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SC Court of Appeals

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.

1 A. More or less, yes.

2 MS. BUENO: Thank you.

3 And thank you for giving me a few
4 extra minutes.

5 THE COURT: All right.

6 MS. BUENO: Dr. Madigan, thank you for
7 your time. I regret we don't have more of
8 it together.

9 THE WITNESS: Thank you, Ms. Bueno.

10 THE COURT: Ms. Gross, redirect.

11 MS. GROSS: Thank you. Give me one
12 more second.

13 * * *

14 REDIRECT EXAMINATION

15 BY MS. GROSS:

16 Q. Can you still hear me? Can you still
17 hear me, Dr. Madigan?

18 THE COURT: Put it in the box.

19 BY MS. GROSS:

20 Q. All right. Dr. Madigan, can you hear
21 me now?

22 A. Yes. Can you hear me?

23 Q. Yes, I can.

24 So the lawyer for Johnson & Johnson
25 was asking you all these questions about you

1 didn't do a dose, you didn't do a calculation, you
2 didn't do all this stuff.

3 Do you remember those questions?

4 A. Sure.

5 Q. And do you remember that you answered
6 her and you said, "I actually just did a
7 calculation for someone who applied powder twice a
8 day for 30 years"?

9 A. Right.

10 Q. Could you tell us a little bit about
11 that?

12 A. Sure. I mean, it's -- it's just
13 arithmetic.

14 So in the Gardner Paper, there's an
15 estimate of the fibers per cc of asbestos that a
16 person was exposed to by using talc for one
17 minute. And it's 1.9 fibers per cc.

18 So, just arithmetic, you can then take
19 that one minute and say, "Well, if only that one
20 minute was repeated twice a day for 30 years, what
21 exposure would that result in?"

22 And the answer in that case
23 is .35 fiber years. That's what I testified to
24 earlier.

25 Q. You were also asked some questions

1 about the graphs that we looked at earlier, the
2 charts about the male versus female rates, about
3 asbestos consumption.

4 And the lawyer from Johnson & Johnson
5 said, "Well, isn't the data about women
6 irrelevant?"

7 And you said, "Well, I don't think
8 so," right?

9 A. Yes.

10 Q. If asbestos-containing talc gives
11 women mesothelioma, what does it do to men?

12 MS. BUENO: Objection, Your Honor.

13 He's not a medical --

14 THE COURT: Overruled. You opened the
15 door to that.

16 THE WITNESS: So if -- if it causes it
17 in women, I believe it causes it in men.
18 Is that what you're asking?

19 BY MS. GROSS:

20 Q. Yes. That is exactly what I'm asking.
21 Thank you, Doctor.

22 Final question. You were shown the
23 Boundy study on the -- I don't know, the projector
24 thing.

25 Have you ever been shown any documents

1 by a Johnson & Johnson lawyer related to that
2 Boundy study?

3 A. Not that I recall.

4 Q. Have you ever seen the Johnson &
5 Johnson documents where they discussed that they
6 deleted the reference to asbestos from the Boundy
7 study?

8 A. I don't recall.

9 Q. Okay.

10 MS. GROSS: I don't have any further
11 questions, Your Honor.

12 Thank you, Dr. Madigan. Very much
13 appreciate it.

14 THE COURT: Dr. Madigan, this is Jean
15 Toal. I'm the judge in this matter.

16 Thank so much for your testimony and
17 for your participation in this trial. You
18 are excused.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 All right. All right. Now, remind me
22 where we in the lineup, Ms. McVey.

23 We've now got Dr. Longo, and he's
24 going to be our next expert witness. So
25 we'll be starting him after lunch?

1 MS. McVEY: If possible, that would be
2 great.

3 THE COURT: Yeah. I think that makes
4 sense.

5 MS. BUENO: And then we have the rest
6 of the video, too.

7 THE COURT: Yes.

8 Just for a preview then, members of
9 the jury, one of the plaintiffs' principal
10 witnesses is appearing live here, and he'll
11 be lengthy. So my thinking is we'll take
12 our lunch break now.

13 And after that testimony is complete,
14 there are some designations of Dr. Hopkins'
15 video material that the defendant wants to
16 put in, and we will play those after that.

17 And that kind of is a preview of what
18 the day will be like.

19 In terms of weather, we will get some
20 heavier rain tomorrow, but it doesn't look
21 like anything that would get into the
22 ballpark of what we've already experienced.

23 So, so far, so good. But I'll get
24 some more complete information about that
25 before I release you today so that you'll

1 know exactly where we stand.

2 Again, your safety is the biggest
3 thing. And I intend to protect that no
4 matter what happens about the trial, so...
5 All right?

6 Very well. You are -- it's 12:15.
7 Please try to be back here by 1:40 and
8 ready to go.

9 All right. Please rise for the return
10 of the jury.

11 (The jury exits the courtroom at
12 12:16 p.m.)

13 THE COURT: All right. Ladies and
14 gentlemen, we'll break at this time.
15 Anything before we do?

16 MS. PEPKE: Your Honor, if I can,
17 while we still have the court reporter.

18 I just -- we were off the record
19 yesterday when I made sure that we had the
20 right to raise our DV. Even though the
21 plaintiffs will receive a copy this
22 afternoon, that we all agree that we can
23 hold the DV and --

24 THE COURT: Absolutely. Thank you
25 very much for checking.

1 Now, anything else by way of
2 designations, Ms. Flynn, that you wanted to
3 put on?

4 MS. FLYNN: I don't believe so other
5 than we would have cross-examined had we
6 not been in default. But aside from that,
7 I don't have any --

8 THE COURT: All right. But -- okay.
9 I think your -- I just want to be sure your
10 position is protected.

11 MS. FLYNN: I appreciate that,
12 Your Honor.

13 THE COURT: Very good. All right.
14 The court will be in recess.

15 * * *

16 (Whereupon, there was a lunch recess
17 in the proceedings from 12:17 p.m. to
18 1:42 p.m.)

19 * * *

20 THE BAILIFF: All rise. Court will
21 come to order, please.

22 THE COURT: Okay.

23 MR. ADAMS: Your Honor.

24 THE COURT: Please be seated.

25 Yes, sir.

1 MR. ADAMS: We're three minutes away
2 from the tech being ready.

3 THE COURT: That's fine. I've got a
4 couple little things.

5 Ms. Flynn, I received your document
6 called "Objection" and asked for a limited
7 instruction on Steven Haber with a
8 100-and-something-pages-long medical
9 report. It's all about a different --
10 different point of view about causation.

11 The averments of the complaint include
12 averments about causation and everything
13 else, and that is improper to be offered
14 even as a proffer.

15 I'm going to -- I did a little speed
16 reading, but I haven't digested the whole
17 thing. But that's far beyond anything I
18 would ever have allowed anybody to ask
19 Dr. Haber by taking some medical report
20 you-all got from somebody that isn't
21 even -- never been in this case and start
22 talking about the cause of his
23 mesothelioma, so offering a theory about
24 what caused it.

25 So I'll just let you know that that is

1 in the wind, and we'll try to put something
2 on the record about it before we get out of
3 here today.

4 MS. FLYNN: I understand. We did not
5 offer it for that purpose. We offered it
6 for the -- the exhibit had some elements
7 of --

8 THE COURT: The whole purpose -- the
9 whole thrust of that medical report given
10 to somebody at Nelson, Mullins, is the way
11 I read it, is an alternate medical opinion
12 about Perry, about somebody who has never
13 examined him and then quotes extensively
14 about his medical records and gets some of
15 it wrong in the balance. So that's the way
16 I'm reading it.

17 MS. FLYNN: It was about past medical
18 history, which was what we wanted to talk
19 about.

20 THE COURT: Well...

21 All right. Now, let me say something
22 else. Apparently, the style now in all
23 these trial academies you people go
24 through, not available when I tried cases,
25 is that cross-examination is no longer

1 simply the ability to lead the witness.
2 Cross-examination is to be able to testify
3 to the jury.

4 Ms. Bueno, this business of turning
5 your back on the witness, looking up
6 straight and getting in the space of the
7 jury and then formulating this big
8 question, which is nothing but testimony
9 about your theory about things rather than
10 simply not a direct question but a leading
11 question, it's got all this information in
12 it that's not anything that's been said and
13 then what you want to say, you -- "You're
14 not saying that," or "You don't know
15 anything about that," that's not proper
16 cross-examination.

17 In my day, that was called "testifying
18 cross-examination." And some of the finest
19 judges who are pictured around here would
20 have kicked me out of the courtroom if I
21 had had the temerity to ask questions like
22 that.

23 So I want you to be mindful of that
24 and as I do all of you lawyers. I'm not
25 going to permit that kind of questioning.

1 That's just contrary to everything I know
2 about what a leading question allows and
3 what it doesn't allow.

4 And I do just the slightest little
5 dive into one of my old trial handbooks to
6 look at what kinds of testimony on
7 cross-examination -- that's what I'm not
8 going to allow. So word to the wise. I
9 hope it's sufficient.

10 All right. Now, Mr. Adams, ready to
11 go?

12 MR. ADAMS: All set. Yes, Your Honor.

13 THE COURT: Madam Bailiff, yes, ma'am,
14 bring me the jury.

15 (The jury enters the courtroom at
16 1:48 p.m.)

17 THE BAILIFF: The jury is seated,
18 Your Honor.

19 THE COURT: All right. Thank you,
20 ma'am.

21 Ladies and gentlemen of the jury, we
22 continue with the presentation of the
23 plaintiffs' case, and Dr. Longo is the next
24 witness for the plaintiff.

25 So, Mr. Adams, you may proceed.

1 MR. ADAMS: Thank you, Your Honor.

2 Plaintiff calls the next witness,

3 Dr. William Longo.

4 THE COURT: Come right around,

5 Dr. Longo, and be sworn.

6 THE WITNESS: Thank you, Your Honor.

7 THE BAILIFF: Turn to the clerk.

8 Raise your right hand, please.

9 THE CLERK: Do you swear or affirm
10 that the testimony you are about to give in
11 this case will be the truth, the whole
12 truth and nothing but the truth, so help
13 you God?

14 THE WITNESS: Yes, I do.

15 THE CLERK: Thank you, sir. Please
16 have a seat in the witness stand and state
17 your full name for the record.

18 THE WITNESS: William Edward Longo,
19 L-O-N-G-O.

20 * * *

21 WILLIAM E. LONGO, Ph.D.,
22 having been first duly sworn, was examined and
23 testified as follows:

24 * * *

25 DIRECT EXAMINATION

1 BY MR. ADAMS:

2 Q. Good afternoon, Dr. Longo.

3 A. Good afternoon.

4 Q. How are you?

5 A. I'm doing okay.

6 Q. I'm going to get into what kind of
7 doctor you are, your background, your training and
8 expertise and all of that, but I just want to give
9 the jury a heads-up about where we're going, if
10 that's okay.

11 A. That's fine with me.

12 Q. Have you tested over 100 bottles of
13 Johnson & Johnson's Baby Powder?

14 A. We have.

15 Q. Have you tested the tissue -- the lung
16 tissue of Michael Perry, his own lung tissue?

17 A. We have.

18 Q. And are you going to, when we get to
19 your opinions, tell the jury whether the asbestos
20 in the bottles of Johnson's Baby Powder matches
21 Mr. Perry's -- what's in Mr. Perry's lung tissue?

22 A. Yes, I will.

23 Q. Okay. You've got a Ph.D. What kind
24 of doctor are you?

25 A. I'm not a medical doctor. But I have

1 a doctorate or Ph.D. in a field called "material
2 science and engineering," sort of -- and -- and
3 "biomaterials."

4 Q. What is material science? What does
5 that mean?

6 A. You know, it's, quite simply, just the
7 study of materials. And the materials are broken
8 down in approximately five groups. They're
9 metals -- we call it "metallurgy" -- polymers or
10 plastics; ceramics; minerals, which asbestos would
11 fall under; things where they will mix different
12 types of materials, put a metal into the polymer
13 to make it stronger or carbon fiber that's put
14 into the polymer to make it very strong; and
15 biomaterials. And that's the area I work in a
16 lot.

17 And these would be materials going
18 into the body, like a hip prosthesis. You know,
19 what is the best metal? What is the strength,
20 et cetera. Will it cause the body to try to
21 reject it? You know, so you've got to make --
22 you've got to do it so that the immune system
23 doesn't go after it, you know.

24 Intraocular lenses, say, if --
25 typically, if you get old enough, you'll start

1 forming cataracts at some point. Mine have just
2 started.

3 And at some point, they get bad enough
4 they will take out -- try to take out the lens and
5 stick in a polymeric artificial lens in there, you
6 know, to get your sight back. There's a lot of
7 development on that. Is it the right materials?
8 Can it last as long as it should? Et cetera.

9 And the last area is what I do a lot
10 of, is: Why did something go wrong? Why did it
11 break? Why was asbestos put in products? What
12 kind -- what kind of -- advantages of using it and
13 not using it. How is it released? Et cetera. So
14 that's what I've been doing for the last 36 years.

15 Q. Is one of the things that you have
16 done over your career is test various types of
17 asbestos-containing products to see what's in
18 them?

19 A. Yes.

20 Q. And we'll get into that a little more
21 in a bit. Have you testified in front of Congress
22 on the specific topics you're going to talk to the
23 jury about today?

24 A. I have.

25 Q. Can you tell us about that?

1 A. Well, I got an email one day, and they
2 asked me if I would come to Congress and testify
3 what was the best analytical method for testing
4 cosmetic talcs for asbestos, what was my thoughts
5 on that.

6 It's sort of like -- when somebody
7 says a method or -- it's sort of like a recipe.
8 You start off at the first ingredient, and you go
9 all the way down to the last ingredient. And if
10 you put all the ingredients in right, you get a
11 cake.

12 But what we want is that when -- when
13 labs test something in different labs, we want
14 them all to use the same recipe, so that when I
15 look at their cake, it can match up with my cake
16 where I look at their results and our results. So
17 Congress was in the process of evaluating that.

18 I do a lot of public speaking. That's
19 about as afraid as I've ever been, those five
20 minutes. It was pretty daunting. I lost -- I
21 don't think I slept for two days before I got to
22 Washington and did that.

23 Q. It says carcinogens in consumer
24 projects. What -- what carcinogens and what
25 consumer projects?

1 A. The consumer products, essentially,
2 was talcum powder. And the carcinogens were the
3 asbestos that's in that talcum powder.

4 And what they wanted to know is what
5 our lab was doing to get enough sensitivity so
6 that we could get a good detection limit. And
7 we'll talk about that later.

8 And so that -- I'm not sure how they
9 got my name. But it was pretty -- I thought it
10 was a joke at first, when I got the email, and my
11 friends were pranking me.

12 Q. And you talk about detection limits.
13 The jury sort of heard these TEM, XRD, PLM names
14 floating around. Are you going to help us
15 understand what that actually means?

16 A. I'll try.

17 Q. Okay. And we've got this big picture
18 over here, and we're going to -- we're going to
19 learn about microscopes a little bit.

20 Can you give us your educational
21 background, tell us a little bit about that.

22 A. Yes. I went to the University of
23 Florida and received a bachelor's in microbiology
24 and virology. From there, I was -- I was going to
25 go to veterinary school. It just never occurred

1 to me that I wouldn't get in.

2 So I was a burden on society, and I
3 had to get a job. And I got a job in the material
4 science department as a lab tech. And three
5 months later, the professor, who I never saw like
6 twice because I was just a lowly lab tech, called
7 me into his office.

8 I was sure he was going to fire me. I
9 didn't know what I had done. And he said he'd
10 like me to go to graduate school.

11 And I said, "Well, I have two
12 problems."

13 He says, "What's the first problem?"

14 I said, "I'm reapplying to veterinary
15 school in the fall because that's all I wanted to
16 ever do since I was, you know, old enough to think
17 about it. And when I get accepted, I'll have to
18 leave here."

19 And he said, "Well, that's --
20 that's -- you know, life goes on, and, you know,
21 we'll miss you."

22 And he said, "You know what? If I was
23 sitting on the board of the veterinary school,"
24 whenever they use to say yes or no to your
25 application, "I would probably be more impressed

1 that you're in an engineering field and graduate
2 school than taking a couple of courses per
3 semester."

4 I said, "Man, that's a great idea.
5 Okay."

6 He says, "What's the -- what's your --
7 what's your other concern?"

8 I said, "This is graduate school and
9 engineering. I have two quarters of calculus.
10 How the hell am I going to survive over there?"

11 He said, "Well, you're friends with
12 John Sheets, who is a graduate student. He --
13 he's got a degree in zoology, and Richard Cherry
14 has got a degree in -- in biology. They were
15 doing fine."

16 Well, he didn't tell me that their IQs
17 are probably 50 times higher than mine. So,
18 anyway, long story short, I was glad I did that
19 because I really enjoy this kind of work, and I
20 never thought about veterinary school again.

21 Q. You ended up getting your master's and
22 your Ph.D. in material science?

23 A. Yes, sir.

24 Q. Okay. And engineering?

25 A. Correct.

1 Q. And tell us just a little bit about
2 your memberships in societies that have to do with
3 your field.

4 A. I mean, I'm a member in the
5 Environmental Information Association. I'm a
6 member of the American Industrial Hygiene
7 Association.

8 I'm not a member of EPA because they
9 don't really have memberships. But I was chosen
10 some years ago, myself and four -- three other
11 scientists, to go to the headquarters of EPA every
12 year -- every six months to look at their research
13 in asbestos.

14 They wanted us to critique what they
15 were doing. Also look at the analysis they're
16 doing, to peer-review it, and to give them our
17 thoughts on where the research ought to go. And I
18 did that for a number of years until their funding
19 ran out.

20 I'm a member of the American Society
21 of Testing Materials, ASTM. It is a -- it's not a
22 government agency, but it is one of the largest
23 method development agencies in the world. Again,
24 developing recipes.

25 And so they developed testing methods

1 from -- everything from how many times a cabinet
2 door ought to open and close before the hinge
3 breaks; a mask to -- a mask that you can put on
4 that would reduce the amount of contaminants
5 you're breathing, and they test what gets through
6 and what does not; a lot of, you know, concrete.

7 You're putting up a new building, and
8 typically the concrete they want you to use in
9 that structure will have an ASTM number on it or,
10 you know, what the ingredients ought to be,
11 et cetera.

12 And it takes a long time to get these
13 methods through. 40,000 members across -- across
14 the world are in ASTM. I made the mistake of
15 volunteering to do one of these methods. It took
16 five years of rebuilding and rebuilding it.

17 It's easier to try to herd 125 cats
18 into one area than get 125 scientists in your
19 committee to agree on anything. I haven't done
20 another one since.

21 Q. Despite the difficulty in reaching
22 sort of a consensus within these organizations,
23 have some of these organizations, ASTM, EPA, come
24 up with specific protocols when you're using a
25 microscope and you're -- and you're determining

1 whether there's asbestos in a substance?

2 A. Yes.

3 Q. Okay. And we'll get into that in a
4 little bit more. But do you follow those
5 protocols when evaluating, for example, Johnson's
6 Baby Powder?

7 A. Yes, you have to initially, because a
8 lot of these organizations will audit you, and you
9 better be following the protocols that are
10 specific to a certain type of testing. If you
11 diverge from those, you can flunk that area. And
12 if you flunk enough of them, they'll pull your --
13 they'll pull your certification.

14 Q. What is MAS?

15 A. That's the short version of
16 "Materials Analytical Services," and -- God, I
17 look so much younger there. That's me, only a few
18 years ago, and sitting in one of our scanning
19 electron microscopes, which at that point, some
20 three, four years ago, was a state-of-the-art one.

21 And we use that -- when you say
22 "scanning electron microscope," instead of like an
23 optical microscope where you're using light, you
24 know, to illuminate what you're looking at, like
25 biology, these use electrons.

1 And the electrons are generated at the
2 top of a column. And then having a different type
3 of -- like a negative or a positive will pull them
4 down into the column. But since they are
5 electrons, they can't go through anything.

6 So these columns -- and we'll see some
7 here -- have these electromagnetic magnets. They
8 will push the electrons into a small beam.

9 Because it's scanning, it ratchets
10 across the sample really fast, sort of like a TV
11 where you can't see it, but it's -- it's going at
12 a high speed. And when an electron hits, say -- I
13 never put my finger in a scanning electron
14 microscope because it would be like sticking your
15 finger in outer space, you wouldn't have a finger
16 anymore.

17 But it scans it. And so the electrons
18 that get hit at the top is going to be the most.
19 So that generates other electrons, kicks them out
20 of the sample. You don't have room for them all.
21 And then the computer system measures the
22 intensity of those electrons and builds an image.
23 We'll see some later that will make it a little
24 easier.

25 Q. What --

1 A. We use this for -- if you want to see
2 real fine surface features.

3 Q. What's your connection to MAS, that
4 lab?

5 A. Oh, I'm the CEO.

6 Q. How long have you been the CEO and/or
7 president and owned that lab?

8 A. Well, I was president up to about two
9 years ago, and I promoted a person to be the
10 president. So I had to have a title of some sort.
11 So I made myself CEO. Well, we had a vote.

12 Q. How long have you had MAS?

13 A. I opened the doors in February of
14 1988.

15 Q. Is your lab, MAS, accredited?

16 A. Yes.

17 Q. Can you tell us about that?

18 A. We're a registered -- start off with
19 an FDA lab. So we do a lot of work on
20 pharmaceuticals.

21 So you don't get an accreditation.
22 They give you a number. You're registered.
23 However, they do have the most intense audits of
24 any -- any group you've ever had.

25 Q. This is the FDA?

1 A. The FDA. Because if you're doing FDA
2 work, they're going to -- they're going to come
3 audit you. But they do not tell you when they're
4 going to show up. You'll know you're having an
5 audit when your receptionist tells you there's two
6 FDA agents sitting in the lobby waiting for you to
7 get to work.

8 Also certified by the American
9 Industrial Hygiene Association. And we have a
10 number of certifications from the International
11 Standards Organization for different types of
12 methods. And that would -- and their standards go
13 through the American Association of Laboratory
14 Accreditation, do the work for the International
15 Standards Organization.

16 And this is all about following the
17 methods properly so that you're getting the right
18 results. It's also about the quality control, how
19 you make sure that it's right, and keep checks of
20 the training.

21 And FDA even has -- they want you to
22 keep a insect log. Anytime a bug gets into the
23 lab, you've got to write it down and then tell how
24 you got rid of it. So it's fairly intense for
25 labs to maintain that type -- these types of

1 accreditations.

2 Q. You mentioned product testing earlier.
3 Give us a sense of how many asbestos-containing
4 products you have tested and some of the folks
5 you've consulted for.

6 A. You know, I've estimated now that we
7 have analyzed well over 400,000 different
8 individual asbestos samples of just about every
9 type you can think of.

10 These would be what we call "bulk
11 samples," meaning, it's like -- I know this
12 courthouse does not have asbestos in the plaster
13 up there. But if somebody wanted to know in a
14 building, they would take, essentially, a piece
15 of -- piece of the ceiling.

16 And the size of the sample you take --
17 and I know they don't have these anymore. You
18 youngsters probably don't know what they are. But
19 these would be 35-millimeter film canisters.
20 That's a perfect fit for one of those samples.
21 It's hard to find them now.

22 Air samples. Take an air sample in
23 here to see if there's any fibrous material with
24 asbestos. Water samples. Human lung tissue
25 samples to see if there's asbestos -- we call them

1 a "lung burden" -- in the lungs. And not only
2 asbestos, it's what else is in there.

3 And I think that covers the majority
4 of all the different samples.

5 Q. Tell us about some of the government
6 organizations and businesses that have hired you
7 and your lab.

8 A. We've done a lot of work over the
9 years for the Environmental Protection Agency
10 and -- EPA -- the -- the Environmental Protection
11 Agency does not do a lot of their own research
12 testing. They'll come up with what -- some --
13 what they want done, and then you can bid on it.
14 And we've gotten a few of those contracts.

15 The U.S. Department of the Treasury,
16 we were asked to help evaluate some of the new
17 printing processes when the new -- I think they
18 started with the \$20 bill, 50s and all the -- and
19 what they wanted from us was -- is to tell them
20 how far the ink went into the new paper that they
21 used.

22 So we did that work. They sent us the
23 money to look at it. It just came in a box in the
24 mail, and I was feeling it and going, "Must be
25 \$15,000 in here." It probably was, but it was all

1 shredded.

2 The U.S. Air Force was some work that
3 we did for them that had to do with some computer
4 chips. And I can't talk about what the project
5 was. But it was interesting because they would
6 come every day in a jet with MPs and a guy holding
7 a briefcase like in the movies with the chips in
8 there, and they never let those chips out of their
9 sight. And at the end of the day, they'd pack it
10 all up and fly back out. They did that for a few
11 months. It was very interesting.

12 BMW is -- some of the car companies
13 we've done work for to solve some sort of problem
14 in the manufacturing or QC.

15 The Center for Disease Control were
16 two projects when the initial -- when the Ebola
17 virus -- virus outbreak happened -- I don't
18 know -- 15, 20 years ago. We had better scanning
19 electron microscopes than they did. They wanted
20 to come over and image the virus.

21 Q. You said Ebola?

22 A. Ebola.

23 Q. Ebola.

24 A. It was dead when it got to our lab.

25 And Kimberly-Clark Corporation was to do some work

1 on looking at some of their paper production, and
2 they wanted to see some of the defects that are in
3 it. Gulfstream was, again, looking at some parts
4 that they needed some evaluation on.

5 Q. And I don't want to go through
6 every -- every single one, but have you served as
7 an official referee lab and also worked for
8 various cities and states around the country?

9 A. Yes. We were retained as an expert in
10 all those cases, starting from the top down to the
11 City of Baltimore. They wanted us to do reverse
12 engineering on asbestos-containing products that
13 were in their buildings that they had to spend a
14 lot of money on now to take care of it.

15 So we were able to figure out how to
16 reverse-engineer the samples. We did a lot of
17 that.

18 When I got the State of Hawaii
19 contract, I was very excited, but they never took
20 me to Hawaii.

21 And as a referee with W.R. Grace,
22 property damage, asbestos manufacturing claims.
23 So in these bankruptcies, if you wanted to get
24 money to remove W.R. Grace thermal insulation from
25 your building, you had to prove to them that it

1 was a W.R. Grace product. So we would get those
2 and say yea or nay when we analyze them and -- and
3 the same for the others.

4 Q. Have you also published in the
5 peer-reviewed scientific literature?

6 A. Yes, sir, I have.

7 Q. Can you tell us briefly about that.

8 A. Publications in the peer-reviewed
9 process is where if you have something unique and
10 it's new research and new results or -- something
11 that -- that pushes along the knowledge of a
12 particular area.

13 And there's got to be hundreds of
14 individual journals, and finding one that is in
15 your area, send a manuscript. The editor will
16 look at it and say, "Yes, this is worthwhile."
17 Then they'll send it out to peer-review people,
18 people that are in your area.

19 So they're not -- no names or anything
20 are on it. So you're supposed to stay in the --
21 in the dark about whose paper it is. And then
22 they'll either say, yes, this can be published or
23 needs some more work. And usually, with mine,
24 they would say, "Need to clean the English up."
25 And I'm not kidding about that. I wish I had

1 studied that more in college.

2 And once it gets published, then you
3 have a peer-reviewed process. And so we -- I have
4 peer-reviewed papers from all the way back to
5 graduate school on -- when I was working on my
6 Ph.D. to the property damage areas and other
7 things.

8 And the most recent one is -- had to
9 do with exposure to individuals from Johnson's
10 Baby Powder and the tissue analysis we had done on
11 some of these individuals to show how it matched
12 back to the product itself.

13 MR. ADAMS: Your Honor, we'd offer
14 Dr. Longo as an expert witness on the
15 issues of material science, industrial
16 hygiene, asbestos testing and tissue
17 digestion.

18 MR. COWAN: Your Honor --

19 THE COURT: Just a second. Let me --

20 MR. COWAN: Sure.

21 THE COURT: Yes, sir?

22 MR. COWAN: Just for your -- we didn't
23 have an evidentiary ruling on that with
24 regard to Longo -- Dr. Longo, so no
25 objection.

1 THE COURT: Thank you.

2 All right. Ladies and gentlemen of
3 the jury, by reason of his training,
4 education and experience, Dr. William Longo
5 is qualified to testify about material
6 science, industrial hygiene, asbestos
7 testing and tissue digestion and may
8 express opinions to you about those
9 matters. The credibility of this evidence,
10 as usual, is within your purview.

11 You may proceed, Mr. Adams.

12 MR. ADAMS: Thank you, Your Honor.

13 BY MR. ADAMS:

14 Q. I've got three questions up here,
15 Dr. Longo. I want to start with Number 1. Did
16 Johnson's Baby Powder contain asbestos?

17 That's something you've evaluated?

18 A. Yes.

19 Q. Is that something that you are
20 prepared to answer today?

21 A. Yes, sir.

22 Q. Okay. Just -- we'll get into the
23 details. But have you repeatedly found asbestos
24 in Johnson's Baby Powder?

25 A. Yes, we have. Over the 100 samples,

1 different product samples that we've analyzed, the
2 percentage of positive samples is approximately
3 75 percent.

4 Q. We've got some reports here that we've
5 marked as Exhibit 2338, 4070, 4071, 4072, 4073 and
6 4074. What are these?

7 A. These are reports for analysis of
8 Johnson's Baby Powder as well as a few Shower to
9 Shower. And these go through different decades,
10 starting in about 2000. And then the final report
11 at the very end, I threw it all together. So I
12 think it goes from approximately 1950 through
13 2000.

14 And these would be samples that
15 Johnson & Johnson provided, what they call the
16 "historical samples" where they're museums. So
17 that came from them, so we know that for sure this
18 is their product.

19 MR. ADAMS: Your Honor, we discussed
20 these reports and just admitting the images
21 found in them. So at this time, we would
22 seek to admit the images from these reports
23 as 2338, 4070, 4071, 4072, 4073 and 4074.

24 THE COURT: All right.

25 MR. COWAN: Your Honor, we don't have

1 an issue with the images. I'd just like to
2 be able to check the images before they
3 actually go back to make sure there's no
4 writing. Sometimes --

5 THE COURT: That's fine.

6 MR. ADAMS: We'll provide a copy.

7 Thank you.

8 BY MR. ADAMS:

9 Q. What are we looking at here?

10 A. These are what we call "micrographs."
11 They're photographs taken by the transmission
12 electron microscope.

13 And here, we have various samples
14 showing the asbestos structures that were found in
15 with the talc. So the structures that are -- look
16 like they're very thin, that's known as a fibril,
17 you know, just one asbestos structure.

18 You get the ones that say -- you look
19 at one, two from the right-hand side, the third
20 row down that -- over one, that's a bundle. If
21 you look at the very top of that structure, you
22 can see that it has multiple fibrils sticking out
23 of it. We call that a "bundle."

24 Now, what you're looking at is --
25 would be absolutely invisible to the naked eye.

1 These -- these structures and fibers are measured
2 in what we call "microns" or "micrometers."
3 Anybody go into that yet?

4 Q. We've had some of that with Dr. Brody.

5 A. Okay. He stole that from me. I swear
6 he did. No, only kidding.

7 And -- and you can see some of those
8 at a higher magnification. They're on filters
9 that we call "polycarbonates," which they are.
10 And you can see, like, almost a round hole in it.
11 Those round holes are 2/10 of a micron in width.
12 So they're all microscopic, and for us to see
13 these type of structures, we have to have one of
14 those transmission electron microscopes.

15 Q. And I think it was clear, but I just
16 want to make sure. Are these all asbestos
17 structures that you found in Johnson's Baby Powder
18 or Johnson & Johnson's talc?

19 A. Well, it's in their talc. It's not
20 their talc. They buy the talc. But it's in their
21 products. These were from the products
22 themselves, not from the mines themselves. We
23 have done those analyses, but these are all from
24 the products themselves.

25 Q. And when you say "product themselves,"

1 are you referring to bottles of Johnson's Baby
2 Powder or Shower to Shower?

3 A. Yes, that's what I'm referring to.

4 Q. Okay. I want to just cover this
5 quickly, and I know it's a little tedious. But we
6 talked about these specific protocols that are to
7 be followed when you're analyzing talc for
8 asbestos.

9 Can you tell us what -- what this
10 slide is, and then we'll go through the protocol
11 quickly, if you can.

12 A. Well, the left-hand side, that's
13 the -- that's the International Standards
14 Organization, which provides protocols for various
15 types of things. And it's the -- and essentially,
16 when it says International Standard, it's for
17 scientists from different countries around the
18 world.

19 The middle one is the Environmental
20 Protection Agency, EPA. And then on the far side,
21 the American Society of Testing Materials. Now,
22 all three of these different organizations have a
23 protocol or methodology for analyzing a myriad of
24 things by transmission electron microscopy for
25 asbestos. And the International Standards

1 Organization actually has a protocol specifically
2 for cosmetic talc.

3 Q. Okay. I want to go through that
4 protocol. I've got some real time limits. So I'm
5 going to try to pick it up a little bit.

6 A. Okay.

7 Q. What is this three-step process we
8 have here?

9 A. That's -- Step 1, Step 2, Step 3, if
10 it meets the criteria for asbestos for all three
11 steps, you have to call it asbestos.

12 Step 1 means 5:1 aspect ratio or
13 greater. So it means that the length has to be,
14 at a minimum, 5 times the width, the top of it.
15 Chemistry. And we will see that later in some
16 examples. You've got to have the right chemistry
17 for asbestos. And selected area electron
18 diffraction is a very fancy word for saying it has
19 to have the right crystalline formation or
20 structure.

21 Once it meets all three criteria,
22 every one of those methods -- and they're all the
23 same even though they're three different
24 organizations -- you have to call it asbestos.

25 Q. Is that some method that you made up

1 and you're kind of doing your own thing, or did
2 you get that specifically from these
3 organizations?

4 A. No, sir, that's not my method or there
5 would have been just "Longo" up there.

6 No, it's -- this is a method that we
7 follow because it's -- pretty much, it's accepted
8 worldwide for a specific type of way to determine
9 if you have asbestos in there or some other type
10 of fiber or something else.

11 Q. Is this EPA method, AHERA, the same --
12 have the same criteria as what you follow?

13 A. Yes.

14 Q. And did AHERA explain in the Federal
15 Register EPA why they use these counting criteria?

16 A. When they put this together and --
17 initially starting in 19 -- 1980 -- 1987, they
18 pulled in all the -- what they would consider the
19 expert electron microscopists around the country,
20 got them together and then put the method
21 together.

22 So there would be a couple of people
23 there that wanted 10:1, but the overwhelming
24 majority of the scientists decided that the 5:1
25 was what was needed as the -- we call it the more

1 volatile. The thing has to be at least 5 times
2 longer than it is wide.

3 Q. Okay. And what was the reason that --
4 that these organizations came down on 5:1 aspect
5 ratio?

6 A. Because you'll hear things like
7 "cleavage fragments," "nonasbestos structures."
8 The majority of all those nonasbestos structures
9 and cleavage fragments, et cetera, are down in the
10 1:1/1:2 aspect ratio.

11 They felt going to 10:1 was going to
12 eliminate actual asbestos fibers in bundles that
13 met all the criteria. So that's why they did
14 that. They felt the 10:1 was going to -- what we
15 call "false negatives." Oh, it's negative for
16 asbestos, but it's false.

17 Q. And you said 10:1. Did you mean 5:1?

18 A. Well, they initially wanted 10:1.
19 That's why they went to 5:1 --

20 Q. I got it.

21 A. -- or stayed with 5:1 because most of
22 all these fragments were less than 5:1.

23 Q. Got it.

24 So if you have one of these asbestos
25 minerals and it's 5:1 or greater, it's asbestos?

1 A. 5:1 or greater. Has to have
2 significantly parallel sides. It can't be like,
3 you know, going out in a triangle. It has to have
4 the right chemistry.

5 So once 5:1 or greater, it also has to
6 be at least a half a micron long or longer. So
7 that's number one. You get by number one, then
8 you go and see if it meets number two. If it
9 meets number two, which is the chemistry, then you
10 see if it has the right crystalline structure.

11 Q. Is this counting criteria also in
12 peer-reviewed published scientific literature?

13 A. Yes. I have some published literature
14 myself that has the same criteria in it.

15 Q. And then you mentioned the second and
16 third steps. And I just want to go to Step 2 for
17 a second. It says chemistry. Is that how you
18 determine whether it's one of these six asbestos
19 minerals?

20 A. Yes.

21 Q. What are these images that we're
22 looking at here?

23 A. Well, you go -- this is the three
24 steps. Step 1, you have a bundle there. And does
25 it have parallel sides? It doesn't have to be

1 perfect parallel sides. Significantly parallel.

2 And the answer is yes.

3 Is the length at least 5 times greater
4 than the width? Yes. Is it greater than a half a
5 micron in length? No. Same -- at least a half a
6 micron? Yes.

7 Now we go to the chemistry. It's a
8 little hard to see. But if you start on the
9 left-hand side, that very first peak says that
10 this is a magnesium peak. And the way you get --
11 and the intensity or how high the magnesium peak
12 has to be at a certain length or height for it to
13 match -- and where we're going with this, this is
14 a chemistry for tremolite.

15 Then the next peak, that really high
16 one, is silicate. And then going to the next peak
17 is calcium. And the calcium peak is typically
18 lower than the magnesium peak for tremolite. The
19 very last peak is the copper grid because you get
20 static. So that's the chemistry.

21 So that means the intensity of the
22 X-rays coming off the sample for this, silicate is
23 the most. The secondmost is magnesium. And the
24 thirdmost is calcium. And if you have that ratio,
25 you know beyond a shadow of a doubt that this is,

1 in fact, tremolite asbestos because there's no
2 other mineral out there that has that type of
3 chemistry and that type of structure.

4 Q. Do they have situations where you can
5 get literal bottles of asbestos fiber from -- from
6 this organization to compare to the fibers that
7 you're testing?

8 A. Yes. We -- we purchase those. And to
9 have accreditation for doing this work, you have
10 to have these standards in them.

11 So the standard means that you can
12 make a sample with that, put it in the electron
13 microscope, transmission electron microscope. And
14 because it is standard of the National Institutes
15 of Standards and Technology, you can look at it as
16 we keep those for new electron microscopes -- Not
17 microscopes. They don't know what they're doing
18 unless you run it -- microscopists to train them
19 on what it should look like, what the chemistry
20 should look like.

21 And then we have those -- then we have
22 those, what -- the "Spectras," we call them, the
23 EDXA, up in the different TEM rooms so they can
24 see it. Then we have that for every -- all the
25 important -- all -- all the asbestos types that we

1 run into.

2 Q. Okay. These are some images that we
3 have marked as Exhibit 3324. Are these images you
4 took, and what are they?

5 A. These were from that NIST standard
6 that we have, and what I wanted to do is -- that
7 is known as asbestos, asbestiform. So it
8 shouldn't be any argument that these are asbestos.

9 So this is taken with the scanning
10 electron microscope. And you can see a
11 difference, that we get a lot of nice surface
12 features with this. Because this is just scanning
13 the surface and while the transmission electron
14 microscope is sort of like how an X-ray works.

15 Electrons come down, go through the
16 sample. Some electrons are stopped. Some are
17 allowed to pass through. So that gives you the
18 contrast. This only looks at the surface feature.
19 So -- so it's two different types. And you can
20 see how well the surfaces are, so every one of
21 these is asbestos.

22 Q. And these came out of that NIST
23 standard container, and you took these
24 photographs?

25 A. I did.

1 Q. Okay. Are these tremolite asbestos?
2 What kind of asbestos are these?

3 A. I think these are all tremolite.

4 Q. Have you also reviewed and relied on
5 peer-reviewed published literature using
6 transmission electron microscopy, TEM microscopes,
7 to look at asbestos in talc?

8 A. Yeah. This is a 1975 paper that --
9 probably one of the first publications out that
10 showed that cosmetic talcs had asbestos in them.

11 Q. I think we've covered this.

12 Just very quickly, if we can, what is
13 a count sheet, and what does that have to do with
14 testing for asbestos?

15 A. Well, this is a count sheet for the
16 transmission electron microscope, and as -- if you
17 look over to the left, these are the sample grids.
18 This is what goes into -- the sample goes on, and
19 then it goes into the electron microscope.

20 Now, the electron microscopes probably
21 weigh five to as high as 7,000 pounds, anywhere
22 from 9 feet, 8 feet tall. The biggest sample you
23 can put in there is a copper disc that's only
24 3 millimeters in diameter.

25 And in that 3 millimeters, they etch

1 out 100 openings. And if you look kind of close,
2 you can see that on the right-hand -- on the
3 vertical sides, we have 1 through 10. And then on
4 the parallel sides, we have A through J, I think
5 it is. So when we find a structure, we can
6 pinpoint it on the grid.

7 Say we got -- you know, A2 has a
8 tremolite fiber in it. So when we do QC or we
9 want to go back and look at it, we can easily find
10 it.

11 Q. What is this big picture over here of?
12 What is that?

13 A. That is a transmission electron
14 microscope. That's not one of ours. That's a
15 Philips. That's one of Mark Bailey's. And that's
16 the instrument that takes that little grid thing.

17 Q. These are some of the standards and
18 the protocol -- counting protocols for asbestos.
19 When you look at asbestos in talc, do you follow
20 every single one of these, some of them? Tell us
21 about that.

22 A. Well, some of them. And the top one,
23 EPA, AHERA. That's one. The ISO 10312 is an
24 ambient air one, but it has the exact same
25 requirement as EPA.

1 Q. Yeah.

2 A. ASTM 5755, the surface dust fiber
3 count method, that's the one I shepherd through.
4 That has the exact same counting rules and so on.

5 Down at the bottom, we don't follow
6 the J&J one. And the soil method one, again, the
7 same counting rules. And the settled dust one,
8 the same counting rules.

9 Q. I asked a bad question. I know you
10 don't follow all these, but when you find a fiber
11 that you identify as asbestos, does it qualify as
12 asbestos under every single one of these?

13 A. Yes.

14 Q. Have you seen Johnson & Johnson's own
15 internal definition of asbestos?

16 A. I have.

17 Q. Okay. And is fibrous tremolite a form
18 of asbestos?

19 A. Yes, it is.

20 Q. Is it easy to tell the difference
21 between fibrous talc and asbestos using these
22 diffraction patterns?

23 A. Yes. Fibrous talc, anthophyllite
24 asbestos has the exact same chemistry. And it
25 looks pretty close in the morphology. But the

1 crystalline structure for the fibrous talc is this
2 little pentagon-type -- see the dots? That's --
3 and those dots are from the diffraction of the
4 electron beams going through the crystal.

5 Then over here in anthophyllite, you
6 see that it's completely different from the
7 fibrous talc. That's how we tell the difference
8 between them.

9 Q. We've got XRD, PLM and TEM. Can you
10 briefly -- and, again, I've got limited time --
11 tell us the difference between these as far as
12 sensitivity?

13 A. The one on the far left, X-ray
14 diffraction, XRD, uses X-rays to determine what
15 kind of mineral you have. It has a very poor
16 detection limit. It can't tell you if it's
17 fibrous or not.

18 It's not a microscope. We don't use
19 it. We don't even have it in our lab. It's -- to
20 me, it's a waste of time. Because if you find
21 that it's positive for, say, tremolite, you still
22 have to go and do the next steps. And the
23 polarized light microscope.

24 The polarized light microscope, when I
25 first got involved in this, I thought that was

1 useless because it didn't have the resolution.
2 However, after -- after doing this for years
3 and -- you know, scientists, if you're a good
4 scientist, I think, you go, "You know what? I was
5 wrong about that."

6 And then -- so it's an important part
7 of -- and it used polarized light, like polarized
8 sunglasses makes light go in a particular
9 direction that's refracted on a crystal, and you
10 can see different colors. And then, of course, we
11 have the transmission electron microscope.

12 Q. How -- can you give us a sense of,
13 like -- people know the microscope they have in
14 high school, sort of tabletop, looks kind of like
15 the one in the middle but less sophisticated.

16 A. It's a -- it's a little bit more
17 sophisticated.

18 Q. How much more powerful is a TEM
19 microscope than that little microscope we're used
20 to from high school?

21 A. The highest magnification you can get
22 on a polarized light microscope and still use is
23 about 600 times, meaning -- you know; where TEM,
24 we use it, typically, at its lowest magnification
25 for -- for asbestos, which is about 20,000 times.

1 So if you were to take a basketball and magnify it
2 by 20,000 times, your basketball would be 5 miles
3 in diameter.

4 The reason that the transmission
5 electron microscope is much more powerful in
6 magnification is because what you're using to
7 image is electrons. I can have 10 million
8 electrons sitting on my thumb, you can never see
9 it.

10 Light, on the other hand, is a
11 wavelength where it's just one wave of, you know,
12 electromagnetic radiation or whatever you'd like
13 to call it.

14 So if I have -- if this is my asbestos
15 fiber, and my wavelength is this big, I can't see
16 it in the polarized light microscope.

17 Now, if my wavelength was only this
18 big -- say, this was a lot bigger -- then, yes, I
19 can see it. The transmission electron microscope,
20 because you have infinitely small electrons, we --
21 when we had our Raleigh lab, we had one there that
22 you can increase the magnification to 6 million
23 times to use for semiconductors. You could
24 actually see the atom lattices with it, because
25 the electrons are infinitely small. The -- the

1 smaller -- what you're using to look at something,
2 the better -- you call it "resolution."

3 Q. Is there also something called
4 "concentration method" or the "heavy liquid
5 separation method"?

6 A. Yes.

7 Q. What is that?

8 A. This is sample preparation. You can
9 have the most expensive transmission electron
10 microscope in the world that does everything. If
11 you don't prepare the sample right, you cannot get
12 good results. It's sort of the old saying with
13 computers when they first came out: Junk in/junk
14 out. So it's all about sample preparation.

15 Heavy liquid separation allows us to
16 take a sample and concentrate what we don't want
17 to see. So -- and this is a method that's been
18 around for hundreds of years. You go back to the
19 California gold rush, and they're doing the pan to
20 find the gold. Well, whenever you watch them,
21 they've got water in, and they're doing it real
22 soft. And then they pour it, put some more water
23 in it, because the dirt and soil in there, it's
24 easily resuspended in the water because it has a
25 low density.

1 The gold, on the other hand, has a
2 density, I think it's 14.8 grams for a little
3 cube, where the soil is like 2.6.

4 So you're getting the soil out. You
5 get the soil out, and you keep doing that. And
6 then you look in there and you're going to have
7 small pebbles, and hopefully you've got some that
8 are gold. That's heavy liquid density separation.

9 Another example would be, you know, I
10 want to -- I want to find the needles in the
11 haystack. That old saying, "like looking for
12 needles in a haystack."

13 Well, if you take that haystack and
14 put it in a big old thing of water and shake it
15 up, the hay has less density than the water for a
16 while and it'll all float to the top. All the
17 needles go to the bottom. And if you have a way
18 to sample the bottom, you can get the needles.

19 We do that with the talc. We use a
20 heavy liquid density material that'll cause the
21 talc to float and the asbestos bundles and stuff
22 to go to the bottom.

23 Q. Do we have some slides to sort of walk
24 us through that procedure?

25 A. Yes. So, here's a test tube. You're

1 putting in the heavy liquid density liquid. And
2 this liquid -- typically water has a density of
3 about 1.2 grams for a cube. This material that
4 we're putting in there is the liquid. It has a
5 density of 2.81. The talc has a density of 2.6 --
6 2.65 to 2.7. So it's going to float, just like
7 the hay, because it has a less density.

8 The asbestos we're looking for here --
9 tremolite, actinolite, anthophyllite -- has
10 densities of 3.0 to 3.3. They're all going to go
11 to the bottom.

12 Now, if we were to do all this and
13 shake it up and sit it out on the counter for
14 about a week, it slowly will all separate. Or you
15 put it in a centrifuge and get it out a couple
16 hours later. Because the force of that will push
17 the stuff that is heavier to the bottom and the
18 things that float to the top.

19 So here we have the -- say the blue is
20 the -- the -- the amphibole asbestos, and we'll
21 just say it is tremolite, and all at the top.

22 Now, we take that -- take that
23 container and we stick the bottom in liquid
24 nitrogen, which is at a temperature of minus
25 260 degrees Fahrenheit, I believe. It

1 flash-freezes that tip.

2 We cut that off with this
3 guillotine-like apparatus, and that's what we then
4 prepare for the sampling. So -- and it increases
5 our detection limit tremendously.

6 Q. The jury has heard a little bit about
7 Dr. Alice Blount. Was -- was the heavy liquid
8 density separation method something -- something
9 she published on in 1991?

10 A. She worked on that and used it exactly
11 what we just talked about, used it to show that
12 you could separate out tremolite from cosmetic
13 talcs using that protocol, which we use now.

14 Q. Have you also reviewed Johnson &
15 Johnson for internal documents going back to the
16 '70s about this concentration method?

17 A. Yes. I have all those documents. And
18 when I saw them, I saw that it was possible to
19 even -- chrysotile.

20 Johnson & Johnson hired the Colorado
21 School of Mines to develop a method called -- they
22 called it the -- you know? The presence of --
23 "preconcentration," they called it.

24 So it took them a year from start to
25 finish, and they basically developed what Alice

1 Blount published and what we were using and had it
2 all signed off, 1973. And they had a method to do
3 exactly what we'd been doing and what Alice Blount
4 published.

5 Q. Have you also reviewed Johnson &
6 Johnson documents in which they hired Dartmouth
7 University to use concentration techniques?

8 A. Well, it's actually Windsor Mineral
9 hired them. But -- so, yeah. But they're all
10 connected.

11 Yes. They did the exact same thing.
12 They developed -- in 1974 they developed this
13 method.

14 Q. Windsor Minerals is the division of
15 Johnson & Johnson that owned the talc mine in
16 Vermont. Do I have that right?

17 A. You have that right.

18 Q. Okay. And these are documents that
19 you've reviewed in preparation to testify. Fair?

20 A. Yeah. Dr. Reynolds of Dartmouth is
21 the scientist who developed it for them. And you
22 can see a lot of the similarity, except we didn't
23 use a rubber plug. That's not so easy.

24 And the heavy minerals, again, bottom;
25 talc at the top. And then they analyzed it and

1 showed that they could concentrate the asbestos in
2 the Vermont talc. I think it was Argonaut, maybe.

3 And here's a photograph from 1974
4 showing anthophyllite asbestos, the talc, and --
5 so they were successful in developing that method.

6 Q. I want to just briefly touch on this
7 concept with the jury. Because they already heard
8 a little bit about -- about how you can kind of
9 have a low weight percentage of asbestos in a talc
10 product and still have millions or billions of
11 asbestos fibers in the bottle.

12 Can you explain that to the jury
13 briefly --

14 A. Sure.

15 Q. -- in a way that we can understand?

16 A. I have -- I always have trouble with
17 "briefly."

18 Q. I know. I'm running out of time.

19 A. I know. I know.

20 The weight of a single asbestos fiber,
21 and even a good-sized one, is measured in
22 picograms. Milligram -- micrograms is a millionth
23 of a gram. The next step up is nanograms. That's
24 a billionth of a gram. 1 fiber, a billionth of a
25 gram. A picogram is another thousand times up.

1 That's a trillionth of a gram.

2 So how many fibers do you think you
3 can have in your hand and hardly weigh anything?
4 And that's the whole fundamental problem because
5 they're so small.

6 You could have a hundred fibers per cc
7 in this air, which is an extraordinary amount of
8 asbestos fibers, anywhere. You hardly ever see
9 things that high. You could never see it.
10 They're so small.

11 If they were big, we wouldn't have
12 this issue. That's why you can have a ton and
13 even say, "Oh, it's only trace amounts."

14 Well, you know, what's an ant weigh?
15 How many ants could you have in a -- you know, in
16 a couple grams? You know, a couple hundred?

17 Well, that -- you know, they -- if you
18 measure all the sand that they pile around, the
19 ants would be -- and what that would weigh, it's
20 the ants would be at trace levels. So, you know,
21 there's a few thousand in there. So that's the
22 same thing.

23 That's why you can have so many in --
24 in a -- in cosmetic talc but still be called
25 "trace."

1 Q. What is this -- what is this
2 calculation here?

3 A. Well, this was a calculation where we
4 found 63,800 asbestos structures in 1 gram --
5 1 gram of the talcum powder.

6 Now, you don't get talcum powder
7 samples in 1 gram. Usually, it's anywhere from
8 1.5 ounces to 9 ounces. And then you get the
9 larger containers. I'm dealing with J&J ones,
10 15 ounces and then they had a 22-ounce.

11 Every ounce has 28.35 grams in it. So
12 if you have a 9-ounce bottle times 28.35, that'll
13 give you all the grams in there.

14 And if you then multiply how many
15 grams in an ounce, you'll get 16,278,000. But
16 just round it off to 16 million asbestos
17 structures in one 9-ounce container of Johnson
18 Baby Powder. If you find at least 63,800. We've
19 found that much. We have found right at our
20 detection limit of seven to 8,000 to 10,000.

21 And we have found as high as -- I
22 think our highest one is approximately 15 million
23 asbestos structures per gram, now. Not in the
24 whole container.

25 Q. What if you -- and I don't know if you

1 can do this calculation sort of off the top of
2 your head.

3 But what if you find, I don't know, 5,
4 8, 16 -- well, let me just ask you.

5 You're aware of the TM724 method that
6 Johnson & Johnson had where they could find
7 16 asbestos fibers in a microscopic sample of the
8 talc and report that it wasn't there?

9 A. I've seen that, yes.

10 Q. Help us understand how many asbestos
11 fibers there is in a bottle if you find just a
12 handful in a microscopic sample, whatever unit you
13 want to use.

14 A. Well, 63 million would be
15 approximately 7 -- 5 to 7 asbestos fibers that
16 we'd find in a little, microscopic amount of the
17 sample. We're only looking at a very small amount
18 of the entire sample.

19 Q. Okay.

20 A. You know? And so it's -- in order to
21 get up into the millions per sample, it's still a
22 really tiny amount that we're looking at.

23 Q. Let's look at some of your reports on
24 Johnson's Baby Powder.

25 Is this one of your reports on a

1 sample from 1978?

2 A. That's one of the historic -- that's
3 one of the samples that we, yeah, got in 1978,
4 Johnson & Johnson. In 1978, that was with their
5 Vermont mine. So that's one we analyzed.

6 Q. Have you analyzed talc from all of the
7 sources that Johnson & Johnson used in its baby
8 powder that it sold in this country?

9 A. Yes.

10 Q. Okay. Have you analyzed Johnson's
11 Baby Powder with XRD, PLM, and TEM and TEM with
12 the concentration method?

13 A. We did run an analysis of XRD. Now, I
14 said it was useless. But when we did the
15 analysis, I wanted to compare it to the different
16 methods to see which ones were the worst and which
17 ones were the best, and that's the only time we've
18 used it.

19 And the detection limit, the XRD, we
20 think it was 72 samples. The XRD showed that only
21 1 of those 72 had -- was positive for asbestos.

22 The PLM analysis is when we started
23 using it approximately showed that 30 or -- 20 or
24 30 percent were positive for asbestos. And the
25 TEM showed that there was 75 percent positive.

1 So we only use PLM and TEM now, and
2 I've never used XRD again.

3 Q. This is one of your reports from
4 Johnson & Johnson's Baby Powder from the 1960s?

5 A. Yes.

6 Q. I just want to walk through some of
7 the images so the jury can see what you're
8 finding. We don't have to talk long about --
9 well, I can just kind of scroll through them and
10 you -- why don't you just tell us what we're
11 looking at?

12 A. Well, this is a -- a tremolite, I
13 believe, bundle.

14 Q. Okay.

15 A. Here's another one. Again, a bundle,
16 tremolite.

17 This one is a, I believe, bundle
18 of .5 microns. It could be a single fiber. What
19 I -- you really need to be on the microscope when
20 you're doing this.

21 Q. Right.

22 A. Because somebody will look it up and,
23 go, "No. You're wrong."

24 Here's a definite bundle, another
25 tremolite. And you can see on the left-hand side

1 that there really is multiple fibril structures
2 there. So you have to have at least two of them
3 touching each other in order to be classified as a
4 bundle.

5 This one's pretty close to being a
6 single fiber again. And you can see that it has
7 substantially parallel sides. And these other
8 things you're seeing in there is talc --
9 typically, talc flakes.

10 Q. Okay. There are some other ones that
11 are sort of lower-aspect ratio. What are we
12 looking at here?

13 A. This, again, is tremolite and, again,
14 tremolite. This has a pretty large aspect ratio.
15 This one is actually 20:1, and it's a bundle.

16 Q. I think this one says anthophyllite.

17 A. Is it? I've got to get my glasses.

18 Q. Okay.

19 A. Thank you for correcting that.

20 Q. No worries.

21 Have you found tremolite and other
22 asbestos fibers over and over --

23 A. Yes.

24 Q. -- in Johnson's Baby Powder?

25 A. Now, this -- if you go back to this

1 previous one here, this one is a bundle that you
2 can see some of the individual really well, some
3 of the individual fibrils in there.

