:00:35)	8-16-23.51
	77:11 Q. So I want to go back to the S4. There is a	2023_8_3.1
	77:12 section on page 179.	2023_8_3.3
	77:13 A. Yes.	
	77:14 Q. That contains a map of the manufacturing	2023_8_3.3.1
	77:15 footprint. See that?	
	77:16 A. Yes.	
	77:17 Q. You're familiar with that. Correct?	
	77:18 A. Uh-huh.	
	77:19 Q. And this shows all the manufacturing areas	
	77:20 throughout the world that Kenvue currently owns?	
77:22 - 78:07	Ruh, Paul 2023-08-16 (00:00:24)	8-16-23.52
	77:22 THE WITNESS: Yes. And the one that J&J owns	
	77:23 as well.	
	77:24	
	77:25 BY MR. PLACITELLA:	
	78:01 Q. The pink ones are the ones that J&J owns?	
	78:02 A. Yes.	
	78:03 Q. And the green ones are the ones that Kenvue	
	78:04 owns, correct?	
	78:05 A. That's correct. Yes.	
	78:06 Q. Okay. And did this same map exist before the	
	78:07 separation, but they would have all been pink?	
78:09 - 79:04	Ruh, Paul 2023-08-16 (00:01:10)	8-16-23.53
	78:09 THE WITNESS: Yes.	
	78:10	
	78:11	
	78:12 BY MR. PLACITELLA:	
	78:13 Q. And the ones that J&J owns, those are	
	78:14 manufacturing facilities that are manufacturing -- you	
	78:15 have an arrangement with them, and they're manufacturing	
	78:16 at least in part, for the benefit of Kenvue, correct?	
	78:17 A. Correct.	
	78:18 Q. And there's a section under it called Kenvue's	
	78:19 Key Manufacturing Sites. You see that?	
	78:20 A. Yes.	

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	78:21 Q. And it lists Lititz, Pennsylvania. And I	
	78:22 highlighted it. See that?	
	78:23 A. Yes.	
	78:24 Q. United States, the strategic focus of Kenvue's	
	78:25 lead facility is to produce skin, health and beauty, and	
	79:01 essential health products, including Listerine,	
	79:02 Lubriderm, Aveeno, Neosporin, Desitin, and Johnson Baby	
	79:03 Products, correct?	
	79:04 A. Yes.	
79:10 - 79:15	Ruh, Paul 2023-08-16 (00:00:09)	8-16-23.54
	79:10 Q. But at least here it says Johnson's Baby	
	79:11 Products in Pennsylvania, right?	
	79:12 A. That is correct.	
	79:13 Q. And that existed before and after the	
	79:14 separation?	
	79:15 A. Yes.	Clear
90:09 - 90:12	Ruh, Paul 2023-08-16 (00:00:11)	8-16-23.55
	90:09 I want to go to Kenvue-9	bit.1
	90:10 is the S1 statement.	
	90:11 You're familiar with this, correct?	
	90:12 A. Yes.	
91:10 - 91:10	Ruh, Paul 2023-08-16 (00:00:02)	8-16-23.56
	91:10 Q. On page 41 on the bottom it says, we presently	bit.14
91:11 - 91:15	Ruh, Paul 2023-08-16 (00:00:16)	8-16-23.82
	91:11 sell talc-based Johnson's Baby Powder in certain other	bit.14.1
	91:12 markets around the world. See that?	
	91:13 A. Yes.	
	91:14 Q. That's accurate?	
	91:15 A. Correct. That is accurate.	Clear
91:16 - 92:01	Ruh, Paul 2023-08-16 (00:00:31)	8-16-23.59
	91:16 Q. Given this, we may be subject to additional	
	91:17 claims related to the sale of talc-based Johnson Baby	
	91:18 Powder in markets where we presently sell the product,	
	91:19 correct?	
	91:20 A. Yes.	
	91:21 Q. All right. And then it says, as well as	
	91:22 additional claims to the sale of talc-based Johnson Baby	
	91:23 Powders in markets where we have discontinued this	
	91:24 product, such as the United States and Canada. You see	
	91:25 that?	
	92:01 A. Yes.	
93:24 - 94:06	Ruh, Paul 2023-08-16 (00:00:31)	8-16-23.60

