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**Oct 06 2026**

S.C. SUPREME COURT

**Attachment 3**

**09/29/2026 Plaintiffs' Response to J&J /Kenvue Motion to  
Quash and for Protective Order with exhibits**

|                                            |   |                                     |
|--------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                    | ) | IN THE COURT OF COMMON PLEAS        |
|                                            | ) |                                     |
| COUNTY OF RICHLAND                         | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
|                                            | ) |                                     |
| ANDREW T. GERKEN, as Personal              | ) | C/A NO. 2023-CP-40-06111            |
| Representative of the Estate of ANNA MARIE | ) |                                     |
| L. GERKEN, deceased,                       | ) | <i>In Re:</i>                       |
|                                            | ) | Asbestos Personal Injury Litigation |
| Plaintiff,                                 | ) | Coordinated Docket                  |
| v.                                         | ) |                                     |
|                                            | ) |                                     |
| AVON PRODUCTS, INC., et al.                | ) |                                     |
|                                            | ) |                                     |
| Defendants.                                | ) |                                     |

|                           |   |                                     |
|---------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS        |
|                           | ) |                                     |
| COUNTY OF RICHLAND        | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
|                           | ) |                                     |
| DEBRA McANDREW BARNETT    | ) |                                     |
|                           | ) |                                     |
| Plaintiff,                | ) | C/A NO. 2026-CP-40-01257            |
| v.                        | ) |                                     |
|                           | ) | <i>In Re:</i>                       |
| JOHNSON & JOHNSON, et al. | ) | Asbestos Personal Injury Litigation |
|                           | ) | Coordinated Docket                  |
| Defendants.               | ) |                                     |
|                           | ) |                                     |

**PLAINTIFFS' RESPONSE TO DEFENDANTS JOHNSON & JOHNSON AND KENVUE, INC.'S MOTION TO QUASH PLAINTIFFS' NOTICES OF DEPOSITION AND FOR PROTECTIVE ORDER AND PLAINTIFFS' MOTION TO COMPEL**

Plaintiffs Andrew T. Gerken, as Personal Representative of the Estate of Anna Marie L. Gerken, and Debra McAndrew Barnett, file this response in opposition to Defendants Johnson & Johnson and Kenvue, Inc.'s (hereinafter "J&J Defendants") Motion to Quash Plaintiffs' Notices of Deposition and for a Protective Order. As their objections are meritless, Plaintiffs file a cross-motion requesting this Court to compel the J&J Defendants to produce Johnson & Johnson ("J&J") and Kenvue, Inc. for their depositions and to tender all responsive documents to Plaintiffs.

## I. INTRODUCTION

On August 17, 2026, Plaintiffs served 30(b)(6) deposition notices on the J&J Defendants, which included a list of narrowly tailored topics for discussion and a request for documents.<sup>1</sup> That same day, Plaintiffs attempted to engage with the J&J Defendants regarding the notices to ensure the prompt resolution of any disagreements.<sup>2</sup>

On September 2, 2026, having heard no substantive response from the J&J Defendants, Plaintiffs served amended deposition notices.<sup>3</sup> After more than two weeks, the J&J Defendants responded they intended to move for protection.<sup>4</sup> The J&J Defendants made no attempt to meet and confer, provided no substantive explanation as to their objections, and made no effort to resolve the unidentified issues absent Court intervention.<sup>5</sup> Contrary to the J&J Defendants' Rule 11 certification in their Motion that they "communicated in good faith" with Plaintiffs, J&J Defendants never engaged in discussions with Plaintiffs. Instead, the J&J Defendants filed this Motion, which is now pending before the Court.

The Motion is nothing more than a meritless attempt by the J&J Defendants to delay testimony and to avoid answering questions regarding topics that they do not want to discuss. The J&J Defendants have not met their burden, and the Motion should be denied. This Court should order the J&J Defendant to respond to the September 2, 2026, notices and subpoenas as follows: (1) within 5 days of the order, provide the previously identified list of J&J's approximately 100 retained experts; (2) by October 14, provide all other responsive documents; and (3) produce a witness fully prepared to discuss all noticed topics for deposition on October 23 or 29.

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<sup>1</sup> See **Ex. A**, 30(b)(6) Notice and Subpoena Duces Tecum for Johnson & Johnson; *see also* **Ex. B**, 30(b)(6) Notice and Subpoena Duces Tecum for Kenvue, Inc.

<sup>2</sup> See **Ex. C**, Email Exchange.

<sup>3</sup> See **Ex. D**, First Amended 30(b)(6) Notice and Subpoena Duces Tecum for Johnson & Johnson; *See* **Ex. E**, First Amended 30(b)(6) Notice and Subpoena Duces Tecum for Kenvue, Inc.

<sup>4</sup> See **Ex. C**.

<sup>5</sup> See *id.*

## II. STANDARD OF REVIEW

“The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party.” *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 652, 579 S.E.2d 151, 158 (Ct. App. 2003). “Essentially, the rights of discovery articulated by the rules give the attorney the means to prepare for trial.” *Id.* “Discovery is the quintessence of preparation for trial.” *Id.* “The scope of discovery in South Carolina is generally broad.” *In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 166, 829 S.E.2d 707, 712 (2019). “As a result, parties may obtain discovery regarding any matter that is not privileged so long as it is relevant to the subject matter involved in the pending claim.” *Id.*

“Rule 30(b)(6) depositions are often vital to any litigation involving companies, the government, or other organizations.” *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 650–51, 916 S.E.2d 320, 326 (2025). South Carolina’s rule “tracks the federal rule, which was adopted in 1970 to stop the childish game-playing that often plagued parties seeking to find facts from corporations.” *Id.* at 651, 326. The Rules delineated in 30(b)(6) aim to streamline the process by requiring the party seeking discovery to describe the matters at issue, and the organization responding to designate someone prepared to testify on the issues. *Id.* at 650-51, 326.

In limited instances, a court may issue a protective order where it is required by “justice” in order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense.” SCRCP 26. Limiting or quashing discovery, especially 30(b)(6) notices, is only appropriate where the moving party has met its burden. The party opposing discovery must show “a particularized harm which will be caused by allowing the discovery.” *Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009). Only when that burden is met is the proponent required to show that the information is relevant and necessary (rather than admissible) to the case.



*Id.* The Court is then charged with balancing the interests of the parties and determining whether to limit or deny the pending requests. SCRCP 26.

### **III. ARGUMENTS & AUTHORITIES**

The J&J Defendants argue Plaintiffs should not be allowed to ask questions regarding their legislative agenda, the compensation paid to their experts, the opinions held by their experts, and questions generally asked in prior depositions. The discovery sought, however, is allowed by South Carolina law, relevant, not unduly burdensome, and necessary to develop Plaintiffs' cases. Plaintiffs' deposition topics target specific, discrete areas of discussion that go directly to the J&J Defendants' knowledge regarding the hazards of talcum powder products, their efforts to influence or control scientific literature, their post-market conduct, and their failure to provide warnings.<sup>6</sup>

#### **I. Timeliness of Deposition Notices**

The J&J Defendants argue the 30(b)(6) deadline in the *Gerken* case was August 8, 2025, discovery is closed, and Plaintiffs' notice was untimely. As this Court may recall it set the *Gerken* case for trial in 2025, but the *Johnson* case was tried instead—setting *Gerken* for trial on November 9, 2026. Pursuant to the Amended Exhibit 6 to the October 13, 2010 Asbestos Master Discovery/Scheduling Order, 30(b)(6) depositions are to be completed 45 days before trial. When the Court reset the *Gerken* case for trial, it similarly reset the deadlines associated with the case. Under the scheduling order, the new deadline to complete 30(b)(6) depositions is September 25, 2026 (45 days before November 9, 2026). J&J Defendants have not provided any argument or authority to support their position that case deadlines are not re-set when a trial date is moved.

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<sup>6</sup> See Exs. A, B, D and E.

## II. Definitions

The J&J Defendants argue Plaintiffs' definition of "You" and "Your" in the deposition notices includes hundreds of subsidiaries. Plaintiffs, however, solely seek testimony from J&J and Kenvue, Inc., and those that were involved with the sale or manufacturing of Johnson's Baby Powder.<sup>7</sup>

## III. Lobbying

### A. Factual background.

Plaintiffs allege J&J engaged in a decades-long pattern of deception aimed to hide the true dangers of Johnson's Baby Powder—J&J's "flagship product."<sup>8</sup> Not only did J&J not issue warnings, but it ensured regulators did the same. J&J routinely uses regulators' inaction to argue to juries cosmetic talc is safe. The following are J&J's opening slides exchanged in another trial:



What J&J ignores, is the fact that it hid the hazards of talc from those agencies and that it worked behind the scenes to ensure the scientific literature they were reviewing espoused their views regarding its safety. This conduct was not isolated, and it was well-underway by the time Plaintiffs started using JBP.

<sup>7</sup> See Exs. A, B, D, E.

<sup>8</sup> Ex. F, Hopkins Trial Testimony, *Barden v. Brenntag North America, et al.*, 7/22/2019, at 103:23-25.

This pattern of deception started by the 1970s. At that time, the FDA informed J&J it intended to start regulating talc.<sup>9</sup> J&J falsely represented to the FDA that its talc was clean. J&J received many results showing chrysotile in JBP,<sup>10</sup> but it told the FDA none was ever found.<sup>11</sup> J&J knew of hundreds of findings of tremolite in the talc used to manufacture JBP,<sup>12</sup> but it told the FDA “No amphiboles or serpentine minerals were detected in any sample.”<sup>13</sup> In 1977, a J&J consultant wrote (without disclosing his affiliation with J&J) an editorial in *The Lancet* claiming “there is no reason to believe that normal consumer exposure to cosmetic talc has in the past led either to cancer at any site or to measurable loss of lung function. It seems unlikely that future exposure to cosmetic talc of the specifications now agreed to by major manufacturers will present a health hazard.”<sup>14</sup> *The Lancet* editorial claimed cosmetic talc industry testing virtually ensured the lack of asbestos in talc—a fact which J&J knew to be untrue. *The Lancet* ultimately retracted the editorial in 2026, because the consultant failed to disclose his affiliation with J&J while at the same time allowing J&J to directly edit the editorial’s content.<sup>15</sup>

This pattern of deception continued into the 2000s when J&J found out the NTP (a division of the Department of Health and Human Services) wanted to propose listing talc as a carcinogen. J&J again paid a consultant to write favorable papers about talc.<sup>16</sup> The resulting article (a “Review of the Safety Issues”) represented cosmetic talc as safe and free from fibers (*i.e.* asbestos).<sup>17</sup> The consultant identified himself as an “independent” researcher, while simultaneously accepting

<sup>9</sup> **Ex. G**, Hopkins Dep. (4/11/18) at 131:5-8.

<sup>10</sup> *E.g.*, **Ex. H**, Dr. Langer to J&J (11/10/71); **Ex. I**, Dr. Hutchinson report to McCrone/J&J.

<sup>11</sup> *See* **Ex. J**, CTFA meeting minutes (2/4/75).

<sup>12</sup> **Ex. F**, Hopkins Trial Transcript (7/22/19) at 137:6-11; **Ex. G**, Hopkins Dep. (4/11/18) at 78:1-14, 172-173.

<sup>13</sup> **Ex. K**, J&J letter to the CTFA (to be forwarded to the FDA) (3/15/76).

<sup>14</sup> **Ex. Z**, *The Lancet* (6/25/77).

<sup>15</sup> **Ex. AA**, *The Lancet* retraction.

<sup>16</sup> **Ex. L**, Mann Dep. (2/15/21) at 79:17-24, 80:19-81:16.

<sup>17</sup> **Ex. L**, at 80:2-81:16; 93:6-24; 94:16-18; 174:2-6, 181:2-7.; *see also* **Ex. M**, Exh. 7, Exh. 28 to Mann Dep.

payment from J&J.<sup>18</sup> Third parties have found J&J hid such relationships with “independent” researchers and “independent” studies by funneling payment through law firms “so as to preserve the benefit of the attorney work product privilege, which is helpful in protecting confidentiality.”<sup>19</sup> J&J chose to pay third-party experts through its law firms “[t]o maximize the effectiveness of [their] use of the attorney work product privilege for their work.”<sup>20</sup> In other words, J&J paid the experts through their attorneys to obfuscate the source of payments for “scientific” work and not as part of an overall strategy seeking legal advice. Ultimately, the NTP withdrew talc as a potential carcinogen. The NTP had proposed listing over 20 materials as carcinogens; the NTP only withdrew talc.<sup>21</sup> J&J called this “[g]reat news” and stated, “This is a direct result of our efforts in coordination with Luzenac and CTFA. We did it!”<sup>22</sup>

Plaintiffs believe this pattern of deception continued into the 2020s, and it continues today. The most recent example, which is still being parsed out, involves the Modernization of Cosmetics Regulation Act of 2022 (“MoCRA”).<sup>23</sup> MoCRA is “the most significant expansion of FDA’s authority to regulate cosmetics since the Federal Food, Drug, and Cosmetic (FD&C) Act was passed in 1938.”<sup>24</sup> The law requires the FDA to establish regulations for “[s]tandardized testing methods for detecting and identifying asbestos in talc-containing cosmetic products.”<sup>25</sup> To comply

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<sup>18</sup> **Ex. N**, *Doomey* Transcript Day 11 at 3165:11-3166:13, 3030:20-3032:20.

<sup>19</sup> **Ex. O**, Tess Bird, et al, *A Review of the Talc Industry’s Influence on Federal Regulation and Scientific Standards for Asbestos in Talc* (2021).

<sup>20</sup> **Ex. AB**, Ridgway Letter (2/28/05).

<sup>21</sup> **Ex. L**, at 215:3-24; **Ex. M**, Exh. 9, Exh. 35 to Mann Dep.

<sup>22</sup> **Ex. L**, at 215:3-24; **Ex. M**, Exh. 9, Exh. 35 to Mann Dep.

<sup>23</sup> <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf> (starting at Section 3501).

<sup>24</sup> See “Modernization of Cosmetics Regulation Act of 2022 (MoCRA)” available at: <https://www.fda.gov/cosmetics/cosmetics-laws-regulations/modernization-cosmetics-regulation-act-2022-mocra> (last accessed Sept. 25, 2026).

<sup>25</sup> See “Modernization of Cosmetics Regulation Act of 2022 (MoCRA)” available at: <https://www.fda.gov/cosmetics/cosmetics-laws-regulations/modernization-cosmetics-regulation-act-2022-mocra> (last accessed Sept. 25, 2026).

with MoCRA, the FDA submitted a proposed rule in December 2024.<sup>26</sup> The FDA withdrew the proposed rule in November 2025 with little explanation.<sup>27</sup>

This withdrawal is inconsistent with the findings of a panel of experts convened by the FDA in May 2025 to review the data related to talc exposure “and evaluate it’s [sic] continued use within the context of public health need and alternatives that are available.”<sup>28</sup> The various experts talked about the presence of asbestos in talc, with some relevant scientific findings as follows:

- Mr. Godleski, a board-certified pathologist, discussed that “[i]t’s well known that talc is contaminated with tremolite and chrysotile asbestos.”<sup>29</sup> He discussed studies starting in 2017 that have shown that talc exposure can cause ovarian cancer—with 10% of the cases testing positive for asbestos fibers.<sup>30</sup>
- Dr. Wentzensen, a cancer epidemiologist, discussed the fact that talc and asbestos can co-exist in “mines where it’s well-documented that they are present at the same time and they are certainly in any product that would be coming from these mines.”<sup>31</sup>
- Dr. Schildkraut, an epidemiology professor, along with other experts, during that panel expressed concern “about contamination with asbestos in talc.”<sup>32</sup>

The withdrawal appears to be, at least in part, influenced by a letter written by a supposed “independent” third party (Dr. Korchevskiy) to the FDA with a number of co-signatories. The letter contradicts the panel’s findings and urges the safety of talc (the “Korchevskiy Letter”).<sup>33</sup> J&J has provided inconsistent statements and been less than forthcoming regarding its involvement with the

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<sup>26</sup> See “Testing Methods for Detecting and Identifying Asbestos Containing Cosmetic Products” available at: <https://www.federalregister.gov/documents/2025/11/28/2025-21407/testing-methods-for-detecting-and-identifying-asbestos-in-talc-containing-cosmetic-products> (last accessed Sept. 25, 2026).

<sup>27</sup> See “Testing Methods for Detecting and Identifying Asbestos Containing Cosmetic Products; Withdrawal” available at: <https://www.federalregister.gov/documents/2025/11/28/2025-21407/testing-methods-for-detecting-and-identifying-asbestos-in-talc-containing-cosmetic-products> (last accessed Sept. 25, 2026).

<sup>28</sup> **Ex. Q**, FDA Panel Transcript 7:22-25.

<sup>29</sup> *Id.* at 13:21-14:3.

<sup>30</sup> *Id.* at 14:20-15:7.

<sup>31</sup> *Id.* at 38:19-24.

<sup>32</sup> *Id.* at 83:11-13.

<sup>33</sup> **Ex. R**, June 9, 2025 letter to FDA Commissioner Dr. Martin Makary.

Korchevskiy Letter, including the involvement of its attorneys and its hired consultants. One such example is as follows:

| <i>Gerken Deposition</i>                                                                                                                                                                                | <i>Gautier Deposition</i>                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “And then I wanted to know were—wasthere any—did Kevin Hynes have any involvement in the letter. And he said no..” <sup>34</sup>                                                                        | Q: Your notes state: . . . “At that second meeting, Dr. Korchevskiy told me that Kevin wrote his thoughts down. Mr. Hyes said that during that second meeting he shared his computer screen and told me that he acted as a scribe for Dr. Korchevskiy.” . . .                                                                                                              |
| “He said that Dr. Korchevskiy had reached out to him to get some contact information from a number of different people and that he provided that contact information to Dr. Korchevskiy.” <sup>36</sup> | A: That’s correct. <sup>35</sup><br>Q: But did Dr. Korchevskiy say to Mr. Hynes “I need the contact information for Dr. Finan and Dr. Permuth?” Or did Dr. Korchevskiy ask Kevin Hynes for the contact information of other experts who may be willing to cosign the letter?<br>A: I don’t recall asking the specific question in the way that you just did. <sup>37</sup> |

The Korchevskiy Letter does not identify J&J’s involvement, Dr. Kuffner at trial claimed no involvement in this letter by J&J, and in discovery Dr. Kuffner represented on behalf of the company that it was not involved. Yet, now, J&J has acknowledged it participated in the drafting of the letter through its attorney Kevin Hynes who was paid to be a “scribe.”

Plaintiffs believe J&J has continued to follow the same pattern it started in the 1970s with the FDA and continued into the 2000s with the NTP. It appears J&J is influencing regulatory bodies through “independent” scientists, arguing that talc is safe, and hiding behind its attorneys. What Plaintiffs do not know is the true pervasiveness of J&J’s conduct after the 2000s. Plaintiffs merely seek an understanding of the extent of J&J’s influence over supposedly “independent” information sent to regulators, experts, and scientific bodies regarding talc. With 50 years of smoke

<sup>34</sup> Ex. S, Kuffner Dep. (9/10/25) at 250:19-252:8.

<sup>35</sup> Ex. T, Kuffner Dep. (5/6/26) at 81:25-82:12.

<sup>36</sup> Ex. S, Kuffner Dep. (9/10/25) at 250:19-252:8.

<sup>37</sup> Ex. T., Kuffner Dep. (5/6/26) at 97:12-19.

screens and half-truths, Plaintiffs cannot just take J&J's word that Plaintiffs have all the non-privileged documents related to these topics.

**B. The requested information is relevant.**

Plaintiffs seek discovery regarding the J&J Defendant's involvement with the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328); the Modernization of Cosmetics Regulation of 2022 (MoCRA); FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490); and the May 20, 2025, Expert Panel with the FDA. The J&J Defendants argue such information is not discoverable, as any activity they label as "lobbying" is protected.

As an initial matter, the J&J Defendants primarily center their argument around their belief that Plaintiffs' topics of discussion violate the federal *Noerr-Pennington* doctrine and, thereby, their First Amendment rights. The *Noerr-Pennington* doctrine is an amalgamation of two federal anti-trust cases from the 1960s, which "held that activities designed to influence legislation, including publicity campaigns, are protected by the first amendment right to petition." *N. Carolina Elec. Membership Corp. v. Carolina Power & Light Co.*, 666 F.2d 50, 52 (4th Cir. 1981). As it has evolved, defendants have cited the doctrine as "an affirmative defense which exempts from anti-trust liability any petitioning activity designed to influence legislative bodies or governmental agencies." *Id.* While many states have adopted the *Noerr-Pennington* doctrine as a defense, South Carolina has not. Defendants cite to no case (and Plaintiffs have found no case) confirming that South Carolina has adopted the doctrine.

Even if the doctrine does apply to South Carolina courts, "*Noerr-Pennington* is by definition an exemption from anti-trust liability, and not a bar to discovery of evidence." *Id.* at

53.<sup>38</sup> The *Pennington* decision itself “held that evidence of legislative activity, if relevant, must be accompanied by an instruction which limits the jury's consideration to non-legislative activities.” *Id.* In other words, “[t]hat holding presumes the admissibility of relevant evidence. If the evidence is arguably admissible, certainly it should be discoverable.” *Id.* The *Noerr Pennington* doctrine is an affirmative defense as to liability, not a discovery shield as to all activity that could be characterized as lobbying.

This distinction between the discovery of relevant evidence and the imposition of liability for lobbying, as detailed in *North Carolina Electric Membership Corporation*, is not inconsistent with the cases cited by the J&J Defendants that supposedly bar discovery related to lobbying. For example, *Alliance of Automobile Manufacturers, Inc.* was not a product liability case, but instead a lawsuit involving the constitutionality of a state law. *All. of Auto. Mfrs., Inc. v. Jones*, No. 4:08CV555-MCR/CAS, 2013 WL 4838764, at \*4 (N.D. Fla. Sept. 11, 2013). In that case, the court did not allow evidence regarding lobbying as “[q]uestions concerning the constitutionality of state law are not decided upon review of campaign contributions, candidate support, a citizen's view of the law, or the like.” *Id.* *Alliance of Automobile Manufacturers, Inc.* only bared discovery in that case based upon the specific facts at issue. As another example, *In re Uber Rideshare Cases* is a negligence case (with dismissed fraud and misrepresentation counts) centered around allegations that Uber allowed its passengers to be harmed during transport. See J&J’s Motion to Quash, Ex. 15 at 1-2. Plaintiffs wished to obtain information regarding lobbying activities to allow them to attack any defense presented by Uber regarding its compliance with rules and regulations. *Id.* at

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<sup>38</sup> This ruling that *Noerr-Pennington* is not a bar to discovery or the admission of relevant evidence, is not exclusive to the Fourth Circuit Court of Appeals. It has been widely accepted by other courts. See *Major League Baseball v. Crist*, 331 F.3d 1177, 1186 (11th Cir. 2003); *Stallings v. Union Pac. R. Co.*, No. 01 C 1056, 2003 WL 21317297, at \*7 (N.D. Ill. June 6, 2003); and *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prods. Liab. Litig.*, 295 F. Supp. 3d 927, 973 n. 7 (N.D. Cal. 2018).



10. In the context of that case, the court determined that the “the theories go nowhere, and no legitimate purpose would be served by allowing discovery on this topic.” *Id.* What *Alliance of Automobile Manufacturers, Inc.* and *Uber* confirm is that there is no blanket prohibition, but rather discoverability centers around the facts of the case at hand and the relevance demonstrated by the party seeking discovery. The additional cases cited by the J&J Defendants confirm the same, and there is no “longstanding approach” to bar the discovery of or the admission of evidence related to lobbying activities in all cases. J&J’s Motion to Quash at 18-19.

In fact, the J&J Defendants ignore a decision directly on point that confirms such evidence is both discoverable and admissible in the right case. In the *Uber* opinion, attached as an exhibit to Defendants’ motion, the court distinguishes *Uber* from *Hernandez v. Amcord, Inc.* (2013), 215 Cal.App.4th 659. *Id.* at 9 fn.4. The court notes the California Court of Appeals ruled in *Hernandez* that the trial court acted in error in excluding evidence of lobbying activities in an asbestos exposure case. *Id.* The court held the *Noerr-Pennington* doctrine (and thereby the First Amendment) “does not provide a basis for exclusion of *evidence* of lobbying activities that might be relevant to show a defendant’s knowledge of the dangerous nature of its product or a failure to exercise ordinary care.” *Hernandez*, 215 Cal. App. 4th at 680. Similarly, in *Wolfe v. McNeil-PPC, Inc.*, the court allowed plaintiffs to admit evidence of petitions made to the FDA because they confirmed the defendant’s knowledge regarding the dangerous nature of a product. *Wolfe v. McNeil-PPC, Inc.*, No. CIV.A. 07-348, 2012 WL 38694, at \*6 (E.D. Pa. Jan. 9, 2012). Additionally, in *Wardell v. Zimmer, Inc.*, a case cited in the J&J Defendants’ brief, the court ordered compliance with a discovery request for “[a]ll communications between you and the FDA relating to metal implants or the regulatory approval of medical devices.” No. 3:16-CV-00187-SLG, 2019 WL 13135858, at \*2 (D. Alaska Feb. 7, 2019).

Just like in *Hernandez* and *Wolfe*, the evidence requested by Plaintiffs is relevant to show the J&J Defendants knew of the dangerous nature of their products and chose not to warn consumers. The information sought is relevant to the J&J Defendants' state of knowledge regarding the hazards of talc during the relevant periods, including the extent to which the J&J Defendants understood and tried to suppress or delay regulatory findings that were consistent with what the science showed (*i.e.* that talc had asbestos). Plaintiffs' evidence shows the J&J Defendants engaged in a pattern of deceptions, where they deceived regulators for decades. This is part of Plaintiffs' theory in support of the fraud count and punitive damages. The fact that the J&J Defendants continued into the 2020s to deceive regulators shows intent, the absence of a mistake or accident, and a common scheme or plan. *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). It also directly contradicts the argument J&J made recently in the *Craft* case in Maryland, which is that punitive damages are unnecessary because J&J "no longer sell[s] talc-based baby powder, diminishing the deterrence value of a punitive damages award."<sup>39</sup> This idea that J&J divorced itself from talc when it stopped selling a talc-based product, is directly contradicted by the fact that it continues to work to stop regulators from warning people of its dangers. The J&J Defendants had continued awareness of talc being contaminated with asbestos and attempted to delay or prevent confirmation of those risks—through lying and submitting manipulated evidence to regulators. Their actions were purposeful, calculated, and lasted for decades.

To the extent those interactions occurred after Plaintiffs exposure, that does not somehow negate the relevance of such evidence. While evidence of a defect post-dating the injury may not be proper to prove the product was defective when used by Plaintiffs, that does not mean its use is

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<sup>39</sup> Ex. U, J&J Motion for New Trial.

improper for all purposes. *See Branham v. Ford Motor Co.*, 390 S.C. 203, 227, 701 S.E.2d 5, 18 (2010). Similarly, even if the Court rules the FDA’s non-final rule is inadmissible, that does not limit Plaintiffs’ ability to present evidence regarding the J&J Defendants’ conduct surrounding the proposed rule. Whether any of the evidence gathered will be admitted at trial, is not the question to be answered today. What Plaintiffs have shown is that such evidence is relevant and necessary to develop Plaintiffs’ case. Plaintiffs do not seek to impose liability on the J&J Defendants for lobbying a federal agency. Rather, evidence regarding J&J’s interactions with the federal branch is relevant and likely to lead to the discovery of admissible evidence. Specifically, it may lead to additional discoverable information regarding scientific studies and scientists that J&J influenced, the J&J Defendant’s pattern of influence over regulatory bodies, and the exact role of the J&J Defendants’ attorneys in the process.

**C. The J&J Defendants cannot hide behind a blanket attorney-client objection.**

The J&J Defendants also argue their lobbying efforts were part of their legal strategy in ongoing and anticipated litigation and, as such, numerous documents related to the topics in Plaintiffs’ deposition notices are protected by the attorney-client privilege. This blanket assertion by the J&J Defendants, however, is overbroad and premature.

“[W]hile South Carolina bestows significant weight to the attorney-client privilege, the privilege is not absolute.” *In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 167–68, 829 S.E.2d 707, 712 (2019). “[T]he party claiming the privilege has the burden of establishing the confidential nature of the communication, including the absence of waiver.” *Id.* at 168-69, 712-13; *see also Crawford v. Henderson*, 356 S.C. 389, 395, 589 S.E.2d 204, 207 (Ct. App. 2003). “[I]nformation—in and of itself—does not become privileged merely because it was communicated to an attorney.” *Id.* The J&J Defendants bear the burden on demonstrating the documents they seek to protect were made

in confidence for the purpose of obtaining legal advice, and not in furtherance of their decision to impact legislative affairs. They have not met that burden. As requested by Plaintiffs, the J&J Defendants should be required to produce a privilege log identifying each such document, its author, recipients, date of preparation, and the specific privilege or work product protection claimed.

Only once the J&J Defendants have made the required showing, does the burden shift to Plaintiffs to establish “the communications are otherwise discoverable under an exception or waiver.” *In re Mt. Hawley Ins. Co.*, 427 S.C. at 169, 829 S.E.2d at 713. Lobbying activities are, by their nature, public-facing and non-confidential. This idea has been echoed in case law, where courts have held that information prepared for the purpose of presenting it to others is not confidential as it “was not intended to be kept in confidence.” *In re Grand Jury Subpoena*, 204 F.3d 516, 521 (4th Cir. 2000) (internal citations and cases omitted). Where an attorney’s work involves “conveying information to third parties rather than to provide legal advice for the clients’ own guidance,” such work is not protected just because it is done by an attorney. *Id.* For example, when J&J paid its lawyer (Kevin Hynes) to act as a typist for experts his work was neither confidential nor undertaken in furtherance of legal advice. As J&J answered questions regarding Mr. Hynes’ involvement with the Korchevskiy Letter in *Gerken*, J&J appears to acknowledge that a lawyer’s involvement in a matter is not all that is needed to implicate privilege.

Here, Plaintiffs seek information that was relayed to a third party and/or that was discussed internally for the purpose of disclosure to a third party. The evidence requested by Plaintiffs is not confidential and is relevant and necessary to develop Plaintiffs’ case, as explained *supra*. To the extent any disagreements regarding documents remain once the J&J Defendants have submitted a privilege log, this Court can review such documents *in camera* to determine the legitimacy of an

attorney-client privilege designation. See *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 578, 582 S.E.2d 405, 407 (2003).

**D. The request is not overbroad or unduly burdensome.**

The J&J Defendants state in a conclusory fashion that “[g]iven the privileged status of these materials, the J&J Defendants would thus be forced to devote significant resources to searching, culling through, and ultimately creating an enormously long privilege log just to protect this non-discoverable information.” J&J’s Motion to Quash at 22. It is not enough for counsel to argue that there is an undue burden, where there is “no evidence showing the cost of complying with the subpoenas, that the subpoenas imposed an undue burden, or that compliance caused them to incur undue expenses.” *Taylor v. Taylor*, 434 S.C. 307, 326, 863 S.E.2d 335, 345 (Ct. App. 2021). The J&J Defendants have provided no information regarding “the time required to conduct the search, the cost, and the number of files that would have to be searched.” *Glassmeyer v. S.C. Lottery Comm’n*, No. 2024-001296, 2026 WL 2177330, at \*7 (S.C. Ct. App. July 29, 2026). Instead, the J&J Defendants highlight the number of documents already disclosed to Plaintiffs, which in fact contradicts the J&J Defendants’ argument that this large corporation is unable to gather the requested documents as the volume is too large. The only information before the Court is Plaintiffs’ notices and subpoenas, which seek limited documents related to specific legislation covering the span of a few years. Thus, the J&J Defendants’ claim that any documents deemed “lobbying” material should not be turned over fails.

**IV. Expert discovery.**

**A. The disclosure of payments to non-testifying experts is not barred by South Carolina law.**

The J&J Defendants cite non-binding cases from other jurisdictions to support their proposition that fee payment information regarding non-testifying experts is barred under the

attorney work product doctrine, while ignoring the plain language of the South Carolina statutes. The rules state “[a] party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.” SCRCP 26. Plaintiffs are not seeking facts or opinions from consulting experts, but only payments to them. Such evidence is not encompassed by South Carolina Rule of Civil Procedure 26(b)(4) and is not barred from disclosure, and a showing of good cause is not required.

As J&J previously attempted to make the discovery of billing records more difficult by funding non-disclosed experts through law firms or by involving lawyers generally, Plaintiffs anticipate the J&J Defendants will claim payment documents are attorney work product. That argument similarly fails. “[T]he traditional work-product doctrine generally protects defense disclosure of tangible materials prepared in anticipation of trial by a defense agent. *State v. Jones*, 383 S.C. 535, 545, 681 S.E.2d 580, 585 (2009). In determining whether something was prepared in anticipation of litigation, South Carolina courts look to whether the documents were prepared in the ordinary course of business. *See Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010). As billing records are prepared in the ordinary course, the J&J Defendants cannot claim that they were prepared in anticipation of litigation. Discovery regarding such records should be allowed based upon South Carolina’s broad discovery rules.

**B. Compensation paid to experts in other cases is relevant.**

Plaintiffs’ deposition notices seek payments to all experts, including testifying experts, for the last five years to assess each experts’ bias and credibility. Courts have allowed such discovery

of all payments made by a defendant to a specific expert during a defined period. *See, e.g., Wardell*, 2019 WL 13135858, at \*2.<sup>40</sup> The retention of experts in multiple cases demonstrates a potential pattern of financial relationships that is probative of systematic bias, not simply compensation in the present two cases. In *Yoho v. Thompson*, the Court explained that evidence confirming a relationship between a company and an expert can be used to show bias. 345 S.C. 361, 366, 548 S.E.2d 584, 586 (2001). In that case, the expert consulted for the company, gave lectures to the company's employees, and spent 10-20% of his practice reviewing records for the company and similarly situated companies. *Id.* Plaintiffs are entitled to explore whether the J&J Defendants have cultivated a group of financially dependent experts who provide consistent, coordinated testimony across talc litigation.

Plaintiffs' deposition notices seek payments to all experts, to determine which experts have worked with J&J and the extent to which J&J was involved with those experts' efforts to publish scientific articles or studies or to influence regulators. What Plaintiffs know is that "J&J has retained over 100 individuals as testifying experts in talc litigation over the last fifteen years."<sup>41</sup> Plaintiffs do not know who those people are or the role that they played in influencing talc safety on behalf of the J&J Defendants. Plaintiffs will never know until they can get access to payment records, communications, and testimony regarding their involvement with J&J.

Despite a plethora of evidence to the contrary, J&J still refuses to acknowledge it paid experts to essentially ghostwrite scientific articles on its behalf. Even after *The Lancet* retracted the editorial, J&J brushed the issue off as an illegitimate concern based upon "certain plaintiffs' lawyers desire to breathe new life into a tall tale in the hopes of reframing historical scientific

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<sup>40</sup> The court ordered: "Dr. Tower shall provide all documents for the two year period preceding his retention in this case where he had been retained as a testifying expert by Ingaldson Fitzgerald in any other case, to the extent such documents would be discoverable by the other party in that other case under Civil Rule 26(a)(2)(B) or (b)(4)(C)."

<sup>41</sup> **Ex. AC**, Fournier Declaration (7/22/26).

debates for their present-day courtroom narrative.”<sup>42</sup> The editorial is not a historical scientific debate, but an opinion listed on reliance lists for experts up until 2026. The evidence confirms discovery about J&J’s efforts, either directly or indirectly (via its law firms), to fund scientific publications and research or to influence regulations is relevant and necessary for Plaintiffs’ cases.

**C. Gathering payment information is not unduly burdensome.**

The J&J Defendants additionally argue it would be unduly burdensome to gather five years of expert compensation information across numerous cases because they do not have a centralized database identifying which experts were designated in which cases, expert invoices are typically paid by outside counsel, dozens of other law firms and some invoices are issued to the name of the expert’s institution rather than the individual expert. The fact that it may be difficult, however, is not the standard. The question is whether it is *unduly* burdensome, and J&J’s past ability to provide such information when pushed by courts to do so confirms that it is not.

The J&J Defendants have been defending talc cases for years and have coordinated national counsel who manage their defense. In *Hirshberg*,<sup>43</sup> a Washington court ordered one of J&J’s experts (Dr. Matthew Sanchez) to provide all documents regarding payments from J&J to Dr. Sanchez, RJ Lee (his employer) or any other employee or former employee affiliated with RJ Lee within four days of the court’s ruling.<sup>44</sup> Dr. Sanchez complied with the court’s order and provided a declaration outlining payments from J&J *within four days*.<sup>45</sup> Dr. Sanchez specifically stated in his declaration that he did not gather the payment amounts in his declaration, but the “figures were compiled by counsel for the J&J defendants based on searches of reasonably available payment

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<sup>42</sup> See “Johnson & Johnson Statement on Lancet Retraction” available at: <https://www.factsabouttalc.com/media-center/press-releases/johnson-johnson-statement-on-lancet-retraction> (last accessed Sept. 25, 2026).

<sup>43</sup> *Wendi Hirshberg, et al v. Johnson & Johnson, et al*, Case No. 20-2-05603-1 SEA in the Superior Court of the State of Washington in and for the County of King.

<sup>44</sup> See **Ex. V**, March 24, 2021, Order.

<sup>45</sup> See **Ex. W**, Sanchez Declaration.



systems.”<sup>46</sup> As such, J&J was able to gather Dr. Sanchez’s payment information in four days. In *Gautier*,<sup>47</sup> a Louisiana court ordered production of all non-privileged payments for all of J&J’s talc experts for the past 15 years. The First Circuit Court of Appeals in Louisiana ultimately ordered the J&J Defendants to provide compensation paid to the four experts designated to testify in the *Gautier* case.<sup>48</sup> The court did however not permit discovery on the remaining experts.

Here, the request is narrower than in *Gautier*. The request is limited to the last 5 years, rather than 15 years. Second, Plaintiffs are willing to limit their request further to make compliance even easier for the J&J Defendants. In *Gautier*, the J&J Defendants stated that they had counted the number of experts retained by J&J and that the number exceeded 100. Plaintiffs request the J&J Defendants disclose that list to Plaintiffs. Unless the J&J Defendants can provide concrete evidence that it would be burdensome or otherwise invade attorney client privilege, the list should include identifying the name of the expert and a summary of the basis for payment. Provided such a list is disclosed, Plaintiffs are willing to then limit their request to billing records for (1) the experts identified in this case and (2) an additional 10 experts selected by Plaintiffs from that list. There is nothing burdensome in identifying the experts, which were already counted so that the J&J Defendants could affirm under oath the number of experts they use. History also confirms J&J can respond to this information efficiently and that it is known to the company.

Moreover, compensation records are the recognized, less burdensome means of proving expert bias. *See Garcia v. Quevedo*, 2022 WL 1037090 at 5 (April 6, 2022). Thus, the J&J Defendants’ claim that providing payment information for the experts retained in these two cases fails.

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<sup>46</sup> *Id.* at ¶ 4.

<sup>47</sup> *Carolyn M. Gautier v. Adriatic Insurance Company, et al.*, Case No. C-753560 in the 19<sup>th</sup> Judicial District Court for the Parish of East Baton Rouge.

<sup>48</sup> *See Ex. X*, July 13, 2026, Order; *see also, Ex. Y*, September 9, 2026, Order.

## **V. Plaintiffs do not seek expert testimony from the J&J Defendants**

The J&J Defendants argue that Plaintiffs' request for corporate representative testimony regarding "any opinions you intend to give at trial in this case"<sup>49</sup> and information regarding payment to experts in the case for any matter are not proper subject of corporate representative testimony because they seek expert testimony from corporate representatives.<sup>50</sup> While a corporate representative cannot be compelled to personally offer expert opinions, Plaintiffs' noticed topic regarding expert opinions are directed at obtaining the J&J Defendants' corporate understanding of the opinions their experts will offer, which is valid to the extent the testimony reflects the corporation's own knowledge and strategy about the scientific and medical positions the J&J Defendants intend to establish at trial. Plaintiffs are also entitled to understand the scope of anticipated expert testimony to prepare for trial. While the J&J Defendants rely on *Hund v. Smith & Nephew, Inc.*, the case deals with compelling a corporate representative to offer technical expert opinions about a medical device. No. 6:10-cv-01556-JMC, 2011 WL 13217730, at \*1 (D.S.C. July 28, 2011). Here, however, the topics concern the J&J Defendants' own awareness and reliance on experts' opinions and what the J&J Defendants intend to present at trial.

## **VI. Purported Duplicative Deposition Topics**

The J&J Defendants argue Plaintiffs previously deposed J&J in the *Gerken* case in September 2025 on some of the same topics in Plaintiffs' current deposition notices. Even though J&J testified in the *Gerken* case previously in September 2025, that does not satisfy the J&J Defendants' discovery obligations in the *Barnett* case, which involves a different Plaintiff and exposure history. Additionally, to the extent information pertaining to the topics in the deposition notices has evolved like the November 2025 withdrawal of the FDA proposed testing rule,

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<sup>49</sup> See **Exs. A, B** at topic 17; *see also* **Exs. D, E**.

<sup>50</sup> See **Exs. A, B, D** and **E** at topics 10-11.

Plaintiffs are entitled to updated testimony. J&J was also not prepared to testify regarding certain topics such as the upcoming cosmetic talc ban in Europe<sup>51</sup>, certain aspects of J&J's discontinuation of talc-containing products including the refund policy to retailers, and why certain retailers did not receive the standard retailer letter.<sup>52</sup>

Also, Plaintiffs have not deposed Kenvue, Inc. in either matter, and they are entitled to do so now. The topics in Plaintiffs' deposition notices for Kenvue, Inc. are relevant and necessary to develop Plaintiffs' case. As non-exclusive examples, the topics support the company's knowledge regard the presence of asbestos in talc and its participation in lobbying efforts.

The J&J Defendants also argue that they have produced 2.5 million pages of documents to Plaintiffs over the course of talc litigation and the document requests in Plaintiffs' deposition notices are duplicative. Simply because the J&J Defendants previously produced numerous documents to Plaintiffs, that does not support a conclusion that they provided all regulatory documents—especially with regard to recent regulatory developments. The J&J Defendants have not engaged in discussions with Plaintiffs' counsel regarding the deposition notices, much less confirmed that all responsive documents to Plaintiffs' specific deposition notices have been produced by both J&J and Kenvue, Inc. In fact, their Motion suggests the opposite. If all documents were produced, the J&J Defendants would not be complaining about the supposed burden required to produce the additional documents. The J&J Defendants have not provided any actual evidence to confirm that the requests are duplicative, and this argument fails.

## **VII. Cross-Motion to Compel**

South Carolina Rule of Civil Procedure 26(b)(1) provides that a party is entitled to discovery on:

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<sup>51</sup> See **Exs. B** and **E** at topic 15.

<sup>52</sup> See **Exs. B** and **E** at topics 8 and 14.

any matter, not privileged, which is relevant to the subject matter involved in the pending action whether it relates to a claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

The rules further provide that a party shall produce documents within their “possession, custody or control.” SCRCF Rule 34. As the language of Rule 34 makes clear and as the courts have confirmed, a request for production need not be confined to documents or other items in a party’s possession, but instead may properly extend to items that are in that party’s “control.” SCRCF 34(a)(1). In interpreting the identical provision of the Federal Rules, the Sixth Circuit and other courts have held that documents are deemed to be within the “control” of a party if it “has the legal right to obtain the documents on demand.” *In re Bankers Trust Co.*, 61 F.3d 465-69 (6th Cir. 1995); *Mercy Catholic Med. Cntr. v. Thompson*, 380 F.3d 142, 160 (3d Cir. 2004); *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984).

As noted above, Plaintiffs noticed the 30(b)(6) depositions of J&J and Kenvue, Inc. Plaintiffs allege the J&J Defendants are liable for Decedent Anna Marie Gerken and Plaintiff Debra Barnett’s exposures to asbestos from Johnson’s Baby Powder. Through Plaintiffs very tailored and specific deposition notices, Plaintiffs seek information and documents concerning the J&J Defendants’ continued efforts to try and influence the regulation of talc, the bias of the J&J Defendants’ experts, and the J&J Defendants’ knowledge of the hazards of their talcum powder products while attempting to influence regulation of talc as “safe.” These topics go to Plaintiffs’ claims including, negligence, strict liability, fraud, and punitive damages.

As such, Plaintiffs respectfully request that this Court order the J&J Defendants to produce fully prepared witnesses and all responsive documents pertaining to Plaintiffs’ 30(b)(6) deposition notices of J&J and Kenvue, Inc.

### VIII. CONCLUSION

For the reasons expressed herein, Plaintiffs respectfully request that this Court enter an Order denying Defendants Johnson & Johnson and Kenvue, Inc.'s Motion to Quash Plaintiffs' Notices of Deposition and for a Protective Order. Plaintiffs further request the Court grant their cross-motion and compel Defendants Johnson & Johnson and Kenvue, Inc. to comply with the notices and subpoenas as follows:

1. Within 5 days of the order, provide the previously identified list of J&J's approximately 100 retained experts—identifying the name of the expert and a summary of the basis for payment;
2. By October 14, provide all other responsive documents; and
3. Produce a witness fully prepared to discuss all noticed topics for deposition on October 23 or 29.

Plaintiffs further request the Court granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/ David C. Humen

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**ATTORNEYS FOR PLAINTIFFS**

September 29, 2026  
Dallas, Texas

# EXHIBIT A

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

DEBRA McANDREW BARNETT )

Plaintiff, )

v. )

JOHNSON & JOHNSON, et al. )

Defendants. )

C/A NO. 2026-CP-40-01257

*In Re:*

Asbestos Personal Injury Litigation

Coordinated Docket

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

ANDREW T. GERKEN, as Personal  
Representative of the Estate of ANNA  
MARIE L. GERKEN, Deceased )

Plaintiff, )

v. )

AVON PRODUCTS, INC., et al. )

Defendants. )

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO. 2023-CP-40-06111

*In Re:*

Asbestos Personal Injury Litigation

Coordinated Docket

**PLAINTIFFS' NOTICE OF THE 30(b)(6) DEPOSITION OF  
DEFENDANT JOHNSON & JOHNSON AND SUBPOENA DUCES TECUM**

ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of **Johnson & Johnson** on **September 16, 2026 at 9:30 a.m. ET** and will take place in person and via Zoom at which time you are notified to appear and take part as you see fit and proper in such examination.



The deposition will take place before a certified court reporter and videographer. If necessary, the deposition shall continue day to day.

**Zoom login info will be sent out prior to the deposition. A location for the deposition will be provided as well. Plaintiff will accommodate Defendant's preference for a location if provided.**

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit "A" attached hereto. Pursuant to Rule 30(b)(5), Defendant is requested to produce documents responsive to the descriptions listed in Exhibit "B" also attached hereto. Pursuant to Rule 30(b)(5) the time for production of these documents is governed by Rule 34, which holds all responsive documents were due produced to Plaintiff in 30 days from service. Plaintiffs reserve the right to use the deposition and exhibits thereto, including the deposition transcript, audio recording, and videorecording of the testimony, for any purpose, including at trial in this and in any subsequent matter, particularly as neither Deponent nor its Person(s) Most Qualified are residents of the state of California, and are therefore unavailable at trial as defined by California Evidence Code section 240. All parties given notice of this deposition are advised of Plaintiffs' intent to use the transcript, audio recording, and videorecording of the testimony for the purpose of preserving the witness's testimony as a proxy for trial testimony which may be used in this and any subsequent matters. All parties are advised to take full and fair opportunity of their right to examine the witness in anticipation that the testimony, and/or portions thereof, is intended for use at trial.

Respectfully submitted,

/s/ David C. Humen

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**ATTORNEYS FOR PLAINTIFF**

August 17, 2026  
Dallas, Texas

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Receipt, U.S. Mail Standard First Class, and/or electronic mail this on August 17, 2026.

s/ David C. Humen  
Attorney for Plaintiffs

## **EXHIBIT A**

For purposes of these topics, the following words shall have the following meanings: Definitions: "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors- in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf.

The term "ASBESTOS" shall be interpreted, not in a limited regulatory sense, but broadly and include non-regulated and non-commercial forms of asbestos, all forms of elongate mineral particles, fibrous minerals, fibrous talc, cleavage fragments of amphiboles, individual fibers, bundles, fibrils and transition/transitional fibers. "Asbestiform" shall also be interpreted broadly and without particular limitation regarding fiber size, length, dimension, ratio, presence of multiple fibers, or geologic origin or "habit." The foregoing notwithstanding, "asbestos" also includes talc, whether or not known or acknowledged by defendant(s) to contain asbestiform minerals or other elongate mineral particles. See, e.g., Egilman, et al., Health Effects of Censored Elongated Mineral Particles: A Critical Review, Detection Limits in Air Quality and Environmental Measurements (STP 1618, 2019; doi: 10.1520/STP161820180080); January 6, 2020, Executive Summary of Preliminary Recommendations on Testing Methods for Asbestos in Talc and Consumer Products Containing Talc (available at <https://www.fda.gov/media/134005/download>) ("The difficulty of identifying and quantifying individual asbestos or other mineral particles present at low concentrations in talc is compounded by the presence of non-asbestiform analogs with the same elemental composition and crystal structure, but different growth habit. Using TEM, differentiation of chrysotile from non-asbestiform serpentine analogs is relatively straightforward; however, each of the non-asbestiform amphiboles can disaggregate into particles resembling asbestiform fibers, giving rise to disputes between laboratories over whether elongate amphibole particles are truly asbestos, or are particles resulting from attrition of larger particles of a non-asbestiform analog. Because both types of elongate minerals are suspected of having biological activity with similar pathological outcomes, the distinction is irrelevant...").

The term "TALC" includes all grades of talc including but not limited to industrial, cosmetic, food, and/or pharma, unless specified otherwise.

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

**Please provide a corporate representative to be deposed on the following subject matters:**

1. Any and all communications between YOU and the Department of Health & Human Services (HHS), the Federal Drug Administration (FDA), and the Executive Branch of the U.S. Government regarding:
  - a. the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328);
  - b. the Modernization of Cosmetics Regulation of 2022 (MoCRA);
  - c. FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490); and
  - d. the May 20, 2025 Expert Panel with the FDA.
2. All trade organizations, trade associations, and any other groups with which YOU discussed the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490).
3. Any and all internal communications YOU regarding to the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490).
4. When and how YOU first learned that Dr. Andrey Korchevskiy intended to write the FDA regarding the Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products and/or the May 20, 2025 Expert Panel with the FDA.
5. YOUR involvement with the June 9, 2025 letter written by Dr. Andrey Korchevskiy to Dr. Martin Makary, including the selection of co-signatories, the drafting of the letter, and the development of its content.
6. YOUR knowledge of how the June 9, 2025 letter was drafted, including how feedback was provided to Dr. Korchevskiy and how drafts were exchanged between signatories.
7. When and how YOU first learned that the FDA intended to withdraw and did withdraw its proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
8. A understanding of which entities historically made Johnson's Baby Powder or other cosmetic talc product at the time YOU spun off your cosmetic segment. The date that cornstarch was made available in each location. The discussions, efforts and actions taken to stop selling talc based cosmetic products. This is not limited to cosmetic talc products in the United States or Canada.
9. Listing of all individuals involved with the decision to stop selling talc in Johnson's Baby Powder and the steps involved to execute that decision. This includes efforts by YOU after the cosmetic segment sold.
10. An understanding of payments made by YOU to your experts in this case for any matter for the last five years including an understanding of the nature of the payment (consulting, testifying, regulatory issues, etc.).

11. An understanding of payments made by YOU directly or indirectly to Shu-Chun Su or Ann Wylie for any matter for the last five years including an understanding of the nature of the payment (consulting, testifying, regulatory issues, etc.).
12. Actions taken by YOU or at YOUR behalf to respond to the Lancet Retraction ([https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(26\)00552-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(26)00552-0/fulltext)). This includes understanding the actions taken, time spent, individuals involved and cost incurred.
13. Identify all individuals and organizations involved with “Johnson's Baby Talcum Powder: A Comprehensive Review.” Current as of March 17, 2020, starting with bates JNJ TALC 001540233. Identify all cost incurred in preparing for and writing the Comprehensive Review. Identify and discuss all efforts to update the alleged Comprehensive Review. Identify and discuss information known or knowable to the company that was not included or considered in the alleged Comprehensive Review. Identify and discuss the topics covered in the Comprehensive Review.
14. YOUR participation in professional, industrial, and trade organizations, including but not limited to the Cosmetic, Toiletry & Fragrance Association (CTFA); the Cosmetic, Toiletry & Perfumery Association (CTPA); and the Personal Care Products Council (PCPC). This includes an understanding of when membership began, cost of membership, donations or contributions related to talc issues.
15. All information related to each entity’s conversion from talc to “talc free” baby powder, including the volume of sales, last date of sale and handling of existing inventory.
16. All information relating to YOUR involvement with, knowledge regarding, and communications with or about any European health agency relating to its assessment of a potential ban on talc.
17. All documents produced by YOU and any opinions you intend to give at trial in this case.
18. What YOU did to prepare for this deposition (documents searched for, documents reviewed, people searched for, people interviewed, etc.)
19. Information regarding document searches YOU have performed in this particular case. (i.e., when the search occurred, where it occurred, terms queried, by whom, results, bates-stamp range applied to all documents produced, etc.).

## **EXHIBIT B**

For purposes of these requests, the following words shall have the following meanings:

The terms "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors- in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf.

The term "ASBESTOS" shall be interpreted, not in a limited regulatory sense, but broadly and include non-regulated and non-commercial forms of asbestos, all forms of elongate mineral particles, fibrous minerals, fibrous talc, cleavage fragments of amphiboles, individual fibers, bundles, fibrils and transition/transitional fibers. "Asbestiform" shall also be interpreted broadly and without particular limitation regarding fiber size, length, dimension, ratio, presence of multiple fibers, or geologic origin or "habit." The foregoing notwithstanding, "asbestos" also includes talc, whether or not known or acknowledged by defendant(s) to contain asbestiform minerals or other elongate mineral particles. See, e.g., Egilman, et al., Health Effects of Censored Elongated Mineral Particles: A Critical Review, Detection Limits in Air Quality and Environmental Measurements (STP 1618, 2019; doi: 10.1520/STP161820180080); January 6, 2020, Executive Summary of Preliminary Recommendations on Testing Methods for Asbestos in Talc and Consumer Products Containing Talc (available at <https://www.fda.gov/media/134005/download>) ("The difficulty of identifying and quantifying individual asbestos or other mineral particles present at low concentrations in talc is compounded by the presence of non-asbestiform analogs with the same elemental composition and crystal structure, but different growth habit. Using TEM, differentiation of chrysotile from non-asbestiform serpentine analogs is relatively straightforward; however, each of the non-asbestiform amphiboles can disaggregate into particles resembling asbestiform fibers, giving rise to disputes between laboratories over whether elongate amphibole particles are truly asbestos, or are particles resulting from attrition of larger particles of a non-asbestiform analog. Because both types of elongate minerals are suspected of having biological activity with similar pathological outcomes, the distinction is irrelevant...").

The term "TALC" includes all grades of talc including but not limited to industrial, cosmetic, food, and/or pharma, unless specified otherwise.

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

1. All communications between YOU and the Department of Health & Human Services (HHS), the Federal Drug Administration (FDA), and the White House regarding the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
2. All communications between YOU and any identified trade organizations regarding the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
3. All communications between YOU and Dr. Korchevskiy regarding the Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products and the May 20, 2025 Expert Panel with the FDA.
4. All records related to the June 9, 2025 letter to Dr. Martin Makary.
5. If YOU have withheld any document based on a claim of privilege, please produce a privilege log identifying each such document, its author, recipients, date of preparation, and the specific privilege or work product protection claimed.
6. All documents reviewed to make the witness knowledgeable about each topic above, and/or to prepare the witness to testify as to the above topics.
7. All documents used to refresh the recollection of the designated witness and/or prepare that person to testify as to areas of inquiry listed above.
8. All documents related to, or that form the foundation for, YOUR responses to discovery requests in talc litigation.
9. All documents that will be used to prove YOUR cross-claims, if any, against other alleged tortfeasors in this lawsuit.
10. All documents, depositions, interrogatories, statements, certifications and/or affidavits that will be used to evidence all potential exposure to Plaintiff other than the alleged exposures to YOUR products.
11. All documents YOU intend to use at trial in this matter.
12. Any documents relating to testing done by the FDA of talc products in 2009 and 2010.
13. Any documents relating to consideration, development, approval, use, accuracy, inaccuracy, detection limit, limitations, promotion or disapproval of any other method for the analysis of talc for the presence of asbestos (other than the J4-1 method).
14. Any documents related to the 1993 FDA Talc Symposium.
15. Any documents relating to YOUR involvement and knowledge of the Expert Panel with the FDA on talc on May 20, 2025.
16. Any documents relating to the identity of entities that made and sold Johnson's Baby Powder with talc, regardless of geography, at the time each entity went "talc-free."
17. All documents related to YOUR decision to stop the sale and/or manufacturing talc baby

powder in United States.

18. All documents related to YOUR continued sale and/or manufacturing of talc baby powder in other countries after YOU discontinued sales and/or manufacturing in the United States.
19. All documents relating to YOUR efforts and activates relating to communication and efforts related to the safety of talc in Europe when assessing a ban on talc. This includes efforts known to J&J involving Kenvue.
20. All documents relating to YOUR knowledge of the dangers of talc as relayed by the FDA.



# EXHIBIT B

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

DEBRA McANDREW BARNETT )

Plaintiff, )

v. )

JOHNSON & JOHNSON, et al. )

Defendants. )

C/A NO. 2026-CP-40-01257

*In Re:*

Asbestos Personal Injury Litigation

Coordinated Docket

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

ANDREW T. GERKEN, as Personal  
Representative of the Estate of ANNA  
MARIE L. GERKEN, Deceased )

Plaintiff, )

v. )

AVON PRODUCTS, INC., et al. )

Defendants. )

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO. 2023-CP-40-06111

*In Re:*

Asbestos Personal Injury Litigation

Coordinated Docket

**PLAINTIFFS' NOTICE OF THE 30(b)(6) DEPOSITION OF  
DEFENDANT KENVUE INC. AND SUBPOENA DUCES TECUM**

ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of **Kenvue Inc.** on **September 18, 2025 at 9:30am ET** and will take place in person and via Zoom at which time you are notified to appear and take part as you see fit and proper in such examination. The

deposition will take place before a certified court reporter and videographer. If necessary, the deposition shall continue day to day.

**Zoom login info will be sent out prior to the deposition. A location for the deposition will be provided as well. Plaintiff will accommodate Defendant's preference for a location if provided.**

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit "A" attached hereto. Pursuant to Rule 30(b)(5), Defendant is requested to produce documents responsive to the descriptions listed in Exhibit "B" also attached hereto. Pursuant to Rule 30(b)(5) the time for production of these documents is governed by Rule 34, which holds all responsive documents were due produced to Plaintiff in 30 days from service. Plaintiffs reserve the right to use the deposition and exhibits thereto, including the deposition transcript, audio recording, and videorecording of the testimony, for any purpose, including at trial in this and in any subsequent matter, particularly as neither Deponent nor its Person(s) Most Qualified are residents of the state of California, and are therefore unavailable at trial as defined by California Evidence Code section 240. All parties given notice of this deposition are advised of Plaintiffs' intent to use the transcript, audio recording, and videorecording of the testimony for the purpose of preserving the witness's testimony as a proxy for trial testimony which may be used in this and any subsequent matters. All parties are advised to take full and fair opportunity of their right to examine the witness in anticipation that the testimony, and/or portions thereof, is intended for use at trial.

Respectfully submitted,

/s/ David C. Humen

David C. Humen (SC Bar No. 104536)  
**DEAN OMAR BRANHAM SHIRLEY, LLP**  
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T: 214-722-5990

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Theile B. McVey (SC Bar No. 16682)  
Jamie D. Rutkoski (SC Bar No. 103270)  
**KASSEL MCVEY ATTORNEYS AT LAW**  
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Other email: [emoultrie@kassellaw.com](mailto:emoultrie@kassellaw.com)  
**ATTORNEYS FOR PLAINTIFF**

August 17, 2026  
Dallas, Texas

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Receipt, U.S. Mail Standard First Class, and/or electronic mail this on August 17, 2026.

s/ David C. Humen  
Attorney for Plaintiffs

## **EXHIBIT A**

For purposes of these topics, the following words shall have the following meanings: Definitions: "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors- in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf.

The term "ASBESTOS" shall be interpreted, not in a limited regulatory sense, but broadly and include non-regulated and non-commercial forms of asbestos, all forms of elongate mineral particles, fibrous minerals, fibrous talc, cleavage fragments of amphiboles, individual fibers, bundles, fibrils and transition/transitional fibers. "Asbestiform" shall also be interpreted broadly and without particular limitation regarding fiber size, length, dimension, ratio, presence of multiple fibers, or geologic origin or "habit." The foregoing notwithstanding, "asbestos" also includes talc, whether or not known or acknowledged by defendant(s) to contain asbestiform minerals or other elongate mineral particles. See, e.g., Egilman, et al., Health Effects of Censored Elongated Mineral Particles: A Critical Review, Detection Limits in Air Quality and Environmental Measurements (STP 1618, 2019; doi: 10.1520/STP161820180080); January 6, 2020, Executive Summary of Preliminary Recommendations on Testing Methods for Asbestos in Talc and Consumer Products Containing Talc (available at <https://www.fda.gov/media/134005/download>) ("The difficulty of identifying and quantifying individual asbestos or other mineral particles present at low concentrations in talc is compounded by the presence of non-asbestiform analogs with the same elemental composition and crystal structure, but different growth habit. Using TEM, differentiation of chrysotile from non-asbestiform serpentine analogs is relatively straightforward; however, each of the non-asbestiform amphiboles can disaggregate into particles resembling asbestiform fibers, giving rise to disputes between laboratories over whether elongate amphibole particles are truly asbestos, or are particles resulting from attrition of larger particles of a non-asbestiform analog. Because both types of elongate minerals are suspected of having biological activity with similar pathological outcomes, the distinction is irrelevant...").

The term "TALC" includes all grades of talc including but not limited to industrial, cosmetic, food, and/or pharma, unless specified otherwise.

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

**Please provide a corporate representative to be deposed on the following subject matters:**

1. Any and all communications between YOU and the Department of Health & Human Services (HHS), the Federal Drug Administration (FDA), and the Executive Branch of the U.S. Government regarding:
  - a. the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328);
  - b. the Modernization of Cosmetics Regulation of 2022 (MoCRA);
  - c. FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490); and
  - d. the May 20, 2025 Expert Panel with the FDA.
2. All trade organizations, trade associations, and any other groups with which YOU discussed the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490).
3. Any and all internal communications YOU regarding to the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490).
4. When and how YOU first learned that Dr. Andrey Korchevskiy intended to write the FDA regarding the Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products and/or the May 20, 2025 Expert Panel with the FDA.
5. YOUR involvement with the June 9, 2025 letter written by Dr. Andrey Korchevskiy to Dr. Martin Makary, including the selection of co-signatories, the drafting of the letter, and the development of its content.
6. YOUR knowledge of how the June 9, 2025 letter was drafted, including how feedback was provided to Dr. Korchevskiy and how drafts were exchanged between signatories.
7. When and how YOU first learned that the FDA intended to withdraw and did withdraw its proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
8. Which of YOUR subsidiaries made Johnson's Baby Powder and other cosmetic talc product. The discussions, efforts and actions taken to stop selling talc based cosmetic products. This is not limited to cosmetic talc products in the United States or Canada.
9. Listing of all individuals involved with the decision to stop selling talc in Johnson's Baby Powder and the steps involved to execute that decision.
10. An understanding of payments made by YOU to your experts in this case for any matter including an understanding of the nature of the payment (consulting, testifying, regulatory issues, etc.).
11. An understanding of payments made by YOU directly or indirectly to Shu-Chun Su or Ann Wylie for any matter including an understanding of the nature of the payment

(consulting, testifying, regulatory issues, etc.).

12. Actions taken by YOU or at YOUR behalf to respond to the Lancet Retraction ([https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(26\)00552-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(26)00552-0/fulltext)). This includes understanding the actions taken, time spent, individuals involved and cost incurred.
13. YOUR participation in professional, industrial, and trade organizations, including but not limited to the Cosmetic, Toiletry & Fragrance Association (CTFA); the Cosmetic, Toiletry & Perfumery Association (CTPA); and the Personal Care Products Council (PCPC). This includes an understanding of when membership began, cost of membership, donations or contributions related to talc issues.
14. All information related to each entity's conversion from talc to "talc free" baby powder, including the volume of sales, last date of sale and handling of existing inventory.
15. All information relating to YOUR involvement with, knowledge regarding, and communications with or about any European health agency relating to its assessment of a potential ban on talc.
16. All documents produced by YOU and any opinions you intend to give at trial in this case.
17. What YOU did to prepare for this deposition (documents searched for, documents reviewed, people searched for, people interviewed, etc.)
18. Information regarding document searches YOU have performed in this particular case. (i.e., when the search occurred, where it occurred, terms queried, by whom, results, bates-stamp range applied to all documents produced, etc.).

## **EXHIBIT B**

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1. All communications between YOU and the Department of Health & Human Services (HHS), the Federal Drug Administration (FDA), and the White House regarding the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
2. All communications between YOU and any identified trade organizations regarding the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
3. All communications between YOU and Dr. Korchevskiy regarding the Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products and the May 20, 2025 Expert Panel with the FDA.
4. All records related to the June 9, 2025 letter to Dr. Martin Makary.
5. If YOU have withheld any document based on a claim of privilege, please produce a privilege log identifying each such document, its author, recipients, date of preparation, and the specific privilege or work product protection claimed.
6. All documents reviewed to make the witness knowledgeable about each topic above, and/or to prepare the witness to testify as to the above topics.
7. All documents used to refresh the recollection of the designated witness and/or prepare that person to testify as to areas of inquiry listed above.

# EXHIBIT C

Wednesday, September 2, 2026 at 5:07:12 PM Central Daylight Time

**Subject:** RE: J&J Gerken depo  
**Date:** Wednesday, September 2, 2026 at 2:10:04 PM Central Daylight Time  
**From:** Karp, Andrew  
**To:** Jessica Dean, David Humen  
**CC:** Blake Williams

**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.

Jessica, thanks for following up. We appreciate the outreach, but J&J and Kenvue disagree with the notices generally and intend to move for protection. Based on the notices and what you've written in your emails below, it does not appear that the parties will be able to reach a resolution. We will work with you on scheduling if the deposition is ordered to go forward.

Talk to you soon.

Best,  
 Andrew

**Andrew Karp**

---

**KIRKLAND & ELLIS LLP**  
 601 Lexington Avenue, New York, NY 10022  
 T +1 212 341 7593 M +1 347 454 8690

[andrew.karp@kirkland.com](mailto:andrew.karp@kirkland.com)

---

**From:** Jessica Dean <[jdean@dobslegal.com](mailto:jdean@dobslegal.com)>  
**Sent:** Tuesday, September 1, 2026 3:33 PM  
**To:** Karp, Andrew <[andrew.karp@kirkland.com](mailto:andrew.karp@kirkland.com)>; David Humen <[dhumen@dobslegal.com](mailto:dhumen@dobslegal.com)>  
**Cc:** Blake Williams <[blake.williams@nelsonmullins.com](mailto:blake.williams@nelsonmullins.com)>  
**Subject:** Re: J&J Gerken depo

Andrew, in addition to the deposition notice and effort to meet and confer we have not heard from J&J about this deposition. We intend to go forward on the date scheduled and assume in the NY office for Kirkland. If you want a different date, we need to know by noon tomorrow in the time frame we noted below. As you know we have a lot of trials with J&J this calendar year and both sides are managing scheduling. We have given your client over two weeks to work with us on a date without a substantive response. We are still happy to work together but because we are all managing hectic schedule can't do indefinitely and will be agreeing to do other work in the time frame we are talking after noon tomorrow and less willing to adjust.

Thanks,

## Jessica Dean

**O:** (214) 722-5994 | **C:** (214) 476-5210

1801 North Lamar Street, Suite 300  
Dallas, TX 75202

[www.dobslegal.com](http://www.dobslegal.com)

Dean Omar Branham Shirley, LLP

**From:** Karp, Andrew <[andrew.karp@kirkland.com](mailto:andrew.karp@kirkland.com)>

**Date:** Wednesday, August 19, 2026 at 8:38 PM

**To:** Jessica Dean <[jdean@dotslegal.com](mailto:jdean@dotslegal.com)>; David Humen <[dhumen@dotslegal.com](mailto:dhumen@dotslegal.com)>

**Cc:** Blake Williams <[blake.williams@nelsonmullins.com](mailto:blake.williams@nelsonmullins.com)>

**Subject:** RE: J&J Gerken depo

**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.

Jessica, thanks for your note. We are discussing on our end and will get back to you soon.

Best,  
Andrew

**Andrew Karp**

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022  
T +1 212 341 7593 M +1 347 454 8690

[andrew.karp@kirkland.com](mailto:andrew.karp@kirkland.com)

**From:** Jessica Dean <[jdean@dotslegal.com](mailto:jdean@dotslegal.com)>

**Sent:** Monday, August 17, 2026 7:19 PM

**To:** Karp, Andrew <[andrew.karp@kirkland.com](mailto:andrew.karp@kirkland.com)>; David Humen <[dhumen@dotslegal.com](mailto:dhumen@dotslegal.com)>

**Subject:** J&J Gerken depo

Andrew, we noticed a deposition in Barnett and Gerken today for J&J and Kenvue. If your client intends to object or not respond I am hoping we can work it out sooner rather than later. I selected dates at random but can adjust to later in the month if provided dates that work in next two weeks. In addition, we'd want the documents sought on the notice date so we have time to review. Last deposition we received over 2000 pages of documents shortly before and hoping to avoid that type of time crunch if reasonably possible.

I also reviewed the Johnson/Gerken deposition taken last year and before filing any motion

want to see if we can work out any issues and if follow up is needed handle at the same time as the deposition we just noticed.

Issues that came up where I'd like to meet and confer before filing any motions:

- We are concerned that information responsive to our notice was not searched on SharePoint and Viva Engage/Yammer for internal communications which would be responsive to our notice.
- We have been seeking discovery about discontinuing talc for some time and noted that the documents received were almost entirely 2 weeks before J&J publicly announced discontinuation and after lawyers were involved. It is not credible that there are not earlier communication which dovetails into our concern that some communication sources were not reviewed.
- Dr. Kuffner wasn't adequately prepared to discuss some of the aspects of the discontinuation — for instance, he was unclear about their refund policies with retailers. There's an email (Ex. 15) in which someone asks for approval to pay Wal-Mart between \$100 and \$150,000 to destroy their inventory rather than having to deal with taking it back. We also did not receive documentation about the actual mechanics of the change or identification of the subsidiaries that were manufacturing talc based cosmetic products when the change allegedly occurred.
- Certain large retailers did not receive the "standard" retailer letter (think Wal-Mart, Costco, Target, etc.) but Dr. Kuffner didn't know why specifically or how any refunds/buybacks/destruction payment agreements may have been structured.
- Dr. Kuffner was not prepared to discuss topic 40 regarding the upcoming cosmetic talc ban in Europe.

Let me know when you have time to discuss. Our hope is to avoid motion practice but get the discovery we noticed.

Thanks,

**Jessica Dean**

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**O:** (214) 722-5994 | **C:** (214) 476-5210

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1801 North Lamar Street, Suite 300  
Dallas, TX 75202

---

[www.dobslegal.com](http://www.dobslegal.com)

Dean Omar Branham Shirley, LLP

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of the multi-national law firm Kirkland & Ellis LLP and/or its

affiliated entities. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of the multi-national law firm Kirkland & Ellis LLP and/or its affiliated entities. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

# EXHIBIT D

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

DEBRA McANDREW BARNETT )  
Plaintiff, )  
v. ) C/A NO. 2026-CP-40-01257  
JOHNSON & JOHNSON, et al. )  
Defendants. )  
In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
ANDREW T. GERKEN, as Personal )  
Representative of the Estate of ANNA )  
MARIE L. GERKEN, Deceased ) C/A NO. 2023-CP-40-06111  
Plaintiff, )  
v. ) In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket  
AVON PRODUCTS, INC., et al. )  
Defendants. )

**PLAINTIFFS' FIRST AMENDED NOTICE OF THE 30(b)(6) DEPOSITION OF  
DEFENDANT JOHNSON & JOHNSON AND SUBPOENA DUCES TECUM**

ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of **Johnson & Johnson** on **September 16, 2026 at 9:30 a.m. ET** and will take place in person at **Kirkland & Ellis LLP 601 Lexington Avenue, New York, NY 10022** and via Zoom at which time you are



notified to appear and take part as you see fit and proper in such examination. The deposition will take place before a certified court reporter and videographer. If necessary, the deposition shall continue day to day.

**Zoom Meeting Link:** [CLICK HERE](#)

**Zoom Meeting ID:** 98487104193

**Dial-In Phone #:** 408 638 0968

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit “A” attached hereto. Pursuant to Rule 30(b)(5), Defendant is requested to produce documents responsive to the descriptions listed in Exhibit “B” also attached hereto. Pursuant to Rule 30(b)(5) the time for production of these documents is governed by Rule 34, which holds all responsive documents were due produced to Plaintiff in 30 days from service. Plaintiffs reserve the right to use the deposition and exhibits thereto, including the deposition transcript, audio recording, and videorecording of the testimony, for any purpose, including at trial in this and in any subsequent matter, particularly as neither Deponent nor its Person(s) Most Qualified are residents of the state of California, and are therefore unavailable at trial as defined by California Evidence Code section 240. All parties given notice of this deposition are advised of Plaintiffs’ intent to use the transcript, audio recording, and videorecording of the testimony for the purpose of preserving the witness's testimony as a proxy for trial testimony which may be used in this and any subsequent matters. All parties are advised to take full and fair opportunity of their right to examine the witness in anticipation that the testimony, and/or portions thereof, is intended for use at trial.

Respectfully submitted,

/s/ David C. Humen

David C. Humen (SC Bar No. 104536)

**DEAN OMAR BRANHAM SHIRLEY, LLP**

1801 N. Lamar Street, Suite 300

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[dhumen@dobslegal.com](mailto:dhumen@dobslegal.com)  
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Theile B. McVey (SC Bar No. 16682)  
Jamie D. Rutkoski (SC Bar No. 103270)  
**KASSEL MCVEY ATTORNEYS AT LAW**  
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[jrutkoski@kassellaw.com](mailto:jrutkoski@kassellaw.com)  
Other email: [emoultrie@kassellaw.com](mailto:emoultrie@kassellaw.com)  
**ATTORNEYS FOR PLAINTIFF**

September 2, 2026  
Dallas, Texas

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Receipt, U.S. Mail Standard First Class, and/or electronic mail this on September 2, 2026.

s/ David C. Humen  
Attorney for Plaintiffs

## **EXHIBIT A**

For purposes of these topics, the following words shall have the following meanings: Definitions: "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors- in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf.

The term "ASBESTOS" shall be interpreted, not in a limited regulatory sense, but broadly and include non-regulated and non-commercial forms of asbestos, all forms of elongate mineral particles, fibrous minerals, fibrous talc, cleavage fragments of amphiboles, individual fibers, bundles, fibrils and transition/transitional fibers. "Asbestiform" shall also be interpreted broadly and without particular limitation regarding fiber size, length, dimension, ratio, presence of multiple fibers, or geologic origin or "habit." The foregoing notwithstanding, "asbestos" also includes talc, whether or not known or acknowledged by defendant(s) to contain asbestiform minerals or other elongate mineral particles. See, e.g., Egilman, et al., Health Effects of Censored Elongated Mineral Particles: A Critical Review, Detection Limits in Air Quality and Environmental Measurements (STP 1618, 2019; doi: 10.1520/STP161820180080); January 6, 2020, Executive Summary of Preliminary Recommendations on Testing Methods for Asbestos in Talc and Consumer Products Containing Talc (available at <https://www.fda.gov/media/134005/download>) ("The difficulty of identifying and quantifying individual asbestos or other mineral particles present at low concentrations in talc is compounded by the presence of non-asbestiform analogs with the same elemental composition and crystal structure, but different growth habit. Using TEM, differentiation of chrysotile from non-asbestiform serpentine analogs is relatively straightforward; however, each of the non-asbestiform amphiboles can disaggregate into particles resembling asbestiform fibers, giving rise to disputes between laboratories over whether elongate amphibole particles are truly asbestos, or are particles resulting from attrition of larger particles of a non-asbestiform analog. Because both types of elongate minerals are suspected of having biological activity with similar pathological outcomes, the distinction is irrelevant...").

The term "TALC" includes all grades of talc including but not limited to industrial, cosmetic, food, and/or pharma, unless specified otherwise.