4 But the problem in TEM, if you have
5 thick bundles like this, the electrons can't get
6 through it all. So you get an image of it. It
7 would be like taking an X-ray of your hand, but
8 people piled up about ten hands on top of your one
9 hand, then tried to take an X-ray of it. You're
10 not going to see anything.

11 That's what happens with these, and
12 that's why they developed the counting rules like
13 they did that had to be at least 5:1. So they
14 don't allow you to measure -- try to measure
15 individual fibers. You have to measure the whole
16 length and the whole width.

17 Q. Have you also analyzed Johnson &
18 Johnson's talc from the 1970s?

19 A. Yes, sir.

20 Q. Okay. What are we looking at here?
21 Why does this look different from some of the
22 other images?

23 A. This is a polarized light microscope
24 analysis in which we now have light coming through
25 from the bottom up. And the light going through

1 there, because it's scattered, will make it
2 through.

3 This is called -- we're looking at
4 what the speed of the light is through there. And
5 the way you do that is on the geometry of it,
6 and it's -- so one -- one of the angles coming
7 through there is slower than the other.

8 If we go on to the next one, another
9 TEM from that time, again, we're seeing the same
10 stuff over and over when the sample is positive.
11 So go back to that one. No, no, no. One more.

12 Now, this is actinolite, tremolite,
13 because the light comes up through the bottom of
14 the crystal and then goes in two directions, you
15 can actually see individual fibrils from -- from
16 the -- you know, like the lines go there. Those
17 are individual structures.

18 So to get the aspect ratio of this
19 type of analysis, you do measure the individual
20 fibers, both length and width, and that's going to
21 be over 20:1, 30:1, 40:1. What you can't do is
22 use this type of criteria for the TEM.

23 Q. Okay. I'm just going to scroll
24 through these because I'm going to run out of time
25 unless I start going faster.

1 So can you just kind of narrate on --
2 well, let me ask you a question.

3 Have you found tremolite over and over
4 and over in both the bottles and the ore of
5 Johnson's Baby Powder from the 1970s?

6 A. Yes. The three types of asbestos we
7 see is anthophyllite asbestos; tremolite; and from
8 time to time, we see what we -- we call it
9 "solid solution series of tremolite." It's
10 actinolite, and then we go off and see, you know,
11 richterite and winchite, where all the -- if the
12 tremolite is the main mineral, then these are all
13 the families of tremolite.

14 Because when they were formed hundreds
15 of millions of years ago -- it's like cooking.
16 And tremolite has its recipe, but you have a
17 couple of other elements in there. Like, a little
18 iron ore or a little potassium ore or whatever
19 gets incorporate in, and then we call it
20 richterite and winchite just to differentiate
21 them.

22 Q. Now, we've got your 1980s report on
23 Johnson's Baby Powder. Are you still finding
24 actinolite, tremolites repeatedly, including
25 anthophyllite in the 1980s samples?

1 A. Yes. Again, with all the samples that
2 we have analyzed, approximately 75 percent we have
3 found asbestos in them.

4 Q. 1990s, do you continue finding the
5 same thing, tremolite, anthophyllite and other --
6 and asbestos minerals in Johnson's Baby Powder?

7 A. Yes.

8 Q. And what about for the 2000s,
9 tremolite --

10 A. The same thing.

11 Q. Okay. Have -- we've got a chart here.
12 I know it's not all of the containers of Johnson's
13 Baby Powder that you've tested, and it makes me
14 dizzy, but I just want to scroll through so people
15 can get a sense. What are we looking at here?

16 A. We're looking at not every container,
17 but most of the containers of Johnson's Baby
18 Powder and Shower to Shower, both from samples
19 that we acquired and samples that were given to us
20 by Johnson & Johnson from the three mines that
21 cover the United States.

22 Then the mines were, say,
23 South America, which is the Brazilian mine; the
24 Korean one that was in play for a while for
25 Southeast Asia; the two mines in India that

1 service that part of the country; and Australia.

2 Q. What does this total U.S. containers
3 and then all total containers percentage tell us
4 at the end? I don't know if you can read it.

5 A. All total containers. I think that's
6 a hundred -- 146, actually. And out of that 146,
7 79 percent were positive for asbestos.

8 Q. Have you found tremolite over and over
9 and over and over in Johnson's Baby Powder?

10 A. Tremolite, anthophyllite, richterite
11 we have, and actinolite.

12 Q. Are you familiar with the Battelle
13 lab?

14 A. Yes.

15 Q. Have -- have you looked at the
16 historical talc testing that Battelle did for
17 Johnson & Johnson on its talc?

18 A. Yes.

19 Q. What does say it here, and have you
20 confirmed that that's accurate?

21 A. 153 tests where they found tremolite
22 in 1968.

23 Q. What are we looking at here?

24 A. So this is their testing, Battelle
25 Memorial Labs, and you can see the big red arrow

1 showing tremolite. And these were the results.

2 Q. Have you also compared the asbestos
3 that you find in Johnson's Baby Powder to
4 traditional asbestos-added products?

5 A. Yes. But specifically, did the
6 asbestos-added products, like chrysotile, did they
7 have an accessory mineral that we're seeing in the
8 talc? And we are, and it does. And it shows the
9 same -- the same everything.

10 Q. I've got a couple examples here.
11 We've got brake linings. What is wall mud?

12 A. Bondex. Uh-huh.

13 Q. The joint compound that goes on walls?

14 A. That's a joint -- that's a joint
15 compound. Bendix are brake shoes, brake linings.
16 And then we have the Johnson's Baby Powder.

17 Q. Have you -- have other labs checked,
18 confirmed your findings of asbestos in Johnson's
19 Baby Powder?

20 A. Yes.

21 Q. What are we looking at here?

22 A. J3 Labs, which is another lab with
23 that -- they ran a series of samples. And then we
24 ran the same samples, and we got within 90 percent
25 of each other.

1 Q. Are these just some images from
2 J3 Labs running the same samples on Johnson's Baby
3 Powder as you -- your lab and finding the same
4 thing?

5 A. Yes.

6 Q. Have other labs found asbestos in
7 Johnson & Johnson's talc?

8 A. Yes. Every one of those. FDA --
9 because they sent it out to a contract lab, but
10 they did find asbestos in some of the samples,
11 even with the poor analytical sensitivity they
12 were using.

13 Q. Okay. Have you looked into what
14 Mr. Perry's exposures to asbestos from Johnson's
15 Baby Powder have been?

16 A. Yes.

17 Q. Is that something you've studied where
18 you performed more practice studies with Johnson's
19 Baby Powder?

20 A. Yes.

21 Q. What are we looking at here?

22 A. Well, what we're looking at on the far
23 side is what we call "background." It's how much
24 asbestos fibers are floating around in the air.
25 You may hear that, "Oh, asbestos is everywhere,

1 and we're always breathing some, but it doesn't
2 hurt you." Well, that's just foolish. Asbestos
3 is heavier than air. It does not describe the law
4 of gravity.

5 Now, you could have it go a long
6 distance, depending on the wind currents,
7 et cetera, like a volcano that puts the ash up in
8 the air, say, in South America, but it's showing
9 up in the United States. Well, after a while,
10 there's no more ash going up from the volcano.
11 That ash falls on the ground. That's what happens
12 with asbestos.

13 But in order to say what a background
14 is that we can compare something to, we use a
15 number of .00005 fibers per cc, and that comes
16 from the ATSDR, the Agency for Toxic Substances
17 Disease -- what's that last one?

18 Q. Registry.

19 A. Thank you. Too many acronyms.

20 So we go across. Anderson did a
21 study, a published study, in which they -- their
22 little number was 0.004 fibers per cc. Now, it
23 was published, but there's been a lot of criticism
24 on that report for, in my opinion and others',
25 making it so that they have the lowest

1 concentration.

2 And then we have -- Johnson & Johnson
3 has a -- did a calculation, an estimate, of what
4 an exposure would be, say, for a person diapering.
5 And they came up with a concentration of -- and
6 this was a mathematical -- 4.5 fibers per cc.

7 And then they had an estimate of what
8 the concentration would be on the baby itself.
9 Because if you're using talcum powder that has
10 asbestos in it and you put it on a baby, that baby
11 is going to inhale that talcum powder. You
12 can't -- because it gets up in the air so easy.
13 They came up with 0.18 fibers per cc.

14 And then Gordon -- Dr. Gordon and
15 others published a paper in 2014 where they did a
16 work practice study, and they showed an average
17 concentration of 1.9 fibers per cc.

18 Q. You mentioned that Anderson 2016,
19 the .004 fibers per cc level, had been criticized.
20 Very quickly, can you tell us why?

21 A. Well, when they took the air samples,
22 they added what they call an "impinger" on top of
23 the air samples. It's a -- well, they call it a
24 "cyclone." It's a device that -- and here's the
25 cassettes. And the top is not taking off on them.

1 They put a device up there that remove
2 particles before it got into the -- into the
3 canister. And that's not in the protocols.
4 Nobody has ever suggested doing that with the air
5 samples. So you don't know what you really got
6 because you're removing stuff.

7 And they also put pressure on the
8 laboratory they were using to change their opinion
9 that it was asbestos to predetermines.

10 Q. And so --

11 A. Even with that, it's still 0.004.

12 Q. Given your -- your -- understanding
13 you have some concerns with Anderson, are these
14 some of the general levels that we can expect or
15 at least the best data we have on the levels that
16 Mr. Perry would have been exposed to at times
17 during his 40-plus years of daily use of Johnson's
18 Baby Powder?

19 A. Yes. You're going to have sometimes
20 in that range if you were measuring it. Sometimes
21 it'll be higher than what you're seeing, depending
22 on what's in the container. And sometimes, if you
23 were taking an air sample, you might -- the
24 concentration is such that you can't detect it
25 even though the person is still being exposed.

1 And -- and the reason why is we have
2 not been able to develop an air sampling system
3 that's as efficient as the human lungs are in
4 filtering out things.

5 Those air cassettes are about this
6 big. And you've got a surface area about this big
7 that can collect the particles and stuff.

8 Now, if you take the human's lungs and
9 opened it up and spread out the surface area of
10 what's in this -- each side, the inside area that
11 does the filtering and where things come in, et
12 cetera, would be the size of a tennis court versus
13 something this big.

14 So I know at certain concentrations we
15 would be very fortunate to find something because
16 we have yet to come up with how do we duplicate
17 that type of filtering system. The human lungs
18 are incredibly good filtering systems.

19 Q. One of your areas of expertise is
20 tissue digestion. Have you published on that in
21 the peer-reviewed scientific literature?

22 A. Yes. This was a paper that was
23 published two or three years ago. It has our
24 initial work in it from the heavy liquid density
25 separation showing the tremolite and also the

1 tissue analysis from these individuals that had
2 ovarian cancer.

3 And we were able to see the same
4 ingredients that were in the Johnson's Baby
5 Powder: talc, asbestos fibers, and sometimes
6 aluminum silicates.

7 So -- and they had absolutely no other
8 exposure to anything. I mean, they're -- the --
9 you know, they didn't work on cars. They didn't
10 work in factories and everything. So their only
11 exposure to asbestos was from the cosmetic
12 Johnson's Baby Powder.

13 Q. The left-hand column, is that this
14 NIST standard for tremolite asbestos? I know it's
15 hard to see, but...

16 A. Yes. It is.

17 Q. Okay. And then the middle column is
18 tremolite asbestos found in Johnson's Baby Powder?

19 A. That is correct.

20 Q. And then what's the right-hand column?

21 A. That is tremolite found in tissue
22 samples. And you can see they all look the same.

23 Q. What are we looking at here?

24 A. These are known as "tissue blocks" --
25 this is Michael's tissue -- where they do biopsies

1 to see what's gone wrong.

2 So they take it out and then they fix
3 it in formaldehyde, and then they put it in a hot
4 liquid wax block. So the wax will penetrate into
5 the tissue blocks, and when it hardens, that gives
6 it support so that you can slice it. Otherwise --
7 it's almost like putting something in a clamp and
8 you're going to file it and it doesn't move
9 around.

10 Because when they take pathology
11 slides, meaning they cut the tissue and put it on
12 a glass slide, that tissue thickness is about
13 5 microns.

14 So we received these, and you can see
15 two different colors up there. You can see the
16 pink, which is lung tissue that does not have
17 tumor. And if you go to the ones that have real
18 dark areas, that's the mesothelioma tumor in
19 there.

20 And you don't want to analyze tumor
21 from lungs for asbestos. Obviously, you want to
22 analyze it if you're a pathologist so you can tell
23 what kind it is.

24 But tumor tissue is new tissue, and
25 this is new tissue that has formed when a person

1 is no longer -- usually no longer is being exposed
2 to talcum powder. You want the tissue that's been
3 there for a while.

4 So what we do is we took half of the
5 pink areas across the top, and then one of -- one
6 of the -- one, two, three, four -- the fifth one,
7 you can see on the right side there is some pink
8 tissue. That's what we cut out to analyze.

9 And then -- and the last one is what
10 in the middle is pink. So we just wanted
11 parenchyma, or lung tissue, with no tumor in it.

12 Q. Okay. I got a 15-minute warning, so I
13 got to go fast.

14 Can you tell us how you do this
15 procedure? And just walk us through it.

16 A. The first thing we do is take the
17 pieces, and we put them through a type of xylene
18 or another chemical to wash out all the talc --
19 excuse me -- washout all the -- all the wax.

20 Have to do that five or six times.
21 After we do that, we let it dry. We weigh it.
22 And then we put it into a -- essentially, a bleach
23 material, but a lot more -- a lot more high-power
24 than what you put in, you know, with the whites.

25 Once we do that, we dissolve all the

1 tissue out as much as we can. We centrifuge it
2 and try to get what fibers and whatnot in the
3 bottom, put it on a filter, and put it in the
4 microscope, one of these grid things.

5 Q. What are we looking at here?

6 A. This is the analysis of 12 particles
7 in the sample. What we found in here was
8 tremolite, asbestos and winchite asbestos, which
9 is a form of tremolite. And then we found all
10 these talc particles.

11 Q. Is this from Michael's body?

12 A. This is his lung tissue, about a
13 tenth -- less than a gram of the lung tissue. So
14 we found what we would expect in -- in there for
15 somebody who had been exposed to talc.

16 Q. This is one of those images from the
17 NIST tremolite asbestos standard that we looked at
18 before. This is one of the images from tremolite
19 in Johnson's Baby Powder that we looked at before.

20 A. In his lung.

21 Q. And that's his lung, right?

22 A. Right.

23 Q. Can you tell us whether or not the
24 tremolite in Michael Perry's lung is consistent
25 with what you found in Johnson's Baby Powder?

1 A. It is.

2 Q. Is it also consistent with Johnson &
3 Johnson's own internal documents from decades ago
4 that said when you find tremolite in talc in
5 people's lungs with mesothelioma, it's a
6 fingerprint for exposure to asbestos?

7 A. Yes.

8 MR. ADAMS: I think we have five
9 minutes, give or take? Six or seven.

10 Okay.

11 BY MR. ADAMS:

12 Q. Are you familiar with Johnson &
13 Johnson's stack of testing that says "nondetect"?

14 A. Yes.

15 Q. Why -- give me a summary, in case I
16 run out of time. Why are there so many
17 nondetects?

18 A. Because of the method they were using.

19 Q. Well, let me ask the first question.

20 Have you seen a chart detailing over
21 1,000 examples of samples of Johnson's Baby Powder
22 indicating asbestos in talc?

23 A. I've seen that many showing no
24 asbestos.

25 Q. Have you also -- I want to get to the

1 no asbestos in a second.

2 But there's a chart -- Decades of
3 Evidence chart that we put together from documents
4 showing over 1,000 samples evidencing asbestos in
5 Johnson's Baby Powder.

6 A. Yes. I've seen it.

7 Q. So it's not like there's just a bunch
8 of nondetects. There's a bunch of detects, too.
9 That's what I -- okay. All right.

10 Well, let's talk about the nondetects
11 for a second. Why are there so many nondetects?

12 A. Because their detection limit was so
13 poor. Meaning that in order for this -- in order
14 for them to find it, the sample would have to have
15 at least, in some cases, the minimum would be
16 5 million tremolite samples -- tremolite fibers in
17 bundles in 1 gram of the talcum powder.

18 But usually it's as high as
19 15 million. And out of the 135 samples that we
20 get -- or 45 samples, we have two that would meet
21 that criteria.

22 Q. What is the J4-1 method that we're
23 looking at and why is it inadequate to test to
24 find asbestos in talc?

25 A. Because they use X-ray diffraction

1 initially, and X-ray diffraction has a very poor
2 detection limit. The concentration of asbestos in
3 there, depending on the type, even the
4 state-of-the-art ones, for tremolite, it has to
5 have at least .1 percent. For anthophyllite, it's
6 between .2 and .4. For chrysotile, you're up into
7 half a percent that has to be there.

8 And the thing is, if it's positive,
9 then you have to do polarized light microscopy
10 analysis to verify its fibers. So if it's
11 negative, you just quit.

12 Q. So Johnson & Johnson with its J4-1
13 method used the weakest test there is. And if
14 they didn't see it, they stopped. Do I have that
15 right?

16 A. That's correct. You would say there's
17 no asbestos in there.

18 Now, nobody can ever say there's no
19 asbestos in there. Alls you can say is, "I have a
20 detection limit of this, and I didn't find it."

21 Because you can never say it's not in
22 there because unless you have a detection limit of
23 1, and so far there is no analytical instruments
24 in this world that has been able to achieve
25 something like that.

1 Q. Is it accurate that the vast majority
2 of nondetects in Johnson & Johnson's files are
3 where they used XRD and nothing else?

4 A. Correct.

5 Q. Have -- are you familiar with a White
6 Paper?

7 A. I am.

8 Q. Have scientists in the White Paper
9 criticized the XRD method for finding asbestos in
10 talcs?

11 A. Yes, they have.

12 Q. Did --

13 A. They didn't realize -- you know, they
14 didn't realize for a while that the XRD method was
15 very poor.

16 Q. Do they specifically mention Johnson &
17 Johnson's J4-1 method as -- in their criticisms?

18 A. Yes, they did.

19 Q. Did Johnson & Johnson's own internal
20 documents criticize XRD -- or let me withdraw
21 that.

22 Did Johnson & Johnson's own internal
23 documents have examples where they find asbestos
24 with TEM and don't with XRD?

25 A. Yes.

1 Q. What are we looking at here?

2 A. This was the -- this was the J4
3 method, where they sent spiked samples out to a
4 number of labs to see how they correlated with
5 each other. And only 1 out of 7 found the
6 tremolite in the spiked sample.

7 Q. And a spiked sample is where they
8 literally put asbestos into the talc, send it to
9 these labs, use J4-01, and only 1 of the 7 found
10 it?

11 A. Yeah, all the same concentration.

12 Q. TEM we've covered.

13 Have you seen internal Johnson &
14 Johnson documents from the 1970s where they were
15 concerned that the industry standard was going to
16 become TEM testing of talc?

17 A. Yeah. They didn't like it.

18 Q. What did they say?

19 A. Grave concern was expressed by the
20 meeting with the inclusion of TEM.

21 Q. So we covered the J4-1 XRD method,
22 right?

23 A. Yes.

24 Q. The Johnson & Johnson -- we already --
25 and we discussed this: Johnson & Johnson also had

1 a TEM protocol for the big microscope, right?

2 A. Correct.

3 Q. Okay. Why wasn't -- why wasn't
4 Johnson & Johnson's protocol for the big
5 microscope, the powerful one, adequate?

6 A. Because, one, their detection limit
7 was so poor. You know, their sample size that
8 they're putting on the grid is 9-millionths of a
9 gram. What we put on it -- what we start with
10 because we have heavy liquid density is
11 30 milligrams. So, you know, we have thousand --
12 it's many thousands of times better detection
13 limits.

14 If they have to have 15 million in a
15 gram to detect 1 fiber, we only have to have
16 between 7,000 of the 10,000 in a gram to detect
17 1 fiber. That's why we have so many positives and
18 they have so many negatives.

19 Q. Did they also require the detection of
20 five or more asbestos minerals of one variety;
21 otherwise, they could report it wasn't there?

22 A. Yeah. That -- they called it
23 "unquantifiable." Now, you had to have five.
24 Protocol is -- you know, if you go to ISO
25 protocol, they say detection limit is one; you

1 have to find one, but you had to have five of the
2 same thing.

3 If you found four tremolite, four
4 actinolite, four winchite, four chrysotile, and
5 they were all four, they would say, "That's
6 unquantifiable. You're just fine. You didn't
7 find five."

8 There's no -- absolutely zero reason
9 you have to find five other than -- well, you
10 know, my cynical side says, "other than to say
11 it's negative."

12 Q. Did Johnson & Johnson also limit the
13 time its analysts could look under the big
14 microscope?

15 A. One hour.

16 Q. Why is that a problem?

17 A. Because you're dealing with high
18 magnifications, and you have to -- you know, you
19 see a fiber, you have to then: Okay. What kind
20 of fiber is it? You know, is it talc? Is it
21 asbestos?

22 One hour for us would be looking at a
23 negative sample that didn't have much in it, just
24 to go through and make sure. That sample that --
25 on the analysis on the talc in those two, that

1 took many hours.

2 Q. In Johnson & Johnson's stack of
3 nondetects did they ever use the concentration
4 method even once?

5 A. No.

6 Q. Did they write down why?

7 A. No.

8 Q. Did Johnson & Johnson write down why
9 they didn't want to use the concentration method?

10 A. Oh, yes. It was too sensitive. It
11 puts it in words right there: We deliberately
12 have not included a concentration technique as we
13 felt it would not be in the worldwide company
14 interests to do this.

15 You can't sell it if you show asbestos
16 in it, I guess.

17 MR. ADAMS: Thank you for bearing with
18 me and answering my questions.

19 Pass the witness, Your Honor.

20 THE WITNESS: No problem.

21 THE COURT: All right. Before we go
22 to cross-examination, we'll take our
23 midafternoon break.

24 Ladies and gentlemen of the jury,
25 let's take our midafternoon break. Be back

1 at 3:30 or thereabouts. Everyone needs to
2 be refreshed.

3 (The jury exits the courtroom at
4 3:17 p.m.)

5 THE COURT: Okay. Ladies and
6 gentlemen, I have sad news to give you.
7 The courthouse will be closed tomorrow.
8 Richland County School District wants
9 schools to be closed tomorrow.

10 There is a flood warning, and there's
11 specific information about flood warning as
12 to the Congaree and other bodies of water
13 and rivers which are right around Columbia.

14 And so the Richland County Government
15 has closed the courthouse tomorrow. It
16 will open on Friday. That's what's going
17 to happen. And y'all try to take -- I want
18 to give you that at the break so you can
19 kind of plan out what you want to suggest
20 about how you proceed.

21 MS. BUENO: Thank you, Your Honor.

22 MS. McVEY: Thank you, Judge.

23 THE COURT: All right. Be at ease.

24 * * *

25 (Whereupon, there was a recess in the

1 proceedings from 3:19 p.m. to 3:32 p.m.)

2 * * *

3 (The jury enters the courtroom at
4 3:32 p.m.)

5 THE COURT: Ladies and gentlemen of
6 the jury, before we begin the balance of
7 the day, I want to announce to you that
8 Richland County's courthouse will be closed
9 tomorrow. So you've got the day off.

10 All right. The reason is there are
11 flood warnings for the Congaree and some of
12 the surrounding rivers, and the activity is
13 supposed to take place late this evening,
14 early tomorrow morning.

15 Richland County School District Number
16 1 is closing its schools tomorrow as well.
17 I don't know about the other districts.
18 But county government is closing. I don't
19 know exactly what state government is
20 doing. We've got a potential installation
21 of the new chief justice tomorrow. I don't
22 know whether that's going to take place or
23 not. But we will not be here.

24 All right. We will resume Friday at
25 9:30. So, all right, just for your

1 information. And although the lawyers are
2 anxious about it, it's not a bad thing.

3 All right. You may proceed.

4 MR. COWAN: Thank you, Your Honor.

5 THE COURT: Cross-examination,
6 Mr. Cowan.

7 * * *

8 CROSS-EXAMINATION

9 BY MR. COWAN:

10 Q. Good afternoon, Dr. Longo.

11 A. Good afternoon.

12 Q. And good afternoon. I -- we haven't
13 met either yet. So this is the first time you
14 heard me speak, I think.

15 Dr. Longo, my partner, Kim Bueno, has
16 been repeatedly bringing up this picture here, so
17 I feel like I have to. And I want to -- I want to
18 first try to just set the table here for where
19 we're going.

20 What we've been telling the jury is
21 that the jury is going to need to figure out
22 whether or not there was any asbestos in the
23 bottle that Mr. Perry was using, and if so, how
24 much; and if so, was there enough that was in the
25 air after Mr. Perry used the bottle such that

1 there was enough that ended up in his body that
2 actually caused his mesothelioma? Okay. So
3 that's just setting the table.

4 And I want to talk to you about where
5 you fit in here. Because I know -- and I'm going
6 to start here first, this last picture. And I
7 know that you talked to the jury about your --
8 your tissue digestion analysis, and we're going to
9 get there.

10 But with regard to this -- this
11 picture here, sir, you're -- this is, I think, an
12 easy one. You're not a medical doctor, correct?

13 A. I'm still not.

14 Q. Yeah.

15 You're not an expert in disease
16 causation. So you're not here to tell this jury
17 that any amount of asbestos in Mr. Perry's body
18 actually caused his mesothelioma? That's not your
19 role here, correct?

20 A. It's not my role to say one way or the
21 other. I'm just a measurements guy.

22 Q. Right.

23 So we're going to -- we're going to
24 focus on what's in the bottle and -- and what's in
25 the air, because you're here to talk about both,

1 correct?

2 A. Correct.

3 Q. All right.

4 MR. COWAN: Let's go to Slide Number

5 1.

6 BY MR. COWAN:

7 Q. So let's talk about what's in the
8 bottle. And in order to do that -- answer that
9 question, what's in the bottle, I want to start
10 first with: Where did the talc come from that
11 Mr. Perry would have been using when he was using
12 Johnson & Johnson from 1974 to 2019. Are you with
13 me, sir?

14 A. I am.

15 Q. Okay. So we're going to go to
16 Slide Number 2. Okay. So can you see that, sir?

17 A. Yes.

18 Q. I made it big because I'm going blind
19 myself. I got the -- you got me on the cataracts.

20 THE COURT: His screen doesn't work on
21 the witness's desk?

22 THE WITNESS: No, it does not.

23 THE COURT: All right. Just a second.

24 MR. COWAN: Yes, ma'am.

25 THE WITNESS: Did you do this?

1 MR. COWAN: I did not. I -- I'm the
2 least technical guy here. I'm not that
3 guy.

4 THE WITNESS: I'm just joking.

5 THE COURT: All right. And then the
6 other thing I want done, if you've got this
7 big book that's in between him and the
8 jury.

9 THE BAILIFF: I was just going to ask
10 that question --

11 MR. COWAN: That's my fault.

12 THE COURT: Well, get that book and
13 put it someplace else. Okay.

14 THE WITNESS: Is that okay,
15 Your Honor?

16 THE COURT: Mr. Longo, that's for you.
17 Don't -- don't block the jury. All right.

18 BY MR. COWAN:

19 Q. You see this slide in front of you,
20 sir?

21 A. Yes, but you're missing one.

22 Q. Yep. So we'll get there.

23 So we've got J&J talc used by
24 Mr. Perry. Do you see that, sir, on --

25 A. I do.

1 Q. -- top of the slide?

2 Okay. And from 1974 -- I started
3 the -- the slide with 1974 because Mr. Perry,
4 that's his testimony. This is -- his first memory
5 of actually using Johnson & Johnson talc was when
6 he was around five years old in 1974; is that
7 correct?

8 A. That's correct.

9 Q. All right. And so we started it
10 there. And so for -- you understand that he
11 stopped using -- or as -- he says he stopped using
12 Johnson & Johnson talc in 2019, and that's why I
13 ended it with 2019. Do you see that, sir?

14 A. Yes.

15 Q. Okay. So in 1974, when he first
16 started using Johnson & Johnson talc, that would
17 have been Vermont talc, correct?

18 A. Correct.

19 Q. And from -- from 1974 all the way to
20 mid-2003-ish, all that 29, 30 years, the vast
21 majority of that time, it still would have been
22 Vermont talc, correct?

23 A. That is correct.

24 Q. Okay. Now, at some point in time in
25 2003, Johnson & Johnson switched to Chinese talc,

1 correct?

2 A. Actually, it's 2004.

3 Q. Okay. Well, we can -- I'll change it.

4 A. You don't have to change it.

5 Q. That's all right.

6 A. It's close enough.

7 Q. It's fungible? I don't think it --

8 A. I just don't want to say "2003"

9 because these sometimes come back to haunt me.

10 Q. I hear you.

11 So you say sometime in 2004, it
12 switched over to Chinese?

13 A. Yeah. They pretty much -- yeah, early
14 2004. So 2003 was still Vermont.

15 Q. Okay. Now, you understand that there
16 was a short period of time in and around 1979,
17 1980 where Johnson & Johnson actually went back --
18 and when I say "back," I'll explain that in a
19 moment. But they went back to Italian talc for a
20 little while, correct?

21 A. That's correct.

22 Q. All right. But given this timeline,
23 you're not -- you're not coming in today to
24 testify and tell these jurors that Mr. Perry was
25 actually exposed to Italian talc with Johnson &

1 Johnson's label on it, are you?

2 A. I mean, he's got five to seven months
3 where it's just all Italian. You would have to
4 have a time period where they're filling the
5 containers before they got back to the Vermont.

6 I mean, I don't see how it's not
7 possible, especially the number of containers he
8 was purchasing, ten a year.

9 Q. Dr. Longo, I'd like you to take a look
10 at that big book of yours right next to you on the
11 right.

12 And I'd like you to look at Tab
13 Number 3. And these are prior transcripts of
14 yours, and actually it was a deposition I took of
15 you three weeks ago on this very topic.

16 And I want you to -- I'd like you to
17 turn to Page 64, line 2.

18 A. 64, line 2.

19 Q. And I was asking about this very
20 topic, and I said -- so:

21 QUESTION: "So given his dates of use,
22 and maybe we can short-circuit this, are you going
23 to come into trial and testify that Mr. Perry was
24 exposed to Italian talc from Johnson & Johnson?"

25 ANSWER: "No, I'm not."

1 Sir, did -- were you asked that
2 question and did you give that answer three weeks
3 ago?

4 A. I gave that answer three weeks ago.

5 Q. Thank you.

6 A. But that was before we found the
7 winchite, which is a part that has been found in
8 the Italian talc, the winchite asbestos versus the
9 richterite.

10 That's the only reason I'm going back
11 on that a little bit. Unless --

12 Q. Okay.

13 A. Unless you're not going to go after
14 the winchite, and then I'll withdraw.

15 Q. We'll definitely talk about the
16 winchite, I promise you, when we get to your
17 tissue digestion at the end of this.

18 A. Okay.

19 Q. But we're going to stick with what's
20 in the bottle for now, okay?

21 Now, you've -- with regard to at least
22 Vermont and China, which we know he was exposed
23 to, you never actually visited either one of those
24 mines. Fair?

25 A. That's fair.

1 Q. Okay. And you've not actually tested
2 samples from the ore, like, out of the mines, from
3 either the China or the Vermont mines, correct?
4 Correct?

5 A. I have tested the Windsor out of the
6 mine but milled.

7 Q. Okay. I understand.

8 A. Not out of the containers. I have
9 tested Kwangsi actually from the mine itself and
10 from samples that Sanchez collected when he went
11 over there, so some of them were ore samples.

12 But, no. I've never collected any
13 samples myself.

14 Q. Fair enough. And I don't think it's
15 that important.

16 At the end of the day, you've tested
17 bottles -- Johnson & Johnson talc bottles that
18 came from Vermont, came from China, came from
19 Italy, for that matter, correct?

20 A. Correct.

21 Q. All right. And you started your
22 testing of Johnson's Baby Powder and Shower to
23 Shower in around 2017. Fair?

24 A. Towards the end of 2016, 2017.
25 That's -- that's when we started right off the bat

1 just using the heavy liquid density separation
2 sample prep for the analysis.

3 Q. Sure. Let's go to Slide 3. And
4 you've seen this before. This is actually a slide
5 you've used at prior trials. We've talked about
6 it at your deposition.

7 But this is a -- this -- just kind of
8 set the table for -- for the jury here, okay?

9 These are kind of what you've referred
10 to as "Round 1 testing" before. And just to set
11 the table here, there were kind of two big waves
12 at the beginning of all this, between 2017 and
13 2019, where you tested a bunch of bottles in kind
14 of two main waves. Is that fair?

15 A. Fair.

16 Q. Okay.

17 A. 2019 into 2020.

18 Q. Sure. And -- and the first one was --
19 you've referred to as Round 1. And it's testing
20 that you did of primarily bottles that you got
21 from -- from plaintiffs' counsel. And not
22 these -- not this counsel. I'm talking about just
23 other plaintiffs' counsel throughout the country,
24 correct?

25 A. That's fair.

1 Q. All right. And over the years, you've
2 referred to this group of bottles as, you know,
3 "Round 1." That's just how you've referred to
4 them sometimes, correct?

5 A. I don't recall doing that. And you
6 don't have to remind me.

7 Q. I can, if you'd like. But I don't
8 think I'd waste the time.

9 A. I don't recall it, but I certainly
10 would agree that was the first ones we did.

11 Q. And we're looking at -- you recognize
12 these bottles. You're -- we're looking at the
13 bottles that were actually a part of that Round 1,
14 first-round testing, right?

15 A. Yes.

16 Q. Yeah. And you wrote a really long
17 report. It's like 800 pages. I'm not going to
18 bring it out?

19 A. That's Round 2, I think.

20 Q. Well, they were both really long.
21 Let's be honest.

22 But you wrote a long report about the
23 Round 1 bottles and you issued that report,
24 correct?

25 A. Yes.

1 Q. Okay. Now, for those bottles up
2 there, you know, they were actually off-the-shelf
3 bottles, like, literally purchased off the shelf,
4 correct?

5 A. Correct.

6 Q. Three of them you got from Plaintiffs'
7 counsel -- you actually -- your office went to
8 Publix, I think, and bought one of them, right?

9 A. Yeah, I still have one -- it's
10 Number 13 -- that we use for when we were making
11 standards.

12 Q. That's right.

13 A. So we were using the same thing over
14 and over.

15 Q. And to be fair, we're going to talk
16 about your subsequent testing of some of those
17 bottles later on.

18 But with regard to the Round 1
19 testing, when you tested those off-the-shelf
20 bottles, you didn't have any detection of asbestos
21 in those off-the-shelf bottles during Round 1.
22 Fair?

23 A. It would show it on our -- you know,
24 on our chart. But I think we went back and
25 retested some of those.

1 Q. I'm going to get there soon.

2 A. Yeah. Okay.

3 Q. But what I'm asking about is Round 1
4 testing, sir.

5 A. Yeah. The first testing, we didn't
6 find anything.

7 Q. That's right. And of the remaining
8 bottles, several of these bottles, they were
9 purchased on places like eBay, right?

10 A. Correct.

11 Q. Okay. And -- and, look, some of
12 them -- I mean, they're kind of cool. They look
13 kind of retro. Some of them are pretty old,
14 right?

15 A. We have them as far back as the 1940s.

16 Q. I actually saw some in the 1920s,
17 '30s, weren't there?

18 A. I don't think so.

19 Q. Okay.

20 A. The ones that look really old, those
21 were the ones that were from -- from the 1940s.

22 And a few of them -- actually has
23 taken a while because nobody has admitted to it,
24 is that the World War II ones have California talc
25 in them.

1 Q. Well, we were going to get there. But
2 you're ahead of me, as usual.

3 In fact, most of these bottles in
4 Round 1 were manufactured before 1964, correct?

5 A. Most of them, yes.

6 Q. And so none of them -- none of those
7 manufactured before 1964, none of them would have
8 been Vermont or Chinese. They would have been
9 Italian or, like you just talked about, the World
10 War II might have been California?

11 A. I think it might be. It doesn't make
12 sense that during World War II, when Italy was one
13 of our enemies, that they were selling talc to us.

14 So I'm going, "Okay. This doesn't
15 make sense. Where else could they have been
16 getting the talc?" And in California was one that
17 people were using.

18 Q. At the end of the day, Mr. Perry was
19 not exposed to Johnson & Johnson World War II
20 bottles. Fair?

21 A. That's fair.

22 Q. Okay. And at the end of the day,
23 other than the off-the-shelf bottles, none of the
24 bottles that you tested in Round 1 that you
25 received from Plaintiffs' counsel, they weren't

1 sealed when you got them, correct?

2 A. The off-the-shelf ones were sealed,
3 obviously.

4 Q. Correct.

5 A. But the other ones weren't, no.

6 Q. All right. And we don't know how many
7 people had possession of those Round 1 bottles
8 before you got them. Fair? Other than the
9 off-the-shelf?

10 A. Well, that's fair.

11 Q. Okay. But we --

12 A. But looking -- but looking at the
13 condition of the containers when we got them, I
14 would say whoever had them kept them in pretty
15 good shape. Didn't have them outside.

16 And there was no indication of any --
17 anything done to the containers that they could
18 put -- you know, put something back into it.

19 These tops on these containers are
20 really sealed on there tight. Because, if you
21 think about it, if you're putting that on an
22 infant, the last thing you want is that top coming
23 off and then all that falling out, getting in
24 their breathing system.

25 So my opinion is that everything in

1 those containers was originally put in there when
2 they manufactured it.

3 Q. Dr. Longo, I appreciate all that
4 information, but you remember what my question
5 was, right?

6 All I asked you was: You didn't know
7 who had possession of them beforehand, right?

8 A. No, I don't.

9 Q. Okay. And -- and obviously, now, many
10 of these bottles, these older bottles were Italian
11 talc from the '50s. They may have been
12 California. And in this case, you told me that
13 you are not relying on your Round 1 testing of the
14 Italian talc bottles, correct?

15 A. I did say that.

16 Q. That's right. And -- and in this
17 case, you are relying on the Round 1 testing of --
18 there's a few Vermont in there and some Chinese.
19 Is that fair?

20 A. That's fair.

21 Q. Okay.

22 MR. COWAN: So Slide 4, please.

23 BY MR. COWAN:

24 Q. So out of the Round 1 testing, you
25 know, these are the bottles that were -- were

1 remaining, a few Vermonts and some Chinese. Fair?

2 A. Yeah. I'm not relying on the results,
3 and that's correct.

4 Q. Okay. So --

5 A. But putting an X on there, it's not
6 really fair. It shows that starting off in the
7 '50s and '60s and '70s, yeah, you've got asbestos
8 in there that came from the mines.

9 Q. I appreciate that, but I wasn't trying
10 to insinuate anything, sir. I'm trying to tell a
11 story, and that these bottles you are not relying
12 on, the ones that I've X'd out in this case,
13 because they were Italian -- correct? -- and
14 California?

15 A. Again, the only thing -- because of
16 the results of the tissue, I'm not relying on what
17 the concentrations were in there. But because of
18 all the tremolite that is found in the Italian
19 mines, it's not surprising that there's winchite
20 in there.

21 Q. Okay. Thank you for that.

22 So let's talk about your Round 2
23 testing, okay?

24 A. Okay.

25 MR. COWAN: Let's go to Slide 5.

1 BY MR. COWAN:

2 Q. Now, your Round 2 testing, that was
3 testing of samples from a series of J&J talc
4 product containers that you got directly from
5 Johnson & Johnson. I think you mentioned that
6 earlier, right?

7 A. Well, it went to the laboratory that
8 Johnson & Johnson uses to make splits. We never
9 got the containers, other than pictures of them.

10 So they would take it and make a split
11 where they would give us so much in a container.
12 And then from that laboratory, typically, we would
13 have one of our scientists there watching to make
14 sure they don't put any asbestos in it.

15 Q. And I appreciate all that, and I
16 appreciate all that --

17 A. And then we would get it at our lab.
18 So -- and these -- they gave us pictures of them.
19 But they didn't give us the containers.

20 Q. And we were going to get there, I
21 promise. But I understand you didn't actually get
22 the bottles themselves. You got retains, and you
23 got pictures.

24 And sometimes folks have referred to
25 these bottles as -- as "museum bottles." You've

1 heard that before, right?

2 A. Retained, museum bottles --

3 Q. MDL, MDL models?

4 A. MDLs because that's -- that's what
5 caused these samples to be sent to us.

6 Q. Sure.

7 So whatever you want to call it. I
8 call them Round 2. Do you want to call them
9 museum? Do you want to call them MDL bottles? I
10 don't care.

11 These bottles were dated during the
12 1960s, the '70s, the '80s, mostly, and then there
13 were some '90s bottles.

14 A. And 2000s.

15 Q. There was some 2000s, but it wasn't
16 bottles, right? It was, like -- it was Imerys
17 car -- rail car stuff. And the bottles really
18 were from the '60s, '70s, '80s, and '90s. Fair?

19 A. There were some 2000 bottles.

20 Q. Okay. I'll give you that.

21 All right. So you're relying,
22 certainly, on this Round 2 testing of these
23 museum, MDL, whatever you want to call them,
24 bottles, right?

25 A. Yes, especially for the Vermont ones.

1 Q. And like you said, you didn't actually
2 receive the bottles; you received the pictures.
3 But this is a pretty good representation of the
4 bottles that you got pictures of and you got the
5 samples from --

6 A. No. This is the bottles they've had.
7 These aren't actually what the samples came out
8 of.

9 Q. And the samples were split. You
10 performed a series of analyses on those
11 containers, and over the course of 2018, '19, and
12 then you issued a report, right?

13 A. Yes.

14 Q. And when you did the testing, it
15 was -- I think it was about 50 bottles. There was
16 other stuff, and we can talk about that, if you'd
17 like. But with regard to the bottles, I think
18 there were 50 of them that were U.S.-based, right?

19 A. Correct.

20 Q. And -- and folks, including yourself,
21 you know, referred to your report as -- as the
22 Round 2 report or the Report Number 2 or whatever
23 you want to call it. But you did issue a report
24 on that finding of the 50 bottles that you tested,
25 correct?

1 A. Yeah, 52, 53. I don't remember the
2 exact number.

3 Q. That's fine.

4 And before we talk about the amount of
5 asbestos that you found in those bottles, I want
6 to -- I want to bring up Slide Number 6. And this
7 is just for the education of the jury, okay?

8 So when we talk about the bottle,
9 we're talking about --

10 MR. COWAN: Is it okay if I walk over
11 here, Judge?

12 THE COURT: Sure.

13 BY MR. COWAN:

14 Q. Okay. If we talk about the bottle,
15 we're talking about two different types of ways
16 to -- to measure the amount of asbestos, if any,
17 in the bottle. You can do it by weight
18 percentage. You already talked about that. And
19 then you can do it by fibers per gram, correct,
20 sir?

21 A. Correct.

22 Q. And, in fact, you did both types of
23 measurements in your report on the MDL, the museum
24 bottles, whatever you want to call them?

25 A. Yeah. I think those were the last

1 reports when we used the weight percent since it's
2 so inaccurate.

3 Q. I understand, sir. But you did both
4 on that Report Number 2. Fair?

5 A. Correct.

6 Q. Okay. And in the Round 2 bottles,
7 you -- you reported the amounts in the fiber per
8 gram. And I want to pull up Slide Number 7. And
9 I want to see if you'll agree with me, that with
10 regard to these Round 2 bottles, when you -- when
11 you did an average of all of the fiber-per-gram
12 calculations that you did, you came up with an
13 average of 23,700 fibers per gram, correct?

14 A. Correct.

15 Q. All right. And in the Round 2 report
16 like we just talked about, you did also report
17 weight percentages in TEM, correct?

18 A. Correct.

19 Q. All right. So let's go to Slide
20 Number 8. And obviously, not all of the -- like
21 we talked about, not all of the bottles that you
22 tested came back positive for asbestos at all,
23 right? Some of them came back negative or
24 nondetect?

25 A. Nondetects.

1 Q. Okay. Because you can never actually
2 say there's nothing in there, right? I mean, it's
3 impossible?

4 A. No. My opinion is every one of them
5 has asbestos in it. It's just a matter of
6 detecting it.

7 Q. So with regard to your detection limit
8 at the time, though, out of the 50 bottles --
9 maybe it's 51, 52 -- I think there was about 14
10 that you said, "We couldn't detect any asbestos at
11 that time." Fair?

12 A. I'm trying to remember because the
13 Vermont -- the Vermont samples, I think, we had
14 them up to 85 percent positive level. And then
15 the Chinese, it went down. So, yeah, that would
16 be approximately right.

17 Q. Okay. So you're going to go with me.
18 I can get your report, if you'd like.

19 Okay. So about 14 bottles out of 50
20 came back no asbestos detected. Then we've got a
21 calculation of weight percentage of the remaining
22 bottles. And the -- the lowest level that you
23 identified in that Report Number 2 came out to
24 be .0000033 percent. Do you see that, sir?

25 A. Yes.

1 Q. Okay. And the highest level that you
2 found wasn't even actually a Johnson's Baby
3 Powder. It was a Shower to Shower. But it was
4 at .0092 percent. Do you see that, sir?

5 A. That's, yeah, the weight percent on
6 that.

7 Q. Yeah. And so --

8 A. That's why we stopped using it,
9 because they're so inaccurate.

10 Q. I understand, sir. Thank you. But
11 this is your data, correct?

12 A. It is --

13 Q. Thank you.

14 A. -- but the problem with the weight
15 percent -- because you're not weighing anything.
16 You're doing a mathematical calculation on the
17 microscopic fiber, and that's why the FDA wants
18 that -- wants weight percents out. But, no, those
19 are our numbers.

20 Q. That's your numbers.

21 So let's just keep moving on, keep
22 moving forward. We've got 33 here. So that's
23 3.3-millionths of a percent? That's the right way
24 to say that, correct?

25 A. Correct.

1 Q. And that's 9.2-thousandths of a
2 percent; is that correct?

3 A. That's correct.

4 Q. All right. Now, I heard you talk
5 about trace, so I've got to ask the question.

6 These numbers, that's trace, at least,
7 right? Trace amount has got to be what? At least
8 below 1 percent; that's trace amount, right?

9 A. Typically, it's below .1 percent
10 or .5 percent, trace.

11 Q. You've never testified that
12 1 percent -- below 1 percent was trace?

13 A. Well, I might have said that, but
14 maybe 1/2 percent, 1 percent. But anything below
15 that, I would just call trace. That's pretty
16 much --

17 Q. Okay. So you would agree that these
18 numbers are definitely trace amounts of asbestos,
19 even the highest amount that you're finding in
20 Round 2. Fair?

21 A. It's -- it's -- would be categorized
22 as trace.

23 Q. Right.

24 And a while ago, you used to call --
25 something called "ultratrace," you used to say

1 that was anything below .1 percent. You know you
2 used to say that, right?

3 A. Until I looked at what ultratrace
4 was --

5 Q. Well, you googled it, right? You
6 googled it?

7 A. No. I got my -- I got my microbiology
8 chemistry book out and going, "I've been saying
9 this. I better check it out."

10 Q. Oh, Dr. Longo, come on, now. You
11 told -- you told a -- you told a jury that you
12 googled it, that you found out that ultratrace
13 actually should have a few more zeroes there
14 because you googled it, right?

15 A. Well, it should have a few more
16 zeroes, but you didn't set it up to do -- and a
17 biological system's not perfect anyways. I was
18 using it wrong, but it's still trace.

19 Q. I'm fine. So, regardless, these --
20 these numbers are certainly below trace. And --
21 and at one time, at least, both of these numbers
22 certainly categorized as "ultratrace" under the
23 definition that you at least used to use. Fair?

24 A. Yeah. When I was wrong.

25 Q. Okay. We all get stuff wrong

1 sometimes.

2 You know that the EPA is -- or the
3 Environmental Protection Agency is a health-based
4 organization. You know that, right?

5 A. Correct.

6 Q. Okay. And you've said in the past
7 that the EPA is just not concerned with -- with
8 materials containing a trace level of asbestos,
9 correct? They just aren't?

10 A. That is correct. They are -- EPA is
11 for outside, so EPA doesn't get into the trace
12 levels much.

13 So they are -- is 1 percent. It has
14 to be at least 1 percent because it's a
15 construction project.

16 However, you can't take trace levels
17 of asbestos products and go, "You know what, I've
18 only got a tenth of a percent in here. It's okay
19 if I put it in this landfill and mix it up with --
20 put a lot of sand in it and make it like nothing?"

21 You go to jail if you get caught with
22 that.

23 Q. Dr. Longo, so --

24 A. No. Let me finish.

25 Q. Well, you're not really answering my

1 question.

2 THE COURT: Wait. Wait, wait. Two
3 people are not going to talk.

4 MR. COWAN: You're right. You're
5 right, Your Honor. That was my fault.

6 THE COURT: Dr. Longo, you may finish.

7 THE WITNESS: All right. Thank you,
8 Your Honor.

9 You can't take 1 -- think about it.

10 I've got a sample that has 2 percent
11 asbestos in it. If trace was okay, then I
12 powdered it up and I started putting sand
13 in there so the weight is now trace, if EPA
14 sees you doing that and getting it into the
15 environment or you do that for OSHA so you
16 can make it like, hey, it's below the
17 level, it's not -- it's not right.

18 And the EPA, if they catch you doing
19 it, they will charge with you a felony.

20 BY MR. COWAN:

21 Q. Okay. Do you recall my question, sir?

22 A. I do.

23 Q. All right. You -- not just the EPA.

24 You have also in the past said that, really, you
25 are only ever really concerned about 1 percent or

1 more, correct? You've said that.

2 A. When did I say that for cosmetic talc?

3 Q. I didn't say that.

4 A. Ahh.

5 Q. I said that you have said in the

6 past -- you have said in the past, "I'm only

7 concerned with materials that have 1 percent or

8 more asbestos in them," correct?

9 A. And then -- then that's true. Because
10 when you're dealing with the EPA and you're doing
11 in schools and you're analyzing samples, they want
12 to know if it's 1 percent or above because that
13 puts it in a special category.

14 It's the very real construction
15 products that they've used on sites that actually
16 have less than 1 percent.

17 Q. Let's go to Slide 13 because I think
18 we're going to move on. Let's talk about what's
19 in the air.

20 So, first, I think we can agree on
21 some simple stuff here, Dr. Longo.

22 What gets into the air in terms of
23 asbestos from the use of a container of talc
24 depends in part on the overall concentration of
25 the asbestos in the actual bottle, right?

1 A. That's correct.

2 Q. Okay. So, you know, all things being
3 equal, the higher the concentration, the higher
4 amount of asbestos in the air. Fair?

5 A. I would agree with that.

6 Q. Okay.

7 MR. COWAN: And can we go to Slide 14?

8 BY MR. COWAN:

9 Q. And I think we can also agree that the
10 vast majority of the material that's in the
11 bottle, whatever that material is, the vast
12 majority of that material in the container when it
13 exits the container, it's being used, it's --
14 it's -- it doesn't become airborne, correct?

15 A. No. Everything that comes out of the
16 container is not getting airborne.

17 Q. Right. I mean, not just everything.
18 Specifically, when someone uses a Johnson &
19 Johnson talc product, somewhere between 99.5 and
20 99.9 percent goes to the ground as opposed to
21 actually getting airborne. Fair?

22 A. I would agree.

23 Q. So just to remind the jury again,
24 let's go back to the -- to Slide 15, and let's
25 look at the units of measure.

1 Air, fibers per cubic centimeter.

2 That's the way you express an amount of asbestos
3 in the air, the surrounding ambient air, correct?

4 A. Correct.

5 Q. All right. And a cubic centimeter is
6 like -- and you may disagree. It's like a sugar
7 cube, right? It's about that?

8 A. I used to say that and actually
9 measured one. It's a little bigger than a sugar
10 cube.

11 Q. Okay. Well -- okay.

12 A. Unless you like to drink espresso and
13 you get those big round ones.

14 Q. I like that, too.

15 All right. So --

16 A. Yeah, fibers per cc.

17 Q. But, regardless, it's not really solid
18 because we're talking about air. But it's this
19 much air -- right? -- in volume, correct?

20 A. Yeah. 1 centimeter by 1 centimeter --

21 Q. Yeah.

22 A. -- by 1 centimeter.

23 Q. And so you, Dr. Longo, have not
24 calculated as an actual fiber-per-cc number, you
25 haven't done a calculation of that number for what

1 Mr. Perry specifically was exposed to using
2 Johnson & Johnson, talc, correct?

3 A. No. That's -- I don't know if that's
4 possible.

5 The only thing I did was look at the
6 amount of pounds of cosmetic talc, Johnson &
7 Johnson, that he put on himself every day for 24
8 to 35 years, and it comes to half a ton.

9 So I understand that 99.5 percent of
10 maybe one application is nothing. If you spend a
11 lifetime, almost, putting almost a ton of cosmetic
12 talc on you, all having asbestos, that's where the
13 problem comes in.

14 Q. All right. Just checking my time.
15 You remember my question, though,
16 right?

17 A. I think I answered it.

18 Q. All right. You answered a couple
19 more. So let's keep going.

20 You have in the past, though,
21 conducted three simulated kind of exposure
22 studies, right?

23 A. Correct.

24 Q. All right. And -- and you've done it
25 with Johnson & Johnson talc, correct?

1 A. I did it with containers that were
2 from Italy, so it's all tremolite. Three
3 containers -- one had 15 million, one had
4 4 million, one had 1 million -- to see how they
5 lined up.

6 Q. And you're jumping ahead of me, but
7 you're right.

8 A. I'm trying to get you through here.
9 You're running out of time.

10 Q. I appreciate the help, sir. So we're
11 all right.

12 But with regard to the exposure
13 studies, you're right. You chose the highest
14 amount that you could find in any Johnson &
15 Johnson talc product for one of those exposure
16 studies, correct?

17 A. Correct.

18 Q. And then you went to the second --

19 A. There was a reason -- I mean, there
20 was a reason for it because I wanted to see if we
21 could duplicate the Gordon paper that had that
22 same concentration.

23 Q. That's wonderful. We're going to get
24 to the Gordon paper, too.

25 But all I asked was: You chose the

1 highest amount for one of them, correct?

2 A. Correct.

3 Q. And the second-highest amount for the
4 other one, correct?

5 A. Correct.

6 Q. The third-highest amount for the other
7 exposure study, right?

8 A. Correct.

9 Q. Okay. And they were all Italian talc,
10 right?

11 A. Correct.

12 Q. Okay. And you told me during the
13 deposition that you weren't going to rely on
14 those, but we're going to talk about them anyways
15 because you --

16 A. You brought it up.

17 Q. I did bring it up. So let's talk
18 about it.

19 MR. COWAN: Your Honor, am I allowed
20 to use this chair?

21 THE COURT: What?

22 MR. COWAN: Am I allowed to just use
23 this chair for a moment?

24 THE COURT: Yes.

25 MR. COWAN: Thank you.

1 BY MR. COWAN:

2 Q. So I saw the video, right? It's
3 probably been a while. But there was a video of
4 the first -- the adult application exposure study.

5 And the whole point of an exposure
6 study is to use the product, right, and to use it
7 in a way that a person might use it; and then to
8 test the air around them, test their clothes, test
9 all kinds of things to see what you find when you
10 actually use the product.

11 That's an exposure study, right?

12 A. Yes and no.

13 Q. Okay. Well, let's just keep going,
14 then.

15 So the guy that you had do the adult
16 study, it was a below-the-waist. That's what
17 you'd call it, right?

18 A. Yes. And this was a particular type
19 of case where that's exactly how the person put
20 the talc on.

21 Q. That's right. And so you had the
22 guy -- he was actually -- he was in good shape
23 because he had his shirt off in the video.

24 A. That was me.

25 Q. Oh, was it?

1 A. No.

2 Q. No. I know it wasn't you, man.

3 So -- so he's got the talc in hand. I
4 think it was a bottle from, like, the -- early
5 1950s, right?

6 A. About '54 or so, because -- I can't
7 remember because I think it was actually -- it
8 could have been still -- it could have been metal
9 or plastic. I'd have to go back and look --

10 Q. I'm going to show you a picture and
11 remind you in just a minute.

12 A. Yeah.

13 Q. Okay. So he's got the thing in his
14 hand. He's kind of got his shirt off because
15 you're doing kind of a -- it's a black box. You
16 got cameras on him. There's lights. And
17 you're -- you're -- you've got measurement, air
18 cassettes going on, trying to figure out what
19 happens when he used this bottle of talc, right?

20 A. Correct.

21 Q. And -- and, you know, he sits down.
22 He puts it on himself. He pats himself. You
23 know, you see some dust go up because there's
24 lights on him. And then he gets up. He kind of
25 does something, you know, puts it in his -- into

1 his underpants. And -- and that's the whole kind
2 of -- the whole exposure study. And then you take
3 your measurements, and you take stuff back, and
4 you look at it under a microscope, right?