8-16-23 - Ruh, Paul

Page/Line	Source	ID
	93:24 Q. And why do you use the word 'we'?	8-16-23.60
	93:25 A. It's short form for Kenvue.	
	94:01 Q. Okay. So if I would replace it, I would say,	
	94:02 as well as additional claims related to the sale of	
	94:03 talc-based Johnson Baby Powder and markets where	
	Kenvue	
	94:04 have discontinued this product, such as The United	
	94:05 States and Canada, correct?	
	94:06 A. Yes.	
128:05 - 128:15	Ruh, Paul 2023-08-16 (00:00:48)	8-16-23.57
	128:05 Q. Okay. During the course of the deposition	
	128:06 today -- before I get to that, you indicated I believe	
	128:07 that the purpose of LTL was to handle the talc	
	128:08 liabilities for The United States.	
	128:09 Is that fair?	
	128:10 A. I believe the word I used was that's where	
	128:11 they are housed.	
	128:12 Q. Housed?	
	128:13 A. Yes.	
	128:14 Q. And LTL is a separate company from Johnson &	
	128:15 Johnson, correct?	
128:17 - 128:18	Ruh, Paul 2023-08-16 (00:00:06)	8-16-23.58
	128:17 THE WITNESS: LTL is under Johnson & Johnson,	
	128:18 is under overall Johnson & Johnson.	
140:13 - 140:23	Ruh, Paul 2023-08-16 (00:00:28)	8-16-23.65
	140:13 Q. Right before lunch, you were asked a series of	
	140:14 questions about the separation. You've been asked them	
	140:15 all day, but there was a series of questions about	
	140:16 separation and specifically the transfer of the assets,	
	140:17 people, clients, marketing.	
	140:18 Do you remember that series of questions?	
	140:19 A. Yes.	
	140:20 Q. And I have a question for you about the	
	140:21 liabilities. Were the liabilities for talc-based baby	
	140:22 powder transferred from J&J to Kenvue?	
	140:23 A. No.	
142:22 - 143:01	Ruh, Paul 2023-08-16 (00:00:11)	8-16-23.66
	142:22 Q. Let me ask you this question. Did Kenvue the	
	142:23 Company exist in 2020?	
	142:24 A. No.	
	142:25 Q. Did Kenvue the Company exist in 2021?	
	143:01 A. No.	

Plaintiff Designations: 00:38:07

JNJ Counters: 00:01:43

Total Time: 00:39:50

Documents linked to video:

2023_8_3

bit

Exhibit

Exhibit C

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

JOINT STIPULATION

NOW INTO COURT, through undersigned counsel, come Plaintiffs Michael L. Perry and Lonnie L. Long and come Defendants Johnson & Johnson (“J&J”); LLT Management LLC (“LLT”); Kenvue, Inc. (“Kenvue”); and Johnson & Johnson Holdco (“Holdco”) (collectively, “J&J Defendants”) who respectfully submit the following joint stipulation regarding LLT Management LLC’s Corporate Structure:

1. Johnson & Johnson started manufacturing, marketing, and selling Johnson’s® Baby Powder in 1894, and Shower to Shower® cosmetic talc products in the mid-1960s, and continued to do so until Johnson & Johnson Consumer Inc. (“JJCI”) took over manufacturing, marketing, and selling Johnson’s® Baby Powder.
2. From 1979 until 2020, subsidiaries of Johnson & Johnson, including JJCI, manufactured and marketed Johnson’s® Baby Powder in the United States.
3. From 1978 until 2012, subsidiaries of Johnson & Johnson, including predecessors of JJCI, manufactured, marketed, and sold Shower to Shower® cosmetic talc products.

4. On October 12, 2021, as a result of a series of intercompany transactions, the company called JJCI that had manufactured, marketed, and sold Johnson's® Baby Powder ceased to exist, and LTL Management LLC, was created.