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

**Please provide a corporate representative to be deposed on the following subject matters:**

1. Any and all communications between YOU and the Department of Health & Human Services (HHS), the Federal Drug Administration (FDA), and the Executive Branch of the U.S. Government regarding:
  - a. the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328);
  - b. the Modernization of Cosmetics Regulation of 2022 (MoCRA);
  - c. FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490); and
  - d. the May 20, 2025 Expert Panel with the FDA.
2. All trade organizations, trade associations, and any other groups with which YOU discussed the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490).
3. Any and all internal communications YOU regarding to the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490).
4. When and how YOU first learned that Dr. Andrey Korchevskiy intended to write the FDA regarding the Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products and/or the May 20, 2025 Expert Panel with the FDA.
5. YOUR involvement with the June 9, 2025 letter written by Dr. Andrey Korchevskiy to Dr. Martin Makary, including the selection of co-signatories, the drafting of the letter, and the development of its content.
6. YOUR knowledge of how the June 9, 2025 letter was drafted, including how feedback was provided to Dr. Korchevskiy and how drafts were exchanged between signatories.
7. When and how YOU first learned that the FDA intended to withdraw and did withdraw its proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
8. A understanding of which entities historically made Johnson's Baby Powder or other cosmetic talc product at the time YOU spun off your cosmetic segment. The date that cornstarch was made available in each location. The discussions, efforts and actions taken to stop selling talc based cosmetic products. This is not limited to cosmetic talc products in the United States or Canada.
9. Listing of all individuals involved with the decision to stop selling talc in Johnson's Baby Powder and the steps involved to execute that decision. This includes efforts by YOU after the cosmetic segment sold.
10. An understanding of payments made by YOU to your experts in this case for any matter for the last five years including an understanding of the nature of the payment (consulting, testifying, regulatory issues, etc.).

11. An understanding of payments made by YOU directly or indirectly to Shu-Chun Su or Ann Wylie for any matter for the last five years including an understanding of the nature of the payment (consulting, testifying, regulatory issues, etc.).
12. Actions taken by YOU or at YOUR behalf to respond to the Lancet Retraction ([https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(26\)00552-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(26)00552-0/fulltext)). This includes understanding the actions taken, time spent, individuals involved and cost incurred.
13. Identify all individuals and organizations involved with “Johnson's Baby Talcum Powder: A Comprehensive Review.” Current as of March 17, 2020, starting with bates JNJ TALC 001540233. Identify all cost incurred in preparing for and writing the Comprehensive Review. Identify and discuss all efforts to update the alleged Comprehensive Review. Identify and discuss information known or knowable to the company that was not included or considered in the alleged Comprehensive Review. Identify and discuss the topics covered in the Comprehensive Review.
14. YOUR participation in professional, industrial, and trade organizations, including but not limited to the Cosmetic, Toiletry & Fragrance Association (CTFA); the Cosmetic, Toiletry & Perfumery Association (CTPA); and the Personal Care Products Council (PCPC). This includes an understanding of when membership began, cost of membership, donations or contributions related to talc issues.
15. All information related to each entity’s conversion from talc to “talc free” baby powder, including the volume of sales, last date of sale and handling of existing inventory.
16. All information relating to YOUR involvement with, knowledge regarding, and communications with or about any European health agency relating to its assessment of a potential ban on talc.
17. All documents produced by YOU and any opinions you intend to give at trial in this case.
18. What YOU did to prepare for this deposition (documents searched for, documents reviewed, people searched for, people interviewed, etc.)
19. Information regarding document searches YOU have performed in this particular case. (i.e., when the search occurred, where it occurred, terms queried, by whom, results, bates-stamp range applied to all documents produced, etc.).

## **EXHIBIT B**

For purposes of these requests, the following words shall have the following meanings:

The terms "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors- in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf.

The term "ASBESTOS" shall be interpreted, not in a limited regulatory sense, but broadly and include non-regulated and non-commercial forms of asbestos, all forms of elongate mineral particles, fibrous minerals, fibrous talc, cleavage fragments of amphiboles, individual fibers, bundles, fibrils and transition/transitional fibers. "Asbestiform" shall also be interpreted broadly and without particular limitation regarding fiber size, length, dimension, ratio, presence of multiple fibers, or geologic origin or "habit." The foregoing notwithstanding, "asbestos" also includes talc, whether or not known or acknowledged by defendant(s) to contain asbestiform minerals or other elongate mineral particles. See, e.g., Egilman, et al., Health Effects of Censored Elongated Mineral Particles: A Critical Review, Detection Limits in Air Quality and Environmental Measurements (STP 1618, 2019; doi: 10.1520/STP161820180080); January 6, 2020, Executive Summary of Preliminary Recommendations on Testing Methods for Asbestos in Talc and Consumer Products Containing Talc (available at <https://www.fda.gov/media/134005/download>) ("The difficulty of identifying and quantifying individual asbestos or other mineral particles present at low concentrations in talc is compounded by the presence of non-asbestiform analogs with the same elemental composition and crystal structure, but different growth habit. Using TEM, differentiation of chrysotile from non-asbestiform serpentine analogs is relatively straightforward; however, each of the non-asbestiform amphiboles can disaggregate into particles resembling asbestiform fibers, giving rise to disputes between laboratories over whether elongate amphibole particles are truly asbestos, or are particles resulting from attrition of larger particles of a non-asbestiform analog. Because both types of elongate minerals are suspected of having biological activity with similar pathological outcomes, the distinction is irrelevant...").

The term "TALC" includes all grades of talc including but not limited to industrial, cosmetic, food, and/or pharma, unless specified otherwise.

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

1. All communications between YOU and the Department of Health & Human Services (HHS), the Federal Drug Administration (FDA), and the White House regarding the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
2. All communications between YOU and any identified trade organizations regarding the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
3. All communications between YOU and Dr. Korchevskiy regarding the Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products and the May 20, 2025 Expert Panel with the FDA.
4. All records related to the June 9, 2025 letter to Dr. Martin Makary.
5. If YOU have withheld any document based on a claim of privilege, please produce a privilege log identifying each such document, its author, recipients, date of preparation, and the specific privilege or work product protection claimed.
6. All documents reviewed to make the witness knowledgeable about each topic above, and/or to prepare the witness to testify as to the above topics.
7. All documents used to refresh the recollection of the designated witness and/or prepare that person to testify as to areas of inquiry listed above.
8. All documents related to, or that form the foundation for, YOUR responses to discovery requests in talc litigation.
9. All documents that will be used to prove YOUR cross-claims, if any, against other alleged tortfeasors in this lawsuit.
10. All documents, depositions, interrogatories, statements, certifications and/or affidavits that will be used to evidence all potential exposure to Plaintiff other than the alleged exposures to YOUR products.
11. All documents YOU intend to use at trial in this matter.
12. Any documents relating to testing done by the FDA of talc products in 2009 and 2010.
13. Any documents relating to consideration, development, approval, use, accuracy, inaccuracy, detection limit, limitations, promotion or disapproval of any other method for the analysis of talc for the presence of asbestos (other than the J4-1 method).
14. Any documents related to the 1993 FDA Talc Symposium.
15. Any documents relating to YOUR involvement and knowledge of the Expert Panel with the FDA on talc on May 20, 2025.
16. Any documents relating to the identity of entities that made and sold Johnson's Baby Powder with talc, regardless of geography, at the time each entity went "talc-free."
17. All documents related to YOUR decision to stop the sale and/or manufacturing talc baby powder in United States.
18. All documents related to YOUR continued sale and/or manufacturing of talc baby powder in other countries after YOU discontinued sales and/or manufacturing in the United States.

19. All documents relating to YOUR efforts and activates relating to communication and efforts related to the safety of talc in Europe when assessing a ban on talc. This includes efforts known to J&J involving Kenvue.
20. All documents relating to YOUR knowledge of the dangers of talc as relayed by the FDA.



# EXHIBIT E

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

DEBRA McANDREW BARNETT )

Plaintiff, )

v. )

JOHNSON & JOHSON, et al. )

Defendants. )

C/A NO. 2026-CP-40-01257

*In Re:*

Asbestos Personal Injury Litigation  
Coordinated Docket

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

ANDREW T. GERKEN, as Personal  
Representative of the Estate of ANNA  
MARIE L. GERKEN, Deceased )

Plaintiff, )

v. )

AVON PRODUCTS, INC., et al. )

Defendants. )

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO. 2023-CP-40-06111

*In Re:*

Asbestos Personal Injury Litigation  
Coordinated Docket

**PLAINTIFFS' FIRST AMENDED NOTICE OF THE 30(b)(6) DEPOSITION OF  
DEFENDANT KENVUE INC. AND SUBPOENA DUCES TECUM**

ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of **Kenvue Inc.** on **September 18, 2026 at 9:30am ET** and will take place in person at **Kirkland & Ellis LLP 601 Lexington Avenue, New York, NY 10022** and via Zoom at which time you are notified to appear and take part as you see fit and proper in such examination. The deposition will take place

before a certified court reporter and videographer. If necessary, the deposition shall continue day to day.

**Zoom Meeting Link:** [CLICK HERE](#)

**Zoom Meeting ID:** 91098708905

**Dial-In Phone #:** 408 638 0968

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit “A” attached hereto. Pursuant to Rule 30(b)(5), Defendant is requested to produce documents responsive to the descriptions listed in Exhibit “B” also attached hereto. Pursuant to Rule 30(b)(5) the time for production of these documents is governed by Rule 34, which holds all responsive documents were due produced to Plaintiff in 30 days from service. Plaintiffs reserve the right to use the deposition and exhibits thereto, including the deposition transcript, audio recording, and videorecording of the testimony, for any purpose, including at trial in this and in any subsequent matter, particularly as neither Deponent nor its Person(s) Most Qualified are residents of the state of California, and are therefore unavailable at trial as defined by California Evidence Code section 240. All parties given notice of this deposition are advised of Plaintiffs’ intent to use the transcript, audio recording, and videorecording of the testimony for the purpose of preserving the witness's testimony as a proxy for trial testimony which may be used in this and any subsequent matters. All parties are advised to take full and fair opportunity of their right to examine the witness in anticipation that the testimony, and/or portions thereof, is intended for use at trial.

Respectfully submitted,

/s/ David C. Humen

David C. Humen (SC Bar No. 104536)

**DEAN OMAR BRANHAM SHIRLEY, LLP**

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Theile B. McVey (SC Bar No. 16682)  
Jamie D. Rutkoski (SC Bar No. 103270)  
**KASSEL MCVEY ATTORNEYS AT LAW**  
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Other email: [emoultrie@kassellaw.com](mailto:emoultrie@kassellaw.com)  
**ATTORNEYS FOR PLAINTIFF**

September 2, 2026  
Dallas, Texas

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Receipt, U.S. Mail Standard First Class, and/or electronic mail this on September 2, 2026.

s/ David C. Humen  
Attorney for Plaintiffs

## **EXHIBIT A**

For purposes of these topics, the following words shall have the following meanings: Definitions: "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors- in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf.

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**Please provide a corporate representative to be deposed on the following subject matters:**

1. Any and all communications between YOU and the Department of Health & Human Services (HHS), the Federal Drug Administration (FDA), and the Executive Branch of the U.S. Government regarding:
  - a. the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328);
  - b. the Modernization of Cosmetics Regulation of 2022 (MoCRA);
  - c. FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490); and
  - d. the May 20, 2025 Expert Panel with the FDA.
2. All trade organizations, trade associations, and any other groups with which YOU discussed the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490).
3. Any and all internal communications YOU regarding to the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (proposal and withdrawal of 89 FR 105490).
4. When and how YOU first learned that Dr. Andrey Korchevskiy intended to write the FDA regarding the Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products and/or the May 20, 2025 Expert Panel with the FDA.
5. YOUR involvement with the June 9, 2025 letter written by Dr. Andrey Korchevskiy to Dr. Martin Makary, including the selection of co-signatories, the drafting of the letter, and the development of its content.
6. YOUR knowledge of how the June 9, 2025 letter was drafted, including how feedback was provided to Dr. Korchevskiy and how drafts were exchanged between signatories.
7. When and how YOU first learned that the FDA intended to withdraw and did withdraw its proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
8. Which of YOUR subsidiaries made Johnson's Baby Powder and other cosmetic talc product. The discussions, efforts and actions taken to stop selling talc based cosmetic products. This is not limited to cosmetic talc products in the United States or Canada.
9. Listing of all individuals involved with the decision to stop selling talc in Johnson's Baby Powder and the steps involved to execute that decision.
10. An understanding of payments made by YOU to your experts in this case for any matter including an understanding of the nature of the payment (consulting, testifying, regulatory issues, etc.).
11. An understanding of payments made by YOU directly or indirectly to Shu-Chun Su or Ann Wylie for any matter including an understanding of the nature of the payment

(consulting, testifying, regulatory issues, etc.).

12. Actions taken by YOU or at YOUR behalf to respond to the Lancet Retraction ([https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(26\)00552-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(26)00552-0/fulltext)). This includes understanding the actions taken, time spent, individuals involved and cost incurred.
13. YOUR participation in professional, industrial, and trade organizations, including but not limited to the Cosmetic, Toiletry & Fragrance Association (CTFA); the Cosmetic, Toiletry & Perfumery Association (CTPA); and the Personal Care Products Council (PCPC). This includes an understanding of when membership began, cost of membership, donations or contributions related to talc issues.
14. All information related to each entity's conversion from talc to "talc free" baby powder, including the volume of sales, last date of sale and handling of existing inventory.
15. All information relating to YOUR involvement with, knowledge regarding, and communications with or about any European health agency relating to its assessment of a potential ban on talc.
16. All documents produced by YOU and any opinions you intend to give at trial in this case.
17. What YOU did to prepare for this deposition (documents searched for, documents reviewed, people searched for, people interviewed, etc.)
18. Information regarding document searches YOU have performed in this particular case. (i.e., when the search occurred, where it occurred, terms queried, by whom, results, bates-stamp range applied to all documents produced, etc.).

## **EXHIBIT B**

For purposes of these requests, the following words shall have the following meanings:

The terms "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors- in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf.

The term "ASBESTOS" shall be interpreted, not in a limited regulatory sense, but broadly and include non-regulated and non-commercial forms of asbestos, all forms of elongate mineral particles, fibrous minerals, fibrous talc, cleavage fragments of amphiboles, individual fibers, bundles, fibrils and transition/transitional fibers. "Asbestiform" shall also be interpreted broadly and without particular limitation regarding fiber size, length, dimension, ratio, presence of multiple fibers, or geologic origin or "habit." The foregoing notwithstanding, "asbestos" also includes talc, whether or not known or acknowledged by defendant(s) to contain asbestiform minerals or other elongate mineral particles. See, e.g., Egilman, et al., Health Effects of Censored Elongated Mineral Particles: A Critical Review, Detection Limits in Air Quality and Environmental Measurements (STP 1618, 2019; doi: 10.1520/STP161820180080); January 6, 2020, Executive Summary of Preliminary Recommendations on Testing Methods for Asbestos in Talc and Consumer Products Containing Talc (available at <https://www.fda.gov/media/134005/download>) ("The difficulty of identifying and quantifying individual asbestos or other mineral particles present at low concentrations in talc is compounded by the presence of non-asbestiform analogs with the same elemental composition and crystal structure, but different growth habit. Using TEM, differentiation of chrysotile from non-asbestiform serpentine analogs is relatively straightforward; however, each of the non-asbestiform amphiboles can disaggregate into particles resembling asbestiform fibers, giving rise to disputes between laboratories over whether elongate amphibole particles are truly asbestos, or are particles resulting from attrition of larger particles of a non-asbestiform analog. Because both types of elongate minerals are suspected of having biological activity with similar pathological outcomes, the distinction is irrelevant...").

The term "TALC" includes all grades of talc including but not limited to industrial, cosmetic, food, and/or pharma, unless specified otherwise.

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.



1. All communications between YOU and the Department of Health & Human Services (HHS), the Federal Drug Administration (FDA), and the White House regarding the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
2. All communications between YOU and any identified trade organizations regarding the Consolidated Appropriations Act of 2023 (H.R. 2617 and PL 117-328), the Modernization of Cosmetics Regulation of 2022 (MoCRA), and FDA's proposed Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products (89 FR 105490).
3. All communications between YOU and Dr. Korchevskiy regarding the Testing Methods for Detecting and Identifying Asbestos in Talc-Containing Cosmetic Products and the May 20, 2025 Expert Panel with the FDA.
4. All records related to the June 9, 2025 letter to Dr. Martin Makary.
5. If YOU have withheld any document based on a claim of privilege, please produce a privilege log identifying each such document, its author, recipients, date of preparation, and the specific privilege or work product protection claimed.
6. All documents reviewed to make the witness knowledgeable about each topic above, and/or to prepare the witness to testify as to the above topics.
7. All documents used to refresh the recollection of the designated witness and/or prepare that person to testify as to areas of inquiry listed above.

# EXHIBIT F

1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - MIDDLESEX COUNTY  
3 DOCKET NO. MID-1809-17AS  
4 APPELLATE DOCKET NO. \_\_\_\_\_

5 DOUGLAS AND ROSALYN BARDEN, )  
6 Plaintiff, ) TRIAL  
7 v. )  
8 (VOLUME 1 OF 2)

9 BRENN TAG NORTH AMERICA, et al., )  
10 Defendants. )  
11 ----- )  
12 DAVID CHARLES ETHERIDGE AND )  
13 DARLENE PASTORE ETHERIDGE, ) MID-L-0932-17AS  
14 Plaintiffs, )  
15 v. )  
16 BRENN TAG NORTH AMERICA, et al., )  
17 Defendants. )  
18 ----- )  
19 D'ANGELA McNEILL-GEORGE, )  
20 Plaintiff, ) MID-L-7049-16AS  
21 v. )  
22 BRENN TAG NORTH AMERICA, et al., )  
23 Defendants. )  
24 ----- )  
25 WILLIAM AND ELIZABETH RONNING, )  
Plaintiffs, ) MID-L-6040-17AS  
v. )  
BRENN TAG NORTH AMERICA, et al., )  
Defendants. )

Job No. NJ3446610

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| <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> | <div>Page 4</div> <div>I N D E X</div> <div>WITNESS: JOHN HOPKINS PAGE</div> <div>DIRECT EXAMINATION BY MR. PANATIER 12</div> <div>E X H I B I T S</div> <div>NO. DESCRIPTION PAGE</div> <div>Plaintiff's Exhibit 2064 190</div> <div>Plaintiff's Exhibit 2304 199</div> <div>Plaintiff's Exhibit 2345 121</div> <div>Plaintiff's Exhibit 2360 107</div> <div>Plaintiff's Exhibit 2364 199</div> <div>Plaintiff's Exhibit 2367 199</div> <div>Plaintiff's Exhibit 2368 199</div> <div>Plaintiff's Exhibit 2374 199</div> <div>Plaintiff's Exhibit 2381 199</div> <div>Plaintiff's Exhibit 2382 199</div> <div>Plaintiff's Exhibit 2385 199</div> <div>Plaintiff's Exhibit 2390 199</div> <div>Plaintiff's Exhibit 2391 199</div> <div>Plaintiff's Exhibit 2393 199</div> <div>Plaintiff's Exhibit 2403 199</div> <div>Plaintiff's Exhibit 2412 199</div> <div>Plaintiff's Exhibit 2413 199</div> <div>Plaintiff's Exhibit 2434 199</div> <div>Plaintiff's Exhibit 2594 111</div> <div>Plaintiff's Exhibit 2614 197</div> <div>Plaintiff's Exhibit 2738 72</div> <div>Plaintiff's Exhibit 2836 90</div> <div>Plaintiff's Exhibit 3162 118</div> <div>Plaintiff's Exhibit 3173 139</div> <div>Plaintiff's Exhibit 3378 199</div> <div>Plaintiff's Exhibit 3624 148</div> <div>Plaintiff's Exhibit 3695-14 82</div> <div>Plaintiff's Exhibit 3695-15 59</div> <div>Plaintiff's Exhibit 3695-8 51</div> <div>Plaintiff's Exhibit 3695-22 199</div> <div>Plaintiff's Exhibit 3695-23 161</div> <div>Plaintiff's Exhibit 3695-27 178</div> |
| <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> | <div>Page 5</div> <div>THE COURT: Good morning, Dr.<br/>Hopkins.</div> <div>THE WITNESS: Good morning, your<br/>Honor.</div> <div>(Sidebar.)</div> <div>THE COURT: So we are at sidebar and<br/>we began argument on Friday. I think all the<br/>arguments were in relative to --<br/>(There is a discussion off the<br/>record.)</div> <div>THE COURT: I don't know. Was there<br/>additional argument that counsel wanted to make or<br/>are we done with argument? (INAUDIBLE.)</div> <div>MS. SULLIVAN: And just to emphasize,<br/>your Honor, Evidence Rule 701 and lay opinion from<br/>fact witnesses can be permitted, if it's consistent<br/>with your experience in product -- particularly, in<br/>product liability case.</div> <div>And, specifically, citing the<br/>Appellate Division's decision in Navarro v. George<br/>Koch &amp; Sons, 512 -- I'm sorry, 211 N.J. Super. 558<br/>and, actually, the Court held it might be reversible<br/>to not permit that kind of testimony.</div> <div>MR. MAIMON: Just a moment, your<br/>Honor.</div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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| <p style="text-align: right;">Page 6</p> <p>1 THE COURT: Sure.</p> <p>2 MR. MAIMON: So Rule 701 does allow</p> <p>3 lay opinion testimony. But that has to be based on</p> <p>4 the perception of the witness. And so the classic</p> <p>5 example is that a witness can say how fast was a car</p> <p>6 going but, for instance, the Appellate Division and</p> <p>7 the Supreme Court has held that it would be error to</p> <p>8 let a police officer say the car was going so fast</p> <p>9 and the car was speeding based on the statements of</p> <p>10 others because that's just a vehicle to admit</p> <p>11 hearsay. And I'm just looking at the commentary on</p> <p>12 Rule 701.</p> <p>13 Very clearly, the commentary makes</p> <p>14 that a nonexpert may give his opinions on matters of</p> <p>15 common knowledge and observation but not on areas</p> <p>16 that would usurp the function of expert opinion.</p> <p>17 The discussion of products liability</p> <p>18 cases has been restricted to people who were</p> <p>19 involved in the design so that the designers of</p> <p>20 products such as a chair, and that's the Navarro</p> <p>21 case, could say that providing an undersized chair,</p> <p>22 this is the reason it was designed that way, so</p> <p>23 that's somewhat of an opinion, but it's not an</p> <p>24 opinion where it goes to the product defect. It's</p> <p>25 not an opinion that's an expert opinion. It's</p> | <p style="text-align: right;">Page 8</p> <p>1 had personal knowledge.</p> <p>2 THE COURT: Okay. So here where this</p> <p>3 is going to come in is the whole issue with his</p> <p>4 cross-examination and so I previously ruled so</p> <p>5 there's no personal use testimony coming in.</p> <p>6 There's no expert testimony going to come in because</p> <p>7 he's not an expert. There is no hearsay testimony</p> <p>8 coming in unless it meets one of the exceptions.</p> <p>9 With regard to this whole area, I</p> <p>10 believe, this is going to -- from what you've --</p> <p>11 Counsel advised really kind of come up during</p> <p>12 cross-examination of the witness.</p> <p>13 So I've previously allowed testimony</p> <p>14 within, I believe, the confines of 602 and 701. We</p> <p>15 have to remember his role at the company was as the</p> <p>16 head of product safety for the time period that he</p> <p>17 was there. And so if it's within his personal</p> <p>18 knowledge in that role, the Court will allow that</p> <p>19 testimony.</p> <p>20 This is going to be the situation</p> <p>21 where, I mean, Counsel, if you feel that he's going</p> <p>22 outside that role and not testifying within his</p> <p>23 personal knowledge, then we can come to sidebar.</p> <p>24 MR. PANATIER: Yes, your Honor.</p> <p>25 THE COURT: Okay?</p> |
| <p style="text-align: right;">Page 7</p> <p>1 opinion within not only the knowledge but the</p> <p>2 perception of somebody. And I think that we get --</p> <p>3 we get confused when we say that a person's personal</p> <p>4 knowledge is based on what other people have told</p> <p>5 them. And our courts have said that the party</p> <p>6 opponent exception is -- is allowed to have those</p> <p>7 statements. But the same way in which we could</p> <p>8 offer in the Answers to Interrogatories of Johnson &amp;</p> <p>9 Johnson, they could not offer in their own Answers</p> <p>10 to Interrogatories.</p> <p>11 We could offer the corporate</p> <p>12 representative deposition of Johnson &amp; Johnson. The</p> <p>13 rule on admissibility of depositions makes it clear</p> <p>14 as well as the case law they could not offer their</p> <p>15 own. And so we do not believe that Dr. Hopkins can</p> <p>16 offer any opinions where he lacks personal</p> <p>17 knowledge.</p> <p>18 MS. SULLIVAN: And, your Honor, just</p> <p>19 to follow up on the Navarro case, it wasn't the</p> <p>20 chair case. It actually involves the design of</p> <p>21 latches and the Court held that the employee there</p> <p>22 who was familiar with design manufacturer testing</p> <p>23 issues should be able to testify consistent with his</p> <p>24 knowledge and experience with the company.</p> <p>25 MR. PLACITELLA: And that employee</p>     | <p style="text-align: right;">Page 9</p> <p>1 MR. MAIMON: Understood.</p> <p>2 MS. SULLIVAN: Yes, your Honor.</p> <p>3 THE COURT: Thank you.</p> <p>4 MR. MAIMON: Thank you, your Honor.</p> <p>5 (Sidebar ends.)</p> <p>6 THE COURT: So let's get the Jurors</p> <p>7 in. Everything is working here now.</p> <p>8 I'll step out so we can bring in the</p> <p>9 Jurors.</p> <p>10 (Recess taken 9:32 a.m.)</p> <p>11 (Jury enters.)</p> <p>12 THE COURT: Good morning. Please be</p> <p>13 seated. Make sure cell phones are turned off.</p> <p>14 Officer, you can just give the envelopes to the</p> <p>15 Jurors, they'll pass them around to the correct</p> <p>16 individuals.</p> <p>17 THE WITNESS: May I approach?</p> <p>18 THE COURT: Yes, please. Have a</p> <p>19 seat, Dr. Hopkins.</p> <p>20 Good morning, everyone. Today is</p> <p>21 July 22, 2019. This is the trial in the matter of</p> <p>22 Douglas and Rosalyn Barden versus Johnson &amp;</p> <p>23 Johnson -- Counsel, you may be seated -- Darlene and</p> <p>24 David Etheridge versus Johnson &amp; Johnson, D'Angela</p> <p>25 McNeill versus Johnson &amp; Johnson and William and</p>                                                                                                                                                                                                        |

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| <p style="text-align: right;">Page 10</p> <p>1 Elizabeth Ronning versus Johnson &amp; Johnson.<br/> 2 May I have appearances please for<br/> 3 the Plaintiffs.<br/> 4 MR. MAIMON: Thank you, your Honor.<br/> 5 Good morning. Good morning, everyone. Moshe<br/> 6 Maimon, Chris Panatier and Chris Placitella for the<br/> 7 Bardens, the Etheridges, the Ronnings and Ms.<br/> 8 McNeill.<br/> 9 THE COURT: Thank you.<br/> 10 And on behalf of the Defendant,<br/> 11 Johnson &amp; Johnson and Johnson &amp; Johnson Consumer,<br/> 12 Incorporated.<br/> 13 MS. SULLIVAN: Thank you, your Honor,<br/> 14 good morning. Hi, Jurors. Good morning, everyone.<br/> 15 Diane Sullivan and Jack Nolan for J&amp;J.<br/> 16 MR. NOLAN: Good morning.<br/> 17 THE COURT: Welcome back, Members of<br/> 18 the Jury. As you may recall, we have not finished<br/> 19 the testimony of Dr. Compton who started his<br/> 20 testimony on Friday. Similarly, we have not<br/> 21 completed the testimony of Dr. Webber.<br/> 22 In order to accommodate witnesses'<br/> 23 schedule, we're now going to move to a different<br/> 24 witness.<br/> 25 Plaintiffs may call their next</p> | <p style="text-align: right;">Page 12</p> <p>1 MR. PANATIER: And there's already a<br/> 2 binder there and I've provided Counsel with a binder<br/> 3 of Dr. Hopkins's prior testimony. And we'll be<br/> 4 tendering exhibits to Defense Counsel as they come.<br/> 5 Dr. Hopkins has an exhibit binder there. And here<br/> 6 is...<br/> 7 THE COURT: Thank you.<br/> 8 MR. PANATIER: There may be more<br/> 9 volumes but we're going to start on Volume 1.<br/> 10 DIRECT EXAMINATION BY MR. PANATIER:<br/> 11 Q. Good morning, everybody.<br/> 12 So please introduce yourself.<br/> 13 A. John -- yes, John Hopkins.<br/> 14 Q. Okay. Now, you are here as the<br/> 15 corporate representative for Johnson &amp; Johnson and<br/> 16 Johnson &amp; Johnson Consumer, Inc., correct?<br/> 17 A. Yes.<br/> 18 Q. You don't work for us, we have not<br/> 19 paid you to come here and testify, correct?<br/> 20 A. That is correct.<br/> 21 Q. Alright. You currently do not work<br/> 22 for Johnson &amp; Johnson, correct?<br/> 23 A. Correct.<br/> 24 Q. You are a consultant?<br/> 25 A. Correct.</p> |
| <p style="text-align: right;">Page 11</p> <p>1 witness.<br/> 2 MR. PANATIER: Thank you, your Honor.<br/> 3 At this time Plaintiffs call the<br/> 4 corporate representative of Johnson &amp; Johnson, John<br/> 5 Hopkins, who is already standing at the witness<br/> 6 stand.<br/> 7 DR. HOPKINS: Thank you. Good<br/> 8 morning, Jury. Good morning, your Honor.<br/> 9 THE COURT: Good morning.<br/> 10 Could you please remain seated,<br/> 11 Dr. Hopkins, momentarily, while you are administered<br/> 12 the oath. If you could remain standing, I'm sorry.<br/> 13 If I said "seated," I apologize.<br/> 14 THE CLERK: State your full name and<br/> 15 spell your last name, please.<br/> 16 THE WITNESS: John Hopkins,<br/> 17 H-O-P-K-I-N-S.<br/> 18 J O H N H O P K I N S, SWORN.<br/> 19 THE COURT: Officer, if you could<br/> 20 just remove the bible from there.<br/> 21 Please be seated. Thank you.<br/> 22 MR. PANATIER: And, your Honor, just<br/> 23 by way of organization, I have a testimony binder.<br/> 24 Can I give this to your Honor?<br/> 25 THE COURT: Yes, please.</p>                                                                          | <p style="text-align: right;">Page 13</p> <p>1 Q. And the last year that you worked at<br/> 2 Johnson &amp; Johnson was, approximately, 2000?<br/> 3 A. Correct.<br/> 4 Q. So, since 2000, you have been a<br/> 5 consultant, a paid consultant, right?<br/> 6 A. Yes.<br/> 7 Q. To Johnson &amp; Johnson and its other<br/> 8 companies, right?<br/> 9 A. To Johnson &amp; Johnson, yes.<br/> 10 Q. Well, here, for instance, you're<br/> 11 being paid by both Johnson &amp; Johnson and Johnson &amp;<br/> 12 Johnson Consumer, Inc., even though you might get<br/> 13 just one check; fair?<br/> 14 A. Fair.<br/> 15 Q. Okay, alright. And what is the rate<br/> 16 that you are charging them per hour?<br/> 17 A. My company bills my time at 300 US<br/> 18 per hour.<br/> 19 Q. Now, you've said your company.<br/> 20 Your company is a company that you run with<br/> 21 your wife, correct?<br/> 22 A. Yes, and we employ some people as<br/> 23 well, yes.<br/> 24 Q. Alright. How many people do you<br/> 25 employ?</p>                                                                          |

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| <p style="text-align: right;">Page 14</p> <p>1 A. Besides my wife and myself, there's<br/>2 two full-time and one part-time.<br/>3 Q. So the two full-time are you and your<br/>4 wife and one part-time?<br/>5 A. No. Besides my wife and myself, two<br/>6 full-time and one part-time.<br/>7 Q. That company is called Innova?<br/>8 A. Innovant Research Limited, yes.<br/>9 Q. Okay. And that is the company that<br/>10 then bills for your time and then pays you?<br/>11 A. Correct.<br/>12 Q. Okay. So, even though you are not<br/>13 currently an employee of Johnson &amp; Johnson, you are<br/>14 the face of Johnson &amp; Johnson at this trial. Do you<br/>15 understand that?<br/>16 A. I am today, yes.<br/>17 Q. And do you understand that what you<br/>18 say are the words of Johnson &amp; Johnson, correct?<br/>19 A. Yes.<br/>20 Q. You have served in this capacity on,<br/>21 can we say, numerous occasions now?<br/>22 A. Yes.<br/>23 Q. In fact, next week you're going to<br/>24 Kentucky to do it again, correct?<br/>25 A. Yes.</p> | <p style="text-align: right;">Page 16</p> <p>1 Q. And they still sell -- they sell it<br/>2 worldwide, correct?<br/>3 A. Yes.<br/>4 Q. Until about the early 1960s, the talc<br/>5 that was used in Johnson &amp; Johnson's Baby Powder was<br/>6 Italian talc for the most part, right?<br/>7 A. Until around about '67, yes.<br/>8 Q. It was Italian?<br/>9 A. It was from a mine in Italy, yes.<br/>10 Q. The Val Chisone region, correct?<br/>11 A. The Fontana mine in the Val Chisone<br/>12 region, a particular mine, yes.<br/>13 Q. Prior to 1967 or some time in the<br/>14 '30s and '40s, they also used some domestic talcs<br/>15 and California talc, correct?<br/>16 A. The only time it used domestic was<br/>17 during the war when Nazi u-boats were sinking<br/>18 shipments going from Italy. That was around about<br/>19 from 1941 to end of '45. So there was that time<br/>20 window when a domestic source was being used.<br/>21 Q. The Nazis were looking for the talc<br/>22 boats and sinking the talc boats?<br/>23 A. The Nazis were sinking all boats.<br/>24 Q. Okay. And they used California talc<br/>25 during the '40s, correct?</p>             |
| <p style="text-align: right;">Page 15</p> <p>1 Q. You've already testified this year<br/>2 several times in the same capacity at trial; isn't<br/>3 that true?<br/>4 A. Yes.<br/>5 Q. You have done it last year at trial<br/>6 several times, correct?<br/>7 A. Yes.<br/>8 Q. And the year before?<br/>9 A. Yes.<br/>10 Q. Now, let's talk a little -- let's get<br/>11 our bearings a little bit about Johnson &amp; Johnson<br/>12 and baby powder.<br/>13 Now Johnson &amp; Johnson started selling<br/>14 baby powder in the 1800s, correct?<br/>15 A. 18 -- 1894, as I recollect, yes.<br/>16 Q. In fact, they were giving it away in<br/>17 maternity kits, right?<br/>18 A. Originally, no, it was sold where<br/>19 they -- a large giant dis-bandage to take away an<br/>20 irritation and then later it became a mom's product.<br/>21 Q. That's fine.<br/>22 At some point early on they were putting the<br/>23 Johnson's Baby Powder into maternity kits in<br/>24 hospitals, correct?<br/>25 A. Yes.</p>                                              | <p style="text-align: right;">Page 17</p> <p>1 A. That is my understanding. A<br/>2 particular -- I don't know which mine, but a<br/>3 particular California talc was used during the war,<br/>4 during World War II.<br/>5 Q. Does the Grantham mine, a mine sound<br/>6 familiar to you?<br/>7 A. The Grantham mine was a mine that was<br/>8 evaluated but never used by Johnson &amp; Johnson in the<br/>9 1970s. I have no...<br/>10 Q. You don't believe Grantham was ever<br/>11 used prior to --<br/>12 A. No. There's no evidence whatsoever<br/>13 that Grantham was ever used and it has ever been<br/>14 used. It was evaluated briefly during the early<br/>15 1970s along with 50 other mines as an alternative<br/>16 source of domestic talc. None of those were ever<br/>17 approved, including the Grantham mine.<br/>18 Q. Okay. We'll come back to the '40s<br/>19 then. We don't have anybody who was exposed in the<br/>20 '40s here, so we might just address it briefly.<br/>21 After '67, Johnson &amp; Johnson had<br/>22 purchased a mine in Vermont, correct?<br/>23 A. They did, yes.<br/>24 Q. Well, they purchased it prior to<br/>25 1967, right?</p> |



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| <p style="text-align: right;">Page 18</p> <p>1 A. They did, yes.</p> <p>2 Q. And they ran --</p> <p>3 A. Three or four years before.</p> <p>4 Q. Okay. And they ran that mine through</p> <p>5 a company called Windsor Minerals, right?</p> <p>6 A. The company that purchased the mine</p> <p>7 was a subsidiary of Johnson &amp; Johnson. It was</p> <p>8 purchased, I think, around about 1964, Windsor</p> <p>9 Minerals did. And it was not actually fully</p> <p>10 approved and set in motion as a baby talc source</p> <p>11 until the mid '60s, '67 and it was phased in and</p> <p>12 Italian talc was phased out. But the company that</p> <p>13 owned the mine was a subsidiary called Windsor</p> <p>14 Minerals.</p> <p>15 Q. Right. And Johnson &amp; Johnson used</p> <p>16 the Vermont sourced talc for its -- all of its</p> <p>17 domestic talc in the United States from,</p> <p>18 approximately, 1967 or so until 2003; is that</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Alright. Now, there was some overlap</p> <p>22 with the Italian talc and the Vermont talc, correct?</p> <p>23 A. Yes. One was phased in and the other</p> <p>24 was phased out during the 1967, '68 time frame.</p> <p>25 Q. Okay. In 1980 there was a mine</p> | <p style="text-align: right;">Page 20</p> <p>1 Q. And in 2012, we all know the Shower</p> <p>2 to Shower product, that was sold by Johnson &amp;</p> <p>3 Johnson to a company called Valeant, right?</p> <p>4 A. It was, yes.</p> <p>5 Q. So Johnson &amp; Johnson no longer owns</p> <p>6 the Shower to Shower product line, right?</p> <p>7 A. Not since 2012, no.</p> <p>8 Q. It, obviously, still owns Johnson's</p> <p>9 Baby Powder, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Johnson &amp; Johnson Corporate in New</p> <p>12 Brunswick made all health and safety policy</p> <p>13 decisions with regard to asbestos and talc products,</p> <p>14 correct?</p> <p>15 A. The -- yes, the company in New Jersey</p> <p>16 is the parent company for all the global companies</p> <p>17 made those decisions, yes.</p> <p>18 Q. And testing results between Johnson &amp;</p> <p>19 Johnson and, for instance, Johnson &amp; Johnson</p> <p>20 Consumer, Inc., which I'm just going to call JJCI,</p> <p>21 test results, health and safety information were</p> <p>22 freely exchanged between those two companies,</p> <p>23 correct?</p> <p>24 A. I've not seen any evidence that it</p> <p>25 was not. So, I guess, the answer is going to be,</p> |
| <p style="text-align: right;">Page 19</p> <p>1 strike in Vermont, correct?</p> <p>2 A. There was. And that was December</p> <p>3 1980 and the mine was closed, so for about three</p> <p>4 months until February '81.</p> <p>5 Q. Are you sure it wasn't --</p> <p>6 A. Sorry.</p> <p>7 Q. -- December 1979?</p> <p>8 A. Sorry. December 1979 there was a</p> <p>9 mine strike which ran into -- from 1980, January,</p> <p>10 February, it was sourced from Italy.</p> <p>11 Q. Right. And they went back to the</p> <p>12 00000 Italian Val Chisone talc?</p> <p>13 A. Which is the same talc that they were</p> <p>14 using in Europe at the same time, yes.</p> <p>15 Q. After 2003 all the talc that's been</p> <p>16 sourced for Johnson's Baby Powder and Shower to</p> <p>17 Shower sold here in the US is China, Guangxi,</p> <p>18 correct?</p> <p>19 A. There is a mine in China, the Guangxi</p> <p>20 mine, which is a, like a high grade cosmetic talc,</p> <p>21 yes.</p> <p>22 Q. Johnson &amp; Johnson owned the Vermont</p> <p>23 mine until 1989 when it sold it to a company called</p> <p>24 Cyprus, correct?</p> <p>25 A. Yes.</p>                                                                                                                     | <p style="text-align: right;">Page 21</p> <p>1 yes. But I've not seen evidence that anything was</p> <p>2 withheld.</p> <p>3 Q. Right. Because you wouldn't want</p> <p>4 Johnson &amp; Johnson getting health and safety</p> <p>5 information that was important to the products being</p> <p>6 made and sold by JJCI and not given to them,</p> <p>7 correct?</p> <p>8 A. Correct, yes. Like I say, I've not</p> <p>9 seen evidence that it was ever -- there was any ever</p> <p>10 data withheld.</p> <p>11 Q. In fact, the evidence you've seen is</p> <p>12 that any evidence -- any health and safety</p> <p>13 information that Johnson &amp; Johnson had was given to</p> <p>14 JJCI and vice versa, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Now, you have reviewed many thousands</p> <p>17 of documents, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And in this litigation, this talc</p> <p>20 asbestos litigation, you have reviewed, I think,</p> <p>21 you've told me, 10 to 15,000 documents?</p> <p>22 A. I guess it is, yes, yes.</p> <p>23 Q. Now, you know that Johnson &amp; Johnson</p> <p>24 has turned over around a million documents in this</p> <p>25 litigation, correct?</p>                                                      |



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| <p style="text-align: right;">Page 30</p> <p>1 have been put on-line by Johnson &amp; Johnson's for all<br/>2 people to see?<br/>3 A. I don't know whether they have or<br/>4 whether they have not. What I can say is that I<br/>5 have read probably between 10 and 15,000, which are<br/>6 pertinent to the topic we're talking about. Whether<br/>7 the other --<br/>8 Q. I'm not asking you about that<br/>9 anymore. Now I'm asking you about something<br/>10 specific.<br/>11 You don't know whether or not Johnson<br/>12 &amp; Johnson has put those documents on-line for all to<br/>13 see, do you?<br/>14 A. No.<br/>15 Q. Because we have heard that -- you<br/>16 know Ms. Sullivan, right, correct?<br/>17 A. Yes, I know Ms. Sullivan.<br/>18 Q. Ms. Sullivan has put you on the stand<br/>19 before, correct?<br/>20 A. Yes.<br/>21 Q. Did Ms. Sullivan tell you that she<br/>22 told this jury that Johnson &amp; Johnson's documents<br/>23 were free for all to see on-line? Did you even know<br/>24 that that existed?<br/>25 A. No.</p> | <p style="text-align: right;">Page 32</p> <p>1 A. You have, yes. You have, yeah.<br/>2 Q. And Johnson &amp; Johnson was aware of<br/>3 asbestos disease going back to the turn of the last<br/>4 century, correct?<br/>5 A. When you say, "Johnson &amp; Johnson,"<br/>6 there are no doubt people in the medical department<br/>7 who got a medical training or a toxicology training<br/>8 who worked in the medical department who would have<br/>9 knowledge of asbestos toxicology --<br/>10 Q. Sure. And Johnson &amp; Johnson --<br/>11 A. -- whenever -- worldwide.<br/>12 Q. Yes. And Johnson &amp; Johnson was aware<br/>13 that in the 1930s, asbestos was associated with<br/>14 cancer, correct?<br/>15 A. I'm sure there were individuals in<br/>16 the medical department who would have that knowledge<br/>17 as part of their medical training.<br/>18 Q. And you've testified before, sir,<br/>19 that the knowledge of asbestos inhalation as a cause<br/>20 of lung cancer and mesothelioma was known way before<br/>21 1968, correct?<br/>22 A. Yeah, as a toxicologist, you're<br/>23 taught that people who worked in World War I and gas<br/>24 mask manufacturing, it was not a healthy profession.<br/>25 Q. Okay. But it wasn't just "gas</p>                      |
| <p style="text-align: right;">Page 31</p> <p>1 Q. To the extent that it does, can you<br/>2 tell us when they put them on-line?<br/>3 A. Well, like I say, you're telling me<br/>4 or asking me something that I do not have knowledge<br/>5 of. So I cannot answer that question.<br/>6 Q. Johnson &amp; Johnson had a big medical<br/>7 library, right?<br/>8 A. They had a library, yes, certainly,<br/>9 when I was working there.<br/>10 Q. They had subscriptions to journals<br/>11 like Journal of the American Medical Association,<br/>12 right?<br/>13 A. We did, yes.<br/>14 Q. New England Journal of Medicine<br/>15 right?<br/>16 A. Uh-huh, yep.<br/>17 Q. The Lancet --<br/>18 A. Yes.<br/>19 Q. -- right?<br/>20 The New York Academy of Sciences, correct?<br/>21 A. Probably, yes. I can't remember that<br/>22 one but, yes.<br/>23 Q. And I'll tell you for most of these,<br/>24 if you want to see your testimony, I've asked you<br/>25 these questions before.</p>                                                                    | <p style="text-align: right;">Page 33</p> <p>1 masks," was it?<br/>2 A. Well, that was -- I gave that as one<br/>3 example of why people are aware that asbestos is not<br/>4 a healthy material.<br/>5 Q. Johnson &amp; Johnson being already a<br/>6 large company in the 1960s was well aware of the<br/>7 hazard of asbestos, correct?<br/>8 A. I'm sure that there were one or two<br/>9 medically qualified individuals, as we said, in the<br/>10 medical department who would have had that<br/>11 knowledge. Johnson &amp; Johnson has not been in the<br/>12 asbestos business, so it would not be widely<br/>13 disseminated throughout the whole company.<br/>14 Q. Well, Johnson &amp; Johnson has patented<br/>15 asbestos containing products, correct?<br/>16 A. An individual has patented, I<br/>17 believe, it was an ironing board cover, which was --<br/>18 -- yeah, or something like that, but it was not part<br/>19 -- it was never sold. The company has not sold<br/>20 asbestos products.<br/>21 Q. You and I have gone through about<br/>22 four patents that Johnson &amp; Johnson patented<br/>23 asbestos-containing products before, have we not?<br/>24 A. We have and there were people in the<br/>25 surgical dressings division who were looking at</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 asbestos materials as heat resistant, yes.</p> <p>2 Q. Now, let's talk about baby powder.</p> <p>3 Johnson &amp; Johnson understands -- first of</p> <p>4 all, talc is a mineral, is it not?</p> <p>5 A. Talc is a mineral. It's mined out</p> <p>6 the ground, yes.</p> <p>7 Q. Correct. And Johnson &amp; Johnson,</p> <p>8 actually, had their own mine and they mine and they</p> <p>9 mined it out of the ground, correct?</p> <p>10 A. They did, yes.</p> <p>11 Q. Okay. Baby powder, when it is used</p> <p>12 on a baby, okay, that baby will inhale some of that</p> <p>13 talc, correct?</p> <p>14 A. It's theoretically possible. If you</p> <p>15 put the powder on your hand and run it on baby's</p> <p>16 bottom, it's theoretically possible.</p> <p>17 Q. Will you turn please, sir, to the tab</p> <p>18 that is 2017, 8/15. It should be the first tab.</p> <p>19 Because, sir, it's not</p> <p>20 "theoretically possible," right, it happens,</p> <p>21 correct?</p> <p>22 A. Show me where you're referring.</p> <p>23 Q. Page 66.</p> <p>24 MS. SULLIVAN: I'm sorry, which page?</p> <p>25 MR. PANATIER: I'm sorry, hold on one</p> | <p style="text-align: right;">Page 36</p> <p>1 Your answer, "Yes."</p> <p>2 "I mean, it happens?"</p> <p>3 Your answer, "It happens, yes."</p> <p>4 Do you still agree with your prior</p> <p>5 testimony?</p> <p>6 A. Yes, that's what I said. It's a</p> <p>7 possibility.</p> <p>8 Q. By the way, that was the Herford</p> <p>9 case, right?</p> <p>10 A. Yeah, probably.</p> <p>11 Q. If you could just look at the cover</p> <p>12 page.</p> <p>13 A. Yes.</p> <p>14 Q. Sir --</p> <p>15 A. Yes.</p> <p>16 Q. -- baby powder is an extremely dusty</p> <p>17 product, correct?</p> <p>18 A. I disagree. It's not "dusty." You</p> <p>19 put it on your hands, it spreads all over your skin.</p> <p>20 It doesn't -- you're not getting clouds of dust.</p> <p>21 Q. So, for any of us who have done this</p> <p>22 with a squeeze, that squeezing motion --</p> <p>23 A. You're not meant to do that. You're</p> <p>24 meant to put it on your hand and spread it on the</p> <p>25 kin.</p>                                                                                                                                                                 |
| <p style="text-align: right;">Page 35</p> <p>1 second.</p> <p>2 BY MR. PANATIER:</p> <p>3 Q. It is going to be Page 67, sorry,</p> <p>4 bottom of the page, Line 25.</p> <p>5 A. Sorry. Would you give me the</p> <p>6 reference again?</p> <p>7 Q. Yes, sir.</p> <p>8 A. 2017...</p> <p>9 Q. This is 2017, 8/15, August 15, 2017.</p> <p>10 That's when I came to London to take your</p> <p>11 deposition. Do you remember that?</p> <p>12 A. Yes. So Page 60...</p> <p>13 Q. Seven.</p> <p>14 A. We have that, yes.</p> <p>15 Q. Okay. Down at Line 25. Sir --</p> <p>16 sorry, have you found it?</p> <p>17 A. Yes.</p> <p>18 Q. "Sir, Johnson &amp; Johnson has</p> <p>19 understood for decades that when talc powder is used</p> <p>20 on an infant or a child, they will inhale some of</p> <p>21 the talc into their lungs?"</p> <p>22 Your answer, "there is always the</p> <p>23 possibility when talc is used, we will inhale talc."</p> <p>24 My question, "and it's not really a</p> <p>25 possibility, right?"</p>                                                                                                                                                                         | <p style="text-align: right;">Page 37</p> <p>1 Q. Oh, does the bottle say, don't</p> <p>2 squeeze it?</p> <p>3 A. The bottle tells you how to use it.</p> <p>4 The bottle tells you to put it on your hands and</p> <p>5 spread it over baby's -- baby's bottom and legs.</p> <p>6 Q. So, for any of us who might have seen</p> <p>7 dust come out, were we hallucinating?</p> <p>8 MS. SULLIVAN: Objection, your Honor,</p> <p>9 argument, lawyer argument.</p> <p>10 THE COURT: Please rephrase.</p> <p>11 And no speaking objections, thank you.</p> <p>12 BY MR. PANATIER:</p> <p>13 Q. Sir -- sir, are you saying -- let's</p> <p>14 go back to the initial question. We're in 2017.</p> <p>15 You said, yes, a child will inhale some of the talc,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. Do you still agree with that?</p> <p>19 A. We breathe in dust from the</p> <p>20 atmosphere in this room. Whether it's talc or</p> <p>21 whatever, we can still inhale. We inhale. We</p> <p>22 exhale. That's what we do.</p> <p>23 Q. I'm not talking about dust in this</p> <p>24 room. I'm talking about Johnson's Baby Powder,</p> <p>25 right?</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So let's stick to the product</p> <p>3 that your company made.</p> <p>4 When a parent or a sibling or</p> <p>5 somebody in the family powders a child, a baby from</p> <p>6 birth until whenever they're diaper trained,</p> <p>7 diaper -- potty trained or out of diapers whether</p> <p>8 it's age two or three or whatever, whenever they are</p> <p>9 powdered, they breathe in some of that talc, do they</p> <p>10 not, sir?</p> <p>11 A. We all do, yes.</p> <p>12 Q. The baby does?</p> <p>13 A. The baby does, adults do, yes.</p> <p>14 Q. Anybody who is powdered with</p> <p>15 Johnson's Baby Powder, especially, as a child, is</p> <p>16 going to breathe in some of that dust, are they not?</p> <p>17 A. Yeah, we breathe in, we breathe out,</p> <p>18 yes.</p> <p>19 Q. Alright. Johnson &amp; Johnson</p> <p>20 understood that it would be very, very bad for</p> <p>21 business and J&amp;J's representation if it ever came</p> <p>22 out that baby powder or any of its talc products</p> <p>23 ever contained asbestos, correct?</p> <p>24 A. If the baby powder did contain</p> <p>25 asbestos, it would be bad for business, if it did,</p> | <p style="text-align: right;">Page 40</p> <p>1 Q. Do you remember that in October of</p> <p>2 2018 you and I went through a series of documents</p> <p>3 about Baby Center where Johnson &amp; Johnson was,</p> <p>4 actually, talking about posting content on</p> <p>5 BabyCenter.com? Do you remember that?</p> <p>6 A. No, you'd need to remind me. What</p> <p>7 I've said, I believe in 2018, was that Johnson &amp;</p> <p>8 Johnson doesn't have the responsibility for the text</p> <p>9 that goes on to that domain name.</p> <p>10 Q. Johnson &amp; Johnson owns it, right?</p> <p>11 A. They own the domain name, but not the</p> <p>12 content. The content is written by people who are</p> <p>13 not part of Johnson &amp; Johnson.</p> <p>14 Q. Right. And you and I talked about</p> <p>15 this?</p> <p>16 A. We did. And I tried to make that</p> <p>17 clear. It is -- what goes on to that website is not</p> <p>18 the responsibility of Johnson &amp; Johnson. It's done</p> <p>19 by outside group.</p> <p>20 Q. Johnson &amp; Johnson owns and controls</p> <p>21 the website, correct?</p> <p>22 A. They own the domain name. They do</p> <p>23 not control what goes onto that website.</p> <p>24 Q. They own it but they have no control</p> <p>25 on what goes on the website?</p> |
| <p style="text-align: right;">Page 39</p> <p>1 yes.</p> <p>2 Q. Now, it's still your testimony here</p> <p>3 almost two years after I first took your deposition</p> <p>4 that there has never been any asbestos in Johnson's</p> <p>5 Baby Powder, right?</p> <p>6 A. Not in the baby powder that's sold,</p> <p>7 no, no.</p> <p>8 Q. Was it in the baby powder that wasn't</p> <p>9 sold?</p> <p>10 A. No, not in the baby powder, no.</p> <p>11 Q. Okay. Sir, isn't it true that</p> <p>12 Johnson &amp; Johnson knows that baby powder shouldn't</p> <p>13 be used on children at all?</p> <p>14 A. I don't agree with that.</p> <p>15 Q. Now, Johnson &amp; Johnson owns a website</p> <p>16 called BabyCenter.com, right?</p> <p>17 A. There is a website which is not --</p> <p>18 it's not -- the web -- the web -- the link and the</p> <p>19 web domain name is owned by Johnson &amp; Johnson.</p> <p>20 Q. Johnson &amp; Johnson owns and runs</p> <p>21 BabyCenter.com, right?</p> <p>22 A. It does not run it. It is -- it's</p> <p>23 run by a separate independent group. It's not part</p> <p>24 of Johnson &amp; Johnson. They own the domain name, but</p> <p>25 they have no --</p>                                         | <p style="text-align: right;">Page 41</p> <p>1 A. Sounds crazy. That's my</p> <p>2 understanding, that they own the domain name but</p> <p>3 they do not control what goes onto the website.</p> <p>4 Q. I agree with you, it does sound</p> <p>5 crazy. Because you're saying --</p> <p>6 MS. SULLIVAN: Objection, your Honor,</p> <p>7 lawyer argument.</p> <p>8 MR. PANATIER: It does sound crazy.</p> <p>9 THE COURT: Objection sustained.</p> <p>10 No speaking objections. That's the</p> <p>11 second time.</p> <p>12 BY MR. PANATIER:</p> <p>13 Q. Dr. Hopkins, your testimony to this</p> <p>14 jury is that Johnson &amp; Johnson -- by the way, this</p> <p>15 is a huge company, right, everybody knows that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. That Johnson &amp; Johnson owns a</p> <p>18 website domain name and they conceded all control of</p> <p>19 that domain name to somebody else; is that correct?</p> <p>20 A. I've not seen the terms of the</p> <p>21 agreement. But what I do know is that the content</p> <p>22 of what is written on that website is not approved</p> <p>23 or disapproved by Johnson &amp; Johnson. They don't</p> <p>24 take responsibility for what is written on that</p> <p>25 website.</p>                                                              |

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| <p style="text-align: right;">Page 42</p> <p>1 Q. Let's take a look at BabyCenter.com.</p> <p>2 MS. SULLIVAN: Your Honor, based on</p> <p>3 the testimony, objection as to hearsay.</p> <p>4 THE COURT: I'm going to allow him to</p> <p>5 try to establish foundation for it.</p> <p>6 Go ahead.</p> <p>7 MR. PANATIER: We'll get the</p> <p>8 document. We'll move ahead and do that.</p> <p>9 THE COURT: Okay.</p> <p>10 BY MR. PANATIER:</p> <p>11 Q. We'll come back to Baby Center, okay.</p> <p>12 We can bookmark this with this</p> <p>13 question.</p> <p>14 Johnson &amp; Johnson, certainly, doesn't</p> <p>15 put on its baby powder or any of its talc a warning</p> <p>16 that says, this may contain asbestos, does it?</p> <p>17 A. No, it doesn't.</p> <p>18 Q. It doesn't put a warning on it that</p> <p>19 says, do not use on babies?</p> <p>20 A. No, it doesn't.</p> <p>21 Q. Right. Because it's, specifically,</p> <p>22 marketed for babies, right?</p> <p>23 A. Yes.</p> <p>24 Q. Johnson &amp; Johnson has always stated</p> <p>25 that it has a zero tolerance policy for asbestos,</p>                                                            | <p style="text-align: right;">Page 44</p> <p>1 "non-detect" means.</p> <p>2 MS. SULLIVAN: Objection, your Honor.</p> <p>3 THE COURT: Overruled.</p> <p>4 Q. There shouldn't be any asbestos in</p> <p>5 baby powder, period, correct?</p> <p>6 A. Yes.</p> <p>7 Q. It should be asbestos-free, correct?</p> <p>8 A. Yes.</p> <p>9 Q. "Asbestos-free" means zero, correct?</p> <p>10 A. Yes.</p> <p>11 Q. As you have said before, any amount</p> <p>12 of tremolite in the form of asbestos, quote, "those</p> <p>13 needles," like you say, any amount is not allowed,</p> <p>14 correct?</p> <p>15 A. Tremolite -- I know what I said.</p> <p>16 Tremolite asbestos is not allowed. Tremolite is a</p> <p>17 relatively harmless mineral in its block or rock</p> <p>18 form.</p> <p>19 Q. You have stated before that asbestos</p> <p>20 in the form of needles such as tremolite shouldn't</p> <p>21 be in the baby powder?</p> <p>22 A. Asbestos should not be in baby</p> <p>23 powder. Tremolite can occur -- most tremolite</p> <p>24 occurs in the form of a nonasbestos form or rod</p> <p>25 form.</p>                                                                  |
| <p style="text-align: right;">Page 43</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And Johnson &amp; Johnson has always told</p> <p>4 the public that there's never been a single fiber of</p> <p>5 asbestos in any of its talc for Johnson's Baby</p> <p>6 Powder or Shower to Shower, correct?</p> <p>7 A. Yes.</p> <p>8 Q. It told that to customers, nurses,</p> <p>9 doctors and regulators and hospitals, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Johnson &amp; Johnson has stated that</p> <p>12 there should never ever ever be asbestos in baby</p> <p>13 powder, not a single fiber, zero, correct?</p> <p>14 A. I can't remember the exact</p> <p>15 phraseology, but the principle is the same. I'll</p> <p>16 agree with the principle, correct.</p> <p>17 Q. Well, okay. And just to separate</p> <p>18 that out, Johnson &amp; Johnson agrees today now in 2019</p> <p>19 that baby powder should never have any asbestos in</p> <p>20 it, correct?</p> <p>21 A. Yes.</p> <p>22 Q. That means zero asbestos, correct?</p> <p>23 A. Yeah, it's non-detected. You can't</p> <p>24 find it. There's none there, yes.</p> <p>25 Q. We're going to get into what</p> | <p style="text-align: right;">Page 45</p> <p>1 Q. Has Johnson &amp; Johnson always</p> <p>2 internally believed in a zero tolerance policy for</p> <p>3 asbestos?</p> <p>4 A. That is my understanding, yes.</p> <p>5 Q. You agree any asbestos in baby powder</p> <p>6 is too much?</p> <p>7 A. Yeah, that's what we just said, yes.</p> <p>8 Q. The reason is that no mother or</p> <p>9 father would ever buy any baby powder if it even had</p> <p>10 one fiber of asbestos in it, correct?</p> <p>11 A. Well, you're asking me to speculate.</p> <p>12 But if the product had asbestos in it, I wouldn't</p> <p>13 buy it.</p> <p>14 Q. Right.</p> <p>15 And Johnson &amp; Johnson's expectation</p> <p>16 would be that no one else would buy it either,</p> <p>17 right?</p> <p>18 A. Well, it's speculative, but it's a</p> <p>19 reasonable speculation.</p> <p>20 Q. And Johnson &amp; Johnson knows that</p> <p>21 asbestos in its talc could make people sick because</p> <p>22 Johnson &amp; Johnson knows that asbestos is a</p> <p>23 carcinogen and causes mesothelioma, correct?</p> <p>24 A. Several questions there.</p> <p>25 Asbestos causes -- can cause</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 mesothelioma, correct, yes.<br/> 2 Q. Well, let's just go to -- go to<br/> 3 8/15/17, it's the first one, Page 33.<br/> 4 MS. SULLIVAN: What line, Counsel?<br/> 5 MR. PANATIER: Give me a second.<br/> 6 BY MR. PANATIER:<br/> 7 Q. Okay. First of all, Johnson &amp;<br/> 8 Johnson agrees asbestos is a carcinogen, correct?<br/> 9 A. Yes.<br/> 10 Q. And Johnson &amp; Johnson agrees that no<br/> 11 carcinogen should be contained in the Johnson's Baby<br/> 12 Powder, correct?<br/> 13 A. Yes.<br/> 14 Q. Okay. Go to 4/11/2018 on Page 108.<br/> 15 Are you there?<br/> 16 A. Yes.<br/> 17 Q. Okay. On Line 18, you were asked<br/> 18 this question.<br/> 19 MS. SULLIVAN: Objection, your Honor,<br/> 20 in terms of the procedure. This is not (INAUDIBLE).<br/> 21 I'm not sure --<br/> 22 MR. PANATIER: It is.<br/> 23 THE COURT: Sidebar.<br/> 24 (Sidebar.)<br/> 25 THE COURT: Okay. Page, what are</p>                                                                                                                    | <p style="text-align: right;">Page 48</p> <p>1 A. Yeah. That's what I said five<br/> 2 minutes ago.<br/> 3 Q. You said -- when I asked you the<br/> 4 question, you said, yes, asbestos is a carcinogen.<br/> 5 This was a slightly different question, but we can<br/> 6 move on.<br/> 7 Johnson &amp; Johnson knows there is no safe<br/> 8 level of asbestos exposure, correct?<br/> 9 A. Scientists have not shown a safe<br/> 10 level. So, yeah, I would not disagree.<br/> 11 Q. There is no known safe level of<br/> 12 asbestos exposure, especially, for children,<br/> 13 correct?<br/> 14 A. Again, same answer. There's no -- no<br/> 15 evidence to say otherwise, so we'll assume it's<br/> 16 correct.<br/> 17 Q. Well, in fact, your answer, if you<br/> 18 could go right below on Page 108, you were asked<br/> 19 this question. "Okay, and Johnson &amp; Johnson knows<br/> 20 there's no safe level of asbestos exposure,<br/> 21 especially for children, correct, sir?"<br/> 22 And your answer was again, "There is<br/> 23 no known safe level," correct?<br/> 24 A. Yes. That's what I said.<br/> 25 Q. And then the followup question was,</p> |
| <p style="text-align: right;">Page 47</p> <p>1 we --<br/> 2 MR. PANATIER: 108, Line 18 through<br/> 3 22. This is the exact question I asked him before<br/> 4 and he didn't answer. He said, I agree it's a<br/> 5 carcinogen, but that's not the question. He said, I<br/> 6 agree it's a carcinogen --<br/> 7 THE COURT: Well, this time the same<br/> 8 question. You said it's a compound question. So<br/> 9 I'll allow it. Go ahead.<br/> 10 MR. PANATIER: Thank you, your Honor.<br/> 11 MS. SULLIVAN: Thank you.<br/> 12 (Sidebar ends.)<br/> 13 BY MR. PANATIER:<br/> 14 Q. Doctor, you were asked this question,<br/> 15 "Johnson &amp; Johnson knows that asbestos in its talc<br/> 16 could make people sick because Johnson &amp; Johnson<br/> 17 knows asbestos is a carcinogen and can cause<br/> 18 mesothelioma?"<br/> 19 And what was your answer?<br/> 20 A. What page are you on, again?<br/> 21 Q. Same Page, 108.<br/> 22 A. 108. Beg your pardon, I was on a<br/> 23 different page.<br/> 24 Q. Line 18 through 22. Your answer was,<br/> 25 "That is correct."</p> | <p style="text-align: right;">Page 49</p> <p>1 "That's right, especially, for children, correct?"<br/> 2 And you said, "yes," correct?<br/> 3 A. That's right. That's what I agree,<br/> 4 yeah.<br/> 5 Q. Alright. Johnson &amp; Johnson<br/> 6 understands that if you had just 1 percent by weight<br/> 7 of asbestos in a four-ounce bottle of the Johnson's<br/> 8 Baby Powder, you don't know if it would be trillions<br/> 9 or millions or billions of fibers, but it would be a<br/> 10 very large number, correct?<br/> 11 A. Yes.<br/> 12 Q. In eight ounces of Johnson's Baby<br/> 13 Powder there would be tens to hundreds of trillions<br/> 14 of particles, correct?<br/> 15 A. I don't think anyone has ever counted<br/> 16 them. But you could estimate that would be many,<br/> 17 many trillions, yes.<br/> 18 Q. Okay. And we can look at your<br/> 19 testimony from 2017 --<br/> 20 A. Yeah.<br/> 21 Q. -- but, I believe, you said there<br/> 22 could be tens to hundreds of trillions of particles?<br/> 23 A. Yes.<br/> 24 Q. Okay. And if we just wanted to get<br/> 25 an understanding of what that would mean in terms of</p>              |

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| <p style="text-align: right;">Page 50</p> <p>1 how much asbestos was present, you and I did this<br/>2 calculation.<br/>3 If you had .00001 percent chrysotile and<br/>4 there are only a trillion particles in the whole<br/>5 bottle, not tens or hundreds, you would still have<br/>6 10 million fibers per container, correct?<br/>7 A. That's the math, yes.<br/>8 Q. Okay. Alright. Do you know whether<br/>9 or not Johnson &amp; Johnson has put together an<br/>10 official good rocks, bad rocks company policy?<br/>11 A. I've not seen any such company<br/>12 policy. The company policy is very clear on the<br/>13 quality of talc and what specification a talc must<br/>14 meet, absence of asbestos minerals.<br/>15 Q. Is there a good rocks, bad rocks list<br/>16 that they keep?<br/>17 A. I've not seen such a document that's<br/>18 kept.<br/>19 Q. Alright. So Johnson &amp; Johnson<br/>20 understood, of course, that not only would parents<br/>21 be diapering their children, but that siblings would<br/>22 help out, too, correct?<br/>23 A. Well, that's speculation. I don't<br/>24 ever recollect my kids diapering their younger<br/>25 brothers and sisters, but maybe some people do.</p> | <p style="text-align: right;">Page 52</p> <p>1 THE COURT: You may proceed.<br/>2 BY MR. PANATIER:<br/>3 Q. Dr. Hopkins, do you see this document<br/>4 from 1955 where -- let me zoom in on this a little<br/>5 bit. It's from W.B. Birchfield. "You recently<br/>6 asked Mr. Quackenboss" -- that's a name -- "what we<br/>7 were doing along the lines of providing educational<br/>8 material to clinics conducting new mother classes.<br/>9 In addition to rather extensive use of our bathing<br/>10 time for baby film, we have been providing<br/>11 quantities of a special occasional chart, a sample<br/>12 of which is attached. This chart was first produced<br/>13 in early 1954 and has been reprinted several times.<br/>14 It is authentic and has enjoyed wide acceptance,<br/>15 okay."<br/>16 So have you seen this now?<br/>17 A. Yes.<br/>18 Q. Okay. Now, do you know when, for<br/>19 instance, do you know when Mr. Etheridge was born,<br/>20 David Ethridge?<br/>21 A. I don't.<br/>22 Q. Do you know who that is?<br/>23 A. I believe it's one of the -- your<br/>24 Plaintiffs.<br/>25 Q. Right.</p> |
| <p style="text-align: right;">Page 51</p> <p>1 Q. If you would turn please, sir, to --<br/>2 in the exhibit binder there, it should be<br/>3 chronological and you should be looking for a<br/>4 document that is -- the tab should say "1955" on it.<br/>5 And you've already turned one tab, sir, so you might<br/>6 be missing it. Is that it?<br/>7 A. Yes.<br/>8 Q. 1955, February 22nd?<br/>9 A. Yeah. Yeah.<br/>10 Q. Okay. Do you see that that is a<br/>11 document dated February 22, 1955 on Johnson &amp;<br/>12 Johnson letterhead?<br/>13 A. It is.<br/>14 Q. Okay.<br/>15 MR. PANATIER: Your Honor, I offer<br/>16 this into evidence as Plaintiffs Exhibit 3695-8.<br/>17 MS. SULLIVAN: Your Honor, just a<br/>18 second, please.<br/>19 A. Okay.<br/>20 THE COURT: Hold on.<br/>21 MS. SULLIVAN: No objection, your<br/>22 Honor.<br/>23 THE COURT: So admitted.<br/>24 (Plaintiff's Exhibit 3695-8 was moved<br/>25 into evidence.)</p>                                                                                                                                                                                                                                                                        | <p style="text-align: right;">Page 53</p> <p>1 A. Clients, yes.<br/>2 Q. And you understand he has<br/>3 mesothelioma?<br/>4 A. I do, yes.<br/>5 Q. Do you know when his sister started<br/>6 powdering him?<br/>7 A. I do not.<br/>8 Q. So let's take a peak at one of these<br/>9 brochures. You can see that they have a "How a Baby<br/>10 Grows" brochure. Do you see that?<br/>11 A. I do, yes.<br/>12 Q. And then if you turn the page,<br/>13 there's this document "How to Bathe a Baby." Do you<br/>14 see that?<br/>15 A. Yes.<br/>16 Q. We can zoom in a little bit on it.<br/>17 And you see it looks like a mother and older<br/>18 daughter, right?<br/>19 A. Yeah, it looks 17, 18, yeah, yeah.<br/>20 Q. Well, look just right here. "A<br/>21 visual chart for students who have baby brothers and<br/>22 sisters at home or who serve as mother's helper or<br/>23 babysitters or for those who are studying childcare<br/>24 or may soon start families of their own."<br/>25 So Johnson &amp; Johnson certainly</p>                                                                                           |

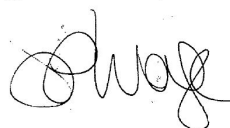


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| <p style="text-align: right;">Page 94</p> <p>1 Q. Hold on.</p> <p>2 A. See there's nothing there?</p> <p>3 Q. Yeah, here, look at my copy.</p> <p>4 A. Okay.</p> <p>5 Q. So, when I asked you, if there was a</p> <p>6 robust record of tremolite in the source talc for</p> <p>7 Johnson's Baby Powder, your answer was what?</p> <p>8 A. Yeah, correct, yeah. I just said</p> <p>9 that a few minutes ago.</p> <p>10 Q. There was a robust record, correct?</p> <p>11 A. Of tremolite, yes.</p> <p>12 Q. Okay. For CTPA in 1996, 2016 your</p> <p>13 global specification they all said no amphibole</p> <p>14 minerals.</p> <p>15 My question is tremolite is an amphibole</p> <p>16 mineral, correct?</p> <p>17 A. My global specification was not a</p> <p>18 global specification.</p> <p>19 MR. PANATIER: Your Honor, I'm going</p> <p>20 to object as nonresponsive.</p> <p>21 MS. SULLIVAN: He didn't even answer</p> <p>22 before you decided it's nonresponsive.</p> <p>23 MR. PANATIER: I asked if tremolite</p> <p>24 was an amphibole.</p> <p>25 THE COURT: That response is stricken</p> | <p style="text-align: right;">Page 96</p> <p>1 Q. And you know that Battel found</p> <p>2 tremolite in the Italian source or for Johnson's</p> <p>3 baby powder several hundred times, correct?</p> <p>4 A. They found tremolite, not asbestos</p> <p>5 tremolite. They found tremolite, yes.</p> <p>6 MR. PANATIER: Your Honor, I move to</p> <p>7 strike. I asked whether they found tremolite.</p> <p>8 A. The answer is, yes.</p> <p>9 THE COURT: Thank you, Doctor.</p> <p>10 Q. Alright. Alright. Several hundred</p> <p>11 times, correct?</p> <p>12 A. They found tremolite.</p> <p>13 Q. There is extensive testing</p> <p>14 demonstrating tremolite in both the Italian and</p> <p>15 Vermont ore, correct?</p> <p>16 A. Yeah.</p> <p>17 Q. And by the early 1970s Johnson &amp;</p> <p>18 Johnson had numerous reports of tremolite in both,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. So I brought up Bill Ashton before</p> <p>22 and I wrote down last night a series of people which</p> <p>23 might help us speed this up, okay. So can you see</p> <p>24 my list of people here?</p> <p>25 A. I need my driving glasses.</p> |
| <p style="text-align: right;">Page 95</p> <p>1 from the record.</p> <p>2 Can you ask the question one more</p> <p>3 time.</p> <p>4 MR. PANATIER: Yes.</p> <p>5 THE COURT: Please listen to the</p> <p>6 question, Dr. Hopkins.</p> <p>7 Q. Is tremolite an amphibole?</p> <p>8 A. Tremolite is an amphibole.</p> <p>9 Q. Okay. Anthophyllite is an amphibole,</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. Actinolite is an amphibole?</p> <p>13 A. They all are, yes.</p> <p>14 Q. Chrysotile is a different type of</p> <p>15 mineral, it's serpentine, correct?</p> <p>16 A. It is serpentine, yes.</p> <p>17 Q. Chrysotile -- anytime you see a</p> <p>18 reference to chrysotile, we don't have to talk</p> <p>19 whether it's good rock or a bad rock, that's</p> <p>20 asbestos always, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Sir, we have heard a little bit in</p> <p>23 this case about the Battel Memorial Altitudes.</p> <p>24 You're familiar with Battel, correct?</p> <p>25 A. I am, yes, yes.</p>                                                                                  | <p style="text-align: right;">Page 97</p> <p>1 Q. Yeah. Can you --</p> <p>2 A. Yes.</p> <p>3 Q. Can you read them okay?</p> <p>4 A. I can read them, yes.</p> <p>5 Q. So, as documents come up, this might</p> <p>6 help us keep track of the cast of characters, okay?</p> <p>7 A. Yes.</p> <p>8 Q. And I've entitled this, "J&amp;J People</p> <p>9 Involved in Talc Asbestos," with the caveat that</p> <p>10 there are others, right?</p> <p>11 A. Probably.</p> <p>12 Q. You're not on there, right, you</p> <p>13 weren't?</p> <p>14 A. Yeah, yeah.</p> <p>15 Q. So, just to get straight -- and I'd</p> <p>16 love if you correct me if any of these are incorrect</p> <p>17 and we can mark it out and we can make an</p> <p>18 adjustment. But let's just go through them. This</p> <p>19 will save us time moving forward as we go through</p> <p>20 the documents, okay?</p> <p>21 A. Okay.</p> <p>22 Q. Is that alright?</p> <p>23 Alright. Bill Ashton, senior science, head</p> <p>24 of talc, someone who you said was regarded as</p> <p>25 Mr. Talc, correct?</p>                                                                     |