5 A. Yeah. And actually, it was a room
6 20 by 15 by 8. That's a confined room that we
7 specially built that we can use asbestos products
8 in it. It has a decontamination area. We're
9 wearing respirators, et cetera.

10 So -- and we wanted to see if that
11 concentration of powder would give us exposures
12 similar to a published paper that had about the
13 same concentration. This just happened to be the
14 waist down.

15 Q. Okay. So that was one adult
16 application. You also did two baby studies,
17 right, where you -- it wasn't a real baby. You
18 had a baby doll, and you did a similar kind of
19 exposure, so that simulation where you tested
20 where -- you kind of patted down a baby and
21 changed the diaper and then took your
22 measurements, true?

23 A. True.

24 Q. Okay. So there's three of them. Now,
25 none of those studies involved the use of a

1 Johnson & Johnson container containing either
2 Vermont or Chinese. Fair?

3 A. That's fair.

4 Q. Okay. Let's take up Slide 16, please.

5 These are the bottles that you used in
6 those three exposure studies. This one over here
7 on the right, that's -- that's the 1950s bottle.
8 That's the one you used in the below-the-waist,
9 right?

10 A. That's correct.

11 Q. And that's the one with the highest
12 amount of asbestos that you ever found in any
13 Johnson & Johnson talc product ever. Fair?

14 A. That's fair.

15 Q. And that's an Italian bottle, correct?

16 A. They were all Italian.

17 Q. Okay. And these -- I was going to
18 say, these were all Italian. Some of them were
19 from like the late '40s, right?

20 A. I think that center one was late '40s,
21 because in the '50s they took the boric acid out
22 because there was problems with it.

23 Q. Yeah, I hear you.

24 So when I took your deposition -- I
25 know the issue that you're having now is the

1 tissue digestion. When I took your deposition,
2 you said you're not relying on any of this stuff
3 because it's Italian talc, correct?

4 A. Correct.

5 Q. Okay. But regardless, even today,
6 you -- these exposure studies were done in like
7 2019, right? 2018, 2019?

8 A. 2020, something like that.

9 Q. Okay. So like four or five years ago,
10 yeah?

11 A. Yes.

12 Q. Okay. So -- but -- so four or five
13 years later, you've never done a similar exposure
14 study in your lab using either a Vermont or a
15 Chinese bottle. Fair?

16 A. That's correct.

17 Q. Okay. And, in fact, you've -- you've
18 never actually performed any sort of simulation
19 study using a Johnson & Johnson talc product from
20 the 1960s, the 1970s, the 1980s, the '90s, the
21 2000s, the 2010s or the -- now, I guess, we're in
22 the 2020s. You've never done a simulation
23 exposure study with a bottle that was manufactured
24 while Mr. Perry was alive. Fair?

25 A. That's fair.

1 Q. And it's not like you don't know how.
2 I mean, you did three of them. So as we've
3 discussed, you've done this in the past. You just
4 happened to use bottles -- and this was a while
5 ago. I'm not saying you chose them purposefully
6 not during Mr. Perry's life. You chose them
7 before this case started.

8 But as it happened, the bottles that
9 you chose were all manufactured decades before
10 Mr. Perry was living, correct?

11 A. Yeah. That -- that doesn't really
12 make any difference. I was trying --

13 Q. I didn't ask that, sir.

14 A. Excuse me. I was trying to show that
15 these types of studies, that even though a very
16 small percent actually gets into the breathing
17 zone, you still have significant amount of
18 exposures. And -- and to put these together are
19 incredibly expensive, et cetera. We're going to
20 get to that, so --

21 Q. Okay. Great.

22 A. -- you have to stay tuned.

23 Q. I'll stay tuned, Dr. Longo. You know
24 I will.

25 Over the years though, I mean, you

1 could have done it. I know it's expensive. But
2 you could have conducted the same exposure study
3 that you used, any of the -- you could have
4 used -- let's go to Slide 5 again, please.

5 You could have used any of these
6 bottles at any time between 2019, when you got
7 them, and today. You could have done the same
8 exposure study. You could have hired the same guy
9 and had him sit down in a chair and pat himself
10 and taken the measurements. You could have done
11 that by now, correct?

12 A. No.

13 Q. You couldn't have?

14 A. We never got these containers.

15 Q. Okay. You're right. You got retains.

16 A. I would have to go get -- I would have
17 to go get another container and pour it in there.
18 And I just -- I can see the cross-examination now.

19 Q. Okay. So let's ask you this, sir.
20 Let me just -- let me just put it this way: You
21 could go and get a bottle of Chinese talc. Fair?
22 You could have done that any number of times, yes?

23 A. You know, it's -- that's a good
24 question, because J&J took it off the market --
25 now took it off the market worldwide. And you

1 can't find these in any grocery stores anymore. I
2 would have to go look online --

3 Q. Okay.

4 A. -- and see if I could get one from
5 eBay. Of course, then I'd get criticized about
6 that.

7 Q. Well, let's just -- let's just put it
8 this way, Doctor: You know that if you hired that
9 same guy, and you got one of your Chinese bottles
10 that you actually did test, and you had that same
11 guy sit down in that chair and pat himself, but
12 instead of using that 1950s bottle, he was using a
13 bottle of Chinese talc, and you did everything the
14 same, everything the same, you know that it would
15 be very unlikely, that using those same protocols,
16 that you would actually detect any asbestos in the
17 air using a Chinese bottle, correct?

18 A. Well, yes and no. Yes, it's going to
19 release asbestos, but it's going to be at a
20 concentration that we can't detect.

21 We've been working on trying to figure
22 out how to make a sampling device that can breathe
23 exactly like we do, which is not that -- which you
24 can do. But then you start looking at the lungs
25 on the surface area that can collect particles and

1 stuff. It's -- so it's not that it's not
2 releasing. It's that the human body, the way it
3 breathes, we haven't been able to duplicate the
4 surface area of the lungs and have that big area
5 collect.

6 Q. Dr. Longo, if you used a Vermont
7 bottle, any of the Vermont bottles that you
8 tested, any of them in Round 2, and you did the
9 exact same test that you did with that 1950s
10 bottle from Italy, you had somebody pat himself,
11 tested the air around them and used exactly the
12 same protocols, the answer is the same: You
13 wouldn't have detected any asbestos in the air,
14 correct?

15 A. Maybe not. Maybe so. You'd have to
16 do the studies, and you have to do a number of
17 them from all the way from the very lowest to the
18 highest.

19 Q. Let's go to Slide 17 again.

20 All right. We already talked about
21 this. This is the bulk average concentration in
22 the Round 2 bottles. You said the average
23 concentration was 23,700 fibers per gram. These
24 are the ones that came directly from Johnson &
25 Johnson. And -- and we already talked about this

1 number. But you've also testified that if
2 somebody were to use an average bottle of this
3 Round 2 bottle that contained 23,700 fibers per
4 gram, that that would result in exposure in the
5 air of .004 fibers per cc, correct?

6 A. Correct.

7 MR. COWAN: Can you put up the next
8 slide, please.

9 BY MR. COWAN:

10 Q. Average -- average concentration,
11 that's bulk, 23,700 fibers per gram. Average
12 airborne exposure, that's .004 fibers per cc. I
13 got those numbers right, correct?

14 A. You did.

15 Q. Doctor, I know you're not here to talk
16 about what is and what is not a safe level, but --
17 and that's right, correct?

18 A. No. I don't -- that's not my area.

19 Q. Sure.

20 A. I don't talk about causation. I don't
21 talk about risk.

22 Q. Absolutely.

23 So let's go to Slide 19. So I want
24 you to assume that the jury heard from Dr. Brody
25 at the beginning of this case. He sat in the

1 chair that you're sitting in right now, and he
2 testified that .006 fibers per cc has no increased
3 risk and it's safe. I want you to assume that.

4 You are not here to dispute that in
5 front of this jury because you are not here to
6 talk about what is and what is not safe, correct?

7 A. I'm not here to say if it's safe or
8 not safe.

9 Q. Thank you.

10 A. If you say that 23,000 is the only
11 number it's ever going to be when Mr. Perry used
12 350 Johnson's Baby Powder containers, a half a ton
13 of powder, and to say every time he used that one
14 to two times a day, he's going to get 0.004,
15 that's crazy. And that's not scientifically
16 valid.

17 Q. Thank you for that. Are you finished?

18 A. I can go on some more.

19 Q. Well -- well, you think about it, and
20 we'll come back to you, okay?

21 A. Okay.

22 Q. All right.

23 A. I'm sorry. I know we're under time
24 constraints --

25 Q. No -- I'm -- I'm with you.

1 All right. So let's just put -- but
2 before we move on, let's put the .004 fibers per
3 cc into some sort of context, okay?

4 Because that's your average. I
5 understand it might be higher sometimes. It might
6 be lower. But let's just go with the average for
7 just a little bit longer here, okay?

8 Again, you're not here as a medical
9 doctor to talk about whether, for example, OSHA --
10 the permissible exposure limit under OSHA is safe
11 or not, correct?

12 A. Well, OSHA doesn't say it's safe.
13 OSHA says at .1 you're gonna get, on average, two
14 mesotheliomas at that level. They know it's not
15 safe --

16 Q. Sure.

17 A. -- at .1.

18 Q. And I'm not suggesting anything. I'm
19 just asking questions.

20 With regard to -- you know what OSHA
21 is. OSHA is the permissible exposure limit under
22 the Occupational Safety and Health Administration.

23 MR. COWAN: Let's go to Slide 20.

24 BY MR. COWAN:

25 Q. And currently, just like you said, the

1 current permissible exposure level is .1 fibers
2 per cc, right?

3 A. 0.1 fibers per cc --

4 Q. Okay.

5 A. -- for an adult who is working in an
6 industrial environment.

7 OSHA, say, when Mr. Perry first
8 started using these products when he was 13 and
9 14, that's not covered by OSHA.

10 I mean, if you're going to start using
11 OSHA, then you need to start using what OSHA says,
12 that if you can potentially have asbestos in your
13 product, you need to put warnings on it. You need
14 to do masks and measure, et cetera. That seems to
15 be left out for some reason.

16 Q. Okay. And I appreciate all that
17 information, and we'll get there.

18 But all I asked was: You understand
19 that OSHA PEL is now .15 fibers per cc, correct?

20 A. Correct.

21 Q. Okay.

22 A. You have to understand, when you start
23 putting these numbers up there, and you very
24 rarely see 0.15 fibers per cc in these type of
25 environments, it has nothing to do with putting

1 baby powder on -- on your body every time you get
2 out of the shower. This is for --

3 Q. What -- what --

4 A. This is for industrial situations
5 because you're not following any of the other OSHA
6 stuff.

7 Q. Sir, what that means is that without
8 exceeding OSHA permissible limits, you can be in
9 that workplace environment -- workplace
10 environment -- all day at .1 fibers per cc or
11 right below it. You can be at that level without
12 exceeding OSHA permissible exposure limits,
13 correct?

14 A. In a workplace, that's correct.

15 Q. Okay. And -- and you would agree --

16 MR. COWAN: Let's go to Slide 21.

17 BY MR. COWAN:

18 Q. You would agree -- and I know you
19 don't like this comparison, and we just heard why
20 you don't.

21 But you will agree, at least with the
22 math, that .004 --

23 MR. COWAN: And let me get the click
24 here, please.

25 BY MR. COWAN:

1 Q. -- .004 is approximately 25 times
2 lower than .1, correct? As a matter of math, sir?

3 A. Yes.

4 Q. Thank you.

5 A. You can throw out all kinds of
6 numbers. But that's so disingenuous. It has
7 nothing to do.

8 You have an infant that you're putting
9 this baby powder on. They should be under OSHA as
10 well. So we didn't -- we didn't exceed the OSHA
11 permissible levels, that would be fine.

12 Q. I thought you weren't here to talk
13 about safety, sir.

14 A. So you're making comparisons for
15 something that has absolutely no utility in this
16 type of exposure environment. That's not fair.

17 Q. Let's keep going. Let's keep going.

18 MR. COWAN: Slide Number 22, please.

19 BY MR. COWAN:

20 Q. Okay. And what that means, sir, is
21 that if you are using an average Johnson & Johnson
22 museum bottle, okay?

23 Someone could spend the whole day
24 shaking and patting baby powder on themselves for
25 a working life for 40 years at their job and you

1 would still be below the current OSHA permissible
2 exposure levels for asbestos, correct?

3 A. Your hypothetical is not
4 scientifically valid.

5 Q. Okay.

6 A. You're not going to be using it for
7 40 years and have a container every day that has
8 the exact same amount, not higher, not lower.

9 And you're not going to be over an
10 OSHA limit, but I'm sure that would be -- but OSHA
11 does say.

12 So you can't make this comparison.
13 It's a -- it's not a problem because we're not
14 over the OSHA limit, when there is no OSHA limits
15 for residential exposures when somebody is in a
16 small bathroom.

17 Q. Dr. Longo, can you please take that
18 book out for me. Tab Number 9.

19 A. Tab Number 9.

20 Q. Yes, sir.

21 A. Okay.

22 Q. It's from the O'Hagan trial. And I'd
23 like --

24 A. Let's see. This was --

25 Q. I'd like you to go to page --

1 A. 2019.

2 Q. I'd like you to go to page 119 of your
3 sworn testimony?

4 THE COURT: Say it again.

5 MR. COWAN: Yes, Your Honor. I'm
6 sorry. It's Tab 9.

7 THE COURT: I got that.

8 MR. COWAN: Page 119.

9 THE COURT: All right.

10 MR. COWAN: Starting on Line 9.

11 THE COURT: All right.

12 THE WITNESS: Okay.

13 BY MR. COWAN:

14 Q. Are you there with me, sir?

15 A. I am.

16 Q. QUESTION: "Right. And so, literally,
17 even if we just take the numbers from this one
18 study -- and we're going to talk about what
19 happened with some other data.

20 "But even if we just accept those
21 numbers from that study, if you're using an
22 average museum bottle, someone could spend the
23 whole day shaking and patting baby powder on
24 themselves for a working life for 40 years at
25 their job and you would still be below the current

1 OSHA levels, right?"

2 ANSWER: "That's correct. If it's
3 eight hours a day and your exposure level is
4 below .1, you will not exceed it."

5 Were you asked that question and did
6 you give that answer under oath, sir?

7 A. Well, the math works. I'm not
8 debating the math.

9 It's just how it's so disingenuous
10 that you're going to pick this one number for OSHA
11 for something that has nothing to do with putting
12 cosmetic talcum powder on.

13 But, yeah. The math is okay.

14 Q. Before we move on, I do want to ask
15 just a couple of quick questions about the Gordon
16 article that you referenced.

17 You talked about it. Dr. Madigan
18 talked about it on the -- on the screen there.
19 And so just a couple of questions.

20 You rely on that 2014 Gordon article,
21 correct, sir?

22 A. Yes, sir.

23 Q. Yes. And -- and one of the authors is
24 Ronald Gordon, and that's why we call it the
25 "Gordon article," right?

1 A. Yeah. I think he's the lead on it.

2 Q. Okay. And as part of the studies
3 documented in this case, they did -- or in the
4 paper, they did a simulated exposure study for
5 someone applying talcum powder to themselves using
6 a shaker container, a lot like what you did. And
7 they concluded that the exposure to the person
8 using that container was 1.9 fibers per cc,
9 correct?

10 A. Correct.

11 Q. All right. And according to the
12 authors, and you yourself just -- I think you
13 told -- said earlier that the container of talcum
14 powder contained not just 15 million, it actually
15 contained 18 million fibers per gram, correct?

16 A. That's correct.

17 Q. Okay. But you know, Doctor -- I mean,
18 obviously, that's considerably more than the
19 average 23,700 that we were talking about earlier.

20 But that container, that wasn't a
21 Johnson & Johnson container, correct?

22 A. No. It was a Cashmere Bouquet. But
23 it was Italian talc, same source.

24 Q. It was the same source from the 1960s,
25 correct?

1 A. Correct.

2 Q. It was a -- it was a product by
3 Colgate called "Cashmere Bouquet"; is that right?

4 A. That's the one.

5 Q. And it was made with Italian talc, as
6 you just said. The -- you know, though, that
7 Cashmere Bouquet used a mixture. It wasn't just
8 Italian, right?

9 A. They used Italian talc up until about
10 1963 to '64, just by itself. And then they mixed
11 it with North Carolina talc, and I think
12 eventually they used Montana talc.

13 Q. And you know that the article actually
14 talks about the fact that the -- that the bottles
15 that they were using were Italian, Montana and
16 North Carolina talc, right? It wasn't just
17 Italian talc, sir?

18 A. No, not all of them. But they
19 probably had like 40 containers.

20 Q. Yeah. Obviously, Johnson & Johnson
21 never sourced its talc from North Carolina or
22 Montana, right?

23 A. That is correct.

24 Q. Okay. Let's move on.

25 Dr. Longo, you have been testifying as

1 an expert witness for more than 30 years, fair?

2 A. Oh, easily. It's 36, 37 years.

3 Q. And you're a pro. You opened up your
4 lab, MAS, back in February, as you said, 1988.
5 Fair?

6 A. That's fair.

7 Q. Okay. And you're the CEO now of your
8 company?

9 A. Correct.

10 Q. All right. And are you working
11 towards retirement and out of the CEO thing, or do
12 you --

13 A. You don't get to ask me if you want me
14 to retire. That's none of your business.

15 Q. Do you own 75 percent of your company,
16 MAS, still?

17 A. Yes, sir.

18 Q. Okay. And over the years, you've been
19 paid to give testimony just like all the retained
20 witnesses that are coming in here. But you've --
21 you've done it a lot, and you've given like 3,000
22 depositions, right?

23 A. Starting in about 1990, that's
24 correct.

25 Q. And you've testified in court at least

1 300 times. Is this 301, or you're not sure?

2 A. You know, I'm not sure about that.

3 Q. Okay.

4 A. I would say 300 times in court.

5 That's probably reasonable.

6 Q. So -- and obviously, 90 to 95 percent
7 of the time you're -- you're testifying for
8 plaintiffs. Is that fair?

9 A. Yes. It's getting closer to
10 100 percent because I have another scientist in
11 our lab that took over the defense work, which was
12 a blessing.

13 Q. And, look, you've been doing this a
14 long time. Your company has billed out for
15 plaintiffs' work over the last 30-odd years more
16 than \$30 million. Fair?

17 A. That's fair.

18 Q. Okay. But before you were hired --
19 and don't worry, we're not going to go through all
20 of this.

21 But before you were hired to testify
22 concerning talc products during the '90s and early
23 2000s, you were testifying for plaintiffs' lawyers
24 suing companies that intentionally put asbestos
25 into products, correct?

1 A. Correct.

2 Q. All right. So we're talking about all
3 those different types of asbestos-containing
4 products. We're talking about boiler insulation
5 and -- and attic insulation and -- and brakes and
6 whatnot, right?

7 A. That's correct.

8 Q. Okay. And -- and you've testified
9 about all kinds of different types of
10 asbestos-containing products. Fair?

11 A. That's fair.

12 Q. And when you were working as an expert
13 for plaintiffs who were suing folks that were
14 purposefully putting asbestos in, for example,
15 their brakes and other asbestos-containing
16 products, that the defense lawyers -- every once
17 in a while, during those years that you were doing
18 that, the defense lawyers for those brake
19 companies and those boiler insulation companies,
20 they would ask you about sources of potential
21 asbestos exposure other than their products,
22 right?

23 A. Correct.

24 Q. Okay. And -- and during those
25 times -- sometimes it would be a deposition;

1 sometimes it would be at trial. But before you
2 were hired by any plaintiff in cosmetic talc
3 litigation, the defense attorneys would sometimes
4 ask you about whether cosmetic talc could be one
5 of those alternative sources, right?

6 A. Yeah. What I had been shown from my
7 old depositions, the -- on four occasions from
8 like 2000, et cetera, I said there was no asbestos
9 in cosmetic talcs. In fact, in this courtroom,
10 one of y'all's attorneys, they found one that
11 said -- I called it an urban legend.

12 Q. Yeah. And we're not going to go
13 through all of it. It was actually five times --

14 A. Was it five?

15 Q. -- that you testified --

16 A. Oh, okay. Not six. Three.

17 Q. Yeah.

18 A. Actually, you know, I was wrong then,
19 and it was -- it must have been my opinion,
20 because it was so many depositions ago I didn't
21 remember it.

22 But I was wrong, which I've testified
23 in the past. Because when we started testing it,
24 we started seeing all the Johnson & Johnson
25 documents going back 50 years, showing that they

1 tested it and found it. So scientists, if they're
2 reasonable, they will change their opinions.

3 Q. Yeah, I understand all that. And I
4 don't want to waste the jury's time. I don't need
5 to talk with you through, you know, five different
6 times or whatever. I want to talk about one of
7 them, okay?

8 A. Which one?

9 Q. We'll talk about it.

10 So, in 2010, it was about six years
11 before you were ever hired by any plaintiff's firm
12 to come after cosmetic talc.

13 THE COURT: Rephrase that.

14 MR. COWAN: You're right. I'm sorry,
15 Your Honor.

16 THE COURT: Thank you, sir.

17 BY MR. COWAN:

18 Q. Before you were ever hired as a
19 retained expert by plaintiff who was suing a
20 cosmetic talc company, about six years before
21 that, in 2010, you were in a deposition in a case
22 that involved a brake manufacturer called "Bendix"
23 in 2010.

24 And during that testimony, you were
25 talking about how talc is clean unless you're

1 getting it from Gouverneur mines in New York. Do
2 you recall just generally that?

3 A. Well, I recall it because it's been
4 read to me at least a dozen times over the last
5 couple of years.

6 Q. Yeah.

7 MR. COWAN: So can we go to Slide 35,
8 please.

9 BY MR. COWAN:

10 Q. So this is the testimony. It's from a
11 case called Edwards. And it says: Can you
12 describe basically what you've done and what
13 you've found. They even asked you about "Hey,
14 have you ever tested cosmetic talc before?"

15 You said -- answered: Depends on
16 where the talcs come from. If it's Gouverneur
17 talc --

18 And that's the New York Gouverneur
19 mine, right?

20 A. Yes, sir.

21 Q. And obviously, Johnson & Johnson never
22 got its talc from New York, right?

23 A. No, they did not.

24 Q. Okay. And we've -- we have found both
25 anthophyllite and tremolite in that talc, in New

1 York talc. If it comes from other parts of the
2 country, that talc is clean.

3 And you said that in 2010, and you
4 just said you -- you don't believe that's accurate
5 anymore, and I understand that.

6 MR. COWAN: Can I click to the
7 animation, please.

8 BY MR. COWAN:

9 Q. The defendant in that case was
10 Bendix Corporation. And you know what Bendix
11 Corporation is, correct?

12 A. Yes, brakes and clutches. No.
13 Primarily brakes that I get involved in.

14 Q. Yeah.

15 Was -- Bendix Corporation was -- makes
16 brake shoes, brake pads, other brake stuff, right?

17 A. Yes, sir.

18 Q. And in that 2010 deposition, in a case
19 about Bendix brakes, defense counsel asked you
20 about your opinion about: Hey, well, wait a
21 minute. What about talc? It might be the talc.

22 And you said at that time: I think
23 the talc is clean unless it's coming from
24 New York.

25 THE COURT: All right. Counsel.

1 BY MR. COWAN:

2 Q. Is that fair?

3 THE COURT: Counsel.

4 MR. COWAN: Yes.

5 THE COURT: This thing of a whole
6 bunch of testimony has been -- I talked to
7 you-all about this out of the presence of
8 the jury.

9 MR. COWAN: I will shorten my
10 questions.

11 THE COURT: Phrase your questions --

12 MR. COWAN: I will. I will shorten my
13 questions. I apologize, Your Honor.

14 THE COURT: Yes, sir.

15 BY MR. COWAN:

16 Q. Dr. Longo, in this case, in this case,
17 no one needed to tell you to consider whether
18 Mr. Perry had any potential exposures to products
19 other than cosmetic talc because you do that
20 automatically in every case, right?

21 A. When I work on the cases, that's
22 correct.

23 Q. Yeah. And you considered whether
24 Mr. Perry likely had a significant exposure to
25 asbestos from his brake work and, specifically,

1 his work with Bendix brakes when he was a kid
2 learning how to change brakes in the garage with
3 his father. You considered that?

4 A. I did.

5 Q. And it is your opinion that he did
6 have a significant exposure when he was a teenager
7 working on brakes, correct?

8 A. Correct.

9 Q. And so let's talk about what a
10 significant exposure means to you in the world of
11 brakes, okay? Is that fair?

12 A. That's fair.

13 Q. All right. So Mr. Perry testified
14 that he worked on a 1979 Honda, right? A Honda
15 Accord. It had front disc brakes and -- and rear
16 drum brakes, right?

17 A. Correct.

18 Q. Okay. And -- and he worked on, also,
19 a 1976 Chevy pickup that also had front disc
20 brakes and -- and also rear drum brakes, right?

21 A. Correct.

22 Q. Okay. He testified -- Mr. Perry did
23 -- that he was constantly changing these brakes
24 because he was, in his words -- and I think I'm
25 quoting here -- a pretty terrible teenage driver.

1 Do you recall that?

2 A. I don't know.

3 Q. Okay.

4 A. I don't recall, but I'm sure you would
5 not say something unless it was true.

6 Q. I -- I promise I have basis for it.

7 So -- and Mr. Perry changed brakes at
8 home in his own garage, right?

9 A. Correct.

10 Q. And -- and if -- if it was cold, he
11 would change the brakes in the garage with the
12 garage door shut, right?

13 A. Correct.

14 Q. And obviously, if it was nicer out, he
15 would open up the garage door and have a better
16 day. Fair?

17 He testified --

18 THE COURT: If you're going to -- if
19 you're going to do this thing effectively,
20 reading the deposition and then say,
21 "Fair," and then move on, you've got to ask
22 it as a question and then give him a
23 chance --

24 MR. COWAN: I apologize, Your Honor.
25 I am getting ahead of myself. I apologize.

1 THE COURT: Okay. It's not a question
2 of apologizing. Don't do that anymore. We
3 could go through the whole complex thing
4 that we do about showing the stuff, letting
5 him read and so forth.

6 MR. COWAN: Yes, Your Honor.

7 THE COURT: I don't insist on that.
8 But I'm not going to just have testimony
9 with "Am I not right?"

10 MR. COWAN: Yes, Your Honor.

11 THE COURT: Okay?

12 MR. COWAN: Yes, Your Honor.

13 BY MR. COWAN:

14 Q. Mr. Perry, he wore out the drum brakes
15 more often. Do you recall that?

16 A. He did what? I'm sorry?

17 Q. He wore out the drum brakes where
18 the -- where the brake shoes -- that's -- the
19 brake shoes is what he would wear out. Do you
20 recall that?

21 A. I don't recall it, but I think that's
22 correct.

23 Q. Okay. And he would sometimes change
24 two shoes in one drum brake at a time. Do you
25 recall that?

1 A. I do recall that because --

2 Q. All right.

3 A. -- specifically, you're supposed to
4 change both of them.

5 Q. You know more about it than I do.
6 You've done this before, correct? You've changed
7 brakes?

8 A. I used to change my own brakes.

9 Q. All right. Mr. Perry, when he would
10 remove the brake shoes, there was black residue
11 left behind in the drum. Do you recall that?

12 A. Yes.

13 Q. Okay. And Mr. Perry testified that he
14 had an air compressor in the garage, correct?

15 A. Correct.

16 Q. And that he would use that air
17 compressor in several different ways, correct?

18 A. To clean out the brake drums at times.

19 Q. Yeah. And there was also a grinder
20 attached to the compressor, correct? Do you
21 recall that?

22 A. An air grinder?

23 Q. Uh-huh.

24 A. I don't recall what he was doing with
25 it.

1 Q. You don't recall whether or not that
2 he testified he would sand the brake shoes before
3 installing them --

4 A. Oh, yeah.

5 Q. -- using a small grinder?

6 A. To rough them up, yes.

7 Q. Okay. And over the course of three
8 years, Mr. Perry testified that he did
9 approximately 72 of these types of brake jobs,
10 correct?

11 A. Correct.

12 Q. Now, over the years, you and MAS, your
13 company, have tested asbestos-containing brakes,
14 correct?

15 A. Correct.

16 Q. And that includes Bendix brakes,
17 right? The same ones that Mr. Perry used?

18 A. Yes. We've done a lot of tests on
19 Bendix brakes.

20 MR. COWAN: So can I please bring up
21 Slide Number 36.

22 BY MR. COWAN:

23 Q. And you've tested to see how much
24 asbestos is actually in a Bendix brake shoe
25 product, right?

1 A. Correct.

2 Q. And in that testing, you looked for
3 chrysotile, correct?

4 A. Correct.

5 Q. And you found chrysotile, certainly,
6 because it was the purposefully -- it was
7 purposefully added, correct?

8 A. Yeah. I mean, the amount of
9 chrysotile that were on the brake shoes is usually
10 between 35 and 55 percent.

11 Q. I'm going to hand you something that
12 I've marked for -- as identification as CX10, just
13 to help remind you.

14 MR. COWAN: Can I approach,
15 Your Honor?

16 THE COURT: Yes.

17 THE WITNESS: Thank you.

18 MR. COWAN: Thank you.

19 Your Honor, do you want a copy?

20 THE COURT: Yes. Now, this is --

21 MR. COWAN: This is a report that --

22 THE COURT: That Dr. Longo did, right?

23 MR. COWAN: Yes. Yes, ma'am.

24 THE COURT: All right.

25 BY MR. COWAN:

1 Q. Dr. Longo, you recognize this as a
2 report that you've done in another case. Fair?

3 A. It has my signature.

4 Q. Yeah. And I just chose this because
5 it -- there are sections in here that kind of
6 generally describe some of the brake tests that
7 you-all did at MAS. And I just have this here to
8 hopefully help you remember certain numbers if you
9 need to, okay?

10 Is that okay, sir?

11 A. If I said it wasn't, would that stop
12 you?

13 Q. Thank you, sir.

14 A. Yes. It's okay.

15 Q. And if you could turn to Page 11.

16 A. 11.

17 Q. It's going to be 10.11. At the top of
18 the page, it says: We have analyzed many brands
19 of asbestos-containing brakes at MAS.

20 And that's certainly true, correct?

21 A. Correct.

22 Q. And it goes on to say that you have
23 found a range for Bendix at 15 percent to
24 45 percent chrysotile.

25 Do you see that, sir?

1 A. Yes, I do.

2 Q. Okay.

3 MR. COWAN: Can I have Slide 37,
4 please?

5 BY MR. COWAN:

6 Q. So at that kind of percentage, 15 to
7 40 percent asbestos in the brake shoe, I mean,
8 we're not talking about hundreds or thousands or
9 hundreds of thousands or millions or billions.
10 We're talking about quadrillions of asbestos
11 fibers in a brake shoe; is that fair?

12 A. That's fair. But I don't think it's
13 fair to compare it to cosmetic talcs because you
14 don't pour the dust from people collecting brake
15 shoe dust and other dust on your body two or three
16 times a day. So you can't really use that as a
17 comparison.

18 Q. Dr. Longo, I had to look it up.
19 Quadrillion is the number followed by 15 zeroes;
20 is that right?

21 A. That is correct.

22 Q. So let's talk about what gets in the
23 air when you work with products like these, okay?

24 A. Sure.

25 MR. COWAN: Let's go to Slide

1 Number 38.

2 BY MR. COWAN:

3 Q. You and MAS have done a number of
4 simulated exposure studies concerning working with
5 brakes, right?

6 A. Correct.

7 Q. All right. And you and MAS have
8 conducted simulated exposure studies concerning
9 grinding of brakes and sanding of the brakes and
10 measuring the asbestos fibers that get in the air
11 as a result of doing something like that. Fair?

12 A. That's fair. And we've also done
13 tissue analysis of long-time -- long-term
14 mechanics.

15 Q. Sure. And if you and MAS, your
16 company, have conducted simulated exposure studies
17 where you-all used compressed air to blow out
18 assemblies after asbestos-containing brakes were
19 removed from a vehicle. You've done that, too?

20 A. We've used compressed air to -- to
21 blow out the drums for these studies, yes.

22 Q. Sure. And -- and you know that, as
23 we've already discussed, Mr. Perry did the same
24 types of things. He used compressed air and he
25 grinded the brake shoes to get them to put

1 themselves into place, correct?

2 A. Correct.

3 Q. That's part of what he did? Okay.

4 So let's talk about what you and MAS
5 found in those brake exposure studies.

6 MR. COWAN: Can I just click once to
7 39, please. Okay. Let's go and click one
8 more time.

9 BY MR. COWAN:

10 Q. All right. If you turn to Page 12 of
11 the CX 10 that I gave you, in the middle of the
12 page, there is a -- there is a paragraph that
13 starts "MAS personnel performed."

14 Do you see where I'm at?

15 THE COURT: What page?

16 MR. COWAN: It's CX 10.12, Your Honor,
17 and it starts in the middle of the page:
18 "MAS personnel performed two compressed air
19 blow out work practice studies."

20 THE COURT: What is the page number on
21 the top of the page?

22 MR. COWAN: On the top of the page, it
23 will be 12 out of 27, Your Honor.

24 THE COURT: All right.

25 THE WITNESS: I'm sorry.

1 MR. COWAN: I'm sorry. There's way
2 too many page numbers.

3 BY MR. COWAN:

4 Q. Do you see where I'm at, sir?

5 A. Yes.

6 Q. Okay. And MAS personnel, it says,
7 performed two compressed air blow out work
8 practice studies in 2004 involving a brake shoe
9 inspection where the drums on all four wheels were
10 removed and compressed air was used to blow out
11 the brake assemblies.

12 Do you see where I'm at?

13 A. Yes.

14 Q. And you see, just a little bit below
15 there, where the readouts for that kind of
16 activity would create a fiber-per-cc-to-air amount
17 of .3 range to 2.2 fibers per cc.

18 Do you see that, sir?

19 A. I do.

20 Q. Okay. And those are your numbers from
21 your report, correct?

22 A. It is.

23 Q. All right. And, obviously -- well,
24 let's just keep moving on.

25 You've cited to other similar studies

1 also in this report; not one that you did, but one
2 that was published by Mount Sinai.

3 If I could turn your attention to
4 Page 12. Or we're still on Page 12 but at the
5 bottom -- at the very bottom of the page. It says
6 "additionally"?

7 Do you see where I'm at?

8 A. Page --

9 Q. The same page you were on --

10 A. Oh.

11 Q. -- bottom of the page.

12 A. Okay.

13 Q. "Additionally."

14 A. Yes.

15 Q. It says: Additionally, there are a
16 number of other studies published in the
17 peer-reviewed literature that show when mechanics
18 blow out brakes in the middle of garages, their
19 exposures to an airborne asbestos levels were
20 consistent with the MAS work practice study.

21 Do you see that, sir?

22 A. I do.

23 Q. And then if you go to the very end
24 there, it says: The Mount Sinai group collected
25 four air samples and measured exposure levels

1 between 6.6 fibers per cc and 29.8 fibers per cc.

2 Do you see that, sir?

3 A. I do.

4 Q. Okay.

5 MR. COWAN: Can you click the
6 animation, please?

7 BY MR. COWAN:

8 Q. So Mount Sinai did a similar type of
9 compressed air test. But instead of getting your
10 numbers of .3, we're actually even getting higher
11 numbers at 6.6 all the way to 29.8 fibers per cc,
12 correct?

13 A. Right. But you can't compare the two
14 because they're in a -- actually in a -- in an
15 automotive shop, where he's all day, every day.
16 And you're going to get other factors.

17 And it depends on how much is worn
18 down in the shoe. Okay? And this was during the
19 time frame where most of the -- these were trucks,
20 so they have bigger brake drums, et cetera.

21 So, yes, this is the levels. And if
22 you have the exact same conditions that they had,
23 you're going get those results.

24 Q. Thank you.

25 So let's talk next about Mr. Perry's

1 using that grinder powered by compressed air to
2 sand brakes, grind them.

3 MAS did a study entitled "Occupational
4 Exposure to Asbestos-Containing Brake Shoes During
5 Hand Grinding and Sanding, a Work Practice
6 Simulation." You're aware of that study, correct?

7 A. What page is that on?

8 Q. If you go to the same page, 12.

9 A. I keep moving off it for some reason.

10 Q. Okay. At MAS, we studied -- I'm
11 sorry. Hold on one moment. I'm trying to find
12 the place where I'm at. I'm sorry, sir. Give me
13 one moment, please. Oh, I'm sorry. It was
14 actually on Page 11 -- no, on 12, but we're up at
15 the top now.

16 At the very top of the Page 12, it
17 says: At MAS, we have studied the scuffing of a
18 brake surface with a power grinder.

19 Do you see that, sir?

20 A. I'm sorry. Where is that, again?

21 Q. Top of the Page 12 you're on, but now
22 we're at the top of the page.

23 At MAS, we have studied the scuffing
24 of a brake surface --

25 A. Yes.

1 Q. -- with a power grinder.

2 And it says: This MAS, M-A-S, study
3 entitled -- what we just talked about -- where it
4 has an airborne asbestos exposure levels to the
5 mechanic during this study using a power grinder
6 was 25 to 36 fibers per cc as measured by PLM and
7 TEM.

8 Do you see that, sir?

9 A. I do.

10 Q. Okay.

11 MR. COWAN: Can you click that for me?

12 BY MR. COWAN:

13 Q. I mean, those numbers are obviously
14 significant exposures, correct?

15 A. I would agree.

16 Q. I'm going to move on, sir. Let's talk
17 about your tissue digestion.

18 A. Sure.

19 Q. Last topic. You recently did an
20 analysis of some of Mr. Perry's lung tissue,
21 correct?

22 A. Correct.

23 Q. And you wrote a report on that, and
24 you provided that to us after we had already
25 started this trial. You provided it on Monday,

1 right?

2 A. That is correct.

3 Q. Yeah. We started this trial on
4 Monday --

5 THE COURT: Approach.

6 MR. COWAN: Yes, Your Honor.

7 (Bench conference off the record.)

8 BY MR. COWAN:

9 Q. Regardless of when you got us the
10 report, when I -- when I deposed you three weeks
11 ago for the first time, you obviously hadn't --
12 hadn't gotten the tissue yet by then?

13 A. It hadn't arrived.

14 Q. Yeah.

15 And you testified that it would take
16 you at least -- and this is optimistic --

17 THE COURT: Just -- just a moment.

18 Counsel, all this was the subject of a
19 ruling by me. That is not a appropriate
20 area of questioning for Dr. Longo. I
21 allowed this testing to be done, and I've
22 allowed him to speak about it now.

23 This line of questioning is not
24 something that's in his control. That's a
25 ruling I made. You cannot project to the

1 jury or argue about that.

2 MR. COWAN: It was not about that,
3 Your Honor. It was about the amount of
4 time that it took him to do it.

5 THE COURT: I --

6 MR. COWAN: I understand.

7 THE COURT: I'm asking you not to go
8 there.

9 MR. COWAN: I'm done. I'm done. I'm
10 going to move on.

11 THE COURT: All right.

12 MR. COWAN: Thank you.

13 BY MR. COWAN:

14 Q. Dr. Longo, you say you found talc in
15 his tissue, correct?

16 A. Correct.

17 Q. And you say you found 1 fiber of
18 tremolite in Mr. Perry's tissue, correct?

19 A. Correct.

20 Q. And you found 1 fiber of winchite,
21 right?

22 A. I think it was a bundle, but it
23 doesn't matter --

24 Q. Right. A particle.

25 The tremolite fiber was less than

1 5 microns long, correct?

2 A. Correct.

3 Q. And the winchite fiber or bundle was
4 less than 5 microns long, right?

5 A. That's correct, but it met the
6 criteria for asbestos for both EPA, ISO and ASTM.
7 It has to be at least half a micron long or
8 greater so it fits the protocol.

9 Q. Sure. You're -- you're not a
10 pathologist, correct?

11 A. No. I didn't stay in the Holiday Inn
12 last night.

13 Q. But you -- you know Dr. Ronald Gordon,
14 correct? We already talked about him. He's the
15 author of that paper that you rely on, correct?

16 A. Correct.

17 Q. And Dr. Gordon is a pathologist who's
18 done quite a lot of these types of tissue
19 digestion analyses, correct?

20 A. He's been doing it -- there's about
21 three or four of us in the country that do this.

22 Q. Well, you certainly testified that
23 he's a reliable source --

24 A. He is.

25 Q. -- for appropriate methodologies for

1 identifying asbestos in tissue like you did for
2 Mr. Perry, correct?

3 A. No, he's a -- he's -- he's been doing
4 it for a long time.

5 Q. Dr. Longo, did you know that
6 Dr. Gordon has testified that he never counts
7 asbestos fibers in tissue if they are less than
8 5 microns long?

9 A. Well, I can't -- I can't tell
10 Dr. Gordon what to do or not to do. He's
11 following the protocol. And it is the size range
12 that both the Environmental Protection Agency, the
13 ones I've already stated, has regulated asbestos.

14 It's hard for me to understand how the
15 body can know the difference between a 4.5- and a
16 5-micron fiber, that one is okay and one is not.
17 We just follow the counting rules that states
18 here's what you do. We've been doing that for
19 20-some years on tissue samples.

20 Q. Okay. Speaking of tremolite, we
21 talked about asbestos-containing brakes, correct?

22 A. Correct.

23 Q. And including Bendix brakes, one of
24 the brakes that Mr. Perry worked with, correct?

25 A. Correct.

1 Q. And asbestos-containing brakes like
2 Bendix didn't just have chrysotile in them. They
3 also were contaminated with tremolite, correct?

4 A. That's correct.

5 Q. And asbestos-containing brakes that
6 you have tested contain anywhere between
7 .0001 percent to .001 percent tremolite, correct?

8 A. Correct.

9 Q. And -- now, you've also found
10 tremolite in talc -- right? -- certainly?

11 A. Cosmetic talc, yes.

12 Q. Yeah.

13 But it's not just in Johnson & Johnson
14 talc. You found it in talc from many other
15 sources, correct?

16 A. That's correct.

17 Q. You found tremolite in talc from
18 North Carolina, correct?

19 A. We have found tremolite in all of them
20 now, including Montana.

21 Q. All right. I was just about to ask
22 about Montana.

23 A. I knew you would --

24 Q. So you found it in North Carolina and
25 Montana?

1 A. -- so I beat you to the punch.

2 Q. Thank you.

3 And Johnson & Johnson never sourced
4 its talc from either North Carolina or Montana,
5 correct?

6 A. Not that I'm aware of.

7 Q. And as we already discussed through --
8 though, Johnson & Johnson did source its talc from
9 Vermont during the majority of the time Mr. Perry
10 was using Johnson's Baby Powder; isn't that right?

11 A. Vermont and China, those two. And we
12 found -- we have found tremolite in the Chinese
13 mine. We have found richterite in the Chinese
14 mine.

15 Q. We can also agree, Dr. Longo, that it
16 was anthophyllite asbestos, not tremolite, that
17 you say you found most commonly when you analyzed
18 Vermont Johnson & Johnson talc, correct?

19 A. That's correct, but we did find
20 tremolite in Vermont mines --

21 Q. And you didn't --

22 A. -- and by PLM and by TEM, but there's
23 more anthophyllite than there is tremolite.

24 Q. And you didn't find any anthophyllite
25 in Mr. Perry's tissue, correct?

1 A. No, we did not.

2 Q. Doctor, let's talk a little bit more
3 about winchite since you brought it up.

4 All right. You found -- you found
5 some winchite in Mr. Perry's tissue. And the jury
6 hasn't heard a lot about winchite, but it's a type
7 of asbestos, correct?

8 A. It's just -- it's really -- they used
9 to call it "sodic tremolite." It's -- it's in the
10 tremolite asbestos family, but it just has a
11 little bit different -- it has a little sodium in
12 it. And that has to do with the mixture itself.

13 Q. And --

14 A. It used to be just called "sodic
15 tremolite" until the EPA decided to rename them
16 and give them that name.

17 Q. And it's not technically one of the
18 regulated asbestoses that the jury has heard
19 about, but you certainly count winchite as part of
20 your asbestos-counting methodologies, correct?

21 A. Well, every -- every TEM lab does --

22 Q. Sure.

23 A. -- on this winchite and richterite.
24 But they're so close, it's almost interchangeable.

25 Q. And I think you told me yesterday that

1 you heard somebody say in a conference once --
2 talking about winchite and saying, "I don't care
3 what you call it, it's not regulated, but it's
4 killing people." You told me that, correct?

5 A. Yeah. It was at a conference when the
6 EPA was presenting it. But, you know, we have
7 never found -- but if you -- you know, about the
8 brakes, because he's suggesting that it came from
9 the brakes.

10 Here are some things we have never
11 found in brake shoes, as well as in air samples,
12 is talc. You never put talc in a brake assembly,
13 because it's the softest mineral and it slips.
14 You don't need things in there.

15 So where do these two structures come
16 from? Was it 35 years of adding, you know,
17 cosmetic talc -- talcum powder to your body every
18 day, about 500 pounds' worth between that and SEM,
19 or did it come from brakes?

20 The other things we have never found
21 in brake shoes is winchite and richterite. It's
22 always been tremolite, because chrysotile in these
23 brake shoes comes from Canada, and they don't have
24 it in there.

25 So you're asking me what my opinion

1 is, is where this material came from that we found
2 in there. It came from his use of cosmetic
3 talc --

4 Q. Dr. Longo, I have very limited time.

5 A. Sorry.

6 Q. There's a mineral that is mined that
7 the jury also hasn't heard about called
8 vermiculite, correct?

9 A. Correct.

10 Q. And it was contaminated, this
11 vermiculite, with -- with tremolite. Fair?

12 A. Fair.

13 Q. And it was also contaminated with
14 winchite, true?

15 A. Richterite, winchite, tremolite and
16 actinolite.

17 However, that's not where this came
18 from. Because we have done tissue analysis in
19 people who have been exposed to the Libby,
20 Montana, vermiculite, the tremolite.

21 And we find tremolite and we find
22 winchite and we find richterite, but we also find
23 something else. We find vermiculite. And there's
24 no vermiculite in his tissue.

25 So I would cross out -- again, the

1 evidence for me points to the cosmetic talcs.

2 Q. I understand.

3 Dr. Longo, you have found winchite in
4 some cosmetic talcs, including an Avon product,
5 correct?

6 A. Yeah. They -- that came -- that comes
7 from California.

8 Q. That's right.

9 A. Absolutely.

10 Q. And, Dr. Longo, you have never, not
11 once, identified winchite in a Johnson & Johnson
12 talc product, ever, in any report, correct?

13 A. That is correct.

14 Q. Thank you.

15 A. I haven't. Maybe others have. But I
16 have found richterite, which is so close.

17 Q. You found winchite in Mr. Perry's
18 body, correct?

19 A. One winchite bundle and one tremolite
20 bundle.

21 Q. And you found some plain talc in
22 Mr. Perry's tissues, correct?

23 A. Well, I wouldn't say "some." 8,000
24 and change, 8,000-and-something per gram. And
25 they're all in the size range that you would find

1 for cosmetic talc.

2 Q. Sure, they are. But you can't tell
3 this jury that talc came from a Johnson & Johnson
4 product, right?

5 A. No, I can't. Because we have -- you
6 know, we have Clubman. But the Clubman, we have
7 280 pounds. So the Clubman only makes up
8 46 percent of what the exposure was to J&J and
9 others.

10 But I can't say within a reasonable
11 degree of scientific certainty that it was all
12 from Johnson & Johnson. It's just the product
13 that was used the most.

14 Q. I mean, it's not just Clubman,
15 Dr. Longo. How many different -- you're aware of
16 how many different bottles of -- of different
17 types of talc products that Mr. Perry alleges that
18 he used in this case, right?

19 A. Oh, that's fair. I shouldn't have
20 left the other ones out. They just didn't have
21 the amount, from the calculations, of the others.

22 But you're right. There's other ones
23 in there that he would use occasionally.

24 Q. Occasionally.

25 MR. COWAN: Thank you, Your Honor.

1 THE COURT: All right.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Redirect? I would like it
4 to be as compressed as you can make it,
5 Mr. Adams.

6 * * *

7 REDIRECT EXAMINATION

8 BY MR. ADAMS:

9 Q. Dr. Longo, it's late in the day. I'm
10 going to be quick.

11 You were just asked about this
12 winchite material. Do you remember?

13 A. Yes, sir.

14 Q. That it was found in Michael Perry's
15 body, right?

16 A. Correct.

17 Q. In his lung, right?

18 A. That is correct.

19 Q. And the question from Johnson &
20 Johnson was: You've never found winchite in
21 Johnson's Baby Powder.

22 Do you remember that?

23 A. Since he just asked me that or said
24 that, yes, I remember that.

25 Q. And so maybe the talc and the

1 tremolite and the winchite that you found over and
2 over and over in Michael Perry's body didn't come
3 from them, right? That was the idea, correct?

4 A. Yeah. Of course.

5 Q. But you know that Johnson & Johnson's
6 own expert who they hired in this case found
7 winchite in their baby powder, right?

8 A. I do know that.

9 Q. You've seen his report. It's Matt
10 Sanchez, right?

11 A. That is correct.

12 Q. And he tested Johnson's Baby Powder,
13 found winchite, and put it in a report, right?

14 A. Correct. He did.

15 Q. You also know that there was winchite
16 in the Italian talc that Johnson & Johnson used
17 for over 70 years, right?

18 A. Yes, sir.

19 Q. You've actually published about it,
20 right?

21 A. Correct.

22 Q. That at the mine where they were
23 processing the Italian talc that they put in
24 Johnson's Baby Powder, it was contaminated with
25 winchite, right?

1 A. From that particular mine where they
2 were processing it, that was the appearance.

3 Q. This is your peer-reviewed published
4 paper, right?

5 A. That is correct.

6 Q. You've also yourself found richterite
7 in Johnson's Baby Powder over and over, right?

8 A. Yes, we have.

9 Q. Now, "richterite" isn't the same word
10 as "winchite," right?

11 A. No. One has -- winchite has a little
12 bit -- a little bit more sodium than the -- so
13 it's really close. I mean, you could literally --
14 I've seen our analysts argue which is it, winchite
15 or richterite.

16 Q. You --

17 A. So it's so close in nature that you
18 can switch them back and forth.

19 Q. Remember all the questions about
20 how -- and there was like the image of the globe
21 that they put up and they just had Vermont and
22 Chinese and no Italian? Remember that?

23 A. Yes.

24 Q. And they're trying to get away from
25 the Italian. Do you remember all those questions?

1 A. Yes, sir.

2 Q. And I think you pointed out, and I'm
3 not sure if people caught it, but that Johnson &
4 Johnson used Italian talc in all of its talc
5 products for seven months in 1979.

6 Did I have that right?

7 A. Correct.

8 Q. Okay.

9 A. Yes, you do.

10 Q. But either way, when you found
11 tremolite and richterite in the 1994 bottle of
12 Johnson's Baby Powder, where did the talc come
13 from?

14 A. Vermont.

15 Q. You know that Johnson & Johnson's own
16 expert says richterite is the same thing he calls
17 "winchite," right?

18 A. That's -- that's the whole issue with
19 it. It's almost -- you could call it back and
20 forth.

21 Q. "Your lab," he's referring to you,
22 right?

23 A. Yes.

24 Q. Or excuse me. The question: "Your
25 lab finds winchite. Longo's lab finds richterite.

1 And you-all were seeing the same thing."

2 Johnson & Johnson's own expert says:

3 "Yeah." Right?

4 A. Correct.

5 Q. Is there any surprise to you that when
6 you find something in Michael Perry's body, either
7 the Vermont talc, the Italian talc, that it came
8 from Johnson's Baby Powder?

9 A. No.

10 Q. Have you --

11 A. I mean, it certainly matches. I
12 couldn't say within a reasonable -- but I was
13 looking at the product that he used the most of to
14 give you the most opportunity to have something in
15 the lungs.

16 Q. Does the tremolite that you have found
17 in Johnson's Baby Powder match what's in Michael
18 Perry's lung?

19 A. Yes.

20 Q. What about the winchite?

21 A. Winchite/richterite, it's not
22 surprising because it's part of the whole
23 tremolite family. That's why they call it a
24 "solid solution series."

25 So when it formed many, many years

1 ago -- not that I'm a geologist. But it's sort of
2 like what are the ingredients that gets
3 incorporated into it.

4 And if there's a little bit more
5 sodium there, that gets into it. Or a little bit
6 more iron. And if you get enough iron in there,
7 then it goes from tremolite to actinolite. And
8 then the arguments are: And how much iron?

9 Q. And from all this questions about how,
10 well, maybe the brakes did it. Do you remember
11 that?

12 You weren't here when Doctor -- do you
13 remember that?

14 A. I do remember that.

15 Q. You weren't here when Dr. Brody
16 testified or Dr. Haber, were you?

17 A. No.

18 Q. But if they testified that it's the
19 cumulative dose of asbestos that causes this
20 disease, whether it's from brakes, talc or
21 something else, it all counts, are you here to
22 dispute that testimony in any way?

23 A. I'm not here to dispute it or say it's
24 not correct. That's not my area. But I'm not
25 surprised.

1 Q. But if we want to know, even if they
2 both count, which one was bigger, which one
3 affected Mr. Perry more, can we look at what's in
4 his body?

5 A. Yes.

6 Q. Did you ever find winchite in Bendix
7 brakes?

8 A. I've never found richterite or
9 winchite in brakes, and I've never found any
10 inkling of cosmetic talc or talcs in general,
11 especially talcs that are sized as cosmetic talcs.

12 Q. I showed this the other day. But
13 you're aware that Johnson & Johnson's hired
14 medical experts in this case, right?

15 A. I'm not sure. I don't know what
16 the --

17 MR. COWAN: Objection, Your Honor.
18 Scope.

19 THE COURT: What's that?

20 MR. COWAN: Objection to scope,
21 Your Honor. This is outside the scope.
22 He's talking about -- he's talking about
23 medical.

24 THE COURT: I don't know what he's
25 talking about yet. He hadn't asked a

1 question --

2 MR. ADAMS: He's actually not a
3 medical doctor.

4 BY MR. ADAMS:

5 Q. You know that Johnson -- Johnson --

6 A. I don't know who the witnesses are.

7 Q. Sure.

8 A. My understanding is Dr. Sanchez would
9 be here, but I understand that's not true anymore.

10 Q. You know that Johnson & Johnson hires
11 experts in the case, right?

12 A. Oh, yeah.

13 Q. This is one of the experts that
14 Johnson & Johnson hired. He was asked at
15 deposition: Was Mr. Perry placed on an increased
16 risk of disease, mesothelioma, from any exposure
17 to asbestos-containing brakes?

18 He answered under oath: No.

19 Did they show you that?

20 A. I don't remember them showing that to
21 me.

22 Q. Do you know why Johnson & Johnson
23 keeps bringing up brakes when their own
24 epidemiologist said they didn't count?

25 MR. COWAN: Objection, Your Honor.

1 Speculation.

2 THE COURT: All right. If he knows.

3 THE WITNESS: Well, it's always --
4 it's always human nature to want to blame
5 somebody else for a problem.

6 MR. COWAN: Objection. Move to
7 strike.

8 THE COURT: I didn't hear what he
9 answered.

10 THE WITNESS: What I said, Your Honor,
11 was, it's almost human -- a lot of human
12 nature is to blame somebody else for a
13 problem.

14 THE COURT: Well, I'll strike that.

15 MR. COWAN: Thank you. Your Honor.

16 THE WITNESS: All right. Sorry,
17 Your Honor.

18 BY MR. ADAMS:

19 Q. Do you know why? I'll move on.

20 You were asked about this Libby
21 vermiculite. I don't think anyone's heard about
22 that. That was -- that was a material that was
23 mined in Libby, Montana. Do I have that right?

24 A. It was a vermiculite -- vermiculite
25 mine that had high concentrations for accessory

1 minerals of tremolite. And they had the whole
2 series: tremolite, actinolite -- actinolite,
3 winchite and vermiculite.

4 Q. And you were asked a bunch of
5 questions about it, but you found similar
6 materials to what was in Libby, Montana, in
7 Johnson's Baby Powder. Fair?

8 A. Well, I found tremolite. We have
9 found richterite and winchite. But what we don't
10 find is the vermiculite.

11 And the percentage of asbestos in the
12 processed materials that are going in is
13 typically -- you could start out 3 or 4 percent,
14 but after they exfoliated, it's in tenths of a
15 percent. And you can't -- let's say it's 1. You
16 can't have 1 percent if it's not there. Nothing.
17 Anything from the 99 percent vermiculite and
18 they're -- they're in the size range that is
19 the -- the tremolite is in the size range.

20 Q. How do we know -- if the suggestion
21 from Johnson & Johnson was maybe Michael Perry was
22 somehow exposed to asbestos in Libby, Montana, is
23 that true or false?