5. On December 29, 2023, LTL Management LLC changed its name to LLT Management LLC.

6. While J&J Defendants deny any liability in this action, to the extent any J&J Defendant is found liable, LLT Management LLC is the entity that will accept such liability, regardless of whether it was the entity that manufactured, marketed or sold the product(s) at issue, and without waiver of J&J Defendants' position that each Johnson & Johnson subsidiary and affiliate is a separate and distinct entity.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Blake T. Williams

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Attorneys for Defendants Johnson & Johnson, Inc.; LLT Management, LLC, formerly known as LTL Management, LLC; Kenvue, Inc.; and Johnson & Johnson Holdco (NA), Inc.

Columbia, South Carolina

August 6, 2024

Exhibit D

1 STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND : FOR THE FIFTH JUDICIAL CIRCUIT
3 MICHAEL L. PERRY and :
4 LONNIE L. LONG, :
5 Plaintiffs, : C/A No.
6 v. : 2023-CP-40-04072
7 AMERICAN INTERNATIONAL :
8 INDUSTRIES, et al., :
9 Defendants. :

10

11 Video-Recorded Deposition of

12 MICHAEL L. PERRY

13 VOLUME I

14

15 Hampton Inn by Hilton Charleston Historic District

16 345 Meeting Street, Charleston, South Carolina

17 and

18 Via Zoom Videoconferencing

19

20 Tuesday, October 10, 2023

21 10:06 a.m.

22

23 Reported by:

24 Adam D. Miller, Registered Professional Reporter

25

1 Q Were you ever around other family
2 members when you were growing up that also used
3 talc on their bodies?

4 A Absolutely.

5 Q Who?

6 A My mother and my father.

7 Q Would you ever be in physical close
8 proximity to either your mother or your father
9 growing up when they would apply talc powder to
10 their body?

11 A Always with my mother, absolutely.

12 Q Were you also about five when
13 you first remember being around your mom when
14 she would apply talc powder?

15 A Absolutely.

16 Q When is the last time -- big-picture
17 question. When is the last time in terms of a
18 year you remember putting any kind of talc
19 powder anywhere on your body?

20 A It would have been 2019.

21 Q Why do you remember it in 2019?

22 A 2019, Lonnie and I sold the farm, and
23 we had our forever retirement home built. So
24 our needing to go outside in the elements, take
25 care of the horses, the cows, all that stuff was

1 **A** Regarding to...?

2 **Q** Any company, type of product, any
3 specifics of things that you saw about asbestos.
4 Terrible question.

5 ATTORNEY GROSS: It wasn't so bad.
6 But can you answer it?

7 THE WITNESS: I will answer, and I
8 hope answer it satisfactory to you.

9 I recall the commercials about
10 Johnson & Johnson Baby Powder and Shower
11 to Shower and the ovarian cancer for
12 women. And that was my first recollection
13 about talc and not being too alarmed with
14 my own situation because it was designated
15 in and advertised just for women with
16 ovarian cancer.

17 BY ATTORNEY WILLIAMS:

18 **Q** And did you do any of your own
19 searches about talcum powder lawsuits?

20 **A** The only thing that I, once again,
21 will, will -- that I can speak on is when I saw
22 that there was a bankruptcy for Johnson &
23 Johnson. And that was all I saw.

24 **Q** Have you had any testing done on any
25 containers of baby powder or talcum powder that

1 **Q** As you testified yesterday, would
2 that have been potentially multiple times a day?

3 **A** Yes, sir.

4 **Q** And how long would it usually take
5 him to apply talc products, his routine?

6 **A** Lonnie and I would apply the talc
7 powder together. So it was more of me putting
8 it in my hand and I would powder him down.

9 So it would probably be very similar
10 to the same time structure as what it was for
11 me.

12 **Q** And again, are we talking a minute or
13 two? five minutes?

14 **A** No --

15 ATTORNEY GROSS: Object to form.

16 THE WITNESS: -- a minute or two or
17 less.

18 BY ATTORNEY WILLIAMS:

19 **Q** When did you last use Johnson's Baby
20 Powder?

21 **A** 2019.

22 **Q** And why did you stop using it?

23 **A** We had sold the farm and had made the
24 process of moving into the forever home.

