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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.

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.

SUPPLEMENTAL NOTICE OF APPEAL

Defendants Johnson & Johnson; LLT Management, LLC f/k/a LTL Management, LLC; Kenvue, Inc.; and Johnson & Johnson Holdco (NA), Inc. (“J&J Defendants”) appeal: (1) the Order filed March 2, 2025 denying the J&J Defendants’ motion to reconsider and (2) the Amended Order filed March 2, 2025 ruling on successor liability issues and denying the J&J Defendants’ post-trial motion.

Copies of the orders are attached hereto. The J&J Defendant received written notice of the entry of both Orders on March 2, 2025.

Respectfully submitted,

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March 3, 2025

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

**MICHAEL L. PERRY and
LONNIE L. LONG,**

Plaintiffs,

v.

**AMERICAN INTERNATIONAL
INDUSTRIES, et al.,**

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO. 2023-CP-40-04072

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**ORDER ON REMAND FROM THE
SOUTH CAROLINA COURT OF APPEALS
REGARDING DEFENDANTS JOHNSON &
JOHNSON'S MOTION TO RECONSIDER OR
TO ALTER AND AMEND THIS COURT'S
DECEMBER 11, 2024 ORDER**

BACKGROUND

Plaintiffs filed this action against multiple defendants, including the J&J Defendants and Defendant AII. The trial began on August 5, 2024. After the close of Plaintiffs' case on the legal claims, the J&J Defendants moved for a directed verdict. This Court denied that motion. After the defense rested, J&J Defendants again moved for directed verdict. This Court again denied J&J Defendants' motion. On August 15, 2024, the jury returned a verdict against the J&J Defendants on Plaintiffs' claims for negligence and strict liability for selling defective products. The jury awarded Plaintiffs a total of \$32,656,250 in actual damages. The jury also found that the J&J Defendants' conduct was willful, wanton, or reckless. The jury found for the J&J Defendants on Plaintiffs' fraudulent misrepresentation cause of action. The J&J Defendants then argued the verdict already reflected a punitive damages award, and argued punitive damages were unjustified and should not be considered. This Court rejected those arguments. After punitive damages arguments by counsel and this Court's charge, the jury returned a verdict of \$30,000,000 in punitive damages against J&J. This Court then discharged the jury and granted joint requests for

leave to file post-trial motions within ten days. This Court also permitted Plaintiffs to make additional filings regarding their claim of successor liability. The Plaintiffs submitted its brief on the successor liability issue on August 23, 2024, to which they attached additional evidence.

On August 26, 2024, Defendants Johnson & Johnson filed a 90-page post-trial motion for JNOV, new trial absolute based on errors of law, new trial absolute based on the thirteenth juror doctrine, and new trial *nisi remittitur*. Additionally, J&J moved for set-off, for the production of settlement documents, and for a stay of execution on the judgment. J&J also briefed the issue of successor liability, which by agreement was reserved for a hearing and ruling by this Court post-trial, inasmuch as successor liability is an equitable matter, which is not submitted to the jury. A comprehensive post-trial hearing was conducted on September 24, 2024. As is this Court's custom, preliminary rulings on these matters were made from the bench. For some issues this Court's decision was not fully resolved. The parties were asked to submit proposed orders, and to separately submit proposed orders on successor liability. Between September 30, 2024, and late November, the parties submitted proposed orders for this Court's review. On December 11, 2024, this Court issued an 86-page Order disposing of all above set forth matters. On December 23, 2024, the J&J Defendants filed a Motion to Reconsider. On January 10, 2025, before this Court had an opportunity to receive a reply to Defendants' motion from Plaintiffs, Defendants J&J appealed this case to the South Carolina Court of Appeals. As a result, this Court no longer had jurisdiction to act upon J&J's motion. On January 13, 2025, Appellants J&J filed with the Court of Appeals a Motion for a Limited Remand to allow this Court to consider J&J's December 23, 2024, Motion to Reconsider and to Alter or Amend. On January 30, 2025, the Court of Appeals remanded this matter to this Court for the limited purpose of considering J&J's motion. On February 21, 2025, Plaintiffs' filed a Response to J&J's Motion to Reconsider and to Alter or Amend. Although

Defendants J&J's Motion for Reconsideration focuses on successor liability, the punitive damages phase of the trial, and the verdict form, it also rehashes many of the pre-trial, trial, and post-trial rulings by this Court. Some perspective from this trial court judge as to the complicated pre-trial, trial, and post-trial activities in this matter may be helpful for the appellate review of this case.

This Court conducted lengthy pre-trial hearings in this matter in order to facilitate pre-trial discovery, as well as an orderly trial of this case. I reviewed tens of thousands of pages of documents, testimony under oath, business records, learned treatises, and numerous detailed briefings by these parties. Additionally, as is my practice, I conducted an extensive pre-trial hearing on all remaining discovery disputes, all outstanding motions for summary judgment, motions to dismiss, and motions *in limine* regarding jury selection and juror *voir dire*. Further, I attempted to resolve all issues regarding admission of testimony, exhibits, expert qualification, and the like, so that the trial could move smoothly. Moreover, I examined and ruled upon the use at trial of demonstrative materials in aid of opening statements or other presentations of evidence, and I requested an outline from each party of the witnesses to be presented each day.

Two weeks were allotted for the trial of this case, a more than adequate time-frame given that the Johnson & Johnson entities and AII, who was in default, were the only two trial Defendants. Despite these efforts on this Court's part, this trial presented difficulties right off the bat. The Defendants were not cooperative with this Court with their list of witnesses. Additionally, they attempted to revisit many pre-trial rulings and/or agreements by the parties as to the scope of experts, designation of witnesses, and designation of agreed upon documents and exhibits. Each day of trial, I conducted hearings before the 9:30 AM hour for the commencement of trial, and many times, after I dismissed the jury, generally between 5:00 PM and 5:30 PM, I conducted other hearings on disputed matters in an attempt to move the trial along. The Defendants continued to

decline to give an outline of their trial witnesses so that this Court could properly allocate time, but attempted to blame this Court for their inability to present experts and other witnesses they previously designated. Ultimately, Defendants Johnson & Johnson announced it would not present a substantive defense case, but would rest at the end of Plaintiffs' case. J&J contended that this decision was necessitated by the pre-trial rulings of this Court, which they claimed unfairly limited the testimony of their experts. This Court emphasized that none of their witnesses were excluded, and that they were free to offer any previously identified witnesses. My previously issued post-trial order explains in detail the limitations I placed on Defendants' experts consistent with the trial court's duty to "gatekeep" in its qualification of experts. As the trial moved toward presentation to the jury for deliberation, Defendants Johnson & Johnson attempted to change this Court's normal practice for bifurcation of damages. State law now requires bifurcation, and this Court handles bifurcation as follows.¹ In the Plaintiffs' and Defendants' presentation of their case regarding actual damages, there is no mention of a request for punitive damages. On the verdict form in the actual damages part of the trial, there is a question which directs the jury, if they find liability, to answer the following query:

WILLFUL, WANTON OR RECKLESS CONDUCT

If you answered "Yes" to Questions 1, 2, 5, or 6, please answer this question as to any Defendant for which you answered "Yes." We, the jury, find by clear and convincing evidence that the conduct of the following Defendants was willful, wanton, or reckless:

Johnson & Johnson

AII

_____ Yes

_____ Yes

_____ No

_____ No

Pre-trial, J&J moved that the trial be bifurcated and I granted this motion. I announced that the case would be bifurcated, and that there would be separation between the actual and punitive

¹ The provisions of S.C. Code Ann. § 15-32-520 mandate that bifurcation in which punitive damages are sought by Plaintiff must be granted if requested by any Defendant against whom punitive damages are sought.

damages phases of the trial. The verdict form asked the jury to determine whether they found Defendants' conduct to be willful, wanton or reckless, only if it found Defendants' conduct to be negligent and/or if the jury found that either Defendant engaged in fraudulent misrepresentation. Only if the questions were answered "yes" would we proceed to a punitive damages phase, and the jury would then be instructed as to how to conduct their deliberations. But suddenly, J&J objected to the previously ruled upon verdict form regarding bifurcation, and contended that the jury needed to be instructed during the actual damages part of the case about punitive damages. This is just an example of Defendants' conduct in endlessly revisiting settled rulings and, many times, agreed upon matters.

Now, under the guise of "issue preservation" the Defendants have asked the Court of Appeals to remand this matter for yet another round of hearings and rulings.

One of the contentions that is made in the motion is that this Court should include specific rulings on each of J&J's arguments or insert language stating that this Court considered and rejected any arguments not expressly addressed in the Order.

I do not believe that I am required to endlessly reframe my post-trial rulings to meet Defendants' request for answers to the additional questions they have framed. I am sensitive to the issue of preservation and accommodate it in all of my trials, as I did here. Johnson & Johnson's appellate counsel, led by C. Mitchell Brown, are top-notch and I do not criticize them in any way. Their client J&J decided, perhaps even before this trial began, that its primary defense would be aimed at attacking the trial court's rulings rather than presenting a substantive defense case. Appellate counsel is simply trying to play clean-up. I have tried to facilitate the preservation of Defendants J&J's disagreements with this Court's rulings. I do not think I am required to endlessly "doomscroll" my rulings in order to preserve Defendants' citations of trial judge error. This "issue

preservation” activity post-trial is no substitute for the presentation of a substantive defense during the trial of this matter; that was trial counsel’s choice. Trial counsel had the responsibility in the first instance to preserve its positions. What I do not believe I am required to do is revisit my rulings again and again. I unreservedly respect the constitutional authority of the Court of Appeals and the South Carolina Supreme Court to review my rulings as a trial judge. I would not have had a job as an appellate judge for twenty-seven years if trial judges always got it right. If the appellate courts find error in my rulings, I will respect and follow those rulings, as I always have. Our appellate courts are second to none in their ability to faithfully discharge their responsibilities.

RULING ON THE MERITS

I have carefully considered the Defendants’ Motion to Reconsider of December 3, 2024, and Plaintiffs’ Response filed February 21, 2025. I believe the Plaintiffs’ filing is a fair and accurate summary of the rulings I have made, and therefore, I have utilized it as well as Defendants’ Motion to Reconsider to craft the Order of this Court.

LEGAL STANDARD

Rule 59(e) of the *South Carolina Rules of Civil Procedure* allows a party to move for an order altering or amending a judgment or order entered by the court. The decision to grant or deny a Rule 59(e), SCRCF, motion is within the sound discretion of the trial judge. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (App. 2012), *reh’g denied, cert dismissed*. A motion to alter or amend is typically granted only where the moving party shows that there is a clear factual error to be corrected. *See Doe v. Doe*, 324 S.C. 492, 478 S.E.2d 854 (Ct. App. 1996). As the federal courts have recognized, “reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396 (4th Cir. 1998).

A party's mere disagreement with how the trial court applied the pertinent standard when making its decision does not support a motion to alter or amend. See *Hutchinson v. Staton*, 994 F.2d 1076, 1083 (4th Cir. 1993). The South Carolina Supreme Court has explained that "[a] party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Moreover, a party cannot use a motion to alter or amend a judgment to present to the trial court an issue that the party could have raised prior to judgment but did not. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002); *Mailsources, LLC v. MA. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

The J&J Defendants' Motion to Reconsider fails to show this Court has misunderstood, failed to fully consider, or failed to rule on an argument or issue. J&J Defendants' motion largely rehashes the same arguments J&J Defendants advanced in support of its post-trial motions, which this Court thoroughly considered, discussed, and partially rejected and partially adopted in its Order. No adequate reason has been presented to alter or amend this Court's rulings, with one minor exception explained in Section III.

ANALYSIS

I. SUCCESSOR LIABILITY

In its December 11, 2024 Order, this Court found (1) the successor liability issue in this case was governed by South Carolina law and (2) that Defendants Johnson & Johnson Holdco (NA) Inc. ("Holdco") and Defendant Kenvue, Inc. ("Kenvue") were successors in interest to Johnson & Johnson Consumer Products, Inc. ("Old JJCI") and Johnson & Johnson. The J&J

Defendants object to this finding and allege that this Court overlooked and/or did not expressly address certain argument related to the issue of successor liability:

A. Project Plato

The J&J Defendants contend that it was improper for this Court to include in its Order statements regarding the purpose of Project Plato, statements identifying the entities created as a result of Project Plato, and statements regarding the post-Project Plato manufacture of JBP. The J&J Defendants argue that these statements are erroneous and factually unsupported. Contrary to the J&J Defendants' argument, Plaintiffs presented evidence supporting these statements. Defendants have failed to state why the evidence submitted by Plaintiffs should not have been considered by this Court or why the statements made in support of a finding of successor liability are factually incorrect. Further, this Court thoroughly addressed these issues in its Order on pages 8-9. This Court's conclusion on the successor liability issue was not factually erroneous. The J&J Defendants simply disagree with this Court's ruling.

B. Defendants' "after the fact" objection to successor liability being heard by this Court only.

The J&J Defendants argue that they did not agree on how and when the successor liability issue would be addressed. This is not only inaccurate, it has been waived. First, in the J&J Defendants' memorandum entitled *Mode of Trial Motion Regarding Successor Liability and Amalgamation*, filed on August 3, 2024, the J&J Defendants argued that this Court should decide the issue of successor liability, as opposed to the jury, because it is an equitable issue.² Plaintiffs agreed with the J&J Defendants.³ This Court agreed to conduct separate proceedings by this Court only. Second, this Court, in accordance with argument from the J&J Defendants' counsel,

² J&J Defendants' *Mode of Trial Motion Regarding Successor Liability and Amalgamation*, filed 8/3/24, at pgs. 1-2.

³ Trial Transcript (hereinafter referred to as "TT") Day I, 8/5/24, at 10:2-11.

informed the parties that it would rule on the issue of successor liability after impaneling the jury. Counsel for Defendants J&J agreed, stating “[a]ll of the successor liability issues are after that”.⁴ At the hearing on the J&J Defendants’ post-trial motions, this Court again noted the parties’ agreement “to defer and consider” the successor liability issues “before we closed out the post-trial.”⁵ While there were objections throughout trial to the admission of evidence that may have been relevant to the successor liability issue as well as issues before the jury, the J&J Defendants did not object to this Court determining the successor liability issue post-jury verdict.

C. Punitive damage verdict is against J&J only.

The J&J Defendants now argue that the jury’s verdict of willful, wanton, or reckless conduct was as to Johnson & Johnson only.⁶ However at trial, the J&J Defendants, speaking through trial counsel, agreed they should be grouped together on the verdict form.⁷ When the verdict was read in open court, the J&J Defendants did not object to the claimed error which they now assert. Thus, they have waived any challenge to errors on the verdict form. See *Limehouse v. S. Ry. Co.*, 216 S.C. 424, 430, 58 S.E.2d 685, 688 (1950) (“It is well established that where a verdict is objectionable as to form, the party who desires to complain should call that fact to the [c]ourt’s attention when the verdict is published. Otherwise, the right to do so is waived.”).

Further, while the J&J Defendants filed a total of eight pages of objections to this Court’s final Jury Charges and Related Final Court Verdict Form and Plaintiffs’ Proposed Verdict Form, not once did they object to the willful, wanton, and reckless interrogatory only listing “Johnson &

⁴ TT Day I, 8/5/24, 17:18-25.

⁵ Hearing on Post-Trial Motions, Vol. II, 9/25/24, at 162:16-19.

⁶ Verdict Form, Ct Ex. 4, 8/19/24, at pg. 3.

⁷ TT Day VI, 8/13/24, 1775:14-20.

Johnson.”⁸ Throughout trial, the J&J Defendants presented a group defense. The jury’s verdict was against the “J&J Entities,” and this Court’s reference to that fact was not in error.

D. Successor liability governed by South Carolina law.

The J&J Defendants argue that this Court erroneously determined that the successor liability issue was governed by South Carolina law and not Texas law. The J&J Defendants simply disagree with my ruling on this issue, which I thoroughly addressed in my Order.⁹

E. Pecos River should be substitute for all other J&J entities.

The J&J Defendants contend that ruling on the issue of successor liability was unnecessary because Johnson & Johnson and newly created entity Pecos River are still in existence and can pay the judgment. The trial of this matter began on August 5, 2024. The J&J Defendants only filed a motion for substitution—requesting the substitution of Pecos River for LLT Management—after the entry of the verdict on August 15, 2024. Thus, this Court had no knowledge of the existence of Pecos River nor its ability to pay any verdict until after the entry of the jury’s verdict. Consequently, it cannot be said that a ruling on the issue of successor liability was unnecessary because LLT—the entity that the J&J Defendants told this Court would be responsible for any verdict rendered against the J&J Defendants—then ceased to exist. Given the frequent name changes, bankruptcies, and other corporate maneuvers of J&J and its related entities, all designed to avoid liability to talc plaintiffs, Plaintiffs’ successor liability claims are necessary to ensure that solvent, responsible entities are available respond to the verdict. J&J does not get to dictate whether Plaintiffs’ successor liability claims are “unnecessary,” especially when they failed to establish any requirement that the predecessor no longer exist before the issue of successor liability becomes

⁸ See J&J Defendants’ Objections to this Court’s Final Jury Charges and Related Final Court Verdict Form, filed 8/14/24; and J&J Defendants’ Objections to Plaintiffs’ Proposed Verdict Form, filed 8/12/24.

⁹ Order on Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc.; and Kenvue, Inc.’s Post-Trial Motions, filed 12/11/24, at pgs. 13-16.

ripe for ruling. See *Simmons v. Mark Lift Indus.*, 366 S.C. 308, 332, 622 S.E.2d 213, 225-226 (S.C. 2005).

F. Mere Continuation Theory

This Court did not err in finding successor liability under the mere continuation exception. In my Order, I addressed each of the elements for application of the mere continuation exception as expressed in *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc.*, 424 S.C. 256, 269-70, 818 S.E.2d 447, 454-55 (S.C. 2018). Importantly, this Court included specific evidence demonstrating the commonality among officers, directors, **and** shareholders. My Order specifically found:

The business of Old JJCI continued without interruption in New JJCI via Holdco and Kenvue. The shareholders of Old JJCI became shareholder[s] of Holdco/Kenvue. The companies shared employees, including members of their leadership teams and board of directors. The majority of the individual[s] on Kenvue's current Board of Directors got their start at Johnson & Johnson or Old JJCI. Kenvue has even admitted in official documents that it is the same company as Old JJCI.¹⁰

This is not an instance where this Court misapplied the law. The J&J Defendants simply disagree with this Court's findings.

G. Kincaid Citation

This Court did not conflate the doctrine of successor liability and piercing the corporate veil. As support for this position, the J&J Defendants point only to this Court's reference to *Kincaid v. Landing Development Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986). I did so only in reference to the commonality between shareholders, officers, and directors and a "blurred corporate distinction amongst the entities involved[.]"¹¹ The reference to *Kincaid* was not improper

¹⁰ Order, filed 12/11/24, at pgs. 17-18.

¹¹ Order, filed 12/11/24, at pg. 20.

and does not suggest that this Court improperly conflated the doctrines of successor liability and piercing the corporate veil.

H. Fraud exception for successor liability.

This Court did not err in finding that the fraud exception for successor liability applied. On this point, the J&J Defendants point to the creation dates for Kenvue and the cessation of sales of JBP. All of which are irrelevant. The issue of successor liability focuses on liability for the harms caused. That harm is not lessened simply because the Defendants created another entity. Again, this is not an issue of misapplication of facts. As this Court noted:

Johnson & Johnson, Holdco, and Kenvue, along with other entities, have intermingled and blurred corporate interests, entities, and activities such that there is no legal distinction between the corporation involved in the consumer products business.¹²

The J&J Defendants simply disagree with this Court's ruling.

I. Blurred Corporate Distinction

As above, the J&J Defendants disagree with this Court's finding they "blurred corporate distinction between the entities involved in the consumer product business." This Court considered the J&J Defendants' evidence contradicting the evidence submitted by Plaintiffs on this issue. J&J simply disagrees with this Court's ruling.

II. PUNITIVE DAMAGES

A. Strict Liability

Plaintiffs' case against the J&J Defendants was not based solely on the theory of strict liability. The imposition of punitive damages, based on the evidence submitted, is proper as to Plaintiffs' remaining causes of action, excluding loss of consortium. As noted in Plaintiffs' Response In Opposition to J&J Defendants' Post-Trial Motions, Plaintiffs did not seek to recover

¹² Order, filed 12/11/24, at pg. 18.

punitive damages as it relates to their strict liability claim or loss of consortium claims. It is the J&J Defendants, not this Court, who misunderstand the purpose and propriety of punitive damages. There is no foundation to argue that this Court awarded punitive damages in this case for strict liability.

B. Loss of Consortium

Plaintiffs did not seek to recover punitive damages as it relates to Plaintiff Lonnie Long's loss of consortium claim. It is the J&J Defendants, not this Court, who misunderstand the purpose and propriety of punitive damages. There is no foundation to argue that this Court awarded punitive damages in this case for loss of consortium.

C. Deterrence

The South Carolina Court of Appeals recently wrote that “[t]he purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future.” *Portrait Homes-South Carolina, LLC v. Pennsylvania Nat’l Mut. Casualty Ins. Co., et al.*, 442 S.C. 515, 587, 900 S.E.2d 245, 284 (Ct. App. 2023) (quoting *Clark v. Cantrell*, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). Additionally, punitive damages “serve to vindicate a private right of the injured party[.]” *Id.* Plaintiffs’ evidence established that talc-based JBP is *still available* for purchase online,¹³ plus J&J continues to sell other formulas of JBP and thousands of other consumer products. Punitive damages serve the valid purposes of both punishing J&J and deterring J&J and others from selling personal care products that cause serious bodily harm and death.

¹³ Mongon, CEO Kenvue Depo., *Naranjo v. Kenvue*, 8/14/23, 55:3-12.

D. Comparative Fault

The J&J Defendants argue that it is unconstitutional to award punitive damages based on a comparative fault scheme that does not allow the jury to apportion fault between tortfeasors. The J&J Defendants raised this issue in their post-trial motions. Plaintiffs addressed this issue in their response. This Court did not award punitive damages based on a comparative fault scheme. Punitive damages in this case were awarded pursuant to S.C. Code Ann. § 15-32-520, which does not require apportionment of fault among joint tortfeasors. While “the defendant’s degree of culpability” is one of many factors the jury **may** consider in arriving at the amount of punitive damages to award, its “apportionment of fault” is reflected in the punitive damages award . . . specific to [that] defendant.” S.C. Code Ann. § 15-32-520(G). Further, “each defendant is liable only for the amount of the award made against that defendant.” *Id.* Thus, there is no danger that J&J would be liable for an unsupported portion of the punitive damages award.

E. Punitive Damage Instructions

Contrary to the J&J Defendants’ position, this Court addressed their contentions of errors in the punitive damage’s instruction. “The substance of the law is what must be instructed to the jury, not any particular verbiage.” *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016). My Order concluded that “[t]he punitive damages instruction explained the nature, purpose, and basis for the punitive damages award.”¹⁴

By determining that the punitive damages instruction was proper, this Court thereby concluded there was no error in the punitive damages instruction and rejected the J&J Defendants’ arguments on this issue. The J&J Defendants have given this Court no reason to revisit this ruling.

¹⁴ Order, filed 12/11/24, at pg. 35.

F. *Mitchell v. Fortis* Review

The J&J Defendants contend that this Court erred in its due process review under *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009). Notably, the J&J Defendants do not contend that this Court misunderstood, failed to fully consider, or failed to rule on their argument regarding the *Mitchell v. Fortis* guidelines. They simply disagree with this Court's conclusions. A party's mere disagreement with how the trial court applied the pertinent standard when making its decision does not support a motion to alter or amend.¹⁵ This Court addressed each of the *Mitchell v. Fortis* factors and the evidence supporting those factors.

The J&J Defendants contend this Court erred in its review of the punitive damages award. Again, the J&J Defendants do not assert that this Court misunderstood, failed to fully consider, or failed to rule on any of their arguments against the imposition of punitive damages. They simply disagree with this Court's conclusions. A party's mere disagreement with how the trial court applied the pertinent standard when making its decision does not support a motion to alter or amend. *See Hutchinson*, 994 F.2d at 1083. Additionally, this Court addressed and dismissed the J&J Defendants' arguments regarding Plaintiffs' counsel's closing argument. As above, they simply disagree with this Court's ruling and disagreement is an improper basis to alter or amend this Court's judgment.

III. OTHER J&J OBJECTIONS

A. Dr. Longo's Testimony

While the majority of the J&J Defendants' bases for requesting this Court alter and/or amend its Order are simply a rehashing of their arguments against entry of the jury's verdict or a mere disagreement with this Court's ruling on their post-trial motions, this Court will make one

¹⁵ *See Hutchinson v. Staton*, 994 F.2d 1076, 1083 (4th Cir. 1993).

minor change to a sentence on page 6 of its Order, filed December 11, 2024, regarding the type of asbestos fibers Plaintiffs' expert Dr. Longo identified in brakes. The statement will be amended to refer to winchite only, instead of winchite and tremolite, and to accurately read:

*The jury then heard, uncontradicted, that Dr. Longo has never found winchite in any of his testing of brakes.*¹⁶

This minor alternation has no bearing on this Court's other findings, legal conclusions, and rulings on the J&J Defendants' post-trial motions.

B. Dr. Haber and Dr. Madigan's Testimony on Proximate Cause

Contrary to J&J's contentions, this Court's Order does not misstate the evidence on proximate cause. Dr. Haber testified as an expert for Plaintiffs on issues regarding proximate cause. The statement in this Court's Order regarding Dr. Haber's testimony was an accurate short summary of his testimony, including his references to talc exposure studies, and his ultimate opinion that "the fiber per cc levels of exposure or a range of exposures from Johnson's Baby Powder" is "between .1 to 4 fibers per cc."¹⁷ Similarly, Dr. Haber referenced a talc exposure study "looking at people that used it for 40 years, .38 to 5.18 fiber . . . per cc years[.]"¹⁸ Dr. Haber later confirmed that these numbers would apply to Michael Perry as he used the product for 40 years.¹⁹ No alteration is necessary.

This Court's statement regarding Dr. Madigan's conclusions regarding Michael Perry's dose of asbestos from JBP was correct based on Dr. Madigan's prior calculations, even though those calculations were not specific to Michael Perry. Dr. Madigan testified that he did a dose calculation immediately prior to this trial for someone who applied Johnson's Baby Powder twice

¹⁶ This Court has today, February 28, 2025, filed an Amended Order reflecting this ruling.

¹⁷ TT Day II, 8/6/24, at 414:12-18.

¹⁸ *Id.* at 414:2-6.

¹⁹ *Id.* at 426:8-14.

a day for 30 years.²⁰ Relying on the Gardner paper, a peer reviewed and published study, Dr. Madigan testified that “there is an estimate of the fibers per cc of asbestos that a person was exposed to by using talc for one minute. And it’s 1.9 fibers per cc.”²¹ He further testified that this was the equivalent to .35 fiber years.²² It is clear from the similarities between the specific individual in Dr. Madigan’s calculations and Michael Perry, that the dose calculation would be the same or similar. No alteration is necessary.

IV. STAY

The J&J Defendants seemingly request this Court alter or amend its decision as to the bond amount. This is simply a rehashing of the arguments the J&J Defendants made in their post-trial motion to stay execution of judgment. The amount of the bond is within this Court’s discretion and can either be in the full amount of the judgment or some lesser amount according to a statutory formula. This Court exercised its discretion and protected the judgment in this case from the J&J Defendants’ constant corporate changes by setting a bond that covers the full amount of the judgment. The J&J Defendants have failed to demonstrate that this Court’s setting of the bond at the full amount of the judgment was a clear factual error, or that this Court has misunderstood, failed to fully consider their argument, or failed to rule on the issue. The J&J Defendants’ motions as to this issue should be denied.

²⁰ TT Day III, 8/7/24 at 802:24-803:9.

²¹ *Id.* at 803:14-17.

²² *Id.* at 803:22-24.

CONCLUSION

Motions to Reconsider, Alter or Amend a trial court's final Order must be premised on an error of fact or law made by the court. Mere disagreement with the court's decisions is no a sufficient basis for such a motion. This Order corrects the one minor factual error contained in the December 11, 2024, Order of this Court. With respect to all other matters raised by J&J, for the reasons stated above, Defendants' Motion to Reconsider, and/or to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al

Case Number: 2023CP4004072

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2025-02-28 13:57:06 page 19 of 19

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.,	)	
	)	
Defendants.	)	

**AMENDED ORDER¹ ON DEFENDANTS JOHNSON & JOHNSON; LLT
MANAGEMENT, LLC; JOHNSON & JOHNSON HOLDCO (NA) INC.; AND KENVUE,
INC.'S POST-TRIAL MOTIONS**

Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc., and Kenvue, Inc. (collectively “J&J”) move for relief from the jury’s August 15, 2024 verdict in favor of Plaintiffs Michael L. Perry and Lonnie L. Long. For the reasons set forth below, J&J’s motions for judgment notwithstanding the verdict, new trial absolute based on errors of law, new trial absolute based on the thirteenth juror doctrine is DENIED, and new trial *nisi remittitur* are GRANTED. Separately, J&J’s motion for setoff and production of settlement agreements is GRANTED as to setoff, but DENIED as to the production of settlement agreements. Finally, J&J’s motion for stay of execution on the judgment is GRANTED, in part.

I. EVIDENCE AT TRIAL

Viewing the record in the light most favorable to Plaintiffs, sufficient evidence supports the jury’s finding that Michael Perry’s malignant pleural mesothelioma was proximately caused

¹ This Order is amended per the Order on Remand filed today, February 28, 2025, at page 6 to reflect the deletion, in the description of Dr. Longo’s findings of the words “tremolite or”.

by exposure to asbestos in Johnson's Baby Powder ("JBP"). Mr. Perry and his husband, Lonnie Long, brought this action against multiple defendants, including but not limited to J&J. Evidence at trial demonstrated that Mr. Perry was exposed to asbestos by using JBP on himself on a daily basis, multiple times a day, from 1974 through 2019. His mother also used JBP on him during diaper changes from the day of his birth on December 20, 1969. Three of Plaintiffs' causes of action were placed before the jury: negligence, strict liability, and fraudulent misrepresentation. J&J did not put on a case-in-chief.

A. Liability and Punitive Damages

1. Mr. Perry testified to his decades-long use of JBP on a daily basis.

Mr. Perry testified that his earliest memory of using talcum powder on himself was from 1974, when he was four or five years old, through 2019. He also testified that, after he was born in 1969, his mother used JBP on him during diaper changes when he was an infant and that his use of the baby powder "didn't just start at the age of five." This is all undisputed. He explained that he was using Johnson's Baby Powder two to four times per day. The jury further heard that Mr. Perry used a minimum of ten bottles of JBP per year. Use of JBP was part of Mr. Perry's daily hygiene routine because he was allergic to deodorant. The jury heard that this also was undisputed.

The jury was shown images of two bottles of JBP Mr. Perry found in his home. There was no warning of any kind on the first bottle. The second bottle had a small warning regarding keeping the bottle away from small children to avoid inhalation. Neither bottle found in his home had a warning that JBP could contain asbestos. Mr. Perry further testified to the jury about what was written on the bottles of JBP found in his home, including the phrases "purest protection", indicating that "pure" was synonymous with "safe," and "clinically proven mildness," indicating once more that "clinically proven" meant scientifically safe.

2. JBP contained asbestos.

It was undisputed that throughout Michael Perry's use of JBP, the specifications for the powder called for talc sourced from different mines including but not limited to mines in Val Chisone, Italy, Vermont, and China. Plaintiffs' expert, Dr. William Longo, testified that he has analyzed talc from each source that J&J used in its baby powder. His test results showed the presence of asbestos in each of the mines utilized by J&J in its baby powder throughout time. He confirmed that he found tremolite and other asbestos fibers, including winchite/richterite, over and over in JBP. Dr. Longo further testified that he found asbestos in JBP throughout each of the decades in which Mr. Perry used JBP – 1960s through the late 2000s. He confirmed that he found tremolite asbestos, anthophyllite, richterite, and actinolite in JBP. Battelle Memorial Labs also found tremolite asbestos in JBP 153 times as early as the 1950s. By the early 1970s, J&J had numerous reports showing the presence of tremolite in its Vermont and Italian talc ore. Additionally, even with "poor analytical sensitivity", the FDA's contract lab found asbestos in the talc used in JBP in 2019. Despite J&J having this knowledge, J&J admitted through its former corporate representative, Dr. John Hopkins, that there has never been a warning about asbestos on JBP or any J&J talc product.

3. Michael Perry was exposed to asbestos from JBP.

The testimony established that Mr. Perry's use of JBP exposed him to visible asbestos-containing dust. Plaintiffs' expert Dr. Steven Haber testified that once talc is used in a powder form inside the home, often in enclosed spaces such as a bedroom or bathroom, it is impossible to get the asbestos from that talc powder out of the home. There was uncontradicted evidence regarding re-entrainment. Dr. Haber explained that once asbestos settles down to the ground or to a surface, anyone walking by it or brushing it can put the asbestos fibers back into the air inside

the home. He elaborated that even if one were to vacuum or sweep up the talc dust with asbestos in it that is all over the home, that process is simply blowing the asbestos back into the air. Once it's in the air, it can be breathed in. Dr. Haber cited an authoritative, peer-reviewed and published paper by Dr. Hillerdal that studied these very concepts.

Dr. Haber additionally testified that OSHA began regulating asbestos exposure in the workplace in the early 1970s and that while the permissible exposure limit eventually was set at .1 fiber per cubic centimeter of air (fiber/cc) time -weighted average, that level was not safe for mesothelioma and people exposed at this level would still develop the disease. Dr. Haber testified about his reliance on the Steffen study, which the jury heard showed that when individuals used JBP for 40 years, their exposure level to asbestos is between .38 to 5.18 fibers/cc years. This exposure level substantially increases the user's risk of developing mesothelioma. Dr. Haber opined, to a reasonable degree of medical certainty, that Mr. Perry's range of exposures from his use of JBP was between .1 to 4 fibers per cc. Epidemiological studies have established that these levels are sufficient to cause mesothelioma, including studies by Gardner, Ferrante, Jiang, LaCourt, Roland, Iwatsubo, and Rodelsperger.

The jury heard testimony from Dr. Madigan, who testified that he did a dose calculation immediately prior to this trial for someone who applied JBP twice a day for 30 years. He testified that "there is an estimate of the fibers per cc of asbestos that a person was exposed to by using talc for one minute. And it's 1.9 fibers per cc." He further testified that this was the equivalent to .35 fiber years. Mr. Perry used even more talc than the hypothetical person utilized in Dr. Madigan's calculation, and his calculation demonstrated an increased risk. Dr. Madigan's dose testimony was undisputed.

The jury also heard testimony from Dr. Haber, who testified that OSHA concluded that there is no safe level of exposure to asbestos and that mesothelioma requires the least amount of asbestos exposure to develop. Dr. Haber testified to the jury about the *Steffen, et al.* peer-reviewed published paper and explained the levels of exposure that occur when someone uses J&J's talc. He explained to the jury that the study showed that individuals who used J&J's talc for 40 years had an exposure level to asbestos between .38 to 5.18 fibers/cc years, which substantially increases the user's risk of developing mesothelioma. Dr. Haber testified that Mr. Perry's range of exposures to asbestos from JBP was between .1 to 4 fibers per cc. He clarified that 1 fiber per cc meant breathing "10,000 fibers every minute, millions or billions in a year."

4. Plaintiffs' experts considered Mr. Perry's frequent use of JBP.

The jury heard testimony from Dr. Haber that Mr. Perry was "an above-average user" of JBP and he was "not only using it two to four times a day, but he was putting it on his whole body, and . . . at times he was actually putting it on his . . . face." He also explained that Mr. Perry's use of JBP was "a repeated use" and, because Mr. Perry is "a big guy" that "the amount of talc that he uses . . . is going to be more than . . . a smaller-framed individual." The testimony established that Mr. Perry's exposures to asbestos from JBP were a "substantial contributing factor to" the "development of [his] mesothelioma." The jury also heard evidence that J&J used talc in JBP from Italy before 1966/1967, talc "mostly" from Vermont from 1966 to 2003, talc from Italy for seven months in 1979, and talc from China from 2003 to 2020 – and each of these mines have tested positive for asbestos. The uncontradicted evidence was that Mr. Perry inhaled talc from JBP from each of these mine sources.

5. Mr. Perry's lung tissue contained amphibole asbestos fibers found in JBP.

Plaintiffs' material scientist expert Dr. Longo performed a tissue digestion on Mr. Perry's tissue. The tissue digestion revealed the presence of tremolite asbestos, winchite asbestos, and talc particles in Mr. Perry's lungs. The jury heard from Dr. Longo that the tremolite in Mr. Perry's lungs was consistent with what he has previously and repeatedly found in his testing of JBP, and it is also consistent with "Johnson & Johnson's own internal documents from decades ago that said when you find tremolite in talc in people's lungs with mesothelioma, it's a fingerprint for exposure to asbestos." Dr. Longo further explained to the jury that J&J's own experts have found winchite in JBP, that winchite has been found in the talc sourced from the Italian mine used by J&J, that he has found richterite in JBP and that J&J's own expert refers to "richterite" as "winchite" as finding the same thing because the chemistry is so close. The jury then heard, uncontradicted, that Dr. Longo has never found winchite in any of his testing of brakes.

B. Successor Liability

Prior to the trial of this matter, the parties agreed that the issue of successor liability would not be tried to the jury. Therefore, no evidence was put forth to the jury throughout trial as to the successor liability of any J&J entities, even though J&J continued to make objections on the record regarding certain evidence. Plaintiffs and J&J jointly stipulated that the verdict form submitted to the jury would read "J&J Entities" so that this Court could rule on the successor liability post-trial. As such, the parties have since submitted extensive briefing regarding the successor liability issue to this Court and reserved that issue for the Court's ruling.

C. Jury Trial

A jury trial was held against J&J and a co-defendant, American International Industries, in August, 2024. The jury found that (1) J&J was negligent and that its negligence proximately caused

Mr. Perry's mesothelioma; (2) J&J was strictly liable for selling defective products that were a proximate cause of Mr. Perry's mesothelioma; and (3) J&J was willful, wanton, and reckless in its conduct. The jury returned a verdict of \$23,037,500 for Mr. Perry's past and future loss and of \$9,618,750 for Lonnie Long on his loss of consortium claim. After a bifurcated trial on punitive damages, the jury found that J&J had acted willfully, wantonly, and recklessly and awarded \$30,000,000 in punitive damages against J&J.

J&J now seeks judgment notwithstanding the verdict, a new trial absolute, and a new trial *nisi remittitur*. J&J contends that there was no evidence to support any part of the jury's verdict, and challenges the amounts of the compensatory and punitive damages awards.

II. RULING ON SUCCESSOR LIABILITY

A. Standard of Review

In South Carolina, successor liability arises when: (a) there was an agreement to assume such debts; (b) the circumstances surrounding the transaction indicate a consolidation of the two corporations; (c) the successor company was a mere continuation of the predecessor company; or (d) the transaction was fraudulently entered into for the purpose of wrongfully defeating creditor claims. *Nationwide Mutual Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451 (2018); *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 305-06, 657 S.E.2d 67, 69 (Ct. App. 2008); *Simmons v. Mark Lift Indus.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005); *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924). A successor corporation is a mere continuation of its predecessor when the predecessor and successor corporations have substantially the same officers, directors, and shareholders. *Simmons*, at 366 S.C. at 313, 622 S.E.2d at 216. Where the changing of corporate hats is tainted by such fraudulent intent, the successor corporation remains liable, even when the test for mere continuation is not otherwise

satisfied. *Nationwide Mutual*, 424 S.C. at 269-70, 818 S.E.2d at 454-55. South Carolina recognizes this exception when a predecessor's assets are specifically transferred or moved to place the predecessor's assets out of the reach of creditors and/or third parties. *Nationwide Mutual*, 424 S.C. at 256.

B. Creation of the Successor Defendants

Johnson & Johnson alone made and sold JBP from the 1890s to 1978. From 1979 to 2021, subsidiaries under Johnson & Johnson's direction sold JBP (collectively "Old JJCI").

In October 2021, Johnson & Johnson devised a scheme called "Project Plato" with the stated purpose of avoiding talc liabilities. Defendants admitted they did it to (a) "allocate the talc liabilities," (b) "stop litigation completely" and (c) prevent an "outflow of revenue." On October 12, 2021, through a series of intercompany transactions (called the "Texas Two Step"), Old JJCI ceased to exist, and two new companies were created (a) LTL Management ("LTL") holding all the talc liabilities (per Johnson & Johnson), no productive assets and no ongoing business and (b) Johnson & Johnson Consumer Inc. ("New JJCI"), holding the productive business assets.

Two days after its creation, LTL declared Chapter 11 bankruptcy. LTL requested a bankruptcy stay of litigation to apply not only to LTL, but to Johnson & Johnson, New JJCI and various other parties. In November 2021, the request was granted. In early 2023, the Third Circuit reversed the Bankruptcy Court, holding LTL's bankruptcy was filed in bad faith. On April 4, 2023, the Bankruptcy Court formally dismissed the case. LTL re-filed a second bankruptcy a few hours later on April 4, 2023. Ultimately, the Bankruptcy Court held that LTL filed the second bankruptcy in bad faith. On August 11, 2023, the second bankruptcy attempt was formally dismissed, ending all litigation stays. There is no dispute that Old JJCI is not a viable entity as it ceased to exist in October 2021.

After its creation in October of 2021, New JJCI continued to operate Johnson & Johnson's Consumer Health business in the U.S. without interruption. The manufacturing, marketing and distribution assets that Old JJCI used to make baby powder went to New JJCI. New JJCI maintained and continued (a) Old JJCI's business contracts (manufacturing, licensing, supply, vendor, etc.), (b) the same ownership (Johnson & Johnson as grandparent, Janssen Pharmaceuticals as parent), (c) the same management, (d) the same employees in the same positions, (e) the same operating locations, (f) the same business operations and (g) making the same products, including JBP. New JJCI changed its name to Johnson & Johnson Holdco (NA) Inc. ("New JJCI/Holdco") in December 2022.

In early 2023, Johnson & Johnson spun off its consumer business segment to defendant Kenvue, Inc. ("Kenvue"):

- New JJCI/Holdco formed a subsidiary, Johnson & Johnson Consumer, Inc. ("JJCI 3.") in June 2022
- New JJCI/Holdco transferred New JJCI 3 to Janssen Pharmaceuticals in Feb. 2023.
- Janssen transferred "JJCI 3" to a holding company, JNTL Holdings 2, Inc.
- JNTL Holdings 2, Inc. (parent of JJCI 3), along with other entities, were ultimately transferred to Johnson & Johnson by early April 2023.
- Johnson & Johnson spun off these entities to Kenvue in April 2023.

According to testimony from Kenvue's corporate representatives, Kenvue held itself out as essentially the same company that was operating the Consumer Health Division inside of Johnson & Johnson. Kenvue's SEC filings present itself as the same company that sold JBP for decades. Kenvue maintained the (a) same business contracts, permits, licensing, etc. as Old JJCI and New JJCI/Holdco, (b) same ownership (both before and after an August 2023 "stock swap"), (c) same management, (d) same employees, (e) same operating locations, (f) same business operations and (g) same products, including JBP.

C. Other issues impacting successor liability.

J&J's business used to consist of three segments: Consumer, Pharmaceutical and Medical Devices. The consumer segment was composed of numerous legal entities, Old JJCI being only one. While over 10,000 employees worked in the consumer segment, allegedly Old JJCI employed about 3,000. Executives testified that they conducted business by segment, sharing employees and resources without regard for the legal entities:

- *Mr. Mongon (President of the consumer segment and then Kenvue):* They operated business segment, not “through the lens of legal entities;”
- *Mr. Ruh (CFO of the consumer segment and then Kenvue):* He did not know “what legal entities were under my purview” because it operated by segment;
- *Dr. Kuffner (Medical Officer of the consumer segment):* They oversaw and monitored products sold across all legal subsidiary entities of the segment;
- *Ms. Goodridge (President of Old JJCI and New JJCI):* She worked for the consumer segment consisting of multiple legal entities.

The officers and directors of Old JJCI and New JJCI were all employees of Johnson & Johnson. Ms. Goodridge simultaneously held positions as president of (a) a unit of Johnson & Johnson's consumer segment and (b) Old JJCI. She never participated in any board meetings for Old JJCI. Ms. Goodridge explained that the president of Old JJCI was not an “operational role,” but instead a “corporate officer role” consisting of signing legal transactions. The consumer health segment of J&J was spun off to the Kenvue enterprise.

Johnson & Johnson dictated the October 2021 “Texas Two Step.” The president of the Consumer segment (and then Kenvue) testified that the Legal Department of Johnson & Johnson handled the decisions of “Project Plato” in October 2021. Ms. Goodridge, president of Old JJCI, confirmed that Johnson & Johnson (the parent) controlled the creation of LTL and New JJCI. Ms. Goodridge testified that (a) Johnson & Johnson made her president of the other newly created entities in the transactions and instructed her to sign the instruments, (b) Johnson & Johnson

established the entities, (c) she only spoke with Johnson & Johnson attorneys (and no businessperson) and (d) she cannot identify any business purpose for the transactions.

Similarly, Johnson & Johnson dictated the April 2023 Kenvue spinoff. Both Kenvue's CEO and CFO confirmed that Johnson & Johnson made all decisions; the Kenvue Board had no say. The entire transaction was under the control and direction of Johnson & Johnson.

In the instant case, Plaintiffs deposed Kenvue Inc. first through its corporate representative James Mittenthal. Mr. Mittenthal testified the Vice President of Global Risk Management for Kenvue once worked for Johnson & Johnson. Additionally, according to Kenvue, Teddy Reed, Kenvue's vice president and corporate secretary, also worked for Johnson & Johnson before coming to Kenvue. Further, Mr. Mittenthal, as corporate representative for Kenvue, has no knowledge of the logic behind the "restructuring" transactions and cannot testify that anything substantive occurred in Texas.

Kenvue later designated John Kim as its corporate representative in this case after this Court found the preparation of Kenvue lacking. He was also designated as the corporate representative for Johnson & Johnson Holdco (NA) Inc. Mr. Kim has never worked for Kenvue or Holdco. He was, however, head of product liability litigation at Johnson & Johnson. Mr. Kim confirmed that the 2021 transaction created two entities from Old JJCI—LTL and New JJCI. New JJCI later became Holdco.

Mr. Kim testified that he was personally involved in Project Plato, along with Chris Andrew, who is currently at Kenvue. According to Mr. Kim, there are documents associated with Project Plato which refer to the J&J family or the "J&J enterprise" and he noted that the term is used to denote a company that shares some common ownership with, at the top—basically—generally, they're owned by Johnson & Johnson shareholders, ultimately.

In 2023, Johnson & Johnson initiated “Project Diamond” which concerned the spinoff of the Consumer Health business segment from Johnson & Johnson to the Kenvue enterprise. Kenvue’s CEO admitted that (a) Kenvue has held itself out to investors as essentially the same company that was operating the Consumer Health Division inside Johnson & Johnson and (b) Kenvue has held itself out as the former Johnson & Johnson consumer business. Despite forming in February 2022, Kenvue publicly referred to its portfolio of iconic and modern brands that has been built over 135 years, including JBP. In other words, Kenvue held itself out as the same company that made JBP for generations.

Similarly, corporate representatives for the companies admitted that all of the employees were transferred from Johnson & Johnson’s consumer segment to Kenvue, unless they were designated as shared employed. The executive officers for Kenvue had previously held the same or substantially similar positions for the Johnson & Johnson consumer segment. The manufacturing facilities remained the same and all of the manufacturing assets were transferred to Kenvue. According to Kenvue’s corporate representatives, everything under the consumer health sector was transferred over to Kenvue, including assets, trademarks, people, manufacturing facilities, and brands. Nothing related to the manufacture of JBP was left with Johnson & Johnson’s prior consumer health division. Through mid-August 2023, Johnson & Johnson still owned close to 90% of Kenvue. After mid-August 2023, Kenvue continued to have the same ownership because Johnson & Johnson shareholders became Kenvue shareholders through a stock swap. Johnson & Johnson shares were converted to Kenvue shares.

As to the commonality of directors, employees, officers, and/or managers, Kenvue testified during its deposition that currently two members of Kenvue’s current Board of Directors previously held positions at Johnson & Johnson. Kenvue made no effort to confirm which of its

current board members held positions with Johnson & Johnson. During Kenvue's deposition in this case, Kenvue confirmed the connections of each current member of Kenvue's executive team to prior Johnson & Johnson and/or Old JJCI:

Name	Kenvue Position	JJCI or J&J Position
Thibaut Mongon	CEO	Executive VP and Worldwide Chairman of Consumer Health
Paul Ruh	CFO	CFO
Luani Alvarado	Chief People Officer	Global Leader of Human Resources
Carlton Lawson	Group President, Europe, Middle East and Africa & Latin America	Group Chairman for Europe, Middle East, and Africa
Charmaine England	Chief Growth Officer	Global Head of Strategy, Consumer Health
Matthew Orlando	General Counsel	General Counsel
Meri Stevens	Chief Operations Officer	Worldwide Vice President, Consumer Health Chain and Delivery
Bernardo Tavaras	Chief Technology & Data Officer	Chief Information Officer
Ellie Bing Xie	Group President, Asia Pacific	Company Group Chairman, Asia Pacific

After their creation, Holdco and Kenvue continued the baby powder line. Talcum-based baby powder was sold internationally after the spinoff of Johnson & Johnson's consumer segment from Holdco to Kenvue.

III. CHOICE OF LAW

As a threshold matter, this Court must decide which state's substantive law will apply to the issue of successor liability. The Successor Defendants contend that Texas substantive law should apply to the issue because the restructuring of companies occurred under Texas law.

Plaintiffs disagree and argue that either South Carolina or New Jersey substantive law should apply to this issue. The Court agrees with Plaintiffs.

Under South Carolina's choice-of-law rules, the analysis necessarily begins with the question of whether a cause of action - in this instance successor liability - sounds in contract or tort. *Lister v. NationsBank of Delaware, N.A.* 329 S.C. 133, 141, 494 S.E.2d 449, 454 (S.C. App. 1997) ("Before determining choice of law, this Court must first decide if the cause of action . . . is an action in contract or in tort.").

If successor liability is properly characterized as a contract-based theory, South Carolina law provides that "contracts are to be governed as to their nature, validity and interpretation by the law of the place where they are made, unless the contracting parties clearly appear to have had some other place in view." *Livingston v. Atlantic Coast Line R.R.*, 176 S.C. 385, 391, 180 S.E. 343, 345 (1935); *see also Albermarle Corp. v. Astrazeneca UK Ltd.*, 628 F.3d 643 (4th Cir. 2010) (observing that the law gives effect to the parties' choice of law as set forth in the contract if reasonable); S.C. Code Ann. § 36-1-105 (1) (providing that when a transaction bears a reasonable relation to this state and to another state or nation, the parties may agree on the law that governs their rights and duties). On the other hand, if successor liability is properly characterized as a tort-based theory, South Carolina choice-of-law rules look to the law of the state in which the injury occurred. *Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct. App. 1994).

Contrary to argument from J&J, South Carolina courts have not clarified whether successor liability claims should be evaluated using the choice-of-law rules governing tort or corporate/contract law and the Successor Defendants' reliance on the Supreme Court of South Carolina's statements in *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640 (2018) is inapposite. *Pertuis* was an action for stockholder oppression. 423 S.C. at 628. This case, unlike *Pertuis*, is

focused on determining which of the many entities organized underneath the Johnson & Johnson Enterprise can or should be held liable for the injuries suffered by Plaintiffs. Plaintiffs' issue regarding successor liability does not seek to "regulate the organization or [the] internal affairs of a foreign corporation[.]" *Pertuis*, at 423 S.C. at 650.

The Successor Defendants presume the Court must abide by their preferences for which entity (and only one entity) bears responsibility for the harm they caused. However, they overlook two distinctions. The import of a choice-of-law provision differs in disputes between (a) parties to the contract or transaction and (b) non-parties to the contract or transaction who are alleging injury in tort (*e.g.*, Plaintiffs here). *See, e.g., Berg Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 465 (3d Cir. 2006) (applying an "interest-based analysis" to conclude that contractual choice-of-law provisions do not apply to choice of law in "de facto merger" analyses). Likewise, choice-of-law law analysis differs when analyzing disputes about the standard of care for (a) internal affairs of a corporation and (b) injuries caused by those corporations. While Johnson & Johnson can choose to apply Texas law in disputes between and amongst its own internal subsidiaries, Plaintiffs here are not bound by that choice.

Plaintiffs do not contend that Kenvue or Holdco expressly assumed liability. Similarly, Plaintiffs do not contend that Kenvue or Holdco are successors in interest to LTL/LLT/Pecos River (or any new entity with no ongoing business concerns that expressly assumes liabilities for talc). Rather, Plaintiffs contend Kenvue and Holdco are successors in interest to Johnson & Johnson Consumer Inc. and Johnson & Johnson.

I find that the successor-liability issue in this case is tort-based, as the question to be resolved is not one of contract interpretation or contract validity. Instead, the focus is on which entity in a chain of entities is and/or can be held liable for the injuries suffered by Plaintiffs.

Because this issue is tort-based, the laws of the state where Plaintiffs' injuries occurred—South Carolina—will apply.

IV. SUCCESSOR LIABILITY UNDER SOUTH CAROLINA LAW

In South Carolina, in the absence of a statute, a successor company is not ordinarily liable for the debts of a predecessor company under a theory of successor liability unless: (a) there was an agreement to assume such debts; (b) the circumstances surrounding the transaction indicate a consolidation of the two corporations; (c) the successor company was a mere continuation of the predecessor company; or (d) the transaction was fraudulently entered into for the purpose of wrongfully defeating creditor claims. *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451; *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 305-06, 657 S.E.2d 67, 69 (Ct. App. 2008); *Simmons v. Mark Lift Indus.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005); *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924).

Importantly, a plaintiff may maintain a product liability claim under a successor liability theory against a defendant when there are one or more other viable product liability defendants. *Simmons*, 622 S.E.2d at 97. The status and availability of other potential defendants is irrelevant in determining the issue of a successor corporation's liability in a product liability action. Here, the predecessor entity—Old JJCI—no longer exists and is not a viable defendant. Rather than focus on viability of others a plaintiff must fall within one of the four exceptions set forth in *Brown*. See, *Nationwide*, supra, 424 S.C. at 264, 818 S.E.2d at 451.

A. An agreement to assume the debts

As to the Successor Defendants, Plaintiffs do not contend that the first exception applies. It is undisputed that LLT (now Pecos River Talc) was sued because of an agreement to assume the

debts of Old JJCI. This exception does not apply to the inquiry of whether **Holdco and Kenvue** may be held as successors in interest to Old JJCI.

B. Mere Continuation

A successor corporation is a mere continuation of its predecessor when the predecessor and successor corporations have substantially the same officers, directors, and shareholders. *Simmons*, at 366 S.C. at 313, 622 S.E.2d at 216. The mere continuation test is a strict one, but not completely inflexible. While commonality of ownership is a keystone of the analysis and almost always sufficient to establish mere continuation when paired with common directors and officers, South Carolina courts have stressed that control is an essential consideration as well. Typically, ownership and control are found in tandem; however, there may be instances where directors or officers—lacking ownership—exert such control and influence over a corporation that their continued presence after a corporate acquisition is sufficient to establish successor liability. Although the mere continuation test is a high burden for a plaintiff to meet, it is intentionally so, as corporate law generally favors the free transfer of assets and disfavors successor liability. However, South Carolina's successor liability doctrine affords protection for plaintiffs in those cases where a corporate sale is driven by a desire to escape the predecessor's liabilities and obligations. Where the changing of corporate hats is tainted by such fraudulent intent, the successor corporation remains liable, even when the test for mere continuation is not otherwise satisfied. *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc.*, 424 S.C. 256, 269-70, 818 S.E.2d 447, 454-55 (S.C. 2018).

The Court finds that the mere continuation theory, as addressed in *Nationwide*, is satisfied. The business of Old JJCI continued without interruption in New JJCI via Holdco and Kenvue. The shareholders of Old JJCI became the shareholders of Holdco/Kenvue. The companies shared

employees, including members of their leadership teams and boards of directors. The majority of the individuals on Kenvue's current Board of Directors got their start at Johnson & Johnson or Old JJCI. Kenvue has even admitted in official documents that it is the same company as Old JJCI.

This Court finds continuity of enterprise management. Kenvue's representative created a chart of the overlap of leaders as of July 2024. However, each person currently in a leadership position at Kenvue held the same or a similar leadership position at Johnson & Johnson or JJCI prior to Kenvue's creation. Some changes occurred such as changing the title from "human resources" to "People Officer," but Defendants could not identify any substantive changes.

The Court further finds that the creation of these various corporate entities by J&J was done to escape its predecessor's liabilities and obligations with the intent to defeat creditors, such as Mr. Perry, and evade liability.

C. Holdco and Kenvue are liable as successors under the fraudulent transfer and blurred corporate identifies exceptions to non-liability.

Holdco and Kenvue are also liable as successors based on fraud and the use of the corporate form to escape liability. Here, the entity who had the liability for JBP for decades ceased to exist and assets were transferred to other entities. Additionally, Johnson & Johnson, Holdco, and Kenvue, along with other entities, have intermingled and blurred corporate interests, entities, and activities such that there is no legal distinction between the corporations involved in the consumer products business. *Mid-South Mgt. Co. Inc. v. Sherwood Development Corp.*, 374 S.C. 588, 604-605 (Ct. App. 2007); see also *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct. App. 1986) (finding a sibling company liable for the obligation of another sibling company due to the evidence revealing an "amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities' where the companies shared officers, shareholders, and location).

In *Schmoll v. AcandS, Inc.*, Raymark Industries transferred its assets to Raytech—a company owned by Raymark Industries’ shareholders—through asset transfers and corporate restructurings. 703 F. Supp. 868, 872-73 (D. Or. 1988). As a result of the transfers and corporate restructurings, Raymark Industries was left with “staggering asbestos liabilities, unprofitable operations, unsecured notes, and stock which could not be sold in large blocks without a deep discount.” *Id.* at 873. Meanwhile, Raytech received Raymark Industries valuable assets. *Id.* This left present and future asbestos tort claimants with little chance of compensation. *Id.* Based on this context and statements made by those involved, the court concluded, “the elaborate transfer of assets was designed to escape liability[.]” and held Raytech liable as a successor of Raymark Industries. *Id.*

Like *Schmoll*, Johnson & Johnson, Kenvue, and Holdco have engaged in an elaborate corporate fiction to avoid liabilities associated with and from asbestos-containing Johnson’s Baby Powder. Johnson & Johnson has been “transparent” about using the bankruptcy process as a vehicle “to address the company’s growing talc-related liability exposures and costs in defending the tens of thousands of pending ovarian cancer claims and hundreds of mesothelioma cases, as well as future claims.” *In re LTL Management, LLC*, 637 B.R. 396, 407 (Bankr. D.N.J. 2022), *rev’d and remanded*, 58 F.4th 738, *rev’d and remanded*, 64 F.4th 84 (3d Cir. 2023). The corporate restructure was “designed to allow ‘New JJCI to continue to operate Johnson & Johnson’s Consumer Health business in the United States without interruption[.]’” *Id.* Despite being amply solvent, Johnson & Johnson sought to use the bankruptcy system to limit and redefine the rights of the people its products harmed. While it sought refuge in the bankruptcy system for talc-based liabilities, Kenvue and Holdco continued to make, sell, and profit from Johnson & Johnson’s talc-based product line for some time and in some locations. Here, even more so than the defendants

in *Schmoll*, Johnson & Johnson's, Kenvue's, and Holdco's conduct, both before the Texas Two Step and after, shows that these entities were created to avoid and eliminate liability.

Additionally, like the companies in *Kincaid v. Landing Development Corporation*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986) here too, J&J and these defendants have common shareholders, common officers and directors, and a blurred corporate distinction amongst the entities involved in the consumer products business.²

D. Amalgamation

J&J argues that the Plaintiffs did not plead an amalgamation theory in their complaint. The Court agrees that the amalgamation theory was not plead in the complaint, and therefore, the Court does not address this issue.

V. SUCCESSOR LIABILITY AND PUNITIVE DAMAGES

Plaintiffs and J&J jointly stipulated to have the verdict form submitted to the jury to read "J&J Entities". Because of this, the jury's finding of punitive damages was against J&J Entities. Because the Successor Defendants are successors-in-interest to Old JJCI, they are also liable for any portion of punitive damages assessed to Old JJCI. Punitive damages are likewise recoverable against LLT because it agreed to assume the talc liabilities, debts, and obligations of its predecessor.

Successor liability does not allow the successor to pick and choose which of its predecessor's obligations follow it. Successor Defendants argue that South Carolina courts have yet to address the issue of whether punitive damages are recoverable against a successor corporation. Courts in other jurisdictions have held that punitive damages may be assessed against a successor corporation. *See Aurora Loan Servs., LLC v. Hirsch*, 170 Conn. App. 439, 456 (2017)

² Because the Court has concluded that South Carolina law will apply to the successor-liability issue, the Court declines to address Plaintiffs' alternatively contention that the issue be resolved pursuant to New Jersey law.

(defendant can be held vicariously liable for punitive damages when it ratified or approved the act); *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 73-75; *Man v. Raymark Indus.*, 728 F.Supp.1461, 1471 (D. Haw. 1989) (imposing successor liability, including punitive damages, and stating acquiring corporation cannot accept the good without the bad, absent an unlikely agreement with the acquired entity, and jettison inchoate liabilities into a never-never land of transcorporate limbo); *Krull v. Celotex Corp.*, 611 F.Supp. 146,148 (N.D. Ill. 1985) (applying Delaware law; the universal rule applicable to mergers or consolidations is that, by operation of law, the successor corporation assumes all debts and liabilities of the predecessor corporation precisely as if it had incurred those liabilities itself).

The Successor Defendants cite a litany of cases from other jurisdictions that have found that punitive damages are not recoverable against a corporate successor. *See e.g., In re Related Asbestos Cases*, 566 F. Supp. 818 (N.D. Cal. 1983) (reasoning that, because the successor was doing nothing to perpetuate the alleged malicious conduct of the predecessor, no award of punitive was warranted); *Catasauqua Area School District v. Raymark Industries*, 662 F. Supp. 64 (E.D. Penn. 1987) (holding that punitive damages were not allowed against successor entities where the plaintiff failed to present evidence that asbestos products manufactured by a successor entity were actually used); *Drayton v. Jiffee Chemical Corp.*, 395 F. Supp. 1081 (N.D. Ohio 1975), *modified*, 591 F.2d 352 (6th Cir. 1978) (refusing to award exemplary damages when the successor company improved the injury-causing product).

The Court finds the cases cited by the Successor Defendants inapposite because, based on the evidence presented. Kenvue and Holdco stepped into the shoes of Old JJCI and continued to manufacture, sell, market, and distribute the exact same asbestos-containing talc products once manufactured and/or distributed by Old JJCI. Kenvue and Holdco continued these sales with the

same knowledge that its' JBP contained asbestos as Old JJCI. Thus, Holdco, Kenvue, and Old JJCI were "effectively one and the same entity" in the way they sold asbestos containing talc and hid that its baby powder contained asbestos.

Therefore, Successor Defendants' request that punitive damages not be assessed against them is DENIED.

VI. RULING ON JUDGMENT NON OBSTANTE VEREDICTO (NOT WITHSTANDING THE VERDICT) ("JNOV")

A. Standard of Review

In ruling on a JNOV motion, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the non-moving party. *Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); *Swicegood v. Lott*, 379 S.C. 346, 351, 665 S.E.2d 211, 213 (Ct. App. 2008); *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 287, 356 S.E.2d 123, 127 (Ct. App. 1987). The court must deny the motion for JNOV when the evidence yields more than one inference, or its inference is in doubt. *Id.*; *Steinke v. South Carolina Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). The jury's verdict may not be overturned if *any evidence* sustains the factual findings implicit in its decision. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.W.2d 408, 419 (Ct. App. 2000); *Smalls v. South Carolina Dep't of Educ.*, 339 S.C. 208, 215, 528 S.E.2d 682, 686 (Ct. App. 2000).

A new trial is warranted only if the trial court determines that the verdict is contrary to the fair preponderance of the evidence. *See Dent v. Redd*, 270 S.C. 585, 243 S.E.2d 460 (1978). Similarly, "[a] circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate." *Brinkley v. South Carolina Dep't. of Corrections*, 687 S.E.2d 54 (S.C. 2009) (citations omitted). "The jury's determination of damages, however, is entitled to substantial deference. The circuit court should grant a new trial absolute on the excessiveness of the verdict

only if the amount is so grossly inadequate or excessive so as to shock the conscious of the court and clearly indicates that the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives.” *Id.*

“The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.” *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984). “Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed.” *Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 431 S.E.2d 596 (Ct. App. 1993); *see also Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct. App. 1995) (under “thirteenth juror doctrine,” the trial court may grant a new trial if she believes the verdict is unsupported by evidence or if the verdict is inconsistent and reflects jury’s confusion).

A new trial *nisi remittitur* may be granted “when the verdict indicates the jury was unduly liberal in determining damages.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). “A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” *Id.*

“Compelling reasons must be given to justify invading the jury’s province by granting a new trial *nisi remittitur*.” *Proctor v. Dep’t of Health & Env’tl. Control*, 368 S.C. 279, 320–21, 628 S.E.2d 496, 518 (Ct. App. 2006). The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Id.*

B. J&J is not entitled to JNOV as to Plaintiffs' design defect claims.

The record supports the jury's finding that JBP was designed to contain talc, which J&J knew contained asbestos. As the Court of Appeals of South Carolina has recently acknowledged:

"A product can be defective because of a flaw in its design." *Madden v. Cox*, 284 S.C. 574, 579, 328 S.E.2d 108, 112 (Ct. App. 1985). "Liability for a design defect may be based on negligence, strict tort, or warranty." *Id.* "In an action based on strict tort or warranty, **plaintiff's case is complete when he has proved the product, as designed, was in a defective condition *unreasonably dangerous* to the user when it left the control of the defendant, and the defect caused his injuries.**" *Id.* at 579–80, 328 S.E.2d at 112 (emphasis added). "Liability for negligence requires, in addition to the above, proof that the manufacturer breached its duty to exercise reasonable care to adopt a safe design." *Id.* at 580, 328 S.E.2d at 112. "This burden may be met by showing that the manufacturer was aware of the danger and failed to take reasonable steps to correct it." *Id.*

Jolly v. General Electric Company, 435 S.C. 607, 648-49, 869 S.E.2d 819, 841-42 (Ct. App. 2021).

In 2010, the South Carolina Supreme Court held that the exclusive test in a products liability design case is the risk-utility test. *Branham v. Ford Motor Co.*, 390 S.C. 203, 220, 701 S.E.2d 5, 14 (S.C. 2010). According to the Restatement (Third) of Torts: Products Liability §2(b), adopted by the Supreme Court in *Branham*:

A product ... is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe.

Branham, 390 S.C. at 223-24, 701 S.E.2d at 16 (quoting Restatement (Third) of Torts: Products Liability §2 (b) (1998).

The evidence presented at trial demonstrated that throughout the time period of Mr. Perry's use of JBP, from 1969 through 2019, the specifications for JBP called for talc sourced from mines in Italy, Vermont, and China. Plaintiffs' expert, Dr. William Longo, testified that he has analyzed talc from all of the sources that J&J used in its baby powder and that his test results showed the

presence of asbestos in each of the mines utilized by J&J in its baby powder throughout time. Dr. Longo testified to the jury that he found tremolite and other asbestos fibers repeatedly in JBP throughout each decade in which Mr. Perry used JBP.

The jury also heard at trial that other scientists found asbestos in the talc used to manufacture JBP. Battelle Memorial Labs found tremolite asbestos in Johnson's Baby Powder 153 times as early as the 1950s. Even with "poor analytical sensitivity" the FDA's contract lab found asbestos in the talc used in JBP in 2019. The jury heard Dr. Hopkins' testimony that there was never a warning about asbestos on any Johnson & Johnson product, despite knowing that by the early 1970s there were numerous reports of tremolite in J&J's Vermont and Italian talc ore. Dr. Hopkins further testified to the jury about several positive tests for asbestos in JBP throughout the decades that the talc powder was for sale.

The jury had this evidence and more in front of them when considering Plaintiffs' strict liability—design defect claim. Contrary to argument from J&J, Plaintiffs were not required to demonstrate that J&J intentionally added asbestos to their product. J&J's specifications for JBP—which called for the use of talc from mines which contained asbestos—created an unreasonable risk of harm to Mr. Perry.

J&J's motion for JNOV on Plaintiffs' design defect claim is DENIED.

C. J&J is not entitled to JNOV as to Plaintiffs' failure to warn claim.

"A supplier and manufacturer of a product are liable for failing to warn if they know or have reason to know the product is or is likely to be dangerous for its intended use; they have no reason to believe the user will realize the potential danger; and, they fail to exercise reasonable care to inform of its dangerous condition or of the facts which make it likely to be dangerous. *Livingston v. Noland Corp.*, 293 S.C. 521, 525, 362 S.E.2d 16, 18 (1987). Plaintiffs presented

evidence that J&J, after multiple tests of the talc used in JBP, knew that the talc contained asbestos. J&J presented no evidence to the jury that there was reason to believe that any of its JBP users, including Mr. Perry, would know that the product likely contained asbestos and still failed to warn of the hazards associated with the foreseeable use of the product.

In 1958, J&J knew its talc contained tremolite asbestos. By the early 1970s, J&J had received numerous additional reports that tremolite asbestos was found in the talc used in JBP. Despite this knowledge, the jury heard that bottles of JBP never displayed a warning about asbestos.

The jury also saw photos of two different bottles of JBP Mr. Perry found in his home. One of Mr. Perry's bottles had no warning on it about anything. The second of Mr. Perry's bottles had a small warning about infant's inhaling JBP generally. It was undisputed that neither of Mr. Perry's bottles of JBP had a warning about asbestos, and it is undisputed that one of Mr. Perry's JBP bottles had no warning at all.

J&J's motion as to this issue is DENIED.

D. J&J is not entitled to JNOV as to proximate cause.

J&J contends that Plaintiffs failed to establish that JBP was a proximate cause of Mr. Perry's mesothelioma. The evidence presented at trial, however, was sufficient for the jury to conclude that Mr. Perry's exposure to JBP was a substantial factor in the development of his mesothelioma.

As the South Carolina Court of Appeals affirmed in *Jolly v. General Electric Company*, 435 S.C. 607, 869 S.E.2d 819 (2021)³, "when there are multiple possible sources of the plaintiff's

³ The South Carolina Supreme Court granted certiorari only on the issue of additur and set off. It affirmed the trial court and the Ct. of App on additur and set off. Thus, the Court of Appeal's analysis on all other issues stands as though it was reviewed by the Supreme Court. *Jolly v. General Electric Co.*, __S.C.__, 905 S.E.2d 380 (2024).

exposure to a toxin . . . the plaintiff must also show that his exposure to a particular defendants' product was a 'substantial factor' in the development of the plaintiff's disease." *Id.* at 435 S.C. at 625, 869 S.E.2d at 829 (citing David E. Bernstein, *Getting to Causation in Toxic Tort Cases*, 74 Brook. L. Rev. 51, 52 (2008)). South Carolina adopted the "substantial factor test" in *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007), where the Supreme Court held that a plaintiff in an asbestos case need only present evidence of "actionable exposure" to a defendant's asbestos product. *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). To determine whether exposure is actionable, South Carolina courts apply the "frequency, regularity and proximity" factors set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986). *Id.* Therefore, "[t]o support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to . . . the plaintiff[.]" *Id.* (quoting *Lohrmann*, 782 F.2d at 1162).

Plaintiffs' extensive causation evidence includes testimony from Mr. Perry regarding his lifelong daily use of JBP; testing of JBP establishing that the talc ore and finished product contained asbestos during the years Mr. Perry used JBP; Dr. Haber's testimony regarding talc exposure studies indicating that Mr. Perry's range of exposures to asbestos from JBP was between .1 to 4 fibers/cc, resulting in cumulative exposures over 40 years of .38 to 5.18 fiber-cc years; Dr. Madigan's similar testimony that Mr. Perry's dose of asbestos from JBP was .35 fiber years; Dr. Madigan's testimony that this exposure level is within the range found to cause mesothelioma in numerous epidemiological studies; and Dr. Haber's opinion that Mr. Perry's exposure to JBP was a substantial factor in causing his disease.

The record supports the jury's finding that Mr. Perry had frequent, regular, and proximate exposure to asbestos from JBP that contained asbestos over the course of many years. Evidence at trial demonstrated more than just a casual or minimum contact with JBP from which the jury could conclude that Mr. Perry's exposure to JBP was a substantial factor in the development of his mesothelioma.

J&J's request for JNOV on this issue is DENIED.

E. J&J is not entitled to JNOV on Lonnie Long's loss of consortium claim.

J&J's request for JNOV as to Lonnie Long's loss of consortium claim is based on, and derivative of, the jury's liability and causation findings for Mr. Perry's mesothelioma, which the Court has denied.

Therefore, this request is DENIED.

F. J&J is not entitled to JNOV as to punitive damages.

The jury in this matter assessed punitive damages against J&J in the amount of \$30 million. J&J argues that this amount was grossly excessive and that there was no evidence of J&J's reprehensible conduct in the record. The Court disagrees. The record supports the jury's finding that J&J's conduct was willful, wanton, or in reckless disregard of Mr. Perry's rights in connection with Plaintiffs' negligence claim.

Under South Carolina law, punitive damages may be awarded to punish tortfeasors who have acted in a "reckless, willful, or wanton" manner. S.C. Code Ann. § 15-32-520(D); *Duncan v. Ford Motor Co.*, 385 S.C. 119, 138, 682 S.E.2d 877, 886 (Ct. App. 2009) (citing *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996)); *see also Berberich v. Jack*, 392 S.C. 278, 288, 709 S.E.2d 607, 612 (2011). The South Carolina Court of Appeals recently wrote that "[t]he purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others

from engaging in similar reckless, willful, wanton, or malicious conduct in the future.” *Portrait Homes-South Carolina, LLC v. Pennsylvania National Mutual Casualty Insurance Company, et al.*, 442 S.C. 515, 587, 900 S.E.2d 245, 284 (Ct. App. 2023) (quoting *Clark v. Cantrell*, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). Additionally, punitive damages “serve to vindicate a private right of the injured party[.]” *Id.* “A tort is characterized as reckless, willful or wanton if it was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff’s rights. A conscious failure to exercise due care constitutes willfulness.” *Taylor*, 324 S.C. at 221, 479 S.E.2d at 46 (citations omitted); see also *Berberich*, 392 S.C. at 288, 709 S.E.2d at 612. When evidence exists that suggest a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness and recklessness. *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005) (citing *McGee v. Bruce Hosp., Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996)). The jury has considerable discretion to determine the amount of damages. See *Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 404-05, 714 S.E.2d 904, 915 (Ct. App. 2011) (noting the deference due to the jury on punitive damages).

The evidence at trial showed that J&J knew asbestos, including asbestos in talc, could cause fatal disease. The jury heard that since the 1800s geology texts have reported asbestos in talc. Since the early 1930s, it has been known that asbestos causes deadly diseases. J&J’s own documents as well as J&J’s corporate representative, Dr. Hopkins’ testimony to the jury revealed that J&J has known that asbestos causes cancer since the 1930s. It was even further established by the 1960s that mesothelioma was caused by asbestos exposure.

The evidence at trial showed that J&J knew its talc contained asbestos and took no corrective action. By the 1940s, it was known that asbestos was a common impurity in cosmetic talc. By 1958, J&J knew they had fibrous tremolite asbestos in their talc. The jury heard from Dr. Hopkins about all of the testings done on J&J's talc throughout the 1970s that were positive for asbestos done by multiple scientists. The jury also heard about the 2019 FDA finding in which asbestos was, once again, found in JBP.

The evidence at trial showed that J&J had actual knowledge of asbestos in its talc before, and during, the time Mr. Perry was exposed to JBP. The jury saw an internal document from J&J in 1997 in which J&J was analyzing the tissue of women who had mesothelioma and finding tremolite and talc fibers. The jury saw that J&J wrote that both tremolite and anthophyllite are known contaminants of talc, and that the cases of mesothelioma among women with no other identifiable exposures to asbestos could be related to cosmetic talc exposure. The jury also saw an internal document from 1973 in which J&J notes that its "clean mine approach to asbestos is over."

The evidence at trial showed that J&J knew infants inhale talc during JBP application. By 1969, J&J knew the "needle shape of tremolite" made it especially respirable and capable of entering "pulmonary alveoli."

The evidence at trial showed that J&J failed to adequately test by transmission electron microscopy ("TEM"), which it knew was the most sensitive method for identifying asbestos in talc. The jury heard testimony and saw evidence that J&J chose not to adopt heavy liquid density separation techniques for asbestos detection because the method was too sensitive. The jury also heard about, and saw documents about, J&J's TM7024 testing method, which J&J intentionally designed in such a manner that 16 various kinds of asbestos fibers could be found in a small sample from a bottle of JBP and still be reported as non-detect.

The jury also heard from Dr. Hopkins that J&J knew there would be negative consequences for its business if people found out there was asbestos in JBP. Evidence at trial showed J&J's tactics aimed at defending the safety image of JBP, including (1) monitoring and defending against adverse scientific, consumerist, and regulatory trends; (2) quelling questions and data about asbestos in talc; (3) promoting less sensitive FDA regulations by advocating for less sensitive test methods and (4) withholding positive asbestos test results. The jury saw J&J documents in which J&J touted the safety of asbestos in talc, such as the 1974 document in which J&J told the FDA that a substantial amount of asbestos could be safely allowed in baby powder. The jury then saw evidence that, despite this, J&J continued to advertise JBP throughout the decades by seeking to capitalize on the mother-infant bond and promote JBP as a safe product that mothers should use on their babies to show love.

The evidence at trial further showed that J&J knew cornstarch was an available substitute for talc since the late 1800s. J&J was evaluating an alternative to talc throughout the 1960s, 1970s, and 1980s.

The evidence at trial supported the jury's finding that J&J was willful, wanton, or reckless. J&J knew there were multiple tests showing that the talc used to make JBP contained asbestos, and was present even in the final product sold to the American public. Dr. Hopkins then testified that J&J never put any warning about asbestos on JBP despite this knowledge. Regardless of this information, J&J continued to sell asbestos-containing JBP until 2020 in the United States.

Therefore, J&J's request for JNOV on Plaintiffs' punitive damages award is DENIED.

G. J&J is not entitled to a JNOV on punitive damages as to successor entities because punitive damages are recoverable against successor entities.

Plaintiffs and J&J jointly stipulated to have the verdict form submitted to the jury to read J&J Entities. The determination of successor liability was reserved for determination by the Court

post-trial. Because of this, the jury's finding of punitive damages was against J&J Entities. Because Kenvue and Holdco are successors-in-interest to Old JJCI, they are also liable for any portion of punitive damages assessed to Old JJCI. Punitive damages are likewise recoverable against LLT because it agreed to assume the talc liabilities, debts, and obligations of its predecessor. The J&J Defendants have requested that newly-formed Pecos River Talc, LLC ("Pecos River") be substituted as a party defendant for LLT. Plaintiffs have objected to this substitution. The Court DENIES J&J's request for substitution, but will permit Pecos River to be added as an additional party defendant.

Successor liability does not allow the successor to pick and choose which of its predecessor's obligations follow it. J&J argues that South Carolina court have yet to address the issue of whether punitive damages are recoverable against a successor corporation. Courts in other jurisdictions have held that punitive damages may be assessed against a successor corporation. *See Aurora Loan Servs., LLC v. Hirsch*, 170 Conn. App. 439, 456 (2017) (defendant can be held vicariously liable for punitive damages when it ratified or approved the act); *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 73-75; *Man v. Raymark Indus.*, 728 F.Supp.1461, 1471 (D. Haw. 1989) (imposing successor liability, including punitive damages, and stating acquiring corporation cannot accept the good without the bad, absent an unlikely agreement with the acquired entity, and jettison inchoate liabilities into a never-never land of transcorporate limbo); *Krull v. Celotex Corp.*, 611 F.Supp. 146,148 (N.D. Ill. 1985) (applying Delaware law; the universal rule applicable to mergers or consolidations is that, by operation of law, the successor corporation assumes all debts and liabilities of the predecessor corporation precisely as if it had incurred those liabilities itself).

This Court finds that Kenvue and Holdco stepped into the shoes of Old JJCI and continued to manufacture, sell, market, and distribute the exact same asbestos-containing talc products which in turn gave Mr. Perry cancer. Thus, Holdco, Kenvue, and Old JJCI were “effectively one and the same entity” in the way they sold asbestos containing talc and hid that its baby powder contained asbestos.

Therefore, J&J’s request that it have, in effect, a JNOV as to the award of punitive damages against its successor entities is DENIED.

VII. RULING ON MOTION FOR NEW TRIAL

J&J contends that a new trial is warranted because the jury instructions given to the jury were improper and that the Court improperly limited J&J’s evidence such that J&J had an unfair trial due to prejudicial error. The Court disagrees.

A new trial is warranted only if the trial court determines that the verdict is contrary to the fair preponderance of the evidence. *See Dent v. Redd*, 270 S.C. 585, 243 S.E.2d 460 (1978). Similarly, “[a] circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate.” *Brinkley v. South Carolina Dep’t. of Corrections*, 687 S.E.2d 54 (S.C. 2009) (citations omitted). “The jury’s determination of damages, however, is entitled to substantial deference. The circuit court should grant a new trial absolute on the excessiveness of the verdict only if the amount is so grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates that the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives.” *Id.* The decision to grant a new trial rests within the discretion of the court. *Id.* The Court of Appeals has stated when reviewing whether the trial court committed error in exercising that discretion, “we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party.” *Id.*; *see*

also, *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996).

A. The jury instructions given in this case were proper.

1. The jury instructions on punitive damages correctly stated the law.

J&J contends the Court improperly charged the jury as to punitive damages because the Court permitted the jury to award punitive damages based on third-party harm. A jury charge is correct if, when read as a whole, it contains correct definitions and adequately covers the law.

Keaton ex rel. Foster v. Greenville Hosp. System, 334 S.C. 488, 514 S.E.2d 570 (1999).

As to punitive damages, the jury was charged, in part, as follows:

So we will begin with these instructions. As I have told you, if you award actual damages against the defendant, you may also consider and award punitive damages. You've already crossed the first hurdle, which is you have found that the conduct was willful, reckless, and wanton. Punitive damages are intended to punish a defendant for willful, reckless, and wanton misconduct and to prevent the defendant and others from committing similar acts in the future. Punitive damages can only be awarded when the conduct of the defendant has been something more than mere negligence. The evidence must clearly and convincingly establish that the defendant was reckless or willful or wanton, meaning there was a conscious failure to exercise due care or a conscious indifference to the rights and safety of others or reckless disregard for the safety of others.

The Court also read pertinent portions of S.C. Code Ann. § 15-32-520 to the jury. The trial court may charge the jury regarding the factors which would justify a punitive damages award in the case. A punitive damages award survives constitutional scrutiny if: (1) the trial court's jury instruction explains the nature, purpose and basis for the award; (2) post-trial procedures enable the court to scrutinize the award; and (3) an appellate review process ensures that the award is reasonable and rational. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991); *Kinard v. Crosby*, 315 S.C. 237, 433 S.E.2d 835 (1993); *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 450 S.E.2d 66 (Ct. App. 1994).

J&J argues that Plaintiffs' punitive award was the result of Plaintiffs being able to introduce evidence of third-party harm related to ovarian cancer. The Court disagrees. It was made clear repeatedly throughout trial that Mr. Perry suffers from mesothelioma and not any other asbestos-related disease. Additionally, there is no evidence that the jury was encouraged to award punitive damages against J&J for harm done to others. Plaintiffs' told the jury that the punitive phase was for what J&J had done to Mr Perry, emphasizing that punitive damages are for "[w]hat Michael Perry is going through."

The punitive damages instruction explained the nature, purpose, and basis for the punitive damages award. The instruction was the same as the instruction given to the jury when it was to determine whether J&J's conduct was reckless, willful, and wanton. The record shows that the jury understood that punitive damages are paid to Mr. Perry.

2. There was no error regarding the effect of "Question 8" on the jury form.

At the end of the liability phase of trial, the Court instructed the jury, in part, as follows:

In addition, if you find that the defendant's conduct was willful, wanton, or reckless, the plaintiff must also prove that by clear and convincing evidence, that is, that the evidence must clearly and convincingly establish that the defendant was actually reckless or willful and wanton, meaning there was a conscious failure to exercise due care or a conscious indifference to the rights and safety of others or reckless disregard of the rights and safety of others.

* * *

Willful and wanton and reckless conduct. There's one question on the jury form that asks about willful, wanton, or reckless conduct. A defendant's conduct is reckless or willful or wanton if there was a conscious failure to exercise due care or conscious indifference to the rights and safety of others or reckless disregard to the rights and safety of others. This must be established by clear and convincing evidence, which is something more than simple greater weight of the evidence and something less than beyond a reasonable doubt. Clear and convincing proof is proof that leaves you firmly convinced. Clear and convincing proof establishes in your mind not only that a fact is probable but that it is highly probable.

Prior to charging the jury, the Court and counsel for the parties discussed the verdict form and the propriety of telling the jury the purpose of Question 8. J&J agreed to include Question 8 on the verdict form.

The record shows that a punitive damages phase would not be necessary if the jury returned a “no” verdict as to negligence. The verdict form was not defective, it did not prejudice J&J, and the Court gave clear instructions to the jury regarding completing the form. J&J has failed to demonstrate how the failure to tell the jury that a “yes” as to Question 8 would trigger a punitive damages phase trial resulted in prejudice. Quite to the contrary, the South Carolina General Assembly, by statute⁴, now mandates a bifurcated trial for punitive damages in cases of this kind. The jury must make the predicate finding that the Defendant’s conduct was willful, wanton and reckless. This does not dictate that a jury must find punitive damages. The Court’s decision not to discuss punitive damages until after the jury made its decision as to the character of the conduct is completely consistent with the provisions of the statute governing this matter. Finally, the Court’s preliminary instructions in the punitive phase made it clear that it was up to the jury whether to award any amount of punitive damages after a finding of willful, wanton and reckless conduct.

J&J’s motion for a new trial on this issue is DENIED.

3. There was no error in declining to charge J&J’s requested “But-For” Causation instruction.

J&J contends it was prejudicial for the Court to refuse to instruct the jury using its suggested causation charge, wherein it stated as follows:

Proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the injury would not have occurred “but for” the defendant’s acts. Legal cause is proved by establishing foreseeability. If there is not

⁴ See S.C. Code Ann §15-32-520

sufficient evidence to conclude that, but for a defendant's conduct the injury would not have occurred, then you must find in favor of the defendant.

"[A] trial court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal." *Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005). "[T]he substance of the law is what must be instructed to the jury, not any particular verbiage." *Marin*, 415 S.C. at 482, 783 S.E.2d at 812.

J&J's instruction sought to have the jury determine causation in this case using a strict but-for causation standard. That is not the proper standard in asbestos cases in South Carolina. This Court, instead, charged the jury as to causation according to *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007). In *Henderson*, the Supreme Court of South Carolina held that in asbestos cases:

In determining whether exposure is actionable, we adopt the "frequency, regularity, and proximity test" set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162[-63] (4th Cir. 1986): "To support a reasonable inference of *substantial causation* from circumstantial evidence, there must be evidence of exposure to a *specific product* on a *regular* basis over some *extended* period of time in *proximity* to where the plaintiff actually worked."

373 S.C. at 185, 644 S.E.2d at 727 (emphases added). The Supreme Court reaffirmed this standard in *Edwards v. Scapa Waycross, Inc.*, 442 S.C. 387, 899 S.E.2d 597 (2024). Notably, in *Edwards*, the Supreme Court explained that "the *Lohrmann* substantial factor test relaxes the 'but-for' requirement that applies in traditional tort cases [but] still requires the plaintiff to show "more than a casual or minimum contact with the product.'" 442, S.C. at 391, 899 S.E.2d at 599 (quoting *Lohrmann*, 782 F.2d at 1162)).

J&J's proposed instruction was an incorrect statement of law. There can be no prejudice from the Court's proper decision not to misinform the jury about the controlling law.

J&J's motion for a new trial on this issue is DENIED.

4. There was no error in declining to give J&J's requested instruction on specific causation.

J&J contends this Court failed to properly instruct the jury as to “specific causation” and argued that this Court should have accepted its instruction on specific causation. J&J also contends that Plaintiffs failed to present sufficient evidence of specific causation to the jury. The Court disagrees.

“Specific causation is whether a substance caused particular individual’s injury.” *Jolly*, 435 S.C. at 625, 869 S.E.2d at 828 (*quoting In re Bausch & Lomb Inc. Contacts Lens Solution Prods. Liab. Litig.*, 693 F. Supp. 2d 515, 518 (D.S.C. 2010)).