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| <p style="text-align: right;">Page 102</p> <p>1 Q. Charles -- I can't say that --<br/> 2 W-a-h-s-c-z-u-k?<br/> 3 A. I think it's pronounced Wajsczuk, but<br/> 4 I don't know him.<br/> 5 Q. Okay, great; medical Safety Officer,<br/> 6 right?<br/> 7 A. Yeah.<br/> 8 Q. Okay. Alright. So this might help<br/> 9 us keep our bearings as we move forward.<br/> 10 Now, sir, Johnson &amp; Johnson understands that<br/> 11 talc, specifically, for use on babies but really for<br/> 12 all purposes has no medicinal benefit, right?<br/> 13 A. It's not a therapeutic medicinal, no,<br/> 14 there's no --<br/> 15 Q. It doesn't have --<br/> 16 A. It doesn't treat nor cure disease.<br/> 17 Q. It doesn't have any health benefits?<br/> 18 A. It helps cool the skin and keeps the<br/> 19 skin from chaffing. It's -- call it dry lubricant.<br/> 20 The talc particles slide over each other so they<br/> 21 help stop chaffing but --<br/> 22 Q. Okay. Other than that --<br/> 23 A. -- it's not medicinal, I don't know.<br/> 24 Q. Other than chaffing, does it have any<br/> 25 health benefits, sir?</p>        | <p style="text-align: right;">Page 104</p> <p>1 Q. They referred to it as the<br/> 2 cornerstone of their baby products franchise,<br/> 3 correct?<br/> 4 A. It was the first baby product, yes.<br/> 5 Q. They've even referred to it as the<br/> 6 sacred cow, right?<br/> 7 A. I've heard that expression from one<br/> 8 individual.<br/> 9 Q. Right; in the Johnson &amp; Johnson<br/> 10 documents, true?<br/> 11 A. Yes.<br/> 12 Q. Okay. So let's look at this document<br/> 13 it's dated 1966. It is from W.H. Steinberg to Gavin<br/> 14 Hildick-Smith, okay, Director of Medical Affairs,<br/> 15 correct?<br/> 16 A. Yes.<br/> 17 MR. PANATIER: Alright. I'm going to<br/> 18 offer this into evidence, your Honor, Exhibit 2360.<br/> 19 MS. SULLIVAN: Your Honor, this was<br/> 20 in limine issue and it's also --<br/> 21 THE COURT: Sidebar.<br/> 22 (Sidebar.)<br/> 23 THE COURT: What's the in limine<br/> 24 issue?<br/> 25 MS. SULLIVAN: This was other adverse</p>                                                                                                                                                                                                                             |
| <p style="text-align: right;">Page 103</p> <p>1 A. I'm not aware of any curative --<br/> 2 disease curative benefits, no. It's a skin dry<br/> 3 lubricant.<br/> 4 Q. You can turn, please, sir, it's going<br/> 5 to be in the big binder to June 17, 1966. It should<br/> 6 be near the front. Here it is.<br/> 7 Now, first of all, Johnson &amp; Johnson refers<br/> 8 to the baby powder. It's an important product to<br/> 9 Johnson &amp; Johnson, right?<br/> 10 A. Yes, it's been sold for over hundred<br/> 11 years.<br/> 12 Q. It's not one that they ever made -- I<br/> 13 mean, they ever made a ton of money from relatively<br/> 14 speaking, right?<br/> 15 A. No, virtually none.<br/> 16 Q. It was far more important to Johnson<br/> 17 &amp; Johnson in terms of reputation, correct?<br/> 18 A. Yes, it was a historical product.<br/> 19 Q. Johnson &amp; Johnson?<br/> 20 A. From the 1890s.<br/> 21 Q. I'm sorry?<br/> 22 A. From the 1890s.<br/> 23 Q. Johnson &amp; Johnson referred to the<br/> 24 baby powder as their flagship product, correct?<br/> 25 A. I've seen that expression, yes.</p> | <p style="text-align: right;">Page 105</p> <p>1 -- it's like a cancer -- this is the asphyxiation<br/> 2 issue. It has nothing to do with mesothelioma.<br/> 3 These are the kids that choked or asphyxiated<br/> 4 because of the blocking air, yeah, from the powder.<br/> 5 It's a 403 issue and it's also hearsay, of course.<br/> 6 MR. PANATIER: First of all, it's<br/> 7 here to -- to address hearsay within hearsay goes to<br/> 8 notice.<br/> 9 Second of all, as far as the overall<br/> 10 safety --<br/> 11 THE COURT: Wait a minute. One<br/> 12 person at a time.<br/> 13 MR. PANATIER: Overall safety Counsel<br/> 14 for Johnson &amp; Johnson brought this up in opening<br/> 15 statement. She said the product is safe and it goes<br/> 16 to the fact that if they had heeded the doctor's<br/> 17 warnings for whatever reason and they stopped<br/> 18 selling the product, we don't have this case.<br/> 19 MS. SULLIVAN: This is --<br/> 20 THE COURT: So that's the issue?<br/> 21 MR. PANATIER: That's correct.<br/> 22 THE COURT: Thank you.<br/> 23 MS. SULLIVAN: This is notice as<br/> 24 asphyxiation from blocking. It has nothing to do<br/> 25 with cancer and mesothelioma.</p> |



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| <p style="text-align: right;">Page 134</p> <p>1 they note that it's largely fine acicular particles.<br/> 2 "Acicular" means needlelike, right?<br/> 3 A. Well, it's like the old Greek word,<br/> 4 yeah, I mean, it's like the shape of my pen.<br/> 5 Q. Okay. If you go to Page 32, although<br/> 6 you can just look up here.<br/> 7 There's many more results finding tremolite<br/> 8 over and over and over again, correct?<br/> 9 A. You will find trace of tremolite in<br/> 10 Italian talc.<br/> 11 Q. Johnson &amp; Johnson absolutely knew<br/> 12 that tremolite was a consistent mineral that was<br/> 13 present in the Italian talc, correct?<br/> 14 A. Yes, it's one of several minerals<br/> 15 that are present in talc.<br/> 16 Q. Right, I mean, we can look through<br/> 17 this. We are going to find it more often than not,<br/> 18 aren't we?<br/> 19 A. You'll find it occasionally, yeah.<br/> 20 Q. Okay. Here it is, again, okay.<br/> 21 Johnson &amp; Johnson received these tests and knew<br/> 22 about them, correct?<br/> 23 A. Yes.<br/> 24 Q. Let's go to December 31st, 1959.<br/> 25 MR. PANATIER: This will be</p> | <p style="text-align: right;">Page 136</p> <p>1 horizontally, that pretty well comes to a hundred.<br/> 2 Q. Okay.<br/> 3 A. Between platy, non-platy, yeah.<br/> 4 That's pretty well everything there. So it doesn't<br/> 5 mean you're going to get apatite or rutile or any of<br/> 6 the minerals in those particular samples.<br/> 7 Q. Next one -- go to -- this says<br/> 8 March 8th, 1960. And this one is in evidence as<br/> 9 2350.<br/> 10 You see this is pilot plant<br/> 11 beneficiation of Italian run of mine talc,<br/> 12 March 8th, 1960, right?<br/> 13 A. Yes.<br/> 14 Q. Okay. Let's just go to one of their<br/> 15 tables where they do characteristics of talc<br/> 16 products. Tremolite, they find it in every single<br/> 17 one, right?<br/> 18 A. What table is that?<br/> 19 Q. This is Table 8.<br/> 20 A. Yes, they report tremolite.<br/> 21 Q. And, of course, they find it in a<br/> 22 Johnson &amp; Johnson shelf product that was a sample<br/> 23 from 1958, right?<br/> 24 A. August '58, yes.<br/> 25 Q. Okay. So we know -- they know by</p>                                   |
| <p style="text-align: right;">Page 135</p> <p>1 Exhibit 2349. This is already in evidence, your<br/> 2 Honor.<br/> 3 BY MR. PANATIER:<br/> 4 Q. Another Battelle study and I'm almost<br/> 5 done with the Battelle studies. You see that,<br/> 6 December 31st, '59?<br/> 7 A. Yeah.<br/> 8 Q. And, again, sir, they found more and<br/> 9 more results for tremolite in the ore, correct?<br/> 10 A. Yeah, yes, tremolite.<br/> 11 Q. If you go to the very last page,<br/> 12 again, it's kind of small type. But you can see<br/> 13 over and over again -- by the way, when it says,<br/> 14 less than one, that's not the same as trace,<br/> 15 correct, because when they find trace, they mark<br/> 16 trace, true?<br/> 17 A. Sometimes they mark trace, yeah. And<br/> 18 sometimes they mark less than one.<br/> 19 Q. Okay.<br/> 20 A. Yeah.<br/> 21 Q. And they're not reporting on all<br/> 22 those other accessory minerals, the apatite, the<br/> 23 titanite, the other ones, they're reporting on<br/> 24 tremolite, dolomite and talc?<br/> 25 A. They are. But when you add up</p>                                                       | <p style="text-align: right;">Page 137</p> <p>1 now, this is 1960, certainly, that even if they<br/> 2 beneficiate, they float the talc, that tremolite<br/> 3 makes it through that process and even into the<br/> 4 final product, right?<br/> 5 A. Yes, if they -- yes.<br/> 6 Q. Johnson &amp; Johnson knew there was<br/> 7 tremolite unequivocally in the source ore and in the<br/> 8 final product, correct?<br/> 9 A. Tremolite, yes, tremolite.<br/> 10 Q. Yes, I understand.<br/> 11 A. Yeah.<br/> 12 Q. If you will turn, sir, to -- it<br/> 13 should just be marked 2,000. So it's probably in<br/> 14 that final binder. It should be marked 2,000 and<br/> 15 it's in that last binder. Let me know when you have<br/> 16 it.<br/> 17 A. Yeah, we have it.<br/> 18 Q. Can you see, sir -- you know what<br/> 19 interrogatories are, right?<br/> 20 A. Yes.<br/> 21 Q. Interrogatories are questions in a<br/> 22 lawsuit where one person asks questions of the other<br/> 23 and the other has to answer them under oath, just<br/> 24 like you've taken the oath in a courtroom, right?<br/> 25 A. Yes.</p> |

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| <p style="text-align: right;">Page 198</p> <p>1 First of all -- let me stop there.</p> <p>2 Johnson &amp; Johnson agrees that if the baby</p> <p>3 powder has asbestos, it should be withdrawn from the</p> <p>4 market immediately, correct?</p> <p>5 A. It wouldn't be sold in the first</p> <p>6 place.</p> <p>7 Q. Can you answer my question?</p> <p>8 A. So the answer would be, yes.</p> <p>9 Q. Right? It is possible that a company</p> <p>10 could sell a product and then discover a problem at</p> <p>11 which point they would need to recall it, right?</p> <p>12 A. That's the normal operation, yes.</p> <p>13 Q. It continues that Dr. Cooper said</p> <p>14 that he did not believe that there was a low level</p> <p>15 of asbestos content in talc which would be</p> <p>16 acceptable for cosmetic ore.</p> <p>17 And Johnson &amp; Johnson agrees with that, the</p> <p>18 acceptable level of asbestos in cosmetic talc zero,</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So this is another</p> <p>22 third-party. This person at Berkeley, who has</p> <p>23 opined that asbestos in cosmetic talc to Johnson &amp;</p> <p>24 Johnson would be a hazard, correct?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 200</p> <p>1 CERTIFICATION</p> <p>2</p> <p>3 I, SILVIA P. WAGE, C.S.R., License Number</p> <p>4 30X100182700, a Certified Court Reporter in and for</p> <p>5 the State of New Jersey, do hereby certify the</p> <p>6 foregoing to be prepared in full compliance with the</p> <p>7 current Transcript Format for Judicial Proceedings</p> <p>8 and to be true and accurate non-compressed transcript</p> <p>9 dge and ability.</p> <p>10 </p> <p>11</p> <p>12 SILVIA P. WAGE JULY 22, 2019</p> <p>13 CERTIFIED COURT REPORTER DATE</p> <p>14 MIDDLESEX COUNTY COURTHOUSE</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 199</p> <p>1 Q. Okay. I'll put that in the inbox.</p> <p>2 Let's look at the next document,</p> <p>3 which is April 13, 1976. So, if you'll turn to</p> <p>4 April 13, 1976. And, actually, this tab just says</p> <p>5 "1976," so it will likely be the first 1976 document</p> <p>6 that you have. Keep going back.</p> <p>7 A. Okay. It's March.</p> <p>8 Q. Keep going back. Yeah. It's</p> <p>9 probably -- it's one of those. Okay. So go ahead</p> <p>10 and turn the page. It's one of those three there.</p> <p>11 So let's go to the next one there. Yeah, keep</p> <p>12 going. Next one. That's it.</p> <p>13 Okay. Sorry about that.</p> <p>14 Okay. You see this is a memo from</p> <p>15 D.R. Petterson to D.D. Johnston, right?</p> <p>16 A. It is, yes.</p> <p>17 Q. Now, D.D. Johnston was President of</p> <p>18 the Baby Products Company, true?</p> <p>19 A. I think he was at that time, yes,</p> <p>20 yes.</p> <p>21 Q. Petterson, medical director, right?</p> <p>22 A. He was, yes.</p> <p>23 (Continuation of the day's</p> <p>24 proceedings in Volume 2.)</p> <p>25</p>                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

# EXHIBIT G

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES

3 -----x  
4 IN RE: LAOSD ASBESTOS CASES  
5 -----x

6 CAROLYN WEIRICK and ELVIRA GRACIELA  
7 ESCUDERO LORA,

8 Plaintiffs, J.C.C.P. NO.  
9 4674

10 -against-

11 CASE NO.  
12 BC656425

13 BRENNTAG NORTH AMERICA, INC.,  
14 (sued individually and as  
15 successor-in-interest to MINERAL  
16 PIGMENT SOLUTIONS, INC. and as  
17 successor-in-interest to WHITTAKER  
18 CLARK & DANIELS, INC.) et al.,

19 Defendants.  
20 -----x

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 FOR THE COUNTY OF LOS ANGELES  
23 -----x

24 IN RE: LAOSD ASBESTOS CASES  
25 -----x

26 JOANNE ANDERSON and GARY ANDERSON,

27 Plaintiffs, J.C.C.P. NO.  
28 4674

29 -against-

30 CASE NO.  
31 BC666513

32 BORG-WARNER CORPORATION by its  
33 successor-in-interest BORG-WARNER  
34 MORSE TEC, INC., et al.,

35 Defendants.  
36 -----x

37 JOB NO. 2855811

38 PRIORITY-ONE COURT REPORTING SERVICES, INC.

39 290 West Mount Pleasant Avenue, Suite 2260

40 Livingston, New Jersey 07039

41 (718) 983-12341

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| <p style="text-align: right;">2</p> <p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA<br/>FOR THE COUNTY OF LOS ANGELES<br/>2 -----X<br/>IN RE: LAOSD ASBESTOS CASES<br/>3 -----X<br/>ILENE BRICK,<br/>4<br/>Plaintiff, J.C.C.P. NO.<br/>5 4674<br/>-against-<br/>6 CASE NO.<br/>BRENNTAG NORTH AMERICA, INC., BC674595<br/>7 (sued individually and as<br/>successor-in-interest to MINERAL<br/>8 PIGMENT SOLUTIONS, INC. and as<br/>successor-in-interest to WHITTAKER<br/>9 CLARK &amp; DANIELS, INC.) et al.,<br/>10 Defendants.<br/>-----X<br/>11 SUPERIOR COURT OF THE STATE OF CALIFORNIA<br/>FOR THE COUNTY OF LOS ANGELES<br/>12 -----X<br/>IN RE: LAOSD ASBESTOS CASES<br/>13 -----X<br/>NANCY CABIBI and PHIL CABIBI,<br/>14<br/>Plaintiffs, J.C.C.P. NO.<br/>15 4674<br/>-against-<br/>16 CASE NO.<br/>AVON PRODUCTS, INC., et al., BC665257<br/>17 Defendants.<br/>-----X<br/>18<br/>19<br/>20<br/>21 JOB NO. 2855811<br/>22 PRIORITY-ONE COURT REPORTING SERVICES, INC.<br/>23 290 West Mount Pleasant Avenue, Suite 2260<br/>24 Livingston, New Jersey 07039<br/>25 (718) 983-1234</p> | <p style="text-align: right;">4</p> <p>1 A P P E A R A N C E S:<br/>2 SIMON GREENSTONE PANATIER BARTLETT, PC<br/>3232 McKinney Avenue, Suite 610<br/>3 Dallas, Texas 75204<br/>BY: CHRIS PANATIER, ESQ.<br/>4 Attorneys for the Plaintiffs<br/>5 ORRICK HERRINGTON &amp; SUTCLIFFE, LLP<br/>51 West 52nd Street<br/>6 New York, New York 10019<br/>BY: PETER A. BICKS, ESQ.<br/>7 BY: C. ANNE MALIK, ESQ.<br/>Attorneys for the Defendants,<br/>8 Johnson &amp; Johnson and<br/>Johnson &amp; Johnson Consumer Inc.<br/>9<br/>FOLEY &amp; MANSFIELD, PLLP<br/>10 115 Broadway, 5th Floor<br/>New York, New York 10006<br/>BY: STEPHEN NOVAKIDIS, ESQ.<br/>BY: ERIKA MUSE, ESQ.<br/>12 Attorneys for the Defendant, Colgate<br/>DENTONS US, LLP<br/>13 601 South Figueroa Street, Suite 2500<br/>14 Los Angeles, California 90017<br/>BY: DESTINY J. BROWN, ESQ. (Via Telephone)<br/>15 Attorneys for the Defendants,<br/>Imerys Talc America, Inc.<br/>16 and Cyprus Amax Minerals Company<br/>in the Brick, Weirick and Cabibi cases<br/>17<br/>MANNING GROSS &amp; MASSENBURG, LLP<br/>18 201 Spear Street, 18th Floor<br/>San Francisco, California 94105<br/>BY: EMILY M. WESTFALL, ESQ. (Via Telephone)<br/>19 Attorneys for the Defendant, Chanel, Inc.<br/>20<br/>EVERETT DOREY, LLP<br/>21 One MacArthur Place, Suite 110<br/>Santa Ana, California 92707<br/>BY: JONATHAN W. CAYTON, ESQ. (Via Telephone)<br/>22 Attorneys for the Defendant,<br/>Davion, Inc. in the Cabibi case<br/>23<br/>ALSO PRESENT:<br/>24 PHIL GLAUBERSON, Videographer<br/>25</p> |
| <p style="text-align: right;">3</p> <p>1 Transcript of the videotaped deposition of JOHN<br/>2 HOPKINS, Ph.D., called for Oral Examination in the<br/>3 above-captioned matters, said deposition being taken<br/>4 pursuant to Federal Rules of Civil Procedure by and<br/>5 before EVAMARIE WALSH, a Notary Public and Shorthand<br/>6 Reporter, at the Offices of ORRICK, HERRINGTON &amp;<br/>7 SUTCLIFFE, LLP, 51 West 52nd Street, New York, New<br/>8 York 10019, on Wednesday, April 11, 2018, commencing<br/>9 at approximately 10:08 in the forenoon Eastern<br/>10 Standard time.<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                                                                                                                                                                                                                                                                                                           | <p style="text-align: right;">5</p> <p>1 I N D E X<br/>2<br/>3 WITNESS NAME PAGE NO.<br/>4<br/>JOHN HOPKINS, Ph.D.<br/>5 Examination by Mr. Panatier 12<br/>Examination by Mr. Bicks 283<br/>6<br/>7<br/>8 E X H I B I T S<br/>9<br/>10 EXHIBIT NO. PAGE NO.<br/>11 (HOPKINS)<br/>12 1 Notice of deposition and request 11<br/>for production of documents of<br/>Johnson &amp; Johnson in Cabibi case<br/>13<br/>14 2 Notice of deposition and request 11<br/>for production of documents of<br/>Johnson &amp; Johnson in Brick case<br/>15<br/>16 3 Notice of deposition and request 11<br/>for production of documents of<br/>Johnson &amp; Johnson Consumer Inc.<br/>17 in Cabibi case<br/>18 4 Notice of deposition and request 11<br/>for production of documents of<br/>Johnson &amp; Johnson Consumer Inc.<br/>19 in Brick case<br/>20<br/>21 5 Notice of deposition and request 11<br/>for production of documents of<br/>Johnson &amp; Johnson in Anderson case<br/>22<br/>23 6 Notice of deposition and request 12<br/>for production of documents of<br/>Johnson &amp; Johnson Consumer Inc.<br/>24 in Weirick case<br/>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                          |

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| <p style="text-align: right;">6</p> <p>1 EXHIBITS (CONT'D)</p> <p>2</p> <p>3 EXHIBIT NO. PAGE NO.</p> <p>4 (HOPKINS)</p> <p>5 7 Notice of deposition and request 12</p> <p>6 for production of documents of</p> <p>7 Johnson &amp; Johnson in Weirick case</p> <p>8</p> <p>9 8 Notice of deposition and request 12</p> <p>10 for production of documents of</p> <p>11 Johnson &amp; Johnson Consumer Inc.</p> <p>12 in Anderson case</p> <p>13 9 Documents Bates stamped 27</p> <p>14 J&amp;J-0148425 through J&amp;J-0148428</p> <p>15</p> <p>16 10 Memorandum dated 6/17/1966 Bates 30</p> <p>17 stamped JNJNL61_000009898</p> <p>18 11 Memorandum dated 8/13/1971, Bates 32</p> <p>19 stamped JNJAZ55_000004904 through</p> <p>20 JNJAZ55_000004906</p> <p>21 12 Memorandum dated 3/22/1976, Bates 34</p> <p>22 stamped JNJNL61_000018722 and</p> <p>23 JNJNL61_000018723</p> <p>24 13 Photographs of trial chart 47</p> <p>25 14 Article "Amphibole Content of 63</p> <p>Cosmetic and Pharmaceutical</p> <p>Tales"</p> <p>15 15 Documents Bates stamped 74</p> <p>16 JNJAZ55_000005980 and</p> <p>17 JNJAZ55_000005981</p> <p>18</p> <p>19 16 Documents Bates stamped JNJNL61_ 78</p> <p>20 000095945 and JNJNL61_000095946</p> <p>21 with newspaper article attached</p> <p>22 17 Copy of a newspaper article dated 81</p> <p>23 6/17/1972</p> <p>24</p> <p>25</p> | <p style="text-align: right;">8</p> <p>1 EXHIBITS (CONT'D)</p> <p>2</p> <p>3 EXHIBIT NO. PAGE NO.</p> <p>4 (HOPKINS)</p> <p>5 29 CTFA meeting minutes Bates 137</p> <p>6 stamped JNJNL61_000020392 and</p> <p>7 JNJNL61_000020393</p> <p>8</p> <p>9 30 Memorandum dated 10/15/1974 Bates 139</p> <p>10 stamped JNJAZ55_000004628 through</p> <p>11 JNJAZ55_000004632</p> <p>12</p> <p>13 31 Document Bates stamped 141</p> <p>14 JNJMX68_000009120</p> <p>15 32 Memorandum dated 1/20/1977 Bates 145</p> <p>16 stamped JNJNL61_000021796 and</p> <p>17 JNJNL61_000021797</p> <p>18 33 Memorandum dated 3/1/1978 Bates 147</p> <p>19 stamped J&amp;J-0083118 and</p> <p>20 J&amp;J-0083119</p> <p>21 34 Memorandum dated 4/21/1977 Bates 151</p> <p>22 stamped JNJNL61_000020544 and</p> <p>23 JNJNL61_000020545</p> <p>24 35 Documents Bates stamped 152</p> <p>25 J&amp;J-0096500 through J&amp;J-0096502</p> <p>36 CTFA meeting minutes Bates 158</p> <p>stamped JNJNL61_000020521</p> <p>through JNJNL61_000020523</p> <p>37 Documents Bates stamped 162</p> <p>JNJAZ55_000001892 through</p> <p>JNJAZ55_000001898</p> <p>38 Documents Bates stamped 169</p> <p>JNJNL61_000005496 through</p> <p>JNJNL61_000005502</p> <p>39 New reagent systems - plant trial 178</p> <p>at Windsor Minerals Inc.</p> |
| <p style="text-align: right;">7</p> <p>1 EXHIBITS (CONT'D)</p> <p>2</p> <p>3 EXHIBIT NO. PAGE NO.</p> <p>4 (HOPKINS)</p> <p>5 18 Memorandum dated 6/17/1972 Bates 83</p> <p>6 stamped JNJNL61_000001123 through</p> <p>7 JNJNL61_000001125</p> <p>8</p> <p>9 19 E-mail dated 2/21/2002 Bates 85</p> <p>10 stamped JNJNL61_000103086</p> <p>11 20 Document Bates stamped 87</p> <p>12 JNJNL61_000016358 through</p> <p>13 JNJNL61_000016406</p> <p>14 21 Letter dated 7/1/1975, with 89</p> <p>15 tables attached Bates stamped</p> <p>16 J&amp;J-0005925 through J&amp;J-0005929</p> <p>17 Letter dated 11/5/1975 with 91</p> <p>18 table attached Bates stamped</p> <p>19 J&amp;J-0123238 and J&amp;J-0123239</p> <p>20 23 Memorandum dated 1/14/1975 Bates 94</p> <p>21 stamped JNJMX68_000002659 through</p> <p>22 JNJMX68_000002660</p> <p>23 24 Document Bates stamped 110</p> <p>24 JNJAZ55_000003548 through</p> <p>25 JNJAZ55_000003551</p> <p>26 Letter dated 9/6/1974 Bates 115</p> <p>stamped JNJNL61_000013575 and</p> <p>JNJNL61_000013576</p> <p>27 Talc subcommittee minutes Bates 123</p> <p>stamped JNJNL61_000021692 through</p> <p>JNJNL61_000021694</p> <p>28 Talc subcommittee minutes Bates 125</p> <p>stamped WCD000162 and WCD000163</p> <p>Memorandum dated 12/17/1974 Bates 134</p> <p>stamped JNJMX68_000009139</p>                          | <p style="text-align: right;">9</p> <p>1 EXHIBITS (CONT'D)</p> <p>2</p> <p>3 EXHIBIT NO. PAGE NO.</p> <p>4 (HOPKINS)</p> <p>5 40 Documents Bates JNJMX68_000005032 182</p> <p>6 through JNJMX69_000005036</p> <p>7 Letter dated 10/11/1972 Bates 184</p> <p>8 stamped JNJAZ55_000003635 through</p> <p>9 JNJAZ55_000003637</p> <p>10 42 Letter dated 11/27/1974 Bates 187</p> <p>11 stamped J&amp;J-0147727 and</p> <p>12 J&amp;J-0147728</p> <p>13 43 Memorandum dated 10/26/1973 Bates 199</p> <p>14 stamped JNJAZ55_000002042</p> <p>15</p> <p>16 44 Document Bates stamped 202</p> <p>17 JNJAZ55_000004573 through</p> <p>18 JNJAZ55_000004577</p> <p>19</p> <p>20 45 Memorandum dated 10/30/1974 Bates 206</p> <p>21 stamped JNJAZ55_000001096 through</p> <p>22 JNJAZ55_000001098</p> <p>23</p> <p>24 46 Letter dated 11/3/1977 Bates 213</p> <p>25 stamped JNJAZ55_000009127 and</p> <p>JNJAZ55_000009128</p> <p>47 Memorandum dated 3/31/1975 Bates 222</p> <p>stamped JNJAZ55_000009265</p> <p>48 Transcript of Roger Miller dated 232</p> <p>1/16/2007</p> <p>49 Memorandum Bates stamped 234</p> <p>JNJAZ55_000004644 and</p> <p>JNJAZ55_000004645</p> <p>50 Letter dated 9/26/1984 Bates 237</p> <p>stamped JNJNL61_000000006</p>                                                             |

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| <p style="text-align: right;">10</p> <p>1 EXHIBITS (CONTD)</p> <p>2</p> <p>3 EXHIBIT NO. PAGE NO.</p> <p>4 (HOPKINS)</p> <p>5 51 Memorandum dated 10/23/1984 Bates 239</p> <p>6 Stamped JNJNL61_000000126 through</p> <p>7 JNJNL61_000000128</p> <p>8 52 Document Bates stamped 241</p> <p>9 JNJAZ55_000001282</p> <p>10 53 Memorandum dated 4/9/1969 Bates 244</p> <p>11 stamped JNJAZ55_000001073 and</p> <p>12 JNJAZ55_000001074</p> <p>13 54 Memorandum dated 1/18/1974 247</p> <p>14 Bates stamped J&amp;J-0132008</p> <p>15 through J&amp;J-0132011</p> <p>16 55 Memorandum dated 4/15/1969 Bates 258</p> <p>17 stamped JNJNL61_000001534 and</p> <p>18 JNJNL61_000001535</p> <p>19 56 Document Bates stamped 269</p> <p>20 JNJI4T5_000004097 through</p> <p>21 JNJI4T5_000004100</p> <p>22 57 E-mail dated 2/24/2004 Bates 271</p> <p>23 stamped JNJI4T5_000004090 and</p> <p>24 JNJI4T5_000004091</p> <p>25 58 Johnson &amp; Johnson credo 292</p>                                                                                                                                                                                                                                                                                                                                                     | <p style="text-align: right;">12</p> <p>1 (Notice of deposition and request for</p> <p>2 production of documents of Johnson &amp; Johnson</p> <p>3 Consumer Inc. in Weirick case is marked as</p> <p>4 (Hopkins) Exhibit 6 for identification, as of</p> <p>5 this date.)</p> <p>6 (Notice of deposition and request for</p> <p>7 production of documents of Johnson &amp; Johnson in</p> <p>8 Weirick case is marked as (Hopkins) Exhibit 7</p> <p>9 for identification, as of this date.)</p> <p>10 (Notice of deposition and request for</p> <p>11 production of documents of Johnson &amp; Johnson</p> <p>12 Consumer Inc. in Anderson case is marked as</p> <p>13 (Hopkins) Exhibit 8 for identification, as of</p> <p>14 this date.)</p> <p>15</p> <p>16 JOHN HOPKINS, P. H. D.</p> <p>17 The Elms, Oxford Road, Chieveley, Newbury,</p> <p>18 RG208RT, United Kingdom, called as a witness,</p> <p>19 having been first duly sworn according to law,</p> <p>20 testifies as follows:</p> <p>21</p> <p>22</p> <p>23 EXAMINATION BY MR. PANATIER:</p> <p>24</p> <p>25 Q Go ahead and introduce yourself, tell</p> |
| <p style="text-align: right;">11</p> <p>1 MR. PANATIER: Just for the record,</p> <p>2 I've -- I've marked the notices as Exhibits 1</p> <p>3 through 8.</p> <p>4 (Notice of deposition and request for</p> <p>5 production of documents of Johnson &amp; Johnson in</p> <p>6 Cabibi case is marked as (Hopkins) Exhibit 1</p> <p>7 for identification, as of this date.)</p> <p>8 (Notice of deposition and request for</p> <p>9 production of documents of Johnson &amp; Johnson in</p> <p>10 Brick case is marked as (Hopkins) Exhibit 2 for</p> <p>11 identification, as of this date.)</p> <p>12 (Notice of deposition and request for</p> <p>13 production of documents of Johnson &amp; Johnson</p> <p>14 Consumer Inc. in Cabibi case is marked as</p> <p>15 (Hopkins) Exhibit 3 for identification, as of</p> <p>16 this date.)</p> <p>17 (Notice of deposition and request for</p> <p>18 production of documents of Johnson &amp; Johnson</p> <p>19 Consumer Inc. in Brick case is marked as</p> <p>20 (Hopkins) Exhibit 4 for identification, as of</p> <p>21 this date.)</p> <p>22 (Notice of deposition and request for</p> <p>23 production of documents of Johnson &amp; Johnson in</p> <p>24 Anderson case is marked as (Hophins) Exhibit 5</p> <p>25 for identification, as of this date.)</p> | <p style="text-align: right;">13</p> <p>1 us your name.</p> <p>2 A My name is John Hopkins.</p> <p>3 Q All right. And you are the corporate</p> <p>4 representative for both Johnson &amp; Johnson and</p> <p>5 Johnson &amp; Johnson Consumer Inc., correct?</p> <p>6 A Correct.</p> <p>7 Q All right. You do not currently work</p> <p>8 for Johnson &amp; Johnson, right?</p> <p>9 A That is correct.</p> <p>10 Q Or any Johnson &amp; Johnson entity, true?</p> <p>11 A That is also correct.</p> <p>12 Q You are a private consultant to</p> <p>13 Johnson &amp; Johnson, true?</p> <p>14 A In this -- in this case, yes.</p> <p>15 Q Okay. And you have been a private</p> <p>16 consultant to Johnson &amp; Johnson on numerous</p> <p>17 occasions, fair?</p> <p>18 A Several occasions --</p> <p>19 Q All right.</p> <p>20 A -- yes.</p> <p>21 Q When was the last year that you were</p> <p>22 actually employed by Johnson &amp; Johnson?</p> <p>23 A 2000.</p> <p>24 Q How much are you being paid to serve</p> <p>25 as the corporate representative?</p>                                                 |



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| <p style="text-align: right;">14</p> <p>1 A Today?</p> <p>2 Q Well, I assume you charge by the hour?</p> <p>3 A Yes, my company, not me. My company bills</p> <p>4 my services at \$300 per hour.</p> <p>5 Q And you said your company. How many</p> <p>6 employees does your company have?</p> <p>7 A Besides me, two full time and one part</p> <p>8 time.</p> <p>9 Q Johnson &amp; Johnson began making baby</p> <p>10 powder in the late 1800s, right?</p> <p>11 A Correct, yes.</p> <p>12 Q Okay. And they even offered them sort</p> <p>13 of at the beginning in maternity kits, right?</p> <p>14 A Yes.</p> <p>15 Q Okay. It's still sold worldwide</p> <p>16 today, true?</p> <p>17 A It is, yes.</p> <p>18 Q Until about the mid 1940s Johnson &amp;</p> <p>19 Johnson's Baby Powder was sourced, for purposes of</p> <p>20 the US, from a mixture of Italy and California,</p> <p>21 correct?</p> <p>22 A From mid 1940s, yes.</p> <p>23 Q Okay. And then about from the mid</p> <p>24 1940s until the end of the 1960s, all Johnson's Baby</p> <p>25 Powder was Italian talc, correct?</p>                                                                                                                     | <p style="text-align: right;">16</p> <p>1 Baby Powder from the '70s until 2003 was Vermont,</p> <p>2 correct?</p> <p>3 A The main source, yes.</p> <p>4 Q There was a period in 1980 where they</p> <p>5 went back to Italian, because of a mine strike,</p> <p>6 correct?</p> <p>7 A There was a mine strike November of '79,</p> <p>8 February '80 when a small amount of Italian talc was</p> <p>9 purchased, yes.</p> <p>10 Q Well, I think we've seen recently that</p> <p>11 we're talking about dozens and dozens of tons being</p> <p>12 bought from Italy during that time, correct?</p> <p>13 MR. BICKS: Objection to the form.</p> <p>14 A Obviously it's going back to 1980, the --</p> <p>15 the records are not exactly clear, so I wouldn't</p> <p>16 quote it as dozens of tons, but certainly a -- a</p> <p>17 measurable amount, a significant amount was</p> <p>18 purchased from the Italian mine --</p> <p>19 Q Okay.</p> <p>20 A -- December, January of 1980.</p> <p>21 Q From 2003 to the present the source of</p> <p>22 the talc in Johnson's Baby Powder has been Chinese,</p> <p>23 correct?</p> <p>24 A It's from the Guangxi Zhou in China.</p> <p>25 Q Right. Now, Johnson &amp; Johnson also</p> |
| <p style="text-align: right;">15</p> <p>1 A Yes, correct.</p> <p>2 Q And then sometime in the late 1960s</p> <p>3 early 1970s there was a -- I think you described as</p> <p>4 sort of a gradual switchover to Vermont talc,</p> <p>5 correct?</p> <p>6 A That is correct, yes.</p> <p>7 Q Okay, all right. And during that time</p> <p>8 in the '50s, '60s, '70, and then till 1989 Johnson &amp;</p> <p>9 Johnson owned the mines in Vermont that it sourced</p> <p>10 from, correct?</p> <p>11 A They did own the Vermont mine, yes.</p> <p>12 Q The two primary sources for Vermont</p> <p>13 were the Hammondsville Mine and then starting in</p> <p>14 about 1976 or '77 the Argonaut Mine, correct?</p> <p>15 A Yes, correct.</p> <p>16 Q Okay. And most of this you and I have</p> <p>17 been over. If there's anything that you would like</p> <p>18 to take a peek out when we do this just kind of</p> <p>19 general background let me know, okay?</p> <p>20 A I will.</p> <p>21 Q When Johnson &amp; Johnson sold its</p> <p>22 Vermont mines in 1989 it sold them to a company</p> <p>23 called Cyprus, correct?</p> <p>24 A That is correct, yes.</p> <p>25 Q The main source of Johnson &amp; Johnson's</p> | <p style="text-align: right;">17</p> <p>1 made a product called Shower to Shower, correct?</p> <p>2 A They -- they did, yes.</p> <p>3 Q It sold that product from about 1960</p> <p>4 to about 2012, true?</p> <p>5 A I think it was early '60s --</p> <p>6 Q Okay.</p> <p>7 A -- till 2012, yes.</p> <p>8 Q Okay, that's fine. And then it sold</p> <p>9 the Shower to Shower brand to a company called</p> <p>10 Valiant in 2012, true?</p> <p>11 A That is true, yes.</p> <p>12 Q The sources for Shower to Shower</p> <p>13 matched the sources for Johnson's Baby Powder from</p> <p>14 1960 to 2012, correct?</p> <p>15 MR. BICKS: Sources of what?</p> <p>16 MR. PANATIER: Talc.</p> <p>17 A Sources of talc. The majority of the talc</p> <p>18 was Vermont talc, but it was also some Italian talc.</p> <p>19 Q And I think you told me that for</p> <p>20 Shower to Shower the use of Italian extended further</p> <p>21 into the '70s than it did for Johnson's Baby Powder,</p> <p>22 correct?</p> <p>23 A That is correct.</p> <p>24 Q Okay. Johnson &amp; Johnson corporate in</p> <p>25 New Brunswick, New Jersey made all health and safety</p>                                                                  |



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| <p style="text-align: right;">18</p> <p>1 policy decisions with regard to asbestos and talc<br/>2 issues, correct?<br/>3 A Yes.<br/>4 Q Okay. Now, Johnson &amp; Johnson also has<br/>5 a number of subsidiary companies, true?<br/>6 A That is true, yes.<br/>7 Q One of those is Johnson -- Johnson &amp;<br/>8 Johnson Consumer Inc., correct?<br/>9 A That is correct, yes.<br/>10 Q Right. Now, when did that company<br/>11 first -- when was that company first established?<br/>12 A I don't know the answer to that.<br/>13 Q Okay. And let me ask you, you -- I<br/>14 think I asked you this, but you're the corporate<br/>15 representative today for both Johnson &amp; Johnson and<br/>16 Johnson &amp; Johnson Consumer Inc., true?<br/>17 A Correct, yes.<br/>18 Q Okay, correct. And as the corporate<br/>19 representative you're saying you don't know when<br/>20 Johnson &amp; Johnson Consumer Inc. was founded?<br/>21 A So the predecessor was Johnson's Baby<br/>22 Products Company and that -- that's the name that<br/>23 appears in the correspondence throughout the '80s<br/>24 and '90s, but in the '90s -- sometime in the '90s it<br/>25 was changed to Consumer Products, Inc.</p> | <p style="text-align: right;">20</p> <p>1 Q Okay. Johnson &amp; Johnson wouldn't get<br/>2 a test result and then not share it with the<br/>3 subsidiaries, correct?<br/>4 A That is correct.<br/>5 Q All right. Because it was important<br/>6 that a subsidiary that might actually physically be<br/>7 manufacturing the product understand and know the<br/>8 testing results, correct?<br/>9 A Correct.<br/>10 Q All right. And vice versa, if one of<br/>11 the subsidiaries got a testing result they would, of<br/>12 course, share that with Johnson &amp; Johnson, right?<br/>13 A They would, yes --<br/>14 Q All right.<br/>15 A -- yes.<br/>16 Q When it comes to -- can we agree that<br/>17 when it comes to any testing, any knowledge about<br/>18 any potential hazards that the talc products might<br/>19 have Johnson &amp; Johnson and the subsidiaries were<br/>20 equally aware of those; is that fair?<br/>21 MR. BICKS: Objection to the form.<br/>22 A Again, I -- I can speculate, but I don't<br/>23 want to speculate. It's -- it's -- rephrase the<br/>24 question.<br/>25 Q Yeah. Actually, I can ask you a</p> |
| <p style="text-align: right;">19</p> <p>1 Q Okay. What was the actual entity, and<br/>2 I -- let me phrase it this way.<br/>3 My understanding is that until 1972 Johnson<br/>4 &amp; Johnson was the manufacturer of Johnson's Baby<br/>5 Powder; is that correct?<br/>6 A Again, I don't want to speculate on the way<br/>7 that the corporate structure was set up in 1972.<br/>8 The -- the products then -- that's the heading<br/>9 you'll see on all the correspondence was Johnson's<br/>10 Baby Products.<br/>11 Q Okay.<br/>12 A I -- I can't speculate on -- on that --<br/>13 Q Okay.<br/>14 A -- legal definition of sub -- sub<br/>15 companies.<br/>16 Q I might show you some interrogatories<br/>17 in a bit and perhaps we can straighten that out.<br/>18 But between the companies, between Johnson<br/>19 &amp; Johnson, the Baby Products Company and Johnson &amp;<br/>20 Johnson Consumer Inc., obviously with regard to<br/>21 health and safety issues, any testing that happened<br/>22 with regard to the talc that was being manufactured<br/>23 and sold, all of that would've been shared between<br/>24 those companies; is that fair?<br/>25 A Yes.</p>                              | <p style="text-align: right;">21</p> <p>1 better question.<br/>2 A Yes.<br/>3 Q As the corporate representative of<br/>4 both Johnson &amp; Johnson and Johnson &amp; Johnson<br/>5 Consumer Inc. --<br/>6 A Yes.<br/>7 Q -- it would be your expectation that<br/>8 all of the data with regard to health and safety of<br/>9 talc products would be shared equally between the<br/>10 companies, fair?<br/>11 A That's a reasonable expectation.<br/>12 Q And that would be your expectation,<br/>13 true?<br/>14 A That would be my expectation.<br/>15 Q Okay. I've asked you this before.<br/>16 Johnson &amp; Johnson had and still has a very large<br/>17 medical library, true?<br/>18 A Correct.<br/>19 Q They had subscriptions to the Journal<br/>20 of the American Medical Association, the New England<br/>21 Journal of Medicine, Lancet, the New York Academy of<br/>22 Sciences and so forth, correct?<br/>23 A Yes.<br/>24 Q Okay. Johnson &amp; Johnson was aware of<br/>25 asbestos disease going back to the turn of the last</p>                                                                                         |

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| <p style="text-align: right;">22</p> <p>1 century, the early 1900s, correct?</p> <p>2 A It depends how we define Johnson &amp; Johnson.</p> <p>3 I've no doubt that medical directors would have</p> <p>4 their own personal knowledge of asbestos disease,</p> <p>5 but that's -- that would be a personal issue.</p> <p>6 Q Well, I think I asked you before, and</p> <p>7 I can -- we can look at it, so I'll show this to</p> <p>8 you. I'm going to read you the question and answer</p> <p>9 and then I can show it to you if you want to see it.</p> <p>10 I asked you this question in August.</p> <p>11 "Now, when did Johnson &amp; Johnson first</p> <p>12 learn that asbestos could be hazardous in any</p> <p>13 context?" And your answer was, "In the medical</p> <p>14 literature you can find reports of asbestos disease,</p> <p>15 asbestosis, going back to the turn of the last</p> <p>16 century. The early 1900s you'll find reports of</p> <p>17 asbestos disease in industrial workers."</p> <p>18 And I assume you still agree with that; is</p> <p>19 that fair?</p> <p>20 A You will find that in the medical</p> <p>21 literature, yes.</p> <p>22 Q Okay.</p> <p>23 A Yes.</p> <p>24 Q And as a -- do you believe that</p> <p>25 Johnson &amp; Johnson was a responsible company?</p>                                                                                                                 | <p style="text-align: right;">24</p> <p>1 MR. PANATIER: And I'm just going to</p> <p>2 object to nonresponsive.</p> <p>3 Q My question was, Johnson &amp; Johnson was</p> <p>4 conscious of the potential for asbestos in the '40s</p> <p>5 and was on the lookout for it, correct, because of</p> <p>6 the needle-like characteristics, correct?</p> <p>7 MR. BICKS: Object to the form.</p> <p>8 A The specifications in the late 1940s, early</p> <p>9 '50s never actually mentioned asbestos. What we can</p> <p>10 look at in retrospect is the requirement that the</p> <p>11 product be free from needle-like particles, which</p> <p>12 would've included asbestos, but that's going back in</p> <p>13 retrospect, but the word asbestos didn't actually</p> <p>14 appear in the specification in the 1940s.</p> <p>15 Q You're aware that the State of</p> <p>16 California had a regulation on asbestos back in</p> <p>17 1936, correct?</p> <p>18 A I'm aware of that, yes.</p> <p>19 Q Okay. And in the early 1970s Johnson</p> <p>20 &amp; Johnson was very interested in the subject of</p> <p>21 asbestos, correct?</p> <p>22 A Yes, they -- the talc industry was alerted</p> <p>23 to the interest of asbestos in the 1970s, yes.</p> <p>24 Q Johnson &amp; Johnson was ordering</p> <p>25 articles like Merewether and Price "Asbestos and</p> |
| <p style="text-align: right;">23</p> <p>1 A I do.</p> <p>2 Q And as a responsible company do you</p> <p>3 believe that Johnson &amp; Johnson would've stayed</p> <p>4 abreast of that literature?</p> <p>5 A Johnson &amp; Johnson would've stayed abreast</p> <p>6 of any literature that was relevant at the time.</p> <p>7 The company's never sold asbestos, so they're hardly</p> <p>8 likely to be world experts in asbestos disease, but</p> <p>9 any well-qualified medical professional or</p> <p>10 toxicologist would have some background knowledge of</p> <p>11 asbestos disease and asbestos.</p> <p>12 Q Okay. Johnson that -- you've told me</p> <p>13 that Johnson &amp; Johnson was looking for asbestos in</p> <p>14 its talc in the 1940s, right?</p> <p>15 A The -- what I've -- what I've said in the</p> <p>16 past and I'll repeat it, 'cause it -- it's not</p> <p>17 different is that as far as the late 1940s the</p> <p>18 specification required the absence of what are</p> <p>19 described as acicular, which means needle-like</p> <p>20 particles, which would've related to asbestos. If</p> <p>21 asbestos were there, it would have shown up as</p> <p>22 needle-like particles, so -- but that was not for</p> <p>23 the reason of asbestos, it was for the simple reason</p> <p>24 that if you've got needle-like particles in the</p> <p>25 product it would feel prickly on the skin.</p> | <p style="text-align: right;">25</p> <p>1 Carcinoma of the Lung", right?</p> <p>2 A That's quite possible. I don't have that</p> <p>3 in front of me, but.</p> <p>4 Q I might show you something --</p> <p>5 A Thank you.</p> <p>6 Q -- but it's something you've seen</p> <p>7 before, but --</p> <p>8 A Yes.</p> <p>9 Q -- I'm just going to ask you some --</p> <p>10 some titles. They were ordering articles entitled,</p> <p>11 "Source and Identification of Respirable Fibers",</p> <p>12 right?</p> <p>13 A If -- if -- if you have evidence for that,</p> <p>14 then the answer's yes. I don't have that in front</p> <p>15 of me, but, yes.</p> <p>16 Q They were ordering articles entitled,</p> <p>17 "Mesothelioma and Asbestos Exposure", right?</p> <p>18 A Well, again, I'm speculating. I don't want</p> <p>19 to speculate. If there's evidence that that is the</p> <p>20 case, then we -- we can take it as read, but I don't</p> <p>21 -- I don't have that evidence here.</p> <p>22 Q Well, I've shown it to you before --</p> <p>23 A Yeah.</p> <p>24 Q -- that's why I'm asking you about it.</p> <p>25 A I'm -- we had 15,000 documents when we</p>                                                                                                                                                                                    |

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| <p style="text-align: right;">26</p> <p>1 looked -- when we spoke last August, so --</p> <p>2 Q Well, you and I talked --</p> <p>3 A -- I don't remember every one.</p> <p>4 Q When you and I talked about -- it felt</p> <p>5 like 15,000, but you and I talked about a hundred</p> <p>6 fifty of them. I'm going to read off some titles</p> <p>7 and I'll hand you this and you just verify if I've</p> <p>8 read them right.</p> <p>9 A Okay.</p> <p>10 Q "Mesothelioma and Asbestos Exposure",</p> <p>11 "Mesothelioma in Scotland", "Environmental</p> <p>12 Epidemiology", "Community Effects of</p> <p>13 Non-occupational Environmental Asbestos Exposure",</p> <p>14 "Asbestos Exposure Smoking and Neoplasia".</p> <p>15 Now, neoplasia means cancer?</p> <p>16 A It does, yes.</p> <p>17 Q Okay. "The Occurrence of Pleural</p> <p>18 Calcification Among Asbestos Insulation Workers",</p> <p>19 "Relation Between Exposure to Asbestos and</p> <p>20 Mesothelioma", "Asbestos as a Modern Urban Hazard",</p> <p>21 "Diffuse Pleural Mesothelioma and Asbestos Exposure</p> <p>22 in Northwestern Cape Province", "Diffuse Malignant</p> <p>23 Pleural Mesothelioma and Asbestos Exposure", and I'm</p> <p>24 going to --</p> <p>25 MR. PANATIER: I'll just mark this and</p> | <p style="text-align: right;">28</p> <p>1 the top, right?</p> <p>2 A It is, yes.</p> <p>3 Q And that's a document I've shown you</p> <p>4 before, true?</p> <p>5 A I can't remember it, but I believe you.</p> <p>6 Q Okay. And those -- that -- and on the</p> <p>7 side, and that's the copy we got from Johnson &amp;</p> <p>8 Johnson, but it has a status of each article, when</p> <p>9 it was ordered or when it was distributed and</p> <p>10 they're all about 1971 or '72, correct?</p> <p>11 A Yes.</p> <p>12 Q Okay, all right. So in the early</p> <p>13 1970s it's fair to say that researchers at Johnson &amp;</p> <p>14 Johnson were quite interested in the subject of</p> <p>15 asbestos, correct?</p> <p>16 A Yes.</p> <p>17 Q All right. You have said that the</p> <p>18 needle-like structure of asbestos and asbestiform</p> <p>19 minerals is the quality that gives it the ability to</p> <p>20 imbed in pulmonary tissue and potentially lead to</p> <p>21 mesothelioma, correct?</p> <p>22 A That -- that is an opinion in the medical</p> <p>23 literature.</p> <p>24 Q And that's an opinion you've given as</p> <p>25 a toxicologist?</p>                                               |
| <p style="text-align: right;">27</p> <p>1 show it to you.</p> <p>2 (Documents Bates stamped J&amp;J-0148425</p> <p>3 through J&amp;J-0148428 are marked as (Hopkins)</p> <p>4 Exhibit 9 for identification, as of this date.)</p> <p>5 MR. PANATIER: This is Exhibit 9.</p> <p>6 Q And just tell me if those titles are</p> <p>7 on there that I read off.</p> <p>8 MR. BICKS: It's going to be</p> <p>9 impossible to remember all the titles you've</p> <p>10 read without the documents.</p> <p>11 MR. PANATIER: Make an objection.</p> <p>12 MR. BICKS: Can I just ask a question?</p> <p>13 In terms of this proceeding, and you help me</p> <p>14 out here, you've taken his deposition, he's</p> <p>15 been at a trial, are you intending to go over</p> <p>16 the same things that you've already asked him</p> <p>17 about?</p> <p>18 MR. PANATIER: Some will, some will,</p> <p>19 yeah.</p> <p>20 A Okay.</p> <p>21 Q Okay.</p> <p>22 A Well, you read out on Exhibit 9 the yellow</p> <p>23 highlighted reports, publications that someone in</p> <p>24 the medical or research department asked for.</p> <p>25 Q Right. And Dr. Nashed's name is at</p>                                                                                                                       | <p style="text-align: right;">29</p> <p>1 A Yes.</p> <p>2 Q Okay. Johnson &amp; Johnson has known</p> <p>3 since the 1950s that doctors have recommended</p> <p>4 against the use of talcum powder on babies, correct?</p> <p>5 A I've no doubt that some doctors recommend</p> <p>6 against the use.</p> <p>7 Q All right.</p> <p>8 A I don't dispute that.</p> <p>9 Q And Johnson &amp; Johnson was told in the</p> <p>10 '60s and '70s that doctors recommended against the</p> <p>11 use of talcum powder on babies, correct?</p> <p>12 A I believe a very, very small number of</p> <p>13 doctors may have made that recommendation.</p> <p>14 Q Have you ever set out to count how</p> <p>15 many doctors have made that recommendation, sir?</p> <p>16 A I've not, but it's never been a big topic.</p> <p>17 It's not been one that the company ever considered</p> <p>18 as being a really big, big story. I've no doubt</p> <p>19 that a small number of doctors have made that</p> <p>20 recommendation.</p> <p>21 Q When you say small number of doctors,</p> <p>22 you're telling the jury that.</p> <p>23 How -- how many doctors, then, if it's a</p> <p>24 small number?</p> <p>25 A I don't know.</p> |

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| <p style="text-align: right;">30</p> <p>1 Q Okay.</p> <p>2 (Memorandum dated June 17, 1966 Bates</p> <p>3 stamped JNJNL61_000009898 is marked as</p> <p>4 (Hopkins) Exhibit 10 for identification, as of</p> <p>5 this date.)</p> <p>6 MR. PANATIER: This will be Exhibit 10</p> <p>7 and then if you want to take a peek at it.</p> <p>8 I've -- I had a Kinkos issue, so sometimes I'm</p> <p>9 going to have an extra copy for you and</p> <p>10 sometimes I'm not, apparently, okay?</p> <p>11 Q All right, sir, that's -- that's an</p> <p>12 exhibit that I showed you during your deposition</p> <p>13 when we talked last summer, right?</p> <p>14 A Yes.</p> <p>15 Q Okay. And this is dated June 17th,</p> <p>16 1976 (sic) and it's a Johnson &amp; Johnson memo,</p> <p>17 correct?</p> <p>18 A Yes.</p> <p>19 Q All right.</p> <p>20 A June -- June 17th, 1966.</p> <p>21 Q All right.</p> <p>22 A Yes.</p> <p>23 Q It says, "Reference is made to the</p> <p>24 attached note from Mr. J. Dettre forwarding an</p> <p>25 article by Drs. Hughes and Kalmer which appeared in</p>                                                                                                                                                                                        | <p style="text-align: right;">32</p> <p>1 A It does, yes.</p> <p>2 Q Okay. And something, he mentions, is</p> <p>3 a foreign body.</p> <p>4 Talc literally is a mineral that is pulled</p> <p>5 out of the ground, right?</p> <p>6 A Yes.</p> <p>7 Q Okay. It's not something organic, is</p> <p>8 it?</p> <p>9 A Correct.</p> <p>10 Q Okay. It says, "Would it be possible</p> <p>11 for us to initiate basic work to explore this</p> <p>12 phenomenon either to obtain data to refute this</p> <p>13 problem or to develop mechanisms to reduce the</p> <p>14 hazard."</p> <p>15 And did I read that right?</p> <p>16 A You did.</p> <p>17 Q Okay. Now, let's skip ahead to 1971.</p> <p>18 MR. PANATIER: And this will be</p> <p>19 Exhibit 11.</p> <p>20 (Memorandum dated August 13, 1971,</p> <p>21 Bates stamped JNJAZ55_000004904 through</p> <p>22 JNJAZ55_000004906 is marked as (Hopkins)</p> <p>23 Exhibit 11 for identification, as of this</p> <p>24 date.)</p> <p>25 Q Now, Johnson &amp; Johnson acknowledges</p>                                                                                                                                                                                                                                                                                                                                                         |
| <p style="text-align: right;">31</p> <p>1 June 1966, American Journal of Diseases of Children.</p> <p>2 Baby powder represents the cornerstone of our baby</p> <p>3 products franchise."</p> <p>4 And we've seen where Johnson &amp; Johnson</p> <p>5 refers to the baby powder as a franchise, correct?</p> <p>6 A It's -- it's another word from the</p> <p>7 marketing group, yes.</p> <p>8 Q Yes, okay. "In addition, we have a</p> <p>9 large investment in a talc mine."</p> <p>10 And we've talked about that, they owned the</p> <p>11 Vermont mines by this point, right?</p> <p>12 A They did, yes.</p> <p>13 Q "I'm concerned over the conclusions</p> <p>14 drawn in the article, 'In conclusion, it is strongly</p> <p>15 urged that talcum powder be removed from the</p> <p>16 environment of children and the traditional</p> <p>17 association of talcum powder and babies be</p> <p>18 abandoned. It has no medicinal value; wherever</p> <p>19 placed it serves as a foreign body; and at least</p> <p>20 three deaths and an unknown morbidity have resulted</p> <p>21 from this silicate powder'."</p> <p>22 First of all, did I read that right?</p> <p>23 A You did.</p> <p>24 Q Morbidity, when you hear morbidity</p> <p>25 that means illness, correct?</p> | <p style="text-align: right;">33</p> <p>1 that talc does not have any medicinal benefit,</p> <p>2 correct?</p> <p>3 A It depends how we define medicinal. The --</p> <p>4 the role of talc from when it was first sold as a</p> <p>5 baby powder product was to help prevent chafing and</p> <p>6 diaper rash. Most people that I know would regard</p> <p>7 diaper rash as a medicinal value -- to avoid diaper</p> <p>8 rashes a medicinal value, so I'm -- I'm not sure</p> <p>9 that I would agree with saying it has no medicinal</p> <p>10 value. Certainly back in the '60s, before the</p> <p>11 advent of disposable diapers, babies did get quite</p> <p>12 severe diaper rash, so there is the medicinal value.</p> <p>13 Q That would be Exhibit 11 that I just</p> <p>14 handed you. This is another confidential memo.</p> <p>15 This is August 13th, '71, right?</p> <p>16 A That is the date, yes.</p> <p>17 Q Five years after the previous memo you</p> <p>18 and I just looked at, true?</p> <p>19 A Yes.</p> <p>20 Q All right. If you will go to the</p> <p>21 second page, paragraph I. Here's what Johnson &amp;</p> <p>22 Johnson says, "A facet of the situation not yet</p> <p>23 considered is that of the efficacy -- is that of the</p> <p>24 efficacy of body powder. A considered approach to</p> <p>25 all 'health products' is that of benefit versus</p> |

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| <p style="text-align: right;">34</p> <p>1 risk. While it has generally been believed that<br/> 2 baby powder provides lubricity, thus reducing<br/> 3 chafing, may absorb moisture, et cetera" -- and<br/> 4 those are things you just listed, right?<br/> 5 A Yes.<br/> 6 Q -- "this has not been proven insofar<br/> 7 as we know."<br/> 8 Isn't that what Johnson &amp; Johnson said?<br/> 9 A That's what this individual wrote.<br/> 10 Q And that individual -- go to the last<br/> 11 page, is T. H. Shelley; is that correct?<br/> 12 A Mr. Shelley, yes.<br/> 13 Q And Mr. Shelley was one of the main<br/> 14 people authoring memos and doing research on talc<br/> 15 and asbestos throughout the '70s, was he not?<br/> 16 A He was a research director, yes.<br/> 17 MR. PANATIER: Okay, all right. You<br/> 18 can set that aside.<br/> 19 Q Let's skip ahead five more years.<br/> 20 MR. PANATIER: This will be Exhibit<br/> 21 12.<br/> 22 (Memorandum dated March 22, 1976,<br/> 23 Bates stamped JNJNI61_000018722 is marked as<br/> 24 (Hopkins) Exhibit 12 for identification, as of<br/> 25 this date.)</p> | <p style="text-align: right;">36</p> <p>1 with this person, correct?<br/> 2 A Yes.<br/> 3 Q Go down to the highlight. "She then<br/> 4 asked him about asbestos and he said that this was a<br/> 5 different problem and that he would not recommend<br/> 6 using talc on babies because of the possibility of<br/> 7 asbestos inhalation, regardless of the contamination<br/> 8 level. He felt that this would constitute a<br/> 9 unnecessary risk."<br/> 10 And that was the opinion of the chief of<br/> 11 the pathology section for NIOSH, correct, sir?<br/> 12 MR. BICKS: Objection to the form. No<br/> 13 foundation.<br/> 14 A Well, that was Dr. Groth's opinion. That's<br/> 15 what he said --<br/> 16 Q Right.<br/> 17 A -- in that letter.<br/> 18 Q Right. And that's what I asked you,<br/> 19 that that was the opinion of the chief of the<br/> 20 pathology section for NIOSH, correct?<br/> 21 A That was his opinion --<br/> 22 Q All right.<br/> 23 A -- in '76.<br/> 24 MR. PANATIER: All right, you can set<br/> 25 that aside.</p>                                                                                                         |
| <p style="text-align: right;">35</p> <p>1 Q Here you go, sir. Now, this is a<br/> 2 Johnson &amp; Johnson memo and this is authored by Bruce<br/> 3 Semple.<br/> 4 Do you see that on the second page?<br/> 5 A Yes, yes.<br/> 6 Q Who's Bruce Semple?<br/> 7 A He was the M.D. who's medically qualified,<br/> 8 medical director.<br/> 9 Q All right. So he's the medical<br/> 10 director, right?<br/> 11 A In '76, yes. In '76 he was, yes.<br/> 12 Q Do you see that this is with regard to<br/> 13 a telephone conversation they had with the chief of<br/> 14 the pathology section for NIOSH?<br/> 15 A Yes.<br/> 16 Q Now, NIOSH is the National Institute<br/> 17 for Occupational Safety and Health, correct?<br/> 18 A Yes.<br/> 19 Q Okay. And just for a little bit of<br/> 20 background he says at the top, "I identified myself<br/> 21 and the reason for phoning. He was pleasant and<br/> 22 cooperative. He recalled being phoned around<br/> 23 Wednesday, March 17th, 1976 by a woman whom he<br/> 24 thought was from a Cincinnati newspaper."<br/> 25 Okay, so we know he had had a conversation</p>      | <p style="text-align: right;">37</p> <p>1 Q Johnson &amp; Johnson always had the<br/> 2 ability and knowledge to sell cornstarch instead of<br/> 3 talc if it had wanted to, correct?<br/> 4 A Well, since the 1960s cornstarch was sold.<br/> 5 Q Are you saying that cornstarch was<br/> 6 sold by Johnson &amp; Johnson since the '60s?<br/> 7 A Yes, '60s or '70s -- maybe it was early<br/> 8 '70s.<br/> 9 Q I think you told me it was 1980 in our<br/> 10 first deposition and we can -- we can look at it.<br/> 11 MR. BICKS: Objection to the form of<br/> 12 the question.<br/> 13 A Yeah, rephrase the question.<br/> 14 Q Sure. When did Johnson &amp; Johnson<br/> 15 first start marketing and selling cornstarch, sir?<br/> 16 A Baby cornstarch powder, cornstarch baby<br/> 17 powder?<br/> 18 Q Yes.<br/> 19 A As opposed to Shower to Shower. I'm not<br/> 20 exactly sure, I don't want to speculate, but<br/> 21 estimating around the late '70s, I think, but maybe<br/> 22 1980.<br/> 23 Q Okay. Johnson &amp; Johnson was aware and<br/> 24 is aware that cornstarch was used -- used as a body<br/> 25 powder in the late 1800s, correct?</p> |



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| <p style="text-align: right;">38</p> <p>1 A It -- cornstarch has been used in -- in<br/> 2 some body powder uses, yes, since the -- turn --<br/> 3 turn of the last century.</p> <p>4 Q Okay. If Johnson &amp; Johnson had wanted<br/> 5 to, Johnson &amp; Johnson, throughout the entire 1900s<br/> 6 to the present, could have chosen to sell a<br/> 7 cornstarch baby powder instead of a talc baby<br/> 8 powder, correct?</p> <p>9 MR. BICKS: Objection. Speculation.<br/> 10 Hypothetical.</p> <p>11 A Yeah, you know, I -- I don't want to<br/> 12 speculate on what marketing managers and product<br/> 13 development people would've done in the '40s, '50s,<br/> 14 '60s. It's speculation. I mean, a product, as you<br/> 15 say, quite likely existed and could have been made<br/> 16 as a body powder based on cornstarch, but I can't<br/> 17 speculate any further.</p> <p>18 Q Yeah, and I'm not asking you to<br/> 19 speculate.</p> <p>20 Did Johnson &amp; Johnson have the ability, if<br/> 21 Johnson &amp; Johnson had chosen to, to sell cornstarch<br/> 22 instead of talc for baby powder?</p> <p>23 MR. BICKS: Objection. Calls for<br/> 24 speculation.</p> <p>25 A Again, it is speculation, because the kind</p>                                            | <p style="text-align: right;">40</p> <p>1 quantities, you -- you just speculated about that,<br/> 2 didn't you?</p> <p>3 A Well, because Johnson's Baby Powder<br/> 4 products were, still are, the main branded product<br/> 5 out there.</p> <p>6 Q Well, let's -- let's go back to the<br/> 7 question, which -- which I'll simplify.</p> <p>8 With -- without regard to how much was<br/> 9 being sold people were selling cornstarch for baby<br/> 10 powder in -- throughout the entire 1900s, correct?</p> <p>11 MR. BICKS: Asked and answered.</p> <p>12 A That is correct.</p> <p>13 Q All right. Johnson &amp; Johnson<br/> 14 understands that an infant will inhale talc into<br/> 15 their lungs when they are powdered with Johnson's<br/> 16 Baby Powder, correct?</p> <p>17 MR. BICKS: Objection to the form. No<br/> 18 foundation.</p> <p>19 A It's -- it's theoretically possible.</p> <p>20 Q Well, it's not theoretical, it<br/> 21 actually happens.</p> <p>22 You know that, correct, sir?</p> <p>23 MR. BICKS: Objection to the form.<br/> 24 Foundation.</p> <p>25 Q Is that correct, sir?</p>                                                                                                                             |
| <p style="text-align: right;">39</p> <p>1 of quantity we're talking about is -- is quite<br/> 2 significant. Cornstarch is a very different product<br/> 3 from talc. It has to be sterile and free from germs<br/> 4 and bacteria. Producing cornstarch in large<br/> 5 quantities, they may've wanted to, but maybe the<br/> 6 technology did not exist, so, again, I'm<br/> 7 speculating. I don't want to speculate.</p> <p>8 Q Okay. You -- you are speculating when<br/> 9 you say maybe the technology didn't exist, fair?</p> <p>10 A Yes.</p> <p>11 Q Okay.</p> <p>12 A That's why that -- the question you asked<br/> 13 is a difficult one to answer without speculation.</p> <p>14 Q Your -- your concern is could they<br/> 15 have done it on as big of a scale as they were<br/> 16 selling the talc baby powder, correct?</p> <p>17 A Well, that was --</p> <p>18 MR. BICKS: Objection to the form.</p> <p>19 A That was an issue that I raised. To answer<br/> 20 the main question is they could've done it, I don't<br/> 21 know if they could've done it.</p> <p>22 Q Certainly it was a product that was<br/> 23 being used by others for baby powder, correct?</p> <p>24 A In small quantities, I believe so, yes.</p> <p>25 Q Well, and you don't know about the</p> | <p style="text-align: right;">41</p> <p>1 A When -- when the products are used as<br/> 2 directed, as is put on -- on the packet it's<br/> 3 described how it's applied to the hands and rubbed<br/> 4 onto the baby's skin, the opportunity for inhaling<br/> 5 is incredibly low, incredibly low, if it's used as<br/> 6 directed.</p> <p>7 Q I'm going to hand you your transcript.<br/> 8 This is from August 15th, 2017 in the Herford case<br/> 9 as well as a few others. I'll direct you to page 67<br/> 10 and 68 there.</p> <p>11 Okay, and there you were asked a series of<br/> 12 questions and here's the questions you were asked<br/> 13 asked.</p> <p>14 MR. BICKS: Can I have a copy, if you<br/> 15 have one?</p> <p>16 MR. PANATIER: I'll loan you mine when<br/> 17 I'm done.</p> <p>18 MR. BICKS: Okay, fine.</p> <p>19 Q Page 67, line 25. "Sir, Johnson &amp;<br/> 20 Johnson has understood for decades that when talc<br/> 21 powder is used on an infant or a child, they will<br/> 22 inhale some of the talc into their lungs." Your<br/> 23 answer, "There is always the possibility that when<br/> 24 the talc is used we will inhale talc." Me, "And<br/> 25 it's not really a possibility, right?" You, "yes."</p> |

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| <p style="text-align: right;">42</p> <p>1 Me, "I mean, it happens?" Your answer, "It happens,<br/>2 yes."<br/>3 Did I read that correctly, sir?<br/>4 A The word happens related to the<br/>5 possibility, it -- it's a possibility that it<br/>6 happens, yes.<br/>7 Q Wait, no. "I mean, it happens?" And<br/>8 you saying "It happens, yes."<br/>9 Happens means it happens, doesn't it, sir?<br/>10 MR. BICKS: Objection to the form.<br/>11 Argumentative.<br/>12 A What -- what you asked me, "And it's not<br/>13 really a possibility, right? Answer, yes. I mean<br/>14 it happens? It happens, yes." The answer's not<br/>15 clear and -- but if we go back to the basic<br/>16 question, there is a theoretical possibility, yes.<br/>17 Q All right.<br/>18 MR. PANATIER: So I'm just going to<br/>19 object to nonresponsive.<br/>20 Q Can we agree that this exchange<br/>21 happened? Me, "And it's not really a possibility,<br/>22 right?" You, "Answer, yes. Question, I mean it<br/>23 happens?" Your answer, "It happens, yes."<br/>24 Did those words come out of your mouth?<br/>25 A They did, yes.</p>                                                          | <p style="text-align: right;">44</p> <p>1 tests that it's received internally reporting on<br/>2 asbestos minerals or asbestos content in its source<br/>3 ore or finished product, correct?<br/>4 MR. BICKS: Objection to the form of<br/>5 the question. No foundation. Vague and<br/>6 ambiguous.<br/>7 A The -- yeah, rephrase the question. When<br/>8 you say asbestos in the product, is that what you're<br/>9 saying?<br/>10 Q Listen to the question. No. And --<br/>11 and I'll give you some background. You and I have<br/>12 spent probably two-and-a-half full days going<br/>13 through every report in Johnson &amp; Johnson's records<br/>14 and writing them down on charts, haven't we?<br/>15 A We have, yes.<br/>16 Q Okay. And along the line when I wrote<br/>17 them down on those charts I said, you'll tell me if<br/>18 I'm writing this down inaccurately, right?<br/>19 A Yes.<br/>20 Q Okay. And we verified that those<br/>21 charts that I did at your deposition and then at<br/>22 trial, that those were act -- those accurately<br/>23 reflected what was actually written in the papers,<br/>24 correct?<br/>25 MR. BICKS: Objection to the form. No</p> |
| <p style="text-align: right;">43</p> <p>1 MR. PANATIER: Okay, all right, you<br/>2 can set that aside. And, you know, why don't<br/>3 you hand that back, so I can keep those in<br/>4 order, since there's four volumes of it.<br/>5 Q Johnson &amp; Johnson understood that it<br/>6 would be very, very bad for business and Johnson &amp;<br/>7 Johnson's reputation if it ever came out that baby<br/>8 powder or any of its talc products ever contained<br/>9 asbestos, correct?<br/>10 A That's correct.<br/>11 Q Okay. Johnson &amp; Johnson has<br/>12 approximately 250 test results it has received<br/>13 internally from the 1950s to the 2000s reporting<br/>14 actinolite, tremolite, chrysotile, anthophyllite and<br/>15 asbestos in various combinations in both its source<br/>16 ore and finished products, correct, sir?<br/>17 MR. BICKS: Objection to the form. No<br/>18 foundation.<br/>19 A There are several questions there. Would<br/>20 -- would you clarify that question --<br/>21 Q Yeah.<br/>22 A -- it's not clear.<br/>23 Q Sure. And I'm just asking --<br/>24 A Break it -- break it down.<br/>25 Q Yeah. Johnson &amp; Johnson has over 250</p> | <p style="text-align: right;">45</p> <p>1 foundation.<br/>2 MR. PANATIER: You can answer.<br/>3 A They -- what was written in the papers were<br/>4 test results.<br/>5 Q Right, right. And you and I have been<br/>6 through test results from the '50s to the 2000s,<br/>7 fair?<br/>8 A We have looked at test results, yes.<br/>9 Q And let's just -- let's just see if we<br/>10 can agree on the number of test results. We've<br/>11 looked at over 200 test results --<br/>12 A Yes.<br/>13 Q -- where they have been looking for<br/>14 asbestos, correct?<br/>15 A They have been looking --<br/>16 Q Okay.<br/>17 A -- for asbestos, yes.<br/>18 Q And amongst those 200 test results we<br/>19 have seen -- and I'm not going to say there's any --<br/>20 I'm not going to give you any numbers, but when we<br/>21 have looked at over 200 test results that Johnson &amp;<br/>22 Johnson has, we have seen reported over 200 times a<br/>23 combination of asbestos minerals and asbestos fibers<br/>24 in both the source ore and the finished product,<br/>25 reported, correct, sir?</p>                                                                                     |

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| <p style="text-align: right;">46</p> <p>1 MR. BICKS: Objection. No foundation.</p> <p>2 A What -- what we've seen are reports of</p> <p>3 asbestos minerals, but what is important to make</p> <p>4 clear is that that did not relate to the product</p> <p>5 that's used in baby powder. Johnson &amp; Johnson's</p> <p>6 or the Windsor Minerals business operated industrial</p> <p>7 mines in industrial talc and some of those relate to</p> <p>8 industrial talcs.</p> <p>9 Q All that -- to be clear, in the 1970s</p> <p>10 any industrial talc products that were sold were</p> <p>11 coming out of the same mine that was generating the</p> <p>12 talc for the Johnson's Baby Powder, correct?</p> <p>13 MR. BICKS: Objection to form. No</p> <p>14 foundation.</p> <p>15 A I -- I'm not sure that is correct, so I --</p> <p>16 I'm not going to speculate. The company owned other</p> <p>17 mines.</p> <p>18 Q Okay. You and I have been through</p> <p>19 this many times. In 19 -- from 1968 through 1976</p> <p>20 there was one mine that produced any talc that</p> <p>21 Johnson &amp; Johnson owned and it was Hammondsville,</p> <p>22 correct?</p> <p>23 MR. BICKS: Objection to the form. No</p> <p>24 foundation.</p> <p>25 A From my -- my understanding there are other</p> | <p style="text-align: right;">48</p> <p>1 the Battelle studies, correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. '57, '58, '59, another in '58,</p> <p>4 another in '59, another in '59, those were all tests</p> <p>5 of the flotation experimentation they were doing in</p> <p>6 Hammondsville, correct?</p> <p>7 MR. BICKS: Objection to the form. No</p> <p>8 foundation.</p> <p>9 A Well, these results from '57, '58, '59,</p> <p>10 '60, we went through this before, you've -- you've</p> <p>11 described it, these materials are as tremolite,</p> <p>12 tremolite, tremolite, but what we do know is that</p> <p>13 tremolite takes other forms, other than asbestos</p> <p>14 tremolite. Most tremolite in the -- in the world is</p> <p>15 nonasbestos, so --</p> <p>16 MR. PANATIER: So I'm just going --</p> <p>17 A -- that wasn't clear from here.</p> <p>18 MR. PANATIER: Yeah, I'm going to</p> <p>19 object to nonresponsive.</p> <p>20 Q We had this conversation that I only</p> <p>21 wrote down what was reported in the reports that</p> <p>22 Johnson &amp; Johnson had, right?</p> <p>23 A You --</p> <p>24 Q Sometimes they just wrote tremolite,</p> <p>25 correct?</p> |
| <p style="text-align: right;">47</p> <p>1 mines that Johnson owned or that Windsor -- Windsor</p> <p>2 Minerals owned that were -- other than the</p> <p>3 Hammondsville Argonaut mines.</p> <p>4 Q Okay, well, we'll -- that's not -- I'm</p> <p>5 not asking whether they owned them, I'm asking you</p> <p>6 what they produced for, and I'm happy to go back and</p> <p>7 rehash the trial testimony where we straightened</p> <p>8 that out if that will help clear it up, but maybe</p> <p>9 there's an easier way.</p> <p>10 MR. PANATIER: This will be exhibit</p> <p>11 13.</p> <p>12 (Photographs of trial chart is marked</p> <p>13 as Exhibit 13 for identification, as of this</p> <p>14 date.)</p> <p>15 Q Here's a copy for you. This is a</p> <p>16 chart that you and I created in trial, okay, in</p> <p>17 October of 2016, okay?</p> <p>18 A Yes.</p> <p>19 Q And this is the chart where I wrote</p> <p>20 down exactly what was in the papers and I asked you,</p> <p>21 am I being accurate.</p> <p>22 Do you recall that, sir?</p> <p>23 A I do, yes.</p> <p>24 Q Okay. So let's -- let's look at this.</p> <p>25 In 1957 we had a report of amphibole and that was</p>                                                                                                        | <p style="text-align: right;">49</p> <p>1 A Yes.</p> <p>2 Q Okay. And so we wrote down exactly</p> <p>3 what they put. If they said tremolite asbestos we</p> <p>4 wrote tremolite asbestos, correct?</p> <p>5 MR. BICKS: Objection to the form. No</p> <p>6 foundation.</p> <p>7 A Yeah, I -- I don't know what -- I don't have</p> <p>8 all those individual 150 or 200 reports with me, but</p> <p>9 I'm not quite sure where you're going with this one.</p> <p>10 Q Okay, well, since you've now been</p> <p>11 through it three times, in Herford twice and Lanza</p> <p>12 once, I'm was hoping not to have to go through every</p> <p>13 one of the 250 reports.</p> <p>14 Do we need to do that?</p> <p>15 A Well --</p> <p>16 MR. BICKS: Objection to the form.</p> <p>17 A Let's try and rephrase --</p> <p>18 Q Okay.</p> <p>19 A -- where you're going --</p> <p>20 Q Okay.</p> <p>21 A -- where you're going with this one.</p> <p>22 Q So -- so let's see if we can get on</p> <p>23 the same page, okay?</p> <p>24 All I'm talking about right now is, Johnson</p> <p>25 &amp; Johnson was in possession from the 1950s to the</p>                                            |