24 A. No. The evidence doesn't support it.

25 Q. Why not?

1 A. One, vermiculite does not have talc in
2 it. And you can't -- you know, here -- you can't
3 get exposed and have tremolite from the mixture,
4 because they're not adding tremolite, and not have
5 any small pieces of the vermiculite.

6 And the vermiculite chemistry is
7 completely different than talc. You can never mix
8 that up. So, no, I don't have any evidence. The
9 evidence of what's in Mr. Perry's lungs does not
10 support that.

11 Q. If we're wondering, though -- I'm
12 going to get to that in a second. That's my last
13 thing, and everybody gets to go home.

14 If -- if we're wondering about how bad
15 these minerals are, tremolite, winchite that were
16 in Libby, Montana, and in Johnson's Baby Powder,
17 what happened in Libby, Montana? What happened to
18 people who live there?

19 A. It became an EPA Super site because
20 there was so much contamination. I have worked on
21 a number of cases of people who lived there, and
22 it was given away free. They put it on -- they
23 put it on -- you know, they used it all over the
24 place in the city. It pretty much devastated that
25 city.

1 Q. Most of the questioning of you was
2 about how there wasn't that much asbestos in
3 Johnson's Baby Powder. Do you remember all that?

4 A. Yes.

5 Q. And I just want to pause for a moment.
6 Have you heard of this company called "The Family
7 Company Johnson & Johnson"?

8 A. Yes.

9 Q. And you were just asked an hour or so
10 of questions about asbestos in baby powder and how
11 it was less than people who were exposed to
12 factories. Is that fair?

13 A. That's fair.

14 Q. Have you seen any of the ads that
15 Johnson & Johnson ran about how pure and safe its
16 baby powder was?

17 MR. COWAN: Objection. Scope.

18 THE COURT: Overruled.

19 THE WITNESS: I've seen the ads --

20 BY MR. ADAMS:

21 Q. Okay.

22 A. -- and it's disturbing to me.

23 Q. That's what was really in the baby
24 powder, right?

25 A. Yes.

1 Q. You were shown all these levels and
2 these numbers. This is the number that the FDA
3 found in Johnson's Baby Powder in 2019, right?

4 A. And I calculated how much was in that
5 container --

6 Q. Did the FDA say it was safe --

7 A. No.

8 Q. -- that it was okay for babies?

9 A. No. They -- they put a warning out,
10 and Johnson & Johnson had to recall the entire
11 lot. They didn't have to, but they did.

12 Q. What did the FDA call the asbestos
13 that they found in Johnson's Baby Powder?

14 A. Poisonous, and had a concentration
15 where -- it didn't really matter what the
16 concentration was.

17 Q. You were asked about the Gordon study
18 and these other papers and the numbers in those
19 studies, 1.9 fibers per cc. Do you remember that?

20 A. Yes.

21 Q. Did Johnson & Johnson ask you any
22 questions about what they said the exposure levels
23 were to asbestos in their baby powder in their own
24 internal documents?

25 A. No.

1 Q. I wanted to show something very quick,
2 and I promise we're almost done, which is a clip
3 from their corporate representative John Hopkins.

4 MR. COWAN: Your Honor, I'm objecting.
5 They have not designated this testimony.
6 We haven't been given an opportunity to
7 cross-designate. They're just playing
8 testimony now for a witness who is on the
9 stand.

10 THE COURT: This is a pot and kettle.
11 You spent a good deal of time doing this
12 very same thing yourself, Mr. Cowan.

13 Overruled.

14 I think both of you need to kind of
15 move on --

16 (Playing video.)

17 BY MR. ADAMS:

18 Q. Johnson & Johnson has actually done
19 some experimental calculations where they've
20 estimated what the dose of asbestos a person would
21 get would be if they used talc that had a very
22 small bit of asbestos, about 10 parts per million,
23 correct?

24 A. I believe so, yes.

25 Q. And they calculated that that would

1 create a dose of between 4.5 to 9.3 fibers per cc
2 for the adult and .16 to .18 fibers per cc in
3 diapering a baby, correct?

4 A. I believe that's -- that's been
5 stated.

6 (Video stopped.)

7 BY MR. ADAMS:

8 Q. Even if it were okay to expose babies
9 to occupational levels of asbestos in a powdered
10 product used in the home that they said was pure,
11 even if it were okay, did those low levels violate
12 every OSHA standard that's ever existed?

13 A. If it was done over eight hours of
14 peak exposures, yes.

15 MR. ADAMS: No further questions.

16 Thank you. I'm done.

17 THE COURT: All right. Dr. Longo --

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: -- thank you very much for
20 your testimony.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: You may be excused.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Ladies and
25 gentlemen of the jury, that will conclude

1 court for you today. We'll see you Friday
2 morning at 9:30. Needless to say, continue
3 to check Thursday late to see if you got
4 any update, but I fully expect that
5 everything will be fine for us Friday --
6 Friday morning to continue the trial.

7 I cannot tell you how much I
8 appreciate the kind of attention you're
9 paying. This is a citizen's duty at its
10 most onerous, and I realize that. I'm
11 trying to do my own duty the same way at my
12 age.

13 So thank you very much. Have a
14 wonderful day off. See you Friday.

15 Thank you so much. Keep them in the
16 jury room. Thank you so much.

17 All right. Lawyers, what else before
18 we retire for the day?

19 Yes, ma'am?

20 MS. BUENO: Your Honor, I have
21 something related to Dr. Longo's testimony.
22 I have some -- I have some serious concerns
23 that I need to bring to the Court's
24 attention and raise that I think warrants
25 some action.

1 Number one, the last clip that was
2 just played of our former corporate
3 representative John Hopkins, it was taken
4 from an April 11th, 2018, deposition. It
5 was played a clip asking about a
6 hypothetical study that had been done by
7 Johnson & Johnson, and the testimony was
8 given related to 4.5 to 9.3 fibers per cc.
9 He was asked if that was correct.

10 And Dr. Hopkins said at the end of
11 that clip, quote, "I believe that is what
12 has been stated."

13 The reason I'm so concerned with this
14 is that information comes from a slide deck
15 by a gentleman named Dr. Tim McCarthy, who
16 was just deposed by the Dobbs firm for four
17 days about that particular slide and
18 testified multiple times and clarified that
19 it was not fibers per cc and it was fibers.
20 And that is exactly what it said on the
21 slide.

22 And he confirmed that what Dr. Hopkins
23 said in 2018 was flat wrong, and counsel
24 knows that. And for them to play a
25 representation from Dr. Hopkins that they

1 know from yesterday's deposition is
2 incorrect information is a problem. That's
3 number one.

4 Number two, allowing Dr. Longo to talk
5 about the tissue testing that was not
6 received by us until --

7 THE COURT: I've already ruled on
8 that.

9 MS. BUENO: I know you have.

10 And, number three, not allowing my
11 partner, Mr. Cowan, to -- to -- Mr. Cowan
12 to -- to cross-examine Dr. Longo about this
13 rush job he did when he testified he would
14 not have been able to because of scientific
15 principle.

16 THE COURT: All right. I hear you,
17 Ms. Bueno, but I'm not going to spend a lot
18 of time having discourse on things I've
19 already ruled about.

20 MS. BUENO: I know you have. But I
21 needed to make a record because I do think,
22 Your Honor, that this is prejudicial.
23 There is no way to overcome it. There's no
24 way for Defendants to get a fair trial.

25 THE COURT: Well, stop for a minute,

1 now. Stop for a minute. Let's go back to
2 the very first one. All right? Which is
3 the playing of Hopkins.

4 MS. BUENO: Yes.

5 THE COURT: Your co-counsel spent
6 almost his entire time here doing something
7 that I warned y'all that I am very
8 concerned about, which is just reading out
9 material from things that are not a part of
10 this case, not a part of evidence in this
11 case. Testifying to the jury, in effect,
12 by reading those things and then saying,
13 "All right. Is that something you know
14 about?" or words to that effect. No
15 exhibit or anything else. All right?

16 I don't know whether those things are
17 true or not. Some of those things were
18 things that other people dispute very much,
19 the truth or falsity of it. That was done.

20 I tried to tell y'all today, before we
21 started this afternoon, that y'all have got
22 some different notions that are apparently
23 fueled by all of the trial academies you go
24 to that have transformed cross-examination
25 into testimony by counsel.

1 I don't like that. I don't think it's
2 appropriate. But that's what's been done
3 all day long, particularly by your side.

4 And to then get up and say that
5 Dr. Hopkins's material cannot be played
6 because somebody else says he's wrong, I'm
7 sorry, but that is -- doesn't cut any ice
8 with me whatsoever.

9 Hopkins is the corporate rep. Y'all
10 have played stuff from him. They've played
11 stuff from him.

12 The fact that you've now got somebody
13 else that says that's wrong, it doesn't
14 have one bit to do with whether or not it
15 can be asked about.

16 They may disagree entirely with what
17 the witness that you had said about whether
18 it's true or not true. Hopkins said, and
19 they can play the corporate rep's
20 statement.

21 So I don't see any problem at all by
22 that and overrule any objections you might
23 have.

24 MS. BUENO: Understood, Your Honor.

25 And I -- I will mention that those

1 three items we do believe were
2 fundamentally problematic, prejudicial,
3 that this trial cannot proceed in a fair
4 manner for the Johnson & Johnson
5 defendants.

6 As a result of that, we are moving for
7 a mistrial at this time based on those
8 three items.

9 THE COURT: Very good. Denied. All
10 right.

11 MS. McVEY: I think we're good, Judge,
12 other than that.

13 We will send out an -- we're going to
14 have to figure out witnesses since we're
15 going to be down tomorrow. But I'll send
16 an email out kind of giving an outline
17 about who is coming when.

18 THE COURT: Very good.

19 MS. McVEY: Thank you, Judge.

20 THE COURT: All right. The court will
21 be in recess.

22 * * *

23 (Proceedings were adjourned at
24 5:24 p.m.)

25 * * *

1 CERTIFICATE OF REPORTER

2
3 I, Cindy A. Hayden, Registered Merit
4 Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify:

6 That the foregoing proceeding was taken
7 before me on the date and at the time and location
8 stated on Page 1 of this transcript; that the
9 deponent was duly sworn to testify to the truth,
10 the whole truth and nothing but the truth; that
11 the testimony of the deponent and all objections
12 made at the time of the examination were recorded
13 stenographically by me and were thereafter
14 transcribed; that the foregoing deposition as
15 typed is a true, accurate and complete record of
16 the testimony of the deponent and of all
17 objections made at the time of the examination to
18 the best of my ability.

19 I further certify that I am neither
20 related to nor counsel for any party to the cause
21 pending or interested in the events thereof.
22 Witness my hand, this 7th of August, 2024.

23
24
25

Cindy A. Hayden,
Registered Merit Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
July 27, 2030

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EXHIBIT 4

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,

vs.

AMERICAN INTERNATIONAL
INDUSTRIES, ET AL.,

Defendants.

)
)
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) Case No.
) 2023-CP-40-04072
)
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)

TRIAL BEFORE: THE HONORABLE JEAN H. TOAL
DAY 4

DATE TAKEN: Friday, August 9, 2024
TIME BEGAN: 8:48 a.m.
TIME ENDED: 5:27 p.m.
LOCATION: Richland County Judicial Center
1701 Main Street
Courtroom 3B
Columbia, South Carolina
REPORTED BY: Cindy A. Hayden, RMR, CRR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

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1 P R O C E E D I N G S

2 * * *

3 THE COURT: Good morning. Please be
4 seated.

5 Ms. McVey, I have received your
6 communication. I'll pull it up here.

7 MS. McVEY: Your Honor, I think we
8 have come to an agreement, at least as to
9 the stipulation.

10 THE COURT: Huh?

11 MS. McVEY: I think we've come to an
12 agreement as to at least the stipulation on
13 J&J entities.

14 THE COURT: Yeah. Good.

15 MS. McVEY: So we can hand that up.
16 Mr. George is making some --

17 MS. PEPKE: I haven't seen the final
18 copy, but I'm sure --

19 MS. McVEY: Yes.

20 MS. PEPKE: -- subject to me just
21 looking at it --

22 MS. McVEY: Yeah.

23 THE COURT: Okay. All right.

24 Ms. McVey, first of all, on the -- I don't
25 like the idea we've got to -- I'm sorry

1 mistakes are made about the designations on
2 the Mann video, but I don't like that that
3 will add to the length. We're going to do
4 good to finish with what we've got today.

5 MS. McVEY: So I -- that was -- but I
6 have to be honest, that was my fault. I
7 thought we had the entire as played from an
8 agreement in a different trial. I didn't
9 realize there was a whole second volume.
10 And so that -- I take responsibility for
11 that. But what we've done is we've taken
12 away Mark Bailey.

13 THE COURT: Yeah. And I don't like
14 that you have to do that.

15 MS. McVEY: I know. It's not ideal at
16 all, but I don't know what else to do to
17 keep us on track.

18 THE COURT: Okay. Well, looks to me,
19 like, in light of how it was set up, people
20 should have been a little bit more
21 cooperative on the defense side. I don't
22 like that.

23 MS. BUENO: Your Honor, no, that is
24 incorrect.

25 THE COURT: No. Mrs. Bueno, let me

1 tell you something. I don't want any more
2 argument about it. That's how I feel about
3 it, period.

4 I'm going to tell you something. I'm
5 still so unhappy about what happened at the
6 end of Wednesday. And I can tell you one
7 thing: That would never be tolerated --
8 most of the cases I had to try, the judges
9 never sent the jury out. If the judge
10 wanted to talk to you about something, you
11 had to pay for it in front of the jury.

12 After hours' worth of cross-examining
13 Dr. Longo on something he said he made a
14 mistake on and retracted and, nevertheless,
15 quite as a -- can be, you-all spent a long
16 amount of time on cross-examining him on
17 his mistakes and so forth with respect to
18 his discussion of talc. The plaintiffs did
19 not fuss about that or say anything.

20 So then at the end of their redirect,
21 when they put up a clip from Dr. Hopkins
22 and you get up and first you object; I
23 overrule. Then as soon as the jury leaves,
24 you go berserk and start accusing the
25 lawyers of lying because y'all had some

1 deposition of something else and what he
2 said was wrong. It might have been wrong.
3 Longo said what he said was wrong. That's
4 a subject of cross-examination. But it is
5 not the subject of an accusation of
6 counsel.

7 And then, of course, to follow it up
8 with that foolish motion for a mistrial. I
9 never heard of a mistrial being made on
10 that basis or granted.

11 I'm not putting up with that kind of
12 incivility and carrying on. Just the
13 length of things where it's already a very,
14 very tight and narrow schedule.

15 I don't like that there's not an
16 agreement with Ms. Flynn, and I'm going to
17 have something to say about that.

18 You know, I was brought up you get
19 together and agree upon anything you could
20 possibly agree upon, particularly if it's
21 not something that goes to the heart of the
22 other side's case. But this thing is a
23 tooth and thumbnail battle about
24 everything, including things that you can
25 agree to let him put up without having to

1 brief the content of it.

2 So I'm just telling you, I'm -- my
3 feeling about all of that is still weighing
4 very heavily on me, and I'm not putting up
5 with any more protracting by carrying on
6 like that.

7 MS. BUENO: May I respond, Your Honor?

8 THE COURT: No, ma'am.

9 Now, we've got Mann. Then we've
10 got -- having to call the economist
11 remotely.

12 Ms. Flynn, I am very, very unhappy
13 about that, and I can tell you this: I am
14 going to scrutinize very carefully what is
15 asked by AII, because they would not
16 stipulate to something as basic as
17 uncontested economic damages.

18 So please let your client know that
19 I'll be looking very carefully at what is
20 asked, what is relevant that's asked, and I
21 will operate accordingly.

22 MS. FLYNN: I understand, Your Honor.
23 I think we have some good cross-examination
24 going --

25 THE COURT: And -- and it won't be

1 cured by trying to figure out something
2 this weekend that takes the sting out of
3 that. That's not professional, in my view.

4 And, again, I have to tell clients
5 plenty of times "no." The way we operate
6 and our lawyers' relationship that we love
7 doesn't permit me to act like a -- getting
8 obstructionist about things. And that's
9 what they're doing.

10 So I cannot imagine that there is any
11 deep mystery about these economic damages.
12 So they are proceeding at their peril, and
13 you let them know that.

14 MS. FLYNN: I understand, Your Honor.

15 THE COURT: All right.

16 MS. FLYNN: Our position would just be
17 that AII is entitled to have the plaintiff
18 demonstrate the damages --

19 THE COURT: AII's position is not
20 dissimilar from J&J's position. Very same
21 position. That has nothing to do with AII,
22 and I don't want to hear their names
23 brought into it one moment that has to do
24 with what Perry's economic damages are.
25 So, ponder that.

1 All right. Now, the next thing we've
2 got is the revised schedule. But have we
3 now received information from J&J as to
4 their witnesses and their --

5 MS. McVEY: Have not.

6 THE COURT: Well, that's not
7 acceptable. Not acceptable.

8 MS. BUENO: Your Honor, here's where
9 we stand: We had several witnesses that we
10 asked Your Honor to bring out of turn. You
11 made very clear, and I understand your
12 ruling, that we could not interrupt
13 plaintiffs' case. You recall I asked
14 multiple times to bring Dr. Christy
15 Barlow --

16 THE COURT: That's correct. And
17 that -- that decision -- that ship has
18 sailed, so...

19 MS. BUENO: It has. But I'm giving
20 you the lay of the land. So --

21 THE COURT: It's not a tit-for-tat
22 thing where you don't like one ruling of
23 mine, therefore you're going to do
24 something else.

25 MS. BUENO: Your Honor, I understand.

1 I'm trying to explain how we got to the --

2 THE COURT: Well, just tell me where
3 you are right now --

4 MS. BUENO: Where we are is this.
5 Last night, when we -- or yesterday, when
6 we found out what plaintiffs plan to do for
7 the rest of the trial and they indicated
8 they'd be done on Monday, I sent an email
9 and I said: I have added up all of the
10 time, and it looks like 14 hours to me.
11 And that's not going to work in two days
12 because we've been about six hours on the
13 record each day.

14 And I also asked if they were going to
15 proceed with their request in the motion to
16 compel to have three hours of corporate
17 representative testimony for Kenvue and
18 Holdco.

19 I have not heard back about that. But
20 then I saw a filing last night that they're
21 asking to have our case held -- that
22 they're going to hold their case open, have
23 our case proceed, and then they're going to
24 ask Your Honor to bring in corporate
25 representatives.

1 Now, these are scheduling issues that
2 will impact who we bring and when. I can
3 tell Your Honor right now --

4 THE COURT: Let me just stop you right
5 here. That -- Plaintiff gave what they had
6 and we had to revise it several different
7 times.

8 This idea that you're not going to
9 tell them anything about who you're
10 bringing and how much time and so forth is
11 not acceptable.

12 MS. BUENO: I --

13 THE COURT: We'll get in a moment to
14 this corporate representative and to
15 compelling and all that kind of thing, but
16 that's not acceptable.

17 It may have to be changed. But I want
18 before we break today to have them supplied
19 with a list of everybody you plan to offer
20 and what the time frame is. If that has to
21 change, so be it.

22 MS. BUENO: If Your Honor tells us
23 that we're starting on Tuesday morning and
24 we'll proceed --

25 THE COURT: I'm not telling you --

1 well, I'm not going to guarantee you
2 anything. I didn't guarantee them
3 anything, and it turns out they had to
4 change things around rather considerably
5 because of the recalcitrant treatment
6 they've received from defense counsel, both
7 of you.

8 So, no. I'm not going to guarantee
9 anything.

10 I want you to give me the names of
11 everybody that's going to testify,
12 particularly the experts, because they've
13 got to prepare for that.

14 MS. BUENO: Understood.

15 THE COURT: Are they still going or
16 not going?

17 MS. BUENO: Understood, Your Honor.

18 THE COURT: And I also want you to
19 give the names of all the other witnesses.
20 If that then changes, I want you to update
21 it.

22 MS. BUENO: Absolutely.

23 THE COURT: Period.

24 MS. BUENO: We can do that,
25 Your Honor. And I'm just telling

1 Your Honor that we have scheduling issues,
2 so that's why I was going to wait till
3 today --

4 THE COURT: Now, as to what --

5 MS. BUENO: -- to ask for clarity from
6 the Court about timing. And I will tell
7 you that we have been nothing but
8 cooperative with plaintiffs regarding the
9 schedule.

10 THE COURT: Well --

11 MS. BUENO: And the issue with
12 Dr. Mann was a misunderstanding. There was
13 no allegations or accusations on either
14 side.

15 THE COURT: Listen, enough, Ms. Bueno.
16 I have heard enough.

17 MS. McVEY: Your Honor, they know what
18 experts they're calling. They just refuse
19 to tell us. I don't even know --

20 THE COURT: Yes, exactly.

21 I'm not going to get into this any
22 further. I've told you what's got to
23 happen. Before this day ends, a complete
24 list, including experts, is going to be
25 given by defense to plaintiff with the

1 scheduling as they foresee it, any changes
2 to be dealt with later, period. That's
3 what's going to happen.

4 MS. BUENO: Understood, Your Honor.

5 THE COURT: All right. So no more.

6 MS. McVEY: And just for the record --

7 THE COURT: No more.

8 MS. McVEY: I understand. Okay.

9 THE COURT: No more.

10 MS. McVEY: Okay.

11 THE COURT: That could go back and
12 forth forever.

13 MS. McVEY: Sure.

14 THE COURT: All right. Now, the next
15 thing is the motion to compel the corporate
16 deposition.

17 I am going to compel the corporate
18 deposition. And if I just ask you what
19 your thoughts are about that.

20 MS. McVEY: So, Your Honor, I sent
21 around a draft order on granting of the
22 motion to compel.

23 There is one request, Number 2. I can
24 hand it up to you.

25 THE COURT: All right.

1 MS. McVEY: And after -- the
2 deposition, I believe, is going to take
3 place this weekend.

4 THE COURT: It's going to take place
5 this weekend.

6 MS. McVEY: Yes, ma'am.

7 MS. BUENO: It is scheduled. It is
8 scheduled, Your Honor, yes.

9 THE COURT: All right.

10 MS. McVEY: And -- so here's the
11 issue: I don't know that we're going to
12 need to use that deposition at the end of
13 our case, but we may, and so that shouldn't
14 affect any scheduling. I just want to
15 leave it as a possibility.

16 And you can see in the order,
17 Number 2, I say it pretty clearly, which
18 is: The corporate designee shall appear
19 for trial as the last witness to take the
20 stand at the prepunitive stage should the
21 plaintiffs wish to call this witness.

22 THE COURT: What's wrong with that?

23 MS. McVEY: I don't think there's any
24 problem with that.

25 THE COURT: Well, that's exactly what

1 we're going to do. They've created their
2 own hell about this thing by not getting
3 this corporate rep done beforehand. So
4 that's what's going to happen.

5 MS. McVEY: Thank you, Your Honor.

6 MS. PEPKE: May I be heard,
7 Your Honor?

8 THE COURT: Ms. Pepke, I got all of
9 your materials, and I don't want to spend a
10 whole lot of time on them.

11 Right now, I'm not into the
12 sanctions order. I'm into the scheduling
13 thing, right?

14 MS. PEPKE: That's correct,
15 Your Honor, except that the plaintiffs'
16 proposed order does order sanctions.

17 THE COURT: Well, I'm going to order
18 sanctions, so please understand that.

19 MS. McVEY: We defer the sanctions,
20 Your Honor, in the order. We said that
21 we'll come back to revisit it if we --

22 THE COURT: Correct. I'm not going to
23 do that at this moment, but I am definitely
24 going to consider the issue of sanctions.

25 MS. PEPKE: And, Your Honor, we would,

1 obviously, vehemently oppose holding open
2 our case. It is unfair, prejudicial to
3 Johnson & Johnson, who isn't even the
4 subject of these motions, to hold open a
5 case and bring at the end, before the case
6 goes to the jury, corporate representative
7 testimony --

8 THE COURT: You raised your own
9 problem in that regard.

10 And I know that your brief says due
11 process as we know it on Earth has been
12 disturbed terribly by even suggesting that
13 that be done, but that's going to be done.

14 MS. PEPKE: Your Honor, thank you.

15 I would incorporate all of our prior
16 briefing on successor liability and
17 equitable distribution to the Court.

18 THE COURT: Understood. Understood.

19 All right. I will sign the motion to
20 compel as submitted.

21 MS. McVEY: Thank you, Your Honor.

22 THE COURT: All right. Now -- wait a
23 minute. Let's talk about the stipulation.
24 Have we got one?

25 MS. McVEY: I think we have a final

1 stipulation. I want to show it to
2 Ms. Pepke, and then we'll -- Ryan is
3 printing it out. So as soon as we get it
4 printed out, we'll hand it up to you.

5 THE COURT: Print it out for them and
6 for me.

7 MS. McVEY: Yes, ma'am.

8 THE COURT: And at the first break, I
9 will deal with that stipulation and see
10 what needs to be done about it.

11 MS. McVEY: Okay.

12 THE COURT: Because if it turns out
13 they're not going to stipulate.

14 MS. McVEY: Yes, ma'am. That will be
15 great.

16 THE COURT: All right. That -- that
17 doesn't touch the issue of successor
18 liability, correct?

19 MS. McVEY: It just addresses it, in
20 my view, enough so that the jury has some
21 understanding of who's going to be on the
22 verdict form.

23 THE COURT: Yes, the history of the --
24 like, what went on with the various
25 creations and dissolutions and the rulings

1 and --

2 MS. McVEY: Right.

3 THE COURT: -- all that kind of thing.
4 I don't think that has anything to do with
5 successor liability.

6 MS. McVEY: I agree. You will still
7 have to make the decision following a jury
8 verdict.

9 THE COURT: That's correct. That's
10 correct.

11 MS. McVEY: If there is a jury
12 verdict.

13 THE COURT: That's correct.

14 And I say on the record now that if
15 there's any need to say anything more --
16 the stipulations will be read to the jury
17 at the end of the case anyway. By that
18 time, I will have made my mind up about
19 successor liability. But I do not think
20 that matter's been decided in this
21 stipulation.

22 MS. McVEY: Correct.

23 THE COURT: And so I put on the record
24 that nothing in the stipulation will be
25 regarded as any concession by J&J

1 defendants as to the issue of successor
2 liability.

3 MS. McVEY: Thank you, Your Honor.

4 THE COURT: Okay. Now, what else have
5 we got?

6 MS. McVEY: So we have two other
7 issues. One is the Johnson & Johnson
8 spoliation issue, which I want to address
9 with you. And we believe that Johnson &
10 Johnson opened the door to that in their
11 cross-examination of Dr. Haber.

12 And I just want to hand you up -- I've
13 handed it to Ms. Bueno as well -- a part of
14 the transcript where she crossed Dr. Haber
15 extensively about how much testing
16 Johnson & Johnson did, how good it was that
17 they did all this testing. We did all the
18 best. We're the best of all the testers.
19 And, Your Honor, we believe that certainly
20 opens the door to the spoliation charge.

21 MS. BUENO: Your Honor, may I respond?

22 THE COURT: Yes. Let me just read it
23 here for a second. All right.

24 MS. BUENO: Your Honor, your order
25 indicated that if we were to offer testing

1 specifically about negative test results,
2 meaning no asbestos in our talc, that we
3 would then trigger the order. I did not
4 ask Dr. Haber anything about test results
5 showing no asbestos in Johnson's Baby
6 Powder.

7 The questions I asked him were as
8 indicated here: You agree it's a good
9 thing for companies to test their products?
10 You have not seen a single cosmetic talc
11 company that has more testing of its
12 product than Johnson & Johnson? And you
13 understand that Johnson & Johnson did more
14 testing and surpassed the industry
15 standards of the cosmetic talc industry
16 over the years? And it's a good thing for
17 a company like Johnson & Johnson to reach
18 out and hire the very best labs in the
19 country and use the best microscopes and do
20 the most testing?

21 Then I went on to say in the
22 highlighted section on Line 10: You have
23 reviewed for Johnson & Johnson -- there's
24 no question in your mind the documents you
25 have reviewed for Johnson & Johnson

1 demonstrate that we surpassed and exceeded
2 the Industry Standard J-41?

3 Your Honor, there is nothing in this
4 transcript and nothing I asked of Dr. Haber
5 about any test results or negative results
6 of Johnson & Johnson testing. This did not
7 trigger the spoliation order.

8 THE COURT: Well, here's my reaction
9 to that: There has already been
10 information that's been put in front of the
11 jury about Johnson & Johnson testing,
12 including no detection or no asbestos.
13 They've already heard in other testimony
14 that's already been offered to them.

15 MS. BUENO: Nothing about Johnson &
16 Johnson. Just FDA, Your Honor.

17 THE COURT: All right. Well, I
18 disagree. That's not my memory of it. But
19 the issue of them projecting no detect to
20 the FDA has already been touched upon in
21 front of this jury. No motion to strike it
22 or anything else.

23 I think I said at some point yesterday
24 that the door was opening on this. And I
25 think the door has been opened, not just on

1 Haber, but on other things that have been
2 done that's put before the jury.

3 I know your whole mantra is bottle,
4 air and dose. That is an attempt to avoid
5 focusing on this whole issue of testing and
6 whether J&J concealed its knowledge of
7 asbestos in its product.

8 The stage has already been set for
9 that here. And so if that -- that's not
10 going to influence me at all about
11 spoliation. The concept of my spoliation
12 order exempted from any projection to the
13 jury by anybody of the claim that Johnson &
14 Johnson concealed information in that
15 internally about its product is not
16 something that I intended by that order at
17 all.

18 So to the extent that is something you
19 think is intended by it, I did not intend
20 that, and that is not what I will do.

21 This issue has already been outlined
22 for the jury in opening statements. It's
23 already been alluded to many different
24 times in bits and pieces of evidence about
25 what Johnson & Johnson knew, what its

1 history was.

2 And we're not going to, under the
3 guise of something I said in a spoliation
4 order, preclude the jury from hearing that
5 evidence. They're going to hear it.

6 MS. BUENO: Your Honor, yes, we're
7 talking, I believe, about two separate
8 issues. Your order made very clear that
9 you would instruct the jury on spoliation
10 if Johnson & Johnson put forth evidence of
11 our testing showing negative results, that
12 I -- I did not know that Ms. McVey was
13 raising this. I do not have your order in
14 front of me, but your order was clear.
15 That was --

16 THE COURT: I don't -- I will revisit
17 that order and take a look at it. But I
18 can tell you, all right, you are dreaming
19 if you think that that order was any
20 expression by me of a limitation on the
21 plaintiffs' ability or anybody's ability in
22 this trial to put before the jury the
23 contention that Johnson & Johnson concealed
24 and spoliated evidence. That's -- they're
25 going to pursue that.

1 MS. BUENO: They are, but there's a
2 difference between plaintiffs putting on
3 evidence and pursuing it and Your Honor
4 reading an instruction to the jury.

5 THE COURT: Well, we haven't even
6 gotten to the instruction to the jury yet.

7 MS. BUENO: Ms. McVey just asked you
8 to read it. That is what this discussion
9 is about.

10 THE COURT: I understand, but that's
11 not going to be done until the trial is
12 over with.

13 MS. BUENO: All I'm saying is
14 Your Honor's recollection of what has been
15 put forth in this trial --

16 THE COURT: Ms. Bueno, a spoliation
17 instruction is not going to be given until
18 the case goes to the jury, and there's a
19 lot of water that's going to flow over and
20 under the bridge in that regard.

21 MS. BUENO: Your Honor, I understand.

22 THE COURT: But I can tell you that
23 based on what I now know, the jury is
24 probably going to be instructed about
25 spoliation because it has already been

1 alluded to by many witnesses if they
2 projected the notion of no asbestos when
3 they had internal information to the
4 contrary.

5 MS. BUENO: Your Honor, the evidence
6 that has been presented and is reflected in
7 the record, the only testing evidence that
8 the jury has heard about is that of the
9 FDA. And Your Honor's order made clear
10 that Johnson & Johnson tested --

11 THE COURT: Well, we're saying the
12 same thing over and over again with no real
13 purpose.

14 MS. McVEY: I just want to say one
15 thing, and then we can move on from it.

16 But it's not just that the FDA looked
17 at it and tested. What she did with
18 Dr. Haber is put the testing front and
19 center. The only purpose on Planet Earth
20 for asking about the testing that Johnson &
21 Johnson did is to show it was negative.

22 THE COURT: Oh, of course. You know,
23 I -- I understand. And I understand to --
24 following up with above the industry
25 standard of J4-1 is all a part of that

1 whole issue. I get that very definitely.

2 But let me say this: The Haber thing
3 is not the only way that they are placing
4 in front of the jury the methods of
5 testing, the accuracy of the testing, their
6 ability to hide behind the fact that the
7 FDA approved J4-1. All that's going in
8 front of the jury, and I'm going to take
9 all that into account before I charge the
10 jury.

11 MS. McVEY: Thank you --

12 THE COURT: So --

13 MS. McVEY: Okay. Thank you,
14 Your Honor.

15 THE COURT: I intend to give a
16 spoliation charge. What it's going to be
17 is still the subject of some discussion
18 until the trial gets to the point where I
19 have to charge.

20 MS. McVEY: Thank you, Your Honor.

21 THE COURT: All right.

22 MS. BUENO: And so the record is
23 clear, you have made a decision to offer a
24 spoliation instruction to --

25 THE COURT: Ms. Bueno -- Ms. Bueno --

1 MS. BUENO: I need to know before I
2 proceed with my witnesses.

3 THE COURT: Well, then you're just
4 going to have to do the best you can with
5 what I have already said. But I have not
6 given you free rein to conceal from the
7 jury anything about what J&J did about
8 testing. I have not given you permission
9 to say that no test results from J&J can be
10 put in front of the jury. And to the
11 extent you believe that was part of what
12 the argument said, let me disabuse you of
13 that. Okay?

14 MS. McVEY: Your Honor, two last
15 issues as far as I can see. One is we have
16 asked that the Court order everybody to put
17 their PowerPoints both in for direct and
18 cross --

19 THE COURT: Yes.

20 MS. McVEY: -- and color copies.

21 THE COURT: Yes, that needs to be
22 done.

23 MS. McVEY: And can we have that done
24 today so --

25 THE COURT: Yes, let's do that today

1 in color. There's no -- they have a whole
2 latitude to do that.

3 MS. McVEY: And we'll do the same, of
4 course.

5 THE COURT: That's right. That needs
6 to be done. I don't need to be interrupted
7 as we go along about that kind of thing.

8 MS. McVEY: Just for the court record,
9 we'd love to have them as court exhibits --

10 THE COURT: That's right.

11 MS. McVEY: -- only.

12 The last thing is that you ordered
13 that AII give us their financial
14 information by yesterday. Ms. Flynn sent
15 me a confidentiality order. We agreed to
16 it. I even said I know the Court is
17 probably not going to enter it today
18 because we weren't in court, but I will
19 abide by it anyway; please send us the
20 financial information.

21 I -- Ms. Flynn called me and said that
22 they were not going to do that, that they
23 wanted to give it to you and that I --

24 THE COURT: I want it up here right
25 now, your confidentiality order.

1 MS. McVEY: I think you submitted it,
2 did you not --

3 MS. FLYNN: I did.

4 MS. McVEY: Okay.

5 THE COURT: Well, give it to me and --
6 wait a minute. Is this one that she
7 submitted acceptable to y'all?

8 MS. McVEY: Yes.

9 THE COURT: I'm signing it right now,
10 period, end of conversation. I don't want
11 any more ruling about it.

12 Ms. Flynn, you get on the phone to AII
13 and tell them to send this information
14 ASAP. You got it right here?

15 MS. FLYNN: Your Honor, my client has
16 asked for the confidentiality order,
17 obviously, to be signed first.

18 But then he would also ask that it be
19 handed to you in -- in camera as pursuant
20 to --

21 THE COURT: No, ma'am. It's going to
22 be handed to Ms. McVey right now.

23 MS. FLYNN: Okay.

24 THE COURT: I deny that request.

25 MS. FLYNN: All right. Please note

1 our objection for the record that we did
2 ask, pursuant to Paragraph 8 of the
3 confidentiality order, for that to be done.

4 THE COURT: If this indicates a lack
5 of trust in counsel for the other side
6 despite the terms of the consent order, I'm
7 not going to play those games.

8 MS. FLYNN: And I -- I appreciate the
9 assurances that they're going to hold the
10 confidentiality before the order is even
11 signed. I really do.

12 It's a big deal for AII. They have
13 never previously produced this information
14 in litigation.

15 THE COURT: Yes. Just like it's a big
16 deal for them not to stipulate to something
17 that is so easy that it's -- your client is
18 not behaving in a way that comports with
19 normal rules of civility to each other to
20 get the trial to move forward.

21 So I don't respect what they have to
22 say about this issue because it indicates a
23 lack of respect of other counsel for a
24 confidentiality order.

25 Give that to her now.

1 MS. McVEY: Your Honor, thank you.

2 THE COURT: Tasha is going to put the
3 order up now.

4 MS. McVEY: Thank you.

5 I'm going to tell you that this is a
6 very thin envelope.

7 THE COURT: Yeah. Open it up right
8 now and let's see if it complies with what
9 I ordered.

10 MS. McVEY: It does not. Ms. Flynn's
11 already told me they only are giving two
12 years' worth of information.

13 THE COURT: No, ma'am. No, ma'am.
14 I've already signed an order saying
15 otherwise.

16 They must comply with my order
17 immediately.

18 MS. FLYNN: Okay. Your Honor, I
19 understand. Let me -- let me tell you
20 what --

21 THE COURT: And don't give me Poor
22 Pitiful Pearl about this poor little
23 company sitting out in California, a family
24 business.

25 No, ma'am. I already cut it down from

1 ten years, which is perfectly normal, to
2 five.

3 MS. FLYNN: The first time we ever saw
4 this document with this long list of items
5 requested was on Saturday, August 3rd. And
6 that's --

7 THE COURT: I'm sorry. That's just
8 what happens. That has nothing to do with
9 what I've ordered. I ordered five years,
10 and I mean it.

11 MS. FLYNN: I understand, Your Honor.

12 I -- in -- in -- and I will be -- I
13 will be up-front with the Court. When this
14 information came up and I was talking to
15 the client about it, I did tell him that
16 the Court's only ever ordered two years.
17 That's generally what happens. Be prepared
18 for that.

19 He did prepare for that. He is in
20 Israel now because his son is joining the
21 Israeli Army. It was his last chance to
22 see him before --

23 THE COURT: Well, that's too bad.
24 There's going to be somebody else in AII
25 that can do that. And they've got to do

1 that today or they're going to be in
2 contempt.

3 And don't tell me. We've already done
4 a religious holiday. Now he's gone for
5 some other purpose. There's got to be more
6 than one person in AII that can do this.

7 MS. FLYNN: On top of that, I know
8 that they say the envelope is small. But
9 that's because all of these categories on
10 this document are made for corporations.

11 It's not a corporation. It is a small
12 family general partnership. Virtually none
13 of this stuff, they have. Virtually none.

14 THE COURT: Well, good. If -- you
15 know, because that's not acceptable. So
16 you -- you get five years' worth of this
17 information and get it today.

18 MS. FLYNN: Yes, Your Honor.

19 THE COURT: And get it to Ms. McVey
20 today.

21 MS. FLYNN: And this -- I'm sorry.

22 THE COURT: Otherwise, we are going to
23 take up sanctions big time.

24 MS. FLYNN: What we have done -- and
25 I'll preview this for the Court. This was

1 one of the reasons we wanted to hand it to
2 you.

3 We -- my -- my CPA for the company,
4 the acting CFO, has put this information
5 onto a piece of paper, where he's -- for
6 tax years 2022 and 2023.

7 He provided all the categories that
8 their expert, the economic expert, Robert
9 Johnson, provided as to J&J and all the
10 other defendants that he evaluated this
11 information for.

12 He set that information out in that
13 specific format because, like, they're --

14 THE COURT: Ms. -- Ms. Flynn, let me
15 stop you here.

16 My two cousins and I ran our family
17 business, a general small family
18 partnership of 14 people, for 30 years.
19 And we had litigation from time to time,
20 including litigation in federal court,
21 where we had to supply a lot of things.

22 And it was just the three of us with
23 one -- we got with the general manager and
24 ran the business. And a CPA. And we were
25 able to respond to some very sweeping

1 requests for information.

2 I -- that does not hold any water with
3 me whatsoever. They are going to supply
4 this information today.

5 MS. McVEY: And, Your Honor, just for
6 the record, this is not even official
7 documents. This is -- and I'll just show
8 you one.

9 This is just what Mr. --

10 THE COURT: Show me the whole thing.

11 MS. McVEY: It's not even a tax
12 return. There's no official documents.
13 It's not verified.

14 MS. FLYNN: I think we could rectify
15 the verification if -- verification, if
16 that's an issue. Brian Dror has also
17 offered to make himself available to
18 the Court for questioning should you wish
19 to do so.

20 THE COURT: No, ma'am. I'm not up
21 here to question somebody about this.

22 This is going to be submitted in
23 writing in top form, in affidavit form,
24 with whatever backup is necessary to verify
25 it.

1 That's what she's got to have and
2 that's what I've got to have. So this is
3 not acceptable for what it represents.

4 MS. McVEY: And the last thing,
5 Your Honor. I hate to be this person, but
6 AII has defied every single order
7 this Court has ordered.

8 THE COURT: Absolutely. I got that.
9 And not one order have they said, "Yes.
10 The Court's ordered that and we're going to
11 do it."

12 And apparently they're not just in
13 litigation here. They're in litigation
14 elsewhere.

15 This is not some little ten to
16 fifteen-year-old company on the banks of
17 the Delaware. This is a company that
18 apparently has interests in more than just
19 their small, little family partnership
20 sitting out in California.

21 MS. FLYNN: Your Honor, I disagree.
22 Talc sales were less than 1 percent of
23 their sales ever in their entire company
24 history from --

25 THE COURT: That doesn't make any

1 difference to what we're talking about
2 here. Not one piece of difference.

3 We are entitled -- she is entitled,
4 the Court is entitled to get information
5 about their net worth and all the financial
6 information five years out.

7 I signed that order and I am going to
8 enforce that order. That's the end of
9 this.

10 MS. McVEY: And, Your Honor, we do
11 believe that we're entitled to substantial
12 sanctions. This is a mockery of your
13 orders. I just don't know what else to do.

14 THE COURT: I will see what happens at
15 the end of the day.

16 MS. McVEY: Thank you, Your Honor.

17 THE COURT: All right. Thank you,
18 Ms. Flynn.

19 MS. FLYNN: Your Honor, thank you.

20 MS. McVEY: The last thing is we have
21 made a list for the court reporter and for
22 counsel, and I can hand the Court up, what
23 we believe is the admitted plaintiffs'
24 exhibits --

25 THE COURT: Yes.

1 MS. McVEY: -- just to make life a
2 little bit easier. So I'll hand that to
3 the court reporter.

4 MS. BUENO: Do you have a copy?

5 MR. COWAN: Do you have a copy?

6 MS. McVEY: Yes, of course.

7 And, for the record, we swapped out
8 the redacted piece of the Decades chart, as
9 you ordered.

10 THE COURT: Yes.

11 MS. McVEY: And we have removed from
12 the boxes, I think, Rachel, you can confirm
13 that, the exhibits that we withdrew.

14 MS. GROSS: We did.

15 MS. McVEY: We did remove them?

16 MS. GROSS: We did, yes.

17 MS. McVEY: From the box?

18 MS. GROSS: Oh. From the box? No.

19 Not from the box. But from the list, yes.

20 MS. McVEY: Yeah.

21 THE COURT: Yes. Get that all out at
22 some point.

23 MS. McVEY: Yes, ma'am.

24 MS. BUENO: I suggest we have a time
25 where we can --

1 MS. McVEY: Absolutely.

2 MS. BUENO: -- both parties can look
3 at all of the exhibits to make sure they're
4 correct before they go back to the jury.
5 We'll work together on that.

6 THE COURT: The jury ain't getting
7 them till several days from now, so I'm
8 sure that will occur.

9 I mean, it's not like they're going to
10 go back to the jury right now, as you, I'm
11 sure, well know.

12 MS. McVEY: And, Your Honor, we will
13 want to make sure they are ready to go so
14 the jury can take them immediately back
15 after closing.

16 THE COURT: Exactly. You always have
17 verification time, just as you would
18 expect --

19 MS. McVEY: Yes, ma'am.

20 THE COURT: -- before anything is
21 done. We do it before closing arguments
22 and instructions to the jury. We have a
23 standardized, very accurate procedure.

24 MS. McVEY: There was one last issue I
25 wanted to raise with the Court. I know --

1 we're going to finish playing the Hopkins
2 deposition, the defense designations.

3 THE COURT: Yes.

4 MS. McVEY: And then we are going to
5 start with Dr. Kuffner.

6 I wanted to clarify with the
7 defendant -- well, couple things.

8 One, Your Honor, he's the corporate
9 representative. And you ruled in limine
10 that he could, of course, give factual
11 testimony, he could talk about the
12 documents, but that he would not be allowed
13 to offer opinion testimony.

14 THE COURT: That's correct.

15 MS. McVEY: And I know he's sitting in
16 the courtroom now, so I just wanted to make
17 sure that was clear on the record.

18 THE COURT: Right.

19 MS. McVEY: The other thing is that
20 when I talked to Ms. Bueno, initially she
21 was just going to use her time in our case
22 for the testimony of Dr. Kuffner.

23 So we would put him on first as an
24 adverse witness, and then they would do
25 theirs, we would do our redirect.

1 And then I heard that she was going to
2 call him back in her case in chief, and so
3 maybe she'll take a smaller time now.

4 I haven't heard what the plan is for
5 that, so --

6 MS. BUENO: Yes.

7 THE COURT: Here is what I will do: I
8 will pay close attention to what this
9 examination is like. And then if -- if she
10 decides that she wants to put him in her
11 case as well, we will discuss whether it's
12 repetitive or anything of that nature.
13 I -- you know, I'm not going to rule on
14 that right now.

15 MS. McVEY: That's fine. I just want
16 to discuss time limits because it matters
17 for getting the rest of our stuff done. So
18 can we address that?

19 MS. BUENO: Yeah. I understand that
20 plaintiffs are going to use an hour and a
21 half with Dr. Kuffner today, and I suggest
22 we use an hour. And then when we can bring
23 him back in our case, we can talk about
24 timing then.

25 THE COURT: That's fine with me.

1 MS. McVEY: And just to confirm, he
2 is, of course, not an expert. He's the
3 corporate representative.

4 THE COURT: Yeah. Exactly. Exactly.
5 I get what he is.

6 MS. McVEY: Thank you, Your Honor. I
7 think that's it.

8 THE COURT: All right. Great.
9 The court will be in recess.

10 * * *

11 (Whereupon, there was a recess in the
12 proceedings from 9:22 a.m. to 9:36 a.m.)

13 * * *

14 THE BAILIFF: The court will come to
15 order. All rise, please.

16 THE COURT: All right. Please be
17 seated.

18 Some of the orders that we have just
19 discussed, we're having a little bit of a
20 snafu about where they're being sent.
21 Sometimes these motions, unfortunately, are
22 being sent to Jocelyn Newman, a motion
23 judge, rather than coming to me.

24 MS. McVEY: Okay.

25 THE COURT: We're untangling that a

1 little bit. They'll be posted in the due
2 course of time. I've got IT working on it.

3 MS. McVEY: Thank you so much. And
4 the only thing I want to hand up is our
5 joint stipulation.

6 MS. PEPKE: Yes.

7 MS. McVEY: Okay.

8 MS. PEPKE: Yeah. We're agreed on the
9 stipulation. And of course, as I told
10 them, this is subject to our continuing
11 objection on the successor liability coming
12 in at all to the jury.

13 THE COURT: Very -- very well.
14 Bring me the jury.

15 THE BAILIFF: Yes, ma'am.

16 MS. PEPKE: We're just marking this as
17 Court Exhibit 5 what plaintiffs' counsel
18 passed up during the spoliation argument.

19 (COURT EXHIBIT 5, Excerpted portion of
20 trial transcript dated 8/6/24 regarding
21 spoliation argument, was admitted into
22 evidence.)

23 (The jury enters the courtroom at
24 9:38 a.m.)

25 THE BAILIFF: The jury is seated,

1 Your Honor.

2 THE COURT: Thank you.

3 Ladies and gentlemen of the jury, I
4 hope you enjoyed the respite from this
5 courtroom as much as I did yesterday. We
6 got a new chief justice sworn in and a
7 beautiful ceremony at my old court. It's
8 nice to be among my old colleagues, so a
9 good day.

10 The first thing that will be done
11 today as the plaintiffs' case continues is
12 the playing of some other material by
13 video, and then we will go forward with
14 live witnesses. So that's kind of what's
15 taking place as we proceed today.

16 All right. Counsel, you may be
17 seated.

18 MS. McVEY: And, Your Honor, defense
19 designations from Dr. Hopkins, which we
20 started a couple of days ago.

21 THE COURT: This will be designations
22 that the defendant made for the deposition
23 of the corporate -- of the former corporate
24 representative of Johnson & Johnson,
25 Dr. John Hopkins. All right.

1 (Whereupon, the videotaped deposition
2 of John Hopkins, Ph.D., was played in open
3 court.)

4 BY MR. BICKS:

5 Q. Tell us your name, please.

6 A. My name is John Hopkins.

7 Q. And hello, Mr. Hopkins. I'm Peter
8 Bicks. You and I know each other.

9 A. Yes.

10 Q. Did you work for Johnson & Johnson?

11 A. I did work for Johnson & Johnson, yes.

12 Q. And tell our jury for how many years.

13 A. I worked from 1976 as a full-time
14 employee through to -- partway through 2000, about
15 24 years.

16 Q. And walk us through your various jobs
17 at Johnson & Johnson.

18 A. I joined the U.K. company of Johnson &
19 Johnson in 1976 in the medical department with
20 responsibility for safety of products. And over
21 the years, I took on additional responsibility,
22 and I ended up taking over the responsibility for
23 the medical department and then later became
24 research director for the baby products division
25 in the U.K.

1 Q. And are you a toxicologist?

2 A. I am, yes. That's my professional
3 background, but -- I've always kept that, but I
4 also have managerial expertise. And following
5 1990 -- beginning of 1994, I took my
6 responsibilities as a manager to the U.S., and I
7 worked in the U.S. in New Brunswick here for four
8 years, '94, '95, '96 -- sorry, '95, '96 to the end
9 of 1998.

10 Q. Fair enough.

11 A. Let me phrase that again. '95, '96,
12 '97, '98, four years in the U.S.

13 Q. And that was -- you became a head of
14 research and development --

15 A. I was worldwide director for baby
16 products here in the U.S.

17 Q. And what baby products?

18 A. It's all the baby products that are
19 sold globally. It's baby -- baby shampoo, baby
20 body wash, baby hair conditioning products, baby
21 oil, baby powder, baby soap. All the baby -- and
22 the kids' products as well, and the kids'
23 products.

24 Q. Sir, where do you live?

25 A. I live in the U.K., a town -- it's

1 about 50 miles due west of London -- called
2 Newbury.

3 Q. And tell us a little about your
4 family.

5 A. Okay. I've been married since 1970,
6 and I've got three children and eight
7 grandchildren.

8 Q. And walk our jury through your
9 educational background. Where did you go to
10 school, college, and whatever degrees?

11 A. I did a bachelor of science degree at
12 the University of St. Andrews in Scotland. It's
13 one of the old Ivy League universities founded in
14 1411. And then I did -- that was in chemistry and
15 biochemistry. And then I did a Ph.D. at the
16 University of Dundee Medical School, which is also
17 in Scotland, in toxicology and pharmacology.

18 Q. Are you also a chartered biologist?

19 A. I am, yes.

20 Q. And tell us what that's about and how
21 you get that.

22 A. It's a -- it's a diploma that's given
23 by the Society of Biology. In fact, I'm a member
24 of the Royal Society of Biology, and they give --
25 that's actually an award -- it's not an award -- a

1 diploma given to people who have the appropriate
2 expertise and duration of their abilities.

3 Q. And who gives out that award?

4 A. It's given by the Royal Society of
5 Biology.

6 Q. And you mentioned your company.
7 What's the name of your company?

8 A. My company is -- founded in 2000 -- is
9 Innovant Research, I-N-N-O-V-A-N-T.

10 Q. Fair enough. And has product safety
11 been an important part of your professional life?

12 A. It has, yes. I did my Ph.D. in the
13 safety of drugs on -- in people who are usually
14 exposed to them and the way that certain drugs
15 could damage red blood cells in patients. So I
16 did my Ph.D. in a teaching hospital, and that's
17 going back to early '70s.

18 Q. And remind us again, what year did you
19 leave Johnson & Johnson?

20 A. I left -- I went to work with a French
21 company after leaving the U.S. for 18 months,
22 almost two years. I left in May 2000, April-May
23 2000.

24 Q. And then after that you formed your
25 company and been doing consulting work and things

1 of that nature?

2 A. For many, many different companies,
3 yes, yes.

4 Q. And is your company being compensated
5 for your time to be here today?

6 A. My company is billing for my time,
7 yes.

8 Q. And in terms of what you do today,
9 your job, how much of it is involved with
10 testifying in litigation?

11 A. In the past 12, 18 months, it's --
12 it's grown from very, very little to probably 15,
13 20 percent of my annual time.

14 Q. And let's talk a little bit about
15 Johnson & Johnson. Tell us about the founders of
16 Johnson & Johnson.

17 A. They're two -- two brothers who
18 founded the company in the late 1800s. Their --
19 their background was -- was interesting in that
20 they -- they had both been to -- they went to a
21 lecture given by a physician, Sir Joseph Lister.
22 And he was proposing the idea that if you applied
23 sterile wound dressings to severely injured
24 people, you would reduce the rate of death.

25 The Johnson brothers were very aware

1 that following the Civil War here in the U.S.,
2 many, many, many men on both sides had died
3 through injuries, which today we would see as
4 treatable and manageable, from infections.

5 So they -- they were very impressed by
6 the lecture they went to and decided to set up a
7 business making sterile surgical dressings, and
8 that business was set up in New Brunswick.

9 Q. Does Johnson & Johnson have a credo?

10 A. It does, yes. It's been around since
11 1940s, I believe.

12 Q. And the first sentence here under the
13 credo says that "We have -- believe our first
14 responsibility is to doctors, nurses and patients,
15 to mothers and fathers and all others who use our
16 products and services."

17 A. You read that, yes. That is what is
18 written, yes.

19 Q. And I'm over here on the second page.
20 And you see here that Johnson & Johnson "We're
21 responsible to the communities in which we live
22 and work and to the world community as well. We
23 must be good citizens."

24 Do you see that?

25 A. Yes, that's -- that's an important

1 part of the credo, the way you operate to be
2 responsible to other people.

3 Q. How would you characterize how
4 Johnson & Johnson tests and reviews its products
5 for safety?

6 A. It follows, essentially, industry
7 standards that are published out of the
8 literature. When you develop a new product, let's
9 say it's a new body wash product, you look at the
10 raw materials, the ingredients, the different
11 cleansers.

12 You look at the safety data that's
13 available for those. Do they irritate the skin?
14 Hopefully, no. Are they skin allergens?
15 Hopefully, no. Are they likely to cause effects
16 inside the body if they're absorbed? Again,
17 hopefully, no.

18 So you put all that information
19 together and the product is created, and then it's
20 evaluated, very often in clinical studies whereby
21 it's evaluated in groups of mothers and babies to
22 ensure that it -- it works in real life before
23 it's sold to the market.

24 Q. Let's talk a little bit about talc.
25 What is it?

1 A. It's a mineral that's obtained from
2 mining. It's taken out of the ground.
3 Chemically, it's a magnesium silicate. The purest
4 grades that are used in cosmetics and
5 pharmaceuticals are a white powder.

6 Q. And what's it look like under a
7 microscope?

8 A. Under a microscope, the grades that
9 we're talking about today, that's the
10 pharmaceutical and cosmetic grades, have been
11 shown as lots of particles.

12 The finest grades are -- the particles
13 are plate-like. They -- they're a little like the
14 dinner plates that slide over each other to give
15 that fine, lubricious, silky feel.

16 Q. And what products contain talc?

17 A. Well, there are cosmetic products,
18 industrial products, food products.

19 Cosmetic products contain talc, such
20 as body powders. Talc is the main component of
21 face -- face powders, liquid foundation, eye
22 shadow, mascara. It's quite heavily used in -- in
23 those kinds of products.