The Court instructed the jury as to causation, in part, as follows:

Plaintiff must prove that the defendant -- that the plaintiffs' exposure to asbestos in the defendant's product was of such a frequency, regularity, and duration that it was a substantial factor in bringing about the disease or injury. The mere fact that an injury or accident occurred standing alone does not permit you to draw the conclusion that the injury or accident was caused by anyone's negligence or breach of warranty of strict liability.

The Court finds that the instructions given to the jury as to causation were proper statements of the law. J&J has not and cannot demonstrate any prejudice to it resulting from the Court’s properly worded instruction. *Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005).

The evidence satisfied the *Henderson* causation standard. A plaintiff in an asbestos case need only present evidence of “actionable exposure” to a defendant’s asbestos product. *Henderson v. Allied Signal, Inc.*, 373 S.C. at 185, 644 S.E.2d at 727. To determine whether exposure is actionable, South Carolina courts apply the “frequency, regularity and proximity” factors set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986). *Id.* Therefore, “[t]o support a reasonable inference of substantial causation from circumstantial evidence, there must

be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.”” *Id.* (quoting *Lohrmann*, 782 F.2d at 1162).

Plaintiffs’ presented sufficient evidence to support the jury’s causation finding. The evidence in this case was that Mr. Perry was exposed to visible dust while applying JBP on a daily basis for 50 years. Plaintiffs’ experts presented circumstantial evidence from which the jury could have concluded that the JBP that Michael Perry used for 50 years contained asbestos. The jury also heard testimony about the range of exposure to asbestos that Mr. Perry had while using JBP, and was further told that Mr. Perry’s asbestos exposure level was many orders above background levels.

The jury could thus have easily concluded that Mr. Perry had frequent, regular, and proximate exposure to asbestos from his use of JBP over the course of many decades. This evidence is more than sufficient to support the jury’s determination that Mr. Perry’s mesothelioma was caused by his exposure to asbestos from Johnson’s Baby Powder.

J&J’s motion on this issue is DENIED.

5. The Court properly instructed the jury on substantial factor causation.

As noted in *Edwards*, the “substantial factor” test requires demonstration of frequency, regularity, and proximity. 442 S.C. at 391, 899 S.E.2d at 599. The Court instructed the jury as to substantial factor. The Court instructed the jury, in part, as follows:

Plaintiff must prove that the defendant -- that the **plaintiffs' exposure to asbestos in the defendant's product was of such a frequency, regularity, and duration that it was a substantial factor in bringing about the disease or injury.** The mere fact that an injury or accident occurred standing alone does not permit you to draw the conclusion that the injury or accident was caused by anyone's negligence or breach of warranty of strict liability.

In this instruction, the Court told the jury that substantial factor meant “frequency, regularity, and duration.” This was a correct statement of law.

J&J's request for a new trial on this issue is DENIED.

6. The jury instruction as to "component parts" was proper.

It was not error for the Court to instruct the jury as to component parts. As to component parts, the Court instructed the jury that:

If a reasonable inspection or test would have disclosed a defect, a manufacturer who incorporates a defective component into its finished product and places the finished product into the stream of commerce is liable for the injuries caused by defect in that component part.

But defendant can, however, be liable for an alleged defective product it did not design, recommend, specify, require, manufacture, sell, or place in the stream of commerce. In deciding whether the defendant had a duty to test the product, you should consider the defendant's ability to conduct tests at the time the product was sold.

This instruction was given in order to address J&J's argument at trial that it did not intend for asbestos to be in its talc. This instruction informed the jury that J&J could still be found liable for Mr. Perry's mesothelioma even though it did not intentionally add asbestos to its product. The instruction also noted that once J&J was on notice that its product contained a defective component (asbestos) and still placed the product into the stream of commerce, J&J could be held liable for injuries caused by exposure to that defective component.

J&J's request for a new trial on this issue is DENIED.

7. The "eggshell plaintiff" instruction was proper.

J&J contends that the Court committed error when it instructed the jury on the "eggshell plaintiff." The Court disagrees. This instruction was necessary because of J&J's suggestion that Mr. Perry's individual susceptibility would have been the reason he developed mesothelioma. J&J put on evidence at trial about Mr. Perry's family history of cancer. The jury heard from J&J that Mr. Perry's mother had ovarian/uterine cancer. J&J cross-examined Mr. Perry's treating thoracic

surgeon expert, Dr. Barry Gibney, at length on Mr. Perry's genetic makeup and what kinds of genetic testing were either done, or not done, on Mr. Perry.

South Carolina has adopted the "eggshell plaintiff" rule which states a "defendant takes the plaintiff as [she] is found." *Raino v. Goodyear Tire and Rubber Co.*, 309 S.C. 255, 259, 422 S.E.2d 98, 100 (1992). "As a general rule, liability for the consequences of one's tortious act is not lessened by reason of the fact that the injuries were aggravated by plaintiff's unhealthy conditions . . ." *Id.*, citing 22 Am.Jur.2d Damages §282 (1988).

J&J's request for a new trial on this issue is DENIED.

8. The jury was not given a "blended" products liability charge.

J&J contends that the Court committed error by providing a "blended" products liability charge to the jury. This Court disagrees.

Plaintiffs alleged both a design defect and manufacturing defect claim against J&J and was given the proper test for each. In *Branham v. Ford Motor Co.*, 390 S.C. 203, 220, 701 S.E.2d 5, 14 (2010), the Supreme Court clearly stated that "the consumer expectations test fits well in manufacturing defect cases" but is "ill-suited in design defect cases."

The instruction was not blended. The jury was instructed as to "manufacturing defect," in part, as follows:

When a manufacturing defect is claimed, the test of whether a product is or is not defective is whether the product is unreasonably dangerous to the consumer or user given the conditions and circumstances that foreseeably attend the use of the product.

The jury was charged separately as to design defect. When instructing the jury as to design defect, the Court included language reflecting the risk-utility test, which is the proper test for design defect claims. *Branham*, 390 S.C. at 220, 701 S.E.2d at 14.

J&J's request for a new trial on this issue is DENIED.

9. There was no error in declining to charge the jury as to “hindsight opinions,” that more could have been done, or “post distribution” evidence.

J&J contends that the Court committed error by failing to charge the jury as to “hindsight opinions.” The Court disagrees. J&J has cited no authority which would require this Court to instruct the jury as to “hindsight opinions,” or that the jury should have considered that “more could have been done.”

The admission of post-distribution evidence in this case was not prejudicial. Mr. Perry used JBP until shortly before J&J removed the product from the shelves. South Carolina’s Supreme Court defined “post-distribution” evidence as “evidence of facts neither known nor available at the time of distribution.” See *Branham*, 390 S.C. at 227, 701 S.E.2d at 17. In a footnote, the Court clarified that:

If information on a product is reasonably attainable, then a manufacturer is charged with such knowledge at the time of manufacture. The rule prohibiting the introduction of post-distribution evidence does not permit a manufacturer to turn a blind eye to reasonably available information regarding the safety or danger of its product.

Id. at n. 17. The evidence supports a finding that J&J knew of the presence of asbestos not only in the talc that it put into its powder but also the presence of asbestos in its finished product. The information regarding the presence of asbestos in JBP was available to J&J prior to Mr. Perry’s initial exposure.

J&J’s request for a new trial on this issue is DENIED.

B. None of the alleged structural, evidentiary, or expert witness errors identified by J&J warrant post-trial relief.

1. J&J was not entitled to severance.

J&J contends that the Court committed error by denying its request to sever trial from co-defendant American International Industries (“AII”). The Court disagrees. Trial judges, in their

discretion, are responsible for determining whether trial issues are distinct enough to warrant severability. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). In this case, the claims against J&J and AII were largely identical. The issues to be determined by the jury in this matter as to both of these defendants were not so distinct as to warrant severability.

By the time of trial, the Court had resolved Plaintiffs' liability claims against AII as a matter of law as a result of AII being in default. Before opening statements, the Court informed the jury as follows:

It has been determined as a matter of law that American International Industries, AII, which is a company responsible for Clubman talc products, is liable to Mr. Michael Perry on each of the causes of action pled against them in this case, specifically negligence, strict liability, fraud, conspiracy and implied warranty of merchantability. It has been determined as a matter of law that Clubman's asbestos-containing talc product was defective and unreasonably dangerous and was a substantial factor in the development of Michael Perry's mesothelioma. It has been determined as a matter of law that American International Industries' conduct was willful, wanton, and reckless, meaning American International Industries acted with conscious indifference to the rights and safety of others.

You are instructed that American International Industries is liable to the plaintiffs in this case. Your only task as to American International Industries are to determine the total amount of damages that Michael Perry and Lonnie Long have suffered.

It was clear from this instruction that the jury understood that all of Plaintiffs' claims against J&J were to be decided by the jury. Nothing about the Court's instruction to the jury indicated that it should also find J&J liable for Plaintiffs' injuries because of AII. The jury was instructed that these two defendants were to be considered separately.

J&J's request for a new trial on this issue is DENIED.

2. Defendants' experts did not have a proper scientific foundation for their opinions that Mr. Perry's mesothelioma was idiopathic or spontaneous.

In accordance with its "gatekeeping" function, the Court prevented J&J's experts from opining that Mr. Perry's mesothelioma was idiopathic and/or spontaneous. J&J's experts were

permitted, however, to testify at trial about spontaneous mesotheliomas generally.

The trial court must act as a gatekeeper over scientific evidence and make three preliminary findings before expert testimony may be admitted. *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). The Court must find “that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable.” *Id.* at 446-47, 699 S.E.2d at 175. “In South Carolina, a trial court minding the Rule 702 gate must assess not only (1) whether the expert’s method is reliable (i.e., valid), but also (2) whether the substance of the expert’s testimony is reliable.” *State v. Warner*, 430 S.C. 76, 86, 842 S.E.2d 361, 365–66 (Ct. App. 2020), *aff’d in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022). A trial court does not abuse its discretion under Rule 702 by excluding the testimony of medical experts whose conclusions were not supported by the data and experiments upon which they relied. *Id.* (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). ““A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.”” *Id.* (quoting *Joiner*, 522 U.S. at 146).

Dr. Weill is a pulmonologist who J&J intended to have testify that Mr. Perry’s mesothelioma was spontaneous because he saw no exposure to asbestos that Mr. Perry would have had, including any exposure to talc. While Dr. Weill reviewed the reports of the parties’ experts, he did not review any internal testing documents from J&J. He didn’t review any J&J documents at all. The Court finds that Dr. Weill’s opinion regarding spontaneous mesothelioma is unsupported in any recognized scientific community, and that his conclusions regarding the “cause” of Mr. Perry’s mesothelioma would have been unsupported and merely a diagnosis of exclusion. His methodology was not reliable or consistent with recognized scientific principles. Additionally, Dr. Weill’s anticipated testimony that Mr. Perry had no exposure to asbestos

throughout his life is unreliable given that he has not reviewed any J&J documents, including J&J's internal testing documents – some of which found asbestos in J&J's talc that Mr. Perry used.

Dr. Diette's opinions also lack an adequate foundation to opine that that Mr. Perry's mesothelioma was either spontaneous or "naturally occurring." The Court finds that Dr. Diette's opinion regarding spontaneous mesothelioma is unsupported in any recognized scientific community, and that his conclusions regarding the "cause" of Mr. Perry's mesothelioma would have been unsupported and merely a diagnosis of exclusion. His methodology was not reliable or consistent with recognized scientific principles. Additionally, Dr. Diette's anticipated testimony that Mr. Perry had no exposure to asbestos throughout his life is unreliable given that he has not reviewed any J&J documents, including J&J's internal testing documents – some of which found asbestos in J&J's talc that Mr. Perry used. In fact, Dr. Diette has previously opined that there is no scientific literature to support the conclusion that a mesothelioma can occur spontaneously when there is a history of asbestos exposure.

Drs. Diette and Weill were not excluded completely from testifying. Their only limitation was that they could not use a diagnosis of exclusion and testify that Mr. Perry's mesothelioma was spontaneous. J&J has not provided any explanation as to how it was prejudiced by these rulings. J&J chose not to call Dr. Weill and Dr. Diette as witnesses in its case-in-chief.

South Carolina precedent makes clear that "it is not sufficient for the doctors to say simply that the ailment in question 'possibly' or 'might have' resulted from the accident, but the medical experts must go further and testify at least that in their professional opinions the result in question 'most probably' came from the alleged cause." *Windham v. City of Florence*, 221 S.C. 350, 358, 70 S.E.2d 553, 556 (1952). The Court finds that any opinions from J&J's experts that Mr. Perry's

mesothelioma was “spontaneous” were scientifically unsupported, lacking in factual foundation, and unreliable.

J&J’s request for a new trial on this issue is DENIED.

3. Testimony from Plaintiffs’ experts complied with the South Carolina causation standard.

J&J contends that the causation testimony of Plaintiffs’ medical experts Dr. Arnold Brody and Dr. Steven Haber is unreliable and insufficient to establish substantial factor causation. The Court disagrees. Plaintiffs’ experts do not hold the opinion that “any exposure” or “every exposure” or “every asbestos fiber” causes mesothelioma generally or caused Mr. Perry’s mesothelioma. They testified that Mr. Perry’s mesothelioma was caused by his cumulative asbestos exposure, and that given the specific facts of his exposure to visible asbestos dust from JBP regularly over the course of several decades, these exposures were a substantial factor in causing Mr. Perry’s disease.

a. Standard of Review

The admissibility of expert testimony is governed by South Carolina Rule of Evidence 702. That rule provides that “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Rule 702, SCRE.

Courts evaluating the admissibility of scientific expert evidence “must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.” *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508 (S.C. 1999). The reliability of scientific evidence is evaluated based on several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the

quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684 (S.C. 2009) (citing *Council*, 335 S.C. at 19).

“[C]ross-examination, presentation of contrary evidence, and careful instruction on the burden of proof” are the ordinary means to attack an opposing expert. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596 (1993). Courts should not exercise their gatekeeping responsibility by excluding expert testimony that falls within the range of matters on which reasonable experts can disagree. *See Milward v. Acuity Specialty Prods. Group, Inc.*, 639 F.3d 11, 22 (1st Cir. 2011). While the trial court may look at the reliability of the expert’s methodology, it is for the jury to determine the soundness of the facts underlying the expert’s opinion and the correctness of the expert’s conclusions. *See id.* 22.

b. JNOV is an improper vehicle for the court to reconsider a *motion in limine*.

J&J offers no authority for the proposition that a JNOV motion is the appropriate vehicle for requesting a Court reconsider its evidentiary rulings. To the contrary, South Carolina Courts have found that a JNOV motion is not the appropriate vehicle to address errors in the admission of evidence. *Johnson v. Hoechst Celanese Corp.* 317 S.C. 415, 420 (1995) (“a motion for judgment notwithstanding the verdict was not the appropriate vehicle to address the alleged error,” in submitting a color-coded map to the jury which the moving parties contended showed their properties in the wrong color classification.).

In ruling on a JNOV, the Court is required to review *all* the evidence and consider it in the light most favorable to the nonmoving party. *Welch*, 342 S.C. at 299. South Carolina law does not contemplate revisiting evidentiary rulings when deciding a JNOV motion.

For this initial reasons, J&J's request that this Court belatedly exclude Plaintiffs' experts' testimony is DENIED.

c. Plaintiffs' experts had a reliable scientific basis for their opinions.

Plaintiffs' experts provided identical and/or similar causation opinions to the jury as at the trial of *Jolly v. General Electric Co.*, 435 S.C. 607, 869 S.E.2d 819 (S.C. Ct. App 2021), aff'd *Jolly v. General Electric Co.*, ___S.C. ___, 905 S.E.2d 380 (2024). In *Jolly*, this Court allowed expert testimony that mesothelioma can be caused by brief or low-level cumulative exposures, finding that the plaintiffs' "experts were entitled to rely on this basic medical fact in reaching their opinion in this case." *Id.* at 30. The Court recognized that testimony about this basic medical fact is not the same thing as testimony that "each and every exposure" is a substantial factor in causing disease. *Id.* Dr. Brody's testimony was similarly allowed in the *Howe* trial 2015-CP-46-03456 in March 2018, the *Crawford* trial 2017-CP-42-04429 in July 2018, the *Glenn* 440 S.C. 34, 890 S.E.2d 560 (Ct. App 2023), trial in January 2019, and the *Plant* trial 2022-CP-40-01265 in 2023.

In *Jolly*, the Court found that the plaintiffs' experts had utilized a reliable methodology in that they "relied on their many years of experience in the area of asbestos-related diseases, as well as a broad range of evidence including epidemiology and other scientific literature, the dose-response relationship, the science regarding the low levels of exposure that can cause mesothelioma, the exposure levels documented from working with gaskets and packing in the manner described by [the plaintiff and his co-worker], and the facts surrounding [the plaintiff's] exposure to visible dust from Defendants' valves." *Id.* at 31. The Court ruled that because the experts' causation opinions were supported by the scientific literature as well as relevant exposure facts, their testimony was admissible, relevant, and helpful to the jury. *Id.* at 32.

The Court of Appeals affirmed this Court’s *Jolly* Order. Considering the same arguments raised by Defendants in this matter, it ruled, “[t]o the extent Appellants challenge the admissibility of Respondents’ experts’ testimony on the ground that it was unreliable, *they have failed to show any significant part of the testimony that could be reasonably characterized as espousing the ‘each and every exposure’ theory.*” *Jolly v. General Electric*, 435 S.C. 607, 639; 869 S.E.2d 819, 836 (Ct. App. 2021) (emphasis added).⁵

The Court of Appeals agreed with Mrs. Jolly that her “experts relied on the cumulative dose theory and that their reliance on basic science in reaching their opinions is not the equivalent of testifying that ‘each and every exposure’ was a substantial factor in causing Dale’s mesothelioma.” *Id.* at 634, 869 S.E.2d at 833-34.

The Court of Appeals also noted its disagreement with Defendants’ contention that “the cumulative dose theory conflicts with the *Henderson/Lohrmann* substantial factor standard.” *Id.* at 635, 869 S.E.2d at 834. “Stating that a certain exposure *contributes* to an individual’s cumulative dose does not espouse the view that ‘each and every breath’ of asbestos is ‘substantially’ causative of mesothelioma or imply that one exposure meets the legal requirement for causation.” *Id.* at 635-36, 869 S.E.2d at 834. “We view the testimony concerning cumulative dose as background information essential for the jury’s understanding of medical causation, which must be based on science. We do not interpret this presentation as an attempt to supplant the *Henderson/Lohrmann* test.” *Id.* at 636, 869 S.E.2d at 834-35.

The Court of Appeals ultimately concluded, “the cumulative dose theory on which Respondents’ experts relied *easily meets* the standard for reliability set forth in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999).” *Id.* at 639, 869 S.E.2d at 836 (emphasis added).

⁵ The Supreme Court granted review on other grounds and affirmed. *Jolly v. General Electric*, ___ S.C. ___, 905 S.E.2d 380 (2024).

“Respondents’ experts were guided by the facts specific to Dale’s exposure to Appellants’ products in forming their opinions concerning causation.” *Id.* at 637, 869 S.E.2d at 835. Finally, the Court recognized Plaintiff’s experts relied on “numerous peer-reviewed, published epidemiological studies, case series, and case reports,” as well as other scientific criteria impacting causation of disease, and follows the weight-of-the-evidence methodology used by national and international public health organizations for evaluating the health effects of asbestos.” *Id.* at 640-41, 869 S.E.2d at 837.

South Carolina’s Court of Appeals again rejected Defendants’ attempts to conflate “cumulative dose” testimony with the “each and every exposure” theory in *Edwards v. Scapa Waycross, Inc.*:

[Defendant] Scapa argues the trial court erred in failing to grant its motion for JNOV because Stewart employed the “each and every exposure” theory of causation at trial. Scapa states that Dr. Frank explained the cumulative dose or “cumulative exposure” theory to the jury and utilized that theory in reaching his opinion as to whether Scapa’s dryer felts were a substantial factor in causing Stewart’s mesothelioma. Scapa conflates these two theories and claims they are inconsistent with the specific causation standard set forth in *Henderson*. We disagree.

“The ‘each and every exposure’ theory espouses the view that ‘each and every breath’ of asbestos is substantially causative of mesothelioma.” *Jolly*, 435 S.C. at 633, 869 S.E.2d at 833 (quoting *Rost v. Ford Motor Co.*, 151 A.3d 1032, 1044 (2016)); see also *Yates v. Ford Motor Co.*, 113 F. Supp. 3d 841, 846 (E.D.N.C. 2015) (“Also referred to as ‘any exposure’ theory, or ‘single fiber’ theory, it represents the viewpoint that, because science has failed to establish that any specific dosage of asbestos causes injury, every exposure to asbestos should be considered a cause of injury.”). This court has recently refused to conflate the cumulative dose theory with the each and every exposure theory, concluding that an expert’s opinion which states “that a certain exposure contributes to an individual’s cumulative dose does not espouse the view that ‘each and every breath’ of asbestos is ‘substantially’ causative of mesothelioma or imply that one exposure meets the legal requirement for causation.” *Jolly*, 435 S.C. at 635–36, 869 S.E.2d at 834. Rather, this court viewed testimony regarding a plaintiff’s cumulative dose as “background information essential for the jury’s understanding of medical causation, which must be based on science.” *Id.* at 636, 869 S.E.2d at 834–35.

437 S.C. 396, 416-17, 878 S.E.2d 696, 707 (Ct. App. Aug. 3, 2022), *aff'd*, 442 S.C. 387, 899 S.E.2d 5976 (2024); see also, *Glenn v. 3M Company*, 440 S.C. 34, 64-68, 890 S.E.2d 569, 585-587 (Ct. App. 2023).

Consistent with years of South Carolina law, Plaintiffs' experts' opinions regarding the cumulative nature of asbestos diseases and the lack of any safe threshold of exposure are not "unreliable," but are generally accepted medical facts that have long been established by a significant body of peer-reviewed medical and scientific literature. In addition, Dr. Haber and Dr. Brody relied on their many years of experience in the area of asbestos-related diseases, as well as a broad range of evidence including animal studies, epidemiology, and other scientific literature, the dose-response relationship, and the science regarding the low levels of exposure that can cause mesothelioma. As in *Jolly*, *Edwards*, and *Glenn*, the opinions of Plaintiffs' experts are reliable and admissible expert opinion testimony.

J&J's request that this Court find Plaintiffs' experts' unreliable and inadmissible is DENIED.

d. Dr. Haber's specific causation opinion was based on the exposure evidence in this case.

Dr. Haber's specific causation opinion is firmly grounded in the exposure evidence presented at trial. Dr. Haber was offered and qualified as an expert in internal medicine and pulmonology. J&J objected to anything outside of internal medicine and pulmonology. This objection was partially overruled because Dr. Haber had read and relied on those materials in forming his specific causation opinion about what caused Mr. Perry's mesothelioma.

Dr. Haber testified that Mr. Perry was suffering from mesothelioma caused by asbestos. Dr. Haber testified to the jury that the JBP that Mr. Perry used for five decades played a role in the development of his mesothelioma. In reaching his conclusions, Dr. Haber reviewed Mr. Perry's

medical records, including X-rays and scans of his chest, conducted a personal interview with Mr. Perry, reviewed reports of other experts designated in this matter, reviewed the deposition testimony in this case, and “other materials.” Dr. Haber also reviewed and evaluated Mr. Perry’s clinical course of care and treatment post-diagnosis.

Dr. Haber explained that mesothelioma is a “signal tumor” for asbestos exposure. The average life expectancy for epithelioid mesothelioma is 18 months. Dr. Haber told the jury that Mr. Perry’s cancer was extensive and invasive and that it had spread into the soft tissues of the chest wall, including into his lymph node and lung. Dr. Haber also testified that Mr. Perry’s pleura had doubled in size as of April, which likely meant a recurrence of his mesothelioma. Dr. Haber then discussed asbestos and how the different asbestos types were used commercially and noncommercially. He testified that all fiber types cause mesothelioma.

Dr. Haber also testified to the jury that he reviewed J&J’s internal records finding tremolite asbestos in its talc and he reviewed published medical and scientific literature on the definition of asbestos. He also noted that J&J’s own internal documents confirm that exposure to fibrous tremolite is a cause of mesothelioma because it is asbestos. He explained that for asbestos to attack the body the asbestos fibers had to be in respirable form and, if there is asbestos in talc powder the asbestos is by its nature already in a respirable form.

Dr. Haber explained what he refers to as the “onion properties” when explaining whether asbestos harms a person as soon as it’s breathed in. He also testified that there is no safe level of exposure to asbestos even at the 0.1 fibers-per-cc- level established by OSHA. Dr. Haber also explained that multiple studies and multiple health organizations have concluded that there is no threshold level below which there is no risk of developing an asbestos-related disease.

Dr. Haber also reviewed and testified about case reports which look at people who had mesothelioma. He told the jury that there are case reports based on certain occupations that work with talc which indicate concerns about the development of mesothelioma and case reports of individuals exposed to cosmetic talc who develop mesothelioma. During autopsies of people who died of mesothelioma, Dr. Haber testified that talc, anthophyllite, and tremolite have been repeatedly found. Dr. Haber later noted that background asbestos is mostly composed of small amounts of chrysotile and that anthophyllite and tremolite are not found in background levels.

Dr. Haber also considered whether Mr. Perry had exposures to asbestos from sources other than talc. He concluded that Mr. Perry had some exposure to chrysotile asbestos from brake work and that this contributed to cause his disease.

In Dr. Haber's opinion, JBP was Mr. Perry's first and primary exposure to asbestos. As to frequency and quantity, Dr. Haber testified that Mr. Perry was "an above-average user" of JBP, using it "two to four times a day", "putting it on his whole body" and occasionally "actually putting it on his . . . face." Dr. Haber concluded that Mr. Perry's exposure to asbestos from JBP was a substantial contributing factor to the development of his mesothelioma.

Dr. Haber's causation opinion was expressed the jury to a reasonable degree of scientific and medical certainty. His causation opinions are based on the record of Mr. Perry's repeated exposures to asbestos from JBP, as well as the scientific literature and other evidence presented to the jury. Dr. Haber's methodology therefore is identical to the methodology affirmed in *Jolly*, *Edwards*, and *Glenn*.

J&J's request for a new trial on this issue is DENIED.

4. The Court did not commit error by admitting Plaintiffs' tissue digestion.

On July 10, 2024, this Court ordered the division of Mr. Perry's lung tissue for digestion. At the pre-trial hearing on July 30, 2024, J&J moved to exclude the tissue digestion. J&J argued that its expert, Dr. Victor Roggli, could not perform the digestion prior to trial. J&J then claimed to have found a second expert, Dr. Stanley Geyer, who could perform the digestion prior to trial.

After this Court signed the order permitting the tissue split to occur, it took several days for Medical University of South Carolina ("MUSC") to divide the tissue as instructed by the Court's order. On the day before the pre-trial hearing, the tissue was divided and MUSC sent the tissue to the experts designated by the parties in this Court's order. Each tissue division arrived at each of the parties' respective experts on the same day at the same time – the morning of the pre-trial hearing in this case. J&J argued that the tissue digestion should not be allowed because the parties were out of time to perform the testing. This Court overruled J&J's objection, and ordered that the tissue digestion could proceed.

On the first morning of trial, J&J informed the Court that its expert could not perform the tissue digestion. Plaintiffs' informed the court that its expert who was performing the tissue digestion, Dr. Longo, was in the process of concluding the tissue digestion and offered to make Dr. Longo available for a deposition on his findings before he testified so that there was no surprise.

Dr. Longo's report on his tissue digestion findings was produced to J&J on August 5, 2024. Plaintiffs tendered Dr. Longo for deposition on August 6, 2024, at 4:00 pm by phone as he was traveling to testify in trial that evening. Dr. Longo's deposition was conducted via zoom at 10:00 pm on August 6, 2024, at J&J's request.

Dr. Longo testified to the jury that he tested Mr. Perry's lung tissue. He told the jury that he and his lab had analyzed over 400,000 different individual asbestos samples, including testing human lung tissue referred to as a "lung burden" to see what, if anything, is in the lung. Dr. Longo testified that the tissue digestion revealed the presence of tremolite asbestos, winchite asbestos, and talc in Mr. Perry's lungs. The evidence supported Dr. Longo's testimony that the presence of tremolite asbestos in Mr. Perry's lungs was consistent with what had repeatedly found in Dr. Longo's historical testing of JBP. J&J cross-examined Dr. Longo regarding his findings of the presence of asbestos in Mr. Perry's lungs.

The Court prohibited J&J from asking questions regarding when Dr. Longo received the lung tissue for testing. J&J had two experts at its disposal that could have performed the tissue digestion yet did not make the time. J&J had every opportunity to cross-examine Dr. Longo on his methodology of performing the tissue digestion. They chose not to and this Court does not find compelling reasons to allow J&J to challenge Dr. Longo's findings in a post-trial motion.

The Court prohibited J&J, through its corporate representative Dr. Edwin Kuffner, from discussing the results of the tissue digestion. Dr. Kuffner was not designated as an expert witness in this case. J&J contends that the Court improperly prohibited Dr. Kuffner from testifying about Dr. Longo's winchite finding in Mr. Perry's lungs to the jury, and that this prohibition was error. The Court disagrees.

Dr. Kuffner was designated as the corporate representative and was a fact witness. J&J did not list him as an expert nor did it seek to qualify him as an expert. As he was not designated or qualified as an expert, this Court ruled that Dr. Kuffner could not testify about topics of which he had no special knowledge, skill, or training to discuss with the jury. The Court did allow Dr. Kuffner to testify about what he had seen in J&J documents regarding winchite asbestos in JBP,

but the Court ruled that J&J could not use Dr. Kuffner to testify about geological concepts to the jury, as J&J sought to have Dr. Kuffner testify to the jury what Dr. Longo's finding of winchite meant.

"To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'" *Gooding v. St. Francis Xavier Hospital*, 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997). As a fact witness, Dr. Kuffner's testimony was properly limited by South Carolina Rule of Evidence 701, which provides:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

Dr. Kuffner's was not an expert in microscopy or geology and was not tendered as an expert. Dr. Kuffner had already been permitted to explain to the jury that the minerals found in Mr. Perry's lungs did not come from JBP based upon his review of J&J documents. If J&J intended to have Dr. Kuffner testify as to the geology, mineralogy, and findings of winchite asbestos, he should have been offered and qualified as an expert witness with the training, skill, and education to do so. Alternatively, J&J could have called its geologist expert, Dr. Sanchez, to testify at trial. J&J chose not to do either.

J&J further argues that Plaintiffs' counsel statement in closing argument regarding J&J's failure to call an expert witness to rebut Dr. Longo's in Mr. Perry's lungs was an improper invocation of the missing witness rule. The jury was instructed that a comment on the failure to call an expert is permitted, but that Plaintiffs' assertion that J&J could not find an expert was

stricken. This instruction cured any potential prejudice to J&J. As such, the Court finds that J&J has failed to demonstrate any prejudice from admitting Plaintiffs' tissue digestion.

J&J's request for a new trial on this issue is DENIED.

5. Dr. Haber did not testify outside of his qualifications.

Dr. Haber was qualified as an expert by reason of his training, education, and experience, as an expert in the areas of internal medicine and pulmonology. He was also permitted to testify about the information that he relied on in forming his conclusions. Dr. Haber repeatedly testified that he had evaluated and reviewed thousands of J&J's internal documents on various topics. "Expert testimony may be based partially on information received from other sources if such facts and data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." *Lucas v. Sara Lee Corp.*, 307 S.C. 495, 501, 415 S.E.2d 837, 841 (Ct. App. 1992).

J&J's request for a new trial on this issue is DENIED.

6. The Court's exclusion of the 1986 Citizens Petition and J&J 2019 Health Hazard Evaluation was proper.

J&J contends that this Court improperly excluded the 1986 Citizens Petition and the 2019 Health Hazard Evaluation ("HHE") and that these exclusions were error warranting a new trial. The Court disagrees.

J&J sought to present to the jury that the FDA's position was that there is "no risk" from asbestos in talc by admitting the 1986 document into evidence. The Court found the 1986 Citizens Petition contains inaccurate and unreliable expert opinion information which made its probative value substantially outweighed by the risk of confusion to the jury, and therefore unfair prejudicial under South Carolina Rule of Evidence 403.

The Court finds that the statements in the 1986 document are based on false information that J&J provided to the FDA. For example, in one of the documents Donald Kennedy, the then–Commissioner of the FDA, attempts to justify the 0.1% level by relying in part on J&J’s “extensive testing for asbestiform particles in cosmetic-grade talc; all results to date have been negative.” But all results of J&J’s talc had not been negative. The evidence showed that by 1979, J&J was aware that asbestos minerals had been found in its talc over 400 times.

J&J offered this document as the FDA’s official position and use it support its argument that any and all use of cosmetic talcum powder – no matter how long, how heavy, or how consistent – is without risk and cannot increase a person’s risk of mesothelioma at all. The document was not admitted because it contained false and unreliable expert opinion information which the risk of confusion to the jury substantially outweighed by any probative value. J&J had other avenues to present their position regarding the FDA’s position on asbestos in their talc, including through Dr. Barlow, J&J’s toxicologist.

Despite this Court striking the 1986 document, J&J still was able to present evidence to the jury regarding its theory as to the FDA’s position on the safety of talc. Dr. Kuffner testified that it was untrue that J&J hid information from the FDA. He also testified that J&J’s testing method was created with consultation from the FDA, so J&J’s testing method was the industry standard. Additionally, Dr. Kuffner testified that the FDA conducted studies of JBP in the 1970s and found no asbestos. Dr. Kuffner also testified that as of 1994, the FDA had concluded that “talc has proved to be among the safest of consumer products.”

This Court finds no prejudice from the exclusion of the 1986 Citizens Petition.

With regard to the 2019 HHE, the Court’s ruling was limited to Dr. Kuffner, a lay witness. Laypersons can provide opinion or inferences only if they (a) are rationally based on the

perception of the witness; (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) do not require special knowledge, skill, experience or training. Rule 701, SCRE. Any opinions or conclusions about the HHE would require special knowledge, skill, experience, or training.

Dr. Kuffner testified that he was involved in preparing and writing the HHE, but as a lay witness he could not give toxicology testimony based upon this document as J&J sought to do. J&J could not use Dr. Kuffner to provide toxicology expert testimony to the jury. J&J could have called a properly qualified expert, including its toxicologist Dr. Barlow, but chose not to do so.

J&J has not shown that exclusion of the 1986 Citizens Petition and the 2019 HHE were so prejudicial that a new trial is warranted. J&J's request for a new trial on this issue is DENIED.

7. Plaintiffs' counsel's closing argument was not prejudicial such that J&J is entitled to a new trial.

"It has long been settled that closing arguments and objections thereto are left largely to the sound discretion of the trial judge 'who is on the scene and in much better position than an appellate court to judge as to what is improper argument under the circumstances.'" *Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 599, 344 S.E.2d 157, 164 (Ct. App. 1986) (quoting *Lesley v. Am. Sec. Ins. Co.*, 261 S.C. 178, 185, 199 S.E.2d 82, 86 (1973)). "[C]onsiderable latitude is allowed counsel in drawing inferences and deductions from the evidence and in arguing the same to the jury." *Lesley*, 261 S.C. at 185, 199 S.E.2d at 85. "When [an] objection is timely made to improper remarks of counsel, the judge should rule on the objection, give a curative charge to the jury, and instruct offending counsel to desist from improper remarks." *McElveen v. Ferre*, 299 S.C. 377, 381, 385 S.E.2d 39, 41 (Ct. App. 1989).

J&J contends that several statements from Plaintiffs' counsel during his closing argument were prejudicial. To the extent that J&J did not object during Plaintiffs' closing argument when

certain terms were used, J&J has waived its argument as to these statements. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (“It is well settled that an issue may not be raised for the first time in a post-trial motion.”); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005) (rejecting argument regarding improper closing argument: “Since there was no contemporaneous objection, this issue is not preserved for appellate review.”); *Moore v. Florence School Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994) (“[T]he record indicates no objection to counsel's argument to the jury regarding consent and this issue is not preserved for review”); *State v. Walker*, 366 S.C. 643, 660, 623 S.E.2d 122, 131 (Ct. App. 2005) (“Failure to object to comments made during [closing] argument precludes appellate review of the issue.”).

“[G]reat latitude is accorded counsel in presenting closing arguments to a jury.” *United States v. Johnson*, 587 F.3d 625, 632 (4th Cir. 2009) (citation omitted); *see also id.* at 633 (“[T]o parse through a prosecutor's closing statement for minor infelicities loses sight of the function of our adversary system, which is to engage opposing views in a vigorous manner.”). “Thus, while courts should not hesitate to condemn those prosecutorial comments that truly offend constitutional norms, neither shall we attach constitutional significance to every verbal fillip, lest we unduly censor the clash of viewpoints that is essential to adversarial proceedings.” *United States v. Runyon*, 707 F.3d 475, 507 (4th Cir. 2013).

J&J has failed to demonstrate that Plaintiffs’ closing argument was designed to inflame the jury or encourage the jury to rule in Plaintiffs’ favor on an improper basis. This Court gave proper curative instructions when it found they were warranted.

J&J’s request for a new trial on this issue is DENIED.

8. There was no error in the verdict form submitted to the jury.

J&J contends that it is entitled to a new trial because, while Plaintiffs' claims against J&J included design defect and manufacturing defect theories, the verdict form did not include separate questions on those issues. The Court disagrees.

J&J did not object to the questions on the verdict form, after being given an opportunity to object, prior to its submission to the jury. Because its post-trial motion is the first time that J&J objected to questions on the final verdict form, its objection is waived. *Jackson v. Speed*, 326 S.C. 289, 304, 486 S.E.2d 750, 757 (1997) (finding appellant waived claim of lack of notice of cause of action by failing to object to having his name included on the verdict form); *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 421, 453 S.E.2d 908, 912 (Ct. App. 1995) (holding by failing to object to a verdict form until after a liability verdict had been reached, appellant failed to preserve any issue relating to the verdict form).

The Court finds that neither the verdict form nor the instructions to the jury created confusion about the jury's role in this case. The jury was instructed regarding Plaintiffs' claims that J&J sold a product that was defective in multiple ways: the product had a manufacturing defect, had a design defect, and/or a warning defect. The instructions specifically stated:

Plaintiffs' claims in this case are based on several theories: negligence, strict liability, and fraudulent misrepresentation.

The instructions went on to explain the different ways J&J could be found strictly liable in South Carolina.

A trial judge has discretion to determine how a case is submitted to the jury and error, if any, in the refusal of using J&J's proposed verdict form would only constitute grounds for a new trial if prejudice resulted from that failure. *See Freeman v. J.L.H. Investments, LP*, 414 S.C. 362, 386, 778 S.E.2d 902, 914 (2015); *Steele v. Dillard*, 327 S.C. 340, 343, 486 S.E.2d 278, 280 (Ct.

App. 1997) (quoting 5A C.J.S. *Appeal & Error* § 1762(b), at 1136 (1958)). The Court finds that J&J has not demonstrated any prejudice that it suffered as a result of this Court not separating the question on the verdict form regarding strict liability into multiple questions.

J&J's request for a new trial on this issue is DENIED.

VIII. RULING ON NEW TRIAL BASED ON CUMULATIVE ERROR

Where there has been no error, there cannot be cumulative error. "The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial. *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). "An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *Id.* The Court finds J&J has not shown that it did not receive a fair trial or that cumulative errors affected the outcome.

J&J's request for a new trial on this issue is DENIED.

IX. RULING ON NEW TRIAL PURSUANT TO THE THIRTEENTH JUROR DOCTRINE

In South Carolina, the thirteenth juror doctrine is a long-standing means by which a trial court may grant a new trial absolute. *See Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (S.C. 1990). "Under the "thirteenth juror doctrine," a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the facts.'" *Haselden v. Davis*. 341 S.C. 486, 534 S.E.2d 295 (S.C. Ct. App. 2000) (quoting *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (S.C. Ct. App. 1996)). Stated differently, a trial judge may grant a new trial under the thirteenth juror doctrine if the judge determines the verdict "is contrary to the fair preponderance of the evidence." *Dent v. Redd*, 270 S.C. 585, 243

S.E.2d 460 (S.C. 1978); see also *Vinson*, 324 S.C. at 404, 477 S.E.2d at 722 (“Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge’s finding that justice has not prevailed.”). “[T]he trial Judge is the thirteenth juror, possessing the veto power to the nth degree....” *Worrell v. S.C. Power Co.*, 186 S.C. 306, 195 SE. 638 (S.C. 1938).

“Unlike a motion for directed verdict, the trial judge weighs the evidence under the thirteenth juror doctrine and need not view the evidence in the light most favorable to the opposing party.” *McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 578 SE.2d 746 (S.C. Ct. App. 2003); see also *Parker v. Evening Post Publ’g Co.*, 317 S.C. 236, 452 SE.2d 640 (S.C. Ct. App. 1994) (stating the trial court may take its own view of the evidence). Furthermore, the decision of whether to grant a new trial upon the facts is one addressed to the sound discretion of the trial judge. *S.C. State Highway Dep’t v. Clarkson*, 267 S.C. 121, 226 S.E.2d 696 (S.C. 1976).

“South Carolina’s thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds ‘the evidence does not justify the verdict,’ and then to grant a new trial based solely ‘upon the facts.’” *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (S.C. 2002) (quoting *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267). By sitting “[a]s the ‘thirteenth juror,’ the trial judge can hang the jury by refusing to agree to the jury’s otherwise unanimous verdict.” *Id.* at 478, 567 S.E.2d at 854. As stated by the South Carolina Supreme Court in *Folkens*,

The effect is the same as if the jury failed to reach a verdict.... When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the “thirteenth juror” vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

300 S.C. at 254, 387 S.E.2d at 267.

The jury returned a verdict finding that J&J was negligent, and that J&J was strictly liable for Mr. Perry's mesothelioma. The Court finds that the evidence at trial supported the jury's verdict. The Court declines to use the thirteenth juror to interfere with the decision made by the jury.

J&J's request for a new trial on this issue is DENIED.

X. RULING ON MOTION FOR SETOFF

J&J contends that it is entitled to a full set-off for Plaintiffs' entire settlement amount and Plaintiffs do not object. J&J further contends that Plaintiffs should have to produce their settlement agreements with various co-defendants, with which the Court disagrees. Plaintiffs' settlement releases are not discoverable. Rule 408, SCRE. The Court has reviewed Plaintiffs' settlement agreements in camera and finds they are fair and reasonable. *See Glenn v. 3M Co.*, 440 S.C. 34, 86, 890 S.E.2d 569, 596 (Ct. App. 2023). The Court therefore rules that the amount of \$11,255,000 in Plaintiffs' pre-trial settlements will be set-off from Plaintiffs' compensatory damages award.

XI. RULING ON STAY OF EXECUTION OF JUDGMENT AND BOND

J&J requests a stay of judgment pursuant to Rule 62, SCRCP. The Court agrees that J&J is entitled to a ten-day automatic stay of judgment pursuant to Rule 62(a).

There is no automatic stay of execution of a money judgment during the pendency of appeal. S.C. Code § 18-9-130(A)(1); *see also* Rule 241(b)(1), SCACR (providing that money judgments are an exception to the general rule that service of a notice of appeal automatically stays matters decided in the judgment). Rather, a stay of execution is within the trial court's discretion: "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay

of execution.” S.C. Code § 18-9-130(A)(1). Rule 62(d) provides that a stay of execution of judgment is predicated on posting a supersedeas bond.

The Court exercises its discretion to deny J&J’s request for a stay order without the requirement of an appeal bond. In the event of an appeal, the Court orders that J&J post a supersedeas bond in the full amount of the judgment, pursuant to SCRCP 62(d).

XII. RULING ON A NEW TRIAL BASED ON VERDICT SIZE

A. Actual Damages

“When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice.” *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530, 431 S.E.2d 557, 558 (1993). Likewise, the circuit court must avoid conflating the constitutionality of a damages award with an award motivated by passion or prejudice. *See e.g., Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 592-96, 686 S.E.2d 176, 187-190 (2009) (finding a \$15 million punitive damages award to be “grossly excessive” such that it rose to the level of a due process violation but finding “no credible evidence anywhere in the record” to support the defendant’s contention that the compensatory or punitive damages award resulted from passion, caprice, or prejudice).

Further, the amount of unliquidated damages that “a jury might properly award ... is largely a matter of judgment based upon the facts and circumstances of each case.” *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). “In determining the question, the facts must be viewed in the light most favorable to the plaintiff[,] and[] whe[n] the amount of a verdict bears a reasonable relationship to the character and extent of the injury sustained, it is not excessive.” *Id.* Moreover, “the jury’s determination of damages is entitled to substantial

deference[,]” and the circuit court's decision on whether to grant a new trial based on the amount of the verdict “will not be disturbed on appeal unless it clearly appears the exercise of discretion was controlled by a manifest error of law.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000).

Here, as to the award of compensatory damages, the jury was informed that Plaintiffs and J&J stipulated to \$3,329,973.05 in economic loss, which including Mr. Perry’s economic loss and costs of his medical treatment. After this stipulation, Plaintiffs requested \$2 million for every year of his life that Mr. Perry will lose pursuant to the South Carolina life expectancy tables, which this Court finds to be slightly less than 27 years and reasonable. The jury returned a verdict lower than Plaintiffs’ request.

The jury heard testimony about Mr. Perry’s pain and suffering extensively. The jury heard from Mr. Perry’s treating thoracic surgeon, Dr. Gibney, who testified that published scientific data indicates that it is an average of 50% of mesothelioma patients that will survive between 12 to 18 months, and then confirmed that this survival period applies to Mr. Perry. Dr. Gibney testified that people with mesothelioma suffer from extreme chest pain, restrictive air disease that leads to heart problems and extreme shortness of breath that makes the patient feel as though they are drowning. Dr. Gibney testified that mesothelioma almost always recurs and is aggressive. The jury then heard about the 6-8 surgeries Dr. Gibney performed on Mr. Perry in great detail, testifying that: (1) he had to cut Michael open from behind his shoulder blade all the way around to the front of his body to access the chest wall; (2) cut his large back muscle in half to access his chest where the cancer was; and (3) removed one of his ribs. Indeed, Dr. Gibney testified that he had to use his hands to “peel the pleura off the chest wall and then off the lungs. I liken it most to removing the peel off of an orange.” Dr. Gibney further testified that he had to remove Mr. Perry’s entire diaphragm and

rebuild it with mesh. Dr. Gibney told the jury about Mr. Perry's post-surgical recovery, describing it as significantly painful due to the removal of the pleura where the mesothelioma is. He also testified that Mr. Perry would die from his mesothelioma and that he would experience shortness of breath and chest pain until he died.

Evidence was also presented to the jury showing Mr. Perry's loss of life expectancy by over two decades, the anxiety and mental anguish he will suffer before he dies, and the fact that his mesothelioma will cause his death. Evidence demonstrated that J&J knew that asbestos caused cancer and despite knowing that the talc it used in JBP had repeatedly tested positive for asbestos, J&J continued to use that talc in JBP. Mr. Perry used JBP for 50 years and his use of that powder has significantly shortened his life. Thus, the Court finds that the jury's award was not the result of passion or prejudice.

The jury also heard testimony from Lonnie Long relevant to his loss of consortium claim. Mr. Long testified that he and Mr. Perry met over 20 years ago and talked about the life they had together prior to Mr. Perry's mesothelioma diagnosis. Mr. Long told the jury about sharing the holidays with Mr. Perry, and how Mr. Perry would decorate and do things with the neighborhood kids for the holidays. He talked about their honeymoon in Hawaii and how much they enjoyed traveling together. Lonnie described Mr. Perry as his "savior" because when they met Mr. Long was suffering with low self-esteem and depression and Mr. Perry showed him the strength to keep going. The jury heard that their conversations since Mr. Perry got mesothelioma have turned to "how we're going to fight this and how we're going to get through it." Mr. Perry then testified that Mr. Long takes him to all of his doctors' appointments and that he has never missed a single appointment. He noted that his husband did not stay in the courtroom for his testimony because he was "very protective."

The jury then considered the relationship that Mr. Perry and Mr. Long had experienced for over 20 years, what they lost as a result of Mr. Perry's mesothelioma, and what they would lose when Mr. Perry inevitably died. The jury's loss of consortium award reflects the jury's deliberation on that life, the loss of that life, and the loss that Mr. Long has suffered, and will suffer, as a result of Mr. Perry's inevitable death. The jury's award of loss of consortium damages was not the result of passion or prejudice.

B. The jury's award of punitive damages satisfies Constitutional standards.

J&J contends that the size of the jury's punitive damages award is grossly excessive and violated J&J's constitutional right to procedural and substantive due process. The Court disagrees.

"The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future" as well as "to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party." *Clark v. Cantrell*, 339 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000). "At least three important purposes are served by a punitive damages award: (1) punishment of the defendant's reckless, willful, wanton, or malicious conduct; (2) deterrence of similar future conduct by the defendant or others; and (3) compensation for the reckless or willful invasion of the plaintiff's private rights." *Mellen v. Lane*, 377 S.C. 261, 290, 659 S.E.2d 236, 251 (Ct. App. 2008). "The paramount purpose for awarding punitive damages is not to compensate the plaintiff but to punish and set an example for others." *Id.*

To receive a punitive damages award, "the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Welch v. Epstein*, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). "A tort is characterized as reckless, willful[,] or wanton if it was committed in such a manner or

under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff's rights." *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). "A conscious failure to exercise due care constitutes willfulness." *McCourt ex rel. McCourt v. Abernathy*, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995).

"In South Carolina, 'punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future.'" *Gamble v. Stevenson*, 305 S.C. 104, 110, 406 S.E.2d 350, 354 (1991) (quoting *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964)). The amount of the punitive damages award is largely within the discretion of the jury, and, like the compensatory award, is entitled to substantial deference. *McCourt By and Through McCourt v. Abernathy*, 318 S.C. 301, 309-10, 457 S.E.2d 603, 608 (1995).

Punitive damages awards should be reviewed for compliance with the Due Process Clause. *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006). In *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), the South Carolina Supreme Court set forth three guideposts to be applied in conducting a post-judgment review of a punitive damages award: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135, 150-151 (2010). These guideposts incorporate the relevant factors set forth in *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991) and *BMW of North America v. Gore*, 517 U.S. 559 (1996). See *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185.

Reprehensibility is the most important consideration. *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185. A number of factors are relevant to reprehensibility, including whether: “(i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.” *Id.*

The evidence supports the jury’s finding that J&J’s conduct was reprehensible. Evidence showed to the jury showed that Mr. Perry is expected to die a very premature and painful death despite having a life expectancy—in the absence of mesothelioma—of about 26 years. Thus, the harm caused to Mr. Perry was physical as opposed to solely economic.

J&J has been selling baby powder since 1894. The serious health risks of inhaling asbestos dust from talc were well-published in the scientific literature, and actually known by J&J decades before Mr. Perry was ever born, let alone exposed to asbestos from JBP. The jury saw advertisement by J&J in which it advocated that JBP was safe and pure, and used both language and images to capitalize on the mother-baby bond in order to make J&J money off the reputation of JBP. Mr. Perry was first exposed to JBP through his mother’s use and then continued using JBP repeatedly and on a daily basis for almost 50 years. Throughout the time that he used JBP, J&J never warned Mr. Perry, nor any other customer, of the potential asbestos exposure from the foreseeable use of JBP. The jury also saw documents and heard testimony that J&J misled the FDA as to the asbestos content of JBP, including telling the FDA that a substantial amount of asbestos can be allowed safely in a baby powder.

The jury found J&J negligent, and that it engaged in conduct that was willful, wanton, and reckless related to its negligence finding. This Court finds that the jury’s assessment is appropriate

considering the devastating physical and emotional losses that Mr. Perry and Mr. Long have suffered and will continue to suffer due to J&J's willful, wanton, and reckless conduct.

As to ratio, due process requires consideration of the ratio between the compensatory damages award and the punitive damages award. *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 185. A single-digit ratio is generally thought to comport with due process. *Id.* The South Carolina Supreme Court has upheld verdicts with a 6.82 to 1 ratio, 3.75 to 1 ratio, 2.54 to 1 ratio, 9.96 to 1 ratio, and a 28 to 1 ratio. *Id.* at 593, 686 S.E.2d at 188 (collecting cases). In *Mitchell*, the Court remitted a punitive damages award from \$15 million to \$10 million so that it would be a 9.2 to 1 ratio. *Id.* at 594, 686 S.E.2d at 188.

The Court finds the ratio between the jury's compensatory and punitive award is well within the acceptable ratio as defined by South Carolina law. The Court also finds that the jury's award of punitive damages is well within the legislative cap of three times the compensatory award pursuant to S.C. Code Ann. §15-32-530.

The final *Gamble* factor is an evaluation of like awards in similar cases. The Court may properly consider the similarity between the punitive damages awarded by the jury in the case under review as compared to punitive damages awards in other cases. *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 186. Relevant points of comparison are "the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Id.* at 588-89, 686 S.E.2d at 186.

Mr. Perry's award is comparable to awards in other talc cases with young plaintiffs.

In the Theresa Garcia case tried earlier this year in Chicago, the jury awarded \$45 million in compensatory damages to her estate (\$33 million for noneconomic damages) and to her children

(\$12 million). Ms. Garcia had a very similar profile to Mr. Perry – she was only 52 years old and her primary exposure was to JBP.

In another reported decision from 2021, a California jury awarded \$29,490,000 in compensatory damages to Teresa Leavitt and her husband in their case against J&J, again pre-bankruptcy. *Leavitt v. Johnson & Johnson*, No. A157572, 2021 WL 3418410, at *2 (Cal. Ct. App. Aug. 5, 2021). Mrs. Leavitt was exposed to Johnson’s Baby Powder as an infant and adult and was diagnosed with mesothelioma at only 51 years old. *Id.*

There are not a large number of verdicts against J&J because its multiple bankruptcies stayed litigation for almost two years. Talc verdicts against other companies have been substantially similar to the verdict reached in this case. In 2021, Nedelka Vanklive was awarded \$75 million in noneconomic damages in a talc case in Alameda County California. The case was started against both J&J and Whitaker, Clark & Daniels but J&J declared bankruptcy in the middle of trial. The verdict is against Whitaker, Clark & Daniels but the jury assigned 60% liability to J&J. Ms. Vanklive was exposed to JBP as an infant and child and developed mesothelioma at 48 years old.

In a talc trial in California in 2022, the jury awarded \$32 million in noneconomic damages to Rita-Ann Chapman, and \$8 million to her husband, and a total of \$11.3 million in punitive damages in a case involving exposure to body powders made by Avon and J&J. Mrs. Chapman used both J&J and Avon body powders as a child and adult and was 75 years old at the time of her mesothelioma diagnosis.

In the *Plant* case tried before this Court in 2023, the jury awarded \$20 million in noneconomic damages to Sarah Plant, \$3.5 million in future medical expenses, and \$5 million to

her husband, in a trial against talc supplier Whitaker, Clark & Daniels. Mrs. Plant was only in her thirties when she developed mesothelioma from her use of asbestos-containing talc powders.

These recent talc verdicts against J&J and others establish that the award to Mr. Perry is consistent with verdicts in other talc cases across the country.

Finally, J&J contends that the jury's punitive damages award in this case is either unsupported or unconstitutional because it no longer sells the talc-based version of JBP. The Court disagrees as this argument fails to account for one of the purposes of punitive damages pursuant to South Carolina law—to deter the wrongdoer **and others** from engaging in similar reckless, wanton, willful, or malicious conduct in the future. *See Portrait Homes—South Carolina, LLC v. Pennsylvania National Mutual Insurance Company*, 442 S.C. 215, 900 S.E.2d 245 (Ct. App. 2023).

The evidence was that J&J sold talc-based JBP for over 100 years, with no warning of potential asbestos exposure, despite actual knowledge that both its talc ore and its finished JBP product had asbestos in it. Additionally, according to J&J, the decision to stop selling JBP was not based on safety reasons. The Court finds that the jury's punitive damages award was proper and does not violate any Constitutional bounds.

J&J's request to eliminate the jury's verdict as to punitive damages is DENIED. However, the Court will reduce the amount of the punitive damages award from \$30,000,000 to \$25,000,000.

XIII. J&J IS NOT ENTITLED TO A NEW TRIAL BASED ON *STATE V. WRIGHT*.

J&J contends that this Court prevented it from being able to present a defense at trial and thus is entitled to a new trial pursuant to *State v. Wright*, 271 S.C. 534, 248 S.E.2d 490 (1978). The Court disagrees.

J&J was not prevented from presenting a defense, nor did the Court make comments that affected the outcome of the case or the effectiveness of counsel's presentation. Unlike counsel in *Wright*, J&J chose to not put on its case and instead try this case solely through Plaintiffs' case-in-chief. J&J's defense was that JBP does not have enough asbestos in it to have been a substantial contributing factor in the development of Mr. Perry's mesothelioma. J&J's additional defense was that JBP does not have asbestos in it. This Court did not strike any of J&J's experts and they were all free to testify at trial. The only limitation was that Dr. Weill and Dr. Diette could not testify that Mr. Perry's mesothelioma was spontaneous. J&J chose not to call any of its experts.

J&J further argues that it could not try its case because of the potential for a spoliation order and the Court's exchanges with Dr. Kuffner. The Court disagrees on both counts.

A. The *Hood-McBrayer* Spoliation Order

The *Hood-McBrayer* Spoliation Order was entered on November 5, 2021, in another case involving decades of use of JBP. While there was discussion during the pre-trial hearing of this Order, it was never entered. No such order was ever signed in this trial, and no adverse instructions were given in this trial. The Court's potential consideration of entering the *Hood-McBrayer* Order did not change the outcome of Mr. Perry's trial or J&J's defense. J&J has failed to identify any witness that could not be called to testify as a result of the *Hood-McBrayer* Order. Critically, the potential for this order did not stop J&J from discussing negative test results with the jury in Mr. Perry's trial. J&J questioned Dr. Haber about tests, from the FDA and others, which did not detect asbestos in either the talc used in JBP or the finished product. The record also shows that Dr. Hopkins testified to the jury, through videotaped deposition, about J&J's negative testing results that it now argues the potential for this Order kept it from doing.

The Court made clear multiple times throughout this trial that J&J could call whatever witnesses it chose. J&J contends that it could not call *any* witnesses because it could not discuss negative testing. This is incorrect. The Court afforded J&J the opportunity to call expert witnesses with no notice to Plaintiffs' counsel, which J&J chose not to do. J&J was given every opportunity by this Court to put on its case with expert witnesses.

B. The Court's exchanges with Dr. Kuffner.

Dr. Kuffner was not an expert witness in this case. Because of this, the Court did not allow Dr. Kuffner to give opinions that would have been based on his skill, knowledge, training, and education because that testimony is not the testimony of a fact witness. J&J, during its questioning of Dr. Kuffner, made clear that his role of corporate representative was separate from his role as chief medical officer. He was permitted to testify as to what J&J documents say about the presence of asbestos in its talc and in the finished talc products. He also testified as to what documents were produced in litigation and not destroyed or concealed.

Beyond being able to testify as an expert on issues outside of his role as a fact witness or corporate representative, J&J does not identify any other topic on which the trial court prevented Dr. Kuffner from testifying to justify its request for a new trial.

C. Different standard as to J&J

J&J contends the Court treated J&J so differently from Plaintiffs, and applied a different standard of law, that it affected the verdict in Mr. Perry's case and J&J is entitled to a new trial. The Court disagrees.

First, the Court's comments regarding the years that LTL spent in bankruptcy neither reflect a different standard for J&J nor did the comments infect the trial such that J&J is entitled to a new trial. The record reflects the uncontradicted fact that any such discussion did not happen

in the presence of the jury at any point in time. There is no precedent preventing this Court from disagreeing with the steps taken by a defendant to avoid talc liabilities, and J&J has provided none.

Second, the Court's comments regarding the opinions that J&J intended to have its experts offer, including Dr. Sanchez's definition of asbestos, were not improper or prejudicial. The Court does not agree that the comments prevented J&J from presenting a defense to Plaintiffs' claims at trial and they were not made in the presence of the jury. This Court's discussion of Dr. Sanchez's anticipated testimony was made as part of this Court's gatekeeping function. the Court, in minding the Rule 702 gate, must assess not only (1) whether the expert's *method* is reliable (i.e., valid), but also (2) whether the *substance* of the expert's testimony is reliable." *State v. Warner*, 430 S.C. 76, 86, 842 S.E.2d 361, 365–66 (Ct. App. 2020), *aff'd in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022). A trial court does not abuse its discretion under Rule 702 by excluding the testimony of medical experts whose conclusions were not supported by the data and experiments upon which they relied. *Id.* (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). "A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Id.* (quoting *Joiner*, 522 U.S. at 146).

J&J knew that this Court did not prohibit any of its experts testifying to the jury because as of Saturday, August 3, 2024, J&J intended to call at least 5 witnesses, including Dr. Sanchez, Dr. Diette, and/or Dr. Weill, during its case-in-chief.

For more than 50 years, it has been well settled that a Court is entitled to ask a witness questions to get to the truth. In *Williams v. South Carolina Farm Bureau Mut. Ins. Co.*, 251 S.C. 464 (1968), our Supreme Court held:

The trial judge, of course, has the right, in [her] discretion, and in a proper manner, to question witnesses during a trial, in order to elicit the truth. This discretion will not be controlled except where it appears that the manner in which the judge exercised the right tended to unduly impress the jury with the importance of the

testimony elicited, or would be likely to lead the jury to suppose that the judge was of the opinion that one party rather than the other was correct upon a particular issue of fact.

If a trial judge in the exercise of his discretion feels called upon, in the interest of justice, to question witnesses to elicit the truth, he should be cautious to see that such questions are propounded in a fair and impartial manner, and should not express or indicate to the jury the judge's opinion as to the facts of the case or the weight or sufficiency of the evidence.

The Court questioned Dr. Kuffner during both direct and cross. When the Court believed the jury needed clarity on a position taken by Plaintiffs during the questioning of Dr. Kuffner, the record shows that the Court asked counsel for clarity and then instructed the jury.

None of the discussions that J&J takes issue with occurred in front of the jury. J&J's counsel even stated during its closing argument that J&J did not need to present any witnesses because it had proven its case through Plaintiffs' own witnesses. J&J chose not to call its expert witnesses.

D. Exchanges between attorneys for Plaintiffs and J&J

This Court finds that there is no authority or compelling evidence to grant a new trial based on a single exchange between counsel outside of the presence of the Court and outside of the presence of the jury. On Friday, August 9, 2024, Plaintiffs played the videotaped portion of the testimony of J&J's corporate representative, John Hopkins. This portion of the videotaped deposition had been edited and cut by J&J. During the re-direct, plaintiff's counsel at the deposition questioned Dr. Hopkins about the 1972 Report from Dr. Hutchinson, finding asbestos in J&J's talc repeatedly. Dr. Hutchinson took pictures of the actual asbestos fibers he found in J&J's talc. During the re-direct, plaintiff's counsel on the video not only discussed the results from Dr. Hutchinson's testing, but also displayed the pictures of the asbestos fibers Dr. Hutchinson found on the video. The video that was cut and played by counsel for J&J, however, omitted the

photographs of the asbestos found in J&J's talc by Dr. Hutchinson to the jury. During the break, Plaintiffs' counsel and counsel for J&J spoke about Plaintiffs' concerns regarding the way in which J&J presented evidence to the jury. The entire exchange with J&J's counsel lasted less than a minute.

The Court does not find that this single incident with Plaintiffs' counsel resulted in such intimidation that J&J's counsel could not effectively represent their clients. J&J has provided no such evidence justifying its request for a new trial based on *State v. Wright*. Unlike the circumstances in *State v. Wright*, this Court does not find that a single incident outside the presence of the jury, for which counsel was reprimanded, rises to any level sufficient to justify a new trial.

The Court has treated all parties and their counsel fairly. Throughout this trial, the Court disagreed with all parties on various issues. The Court was evenhanded when it came to ruling on objections. The Court reprimanded counsel on both sides when necessary. J&J has therefore failed to identify any incident which negatively affected its counsel's effectiveness as discussed in *State v. Wright*.

J&J's request for a new trial pursuant to *State v. Wright* is DENIED.

XIV. RULING ON NEW TRIAL *NISI REMITTITUR*

A new trial nisi remittitur may be granted "when the verdict indicates the jury was unduly liberal in determining damages." *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). "A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice." *Id.*

When reviewing a request for new trial nisi remittitur, substantial deference must be given to the jury's determination of damages. *Hassell v. City of Columbia*, 430 S.C. 620, 635, 846 S.E.2d

373, 381 (Ct. App. 2020). The consideration of a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep't of Health & Env'tl. Control*, 368 S.C. 279, 320–21, 628 S.E.2d 496, 518 (Ct. App. 2006). “Compelling reasons must be given to justify invading the jury’s province by granting a new trial nisi remittitur.” *Id.*

The jury award against J&J, along with AII, was for \$23,037,500 in actual damages to Mr. Perry, \$9,618,750 to Mr. Long in loss of consortium damages, and \$30,000,000 in punitive damages against J&J. This Court also recognizes Plaintiffs’ settlement setoff in the amount of \$11,255,000 to be fair and reasonable.

As reasons to remit this jury award of actual damages to Mr. Perry and Mr. Long, J&J argued the following:

For example, the evidence simply does not support the massive loss of consortium award to Mr. Long. Nothing unusual about his loss of services of explained to in detail to justify a \$9M loss. Again, there is no attempt here to deny that he has suffered loss. But the jury’s award is grossly excessive or, failing that, overly liberal. The award to Mr. Perry is also shockingly excessive and, failing that, overly liberal. Mr. Perry’s disease has, fortunately, been treated at least temporarily by his treating doctors and he appeared for most of the two-week trial in court in Richland County. While without question he suffers from a terrible disease, he is ambulatory and self-sufficient, and was physically well-composed and able to testify during the trial, demonstrating his current state of health.

A. Analysis of other cases.

- *Firth v. Garlock Sealing Technologies, LLC*, Civil Action No. 2008-CP-23-09186 (Greenville Cty. 2009), involved a 72-year-old deceased mesothelioma. The jury awarded \$300,000 for survival and \$400,000 for wrongful death, for a total of \$700,000 in compensatory damages. The jury declined to award damages for loss of consortium.
- *Garvin v. AGCO Corporation, et al.*, Civil Action No. 2012-CP-40-06675 (Richland Cty. 2013), involved a 74-year-old living mesothelioma who worked on pumps and valves as a millwright for thirty years. The jury awarded \$10 million for pain and suffering and \$1 million for loss of consortium, for a total of \$11 million in compensatory damages. The jury also awarded an aggregate of \$27 million in

punitive damages against three defendant parties. After a trial defendant challenged the verdict, and the trial court granted a new trial *nisi remittitur* reducing the compensatory damages award from \$11 million to \$1.5 million (a remittitur of slightly more than 85%) and reducing the punitive damages award against the challenging defendant from \$11 million to \$3.5 million, commensurate with the statutory cap on punitive damages.

- *Keene v. CNA Holdings, LLC*, Civil Action No. 2013-CP-42-03915 (Spartanburg Cty. 2015), involved a 70-year-old deceased mesothelioma who worked as a millwright for Daniel Construction at the Celanese Spartanburg facility from 1969 to 1978. The jury awarded \$2 million for pain and suffering, \$5 million for wrongful death, and \$5 million for loss of consortium, for a total of \$12 million in compensatory damages. The jury also awarded \$2 million in punitive damages.
- *Jolly v. General Electric Co., et al.*, Civil Action No. 2016-CP-42-01592 (Spartanburg Cty. 2017), involved a 73-year-old living mesothelioma who worked for Duke Power as a mechanical inspector around other trades engaged in tearing-out asbestos insulation and gaskets from 1980 to 1984. The jury awarded \$200,000 for pain and suffering and \$100,000 for loss of consortium, for a total of \$300,000 in compensatory damages. This Court granted a new trial *nisi additur*, increasing the compensatory damages award to a total of \$1,870,000.
- *Edwards v. Scapa Waycross, Inc.*, Civil Action No. 2013-CP-46-00368 (York Cty. 2018), involved a 60-year-old deceased mesothelioma who worked at Bowater Paper Mill on a paper machine from 1963 to 2002. The jury awarded \$600,000 in survival and \$100,000 in wrongful death damages. This Court granted a new trial *nisi additur*, increasing the survival award by \$400,000 to \$1 million and sustaining the damages awarded for wrongful death. After additur, the compensatory damages totaled \$1,100,000.
- *Glenn v. 3M Co., et al.*, Civil Action No. 2015-CP-04-01607 (Anderson Cty. 2019), involved a 69-year-old deceased mesothelioma who worked for Duke Power as an instrumentation worker around trades tearing-out asbestos insulation and gaskets from 1970 through 1996. The jury awarded \$1 million for pain and suffering, \$1 million for wrongful death, and \$1 million for loss of consortium, for a total of \$3 million in compensatory damages. The jury also awarded \$2,125,000 in punitive damages.
- *Weist v. Kraft Heinz Company, et al.*, Civil Action No. 2020-CP-40-01597 (Richland Cty. 2021), involved the death of Kathy Weist. The jury awarded \$11 million for Kathy Weist's survival damages, \$10 million for the wrongful death damages and \$1 million for the loss of consortium damages. The jury also awarded \$10 million in punitive damages.

- *Plant v. Whittaker Clarke & Daniel et al*, Civil Action No. 2022-CP-40-01265 (Richland Cty. 2023), involved a 35 year old living mesothelioma who was exposed to talcum powder and cosmetic products. The jury awarded \$871,356 in past medical expenses, \$3,368,336 in future medical expenses, \$20 million in other damages, and \$5 million in loss of consortium.

B. *Garvin v. Crane Co.*

This Court points to now-Justice Hill's prior order in the *Garvin v. Crane Co.* case. *Order Denying in Part and Granting in Part Defendant Crane Co.'s Motion for Post-Trial Relief, Garvin v. AGCO Corporation*, No. 2012-CP-40-6675, Richland County Court of Common Pleas of South Carolina (Nov. 10, 2014)). After Mr. Garvin's trial, Justice Hill remitted the jury finding from \$10,000,000 in compensatory damages to \$1,500,000. The reasons for this remittitur were that Mr. Garvin was 74 years old, had testicular mesothelioma, and had several other serious medical conditions unrelated to his testicular mesothelioma. Additionally, Mr. Garvin was cancer-free and only had economic damages in the amount of \$149,000. Justice Hill noted that based on Mr. Garvin's pecuniary damages, the nature of his injury (testicular mesothelioma), his treatments, his age, and his life expectancy, there were compelling reasons to remit Mr. Garvin's verdict.

C. *Seay v. CNA Holdings, LLC*

Justice Hill also evaluated a request for new trial nisi remittitur in the *Seay v. CNA Holdings, LLC* case. *Order Denying Defendant CNA Holding, LLC's Motion for Post-Trial Relief, Angie Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay v. CNA Holdings, LLC*, No. 2013-CP-42-03915, Richland County Court of Common Pleas of South Carolina (Jan. 8, 2016)). Celanese requested that Justice Hill remit the jury's compensatory verdict from \$2,000,000 to \$1,500,000, which Justice Hill declined to do. *Id.* at *31. In support of his ruling, Justice Hill noted that Mr. Seay had pleural mesothelioma and suffered with chest and lung pain before his diagnosis. He noted all of Mr. Seay's pain and

suffering, including all of his medical treatments and surgeries to try and prolong his life. He noted that before his pleural mesothelioma diagnosis, Mr. Seay was “strong and in very good physical shape,” Justice Hill noted that Mr. Seay suffered from excruciating pain and mental distress, and that he found no compelling reason to reduce the compensatory verdict. Justice Hill further noted that the compensatory verdict was similar to other jury awards for someone with pleural mesothelioma.

Justice Hill further elaborated in his *Seay* post-trial order that:

As Celanese points out, in *Garvin*, this Court did remit the pain and suffering awarded to Mr. Garvin from \$10 million to \$1.5 million. But the cases are very different. Mr. Garvin was alive and cancer free at the time of his trial, whereas Mr. Seay suffered unrelenting pain until his mesothelioma killed him. Mr. Garvin was four years older at the time of trial than Mr. Seay was at his death, and Mr. Garvin’s life expectancy was a number of years shorter. Mr. Garvin suffered from a testicular form of mesothelioma, while Mr. Seay suffered from pleural mesothelioma that caused his death by suffocation.

Id. at *35.

Justice Hill also affirmed the jury’s award of \$5,000,000 for loss of consortium damages to Mr. Seay’s widow because she “suffered extreme hardship and loss” because of her husband’s mesothelioma. *Id.* at *36. Justice Hill noted how much time Mr. and Mrs. Seay spent together and the fact that Mrs. Seay took care of her husband when he was sick because he “always wanted her right beside him.” *Id.* at *36. Justice Hill noted that the loss of consortium award was supported by the trial evidence and was not unduly liberal. *Id.* at *37. Justice Hill acknowledged that, same as in *Garvin*, there was no compelling reason to disturb the loss of consortium verdict.

Justice Hill also affirmed the award of \$5,000,000 to the wrongful death claim noting that Mr. Seay would have had a life expectancy of 13 years had he not developed mesothelioma.

Finally, Justice Hill declined to remit the jury’s punitive verdict, finding of \$2,000,000 in total, or in the alternative to \$50,000. *Id.* at *43. Justice Hill walked through all of the evidence

that had been presented to the jury about how long Celanese had known about asbestos causing disease, how long Celanese had known that the asbestos on its premise exposed people to high enough levels of asbestos to cause disease, and that Celanese had knowingly and consciously disregarded the rights and safety of Mr. Seay and other workers on its premise and never warned anyone of asbestos hazards. Justice Hill wrote that:

...evidence included Celanese's decision to continue using asbestos products when there were available alternatives, and deliberately concealing the nature of the danger from contract workers like Mr. Seay. This was not isolated conduct, but continued for almost a decade...

Id. at *45.

D. Mr. Perry

The evidence shows that Mr. Perry's injuries are very different from Mr. Garvin's. Mr. Perry was 53 years old at the time of his diagnosis in 2023, more than 20 years younger than Mr. Garvin at the time of his trial. Mr. Perry has pleural mesothelioma and, as the jury heard from Dr. Haber, is facing a resurgence of his disease. He has no other severe medical conditions aside from his pleural mesothelioma and was in good physical health before his cancer diagnosis.

Mr. Perry is more similar to Mr. Seay. Mr. Perry, like Mr. Seay, has pleural mesothelioma. He has suffered extreme chest and lung pain. He has had extensive medical treatments, including but not limited to chemotherapy, radiation, and a six-to-eight surgery during which his back muscle was cut in half, his cancer-ridden lung lining was peeled off like an orange rind, his rib was removed, and his diaphragm was removed and reconstructed with mesh. The jury heard from Dr. Gibney that Mr. Perry's mesothelioma will recur, will be aggressive, and that when that happens, Mr. Perry will suffocate to death with a sensation of "drowning."

Relevant to both *Garvin* and *Seay* prior orders, Mr. Perry's loss of life expectancy was approximately 26 years. Mr. Perry had \$510,620.05 in medical bills, an amount that was stipulated

to as fair and reasonable by J&J. The record also shows that Mr. Perry had an economic loss of \$2,819,353, an amount also stipulated to by J&J as fair and reasonable. Therefore, Mr. Perry had a total economic loss of \$3,329,973.05, an amount that J&J stipulated to which was then presented to the jury. This is contrasted with Mr. Garvin's economic loss of \$149,000.

Evidence supports the fact that Mr. Long has felt the loss of his husband, and will continue to feel it long after Mr. Perry dies. The jury heard evidence that his husband gives him strength, and his entire life revolves around his relationship with Mr. Perry. The jury heard that Mr. Long takes Mr. Perry to every single doctor's appointment without fail, and loves his husband so much he could not even watch him testify at trial because it would be too painful to watch Mr. Perry be cross-examined.

Similar to the *Seay* order, the jury heard evidence that J&J continued to sell JBP knowing that it had asbestos in it and knowing that there was an alternative available in cornstarch the entire time JBP was sold. The jury also heard evidence that J&J deliberately misled the FDA as to the asbestos in its talc and deliberately designed, and advocated for the use of, underpowered testing methods so that the asbestos in its talc either would not be found or could be designated as "non-detect." The jury also heard evidence that J&J hid the fact that it had asbestos in its talc powder from the American public, including Mr. Perry. Finally, the jury heard evidence that J&J persisted in this conduct for decades – long after it first learned in the 1950s that its talc had tremolite asbestos in it.

As Justice Hill noted in his prior post-trial order in *Garvin*, "While the jury did decide on a large award, the Court has no reason to conclude it was the result of any improper motive or outside consideration. Placing a value on pain and suffering is inherently subjective." *Order*

Denying in Part and Granting in Part Defendant Crane Co. 's Motion for Post-Trial Relief, Garvin v. AGCO Corporation, at *32 (Nov. 10, 2014)).

However, the Court does find the verdict should be reduced because it is “merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). The verdict to Mr. Perry of \$23,037,500 shall be reduced by \$4,000,000 thereby leaving a verdict of \$19,037,500.

The Court finds the loss of consortium award shall be reduced because it is “merely excessive although not motivated by considerations such as passion, caprice or prejudice.” *Id.* The verdict to Mr. Long of \$9,618,750 shall be reduced by \$3,000,000 thereby leaving a verdict of \$6,618,750.

Finally, the Court finds that the jury’s punitive damages award is reasonable given the evidence at trial and that it is within the 3:1 ratio pursuant to S.C. Code Ann. §15-32-530. However, the Court finds that the punitive verdict against the Defendant shall be reduced by \$5,000,000, thereby leaving a punitive damage verdict of \$25,000,000. Against J&J.

Plaintiffs’ verdict of \$19,037,500 for Mr. Perry’s past and future total loss, \$6,618,750 for Mr. Long’s loss of consortium shall be set off by the fair and reasonable setoff of \$11,255,000, resulting in a compensatory judgment of \$14,401,250. The total punitive judgment, after reduction is \$25,000,000. Therefore, the total judgment to be entered against the J & J entities is \$39,401,250.

J&J’s request for nisi remittitur as to Plaintiffs’ compensatory awards and the punitive damages award is GRANTED.

[JUDGE’S SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Amend

So Ordered

Jean H. Toal

Electronically signed on 2025-02-28 13:08:57 page 86 of 86

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

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants, certify that I have served all counsel in this action with a copy of the document(s) specified below a copy by electronic mail to each attorney listed below using their primary email address listed in the Attorney Information System.

PLEADING(s): Supplemental Notice of Appeal

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March 3, 2025



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March 19, 2025

Via Hand Delivery

Richland County Clerk of Court
Attn: Brandy Metts
Clerk of Court Accounting Supervisor
1701 Main Street
Columbia, SC 29201

RE: Michael Perry v. American International Industries., et al.
Civil Action No. 2023CP4004072
NMRS File No. 003501.01982

Dear Ms. Metts:

Enclosed is the *original* Supersedeas Bond in the above matter, which was electronically filed with the Court on March 19, 2025.

Very truly yours,

s/ Blake T. Williams

Blake T. Williams

BTW/eh

Enclosure

cc: Charles William Branham, III, Esquire (via email)
Theile B. McVey, Esquire (via email)
David Christopher Humen, Esquire (via email)
John D. Kassel, Esquire (via email)
Jamie Rae Rutkoski, Esquire (via email)
Rachel A. Gross, Esquire (via email)
Amy Pepke, Esquire (via email)
Mitch Brown, Esquire (via email)
Matt Bogan, Esquire (via email)

Bond Number: K42016731

**STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT**

MICHAEL L. PERRY and LONNIE L. LONG,

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES, *et al*,

Defendants.

C/A No. 2023-CP-40-04072

SUPERSEDEAS BOND

In Re:
Asbestos Personal Injury Litigation
Consolidated Docket

KNOW ALL BY THESE PRESENTS that, Defendant JOHNSON & JOHNSON; LLT MANAGEMENT, LLC; JOHNSON & JOHNSON HOLDCO (NA) INC., AND KENVUE, INC. (collectively "J&J"), as principal ("Defendant"), and FEDERAL INSURANCE COMPANY, a corporation authorized to transact surety business in the State of South Carolina, as surety ("Surety"), are held and firmly bound unto Plaintiffs MICHAEL L. PERRY and LONNIE L. LONG (each a "Plaintiff" or "Obligee" and, collectively, the "Plaintiffs" or "Obligees"), in the total aggregate sum of Thirty Nine Million Four Hundred One Thousand Two Hundred Fifty and 00/100 Dollars (\$39,401,250.00), lawful money of the United States, for which payment, well and truly to be made, we bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, as set forth below.

WHEREAS, on December 11, 2024, the COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Court of the State of South Carolina entered a Judgment in the above-referenced action in favor of the Plaintiffs and against Defendant (the "Judgment"); and

WHEREAS, Defendant desires to give this Supersedeas Bond as an undertaking for an appeal from the Judgment (the "Appeal"), as provided by Rule 62(d), SCRCP, to stay execution of the Judgment through the disposition of the Appeal by the COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT,

NOW THEREFORE, the conditions of this undertaking are such that if: (1) the Judgment is vacated or reversed upon the disposition of the Appeal by the COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT ; or (2) the Appeal is withdrawn or dismissed and the Principal satisfies the Judgment in full or as otherwise agreed to by the Plaintiffs; or (3) the Judgment is affirmed upon the disposition of the Appeal by the COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT and the Principal satisfies said Judgment in full, including any costs and/or interest as may be awarded by the COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT; or (4) the Judgment is modified upon the disposition of the Appeal by the COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT and Principal satisfies such modified Judgment in full, including any costs and/or interest as may be awarded by the COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT, then this undertaking shall be null and void, otherwise it shall remain in full force and effect subject to the following terms and conditions:

1. The aggregate liability of the Surety hereunder for any and all claims presented shall not exceed the amount of this undertaking set forth above; and
2. If payment is required to be made hereunder by the Surety to the Obligees, or any of them, such payment shall be made, provided that (a) Principal has not fully satisfied its obligations under the Judgment within (30) days following the filing of the remittitur after affirmance, modification, withdrawal, or dismissal of the Appeal, and (b) the Obligees or their counsel shall have notified the Surety, Principal, and their respective counsel, in writing, that the Principal has failed to make such payment to the Obligee,

in which event the Surety shall have thirty (30) days from the receipt of that notice to issue payment.

The said Defendant/Principal has caused this undertaking to be executed and its name and seal to be hereunto affixed by its duly authorized officer and representative and the said Surety has caused this undertaking to be executed and its name and seal to be hereunto affixed by its duly authorized attorney-in-fact on this 18th day of March, 2025.

SURETY
FEDERAL INSURANCE COMPANY

By: Debra A. Deming
Name: Debra A. Deming
Attorney-in-Fact

[ATTACH COPY OF ATTORNEY-IN-FACT'S POWER OF ATTORNEY]

CHUBB**Power of Attorney**

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, **PACIFIC INDEMNITY COMPANY**, a Delaware corporation, **WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Valorie Spates and Beverly Woolford of Garden City, New York; Debra A. Deming, Sandra Diaz, Vilma Gonzalez, Peter Healy, Pablo Garcia Horcajo, Francesca Kazmierczak, Aklima Noorhassan, Anne Potter and Frances Rodriguez of New York, New York -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, **PACIFIC INDEMNITY COMPANY**, **WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** have each executed and attested these presents and affixed their corporate seals on this 15th day of July, 2024.

Rupert H.D. Swindells

Rupert HD Swindells, Assistant Secretary



Warren Eichhorn

Warren Eichhorn, Vice President



STATE OF NEW JERSEY
County of Hunterdon

SS.

On this 15th day of July, 2024 before me, a Notary Public of New Jersey, personally came Rupert HD Swindells and Warren Eichhorn, to me known to be Assistant Secretary and Vice President, respectively, of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, **PACIFIC INDEMNITY COMPANY**, **WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Rupert HD Swindells and Warren Eichhorn, being by me duly sworn, severally and each for himself did depose and say that they are Assistant Secretary and Vice President, respectively, of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, **PACIFIC INDEMNITY COMPANY**, **WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal



Albert Contursi
NOTARY PUBLIC OF NEW JERSEY
No 50202369
Commission Expires August 22, 2027

Albert Contursi
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** on August 30, 2016; **WESTCHESTER FIRE INSURANCE COMPANY** on December 11, 2006; and **ACE AMERICAN INSURANCE COMPANY** on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Rupert HD Swindells, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, **PACIFIC INDEMNITY COMPANY**, **WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this **March 18, 2025**



Rupert H.D. Swindells

Rupert HD Swindells, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

FEDERAL INSURANCE COMPANY
STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

December 31, 2023

(in thousands)

ASSETS		LIABILITIES AND SURPLUS TO POLICYHOLDERS	
Cash, Cash Equivalents, and ST Investments	\$ 258,280	Outstanding Losses and Loss Expenses	\$ 9,827,827
United States Government, State and Municipal Bonds	3,248,130	Reinsurance Payable on Losses and Expenses	1,718,382
Other Bonds	7,785,988	Unearned Premiums	2,899,835
Stocks	283,737	Ceded Reinsurance Premiums Payable	344,549
Other Invested Assets	<u>1,763,284</u>	Other Liabilities	<u>518,080</u>
TOTAL INVESTMENTS	<u>13,319,359</u>	TOTAL LIABILITIES	<u>15,304,683</u>
Investments in Affiliates:		Capital Stock	20,980
Great Northern Ins. Co.	433,797	Paid-In Surplus	2,711,474
Vigilant Ins. Co.	380,848	Unassigned Funds	<u>2,079,218</u>
Chubb Indemnity Ins. Co.	188,614	SURPLUS TO POLICYHOLDERS	<u>4,811,672</u>
Chubb National Ins. Co.	199,440		
Other Affiliates	117,668		
Premiums Receivable	2,282,801		
Other Assets	<u>3,215,928</u>		
TOTAL ADMITTED ASSETS	<u>\$ 20,116,355</u>	TOTAL LIABILITIES AND SURPLUS	<u>\$ 20,116,355</u>

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners. At December 31, 2023, investments with a carrying value of \$685,024,973 were deposited with government authorities as required by law.

STATE OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

John Taylor, being duly sworn, says that he is Senior Vice President of Federal Insurance Company and that to the best of his knowledge and belief the foregoing is a true and correct statement of the said Company's financial condition as of the 31st day of December, 2023.

Sworn before me this March 14, 2024


 Senior Vice President


 Notary Public

August 8, 2027
 My commission expires

Commonwealth of Pennsylvania - Notary Seal
 Diane Wright, Notary Public
 Philadelphia County
 My commission expires August 8, 2027
 Commission number 1235746
 Member, Pennsylvania Association of Notaries

From: Kim Bueno <Kim.Bueno@butlersnow.com>
Sent: Saturday, August 3, 2024 2:45 PM
To: 'Ben Adams'; Rachel Gross; Amy Pepke; 'blake.williams@nelsonmullins.com'; Chris Cowan; C. Mitchell Brown (mitch.brown@nelsonmullins.com)
Cc: Theile McVey; Teresa Gilliland; 'Ryan Travis'; Tara Blake
Subject: RE: Perry Trial Schedule
Attachments: image001.png

Ben, Rachel and team,

As a follow-up to my email below—Please let us know if we can reach agreement on any of these times, or if we will need to raise them with the Court on Monday morning.

We propose exchange of opening slides at **7 p.m. tomorrow**. Please confirm that works for you.

Thanks,

Kim

Kim Bueno
Butler Snow LLP

D: (737) 802-1820 | C: (512) 699-3255 | F: (737) 802-1801
1400 Lavaca Street, Suite 1000, Austin, TX 78701
Kim.Bueno@butlersnow.com | [vCard](#) | [Bio](#)

[X \(Twitter\)](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Kim Bueno <Kim.Bueno@butlersnow.com>
Sent: Saturday, August 3, 2024 7:55 AM
To: 'Ben Adams' <badams@dobslegal.com>; Rachel Gross <rgross@dobslegal.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; 'blake.williams@nelsonmullins.com' <blake.williams@nelsonmullins.com>; Chris Cowan <Chris.Cowan@butlersnow.com>; C. Mitchell Brown (mitch.brown@nelsonmullins.com) <mitch.brown@nelsonmullins.com>
Cc: Theile McVey <TMcVey@kassellaw.com>; Teresa Gilliland <tgilliland@dobslegal.com>; 'Ryan Travis' <rtravis@thetrialgroup.com>; Tara Blake <Tara.Blake@butlersnow.com>; Kim Bueno <Kim.Bueno@butlersnow.com>
Subject: RE: Perry Trial Schedule

Ben, Rachel and team,

Good morning! Thank you for proposing time limits for trial. We have a few, but not many, disagreements about your proposal. Where we have a disagreement, our counterproposal is noted in **red**. If we do not include a counter proposal, then we are in agreement about the time for that witness. We also included our proposed witness times in red below. Please note that times allotted

to Defendants are for the J&J Defendants only. If A-I-I seeks to question any of these witnesses about damages issues, that time will be in addition to the Defendants' time below.

We agree to stipulate on economic damages (avoiding the need to call Johnson) in exchange for calling our expert on Friday, August 9. This stipulation is also on behalf of J&J Defendants only (not A-I-I). The witness we call on August 9 will require a total of 2:20 based on the times below.