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| <p style="text-align: right;">50</p> <p>1 2000s of over 200 test reports on their talc, we can<br/> 2 start there, right?<br/> 3 A Yes.<br/> 4 Q Okay. And those test reports were all<br/> 5 looking for either asbestos minerals, just the<br/> 6 minerals, such as tremolite, actinolite,<br/> 7 anthophyllite, right?<br/> 8 A Yes.<br/> 9 Q And some were looking for asbestos,<br/> 10 right, the asbestos versions of those minerals,<br/> 11 correct?<br/> 12 MR. BICKS: Objection to the form. No<br/> 13 foundation.<br/> 14 A What -- what was being analyzed was the<br/> 15 mineral composition of the material and the report<br/> 16 would've stated tremolite, if tremolite was present.<br/> 17 Q We know that tremolite was reported as<br/> 18 present in Italian and Vermont talc dozens and<br/> 19 dozens of times, correct?<br/> 20 MR. BICKS: Objection to the form. No<br/> 21 foundation.<br/> 22 MR PANATIER: You can answer.<br/> 23 A It was reported and, of course, we know<br/> 24 that the tremolite in those talc bodies is not<br/> 25 asbestos tremolite.</p>                                                                                                                                                                  | <p style="text-align: right;">52</p> <p>1 high amphibole in one hole, correct?<br/> 2 MR. BICKS: Objection to the form.<br/> 3 A Well, one hole relates to a test bore when<br/> 4 -- when the geologists are looking to find out the<br/> 5 quality of the mine where it extends over several<br/> 6 acres, and a hole or bore hole would tell you where<br/> 7 you could go and where you'd avoid.<br/> 8 Q Right. And in one of the holes they<br/> 9 found disproportionately high amphibole, correct?<br/> 10 A And that -- that was obviously an area to<br/> 11 be avoided as far as mining was concerned.<br/> 12 Q Okay. In their summary they said<br/> 13 trace to one percent altered amphibole, correct?<br/> 14 MR. BICKS: Objection to the form.<br/> 15 A Well, that's -- you've read what-- what<br/> 16 you wrote --<br/> 17 Q Right.<br/> 18 A -- last year.<br/> 19 Q And that you agreed with, correct,<br/> 20 that that was reported, correct?<br/> 21 MR. BICKS: Objection to the form.<br/> 22 A You -- you -- you read us what you wrote<br/> 23 last year.<br/> 24 Q Right. And every single time that I<br/> 25 wrote something down it was directly from one of the</p> |
| <p style="text-align: right;">51</p> <p>1 MR. PANATIER: Well, I'm going to<br/> 2 object to nonresponsive.<br/> 3 Q Because most of the times there was<br/> 4 not further analysis to determine whether it was<br/> 5 fibrous or not; isn't that correct?<br/> 6 MR. BICKS: No foundation.<br/> 7 A From the 1970s onwards there was extensive<br/> 8 evaluation from '73 of the products to look for the<br/> 9 -- the type of fiber using transmission electron<br/> 10 microscopy and that -- that would've picked out<br/> 11 asbestos material had it been present.<br/> 12 Q Here -- here's the best way to do<br/> 13 this. I'm just going to read some of the things<br/> 14 from the chart that you and I went through and ask<br/> 15 you if we -- if you and I reported that on the<br/> 16 chart. 1957 amphibole, 1958 amphibole variety<br/> 17 tremolite, 1958 tremolite in flotation two-dozen<br/> 18 tremolite, 1959 sixty results for tremolite, 12/1959<br/> 19 run of mill two percent tremolite and number 2, that<br/> 20 was Italian number 2, one percent tremolite, 28<br/> 21 tremolite, correct, first page?<br/> 22 A Yes.<br/> 23 Q Okay.<br/> 24 A You've read what was written.<br/> 25 Q Second page, 1961 disproportionately</p> | <p style="text-align: right;">53</p> <p>1 reports that Johnson &amp; Johnson had, right?<br/> 2 MR. BICKS: Objection to the form.<br/> 3 A You -- you wrote -- you wrote what was<br/> 4 written from a report.<br/> 5 Q That's right, okay. 1966 serpentine<br/> 6 and altered amphibole in the Hammondsville Vermont<br/> 7 deposit, correct?<br/> 8 A You read what was written, yes.<br/> 9 Q Okay. 1967, BabyMate was a competitor<br/> 10 of Johnson &amp; Johnson, right?<br/> 11 A I believe so, yes.<br/> 12 Q Okay. And they found -- they found<br/> 13 half percent -- less than half percent of fibrous<br/> 14 tremolite in that competitor, correct?<br/> 15 MR. BICKS: Objection to the form. No<br/> 16 foundation.<br/> 17 A Well, it -- again, you -- you read what you<br/> 18 -- what you wrote back in August last year.<br/> 19 Q And the -- the author of the Johnson &amp;<br/> 20 Johnson report on BabyMate concluded that that was<br/> 21 Italian talc, correct?<br/> 22 MR. BICKS: Objection to the form. No<br/> 23 foundation.<br/> 24 A The author postulated that it was Italian<br/> 25 talc.</p>                                                                 |

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| <p style="text-align: right;">54</p> <p>1 Q Okay.</p> <p>2 A He didn't have evidence, it was a guess.</p> <p>3 Q October 10, 1967 serpentine 0.25 to</p> <p>4 1.5 percent, correct?</p> <p>5 A That's what was written.</p> <p>6 Q Okay. May 10th, 1971 sample 344L,</p> <p>7 which was Johnson's Baby Powder, correct?</p> <p>8 A Yes.</p> <p>9 Q Okay. This was Colorado School of</p> <p>10 Mines, they said free non-talc needles, right?</p> <p>11 A That's what was written.</p> <p>12 Q And then four days later they said the</p> <p>13 non-talc needles were tremolite, correct?</p> <p>14 MR. BICKS: Objection to the form. No</p> <p>15 foundation.</p> <p>16 A Well, again, I can't remember what was --</p> <p>17 what you wrote. That was what was written on the --</p> <p>18 on the blackboard -- on the whiteboard, yes.</p> <p>19 Q Okay. And you and I have been through</p> <p>20 those reports two times already?</p> <p>21 A We have, yes.</p> <p>22 Q Okay. July 1975 McCrone has four</p> <p>23 confirmed asbestos results in the fines of cosmetic</p> <p>24 ore, correct?</p> <p>25 MR. BICKS: Objection to the form. No</p>       | <p style="text-align: right;">56</p> <p>1 Q Okay.</p> <p>2 A -- mistakenly, yes.</p> <p>3 Q All right. And then July 7th, 1971</p> <p>4 Colorado School of Mines reported less than a</p> <p>5 percent of tremolite and actinolite in six of seven</p> <p>6 samples, correct?</p> <p>7 A That is -- is what you wrote back in August</p> <p>8 last year, yes.</p> <p>9 Q Okay. Directly from the report that</p> <p>10 you've seen?</p> <p>11 A From a report, yes.</p> <p>12 Q Right. July 29th, 1971, Vermont talc</p> <p>13 trace amounts of fibrous tremolite and actinolite,</p> <p>14 independent labs show negligible trace fibrous</p> <p>15 minerals.</p> <p>16 That's directly from that report, is it</p> <p>17 not, sir?</p> <p>18 MR. BICKS: No foundation. Objection.</p> <p>19 A Well, again, you wrote what was written</p> <p>20 from a report.</p> <p>21 Q That Johnson &amp; Johnson had?</p> <p>22 A You -- you read out out exactly what you</p> <p>23 wrote last year.</p> <p>24 Q Right. Which was directly from a</p> <p>25 report that you and I were looking at, correct?</p>                  |
| <p style="text-align: right;">55</p> <p>1 to foundation.</p> <p>2 A Again, you wrote what's -- you read out</p> <p>3 what you wrote that -- last -- last year.</p> <p>4 Q And I wrote that directly from a</p> <p>5 report that Johnson &amp; Johnson had, correct?</p> <p>6 MR. BICKS: Objection. No foundation.</p> <p>7 A I believe that is the case.</p> <p>8 Q Okay. And then there were two more</p> <p>9 confirmed asbestos in the sediment, correct?</p> <p>10 A Yes.</p> <p>11 Q Okay. Then in November of 1975</p> <p>12 McCrone found, "fibers of asbestos", six amphibole</p> <p>13 in cosmetic talc, correct?</p> <p>14 A Well, that's what you wrote back in August.</p> <p>15 Q And that's directly from the report,</p> <p>16 correct?</p> <p>17 A Correct.</p> <p>18 MR. BICKS: Objection. No foundation.</p> <p>19 A That's what you wrote.</p> <p>20 Q From the report that you've seen?</p> <p>21 A Yes, that's what you wrote.</p> <p>22 Q Okay. Dr. Langer, July 9th, 1971, he</p> <p>23 stated that he found chrysotile in Johnson's Baby</p> <p>24 Powder by electron microscopy, correct?</p> <p>25 A That's what he claimed --</p> | <p style="text-align: right;">57</p> <p>1 A From a report.</p> <p>2 Q Okay. You can skip the next page. Go</p> <p>3 to August 9th, 1971. Johnson &amp; Johnson had a memo</p> <p>4 where they said, we need to upgrade the quality</p> <p>5 control on baby powder for asbestos content,</p> <p>6 correct?</p> <p>7 A I don't have that report.</p> <p>8 Q Okay.</p> <p>9 A I don't have that report with me.</p> <p>10 Q I'll flag that, I do.</p> <p>11 A Okay.</p> <p>12 Q So I'll show that to you. Let's go</p> <p>13 ahead and go down to another report. 9/3/71, less</p> <p>14 than 0.001 percent asbestos in the medicated powder</p> <p>15 and chrysotile in Shower to Shower and that was a</p> <p>16 McCrone report, correct, sir?</p> <p>17 MR. BICKS: Objection to the form. No</p> <p>18 foundation.</p> <p>19 A Again, you're -- you're quoting what you</p> <p>20 wrote last fall.</p> <p>21 Q Right. And I'm quoting directly from</p> <p>22 the reports that you and I went through one by one,</p> <p>23 correct?</p> <p>24 A From a report, yes.</p> <p>25 Q Okay. Dr. Langer in November 10th,</p> |

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| <p style="text-align: right;">58</p> <p>1 1971, he reported less than 0.01 percent of asbestos<br/> 2 in Johnson's Baby Powder, correct?<br/> 3 MR. BICKS: Objection. No foundation.<br/> 4 A That's what he reported.<br/> 5 Q Okay.<br/> 6 A Though incorrectly.<br/> 7 Q Now, you said though incorrectly. Dr.<br/> 8 Langer, never, never recanted that he found asbestos<br/> 9 in Johnson's Baby Powder, did he?<br/> 10 A My understanding is that he did. There's a<br/> 11 letter in the -- to a -- a newspaper whereby he --<br/> 12 he retracted.<br/> 13 Q The letter in the newspaper where he<br/> 14 said he still believes there's trace asbestos in the<br/> 15 Johnson's Baby Powder?<br/> 16 MR. BICKS: Objection to the form. No<br/> 17 foundation.<br/> 18 A He -- he didn't -- he did not say that.<br/> 19 Q He didn't. So -- so Dr. Langer never<br/> 20 said in the newspaper article that he believed there<br/> 21 was still trace asbestos in Johnson's Baby Powder.<br/> 22 Is that Johnson &amp; Johnson's testimony<br/> 23 today?<br/> 24 A My --<br/> 25 MR. BICKS: Objection to the form.</p> | <p style="text-align: right;">60</p> <p>1 but at the time that -- that is -- that is the case.<br/> 2 Q Well, I have the documents. I'm<br/> 3 trying to save you time, okay?<br/> 4 A Thank you.<br/> 5 Q And if you want to see one, you just<br/> 6 let me know, we'll pull it out, but I'm trying to<br/> 7 save you some time.<br/> 8 October 27, 1972 McCrone has two reports<br/> 9 regarding 108 and 109T, which were Johnson's Baby<br/> 10 Powder, correct?<br/> 11 A They had a report, yes.<br/> 12 Q Okay. And they found half a percent<br/> 13 tremolite in one and 0.2 to 0.3 percent tremolite in<br/> 14 the others, right?<br/> 15 MR. BICKS: Objection. No foundation.<br/> 16 A Well, again, you're -- you're reading out<br/> 17 what -- what you wrote out on the whiteboard last<br/> 18 fall.<br/> 19 Q So here's the thing, you're -- you're<br/> 20 Johnson &amp; Johnson today; you understand that, right?<br/> 21 A Yes.<br/> 22 Q And you're Johnson &amp; Johnson Consumer<br/> 23 Inc., correct?<br/> 24 A Yes.<br/> 25 Q I'm not, am I?</p>                                                   |
| <p style="text-align: right;">59</p> <p>1 A My understanding is that Dr. Langer did not<br/> 2 find asbestos in Johnson's Baby Powder.<br/> 3 Q Okay, we'll talk about that, too. In<br/> 4 February of 1972 Val Chisone, which is where the<br/> 5 Italian talc came from, right?<br/> 6 A Yes.<br/> 7 Q Their certification, their spec sheet<br/> 8 said less than 0.02 percent tremolite, correct?<br/> 9 MR. BICKS: Objection. No foundation.<br/> 10 A I -- yes, I don't have that in front of me.<br/> 11 I can't remember what the Val Chisone statement<br/> 12 said.<br/> 13 Q You and I have been through it two<br/> 14 times already --<br/> 15 A Yes.<br/> 16 Q -- correct?<br/> 17 A Yes.<br/> 18 Q Okay.<br/> 19 A Yes, okay. Are -- you -- you are reading<br/> 20 out what you wrote last fall.<br/> 21 Q And what I wrote last fall was<br/> 22 directly from the documents you and I were looking<br/> 23 at, correct?<br/> 24 MR. BICKS: No foundation.<br/> 25 A Well, we don't have those documents today,</p>                                                                                            | <p style="text-align: right;">61</p> <p>1 A No.<br/> 2 Q I'm not Johnson &amp; Johnson --<br/> 3 A No.<br/> 4 Q -- right? To your knowledge, have I<br/> 5 ever worked for Johnson &amp; Johnson?<br/> 6 A No.<br/> 7 Q You're the -- you're the one that<br/> 8 should know the most about Johnson &amp; Johnson's own<br/> 9 products, correct?<br/> 10 MR. BICKS: Objection to the form. No<br/> 11 foundation. Improper.<br/> 12 Q Right?<br/> 13 A I know extensive amounts of information on<br/> 14 the quality of the talc used in Johnson's products,<br/> 15 yes. I've had information --<br/> 16 Q Okay.<br/> 17 A -- and it's important to actually make it<br/> 18 very clear that nowhere has anyone actually shown<br/> 19 that in the baby powder products, in the Shower to<br/> 20 Shower products, there was asbestos present. What<br/> 21 we've looked at here is words like tremolite and<br/> 22 anthophyllite, but no one has ever taken that to the<br/> 23 level of saying those are asbestos.<br/> 24 Q Are you -- after -- after -- you and I<br/> 25 have been through this through two times.</p> |

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| <p style="text-align: right;">62</p> <p>1 Literally every document documenting</p> <p>2 reports of whatever you want to call it, asbestos or</p> <p>3 asbestos minerals, it's Johnson &amp; Johnson's</p> <p>4 testimony that there's never been a report of</p> <p>5 asbestos in Johnson &amp; Johnson?</p> <p>6 A In Johnson's baby products.</p> <p>7 Q Okay.</p> <p>8 A In industrial tales there could well be,</p> <p>9 yes.</p> <p>10 Q Sir, you know that there is published</p> <p>11 peer-reviewed literature where asbestos was reported</p> <p>12 in Johnson's Baby Powder, do you not?</p> <p>13 MR. BICKS: Objection. No foundation.</p> <p>14 A I'm aware that in the early 1970s there</p> <p>15 have been claims of that, but they were later</p> <p>16 refuted.</p> <p>17 Q It's important when you make</p> <p>18 statements, especially as a scientist, sir, to make</p> <p>19 sure that you're being accurate about what you</p> <p>20 state, right?</p> <p>21 A Yes.</p> <p>22 Q Okay. Alice Blount was a consultant</p> <p>23 to Johnson &amp; Johnson, correct?</p> <p>24 Correct, sir?</p> <p>25 A She -- I believe she may have been a</p> | <p style="text-align: right;">64</p> <p>1 The point of this article is --</p> <p>2 Q I haven't asked you a question.</p> <p>3 A Okay.</p> <p>4 Q I'll show you your testimony from the</p> <p>5 Herford trial from November 1st, 2017, so six months</p> <p>6 ago.</p> <p>7 All right. Sir, if you'll look at the top</p> <p>8 of 2313, page 2313, I asked you this question on</p> <p>9 line 7, "As far as the presence of asbestiform</p> <p>10 minerals Alice Blount published that in 1991 she</p> <p>11 found asbestos in Johnson's Baby Powder, correct?"</p> <p>12 And your answer was, "She claims to."</p> <p>13 Correct?</p> <p>14 A Yes.</p> <p>15 Q Okay. Now, Johnson &amp; Johnson has</p> <p>16 never controverted that report, it is</p> <p>17 uncontroverted, is it not?</p> <p>18 MR. BICKS: Objection to the form.</p> <p>19 A How do you define controverted? How would</p> <p>20 you --</p> <p>21 Q First of all -- first of all, sir,</p> <p>22 let's start at the beginning.</p> <p>23 Johnson &amp; Johnson acknowledges that Alice</p> <p>24 Blount found asbestos in Johnson's Baby Powder and</p> <p>25 she published it in the peer-reviewed literature,</p> |
| <p style="text-align: right;">63</p> <p>1 consultant at some point --</p> <p>2 Q Okay.</p> <p>3 A -- or she may have consulted.</p> <p>4 Q Yeah.</p> <p>5 (Article entitled "Amphibole Content</p> <p>6 of Cosmetic and Pharmaceutical Talcs" is marked</p> <p>7 as (Hopkins) Exhibit 14 for identification, as</p> <p>8 of this date.)</p> <p>9 Q This is Exhibit 14. And, sir, I've</p> <p>10 shown you that --</p> <p>11 A Yes.</p> <p>12 Q -- two times before --</p> <p>13 A Yes, yes, I've seen this one.</p> <p>14 Q -- right?</p> <p>15 A Yes.</p> <p>16 Q That is a published peer-reviewed</p> <p>17 article from 1991 entitled, "Amphibole Content of</p> <p>18 Cosmetic and Pharmaceutical Talcs", right?</p> <p>19 A That is the title of the article, yes.</p> <p>20 Q And you know looking at the key at the</p> <p>21 back that sample I is J&amp;J, Johnson's Baby Powder,</p> <p>22 correct?</p> <p>23 MR. BICKS: Objection. No foundation.</p> <p>24 A Well, there's a -- there's a handwritten</p> <p>25 note to say that sample I is Johnson's Baby Powder.</p>                                                                                 | <p style="text-align: right;">65</p> <p>1 correct?</p> <p>2 MR. BICKS: Objection. No foundation.</p> <p>3 MR. PANATIER: Except for the article</p> <p>4 itself, but go ahead, sir.</p> <p>5 MR. BICKS: Except that it's not</p> <p>6 necessarily foundation, it's peer-reviewed,</p> <p>7 and you're misinterpreting his testimony,</p> <p>8 'cause he said she claimed to.</p> <p>9 MR. PANATIER: Okay, just make</p> <p>10 objections.</p> <p>11 MR. BICKS: I know, but stick to the</p> <p>12 testimony and let --</p> <p>13 MR. PANATIER: You should just stick</p> <p>14 to --</p> <p>15 MR. BICKS: And let's not --</p> <p>16 MR. PANATIER: -- actually making</p> <p>17 objections.</p> <p>18 MR. BICKS: Let's not take stuff out</p> <p>19 the context.</p> <p>20 A I -- I stand by what I said back then.</p> <p>21 Q Right. She reported --</p> <p>22 A She -- she claimed to have found, yes.</p> <p>23 Q Okay. And to your knowledge, has</p> <p>24 Johnson &amp; Johnson done anything to controvert, to</p> <p>25 refute that report?</p>                                                                                                                                  |

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| <p style="text-align: right;">66</p> <p>1 A The -- the refutation, the -- the opposite<br/> 2 of this is that Johnson &amp; Johnson has, over the<br/> 3 years, and certainly in 1990, has many, many<br/> 4 hundreds of test results which show no asbestos in<br/> 5 the product, in the baby product, so that -- that in<br/> 6 itself is evidence of -- of a refutation. It -- it<br/> 7 contradicted this.</p> <p>8 Q Did Johnson &amp; Johnson ever in the<br/> 9 published peer-reviewed literature write a letter to<br/> 10 the editor refuting that?</p> <p>11 A I'm not aware that a letter was ever<br/> 12 written to the editor.</p> <p>13 Q Okay. You represented earlier --<br/> 14 let's go back to what you said, sir. You said there<br/> 15 has never been a report of asbestos in Johnson's<br/> 16 Baby Powder.</p> <p>17 That's not true, is it?</p> <p>18 A There needs to be -- when we talk about a<br/> 19 report, a report in scientific terms should always<br/> 20 be validated, should be proven, should be<br/> 21 reproducible. This particular study by Alice Blount<br/> 22 was using a very experimental method and no has ever<br/> 23 confirmed that method. I've not seen any other<br/> 24 publication using that method which confirmed it, so<br/> 25 any test method needs to be validated to be sure</p> | <p style="text-align: right;">68</p> <p>1 is a heavy liquid separation method, correct?</p> <p>2 A That is her method.</p> <p>3 Q Are you aware that Johnson &amp; Johnson<br/> 4 was aware of that method in the early 1970s?</p> <p>5 A I'm -- I'm aware that that method was<br/> 6 looked at as far as back as the '70s, but -- it was<br/> 7 -- it was never proceeded with.</p> <p>8 Q Because what the heavy liquid<br/> 9 separation method does is it allows you to<br/> 10 concentrate any asbestos that might be there so it<br/> 11 could be more readily seen by microscopy, correct?</p> <p>12 A Well, to determine asbestos you need to use<br/> 13 several different test methods, x-ray diffraction,<br/> 14 transmission microscopy, polarized light microscopy,<br/> 15 otherwise you can either get confused by looking at<br/> 16 under a microscope fibers that we -- we've not<br/> 17 defined that they're truly asbestos.</p> <p>18 MR. PANATIER: I'm going to object to<br/> 19 nonresponsive.</p> <p>20 Q The question was, the heavy liquid<br/> 21 separation technique is a concentration technique so<br/> 22 you can remove out much of the talc and resolve the<br/> 23 asbestos fibers to the extent that they are there;<br/> 24 is that correct?</p> <p>25 MR. BICKS: Objection. No foundation.</p>                                                                           |
| <p style="text-align: right;">67</p> <p>1 that it's relevant.</p> <p>2 MR. PANATIER: I'm going to object to<br/> 3 nonresponsive.</p> <p>4 Q Sir, you stated that there was no<br/> 5 report of asbestos in Johnson &amp; Johnson's Baby<br/> 6 Powder, did you not?</p> <p>7 MR. BICKS: Objection to the form.<br/> 8 Asked and answered.</p> <p>9 A There is a report where a -- an author<br/> 10 using a very experimental method claims to have<br/> 11 found asbestos in the product.</p> <p>12 Q And as far as you know in the<br/> 13 peer-reviewed literature that claim, as you call it,<br/> 14 is completely un-refuted, correct?</p> <p>15 MR. BICKS: Objection. Asked and<br/> 16 answer.</p> <p>17 A Yes, I -- as I said, I'm not aware that<br/> 18 anyone wrote a letter to the editor.</p> <p>19 Q Let's look at -- and she -- she not<br/> 20 only found it in the baby powder, she found it in<br/> 21 the source talc, too, correct?</p> <p>22 A She claimed to have found it --</p> <p>23 Q Right.</p> <p>24 A -- by her experimental method.</p> <p>25 Q Now, the method you're talking about</p>                                                                                                                                                                                                                             | <p style="text-align: right;">69</p> <p>1 A Again, it's an experimental technique. It<br/> 2 -- it's never been used widely or for other than in<br/> 3 the most basic academic research --</p> <p>4 Q Really?</p> <p>5 A -- so any -- any methodology that you're<br/> 6 looking for anything, whether you're looking to<br/> 7 measure how many milligrams of something is in<br/> 8 something else, you have to validate the test<br/> 9 methods, and that means different researchers will<br/> 10 do that, others will repeat it and reproduce it.<br/> 11 What I'm saying is that this methodology has been<br/> 12 around since, what you say, since the '70s, people<br/> 13 have looked at concentration, but it -- it's never<br/> 14 taken off, because no one was ever able to reproduce<br/> 15 it in a -- in an effective way.</p> <p>16 Q You just made all that up, fair?</p> <p>17 MR. BICKS: Objection to the form.</p> <p>18 A No. In any scientific method, any<br/> 19 scientific method, what -- what you're looking at in<br/> 20 -- in safety issues or anything else, you look at<br/> 21 how you can develop a test method and then you --<br/> 22 you do various test laboratories where -- where<br/> 23 we'll try can -- can it be done in lab A, lab B, lab<br/> 24 C, can they reproduce it, and the point I'm making<br/> 25 is that that was never reproduced in any outside</p> |



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| <p style="text-align: right;">70</p> <p>1 labs. It -- it was experimental and it's still<br/>2 experimental.<br/>3 Q It is. So do you know what the<br/>4 International Standards Organization is?<br/>5 A I've heard of it, ISO.<br/>6 Q ISO?<br/>7 A I've heard of ISO, yes.<br/>8 Q So I guess if it hasn't been<br/>9 validated, ISO wouldn't have a heavy liquid<br/>10 separation technique preparation method, would they?<br/>11 MR. BICKS: Objection to the form.<br/>12 A Again, I'm -- I'm aware that ISO has that<br/>13 technique.<br/>14 Q Oh, you are?<br/>15 A Yes. What I'm saying is that as far as its<br/>16 use in baby powder, powdered products, it's not been<br/>17 validated within the test labs that do these tests.<br/>18 Q So you're aware that ISO actually has<br/>19 a heavy liquid separation technique?<br/>20 A I'm aware that ISO has a technique, yes.<br/>21 Q Okay. ISO's a pretty well-regarded<br/>22 and authoritative source on different standards for<br/>23 test methods?<br/>24 A They are, yes.<br/>25 Q Okay. And they actually have a heavy</p>                                                                  | <p style="text-align: right;">72</p> <p>1 to speculate as to what RJ Lee does in their --<br/>2 their research laboratories. I can't speculate on<br/>3 that.<br/>4 Q The truth is that everything you have<br/>5 said, everything you have represented about whether<br/>6 or not Alice Blount's method that she published in<br/>7 1991 has been validated or not is just -- you just<br/>8 made it up, right?<br/>9 MR. BICKS: Objection. Argumentative.<br/>10 A If a scientist is validating a methodology,<br/>11 other researchers will publish it and say exactly<br/>12 that, they'll say we have looked at this<br/>13 methodology, we've -- we've shown that it works.<br/>14 What I'm saying is that, as far as I'm aware, I've<br/>15 not seen since this 1991 publication any reports in<br/>16 the scientific or analytical literature where this<br/>17 methodology has been used to examine talc.<br/>18 Q What's the point of peer-review?<br/>19 A I've done peer-reviews. I've actually been<br/>20 a peer-reviewer, and you look at the quality of the<br/>21 work, how it was written and you say, yes, this is<br/>22 -- this is worth publishing, but one of the points<br/>23 to remember when you publish a paper is that you are<br/>24 then open to challenge from other researchers. A<br/>25 researcher can say we -- we've tried to reproduce</p> |
| <p style="text-align: right;">71</p> <p>1 liquid separation technique that they have<br/>2 established as a test method, correct?<br/>3 A Establishing a test method even by ISO is<br/>4 -- is step one. Any test method has to be proven<br/>5 and used within different laboratories who are used<br/>6 to dealing with this, and the point I'm making is<br/>7 that no outside laboratories or even academic<br/>8 laboratories have -- have used this test methodology<br/>9 for the measuring contamination of talc.<br/>10 Q Okay.<br/>11 A It's never been -- it's never been -- it's<br/>12 never taken off.<br/>13 Q Okay. So RJ Lee's never done it?<br/>14 A I don't know, but --<br/>15 Q Do you know who RJ Lee is?<br/>16 A I do, yes.<br/>17 Q You, Johnson &amp; Johnson, have hired RJ<br/>18 Lee in these cases to help defend you, correct?<br/>19 A Correct, yes.<br/>20 Q Yeah. And so you wouldn't expect RJ<br/>21 Lee to have done this, because it's so, I guess<br/>22 whatever you're saying, un-validated, right?<br/>23 MR. BICKS: Objection to the form.<br/>24 Argumentative.<br/>25 A Again, I never speculate -- I'm not going</p> | <p style="text-align: right;">73</p> <p>1 this, we couldn't get it to work or they could say<br/>2 we've done this method we -- we confirmed, we<br/>3 validate it. So peer-review is -- is a way of<br/>4 expressing the way a report is written and you'll<br/>5 say this is written well, it describes the methods<br/>6 it used, describes the results and you say, yes,<br/>7 it's worth publishing, and then other researchers<br/>8 can come back and say, we agree or we don't agree.<br/>9 That's --<br/>10 Q Yeah.<br/>11 A -- that's what peer-review is.<br/>12 Q Right. Peer review is a way to vet<br/>13 something, correct?<br/>14 A Yes, and I've been one of those<br/>15 peer-reviewers --<br/>16 Q Yeah, I get it.<br/>17 A -- I've done vetting.<br/>18 Q Have you -- have you vetted Blount's<br/>19 method?<br/>20 A I have not vetted that method, but I --<br/>21 Q Has anybody, to your knowledge,<br/>22 challenged that in a peer-review?<br/>23 A Again, I've not seen any publications since<br/>24 then which has either challenged or confirmed.<br/>25 Q You haven't seen reports by RJ Lee</p>                                                                                                                                                                                                                                                 |

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| <p style="text-align: right;">74</p> <p>1 where they have actually used that exact method,<br/> 2 your expert --<br/> 3 A I --<br/> 4 Q -- have used that exact method to<br/> 5 determine asbestos in talc?<br/> 6 A I've not seen reports, no.<br/> 7 Q Okay. The fact that there -- that<br/> 8 Johnson &amp; Johnson was finding tremolite in its<br/> 9 source ore and final product was nothing new to<br/> 10 Johnson &amp; Johnson, was it, in the 1970s?<br/> 11 MR. BICKS: Objection. No foundation.<br/> 12 A The -- the examination of the mine, the<br/> 13 source ore conducted by Professor Pooley in -- in<br/> 14 Vermont and in Val Chisone Italy in '71 reported<br/> 15 tremolite, which was not asbestos tremolite.<br/> 16 (Documents Bates stamped<br/> 17 JNJAZ55_000005980 and JNJAZ55_000005981 are<br/> 18 marked as (Hopkins) Exhibit 15 for<br/> 19 identification, as of this date.)<br/> 20 Q This will be Exhibit 15. You've seen<br/> 21 that before, right?<br/> 22 MR. PANATIER: Here you go.<br/> 23 A Yes.<br/> 24 Q Right. And this is Dr. Nashed writing<br/> 25 to Goudie and he says, "I thought tremolite was</p> | <p style="text-align: right;">76</p> <p>1 expressions that --<br/> 2 Q We know from the testing, because in<br/> 3 fairness, sir, the chart that I was showing you, you<br/> 4 don't have -- as you sit here today, you don't have<br/> 5 any -- any criticism that I wrote down anything<br/> 6 there inaccurately, do you?<br/> 7 A You wrote down what was written. You wrote<br/> 8 words like tremolite, but the point I'm making is<br/> 9 that --<br/> 10 Q Wait, just answer the question.<br/> 11 A Well, that was my criticism, you --<br/> 12 Q I understand.<br/> 13 A -- asked me for my criticism.<br/> 14 Q You -- you have more to say about what<br/> 15 was found; is that fair?<br/> 16 A Yes.<br/> 17 Q Okay. All I'm asking is a very simple<br/> 18 question, so we can try to streamline this which is,<br/> 19 you don't have any criticism that anything I wrote<br/> 20 down on that chart was in any way not what was<br/> 21 reported in the reports Johnson &amp; Johnson had,<br/> 22 correct?<br/> 23 A You wrote what was written.<br/> 24 Q Okay. I wrote what was written in the<br/> 25 reports, right?</p> |
| <p style="text-align: right;">75</p> <p>1 mistakenly identified in view of similarity to<br/> 2 sodium sesquicarbonate", right?<br/> 3 A Yes, that's what written.<br/> 4 Q And what Al writes back is, "There are<br/> 5 trace quantities present confirmed both by McCrone<br/> 6 and Bill Ashton. Levels are extremely low, but<br/> 7 occasionally can be detected optically. This is not<br/> 8 new."<br/> 9 Is that what he wrote?<br/> 10 A That's what he wrote, yes.<br/> 11 Q Now, Johnson &amp; Johnson has stated that<br/> 12 that there should never, ever, ever be any asbestos<br/> 13 in baby powder, right?<br/> 14 A Yes.<br/> 15 Q Okay. Not a single fiber, right?<br/> 16 A That the product should be free of<br/> 17 asbestos.<br/> 18 Q Meaning zero?<br/> 19 A Yes.<br/> 20 Q Okay.<br/> 21 MR. BICKS: When it's a convenient<br/> 22 time for a break, let us know. I'm also<br/> 23 looking at our court reporter who I can tell --<br/> 24 MR. PANATIER: Yeah.<br/> 25 MR. BICKS: I can tell by people's</p>                                                                                                                   | <p style="text-align: right;">77</p> <p>1 A In the reports, yes.<br/> 2 Q Okay. And we know from the testing<br/> 3 that there's tremolite in both the Italian and<br/> 4 Vermont talc ore, correct?<br/> 5 A We know there's nonasbestos tremolite in<br/> 6 the talc ores.<br/> 7 Q Before you can have the asbestos<br/> 8 version you got to have the mineral, right?<br/> 9 MR. BICKS: Objection to the form.<br/> 10 A If there are findings of tremolite, tiny<br/> 11 quantities of tremolite, which we know from<br/> 12 extensive geological studies is not asbestos --<br/> 13 Q Okay.<br/> 14 A -- tremolite.<br/> 15 MR. PANATIER: I'm just going to<br/> 16 object as nonresponsive.<br/> 17 Q I'm asking you about tremolite. I'm<br/> 18 not going to call it asbestos unless it says<br/> 19 asbestos, okay?<br/> 20 A Fine, then the answer's yes.<br/> 21 Q Okay. So the answer's yes there is<br/> 22 extensive testing demonstrating tremolite in the<br/> 23 Italian and Vermont ore, correct?<br/> 24 MR. BICKS: Objection.<br/> 25 A Correct.</p>                                                                      |

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| <p style="text-align: right;">78</p> <p>1 Q And by 1972 there was a robust record<br/>2 of tremolite being in Johnson &amp; Johnson ores,<br/>3 correct?<br/>4 MR. BICKS: Objection to the form.<br/>5 Argumentative.<br/>6 A There is -- we've just agreed, there is<br/>7 traces of tremolite in the ores.<br/>8 Q You and I characterize it -- I asked<br/>9 you to characterize it as a robust record by 1972<br/>10 and you agreed with that before.<br/>11 Are you disagreeing with that now?<br/>12 A No, not disagreeing, no --<br/>13 Q Okay.<br/>14 A -- there's a record, yes.<br/>15 MR. PANATIER: All right, all right,<br/>16 we can take a break.<br/>17 (A short recess is taken.)<br/>18 (Document Bates stamped<br/>19 JNJNL61_000095945 and JNJNL61_000095946 is<br/>20 marked as (Hopkins) Exhibit 16 for<br/>21 identification, as of this date.)<br/>22 Q All right, sir, this will be Exhibit<br/>23 16. You've seen that before.<br/>24 That's a letter from Alice Blount to<br/>25 Luzenac, right?</p>                                                                                                                               | <p style="text-align: right;">80</p> <p>1 not know their sources at the time the analyses were<br/>2 done. I do not believe I am misrepresenting these<br/>3 talcs. For individual deposits, the shape<br/>4 distribution and quantity remains fairly constant<br/>5 over time."<br/>6 Turn to the next page, she's got a key, and<br/>7 you see sample I is what?<br/>8 A It says Windsor, Vermont's baby powder.<br/>9 Q Right. And then J through L are<br/>10 Windsor talc deposits.<br/>11 M is Troy, correct?<br/>12 A Well, L -- they're -- they're described as<br/>13 Vermont's, Vermont's, Vermont's, Vermont's --<br/>14 Q Okay.<br/>15 A -- from J through M.<br/>16 Q All right. So, again, she actually<br/>17 wrote a letter where she said she specifically<br/>18 validated the method by publishing it in a<br/>19 peer-review, did she not?<br/>20 A Yeah, she -- she says, "To establish the<br/>21 validity of the method, it's necessary to publish it<br/>22 for peer-review."<br/>23 Q And that's what she did, correct, sir?<br/>24 A She published it.<br/>25 Q Okay. In the peer-review, correct?</p>             |
| <p style="text-align: right;">79</p> <p>1 A Yes.<br/>2 Q And you know Luzenac is what later<br/>3 became Imerys, their talc supplier?<br/>4 A That is correct, yes.<br/>5 Q Okay. And you see what she -- she<br/>6 wrote in the second paragraph? She says, "The<br/>7 reason I have carried out this study is that I am<br/>8 asked to analyze very pure talcs for amphiboles. I<br/>9 take it -- it takes a great deal of time to do 100<br/>10 fields of view. Sometimes it is necessary to go to<br/>11 1000 fields of view. It is not fun. It seemed to<br/>12 me that there had been to be an easier way, and to<br/>13 establish the validity of a method is it is<br/>14 necessary to publish it for peer-review."<br/>15 That's exactly what she did, isn't it, sir?<br/>16 A She did --<br/>17 Q Okay.<br/>18 A -- she published.<br/>19 Q "That is why the paper has appeared in<br/>20 print."<br/>21 Right, she's said that?<br/>22 A That's what she's written, yes.<br/>23 Q Now, go to the bottom. She says, "As<br/>24 I told Slim Thompson I've analyzed many talc samples<br/>25 (only a few reported) and often blind, in that I did</p> | <p style="text-align: right;">81</p> <p>1 A Publish it for peer-review, yes.<br/>2 Q Okay, all right.<br/>3 MR. PANATIER: You can set that aside.<br/>4 This will be Exhibit 25 (sic).<br/>5 Q You said that Dr. Langer in a<br/>6 newspaper article stated that there was no asbestos<br/>7 in Johnson's Baby Powder, correct?<br/>8 A Well, let's -- let's -- let's read the<br/>9 words -- yeah, okay, yes.<br/>10 Q Well, that's what you said, right?<br/>11 A That's -- that's what he claimed. He<br/>12 retracted his initial findings.<br/>13 MR. PANATIER: Sorry. That's exhibit<br/>14 -- is that -- we're not at 25. I'm sorry,<br/>15 here, hand that back. It should be --<br/>16 MS. MALIK: 17. You were right.<br/>17 MR. PANATIER: 17, right, oops, that<br/>18 will be 17, sorry.<br/>19 Q Here you go, sir.<br/>20 (Copy of a newspaper article dated<br/>21 June 17, 1972 is marked as (Hopkins) Exhibit 17<br/>22 for identification, as of this date.)<br/>23 Q All right, Exhibit 17. There's a<br/>24 quote from Dr. Langer there that's highlighted and<br/>25 you can see the date of this is June 17th, 1972,</p> |



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| <p style="text-align: right;">82</p> <p>1 right?</p> <p>2 A That is the date, yes, from The New York</p> <p>3 Times.</p> <p>4 Q Okay. Initially Dr. Langer had</p> <p>5 reported asbestos at five to twenty-five percent,</p> <p>6 correct?</p> <p>7 A That is what he mistakenly reported, yes.</p> <p>8 Q But then he -- it says here, "On the</p> <p>9 contrary, Dr. Langer said, further more detailed</p> <p>10 analysis found that there were only trace amounts of</p> <p>11 asbestos in Johnson &amp; Johnson powder", right?</p> <p>12 A That's what he -- that's what was written</p> <p>13 in this newspaper letter, yes.</p> <p>14 Q Now, any asbestos is too much for baby</p> <p>15 powder, correct?</p> <p>16 You've already said that.</p> <p>17 A Yes.</p> <p>18 Q Okay. He doesn't say there's no</p> <p>19 asbestos in it, does he?</p> <p>20 He says he still thinks there's asbestos in</p> <p>21 it.</p> <p>22 A What he states in a newspaper letter, not</p> <p>23 in a scientific report, he used the words, there's</p> <p>24 only trace amounts, but, again, this is a newspaper</p> <p>25 letter and the definitive report that you'd be</p> | <p style="text-align: right;">84</p> <p>1 Q Right. Subject is talc asbestos and</p> <p>2 the memo is authored by Dr. Nashed, right?</p> <p>3 A Yes.</p> <p>4 Q On the page of -- top of page 2, same</p> <p>5 day the article comes out, "I asked Dr. Langer if he</p> <p>6 can state that our baby powder is free of asbestos</p> <p>7 as a result of the conference and review of August</p> <p>8 3rd, 1971 with the FDA. He said he still thinks</p> <p>9 that Johnson &amp; Johnson's product contains minute</p> <p>10 traces of asbestos and he believes he can find</p> <p>11 asbestos fibers after breaking down the platelets by</p> <p>12 ultrasonic energy."</p> <p>13 Did I read that right, sir?</p> <p>14 A You -- you read what was written.</p> <p>15 MR. PANATIER: Okay. You can set that</p> <p>16 aside, sir.</p> <p>17 Q You recall, sir, that we went through</p> <p>18 documents where -- where Dr. Langer even had Johnson</p> <p>19 &amp; Johnson in his own lab and showed him -- showed</p> <p>20 them the asbestos he found in the Johnson's Baby</p> <p>21 Powder, correct?</p> <p>22 A He did receive visits from technical people</p> <p>23 at Johnson &amp; Johnson, yes.</p> <p>24 Q And he showed them the chrysotile in</p> <p>25 their powder, correct?</p> |
| <p style="text-align: right;">83</p> <p>1 looking for would be a scientific report.</p> <p>2 Q You're the one that said that Dr.</p> <p>3 Langer recanted and said there was no asbestos in</p> <p>4 baby powder in a newspaper article.</p> <p>5 I'm now showing you the newspaper article,</p> <p>6 right, sir?</p> <p>7 A You -- you're showing me a newspaper</p> <p>8 article.</p> <p>9 MR. PANATIER: Okay, and you said that</p> <p>10 aside.</p> <p>11 Q The very same day --</p> <p>12 MR. PANATIER: This will be Exhibit</p> <p>13 18.</p> <p>14 (Memorandum dated June 17, 1972, Bates</p> <p>15 stamped JNJNL61_000001123 through</p> <p>16 JNJNL61_000001125 is marked as (Hopkins)</p> <p>17 Exhibit 18 for identification, as of this</p> <p>18 date.)</p> <p>19 Q June 17th, 1972, this will be Exhibit</p> <p>20 18, there's a memo in Johnson &amp; Johnson, right?</p> <p>21 Do you see that?</p> <p>22 A It's a memo -- yes, it is.</p> <p>23 Q It's the same day the newspaper</p> <p>24 article came out, true, sir?</p> <p>25 A Yes.</p>                                                                                                           | <p style="text-align: right;">85</p> <p>1 A He showed them what he thought was</p> <p>2 chrysotile in their powder, yes --</p> <p>3 Q And --</p> <p>4 A -- back in '72.</p> <p>5 Q -- and then he maintained it to</p> <p>6 Johnson &amp; Johnson and in the newspaper, correct?</p> <p>7 A Up until that point, yes.</p> <p>8 MR. PANATIER: Okay. This one will be</p> <p>9 Exhibit 19.</p> <p>10 (E-mail dated February 21, 2002, Bates</p> <p>11 stamped JNJNL61_000103086 is marked as</p> <p>12 (Hopkins) Exhibit 19 for identification, as of</p> <p>13 this date.)</p> <p>14 Q Who's Lorena Telofski? You've told me</p> <p>15 before, but I forgot.</p> <p>16 A She -- she's a lady who works in the</p> <p>17 technical department at Johnson &amp; Johnson.</p> <p>18 Q And Steve Mann, who's he?</p> <p>19 A He's no longer with the company. He was in</p> <p>20 the toxicology department.</p> <p>21 Q Okay. This will be Exhibit 19. First</p> <p>22 of all, the CTFA, that's -- that's a trade</p> <p>23 organization for cosmetic companies, correct?</p> <p>24 A Yes.</p> <p>25 Q And it stands for the Cosmetic</p>                                                                                                                                                          |

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| <p style="text-align: right;">86</p> <p>1 Toiletries and Fragrances Association, right?</p> <p>2 A That is correct, yes.</p> <p>3 Q Nowadays it's known as the PCPC or the</p> <p>4 Personal Care Products --</p> <p>5 A Council.</p> <p>6 Q -- Council. Okay, got it. This</p> <p>7 e-mail from Mr. Mann says, "I'd like to tell CTFA</p> <p>8 that we are okay with forwarding" --</p> <p>9 MR. PANATIER: Here you go, sorry. I</p> <p>10 have a copy for you.</p> <p>11 Q "I'd like to tell CTFA that we are</p> <p>12 okay with forwarding that literature view to NTP."</p> <p>13 Now, the TCP is the National Toxicology</p> <p>14 Program, right?</p> <p>15 A Yes.</p> <p>16 Q "Did you have a suggestion on a</p> <p>17 sentence that addresses the fact that our source</p> <p>18 talc 'never' had asbestos in it."</p> <p>19 Right?</p> <p>20 A You read what was written.</p> <p>21 Q And he puts quotes around never,</p> <p>22 doesn't he?</p> <p>23 A Yes.</p> <p>24 MR. PANATIER: Okay. You can set that</p> <p>25 aside, sir.</p> | <p style="text-align: right;">88</p> <p>1 Johnson &amp; Johnson on June 10th, 1976, correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. And, sir, all you have to do is</p> <p>4 go to the third page in, the third piece of paper.</p> <p>5 There you go, you're there.</p> <p>6 One of the very first things it says to</p> <p>7 doctors and nurses or physicians and nurses there</p> <p>8 is, "Johnson's Baby Powder contains no detectable</p> <p>9 asbestos."</p> <p>10 Right?</p> <p>11 A This is what was written, yes.</p> <p>12 Q Okay. So we know that was actually</p> <p>13 stated to doctors and nurses directly, right?</p> <p>14 MR. BICKS: Objection to the form. No</p> <p>15 foundation.</p> <p>16 A It was stated in a review summary document.</p> <p>17 Q Well, in actually --</p> <p>18 A Published in '76.</p> <p>19 Q Okay. But it's not just a summary</p> <p>20 document, it is a basic review, professional</p> <p>21 information for physicians and nurses, prepared for</p> <p>22 Johnson &amp; Johnson, correct?</p> <p>23 MR. BICKS: Objection to the form. No</p> <p>24 foundation.</p> <p>25 A It was prepared, a basic review</p> |
| <p style="text-align: right;">87</p> <p>1 Q Johnson &amp; Johnson has always told the</p> <p>2 public that there's never been a single fiber of</p> <p>3 asbestos in any of its talc, right?</p> <p>4 MR. BICKS: Objection to the form. No</p> <p>5 foundation.</p> <p>6 A In the baby powder products, Shower to</p> <p>7 Shower products, yes.</p> <p>8 Q Correct, it told that to customers,</p> <p>9 right?</p> <p>10 A Yes.</p> <p>11 Q It told that to nurses, doctors and</p> <p>12 hospitals?</p> <p>13 A And that is true.</p> <p>14 Q That's what it said to nurses, doctors</p> <p>15 and hospitals, right?</p> <p>16 A Yes.</p> <p>17 MR. PANATIER: This will be Exhibit</p> <p>18 20.</p> <p>19 (Document Bates stamped</p> <p>20 JNJNL61_000016358 through JNJNL61_000016406 is</p> <p>21 marked as Exhibit 20 for identification, as of</p> <p>22 this date.)</p> <p>23 Q You can see that this is a -- it's</p> <p>24 called, Talc, a basic review, professional</p> <p>25 information for physicians and nurses prepared for</p> | <p style="text-align: right;">89</p> <p>1 professional information for physicians and nurses.</p> <p>2 Q Okay. And that's on June 10, 1976,</p> <p>3 true?</p> <p>4 A Yes.</p> <p>5 Q You're not disputing that Johnson &amp;</p> <p>6 Johnson represented to doctors and nurses that there</p> <p>7 was no asbestos in the product, correct?</p> <p>8 A I'm not disputing that, no.</p> <p>9 Q Okay. They did do that, correct?</p> <p>10 A They did --</p> <p>11 Q Okay.</p> <p>12 A -- yes.</p> <p>13 MR. PANATIER: You can set that aside.</p> <p>14 So this'll be Exhibit 21.</p> <p>15 (Letter dated July 1, 1975, with</p> <p>16 tables attached Bates stamped J&amp;J-0005925</p> <p>17 through J&amp;J-0005929 is marked as (Hopkins)</p> <p>18 Exhibit 21 for identification, as of this</p> <p>19 date.)</p> <p>20 Q And this is one of those reports that</p> <p>21 you and I wrote down on the charts, both in London</p> <p>22 and then in trial, and this is a report from about a</p> <p>23 year before the doctors and nurses publication,</p> <p>24 correct, sir?</p> <p>25 A Yes.</p>                                                   |

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| <p style="text-align: right;">90</p> <p>1 Q Okay. And this is McCrone writing<br/>2 about a report of its investigation for asbestos in<br/>3 talc to Windsor Mineral Company, correct?<br/>4 A Yes.<br/>5 Q Windsor Minerals was, of course, owned<br/>6 by Johnson &amp; Johnson, correct?<br/>7 A Yes.<br/>8 Q Okay. And that was the -- the company<br/>9 that ran the mining out of the Vermont mines,<br/>10 correct?<br/>11 A They did, yes.<br/>12 Q All right. And if you turn the page,<br/>13 sir, it has a description of sample content of the<br/>14 fines and you've told me that the fines versus the<br/>15 sediments, the fines are what end up going into the<br/>16 product, correct, the sediment does not?<br/>17 A The sediment does not.<br/>18 Q Okay.<br/>19 A What you're trying to do is reduce the<br/>20 fines. What you're trying to do is to get the large<br/>21 platy pieces of talc as the main part of the talc.<br/>22 Q Okay. Well, they analyzed the<br/>23 contents of the fines and of the sediment, correct?<br/>24 Look at the -- Table 1 is the fines.<br/>25 A Oh, yes, Table 2 is the sediment --</p>             | <p style="text-align: right;">92</p> <p>1 A Yes.<br/>2 Q They also have a report of fibers of<br/>3 asbestos in the fines and in the sediment on the<br/>4 second page, correct, sir?<br/>5 A They do report their examination of talc<br/>6 samples, yes.<br/>7 Q Okay. And their words they use is<br/>8 fibers of asbestos, correct, sir?<br/>9 A They use those words.<br/>10 Q And they found in the fines one, two,<br/>11 three, four, five, six, seven, eight, nine, ten<br/>12 different results, right?<br/>13 A Yes.<br/>14 Q And in the sediment one, two, three,<br/>15 four results for asbestos, correct?<br/>16 A Yes.<br/>17 Q Now go back to the front. He actually<br/>18 says, "This letter will supplement a report of July<br/>19 1975 on a series of talc ore samples which we have<br/>20 analyzed for you. Table 1 shows the actual fiber<br/>21 counts and the approximate equivalent concentration<br/>22 in parts per million of the amphibole particles<br/>23 which we have found in these samples. Some of these<br/>24 seem rather high, one had ten and one had nine<br/>25 amphiboles. Most of these come in bundles of one,</p>                                             |
| <p style="text-align: right;">91</p> <p>1 Q Sediment, right, okay.<br/>2 A -- yes, yes.<br/>3 Q They found, in their own words,<br/>4 confirmed asbestos visual. They found it in one,<br/>5 two, three, four, five, six, seven, eight, nine<br/>6 different samples, correct?<br/>7 A They found it in nine different samples.<br/>8 Q Okay. And if you turn to page, sir,<br/>9 to the sediment, they found it in one, two, three,<br/>10 four, five different samples there, correct, sir?<br/>11 A They found it in five different samples.<br/>12 MR. PANATIER: Okay, now set that<br/>13 aside, 'cause we've got another report I want<br/>14 to address with you. This will be Exhibit 22.<br/>15 (Letter dated November 5, 1975, with<br/>16 table attached Bates stamped J&amp;J-0123238 and<br/>17 J&amp;J-0123239 is marked as (Hopkins) Exhibit 22<br/>18 for identification, as of this date.)<br/>19 MR. PANATIER: Here's a copy for you.<br/>20 Q This is just a few months later. It's<br/>21 another report to Windsor Minerals from McCrone,<br/>22 correct?<br/>23 A Yes.<br/>24 Q Okay. And it's dated November 5th,<br/>25 1975, true?</p> | <p style="text-align: right;">93</p> <p>1 two or three fibers with anywhere from two to five<br/>2 amphiboles in a bundle."<br/>3 Now, sir, you know that if you see asbestos<br/>4 in a bundle it's not nonasbestos, if it's in bundles<br/>5 it's asbestos, correct, sir?<br/>6 MR. BICKS: Objection.<br/>7 A That is -- that's a reasonable explanation.<br/>8 Q Okay, all right. And that is<br/>9 November, so that's about six months before that<br/>10 report to the doctors and nurses, correct?<br/>11 MR. BICKS: Objection. No foundation.<br/>12 A Yes, chronologically time-wise, it's six<br/>13 months -- it's several months before, yes.<br/>14 MR. PANATIER: All right, sir, you can<br/>15 set that aside.<br/>16 Q Now, Johnson &amp; Johnson is also aware<br/>17 that McCrone repeatedly reported finding asbestos in<br/>18 Johnson &amp; Johnson sourced talc in the '70s, '80s and<br/>19 '90s, correct?<br/>20 MR. BICKS: Objection to the form. No<br/>21 foundation.<br/>22 A As I said a little while ago, Johnson &amp;<br/>23 Johnson has -- had several talc mines and talc ores,<br/>24 so it would not be unusual to find traces of<br/>25 asbestos in industrial talcs.</p> |

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| <p style="text-align: right;">94</p> <p>1 MR. PANATIER: Okay. I think it's<br/>2 important for us to get the mines straight,<br/>3 let's take a five-minute break, because I'm<br/>4 going to pull some testimony, okay?<br/>5 (A short recess is taken.)<br/>6 (Memorandum dated January 14, 1975,<br/>7 Bates stamped JNJMX68_000002659 through<br/>8 JNJMX68_000002660 is marked as (Hopkins)<br/>9 Exhibit 23 for identification, as of this<br/>10 date.)<br/>11 Q This is Exhibit 23, sir. You've seen<br/>12 that before. That's the January 14th, 1975 letter<br/>13 authored by Mr. Zeitz, who is the manager of<br/>14 research and develop at Windsor, correct?<br/>15 A Yes, he was, yes.<br/>16 Q And it talks about a six months ore<br/>17 study on asbestiform content, true?<br/>18 A Yes.<br/>19 Q Okay. And the highlighted portion<br/>20 there says that, "The samples represented by both<br/>21 the industrial materials produced at Gassetts and<br/>22 the West Windsor mill sites and the ore used in the<br/>23 cosmetic production (HC)."<br/>24 Correct?<br/>25 A That's what is written, yes.</p>                                                                                                              | <p style="text-align: right;">96</p> <p>1 Q Okay. And I said, "Right" and you<br/>2 said, "But I was not at the mine at the time. There<br/>3 may well have been. We would need to talk to the<br/>4 mining people at a different pit, a different origin<br/>5 within that ore body." And I said, "You don't<br/>6 know." And you said, "It's hypothetical, but it's a<br/>7 possibility, and without mining expertise to<br/>8 understand that, we don't know whether they were<br/>9 taken from a different pit in the ore body." My<br/>10 question, "Well, the Hammondsville ore body, talc<br/>11 ore body, they got both cosmetic talc and industrial<br/>12 from, correct?" Your answer, "From the ore body,<br/>13 yes."<br/>14 Correct, sir?<br/>15 A That's what I said.<br/>16 Q In the mid 1970s there was one ore<br/>17 body, it was Hammondsville, true?<br/>18 A In the west -- in the West Windsor, yes,<br/>19 there was one ore body called cosmetic talc. I'm --<br/>20 I'm now aware that there are other -- other mine<br/>21 areas that were used in West Windsor that were<br/>22 industrial mines --<br/>23 Q Sir --<br/>24 A -- and they owned other mines.<br/>25 Q In the ownage I -- I don't care about.</p>                                                                        |
| <p style="text-align: right;">95</p> <p>1 Q Right. And we saw in the results from<br/>2 July and November of 1975 we saw asbestos reported<br/>3 by McCrone in both the GI, WI and HC designated<br/>4 samples, correct?<br/>5 A Correct.<br/>6 MR. PANATIER: All right, you can set<br/>7 that aside, sir.<br/>8 Q Now, here's -- this is your testimony<br/>9 from November 3rd, 2017, page 2605, and I want to go<br/>10 through this with you, because you brought up here<br/>11 today, you said, well, there are other mines and it<br/>12 could've been anything else. So here -- here's what<br/>13 you said.<br/>14 The question was, "Let's be very clear,<br/>15 though, before we get to trying to divide up<br/>16 cosmetic talc versus industrial talc they're just<br/>17 talking about Windsor talc here, right?<br/>18 "Answer. "Windsor talc includes both<br/>19 industrial and cosmetic." Me, "Right, it includes<br/>20 both. And it only includes, at least in the mid<br/>21 1970s, there was only one mine that supplied it and<br/>22 that was Hammondsville, correct?" Your answer was,<br/>23 "There was one ore body, Hammondsville ore body."<br/>24 Correct, sir?<br/>25 A That's what I said at the time.</p> | <p style="text-align: right;">97</p> <p>1 A Okay.<br/>2 Q What I care about is your sworn<br/>3 testimony from last year, which was in the mid '70s<br/>4 there was only one mine that supplied ore to West<br/>5 Windsor and that was Hammondsville, correct?<br/>6 A There's -- there was -- the mine that<br/>7 supplied -- the Hammondsville ore body supplied, and<br/>8 that's what I believed we were talking about,<br/>9 cosmetic talc for baby products.<br/>10 Q Right. And it supplied industrial, as<br/>11 you said right here?<br/>12 A It did supply industrial, but what I'm --<br/>13 I'm -- I'd hedge my bets there by saying that<br/>14 there's a different pit, a different origin, so what<br/>15 I'm saying is that I had an understanding that there<br/>16 were other pits that were available to the company<br/>17 that were industrial mines, industrial pits.<br/>18 Q Within the Hammondsville ore body,<br/>19 sir, that's what you said, correct?<br/>20 MR. BICKS: Objection to the form.<br/>21 A What I said was -- you asked me the<br/>22 question. We would need to talk -- I would need to<br/>23 talk to mining people, there may've been a different<br/>24 pit, a different origin within that ore body. It's<br/>25 hypothetical. It's a possibility. Without the</p> |

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| <p style="text-align: right;">98</p> <p>1 mining expertise to understand it, we don't know<br/>2 whether they were taken from a different pit in the<br/>3 ore body.<br/>4 Q It was the same ore body, it's the<br/>5 Hammondsville ore body, correct?<br/>6 A Industrial --<br/>7 Q You said that?<br/>8 A Yes.<br/>9 MR. BICKS: Objection to the form.<br/>10 Argumentative.<br/>11 A Industrial talc could've come from the ore<br/>12 body, but what it -- we also know is that the -- the<br/>13 company owned other ore bodies, other pits, that<br/>14 supplied industrial talc.<br/>15 Q Okay, so let's just talk about what<br/>16 you said under oath, okay, all right? You said this<br/>17 -- I asked this question, "And it only includes, at<br/>18 least in the mid '70s, there was only one mine that<br/>19 supplied it and that was the Hammondsville -- and<br/>20 that was Hammondsville, correct?" You, "There was<br/>21 one ore body, Hammondsville ore body."<br/>22 Is that still correct, sir?<br/>23 A There was -- there was an ore body that<br/>24 supplied cosmetic grade talc that --<br/>25 Q Can you just answer whether or not</p> | <p style="text-align: right;">100</p> <p>1 A The -- the Windsor milling --<br/>2 Q Did you say that?<br/>3 A Yes.<br/>4 Q Okay. Next question, "Right, it<br/>5 includes both. And it only includes, at least in<br/>6 the mid '70s, there is only one mine that supplied<br/>7 it and that was Hammondsville, correct?" And your<br/>8 answer was, "There was one ore body, Hammondsville<br/>9 ore body."<br/>10 Did you say that, sir?<br/>11 A I said that, but my intent --<br/>12 Q Now --<br/>13 A -- was related to baby powder, which was<br/>14 what we were talking about.<br/>15 Q Even though in the prior question we<br/>16 talked about --<br/>17 A Right.<br/>18 Q -- both cosmetic and industrial,<br/>19 correct?<br/>20 A Well, we're mix -- we're mixing questions<br/>21 there.<br/>22 Q You're mixing questions.<br/>23 MR. BICKS: Objection to the form.<br/>24 Q Since November, sir, you have -- you<br/>25 have -- this is the third time now I've deposed you</p>                                                                                                                                                                                                                                          |
| <p style="text-align: right;">99</p> <p>1 that's correct?<br/>2 MR. BICKS: What is correct, though?<br/>3 Do the best you can and don't get bullied.<br/>4 MR. PANATIER: Okay. He needs to<br/>5 answer the question.<br/>6 MR. BICKS: Yeah.<br/>7 A What I'm saying --<br/>8 MR. PANATIER: It's funny to hear a<br/>9 Johnson &amp; Johnson lawyer talk about bullying.<br/>10 Q But go ahead and answer the question.<br/>11 A What I'm saying is that if we were talking<br/>12 about cosmetic grade talc used in baby powder it<br/>13 came from the Hammondsville ore body.<br/>14 Q Before you get too far off track, no<br/>15 we're not. Read -- read what we talked about, sir.<br/>16 MR. BICKS: Let's just cut --<br/>17 Q Here's the question.<br/>18 MR. BICKS: -- cool the argumentative.<br/>19 Q Here's the question. "Let's be very<br/>20 clear, though. Before we get to trying to divide up<br/>21 cosmetic talc versus industrial talc, they're just<br/>22 talking about Windsor talc here, right?" Answer,<br/>23 you said this, "Windsor talc includes both<br/>24 industrial and cosmetic."<br/>25 You said that, did you not?</p>           | <p style="text-align: right;">101</p> <p>1 or asked you questions under oath and you have<br/>2 thrown out this possibility of other mines that<br/>3 maybe these results came from, which one?<br/>4 If they didn't come from Hammondsville,<br/>5 sir, tell me, as the corporate representative for<br/>6 Johnson &amp; Johnson and Johnson &amp; Johnson Consumer<br/>7 Inc., where did the results come from if not<br/>8 Hammondsville?<br/>9 MR. BICKS: Objection to the form.<br/>10 A The company took industrial talcs, you<br/>11 know, I -- I believe we were talking about cosmetic<br/>12 talcs, from other ore bodies.<br/>13 Q Which ones?<br/>14 A Well, there's a -- there's a Clifton mine,<br/>15 which is an industrial mine, that's about seventeen<br/>16 miles away from Hammondsville. The company owned an<br/>17 industrial mine in California, in Sacramento County.<br/>18 There are -- there are other industrial mines that<br/>19 the company took talc from.<br/>20 Q Was Johnson &amp; Johnson processing<br/>21 Californian talc in West Windsor, Vermont, sir?<br/>22 A I don't -- I don't know if they were doing<br/>23 that.<br/>24 Q Okay.<br/>25 A They -- they certainly had -- seventeen</p> |



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| <p style="text-align: right;">102</p> <p>1 miles away there was a Clifton Mine, which was an<br/>2 industrial mine.<br/>3 Q And when was the Clifton mine in<br/>4 operation, what years, can you tell me that?<br/>5 A I -- I don't have that at my fingertips,<br/>6 but --<br/>7 Q It is pure speculation that anything<br/>8 but Hammondsville was going through West Windsor in<br/>9 the mid 1970s, agree?<br/>10 A No, no, it isn't. No, it's --<br/>11 Q So you're saying that something else<br/>12 was going through West Windsor in the mid 1970s?<br/>13 A That is -- that is my understanding, yes.<br/>14 Q What?<br/>15 A I -- I believe that the Clifton Mine<br/>16 supplied talc, industrial grade talc, to -- to the<br/>17 Windsor mill for milling at Windsor and -- and that<br/>18 was producing industrial grade talcs.<br/>19 Q And during what years was it doing<br/>20 that, 'cause I'd like to know when I check on this?<br/>21 A Well, I don't have that at my fingertips.<br/>22 I can't remember what time that the Clifton Mine was<br/>23 operating. The simple reason that, what I'm talking<br/>24 about here, when I came to be deposed, related to<br/>25 baby powder and the cosmetic grade talcs. I -- I've</p> | <p style="text-align: right;">104</p> <p>1 I'm not an expert on the industrial side, but I said<br/>2 it's a possibility.<br/>3 Q Well, let's --<br/>4 A The mining expertise, I don't know whether<br/>5 they would take from a different pit in the ore<br/>6 body.<br/>7 Q In the ore body -- you understand an<br/>8 ore body -- Hammondsville is an ore body, you<br/>9 understand that?<br/>10 A I do, yes.<br/>11 Q Hammondsville wasn't a pit --<br/>12 A No.<br/>13 Q -- right, it was an ore body, right?<br/>14 A Yes.<br/>15 Q And so let's just see if we can agree<br/>16 that these words are on the page?<br/>17 A These words are on the page.<br/>18 Q Okay. And the words that are on the<br/>19 page is, "And it only includes, at least in the mid<br/>20 '70s, there was only one mine that supplied it and<br/>21 that was the Hammondsville -- Hammondsville,<br/>22 correct?" Your answer, "There was one ore body,<br/>23 Hammondsville ore body."<br/>24 Did -- is -- is that word on the page in<br/>25 your sworn testimony?</p> |
| <p style="text-align: right;">103</p> <p>1 never claimed to be an expert in all the industrial<br/>2 grade talcs. So what I'm saying is there were<br/>3 industrial mines that supplied West Windsor mill for<br/>4 milling industrial talcs.<br/>5 Q Okay. You don't know what year<br/>6 Clifton was supplying to West Windsor, do you?<br/>7 A No, I would need to -- I'd need to look<br/>8 that up and --<br/>9 Q Okay.<br/>10 A -- go back, but that's an industrial issue.<br/>11 I'm not here to talk about the industrial side.<br/>12 Q Well, as far as -- we were talking<br/>13 about West Windsor, and as far as your sworn<br/>14 testimony in November, you said, the only ore body<br/>15 going through West Windsor for industrial and<br/>16 cosmetic was Hammondsville.<br/>17 Is that what you said?<br/>18 A If I said that, then, yeah, I -- I'm edging<br/>19 -- I'm hedging my bets, 'cause I talked about --<br/>20 Q You've been hedging your bets all day.<br/>21 MR. BICKS: Well, but that's what he<br/>22 says when he's --<br/>23 A Well, I used -- I used the word<br/>24 possibility. I used -- you know, that -- that's the<br/>25 whole point. I was vaguely aware that -- you know,</p>                              | <p style="text-align: right;">105</p> <p>1 A That is what is written on this testimony.<br/>2 Q Okay, all right.<br/>3 MR. PANATIER: You can put that<br/>4 aside.<br/>5 Q The tests that McCrone did in July and<br/>6 November of 1975 where they identified asbestos<br/>7 fibers, was any of that a year or six months later<br/>8 communicated to the nurses and doctors, sir?<br/>9 MR. BICKS: Objection to the form. No<br/>10 foundation.<br/>11 A I'm not aware that was -- that was<br/>12 communicated.<br/>13 Q The FDA found asbestos in Johnson &amp;<br/>14 Johnson's Shower to Shower in 1974, correct, sir?<br/>15 A I'd -- I would need to see that FDA report,<br/>16 if that's the case.<br/>17 Q Well, I've shown it to you twice<br/>18 before.<br/>19 A You're --<br/>20 Q You're not disputing that I've shown<br/>21 it to you, are you?<br/>22 A You'd need to show it to me again if you<br/>23 would like me to comment on it.<br/>24 Q I'll just show you your sworn<br/>25 testimony, okay?</p>                                 |

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| <p style="text-align: right;">106</p> <p>1 A I'd like to see the report if I'm going to<br/>2 comment on it.<br/>3 Q Well, the first thing we're going to<br/>4 see is your sworn testimony, okay? This is from<br/>5 August 16th, 2017, your sworn testimony under oath<br/>6 page 390 to 391. Here you go. And what you were<br/>7 asked there is, page 390, line 16, "This is the FDA<br/>8 and they find -- in Johnson &amp; Johnson Shower to<br/>9 Shower they find 107 fibers of tremolite per<br/>10 milligram; is that correct?" You said, "That is Dr.<br/>11 Lewin's summary, yes." And I said, "That's not Dr.<br/>12 Lewin's summary. That is the FDA's reexamination of<br/>13 Lewin's sample. Do you understand that?" You said,<br/>14 "Okay, that's not clear from here." "Okay. So who<br/>15 actually did the examination?" You asked. Me, "You<br/>16 could see here on the previous page at the bottom<br/>17 project manager's signature, right? Yes, that's<br/>18 John Stewart, but here Ronald Yates signed it,<br/>19 correct?"<br/>20 And, sir, you recall that now?<br/>21 A I do, yes.<br/>22 Q Okay. And so it says here line 12,<br/>23 "Examination of talc samples by optical microscopy<br/>24 according to the Federal Register is proceeding.<br/>25 This is 1973 and 1974, correct? Correct. Lewin had</p> | <p style="text-align: right;">108</p> <p>1 Q Johnson &amp; Johnson has told the world<br/>2 that it has a zero tolerance policy for asbestos in<br/>3 its talc, correct?<br/>4 MR. BICKS: Objection to the form. No<br/>5 foundation.<br/>6 A I'm not sure the whole world. Johnson &amp;<br/>7 Johnson's policy is to have talc which is zero<br/>8 asbestos.<br/>9 Q Okay. So Johnson &amp; Johnson has a zero<br/>10 tolerance policy for any asbestos in its talc,<br/>11 correct?<br/>12 A Yes.<br/>13 Q Okay. The reason is that no mother or<br/>14 father would ever buy talc for use on themselves or<br/>15 their children if they knew it had a single fiber of<br/>16 asbestos in it, correct?<br/>17 A Yes.<br/>18 Q Johnson &amp; Johnson knows that asbestos<br/>19 in its talc could make people sick because Johnson &amp;<br/>20 Johnson knows asbestos is a carcinogen and can cause<br/>21 mesothelioma, correct, sir?<br/>22 A That is correct.<br/>23 Q Okay. And Johnson &amp; Johnson knows<br/>24 there's no safe level of asbestos exposure,<br/>25 especially for children, correct, sir?</p> |
| <p style="text-align: right;">107</p> <p>1 already done his testing, you're aware of that,<br/>2 correct?" You, "Yeah, sure. Okay, and they're<br/>3 using Lewin's identification numbers. Oh, got you,<br/>4 okay." You say. "So they're evaluating Lewin's<br/>5 report, right?" You, "Okay, and Lewin's samples.<br/>6 And the FDA finds -- and what the FDA finds is 107<br/>7 fibers of tremolite per milligram, right?" Answer,<br/>8 "That's what it said."<br/>9 Right?<br/>10 A That's what it says, yes.<br/>11 Q Okay. And, of course, I asked you and<br/>12 I'm sure you still know the answer, how many<br/>13 milligrams are there in a gram?<br/>14 A A thousand.<br/>15 Q A thousand. So if they're finding 107<br/>16 fibers of tremolite per milligram that's 107,000<br/>17 fibers of tremolite per gram, correct, sir?<br/>18 A Yes.<br/>19 Q And that's what the FDA found,<br/>20 correct?<br/>21 A That's what is reported in --<br/>22 Q Okay.<br/>23 A -- in the 1970s.<br/>24 MR. PANATIER: All right, sir, you can<br/>25 set that aside.</p>                                                                                                                                                                                                                                                                       | <p style="text-align: right;">109</p> <p>1 MR. BICKS: Objection to the form. No<br/>2 foundation.<br/>3 A Again, there is no known safe level.<br/>4 Q That's right. Especially for<br/>5 children, correct?<br/>6 A Yes.<br/>7 Q Okay. Now, the truth is that Johnson<br/>8 &amp; Johnson didn't really ever have a zero tolerance<br/>9 policy for asbestos in talc, did they?<br/>10 A A specification for the product is that<br/>11 there's no asbestos.<br/>12 Q Right. But they didn't really have a<br/>13 zero tolerance policy for asbestos internally, did<br/>14 they?<br/>15 A The specification is no asbestos because --<br/>16 Q Okay.<br/>17 A -- that's -- that's what it states --<br/>18 Q All right.<br/>19 A -- no asbestos.<br/>20 Q So Johnson &amp; Johnson would always have<br/>21 advocated methodologies for determining asbestos in<br/>22 talc that showed no talc -- I mean no asbestos,<br/>23 correct?<br/>24 A The methodologies that we used that<br/>25 developed over the years, and they're the ones which</p>                                                                    |

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| <p style="text-align: right;">110</p> <p>1 are still in use today, which show that if there's<br/>2 asbestos there you will find it.<br/>3 Q Johnson &amp; Johnson would never have<br/>4 advocated a method that allowed for a certain amount<br/>5 of asbestos, correct?<br/>6 A Well, the methods that Johnson &amp; Johnson<br/>7 have used are the ones that are recognized as being<br/>8 the leading test methods to ensure absence of<br/>9 asbestos.<br/>10 Q And we're going to talk about those,<br/>11 but my question's a little different.<br/>12 A Okay.<br/>13 Q Johnson &amp; Johnson would never have<br/>14 advocated for test methods that allowed asbestos to<br/>15 be present, would they have?<br/>16 A Again, it's speculation. Without knowing<br/>17 what such methods were or whether they were relevant<br/>18 or validated, it's speculation.<br/>19 MR. PANATIER: Okay, this will be<br/>20 Exhibit 24 so we don't have to speculate.<br/>21 (Document Bates stamped<br/>22 JNJAZ55_000003548 through JNJAZ55_000003551 is<br/>23 marked as (Hopkins) Exhibit 24 for<br/>24 identification, as of this date.)<br/>25 Q You've seen this before, if you turn</p> | <p style="text-align: right;">112</p> <p>1 A You read what was written.<br/>2 Q And Johnson &amp; Johnson was there,<br/>3 right?<br/>4 A Yes.<br/>5 Q And when the -- the FDA actually<br/>6 proposed an allowance of one percent asbestos, no<br/>7 one objected including Johnson &amp; Johnson, did they?<br/>8 A Let's see who else was there. It doesn't<br/>9 say who else was there, but there's obviously a lot<br/>10 of people there?<br/>11 Q Yeah.<br/>12 A CTDA, FDA. Well, the report says that no<br/>13 objections were raised.<br/>14 Q Okay. Include -- that would mean no<br/>15 one including Johnson &amp; Johnson, right?<br/>16 A But that was -- that was the opinion of Dr.<br/>17 Schaffner at the Food and Drug Administration.<br/>18 Q Right. And when he said that there<br/>19 would be an allowance of one percent, Johnson &amp;<br/>20 Johnson did not object, did they?<br/>21 MR. BICKS: Objection to the form. No<br/>22 foundation.<br/>23 A Well, yeah, you read what was written.<br/>24 MR. PANATIER: You can set that aside,<br/>25 sir.</p>                                                                                   |
| <p style="text-align: right;">111</p> <p>1 the page, dated August 14th, 1972, right?<br/>2 It's a summary of a meeting with the FDA<br/>3 that Johnson &amp; Johnson had, correct?<br/>4 A Yes.<br/>5 Q Okay. If you go ahead and turn to the<br/>6 second page, paragraph numbered 7.<br/>7 A Okay.<br/>8 Q There's a highlight there it says, "In<br/>9 subsequent discussion, Mr. Ian Stewart" -- now he's<br/>10 with McCrone at the time, correct?<br/>11 A '72, yes.<br/>12 Q Okay. "Mr. Ian Stewart pointed out<br/>13 that light microscopy may not detect chrysotile<br/>14 fibers. Dr. Weissler said that they recognize that<br/>15 some samples will be passed on that basis but they<br/>16 are willing to live with that."<br/>17 Now, Weissler was the FDA, wasn't he?<br/>18 A Yes.<br/>19 Q "Dr. Schaffner said that this<br/>20 procedure will be adopted in the proposed policy<br/>21 statement. He asked if anyone present had any<br/>22 toxicological objections to the allowance of one<br/>23 percent by weight asbestos in talc. No objections<br/>24 were raised."<br/>25 Do you see that?</p>                                                                      | <p style="text-align: right;">113</p> <p>1 Q When the FDA proposed a method that<br/>2 would allow one percent asbestos in talc and Johnson<br/>3 &amp; Johnson didn't object to that, that's not<br/>4 advocating zero tolerance, is it?<br/>5 MR. BICKS: Objection to the form.<br/>6 A The two are entirely different. A meeting<br/>7 with FDA and members of various cosmetic CTFA<br/>8 companies in Washington is -- is not relevant to<br/>9 saying that Johnson &amp; Johnson didn't have a policy<br/>10 of zero tolerance.<br/>11 Q Zero tolerance -- if they had zero<br/>12 tolerance policy they would've objected, wouldn't<br/>13 they?<br/>14 A Not necessarily --<br/>15 Q Okay.<br/>16 A -- that's speculation. There's no reason<br/>17 to object if they -- if they were comfortable that<br/>18 they didn't have asbestos in the products.<br/>19 Q They understood they were at a meeting<br/>20 where they understood that FDA was working to form<br/>21 policy, governmental policy, on asbestos in talc,<br/>22 correct?<br/>23 A Yes.<br/>24 Q Okay. And the FDA said, well, we're<br/>25 fine with an allowance of one percent asbestos,</p> |