25 **Q** You just didn't need it anymore,

1 C E R T I F I C A T I O N

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21

/s/ Adam D. Miller
Registered Professional Reporter
and Notary Public

23

24

25

Exhibit E

Epiq Corporate Restructuring, LLC
PO Box 4470
Beaverton, OR 97076
Address Service Requested

Legal Documents Enclosed -
Please direct to the attention
of the Addressee,
Legal Department or President

3,500



LLC 341NTC 11/23/2021 (CREDITOR,CREDNUM)
*****1000038319***** BAR(23) MAIL ID *** 000202248791 ***

SHOOK, HARDY & BACON LLP
JENNIFER MCLOONE
VANESSA OFFUTT
201 S. BISCAYNE BLVD. SUITE 3200
MIAMI FL 33131

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ELECTRONICALLY FILED - 2024 Aug 06 10:40 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re

LTL MANAGEMENT LLC,

Debtor.

Chapter 11

Case No. 21-30589 (MBK)

**NOTICE OF COMMENCEMENT OF
CHAPTER 11 CASE AND MEETING OF CREDITORS**

Commencement of Chapter 11 Case. On October 14, 2021, LTL Management LLC, a North Carolina limited liability company (the “Debtor”),¹ 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, Charlotte Division (the “North Carolina Court”). On November 16, 2021, an Order was entered by the North Carolina Court transferring this case to the District of New Jersey, which case was subsequently referred to the United States Bankruptcy Court for the District of New Jersey (the “Court”). The last four digits of the Debtor’s federal tax identification number are 6622. The Debtor’s address is 501 George Street, New Brunswick, New Jersey 08933.

Chapter 11 of the Bankruptcy Code allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed (i.e., approved) by the Court. Eventually, when such a plan is proposed, you may be sent a copy of the plan and a related disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing to consider approval of the plan, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the Debtor will remain in possession of its property and may continue to operate any business and manage any properties.

Attorneys for the Debtor. The attorneys representing the Debtor are: (a) Gregory M. Gordon, Dan B. Prieto and Amanda Rush, Jones Day, 2727 North Harwood Street, Dallas, Texas 75201, Telephone: (214) 220-3939, Facsimile: (214) 969-5100; (b) Brad B. Erens, Jones Day, 77 West Wacker, Chicago, Illinois 60601, Telephone: (312) 782-3939, Facsimile: (312) 782-8585 and (c) Paul R. DeFilippo, Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110, Telephone: (212) 382-3300, Facsimile: (212) 382-0050.

Meeting of Creditors. Pursuant to section 341 of the Bankruptcy Code, the United States Trustee for the District of New Jersey (the “U.S. Trustee”) has scheduled a meeting of creditors to be held on **December 15, 2021, at 10:00 a.m., prevailing Eastern Time.** In response to the COVID-19 pandemic, the meeting will be held via zoom at the following link:

¹ The Debtor was formerly named Chenango One LLC, a Texas limited liability company.



<https://us02web.zoom.us/j/87894228000?pwd=K25QUFdTL0tUMmFZL2lVTUJnSG5pUT09.>

Please utilize the following meeting ID and passcode for the meeting:

Meeting ID: 878 9422 8000

Passcode: 625446

Parties may also attend the meeting telephonically by using the following dial-in information:

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Epiq Corporate Restructuring, LLC (the “Agent”) shall post a banner on the Agent’s website at <https://dm.epiq11.com/LTL> that provides the zoom and telephonic information concerning the 341(a) meeting. The Debtor’s representatives must be present at the meeting to be examined under oath by the U.S. Trustee and by creditors. Creditors are welcome to attend the meeting, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the Court.

Creditors Generally May Not Take Certain Actions. In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the Debtor and the Debtor’s property. This means that creditors generally may not take action to collect debts from the Debtor or the Debtor’s property. Actions against other parties may be subject to the automatic stay to the extent such actions effectively are actions against the Debtor or its property or seek to pursue causes of action owned by the bankruptcy estate. Under certain circumstances, the Debtor may request that the Court extend or impose a stay with respect to additional entities. On November 15, 2021, the North Carolina Court entered an Order Granting the Debtor’s Request for Preliminary Injunctive Relief (the “Injunction Order”), which extends or applies the automatic stay to certain non-debtor affiliates and other parties for sixty (60) days after the entry of the Injunction Order [Adv. Pro. Case No. 21-03032]. Prohibited actions are listed in section 362(a) of the Bankruptcy Code and common examples include: (a) contacting the Debtor by telephone, mail or otherwise to demand payment of a pre-bankruptcy obligation; (b) taking actions to collect money or obtain property from the Debtor; (c) starting or continuing lawsuits against the Debtor; and (d) repossessing or foreclosing upon the Debtor’s property. See 11 U.S.C. § 362(a). If unauthorized actions are taken by a creditor against the Debtor or its property or against any party covered by the automatic stay, the Court may penalize that creditor. A creditor who is considering taking action against the Debtor or its property should review, among other things, section 362(a) of the Bankruptcy Code and any applicable orders of the Court and seek legal advice.