As for Dr. Madigan, we regret that we cannot accommodate your request to call him on August 14. Justice Toal already told us that we are closing that day. Additionally, we need to submit and argue our directed verdict motion at the close of Plaintiffs' case. Plaintiffs' evidence must be complete before we call our witnesses and rest. However, due to Dr. Madigan's conflict, we will not oppose a request to call him remotely earlier in the trial. I understand Justice Toal has allowed remote witnesses at prior trials under similar circumstances.

We intend to call one witness on Friday and our other witnesses Monday and Tuesday. This will allow us to rest on Tuesday and have a charge conference. We can close Wednesday as planned.

Finally, I am not certain we have final agreement on the deposition clips (Hopkins, Mann, Ruh, Mongon). The times below appear to be fairly accurate, but we understand the actual times may vary slightly.

Let me know if you want to discuss. Thanks,

Kim

Opening

- P: 1 hour—45 minutes
- D: 1 hour—45 minutes

Brody

- Direct: 45 mins
- Cross: 30 mins
- Re-direct: 10 mins

Longo

- Direct: 1.5 hrs
- Cross: 1 hr—1.5 hours (see below, we are taking time from Bailey's cross for Dr. Longo)
- Re-direct: 25 mins

Gibney

- Direct: 35 mins
- Cross: 20 mins—30 min
- Re-direct: 10 mins

Bailey

- Direct: 1 hr, 15 mins
- Cross: 1 hr—30 minutes
- Re-direct: 15 min

Lonnie

- Direct: 30 mins
- Cross: 15 mins
- Re-direct: 5 mins

Michael

- Direct: 35 mins
- Cross: 25 mins—35 minutes
- Re-direct: 5 mins

Haber

- Direct: 2 hrs
- Cross: 1 hr, 20 mins
- Re-direct: 20 mins

Madigan

- Direct: 40 mins
- Cross: 20 mins
- Re-direct: 5 mins

Mann

- Pltfs
 - o 1 hour, 44 mins
- Def
 - o 17 mins

Hopkins

- Pltfs:
 - o 2 hours, 21 mins
- Def
 - o 1 hour, 12 mins

Ruh

- P: 38 mins
- D: 2 mins

Mongon

- P: 47 mins
- D: 2 mins

Kuffner

- P: 1 hour, 30 mins
- D: 1 hour, 30 mins (including our direct)
- P: 20 mins
- D: 20 mins (redirect)

Johnson

- ~~P: 25 mins~~
- ~~D: 10 mins~~
- ~~Re-direct: 3 mins~~

Sanchez

- D: 1.25 hour
- P: 45 min
- D: 20 min

Diette or Weill (TBD)

- D: 1.25 hour
- P: 45 min
- D: 20 min

Barlow:

- D: 1.25 hour

- P: 45 min
- D: 20 min

Alexander:

- D: 45 min
- P: 30 min
- D: 10 min

Kim Bueno Butler Snow LLP

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From: Ben Adams <badams@dobslegal.com>
Sent: Friday, August 2, 2024 3:59 PM
To: Rachel Gross <rgross@dobslegal.com>; Kim Bueno <Kim.Bueno@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; 'blake.williams@nelsonmullins.com' <blake.williams@nelsonmullins.com>; Chris Cowan <Chris.Cowan@butlersnow.com>; C. Mitchell Brown (mitch.brown@nelsonmullins.com) <mitch.brown@nelsonmullins.com>
Cc: Theile McVey <TMcVey@kassellaw.com>; Teresa Gilliland <tgilliland@dobslegal.com>; 'Ryan Travis' <rtravis@thetrialgroup.com>; Tara Blake <Tara.Blake@butlersnow.com>
Subject: Re: Perry Trial Schedule

Kim,

To clarify, we will likely have time to accommodate your expert on Friday if we can reach a stipulation on Bob Johnson's testimony so we don't have to call him. We hope that you will make a substantive counterproposal to the proposed stipulation we previously sent. What is your time estimate for the expert you intend to call Friday?

Ben

Benjamin H. Adams | Partner
<https://link.edgepilot.com/s/c965ef38/djfSSv95ykOvEzuM85uXKQ?u=http://www.dobslegal.com/>

From: Rachel Gross <rgross@dobslegal.com>
Date: Friday, August 2, 2024 at 2:53 PM
To: Kim Bueno <Kim.Bueno@butlersnow.com>, Ben Adams <badams@dobslegal.com>, Amy Pepke <Amy.Pepke@butlersnow.com>, 'blake.williams@nelsonmullins.com' <blake.williams@nelsonmullins.com>, Chris Cowan <Chris.Cowan@butlersnow.com>, C. Mitchell Brown (mitch.brown@nelsonmullins.com) <mitch.brown@nelsonmullins.com>
Cc: Theile McVey <TMcVey@kassellaw.com>, Teresa Gilliland <tgilliland@dobslegal.com>, 'Ryan Travis' <rtravis@thetrialgroup.com>, Tara Blake <Tara.Blake@butlersnow.com>
Subject: Re: Perry Trial Schedule

Kim:

Below is our proposed division of time. This is consistent with the time limits utilized and approved by Judge Toal in last year's Plant trial. I believe we will still be in Plaintiffs' case on Friday, but happy to accommodate your expert then. To that end, we need to call Dr. Madigan out of turn because of his schedule and have penciled him in for Wednesday, August 14th. Please let us know if you have any counter-proposal. Thanks.

Opening

- P: 1 hour
- D: 1 hour

Brody

- Direct: 45 mins
- Cross: 30 mins
- Re-direct: 10 mins

Longo

- Direct: 1.5 hrs
- Cross: 1 hr
- Re-direct: 25 mins

Gibney

- Direct: 35 mins
- Cross: 20 mins
- Re-direct: 10 mins

Bailey

- Direct: 1 hr, 15 mins
- Cross: 1 hr
- Re-direct: 15 min

Lonnie

- Direct: 30 mins
- Cross: 15 mins
- Re-direct: 5 mins

Michael

- Direct: 35 mins
- Cross: 25 mins
- Re-direct: 5 mins

Haber

- Direct: 2 hrs
- Cross: 1 hr, 20 mins
- Re-direct: 20 mins

Madigan

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Mann

- Pltfs
 - o 1 hour, 44 mins
- Def
 - o 17 mins

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- Pltfs:
 - o 2 hours, 21 mins
- Def
 - o 1 hour, 12 mins

Ruh

- P: 38 mins
- D: 2 mins

Mongon

- P: 47 mins
- D: 2 mins

Kuffner

- P: 1 hour, 30 mins
- D: 1 hour, 30 mins
- P: 20 mins

Johnson

- P: 25 mins
- D: 10 mins
- Re-direct: 3 mins

RACHEL A. GROSS | Attorney

O: (214) 722-5990 | C: (214) 683-1753

<https://link.edgepilot.com/s/c965ef38/djfSSv95ykOvEzuM85uXKQ?u=http://www.dobslegal.com/>

From: Kim Bueno <Kim.Bueno@butlersnow.com>

Date: Friday, August 2, 2024 at 1:46 PM

To: Ben Adams <badams@dobslegal.com>, Rachel Gross <rgross@dobslegal.com>, Amy Pepke <Amy.Pepke@butlersnow.com>, 'blake.williams@nelsonmullins.com'

<blake.williams@nelsonmullins.com>, Chris Cowan <Chris.Cowan@butlersnow.com>, C. Mitchell Brown (mitch.brown@nelsonmullins.com) <mitch.brown@nelsonmullins.com>

Cc: Theile McVey <TMcVey@kassellaw.com>, Teresa Gilliland <tgilliland@dobslegal.com>, 'Ryan Travis' <rtravis@thetrialgroup.com>, Tara Blake <Tara.Blake@butlersnow.com>

Subject: Perry Trial Schedule

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Plaintiffs' counsel,

When can we expect to hear from you about your proposed division of time at trial? My understanding is that you were going to send us a proposal on Wednesday. Please respond today and let us know your proposal.

We have already confirmed two of our experts—one on Friday (8/9) and one on Monday (8/12). Those two witnesses cannot appear on any other day of trial, so I have locked them in. We have a little flexibility with the others, but I need to get them booked this weekend.

Thanks,

Kim

Kim Bueno
Butler Snow LLP

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Kim.Bueno@butlersnow.com | [vCard](#) | [Bio](#)

[X \(Twitter\)](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Kim Bueno

Sent: Wednesday, July 31, 2024 8:23 PM

To: 'Ben Adams' <badams@dobslegal.com>; Rachel Gross <rgross@dobslegal.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; blake.williams@nelsonmullins.com; Chris Cowan <Chris.Cowan@butlersnow.com>

Cc: Theile McVey <TMcVey@kassellaw.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ryan Travis <rtravis@thetrialgroup.com>; Tara Blake <Tara.Blake@butlersnow.com>

Subject: RE: Perry - J&J Page Lines

Hi Ben,

We need clarity on which witnesses you are calling before we can finalize our lineup and time estimates. Can you please tell us your plan and estimated date/time you will rest your case? That information will guide our response. You don't need to reveal your order, but we cannot give you time estimates for our experts until we know who you are bringing.

Thanks,

Kim

Kim Bueno
Butler Snow LLP

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Kim.Bueno@butlersnow.com | [vCard](#) | [Bio](#)

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From: Ben Adams <badams@dobslegal.com>

Sent: Wednesday, July 31, 2024 12:32 PM

To: Kim Bueno <Kim.Bueno@butlersnow.com>; Rachel Gross <rgross@dobslegal.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; blake.williams@nelsonmullins.com; Chris Cowan <Chris.Cowan@butlersnow.com>

Cc: Theile McVey <TMcVey@kassellaw.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ryan Travis <rtravis@thetrialgroup.com>; Tara Blake <Tara.Blake@butlersnow.com>

Subject: Re: Perry - J&J Page Lines

— —
We'll get you our time estimates by Friday. Can you please do the same for your experts? Thanks.

Benjamin H. Adams | Partner

From: Kim Bueno <Kim.Bueno@butlersnow.com>

Sent: Wednesday, July 31, 2024 1:19 PM

To: Ben Adams <badams@dobslegal.com>; Rachel Gross <rgross@dobslegal.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; blake.williams@nelsonmullins.com <blake.williams@nelsonmullins.com>; Chris Cowan <Chris.Cowan@butlersnow.com>

Cc: Theile McVey <TMcVey@kassellaw.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ryan Travis <rtravis@thetrialgroup.com>; Tara Blake <Tara.Blake@butlersnow.com>

Subject: RE: Perry - J&J Page Lines

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Hi Ben,

Thanks for sending these. We will review and get back to you ASAP. To follow up on my other question—When can we expect to get your proposed schedule for trial and division of time? We need to know your proposal before we can finalize our page/lines. We are also eager to schedule our witnesses. For that reason, we need to hear back from you on your proposed schedule today.

Thanks,

Kim

Kim Bueno

Butler Snow LLP

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Kim.Bueno@butlersnow.com | [vCard](#) | [Bio](#)

[X \(Twitter\)](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Ben Adams <badams@dobslegal.com>

Sent: Wednesday, July 31, 2024 11:50 AM

To: Kim Bueno <Kim.Bueno@butlersnow.com>; Rachel Gross <rgross@dobslegal.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; blake.williams@nelsonmullins.com; Chris Cowan <Chris.Cowan@butlersnow.com>

Cc: Theile McVey <TMcVey@kassellaw.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ryan Travis <rtravis@thetrialgroup.com>; Tara Blake <Tara.Blake@butlersnow.com>

Subject: Re: Perry - J&J Page Lines

Hi Kim,

Attached are the full as-playeds from Lee (three volumes of Hopkins and one of Mann). We will submit these to Justice Toal on Thursday and request that she order these as-playeds played in Perry if we have not reached agreement.

We also plan to play the designations agreed to in Garcia of Mongon and Ruh (attached), except we intend to withdraw the portions of our designations highlighted in green. Can we agree to those same designations with the withdrawn portions? Thanks.

Benjamin H. Adams | Partner

<https://link.edgепilot.com/s/c965ef38/djfSSv95ykOvEzuM85uXKQ?u=http://www.dobslegal.com/>

From: Kim Bueno <Kim.Bueno@butlersnow.com>

Date: Wednesday, July 31, 2024 at 11:42 AM

To: Ben Adams <badams@dobslegal.com>, Rachel Gross <rgross@dobslegal.com>, Amy Pepke <Amy.Pepke@butlersnow.com>, blake.williams@nelsonmullins.com <blake.williams@nelsonmullins.com>, Chris Cowan <Chris.Cowan@butlersnow.com>

Cc: Theile McVey <TMcVey@kassellaw.com>, Teresa Gilliland <tgilliland@dobslegal.com>, Ryan Travis <rtravis@thetrialgroup.com>, Tara Blake <Tara.Blake@butlersnow.com>

Subject: RE: Perry - J&J Page Lines

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Ben,

Will you confirm what you sent as the “as played” clips of Hopkins from the *Lee* case are what you intend to play in *Perry*? Based on our review of the *Lee* record, the Hopkins play was about 1.5 hours in total; the script you sent us was only the last portion of the Hopkins play that was played on May 14th in *Lee* and was only 29 minutes long. In order to respond, we need to know what you intend to play in *Perry* for Hopkins.

Also, when will your team be sending us your proposed schedule and division of time for trial? Our choices of what video clips we want to play for these witnesses may depend on time constraints. Please do not send any page/lines to Judge Toal until we reach agreement on the proposed trial schedule. At that time, we can nail down our affirmatives and counters.

Thanks,

Kim

Kim Bueno

Butler Snow LLP

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1400 Lavaca Street, Suite 1000, Austin, TX 78701

Kim.Bueno@butlersnow.com | [vCard](#) | [Bio](#)

From: Ben Adams <badams@dobslegal.com>

Sent: Tuesday, July 30, 2024 8:51 AM

To: Kim Bueno <Kim.Bueno@butlersnow.com>; Rachel Gross <rgross@dobslegal.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; blake.williams@nelsonmullins.com; Chris Cowan <Chris.Cowan@butlersnow.com>

Cc: Theile McVey <TMcVey@kassellaw.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ryan Travis <rtravis@thetrialgroup.com>

Subject: Re: Perry - J&J Page Lines

Kim,

Attached for your convenience please find the as-playeds of Hopkins and Mann from the *Lee* case. We look forward to your response.

If we do not reach agreement, we intend to submit the page-line designations done in this case to Judge Toal on Thursday for ruling. Thank you.

Ben

Benjamin H. Adams | Partner

<https://link.edgепilot.com/s/c965ef38/djfSSv95ykOvEzuM85uXKQ?u=http://www.dobslegal.com/>

From: Kim Bueno <Kim.Bueno@butlersnow.com>

Date: Monday, July 29, 2024 at 8:45 PM

To: Rachel Gross <rgross@dobslegal.com>, Amy Pepke <Amy.Pepke@butlersnow.com>, blake.williams@nelsonmullins.com <blake.williams@nelsonmullins.com>, Chris Cowan <Chris.Cowan@butlersnow.com>

Cc: Ben Adams <badams@dobslegal.com>, Theile McVey <TMcVey@kassellaw.com>, Teresa Gilliland <tgilliland@dobslegal.com>

Subject: RE: Perry - J&J Page Lines

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Rachel,

I will look into this and get back to you. I don't have visibility into the page/lines from Lee, but I'll pull those and review.

Thanks,
Kim

Kim Bueno
Butler Snow LLP

D: (737) 802-1820 | C: (512) 699-3255 | F: (737) 802-1801
1400 Lavaca Street, Suite 1000, Austin, TX 78701
Kim.Bueno@butlersnow.com | [vCard](#) | [Bio](#)

[X \(Twitter\)](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Rachel Gross <rgross@dobslegal.com>

Sent: Monday, July 29, 2024 5:56 PM

To: Kim Bueno <Kim.Bueno@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>;
blake.williams@nelsonmullins.com; Chris Cowan <Chris.Cowan@butlersnow.com>

Cc: Ben Adams <badams@dobslegal.com>; Theile McVey <TMcVey@kassellaw.com>; Teresa Gilliland
<tgilliland@dobslegal.com>

Subject: Perry - J&J Page Lines

Hi Kim and team:

In an effort to see if we can cut down on some time for both our sides and Chief Justice Toal as well would J&J be willing to agree to the as played page lines for both Hopkins and Mann as they were played in the *Lee* trial in May? It looks like we both designated the same affirmative page lines, so presumably the objections and counters from both our sides would be the same. The only aspect that would be different are any redactions to documents that were done in *Lee* pursuant to any rulings by that court.

Please let us know.

RACHEL A. GROSS | Attorney

LAW OFFICES OF

DOBS

O: (214) 722-5990 | **C:** (214) 683-1753

302 N Market St, Suite 300
Dallas, TX 75202

<https://link.edgepilot.com/s/c965ef38/djfSSv95ykOvEzuM85uXKQ?u=http://www.dobslegal.com/>

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Archived: Sunday, November 2, 2025 7:17:01 PM
From: [Kim Bueno](#)
Mail received time: Sun, 4 Aug 2024 20:55:47 +0000
Subject: RE: Perry-- Outstanding Issues
Attachments: [image001.png](#)

Hi Theile,

We need clarity from the Court about the witness schedule before we finalize our lineup. If she allows us to bring Dr. Barlow on Friday afternoon, we can finalize our lineup and give you the plan tomorrow. If you agree to let us bring Dr. Barlow on Friday, we can finalize the plan tonight. Yes, we are planning to call Dr. Alexander. Are you planning to call all of the witnesses on your list as well?

As Chris noted in the earlier email, we understand the Court's rulings on MILs. We are not seeking to relitigate her rulings on documents. We are preserving our objection for the record.

We are reviewing Ben's email on the Hopkins designations and will respond separately on that.

You have not addressed our proposed Rule 43(k) stipulation. Are you interested in memorializing any of those agreements for this case?

Thank you,

Kim

Kim Bueno
Butler Snow LLP

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Kim.Bueno@butlersnow.com | [vCard](#) | [Bio](#)

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From: Theile McVey <tmcvey@kassellaw.com>
Sent: Sunday, August 4, 2024 3:36 PM
To: Kim Bueno <Kim.Bueno@butlersnow.com>; 'Ben Adams' <badams@dobslegal.com>; Rachel Gross <rgross@dobslegal.com>
Cc: Chris Cowan <Chris.Cowan@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; 'Mitch Brown' <mitch.brown@nelsonmullins.com>; Blake Williams <blake.williams@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>
Subject: RE: Perry-- Outstanding Issues

Hey Kim, first, did you respond to my questions? I sure hope this is the type of thing we can communicate about and be straightforward on. Weill or Diette? Is Alexander actually coming?

Two, we are trying to figure out if we 7pm is reasonable but based on the number of objections to the documents that she has already ruled on, we are trying to sort it out. Rachel will let you know.

We let you know about witness timing and timing for openings. We will take the one hour for openings

Ben responded about the depo designations.

Tomorrow should be Brody and Hopkins after openings.

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From: Kim Bueno <Kim.Bueno@butlersnow.com>
Sent: Sunday, August 4, 2024 4:29 PM
To: 'Ben Adams' <badams@dobslegal.com>; Rachel Gross <rgross@dobslegal.com>; Theile McVey <tmcvey@kassellaw.com>
Cc: Chris Cowan <Chris.Cowan@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; 'Mitch Brown' <mitch.brown@nelsonmullins.com>; Blake Williams <blake.williams@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>
Subject: RE: Perry-- Outstanding Issues

Counsel,

Can you please respond regarding the timing of tonight's slide exchange? I sent several emails proposing 7 p.m. today, which is reasonable. I do not want this to be a late-night exchange.

I sure hope this is the type of thing we can communicate about and come to agreement. Please respond on our other questions below as well.

Thanks,

Kim

From: Kim Bueno <Kim.Bueno@butlersnow.com>
Sent: Sunday, August 4, 2024 10:43 AM
To: 'Ben Adams' <badams@dobslegal.com>; Rachel Gross <rgross@dobslegal.com>; Theile McVey <TMcVey@kassellaw.com>
Cc: Chris Cowan <Chris.Cowan@butlersnow.com>; Amy Pepke <Amy.Pepke@butlersnow.com>; 'Mitch Brown' <mitch.brown@nelsonmullins.com>; Blake Williams <blake.williams@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Kim Bueno <Kim.Bueno@butlersnow.com>
Subject: Outstanding Issues

Counsel,

In the last few days, we have reached out with questions about several topics. We have not heard back from you on the items below. Please respond today to let us know your position on each issue. We need to know what needs to be raised with the Court tomorrow morning. I am happy to get on a call today and talk through these issues.

RoA_20422

- **Time for opening slide exchange?**We proposed simultaneous exchange of slides at 7 p.m. tonight. Please confirm agreement.
- **Time limits for openings?**The Court suggested 45 minutes each, and we agree to that. Do you plan to ask for an hour, or can we agree to 45 minutes?
- **First witness--** Who will be your witness tomorrow (August 5) if time permits after jury selection and opening statements?
 - Please provide any exhibits and demonstratives you plan to use during direct.
- **Division of time for witnesses?**Please respond to our counter proposal sent yesterday.
- **Motion to Pre-Admit Exhibits?**We provided a chart with our objections to your 300+ exhibits. If you seek to use any objected-to exhibits in opening, we need to raise those objections with the Court tomorrow.
- **Rule 43 Stipulations?**We sent you a proposed stipulation. Please confirm if you want to enter into any of those agreements in this case.
- **Depo designations generally--** Please confirm that Plaintiffs will be playing (and responsible for cutting/preparing) their affirmatives and Defendants? counters; and Defendants will be playing (and responsible for cutting/preparing) Defendants? affirmatives and Plaintiffs? counters.
 - **Ruh designations ?** Please confirm if we have agreement.
 - **Mongon designations?**We are still not clear about your proposal because what was sent skipped from page 37-118, the Garcia as-played included many Plf designations from those pages. What is your proposal on these missing pages?
 - **Hopkins?**Please confirm we are in agreement regarding Hopkins ?as played? per Chris Cowan?s proposal in his August 1 and 3 emails.

Thanks,

Kim

Kim Bueno
Butler Snow LLP

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Archived: Sunday, November 2, 2025 7:17:05 PM
From: [Kim Bueno](#)
Mail received time: Sat, 10 Aug 2024 18:14:34 +0000
Subject: Perry-- Trial Schedule

Chief Justice Toal, Ms. Bridenback, and Counsel:

Later today, J&J Defendants will send Plaintiffs a list of the exhibits we seek to admit. If Plaintiffs have objections to any of our exhibits, which we have previously provided, we request argument on those issues on Monday.

We are preparing to file a motion for mistrial later today. We request an opportunity to argue this motion on Monday as well.

Here is our understanding of Monday's schedule based on Plaintiffs' email below:

1. Finish Mann video (Plaintiffs' 1:25; Defendants' 1:40) = 3:05
2. Bob Johnson (economist)'s cross by All
3. Lonnie Long (Plaintiffs--:30; Defendants-- :15; Redirect: 5) = 45 minutes
4. Ruh video = 40 minutes
5. Mongon video = 50 minutes
6. Michael Perry's (Plaintiffs--:35, Defendants--:30, Redirect-- :5) = 1 hour 10 minutes

When Plaintiffs rest after the completion of Mr. Perry's testimony, the J&J Defendants will present our Motion for Directed Verdict.

If our understanding about Plaintiffs' remaining lineup is correct, J&J Defendants do not intend to present witnesses. We will be prepared to present closing argument at the completion of Plaintiffs' case.

Thank you,

Kim Bueno

Kim Bueno
Butler Snow LLP

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[X \(Twitter\)](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Theile McVey <tmcvey@kassellaw.com>
Sent: Thursday, August 8, 2024 7:57 PM
To: Toal, Jean <JToal@sccourts.org>
Cc: Bridenback, Tasha <tbridenback@sccourts.org>; Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Eileen Hindman <eileen.hindman@nelsonmullins.com>; Meredith Keane <meredith.keane@nelsonmullins.com>; sgflynn@foxrothschild.com; Amy Pepke <Amy.Pepke@butlersnow.com>; Blake Williams <blake.williams@nelsonmullins.com>; Trey Branham <tbranham@dobslegal.com>; Teresa Gilliland

<tgilliland@dobslegal.com>; Ben Adams <badams@dobslegal.com>; Jonathan George <jgeorge@dobslegal.com>; Ryan Travis <rtravis@thetrialgroup.com>; Kim Bueno <Kim.Bueno@butlersnow.com>; Rachel Gross <rgross@dobslegal.com>; Chris Cowan <Chris.Cowan@butlersnow.com>

Subject: RE: Perry v. All: Proposed Order compelling All Financial Information

Chief Justice Toal:

A revised schedule is below. J&J let us know that we did not incorporate all of the designations in the Steve Mann deposition. He is the former director of toxicology. That will add time to how long the video will play.

Additionally, All confirmed again today that they will not agree to the economic stipulation, so we will have to call our economist on Monday morning remotely. Due to the time constraints, we have decided not to call our expert Mark Bailey. The revised schedule is below.

Friday

1. Finish Hopkins deposition
2. Dr. Kuffner
3. Mann Video

Monday

1. Bob Johnson (economist)
2. Lonnie Long
3. Ruh Video
4. Mongon Video
5. Michael Perry

I am attaching the Order granting our motion to compel the Kenvue/Holdco corporate representative deposition. Additionally, we are attaching the proposed stipulation regarding the J & J entities. We have red-lined the stipulation originally sent by J & J. We have sent the redlined version back to J & J but not yet heard back.

We have asked J&J to tell us what witnesses they will call numerous times and thus far, they have refused.

We would also request that both sides print color copies of their slide decks used in directs and cross and make them court exhibits tomorrow morning I believe they are needed to make sure the Court record is complete.

We are working on jury charges and hope to have a draft to you by Friday afternoon or over the weekend as well as a verdict form.

Theile McVey

Kassel McVey

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https://link.edgепilot.com/s/e3262891/r9C4AEomP0uXtS6RcQU_KQ?u=http://www.kasselmvey.com/

-----Original Message-----

From: Theile McVey

Sent: Thursday, August 8, 2024 11:23 AM

To: Toal, Jean <JToal@sccourts.org>

Cc: Bridenback, Tasha <tbridenback@sccourts.org>; Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan

<Matt.Bogan@nelsonmullins.com>; Eileen Hindman <eileen.hindman@nelsonmullins.com>; Meredith Keane

<meredith.keane@nelsonmullins.com>; sgflynn@foxrothschild.com; Amy Pepke <Amy.Pepke@butlersnow.com>; Blake

RoA_20425

Williams <blake.williams@nelsonmullins.com>; Trey Branham <tbranham@dobslegal.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ben Adams <badams@dobslegal.com>; Jonathan George <jgeorge@dobslegal.com>; Ryan Travis <rtravis@thetrialgroup.com>; Kim Bueno <Kim.Bueno@butlersnow.com>; Rachel Gross <rgross@dobslegal.com>; Chris Cowan <Chris.Cowan@butlersnow.com>
Subject: RE: Perry v. All: Proposed Order compelling All Financial Information

Chief Justice Toal: I believe below is the proper order of our witnesses.

Friday

1. Finish Hopkins deposition
2. Dr. Kuffner
3. Mark Bailey
4. Mann Video

Monday

1. Cont. Mann Video if needed
2. Lonnie Long
3. Ruh Video
4. Mongon Video
5. Michael Perry

We would also request that both sides print color copies of their slide decks used in directs and cross and make them court exhibits tomorrow morning I believe they are needed to make sure the Court record is complete.

We are working on jury charges and hope to have a draft to you by Friday afternoon or over the weekend as well as a verdict form.

Finally, we have not heard what experts or witnesses J&J is planning to call. It seems to be a moving target. We would very much appreciate knowing exactly who they will call and when.

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-----Original Message-----

From: Toal, Jean <JToal@sccourts.org>
Sent: Thursday, August 8, 2024 10:04 AM
To: Theile McVey <tmcvey@kassellaw.com>
Cc: Bridenback, Tasha <tbridenback@sccourts.org>; Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Eileen Hindman <eileen.hindman@nelsonmullins.com>; Meredith Keane <meredith.keane@nelsonmullins.com>; sgflynn@foxrothschild.com; Amy Pepke <Amy.Pepke@butlersnow.com>; Blake Williams <blake.williams@nelsonmullins.com>; Trey Branham <tbranham@dobslegal.com>; Teresa Gilliland <tgilliland@dobslegal.com>; Ben Adams <badams@dobslegal.com>; Jonathan George <jgeorge@dobslegal.com>; Ryan Travis <rtravis@thetrialgroup.com>; Kim Bueno <Kim.Bueno@butlersnow.com>; Rachel Gross <rgross@dobslegal.com>; Chris Cowan <Chris.Cowan@butlersnow.com>
Subject: Re: Perry v. All: Proposed Order compelling All Financial Information

Theile and all: I look forward to receiving a revised schedule for tomorrow and for the rest of the trial. Also need to have Jury Charges. Let's gather tomorrow morning at 8:45am. Tasha: Let's be sure the courtroom is opened well before we meet

RoA_20426

tomorrow. Best regards, JHT Sent from my iPhone

On Aug 7, 2024, at 2:08â€ PM, Theile McVey <tmcvey@kassellaw.com> wrote:

ï»¿

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *** Chief Justice Toal:

Per your order this morning, please find attached for your review and consideration, an Order compelling the production of financial information. The order reflects that you ordered 5 years of financial information rather than the 10 years we requested. Counsel for Defendants are copied here. Thanks, Theile

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Kassel McVey
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803.256.4242

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[u=http://www.kasselmvey.com/](http://www.kasselmvey.com/)<<https://link.edgepilot.com/s/1a91a7ed/62y09n6agkWk6Mrf8Krdtw?>

[u=https://protect.checkpoint.com/v2/](https://protect.checkpoint.com/v2/) <http://www.kasselmvey.com> .YzJ1OnNjanVkaWNpYWw6YzpvOjdhNzJiYTc4NGJjMGU0MGRlNjYxMGI3YTdkMWJhYjcxOjY6Nzg1NT00ZjlzNjI4MmE0NWE3Y2VmMzk1YTgyY2U2Zjg4NzJjMTU5YWlzMGEjNTkyMDg5YTY2ZjVhOTU0YjQyNmJmZTg2Omg6RjpO>

From: Theile McVey

Sent: Tuesday, August 6, 2024 10:39 PM

To: Toal, Jean <JToal@sccourts.org>; tbridenback@sccourts.org

Cc: Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Eileen Hindman

<eileen.hindman@nelsonmullins.com>; Meredith Keane <meredith.keane@nelsonmullins.com>;

sgflynn@foxrothschild.com; Amy Pepke <Amy.Pepke@butlersnow.com>; Blake Williams

<blake.williams@nelsonmullins.com>; Trey Branham <tbranham@dobslegal.com>; Teresa Gilliland

<tgilliland@dobslegal.com>; Ben Adams <badams@dobslegal.com>; Jonathan George <jgeorge@dobslegal.com>; Ryan Travis

<rtravis@thetrialgroup.com>; Kim Bueno <Kim.Bueno@butlersnow.com>; Rachel Gross <rgross@dobslegal.com>; Mitch

Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Eileen Hindman

<eileen.hindman@nelsonmullins.com>; Meredith Keane <meredith.keane@nelsonmullins.com>;

sgflynn@foxrothschild.com; Amy Pepke <Amy.Pepke@butlersnow.com>; Chris Cowan <Chris.Cowan@butlersnow.com>

Subject: Agenda for August 7, 2024

Chief Justice Toal and Counsel:

As discussed at the close of the day, tomorrow we will call the following witnesses:

Dr. Gibney

Dr. Madigan

Dr. Longo.

Completion of the video of Dr. Hopkins.

We appreciate the Court making some time before the jury comes in tomorrow. We believe the following issues will need to be addressed.

All Financial Order

As you recall, you ordered the Plaintiffsâ€™ to draft an Order compelling the financial information of All. We need to get this

RoA_20427

information to our expert. We previously emailed and handed up to the Court the Order compelling All to produce their financial information. It is certainly discoverable at this stage and will be used in the so that we can use it in the punitive phase.

Economic Stipulation

The Johnson & Johnson entities and the Plaintiffs have agreed on an economic stipulation for Mr. Perry's economic loss. All indicated today, they may not agree to the stipulation.

Motion to Compel Against Kenvue and Johnson & Johnson

We believe this is ripe and ready for you to hear.

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[https://link.edgepilot.com/s/b0aaada6/8fYfKqIBAESLPLBJTg_4qQ?](https://link.edgepilot.com/s/b0aaada6/8fYfKqIBAESLPLBJTg_4qQ?u=http://www.kasselmvey.com/<https://link.edgepilot.com/s/ab50b63f/Q936amtDT0OuMLw88lGnng?u=https://protect.checkpoint.com/v2/_http://www.kasselmvey.com_.YzJ1OnNjanVkaWNpYWw6YzpvOjdhNzJiYTc4NGJjMGU0MGRlNjYxMGI3YTdkMWJhYjcxOjY6MGI5ZjZjNjNTVjNzFIYzcxODAyYWQzZTUxMWMzMzQwYzFkYzIxMzkyNDZmZjg4MzdlOGYxOTZiOWZiOGUxYzAxNDM0Omg6RjpO>)

[u=http://www.kasselmvey.com/<https://link.edgepilot.com/s/ab50b63f/Q936amtDT0OuMLw88lGnng?](http://www.kasselmvey.com/<https://link.edgepilot.com/s/ab50b63f/Q936amtDT0OuMLw88lGnng?u=https://protect.checkpoint.com/v2/_http://www.kasselmvey.com_.YzJ1OnNjanVkaWNpYWw6YzpvOjdhNzJiYTc4NGJjMGU0MGRlNjYxMGI3YTdkMWJhYjcxOjY6MGI5ZjZjNjNTVjNzFIYzcxODAyYWQzZTUxMWMzMzQwYzFkYzIxMzkyNDZmZjg4MzdlOGYxOTZiOWZiOGUxYzAxNDM0Omg6RjpO>)

[u=https://protect.checkpoint.com/v2/_http://www.kasselmvey.com_.YzJ1OnNjanVkaWNpYWw6YzpvOjdhNzJiYTc4NGJjMGU0MGRlNjYxMGI3YTdkMWJhYjcxOjY6MGI5ZjZjNjNTVjNzFIYzcxODAyYWQzZTUxMWMzMzQwYzFkYzIxMzkyNDZmZjg4MzdlOGYxOTZiOWZiOGUxYzAxNDM0Omg6RjpO>](https://protect.checkpoint.com/v2/_http://www.kasselmvey.com_.YzJ1OnNjanVkaWNpYWw6YzpvOjdhNzJiYTc4NGJjMGU0MGRlNjYxMGI3YTdkMWJhYjcxOjY6MGI5ZjZjNjNTVjNzFIYzcxODAyYWQzZTUxMWMzMzQwYzFkYzIxMzkyNDZmZjg4MzdlOGYxOTZiOWZiOGUxYzAxNDM0Omg6RjpO>)

<Order compelling 5 years of financial information of All.docx> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
)
) FOR THE FIFTH JUDICIAL
COUNTY OF RICHLAND) CIRCUIT
)
MICHAEL L. PERRY and) C/A NO. 2023-CP-40-04072
LONNIE L. LONG,)
)
Plaintiffs,)
)
V.)
)
AMERICAN INTERNATIONAL) In Re:
INDUSTRIES, et al.) Asbestos Personal Injury
) Litigation Coordinated
Defendants.) Docket

ORAL VIDEOCONFERENCE DEPOSITION OF
WILLIAM E. LONGO, PhD
TUESDAY, AUGUST 6, 2024
Volume 1 of 1
(REPORTED REMOTELY)

ORAL VIDEOCONFERENCE DEPOSITION OF
WILLIAM E. LONGO, PhD, commencing from 10:07 p.m. to
10:36 p.m., Eastern Time, TUESDAY, AUGUST 6, 2024,
taken on behalf of the DEFENDANTS and pursuant to
the South Carolina Rules of Civil Procedure and the
provisions stated on the record or attached hereto
and reported stenographically via remote
videoconference before PENNY L. PABITZKY, CSR, RPR

Page 2 1 No. 800526. 2 For the taking of the deposition, the witness 3 was located in Columbia, South Carolina. 4 For the taking of the deposition, the 5 certified stenographer was located in Nederland, 6 Texas. 7 8 CERTIFIED STENOGRAPHER'S NOTE: Please note 9 that due to the quality of a Zoom-type 10 videoconference and transmission of data and 11 overspeaking, audio distortion may occur, which may 12 disrupt the process of preparing a verbatim 13 transcript. 14 15 Quotation marks are used for clarity and do 16 not necessarily reflect a direct quote. 17 18 19 20 21 Job Number 310240 22 23 24 25	Page 4 1 APPEARANCES 2 CONTINUED 3 4 CERTIFIED STENOGRAPHER: 5 Penny L. Pabitzky, CSR, RPR 6 NCRA RPR 800526 - Expires 09-30-24 7 AS AN INDEPENDENT CONTRACTOR FOR: 8 GOUCHER PARKER SPIVEY, LLC 9 P.O. Box 348 10 Millbury, Massachusetts 01527 11 214-347-4781 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 3 1 APPEARANCES 2 ALL PARTIES APPEARED IN PERSON OR 3 VIA VIDEOCONFERENCE OR TELECONFERENCE 4 FOR THE PLAINTIFFS: 5 Ben Adams, Esq. 6 Jonathan George, Esq. 7 Sam Iola, Esq. 8 DEAN OMAR BRANHAM SHIRLEY, LLP 9 302 N. Market Street 10 Third Floor 11 Dallas, Texas 75202 12 214-722-5990 13 badams@dobslegal.com 14 jgeorge@dobslegal.com 15 siola@dobslegal.com 16 17 FOR THE DEFENDANTS JOHNSON & JOHNSON, INC.; LLT 18 MANAGEMENT, LLC; JOHNSON & JOHNSON HOLDCO (NA), 19 INC.; AND KENVUE, INC.: 20 Chris Cowan, Esq. 21 BUTLER SNOW LLP 22 1400 Lavaca Street 23 Suite 1000 24 Austin, Texas 78701 25 737-802-1820 chris.cowan@butlersnow.com FOR THE DEFENDANT AMERICAN INTERNATIONAL INDUSTRIES: Robert E. Thackston, Esq. NELSON MULLINS RILEY & SCARBOROUGH LLP 5830 Granite Parkway Suite 1000 Plano, Texas 75024 469-484-4798 robert.thackston@nelsonmullins.com	Page 5 1 INDEX 2 ORAL VIDEOCONFERENCE DEPOSITION OF 3 WILLIAM E. LONGO, PhD 4 TUESDAY, AUGUST 6, 2024 5 6 7 8 9 10 11 12 REQUESTED INFORMATION 13 PAGE/LINE NUMBER DESCRIPTION 14 (None.) 15 16 QUESTIONS INSTRUCTED NOT TO BE ANSWERED 17 PAGE/LINE NUMBER QUESTION BY 18 (None.) 19 20 21 NONRESPONSIVE/MOTION TO STRIKE OBJECTION INDEX 22 PAGE/LINE NUMBER OBJECTION BY 23 (None.) 24 25

Page 6 1 EXHIBIT INDEX 2 ORAL VIDEOCONFERENCE DEPOSITION OF 3 WILLIAM E. LONGO, PhD 4 TUESDAY, AUGUST 6, 2024 5 NOS. 1 - 6 6 NO. DESCRIPTION PAGE 7 Exhibit 1 Tissue Analysis Report, 8 8 Michael Perry, Project M71796, 9 Prepared by Materials Analytical 10 Services, LLC, 08/05/24, 11 92 pages 12 Exhibit 2 Materials Analytical Services, 22 13 LLC, Chart of Avon Testing - 14 Table I - Avon Talcum Body 15 Powder Products, 09/24/23, 21 pages 16 Exhibit 3 (Not Marked) 17 Exhibit 4 (Not Marked) 18 Exhibit 5 (Not Marked) 19 Exhibit 6 Letter to the Editor, 15 20 "Egilman's assessment 21 regarding exposures of 22 auto mechanics to amphiboles 23 is correct," David Egilman and 24 William E. Longo, Inhalation 25 Toxicology, 2012; 24(9): 614-618, 5 pages	Page 8 1 else is reserved. 2 (Witness sworn.) 3 WILLIAM LONGO, Ph.D., 4 having been first duly sworn to tell the truth, the 5 whole truth, and nothing but the truth, so help him 6 God, testified as follows: 7 EXAMINATION 8 BY MR. COWAN: 9 Q. Dr. Longo, good evening. How are you, 10 sir? 11 A. I'm fine. How are you doing today? 12 Q. I'm okay, sir. And I understand you just 13 had a long drive and it's a late night; so we're 14 going to try to do this quick. Okay? 15 A. That would be great. 16 (Marked Exhibit Number 1.) 17 BY MR. COWAN: 18 Q. So I'm going to share my screen. Let's 19 just get going here. I'm going to share my screen 20 now and hopefully show you what I want you to look 21 at. I've marked this document here as Exhibit 1 22 to your deposition. 23 Dr. Longo, do you see Exhibit 1 in 24 front of you, "Tissue Analysis Report, Michael 25 Perry"?
Page 7 1 PROCEEDINGS 2 THE CERTIFIED STENOGRAPHER: Good 3 evening. We are on the record. Today is 4 August 6th, 2024. The time is 10:07 p.m., 5 Eastern Time. This is the remote 6 videoconference oral deposition of 7 Dr. William Longo in the Perry matter. 8 I am your certified stenographer, 9 Penny Pabitzky, RPR 800526. I will be 10 administering the oath and reporting the 11 deposition remotely by stenographic means 12 from my office located in Nederland, 13 Texas. 14 The witness is located in Columbia, 15 South Carolina. 16 Do all counsel agree to the remote 17 swearing of the witness? 18 MR. COWAN: Yes. 19 MR. GEORGE: Yes. 20 THE CERTIFIED STENOGRAPHER: Please 21 state other stipulations for the record. 22 MR. COWAN: I don't know that we 23 have any, but the usual South Carolina 24 ones. And if somebody wants to object to 25 form, that sounds fine to me. Everything	Page 9 1 A. I'm trying to get you up on the screen 2 here. 3 Q. What's that? 4 A. I'm trying to get your screen up. Here 5 it is. 6 Q. Okay. Do you see that report now, sir? 7 A. No. 8 Q. Okay. Is there an issue with the screen? 9 I've got share screen on. 10 MR. GEORGE: We see you, but we 11 don't see your share screen. 12 MR. COWAN: I'm going to stop share 13 and try one more time. Give me one 14 second. 15 MR. GEORGE: He's got his report 16 with him. 17 BY MR. COWAN: 18 Q. Okay. Well, I'm going to need to be able 19 to share screen here. So give me one second here 20 and see if I can fix this because I need for you 21 to look at other documents besides that. 22 (Discussion off the record.) 23 THE CERTIFIED STENOGRAPHER: We're 24 back on the record. 25 BY MR. COWAN:

Page 10 1 Q. Dr. Longo, we're back on the record. 2 I've put in front of you Exhibit Number 1, which 3 is a tissue analysis report, Project Number 4 M71796, from Michael Perry. 5 Do you see that, sir? 6 A. Yes. 7 Q. Is this the report of your analysis of 8 Mr. Perry's tissue digestion? 9 A. Yes. 10 Q. And as part of that report -- and I'm 11 skipping down here on to the body of the report. 12 I'm going to go down all the way to the results 13 section. 14 As a part of your analysis of 15 Mr. Perry's tissue digestion, you identify ten 16 platy talc structures; is that right? 17 A. That's correct. 18 Q. And then there were two asbestos fibers 19 and/or bundles that you identified in the same 20 tissue digestion. Is that fair? 21 A. Yes. 22 Q. One of them was something called winchite 23 asbestos. Is that true? 24 A. That's true. 25 Q. The other one was tremolite asbestos,	Page 12 1 of winchite you found in Mr. Perry's tissue to a 2 background reference population? 3 A. No. 4 Q. And same question for talc. Did you do 5 any kind of direct comparison between the amount 6 of talc that you found in Mr. Perry's tissue to 7 any sort of background reference population? 8 A. No. 9 Q. Do you know if the asbestos minerals -- 10 and I'm talking obviously about the winchite and 11 tremolite. 12 Do you know if any of those asbestos 13 minerals that you found in Mr. Perry's tissue -- 14 was that found in tumor tissue or was it found in 15 lung parenchyma tissue? 16 A. It was found in the parenchyma. We 17 don't -- 18 Q. Parenchyma. 19 A. -- the tumor tissue in with these 20 analyses since it's relatively new tissue and one 21 would not expect to find much in them since it's 22 way after the exposure period. 23 Q. I'm not sure I understood the answer. 24 You wouldn't expect to find what way after the 25 exposure period?
Page 11 1 correct? 2 A. Correct. 3 Q. And the winchite asbestos, that was a 4 fiber, correct? 5 A. That is correct. 6 Q. And it was 2.3 microns in length. So it 7 was less than 5 microns. Fair? 8 A. It was less than 5 microns. 9 Q. Similarly, the tremolite asbestos fiber 10 that you saw in Mr. Perry's tissue was also less 11 than 5 microns. It was 3.6 microns. True? 12 A. That is correct. 13 Q. Okay. Other than the platy talc that we 14 just discussed, the winchite asbestos, and the 15 tremolite asbestos, did you find any other 16 materials or identify any other materials in the 17 tissue digestion for Mr. Perry? 18 A. No. 19 Q. Dr. Longo, did you do any kind of direct 20 comparison between the amount of tremolite that 21 you found in Mr. Perry's tissue to any sort of 22 background reference population? 23 A. No. 24 Q. Same question for winchite. Did you do 25 any kind of direct comparison between the amount	Page 13 1 A. Well, tumor tissue is -- is new tissue 2 that is being generated because it is cancer and 3 it's a tumor. For these types of analysis, the 4 tumor areas are not harvested for the analysis 5 because it is this new tissue and not tissue that 6 was around typically during the exposure period. 7 Q. How do you know that -- that this tumor 8 tissue was not harvested as part of the collection 9 of tissue that was obtained for you? 10 A. Well, the blocks were obtained for us, 11 the tissue blocks. And you can look at the tissue 12 blocks and you can see where the tumor is compared 13 to where the parenchyma is. And if you go to the 14 photographs, I can point it out on -- 15 Q. Okay. We'll look at that in a second. 16 Did you look at any histological 17 sections of the tissue to confirm that you were 18 looking at lung versus tumor tissue? 19 A. The way the tumor tissue presents itself, 20 that is not required, versus the parenchyma or the 21 lung tissue, which has sort of a reddish-pink 22 color, where the tumor area tissues are literally 23 black. 24 Q. I understand, sir, but I wasn't -- that 25 wasn't my question. I just asked whether or not

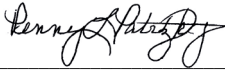
Page 14 1 you did look at any histological sections of the 2 tissue to confirm whether or not you were looking 3 at lung or tumor tissue. 4 A. I didn't do any histological slides. 5 They were not provided. 6 Q. Okay. 7 A. But I verified it because it is very 8 easily distinguished, from just looking at the 9 block itself, between the two. 10 Q. Did you work with any sort of pathologist 11 in conducting your analysis? 12 A. No. That's not required for this -- for 13 what was done here. 14 Q. Okay. You know who Dr. Ronald Gordon is, 15 obviously? 16 A. I do know Dr. Gordon. 17 Q. Okay. Do you consider him a reliable 18 source for appropriate methodologies for 19 identifying asbestos tissue digestions? 20 A. Yes. Done quite a lot of it. I don't 21 have any problem with what he does. 22 Q. You found tremolite. Let's talk about 23 that for just a minute. You found tremolite as a 24 contaminate -- I'm sorry. Strike all that. 25 One of the asbestos minerals that you	Page 16 1 Q. I have put forward in front of you 2 something I've marked as Exhibit Number 6. It's a 3 letter to the editor, "Egilman's Assessment 4 Regarding Exposures of Auto Mechanics to 5 Amphiboles is Correct." 6 Do you see that that's a letter that 7 you and -- is it Dr. Egilman or Mr. Egilman? 8 A. Dr. Egilman. 9 Q. So you and Dr. Egilman wrote this? 10 A. Just the section you're going to point me 11 to. 12 Q. Okay. I'm going to skip down to the 13 bottom of the -- I think it's the second page of 14 the PDF. There is a section on brakes. It says 15 "Brakes. Bulk samples of chrysotile-containing 16 Bendix, Chrysler, Wagner, and Wearever brake shoes 17 were analyzed by ATM after chrysotile was removed 18 by the Addison and Davis digestion method." 19 Do you see where I'm at, sir? 20 A. Yes. 21 Q. "Each of the brake shoe friction material 22 MAS tested was found to contain trace weight 23 amounts of tremolite fibers and bundles." 24 And if we look down there, we see 25 amphibole by weight. And it's tremolite for
Page 15 1 found in Mr. Perry's tissue was tremolite. And we 2 already talked about that, correct? 3 A. Correct. 4 Q. And you found tremolite also in your 5 analysis of other types of products, including 6 asbestos-containing brakes, correct? 7 A. That is correct. 8 Q. How much tremolite have you found in 9 asbestos-containing brakes in weight percentage? 10 A. The Addison Davies analysis, typically 11 anywhere from .0001 to .001. 12 Q. As part of the analysis of 13 asbestos-containing brakes, and specifically with 14 regard to tremolite, you've reported that folks 15 that work with brakes are not just exposed to 16 significant chrysotile but also significant levels 17 of tremolite as well, correct? 18 A. I'm not sure I -- you'll have to show me 19 that testimony that I said they were exposed to 20 significant amounts. I've said in the past that 21 they had the potential to be exposed. 22 Q. Okay. Give me one second and I'll find 23 it. 24 (Marked Exhibit Number 6.) 25 BY MR. COWAN:	Page 17 1 Bendix at about what you were talking about, which 2 was .0009 to .002 weight percentage. 3 Do you see that, sir? 4 A. Yes. 5 Q. And that would have been obviously 6 tremolite amphibole, correct? 7 A. That's correct. 8 Q. If we go down, it says here "MAS has 9 performed a number of work practice studies where 10 air samples were collected during the sanding, 11 filing, and grinding of chrysotile-containing 12 brake shoe friction material." 13 And that's true, sir, correct? We've 14 talked about that before. 15 A. Yes. 16 Q. "This involved the collection of a large 17 number of air samples that were analyzed by PCM 18 and TEM, but none of air samples showed any 19 presence of tremolite; only chrysotile fibers were 20 detected. And this is not surprising considering 21 that your research showed that the amount of 22 tremolite present in chrysotile brake material 23 tested is at trace levels, causing the air sample 24 analysis to be overwhelmed by the sheer number of 25 chrysotile fibers as compared to the amount of

Page 18 1 tremolite fibers that could possibly be on the 2 collected air filter samples." 3 And that's also accurate, correct? 4 A. That's what it states. 5 Q. But it is what it states and it's also -- 6 is it accurate? It's what you wrote. So I'm just 7 making sure you're standing by it. 8 A. Sure. 9 Q. Okay. And then after that it says you 10 guys tried to determine if any trace amounts of 11 tremolite present in the brake shoe material was 12 actually released in measurable amounts. And you 13 did two air samples that were previously collected 14 during the arc grinding and hand grinding studies, 15 which were further analyzed by the Addison Davies/ 16 ATEM method. And the analysis showed that both 17 air samples had tremolite fiber concentrations 18 of .051 to .22 fibers per cc greater than 5 19 micrometers in size. 20 Do you see that, sir? 21 A. Yes. I've been following your little 22 pointer as it's gone every -- every line. 23 Q. And, sir, would you agree that .051 24 to .22 fibers per cc of tremolite in the air would 25 be a substantial or significant exposure to	Page 20 1 A. That's true. It's pretty much recognized 2 in the community that winchite and richterite are 3 really not much different, a little bit of 4 chemistry, than tremolite. And as I heard in one 5 conference, somebody said, "I don't care what you 6 call it. It's not regulated. It's killing 7 people." 8 Q. So you count winchite, obviously. You 9 did so here. Is it true, though, that you have 10 never actually identified winchite in any Johnson 11 & Johnson talc product that you've ever tested? 12 A. That's actually not true. 13 Q. Identify. When did you -- when did you 14 identify a winchite particle in a Johnson & 15 Johnson product? 16 A. Some years ago, we found it in -- in 17 Johnson & Johnson's -- I would need my chart. 18 Q. Okay. We -- 19 (Overlapping speakers.) 20 A. But the chart of our work where it 21 provides -- there it is. 22 BY MR. COWAN: 23 Q. That was the old chart. Here's this 24 chart. 25 A. No, that's not the right chart.
Page 19 1 tremolite asbestos? 2 A. Certainly that would be over background. 3 But this, of course, has nothing to do with the 4 tissue analysis and -- 5 Q. I understand, sir -- 6 A. Excuse me. I'm not done. 7 And if one were to look at what was 8 found in the tissue versus what we're pointing out 9 here, you can see the folly of this type of 10 approach. 11 Q. Okay. Well, we'll just keep moving on, 12 then. 13 Dr. Longo, you have found tremolite 14 in talc products sourced from Montana. Is that 15 fair? 16 A. That's fair. 17 Q. And also tremolite in talc products 18 sourced from North Carolina. True? 19 A. True. 20 Q. All right. Let's move on to winchite. 21 You found some winchite -- one fiber of winchite 22 in Mr. Perry's tissue. Winchite is not 23 specifically identified as one of the regulated 24 asbestos, but you certainly count it as part of 25 your asbestos counting methodologies, correct?	Page 21 1 Q. This is the chart that I have for your 2 Johnson & Johnson testing. Hold on. This is 3 September 21st, 2021. 4 A. What's all this over here? Because I 5 won't be able to see it. Hold on. Don't go -- 6 Q. Sure. 7 A. Yeah, there we go. We need to get rid of 8 that. 9 I'm sorry. You said winchite, not 10 richterite? 11 Q. Correct. I'll just tell you, Doctor, 12 I -- I -- you were asked this exact same question 13 in Egil's and you said you had found richterite, 14 but you had not found winchite in any Johnson & 15 Johnson product. And I just -- I was a little 16 confused by -- 17 A. I misunderstood. We have not what 18 somebody would call "winchite." But, as you know, 19 winchite and richterite are pretty 20 interchangeable. And sometimes it's just a 21 toss-up which one is which. It's all part of the 22 tremolite solid solution series. So not 23 surprising when you run across it. 24 Q. Doctor, you've never run across winchite 25 in a Johnson & Johnson product. You've never

Page 22 1 identified in any report that you've ever written 2 about a Johnson & Johnson product. 3 A. And I think I've already agreed to that. 4 Q. Okay. 5 A. I'm telling you that winchite and 6 richterite are so close in chemistry; it really 7 doesn't matter which one you find. It's going to 8 be the same. 9 Q. Doctor, you actually have, though, found 10 winchite in other cosmetic talc products, correct? 11 And if you don't recall, I can show you something. 12 A. The only time I can think that probably 13 at any level would be some of the California talc, 14 but -- 15 Q. Let's look at -- 16 A. -- that would go -- that would go along 17 with what I've been testifying about. Winchite 18 and richterite are interchangeable. 19 (Marked Exhibit Number 2.) 20 BY MR. COWAN: 21 Q. I'm showing you what I've marked as 22 Exhibit Number 2. 23 Do you recognize this as your chart 24 of Avon testing, dated September 24th, 2023? 25 A. Yes.	Page 24 1 vermiculite for attic insulation, if you know? 2 A. Sometime in the late 1970s. 3 Q. Did that -- did that Libby vermiculite 4 also include not just winchite but tremolite? 5 A. It included tremolite, winchite, 6 richterite, and actinolite. 7 Q. And I know that you've written at least 8 one report that I've seen about attic insulation 9 made of Libby, Montana vermiculite. 10 Do you recall that? I think it was 11 called Zonolite. 12 A. Yes, that's correct. 13 Q. And that type of attic insulation 14 containing that vermiculite could have as much as 15 3 percent asbestos content in it. Is that fair? 16 A. We've analyzed attic insulation. It 17 depends on if it's been exfoliated, which it 18 typically is or not. So you just can't say it 19 could have up to 3 percent. I would say for attic 20 insulation, it's exfoliated material because it -- 21 that puts air pockets in it; and that's usually 22 around the .2, .3, .4 percent. So it's still 23 pretty high. 24 Q. Does vermiculite also contain talc? 25 A. No.
Page 23 1 Q. And I'm going to move down to Number 37 2 here. Do you see what I'm looking at the bottom 3 of the page, 37, on page 15 of Exhibit Number 2? 4 There's a Rapture Gift Set, Avon gift set with 5 richterite and winchite bundles that you identify. 6 Do you see that? 7 A. I do. 8 Q. Do you see that the talc source was 9 either Italy, Hitchcock, North Carolina, Willow 10 Creek -- or Willow Creek, Montana? Do you see 11 that? 12 A. I do. 13 Q. Do you know one way or the other whether 14 or not this product was either Italian, Willow 15 Creek, or Hitchcock, North Carolina talc? 16 A. There were blends back in those days. 17 Q. So it would have been all three? 18 A. Typically, yes. 19 Q. Winchite is also found in Libby 20 vermiculite, correct? 21 A. It is. 22 Q. Is that something that's used to create 23 attic insulation, or was used? 24 A. It was used. 25 Q. When did they stop using Libby	Page 25 1 Q. Doctor, can we agree that the 2 anthophyllite asbestos mineral was the mineral 3 that you found most commonly when you were 4 analyzing Vermont Johnson & Johnson talc products? 5 A. That's correct. 6 Q. You also found some talc obviously in 7 Mr. Perry's tissue. 8 Can you -- just by looking at the 9 platy talc that you found, can you -- is there 10 anything about the talc that you saw that you can 11 look at and link to Johnson & Johnson talc versus 12 any other talc that Mr. Perry was using? 13 A. The only thing you can say about the talc 14 is that it was around the size range that you 15 would expect for cosmetic talc powder. 16 Q. So it could have been talc from any 17 number of different sources. Fair? 18 A. I don't know about many different 19 sources, but other cosmetic talcs. 20 Q. Doctor, have you ever published on any 21 tissue digestion analysis that you've conducted? 22 A. Yes. 23 Q. What was that? 24 A. That was our ovarian cancer paper because 25 that involved tissue analysis from about a half

Page 26 1 dozen of the ovarian cancer victims in which we 2 found everything that would be expected to be 3 found in somebody that's using Johnson's Baby 4 Powder. And it was in their fallopian tubes. It 5 was -- we found the talc, we found the asbestos. 6 So -- and they didn't have any other exposures. 7 So -- 8 Q. Is that the -- is that the Stefan paper? 9 Is that the one that starts with Stefan? 10 A. Yep. Yes, sir. 11 Q. Thank you. 12 Have you -- anything else besides 13 that paper, sir? 14 A. No. No, sir. 15 Q. Have you ever analyzed any sort of tissue 16 digestion outside of litigation before? 17 A. Yes. 18 Q. In what context? 19 A. On a couple occasions we got tissue 20 blocks from pathologists and the tissue had some 21 unknown material particles in it and they weren't 22 sure what it was. So they sent it to us to 23 identify. So it was a type of exposure. It 24 didn't involve any litigation. They just wanted 25 to figure out how to treat these -- a couple of	Page 28 1 A. I'm sorry. Last Thursday going into 2 Friday. 3 Q. Okay. So it would have been August 1st, 4 August 2nd, when you started in on the analysis? 5 A. Correct. Well, during the sample 6 preparation. The actual analysis started on the 7 weekend. 8 Q. Got it. So sometime on the 3rd or the 9 4th? 10 A. Well, looking at the TEM analysis, we 11 have starting on the 3rd, running to the 5th, 3rd 12 to the 5th and so on. 13 Q. Okay. So you received it on the 31st and 14 you basically finished your analysis on the 5th. 15 Is that fair? 16 A. That's fair. 17 MR. COWAN: I think that that is 18 all I really need to ask of you, sir. 19 THE WITNESS: Okay. 20 MR. COWAN: And I believe we're out 21 of time anyways. 22 THE WITNESS: Thank you. 23 MR. COWAN: So -- and I've been -- 24 I have tried to do my best to stay as true 25 to my word. I have gone less than 35
Page 27 1 individuals over the years. So I think it 2 happened on two occasions. 3 Q. And I want to go back to your report real 4 quick. And I know I'm running out of time. So I 5 promise I'll be done very soon. 6 It says up here at the 7 introduction -- and I think I'm on the third 8 page of the first six pages of Exhibit Number 1. 9 It says "Nine blocks of tissue samples pertaining 10 to Michael Perry were sent to MAS and arrived on 11 July 31st, 2024." 12 Is that when you first received the 13 tissue samples, sir? 14 A. Yes. 15 Q. When did your analysis begin? I mean, 16 was it the same day, the next day? When did you 17 start working? 18 A. The actual analyses were done on 19 August 3rd all the way up to the -- approximately 20 the 5th. Because we had to prep the samples; the 21 samples were -- started preparing the samples -- 22 we started pulling people off of other projects. 23 Started preparing the samples last Friday. 24 Q. Last Friday would have been -- I'm sorry. 25 I'm terrible at dates.	Page 29 1 minutes. I want that to be on the record, 2 sir. 3 THE WITNESS: I appreciate it. 4 MR. COWAN: Okay. Thank you. We 5 can go off the record. 6 THE WITNESS: All right. Thank 7 you. 8 THE CERTIFIED STENOGRAPHER: The 9 deposition of Dr. William Longo has 10 concluded at 10:36 p.m., August 6th, 2024. 11 Thank you. We are off the record. 12 (Remote deposition concluded at 13 10:36 p.m., August 6, 2024.) 14 15 16 17 18 19 20 21 22 23 24 25

Page 30		Page 32	
1	MICHAEL L. PERRY and LONNIE L. LONG V. AMERICAN INTERNATIONAL INDUSTRIES, et al.	1	STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS)
2		2	)
3	CHANGES AND SIGNATURE	3	) FOR THE FIFTH JUDICIAL
4	ORAL VIDEOCONFERENCE DEPOSITION OF	4	COUNTY OF RICHLAND) CIRCUIT)
5	WILLIAM E. LONGO, Ph.D.	5	MICHAEL L. PERRY and) C/A NO. 2023-CP-40-04072 LONNIE L. LONG,))
6	TUESDAY, AUGUST 6, 2024	6	Plaintiffs,))
7	PAGE/LINE CHANGE REASON	7	V.))
8		8	AMERICAN INTERNATIONAL) In Re: INDUSTRIES, et al.) Asbestos Personal Injury
9		9	) Litigation Coordinated
10		10	Defendants.) Docket)
11		11	
12		12	ORAL VIDEOCONFERENCE DEPOSITION OF WILLIAM E. LONGO, Ph.D.
13		13	TUESDAY, AUGUST 6, 2024 Volume 1 of 1 (REPORTED REMOTELY)
14		14	
15		15	CERTIFIED STENOGRAPHER'S CERTIFICATION
16		16	
17		17	I, Penny L. Pabitzky, RPR, residing in
18		18	Nederland, Texas, do hereby certify that the
19		19	foregoing proceedings were reported by me and that
20		20	the foregoing transcript constitutes a full, true,
21		21	and correct transcription of my stenographic notes,
22		22	to the best of my ability and hereby certify to the
23		23	following:
24		24	That the witness, WILLIAM E. LONGO, Ph.D.,
25		25	located in Columbia, South Carolina, was duly sworn

Page 31		Page 33	
1	I, WILLIAM E. LONGO, Ph.D., have read the	1	by me and that the transcript of the ORAL
2	foregoing deposition and hereby affix my signature	2	VIDEOCONFERENCE DEPOSITION is a true record of the
3	that same is true and correct, except as noted above.	3	testimony given by the witness;
4		4	That the original deposition was delivered to
5	_____	5	CHRIS COWAN, custodial attorney;
6	WILLIAM E. LONGO, Ph.D.	6	That a copy of this certificate was served on
7	THE STATE OF _____)	7	all parties and/or the witness shown herein on
8	COUNTY OF _____)	8	_____.
9	Before me, _____, on	9	If returned, attached Changes and Signature
10	this day personally appeared WILLIAM E. LONGO,	10	Page contains any changes and the reasons therefor.
11	Ph.D., known to me or proved to me on the oath or	11	I further certify that I am neither counsel
12	through _____) (description of	12	for, related to, nor employed by any of the parties
13	identity card or other document) to be the person	13	in the action in which this proceeding was taken,
14	whose name is subscribed to the foregoing instrument	14	and further that I am not financially or otherwise
15	and acknowledged to me that they executed the same	15	interested in the outcome of the action.
16	for the purposes and consideration therein	16	Subscribed and sworn to on this the 6TH day of
17	expressed.	17	AUGUST, 2024.
18	Given under my hand and seal of office this	18	
19	_____ day of _____, 2024.	19	
20		20	
21	_____	21	
22	NOTARY PUBLIC IN AND FOR	22	Penny L. Pabitzky, CSR, RPR
23	THE STATE OF _____	23	NCRA RPR 800526 - Expires 09-30-24
24	My commission expires: _____	24	AS AN INDEPENDENT CONTRACTOR FOR:
25	Job Number 310240	25	GOUCHER PARKER SPIVEY, LLC

1 STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND : FOR THE FIFTH JUDICIAL CIRCUIT
3 MICHAEL L. PERRY and :
4 LONNIE L. LONG, :
5 Plaintiffs, : C/A No.
6 v. : 2023-CP-40-04072
7 AMERICAN INTERNATIONAL :
8 INDUSTRIES, et al., :
9 Defendants. :

10

11 Video-Recorded Deposition of

12 MICHAEL L. PERRY

13 VOLUME I

14

15 Hampton Inn by Hilton Charleston Historic District

16 345 Meeting Street, Charleston, South Carolina

17 and

18 Via Zoom Videoconferencing

19

20 Tuesday, October 10, 2023

21 10:06 a.m.

22

23 Reported by:

24 Adam D. Miller, Registered Professional Reporter

25

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RoA_20447

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2 JACKIE MAZADE

3 - - - - -

4 INDEX

5 DEPONENT: MICHAEL L. PERRY

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1 THE VIDEOGRAPHER: We are on the
2 record at 10:06. Today's date is
3 October 10th, 2023. This is the beginning
4 of media one in the deposition of Michael
5 Perry, in the matter of Michael L. Perry,
6 et al., versus American International
7 Industries, et al., in the Court of Common
8 Pleas for the Fifth Judicial Circuit,
9 State of South Carolina, County of
10 Richland, Case Number 2023-CP-40-04072.

11 This deposition's taking place at
12 345 Meeting Street, Charleston, South
13 Carolina.

14 My name is Tyler Tam, and I am the
15 videographer. The court reporter is Adam
16 Miller. Counsel will be stated on the
17 stenographic record.

18 Will the court reporter please swear
19 in the witness.

20 - - - - -

21 MICHAEL L. PERRY, having first been
22 duly sworn according to law, was examined
23 and testified as follows:

24 - - - - -

25 ATTORNEY GROSS: All right. Just

1 before we get started, just a couple quick
2 things on the record. We'll do what we
3 always do for South Carolina depositions,
4 meaning in terms of stipulations, the
5 first one being obviously that this
6 deposition is being conducted pursuant to
7 the South Carolina Rules of Civil
8 Procedure.

9 Second is that all objections except
10 those as to the form of the question or
11 responsiveness of the answer are reserved
12 until the time of trial.

13 Third is one objection by a defendant
14 is good for all. That means you can mark
15 just "defense counsel" in the transcript
16 unless somebody specifically wants to opt
17 out. I've never heard of that happening
18 before, but just in case.

19 Fourth is that an appearance by a
20 defendant here today does not waive any of
21 their possible defenses. And that
22 includes any and all defenses. I'm not
23 going to list them out, but it doesn't
24 waive any of them.

25 Does any defendant have any

1 stipulations they'd like to bring up to
2 add?

3 Okay. Well, then we can go ahead and
4 get started. Are we on? Okay.

5 BY ATTORNEY GROSS:

6 Q Good morning, Mr. Perry.

7 A Good morning.

8 Q Go ahead and introduce yourself to
9 everybody. Breathe. Breathe first and then go
10 ahead and --

11 A My name is Michael Perry.

12 Q Okay. How are you feeling today?
13 Are you nervous?

14 A I'm a little nervous. A lot, a lot
15 of processing right now. But I'm as good as I
16 can be on this day.

17 Q We're going to take it step by step,
18 question by question. We're going to get
19 through this, okay?

20 A Uh-huh.

21 Q Everybody will tell you if you need
22 to take a break at any time, you just let us
23 know. I'm going to keep my eye on you, though;
24 okay?

25 A Okay.

1 Q All right.

2 A Thank you.

3 Q We are here today to take your
4 deposition. Do you understand that?

5 A I do.

6 Q Have you ever done anything like this
7 before in your entire life?

8 A I have been deposed before, but
9 nothing to this gravity.

10 Q How many times have you been deposed
11 before?

12 A Twice.

13 Q Was it for work?

14 A Work and a real estate venture that I
15 was involved in.

16 Q Got it. So never in any sort of the
17 personal injury capacity?

18 A No, sir -- or no, ma'am. Sorry.

19 Q That's okay. It happens all the
20 time. Don't worry.

21 Your deposition, Michael, is being
22 videotaped. And do you understand that this
23 video could be played to a jury later at trial?

24 A I do.

25 Q What is your understanding of why

1 we're all here today?

2 A My understanding is to tell my story,
3 my journey that I'm going to take with, with
4 mesothelioma, and to find closure and hold the
5 individuals that caused this to me accountable.

6 Q Okay.

7 A And however that ends is the most
8 important thing to me, to make sure that my
9 family and loved ones are taken care of after
10 I'm gone.

11 Q Okay. I know this is going to be
12 hard. But, again, we're going to take this step
13 by step, question by question; okay?

14 A Yeah.

15 Q Okay. You've already mentioned it,
16 but have you been diagnosed with a disease?

17 A I was diagnosed with mesothelioma
18 back in July of 2023.

19 Q Okay. Do you have an understanding
20 of what causes mesothelioma?

21 A I do.

22 Q What's that?

23 A My exposure to asbestos.

24 Q Okay. How does sitting down for long
25 periods of time affect you physically right now?

1 A Sitting in -- it is a -- sitting in
2 one, one spot or confined, it builds a
3 tremendous amount of discomfort in my chest and
4 back area. And so I live with everyday pain and
5 discomfort.

6 Q Let's talk. Let's let everybody get
7 to know you a little bit; okay?

8 A Okay.

9 Q Where were you born?

10 A I was born in Springfield, Illinois,
11 1969.

12 Q So we got the year. What's your full
13 birthday?

14 A December 20th, 1969.

15 Q I am very bad at math. Tell me how
16 old you are.

17 A It puts me at 53 years old.

18 Q When I have to carry the one, it's
19 all gone. All right. So you're 53.

20 Where did you grow up? Did you grow
21 up in Springfield?

22 A I grew up in Springfield.

23 Q Where do you live now?

24 A I live on Johns Island, South
25 Carolina.

1 Q When did you move to South Carolina?

2 A We -- I moved in the 1990s.

3 Q So you've been making South Carolina
4 your home for the last several decades; right?

5 A Yes.

6 Q Where did you go to school?

7 A I graduated -- I went to three
8 schools in Springfield, Illinois. It was
9 Riverton Elementary School, Riverton Middle
10 School, and Riverton High School, where I
11 graduated before attending college.

12 Q Walk us through your education a
13 little bit.

14 A Um...

15 Q Did you get any degrees in college?

16 A Oh, yeah. So higher education, I
17 graduated from University of Illinois, where I
18 obtained a degree in communications. And then
19 after that I attended the College of Charleston,
20 where I was seeking a degree in finance, hotel
21 management.

22 Q And did you get that degree?

23 A I am one class shy. So if I get my
24 butt back into place, I may get it one day.

25 Q Okay. I'm going to put up and we'll

1 mark it as Exhibit 1. So bear with me. This is
2 the technological impediment that I always face.

3 (Exhibit PX 1 was marked for
4 identification.)

5 BY ATTORNEY GROSS:

6 Q All right. Does everybody see this
7 photo and only this photo on their computer?

8 Okay. I'm seeing shaking heads, so
9 that's great.

10 All right. So we're going to attach
11 this photograph, Michael, for the record as
12 Exhibit 1. This looks like a graduation outfit;
13 is that right?

14 A That is my high school graduation
15 with my grandmother on my mother's side.

16 Q Okay. Do you remember this day at
17 all?

18 A I do. I remember it quite vividly.

19 Q Tell us just a little bit about it.

20 A Since the family is so important to
21 our family and so when I graduated high school,
22 my grandmother came up from New Mexico. You
23 know, I was the second grandchild that had
24 graduated from high school, my sister being the
25 first one. And so it was a very joyous day for

1 us to go to the school, graduate from high
2 school. It was a big sense of accomplishment
3 for my family.

4 Q Have you ever been married?

5 A I have. I met the love of my life,
6 Lonnie Long, in the early 2000s.

7 Q We're going to talk more about Lonnie
8 later. But just for right now, you said you met
9 in the early 2000s?

10 A Yes.

11 Q Have you-all been together ever
12 since?

13 A About 2003.

14 Q Have you-all been together ever
15 since?

16 A We have.

17 Q Let's talk a little bit more about
18 you growing up, when you were a kiddo; okay?

19 A Uh-huh.

20 Q Did your parents give you any
21 siblings?

22 A I have a sister.

23 Q What's your sister's name?

24 A Michelle.

25 Q So we're going to attach probably my

1 favorite photo, because your sister looks like
2 Harry Potter, as Exhibit 2.

3 (Exhibit PX 2 was marked for
4 identification.)

5 BY ATTORNEY GROSS:

6 Q You-all see the photo?

7 A Yes.

8 Q Okay. Who's who in this picture?

9 A I'm the little boy in the yellow.

10 The girl next, with the Groucho Marx glasses and
11 nose, is my sister. We were at my grandparents'
12 house on my father's side back in the 1970s. It
13 was at Christmastime, and it was quite joyous.
14 And we shared mugshots with the Groucho Marx
15 nose and glasses.

16 Q I showed my age that I referred to
17 them as Harry Potter glasses, but we'll leave
18 that aside.

19 All right. Growing up, Michael, what
20 did your mother and father do for work?

21 A My mother was a computer programmer
22 for an insurance company that insured
23 schoolteachers across the United States.

24 My father worked at the airport,
25 started off as a mechanic and ended his career

1 as an inspector. His strength and his specialty
2 was avionics.

3 Q Were you close to your family growing
4 up?

5 A Yes; very close. We were a tight,
6 cohesive bond.

7 Q You told us earlier you currently
8 live close to Charleston; right?

9 A I do.

10 Q How far about are you from downtown
11 where we are right now?

12 A 15 minutes, given traffic.

13 Q How many homes have you lived in
14 between your Springfield home where you were
15 born and your current home in -- did you say
16 Johns Island?

17 A Johns Island.

18 Q Okay. So how many homes did you live
19 in between your childhood home in Springfield
20 and your current home in Johns Island?

21 A Five homes total. Two of them in
22 Springfield and then three homes in Charleston
23 counting the current home that we're in now.

24 Q Okay. And what I want to ask you,
25 I'm going to try to do it as a big-picture

1 question, and we'll see if we can; okay?

2 Through these five homes, can you tell us how
3 many bathrooms were in each home?

4 A Sure.

5 Q Go ahead.

6 A The first home that I was born into
7 was a small, post-World War II home that had one
8 bathroom. Then in 1976, my family -- my mom and
9 dad were able to buy a larger home where we had
10 two bathrooms. Then when I left the family
11 home, I lived in a beach cottage down by Folly
12 Beach here in South Carolina. And it was a
13 small 1940s-style -- or, excuse me, 1920s-style
14 home that had just one bathroom. And then the
15 bathroom on the farm was two bathrooms. And
16 then the final home that we're in is three
17 bathrooms.

18 Q Okay. What do you do for a living
19 right now?

20 A I am the general manager of the
21 Market Pavilion Hotel and Grill 225 restaurant.

22 Q How long have you been in what I'll
23 call the hospitality industry for work?

24 A That's all I know. Hospitality is,
25 is my blood. I live and breathe hospitality.

1 (Discussion held off the stenographic
2 record.)

3 ATTORNEY GROSS: Off the record for
4 two seconds.

5 THE VIDEOGRAPHER: Off the record at
6 10:19.

7 (Discussion held off the record.)

8 THE VIDEOGRAPHER: Back on the record
9 at 10:21.

10 BY ATTORNEY GROSS:

11 Q All right. Quick, little break,
12 quick technological --

13 A Yeah.

14 Q -- issues. That happens on Zoom
15 sometimes. When we quickly jumped off, you had
16 told us that hospitality is all you know. It's
17 in your blood, right?

18 A It is. That's all I know.

19 Q All right. Now, I know, because I
20 know you, that at some point in time, you worked
21 on a sailboat; is that right?

22 A I did, yeah.

23 Q Okay. Walk us through your job
24 history from your first job through your current
25 general manager position, if you would.

1 A So I was, back at the age of 15, I
2 was a lifeguard. And I got a job at a Holiday
3 Inn in Springfield, Illinois, as the lifeguard
4 at their pool. And they loved me so much, I
5 grew up through the ranks, made it from
6 lifeguard to front desk and from front desk into
7 a supervisory role and eventually made it as the
8 resident manager of that hotel. It was a
9 406-room Holidome in Springfield, Illinois.

10 After that I really had this desire
11 that I wanted to live a pirate's life. And
12 living and doing the boat tours or the charter
13 boats was something that I just couldn't get --
14 it was the Robinson Crusoe in me, living on a
15 boat and living behind an island and chasing
16 sunsets. And I got a chance to do that and
17 follow that dream, and I did that for money.

18 Q Let me stop you right there before
19 you keep going. I want to attach as Exhibit 3,
20 I think we've got some photographs of the boat,
21 I think.

22 A Yeah.

23 Q Let's see.

24 (Exhibit PX 3 was marked for
25 identification.)

1 BY ATTORNEY GROSS:

2 Q Is this it?

3 A That's the Midnight Dragon.

4 Q This is your sailboat?

5 A Yes.

6 Q Okay. Keep going.

7 A So I had five other friends that I
8 met, and we were able to join together. And we
9 traveled together with passengers either from
10 the Middle Keys up to -- or down to Key West,
11 Dry Tortugas, Fort Jefferson, or we would go
12 over to the Bahamas. We traveled in a group.
13 It was safe back then.

14 And I did that until I came to this
15 epiphany that that's all I was ever going to be
16 is someone else's vacation unless I got focused
17 on my career, get my own money, and stop living
18 someone else's vacation and start living my own.
19 So that's when I got focused back into
20 hospitality to really do what was important,
21 which was set up my end -- my end of future --
22 my retirement, so when I was married, we could
23 go and chase sunsets through the Bahamas and in
24 the Florida Keys.

25 Q Okay. When you first moved in with

1 Lonnie, you-all lived on a farm; is that
2 correct?

3 A Yes. We had 15 acres on Johns
4 Island, South Carolina.

5 ATTORNEY GROSS: All right. So we'll
6 mark as Exhibit 4, kind of small, just on
7 the export. Give me one quick second.

8 (Exhibit PX 4 was marked for
9 identification.)

10 BY ATTORNEY GROSS:

11 Q We'll mark as Exhibit 4 -- are these
12 some cows?

13 A Those are cows at the big farm up in
14 Laurens, South Carolina. So every fall the
15 family would go up, and all the cows that were
16 going to be sent to market were brought
17 together. And then we'd load them up in trucks
18 and take them out to send them to market.

19 Q The farm that you and Lonnie lived
20 on, was it a lot of land?

21 A There on Johns Island, it was, yes,
22 10 acres of land. So what we did is we kept our
23 horses on it. And then in the summer months
24 when we got into hurricane season, we moved the
25 horses up to Laurens so they would be safe so we

1 didn't have to deal with the stress and have
2 them be under stress with hurricanes and so
3 forth. And we'd bring them back down in the
4 fall.

5 But the horses were our children.
6 Lonnie and I were never allowed or able to have
7 children because of the big elephant in the
8 room, which we were a same-sex marriage. So the
9 horses were everything to us. And they had
10 personalities.

11 And I'll never forget one of the
12 times that we had a huge storm come up and
13 spooked one of our horses. And she actually
14 climbed up the steps of the front porch. And I
15 woke up in the middle of the night hearing this
16 horrible noise up on the porch. And I looked --
17 went to the front door and looked out there, and
18 here's Storm Cat standing on the porch just
19 looking in the front door. And it took forever
20 to get her back off the steps, back down. But
21 they all had personalities, and they were all
22 our children.

23 Q When my horse growing up, if I had
24 tried to bring her inside the house, my parents
25 would be thrilled.

1 Have you always been an animal
2 person?

3 A I have. I have owned animals from my
4 earliest recollection. I just can't imagine
5 life without love.

6 Q How many pets do you have now?

7 A I've got two.

8 Q What are their names?

9 A I have Keziah. Keziah is my
10 three-year-old Havanese. And I also have
11 Abraham, which is Lonnie's five-year-old
12 Havanese.

13 Q So, of course, I've been lucky enough
14 for you to show me a bunch of photographs
15 throughout your life. The ones that we're going
16 to show today are only a small handful, but one
17 particular that connected with me being that I'm
18 a horse girl myself. So let me ask you this
19 question, Michael: Did you used to
20 horseback-ride?

21 A I did.

22 Q All right. Let put up as Exhibit --
23 which I think I'm already screwed up -- 5.

24 (Exhibit PX 5 was marked for
25 identification.)

1 BY ATTORNEY GROSS:

2 Q Is that you?

3 A That was me at the Midwest Charity
4 Horse Show.

5 Q Was this a Saddlebred that you show?

6 A Uh-huh.

7 (Reporter clarification.)

8 Q Did you do Saddlebred competitions?

9 A I did.

10 Q How long did you do that for?

11 A I believe it was five or six years.

12 Q Before everything that we're here to
13 talk about today, when you were a kid, were you
14 ever a Boy Scout?

15 A I was.

16 Q All right. We'll mark this as
17 Exhibit 6.

18 (Exhibit PX 6 was marked for
19 identification.)

20 BY ATTORNEY GROSS:

21 Q This is you with this big smile in
22 the front holding the sign?

23 A That is me. And that flag. We won
24 an award. That's the award on the drape of the
25 flag itself. That was the wolf patrol. And

1 that was when I was the first, that was my first
2 patrol when I was a patrol leader.

3 Q How long did you do Boy Scouts for?

4 A I was in Boy Scouts until -- clear
5 into my 20s. After I left Boy Scouts, I went
6 into Exploring, which is another branch of the
7 Boy Scouts of America, but that was clear into
8 my 20s.

9 Q Now, I know what your current job is.
10 You told us already. But are you still working
11 today?

12 A I am on family medical leave absence
13 right now. And then after that, I don't know
14 that I will be able to return to my employment.
15 My illness has taken me to the point of being a
16 hundred percent able to take care of myself and
17 function to I need a lot of assistance to just
18 get through some of the daily tasks that I have
19 ahead of me. So it was a big question mark if I
20 ever will be able to go back to work.

21 Q What happened last night?

22 Let me help.

23 A I got out of bed last night. And
24 yesterday I had my scheduled fluids because I
25 get so dehydrated and weak. And so last night I

1 wanted to go into the kitchen to get something
2 to eat, and I ended up collapsing in the
3 hallway.

4 Q Just take a minute.

5 A And Lonnie heard me fall. It was the
6 first time that I'd fallen but --

7 ATTORNEY GROSS: Okay. Let's go off
8 the record for two seconds.

9 THE VIDEOGRAPHER: Off the record at
10 10:30.

11 (Discussion off the record.)

12 THE VIDEOGRAPHER: Back on the record
13 at 10:30.

14 BY ATTORNEY GROSS:

15 Q Michael, were you -- are you the kind
16 of person who was counting down the days until
17 they turned 65, or is working important to you?

18 A Working's important to me.

19 Q Tell us about that.

20 A Everyplace I've ever worked, I always
21 put my mark on what I've done. So all of the
22 hotels that I've touched in Charleston have
23 either been award-winning hotels or Circle of
24 Excellence. And when I graduated -- I call it
25 graduating -- up to a platinum hotel like the

1 Market Pavilion Hotel, I took great pride -- I
2 took great pride of being part of the top-five
3 Leading Hotels of America, having that
4 designation, or being number one in the Relais &
5 Ch teaux brand. And I lived and breathed it.

6 You know, the H in hotel always meant
7 to me hospitality. And I just had a tough time
8 ever walking away from that and not being able
9 to put my touch on what hospitality means and
10 what it really -- to live and breathe and glow
11 of the hospitality, and that's just who I am.

12 Q Let's shift gears, talk about the
13 reasons why we're here, talk about the different
14 ways you were exposed to asbestos; okay?

15 A Okay.

16 Q Just the roadmap for you and
17 everybody's else's benefit, we're going to start
18 with talc. Then we're going to go into brakes.
19 Then we're going to go into some work that was
20 done while you were working at various hotels;
21 okay?

22 A Okay.

23 Q So starting with talc, Michael, did
24 you ever use talc powder in your life?

25 A I did.

1 Q All right. Can you tell us the
2 different ways that you remember using talc
3 powder in your life?

4 A Different ways?

5 Q Yeah.

6 A I used talc on my body, my neck, my
7 armpits, my torso, my genitalia, feet, and legs.
8 So it was a full-body use of talc on my body.

9 Q Why did you use talcum powder in your
10 armpits?

11 A I'm allergic to deodorant. So I, you
12 know, being self-aware, would make sure that I
13 always had that product to make sure that I was
14 always fresh.

15 Q Some of those questions about your
16 age and the years are going to be difficult, but
17 let's try and get through them; okay?

18 A Uh-huh.

19 Q That being said, how old about were
20 you when you have your first memory of using
21 talc powder on yourself?

22 A Around five years old.

23 Q You were born in 1969, so that puts
24 us in about '74?

25 A '74, uh-huh.

1 Q Were you ever around other family
2 members when you were growing up that also used
3 talc on their bodies?

4 A Absolutely.

5 Q Who?

6 A My mother and my father.

7 Q Would you ever be in physical close
8 proximity to either your mother or your father
9 growing up when they would apply talc powder to
10 their body?

11 A Always with my mother, absolutely.

12 Q Were you also about five when
13 you first remember being around your mom when
14 she would apply talc powder?

15 A Absolutely.

16 Q When is the last time -- big-picture
17 question. When is the last time in terms of a
18 year you remember putting any kind of talc
19 powder anywhere on your body?

20 A It would have been 2019.

21 Q Why do you remember it in 2019?

22 A 2019, Lonnie and I sold the farm, and
23 we had our forever retirement home built. So
24 our needing to go outside in the elements, take
25 care of the horses, the cows, all that stuff was

1 no longer part of our daily ritual. So I really
2 stopped needing to use those products because I
3 was inside so much at that time.

4 Q Okay. Beginning -- strike that.

5 Beginning from the time that
6 you first remember using talc powder on yourself
7 in 1974 through 2019, has there ever been any
8 stretch of time where you did not use powder on
9 yourself?

10 A No.

11 Q As part of this whole process, have
12 you spent a lot of time really thinking long and
13 hard about the different brands of powder that
14 you used or that your family members used
15 throughout your life?

16 A Yes.

17 Q Have I also asked you to spend a lot
18 of time thinking about any work you did on cars
19 with your father?

20 A Yes.

21 Q Okay. And in that same vein, have
22 you also spent some time thinking about work
23 that was done around you while you were employed
24 at various hotels?

25 A Yes.

1 Q Okay. That being said, let's stick
2 with talc for a little bit; okay?

3 A Uh-huh.

4 Q I want to start with talc that you
5 used on yourself, so we're going to put your mom
6 to the side for now; okay?

7 A Okay.

8 Q Big-picture question: Can you tell
9 us the brands of talc powder that you remember
10 using on your body throughout your life?

11 A Yes.

12 Q Go ahead.

13 A Johnson & Johnson Baby Powder.
14 Johnson & Johnson Baby So Soft [sic]. Polo
15 Ralph Lauren talc. Drakkar fragrance talc.
16 Obsession Calvin Klein talc. Ammens talc. Gold
17 Bond talc powder. Equate powder.

18 I'm sure I've missed a couple, but
19 that's the ones that are right on the forefront
20 of my mind.

21 Q Did you use any of the powders that
22 you've named throughout your entire life as a
23 constant?

24 A Yes.

25 Q Which one?

1 A Would have been the Johnson & Johnson
2 products.

3 Q Was there ever any other powder that
4 you used throughout your entire life in addition
5 to Johnson's baby powder?

6 A Clubman would have been one from my
7 childhood clear up to my adult.

8 Q Did you ever use a powder called
9 Stetson?

10 A Stetson. Yes, I did. It was not one
11 of my favorites. It was a gift, but it was one
12 of them that I used.

13 Q Were there any talc powders that you
14 remember your father using that you then used
15 yourself?

16 A One that I used was my father's
17 Old Spice talc powder.

18 Q So what I want to do is spend the
19 next few minutes, I want to just work our way
20 through these and see if we can't get a
21 framework for years. We've already touched on a
22 couple, but years in which you remember using
23 these powders, okay?