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| <p style="text-align: right;">114</p> <p>1 correct?</p> <p>2 A That's what --</p> <p>3 MR. BICKS: Objection to the form. No</p> <p>4 foundation.</p> <p>5 A That's what an employee of the FDA stated.</p> <p>6 Q Okay. And that was an employee, by</p> <p>7 the way, he was the associate director of</p> <p>8 technology, correct?</p> <p>9 A Correct.</p> <p>10 Q And so he proposes this, Johnson &amp;</p> <p>11 Johnson, you've already told me, understands that</p> <p>12 any asbestos could be dangerous if it was allowed in</p> <p>13 talc, correct?</p> <p>14 A Yes, but it was always Johnson &amp; Johnson's</p> <p>15 policy to have zero asbestos.</p> <p>16 Q And Johnson &amp; Johnson didn't voice any</p> <p>17 objection when the FDA said we're going to allow</p> <p>18 asbestos in talc?</p> <p>19 MR. BICKS: Objection to the form --</p> <p>20 A Well, according --</p> <p>21 MR. BICKS: -- argumentative.</p> <p>22 A -- to that letter, you read what was</p> <p>23 written, but what I'm saying is that is a separate</p> <p>24 issue from Johnson &amp; Johnson saying that in the</p> <p>25 cosmetic talc the company's policy is no detectable</p> | <p style="text-align: right;">116</p> <p>1 MR. PANATIER: Oh, I'm sorry.</p> <p>2 Q It should be about halfway down in the</p> <p>3 first paragraph, sir.</p> <p>4 Do you see the sentence that's about</p> <p>5 calculation?</p> <p>6 A I do, yes.</p> <p>7 Q Okay. Johnson &amp; Johnson did a</p> <p>8 calculation about safety factors, right?</p> <p>9 A They were asked to do a calculation by the</p> <p>10 FDA, a hypothetical calculation.</p> <p>11 Q Okay, so --</p> <p>12 A So they -- they did what they were asked to</p> <p>13 do.</p> <p>14 Q Yeah. And let's see what Johnson &amp;</p> <p>15 Johnson concluded and communicated to the FDA. "The</p> <p>16 calculation shows that a substantial safety factor</p> <p>17 can be expected with talc containing one percent</p> <p>18 asbestos fibers."</p> <p>19 Right, and w/w means weight for weight,</p> <p>20 right?</p> <p>21 A It does.</p> <p>22 Q "Therefore, methods capable of</p> <p>23 determining less than one percent asbestos in talc</p> <p>24 are not necessary to assure the safety of cosmetic</p> <p>25 talc."</p>                                                                                                                                                                             |
| <p style="text-align: right;">115</p> <p>1 asbestos.</p> <p>2 Q Yeah, and it was Dr. Nashed that even</p> <p>3 wrote that -- that memo about that meeting, correct?</p> <p>4 A It appears to be, yes.</p> <p>5 Q Okay.</p> <p>6 MR. PANATIER: This will be Exhibit</p> <p>7 25.</p> <p>8 (Letter dated September 6, 1974, Bates</p> <p>9 stamped JNJNL61_000013575 and JNJNL61_000013576</p> <p>10 is marked as (Hopkins) Exhibit 25 for</p> <p>11 identification, as of this date.)</p> <p>12 Q This is from Johnson &amp; Johnson, okay,</p> <p>13 to Dr. Nashed -- to Dr. Schaffner at the FDA, right?</p> <p>14 A Yes.</p> <p>15 Q And this isn't a memo of a meeting,</p> <p>16 this is a direct communication between Johnson &amp;</p> <p>17 Johnson and the FDA, true?</p> <p>18 A Yes.</p> <p>19 Q Okay. There's a highlighted portion</p> <p>20 there in the first paragraph, "The calculation shows</p> <p>21 that a substantial safety factor can be expected</p> <p>22 with talc containing one percent asbestos fibers."</p> <p>23 Right?</p> <p>24 MR. BICKS: Just so -- the</p> <p>25 highlighting's on yours, but it's not on this.</p>                            | <p style="text-align: right;">117</p> <p>1 Correct?</p> <p>2 A Based -- based on that calculation, as</p> <p>3 requested by the FDA, that was the authors' summary,</p> <p>4 conclusion.</p> <p>5 Q And that's Dr. Nashed and he plus Dr.</p> <p>6 Ashton were the main two guys at Johnson &amp; Johnson</p> <p>7 that were sort of driving the issues having to do</p> <p>8 with talc and asbestos, correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. And he writes to the FDA and</p> <p>11 says, "Methods capable of determining less than one</p> <p>12 percent asbestos in talc are not necessary to assure</p> <p>13 the safety of cosmetic talc."</p> <p>14 Correct?</p> <p>15 A That was his opinion.</p> <p>16 Q That's Johnson &amp; Johnson's opinion</p> <p>17 communicated to the FDA, correct?</p> <p>18 A That was -- that was what he wrote.</p> <p>19 Q That's not zero tolerance, is it?</p> <p>20 A What -- there's two issues here, one is he</p> <p>21 -- he's talking about methods capable of determining</p> <p>22 less than one percent asbestos. He's saying they're</p> <p>23 not necessary based on the request from FDA as to</p> <p>24 how much theoretically, theoretically you could get</p> <p>25 exposed to in -- in baby dusting, so based on that</p> |

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| <p style="text-align: right;">118</p> <p>1 he's saying that, theoretically, it's not necessary.<br/> 2 Q Telling the FDA that methods capable<br/> 3 of determining less than one percent asbestos in<br/> 4 talc are unnecessary, is that zero tolerance, that's<br/> 5 my question?<br/> 6 MR. BICKS: Objection to the form.<br/> 7 Argumentative.<br/> 8 A Again, just because it's not necessary<br/> 9 doesn't mean to say you -- you still don't have<br/> 10 within the company a zero tolerance policy.<br/> 11 Q Are they -- are they projecting --<br/> 12 A The two are different.<br/> 13 Q -- let me ask you, are they projecting<br/> 14 a different policy to the FDA than they have<br/> 15 internally?<br/> 16 A What they -- what they're saying internally<br/> 17 is it a -- a no detectable asbestos limits. What<br/> 18 they are saying to FDA, following a request from<br/> 19 FDA, to tell us what about theoretical dusting of<br/> 20 baby powder, they saying, well, even if you had one<br/> 21 percent, it would not be, based on the information<br/> 22 at the time, it would not be a hazard.<br/> 23 Q So they're sort of saying something<br/> 24 different to the FDA than you're telling me that<br/> 25 they believed internally; is that true?</p> | <p style="text-align: right;">120</p> <p>1 They say, "Methods capable of determining less than<br/> 2 one percent asbestos in talc are not necessary to<br/> 3 assure the safety of cosmetic talc."<br/> 4 Can we agree that they said that?<br/> 5 A They said that.<br/> 6 MR. PANATIER: Okay. You can set that<br/> 7 aside.<br/> 8 Q Johnson &amp; Johnson communicated with<br/> 9 the FDA hundreds of times, right?<br/> 10 A There was a strong dialogue with FDA, yes.<br/> 11 Q Right. They provided thousands of<br/> 12 pages of data, right?<br/> 13 A They did, yes.<br/> 14 Q The FDA has never had the authority to<br/> 15 go into Johnson &amp; Johnson's company files ever,<br/> 16 correct?<br/> 17 MR. BICKS: Objection. Calls for a<br/> 18 legal conclusion.<br/> 19 A I -- I don't know the answer. I'm not a<br/> 20 lawyer.<br/> 21 Q You do know the answer because you've<br/> 22 answered --<br/> 23 A FDA --<br/> 24 Q -- it twice before.<br/> 25 A The FDA, although it's not responsible for</p>                                                                                                                                                                                                                           |
| <p style="text-align: right;">119</p> <p>1 MR. BICKS: Objection to the form.<br/> 2 Argumentative.<br/> 3 A My -- my interpretation of what they saying<br/> 4 is, following a request from FDA to do a<br/> 5 hypothetical calculation, that even assuming there's<br/> 6 one percent asbestos in talc, it would still be what<br/> 7 was recognized at that time to be safe. Having said<br/> 8 that the company's policy was and still is no<br/> 9 detectable asbestos.<br/> 10 MR. PANATIER: I'm just going to<br/> 11 object to nonresponsive, okay.<br/> 12 Q You've said what you want to say, but<br/> 13 my question is calling for a different type of<br/> 14 answer, it's calling for a direct answer.<br/> 15 The question is, Johnson &amp; Johnson,<br/> 16 according to you, had a policy of zero tolerance<br/> 17 internally of none detected. They were not<br/> 18 advocating that to the FDA, they were advocating<br/> 19 something different, correct, sir?<br/> 20 MR. BICKS: Objection to the form.<br/> 21 Asked and answered.<br/> 22 A My interpretation is that they were, in a<br/> 23 sense, reassuring FDA that even if there were one<br/> 24 percent asbestos, it would still assure the safety.<br/> 25 Q They say something pretty direct.</p>        | <p style="text-align: right;">121</p> <p>1 premarket clearance, premarket approval, FDA has the<br/> 2 responsibility to ensure that products on the market<br/> 3 are safe, not misbranded, not mislabeled and -- and<br/> 4 if they think otherwise they can challenge the<br/> 5 company.<br/> 6 Q My question was, does the FDA have the<br/> 7 authority to go into Johnson &amp; Johnson's own files?<br/> 8 MR. BICKS: Objection to the form.<br/> 9 Argumentative and calls for a legal conclusion.<br/> 10 A I -- I don't know the answer to that<br/> 11 question.<br/> 12 Q So the two times before that you've<br/> 13 answered the question in the affirmative you didn't<br/> 14 know the answer?<br/> 15 A It depends how the question was phrased.<br/> 16 Q Okay, sure, we can look at it, sir.<br/> 17 Let's see if I can find it. I'll show you this in a<br/> 18 second, 'cause I only have the one copy.<br/> 19 "Question. The FDA at no time has had any<br/> 20 right to go into a company's files to investigate<br/> 21 cosmetic talc, correct?" Your answer, "Correct."<br/> 22 Page 166 at the top, 166, sir.<br/> 23 A Okay, yes.<br/> 24 Q Was that your answer, sir?<br/> 25 A That's what I -- that's what I said, yes.</p> |

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| <p style="text-align: right;">122</p> <p>1 Q Okay, thank you. Furthermore, the FDA<br/>2 -- companies are under no obligation to provide any<br/>3 information about their own internal testing to the<br/>4 FDA, correct?<br/>5 MR. BICKS: Objection to the form.<br/>6 Calls for a legal conclusion.<br/>7 A There's no legal obligation, but companies<br/>8 that refuse to provide information, whether it's to<br/>9 FDA or to any other regulatory body, would not be in<br/>10 a very good place. It would be normal if -- for a<br/>11 company to provide any technical information to the<br/>12 FDA or other bodies.<br/>13 Q As the corporate representative for<br/>14 Johnson &amp; Johnson, you understand that Johnson &amp;<br/>15 Johnson has never been obligated to give any<br/>16 information to the FDA about its cosmetic talc,<br/>17 correct?<br/>18 A Obligated --<br/>19 MR. BICKS: Calls for a legal<br/>20 conclusion.<br/>21 A Obligated is a legal requirement, and what<br/>22 I said was, no, there's no obligation, but companies<br/>23 who did not provide information would be in a pretty<br/>24 poor state.<br/>25 Q Why, because the FDA would be angry</p> | <p style="text-align: right;">124</p> <p>1 present, George Lee is there, you see it?<br/>2 A Yes, there are a dozen people.<br/>3 Q Yes. And if you go to the last page<br/>4 in the last paragraph about halfway through the last<br/>5 paragraph it says, Dr. Schaffner, we know he's from<br/>6 the FDA, right?<br/>7 A Yes, he is, yes.<br/>8 Q "Dr. Schaffner suggested the<br/>9 possibility of having industries report periodically<br/>10 on the result of its -- its analyses to the FDA."<br/>11 Dr. Estrin, now, he's the head of the CTFA,<br/>12 right?<br/>13 A Yes.<br/>14 Q "Dr. Estrin responded the subcommittee<br/>15 would give serious consideration to this<br/>16 suggestion."<br/>17 Right?<br/>18 A Yes.<br/>19 Q So the FDA said would you share your<br/>20 periodic analyses with us and the CTFA said we'll<br/>21 seriously consider it, right?<br/>22 A That's what is written.<br/>23 Q Okay. And that would be a responsible<br/>24 thing to do, right?<br/>25 A To seriously consider it.</p> |
| <p style="text-align: right;">123</p> <p>1 with them?<br/>2 A FDA, as we've said, although it doesn't<br/>3 give premarket approval, it has the ability to pull<br/>4 the product from the market if it's misbranded or<br/>5 it's considered unsafe or adulterated.<br/>6 Q Right. And they would have to do that<br/>7 if a company chose not to cooperate with the FDA,<br/>8 they can not cooperate with the FDA, correct?<br/>9 A If a company so chose, that -- that's --<br/>10 that -- it would be most unusual.<br/>11 Q Would it be, okay. All right. So<br/>12 let's look at a meeting March 15th, 1976.<br/>13 MR. PANATIER: This will be Exhibit<br/>14 26. Here you go, sir. Here's a copy for you.<br/>15 MR. BICKS: Thank you.<br/>16 (Talc subcommittee minutes Bates<br/>17 stamped JNJNL61_000021692 through<br/>18 JNJNL61_000021694 is marked as (Hopkins)<br/>19 Exhibit 26 for identification, as of this<br/>20 date.)<br/>21 Q You see this is the meeting of the<br/>22 talc subcommittee of the CTFA March 15th, 1976?<br/>23 A Yes.<br/>24 Q Right. And let's go to the last page,<br/>25 and you see on the front Johnson &amp; Johnson is</p>                         | <p style="text-align: right;">125</p> <p>1 Q Yeah, right?<br/>2 A Yes.<br/>3 Q Okay.<br/>4 MR. PANATIER: This will be Exhibit<br/>5 27.<br/>6 (Talc subcommittee minutes Bates<br/>7 stamped WCD000162 and WCD000163 is marked as<br/>8 (Hopkins) Exhibit 27 for identification, as of<br/>9 this date.)<br/>10 MR. BICKS: Thanks.<br/>11 Q This is March 31st, '76. This is<br/>12 sixteen days later, right?<br/>13 A Yes.<br/>14 Q Right. Johnson &amp; Johnson is at this<br/>15 meeting too, correct?<br/>16 A Yes, they're one of a dozen, maybe more<br/>17 than a dozen people there.<br/>18 Q There are two people from Johnson &amp;<br/>19 Johnson, George Lee and Robert Rolle, right?<br/>20 A Yes.<br/>21 Q FDA was not at this meeting, true?<br/>22 A No, it was a CTFA meeting.<br/>23 Q Well, they were at -- they have been<br/>24 at CTFA meetings, correct?<br/>25 A Yes.</p>                                                                                                                                |

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| <p style="text-align: right;">126</p> <p>1 Q Okay.</p> <p>2 A This is a -- CTFA have regular meeting on a</p> <p>3 regular --</p> <p>4 Q Right.</p> <p>5 A -- weekly or monthly basis.</p> <p>6 Q Go to the second page where it says</p> <p>7 periodic reporting.</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q "The subcommittee agreed on the</p> <p>11 success of the presentation of summary reports given</p> <p>12 to the FDA. Dr. Estrin suggested the subcommittee</p> <p>13 should not obligate itself to give periodic reports</p> <p>14 to FDA but urged members to build their database so</p> <p>15 that at some time in the future the subcommittee can</p> <p>16 decide whether the time is right to present FDA with</p> <p>17 an update on industry analysis."</p> <p>18 Did I read that right?</p> <p>19 A You did, yes.</p> <p>20 Q Two weeks prior the FDA said please</p> <p>21 share your internal analyses and Mr. Estrin said</p> <p>22 we'll give it serious consideration, right?</p> <p>23 A Yes.</p> <p>24 Q And then sixteen days later they said,</p> <p>25 we're not going to obligate ourselves to do that?</p>                                                                                                          | <p style="text-align: right;">128</p> <p>1 A -- they're not going to do it.</p> <p>2 Q One, FDA asked for periodic updates,</p> <p>3 they said we're not going to do that, true?</p> <p>4 MR. BICKS: Objection to form. Asked</p> <p>5 and answered.</p> <p>6 Q True, sir?</p> <p>7 A It depends how you define period. Is it --</p> <p>8 is it monthly, weekly, yearly? A periodic update is</p> <p>9 something that you define what your time period is.</p> <p>10 In this case they're saying when the time is right</p> <p>11 to present FDA with an update.</p> <p>12 Q Okay, give me the date. When did they</p> <p>13 give -- when did they give all of their analyses,</p> <p>14 Johnson &amp; Johnson, when did they give all of their</p> <p>15 internal analyses to the FDA?</p> <p>16 A So this is dated '76 --</p> <p>17 Q Uh-huh.</p> <p>18 A -- and I'm aware that there have been many</p> <p>19 meetings with FDA to update and discuss updates on</p> <p>20 -- on the quality of talc.</p> <p>21 Q What was the date when Johnson &amp;</p> <p>22 Johnson gave all of the 200 to 250 reports that you</p> <p>23 and I have been through to the FDA?</p> <p>24 MR. BICKS: Objection to the form.</p> <p>25 Argumentative.</p>         |
| <p style="text-align: right;">127</p> <p>1 MR. BICKS: Objection to the form.</p> <p>2 A You know --</p> <p>3 Q Okay.</p> <p>4 A -- finish the sentence, but he said he</p> <p>5 urged members to build their database so that at</p> <p>6 some time in the future the committee can decide to</p> <p>7 present FDA with an update.</p> <p>8 Q Yeah.</p> <p>9 A He's not saying they're not going to do it.</p> <p>10 He's just going to say we'll get the data together</p> <p>11 and when we got the data in the form and amount</p> <p>12 that's required we'll present it to -- we'll</p> <p>13 consider presenting it to FDA.</p> <p>14 Q Consider presenting it to FDA. First,</p> <p>15 let's -- let's take that --</p> <p>16 A Let's -- well, let's -- let's read it.</p> <p>17 Let's read what's written. "At sometime in the</p> <p>18 future the subcommittee can decide whether the time</p> <p>19 is right to present to FDA with an update on</p> <p>20 industry analysis." Nowhere are they saying they're</p> <p>21 not going to do it. They're going to say we'll</p> <p>22 collect the data and at sometime in the future when</p> <p>23 the time is right to present FDA with an update.</p> <p>24 They're not saying --</p> <p>25 Q One --</p> | <p style="text-align: right;">129</p> <p>1 A I -- I don't have that date. I don't -- I</p> <p>2 don't have that date.</p> <p>3 Q The truth is that Johnson &amp; Johnson</p> <p>4 never provided its positive reports for asbestos or</p> <p>5 amphibole, any of the sort, to the FDA, correct?</p> <p>6 MR. BICKS: Objection to the form. No</p> <p>7 foundation.</p> <p>8 A Again, I'm not going to speculate. I -- I</p> <p>9 wasn't responsible for what was going on in 1976.</p> <p>10 There were a lot of meetings between FDA and Johnson</p> <p>11 &amp; Johnson in that time period in the early mid '70s,</p> <p>12 late '70s on -- on safety of talc.</p> <p>13 Q When did Johnson &amp; Johnson begin to</p> <p>14 give periodic reports of their actual internal</p> <p>15 analyses to the FDA?</p> <p>16 A I don't know.</p> <p>17 Q They never did, did they?</p> <p>18 A I don't -- I don't know and I'm not going</p> <p>19 to speculate.</p> <p>20 Q I'll ask it slightly differently.</p> <p>21 What evidence do you have that they did provide</p> <p>22 periodic reports of all of their analyses of talc to</p> <p>23 the FDA?</p> <p>24 A I don't have that evidence here.</p> <p>25 Q All right. And all we know there is</p> |

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| <p style="text-align: right;">130</p> <p>1 Estrin said we're not going to obligate ourselves to<br/>2 the periodic reporting, we'll hold it and we'll<br/>3 decide later whether we want to turn something over,<br/>4 correct?<br/>5 MR. BICKS: Objection. Argumentative.<br/>6 Asked and answered.<br/>7 A What he -- what he wrote was, when the time<br/>8 is right --<br/>9 Q Uh-huh.<br/>10 A -- they would -- they would present the<br/>11 data.<br/>12 Q Was the time ever right for Johnson &amp;<br/>13 Johnson to provide the 200 to 250 reports that you<br/>14 and I went through?<br/>15 MR. BICKS: Objection. Argumentative<br/>16 and no foundation.<br/>17 A Again, I -- I don't have the answer to<br/>18 that.<br/>19 Q Okay. You're not aware of any<br/>20 evidence that they ever did, correct?<br/>21 A I -- I don't know have the answer to that.<br/>22 Q Okay. If you don't have the answer,<br/>23 you don't have any evidence that they ever did,<br/>24 correct?<br/>25 MR. BICKS: Objection. No foundation.</p>                                                                                                                                                                                            | <p style="text-align: right;">132</p> <p>1 self regulate.<br/>2 They did that, didn't they?<br/>3 MR. BICKS: Objection to the sidebar.<br/>4 No foundation.<br/>5 A As -- as I said, I'm not disagreeing with<br/>6 the tone of what you're saying, but, you know -- but<br/>7 I -- I don't know the exact words of let us self<br/>8 regulate. What I am saying is that the CTFA, the<br/>9 trade association of the cosmetics industry, is a<br/>10 self-regulating body.<br/>11 Q All right. You were asked this<br/>12 question on August 17th, "The closest we saw to them<br/>13 getting there was the FDA's proposed regulation in<br/>14 '73 which the CTFA convinced them not to go forward<br/>15 on the promise of self regulation, correct?" And<br/>16 your answer was, "Yes."<br/>17 MR. BICKS: All right.<br/>18 A Yes --<br/>19 Q Okay.<br/>20 A -- no, that's fine, that's what I'm saying,<br/>21 CTFA is a self-regulating body, so the promise would<br/>22 be to go forward to self regulate.<br/>23 Q Right. It's not governmental<br/>24 regulation, correct?<br/>25 A That's correct, yes.</p>                        |
| <p style="text-align: right;">131</p> <p>1 A Again, I don't have the evidence. I don't<br/>2 have --<br/>3 Q Right.<br/>4 A -- the evidence.<br/>5 Q Okay, all right. Now, the FDA wanted<br/>6 to regulate asbestos in talc in the early 1970s,<br/>7 they even proposed a regulation, correct, sir?<br/>8 A Yes.<br/>9 Q But Johnson &amp; Johnson, through the<br/>10 CTFA, said let us attempt to self regulate first,<br/>11 correct?<br/>12 MR. BICKS: Objection. No foundation.<br/>13 A Well, I don't have the documents where they<br/>14 said let us attempt to self regulate. The CTFA and<br/>15 the industry is a self-regulating body, so words to<br/>16 that effect would be the kind of words that would be<br/>17 used. They self regulate and going forward from<br/>18 those early '70s there was a regular dialogue<br/>19 between CTFA and the FDA in the development of the<br/>20 best test methods to measure asbestos.<br/>21 Q All right. Again, I'm only asking you<br/>22 things you've been asked before, okay? So -- so I<br/>23 could pull out the -- the transcript, but the<br/>24 question is, the CTFA and Johnson &amp; Johnson told the<br/>25 FDA, instead of you passing a regulation, let us</p> | <p style="text-align: right;">133</p> <p>1 Q The FDA had a proposed governmental<br/>2 regulation, the CTFA said, no, let us self regulate,<br/>3 correct?<br/>4 A And to do that, we'll work with you, FDA,<br/>5 to develop test methods that we're all on the same<br/>6 page.<br/>7 Q And the CTFA was successful, the FDA<br/>8 never ended up regulating asbestos in talc, correct?<br/>9 MR. BICKS: Objection to the form. No<br/>10 foundation.<br/>11 A I'm not aware of any regulation from --<br/>12 Q Okay.<br/>13 A -- FDA.<br/>14 Q Now, Johnson &amp; Johnson was very keen<br/>15 on trying to get their method out before the FDA got<br/>16 a method out, correct?<br/>17 MR. BICKS: Objection. No foundation.<br/>18 A Well, Johnson &amp; Johnson was a member of<br/>19 CTFA, who were working on a methodology with -- in<br/>20 -- in agreement with FDA to develop methodologies,<br/>21 so that they were keen to get everyone agreeing on a<br/>22 good test method.<br/>23 Q Johnson &amp; Johnson was concerned that<br/>24 the FDA would propose and regulate using a very<br/>25 sensitive method, correct?</p> |



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| <p style="text-align: right;">134</p> <p>1 A I -- I don't have that -- if you've got a<br/> 2 document which says that Johnson &amp; Johnson is<br/> 3 concerned then let's see it.<br/> 4 MR. PANATIER: This is Exhibit 28.<br/> 5 Here you go.<br/> 6 (Memorandum dated December 17, 1974,<br/> 7 Bates stamped JNJMX68_000009139 is marked as<br/> 8 (Hopkins) Exhibit 28 for identification, as of<br/> 9 this date.)<br/> 10 Q Do you see this memo -- internal memo<br/> 11 at Johnson &amp; Johnson, sir?<br/> 12 A Yes.<br/> 13 Q Right. And they're writing to the<br/> 14 CTFA and someone at Clairol, right?<br/> 15 A Yes.<br/> 16 Q And what Johnson &amp; Johnson says is,<br/> 17 "The task -- talc task force has completed the<br/> 18 process of development of analytical procedures for<br/> 19 determining the presence of chrysotile and tremolite<br/> 20 in talc. We believe it is critical for the CTFA to<br/> 21 now recommend these methods to the FDA before the<br/> 22 art advances to more sophisticated techniques with<br/> 23 higher levels of sensitization."<br/> 24 Did I read that right?<br/> 25 A You read what was written, yes.</p>                                            | <p style="text-align: right;">136</p> <p>1 asbestos in talc, correct, sir?<br/> 2 MR. BICKS: Objection. No foundation.<br/> 3 A Well, again, it doesn't say if they're<br/> 4 concerned. It said we believe it's critical to<br/> 5 recommend these methods to FDA, they -- they are<br/> 6 looking for --<br/> 7 Q Wait, wait, wait --<br/> 8 A -- the methods.<br/> 9 Q -- finish the sentence if you're going<br/> 10 to read it.<br/> 11 A "We believe it is critical, CTFA, to<br/> 12 recommend these methods to the FDA before the art<br/> 13 advances to a more sophisticated techniques with<br/> 14 high levels of sensitization."<br/> 15 Q Okay, you read it correct.<br/> 16 MR. PANATIER: Okay, you can set that<br/> 17 aside.<br/> 18 Q In fact, sir, you know that the CTFA<br/> 19 method that was proposed was five times more<br/> 20 sensitive than the -- well, wait.<br/> 21 You know that the FDA method that was<br/> 22 proposed was five times more sensitive than the<br/> 23 method proposed by CTFA, correct?<br/> 24 A Which was the FDA method at the time?<br/> 25 MR. PANATIER: Here you go. I'll just</p> |
| <p style="text-align: right;">135</p> <p>1 Q They wanted to get their method out<br/> 2 there before more sensitive methods came along,<br/> 3 that's literally what they say, isn't it?<br/> 4 MR. BICKS: Objection. No foundation.<br/> 5 A Again, it's what it -- it's what is<br/> 6 written--<br/> 7 Q Uh-huh.<br/> 8 A -- but other methods with "high levels of<br/> 9 sensitization", I think they probably meant<br/> 10 sophistication, had never been published at that<br/> 11 time, so the -- you know, they -- this was an issue<br/> 12 where they were saying this is what we recommend --<br/> 13 or CTFA was saying this is what we recommend.<br/> 14 Q Are you saying that TEM wasn't<br/> 15 available in 1974?<br/> 16 A It was and Johnson was using TEM in 1972.<br/> 17 Q Johnson &amp; Johnson wasn't, but some of<br/> 18 their consultants were; is that correct?<br/> 19 A Johnson &amp; Johnson were subcontracting it to<br/> 20 their consultants --<br/> 21 Q Okay.<br/> 22 A -- to use on their -- their baby products.<br/> 23 Q What they were concerned of was that<br/> 24 the FDA would actually pass a regulation that<br/> 25 required higher sensitive means of looking for</p> | <p style="text-align: right;">137</p> <p>1 let you look at the documents. Here you go.<br/> 2 (CTFA meeting minutes Bates stamped<br/> 3 JNJNL61_000020392 and JNJNL61_000020393 is<br/> 4 marked as (Hopkins) Exhibit 29 for<br/> 5 identification, as of this date.)<br/> 6 Q Okay, you see this CTFA minutes memo,<br/> 7 sir?<br/> 8 A Yes, that's right.<br/> 9 Q From February 1st, 1977?<br/> 10 A Yes.<br/> 11 Q Okay. And go to the next page. They<br/> 12 do a comparison of sensitivity, a number of issues,<br/> 13 but one of them is sensitivity between the CTFA and<br/> 14 FDA method, right?<br/> 15 A Yes.<br/> 16 Q CTFA method is sensitive down to 0.5<br/> 17 percent, right?<br/> 18 A Yes.<br/> 19 Q And the FDA method is sensitive down<br/> 20 to 0.1 percent, right?<br/> 21 A On -- on this report, yes.<br/> 22 Q Right. The FDA's method is five times<br/> 23 more sensitive than the CTFA method, correct?<br/> 24 MR. BICKS: Objection. No foundation.<br/> 25 A Sensitivity for CTFA is 0.5 and sensitivity</p>                                                                                          |

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| <p style="text-align: right;">138</p> <p>1 for the FDA method is 0.1.<br/> 2 Q And that's a difference of five times,<br/> 3 correct?<br/> 4 A It is a different of five --<br/> 5 Q Okay.<br/> 6 A -- times, yes.<br/> 7 MR. PANATIER: Okay, you can set that<br/> 8 aside.<br/> 9 Q In fact, sir, you said that -- you<br/> 10 represented that Johnson &amp; Johnson was using some<br/> 11 TEM.<br/> 12 Did you not?<br/> 13 A Correct.<br/> 14 Q And some of their consultants were<br/> 15 using some TEM, but J&amp;J wasn't doing TEM internally<br/> 16 at this time, were they?<br/> 17 A Not in their early '70s period, no, it was<br/> 18 placed outside to subcontract.<br/> 19 Q They finally bought a -- a TEM I think<br/> 20 in '73 or '74, right?<br/> 21 A They -- they did buy one eventually, yes.<br/> 22 Q But they weren't using their own TEM<br/> 23 for any analysis of asbestos in talc, correct?<br/> 24 A Yes, they were. They were initially in the<br/> 25 very early '70s, '72 time frame it was put out to</p>                     | <p style="text-align: right;">140</p> <p>1 Talc/Powder Safety Studies Review Meeting, and<br/> 2 there's a bunch of people at this meeting, right?<br/> 3 A Yes.<br/> 4 Q Those are all J&amp;J people, they're not<br/> 5 FDA people?<br/> 6 A Yes.<br/> 7 Q Okay. If you will go to the second<br/> 8 page, sir, please. Under asbestos identification,<br/> 9 CTFA task force.<br/> 10 Do you see that?<br/> 11 A Yes.<br/> 12 Q It says, "The analytical schemes<br/> 13 utilizing x-ray diffraction and DTA proposed by the<br/> 14 task force were outlined. Grave concern was<br/> 15 expressed by the meeting with the inclusion of TEM<br/> 16 as an alternative followup to optical dispersion if<br/> 17 the sample fails DTA and passes optical."<br/> 18 So they expressed grave concern about the<br/> 19 use of TEM, right?<br/> 20 A Well, this particular individual expressed<br/> 21 grave concern and --<br/> 22 Q And who is that particular individual?<br/> 23 A Mr. Lee.<br/> 24 Q Right. And who is Mr. Lee?<br/> 25 A He was a scientist.</p>                                                        |
| <p style="text-align: right;">139</p> <p>1 subcontract, but internally the TEM machine was used<br/> 2 in parallel to look at talc quality.<br/> 3 Q You've seen those reports?<br/> 4 A Yes.<br/> 5 Q Okay. On -- on what -- what basis,<br/> 6 was it a routine basis they would use their own TEM?<br/> 7 A Depends on what you define routine, it was<br/> 8 regularly used, yes.<br/> 9 Q Okay. You've seen those reports, when<br/> 10 did they start?<br/> 11 A I believe the mid '70s.<br/> 12 Q Okay. Well, let's look and see what<br/> 13 they say about TEM in the mid '70s, okay.<br/> 14 (Memorandum dated October 15, 1974,<br/> 15 Bates stamped JNJAZ55_000004628 through<br/> 16 JNJAZ55_000004632 is marked as (Hopkins)<br/> 17 Exhibit 30 for identification, as of this<br/> 18 date.)<br/> 19 Q This is an October 15 report 1974.<br/> 20 '74, that's mid '70s, right?<br/> 21 A More or less, not quite, but, yes.<br/> 22 Q I mean, it's two months away from '75,<br/> 23 right?<br/> 24 A Yes.<br/> 25 Q And this memo it's entitled,</p> | <p style="text-align: right;">141</p> <p>1 Q Right.<br/> 2 MR. PANATIER: Okay. You can set that<br/> 3 aside, sir.<br/> 4 Q So in 1974 we have them expressing<br/> 5 grave concern about the use of TEM and you're<br/> 6 telling us that in the mid '70s they started<br/> 7 routinely testing their talc by TEM?<br/> 8 A They -- they -- they did test by TEM, yes.<br/> 9 Q Okay. Now, Johnson &amp; Johnson, when it<br/> 10 came to the -- the FDA method, Johnson &amp; Johnson was<br/> 11 pretty aggressive in fighting against the FDA's<br/> 12 proposed method for the detection of asbestos in<br/> 13 talc, wouldn't you agree?<br/> 14 MR. BICKS: Objection. Argumentative.<br/> 15 A No, I have no evidence to say that they<br/> 16 were aggressive in fighting FDA, no.<br/> 17 (Document Bates stamped<br/> 18 JNJMX68_000009120 is marked as (Hopkins)<br/> 19 Exhibit 31 for identification, as of this<br/> 20 date.)<br/> 21 Q Okay, here you go this is Exhibit 31.<br/> 22 Sir, do you see number 6 down there at the bottom of<br/> 23 this memo.<br/> 24 Do you see that?<br/> 25 A I do, yes.</p> |



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| <p style="text-align: right;">142</p> <p>1 Q Johnson &amp; Johnson says, "The FDA<br/>2 proposed optical method was literally destroyed by<br/>3 us - how come we are suggesting it now."<br/>4 Do you see that?<br/>5 MR. BICKS: Do you have the rest of<br/>6 this document?<br/>7 A I don't know who us is. Who is us?<br/>8 MR. PANATIER: This is how it's<br/>9 provided to us by you.<br/>10 MR. BICKS: Objection to the form and<br/>11 use of the document. No foundation.<br/>12 Q Did I read that correctly, sir?<br/>13 A You -- you read what was written on the<br/>14 document that has no letterhead, no heading, it has<br/>15 no author.<br/>16 Q It has a Bates stamp from Johnson &amp;<br/>17 Johnson, does it not?<br/>18 A It has a Bates stamp, but it still doesn't<br/>19 take away the fact that there's no letterhead as to<br/>20 who is writing to whom, it's a -- anyone could've<br/>21 written this. I don't know who wrote it, so.<br/>22 Q Sir, I got it from you, you understand<br/>23 that?<br/>24 A I do understand that --<br/>25 Q Okay.</p>                                                                                                                                                                                                          | <p style="text-align: right;">144</p> <p>1 Q You know what, at our -- our break --<br/>2 at our break I'm going to actually go in the<br/>3 documents and see what document you gave me to<br/>4 determine who wrote that. I'm going to set that<br/>5 aside. We're going to come back to it, okay?<br/>6 A That's fine. I don't have a problem with<br/>7 that.<br/>8 Q Yeah. Now, you know that the method<br/>9 -- the methods that were actually adopted by the<br/>10 CTFA and Johnson &amp; Johnson for the detection of<br/>11 asbestos in talc actually had some serious<br/>12 shortcomings, did they not?<br/>13 MR. BICKS: Objection to the form. No<br/>14 foundation.<br/>15 A The methods adopted, CTFA J4 method, is the<br/>16 one that's still used today. It's also used in the<br/>17 US Pharmacopeia, so it has -- it has a lot of<br/>18 history of valid use, so I'm not sure where the<br/>19 shortcomings are.<br/>20 Q Well, does it look for chrysotile?<br/>21 A The CTFA J4.<br/>22 Q Yeah.<br/>23 A CTFA J4 requires that you look for the<br/>24 x-ray diffraction, which will pick up the chrysotile<br/>25 material if it's there chemically -- chemically and</p> |
| <p style="text-align: right;">143</p> <p>1 A -- but I don't know what the relevance is.<br/>2 Q Okay. Well, the relevance is you said<br/>3 that Johnson &amp; Johnson was not aggressive in<br/>4 opposing the FDA's methodology, and so I'm<br/>5 presenting you with a statement where they say, "The<br/>6 FDA proposed optical method was literally destroyed<br/>7 by us - how come we are suggesting it now."<br/>8 Is that what it says?<br/>9 A There's no -- nothing here which says this<br/>10 is Johnson &amp; Johnson speaking.<br/>11 Q Okay. So are you taking the position<br/>12 that Johnson &amp; Johnson didn't write this?<br/>13 A I don't know who wrote this. This could've<br/>14 been sent to Johnson &amp; Johnson. It could be in the<br/>15 files. I really have no idea, but, quite honestly,<br/>16 if there's no letterhead as to who it's from and who<br/>17 authored it, this is a piece of paper with some<br/>18 comments on.<br/>19 Q Okay. Well, I'm asking you what the<br/>20 comment is?<br/>21 A The comment, and we do not know who wrote<br/>22 it or which company wrote it, said that FDA proposed<br/>23 optical method was literally destroyed by us, how<br/>24 come we're suggesting it now, but who wrote that we<br/>25 don't know.</p> | <p style="text-align: right;">145</p> <p>1 then you can look at the optical in the polarized<br/>2 light.<br/>3 Q You and I have been through J4 page by<br/>4 page, right, sir?<br/>5 A Yes.<br/>6 Q Okay. Does CTFA J4 look for<br/>7 chrysotile at all? I'm giving you an opportunity to<br/>8 say no, because that's the truth.<br/>9 MR. BICKS: Objection to the form.<br/>10 Argumentative.<br/>11 Q Does it look for chrysotile?<br/>12 A It doesn't -- it doesn't look for<br/>13 chrysotile specifically.<br/>14 Q Okay. Now, you know that CTFA did a<br/>15 round robin to, as you would say, try to validate --<br/>16 A Yes.<br/>17 Q -- J4, correct?<br/>18 A Yes.<br/>19 MR. PANATIER: This will be Exhibit<br/>20 32.<br/>21 (Memorandum dated January 20, 1977,<br/>22 Bates stamped JNJNL61_000021796 and<br/>23 JNJNL61_000021797 is marked as (Hopkins)<br/>24 Exhibit 32 for identification, as of this<br/>25 date.)</p>                                                                                                                                                                                                                                                     |

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| <p style="text-align: right;">146</p> <p>1 Q Here you go. Right. Do you see, sir,<br/> 2 that this is dated January 20th, 1977. It's a<br/> 3 progress report to the CTFA scientific advisory<br/> 4 committee concerning the task force on round robin<br/> 5 testing of consumer talcum products, right?<br/> 6 A Yes.<br/> 7 Q Okay. And you can see down on the<br/> 8 second page, go ahead and go to the second page,<br/> 9 sir, they identify that they're going to spike two<br/> 10 samples, two standard talc samples, with asbestos<br/> 11 and then they're also going to use seven different,<br/> 12 then being manufactured, cosmetic talc products.<br/> 13 Do you see that?<br/> 14 A Yes.<br/> 15 Q And the different brands they're going<br/> 16 to test are Avon, Ammens Medicated Powder, Vaseline<br/> 17 Intensive Care, Cashmere Bouquet Body Powder, Mennen<br/> 18 Baby Magic Powder, Clouds of Clairol Herbal Essence<br/> 19 and Johnson's Baby Powder, right?<br/> 20 A Yes.<br/> 21 Q Okay. So those are the -- there's<br/> 22 going to be nine total samples for the FDA -- or for<br/> 23 the CTFA round robin, these seven commercial samples<br/> 24 plus two spiked samples, correct, sir?<br/> 25 A That's my understanding, yes.</p> | <p style="text-align: right;">148</p> <p>1 A Yes.<br/> 2 Q To Mr. Haynes and he says, "I'm<br/> 3 enclosing a table which breaks the code for the<br/> 4 recently completed CTFA task force on round robin<br/> 5 testing of consumer talcum products for asbestiform<br/> 6 amphibole minerals."<br/> 7 Now, you're aware that J4-1 was a test<br/> 8 method for the detection of asbestiform amphiboles,<br/> 9 correct?<br/> 10 A Yes.<br/> 11 Q Chrysotile is not an amphibole, is it?<br/> 12 A Chrysotile is not.<br/> 13 Q Okay. And you can see down at the<br/> 14 bottom it says, this is what they are going to do,<br/> 15 paragraph 2, "Contact each of the industrial<br/> 16 participants to inform them of the round robin<br/> 17 results for their product only, as well as the<br/> 18 actual lot tested. Please emphasize that no talcum<br/> 19 product failed CTFA method J4-1, parts I and II,<br/> 20 i.e., no product was found to contain asbestiform<br/> 21 amphibole at a level equal to or greater than 0.5<br/> 22 percent by weight."<br/> 23 So we know by now that J4-1 does have a<br/> 24 weight limit or a sensitivity 0.5 percent, correct?<br/> 25 A Yes.</p> |
| <p style="text-align: right;">147</p> <p>1 Q Okay. So that's our document that<br/> 2 we're going to have to establish that.<br/> 3 We know that the round robin was completed,<br/> 4 right?<br/> 5 A Yes.<br/> 6 Q Okay.<br/> 7 MR. PANATIER: This will be Exhibit<br/> 8 33.<br/> 9 (Memorandum dated March 1, 1978, Bates<br/> 10 stamped J&amp;J-0083118 and J&amp;J-0083119 is marked<br/> 11 as (Hopkins) Exhibit 33 for identification, as<br/> 12 of this date.)<br/> 13 MR. BICKS: Can I ask you what your<br/> 14 thinking is for lunch?<br/> 15 MR. PANATIER: Let me finish this<br/> 16 exhibit.<br/> 17 MR. BICKS: Okay.<br/> 18 MR. PANATIER: Okay.<br/> 19 Q This is Exhibit 33 and, sir, can you<br/> 20 see there that it says this is from Schelz, John<br/> 21 Schelz, and he was an Johnson &amp; Johnson employee,<br/> 22 correct?<br/> 23 A Yes, he was, yes.<br/> 24 Q Okay. And he sends this communication<br/> 25 confidently to the CTFA, right?</p>                                                                                                                                                                                                                                                                                            | <p style="text-align: right;">149</p> <p>1 Q And then look at page 2, top of page<br/> 2 2. It says number 3, "Destroy your copy of the<br/> 3 table."<br/> 4 Right?<br/> 5 A Yes, that's what is written.<br/> 6 Q Okay. So J&amp;J is telling CTFA to<br/> 7 destroy his copy of the table once he looks at it,<br/> 8 right?<br/> 9 A Yes, it's what's written.<br/> 10 Q Okay, all right.<br/> 11 A It's not unusual if you're doing a<br/> 12 confidential round robin that you keep those -- that<br/> 13 -- that side of information confidential.<br/> 14 Q These were -- these were tests for<br/> 15 asbestos of then being manufactured talc products,<br/> 16 correct?<br/> 17 A They were -- if you go back to the previous<br/> 18 exhibit, what -- what we said was the -- the point<br/> 19 is to verify instrument detection sensitivity,<br/> 20 Exhibit 32, so my read of that is that you -- you're<br/> 21 looking at how confidential that should be. If<br/> 22 you're verifying the detection sensitivity of one<br/> 23 manufacturer versus another, you -- you may not want<br/> 24 that to be public -- public knowledge, it's<br/> 25 competitive information, so.</p>   |

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| <p style="text-align: right;">150</p> <p>1 Q If it was destroyed it certainly<br/>2 wasn't communicated to the FDA, was it?<br/>3 A What, the copy of the table?<br/>4 Q Uh-huh.<br/>5 A The copy of the table may or may not have<br/>6 been, but there's no reason that the results<br/>7 wouldn't have been --<br/>8 Q By the way --<br/>9 A -- communicated to FDA.<br/>10 Q Sorry. And by the way, we know<br/>11 Johnson &amp; Johnson was one of the products tested,<br/>12 right?<br/>13 A Yes.<br/>14 Q What was the code number for Johnson &amp;<br/>15 Johnson?<br/>16 A I don't have that --<br/>17 Q Okay.<br/>18 A -- here.<br/>19 Q I asked you in August what the code<br/>20 was for Johnson &amp; Johnson so we could figure out if<br/>21 it was one of the positives.<br/>22 Have you looked for it?<br/>23 MR. BICKS: Objection.<br/>24 A No.<br/>25 MR. PANATIER: Okay, you can set that</p>                                                                                                                                                                                                                                                                                                                                     | <p style="text-align: right;">152</p> <p>1 has been released to no one."<br/>2 So he's reporting that two or three of the<br/>3 labs have found that three of the different<br/>4 products, the commercial products, have failed J4-1,<br/>5 correct?<br/>6 A He's reporting that, yes.<br/>7 MR. PANATIER: Okay, you can set that<br/>8 aside, sir.<br/>9 Q Now, those round robins were being<br/>10 done on then current production products, correct?<br/>11 A Yes.<br/>12 Q Okay.<br/>13 MR. PANATIER: This will be Exhibit<br/>14 35.<br/>15 (Documents Bates stamped J&amp;J-0096500<br/>16 through J&amp;J-0096502 are marked as (Hopkins)<br/>17 Exhibit 35 for identification, as of this<br/>18 date.)<br/>19 Q Earlier I asked you about a document<br/>20 and you said, well, you didn't know where it came<br/>21 from, et cetera, so I think this will help us. This<br/>22 is Exhibit 35. And, sir, can you see that this is a<br/>23 draft of CTFA specification.<br/>24 Do you see that, for talc?<br/>25 A Yes.</p> |
| <p style="text-align: right;">151</p> <p>1 aside and why don't we go off the record.<br/>2 (A lunch recess is taken at 12:42 p.m.)<br/>3 (Afternoon session resumes at 1:43 p.m.)<br/>4 Q All right, sir, this will be Exhibit<br/>5 34.<br/>6 (Memorandum dated April 21, 1977,<br/>7 Bates stamped JNJNL61_000020544 and<br/>8 JNJNL61_000020544 through JNJNL61_000020545 is<br/>9 marked as (Hopkins) Exhibit 34 for<br/>10 identification, as of this date.)<br/>11 (A discussion is held off the record.)<br/>12 Q All right, sir, this is a memo from<br/>13 April 21, 1977 from John Schelz to participants of<br/>14 the round robin, right, where they're trying to<br/>15 validate J4-1 --<br/>16 A Yes.<br/>17 Q -- correct? And you can see that he<br/>18 in the second paragraph he writes, "Interlaboratory<br/>19 comparison of our task force data indicates serious<br/>20 inconsistencies in the results, i.e., three of the<br/>21 commercial products have each been declared by two<br/>22 or three of the labs to have failed CTFA method J4-1<br/>23 parts I and II (asbestiform amphibole detected at a<br/>24 level of greater than or equal to half a percent).<br/>25 The sample code, which is still in my possession,</p> | <p style="text-align: right;">153</p> <p>1 Q Okay?<br/>2 A Yes.<br/>3 Q And at the top there's even writing<br/>4 from George Sandland who, of course, was a Johnson &amp;<br/>5 Johnson employee, wasn't he?<br/>6 A I think he was, yes.<br/>7 Q Okay. And it says, "Members of talc<br/>8 subcommittee, any comments on this, please bring to<br/>9 meeting, 3/11/75." Signed by George Sandland,<br/>10 right?<br/>11 A Yes.<br/>12 Q Okay. And then at the bottom he's<br/>13 written in a note, tremolite fibrous as a test, a<br/>14 specification that none be detected and then CTFA<br/>15 designation under the method, correct?<br/>16 A Yes.<br/>17 Q Okay. Do you see how there's a J&amp;J<br/>18 Bates number there, 96500?<br/>19 A I do, yes.<br/>20 Q Do you see how it goes to 96501 and<br/>21 96502 on the next two pages?<br/>22 A I do, yes.<br/>23 Q Okay. And you can see, sir, on the<br/>24 second page it says, position I (no) and that's the<br/>25 document you and I had looked at?</p>               |

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| <p style="text-align: right;">154</p> <p>1 A Yes.</p> <p>2 Q And then if you go to the third page</p> <p>3 it has position II and it says (yea) --</p> <p>4 A Yes.</p> <p>5 Q -- right? And, in fact, sir, number 3</p> <p>6 there says, "With no backup method to DTA, a talc</p> <p>7 containing possibly only antigorite would fall (sic)</p> <p>8 when it in fact -- should fail when in fact it</p> <p>9 should pass. Remember, Pooley reports finding</p> <p>10 antigorite in our Windsor ore body."</p> <p>11 That's Johnson &amp; Johnson, correct, sir?</p> <p>12 A Yes.</p> <p>13 Q Okay. So, sir, now you have contexts</p> <p>14 for this Table 1 and Table 2, correct?</p> <p>15 A We do, yes.</p> <p>16 Q Okay. This is a Johnson &amp; Johnson</p> <p>17 document, is it not?</p> <p>18 A It would appear so, yes.</p> <p>19 Q Okay. And if you go to position I on</p> <p>20 the table that we talked about before, what Johnson</p> <p>21 &amp; Johnson writes here in number 6 is, "The FDA</p> <p>22 proposed optical method was literally destroyed by</p> <p>23 us - how come we are suggesting it now?"</p> <p>24 And my question is, you would have to be</p> <p>25 pretty powerful to destroy something that the FDA</p>    | <p style="text-align: right;">156</p> <p>1 A Yeah.</p> <p>2 Q The point is you know that there was a</p> <p>3 FDA proposed method, correct?</p> <p>4 A FDA did propose a method of --</p> <p>5 Q Right. And CTFA proposed a method,</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q Ultimately there was never a federal</p> <p>9 regulation put out by the FDA for the method,</p> <p>10 correct?</p> <p>11 A Correct, but --</p> <p>12 Q Okay.</p> <p>13 A -- the whole process was one of an ongoing</p> <p>14 dialogue between FDA and the CTFA where results were</p> <p>15 shared and both parties agreed that the CTFA J4-1</p> <p>16 method was the most appropriate.</p> <p>17 Q And that sounds very gentlemanly, but</p> <p>18 what Johnson &amp; Johnson wrote was the FDA proposed</p> <p>19 optical method was literally destroyed by us,</p> <p>20 correct?</p> <p>21 A That's what's written --</p> <p>22 Q Okay.</p> <p>23 A -- but what I'm suggesting or -- or stating</p> <p>24 is that a polarized light optical method was adopted</p> <p>25 as part of the CTFA J4-1.</p>             |
| <p style="text-align: right;">155</p> <p>1 puts out, wouldn't you?</p> <p>2 MR. BICKS: Objection to the form.</p> <p>3 A Well, it's hypothetical. I don't know what</p> <p>4 -- what the exact methodology was that FDA were</p> <p>5 proposing for optical, whether it's straightforward</p> <p>6 microscopy or polarized light optical microscopy.</p> <p>7 Q And we know that the FDA proposed a</p> <p>8 method that ultimately was not adopted and in its</p> <p>9 place the CTFA's method was allowed to be the method</p> <p>10 that the cosmetic talc industry used to govern</p> <p>11 itself, correct?</p> <p>12 MR. BICKS: Objection. Foundation.</p> <p>13 A The CTFA J4-1 method used x-ray diffraction</p> <p>14 as part one and then part two is an optical</p> <p>15 microscopy method, which is polarized light</p> <p>16 microscopy so --</p> <p>17 Q Yes.</p> <p>18 A -- I would say that was where -- that was</p> <p>19 where the industry came out. I don't know what the</p> <p>20 FDA optical method was, whether it was polarized</p> <p>21 light or just a simple microscope --</p> <p>22 Q Yeah.</p> <p>23 A -- but that's -- I can't comment any</p> <p>24 further.</p> <p>25 Q And I'm not asking you the details.</p> | <p style="text-align: right;">157</p> <p>1 MR. PANATIER: All right. I'm going</p> <p>2 to object to nonresponsive.</p> <p>3 Q They wrote, we literally destroyed the</p> <p>4 FDA method, correct?</p> <p>5 A The optic -- yes, the optical -- proposed</p> <p>6 optical method from FDA what you say was literally</p> <p>7 destroyed.</p> <p>8 Q Okay, all right.</p> <p>9 A But we did use an optical light microscopy</p> <p>10 polarized light.</p> <p>11 Q We understand. Optical light became</p> <p>12 part of CTFA, right?</p> <p>13 A Polarized light did, yes.</p> <p>14 Q Okay.</p> <p>15 A Yes.</p> <p>16 Q All right.</p> <p>17 MR. PANATIER: You can set that aside.</p> <p>18 Q Now, you know that as a result of the</p> <p>19 round robin that was conducted, Mr. Schelz from</p> <p>20 Johnson &amp; Johnson actually concluded that they had</p> <p>21 no assurance after the round robin that it was</p> <p>22 accurate, reliable or practical, correct?</p> <p>23 A Let's read that -- can we read which</p> <p>24 document?</p> <p>25 Q Yeah, sure, here, I'll give it to you.</p> |

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| <p style="text-align: right;">158</p> <p>1 May 17, 1977. This will be Exhibit 36. Here you<br/> 2 go. I've shown you this one before. Here you go.<br/> 3 (CTFA meeting minutes Bates stamped<br/> 4 JNJNI61_000020521 through JNJNI61_000020523 is<br/> 5 marked as (Hopkins) Exhibit 36 for<br/> 6 identification, as of this date.)<br/> 7 MR. BICKS: Do you have a copy of it?<br/> 8 MR. PANATIER: I -- I pulled it<br/> 9 because I didn't think I was going to need it.<br/> 10 MR. BICKS: Okay.<br/> 11 Q Okay, sir --<br/> 12 A Okay.<br/> 13 Q -- it's on the front page --<br/> 14 A Yeah.<br/> 15 Q -- highlighted there. I've shown you<br/> 16 that document before, correct?<br/> 17 A Well, probably last year, yes.<br/> 18 Q Yeah, in November?<br/> 19 A Yeah.<br/> 20 Q Okay, so at the bottom, just go ahead<br/> 21 and read the highlighted portions for us.<br/> 22 A "Dr. Schelz opened the meeting by asking<br/> 23 participants to introduce themselves and then stated<br/> 24 the task force objective as:"<br/> 25 Q Okay.</p>  | <p style="text-align: right;">160</p> <p>1 Q It was sent to seven labs and they<br/> 2 were all asked to use J4-1, correct?<br/> 3 A They were.<br/> 4 Q And one lab found the sample that had<br/> 5 the spiked tremolite, true?<br/> 6 A Yes, and you know that, if you said a<br/> 7 little while ago --<br/> 8 Q Sir, I'm just asking you -- sir --<br/> 9 A Well --<br/> 10 Q -- I'm just asking you whether it's<br/> 11 true that one of seven found it --<br/> 12 A On that --<br/> 13 Q -- is that true?<br/> 14 A -- on that first run --<br/> 15 MR. BICKS: Give your answer.<br/> 16 A Yes.<br/> 17 MR. BICKS: You can --<br/> 18 Q Okay, thank you, sir.<br/> 19 MR. BICKS: You can --<br/> 20 Q Now, sir, have --<br/> 21 MR. BICKS: -- finish your answer if<br/> 22 you were interrupted.<br/> 23 Q Sir, you said on the first run. Was<br/> 24 there ever another run, to your knowledge?<br/> 25 A I don't have that document, but the point</p>                                                                       |
| <p style="text-align: right;">159</p> <p>1 A "1. Determining whether or not any 1976<br/> 2 production of talc contain asbestiform amphibole<br/> 3 contaminants." And, "2. Test and verified CTFA<br/> 4 method J4-1 for this purpose - assurance that the<br/> 5 method is accurate, reliable and practical. He then<br/> 6 reported that these objectives have not yet been<br/> 7 achieved."<br/> 8 Q Okay. And if you go to the top of the<br/> 9 second page, he has a table and if you go across the<br/> 10 top there are samples where they where they were<br/> 11 spiked, correct?<br/> 12 A Yes.<br/> 13 Q And they sent the spiked tremolite<br/> 14 samples to seven different labs, true?<br/> 15 A True.<br/> 16 Q And how many of the labs using J4-1<br/> 17 found the spiked tremolite?<br/> 18 A One, two, three, three.<br/> 19 Q Try again. How many found the spiked<br/> 20 tremolite?<br/> 21 A Just about -- no report, possibly one.<br/> 22 Q Okay, one.<br/> 23 A Yes, one --<br/> 24 Q Okay.<br/> 25 A -- by tremolite, yes.</p> | <p style="text-align: right;">161</p> <p>1 I'm making is that when you got a new method, people<br/> 2 with their own individual apparatus and their own<br/> 3 laboratories need the ability to check whether their<br/> 4 apparatus will find what they're intending to find,<br/> 5 so --<br/> 6 Q And at least --<br/> 7 A -- they --<br/> 8 Q Sorry, go ahead.<br/> 9 A -- they -- they didn't, so obviously only<br/> 10 one out of the seven reported what -- what they were<br/> 11 intending to find.<br/> 12 Q And that is in -- is that March or May<br/> 13 of '77?<br/> 14 A May --<br/> 15 Q May --<br/> 16 A -- of '77.<br/> 17 Q -- okay, May of '77. They -- using<br/> 18 their method that they adopted a year earlier in<br/> 19 1976 one of seven labs identified the spiked<br/> 20 tremolite, correct?<br/> 21 A That is correct.<br/> 22 MR. PANATIER: Okay. You can set that<br/> 23 aside.<br/> 24 Q I asked you this before. In Johnson &amp;<br/> 25 Johnson's stated policy is that because asbestos is</p> |



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| <p style="text-align: right;">162</p> <p>1 so dangerous it will use the most sensitive testing<br/>2 methods available, correct?<br/>3 A Yes.<br/>4 Q Okay. Johnson &amp; Johnson, during the<br/>5 1970s, however, continually argued against more<br/>6 sensitive methods, because they tended to disclose<br/>7 amphiboles in the talc, correct?<br/>8 A I don't have any evidence that they<br/>9 continually argued against it. They were certainly<br/>10 using sensitive methods such as transmission<br/>11 electron microscopy, TEM, as early as the very early<br/>12 1970s, where they're contracting that out to outside<br/>13 laboratories with that level of expertise.<br/>14 MR. PANATIER: Objection.<br/>15 Nonresponsive.<br/>16 (Documents Bates stamped<br/>17 JNJAZ55_000001892 through JNJAZ55_000001898 is<br/>18 marked as Exhibit 37 for identification, as of<br/>19 this date.)<br/>20 MR. PANATIER: This is Exhibit 37 and<br/>21 if you'll hand it to your lawyer there for a<br/>22 second I only have a -- two copies so he can<br/>23 look at it if you need him to. You've seen it<br/>24 before.<br/>25 Q This is dated May 16th, 1973, correct,</p> | <p style="text-align: right;">164</p> <p>1 writes here is, "This technique has not been written<br/>2 up yet, but evidently when applied to Vermont talc<br/>3 0.05 percent of tremolite type is found. The<br/>4 limitation of the method is that it may be too<br/>5 sensitive."<br/>6 Correct, sir?<br/>7 A That is what is written.<br/>8 MR. PANATIER: Okay, you can set that<br/>9 aside.<br/>10 Q When you're looking for something like<br/>11 asbestos, you want the most sensitive technique to<br/>12 be able to find it, correct, sir?<br/>13 A You -- you want a sensitive technique --<br/>14 Q Okay.<br/>15 A -- to find asbestos, yes.<br/>16 Q If -- if you're identifying what<br/>17 you're looking for using a sensitive technique, then<br/>18 it's not too sensitive, it's sensitive enough, isn't<br/>19 it?<br/>20 MR. BICKS: Objection to the form.<br/>21 A That's going to call for speculation. I am<br/>22 -- yeah, I'm not going to speculate.<br/>23 Q If you see something you're looking<br/>24 for, then the method you're using is sensitive<br/>25 enough to find it, isn't that correct by definition,</p> |
| <p style="text-align: right;">163</p> <p>1 sir?<br/>2 A Yes.<br/>3 Q Okay. And Mr. Shelley at Johnson &amp;<br/>4 Johnson says here, "England is considering method of<br/>5 pre-concept -- pre-concentrating the asbestos so as<br/>6 to be able to analyze by x-ray. They find a no<br/>7 'asbestos' by doing this with Italian talc. They<br/>8 find (Pooley)."<br/>9 And Pooley was an consultant to Johnson &amp;<br/>10 Johnson, correct?<br/>11 A Correct.<br/>12 Q "Of 0.05 percent of a tremolite type<br/>13 in Vernon."<br/>14 Correct?<br/>15 A That's what is written.<br/>16 Q All right, now, if you will, sir,<br/>17 please, turn to the page at the bottom, it should be<br/>18 Bates stamped 1896 or it should have a flag on it,<br/>19 that might help. Okay, there you go.<br/>20 The heading there is the pre-concentration<br/>21 of asbestos followed by XRD analysis, the Pooley<br/>22 method, correct?<br/>23 A He was experimenting at that time with a<br/>24 concentration method, yes.<br/>25 Q Right. And what Johnson &amp; Johnson</p>                                                                                                               | <p style="text-align: right;">165</p> <p>1 sir?<br/>2 MR. BICKS: Objection to the form.<br/>3 A If you're looking to find something, you<br/>4 use a sensitive method.<br/>5 Q Right.<br/>6 A Yes.<br/>7 Q And they were -- they were looking to<br/>8 find in there -- and they put it in quotes asbestos,<br/>9 and they found a tremolite "type" in the Vermont,<br/>10 correct?<br/>11 A They say a tremolite type.<br/>12 Q Right.<br/>13 A It doesn't say a tremolite type of<br/>14 asbestos, it says a tremolite type.<br/>15 Q They said asbestos in quotes on the<br/>16 front page, but -- on the first page we looked at,<br/>17 correct?<br/>18 Correct, sir?<br/>19 A On the --<br/>20 MR. BICKS: Let him read the document.<br/>21 A Yes, on the -- on the cover letter --<br/>22 MR. PANATIER: He's read it five<br/>23 times.<br/>24 A -- they -- they used --<br/>25 MR. BICKS: Hold on a minute. You put</p>                                                                                                                                                                                                                 |

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| <p style="text-align: right;">166</p> <p>1 4 to 500 exhibits in front of this man --</p> <p>2 MR. PANATIER: I did?</p> <p>3 MR. BICKS: -- for about four to five</p> <p>4 days.</p> <p>5 MR. PANATIER: I did? 4 to 500</p> <p>6 exhibits?</p> <p>7 MR. BICKS: Yeah.</p> <p>8 MR. PANATIER: You counted them?</p> <p>9 MR. BICKS: Yeah, I tried --</p> <p>10 MR. PANATIER: It was --</p> <p>11 MR. BICKS: -- to read all of them,</p> <p>12 but --</p> <p>13 MR. PANATIER: -- it was -- there were</p> <p>14 a lot, it was about a hundred and fifty, but</p> <p>15 not --</p> <p>16 MR. BICKS: No, it wasn't.</p> <p>17 MR. PANATIER: -- quite 4 to 500.</p> <p>18 MR. BICKS: It wasn't.</p> <p>19 MR. PANATIER: No, it really was a</p> <p>20 hundred and fifty exhibits.</p> <p>21 MR. BICKS: Anne, how many exhibits in</p> <p>22 those four days in London?</p> <p>23 MS. MALIK: I don't have --</p> <p>24 MR. PANATIER: That I did? A hundred</p> <p>25 and fifty.</p>                                                                                                                                | <p style="text-align: right;">168</p> <p>1 A -- state asbestos.</p> <p>2 Q All right. Yet -- so -- so let me ask</p> <p>3 you this question, if it's just tremolite, there's</p> <p>4 not a problem, right?</p> <p>5 A If it's not asbestos tremolite --</p> <p>6 Q Right.</p> <p>7 A -- yes.</p> <p>8 Q It's not a problem?</p> <p>9 A Yeah.</p> <p>10 Q So -- so -- but -- and yet they say</p> <p>11 the limitation of the method is that it may be too</p> <p>12 sensitive, right?</p> <p>13 A Well, that -- that's what this author</p> <p>14 wrote, obviously.</p> <p>15 MR. PANATIER: Right. Okay, you can</p> <p>16 set that aside, sir.</p> <p>17 Q Your honor -- your honor --</p> <p>18 THE WITNESS: Yeah.</p> <p>19 MR. PANATIER: I feel like I'm in</p> <p>20 England, right, 'cause every -- everybody's</p> <p>21 your honor or -- or --</p> <p>22 THE WITNESS: Sir.</p> <p>23 MR. PANATIER: -- landlord.</p> <p>24 THE WITNESS: You called me sir.</p> <p>25 MR. PANATIER: I did. Landlord,</p>                                                                                                                                                                               |
| <p style="text-align: right;">167</p> <p>1 MR. BICKS: It was a lot. It was a</p> <p>2 lot.</p> <p>3 MR. PANATIER: Yeah, I guess if you</p> <p>4 round up it's 500.</p> <p>5 MR. BICKS: All right.</p> <p>6 MR. PANATIER: Yeah, you can round up</p> <p>7 from a hundred and fifty to 500.</p> <p>8 MR. BICKS: All right, well.</p> <p>9 Q So, sir, what it says on the first</p> <p>10 page there with the date on it is, they find no</p> <p>11 "asbestos" by doing this with the Italian type, they</p> <p>12 find 0.05 percent of a tremolite type in Vermont,</p> <p>13 correct?</p> <p>14 A That's right, they find no asbestos, but</p> <p>15 they find 0.05 percent of a tremolite type.</p> <p>16 Q Right. And they say that, evidently</p> <p>17 when applied to Vermont talc they find 0.05 percent</p> <p>18 tremolite type in the Vermont, correct?</p> <p>19 A They do. They did not use the word</p> <p>20 asbestos in that sentence.</p> <p>21 Q They say tremolite type, right?</p> <p>22 A Yes, tremolite --</p> <p>23 Q Okay.</p> <p>24 A -- type does not --</p> <p>25 Q All right.</p> | <p style="text-align: right;">169</p> <p>1 right, is that what you call the -- the guys in</p> <p>2 the pubs, landlord?</p> <p>3 THE WITNESS: We do, yes.</p> <p>4 MR. PANATIER: Yeah, I've seen that in</p> <p>5 movies. I know everything I know about England</p> <p>6 and London from movies. That feels pretty</p> <p>7 accurate. Okay, so this will be Exhibit 38.</p> <p>8 (Documents Bates stamped</p> <p>9 JNPNL61_000005496 through JNPNL61_000005502 are</p> <p>10 marked as (Hopkins) Exhibit 38 for</p> <p>11 identification, as of this date.)</p> <p>12 Q Sir, you know that your own</p> <p>13 consultants recently have said that Johnson &amp;</p> <p>14 Johnson's method for looking for asbestos in talc by</p> <p>15 TEM is not optimal, correct?</p> <p>16 A I'm not aware of that --</p> <p>17 Q Okay.</p> <p>18 A -- no. I'm not aware of that at all.</p> <p>19 Q All right. I've shown this document</p> <p>20 two times, this'll be the third time. That's</p> <p>21 Exhibit 38. Here you go.</p> <p>22 Do you see the date on this, it's a</p> <p>23 contract manufacturing audit report of RJ Lee, March</p> <p>24 12 -- March 2012, right?</p> <p>25 A Yes.</p> |



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| <p style="text-align: right;">170</p> <p>1 Q And you told me when I first showed<br/>2 you this back in August that Johnson &amp; Johnson does<br/>3 audits of its different vendors, correct?<br/>4 A Yes.<br/>5 Q Okay. Go ahead and turn to the page<br/>6 it's 5 of 7, and do you see under observation from<br/>7 the audit it says, "There was evidence of<br/>8 deficiencies in the document control process." But<br/>9 go down to number 4. It says, "There was no current<br/>10 TM7024 for asbestos at the site."<br/>11 Now, that's Johnson &amp; Johnson's test<br/>12 method, correct?<br/>13 A Yes.<br/>14 Q Okay. "RJ Lee also indicated that the<br/>15 test method was not an optimal method for asbestos<br/>16 testing."<br/>17 Did I read that right?<br/>18 A You read what was written.<br/>19 Q Okay. And so you are aware now that<br/>20 RJ Lee has said that your test method for asbestos<br/>21 is not optimal; is that correct?<br/>22 A Well, TM7024 is one of several test methods<br/>23 for asbestos.<br/>24 Q It's Johnson &amp; Johnson's only TEM test<br/>25 method, correct?</p>     | <p style="text-align: right;">172</p> <p>1 A They did, yes.<br/>2 Q Okay. As you sit here right now, can<br/>3 you tell us how many of the positive results were<br/>4 actually supplied to the FDA?<br/>5 MR. BICKS: By Johnson &amp; Johnson?<br/>6 MR. PANATIER: By Johnson &amp; Johnson,<br/>7 that's right.<br/>8 A I don't have an answer to that. I do not<br/>9 know.<br/>10 Q Some question for JJCI?<br/>11 A It's the same answer.<br/>12 Q Okay. You're aware that the FDA even<br/>13 asked Johnson &amp; Johnson straight up if the mineral<br/>14 press -- tremolite was even present in their talc,<br/>15 correct?<br/>16 A I -- I don't have that letter --<br/>17 Q Okay.<br/>18 A -- available, but.<br/>19 Q We -- we've gone through that one?<br/>20 A Yeah, it's quite a reasonable question --<br/>21 Q Okay.<br/>22 A -- to ask, yeah.<br/>23 Q All right. And by the early '70s,<br/>24 just with regard to tremolite, okay, Johnson &amp;<br/>25 Johnson had numerous supports of tremolite in its</p>                                                                                                                                   |
| <p style="text-align: right;">171</p> <p>1 A It -- it is the TEM method that's used,<br/>2 yes.<br/>3 MR. PANATIER: All right, you can set<br/>4 that aside, sir.<br/>5 Q Johnson &amp; Johnson knew that citizens<br/>6 in the 1980s had asked the FDA to require a warning<br/>7 on talc in the 1980s and the FDA said no because<br/>8 they weren't aware of any problems with the talc at<br/>9 the time, correct?<br/>10 A Correct.<br/>11 Q Okay. Now, first of all, there's<br/>12 never been a warning about asbestos on any Johnson &amp;<br/>13 Johnson talc product, correct?<br/>14 A Correct.<br/>15 Q All right. And the truth is that<br/>16 Johnson &amp; Johnson never shared its positive findings<br/>17 for asbestos, any positive findings, in its talc ore<br/>18 bodies with the FDA, correct?<br/>19 A I don't know the answer to that.<br/>20 Q Okay.<br/>21 A I do know that extensive documentation was<br/>22 supplied to FDA.<br/>23 Q Johnson &amp; Johnson certainly provided<br/>24 dozens or even hundreds of reports and literature<br/>25 that it chose to send to the FDA, correct?</p> | <p style="text-align: right;">173</p> <p>1 Vermont and Italian ore, correct?<br/>2 A Correct.<br/>3 Q Okay. Now, we already talked about<br/>4 Professor Blount, right, and that Professor Blount,<br/>5 who was a consultant to Johnson &amp; Johnson, published<br/>6 a peer-reviewed paper that you and I have already<br/>7 gone through, true?<br/>8 A We have.<br/>9 Q Okay. When that paper came out in<br/>10 1991, did Johnson &amp; Johnson run that over to the<br/>11 FDA?<br/>12 A I don't know.<br/>13 Q Okay.<br/>14 A It's public domain literature so the FDA is<br/>15 quite capable of doing their regular literature<br/>16 search and they would -- they would find it.<br/>17 Q Well, the truth is that the majority<br/>18 of what Johnson &amp; Johnson provides to the FDA<br/>19 through the '70s, the dozens and dozens of articles<br/>20 and so forth, the majority was already in the public<br/>21 purview, correct?<br/>22 MR. BICKS: Objection. No foundation.<br/>23 A Again, I -- I could speculate, but I'm not<br/>24 going to. Any publication that's in the public<br/>25 domain in any of the learned or medical journals</p> |