24 It's used in the manufacture of paper.
25 This paper product contains 30, 40 percent talc.

1 It's -- it's used as an industrial use.

2 And there are other industrial uses
3 like automobile tires, roofing materials.

4 There's -- it's widespread.

5 It's even used in some food materials,
6 polishing rice and some materials. And so it's
7 got a widespread usage.

8 Q. And how long has Johnson & Johnson
9 been selling baby powder?

10 A. Since the late 1800s.

11 Q. And --

12 A. 1894, believe.

13 Q. Yeah. And tell the jury what the baby
14 powder is made of.

15 A. It's about 99.5 or 6 percent talc and
16 a small amount of fragrance, about 5 percent or
17 less of fragrance.

18 Q. And how long has Johnson's Baby Powder
19 contained talc?

20 A. Since the late 1800s, 1890s. It's
21 been the main component of talc. Over the years,
22 a couple of other minor ingredients have been
23 added and taken out, but they were less than a
24 fraction of 1 percent, to help flow so the little
25 holes in the top didn't get blocked.

1 Q. So that would be almost close to
2 120 years that talc would be --

3 A. About a hundred years. Yes, over a
4 hundred years.

5 Q. And what was the purpose of using baby
6 powder?

7 A. The -- it goes back historically to
8 evidence which was shown to the Johnson brothers
9 that when they sold a large plaster bandage,
10 6-inches-by-4 size out of the rubber thesis, when
11 that was removed from the skin, the skin was
12 irritated. And it was shown by adding powder to
13 the skin, it reduced irritation, and -- from
14 chafing.

15 And so that carried forward to the
16 stage where it's used on babies -- on babies,
17 babies' bottoms and to babies' thighs, to prevent
18 or reduce chafing and therefore help reduce the
19 chance of diaper rash.

20 Q. And is Johnson's Baby Powder an
21 important product for Johnson & Johnson?

22 A. Commercially, no. It's -- it's pretty
23 small sales, I think barely 20-odd million
24 dollars, which, in the scheme of a large
25 corporation, is quite small. In fact, the profit

1 is probably barely \$2 million, I think. So in the
2 scheme of things, financially, it's not an
3 important product.

4 It's got a long history of safety, and
5 it's been around for over a hundred years. So
6 it's -- it's important in the context of branding.

7 Q. Are you familiar with industrial talc?

8 A. Yes. Yes.

9 Q. And what is industrial talc?

10 A. It's -- it probably comprises about 90
11 or even slightly more than 90 percent of the talc
12 that's mined around the world. It tends to be
13 cruder in -- in grade. It's often mixed with
14 other minerals, such as chlorite and sometimes
15 iron salts. It's a different color. It's often
16 gray or grayish in color.

17 It's clearly very different from the
18 grades that are used in pharmaceutical and in
19 cosmetic manufacturing. It's generally not so
20 pure, but it's suitable for industrial grades.

21 Q. And focusing outside of talc, does
22 Johnson & Johnson sell a cornstarch product?

23 A. They sell a baby cornstarch product,
24 yes.

25 Q. And -- and why does Johnson & Johnson

1 sell a cornstarch baby powder?

2 A. Again, historically they're -- since
3 the last 30 years or so, people have found
4 cornstarch to be suitable for their particular
5 needs. But the two are very different.

6 Q. And to what extent, if at all, is
7 consumer choice important to Johnson & Johnson?

8 A. Consumer choice is important to any
9 company. If you market products that are disliked
10 by consumers, they will go elsewhere. They will
11 choose another product.

12 So the aim has always been to ensure
13 that consumers have a choice: If you like this,
14 product A. If you like that, product B. You have
15 a choice.

16 Q. And do you know what asbestos is?

17 A. I do, yes.

18 Q. And what is asbestos?

19 A. It's -- it's a mineral. There are
20 even asbestos mines in several parts of the world.

21 And it is quite different from talc.
22 It -- it looks like sort of furry and prickly in
23 terms of its behavior. And it has a
24 long-established use in insulation.

25 Q. And you mentioned insulation. What

1 other products has asbestos been used in?

2 A. Well, it's used in a lot of
3 industrial. I mean, the main one that was used
4 that most of us are exposed to relates to
5 automobile brake linings. It was the main
6 component of automobile brake linings up until,
7 here in the United States, certainly up until, you
8 know, late 1980s, and it's still used in some
9 parts of the world. It's a very hard material,
10 and it's suitable for that.

11 The other use is in popcorn ceiling,
12 that spray paint with those lumpy bubbles, that
13 spray paint or asbestos has been used in that as
14 well. So it's been around and it's got a lot of
15 industrial uses.

16 Q. Has Johnson & Johnson ever been in the
17 asbestos business?

18 A. No.

19 Q. Has Johnson & Johnson ever mined
20 asbestos?

21 A. No.

22 Q. Has Johnson & Johnson ever milled
23 asbestos?

24 A. No.

25 Q. Has Johnson & Johnson ever made

1 products that contain asbestos?

2 A. No.

3 Q. Is asbestos a mineral that Johnson &
4 Johnson ever wanted in its talc products?

5 A. No. Absolutely not.

6 Q. And can you explain why not?

7 A. Well, as we've said, asbestos has been
8 recognized, and it's about a hundred years, as
9 being -- having hazardous effects.

10 And that came about from gas mask
11 workers in World War I. The ladies who assembled
12 the gas masks, they were shown to have lung
13 disease. That was a hundred years ago. So it's
14 recognized as having adverse properties.

15 BY MR. PANATIER:

16 Q. Good morning, Dr. Hopkins.

17 A. Good morning.

18 Q. Today we're going to cover various
19 topics, but I have kind of an overview graphic
20 that I thought would help us in terms of what
21 we're going to talk about. And this is something
22 you helped put together?

23 A. Yes, it is.

24 Q. All right.

25 A. I recognize this.

1 MR. BICKS: And this is Hopkins 59.

2 We'll put a sticker on that.

3 BY MR. BICKS:

4 Q. And the title on this is "Process to
5 Ensure No Asbestos in Talc," and there are ten
6 items on here.

7 Do you see that?

8 A. I do, yes.

9 Q. And can you walk us through each of
10 these items? Let's start with Item 1. Tell us
11 what that's referring to.

12 A. Well, the first procedure to ensure
13 this freedom from asbestos in talc, Point 1 is to
14 select the mines with deposits known by geologists
15 to be asbestos-free.

16 Q. And is that something that Johnson &
17 Johnson did?

18 A. It is, yes.

19 Q. Yeah. And let's look at the second
20 step, please.

21 A. Oh. The second step is to have the
22 geologists test the ore samples from the mines for
23 asbestos.

24 Q. And was that also something that was
25 done at Johnson & Johnson's request?

1 A. It was, yes.

2 Q. Yeah. And how about the third step?

3 A. The third step is -- is known as mine
4 select -- mine selectively. And that is that the
5 miners are shown how to choose, when they're
6 mining, to choose only pure talc.

7 Q. And is that something that, as a
8 general matter, is visible to the naked eye?

9 A. It is. Pure -- pure talc is -- is
10 white and clean and very obviously talc. Other
11 minerals are discolored and different in
12 appearance.

13 Q. Yeah. And then what is the fourth
14 step?

15 A. The fourth step is, once the ore's
16 been taken out of the mine, to test it optimally.
17 That's testing it so -- there's various tests you
18 would do, but it's just part of the process to
19 ensure there's no asbestos there.

20 Q. And -- and in the, say, the last, you
21 know, 50-year period that we're going to be
22 talking about, can you give us some sense of how
23 often that kind of testing was done?

24 A. Well, the ore -- the ore is tested on
25 a frequent basis, typically every -- biweekly is

1 the -- is the long-term procedure, tested on a
2 biweekly basis for freedom from asbestos.

3 Q. And did those time periods change over
4 time as more confidence --

5 A. Yeah. So over the years, in more
6 recent years, it -- it moved to triweekly but with
7 larger samples. And then lastly to -- to monthly,
8 again, with more confidence in our assurance.

9 Q. And then so we're clear, "biweekly" is
10 every two weeks?

11 A. Every -- every two weeks is the
12 majority of the testing, yes.

13 Q. Yeah. All right. And then the fifth
14 step here is cleaning the talc. Tell us what that
15 is.

16 A. That's a process whereby the -- the
17 talc, after the ore's been ground into powder,
18 is -- is -- the term is "flotation" or
19 "beneficiation," and the talc is -- is washed and
20 put through a procedure by a -- impurities are
21 removed. It's floated to the top, and then the
22 top float, pure talc, is taken away. It's been
23 cleaned.

24 Q. And the next step here is test
25 finished talc internally. Tell us what that is.

1 A. Again, that's following similar
2 procedures to look at the talc that you've
3 beneficiated and put into silos and it's ready
4 to -- for testing. It's tested by a series of
5 test methods to ensure freedom from asbestos.

6 Q. And walk us through the next point
7 here, which is having outside labs test talc.

8 A. Well, that's part of the process to be
9 used, both in internal labs and external labs.
10 They would ensure that the talc was free from
11 asbestos using the -- the most sophisticated test
12 methods available.

13 Q. And in Johnson & Johnson's history,
14 did it use various outside labs?

15 A. It did. On a routine basis, McCrone
16 Labs were used and also RJ Lee labs were used.
17 But on a research basis, several university
18 facilities have been used to -- to give a level of
19 assurance that the product was clean.

20 Q. And based on what you have learned
21 about the testing that was done, are you aware of
22 any individuals or institutions who were more
23 knowledgeable about testing for asbestos than the
24 various universities and laboratories that
25 Johnson & Johnson used from time to time?

1 A. No. They -- the people who Johnson &
2 Johnson used were recognized as probably the
3 world's leading experts in -- in testing for
4 freedom from asbestos.

5 Q. And -- and who actually paid for those
6 tests to be done?

7 A. They were -- they were paid for by
8 Johnson & Johnson as part of the assurance that
9 you have to spend the money to ensure the product
10 is -- is clean and free from asbestos.

11 Q. And then the next bullet point is
12 requiring suppliers to certify their talc did not
13 contain asbestos. Tell us what that is.

14 A. That -- that -- again, every batch of
15 talc that was shipped to the -- the company for
16 putting -- to putting it into tubs for baby powder
17 or Shower to Shower requires that the supplier
18 provide a certificate of analysis with all the
19 evidence that there was no asbestos present.

20 Q. And if you had to estimate how many of
21 these certifications Johnson & Johnson receives,
22 what would be your ballpark?

23 A. From evidence I've seen, it is many,
24 many hundreds.

25 Q. All right.

1 A. Over the years, it's many hundreds.

2 Q. All right. And then the last -- the
3 second-to-last bullet point is have the medical
4 department monitor published literature. Tell us
5 what that's about.

6 A. Well, the role -- the role of the
7 medical department is to keep up to date with --
8 with the safety requirements that are out there in
9 the published literature. The way you do that is
10 to read published learned journals, main medical
11 journals and scientific journals and keep up to
12 date with -- with what's happening in the world as
13 far as safety's concerned.

14 Q. And tell us what the last item refers
15 to.

16 A. The last item -- may I -- is -- is to
17 work with the regulators to ensure consumer
18 safety. And that means that you establish an
19 ongoing dialogue to ensure that the regulators are
20 aware of the results and information that the
21 company has to ensure safety and to -- to discuss
22 with regulators any questions they may have.

23 Q. If we look at -- and tell us, these
24 ten steps, how long at Johnson & Johnson were
25 these various steps performed?

1 A. Right -- right from the -- right from
2 the very early '70s, we -- you know, the mine
3 issue was being dealt with as far back as 1970,
4 '71. Geologists were looking at the mine
5 qualities. This is as far as the Italian and the
6 Vermont mine is concerned.

7 But even earlier than that, if -- the
8 company's gone back and looked at reports in the
9 United States Geological Survey going back to
10 19 -- 1914. And, again, U.S. Geological Survey,
11 1955. So where those official government
12 organizations have looked at the geology of the
13 mines here in the United States, that's been
14 available to the company since 1913.

15 Q. And based on those -- the decades of
16 information that you referred to, what conclusion,
17 if any, did Johnson & Johnson reach about whether
18 the talc that it used contained asbestos?

19 A. The conclusion's very clear, is -- is
20 and always has been that the talc that's used in
21 baby body products and adult body products is free
22 from asbestos.

23 Q. And was much of this information
24 conveyed to Johnson & Johnson from various third
25 parties?

1 A. Yes. As part of the process, you
2 recognize that you cannot do everything in-house
3 and you need to involve outside experts, and those
4 experts have provided a lot of information to
5 Johnson & Johnson externally to ensure that the
6 product is clean and free from asbestos.

7 Q. So let's look at what we'll put up
8 here and we'll mark as Exhibit 60, and -- and get
9 an overview of it, if we can, of -- of the various
10 mines where Johnson & Johnson got talc from.

11 Do you see that?

12 A. I do, yes.

13 Q. And there's three supply sources here,
14 right?

15 A. There are, yes.

16 Q. And let's start with Val Chisone,
17 Italy. And the time frame up there is essentially
18 1926 to 1973. Does that --

19 A. Yes.

20 Q. Is that a good estimate of the time
21 frame?

22 A. That is -- that's the approximate time
23 frame supplied to the United States. Val Chisone
24 supplied to the European Johnson companies up
25 until the early 1980s.

1 Q. And you've got up there the 00000, and
2 there's also that 1615 reference. What is that?

3 A. That's a reference to the ore from the
4 Val Chisone mine that was imported in bulk into
5 the United States and ground to powder here in the
6 United States. It's the same ore.

7 Q. And then if we move to the left, we
8 see Windsor, Vermont. Tell us the time period
9 that Johnson & Johnson got talc from Windsor,
10 Vermont.

11 A. The Vermont mine came into commission
12 for Johnson & Johnson in approximately 1964,
13 and -- and that overlapped with some of the
14 Italian. So that was approved from there onwards
15 until 2003.

16 Q. And the grades there are what, as we
17 move forward here?

18 A. The grade that's used in baby products
19 is Grade 66.

20 Q. And we also see up there the number
21 96.

22 A. The 96 -- that's -- that's an
23 alternative grade; but, yes, 66 and 96 are the
24 ones that come out for cosmetic use.

25 Q. And when we talk about Windsor,

1 Vermont, Dr. Hopkins, remember I had asked you
2 questions about cosmetic talc and industrial talc?

3 A. Yes, we -- we discussed that, yes.

4 Q. And at Windsor, was that a source of
5 both industrial talc and cosmetic talc?

6 A. Windsor has been used to make -- to
7 provide industrial talc --

8 Q. And --

9 A. -- as part of the supply, yes.

10 Q. And then you've told us that the --
11 the Windsor mines were sold in about -- is that
12 19 --

13 A. 1989. They were sold to a company
14 called "Cyprus Minerals" in '89.

15 Q. And then -- but did Johnson & Johnson
16 still receive talc from Windsor even after it had
17 been sold?

18 A. They did. And as part of that
19 agreement, they -- same requirements for purity
20 were established with Cyprus Minerals.

21 Q. And then walk us through what happened
22 after 2003.

23 A. After 2003, the talc was taken from a
24 very high-grade talc mine in China, Guangxi Zhou
25 mine, which has been approved by Johnson & Johnson

1 in the previous years, and that is shipped to the
2 United States for use in baby products.

3 Q. And this was an exhibit that you were
4 shown yesterday, I think, Exhibit 41. And this is
5 a July 29th, 1971, memorandum from -- on Johnson &
6 Johnson's letterhead, Dr. Hopkins?

7 A. It is, yes.

8 Q. And it talks about that the ore
9 undergoes a careful purifying process, which
10 includes a 36-step washing process. Do you see
11 that?

12 A. I do, yes.

13 Q. And -- and can you describe to us that
14 process?

15 A. Yes. That's what I -- I mentioned
16 briefly a few minutes ago. It's called a
17 beneficiation or flotation process whereby the
18 ground talc ore is placed into what appears to be
19 a large mixing vessel, water is added with a
20 little bit of surfactant, a little bit of
21 detergent, and bubbles are blowing through, and
22 the talc rises to the top of the steel mixing
23 vessel and is scraped off and taken to another
24 tank. And that goes through 36 separate processes
25 to where it's washed. And at the end of that

1 process, the talc that you're looking to achieve
2 has developed plate-like structures, different
3 sized talc particles, and it is highly purified.

4 Q. And let's talk a little bit about the
5 geology, which was the first step on the ten steps
6 that we talked about. Do you know a person named
7 Dr. Frederick Pooley?

8 A. Yes, I've -- I've met him many times.

9 Q. And tell us who he is.

10 A. He's -- he's one of the leading --
11 world's leading geologists. He's based -- he's
12 now an emeritus professor at the University of
13 Wales mineralogy geology department. He has many,
14 many years of experience in geology.

15 Q. Let me show you Exhibit 62. Did he do
16 work for Johnson & Johnson from time to time?

17 A. He did, yes. Yes.

18 Q. And did Johnson & Johnson seek his
19 advice on the mineral content of both Italy and
20 Vermont?

21 A. They did, yes. Yes.

22 Q. Let me show you what we've marked as
23 the next exhibit. And -- and this is -- you see a
24 28th September 1972 letter from Dr. Pooley?

25 A. Yes, I do. Yes.

1 Q. And I want to talk to you a little bit
2 about this. And does this relate to -- is the
3 Italian talc. You see the 00000 here?

4 A. It does. This is a summary of a -- of
5 a report that he conducted on the -- on the
6 Italian mine. He went down the Italian mine and
7 spent a great deal of time looking at the geology
8 of the Italian mine.

9 Q. Yeah. And you see in this first
10 paragraph he says that the mineralogical X-ray --
11 it's a big word there -- morphological examination
12 of the Italian mine samples has been in progress
13 for over a year.

14 Do you know how long Pooley --
15 Dr. Pooley worked on this to do his work?

16 A. Yes. Yes, I do. He -- he visited the
17 mines in the '70, '71 time period. He took rock
18 samples not just from the talc mining area, but in
19 other areas of the mine where the talc was not
20 mined to get a full understanding of the total
21 geology of the mine.

22 And he took those back to his
23 university laboratory and then spent several
24 months, many months, understanding the mineralogy
25 of those rocks.

1 Q. And can you tell us here what he
2 concludes? He's referring to a report, right?

3 A. Yes. He -- he wrote a large report.
4 It's probably about a half-inch thick.

5 And he commented and said that no
6 chrysotile was found out of the mine or in the
7 samples taken. Some tremolite was located but was
8 not asbestiform in character. It has not been
9 detected in the 00000 talc imported to Great
10 Britain for the past year nor in shipments dating
11 back to 1949.

12 So that's his summary, that he didn't
13 find it in '72, and he looked at historic samples
14 going back to 1949 and also did not find asbestos
15 present.

16 Q. And he says there that there was
17 tremolite but not asbestiform in character and
18 that that has not been detected in the 00000 talc
19 imported into Great Britain for the year, right?

20 A. Yes.

21 Q. And can you again explain to us is
22 there a difference between tremolite and tremolite
23 that is asbestiform?

24 A. Yes. Tremolite can take two forms.
25 It can take its massive or rock form, and that's

1 the form that we often see. It's a material like
2 jade. But it can also be in an asbestos form, so
3 which would be asbestos tremolite. But what he's
4 saying here, he did not see any asbestos form
5 tremolite.

6 Q. And in a report like this, what is
7 this telling you about whether or not the Italian
8 talc deposit has asbestos in it?

9 A. Very clearly, Professor Pooley's
10 saying that there's no asbestos in the Italian
11 talc.

12 Q. And you mentioned that he prepared a
13 report. Let me show you what is Exhibit 63 and
14 ask you to -- if you have seen that before.

15 A. Yes. Yes, I have. In fact, it's more
16 than half an inch thick. This is his report.

17 Q. Yeah. And if we go to the beginning
18 of this report, we can see -- and maybe you can
19 summarize for us.

20 This is the cover page, "An
21 Examination of Italian Mine Samples and Relevant
22 Powders."

23 Do you see that?

24 A. I do, yes.

25 Q. And if you look through this,

1 Dr. Pooley gives a list of various samples that he
2 looked at.

3 Do you see that?

4 A. I do, yes.

5 Q. And you can see that he lists the
6 samples on this page here. And it indicates, I
7 think, that, if you go down to the bottom here,
8 that he's looking at -- and it's cut off a little
9 bit.

10 But you go to the bottom, and he's --
11 over 27 samples on this page. And you go to the
12 next page, and it looks like he's looking at
13 46 samples.

14 What does this tell you about where he
15 was getting the samples from?

16 A. Yeah. As I said, he went pretty well
17 all over the mine looking at areas where talc
18 wasn't mined, just to be sure that there was no
19 asbestos material in the mine.

20 He looked to the face wall, the foot
21 wall, areas of the mine that were not being mined,
22 just to get a full understanding of the geology.

23 And he took those 46 samples back to
24 his university and was able to conclude that there
25 was no asbestos in the mine.

1 Q. And he also looked at other specimens
2 here, and this is on this next page, including
3 pure talc from the face inclusions and then back
4 shipments and old samples.

5 A. Yes. Again, he's looking now back
6 into the areas that were being mined as opposed to
7 the areas that were not being mined. And he took
8 samples that were talc and close to talc and
9 looked at those and also compared them to finished
10 product, 00000 talc.

11 And, as we said earlier, he looked at
12 the old British talc samples of actual powder in
13 tubs dating back to '49.

14 Q. And you told us what he concluded. Do
15 you see this last page where he says that no
16 amphibole or chrysotile mineral was detected in
17 any of the numerous powders examined?

18 Do you see that?

19 A. I do. And that was his summary, that
20 he could not find any asbestos or amphibole
21 materials present.

22 Q. And how thorough would you describe
23 this report and the research that he did?

24 A. Well, very clearly he took a long time
25 to put together at least half an inch thick of

1 information. I've -- I've read this as -- as a
2 scientist and see this is incredibly complex,
3 detailed, and very, very professional. This is
4 very -- an exhaustive report.

5 Q. And was this information helpful to
6 Johnson & Johnson?

7 A. Yes. It provides -- provided and
8 still provides a level of assurance that the talc
9 coming from the Italian mine is clean and free
10 from asbestos.

11 Q. And did Dr. Pooley also do research on
12 animals to see the impact of any of this talc?

13 A. He did. Back in -- back in the early
14 '70s, he did a study on rodents, on rats,
15 injecting them with the talc or giving them the
16 talc, the Italian 00000 talc. And he compared it
17 to what happens when you give the rats asbestos
18 and compared the results.

19 Q. And let me show you Exhibit 64. And
20 is this his report on the study that he was a part
21 of?

22 A. Yes. Yes. I've read this before.

23 Q. And is this the same talc that was
24 used prior to Vermont as a source for Johnson &
25 Johnson's Baby Powder?

1 A. That was the same source that was used
2 here in the United States prior to the opening of
3 the Vermont mine, yes.

4 Q. And did Johnson & Johnson have
5 anything to do with Dr. Pooley's research in this
6 report? Any kind of financing or anything like
7 that?

8 A. No. None whatsoever.

9 Q. So does it indicate any asbestos in
10 this talc?

11 A. No, it does not.

12 Q. All right. And you see here -- and
13 this is Dr. Pooley writing. Can you read this for
14 us, please?

15 A. Virtually no change in the
16 mineralogical -- let's -- let's read the whole
17 paragraph, if I may.

18 Extensive investigation of this
19 particular grade of talc has been performed for a
20 two-year period prior to the start of the animal
21 experimentation and samples which were over 30
22 years old have been examined, as well as more
23 recent imports. Virtually no change in the
24 mineralogical composition of the material has been
25 detected. No asbestos minerals of either

1 tremolite or chrysotile varieties have been
2 detected in the many samples of powder examined.

3 A mineralogical study of the talc mine
4 itself has shown that tremolite can be found in
5 isolated sections of the mine, but this could not
6 be traced to the final product. This is probably
7 due to the selective mining procedures adopted in
8 the mine, where the talc is mined by hand.

9 Q. Now, you were asked some questions
10 yesterday about Professor Rubino. Do you remember
11 that?

12 A. I do, yes.

13 Q. All right. So I just want to show you
14 a couple -- walk through a couple of the
15 documents.

16 The first one was Exhibit 44. And do
17 you remember the question of why workers who were
18 ill might be excluded from this study?

19 A. Yes, I do.

20 Q. You were shown this?

21 A. Yes, I do.

22 Q. Can you explain why, in a study like
23 this, workers who are recovering from an acute
24 illness would not be immediately included in the
25 study?

1 A. As I said yesterday, if someone's had
2 a heart attack or a stroke or they're seriously
3 ill, it would not be appropriate to question them
4 and get them involved in the study.

5 Q. And if somebody, for example, had a
6 mesothelioma and they weren't examined here, are
7 you aware that there were follow-up studies to the
8 Rubino work?

9 A. Yes.

10 Q. And if it -- would that -- those
11 follow-up studies, do you know whether, if at all,
12 if somebody was missed here, they would be picked
13 up in subsequent studies?

14 A. Well, if we look at the actual
15 evidence, there are follow-up studies of the
16 employees of that facility running up to 2017
17 whereby the -- the medical history is examined,
18 and that's reported.

19 Q. On Exhibit 45, you were asked about, I
20 believe, and you remember the question of comments
21 to Mr. Rubino's publication and his -- and the
22 presentation he was making.

23 Do you remember that general category
24 of discussion?

25 A. I do, yes.

1 Q. And do you see the comment here that
2 it was very significant and a testimony to
3 Rubino's veracity?

4 Do you see that?

5 A. I do, yes.

6 Q. And what does that convey to you about
7 Johnson & Johnson's view of Dr. Rubino?

8 A. It -- it's saying that Dr. Rubino
9 is -- he's a -- he's a scientist, or a physician,
10 in this case, who is -- speaks the truth and is
11 honest.

12 Q. Let me ask you about another exhibit
13 that you were shown, which was Exhibit 46, and
14 this was -- remember the discussions that you had
15 about this handwritten comment?

16 Do you remember that?

17 A. I do, yes.

18 Q. And I actually want to show you a
19 different part of this memo here.

20 Do you see this paragraph that I've
21 highlighted?

22 A. I do, yes.

23 Q. So, number one, do you think it is a
24 good idea to send somebody published literature?

25 A. If I'm -- if I'm writing a paper, I

1 would want to have whatever technical publications
2 are available to support my -- what I'm trying to
3 say. So it's not unreasonable to send
4 publications that he could refer to.

5 Q. And the reference here that the
6 discussion material and conclusions can be
7 modified in any way to suit Professor Rubino, what
8 does that tell you about who was actually in
9 control of modifications?

10 A. My reading of that is that Professor
11 Rubino can -- can basically modify in any way that
12 he feels -- sees fit. It's Professor Rubino who
13 can modify.

14 Q. Then let me also show you Exhibit 47,
15 which you were also shown. Do you see the -- the
16 discussion here that you had yesterday was about
17 reviewing a manuscript?

18 A. Yes.

19 Q. Do you remember that?

20 A. I do, yes.

21 Q. And I've highlighted the phrase
22 "reviewed for factual accuracy."

23 Do you see that?

24 A. I do, yes.

25 Q. And do you think it's a good idea that

1 things be reviewed for factual accuracy?

2 A. Yes, yes, that -- as I said,
3 scientists are aiming to seek the truth and to
4 ensure that things are factually correct.

5 Q. And I'm going to show you Exhibit 65.
6 Are you familiar with this?

7 A. Yes, I am.

8 Q. And what is this?

9 A. It's the paper published by
10 Professor -- Professor Rubino and his colleagues
11 in -- in -- on the talc miners in Italy, on the
12 health and mortality of those miners.

13 Q. And do you know as someone -- have you
14 kept up with the epidemiology in this area as it's
15 followed through over time?

16 A. Yes, I have.

17 Q. And I'm looking at a chart. It's a
18 little bit hard to see. But are you with me?
19 It's Table 10.

20 A. Yes.

21 Q. And it says over there "Malignant
22 Neoplasms Pleura" and then "Mesothelioma."

23 Do you see that?

24 A. I do, yes.

25 Q. And then if you run across that, what

1 does that tell us about whether or not there were
2 any mesotheliomas detected in any of these miners
3 and millers?

4 A. Well, the report speaks for itself.
5 It says that there were no mesotheliomas.

6 Q. And just to back up for a minute,
7 remind us, who are the people who are being
8 studied here?

9 A. These were talc miners and talc
10 millers, who, over a period of many, many years in
11 some cases, were exposed to very high levels of --
12 of dust, particularly in the early phases where
13 the mine was very dusty, and the same applies to
14 the talc millers. So these were people exposed
15 eight hours a day to the high levels of talc dust.

16 Q. And did Dr. Pooley also do work on the
17 Vermont mine?

18 A. He did, yes. Yes, he was heavily
19 involved in the geology of the mine.

20 Q. And let me show you Exhibit 70, and
21 ask you if you have seen this before.

22 A. Yes, I have.

23 Q. And if we go to the -- the conclusion,
24 do you see that on Page -- of this 48 report --
25 48-page report, do you see that?

1 A. I do, yes.

2 Q. And then what does he say here? Can
3 you walk us through that?

4 A. He said: The amphibole minerals were
5 found in discrete locations and not disseminated
6 throughout the talc ore and were not asbestiform
7 in character. The serpentine mineral was found in
8 the specimen located at the center of the ore
9 body, but no fibrous components were observed.

10 Q. And then he also -- what does he say
11 here about -- at the bottom about whether or not
12 chrysotile -- and that can be a type of asbestos,
13 right?

14 A. It -- it is indeed asbestos, yes.

15 Q. And what does he say about whether or
16 not chrysotile was present?

17 A. Well, specifically, he says
18 "chrysotile was not present."

19 Q. And they say here that the tremolite
20 fragment noted in the report of June 3rd is not
21 asbestos, but rather, normal rock-forming
22 amphibole which is ubiquitous in the Earth's
23 crust.

24 Do you see that?

25 A. I do, yes.

1 Q. You are familiar, are you not, with
2 various work that Battelle Laboratories did,
3 right?

4 A. Yes. They -- they did extensive
5 research for Johnson & Johnson in the '50s and
6 '60s.

7 Q. And I'm going to show you a -- a
8 series of exhibits, 72 through 74, 75, 76, 77, 78,
9 79, 80. Have you seen these reports before?

10 A. Yes, I have. Yes.

11 Q. And -- and these are -- what are they?

12 A. They are fairly extensive reports on
13 the work that was conducted by Battelle, which is
14 a research institute, on behalf of Johnson &
15 Johnson.

16 Q. And I want to focus on the early
17 1970s. Was that a time where there was a fair
18 amount of public discussion about whether or not
19 talc had asbestos in it?

20 A. There was. The scientific literature
21 and the press indicated that people were saying,
22 is -- is talc pure? Does it contain -- talc
23 contain asbestos? They were asking those
24 questions.

25 Q. And are you familiar -- you heard of

1 somebody named Arthur Langer?

2 A. Yes, I have. Yes.

3 Q. And do you remember who he is or was
4 at that time?

5 A. He was -- he worked at Mount Sinai
6 in -- in this country, Mount Sinai Medical School.

7 Well, this is a slide we put together.
8 Colorado School of Mines is one of the most
9 reputable bodies here in the United States who
10 understand mining and geology. They examined the
11 powder, and they did not find any asbestos-type
12 minerals.

13 Q. And is this Exhibit 84, which is a
14 report from the Colorado School of Mines?

15 A. It is, yes.

16 Q. And does it indicate on it -- you'll
17 see, it says at the Paragraph 3 -- what does it
18 say?

19 A. It says: In essence, within our
20 limits of detectability, we cannot positively
21 identify any asbestos-type minerals in the Vermont
22 final product samples.

23 Q. And you see -- is this referring to
24 the 344-L that is discussed on this graphic here?

25 A. It does, yes.

1 Q. Yeah. And, also, Professor Pooley,
2 did he also examine this particular sample?

3 A. Yes. He was given a sample to
4 evaluate to -- to see if he could find any
5 asbestos in the product.

6 Q. And let me show you Exhibit 85. And
7 tell us what this is.

8 A. Again, Professor Pooley looked at the
9 same sample, and his conclusion was presented.

10 Q. And we know he looked at it, because
11 if we look at the exhibit, we can see 344-L,
12 right?

13 A. Yes, he looked at 344-L and also
14 several other samples.

15 Q. And -- and then if you look at his
16 conclusion page, he's talking about Samples 1
17 through 10, which includes 8, right? Are you with
18 me?

19 A. Yes.

20 Q. And he says here that Samples 1
21 through 10 were found to be free of chrysotile
22 asbestos fiber, with the exception of one small
23 chrysotile fibril. Considering that in most
24 laboratories a background contamination of
25 1 fibril per EM field is normal, the chrysotile

1 content of the samples examined can be considered
2 as nil.

3 Do you see the phrase "nil"?

4 A. Yes.

5 Q. And so what's "nil"? What's your
6 understanding of that word?

7 A. It means "nothing," "nothing,"
8 "nothing there."

9 Q. We're going to talk about them. But
10 do you know of any people during this time who had
11 more expertise than the McCrone Group when it came
12 to looking in microscopes and things like that?

13 A. No. McCrone's expertise, certainly in
14 the '70s and '80s, was recognized as being world
15 class in -- in understanding mineralogy and
16 examination for materials like asbestos.

17 Q. And let me show you Exhibit 86 and --
18 and ask you to tell us what this is.

19 A. This is a report from the McCrone
20 people to Johnson & Johnson whereby they've
21 examined Sample 344-L baby powder and they report
22 on their results.

23 Q. And we know it's 344-L because it says
24 it right on the first page, right?

25 A. Yes.

1 Q. And then their conclusion is at the
2 end. Do you see what I have highlighted here?

3 A. Yes, I do.

4 Q. They say: 344-L, no asbestos or
5 asbestiform minerals were identified. Only one
6 fiber was observed, which could not be identified
7 as rolled or folded talc flakes. This fiber has
8 not been positively identified but may be quartz
9 or hydro --

10 A. Magnesite.

11 Q. -- magnesite.

12 A. Yes.

13 Q. So what is this communicating as to
14 whether or not, in the view of the folks at
15 McCrone, this particular sample had asbestos in
16 it?

17 A. In summary, they're saying that
18 Sample 344-L did not contain asbestos.

19 Q. And did Dr. Langer actually publish a
20 paper later on with Dr. Selikoff that actually
21 showed the results of their testing of Johnson &
22 Johnson Baby Powder?

23 A. Yes. He published a paper with other
24 authors, and Johnson's Baby Powder was one of
25 those that were reported.

1 Q. Let me show you Exhibit 88 and ask you
2 to tell us what that is.

3 A. This is a publication from Dr. Langer
4 and Selikoff and others at the Mount Sinai School
5 of Medicine and two authors from the geology
6 department, University of Glasgow in Scotland.

7 Q. And it's tricky, because here's the --
8 the beginning of the paper, and it's like, again,
9 our "Reader's Digest" view, where they say they
10 look at 20 baby powders, right? And then they
11 say, of the 20, 10 contained detectible amounts of
12 tremolite and anthophyllite, right?

13 A. Yes.

14 Q. And then there's a table here, which
15 is at Page 266. Do you see that?

16 A. Yes.

17 Q. And if you look at 266, it's -- it
18 lists 21 samples right across the top.

19 A. It does, yes.

20 Q. And -- but it doesn't say what the
21 name of the samples are, right?

22 A. No. This -- this particular paper
23 does not --

24 Q. Yeah.

25 A. -- disclose the names of the 21

1 products.

2 Q. Yeah. And -- and have you made
3 efforts to actually figure out what they are?

4 A. Yes. Yes. There are -- there are
5 other data to support a -- a coding.

6 Q. Yeah, because was Dr. Pooley looking
7 at these samples, too?

8 A. Yes, Dr. Pooley also looked at these
9 samples and others.

10 Q. And before you is Exhibit 89, and is
11 this a report of Dr. Pooley of January 5th, 1976?

12 A. Yes.

13 Q. And do you see he says in the
14 beginning: An examination of 38 talc samples
15 originating from the laboratory of A.M. Langer at
16 Mount Sinai. Right?

17 A. Yes.

18 Q. And were -- was Dr. Pooley and
19 Dr. Langer looking at the same samples?

20 A. Yes. They -- they corresponded, and
21 I'm aware that they met with each other.

22 Q. And if you go to the back of this
23 document, you can see where Dr. Pooley lists
24 21 samples that he's looking at, right?

25 A. Yes.

1 Q. It starts at number 1 there and goes
2 over to the next page. 21, right? 21 samples?

3 A. Yes.

4 Q. Right? And then you can actually see
5 which are the ones that are Johnson & Johnson,
6 right?

7 A. You can, yes.

8 Q. Yeah. And tell us again the
9 reputation in your world of the Mount Sinai
10 Medical Center?

11 A. Mount Sinai is recognized globally as
12 one of the leading hospitals for -- for skills and
13 treatment of disease, phenomenal number of
14 experts, world-class experts.

15 Q. And they say here what about baby
16 talc?

17 A. They state that it -- it is the
18 opinion of Mount Sinai's department of pediatrics
19 that baby talc is a useful and safe product.

20 Q. And do you remember that after this
21 stir created by Dr. Langer, that the FDA got
22 Dr. Lewin to do some work?

23 A. They did. They commissioned Dr. Lewin
24 to take on a project to look at talc products on
25 the U.S. market.

1 Q. And here's an exhibit that just helps
2 us in time from Dr. Alfred Weissler, acting
3 director.

4 MR. BICKS: We'll mark it Exhibit 92
5 for the record.

6 BY MR. BICKS:

7 Q. And he says he asked Dr. Lewin to
8 undertake some asbestos analysis of 100 samples.

9 Do you see that?

10 A. I do, yes.

11 Q. All right. And one of the samples was
12 a Johnson & Johnson Shower to Shower product,
13 right?

14 A. Yes. Dr. Lewin looked at a Shower to
15 Shower product.

16 Q. And then they also looked at two
17 samples of baby powder, right?

18 A. They did, yes.

19 Q. All right.

20 A. Yes.

21 Q. And let me show you Exhibit 105.

22 I can say that -- I think it's
23 understood these individuals are not alive
24 anymore, right?

25 A. That is correct.

1 Q. But who are they?

2 A. The picture on the left is Walter C.
3 McCrone, who is recognized as a world-leading
4 analytical microscopist. And his wife was also in
5 the operation, Lucy -- Lucy McCrone.

6 Q. And what was the reputation, in your
7 toxicology world, of the McCrone company?

8 A. McCrone were the leading -- leading
9 lights in scientific expertise in mineralogical
10 estimation of microscopy. They worked with
11 leading test methods, developed test methods, and
12 were the best at exploiting them.

13 Q. Yeah.

14 A. They really understood their field.

15 Q. Let me show you Exhibit 107.

16 Do you see that?

17 A. Yes, I do.

18 Q. And this is a February 22nd, 19 --
19 23rd, 1978, letter to Roger Miller from Johnson &
20 Johnson, right?

21 A. Yes.

22 Q. And you see that it says that: We
23 need to recognize that Windsor Minerals and
24 Johnson & Johnson have exercised more extensive
25 controls and testing in the past than just meeting

1 the J4-1 requirement.

2 Do you see that?

3 A. Yes. That is what is written, yes.

4 Q. And do you believe that is what
5 actually happened?

6 A. Yes. There's good evidence that that
7 is the case.

8 Q. And there's a statement here that
9 says: We intend continuing to surpass the
10 industry testing as reflected by CTFA J4-1.

11 Are you with me?

12 A. Yes, I am.

13 Q. Did Johnson & Johnson do that?

14 A. Yes. They -- they exceeded the CTFA
15 J4-1 standard.

16 Q. And did you think that was a good
17 thing to do?

18 A. Yes, I do. It's a correct thing to
19 do.

20 Q. This is Exhibit 108. And that --
21 that's the TM7024, right?

22 A. 7024's transition electron microscopy.

23 Q. Again, so we're clear, "biweekly" is
24 what?

25 A. Every two weeks.

1 Q. All right.

2 A. Every 14 days.

3 Q. Was this testing that Johnson &
4 Johnson was doing here -- the 7024, the biweekly
5 composite and the weekly composite samples -- was
6 there any, you know, particular regulatory
7 requirement that said they had to do this?

8 A. No. There's not that testing, no. It
9 was -- it was the approach that Johnson & Johnson
10 has taken to ensure freedom from asbestos in the
11 product.

12 Q. And have you seen results of these --
13 I guess we see here that McCrone is talking about
14 the results of some of this sampling in this 1987
15 letter, right?

16 A. Yes, that's correct.

17 Q. And they say, based on the -- their
18 15, 16 years, that there was no asbestos in any of
19 these products?

20 A. Yes.

21 Q. And let me show you just a sampling of
22 results, reports that came from McCrone to
23 Johnson & Johnson.

24 MR. BICKS: And we'll mark this
25 Exhibit 110, and this is a series of

1 communications from McCrone.

2 BY MR. BICKS:

3 Q. Do you see that?

4 A. Yes, I do. Yes.

5 Q. And we start here in August 1974? Do
6 you see that? Free of chrysotile and amphibole?

7 Are you with me?

8 A. Yes.

9 Q. And we go up to 1974. And they say
10 here there was possibly a fiber found that could
11 have originated as stray contamination, possibly
12 from atmospheric. And then it says the material
13 can be considered asbestos-free.

14 Do you see that?

15 A. I do, yes.

16 Q. And April 30th, 1975, no asbestos --
17 no amphiboles or serpentines found.

18 Do you see that?

19 A. I do, yes.

20 Q. 1976, no asbestiform minerals present.

21 Do you see that?

22 A. I do, yes. Yes. That's what's
23 reported.

24 Q. 1976, completely free of asbestiform
25 minerals.

1 Are you with me?

2 A. Yes. That's what's reported.

3 Q. 1977, no asbestiform minerals. Do you
4 see that?

5 A. I do. That's reported.

6 Q. X-ray diffraction, not detected, not
7 detected.

8 Do you see that?

9 A. I do, yes.

10 Q. If I go to the end here, 1986, this is
11 from McCrone, no detectable asbestiform minerals
12 nor any fibrous materials using TEM.

13 Do you see that?

14 A. I do, yes.

15 Q. All right. And is that consistent
16 with the information that Johnson & Johnson was
17 receiving during that time period?

18 A. Yes. That's a summary of -- of the
19 factual evidence that there was no asbestos.

20 Q. Yeah. Do you have that in front of
21 you?

22 A. Yes, I do.

23 Q. And this document indicates that --
24 that Johnson & Johnson had been doing an analysis
25 for asbestiform minerals and that there was a

1 report on January 4th, 1975.

2 Do you see that?

3 A. Yes.

4 Q. And it says here: With greater than
5 99.9 percent certainty, ore and material produced
6 from the ores at all Windsor Minerals locations
7 are free from asbestos or asbestiform mineral.

8 Right?

9 A. Yes. That's what was reported in
10 November '78.

11 Q. And in -- just to orient us in time,
12 we're in '87. And in '89 Johnson & Johnson
13 entered into a deal with Cyprus where it sold
14 the -- the mines to Cyprus, right?

15 A. They did, yes.

16 Q. And did that agreement with Cyprus
17 require that this kind of testing continue?

18 A. Yes. You showed me a copy of the
19 agreement that was an inch thick.

20 But part of that was a requirement
21 that Cyprus Minerals continue to do regular
22 testing on the product.

23 Q. So here, from '89 forward, it went on
24 a monthly basis. Is that what this appears to be?

25 A. Yes. They -- they are doing

1 composites of -- of regular sampling but sending
2 them away on a monthly basis.

3 Q. Did the McCrone tests of cosmetic
4 talc, after the sale of Windsor Minerals, did that
5 ever indicate to Johnson & Johnson that there was
6 asbestos in any of the talc?

7 A. No, it did not. No. They've --
8 they've not found asbestos, not reported asbestos
9 in the talc.

10 Q. And let me show you what we'll mark as
11 Exhibit 127.

12 MR. BICKS: And this is -- a report
13 for the third quarter of 1983, and it
14 goes -- it talks about a whole series of
15 work done by ES Laboratories.

16 BY MR. BICKS:

17 Q. Do you see that?

18 A. I do, yes. I recollect this, yes.

19 Q. Yeah. And they had done work, if you
20 just leaf through here, doing various tests,
21 right?

22 A. Yes.

23 Q. And they are a company that -- you
24 know, that's known to do good work?

25 A. Yes.

1 Q. And if you just look at their sheets,
2 which are in here -- and there are many, many of
3 them, but I won't go through them all.

4 But, you know, they are indicating --
5 going through the sample numbers and indicating
6 that both tremolite and chrysotile were not
7 detected in the samples that they looked at?

8 A. They did, yes.

9 Q. And if we leaf through this over the
10 years, you know, you'd see results after results
11 of their indication that there was no detection of
12 tremolite or chrysotile, right?

13 A. Yes.

14 Q. All right. And Johnson & Johnson had
15 something called a "worldwide talc audit program,"
16 right?

17 A. They did, yes.

18 Q. And let me show you Exhibit 128 and
19 ask you if you've seen that before.

20 A. Yes. Yes, I have.

21 Q. And this is a compilation of results.

22 And just tell me. What is the
23 Johnson & Johnson worldwide talc audit program?

24 A. All right. It recognizes that
25 throughout the world different Johnson & Johnson

1 companies in Latin America, Europe, Asia, each
2 will use different talc sources for their -- for
3 the manufacture of baby powder.

4 So there are talc mines in India,
5 Australia, various other global affiliates, which
6 would use a different talc from here in the United
7 States.

8 So the purpose is to ensure that those
9 non-U.S. affiliates were using talc and producing
10 baby powder and other products which were to the
11 same standard and free from asbestos.

12 Q. So if we went back to this chart, we
13 would add a layer here for Johnson & Johnson's
14 worldwide audit program, right?

15 A. Yes.

16 Q. And this is indicating here that the
17 date on this is 1975?

18 A. Yes.

19 Q. And then if we go through this,
20 it's -- I have here -- 1975 to -- my last date is
21 1999.

22 A. Yes.

23 Q. Do you see that at the end?

24 A. Yes, I do. Yes.

25 Q. And do you think this was a good thing

1 for Johnson & Johnson to do?

2 A. Yes, I do. Yes. It -- it ensured
3 that the company, from a global perspective, was
4 confident in its product throughout the world.

5 Q. And was Vermont talc tested as part of
6 the worldwide talc auditing program?

7 A. It was, yes. The Canadian affiliate
8 uses Vermont talc -- used Vermont talc at that
9 time, and so it was treated as a non-U.S.
10 evaluation.

11 Q. If you go through each of these
12 documents, there's always a summary, and it says
13 that -- that: All talcs used in the J&J family
14 worldwide are clean. No asbestos minerals were
15 found.

16 Do you see that?

17 A. Yes. That was generally the summary.

18 Q. Yes. And was McCrone, to your
19 knowledge, also doing the TEM on -- for the
20 worldwide audit?

21 A. The initiation period, yes, in 1975.
22 I'm not quite sure who was doing it up to '99, but
23 certainly McCrone was involved for the majority of
24 that time.

25 Q. Did Johnson & Johnson also receive --

1 require that its supplier test talc that were sold
2 to Johnson & Johnson?

3 A. Yes. That's part of a supplier
4 relationship agreement.

5 Q. And was this set forth in various
6 specifications?

7 A. Yes, there's a specification for talc
8 and talc testing.

9 Q. And let me show you Exhibit 130, which
10 is a Johnson & Johnson specification for Windsor
11 talc. Have you seen this before?

12 A. Yes, I have. Yes.

13 Q. And you'll see that it says here
14 asbestos properties and requirements. Asbestos
15 not detected. Asbestos, and it defines it fibrous
16 serpentine, chrysotile and fibrous forms of
17 amphibole and -- are you with me there?

18 A. Yes.

19 Q. Starting in 1997, was TEM analysis
20 done by Johnson & Johnson's supplier at that time,
21 Imerys?

22 A. Yes.

23 Q. And did they provide to Johnson &
24 Johnson certificates of the -- of the testing that
25 had been done?

1 A. They -- that was a requirement that
2 they provide the certificates --

3 Q. Yes.

4 A. -- of evidence, yes.

5 Q. And I'm going to -- I don't want you
6 to get intimidated by what I'm about to show you,
7 but it's a stack of certificates that we've been
8 able to pull together as Exhibit 133. And it
9 starts going to the date of 1990 and then goes
10 forward up until 2017.

11 A. Okay.

12 Q. And this is a series of certificates
13 that Johnson & Johnson received that address
14 whether or not asbestos has been detected?

15 A. Yes, there are several hundred in
16 here.

17 Q. Yeah, I think there are over 500.

18 A. Okay.

19 Q. And I will also tell you, I do not
20 have all of them put in there.

21 A. Okay.

22 Q. But a kind of sampling of what -- what
23 could be pulled together.

24 On our timeline, then -- so was TEM
25 testing being done from '97 forward by Johnson &

1 Johnson's supplier?

2 A. Yes.

3 Q. And then even though Johnson & Johnson
4 was receiving TEM test results from its supplier,
5 would it -- was it also doing its own testing on
6 top of that?

7 A. Yes.

8 Q. And who was doing that?

9 A. That was done in the research facility
10 at Johnson & Johnson. The microscopist there,
11 Ms. Gallagher --

12 Q. Yeah.

13 A. -- was the head of microscopy, and she
14 used a TEM machine and did a separate audit.

15 Q. And did Johnson & Johnson also seek
16 out testing from RJ Lee?

17 A. Yes, yes. That's also part of the
18 ongoing program to use an outside facility.

19 Q. And let me show you Exhibit 134, which
20 is a compilation of RJ Lee testing going from the
21 year 2009 up through 2017.

22 And was there any requirement that
23 Johnson & Johnson, on top of the testing that was
24 being done by its supplier, go out and hire RJ Lee
25 to also do testing?

1 A. No. It was done as a -- a backup to
2 confirm what you were getting from the supplier.

3 Q. Now, I want to ask you about some
4 questions about information that was given to the
5 FDA. Do you remember that?

6 A. I do, yes.

7 Q. Let me show you Exhibit 135. This is
8 a table of contents of materials that were given
9 to the FDA. Do you see that?

10 A. I do, yes.

11 Q. And what exhibit number do we have for
12 that?

13 A. 135.

14 Q. 135. And you'll see in here that if
15 you go to, for example, November 1972 -- do you
16 see that? -- you'll see that Johnson & Johnson was
17 providing the McCrone report, Colorado School of
18 Mines, Professor Pooley and things of that nature?

19 A. Yes.

20 Q. And did Johnson & Johnson also
21 authorize -- but I -- I guess I should say: Did
22 Windsor Minerals also authorize McCrone to turn
23 over to the FDA the testing that it had done on
24 cosmetic talc?

25 A. It -- it did. There is evidence that

1 they gave that authorization.

2 Q. And so this is Exhibit 137, and it's
3 dated May 24th, 1976. Do you see that?

4 A. I do, yes.

5 Q. And it's from Miller, the president,
6 to Walter McCrone. And we had looked back -- I
7 had shown you the letter to the CTFA --

8 A. Yes.

9 Q. -- where McCrone was saying, "We're
10 trying to get everybody to sign off, and we're
11 going to provide all of our data."

12 A. Yes.

13 Q. And this was Exhibit 123. Remember,
14 this was the document I was talking about from
15 McCrone to Estrin at the CTFA indicating that, you
16 know, they're going to turn over materials as soon
17 as they get the green light?

18 A. Yes.

19 Q. And here is the letter to McCrone
20 where Miller is saying: Never ask a lawyer for a
21 quick answer. I've just now received the answer
22 to your request on March 26. And he's writing on
23 May 24th. And he says: We granted permission to
24 disclose data resulting from your tests on our
25 samples.

1 And he says: The samples which are
2 relevant to the production and sale of cosmetic
3 talcs in the U.S. and Canadian markets are those
4 bearing the letters "HC" as part of their prefix.
5 The dates included in the identifier are the dates
6 on which the material was processed.

7 Do you see that?

8 A. You -- you read what was written, yes.

9 Q. Yeah. And do you think that was a
10 good idea to authorize McCrone to do that?

11 A. Yes.

12 * * *

13 BY MR. PANATIER:

14 Q. Dr. Hopkins, Johnson & Johnson would
15 agree that the sensitivity of a method is
16 extremely important when considering whether or
17 not it's going to find what you're looking for,
18 correct?

19 A. Yes.

20 Q. For instance, I've used this example
21 with you before. It's very simple. But human
22 beings are covered in cells, correct?

23 A. Yes.

24 Q. I can't see an individual cell with my
25 naked eye, right?

1 A. No.

2 Q. I could look at my skin a billion
3 times, and I will never see an individual cell,
4 will I?

5 A. Correct.

6 Q. You were also shown -- the first thing
7 that the lawyer for Johnson & Johnson showed you
8 was the Johnson & Johnson credo, right?

9 A. Yes.

10 Q. And credo is like -- remember that
11 movie "Jerry Maguire"? Did you ever see that?

12 A. Yes.

13 Q. He had a mission statement he wrote
14 that he was real proud of?

15 A. Yes.

16 Q. At the end of the day, do you agree
17 that actions speak louder than words?

18 A. Generally, yes.

19 Q. This will be Exhibit 140.

20 So now I'm -- I'm -- so now I'm coming
21 off of Johnson & Johnson's website here from the
22 credo. Now I'm going to an actual document.
23 Okay?

24 Can you see this is a confidential
25 document from March 3rd of 1975 from Johnson &

1 Johnson?

2 A. Yes.

3 Q. Okay. Here's what they say about
4 research in 1975: Our current posture with
5 respect to sponsorship of talc safety studies has
6 been to initiate studies only as dictated by
7 confrontation.

8 Did I read that right?

9 A. You read what was written.

10 Q. Okay. This philosophy so far has
11 allowed us to neutralize or hold in check data
12 already generated by investigators who question
13 the safety of talc.

14 The principal advantage for this
15 operating philosophy lies in the fact that we
16 minimize the risk of possible self-generation of
17 scientific data which may be politically or
18 scientifically embarrassing.

19 Did I read that right?

20 A. You did.

21 Q. Now, you also said yesterday -- you
22 said the baby powder was such a super small part
23 of the business, right?

24 A. It is a small part of the total
25 company's business, yes.

1 Q. And you said -- you said there were
2 something like \$20 million in sales of Johnson's
3 Baby Powder?

4 A. That's my understanding, that -- I
5 believe it's 20-odd million dollars, yeah, 25 or
6 something like that.

7 Q. To 20- to 25-odd million dollars of
8 what?

9 A. Of sales.

10 Q. A year?

11 A. Annual, yes.

12 Q. For what years?

13 A. Well, I haven't got the recent
14 figures. But certainly, in the past few years.
15 That was a number I was given a few years ago.

16 Q. You see where it says: Johnson's Baby
17 Powder line?

18 A. Yes.

19 Q. And it says -- this is in millions,
20 right?

21 A. Yes.

22 Q. Okay. And it says that between food,
23 drug and mass merchandiser, 1989's numbers were
24 \$40 million, right?

25 A. That's what it said for 1989, yes.

1 Q. For '89?

2 A. Yes.

3 Q. Okay? Well, that's more than double
4 20 million, isn't it?

5 A. Yes. It's more than double
6 25 million. It's less than double 25 million,
7 which I said yesterday.

8 Q. Well, you said yesterday 20 million.
9 Let's just be real clear, okay?

10 A. Okay. I thought -- I thought I said
11 25.

12 Q. Last night you represented, without
13 any reference to any year, that they sold
14 20 million a year of baby powder total, correct?

15 A. My understanding was that the current
16 sales were of that order of magnitude.

17 Q. But back in the 1980s -- for '89 it
18 was 40.4 million in total sales for Johnson's Baby
19 Powder, correct?

20 A. Yes. That was almost 30 years ago,
21 yes.

22 Q. Yeah. Right now talc and asbestos in
23 talc is unregulated by the FDA, correct?

24 A. There's no formal regulation.

25 Q. So here's a letter to Professor Rubino

1 from Johnson & Johnson, June 26th, 1974, correct,
2 sir?

3 A. Yes.

4 Q. And who's it from?

5 A. It's from Dr. Hildick-Smith.

6 Q. All right. At Johnson & Johnson,
7 correct?

8 A. Yes.

9 Q. And it says: Dear Professor Rubino, I
10 was pleased to be able to talk to you and learn
11 that you will be submitting to me in the next few
12 weeks the raw data that you have obtained in
13 reviewing approximately 75 percent of the mine
14 workers and millers whose cause of death you are
15 studying.

16 Now, he hasn't published a study yet.
17 It comes out, oh, two years later, right?

18 A. Yes.

19 Q. Okay.

20 A. It's a long process to --

21 Q. Yeah.

22 A. -- go through that -- those death
23 records.

24 Q. Sure. Here's what Johnson & Johnson
25 says to Rubino: The data that I think we would be

1 most interested in having presented at that
2 meeting -- because, you know, they're going to
3 talk about it at a meeting -- would relate to the
4 cause of death of the miners and millers which
5 would show that the incidence of cancer in these
6 subjects is no different from that of the Italian
7 population or the rural -- rural control group.
8 We would like to have these data formally
9 presented and also have the data published in the
10 suitable journal.