24 A Uh-huh.

25 Q So let's start with Johnson's baby

1 powder. You said just a second ago you used
2 that clear throughout your entire life; is that
3 correct?

4 A That's correct.

5 Q And same for Clubman?

6 A Clubman as well, yes.

7 DEFENSE COUNSEL: Objection to form.

8 BY ATTORNEY GROSS:

9 Q So for those, tell us the years --
10 just so we're clear, tell us the years that you
11 remember using Johnson's baby powder and
12 Clubman.

13 DEFENSE COUNSEL: Form.

14 BY ATTORNEY GROSS:

15 Q You can ignore the objections.

16 Go ahead.

17 A It would have been 1974, '75, clear
18 up until the 1990s.

19 Q Okay.

20 A Excuse me. 2019. I apologize.

21 2019.

22 Q Okay. That's okay. Let me just ask
23 a cleaner -- let me just make sure it's clean,
24 okay?

25 You said just now you remember

1 starting to use Clubman and Johnson's baby
2 powder in about 1974, 1975; correct?

3 A Yes.

4 DEFENSE COUNSEL: Objection; form.

5 BY ATTORNEY GROSS:

6 Q And you used both up through 2019.
7 You just said that.

8 A That's correct.

9 DEFENSE COUNSEL: Objection; form.

10 BY ATTORNEY GROSS:

11 Q All right. Let's go through the rest
12 of the powders you said you remember. Well,
13 strike that.

14 Before we do that, how many
15 bottles -- this is going to be hard. But how
16 many bottles of Johnson's baby powder would you
17 say you purchased in a year on average
18 throughout your life?

19 A Oh, several. More than I could
20 count.

21 Q How about Clubman?

22 DEFENSE COUNSEL: Objection; form.

23 THE WITNESS: Several.

24 DEFENSE COUNSEL: Objection;
25 nonresponsive.

1 ATTORNEY GROSS: That's not
2 nonresponsive, but that's fine.

3 BY ATTORNEY GROSS:

4 Q So you said you bought several
5 bottles --

6 DEFENSE COUNSEL: Does he recall how
7 many he bought?

8 ATTORNEY GROSS: You can -- counsel,
9 you can ask whatever you like on cross, so
10 let's get back.

11 DEFENSE COUNSEL: I'm sorry. I
12 thought you were engaging in colloquy.

13 BY ATTORNEY GROSS:

14 Q When you said you bought several
15 bottles of Johnson's baby powder per year --

16 A Uh-huh.

17 Q -- give us a flavor for how much
18 "several" is.

19 A How many bottles I bought a year?

20 Q If you can. But just give us a
21 flavor for how much "several" really means. I
22 mean, that could mean just about anything.

23 A Ten or more.

24 Q Okay. How about Clubman?

25 A Clubman --

1 DEFENSE COUNSEL: Objection; form.

2 THE WITNESS: -- would be very

3 similar.

4 BY ATTORNEY GROSS:

5 Q Okay. Let's keep going. Gold Bond,
6 you mentioned Gold Bond. When is the first time
7 that you remember beginning to use Gold Bond on
8 yourself?

9 A Gold Bond would have been used mostly
10 when I was doing my sailing. That would have
11 been a product that I put in my shoes to help
12 with the smell and the growth that was --
13 because my shoes stunk so bad. So we put that
14 in my shoes to help keep that under control.

15 Q When did you start sailing, about?

16 A It was in the '90s.

17 Q Okay. When is approximately the last
18 time you remember using Gold Bond powder on
19 yourself?

20 A 2019.

21 Q Okay. And same question that I'm
22 going to ask you for all of those. How many
23 bottles of Gold Bond would you say you purchased
24 in a year on average?

25 A Several. That was another one that

1 would have been, you know, a common purchase at
2 the store.

3 Q Got it. You also mentioned Calvin
4 Klein Obsession; correct?

5 A That's correct.

6 Q Okay. I'm just going down my list
7 here. When do you first remember using Calvin
8 Klein Obsession powder on yourself?

9 A Calvin Klein Obsession, I, when I,
10 when I was able and I was gainfully employed and
11 I had a little extra disposable income, I would
12 buy those types of products. They were always
13 fun to put something like that on when you're
14 going out to a bar or going to be around other
15 people. But I remember vividly that that was a
16 part of my culture, part of my routine back in
17 the '90s.

18 Q Okay. So starting in about the '90s
19 for Obsession?

20 A Yes.

21 Q Okay. When is the last time,
22 approximately, you remember using the Obsession
23 on yourself?

24 A It would have been pre-2019.

25 Q Pre-2019.

1 A Yeah.

2 Q Why do you say "pre-2019"?

3 A Well, at that point in time, it was
4 not one of my favorites. And there is no need
5 to buy it anymore. Lonnie certainly didn't like
6 it.

7 Q Oh, Lonnie didn't like it?

8 A He didn't like it.

9 Q Okay. Which of your powders did
10 Lonnie like?

11 A It would have been Ralph Lauren.

12 Q Okay. Let's stick with Ralph Lauren,
13 then. When is the first time you remember using
14 Ralph Lauren on yourself?

15 A Ralph Lauren would have been used in
16 '90s as well, and I used that one pretty often,
17 even into my professional career.

18 Q When's the last time you remember
19 using Ralph Lauren about?

20 A That would have been pre-2019.

21 Q For the Ralph Lauren, how many
22 bottles, approximately, do you remember
23 purchasing in a year?

24 A It would have been several as well.
25 And this is when I was working, and I would have

1 to go out to the mall. If I could find that on
2 sale or find an end cap, I would always buy a
3 bottle of that. So I always had a bottle of
4 Ralph Lauren somewhere, either in the car or in
5 my travel bag or at the house.

6 Q What about the Calvin Klein
7 Obsession; how often would you say you bought
8 bottles of that in about a year?

9 A Not as often. It wasn't one of my
10 favorites. But it would have probably been less
11 than six a year.

12 Q Okay. How about Drakkar Noir? When
13 do you first remember using Drakkar Noir powder
14 on yourself?

15 A That would have been also the 1990s.

16 Q Go ahead.

17 A And that would have been one of my
18 favorites as well, so that would have been a
19 heavy buy.

20 Q When you say "heavy buy,"
21 approximately how many bottles of Drakkar Noir
22 powder do you remember purchasing in a year?

23 A Six or more.

24 Q Would that have been something you
25 purchased as much as the Johnson's baby powder

1 or the Clubman?

2 A Not as much. Johnson's baby powder
3 and Clubman were always my go-to for so many
4 other reasons. So I was always buying more of
5 that than I was scented powders.

6 DEFENSE COUNSEL: Objection; form.
7 BY ATTORNEY GROSS:

8 Q Got it. Okay. When was about the
9 last time you remember using the Drakkar Noir
10 powder on yourself?

11 A It would have been pre-2019.

12 Q Okay. So same, the years that we're
13 looking at are the same so far for Ralph Lauren,
14 Drakkar Noir, and Calvin Klein Obsession; is
15 that correct?

16 A Correct.

17 Q Okay. What about Stetson? What do
18 you remember -- when's the first time you
19 remember using Stetson powder on yourself? I
20 know you didn't like it that much.

21 A Stetson was a gift from a family
22 member. And, of course, with family members,
23 you better use it. But it was one of those that
24 I used. And I think that I got a couple
25 different Christmas gifts of it as well.

1 Eventually, I was able to say, "I don't want any
2 more of it." But that was one that I did use;
3 it just wasn't one of my favorites.

4 Q Do you remember about when you would
5 you have gotten that powder as a gift-ish?

6 A That was really one of my very first
7 ones.

8 Q Okay.

9 A So that would have been like 19 --
10 late 1980s, because it was a gift. It wasn't
11 coming out of my pocket. So, yeah, that would
12 have been 1980-something.

13 Q Okay. You also mentioned, when you
14 were listing off at the powders, you listed
15 Ammens, A-M-M-E-N-S; is that correct?

16 A That's correct.

17 Q When is the first time you remember
18 using this Ammens powder on yourself?

19 A It was would be in the 1990s.

20 Q And similar exercise, when's the last
21 time you remember using the Ammens powder on
22 yourself?

23 A That would have been, that product
24 was going to be used clear until, into the mid,
25 till later, 2000s. And that was because of the

1 rash and the jock itch that I would get from
2 working out on the farm or being on the boat.

3 Q Was Ammens a medicated powder?

4 A It is.

5 Q Again, same exercise: How many
6 bottles of Ammens powder would you say you
7 purchased in a year on average?

8 A It was several. But it really
9 depended on, I would buy more of it when I was
10 on the boat than I would when I was at the farm.

11 Q How long were you on that sailboat
12 for?

13 A Each tour was a week long. So we
14 were talking, you know, years that I was, I was
15 doing that program.

16 Q Okay. When is the, just so we get a
17 framework, you know, for these powders that you
18 say you used primarily or a lot on the sailboat,
19 just so we have a framework here, when did you
20 start doing that, those tour work on the
21 sailboat?

22 A Oh, I started doing tours in the
23 early 1990s.

24 Q Okay.

25 A Yeah.

1 Q And how many years did you stay
2 working on the boat? Are we talking five or six
3 years?

4 A Yes, we are.

5 Q Okay. The last powder -- you also
6 listed Equate that you used; is that correct?

7 A That's correct.

8 Q Okay. When do you first remember
9 using Equate powder on yourself?

10 A Using Equate there at the farm, that
11 was the type that Lonnie had in the bathroom
12 drawer. So we used that one. I bought
13 Johnson & Johnson baby powder. He would buy
14 Equate.

15 Q Remind us when you and Lonnie first
16 moved to the farm.

17 A My, my entry into the, excuse me, my
18 entry into the farm was the early 2000s.

19 Q When's about the last time you
20 remember using Equate on yourself?

21 A It really started fading itself out,
22 but it was the late 2018, 2019.

23 Q Okay. And the last powder you
24 mentioned that we haven't talked about yet is
25 Old Spice; is that correct?

1 A That's correct.

2 Q Okay. When is the first time about
3 you remember using Old Spice on yourself?

4 A So my father and I, on Friday
5 afternoons he would leave work early. We'd grab
6 the boat. We'd head over to the Illinois River
7 or the Mississippi River and go fishing for
8 either the night or for a weekend. After the
9 fishing on the river all night long, because it
10 was night fishing, both of us stunk so bad of
11 bait, bug spray, and everything else that was on
12 our body, we would pull that Old Spice bottle
13 out and put the talc all over us. It would help
14 cool us off but also helped get rid of the smell
15 of the dead fish that we had all over us.

16 Q Lovely.

17 A That would have been in the 1980s.

18 Q Okay. When is about the last time
19 you remember using Old Spice on yourself?

20 A In the 1990s.

21 Q Did you ever purchase Old Spice
22 yourself, or did you just use your dad's?

23 A Just always used his; yeah.

24 Q I think I got everything you
25 remembered.

1 Did you ever go to Columbia, South
2 Carolina, for any reason?

3 A I did.

4 Q Tell us why.

5 A I was working for Hilton Hotel
6 Corporation out of their corporate office, and I
7 had a number of hotels that were in my
8 supervision. And South Carolina had every
9 Hilton property that had the flag of Hilton on
10 it in the state of South Carolina.

11 Q Did you ever use any of these talc
12 powders in Columbia?

13 A I did.

14 Q Did you bring them with you?

15 A Absolutely.

16 Q Okay. Let's shift gears here. I
17 want to talk to you about the powder you said
18 your mom used around you; okay?

19 A Yes.

20 Q And we're going to do, if my papers
21 don't explode, we're going to do the same
22 exercise with your mom's powders --

23 A Okay.

24 Q -- that we just did with yours; okay?

25 A Okay.

1 Q What powders do you remember your
2 mother using while you were around?

3 A It would have been Cotillion, Skin So
4 Soft, Birds of Paradise, Soft Musk, Topaz, White
5 Linen, Johnson & Johnson baby powder, Johnson &
6 Johnson Body to Body, Chanel No. 5. I may have
7 forgotten one, but that's the ones that, on the
8 forefront.

9 Q Let me see if I can help you. When
10 you say "Johnson's Body to Body," have you ever
11 heard of Johnson's Shower to Shower?

12 A Yes. I'm sorry. Yes.

13 Q That's okay. So she used, your mom
14 used Johnson's Shower to Shower?

15 A Yes, uh-huh.

16 Q Do you ever remember your mom using
17 any talc powder that smelled florally?

18 A Yes. That would have been her Birds
19 of Paradise, and that also would have been
20 Cashmere Bouquet.

21 Q Okay. So let's stick with the Avon
22 powders for now that you remember your mom used.
23 When is the first time you remember being around
24 your mother while she used any of those Avon
25 powders?

1 A So when I was in the original home,
2 the one that I was born into, it was a very,
3 very small home. It was so easy for Mom just to
4 grab me. We'd take showers together. After I
5 got out of the shower or out of the bathtub, she
6 would wrap me in a towel. She would towel off,
7 towel me off, and then she started applying the
8 different powders that she was going to use that
9 day on her body. And then she would powder me
10 as well.

11 Q When is about the first year you
12 remember seeing her start to use those Avon
13 powders around you?

14 A It would have been 1974, 1975.

15 Q When was the last time you remember
16 seeing your mom use those Avon powders?

17 A Clear until the 2000s, until she died
18 in 2010.

19 Q Okay. How about -- go through the
20 list here.

21 How about Chanel?

22 A Chanel was my mother's power, her
23 power fragrance. She was in a male-dominated
24 industry and didn't get a lot of respect from
25 male counterparts. And so as she entered into

1 her 40s, she would put on that -- her power
2 scent is what she referred to it as. And she
3 would go and she'd find great joy in tormenting
4 some of her male counterparts that she could
5 outmaneuver. So that was her power scent.

6 Q When was the first time you remember
7 being around her when she would apply the Chanel
8 No. 5 powder?

9 A It would have been in the early '80s.

10 Q When is the last time you remember
11 being around your mother while she applied the
12 Chanel No. 5 powder?

13 A It would have been 2007, 2008,
14 something like that.

15 Q You also mentioned Cashmere Bouquet;
16 is that correct?

17 A That's correct.

18 Q When is the first year you remember
19 being around your mother when she would apply
20 Cashmere Bouquet to herself?

21 A When was the first year?

22 Q Yes, sir.

23 A 2 -- excuse me. 1974, 1975.

24 Q Okay. And when do you remember being
25 the last year that you would have been around

1 your mom when she would apply Cashmere Bouquet
2 about?

3 A That would have also have been in the
4 2000s.

5 Q Okay. Was there any activity or
6 anything that happened to your mom in the 2000s
7 that you associate with her no longer using body
8 powder on herself? Because it looks like
9 they're all probably around the same point in
10 time.

11 A Yes. In 2007, it was Memorial Day
12 2007, my mom suffered a massive heart attack on
13 the boat there where they live at. And that
14 left her unable to take care of herself. And so
15 her being able to enjoy the finer things that
16 she was accustomed to were no longer an option.

17 Q You also mentioned Johnson's baby
18 powder and Shower to Shower; is that correct?

19 A Correct.

20 Q When would have been the first time
21 you remember being around your mother when she
22 used Shower to Shower or baby powder?

23 A That would have been in the early
24 1970s when we showered together.

25 Q Okay. When would have been the last

1 time you remember seeing her apply those powders
2 around you?

3 A Clear until the 2007, 2008.

4 Q Okay. And then the last one you
5 mentioned was White Linen; is that correct?

6 A That's correct.

7 Q When is the first time you remember
8 being around your mom when she applied White
9 Linen?

10 A White Linen. White Linen was
11 inspired by my mother's mother. When she would
12 watch either Knots Landing or Falcon Crest or
13 something like that. And it just was something
14 my grandmother saw a commercial, ended up buying
15 it for my mother. It was not one of her
16 favorites. But she put it on more, I think,
17 more to appease my grandmother. But she would
18 wear that until it was gone.

19 Q Okay. Do you remember when -- I
20 understand it was a gift. But do you remember
21 when about the last time she -- you would have
22 been around her when she applied it?

23 A It would have been in the '90s.

24 Q Okay. You've told us now a couple of
25 times that you took showers with your mother or

1 you were around her a lot in the bathroom; is
2 that correct?

3 A That's correct.

4 Q Why were you around your mother so
5 much in the bathroom?

6 A Well, originally, it was to get ready
7 with Mom, because, you know, like I said, we
8 were a small family, one bathroom. To try to
9 get as many bodies showered and ready for school
10 or daycare or ready for work. So Mom would
11 just -- it was just easier just to throw me in
12 the tub with her, and we would take a shower.

13 And -- but then it turned into Mom
14 would hold court in the bathroom. So she was in
15 the bathroom. Everybody has to go in there
16 because Mom was going to solve all the world
17 problems.

18 And so, you know, Mom had no -- no
19 safe place from us. We were always -- the
20 bathroom was always her vulnerability. When she
21 was in the bathroom, we could all get in there
22 and solve the world's problems.

23 ATTORNEY GROSS: We've being going
24 almost an hour. Do you want to keep going
25 for a little bit, or do you need a break?

1 THE WITNESS: We can go for a little
2 bit longer.

3 BY ATTORNEY GROSS:

4 Q Okay. Let's get through the next
5 short section. I want to shift gears back to
6 talking to you about powder that you applied to
7 yourself; okay?

8 A Okay.

9 Q I want to talk to you a little bit
10 about your routine in general, so big-picture
11 questions; okay?

12 A Okay.

13 Q When during the day or for what
14 reasons did you apply body powder to yourself?

15 A When during the day?

16 Q Yeah. Not like a time. I mean, was
17 there something that you did during the day that
18 caused you to apply body powder to yourself?

19 A I would start with the body powder in
20 the morning after my morning shower. But as I
21 was working on the farm, it would usually take a
22 couple different treatments or uses of body
23 powder during the afternoon. And then certainly
24 when I would go out for the evening feedings
25 with the horses, there would be another

1 treatment. And then the final one would be
2 before I'd go to bed at night. I'd take my
3 shower to get cleaned off and then put the baby
4 powder back on me.

5 Q Okay. Did you play any sports
6 growing up?

7 A I did.

8 Q Which ones?

9 A I was a hockey player, and I was also
10 a swimmer.

11 Q Did you ever have to use my powders
12 when you were playing those sports?

13 A Yeah. So I'd keep -- my mom would
14 make sure I had a bottle of Johnson baby powder
15 in my hockey bag. So when I, before I put my
16 equipment on, my shoulder pads, my leg pads, I
17 would always squirt the body powder in there as
18 I'm putting it on before the game. And so I
19 would do that.

20 During swimming, it was always after
21 I am done swimming for the day, I'd put that
22 powder on.

23 Q How often do you shower in one day?
24 It's a weird question, but how often do you
25 shower in a day?

1 A A minimum of two times, morning and
2 evening. If it's really hot outside, it could
3 be three times.

4 Q Has it always been that same amount?

5 A It is.

6 Q Do you have a post-shower routine?

7 A I have the almost exact same
8 post-shower routine as my mother did, which is
9 take the shower. After I get out and dry off, I
10 would apply the product into my hand. It would
11 be three or four shakes into my hand. And then
12 apply it from my neck down to my groin and then
13 feet.

14 Q Would you dry off in between getting
15 out of the shower and applying the powder?

16 A Absolutely, yes.

17 Q So was your skin dry when you would
18 apply the powder?

19 A It was, yes.

20 DEFENSE COUNSEL: Objection; form.

21 BY ATTORNEY GROSS:

22 Q Has your post-shower routine ever
23 been drastically different at any point in your
24 life?

25 A No.

1 DEFENSE COUNSEL: Objection; form.

2 BY ATTORNEY GROSS:

3 Q You said you would -- well, strike
4 that. I'm trying to cut some of this out. This
5 is a good thing. Give me one second.

6 You said you did approximately three
7 to four shakes into your hand of whatever powder
8 you were using --

9 A Uh-huh.

10 Q -- is that correct?

11 A Yes.

12 Q Was the shaking of that powder into
13 your hand and then applying it to your body a
14 clean process?

15 A Absolutely not.

16 DEFENSE COUNSEL: Objection; form.

17 BY ATTORNEY GROSS:

18 Q Is it hard to apply body powder
19 neatly?

20 A It's impossible.

21 DEFENSE COUNSEL: Objection; form.

22 BY ATTORNEY GROSS:

23 Q Why do you say it's impossible?

24 A Because it's an airborne powder. And
25 once it comes out of the bottle, it creates this

1 big haze all over. And so if there is a clean
2 way of doing it, I certainly didn't learn that.

3 Q Did it make a mess in your bathroom?

4 A It did.

5 Q Did you have to clean up your
6 bathroom?

7 A I did. And I'd have to chase my
8 white footprints all the way out the bathroom,
9 down the hall, into the kitchen. It would be
10 all over the place.

11 Q What did the air look like around you
12 when you were applying the powder?

13 A It was like a big --

14 DEFENSE COUNSEL: Objection; form.

15 THE WITNESS: -- a big white cloud.

16 BY ATTORNEY GROSS:

17 Q Were any of your bathrooms at any
18 point in time in your life carpeted?

19 A Yes. The two bathrooms in the
20 original homes that I lived in with my parents.
21 So the very first home in 1970s and then the
22 home that I had most of my childhood in.

23 Q Did you ever have to clean up those
24 bathrooms?

25 A I did. That was part of our daily

1 chores that had to be done is cleaning the
2 house, cleaning the bathroom, vacuuming.

3 Q We're going to talk a tiny bit more
4 about your cleanup later.

5 Your process of applying the powder
6 that you just told us about --

7 A Uh-huh.

8 Q -- was that always the same,
9 regardless of the brand of powder you were
10 using?

11 DEFENSE COUNSEL: Objection; form.

12 THE WITNESS: Yes. But with the
13 vanity fragrances, I was a little bit more
14 careful on waste because it did cost a lot
15 of money, of making sure that that was
16 more targeted on my body.

17 BY ATTORNEY GROSS:

18 Q Okay. And vanity from fragrances,
19 which are the fragrances that you consider to be
20 vanity fragrances?

21 A That would have been the Ralph
22 Lauren, Calvin Klein, Drakkar, and then the
23 Obsession -- or the Stetson. Excuse me.

24 Q Stetson. Okay.

25 Regardless of whatever house you were

1 living in or even on the boat, did you apply
2 body powder to yourself in the bathroom?

3 A Yes.

4 Q That white cloud you describe seeing
5 when you would apply powder, did you ever
6 breathe that body powder?

7 A Absolutely.

8 DEFENSE COUNSEL: Objection; form.

9 BY ATTORNEY GROSS:

10 Q You never held your breath for any
11 reason while applying body powder, did you?

12 DEFENSE COUNSEL: Objection; form.

13 THE WITNESS: No.

14 BY ATTORNEY GROSS:

15 Q Could you smell the powder when you
16 would apply it?

17 A Absolutely.

18 ATTORNEY GROSS: Let's go off the
19 record.

20 THE VIDEOGRAPHER: We're off the
21 record at 11:05.

22 (Recess.)

23 THE VIDEOGRAPHER: We are back on the
24 record at 11:18.

25 BY ATTORNEY GROSS:

1 Q All right. We are back from a quick,
2 stretch-our-legs break.

3 A Thank you.

4 Q You're welcome. You ready to keep
5 going?

6 A I am.

7 Q All right. So when we took a break,
8 we finished up talking to you about your routine
9 when you would apply powders. And now I want to
10 shift gears over to your mother; okay?

11 A Okay.

12 Q How frequently would you be in the
13 bathroom with your mother while she was getting
14 ready?

15 A As a child, every day.

16 Q Every day. Okay. As you aged, tell
17 us about that.

18 A Going into the 1970s, got into the
19 bigger house, two bathrooms, it was more, I
20 could take care of myself but still would go
21 into Mom's bathroom when she was in there
22 because it was part of our ritual, part of our
23 daily having court in Mom's bathroom.

24 Q So every day when you're younger,
25 then you move into the next home and you've got

1 a couple bathrooms, you're getting a little
2 older. Give us a feel for how on a week, how
3 many times on a weekly basis you'd be in that
4 bathroom with your mom when she got ready versus
5 the daily when you were a kid?

6 A Certainly Monday through Friday.

7 Q So five days a week?

8 A Five days a week.

9 Q Okay. Give us a feel -- strike that.
10 The first bathroom, the house that
11 you lived in when you were a kid that only had
12 one bathroom for everybody --

13 A Okay.

14 Q You with me?

15 A I am.

16 Q Okay. Give us a feel or a flavor for
17 how big that bathroom was.

18 A It was an extremely small bathroom.
19 So it consisted of a commode, a sink, a tub, and
20 there was a small, little, like, wall tower that
21 Mom would keep her different products on.

22 Q Where would your mom be in that
23 bathroom when she would apply body powder to
24 herself?

25 A She could either be standing in front

1 of the sink; or if I was sitting on the tub, she
2 could be right there in front of the toilet.

3 Q And you anticipated my next question.
4 Where would you be while your mom would apply
5 body powder to herself in that bathroom?

6 A I would be either be sitting on the
7 commode or sitting on the edge of the bathroom
8 tub.

9 Q I don't expect you to know exact
10 measurements. But that being said, let me ask
11 you this: How close would you be to your mother
12 when she would apply those body powders to
13 herself in that bathroom.

14 A It was extremely close. It was a
15 very, very small bathroom. So contact was very,
16 very easy. Just right here would be enough
17 space to reach out from the tub to the toilet
18 where Mom would be at.

19 Q Could you reach out like you just
20 demonstrated on the record, just because they
21 can't see on the --

22 A Sure.

23 Q When you reached out like that, could
24 you touch your mom?

25 A Absolutely.

1 Q Okay. Let me shift gears to the next
2 bathroom that you lived in when you were a kid
3 or the -- strike that.

4 The next house you lived in when you
5 were a kid, the one that had two bathrooms;
6 okay?

7 A Uh-huh.

8 Q Same sort of questions: Where would
9 your mom be in that bathroom when she would get
10 ready and you would be in there?

11 A My mother would stand in front of the
12 vanity, the bathroom vanity. And then we would
13 either stand in the doorway or we would go sit
14 on the commode or the tub edge as well.

15 Q And give us a feel for how big that
16 bathroom in your second childhood home was.

17 A My mother's bathroom was larger. It
18 still consisted of a bathroom vanity, a commode,
19 and a bathtub. But it was more of a long,
20 "rectile" configuration.

21 Q Like a rectangle?

22 A Yes.

23 Q Okay. Similar to how I asked you
24 before, how close would you be to your mother in
25 your second childhood home when she would apply

1 that powder to herself?

2 A Just a few feet.

3 Q Could you reach out and touch her in
4 that bathroom?

5 A Absolutely. Absolutely.

6 Q Okay. When you were growing up, so
7 before you left home and you became an adult,
8 did you ever see your mother get ready anyplace
9 else other than the bathroom?

10 A No.

11 Q Did your mother have a post-shower
12 routine that you observed with your own two eyes
13 just like you did?

14 A Yes.

15 Q What was it?

16 A She would take her shower. She would
17 dry off. As soon as she was dried off, she'd
18 immediately start putting whatever powder she
19 was going to be using that day onto her body.

20 Q When in your mom's post-shower
21 process did she put on the her makeup?

22 A It was always after the powder.

23 Q How did your mom apply the body
24 powder to her body?

25 A Same thing. It would be three or

1 four shakes and working from her neck all the
2 way down.

3 Q Would she be dressed when she did
4 this? Would she be in a towel?

5 A In the early years, Mom would be
6 still nude.

7 Q Okay.

8 A In the older years, mom would be in
9 her bra and underwear.

10 Q Was her post-shower routine the same
11 every single time you saw her getting ready
12 after her showers with your own two eyes
13 throughout the years?

14 A Yes.

15 Q And that routine would have been the
16 same -- strike that.

17 Would that routine have been the
18 same, regardless of whatever powder she was
19 using?

20 A Yes.

21 Q Could you describe the air to us when
22 she would apply that powder to herself?

23 A It was a big, cloudy haze in the
24 bathroom when she would put that on.

25 Q And when your mom would apply the

1 powder, would she shake it into her hand
2 directly, or would she ever shake it onto her
3 body or anything else? What was that process
4 like for her, given that she was a woman?

5 A It was, more times than not, into her
6 hand, putting three or four shakes into it. And
7 then she would work the powder all the way down.

8 Q Did any of the powders that you saw
9 your mom use with your own two eyes come with
10 poofs?

11 A Yes.

12 Q Did you ever see your mother applying
13 body powder to herself? I take it by your
14 smile, that's a yes.

15 A Yes.

16 Q Okay.

17 A Yes. She -- almost all of the
18 powders had poofs to them. And then depending
19 on how silly I was, I would be the recipient of
20 a, getting hit in the face or on the top of the
21 head with a poof as well.

22 Q Okay. Could you smell the powder
23 that your mom was applying to herself when she
24 would use it?

25 A Absolutely.

1 Q Now, you mentioned your dad earlier.
2 Did you ever with your own two eyes see your dad
3 apply powder to yourself -- to himself, aside
4 from the Old Spice situations you talked to us
5 about, post fishing?

6 A Not really, because my father would
7 be the first out the door. And so that would --
8 his, his morning routine was already over before
9 my mom and I would start our day.

10 Q Did you ever see any of your dad's
11 products in the bathroom?

12 A Absolutely.

13 Q Which ones -- well, strike that.
14 Which powders did you see in your
15 childhood bathrooms that you associate with your
16 father using?

17 A It would have been the Old Spice. It
18 would have been Avon Deep Woods, Avon Musk were
19 the ones that he used and that I would play
20 with.

21 Q Got it. I told you earlier we would
22 talk a little bit more about cleanup, and now's
23 that time, just to orient you. Your first
24 childhood home, the one with one bathroom that
25 had carpet in it -- you with me?

1 A Yes.

2 Q Okay. Did you ever have to clean
3 that bathroom?

4 A Yes. That was part of our weekly
5 duties that we'd have to do. Mom would pay us
6 money to make sure that we'd do our chores.

7 Q How would you clean that bathroom?

8 A Would we have to go in there, wipe
9 everything down, vacuum it. And that was, that
10 was really on a daily basis that we would have
11 this old torpedo, long Electrolux vacuum
12 cleaner. And we'd go in there and vacuum that
13 all up. And then at the end, you would have to
14 take the top of the canister off and pull out
15 this cloth bag. And then it had a little rope
16 on the bottom of it you punched through, and all
17 the product would fall down into the trash can.
18 And then you'd pull the cloth bag back up and
19 put it back in the vacuum cleaner. But when you
20 would do that, there would be this big haze of
21 dust and debris that was coming out of that bag.

22 Q And just to be fair, was this
23 something that you and your sister both did?

24 A I usually got stuck with the dirtier
25 jobs. My sister somehow always got the better

1 end of that deal. But I would do that, yeah.

2 Q She's a girl.

3 A Yeah.

4 Q Okay. How about your next childhood
5 home, the one that had -- take your time. I'll
6 get out my whole, my entire question, but take
7 your time drinking, okay?

8 Your next childhood home, the one
9 that had the two bathrooms; okay?

10 A Uh-huh.

11 Q Did you have to clean those
12 bathrooms?

13 A Yes.

14 Q Were either of those bathrooms
15 carpeted?

16 A Yes. Both of them were.

17 Q Okay. Was the process that you used
18 to clean those bathrooms the same as the one we
19 just talked about?

20 A Absolutely.

21 Q Okay. The next place you lived,
22 would that have been the sailboat or was there
23 another home?

24 A No. That would have been after I
25 moved out of the family house, then I was

1 sailing, and so that would have been the boat.

2 Q Okay. I hate -- I'm sure the
3 sailboat bathroom was a wonderful place, but --

4 A It was very small.

5 Q Okay. Very small bathroom on the
6 sailboat. Let me ask you this: Did you clean
7 up the bathroom on the sailboat?

8 A Absolutely.

9 Q Was it your own private bathroom, or
10 did you share it with a bunch of other dudes.

11 A No. It -- my bathroom on my boat was
12 mine.

13 Q Okay. Was it carpeted?

14 A No.

15 Q Okay. How would you clean that
16 sailboat bathroom?

17 A It was a rag, water, and if I had it,
18 some type of like Clorox products that kind of
19 helped with mildew.

20 Q Next place you lived after the
21 sailboat, that was the beach cottage on
22 Folly Beach?

23 A Yes.

24 Q How many bathrooms again?

25 A Just one.

1 Q Was it carpeted?

2 A No.

3 Q Did you clean that bathroom?

4 A Yes.

5 Q And was the process with which you
6 cleaned that bathroom the same as the one you
7 did on the sailboat?

8 A Yes.

9 Q Okay. And the next house we're up to
10 after that is the farm with Lonnie; right?

11 A That is correct.

12 Q How many bathrooms again?

13 A Two bathrooms.

14 Q Were either of them carpeted?

15 A No.

16 Q Did you clean both?

17 A I did.

18 Q Same process with which you cleaned
19 the bathroom on the sailboat and the Folly Beach
20 house?

21 A Yes.

22 Q Okay. In those bathrooms, did you
23 see any powder residue laying around?

24 A Absolutely.

25 Q Why do you say "absolutely"?

1 A Because it wasn't a clean process.
2 When I would use those products, it would settle
3 down all over everything. So in order to clean
4 it all up, I mean, it really was an entire
5 effort to clean everything because it just
6 didn't fall in one spot. It just drifted all
7 over. It would drift out into the house. And
8 you would see, as I said, footprints, as we'd
9 walked through the house, in white.

10 Q Was that the case for the powders
11 that your mother used as well?

12 A Yes.

13 Q All right. Let's shift gears here a
14 little bit. Now that we have the years in which
15 you used the powders nailed down and yours and
16 your mother's routines and cleanup all nailed
17 down, the next thing I want to talk with you
18 about is the frequency with which you used these
19 powders.

20 Are you with me?

21 A Yes.

22 Q Would you give us an estimate about
23 how frequently on a daily, weekly, monthly basis
24 you used a body powder in general?

25 DEFENSE COUNSEL: Objection; form.

1 THE WITNESS: Repeat that question,
2 please.

3 BY ATTORNEY GROSS:

4 Q Sure thing. Could you give us an
5 estimate about how frequently on a daily,
6 weekly, or monthly basis you used a body powder
7 in general? So I'm not tying you to a specific
8 type of powder for this question.

9 A I used --

10 DEFENSE COUNSEL: Objection; form.

11 BY ATTORNEY GROSS:

12 Q Go ahead.

13 A I used that product daily. I would
14 use it multiple times a day, every single day.

15 Q Perfect. Were there some weeks,
16 Michael, where you would use a certain brand
17 more than others or vice versa?

18 A It really depended on what my day was
19 going to be like. If I was just going to be out
20 on the farm, it was something that was more like
21 the Johnson & Johnson baby powder. If it was
22 something that I was going to be going out in
23 the professional arena, I would start off with
24 Johnson & Johnson baby powder; but then there
25 would also be one of my fragrance powders being

1 used as well.

2 Q If someone were to ask you exactly
3 how many bottles of a certain brand of powder
4 you bought in a year, would you ever be able to
5 do that?

6 A No.

7 DEFENSE COUNSEL: Objection; form.

8 BY ATTORNEY GROSS:

9 Q Why not?

10 A Because there were so many.

11 Q And this seems like a silly question,
12 but I have to ask it: When you used these
13 respective body powders, how close was the
14 powder to your face when you applied it to your
15 body?

16 DEFENSE COUNSEL: Objection; form.

17 THE WITNESS: I don't know that you
18 could distinguish it. It really was from
19 my head down, so, I mean, it just -- all
20 over (indicating) --

21 BY ATTORNEY GROSS:

22 Q Okay.

23 A -- I used it.

24 Q Couple of very quick questions -- I
25 just want to blow through these -- about where

1 you purchased these respective body powders.

2 A Okay.

3 Q So the states that I have you living
4 in are Illinois, Florida, and South Carolina; is
5 that correct?

6 A Correct.

7 Q All right. So let's start with
8 Illinois. We're going to go in chronological
9 order here. Where would you buy these
10 respective body powders in the state of
11 Illinois?

12 A It would have been either at the
13 grocery store, Walmart, or Walgreens.

14 (Discussion held off the stenographic
15 record.)

16 BY ATTORNEY GROSS:

17 Q Same question for Florida: Where
18 would you purchase your respective body powders
19 in Florida?

20 A It would have been --

21 DEFENSE COUNSEL: Objection; form.

22 BY ATTORNEY GROSS:

23 Q Go ahead.

24 A -- Walmart, Eckerd's Pharmacy, or the
25 grocery stores.

1 Q And, finally, South Carolina, where
2 would you have purchased your respective body
3 powders in the state of South Carolina?

4 A It would have been --

5 DEFENSE COUNSEL: Objection; form.

6 THE WITNESS: -- Walmart, Piggly
7 Wiggly, Food Lion, CVS Pharmacy.

8 BY ATTORNEY GROSS:

9 Q You mentioned Walgreens in Illinois.
10 Did you shop at Walgreens in either Florida or
11 South Carolina?

12 A Both.

13 Q Okay.

14 DEFENSE COUNSEL: Objection; form,
15 leading.

16 BY ATTORNEY GROSS:

17 Q Let's talk -- well, strike that. Let
18 me double-check one thing. I don't want to beat
19 you up on that. Hold on.

20 Does the name Rite Aid ring a bell?

21 A It does.

22 Q Did you ever shop at a Rite Aid store
23 in Illinois, Florida, or South Carolina?

24 A South Carolina and Florida.

25 DEFENSE COUNSEL: Objection; form,

1 leading.

2 BY ATTORNEY GROSS:

3 Q South Carolina and Florida?

4 A Yes.

5 Q Now, let's quickly do the same
6 exercise with your mother's use of powder. So,
7 again, based on what you saw your mother do with
8 your own two eyes, okay, could you give us an
9 estimate about how frequently on a daily,
10 weekly, or monthly basis your mother applied
11 body powder while you were with her in the
12 bathroom?

13 A How frequent she would apply powder?

14 Q Yes. While you were in the bathroom
15 with her.

16 A It was every time.

17 Q Okay. And just so we're clear, when
18 you say "every time," you told us earlier that
19 in your first childhood home, when you had one
20 bathroom, you would be with your mother in the
21 bathroom when she got ready every day; correct?

22 A Every day.

23 Q And then when you got older in your
24 second childhood home, you would be with her
25 when she got ready in the bathroom about five

1 days a week, Monday through Friday, correct?

2 A That is correct.

3 Q Okay. Do you ever remember if your
4 mother used certain body powders more than
5 others or vice versa?

6 A Yes.

7 Q Tell us a little bit about that.

8 A Mom's always go-to powder was the
9 Johnson & Johnson baby powder and the Shower to
10 Shower. Depending on what her day was going to
11 comprise, very similar to how mine was, she
12 would choose what fragrant powder she was going
13 to put on as well.

14 So her favorite was the Cotillion,
15 Birds of Paradise, Chanel, I would say would
16 probably be her top three, because I remember
17 smelling them so much. But the Johnson &
18 Johnson products were always her go-to, no
19 matter what was going to be on her body.

20 Q Do you associate again with what you
21 saw with your own two eyes any of the powders
22 that your mother used as ones she would use when
23 she went to work?

24 A Chanel would be the one that -- that
25 was her power fragrance. So she would use that

1 when she was going to be going to work.

2 Q Where does the -- one of the powders
3 you mentioned earlier was Cashmere Bouquet.
4 Where does that fall in terms of how frequently
5 your mother used it?

6 A Mom would use that --

7 DEFENSE COUNSEL: Objection; form.

8 BY ATTORNEY GROSS:

9 Q Go ahead.

10 A Mom would use that one after she
11 would come home from work and shower. But that
12 would be on her body, you know, just in the
13 house or if she was going to be out and about.
14 It would be a less-formal occasion that she
15 would have the, that product on.

16 Q Got it. If someone were to ask you
17 to put some kind of exact number of bottles per
18 year your mother bought of any of her powders,
19 would you ever be able to do that?

20 A I could not.

21 Q Why not?

22 A Because there were so many of them.
23 There was too many to count.

24 Q Do you know where your mom bought any
25 of her powders?

1 A From Avon.

2 Q Okay. What about the powders that
3 were not Avon; do you know where she bought any
4 of those?

5 A Either they came to her as gifts or
6 she'd buy them at the Walmart or the grocery
7 store or the pharmacy.

8 Q Did you ever go with your mother when
9 she would purchase any of these powders she
10 used?

11 A Yes. So part of our weekly
12 responsibilities was to help Mom at the grocery
13 store. And so I would watch Mom either pull
14 those products off the shelf itself, or I would
15 go and get them and put them in the cart.

16 Q If someone were to ask you which
17 products that your mom used you have a specific
18 recollection of picking up a bottle and putting
19 that in the cart, would you ever be able to do
20 that?

21 A I could.

22 Q Okay. Tell us which ones.

23 A The Johnson & Johnson baby powder,
24 Johnson & Johnson Shower to Shower --

25 Q Uh-huh.

1 A -- would be the two that I would
2 specifically pull off the cart. If -- in my
3 later years, Gold Bond. Mom did not like the
4 idea sometimes that I spent my own money, so she
5 would spring for something like that. So the
6 Gold Bond or making sure that I had Johnson &
7 Johnson products.

8 Q All right. Shifting gears again.

9 A Okay.

10 Q All right. This is probably the
11 last -- no. I lied. Ignore that last part.
12 Anytime a lawyer says it's their last question
13 or the last section, they're lying. So I just
14 did it myself.

15 Let me talk to you a little bit more
16 in detail about the products you used; okay?
17 Let's start with Johnson's baby powder. You've
18 already told us that that was one of the powders
19 you remember using basically your entire life;
20 is that correct?

21 A That's correct.

22 Q What do you remember about Johnson's
23 baby powder and why you used it?

24 A Johnson & Johnson was -- we were --
25 first off, we were a very, very brand-loyal

1 family. And Johnson & Johnson, we were -- that
2 was a family brand. We always used it. We all
3 touched it. We all trusted it. And that's
4 what -- you know, that was part of our culture.
5 That was my culture clear up until 2019, was
6 using these products.

7 DEFENSE COUNSEL: Objection;
8 nonresponsive.

9 BY ATTORNEY GROSS:

10 Q Okay. So this is -- you and your
11 family were very brand-loyal to Johnson's baby
12 powder. You've already told us some ways you
13 would have use it. For example, you used it
14 when you would play sports; right?

15 A That's correct.

16 Q Okay. What are some other ways that
17 you remember using Johnson's baby powder? And
18 why did you use them for that reason?

19 A Other reasons of using Johnson &
20 Johnson.

21 Q Uh-huh.

22 A It really was --

23 Q It's a hard question.

24 A If I was on the sailboat and I had to
25 jump into the engine room, I would put the talc

1 onto my hands because I needed to have dry hands
2 as I was working on the different parts of the
3 motor. I would have it on my face. I was
4 trying to keep the moisture from coming down
5 into my eyes. And so I would smear this all
6 over my face, all over my hands so I would have
7 dry hands while I was working on the engine or
8 anything that had electronics that I needed to
9 stay dry for.

10 Q You told us when we first started
11 talking that you were allergic to deodorant;
12 right?

13 A I am.

14 Q Was Johnson's baby powder one of the
15 powders you used to stay fresh --

16 A It was.

17 Q -- because you were allergic to
18 deodorant?

19 A It was.

20 Q Okay. Would you also use Johnson's
21 baby powder when you were out on the farm with
22 Lonnie?

23 A I would.

24 Q Tell us a little bit about that.

25 A So when we would go out and work with

1 cows, the horses, the chickens, the goats, the
2 whole herd of our menagerie, they -- you know,
3 that was just part of trying to -- South
4 Carolina in June, July is incredibly, incredibly
5 hot. So trying to stay fresh was very
6 difficult. And the Johnson & Johnson products,
7 the Equate products was part of our culture on a
8 multiple-day -- a multi-day routine.

9 Q Let me ask you about Equate, because
10 you just brought it up. What do you remember --
11 well, strike that.

12 You told us earlier that Lonnie was
13 using Equate, and that's how you first became
14 accustomed to using it; correct?

15 A That's correct.

16 Q Okay. So given that -- tell us what
17 you remember about Equate and why you continued
18 to use it.

19 A Equate was just one of those products
20 that Lonnie -- I love Lonnie to death. I
21 absolutely love him to death, but sometimes he
22 could be the cheapest guy in the world. So he
23 would not splurge on the Johnson & Johnson
24 product. He would just splurge on Equate
25 because it just came down to simple economics.

1 He just would not spend that money.

2 Q And did you use -- strike that.

3 I should have asked you this earlier,
4 and I forgot. Were you ever around Lonnie when
5 he would apply powder?

6 A Absolutely.

7 Q Okay. Tell us a little bit about
8 that.

9 A Lonnie and I, as a married couple or
10 as a living couple, cohabitating couple, we
11 would shower together. And we would dry off,
12 dry off each other, and then we would apply the
13 powders to each other or separately. But that
14 was part of our intimate process. We would just
15 take showers together. It was so much easier.

16 Q What powders do you remember Lonnie
17 applying to himself while you were around him?

18 A Certainly Equate, Johnson & Johnson,
19 and any of the fragrant powders that I used.

20 Q So you guys would intermingle your
21 products?

22 A Yes. Absolutely.

23 Q Which of your -- what did you call it
24 earlier? You used a specific -- your vanity
25 products?

1 A My vanity products.

2 Q Your vanity products. Okay. Which
3 of your vanity products did Lonnie apply to
4 himself while you were around?

5 A Occasionally -- it was very, very
6 occasional. It would be the Ralph Lauren.

7 Q Did he not like any of the other
8 smells?

9 A Lonnie, Lonnie, as long as I've known
10 Lonnie, he has never put on cologne. Lonnie,
11 you get what you get with him, and he is what he
12 is. I love him to death. But if you, if you
13 didn't like how he smelled, he really didn't
14 care.

15 Q Did Lonnie feel one way or the other
16 about your Clubman powder?

17 A Yes. So --

18 DEFENSE COUNSEL: Objection; form.

19 THE WITNESS: -- Lonnie and I,
20 because of my use with Clubman clear back
21 to when I was a small child and going to
22 the barbershop with my father, the -- if I
23 may just veer off for a second, the barber
24 would utilize --

25 BY ATTORNEY GROSS:

1 Q I'm going to ask you about that. So
2 just for now, let me re-ask the question just so
3 it's clean.

4 A Okay.

5 Q How did Lonnie feel about your
6 Clubman powder?

7 A He loved it.

8 DEFENSE COUNSEL: Objection; form.

9 THE WITNESS: And we would have
10 plenty of Clubman in the house that we
11 would use.

12 DEFENSE COUNSEL: Objection;
13 nonresponsive.

14 BY ATTORNEY GROSS:

15 Q So let me stick with Clubman for a
16 minute. What do you remember about Clubman and
17 why you used it?

18 DEFENSE COUNSEL: Objection; form.

19 THE WITNESS: Clubman I remember
20 clear as a small child when my father was
21 taking me to the barbershop. And it was
22 always a joy. We'd go there every couple
23 weeks. And at the very, very end of my
24 haircuts, the barber, because I was on the
25 big-boy seat in the chair, the barber

1 would reach around me and I'd be in the
2 middle. And he would have this horsehair
3 brush and the wooden handle. And he would
4 shake the Clubman down into the horsehair
5 brush and then wiggle it a little bit.
6 And then he would start wiping Clubman all
7 over me, down my neck and so forth.

8 And that's how I've always remembered
9 that fond memory of the showmanship of the
10 barber, that he -- how he took time to
11 wipe me off. I dealt with that product --
12 not dealt with it, but I used that product
13 clear up until 2019. And then I stopped
14 using that product abruptly.

15 DEFENSE COUNSEL: Objection;
16 nonresponsive.

17 BY ATTORNEY GROSS:

18 Q What other ways, aside from the
19 barber, would you use Clubman?

20 A What other ways?

21 Q Yeah.

22 A I'd use it all over my body. Shake
23 it three or four shakes. Always up here in this
24 area, down my torso, underneath my armpits. I
25 loved the smell, the fragrance of Clubman.

1 Q Was Clubman a powder that you had
2 during the years when you were on the sailboat?

3 A Yes. Clubman has also been a
4 Christmas gift that I was -- it was always -- I
5 always had Clubman. I think it's a very, very
6 masculine, macho-smelling powder.

7 Q Is that why Lonnie likes it?

8 A Yes.

9 Q How about Gold Bond; what do you
10 remember -- we've touched on the Gold Bond, that
11 you used it in your shoes. But what do you
12 remember about Gold Bond and why you used it?

13 A Well, I remember Gold Bond being --
14 you know, it's just a product that we could, we
15 could use readily. I used it in my shoes. It
16 was a source of a lot of fights with shooting
17 Gold Bond at each other, over the top of your
18 head because I'm sailing with all these guys and
19 so when we would all be together; it was like
20 sometimes like a big fraternity. And it wasn't
21 uncommon for someone to get a big glob of Gold
22 Bond right in the middle of their head just
23 being a brunch of frat boys.

24 Q Did you ever use Gold Bond for any
25 reason other than in your shoes?

1 A I've used it on my hands. It really
2 depended on -- if I had to get into the engine
3 room, what product did I have that I could get
4 my hands dry and my face dry? And so sometimes
5 it was that Gold Bond.

6 Q And for the years in which you were
7 using Gold Bond in your shoes -- are you with me
8 so far?

9 A Years?

10 Q No. No, no, no, no. I'm just
11 orienting you where I'm going; okay?

12 A Okay.

13 Q So in the years in which you used
14 Gold Bond in your shoes, how close would your
15 face be when you would put that powder into your
16 shoes?

17 A I would just say, you know, a couple
18 feet.

19 Q Okay. Could you still see --

20 A Absolutely.

21 Q -- the powder in the air?

22 A Absolutely.

23 Q Did you breathe it when you'd use the
24 Gold Bond in your shoes?

25 A Absolutely.

1 Q Okay. So you could smell the Gold
2 Bond when you put it in your shoes, right?

3 A Absolutely.

4 Q How about Old Spice? I know this one
5 is a little bit different, and you've talked to
6 us a little bit about it. But what do you
7 remember about Old Spice and why you used it?

8 A Old Spice really came back to trying
9 to emulate my father and his masculinity. It
10 was something that we shared together. It's
11 certainly not a fragrance that was one of my top
12 favorites. But it was always a fond memory of
13 the times my dad and I spent together.

14 Q How about Ammens? You told us
15 earlier that is a medicated powder; correct?

16 A Correct.

17 Q What do you remember about Ammens and
18 why you used it?

19 A Well, Ammens took care of some
20 nuisances when I was on the sailboat, being the
21 jock itch or the chafing that I would get from
22 being in wet suits all the time.

23 Q Was Ammens a powder that you and
24 Lonnie would have used on the farm as well?

25 A Absolutely.

1 Q Tell us a little bit about that.

2 A Because of the environment that we
3 were in, it wasn't uncommon for one of us or
4 both of us to always have some type of chafing
5 or bacteria growth in our groin area, so the
6 jock itch, so we would use that product just to
7 try to medicate that. But I would use it -- I
8 used it more down in Florida and South Carolina
9 than I did anywhere else.

10 Q Let's shift gears a little bit, talk
11 about your vanity powders --

12 A Okay.

13 Q -- vanity scents; okay? Let's start
14 with Ralph Lauren. What do you remember about
15 Ralph Lauren and why you used it?

16 A Ralph Lauren was to me another one of
17 my, my go-tos. It was my favorite. I am a
18 lifelong fan of Ralph Lauren. Everything I wear
19 is Ralph Lauren. But it would be my, almost my
20 number 1 go-to. If I was going to be going out
21 and about, I wanted to have that fragrance on
22 me.

23 Q And I should have asked you this
24 earlier, so it's a little bit unorganized. But
25 your vanity powder, so Ralph Lauren, Drakkar

1 Noir, Obsession -- and we'll lump Stetson in for
2 the purposes of the question; okay?

3 A Okay.

4 Q If somebody were to ask you how many
5 bottles of one you would purchase and use versus
6 the other -- or would you ever be able to do
7 that?

8 A I could not.

9 Q Tell us a little bit about why not.

10 A Because I used them so liberally on
11 my body so often that I couldn't -- I couldn't
12 begin to tell how many I bought. It was several
13 several.

14 Q Would you use all those scents at the
15 same time?

16 A No.

17 Q Okay.

18 A So I was on a rotation. This was
19 something I learned from my mother. That was
20 part of our process, our culture, where today
21 being Tuesday, it may be Drakkar. Tomorrow
22 could be Ralph Lauren or Obsession. It's, it's
23 just really -- and they were constantly on a
24 rotating. So I enjoy variety in my life, so I
25 would never wear the same scent day after day.

1 Q So for these vanity fragrances, would
2 you own bottles of powder of all of them at the
3 same time?

4 A Yes.

5 Q Let me talk to you a little bit about
6 Drakkar Noir. What do you remember about
7 Drakkar Noir and why you used it?

8 A I thought that the fragrance of it
9 was absolutely captivating, and I loved it very
10 much. I did enjoy wearing it. But that would
11 probably be my number 2 go-to.

12 Q After the Ralph Lauren?

13 A Yes.

14 Q What about the Calvin Klein
15 Obsession? What do you remember about Obsession
16 and why you used it. Take your time. There's
17 no rush.

18 A The Obsession was one of those
19 products I absolutely loved what it smelled
20 like. But that would probably end up in my
21 shoes with the Gold Bond as well. It wasn't a
22 product that was -- it certainly wasn't one of
23 my favorites, but it would be number 3 on my
24 list.

25 Q Okay. And I know the Stetson is a

1 little bit different. Is the only time you used
2 Stetson when you got it as a gift?

3 A Yes.

4 Q Would that have been one of your
5 vanity powders that was part of your rotation
6 when you owned it?

7 A It would. It still would, yeah.

8 Q I want to shift gears, talk to you a
9 little bit about your mother in a similar
10 exercise. I think we all know the answer to
11 this question at this point. But were you and
12 your mother close when you were young?

13 A I can't imagine a closer relationship
14 than I had with my mother with anybody. My
15 mother was pretty much everything to me. Loved
16 her to death. I didn't, I didn't hide anything
17 from her. She could read me like a book, and I
18 could tell and see when my mom --

19 Q Okay.

20 A -- was in pain. She would share.
21 And so, yeah, I can't -- just can't imagine a
22 closer relationship.

23 Q Let me mark as Exhibit 7 this
24 photograph. I love it. You know which one I'm
25 going to show.

1 A Yeah.

2 Q Obviously, it has a pony in it.

3 (Exhibit PX 7 was marked for
4 identification.)

5 ATTORNEY GROSS: Everybody see this
6 photo?

7 BY ATTORNEY GROSS:

8 Q Can you see it?

9 A Yes.

10 Q Okay. Tell us who this is in this
11 picture.

12 A That is me on Kiss Me I'm Irish, and
13 that was my mom standing right next to her.

14 Q Did you and your mom stay close as
15 you got older?

16 A Oh, absolutely. Mom and I talked
17 every single day. And, you know, Mom would
18 always -- like I said, we'd hold court in the
19 bathroom; but when there was miles between us,
20 no matter where I was at, Mom and I talked every
21 single day. And there was never a subject that
22 we wouldn't touch.

23 Q Once you grew up and left home, would
24 you ever go back to visit her?

25 A Absolutely.

1 Q How often?

2 A Every month.

3 Q In those times when you would go back
4 to visit her, was she still using her body
5 powders?

6 A She was.

7 Q How do you know?

8 A I could smell them.

9 Q Did you ever see her apply them with
10 your own two eyes when you would go back home to
11 visit her?

12 A Absolutely.

13 Q And the process that she did that was
14 exactly the same?

15 A Exactly the same.

16 Q Once you moved to South Carolina, did
17 she ever travel to visit you?

18 A She did.

19 Q When she came to visit you in
20 South Carolina, would she bring her toiletries
21 with her?

22 A Yes, she did.

23 Q Were any of those toiletries her body
24 powders?

25 A Yes, they were.

1 Q Did you ever see her apply any of her
2 body powders around you when she came to visit
3 you in South Carolina?

4 A Yes.

5 Q Okay. Let's talk about those for a
6 couple minutes here; okay? Which of your
7 mother's powders do you remember her applying to
8 herself around you in South Carolina?

9 A Would have been Birds of Paradise,
10 her Chanel, Cotillion, Cashmere Bouquet.

11 Q Did you ever remember seeing her use
12 Shower to Shower or Johnson's baby powder when
13 she would come to visit you?

14 A Absolutely. Both of them.

15 Q Would she bring her -- if it was a
16 product that you-all both used, would she bring
17 her own powder or would she use yours?

18 A She would still bring her own.

19 Q Where would you be -- well, strike
20 that.

21 Where would your mother apply body
22 powders to herself when she would come visit you
23 in South Carolina?

24 A She would do it in the bathroom.

25 Q Would you sit with her in the

1 bathroom still?

2 A Still, yeah. I'd still stand in the
3 doorway, and we'd talk.

4 Q Did she have her own bathroom when
5 she would come visit you?

6 A Yes. She had her, she had an
7 en suite bathroom.

8 Q Oh, that's very nice. Okay. Once
9 she left, would you clean up her bathroom.

10 A I would.

11 Q When she applied the body powder to
12 herself in South Carolina, would you see that
13 same cloudy haze you told us about earlier?

14 A Absolutely.

15 Q Could you smell your mother's
16 powders?

17 A Absolutely.

18 Q Were there any powders that your mom
19 used when she came to visit you that you didn't
20 necessarily see her apply to herself but you
21 could smell them?

22 A Yes.

23 Q Which ones?

24 A It would have been the Birds of
25 Paradise and the Chanel No. 5 and the Cotillion.

1 Q Okay. So let me, let me try this in
2 a different way that might make it easier. You
3 said just now you could smell the Chanel No. 5
4 when your mom used it; right?

5 A Right.

6 Q Pretty strong smell; right? Did it
7 have a pretty strong smell?

8 A Yes.

9 Q Did you like it?

10 A It was Mom's power; scent, so
11 whatever mom wanted, mom got.

12 Q You had to respect it.
13 Did you ever see her apply Chanel
14 No. 5 powder to herself when she would visit you
15 in South Carolina?

16 A Yes.

17 Q Okay. You mentioned Birds of
18 Paradise and Cotillion you could smell. Could
19 you ever, did you ever see her apply either of
20 those powders to herself in South Carolina?

21 A Yes.

22 Q Okay. Cashmere Bouquet you mentioned
23 earlier as well. Could you smell the Cashmere
24 Bouquet when your mom used it in South Carolina?

25 DEFENSE COUNSEL: Form.

1 THE WITNESS: Yes.

2 BY ATTORNEY GROSS:

3 Q Did you ever see her apply Cashmere
4 Bouquet powder to herself around you in the
5 state of South Carolina?

6 A Yes.

7 Q Okay. Same question for Shower to
8 Shower and Johnson's Baby Powder.

9 A Yes.

10 Q Okay. Could you smell when your
11 mother used those when she visited you?

12 A Absolutely.

13 Q Did you see her apply both of those
14 in South Carolina?

15 A Yes, I did.

16 Q Okay. So the one that we did not
17 mention -- and I just, to be fair -- was White
18 Linen. That was the one that you said your mom
19 only got as a gift; right?

20 A Correct.

21 Q So would that have been a powder that
22 you saw her use in South Carolina?

23 A No.

24 Q Okay. And then the one thing I
25 wanted to ask you about, the other Avon powders

1 you told us about earlier, did you ever see your
2 mother use Skin So Soft when she would visit you
3 in South Carolina?

4 A Absolutely.

5 Q Okay.

6 DEFENSE COUNSEL: Object to form.

7 BY ATTORNEY GROSS:

8 Q Some question for Topaz.

9 A Not in South Carolina.

10 Q Okay. How old were you when you
11 learned how to read?

12 A Five years old.

13 Q These powders that your mother
14 used --

15 A Uh-huh.

16 Q -- how do you know they were what
17 you're testifying to today?

18 A Because I sat next to my mother on
19 the couch when Avon would come over, introduce
20 these different products. So when -- and I
21 remember this so vividly -- when the Birds of
22 Paradise arrived and I would ask mom -- because
23 it's such a colorful carton and box -- and I
24 asked her what that was. She goes "That's my
25 Birds of Paradise."

1 And she did that with all of her
2 other ones. And I would always smell them. And
3 so I always associated smell and picture with
4 the name.

5 Q Could you read the names of the
6 products on the bottles?

7 A In time, I could.

8 Q Okay. When you would stand in the
9 doorway or sit on the toilet when your mom would
10 apply those powders in the state of South
11 Carolina when she would visit you, how close
12 would you be to her?

13 A Just a couple of feet away.

14 Q Could you still reach out and touch
15 her?

16 A I could.

17 Q We talked a little bit about why your
18 mother used Chanel No. 5. She called it her
19 power scent; right?

20 A Uh-huh.

21 Q Tell us a little bit more about why
22 your mother used Chanel No. 5.

23 A Going back to when she was still
24 working, she was in a male-dominated industry.
25 And many of her male counterparts that she

1 trained would get promoted faster up the
2 corporate ladder than her. And she always felt
3 like she was being -- I don't want to use the
4 word "discriminated," but I'll use it --
5 discriminated against because of gender.

6 So in the 1980s, when she started
7 using the Chanel product, she called that her
8 power scent because she'd get so many comments
9 from her male counterparts on how good she
10 smelled.

11 Q Hmm.

12 A And so therefore, she dubbed that her
13 power scent because she was able to torment the
14 boys a little bit. And she enjoyed that.

15 Q Do you know why your mother used
16 Avon?

17 A Avon was a product that was
18 relatively inexpensive. She used it from the
19 1970s clear up until, you know, when she stopped
20 using it altogether. But that was always a
21 go-to because of the price.

22 Q Do you know why your mother used
23 Cashmere Bouquet?

24 A Cashmere Bouquet was because it's
25 such a pretty boutique -- or not boutique --

1 botanical smell to it.

2 Q Do you know why she used Johnson's
3 Baby Powder?

4 A Johnson's Baby Shower -- or Baby
5 Powder was a family staple. It was. We were,
6 we were --

7 (Interruption.)

8 Q It's okay. Go ahead.

9 A We were such a brand-loyal family
10 that we used that. We trusted it. We trusted
11 it. And that just -- yeah.

12 Q What about Shower to Shower?

13 A Mom used Shower to Shower on me as a
14 young person. If I didn't have any Johnson's
15 Baby Powder, I'd use Shower to Shower, whatever
16 was in the bathroom.

17 Q I may come back and ask you some
18 talc-oriented question that I've forgotten,
19 which is likely. But for now I want to totally
20 shift gears here; okay?

21 A Okay.

22 Q I want to talk to you a little bit
23 about brake work that you did.

24 A Okay.

25 Q So I know we haven't been back that

1 long, but given that we're going to shift topic,
2 do you need to take another five-minute break or
3 are you good?

4 A I'm good.

5 Q Okay. Let's keep going. So let's
6 talk about brakes.

7 We have this -- you signed an
8 affidavit.

9 A I did.

10 Q You did; okay. Did you -- I have a
11 copy I can give to you.

12 ATTORNEY GROSS: We'll mark it, just
13 for the record, since he's going to have
14 it in front of him, as Exhibit 8.

15 (Exhibit PX 8 was marked for
16 identification.)

17 DEFENSE COUNSEL: Rachel, this is
18 Kevin Greene. Can I just register a
19 continuing objection to the affidavit
20 exhibit?

21 ATTORNEY GROSS: Sure.

22 On what basis, just out of curiosity?
23 It's a sworn affidavit.

24 DEFENSE COUNSEL: I appreciate that.
25 Depending on how you may want to use this

1 in the future, it could be hearsay.

2 ATTORNEY GROSS: Okay. That's fine.

3 BY ATTORNEY GROSS:

4 Q Just leave it there for new. We're
5 going to mark it Exhibit 8. But let me ask you
6 this question: Is brake work one of the ways in
7 which you believe you were exposed to asbestos?

8 A Yes.

9 DEFENSE COUNSEL: Object to form.

10 BY ATTORNEY GROSS:

11 Q Okay. Why did you work on cars for
12 these few years going up?

13 A So as a driver, I had access to two
14 absolutely horrible piece-of-junk cars. One was
15 a 1979 Honda Accord. It had front disc brakes
16 and rear drum brakes. I also had access to a
17 1976 Chevy pickup truck that had front disc
18 brakes and rear drum brakes.

19 I could run through that set of shoes
20 or disc brakes faster than anybody. They would
21 shear off, break.

22 It was always something that my
23 father would make me learn how to do. I think
24 his hopes was that I would be a better driver.
25 But it didn't work. But I was constantly

1 changing brakes on those two vehicles.

2 Q Did you like working on those cars?

3 A I hated working on those two cars.

4 It was one of my missions in life that if I had
5 anything, I want to have a good job so I can
6 have a nice car so I'd never have to changes
7 brakes on my car.

8 Q Got you. Okay. Did you do any brake
9 changes other than the two cars that you owned
10 growing up?

11 A No.

12 Q And tell me just one more time -- I
13 forgot to write it down. Tell us one more time
14 what were the two family cars you did the brake
15 work on.

16 A It was a 1979 Honda Accord and a 1976
17 Chevy pickup truck.

18 Q And did both the pickup and the
19 Accord have disc brakes in the front and drum in
20 the back?

21 A Yes.

22 Q Big-picture question: When you and
23 your dad -- well, strike that.

24 Did you and your dad do these brake
25 changes together?

1 A Yes, we did.

2 Q When you-all did these brake changes,
3 did you do them outside, indoors, or both?

4 A Both.

5 Q Tell us a little bit about that.

6 A We would pull the car or the truck up
7 to the front of the garage if the weather was
8 nice. We would jack it up, pull the tire off
9 and then take the -- you know, if the front of
10 the car or the back of the car, start taking
11 them apart.

12 If it was a wintertime, we'd pull the
13 car into the garage, shut the garage door. And
14 my dad had this kerosene torpedo that would heat
15 up the garage so we could do it in the garage.

16 Q In your affidavit you noted that the
17 years in which you remember doing brake-change
18 work with your father was 1984 to 1987; is that
19 correct?

20 A That's correct.

21 Q Is that the only period of time in
22 your life that you did work on cars?

23 A That's correct.

24 Q Did you change both the disc and drum
25 brakes?

1 A I did.

2 Q Can you explain to us the difference
3 between a brake change on disc brake and a brake
4 change on a drum brake.

5 A Well, the disc brake had two pads
6 that went on each side of the rotor. The
7 caliper would push in and make the -- start
8 braking the car.

9 The drum brake had a big spring in
10 the back. When you'd hit that, it would push
11 the, push the drum itself up -- or the brake up
12 against the drum itself and slow the car down.

13 Q What part of the drum brake is the
14 part that wears out and needs to be changed when
15 you're doing brake changes?

16 A The shoe.

17 Q How many shoes were there in each
18 drum brake?

19 A Two -- or one. But I'd buy them in a
20 set of two.

21 Q Okay.

22 A Excuse me.

23 Q Were there two drum brakes -- so each
24 time you're removing a brake on one -- strike
25 that.

1 So if you're changing -- would you
2 change both back brakes on each car at the same
3 time?

4 A Yes, absolutely.

5 Q Okay. So were you doing four brake
6 shoes in total on each brake change?

7 A No. If the front was fine, I didn't
8 mess with the front. If it was just the rear,
9 just to take care of the rear.

10 Q Okay. So if you were doing a rear
11 brake change, you were removing two brake shoes
12 each time; right?

13 A Yes. Uh-huh.

14 Q Did you ever change two shoes in one
15 drum brake?

16 A Repeat.

17 Q Yeah. Did you ever change two shoes
18 in one drum brake?

19 A Yes.

20 Q You did; okay. So in that instance
21 you would be removing the four brake shoes
22 rather than the two?

23 A Yes.

24 Q Got it. That math I can do. But
25 that's it.

1 What brands of brakes do you remember
2 your dad using?

3 A Bendix and NAPA, Rayloc.

4 Q If somebody were to ask you could you
5 estimate -- well, strike that.

6 If somebody were to ask you did you
7 use Bendix more than Rayloc or vice versa, would
8 you ever be able to do that?

9 A I couldn't. And the reason why is
10 because it -- it would -- always came down to
11 simple economics. Whatever's cheaper is what I
12 bought.

13 Q Do you think it was 50/50?

14 A I do.

15 Q When you-all took the brake shoes off
16 the drum brake -- you with me?

17 A Yes.

18 Q -- what was left behind in the drum?

19 A It was always this black residue.
20 Then I would take -- we had an air compressor in
21 the garage that had air tools. And so either I
22 would blow it out with my mouth or use the
23 compressor and blow it out that way.

24 Q And when you say "residue," I want to
25 be real clear about what you mean by that

1 because you're talking about using compressed
2 air or blowing it off with your mouth. What do
3 you mean by "residue"?

4 A It was byproducts of the shoe itself
5 as it disintegrated from use.

6 Q When you would either blow that out
7 with your mouth or the compressed air, what did
8 the air look like around you when you did that?

9 A It would be a haze.

10 Q A haze of what?

11 A Of that residue. So it would be the
12 dark-color cloud.

13 Q Was it dust?

14 A Yes.

15 Q Okay. Did you ever have to do any
16 sanding on the brake shoes?

17 A Yes --

18 DEFENSE COUNSEL: Object to form.

19 BY ATTORNEY GROSS:

20 Q It's okay. Go ahead.

21 A On the shoe itself we would have to
22 use this small little grinder from the
23 compressor. And so I would just go ahead and
24 shave off a little bit so it would fit into
25 there properly.

1 Q So we all know a brake change works.
2 But for somebody who may be watching this who
3 doesn't, when in the brake change process would
4 you use the little grinder to sand the brake
5 shoes?

6 A It's as I'm trying to put the shoe
7 into place into the drum.

8 Q So it's during the installation of a
9 new shoe?

10 A Yes, absolutely.

11 Q Got it. Did you see anything in the
12 air around you when you would sand the new brake
13 shoe to install it?

14 DEFENSE COUNSEL: Object to form.

15 THE WITNESS: Yeah. It would still
16 be, it would still be a haze.

17 BY ATTORNEY GROSS:

18 Q When you're either removing the old
19 brakes or installing the new brakes, did you
20 breathe that dust?

21 A Absolutely.

22 Q You'd breathe that haze?

23 DEFENSE COUNSEL: Objection to form.

24 THE WITNESS: I did.

25 BY ATTORNEY GROSS:

1 Q Never held your breath when you were
2 doing any brake work?

3 A It was impossible.

4 THE VIDEOGRAPHER: Five minutes left
5 on this media.

6 ATTORNEY GROSS: Okay. Let's just
7 take a quick break so we can change -- off
8 the record.

9 THE VIDEOGRAPHER: This is the end of
10 media one in the deposition of Michael
11 Perry. We are off the record at 12:13.

12 (Recess.)

13 THE VIDEOGRAPHER: This is the
14 beginning of media two in the deposition
15 of Michael Perry. We are back on the
16 record at 12:29.

17 BY ATTORNEY GROSS:

18 Q Okay. Back from a quick break.

19 A Yes. Thank you.

20 Q Yeah, of course. Before we took our
21 break, the last thing we were talking about was
22 your brake work and if you held your breath
23 doing any brake work. Do you remember that?

24 A Correct. Yes.

25 Q Okay. Now I want to ask you a little

1 bit of a different question. From start to
2 finish, on average, how long did a brake job
3 take when you would do a drum brake with your
4 dad?

5 A It -- I'm smiling because it really
6 depends on how much fighting was done. I
7 absolutely hated changing brakes on those
8 vehicles. And my father would walk away from
9 arguments and just let me stew and flounder
10 there before I would have the courage to tell
11 him that I'm ready to shut up and just do it his
12 way.

13 Q Okay. So taking into account the
14 family theatrics -- which I understand; I have a
15 brother and a father as well -- how long would
16 you say, on average, it took you-all to do your
17 typical brake change on a drum brake?

18 A Certainly over a couple hours.

19 Q And would that have been for both
20 brakes together?

21 A Yeah.

22 Q Okay. Given what you told us about
23 those two cars and the condition in which they
24 were running in, how many brake jobs would you
25 say you and your father did in this time period

1 of 1984 to 1987?

2 A Many dozen.

3 Q Many dozens?

4 A Yes. I could shear off a brake or
5 brake shoe very easy in that Honda, just by
6 hitting the brakes. And as my dad would yell at
7 me because I would wait too late to start
8 braking and just slam on the brakes, and it
9 would shear them off.

10 Q Are you able to estimate how many
11 discs versus drum brake changes you did during
12 those four years?

13 A It was 50/50.

14 Q Did you have to changes the drum
15 brakes more than the disc brakes or vice versa?

16 A It was really 50/50.

17 Q Perfect. Did you ever have to do any
18 other work on those two cars in addition to the
19 brake work?

20 A Yeah. Both cars needed engine work.
21 And so when I was in high school and learning
22 about the mechanical arts, that was my dad's
23 opportunity to have me break down the engine and
24 change the head gasket on both those vehicles as
25 well. So removing the head gasket was part of

1 that process.

2 Q How many times did you remove the
3 head gasket on each car?

4 A Once.

5 Q So you only removed two head gaskets
6 in your entire life; true?

7 A True. Correct. True.

8 Q Got it. Do you remember where your
9 dad -- you and your father would purchase
10 you-all's brakes?

11 A It would either come from AutoZone or
12 NAPA.

13 Q How did you decide between one or the
14 other?

15 A It really came down to cost.

16 Q If somebody were to ask you if you
17 could estimate if you purchased brakes more at
18 AutoZone or NAPA or vice versa, would you ever
19 be able to do that?

20 A No.

21 Q Couple very quick questions, and then
22 we'll go done with brakes; okay?

23 A Okay.

24 Q Did you ever look at the brake boxes
25 when you would be installing the new ones?

1 A I would.

2 Q Do you ever recall seeing any kind of
3 warning or caution about asbestos being in the
4 brakes?

5 A I do not.

6 Q Do you ever recall seeing any kind of
7 warning or caution about asbestos being
8 hazardous to your health?

9 A No, I do not.

10 Q Do you ever recall seeing the word
11 "cancer" on any boxes of brakes you ever
12 installed?

13 A I do not.

14 Q And, of course, if you were
15 installing the brakes and removing brakes
16 before, were those the brakes that you-all had
17 installed the week prior or whatever, whenever
18 they sheared off, you said?

19 A Yes.

20 DEFENSE COUNSEL: Object to form.

21 BY ATTORNEY GROSS:

22 Q That was a bad question actually,
23 like real bad. So let me re-ask it. I lost
24 myself in it.

25 When you and your dad would be

1 installing new brakes, were you-all removing the
2 brakes that you had installed prior?

3 A Yes.

4 Q Okay.

5 DEFENSE COUNSEL: Objection; form.

6 BY ATTORNEY GROSS:

7 Q Did you know that brakes had asbestos
8 in them in the '80s?

9 A I did not.

10 DEFENSE COUNSEL: Objection to form;
11 assumes facts.

12 BY ATTORNEY GROSS:

13 Q Were you aware when asbestos was
14 first taken out of brakes?

15 A I do not.

16 Q Okay. Let's way shift gears here;
17 okay?

18 A Okay.

19 Q We're done with brakes; okay?

20 A Okay.

21 Q Because I know you hate talking about
22 brakes.

23 You told us when we first started
24 talking today you worked in the hospitality
25 industry as long as you can remember; correct?

1 A That's correct.

2 Q All right. Hold on one second. I
3 lied when I said I shifted gears. See, I told
4 you any time a lawyer says they're done, they're
5 probably wrong.

6 Let's just keep going.

7 At any of the hotels you ever worked
8 at, do you remember there been renovation or
9 repair work done?

10 A Yes.

11 Q Okay. Let's spend a few minutes
12 walking through them and remember and talk about
13 the work that went down; okay?

14 What was the first hotel you worked
15 at? Was that --

16 (Crosstalk.)

17 Hold on. Let me get my whole
18 question out, only because he gets very mad at
19 me because I already talk too fast to begin
20 with. Okay?

21 A Okay.

22 Q You're doing a great job, by the way.
23 What was the first hotel you worked
24 at what had renovation work done to it while you
25 were working there?

1 A It was a Holiday Inn Holidome in
2 Springfield, Illinois.

3 Q Okay. Do you remember approximately
4 when that work was done while you were working
5 there?

6 A It was during the 1980s.

7 Q What work do you remember being done?

8 A They were constantly -- because it
9 was an indoor Holidome, which was a huge
10 swimming pool, they were constantly changing out
11 sheetrock that may have been damaged, water
12 damaged, mildew, mold that was being ripped out
13 of the rooms. They would do whole sections of
14 rooms at the time.

15 Q What was your job at this Holidome
16 hotel in Springfield?

17 A Originally it started off as a
18 lifeguard. So I was in the lifeblood of that
19 whole area. And then I moved into management,
20 where I had more of a front-of-the-house
21 appearance.

22 But part of my learning was to work
23 with the general manager. And he would take me
24 into these areas because we would have to proof
25 these areas before checks would be cut for the

1 contractors.

2 Q Okay. And that was going to be my
3 next question, is: Explain to us how your job
4 at this hotel would have put you around this
5 work that had been done?

6 A So we -- myself and the general
7 manager would go to the areas. We would do a
8 punch list of is the work that they've done what
9 it should be? Is it like new or new? And is it
10 guest ready?

11 If it was that, we would go ahead and
12 sign off it and make sure at the check was cut
13 for them -- that different trade would be paid
14 for.

15 Q Were you ever around when that work
16 was actually being done?

17 A Absolutely.

18 Q Okay. Did you ever see any dust from
19 that work?

20 A Absolutely.

21 Q Okay. So similar exercise to what we
22 did before: What was the next property you
23 remember working at that had renovation or
24 repair work being done to it while you were
25 there?

1 A It would have been the Embassy Suites
2 Charleston, South Carolina.

3 Q Is it the one that's right next door?

4 A It's right next door.

5 Q What do you remember -- well, strike
6 that.

7 What years, approximately, do you
8 remember that work being done?

9 A 2000, 2001.

10 Q And what work do you remember being
11 done?

12 A Similar where the sheetrock was being
13 ripped out. That hotel had a lot of
14 water-intrusion issues. So we would always be
15 ripping out the sheetrock and replacing, trying
16 to find the leak so we could get it repaired and
17 put new sheetrock in.

18 Q Did you ever have to do anything with
19 the library next door?

20 A Yes. So the library right next door
21 to the Embassy Suites, adjacent from the hotel
22 that we're sitting in right now, was
23 condemned -- I found out later -- condemned by
24 the County because it was full of asbestos.

25 I would be sent in there because

1 furniture was stacked from the floor up to the
2 ceiling, trying to either remove furniture to
3 put into the hotel or put -- either put
4 furniture in there from the hotel or retrieve
5 furniture and put it back in the hotel.

6 Q Were you ever in that library when
7 work was actually being done?

8 A Yeah; because the -- there would be
9 workers over there constantly shoving and moving
10 things around.

11 Q Okay. Was it the same work at the
12 library that you remember, generally sheetrock
13 work?

14 A Well, no, they weren't doing
15 sheetrock work in the library; no.

16 Q Okay. What do you remember them
17 doing in the library?

18 A They would be moving -- because it
19 was kind of being used as a -- store everything
20 in there. So guys would go in there and push
21 stuff around. They may hit the ceiling. They
22 may hit the -- because the ceilings were
23 starting to cave in at that point in time. So
24 it was really just, you know, a free-for-all as
25 people would just bounce things around in.

1 Q Okay. So like a lot of storage of --

2 A Yeah.

3 Q -- stuff? Okay, got it.

4 How did your job at that Embassy

5 Suites in the old Citadel put you around this

6 renovation or repair work being done on the

7 sheetrock?

8 A Well, with the sheetrock replacement,

9 I took the knowledge that I had from the

10 previous job and I applied it. So when we'd

11 have to go in there, once again, proof did the

12 work get done, is it like now, is it new, does

13 it meet guest expectations; then I would go

14 ahead and sign off on it.

15 If it wasn't, then we would go ahead

16 and say: No, you need to go back and do this,

17 this, and this.

18 Q Got it.

19 A And then there would be the final

20 cleanup.

21 Q Got it. What was the next hotel you

22 were at?

23 A From there I was at the Homewood

24 Suites in Mount Pleasant, South Carolina.

25 Q What, what years do you remember

1 being there while renovation/repair work was
2 being done?

3 A That would have been 2015 to -- 2014
4 to 2017.

5 Q Okay. What do you remember being
6 done there?

7 A That one was a property that had a
8 construction defect in the ceiling of the lobby.
9 And the lobby collapsed one afternoon down into
10 the lobby. So they had to rip out the entire
11 ceiling of the lobby.

12 Q Okay. Were you there when that work
13 was being done?

14 A I was.

15 Q Did you have to inspect it like you
16 did the other --

17 A I did.

18 Q What was the next hotel you were at
19 where you remember renovation/repair work being
20 done?

21 A This property right here was another
22 one that was --

23 Q This Hampton Inn that we're in right
24 now?

25 A It had a flood from a water main had

1 broke. And so the ceilings on the first floor
2 collapsed down into the lobby. And so -- I was
3 more in a corporate role of it. But I
4 oversaw -- when I say oversaw, being I was here
5 when they were ripping out sheetrock and putting
6 up new sheetrock. And you'd walk in the door of
7 this hotel, the front doors, and you could just
8 see the white haze of sheetrock dust as you'd
9 walk through it.

10 Q What years about do you remember that
11 being done?

12 A That was in the early 2000s.

13 Q Okay. Were there any other hotels
14 that you worked at where you remember renovation
15 or repair work being done while you were there?

16 A This is it.

17 Q That's it. Okay. So I hate to
18 bother you with questions that could be nothing,
19 but -- meaning if the joint compound on those
20 walls didn't have asbestos in it, we don't
21 really care about it. Right?

22 A Correct.

23 Q Okay. But if it did, that's a little
24 bit of a different story. So that being said,
25 what did the dust look like when you saw this

1 kind of work being done at these properties?

2 A It's a big, it's a big white haze.

3 It's a big cloud that you walk into. It leaves
4 a chalk residue all over your body.

5 Q So I just want to be really clear.

6 You saw visible dust in the air and on the
7 ground; correct?

8 A Absolutely.

9 Q Okay. At any of the hotels where you
10 saw work being done, did you ever see any pipe
11 insulation?

12 A No.

13 Q All right. Way shifting gears,
14 totally shifting gears -- I can take this from
15 you.

16 Since you and I met, Michael, have I
17 asked you to think about a ton of ways that you
18 may have been exposed to asbestos?

19 A Yes.

20 Q Has it been annoying?

21 A It's been enlightening.

22 Q Okay. That's a nice word. That
23 being said, do you believe you were exposed to
24 asbestos through any work your father did --

25 A Yes.

1 Q -- outside the home?

2 A No.

3 Q Why not?

4 And when I say "outside the home,"
5 let me make sure the record's really clear. I
6 mean -- when I asked you earlier, you told me
7 about his job outside the house; right?

8 A Yeah.

9 Q Okay. Do you believe you were
10 exposed to asbestos through any work that you
11 dad did as part of his employment outside of the
12 home?

13 A No.

14 Q Why not?

15 A My father had a very strict regiment.
16 He'd leave every morning wearing his uniform.
17 He would have in his hand his rolled-up jeans
18 and a shirt that he'd come home in. So he'd go
19 to work, do everything there, change clothes,
20 leave his soiled uniform at work, and then come
21 home in street clothes.

22 Q Do you believe you were exposed to
23 asbestos at any of the homes you lived in aside
24 from the exposures we've talked about today?

25 A No.

1 Q Never any home remodels or anything
2 done in any of the homes you lived in while you
3 were there; right?

4 A No.

5 Q When you were first diagnosed with
6 mesothelioma, Michael, did you look around your
7 house for any powder products that had talc in
8 them?

9 A Yes.

10 Q You actually found two bottles;
11 right?

12 A Yes.

13 Q Okay. I'm just helping you out
14 because I know -- okay.

15 Did you send me those bottles?

16 A I did.

17 Q Were they double-bagged?

18 A Yes.

19 Q Okay. On any of your powder products
20 that you used throughout your life at any point
21 in time, did you ever see any kind of warning on
22 them about asbestos?

23 A I did not.

24 Q Okay. Would that have caught your
25 attention if you had?

1 A If I --

2 Q If you had seen warnings about
3 asbestos, would that warning had caught your
4 attention?

5 A It would have.

6 Q Why?

7 A Because later in my life, I knew that
8 asbestos caused lung cancer.

9 Q Okay. Breathe.

10 Did you ever see a warning on any of
11 the powder products you used ever in your
12 life -- or that your parents used -- that
13 included the words "tremolite," "anthophyllite,"
14 "chrysotile," "actinolite," or any other
15 crazy-sounding words like that?

16 A No.

17 DEFENSE COUNSEL: Objection; form.
18 BY ATTORNEY GROSS:

19 Q Do you have any idea what any of
20 those words mean?

21 A I do not.

22 Q Okay. If you had seen a warning that
23 the powder products you and your family were
24 using might contain asbestos, would you still
25 have used them?

1 A I would not.

2 DEFENSE COUNSEL: Objection; form.

3 BY ATTORNEY GROSS:

4 Q Why not?

5 A Later in my life I associated these
6 products caused lung cancer.

7 Q Well, let me ask you this: Before
8 you knew what asbestos was, did you ever see any
9 warnings on any of the powder products you and
10 your family were using that contained the word
11 "cancer"?

12 A No.

13 DEFENSE COUNSEL: Objection to form.

14 BY ATTORNEY GROSS:

15 Q Did you have an understanding of what
16 cancer was when you were younger?

17 A I did not.

18 Q Okay. When did you learn that
19 somebody having cancer is bad?

20 A It was as I -- as education and I
21 started getting older and I, you know, started
22 realizing, you know, why people die and hearing
23 the word "cancer" and horrible death and pain
24 and suffering.

25 Q Okay.

1 A So, yeah, it was as I grew older.

2 Q Did you ever see on any powder
3 products that you and your family used, even
4 when you were a kid, anything like "be careful"
5 or a skull-and-crossbones, anything like that?

6 A No.

7 DEFENSE COUNSEL: Objection; form.

8 BY ATTORNEY GROSS:

9 Q Okay. If you had ever seen a
10 warning, whether it was when you were a kid or
11 an adult, that these products would be harmful
12 to your health or your family's health, would
13 you have continued to use them?

14 A I would not.

15 DEFENSE COUNSEL: Objection; form.

16 BY ATTORNEY GROSS:

17 Q Would you have let your husband,
18 Lonnie, continue to use this powder on himself?

19 A I would not.

20 DEFENSE COUNSEL: Same objection.

21 BY ATTORNEY GROSS:

22 Q This is the last topic. It's the
23 hardest one, and it's the one that I hate I have
24 to talk to you about. So if you want to take a
25 minute, we can take another five-minute break.

1 We are in no rush.

2 A No, I'm good.

3 Q You sure?

4 A Yeah. We can go through this.

5 Q All right. I want to take you back

6 in time to before you even knew what

7 mesothelioma was, before you were diagnosed with

8 it, when your life was still simple and

9 uncomplicated. Okay.

10 A Okay.

11 Q You with me?

12 A Uh-huh.

13 Q What was your life like?

14 A It was beautiful.

15 Q Tell us about it.

16 A I -- before I met Lonnie, I lived, I
17 lived my dreams.

18 Q What do you mean by that?

19 A I would say the time when I was
20 exploring the Caribbean on the sailboat, living
21 the life of Robinson Crusoe on an Out Island,
22 finding -- you know, going out and catching my
23 own food -- lobster, crabs, fish -- and living
24 that life was just what every boy dreams of.
25 And I lived it.

1 Q Can you take us through sort of an
2 average day in your life before you got sick.
3 So you're off the boat. You're living with
4 Lonnie. What was an average day like before you
5 got sick?

6 A Lonnie and I would get up. We'd go
7 out and take care of the horses. Everybody had
8 their own personality. We would take care of
9 them, do our morning chores with the horses.
10 Come back inside, have breakfast.

11 Then I would start my day. At that
12 time I had -- I was working from home. So me
13 jumping into the car and racing away to the
14 office wasn't part of the equation at that point
15 in time. But our -- taking care of all of our
16 horses and animals was the most important thing.

17 Q What are some examples of things that
18 you do in your life before you got sick that
19 brought you joy, that you loved?

20 A I think just being a part of my
21 animals. The animals brought me so much joy. I
22 have so much love to give. Some of the -- some
23 of my most favorite moments was when we had
24 babies and be able to be there and be part of
25 their life and watch their personalities grow.

1 Lonnie and I would sit there in the
2 living room and try to come up with names. We
3 always wanted unique names that no one else
4 would think of. And, you know "what are we
5 going to do next? What are we going to do
6 next?" because it was such a passion to be able
7 to have the farm. And we'd sit there in the
8 house and look out over the marsh and say "God,
9 we're lucky. We're blessed."