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| <p style="text-align: right;">174</p> <p>1 will be available to FDA and to Johnson &amp; Johnson.<br/> 2 Q When Johnson &amp; Johnson became<br/> 3 knowledgeable of Dr. Blount's paper, did they call<br/> 4 it out to the FDA and say, hey, guys, just so you<br/> 5 know, one of our consultants published a<br/> 6 peer-reviewed paper where she found asbestos in our<br/> 7 baby powder, did Johnson &amp; Johnson do that?<br/> 8 MR. BICKS: Objection --<br/> 9 A I do not know.<br/> 10 MR. BICKS: -- no foundation.<br/> 11 A I do not know.<br/> 12 Q You don't have any evidence that they<br/> 13 did do that, correct?<br/> 14 A I have no evidence that they did nor that<br/> 15 they did not.<br/> 16 Q All right. Johnson &amp; Johnson actually<br/> 17 knew that it couldn't get rid of elongated tremolite<br/> 18 and actinolite that it was finding in its talc ore,<br/> 19 correct?<br/> 20 A On what basis? You'd need to clarify that.<br/> 21 Q All right.<br/> 22 MR. PANATIER: Do you still have<br/> 23 volume 2 over there of -- yeah, I think that's<br/> 24 it. Can you see if that's -- if you have<br/> 25 volume 2 of --</p>         | <p style="text-align: right;">176</p> <p>1 Q They -- it -- and it does improve it,<br/> 2 correct?<br/> 3 A It does, yes.<br/> 4 Q But they knew it couldn't get rid of<br/> 5 all the asbestiform minerals that were present to<br/> 6 the extent that they were found, correct?<br/> 7 MR. BICKS: Objection. No foundation.<br/> 8 Q As you stated in your deposition?<br/> 9 A That's a -- that's a reasonable -- a<br/> 10 reasonable summary.<br/> 11 Q Johnson &amp; Johnson tried flotation,<br/> 12 thermal decomposition and even destruction to try to<br/> 13 get rid of tremolite that it was finding, correct?<br/> 14 MR. BICKS: Objection. No foundation.<br/> 15 A Well, I would not use the word tremolite.<br/> 16 I -- we use the word asbestiform or asbestos.<br/> 17 Q And that's fine. I -- I'm asking you<br/> 18 now as -- I'm asking you another question based on<br/> 19 other documents you and I have talked about. I'm<br/> 20 not talking about the deposition.<br/> 21 A Okay.<br/> 22 Q So -- so the question is this, Johnson<br/> 23 &amp; Johnson -- and typically it was with Pooley and<br/> 24 the Colorado School of Mines, they asked Pooley and<br/> 25 the Colorado School of Mines to attempt thermal</p> |
| <p style="text-align: right;">175</p> <p>1 MR. BICKS: Day two?<br/> 2 MR. PANATIER: Day two, that's it.<br/> 3 Can you pull day two there, sir, and I'll send<br/> 4 you to the right page. I think it's going to<br/> 5 be page 427. Yeah.<br/> 6 Q If you look at page 427, line 9 you<br/> 7 were asked this question, "Now, Johnson &amp; Johnson<br/> 8 acknowledges that their flotation, their<br/> 9 beneficiation processes, were never able to remove<br/> 10 all asbestiform or asbestos to the extent it was<br/> 11 present, correct?"<br/> 12 And what was your answer?<br/> 13 A "Correct."<br/> 14 Q Okay. And in fact, you reported that<br/> 15 to people who asked you, including the US<br/> 16 government, correct?<br/> 17 A Again, I -- I don't want to speculate.<br/> 18 This is --<br/> 19 Q I -- I can show it to you.<br/> 20 A That it's quite possible, yes.<br/> 21 Q Okay. Now, Johnson &amp; Johnson tried<br/> 22 all sorts of different methods to try to get rid of<br/> 23 asbestiform minerals it was finding, correct?<br/> 24 A They -- they used flotation process as a<br/> 25 means of improving the quality of talc, yes.</p> | <p style="text-align: right;">177</p> <p>1 decomposition of chrysotile and tremolite, correct?<br/> 2 A Yes.<br/> 3 Q They asked Pooley to destroy the<br/> 4 tremolite that was present, correct?<br/> 5 A Yes.<br/> 6 Q And then they even tried to add<br/> 7 certain reagents to their flotation, correct?<br/> 8 A To improve the separation, yes.<br/> 9 Q Right, to try to pull any asbestiform<br/> 10 out of it, right?<br/> 11 MR. BICKS: Objection. No foundation.<br/> 12 A The aim of the flotation process is to<br/> 13 improve the quality of the talc which floats to the<br/> 14 top of the product.<br/> 15 Q You're aware that the -- the Windsor<br/> 16 Mine operators endorsed a reagent system<br/> 17 specifically to provide the protection against what<br/> 18 are currently considered to be materials presenting<br/> 19 a severe health hazard, correct?<br/> 20 A The beneficiation flotation process?<br/> 21 Q Yes.<br/> 22 A That is -- the aim of that process that<br/> 23 I've just stated is to improve the quality of the<br/> 24 talc so that you end up with high quality platy<br/> 25 talc, large platy particles.</p>                                                                                     |

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| <p style="text-align: right;">178</p> <p>1 Q Okay. I kind of asked you a different<br/>2 question, though.<br/>3 A Okay.<br/>4 Q I didn't ask you what the purpose of<br/>5 flotation was. I think we -- we know that, we<br/>6 talked about that.<br/>7 A We --<br/>8 Q I asked you whether or not the people<br/>9 who were running the flotation endorsed a new<br/>10 reagent system in the middle of the '70s to improve<br/>11 the safety of the talc they were making; did they do<br/>12 that?<br/>13 A They -- they tried -- they evaluated<br/>14 several different reagents systems.<br/>15 (New reagent systems - plant trial at<br/>16 Windsor Minerals Inc. document is marked as<br/>17 (Hopkins) Exhibit 39 for identification, as of<br/>18 this date.)<br/>19 Q This is Exhibit 39.<br/>20 A Certainly more than one.<br/>21 MR. PANATIER: Got another copy. Here<br/>22 you go.<br/>23 Q All right, sir, you and I have been<br/>24 through this document before, correct?<br/>25 A Yes.</p>                   | <p style="text-align: right;">180</p> <p>1 A All right.<br/>2 Q -- let me look at yours. Oh, you<br/>3 ended up -- can he have your copy?<br/>4 A Oh.<br/>5 MR. PANATIER: Thanks.<br/>6 THE WITNESS: Are they the same or not<br/>7 or --<br/>8 MR. PANATIER: They should be. They<br/>9 should be. Turn to the second page. That's<br/>10 Attachment C. I don't know what happened.<br/>11 Q Oh, okay, go to the page -- go to the<br/>12 page marked 4997. Here you go. It's there.<br/>13 Do you see at the bottom page 4997?<br/>14 A It's the Bates number?<br/>15 Q Yep. All right, do you see near the<br/>16 top of the page it says January 29, 1974, second or<br/>17 third paragraph?<br/>18 A Yes.<br/>19 Q Okay, all right. So we -- we know<br/>20 when this was being done, right?<br/>21 A Yes.<br/>22 Q Okay. Sir, if you'll go to the bottom<br/>23 of page -- it's Bates stamped 5001. It's page 5 of<br/>24 that document as it's numbered.<br/>25 A Yes.</p>                                                                                                                                                                                            |
| <p style="text-align: right;">179</p> <p>1 Q It's entitled, Confidential, new<br/>2 reagent systems - plant trial at Windsor Minerals,<br/>3 right?<br/>4 A Yes.<br/>5 Q And under the introduction on the<br/>6 second page it says, "Windsor Minerals has been<br/>7 actively engaged in a froth flotation research<br/>8 program for the past year-and-a-half. This program<br/>9 has developed two flotation reagents systems which<br/>10 offer substantial advantages to the Windsor<br/>11 flotation process from an economic, purity and<br/>12 potential health hazard point of view."<br/>13 Right?<br/>14 A Yes.<br/>15 Q Okay. They did this on January 29,<br/>16 1974, true?<br/>17 A I'm trying to find the date. Where's the<br/>18 date?<br/>19 Q It's right in the middle of the second<br/>20 page --<br/>21 A Page 2.<br/>22 Q -- when they conducted the trial.<br/>23 Second page. I think you're on page like 4 or 5.<br/>24 Okay, go to the next page. Here, let me -- let me<br/>25 look at yours --</p> | <p style="text-align: right;">181</p> <p>1 Q Okay. Under summary and remarks the<br/>2 second paragraph says, "The use of citric acid in<br/>3 the depression of chrysotile asbestos and other<br/>4 mineral species has been developed at Windsor<br/>5 Minerals in response to the potential need for a<br/>6 means to exclude extremely low levels of these<br/>7 contaminants from the finished product of the<br/>8 beneficiation process."<br/>9 Did I read that right, first of all?<br/>10 A You did, yes.<br/>11 Q Okay. And he goes on, he says, "The<br/>12 use of these systems is strongly urged by this<br/>13 writer to provide the protection against what are<br/>14 currently considered to be materials presenting a<br/>15 severe health hazard and are potentially present in<br/>16 all talc ores used at this time."<br/>17 Did I read that right?<br/>18 A Yes. He used the word potentially present.<br/>19 Q Yeah.<br/>20 A Yes.<br/>21 Q And he is endorsing the use of these<br/>22 reagents in order to help with that, correct?<br/>23 A That's -- that's his opinion, yes.<br/>24 Q All right.<br/>25 MR. PANATIER: Let me see your copy,</p> |

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| <p style="text-align: right;">182</p> <p>1 because I might be able to direct you where I<br/>2 need you to go next.<br/>3 THE WITNESS: (Handing.)<br/>4 MR. PANATIER: Thank you. Okay.<br/>5 Q Do you agree that fibrous<br/>6 anthophyllite and chrysotile asbestos have been<br/>7 found in association with the Hammondsville ore<br/>8 body?<br/>9 A I'd -- I'd need to see the results before<br/>10 I --<br/>11 Q Okay, sure.<br/>12 A -- I comment on that --<br/>13 Q This is --<br/>14 A -- yes.<br/>15 MR. PANATIER: Yes, this is the -- App<br/>16 -- Attachment B to that and I'll just mark it<br/>17 as an separate exhibit.<br/>18 This will be Exhibit 40.<br/>19 (Document Bates stamped<br/>20 JNJMX68_000005032 through JNJMX68_000005036 is<br/>21 marked as (Hopkins) Exhibit 40 for<br/>22 identification, as of this date.)<br/>23 Q I've shown you that one before. Just<br/>24 take a peek at that. You can even read it aloud if<br/>25 you want to.</p>                                                               | <p style="text-align: right;">184</p> <p>1 That's exactly what he says right there,<br/>2 correct?<br/>3 A Well, he said in association with it. It<br/>4 didn't say it's actually in the body, but --<br/>5 Q Okay.<br/>6 A -- in association with.<br/>7 Q All right. Well, if it wasn't in the<br/>8 body then they wouldn't need to float it out, would<br/>9 they?<br/>10 A That's speculation. What -- what he says<br/>11 is that it's found in its -- it's found in<br/>12 association with the body.<br/>13 Q Okay. And he is the one that's<br/>14 advocating the endorsement of this new reagent<br/>15 system, specifically to try to get asbestiforms out,<br/>16 correct?<br/>17 A He is endorsing this as a means of cleaning<br/>18 it up, yes.<br/>19 MR. PANATIER: All right, you can set<br/>20 that aside, sir. I have another document I<br/>21 want to talk to you about and this is a<br/>22 communication you and I have talked about<br/>23 before. This will be Exhibit 41. Here you go.<br/>24 (Letter dated October 11, 1972, Bates<br/>25 stamped JNJAZ55_000003635 through</p> |
| <p style="text-align: right;">183</p> <p>1 Sir, do you see the page I -- I flagged for<br/>2 you?<br/>3 A I do, yes.<br/>4 Q I -- I highlighted for you at the very<br/>5 -- very end?<br/>6 A Yes.<br/>7 Q I -- I handed you the page, you've<br/>8 turned away from it.<br/>9 A It's not this one?<br/>10 Q Turn -- turn back. There it is right<br/>11 there on top.<br/>12 A Okay, yes.<br/>13 Q Okay? Can you read that highlight for<br/>14 us aloud?<br/>15 A "Although the data was accumulated for the<br/>16 specific mineral species, fibrous anthophyllite, the<br/>17 same results can be predicted for other fibrous<br/>18 amphibole minerals and chrysotile asbestos found in<br/>19 association with the Hammondsville ore body whose<br/>20 surfaces expose a substantial concentration of<br/>21 magnesium and hydroxyl groups as reactive sites."<br/>22 MR. PANATIER: All right, you can set<br/>23 that aside, sir.<br/>24 Q So fibrous anthophyllite was found in<br/>25 association with the Hammondsville ore body.</p> | <p style="text-align: right;">185</p> <p>1 JNJAZ55_000003637 is marked as (Hopkins)<br/>2 Exhibit 41 for identification, as of this<br/>3 date.)<br/>4 Q And this is a communication between<br/>5 Nashed and the Department of Health, Education and<br/>6 Welfare, correct?<br/>7 A It is, yes, yes.<br/>8 Q All right. And he's -- he's writing<br/>9 to the Federal Government, isn't it?<br/>10 A Yes.<br/>11 Q And I've highlighted a bunch there,<br/>12 but I'm only concerned about the couple of bullet<br/>13 points he lists out there on the first page.<br/>14 Do you see those?<br/>15 A Yes.<br/>16 Q Okay. And right above those what does<br/>17 he say?<br/>18 A In highlight? Well --<br/>19 Q Yes, in highlight, directly above the<br/>20 numbers.<br/>21 A Okay, let's put it in context. If I may<br/>22 just read the preliminary paragraph. "We wish to<br/>23 comment on the proposed entitled food additives<br/>24 proposal regarding food ingredients." And before<br/>25 that he talks about, "We do not manufacture food, we</p>                                             |

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| <p style="text-align: right;">186</p> <p>1 believe that the proposal could have a detrimental<br/>2 effect upon our products because of certain<br/>3 assumptions implicit in the proposal which we<br/>4 believe to be incorrect."<br/>5 Q And then he lists the assumptions,<br/>6 right?<br/>7 A "If these assumptions are permitted in the<br/>8 regulation, they will be the basis for regulation<br/>9 with regards to cosmetics and drugs containing talc.<br/>10 The assumptions we believe to be incorrect are" --<br/>11 Q Number 1.<br/>12 A -- "Talc can be processed to remove<br/>13 asbestiform particles."<br/>14 Q Okay. So we're going to stop there.<br/>15 He says to the Federal Government, "We believe the<br/>16 assumption that talc could be processed to remove<br/>17 asbestiform particles is false", correct?<br/>18 A That's an incorrect assumption --<br/>19 Q Yes.<br/>20 A -- that he's stated.<br/>21 Q Right. He's saying -- he's -- he's<br/>22 verifying that it cannot be processed to remove<br/>23 asbestiform particles, correct?<br/>24 A Yes, he's stating the assumption is an<br/>25 incorrect assumption.</p> | <p style="text-align: right;">188</p> <p>1 A It's a response to someone who's written a<br/>2 letter, yes.<br/>3 Q Okay. And they're reacting to a<br/>4 newspaper article that they read, right?<br/>5 A Yes.<br/>6 Q Okay. Now, in order to answer the<br/>7 concerns by this -- this member of the general<br/>8 public, if you look about halfway down the second<br/>9 paragraph what this person from Johnson &amp; Johnson<br/>10 says is, "The talc ore then undergoes a cleansing<br/>11 procedure known as flotation that involves many<br/>12 separate washing operations to remove any impurities<br/>13 which might be present."<br/>14 Right?<br/>15 A That's what is written.<br/>16 Q "Finally the talc is checked by<br/>17 complex scientific methods including x-ray<br/>18 diffraction, differential thermal analysis and<br/>19 electron microscopy with electron diffraction to<br/>20 confirm the absence of asbestos."<br/>21 Right?<br/>22 A Correct.<br/>23 MR. BICKS: It's electron<br/>24 differentiation, you said diffraction.<br/>25 MR. PANATIER: I did. He's actually</p>          |
| <p style="text-align: right;">187</p> <p>1 Q The -- the assumption that is<br/>2 incorrect is that it can be removed, correct?<br/>3 A Correct.<br/>4 MR. PANATIER: Okay, all right, you<br/>5 can set that aside, sir.<br/>6 Q Now, Johnson &amp; Johnson actually wrote<br/>7 to customers when customers had questions, didn't<br/>8 they?<br/>9 A Yes.<br/>10 MR. PANATIER: This will be Exhibit<br/>11 42. Here's your copy. Here's your copy.<br/>12 (Letter dated November 27, 1974, Bates<br/>13 stamped J&amp;J-0147727 and J&amp;J-0147728 is marked<br/>14 as (Hopkins) Exhibit 42 for identification, as<br/>15 of this date.)<br/>16 Q And he's writing to a Mrs. Husten,<br/>17 right?<br/>18 A Yes.<br/>19 Q And what's the date of that?<br/>20 A November 27th, 1974.<br/>21 Q All right. And who's it from?<br/>22 A Someone called John Infante from the<br/>23 medical services.<br/>24 Q Okay. And so he's writing to this<br/>25 person who has written a letter, right?</p>                                                                                                                                                            | <p style="text-align: right;">189</p> <p>1 saying it wrong, but, yes, he does say --<br/>2 MR. BICKS: Well --<br/>3 MR. PANATIER: -- electron<br/>4 differentiation.<br/>5 MR. BICKS: -- that's what he says in<br/>6 the document.<br/>7 MR. PANATIER: Yes.<br/>8 Q Yes, to confirm the absence of<br/>9 asbestos, right?<br/>10 A That is what is written, yes.<br/>11 Q Okay. And so let's go to the first<br/>12 sentence I highlighted. "The talc ore then<br/>13 undergoes a cleansing procedure known as flotation<br/>14 that involves many separate washing operations to<br/>15 remove any impurities which might be present."<br/>16 They've already told the Federal Government<br/>17 that they can't wash or float out all the<br/>18 asbestiform, correct?<br/>19 A Yes.<br/>20 Q Okay. So they didn't provide complete<br/>21 information to this customer, did they?<br/>22 A Well, what they told the customer is what<br/>23 is written here, that we extract from our own ore<br/>24 body and select the talc and the talc undergoes a<br/>25 cleansing process that involves many separate</p> |



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| <p style="text-align: right;">190</p> <p>1 washings to remove any impurities that might be<br/>2 present.<br/>3 Q But that wasn't true, was it, because<br/>4 Johnson &amp; Johnson had admitted already that they<br/>5 couldn't wash out all the asbestiform minerals,<br/>6 correct?<br/>7 A Well, if there had been asbestiform<br/>8 minerals, and that's -- that's what is written in<br/>9 the letter to the -- to the Federal Government, but<br/>10 on this one they simply say, to remove any<br/>11 impurities which may be present.<br/>12 Q Right, and on the basis of their own<br/>13 testing they knew they couldn't get all the<br/>14 asbestiforms out, that's what they told the Federal<br/>15 Government, correct?<br/>16 MR. BICKS: Objection to the form.<br/>17 Argumentative.<br/>18 A Yeah, if asbestos had been there in the<br/>19 first place, then that would be the -- that's what<br/>20 they told the Federal Government, yes.<br/>21 Q They certainly didn't tell this<br/>22 customer complete information about the fact that<br/>23 they couldn't get all the asbestiform minerals out,<br/>24 correct?<br/>25 MR. BICKS: Objection to the form. No</p> | <p style="text-align: right;">192</p> <p>1 all asbestiform or asbestos to the extent it was<br/>2 present, correct?"<br/>3 Did you say correct to that?<br/>4 A I did.<br/>5 Q Did you -- did Johnson &amp; Johnson tell<br/>6 that to customers?<br/>7 MR. BICKS: Tell what?<br/>8 A Tell -- well -- tell what? The customer<br/>9 asked about the talc. The word asbestos was never<br/>10 mentioned in the customer's letter.<br/>11 Q Sure it was. At the end of the second<br/>12 paragraph it talks about how Johnson &amp; Johnson<br/>13 establishes the absence of asbestos.<br/>14 A In the customer's letter?<br/>15 Q Yeah. You put it on top of that pile<br/>16 right there. At the end of the second paragraph,<br/>17 sir.<br/>18 A Confirm the absence of asbestos, yes.<br/>19 Q Right, okay. So they are talking<br/>20 about asbestos to the customer, right?<br/>21 A They -- they -- what they -- what they say<br/>22 is they used x-ray diffraction, differential thermal<br/>23 analysis, electron microscopy, electron<br/>24 differentiation, it states here, to confirm the<br/>25 absence of asbestos.</p>                                                                           |
| <p style="text-align: right;">191</p> <p>1 foundation.<br/>2 A Well, they don't use the word asbestiform,<br/>3 they use the word impurities.<br/>4 Q Let's -- let's look at what you've --<br/>5 what you've admitted. Go back to page 427 in volume<br/>6 2 right in front of you. You've got it under<br/>7 something, okay.<br/>8 A Okay.<br/>9 Q Page 427, line 9.<br/>10 A Yes.<br/>11 Q Now, "Johnson &amp; Johnson acknowledges<br/>12 their flotation, their beneficiation processes, were<br/>13 never able to remove all asbestiform or asbestos to<br/>14 the extent it was present, correct?" Your answer<br/>15 was "Correct."<br/>16 Right?<br/>17 A Yes, they deliberately added one percent to<br/>18 that flotation experiment and that result is what<br/>19 was written there.<br/>20 MR. PANATIER: I'm going to object to<br/>21 nonresponsive.<br/>22 Q Did you answer this question correct,<br/>23 and here's the question, "Johnson &amp; Johnson<br/>24 acknowledges that their flotation, their<br/>25 beneficiation processes, were never able to remove</p>                                                                                                     | <p style="text-align: right;">193</p> <p>1 Q Right. At no point did they tell the<br/>2 customer that the washing technique doesn't actually<br/>3 get rid of all the asbestiforms to the extent they<br/>4 are present, does it?<br/>5 MR. BICKS: Objection. No foundation.<br/>6 A The washing technique doesn't, but there<br/>7 are other processes involved in -- in mining the<br/>8 talc, selective mining and everything that goes into<br/>9 creating the talc from a clean mine which ensures<br/>10 that the asbestos wouldn't be there in the first<br/>11 place --<br/>12 Q Okay, sir, I'm --<br/>13 A -- so there isn't a conflict, it's just<br/>14 that we've used different words.<br/>15 MR. PANATIER: I'm going to object to<br/>16 nonresponsive.<br/>17 Q Johnson &amp; Johnson chose to make a<br/>18 representation to this person that they washed their<br/>19 talc and got rid of any impurities, didn't they?<br/>20 They say that, don't they?<br/>21 A They say they wash the talc to remove any<br/>22 impurities which might be present and --<br/>23 Q Right.<br/>24 A -- those impurities include a lot of other<br/>25 materials, such as chlorite, quartz, sandy materials</p> |

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| <p style="text-align: right;">194</p> <p>1 that could, in theory, be mined and get -- and get<br/>2 into the product.<br/>3 Q I'm sorry, does -- does this letter<br/>4 say chlorite, quartz at all?<br/>5 A No, it just -- it just uses a generic word<br/>6 impurities.<br/>7 Q And the next sentence says asbestos,<br/>8 right?<br/>9 A And then -- then they go on to talk about<br/>10 asbestos, a separate issue.<br/>11 Q And -- and clearly this person's<br/>12 concern was asbestos based on the newspaper article,<br/>13 correct, sir?<br/>14 MR. BICKS: Objection. No foundation<br/>15 about someone's concern.<br/>16 Q The person read a newspaper article<br/>17 and Johnson &amp; Johnson responded to the person<br/>18 discussing asbestos and nothing else, correct?<br/>19 MR. BICKS: Objection to the form. No<br/>20 foundation.<br/>21 A Well, I -- I don't know what the newspaper<br/>22 article was. I haven't seen the original letter<br/>23 from Mrs. Husten to know what her concerns were, but<br/>24 what this letter responds to is to state that there<br/>25 -- the mine -- obtained from our own mines which are</p>              | <p style="text-align: right;">196</p> <p>1 A That is correct.<br/>2 MR. PANATIER: You can set that aside,<br/>3 sir.<br/>4 Q Now, that was in late 1974, true?<br/>5 A Yes.<br/>6 Q Okay. Now, when Johnson &amp; Johnson got<br/>7 McCrone's reports in July of '75 and November of<br/>8 '75, did they write back to Ms. Husten or any other<br/>9 customers and tell them that asbestos had been<br/>10 confirmed in their ore?<br/>11 A I -- I don't know the answer to that, no.<br/>12 Q You've never seen such a letter, have<br/>13 you?<br/>14 A I've not seen a letter, no.<br/>15 Q All right. Now, Johnson &amp; Johnson has<br/>16 actually done some experimental calculations where<br/>17 they've estimated what the dose of asbestos a person<br/>18 would get would be if they used talc that had a very<br/>19 small bit of asbestos, about ten parts per million,<br/>20 correct?<br/>21 A I believe so, yes.<br/>22 Q Yeah. And they calculated that that<br/>23 would create a dose of between 4.5 to 9.3 fibers per<br/>24 cc for the adult and 0.16 to 0.18 fibers per cc in<br/>25 diapering a baby, correct?</p> |
| <p style="text-align: right;">195</p> <p>1 selected for high quality and purity and then they<br/>2 go on to say the ore goes through a washing or<br/>3 flotation process which to remove impurities and<br/>4 then as you say finally it's checked by complex<br/>5 scientific methods to -- to demonstrate or confirm<br/>6 the absence of asbestos. That's -- that's what the<br/>7 letter states.<br/>8 MR. PANATIER: Okay, I'm going to<br/>9 object to nonresponsive.<br/>10 Q The question that we have been<br/>11 bandying around here is, Johnson &amp; Johnson made the<br/>12 decision to write and say they washed the -- the<br/>13 talc, right?<br/>14 A That was part of a paragraph --<br/>15 Q Okay.<br/>16 A -- yes.<br/>17 Q And the washing they're talking about<br/>18 is the beneficiation process, correct?<br/>19 A Yes.<br/>20 Q Okay. You have said as the corporate<br/>21 representative for Johnson &amp; Johnson that Johnson &amp;<br/>22 Johnson acknowledges that their flotation, their<br/>23 beneficiation process, was never able to remove all<br/>24 asbestiform or asbestos to the extent it was<br/>25 present, correct?</p> | <p style="text-align: right;">197</p> <p>1 A I believe --<br/>2 MR. BICKS: Objection. No foundation.<br/>3 A I believe that's -- that's been stated.<br/>4 Q Okay.<br/>5 A And you and I have talked about that two<br/>6 times before already, fair?<br/>7 A We have, yes.<br/>8 Q Okay. Now, Johnson &amp; Johnson funded<br/>9 much of the scientific research that it now relies<br/>10 on to defend itself in lawsuits, right?<br/>11 MR. BICKS: Objection. No foundation.<br/>12 A Some research was supported by Johnson &amp;<br/>13 Johnson, yes.<br/>14 Q Okay. Such as the Rubino work from<br/>15 1976, true?<br/>16 A The grant was made to Professor Rubino and<br/>17 his associates to collect the data, yes. Nothing<br/>18 unusual in that.<br/>19 Q I didn't ask you if there was anything<br/>20 unusual, but if you want to volunteer that there's<br/>21 nothing unusual about that, that's fine.<br/>22 Scientific research should be unbiased and<br/>23 independent, correct?<br/>24 A Yes.<br/>25 Q Okay. The Rubino work was not</p>                                                                            |



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| <p style="text-align: right;">234</p> <p>1 apparently closed or ceased operating in '73.<br/> 2 Q All right. So unless it miraculously<br/> 3 reopened in '75, it wasn't Clifton ore going through<br/> 4 Windsor Minerals, correct?<br/> 5 MR. BICKS: Objection. No foundation.<br/> 6 A Well, speculatively, if -- if it wasn't<br/> 7 running in '75, then it would not be Clifton.<br/> 8 Q Right. He said it ceased in '73.<br/> 9 A That's --<br/> 10 Q That is what he said?<br/> 11 A That's what he said, yes.<br/> 12 Q And he's the president of Windsor<br/> 13 Minerals, right?<br/> 14 A Yes.<br/> 15 Q Sir, Johnson &amp; Johnson's strategy was<br/> 16 to compromise those who published work that was<br/> 17 potentially dangerous to their business, correct?<br/> 18 A I don't agree with that comparison, no.<br/> 19 MR. PANATIER: All right. This will<br/> 20 be Exhibit 49.<br/> 21 (Memorandum Bates stamped<br/> 22 JNJAZ55_000004644 and JNJAZ55_000004645 is<br/> 23 marked as (Hopkins) Exhibit 49 for<br/> 24 identification, as of this date.)<br/> 25 MR. PANATIER: Here's a copy for you.</p>                                               | <p style="text-align: right;">236</p> <p>1 Q Right. And here they're saying that<br/> 2 at least one -- they had two purposes stated here<br/> 3 for their Italian study. One was to maintain the<br/> 4 good name of talc and the second was to compromise<br/> 5 Selikoff type allegations, right?<br/> 6 A And the meaning of that is to challenge<br/> 7 Selikoff's comment in the early '70s where his<br/> 8 particular group believed that there was asbestos in<br/> 9 -- in various talc patterns.<br/> 10 Q Okay.<br/> 11 A And the compromise here means challenge.<br/> 12 Q Well, first of all, he -- he was at<br/> 13 Mount Sinai, correct?<br/> 14 A Yes, he was, yes.<br/> 15 Q And they don't say challenge, they say<br/> 16 compromise, do they not?<br/> 17 A That's the word they've used, but that<br/> 18 context means to challenge those allegations,<br/> 19 compromise or weaken.<br/> 20 Q You're providing context that is not<br/> 21 reading there, correct?<br/> 22 A I'm -- I'm translating for you for the<br/> 23 benefit what the meaning of compromise was in that<br/> 24 statement.<br/> 25 Q Well, I -- I speak English. You don't</p> |
| <p style="text-align: right;">235</p> <p>1 Q Here's a copy for you. Sir, do you<br/> 2 see that this is a Johnson &amp; Johnson memo. At the<br/> 3 top it says worldwide study.<br/> 4 Do you see that?<br/> 5 A Yes.<br/> 6 Q All right. And do you see at the very<br/> 7 bottom they're talking about the Italian studies,<br/> 8 right?<br/> 9 A Yes.<br/> 10 Q Italian data, it says, "Develop long<br/> 11 term human exposure data on the safety of Italian<br/> 12 talc through the Val Chisone Pinerolo operations.<br/> 13 (oldest and largest records available in the world)"<br/> 14 and then it says, "Purpose to maintain good name of<br/> 15 talc and compromise Selikoff type allegations."<br/> 16 Right?<br/> 17 A You read what was written.<br/> 18 Q Now, Dr. Selikoff was someone who had<br/> 19 come out in the 1960s and was sort of a pioneer with<br/> 20 regard to asbestos disease and people who were<br/> 21 exposed to it, correct?<br/> 22 A He had pub -- he had published in the '60s.<br/> 23 Q Right. And Johnson &amp; Johnson was<br/> 24 aware of his work in the '60s, correct?<br/> 25 A That's a reasonable assumption, yes.</p> | <p style="text-align: right;">237</p> <p>1 have to translate it. They -- they actually say<br/> 2 compromise.<br/> 3 They don't say challenge, do they?<br/> 4 A They say compromise --<br/> 5 Q Okay.<br/> 6 A -- but the meaning that it is to challenge.<br/> 7 Q Didn't -- haven't you said repeatedly<br/> 8 today you don't want to speculate, but now you're<br/> 9 speculating as to what their meaning was there --<br/> 10 MR. BICKS: Objection.<br/> 11 Q -- beside compromise --<br/> 12 MR. BICKS: Argumentative.<br/> 13 Q -- isn't that true?<br/> 14 A I'm not going to answer that question. The<br/> 15 sentence states to compromise Selikoff type<br/> 16 allegations.<br/> 17 MR. PANATIER: Great. This is Exhibit<br/> 18 50.<br/> 19 (Letter dated September 26, 1984 Bates<br/> 20 stamped JNJNL61_000000006 is marked as<br/> 21 (Hopkins) Exhibit 50 for identification, as of<br/> 22 this date.)<br/> 23 Q I've shown you this one before, too.<br/> 24 And this --<br/> 25 MR. BICKS: It's 40 -- 49, not 50.</p>                                                                                                                                   |

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| <p style="text-align: right;">238</p> <p>1 (A discussion is held off the record.)</p> <p>2 Q This is a letter from Ashton to</p> <p>3 Luzenac, and we've seen him write to Luzenac a few</p> <p>4 times, right?</p> <p>5 A Yes.</p> <p>6 Q Okay. And here he's writing about an</p> <p>7 article written by Paoletti in Italy, true?</p> <p>8 A Yes.</p> <p>9 Q Now, I'm sure you've read that article</p> <p>10 by Paoletti, right?</p> <p>11 A Yes.</p> <p>12 Q Okay. In that article by Paoletti</p> <p>13 they found a bunch of asbestos in Italian talc,</p> <p>14 didn't they?</p> <p>15 A It -- it alleges substantial number of talc</p> <p>16 containing five percent asbestos.</p> <p>17 Q Right. And here Ashton is writing to</p> <p>18 Luzenac and he says, "Attached is a copy of a paper</p> <p>19 which is very important to the talc industry in your</p> <p>20 territory. It alleges that a substantial number of</p> <p>21 tales contains fibers and/or asbestos. It is</p> <p>22 published by a reputable organization in Rome. It</p> <p>23 has just appeared in this month's issue of</p> <p>24 Regulatory Toxicology and Pharmacology here in the</p> <p>25 States." Right?</p> | <p style="text-align: right;">240</p> <p>1 A Yes, it's a month later.</p> <p>2 Q The let -- the letter that Ashton</p> <p>3 wrote to Luzenac was September 26th, '84 and here</p> <p>4 he's writing an internal memo 10/23/84, right?</p> <p>5 A Yes.</p> <p>6 Q Okay. And can you see on the second</p> <p>7 page under talc he says, "I spoke to some of the</p> <p>8 ASTM and ISO officials about the uncomfortable</p> <p>9 business aspects of the recent Paoletti article</p> <p>10 hoping they might have some ideas on how to</p> <p>11 compromise it."</p> <p>12 Did he say that?</p> <p>13 A Yes.</p> <p>14 Q And a month earlier he acknowledged</p> <p>15 that this had come from a reputable organization,</p> <p>16 Paoletti's article, didn't he?</p> <p>17 A He did, yes.</p> <p>18 Q But he's trying to come up with ways,</p> <p>19 ideas, on how to compromise it, true?</p> <p>20 A Again, the word compromise has different</p> <p>21 meanings. The meaning that I've always taken for</p> <p>22 that is to challenge it.</p> <p>23 Q The word Ashton chose out of his</p> <p>24 lexicon was compromise --</p> <p>25 A Yes.</p> |
| <p style="text-align: right;">239</p> <p>1 So that's our framework, which is he's</p> <p>2 talking about the Paoletti article where they found</p> <p>3 asbestos and/or fibers in talc from Italy, true?</p> <p>4 A He is -- yes, he's talking about that,</p> <p>5 Ashton, yes.</p> <p>6 Q Okay. So that's Bill Ashton. Now,</p> <p>7 you know that he actually tried to come up with ways</p> <p>8 to compromise Paoletti, didn't he?</p> <p>9 A I mean, I don't have evidence for that.</p> <p>10 Q Well, I've given it to you before,</p> <p>11 sir.</p> <p>12 Did you forget?</p> <p>13 A I think that's --</p> <p>14 MR. BICKS: Objection. Argumentative.</p> <p>15 A It's argumentative. I just mean I don't</p> <p>16 have it in here in front of me.</p> <p>17 (Memorandum dated October 23, 1984,</p> <p>18 Bates stamped JNJNL61_000000126 through</p> <p>19 JNJNL61_000000128 is marked as (Hopkins)</p> <p>20 Exhibit 51 for identification, as of this</p> <p>21 date.)</p> <p>22 Q Here you go. There's Exhibit 51.</p> <p>23 Here's a copy.</p> <p>24 All right. You see that, sir? This is a</p> <p>25 month later, right?</p>                                                        | <p style="text-align: right;">241</p> <p>1 Q -- right? Okay.</p> <p>2 MR. PANATIER: You can set that aside,</p> <p>3 sir.</p> <p>4 Q And that's even though Paoletti and</p> <p>5 his group had a -- come from a reputable</p> <p>6 organization, right?</p> <p>7 A They -- they came from a reputable</p> <p>8 organization, yes.</p> <p>9 Q Okay. Johnson &amp; Johnson was</p> <p>10 evaluating alternatives to talc throughout the '60s,</p> <p>11 '70s and '80s, right?</p> <p>12 A Yes, they looked at cornstarch.</p> <p>13 Q Right.</p> <p>14 A Yes.</p> <p>15 MR. PANATIER: This will be Exhibit</p> <p>16 52.</p> <p>17 (Document Bates stamped</p> <p>18 JNJAZ55_000001282 is marked as Exhibit for</p> <p>19 identification, as of this date.)</p> <p>20 Q This is entitled talc alternatives,</p> <p>21 right?</p> <p>22 A Yes.</p> <p>23 Q It says under background, "There are</p> <p>24 several reasons requiring an increase in research</p> <p>25 for an acceptable alternative to talc in our body</p>                                                                                                                            |

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| <p style="text-align: right;">242</p> <p>1 dusting powders. Those reasons are related to the<br/> 2 increasing likelihood that the following events will<br/> 3 occur. Number 1, Federal regulations."<br/> 4 Right?<br/> 5 A That's what is written.<br/> 6 Q Okay. "Number 2, overseas scientific<br/> 7 investigators are now known to be studying<br/> 8 biological responses to talc in ways which can<br/> 9 create doubts on talc efficacy and raise unfounded<br/> 10 questions on talc safety. Such findings will cause<br/> 11 new apprehension in the high grade talc market and<br/> 12 may have an adverse effect on our business."<br/> 13 So they were worried about their business,<br/> 14 fair?<br/> 15 A Yes.<br/> 16 Q Okay. And then "Number 3, increased<br/> 17 pressure from consumer advocates can require such<br/> 18 high expenditures for technical support needed to<br/> 19 compromise them, that our profits can approach<br/> 20 diminishing returns."<br/> 21 Did I read that write?<br/> 22 A You read what was written.<br/> 23 Q Third time someone at Johnson &amp;<br/> 24 Johnson has used the word compromise in terms of<br/> 25 either scientists or consumer advocates, correct?</p> | <p style="text-align: right;">244</p> <p>1 challenging.<br/> 2 Q Okay. The word challenge was<br/> 3 completely added by yourself, in fairness, right?<br/> 4 A Yes. And -- and the reason I do that is to<br/> 5 set it into context in which those authors intended.<br/> 6 Q Challenge sure sounds a lot nicer than<br/> 7 saying compromise, doesn't it?<br/> 8 MR. BICKS: Argumentative. Objection.<br/> 9 A That's -- that's an opinion. What I'm<br/> 10 saying is that the intent is to challenge findings<br/> 11 or comments that the company believed were not<br/> 12 correct.<br/> 13 (Memorandum dated April 9, 1969, Bates<br/> 14 stamped JNJAZ55_000001073 and JNJAZ55_000001074<br/> 15 is marked as (Hopkins) Exhibit 53 for<br/> 16 identification, as of this date.)<br/> 17 Q Sir, you've been given --<br/> 18 MR. PANATIER: I'm going to object to<br/> 19 nonresponsive.<br/> 20 Q You've been given a document, an<br/> 21 internal document from Johnson &amp; Johnson dated April<br/> 22 9th, 1969.<br/> 23 Do you see that?<br/> 24 A '69, yes.<br/> 25 Q And it is -- the subject says</p>                                                                                                        |
| <p style="text-align: right;">243</p> <p>1 A Correct. And I've said before the word<br/> 2 compromise in this meaning, in my view, comes out to<br/> 3 challenge.<br/> 4 Q They keep choosing the word<br/> 5 compromise, though; isn't -- isn't that true?<br/> 6 A I presume it's the same individual, but the<br/> 7 answer's he uses that word.<br/> 8 Q Yeah, you presume -- it's Bill Ashton,<br/> 9 correct?<br/> 10 A I don't have evidence, but on this<br/> 11 particular one there's no author, but on the others<br/> 12 it was Mr. Ashton.<br/> 13 Q Okay.<br/> 14 MR. PANATIER: All right, sir, you can<br/> 15 set that aside.<br/> 16 Q So I asked you wasn't it Johnson &amp;<br/> 17 Johnson's strategy when other researchers or<br/> 18 consumer advocates put out information that was<br/> 19 potentially dangerous to Johnson &amp; Johnson's<br/> 20 business, their strategy was to attempt to<br/> 21 compromise them, do you agree?<br/> 22 MR. BICKS: Objection. Argumentative.<br/> 23 Asked and answered.<br/> 24 A The strategy was to challenge them. The<br/> 25 word compromise was used, but in the context of</p>                                                                            | <p style="text-align: right;">245</p> <p>1 alternative domestic talc sources and and it says<br/> 2 file number 101, and I've shown you this before,<br/> 3 right?<br/> 4 A I believe so, yes.<br/> 5 Q Okay. This is from Bill Ashton, true?<br/> 6 A Correct.<br/> 7 Q He's writing to Dr. Hildick-Smith.<br/> 8 Now, Dr. Hildick-Smith, was he a medical doctor?<br/> 9 A Yes, he was.<br/> 10 Q Okay. He says, "Pete, we have to firm<br/> 11 up the position the company should have on the<br/> 12 presence of the mineral tremolite in talc. Your<br/> 13 staff will have to do this for us since the<br/> 14 obligations (sic) to that mineral have been mainly<br/> 15 medical or clinical as opposed to chemical or<br/> 16 physical. The reason we have to firm up our<br/> 17 position is that we have moved into high gear on<br/> 18 some alternative talc sources and it is normal to<br/> 19 find different levels of tremolite in many US<br/> 20 talcs."<br/> 21 And, in fact, sir, we have -- you and I<br/> 22 have gone through numerous tests where tremolite has<br/> 23 been found in Johnson &amp; Johnson's Italy and Vermont<br/> 24 talcs, correct?<br/> 25 MR. BICKS: Objection. No foundation.</p> |

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| <p style="text-align: right;">246</p> <p>1 A What we do know is that in the -- the mines<br/>2 there may be presence of tremolite, nonasbestos<br/>3 tremolite, yes.<br/>4 Q Okay. It just says tremolite here,<br/>5 right?<br/>6 A In this document written in '69, that --<br/>7 they use that word, yes.<br/>8 Q "Historically, in our company,<br/>9 tremolite has been bad because it has needle-type<br/>10 crystals. Our position has been that these can<br/>11 stand on end, penetrate the skin and cause<br/>12 irritation; consequently, talcs exceeding trace<br/>13 contents have never been approved. Over the past<br/>14 year or two the medical literature has made<br/>15 reference to potential hazards of talcs containing<br/>16 tremolite and I have seen some articles under the<br/>17 umbra of environmental health agencies from here and<br/>18 abroad which pinpoint severe objections to the<br/>19 mineral in talcum powders."<br/>20 So now they're talking about a health<br/>21 response to tremolite, correct, sir?<br/>22 A Well, they -- they're saying that the<br/>23 medical literature has made reference to potential<br/>24 hazards of talc.<br/>25 Q Sure. Then he says -- then he says,</p> | <p style="text-align: right;">248</p> <p>1 date.)<br/>2 Q Do you see that that there's a<br/>3 response in T. M. Thompson, M.D.?<br/>4 A Yes.<br/>5 Q And the doctor inside Johnson &amp;<br/>6 Johnson writes back to Bill Ashton, and this again<br/>7 it says -- it has a project code 101, right?<br/>8 A Yes.<br/>9 Q The doctor says, "Your inquiry of<br/>10 April 9th, 1969 addressed to Dr. G. Hildick-Smith<br/>11 has been referred to my attention for reply. Over<br/>12 the years I've reviewed the literature on hazards<br/>13 relating to inhalation of talc particles on several<br/>14 different occasions. In your memorandum you<br/>15 indicate that tremolite does have needle-type<br/>16 crystals and our position has been that these could<br/>17 penetrate the skin and cause irritation. Actually,<br/>18 to the best of my knowledge, we have no factual<br/>19 information on this subject. It would seem logical<br/>20 that it could occur, although whether or not it<br/>21 would be of clinical significance would be<br/>22 conjectural."<br/>23 So the doctor at Johnson &amp; Johnson actually<br/>24 says, the whole point of the poking your skin, we<br/>25 don't really have data on that, right?</p> |
| <p style="text-align: right;">247</p> <p>1 "Some varieties of it", meaning tremolite, "match<br/>2 asbestos, and I gather there has been a lot of<br/>3 attention given to the hazards of inhaling minerals<br/>4 of that type lately. There is nothing we can do<br/>5 about the confused state of affairs on tremolite<br/>6 from the mineralogical and chemical points of view<br/>7 as far as historical literature is concerned. The<br/>8 question is how bad is tremolite medically and how<br/>9 much of it can safely be in a talc base we might<br/>10 develop?"<br/>11 Right, he asks those questions of the<br/>12 medical department of Johnson &amp; Johnson, true?<br/>13 A Yeah.<br/>14 Q Thank you.<br/>15 A Not an unreasonable question to -- to<br/>16 raise.<br/>17 Q I agree. Let's see what the answer<br/>18 is, okay? So he receives an answer about six days<br/>19 later.<br/>20 MR. PANATIER: This will be Exhibit<br/>21 54.<br/>22 (Memorandum dated April 15, 1969,<br/>23 Bates stamped JNJNL61_000001534 and<br/>24 JNJNL61_000001535 is marked as (Hopkins)<br/>25 Exhibit 54 for identification, as of this</p>                                                                                       | <p style="text-align: right;">249</p> <p>1 A That's -- that's true today.<br/>2 Q Okay.<br/>3 A Yes.<br/>4 Q "We have been concerned to a much<br/>5 greater extent with regard to possible dangers<br/>6 relative to the inhalation of the talc with a<br/>7 spicule or needle-like crystalline structure as<br/>8 compared with a flat platelet-type of crystalline<br/>9 structure. There are reports in the literature<br/>10 concerning talcosis which, as you know, is a form of<br/>11 pneumoconiosis attributed to the inhalation of<br/>12 talc." Let's stop there.<br/>13 Johnson &amp; Johnson was aware that talc could<br/>14 cause talcosis, which was a type of dust disease of<br/>15 the lungs, correct?<br/>16 A That's an industrial disease, yes. You get<br/>17 that in talc miners and millers, in factory workers<br/>18 and various people who've used talc --<br/>19 Q Right.<br/>20 A -- in very, very high amounts --<br/>21 Q Right.<br/>22 A -- in every day of their lives.<br/>23 Q "Reported studies have suggested that<br/>24 this does not occur in connection with flat or<br/>25 platelet-type talc, but does occur in connection</p>                                                                       |

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| <p style="text-align: right;">250</p> <p>1 with the spicule-type."<br/> 2 And that means needle, right?<br/> 3 A Yes.<br/> 4 Q Needle-type or "spicule-type of<br/> 5 crystalline structure characteristic of tremolite.<br/> 6 The reported instances have been extremely few but<br/> 7 have, without exception, involved inhalations of<br/> 8 high concentrations on an occupational basis of many<br/> 9 years duration."<br/> 10 So he's talking about those industrial<br/> 11 workers, right?<br/> 12 A Yes.<br/> 13 Q "Furthermore, we have occasionally<br/> 14 received inquiries from various individuals,<br/> 15 including General Johnson."<br/> 16 Now, he was an executive at Johnson &amp;<br/> 17 Johnson, right?<br/> 18 A He was, yes.<br/> 19 Q "And several pediatricians expressing<br/> 20 concern over the possibility of the adverse effects<br/> 21 on the lungs of babies or mothers who might inhale<br/> 22 any substantial amounts of our talc formulations."<br/> 23 So not only have people inside the company<br/> 24 been concerned about dangers to breathing this, but<br/> 25 pediatricians and mothers, correct?</p>                                                     | <p style="text-align: right;">252</p> <p>1 that any amount of tremolite in the form of<br/> 2 asbestos, those needles, like you said, any amount<br/> 3 is not allowed, correct?<br/> 4 MR. BICKS: Objection. Argumentative.<br/> 5 A The position is that products should be<br/> 6 free from asbestos.<br/> 7 Q Right.<br/> 8 A You can get tremolite in a fractured form,<br/> 9 which may appear as needles, if you like, but not<br/> 10 asbestos. It's a -- it's a geological point.<br/> 11 Q He -- he's not really making that<br/> 12 distinction, though, is he?<br/> 13 A In 1969, no, he didn't.<br/> 14 Q Okay. Let's skip to the big paragraph<br/> 15 there on the second page. "Since pulmonary<br/> 16 diseases, including inflammatory fibroplastic and<br/> 17 neoplastic diseases" -- now, that's cancer, right?<br/> 18 A Yes.<br/> 19 Q -- "appear to be on the increase, it<br/> 20 would seem to be prudent to limit any possible<br/> 21 content of tremolite in our powder formulations to<br/> 22 an absolutely minimum. To the best of my knowledge,<br/> 23 we have never been faced with any litigation<br/> 24 involving either skin or lung penetration by our<br/> 25 talc formulations. Some years ago we were faced</p>                                                         |
| <p style="text-align: right;">251</p> <p>1 A Okay, yes, we've --<br/> 2 Q Okay?<br/> 3 A -- received inquiries from General Johnson<br/> 4 and several pediatricians. They were -- they were<br/> 5 the two who've raised that --<br/> 6 Q Okay.<br/> 7 A -- question, yes.<br/> 8 Q "In the past we have replied to the<br/> 9 effect that since our talc is essentially all of the<br/> 10 platelet-type crystalline structure and is of a size<br/> 11 that would not likely -- not be likely to enter the<br/> 12 pulmonary alveoli" -- those are the air sacs in the<br/> 13 lungs --<br/> 14 A In the very bottom of the lungs, yes.<br/> 15 Q -- right? "We would not regard the<br/> 16 usage of our powders as presenting any hazards.<br/> 17 Obviously, if we do include tremolite in more than<br/> 18 unavoidable trace amounts, this sort of negation of<br/> 19 such inquiries could no longer pertain."<br/> 20 In other words, if they had any more other<br/> 21 than trace amounts of tremolite you couldn't go<br/> 22 around saying that this stuff was safe, right?<br/> 23 A That's what Dr. Thompson wrote in 1969,<br/> 24 yeah.<br/> 25 Q Now, Johnson &amp; Johnson's position is</p> | <p style="text-align: right;">253</p> <p>1 with a more or less serious problem resulting from<br/> 2 what we consider to have been an unjust accusation<br/> 3 of danger due to the presence of a small amount of<br/> 4 boric acid in our talc. This created such a furor<br/> 5 that we were more or less compelled to remove boric<br/> 6 acid from the formulation. It is conceivable that a<br/> 7 similar situation might arise if it became known<br/> 8 that our talc formulations contained any significant<br/> 9 amount of tremolite. Since the usage of these<br/> 10 products is so widespread and the existence of<br/> 11 pulmonary disease is increasing, it is not<br/> 12 inconceivable that we could become involved in<br/> 13 litigation in which pulmonary fibrosis or other<br/> 14 changes might be rightfully or wrongfully attributed<br/> 15 to inhalation of our powder formulations." I'll<br/> 16 stop right now.<br/> 17 In 1969, Johnson &amp; Johnson's company doctor<br/> 18 warned Johnson &amp; Johnson about possible litigation<br/> 19 because of what was in the product, correct?<br/> 20 A He said what might be in the product --<br/> 21 Q That's right.<br/> 22 A -- if it contained any significant amounts<br/> 23 of tremolite.<br/> 24 Q Okay.<br/> 25 A If.</p> |



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| <p style="text-align: right;">254</p> <p>1 Q Right. And the doctor warned you,<br/>2 Johnson &amp; Johnson, about that in 1969, true?<br/>3 A If it contained -- if it contained<br/>4 significant amounts of tremolite --<br/>5 Q Okay.<br/>6 A -- yes.<br/>7 Q "It might be that someone in the law<br/>8 department should be consulted with regard to the<br/>9 defensibility of our position in the event that such<br/>10 a situation could ever arise. It is my personal<br/>11 feeling that until we have at least substantial<br/>12 evidence, based on animal work, to the effect that<br/>13 the presence of tremolite in our talc does not<br/>14 produce adverse effects, we should not extend its<br/>15 usage beyond an absolute minimum previously<br/>16 mentioned."<br/>17 Is that what the doctor from Johnson &amp;<br/>18 Johnson said?<br/>19 A He did state that, yes.<br/>20 Q How many times after this did Bill<br/>21 Ashton consult with Dr. Thompson?<br/>22 A I don't know.<br/>23 Q After any of the positive test results<br/>24 that came back throughout the '70s or '80s, were any<br/>25 of those sent to Dr. Thompson?</p>                        | <p style="text-align: right;">256</p> <p>1 one relating to studies of a vaccine, a mumps<br/>2 vaccine.<br/>3 Q Was -- was Paolet -- was the Paoletti<br/>4 paper that Mr. Ashton wanted to compromise, was that<br/>5 ever withdrawn?<br/>6 A Not to my knowledge.<br/>7 Q Okay. At -- in 1969 when Dr. Thompson<br/>8 wrote this, did Johnson &amp; Johnson cease to sell talc<br/>9 and just move over to cornstarch?<br/>10 A No, but I'm aware that studies were<br/>11 conducted to look at the safety of talc -- sorry, of<br/>12 tremolite in animal studies, as Dr. Thompson<br/>13 mentioned.<br/>14 Q Now, are you talking about the hundred<br/>15 hamsters that Johnson &amp; Johnson sponsored?<br/>16 A There were studies -- they were done in<br/>17 rats, not hamsters. There is a study on hamsters --<br/>18 Q Okay.<br/>19 A -- which is done from Battelle, but there<br/>20 is another study on rats --<br/>21 Q All right.<br/>22 A -- regarding tremolite.<br/>23 Q Now, Johnson &amp; Johnson has never<br/>24 attempted to follow the customers of Johnson &amp;<br/>25 Johnson who purchased talc to see if they developed</p> |
| <p style="text-align: right;">255</p> <p>1 A I don't know. I don't think he was still<br/>2 employed in the '80s in -- in Johnson &amp; Johnson.<br/>3 MR. PANATIER: All right, sir, can you<br/>4 set that aside.<br/>5 Q Isn't it true, sir, that even after<br/>6 1969, with that sort of admonition or warning from<br/>7 Dr. Thompson, that Johnson &amp; Johnson continued to<br/>8 find tremolite on a regular basis in its ore and<br/>9 baby powder?<br/>10 A You could find tremolite traces in the --<br/>11 in the mines of Vermont and in Val Chisone in Italy,<br/>12 the point being that you avoid -- when the miners<br/>13 are mining, you avoid those areas.<br/>14 Q We know that Dr. Blount reported<br/>15 finding it, obviously, right?<br/>16 A She claimed to.<br/>17 Q Has her peer-reviewed paper ever been<br/>18 withdrawn, to your knowledge?<br/>19 A It's almost impossible to withdraw a paper.<br/>20 Q Has it been withdrawn?<br/>21 A It's impossible to do. Once a paper is<br/>22 published, it's published.<br/>23 Q So papers are never withdrawn on<br/>24 peer-reviewed literature?<br/>25 A The only paper I've ever seen withdrawn was</p> | <p style="text-align: right;">257</p> <p>1 any disease, correct?<br/>2 A I'm not aware of that.<br/>3 Q Okay. And currently speaking, how<br/>4 many current cases are pending against Johnson &amp;<br/>5 Johnson for people with mesothelioma who used<br/>6 Johnson &amp; Johnson's talc?<br/>7 A Again, I'm --<br/>8 MR. BICKS: Objection.<br/>9 A I'm not aware of that to be determined.<br/>10 It's -- it's company confidential between the law --<br/>11 the attorneys and of the plaintiffs.<br/>12 Q Well, they haven't told us. I'm<br/>13 asking -- I'm asking you.<br/>14 A Well --<br/>15 Q How many current cases of mesothelioma<br/>16 are pending against Johnson &amp; Johnson?<br/>17 A I have -- I have no idea.<br/>18 Q And you're the company, right?<br/>19 A Yes.<br/>20 Q Okay.<br/>21 A I'm one of the comp -- company's experts,<br/>22 yes.<br/>23 Q Well, no, you're not their expert,<br/>24 you're -- you're the company.<br/>25 A I'm here --</p>                                                                                                                                                                       |

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| <p style="text-align: right;">258</p> <p>1 Q You understand that?</p> <p>2 MR. BICK: Objection to the form.</p> <p>3 A -- today to represent the company, yes, but</p> <p>4 what I'm stating is that I don't know the answer as</p> <p>5 to how many litigations are pending.</p> <p>6 Q Okay. Isn't it true, sir, that in the</p> <p>7 mid 1970s Johnson &amp; Johnson actually went to the FDA</p> <p>8 and told them that their belief as was that a</p> <p>9 substantial amount of asbestos could be safely</p> <p>10 allowed in baby powder?</p> <p>11 A That's not how I've seen the phraseology.</p> <p>12 The FDA raised the question as to theoretically if</p> <p>13 baby powder contained or any of that body powder</p> <p>14 contained asbestos, what would be the dosage that</p> <p>15 would be administered, and how that compared to the</p> <p>16 industrial exposure that was approved and permitted</p> <p>17 by -- by OSHA --</p> <p>18 MR. PANATIER: Are we at --</p> <p>19 A -- and those -- that data was presented to</p> <p>20 FDA.</p> <p>21 MR. PANATIER: What exhibit are we at?</p> <p>22 COURT REPORTER: I'm sorry, the next</p> <p>23 is 56.</p> <p>24 MR. PANATIER: Oh, okay. Got it.</p> <p>25 (A discussion is held off the record.)</p> | <p style="text-align: right;">260</p> <p>1 there. We're going to find that out, okay?</p> <p>2 A The sentence is there.</p> <p>3 Q Okay.</p> <p>4 A "Our very preliminary calculation."</p> <p>5 Q Right. They say "Our very preliminary</p> <p>6 calculation indicates that substantial asbestos can</p> <p>7 be allowed safely in a baby powder."</p> <p>8 Correct?</p> <p>9 A Based on the theory -- theoretical studies</p> <p>10 that were conducted --</p> <p>11 Q Right.</p> <p>12 A -- in that paragraph.</p> <p>13 Q Right. Johnson &amp; Johnson did</p> <p>14 calculations that the FDA asked them to do --</p> <p>15 A Yes.</p> <p>16 Q -- and they came back on the basis of</p> <p>17 those calculations and opined to the FDA that a</p> <p>18 substantial amount of asbestos can be allowed safely</p> <p>19 in baby powder, did they not?</p> <p>20 A Based on those theoretical calculations,</p> <p>21 that was the -- that was the comment, yes, the</p> <p>22 summary.</p> <p>23 Q Has Johnson &amp; Johnson -- first of all,</p> <p>24 advocating that a substantial amount of asbestos</p> <p>25 could be safely allowed in baby powder is completely</p>                                                                                                                                                                                                                                            |
| <p style="text-align: right;">259</p> <p>1 (Memorandum dated January 18, 1974,</p> <p>2 Bates stamped J&amp;J-0132008 through J&amp;J--132011</p> <p>3 is marked as (Hopkins) Exhibit 55 for</p> <p>4 identification, as of this date.)</p> <p>5 Q Here you go, sir. All right, sir,</p> <p>6 this is a memo from January 18th, 1974, true?</p> <p>7 A Yes.</p> <p>8 Q Okay. And this is a memo, a Johnson &amp;</p> <p>9 Johnson memo. It's authored by Hildick-Smith and</p> <p>10 Nashed and it's about a meeting that they had with</p> <p>11 the commissioner of the FDA, right?</p> <p>12 A Yes.</p> <p>13 Q Okay. And look at the second page,</p> <p>14 please, sir. There's a paragraph about Dr. Eiermann</p> <p>15 and what Johnson &amp; Johnson told the FDA was "Our</p> <p>16 very preliminary calculation indicates that</p> <p>17 substantial asbestos can be allowed safely in a baby</p> <p>18 powder."</p> <p>19 Do you see that?</p> <p>20 A Taking that sentence at its full context,</p> <p>21 it relates to --</p> <p>22 Q First tell me whether the sentence is</p> <p>23 there.</p> <p>24 A Well --</p> <p>25 Q First tell me whether the sentence is</p>                                                                                         | <p style="text-align: right;">261</p> <p>1 antithetical to Johnson &amp; Johnson's stated policy of</p> <p>2 zero tolerance, is it not?</p> <p>3 A Nowhere does it say there they're</p> <p>4 advocating it. It says that preliminary</p> <p>5 calculations, and that was based on the FDA's</p> <p>6 request to do some -- run some numbers indicated</p> <p>7 that it could be or can be allowed, but that's never</p> <p>8 been Johnson &amp; Johnson's policy.</p> <p>9 Q Okay.</p> <p>10 A This is a response to a request from FDA to</p> <p>11 run some numbers.</p> <p>12 Q Right. And Johnson &amp; Johnson reached</p> <p>13 the conclusion that a substantial amount of asbestos</p> <p>14 could be safely allowed in baby powder and they told</p> <p>15 that to the FDA, right?</p> <p>16 A They -- they told it -- it's based on the</p> <p>17 allowable daily amount of five fibers per mil, which</p> <p>18 was the OSHA limit for industrial exposure. If you</p> <p>19 use that as a benchmark, a starting point, then you</p> <p>20 would be way under that figure and, therefore, the</p> <p>21 preliminary calculation using the math would</p> <p>22 indicate that substantial asbestos can be allowed</p> <p>23 safely in baby powder. However, that is not and</p> <p>24 never has been the Johnson &amp; Johnson position. This</p> <p>25 -- this is merely a response to the FDA's request to</p> |



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| <p style="text-align: right;">262</p> <p>1 run those numbers and compare what they would look<br/>2 like compared to the OSHA minutes.<br/>3 MR. PANATIER: I'm just going to<br/>4 object to nonresponsive.<br/>5 Q At no point there does Johnson &amp;<br/>6 Johnson report that they told the FDA that the<br/>7 exercise was completely unnecessary, because no one<br/>8 should ever put as asbestos in baby powder, correct?<br/>9 A They've not reported that, no, not in this<br/>10 particular summary of the -- of the meeting. This<br/>11 was obviously a long meeting, and Dr. Eiermann, who<br/>12 I've -- I've met and I know -- knew the guy, it was<br/>13 done -- that was his comment. He said that they had<br/>14 looked at the OSHA benchmark and compared it to the<br/>15 worse case of diapering babies and applying product<br/>16 to babies would be, and based on that OSHA<br/>17 benchmark, the comment said that our preliminary<br/>18 calculation indicates that substantial amounts can<br/>19 be used.<br/>20 Q Does Johnson &amp; Johnson agree that<br/>21 there shouldn't ever have even been a conversation<br/>22 about whether or not asbestos should be in a baby<br/>23 powder; do you agree with that?<br/>24 MR. BICKS: Objection. No foundation.<br/>25 A If FDA and Dr. Eiermann at FDA raised that</p> | <p style="text-align: right;">264</p> <p>1 discussion based on probably the same information --<br/>2 Q Sir --<br/>3 A -- at this point, January of '74, so it's<br/>4 -- it's part of that same story.<br/>5 Q We can go back to the document, but<br/>6 Johnson &amp; Johnson told the FDA that a standard for<br/>7 the detection of asbestos in talc didn't have to go<br/>8 below one percent by weight, didn't they?<br/>9 A That is what they stated --<br/>10 Q Okay.<br/>11 A -- back in the early '70s.<br/>12 Q And in -- when you talk about asbestos<br/>13 fibers, they're extremely small, you can't see them<br/>14 with the naked eye, individual fibers, can you?<br/>15 A No.<br/>16 Q Okay. And in a -- in a four ounce<br/>17 bottle of Johnson &amp; Johnson baby powder, one<br/>18 percent, if you had one percent by weight asbestos<br/>19 in there, that would be trillions and trillions and<br/>20 trillions of fibers, would it not?<br/>21 A If there was asbestos there, is it would<br/>22 be -- I don't know that it's trillions or millions<br/>23 or billions. If there were one percent asbestos<br/>24 there, and there never has been one percent asbestos<br/>25 there, then there would be a very large number of</p> |
| <p style="text-align: right;">263</p> <p>1 as an issue, you can't say we're not going to talk<br/>2 about this. You -- you -- you merely given an<br/>3 answer to the best of your ability, and that's what<br/>4 was done in this case. This was a response to Dr.<br/>5 Eiermann at FDA and his colleagues at FDA to come up<br/>6 with some numbers as to how diapering babies<br/>7 compared to exposure to fibers in an industrial<br/>8 application.<br/>9 Q Johnson &amp; Johnson knows that OSHA<br/>10 permissible exposure limits in an industrial setting<br/>11 should never be applied to what a baby or a mother<br/>12 or father powdering a baby might experience when<br/>13 using talc, correct?<br/>14 A Yes, and that's why I said this was not a<br/>15 Johnson &amp; Johnson initiated project, it was<br/>16 something that FDA asked the company to do and they<br/>17 did it, but it's not part of the company policy to<br/>18 propose that you're allowing asbestos in a baby<br/>19 powder.<br/>20 Q Well, sir, we know that Johnson &amp;<br/>21 Johnson had before this advocated a one percent by<br/>22 weight limit on asbestos to the FDA as well, didn't<br/>23 they?<br/>24 MR. BICKS: Objection. No foundation.<br/>25 A Again, that was part of a dialogue and a</p>                                             | <p style="text-align: right;">265</p> <p>1 fibers present.<br/>2 Q Now, in a -- in a bottle of talc, have<br/>3 you ever sat down and counted how many total<br/>4 particles there are?<br/>5 A No, I haven't.<br/>6 Q Do you know if anybody has?<br/>7 A No.<br/>8 Q Okay. When you talk about the total<br/>9 amount of dust particles in a -- in a bottle of<br/>10 talc, and even just a small bottle, a four ounce<br/>11 bottle, we're talking about an almost uncountable<br/>12 number of particles; is that fair?<br/>13 A It's speculation. Everything's countable.<br/>14 Q In practical terms?<br/>15 A In practical terms, yes. You wouldn't<br/>16 count the whole eight ounce, four ounce bottle.<br/>17 Q Right. I mean, we're talking about --<br/>18 when you're talking a whole bottle of talc you're<br/>19 talking about quintillions or septillions or<br/>20 octillions of -- of particles, right?<br/>21 A I have no idea. There's a lot.<br/>22 Q It's got a lot of zeroes --<br/>23 A Yes.<br/>24 Q -- fair?<br/>25 A Yes.</p>                                                                                                                                                                                                      |

John Hopkins, Ph.D.

| <p style="text-align: right;">310</p> <p>1 pipe work has been widely used and is still used as<br/> 2 water conduit, so you could expect to find it. You<br/> 3 could find it in the groundwater in some places,<br/> 4 even before it's been piped.<br/> 5 Q Now --<br/> 6 MR. PANATIER: Relevance.<br/> 7 Q Has Johnson &amp; Johnson ever been in the<br/> 8 asbestos business?<br/> 9 A No.<br/> 10 Q Has Johnson &amp; Johnson ever mined<br/> 11 asbestos?<br/> 12 A No.<br/> 13 Q Has Johnson &amp; Johnson ever milled<br/> 14 asbestos?<br/> 15 A No.<br/> 16 Q Has Johnson &amp; Johnson ever made<br/> 17 products that contain asbestos?<br/> 18 A No.<br/> 19 Q Is asbestos a mineral that Johnson &amp;<br/> 20 Johnson ever wanted in its talc products?<br/> 21 A No, absolutely not.<br/> 22 Q And can you explain why not?<br/> 23 A Well, as we've said, asbestos has been<br/> 24 recognized, and it's about a hundred years, as<br/> 25 being -- having hazardous effects and that came</p> | <p style="text-align: right;">312</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1<br/> 2<br/> 3 I, EVAMARIE WALSH, a Notary Public and<br/> 4 Shorthand Reporter, do hereby certify that prior to<br/> 5 the commencement of the examination<br/> 6<br/> 7 JOHN HOPKINS, Ph.D.<br/> 8<br/> 9 was sworn by me to testify to the truth, the<br/> 10 whole truth and nothing but the truth.<br/> 11 I DO FURTHER CERTIFY that the foregoing is<br/> 12 a true and accurate transcript of the testimony as<br/> 13 taken stenographically by and before me at the time,<br/> 14 place and on the date hereinbefore set forth.<br/> 15 I DO FURTHER CERTIFY that I am neither a<br/> 16 relative of nor employee nor attorney nor counsel<br/> 17 for any of the parties to this action, and that I am<br/> 18 neither a relative nor employee of such attorney or<br/> 19 counsel, and that I am not financially interested in<br/> 20 the action.<br/> 21<br/> 22 _____&lt;%Signature%&gt;_____<br/> 23 Notary Public<br/> 24<br/> 25</p>                                                                                                                                                                                                                                                                                       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| <p style="text-align: right;">311</p> <p>1 about from gas mask workers in World World I, the<br/> 2 ladies who assembled the gas masks, they were shown<br/> 3 to have lung disease. That was a hundred years ago,<br/> 4 so it's recognized as having adverse properties.<br/> 5 MR. BICKS: So I'm going to propose we<br/> 6 stop and break for the day and then pick up --<br/> 7 MR. PANATIER: Sure.<br/> 8 MR. BICKS: -- and we said at nine in<br/> 9 the morning.<br/> 10 MR. PANATIER: Sure.<br/> 11 MR. BICKS: Thank you.<br/> 12 (Time noted is 5:01 p.m.)<br/> 13<br/> 14<br/> 15 I have read the foregoing transcript of my deposition,<br/> 16 and find it to be true and accurate to the best<br/> 17 of my knowledge and belief.<br/> 18<br/> 19 _____<br/> 20 JOHN HOPKINS, Ph.D.<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p>                                                                                                                                                                    | <p>1 ERRATA SHEET<br/> 2 Priority-One Court Reporting/Veritext<br/> 3 718-983-1234<br/> 4 ASSIGNMENT NO. P1-2855811<br/> 5 CASE NAME: Weirick/Anderson/Cabibi/Brick v. Asbestos<br/> 6 DATE OF DEPOSITION: 4/11/2018<br/> 7 WITNESS' NAME: Dr John Hopkins<br/> 8<br/> 9<br/> 10<br/> 11<br/> 12<br/> 13<br/> 14<br/> 15<br/> 16<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p> <table border="1"> <thead> <tr> <th>PAGE/LINE(S)/</th> <th>CHANGE</th> <th>REASON</th> </tr> </thead> <tbody> <tr><td>6</td><td>/</td><td>/</td></tr> <tr><td>7</td><td>/</td><td>/</td></tr> <tr><td>8</td><td>/</td><td>/</td></tr> <tr><td>9</td><td>/</td><td>/</td></tr> <tr><td>10</td><td>/</td><td>/</td></tr> <tr><td>11</td><td>/</td><td>/</td></tr> <tr><td>12</td><td>/</td><td>/</td></tr> <tr><td>13</td><td>/</td><td>/</td></tr> <tr><td>14</td><td>/</td><td>/</td></tr> <tr><td>15</td><td>/</td><td>/</td></tr> <tr><td>16</td><td>/</td><td>/</td></tr> <tr><td>17</td><td>/</td><td>/</td></tr> <tr><td>18</td><td>/</td><td>/</td></tr> <tr><td>19</td><td>/</td><td>/</td></tr> <tr><td>20</td><td>/</td><td>/</td></tr> </tbody> </table> <p>Dr John Hopkins<br/> 21 (Notary not required in California)<br/> 22 SUBSCRIBED AND SWORN TO<br/> 23 BEFORE ME THIS _____ DAY<br/> 24 OF _____, 2018.<br/> 25<br/> 26<br/> 27<br/> 28<br/> 29<br/> 30<br/> 31<br/> 32<br/> 33<br/> 34<br/> 35<br/> 36<br/> 37<br/> 38<br/> 39<br/> 40<br/> 41<br/> 42<br/> 43<br/> 44<br/> 45<br/> 46<br/> 47<br/> 48<br/> 49<br/> 50<br/> 51<br/> 52<br/> 53<br/> 54<br/> 55<br/> 56<br/> 57<br/> 58<br/> 59<br/> 60<br/> 61<br/> 62<br/> 63<br/> 64<br/> 65<br/> 66<br/> 67<br/> 68<br/> 69<br/> 70<br/> 71<br/> 72<br/> 73<br/> 74<br/> 75<br/> 76<br/> 77<br/> 78<br/> 79<br/> 80<br/> 81<br/> 82<br/> 83<br/> 84<br/> 85<br/> 86<br/> 87<br/> 88<br/> 89<br/> 90<br/> 91<br/> 92<br/> 93<br/> 94<br/> 95<br/> 96<br/> 97<br/> 98<br/> 99<br/> 100<br/> 101<br/> 102<br/> 103<br/> 104<br/> 105<br/> 106<br/> 107<br/> 108<br/> 109<br/> 110<br/> 111<br/> 112<br/> 113<br/> 114<br/> 115<br/> 116<br/> 117<br/> 118<br/> 119<br/> 120<br/> 121<br/> 122<br/> 123<br/> 124<br/> 125<br/> 126<br/> 127<br/> 128<br/> 129<br/> 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# EXHIBIT H

7. Langer  
Letter



MOUNT SINAI SCHOOL OF MEDICINE  
of The City University of New York  
FIFTH AVENUE AND 100TH STREET NEW YORK, N.Y. 10029



Department of Community Medicine

November 10, 1971

Dr. Gavin Hildick-Smith  
Director of Clinical Research  
Johnson and Johnson  
Research Division  
New Brunswick, New Jersey

Dear Dr. Hildick-Smith:

I have in front of me a letter dated August 9, 1971 addressed to Dr. Selikoff indicating your wish to receive some information on the Tenovus sample that you so kindly lent to us. I have been putting off answering this letter not because I am a feisty devil so much as the fact that I lost the letter on my desk! I called your office last week. You were out and I feel that I would do as well to report to you in writing.

In respect to the Tenovus samples that were sent to us, we made the following observations. We did find some grains that resembled talc with the usual electron diffraction pattern consistent for a sheet silicate structure. Again, we have no definitive means of identifying the particle on the basis of its electron diffraction pattern in that many sheet silicates yield a similar array of spots. We assume that the particles were talc or, rather, were consistent with talc. We also got a few surprises in that we observed some chrysotile asbestos to be present in the tissue as well. We have been kicking this observation around the Laboratory for a while and we might consider a publication somewhere -- just a short note indicating that we have observed these materials present in the tissues.

We have also analyzed one of your talc samples in some detail. In addition to the normal platy talc present, we have observed many "fibrous talcs" as well. This fibrous talc material closely resembles normal platy talc but appears with a greater length aspect. Its terminations are prism terminations and

Dr. Gavin Hildick-Smith

November 10, 1971

Page Two

and the general characteristics under the electron microscope do indeed resemble normal talc. Electron diffraction on ~~these grains again yields~~ these grains again yields a talc pattern which is a very well-defined hexagonal array of spots. We also observed trace amounts of chrysotile asbestos only when the talc was sonified and markedly dispersed. The amounts of chrysotile are relatively small, occurring in amounts, we estimate, at less than .01%. The J & J baby talc is of quite high quality and as a matter of fact, in relation to the number of samples we have examined thus far, it is the "purest".

We just thought that we would pass this information along to you as our colleagues in scientific research and you may use it as you wish. Again, many thanks for giving us the samples and allowing us to look them over. Incidentally, I am very interested in obtaining some of your material called sodium sesquicitrate which has been bandied about as possessing a structure that is not unlike chrysotile. Do you think you could have one of your research boys send me some of this?

Again, many thanks, and if you need any further information, please don't hesitate to call on me.

Sincerely,



Arthur M. Langer  
Associate Professor  
Mineralogy

AML:1kh

**JNJ000259771**

**Metadata**

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| <b>AttachCount</b>     | 0                               | ORIGINAL |
| <b>BegAttach</b>       | JNJ 000259771                   | ORIGINAL |
| <b>Confidentiality</b> | N                               | ORIGINAL |
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| <b>EndAttach</b>       | JNJ 000259773                   | ORIGINAL |
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# EXHIBIT I

# UNIVERSITY OF MINNESOTA SPACE SCIENCE CENTER

ELECTRONICALLY FILED - 2026 Sep 29 12:04 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4006111



JOJO-MA2546-01282



## INVESTIGATION OF POSSIBLE ASBESTOS CONTAMINATIONS IN TALC SAMPLES

### SCANNING ELECTRON MICROSCOPE EXAMINATION

Specimens of powdered talc were received from Johnson & Johnson Co. and from McCrone Associates. Analysis of these samples using the scanning electron microscope was requested in order to determine the possible content of fibrous crysotile asbestos contained in the talc samples. The first lot of material examined was labeled by McCrone Associates Lewin.

The samples were mounted on one half inch aluminum electron microscope stubs with silverprint glue. The glue was first placed on the aluminum stub and the sample was then pressed to the surface of the wet silver print. A jet of pure Freon was used to remove excess talc from the surface. The specimens were then shadowed with a thin layer of carbon and gold providing a conductive path to the specimen stub. The stubs thus prepared were placed in the scanning electron microscope which was operated at 20 kilovolts electron beam energy and were examined at magnifications between 20 and 25,000 times. The initial effort was directed toward detection of the presence of fibrous morphologies in the basically sheet structured talc bodies. To this end crysotile asbestos specimens were prepared as outlined above and observed in the S.E.M. as illustrated in Figure 1.

To be noted, of course, is the highly fibrous structure as opposed to the layered structure of the talc bodies. The asbestos fiber can be seen to shred both at the ends and on occasion at the center of a fiber bundle giving an appearance not unlike rope but on a much magnified scale.

Having established the general appearance of asbestos, suitable samples were selected for examination in a scanning electron microscope. A magnification of 1,000 times seems quite adequate to pick up any appreciable fibrous morphology present within the talc sample. In order to make the survey as quantitative as possible, a grid of pictures was mapped on the surface consisting of five pictures on each side of

a square covering thus 25 squares at 1,000 times magnification. Numerous fibrous structures were observed during this examination of both the original Lewin material and the Shower to Shower material supplied by Johnson & Johnson. Examples of these micrographs are shown in the following figures. Figure 2 shows one such fibrous material which is in fact split on the end and is generally within the limits of possible diameter of an asbestos fiber. The general character of the split at the end, however, rather than being shredded, gives a somewhat more solid appearance indicative of an organic fiber such as wood. Figure 3 shows an area at the center which may possibly indicate an asbestos structure. Slight differences in character, however, exist. Although the rough appearance of this body is shredded, careful examination indicates that it is more than likely an edge on view of a talc structure.

Figure 4 shows another such structure. In addition, however, at the center of the micrograph indicated by the arrow, is a small broken fiber which is too small to identify for certain as either talc or asbestos. Other such examples are seen in Figures 5 and 6. These may probably be discounted on the basis of their very short length. One such fiber which is sufficiently long to be suspect is seen in Figure 7, taken at 500 times magnification. These are, however, seldom encountered. Figure 8 and 9 show higher magnification pictures of such fibers taken at 5,000 and 10,000 times respectively. These cannot be entirely discounted although the net volume involved, even if they are asbestos fibers, is extremely small.