11 So he's telling Rubino exactly the
12 conclusion he wishes to see, correct?

13 A. No. What he's saying is that the data
14 that would be ideally presented at the symposium
15 and later published would look at the incidence of
16 cancer and compare it to the Italian population.

17 Q. Now, you know that you were shown this
18 paper, Professor Rubino's second paper. It was
19 the mortality study, correct?

20 A. Yes.

21 Q. Okay. The first one was just
22 morbidity, which is sickness. The second one
23 focused on death rate.

24 A. Yes.

25 Q. Right? Now, do you see that this is

1 entitled "Prepublication Mortality and Morbidity
2 of Talc Miners and Millers in Italy"?

3 A. That is the title, yes.

4 Q. And you see it's by Rubino?

5 A. Right. Yes.

6 Q. Okay. So Johnson & Johnson somehow
7 got ahold of this, right?

8 A. Yes.

9 Q. Sir, you have miners and millers?

10 A. Yes.

11 Q. You have five different categories of
12 increased cancer, correct?

13 A. Yes.

14 Q. They chose to include one category of
15 cancer, and it happened to be the one where there
16 wasn't an increase; isn't that true?

17 A. They -- they've published what was --
18 what they had. They published their raw data.

19 Q. They didn't publish it all?

20 A. They didn't publish it all. They
21 focused on the millers.

22 Q. The industrial talc was not floated,
23 correct?

24 A. That is my understanding.

25 Q. And then when you do the flotation,

1 you get -- you get the division of the fines and
2 the sediment and you determine which one you want
3 to take, right?

4 A. Yes.

5 Q. Okay. All right. So, now, jumping
6 back a little bit. You were shown a study that
7 was done by NIOSH. Do you recall that?

8 A. Yes.

9 Q. The National Institute for
10 Occupational Safety and Health, right?

11 A. Yes.

12 Q. This will be Exhibit 149. And this is
13 a paper authored by Windsor Minerals. And I've
14 shown you this before.

15 Do you recall seeing this document,
16 sir?

17 A. Yes, I do.

18 Q. And it -- it says "the NIOSH-sponsored
19 talc study."

20 And just for us to get our bearings,
21 it says: Corporate representation relating to the
22 NIOSH-sponsored talc study now underway in Vermont
23 has included representatives from baby products,
24 analytical research, and Windsor Minerals.

25 Meaning that both Johnson & Johnson

1 and Windsor are involved, correct?

2 A. Yes.

3 Q. Now --

4 A. It was a Windsor mine. Yes.

5 Q. Yeah. Now, it says: At the present
6 time, we can predict with a high level of
7 certainty the specific risks involved and provide
8 adequate defenses against these risks.

9 We can further responsibly predict the
10 outcome of the study and even -- and I'm going to
11 put this in pink -- even influence the conclusions
12 by way of directional suggestions involving the
13 subjective interpretation of the study groups.

14 Do you see that there?

15 A. You read what was written.

16 Q. Okay. They're talking about -- they
17 actually used the word "influence" -- influencing
18 the conclusions of the NIOSH study, correct, sir?

19 A. That's what this individual wrote.

20 Q. And I kind of recreated this little
21 timeline and I added a few things to it.

22 But, broadly speaking, the lawyer for
23 Johnson & Johnson had this timeline that started
24 in '71 with Lewin-Langer. '76 with the advent of
25 the J4-1 method. 1984, there was another article.

1 '86 was the citizens' petition.

2 In '87, McCrone wrote a letter that
3 said they've only detected asbestos two times
4 since '71 in Windsor talc.

5 Remember that?

6 A. Yes.

7 Q. And the two times were, like, one,
8 there was a piece of equipment --

9 A. A broken clutch. And the other one
10 was --

11 Q. Right.

12 A. -- a false representation --

13 Q. Right. So --

14 A. -- from Illinois EPA.

15 Q. So basically what they said was, in
16 '87, they said, "No times did we find asbestos in
17 Windsor talc," right?

18 A. In baby powder talc, yes.

19 Q. Well, it didn't say "baby powder
20 talc," did it? It said "Windsor talc."

21 A. In Windsor talc.

22 Q. So you have the document from McCrone,
23 right?

24 A. Yes.

25 Q. To an industrial client, Armstrong

1 World Industries, right?

2 A. Yes.

3 Q. He's just saying, "We've tested the
4 Windsor talc for 17 years," right?

5 A. Yes.

6 Q. Okay. And he's saying that to an
7 industrial person, right?

8 A. Yes.

9 Q. This is Colorado School of Mines,
10 which was one of the other consultants that was
11 on -- on this thing that the lawyers made, right?

12 So this is Colorado School of Mines?

13 A. Yes.

14 Q. And here you can see that they looked
15 at 344-L as well as six monthly Vermont talc
16 product samples, right?

17 A. Yes.

18 Q. Okay. And they say: Vermont products
19 and standard mineral samples indicate that
20 essentially no anthophyllite and only minor
21 amounts, below 1 percent, of tremolite and
22 actinolite were detected, right?

23 A. That's what they wrote, yes.

24 Q. Okay. And in fact -- if we can go to
25 the next page.

1 And we know that Colorado School of
2 Mines verified that in Sample 344-L there was
3 tremolite/actinolite, correct?

4 A. They did, yes.

5 Q. Okay. We also know that that wasn't
6 just the presence of the mineral. We know that
7 they were needles of tremolite, correct?

8 A. Where does it say "needles"? Show me.

9 Q. Okay. Well, I'm going to -- I'm going
10 to show you that.

11 This is Exhibit 151. This document
12 with a stamp that says "methodology" on it.

13 And if you turn, please, sir, to the
14 page at the bottom. It says "6075" at the bottom.
15 There you go. You've got it.

16 In the middle, it says: We consider
17 the free non-talc needles but a trace, both on a
18 count and area basis. Those particles are
19 tremolite.

20 Do you see that?

21 A. Yes.

22 Q. And this is a report you actually
23 authored. That's you -- your company, Innovant,
24 right?

25 A. Yes. Yes.

1 Q. Okay. And you signed this July 17th,
2 19 -- 2015?

3 A. I did, yes.

4 Q. When we were talking about needles,
5 here's what you wrote: The needle-like structure
6 of asbestos and asbestiform minerals is the
7 quality that gives it the ability to embed in
8 pulmonary tissue and potentially lead to
9 mesothelioma.

10 Did you type that?

11 A. Yes.

12 Q. Okay. Well, let's see what -- if
13 Lewin had said there was tremolite asbestos and
14 chrysotile asbestos in a bunch of different
15 products, correct?

16 A. He claimed to have found that, yes.

17 Q. Okay.

18 A. But on later studies, even though it
19 was conducted by the FDA, they -- they did not
20 confirm his comments.

21 Q. Well, let's see what -- let's see what
22 the FDA actually said because Johnson & Johnson
23 met with the FDA, and they actually met with the
24 guy whose tests I just showed you. This is March
25 13th, 1974, and here's what the FDA reported to

1 Johnson & Johnson.

2 Dr. Stewart felt that a meeting would
3 be of little value because he had been asked to
4 devote all his time to utilizing the FDA optical
5 microscopy method for examining the commercial
6 talcum powders previously analyzed by Dr. Lewin.
7 He stated that his work thus far has concurred
8 with Dr. Lewin's results, except that he has not
9 detected chrysotile.

10 So he found the tremolite. He did not
11 see the chrysotile, right?

12 A. The method he was using was optical
13 microscopy --

14 Q. Can you answer the question?

15 A. -- by optical microscopy. He -- he
16 did not detect chrysotile and -- and confer --
17 confirmed or confer -- agreed with Dr. Lewin's
18 other results.

19 Q. Right. Which his other results were
20 tremolite, correct?

21 A. Were -- were tremolite. But no one
22 had defined that using the methodology of -- as
23 being asbestos tremolite.

24 Q. Professor Hutchinson was brought in by
25 McCrone and/or Johnson & Johnson at University of

1 Minnesota Space Science Center, correct?

2 A. Yes.

3 Q. And he looked at both
4 Professor Lewin's sample of Shower to Shower
5 and a then-current Johnson & Johnson sample,
6 correct?

7 A. Yes.

8 Q. Okay. And here's what he said: Based
9 on transmission electron microscopy, it is felt,
10 therefore, that chrysotile asbestos does exist in
11 the specimens of Shower to Shower and Lewin
12 supplied to this laboratory, correct?

13 A. You read what was written.

14 Q. Okay.

15 A. Yes.

16 Q. Now, he actually provided some really
17 nice photos, too, of the actual fibers. Do you
18 see that --

19 A. I do, yes.

20 Q. -- up on the screen?

21 A. Yeah.

22 Q. Some other ones?

23 A. Yes.

24 Q. This, for instance, is -- it just says
25 Lewin Grid 2, right? So he -- he documented his

1 work, correct?

2 A. Yes, he's documenting --

3 Q. Okay.

4 A. -- work from Lewin, yes.

5 Q. And then he even has his handwritten
6 notes, five fibrous particles. And this says --
7 this is the Lewin sample: Five fibrous particles
8 were found which gave electron diffraction
9 patterns unmistakably chrysotile asbestos.

10 Is that what he said?

11 A. That -- that's what he said.

12 MR. ADAMS: Your Honor, looks like
13 there was a portion of the video omitted in
14 what Johnson & Johnson cut. We got our cut
15 ready. We'd like to take over so it's
16 edited correctly.

17 And so I don't know what the
18 technology we need to do that. But the
19 photos that were just shown were not in the
20 video.

21 THE COURT: Well, let's do this:
22 Let's take a break.

23 MR. ADAMS: Okay.

24 THE COURT: Ladies and gentlemen,
25 let's take our midmorning break. It's

1 11:10, a little bit after that. Please be
2 back at 25 afterish. Everyone needs to be
3 refreshed.

4 (The jury exits the courtroom at
5 11:11 a.m.)

6 THE COURT: All right. Is this
7 something y'all can agree upon?

8 MR. ADAMS: I'm sure we can,
9 Your Honor.

10 THE COURT: I'm going to tell you, I
11 don't know why we even had this discussion
12 this morning, all right, in light of all
13 discussed and shown out of McCrone. But I
14 mean --

15 MS. BUENO: Your Honor, we haven't
16 even talked --

17 MR. ADAMS: Your Honor --

18 THE COURT: But, hey, right now, what
19 I want you to do is get the rest of this
20 video straightened out.

21 MR. ADAMS: We -- we will, Your Honor.
22 I need to make a very short record. I know
23 people want to take a break. I can do it
24 when we come back.

25 THE COURT: Do it when we come back.

1 MR. ADAMS: Yes, Your Honor.

2 MS. BUENO: And I do as well,
3 Your Honor.

4 THE COURT: All right. We will try
5 to -- we'll try to come back about -- in
6 about ten minutes and see what we can do.

7 MS. BUENO: Sure --

8 THE COURT: All right.

9 * * *

10 (Whereupon, there was a recess in the
11 proceedings from 11:11 a.m. to 11:23 a.m.)

12 * * *

13 THE COURT: All right. What's going
14 on?

15 MS. BUENO: Your Honor, may I begin?

16 MS. McVEY: Well, actually, there's
17 two things, and I think the first one is
18 they want to put on the record --

19 THE COURT: All right.

20 MR. ADAMS: So, Your Honor, I want to
21 just explain what just happened with the
22 video.

23 THE COURT: Yes.

24 MR. ADAMS: What just happened with
25 the video is, Johnson & Johnson cut the

1 video to remove the pictures of asbestos
2 that were just shown in the Dr. Hutchinson
3 report.

4 THE COURT: Yeah.

5 MR. ADAMS: Now, accidents happen, of
6 course --

7 THE COURT: Yes.

8 MR. ADAMS: -- and things go missing.

9 THE COURT: Yes.

10 MR. ADAMS: This is the second trial
11 in a row where I have had the exact same
12 thing that happens. Volume 1 our folks cut
13 because it was mostly our lawyer asking
14 questions.

15 THE COURT: Yeah.

16 MR. ADAMS: Volumes -- Volume 2
17 Johnson & Johnson cuts because it's mostly
18 their lawyer asking questions.

19 THE COURT: Yeah.

20 MR. ADAMS: But our lawyer asked
21 questions at the end on redirect, which is
22 what we just watching.

23 THE COURT: Right.

24 MR. ADAMS: Two trials in a row I've
25 been in with Johnson & Johnson, separate

1 edits. It's not the same edit. They're
2 going to get up and tell you it's the same
3 edit. It wasn't the same edit. The
4 asbestos pictures disappear from the
5 portion they cut.

6 THE COURT: Okay.

7 MR. ADAMS: So I am --

8 THE COURT: I -- I get what you're
9 fussing about.

10 MR. ADAMS: And I don't make
11 allegations lightly, but I'm deeply
12 concerned that the portions of the asbestos
13 were not shown. And so we'd like to back
14 the video up, play our cut so the correct
15 video can be shown.

16 THE COURT: How much longer is that
17 going to take?

18 MR. ADAMS: Very short. There's
19 like --

20 THE COURT: Oh, okay. Let me just see
21 what they say.

22 MS. McVEY: Five to ten minutes left.

23 MR. ADAMS: Five to ten minutes left.

24 THE COURT: Yeah. Okay.

25 MS. BUENO: Your Honor, this cut that

1 we played was identical to what was played
2 in Lee. There is a database. Our tech
3 person it took from the database, provided
4 it to counsel on August 5th along with the
5 agreement that we were playing the "as
6 played" clips from Lee.

7 I am surprised by this. I was unaware
8 of this issue. And from our perspective,
9 we played exactly what was played in the
10 Lee trial, and that was our --

11 THE COURT: And apparently, the Lee
12 trial also had problems. That's the
13 problem.

14 MS. BUENO: I am unaware of that. And
15 that was not communicated.

16 THE COURT: Well, I'm not blaming you
17 personally, but it is a problem. We're
18 going to go back like they want and play
19 it.

20 MS. BUENO: That's fine. We have
21 no -- no problem with that, but --

22 THE COURT: Now, I'm not going to
23 assign any blame to you, but we're going to
24 go back and replay it. But it shows you
25 got to really -- you -- were you in the Lee

1 trial?

2 MS. BUENO: I was not, Your Honor.

3 THE COURT: That's what I thought.

4 Ben was in the Lee trial. He's -- she
5 didn't know about this, she says. I'm
6 going to take her at her word about that.
7 That's fine. But we're going to replay
8 this thing.

9 MS. BUENO: Your Honor, I also --

10 MR. ADAMS: Your Honor, I -- I don't--

11 MS. BUENO: -- have to state that -- I
12 have to state --

13 MR. ADAMS: I have to state --

14 THE COURT: Now, wait a minute. I am
15 not going to let you two get into it. Now,
16 I've said we're going forward. We're not
17 going to do this every time and keep our
18 jury back there waiting. We are going to
19 replay this thing. If there's anything
20 that goes on that needs to be said at the
21 end of the day, I'll take it. I'm not
22 taking it right now. Okay?

23 MR. ADAMS: That's fair.

24 THE COURT: Not from you, Ben. Not
25 from Kim.

1 MS. McVEY: And, Your Honor, just so
2 you're not disappointed, it's about 25 or
3 so minutes left total in the video to play.

4 THE COURT: Okay.

5 MS. McVEY: And then we're done.

6 THE COURT: Is it cued up now and
7 ready to go?

8 MR. TRAVIS: Yes.

9 MS. McVEY: Yes.

10 THE COURT: Can I get the jury? Bring
11 me the jury.

12 THE BAILIFF: Yes, ma'am.

13 THE COURT: Now, Theile, I forgot my
14 thing back on what's happening today. Do
15 you got one?

16 MS. McVEY: The agenda?

17 THE COURT: Yes.

18 MS. McVEY: I can forward it to you.
19 Would that be easier?

20 THE COURT: Yeah.

21 MS. McVEY: Okay.

22 THE COURT: I marked it.

23 MS. McVEY: The next witness is
24 Dr. Kuffner.

25 THE COURT: I marked it and then put

1 some other little hiding hole.

2 MS. McVEY: Okay.

3 THE COURT: No, wait a minute. My
4 crack. My law clerk has got it right here.
5 I got it.

6 MS. McVEY: Okay.

7 THE COURT: We've got a few more folks
8 that need to be refreshed, so be at ease.

9 MS. McVEY: Your Honor, just one other
10 issue that I can see -- I want to talk
11 about.

12 THE COURT: Is that door open?

13 THE CLERK: Yeah.

14 THE COURT: Let's not have the door
15 open.

16 (The jury enters the courtroom at
17 11:28 a.m.)

18 THE BAILIFF: The jury is seated,
19 Your Honor.

20 THE COURT: Thank you, sir. You may
21 proceed.

22 (Video playing.)

23 BY MR. PANATIER:

24 Q. Professor Hutchinson was brought in by
25 McCrone and/or Johnson & Johnson at the University

1 of Minnesota Space Science Center, correct?

2 A. Yes.

3 Q. And he looked at both

4 Professor Lewin's sample of Shower to Shower and a
5 then-current Johnson & Johnson sample, correct?

6 A. Yes.

7 Q. Okay. And here's what he said: Based
8 on transmission electron microscopy, it is felt,
9 therefore, that chrysotile asbestos does exist in
10 the specimens of Shower to Shower and Lewin
11 supplied to this laboratory, correct?

12 A. You read what was written.

13 Q. Okay.

14 A. Yes.

15 Q. Now, he actually provided some really
16 nice photos, too, of the actual fibers.

17 Do you see that?

18 A. I do, yes.

19 Q. Up on the screen here?

20 A. Yes. Yeah.

21 Q. Some other ones?

22 A. Yes.

23 Q. This, for instance, is -- it just says
24 Lewin Grid 2, right? So he -- he documented his
25 work, correct?

1 A. Yes, he's documenting --

2 Q. Okay.

3 A. -- work from Lewin, yes.

4 Q. And then he even has his handwritten
5 notes five fibrous particles, and it says -- this
6 is the Lewin sample: Five fibrous particles were
7 found which gave electron diffraction patterns
8 unmistakably chrysotile asbestos.

9 Is that what he says?

10 A. That -- that's what he said, yes.

11 Q. Shower to Shower. Three clear
12 examples were found of serpentine material and
13 which gave perfect chrysotile patterns, correct?

14 A. That's what he's written.

15 Q. You haven't found anything that showed
16 that this was given to the FDA, right?

17 So you're also aware, sir, you brought
18 up the fact that the Illinois EPA had said that
19 there was no asbestos in Johnson & Johnson's talc,
20 correct?

21 A. That was the report from McCrone, yes.

22 Q. You're aware, sir are you not, that
23 there was a dispute between Windsor and the
24 Illinois EPA as to whether there was asbestos in
25 the Windsor talc and they had it refereed by

1 Cyprus Minerals, correct?

2 A. Well, I -- I'm not aware of that, but
3 I'll believe if you're telling me that.

4 Q. This is Exhibit 157. This is 1975.
5 Do you see that at the top there?

6 A. Yes.

7 Q. And it says: Key. Windsor Minerals,
8 Illinois, EPA. This project involves both X-ray
9 and microscopic study on two submitted Windsor
10 Minerals talc samples labeled 1 and 2 from the
11 Illinois EPA. This report deals only with the
12 electron microscopic investigation and will
13 supplement a similar report concerning X-ray
14 analysis of the samples. The submitted talc
15 samples are the subject of a dispute between the
16 Illinois EPA and the Windsor Minerals talc
17 company. The EPA claims talc from Windsor
18 Minerals obtained from various manufacturing
19 plants contains asbestos. Windsor Minerals claims
20 their talcs are asbestos-free.

21 Did I read that right?

22 A. You did, yes.

23 Q. The objective of this project is to
24 act as a neutral party and determine if asbestos
25 is present in the submitted talc samples.

1 Did I read that right?

2 A. You did, yes.

3 Q. Okay. Scanning and transmission
4 electron microscopy revealed the presence of
5 asbestos mineral in both samples Number 1 and 2.

6 So they're saying there's asbestos
7 there, correct, sir?

8 A. That's what they claim to have found.

9 Q. Tremolite was readily apparent and
10 estimated in amounts of about 1 percent. Possible
11 chrysotile was also observed and estimated at less
12 than 1 percent level, however, these serpentine
13 form fibers were poorly diffracting and positive
14 identification was not made.

15 So it looks like they made it on the
16 tremolite only, correct?

17 A. That is what -- you read what was
18 written.

19 Q. Okay. Tremolite and probable
20 serpentine minerals were easily recognized in both
21 samples. The tremolite was mainly in the massive
22 form, although defibrillation was observed and
23 further processing would likely result in
24 additional fibrous tremolite being liberated.
25 There are, however, sufficient fibers of

1 respirable size to result in an airborne asbestos
2 fiber concentration which would likely exceed the
3 allowable TLV if dust control measures were
4 nonexistent or insufficient.

5 And that's at less than 1 percent,
6 correct, sir, or approximately 1 percent, right?

7 A. That is -- that -- that would be the
8 case.

9 Q. Okay. Now look at the last page, just
10 so we're very clear about their finding.

11 The identification of the serpentine
12 form fiber would be too time-consuming for this
13 project, as the objective was to determine if
14 asbestos was present. The presence of the
15 tremolite form of asbestos completed the
16 objective, correct?

17 A. Yes.

18 Q. Okay. So Cyprus, which was a supplier
19 of talc -- you understand that, right?

20 A. Yes.

21 Q. So you were shown this report first.
22 This is 1972. This was a report of Lewin's
23 samples of baby powder that McCrone looked at,
24 correct?

25 A. Yes.

1 Q. This report where they actually said
2 that in the baby powder, tremolite was in both
3 samples up to half a percent, right?

4 A. That's what they reported, yes.

5 Q. Okay. This is from April of 1973,
6 correct?

7 A. Yes.

8 Q. And it says "Microscopic examination
9 of Johnson's Baby Powder," and there's four
10 different lots?

11 A. Yes.

12 Q. Right?

13 A. Yes.

14 Q. Petrographic optical microscopy
15 revealed trace amounts of amphibole in each of the
16 above samples. Based on the numbers of particles
17 scanned, we estimate trace to be .001 to .01 by
18 weight.

19 And then they actually describe the
20 shape and size of the particles.

21 A. Yes.

22 Q. And this one, 20 by 4, would be a 5:1
23 aspect ratio, wouldn't it?

24 A. It would, yes.

25 Q. And 200 microns by 30 would be roughly

1 9:1, 10:1?

2 A. 6.5:1.

3 Q. Oh, I'm sorry. Would it be? You're
4 exactly right. This would be 6.5:1, right?

5 A. Yes.

6 Q. Okay. Sorry about that. And it says:
7 The optical properties of the particles are closer
8 to actinolite than tremolite.

9 And so what they have here is they've
10 got four samples of baby powder, correct?

11 A. They have samples of powder, yes.

12 Q. And they're finding whatever you want
13 to call it, they're finding long fibers of
14 amphibole, correct?

15 A. Yes. And, again, they're not stating
16 that as being asbestos.

17 Q. Now, the Argonaut ore body came online
18 in about '76, right?

19 A. Yes. About then, yes.

20 Q. For use with the baby powder, true?

21 A. Yes.

22 Q. Okay.

23 A. Yes.

24 Q. And McCrone, this is a McCrone --
25 McCrone report, right?

1 A. Yes.

2 Q. McCrone found 15 results of
3 asbestiform minerals in the Argonaut ore body,
4 correct?

5 A. In -- in a part of the Argonaut ore
6 body, yes. Yes.

7 Q. Okay. July 1974 to Robert Rolle:
8 We've analyzed 21 samples of talc to determine the
9 content of asbestiform materials in those samples.

10 Asbestiform means asbestos, right?

11 A. Generally, yes.

12 Q. Yeah. Of the 21 samples we analyzed,
13 17 were production-run samples and 4 were other
14 type samples. In this latter group of four, one
15 sample contained two small chrysotile fibers,
16 while the other three samples didn't show any
17 whatsoever.

18 Let's look at the results. There's a
19 table. These guys up here were something else.
20 So we're not going to pay attention to those.
21 Let's look at the production runs, right? They
22 find probable chrysotile, chrysotile, tremolite
23 and probable chrysotile, chrysotile and two
24 chrysotiles in one, two, three, four, five
25 production runs of baby powder, correct?

1 A. Where does it say baby powder?

2 Q. Well, let's look who it's to because
3 that's what you said the last time I showed you
4 this document. It's to Robert Rolle, who is head
5 of what?

6 A. He was actually a researcher at
7 Johnson & Johnson.

8 Q. He was -- well, that's not what you
9 told me last time. You said he was in the baby
10 products division?

11 A. Yes, baby -- baby products research,
12 yes.

13 Q. So what we have is McCrone in five
14 production runs finding asbestos, correct, sir?

15 A. Again, it doesn't state that this is
16 baby powder. Well, what -- what you've done is to
17 associate an individual's name who works in
18 research, in Johnson's research, with -- with the
19 results of these test samples.

20 Q. He is in the baby products company,
21 correct, sir?

22 A. He's in -- yes. He works for the
23 research, the Johnson & Johnson research.

24 Q. In the baby products company?

25 A. He did work in baby products at one

1 time. I don't know if he was at this point in
2 time. But certainly, he has been in baby
3 research.

4 But the -- the point is still the
5 same, that we're looking here at results of
6 studies which do not state where the talc -- what
7 grade of talc it was or where it came from.

8 Q. Except for the fact that this is going
9 to Johnson & Johnson; it is production-run samples
10 that are being taken on the exact same schedule
11 that you told the Johnson & Johnson lawyer they
12 would be taken, correct?

13 A. Yes.

14 Q. You guys spent a lot of time talking
15 about what "HC" means and "GI" and "WI," remember
16 that?

17 A. Yes.

18 Q. Now --

19 A. The HC designation is also given to
20 industrial.

21 Q. Okay. Well, I think I can help us
22 clear this up, because you told me that the
23 industrial were not floated, right?

24 A. I --

25 Q. You told me that?

1 A. I -- I believe they were not floated.

2 Q. We know that because we have fines and
3 sediments, these were floated, and we know that
4 there was one, two, three, four, five, six, seven,
5 eight, nine findings of confirmed asbestos in the
6 fines, correct, sir?

7 A. You read what was written on that
8 report.

9 Q. And I've counted right, haven't I?

10 A. You've counted correctly.

11 Q. Okay. And we know that in the
12 sediment we have one, two, three, four, five.
13 That's a total of 14 results for asbestos,
14 correct?

15 A. Correct.

16 Q. Okay. That is July 1st, 1975, and we
17 know that's McCrone. Then we have November 1975.
18 Do you see that, sir?

19 A. I do, yes.

20 Q. And here, again, we have fines and
21 sediments, right?

22 A. Yes.

23 Q. And, again, these are being done on
24 the exact -- in the exact frequency you said the
25 cosmetic was to be done, aren't they?

1 A. That is correct.

2 Q. There's 13 results for, as they say,
3 fibers of asbestos, right?

4 A. That's -- that's what's written.

5 Q. Okay. That's November 5th, 1975.

6 MR. PANATIER: This is getting
7 pretty -- pretty messy.

8 BY MR. PANATIER:

9 Q. There's 13 asbestos. And "asbestos"
10 is their word; it's not mine, correct?

11 A. Yes.

12 Q. Okay. And that's also McCrone, okay?

13 All right, sir. Here is another
14 report from McCrone, November 19th, 1975, correct?

15 A. Yes.

16 Q. All right. And this one is to
17 Mr. Zeitz at Windsor Minerals, true?

18 A. Yes.

19 Q. Okay. And he says: There are 24
20 samples, and in the entire series, we found 2
21 asbestiform. "Asbestiform" means asbestos, right?

22 A. It means in the form of asbestos, yes.

23 Q. It means "asbestos," right?

24 A. It's -- it's a moot point. It usually
25 means in the form of asbestos.

1 Q. But when you say it's asbestiform --

2 A. But people --

3 Q. -- versus nonasbestiform, right?

4 A. -- people would use that expression to
5 mean asbestos, yes.

6 Q. Both amphiboles, one in Sample N1-HC,
7 and one in Sample 01-HC at an equivalent of .1
8 parts per million and .3 parts per million, right?

9 A. That's what they reported, yes.

10 Q. So that's two findings of asbestiform,
11 right?

12 A. In -- in those samples.

13 Q. Right. That were HC, right? I mean,
14 it says "HC," correct?

15 A. Well, they're designated N1-HC and
16 01 -- 01-HC.

17 Q. This is from August 22nd, 1985.
18 Again, it's to Windsor Minerals from McCrone,
19 right?

20 A. Yes.

21 Q. They have seven samples. Do you see
22 that?

23 A. Yes.

24 Q. Okay. And they find chrysotile
25 asbestos in two of them, right?

1 A. They do. These are designated WMI, 85
2 down -- 26 down to 31.

3 Q. Right.

4 A. And I do know this, that WMI relates
5 to Western mining, which is an industrial mine
6 which Johnson owned at that time out in
7 Sacramento, California.

8 Q. I'm not. I'm not. Johnson & Johnson,
9 you and your lawyers are the ones that keep using
10 the 1987 letter from McCrone to Armstrong World
11 Industries, an industrial talc user, correct?

12 A. They were a user of industrial talc,
13 yes.

14 Q. I don't bring this letter up. You
15 bring it up, right?

16 A. Yes.

17 Q. Okay. And so here we have a statement
18 having to do with -- remember this letter --
19 Windsor talc products, okay, Windsor Minerals.
20 This is Windsor Minerals, is it not?

21 A. The head office of the company was
22 Windsor Minerals in the state of Vermont.

23 Q. And they find two times chrysotile.
24 And I'll even -- for -- I'll even say JH says
25 California.

1 A. I believe it's California.

2 Q. Well, you said it, right?

3 A. I believe that was California. Okay.

4 Q. That's fine. Okay. Well, I'll put it
5 there just for completion, okay?

6 All right. Now, up here, McCrone --
7 and I put an M every time we had McCrone. And
8 just to be totally fair, I'm not even going to
9 count this one, okay? Because you say it's
10 California, that's fine.

11 But just to be fair, McCrone said no
12 times between '87 and '71 did they find asbestos
13 in Windsor Minerals, correct? Correct.

14 A. That's what they stated, yes?

15 Q. Correct. So what we have is we have
16 one, two, three, four, five, six -- and I'm not
17 going to count the last one for you, okay? Six
18 times that McCrone found asbestos and communicated
19 it to Windsor Minerals, correct?

20 A. They -- they claim to have found
21 asbestos in samples.

22 Q. McCrone said, we have never found
23 asbestos, barring these two crazy examples, in the
24 Windsor Minerals talc, correct?

25 A. Yes, that's what they said.

1 Q. Sir, you were talking about
2 Mount Sinai when the chair of the department,
3 Chalmers, came out and said some things about
4 Langer, right?

5 A. He made a -- a statement to the press
6 summarizing the Mount Sinai position.

7 Q. And you talked about Selikoff and
8 about how well respected he was, right?

9 A. He was -- he has a lot -- a lot of
10 expertise in asbestos and asbestos diseases.

11 Q. And he was leading the charge in
12 asbestos at Mount Sinai, right? And you said
13 Mount Sinai was recognized globally and filled
14 with world-class experts, right?

15 A. Yes.

16 Q. Okay. Let's see what Johnson &
17 Johnson said about Dr. Selikoff internally. This
18 is Exhibit 164. I'll blow this up so you can see
19 it, sir. Do you see this November 29, 1972?

20 A. Yes.

21 Q. Can you read the heading there for us?

22 A. Antagonistic personalities: Talc
23 Story in the USA.

24 Q. Antagonistic personalities in the Talc
25 Story in the USA, and this is written by Gavin

1 Hildick-Smith.

2 Here's what he says: The increase in
3 the profile of talc as a potential health hazard
4 has been actively promoted by a number of
5 individuals for a variety of reasons.

6 The start of the attack on talc
7 originated in England at the Tenovus Research
8 Institute in Cardiff where a technician in
9 microscopy published a paper. In the USA, the
10 leading roofer initiated the attack on talc
11 located in New York City and consists of the
12 following.

13 And who's is the first person and
14 entity that they list?

15 A. Dr. Selikoff.

16 Q. Of the Mount Sinai Hospital, right?

17 A. Yes.

18 Q. He's an antagonistic personality. He
19 makes number one on Johnson & Johnson's list,
20 true?

21 A. No. He's -- he stated that --

22 Q. Is that funny?

23 A. He's stated as -- he's stated as one
24 of the people who've been attacking talc.

25 Q. Right. Let's see who else they listed

1 as antagonistic personalities. Dr. Langer, right?

2 A. Yes, the two worked together.

3 Q. And then anybody else in their
4 department, right?

5 A. Yes.

6 Q. And then they also list the FDA --
7 right? -- specifically, Dr. Weissler?

8 A. Dr. Weissler had made adverse comments
9 on talc. He had done that in the very early '70s.

10 Q. Dr. Lewin, right?

11 A. Yes, he's another one who made adverse
12 comments.

13 Q. He hadn't made adverse comments.
14 He -- he said that there was asbestos in the talc,
15 right?

16 A. He claimed to have found asbestos in
17 the talc.

18 Q. Which Dr. Hutchinson and the FDA
19 actually verified, correct? Correct, sir?

20 A. They reported what they reported.

21 Q. This is Exhibit 165. It's a report
22 from EMV. Do you see that?

23 A. I do, yes.

24 Q. And on the second page, it says: Nine
25 talc samples, April 1st, 1977?

1 A. Yes.

2 Q. If you go in, it says: This report
3 gives the results of analysis for nine talc and
4 rock samples and discusses new preparation and
5 examination techniques that have been implemented
6 to supplement previous techniques. Other than
7 this, examination is as described in previous
8 reports.

9 And he has a couple of different
10 samples they look at. One is D ground. And I've
11 asked you before. That's domestic ground,
12 correct?

13 A. It's -- it's an assumption. It
14 doesn't actually state that. One would have to
15 speculate, so it's an assumption.

16 Q. Okay. Well, here they say, for
17 A composite, they found both large and small
18 tremolite particles, right?

19 A. Yes.

20 Q. Okay. In old stock, they found a
21 small fibrous tremolite particle, right?

22 A. That's what they reported, yes.

23 Q. In Samples 14 and 15, they found
24 tremolite particles. In several experimental
25 types of preparations, however, fibrous and

1 nonfibrous are shown in Figures 8, 9 and 10?

2 A. Yes.

3 Q. They find nonfibrous tremolite, right?

4 A. Yes.

5 Q. So -- so they're finding both fibrous
6 and nonfibrous tremolite, correct?

7 A. They're reporting what -- what they --
8 they find, yes.

9 Q. Now, they even have some pictures --
10 now these are, like, old-style photocopied
11 pictures here, but a few of these actually look
12 pretty good. You can see this one here, it says
13 that's a -- A composite low iron tremolite
14 particles, right?

15 A. That's what it states, yes.

16 Q. And there's a tremolite particle right
17 there?

18 A. That's a rod, yes.

19 Q. With regard to 7024, the detection
20 limit of this technique according to McCrone, is
21 approximately .1 percent by weight of asbestos.

22 I asked you, "Right?" And you said,
23 "That's what it states, yes."

24 Do you need to see that?

25 A. No, I believe that's what you read,

1 yes.

2 Q. Well, we actually saw during the
3 period of time even before testing method 7024 was
4 adopted by Johnson & Johnson, McCrone was getting
5 results down to .0001, right?

6 A. By -- by their methodologies, yes,
7 yes.

8 Q. Using electron microscopy, right?

9 A. Yes.

10 Q. Yet when Johnson & Johnson adopted a
11 method, they adopted one that was 100 or 1,000
12 times less sensitive, correct?

13 A. Again, you -- we would need to go back
14 to McCrone and ask what that's -- what the ability
15 was of the equipment at that time.

16 Q. Can you describe for us the
17 information that was conveyed in total from these
18 25 thereabout organizations over -- from late
19 1960s to 20 --

20 A. 10.

21 Q. -- 10. On the question of whether or
22 not Johnson & Johnson's talc has asbestos in it?

23 A. Yes. If you look, it's over a
24 fifty-year period. None of those institutes and
25 individuals working for them confirmed the

1 presence of asbestos in Johnson's Baby Powder.

2 Q. And did any of these organizations
3 actually say that Johnson & Johnson's Baby Powder
4 was free of asbestos and useful and a safe
5 product?

6 A. Some -- some of them did, yes.
7 They -- they commented further other than giving
8 their analytical results, people commented --
9 particularly Chalmers at Mount Sinai. Commented
10 that -- that it was a safe product.

11 Q. And as you look at a bunch of these
12 organizations, did Johnson & Johnson give any
13 money to the Illinois EPA, NIOSH, the FDA, Mount
14 Sinai, Harvard School of Public Health, New York
15 University, AMA Labs, Sperry Rand?

16 A. No. Many of those institutes did the
17 work for free, or didn't charge for what they'd
18 done.

19 Q. You have not a single document, not a
20 single test, not a single document that says any
21 of this was tested from the Clifton Mine, correct?

22 A. Correct.

23 Q. Correct.

24 A. What -- what we have here are letters,
25 statements to say that the Clifton Mine material

1 was mixed with the Hammondsville Mine and the --
2 the residues from the Hammondsville Mine to
3 produce an industrial talc.

4 And that may confuse the issue as far
5 as analyses are concerned, especially where we've
6 seen designation HC can mean both industrial and
7 it can mean cosmetic. So in a sense that that
8 documentation from the '70s doesn't give clarity
9 to the picture.

10 Q. On the 9th, we have this internal memo
11 at J&J, and this will be Exhibit 174, I have it
12 right here. Shelley says: It is important that
13 we continue the processing work on the removal of
14 fines from our baby powder since this is a faction
15 implicated in talcosis and asbestos toxicology,
16 right?

17 A. That was his opinion in 1971.

18 Q. Okay. That they needed to improve
19 their processing work on baby powder, right?

20 A. Yes. And that's part of the flotation
21 process to get a -- a nice product.

22 Q. And he gives two reasons, talcosis,
23 and asbestos toxicology, doesn't he?

24 A. That's what he said at that time.

25 Q. February 8, 1973, I've shown you this

1 document before, too. This is to Bill Ashton at
2 Johnson & Johnson. And he says -- this guy says
3 to Ashton: I recall the results of that study. I
4 recall that the results of that study concluded
5 that the talc could not be processed to completely
6 remove tremolite even by your most technologically
7 advanced methods of beneficiation.

8 And, sir, we know that Johnson &
9 Johnson said that exact thing to the federal
10 government, correct?

11 A. Yes. The point of beneficiation is to
12 get a nice grade of platy talc.

13 Q. We have two documents that refer -- at
14 least two that refer to HC as the cosmetic grade
15 talc, correct? We have the key from 1975, which
16 we've seen, correct?

17 A. We -- we have a document --

18 Q. Right.

19 A. -- that relates to -- relates to
20 cosmetic talc as being HC, yes.

21 Q. And then we have the other one, where
22 Miller, the president of Windsor Minerals, says to
23 McCrone, "Go ahead and hand over our cosmetic
24 testing, it's designated HC," right?

25 A. On certain particular samples, yes.

1 Q. Let's do the other one. This is the
2 one where they say -- they don't say "confirmed
3 asbestos," but they say "fibers of asbestos," and
4 here we have nine total results in the fines, and
5 four are HC, correct?

6 A. That is what is written.

7 Q. All right. Now, lastly, I think, they
8 showed you some documentation with regard to
9 Hutchinson who had looked at some Lewin samples
10 and the sample of Shower to Shower, correct?

11 A. He claimed to have looked at Shower to
12 Shower. And he was -- he was given a sample -- a
13 Lewin sample, Lewin 16, and a sample of pure
14 chrysotile by McCrone.

15 Q. Sir, you don't know how many times
16 McCrone sent things to Hutchinson, did you?

17 A. We don't know whether it was just the
18 once or more than once.

19 Q. Okay. Well, let's look at what
20 Hutchinson actually did. Do you know what Lewin
21 Sample 136 is?

22 A. No.

23 Q. And you don't know what Sample 137 is,
24 do you?

25 A. No.

1 Q. And you know that in the memo they had
2 a series of numbers with all the brands, correct?

3 A. Yes.

4 Q. Okay. What's 136, sir?

5 A. Shower to Shower.

6 Q. What's 137?

7 A. It says Shower to Shower.

8 Q. Okay. And you see in Hutchinson's
9 report Sample 137, see chrysotile?

10 A. He claims to have seen chrysotile in
11 Sample 137.

12 Q. Sample 137 chrysotile. You see that?

13 A. He claims to have seen it, yes.

14 Q. That was one sample of Shower to
15 Shower. And there's Sample 136, talc altering the
16 chrysotile.

17 Do you see that?

18 A. Yes. He -- that's what he's written.

19 Q. Chrysotile, do you see that?

20 A. That's what he's written.

21 Q. And you were asked questions about why
22 do all this testing if you don't have asbestos,
23 right? Do you remember that?

24 A. Yes, I do.

25 Q. Do you go to a doctor if you're not

1 sick?

2 A. Not very often. It costs you money.

3 No.

4 Q. But you might be -- you might go for
5 your annual checkup. That's not unreasonable
6 but -- to have an annual checkup so you can go to
7 a doctor if you're not sick.

8 MR. ADAMS: Your Honor, that concludes
9 the deposition of Johnson & Johnson through
10 their corporate representative,
11 Dr. Hutchinson [sic]. We have a live
12 witness at this time.

13 THE COURT: Very good.

14 MR. ADAMS: Do you want to break for
15 lunch?

16 THE COURT: How long is this witness?

17 MR. ADAMS: Pretty -- pretty
18 substantial.

19 THE COURT: All right. Then we will
20 break for lunch. Ladies and gentlemen,
21 we'll take our lunch break now. It's for
22 all intents and purposes noon. Be back
23 here ready to go at 1:30.

24 (The jury exits the courtroom at 11:58
25 a.m.)

1 THE COURT: Yes, ma'am.

2 MS. McVEY: I just want to put one
3 thing on the record to make sure it's clear
4 because I saw the Court's -- a little bit
5 of the Court's concern that we went into a
6 lot of Johnson & Johnson's testing on that
7 video. And I want to make it clear that
8 before this trial started that we entered
9 into a stipulation with Johnson & Johnson
10 that we would -- that the Hopkins
11 deposition would not trigger the spoliation
12 charge. And let -- we did that for a
13 couple of reasons.

14 One, we didn't want you to have to
15 rule on all these page lines. We wanted
16 some agreement on that. So we entered that
17 stipulation before this trial started and,
18 of course, we did not know that Johnson &
19 Johnson -- and I just want to -- the first
20 day of trial, Ms. Bueno came in and when we
21 were discussing the spoliation, she said,
22 "You don't need to charge that because we
23 made a strategic decision not to use any
24 Johnson & Johnson testing," essentially
25 surrendering this whole thing.

1 So the first time we learned that they
2 not going to use any Johnson & Johnson
3 testing was the first day of trial. We
4 entered into that stipulation before this
5 trial started.

6 THE COURT: Yes.

7 MS. McVEY: So shame on us maybe for
8 not doing better about that. And we're
9 going to stick with our stipulation because
10 that's what we agreed to, but we, of
11 course, did not know by entering into it --
12 so you wouldn't have to rule on the page
13 lines -- that the way that we'd get the
14 testing in is through this Hopkins
15 testimony.

16 So it puts us on a little bit of a
17 bind, but it doesn't matter because we
18 believe that she already opened up the door
19 to spoliation charge with how she's
20 questioned Haber and other witnesses.

21 So I want to put that on the record
22 that there was a stipulation, we're not
23 saying that this Hopkins deposition --

24 THE COURT: I realize that all of this
25 is going to revolve around whether the door

1 was opened.

2 MS. McVEY: Correct.

3 THE COURT: It's not -- and things
4 that you said should not be considered in
5 deciding whether the door is opened include
6 the Hopkins' deposition. So I get that.

7 MS. McVEY: Okay. So we believe it's
8 open anyway, but I did want to say we don't
9 believe it's open because of this Hopkins
10 deposition.

11 THE COURT: All right. I understand
12 that.

13 All right. What else?

14 MS. BUENO: Your Honor, I have to
15 state that during the break, when we had a
16 brief moment to work on the video that
17 we've already discussed with Your Honor,
18 there were some statements made that I
19 think I need to make Your Honor aware of
20 and I definitely want on the record.

21 Mr. Adams said to me that I am
22 unethical and that he was going to report
23 me to the state bar if it's the last thing
24 he did. He called us criminals. He called
25 my partner Mr. Cowan a criminal who works

1 for a criminal organization hiring criminal
2 lawyers.

3 My partner, Tara Blake, who is in the
4 courtroom who Your Honor hasn't even heard
5 from, who is here to assist with documents
6 today, he said to her, "You are a criminal,
7 unethical, and we will do to you worse than
8 what we did in Lee." And as Your Honor
9 knows, Lee was the last trial with
10 Johnson & Johnson.

11 I want to make Your Honor aware of
12 this because I take this very seriously to
13 have officers of the court making these
14 kind of comments and allegations when this
15 team has done nothing but be professional
16 at this trial.

17 THE COURT: Well, now, wait a minute.
18 I'm not going to -- I'm not going to get
19 into that. I will not get into that. I'm
20 not going to do it on the basis of "Hey,
21 have you been unprofessional?" and we have
22 to go tit for tat. I don't want either
23 side to do that.

24 Now, I've fussed awfully hard about
25 some of the unprofessional information that

1 was already admitted or said to me, and I
2 didn't like that. And I told y'all that
3 this morning. But I'm going to go right
4 now to Mr. Adams. You may take your seat.

5 MR. ADAMS: So, Your Honor --

6 THE COURT: Mr. Adams.

7 MR. ADAMS: Your --

8 THE COURT: No. You listen to me and
9 listen to my question first, okay?

10 MR. ADAMS: Yes, Your Honor.

11 THE COURT: Did you say what she has
12 related to me?

13 MR. ADAMS: No. She misstated me.

14 THE COURT: All right. Well, you be
15 very clear with me because I'm not going to
16 get into this tit for tat. I -- you talk
17 about not like. I don't like that. Big
18 time don't like it. I don't care whether
19 it's said.

20 You people do all kind of things that
21 are not before the Court, that is not
22 before me and not before the jury, and I
23 can't control all of that. And quite
24 frankly, I'm not going to get into all of
25 it.

1 But I -- this injured air of innocence
2 business does not appeal to me. And every
3 time we have something where Johnson's
4 called to ask for something, then there's
5 this great injured air of innocence that
6 goes on, and I don't want to put up with
7 that. But I don't like comments like that
8 one darn bit.

9 And I don't care whether it's slightly
10 misconstrued or whatnot. You can give me a
11 brief precis of what you think is kind of
12 incorrect about what she relayed.

13 MR. ADAMS: What is incorrect is what
14 I said to Johnson & Johnson, is that when
15 you deleted the asbestos fibers from the
16 video in this trial and in the Lee trial,
17 that was unethical. And I --

18 THE COURT: Okay. That -- all right.
19 That's fine. How about the criminal and
20 we're going to do to you what we did to
21 Lee? Was that said?

22 MR. ADAMS: That is false.

23 MR. COWAN: Your Honor, I have to
24 say --

25 MS. BUENO: Your Honor, we have -- we

1 have --

2 Chris -- Mr. Cowan.

3 MR. COWAN: I'm sorry.

4 MS. BUENO: We have everyone on this
5 side of the courtroom that heard every
6 comment, and if you would like to go down
7 the line, we can.

8 THE COURT: No, I don't -- you --
9 you-all --

10 They all say you said that.

11 MR. LOEBBAKA: Judge, I heard it too,
12 and I'm just independent.

13 THE COURT: Well, Mr. Adams --

14 MS. McVEY: Your Honor, I -- I heard
15 exactly what Mr. Adams said, and what he
16 was saying is what Johnson & Johnson --
17 what they have done is criminal, meaning
18 Johnson & Johnson.

19 THE COURT: I don't care whether you
20 say what they've done or anything, all
21 right? I'm not going to parse the words.

22 That's not a proper comment to make.
23 Now, what is proper to make is if something
24 improper has occurred, bring it to my
25 attention. I think some improper things

1 did occur, and that's why I allowed that
2 thing to be redone and gone back. And I
3 stand by that. That's not proper to have
4 been done. And y'all apparently battled
5 about that in the Lee case, and now here we
6 got -- I got to go through it again.

7 All right. Johnson & Johnson has got
8 to do better about this. And this injured
9 innocence is not going to be the way I look
10 at it.

11 But I tell you right now, Mr. Adams,
12 that if anything further is said on your
13 side of the table that accuses the client
14 or the witnesses or the lawyers or a
15 combination of both of being criminals,
16 then I am going to think about sanctions.

17 If there's anything improper or
18 unethical that's been done, that can be
19 brought to me. But this back-and-forth and
20 starting to get into it with each other,
21 I'm not going to tolerate it.

22 Does everybody understand what I'm
23 saying?

24 MS. McVEY: Yes, ma'am.

25 MR. ADAMS: Yes, Your Honor.

1 THE COURT: I don't want any more of
2 that. That is not the way we do business
3 here, and it's not proper. So --

4 MS. McVEY: Yes, ma'am.

5 THE COURT: Let's clear -- as I tell
6 the kids, who are now in their 40s and 50s,
7 let's clear the thing and turn the page on
8 all of that. All right?

9 MS. McVEY: Yes, ma'am.

10 MR. ADAMS: Yes, ma'am.

11 THE COURT: All right. Very good.

12 MS. McVEY: Thank you.

13 THE COURT: Now, I'm going to run and
14 get a quick lunch, but know that I will try
15 to be back here at 1:00 in case there's
16 anything that anybody needs to take up with
17 me. So I'll be in my chambers, and if
18 y'all need me, just send word and I'll
19 come.

20 MS. McVEY: Thank you so much.

21 THE COURT: All right.

22 * * *

23 (Whereupon, there was a recess in the
24 proceedings from 12:05 p.m. to 1:28 p.m.)

25 * * *

1 THE BAILIFF: All rise, please.

2 THE COURT: Please be seated.

3 Bring me the jury.

4 (The jury enters the courtroom at
5 1:34 p.m.)

6 THE BAILIFF: The jury is seated,
7 Your Honor.

8 THE COURT: Thank you, sir.

9 All right. Plaintiffs' case will
10 proceed.

11 Plaintiffs, call your -- call your
12 next witness.

13 MR. ADAMS: Your Honor, plaintiff
14 calls their next witness, the defendants
15 Johnson & Johnson and LLT Management LLC
16 through their designated corporate
17 representative, Edwin Kuffner.

18 THE COURT: Come around, Mr. Kuffner,
19 and be sworn.

20 THE BAILIFF: Come around and be
21 sworn, sir, come around this way.

22 THE WITNESS: Sure.

23 THE BAILIFF: There we go.

24 THE CLERK: Go around the table.

25 THE WITNESS: I'm sorry.

1 THE BAILIFF: Right -- right here.

2 THE WITNESS: Oh, I'm sorry.

3 THE BAILIFF: Put your bottle down.

4 Come right here.

5 THE WITNESS: Yep.

6 THE BAILIFF: Okay. Place your left
7 hand on the Bible. Raise your right and
8 face the clerk.

9 THE CLERK: Do you swear or affirm
10 that the testimony you're about to give in
11 this case will be the truth, the whole
12 truth and nothing but the truth so help you
13 God?

14 THE WITNESS: Yes.

15 THE CLERK: Thank you, sir. Please
16 have a seat on the witness stand and state
17 your full name for the record.

18 THE COURT: All right. Yes. Go
19 ahead, Mr. Kuffner, and give your full name
20 and spell it.

21 THE WITNESS: It's Dr. Edwin Kuffner,
22 K-U-F-F-N-E-R.

23 THE COURT: Ladies and gentlemen,
24 Dr. Kuffner is the corporate representative
25 of certain entities included in the Johnson

1 Group as has been outlined by Mr. Adams.
2 He is the defendant's corporate
3 representative, and, therefore, he --
4 Mr. Adams will be given a little leeway,
5 according to our rules, in how he examines
6 Mr. Kuffner. He can ask leading questions.

7 But I have counseled both sides in
8 this matter, that these leading questions
9 have begun to resemble a speech where they
10 get up and look straight at you and not at
11 the witness and expostulate about a whole
12 bunch of things and then say, "Don't you
13 agree?" All right. That's not proper
14 cross-examination.

15 So, I have counseled both sides
16 that -- to ask normal questions, leading
17 questions if you've got permission to do
18 it. But don't sit up there and give a
19 speech to the jury that last ten minutes
20 and then say, "Don't you agree" or "Don't
21 you disagree," something like that. So
22 let's see if they behave as I've asked them
23 to do.

24 Mr. Adams, I'm sure you will.
25 Proceed.

1 MR. ADAMS: Your Honor, thank you so
2 much.

3 * * *

4 EXAMINATION

5 BY MR. ADAMS:

6 Q. Good afternoon, Dr. Kuffner.

7 A. Good afternoon.

8 Q. You're something called the corporate
9 representative, right?

10 A. Yes.

11 Q. For Johnson & Johnson?

12 A. Yes.

13 Q. And LLT Management, LLC?

14 A. Yes.

15 Q. And what that means is that, out of
16 all the employees of Johnson & Johnson, Johnson &
17 Johnson chose you to speak for the company in this
18 case. Fair?

19 A. Yes.

20 Q. One of the things you know from your
21 review of Johnson & Johnson documents is that
22 there are many, many, many, many internal
23 documents at Johnson & Johnson that use this word
24 "tremolite." Fair?

25 A. Yes. There are many documents I

1 review -- I review thousands and thousands of
2 documents. Not all of them have tremolite in
3 them, but many documents do.

4 Q. I know you were kind of in and out of
5 the room. I don't know if you were in the room
6 for the testimony of Johnson & Johnson's former
7 spokesperson, Dr. Hopkins, over the last couple of
8 hours where he was shown document after document
9 after document with tremolite in it. Were -- were
10 you there for that?

11 A. Yes, I was in the courtroom for that.

12 Q. One of the things you know for sure is
13 that 65 years ago Johnson & Johnson knew there was
14 tremolite in the talc it used in baby powder,
15 correct?

16 A. Yes. We understood there was
17 tremolite there, not tremolite asbestos, and
18 they're two different things.

19 Q. This is in evidence as Exhibit 31.
20 This is a Johnson & Johnson document, right?

21 A. Yes, it is.

22 Q. And I excerpted parts out. You've
23 seen this before, right?

24 A. Again, you're -- you're showing --
25 showing me clips, but it looks like a Battelle

1 document from 1959. I believe I've seen that
2 document, yes.

3 Q. And this is a Battelle document in
4 which Johnson & Johnson hired Battelle, right?

5 A. Yes, to do -- to do testing.

6 Q. To look at the talc that Johnson &
7 Johnson was using in baby powder, right?

8 A. So what I would say is they -- they
9 hired them to not only look at the talc that
10 Johnson & Johnson was using in baby powder, but
11 also to look at other -- other talc sources as
12 well. So it's important to understand what
13 they're actually looking at.

14 Q. And what we see here -- and this isn't
15 the only one -- but is that Johnson & Johnson
16 writes down or receives a writing finding
17 tremolite over and over and over again in the talc
18 it's using in baby powder, right?

19 A. So I -- I have to look at this
20 document. Again, it just says float 1 and 2.
21 It's unclear to me just what it's representing
22 here whether this was actually the talc that was
23 being used in the baby powder, but they're --
24 they're finding -- they're finding tremolite. As
25 I said, they looked at different -- different

1 types of talc.

2 Q. If this was Italian talc, then it was
3 the talc that was being used in the baby powder at
4 the time. Fair?

5 A. Not -- not necessarily, if -- my
6 understanding was there were a couple different
7 types of Italian talc. We -- we -- if you have a
8 full document, I can certainly review the
9 document. We can take a look.

10 Q. One thing you mentioned is that, well,
11 there's sort of like the bad tremolite, the
12 tremolite asbestos, and then there's this other
13 tremolite, remember?

14 A. Those aren't the words I used. From a
15 mineralogic perspective, there is tremolite and
16 there's tremolite asbestos, and tremolite is not
17 asbestos, but tremolite asbestos is asbestos.

18 Q. What Johnson & Johnson knew at least
19 in the 1960s is that the kind of tremolite that
20 was in their baby powder was the bad kind.

21 A. That -- that's not true. It says
22 tremolite here. It doesn't say tremolite
23 asbestos. Now generally, the company didn't want
24 either tremolite or tremolite asbestos in the
25 product, but the company clearly understood the

1 difference.

2 Q. This is Exhibit 7 in evidence. And
3 what Johnson & Johnson wrote down is: There would
4 be a furor if it became known our talc contained
5 any significant amount of tremolite.

6 Do you see that?

7 A. Is it possible to get the document?

8 Q. Sure. I've shown you this document
9 many, many times, right?

10 THE COURT: Show it to me again, the
11 full one without the breakouts.

12 MR. ADAMS: Yes, ma'am.

13 THE WITNESS: Thank you very much.

14 THE COURT: Dr. Kuffner, is that
15 the -- what you -- is that the one that is
16 being looked at? It bears the date
17 April 15th, 1969.