Claims. A Proof of Claim is a signed statement describing a creditor’s claim. A Proof of Claim form is not included with this Notice, but you can obtain one at any United States Bankruptcy Court Clerk of Court’s office or online at www.njb.uscourts.gov. You may look at the Debtor’s schedules of assets and liabilities that have been, or will be, filed (a) at the Clerk of Court’s office, (b) by accessing the website maintained by the Debtor’s claims and noticing agent at

<https://dm.epiq11.com/LTL> free of charge or (c) by accessing PACER on the Court's website at <https://www.njb.uscourts.gov> for a nominal fee. If your claim is scheduled and is not listed as disputed, contingent or unliquidated, it will be allowed in the amount scheduled unless you have filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent or unliquidated, then you must file a Proof of Claim if a bar date is set or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim may submit the creditor to the jurisdiction of the Court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Do not include this notice with any filing you make with the Court.**

Notice of Bar Dates for Proofs of Claim. D.N.J. LBR 3003-1(a)(1) provides that the deadline to file Proofs of Claim is seventy (70) days from the petition date. The Debtor intends to seek relief from this local rule, including seeking to modify the deadline for filing Proofs of Claim. As such, no bar date has yet been established for the filing of Proofs of Claim. If and when a bar date is established, a separate notice of the bar date (the "Bar Date Notice") will be provided. Any such Bar Date Notice will contain information regarding the bar dates, a Proof of Claim form and instructions for completing and filing a Proof of Claim form.

Filing Deadline for a Creditor with a Foreign Address. A deadline for filing claims may be set in a later Court order as set forth above, and, if so, will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the Court to extend the deadline. There is no assurance that such a motion would be granted. Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Case Management and Administrative Procedures. On November 4, 2021, the North Carolina Court entered an Order Establishing Certain Notice, Case Management and Administrative Procedures [Dkt. 322] (the "Case Management Order"). All parties who desire to participate in this case must follow the procedures set forth therein. The Case Management Order provides, among other things, that, except as set forth in the procedures approved by the Case Management Order, notice of proceedings in this chapter 11 case need only be sent via electronic mail to the parties on the established service list. Any party in interest that desires to receive electronic mail notice in this chapter 11 case and, consequently, be added to the service list, must file with the Court a notice of appearance and request for service and shall serve such request on: (a) Gregory M. Gordon, Dan B. Prieto and Amanda Rush, Jones Day, 2727 North Harwood Street, Dallas, Texas 75201, Telephone: (214) 220-3939, Facsimile: (214) 969-5100; (b) Brad B. Erens, Jones Day, 77 West Wacker, Chicago, Illinois 60601, Telephone: (312) 782-3939, Facsimile: (312) 782-8585; and (c) Paul R. DeFilippo, Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110, Telephone: (212) 382-3300, Facsimile: (212) 382-0050. All creditors will receive notice of certain proceedings, including, but not limited to: (a) any bar dates (unless applicable to a limited population of creditors); (b) the time fixed for filing objections to, and any hearing to consider, a disclosure statement and/or confirmation of a chapter 11 plan; and (c) dismissal or conversion of the chapter 11 case to another chapter of the



Bankruptcy Code. A copy of the procedures approved by the Case Management Order is available from the sources described below.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts. Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that you may never try to collect the debt from the Debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under section 1141(d)(6)(A) of the Bankruptcy Code, you must start a lawsuit by filing a complaint in the Court by **January 31, 2022**. The Clerk of Court's Office must receive the complaint and any required filing fee by such deadline.