Figure 11 shows an example in the lower right hand corner of a fiber which is almost certainly wood. Asbestos cannot possibly take such a small radius of curvature without being entirely shredded. One rather curious fiber found during this investigation is shown in Figure 12. It is roughly the proper size and length but shows a most curious end structure. This is more than likely a talc body which has encountered an on end collision and become shredded during its processing. No evidence of microstructure indicative of asbestos was found.



### CHEMICAL EXAMINATION OF FIBERS

Considering that little could be categorically determined to be asbestos in the material based solely upon morphology, efforts were made to use microchemical analyses of such fibers in the scanning electron microscope. These efforts involve the use of a non-dispersive X-ray detector, which analyzes the X-rays energy resulting from electron beam impingement. Areas as small as a 1,000 Angstrom fiber can be analyzed under suitable conditions. Figure 15 and 16 show traces of an oscilloscope picture in which the energy of X-rays is displayed along the horizontal scale and the number of X-rays arriving at the counting detector is displayed on the vertical scale. In Figure 15 an asbestos fiber was used as an object for X-ray analysis by reducing the electron scan image to a line which was aligned along the asbestos fiber. The asbestos fiber was imbedded in the talc matrix and was in fact part of the doped specimen. A number of elements can be identified from this trace. The ones which are certain to be part of the specimen itself rather than artifacts of the instrument are magnesium and silicon. This pattern was used as a standard and compared to other counts taken from suspect fibers in other fields of view. Efforts were made to maintain the geometry the same as that in the standard. An example of such an effort is seen in Figure 16. No strong similarities could, however, be shown in any fiber sample.

### TRANSMISSION ELECTRON MICROSCOPY

Considering the lack of success in obtaining definitive results by scanning electron microscopy transmission electron microscopy was tried. Specimens were mounted by standard techniques of swirl dispersion on electron microscope grids covered with a formvar film. A large number of grids were examined and numerous examples of fibrous material were seen. Of the large number of grids examined, three examples of fibers which upon examination by electron diffraction could be classified as likely candidates for chrysotile asbestos in the shower to shower material and one example was found in the Lewin material. These are shown in Figure 16, 17, 18

and 19. In Figures 17a and 18a, electron micrographs of the transmission type show the typical stranded appearance of crysotile asbestos. In each case, Figures 16 through 19, the diffraction pattern is closely similar to that indexed for crysotile asbestos. Figure 18a is a double exposure of the diffraction pattern and the bright field micrograph. In order to avoid confusion as to the area used in diffraction, the bright spot at the center of the micrograph is a delineation of the area used in diffraction. The diffraction pattern, however, is rotated by roughly 40° from the axis of the specimen. It is felt therefore that crysotile asbestos does exist in the specimens of shower to shower and Lewin supplied to this laboratory. It is, however, further concluded that, on the basis of samples supplied to us, transmission electron microscopy can only find a total material by volume of less than 1/100 of 1 percent crysotile asbestos in the shower to shower material and less in the Lewin material.

#### CONCLUSIONS

The extensive investigation reported here must conclude that the scanning electron microscope by itself is unable to make distinctions between asbestos fibers within samples of talc and other such fibers of wood, wool, and talc fibers. Only the shredded appearance (not found in any specimen examined other than that purposely doped with asbestos) is the sole basis for assuming the existence of asbestos in the specimens. Efforts to use non-dispersive X-ray detection yielded a negative result, and could not be used as well. Transmission electron microscopy shows less than 1/100th of 1 percent asbestos in the material given to us. Neither scanning microscopy alone or in conjunction with microchemical analysis can be reasonably expected to prove the existence of crysotile asbestos in talc.



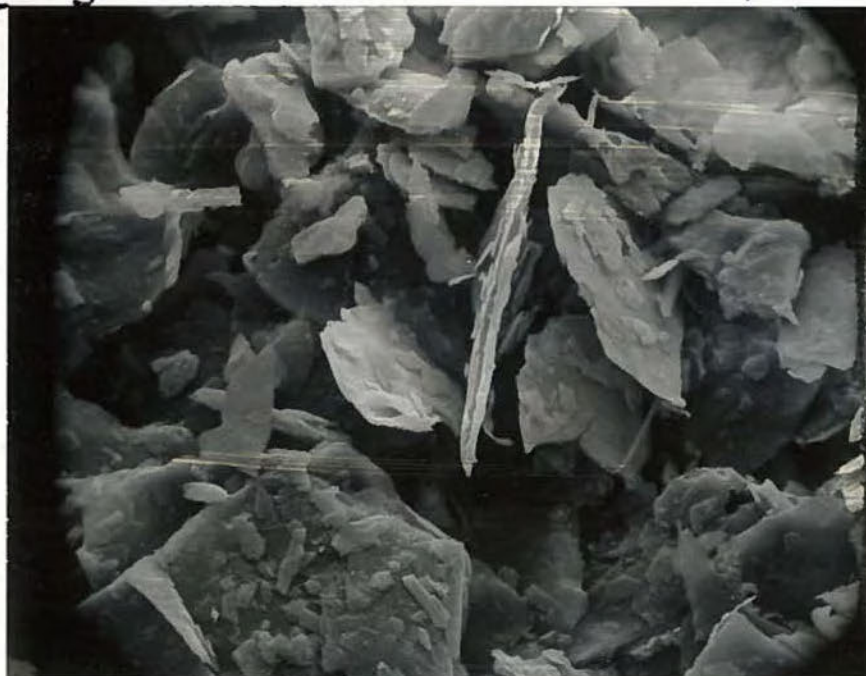






Figure 3

9-13-4-C



1,000X











Figure 6-B

9-14-27A



1,000 X

STS



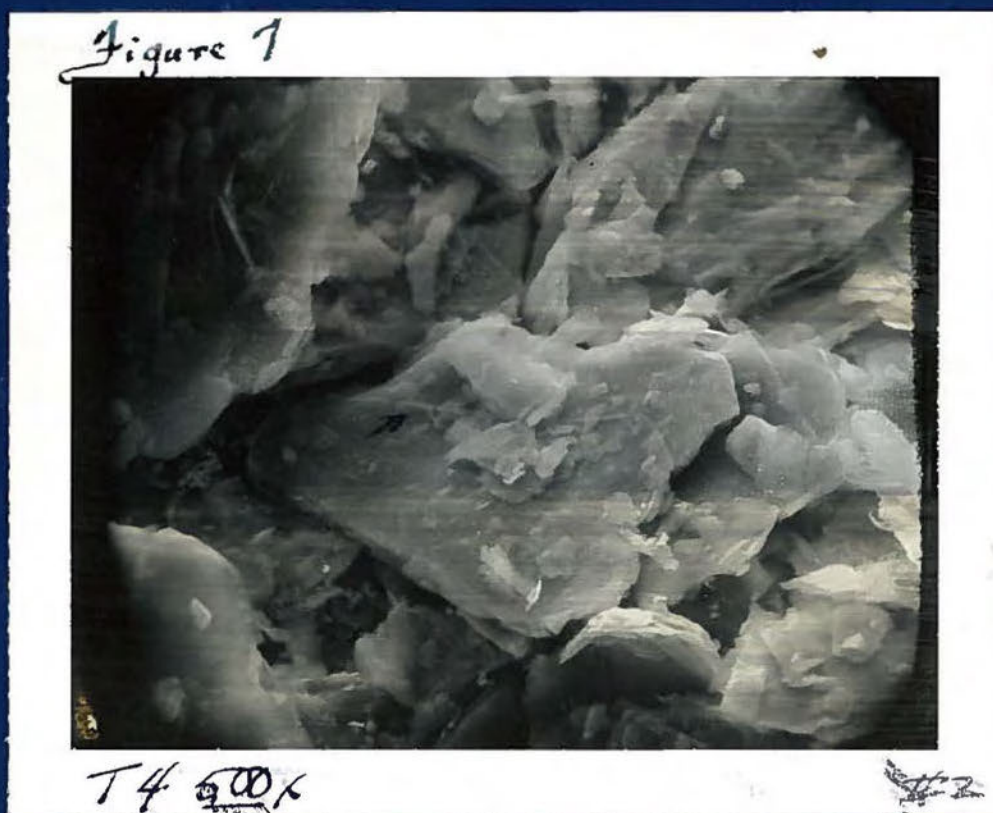


Figure 8

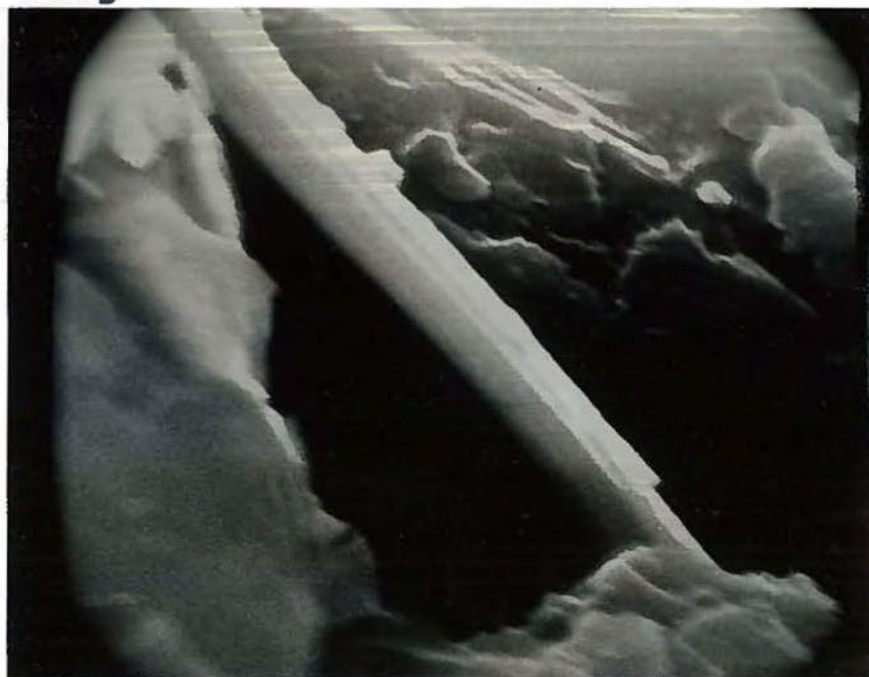


JE 5K

#3



Figure 9



10KX

9-44 #3





Figure 12



5K TG Count 2

Figure 13



12KX 1% doped Jet.

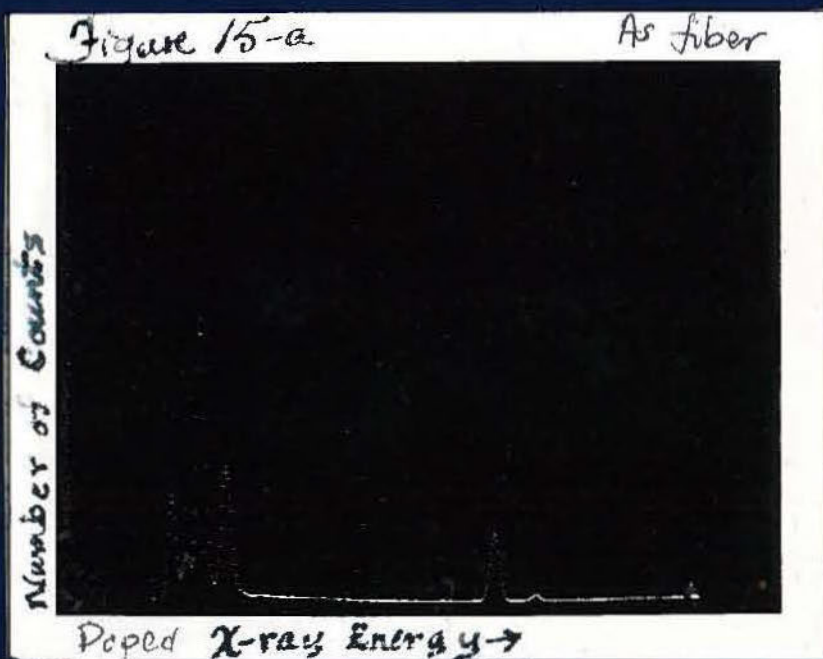


Figure 14



1% doped 1000x

1000x





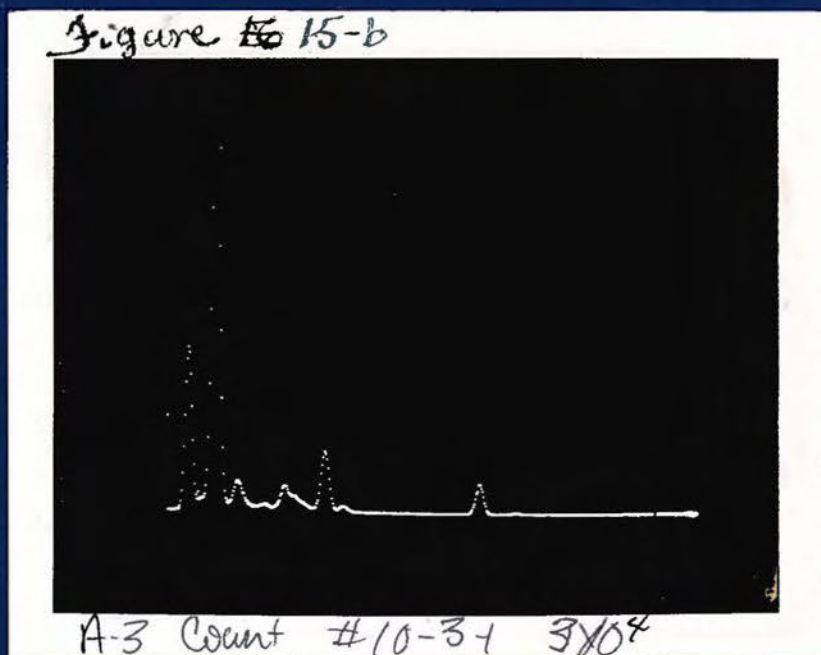


Figure 46



87051  
Grid 52









Figure 18-a 4,800X



SxS 3  
Grid 3

Note diff. Pat dbl ex.



Figure 19



Learn Grid 2



Tale Figure 20



Tale standard form  
Lecwin Grid 7

and 19. In Figures 17a and 18a, electron micrographs of the transmission type show the typical stranded appearance of crysotile asbestos. In each case, Figures 16 through 19, the diffraction pattern is closely similar to that indexed for crysotile asbestos. Figure 18a is a double exposure of the diffraction pattern and the bright field micrograph. In order to avoid confusion as to the area used in diffraction, the bright spot at the center of the micrograph is a delineation of the area used in diffraction. The diffraction pattern, however, is rotated by roughly 40° from the axis of the specimen. It is felt therefore that crysotile asbestos does exist in the specimens of shower to shower and Lewin supplied to this laboratory. It is, however, further concluded that, on the basis of samples supplied to us, transmission electron microscopy can only find a total material by volume of less than 1/100 of 1 percent crysotile asbestos in the shower to shower material and less in the Lewin material.

#### CONCLUSIONS

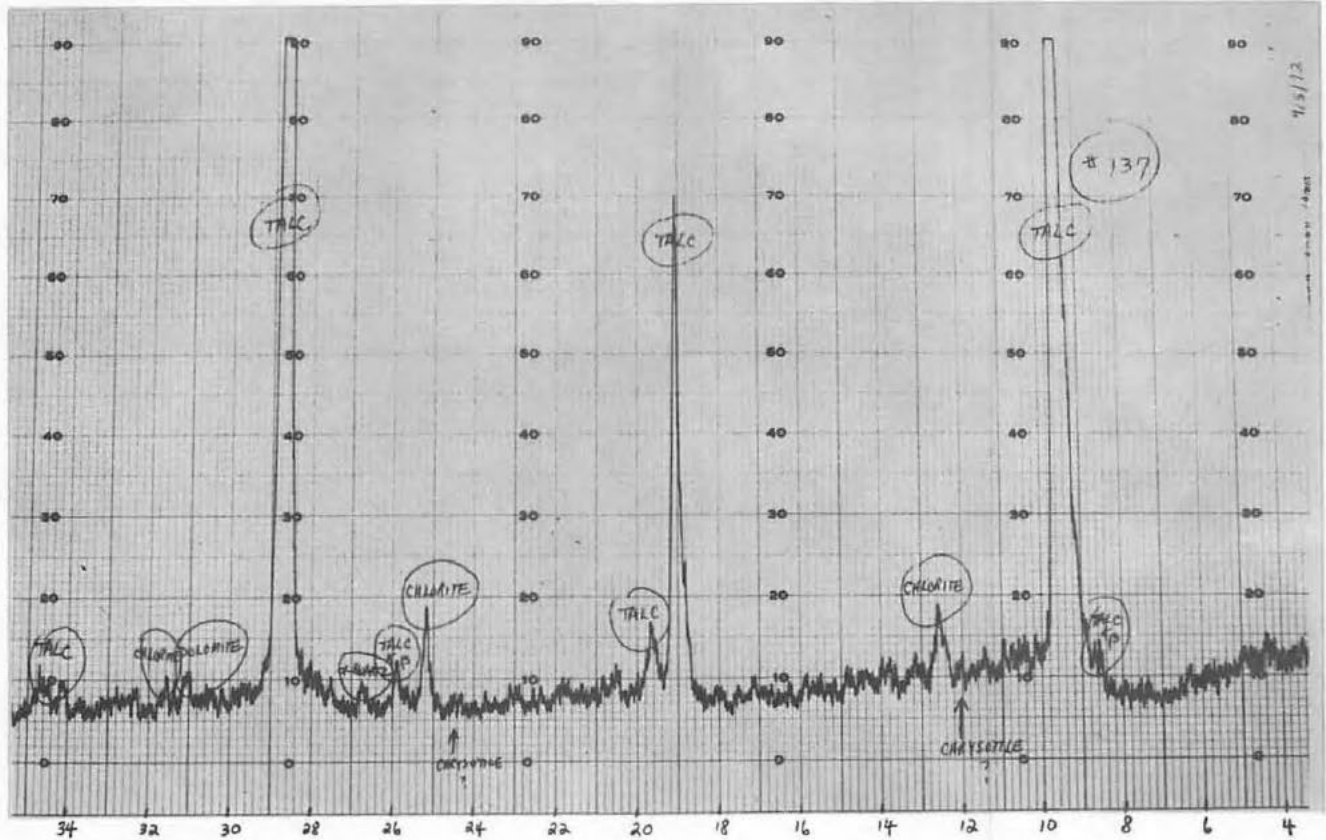
The extensive investigation reported here must conclude that the scanning electron microscope by itself is unable to make distinctions between asbestos fibers within samples of talc and other such fibers of wood, wool, and talc fibers. Only the shredded appearance (not found in any specimen examined other than that purposely doped with asbestos) is the sole basis for assuming the existence of asbestos in the specimens. Efforts to use non-dispersive X-ray detection yielded a negative result, and could not be used as well. Transmission electron microscopy shows less than 1/100th of 1 percent asbestos in the material given to us. Neither scanning microscopy alone or in conjunction with microchemical analysis can be reasonably expected to prove the existence of crysotile asbestos in talc.



SAMPLE NO. 137.

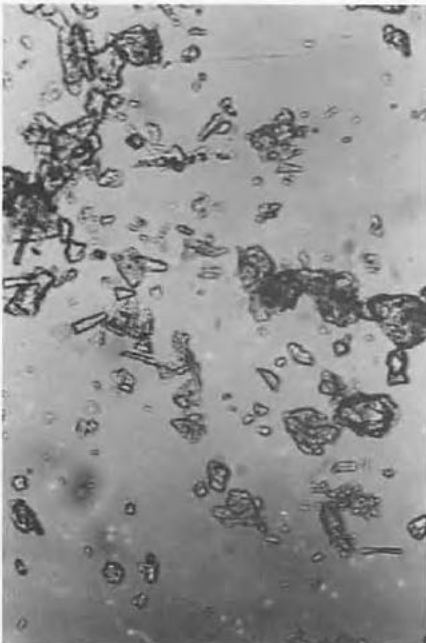
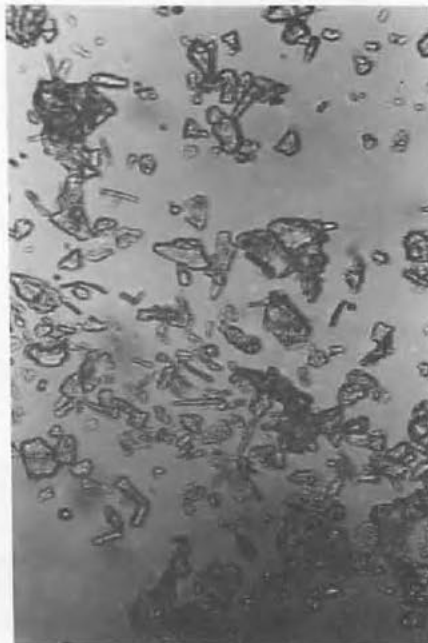
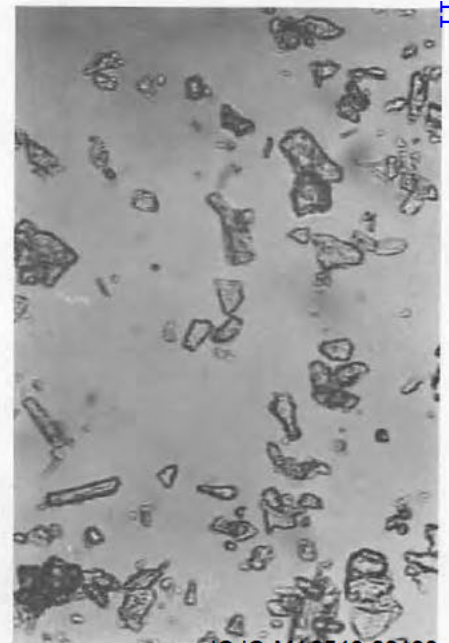
X-RAY DIFFRACTION PATTERN

Let No  
0709 X

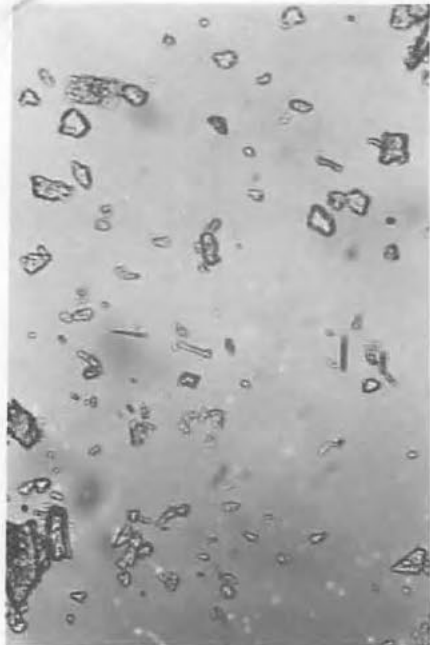
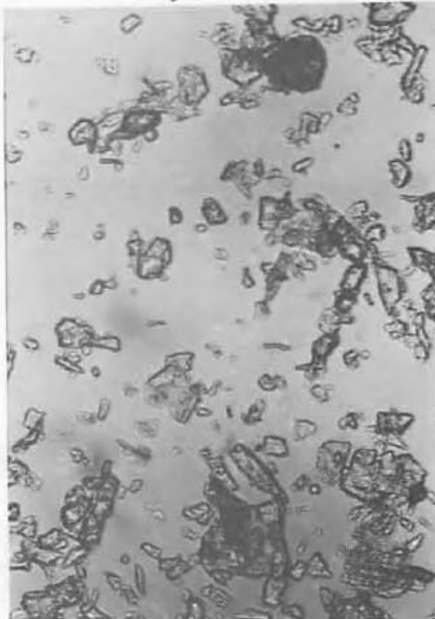
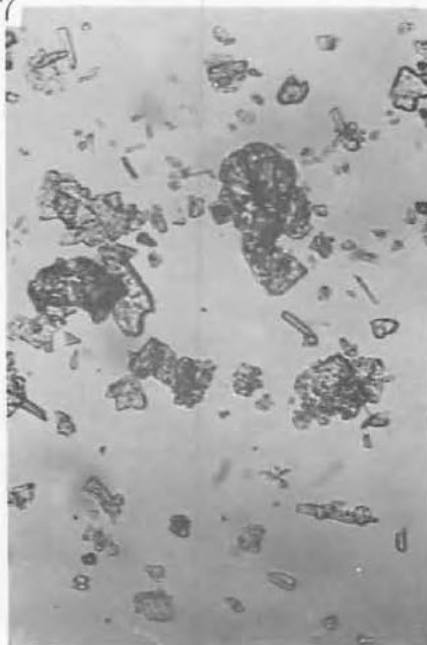
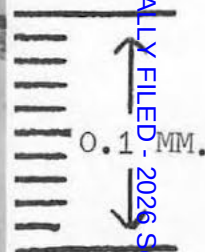
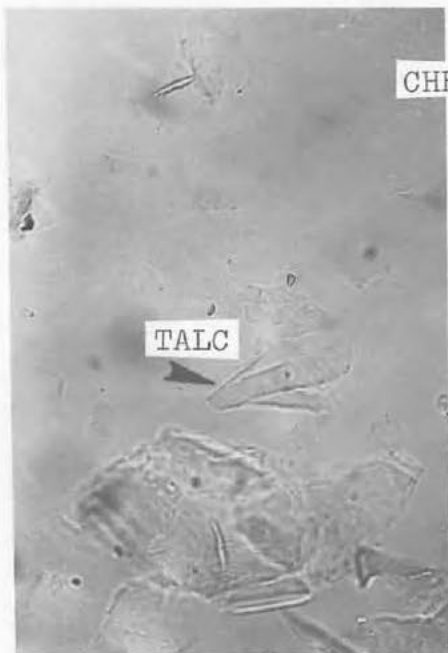


Analytical Results: TALC 89%; CHLORITE 4%; α-QUARTZ 3%; DOLOMITE 2%  
CHRYSOTILE 2%

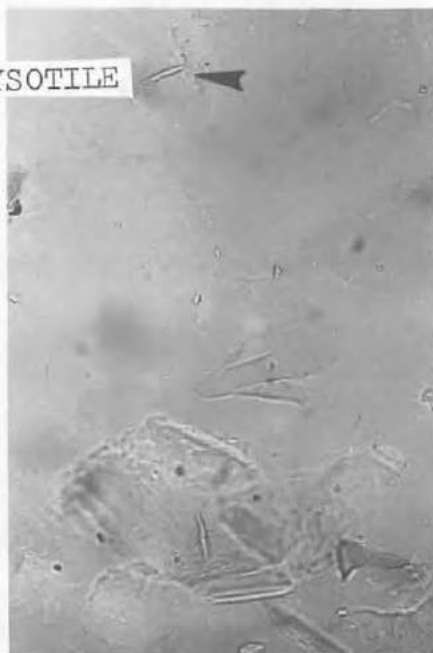
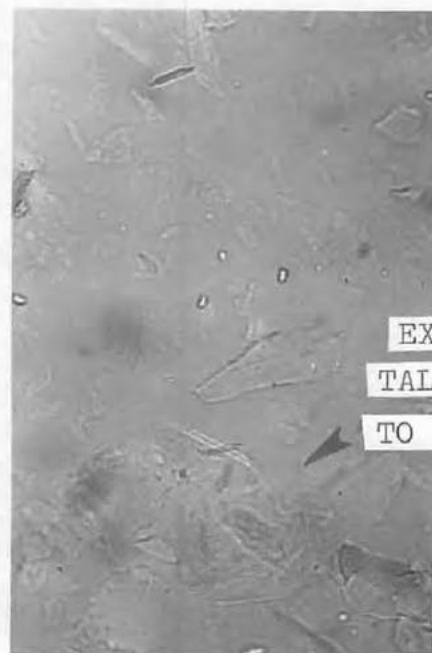
Below: PHOTOMICROGRAPHS OF DRY POWDER NO. 137



JOJO-MA2546-00138



CHRYSTILE

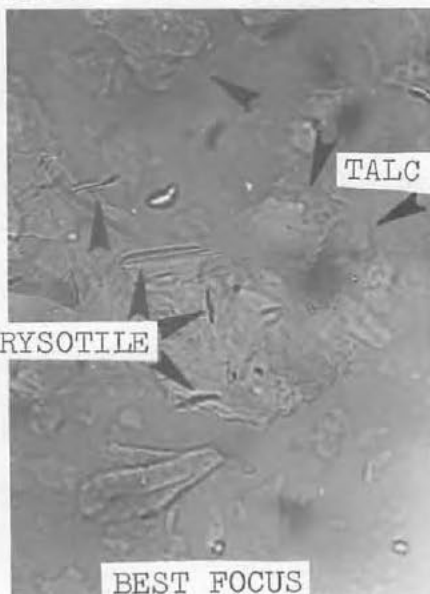


EXAMPLES OF  
TALC ALTERING  
TO CHRYSTILE

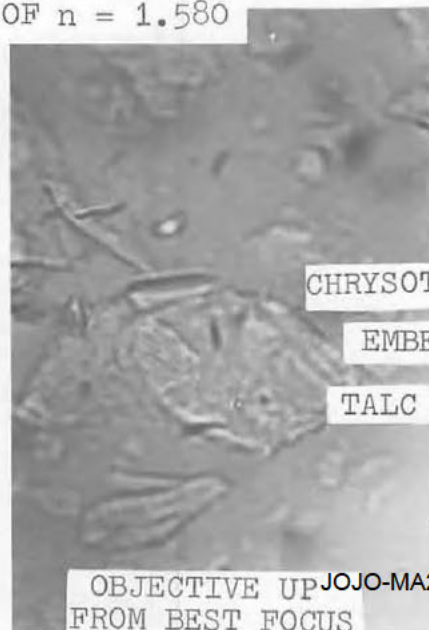
SAMPLE NO. 137 IN IMMERSION LIQUID OF  $n = 1.580$



OBJECTIVE DOWN  
FROM BEST FOCUS



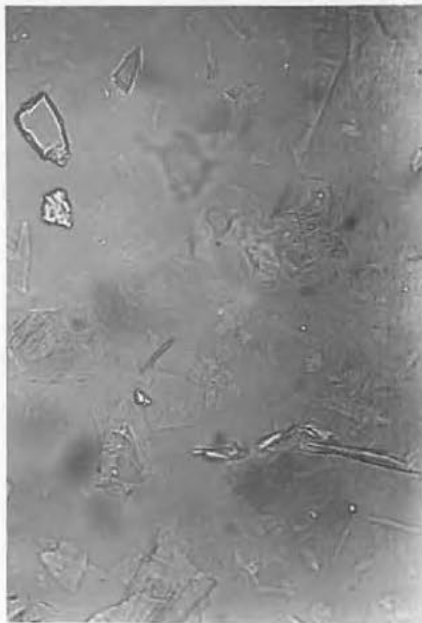
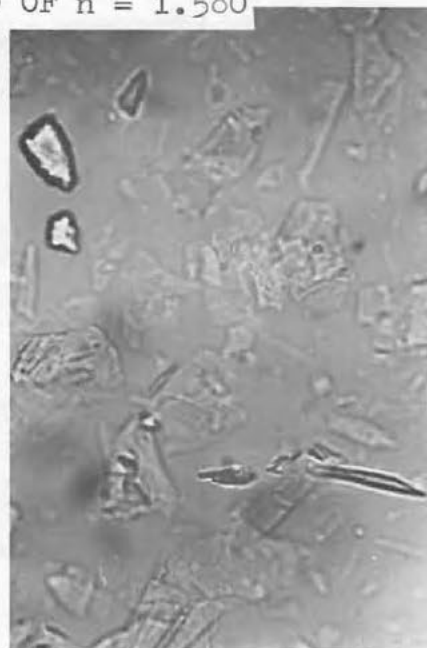
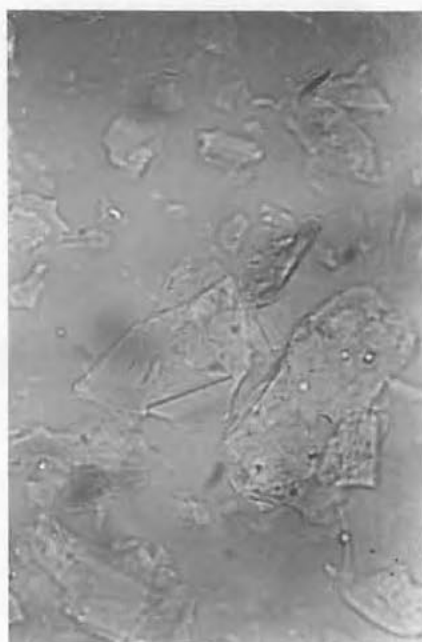
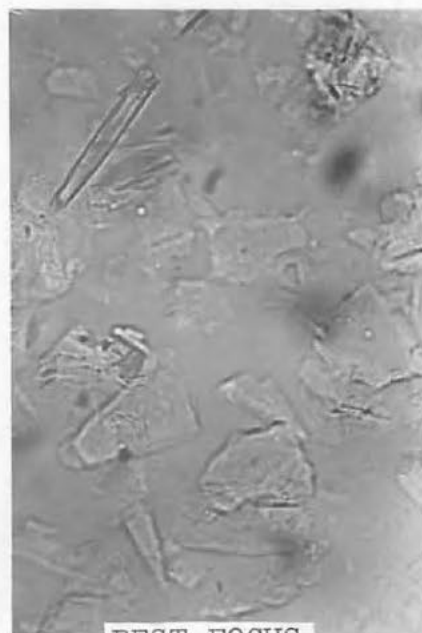
BEST FOCUS



OBJECTIVE UP  
FROM BEST FOCUS

CHRYSTILE FIBERS  
EMBEDDED IN  
TALC PARTICLES





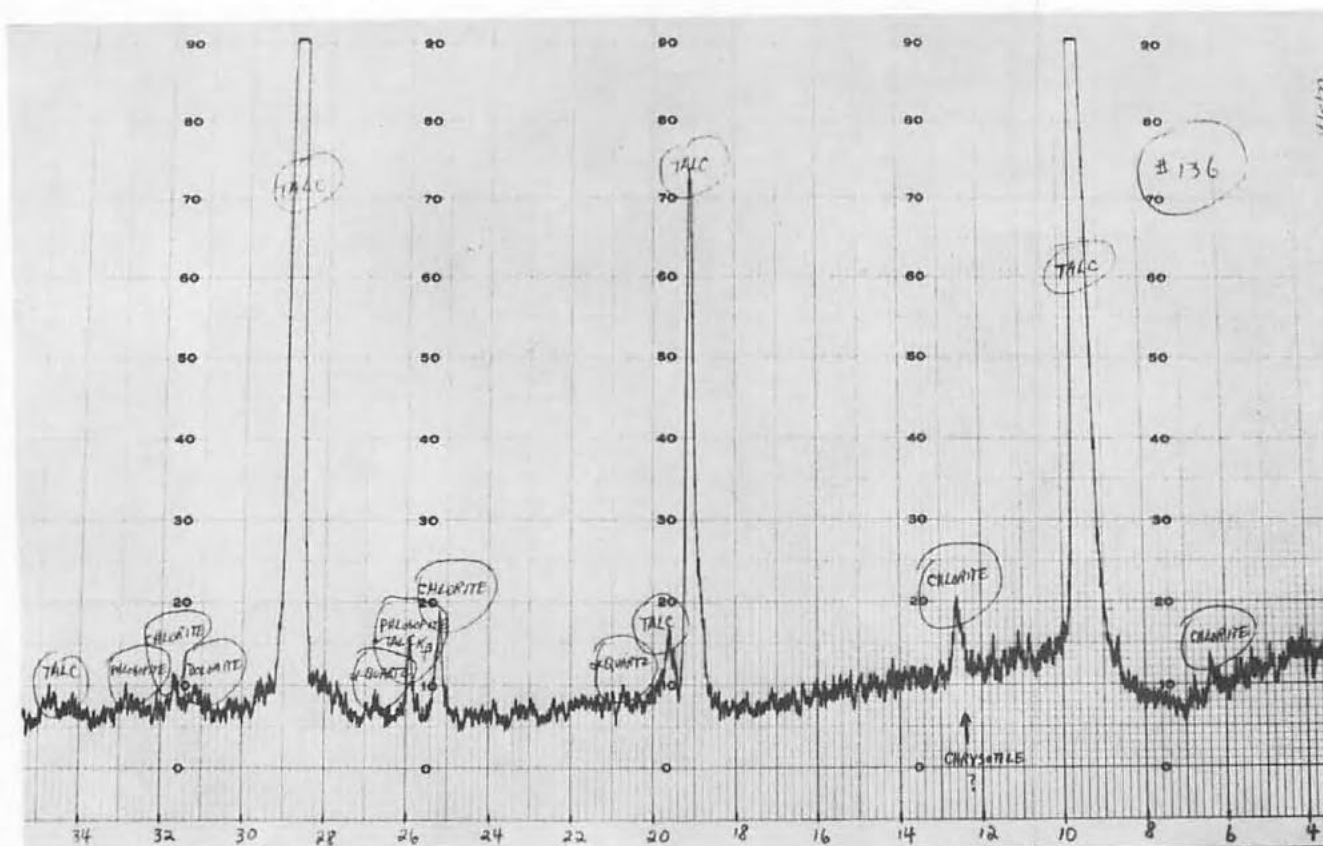
OBJECTIVE DOWN  
FROM BEST FOCUS

BEST FOCUS

OBJECTIVE UP  
FROM BEST FOCUS

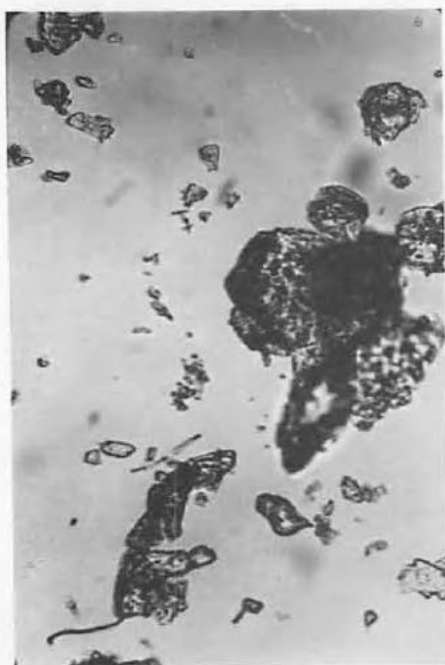
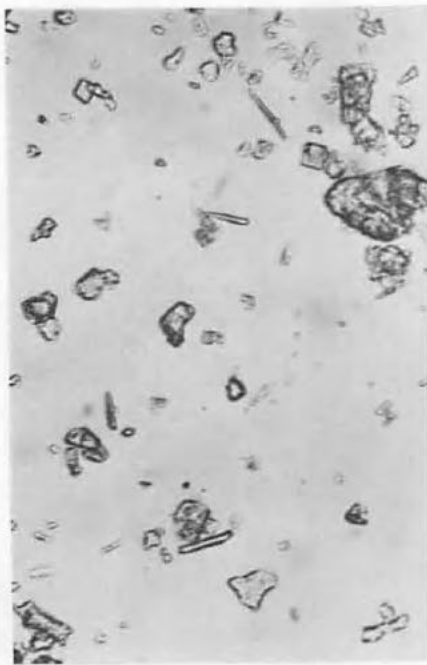
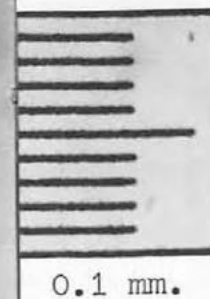
SAMPLE NO. 136.

X-RAY DIFFRACTION PATTERN

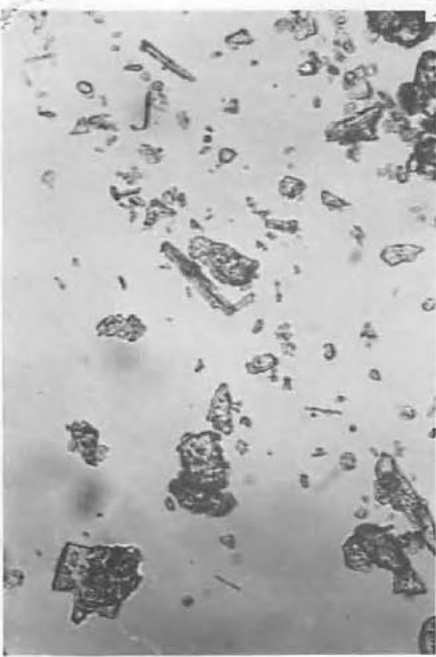
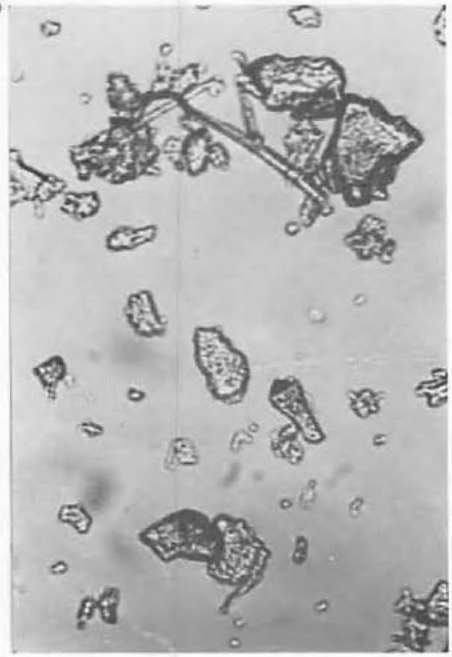
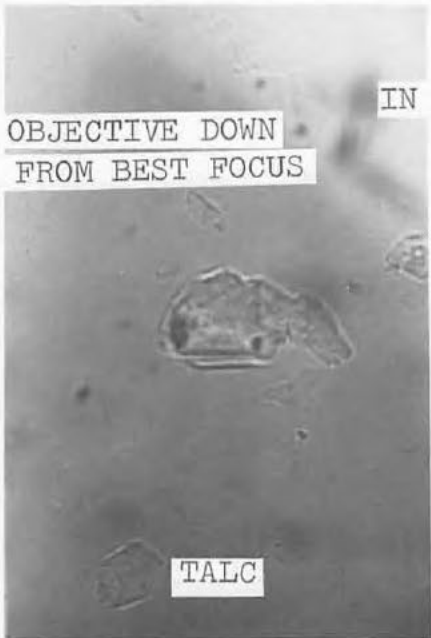


Analytical Results: TALC 87%; CHLORITE 4%; PHLOGOPITE 3%;  
 $\alpha$ -QUARTZ 2%; DOLOMITE 2%; CHRYSTILE 2%

PHOTOMICROGRAPHS OF DRY POWDER NO. 136







OBJECTIVE DOWN  
FROM BEST FOCUS

TALC



BEST FOCUS



OBJECTIVE UP  
FROM BEST FOCUS

TALC  
ALTERING  
TO  
CHRYSTILE



STAGE AT 0°



WITH CROSSED POLARS,

STAGE AT 45°



STAGE AT 90°

CHRYSTILE

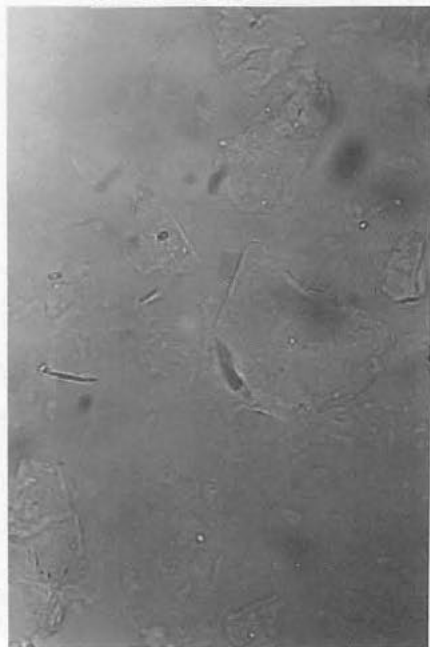
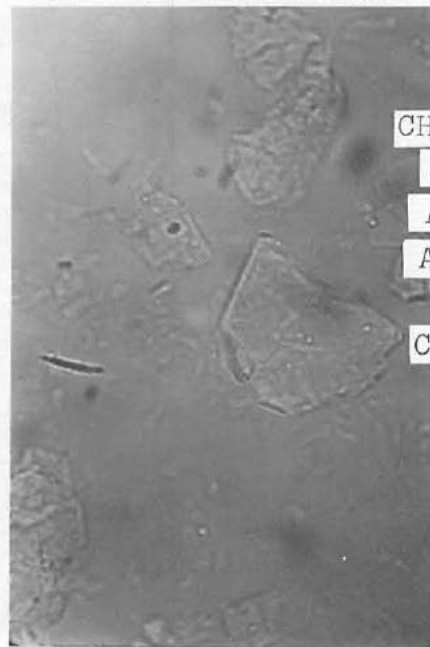
TALC



DOWN FROM BEST FOCUS

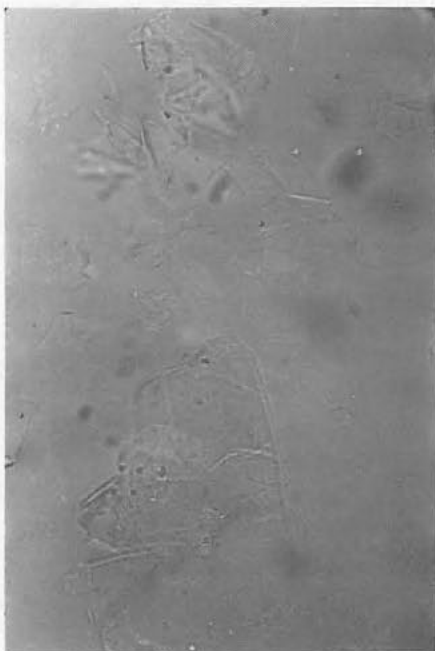
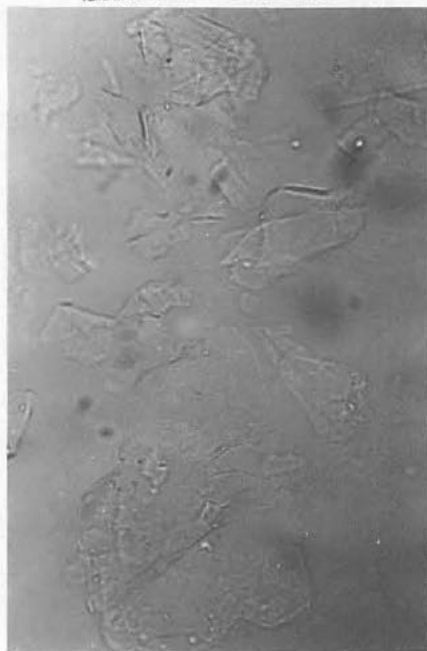
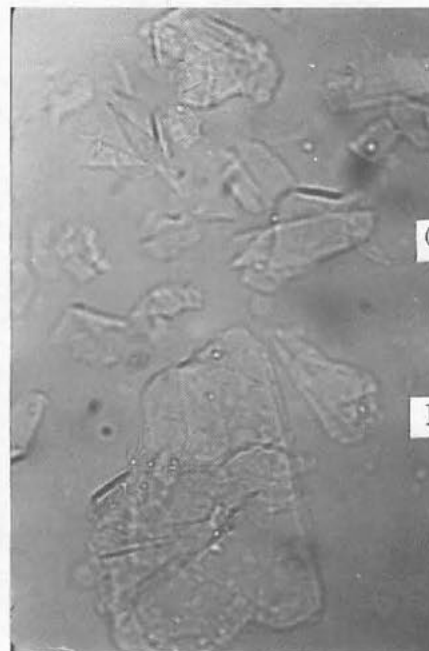
BEST FOCUS

UP FROM BEST FOCUS

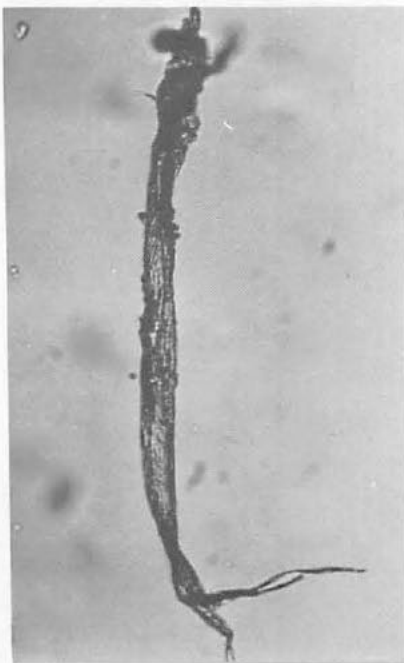
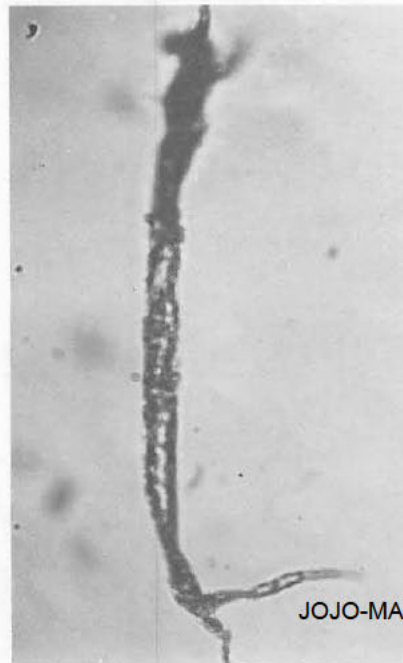


CHRYSTOTILE  
FIBERS  
AND TAILS  
ALTERING  
TO  
CHLORITE

SAMPLE NO. 136



CHRYSTOTILE  
FIBERS  
WITHIN  
TALC  
PARTICLES



ORGANIC  
FIBER

JOJO-MA2546-00143

ELECTRONICALLY FILED - 2026 Sep 29 12:04 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4006111



## Transmission Electron Microscope

Thos. Hutchinson, Univ. of Minn.  
Particle settling in a swirl tube was used for obtaining the dispersion of "tale" on 200 mesh microscope grids. Lewin and Shower to shower were collected.

### Lewin

Roughly 900 grid squares were scanned in the T.E.M. at moderate magnification. Five fibrous particles were found which gave electron diffraction patterns unmistakably ~~crysotile~~ ~~asbestos~~. One highly suspect particle gave a noncrysotile diffraction pattern. The particles were generally ~~one~~ less than 30 microns in length and had the typical fiber structure. No bundle branch and join was however seen.

### Shower to Shower.

~~Approximately~~ Approximately 2100 grid squares were examined. Numerous examples of fibrous structures were seen. Electron diffraction of these fibers showed no resemblance to ~~the~~ ~~crysotile~~ ~~asbestos~~ patterns. Three clear examples were found of serpentine material and which gave perfect ~~crysotile~~ patterns.





Two long fibers were found singly and two others were in the same grid square and apparently in close association with a tale structure. These fibers showed clear ~~fibrous~~<sup>filamented</sup> structure at high magnification.

### Total Concentration Calculation (Shaver to Shaver)

Prints of the micrographs were cut to estimate the relative ~~area~~ area of asbestos and ~~non~~ talc ~~areas~~. One fifth of one square contained inconvertible asbestos, while approximately 1550 squares were covered with talc. This yielded an area percentage of one part in 7500 or roughly one one hundredth of one percent.

The total concentration of all "fibers" was near .one percent.

Summary: Neither scanning microscopy alone or aided by X-ray energy dispersive element detection can unequivocally identify erosive asbestos in concentration of a few percent. No elemental tag exists to discriminate as ~~fibers~~ from other fibrous minerals present. T.E.M. with electron diffraction shows less than ~~0.01%~~ .01%  
This E Hutchinson, Univ of Minnesota

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

|                                |   |                        |
|--------------------------------|---|------------------------|
| IN RE: ALL ASBESTOS LITIGATION | ) |                        |
| FILED BY MAUNE RAICHLE         | ) |                        |
| HARTLEY FRENCH & MUDD, LLC     | ) |                        |
|                                | ) |                        |
| vs.                            | ) | Case No. 2016 L 999001 |
|                                | ) |                        |
| THE MCCRONE GROUP, INC.,       | ) |                        |
|                                | ) |                        |
| 3d Party non-defendant.        | ) |                        |

**BUSINESS RECORDS AFFIDAVIT**

BEFORE ME, the undersigned authority, personally appeared the undersigned affiant who, being duly sworn, deposed as follows:

My name is David A. Wiley. I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated:

1. I am the President and Chief Operating Officer of the McCrone Group, Inc. ("McCrone"). As such, I have knowledge of McCrone's recordkeeping practices.
2. On May 17, 2017, McCrone was served a Subpoena Duces Tecum in the above-referenced case.
3. In response to said Subpoena Duces Tecum, McCrone employees undertook a search of McCrone's records for responsive documents.
4. In July 2017, McCrone produced the responsive documents to counsel at Maune Raichle Hartley French & Mudd, LLC. The true and accurate documents comprising McCrone's response ("the Records") have been bates numbered as follows:
  - a. AVON-MA02803-0001 to -0020



- b. AVON-MA02811-0001 to 0009
- c. AVON-MA03988-0001 to 0038
- d. AVON-MA03072-0001 to 0051
- e. AVON-MA03143-0001 to 0806
- f. AVON-MA10318-0001 to 0102
- g. AVON-MA10996-0001 to 0015
- h. AVON-MA20407-0001 to 0015
- i. AVON-MA27677-0001 to 0188
- j. AVON-MA29944-0001 to 0018
- k. AVON-MA30572-0001 to 0023
- l. AVON-MA31088-0001 to 0046
- m. AVON-MA31976-0001 to 0034
- n. AVON-MA34258-0001 to 0020
- o. AVON-MA35161-0001 to 0028
- p. AVON-MA60416-0001 to 0014
- q. COLG-MA03805-0001 to 0014
- r. COLG-MA03884-0001 to 0022
- s. COLG-MA04426-0001 to 0013
- t. COLG-MA05259-0001 to 0059
- u. COLG-MA05500-0001 to 0220
- v. COLG-MA07673-0001 to 0020
- w. COLG-MA11871-0001 to 0010
- x. COLG-MA12917-0001 to 0007
- y. CYPR-MA08802-0001 to 0020
- z. CYPR-MA09863-0001 to 0012
- aa. CYPR-MA11173-0001 to 0004
- bb. CYPR-MA11196-0001 to 0007
- cc. CYPR-MA22358-0001 to 0017
- dd. CYPR-MA23032-0001 to 0018
- ee. CYPR-MA23252-0001 to 0023
- ff. CYPR-MA60281-0001 to 0145
- gg. CYPR-MA60352-0001 to 0082
- hh. CYRE-MA05392-0001 to 0010
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 vv.CYWM-MA60562-0001 to 0019  
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 yy.DANA-MA13107-0001 to 0015  
 zz. ENGE-MA03660-0001 to 0016  
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 hhh. JOJOMA1454-0001 to 0004  
 iii. JOJOMA2330-0001 to 0108  
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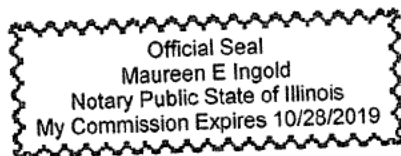
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 xxxx. LUZE-MA30976-0001 to 0022  
 yyyy. LUZE-MA38305-0001 to 0043  
 zzzz. LUZE-MA60583-0001 to 0015  
 aaaa. LUZE-MA60591-0001 to 0020  
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 hhhhh. RTVAND-MA06917-0001 to 0034  
 iiiii. RTVAND-MA22971-0001 to 0286  
 jjjjj. RTVAND-MA60569-0001 to 0009  
 kkkkk. RTVAND-MA60597-0001 to 0191  
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 mmmmm. WHIT-MA08683-0001 to 0017  
 nnnnn. WIND-MA04055-0001 to 0589  
 ooooo. WIND-MA10764-0001 to 0005  
 ppppp. WIND-MA11486-0001 to 0015  
 qqqqq. WIND-MA11951-0001 to 0030

rrrrr. WIND-MA15602-0001 to 0009  
 sssss. WIND-MA15828-0001 to 0008

5. Each document in the Records was individually: (a) kept in the course of a regularly conducted activity of McCrone, with the making of said documents being a regular practice of McCrone; and (b) made at or near the time by (or from information transmitted by) someone with knowledge. The Records are the original or exact duplicates of the originals.

DAW 14 SEP 2017  
 David A. Wiley

In Witness whereof, I have hereunto subscribed my name and affixed my official seal this 14th day of September, 2017.



Maureen E Ingold  
 Notary Public

My Commission expires: 10/28/2019

# EXHIBIT J



Meeting Date: February 4, 1975  
Release Date: February 26, 1975

MEETING NOTES OF CTFA TALC SUBCOMMITTEE

PRESENT:

Mr. George Sandland, Chairman  
Mr. Salvatore DiBianca  
Dr. George Cohen  
Dr. Allan Harvey  
Mr. George Lee  
Dr. F. Robert Rolle  
Dr. John Schelz  
Mr. Joseph Simko  
Dr. John Travers

Bristol-Myers Products  
Mennen Co.  
Bristol-Myers Products  
R. T. Vanderbilt  
Johnson & Johnson  
Johnson & Johnson  
Johnson & Johnson  
Colgate-Palmolive  
Avon Products

COPY:

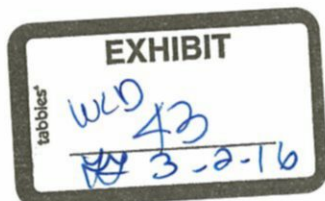
Dr. Murray Berdick  
Dr. Christopher Costello  
Mr. Ray Kraumes  
Mr. Fred Roesch  
Mr. Harold Stanley, Jr.  
Dr. C. S. Thompson  
Mr. Ronald Yakupcin

Chesebrough-Ponds  
Colgate-Palmolive  
Whittaker, Clark & Daniels  
Whittaker, Clark & Daniels  
Pfizer  
R. T. Vanderbilt  
Kolmar Laboratories

CC: Members of Standard Committee

Ms. Anita Curry  
Dr. Norman Estrin  
Dr. John Menkart  
Mr. Eugene Lambert

The meeting was held in the Technical Services Conference Room  
at Bristol-Myers Products, 225 Long Avenue, Hillside, N. J.



WCD000067

Jack Travers reported that NIOSH has proposed a revised (lower) TLV of 50 mcg/cubic meter for crystalline silica.

Bob Rolle described the latest results of Round Robin #3 using the CTFA Proposed Optical Microscope Procedure For Detection of Chrysotile in Talc. This is the method intended to be used as a back-up to the DTA method, since DTA can give a false positive for chrysotile when non fibrous antigorite is present. Unfortunately, there was disagreement among 3 very capable investigators, McCrone Associates, Harold Stanley of Pfizer and Dave Hamer of Johnson & Johnson.

It was agreed, however, that chrysotile is never found in cosmetic talcs, based on numerous analyses by several investigators. The only discoverer of chrysotile in cosmetic talcs has been Professor Lewin, and his results have been refuted in a repeat testing of the same samples by John Stuart at FDA.

The committee concurred, therefore, that our only courses of action are either to rely only on DTA by itself (without a back-up procedure), or else, based on the wealth of data available, eliminate the need for a chrysotile specification in cosmetic talc. Either way, we are confident at this point, that chrysotile won't be found and simply is not present in cosmetic talc.

We are still awaiting additional DTA results on talc samples (some spiked) which were sent to Colgate-Palmolive, Mennen, Pfizer, and Whittaker Clark & Daniels. In addition, Jack Travers has submitted a set of samples to John Reffner (V. of Comm) for DTA analysis.

Jack Schelz described an inexpensive DTA unit sold by Columbia Scientific Industries costing \$3350 without a recorder and about \$4600 with a recorder. This instrument was evaluated by Dr. Schelz and was found to be capable of detecting serpentine minerals above the 0.5% w/w level in talc, when used according to the proposed CTFA test method.

It was agreed that we include in the procedure for chrysotile, the latest definition of a fiber as published by OSHA in Field Information Memorandum #74-92, which was sent to OSHA Assistant Regional Directors and Area Directors. This memorandum states that:

"In order to be considered asbestiform or fibrous the following criteria will be used by the Salt Lake City Laboratory of OSHA,

- 2 -

- A. Particles must appear to be fibrous, rather than as crystals or slivers.
- B. The maximum diameter of a fiber to be counted is 3 microns.
- C. The maximum length of a fiber to be counted is 30 microns.
- D. The length to width ratio must be 5 or more to 1, that is, 5 times or more longer than wide.
- E. The separate or individual fibers must contain fibrils or the "bundle of sticks" effect, unless they are at a non-divisible stage. A fibril cannot be subdivided and would be counted, if it meets the other criteria. The electron microscope may be used to prove the fibrous nature of the particles. The length to width ratios of 5 or more to 1 is not meant to imply that other particles are not hazardous."

The directive states at the end that the above guidance is temporary and may change as a result of findings from an on-going NIOSH study on this subject.

A CTFA Talc Task Force comprised of Dr. Berdick, Dr. Estrin (CTFA), Mr. Lee, Dr. Rolle and Mr. Sandland will meet with Dr. Robert Schaffner, Mr. Eiermann and their designated personnel at FDA on Friday, February 7, 1975. It is planned to propose the 0.5 to 1.0% limit for each fibrous tremolite and chrysotile in cosmetic talc. Our CTFA Task Force developed methodology will be submitted in latest form as part of the proposal. A preliminary meeting at CTFA Headquarters will be held in the morning and the meeting with FDA is scheduled at 1:00 P.M.

A report of this meeting will be submitted to the members of the CTFA Talc Subcommittee.

Allan Harvey reported that he will attend a meeting on Tuesday, February 11, 1975 which has been called by Dr. Raymond E. Shapiro of FDA who is heading up a Subcommittee on Asbestos Protocols. This subcommittee was assigned the job of reviewing all existing data with respect to the biological effects of orally administered asbestos, with particular reference to carcinogenesis, and if necessary of

- 3 -

developing appropriate protocols for studies to elaborate on any data deficiencies in this area.

At the meeting of February 11th, the subcommittee members will discuss a working draft which has been furnished to them to provide a basis for comment and discussion.

A paper entitled "Is Short-Fibered Asbestos Dust a Biological Hazard?" by Paul Gross, M.D., Charleston, S. C. was discussed. Here Gross states there is evidence that asbestos particles which are submicroscopic in size (<5 microns) elicit only a macrophage reaction in the lungs of monkeys. Similar results resulted in several other animals including rats and hamsters when submicroscopic asbestos was injected intratracheally and intra-abdominally.

There being no further business, the meeting was adjourned.

  
G. W. Sandland  
Chairman, CTFA Talc Subcommittee

# EXHIBIT K



Johnson &amp; Johnson

BABY PRODUCTS COMPANY

NEW BRUNSWICK, N. J. 08903

Dr. N. F. Estrin  
C.T.F.A.

-2-

March 15, 1976

March 15, 1976

Dr. Norman F. Estrin  
Vice President - Science  
Cosmetic, Toiletries, and  
Fragrance Association  
1133 15th Street, N.W.  
Washington, D.C. 20005

Re: Examination for Asbestos in Talc

Dear Dr. Estrin:

The talc which is used by Johnson & Johnson is solely derived from its own mine in Vermont, where the ore is mined selectively and then beneficiated by the process of flotation.

Shipments of this highly purified talc are routinely examined by our own laboratory to verify the absence of asbestos minerals.

Historically, Johnson & Johnson has always been concerned about the mineralogical integrity of its talcs and even its earliest specifications have required the examination for acicular particulates. When it was erroneously reported in 1971 that our powder contained asbestos, we sponsored a scientific seminar of mineralogical and analytical experts for the FDA to prove that our talc is not contaminated with asbestos. At that time numerous samples were analyzed by experienced consultants such as McCrone Associates, Colorado School of Mines, Professor F. D. Pooley (of the University College, Cardiff), Professor G. Brown (of Princeton), and Professor M. Buerger (of M.I.T.). These examinations included X-ray diffraction analysis, differential thermal analysis, and transmission electron microscopy.

During the period December 1972 to October 1973, 93 lots were individually sampled and examined by X-ray diffractometry for the presence of asbestos minerals. No amphiboles or serpentine minerals were detected in any sample.

Beginning in October 1973, differential thermal analysis was added to our specified requirement. Both, differential thermal analysis and X-ray diffractometry were instituted for the routine examination of sequential lots. A further 100 lots have since been examined, applying both methods to each sample. Again, no amphibole or serpentine minerals have been detected.

I would like to advise that we are continuing to employ differential thermal analysis and X-ray diffractometry in the examination of sequential lots for the detection of amphibole and serpentine minerals.

It should be pointed out that we also maintain a worldwide monitoring of talcs used by our Johnson & Johnson affiliates, employing these same techniques.

Finally, let me add that periodically, we also submit sub-samples for Transmission Electron Microscope examination and these have always verified the absence of asbestiform minerals.

It is our understanding that you would wish to submit this information to the FDA. Please regard this letter as non-confidential.

Sincerely yours,

George Lee  
Director of Applied Research

GL/mm

Ex. 6587-6

The Cosmetic, Toiletry and Fragrance Association, Inc.

1733 15th STREET, N.W., WASHINGTON, D.C. 20005 • 202/331-1770 • TELEX 68-2673

James H. Merritt  
President

Norman F. Estrin, Ph.D.  
Vice President—Science

March 13th, 1976

Mr. Heinz J. Eiermann  
Food and Drug Administration  
200 C Street, S.W.  
Washington, D.C. 20204

On March 11th, 1976, Mr. Eiermann --

-- the CTFA Talc Subcommittee met to discuss the current status of talc. It was recognized that a need exists to bring to your attention a profile of the analyses for asbestos form materials in talc used in the U.S. production of cosmetics and toiletry products.

The attached letters demonstrate responsibility of industry in monitoring its talcs. We are certain that the summary will give you assurance as to the freedom from contamination by asbestos form materials of cosmetic talc products.

Individual companies are more than willing to discuss the detailed data with you at your convenience.

Cordially,

  
Norman F. Estrin, Ph.D.  
Vice President - Science

NFE:jj  
Attachments

The Cosmetic, Toiletry and Fragrance Association, Inc.

1133 15th STREET, N.W., WASHINGTON, D.C. 20005 • 202/331-1770 • TELEX 68-2673

James H. Merritt  
President

Norman F. Estrin, Ph.D.  
Vice President—Science

MEMORANDUM

TO: Norman F. Estrin, Ph.D.  
FROM: Anita S. Curry  
DATE: March 12th, 1976

Jim Jenkins called regarding the letter you have asked for on current talc analyses. He wishes to inform you as to what they have been doing:

1. Mr. Clements contacted Dr. Langer who gave him the code on the Coty Airspun that was tested. It turns out that this was a July, 1969 production item.
2. In 1970 Coty changed to a completely different talc; since that time the supplier (WC&D) has supplied letters to the effect that they do continuous monitoring of production, even though individual batches sold to Coty may not be individually tested.
3. Coty has had tests run on intermittent batches at the Pfizer Laboratory in Easton, Pennsylvania. These were done by X-ray diffraction and TEM. The results were all negative. Also, in the last week they have tested 1974 and 1975 lots. These too were negative.

ASC:jj

PENGAD 800-631-6389

EXHIBIT

EX. 6587-1

# EXHIBIT L

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY  
DOCKET NO. MID-L-4927-18AS

VIDEOTAPED  
VIRTUAL  
DEPOSITION UPON  
ORAL EXAMINATION  
OF  
STEVEN MANN

MARY PULIDO and VICTOR  
PULIDO, JR.,

Plaintiffs,

v.

JOHNSON & JOHNSON, et al.,

Defendants.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY  
DOCKET NO. MID-L-0549-20AS

SANDRA R. WEATHERS AND  
BRIAN L. WEATHERS,

Plaintiffs,

v.