18 THE WITNESS: Yes.

19 THE COURT: And so this -- this is
20 what -- as we see it on the screen, it's
21 just a blow out, but you got the real
22 document there, right?

23 THE WITNESS: I do. I'm just trying
24 to make sure that all the words -- because
25 some of the things are pieced together. I

1 just want to see what it is.

2 THE COURT: Yes, sir, take your time.

3 THE WITNESS: Is there a specific
4 sentence you want me to look at?

5 BY MR. ADAMS:

6 Q. Sure. Are those the words in that
7 document?

8 A. I haven't read the whole -- the whole
9 document, but is this -- is this -- a specific
10 sentence that you want me to look at? If you can
11 point out the sentence, I'm happy to look at it.

12 THE COURT: Mr. Adams, just get your
13 highlighter and highlight those things.
14 Give -- give that to him, Mr. Kuffner.

15 BY MR. ADAMS:

16 Q. Okay. Take a look at the second page.

17 A. Okay.

18 THE COURT: Do -- do you find the
19 words in there?

20 THE WITNESS: I see.

21 THE COURT: All right. Read the words
22 out.

23 THE WITNESS: This created such a
24 furor that we were more or less compelled
25 to remove boric acid from the formulation.

1 So I think the furor is talking about
2 the boric acid.

3 BY MR. ADAMS:

4 Q. Read the next sentence.

5 THE COURT: Keep on going.

6 THE WITNESS: It is conceivable that a
7 similar situation might eventually arise if
8 it became known that our talc formulations
9 contained any significant amount of
10 tremolite.

11 BY MR. ADAMS:

12 Q. Johnson & Johnson wrote down 65 years
13 ago that if people found out there was tremolite
14 in their talc, there would be outrage, right?

15 A. That's what that -- that's what
16 that one sentence says.

17 Q. And when they wrote that down, they
18 said, "We need to contact the lawyers," right?

19 A. Part -- part of this talks -- they
20 said that they may want a -- they might want to
21 talk to the lawyers, yes.

22 Q. And your testimony today is that was
23 the good tremolite?

24 A. My -- my testimony today is that
25 they're talking about tremolite. And this was --

1 I believe this was Project 101 where they were
2 looking for other sources of talc. And they used
3 other -- find other mines of talc. There's no
4 question the company wanted to minimize the
5 tremolite in the talc that they were using, but
6 just because it says tremolite doesn't mean it's
7 tremolite asbestos.

8 Q. Three years later -- you've seen this
9 document many times, right? This is Exhibit 117
10 in evidence.

11 A. Yes, I've seen this document.

12 Q. So three years later -- and this was
13 shown during the deposition of Hopkins that the
14 jury just saw. You saw that, right?

15 A. I did see it. I wasn't paying
16 attention to every single document that was in his
17 deposition, but it may have been.

18 Q. Johnson & Johnson's testing lab at
19 McCrone for Johnson & Johnson finds half a percent
20 of tremolite in Johnson & Johnson's talc again,
21 right?

22 A. I mean, like, do you have the document
23 I can look at, please?

24 MS. McVEY: Your Honor, can we
25 approach for just a moment?

1 THE COURT: Yes.

2 MS. McVEY: We have severe time limits
3 in this case, an hour and a half, and he
4 has seen this document a number of times.

5 THE COURT: I'll caution him.

6 MS. McVEY: He's -- he's taken five
7 minutes.

8 THE COURT: I'll caution him.

9 MS. McVEY: Thank you, Your Honor.

10 THE COURT: Dr. Kuffner, I've been
11 asked to caution you and I do caution you
12 there are some severe time limits that
13 we're trying to stick to on all of our
14 witnesses, including you.

15 These are documents you've seen many
16 times and many other situations, and taking
17 a lengthy period of time to examine each
18 one will really blow up our time situation,
19 so we'd ask you to be cooperative and just
20 answer the questions the best way you can.

21 THE WITNESS: I actually am trying. I
22 just want to make sure the --

23 THE COURT: Yeah. But taking this
24 length of time with documents like this.
25 We've seen these documents, me and the

1 jury, several times already just in the
2 course of this trial itself. And you're
3 the corporate representative. These
4 documents are very familiar to you, and so
5 I ask you to cooperate in trying to move
6 this thing along.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Thank you, sir.

9 BY MR. ADAMS:

10 Q. Dr. Kuffner, when Johnson & Johnson
11 received this report finding tremolite in their
12 talc, they wrote down "do not use this report,"
13 right?

14 A. They -- they wrote that down because
15 the report was replaced by McCrone when they did
16 additional analyses and that was the final report
17 which they replaced it with.

18 Q. And your testimony is that was the
19 nonasbestos tremolite?

20 A. My understanding, yes, it was.

21 Q. You know that by the year 2000, six
22 people started suing Johnson & Johnson about the
23 asbestos in their talc, right?

24 A. I don't recall the specific date, but
25 there's no question that at some point in time

1 people did sue the company.

2 Q. And what happens when there's a
3 lawsuit -- what happened when real people in real
4 life started suing Johnson & Johnson and saying,
5 "The asbestos in your talc hurt me," is that
6 Johnson & Johnson said, under oath, "Tremolite was
7 never there," right?

8 A. I will tell you there wasn't asbestos
9 in the Johnson's Baby Powder.

10 Q. What Johnson & Johnson said under oath
11 is that the baby powder never contained tremolite
12 at all, right?

13 A. I'd have to see the document.
14 Certainly the company -- and I reviewed the
15 document, it doesn't contain asbestos and the
16 company would say that there's tremolite there,
17 but not tremolite asbestos.

18 Q. You've seen this. This is a
19 verification page, right? Are you able to see it
20 on the screen up there right in front of you?

21 A. There's no -- there's nothing on the
22 screen.

23 Q. Sorry about that. We'll fix that.

24 If you go to the last page,

25 Dr. Kuffner.

1 A. Yes.

2 Q. There's what's called a
3 "Certification" page there. You're familiar with
4 that. That's also called a "Verification" page,
5 right?

6 A. Yes, I'm familiar.

7 Q. That's where -- where in cases like
8 this, each side can send the other side written
9 questions, and they have to answer under oath,
10 right?

11 A. And I'm not a lawyer, but that's my
12 general understanding, yes.

13 Q. And this is Johnson & Johnson signing
14 those interrogatories under oath 24 years ago,
15 right?

16 A. I -- I'm not sure if I've ever seen
17 this document, but...

18 THE COURT: Is it 24 years old? Look
19 at the date on any page of it.

20 THE WITNESS: I see -- is it 1991 I
21 see?

22 THE COURT: Right.

23 All right. Go forward, Mr. Adams.

24 BY MR. ADAMS:

25 Q. Johnson & Johnson knew when it said

1 under oath, "There was never tremolite in our baby
2 powder," they knew if people knew, there would be
3 an outrage, right?

4 A. I see -- I see the document we just --
5 we just reviewed and yeah, you're -- you're
6 piecing things together. It's not the exact words
7 that are in this document, right? It says the
8 furor was about boric acid. And so these are
9 pieced words together, but it is written in the
10 document that, yes, there was concern raised in
11 the document.

12 Q. Do you know what they found in Michael
13 Perry's lungs?

14 A. I believe what they found in Michael
15 Perry's lungs is -- talking about the tissue
16 digestion that was done?

17 Q. Yeah.

18 A. Yes. I believe they found tremolite,
19 winchite and talc.

20 Q. Are you familiar with the NIST
21 tremolite standard? Have you ever seen that
22 before?

23 A. I -- I don't recall specifically
24 seeing this, no.

25 Q. Have you seen some of the images of

1 the tremolite in Johnson's Baby Powder?

2 A. Over time I have seen images. I'm --
3 I'm a medical doctor and a medical toxicologist.
4 I'm not a microscopist, so -- but I have seen -- I
5 have seen pictures.

6 Q. They just -- they look just like the
7 tremolite in Michael Perry's lung, right?

8 A. I'm -- I'm not a microscopist. And my
9 general understanding is that tremolite can have
10 different and similar appearances. But I'm not a
11 microscopist. I'm a medical doctor and
12 toxicologist.

13 Q. In 2019, the FDA found asbestos in
14 Johnson's Baby Powder, right?

15 A. They -- that's what they -- they claim
16 to have found at very low levels.

17 Q. This is a document you've seen many,
18 many times. We've marked this Exhibit 386. It's
19 what the FDA said about Johnson's Baby
20 Powder -- right? -- in 2019?

21 A. Yes? That's the -- the FDA had it
22 tested by an outside lab, and that's what they --
23 they said that was their labs that they found.

24 Q. What did the FDA call the asbestos in
25 Johnson's Baby Powder?

1 A. They -- the -- they said asbestos in
2 general -- I believe they used a term that
3 asbestos is -- is poisonous or it is -- is a
4 poison. They didn't necessarily say that was
5 Johnson's Baby Powder, but asbestos is. And then
6 they said that if you have asbestos in the
7 product, it's adulterated, which in terms of
8 adulterated I would agree with, the company didn't
9 want asbestos in their product, and if there was
10 asbestos there, I would agree that it's
11 adulterated.

12 Q. Did the FDA say 0.00002 percent
13 asbestos in a powdered product for babies is safe?

14 A. The FDA didn't -- didn't say that, and
15 I would say for me when it comes to whether it's
16 safe, you need to do an exposure assessment and
17 find out how much would get into a baby. But I
18 would say, certainly, the company wouldn't want
19 asbestos in the product. As a chief medical
20 officer, I wouldn't want asbestos in the product.

21 Q. It was a big, big deal to Johnson &
22 Johnson when the FDA found asbestos in its
23 product, right?

24 A. It -- it was the -- the first time
25 that the FDA had said that they found asbestos in

1 the product, and it certainly was a big deal to
2 the company, and it was a big deal to me. I was
3 the chief medical officer in charge of safety at
4 that time. And as soon as I heard about it, I --
5 I traveled and flew back to the United States
6 immediately. It was the first time. It was
7 shocking to me that the FDA found it.

8 Q. What the FDA found matched hundreds
9 and hundreds and hundreds of pages of confidential
10 internal corporate documents from Johnson &
11 Johnson going back 60 years, right?

12 A. No. I disagree.

13 Q. They found the same stuff?

14 A. I disagree with that. The -- and I've
15 looked at the -- the company -- company documents,
16 and asbestos was not confirmed in the company
17 product over decades and decades and decades.

18 Q. What was different for Johnson &
19 Johnson about the FDA's 2019 findings, is it
20 wasn't in a confidential corporate document. It
21 was front-page news, right?

22 A. I -- I disagree with the premise
23 there. The company documents don't show confirmed
24 asbestos in the company's product. They
25 absolutely don't. This was the first time that

1 the FDA said that they thought they found asbestos
2 in the company's product. I -- I disagree with
3 the overall finding based upon the company's
4 investigation, but this is what the company said.
5 I mean -- this is what the FDA said.

6 Q. After the FDA said this publicly in
7 2019, Johnson & Johnson changed its name to LTL
8 Management, LLC, right?

9 A. What I would say is that there was a
10 time period, I believe it was after 2019, that
11 there -- there were some changes in how -- the
12 companies under Johnson & Johnson, there's many
13 different companies, how -- how they changed their
14 names -- I understand that, yes, they did change
15 their name.

16 Q. You're the corporate representative
17 for -- not LTL Management but LLT Management,
18 right?

19 A. Yes, that's my understanding.

20 Q. LTL Management, formerly Johnson &
21 Johnson, changed its name to LLT Management,
22 right?

23 A. That -- that's my general -- general
24 understanding. When it comes to all the -- the
25 corporate names, that's -- that's not something

1 that I really looked into. I look into the
2 medical safety aspects of the product.

3 Q. As the corporate representative and
4 the spokesperson for LTL Management, can you tell
5 the jury whether or not that's just a shell
6 company?

7 A. When -- when it comes to the different
8 corporate entities and -- that's not something
9 that I've -- I've looked into. And I haven't been
10 asked to look into that as the corporate
11 representative. There -- there are different
12 corporate representatives who look into different
13 things. But when it comes to the safety of the
14 products, certainly that's what I focus on.

15 Q. You know that shortly after the FDA
16 found asbestos in Johnson's Baby Powder in 2019,
17 they named the Johnson & Johnson's company Legacy
18 Talc Liabilities. That's what LTL stands for,
19 correct?

20 MS. BUENO: Objection, Your Honor.

21 THE COURT: What's the grounds for
22 your objection?

23 MS. BUENO: That --

24 THE COURT: Wait a minute. If your
25 objection is you don't think it's true,

1 that's not for me to make a -- that's for
2 the witness to answer. He can ask a
3 question, and if it's not true or it is
4 true, that's for the witness to answer.
5 That's not the foundation for proper
6 objection.

7 MS. BUENO: Could we approach,
8 Your Honor?

9 THE COURT: I'm not going to -- I'm
10 not going to do a lot of this. It is a
11 perfectly legitimate question to ask.

12 Repeat the question, Mr. Adams.

13 BY MR. ADAMS:

14 Q. LTL stands for Legacy Talc
15 Liabilities, right?

16 A. I don't know.

17 THE COURT: That's a proper question.
18 Go right ahead.

19 And this -- Dr. Kuffner, that is a
20 question you ought to know the answer to.
21 You -- it's part of your responsibility as
22 corporate rep. It's a real simple
23 question. What does LTL stand for?

24 THE WITNESS: I -- I don't know what
25 LTL stands for.

1 BY MR. ADAMS:

2 Q. Legacy means in the past, right?

3 A. Well, legacy does -- does mean in the
4 past, right. But I'm telling you, I don't know
5 what LTL stands for. I haven't been involved in
6 any of those discussions.

7 Q. If we're trying to figure out what
8 this LTL Management, LLC, company is, whether it's
9 a real company or just a shell company, you know
10 that you've never seen their corporate
11 offices -- right? -- for LTL?

12 A. I -- I haven't been into LTL's
13 corporate offices, no.

14 Q. You don't even know if they have a
15 corporate office, right?

16 A. I don't know if they do. There are
17 many different companies within Johnson & Johnson,
18 and not all of them have specific corporate
19 offices.

20 Q. Have you ever met a single employee
21 from LTL?

22 A. I -- I don't -- I can't recall saying
23 that I know somebody specifically works for LTL,
24 just like people wouldn't know in Johnson &
25 Johnson specifically what Johnson & Johnson entity

1 I work for. They know I'm chief medical officer,
2 but they wouldn't know what entity I work for.

3 Q. And so can you tell the jury a name of
4 a single human being who actually works for this
5 company?

6 A. I -- I don't know the name of any --
7 any person who works for the company, just like
8 people would -- they know I'm chief medical
9 officer but they couldn't tell -- tell you what
10 company I work for under the Johnson & Johnson
11 umbrella.

12 Q. I want to ask you a few hopefully just
13 very, very simple, basic questions, okay?

14 A. Sure.

15 Q. This -- this stuff can get real
16 technical -- right? -- with the microscopes, the
17 XRD, the TEM, all the different asbestos acronyms,
18 all that stuff. I just want to ask you some real
19 simple questions.

20 It's not okay to sell baby powder with
21 asbestos in it, right?

22 A. I -- I agree 100 percent with that.
23 You don't want asbestos in Johnson's Baby Powder.

24 Q. There's no excuse for selling baby
25 powder with asbestos in it, right?

1 A. I -- I would agree with that, that the
2 company didn't want -- didn't have asbestos in the
3 baby powder. I agree with you.

4 Q. The reason it's not okay to sell
5 asbestos-containing baby powder is because
6 asbestos hurts people, right?

7 A. So what -- what I would say is it has
8 the potential to hurt people. But if you want to
9 understand will it hurt people, you need to
10 understand how much of the asbestos in the bottle
11 would get into the air and would get into the
12 body. But the company certainly didn't want, and
13 I as the chief medical officer don't want asbestos
14 in the product.

15 Q. What amount of asbestos in a powdered
16 product used on babies is okay with Johnson &
17 Johnson?

18 A. There -- there is no -- I would say no
19 amount of asbestos is okay with the company in --
20 in the product.

21 Q. No amount of asbestos in baby powder
22 is safe, right?

23 A. That -- that's a different question.
24 The question of did the company want it in the
25 product? Absolutely not. But whether the amount

1 in the product is actually going to cause injury
2 or disease or mesothelioma, that's a completely
3 different question.

4 Q. All these additional things we need to
5 know about how much asbestos was in the paper
6 [sic], that's a new -- in the powder, that's a new
7 position for Johnson & Johnson, right?

8 A. Absolutely -- absolutely not. You
9 know, as a -- as a toxicologist working in the
10 company, and before I got to the company working
11 at the poison center, the most important thing to
12 understand if something is going to cause an
13 injury to somebody is how much the dose that
14 somebody's exposed to. That is not new for
15 Johnson & Johnson. That's not new for me as a
16 toxicologist.

17 Q. What Johnson & Johnson used to say,
18 the corporate spokespersons that came before you
19 under oath, is that there's no safe level of
20 asbestos in Johnson's Baby Powder no matter what,
21 right?

22 A. I think what -- what people would say
23 is -- and I read a lot of the testimony -- I
24 believe there's no known safe -- safe level of --
25 of asbestos, but as -- there's -- people get

1 exposed to asbestos in background all the time.

2 So there has to be a safe level.

3 Q. If there's no known safe level of
4 asbestos, and that's Johnson & Johnson's position,
5 do you know why for the entire week Johnson &
6 Johnson's been telling this jury that there is a
7 safe level of asbestos and the asbestos in their
8 baby powder was safe?

9 A. What -- what I would say -- I sat in
10 on, you know, that day I was at court. I've
11 watched the videos. There's two different
12 concepts. The company didn't want asbestos in
13 their baby powder, but whether bad -- we can go
14 back to that 0.00002 percent, whether that's
15 actually going to cause harm to somebody, that's a
16 completely different topic. And that's something
17 I dealt with at the poison center all the time in
18 terms of what's the dose that could hurt someone.

19 Q. Let's take a look at -- at some of
20 Johnson & Johnson's sworn testimony, just real
21 quick clips on this. I think you referred to it
22 already, but this is Dr. Hopkins. You're very
23 familiar with this clip, right?

24 (Playing video.)

25 Q. And Johnson & Johnson knows there's no

1 safe levels of asbestos exposure, especially for
2 children, correct, sir?

3 A. Again, there's no known safe level.

4 Q. That's right. Especially for
5 children, correct?

6 A. Yes.

7 (End playing video.)

8 BY MR. ADAMS:

9 Q. It wasn't Dr. Hopkins who gave that
10 testimony before. You've seen that before, right?

11 A. I have seen that before. I agree with
12 it. That's what I just told you. There's no
13 known safe level.

14 Q. What was the level of asbestos that
15 was safe for Michael Perry?

16 A. So to -- to some degree it would
17 depend, right? We would say background levels
18 of -- of asbestos we're all exposed to some -- you
19 want to minimize background as much as you can.
20 And so I would say we try to minimize asbestos
21 exposures.

22 But I've concentrated on would the
23 potential amount of asbestos in Johnson's Baby
24 Powder, that FDA finding, would that potentially
25 cause disease for someone, and based on my

1 assessment, the company assessment, it wouldn't.

2 Q. The -- the asbestos that the FDA
3 called poison?

4 A. They -- they said -- I just want to
5 make sure we're all on the same page -- asbestos
6 is absolutely a carcinogen. It is a poison.
7 Whether it's going to cause disease in someone
8 depends upon the dose that someone is exposed to,
9 and they are two different concepts, and I'm not
10 saying that it's okay to have asbestos in
11 Johnson's Baby Powder. I'm not saying that. But
12 if you want to understand if it's going to cause
13 disease, mesothelioma, you need to understand the
14 dose that someone is exposed to.

15 Q. Why isn't it okay to have asbestos in
16 Johnson's Baby Powder?

17 A. Why -- why wouldn't it be okay?
18 Because we don't want asbestos in Johnson's Baby
19 Powder. It potentially could cause harm to
20 people. We certainly don't want asbestos in baby
21 powder. The company took many efforts, testing
22 over the years to make sure that it wasn't there.
23 We don't want it there. But it's -- a different
24 concept is, if it did get there, will it actually
25 cause disease. It's -- it's two different

1 concepts.

2 Q. Whatever dose Michael Perry had, it
3 was enough to give him terminal cancer, right?

4 A. I would say what -- whatever dose he
5 had over -- over his lifetime from whatever the
6 source it was, it -- it may have been enough to --
7 to cause him cancer, or mesothelioma. It's
8 possible his mesothelioma came from other -- you
9 know, other reasons, but if -- if you're going to
10 say it's from asbestos, then wherever he got it,
11 it would have been enough to cause mesothelioma,
12 if it was from asbestos.

13 Q. Do you know Steve Mann? Do you know
14 who he is?

15 A. I -- I don't know him personally. He
16 was a -- he was a toxicologist, not a medical
17 doctor toxicologist, but a Ph.D. toxicologist. He
18 worked at the company, I believe, for four years
19 prior to my time. I never interacted with him at
20 the company.

21 Q. He was Johnson & Johnson's director of
22 toxicology, right?

23 A. For -- for a number of years, I think
24 for a four-year period, yes.

25 Q. Have you reviewed his deposition that

1 the jury is going to see this afternoon?

2 A. I -- I have. I believe I read his
3 deposition. I don't believe I've seen it or maybe
4 I've seen clips of it.

5 Q. I'm just going to show you a quick
6 clip that's going to be shown to the jury this
7 afternoon where he talks about what level of
8 asbestos is acceptable in Johnson's Baby Powder,
9 okay?

10 A. Okay.

11 (Playing video.)

12 Q. Well, if there is asbestos in the
13 talc, then it is carcinogenic, right?

14 A. There's no known safe level for
15 asbestos.

16 (End of video.)

17 BY MR. ADAMS:

18 Q. Johnson & Johnson's own internal
19 documents say there's no safe level of asbestos in
20 talc as well, right?

21 A. I think we're parsing words here.
22 At -- at the end of the day, I've said there's no
23 known safe level. I think that's just what
24 Dr. Mann said. I heard Dr. Hopkins say it. And
25 so we didn't want it in -- in the product. But

1 whether any specific level is going to cause
2 disease, you need to do a dose assessment.

3 Q. Have you seen this document,
4 Exhibit 213?

5 A. It's hard to see with all the stuff on
6 here. I don't know -- do you have the document?

7 Q. Can we just agree, in the interest of
8 time, this is a Johnson & Johnson document? Do
9 you see the Bates stamp on the bottom?

10 A. I do see the Bates stamp on the
11 bottom, yes.

12 Q. And it says: From a product safety
13 standpoint, it's necessary that the talc powder be
14 free of asbestiform minerals, right?

15 A. I don't know if that's what it says.
16 You cut and paste things out of these documents.
17 They're quite long, so -- thank you very much.
18 Can you just point out where the sentence is?

19 Q. You're Johnson & Johnson, right?

20 A. I am Johnson & Johnson.

21 Q. You're the company?

22 A. Yes.

23 Q. They're your documents, right?

24 A. They -- they are our documents --

25 THE COURT: Have you seen that

1 document before?

2 THE WITNESS: I may have seen it. I
3 don't recall specifically if I have or
4 haven't.

5 BY MR. ADAMS:

6 Q. Do you agree or disagree with these
7 words on the screen?

8 A. I can't agree or disagree --

9 THE COURT: Doctor -- Doctor, don't
10 quarrel with him about the question. He's
11 asking you a real specific question. Just
12 look at the words on the screen. He's
13 asking you whether you agree or disagree
14 with those words.

15 THE WITNESS: You're not asking me if
16 these specific words are in a sentence in a
17 document. You're asking me if I disagree
18 or agree with this statement --

19 THE COURT: That's correct.

20 THE WITNESS: -- even though it's been
21 pieced together. I would say -- I would
22 say, in general, yes. From a product
23 safety standpoint, I would say, yes, we
24 would want the talc powder to be free of
25 what I would say is asbestos.

1 BY MR. ADAMS:

2 Q. The jury has heard a lot about OSHA
3 and different OSHA TLV or PEL levels. Do you know
4 what that is?

5 A. Yes. OSHA is the Occupational Safety
6 and Health Administration. We talked about
7 time-weighted average over an eight-hour work --
8 work shift or -- and then you say what's the PEL,
9 the permissible exposure limit, the abbreviation
10 for that.

11 Q. OSHA says the same thing as Johnson &
12 Johnson's old director of toxicology and old
13 corporate representative, right?

14 A. Again, I don't -- this document is
15 probably many, many pages long. I'm not sure what
16 document it's coming from. I would agree that, in
17 general, OSHA would say that, yes, there's
18 probably no known safe level of asbestos exposure,
19 similar to what -- what I'm saying.

20 What I would say is, you know, when it
21 comes to short duration of a few days, I would say
22 you need to know what the actual exposure was for
23 me to agree to that specific part of it.

24 Q. When OSHA says there is no safe level
25 of asbestos exposure for any type of asbestos

1 fibers, does Johnson & Johnson agree or disagree?

2 A. I would -- what I would say is, in
3 general, there's no known safe level -- right? --
4 for different -- different types of asbestos
5 fibers.

6 Q. Do you agree or disagree as Johnson &
7 Johnson with OSHA's statement that there is no
8 safe level of asbestos exposure for any type of
9 asbestos fiber? Do you agree or disagree as
10 Johnson & Johnson?

11 A. What I would say: There's no known
12 safe -- safe level for asbestos in general.

13 Q. How about there's no safe level?

14 A. I would say there's no known safe
15 level, because in order to understand whether it's
16 safe, you need to do an exposure assessment,
17 understand what somebody was actually exposed to.

18 Q. Johnson & Johnson as an employer would
19 be required to follow the federal OSHA asbestos
20 regulations, correct?

21 A. Yes. We don't -- we don't make
22 asbestos, but certainly we need to follow the OSHA
23 regulations.

24 Q. Here, OSHA says it's aware of no
25 instance in which exposure to a toxic substance

1 has more clearly demonstrated detrimental health
2 effects on humans than has asbestos exposure.

3 Does Johnson & Johnson agree or disagree?

4 A. This is an extremely broad statement.
5 As a toxicologist, they're trying to compare
6 asbestos to any other chemical that is out there.
7 There are other chemicals, certainly, that do
8 cause adverse health consequences on humans.

9 If you're talking about mesothelioma,
10 in a general population, it's horrible for anyone
11 who gets it, but it's a relatively small number.
12 There's probably other toxins or chemicals that,
13 if you want to talk more on a broader -- a broader
14 population, can cause more damage.

15 I'll give you an example. Like,
16 smoking, right? Smoking causes lung cancer. It
17 probably causes many more deaths than if you want
18 to say asbestos-causing mesothelioma. So to some
19 degree, it's in -- as a toxicologist, you need to
20 look at all the data, and so -- there are other
21 exposures as well.

22 Q. What OSHA said is asbestos is the
23 worst one, right?

24 A. That's what they're saying. You're
25 asking if I agree with it. I think there's other

1 chemicals that if you want to say the burden on
2 society, you know, is greater than asbestos.

3 Q. Is it Johnson & Johnson's position to
4 this jury that it is safe for a human being to
5 dust themselves from head to toe with an
6 asbestos-containing baby powder for over 45 years?
7 Is that Johnson & Johnson's testimony to the jury?

8 A. What -- what I would say is, you don't
9 want asbestos in -- in baby powder to begin with.
10 Our -- our baby powder didn't contain asbestos.

11 But if you want to talk about safe in
12 terms of is it going to cause disease, you need to
13 do an exposure assessment. I wouldn't want people
14 to be exposed to talc with asbestos. But if
15 you're asking me did that cause someone's disease,
16 well, I'd need to do an exposure assessment to
17 figure that out.

18 Q. We know that it wasn't safe for
19 Michael Perry, right? Because we looked in his
20 lungs and found tremolite asbestos and talc in his
21 lungs, right?

22 A. They say they found tremolite,
23 winchite and talc in his lungs. So if you're
24 going to say that -- you know, the tremolite, the
25 winchite was the cause of his mesothelioma, then

1 somehow he got a large enough dose to cause
2 mesothelioma.

3 Q. How?

4 A. How -- how did he get a large enough
5 dose?

6 Q. (Nods head.)

7 A. There's probably many ways that he
8 could have got a large enough dose from his
9 exposure over his lifetime. If you're talking
10 about is it our product, I don't believe it was
11 caused by Johnson's Baby Powder based upon my --
12 my understanding of the -- of the data. So I
13 wouldn't say that our product caused his -- his
14 mesothelioma.

15 Q. Johnson & Johnson denies that the
16 tremolite in its baby powder that's now in
17 Michael Perry's lung played any role at all, zero,
18 in Michael Perry's mesothelioma. Do I have that
19 right?

20 A. What -- what I would say is we
21 didn't -- we don't -- didn't have asbestos in
22 Johnson's Baby Powder. So I would say Johnson's
23 Baby Powder didn't cause his mesothelioma.

24 And the type of tremolite that was
25 with -- at very trace levels within our product

1 was tremolite. It wasn't tremolite asbestos.

2 So I would say, no, I don't believe
3 the data supports that Johnson's Baby Powder
4 caused Mr. Perry's mesothelioma.

5 Q. One of the things that you know at
6 Johnson & Johnson is you take this case very, very
7 seriously, right?

8 A. I take it absolutely seriously as --
9 as the chief medical officer.

10 Q. You understand how big and serious
11 this case is, right?

12 A. I would say I feel bad for anyone who
13 has mesothelioma, as a physician, as a
14 toxicologist, and emergency medicine physician.
15 So, yes, it's -- it's a big deal and part of the
16 reason why I'm here testifying, absolutely
17 seriously.

18 Q. You completely understand that we, as
19 the spokespeople for Michael Perry, allege that
20 Johnson & Johnson played a role in giving him the
21 cancer that is going to end his life, right? You
22 understand that?

23 A. I believe that's -- that's your
24 allegation. I -- I disagree with that.

25 Q. Johnson & Johnson vehemently denies

1 that, right?

2 A. When you -- you use the word
3 "vehemently," I don't think that's a word that I
4 would use. I would say, I don't believe Johnson's
5 Baby Powder caused his mesothelioma based upon all
6 the review of the company documents that I've
7 done, exposure assessments that have been done and
8 my understanding of the scientific data.

9 So I would say, based upon scientific
10 grounds, that is why I would say I don't believe
11 Johnson's Baby Powder caused his mesothelioma.

12 Q. And because of that, Johnson & Johnson
13 hires experts in these cases to come defend the
14 company, correct?

15 A. Yes. My understanding is plaintiffs
16 hire experts, and company [sic] hires experts,
17 and that's my understanding of how these cases go.

18 Q. Do you know who these people are?

19 A. I -- I've met -- I've met some of
20 these people. I don't -- I don't know all of the
21 people, no.

22 Q. You know that -- did you know that
23 these are the experts that Johnson & Johnson hired
24 in this case?

25 A. I -- I haven't asked or reviewed who

1 were the experts in the case.

2 Q. Before you came and told the jury that
3 Johnson & Johnson had nothing to do with Michael
4 Perry's cancer, did you even check and see which
5 experts they hired in the case?

6 A. I -- I didn't check to see. As a
7 medical toxicologist, I've looked at the company
8 data, I've looked at the scientific data, but I
9 didn't ask our counsel about who was coming,
10 potentially, or involved in this case, no.

11 Q. Did you review any of the reports each
12 of the six experts hired by Johnson & Johnson have
13 prepared in this case?

14 A. I -- I didn't specifically -- I know
15 I've seen a few reports. I didn't review all the
16 reports, no.

17 Q. Did you review any of the depositions
18 each of the six experts hired by Johnson & Johnson
19 gave in this case?

20 A. I -- I did not review the depositions,
21 no.

22 Q. But you understand that within this
23 case, experts were hired, paid; they prepared
24 reports, and they gave depositions. Fair?

25 A. Again, I don't know who gave specific

1 depositions, but --

2 THE COURT: Just answer the question,
3 Dr. Kuffner.

4 THE WITNESS: I would generally agree.
5 People -- experts gave depositions. I
6 don't know who did.

7 BY MR. ADAMS:

8 Q. And then there was a tissue digestion
9 done, and we looked inside Michael Perry's lungs,
10 right?

11 A. Yes. I believe it was Dr. Longo who
12 did the tissue digestion.

13 Q. Do you know if any of the six experts
14 are still going to come defend Johnson & Johnson?

15 A. That's not something that I
16 specifically know.

17 Q. Do you know if even one of them is
18 going to come?

19 A. I've concerned myself with myself
20 being here. I don't know when it comes to other
21 people who would be coming.

22 Q. One of the things I think we can agree
23 on probably is that Johnson & Johnson tested its
24 baby powder thousands of times for asbestos,
25 right?

1 A. I would agree about that, yes.

2 Q. And we heard a whole lot on the video
3 before you came about testing and different
4 testing methods, J4-1, TM7024. You heard that,
5 right?

6 A. Yes.

7 Q. And we've mentioned it a couple of
8 times, but I'm not sure people know what those
9 terms mean yet because I haven't done a great job
10 of explaining them. You know what they mean,
11 right?

12 A. Yes.

13 Q. J4-1 is XRD, right?

14 A. It's XRD coupled with polarized light
15 microscopy.

16 Q. Anything else you want to add to that
17 description?

18 A. It's a -- J4-1 was an industry
19 standard that was developed in the early '70s
20 working -- working with FDA, and it's been used --
21 used across the industry.

22 Q. It's XRD first, right?

23 A. Yes, it is XRD first.

24 Q. It's not XRD and polarized light,
25 right?

1 A. It's -- you start with XRD, and if
2 there is a finding on XRD, which you can't tell
3 whether something is asbestos or not, you go on to
4 use polarized light microscopy.

5 Q. Only if you find it with XRD, right?

6 A. Yes, that's -- that's the method.

7 Q. And so the weakest test there is, XRD,
8 is what Johnson & Johnson used, and they only
9 checked it with another microscope if they found
10 it with the weakest test, right?

11 A. No, that's -- that's incorrect,
12 because Johnson & Johnson used J4-1. It also used
13 transmission electron microscopy. And so it was a
14 combination of the tests.

15 Q. We'll get to the TEM in just a second.
16 But when -- when the jury saw all those tests put
17 down by the Johnson & Johnson lawyer over and over
18 and over in the Hopkins video and they said
19 "nondetect," "nondetect," "nondetect," almost all
20 of those were with XRD and nothing else, right?

21 A. Some of them with -- with XRD. Some
22 of them were with XRD, polarized light microscopy
23 and TEM. Some were with just TEM. You have to go
24 back and look at each individual report. But
25 certainly, multiple different types of methodology

1 were used.

2 Q. The TEM and the TM7024 that you
3 mentioned that Johnson & Johnson also used
4 sometimes, that's the one with the big, powerful
5 microscope, right?

6 A. Yes, that's the -- the transmission
7 electron microscopy. Yes.

8 Q. And so some of those reports that were
9 shown in the Dr. Hopkins video about nondetect,
10 they were with the big, powerful microscope,
11 right?

12 A. Some of them likely would have been.
13 Again, I'd have to go back and look at -- if I've
14 reviewed many of these reports, what each
15 individual report, it would say what was used in
16 that report.

17 Q. Well, Johnson & Johnson said
18 specifically through Dr. Hopkins that they
19 exceeded industry standards. Do you remember
20 that?

21 A. We did exceed industry standard
22 because --

23 Q. That -- that sure sounds good, right?

24 A. I don't know how it sounds. From a
25 scientific perspective, I think it was good, that

1 you had J4-1, and then the company also used
2 transmission electron microscopy, which was a more
3 sensitive type of test. So the company used both.

4 Q. When the company used TEM, the big,
5 powerful microscope, they literally used a program
6 that said you could find asbestos, document
7 asbestos, see asbestos and write down that it
8 wasn't there, right?

9 A. I -- I disagree with that. I think
10 we're getting into limits of detection, limits of
11 quantification, which I think that's potentially
12 what -- what you're talking about.

13 Q. We're getting into the records in
14 Johnson & Johnson's own TM7024 that said you have
15 to have at least five asbestos fibers of one type
16 or you can write down "nondetect," that word we
17 saw over and over and over and over again in the
18 Hopkins video, right?

19 A. The -- the methodology that was used
20 changed over time. But at one point, yes, in
21 order to quantify the amount, that -- that's
22 correct. But that changed over time as the
23 science evolved, as you would expect it would
24 change.

25 Q. And so you could find 16 asbestos

1 fibers in a microscopic sample you only looked at
2 for -- you only had to look at for one hour and
3 you could write down "nondetect." That's okay
4 with Johnson & Johnson, right?

5 A. At a certain point in time, as the
6 science was evolving, that was -- that was what
7 the science was. Over time, that evolved, and
8 that was not the standard that was used in the
9 more recent years as the science evolved.

10 And as you talk about it, I'm not
11 aware of, in looking at the company documents,
12 where if somebody actually said, oh, there's three
13 fibers here, three fibers here, three fibers here
14 we're not going to -- we're not going to identify.

15 Q. Every single nondetect test shown on
16 that video to the jury was either -- was either
17 XRD, the weakest microscope, or TM7024, where they
18 rigged the big one, right?

19 A. That is absolutely false when you use
20 the word "rigged." Johnson & Johnson is a
21 scientifically based company, still is, always has
22 been.

23 The scientists kept up to date with
24 the methodologies. We used outside experts who
25 were experts at the time in their field. And so

1 I -- if you want to use "vehemently," I vehemently
2 disagree that it was rigged.

3 Q. Did J&J have a protocol where you
4 could find 16 asbestos fibers in a microscopic
5 sample of talc put on babies for over 100 years
6 and write down it wasn't there, yes or no?

7 A. You say for over 100 years. I --
8 first of all, I -- I disagree with that. The
9 standard only started to be developed in the '70s.

10 But as we've talked about, at a point
11 in time, that was the science. As the science
12 evolved, as the technology evolved, testing
13 standards evolved, Johnson & Johnson's methodology
14 evolved as well. As I said, we work with the
15 world's experts on this.

16 Q. Well, what we know and we can agree on
17 is that Johnson & Johnson tested this talc baby
18 powder for asbestos thousands of times, fair?

19 A. Yes.

20 Q. Did they ever tell the moms that they
21 were selling baby powder to that Johnson & Johnson
22 was so worried about asbestos in its baby powder
23 that it tested it thousands of times?

24 A. I -- I don't believe we -- we told the
25 moms that. I would expect that the moms would

1 expect that of us as Johnson & Johnson, that we
2 would test the product appropriately and certainly
3 make sure that the product didn't contain
4 asbestos.

5 So I don't recall if we've told them
6 that, but I believe that certainly would be an
7 expectation, that we would test the product and
8 there would not be asbestos in the product.

9 Q. Do you think the moms putting the baby
10 powder on their babies would have wanted to know
11 that Johnson & Johnson was testing the baby powder
12 for the worst carcinogen in history, according to
13 OSHA, thousands of times? Do you think the moms
14 would have wanted to know?

15 A. I think what moms would want to know
16 was that, as a science-based company, we did test
17 the product; the product didn't contain asbestos.
18 And I believe that's what moms would want to know,
19 that it was a high-quality product, which it was.

20 Q. Why didn't Johnson & Johnson tell the
21 people ever buying their baby powder that they had
22 to test it thousands of times for asbestos?

23 A. What I would say is, I've worked in
24 the company for many years and been responsible
25 for safety for many different products. We test

1 almost all products for all different things to
2 make sure that the product is high quality. And
3 so we don't go out and have those discussions. If
4 people want to know, happy to have those
5 discussion.

6 But what people want to know: Is it a
7 high-quality product? And they trust Johnson &
8 Johnson and the scientists in Johnson & Johnson,
9 medical doctors like me in Johnson & Johnson to
10 make sure that the company is doing things
11 appropriately, and that was my job. And I think
12 that's what people actually want to know, that we
13 are doing things appropriately, which we were.

14 Q. The reason Johnson & Johnson didn't
15 tell the moms and the folks and the people and the
16 teenagers and the young boys and the adults and
17 everybody using their baby powder in their home on
18 their bodies that they had to test it for asbestos
19 is because they knew that they built the entire
20 company on baby powder, right?

21 A. I -- I disagree with that. There's a
22 couple of things you're saying in there. One,
23 you're talking about telling people about testing.
24 We talked about that. They expect a high-quality
25 product. I believe they trust us to make sure

1 it's a high-quality product, which we did.

2 If you want to talk about was
3 Johnson's Baby Powder an important part of
4 Johnson & Johnson over the years, I would say,
5 absolutely, as part of the baby franchise, which
6 was an important part of Johnson & Johnson over
7 the years.

8 Q. These are some of the words that
9 Johnson & Johnson used for over 50 years to
10 describe its baby powder, right?

11 A. So there's many different words up
12 here. Many of these are probably from different
13 documents. What I would say is that people in --
14 mostly different people in marketing, people in
15 marketing, yes, would use different terminology to
16 discuss the baby franchise, not necessarily
17 terminology I agree with. But, yes, you can find
18 documents where marketers may have used these type
19 of terms.

20 Q. And what the jury just heard is when
21 Dr. Hopkins was asked about the baby powder, he
22 said: We didn't make that much money from it. Do
23 you remember that?

24 A. I -- I saw his testimony, and I think
25 what he was talking about was -- again, I don't

1 know -- as the chief -- chief medical officer, I
2 don't concern myself with money.

3 I think he was saying, you know, at
4 that time maybe he was being asked. I -- I don't
5 know what the specific sales were.

6 What I do know is that, gradually,
7 over time, the sales of the product decreased, and
8 it became a less important product based upon all
9 the other products that the company had. I'm not
10 telling you it wasn't an important product, but
11 the baby franchise was always important to the
12 company.

13 Q. What Dr. Hopkins said is, "Initially,
14 we made 20 million a year for the baby powder."
15 Then he adjusted it to 25. Then he said 40.
16 Correct?

17 A. I -- I saw the video like you did. I
18 think, yes, I mean, he didn't know specifically
19 how much they made, nor do I know how much they
20 made.

21 Q. But the money that Johnson & Johnson
22 made specifically from the baby powder doesn't
23 even begin to capture the importance of the baby
24 powder to the company, fair?

25 A. I would agree with the concept of --

1 not just -- I don't think it's baby powder. It's
2 the baby franchise. The baby franchise you've
3 heard Dr. -- I think it was Dr. Hopkins talk about
4 it, whether it's the golden shampoo, the -- the
5 pink lotion. Those certainly were important to
6 the company. And at different times, they were
7 more important than you want to say in later years
8 as the company expanded all the products that they
9 sold.

10 Q. In 1966, someone inside Johnson &
11 Johnson pointed out that the talc baby powder had
12 no medicinal -- medicinal value, correct?

13 A. I -- I believe this is -- I believe
14 this is from a medical article. And I don't -- I
15 don't know if you have it. But it just relates to
16 a medical article that was published in the
17 medical literature where there were children who
18 got exposed, three -- I think it was three kids --
19 who had died from taking a bottle of baby powder
20 and inhaling the whole thing and just getting a
21 lot of dust and particles in the lung. I believe
22 this is what that's from, if I can recall correct.

23 Q. This has no medicinal value, right?

24 A. That's what -- I believe this is what
25 was written in the scientific article. I don't

1 think this was written by someone within J&J. I'm
2 happy to review the -- the specific document, but
3 I believe that was written in the medical article.
4 But I -- I think this is what this one was.

5 Q. That a J&J employee noticed and passed
6 along to J&J -- right? -- in this document?

7 A. You're talking about a -- something in
8 the medical literature related to talc -- I don't
9 know if it was necessarily Johnson & Johnson's
10 Baby Powder. It could have been.

11 But, yes, I would expect people in the
12 medical department where I work, people in the
13 safety department to keep up to date with the
14 medical literature. And so it's not surprising to
15 me that we have this in the files.

16 And so, yes, people in the company
17 were -- were aware of that. Again, that's kids
18 taking a bottle and picking it up -- given it to
19 play with. I spent my -- I spent my whole career
20 in poison control --

21 Q. I promise we're going to get to that.

22 A. Okay. Sure.

23 Q. I promise. I just hope you can answer
24 my very specific short question so we can get
25 through this.

1 A. Sure.

2 Q. And then your lawyers are going to
3 stand, and they're going to ask you all the
4 questions you want. You can explain all you want.

5 A. Sure.

6 Q. This is a document you've seen
7 probably hundreds of times, not an exaggeration at
8 all, right?

9 A. I don't know how many -- how many -- I
10 think hundreds is probably a lot. But I've
11 absolutely seen this, and I -- I've read this
12 scientific article. And this is -- this is from a
13 scientific article.

14 Q. I've shown you this document many
15 times.

16 A. You've likely shown me this document,
17 yes.

18 Q. Okay. You know exactly what this
19 document says and what it is, right?

20 A. I believe -- I'm happy to see the
21 document. I believe it relates to a scientific
22 article in the published literature. I believe
23 the authors of that scientific article are Hughes
24 and Kalmer, and it talks about that type of
25 accidental exposure. That's what I believe it's

1 from. You haven't shown me the document, but
2 that's the best of my recollection.

3 Q. You know with certainty this is a
4 document where an employee of Johnson & Johnson
5 found a medical article, took an excerpt out of
6 it, and passed it along to Johnson & Johnson.
7 That's exactly what happened, right?

8 A. So now the way that you say that,
9 right, you're saying they took an excerpt out of
10 the article. You didn't say that at the
11 beginning. Yes, this is an excerpt out of the
12 article --

13 Q. What I asked you -- what I asked you
14 at the beginning is: Does it say no medicinal
15 value? It does, right?

16 A. You said, in the beginning, someone at
17 Johnson & Johnson said this. This is a quote from
18 the scientific article Hughes and Kalmer. I read
19 that scientific article.

20 Q. Someone in Johnson & Johnson took the
21 scientific article that said "no medicinal value"
22 and passed it along to Johnson & Johnson, right?

23 A. That's why it's in quotes here. This
24 is from the -- I believe, and I'm happy -- if you
25 show me the article, we can settle this. I read

1 the article. I believe this is from the
2 article --

3 Q. It says: Serves as a foreign body.
4 Right?

5 A. From the article, talc can be -- can
6 be a foreign body, yes --

7 Q. And it says at least three deaths,
8 right?

9 A. Yes. These -- and I read the article.
10 These are young kids who were given the bottle to
11 play with and dumped it into their face and mouth
12 and got the talc in their -- in their lungs.
13 That's -- that's what this is --

14 Q. I didn't ask you about any of that. I
15 just said: Does it say at least three deaths? It
16 does, right?

17 A. It does, from accidental unsupervised
18 ingestion in children.

19 Q. Correct? And we'll get to that.

20 A. Okay.

21 Q. It's from ingestion. It's not from
22 asbestos, right?

23 A. It's -- it's not from -- it's not from
24 ingestion. It's from inhalation. And it's not
25 asbestos.

1 Q. Right. It's from asphyxiation, not
2 asbestos, right?

3 A. Yes.

4 Q. But babies were still dying, right?

5 A. Yes, when the product was given to
6 them as a toy. And the company took steps to
7 prevent this.

8 MR. ADAMS: Your Honor, I move to
9 strike everything after "yes."

10 THE COURT: Denied.

11 BY MR. ADAMS:

12 Q. So what this employee of Johnson &
13 Johnson said was they passed along this article,
14 and then Johnson & Johnson explained why it was
15 still selling talc baby powder, right?

16 A. I don't understand -- we continue to
17 sell -- to sell the product. These were -- it was
18 an accidental unsupervised ingestion in a kid.

19 Q. Johnson & Johnson said: The baby
20 powder represents the cornerstone of our baby
21 products franchise. Right?

22 A. I believe reading that in the memo,
23 yes.

24 Q. And: We have a large investment in
25 the talc mine. Right?

1 A. Yes.

2 Q. This was a decade after they knew
3 there was tremolite in the baby powder, right?

4 A. Not -- not tremolite asbestos. And
5 this article that this memo relates to has nothing
6 to do with asbestos. It has nothing to do with
7 tremolite or tremolite asbestos. It has to do
8 with young kids taking a bottle.

9 Q. Right. But they say it's the
10 cornerstone of the baby franchise, right?

11 A. That is what's written in the
12 document, yes.

13 Q. You've seen this document many times
14 before, right?

15 A. I have.

16 Q. This is a series of PowerPoint slides
17 that Johnson & Johnson created, right?

18 A. These are put together by the
19 marketing organization, yes.

20 Q. Where they talk about why the baby
21 powder is so important to the company, right?

22 A. This -- this is not just baby powder.
23 If you look there, this is Baby Camp -- baby
24 franchise, and it had -- if you'd go back to that
25 slide so I can finish, please. It has different

1 brands, Johnson's, Kanopi, Matoosin (phonetic).

2 They're different brands. Kanopi and Matoosin are
3 global brands.

4 Q. They talk about Johnson & Johnson Baby
5 Camp in equity, right?

6 A. Yes.

7 Q. There's a video that you've seen where
8 Johnson & Johnson talks about the baby franchise,
9 right?

10 A. Yes.

11 Q. It's about three minutes long. I
12 would like to just show it to the jury.

13 A. Sure.

14 Q. And I've got a couple of questions
15 about it.

16 A. Okay.

17 (Playing video.)

18 UNIDENTIFIED SPEAKER: Hello,
19 everyone. You are going to spend two and a
20 half days on the baby franchise. This is
21 our pledge here. This is our foundation.

22 You are extracting two and a half days
23 out of your business schedules to
24 accomplish, in my mind, two objectives.
25 First of all, understand the equity in

1 order to nurture it in your respective
2 companies. I hope this objective will
3 burnish the golden egg or to add to the
4 gold mine.

5 The golden egg is our equity. In the
6 mind of consumers, Johnson & Johnson is
7 synonymous with the mother-infant bond.

8 In U.S., when consumers are asked,
9 "What's the size of Johnson & Johnson?"
10 the answer usually is, "It's a baby
11 company."

12 So when you think of it, we are
13 blessed to be a company in all sorts of
14 businesses and with the image of a
15 trustworthy, caring, small company. That's
16 what we have to protect and nurture.

17 The second objective is to make the
18 baby business a profitable growth platform
19 in spite of all the new entrants in this
20 market, Pfizer, Unilever, Loreal, P&G,
21 Colgate.

22 These two points are the key to the
23 consumer group and the corporation. First
24 point is the Johnson & Johnson name. I'm
25 conscious that some of (inaudible) -- with

1 care and trust. We have to make sure that
2 generations to come enjoy the same
3 competitive edge we draw from this --

4 The second point is our obligation to
5 make baby a platform for growth, and that's
6 fairly obvious. We have worldwide 40 to
7 50 percent market share of the baby
8 products business, 25 to 30 percent -- we
9 ought to make this business grow double
10 digits and even more profitable than it is
11 today. How are you going to do this? By
12 sharing and learning during this two and a
13 half days.

14 Quite a few of you are new in this
15 area. We have put in your hands our most
16 prestigious and cherished equity. It is
17 your responsibility to learn and share as
18 much as possible, to be open -- in order to
19 go back to your companies and build a
20 business aggressively. As usual, people
21 make the difference, and you are going to
22 make a difference.

23 I count on you. Good luck with the
24 conference.

25 (End of video.)

1 BY MR. ADAMS:

2 Q. One of the things that individual from
3 Johnson & Johnson said was that Johnson's Baby
4 Powder is synonymous with the mother-infant bond.
5 Do you remember that?

6 A. Yes.

7 Q. That's true, right?

8 A. Yes. From a marketing perspective,
9 that's -- that's something that they encourage the
10 marketers.

11 Q. Here are some other slides where
12 Johnson & Johnson shows images of the
13 mother-infant bonds from its ads, correct?

14 A. Yes.

15 Q. Says -- talks about deep personal
16 emotional trust that is the flagship brand. Do
17 you see that?

18 A. I do.

19 Q. Other slides talk about Johnson's baby
20 being the company's Number 1 equity? Do you see
21 that?

22 A. The Johnson baby franchise, yes.

23 Q. It talks about deep personal trust,
24 and the source is the mother-baby bond, right?

25 A. Yes.

1 Q. And there's slide after slide after
2 slide talking about the source of Johnson &
3 Johnson's image being the mother-baby bond, fair?

4 A. Yes.

5 Q. There are other documents from
6 different time periods talking about the
7 mother-infant bond. Do you see that?

8 A. Yes.

9 Q. They call it the goose that laid the
10 golden egg. Do you see that?

11 A. Yes, I do.

12 Q. The mother-infant bond, feeding the
13 goose, the mother-baby strategic mission. Do you
14 see that?

15 A. Yes.

16 Q. And they say that the Johnson's brand
17 is deeply linked to baby products, right?

18 A. Yes.

19 Q. You know that 75 percent of total
20 category spending for Johnson's Baby Powder or for
21 the Johnson's Baby Powder division was for
22 Johnson's Baby Powder advertising, fair?

23 A. I need to see the document to see the
24 context of this and what they're talking about, a
25 category of spending. This may mean, within the

1 baby category, Johnson's Baby Powder we spend 75
2 percent compared to if you want to say -- this is
3 probably before your time -- Equate and other
4 brands. I'd need to see the document to
5 understand exactly what -- what that means.

6 Q. Johnson -- Johnson & Johnson's
7 advertised the baby powder a lot, fair?

8 A. Yes, I'd say that.

9 Q. One of the things that Johnson &
10 Johnson wrote down is that this deep personal
11 trust from your mother-baby bond from their
12 advertising makes people believe that the product
13 is safe and won't hurt them, right?

14 A. I think they're saying, yes, that the
15 product is safe and won't hurt them.

16 Q. There's slide after slide about trust,
17 deep personal trust, emotional trust in Johnson's
18 Baby Powder, fair?

19 A. Yes.

20 Q. They say it's -- it's one of the
21 company's competitive advantages that
22 differentiates it from other cosmetic companies,
23 correct?

24 A. Yes. This is what a marketer who put
25 this slide together believes, yes.

1 Q. These are a few of the ads over the
2 years that Johnson & Johnson put in print, right?

3 A. Yes.

4 Q. They typically have a mom cradling a
5 baby, kissing a baby, loving on a baby, right?

6 A. Yes.

7 Q. And, therefore, the baby powder that
8 Johnson & Johnson knew had fibrous tremolite in it
9 since 1958, right?

10 A. That the company knew had tremolite
11 but not tremolite asbestos.

12 Q. Johnson & Johnson talked about
13 protecting and enhancing its Johnson baby equity
14 with the mother-infant bond, right?

15 A. Yes. Of course, the -- the Johnson
16 Baby Powder, the shampoos, the -- the lotions,
17 yes.

18 Q. They wrote down why they needed to do
19 it, right?

20 A. Yes.

21 Q. And they put the mother-baby bond over
22 a bag of money because they knew that's what they
23 built the company with, right?

24 A. I would say a marketer put this
25 together, yes. Would I put this together this

1 way? No. But a marketer put this together. And
2 was the baby franchise important? Yes, it was.

3 Q. Another marketer put this together for
4 Johnson & Johnson where they talked about
5 protecting their Johnson & Johnson equity and put
6 the mother-baby bond over a piggy bank, right?

7 A. Yes.

8 Q. And there are other slides where they
9 do the same thing, right?

10 A. Yes, I've seen other slides.

11 Q. That's why Johnson & Johnson never
12 told anyone there was tremolite in their baby
13 powder for 70 years, right?

14 A. That is absolutely false.

15 MR. ADAMS: That's all I have.

16 Pass the witness.

17 THE COURT: All right. The witness is
18 passed. Ms. Bueno with defense.

19 THE REPORTER: Can I take a two-minute
20 break?

21 THE COURT: Yes. Of course.

22 THE REPORTER: Thank you.

23 * * *

24 (Whereupon, there was a recess in the
25 proceedings from 2:50 p.m. to 2:53 p.m.)

1 * * *

2 THE BAILIFF: They're ready,
3 Your Honor.

4 THE COURT: Very good. Bring me the
5 jury.

6 (The jury enters the courtroom at
7 3:05 p.m.)

8 THE COURT: The plaintiffs are ready
9 for Ms. Bueno to go forward.

10 MR. ADAMS: Yes, Your Honor.

11 THE COURT: Very good.

12 THE BAILIFF: The jury is seated,
13 Your Honor.

14 THE COURT: Thank you, sir.

15 All right. The examination of
16 Dr. Kuffner will proceed with counsel for
17 the defense. Ms. Bueno --

18 MS. BUENO: Thank you, Your Honor.

19 THE COURT: -- you may proceed.

20 MS. BUENO: Thank you, Your Honor.

21 THE COURT: Yes, ma'am.

22 EXAMINATION

23 BY MS. BUENO:

24 Q. Good afternoon, Dr. Kuffner.

25 A. Good afternoon.

1 Q. Could you remind the jury of your role
2 at Johnson & Johnson and when you started in that
3 role?

4 A. The chief medical officer in charge of
5 the safety team. I started in that role in 2017.

6 Q. And prior to that, were you at
7 Johnson & Johnson?

8 A. Yes. I've been working at the company
9 since 2006.

10 Q. And from that time, starting in 2017
11 until Johnson & Johnson stopped selling talc-based
12 Johnson's Baby Powder, who was the person at the
13 company responsible for the safety of that
14 product?