10 And we made a lot of sacrifices to be
11 able to do all that. But at the end of the day,
12 where our passion was was all of our animals.

13 Q You told us earlier -- do you like to
14 fish?

15 A I do.

16 Q All right. Let me put up --

17 A Fishing is something that I did -- if
18 we weren't on the farm, Lonnie and I were
19 fishing. And we did that all the way up until I
20 got sick.

21 ATTORNEY GROSS: Let me mark as
22 Exhibit 9 this photo.

23 (Exhibit PX 9 was marked for
24 identification.)

25 BY ATTORNEY GROSS:

1 Q Can you-all see this?

2 A Ah. That's my sheephead.

3 Q What's that?

4 A It's a sheephead. It's a very, very
5 good fish to eat. It's -- what's so funny about
6 it and why we took the time to take the picture,
7 if you google "sheephead" and you look at its
8 teeth, it has human teeth. And it's quite
9 intimidating if you look at it. But that was my
10 first sheephead that I ever caught.

11 Q Oh, so you caught this one yourself?

12 A I caught that myself.

13 Q Are they hard to catch?

14 A They're very hard to catch.

15 Q Why?

16 A Because they live in an area -- they
17 only eat off of oyster shells and mollusks. And
18 I caught that on a shrimp on the bait -- on the
19 beach; excuse me.

20 Q Now, I have to ask this question with
21 a caveat of "besides my own." Do you have the
22 cutest puppies in the world?

23 A I have the cutest puppies in the
24 world.

25 Q Okay. We're going to put up as

1 Exhibit 10.

2 (Exhibit PX 10 was marked for
3 identification.)

4 BY ATTORNEY GROSS:

5 Q I think this is Keziah. Is that her?

6 A That is my baby Keziah; yes.

7 Q How old is she?

8 A She's three years old.

9 Q Tell us about your puppies.

10 A You know, my Keziah is -- she is my
11 go-to. She is there every single night. She
12 sleeps with me. She mimics me. She likes to
13 sleep -- if I sleep of top of the pillow, she
14 likes to sleep on top of the pillow. When I
15 wake up in morning, she is just inches away from
16 my face. And her eyes open, my eyes open. And
17 we are really like peas and carrots together. I
18 can't imagine, I can't imagine a life without
19 her. And I can't imagine her life without me.

20 Q What about Abraham?

21 A Well, Abraham is Lonnie's, is
22 Lonnie's dog.

23 Q Uh-huh.

24 A But -- Abraham loves Keziah. But
25 Abraham will sleep right next to Lonnie. But

1 Keziah is my baby.

2 Q Okay. She does this really cute
3 thing.

4 A She dances.

5 Q She dances; right?

6 A If you say, you know, "Keziah, you
7 want a treat?" she'll run over to the pantry
8 door and she'll stand up on her back legs and do
9 a little dance waiting for her treat.

10 Q All right. Do you want to take a
11 minute?

12 A No, I'm good.

13 Q Okay. I want to talk to you now
14 about your health and what's been going on with
15 you leading up to and since your diagnosis.
16 Okay?

17 A Okay.

18 Q This is the not-fun part. Not that
19 any of this has been a super-fun time, but this
20 is the non-fun part.

21 A Okay.

22 Q Okay. Can you walk us through your
23 initial symptoms that led you to visit a doctor.

24 A Sure.

25 Q Go ahead.

1 A In January of 2023 I was diagnosed
2 with COVID.

3 Q Uh-huh.

4 A And I started developing a little bit
5 of a cough. And I couldn't shake the cough.

6 And after 14 days, I finally tested
7 negative. And I talked to my doctor on the
8 phone and he's like going: You know, you may
9 just be one of these people that's just going to
10 have this persistent cough. And you just let me
11 know if it gets any worse.

12 So I continue on. And the cough got
13 a little bit worse. And I started taking cough
14 have drops, Luden's cough drops. And that would
15 help suppress the cough for me. And I just
16 continued on.

17 And the cough started getting a
18 little bit more bad and a little bit worse and
19 little bit worse. And then finally Lonnie goes:
20 "You need to go see the doctor."

21 And so I made the appointment -- I
22 had a standing appointment -- excuse me -- for
23 my, for my annual checkup. And I walk in the
24 door, and my doctor's demeanor was much
25 different than it was whenever I saw him in the

1 past. And he goes: "Hey, what's going on"?
2 I said: "I got this cough."
3 And he said: "Tell me about it."
4 And I told him about the cough.
5 He goes: "What else? What's your
6 other symptoms?"
7 And I: "Well, I have the night
8 sweats."
9 He goes: "Tell me about it."
10 And I told him how bad my night
11 sweats were; it would be sheet-drenching wet.
12 And the expression on his face kept
13 on getting more and more gloom. And he goes --
14 he asked me a few more questions. And I told
15 him and he goes: "Your labs are awful."
16 Q Oh.
17 A And I always have fantastic labs.
18 And he goes your labs are awful. He goes: "I
19 think first things let's get you on" -- and he
20 gave me two different medications, a steroid and
21 an antibiotic because he, you know, wanted to
22 make sure I didn't have a pneumonia or something
23 like that.
24 And he goes: "I want you to" -- this
25 is Father's Day weekend. I remember that so

1 vividly. He goes: "I want to go in and get a
2 chest x-ray today, and I will call you tonight."
3 This is a Friday.

4 Q Did you go get that chest x-ray?

5 A I did. And I didn't hear from him on
6 Friday. Saturday came around, nothing. Sunday
7 came around, nothing.

8 Monday, I get a phone call from him.
9 And he goes: "Hey, I got your chest x-ray and
10 it was a little hazy. And I just want to make
11 sure, so I'm going to send you in, you know, for
12 a CAT scan with contrast, on your lung."

13 Q Did you go get that CAT scan?

14 A I did. And he goes: "I'm going to
15 set it up for stat, being I want it done right
16 away."

17 Okay. So the hospital calls me, sets
18 it up. And I think that was a Wednesday. So I
19 talked to him on Monday; Wednesday I got the CAT
20 scan.

21 Q What happened after you got the CAT
22 scan?

23 A CAT scan came around. And he calls
24 me up and he goes: "I want you in my office."
25 And I go into his office, and he shows me. And

1 he goes -- and he reads it. He goes: "I am not
2 a radiologist. I'm just going to read you the
3 report, and I'm going to show you the pictures."
4 He goes: "I can't answer a lot of questions
5 other than here's what the radiologist said."

6 And he read it to me. And I looked
7 at it. And he goes: "I want you to go see
8 Dr. Kline. I've already set up an
9 appointment" -- which was going to be the very
10 next day.

11 Q Did you know what kind of doctor
12 Dr. Kline is?

13 A She was a thoracic surgeon.

14 Q Okay. And then what happened?

15 A So I go in to see Dr. Kline on
16 Thursday. She's looking at it. She opens up
17 the picture. She's looking at it and she goes:
18 "You know, doctors always come up with the first
19 five things that we possibly -- we'd be looking
20 at." She goes: "Have you ever heard of
21 mesothelioma before?"

22 Q Had you?

23 A I said: "Yes, I have." I said:
24 "But, Dr. Kline," I said, "I'm a white-collar
25 guy; I'm not a blue-collar guy."

1 So goes: "Okay." And then she keeps
2 on looking at it and she said it also could be
3 this noncancerous, aggressive skin disease -- or
4 lung disease. She goes: "But, you know, I
5 think we need to go inside." She goes: "We're
6 going to go ahead and do a biopsy." She goes:
7 "I want to do it first thing tomorrow morning."

8 Q Did you have the biopsy done?

9 A I did.

10 Q Okay. Then what happened?

11 A So the biopsy is -- excuse me. I go
12 in. And after surgery she comes out and says:
13 "Yes, you have cancer." She goes: "But when
14 the pathology comes back, I'll know a name to
15 your cancer."

16 So I wait a few more days. And I
17 meet with them, and they tell me I have
18 mesothelioma. And that's when I met with
19 Dr. Brian -- or Dr. Lingerfelt with Roper
20 Hospital.

21 Q So let me take you back to that
22 moment. It sounds like it happened pretty fast;
23 is that right?

24 A It was lighting speed.

25 Q When was your doctor -- what was the

1 doctor's name who told you you had cancer first?

2 A Dr. Kline.

3 Q Dr. Kline, okay. When Dr. Kline
4 first told you that you had cancer -- you didn't
5 know what kind of cancer, but she told you you
6 had cancer -- what was going through your head
7 when she told you that after this all happened
8 so fast?

9 A At first, I couldn't believe it. I
10 just sat there in disbelief, and I said: "How
11 could it be me?" I just, just sat there. And
12 I -- my mind was racing because I was smart
13 enough to know there is never a good cancer.
14 And I knew nothing about mesothelioma.

15 And I started asking Lonnie
16 questions, and I wasn't getting any answers.

17 Q Did you get any answers once your
18 cancer had a name?

19 A Yes. When I went to Dr. -- the
20 oncologist with Roper Hospital. He came into
21 the room, sat down, and goes: "There's really
22 nothing we can do. We're just going to move you
23 to palliative care. I doubt we can do surgery
24 on you. We're just going to make you
25 comfortable."

1 And I said: "How much time do I have
2 left?"

3 And he just said: "It's really going
4 to be maybe a matter of months, maybe a year.
5 And that's all you have."

6 And I just sat there and I go:
7 "Fuck. My whole life is over." And that's
8 just -- I couldn't believe it.

9 And then Lonnie and I went and sat in
10 the truck and we both cried together. I said:
11 "How could this be?"

12 ATTORNEY GROSS: Let's go off the
13 record for five minutes, please.

14 THE VIDEOGRAPHER: We are off the
15 record at 1:01.

16 (Recess.)

17 THE VIDEOGRAPHER: We are back on the
18 record at 1:06.

19 BY ATTORNEY GROSS:

20 Q Back from a quick break.

21 A Thank you.

22 Q No problem. Talking about the
23 puppies makes everything better; right?

24 A It does.

25 Q Okay, good. This seems like the

1 silliest question in the world. But since
2 you've been diagnosed, has work been difficult
3 for you?

4 A Define "work."

5 Q Well, that's a good question. Let's
6 start with your job. Has that been difficult
7 for you?

8 A I have been on medical leave, FMLA,
9 since the day before my surgery. I know what my
10 daily ritual would be. I can't imagine at this
11 point me being able to go anywhere near that
12 rigorous schedule when every chemo takes six
13 days for me to even come back to even be as
14 close to as strong as what I can be. So I just,
15 I just don't see that ever being a part of the
16 equation anymore.

17 Q Conversely, let me ask you this: Has
18 work around your home -- meaning your daily
19 chores just to keep your home kept up -- has
20 that been difficult for you since your
21 diagnosis?

22 A Yes. So we've now employed a
23 domestic service that comes in and cleans the
24 house because I can't -- that was always my
25 deal. I was always responsible for the domestic

1 chores inside the house. And so since I can't
2 fulfill those anymore, we've hired a domestic
3 care -- or domestic person to come in and do it.

4 But a good example is for me to get
5 the sheets on the bed. I can get the sheets
6 off. I can get a sheet back on. But to put the
7 pillows and then tuck the sheets into the bed, I
8 can't do that anymore. And that takes myself
9 and Lonnie will help me do that.

10 Q You had a surgery after your
11 mesothelioma diagnosis; correct?

12 A I did.

13 Q Remember, if we need to take a break,
14 we're going to take a break; okay?

15 A Uh-huh.

16 Q Did you make a record of how you were
17 feeling the day before that procedure?

18 A I did.

19 Q What did you do?

20 A I made a video.

21 Q What I want to do is I'll mark -- the
22 video's been produced to everybody. What I want
23 to do is I want to mark the video as Exhibit 11.

24 (Exhibit PX 11 was marked for
25 identification.)

1 BY ATTORNEY GROSS:

2 Q I only want to play like ten seconds
3 of it. Okay?

4 A Okay.

5 Q You ready?

6 A I'm ready.

7 ATTORNEY GROSS: Okay. Can you-all
8 see the video? I've never done
9 picture-in-picture on video before. So if
10 it doesn't work, let me know; okay?

11 Can you see it?

12 Will this pick up the sound when I
13 play it on the computer?

14 THE VIDEOGRAPHER: Yes.

15 BY ATTORNEY GROSS:

16 Q All right. You ready?

17 A I am.

18 Q Okay. Is this -- I mean, I know it's
19 a screen shot right now. But is this the video
20 you made the day before your surgery?

21 A It is.

22 No sound.

23 ATTORNEY GROSS: Let's go off the
24 record real quick.

25 THE VIDEOGRAPHER: Off the record at

1 1:10.

2 (Discussion held off the record.)

3 THE VIDEOGRAPHER: We are back on the
4 record at 1:13.

5 BY ATTORNEY GROSS:

6 Q All right. We are back from a very
7 quick technologically induced break. I think we
8 figured it out. So let's try this again.

9 Can you see this?

10 A I can.

11 Q Okay. And is this the video that you
12 made the day before you had your surgery?

13 A It is.

14 Q And before we keep going, did you
15 actually wind up having your surgery the next
16 day?

17 A I did.

18 Q Okay.

19 A Well, pardon me. The doctor that was
20 doing the surgery called and said that he was
21 COVID-positive. So they pushed it off for one
22 week.

23 Q Okay. So this video was filmed the
24 day before you were supposed to have your
25 surgery; the doctor gets COVID; then you have

1 the surgery the week following.

2 A Yes.

3 Q Got it?

4 A Correct.

5 Q All right. I think I marked this as
6 Exhibit 11. We're just going to play a few
7 seconds; okay?

8 (Video plays as follows:

9 "Mother of all surgeries. It's
10 going to be tough. Chemo afterwards. It's a
11 big chemo. And my ability to have more time
12 is my ability to tolerate surgery and all the
13 chemo. If I don't make the chemo, I'm too
14 sick, it changes my 'projectory' and my
15 time.")

16 BY ATTORNEY GROSS:

17 Q All right. That video hard for you
18 to watch?

19 A It is. And that's about as real
20 as -- those are words that I think that most
21 people think inside and struggle to find the
22 words to say it out loud.

23 And for me it was, saying it out loud
24 is my way of coping with it. It was no longer
25 an internal conversation. But I wanted

1 everybody to know what was on my mind as I was
2 going to face, as I said, as my doctor called
3 it, the mother of all surgeries.

4 Q This is obvious, but were you nervous
5 before your surgery? I don't know if nervous is
6 even the right word?

7 A I don't know if you can say nervous.
8 I didn't -- I specifically and on purpose did
9 not ask a lot of questions. Because, you know,
10 this wasn't buying a car; this wasn't buying a
11 couch. This was these guys had to go in and do
12 this. If I want to live, you're going to do the
13 surgery. If you don't want to live, you can do
14 what the other hospital said: Go home and
15 they'll give you some painkillers and we'll just
16 ride it out.

17 I, I wanted to live. And so I didn't
18 ask a lot of questions. I didn't know a lot
19 going into it. I knew it was going to be tough.
20 I knew it was going to be painful. And I
21 just -- I went with the flow.

22 Q Do you now have an understanding --
23 and understanding that none of us are doctors.
24 But do you have any sort of layman's
25 understanding of what the surgery you had

1 entailed?

2 A Yes.

3 Q What is it?

4 A They went in and opened up my side
5 chest wall, removed a rib, removed every piece
6 of cancer that they could find. They removed
7 the pleural lining, the lining that the organs
8 sit in in the chest wall, clear down to my
9 stomach. Removed some cancer that was down in
10 the diaphragm. And then they sewed me back up.

11 Q Is that a big surgery?

12 A It was an enormous surgery. It was,
13 I believe we were told, ten hours.

14 Q I'm going to mark as Exhibit 12 a
15 photo you sent me.

16 A Okay.

17 Q Okay. I think you know where I'm
18 going right?

19 A Uh-huh.

20 (Exhibit PX 12 was marked for
21 identification.)

22 BY ATTORNEY GROSS:

23 Q Can you-all see this? Everybody?
24 Okay.

25 Is this -- when did you take this

1 photograph?

2 A That was the day I got home from the
3 hospital.

4 Q Who took it? Lonnie?

5 A Lonnie took it.

6 Q So this is the day you got home after
7 the surgery; right?

8 A Yes.

9 Q What is this big incision we're
10 looking at?

11 A That is how they entered my, my
12 chest. They entered -- originally they were
13 talk about cutting me down the breastbone and
14 opening up this way. Then this become more of
15 an option. And I think it -- I don't know why.
16 I don't want to say I'm thinking. He didn't
17 explain why; I did not ask questions.

18 Q We can't see the vantage point of it.
19 How far around the front of your torso does that
20 incision go?

21 A It comes up about here.

22 Q So, just for the record, it's right
23 under --

24 A My nipple.

25 Q -- you left breast, like left

1 breastbone, basically?

2 A Yes.

3 Q Okay. Was your recovery in the
4 hospital after that surgery smooth?

5 A If I may, define "smooth."

6 Q Okay. Good question. What was the
7 first -- do you remember -- strike that. I'll
8 get it.

9 How was your recovery in the hospital
10 after the surgery?

11 A Okay. When I -- the doctor before
12 the surgery prepped Lonnie and I that I would be
13 on a respirator coming out of surgery. He also
14 prepped us that there is a good chance -- not a
15 good chance -- there is a stronger chance that I
16 may not make it off the table, I would die in
17 the surgery.

18 So that was right before they took me
19 away. So Lonnie and I said our normal goodbyes,
20 kiss.

21 After surgery and I started becoming
22 self-aware, I was in this dark room. No lights
23 whatsoever. It was just as hot and
24 uncomfortable as I could possibly be. Sweating.
25 I didn't know where I was at. I could feel the

1 respirator, the tube down my throat.

2 And they came in. It was 3:00 in the
3 morning. And I know it was 3:00 in the morning
4 because I could see the clock. And they started
5 trying to turn the machine off to see if I
6 could -- my lung would start working.

7 And I just remember when they did
8 that for the very first time -- and I couldn't
9 breathe. My hands were tied down. My feet were
10 tied down. My chest was tied down. And my head
11 was tied down.

12 And I can't even gasp for air because
13 there was nothing for me to breathe. So they
14 turned the machine back on. And Dr. Gaffney
15 learns over me. It's still in the dark, still
16 very, very dark. And he leans over to me and he
17 touches me on my right shoulder. And he goes:
18 "Pal, just give me 24 hours more."

19 And I laid there because I didn't
20 know if I was going to live. I felt like I was
21 going to die.

22 Q All right.

23 A By 6:00 a.m. -- go ahead?

24 Q Yeah, please.

25 A My 6:00 a.m. my lungs started

1 working. He walks in. They pulled the
2 respirator out, put me on oxygen, and he leaves.

3 And he comes back a couple hours
4 later and he goes: "I want this man in a chair
5 right now. Get him out of bed. I want him in a
6 chair."

7 And then the team comes in to move
8 from the bed to a chair. And that was a
9 gradual, very aggressive approach of getting me
10 back on my feet as soon as possible. And it
11 progressed over the next couple of days.

12 Q Got it. Okay. Take a breath?

13 A Nodded.

14 Q I love that you're drinking Hawaiian
15 Punch. Take a sip of that.

16 A (Complies.)

17 Q Okay. Have you had any sort of
18 treatment since your surgery?

19 A I am now in my -- I'm one-third of
20 the way through my chemo treatments, my
21 chemotherapy.

22 Q How many chemo treatments have you
23 had so far?

24 A I had two.

25 Q When did you have your most recent

1 one?

2 A Thursday of last week.

3 Q How does your body react to those
4 chemo treatments?

5 A The day of treatment I usually get
6 done between 12:00 and 1:00. By 4:00 I am
7 really sick and I'm in bed or on the couch. And
8 I will stay in that position until -- usually
9 Saturday is my, my bottom, where I've reached
10 just absolute -- I can't, I can't eat, I can't
11 drink.

12 And then Monday morning I'll go into
13 the hospital for infusion of fluids. And then
14 it picks me back up. And then I bounce pretty
15 quick up to a level that I can be almost
16 self-sufficient.

17 Q Did you have those fluids yesterday?

18 A I did.

19 Q Have any of your doctors told you
20 about any future treatment you may need in
21 addition to the chemotherapy?

22 A Yes. They are pairing me up with a
23 radiologist that's going to do radiation
24 treatment on my lung. And that's going to be 25
25 treatments after my last chemo.

1 Q Okay. So you haven't had any
2 radiation yet?

3 A I have not.

4 Q Has any doctor brought up
5 immunotherapy to you?

6 A That is a possibility for me. But
7 it's only going to be if my cancer comes back.

8 Q Got it. Okay. We're in the
9 homestretch.

10 A Okay.

11 Q Do you have any new health issues or
12 problems or complications -- strike that. Let
13 me ask you this first: How was your health
14 before you got sick with mesothelioma?

15 A Fantastic. I was, I was a very, very
16 healthy person. And if I may...

17 Q You may.

18 A Part of why this journey of being in
19 the hospital for three weeks went down to nine
20 days was because of how good my health was, how
21 good my lungs were. Dr. Gaffney commented many,
22 many times he didn't expect me to bounce the way
23 I did.

24 He goes: "I don't see patients that
25 are healthy as you." He goes: "You're a young,

1 very healthy individual." He goes structure --
2 or muscle -- I had the muscle mass. He goes --
3 it just -- couldn't believe it.

4 And all of the residents that came in
5 to him, all of them were shocked because they
6 never see patients that do as well through this
7 surgery as what I did.

8 Q Do you have any new health issues or
9 complications now, since your diagnosis and your
10 surgery, that you did not have before your
11 mesothelioma?

12 A Absolutely.

13 Q Obviously, we've talked about the
14 chemotherapy. But tell us a little bit about
15 that, what new issues you have had come up with
16 your health since your mesothelioma diagnosis.

17 And I know that's a hard question to
18 answer, but...

19 A I, I think, I think the biggest
20 health thing is I get shortness of breath. I
21 can't -- if I want to go up and down the steps,
22 that may be all I can do is up and down the
23 steps. I have to sit down upstairs to rest a
24 little bit.

25 Going to the grocery store -- and I

1 do go to the grocery store because I need to do
2 the walking. It takes me twice as long to do
3 the grocery shopping. And Lonnie is with me the
4 whole entire time.

5 So I wear out, very easy. I get weak
6 very, very easy. My ability to -- I am nowhere
7 near able to do anything like I used to do. I
8 mean, it's just the reality of my illness.

9 Q I want to talk about a couple things
10 that make you happy.

11 A Okay.

12 Q Okay.

13 A Love that.

14 Q Love that too.

15 How did you meet Lonnie?

16 A I met Lonnie on a dating website.
17 And Lonnie and I talked a little bit, and then
18 he asked me out on a date the very next night.
19 And we met downtown Charleston at Wild Wings,
20 and we had a bucket of beer and some hot wings.
21 And I die laughing because I ordered the virgin
22 hot wings. And Lonnie, being the masculine
23 macho man, ordered the Chernobyl, the hottest
24 wings he could possible buy.

25 And I remember when the cooks were

1 bringing it through the door, I was choking
2 because of the smell of those hot wings. And I
3 watched him as he had this bead of red or sweat
4 across his lip as he tried to choke those down.

5 And that was our very first date.

6 Q Why did you fall in love with him?

7 A I think that, as my mom always said,
8 if you're going to marry, marry your best
9 friend. And Lonnie and I had more in common
10 than we didn't have in common. And he was
11 everything I ever wanted in a soulmate. And I
12 look at him still to today, and the only thing I
13 regret about Lonnie is I'll never be able to ask
14 him again to marry me because he already granted
15 me the greatest -- the greatest thing I ever
16 wanted was my soulmate to love me.

17 Q There's another story you told me.

18 A Uh-huh.

19 Q Take a minute. But what is one thing
20 that you have talked to me about that you are
21 particularly proud that you've done in this
22 life?

23 A So it started off in the early, early
24 '90s. And I was able to apply for the United
25 States Olympic Committee spot on the '92

1 Olympics team as a youth ambassador. And it was
2 a very, very long --

3 Q (Shows picture.)

4 A Yep.

5 Q Is that you?

6 A That is correct. That's me that's in
7 Madrid, Spain, from 1992. I applied for that.
8 I had to write an essay to them. Then after the
9 essay was several phone interviews. And then
10 the final one was a face-to-face interview.

11 But I was sponsored by Adidas, just
12 like the teams were, to be there and be part of
13 the Olympic movement in 1992 in Barcelona,
14 Spain.

15 Q Why is that such a fond memory of
16 yours that makes you so proud?

17 A I think that, for me, it's --
18 everybody lives life to have a consequential --
19 something happens consequentially. And that
20 was, that was a turning point. I was in a
21 position -- I could make change. And that was
22 our mission, is to meet with the other 165
23 countries that were there and talk about real
24 substance that other youth in other countries
25 were deal with and try to come to, Hey, we're

1 all different, but what can we -- can we all
2 come together and understand.

3 And that was what I enjoyed the most.
4 I also enjoyed getting a chance, you know, to
5 meet the athletes and walk through the village.
6 And it just -- it's hard to even put words to
7 it. It just a dream that absolutely came true.

8 ATTORNEY GROSS: Just for the record,
9 we'll mark that photograph as Exhibit 13.

10 (Exhibit PX 13 was marked for
11 identification.)

12 BY ATTORNEY GROSS:

13 Q Has your mesothelioma diagnosis
14 affected your relationship with Lonnie, for both
15 the good and the bad?

16 A It certainty has brought Lonnie and I
17 much closer.

18 Q Tell us a little bit about that.

19 A I was always one that would not
20 discuss things that were bothering me. I would
21 hold it up inside, what I -- what was scary for
22 me, because Lonnie, Lonnie has debilitating
23 depression and bipolar. And I didn't want to
24 burden him with any of my baggage.

25 But since surgery, we've had to talk

1 about a lot of things. You know, what it takes
2 to make our household work. And he now has
3 become, instead of the recipient of the care and
4 love. He has turned that on me. It has been
5 probably some of the most liberating experiences
6 to watch him care for me -- because I always
7 knew he could, but I can no longer. And he's
8 there for me.

9 Q This is going to be the last one, I
10 promise.

11 A Okay.

12 Q This one I'm not lying. We'll mark
13 as Exhibit 14...

14 A Oh.

15 (Exhibit PX 14 was marked for
16 identification.)

17 BY ATTORNEY GROSS:

18 Q Is this you after getting -- or
19 during chemotherapy?

20 A It's actually during chemotherapy.

21 Q Do you ever think about your future?

22 A I do.

23 Q Tell us a little bit about that.

24 Take a minute.

25 A I, I look at a couple things.

1 What's, what is going to happen in the next two,
2 three months. Can I continue to just be
3 stronger and try to be more of what my life used
4 to be like?

5 I try not to let my mind go down the
6 pathway of my final days. You know, Lonnie has
7 plenty of those visions of my final days and
8 life without me. And I try not to imagine
9 Lonnie's life without me or my dogs without me.

10 But that's, that's really what's on
11 my mind, is trying to get healthier and not
12 think about my end.

13 Q Does Lonnie -- well, strike that.
14 Who took this photo?

15 A That was Lonnie.

16 Q Does he go with you to your chemo
17 treatments?

18 A He is with me at -- Lonnie takes me
19 everywhere. So he's with me there.

20 Q Does he go to your doctor's
21 appointments with you?

22 A He does.

23 Q Could you imagine going through this
24 journey that you're on now without Lonnie with
25 you side by side?

1 A I can't. I can't imagine it. I --
2 this is different than, you know, I'm going to
3 go in and have, you know, a knee replacement and
4 you could go in and, you know, they take care of
5 it and maybe you get a friend to take you home
6 and you convalesce at home.

7 This is something that there's no way
8 without a support structure I could ever, ever
9 manage by myself. And like I said, Lonnie has
10 done absolutely the best that he can do to keep
11 me where I need to be at.

12 Q I keep thinking -- I keep seeing this
13 big smile on your face, even though you're in
14 chemotherapy. So let me ask you this: In spite
15 of everything that you're dealing with and going
16 through, with having Lonnie by your side, do you
17 still have hope for your future?

18 A Hope is a really interesting word.
19 Hope that I make six months. A dream I make a
20 year. Or, as Dr. Gaffney, my thoracic surgeon
21 said: "I hope to see you standing on stage with
22 me at MUSC in five years so we can get a picture
23 taken."

24 But the reality of it is that I have
25 mesothelioma. There's no cure. It's going to

1 rear its ugly head. And at the end of the day,
2 that's what's going to be my death.

3 So I think hope is -- hope is maybe a
4 made-up word because I don't know what hope
5 means when I think of mesothelioma. Because
6 there is no -- that you can do everything you
7 can do. But at the end of the day,
8 mesothelioma's going to do what mesothelioma
9 does. And it kills.

10 Q Is it your goal to be on that stage
11 with your doctor in five years?

12 A That is my hope.

13 Q Is your goal to still be side by side
14 with Lonnie in the next five years?

15 A I want to be holding his hand; yes.

16 ATTORNEY GROSS: Let's go off the
17 record real quick.

18 THE VIDEOGRAPHER: We are off the
19 record at 1:37.

20 (Recess.)

21 THE VIDEOGRAPHER: Back on the record
22 at 1:44. The deposition of Michael Perry
23 is adjourned. We are back off the record
24 at 1:44.

25 (Deposition adjourned at 1:44 p.m.)

1	ERRATA			
2	PAGE	LINE	NOTATION	
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1 C E R T I F I C A T I O N

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4 I hereby certify that I have read the
5 foregoing transcript of my deposition
6 testimony, and that my answers to the
7 questions propounded, with the attached
8 corrections or changes, if any, are true and
9 correct.

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12 MICHAEL L. PERRY

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1 C E R T I F I C A T I O N

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4 I, ADAM D. MILLER, Registered
5 Professional Reporter, certify that the
6 foregoing is a true and accurate transcript
7 of the foregoing deposition, that the
8 witness was first sworn by me at the time,
9 place and on the date herein before set
10 forth.

11 I further certify that I am neither
12 attorney nor counsel for, not related to nor
13 employed by any of the parties to the action
14 in which this deposition was taken; further,
15 that I am not a relative or employee of any
16 attorney or counsel employed in this case,
17 nor am I financially interested in this
18 action.

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21 /s/ Adam D. Miller
22 Registered Professional Reporter
23 and Notary Public

24

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

Video-Recorded Deposition of
MICHAEL L. PERRY
VOLUME IV

Hampton Inn by Hilton Charleston Historic District
345 Meeting Street, Charleston, South Carolina
and
Via Zoom Videoconferencing

Friday, October 13, 2023
10:04 a.m.

Reported by:

Adam D. Miller, Registered Professional Reporter
gpsllc
gpscalendar@gps.llc ~ 214.347.4781

Michael L. Perry, Volume IV
October 13, 2023

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Page 640 1 On Behalf of Genuine Parts Company: 2 DAVID L. SZLANFUCHT, ESQUIRE 3 David.Szlanfucht@lewisbrisbois.com 4 LEWIS BRISBOIS BISGAARD & SMITH LLP 5 4600 Madison Avenue, Suite 700 6 Kansas City, Missouri 64112 7 816.299.4244 8 On Behalf of Johnson & Johnson; LTL Management, LLC; J&J 9 Holdco (NA) Inc.; Janssen Pharmaceuticals, Inc.; and 10 Kenvue, Inc.: 11 BLAKE T. WILLIAMS, ESQUIRE 12 blake.williams@nelsonmullins.com 13 NELSON MULLINS RILEY & SCARBOROUGH LLP 14 1320 Main Street, 17th Floor 15 Columbia, South Carolina 29201 16 800.237.2000 17 On Behalf of Pfizer, Inc.; Minerals Technologies Inc.; 18 and Specialty Minerals Inc.: 19 JAMES H. BURNS, ESQUIRE 20 james.burns@nelsonmullins.com 21 NELSON MULLINS RILEY & SCARBOROUGH LLP 22 1320 Main Street, 17th Floor 23 Columbia, South Carolina 29201 24 800.237.2000 25 - - - - -	Page 642 1 THE VIDEOGRAPHER: We are on the 2 record at 10:04. Today's date is October 3 13th, 2023. This is the beginning of 4 media one, volume four, in the deposition 5 of Michael Perry. My name is Tyler Tam. 6 I'm the videographer. 7 The court reporter is Adam Miller. 8 (Crosstalk.) 9 (Discussion held off the record.) 10 THE COURT REPORTER: Mr. Perry, you 11 understand you're still under oath, sir; 12 correct? 13 THE WITNESS: Yes. 14 THE COURT REPORTER: Thank you, sir. 15 - - - - - 16 BY ATTORNEY GREVE: 17 Q I was about to ask or remind you of 18 the same thing. So I can check one thing off 19 the list. 20 Mr. Perry, my name's Kurt Greve. I 21 represent a couple defendants in this case. One 22 of them is named Glamour Industries Company. Is 23 that a name that you're familiar with? 24 A It is not. 25 Q And as you sit here today -- as to
Page 641 1 ALSO PRESENT: TYLER TAM, THE VIDEOGRAPHER 2 JACKIE MAZADE 3 - - - - - 4 INDEX 5 DEPONENT: MICHAEL L. PERRY 6 EXAMINATION BY: PAGE 7 ATTORNEY GREVE 642 8 ATTORNEY ELLIOTT 835 9 ATTORNEY HERNS 834 10 ATTORNEY MAJOR 840 11 ATTORNEY GREENE 851 12 ATTORNEY TECHMAN 867 13 ATTORNEY GROSS 871 14 ATTORNEY MCCOOL 890 15 ATTORNEY GREVE 901 16 - - - - - 17 18 19 20 21 22 23 24 25 GPS LLC gpscalendar@gps.llc ~ 214.347.4781	Page 643 1 ever using or being around any product 2 associated with Glamour Industries Company; is 3 that true? 4 ATTORNEY GROSS: Object to form. 5 THE WITNESS: Please repeat your 6 question, sir. 7 BY ATTORNEY GREVE: 8 Q Yes. As you sit here today, you're 9 unable to provide any testimony as to being 10 around any product manufactured by a Glamour 11 Industries Company; is that true? 12 A I would need to understand what, what 13 products they do produce. 14 Q Understood. But the name Glamour 15 Industries itself is not something you associate 16 with any product -- just those names alone -- 17 from your history of using talcum powder; is 18 that correct? 19 A I don't have name recognition with 20 Glamour. 21 Q Fair enough. Fair enough. 22 Mr. Perry, this is day three [sic] of 23 your deposition. You realize you're still under 24 oath. And is there anything that you did to 25 prepare for today's deposition after we



Page 644 1 concluded day two or yesterday's session? 2 A No. 3 Q Okay. Mr. Perry, have you ever had 4 any name changes or aliases? 5 A No. 6 Q Do you have any social media accounts 7 or presence? 8 A No. 9 Q Can you give me your current height 10 and weight? 11 A I am six foot, 194 pounds. 12 Q And has your weight changed -- 13 A Six foot two-- 14 Q -- up or down? 15 A I'm sorry. Six foot, two inches, 16 194 pounds. 17 Q Don't want to shortchange you. So 18 you're six-two -- 19 A Yes, sir. 20 Q -- 194 pounds as we sit here today; 21 is that correct? 22 A Yes, sir. 23 Q And has your weight changed in the 24 past year? 25 A It has.	Page 646 1 the mail? How is it that you came to understand 2 that they are in the business of representing 3 mesothelioma plaintiffs? 4 ATTORNEY GROSS: Object to form. 5 THE WITNESS: Recommendation. 6 BY ATTORNEY GREVE: 7 Q Who provided that recommendation to 8 you? 9 A A dear friend. 10 Q Who's the dear friend? 11 A Are you wanting a name? 12 Q Yes. 13 A The Mendlesohn family. 14 Q Who in the Mendlesohn family 15 recommended the Dean Omar firm? 16 A It was a conversation that we had 17 together. I don't, I don't know that I can -- 18 who mentioned it first. But it would have been 19 a conversation when we were talking. 20 Q Can you give me the spelling of that 21 name. 22 A M-E-N-D-L-E-S-O-H-N. 23 Q And who are the Mendlesohns to you? 24 Are they friends? relatives? co-workers? 25 colleagues?
Page 645 1 Q And can you tell me how much it has 2 changed. 3 A In January of 2023 I was 230 pounds. 4 Q And, sir, I don't want to get into 5 any of the actual conversations that you've had 6 with your counsel. But I just would like to get 7 a better understanding as to how you came to 8 retain your counsel. And my question for you 9 is: Did you have any conversations with anyone 10 at the Dean Omar law firm prior to bringing your 11 lawsuit? 12 ATTORNEY GROSS: I don't really know 13 how he can answer that without talking 14 about -- I'll reiterate his instruction: 15 To the extent you can answer his question 16 without -- 17 BY ATTORNEY GREVE: 18 Q I'm not asking you for the content of 19 the conversation. I'm asking: Did you have a 20 conversation with the law firm before filing 21 your lawsuit? 22 A No. 23 Q How did you first come into contact 24 with the Dean Omar firm? Did you see an 25 advertisement on TV? Did you see something in	Page 647 1 A They are the best friends of my 2 in-laws. 3 Q And can you give me the individual -- 4 who are the Mendlesohns? Do you have a first 5 name? 6 A Joe is who's closest to me. 7 Q Are there -- is that short for 8 Joseph? 9 A Yes. 10 Q Was Joseph the only member of them 11 Mendlesohn family who had a conversation with 12 you regarding the Dean Omar Bradley firm and the 13 recommendation? 14 A Yes. 15 Q Was there anyone else present during 16 that conversation other than Joseph? 17 A It would have been just a private 18 conversation between he and I. 19 Q And where does Joseph Mendlesohn 20 live? 21 A Here in Charleston. 22 Q How long have you known the 23 Mendlesohn family? 24 A Say again. I'm sorry. 25 Q How long have you known the

Page 648 1 Mendlesohn family? 2 A Over 20 years. 3 Q What was the conversation that you 4 had? Can you describe the context and what was 5 exactly said that led to the recommendation of 6 the Dean Omar firm recommendation. 7 ATTORNEY GROSS: Object to form. 8 THE WITNESS: I pause for a second, 9 Mr. Greve, because I need to make sure 10 that I make the record very clear. Joe 11 Mendlesohn is an attorney in the state of 12 South Carolina in good standings. Joe 13 Mendlesohn has been my ear of conscience. 14 And I think if I answer this type of 15 question, I will violate my 16 attorney-client privilege with him. 17 BY ATTORNEY GREVE: 18 Q That's absolutely fair. Okay. So 19 let me just take a step back. 20 So Joseph Mendlesohn is a family 21 friend, but he is also an attorney in the 22 Charleston, South Carolina area; is that 23 correct? 24 A That's correct. 25 Q Okay. And in -- where exactly did	Page 650 1 dear close friend, best friend of my in-laws. 2 So I spoke to the Mendlesohn family often. 3 Q Was he involved in any of the 4 workers' comp -- 5 A Yes. 6 Q -- claims? 7 A Yes. 8 Q And I believe you had mentioned 9 earlier in your deposition that there was some 10 litigation, I believe, involving some real 11 estate; is that correct? 12 A That is correct. 13 Q And was he your attorney for that as 14 well? 15 A He was. 16 Q Did you reach out directly to retain 17 the Dean Omar Bradley law firm yourself, or was 18 that facilitated through someone else? 19 ATTORNEY GROSS: It doesn't really 20 matter, but it's Dean Omar Branham. 21 ATTORNEY GREVE: Sorry. Dean Omar 22 Branham. 23 THE WITNESS: And yes, we did make 24 the phone call. 25 BY ATTORNEY GREVE:
Page 649 1 this conversation take place where the 2 recommendation was made? Was it at an office or 3 was it at your home? 4 ATTORNEY GROSS: Can I just have a 5 running objection to this entire line of 6 questioning, please? 7 ATTORNEY GREVE: Sure. 8 ATTORNEY GROSS: Thank you. 9 THE WITNESS: It was sitting on the 10 porch in his home. 11 BY ATTORNEY GREVE: 12 Q And was this a, an appointment or 13 professional visit that you had arranged to 14 discuss your condition? 15 A I went to him to specifically talk to 16 him. 17 Q Okay. And it was with -- you were 18 seeking legal counsel from him during that 19 conversation; is that correct? 20 A I was seeking legal advice. 21 Q Did you ever hire Joseph Mendlesohn 22 as your attorney? 23 A Joe Mendlesohn has been my legal 24 counsel for anything from personal estates to 25 anything else in my life. He, as I said, is a	Page 651 1 Q "We" being you and Lonnie or -- 2 A Yes. 3 Q -- "we" being you -- 4 A No. 5 Q -- and Mr. Mendlesohn? 6 A Lonnie and I made the phone call. 7 Q In terms of any attorney who 8 currently represents you in an asbestos or 9 talc-related matter, that's only the Dean Omar 10 firm; is that correct? 11 ATTORNEY GROSS: Object to form. 12 THE WITNESS: That is correct. 13 BY ATTORNEY GREVE: 14 Q Prior to your deposition, starting, I 15 guess, two days ago, had you had any meetings 16 with anyone to prepare for this deposition? 17 A Define preparing for the deposition. 18 Q Sure. Without you having to reveal 19 anything that anyone actually told you or said 20 to you -- all right; that's not my question. My 21 question is: Prior to the beginning of your 22 deposition, I believe on Wednesday, had you had 23 any meetings with anyone from the Dean Omar firm 24 to help prepare you for your deposition? 25 A I spoke with my attorney, just to

Page 652 1 understand the process itself. 2 Q And do you recall how many 3 conversations you had with your attorney? 4 A Just a couple. 5 Q And was that Miss Gross who you spoke 6 to? 7 A Yes. 8 Q And did those occur over a Zoom or 9 over a telephone call? 10 A I believe it was a Teams call. 11 Q Was there anyone else who 12 participated in the meeting? 13 A No. 14 Q And you said there were two meetings. 15 Can you tell me how long each of them lasted? 16 A Perhaps 30 minutes. 17 Q Each? 18 A Yes. 19 Q At any point in time in these 20 discussions, did you ever review any 21 photographs? 22 A No. 23 Q And I believe you had testified 24 previously, but just the same ago today, you 25 haven't reviewed any materials to prepare for	Page 654 1 not just today but in other days -- but does 2 Lonnie know if he is a party to this lawsuit? 3 A He does. 4 Q And can you -- does Lonnie have any 5 understanding that he also may have to give a 6 deposition in this lawsuit? 7 A He does. 8 Q And as someone who cares for Lonnie, 9 is there any instruction you can provide us in 10 terms of his current health status, in terms of 11 how we should guide ourselves in that deposition 12 process if we take his deposition? 13 ATTORNEY GROSS: Object to form. 14 BY ATTORNEY GREVE: 15 Q You said he suffers from anxiety. 16 A No. 17 Q You said that you're trying to -- 18 ATTORNEY GROSS: That's not -- no. 19 THE WITNESS: That is not accurate. 20 BY ATTORNEY GREVE: 21 Q Okay. 22 A I said he suffers from debilitating 23 depression and bipolar. Anxiety is part of it, 24 but I never mentioned the word "anxiety." 25 As for how to handle Lonnie, I think
Page 653 1 this deposition; is that correct? 2 A That is correct. 3 Q Have you had any discussions with 4 Lonnie regarding your testimony on the first two 5 days of your deposition? 6 A No. 7 And if I may, Mr. Greve, Lonnie 8 suffers from debilitating depression. And so 9 what normally a married couple may discuss in 10 the privacy of their home, own home, I do not. 11 I carry that burden. Because as hard as it may 12 be for that man to wake up and put a smile on 13 his face and say "today no one's going to upset 14 me and I'm going to have a good day" is a 15 challenge. 16 And so I will pick and choose what I 17 say. And the confines of this room and what we 18 talk about will always remain sacred because I 19 don't want to shatter what little happiness he's 20 able to have. 21 ATTORNEY GREVE: Objection to the 22 nonresponsive portion. 23 BY ATTORNEY GREVE: 24 Q Mr. Perry -- and this just will help 25 me and guide me as we go through this process,	Page 655 1 that's a question for Lonnie to answer. I 2 think -- I don't want to put words into his 3 mouth. So should you have that conversation 4 with him, I think that would behoove you to ask 5 what would be best and how to conduct yourself 6 to make sure that your time together is 7 appropriate -- or as productive as it should be. 8 Q Mr. Perry, thank you for that 9 guidance on that. I appreciate that. 10 Mr. Perry, I'd like to go back a 11 little bit further in time, hopefully to a more 12 positive topic. I want to visit with you about 13 your residences, some of the places that you 14 lived. 15 And I think through the discussions 16 that we had yesterday, we were able to pretty 17 much narrow down a complete list of all of the 18 residences where you lived during your lifetime. 19 I'm just going to roll through sequentially to 20 make sure I got the list right, and then I have 21 some specific questions about the actual 22 residences. 23 The first residence that I have, your 24 childhood home, the first you remember, where 25 you were born, was the North Osborne residence

Page 656 1 in Springfield, Illinois; is that correct? 2 A That's correct. 3 Q And then you moved in 1976, roughly, 4 to 4143 Cessna Lane, also in Springfield, 5 Illinois; is that correct? 6 A That's correct. 7 Q And then the next location would have 8 been University of Illinois dorm room. That 9 would have started in your freshman year. But 10 then you -- obviously you returned home, as you 11 explained. But then in your junior and senior 12 year you returned to the campus to continue 13 living and complete your college studies; 14 correct? 15 A Correct. 16 Q And then we also have the boat. And 17 understanding that you would have resided and 18 lived on the boat on spring breaks and summers 19 while you're still in school, there was a period 20 of time from roughly summer of 1993 to 1996 21 where you lived on the boat full-time; correct? 22 A Correct. 23 Q After you stopped living on the boat, 24 you came to South Carolina, Folly Beach, for the 25 first time. And that would have been in the --	Page 658 1 A Correct. 2 Q And then the last residence that 3 you've lived in in your lifetime is the one that 4 you're currently in. That's the 2457 property 5 on Lieutenant Dozier; is that correct? 6 A That's correct. 7 Q Now, going back to your very first 8 childhood home, can you give us a description of 9 what that home looked like. I know you told us 10 that it had one bathroom. But I was wondering 11 if you could just, just give us an image or draw 12 a picture for us of what that house and what 13 that residence looked like? 14 A If I may use the descriptor of a 15 post-World War II one-bedroom home. The kitchen 16 was very, very small. It consisted of a 17 refrigerator that was not recessed into any 18 cabinetry, a table that had four chairs around 19 it, a stove that was not recessed, and a little 20 tiny kitchen countertop with a sink. 21 From that room you had two exits of 22 that room, which would have been to the exterior 23 of the home and then a little pathway that would 24 have led to, on one side of this pathway, the 25 bathroom. Across the hall would have been my
Page 657 1 a rented property sometime after 1996; is that 2 correct? 3 A Correct. 4 Q And that rented -- my notes say it's 5 a rented one bedroom, I think you may have 6 called it a shack, actually on the beach? 7 A Correct. 8 Q How long did you stay there? 9 A Until I moved into the 1550 Folly 10 Road residence. 11 Q And then after 1550 Folly Road, which 12 you left in 2003 -- let me back up. The 1550 13 Folly Road, is that a property that you moved 14 into in 1996 or 1997, if you recall? 15 A I believe I purchased that property 16 in '99 or 2000, something like that. 17 Q So you rented the home on Folly Beach 18 for a couple of years; is that fair to say? 19 A That's correct. 20 Q Okay. And then you left the Folly 21 Beach cottage in 2003. And that's when you 22 moved in with Lonnie at 2695 Exchange Landing 23 Johns Island -- 24 A Correct. 25 Q -- South Carolina?	Page 659 1 mother and father's bedroom. It would have -- 2 continued forward on that same pathway, it would 3 have dead-ended into the living room, which was 4 big enough for one couch. And there was a small 5 little, let's refer to it as an easy-man's 6 chair. 7 And then on the front of the house 8 was a glass porch that had no heating or air. 9 And that room my sister and I shared together in 10 one bed. 11 Q So the enclosed porch was not a 12 formal bedroom, but that's what functioned as 13 you and your sister's bedroom; is that fair to 14 say? 15 A Today we would all refer to it as a 16 bunk porch or a sunroom. It was consisted of 17 all glass. And then it had a glass door that 18 went out to the exterior. 19 Q Can you give me an estimation as to 20 the square footage for this home? 21 A Less than 1000 square feet. 22 Q How was the residence heated? 23 A It had gas, a gas forced air, 24 forced air unit in it. 25 Q And was it natural gas?

Page 660 1 A It was. 2 Q And do you know, was this a property 3 that was on a city lot and block? Was it 4 located in the city? 5 A It was. 6 Q Okay. And so you had your city water 7 and sewage connected? 8 A We did. 9 Q And you've lived there until 1976; is 10 that correct? 11 A Correct. 12 Q Did you have, you know, childhood 13 friends or neighbors from that property, the 14 North Osborne property? 15 A I had a friend that lived across the 16 street. 17 Q Do you recall his name? 18 A His name was Charlie. 19 Q Do you recall what Charlie's last 20 name was? 21 A I do not. 22 Q Did you and Charlie -- I mean, was 23 this a typical setting where, as kids, you-all 24 would play outside whenever you had free time, 25 as opposed to staying in the house?	Page 662 1 for your district -- that was the district that 2 you were in? 3 A Yes. 4 Q Can you describe for me what Enos 5 Elementary School looked like? 6 A It's been a long time. I, I can't 7 recall the classrooms themselves. But I believe 8 it was a two- -- two-story, three-story brick 9 building encased around trees. It was only a 10 few blocks away from the Osborne house. That's 11 really all I recall about it. 12 Q Do you recall ever going there to 13 play with your friends? Would that be a site 14 where you-all would do things together? 15 A No; it was not safe. 16 Q The next residence, the 4143 Cessna 17 Lane, from 1976, you described it having two 18 baths. Do you have any idea how that home was 19 heated? 20 A Forced -- originally it was a 21 electric heat pump. And then shortly after we 22 moved into that house, my father had the house 23 moved to forced, forced air. 24 Q Can you describe for me what you mean 25 by "forced air."
Page 661 1 A Yes. His mother also provided some 2 childcare for my family during some of the 3 earlier years. And we were your typical little 4 kids that knew nothing about each other other 5 than we liked to hang out with each other. 6 Q Got it. Was there any farmland in 7 this area -- I know you described it, it was in 8 a city -- if you're on the edge or the border? 9 A No. This was, this was a, a 10 community that was all houses. There was not -- 11 I mean the lots themselves were postage stamps. 12 Lots of houses, no open farmland. 13 Q Do you recall any crossroads for this 14 North Osborne Street property? 15 A Not that I could recall. I just 16 remember that the house always sat on Osborne 17 Street. 18 Q While you're still a child, you went 19 to -- well, let me ask you this: When you were 20 at the North Osborne Street, were you enrolled 21 in school or did you go to attend any school at 22 that location? 23 A I believe I attended Enos Elementary 24 for pre-K. 25 Q That was the local elementary school	Page 663 1 A Heated by gas. 2 Q And so the term I'm familiar with is, 3 like, "HVAC." This would have been a 4 centralized system that heated the air and then 5 circulated it through the home. Is that your 6 understanding of what forced air is as well? 7 A Yes. 8 Q And the Cessna Lane property, was 9 this in the city, or was this out in the -- more 10 the farm area, the rural area? Can you describe 11 it for me. 12 A It was in the Sangamon County area. 13 Q Were there any farm -- was there any 14 farmland close you? 15 A Yes. Some of the farms were quite 16 large, even by today's standards; thousands of 17 acres. 18 Q How far would -- I mean, could you 19 walk easily as a child to get to farmland? I'm 20 just trying to get a sense of how close it was 21 to your property? 22 A Oh, I mean, we -- the land that we 23 lived on at one time was pastureland for cows. 24 And then the farmer that owned it had started 25 selling it off to a developer, and the developer

Page 664 1 put 50 homes on it. 2 All of the homes were big tract 3 properties. We were one of those. But to get 4 to farmland really was walking out the driveway, 5 maybe walk down a thousand feet to the dead end 6 of the street, and then there was a 3500-acre 7 farm patch. 8 Q Got it. Got it. And would this have 9 been the residence you were in when you -- I 10 guess it was Riverton Elementary School? Was 11 that your first school? 12 A That's correct. 13 Q And did you start there as a 14 kindergartner? 15 A I believe my first grade was first 16 grade. 17 Q So when you came to the Cessna Lane 18 home, you completed a pre-K program at your 19 prior residence; you moved to this new location. 20 And did you go immediately into the first grade? 21 A Yes. 22 Q Okay. And your time at this Cessna 23 location, pretty typical for a boy of the age? 24 You'd go outside and play and ride your bike, do 25 the typical boy activities with your friends; is	Page 666 1 of it. And then we would go to corn. 2 And then the very end of the garden 3 was an area that I took great pleasure in 4 because that's where my mother let me have my 5 watermelon and pumpkins. 6 But it was a family effort; because 7 when each one of those vegetables would come to 8 harvest, mother would sit in the house and we 9 would prepare all of that, and that's what we 10 would have for the winter months. 11 Q So while this was obviously a 12 wonderful time you got to spend with your 13 mother, this was a little bit more than a hobby? 14 This was something that was important to the 15 family to help sustain them through the years; 16 is that correct? 17 A That is correct. 18 Q Did your mom have any specific 19 gardening or farming experience that she drew 20 upon, or was this all something new she started 21 with you? 22 A When my mother was a child, that was 23 also part of their survival, which was having 24 the large gardens to raise their fruits and 25 vegetables.
Page 665 1 that true? 2 A I -- given the type of surroundings, 3 I spent a tremendous amount of my time playing 4 out in the yard. I enjoyed gardening with my 5 mother. We had an enormous garden. 6 But then the thing that captured my 7 heart was my mom let me have my own animals. 8 And my very first animals were chickens. And my 9 mother always called me "Chicken Boy" because I 10 always had chickens and I would peddle my eggs 11 up and down to the neighbors, selling them for 12 25 cents a dozen. 13 Q You were way ahead of the times. 14 A I was way ahead. Exactly. 15 Q Let's visit a little bit about the 16 gardening that you would do. How much, how much 17 gardening would you-all do? Could you give me a 18 size of the lot or the plot or whatever it was 19 that you-all, you know, turned soil on? 20 A It was absolute -- it was a couple 21 hundred feet long, probably by 50 feet wide. It 22 would have everything that you could possibly 23 think of, from radishes to carrots to peas to 24 green beans to tomatoes -- tomatoes was always a 25 store that we would have lots and lots and lots	Page 667 1 Q Is this something that you've 2 continued yourself today? 3 A Lonnie and I at the farm had our 4 own -- it was nothing like the gardens we had -- 5 our own garden. We raised some of our -- Lonnie 6 had his own vegetables that he wanted to raise, 7 and I had my own vegetables. And then we canned 8 them. And then, once again, you know, have them 9 during the winter months. 10 But the garden was a little bit 11 harder for us with the horses, the cows, the 12 chickens, the goats, to really focus in on that. 13 Q From the time that you left this 14 Cessna property, between Cessna and then the 15 farm with Lonnie, have you done any gardening on 16 your own in between those two residences? 17 A I did not. 18 Q Okay. Do you know -- were you ever 19 around your mother when she had to, I guess, 20 prepare the soil for whatever the next plants or 21 vegetables that were going to be grown? 22 A No. That was always my father's 23 responsibility. He were more -- he took care of 24 that. And then we had a little device that we 25 would push in front of us that would drop seeds

Page 668 1 down into it. 2 So there wasn't a whole lot of 3 digging in the soil and so forth. It was pretty 4 user-friendly. 5 Q Do you recall having to use any type 6 of additives or chemicals to help prepare the 7 soil prior to planting? 8 A We, before it was ever fashionably, 9 tried to have a very organic -- before "organic" 10 was even a word in the vocabulary -- so we 11 didn't have pesticides or those types of 12 chemicals, fertilizers sown into it. 13 Where the house was, it was very 14 close to the river bottoms. So the soil was 15 rich and plentiful. 16 Q Did you ever have to do anything to 17 treat the soil to produce drainage? 18 A No. 19 Q Do you recall the names of any of 20 your neighbors from that Cessna Lane location? 21 A The Langley family, the Miller 22 family, the Burgener family. 23 Q Can you spell that one for me. 24 A Burgener, B-U-R-G-E-N-E-R. Burgener 25 family. The Schou family, S-C-H-O-U.	Page 670 1 I was just curious that was -- if you had 2 similar siding on the North Osborne residence. 3 A I don't recall what the North Osborne 4 house exterior was. 5 Q And this property had two baths. Can 6 you kind of -- like you did before with the 7 Osborne Street, can you kind of walk us through 8 your memories about this home was, what it 9 looked like. 10 A Okay. You'd walk in the front door 11 into the living room. The living room had a 12 couch, three armchairs, and the television. 13 If you proceeded from the front door, 14 it was -- first off, it's a ranch-style. So 15 walk through the front door, the living room. 16 Walk to the living room straight ahead, it would 17 have an equal-size kitchen/dining room. 18 Inside the dining room was a table to 19 seat six, a large open kitchen area, 20 refrigerator that was recessed into cabinetry, 21 cabinetry, counter space, sink, a range, a 22 kitchen range that was recessed in the 23 cabinetry. And then across from the kitchen 24 sink was a large pantry. 25 I'm going to guide you back to the
Page 669 1 Q Now, you had mentioned that your 2 father had, I guess, either did himself or 3 contracted to arrange for the switchover from 4 the electric heat pump to a more forced-air 5 heating system. 6 Was there any other type of work that 7 was done on the property, you know, to -- in 8 terms of improvements? 9 A I do not recall the year. But my mom 10 and dad changed the front facade. The house was 11 a vinyl siding. And at that period of time they 12 removed one half of the vinyl side- -- or had 13 one half of the vinyl siding removed and a brick 14 facade was put up. 15 That was all the improvements that 16 were done at the house. 17 Q Was that work that your father did 18 himself, or did he have someone else do it for 19 you all? 20 A It was contracted. 21 Q Did the home that you lived in 22 previously, did that have that same or similar 23 vinyl siding, the Osborne Street location? 24 A Repeat that question fully, please. 25 Q Yeah. The siding that you described,	Page 671 1 entry into the kitchen. There was a long 2 hallway leading to the next part of the house. 3 Going down the hallway on the left-hand side was 4 the guest bathroom. Further down a little bit 5 was bedroom number one, which would be my 6 bedroom. Walked down a little bit more, on the 7 left-hand side would have been bedroom 8 number two, which was my mother and father's 9 bedroom, with an en suite bathroom. And at the 10 end of the hallway would have been bedroom 11 number three, which would have been my sister's 12 bedroom. 13 If you turn back around and go to the 14 other end of the house, there was a 15 two-and-a-half-car garage and a entry into the 16 basement of the house that was closed off by 17 sheetrock and the door. 18 If you go down into the basement, it 19 was a full-size basement of the footprint of the 20 house. And down there -- it was unfinished, but 21 the washer and dryer. And then just storage for 22 the family was down there. 23 Q Was there a, I guess, a HVAC system 24 or a furnace or any other equipment in the 25 basement?

Page 672 1 A A water heater that was down there. 2 And then the indoor portion of HVAC would have 3 been down there. 4 Q Do you recall the size of the water 5 heater? 6 A It would have been appropriate for a 7 family of four. So was like five feet tall, 8 something like that. 9 Q Where there pipes that came off from 10 the water heater? 11 A There were. 12 Q Were those pipes wrapped with 13 anything, any material? 14 A I just remember seeing copper pipes. 15 The whole house plumbing was copper. 16 Q So is it your memory that the pipes 17 that connected to the hot water heater, they 18 were -- that the metal copper was the exterior 19 that you noticed? It didn't have anything on it 20 whatsoever? 21 A Yeah, I don't remember seeing any 22 insulation on it at all. 23 Q Did you ever have the occasion to 24 touch one of those pipes? 25 A Absolutely not.	Page 674 1 sheetrock in the basement, was that already 2 installed before you moved into the home? 3 A The sheetrock in the garage was 4 already installed and finished to a plaster 5 wall, a textured plaster wall. The basement was 6 concrete block walls -- or not concrete block 7 but concrete -- poured concrete; excuse me. 8 Poured concrete. 9 Q Have you ever -- at the Cessna home 10 did you ever observe any type of sheetrock work 11 being performed, repairs or new construction? 12 A No. 13 Q Had you ever seen sheetrock work 14 being done at a personal residence? 15 A Yes. 16 Q Which personal residence of yours did 17 you observe it performed? 18 A In a personal residence, when I moved 19 into our current location, I walked, 20 realistically, a couple of dozen homes in the 21 2019 and 2020 timeframe, just looking at the 22 progress of the home, understanding the 23 different floor plans, oohing and aahing and 24 criticizing what I saw. 25 Q And did you actually observe
Page 673 1 Q Because it would have been hot, 2 wouldn't it? 3 A It was hot. 4 Q Do you know if anyone else in your 5 family accidentally touched those pipes and 6 noticed that they were hot? 7 ATTORNEY GROSS: Object to form. 8 THE WITNESS: I wasn't around anybody 9 that would have made that conjecture. 10 BY ATTORNEY GREVE: 11 Q And you didn't hear anyone screaming 12 that they had burned themselves, did you? 13 ATTORNEY GROSS: Object to form. 14 THE WITNESS: No, sir. 15 BY ATTORNEY GREVE: 16 Q The garage that you described, was 17 that an open-air, or was it an enclosed, like a 18 garage -- I'm searching for the words -- 19 something different than a porte cochere. 20 A It was a full, enclosed garage, 21 sheetrock walls, and an open and closing garage 22 door. 23 Q And in any point in time -- strike 24 that. 25 The sheetrock in the garage and the	Page 675 1 craftsmen hanging sheetrock and going through 2 the process of finishing the surface of 3 sheetrock and making it ready for a residence? 4 A Well, this was during COVID, so I 5 wasn't allowed in the door while they were 6 there. But I could stand in the street and 7 watch it. And then at nighttime, when no one 8 was around, I would walk inside and just get an 9 understanding of the floor plans and, like I 10 said, ooh and aah. 11 Q Yeah. The experience that you're 12 just describing, seems like this is something 13 that happened in and around COVID. Was there 14 any other time in your past where you had ever 15 experienced something similar or seen something 16 similar, where craftsmen were applying some type 17 of material to a wall and you noticed, you know, 18 their technique and if it was dusty? And this 19 would have been in a personal-residence 20 situation, something separate from your career 21 in hospitality and with the hotels. 22 ATTORNEY GROSS: Object to form. 23 THE WITNESS: No. 24 BY ATTORNEY GREVE: 25 Q Now, if I understand correctly --

Page 676 1 your sister's older than you; is that correct? 2 A That is correct. 3 Q Okay. Do you recall when, you know, 4 what year she left the Cessna Lane residence? 5 A Approximately two years before me. 6 Q Did she go to college as well? 7 A She did. 8 Q Were did she go? 9 A Monmouth College. M-O-N-M-O-U-T-H 10 College. 11 Q And I apologize, I'm not -- I'm 12 familiar with the name but not sure what state 13 it's located in. 14 A Illinois. 15 Q (Indicating.) 16 A Illinois. 17 Q Did she go away to college, or did 18 she still -- did she stay home and commute? Can 19 you tell me if she -- 20 A No. 21 Q -- permanently left the home to go to 22 college? 23 A All three of her college degrees came 24 from off-campus colleges. 25 Q So when she graduated high school and	Page 678 1 Q -- a bit different? 2 ATTORNEY GROSS: Go ahead. 3 THE WITNESS: I had my own room. 4 ATTORNEY GROSS: Go ahead. Just make 5 sure you let him get his whole question 6 out. That's all that was. 7 THE WITNESS: It was just -- it 8 was -- I had my room. 9 BY ATTORNEY GREVE: 10 Q And when you're describing your own 11 room, was this a single-bedroom apartment that 12 you could rent? Or was this a room that you 13 leased or rented from, from like a, you know, a 14 larger bedroom facility? 15 A It was in a private family's -- it 16 was a room that we rented from a private family. 17 Q So you were -- this is like you're 18 just paying room and board just to have access 19 to one of the rooms in the house; is that 20 correct? 21 A That is correct. 22 Q Do you recall how much you had to pay 23 a month for that? 24 A No. At that time I was not 25 responsible for my expenses.
Page 677 1 left, she did not return back to the home? 2 A No. She, she was done. 3 Q Okay. And did -- you graduated high 4 school -- strike that. 5 Did she also attend the same high 6 school that you did? 7 A She did. 8 Q Okay. Did -- she also went there for 9 elementary and middle school; is that correct? 10 A She did. 11 Q Okay. So then you -- and then -- and 12 your high school graduation was in 1988; is that 13 correct? 14 A That is correct. 15 Q Okay. And in the fall of 1988, you 16 go to the University of Illinois; is that 17 correct? 18 A That's correct. 19 Q And you move into a dorm for the 20 first semester; correct? 21 A I moved in off-site housing; yes. 22 Q Would you consider it to be a 23 dormitory or dorm room facility, or was this 24 something -- 25 A I had my own.	Page 679 1 Q And just so I'm clear, this is your 2 freshman year, first day of class, you would 3 have been living -- you know, renting a room 4 from a private family in that very first 5 semester of your college years; is that correct? 6 A My first semester; correct. 7 Q Okay. And do you recall the name of 8 the family that you leased a room from? 9 A The Miller family. 10 Q And do you recall the first names of 11 any of the Millers? 12 A It was Bob and Joanne. 13 Q Do you know what Bob or Joanne Miller 14 did for a living? 15 A They were retired. 16 Q Do you know what they were retired 17 from? 18 A He was an insurance salesman. She 19 was a stay-at-home wife. 20 Q Whether any other -- let me use the 21 term "boarders." Is that a fair way to describe 22 your living arrangement with the Miller family? 23 A -- I think you can, you can, you can say 24 that. 25 Q Okay. Were there any other boarders

Page 680 1 at that residence during your time there? 2 A No. 3 Q Were there any other people living in 4 the household other than Bob and Joanne Miller 5 while you were living there? 6 A Their kids were already grown. 7 Q Do you recall where -- the physical 8 location or physical address for this property? 9 A I don't remember the street anymore. 10 But, once again, it was just a short period of 11 time until I almost failed out of school. So -- 12 but it was only a few blocks away from campus. 13 Q Do you recall a crossroad? 14 A No; but I can get that for you. 15 Q In terms of a timeline here, had you 16 returned back to your home before Thanksgiving 17 break? 18 A I would have. 19 Q Was it the first round of tests that 20 got you in trouble and was the cause of you 21 returning back to your home? 22 A It was my first report card. 23 Q Were they are on a quarterly system 24 or -- I'm assuming it wasn't a semester system 25 because you got grades before Thanksgiving. Can	Page 682 1 an hour each way? 2 A A couple hours each way. At one 3 point in time I started taking classes at a 4 satellite version of the school that was closer 5 to home so I could get through my first and 6 second year. 7 Q Got it. Just so I have it, since 8 we're talking about it now, can you describe for 9 me, is it a satellite campus of University of 10 Illinois -- 11 A Correct. 12 Q -- or was this a community college? 13 A It was a satellite campus of the 14 school, underneath that school. 15 Q And do you recall what city it was 16 located in? 17 A It was close to Springfield. 18 Q When you returned to University of 19 Illinois as a junior and senior, did you live in 20 a dorm, or did you return to, you know, the 21 Miller residence as before? 22 A No. I was able to stay with friends. 23 But at that point in time I was very focused 24 that I want to get my schooling done and I was 25 much more focused upon what my life's mission
Page 681 1 you describe for me how they reported grades at 2 Illinois at that time? 3 A Yeah. I -- the -- whoever was paying 4 your bills got -- and in this case it was my 5 father -- got my grades. And so when I came 6 home from school on break, he saw my grades, he 7 called me out to the dining room, and thanked me 8 for saving him \$60,000 and asked me what my plan 9 was. 10 Q Got it. You return home. And it's 11 my understanding you continued your schoolwork, 12 but you did not return to the University of 13 Illinois into your junior and senior year? 14 A Living on campus. 15 Q Living on campus; okay. 16 In terms of your education, were you 17 able to continue your classwork at University of 18 Illinois your freshman and sophomore year? 19 A Yes. So I had to commute from home, 20 where my father could and my mother could keep 21 an eye on my extracurricular activities. 22 Q How long was the commute? 23 A A couple hours. I spent all day 24 there and then come home in the night. 25 Q So that's a couple hours each way or	Page 683 1 was going to be. 2 Q Who were the -- when you first 3 returned to school as a junior, where was the 4 location, the physical address that you lived? 5 A I can get you the physical address. 6 But it was just a large brick-front home that I 7 rented a room in. 8 Q Do you recall who -- so at this time 9 you don't recall the address of the location 10 where you (technical difficulties)... 11 ATTORNEY GROSS: Your question broke 12 up, Kurt. 13 ATTORNEY GREVE: Sorry. 14 BY ATTORNEY GREVE: 15 Q Am I correct that at this time you do 16 not, you do not recall the address for the 17 property that you first moved into as a junior 18 when you returned to the University of Illinois; 19 correct? 20 A No. But I can get that for you. 21 Q Okay. And it was a rented room as 22 opposed to a dorm room; correct? 23 A Correct. 24 Q And it was in a residential area; 25 correct?

Page 684 1 A Correct. 2 Q Okay. And can you describe for me 3 the layout and configuration of the house? 4 A It was a two-story residential that 5 was converted into individual rooms. There was 6 community bathrooms. 7 Q At any point in time when you lived 8 at this -- the first residence that you returned 9 to or your first property that you returned to 10 when you returned to campus as a junior, have 11 you ever seen any repair work or construction 12 work or remodeling work being done at that 13 property? 14 A No. 15 Q And do you recall what year this was 16 that you would have returned back for your 17 junior year? 18 A It would have been my last two years 19 of school. 20 Q Do you recall the owners of this 21 residence -- 22 A I do not. 23 Q -- their names? 24 Was there anyone else who lived in 25 this property or at this property, other than	Page 686 1 would remove my belongings so I wouldn't have to 2 pay rent during that period of time, and then go 3 and do what -- you know, if it was the boat, 4 summer breaks, whatever it was. And then I 5 would move back in at the beginning of the next 6 school cycle. 7 Q Okay. So just to make sure I 8 understand, while you are attending classes your 9 junior and senior year, this residence would 10 have been the only place that you would have 11 lived during that time period while you were at 12 campus; fair? 13 A Correct. 14 Q Okay. And in the summer breaks you 15 would move your property out of the residence 16 and you would go to the boat. Is that how it 17 worked? 18 A That is correct. 19 Q Was there ever a point in time where 20 you would go back home for a couple of days 21 before going to the boat? Or were you just 22 leaving campus and going straight to the boat? 23 A No; I'd have to go home and drop off 24 my belongings and then get packed and down to 25 Florida.
Page 685 1 yourself and the owners? 2 A Yes. There was several people that 3 lived there. 4 Q Do you recall how many boarders they 5 had at this property when you lived there? 6 A There were several. There was always 7 movement of people in and out. But several 8 people. 9 Q Do you recall the names of any of the 10 other boarders who lived at this residence? 11 A Yeah. There was an Andy Shouse. I 12 do not know how to spell the last name. 13 Jason -- 14 Q Do you recall any others? 15 A Jason Menendez. Which would have 16 been the two that I would have chatted with the 17 most. 18 There were some females, but I don't 19 recall what their names were. 20 Q So this was a coed boarding facility? 21 A It was. 22 Q Is this -- did you live -- residence 23 this the residence until you graduated? 24 A No -- yes. But at the end of each 25 summer -- or at the beginning of the summer, I	Page 687 1 Q While you were at the University of 2 Illinois, did you ever see any notations or 3 markings or notices regarding asbestos abatement 4 going on on the campus? 5 A I did not. 6 Q Is the phrase "asbestos abatement," 7 is that something you've heard of before? 8 A In my adult -- and I'm going to 9 qualify that adult, 40-plus years old. And I 10 would have learned those terms through my 11 employment with Hilton Worldwide. 12 Q Got it. Was there ever a point in 13 time where you came to understand, even as an 14 adult, that some of the places that you may have 15 either lived at or went to school at, there had 16 been asbestos abatement that had been performed? 17 A Repeat this. 18 ATTORNEY GROSS: Yeah, go ahead. 19 Repeat. 20 BY ATTORNEY GREVE: 21 Q Sure. I understand that you acquired 22 the knowledge of the phrase "asbestos abatement" 23 through your work at Hilton in your professional 24 career; okay? And based on your answers I 25 understand that up until you started working

Page 688 1 with Hilton, you were not familiar with the 2 phrase "asbestos abatement"; correct? 3 A Before Hilton, no, I had not. 4 Q Okay. Now, as you sit here today, 5 with your knowledge that you have today, have 6 you become aware or been made aware of any of 7 the other properties that you either lived at or 8 any of the schools that you attended undergoing 9 an asbestos abatement process? 10 ATTORNEY GROSS: Object to form. 11 THE WITNESS: I was not aware of any 12 such work going on. 13 BY ATTORNEY GREVE: 14 Q And that's at that time you were -- 15 strike that. 16 No one has told you that any of the 17 schools or any of the houses that you've ever 18 lived in have had asbestos removed; is that 19 fair? 20 ATTORNEY GROSS: Object to form. 21 THE WITNESS: Nothing was removed, 22 not to my -- to my knowledge, nothing was 23 removed. 24 BY ATTORNEY GREVE: 25 Q That's right; as far as you know.	Page 690 1 you want an investigation completed so that you 2 could know if there was any asbestos at any 3 residence or school that you ever lived in or 4 attended? 5 ATTORNEY GROSS: Object to form. 6 THE WITNESS: Repeat that question 7 again, sir. 8 BY ATTORNEY GREVE: 9 Q Sure. As you sit here today, would 10 you like to know if there was any asbestos 11 present at any house or residence you lived at? 12 ATTORNEY GROSS: Object to form. 13 THE WITNESS: This is, this is a 14 rather -- I don't know that it changes 15 where I'm at in my life. And why I say 16 that, sir, is whatever days, weeks, months 17 I have left, I don't know that it brings 18 me peace of mind or it further horrifies 19 my memories. 20 So for me, I don't know that it 21 really matters anymore. I know that I'm 22 ill. I know that I'm dying of 23 mesothelioma. So whatever time I have 24 left, I don't know that I want to track 25 down Quad A, you know, on this street had
Page 689 1 If there was asbestos at any of the 2 places that you lived or went to school, is that 3 something you would want to know? 4 ATTORNEY GROSS: Object to form. 5 If there was asbestos, just in 6 general? I mean... 7 Go ahead and answer the question if 8 you can. 9 BY ATTORNEY GREVE: 10 Q Mr. Perry, would you want to know if, 11 in general, there was asbestos at any place that 12 you ever lived or any school you ever attended? 13 ATTORNEY GROSS: Object to form. 14 BY ATTORNEY GREVE: 15 Q Would you want to know that? 16 A At that period of time in my life, I 17 don't know that I -- if you would have asked me 18 to tell you what asbestos is or what asbestos 19 does, I don't think I could have answered that 20 question. When I say "honestly," being that I 21 really honestly didn't know it was. 22 Hindsight, now, if I, if I heard the 23 word "asbestos" -- and this was me being 24 ill -- absolutely I'd want to know. 25 Q Based on what you know today, would	Page 691 1 it in it at one time. It doesn't change 2 anything, and it doesn't give me any more 3 time. 4 ATTORNEY GREVE: Objection to the 5 nonresponsive portion. 6 BY ATTORNEY GREVE: 7 Q Mr. Perry, if through the 8 investigations that occur during this lawsuit 9 you became aware that there was asbestos at any 10 residence or at any school that you attended, 11 would you want to share that information with 12 whoever resides at those residences today? Do 13 you think that might help them? 14 ATTORNEY GROSS: Object to form. 15 To the extent you can answer that 16 without discussing anything that you or I 17 have talked about or will talk about in 18 the future, you can answer it. 19 THE WITNESS: Okay. 20 Sir, if you'll just one more time 21 repeat that question so -- nice and slow. 22 BY ATTORNEY GREVE: 23 Q Sure. If there is an investigation 24 that's conducted through this lawsuit that 25 ultimately determines that there is asbestos

Page 692 1 present at one of the homes that you resided in, 2 do you think it would be important to share that 3 with the current residents of those homes? 4 ATTORNEY GROSS: Same objection. 5 THE WITNESS: I think it is, I think 6 it is everybody's right to know their 7 surroundings. And -- but would I ever go 8 knock on their door and say "Hi, my name's 9 Michael Parry, and I just want to let you 10 know that your house is full of asbestos," 11 I don't know that I could ever bring 12 myself to knock on someone's door. 13 Just like if someone knocked on my 14 door and said that. I'm afraid I would 15 be -- someone would think that I'm a 16 lunatic beating on doors. 17 But I think everybody deserves the 18 right to know that something like that is 19 in there. 20 BY ATTORNEY GREVE: 21 Q And so we can agree that there is a 22 valid purpose in doing that investigation, true, 23 to find out if there is asbestos in any of your 24 homes or places you resided during your 25 lifetime?	Page 694 1 down? 2 A The Riverton Elementary School was 3 torn down and a modern school was put in its 4 place after I graduated. And Riverton High 5 School, the school was torn down and a modern 6 school was put in its place after my graduation. 7 Q Do you have any understanding why 8 they would tear down buildings and build 9 something new? 10 ATTORNEY GROSS: Object to form. 11 THE WITNESS: Schools were getting -- 12 the school district was getting larger and 13 they needed more classrooms, more chairs, 14 more teachers. 15 ATTORNEY GROSS: Hey, Kurt, we've 16 been going about an hour and ten minutes. 17 I'm not sure where you're at in this line 18 of questioning. I'm hoping you're 19 wrapping it up. But can we take -- 20 ATTORNEY GREVE: Yeah, let's take -- 21 ATTORNEY GROSS: -- a five-minute 22 break. 23 ATTORNEY GREVE: -- a break. 24 THE VIDEOGRAPHER: Off the record at 25 11:14.
Page 693 1 ATTORNEY GROSS: Object to form. 2 THE WITNESS: If that is what you and 3 your clients would like to do, that is 4 what you and your clients would like to 5 do. But as for what I would like you to 6 do doesn't mean anything. And it's 7 something that you and your clients have 8 to determine. 9 BY ATTORNEY GREVE: 10 Q In regards to schools, if information 11 is discovered through this process that there's 12 asbestos at one of the schools that you 13 attended, would you want that information shared 14 with the school? 15 ATTORNEY GROSS: Object to form. 16 THE WITNESS: I think when you do 17 your investigation, you'll find out that 18 two of the three schools no longer exist. 19 They tore those schools down and new, 20 modern schools were put in their place. 21 So do the students and the families 22 have a right to know? Yes, they do. 23 Those schools no longer exist. 24 BY ATTORNEY GREVE: 25 Q Which two of the three were torn	Page 695 1 (Recess.) 2 THE VIDEOGRAPHER: We're back on the 3 record at 11:20. 4 BY ATTORNEY GREVE: 5 Q Mr. Perry, can you still hear me 6 okay? 7 A I can, sir. 8 Q All right. We're back from a quick 9 break. Just following up on some of my earlier 10 questions, I think I know the answer to this, 11 but I'll just ask: The residential facilities 12 that you lived at when you were enrolled and 13 attending the University of Illinois, all those 14 residences had city water and sewage; is that 15 correct? 16 A That is correct. 17 Q Okay. And was there ever an instance 18 anywhere that you lived other than the boat that 19 had anything other than city water and sewage 20 connections? 21 A The house on Cessna Lane had a septic 22 tank. And the house at 2695 Exchange Landing 23 Road had a septic tank. 24 Q That's the Johns Island location? 25 A That is correct.

Page 696 1 Q Do you recall any maintenance being 2 performed on the septic tank at Cessna Lane? 3 A No, I do not. 4 Q Is that something your father got 5 tasked with? 6 A It would have been something that he 7 was tasked with. But in the 30 years that they 8 were there, they never mentioned nor did I ever 9 see any type of work being done. 10 Q Let's switch gears a little bit and 11 let's talk about -- well, let me do this. So we 12 realized you went to the boat full-time '93 to 13 '96, summer breaks before then. And then after 14 you finished up your boat life, you started 15 renting this one-bedroom shack on Folly Beach. 16 Am I describing it accurately? 17 A It was a shack. 18 Q Okay. Could you kind of give us a 19 tour of the shack, in your own words. 20 A Walk in a door that did not -- you 21 could see light through the door and light 22 around the door. Bed, TV, hotplate. It's all 23 right there. 24 Q Were you physically located on the 25 beach, on the waterfront?	Page 698 1 A It did. 2 Q Did you pay rent on this property? 3 A I did. 4 Q Do you recall how much you paid in 5 rent? 6 A \$600 a month. 7 Q Were you the only one who resided in 8 that property? 9 A Yes. 10 Q You said you rented it from a friend. 11 Did I understand that correctly? 12 A That is correct. 13 Q Was there any other structures on the 14 property itself, for like where the friend 15 lived? 16 A It was sitting on a small lot by 17 itself. 18 Q Yeah, I'm just trying to figure -- 19 this wasn't a situation where your friend was 20 living in a bigger house and he let you stay in 21 a shack out in the back type of deal? 22 A No. 23 Q Then you moved in 1999 to 1550 Folly 24 Road; is that correct? 25 A That is correct.
Page 697 1 A I had an unobstructed view of the 2 water. 3 Q Was there a street between you and 4 the water, or help me understand how you had an 5 unobstructed view of the water without being on 6 the water itself? 7 A Yeah. So there was a head street in 8 front of me. And then there was the sand dunes 9 and then the Atlantic Ocean. 10 Q What was the name of that street? 11 A Ashley, A-S-H-L-E-Y. 12 Q Is this property still, still there? 13 A It is not. 14 Q And did you do any improvements or 15 see any improvements done to this property 16 during the time that you were there? 17 A No, sir. 18 Q Doesn't sound like there was any 19 siding on this structure; was there? 20 A It was a concrete-block structure; no 21 heating, no air. 22 Q It did have city water and sewage 23 though; correct? 24 A It did. 25 Q It had electricity?	Page 699 1 Q And you referred to this as the beach 2 cottage home; correct? 3 A That is correct. 4 Q And could you give us a description 5 of how many rooms, how it was set up? 6 A That was a two-bedroom cottage. Walk 7 in the front door into a living room. Had a 8 couch, a television. Off to one side was a 9 very, very small dining room, big enough for a 10 table and four chairs. And then it had a entry 11 into the kitchen. Kitchen refrigerator, range, 12 dishwasher, and vanity -- or countertops. 13 Across the hall from the kitchen 14 would have been bedroom number one, big enough 15 for a full-size bed. Go further down the 16 hallway; would have been bedroom number two on 17 the left-hand side, big enough for a full-size 18 bed. 19 At the end of the hallway it 20 dead-ended into bathroom number one -- and one 21 and only bathroom. In the bathroom was a 22 bathroom vanity, commode, and then a tub/shower. 23 And then before the bathroom, had an 24 exit onto the laundry room and then outside the 25 house, door that went outside the house.