How to Obtain Documents. Electronic copies of all pleadings or other documents filed in this case may be obtained for \$0.10 per page or up to \$3.00 per document for most documents via PACER on the Court's web site at <http://ecf.njb.uscourts.gov>. Paper copies of all pleadings or other documents filed in this case may be obtained by sending a written request to the Agent, at LTLInfo@epiqglobal.com, P.O. Box 4419, Beaverton, Oregon 97076-4419 (Attn: LTL Case Team), or by contacting the Agent by telephone at (855) 675-3078. Additionally, free electronic copies of certain pleadings or other documents filed in this case will be posted on the Agent's website at <https://dm.epiq11.com/LTL> as soon as possible after filing.

Court Filings. This case has been assigned to the electronic case filing system. Any paper that you file in this bankruptcy case should be filed through the Court's electronic case filing (ECF) system, which may be accessed at <https://www.njb.uscourts.gov> or <http://ecf.njb.uscourts.gov>. Alternatively, papers may be filed at the Clerk of Court's office at the U.S. Bankruptcy Court, District of New Jersey, Office of the Clerk of Court, Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608. Filings in this case may be accessed via the Court's web site at <http://www.njb.uscourts.gov> or <http://ecf.njb.uscourts.gov>.

Legal Advice. Neither the Debtor's counsel, the Agent nor the staff of the Clerk of Court's Office can give you legal advice. You may wish to consult an attorney to protect your rights.

Dated: November 22, 2021

Clerk of the United States Bankruptcy Court

For the District of New Jersey

Clarkson S. Fisher U.S. Courthouse

402 East State Street

Trenton, New Jersey 08608

Exhibit F

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,	)	
	)	Case No.
vs.	)	2023-CP-40-04072
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, ET AL.,	)	
	)	
Defendants.	)	

TRIAL BEFORE: THE HONORABLE JEAN H. TOAL
DAY 1

DATE TAKEN: Monday, August 5, 2024

TIME BEGAN: 9:00 a.m.

TIME ENDED: 5:39 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Courtroom 3B
Columbia, South Carolina

REPORTED BY: Cynthia First, RPR, CRR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 and get on with this trial. Let me say a few
2 more things so that we can get focused here.

3 I am concerned about two things in terms
4 of what I tell the jury this morning as we
5 begin. There's only one defendant left that
6 does not have default issues, and that is
7 Johnson & Johnson. I want to be clear about
8 what I am to tell the jury. I am not going to
9 place upon the jury the burden of
10 distinguishing between all these versions of
11 Johnson & Johnson to arrive at their verdict.
12 If there's any necessity for distinction, I
13 view it as something that I would make a
14 decision about and not the jury.

15 I, at this moment, without a whole lot of
16 argument about this, view this as an
17 amalgamation situation, and that's how I'm
18 thinking. But I'm open to hearing some further
19 discussion about that.

20 But the various iterations of
21 Johnson & Johnson, since the last time I tried
22 a J&J case, are all wrapped around the axle of
23 this issue about trying to contain liability
24 within newly created corporations for old
25 asbestos cases and mesothelioma cases that have

1 such a long latency period, in my humble
2 opinion.

3 And therefore, I am not going to try to
4 navigate things that have already been
5 navigated by most of the courts that have
6 looked at this and decided that these attempts
7 to isolate responsibility within certain
8 entities and attempts to declare bankruptcy of
9 certain other entities is no longer a bar to
10 trying these cases.

11 And that's all I really need to know about
12 it. I don't need to know the intricacies of
13 Texas two-steps or anything else. To me, this
14 is an amalgamation situation, and I don't think
15 the jury needs to spend a moment about that.
16 So that's one thing.

17 The second thing -- where is Ms. Flynn?
18 Ms. Flynn, I received all your information and
19 particularly about the issues involving the
20 size of the company and the inability to
21 communicate with your clients this weekend
22 because of religious observances, and I respect
23 that.

24 At the same time, I think we disagree
25 profoundly about what default means. Default

1 started. And besides successor liability, when
2 I've got the time after the first day, to deal
3 with this.

4 MS. MCVEY: You don't have to decide
5 successor liability, and I don't want you to
6 make a decision until after the trial is over.
7 You don't have to.

8 THE COURT: Yes, but the reason that
9 Kenvue and the one before it, the two-step
10 outfit, are in this case is because of all the
11 activity they engaged in to try to avoid
12 liability.