15 A. So I was in charge of the safety team.
16 We had an entire safety team, other doctors,
17 nurses, pharmacists, scientists. We were all in
18 charge of it. But ultimately, as the chief
19 medical officer, it was my responsibility.

20 Q. And did you take that responsibility
21 seriously?

22 A. Absolutely.

23 Q. And you have heard allegations in this
24 courtroom and I know you're familiar with the fact
25 that there are claims that Johnson & Johnson knew

1 there was asbestos in Johnson's Baby Powder but
2 just sold it anyway.

3 When you hear that allegation, what's
4 your just general response?

5 A. It's insulting. I'm a -- I'm a
6 physician. I've dedicated my whole life to caring
7 for patients, protecting patients, as have the
8 other physicians and nurses and pharmacists on the
9 safety team. And so it goes against who we all
10 are as healthcare professionals. And so, yeah, it
11 cuts right -- right to the heart when I hear that.

12 Q. And there's also been allegations in
13 this courtroom that Johnson & Johnson hid
14 information from the FDA and didn't tell the FDA
15 about findings. What is your general response to
16 that?

17 A. That's not true. And so I reviewed
18 the -- the company documents and I also talked
19 about my time in the company from 2006 until
20 today, and that's not how the company behaves.

21 Q. And is there any doubt in your mind as
22 you sit here based on what you know as the chief
23 medical officer and what you've read to prepare
24 for your testimony, is there any doubt in your
25 mind about the safety of Johnson's Baby Powder?

1 A. There's no doubt in my mind.

2 Q. If you felt you didn't have enough
3 information to talk to the jury about the safety
4 of Johnson's Baby Powder, would you be here today?

5 A. Absolutely not.

6 Q. And you are here in the role as what
7 the jury has heard is called a corporate
8 representative; is that right?

9 A. Yes.

10 Q. And so the corporate representative
11 role is separate from your role as chief medical
12 officer; is that correct?

13 A. Yes.

14 Q. And have you reviewed literally
15 millions of pages of documents in your role as
16 corporate representative?

17 A. Yes. And -- and I did -- I reviewed a
18 lot of that even before I became the corporate
19 representative in my role as the chief medical
20 officer.

21 Q. And why was that? Why -- when you
22 became chief medical officer, why did you review
23 any documents at all related to talc and the
24 history of talc?

25 A. Well, I became the chief medical

1 officer around 2017. There were other doctors who
2 were primarily responsible for that, working on
3 talc and understanding the safety of talc. But as
4 I started to hear a little bit more about lawsuits
5 against the company, that's when I said -- and I
6 had reviewed documents over time, but I said,
7 "I need personally -- on my watch as a chief
8 medical officer, I need to review the documents."

9 And I actually pulled a team together
10 of, you know, experts within the company saying,
11 "We're doing a full review." I knew reviews like
12 that had been done before. But I said, no, I
13 needed to know as the chief medical officer
14 because I was the one ultimately responsible.

15 Q. And did you start that review even
16 before you took this role as the corporate
17 representative?

18 A. Absolutely. It had nothing to do with
19 being the corporate representative and everything
20 to do with being the chief medical officer
21 responsible for the safety of the patients, the
22 consumers who use our products.

23 Q. And as the corporate representative,
24 you have given a lot of testimony under oath,
25 correct?

1 A. Yes, I have.

2 Q. Why did you agree to take on this role
3 and be the person to come to a courtroom and talk
4 to the jury? Why did you say yes to that?

5 A. Because the allegations are about the
6 safety of the product. And as the chief medical
7 officer, I was the head of the safety team. I was
8 responsible for the safety of all the people who
9 have used our products around the world, including
10 Johnson's Baby Powder.

11 I -- I did the review. I worked with
12 our team to understand all the data. I read the
13 documents. And I said, "All right. If people are
14 making allegations and they're serious allegations
15 against the company, then as the chief medical
16 officer, I'll be the one to go and stand up and
17 answer the questions."

18 Because I asked these same questions
19 myself. Does it contain asbestos? Is it going to
20 cause harm to people? And came to the conclusion
21 that, no, the company's product does not --
22 Johnson's Baby did not contain asbestos, and it's
23 not going to -- not going to harm people from a
24 mesothelioma perspective.

25 Yes, if a small child gets it and

1 inhales it, we don't want that happening. But if
2 you're talking about cancer, the product does not
3 cause cancer.

4 Q. The review that you did as chief
5 medical officer and the review that you did as a
6 corporate rep, are you going to rely on that
7 review and information to talk about some of the
8 documents that you were presented with earlier
9 today?

10 A. Absolutely. I reviewed hundreds,
11 thousands of documents, and it is a million pages
12 of documents. I can't remember every single
13 document. I'll do the best I can.

14 Q. That was my next question. So you've
15 seen a lot of these. I'm going to ask you about a
16 few of the ones that counsel showed you today and
17 talk about some other themes, too.

18 MS. BUENO: I want to start, though,
19 with Slide 12, if we can pull it up.

20 BY MS. BUENO:

21 Q. The jury has seen this before, and I
22 think it illustrates a concept you told us about
23 earlier. You told the jury that there's a
24 difference between tremolite and tremolite
25 asbestos. Does this document help show you that

1 difference?

2 MR. ADAMS: Your Honor, I hate to
3 interrupt, but I just have to object to the
4 expert opinion from someone who's not a
5 geologist.

6 THE COURT: Overruled.

7 BY MS. BUENO:

8 Q. Can you tell us what we're seeing here
9 today and how this impacts what you told the jury
10 earlier?

11 A. Yes. I think it's extremely
12 important. You're right, I'm not a geologist.
13 Many of you probably already knew. But you need
14 to understand there's a difference, right?
15 There's a difference between tremolite and
16 tremolite asbestos. They are different.

17 And you look at some of these terms.
18 I wish when they were putting these names together
19 you had different names, right? But they don't.
20 It's tremolite and tremolite asbestos. And it
21 creates some level of confusion, but the company
22 clearly knew the difference. The company knew
23 tremolite versus tremolite asbestos, and that is
24 extremely, extremely important.

25 Q. And when -- based on your review of

1 documents, which one is more usual or prevalent in
2 the Earth? Is it tremolite or tremolite asbestos
3 that you see the most of?

4 A. It's -- it's tremolite, the
5 nonasbestos form. That's the most common form of
6 the mineral.

7 Q. And so when you see documents -- and
8 perhaps the jury will see documents back in the
9 jury room during deliberations -- if they see the
10 word "tremolite," does that mean it's tremolite
11 asbestos?

12 A. No, it doesn't mean it's tremolite
13 asbestos.

14 Q. I'm showing you --

15 MS. BUENO: If I can have the ELMO,
16 please.

17 BY MS. BUENO:

18 Q. -- what counsel marked as Plaintiffs'
19 Exhibit 117. Do you recognize this document?

20 A. Yes, this is what I talked about
21 earlier.

22 MS. BUENO: May I approach the
23 witness, Your Honor?

24 THE COURT: Of course.

25 BY MS. BUENO:

1 Q. I'm going to try to give you these
2 documents so you can look at them as we go.

3 A. Thank you.

4 Do you want a copy of it?

5 MR. ADAMS: Oh, sure.

6 MS. BUENO: Your Honor, would you like
7 a copy, too, I've got an extra.

8 THE COURT: Certainly. Thank you.

9 BY MS. BUENO:

10 Q. So this was a document that somebody
11 had written on the front page "Do Not Use This
12 Report, Replaced By Another Version"; is that
13 correct?

14 A. Yes.

15 Q. But this wasn't a document Johnson &
16 Johnson threw away? Was it found in the files and
17 produced in the litigation?

18 A. Yes, it was.

19 Q. And have you reviewed both this report
20 and the one that came after it, the new version?

21 A. Yes.

22 Q. Okay. And I believe what counsel had
23 pointed your attention to is a section on Page 3
24 of 3 that talks about the total tremolite content
25 of the two samples in this particular study, 108T

1 and 109T was .5 percent and .2 to .3 percent, and
2 it was tremolite, correct?

3 A. Yes.

4 Q. Is there anywhere in this document
5 where it talks about asbestos?

6 A. No.

7 Q. And have you reviewed the document
8 that came after this one and tell us what it said?

9 A. The same thing. It says it doesn't
10 contain asbestos. But what -- what they did was
11 they went back and looked at samples and said they
12 couldn't verify those exact concentrations, and so
13 they, the McCrone Group, they updated the -- the
14 document by taking out the concentrations, but
15 almost everything else is identical.

16 Q. And do we have a date on this? We
17 sure do, 1972; is that correct?

18 A. Yes.

19 Q. And back in 1972, were there fancy
20 computers and machines that allowed to you just
21 delete and create a new document?

22 A. I was going to school in '72, and I
23 don't remember those -- those type of fancy
24 machines back then.

25 Q. So if you wanted to create a new

1 document, would it be normal to just write a new
2 document, and then make a note that says this one
3 was replaced by a different version?

4 A. Yes. I'm sure that's what -- back
5 then they did.

6 Q. And based on your review of this
7 document and the subsequent documents, is there
8 anything here that you think is sketchy or
9 problematic or suggests the company was trying to
10 hide something?

11 A. I don't think there's anything here
12 that suggests the company was going to hide
13 something; what I would say is the -- the
14 subsequent document is actually dated the same
15 day, and so for me, if I -- if I was going to do
16 it, I -- I would have not put the same exact date
17 on there because it's pretty clear that the
18 document -- the updated document came thereafter.
19 So do I agree with having the same date on there?
20 No, as a scientist, I wouldn't do that. But if
21 you're talking about content in the document, yes.

22 Q. And -- and let's just talk about
23 tremolite for a minute more before I move on. Is
24 tremolite, even though it's not asbestos, is
25 tremolite something that Johnson & Johnson wanted

1 in its talcum powder products?

2 A. No.

3 Q. Why not? What's wrong with just the
4 natural, everyday tremolite that's not asbestos?

5 A. The -- the company was trying to get
6 as much -- you've heard people use that word
7 "platy talcs," the -- the sheets that just rub
8 across each other -- slide across each other. The
9 company was trying to get as high a concentration
10 of that nice, soft talc in the product. And if
11 you have other minerals in there like tremolite or
12 chlorite, those can irritate the skin.

13 And so the company really was trying
14 to remove as many of those other minerals so that
15 you have as pure a product that the technology at
16 the time would allow the company maybe to market
17 and put up -- put out for people to use.

18 MS. BUENO: Could we turn to Slide 13?

19 BY MS. BUENO:

20 Q. This is a -- a slide that the jury saw
21 that plaintiffs put up that talks about medical
22 literature had made -- has made reference to
23 potential hazards of talcs containing tremolite,
24 severe objections to that mineral in talcum
25 powders.

1 Are you familiar with the document
2 that goes with this?

3 A. I believe I've seen the document, yes.
4 If you show it to me, though, I can tell you for
5 sure.

6 Q. Yeah, I'm going to show it to you so
7 you can see exactly what it is. It's marked as
8 Plaintiffs' 6.

9 A. Thank you very much.

10 Q. And first at the very first page, we
11 see it's dated 1969; is that correct?

12 A. Yes.

13 Q. And it talks about file Number 101,
14 and I think I heard you mention earlier today
15 something called Project 101. What was that?

16 A. Essentially, you see in the subject
17 line there, the company was looking for other --
18 this says "domestic sources of talc," other mines
19 that potentially they could use for the talc for
20 Johnson's Baby Powder.

21 Q. And at the bottom of this document,
22 there's a discussion here about: Unfortunately,
23 tremolite has different varieties that can be
24 easily confused with other members of the mineral
25 class into which it falls.

1 Is that correct?

2 A. Yes.

3 Q. And is that similar to what you were
4 saying earlier?

5 A. Yes. The company clearly understood
6 the difference between tremolite and tremolite
7 asbestos.

8 Q. Were there mines that the company was
9 looking at and considering as part of Project 101
10 that it ultimately decided not to use?

11 A. Absolutely. So the company was going
12 out -- they were saying, "Hey, what happens if we
13 run out of talc in some of the mines that we're
14 currently using?" They were looking for
15 high-quality talc in other mines, and they'd go
16 out and they'd look at the mines and they'd test
17 the -- the talc coming out of those mines, and
18 there were multiple mines that the company said
19 we're not going to use based upon contaminants or
20 impurities that were in that talc, sometimes
21 asbestos.

22 Q. And can you give the jury an example
23 of where some of those mines were located that
24 Johnson & Johnson ultimately decided not to use?

25 A. They looked at mines at different

1 places in -- in the United States. And so I
2 believe there was actually a mine they looked at
3 in North Carolina and, you know, mentioned a mine
4 in Montana. They looked at many different mines
5 around trying to find high-quality talc.

6 Q. And if we could turn -- I want to talk
7 a little bit about what you were just saying about
8 the company looking for high-quality talc. Give
9 me a moment to find it.

10 While I'm looking for this to pull up
11 a slide, I want to talk about what the company did
12 as far as testing. You were asked a little bit
13 about J4-1 testing.

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 MS. BUENO: Slide 24. Thank you so
18 much.

19 BY MS. BUENO:

20 Q. There we go. This is a slide I showed
21 earlier, so I wanted to come back around to it.
22 J4-1 you mentioned was XRD and PLM; is that
23 correct?

24 A. Yes, that was the industry standard.

25 Q. And, you know, we talked about XRD,

1 but the way I like to think about it and tell me
2 if you agree, is XRD similar to like going through
3 a suitcase scanner at the airport when you're
4 getting your luggage checked?

5 A. I -- I guess you can look at it
6 that -- that way. I mean --

7 Q. So you send -- you send your suitcase
8 through, and you see if there's anything there
9 that the TSA agent says, "There might be something
10 there," and they take it off, don't they, and they
11 do a second look?

12 A. Yes.

13 Q. And is that second look similar to
14 that PLM?

15 A. Yes.

16 Q. And so if you have the suitcases going
17 through and there's nothing in there to think that
18 there's asbestos or a problem, would there be a
19 reason to then do further testing, at least
20 initially?

21 A. Initially, there -- there wouldn't be,
22 but the company would also use TEM regardless of
23 some of those -- those other findings. So you had
24 this other test that was also being used.

25 Q. And so J4-1 you said was developed by

1 who?

2 A. J4-1 was developed by the industry
3 back in the -- in the '70s, and came out around
4 1976, in consultation with FDA and other experts,
5 so it was an industry standard.

6 Q. And Johnson & Johnson complied with
7 the J4-1; is that correct?

8 A. Yes.

9 Q. And did they go above and beyond?

10 A. Yes, that's where the company used the
11 transmission electron microscopy.

12 Q. And why was it important for Johnson &
13 Johnson, based on your review, to go above and
14 beyond and do additional testing? Why did that
15 matter?

16 A. Because even -- even early on in the
17 '70s as methods were being developed and science
18 was evolving, the scientists at Johnson & Johnson
19 understood that transmission electron microscopy
20 was very sensitive. And the most sensitive way to
21 look for asbestos in talc. And the company had --
22 had the resources and went out and worked with
23 experts around the world to also develop the TEM
24 technology.

25 MS. BUENO: If you'll go to Slide 23.

1 BY MS. BUENO:

2 Q. We don't need it belabor this, but are
3 these some of the different areas where Johnson &
4 Johnson did the testing over time?

5 A. Yes. I was here earlier and heard
6 Dr. Hopkins talk about it. There were multiple
7 steps going from the mine -- first making sure the
8 mine was high quality, testing the talc coming out
9 of the mine, testing it again in the mills and
10 then testing the final product. So multiple steps
11 where it was tested.

12 Q. I want to move on to a couple other
13 documents you were shown today.

14 MS. BUENO: Let's pull up Slide 14.

15 BY MS. BUENO:

16 Q. You were shown a slide similar to this
17 one that we saw in opening statements talking
18 about these three deaths. And you -- I think you
19 already explained to the jury this had to do with
20 aspiration of infants; is that correct?

21 A. Yes. Inhaling -- the talc bottle
22 poured over them.

23 Q. And what did Johnson & Johnson do when
24 it heard and understood that there was a concern
25 with infant asphyxiation? Did you take any action

1 at all?

2 A. The company did take a number of
3 actions. One, put a -- the warning on the product
4 to keep out of the reach of children, which you've
5 probably seen on a lot of different products, but
6 also developed a flow restrictor.

7 And so back in the '60s, somebody
8 could just take the top off the bottle -- it was
9 like cans, and if the baby got it, they could just
10 dump the whole thing out. But as they added that
11 flow restrictor on, you really had to shake it.
12 So that added value, I think, both for the users
13 of the product who were dusting themselves, but
14 also it would prevent a baby from dumping the
15 whole thing on them, and that's -- what I'm trying
16 to say is I spent most of my career as a
17 toxicologist working at a poison center trying to
18 prevent these type of accidental, unsupervised
19 ingestions when kids get into things, and so
20 that's something the company did do.

21 Q. And was that par for the course at
22 Johnson & Johnson? If there were concerns raised,
23 did the company take action to try to figure out
24 ways to fix those concerns?

25 A. Yes. And I've done that on multiple

1 different products since I got to the company in
2 2006, making changes to the product, whether it's
3 changes to the packaging, changes to the labeling,
4 changes to the product themselves. That's some of
5 the work I'm most proud of as a doctor working in
6 the company using my toxicology skills, coming
7 from a poison center to make the product even
8 safer for consumers.

9 Q. And we've heard that there were a lot
10 of allegations that -- especially early in the
11 1970s -- there were concerns about asbestos in
12 cosmetic talc. And you're well aware of those
13 concerns?

14 A. Yes. The company was aware of those
15 concerns. And if somebody would raise a concern,
16 the company would go out and investigate.
17 That's -- you heard and -- Dr. Hopkins talk about
18 it, Dr. Langer, Dr. Lewin, the company would
19 investigate to understand what was the situation.

20 I think something important to
21 understand is, in the early '70s, scientists were
22 trying to understand how do you test talc for
23 asbestos? What's the best method to use? So that
24 science was evolving at that time, and you can see
25 that in the documents.

1 Q. And that was one of the questions I
2 had, because you were asked about some methodology
3 about what type and number of fibers Johnson &
4 Johnson, like, accounted for over time. Can you
5 tell us a little bit about how the science evolved
6 and what Johnson & Johnson did to keep up with it?

7 A. I would say, in general, the company
8 did keep up with the science. So as people
9 understood how you test, the test methods get
10 better. You can go find -- find things at lower
11 levels. The company evolved.

12 And so, yes, at one point in time, did
13 they have the limit of quantification with the
14 different number of fibers? But that changed over
15 time.

16 Q. And was Johnson & Johnson the only
17 company out there that was testing?

18 A. No. There -- as science was evolving,
19 people at other companies were learning about the
20 science, learning how to test, and the -- I'll say
21 the whole medical community, whether it's FDA,
22 scientists, academic institutions, it was -- the
23 science was evolving just like the science evolves
24 today in so many different areas.

25 Q. And back in the 1970s, did the FDA

1 actually do studies of Johnson's Baby Powder?

2 A. Yes, they did.

3 MS. BUENO: I'm handing up now what
4 I've marked as Defense Exhibit 8 that I'll
5 seek to admit, which is the 1976 FDA
6 testing.

7 BY MS. BUENO:

8 Q. Dr. Kuffner, have you seen this
9 document before?

10 A. Yes, I have.

11 Q. And is it the testing report that the
12 FDA did on Johnson's Baby Powder and other
13 products in 1976?

14 A. Yes, it's the -- I would say the final
15 results of the samples that were being tested over
16 many years that Dr. Lewin started testing.

17 MS. BUENO: And, Your Honor, I now
18 seek to admit DX8, Defense Exhibit 8.

19 THE COURT: Very good.

20 MR. ADAMS: No objection, Your Honor.

21 THE COURT: Admitted.

22 (DEFENDANT'S EXHIBIT 8, Memorandum
23 dated 1/7/1976 from Ronald L. Yates, was
24 admitted into evidence.)

25 BY MS. BUENO:

1 Q. All right. So we're looking at
2 Defense Exhibit 8, and this is a 1976 testing
3 document; is that correct?

4 A. Yes, a document -- a memorandum from
5 the FDA.

6 Q. And I'll turn your attention to
7 Page 5, if I could. And this is the actual data,
8 isn't it, about what the FDA studied and what they
9 found?

10 A. Yes.

11 Q. And if we can see here -- let me do
12 the auto focus. There we go.

13 We see here at the top there's the
14 product name. Do you see that?

15 A. Yes.

16 Q. And then it says here there are
17 Lewin's results. And tell us again who Dr. Lewin
18 is.

19 A. Dr. Lewin was the researcher at NYU
20 who had done testing of these specific samples --

21 (There was a brief interruption.)

22 MS. BUENO: I think we wait for the
23 judge.

24 I'm getting ahead and highlighting.

25 I'm going to wait for the judge to come

1 back.

2 THE COURT: Sorry, guys.

3 MS. BUENO: No, that's all right. We
4 waited --

5 THE COURT: Tried to get a weather
6 report.

7 MS. BUENO: We waited for you, Judge.

8 THE COURT: Thank you.

9 MS. BUENO: Okay. Great.

10 BY MS. BUENO:

11 Q. And so I was asking about who
12 Dr. Lewin was and what these results are that are
13 noted here in the FDA document.

14 A. Yes, and so these are the -- the Lewin
15 samples were being tested multiple times by
16 different people over a number of years. This
17 is -- you see Dr. Lewin's results here, and then
18 you see the FDA -- the FDA results on the
19 right-hand side.

20 Q. And fair to say one of the reasons the
21 FDA did this study is to figure out if Dr. Lewin's
22 results could be replicated if they were true,
23 correct?

24 A. Yes. In that early '70s time frame,
25 science was evolving. Everybody was trying to

1 understand. We were within the company, other
2 companies, other scientists. How do you test?
3 How do you use the tools? That's what people were
4 trying to understand.

5 Q. And in 1976, did the FDA detect any
6 asbestos in Johnson's Baby Powder?

7 A. They did not.

8 MS. BUENO: Can we go to Slide 25,
9 please.

10 BY MS. BUENO:

11 Q. This is the slide I showed the jury in
12 opening statements. Can you just confirm that
13 this is an accurate reflection of what we just saw
14 in Defense Exhibit 8, showing the testing of the
15 FDA and their results?

16 A. Yes, this is accurate.

17 Q. Now, did the FDA just stop monitoring
18 talc in 1976, or did they continue to look at it?

19 A. No. They continued to look at it.
20 And, again, as the science evolved, they were part
21 of those discussions.

22 Q. Are you aware of a symposium that was
23 held in 1994 by the FDA?

24 A. Yes.

25 Q. I'm going to hand up to you what I've

1 marked as DX8335. Are you familiar with these
2 meeting minutes from the FDA symposium on talc?

3 A. Yes.

4 Q. And have you read and reviewed these,
5 this long document?

6 A. I -- I have read them, yes.

7 Q. And this -- what I just passed up and
8 marked as DX8335 is like a transcript where
9 somebody wrote down everything that was said at
10 this meeting; is that right?

11 A. Yes, that's my understanding.

12 Q. And this meeting involved questions
13 about the safety of cosmetic talc in 1994, true?

14 A. Yes.

15 MS. BUENO: Your Honor, at this time,
16 I seek to admit DX8335.

17 MR. ADAMS: Your Honor, it's about 400
18 pages. We'd -- we'd like to defer --

19 THE COURT: All right.

20 MR. ADAMS: -- until we take a look at
21 it.

22 THE COURT: Yeah.

23 You've got to admit the whole thing?

24 MS. BUENO: Yes, Your Honor. And I'll
25 tell you why. Because this is -- this is

1 just the transcript of the meeting that --
2 and there's certain pages I'm going to look
3 at throughout.

4 THE COURT: Well, I want to see what
5 pages you're introducing, and then we'll
6 have those in. I don't think we need the
7 entire meeting.

8 MS. BUENO: Okay. That's fine.
9 That's fine, Your Honor.

10 BY MS. BUENO:

11 Q. To orient the jury --

12 MS. BUENO: Can I go back? There we
13 go.

14 BY MS. BUENO:

15 Q. This is the International Society of
16 Regulatory, Toxicology and Pharmacology and the
17 United States Food and Drug Administration, and
18 it's talking about the workshop, Talc Consumer
19 Uses and Health Perspectives, 1994. Do you see
20 that?

21 A. Yes, I do.

22 Q. And Dr. Haber was here, and I asked
23 him a little bit about this. And he said that
24 there was nothing in this meeting minutes and
25 nothing in this discussion about mesothelioma.

1 Were you in the courtroom when you
2 heard Dr. Haber say that?

3 A. Yes, and I was surprised that he said
4 that.

5 Q. And why were you surprised?

6 A. Because I read the minutes, and they
7 certainly were discussing inhalation risks of
8 talc, and they did talk about mesothelioma.

9 Q. And looking at mesothelioma, again,
10 I've just tabbed some of the pages where it's
11 listed. If we go, for example, to Page 181, do
12 you see that there were references of mesothelioma
13 in that discussion?

14 A. Yes.

15 Q. And if we go to Page 191, did it
16 discuss mesothelial cells and mesothelioma?

17 A. Yes.

18 Q. And then on Page 192, also a
19 discussion of mesothelial cells?

20 A. Yes.

21 Q. And then on -- there we go --
22 Page 194, pleural mesothelial cells were
23 discussed?

24 A. Yes.

25 Q. Page 197 --

1 A. I see the --

2 Q. Yeah. I'm sorry.

3 A. Yes.

4 Q. And to be clear, when I'm saying out
5 the pages, I'm saying --

6 THE COURT: Ms. Bueno, what is the
7 point of this? Is the point of this just
8 to navigate him into the business of
9 refuting what Haber said? I mean, it looks
10 like --

11 MS. BUENO: I'll move on, Your Honor.

12 THE COURT: -- what he said there is
13 that asbestos causes mesothelioma. All
14 right. So, I mean, I don't understand this
15 whole line of questioning.

16 MS. BUENO: Could we go to Slide 27,
17 please.

18 BY MS. BUENO:

19 Q. Are you familiar with the
20 peer-reviewed publication that discussed this
21 symposium where mesothelioma and talc use was
22 discussed?

23 A. Yes.

24 Q. And were the conclusions from the FDA
25 in 1994 as indicated in this document, DX8335, did

1 they conclude that in their joint evaluation, talc
2 has proven to be among the safest of consumer
3 products?

4 A. Yes. That was written in the article.

5 Q. And did they also conclude that to
6 reasonable people, even armed with reasonable
7 concern for prudence, these clues suggest that the
8 probability of human risk is likely nonexistent
9 under customary conditions of use?

10 A. Yes. That was written in the document
11 as well.

12 Q. That comes from a Carr article,
13 DX9542, that was a publication in a journal that
14 talks specifically about this symposium; is that
15 correct?

16 A. Yes, that's correct.

17 Q. And you've read and reviewed this?

18 A. Yes.

19 Q. And what we saw on the slide about the
20 conclusions about talc safety is in keeping with
21 what is in that meeting minutes document, correct?

22 A. Those are quotes from the document,
23 yes.

24 Q. Did -- did the FDA continue to test
25 Johnson's Baby Powder?

1 A. Yes, they did.

2 Q. And the jury has already seen it. We
3 don't need to go over it, but are you aware of
4 testing in 2009 and 2010 of Johnson's Baby Powder?

5 A. Yes, I've -- I've reviewed that, yes.

6 Q. And did the FDA find asbestos when
7 they did their own testing in those years of
8 Johnson's Baby Powder?

9 A. No, they didn't.

10 MS. BUENO: Now, turn with me, if you
11 will, to Slide 33.

12 And I'm going to ask for you to help
13 me, Mr. Loebbaka, with some clicks here.
14 Go ahead and click it all the way to the
15 end. One more and stop. Thank you.

16 BY MS. BUENO:

17 Q. This was a slide I also showed to the
18 jury in opening. Are you familiar in April of
19 2019 about FDA testing of Johnson's Baby Powder?

20 A. Very familiar with that.

21 Q. Tell us about the April 2019 testing,
22 first.

23 A. The April 2019 testing, as you see
24 listed here, didn't detect asbestos in Johnson's
25 Baby Powder.

1 Q. And how did it work? Like, when the
2 FDA decides that they're going to test Johnson's
3 Baby Powder, when do they give you the results of
4 that testing? How does that happen?

5 A. First of all, oftentimes you don't
6 even know that they're -- they're testing your
7 product, and at some point they give you the
8 results, and that's when you find out that they
9 did do testing of the product.

10 Q. And so in April of 2019, do you happen
11 to remember when you found out that they did
12 testing and there was no asbestos?

13 A. I think it might have been in that --
14 a good number of months afterward. Maybe
15 September time frame. I forget exactly but --

16 Q. And then in September of 2019 -- and I
17 know the -- the print is small here, but it looks
18 like September 3rd was a first test, and did the
19 FDA find asbestos in that lot?

20 A. Not on that initial test, no.

21 Q. And -- and tell the jury just briefly
22 what is "a lot" when we talk about a lot?

23 A. A lot would be a way that the company
24 keeps track of -- we have it for all different
25 products, but for talc it would be what's the talc

1 that went into certain bottles that were bottled
2 at the same time. And so this -- this lot would
3 be many, many bottles of Johnson's Baby Powder,
4 but it was a way to trace the -- the talc and
5 how -- what went in to that -- that lot that went
6 into those bottles. It's -- it's a way to trace
7 products.

8 Q. And so in September 3rd of 2019 there
9 was no asbestos found, but then September 7th they
10 did find these small amounts of chrysotile
11 asbestos; is that correct?

12 A. That's correct. This was done by an
13 outside testing laboratory.

14 Q. So September 7th was the finding. Do
15 you remember when it was that the FDA came to
16 Johnson & Johnson and said, "We found asbestos in
17 your product." When was that?

18 A. I believe it was October 16th or the
19 15th, right around there.

20 Q. Like more than a month later?

21 A. Yes.

22 Q. So the FDA didn't say on September
23 7th, "Johnson & Johnson, we've got a problem.
24 You've got asbestos in your talc"?

25 A. No. The company found out in

1 mid-October.

2 Q. And we're going to talk a little bit
3 more about exactly what happened during that time
4 and what action the company took, but fair to
5 say --

6 MS. BUENO: One more click, please.

7 BY MS. BUENO:

8 Q. Fair to say that as soon as you found
9 out, you, as chief medical officer, initiated what
10 ultimately became a voluntary recall?

11 A. Yes. I would say within it was two,
12 three days of finding out that the FDA said they
13 thought they found asbestos, even at that very low
14 level. The company -- it wasn't -- it wasn't just
15 me -- it was myself, the head of quality, and the
16 head of regulatory, it's a process within the
17 company, and we all said, "Yes, let's -- let's
18 recall this specific lot."

19 And we said that because, one, they
20 had said there was asbestos there. We don't want
21 asbestos in the product. We didn't think, even at
22 that time, it was going to be a risk, but we
23 wanted to be sure. We said, "Let's protect
24 patients and consumers and pull that lot off the
25 market."

1 MS. BUENO: And if we could go to
2 Slide 50, please, just to reinforce the
3 timing here.

4 BY MS. BUENO:

5 Q. So how many days was it between when
6 the FDA said they found until they informed
7 Johnson & Johnson?

8 A. As you have listed there, it's 39
9 days.

10 Q. And then how long did it take for
11 Johnson & Johnson to issue that voluntary recall?

12 A. Two days.

13 Q. And we're going to talk a little bit
14 more in detail about what that entails.

15 MS. BUENO: But I'd like to go to
16 Slide 34, if I could.

17 BY MS. BUENO:

18 Q. Because the jury has seen this slide,
19 and they've also seen Slide 35, which were two
20 slides that plaintiffs' counsel put up talking
21 about this word "poisonous," indicating that the
22 FDA had found Johnson's Baby Powder with asbestos
23 and asbestos is poisonous, and I just want to look
24 at that document as opposed to the slide.

25 A. Sure.

1 Q. So I'm giving you what plaintiffs have
2 already offered into evidence P170.

3 All right. So this is a -- a document
4 you have seen before, I believe; is that correct?

5 A. Yes, I have.

6 Q. And this is from the FDA?

7 A. Yes, it is an email from FDA.

8 Q. From the FDA. And it's talking about
9 a conference call related to Johnson's Baby Powder
10 with that batch, and is that the batch, the lot
11 number where they found this .00002 percent
12 chrysotile?

13 A. Yes, it is.

14 Q. And then it says: This is a follow-up
15 conference call from this morning for the purpose
16 of continuing discussions of analytical results of
17 asbestos testing for Johnson's Baby Powder.

18 And just to put it in perspective,
19 what is the date of this document?

20 A. October 17th, 2019.

21 Q. So the day after you learned about the
22 trace findings of asbestos, correct?

23 A. Correct.

24 Q. And it goes on to say: The results of
25 testing concludes that the product contains

1 chrysotile, a type of asbestos.

2 And then it says: Asbestos is a
3 poisonous and/or deleterious substance.

4 Do you agree with that?

5 A. Yes.

6 Q. And then it goes on to say:
7 Therefore, Johnson's Baby Powder batch 23 --
8 2318RB is adulterated within the meaning of
9 Section 601(a) of the Federal Food, Drug and
10 Cosmetics Act; is that correct?

11 A. Yes.

12 Q. And tell the jury what it means
13 adulterated in that regulatory world?

14 A. Adulterated essentially means you have
15 something in the product that shouldn't --
16 shouldn't be in the product, and certainly
17 asbestos shouldn't be in Johnson's Baby Powder.
18 So it's -- it's adulterated. And I talked
19 before -- from my understanding, the risk of that
20 is different than being adulterated, and yes, it
21 certainly was adulterated.

22 Q. Even though the word "poisonous" is in
23 this document as it talks about asbestos, here's
24 my question: Did the FDA ever come out with a
25 finding that the amount they found in that lot,

1 .00002 percent chrysotile, was enough to have --
2 be a health hazard for a human? Did they come up
3 with that finding?

4 A. No.

5 Q. And ultimately, when you did a
6 voluntary recall, was there a particular class of
7 recall that was used?

8 A. Yes.

9 Q. And tell the jury just basically
10 what -- what a class system is when it comes to
11 recall.

12 A. The class system for recalls are just
13 different severity of the recall. So a Class 1
14 recall is -- is a more serious -- the outcome for
15 a patient or a user of a product could be more
16 serious, so, essentially it could be the
17 probability of causing something life-threatening
18 or serious harm to someone is a Class 1, that's
19 Class 1 is, down to Class 3 where it would be
20 unlikely that it would cause hazardous effects for
21 people. And then Class 2, if I recall correctly
22 is there's potentially could be some temporary or
23 transient adverse health effects.

24 Q. And what was the type of recall that
25 was done for the Johnson's Baby Powder sample in

1 2019?

2 MR. ADAMS: I'm just going to object,
3 Your Honor, based on foundation.

4 MS. BUENO: I'll -- I'll mark a
5 document, Your Honor.

6 MR. ADAMS: Thank you.

7 BY MS. BUENO:

8 Q. I have several we can mark, but here's
9 one, DX25.

10 A. Thank you.

11 Q. Are you familiar with this document,
12 Dr. Kuffner?

13 A. Yes.

14 Q. What are we looking at with DX25?

15 A. I believe this is from FDA in terms
16 of, like, their summary of the -- the recall
17 situation related to this specific lot.

18 Q. And so this is talking about for the
19 Johnson's Baby Powder, and it says: Reason for
20 recall: Johnson & Johnson Consumer, Inc., has
21 announced that it initiated a voluntary recall in
22 the United States of a single lot of Johnson's
23 Baby Powder, lot 22318RB. That's the lot we're
24 talking about, correct?

25 A. Correct.

1 Q. Because testing has shown presence of
2 sub-trace levels of chrysotile asbestos
3 contamination, no greater than 0.000002 percent.
4 And then it says Class 2; is that correct?

5 A. Yes, it is.

6 Q. And so this is a document where the
7 FDA is calling the chrysotile asbestos
8 contamination "sub-trace levels"; is that correct?

9 A. Yes.

10 MR. ADAMS: Object, Your Honor.
11 Leading. There's no foundation and
12 leading.

13 MS. BUENO: I'll rephrase, Your Honor.

14 THE COURT: All right. Let me just be
15 sure I understand what we're talking about.
16 This recall is a recall of one lot that's
17 composed of 863 cases, 18 per case. That's
18 what we're talking about? We're not
19 talking about a complete recall of all
20 Johnson's Baby Powder?

21 MS. BUENO: I'm so glad you mentioned
22 that, Your Honor, because that's exactly
23 right.

24 BY MS. BUENO:

25 Q. Dr. Kuffner, just so we're not

1 confused, when we're talking about this recall in
2 2019, was it one lot?

3 A. Yes. It was the only recall of that
4 one lot. We did not recall the other lots that
5 were in the marketplace.

6 THE COURT: I mean, please keep in
7 mind, I'm not asking that to suggest
8 anything one way or another. That might
9 have been all that was needed. That might
10 have been not all that was needed. I don't
11 know.

12 MS. BUENO: Yeah.

13 THE COURT: I'm just pointing out what
14 this document is.

15 MS. BUENO: And, Your Honor, I seek to
16 admit DX8355 at this time, which is what
17 you're looking at, please.

18 THE COURT: Yes.

19 MS. BUENO: I will also -- and I'm
20 sorry. At the bottom right-hand corner, we
21 have marked that DX25, which is what I seek
22 to admit.

23 THE COURT: Yes.

24 (DEFENDANT'S EXHIBIT DX25, Johnson's
25 Baby Powder 22 ounce recall, was marked for

1 identification.)

2 MR. ADAMS: Also, Your Honor, we
3 object. This isn't -- this isn't the FDA
4 making an announcement. It's Johnson &
5 Johnson.

6 THE COURT: What's that?

7 MR. ADAMS: This isn't the FDA making
8 an announcement as Johnson & Johnson --

9 THE COURT: This is Johnson & Johnson.
10 This is not the FDA, as I understand it.

11 BY MS. BUENO:

12 Q. I thought -- Dr. Kuffner, did you tell
13 us this was part of the FDA, or do you -- do you
14 know? I thought I heard you say that.

15 A. I -- I believe that's -- that's what
16 it is --

17 MS. BUENO: I do, too, Your Honor. We
18 can get to the bottom of it, and we can --
19 we can offer it. But I believe that's --

20 THE COURT: Well, let's not go back
21 and forth. I mean, it was recalled. It
22 was one particular lot. And apparently,
23 the FDA asked them, "What are you going to
24 do about the recall?" And they recalled
25 this lot. Am I right?

1 MS. BUENO: That's correct.

2 THE COURT: Okay. Well, move on. I
3 think we got that straight.

4 MS. BUENO: Yep. We're almost done
5 with this part, Your Honor. I am now
6 marking DX26, which is from the FDA
7 website, which will give some context to
8 the Class 2 that we just discussed.

9 BY MS. BUENO:

10 Q. And DX26, Dr. Kuffner, you've seen
11 this before, from the FDA website?

12 A. Yes.

13 Q. And it talks about specific classes of
14 recall, and what does it say is a Class 2 recall?

15 A. Situation in which use of, or exposure
16 to, a violative product may cause temporary or
17 medically reversible adverse health
18 consequences or where the probability of serious
19 adverse health consequences is remote.

20 Q. And is that the type of recall that
21 was initiated for that one lot?

22 A. Yes.

23 Q. Okay. And just so we're clear -- and
24 I'm glad the Court raised it -- at the time this
25 was recalled on October 18th of 2019, this one

1 lot, did Johnson & Johnson stop selling talc-based
2 Johnson's Baby Powder altogether?

3 A. No.

4 Q. At some point the following year, was
5 a decision made to stop selling talc-based
6 Johnson's Baby Powder in the United States?

7 A. Yes, it was.

8 Q. Were you involved with that decision?

9 A. I was not at all involved in that
10 decision. It wasn't made based upon safety. It
11 was made during the -- COVID was going on --
12 around in 2020. And the company initially tried
13 to prioritize manufacturing lines due to COVID.
14 And then they eventually, a few months later --

15 THE COURT: Dr. Kuffner, she asked you
16 a real simple question to begin with, which
17 was: Was the entire USA market recalled
18 the next year? And you're going on to
19 discuss -- you blame it on COVID or
20 whatever you're trying to do.

21 Answer the question first. Was it
22 recalled in 2020?

23 THE WITNESS: It was not recalled in
24 2020.

25 THE COURT: Well, what was it?

1 THE WITNESS: The company said --
2 announced they would stop selling the
3 product.

4 THE COURT: All right. The company
5 announced it was going to completely stop
6 selling Johnson's Baby Powder in the
7 United States; is that correct?

8 THE WITNESS: That's correct, but --
9 but --

10 THE COURT: And now you're going on
11 into something else about why you think
12 that was. But let's follow her questions,
13 okay?

14 THE WITNESS: Sure, yes.

15 THE COURT: Very good.

16 BY MS. BUENO:

17 Q. Was the decision to stop selling talc
18 something that came out of the medical department,
19 out of your department?

20 A. No.

21 Q. What department made the decision to
22 stop selling Johnson's Baby Powder in May of 2020?

23 A. I don't know if it was really a
24 department. It was commercial organization, the
25 people who sell the product, the marketers. It

1 wasn't a safety --

2 Q. The business folks?

3 A. The business folks, yes.

4 Q. So if there was a problem with a
5 product that there needed to be a recall, that it
6 needed to be taken off the market, would that have
7 been something that your medical department got
8 involved in?

9 A. Absolutely.

10 Q. Where were you when you found out that
11 the decision was made by the business folks to
12 take Johnson's Baby Powder off the market?

13 A. It was -- it was shortly after -- I
14 was volunteering during COVID, working in the
15 emergency department. I wasn't even involved in
16 it. So I was volunteering my time to take care of
17 patients in New York City during the height of
18 COVID and I found out about it.

19 Q. And were you surprised when you heard
20 it?

21 A. Very surprised.

22 Q. What was your initial reaction?

23 A. I wanted to try to understand why
24 because it certainly wasn't related -- related to
25 safety.

1 Q. As part of the decision or discussion
2 about the voluntary recall for that one lot back
3 in 2019, were you involved in what you had talked
4 about being an exposure assessment or a health
5 hazard evaluation?

6 A. Yes.

7 Q. And you told counsel earlier that you
8 couldn't just say that just because there was
9 asbestos means it causes mesothelioma, that you
10 needed to do what you called an "exposure
11 assessment." What is that?

12 A. Essentially, you need to understand
13 when you have this finding of asbestos in the
14 product that FDA said that they found with zero,
15 put four zeroes there and 2 percent, and you need
16 to understand if that is in the product, and we
17 assumed it was, you need to understand if
18 somebody's using the product, adults using it or
19 putting it on a baby, how much of the -- the talc
20 would get into the air, how much would somebody
21 breathe in and get in their body, and then is that
22 actually a risk to somebody, and is that enough to
23 actually cause a health problem for somebody.

24 And that's -- that was my job when we
25 heard about the FDA finding, and that's what our

1 team worked on.

2 Q. And as part of that assessment, did
3 you do what's called a health hazard evaluation to
4 see if that bottle from 2019, that lot that
5 had .00002 percent, did you do an evaluation to
6 see if that would be a health hazard?

7 A. Yes.

8 MS. BUENO: I'm marking as
9 Exhibit 23 -- DX23 that evaluation. And
10 I'll seek to offer this into evidence.

11 MR. ADAMS: Your Honor, this looks
12 like some kind of expert report from
13 Dr. Kuffner, but he was never designated as
14 an expert in this case. So we would object
15 on that basis.

16 MS. BUENO: Your Honor, this is a J&J
17 document that was done as part of the
18 voluntary recall, and his signature is
19 affixed to the last page. He was part --

20 THE COURT: All right. Just let me
21 look at it for a sec. You're saying this
22 is part of a voluntary recall?

23 MS. BUENO: This is what we were just
24 talking about, Your Honor.

25 THE COURT: Yeah, but you told -- you

1 said it wasn't a recall; it was just a
2 decision that you spent a -- a lot of time
3 spent; it wasn't a recall at all; it was a
4 commercial decision to not sell it in the
5 United States. Now you're calling it a
6 recall?

7 MS. BUENO: I'm sorry. I backtracked.
8 This is from the 2019 voluntary recall, the
9 one lot we discussed --

10 THE COURT: Right.

11 MS. BUENO: -- not --

12 THE COURT: I mean, what --

13 MS. BUENO: -- not the decision to --

14 THE COURT: -- what you -- she just
15 finished asking you a bunch of questions
16 about this. And the projection was: It
17 didn't come out of the medical department.
18 It came out of the commercial department.
19 It was a commercial decision to quit
20 selling it in the United States. That's
21 not a recall. You said that.

22 MS. BUENO: Oh, yes, Your Honor.
23 And -- and I'm sorry I -- I messed up the
24 timeline here. If -- if I confused you, I
25 probably confused the jury.

1 THE COURT: I'm not talking about the
2 timeline --

3 MS. BUENO: No, this is --

4 THE COURT: I'm talking about --

5 MS. BUENO: This was months before the
6 decision to stop selling Johnson's Baby
7 Powder. This is a document, October 18th
8 of 2019, which is the day that
9 Dr. Kuffner's team decided to do a
10 voluntary recall of that one lot.

11 MS. McVEY: Your Honor, can we
12 approach just briefly? This is the subject
13 of a motion in limine that I think we need
14 to discuss just for a moment.

15 THE COURT: That -- that's what's got
16 me confused a little bit.

17 You can rest a minute, ladies and
18 gentleman. Just relax.

19 (Bench conference.)

20 MS. McVEY: Your Honor, this is
21 essentially an expert report that he's
22 going to come in and testify this is a
23 report --

24 THE COURT: Uh-huh.

25 MS. McVEY: -- that he has signed. We

1 had a whole conversation about he's not to
2 give expert opinions.

3 THE COURT: Yeah. That's why I'm
4 trying to sort this out.

5 MS. McVEY: This would be inadmissible
6 under any scenario, but certainly if he's
7 going to testify --

8 THE COURT: And they've got their case
9 coming on where they may have some expert
10 that they can present it.

11 MS. McVEY: That's right.

12 THE COURT: But it's not going to be
13 through him.

14 MS. McVEY: That's right.

15 THE COURT: Do you get what I'm
16 saying?

17 MS. BUENO: Yeah, but, Your Honor,
18 this is the --

19 THE COURT: I don't care whether he
20 authored it or not. He -- this thing is an
21 expert opinion. Y'all have already agreed
22 he isn't going to give expert opinions.

23 MS. BUENO: This is -- we are not
24 offering it for an expert opinion.

25 THE COURT: Well --

1 MS. BUENO: We're offering it for what
2 Johnson & Johnson stated --

3 THE COURT: Well, you've already got
4 into evidence that it was recalled. You've
5 got a document in there about that. That's
6 plenty to establish that fact. This is an
7 attempt to go into more than that and put a
8 report in evidence.

9 He's not to testify about expert
10 witness things; therefore, I'm going to
11 deny allowing this exhibit in through
12 Kuffner at this time, and instruct -- don't
13 ask him anything about expert testimony.
14 I'll put it on the record right now.

15 MS. McVEY: Okay. Thank you.

16 (End of bench conference.)

17 THE COURT: Ladies and gentlemen, let
18 me put on the record this: The exhibit
19 that Ms. Bueno had asked Dr. Kuffner about
20 is an expert opinion. You may recall that
21 experts get qualified in a particular
22 subject. If they're qualified, then they
23 can express an opinion.

24 Dr. Kuffner is the corporate
25 representative. He can't express some

1 expert opinion. You can tell you what
2 happened. All right. He's already told
3 you that they withdrew from the market or
4 recalled -- I don't know exactly how they
5 determined it -- one lot consisting of many
6 cases of a particular talc that had been
7 tested. They withdrew it from the market
8 on October the 19th, 1994, I believe it
9 was.

10 This is an expert report about that.
11 It has already been agreed that he will not
12 testify about expert matters. They're
13 going into their case at some point next
14 week, and they're going to present experts,
15 and if there's any expert opinion about
16 this thing, it's just -- they'll choose to
17 ask for admission, we'll address that at
18 this time. So I have denied the admission
19 of this report -- expert opinion, whatever
20 it is at this time. And instruct Ms. Bueno
21 not to ask him about the opinion or his
22 opinion about this memo.

23 BY MS. BUENO:

24 Q. We're going to move on, and,
25 Dr. Kuffner, next week if -- since we're running

1 out of time --

2 THE COURT: Don't -- don't prestop
3 what he's going to do next week. Just go
4 on and get off this subject and go to
5 another subject.

6 MS. BUENO: Sure, sure.

7 THE COURT: Thank you, ma'am.

8 BY MS. BUENO:

9 Q. Your -- you have heard and were asked
10 about a tissue digestion that was done on
11 Mr. Perry in this case. Do you recall being asked
12 some questions about that?

13 A. Yes.

14 Q. And you indicated your understanding
15 that there was a finding of talc, tremolite and
16 something called winchite; is that correct?

17 A. Yes.

18 Q. Are you familiar with this term
19 "winchite"?

20 A. Yes.

21 Q. Now, you have read literally millions
22 of pages of company documents; is that correct?

23 A. Yes.

24 Q. So looking at those internal company
25 documents that you have reviewed, aside from

1 claims in litigation, have you ever seen any
2 finding of a winchite fiber or particle in any
3 bottle of Johnson's Baby Powder?

4 A. No.

5 Q. Are you familiar with where winchite
6 comes from?

7 A. Yes.

8 Q. Where is that?

9 A. It certainly doesn't come from the
10 Italian mine that we used. It certainly doesn't
11 come from the Vermont mine that we used. It does
12 not come from the Chinese mine that we used. But
13 it can come from other sources.

14 Q. And the jury has heard that there was
15 an expert named Dr. Sanchez who counsel --

16 THE COURT: That's why -- what I'm
17 going to do is strike any testimony by him
18 about the geological arguments, winchite,
19 or whether it -- whether it occurs in
20 various mines. He's not being offered for
21 this. You got an expert, Mr. Sanchez --
22 Dr. Sanchez that's what he -- he is a
23 geologist and he will talk about these
24 matters.

25 But I direct you to move on, not ask

1 him any further questions about the
2 presence of winchite or anything. And
3 looking at documents in the records of J&J
4 is not going to be enough to express some
5 expert opinion about the presence or
6 absence of a particular mineral in a
7 particular mine. That will come up when
8 you have your geologist. So move on.

9 MS. BUENO: Understood, Your Honor.
10 And I'm not asking an expert opinion. As a
11 corporate representative --

12 THE COURT: I'm not going to allow you
13 to get around a ruling by saying, "As a
14 corporate representative are you aware of
15 anything in the records that pertains it
16 winchite." That's an attempt to discuss
17 the presence of that mineral in these
18 mines. I have ruled that he can't testify
19 about that. So please move on to the next
20 subject.

21 BY MS. BUENO:

22 Q. You were shown some documents earlier
23 and there was a discussion about something called
24 "industrial talc." Can you briefly tell us
25 whether or not Windsor Mines in Vermont used both

1 industrial and cosmetic talc or manufactured both
2 industrial and cosmetic talc?

3 A. They -- they did, Windsor Mines made
4 industrial talc as well as cosmetic talc.

5 Q. And are there documents that you have
6 reviewed that talk about both of those things?

7 A. Yes.

8 Q. And if the jury sees a -- a record
9 that talks about talc that was manufactured by
10 Windsor, does that automatically mean it's
11 cosmetic talc?

12 A. No. You need to really look at the
13 document -- the surrounding documents and
14 understand was this cosmetic? Was this
15 industrial? Or sometimes it's not known what the
16 source specifically was.

17 Q. And one of the documents you were
18 shown -- I understand I'm out of time,
19 Dr. Kuffner. Will you be able to come back next
20 week when we do our case and answer a few more
21 questions for us?

22 A. Yes.

23 MS. BUENO: Thank you.

24 THE COURT: All right, Mr. Adams on
25 redirect.

1 MR. ADAMS: Yes, Your Honor.

2 * * *

3 REDIRECT EXAMINATION

4 BY MR. ADAMS:

5 Q. Dr. Kuffner, very quickly. You were
6 just asked about industrial talc versus cosmetic
7 talc, right?

8 A. Yes.

9 Q. Were you here when Dr. Hopkins
10 testified under oath that you don't float the
11 industrial talc?

12 A. I -- I heard him say that.

13 Q. And so if we see a document that talks
14 about the fines and the sediment from the
15 floating, we know with certainty that's cosmetic
16 talc, right?

17 A. You -- you have to look at the
18 specific document because sometimes they use the
19 word "fines" and "sediment" to talk about what --
20 what they were doing during testing in a test
21 tube. And so just because you see fines and
22 sediment in a document, you have to be very
23 careful and you need to look at the whole document
24 to understand what was actually being done.

25 THE COURT: Doctor, he's talking about

1 a real specific document that you've seen
2 it before. It has one whole column that
3 says "Float" and in front of it it's got HC
4 or something like that and some numbers.
5 Your counsel has asked you about that, too.
6 Do you remember that document? Show it to
7 me.

8 THE WITNESS: If you show me the
9 document, that will be great.

10 BY MR. ADAMS:

11 Q. That's all right. It's in evidence.
12 The jury has seen it. You mentioned a Class 2
13 recall. Do you remember that?

14 A. Yes.

15 Q. And then there was a document that was
16 waved around, DX25, one page, and there was a
17 representative -- representation that the FDA said
18 the baby powder they found poison in wasn't so
19 bad, which was a Class 2 recall. Do you remember
20 that?

21 A. That wasn't the suggestion. The -- I
22 think what we're trying to say, "Yes, it was a --
23 a Class 2 recall." I wasn't trying to say it
24 wasn't too bad. If there was asbestos in the baby
25 powder, yes, that's -- that's not something we

1 want.

2 Q. J&J just called it a Class 2 recall,
3 right? The FDA never said that.

4 A. My -- my understanding is even when --
5 when we went in, we went in with a Class -- a
6 Class 3 recall, that it was unlikely to cause
7 adverse health consequence, and I believe the FDA
8 classified it as Class 2.

9 Q. What we saw is that the FDA says it
10 was a -- did you bring a document from the FDA's
11 website with the FDA's name on it, anything ever
12 saying the FDA said Class 2?

13 A. I believe the FDA did classify it as a
14 Class 2. I --

15 Q. Did you bring a document?

16 A. I don't have a document in front of me
17 here.

18 Q. What we know is that when the FDA sent
19 this email --

20 MR. ADAMS: Ryan, can I have the ELMO
21 real quick?

22 BY MR. ADAMS:

23 Q. When the FDA found poison in Johnson's
24 Baby Powder, they said it was poisonous and/or
25 deleterious under Section 601(a) of the Federal --

1 of the Federal Food, Drug and Cosmetics Act. Do
2 you see that?

3 A. Yes. They said asbestos is a
4 poisonous or deleterious substance.

5 Q. You weren't trying to suggest to the
6 jury that the FDA thought the asbestos in
7 Johnson's Baby Powder was safe, were you?

8 A. I wasn't trying to suggest that to the
9 jury. If you want to understand is the asbestos
10 in the -- at that concentration, is it going to
11 cause adverse health consequences, you have to do
12 an exposure assessment to understand that. But
13 certainly, you don't want it in the product.

14 Q. Did you know that the FDA said,
15 under 601(a), what they -- that section of the
16 Federal Food and Cosmetics Act [sic], when they
17 talk about a poisonous or deleterious substance,
18 they're talking about something that is injurious
19 to users, right?

20 A. What it actually says is, it may
21 render it injurious to users. And in order to
22 understand if it does, that's why you do the
23 exposure assessment. But certainly, you don't
24 want asbestos in the product, and that's because
25 it adulterates the product.

1 Q. Where does it say any of that? It
2 doesn't say "exposure assessment."

3 A. What it says is, it may render it.
4 And in order -- and what I'm telling you is, in
5 order to understand if it does render it
6 injurious, you do an exposure assessment. And
7 that's what we did within the company -- I did
8 within the company.

9 Q. Okay. It says: It may render
10 injurious to users under the conditions of use
11 prescribed in the label thereof. Right?

12 A. Yes, that's what -- it may render it.
13 In order to understand if it does, you do an
14 exposure assessment.

15 Q. You were asked all these questions
16 about how the FDA waited so long to -- to announce
17 and tell Johnson & Johnson about the poison in its
18 baby powder. Do you remember that? When we had
19 the slide with the --

20 A. Yes, yes.

21 Q. -- big blue arrow and they waited
22 around?

23 A. It's -- it's the facts of when -- when
24 they did their testing and when they told the
25 company.