Page 700 1 It was approximately 900 square feet. 2 Q Can you give me an estimate as to the 3 square footage of each of the bedrooms? 4 A I cannot. It was a full-size bed. I 5 mean, it was very, very small bedrooms. 6 Q King-size bed would not have fit in 7 the bedroom; is that fair to say? 8 A No. Full-size. 9 Q And were the ceilings eight-foot 10 ceilings? 11 A That sounds possible. 12 Q In any of the residences that you 13 lived in up until this point in time -- leaving 14 the boat aside -- was there anything unusual or 15 out of the ordinary regarding the height of the 16 ceilings? Did they look pretty standard to you? 17 A The farm had 12-foot ceilings. 18 Q And we haven't gotten there yet. So 19 before -- 20 A Then I misunderstood your question, 21 then. I need to ask you to repeat that 22 question, then, please. 23 Q Yeah. Have all the residences that 24 you've lived in up until this, you know, and 25 including this 1550 Folly Road, were the	Page 702 1 had? Was this a lot and kind of what the size 2 of the lot was for this 1550 Folly Road 3 location? 4 A Was a very odd-shaped lot. But I 5 believe it was close to a quarter acre. 6 Q Did you have neighbors? 7 A I did. 8 Q Did they have similar-sized houses on 9 their property? 10 A The house next door was similar to 11 the house, but it had some additions onto it 12 over the years. I was not there -- I was not an 13 owner when those additions were done. 14 Q Do you recall the names of your 15 neighbors? 16 A I do not. 17 (Interruption.) 18 (Discussion held off the record.) 19 BY ATTORNEY GREVE: 20 Q The next house that I have for you is 21 the Exchange Landing property, 2695 Exchange 22 Landing; is that correct? 23 A That is correct. 24 Q And this was built in 1998 by Lonnie; 25 is that correct?
Page 701 1 ceilings all pretty much eight-foot ceilings 2 that you can recall -- or at least a standard 3 size that you don't recall being very different 4 from what you customarily...? 5 A Ordinary and customary; correct. 6 Q How was the 1550 Folly Road home 7 heated? 8 A It had gas heat. 9 Q Was this an HVAC system, or was there 10 a different type of furnace being used? 11 A HVAC, like we've continued to 12 discuss. 13 Q And when you purchased this house, it 14 was already -- someone else had constructed it. 15 It was already built; fair? 16 A That is correct. 17 Q And did you hire or participate in 18 any type of renovations or remodeling of this 19 property? 20 A I did not. 21 Q So when you left it, you left it as 22 you purchased it, pretty much unchanged; is that 23 fair? 24 A That is correct. 25 Q Do you recall how much property you	Page 703 1 A That is correct. 2 Q Did Lonnie build the home or 3 participate in the building of the home himself? 4 Or did he have a contractor and hire somebody 5 else to do all the work? 6 A Him and his father subbed it out. 7 Q Did Lonnie -- or let me back up. 8 Does Lonnie have any construction 9 experience where he could oversee construction 10 projects? 11 A Him and his father are very capable 12 of that. 13 Q What was his father's name? 14 A Lonnie. 15 Q So it's a Lonnie Junior and Senior? 16 A It was Lonnie Senior and the Third. 17 Q Do you know if Lonnie Senior or 18 Lonnie Junior ever had their own, you know, 19 building construction business? 20 A They did not. 21 Q You're saying that they are capable 22 and experienced in terms of overseeing 23 construction projects; is that true? 24 A That is correct. 25 Q Okay. Can you help me understand

Page 704 1 where they got that experience from? 2 A Lonnie Senior was a architect in good 3 standings in the state of South Carolina and 4 designed and oversaw the building of this home. 5 Lonnie the Third -- a realtor and, quite 6 frankly, a prot g of his father and had the eye 7 for architect and what sold in Charleston -- was 8 able to function as a very capable and competent 9 oversight for this project. 10 Q Is Lonnie Senior still with us? 11 A No, he has -- he is deceased. 12 Q Went did he pass away? 13 A Give or take, 2009. 14 Q Is -- was Lonnie Senior employed by 15 an architectural firm or company at the time 16 that he helped oversee the farmhouse project? 17 A He was at his own -- when I say his 18 own, own company, he would design homes for 19 people. But he designed them out of his own 20 house. But he was employed by the Medical 21 University of South Carolina as their architect. 22 Q Just making notes. I apologize. I 23 haven't figured out how to take notes and ask 24 questions at the same time. 25 In terms of the materials that would	Page 706 1 Q But it was his father who did the 2 drawings; right? 3 A It was his father's drawings, his 4 father's design. 5 Q And can you tell me how much you have 6 left to go through from your move? 7 A We have two closets that are -- two 8 bedroom closets that still have some 9 floor-to-ceiling boxes of stuff that we've 10 deemed as not critical. 11 Q How big are those closets? Can you 12 give me a square footage? 13 A They're walk-in closets. So you 14 could walk into them and shut the door behind 15 you. 16 Q Got it. So you think there may be 17 about, you know, less than ten boxes in each one 18 of those walk-in closets? 19 ATTORNEY GROSS: Object to form. 20 THE WITNESS: I -- that was a tough 21 one to pin a number to. You know, Lonnie 22 and I even discussed since the deposition 23 that we really need to get in there and 24 complete this. It just, it's just going 25 to be a matter of time, of finding the
Page 705 1 have been used for the construction of your farm 2 home, Lonnie Senior would have been the person 3 responsible for choosing those materials; is 4 that correct? 5 A I can't answer that, who did what. 6 This would predate me. So I cannot answer that. 7 Q Okay. Do you have any architectural 8 plans or schematics that are associated with the 9 farmhouse? 10 A Somewhere they are -- they exist. 11 Either they're on record with the State of South 12 Carolina. Each one of his designs were stamped. 13 I don't know exactly where those reside. 14 Q And you moved recently, like within 15 the last three years, where you still have some 16 unopened boxes? 17 A We have, yes, lots of unopened boxes. 18 Q Is this something that you would have 19 kept or you believe would have been kept? 20 ATTORNEY GROSS: Object to form. 21 THE WITNESS: In a perfect world, 22 yes. I just don't know if Lonnie 23 preserved the original copy of the 24 drawings. 25 BY ATTORNEY GREVE:	Page 707 1 time and when I'm feeling good to go 2 through those. 3 BY ATTORNEY GREVE: 4 Q Sure. The boxes that are in there, 5 are they kind of like the standard moving boxes, 6 about two feet by three feet? 7 A Correct. 8 Q And you got the walk-in closets 9 filled up to the top of the closet with them? 10 A That is correct. 11 Q You think that's less than 20 boxes? 12 ATTORNEY GROSS: Object to form. 13 THE WITNESS: It could be around a 14 number like that. 15 BY ATTORNEY GREVE: 16 Q But when you were moving out, do you 17 recall packing up any of the architectural 18 plans/schematics associated with your farmhouse 19 property? 20 A There was a box of a number of the 21 drawings. There was more than just the drawings 22 to the house that were in this box. I just 23 can't put my hands on exactly where those 24 drawings are at. 25 Q What was the total square footage of

Page 708 1 this farmhouse? 2 A I believe it was 1800 square feet. 3 Q Can you describe for me how this 4 property was laid out and how the building was 5 situated on the property? 6 A It was two large tracts of pasture 7 lands that had mature oaks on it. When Lonnie 8 found this piece of property, it was just a -- 9 it sits on one of the saltwater creeks there on 10 Johns Island; and towards the very, very back of 11 the property had over a dozen mature live oak, 12 grand oak trees on it. 13 And Lonnie and his daddy sat 14 designing the house, that it would sit up into 15 these trees without damaging the trees. So the 16 house never had direct sunlight on it; it was 17 always sitting in the shade. 18 Q And I believe you described that 19 there was a septic tank on this property? 20 A There was a septic tank in the front 21 yard. 22 Q Yes. Kind of help me -- Exchange 23 Landing is the official route that the mail 24 carrier would drop off your mail; right? But 25 the house would be set back off the road; is	Page 710 1 repair work of the septic system, other than 2 what you've already described? 3 A No. 4 Q You also described that there was a 5 farm -- I'm sorry -- on the farm that there was 6 a garden? 7 A There was a small little raised 8 garden that we had that we tried to raise 9 tomatoes in there; we tried to raise cucumbers 10 in there. And we were successful in raising 11 beans. 12 But it was a raised bed, kind of like 13 putting timbers around. And then we had some 14 soil brought in. And then we did that for a 15 year -- year or two years, but the deer would 16 always eat everything. 17 Q Do you recall having to do anything 18 to the soil in any form or way before you'd 19 plant anything? 20 A No; because the soil was so hard, 21 there was no way we were going to break the 22 soil. So we just decided -- let me back up. 23 Where the house was at was sea level. 24 So when we would get a high tide, we would have 25 the Atlantic Ocean up into our yard, up
Page 709 1 that fair? 2 A The house set back about 1600 feet 3 off the road. 4 Q And the septic tank was in the front 5 part of the property; is that true? 6 A It would sit in the front yard of and 7 let me -- and why I want to be careful on this, 8 because even though the property was incredibly 9 long, when I say the front yard, it really is 10 walk out the front door, down the steps, and 11 then walk 20 feet, and there would be the septic 12 tank. 13 Q Did you or Lonnie have any 14 understanding about how to maintain the septic 15 tank? 16 A Other than our plumber told us to 17 flush down a box of RID-X every so often. 18 Q Got it. The septic system was 19 designed by Lonnie Senior; is that correct? 20 That would have been part of the plans? 21 A I can't -- once again, I was not 22 there for that part of the development of the 23 house. 24 Q During your time at the farmhouse, 25 was there ever any, any other maintenance or	Page 711 1 underneath the house. 2 So we chose to raise the bed, use 3 timber, put some soil in there, and then try 4 that for two years. And then when we were 5 unsuccessful, we decided that maybe this wasn't 6 our, our mission. 7 Q Being on the coast -- you know, I'm 8 presuming you didn't have any basements in this 9 property. Is that fair to say? 10 A No. We were -- like I explained, we 11 were at sea level. 12 Q Yeah. So was this a structure that 13 kind of -- you would live at least one floor 14 above ground level, just in case the water came 15 up? Or was this a property where your entry 16 floor was at ground level. 17 A It was an elevated house. So the 18 carport was underneath the house. And then 19 14 feet up would be the living space. And then 20 in this particular house, there was a third 21 floor. 22 Q In terms of the hot water heaters, 23 would that have been located on the ground level 24 or would that have been up on the other levels? 25 A The -- in South Carolina or in --

Page 712 1 where this house was at, none of those types of 2 systems could have been kept on floor 3 number one. They would have been on floor 4 number 2 or hanging from the outside the house. 5 Q Was floor number one finished out in 6 any way? I know sometimes people do these 7 houses in a way where, if there is flooding, 8 there's nothing of great value down there. But 9 was there a bedroom or any habitable space 10 underneath the elevated structure? 11 A No, there was not. 12 Q You just pull your cars up underneath 13 it? 14 A That was, that was the design of it; 15 correct. 16 Q And so how many hot water heaters did 17 you have on this property? 18 A Just one. 19 Q And did you ever have to do any 20 service or maintenance to the hot water heater? 21 A We did not. 22 Q And did you have your -- an HVAC 23 system here, or did you have some other type of 24 furnace to set up? 25 A It was a heat pump, electric heat	Page 714 1 Q Was there construction or repair work 2 that was done to the farmhouse, this 2695 3 Exchange Landing property, while you were there? 4 A There was not. 5 Q Now, if we look -- I want you to look 6 back at all the homes and residences that you 7 had separate than the boat -- we'll talk about 8 that in little bit. But did you ever live close 9 to any factories? 10 A I did not. 11 Q Did you ever live close to any 12 industrial complexes? 13 A Did not. 14 Q You did live close to some farms; is 15 that correct? 16 A In the 1970s. 17 Q Yeah. Let's talk about your sailboat 18 for a little bit. 19 A Okay. 20 Q Can you give me the dimensions of the 21 boat? 22 A 41 feet long. 23 Q How wide was it? 24 A 16 feet. 25 Q Is "draft" the right term for how
Page 713 1 pump; and air conditioning, central. 2 Q And since you got centralized heating 3 and air, you wanted to have good seals on your 4 windows and -- so you didn't lose all the good 5 cool air out the window in the summertime; is 6 that fair to say? 7 A Well, the house sat in the trees. So 8 it was -- again, we were very, very lucky that 9 our electric bill would be about be \$120 a month 10 because we had the efficiency of the windows, 11 the house, the shade. 12 Q Being down on the coast, saltwater 13 can be a pretty corrosive environment; is that 14 correct? 15 A That is correct. 16 Q Okay. So the seams for your windows, 17 did you ever find that those would dry out where 18 you had to replace them? 19 A We never replaced any of the seals on 20 the windows. 21 Q The caulking or any of the exterior, 22 you know, materials they would have been used 23 incident to the windows, did you ever have to 24 replace or repair any of that material? 25 A We did not.	Page 715 1 deep of water you could actually sail that thing 2 into? 3 A Yes; three and half feet. 4 Q And you described it having one 5 bathroom? 6 A Had two. 7 Q And do you recall -- I think you said 8 it was built in the 1980s? 9 A It was. 10 Q Did you purchase -- or strike that. 11 Your father was one of the part 12 owners of this boat; correct? 13 A That is correct. 14 Q Were you a (technical 15 difficulties)...? 16 ATTORNEY GROSS: Your question cut 17 out, Kurt. 18 ATTORNEY GREVE: Sorry. 19 BY ATTORNEY GREVE: 20 Q Were you one of the part owners of 21 the boat? 22 A I was the -- I was the operator. I 23 was the owner representative operator. 24 Q Who else partnered with your father 25 as boat owner?

Page 716 1 ATTORNEY GROSS: Object to form. 2 If you know. 3 THE WITNESS: It was a friend of my 4 father's, a silent partner. I'm not aware 5 of his name. 6 BY ATTORNEY GREVE: 7 Q Did you ever know the name, or do you 8 just -- you just have forgotten it? 9 A I have forgotten it. 10 Q Was it someone who lived in Illinois? 11 A I believe so. 12 Q And you said it was a diesel engine 13 was on the boat? 14 A It was. 15 Q Who was the manufacturer of the 16 diesel engine? 17 ATTORNEY GROSS: Object to form. 18 THE WITNESS: I believe it was -- I 19 would be guessing, so I'm going to say I 20 do not recall. 21 BY ATTORNEY GREVE: 22 Q Can you tell me how the -- what type 23 of diesel engine it was? Can you give me 24 anything that can help me understand size? 25 horsepower?	Page 718 1 in your deposition you had made some -- 2 identified some crew members of the boat. 3 You described, I guess, Eric 4 Englehardt, a Glenn Harrison, a Don Hagaman -- 5 and I know I'm doing these phonetically and I 6 may not have heard them correctly -- and a Matt 7 Battiali, if I have that correct. 8 A So if I may, let me clean up the 9 record. They were not crew members. They were 10 friends of mine that were my mentors and sailing 11 friends. They all had their own boats and their 12 own businesses and the same mission of trying to 13 raise money to go to college. They were not 14 working on my boat. 15 Q And so when your -- your business on 16 this boat, you could operate it all by yourself; 17 is that correct? 18 A The understanding was that the 19 passengers had to be a part of that. So if we 20 dropped anchor, we would teach them how -- "we," 21 me -- me, myself, and I would have to teach them 22 how to drop the anchor, how to haul the anchor. 23 If we were -- everybody wanted to be 24 able to sail this boat. So we would teach them 25 how to pull -- or steer the boat, how to pull in
Page 717 1 A It was a 90-horse. 2 Q When you purchased -- strike that. 3 Do you know if this boat was 4 purchased brand-new? 5 A It was not. 6 Q Do you recall who the prior owner of 7 the boat was who you-all purchased it from. 8 A It was through a brokerage. I do not 9 recall the owner's name. 10 Q Do you recall the broker's name? 11 A Not, not anymore, I don't. It was a 12 private broker. 13 Q How many crew members were required 14 to operate this boat? 15 A Just one. 16 Q What was the maximum number of crew 17 members that you could have on this boat? 18 A Crew or passengers? 19 Q Crew. 20 A I don't know that I can answer that. 21 It was just me. And then I would have my 22 passengers. 23 Q Okay. And I'm going to give you an 24 opportunity to explain this, but I just want 25 to -- I'm not sure I'm understanding. Earlier	Page 719 1 the sheets, how to lift the jib, how to drop 2 sails; and it made the passage a little bit 3 more... 4 If the family or the individuals that 5 rented were already sailors, sometimes I would 6 just sit back and let them take control of the 7 boat. And then I would just take control when 8 we were coming into port or in tricky channels. 9 Q What was the length of your typical 10 charter? And I have no experience with this, 11 would someone charter you for a week? a day? 12 three days? What was the typical charter 13 experience like that you provided? 14 A I would only do one-week charters. 15 Q So they were -- if they were hiring 16 you, you -- they were renting the boat for seven 17 days? 18 A Yes. It was a Sunday to Saturday. 19 The next passengers would check in on a Sunday. 20 And that would allow us the entire week to get 21 to whatever destination that they were desiring. 22 Q And they would go to some island in 23 the Keys, Dry Tortuga -- they would have a 24 destination that they would want to go to and 25 you would satisfy that request? Or did you

Page 720 1 determine the path and where it was going? 2 A If I knew that this boat was -- this 3 group was going to go to the Bahamas, I would 4 pick them -- I would tell them I would pick them 5 up in Miami. 6 If they were wanting to go to Key 7 West and party in Key West and get drunk like 8 college students, then I would tell them that 9 we're going to leave from Key West and they 10 would get to Key West. 11 Islamorada, which was very, very 12 unique -- I could do either one of those trips 13 from Islamorada, and that's why I hung out more 14 an Islamorada. 15 Q How much did you charge for your 16 weeklong charter service? 17 A Say again. 18 Q Yeah. What was the cost for the 19 charter? 20 A A couple thousand dollars a week. 21 Q And did it vary if you were going to 22 the Bahamas versus the Keys? 23 A No. The unknown always was how much 24 motoring we were going to have to do; because 25 the boat did not -- the fee that they paid for	Page 722 1 ATTORNEY GROSS: Object to form. 2 THE WITNESS: I don't recall. 3 BY ATTORNEY GREVE: 4 Q Is that something that -- did you 5 report that income as earnings to the Social 6 Security Administration? 7 A I did not. 8 Q In terms of costs associated with 9 running your sailboat, you explained the 10 charterer would be responsible for fuel, food, 11 and the docking fees -- or dockage fees. 12 What was your biggest cost that you 13 had to absorb? 14 A My father. 15 Q Gosh, I was going to ask you what was 16 the biggest financial cost. But that may be the 17 same answer? 18 A Yes. 19 Q Excluding your father, what would be 20 your greatest financial costs associated with 21 running that boat? 22 A It, it, you know, it really was wear 23 and tear. I, I lived off of tips. My father 24 got everything else. The owners got everything 25 else. So I was very keen and respectful to make
Page 721 1 did not cover the cost of fuel. So if they 2 wanted air conditioning, that would take more 3 fuel and they would be responsible for that. 4 So the \$2,000 that they paid for was 5 just for the boat. They were responsible for 6 their own food, and they were responsible for 7 any dockage, and they were responsible for fuel. 8 Q Were you usually booked up the entire 9 summer? 10 A I was. 11 Q What was the longest period of time 12 that you had had in a summer where you weren't 13 hired for charter? 14 A I was, I was continuously busy. 15 Q And then when would you do this work 16 on a spring break or, you know, a break from 17 school, you would have a charter lined up. So 18 you were going down there with a specific 19 purpose of fulfilling a, you know, a charter 20 request; fair? 21 A That is correct. 22 Q Okay. If you look at it on an annual 23 basis, what would be the gross income that you 24 would generate off the boat? 25 A I don't --	Page 723 1 sure that the boat didn't get damaged because 2 either I was going to have to fix it or I was 3 going to pay for it. And that was part of the 4 crutch that I bear to be in a situation that I 5 was. 6 Q Was the tip that was associated with 7 the typical charter, was that usually in the 8 20 percent range? 9 A It really depended on how well you 10 worked it and what you did with it. If you were 11 a eager beaver and you made sure that they 12 caught lots of fish and they are on lobsters and 13 they had a fantastic time and you-all connected 14 with them, I have some people that tipped me a 15 hundred percent. 16 And then I would have people -- my 17 worst ones were college students that were on a 18 budget, and I sometimes wouldn't get tipped 19 anything; and it would be the most heartbreaking 20 thing in the world. 21 So I tend to want to have charters 22 that people were gainfully employed and maybe 23 had disposable income because I really wanted a 24 hundred percent. 25 Q In an average summer, how much would

Page 724 1 you make in tip money? 2 A It would be enough to -- it would be 3 more than enough to pay for my semester's worth 4 of college. 5 Q How much was your college semester 6 typically? 7 A Around \$12,000. 8 Q And you well exceeded \$12,000 in 9 terms of your -- the profit that you took home 10 in your pocket, you know, after charter season? 11 A I did. 12 Q I think you described a shower-ish 13 type of facility on the boat; is that correct? 14 A Yes. So you'd walk into the head, 15 the bathroom on the boat. And you walk right 16 into the bathroom vanity. To the right of the 17 bathroom vanity was the toilet or the head 18 itself. 19 And then it would step into a open 20 shower, where it would be a wand. That had a 21 drain. So there's nothing safe or nothing dry 22 in that. So if you had the water on, the toilet 23 was wet, the sink was wet, everything else was 24 wet. 25 Q Got it. Let's -- give me a tour as	Page 726 1 where the helm of the boat is, had a 2 companionway that went down below. 3 Down below would have been the main 4 salon. In layman's terms, it would have 5 been where the galley is at, or the 6 kitchen. Where the kitchen table would 7 have been that, there would have been the 8 chart table so I could chart our courses. 9 To the rear of the boat would have 10 been the captain's cabin with bathroom 11 number one. And it consisted of a 12 queen-size bed. 13 In the very front was the V berth -- 14 just like the letter V, as in Victor, the 15 V berth. And that would have had bathroom 16 number two and more sleeping area. 17 And then the main salon would have 18 been -- all of those tables would have 19 collapsed into sleeping arrangements. 20 BY ATTORNEY GREVE: 21 Q What's the maximum number of people 22 that you could have on a charter? 23 A I really tried to keep it at six 24 people. I didn't like to go any more than six; 25 because that would have been seven people total
Page 725 1 if I'm walking on board. I want to get, you 2 know, your words describing this boat. 3 Before we get into that, is there a 4 certain make or model for this sailboat? 5 A You faded out a little bit. A 6 certain what? 7 Q Is there a specific make or model for 8 this sailboat? 9 A It was a Morgan Out Island. 10 Q Can you spell that for me? 11 A Morgan, M-O-R-G-A-N. Out island, 12 O-U-T I-S-L-A-N-D. 41 was the class. 13 Q If you can, you know, kind of give me 14 a tour of your boat. Help me understand what 15 the boat looked like on deck, what was available 16 below deck, in terms of -- 17 A Since the picture is already in 18 record, is it possible that we could pull open 19 the picture, and I can point and tell you that 20 without trying to explain? It may be easier, 21 since the picture's already in the record. 22 ATTORNEY GROSS: Tell them what you 23 remember. That's fine. 24 THE WITNESS: Okay. So the deck 25 itself is wide open. The cockpit, being	Page 727 1 on the boat, and it just gets to be a lot of, a 2 lot of people, especially if they're not 3 sailors. That's just a lot of people that I 4 didn't need to be around. 5 Q Did you have hot water on the boat? 6 A Yes, we did. 7 Q How was the -- was there a hot water 8 heater or was there other equipment that was -- 9 that would heat up water? 10 A If the engine was on -- if the engine 11 was on or the generator was on, it had hot 12 water. 13 Q Do you recall the brand name or 14 manufacturer name of the generator? 15 A I do not. 16 Q And while you're describing the hot 17 water, you would have hot water if the generator 18 or the engine were on, was there actually a 19 piece of equipment that helped the hot water 20 flow or facilitate heating of the water? 21 A The water would filter through pipes 22 around the generator, around the heat that would 23 heat the water -- you know, a hundred degrees. 24 You wouldn't get anything more than that. 25 THE VIDEOGRAPHER: We've got about

Page 728 1 five minutes left on media one. 2 ATTORNEY GREVE: I've got about five 3 more minutes and we can go on a break. 4 BY ATTORNEY GREVE: 5 Q The pipes for the hot water, did that 6 have any type of insulation or any other type of 7 material wrapped around it? 8 A They did not. 9 Q What was the material that the hot 10 water -- strike that. 11 Do you know if the hot water pipes 12 were made of metal? 13 A They did. 14 Q And it's your understanding that the 15 hot water pipes were metal. Were they hot to 16 the touch? 17 A If you touched them. 18 Q Could you get burned if you touched 19 the hot metal pipes? 20 A In the engine room; yes. 21 Q How about for the pipes that were 22 circulating the heated water? 23 A No. As I stated, the water would be 24 probably no more than a hundred degrees. 25 Q I think you also mentioned that there	Page 730 1 manufacturer of the AC pump? 2 A I do not. 3 Q The boat itself was constructed -- 4 can you describe for me what type of hull? Was 5 it fiberglass? What was the type of building 6 material for the sailboat? 7 A It was fiberglass. 8 Q Was there any part of the boat that 9 was not fiberglass? 10 A The mast. 11 Q In terms of the -- any of the 12 bulkheads or any of the other partitions in the 13 boat itself, did you have any fiberglass that 14 was also, you know, coated with, you know, a 15 lining or some other type of resin material? 16 A Not that I'm aware of. 17 Q Was there any type of -- you know, 18 other than the -- strike that. 19 The exterior hull of the sailboat was 20 made of fiberglass and it was white in color; 21 correct? 22 A That's correct. 23 Q Okay. Was there any other part of 24 the boat, any other construction feature that 25 utilized fiberglass that was not white in color?
Page 729 1 was a bilge pump? 2 A There was. 3 Q Was that the only pump that you had 4 on the boat? 5 A No. There was some other pumps that 6 would bring in saltwater because the air 7 conditioning unit was water-cooled, the engine 8 was water-cooled. 9 Q So you had two other pumps, one for 10 the AC and the other for the engine, that was 11 pumping water? 12 A And the generator; correct. 13 Q Is that a pump for the engine and the 14 generator or a pump for each? 15 A There was each one. 16 Q So other than the bilge pump, you had 17 three other pumps; correct? 18 A That is correct. 19 Q Do you recall the manufacturer or 20 product name of the generator pump? 21 A I do not. 22 Q Do you recall the name or 23 manufacturer of the engine pump? 24 A I do not. 25 Q Do you recall the name or	Page 731 1 A Not that I'm aware of. 2 Q So all of the, all of the interior 3 walls or partitions, they had the same matching 4 fiberglass color and appearance as the whole; is 5 that true? 6 A That is correct. 7 THE VIDEOGRAPHER: We've got about 8 one minute. 9 ATTORNEY GREVE: Let's go ahead and 10 take a break. 11 THE VIDEOGRAPHER: This is the end of 12 media one, volume four, in the deposition 13 of Michael Perry. We're off the record. 14 ATTORNEY GROSS: I do -- Adam, can we 15 stay on the written record for two 16 seconds? 17 THE COURT REPORTER: Sure. Go ahead. 18 ATTORNEY GROSS: So everybody's been 19 really kind to Mr. Perry so far, which I 20 very much appreciate. But based upon what 21 we talked about yesterday, we are not 22 coming back on Monday. We will finish 23 this deposition today. 24 Mr. Perry needs to get back to his 25 focusing on his recovery and his

Page 732 1 chemotherapy treatments. I would just 2 note for the record there have been two 3 hours of questioning this morning and not 4 one single question about the product at 5 issue for that particular defendant. That 6 defendant has the right to question the 7 witness in any way they please. But I do 8 want to put this out there so the 9 defendants can start talking amongst 10 themselves. I've gotten e-mails from a 11 couple of you-all. 12 We're not coming back Monday. We 13 will finish today. Mr. Perry's feeling 14 good and strong today. So we will go the 15 whole day if we need to. But please plan 16 accordingly. We're not coming back on 17 Monday. And if this drags out and y'all 18 try to delay it till Monday, I will move 19 for a protective order and seek some sort 20 of time limit on this deposition and 21 others in the future. 22 So for those of you left with 23 questions, please make sure to coordinate 24 amongst yourselves. 25 ATTORNEY GREVE: I'm sorry. I	Page 734 1 Q Can you tell me what type of repair 2 work you did on the sailboat? 3 A It would be limited to normal wear 4 and tear. Anything that related to the 5 mechanical plant itself, I would have had a 6 professional come in and deal with. 7 Q Normal wear and tear in saltwater 8 happens a lot, doesn't it? 9 A It does. 10 Q Yeah. It's a very corrosive 11 environment; you would agree? 12 A It is. 13 Q And if there's -- when you're out on 14 charter, if you're away from a port or where 15 you're docking, you're responsible for the 16 ship -- or the boat; is that correct? 17 A That is correct. 18 Q Okay. And so if there was an 19 instance where you were out, you know, on 20 charter and there was a problem with the vessel 21 in terms of its operations, that would be you 22 who would be tasked with fixing it; is that 23 right? 24 A If I was able to fix it, I would fix 25 it.
Page 733 1 thought we're taking a break. What did 2 you just say? 3 ATTORNEY GROSS: I'm not redoing it. 4 Adam, can we go off the record. 5 ATTORNEY GREVE: I thought we were 6 off the record. 7 ATTORNEY GROSS: No. I said can we 8 stay on the record. 9 (Luncheon Recess.) 10 THE VIDEOGRAPHER: This is the 11 beginning of media two, volume four, in 12 the deposition of Michael Perry. Back on 13 the record at 12:46. 14 BY ATTORNEY GREVE: 15 Q Mr. Perry, we're back from a quick 16 break. Are you ready to continue? 17 A I am. 18 Q Before the break we were talking 19 about your time on your sailboat. And one of 20 the things that you had mentioned was that you 21 were responsible for repair work on the 22 sailboat. 23 A I was. 24 Q Do you recall that testimony? 25 A I was.	Page 735 1 Q Okay. As part of your charter 2 operations, would you also have to go and 3 inspect and make sure, you know, all different 4 areas of the vessel were in correct operating 5 condition? 6 A It would have been my responsibility. 7 Q Okay. Is that something that you 8 would have done every day, if not multiple times 9 over the course of the day, is check your 10 systems on the ship? 11 A Theoretically. 12 Q And ultimately, if -- strike that. 13 Do you recall how often that you 14 would perform any type of survey or inspection 15 of the ship in a daily -- you know, as part of 16 your daily routine? 17 A If I was going to go across the Gulf 18 Stream, my check of the vessel would be much 19 more in-depth. And it would be checking the 20 through-hull connections, water in the bilge, 21 did I see anything that could have caused us to 22 put passengers in peril. 23 If it was going to be a intercoastal, 24 going down the reef line, that could have been a 25 little bit faster because the water was much

Page 736 1 shallower and shore and help was much closer. 2 Q And as we described, this is a 3 sailboat. It's -- you were trying to operate by 4 wind power as often as possible; correct? 5 A That is correct. 6 Q And the diesel engine was there in 7 case there was no wind, so you just didn't get 8 stuck; is that right? 9 A That is correct. 10 (Crosstalk.) 11 Q Sorry. 12 A You'd -- the dock, go away from dock, 13 motor up onto mooring buoys so we could go 14 snorkeling. And then emergency power. 15 Q So was it part of your regular 16 routine on charter to make sure that the engine 17 was in, you know, correct operational condition? 18 A There was a maintenance plan where 19 every so many hours we would have someone come 20 in and do maintenance on that engine. 21 Q And that's -- when you're out on 22 charter, though, would you go and check and make 23 sure that the engine was in good working order, 24 either turning it on or engaging it, to avoid 25 surprise when you needed it most?	Page 738 1 coat; making sure the sails were in good shape; 2 did I have any holes; what the lines looked 3 like; inspecting the prop; did I have balls or 4 lobster lines or crab balls wrapped up around 5 the lines; going around the outside of the boat 6 from the water line, taking a look at that; did 7 I hit anything during my cross-Atlantic trips or 8 cross-Gulf Stream trips; taking a look at is the 9 refrigerating cooling, is the icebox cooling, is 10 the bathroom flushing. 11 Q Did you have to apply any type of 12 mastic materials anywhere on the ship? 13 A I'm not familiar with that, that 14 term. 15 Q Did you ever have to apply any type 16 of a glue or epoxy or any type of liquid 17 material on the ship? 18 A I did not. 19 Q Were you ever around anyone who did? 20 A I was not. 21 Q You indicated that there was -- there 22 was wood surfaces on the sailboat; is that 23 correct? 24 A There was. 25 Q Okay. And we talked about a little
Page 737 1 A Yes. The engine was used on a daily 2 basis. And if anything was out of sync, I would 3 have sought to have someone take a look at it. 4 Q Was it part of your daily routine on 5 charter to do a visual inspection of the engine 6 down in the engine department? 7 A I would have looked inside the engine 8 room before the engine got hot, if we were going 9 to be using it. 10 Q Got it. And when you're looking 11 inside of it, what would you be looking for? 12 A The big one would be is there any oil 13 coming from the engine itself, what does the 14 bilge look like, do I have water coming into the 15 bilge. 16 Q All right. As part of your everyday 17 maintenance or routine maintenance on the 18 sailboat, did you ever have to water-seal 19 anything or deal with any holes or cracks on any 20 of the surfaces? 21 A I did not. 22 Q The type of repair work that you 23 tasked to do, can you describe that for me? 24 A I would call it general maintenance: 25 polishing the woodwork, teak; buffing the gel	Page 739 1 bit earlier that also there was fiberglass. 2 Were there any other composite materials that 3 you might not know the name of that looked 4 different than the hull or the wood that you 5 previously described? 6 ATTORNEY GROSS: Object to form. 7 THE WITNESS: I was not. 8 BY ATTORNEY GREVE: 9 Q Can you repeat your answer, please. 10 A I was not aware. 11 Q Do you know where your sailboat is 12 located today? 13 A I do not. 14 Q Do you know who the current owner of 15 the sailboat is? 16 A I do not. 17 Q So when was the last time you saw the 18 Midnight Dragon? 19 A When I left the Keys in 1996. 20 Q Did your father sell the boat after 21 you left? 22 A When I was no longer an interested 23 partner in it, neither was my father. 24 Q Okay. Mr. Perry, just some quick 25 questions about your -- some of the schools that

Page 740 1 you went to. 2 You had indicated that the Riverton 3 Elementary School has been torn down, and the 4 high school as well; is that correct? 5 A That is correct. 6 Q And you don't have any understanding 7 as to the circumstances as to why they tore down 8 those buildings; is that correct? 9 A That is incorrect. I've already 10 answered that they were adding more -- 11 additional classrooms, chairs, and teachers, due 12 to population. 13 Q And so it's your understanding that 14 they tore down the buildings as opposed to 15 keeping them and just building new structures to 16 add for chairs and students and teachers; is 17 that correct? 18 A It was my understanding that it is 19 more cost-effective to build new than to try to 20 retrofit and add on to current. 21 Q How did you come across that 22 information? 23 A Speaking to my family that still 24 resides in the Riverton, Illinois school 25 district.	Page 742 1 ATTORNEY GREVE: Weird. 2 I didn't hear the answer to the last 3 question. Can the court reporter read it 4 back. 5 (The court reporter read back the last 6 question and answer.) 7 BY ATTORNEY GREVE: 8 Q Was there a library? 9 A There was. 10 (Technical difficulties.) 11 (Discussion held off the record.) 12 BY ATTORNEY GREVE: 13 Q Was there a gymnasium as part of this 14 complex? 15 A There was. 16 Q And they were all one single building 17 structure all together? 18 A Yes. 19 Q What grades were at the elementary 20 school? 21 A K through three. 22 Q And then in fourth grade did you 23 start middle school? 24 A I did. 25 Q Middle school would go all the way up
Page 741 1 Q What family still resides in the 2 Riverton school district? 3 A My maternal aunt. 4 Q What's her name? 5 A Mary Beth Swaggerty. 6 Q Any other relatives that still live 7 in the Riverton school district? 8 A No. 9 Q And so -- do you know if they built 10 it -- the elementary school was still in the 11 same location where it was when you went there, 12 just a new structure? 13 A That is my understanding. 14 Q Do you recall the street name for 15 that school? 16 A I do not. 17 Q When you were there, do you recall 18 how many buildings were present? 19 A It was all one; weirdly shaped, but 20 all one. 21 Q Did it have a cafeteria in that 22 school? 23 A It did. 24 (Technical difficulties.) 25 ATTORNEY GROSS: Kurt, you're muted.	Page 743 1 to eighth grade? 2 A Four through eight; correct. 3 Q And the high school was a ninth grade 4 to twelfth grade; correct? 5 A Correct. 6 Q Did you have a homeroom at Riverton 7 Elementary? 8 A I did. 9 Q Do you recall what -- did you have a 10 homeroom for each of the years you were there? 11 A I did. 12 Q Do you recall the homeroom for your 13 third grade year? 14 A My third grade? I don't remember the 15 teacher's name. And that's what we would have 16 called it, Mrs. or Mr. whatever. And I don't 17 recall the names. 18 Q Yeah. Can you give us a description 19 of what your classroom looked like? 20 A Tell me a grade, and I'd be more than 21 happy to try to enlighten you. 22 Q Sure. We'll go first grade 23 classroom. 24 A First grade classroom was a large 25 classroom. As you walked in the door, across

Page 744 1 the room would have been an entire glass room -- 2 or glass wall; excuse me. And then to the right 3 would have been the blackboards. 4 And then turn to the right, being the 5 wall that you would have walked through the 6 areas of the classroom would have been 7 classroom; blackboards as well. 8 And then to the rear or to the left 9 of the door would have been where we would have 10 put our coats and bags and kept our lunches. 11 Q At this point in time you would have 12 had all your classes in the same classroom; is 13 that correct? 14 A K through three would have been all 15 in room 101 with teacher, except for the various 16 art class, music class, PE class; you would have 17 went to those respective areas. Library, you 18 would have went to those respective areas. 19 Q Do you recall what type of flooring 20 was at the school? 21 A I do not. 22 Q Do you recall what type of ceiling 23 tiles were at the school? 24 A I do not. 25 Q Do you recall what type of material	Page 746 1 Q And by hard floor, as opposed to 2 wooden floor, that's some type of synthetic 3 material? 4 A I believe it was concrete that had a 5 polished surface on it. 6 Q And can you describe for me the 7 Riverton Middle School, how many buildings it 8 had? 9 A It was all one. 10 Q And -- 11 (Crosstalk.) 12 ATTORNEY GROSS: He wasn't done, 13 Kurt. Sorry. I know it's hard on Zoom, 14 but... 15 Go ahead. Finish. 16 THE WITNESS: Do you want me to 17 describe a classroom or...? 18 BY ATTORNEY GREVE: 19 Q Just the layout of the middle school 20 itself. 21 A You would walk in the main vestibule. 22 Off to the right would have been the 23 administrative and the county superintendent's 24 offices. To the left-hand side of that 25 vestibule would have been the large gymnasium.
Page 745 1 was on the walls at the school? 2 A I do not. 3 Q And if I were to ask the same 4 questions about your middle school experience 5 and your high school experience, would you be 6 able to provided any insight as to any 7 description of those type of materials? 8 A In the middle school, it was built in 9 1976. So the walls would have been painted 10 block walls. The ceiling was drop ceilings. 11 And the floor was carpet. 12 Q And the drop ceiling, that's a 13 ceiling tile type of assembly? 14 A Correct. 15 Q And was the carpet in your middle 16 school, was that in (technical difficulties)...? 17 A Repeat the question. You wavered out 18 a little bit, sir. 19 Q Sure. At Riverton Middle School, was 20 all the flooring carpeted? 21 A In the classroom areas, hallway 22 areas, corridor areas, library areas. The most 23 public areas would have been a hard floor. The 24 cafeteria was a hard floor. Gymnasium was a 25 wooden floor.	Page 747 1 You'd walk straight ahead. You would 2 dead-end into the cafeteria. Off to the 3 right-hand side would have been a corridor that 4 would have taken you to all of the classrooms. 5 And a vast majority the classrooms had small 6 windows in them or no windows at all. 7 Q When you were in middle school, were 8 you starting to rotate classes depending on 9 teacher specialty, or did you still have a 10 single room like you did in elementary school? 11 A Four through six would have been 12 in-classroom learning. Seven and eight would 13 have been moving from class to class. 14 Q And by the time you got to seventh 15 and eighth grade, were pretty much covering, you 16 know, the whole school as part of your routine 17 day? 18 A Just repeat the question. 19 Q Yep. By the time you got to seventh 20 and eighth grade, were you pretty much covering 21 the entire school as part of your daily routine? 22 A When you say "covering the entire 23 school," you're talking about canvassing, moving 24 from one end to the other? 25 Q Yes.

Page 748 1 A The way the school was set up, fourth 2 fifth and sixth grade had their own sections, to 3 keep them away from the bigger kids. Seventh 4 and eighth grade would have been on another 5 section of the room. So our movement was very 6 structured. 7 Q And do you recall who your sixth 8 grade teacher was? 9 A Beulah Hall. 10 Q When you went to high school -- and 11 that's grades nine through twelve -- it's my 12 understanding that that structure has been torn 13 down as well; is that correct? 14 A That is correct. 15 Q And the new high school is on the 16 same location as the old high school that you 17 attended? 18 A That is correct. 19 Q And by the time you got to high 20 school classes, you'd be moving from classroom 21 to classroom depending on the specialty of the 22 teacher; is that correct? 23 A That is correct. 24 Q And once you got to high school, you 25 would have been basically traveling throughout	Page 750 1 minutes? I'm going to try to hit a switch 2 and see if I can improve something on my 3 connection real quick. 4 ATTORNEY GROSS: Sure. 5 THE VIDEOGRAPHER: Off the record at 6 1:07. 7 (Recess.) 8 THE VIDEOGRAPHER: Back on the record 9 at 1:08. 10 BY ATTORNEY GREVE: 11 Q Mr. Perry, when you would apply 12 talcum powder to your body, your goal was to 13 apply the powder to your skin; is that correct? 14 A That is correct. 15 Q And when you'd shake the container in 16 your hands, would you cup your hand so that the 17 powder could be collected in the palm of your 18 hand? 19 A That is accurate. 20 Q Okay. And you would bring the bottle 21 close to your hand and shake it; is that 22 correct? 23 A (Indicating), in that fashion. 24 Q Now, in the fashion you're 25 describing, would you have the container like
Page 749 1 the entire footprint of the school; is that 2 correct? 3 A That's correct. 4 Q And they had a cafeteria, gym, and 5 library? 6 A That is correct. 7 Q Did anyone -- sorry. Did your 8 maternal aunt make any reference to the presence 9 of asbestos at any of the Riverton schools or 10 any schools in the Riverton school district? 11 ATTORNEY GROSS: Object to form. 12 THE WITNESS: She did not. 13 BY ATTORNEY GREVE: 14 Q I'm going to switch gears a little 15 bit question about some parts of your employment 16 history. You know, before COVID, was there ever 17 an instance where you had to wear a mask or 18 respirator as part of your job? 19 A There was not. 20 Q Now I'd like to visit with you a 21 little bit about some of your general testimony 22 related to talcum powder use. 23 ATTORNEY GROSS: Kurt is sorry. Start 24 over. You cut out a little bit. 25 ATTORNEY GREVE: Can you give me two	Page 751 1 you're pouring at a bar, or would you have it 2 close to your hand? 3 ATTORNEY GROSS: Object to form, I 4 think. 5 THE WITNESS: I think to be accurate, 6 it would be -- I can't say how many inches 7 that is. But, you know, three, 8 four inches. 9 BY ATTORNEY GREVE: 10 Q Would you'd agree, you would have it 11 as close as you could to maximize getting the 12 powder in your hand and not everywhere else; is 13 that fair? 14 ATTORNEY GROSS: Form. 15 THE WITNESS: That's correct. 16 BY ATTORNEY GREVE: 17 Q And do you ever recall when you'd be 18 making that motion and putting the powder into 19 your hand that it would ever touch your hand? 20 A The bottle, the bottle from my one 21 hand to the other? 22 Q Yes. 23 A I don't believe that they ever 24 touched. 25 Q When you would apply the powder and

Page 752 1 put it into the palm of your hand and you would 2 cup it, would you agree that that's about the 3 size of a teaspoon? 4 ATTORNEY GROSS: Object to form. 5 THE WITNESS: I would not. My 6 teaspoon -- 7 BY ATTORNEY GREVE: 8 Q Would you say it's the size of a 9 tablespoon? 10 ATTORNEY GROSS: Object to form. 11 THE WITNESS: My teaspoon would be 12 much larger, Mr. Greve. 13 BY ATTORNEY GREVE: 14 Q Are you familiar with the term 15 "heaping teaspoon"? 16 A It would be a very mountainous 17 teaspoon. I have big hands -- 18 Q Sure. 19 A -- so it would have a lot in it. 20 Q But it would be a heaping tablespoon; 21 is that fair to say? 22 ATTORNEY GROSS: Form. 23 THE WITNESS: It would be larger than 24 that; yes. 25 BY ATTORNEY GREVE:	Page 754 1 I would spend more time massaging it. 2 BY ATTORNEY GREVE: 3 Q And you would work the powder into 4 your skin; is that fair? 5 A That is correct. 6 Q And the goal would be not to work it 7 into the floor but into your skin; correct? 8 A That is correct. 9 Q And this was typically after you had 10 come out of the shower, you had toweled yourself 11 off, but you were still in the environment of 12 the shower having just been completed; is that 13 fair? 14 ATTORNEY GROSS: Object to form. 15 THE WITNESS: That is correct. 16 BY ATTORNEY GREVE: 17 Q Your goal was not to be wasteful with 18 the talcum powder products; is that fair? 19 ATTORNEY GROSS: Object to form. 20 THE WITNESS: It -- to be clear, the 21 vanity scents cost a lot. I was more 22 strategic about putting that on my body 23 than I would with a product that only cost 24 a few dollars. So the waste that you 25 speak of, there would be more waste with a
Page 753 1 Q So you're -- you're describing you 2 would have powder into your hand that would 3 exceed the size of a heaping tablespoon; is that 4 fair? 5 ATTORNEY GROSS: Object to form. 6 THE WITNESS: I think the descriptor 7 that I'd like to use is I was very liberal 8 with that product. 9 BY ATTORNEY GREVE: 10 Q But as you're liberal with the 11 product, the goal was still to get it on your 12 skin; right? 13 A That is correct. 14 Q Okay. And when you would apply 15 liberally the powder on your skin, did you 16 physically notice your skin change colors? 17 A I would. 18 Q And how long would that process last? 19 ATTORNEY GROSS: Object to form. 20 THE WITNESS: As long as it was 21 necessary. Sometimes I would just enjoy 22 the pleasantness of having that product on 23 my skin as I massaged it in. 24 So if there was an area of my body 25 that enjoyed a little bit more massaging,	Page 755 1 bottle that cost \$2 or \$3 versus the 2 bottle that cost \$27, \$30. 3 BY ATTORNEY GREVE: 4 Q And so in terms of your budget, 5 though, was there a point in time where you were 6 not concerned about wasting powder because of -- 7 you had a different budget? 8 A When I -- into my 40s, I was not 9 worried about could I afford to buy another 10 bottle of XYZ. 11 Q And so before you were 40, would you 12 be more strategic in terms of how you put the 13 powder in your hand and it might be something on 14 the level of the teaspoon or a tablespoon 15 amount? 16 ATTORNEY GROSS: Object to form. 17 THE WITNESS: As my mother has 18 already passed and gone, I can say this 19 without the risk of getting slapped. 20 Since Mom was paying for it, it did not 21 economically affect me. 22 Economically, when I started having 23 to pay for it, I was little bit more 24 conscious of it. But when Mom was paying 25 for it, it certainly wasn't bothering me

Page 756 1 how much I wasted and how much hit the 2 floor. 3 BY ATTORNEY GREVE: 4 Q Now, did I understand you correctly 5 that you rotated the talcum powders that had 6 strong fragrances? 7 A That is correct. 8 Q And that means you wouldn't use the 9 same talcum powder with the strong fragrance on 10 back-to-back days traditionally; is that fair? 11 A If I used Ralph Lauren today, I was 12 using something else tomorrow. 13 Q And then were you likely to go back 14 to Ralph Lauren the next day? Or would it be a 15 true rotation amongst all the fragrances? 16 A It would really -- it really would be 17 rotation of -- I only had four in my entire 18 pallet. 19 Q And is it fair to say you wouldn't 20 mix-and-match the strong fragranced talcum 21 powders -- and by that I mean applying at the 22 same time? If it's a Ralph Lauren day, you're 23 doing Ralph Lauren. You're not doing Ralph 24 Lauren and then some other strong-scented 25 fragrance on top of it; is that fair?	Page 758 1 it, I would go: "What is missing in my 2 life right now? Oh, I know. I haven't 3 taken a shower yet." 4 BY ATTORNEY GREVE: 5 Q Do you have a specific memory of any 6 instance where you applied talcum powder to your 7 body and after you applied it, you started to 8 sneeze or react to the powder? 9 A I will give you this -- when I was 10 traveling with all the other captains and we 11 would -- and it was more times than not there 12 would be some type of dry-powder fight and the 13 area would be completely full of powder. And we 14 would all be coughing, sneezing, laughing. I 15 think I would call it very sophomoric, frat 16 boy-type behavior. 17 Q And that's the only instance where 18 you can recall sneezing or otherwise reacting to 19 talcum powder in the air? 20 A I'm sure there was more of those. 21 But you asked for one for a specific instance, 22 and I can colorfully remember that one. But I'm 23 sure there was more than that I just can't pin a 24 specific time. 25 Q And was that a pleasant experience,
Page 757 1 A I would, I would not use Ralph Lauren 2 and then, you know, two hours later decide to 3 put Calvin Klein on. I did not do that. 4 Q And, in fact, it probably would be 5 after you had another shower and kind of needed 6 to reset the fragrances for the day; is that 7 fair? That's when you would switch scents? 8 A Right. During my -- during this 9 period of time that we're discussing, three 10 showers a day was very common for me. 11 Q For what period of time would you 12 shower three times a day? Was that when you 13 lived at the farm? 14 A I still shower sometimes three times 15 a day right now. 16 Q Fair enough. Is it your customary 17 practice to shower three times a day? Is that 18 something that's going to happen twice a week or 19 five times a week? What's your best estimate? 20 ATTORNEY GROSS: Object to form. 21 THE WITNESS: I -- quite frankly, I 22 enjoy taking showers. I enjoy having the 23 hot water run across my body. I just 24 can't imagine that, you know -- it's part 25 of my culture. I think if I stopped doing	Page 759 1 where you would volunteer to cause yourself to 2 have a sneezing fit or a coughing fit, being 3 doused with powder? 4 ATTORNEY GROSS: Object to form. 5 THE WITNESS: I don't think I ever 6 volunteered for that. I think that you 7 could probably appreciate from your youth 8 that when boys get together or young men 9 get together, they do a lot of crazy 10 stuff. 11 BY ATTORNEY GREVE: 12 Q And in terms of your use of the 13 talcum powders, you know, for body application, 14 whether it's high fragrance or the others, is it 15 fair to say that the best measure of how many 16 bottles you would go through is really a 17 function of how much you could pour in your hand 18 and then how many times you applied it in the 19 course of the day, so that would be after how 20 many showers you would take in a day? 21 ATTORNEY GROSS: Object to form. 22 THE WITNESS: I would agree. 23 BY ATTORNEY GREVE: 24 Q And so if you're -- to the extent 25 that you've offered testimony saying, you know,

Page 760 1 "I generally maybe used ten bottles of a talcum 2 powder product," that's a guess; is that 3 correct? 4 ATTORNEY GROSS: Object to form. 5 THE WITNESS: Repeat your question 6 again, please, slowly. 7 BY ATTORNEY GREVE: 8 Q Sure. In terms of your ability to 9 specifically recall the number of containers 10 that you have purchased for any talcum powder 11 product that was used on your body would be a 12 guess; is that fair to say? 13 ATTORNEY GROSS: Object to form. 14 THE WITNESS: I would disagree that I 15 am guessing, sir. 16 BY ATTORNEY GREVE: 17 Q So you have a specific memory of each 18 and every talcum bottle that you purchased and 19 brought home? 20 A I do not. 21 ATTORNEY GROSS: Object to form. 22 BY ATTORNEY GREVE: 23 Q So your memory is of a general use 24 and of a general nature; correct? 25 A My memory is of ritual, structure,	Page 762 1 Go ahead. 2 THE WITNESS: I'm not going to ask 3 you to repeat the question. But would you 4 please repeat the question. 5 ATTORNEY GREVE: Court reporter, 6 could you read it back, please. 7 (The court reporter read the pending 8 question.) 9 THE WITNESS: I would use multiple 10 heaps on my -- in my hands to get to the 11 different areas on my body. I would say 12 that my chest, armpits, neck and face 13 would be one of those heaping teaspoons or 14 tablespoons. 15 My lower torso, groin, genitalia, 16 buttocks would be another one of those. 17 And then I would always try to get 18 that product on my inner thighs down to my 19 feet. So that would be a third heaping 20 tablespoonful. 21 And then I still would want to get 22 something on my back. 23 So I would say there could be easily 24 four, if not more, of those heaps that 25 went on my body every treatment, if that
Page 761 1 culture, and habit. 2 Q Sure. 3 A I think that's the best way I can 4 answer that question, sir. 5 Q And even using a liberal application, 6 can we agree that that would be a heaping 7 tablespoon at best in your hands; is that 8 correct? 9 ATTORNEY GROSS: Object to form. I 10 think he's answered this one. 11 But go ahead. 12 THE WITNESS: It was certainly a 13 heaping amount in there. I, I'm a large 14 body. I have a lot of, lot of square 15 inches. 16 BY ATTORNEY GREVE: 17 Q Sure. 18 A And so it was a lot to put on my 19 body. 20 Q And that's what the heaping 21 tablespoon's for, so that you can apply it to 22 your body without wasting it and spilling it 23 the floor; correct? 24 ATTORNEY GROSS: Object to form; 25 asked and answered, now like six times.	Page 763 1 helps. 2 BY ATTORNEY GREVE: 3 Q So -- and is it your belief that you 4 would need four for every single time that you 5 applied a body powder? Or is that the maximum, 6 up to five, that you could apply? 7 ATTORNEY GROSS: Object to form. 8 THE WITNESS: I will concede four to 9 five is a realistic application. 10 BY ATTORNEY GREVE: 11 Q And if I wanted to find out how often 12 you would need to replenish a specific bottle of 13 body talcum powder, I could take four to five 14 heaping tablespoons and figure how much that is 15 and then apply that, you know, times that by how 16 many times you would use it. I'll give you 17 three times a day. And that would give us a 18 fair estimate of how much talcum powder you 19 would use in any given day; true? 20 ATTORNEY GROSS: Object to form. 21 THE WITNESS: I think in a 22 mathematical amount of way, if that's, if 23 that's what we need to do, then that's 24 what you would need to do. 25 But mind you, I'll give you the

Page 764 1 caveat, we have not even talked about 2 waste and how much hit the floor. 3 So I don't know how I can answer that 4 question any more -- what's the word? -- 5 any more clearly. But I think that we're 6 trying to scientifically, through math, 7 come up with a number. And I don't know 8 that I can give you that number. 9 BY ATTORNEY GREVE: 10 Q But you would agree that that would 11 be the process by which we should determine the 12 number, as opposed to just guessing how many 13 bottles you may have had in a given year? 14 Agreed? 15 ATTORNEY GROSS: Object to form. 16 Can you re-ask that question, please, 17 or have Adam read it back. 18 ATTORNEY GREVE: Adam, will you 19 please read it back. 20 (The court reporter read back the 21 pending question.) 22 ATTORNEY GROSS: Object to form. 23 He's already said he wasn't guessing. 24 Go ahead and answer the question, if 25 you can.	Page 766 1 definitive information in terms of the amount of 2 material that was used. 3 Would that also apply to your 4 previous statement that you claim that you can 5 estimate how many bottles of talcum powder was 6 used for each one of the products you've 7 identified today? 8 ATTORNEY GROSS: Object to form. 9 THE WITNESS: I, I think that -- I 10 think the best way for me to say this is I 11 never studied, I never paid that close 12 attention to it. It was just a part of my 13 daily ritual. And I never just said, "You 14 know what, I better remember this to 15 recall it in the future." 16 So it's very hard for me to answer 17 your question. And I'm not trying to be 18 evasive. And I apologize if that seems 19 I'm trying to be. I just -- words mean 20 things. I'm trying to make sure that I 21 answer your question. 22 I just never studied it. I never 23 paid that close attention to it to be able 24 to say, "Well, the best way is," and 25 answer your question. I'm sorry.
Page 765 1 THE WITNESS: I can't definitively 2 answer to the best way of determining how 3 much product was on my skin. 4 BY ATTORNEY GREVE: 5 Q And so that would also include -- 6 well, strike that. 7 Since you can't determine that amount 8 by taking, you know, what we would estimate to 9 be in your hand and multiplying that by the 10 applications to your body, in addition to 11 applying it by the times a day you would shower, 12 you would also agree that it would be 13 implausible or you would be unable make an 14 estimation as to the quantity that would be in a 15 container that you would purchase; is that fair? 16 ATTORNEY GROSS: Object to form. 17 BY ATTORNEY GREVE: 18 Q Strike that. Let me just -- sir, 19 there's two ways we've gone about that. We've 20 tried to estimate the amount of powder that you 21 used by coming up with an agreed, you know, size 22 of an amount of powder in your hand in 23 relationship to how many times you used it and 24 how many times you took a shower. And you're 25 telling me that you can't give me any more	Page 767 1 BY ATTORNEY GREVE: 2 Q Is it also fair to say you just 3 didn't pay enough attention to it where you 4 could say, without guessing or speculating, that 5 I had ten bottles of any brand of talcum powder 6 at any one time in my house? 7 ATTORNEY GROSS: Object to form; 8 misstates his testimony. 9 BY ATTORNEY GREVE: 10 Q Or that I had -- I would buy any 11 brand ten times a year? 12 ATTORNEY GROSS: Same objection; 13 misstates his testimony. 14 THE WITNESS: I, I think the best way 15 of answering -- you know, I was constantly 16 buying these products, just like I would 17 be buying a gallon of milk. And I can 18 tell you I'd buy a gallon of milk every 19 single week. 20 I would buy talcum powder or these 21 types of fragrances all of the time. So 22 when you would say how many did I buy a 23 year, I was buying it all the time. I 24 just mathematically can't come to a number 25 because I never paid that close attention

Page 768 1 to it. 2 BY ATTORNEY GREVE: 3 Q And does that also mean you can't 4 mathematically come to a number as to any single 5 individual talcum powder product that you 6 purchased in a given year? As you said, you 7 bought a lot of these, you bought them all the 8 time. But as you sit here today, it would be 9 speculation for you to say "I, I used -- I mean, 10 I have ten Clubman containers per year, and I 11 bought them ten times a year"? 12 That would be speculation; true? 13 ATTORNEY GROSS: Object to form. 14 THE WITNESS: It would not be 15 speculation. I -- if you asked me how 16 many haircuts that I went and I had, I 17 could say that I had a haircut every two 18 weeks. I could tell you that I used 19 Clubman products every single week and had 20 it on my body. I can tell you that every 21 couple haircuts I was asking the barber to 22 sell me another bottle. 23 I remember those conversations. I 24 remember those actions. I just can't 25 mathematically get to a number for you to	Page 770 1 A Some of them were bulk, bulk vessels 2 that had talc -- I'm just going to say 3 powder-based products in there, talc-based 4 products in there that you would apply through, 5 like, a pouf. 6 Q For the talcum powder products that 7 came in a bottle that had a top, were those tops 8 always the twist top that you described? 9 A From what I remember, yes. 10 Q And the twist top would be a, a top 11 where you would rotate an edge and it would 12 expose openings in the top of the container; 13 correct? 14 A That is correct. 15 Q And the way you would close the 16 container was by rotating the twist top in the 17 opposite direction; correct? 18 A That is correct. 19 Q And that's the only mechanism by 20 which the powder could come out of the 21 container; is that correct? 22 ATTORNEY GROSS: Object to form. 23 THE WITNESS: No. You could unscrew 24 the entire top off it, removing that cap. 25 So you could actually pour the product out
Page 769 1 better answer that question. 2 ATTORNEY GREVE: Objection to the 3 nonresponsive portion. 4 ATTORNEY GROSS: It's not. 5 BY ATTORNEY GREVE: 6 Q Mr. Perry, were all the talcum powder 7 containers that you were around, were they 8 plastic? 9 ATTORNEY GROSS: Ever? 10 ATTORNEY GREVE: Ever. 11 THE WITNESS: I can't, I can't be 12 definitive, so I'm going to say I don't 13 recall. 14 BY ATTORNEY GREVE: 15 Q Do you have any memory -- strike 16 that. 17 Did all of the talcum powder 18 containers that you were around have that 19 salt-and-pepper twist top that you previously 20 described? 21 ATTORNEY GROSS: Object to form. 22 THE WITNESS: No, they did not. 23 BY ATTORNEY GREVE: 24 Q What were other container tops that 25 you associate with talcum powder products?	Page 771 1 in a large bulk. 2 BY ATTORNEY GREVE: 3 Q Now, with the top on or the twist top 4 on that you're describing, required you to 5 rotate to expose the open holes -- 6 (Technical difficulties.) 7 BY ATTORNEY GREVE: 8 Q Can you all hear me now? I'm sorry. 9 It looked like I froze. 10 A Yeah, your -- you waffled a little 11 bit in there. So if you would just repeat that 12 whole process, sir. 13 Q Sure. I'm not talking about 14 instances where you could remove the entire top 15 from the container. All of the talcum powder 16 products that you were around that utilized the 17 twist top, the only way for the material to 18 escape the container, keeping the top still on 19 it, was to rotate the top itself to expose the 20 holes and allow material to flow through it; 21 correct? 22 A That is correct. 23 Q Do you recall, for any of the talcum 24 powder products, a unique pattern of holes on 25 the top of the container that would open when

Page 772 1 you twisted it? 2 A Some of them would have a series of 3 just small round holes that went in a -- the 4 outside had more; the inner, fewer, fewer. As 5 you worked your way into the center of it, fewer 6 holes. Some of them would just be four or five 7 small holes. 8 I remember some of the shaker tops 9 had actually a area that you could pour out more 10 of the product without going through the -- I'll 11 call it the strainer effect. So I remember and 12 recall a number of different types of ways those 13 circles were assembled. 14 Q Understood. In some form or fashion, 15 every single top that you observed for one of 16 the body powders that was in a bottle, it still 17 required you to twist in order to open and allow 18 material to flow through; true? 19 A That is correct. 20 Q Now, you also make reference that 21 there were occasional -- you also made reference 22 to occasions where you could take the top off 23 itself and just pour straight from the 24 container; is that correct? 25 A That is correct.	Page 774 1 that correct? 2 A That is correct. 3 Q For the family size of talcum powder 4 bottles that you would have, were they all the 5 same size as the Johnson & Johnson bottle that 6 you found? 7 ATTORNEY GROSS: Object to form. 8 THE WITNESS: What -- repeat which 9 two types of products we're referring to. 10 I know you said Johnson & Johnson. I just 11 didn't -- were they -- 12 BY ATTORNEY GREVE: 13 Q For the family-size talcum powder 14 bottles that you would have at home, were all of 15 them that same size as the Johnson & Johnson 16 bottle, or were they bigger or smaller? 17 ATTORNEY GROSS: Object to form. 18 THE WITNESS: Sometimes they could be 19 smaller. If the store did not have the 20 family size, we would get what was 21 available. 22 BY ATTORNEY GREVE: 23 Q But typically you would try to order 24 or purchase the family size; correct? 25 ATTORNEY GROSS: Object to form.
Page 773 1 Q Is there -- do you recall there being 2 any other material or any -- well, strike that. 3 In terms of the occasions where you 4 would pour the material out of a container, is 5 that something you ever did for any type of body 6 powder application? 7 A You talking about taking the -- I'll 8 refer to it as the strainer -- taking the 9 strainer off the top? 10 Q Correct. 11 A I mean, I knew that it could happen. 12 I just can't pin a specific instance that I did 13 that. 14 Q Now, I also want to ask you 15 generally, we kind of talked about different 16 types of body powder containers. And I think 17 you described that for some of your sports 18 activities you could have a smaller container 19 and -- that you could put in a bag. But at 20 home, you would have the full-size container. 21 Is that fair to say? 22 A I would have the family size at home. 23 Q Okay. And you showed some pictures 24 in your deposition today of one of the 25 family-size containers of Johnson & Johnson; is	Page 775 1 THE WITNESS: That is correct. 2 BY ATTORNEY GREVE: 3 Q And in instances where you had the 4 family size of -- was it still the same size and 5 height as the J&J bottle that you turned over to 6 your attorneys? 7 ATTORNEY GROSS: Object to form. 8 THE WITNESS: Over time bottles would 9 change. We would just try to buy what was 10 the largest. 11 BY ATTORNEY GREVE: 12 Q Did you also notice how many ounces 13 of material were in the Johnson & Johnson bottle 14 of product that you turned over to your 15 attorneys? 16 A I recall, yes. 17 Q I believe it referenced 15 ounces. 18 Do -- 19 A One of them -- 20 Q -- you recall that? 21 A One of them referenced 15 ounces. 22 Q Do you believe any of the other 23 family-size talcum powder products that you 24 would have purchased had less than 15 ounces in 25 it?

Page 776 1 ATTORNEY GROSS: Object to form. 2 THE WITNESS: Yes. 3 BY ATTORNEY GREVE: 4 Q Do believe some had more? 5 A I do. 6 Q Do you have an understanding as to 7 how many ounces of talcum powder would be in 8 each body powder product you identified through 9 your deposition? 10 ATTORNEY GROSS: Object to form. 11 THE WITNESS: I do not. 12 BY ATTORNEY GREVE: 13 Q Mr. Perry, you had mentioned earlier 14 in your deposition that you went to the 15 barbershop in Illinois and you recalled using 16 talcum powder products as part of your 17 barbershop experience. Do you recall that? 18 A I do recall. 19 Q Okay. Do you recall the name of the 20 salon or the barbershop that you went to the 21 first time you recall talcum powder being used 22 as part of the haircut process? 23 A I do not recall it. 24 Q Do you recall the location where it 25 was that?	Page 778 1 father taking me to my first haircut down the 2 street would be my first recollection. 3 Q Do you recall how old you were? 4 A I was still holding my mom and dad's 5 hands at that point. 6 Q I'm going to ask you if you can give 7 me an age estimate. I know I held my mom and 8 dad's hands for a lot longer. 9 A I know. I know. I would say -- I 10 would be kind of guessing. Maybe four, you 11 know. I do this -- you know. I don't know. 12 Q So you said it was a one-chair shop? 13 A That's correct. 14 Q There was just one chair at the shop? 15 A Yes, sir. 16 Q Do you recall if there were any 17 mirrors at the shop? 18 A There was -- mirror as in reflection? 19 Q Yes. 20 A So when you walked in the, the 21 barbershop, it was a couple of steps up inside 22 it. There was a little waiting room that had 23 chairs and some magazines. And then you would 24 go to the barber chair. 25 And then it would -- you would look
Page 777 1 ATTORNEY GROSS: Kurt, the beginning 2 of your question cut out. 3 BY ATTORNEY GREVE: 4 Q Do you recall where it was located? 5 A The one for the Osborne house would 6 have been just two blocks away, and my father 7 and I would walk hand in hand down there to see 8 the barber. 9 Q And at that point in time could you 10 read? 11 A I was starting to be able to read. 12 Q Do you recall the name of the barber? 13 A Not anymore. I can see him in my 14 eyes or my memory. I can still make out part of 15 his voice. But I don't remember his name. 16 Q Was this a one-barber shop, or did it 17 have multiple stalls for other barbers? 18 A It was just, it was just an older man 19 with one chair. 20 Q Was this the -- was your first 21 haircut at a barbershop like this. Or was this 22 something that kind of evolves as you -- maybe 23 after you started pre-K? 24 A My first recollection is my mother 25 cut my hair and cut my curls off. And then my	Page 779 1 into the mirror that was straight ahead of you. 2 And then it had a sink that he would wash your 3 hair or keep his different tools in. 4 Q So did you get your hair washed 5 before your haircut? 6 A It was just a haircut. 7 Q And when you had entered into the 8 barbershop, was the door open? Like meaning it 9 was, you know, it was -- you didn't have to shut 10 it or close it upon your entry? 11 A I don't remember if it had a door 12 closure on it. But I always remember that as 13 you walked up the couple steps, you would have 14 to open up the door. I think it self-closed. I 15 can't remember. 16 Q Do you recall if there was any 17 windows? 18 A In that little waiting room that I 19 spoke of, it faced the street. And so there 20 was, you know, three, maybe three windows that 21 opened up and brought sunlight in. 22 Q Do you recall if there were any 23 windows? 24 A I don't recall. 25 Q -- even standing, oscillating,

Page 780 1 upright? 2 A I don't recall, no. 3 Q Do you recall if you had to make an 4 appointment in order to go get a haircut there? 5 A We had a standing appointment, being 6 that we knew every other week we were going to 7 be there at whatever time. I always remember it 8 being an afternoon. And we'd walk down there -- 9 it was either a Saturday or Sunday. We'd walk 10 down there. And it was just a standing 11 appointment: See you next week -- or see you 12 every two weeks. 13 Q This is always a harder question for 14 me to ask. But what type of hairstyle did you 15 have at that time? Was it longer hair? shorter 16 hair? buzz cut? How would you describe it? 17 A Originally, my hair would have been 18 longer and then would have parted on the sides, 19 and so it would have been combed over. But 20 always keeping my ears clean, my neck clean. 21 That was a big hot button with my 22 father. And that's why every two weeks that was 23 done. My father could not stand an unkempt neck 24 or ears. And since my hair was always longer, 25 he didn't like it covering over the top of those	Page 782 1 that's good" or "Nope, take a little bit more 2 off." 3 And then we would conclude with the 4 dusting of the neck and face. 5 Q And so the haircut -- they would 6 spritz your hair and it was damp; right? It was 7 wet as he was cutting your hair; correct? 8 A As he cut the hair; correct. Yes, 9 sir. 10 Q And then the wet hair would get 11 around your neck and around your face. And then 12 he would apply talcum powder to a neck duster 13 brush to remove the wet hair from your neck and 14 facial area; correct? 15 A Well, I refer to it as a horsehair 16 brush. You mentioned something else. But I 17 always remember the wooden handle with the 18 horsehair on it that he would put the powder in 19 it and then dust me. 20 Q Did he put the -- did he put the 21 powder into the brush, or did he put it onto the 22 top of the horsehairs? 23 A He would -- as he wrapped my -- he'd 24 wrap -- he'd stand behind me, wrapped his hands 25 around me, because this was a very big showman.
Page 781 1 ears. 2 Q Walk me through the steps for your 3 haircut. You'd enter into the shop. You check 4 in. Then what happens next? 5 A He'd put the -- and I apologize; I 6 don't know what the technical term is -- the 7 bench across the top of the chair. So I would 8 sit on top of that. And then he would always -- 9 there was always some type of bravado man talk 10 of, you know, how things are going, how do you 11 want your hair cut. 12 My dad would always stand there and 13 tell him the same as the last time. 14 And then he would grab a water bottle 15 and wet my hair all the way down and start 16 combing through it. And then he would part it 17 on the side to make sure that the part was 18 correct. 19 And then my dad was always sitting 20 over on the side at this point time, reading 21 magazines. And they would continue to have man 22 talk. 23 And then as he cut my hair, we'd get 24 to the point where he would think we would be 25 done and my dad would come over and say "Yep,	Page 783 1 And he would have that brush right there, right 2 in front of me. And he would pull the horse 3 hairs up to a top, shake the product into the 4 top of the hair, wiggle, wiggle, wiggle, and 5 then dust. 6 Q And the process that you're 7 describing, if a barber, a professional licensed 8 barber described this process as taking no more 9 than two to three seconds to dust someone's 10 neck, would you disagree with that assessment or 11 that estimate of time? 12 ATTORNEY GROSS: Object to form. 13 THE WITNESS: I'd give him another 14 second or two because he was such a 15 showman. And he only did this, me as a 16 little boy. And it really -- it was the 17 neatest show in the world. I'd give him 18 another second or two, just be a showman. 19 BY ATTORNEY GREVE: 20 Q Yeah. And in terms of your 21 understanding, the whole purpose this was so 22 that you could get the wet, sticky hair off of 23 your skin, right? 24 A That is correct. 25 Q And after he applied the talcum

Page 784 1 powder and brushed off the hair, it would drop 2 down to the floor; correct? 3 A Drop down onto my cape. 4 Q Your cape. And then at the end of 5 your barbershop experience, the cape would come 6 off; is that correct? 7 A That is correct. 8 Q And you left the barbershop, and your 9 clothes were just as clean as when you entered; 10 correct? 11 A That is correct. 12 Q And that was part of the barbershop 13 experience; true? 14 A That is part of the barber shop 15 experience; yes. 16 Q Now, you described that you did this 17 as a kid. I'm assuming that you would have had 18 haircuts of maybe a little bit longer than, you 19 know, the youthful period that you described for 20 us. 21 Is this the same barbershop that you 22 would always go to when you were living in 23 Illinois? 24 A No. After we moved from that house 25 to the country house, there was another barber	Page 786 1 BY ATTORNEY GREVE: 2 Q The -- so the second house -- this is 3 the house that you moved into starting 1976 -- 4 you recall there being two barbershops during 5 the time period that you lived in that house 6 that you -- where you would have gotten your 7 haircut; correct? 8 A That is correct. 9 Q Okay. And one was off Dirksen 10 Parkway, and the other was inside the city 11 limits of Riverton; correct? 12 A That is correct. 13 Q And do you recall the names of any of 14 those barbershops? 15 A The one in Riverton was just a barber 16 that cut hair out of the back room of their 17 house. 18 The other one was a barbershop that 19 had a couple different chairs in it in a 20 storefront of like three or four storefronts of 21 a -- I don't want to call it a strip mall, but, 22 you know, three or four buildings. 23 Q Was there a point in time where 24 the -- well, strike that. 25 When you started to go to the
Page 785 1 that we had went ahead and went to. 2 Q Do you recall the name of that 3 barbershop? 4 A I don't. It was there in Springfield 5 also, Dirksen Parkway. 6 Q Can you spell that, please. 7 A D-I-R-K-S-E-N-S-O-N, I think, 8 Dirksen Parkway. And then we used a barber 9 inside the city limits of Riverton. 10 ATTORNEY GROSS: We've been going 11 about an hour. Can you keep on for a 12 little bit? Okay. 13 ATTORNEY GREVE: I'm sorry. I didn't 14 see what you said, Rachel. Are we still 15 good to go? 16 ATTORNEY GROSS: Yeah, we're still 17 good to go. 18 ATTORNEY GREVE: Okay. 19 ATTORNEY GROSS: All right. 20 Although, I mean, I might need a 21 restroom -- a courtesy break at some 22 point. 23 ATTORNEY GREVE: Yeah, let's go about 24 five more minutes. 25 ATTORNEY GROSS: That's fine.	Page 787 1 barbers, you know, in -- after you moved to the 2 Cessna location, did the barbers still have the 3 tendency for showmanship the very first barber 4 you went to as a kid had displayed? 5 A No, not nowhere near that. It really 6 was put the product on the brush and then -- and 7 that product was applied behind my back and then 8 would come around and dust the face -- it was 9 always face, neck, ears; and then as I went into 10 wearing nicer shirts like what I'm wearing 11 today, going down my shoulders and making sure I 12 didn't have hair on my shirts. 13 Q Well, let's do this. The very first 14 salon, the one you can't recall that wasn't a 15 real barbershop, you don't recall the name of 16 that facility; is that correct? 17 A That is correct. 18 Q You don't know if it's still there; 19 correct? 20 A That is correct. 21 Q How many haircuts per month or per 22 year did you utilize at that first location, the 23 real barbershop? 24 A Still to today I get a haircut every 25 other, every other week. So every two weeks or

Page 788 1 two haircuts a month. And I have kept that. I 2 enjoy that. I enjoy having my hair cut. I 3 enjoy looking tight. 4 So nothing has really changed over 5 the decades for me with the barbershop 6 experience. 7 Q And so you may have gone two times 8 per month or, I guess, two times per month, you 9 said, every two weeks. Is that basically what 10 it was? 11 A Yes. 12 Q Yeah. So but that the barbershop 13 that was an official barbershop, do you recall 14 going there every, you know, every two weeks? 15 Or was it split with this other shop that was in 16 someone's back house or in your own home? What 17 was the mix on that? 18 A I went to that barbershop -- and I'm 19 going to be careful -- ten years. And then once 20 I got into I'll call it junior high and I needed 21 to pick up my hair cut a little bit, the next 22 barber inside Riverton -- it was the female. 23 She did an excellent job. And she could do a 24 little more touch to my hair because I wanted -- 25 at that point in time I was looking for	Page 790 1 A Junior high. 2 Q Junior high. Was she more expensive 3 than the official barber that you had previously 4 been going to? 5 A Yeah, I think she was a whole \$12, 6 right, you know. That was a lot of money back 7 then. 8 Q And was that more than the licensed 9 barber? 10 A Yeah. I was doing \$7 haircuts back 11 then. 12 ATTORNEY GROSS: Is now a good 13 stopping, natural stopping point? 14 ATTORNEY GREVE: Yeah, good stop. 15 THE VIDEOGRAPHER: Off the record at 16 1:55. 17 (Recess.) 18 THE VIDEOGRAPHER: We are back on the 19 record at 2:01. 20 BY ATTORNEY GREVE: 21 Q Mr. Perry, back after a quick break. 22 We're visiting about some your barbershops that 23 you frequented during your lifetime. And the 24 two that you described in this Riverton area, 25 were those the two that you used, you know,
Page 789 1 something a little bit different than just a 2 standard barbershop cut. 3 Q So you describe this is maybe more of 4 a hairstylist as opposed your typical 5 barbershop, once we start moving to this house 6 location? 7 A Her speciality but still men. But I 8 said that -- her name was Sue -- Sue could do a 9 classy job and she knew what a man needed to 10 look like versus what a man needed -- or man 11 doing a man -- female doing a haircut, she knew 12 how to make a man look nice and sexy. 13 Q And as you're getting haircuts every 14 two weeks, this is still the same hairstyle 15 where you're parting it; is that correct? 16 A I've worn that same haircut all the 17 way up until recently. 18 Q And so you'd still comb and part it; 19 if that fair? 20 A Yes. High/tight -- up to before I 21 was sick, high/tight/neat. 22 Q And so the female stylist that you 23 start to go to in Riverton, that's something 24 that would start -- you frequented her more 25 often starting in high school?	Page 791 1 whenever you were in the Illinois area back at 2 home? Those would have been the two that you 3 would have been frequenting -- the lady 4 hairstylist more so after junior high? 5 A That is correct. 6 Q And then did you ever get your 7 haircut in Illinois -- or let me ask the 8 University of Illinois, or did come home to get 9 it done? 10 A I would come home. 11 Q And when you were on the boat, was 12 it -- were you getting haircuts with the same 13 frequency? 14 A That would be the only exception. 15 Because of the schedule of crew coming and 16 rotating on Saturdays and Sundays, or 17 passengers. 18 Q Did you let your hair grow out more 19 during the summertime, on the -- during charter 20 business? 21 A No. We had -- one of the guys that 22 we sailed with was a former Marine. So he would 23 cut our hair for us. 24 Q The barbershop experience, was that 25 also going on down there with the Marine who was

Page 792 1 cutting the hair? 2 A Well, you were sitting on the cockpit 3 of the sailboat while someone was cutting your 4 hair and had a rum-and-coke in their hand. So I 5 wouldn't call it a barbershop experience. It 6 was just an experience. 7 Q Is it fair to say they weren't using 8 a neck duster brush with talcum powder to clear 9 hair -- 10 A No. 11 Q -- off the back of your neck? 12 A No, they weren't using the duster 13 brush. But we certainly still had the different 14 dust products that we would use. 15 Q Any of those dust products on the 16 boat specialty to barbershop or hairstylists? 17 A Yes. 18 Q And which one is that? 19 A Clubman. 20 Q So when you were on the boat, where 21 did the product come from? Did you bring it 22 from home, or did someone else bring it? 23 A I would get -- if I didn't have the 24 product accessible, my mother would send that 25 with other stuff that she would send me. I would	Page 794 1 Q Did you ever use any of the Clubman 2 cologne to achieve that same smell? 3 A I did not. 4 Q Were you aware that there was Clubman 5 cologne available? 6 A I did not. 7 Q Did you ever see any Clubman cologne 8 at any of the barbershops that you frequented? 9 A No. I just remember the big green 10 bottle that always said "Clubman" on it. And -- 11 yeah. 12 Q And that's a green cologne bottle or 13 a green talcum powder bottle? 14 A Talcum powder. 15 Q So -- and we'll -- I want to divide 16 this into two parts. There's barbershop and 17 barbershop experience, okay, and then what you 18 may have used at home and personal use. All 19 right? Is that fair? 20 A Correct. 21 Q So in terms of the barbershop that 22 you -- you know, if I can generate a list, we 23 talked about the boat and you-all would do it 24 yourself. And you would be outside, someone 25 performing this. And then you would dust off
Page 793 1 get a weekly care package from her. 2 Q And in the weekly -- is it your 3 testimony that each and every time that you had 4 your hair cut, you would have someone use the 5 Clubman product on your neck to brush off the 6 hairs? 7 A I'd use -- yes. I'd used -- and 8 clear up to today, I think Clubman is probably 9 one of the most masculine, sexy fragrances that 10 I've ever had. And so that was something that I 11 really enjoyed. Having a haircut without 12 Clubman was kind of like having a peanut butter 13 and jelly sandwich without peanut butter. 14 Q Understood. In terms of -- so 15 Clubman was one of the fragranced powders; 16 right? 17 A I -- when I said I had four, Clubman 18 really was -- that was important to me. Clubman 19 was -- I still -- I liked Clubman, despite 20 everything. I liked the fragrance of Clubman. 21 Q And it's, and it's associated with 22 the haircuts? That's when you would offer your 23 Clubman scent, was with the haircuts, true? 24 A It brings back so many fond memories. 25 But it's a very masculine aroma, that fragrance.	Page 795 1 the hairs with Clubman talcum powder. Fair? 2 A That is correct. 3 Q Okay. Once you came back off the 4 boat -- now we're at the -- you've come to Folly 5 Beach. Did your routine differ in any way? 6 Were you still getting haircuts every two weeks? 7 A I was. 8 Q Okay. And do you recall the 9 barbershop at Folly Beach? 10 A I -- 11 (Crosstalk.) 12 Q Strike that. Strike that. Do you 13 recall the barber that you were using when you 14 returned to South Carolina and Folly Beach, 15 looks like somewhere after 1996? 16 A I recall the barbershop. But I do 17 not recall the barber's name. 18 Q What was the name of the shop? 19 A Moonies Barbershop, M-O-N-N -- 20 like -- M-O-N-N-I-E-S, Moonies Barbershop. 21 Q And you don't recall the name of the 22 barber? 23 A It was always -- you know, these 24 barbers were -- you'd walk in the door, whoever 25 had an open chair sat you down. You know, the

Page 796 1 barbers may stay for a few weeks, a few months, 2 maybe a couple years. None of them that I ever 3 developed a first-name basis with. 4 Q Just to check your addresses here, 5 for -- do you still go to Moonies today? 6 A I do not. 7 Q Okay. So was Moonies your regular 8 barber up until the point in time where you left 9 Folly Beach in 2003? 10 A Yes. I -- when I left Folly Beach 11 and Lonnie and I got together, I changed my 12 barber to a, another female barber closer to 13 Johns Island. And she cut my hair until she 14 retired two thousand -- probably 2015. 15 Q And again, same routine, about two 16 times a month? 17 A Right. Every two weeks; uh-huh. 18 Q Every two weeks. And did she apply 19 the Clubman talcum powder as well? 20 A Yes. And she was one of the sources 21 of me continuing to buy Clubman products from 22 her. 23 Q Do you recall her name? 24 A Lori, L-O-R-I. 25 Q Do you recall Lori's last name?	Page 798 1 2003, when you first moved to Johns Island, or 2 was there a transition period before you found 3 her? 4 A No, I, I had -- she was recommended 5 to me by someone. And I was, eh, you know -- 6 because I don't like jumping around. And gave 7 her a shot and absolutely fell in love. 8 Q So from about 2003 to 2015, you were 9 using Lori exclusively for your, for your 10 haircuts; is that correct? 11 A That is correct. 12 Q And then on occasion you would also 13 buy product, Clubman product, to take home; is 14 that fair? 15 A That is correct. 16 Q Okay. Just focusing on the hairstyle 17 in the -- strike that. Let me go back more. 18 2015, when Lori retired, who gave you 19 your haircuts? 20 A Repeat that question again. I'm 21 sorry. 22 Q Sure. After Lori closed shop around 23 2015, who was the next barber or barbershop that 24 you frequented? 25 A The barbershop was Jeff's Barbershop.
Page 797 1 A I do not. 2 Q And where was she located on Johns 3 Island? 4 A On the Maybank Highway thoroughfare. 5 Q Is there a crossroad or a -- any 6 other stores that you can give me in terms of 7 markers of where that would be on Maybank 8 Highway? 9 A Yeah. She -- her store was right 10 there by the Terrace Oaks Antique Mall. 11 Q Do you know if it's still there? 12 A It is not. 13 Q Is the Terrace Oaks Antique Mall 14 still there. 15 A I'm sorry, yes. I'm sorry, yes. 16 That-- yes, that is still there. 17 Q Is there a hair salon still there, 18 even though Lori may not be operating it? 19 A It has now been repurposed into some 20 type of other storefront. 21 Q Okay. And you indicate she was a 22 source where you could buy the Clubman product 23 for use at home; is that true? 24 A That is correct. 25 Q And did you see Lori starting in	Page 799 1 And the barber himself was Scott. 2 Q And where was that located? 3 A In Mount Pleasant, South Carolina, 4 which is just across the river from Charleston. 5 Q And is that who you still use till 6 today? 7 A It is. 8 Q And so for all of the barbers that 9 you frequented, the routine that you described 10 earlier going back to your middle school years, 11 it would be about the same; correct? 12 A That is correct. 13 Q Okay. And in terms of the, the use 14 of barbershop talc, they would quickly put it on 15 the neck duster, hit your neck, and then be done 16 in a matter of seconds; correct? 17 A That is correct. 18 (Crosstalk.) 19 ATTORNEY GROSS: Hang on one second. 20 THE WITNESS: But if I may, Kurt, the 21 product -- and certainly Lori and Scott 22 were more of the -- that brush would 23 also come across my forehead, down my 24 sides, and then in the front of my neck. 25 So it wasn't just the back of my neck.

Page 800 1 BY ATTORNEY GREVE: 2 Q It was wherever there was wet hair -- 3 A Right. 4 Q -- on your skin; correct? 5 A That is correct. 6 Q Because that's what the whole purpose 7 was, was to figure out a way to get the sticky 8 hair off your body so you could finish and 9 depart for the day; correct? 10 ATTORNEY GROSS: Object to form. 11 THE WITNESS: That is correct. 12 BY ATTORNEY GREVE: 13 Q Okay. Prior to -- well, okay. 14 Strike that. 15 Who was the first barbershop that you 16 purchased Clubman talcum powder from? 17 A It would have been Sue's barbershop 18 in Riverton, Illinois. 19 Q Okay. So the lady, the second shop 20 that you frequented starting in middle school, 21 that was called Sue's? 22 A I referred to it as Sue's barbershop. 23 Sue was a one-woman, cutting hair out of the 24 back of her house. So it was Sue's. 25 Q Do you know what Sue's last name was?	Page 802 1 A I mean, not as often as the Johnson & 2 Johnson product. But I enjoyed Clubman so much 3 that I would use Clubman on other purposes, like 4 in my hockey gear or after swim practices. I 5 enjoyed Clubman. So is more -- I literally used 6 that one even though I was not supposed to. But 7 I just can't pin a frequency of use on that. 8 ATTORNEY GREVE: Objection to 9 nonresponsive portion. 10 BY ATTORNEY GREVE: 11 Q You enjoyed the fragrance, and it was 12 one of the fragranced powders that you used, one 13 are your vanities; is that fair? 14 A That's correct. 15 Q Did you ever purchase any Clubman 16 from the Folly Beach barbershop, on -- Moonies? 17 A Yes, I did. 18 Q And again, you can't offer a 19 statement on how frequent you would purchase the 20 Clubman variety from Moonies? 21 ATTORNEY GROSS: Object to form. 22 THE WITNESS: It would have been more 23 often than previously spoken at the other 24 barbershops, given the type of climate 25 that Charleston is known for.
Page 801 1 A I believe it was Crouse, C-R-O-U-S-E. 2 Q Do you know if she was a licensed 3 hairstylist or barber? 4 A She was. 5 Q So when you started middle school and 6 were more concerned with your hair, this would 7 have been in your seventh grade or eighth grade 8 year, as opposed to your fourth grade year? 9 A Seventh grade is when I started 10 seeing Sue. 11 Q Okay. Can you tell me how old you 12 were in seventh grade? 13 A No. I'd have to do the math, and I 14 apologize. 15 ATTORNEY GROSS: That's fine. 16 THE WITNESS: What am I, 12, 13 -- 13 17 years old maybe. Does that sound about 18 right? 19 BY ATTORNEY GREVE: 20 Q And did you buy it yourself from Sue 21 or did your mom? 22 A My mother. 23 Q And did she -- do you know how often 24 you would have to -- you would purchase one of 25 the Clubman containers from Sue?	Page 803 1 BY ATTORNEY GREVE: 2 Q And you still were rotating other 3 talcum powders and other fragrances into your 4 routine at that point in time; is that correct? 5 A I was. 6 Q Is there ever an instance where you 7 purchase Clubman talc prior to, I guess, 8 frequenting Jeff's barbershop -- strike that. 9 Do you recall an instance where you 10 purchased Clubman talc from someone other than a 11 license barber or hairstylist? 12 A I do not. 13 Q So all of your purchases of the 14 Clubman product would have come from a 15 barbershop or a hair salon; correct? 16 A That is correct. 17 Q Okay. And you've identified all the 18 barber shops or hair salons that you frequented 19 during your lifetime; is that correct? 20 A I have. 21 Q And the process -- strike that. 22 What is the first memory you have of 23 someone applying Clubman or using Clubman around 24 you? Is that that very first barbershop at the 25 first residence or is that the second residence?