13 Now, I agree with you that there are two
14 aspects to that. One is simply that they are
15 successor to Johnson & Johnson. It has nothing
16 to do with their badness and their fraud. And
17 that's what I think you're backing up to,
18 saying I want to be able to mention that one
19 that was created in 1979, and then the two-step
20 one, as I call them, and then Kenvue, simply to
21 say that this is a successive -- as we contend,
22 this is a successive group who bear
23 responsibility for the damages.

24 And I might be willing to let you do that,
25 but I don't want to get into the badness, the

CERTIFICATE OF REPORTER

I, Cynthia First, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify: That the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that it is a correct transcript of the same.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 5th day of August 2024, at Chapin, Lexington County, South Carolina.

Cynthia First,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
October 16, 2028

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2023-CP-40-04072
	)	
MICHAEL L. PERRY AND LONNIE L. LONG,	)	<i>In Re: Asbestos Personal Injury Litigation</i>
	)	Coordinated Docket
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>J&J DEFENDANTS' OBJECTION TO</u>
	)	<u>SANCTIONS ORDER</u>
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, ET AL.,	)	
	)	
Defendants.	)	
	)	

The J&J Defendants object to the proposed order submitted by Plaintiffs as not reflecting the Court's order. Specifically, the Court made no order requiring the J&J Defendants to produce a witness to appear for trial and holding open Plaintiff's case in chief until such witness testifies. Not only was this not ordered, but such a ruling would flip the adversarial process on its head by allowing Plaintiff to continue its case after Defendants rest. This would irreparably damage Johnson & Johnson and fly in the face of centuries of due process protections. Plaintiffs proposed order also contains factual findings and other rulings that were not included at the hearing and are unnecessary to the order compelling depositions.

The J&J Defendants are submitting an order that reflects the Court's ruling.

The J&J Defendants also generally oppose Plaintiffs' proposed sanctions Order requiring yet further deposition testimony for Kenvue, Inc. and Johnson & Johnson Holdco (NA) Inc. over the weekend. Kenvue was very publicly spun out as a separate, publicly traded company, and proper responses were given in the deposition in this regard as why it was spun out as a separate

company.¹ Rule 1 of the South Carolina Rules of Civil procedure requires that its rules be construed to “secure a just, speedy, and inexpensive determination of every action.” Rule 26 of the same rules requires limitations on discovery that is “cumulative, duplicative, obtainable from a more convenient source, less expensive, less burdensome.” The Court may and should stop such discovery when it can reasonably do so.

Here, Plaintiffs have taken several days of various 30(b)6 depositions seeking information. The depositions were first noticed on February 29, 2024. On March 8, 2024, objections were made, and there was then a time in which efforts were made to work out the issues involved. Plaintiffs did not move to compel the depositions until June 17, 2024. On July 2, 2024, the Court granted the motions to compel. Plaintiffs have products liability and fraud claims having to do with Mr. Perry’s purchase and use of the talcum products involved. Plaintiffs seek, through the additional sanction deposition, further information regarding bankruptcy and corporate organization issues that post-date Plaintiffs’ use of talcum powder products. Plaintiffs lack standing to engage in discovery regarding these irrelevant matters, but even if they had standing, the extent of discovery ordered and the burden imposed on the J&J Defendants is unwarranted and inconsistent with the South Carolina Rules of Civil Procedure. Further, there is an insufficient showing by Plaintiffs that any sanction is warranted. Finally, the discovery order requiring further deposition testimony during trial on the weekend is prejudicial to the J&J Defendants’ trial preparation and trial presentation efforts and that prejudice, in addition to the other burdens, outweighs any alleged need for yet more hours of depositions of Kenvue. If Plaintiffs have certain unanswered questions they could simply tell counsel what they are as soon as possible and the J&J

¹ The J&J Defendants fully incorporate “Defendants Kenvue and Johnson & Johnson Holdco (NA) Inc.’s Opposition to Plaintiff’s Motion to Compel and Motion for Sanctions” herein.

Defendants' counsel will endeavor to answer those questions subject to objections and reservation of rights.

Respectfully submitted,

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Columbia, South Carolina

August 8, 2024