Page 804 1 A It would have been the first 2 residence. 3 Q And you have a memory of a container 4 that you saw in the barbershop, you know, 5 countertop? 6 A Yes. As I faced that mirror that I 7 spoke of, I would have had the wall of glass or 8 mirror that also would have had his products, 9 the sink, the tools, the hairdryer. I even 10 remember where he kept his cup and -- that would 11 have the horse hair that you would -- for 12 shaving. He had a felt there on the wall that 13 he could run the razor up and down. 14 Q You described the hairdryer. Did he 15 ever use a hairdryer on you? 16 A No. He used the hairdryer to blow 17 the hair off the chair in between each customer. 18 Q Do you recall the brand name or the 19 manufacturer of the hairdryer? 20 A Oh, I don't, no. 21 Q Do you recall the brand name or 22 manufacturer name of any of the other tools or 23 instruments that he had on his countertop? 24 A No, I do not. 25 Q Do you recall if he had Clubman	Page 806 1 in time I could not have read the word "Clubman" 2 in the other words that were on there. I just 3 remember the green, the man, and the white top. 4 Q From the first time you saw a Clubman 5 product to the last time you saw a Clubman 6 product, was it always the description you just 7 gave me, a green square container with a white 8 top on it with a man on? 9 A Yeah. I mean, over the years maybe 10 it changed a little bit. But I always remember 11 green man -- or green bottle, the man, the white 12 top, and the words now, now that I read and so 13 forth, saying "Clubman" on it. 14 Q At what point in time do you recall 15 the writing on a Clubman bottle? 16 A When we moved over to the second 17 house -- so this would have been 4143 Cessna 18 Lane -- now I'm able to spell, read, and I'm 19 able to associate words with names and memories. 20 Q When you moved, you know, at the 21 second home and you started to notice the 22 labeling of the Clubman container, were you old 23 enough to read script yet, or cursive, or was it 24 just block print that you could read? 25 A I started writing cursive in second
Page 805 1 aftershave on his countertop? 2 A Not that I'm aware of. 3 Q Okay. And can you give me the 4 description of the Clubman container that you 5 recall. This would have been back before, I 6 guess, you were either pre-K or younger. 7 A I remember this, that it was always 8 the big green square container with the white 9 top on it that had the man on it. 10 Q Okay. So what you recall was a green 11 container. You don't know if it was plastic or 12 not; true? 13 A That is correct. 14 Q And you remember it having a white 15 twist top on it, as you've described previously; 16 correct? 17 A That is correct. 18 Q Okay. And there was a man on the 19 container; correct? 20 A That is correct. 21 Q Okay. Is there anything else that 22 you recall regarding the -- this visual image 23 you have of the Clubman container from back when 24 you were -- before kindergarten? 25 A That's all I remember. At that point	Page 807 1 grade. And I remember that because my cursive 2 handwriting was so atrocious that I was starting 3 to write in second grade. 4 Q And so you would have moved to the 5 Cessna home before the second grade; true? 6 A That is correct. 7 Q And so the instances where you would 8 have seen a Clubman container, is it your memory 9 it would have had the Clubman name in block 10 print as opposed to script or cursive? 11 ATTORNEY GROSS: Object to form. 12 THE WITNESS: I don't recall if it 13 was script or block at that point in time. 14 And I do apologize. I just don't remember 15 which font that was. 16 BY ATTORNEY GREVE: 17 Q And as you became -- as you got older 18 and started to understand the product and 19 purchase the product, do you have an 20 understanding today the writing and what type of 21 font is on the bottle? 22 ATTORNEY GROSS: Object to form. 23 THE WITNESS: Like was it font or 24 script? 25 BY ATTORNEY GREVE:

Page 808 1 Q Was it block or was it script or was 2 it -- you know, what was the font? 3 ATTORNEY GROSS: Object to form. 4 THE WITNESS: I remember that it was 5 block. 6 BY ATTORNEY GREVE: 7 Q Okay. And so from the first time you 8 saw a Clubman product to the last time you ever 9 saw a Clubman product, you recalled block text 10 on the product label; correct? 11 ATTORNEY GROSS: Object to form. 12 THE WITNESS: Yes. 13 BY ATTORNEY GREVE: 14 Q Okay. And then you also remember 15 that there be -- there was a man on the product 16 label as well; is that true? 17 A That is correct. 18 Q Okay. And describe for me what the 19 man looked like. What is it you can recall 20 about the image of the man on the Clubman 21 container? 22 A I remember when it was a fancy man in 23 a top hat. 24 Q Can you say with absolute certainty 25 that the green container with the fancy man on	Page 810 1 THE WITNESS: -- incorrect. I can 2 state for the record that the fancy man 3 had a top hat and a cane. 4 BY ATTORNEY GREVE: 5 Q Describe what the top hat looked 6 like. 7 A I would refer to it as a 19th century 8 tall top hat. 9 Q And do you have a specific memory of 10 the top hat when you're at the first residence 11 in Osborne -- on Osborne Street in Springfield, 12 Illinois? 13 A No. What I, what I testified to, 14 being the green bottles, the white top, and the 15 fancy man, that's all I could, all I could 16 remember. 17 Q Okay. When you were at Cessna Lane, 18 do you have a specific memory of a green bottle 19 and a white top and a man with the top hat? 20 ATTORNEY GROSS: Object to form; 21 asked and answered. 22 THE WITNESS: I remember the Clubman 23 bottle exactly how I described it to you, 24 with the fancy man, the top hat, the cane, 25 the block-letter "Clubman" on it, green
Page 809 1 it had a top hat on each and every container 2 that you were around, as opposed to a crown? 3 ATTORNEY GROSS: Object to form. 4 THE WITNESS: I don't know that 5 there's a lot of certainties in this 6 world. And for me to say with certainty 7 that every single Clubman container had a 8 top hat on it, I cannot answer that. 9 BY ATTORNEY GREVE: 10 Q And what I'm asking you: Is it 11 possible that you used a talcum powder product 12 in a green container with a man on it that had a 13 crown on his head and not the top hat? 14 ATTORNEY GROSS: Object to form. 15 THE WITNESS: No. 16 BY ATTORNEY GREVE: 17 Q As we sit here today, you can't say 18 with certainty that the product in the big green 19 square container with the white top had a man on 20 it with a crown or a top hat. You can't say 21 which one it was; correct? 22 ATTORNEY GROSS: Object to form - GPS LLC 23 THE WITNESS: No. gpscalendar@gps.llc ~ 214.347.4781 24 ATTORNEY GROSS: -- misstates 25 testimony.	Page 811 1 bottle, with the white shaker top. 2 BY ATTORNEY GREVE: 3 Q And it was always a green bottle, 4 from the first time you saw to the last time you 5 saw it; correct? 6 A That is -- 7 ATTORNEY GROSS: Object to form; 8 asked and answered. 9 Go ahead. 10 THE WITNESS: That is correct. 11 And can I just -- just for a second, 12 I just want to make sure that I'm 13 absolutely unequivocally clear that there 14 was not a crown. It was always a fancy 15 man, top hat, cane, "Clubman" block 16 letter, green bottle, white top. 17 BY ATTORNEY GREVE: 18 Q And that was a white twist top, as 19 you previously described, at all times; correct? 20 A That is correct. 21 Q Do you have any information as to how 22 much talcum powder the Clubman container -- oh, 23 strike that. 24 These size of the Clubman talcum 25 powder container, was that always the same from

Page 812 1 the first time you saw one to the last time you 2 saw it? 3 A I believe it was the large, larger 4 bottle of them, so -- I don't know how many 5 ounces. You know, containers can always deceive 6 you on how many ounces. But it was always the 7 larger-ounce bottles. 8 Q Is there anything else that you can 9 recall in terms of letters, labels, wording, 10 pictures, anything else on the Clubman container 11 other than what you described? 12 ATTORNEY GROSS: Object to form; 13 asked and answered. 14 THE WITNESS: There was always other 15 messaging on the outside of the Clubman 16 container. But if you asked me what it 17 said or could I tell you what it said, I 18 can't do that. 19 What I've stated and what I testified 20 to, the "Clubman" block lettering, fancy 21 man, top hat, cane, green bottle, white 22 top is how I remember the Clubman package. 23 BY ATTORNEY GREVE: 24 Q The Clubman powder, whether it was 25 used on you at the barbershop or you used for	Page 814 1 A My father would use it on his self as 2 well. 3 Q And I believe you testified earlier 4 that you were never around your father when he 5 applied talcum powder or body powder because he 6 left before your day or your routine began; is 7 that fair? 8 A That is correct. But we frequented 9 the same barbershop. 10 Q Fair enough. And so the experience 11 you described for yourself, your father would 12 have experienced a similar experience at the 13 barbershop, except that they may have been a 14 little quicker applying the neck duster brush 15 than what they did for you as a small child; 16 true? 17 A Yeah. I would say he got the adult 18 version of the show. 19 Q Do you have any Clubman container 20 products in your possession? 21 ATTORNEY GROSS: Object to form. 22 THE WITNESS: As I have testified 23 earlier -- I don't know if it was with 24 you, sir -- but I do have some boxes in 25 closets that have bathroom products in it.
Page 813 1 your own personal use, did the appearance of the 2 powder itself ever change that you can recall? 3 A Not that I can recall. 4 Q Okay. What color was the powder 5 itself, the Clubman talcum powder? 6 A I remember it as white. 7 Q Can you always remember it as a white 8 powder? 9 A I do. 10 Q Okay. The scent, can you describe 11 for me the scent that you associate with the 12 Clubman fragrance? 13 A I will, I will start off by 14 apologizing. My vocabulary on describing 15 bouquets and scents, I will say -- like I said 16 before, it was probably one of the most 17 masculine, macho fragrances I've ever had. I 18 find it very sexy. I wish Lonnie would wear it. 19 But as for telling you that it's a floral 20 bouquet of this and that, I can't. 21 Q Did anyone else in your family use 22 Clubman? 23 A My father -- 24 Q This is before, before you married 25 Lonnie.	Page 815 1 We are going to make a very serious 2 effort over the next ten days, two weeks, 3 to go through all boxes and see what if 4 any products still exist of any of the 5 defendants in this case. 6 BY ATTORNEY GREVE: 7 Q Mr. Perry, other than an attorney, 8 has anyone else told you that there's asbestos 9 in Clubman talcum powder? 10 ATTORNEY GROSS: Object to form. 11 THE WITNESS: Yes. 12 BY ATTORNEY GREVE: 13 Q Who else? 14 A I had testified during this 15 deposition that we had an oyster roast. And we 16 had a couple hundred people at the house -- this 17 was that at the farm -- we had a couple hundred 18 people at the farm. This is pre 2019. 19 And as me being the host, working and 20 saying hello to all of our guests, there was 21 this one group of our friends that was mixed 22 with other people. They were medical people, 23 talking amongst themselves. 24 And that was the very first time that 25 I heard the word "Clubman" and "talc." And I

Page 816 1 perked up just a little bit to -- and I thought 2 to myself, hmm. I've heard talc, I've heard 3 Clubman, and I've heard hazardous. 4 And we were all drinking. There was 5 a lot of alcohol that night. I did not go back 6 and say who was who, who said this, and who said 7 that. If you asked me a name, I couldn't even 8 tell you a name. I just know that that group of 9 individuals were all medical providers. 10 And I stored that information away. 11 And that was really the preface of starting to 12 discontinue the use of talc products. 13 Q And this is in 2019? 14 A This is before 2019. 15 Q Is it 2018? 16 ATTORNEY GROSS: Object to form. 17 I don't mind you answering again. 18 He's already testified when the party 19 was. 20 But go ahead. 21 THE WITNESS: It was somewhere right 22 around there. It would have been 23 January/February of 2018, maybe. 24 BY ATTORNEY GREVE: 25 Q It was a big party. And do the	Page 818 1 this stuff and I started seeing the word "talc" 2 on everything. 3 But the commercials on television and 4 mesothelioma or asbestos only were talking about 5 ovarian cancer. At no point in time did gender 6 come up of male. And I said, well -- and I'm 7 being absolutely transparent -- it's only a 8 woman problem. They never talked about a man. 9 They never talked about respiratory. They never 10 talked about anything -- and I just -- I kind of 11 let the commercials kind of de-alarm me, until I 12 became sick. 13 ATTORNEY GREVE: Objection, 14 nonresponsive portion. 15 BY ATTORNEY GREVE: 16 Q In response to -- after this oyster 17 roast when you went and reviewed and looked at 18 the products that you had, you believe you had a 19 Clubman powder container in your possession; is 20 that true? 21 A Oh, I knew I did. 22 Q Okay. Did you go and examine that 23 product, that container, and determined if it 24 had talc as a raw ingredient in it or not in 25 2018?
Page 817 1 oyster roasts usually happen in wintertime? 2 A They are. 3 Q Okay. And is January a time for 4 oyster roasts in South Carolina? Is that why 5 you recall it? 6 A Yeah. The water is the coldest, and 7 you have less bacteria in the oysters. And then 8 you can have a little fire outside. And 9 everybody comes with warm clothes on, because we 10 don't get to wear warm clothes very often. So, 11 yeah. 12 Q Do you even know if Clubman powder 13 contained talc at the time of your oyster roast 14 party? 15 ATTORNEY GROSS: Object to form. 16 THE WITNESS: I wasn't aware until I 17 heard the word "talc" and "hazardous." 18 BY ATTORNEY GREVE: 19 Q Do you have an under- -- did you ever 20 review the ingredient list on any Clubman talcum 21 powder product? Strike that. 22 Did you ever review the list of 23 ingredients on any Clubman powder products? 24 A After that oyster roast, I started 25 being a little bit more conscious of what is in	Page 819 1 A I did. 2 Q Okay. And based on your testimony 3 previously, you would go through containers 4 fairly quickly; is that correct? 5 A Yes. 6 Q Okay. So the bottle that you looked 7 at and inspected after your oyster roast, can 8 you say whether or not that was a bottle or a 9 container that was purchased in 2018, based your 10 frequency of use with the product? 11 A I cannot. And here's why: It is 12 because everybody knew how much I loved Clubman. 13 I would get -- I was that guy that the stocking 14 stuffer was Clubman. I was that guy that Mom 15 would throw Clubman in the mail to me or it 16 could be a birthday gift or something like that. 17 So I had a lot of Clubman. 18 Q And none of that Clubman made its way 19 to your new home; is that correct? 20 A No, that is not correct. 21 ATTORNEY GROSS: Objection; misstates 22 testimony. 23 THE WITNESS: No. I say we are going 24 to spend the next week to ten days, two 25 weeks, going through those two closets and

Page 820 1 all the boxes and making sure that none of 2 that is in the house. And if it is, I'm 3 going to turn that over to Rachel's firm. 4 BY ATTORNEY GREVE: 5 Q Other than your mom, would there have 6 been anyone else who would have given you 7 Clubman -- or Clubman powder as a gift since 8 you've been in South Carolina? 9 A My in-laws would have done it. It 10 was such an easy gift because everybody knew my 11 fondness for Clubman. 12 Q So Lonnie's parents provided -- gave 13 you some Clubman for a gift-giving occasion; 14 fair? 15 A His brothers and sisters. I can't 16 say who gives -- gave what. But, yes, Clubman 17 was a product. I even got some from my sister. 18 Q And it was always the same product 19 that you described going back to -- and the same 20 image, the same description that you provided, 21 going back all the way to your first house in 22 North Osborne; is that correct? 23 A That is correct. 24 Q And as you sit here today, can you 25 tell me what the Clubman container is made of?	Page 822 1 random not-really-product-ID-specific 2 questions. 3 ATTORNEY GROSS: I mean, I'm trying 4 to do that. But I'm not thrilled at the 5 idea of still having no actual idea of how 6 much longer you have. Everyone else's 7 been able to sort of give me an estimate 8 as a courtesy. So -- 9 ATTORNEY GREVE: Well, it's been like 10 sixty seconds since I stop talking. 11 ATTORNEY GROSS: I know. 12 ATTORNEY GREVE: So -- 13 (Crosstalk.) 14 And you're the one that interrupted 15 it, so -- 16 ATTORNEY GROSS: I interrupted it to 17 be courteous to your co-defendants when I 18 look at the -- 19 (Crosstalk.) 20 ATTORNEY GREVE: No, I understand the 21 why. But it's just that the -- we're 22 dealing with the practical side of this. 23 (Crosstalk.) 24 Say that again. 25 ATTORNEY GROSS: Can you give me an
Page 821 1 ATTORNEY GROSS: Object to form; 2 asked and answered multiple times at this 3 point. 4 THE WITNESS: The exterior of the 5 container is, as far as I know, is a 6 plastic bottle. 7 BY ATTORNEY GREVE: 8 Q I understand. The exterior -- strike 9 that. 10 Sir, I want to switch gears with you 11 a little bit and talk a little bit about some of 12 your medical history. 13 ATTORNEY GROSS: Kurt, we need to 14 take a quick timeout. There were two 15 other people. You told us that you had 16 half an hour at 2:00 and it's now 2:40 and 17 you're switching to another topic. 18 So can you give me an actual estimate 19 of how much more time you have? because 20 there are other defendants who have 21 questions and time problems. 22 ATTORNEY GREVE: I think we're pretty 23 quick. But I'll tell you this Rachel, if 24 you want to let some of the other people 25 go, I've got some kind-of cleanup on some	Page 823 1 idea before we switch, or I'm going to ask 2 you to keep going. 3 ATTORNEY GREVE: Probably like, 15 4 minutes -- 15, 20-ish. 5 ATTORNEY GROSS: So you didn't have 6 another half-hour; you had another hour. 7 Okay. Union Carbide and Abex, I 8 think -- are you guys actually needing to 9 go right now, or have you been able to 10 sort out a time conflict, because I'm not 11 comfortable switching back and forth 12 between wall demo and talc. 13 ATTORNEY MAJOR: I'm in limbo. I 14 think I'm canceling the 3:00. I haven't 15 really gotten confirmation, but looks like 16 it, so... 17 ATTORNEY GROSS: Okay. So then hang 18 tight for me for a second. I'm sorry, 19 Denny. 20 ATTORNEY MAJOR: Sorry. 21 ATTORNEY GROSS: What about Kevin? 22 ATTORNEY GREENE: I'm okay. 23 ATTORNEY GROSS: All right, Kurt. Go 24 ahead. 25 Do you need a break while we're sort

Page 824 1 of pausing? 2 THE WITNESS: No, I'm good. 3 ATTORNEY GROSS: Okay. 4 BY ATTORNEY GREVE: 5 Q Mr. Perry, you described previously 6 that you could not use deodorant, that there is 7 a rash or a physical reaction that you would get 8 by using deodorant; is that fair? 9 A That is correct. 10 Q Did you ever determine what the 11 ingredient was that caused the rash? 12 A I did not. 13 Q And have you had this, this reaction 14 ever since you were -- you started using your 15 deodorant? which I'll estimate in that junior 16 high time period. 17 A I did not determine what the cause 18 was. I just knew that there was an alternative 19 and I was happy with that alternative. 20 Q And in terms of, did a doctor ever 21 diagnose you with anything specific or tell you, 22 Hey, this is a type of thing that's in deodorant 23 so be cautious of that, make sure you don't 24 apply that from any other product? 25 ATTORNEY GROSS: Object to form;	Page 826 1 Q Who was the surgeon for that 2 procedure, if you recall? 3 A Dr. Casey Fitz, F-I-T-Z. 4 Q And did he manage your care in 5 addition to doing the surgery, or was there 6 another physician involved? 7 (Technical difficulties.) 8 (Interruption.) 9 (Discussion held off the record.) 10 BY ATTORNEY GREVE: 11 Q Was Dr. Fitz the only physician who 12 helped manage your care and then postop recovery 13 for your 2010 procedure involving your colon? 14 A Yeah, he only did the surgery itself. 15 Q Who was your primary care physician 16 or physician who was managing your recovery from 17 that procedure? 18 A Dr. James Schnell, S-C-H-N-E-L-L, was 19 the gastrointestinal doctor. And Dr. Joanne 20 Hiott, H-I-O-T-T, was my primary physician 21 during that period of time. 22 Q You had also mentioned that -- I 23 think this was the primary care physician who 24 had ordered a chest x-ray for you. And I 25 have --
Page 825 1 asked and answered. 2 THE WITNESS: I did not go seek a 3 doctor. I just knew that at the time, 4 whenever I used it, I would dig in my pits 5 and I would have a red raised area. 6 And so when I spoke to my mother 7 about it, she just kind of -- "Well, 8 you're probably allergic to deodorant, and 9 try this." And the alternative was more 10 enjoyable. And, you know, 40 years later, 11 I'm still quite happy with an alternative. 12 BY ATTORNEY GREVE: 13 Q Mr. Perry, according to my notes, I 14 believe you had a colectomy in 2010; is that 15 correct? 16 A I did. 17 Q What was the underlying diagnosis 18 that precipitated that procedure? 19 A I had a second flare of 20 diverticulitis. And so the gastrointestinal 21 doctor that I was seeing wanted to remove 22 9 inches of my ascending colon. So they 23 scheduled me for "colonectomy" without a 24 colostomy bag and then let nature take its 25 course and heal me.	Page 827 1 (Crosstalk.) 2 And I have the spelling for, I think 3 it was Anthony Germano? 4 A Germinario. I'm going to seek my -- 5 ATTORNEY GROSS: If you don't -- hang 6 on one second. 7 I don't want him using his phone in 8 the middle of the deposition, for obvious 9 reasons. 10 Kurt, if there's a spelling question, 11 I'm happy -- we'll produce it in 12 discovery, if we haven't already. 13 THE WITNESS: I believe it's 14 G-E-R-M-I-A-R-I-O, Germinario. 15 BY ATTORNEY GREVE: 16 Q Prior to Dr. Germinario ordering a 17 chest x-ray, had you ever had a chest x-ray 18 before? 19 A I don't recall. 20 Q And in terms of any type of CT scan 21 or MRI imaging, likewise prior to 22 Dr. Germinario, you don't recall having any of 23 those scheduled for you; is that correct? 24 A That is correct. 25 THE VIDEOGRAPHER: I've got about

Page 828 1 five on this media unit. 2 ATTORNEY GROSS: Kurt, did you hear 3 that? 4 ATTORNEY GREVE: I got it. I should 5 be -- I think I may be able to finish up. 6 ATTORNEY GROSS: That would be great. 7 BY ATTORNEY GREVE: 8 Q Mr. Perry, can you give me Lonnie's 9 age? 10 A Fifty-three. 11 Q And I believe you had mentioned that 12 he's retired; is that correct? 13 A That is correct. 14 Q And did he choose to retire just 15 because it was the right time and he wanted to 16 move on to the next phase in his life? 17 ATTORNEY GROSS: Object to form. 18 THE WITNESS: No. His mental health 19 gave him an opportunity to make the call 20 that it was probably better for him to 21 retire. 22 BY ATTORNEY GREVE: 23 Q In terms of the healthcare related 24 issue with Lonnie, did Lonnie receive a 25 disability rating or did he make a claim of	Page 830 1 remain just that. So there was really no reason 2 for Lonnie to touch any of his own money because 3 I made enough money to take care of both of us. 4 Q Was the -- Lonnie's retirement, is 5 that something that was an investment account? 6 A No. He kept it in his own savings 7 account. 8 Q Did Lonnie ever invest in real 9 estate? 10 A He did. 11 Q And is there any portion of that nest 12 egg that's associated with any real estate 13 holdings? 14 A There is. 15 Q What real estate holdings are part of 16 Lonnie's retirement nest egg? 17 A I'm not aware of all of the different 18 facets of that. Some of that has been set up 19 through inheritance and family holdings. So I 20 cannot speak to that. 21 THE VIDEOGRAPHER: Two minutes. 22 ATTORNEY GREVE: Let's go ahead and 23 make a switch right now. I'm going just 24 flip through my notes. But it would 25 probably be a good time to let someone
Page 829 1 disability? 2 A Not at this time. 3 Q Was Lonnie in a financial position to 4 retire? 5 A Lonnie had a nest egg that made it 6 very easy for him. Plus at that point time when 7 we were together, I was making very good money. 8 So Lonnie did not have financial worries. 9 Q Did Lonnie's nest egg by itself allow 10 him not to have financial concerns? 11 ATTORNEY GROSS: Object to form. 12 THE WITNESS: At some point in time 13 he would have needed help or Lonnie would 14 have had to sell the house, if it wasn't 15 for us getting together and marrying. 16 BY ATTORNEY GREVE: 17 Q Prior to your diagnosis, did you and 18 Lonnie have any type of discussion about how 19 long his nest egg would last? 20 A I'm sorry. You broke up just a 21 little bit. How long what? 22 Q How long Lonnie's retirement nest 23 egg, for lack of a better word, would last? 24 A Well, we lived off of the income that 25 I brought in. And Lonnie's nest egg was to	Page 831 1 else go at this time. 2 THE VIDEOGRAPHER: This is the end 3 that media two, volume four, for the 4 deposition of Michael Perry. We're off 5 the record at 2:51. 6 ATTORNEY GROSS: Well, like I said 7 earlier, Kurt, take your time going 8 through the notes. But I want to be 9 switching now that nobody has a conflict 10 to cancel. If you have more questions, 11 I'd like to finish with you. So I don't 12 want -- you review your notes and come 13 back in about ten minutes. 14 ATTORNEY GREVE: Sorry. I was 15 operating -- I was still thinking someone 16 needed to jump in. But you're right; they 17 said they didn't. 18 How about we just stretch our legs 19 for a second. Let me flip through my 20 pages. And let's see if I can call it a 21 day. 22 ATTORNEY GROSS: That will be great. 23 THE VIDEOGRAPHER: I'm ready 24 whenever. 25 ATTORNEY GROSS: Okay. So what I

Page 832 1 would like to do, then, since Denny and 2 Kevin, unfortunately canceled, James ask 3 your one question, and then Louis ask your 4 five minutes, so we can be done with talc. 5 And then we can finish off with wall 6 demo and brakes and be done. I don't want 7 to be jumping back and forth in between. 8 That's not fair. 9 ATTORNEY ELLIOTT: Sounds good. 10 ATTORNEY HERNS: Okay. 11 ATTORNEY GROSS: You have about five 12 minutes, Louis. Or are you teasing me -- 13 (Crosstalk.) 14 ATTORNEY HERNS: No, no. Hopefully, 15 it'll be less than five minutes. 16 (Discussion held off the record.) 17 (Recess.) 18 THE VIDEOGRAPHER: This is the 19 beginning of media three, volume four, in 20 the deposition of Michael Perry. We are 21 back on the record at 2:54. 22 BY ATTORNEY GREVE: 23 Q Mr. Perry, back after a quick break. 24 Just a couple of quick follow-up questions. 25 You described that you had received	Page 834 1 A She -- Lonnie's mom and dad owned 2 over 45 properties in the Charleston area 3 from -- over the years of them being married. 4 And so they had commercial properties, they had 5 residential properties, they had their own 6 personal property. 7 Q When you first met Lonnie, was 8 Lonnie's mom in the hair salon business? 9 A She -- and I think I want to be clear 10 on this. She did not go to a shop and 11 participate. She just had a shop. She'd go in 12 there and collect booth rental, and she'd go 13 back to the tennis court and play tennis all day 14 long. It really was a mechanism for her to make 15 this piece of property pay for itself. 16 Q I understand. Mr. Perry, I believe 17 that's all the questions I have for you right 18 now. Just -- I just want to say thank you for 19 your time. And have I been polite to you today? 20 A You wavered out. Just repeat that 21 last part again. 22 Q Have I been polite and courteous to 23 you today? 24 A You have. Thank you. 25 ATTORNEY GREVE: All right. Thank
Page 833 1 Clubman powder products as a gift from Lonnie's 2 family members; is that correct? 3 A That would be correct. 4 Q Okay. Do you have any information as 5 to where they purchased those Clubman powder 6 products that you received as gifts? 7 A I will tell you that Lonnie's mother 8 at one time owned her own beauty shop. So her 9 network of friends inside the industry was 10 endless. I cannot tell you who she bought it 11 from, what her sources were, if she went to a 12 storefront. I couldn't tell you any of that. I 13 can just tell you that that was her connection 14 to haircare. 15 Q Did you ever -- and I apologize, 16 Lonnie's mom, is she still with us or is she 17 passed? 18 A She passed in 2008. 19 Q During the time that you knew Lonnie, 20 did you ever have occasion -- I'm sorry -- did 21 you have an understanding that his mom was a 22 practicing hairstylist or barber? 23 A I did not say she was a hairstylist. 24 I said that she owned her own salon. 25 Q She had her own salon.	Page 835 1 you very much, Mr. Perry. 2 ATTORNEY GROSS: James, you're up. 3 One question. 4 BY ATTORNEY ELLIOTT: 5 Q Mr. Perry, James Elliott. Nice to 6 see you again today. And the question is a 7 clarification. So what I wrote down in my notes 8 from your testimony yesterday -- and if I'm 9 wrong, you just tell me I am and we'll get it 10 straight. But I wrote down that your 11 recollection is your mom stopped using Avon 12 products sometime when you're in high school. 13 ATTORNEY GROSS: Object to form. 14 BY ATTORNEY ELLIOTT: 15 Q Okay. 16 A I think she stopped buying them in 17 high school. 18 Q Got it. 19 A I continue -- how much product she 20 had over the years, who she bought products 21 from, I don't recall at that point. Once I left 22 like, you know, the gatekeeper was kind of open. 23 Q Okay. And that may clarify it for 24 me. Because the question is: Do you remember 25 her using an Avon product in South Carolina?

Page 836 1 ATTORNEY GROSS: Object to form. 2 This is asked and answered. 3 BY ATTORNEY ELLIOTT: 4 Q Please answer it if you can. 5 A Yes, I do. 6 ATTORNEY ELLIOTT: Okay. All right. 7 Thank you. 8 ATTORNEY GROSS: Thanks, James. 9 Louis. 10 ATTORNEY HERNS: Am I on? Can you 11 see me? 12 ATTORNEY GROSS: You're on. We can't 13 see you -- oh, there you are. 14 ATTORNEY HERNS: There we go. I got 15 it. 16 BY ATTORNEY HERNS: 17 Q Mr. Perry, my name is Louis Herns. 18 Are you good to go forward? 19 A I am, sir. 20 Q Good. And as with the other 21 attorneys, if you don't understand any question 22 that I ask, please ask me to repeat or rephrase 23 it so that you do understand it. Okay? 24 A Understood. Thank you, sir. 25 Q Okay. Certainly. Now, when your	Page 838 1 boot or whatever, because the purpose was to get 2 the powder into the shoe; correct? 3 A That is correct. 4 Q Okay. And then when you got the 5 powder into the shoe or the boot or whatever 6 footwear you're addressing, you would then twist 7 the top and then go about your business? 8 A That is correct. 9 Q Okay. Now, this is a fairly specific 10 question so -- I'm going to spell part of it. 11 Do you recognize the trade name Phrma -- spelled 12 P-H-R-M-A -- Tech Industries? 13 A I don't recall that name. 14 ATTORNEY GROSS: Object to form. 15 BY ATTORNEY HERNS: 16 Q And the last, last thing is, the 17 purpose was get the powder into your footwear to 18 take care of the smell or the dampness; correct? 19 ATTORNEY GROSS: Object to form. 20 THE WITNESS: That is correct. 21 ATTORNEY HERNS: Okay. Thank you, 22 sir. That's all have. 23 I think it was under five minutes, 24 Rachel. 25 ATTORNEY GROSS: You were. Thanks,
Page 837 1 shoes were wet or smelly, you would squirt Gold 2 Bond into the footwear to take care of the 3 dampness or the smell; correct? 4 A They would be either sprayed either 5 into the shoe itself or sometimes I would sit on 6 either a seat or the commode and massage that 7 product into my feet as I put my ankle on top of 8 my adjoining or the adjacent knee in a 9 figure four. 10 Q Okay. So you would place the powder 11 on your foot and then put your foot into the wet 12 or smelly boot, shoe? 13 A Depending on what the task was. If I 14 was running out to the barn, you're right, I'd 15 just do a big squirt into that and put my foot 16 right down in there and head on out to the barn. 17 Q Okay. And the way you would do it is 18 you would take the bottle of powder and you 19 would open up the -- I liked the term you 20 used -- strainer at the top of the bottle; 21 correct? 22 A Yeah, I would, I would untwist the 23 and then squirt. 24 Q Okay. And you would put the bottle 25 down into the footwear, the shoe or the hockey	Page 839 1 Louis. 2 All right. Are we done with talc? 3 Any other -- one more chance. Any other 4 talc defendant have a question? 5 All right. Denny or Kevin, I'll let 6 you-all fight it out. 7 Do you need a break? 8 THE WITNESS: No. 9 ATTORNEY GROSS: Denny or Kevin, I'll 10 let you-all fight it out. Well, let me do 11 this. 12 Denny, can give me a feel for how 13 long you think you have. 14 And, Kevin, can you? 15 Oh, you're muted, man. 16 ATTORNEY MAJOR: Sorry. 15 minutes 17 or so, I'm guessing. 18 ATTORNEY GROSS: Okay. Kevin, I know 19 that Dave did a lot of your lifting 20 yesterday. How long do you think 21 you're -- 22 ATTORNEY GREENE: I think that would 23 be about right for me as well, 15. 24 ATTORNEY GROSS: All right. 25 ATTORNEY GREENE: If that.

Page 840 1 ATTORNEY GROSS: Well, all right. 2 Denny, I see your face, so you're up. 3 ATTORNEY MAJOR: All righty. 4 BY ATTORNEY MAJOR: 5 Q Mr. Perry, can hear me okay? 6 A I can, sir. Thank you. 7 Q All right. I want to start out by 8 asking about your time at the Holiday -- is it 9 Holidome? Am I saying that right? 10 A It was the Holiday Inn East Holidome. 11 Q Holidome, okay. And I understand 12 that you started when you were 15. So in terms 13 of a year, would that have been 1985? 14 A That sounds appropriately. 15 Q All right. And I know that you went 16 to college in 1988. And I was a little bit 17 confused about whether you worked at the 18 Holidome at all after you went to college. 19 A Well, as I stated, that I would come 20 home for weekends. So if they needed a 21 lifeguard, I would be in that area as well. 22 I -- if they needed front desk staff and that's 23 something I had been trained on, I would have 24 filled in for that as well. 25 Q Okay. And you would do that some on	Page 842 1 you worked there? 2 A No. 3 Q Now, I know you testified it was 4 within a few months of being a lifeguard you 5 were promoted to the front desk. And then I 6 think you testified you were promoted to front 7 desk supervisor quickly after that. Do you 8 know -- I mean, what does "quickly" mean? Is 9 that a few months as well? 10 A Yeah. I was, I was a quick learn. 11 Q Okay. So would it be about a 12 few months? 13 ATTORNEY GROSS: Object to form. 14 THE WITNESS: I couldn't -- 15 ATTORNEY GROSS: Asked and answered. 16 THE WITNESS: I couldn't answer that. 17 But it was a very accelerated process. 18 BY ATTORNEY MAJOR: 19 Q All right. And I understand that 20 when you were a front desk supervisor, you would 21 go and inspect work that had been done. And I 22 think you testified something to the effect of, 23 if they were done with five rooms, you would 24 look at five rooms; if they were done with one 25 room, you would look at one room.
Page 841 1 the weekend. Would you say you did that every 2 weekend, or do you know? 3 A It really depended on what their 4 needs were. It was a source of income for me, 5 so I was focused on getting a little bit of 6 money. 7 Q Do you know when the last year you 8 might have worked at that Holidome? 9 A It's when I left to go to Florida. 10 So there was bigger money down in Florida. I 11 couldn't pin a year to it. But when I started 12 doing the boat full-time, I said goodbye to the 13 Holiday Inn. 14 Q All right. And do you know when that 15 Holiday Inn Holidome was first opened? 16 A I believe it was a motor lodge in the 17 1950s, 1960s. 18 Q Okay. When did it become the 19 Holidome; do you know? 20 A All they did was enclose all of the 21 exterior corridors to make it an interior. And 22 I believe they probably changed the name to 23 Holiday Inn. But I couldn't tell you when any 24 of that was. 25 Q Fair. Did you ever go there before	Page 843 1 So, I mean, my understanding is you 2 were looking at work after it had already been 3 completed; is that correct? 4 A Correct. So we would start with 5 insulation, sheetrock. And then after sheetrock 6 was done, then wall vinyl would go up, flooring 7 would go down, and then they would bring 8 furniture in. 9 Q All right. And did you see the 10 people actually working? I mean, if you were 11 looking at completed work, they wouldn't have 12 been working, would they have? 13 A I was inside the dust zone, 14 Mr. Major. So, of course, I was always seeing 15 people around. 16 Q All right. I mean, what do you 17 remember seeing people doing? 18 A I mean, I remember them cutting 19 sheetrock. I remember them taping joints. I 20 remember seeing them putting compound down. I 21 remember them sanding, dry sanding. I now know 22 but that term is; it was dry sanding because it 23 was so much dust. 24 Q Are you able to tell me how often you 25 would have been around people while they were

Page 844 1 sanding? 2 A Well -- and I don't think any of us 3 have talked about this yet. But with this 4 Holiday Inn, they did not have -- they didn't 5 zip anything in and out. So there was very, 6 very little dust barriers. You know, now we 7 would tape, put plastic up, and try to protect 8 and keep all that enclosed. 9 Back in those days, that wasn't the 10 case. And I was actually quite shocked because 11 that drywall dust would just filter everywhere 12 throughout the hotel. 13 Q And do you -- did you ever look to 14 see what the brands of the products they were 15 using were? 16 A No. And this is kind of me being a 17 little bit snotty. As I finally was wearing a 18 suit and tie, I was starting to become -- I had 19 that horrible experience with the brakes. And 20 never wanted to deal with brakes again. And my 21 sense of I have arrived was a man starting to 22 wear a coat and tie. And I didn't want anything 23 to do with that kind of stuff. 24 Q Understood. Did you ever see any 25 drywall work occurring when you were a	Page 846 1 THE WITNESS: Sadly enough, it was as 2 soon as they got done with doing the 3 entire ring around, give it a 4 couple months and then start the whole 5 process over again. You know, 6 dehumidification in that Holidome was 7 very, very poor. So if you sat down there 8 long, you felt moist. 9 BY ATTORNEY MAJOR: 10 Q All right. And I take it -- I asked 11 about what you might have seen the workers 12 using. You wouldn't know the brand of the 13 manufacturer of any of the drywall or joint 14 compound materials that were removed when you 15 were at the Holiday Inn Holidome, would you? 16 ATTORNEY GROSS: Object to form. 17 THE WITNESS: I do not. 18 BY ATTORNEY MAJOR: 19 Q All right. I'm going to switch gears 20 real quick and ask you about the Embassy Suites. 21 And I know you were a manager. And you talked 22 about the library that was across the street. 23 I'm going to ask you about that in just a 24 second. 25 But I think you also said when you
Page 845 1 lifeguard? 2 A Oh, absolutely, yeah. 3 Q All right. So I guess -- I 4 understand when you were for a front desk 5 supervisor, you'd just be inspecting completed 6 work. If you were a lifeguard, you would have 7 just been walking by; is that right? 8 A Well -- and let me give you kind of a 9 lay of the land. When you walked into the 10 Holidome itself, it was 406 rooms that outlined 11 that swimming pool and game area. So that was a 12 60,000 square-foot dome. And all of the rooms, 13 two floors, up and down, they were all open to 14 the Holidome as well. 15 So if they were doing work in one 16 section of the Holidome, we would have exposure 17 to all of that dust if you were on one side or 18 down the other side of the Holidome. 19 Q And I know you testified -- and I 20 guess it was a lot of mold because of the water 21 in the pool inside. But do you know how often 22 drywall would typically last or how long it 23 would last before it had to be replaced there? 24 A It was almost -- 25 ATTORNEY GROSS: Object to form.	Page 847 1 were with Embassy Suites that there were some 2 water intrusion issues, so there was some 3 ripping out and replacing of drywall to find 4 leaks. Did I hear that right? 5 A Yeah. If I can kind of clean that up 6 for you, Mr. Major. 7 Q Uh-huh. 8 A The Embassy Suites was the old 9 Citadel in Charleston, South Carolina, that was, 10 that was remodeled and made into a hotel. 11 Behind the Embassy Suites was the old 12 county library, okay. Next door to the Embassy 13 Suites is the hotel Hampton Inn, which is where 14 we're at right now. 15 So there's a little bit of a kind 16 of -- and I'm trying to clean it up a little bit 17 so you can get an idea. And I think you're -- 18 when I heard your question, you're kind of 19 putting all of that maybe in -- I just want to 20 make sure that we orient ourselves correctly. 21 So there's three different 22 properties, but they're all within a stone throw 23 of each other. 24 Q Yeah, no, I've been to that Embassy 25 Suites several times. I'm really -- I'm

Page 848 1 wondering were you around any work at the 2 Embassy Suites itself as opposed to the library 3 or the Hampton Inn. 4 A Yes. The Embassy Suites on the 5 mezzanine level -- since you understand the 6 property -- that mezzanine level had the water 7 intrusion and we had the most problems with 8 sheetrock. 9 Q All right. And again, your job was 10 to inspect that work; is that right? 11 A Yeah. As the hotel manager, before 12 ownership would cut checks for -- because 13 everything came out of centralized accounting 14 from Hilton Worldwide -- before any checks were 15 cut out, it took my signature to say that the 16 work was done to like-new or new condition. 17 Q And this was later in time, 2000 or 18 2001. And so were there efforts to try to keep 19 that -- any dust or anything contained from 20 where guests and that kind of thing were? 21 A Yes. That is correct. 22 Q All right. And you don't know the 23 brand or manufacturer of any materials that were 24 removed at the Embassy Suites, do you? 25 A I do not.	Page 850 1 ceiling? I was a little confused about that. 2 A So, yes, Mr. Major. The City had 3 turned on, by accident, an old historic water 4 main. And when that ruptured overnight, the 5 water came up through the walls, up through the 6 building, and worked its way through all the 7 different floors, collapsing the ceiling inside 8 the lobby and the first floor. 9 So the hotel had to be evacuated, and 10 all the guests had to be relocated. 11 Q And you don't know the brand or 12 manufacturer of any of those materials that you 13 did -- or that had to be removed at that time, 14 do you? 15 A No, I do not. 16 Q All right. And Homewood Suites, real 17 quick -- I think that's the last one you 18 mentioned -- you don't know the brand or 19 manufacturer of any of the materials around 20 there, do you? 21 A I do not. 22 Q All right. And you used this term 23 "sheetrock" a few times during the deposition. 24 It's a word I use a lot. But when you say that, 25 you mean drywall or wallboard; right?
Page 849 1 Q All right. The library I'm going ask 2 about now, real quick. You were never around 3 anybody actually working in that library, were 4 you? 5 A There were people inside that library 6 were pushing things around. It really was used 7 as a storage facility. And so when I would be 8 in there, they could be in there poking things 9 around. 10 But they weren't doing work to 11 renovate or to maintain the building. It was 12 just used as a storage facility for furniture 13 and just stuff that the current owner had. 14 Q All right. And you don't know the 15 brands of the manufacturers of any of the 16 materials that were in that library, do you? 17 A I do not. 18 Q Do you know when any of those 19 materials were installed? 20 A I do not. 21 Q All right. Hampton Inn -- and this 22 is the one you're in now; right? 23 A Correct. 24 Q And you said something about some 25 drywall dust there. And I was -- is it from the	Page 851 1 A I -- and I will apologize, sir. I've 2 always associated drywall with sheetrock. I am 3 a layman. And so if I mislabeled that, it is 4 only out of my ignorance of what the difference 5 between the two is. 6 ATTORNEY MAJOR: You and me both, in 7 many ways. 8 I think that's all of the questions 9 that I have, Mr. Perry. I really 10 appreciate your time. 11 THE WITNESS: My pleasure. Thank you 12 so much. 13 ATTORNEY GROSS: Thanks, Denny. 14 Sorry about all that. 15 ATTORNEY MAJOR: No problem. 16 ATTORNEY GROSS: Are you good to keep 17 going? 18 THE WITNESS: I am. 19 ATTORNEY GROSS: Okay. 20 BY ATTORNEY GREENE: 21 Q Good afternoon, Mr. Perry, my name is 22 Kevin Greene. I'm going to have just a few 23 questions related to the two vehicles that 24 you've talked to us about previously, mostly 25 just clarifying questions, I think.

Page 852 1 A Okay, sir. 2 Q You mentioned the 1975 Honda Accord 3 and the 1976 Chevy pickup. And my understanding 4 is that you used those cars sequentially; that 5 is, you drove the Honda Accord once you got your 6 license until it was totaled, and then you 7 started driving the Chevy pickup. 8 Did I understand that correctly? 9 A Right. And just so -- and it may 10 have been because the internet cut it out. I 11 just want to make sure that's the 1979 Honda 12 Accord. 13 Q Yes, sir. 1979 Accord, 1976 Chevy 14 pickup; right? 15 A That is correct. 16 Q Okay. And you drove the Honda Accord 17 from the time you got your license when you 18 turned 16; is that right? 19 A That is correct. 20 Q All right. And so I guess you turned 21 16 in December of 1985; correct? 22 A That sounds appropriate. 23 Q Right. You drove them -- the 1979 24 Accord until the summer between sophomore and 25 junior year, when it was totaled; correct?	Page 854 1 THE WITNESS: The Honda had more 2 problems with the front and rear brakes. 3 The Chevy pickup truck, I had more 4 problems with the rear shoes coming off 5 inside the hub. And then there would be 6 the loud crash or crunch or whatever. And 7 then I knew that when I'd hit the brakes, 8 you could just hear that loud grinding 9 noise. 10 BY ATTORNEY GREENE: 11 Q Let me just follow up briefly on 12 that. With respect to the rear drum brakes on 13 the Chevy pickup, you're telling us that 14 sometimes the actual brake lining would fall off 15 into the drum? 16 A Yes. 17 ATTORNEY GROSS: Object to form. 18 BY ATTORNEY GREENE: 19 Q How frequently did that happen? 20 A Like I explained yesterday, it was 21 often. 22 Q My understanding was you were talking 23 more about the disc brakes yesterday. But is it 24 fair for me to assume that the testimony you 25 gave yesterday about the brakes falling off on
Page 853 1 A That is correct. 2 Q And I take it from your prior 3 testimony that you did not do any of the brake 4 repair or participate in any of the brake repair 5 on the Accord until after you started to drive 6 it; is that right? 7 A That is correct. 8 Q So you would have done the first 9 brake repair on any vehicle in your life after 10 you turned 16 years old; correct? 11 A That is correct. 12 Q The 1976 Chevy pickup was a vehicle 13 that your family bought used; correct? 14 A That is correct. 15 Q And you would not be able to tell us 16 the brand of the brakes that were on the Chevy 17 pickup when you first started to drive it; is 18 that correct? 19 A That is correct. 20 Q Okay. You talked with one of the 21 other attorneys yesterday about the disc pads 22 falling off while you were driving the vehicle. 23 Did that happen on both of these cars, 24 or just the Accord or just the pickup? 25 ATTORNEY GROSS: Object to form.	Page 855 1 the front axles is the same testimony you'd give 2 me if I asked you today about the rear axles and 3 the drum brakes? 4 A That is correct. 5 Q You were asked some questions 6 yesterday about the Rayloc brakes that you 7 recalled purchasing. Is it correct that you do 8 not have any personal knowledge or information 9 about who actually manufactured any of the 10 brakes that you bought as Rayloc? 11 A I, I didn't know anything about who 12 did what. I just knew that whoever the lowest 13 guy was got my business, sir. 14 Q And so you did not see anything on 15 any of the brakes that you identified as Rayloc 16 that actually indicated who manufactured the 17 brake lining or the brake pads; correct? 18 ATTORNEY GROSS: Object to form. 19 THE WITNESS: That is correct. 20 BY ATTORNEY GREENE: 21 Q I understand and you've said it again 22 today that you made the decision about which 23 brakes to purchase based on the cost. And you 24 were looking for the cheapest option; right? 25 A That is correct.

Page 856 1 Q When you called the stores, did you 2 asked for the cheapest option that would apply 3 to the vehicle you were servicing? 4 A I would -- the conversation would be 5 like this: I'm looking for brakes for a 1979 6 Honda Accord. What's a good -- you know, I need 7 front pads or rear shoes. 8 And they would say: Well, I've got 9 this, this, and this. 10 What's the cost? 11 Well, you can do this or you can 12 that. 13 Okay. I'll do this. 14 Q And you would do -- when you said you 15 would do this, you would take the cheapest 16 option they gave you; right? 17 A Yes, sir. 18 Q It sounds like you were -- with 19 respect to Rayloc, you were likely purchasing 20 from their economy line; does that sound right 21 to you? 22 ATTORNEY GROSS: Object to form. 23 THE WITNESS: Well, I don't know that 24 I ever said "Can I have your economy class 25 of products." It really came down to that	Page 858 1 BY ATTORNEY GREENE: 2 Q And that was the Bendix pictures that 3 you were shown during the deposition; correct? 4 A Yes; Mr. Robert. 5 Q Yes, sir. 6 There was not a particular brand of 7 brake that you used for either of your 8 particular cars; is that fair? 9 A I was not brand-loyal, sir. 10 Q With respect to the NAPA store that 11 you answered some questions about yesterday, was 12 that a standalone store or was it part of a 13 strip mall or some other configuration? 14 A It's hard to be certain. But I would 15 venture more chances than not it was a 16 standalone. 17 Q Are you -- and pardon me for asking a 18 few more questions about that. Are you making 19 an educated guess there? Or are you just 20 surmising that that's more likely than not based 21 on other experience in life? 22 ATTORNEY GROSS: Object to form. 23 THE WITNESS: That section of town 24 did -- was not known for strip malls or 25 strip storefronts. So that's how I've
Page 857 1 conversation, how I outlined it to you. 2 BY ATTORNEY GREENE: 3 Q Yes, sir. And if the economy line of 4 Rayloc brakes was the cheapest, that would have 5 been the line that you would have purchased; is 6 that fair? 7 A That is correct. 8 Q It also sounds like, from your 9 testimony, that you were buying new Rayloc 10 brakes as opposed to relined Rayloc brakes; is 11 that correct? 12 ATTORNEY GROSS: Object to form. 13 THE WITNESS: Yeah, I don't know -- 14 and I still don't know that I can 15 distinguish between the two or understand 16 what the two is. 17 BY ATTORNEY GREENE: 18 Q Did you ever see on any of the boxes 19 of Rayloc brakes that you purchased an 20 indication that they were relined? 21 ATTORNEY GROSS: Asked and answered. 22 THE WITNESS: I did not know the 23 difference until counsel showed me 24 pictures two days ago and I saw the word 25 "relined" on it.	Page 859 1 come to the "probably it may have been a 2 standalone," knowing that area of town. 3 BY ATTORNEY GREENE: 4 Q How far was that NAPA store from your 5 home? 6 A Well, I mean -- 7 ATTORNEY GROSS: If you know. 8 THE WITNESS: I don't know many miles 9 it was. But, I mean, you go from the 10 country driving into town and then working 11 your way into the north side. I don't 12 know if it was 30 minutes away, maybe. 13 BY ATTORNEY GREENE: 14 Q Is that your best estimate as you sit 15 here today, 40 years later, approximately a 16 30-minute drive? 17 ATTORNEY GROSS: Object to form. 18 THE WITNESS: Something like that, 19 sir. 20 BY ATTORNEY GREENE: 21 Q Yes, sir. How about the AutoZone? 22 How far was the AutoZone from your home? 23 A Very similar. I don't want to be 24 pinned to an exact -- I don't have really good 25 memories of that. I just have horrible memories

Page 860 1 of the process that I had to go through. 2 Q Other than what you told us yesterday 3 in terms of a description of the NAPA store, is 4 there anything else you can recall that you 5 could share with us today about the store? 6 A No. My description of the store 7 yesterday is still what I would describe today. 8 Q With respect to the disc brakes, you 9 gave some testimony previously, I believe, that 10 you did not need to sand or grind the disc brake 11 pad; is that correct? 12 A That is correct. 13 Q And so is it fair to say that when 14 you were installing new disc brake pads, there 15 was nothing that you did to the brakes to 16 generate any dust? 17 ATTORNEY GROSS: Object to form. 18 THE WITNESS: For front brakes? 19 BY ATTORNEY GREENE: 20 Q Yes, sir. 21 A No, I did not. 22 Q I just want to make sure -- I think 23 we might have had a double negative. 24 Do you agree that there was not any 25 dust generated during the process of installing	Page 862 1 Q Yes, sir. These vehicles don't sound 2 like the most reliable -- these were not the 3 family vehicles that would take long trips; is 4 that right? 5 A I think -- no. 6 Q I'm correct, these are not the family 7 vehicle that would take long trips; correct? 8 A You are absolutely correct. 9 Q Okay. With respect to the affidavit 10 that I think is Exhibit number 8 of the 11 deposition -- 12 ATTORNEY GROSS: Do you want me to 13 give it to him to look at? 14 ATTORNEY GREENE: I don't think so. 15 But I'm happy for him to look at if he 16 needs it. 17 BY ATTORNEY GREENE: 18 Q My question is not about the 19 substance of any conversation, but did you have 20 a conversation with anyone at your lawyers' 21 office before you were presented with this 22 affidavit? 23 A I have spoken to my attorney. I 24 cannot remember how much I spoke to her or what 25 we spoke about prior to the author of that
Page 861 1 a front disc brake pad? 2 A I certainly didn't do anything to the 3 process to generate dust. 4 Q Yes, sir. During these years when 5 you were driving, I understand you drove to 6 school from time to time. And you may have 7 driven to swim practice. Any other places where 8 you would have regularly driven during that time 9 period? 10 A I would have driven to and from 11 school for my mom and dad. I -- one of the 12 families that had all of the horses, they would 13 have me come out when they were out of town or 14 down in Florida for their winter months, take 15 care of their house, take care of their dog, 16 oversee -- not oversee but keep an eye on their 17 horses for them while they were out, and report 18 any problems back to them. 19 Q I apologize if I missed it. You 20 drove the car down to Florida? 21 A No, no. I said I would drive over to 22 their house. They had a farm nearby. And I 23 would check on the house, take care of their 24 animals, their dogs, make sure that house was 25 okay, keep an eye on their horses.	Page 863 1 affidavit. We did have a conversation. But 2 that would have been the initial of them taking 3 over my case. 4 Q So you believe you likely had a 5 conversation with somebody at the office before 6 you signed this affidavit on August 2nd of 2023? 7 ATTORNEY GROSS: Object to form; 8 misstates testimony. He did not say 9 "likely." 10 BY ATTORNEY GREENE: 11 Q Well, I apologize, Mr. Perry. Did 12 you have a conversation with the counsel's 13 office before you were presented with this 14 affidavit for your signature? 15 A Yes. 16 Q Okay. The affidavit indicates that 17 you generally performed maintenance as needed on 18 the family vehicles. 19 Other than the work that we've talked 20 about, what other maintenance did you perform on 21 the family vehicles? 22 A I learned how to plug tires, oil 23 change, windshield wiper fluid, brake fluid, 24 radiator. 25 Q Do you remember the brand name of any

Page 864 1 the oil that you used? 2 A I believe it was Penske. 3 Q Do you remember -- 4 (Crosstalk.) 5 A Yeah, it was the, it was the oil, 6 yellow oil cans. 7 Q Do you remember the brand name of any 8 of the brake fluid that you used? 9 A Not anymore. I -- Mr. Greene, brake 10 fluids, you know, we would, we would buy brake 11 fluid very similar to how we would buy brakes. 12 Cheapest guy because -- you know, bleeding 13 brakes, bleeding brakes, bleeding brakes down. 14 So brake fluid can be a little bit on the 15 expensive side when you're going through it as 16 much as we did. 17 Q One more question on the Chevy 18 pickup. Did you stop driving that when you left 19 high school? 20 A I ended up blowing up the engine, 21 unfortunately. 22 Q And so was that sometime during your 23 senior year in high school? 24 A Yes. 25 Q Just a couple of follow-ups on some	Page 866 1 Q I know you are asked and you 2 indicated you have not undergone any genetic 3 testing at this time. 4 Do you know whether your doctors have 5 performed any genetic testing on your tumor in 6 order to see if there's any potential therapies 7 available? 8 ATTORNEY GROSS: Object to form. 9 THE WITNESS: Not that I'm aware of. 10 BY ATTORNEY GREENE: 11 Q Have you ever used 23andMe or any 12 other service like that where you sought -- you 13 provided a sample for genetic testing? 14 ATTORNEY GROSS: Object to form. 15 THE WITNESS: I have not. 16 BY ATTORNEY GREENE: 17 Q Mr. Perry, have you told us all the 18 ways that you believe you were exposed to 19 asbestos? 20 A I have. 21 Q And have you told us all the 22 information that you are aware of with respect 23 to any brake repair work that you performed or 24 were around? 25 A I have.
Page 865 1 other topics. I understand that your dad 2 currently has prostate cancer. Has he had any 3 prior cancers, any other cancers that you're 4 aware of? 5 A No. My father was -- is -- was a 6 very, very healthy man. But he has late-stage 7 prostate cancer. 8 Q Has your dad any lung or breathing 9 problems? 10 A No. 11 Q I understand your mom developed small 12 cell lung cancer. Did she have any other 13 cancers? 14 A She had uterine cancer. And they 15 discovered that during my birth. 16 Q We've talked about all your 17 residences at length, I think. Have you lived 18 or spent time outside the United States for any 19 period of time longer than, say, one week? 20 A Just on vacations. 21 Q Is there any place you've gone on 22 vacation where you've stayed for more than a 23 week? 24 A No. I mean, most of my travels were 25 with Hilton, where they were in-and-outs.	Page 867 1 ATTORNEY GREENE: I believe those are 2 all of the questions I have. Thank you 3 very much for answering them. 4 THE WITNESS: Thank you. 5 ATTORNEY GROSS: Thank you, Kevin. 6 Let's go off the record for five 7 minutes. 8 THE VIDEOGRAPHER: Off the record at 9 3:30. 10 (Recess.) 11 THE VIDEOGRAPHER: Back on the record 12 at 3:39. 13 ATTORNEY GROSS: Okay, Jennifer. 14 ATTORNEY TECHMAN: Thank you. 15 BY ATTORNEY TECHMAN: 16 Q Mr. Perry, nice to meet you. My name 17 is Jennifer Techman. We've appreciated your 18 time. I've taken a lot of notes and listened 19 closely. I want to ask you a few things I did 20 not hear. 21 A Okay. 22 Q My first question, sir, is: 23 Following your lung surgery in July of 2023, 24 have you had any scans -- an MRI, a PET scan, a 25 CAT scan?

Page 868 1 A I had -- following the surgery? 2 Q Yes, sir. 3 A I had a CAT scan with contrast. I 4 believe it was -- it was before my last chemo. 5 Q All right. Are you scheduled to have 6 another scan, to the best of your knowledge? 7 A I will be having a PET scan, if not 8 before my last chemo, it'll be after my last 9 chemo. 10 Q And where are these scans done? 11 A They're going to be within the 12 Medical University of South Carolina. I tend to 13 choose the downtown location. 14 Q Okay. But MUSC has done both scans; 15 correct? 16 A They will be doing the scan. But I 17 do not have a date on when that scan is, so I 18 cannot tell you the facility where it's going to 19 be done. 20 Q Fair enough. I appreciate that. Did 21 you say on day one that someone mentioned a 22 stage for your cancer. And if so, what stage 23 was that? 24 A Yes. Dr. Rangell told me that, I 25 believe, it is 1-B, is what the stage was. But	Page 870 1 outside the home since 2003? 2 A He has dabbled in real estate here 3 and there. But Lonnie has really retreated from 4 any type of that environment. 5 Q Understood. Would you clarify for 6 me, please, what years you attended College of 7 Charleston? 8 A I -- when I was working at the 9 Embassy Suites, Charleston, I was taking classes 10 there because Hilton paid for them. 11 Q Okay. Excellent. Thank you. Would 12 you please give me your sister's date of birth. 13 A July 16th, 1967. 14 Q And would you give us your dad's full 15 name, please. 16 A Ross Perry. 17 Q Ross? 18 A R-O-S-S. 19 Q Thank you. When your dad worked at 20 the airports, sir, was he in a union of any 21 kind? 22 A He was not. 23 ATTORNEY TECHMAN: Thank you. I 24 appreciate it. Those are all the 25 follow-ups I had and didn't hear us cover
Page 869 1 it is part of my medical records. 2 Q Thank you so much. I appreciate 3 that. 4 I want to switch gears and ask you a 5 question about your time on the farm. During 6 the years you lived on the farm with Lonnie -- 7 which I understand was roughly 2003 to 2019, 8 when you-all were raising animals -- my 9 question, sir: Do you recall ever having a bout 10 of bronchitis or pneumonia or having any lung 11 infection during that time? 12 A No. 13 Q Okay. If you did, would those 14 records be with your primary care doctor at the 15 time, who I understand was Dr. Hiott, 16 H-I-O-T [sic]? 17 A Dr. Hiott, yes. 18 Q Thank you so much. Would you 19 clarify, please, and tell us what year Lonnie 20 retired? 21 A Shortly after us getting together. 22 Q So would you say, was that 2002, GPS LLC 23 2003? gpscalendar@gps.llc ~ 214.347.4781 24 A For argument's sake, 2003. 25 Q Okay. And so has Lonnie done work	Page 871 1 those things. And I appreciate your 2 patience. It's been wonderful to meet 3 you. I wish you the best of luck. And I 4 wish we were meeting you under any 5 different circumstances. 6 THE WITNESS: Thank you. I 7 appreciate that. 8 ATTORNEY TECHMAN: Thank you, 9 Mr. Perry. 10 BY ATTORNEY GROSS: 11 Q All right. You are back with me. 12 You're in luck. But I do not anticipate being 13 much more than 10 to 15 minutes. However, the 14 unfortunate thing is I'm going to be jumping 15 around a little bit. 16 A Okay. 17 Q All right? So just bear with me. 18 You've done a really good job of it so far. But 19 if you need me to re-ask my question or I ask a 20 bad one -- which at this point in time is 21 likely -- just let me know and I'll fix it for 22 you. Okay? 23 A Yes. 24 Q All right. So the way I'm going to 25 do this, just to orient you, is I'm kind of

Page 872 1 going to go basically in order from the first 2 day of cross-examination three days ago through 3 just now. 4 A Okay. 5 Q So we're going to go in that order; 6 okay? 7 So the first few things I want to 8 follow-up with you on, the lawyer for Honeywell, 9 Bendix brakes -- do you remember being asked 10 some questions by him? 11 A I do. 12 Q Do you remember he showed you some 13 photographs and marked them as exhibits to your 14 deposition? 15 A I do. 16 Q Okay. I'm going to hand this one 17 back to you. Candidly, I don't remember if it's 18 Defense Exhibit 1 or 2. But go ahead because he 19 had you hold it up. 20 A (Indicating.) 21 Q Okay. Now, hold that in front of you 22 while I ask you some quick follow-up questions 23 about it. 24 You can put it down. 25 All right. Do you know -- well,	Page 874 1 Q You never even saw it; correct? 2 A I did not. 3 Q All right. Do you know what size 4 font the word "danger" was written in on the 5 Bendix brake boxes? 6 A I've no clue. 7 Q Okay. And if I were to ask you those 8 same or similar questions for Rayloc, the other 9 brand of brakes you remember, do you ever 10 remember seeing anything like this -- 11 A I do not. 12 Q -- on that brake box, would your 13 answers be the same? 14 A It would. 15 DEFENSE COUNSEL: Objection to form. 16 BY ATTORNEY GROSS: 17 Q Okay. You know yourself better than 18 anybody here. Do you think if you'd seen the 19 word "danger" written in red all-capital letters 20 in a decent-size font, you might have noticed 21 this? 22 A I might have. 23 DEFENSE COUNSEL: Object to form. 24 BY ATTORNEY GROSS: 25 Q Why do you say that?
Page 873 1 strike that. 2 Let me ask you: Do remember being 3 asked questions about this warning and the 4 lawyer represented to you that this was a 5 warning on Bendix brakes at some point in time? 6 A I do. 7 Q Okay. Do you know what years this 8 warning is allegedly from? 9 A I do not. 10 Q Do you know how big this warning was 11 in terms of the rest of the Bendix box? 12 A I do not. This is a blowup of a 13 picture that I have no, no reference to. 14 Q And that -- you anticipated my next 15 question. That's quite a blown-up photograph; 16 correct? 17 A I do. 18 DEFENSE COUNSEL: Object to form. 19 BY ATTORNEY GROSS: 20 Q You don't know if that was on the 21 box; correct? 22 A I do not. 23 Q You don't know if it was on the side 24 of the box; correct? 25 A I do not.	Page 875 1 DEFENSE COUNSEL: Objection; form. 2 THE WITNESS: I equate "danger" 3 with... 4 BY ATTORNEY GROSS: 5 Q I know. 6 A I associate "danger" with bodily 7 harm. 8 Q Okay. We're done with that. Give me 9 that back. 10 All right. I want to shift gears. 11 And this is sort of something that's been talked 12 about a little bit, I think, on day one and day 13 three. You were asked a lot of questions about 14 this library that was near this Hampton Inn and 15 this Embassy Suites that we're talking about; 16 right? 17 A That is correct. 18 Q Okay. And you told the lawyer today 19 that you were never really in there when they 20 were doing work; right? 21 A There was any work being done. It 22 was always storing things, stacking things, 23 moving things around. 24 Q Okay. When you saw them stacking, 25 moving things around, banging on walls, did you

Page 876 1 see any dust from that? 2 DEFENSE COUNSEL: Objection to form. 3 THE WITNESS: The lighting was very 4 important, but yes. 5 BY ATTORNEY GROSS: 6 Q Okay. 7 A There was always stir of stuff in 8 there. 9 Q All right. And I'm going to help 10 reorient you. It was on day one. The lawyer 11 from Johnson & Johnson was cross-examining you. 12 And he asked you how you found out that this 13 library had a bunch of asbestos in it. 14 And you told him you saw it in a 15 newspaper article; is that right? 16 A That is correct. 17 Q Okay. When you were in there -- just 18 to make sure we're really clear -- you never saw 19 any renovation or demolition work being done; 20 right? 21 A I did not. 22 DEFENSE COUNSEL: Object to form. 23 BY ATTORNEY GROSS: 24 Q You never saw any pipe insulation 25 work being done?	Page 878 1 A I do. 2 Q Okay. If any of the joint compound 3 or the sheetrock or any of that at any of those 4 hotels on those walls had work done around you 5 and had asbestos in it, did you believe you 6 could have been exposed to asbestos that way as 7 well? 8 A I do. 9 Q Okay. And again, if there's no 10 asbestos in the joint compound, it doesn't 11 matter to us for purposes of why we're here 12 today; right? 13 A That is correct. 14 Q Okay. You told the lawyer for Avon 15 on cross-examine -- I'm going to refresh your 16 memory because I know it was several hours 17 ago -- it was yesterday, actually -- that you 18 did not live at home during your junior and 19 senior year of college. Right? 20 A That is correct. 21 Q Would you still go home and visit 22 your family during breaks from school? 23 A I would. 24 Q Would you go home on the weekends? 25 A I would.
Page 877 1 A I do not. 2 DEFENSE COUNSEL: Form. 3 BY ATTORNEY GROSS: 4 Q You never saw pipe insulation at all; 5 right? 6 DEFENSE COUNSEL: Form. 7 THE WITNESS: I did not. 8 BY ATTORNEY GROSS: 9 Q Okay. Bear with me as I flip through 10 my notes here. Okay. 11 We're not in a rush. Take a minute. 12 You told me on day one -- I asked you 13 do you believe that you were exposed to asbestos 14 from brakes, and you told me yes. Is that still 15 true? 16 A That is. 17 Q Okay. 18 DEFENSE COUNSEL: Object to form. 19 BY ATTORNEY GROSS: 20 Q And when we're talking about the 21 walls, when you were asked all these questions 22 about the sheetrock and the demolition and all 23 the stuff that you told me about on day one and 24 you were asked further about today -- do you 25 remember all that?	Page 879 1 Q And during that time, would you still 2 sit with your mother while she held court in the 3 bathroom and watch her get ready? 4 A I would. 5 Q Okay. And would you still see the 6 same powder ritual you've already told us all 7 about over the course the last four days? 8 A I would. 9 DEFENSE COUNSEL: Object to form. 10 BY ATTORNEY GROSS: 11 Q All right. And you told the Avon 12 lawyer earlier while he was firming some stuff 13 up, you do have memories of being around your 14 mother while she used Avon products in South 15 Carolina; correct? 16 DEFENSE COUNSEL: Object to form. 17 THE WITNESS: Correct. 18 BY ATTORNEY GROSS: 19 Q She would bring it with you -- bring 20 it with her when she would come visit you here 21 when you were living here; right? 22 DEFENSE COUNSEL: Object to form. 23 THE WITNESS: That is correct. 24 BY ATTORNEY GROSS: 25 Q All right. I want to clear up a

Page 880 1 couple things about your dad's work. You told 2 me this all on day one, but we're going to go 3 over it one more time. 4 You told everybody that your father 5 wore a uniform at work; correct? 6 A That is correct. 7 Q Remind us one more time what he did 8 with that uniform at the end of a workday, 9 please. 10 A He left it behind and wore street 11 clothes home. 12 Q Never did any of his work laundry at 13 home; correct? 14 A Never. 15 Q You never did any of his laundry at 16 home? 17 A Never. 18 Q Came home in his street clothes? 19 A Always. 20 Q Okay. Was your dad the kind of guy 21 who would even hug you, hi, when he got home 22 from work? 23 A My dad was not an outwardly 24 affectionate man. 25 Q Okay. Breezing through this as fast	Page 882 1 THE WITNESS: My father... 2 BY ATTORNEY GROSS: 3 Q It's okay? 4 A My father's regiment was to leave 5 work at work. And that meant any, any dirt, 6 dirty uniforms, anything that he would have been 7 exposed to out there was left at the airport. 8 He would shower, wash before he would 9 come home, making sure that whatever he may have 10 touched in an avionic or an aviation platform 11 was left behind. 12 Q All right. Now I wanted switch over 13 to Cashmere Bouquet; okay? 14 A Okay. 15 Q All right. Are you good? 16 A Uh-huh. 17 Q Okay. You told the lawyer for 18 Cashmere Bouquet on cross examination that you 19 thought you remembered a pouf, but I wrote down 20 in quotes you were not certain; is that right? 21 A There was -- 22 DEFENSE COUNSEL: Objection to form. 23 THE WITNESS: -- two different 24 vessels. 25 BY ATTORNEY GROSS:
Page 881 1 as I can; I promised. 2 A Take your time. 3 Q Okay. I want to clear up a couple of 4 things about Cashmere Bouquet. 5 A Okay. 6 Q All right? You told the lawyer for 7 Cashmere Bouquet that Cashmere Bouquet was one 8 of your mother's preferred powders. Is that 9 correct? 10 A That is correct. 11 Q Okay. 12 DEFENSE COUNSEL: Object to form. 13 BY ATTORNEY GROSS: 14 Q Actually, strike that. Let me ask 15 you one more question about your dad's work. 16 A Okay. 17 Q If a defendant in this case told the 18 judge or jury at trial that your dad's work at 19 the airport exposed you to asbestos, do you 20 agree or disagree? 21 A Absolutely disagree. 22 DEFENSE COUNSEL: Objection to form. 23 BY ATTORNEY GROSS: 24 Q Why? 25 DEFENSE COUNSEL: Same objection.	Page 883 1 Q Go ahead. 2 A Two different vessels that I 3 remember. One of them -- 4 DEFENSE COUNSEL: Object to form. 5 THE WITNESS: -- was the sugar bowl 6 type of vessel with the clear plastic top. 7 And the other one was the pink bottle with 8 the, I remember like a flower on it. 9 BY ATTORNEY GROSS: 10 Q Okay. So you saw two different kinds 11 of Cashmere packaging on product that you saw 12 your mother use; correct? 13 A That is correct. 14 DEFENSE COUNSEL: Object to form. 15 BY ATTORNEY GROSS: 16 Q And the top of the bottle with the 17 flowers on it, remind us, what did it look like? 18 A It was a twist top like what we've 19 been talking about. 20 Q Was the like the salt-and-pepper type 21 top? 22 A Yes. 23 DEFENSE COUNSEL: Object to form. 24 BY ATTORNEY GROSS: 25 Q And when she would use the shaker top

Page 884 1 version of the Cashmere Bouquet, did you ever 2 see her apply that to herself with your own two 3 eyes? 4 A Yes. 5 Q Would you have been close enough to 6 touch her, like you testified to me on day one? 7 A Yes. 8 DEFENSE COUNSEL: Object to form. 9 BY ATTORNEY GROSS: 10 Q Was that the same routine in which 11 you've already told us your mother would apply 12 powder to herself from a shaker bottle? 13 A Yes. 14 Q Okay. 15 DEFENSE COUNSEL: Object to form. 16 BY ATTORNEY GROSS: 17 Q She didn't do something vastly 18 different because it was Cashmere Bouquet; 19 right? 20 A That is correct. 21 Q All right. I want to shift gears 22 again. I want to talk to you about the stores 23 that you buy, buy or purchase products at. The 24 very nice lawyer was cross-examining about them 25 yesterday, and I think we got a little turned	Page 886 1 Q Okay. So let me ask you this: Was 2 it your routine to buy products that included 3 talc powder products at Walgreens in South 4 Carolina? 5 A It was. 6 DEFENSE COUNSEL: Object to the form. 7 BY ATTORNEY GROSS: 8 Q Was it your routine to buy products 9 that would have included talc powder products at 10 Rite Aid in South Carolina? 11 A It was. 12 DEFENSE COUNSEL: Objection; form. 13 BY ATTORNEY GROSS: 14 Q Was it your routine to buy products 15 that would have included talc powders at CVS in 16 South Carolina? 17 A It was. 18 DEFENSE COUNSEL: Objection; form. 19 BY ATTORNEY GROSS: 20 Q Was it your routine to buy products 21 that would have included talc powders at Piggly 22 Wiggly in South Carolina? 23 A It was. 24 DEFENSE COUNSEL: Objection; form. 25 BY ATTORNEY GROSS:
Page 885 1 around. So I wanted to just make sure the 2 record here is clear; okay? 3 A Okay. 4 Q All right. Do you remember when the 5 lawyer for Walgreens, Rite Aid, CVS, and Piggly 6 Wiggly yesterday was asking you all those 7 questions about if you had a specific memory or 8 a specific recollection of buying a specific 9 powder at a specific location of store? 10 A I do. 11 Q Okay. Were those kind of confusing 12 to follow? 13 A They were. 14 Q Okay. 15 DEFENSE COUNSEL: Objection; form. 16 BY ATTORNEY GROSS: 17 Q So let me ask you this. I think you 18 actually responded to her. And you said "It's 19 like if somebody asked me where I bought 20 hamburger meat. I know I have. I just don't 21 know exactly where I went." 22 Do you remember that? 23 A I do. 24 Q Is that still true? 25 A It is.	Page 887 1 Q All right. All right. I want to 2 follow up on something that you were asked about 3 this morning by the attorney for Clubman. He 4 was asking you some questions -- but to be fair, 5 so have other attorneys -- about your vanity 6 powders. Right? 7 A Correct. 8 Q All right. And you -- those were 9 your more expensive powders; right? 10 THE WITNESS: That is correct. 11 DEFENSE COUNSEL: Objection; form. 12 BY ATTORNEY GROSS: 13 Q All right. You've -- 14 ATTORNEY GROSS: Why did I pull 15 objection on that question? 16 DEFENSE COUNSEL: Because I think 17 he's already spoken of what was and what 18 was not his vanity powders. 19 ATTORNEY GROSS: Okay. That's fine. 20 BY ATTORNEY GROSS: 21 Q You've told us you were more 22 conscientious about trying to not spill a lot of 23 the more expensive powders; is that right? 24 A That is correct. 25 Q All right. Would your carefulness or

Page 888 1 conscientiousness affect how much of those 2 vanity or designer powders you used on your 3 body? 4 A Repeat that again. 5 Q Sure. Would your -- let me start 6 over. 7 Would your conscientiousness affect 8 how much of those designer or vanity powders you 9 were using on your body? 10 A Yes. 11 Q It did. Tell us about that. 12 A I would be more targeted with 13 administering those powders because, I mean, 14 they cost a whole lot more. 15 Q Uh-huh. 16 A There were whole lot more expensive 17 than a lower-cost one where I wouldn't worry 18 about 2 or 3 dollars falling onto the floor or 19 that bottle costing 2 or 3 dollars if it falls 20 onto the floor. 21 Q Okay. So it sounds like -- correct 22 me if I'm wrong -- fair to say that you would 23 try to not spill the more expensive powders as 24 much? 25 A Yes. I would be more targeted and	Page 890 1 when you're being cross-examined by the AII or 2 Clubman attorney, where he kept trying to 3 suggest to you that you were guessing when you 4 were talking about how you'd purchase several 5 bottles of talcum powder in a near? 6 A Yes. 7 DEFENSE COUNSEL: Objection; form, 8 leading. 9 BY ATTORNEY GROSS: 10 Q Okay. Do you remember how you were 11 trying to explain to him that just because you 12 can't tell him -- well, strike that. Let me 13 just ask you. 14 You kept trying to tell him that you 15 were not guessing; correct? 16 A That is correct. 17 DEFENSE COUNSEL: Objection; leading. 18 DEFENSE COUNSEL: Objection; form. 19 BY ATTORNEY GROSS: 20 Q You've now told us several times 21 using talcum powder was part of your daily 22 ritual; is that true? 23 A That is correct. 24 DEFENSE COUNSEL: Objection; form, 25 leading.
Page 889 1 more conscious of how I administered those. 2 Q Would the amount that you shook into 3 your hand of those powders have changed just 4 because they were more expensive? 5 DEFENSE COUNSEL: Objection; form. 6 THE WITNESS: Not necessarily how 7 much I put in there. Maybe it was my hand 8 was closer to the other hand to make sure 9 that all of it made it into the hand 10 itself and made it onto my torso, neck, 11 face, arms. 12 BY ATTORNEY GROSS: 13 Q Okay. So the heaping teaspoons or 14 tablespoons that you were discussing with the 15 Clubman attorney earlier, would that still have 16 been the same amount that you used of the 17 designer powders; you just would have been more 18 careful not to spill it? 19 A Yeah, when I -- 20 DEFENSE COUNSEL: Objection; form. 21 THE WITNESS: -- when I said four to 22 five, it would have been still four to 23 five. 24 BY ATTORNEY GROSS: 25 Q All right. Do you remember earlier,	Page 891 1 BY ATTORNEY GROSS: 2 Q Okay. Was buying several new powders 3 of talcum powder per year part of that daily 4 ritual? 5 A Yes. 6 DEFENSE COUNSEL: Objection; form, 7 leading. 8 BY ATTORNEY GROSS: 9 Q And you're certain of that? 10 A Yes. 11 Q You're not guessing? 12 DEFENSE COUNSEL: Same objection. 13 THE WITNESS: I am not. 14 BY ATTORNEY GROSS: 15 Q You're not speculating? 16 A I am not. 17 DEFENSE COUNSEL: Objection; form, 18 leading. 19 BY ATTORNEY GROSS: 20 Q Why are you so certain? Why -- tell 21 us why you knew that you're not guessing or 22 speculating that you bought several bottles of 23 talc powder a year? 24 DEFENSE COUNSEL: Objection; form -- 25 THE WITNESS: I bought them.

Page 892 1 DEFENSE COUNSEL: -- leading. 2 THE WITNESS: I had to make, I had to 3 make the journey to the store. I am a 4 creature of habit. I remember over and 5 over and over again, as the day is long, 6 of buying these products. 7 BY ATTORNEY GROSS: 8 Q Okay. That's good. You told the 9 lawyer cross-examining you earlier that you used 10 Clubman for other purposes besides haircuts. 11 And I believe the example you used was in your 12 hockey gear; is that right? 13 A Yes. 14 DEFENSE COUNSEL: Objection form; 15 leading. 16 BY ATTORNEY GROSS: 17 Q What other instances did you use 18 Clubman throughout the years in which you used 19 it in addition to when you got your hair cut? 20 DEFENSE COUNSEL: Objection; form, 21 leading. 22 THE WITNESS: When I was on the boat 23 and I would have to get into that engine 24 room. If I by didn't have -- I love 25 Clubman. And when I'd have to go into the	Page 894 1 think, that you thought Clubman was a masculine 2 and sexy smell. And I think you, in fact, even 3 said you wished Lonnie would wear it; is that 4 correct? 5 A That is correct. 6 DEFENSE COUNSEL: Objection; form. 7 BY ATTORNEY GROSS: 8 Q Would you ever wear Clubman when you 9 went out to a bar or restaurant? 10 DEFENSE COUNSEL: Objection; form, 11 leading? 12 THE WITNESS: Depending on what the 13 venue was; yes. 14 ATTORNEY GROSS: Okay. 15 THE COURT REPORTER: I'm sorry. 16 Repeat that answer. 17 THE WITNESS: The answer was "yes." 18 THE COURT REPORTER: Thank you. 19 BY ATTORNEY GROSS: 20 Q Hold on one quick second. I think 21 I'm done. Those are all my green notes anyway. 22 Just give me a second. 23 All right. I've been keeping track 24 of how long you been cross-examined, but I'm not 25 sure exactly how long it's been. But I only say
Page 893 1 engine room and my hands were just 2 sweating and slippery, I had sweat coming 3 down my face, I would put Clubman on my 4 hands, my arms, my face, to try to dry 5 them up so I could figure out what was 6 going on, see if I needed to fix a 7 problem, if I needed to call a mechanic. 8 So Clubman would be something that I 9 would put on my face and hands. 10 BY ATTORNEY GROSS: 11 Q Tell us about what you were trying to 12 tell us about earlier how you used Clubman in 13 your hockey gear. 14 DEFENSE COUNSEL: Objection; form, 15 leading. 16 THE WITNESS: So after hockey was 17 over or practice was over, I'd go ahead 18 and store my gear. But when I would put 19 my gear back out for the next practice or 20 for the next game, I would squirt this 21 product down into my gear and then pull 22 that over my face and arms and legs, to 23 get ready for the next game. 24 BY ATTORNEY GROSS: 25 Q You've told us several times, I	Page 895 1 that to ask you this next question. 2 You been asked all kinds of 3 questions -- to be fair, by myself and the other 4 attorneys here -- over the course the last four 5 days about details, things like the font size on 6 bottles, caution labels that may have been on 7 brake boxes, colors of packaging, all kinds 8 of -- size of your first grade classroom, all 9 kinds of details over the last four days; right? 10 A That is correct. 11 Q When you sit still for a long period 12 of time and you're sitting down, how does it 13 make you feel physically? 14 A I live every day and every minute of 15 my life -- and not physically pain -- not only 16 physical pain but mental pain. 17 Q Have you been in physical pain the 18 last four days? 19 A I have. 20 DEFENSE COUNSEL: Objection; form, 21 leading. 22 BY ATTORNEY GROSS: 23 Q Yes? 24 A Through my left chest and back. 25 Q All right. Have you done your very

Page 896 1 best at telling us everything that you remember? 2 You've done your very best; right? 3 A I have. 4 ATTORNEY GROSS: All right. Let's go 5 off the record. We're done. 6 THE VIDEOGRAPHER: This concludes the 7 deposition of Michael Perry. We are off 8 the record. 9 (Discussion held off the record.) 10 THE VIDEOGRAPHER: Back on the record 11 at 4:05. 12 BY ATTORNEY MCCOOL: 13 Q Okay, Mr. Perry. I'm very sorry. I 14 showed my face yesterday. Can you hear me okay? 15 A I can. 16 Q Okay. I was just using my phone 17 today because I wasn't anticipate 18 answering [sic] questions and my laptop battery 19 is dead. So this will be quick. Again, it's 20 Deirdre McCool. So I just have a follow-up, a 21 few follow-up questions about the Cashmere 22 Bouquet. 23 Yesterday when I was questioning you 24 about your memory of your mother using Cashmere 25 Bouquet and what the container or containers	Page 898 1 yesterday and today that caused you to now 2 recall that your mother also used Cashmere 3 Bouquet in a container that was pink with a 4 shaker salt-and-pepper top? 5 ATTORNEY GROSS: Object to form. 6 Other than he told me on the first day? 7 But go ahead, Mr. Barry. 8 THE WITNESS: I was having this -- 9 let me describe it as -- when I was 10 speaking with you, I was having a very 11 tough time staying focused. And I would 12 call it almost hypnotic. And I don't -- I 13 want to be very careful with that because 14 that's a medical term. 15 It's just my focus was coming in and 16 out and out, in and out, and I was very 17 confused. 18 Ma'am, I remembered that product as I 19 spoke today and how I spoke day one on 20 that. And I apologize to you that my 21 ability to remain very focused with you 22 that day was not as it was that you would 23 have been expecting and hoping to. And I 24 hope you will accept that. 25 BY ATTORNEY MCCOOL:
Page 897 1 looked like, you didn't say anything about a 2 pink bottle; correct? 3 ATTORNEY GROSS: Object to form. 4 THE WITNESS: I did not. 5 BY ATTORNEY MCCOOL: 6 Q Okay. And you didn't say anything 7 about a shaker-top cap on any container of 8 Cashmere Bouquet that your mother used; correct? 9 ATTORNEY GROSS: Object to form. 10 THE WITNESS: I did not. 11 BY ATTORNEY MCCOOL: 12 Q Did you have any conversations -- I'm 13 not asking anything about what you said -- but 14 did you have any conversations or 15 communications, written or oral or text or phone 16 or anything, with anyone about Cashmere Bouquet 17 between yesterday morning and this morning? 18 A No, I have not. 19 Q Okay. In the past few days have you 20 looked at any pictures or images of Cashmere 21 Bouquet on a computer or printed copy, looked 22 anything up on the internet regarding Cashmere 23 Bouquet? 24 A No, I have not. 25 Q Okay. What occurred between	Page 899 1 Q Mr. Perry, you don't need to 2 apologize. But I appreciate that. And I just 3 have a couple of other questions, specifically 4 about the pink bottle with the shaker 5 salt-and-pepper top. 6 When is the first time that you 7 recall your mother using Cashmere Bouquet in 8 that container? 9 A It would have been in the very first 10 house. 11 Q And that was the same as the other 12 vessel you described, the one with the pouf; is 13 that correct? 14 A Yes. 15 Q And when is the last time that you 16 recall your mother using Cashmere Bouquet that 17 you described today in the pink container? 18 A I would have seen that clear into the 19 farmhouse on Johns Island. 20 Q I'm sorry. Can you refresh me. Was 21 that in the two -- I can't remember -- 2000s? 22 A It would have been all the way up 23 until her death. So, yeah, that would have been 24 the 2007, '8, '9 -- 25 Q -- '10?

Page 900 1 A Yeah. 2 Q During that period of time that you 3 recall your mother using Cashmere Bouquet in 4 that pink container that you described earlier, 5 just a little bit ago, did that packaging change 6 in any way that you can recall, either the 7 color, the writing that was on it, what it was 8 made out of? 9 ATTORNEY GROSS: Object to form. 10 THE WITNESS: No. As I described it 11 with Rachel just now, I always remembered 12 it as the pink bottle with the flowers on 13 it. 14 BY ATTORNEY MCCOOL: 15 Q Okay. And my last question: What 16 was that made out of, the pink bottle? 17 A The material? 18 Q Yes. 19 A I believe it was plastic. 20 ATTORNEY MCCOOL: Okay. All right. 21 Thank you, Mr. Perry. That's all my 22 questions. 23 Thank you, Rachel. 24 THE WITNESS: Thank you so much. 25 ATTORNEY GROSS: Thank you, Deirdre.	Page 902 1 in the engine room or the engine compartment of 2 your sailboat. Do you recall that testimony? 3 A I do. 4 Q And you would agree that you only 5 would have been applying that Clubman powders in 6 association with these engine room activities 7 when you're actually doing something in the 8 engine room or in the engine compartment; 9 correct? 10 A That is correct. 11 Q And how often did you spend time 12 performing duties or working in the engine 13 compartment of your sailboat on a weekly basis? 14 A Usually would have been if there was 15 some type: Oh, my gosh, something doesn't sound 16 right, I need to figure out what's going on. 17 Open up the engine compartment. 18 Engine is off, but it's very, very hot. My face 19 is sweating, my arms are sweating, my hands are 20 sweating. Let's dry it all off. Can't use the 21 towel. Let's use some type of talc. 22 Q And there were many products 23 available to you to perform that function; 24 correct? 25 ATTORNEY GROSS: Object to form.
Page 901 1 ATTORNEY GREVE: Some quick questions 2 from mine, Rachel. 3 ATTORNEY GROSS: You've got -- I... 4 BY ATTORNEY GREVE: 5 Q Mr. Perry, do you know how much 6 Clubman powder costs? 7 ATTORNEY GROSS: Object to form. You 8 already asked him that. 9 THE WITNESS: Given that most of the 10 products I received were gifts, I couldn't 11 pin a cost to that because most of it was 12 just given to me. 13 BY ATTORNEY GREVE: 14 Q You can't assign a dollar amount to 15 the value of a Clubman container, can you? 16 ATTORNEY GROSS: Object to form. 17 THE WITNESS: Most of the time, sir, 18 if I bought it with a haircut, the two 19 prices were put together, plus a tip. So 20 I, I don't recall. And I don't know what 21 a markup was. So I just -- if they said 22 it was \$40, I'd pay them \$40. 23 BY ATTORNEY GREVE: 24 Q Got it. And you described applying 25 Clubman talcum powder when you were doing work	Page 903 1 THE WITNESS: That is correct. 2 BY ATTORNEY GROSS: 3 Q And you're not saying you used 4 Clubman talc for each and every time you had to 5 go into the engine room and work and dried your 6 heads and face; is that correct? 7 ATTORNEY GROSS: Object to form. 8 THE WITNESS: As I testified, I loved 9 the Clubman. So it's, subconsciously, oh, 10 my gosh, I got to go in here. I'm going 11 to -- I just liked the smell. And it was 12 just I grabbed that. 13 BY ATTORNEY GREVE: 14 Q And as you described, you're going 15 into the emergency -- or into the engine room 16 because something was going on, you know, 17 something urgent; is that correct? 18 A That is correct. 19 Q Okay. And so before you were dealing 20 with an urgent situation in the engine, did you 21 often to yourself "gosh, I want to smell like 22 Clubman" before you went and addressed the 23 emergency situation in the engine compartment? 24 ATTORNEY GROSS: Object to form. 25 THE WITNESS: I'm not talking about,

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1 Oh, my gosh, I've a fire on my boat. My 2 boat is sinking in the Atlantic Ocean. 3 If it was something where something 4 was not sounding right, it certainly 5 wasn't a five-alarm fire that I need to 6 worry about while I would stand back and 7 say I want to smell like Clubman right 8 now. I just liked it, and I would just 9 grab it. It was very pleasing to me. 10 BY ATTORNEY GREVE: 11 Q And if it wasn't accessible or easily 12 accessible, would you grab something else? 13 A Absolutely. 14 Q Okay. Also made a reference to the 15 hockey gear. And I just want to make sure. You 16 said you squirted Clubman in on your hockey 17 gear. Was this after you had already had a 18 practice or a game, where the equipment was wet 19 and moist or damp? 20 A No. It would be, it would be before, 21 before I would put it back on after the previous 22 use. 23 Q Okay. And so you would put it on, 24 and then you would go do your workout with your 25 gear on; correct?	1 2 PAGE LINE NOTATION 3 _____ - _____ - _____ 4 _____ - _____ - _____ 5 _____ - _____ - _____ 6 _____ - _____ - _____ 7 _____ - _____ - _____ 8 _____ - _____ - _____ 9 _____ - _____ - _____ 10 _____ - _____ - _____ 11 _____ - _____ - _____ 12 _____ - _____ - _____ 13 _____ - _____ - _____ 14 _____ - _____ - _____ 15 _____ - _____ - _____ 16 _____ - _____ - _____ 17 _____ - _____ - _____ 18 _____ - _____ - _____ 19 _____ - _____ - _____ 20 _____ - _____ - _____ 21 _____ - _____ - _____ 22 _____ - _____ - _____ 23 _____ - _____ - _____ 24 _____ - _____ - _____ 25 _____ - _____ - _____		
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1 A That is correct. 2 Q And that workout would then lead you 3 to sweat, produce moisture, things of that 4 nature in the equipment; is that correct? 5 A That is correct. 6 Q Okay. Sir, thank you very much for 7 your time -- oh, one last question. 8 Do you recall ever seeing the name 9 "American International Industries" on any 10 talcum powder product you were around or owned? 11 ATTORNEY GROSS: Object to form. 12 THE WITNESS: Not that I can 13 recall -- not that I can recall. 14 ATTORNEY GREVE: All right. Thank 15 you very much. 16 ATTORNEY GROSS: All right. Let's go 17 off the record. 18 THE VIDEOGRAPHER: Nothing further. 19 This concludes the deposition of Michael 20 Perry, volume four. We are off the record 21 at 4:14. 22 (Deposition concluded at 4:14 p.m.)	1 C E R T I F I C A T I O N 2 3 4 I hereby certify that I have read the 5 foregoing transcript of my deposition 6 testimony, and that my answers to the 7 questions propounded, with the attached 8 corrections or changes, if any, are true and 9 correct. 10 11 ----- 12 MICHAEL L. PERRY 13 14 15 16 17 18 19 20 21 22 23 24 25		

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witness was first sworn by me at the time,
place and on the date herein before set
forth.

I further certify that I am neither
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STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND : FOR THE FIFTH JUDICIAL CIRCUIT
MICHAEL L. PERRY and :
LONNIE L. LONG, :
Plaintiffs, : C/A No.
v. : 2023-CP-40-04072
AMERICAN INTERNATIONAL :
INDUSTRIES, et al., :
Defendants. :

CERTIFIED COPY

Deposition of
GREGORY B. DIETTE, MD, MHS

Via Zoom Videoconferencing

Wednesday, July 3, 2024
10:00 a.m.

Reported by:
Adam D. Miller, Registered Professional Reporter

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				Page 6					Page 8
1	INDEX				1	doctor in the Perry matter.			
2	DEPONENT: GREGORY B. DIETTE, MD, MHS				2	Exhibit 4 is the curriculum vitae			
3	EXAMINATION BY: PAGE				3	that was produced to me.			
4	ATTORNEY IOLA 9				4	Exhibit 5 will be the combined Perry			
5	ATTORNEY RAINSFORD 96				5	invoices.			
6	- - - - -				6	And then there are documents labeled			
7	EXHIBITS				7	depos notes, legal notes, and medical			
8	NAME	DESCRIPTION	PAGE		8	notes of the doctor's. Those will be			
9	Exhibit 1	6/27/24 Diette Report	8		9	marked -- Exhibit 6 to be depo notes;			
10	Exhibit 2	7/2/24 Diette Supplemental	8		10	Exhibit 7 will be legal notes; Exhibit 8			
11		Report			11	will be the medical notes.			
12	Exhibit 3	Correspondence File	8		12	And then, finally, Exhibit 9 will be			
13	Exhibit 4	Diette CV	8		13	the prior testimony list.			
14	Exhibit 5	Invoices	8		14	(Exhibit 1 was marked for			
15	Exhibit 6	Diette Depo Notes	8		15	identification.)			
16	Exhibit 7	Diette Legal Notes	9		16	(Exhibit 2 was marked for			
17	Exhibit 8	Diette Medical Notes	9		17	identification.)			
18	Exhibit 9	Prior Testimony List	9		18	(Exhibit 3 was marked for			
19					19	identification.)			
20					20	(Exhibit 4 was marked for			
21					21	identification.)			
22					22	(Exhibit 5 was marked for			
23					23	identification.)			
24					24	(Exhibit 6 was marked for			
25					25	identification.)			
				Page 7					Page 9
1	GREGORY B. DIETTE, MD, MHS, having				1	(Exhibit 7 was marked for			
2	first been duly sworn according to law, was				2	identification.)			
3	examined and testified as follows:				3	(Exhibit 8 was marked for			
4	- - - - -				4	identification.)			
5	ATTORNEY IOLA: Good morning, Doctor.				5	(Exhibit 9 was marked for			
6	I had an opportunity to introduce myself				6	identification.)			
7	before we started. Thank you for making				7	BY ATTORNEY IOLA:			
8	time this morning.				8	Q And with that, Doctor, we'll get			
9	THE WITNESS: Good morning.				9	started. Thank you for indulging me.			
10	ATTORNEY IOLA: I want to go ahead				10	You understand you're testifying			
11	and -- we have a stipulation with counsel				11	today in the Perry case filed in South Carolina;			
12	that an objection by one is good for all				12	correct?			
13	defendants. That's fine with the				13	A Yes.			
14	plaintiffs. And we can reserve all				14	Q Do you know the trial date of this			
15	objections besides form. That's also				15	case?			
16	fine.				16	A Not offhand, no. I think I heard			
17	I'll also do little housekeeping.				17	it's coming up soonish, but I don't know the			
18	I'm going to go ahead and premark, I				18	exact date.			
19	think, all the exhibits I'm going to use.				19	Q Okay. Have you been asked to make			
20	Exhibit 1 will be the doctor's report				20	yourself available or to understand your			
21	in the Perry case dated June 27th, 2024.				21	availability for any particular range of days			
22	Exhibit 2 will be the doctor's				22	related to this trial?			
23	supplemental report dated July 2nd, 2024.				23	A You know, it's possible. I mean, I			
24	Exhibit 3 will be the combined				24	think generally speaking, that's my			
25	correspondence between counsel and the				25	understanding, is that, you know, I would have			

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1 to be present. I have an assistant who works
2 with my calendar. So probably somebody's talked
3 to her about, you know, the dates that I'm
4 around and available.

5 Q What does -- I understand there's a
6 litigation consulting part of your professional
7 time. I want to set that aside for a second.
8 Your day-to-day non-litigation-consulting
9 professional time, what does that look like?

10 A Well, I'm full-time at Hopkins. And
11 so it's a -- you know, depending upon the, you
12 know, the week, the weeks of the year, it
13 affects, you know, what I'm doing clinically.
14 So, like, you know, for the inpatient schedule,
15 you know, we have a schedule where we rotate
16 into, into different units.

17 You know, so one week I might be on
18 the pulmonary service, another I might be in the
19 oncology center, you know, another in an
20 intensive care setting. So depends on what the
21 schedule says.

22 And then on weeks when I'm not
23 physically in the hospital, you know, every
24 week, then I see patients in the outpatient
25 clinic. And then there's a mixture of, you

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1 know, teaching, research, and administrative
2 things that fill the rest of the time.

3 Q Okay. And why would you have
4 occasion to be over in the oncology unit?

5 A Oh, well that's -- it's one of -- we
6 co-attend there with the oncologists. So the
7 pulmonary critical care service has a -- we have
8 a regular presence there. So we do, you know,
9 all the consultations on people with pulmonary
10 issues and then anyone who's critically ill.

11 Like, we don't have a separate ICU
12 for oncology patients. The oncology center is
13 itself ICU-capable. And so we're already there,
14 you know, for that.

15 Q Okay. That's that necessity of
16 interdisciplinary approach for the critical care
17 patients; right?

18 A Absolutely.

19 Q Okay. Do you know if Mr. Perry's
20 alive or dead?

21 A I don't have any information that
22 he's deceased. So last I was aware, he is
23 alive.

24 Q Okay. And for context here -- I'm
25 not going to show it to you; I know you have it

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1 in front of you. But I'm looking at your June
2 27th, 2024 report. And one of the first
3 paragraphs describes what you were asked to
4 determine, specifically the potential role, if
5 any, of various talcum powder products sold by
6 various manufacturers.

7 Do you see where I'm at on the first
8 page?

9 A I do.

10 Q Can you walk me through all the
11 people that have retained you in this case, to
12 the best of your knowledge?

13 A Rather than people, the companies?

14 Q Yeah. I was a bit colloquial in my
15 question there, for sure. Yes, the companies
16 that have hired you in this case.

17 A Okay. Yes. So I think -- so it's
18 Johnson & Johnson and Avon, Vi-Jon, Est e
19 Lauder, I think it's PTI Royston -- you know, to
20 the extent that they, you know, bottled the Gold
21 Bond and Ammens products -- and then IMI Fabi.

22 And I think that's it. I don't
23 remember whether Walmart -- because I know that
24 the J&J talcum powder products, I think, are
25 ones sold through Walmart. So I don't know if

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1 I'm retained specifically by Walmart, but I
2 might be.

3 Q Okay. I was actually going to ask
4 you that because in that paragraph on the first
5 page of Exhibit 1 it says for the J&J products
6 you were asked to evaluate what role, if any,
7 they played for the J&J products that were
8 allegedly purchased at Walmart locations.

9 Is that to say you're only evaluating
10 the J&J baby powder that was allegedly purchased
11 at Walmart? Or you're evaluating all of the J&J
12 baby powders, regardless of whether they're
13 purchased at Walmart or someplace else?

14 A Well, I'd have to look to be
15 absolutely sure. But I think that was the task,
16 you know, was the first part, which was those
17 that were sold.

18 But I think that the industrial
19 hygiene reports cover -- if I remember right;
20 I'd have to look to be sure -- I think they
21 cover all the J&J.

22 Q Uh-huh.

23 A So, I mean, my opinion would probably
24 encompass, would encompass that as well. But I
25 don't think I was asked, necessarily, to

Page 14 1 consider all of it. 2 Q Okay. And we'll get into this in 3 more detail shortly. But I guess as a practical 4 matter, evaluating J&J products sold at Walmart 5 or all J&J products that Mr. Perry would have 6 encountered in this lifetime is kind of -- it's 7 an academic exercise because your opinion is 8 that the sum total of the potential exposures to 9 asbestos from the J&J baby powder did not 10 increase his risk, so any subset of that would 11 also not increase risk of meso; right? 12 A Yeah. That's fair to say. 13 Q Okay. Let's talk a favorite subject. 14 Let's talk money, quickly, and we'll get it out 15 of the way. 16 I've been provided certain invoices 17 that I've marked as Exhibit 5. We don't need to 18 go over those. But let me just ask: To the 19 best of your knowledge, is there any time that 20 you have spent on this case for any of the 21 companies that have retained you that has not 22 yet been billed, that is not reflected in the 23 invoices that I have? 24 A Oh, sure. Yeah, definitely. 25 Q How much. How much time?	Page 16 1 accounting for the gross amount of money billed 2 related to professional legal consulting, you 3 kind of separate them between asbestos and talc. 4 Is that fair? Or do you lump those together? 5 A Oh, no -- well, it's easier for me to 6 think about it in those two categories. 7 Q Sure. 8 A And the third category would be, you 9 know, cases that have nothing to do with either 10 one of us. 11 Q Absolutely. And let's operate in 12 those buckets. So for the year 2024 -- we're 13 about halfway through the year, somehow -- for 14 the asbestos work -- not the talc, but let's put 15 it in the first bucket, the asbestos work -- do 16 you have a sense of the total amount of money 17 billed? 18 A It would be an estimate that could be 19 not very accurate. I don't think it's, I don't 20 think so much. I think it might be -- I mean, 21 not so much compared to what you maybe read that 22 I testified about for other years. I think at 23 the end of the quarter, maybe \$50,000 or so. 24 Q Okay. How about for the talc work 25 for this year?
Page 15 1 A So -- and we're talking about my 2 personal time; right? 3 Q You -- 4 A Just to explain, because, like, the 5 invoices you have, they have, you know, they 6 have time of people other than me on the 7 invoices. So I don't have any estimate for 8 people other than me. But I'd say somewhere 9 around 25 or so hours that I've not billed yet. 10 Q Okay. And remind me your billing 11 rate for the materials reviewed/preparation 12 before deposition? 13 A Yeah, my personal rate is \$600, which 14 is what I get. And it gets billed at 725. 15 Q Okay. So approximately 25 hours 16 at -- well, I just did the math in my head at 17 the 600. That was about \$15,000. Does that 18 sound right? 19 A That sounds right, yeah. Yeah, that 20 sounds about right. 21 Q Okay. In terms of -- I had the 22 opportunity to read a couple depositions that 23 you've given in the past, so I'm trying to 24 borrow some of your language here. 25 My understanding is that in terms of	Page 17 1 A Yeah, that's, I would say, more on 2 the order of between 150- and 200,000. 3 Q Okay. And then for non-asbestos, 4 not-talc legal consulting, do you have anything 5 that fits that criteria for this year? 6 A Yeah. And probably, you know, less 7 than 50,000 for that category. 8 Q Okay. And for that last category the 9 non-asbestos, non-talc legal consulting work, 10 what are the subject matters that you're 11 consulting on then? 12 A All sorts of things. Like, you know, 13 some is medical malpractice. You know, some is 14 toxic tort cases that have to do with, you know, 15 mold and indoor dampness, chemicals, you know, 16 like, usually, like, inhalational exposures. 17 Q Okay. At the end of the day the 18 setting -- well, I guess even the medical 19 malpractice is going to be some sort of 20 evaluation of a pulmonary issue; is that fair? 21 A It's -- I'd say -- is not always 22 pulmonary, but it can be. It includes, like, 23 internal medicine issues -- 24 Q Okay. 25 A -- you know, so -- not this year, but

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Page 18 1 I'm just thinking, for example, there was a case 2 I was involved in that involved, like, a low 3 sodium and the management of that, which isn't a 4 pulmonary; it's more a critical care or an 5 internal medicine issue. 6 Q Okay. For the -- again, this last 7 category, the non-asbestos, not-talc legal 8 consulting work that you've done this year, have 9 you been retained by any plaintiffs in those 10 cases? 11 A Oh, sure. Yeah. 12 Q In what kind of cases have you been 13 retained by plaintiffs? 14 A So, like, mold and indoor dampness 15 and then malpractice. 16 Q Okay. Is it accurate that you've 17 never been retained by a plaintiff in an 18 asbestos or talc case? 19 A That is correct. 20 Q Okay. To the best of your knowledge, 21 do you know if any Court has ever precluded your 22 testimony in whole or in part? 23 A In whole, I'm not aware of any. I 24 think in part, the Court that's relevant for 25 this current case I think has limited testimony	Page 20 1 years ago? 2 A No, none. It's the same. 3 Q Okay. Some basic questions for you. 4 You're not a pathologist, but you're -- so 5 you're not here to confirm or dispute whether or 6 not Mr. Perry was correctly diagnosed with a 7 pleural epithelial meso; correct? 8 A So not a pathologist. And, you know, 9 I would say the most I could do is affirm that 10 it makes sense, based on looking at the medical 11 records. Like if I saw something, for example, 12 where the treating clinician said "No, this is 13 in fact something else," you know, I would 14 acknowledge that and -- you know. 15 Q Okay. 16 A But I'm not the person to look under 17 the microscope and say "yes, indeed" or "no, 18 it's not." 19 Q Sure. And for the purpose of this 20 case, you did have an opportunity to review all 21 the medical records that were provided you; 22 correct? 23 A That's correct. 24 Q And do you agree that the course of 25 treatment and the course -- the clinical course
Page 19 1 in a couple of areas. I'm not sure I know, you 2 know, for sure the details of those. 3 And other than that, I don't think my 4 testimony's been excluded. I think there's -- 5 sometimes the judge will say that there's a word 6 that we're not allowed to say or something to 7 describe things. But I don't think that's the 8 same as limiting the testimony, per se. 9 Q That makes sense to me. My 10 understanding is the same as yours, that there 11 was an order from Judge Toal, who's the 12 presiding judge in this matter as well, in a 13 previous case that, at least in part, precluded 14 you from giving the opinion that a plaintiff's 15 mesothelioma was caused spontaneously. 16 Does that sound familiar to you? 17 A It does. 18 ATTORNEY COWAN: Form. 19 BY ATTORNEY IOLA: 20 Q Okay. As you sit here today, how, if 21 at all, have your opinions on the causation of 22 spontaneous mesotheliomas in general or as 23 applied to a specific person changed, either the 24 substance of the opinions or the methodology? 25 Have they changed at all since, let's say, two	Page 21 1 that Mr. Perry has undergone leading up to his 2 mesothelioma diagnosis into the present day is 3 consistent with someone who has pleural 4 mesothelioma? 5 A Yeah, I think all of that's true. 6 Q Okay. Do you agree that eventually 7 Mr. Perry will likely die from his mesothelioma? 8 A I think that's likely unless there's 9 some other intervening, you know, cause of 10 death. 11 Q Okay. Do you agree that mesothelioma 12 is an extremely painful way for patients to die? 13 A No, not necessarily. I think that -- 14 I think there was a different era in medicine 15 where lots of things were extremely painful. I 16 think that, you know, the palliative care 17 services and the attention that, you know, we 18 give in our cancer center, there's a big focus 19 literally on pain control and assessing it 20 regularly and trying to prevent it or manage it. 21 So no, I would hope not. 22 Q As I understand your answer -- 23 correct me if I'm wrong -- it's not that someone 24 in the end stages of mesothelioma is not 25 undergoing an immense amount of pain; it's that

Page 22 1 the pain management techniques have come a long 2 way. Right? 3 A Well, that was what my answer was. 4 But I don't -- I mean, if the issue, for 5 example, is that, you know, somebody has a 6 pleural effusion that's not manageable or, you 7 know, they develop an infection, you know, as a 8 consequence of maybe being immunocompromised or 9 something, that's not necessarily painful, 10 right. 11 Q Okay. 12 A There may be some other unpleasant 13 aspects of it. We're talking specifically about 14 pain. That doesn't have to be, you know, the 15 pathway towards the end. 16 Q Okay. My understanding -- again, 17 correct me if I'm wrong -- that the end stages 18 of mesothelioma, specifically pleural 19 mesothelioma, is basically someone suffocating 20 to death. Is that accurate? 21 A I think it depends case by case. I 22 mean, I think that -- you know, I think that 23 somebody can -- suffocating's sort of a lay 24 term. I think that you could say somebody's 25 having respiratory failure, for example. And	Page 24 1 always a time-and-place issue. But I think in 2 the United States, for example, over the past, 3 you know, several decades, I think that's been 4 the case. 5 Q Okay. Sometimes certain experts have 6 percentages that they like to assign to pleural 7 mesotheliomas in men caused by asbestos exposure 8 is X percentage; Y percentages are the remainder 9 that aren't caused by asbestos exposure. 10 Do you have numbers that you find 11 reliable for that purpose? 12 A So the issue, then, is, like, is the 13 attributable risk -- or the attributable risk 14 fraction would be, like, the epidemiology terms. 15 Q Right. 16 A And there aren't a lot of studies 17 calculated in the United States. Spirtas is a, 18 you know, 20-year-old study. But that had an 19 estimate. I think for men, for pleural, I think 20 it was 80 percent that were attributable to 21 asbestos exposure. For peritoneal meso it was a 22 lower percentage. And for women it was a 23 minority for both combined. 24 Q Okay. I know that those are Spirtas' 25 numbers. That's 1994, correct, that study?
Page 23 1 that's one possible, you know, sort of pathway. 2 But doesn't have to be. There's 3 other things that people with a malignancy, 4 including mesothelioma, can die from that isn't 5 just that pathway. 6 Q Okay. You agree that all of the 7 treatment that Mr. Perry has received in 8 relationship to his mesothelioma diagnosis has 9 been palliative in nature; correct? 10 A So, I guess it depends -- I mean, so 11 palliative, you know, in general has a broad 12 umbrella of what it does, but it's meant to 13 provide comfort. 14 You know, I do think I read at one 15 point, you know, that part of the goal was to 16 extend, extend life and extend the quality of 17 life. So I don't know that that's all 18 palliative care. I think, you know, if you're 19 using chemotherapy and/or radiation therapy, it 20 can have a palliative role, but it can also be 21 to try to extend the length of life. 22 Q Okay. Do you agree that the vast 23 majority of pleural mesotheliomas in men are 24 caused by asbestos exposure? 25 A So I think the majority -- and it's	Page 25 1 A That's correct. 2 Q Do you find that 80 percent number to 3 be more or less reliable for pleural 4 mesotheliomas in men born in North America in 5 the 20th century? 6 A I think so. I mean, I guess the -- 7 what I would wish for is that there be an 8 updated study; because as I understand the 9 trends, you know, the trend lines in the last 10 ten-plus years sort of showed a decline in men's 11 mesothelioma, pleural mesothelioma in 12 particular. It seems to correspond with the 13 reduction in the use of, you know, commercial 14 asbestos. 15 And so, you know, I think that 16 attributable fraction will come down. But I 17 don't have a number to assign to it. 18 Q Okay. And I appreciate you indulging 19 me on some of these general questions. I know 20 you've probably been through this before. But 21 it will expedite the process. 22 A That's fine. 23 Q Can you walk me through all of the 24 risk factors for an increased risk of 25 mesothelioma, the ones that you believe in?

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1 A Sure. And I guess we'll talk about
2 pleural mesothelioma?

3 Q Yeah, let's talk pleural. It's
4 easier that way.

5 A Sure. Yeah. So, you know, asbestos
6 in a sufficient dose is a risk factor. I think,
7 you know, other, other minerals have been
8 identified, like, you know, erionite and
9 balangeroite; that -- radiation; that -- there's
10 some information about inflammation or treatment
11 for tuberculosis that might be a risk factor.

12 And then, you know, I guess in a
13 general sense, other risk factors include
14 potentially having, you know, an inborn or
15 inherited genetic error that might increase the
16 risk or be determinative. And then time and
17 replication. So, you know, and age-related
18 effect from replication errors.

19 Q Okay. Let me try to break that down.
20 You said asbestos in sufficient dose can
21 increase risk of mesothelioma. Is that all
22 fiber types, all six regulated fiber types?

23 A So I'd say probably. I mean, it's
24 very hard to find studies on actinolite. I
25 mean, I understand that it's an amphibole and it

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1 would make sense to me, you know, that it can
2 cause mesothelioma. I just think it's hard to
3 find studies.

4 And the same's true with
5 anthophyllite. I think there's, you know, not
6 as robust a literature as there is for the other
7 four, four fiber types.

8 Q Okay. The actinolite, we can draw
9 analogies to tremolite to understand potential
10 carcinogenicity because they're on the same
11 solid solution series; right?

12 A I don't know if I know the term
13 "solid solution series." But I think there is
14 some analogy, generally speaking, between the
15 fiber types.

16 Q Okay. For erionite, what studies do
17 you rely on that have erionite carcinogenicity,
18 just the ones that come to mind for you that
19 stand out as important?

20 A Yeah, I mean, like the Cappadocia
21 ones, you know, for the most part. I don't
22 remember each citation. I may have included
23 them, you know, in my literature considered.
24 But the Turkish ones, for the most part.

25 Q Okay.

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1 A And then there's, you know, there's
2 others that are sort of coming, coming along.
3 Like there's -- and I don't remember the authors
4 of any of them off the top of my head. But
5 there's -- you know, in Central Mexico there's a
6 case report. I think there might be a case
7 series there also.

8 And then, you know, I read something
9 a little while ago that was talking about
10 erionite areas in the United States. So, for
11 example, I think like the, like the Upper, Upper
12 Midwest or kind of to the left of that -- you
13 know, like maybe Montana or some places where
14 there might be erionite found.

15 Q Okay. Besides the Turkish studies,
16 the series of Turkish studies of people exposed
17 to erionite, there's not a lot of epidemiology
18 on erionite; correct?

19 A That's right.

20 Q Have you seen the papers -- I think
21 they're in the last two or three years -- about
22 the Turkish villagers exposed to erionite that
23 evaluated the relative importance of genetic
24 factors versus the erionite exposure in certain
25 families that might have mesothelioma

Page 29

1 predisposition syndromes; right? Have you seen
2 those?

3 A Well, I think so. I mean, with
4 Carbone, I think that's, that's the group that
5 he started his investigation with, you know, was
6 that particular group because it was so
7 compelling and concentrated.

8 Q Okay. And the conclusion from
9 Carbone and the co-authors is that it's a
10 multivariable effect, where you have both the
11 genetic component and you have the toxicity
12 component of the environmental exposure to the
13 erionite; correct?

14 A I think in general, yeah, meaning
15 that each of those, each of those can play a
16 role in the risk of the cancer.

17 Q Right. Okay. Is there any evidence
18 that you rely on -- in the context of erionite
19 again -- that characterizes erionite as
20 asbestiform?

21 A I'd have to look back and see. I
22 thought that was true. But I don't -- you know,
23 if we're going to look at the articles and the
24 word's not there, I may be misremembering. But
25 I thought that was true.

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Page 30 1 Q Let me ask it a different way, which 2 I think maybe is a little easier, which is: In 3 all the studies you've seen of erionite, the 4 concern and the characterization mineralogically 5 of the mineral particles being looked at is as 6 fibrous or non-fibrous; correct? 7 A Yeah; although I don't know about 8 whether there is non-fibrous erionite. I mean, 9 maybe there is. I just don't know that there 10 isn't. But I think the concern was that it was 11 a fiber. 12 Q Okay. And turning to balangeroite, 13 sort of the same issue: Have you seen any 14 studies that characterize the balangeroite as 15 asbestiform or non-asbestiform? 16 A Yeah; fibrous for sure. And 17 I just -- you know, I'd have to look to see if 18 the word "asbestiform" was used in the articles. 19 Q Okay. For both erionite and 20 balangeroite, the thing that is the same about 21 them is that these are fibrous respirable 22 mineral particles that have been shown to 23 increase risk of mesothelioma; correct? 24 A That's right. 25 Q Okay.	Page 32 1 Q Okay. You also mentioned the 2 genetics, errors. We'll get to that in due 3 course. Let me ask you about a few other 4 things. 5 Are you familiar with 6 winchite/richterite? 7 A I mean, I've seen like a -- I've seen 8 papers that talk about that. I'm not sure what 9 it is. Is it one of, like, the -- there's, 10 there's some of the names of the non-asbestiform 11 amphibole minerals. I don't know if that's one 12 of those. 13 Q I wouldn't use the word 14 "asbestiform." Just for context, where 15 winchite/richterite usually pops up is as two 16 types of nonregulated amphiboles that primarily 17 appear as a contaminant of vermiculite, 18 sometimes referred to as the Libby amphibole 19 mixture. Have you ever heard of that? 20 A Oh, yeah. For sure. 21 Q Okay. Do you have an opinion as to 22 whether or not Libby amphibole or 23 winchite/richterite specifically can increase 24 the risk of mesothelioma? 25 ATTORNEY COWAN: Form.
Page 31 1 A And actually, I just want to be 2 careful because your statement's fairly 3 definitive. I think with the balangeroite, it's 4 suspected. You know, I'm just sort of 5 summarizing, but I think that there's some 6 concern that there might be tremolite in the 7 mines or some other source of asbestos. And so, 8 you know, I think the state of the literature 9 now is that it might be carcinogenic. But I 10 think it's still an open question. 11 Q Okay. And feel free to -- whenever 12 you want to provide more context, that's fine, 13 Doctor. So thank you for doing that. 14 You mentioned -- by the way, 15 Mr. Perry, no evidence of exposure to erionite 16 or balangeroite; correct? 17 A Correct. 18 Q You also mentioned TB. I believe 19 this was kind of an old type of treatment for 20 tuberculosis many decades ago; correct? 21 A Yeah; plumbage, which isn't done 22 anymore. 23 Q Right. No evidence that Mr. Perry 24 had this treatment; correct? 25 A That's correct.	Page 33 1 THE WITNESS: I've heard that it can. 2 But I haven't really made a study of it. 3 So I don't -- you know, I don't know the 4 quality of the evidence. But I know 5 that -- you know, I've seen that some 6 folks say that it does. 7 BY ATTORNEY IOLA: 8 Q Okay. Are you familiar with 9 fluoro-edenite? 10 A Not super familiar. But I think it's 11 in my report as something that's on the list of 12 other minerals that may cause mesothelioma. 13 Q Okay. And would you put 14 fluoro-edenite as in the same bucket as the 15 balangeroite, in the sense that, not 16 particularly well-characterized but there is 17 some concern about a relationship between 18 exposure to these minerals and mesothelioma? 19 A Yes. 20 Q Okay. Are you familiar with carbon 21 nanotubes? 22 A A little bit. I mean, I've seen some 23 studies that have looked at those. So I have 24 some familiarity. 25 Q And as I understand it -- correct me

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Page 34 1 if I'm wrong -- carbon nanotubes, sometimes 2 referred to as multi-walled carbon tubes, these 3 are synthetic. These are man-made 4 nanotechnology, basically; right? 5 A I understand they're man-made. I 6 don't know about the multi-walled part. That's 7 not familiar to me. But I've just heard them 8 called carbon nanotubes. 9 Q Okay. And there is concern in the 10 medical and scientific literature that these 11 carbon nanotubes, because they share the same -- 12 sometimes share the same shape and size as other 13 mineral particles that we know to cause 14 asbestos-related diseases, there's some concern 15 about people getting exposed to it and whether 16 they'll develop asbestos-related diseases; 17 right? 18 A Well, I think there has been concern. 19 Like, I don't know as a fact that there still 20 is. I mean, I haven't looked into it in a 21 while. But I remember at least one paper that 22 did not show a risk from it. So I don't know 23 the extent of the literature at the moment, 24 whether there's still a concern or not. 25 Q If you ever get curious, my PubMed	Page 36 1 stop there. 2 You've seen that; right? 3 A Yeah, I mean, there's the McDonald 4 papers, and there may be others as well. 5 Q Right. What do you think about that? 6 Do you -- are you a subscriber to the amphibole 7 hypothesis, meaning that it's really the 8 tremolite that's causing the diseases in the 9 Canadian miners and millers? Or do you believe 10 that chrysotile has a role too? 11 A Oh, so it -- yeah, I don't -- so I 12 don't know for sure. So I think those studies 13 were interesting and I think it certainly, you 14 know, pointed towards tremolite being an 15 important constituent that elevated the risk. 16 If you're asking do I think that it's 17 not possible for chrysotile asbestos to cause 18 mesothelioma, I don't subscribe to that. I 19 think in sufficient dose that it is possible. 20 Q Okay. So for the Canadian 21 chrysotile, the mixture of the chrysotile and 22 the low levels of tremolite, it's your opinion 23 that both of the asbestos fiber types would play 24 some role in increasing risk of disease in these 25 miners and millers in Canada, dependent on
Page 35 1 alerts every Saturday are full of carbon 2 nanotube papers. They seem to be doing a lot of 3 work on that. 4 Are you familiar with -- and I 5 realize this is kind of colloquial, but there's 6 something referred to as the "amphibole 7 hypothesis" as it refers to -- as it relates to 8 what's called "Canadian asbestos," the mixture 9 of chrysotile and low levels of tremolite. 10 Are you familiar with that? 11 A So, I mean, I think I've heard, you 12 know, the term "amphibole hypothesis" in a 13 couple of different contexts. But are we 14 talking about, like, the different mines in 15 asbestos where the miners and millers were 16 examined and there was, you know, one -- where 17 one mine seemed to have tremolite and the other 18 one seemed to not have tremolite and there was a 19 different risk? 20 Q I think that's pretty much exactly 21 what I'm getting at, the idea that it's not 22 really the chrysotile that's causing an 23 increased risk of asbestos-related disease in 24 the Canadian miners and millers, it's actually 25 the low levels of tremolite -- well, let me just	Page 37 1 whether or not they've been exposed to a 2 sufficient dose; is that fair? 3 A Well, not as a fact in those studies. 4 I mean, I don't know if they achieved a dose 5 that mattered. I'd have to look back, you know, 6 if it was chrysotile predominantly or chrysotile 7 only, if such a thing exists. 8 But I think within those studies, I 9 mean, I think what it showed was risk in those 10 that had tremolite exposure and not that risk in 11 the people who were either predominantly or only 12 exposed to chrysotile. 13 Q Okay. Have you seen any of that 14 mineralogical or geological analyses of either 15 the raw Canadian chrysotile or in fiber 16 digestions of people exposed to the same that 17 characterize the tremolite as asbestiform or 18 non-asbestiform? 19 A If it's part of that same series, I'm 20 sure I've seen it, but not recently enough to 21 recall the detail. 22 Q Okay. If all of the tremolite that 23 was found on fiber digestion in the Canadian 24 miners and millers was classified as 25 non-asbestiform cleavage fragments, does it

Page 38 1 still play a role in causing disease? 2 A So, I guess, you know, fiber 3 digestions are one thing. You know, whether 4 somebody was exposed to, you know, asbestiform 5 tremolite is another issue. I mean, whether 6 it's found in the digestion or not isn't 7 necessarily the same as the fact of whether or 8 not they inhaled it or were exposed to it. 9 If we're talking about cleavage 10 fragments, I think that's a completely different 11 area. I don't know what the role of cleavage 12 fragments is in disease. And I don't really 13 have an opinion about, you know, cleavage 14 fragments and their potential for disease. 15 For me, I've kind of left off with 16 the NIOSH roadmap, which said, you know, it's an 17 area of interest that should be studied. But 18 I'm just not aware that that investigation has 19 come to fruition to say that cleavage fragments 20 of any sort are a risk factor for mesothelioma. 21 Q That's a great point. Let me put it 22 a different way. Maybe it's the opposite way of 23 how you said it, which is: You do not share the 24 opinion that some other people believe, that 25 cleavage fragments have been shown to	Page 40 1 of it -- some of the factors that are important 2 for mineral particles and mesothelioma -- let me 3 just start with the first one. 4 The first one's going to be shape and 5 size; right? Is it respirable? Is it 6 sufficiently long to cause disease? Is it too 7 wide to be inhaled? These are things that 8 you're concerned about as a pulmonologist; 9 right? 10 A Sure. It has to get into the lungs. 11 Q Okay. There are some people that 12 believe that only so-called long asbestos 13 fibers, greater than 5 microns, can cause any 14 asbestos-related diseases. Do you agree or 15 disagree with that or have no opinion at all? 16 A Well, I think the evidence supports 17 that. I mean, you know, going back to some of 18 the experimental stuff with Stanton and so 19 forth. 20 I think for the human epidemiology, I 21 think it's really -- I haven't found anything 22 convincing about short fibers -- and whatever 23 that is. Short, you know, may be less than 24 5 microns in length. 25 But, you know, I think one of the
Page 39 1 definitively not cause disease? It's your 2 opinion that more research is needed; is that 3 fair? 4 A That is fair. 5 Q Okay. Do you have an opinion about 6 what are the things or the factors about 7 asbestos fibers specifically that make them such 8 a potent cause of mesothelioma in human beings? 9 A Not in detail. I mean, I think 10 that's somebody else's field. You know, I 11 think -- 12 Q Okay. 13 A -- other than, like, for example, 14 persistence of the fibers. You know, I think it 15 seems important that for the ones that are the 16 amphibole types that we're talking about, the 17 regulated ones, that they persist and persist 18 long enough to have an effect. 19 But, you know, and I know there's 20 different theories about, you know, the iron 21 content and other things. But that's not really 22 my field. 23 Q Okay. From your perspective as -- 24 and I don't mean to suggest this is all of what 25 you do, but certainly pulmonology is a big part	Page 41 1 issues with the epidemiology studies is that 2 when the fibers are indeed measured, they're 3 measured using, typically, the -- you know, the 4 counting rules that include looking at fibers 5 that are 5 microns and longer. 6 So I just -- I'm not aware of a body 7 of evidence that's shown risk in humans, you 8 know, from shorter fibers, which aren't 9 typically counted, you know, by NIOSH 10 methodology. 11 Q And that's one of the limitations of 12 looking back at these epidemiology studies to 13 understand the role of fiber sizes. If you're 14 not counting -- if it's there, if you're not 15 counting fibers less than 5 microns, you can't 16 figure out what role, if any, they contributed 17 to the risk; right? 18 A Not from the studies; that's right. 19 Q Right. Have you seen the early 2000 20 Suzuki studies -- and there's a few other 21 assorted studies as well; I think Stayner is 22 one -- that show for mesothelioma the 23 predominant fiber type found in the pleura is 24 chrysotile and the predominant fiber size is 25 short-fiber chrysotile?

Page 42 1 You've seen the studies; right? 2 A I have, yes. 3 Q All right. What I'd like to do now 4 is just kind of start walking through your 5 report, sir. I'm looking at the June 27th, 2024 6 Perry report, and I'm looking at page 2. And 7 I'm just going to start there. 8 You have a section here that's 9 Background and Employment History for Mr. Perry; 10 correct? 11 A That's right. 12 Q And you note that Mr. Perry's father 13 was an aviation mechanic and inspector. Let me 14 pause there. You've seen no evidence that 15 Mr. Perry had any take-home exposures to 16 asbestos or other fibrous mineral particles of 17 concern related to Mr. Perry's father's work; 18 correct? 19 A That's correct. 20 Q You also note that at the time of 21 Mr. Perry's deposition his father was 78 years 22 old, had late-stage prostate cancer -- let me 23 pause there. 24 Is prostate cancer one of the BAP1 or 25 other germline mutation diseases associated --	Page 44 1 So it's one that's been found in 2 association. It's not that classic, you know, 3 two or three where, you know, the report 4 started, you know, with those few, you know, 5 rare types of tumors. 6 Q Those classic two or three that you 7 mentioned -- and correct me if I'm wrong -- 8 would be some combination of renal cell 9 carcinoma, the ocular tumors, as well as 10 mesothelioma; right? 11 A Yeah; and specifically uveal melanoma 12 was the ocular. 13 Q Right. Thank you. I regurgitated my 14 layman recollection of it. So thank you for 15 that. 16 All right. Let's go back up. And 17 let me just ask the question instead of beating 18 around it, which is to say: It's your opinion 19 that Mr. Perry could possibly have some germline 20 mutation that may have caused his mesothelioma. 21 But because he's not had the full genetic workup 22 and profile, you don't -- you're not able to say 23 to a reasonable degree of scientific certainty 24 that he does have BAP1 or any other specific 25 germline mutation as we sit here today; is that
Page 43 1 well, I asked a terrible question. Let me start 2 again. 3 Is prostate cancer one of the 4 BAP1-related diseases that you look for in 5 someone who is also diagnosed with mesothelioma? 6 A Let me get you a better answer than 7 just off the top of my head. 8 Q Sure. Yeah, take your time, always. 9 A So I'd say yes. And I'll just 10 qualify it as recognizing that it's not one of 11 the classic initial ones, you know, from the 12 original investigators who looked at it, who are 13 focused on, you know, uveal melanoma and then 14 mesothelioma. But, you know -- and if it helps, 15 I'll just point you to where I'm looking -- 16 Q Sure. 17 A -- is page 39 and 40 of my report. I 18 have a list of -- I'll wait for you to get 19 there. 20 Q I am there, sir, thank you. Please. 21 A So the paragraph that ends at the 22 bottom of page 39, I've listed out tumors that 23 have been found in association with BAP1 24 mutation. And so -- and the prostate cancer's 25 on the next page, on page 40.	Page 45 1 accurate? 2 A It is. I mean, I think the best 3 estimate that I've seen is about 12 percent or 4 so of people with mesothelioma do harbor some 5 type of, you know, pathogenic mutation. But 6 absent testing, I can't say that he does or 7 likely does have one of those. 8 Q Okay. I did notice in the medical 9 records of Mr. Perry and his clinician's 10 investigation of the tumor itself, they noted 11 that the BAP1 was still intact. But for our 12 purposes here, that's kind of irrelevant because 13 that would be a somatic mutation not a germline 14 mutation because we're looking at tumor; right? 15 A Oh, no, it's actually really relevant 16 because it rules out BAP1 as a germline mutation 17 specifically. 18 Q Okay. 19 A So if he had a deletion, it could be 20 just a somatic deletion or it could come from 21 the inherited, you know, gene. But if he has it 22 retained in the tumor, then he can't have a 23 germline mutation in that part. 24 Q Okay. Do you see the medical records 25 that noted that BAP1 was still intact in the

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Page 46 1 tumor? 2 A I did. 3 Q Okay. So that means, fundamentally, 4 Mr. Perry does not have a BAP1 germline 5 mutation, but he could possibly have another 6 unspecified germline mutation that could play a 7 role in the development of mesothelioma; is that 8 accurate? 9 A Absolutely. 10 Q Okay. All right. I know -- again, 11 I'm going to page 3 now. You note in 12 Mr. Perry's past medical history, one of the 13 things that he had had was a colectomy due to 14 some chronic inflammation from the 15 diverticulitis; right? 16 A That's right. 17 Q You don't have an opinion that the 18 inflammation associated with the diverticulitis 19 played any role in causing his mesothelioma; 20 right? 21 A I don't believe it did. 22 Q Okay. Going down to page 4 of your 23 report and employment history -- and this is 24 Mr. Perry's employment history; correct? 25 A That's right.	Page 48 1 Q Okay. So let me ask -- I'll ask it a 2 slightly different way, which is: If Mr. Perry 3 has exposure in 2017 to asbestos, he gets 4 diagnosed a couple years later. Do you have an 5 opinion one way or another whether or not that 6 would have contributed to tumor formation, given 7 the proximity in time? 8 A I don't see how it could have. And 9 it wouldn't -- it would be inconsistent with the 10 literature that, you know, that I've looked at. 11 Q Okay. So if I'm understanding your 12 opinion correctly -- obviously, correct me if 13 I'm wrong -- the exposures that contribute to 14 mesothelioma risk would need to be at least 20 15 years before the diagnosis of the disease or the 16 formation of the tumor; right? 17 A That's right. 18 Q Okay. You have a paragraph -- well, 19 it's really a long sentence here -- in regards 20 to the Social Security records of Mr. Perry. 21 Let me ask just a general question about that. 22 You've seen no evidence of any 23 contributing asbestos exposure from any of these 24 jobs reflected on the Social Security records; 25 is that accurate?
Page 47 1 Q You noted that Mr. Perry and a sister 2 walked beans and corn as a summer job in their 3 rural farming community. Let me pause there. 4 Do you have any opinion as you sit 5 here today that Mr. Perry would have had any 6 exposures to anything environmentally while 7 growing up that would have increased his risk of 8 mesothelioma? 9 A I mean, I have no evidence of that. 10 Q Okay. You note that after moving to 11 South Carolina, Mr. Perry worked for Hilton from 12 2000 to 2017. And I think you note later on in 13 the report that Mr. Perry reported some 14 potential exposures to asbestos associated with 15 his work for Hilton; is that right? 16 A That's right. 17 Q How close in time -- well, I could 18 ask it one of two ways, so I guess I'll ask it 19 both ways. How close in time or how far away in 20 time does an asbestos exposure need to be from 21 the time of tumor formation to actually 22 contribute to tumor risk? 23 A So, I mean, if we're talking about 24 latency, I think 20, 20 years is typical, you 25 know, is a minimum.	Page 49 1 A I'm sure it is. I'm just -- I'd have 2 to crosscheck to be sure because I think for the 3 Holiday Inn, Holiday Inn comes from -- let's 4 see -- yeah, his testimony. And then -- that's 5 right. 6 And again, I think you can tell what 7 I've intended to do is, where I have citations 8 for the Social Security Administration and I 9 list them -- 10 Q Yeah. 11 A -- and then say, you know, not 12 specified. And so that's a placeholder for me 13 which is, he didn't say so and I don't have any 14 other information either. 15 Q Okay. No, that is very helpful. 16 And if I look at the work history 17 chart on page 5, going forward a few pages, you 18 note, you know, some claimed asbestos exposure 19 to drywall and joint compound. Let's see. 20 ATTORNEY IOLA: I guess my gardeners 21 are here at a great time. Could we 22 actually maybe just go off the record for 23 ten minutes, see if they leave. 24 THE WITNESS: That's okay with me. 25 (Discussion held off the record.)

Page 50 1 (Recess.) 2 BY ATTORNEY IOLA: 3 Q Doctor, we are back after a short 4 brake. Thank you for giving me a little time 5 there. 6 To go back to Mr. Perry's social and 7 occupational history, let me see if I can 8 streamline this a little bit. Are there any 9 exposures to asbestos that Mr. Perry had either 10 occupationally, para-occupationally, 11 environmentally, or other that increased his 12 risk for mesothelioma, that you saw from your 13 review? 14 A I'd say I only saw one that was 15 possible, which is just what, you know, he 16 himself, you know, mentioned, was some potential 17 asbestos exposure when he was working at the 18 hotels. 19 Q Okay. And that would be -- let's 20 see. To orient us in time, at the hotels would 21 be -- this is the '85 to '93 at the Holiday Inn, 22 or is this later on in time at the Hiltons in 23 the 2000s, 2010s? 24 A Well, it would include that. And 25 then I think -- you know, I think,	Page 52 1 And I will say too -- I mean, I know 2 it's not my job to do it and we have to live 3 with what people testify. But I do find that, 4 you know, six dozen brake jobs on two cars in a 5 very small amount of time doesn't seem credible 6 to me. It just doesn't make any sense -- 7 Q Uh-huh. 8 A -- you know, as somebody who has 9 owned cars and worked on cars that -- you know, 10 unless it's a drag racer or something that he's 11 taking to the track, it doesn't seem conceivable 12 that that's a good estimate. 13 But even if it is, even assuming 14 that's the fact, it's still -- I still don't 15 see, you know, enough evidence that there is an 16 exposure that matters. 17 Q Okay. Have you seen -- to piggyback 18 off that, have you seen the EPA's part 1 risk 19 assessment for chrysotile asbestos related to 20 the Toxic Substances Control Act? Have you seen 21 that? It's from like from a year or two ago. 22 A I think I know of it, but I haven't 23 read it. 24 Q Okay. Then I'll leave it alone. 25 The next sections are the summary of
Page 51 1 theoretically, the part, you know, that's 2 outside that 20-year window that we talked 3 about. So not the -- you know, not total of all 4 those, you know, dates that he's mentioned but 5 just the ones that are, you know, long enough to 6 satisfy a latency consideration. 7 Q Okay. So basically the asbestos 8 exposures of potential concern to you are the 9 hotel-related work more than 25 years before his 10 diagnosis of mesothelioma; is that right? 11 ATTORNEY COWAN: Form. 12 THE WITNESS: More than 20. 13 BY ATTORNEY IOLA: 14 Q More than 20. Okay. Sorry. Okay. 15 Well, that streamlines it. 16 There was a mention, again, just to 17 be extra careful by me, on page 11 of your 18 report you note that Mr. Perry believed he was 19 exposed to asbestos as a bystander to his 20 family's brake work on family vehicles. 21 Is it your opinion that that would 22 not have increased his risk of mesothelioma or 23 contributed to cause his meso? 24 A Yeah. And I don't see enough 25 information to suggest a risk.	Page 53 1 Mr. Perry's use and exposure to talcum powder 2 products; correct? 3 A That's right. 4 Q Is it accurate to say that it's your 5 opinion that Mr. Perry did not have any 6 exposures to asbestos from any of the talcum 7 powder products that would have caused or 8 contributed to cause or increased his risk of 9 mesothelioma? 10 A No. I think -- I mean, it's an 11 unknown to me. I mean, I allow for the 12 possibility that he might have. It's also 13 possible that he had not. 14 Q Okay. And that kind of goes to the 15 secondary question. The primary question for me 16 is: Even assuming that Mr. Perry did have some 17 exposure to asbestos from some talcum powder 18 products, it would still be your opinion that 19 those did not contribute to increase his risk of 20 mesothelioma; correct? 21 A That is correct. 22 Q Okay. So you're allowing for the 23 possibility that Mr. Perry may have had some 24 exposures to asbestos at unspecified levels, 25 unspecified amount of time, from certain talcum

Page 54 1 powder products, but the actual magnitude of 2 that is kind of irrelevant to your risk 3 assessment because talcum powder with asbestos 4 doesn't cause meso; right? 5 ATTORNEY COWAN: Form. 6 THE WITNESS: Yeah. Although the 7 magnitude's relevant in the sense that I 8 think it's not a, not a magnitude that 9 rises to the level of concern. 10 BY ATTORNEY IOLA: 11 Q Okay. For each -- I'm going to try 12 to take these in order. For your assessment of 13 Mr. Perry's potential exposures to asbestos from 14 Johnson's baby powder product, I know you 15 reviewed -- you reviewed plaintiff expert 16 reports; correct? 17 A That's correct. 18 Q You reviewed the defense expert 19 reports in this case -- at least -- looks to me 20 like most of them if not all of them; right? 21 A That's correct. 22 Q Were you provided any other -- and 23 I'm setting aside deposition transcripts, the 24 pleadings, the medical records; let's set those 25 aside. And set aside the plaintiff expert	Page 56 1 something I possess; and it's not something I 2 keep track of. 3 Q Okay. And I know -- I think I saw 4 this in the previous depositions. You've been 5 asked questions similar to this before by other 6 plaintiff lawyers. You know, have you reviewed 7 internal testing of talc for asbestos? You 8 recall that; right? 9 A Oh, sure. 10 Q Is there a reason why today you still 11 have not reviewed any of the testing of talc for 12 the presence of asbestos that might be internal 13 to some of these companies? 14 A It's not part of my field. You know, 15 I mean, I'm a physician and an epidemiologist. 16 So I -- you know, whatever -- and "internal 17 documents," I'm not sure if it's a term. But I 18 think what we're talking about is, you know, 19 e-mails and memos and things of that sort. 20 You know, I've tried to rely for the 21 most part on, you know, for the most part, on 22 peer-reviewed published literature for, you 23 know, government reports, other statements of 24 that sort, you know, whether they're 25 peer-reviewed or not.
Page 55 1 reports; set aside the defense expert reports. 2 What other materials did you 3 read/review for this case specific to Johnson & 4 Johnson or Johnson & Johnson Baby Powder, if 5 any? 6 A Yeah; nothing else. 7 Q By way of example, let me just give a 8 little context. Dr. Haber, in the Perry case, 9 he keeps what he calls Exhibit B and C. Exhibit 10 B, I believe, is basically a listing of all the 11 internal company documents he's reviewed over 12 time. Exhibit C is the published, 13 peer-reviewed, available literature about 14 asbestos. 15 Do you keep -- I know you keep, 16 effectively, a reference list from the publicly 17 available literature vis- -vis your citations in 18 your report; right? 19 A That's correct. 20 Q Do you keep a list, like Dr. Haber, 21 of internal company documents typically related 22 to testing of asbestos in talc? Is that 23 something you review? Is that something you 24 keep track of? 25 A It's not something I review; it's not	Page 57 1 But it doesn't, it doesn't -- it's 2 not part of my process; right? Like, if I 3 undertake a meta-analysis, I don't go try to 4 find, you know, memos from people. It just 5 doesn't fit into my process. 6 Q Okay. Let me shift our terrain a 7 little bit and see if I can ask it in this 8 context. 9 You mentioned working in mold cases. 10 I think you said you do some of that work for 11 plaintiffs; right? 12 A That's correct. 13 Q In the mold cases, as part of your 14 risk assessment, do you have to assess whether 15 or not there's actually mold present? 16 A No. I mean -- and I'll just -- I 17 mean, I'll give you an example. Like, people 18 will do mold reports; right? I mean, there are 19 companies that will go out and do that. But, 20 you know, based on my own work in the field and 21 also epidemiology, those reports don't 22 contribute anything meaningful. 23 I mean, if someone gives one of them 24 to me, I'll acknowledge it. But for human 25 health, I don't need that information.

Page 58 1 Q Okay. Because it -- let me see if 2 I'm getting this right. Because the 3 peer-reviewed and publicly available literature 4 inherently has in context the assessment of 5 whether or not the substance being analyzed has 6 the toxin that you're looking for, that's just 7 part of -- that's part of the assessment that's 8 being done? That's not something you spend time 9 thinking about; right? 10 A Well, it's -- I don't know if it's 11 different. But it's in addition; right? So 12 from an epidemiology standpoint mold -- since 13 we're talking about mold, mold is very hard to 14 study because it's a, a life-form that goes 15 through many stages. 16 And so, you know, it's not really 17 clear which indicator of mold is a valid one for 18 assessing health risk -- whether it's the 19 spores, whether it's just a PCR test, you know, 20 and so forth. 21 But from epidemiology studies, what 22 works very well is a participant or a patient 23 report of visible mold. That's been shown to be 24 a valid indicator. And a musty smell, for 25 example, is actually very good because there's	Page 60 1 talc-containing asbestos; is that right? 2 A Yeah. I think I've phrased it a 3 little differently, just to be, you know, within 4 my field. I said that the epidemiologic 5 evidence does not support that there's a risk 6 from, you know, perineal applications of talcum 7 powder products and risk of ovarian cancer. 8 Q Okay. Do you agree that the link 9 between asbestos exposure and ovarian cancer has 10 been established in the medical and scientific 11 literature? 12 A I don't, no. And I think, you know, 13 despite the fact there's an IARC monograph, I 14 think that there are reasonable, you know, 15 considerations for why that may have been a 16 premature conclusion. But I allow for the fact 17 that it might. 18 It looks like, if you look at some of 19 the old historical studies from World War II era 20 and after, you know, if it is a cause of ovarian 21 cancer, it's at a very heavy dose of, probably, 22 commercial amphiboles. 23 Q The -- I have seen in some of the 24 ovarian epidemiology that one of the confounding 25 variables that's listed is the presence of
Page 59 1 VOCs that your nose detects. 2 And so for the state of -- even 3 though there's people who publish from, you 4 know, mold tests, they're really not valid for 5 assessing the effect on human health. 6 And just to go further, you know, 7 even when people are worried about mold, it's 8 usually not just mold. It's the indoor 9 dampness. So there's bacteria; there's viruses; 10 there's deteriorating wallboard which is, you 11 know, giving off VOCs. 12 So it's much more complicated than 13 just simply somebody doing a swipe, bringing it 14 back to the lab and saying "Oh, yeah, I found 15 this common mold inside your home." It's 16 practically meaningless. 17 Q Okay. Okay. Not exactly related to 18 what you said, but for some reason it popped 19 into my head. You testify in some of the 20 ovarian cancer talc cases; correct? 21 A That's correct. 22 Q And I take it from who's retained you 23 in those cases -- I haven't seen your testimony, 24 but I'm assuming it's your opinion that ovarian 25 cancer is not caused by either talc itself or	Page 61 1 asbestos in talc before the CTFA adopted the 2 J4-1 method in 1976. 3 Have you seen statements like that in 4 some of the epidemiology? 5 A Well, I've seen it. But it's usually 6 followed up too with then people -- and I think 7 what is it, 1976, of something that people are 8 talking about? 9 Q Yes, sir. 10 A So, yeah. But then some of the 11 epidemiology studies have considered that, and 12 they've looked at the risk pre/post 1976. And 13 there's no difference. So I haven't seen a 14 study that sort of affirmed that that even 15 matters, you know, that concept. 16 Q Okay. Have you seen the recent -- I 17 think it was released in the last three or four 18 weeks -- the NIH -- well, let me phrase it 19 differently -- the study done by certain 20 researchers at the NIH that was just published 21 assessing the risk of ovarian cancer from 22 perineal exposure to talc. I assume you've seen 23 that? 24 A I've seen it. And I'm just saying 25 this to be polite: I answered questions for

Page 62 1 about three hours about that study, I think a 2 couple weeks ago. So I can save you a lot of 3 time -- 4 Q That's all I need to know. 5 A Yeah, I can save you a lot of time if 6 you just want to read that. 7 Q No, no. That actually does save me a 8 lot of time. And really, I was just curious if 9 you've seen it. But that does help. Thank you. 10 A Yeah. 11 Q Going to the next section in your 12 report about Avon -- and just so you know, I'm 13 going to ask this for each set of talc 14 defendants or each talc defendant. Aside from 15 the materials that you reviewed reflected in the 16 plaintiff's expert reports, the defense expert 17 reports, and what I would call the case-specific 18 materials related to Mr. Perry -- the 19 depositions, the medical records, et cetera -- 20 have you reviewed any other documents 21 specifically related to Avon and Avon talcum 22 powder products? 23 A No. 24 Q Okay. Would that answer be true -- 25 would you give the same answer in relationship	Page 64 1 know, mine source link to each product that he's 2 claiming, you know, is an issue here. 3 Q There are a lot of different lawyers, 4 but I'm not that type of lawyer who's going to 5 waste our time going through that. I think your 6 answer is sufficient and points me in the right 7 direction. 8 Let me keep going down. 9 On page 25 of your June report, 10 towards the bottom, you begin a section titled 11 Past Medical History. Let me ask a global 12 question here. 13 Based on your review of the medical 14 records for Mr. Perry before his mesothelioma 15 diagnosis, were any of these -- were any of 16 these medical conditions life-threatening, 17 expected to reduce his life expectancy at that 18 time of diagnosis, not related to meso? 19 A I'd say the only one potentially 20 would be, you know, the fact that he has 21 coronary artery calcifications, which is an 22 indication of coronary artery disease. And so 23 that has the potential to limit his life 24 expectancy. 25 Q Okay. To the best of your
Page 63 1 to each talc defendant that you've been retained 2 by in this case? 3 A Yes. 4 Q Okay. That will definitely make this 5 go quicker. 6 For the -- do you have any knowledge 7 of the particular mine or mines, talc mines, 8 that were used for any of the talcum powder 9 products that Mr. Perry used at any particular 10 time? 11 A I was going to say yes. But then 12 when you finished it with Mr. Perry, I don't 13 know for a fact, you know, which mines were 14 linked. But what I rely on -- 15 Q Sure. 16 A -- is, like, the mineralogists, for 17 example -- so like Mr. Segrave, for example. 18 Q Right. 19 A So I may have pulled some of that 20 into my report. But what I rely on is what he's 21 looked at. And then some of the industrial 22 hygiene reports I think also pull that in. 23 Q Okay. 24 A I could look up what they say. But I 25 haven't, you know, memorized each and every, you	Page 65 1 recollection, was he on any medications related 2 to the coronary artery disease? 3 A I didn't, I didn't track them. 4 Q Okay. If -- let me ask it this way. 5 Sometimes in the medical records they'll refer 6 to it as -- a medical condition as controlled or 7 uncontrolled by medication. 8 Did you see any indication that the 9 coronary artery disease was uncontrolled, not 10 being treated with medication? 11 A I didn't see that. 12 Q Okay. In the next little section for 13 Past Surgical and Procedural History, towards 14 the bottom of that section, on page 28, there's 15 a mention of testicular cancer, 1990. Do you 16 see that? 17 A Yes. 18 Q You've seen -- well, let me ask it 19 this way. Have you seen any evidence that -- 20 besides this one notation in the medical record 21 of testicular cancer, have you seen any other 22 mention in any other documents related to this 23 case that Mr. Perry actually had testicular 24 cancer? 25 A I did not get another record that

Page 66 1 showed that. 2 Q Okay. If he had testicular cancer 3 and he's still alive nearly -- well, I guess, 4 more than 30 years later, is your expectation 5 that the testicular cancer, if malignant, was 6 treated, I guess? 7 A And I would go further and say cured. 8 It sounds like, as you're saying, if it's true 9 that he had testicular cancer, he had an 10 orchiectomy, which would be a surgical removal 11 of the tumor. And it sounds like it would have 12 been a resection for cure. 13 Q Okay. You haven't seen any evidence 14 that Mr. Perry had any radiation treatment for 15 any condition before his mesothelioma; correct? 16 A Yeah. Only, only following the 17 diagnosis. 18 Q Right. Okay. You have a section 19 here, as we keep going, page 29 and 30, of the 20 family history of, I'll call it, disease and 21 cancer. I guess, if there are any cancers on 22 here that might tend to show a propensity for a 23 germline mutation that could also cause 24 mesothelioma, the cancers that are of specific 25 interest are the ones that you and I already	Page 68 1 or common diseases, in the context of the 2 coronary artery disease; right? 3 A I... 4 Q Let me ask a different question. Bad 5 question. Bad question. I look at the face, 6 and that tells me all I need to know, you know. 7 Breast cancer, prostate cancer, lung 8 cancer, and ovarian cancer, or uterine cancer, 9 these are all fairly common cancers; right? 10 A I'd say all but ovarian. I mean, 11 ovarian is usually discussed as a rare cancer. 12 Q Okay. And the coronary artery 13 disease, especially in people over 60, pretty 14 common; right? 15 A It is common. 16 Q Okay. I note that, from the 17 records -- and I saw this note as well -- the 18 reference to a mesothelioma in a paternal 19 grandfather. Is that fair to say you've seen 20 the other record or evidence to suggest that the 21 paternal grandfather did have mesothelioma, 22 besides this one medical record? Is that 23 accurate? 24 A That's correct. This is the only 25 one.
Page 67 1 went over that are listed in your report; 2 correct? 3 A Well, that wouldn't be complete; 4 right? So we talked just about a BCRA mutation, 5 and then I had a list of cancer associated with 6 that. But if you look at -- I'm sorry, not 7 BRCA, BAP1. I misspoke. We talked about BAP1. 8 But, I guess, BRCA genes, for 9 example, you know, might link to, you know, 10 breast and ovarian cancer in his mom. And, you 11 know, the BRCA gene defect has been linked to 12 mesothelioma as well. 13 So sort of cancer by cancer, there 14 could be ones that point towards other 15 syndromes. You know, colon cancer, for example, 16 is listed here. There are various genes that, 17 you know, are linked to colon cancer. 18 So, yeah, just be clear, what we 19 talked about before was just BAP1. 20 Q Okay. Just looking at the list of 21 the diseases here that you list from the medical 22 records -- heart disease, ovarian cancer, breast 23 cancer, prostate cancer, lung cancer -- these 24 are all pretty common cancers; right? 25 Well, they're either common cancers	Page 69 1 Q Okay. All right. Going down to 2 page 32 of your report, in the section entitled 3 Differences Between Asbestos and Talc, you have 4 a -- the first sentence under the Asbestos 5 section says that: Asbestos is a term that is 6 used to describe several naturally occurring 7 silicate mineral species when they are present 8 in a fibrous form. 9 Do you see that? 10 A I do. 11 Q And when you were writing this 12 report, is it fair to say that that definition 13 of asbestos -- the fibrous variety of certain 14 silicate minerals -- is a definition of asbestos 15 that you've seen many times in different medical 16 articles, textbooks, peer-reviewed journals? 17 You've seen it numerous times; correct? 18 A Well, something similar. I mean, I 19 literally took this from a monograph from the 20 Institute of Medicine. 21 Q Right. 22 A I just thought that was a good place 23 to describe it from like a -- you know, like, 24 what medical doctors and scientists would be 25 interested in, as opposed to, like, what a

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Page 70 1 mineralogist would say. 2 Q Right. And in that first sentence, 3 the word "asbestiform" does not appear; correct? 4 A That's correct. 5 Q In the next sentence, in all 6 fairness, you say "fibrous asbestos," and then 7 in brackets "known as asbestiform"; right? 8 A That's right. 9 Q So from your perspective as a medical 10 doctor, "asbestiform" and "fibrous," they're 11 interchangeable. These are symptoms; right? 12 ATTORNEY COWAN: Form. 13 THE WITNESS: No. No, they're not. 14 I mean, you can have something that's 15 fibrous that's not asbestiform. 16 BY ATTORNEY IOLA: 17 Q Okay. What definition of asbestos, 18 from a medical perspective, says that in order 19 for asbestos to be asbestos, it needs to be 20 asbestiform and not just fibrous? 21 A So I'm not sure I even understand 22 that. 23 Q It might be a bad question. Let me 24 try again. 25 Are you aware in any medical	Page 72 1 there's an evidence base to support that. 2 If there's something that's otherwise 3 the same mineral but it's too fat to be inhaled, 4 you know, then I don't think it poses a risk. 5 You know, I don't know if you need a study for 6 that, if it's not respirable. 7 So, yeah, I think there's plenty of 8 opportunities for something that's not 9 asbestiform to either have an unknown evidence 10 base or just not make sense that it could cause 11 harm. 12 Q Do you have an understanding that 13 there's some people -- usually a mineralogist or 14 a geologist -- you've probably seen this in 15 Mr. Segrave's report or Dr. Sanchez's report -- 16 that there can be an overlap in dimensions 17 between non-asbestiform cleavage fragments and 18 asbestiform amphiboles? Have you seen that? 19 A So non-asbestiform cleavage fragments 20 and asbestiform fibers? 21 Q Yeah; that have the same -- they can 22 have an overlap of size and shape, meaning -- 23 let me just give you an example -- that you can 24 have a structure is that's 8 microns long by 25 .25 microns wide -- that's a 40-to-1 aspect
Page 71 1 textbooks, medical journals, articles, that kind 2 of thing, where any medical doctor writes that 3 in order for a mineral particle to be asbestos, 4 it has to be one of these silicate minerals and 5 it has to be asbestiform; something more than 6 fibrous. Have you ever seen that? 7 ATTORNEY COWAN: Form. 8 THE WITNESS: Oh, I don't know. I 9 mean, I'm linking together a variety of 10 things, including just that asbestiform 11 seems to have a definition; right? 12 There's a certain, you know, dimension and 13 aspect ratio that makes it asbestiform 14 rather than just the fiber per se. 15 BY ATTORNEY IOLA: 16 Q Okay. Is it your opinion that if 17 something is a fibrous variety of one of these 18 asbestos mineral species but it is not 19 asbestiform, does it pose the same health risk 20 as a structure that's asbestiform? 21 A Well, I think, you know, we're 22 getting back to a couple of different questions 23 you asked earlier; right? If we talk about 24 fiber length, for example. You know, and if 25 it's a .1 micron length fiber, I don't think	Page 73 1 ratio -- that can be fibrous but not 2 asbestiform. 3 You seen that before; right? 4 A Yes. 5 Q Okay. From your perspective, if you 6 have a structure that meets those criteria and 7 it's one of the six regulated asbestos 8 varieties, it's 8 microns long by 0.25 microns 9 wide, 40-to-1 aspect ratio, is that a mineral 10 particle of health concern, from your 11 perspective? 12 A Well, I don't know. I mean, I think 13 I'd need more context, particularly because 14 you're asking questions about, you know, what 15 could be crushed fragments or something that 16 ended up, you know, in that particular size and 17 shape. And so I understand that there's -- you 18 know, that's still an evolving science, whether 19 that would be true. 20 So I think, you know, if it formed 21 that way -- and again, I don't want to get into 22 trying to pretend I'm a mineralogist -- but I 23 think it matters whether it was formed that way 24 in nature or whether it became that way through 25 some industrial process.

Page 74 1 Q Okay. And as you mentioned 2 earlier -- I guess the bow on top of this is the 3 jury's still out. The medical and scientific 4 literature is still unresolved as to whether or 5 not structures that are classified as 6 non-asbestiform but are fibrous pose the same 7 health risk as those that are classically 8 asbestiform? 9 ATTORNEY COWAN: Form. 10 BY ATTORNEY IOLA: 11 Q Is that right? 12 A I think there's not sufficient 13 evidence, from what I've seen, to answer the 14 question. 15 Q Okay. And I realize that there's a 16 lot more to this report than just this section. 17 But on page 32, the next section, entitled Talc, 18 do you, as a medical doctor, care about what 19 differences, if any, there are between the 20 so-called cosmetic talc and so-called industrial 21 talc? Does that matter to you? 22 A I mean it can. It can matter. 23 Q How? 24 A Well, if it's, if it's industrial 25 talc, for example, it, you know, it wouldn't be	Page 76 1 really the main place I'm talking about. 2 Q Okay. And for the -- for Gouverneur, 3 or the New York talc miner and miller studies, 4 however you want to classify them, have you seen 5 the Honda paper, the Hull paper? Those are both 6 from 2002. 7 A Yes, I have. 8 Q And you certainly saw the discussion 9 about that in the NIOSH roadmap in 2011; 10 correct? 11 A If it's in there, I'm sure I did. 12 But I don't recall that. 13 Q It's okay. Based on the New York 14 talc miner and miller epidemiology, do you agree 15 that it shows that talc contaminated with a 16 sufficient amount of asbestos and people exposed 17 for a sufficient duration to that product can 18 develop mesothelioma from it? 19 A So I'm not sure. I'd have to go back 20 to those because I know there's, like, a couple 21 of, like, letter-to-the-editor kind of things 22 from Finkelstein, like case report things. I 23 got to look again at Honda to recall all the 24 details. 25 I mean, to me, I think it suggested
Page 75 1 the type of talc that we would use in 2 pleurodesis; right? It's meant to be cosmetic 3 grade talc that's also been sterilized. So, you 4 know, as a source of talc, I don't think it 5 would make sense to, you know, reach out to, you 6 know, a commercial type of talc products. 7 And, you know, my general 8 understanding is that there's a different 9 percentage of non-talc that's allowable in 10 different, you know, definitions of that. 11 Q Uh-huh. 12 A And I think -- you know, I haven't 13 made a thorough study. But I've seen some 14 studies with so-called industrial talc where 15 there may well be, you know, asbestos and 16 asbestos of the form that we're talking about. 17 Q Okay. When you mention some studies 18 related to industrial talc where it may actually 19 contain asbestos, perhaps by any definition of 20 the word -- and which studies? In what context 21 have you seen that? 22 A Well, the Gouverneur talc, for 23 example, where I've seen, you know, evidence 24 that it, it may have, like, tremolite -- you 25 know, tremolite as part of that. So that's	Page 77 1 it was possible. But I don't know if I reached 2 a conclusion from when I looked at those 3 articles. 4 Q Okay. And I -- have you ever been 5 retained by RT Vanderbilt or Vanderbilt 6 Holdings, LLC in a case? 7 A I have not. 8 Q Okay. I guess I'll do this as a 9 hypothetical since I know you haven't seen this. 10 But I have had the experience of being in 11 multiple Vanderbilt trials. And I'll represent 12 to you that the uncontested testimony is that 13 there's at least 14 mesotheliomas in a cohort of 14 approximately 790 New York talc miners and 15 millers, which is approximately 1-and-a-half 16 percent of the total workforce. 17 Making that assumption, do you agree 18 with me that that is an epidemic of 19 mesothelioma? 20 A No. I mean it's, it's too simple; 21 right. In order to calculate what the risk is, 22 you need some comparison group. And they would 23 have to be -- if you say that it's a risk, you'd 24 have to compare them to some group that you 25 articulate and compared it to what the expected

Page 78 1 amount would be in the group. 2 So just with those simple facts, I 3 don't think it's -- I don't think it makes sense 4 just to make an assumption about that. 5 Q What is the background rate, if any, 6 of mesotheliomas in the general population, 7 people not exposed to anything other than -- 8 actually, let me ask it a different way. 9 What is the background rate of 10 mesotheliomas in the United States? You can 11 either do it per hundred thousand, per million, 12 whatever you're comfortable with. 13 A Yeah. I mean, currently -- it always 14 depends on sort of, you know, time and place and 15 so forth. But currently, I think there's about 16 3,000 mesotheliomas diagnosed each year and 17 there's about 300 million people, you know, in 18 the United States. So at least in terms of, you 19 know, an annual incidence, I think it would be 20 about one per hundred thousand people living in 21 the US. 22 Q Okay. So if you have a group of 800 23 workers, like in the New York talc miners and 24 millers, any reasonable control group you would 25 expect to see zero mesotheliomas in; right?	Page 80 1 epidemiology study of young children. 2 Q I think all I've seen are the case 3 reports too. I don't know if an epi study's 4 ever been done. But is it your opinion that the 5 occurrence of mesotheliomas in very young people 6 is more evidence to suggest that mesotheliomas 7 can occur spontaneously, absent any 8 environmental exposure? 9 A Yes. 10 Q Okay. Have you seen studies that 11 indicate in stillborn babies where fiber 12 digestions were done, asbestos fibers were found 13 in the stillborn babies, suggesting to the 14 authors that the mothers were exposed to the 15 asbestos and the fibers were actually traversing 16 the placenta in utero. Have you seen that? 17 A I think I have seen one that said 18 that. 19 Q Okay. There have also been some -- I 20 believe they were -- Bruce would know; he'll 21 correct me if I'm wrong -- but I believe that 22 they were either hamster or rat model studies 23 that confirm that asbestos fibers can traverse 24 the placenta in utero. Have you seen that? 25 A I don't recall seeing that.
Page 79 1 A No. I mean, the control group could 2 be the entire US population, in which case it 3 would be 3,000. 4 Q Oh, okay. I see your point. Okay. 5 You got me a little distracted thinking about 6 New York talc. Let me keep going. 7 A I didn't bring it up, by the way. 8 Q No, no. I did. I can't, I can't 9 help myself. Tom Radcliffe, who I don't know if 10 you know, he would hate me for that. 11 On page 44 and 45 you have 12 discussions about mesotheliomas in young 13 persons. And I can wait till you're there. 14 Just let me know when you're there. 15 A Yes. 16 Q Okay. There have been instances -- 17 well, let me ask it this way: Have you seen the 18 literature -- I think it's primarily out of 19 researchers from UT Austin -- studying 20 mesothelioma in very young children, like under 21 ten years old? 22 A I don't know that I've seen a study. 23 I've -- and I don't know where from. But I've 24 seen case reports of, you know, very young 25 children. But I haven't seen like an	Page 81 1 Q Okay. What evidence, if any, do you 2 have that mesotheliomas were occurring and being 3 diagnosed before the industrial use of asbestos 4 in the 20th century? 5 A Yeah, I don't have evidence of that. 6 But I haven't looked either. 7 Q Okay. There are two articles, one by 8 Dr. Strauchen about Mount Sinai Hospital and one 9 by Dr. Mark about Mass General, where they went 10 back and looked at autopsies before the 11 industrial use of asbestos and found no 12 mesotheliomas. Have you seen those papers? 13 A I have. 14 Q Okay. In the next section -- this is 15 the reason -- what prompted this discussion was 16 your discussion of the 2010/2012 IARC monographs 17 on talc. 18 Do you have an opinion one way or 19 another about whether or not particles where 20 talc is intergrown with anthophyllite -- 21 sometimes these are called transitional; 22 sometimes these are called biopyrbole; 23 sometimes they're called intermediate fibers. A 24 lot of words to describe this, but they're 25 particles that have a mixture of talc plus an

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Page 82 1 amphibole. 2 Do you have an opinion as to whether 3 those can be a cause of mesothelioma? 4 A I haven't seen evidence that they 5 can. I mean, I haven't seen epidemiology on 6 that topic. 7 Q Okay. And when IARC says talc 8 containing asbestiform fibers is a carcinogen, 9 do you have an opinion as to whether or not 10 asbestiform talc fibers are included in that 11 assessment? 12 A So I -- my opinion is that was a 13 clumsy statement. And I don't think that they 14 articulated it clearly enough. So what I've 15 seen is that, you know, in my view, that 16 plaintiff's attorneys like to use that statement 17 to imply that they did say definitively that 18 asbestiform talc is a carcinogen. 19 But, you know, it runs counter to 20 them also having a talc monograph that says that 21 talc's not a carcinogen. So, you know, to me, 22 talc is talc, right, so whether it's platy or 23 whether it's asbestiform. So those are 24 inconsistent with each other. 25 And there's one -- if you go -- I	Page 84 1 A That's correct. 2 Q And again, correct me if I'm wrong, 3 but one of the reasons why talc is a good agent 4 for a pleurodesis procedure is that it's 5 inflammatory; it irritates the pleural space, 6 causing the parietal and visceral pleura to 7 actually adhere so fluid can't build up. Right? 8 A Yeah; it causes acute inflammation. 9 Q And while we do not know the exact 10 mechanistic effects by which asbestos fibers 11 cause tumors, cause genetic damage leading to 12 tumors, one of the hypothesized pathways is due 13 to inflammation; right? 14 A Yeah. But chronic inflammation; 15 right? And so your lead-in to this was what's 16 the effect of talc in pleurodesis, which is 17 acute inflammation, right, a temporary effect 18 that achieves the desired result. And the 19 theory that you're talking about is chronic 20 inflammation. You know, it's ongoing. 21 Q Do you agree that fibrous talc itself 22 can cause pleural plaques? 23 A I don't, I don't believe that. 24 Q Okay. Are you familiar with the 25 disease talcosis?
Page 83 1 don't have the citation in front of me. But if 2 you look to the IARC website, there's a place 3 where you can go and they kind of list out, you 4 know, what some of their findings have been in 5 just summary form. And they talk about -- when 6 they link it to talc and then it says, you know, 7 with asbestiform -- or, I mean -- with 8 asbestiform fibers. And then they say in 9 parentheses: See asbestos. 10 So they link it conceptually to their 11 asbestos monograph. So as best as I can tell, I 12 think you're talking about asbestos, per se, in, 13 in talc. But I agree that their statement's 14 ambiguous and that it's, you know, up for 15 interpretation. 16 Q Okay. And perhaps we'll get some 17 clarity on that, because I think they just 18 met -- the talc group just met, I think two 19 weeks ago. So maybe we'll get an update to that 20 in the next couple months. 21 But let me ask about fibrous talc for 22 a minute, actually, while we're on the subject. 23 You mentioned that, I think in your clinical 24 practice, in your everyday job, you've used talc 25 for pleurodesis procedures; correct?	Page 85 1 A Yes. 2 Q And that is an interstitial scarring 3 of the lung by talc itself; correct? 4 A That's correct. 5 Q It's the -- it occurs in roughly the 6 same areas that someone might get asbestosis 7 from asbestos exposure; correct? 8 A Well, it's the lung and it's the 9 interstitium, which is every part of the lung, 10 per se, but the airways. 11 Q And I really should know this, but 12 are you a B reader, sir? 13 A There's no need to be one, and I'm 14 not one. 15 Q Okay. No judgment. I'm just asking. 16 I know most people aren't, but -- 17 A You can judge. But I'm just saying 18 I'm not and there's no value to it for me in 19 clinical practice. 20 Q I understand. And I am not. 21 But you do look at the imaging; 22 right? You looked at the imaging in this case 23 that was available to you; correct? 24 A Absolutely. 25 Q You're familiar with what asbestosis

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Page 86 1 looks like on imaging versus what talcosis looks 2 like; right? 3 A Yes. 4 Q And they can look pretty similar, 5 can't they? 6 A Sure; the pattern can be the same. 7 Q Okay. All right. Are you familiar 8 with -- in the early 1990s, the FDA, in 9 combination with the National Toxicology 10 Program, had a two-day talc conference. I 11 believe it was 1993 or 1994. One day was about 12 ovarian cancer. One day was basically about 13 other health effects and asbestos. 14 Have you seen that? Have you seen 15 those from those conferences? 16 A I'm going to say maybe. I mean, I've 17 seen a lot of stuff. I'm not sure if I've seen 18 that. 19 Q Okay. Are you aware that as part of 20 that, the NTP did a chronic inhalation animal 21 model and found an increased risk of pulmonary 22 carcinomas? 23 A Well, they found adenomas, I think. 24 And they also found pheochromocytomas, which is 25 not lung cancer. But, you know, I'm familiar	Page 88 1 cannot rule out a contribution to meso from any 2 asbestos exposures he might have had from his 3 work history; correct? 4 A That's correct. 5 Q I know you've done this a bunch. You 6 probably know what I'm going to can ask. But 7 can you go any further than just you can't rule 8 it out and it's possible? 9 A I cannot. 10 Q Okay. And I think you and I have 11 kind of -- correct me if I'm wrong -- you and I 12 have kind of narrowed the scope of what we're 13 really talking about in terms of the work 14 history. We're really -- your primary concern 15 in terms of the work history that you are not 16 ruling out but also not taking any further than 17 that is any occupational exposures he might have 18 had associated with the hotel work, basically in 19 the 1980s; right? 20 A That's correct. And I think there's 21 a couple of years, perhaps in the early 2000s, 22 the other part of that work experience, that 23 could have still contributed. 24 Q Okay. Are you able to tell me with 25 specificity the name brand, manufacturers, or
Page 87 1 with that study and, you know, some of the 2 commentary that's followed that study. 3 Q Okay. All right. I think we're 4 getting towards the end, and I'll wrap up here 5 very quickly. 6 Towards the end you have -- starting 7 on page 62 is, as I understand it, your 8 assessment of Mr. Perry's mesothelioma and the 9 potential causes of it; correct? 10 A That's correct. 11 Q Your conclusions as to Mr. Perry are 12 as follows -- at least in part; I know there are 13 others that I'm not listing here -- first, that 14 there is no objective evidence that Mr. Perry 15 had exposure to asbestos from any of the talc 16 products; right? 17 A That's correct. 18 Q And assuming -- even assuming that 19 Mr. Perry did have some levels of asbestos 20 exposure to some talc products that he used over 21 time, that would not have been enough to 22 increase his risk of mesothelioma, even pleural 23 mesothelioma; correct? 24 A That's correct. 25 Q It's also your opinion that you	Page 89 1 even types of asbestos-containing products that 2 he would have had the potential to be exposed to 3 while at work? 4 A Well, certainly not any name brands. 5 I mean, the potential, I think you mentioned, 6 like, drywall and I think maybe tape and some 7 other things related to some of the other 8 renovations. 9 Q Uh-huh. 10 A And then the potential -- you know, 11 if there is -- whatever's in the library, the 12 potential was all kinds of things; right? It 13 could be -- you know, could be insulation on 14 pipes and so forth. But I don't have any 15 information specifically what those exposures 16 would have been. 17 Q Okay. And the library timeframe is 18 approximately like 2000 and 2001; is that right? 19 A That's right. 20 Q So it's kind of right on the edge of 21 what you told us is the requisite amount of time 22 necessary away from the diagnosis to contribute; 23 right? It's like right on that 20-year edge? 24 ATTORNEY COWAN: Form. 25 THE WITNESS: That's correct.

Page 90 1 BY ATTORNEY IOLA: 2 Q Okay. You're not able to tell me 3 what asbestos fiber types were present at any of 4 the locations where Mr. Perry might have had 5 occupational exposures to asbestos? 6 A Not as a fact, no. 7 Q Okay. And you would agree with me 8 that by the 1980s, the vast majority of products 9 that had traditionally contained asbestos 10 earlier in time had been -- the asbestos had 11 been replaced with another substitute -- for new 12 products; right? 13 A Yeah. With the qualification for new 14 products, that's right. 15 Q So the opportunity for exposure to 16 commercial amphibole asbestos in the 1980s by 17 Mr. Perry is basically limited to products that 18 might be in place from an earlier timeframe, 19 probably 10 or 15 years earlier than he was 20 there; right? 21 A Yeah. So sort of, like, legacy 22 products that might have been on-site. 23 Q Okay. And any amphibole asbestos 24 that Mr. Perry might have been exposed to in the 25 early 2000s suffers from the same problem, which	Page 92 1 written that show a no observed effect, you 2 know, of asbestos and mesothelioma, for example, 3 and lung cancer. 4 Q Okay. And you find both the original 5 NOAEL paper and the updated paper by Pierce and 6 co-authors, you find those papers to be 7 authoritative and reliable? 8 A So I don't use the word 9 "authoritative" because I understand it has a, 10 like a legal connotation. So in my fields, I 11 don't find anything to be authoritative. Even 12 guidelines -- you know, guidelines are 13 guidelines; right? They're hopefully well 14 thought out suggestions. But, you know, other 15 than maybe -- well, "authoritative" I think 16 belongs in the legal world. 17 Q Okay. 18 A But I do find those papers to be 19 credible. I mean they're -- they -- you know, 20 to a fault, they're incredibly wordy in terms of 21 what their methodology was. But I think 22 they've -- you know, they've articulated what 23 they did, I think, and, you know, the reader can 24 follow and see what they did. A reader can, you 25 know, pull the same papers that they've cited
Page 91 1 is it wouldn't be new products going in. It 2 would have been legacy products, and at that 3 point it would have had to have been present for 4 decades; right? 5 A That's correct. 6 Q Do you -- there are certain 7 experts -- and I'm sure you've seen this in 8 Dr. Pierce's reports and Dr. Sahmel's reports 9 and Dr. Nony's reports that they subscribe to 10 what's referred to as the "no observable adverse 11 effects levels" for cumulative exposures to 12 asbestos for each fiber type. You've seen that; 13 right? 14 A I have. 15 Q Do you agree with their 16 assessments that -- well, let me stop there. 17 Do you agree with their assessment 18 that there are no observable adverse effect 19 levels for different asbestos fiber types? 20 A Well, yeah. I mean, I've read the 21 Pierce papers and the more recent Beckett one 22 and I've read, you know, all of the articles 23 that they cite, you know, as part of their 24 analysis. And there clearly are papers that 25 underpin, you know, those papers that they've	Page 93 1 and then can, you know, decide if they agree 2 with their conclusions or not. 3 And they also have, you know, a 4 really extensive, you know, recitation of the 5 strengths and limitations of their findings and, 6 you know, what might be an overestimate, what 7 might be an underestimate. 8 So, yeah, I think that they've done a 9 very thorough and credible job of articulating 10 what they've done. 11 Q Okay. Any exposures that Mr. Perry 12 might have had in his lifetime -- and we can 13 treat them cumulatively -- the cumulative effect 14 of any exposures that Mr. Perry would have had 15 in his lifetime to chrysotile asbestos did not 16 increase his risk of mesothelioma or contribute 17 to his risk of mesothelioma; correct? 18 A So I think -- you know, I know that 19 there's people that talk that way. I don't 20 think cumulative exposure causes anything; 21 right? I think cumulative exposure is an 22 estimate of what somebody's dose may have been 23 to something. But it's not the fact, you know, 24 of what caused somebody's disease. 25 But I think what -- if I can sort of

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Page 94 1 maybe reframe it, you know, I don't see evidence 2 that there was a dose of chrysotile asbestos 3 that contributed to his risk of developing 4 mesothelioma, you know, based on the materials 5 in the case. 6 Q Okay. Do you agree that a reasonable 7 layman explanation of what cancer is, is a 8 loss -- it's uncontrolled cell growth, a loss of 9 orderly cell division? 10 A Yeah, I think that's part of it. And 11 it's a helpful way to describe. 12 Q And for mesothelioma, you have to 13 have multiple genetic errors before you get 14 tumor formation. Is not like you can just get 15 one. You have to have three, four, five -- I 16 know people may disagree about the specific 17 number. 18 A Yeah, I don't know -- I mean, we're 19 talking about driver mutations. And I don't 20 know if it's known for sure what the number is, 21 you know, but likely more than one. 22 Q Okay. Is it possible for someone to 23 have exposure to asbestos and a germline 24 mutation that's an independent cause of 25 mesothelioma where the asbestos contributes to	Page 96 1 those two expert reports. 2 Q Okay. I ask this next question with 3 the caveat that obviously you cannot predict 4 what myself or another plaintiff lawyer might 5 ask you at trial or even necessarily what a 6 defense lawyer might ask you at trial. 7 But setting that aside for a second, 8 have you attempted to put all of the opinions 9 and the bases of your opinions that you intend 10 to testify at trial into these two reports, 11 along with all the -- you know, the cited 12 materials incorporated therein? 13 A Yeah. I have -- I'd say the main or 14 overarching primary, you know, opinions I've 15 tried to articulate and tried to provide 16 sufficient information to support those. 17 ATTORNEY IOLA: Okay. Doctor, those 18 are all the questions I have. Thank you 19 for your time this morning. 20 THE WITNESS: Of course. Thank you. 21 ATTORNEY IOLA: Chris? Anybody else? 22 ATTORNEY COWAN: We'll be reserving 23 for trial. Thank you. 24 BY ATTORNEY RAINSFORD: 25 Q Doctor, I do have a quick couple of
Page 95 1 one genetic error, the germline mutation 2 contributes to another, and they work 3 cooperatively to cause the tumor ultimately? 4 A So that's not what the word 5 "cooperatively" means. I mean, I think -- you 6 know, you can have a germline mutation that -- 7 because of what you're born with genetically, 8 and you can induce one, you know, from a 9 sufficient asbestos exposure. 10 If "cooperative" means that there's 11 an interaction or some kind of synergy, I'm not 12 sure that that's true. But up until that point, 13 I agree that each of those, you know, each of 14 those could contribute a driver mutation. 15 Q Okay. Okay. Let's see. I'm just 16 looking briefly at your July 2nd, 2024 report, 17 Doctor. As I understand it, this report was to 18 summarize additional materials that had been 19 provided to you after issuance of your first 20 report. Is that accurate? 21 A That's exactly right. 22 Q Okay. And what I saw is it was 23 primarily a couple of additional expert reports; 24 is that accurate? 25 A I think it was only -- yeah, only	Page 97 1 questions. It's just kind of a housekeeping 2 matter, if you've got a moment. 3 My name is Todd Rainsford. I 4 represent PTI Royston in this case. And there's 5 some apparent confusion in your reports and your 6 testimony earlier today regarding PTI Royston 7 versus PTI Union as a blender of Ammens and Gold 8 Bond products. 9 I'll represent to you that 10 PTI Royston never blended Ammens and Gold Bond 11 products but PTI Union did. With that in mind, 12 could you have been confusing PTI Royston and 13 PTI Union in your initial June 27th report and 14 in your testimony this morning? 15 A Oh, sure. Yeah. I mean, I'm not a, 16 I'm not a scholar of, you know, different 17 corporate entities and their names and so forth. 18 So, yeah, I definitely could have used the 19 wrong, the wrong version of PTI in my report and 20 in my testimony. 21 Q Okay. So with that in mind, would it 22 be accurate, then, to say that any references 23 made to PTI Royston, either in your June report 24 or in your testimony today, should have been to 25 PTI Union instead?

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1A Yeah. I mean, assuming that what 2you're telling me is right, you know, that -- 3ATTORNEY RAINSFORD: Okay. Thanks. 4That's all I've got. 5ATTORNEY IOLA: Anybody else? 6DEFENSE COUNSEL: No questions. 7ATTORNEY IOLA: All right. Hearing 8none, I think we can go off the record, 9Adam. 10Doctor, thank you for your time this 11morning. 12ATTORNEY PECK: Sam, this is Tim 13Peck. Sorry; I couldn't get to my button 14quick enough. I just have that brief 15statement to put on the record as well, if 16all the questions are finished. 17ATTORNEY IOLA: Fire away, Tim. 18ATTORNEY PECK: And this is really 19just for the record, for Adam. 20I represent the defendant American 21International Industries, and it's 22frequently referred to as AII. AII would 23have had questions for Dr. Diette today 24but for the Court's May 29th, 2024 order 25that placed limitations upon AII's	ERRATA <table><tr><th>PAGE</th><th>LINE</th><th>NOTATION</th></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- _____</td><td>- _____</td></tr><tr><td>_____</td><td>- 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I, ADAM D. MILLER, Registered
Professional Reporter, certify that the
foregoing is a true and accurate transcript
of the foregoing deposition, that the
witness was first sworn by me at the time,
place and on the date herein before set
forth.

I further certify that I am neither
attorney nor counsel for, not related to nor
employed by any of the parties to the action
in which this deposition was taken; further,
that I am not a relative or employee of any
attorney or counsel employed in this case,
nor am I financially interested in this
action.



/s/ Adam D. Miller
Registered Professional Reporter
and Notary Public

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