JOHNSON & JOHNSON, et al.,

Defendants.  
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| <p style="text-align: right;">Page 2</p> <p>1 TRANSCRIPT of the stenographic notes of<br/> 2 ANDREA F. NOCKS, a Certified Court Reporter and<br/> 3 Certified Realtime Court Reporter of the State of<br/> 4 New Jersey, Certificate No. XI01573, taken virtually<br/> 5 on Monday, February 15, 2021, commencing at<br/> 6 9:31 a.m., Eastern Standard Time.<br/> 7<br/> 8<br/> 9<br/> 10<br/> 11<br/> 12<br/> 13<br/> 14<br/> 15<br/> 16<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p>                                                                                                                                                                                                                                                                                                                                                                                           | <p style="text-align: right;">Page 4</p> <p>1 INDEX<br/> 2 PAGE<br/> 3 WITNESS:<br/> 4 STEVEN MANN<br/> 5 EXAMINATION BY:<br/> 6 MR. BLOCK 9<br/> 7<br/> 8<br/> 9<br/> 10<br/> 11<br/> 12<br/> 13<br/> 14<br/> 15<br/> 16<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:<br/> 2 LEVY &amp; KONIGSBERG<br/> BY: JEROME H BLOCK, ESQ<br/> 3 MOSHE MAIMON, ESQ<br/> 605 Third Avenue, 33rd Floor<br/> 4 33rd Floor<br/> New York, New York 10158<br/> 5 Attorneys for Plaintiffs<br/> 6<br/> 7<br/> SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM LLP<br/> 8 BY: ALLISON M BROWN, ESQ<br/> One Manhattan West<br/> 9 New York, New York 10001<br/> Attorneys for Defendants,<br/> 10 Johnson &amp; Johnson, Johnson &amp; Johnson<br/> Consumer, Inc<br/> 11<br/> 12<br/> 13<br/> ALSO PRESENT: MIKE PELLEGRINO,<br/> 14 VIDEOGRAPHER<br/> 15 STEPHANIE MARTIN,<br/> SKADDEN, ARPS, SLATE,<br/> 16 MEAGHER &amp; FLOM LLP<br/> 17 JOSHUA SCHOCH,<br/> SKADDEN, ARPS, SLATE,<br/> 18 MEAGHER &amp; FLOM LLP<br/> 19 JOSEPH SATTERLEY<br/> KAZAN, McCLAIN, SATTERLEY<br/> 20 &amp; GREENWOOD<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p> | <p style="text-align: right;">Page 5</p> <p>1 EXHIBITS<br/> 2 NUMBER DESCRIPTION IDENTIFICATION<br/> 3 1 Amended Notice of Deposition 15<br/> 4 2 January 2, 2002 e-mails 21<br/> 5 2A January 7, 2002 e-mails 27<br/> 6 3 February 15, 2002 e-mails 31<br/> 7 3A February 26, 2002 e-mails 36<br/> 8 3B August 13, 2001 e-mails 41<br/> 9 3C March 29, 2002 e-mails 48<br/> 10 4 March 16, 1998 letter 64<br/> 11 5 (Not marked)<br/> 12 6 E-mail chain 71<br/> 13 7 (Not marked)<br/> 14 8 September 24, 2001 e-mail 80<br/> 15 9 September 19, 2002 letter 81<br/> 16 10 October 21, 2002 letter,<br/> 17 Cosmetic Talc Should Not<br/> 18 Be Listed as a Carcinogen:<br/> 19 Comments on NTP's Deliberations<br/> 20 To List Talc as a Carcinogen 86<br/> 21 11 October 23, 2002 memo 91<br/> 22 12 February 24, 2004 fax 95<br/> 23 12A E-mail chain 102<br/> 24 12B E-mail chain 104<br/> 25</p> |



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| <p style="text-align: right;">Page 6</p> <p>1           E X H I B I T S</p> <p>2   NUMBER     DESCRIPTION     IDENTIFICATION</p> <p>3 13 E-mail chain,</p> <p>4     Handwritten notes           112</p> <p>5 14 February 24, 2004 e-mail     116</p> <p>6 15 March 4th, 2004,</p> <p>7     Two-page e-mail            123</p> <p>8 16 March 9, 2004 letter         125</p> <p>9 17 E-mail chain                 130</p> <p>10 18 E-mail chain                136</p> <p>11 19 E-mail chain                138</p> <p>12 20 E-mail chain                141</p> <p>13 21 E-mail chain                144</p> <p>14 22 April 28, 2004 e-mail       146</p> <p>15 23 E-mail chain                151</p> <p>16 24 E-mail chain                158</p> <p>17 25 E-mail chain                163</p> <p>18 26 E-mail chain                166</p> <p>19 27 E-mail chain                170</p> <p>20 28 E-mail chain                174</p> <p>21 29 October 13, 2004 letter     185</p> <p>22 30 May 11, 2006 e-mail         176</p> <p>23 31 E-mail chain                189</p> <p>24 32 E-mail chain                193</p> <p>25 33 February 28, 2005 e-mail   203</p> | <p style="text-align: right;">Page 8</p> <p>1           VIDEOGRAPHER: Good morning,</p> <p>2 everyone. We are going on the video record at</p> <p>3 approximately 9:31 a.m. on February 15, 2021.</p> <p>4           Audio and video recording will</p> <p>5 continue to take place unless all parties agree to</p> <p>6 go off the video record.</p> <p>7           This is the video-recorded deposition</p> <p>8 of Steven Mann in the matter of Pulido verse Johnson</p> <p>9 &amp; Johnson and Weathers verse Johnson &amp; Johnson, both</p> <p>10 filed in the Superior Court of New Jersey, Law</p> <p>11 Division of Middlesex County, Case Numbers 4927-18,</p> <p>12 and 549-20.</p> <p>13           This deposition is being held</p> <p>14 remotely via Zoom.</p> <p>15           My name is Michael Pellegrino. I am</p> <p>16 the videographer. The court reporter is Andrea</p> <p>17 Nocks.</p> <p>18           Appearances will be notated on the</p> <p>19 stenographic record.</p> <p>20           Will the court reporter please swear</p> <p>21 in the witness.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                   |
| <p style="text-align: right;">Page 7</p> <p>1           E X H I B I T S</p> <p>2   NUMBER     DESCRIPTION     IDENTIFICATION</p> <p>3 33A February 1, 2005 e-mail     208</p> <p>4 34 June 8, 2006 document       210</p> <p>5 35 E-mail chain                214</p> <p>6 36 E-mail chain                221</p> <p>7 36A March 26, 2002 fax         223</p> <p>8 37 E-mail chain                226</p> <p>9 38 E-mail chain                228</p> <p>10 39 E-mail chain                231</p> <p>11 40 February 16, 2006 e-mail    238</p> <p>12 41 E-mail chain                241</p> <p>13 42 E-mail chain                244</p> <p>14 43 E-mail chain                248</p> <p>15 44 IARC Monographs on the Evaluation</p> <p>16     Of Carcinogenic Risks to Humans,</p> <p>17     Volume 93, Carbon Black,</p> <p>18     Titanium Dioxide, and Talc   253</p> <p>19 45 September 30, 2005 e-mail   258</p> <p>20 46 May 22, 2006 e-mail         262</p> <p>21 47 E-mail chain                264</p> <p>22 48 January 21, 2003</p> <p>23     Handwritten note           265</p> <p>24 (Exhibits e-mailed to Certified Court Reporter.)</p> <p>25</p>      | <p style="text-align: right;">Page 9</p> <p>1   S T E V E N   M A N N,</p> <p>2 3682 Robin Road, Furlong, Pennsylvania, having been</p> <p>3 first duly sworn, testifies as follows:</p> <p>4   DIRECT EXAMINATION BY MR. BLOCK:</p> <p>5   Q.   Good morning, Mr. Mann.</p> <p>6   A.   Good morning, Mr. Block.</p> <p>7   Q.   Are you Steven W. Mann?</p> <p>8   A.   Yes, I am.</p> <p>9   Q.   You live in Pennsylvania?</p> <p>10   A.   Yes, I do.</p> <p>11   Q.   Are you the former Director of</p> <p>12 Toxicology at Johnson &amp; Johnson Consumer Products</p> <p>13 worldwide?</p> <p>14   A.   Yes.</p> <p>15   Q.   And would you also refer to that</p> <p>16 longer name as Johnson &amp; Johnson Consumer?</p> <p>17   A.   Consumer and Personal Products.</p> <p>18   Q.   Okay. J&amp;J Consumer?</p> <p>19   A.   That's fine.</p> <p>20   Q.   Thank you.</p> <p>21           And J&amp;J Consumer is the company that</p> <p>22 manufactured and sold Johnson's Baby Powder at the</p> <p>23 time you worked for the company, correct?</p> <p>24           MS. BROWN: Objection to the form.</p> <p>25   A.   Yes, that is correct.</p> |

## MANN - Direct

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| <p style="text-align: right;">Page 10</p> <p>1 Q. And what month and year did you start<br/>2 working at J&amp;J Consumer?<br/>3 A. I started in June of 2001 and I left<br/>4 in -- excuse me, I got that wrong. I started in<br/>5 July of 2001 and I left in June of 2006.<br/>6 Q. And during that was your position<br/>7 Director of Toxicology?<br/>8 A. Yes.<br/>9 Q. Where did you attend college?<br/>10 A. I went to Westminster College in<br/>11 Fulton, Missouri for my bachelor of arts degree.<br/>12 Both my master's and Ph.D. were earned at the<br/>13 University of Rhode Island.<br/>14 Q. And what is your master's degree in?<br/>15 A. Pharmacology and toxicology.<br/>16 Q. And how about your Ph.D.?<br/>17 A. Pharmaceutical sciences.<br/>18 Q. Did you ever attend medical school?<br/>19 A. No, I did not.<br/>20 Q. Did you ever take any course at a<br/>21 medical school?<br/>22 A. No, I did not.<br/>23 Q. Did you ever take a class that you<br/>24 would consider to be a medical school class?<br/>25 A. No, I did not.</p> | <p style="text-align: right;">Page 12</p> <p>1 responsibilities in the 1979 to 1981 time period for<br/>2 BFGoodrich in Ohio?<br/>3 A. I was an associate toxicologist. My<br/>4 duties, I was reviewing some of the toxicology work<br/>5 that had been done on their chemical ingredients and<br/>6 reviewing data on the toxicology for a number of<br/>7 their different ingredients, chemical ingredients.<br/>8 Q. And did that include talc?<br/>9 A. No, it did not.<br/>10 Q. Did BFGoodrich in Cleveland, Ohio the<br/>11 location where you worked use talc?<br/>12 A. Not that I am aware of, no.<br/>13 Q. Did you learn anything about talc or<br/>14 asbestos through your job at BFGoodrich from 1979 to<br/>15 1981?<br/>16 A. No.<br/>17 Q. And at that point in time from 1979<br/>18 to 1981 had you learned that asbestos could cause<br/>19 cancer?<br/>20 MS. BROWN: Objection to the form.<br/>21 A. I'm not sure of the timeframe. I<br/>22 recall that asbestos became fairly well recognized<br/>23 as a carcinogen back in the 1970s, I believe. Not<br/>24 specifically when, but I was under the general<br/>25 knowledge that yes, it was a carcinogen.</p> |
| <p style="text-align: right;">Page 11</p> <p>1 Q. Are you a medical doctor?<br/>2 A. No, I am not.<br/>3 Q. Did you ever take any epidemiology<br/>4 courses?<br/>5 A. No, I did not.<br/>6 Q. Do you have any training on testing<br/>7 talc for the presence of asbestos?<br/>8 A. No, not at all.<br/>9 Q. Now, what year did you graduate from<br/>10 your Ph.D. program?<br/>11 A. 1979.<br/>12 Q. And have you worked professionally<br/>13 after you had graduated college while you were<br/>14 getting your master's and your Ph.D.?<br/>15 A. Would you repeat that again?<br/>16 Q. Yeah.<br/>17 What was your first job out of<br/>18 college?<br/>19 A. Oh, I was with the BFGoodrich<br/>20 Chemical Division in Cleveland, Ohio.<br/>21 Q. Okay. And what year, what were the<br/>22 years you worked for BFGoodrich Chemical in<br/>23 Cleveland, Ohio?<br/>24 A. It was '80 -- '79 to '81, I believe.<br/>25 Q. And what were your job</p>                                                                                                          | <p style="text-align: right;">Page 13</p> <p>1 Q. You knew in the 1970s that asbestos<br/>2 was a carcinogen, correct?<br/>3 A. I believe that was correct, yes.<br/>4 Q. So if you knew in the 1970s that<br/>5 asbestos could cause cancer if you breathe in<br/>6 asbestos, correct?<br/>7 MS. BROWN: Objection to the form.<br/>8 A. Yes.<br/>9 Q. Okay. Now, what was your next job<br/>10 after BFGoodrich? You said you worked there until<br/>11 1981. What was your next job?<br/>12 A. I was with pharmaceutical company<br/>13 called Adria Laboratories in Columbus, Ohio.<br/>14 Q. Can you say the name of that company<br/>15 again?<br/>16 A. It's Adria, A-d-r-i-a, Laboratories,<br/>17 I believe was the additional.<br/>18 Q. Okay. And what years did you work at<br/>19 Adria Laboratories in Columbus, Ohio?<br/>20 A. From '81 until October of '85.<br/>21 Q. And what did that company do? What<br/>22 did they produce or --<br/>23 A. Pharmaceuticals. I am trying to<br/>24 remember. They had some, I guess like potassium<br/>25 supplements and we were working on preclinical data</p>                                                                    |

## MANN - Direct

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| <p style="text-align: right;">Page 14</p> <p>1 for some nonsteroidal anti-inflammatory agents that<br/> 2 they working on at the time, so I remembered that.<br/> 3 I can't remember all the specific things, but I was<br/> 4 basically doing preclinical toxicology or overseeing<br/> 5 a group that was doing preclinical testing in<br/> 6 animals.<br/> 7 Q. Did any of your work for Adria<br/> 8 Laboratories from 1981 to 1985 involve either talc<br/> 9 or asbestos?<br/> 10 A. No, it did not.<br/> 11 Q. Where did you work after Adria<br/> 12 Laboratories?<br/> 13 A. I went to McNeil Specialty Products<br/> 14 Company which is part of Johnson &amp; Johnson.<br/> 15 Q. And what did you do at McNeil?<br/> 16 A. There I came as the Associate<br/> 17 Director of Toxicology. We were a very small group<br/> 18 of people that were doing the preclinical tox<br/> 19 work-up on a compound called sucralose which you<br/> 20 would probably know as the final product of Splenda,<br/> 21 the artificial sweetener and food additive.<br/> 22 Q. For how long were you the Associate<br/> 23 Director of Toxicology for McNeil which is a<br/> 24 subsidiary of Johnson &amp; Johnson?<br/> 25 A. I don't remember exactly how long I</p> | <p style="text-align: right;">Page 16</p> <p>1 a document that says "Subpoena," "Subpoena Ad<br/> 2 Testificandum."<br/> 3 Do you see that?<br/> 4 A. No, I don't see that.<br/> 5 Q. Okay. If you just, if you go four<br/> 6 pages in to Exhibit 1, it's double-sided printing.<br/> 7 A. Oh, yes, I see it now.<br/> 8 Q. And you were served with a Subpoena<br/> 9 at your home in Pennsylvania, correct?<br/> 10 A. Yes.<br/> 11 Q. All right. And the Subpoena, you<br/> 12 read the Subpoena, correct?<br/> 13 A. Yes.<br/> 14 Q. All right. And the Subpoena<br/> 15 commanded you to appear at a deposition to give<br/> 16 testimony, correct?<br/> 17 A. Correct.<br/> 18 Q. And are you being represented by a<br/> 19 lawyer here today?<br/> 20 A. Yes.<br/> 21 Q. And are you actually being<br/> 22 represented here today by a lawyer that also<br/> 23 represents Johnson &amp; Johnson and Johnson &amp; Johnson<br/> 24 Consumer?<br/> 25 A. Yes.</p>                                                                                                                                                           |
| <p style="text-align: right;">Page 15</p> <p>1 held that title, but I was Associate Director or the<br/> 2 Director there until I left in -- to go to Consumer<br/> 3 Products in 2001. So from 1985 till 2001.<br/> 4 Q. And during the entire time you worked<br/> 5 at McNeil, the subsidiary of Johnson &amp; Johnson from<br/> 6 1985 all the way up to July of 2001, did you do any<br/> 7 work involving talc?<br/> 8 A. No.<br/> 9 Q. Have you ever testified in a<br/> 10 deposition before?<br/> 11 A. No, I have not.<br/> 12 Q. Have you ever given sworn testimony<br/> 13 at any time in your life before?<br/> 14 A. No, I have not.<br/> 15 Q. And you're testifying here today you<br/> 16 understand because you were served with a Subpoena<br/> 17 that required you to give testimony, correct?<br/> 18 A. That is correct.<br/> 19 Q. And if you look at Exhibit A, I'm<br/> 20 sorry, Exhibit 1 and you have the binders of<br/> 21 exhibits in front of you.<br/> 22 Do you see on the front page it says,<br/> 23 "Amended Notice of Deposition"?<br/> 24 A. Yes, on the right, yes.<br/> 25 Q. And then do you see that it attaches</p>                                                                                                   | <p style="text-align: right;">Page 17</p> <p>1 Q. Now, since the time you were served<br/> 2 with a Subpoena, how many times did you speak with a<br/> 3 Johnson &amp; Johnson attorney?<br/> 4 A. From the time, I guess it came on the<br/> 5 6th of January, once or twice a week.<br/> 6 Q. All right. So once or twice a week<br/> 7 since January 6 which is about six weeks ago,<br/> 8 correct?<br/> 9 A. Yes.<br/> 10 Q. And how long did those meetings last<br/> 11 with the Johnson &amp; Johnson attorneys that you've had<br/> 12 once or twice a week for the last six weeks?<br/> 13 A. From one-and-a-half hours to two or<br/> 14 three I think it was.<br/> 15 Q. And how many Johnson &amp; Johnson<br/> 16 lawyers would be on these meetings with you?<br/> 17 A. I believe there was only one other<br/> 18 one.<br/> 19 Q. So you would meet with two Johnson &amp;<br/> 20 Johnson lawyers one to two times a week for the past<br/> 21 six weeks, correct?<br/> 22 A. Yes.<br/> 23 Q. And one of the Johnson &amp; Johnson<br/> 24 lawyers is the lawyer representing you here today,<br/> 25 correct?</p> |

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| <p style="text-align: right;">Page 18</p> <p>1 A. Yes.</p> <p>2 Q. And was the other Johnson &amp; Johnson</p> <p>3 lawyer a lawyer that actually works in-house at</p> <p>4 Johnson &amp; Johnson?</p> <p>5 A. No.</p> <p>6 MS. BROWN: Object to the form.</p> <p>7 A. Sorry.</p> <p>8 Q. Now, and these meetings would be by</p> <p>9 Zoom or some videoconferencing?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Now, were you shown any</p> <p>12 documents by the lawyers from Johnson &amp; Johnson in</p> <p>13 any of these meetings?</p> <p>14 MS. BROWN: And I'm going to object</p> <p>15 here, Jerry, and instruct Dr. Mann to be careful, of</p> <p>16 course, not to reveal any communications that you</p> <p>17 had with lawyers during these meetings.</p> <p>18 As to the question of did you see</p> <p>19 documents, yes or no, I'll allow you to answer that.</p> <p>20 MR. BLOCK: Well, actually I'm going</p> <p>21 to rephrase my question because that wasn't my</p> <p>22 question.</p> <p>23 BY MR. BLOCK:</p> <p>24 Q. Did the Johnson &amp; Johnson lawyers</p> <p>25 show you any documents in your meetings with them</p>                                                                                | <p style="text-align: right;">Page 20</p> <p>1 A. I don't believe Mike was ever the</p> <p>2 Director of Toxicology.</p> <p>3 Q. Okay. Do you know what the gap was</p> <p>4 between the time Mike Chudkowski left Johnson &amp;</p> <p>5 Johnson Consumer and when you started with the</p> <p>6 company?</p> <p>7 A. No, I don't. He was there during</p> <p>8 some of the time I was there. I don't remember when</p> <p>9 he left.</p> <p>10 Q. Okay. So there was some overlap that</p> <p>11 you worked at Johnson &amp; Johnson Consumer at the same</p> <p>12 time as Michael Chudkowski?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And do you recall the</p> <p>15 approximate period of overlap? Was it more than a</p> <p>16 year, less than a year?</p> <p>17 A. I would say it was more than a year.</p> <p>18 Q. Okay. So looking back, it was your</p> <p>19 belief that when you arrived at Johnson &amp; Johnson</p> <p>20 Consumer, there was a void in terms of people at the</p> <p>21 company with in-depth knowledge about talc safety</p> <p>22 issues, correct?</p> <p>23 MS. BROWN: Objection to the form of</p> <p>24 the question.</p> <p>25 A. No, that would not be correct.</p> |
| <p style="text-align: right;">Page 19</p> <p>1 prior to this deposition?</p> <p>2 MS. BROWN: And that's, in my view,</p> <p>3 that's a yes-or-no question and I'll instruct you,</p> <p>4 Dr. Mann, not to answer anything beyond that.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And approximately how many</p> <p>7 documents did the lawyers from Johnson &amp; Johnson</p> <p>8 show you in preparation for this deposition?</p> <p>9 A. Oh, a dozen or two dozen maybe.</p> <p>10 Q. When you started working at J&amp;J</p> <p>11 Consumer, who was the Director of Toxicology</p> <p>12 immediately before you?</p> <p>13 A. I believe it was Helen Han Hsu,</p> <p>14 Dr. Helen Han Hsu.</p> <p>15 Q. Okay. And her last name is spelled</p> <p>16 H-s-u, correct?</p> <p>17 A. I actually don't remember.</p> <p>18 Q. All right. Was there a Director of</p> <p>19 Toxicology at J&amp;J Consumer at some point before you</p> <p>20 named Mike Chudkowski?</p> <p>21 A. Yes, he was there. Yes.</p> <p>22 Q. And do you recall the amount of time</p> <p>23 there was between Mike Chudkowski being the Director</p> <p>24 of Toxicology and you taking the position of</p> <p>25 Director of Toxicology at J&amp;J Consumer?</p> | <p style="text-align: right;">Page 21</p> <p>1 Q. Okay. Take a look at Exhibit 2 to</p> <p>2 your deposition.</p> <p>3 A. Okay.</p> <p>4 Q. And just for the record, the yellow</p> <p>5 highlighting and red markings on the document are</p> <p>6 highlighting that I put on the documents.</p> <p>7 A. Okay.</p> <p>8 Q. We can go down to the bottom of this</p> <p>9 e-mail chain and look at the e-mail on the bottom.</p> <p>10 Now, you told us you started with</p> <p>11 Johnson &amp; Johnson Consumer in July of 2001, correct?</p> <p>12 A. Yes.</p> <p>13 Q. All right. So this e-mail is about</p> <p>14 five months after you started and the e-mail is from</p> <p>15 Nancy Musco and it's on January 2nd, 2002 to Rachel</p> <p>16 Grossman and Steven Mann and the subject is, "Talc</p> <p>17 Files."</p> <p>18 Do you see that?</p> <p>19 A. Um-hum.</p> <p>20 Q. You can't say "um-hum."</p> <p>21 A. Oh, sorry. Could you repeat the</p> <p>22 question again?</p> <p>23 Q. All right. Did I describe the e-mail</p> <p>24 correctly?</p> <p>25 A. Please describe it again.</p>                                                                                                  |

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| <p style="text-align: right;">Page 30</p> <p>1 assumes facts.</p> <p>2 A. Yeah, that's not really correct. We</p> <p>3 had a number of experts that were -- had been with</p> <p>4 the company for many, many decades actually who had</p> <p>5 extensive knowledge of talc. I was brought in to</p> <p>6 focus on a new product development and I believe</p> <p>7 that if my job with issues came up with talc was to</p> <p>8 be to seek out these experts who were very, very</p> <p>9 familiar with talc and reach out to them as my go-to</p> <p>10 people to address issues related to talc.</p> <p>11 Q. All right. And one of these go-to</p> <p>12 people for you is Bill Ashton?</p> <p>13 A. That is correct.</p> <p>14 Q. One of these go-to people for you was</p> <p>15 Dr. John Hopkins, correct?</p> <p>16 A. That is also correct.</p> <p>17 Q. In 2002 did you review any testing in</p> <p>18 which talc was tested for the presence of asbestos?</p> <p>19 A. No, I did not. That would be done</p> <p>20 with Quality Assurance.</p> <p>21 Q. In 2003 did you review any testing in</p> <p>22 which talc was tested for the presence of asbestos?</p> <p>23 A. Not that I recall. Again, that is</p> <p>24 not really a toxicology issue. It's a purity issue</p> <p>25 that would be addressed by Quality Assurance.</p> | <p style="text-align: right;">Page 32</p> <p>1 A. I'm trying to see where you are. At</p> <p>2 the bottom?</p> <p>3 Q. Yes. Starting at the bottom. And I</p> <p>4 want to go through what your words were, what you</p> <p>5 said, and it starts with, "I'd like to tell CTFA</p> <p>6 that we are okay with forwarding that lit review to</p> <p>7 NTP."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What was the CTFA?</p> <p>11 A. The Cosmetic Toiletries &amp; Fragrance</p> <p>12 Association.</p> <p>13 Q. And what kind of organization is</p> <p>14 that?</p> <p>15 A. It's a trade organization.</p> <p>16 Q. Okay. And the "NTP." We see those</p> <p>17 initials there. That stands for the National</p> <p>18 Toxicology Program, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And that is a United States</p> <p>21 Government agency, correct?</p> <p>22 A. That is correct.</p> <p>23 MS. BROWN: Objection to form.</p> <p>24 BY MR. BLOCK:</p> <p>25 Q. And you knew at the time that the</p>                                                                                                                                                                                                                       |
| <p style="text-align: right;">Page 31</p> <p>1 Q. In February 2002, going to the next</p> <p>2 month even though you had not reviewed any testing</p> <p>3 of talc for asbestos, you knew that Johnson &amp;</p> <p>4 Johnson was telling the public was that Johnson &amp;</p> <p>5 Johnson's talc never contained asbestos, correct?</p> <p>6 A. Sorry. Your sound broke up. I</p> <p>7 couldn't hear your last statement.</p> <p>8 Q. Okay. At this time in early 2002,</p> <p>9 even though you had not reviewed any testing of talc</p> <p>10 for asbestos, you knew that Johnson &amp; Johnson was</p> <p>11 telling the public that its talc never contained</p> <p>12 asbestos, correct?</p> <p>13 A. Yes, I believed it never did contain</p> <p>14 asbestos, based on discussions with these experts</p> <p>15 and my superiors which I have every reason to</p> <p>16 believe that they are telling me what is correct.</p> <p>17 Q. Move to strike the portion that was</p> <p>18 not responsive.</p> <p>19 If you could look at Exhibit 3.</p> <p>20 A. Sorry, 3. Okay.</p> <p>21 Q. If you look at Exhibit 3, and I want</p> <p>22 you to look at your words, your e-mail from</p> <p>23 February 15, 2002 and it's your e-mail to Lorena</p> <p>24 Telofski.</p> <p>25 Do you see that?</p>                                      | <p style="text-align: right;">Page 33</p> <p>1 United States Government through the National</p> <p>2 Toxicology Program was reviewing the issue of</p> <p>3 whether talc was carcinogenic, correct?</p> <p>4 A. Yes, they were reviewing talc.</p> <p>5 Q. Okay. And the next thing you write</p> <p>6 in this e-mail is, "Did you have a suggestion on a</p> <p>7 sentence that addresses the fact that our source of</p> <p>8 talc never had asbestos in it?"</p> <p>9 Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And you're talking about a sentence</p> <p>12 that would be put into a submission that would be</p> <p>13 sent to the National Toxicology Program, correct?</p> <p>14 MS. BROWN: Objection to the form.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And when you state here "our</p> <p>17 source of talc never had asbestos in it," did you</p> <p>18 even know what J&amp;J's source of talc was at this</p> <p>19 time?</p> <p>20 MS. BROWN: Objection to the form.</p> <p>21 A. We had suppliers, that's what I</p> <p>22 believe the source was from, but we also tested</p> <p>23 ourselves.</p> <p>24 Q. No. My question for you is: When</p> <p>25 you wrote these words, "our source of talc never had</p> |



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| <p style="text-align: right;">Page 34</p> <p>1 asbestos in it," do you know the specific source of</p> <p>2 talc that was being used in Johnson's Baby Powder at</p> <p>3 this time?</p> <p>4 A. No.</p> <p>5 Q. And --</p> <p>6 A. Based on -- sorry. Go ahead.</p> <p>7 MS. BROWN: You can finish, Dr. Mann.</p> <p>8 A. I was going to say it's based on our</p> <p>9 internal Quality Assurance and specifications.</p> <p>10 Q. Move to strike the portion that was</p> <p>11 nonresponsive.</p> <p>12 And when you write here "our source</p> <p>13 of talc never had asbestos in it," you put never in</p> <p>14 quotes, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And you put never in quotes was</p> <p>17 because that's what Johnson &amp; Johnson was telling</p> <p>18 people, right?</p> <p>19 MS. BROWN: Objection to the form.</p> <p>20 A. Yes.</p> <p>21 Q. And then Miss Telofski -- and just to</p> <p>22 be clear, when you wrote the sentence "our source of</p> <p>23 talc never had asbestos in it," you had never looked</p> <p>24 at a single piece of paper regarding the testing of</p> <p>25 talc for asbestos, correct?</p>                                                                                                                                                                                    | <p style="text-align: right;">Page 36</p> <p>1 MS. BROWN: Objection to the form.</p> <p>2 A. Because that is what I believe from</p> <p>3 what I had been told by superiors and experts in my</p> <p>4 company.</p> <p>5 Q. Move to strike the portion that was</p> <p>6 not responsive.</p> <p>7 In February 2002, even though you had</p> <p>8 not reviewed any talc for the -- strike that.</p> <p>9 In February 2002, even though you had</p> <p>10 not reviewed any testing of talc for asbestos, you</p> <p>11 did tell the CTFA that J&amp;J never had asbestos</p> <p>12 issues, didn't you?</p> <p>13 MS. BROWN: I object. You just asked</p> <p>14 that question; asked and answered.</p> <p>15 You can answer again, Dr. Mann.</p> <p>16 A. Yes, I said never.</p> <p>17 Q. Okay. And then let's go to Exhibit</p> <p>18 3A.</p> <p>19 And as we look at Exhibit 3A, I want</p> <p>20 to just make something clear with you here. It says</p> <p>21 this is the e-mail from Steven Mann.</p> <p>22 And do you see "CPCUS" next to your</p> <p>23 e-mail or your name?</p> <p>24 A. Yes.</p> <p>25 Q. And that would be for anyone who</p> |
| <p style="text-align: right;">Page 35</p> <p>1 MS. BROWN: Objection to the form.</p> <p>2 A. That's correct. I believe this was</p> <p>3 addressing the submission to NTP that dealt -- that</p> <p>4 submission represented other industry people. And</p> <p>5 my question to her asking for -- the sentence had to</p> <p>6 do with whether we could say never which is true for</p> <p>7 J&amp;J talc. It was going to be used in a document</p> <p>8 that covered, you know, other companies. I can't</p> <p>9 speak for other companies. I just know for Johnson</p> <p>10 &amp; Johnson that's true.</p> <p>11 Q. I'll move to strike the portion that</p> <p>12 was not responsive.</p> <p>13 And then if you look at</p> <p>14 Miss Telofski's reply to you, she says, "I still</p> <p>15 don't have a specific suggestion regarding the</p> <p>16 asbestos. Let's handle as we discussed and I will</p> <p>17 see if I can get a better idea going in the</p> <p>18 meantime."</p> <p>19 That's what she said, right?</p> <p>20 A. Yes.</p> <p>21 Q. Now, it's also true that at this same</p> <p>22 time in February of 2002, even though you had not</p> <p>23 reviewed any testing of talc for asbestos, you</p> <p>24 personally told the trade association, the CTFA,</p> <p>25 that J&amp;J never had asbestos issues?</p> | <p style="text-align: right;">Page 37</p> <p>1 works at Consumer Products Company United States for</p> <p>2 Johnson &amp; Johnson, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And then there's a different</p> <p>5 acronym for one person on this e-mail which is</p> <p>6 "JJCUS." What does that stand for?</p> <p>7 MS. BROWN: Objection to the form.</p> <p>8 A. I believe it's corporate, J&amp;J</p> <p>9 corporate.</p> <p>10 Q. So Johnson &amp; Johnson Corporate United</p> <p>11 States?</p> <p>12 A. I believe.</p> <p>13 Q. Okay. And on February 26, 2002, you</p> <p>14 write to Linda Loretz who was -- was she the head of</p> <p>15 the CTFA, that trade association that you told us</p> <p>16 about?</p> <p>17 A. I don't think she was the head. I</p> <p>18 think she was a toxicologist.</p> <p>19 Q. Okay. And you write "Linda." One of</p> <p>20 the things you write is, "J&amp;J talc never had</p> <p>21 asbestos issues," right?</p> <p>22 A. Yes. Could I take a moment to read</p> <p>23 this entire e-mail?</p> <p>24 Q. Yes.</p> <p>25 A. Okay.</p>                                                             |

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| <p style="text-align: right;">Page 38</p> <p>1 Q. All right. And you knew Linda Loretz</p> <p>2 from the CTFA was interacting with the NTP at the</p> <p>3 time, correct?</p> <p>4 A. Yeah, we were preparing an update on</p> <p>5 the literature review --</p> <p>6 Q. Okay.</p> <p>7 A. Go ahead.</p> <p>8 Q. And you told Linda Loretz of the CTFA</p> <p>9 "J&amp;J talc never had asbestos issues," didn't you?</p> <p>10 A. Yes.</p> <p>11 Q. All right. And you had not reviewed</p> <p>12 any testing of talc for asbestos when you said that,</p> <p>13 correct?</p> <p>14 MS. BROWN: Objection to the form.</p> <p>15 A. Again, as I've said, I've based that</p> <p>16 on the experts that had a long history of the</p> <p>17 analysis of our talc over a long period of time and</p> <p>18 I was relying on them because I had not much</p> <p>19 experience with it before I came there. So I am</p> <p>20 relying on them and I trust them.</p> <p>21 Q. Did Bill Ashton tell you that Johnson</p> <p>22 &amp; Johnson talc never contained asbestos?</p> <p>23 A. Yes.</p> <p>24 Q. Did Dr. John Hopkins tell you that</p> <p>25 Johnson &amp; Johnson talc never contained asbestos?</p> | <p style="text-align: right;">Page 40</p> <p>1 conversations that you might have had with any</p> <p>2 counsel for Johnson &amp; Johnson concerning this e-mail</p> <p>3 as those are privileged and I'll instruct you not to</p> <p>4 reveal that information.</p> <p>5 MR. BLOCK: Can we have of the</p> <p>6 question read back, Andrea, please.</p> <p>7 (The following Question is read back:</p> <p>8 "QUESTION: And why did you copy</p> <p>9 Johnson &amp; Johnson's lawyer Mr. O'Shaughnessy on this</p> <p>10 e-mail?")</p> <p>11 MS. BROWN: And actually, I'm going</p> <p>12 to, now hearing that question again, I'm going to</p> <p>13 instruct you not to answer to the extent to do so</p> <p>14 would require you to reveal information you would</p> <p>15 have had talking to lawyers from Johnson &amp; Johnson.</p> <p>16 BY MR. BLOCK:</p> <p>17 Q. Okay. Mr. Mann, are you going to</p> <p>18 follow that instruction and refuse to answer my</p> <p>19 question?</p> <p>20 A. Yes.</p> <p>21 Q. And just to be clear so I don't have</p> <p>22 to ask this again as we go forward, if Ms. Brown</p> <p>23 instructs you not to answer during this deposition,</p> <p>24 will you follow her instruction not to answer each</p> <p>25 and every time?</p> |
| <p style="text-align: right;">Page 39</p> <p>1 A. Yes, I recall.</p> <p>2 Q. Now, it says here in the first</p> <p>3 sentence you write to Linda Loretz, "Based on the</p> <p>4 comments I received from our legal counsel and</p> <p>5 management, we are okay with the submission to NTP."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And the legal counsel you were</p> <p>9 referring to when you wrote that sentence is a man</p> <p>10 by the name of John O'Shaughnessy, correct?</p> <p>11 MS. BROWN: Objection to the form;</p> <p>12 assumes facts.</p> <p>13 A. I believe so.</p> <p>14 Q. And, in fact, John O'Shaughnessy you</p> <p>15 copied on this e-mail, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And John O'Shaughnessy is the only</p> <p>18 person from J&amp;J corporate that you decided to</p> <p>19 include on this e-mail, correct?</p> <p>20 A. Yeah.</p> <p>21 Q. And all right. And why did you copy</p> <p>22 Johnson &amp; Johnson's lawyer Mr. O'Shaughnessy on this</p> <p>23 e-mail?</p> <p>24 MS. BROWN: And Dr. Mann, I'm just</p> <p>25 going to instruct you not to reveal any</p>                                                                       | <p style="text-align: right;">Page 41</p> <p>1 A. Yes.</p> <p>2 Q. Did Mr. O'Shaughnessy, the Johnson &amp;</p> <p>3 Johnson lawyer, suggest to scientists at Johnson &amp;</p> <p>4 Johnson that they would tell the U.S. Government</p> <p>5 that the talc used in Johnson's Baby Powder was free</p> <p>6 of asbestos?</p> <p>7 MS. BROWN: Objection to the form;</p> <p>8 I'm going to instruct you not to answer anything</p> <p>9 regarding J&amp;J's Mr. O'Shaughnessy and what</p> <p>10 instructions he gave or did not give to employees of</p> <p>11 Johnson &amp; Johnson.</p> <p>12 BY MR. BLOCK:</p> <p>13 Q. Let's go to Exhibit 3B, please. And</p> <p>14 Exhibit 3B, do you see that the dermatologist,</p> <p>15 Dr. Grossman, forwarded you an e-mail chain?</p> <p>16 A. Yes, at the top I see that.</p> <p>17 Q. And you had only been with -- someone</p> <p>18 needs to please mute their phone. Thank you.</p> <p>19 And at this time you received this</p> <p>20 e-mail from Dr. Grossman, you had only been with</p> <p>21 Johnson &amp; Johnson Consumer for about a month,</p> <p>22 correct?</p> <p>23 A. That is correct.</p> <p>24 Q. Who was your supervisor when you</p> <p>25 started at Johnson &amp; Johnson Consumer?</p>                   |

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| <p style="text-align: right;">Page 74</p> <p>1 MS. BROWN: Objection to the form.</p> <p>2 A. I think there were other people</p> <p>3 occasionally like Kathleen Wille who was from</p> <p>4 regulatory, but generally I was, basically a tox</p> <p>5 person to facilitate and interact with the trade</p> <p>6 association.</p> <p>7 Q. All right. And then with regard to</p> <p>8 Bill Ashton it says, "Begin transferring knowledge</p> <p>9 and contact relationships to Steve Mann."</p> <p>10 Do you see that?</p> <p>11 A. Um-hum.</p> <p>12 Q. Yes? You see that?</p> <p>13 A. Yes, I see it.</p> <p>14 Q. All right. And it says, "Steve Mann</p> <p>15 has a good overall perspective in dealing with</p> <p>16 issue-related tox/medical questions."</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. All right. And you actually hadn't</p> <p>20 taken any medical school classes to answer any</p> <p>21 medical questions, right?</p> <p>22 A. No and -- no.</p> <p>23 Q. And then it's also written here in</p> <p>24 these e-mails between Carlos Linares and Lorena</p> <p>25 Telofski, it says, "Really stress the need for</p> | <p style="text-align: right;">Page 76</p> <p>1 Q. And how about Dr. John Hopkins who</p> <p>2 also was a consultant outside of Johnson &amp; Johnson</p> <p>3 Consumer when you started with the company, how many</p> <p>4 times did you meet with Dr. John Hopkins regarding</p> <p>5 issues related to talc?</p> <p>6 A. He was, I believe, in the UK when I</p> <p>7 came on, so most of my interaction with him was</p> <p>8 probably by telephone, but I talked with him much</p> <p>9 more.</p> <p>10 Q. All right. Did you speak with</p> <p>11 Dr. John Hopkins at least 20 times about issues</p> <p>12 relating to talc?</p> <p>13 A. Yes. That would probably be fair,</p> <p>14 yeah.</p> <p>15 Q. And other than Bill Ashton and</p> <p>16 Dr. John Hopkins, can you identify any other</p> <p>17 specific person that you spoke to about issues</p> <p>18 relating to talc?</p> <p>19 A. Yes, Dr. Al Wehner who's a</p> <p>20 veterinarian and toxicologist who had also a kind of</p> <p>21 very long history of talc expertise.</p> <p>22 Q. All right. Other than Ashton,</p> <p>23 Hopkins and Dr. Al Wehner, can you identify any</p> <p>24 other specific person that you've ever spoke with</p> <p>25 during your work at Johnson &amp; Johnson about talc?</p>                        |
| <p style="text-align: right;">Page 75</p> <p>1 transfer of knowledge to other individuals in the</p> <p>2 organization and to Steve Mann in particular."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. So did you meet with Bill Ashton to</p> <p>6 talk about talc?</p> <p>7 A. Very occasionally. I mean he was</p> <p>8 basically available to me if an issue arose, but he</p> <p>9 was not meeting with me on a regular basis that I</p> <p>10 recall.</p> <p>11 Q. How many times did you meet with Bill</p> <p>12 Ashton to discuss issues relating to talc?</p> <p>13 A. I don't recall.</p> <p>14 Q. Was it more than five times?</p> <p>15 A. Probably.</p> <p>16 Q. More than ten times?</p> <p>17 A. I bet you it wasn't.</p> <p>18 Q. Excuse me?</p> <p>19 A. I don't know. It was probably not</p> <p>20 more than ten times, but I don't recall the number</p> <p>21 of meetings. It's just too long.</p> <p>22 Q. So you met with Bill Ashton at least</p> <p>23 five times to discuss issues relating to talc,</p> <p>24 correct?</p> <p>25 A. That would be fair, yes.</p>                                                               | <p style="text-align: right;">Page 77</p> <p>1 MS. BROWN: Objection to the form.</p> <p>2 A. Very briefly to Mike Chudkowski, but</p> <p>3 John Hopkins and when I needed Bill Ashton, those</p> <p>4 were my primary -- and Al Wehner, those were my</p> <p>5 primary go-to people when any issues came up related</p> <p>6 to talc.</p> <p>7 Q. All right. Now, did anyone ever show</p> <p>8 you any testing Battelle Laboratories did on talc to</p> <p>9 determine whether asbestos was present?</p> <p>10 MS. BROWN: Objection to the form.</p> <p>11 A. No, I don't recall right now.</p> <p>12 Q. Did anyone ever talk to you or show</p> <p>13 you anything about testing that a Dr. Arthur Langer</p> <p>14 had done on talc for the presence of asbestos?</p> <p>15 MS. BROWN: Objection to the form.</p> <p>16 A. I don't recall.</p> <p>17 Q. How about did anyone show you or tell</p> <p>18 you about any testing Dr. Seymour Lewin had done on</p> <p>19 talc for the presence of asbestos?</p> <p>20 MS. BROWN: Objection to the form.</p> <p>21 A. I do not recall.</p> <p>22 Q. Did anyone show you or talk to you</p> <p>23 about testing that a laboratory called McCrone had</p> <p>24 ever done on talc for the presence of asbestos?</p> <p>25 MS. BROWN: Objection to the form.</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 A. The name sounds familiar, but beyond<br/>2 that, I don't recall.</p> <p>3 Q. Do you know what Hammondsville<br/>4 cosmetic talc ore is?</p> <p>5 MS. BROWN: Objection to the form.</p> <p>6 A. No, I do not recall.</p> <p>7 Q. Did anyone at Johnson &amp; Johnson ever<br/>8 tell you anything about Hammondsville cosmetic talc<br/>9 ore?</p> <p>10 MS. BROWN: Form.</p> <p>11 A. Not that I recall.</p> <p>12 Q. Did anyone ever tell you about a talc<br/>13 called HC, capital HC?</p> <p>14 MS. BROWN: Form.</p> <p>15 A. Do not recall.</p> <p>16 Q. Did anyone ever show you or tell you<br/>17 anything about testing from the Colorado School of<br/>18 Mines?</p> <p>19 MS. BROWN: Objection to the form.</p> <p>20 A. Not that I recall.</p> <p>21 Q. How about Dr. Reynolds from<br/>22 Dartmouth?</p> <p>23 MS. BROWN: Objection to the form.</p> <p>24 A. Don't recall.</p> <p>25 Q. Did anyone ever tell you or show you</p>                                                                                                                                                                                                                            | <p style="text-align: right;">Page 80</p> <p>1 Exhibit 8.</p> <p>2 And if you look at Exhibit 8 and if<br/>3 you look up on the screen you can see this is<br/>4 another e-mail that was forwarded you by the<br/>5 dermatologist Dr. Grossman within the first few<br/>6 months of you working at J&amp;J Consumer, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And Dr. Grossman is bringing you up<br/>9 to speed on a proposal for Dr. Wehner to write a<br/>10 peer-reviewed article that would be intended to be<br/>11 submitted to the NTP.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And there's a note where it says, "My<br/>15 understanding is that the cost for this would be in<br/>16 the 5,000 range."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And if you go down the e-mail<br/>20 chain, you could see that this was a suggestion,<br/>21 this came from a suggestion that was made by<br/>22 Dr. John Hopkins.</p> <p>23 You see that?</p> <p>24 A. Yes, I see it.</p> <p>25 Q. And Dr. Hopkins says, "I think that</p> |
| <p style="text-align: right;">Page 79</p> <p>1 anything about any testing done by the University of<br/>2 Minnesota and a Dr. Hutchinson on talc for the<br/>3 presence of asbestos?</p> <p>4 A. No, I do not recall.</p> <p>5 MS. BROWN: Form.</p> <p>6 BY MR. BLOCK:</p> <p>7 Q. Did anyone show you any piece of<br/>8 paper that showed anything about testing of Johnson<br/>9 &amp; Johnson's talc for asbestos in the 1950s, 1960s,<br/>10 1970s, 1980s or 1990s or at any time before 2004?</p> <p>11 MS. BROWN: Objection to the form.</p> <p>12 A. I don't recall.</p> <p>13 Q. Now, you mentioned Dr. Wehner, right?</p> <p>14 A. Wehner I think is the way it's<br/>15 pronounced, but anyway, yes.</p> <p>16 Q. Dr. Wehner.</p> <p>17 And one of the things that you were<br/>18 involved with at J&amp;J Consumer in the early 2000 time<br/>19 period was making payments to Dr. Wehner to write<br/>20 papers about talc that were then submitted to<br/>21 National Toxicology Program, correct?</p> <p>22 A. Yeah, I recall facilitating, you<br/>23 know, his contract because he had done, I think,<br/>24 similar things in the past, position papers.</p> <p>25 Q. Let's skip Exhibit 7 and go to</p> | <p style="text-align: right;">Page 81</p> <p>1 it is useful to support the idea to have Dr. Wehner<br/>2 write up to date review of the safety issues<br/>3 regarding talc."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And it says, "NTP will only take<br/>7 account of peer-reviewed publications." And then he<br/>8 says, "It is vital to get some of the<br/>9 counter-balancing information into print."</p> <p>10 Do you see that?</p> <p>11 A. Yes, I see it.</p> <p>12 Q. And Dr. Hopkins mentions that<br/>13 Dr. Wehner is now on the Editorial Board on the<br/>14 Journal, Regulatory Toxicology and Pharmacology.</p> <p>15 You see that?</p> <p>16 A. Yes.</p> <p>17 Q. All right. So Dr. Wehner sent his<br/>18 invoices for papers that he wrote for Johnson &amp;<br/>19 Johnson to you, correct?</p> <p>20 A. I really don't recall, but...</p> <p>21 Q. Let's look at Exhibit 9, please.</p> <p>22 A. Okay.</p> <p>23 Q. And if you look at Exhibit 9, it's a<br/>24 letter from Dr. Wehner to you, correct?</p> <p>25 A. Yes.</p>          |

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| <p style="text-align: right;">Page 82</p> <p>1 Q. And the date of that letter is</p> <p>2 September 19, 2002, right?</p> <p>3 A. Yeah.</p> <p>4 (Court Reporter clarification.)</p> <p>5 BY MR. BLOCK:</p> <p>6 Q. Okay. So now it is up on the screen.</p> <p>7 Sorry for not having it up there.</p> <p>8 And this letter from Dr. Wehner is</p> <p>9 dated September 19, 2002 and it's to you, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And Dr. Wehner says that he is</p> <p>12 enclosing invoice for professional services to you,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. All right. And we saw in an earlier</p> <p>16 e-mail about the idea of Dr. Wehner working on a</p> <p>17 publication that would be submitted to NTP, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And Dr. Wehner said to you, "I have</p> <p>20 not heard anything yet regarding the publication of</p> <p>21 my paper."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. The second paragraph?</p> <p>25 A. Yes, second paragraph.</p>                                                                   | <p style="text-align: right;">Page 84</p> <p>1 A. It seems to, yeah, kind of scribbly,</p> <p>2 but yeah.</p> <p>3 Q. That's your handwriting, right?</p> <p>4 A. That I don't know. The one on the</p> <p>5 left says that. What I see on my thing about Wehner</p> <p>6 does look like mine.</p> <p>7 Q. All right. So you wrote on the</p> <p>8 immediate page before "Al Wehner Talc," right?</p> <p>9 A. Um-hum.</p> <p>10 Q. Yes?</p> <p>11 A. Yes.</p> <p>12 Q. And then on this letter that was sent</p> <p>13 to you, do you believe it's likely that those</p> <p>14 additional notes are your notes?</p> <p>15 MS. BROWN: Objection to the form;</p> <p>16 calls for speculation.</p> <p>17 A. I don't recall if it is.</p> <p>18 Q. All right. And it says 50, I think</p> <p>19 it says, I think 50 or 60,000.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 MS. BROWN: Objection to the form.</p> <p>23 BY MR. BLOCK:</p> <p>24 Q. And it says "Raise fee." Is that</p> <p>25 what it says?</p>                                                                                                        |
| <p style="text-align: right;">Page 83</p> <p>1 Q. He says, "I will let you know when it</p> <p>2 is published and send 50 reprints to Bill Ashton."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And Dr. Wehner also mentions the</p> <p>6 Krushinski litigation.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And do you know anything about the</p> <p>10 Krushinski litigation?</p> <p>11 A. No.</p> <p>12 Q. Did you work on any litigation while</p> <p>13 you were at Johnson &amp; Johnson Consumer?</p> <p>14 A. No.</p> <p>15 Q. And you had never sought any legal</p> <p>16 advice then about any litigation when you worked at</p> <p>17 J&amp;J Consumer, correct?</p> <p>18 MS. BROWN: Objection to the form of</p> <p>19 the question; don't answer that.</p> <p>20 BY MR. BLOCK:</p> <p>21 Q. Okay. So let's look further down in</p> <p>22 this letter that Dr. Wehner sent to you on</p> <p>23 September 19, 2002 and go to the last page, please,</p> <p>24 and someone wrote "\$50,000." Does it say \$50,000?</p> <p>25 MS. BROWN: Objection to the form.</p> | <p style="text-align: right;">Page 85</p> <p>1 MS. BROWN: Objection to the form.</p> <p>2 A. Looks like it.</p> <p>3 Q. And then it has Al Wehner and it has</p> <p>4 a phone number and then it has Bill Ashton's number,</p> <p>5 right?</p> <p>6 A. Um-hum, yes.</p> <p>7 Q. And you recall whether those -- do</p> <p>8 you recall whether Dr. Wehner raised his fee for the</p> <p>9 publication from what was first anticipated to what</p> <p>10 it ended up being?</p> <p>11 MS. BROWN: Objection to the form.</p> <p>12 A. I don't know what that refers to.</p> <p>13 Q. All right. And your testimony is</p> <p>14 that you don't know if these are your notes or not?</p> <p>15 A. I don't, I don't know if they are</p> <p>16 specifically.</p> <p>17 Q. Okay. Does that look like your</p> <p>18 handwriting or not?</p> <p>19 A. Yes.</p> <p>20 Q. All right. I want to ask you some</p> <p>21 questions about this paper that Johnson &amp; Johnson</p> <p>22 paid Dr. Wehner to write. Okay?</p> <p>23 MS. BROWN: Objection to the form.</p> <p>24 A. Okay.</p> <p>25 Q. In this paper that J&amp;J paid</p> |



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| <p style="text-align: right;">Page 86</p> <p>1 Dr. Wehner to write to be submitted to the NTP, you<br/> 2 know that Dr. Wehner wrote that talc does not<br/> 3 contain any asbestos, right?<br/> 4 MS. BROWN: Objection to the form.<br/> 5 A. I don't recall what he wrote.<br/> 6 Q. Let's go to Exhibit 10. Exhibit 10<br/> 7 is an e-mail from Kathleen Willie who you just told<br/> 8 us about previously.<br/> 9 She worked at Johnson &amp; Johnson<br/> 10 Consumer like you did, right?<br/> 11 A. Correct.<br/> 12 Q. One of your co-workers there, right?<br/> 13 A. Correct.<br/> 14 Q. You talked to her about talc issues<br/> 15 sometime?<br/> 16 MS. BROWN: Objection to the form.<br/> 17 A. Sometimes. She's the head of<br/> 18 regulatory at that time, I believe.<br/> 19 Q. Was she in a superior position to you<br/> 20 or more of a lateral equal plane?<br/> 21 A. A different department.<br/> 22 Q. Okay. She ran regulatory; you ran<br/> 23 toxicology at J&amp;J Consumer, right?<br/> 24 MS. BROWN: Objection to the form.<br/> 25 A. I did not run it. I had a boss.</p> | <p style="text-align: right;">Page 88</p> <p>1 A. That appears to be correct.<br/> 2 Q. All right. And just to be clear,<br/> 3 Johnson &amp; Johnson, were they the only company that<br/> 4 paid Dr. Wehner to write this article or did some of<br/> 5 the other companies help fund it?<br/> 6 MS. BROWN: Objection to the form.<br/> 7 A. I don't recall.<br/> 8 Q. All right. And the title of this<br/> 9 paper is, "Cosmetic Talc Should Not Be Listed as a<br/> 10 Carcinogen: Comments on NTP's Deliberations to List<br/> 11 Talc As a Carcinogen."<br/> 12 Do you see that?<br/> 13 A. Yes, I do.<br/> 14 Q. And Dr. Wehner says in this article,<br/> 15 if you look at what I've highlighted, he says, "The<br/> 16 important point to remember in the context of this<br/> 17 review is that non-fibrous, or pure talc as used by<br/> 18 consumers in cosmetics or pharmaceuticals undergoes<br/> 19 strict quality control measures and does not contain<br/> 20 asbestos fibers."<br/> 21 Do you see that?<br/> 22 A. Yes, I do.<br/> 23 Q. And in this article where Dr. Wehner<br/> 24 published and said that talc does not contain<br/> 25 asbestos fibers, did he disclose that he received</p> |
| <p style="text-align: right;">Page 87</p> <p>1 Q. And all right. If we look at this<br/> 2 e-mail from Kathleen Willie to you it attaches<br/> 3 Dr. Wehner's paper.<br/> 4 Do you see that?<br/> 5 A. Okay. Is that on the next page?<br/> 6 Q. Yes. The third page, double-sided<br/> 7 copy.<br/> 8 A. Yes, I see it.<br/> 9 Q. All right. And remember when an<br/> 10 e-mail that you were on, it talked about how<br/> 11 Dr. Wehner is on the Editorial Board of Regulatory<br/> 12 Toxicology and Pharmacology?<br/> 13 A. Yes.<br/> 14 Q. You remember that?<br/> 15 So Dr. Wehner got the paper that<br/> 16 Johnson &amp; Johnson paid for in the journal that he<br/> 17 was on the Editorial Board of, right?<br/> 18 MS. BROWN: I object to the form of<br/> 19 the question.<br/> 20 A. It's published there. I don't know<br/> 21 how it ended up getting reviewed or put on, I<br/> 22 wouldn't know that.<br/> 23 Q. Okay. But it's published in the same<br/> 24 journal that Dr. Wehner was on the Editorial Board<br/> 25 of, right?</p>                                               | <p style="text-align: right;">Page 89</p> <p>1 payments for writing this article from Johnson &amp;<br/> 2 Johnson?<br/> 3 MS. BROWN: Objection to the form of<br/> 4 the question.<br/> 5 A. Yes.<br/> 6 Q. Okay. Let's look at what disclosure<br/> 7 he actually made.<br/> 8 Do you see footnote 2? Dr. Wehner<br/> 9 lists his name and then he lists two notes, note 1<br/> 10 and 2.<br/> 11 Do you see that? There's his name<br/> 12 and it lists footnote 1 and 2.<br/> 13 You see that?<br/> 14 A. Yes.<br/> 15 Q. Let's go to those footnotes that he<br/> 16 said.<br/> 17 The one footnote is telling people<br/> 18 how to contact him, right?<br/> 19 A. Yep.<br/> 20 Q. The next footnote says, "This review<br/> 21 was conducted independently and the opinions<br/> 22 expressed in it are solely those of the author."<br/> 23 Do you see that?<br/> 24 A. Yes, I do.<br/> 25 Q. And he does not say anything about</p>                                                                                                                                                                                                                                                                           |

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| <p style="text-align: right;">Page 90</p> <p>1 Johnson &amp; Johnson, correct?</p> <p>2 A. No.</p> <p>3 Q. And then if we go to the</p> <p>4 Acknowledgment part of the article, at the very end</p> <p>5 of the article, under Conclusion.</p> <p>6 A. Um-hum.</p> <p>7 Q. Do you see where it says</p> <p>8 "Acknowledgment"?</p> <p>9 A. Yes.</p> <p>10 Q. And Dr. Wehner says, "I am indebted</p> <p>11 to Dr. John Hopkins, Innovant Research, United</p> <p>12 Kingdom, for his review of this manuscript and his</p> <p>13 constructive comments."</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Once again, Johnson &amp; Johnson is not</p> <p>17 mentioned, correct?</p> <p>18 A. That is correct.</p> <p>19 Q. And Dr. Wehner doesn't mention in</p> <p>20 that Acknowledgment that Dr. John Hopkins worked for</p> <p>21 Johnson &amp; Johnson companies for more than 20 years,</p> <p>22 correct?</p> <p>23 MS. BROWN: Objection to the form.</p> <p>24 A. That's correct.</p> <p>25 Q. And this article by Dr. Wehner that</p>        | <p style="text-align: right;">Page 92</p> <p>1 A. Let me take a moment to read this.</p> <p>2 Okay.</p> <p>3 Q. And this article that Johnson &amp;</p> <p>4 Johnson paid Dr. Wehner to write was submitted to</p> <p>5 the NTP, correct?</p> <p>6 MS. BROWN: Objection to the form.</p> <p>7 A. Appears so, yes.</p> <p>8 Q. And Dr. Wehner's article was also</p> <p>9 submitted to other government agencies for the</p> <p>10 United States including OSHA, correct?</p> <p>11 A. According to this, yes.</p> <p>12 Q. That article was submitted also to</p> <p>13 the U.S. Geological Survey, USGS, correct?</p> <p>14 A. Correct.</p> <p>15 Q. This article by Dr. Wehner was sent</p> <p>16 to both the trade association of the United States</p> <p>17 and in the United Kingdom, the CTFA and the CTP,</p> <p>18 correct?</p> <p>19 MS. BROWN: Objection to the form;</p> <p>20 assumes facts.</p> <p>21 A. That's what this memo is showing.</p> <p>22 Q. All right. Yes. And this, and it</p> <p>23 says here on the last couple sentences by</p> <p>24 Mr. Ashton, "We have arranged that Dr. Wehner's</p> <p>25 article will be sent to the officials of IARC by the</p> |
| <p style="text-align: right;">Page 91</p> <p>1 said that there was no asbestos in talc was sent to</p> <p>2 a number of government agencies, correct?</p> <p>3 MS. BROWN: Objection to the form.</p> <p>4 A. I believe so, yes.</p> <p>5 Q. And this was part of your plan,</p> <p>6 right?</p> <p>7 MS. BROWN: Objection to the form.</p> <p>8 A. Not clear what you mean by my "plan."</p> <p>9 Q. Look at Exhibit 11.</p> <p>10 A. I'm sorry.</p> <p>11 Q. If you look at Exhibit 11 --</p> <p>12 A. Hold on. Sorry.</p> <p>13 Q. Exhibit 11 is a memo.</p> <p>14 A. Um-hum.</p> <p>15 Q. And it is to Lorena Telofski and it</p> <p>16 is from Bill Ashton.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And Mr. Ashton writes on</p> <p>20 October 23rd, 2002, "Attached is a copy of</p> <p>21 Dr. Wehner's article that was issued last week. It</p> <p>22 is a masterful piece of work in support of the</p> <p>23 safety of our type talc and is a major document that</p> <p>24 talc is not a carcinogen."</p> <p>25 Do you see that?</p> | <p style="text-align: right;">Page 93</p> <p>1 parent company of our U.S. talc producer Luzenac,</p> <p>2 France. This should have a sobering effect on the</p> <p>3 IARC group regarding any adverse decisions on talc."</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And this was part of your plan,</p> <p>7 wasn't it?</p> <p>8 MS. BROWN: Objection to the form.</p> <p>9 A. I recognize this as our intention to</p> <p>10 submit article to NTP during the, or occasions</p> <p>11 during the public time periods.</p> <p>12 Q. And that is your name at the top. We</p> <p>13 can see under the black marking it says, "Steve</p> <p>14 Mann," right? On the top right?</p> <p>15 A. I see my initials.</p> <p>16 Q. Actually, if you look at the top of</p> <p>17 the screen --</p> <p>18 A. Yes. That's Neal writing to me.</p> <p>19 Q. And Neal writes to you, "Was this</p> <p>20 part of our plan? Neal."</p> <p>21 A. Yes.</p> <p>22 Q. And you answer, "Yes. SWM," right?</p> <p>23 A. Right, to submit information that we</p> <p>24 have to them during their comment period, yes.</p> <p>25 Q. To submit a paper by Dr. Wehner?</p>                  |

24 (Pages 90 - 93)

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| <p style="text-align: right;">Page 94</p> <p>1 A. Yes.</p> <p>2 Q. That did not say anything about</p> <p>3 Johnson &amp; Johnson funding it, correct?</p> <p>4 MS. BROWN: Objection to the form.</p> <p>5 A. That's what it appears.</p> <p>6 Q. And this was not only part of your</p> <p>7 plan, this was part of Dr. John Hopkins' plan,</p> <p>8 right? He's copied here.</p> <p>9 MS. BROWN: Objection to the form;</p> <p>10 calls for speculation.</p> <p>11 BY MR. BLOCK:</p> <p>12 Q. Was this part of Dr. John Hopkins'</p> <p>13 plan?</p> <p>14 MS. BROWN: Same objection.</p> <p>15 A. I do not know.</p> <p>16 Q. Was this part of Dr. Wehner's plan?</p> <p>17 MS. BROWN: Same objection.</p> <p>18 A. To submit it to NTP, yes.</p> <p>19 Q. And was this part of Mr. John</p> <p>20 O'Shaughnessy's plan?</p> <p>21 MR. BLOCK: Objection to the form;</p> <p>22 don't answer.</p> <p>23 BY MR. BLOCK:</p> <p>24 Q. Now, Mr. John O'Shaughnessy is copied</p> <p>25 on this memo, correct?</p>                                                        | <p style="text-align: right;">Page 96</p> <p>1 A. Yes.</p> <p>2 Q. And we could see on the top of the</p> <p>3 fax, we could see markings that say, "February 24,</p> <p>4 2004, from J&amp;J Corporate PR," correct?</p> <p>5 A. Not sure I see the "Corporate PR"</p> <p>6 but...</p> <p>7 Q. At the top of the page.</p> <p>8 A. Yeah.</p> <p>9 Q. "J&amp;J Corp PR."</p> <p>10 Do you see that?</p> <p>11 A. Oh, okay. Yes.</p> <p>12 Q. And the subject of this fax that was</p> <p>13 sent to you is "Asbestos," right?</p> <p>14 A. Yes.</p> <p>15 Q. And it says, do you see it's about,</p> <p>16 "We were contacted by a reporter at a Sacramento</p> <p>17 television station."</p> <p>18 You see that?</p> <p>19 A. Yes.</p> <p>20 Q. All right. And it mentions a test</p> <p>21 they performed on Johnson's Baby Powder.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And it says, "She has since sent me</p> <p>25 the attached cover letter and lab results."</p>                                  |
| <p style="text-align: right;">Page 95</p> <p>1 A. Yes, I see that.</p> <p>2 Q. Is there anyone else from J&amp;J</p> <p>3 corporate copied on this memo?</p> <p>4 MS. BROWN: Objection to the form.</p> <p>5 A. I don't believe so.</p> <p>6 Q. Did anyone else from J&amp;J corporate</p> <p>7 know about this plan other than Mr. John</p> <p>8 O'Shaughnessy?</p> <p>9 MS. BROWN: Objection to the form.</p> <p>10 A. I do not know.</p> <p>11 Q. Dr. Mann, while you worked at Johnson</p> <p>12 &amp; Johnson Consumer, you knew the statement that</p> <p>13 Johnson's Baby Powder did not contain asbestos was</p> <p>14 false, correct?</p> <p>15 MS. BROWN: Objection to the form.</p> <p>16 A. No, that is not correct.</p> <p>17 Q. Let's look at Exhibit 12. Exhibit 12</p> <p>18 is a fax to you, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And a fax to you dated February 24,</p> <p>21 2004, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And it is a fax to you from Marc</p> <p>24 Monseau from Corporate Communications at J&amp;J,</p> <p>25 correct?</p> | <p style="text-align: right;">Page 97</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And it says, "Sarah Colamarino</p> <p>4 suggested I share it with you."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And "Sarah will be calling you</p> <p>8 shortly to discuss."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And Sarah Colamarino was the head of</p> <p>12 PR, public relations for Johnson &amp; Johnson Consumer</p> <p>13 at the time, correct?</p> <p>14 MS. BROWN: Objection to the form.</p> <p>15 A. I don't recall but...</p> <p>16 Q. She was with the PR department at</p> <p>17 Johnson &amp; Johnson Consumer at the time, correct?</p> <p>18 MS. BROWN: Objection; asked and</p> <p>19 answered.</p> <p>20 A. I don't recall if she was.</p> <p>21 Q. Okay. So if we go to the attachment</p> <p>22 to the fax that was sent to you, you see there's a</p> <p>23 letter dated February 23rd, 2004?</p> <p>24 A. Yeah.</p> <p>25 Q. And it's a letter to Marc Monseau for</p> |

25 (Pages 94 - 97)

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| <p style="text-align: right;">Page 98</p> <p>1 Johnson &amp; Johnson.<br/> 2 Do you see that?<br/> 3 A. Yes.<br/> 4 Q. And in the letter, do you see the<br/> 5 word "Johnson's Baby Powder," the words?<br/> 6 A. Yes.<br/> 7 Q. And do you see where it says, "I am<br/> 8 enclosing a copy of the test and results for you to<br/> 9 look over."<br/> 10 Do you see that sentence?<br/> 11 A. Yes.<br/> 12 Q. All right. And then if you go to the<br/> 13 attachment, do you see at the top it says "Forensic<br/> 14 Analytical"?<br/> 15 A. Yes.<br/> 16 Q. All right. And I will be referring<br/> 17 to this testing as the Forensic Analytical testing.<br/> 18 Is that understandable to you?<br/> 19 A. Yep.<br/> 20 Q. Yes?<br/> 21 A. Yes.<br/> 22 Q. Okay. And in the Forensic Analytical<br/> 23 testing, you see that it says "Date Analyzed<br/> 24 January 5, 2004"?<br/> 25 A. Oh, yes.</p>                                                                                                 | <p style="text-align: right;">Page 100</p> <p>1 A. Yes.<br/> 2 Q. And it says capital A, capital N.<br/> 3 Do you see that?<br/> 4 A. Yes.<br/> 5 Q. And that asbestos type is defined in<br/> 6 this Forensic Analytical lab report as<br/> 7 "Anthophyllite."<br/> 8 Do you see that?<br/> 9 A. Yes.<br/> 10 Q. And do you see that this lab report<br/> 11 is signed by "Mark Floyd EM Supervisor."<br/> 12 Do you see that?<br/> 13 A. Yes.<br/> 14 Q. And do you see a reference to an EPA<br/> 15 Test Method on this lab report?<br/> 16 A. Yes, barely readable, but yes, EPA<br/> 17 Test Method, yes.<br/> 18 Q. And this was faxed to you on<br/> 19 February 24, 2004 correct?<br/> 20 A. Yes.<br/> 21 Q. And the Forensic Analytical testing<br/> 22 reporting that asbestos was present in Johnson's<br/> 23 Baby Powder, correct?<br/> 24 MS. BROWN: Objection to the form.<br/> 25 A. That's what this report is showing.</p>                                                                                                                                                                                 |
| <p style="text-align: right;">Page 99</p> <p>1 Q. And do you see that there's a heading<br/> 2 that says, "Quantitative Analysis Regarding Asbestos<br/> 3 in Bulk Material Transmission Electron Microscopy."<br/> 4 Do you see that?<br/> 5 MS. BROWN: Objection to the form;<br/> 6 misstates the document.<br/> 7 A. Yes.<br/> 8 Q. And there is some information in the<br/> 9 document that talks about TEM and it talks about<br/> 10 high magnification analysis.<br/> 11 Do you see that? Can you see it on<br/> 12 the screen?<br/> 13 A. Oh, up here. Oh, yes. Okay. Now<br/> 14 it's really hard to read.<br/> 15 Q. All right. And if you go to<br/> 16 Analytical Results.<br/> 17 Do you see "Client Sample Number" and<br/> 18 do you see the words "Johnson's Baby Powder"?<br/> 19 A. Yes, I do.<br/> 20 Q. And it says, "Asbestos Weight<br/> 21 Percent, 0.2 percent."<br/> 22 Do you see that?<br/> 23 A. Yes, I do.<br/> 24 Q. And it says "Asbestos Type."<br/> 25 Do you see that?</p> | <p style="text-align: right;">Page 101</p> <p>1 Q. And they also tested Revlon blush.<br/> 2 Do you see that?<br/> 3 A. Yes.<br/> 4 Q. And as far as a Revlon blush was<br/> 5 concerned, they determined that it was non-detect,<br/> 6 ND, and it says less than .0001 percent.<br/> 7 Do you see that?<br/> 8 A. Yes.<br/> 9 Q. When you received these lab results<br/> 10 you had to decide what to do, correct?<br/> 11 MS. BROWN: Objection to the form.<br/> 12 A. Yes.<br/> 13 Q. One of the things you considered when<br/> 14 it came to Johnson's Baby Powder was that this was a<br/> 15 product that was a sacred cow at Johnson &amp; Johnson,<br/> 16 correct?<br/> 17 MS. BROWN: Objection to the form.<br/> 18 A. I guess that's a strange word that I<br/> 19 use, but, in fact, I recall that had something to do<br/> 20 with something completely different than this.<br/> 21 Q. When you worked at Johnson &amp; Johnson<br/> 22 Consumer, you always considered Johnson's Baby<br/> 23 Powder to be a sacred cow, correct?<br/> 24 MS. BROWN: Objection to the form;<br/> 25 asked and answered.</p> |

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| <p style="text-align: right;">Page 102</p> <p>1 A. It's a well-known brand.</p> <p>2 Q. Less look at Exhibit 12A. And if you</p> <p>3 look at Exhibit 12A, go to the second e-mail down,</p> <p>4 the one dated June 30, 2003 at 10:28 a.m. from</p> <p>5 Steven Mann.</p> <p>6 Do you see that?</p> <p>7 A. Um-hum. Yes, yes.</p> <p>8 Q. All right. And you were writing</p> <p>9 Paul, is it Sterchele?</p> <p>10 A. Sterchele.</p> <p>11 Q. Sterchele. And he was -- you were</p> <p>12 his supervisor, right?</p> <p>13 A. That is correct.</p> <p>14 Q. And you wrote to Paul Sterchele and</p> <p>15 Lorena Telofski on June 30, 2003. "Paul/Lorena, my</p> <p>16 sense is that the baby powder is such a scared cow</p> <p>17 that we will just leave it alone:</p> <p>18 Do you see that sentence?</p> <p>19 A. Yes.</p> <p>20 Q. And what you meant was "sacred cow"?</p> <p>21 A. Yes, dyslexic there.</p> <p>22 Q. What you meant when you wrote that</p> <p>23 sentence was "sacred cow," correct?</p> <p>24 A. Yes.</p> <p>25 Q. And what is a sacred cow?</p>                                                                                                                                                                                                                  | <p style="text-align: right;">Page 104</p> <p>1 A. That's why I say my choice of words</p> <p>2 is poor.</p> <p>3 Q. Well, you didn't just make a mistake</p> <p>4 and write this in one e-mail, did you?</p> <p>5 A. I don't know if this is one e-mail or</p> <p>6 not. I'm just saying --</p> <p>7 Q. Did you use the words "sacred cow" on</p> <p>8 other occasions to refer to Johnson's Baby Powder?</p> <p>9 A. I do not recall if I did.</p> <p>10 Q. Let's go to Exhibit 12B. Okay. And</p> <p>11 let's please look at the e-mail chain and if you</p> <p>12 could follow it down and if you could please turn to</p> <p>13 the e-mail that you wrote on August 7, 2003 at 11:46</p> <p>14 a.m.</p> <p>15 A. August 7.</p> <p>16 Q. August 7, 2003 at 11:46 a.m.</p> <p>17 A. Can I take a moment to look at this</p> <p>18 chain?</p> <p>19 Q. Yes.</p> <p>20 Just let me know when you're ready to</p> <p>21 answer questions.</p> <p>22 A. Okay.</p> <p>23 Q. So looking at your e-mail on the</p> <p>24 screen --</p> <p>25 A. No, I said okay, I will let you know.</p> |
| <p style="text-align: right;">Page 103</p> <p>1 A. In this sense, if I recall, the</p> <p>2 reason Paul's on here, this had to do with</p> <p>3 reformulating the fragrance. And in my mind, one of</p> <p>4 the things about the baby powder that is so iconic</p> <p>5 is the fragrance. So that's what I am referring to</p> <p>6 is that there was some consideration of</p> <p>7 reformulating that very well recognized fragrance</p> <p>8 and so I was sort of warning them, you know, don't</p> <p>9 necessarily mess with the fragrance for something</p> <p>10 that people recognize that fragrance so well.</p> <p>11 Q. Sir, I want to see if we can agree on</p> <p>12 a definition of the term "sacred cow." Okay?</p> <p>13 A. Um-hum.</p> <p>14 Q. A sacred cow means something that</p> <p>15 really cannot be criticized, correct?</p> <p>16 MS. BROWN: Objection to the form.</p> <p>17 A. It's a poor choice of words.</p> <p>18 Q. What does the phrase "sacred cow"</p> <p>19 mean, sir?</p> <p>20 MS. BROWN: Objection to the form.</p> <p>21 A. Important.</p> <p>22 Q. The term "sacred cow" means something</p> <p>23 that is immune from criticism or needs to be</p> <p>24 protected from any criticism, correct?</p> <p>25 MS. BROWN: Objection to the form.</p> | <p style="text-align: right;">Page 105</p> <p>1 Q. Okay.</p> <p>2 A. I'm still reading. Thank you. I'm</p> <p>3 sorry.</p> <p>4 MS. BROWN: Take your time.</p> <p>5 A. Okay.</p> <p>6 Q. Can you see the e-mail up on the</p> <p>7 screen that you wrote on August 7, 2003 at 11:46</p> <p>8 a.m.?</p> <p>9 A. Yes.</p> <p>10 Q. And you're writing Neal Matheson.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Was he someone that was, that you</p> <p>14 considered to be in a superior position --</p> <p>15 A. Yes.</p> <p>16 Q. -- at Johnson &amp; Johnson Consumer at</p> <p>17 the time?</p> <p>18 A. Yes.</p> <p>19 Q. Do you consider Neal Matheson to be</p> <p>20 one of your bosses on August 7, 2003?</p> <p>21 A. Yes.</p> <p>22 Q. And you wrote, "Neal, they are</p> <p>23 transitioning to talc sourcing to China. I realize</p> <p>24 talc and the baby fragrance are somewhat sacred so I</p> <p>25 need to ask."</p>                                                                                                                               |



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| <p style="text-align: right;">Page 138</p> <p>1 A. For every raw material you have</p> <p>2 there's, the suppliers have to provide a sheet that</p> <p>3 provides the toxicology information on any specific</p> <p>4 industrial hygiene handling procedures one would</p> <p>5 have to do, that's my recollection.</p> <p>6 It's sort of an industrial hygiene so</p> <p>7 that all the chemicals that are in the building</p> <p>8 basically should have a file with Material Safety</p> <p>9 Data Sheet in it.</p> <p>10 Q. And was that always important for</p> <p>11 Johnson &amp; Johnson based upon your experience to be</p> <p>12 honest in its Material Safety Data Sheets?</p> <p>13 MS. BROWN: Objection to the form.</p> <p>14 A. Yes.</p> <p>15 Q. Let's look at Exhibit 19. Okay.</p> <p>16 Exhibit 19 is an e-mail chain and like -- right</p> <p>17 there, starting from the top it's from Dana Mickel</p> <p>18 to you, Steven Mann, March 12, 2004.</p> <p>19 You see that?</p> <p>20 A. Yes.</p> <p>21 Q. And so this is about three weeks</p> <p>22 after you received the results of the Forensic</p> <p>23 Analytical testing, correct?</p> <p>24 A. Yes.</p> <p>25 Q. All right. And Dana Mickel writes,</p> | <p style="text-align: right;">Page 140</p> <p>1 Powder Talc that you had forwarded in 2003 and</p> <p>2 called your statements, do you see at the bottom of</p> <p>3 the MSDS there's a statement about Carcinogenic</p> <p>4 Effects?</p> <p>5 A. Yes.</p> <p>6 Q. And it states, "This product contains</p> <p>7 no detectable asbestiform minerals," and it refers</p> <p>8 to CTFA Method J4-1, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And at this time in 2003 when you</p> <p>11 sent these statements to be in Johnson's Baby Powder</p> <p>12 in the MSDS, you admit you didn't even know what the</p> <p>13 CTFA J4-1 Method was, correct?</p> <p>14 MS. BROWN: Objection to the form.</p> <p>15 A. Yes.</p> <p>16 Q. All right. And so now in 2004, after</p> <p>17 you had received results of the Forensic Analytical</p> <p>18 testing, Dana Mickel is writing you to ask if the</p> <p>19 MSDS for talc is the same as you had forwarded in</p> <p>20 the past, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And if go to the next exhibit we can</p> <p>23 see -- let me ask you this: Did you ever read the</p> <p>24 CTFA J4-1 Method that you referred to in the MSDS</p> <p>25 sheet?</p> |
| <p style="text-align: right;">Page 139</p> <p>1 "Steve, I am currently working on the MSDS for</p> <p>2 Shower to Shower Absorbent Body Powder Products.</p> <p>3 Would the terminology that you provided us to use in</p> <p>4 Johnson's Baby Powder be the same for Shower to</p> <p>5 Shower?"</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And if we go down to the e-mail</p> <p>9 chain, you can see what she did was she forwarded a</p> <p>10 past e-mail you had sent her with an attachment.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And so she forwarded an e-mail that</p> <p>14 you had sent her back on June 5, 2003 as an</p> <p>15 attachment and your e-mail from June 5, 2003 says,</p> <p>16 "Attached are my statements for the Baby Powder Talc</p> <p>17 MSDS."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And then you attached the document</p> <p>21 called "MSDS.doc."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And if we look at the material -- if</p> <p>25 we look at the Material Safety Data Sheet for Baby</p>                                                                                                                           | <p style="text-align: right;">Page 141</p> <p>1 MS. BROWN: Objection to the form.</p> <p>2 A. No, I wouldn't. Not my</p> <p>3 responsibility. That's a QA issue again.</p> <p>4 Q. I mean: Did you ever e-mail it to</p> <p>5 yourself so you could read it?</p> <p>6 MS. BROWN: Objection to the form.</p> <p>7 A. I don't recall.</p> <p>8 Q. Let's go to Exhibit 20.</p> <p>9 A. 20. Okay. Okay.</p> <p>10 Q. Exhibit 20, it's actually two e-mails</p> <p>11 that you sent to yourself on February 13, 2006. And</p> <p>12 you actually e-mailed to yourself the CTFA Talc</p> <p>13 Specification, didn't you?</p> <p>14 A. Apparently. Didn't recall.</p> <p>15 Q. You e-mailed it to yourself twice in</p> <p>16 one day; first was at 10:59 a.m., and then you</p> <p>17 e-mailed it again to yourself at 4:01 p.m., right?</p> <p>18 A. Yes. This is what, 2006?</p> <p>19 Q. Yes. See that?</p> <p>20 A. Yeah.</p> <p>21 Q. And did you read the CTFA J4-1 Method</p> <p>22 that you e-mailed to yourself twice on February 13,</p> <p>23 2006?</p> <p>24 MS. BROWN: Objection to the form.</p> <p>25 A. I don't recall if I read it. I</p>                                                   |

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| <p style="text-align: right;">Page 142</p> <p>1 probably wouldn't be able to interpret it very well.</p> <p>2 Q. Do you know what a level of detection</p> <p>3 is?</p> <p>4 A. Yes.</p> <p>5 Q. And do you see that the CTFA J4-1</p> <p>6 Method that was issued in 1976 that we've been</p> <p>7 talking about and that you e-mailed to yourself, do</p> <p>8 you see it talks about the X-ray diffraction method?</p> <p>9 Up on the screen.</p> <p>10 A. Oh, yes. Okay.</p> <p>11 Q. And do you see halfway down the</p> <p>12 paragraph it says, "The level of detection of</p> <p>13 amphibole by this method is 0.5 percent and above."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. While you worked at Johnson &amp;</p> <p>17 Johnson, you knew that the CTFA J4-1 Method had a</p> <p>18 level of detection that only went down to 0.5</p> <p>19 percent, correct?</p> <p>20 MS. BROWN: Objection to the form.</p> <p>21 A. Again, I think the timing here we're</p> <p>22 talking about, this thing that happened in 2004.</p> <p>23 I'm looking at this thing in 2006, so --</p> <p>24 Q. Sir, were you working at Johnson &amp;</p> <p>25 Johnson in February 2006?</p> | <p style="text-align: right;">Page 144</p> <p>1 product, correct?</p> <p>2 A. Yes, I believe that's how it would be</p> <p>3 used, yeah.</p> <p>4 Q. Including hospitals, correct?</p> <p>5 MS. BROWN: Objection to the form.</p> <p>6 A. I would believe that's correct.</p> <p>7 Q. Including drugstores, correct?</p> <p>8 MS. BROWN: Objection to the form.</p> <p>9 A. I don't know. I don't recall all the</p> <p>10 people that would be distributed to. I know in</p> <p>11 manufacturing facilities that's the way I most</p> <p>12 commonly know it. Beyond that I'm not sure.</p> <p>13 Q. All right. Let's look at Exhibit</p> <p>14 20 -- 21.</p> <p>15 A. 21.</p> <p>16 Q. And let's see what your response was</p> <p>17 to Dana Mickel about whether the MSDS for Johnson's</p> <p>18 Baby Powder changed or stay the same as the March of</p> <p>19 2004. Okay?</p> <p>20 And you did respond to Dana Mickel to</p> <p>21 ask you if Johnson's Baby Powder MSDS should stay</p> <p>22 the same, correct?</p> <p>23 A. I'm sorry. What are you asking me?</p> <p>24 Q. Yeah. So do you see -- I have shown</p> <p>25 you the same e-mail chain and Miss Mickel was asking</p> |
| <p style="text-align: right;">Page 143</p> <p>1 A. Yes.</p> <p>2 Q. Did you know at that time that the</p> <p>3 level of detection for the CTFA J4-1 Method was 0.5</p> <p>4 percent?</p> <p>5 A. I don't recall. I see it there but I</p> <p>6 don't recall if it registered again in my senses.</p> <p>7 But this is, again, not an area that I would focus</p> <p>8 on, all the talc testing.</p> <p>9 Q. But in the MSDS you said those were</p> <p>10 my statements. You said those were your statements</p> <p>11 on the MSDS?</p> <p>12 A. Yeah, I'm passing it along.</p> <p>13 Q. So when you said these are my</p> <p>14 statements on the MSDS that said that there was no</p> <p>15 asbestiform minerals in Johnson's Baby Powder by the</p> <p>16 CTFA J4-1 Method?</p> <p>17 A. Yes.</p> <p>18 Q. You were just passing that along,</p> <p>19 right?</p> <p>20 MS. BROWN: Objection to the form.</p> <p>21 A. Yes, that's the method, yeah. I</p> <p>22 wouldn't be criticizing it or altering or trying to</p> <p>23 analyze this. That's the method, yes.</p> <p>24 Q. And Johnson &amp; Johnson would give</p> <p>25 these MSDS sheets to commercial buyers of its</p>                   | <p style="text-align: right;">Page 145</p> <p>1 you whether the MSDS that you had sent her should be</p> <p>2 the same, right, 'cause she was working on an MSDS</p> <p>3 for Shower to Shower, a different talc product,</p> <p>4 right?</p> <p>5 A. Right, right.</p> <p>6 Q. And you responded, didn't you?</p> <p>7 A. Yes.</p> <p>8 Q. And your response on March 12, 2004</p> <p>9 was three weeks after you had received the Forensic</p> <p>10 Analytical testing, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And your response to her was, "As far</p> <p>13 as the talc in it is concerned, that is fine,"</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. So the statement that there was no</p> <p>17 asbestos in Johnson's Baby Powder by the CTFA J4-1</p> <p>18 Method you kept the same in March of 2004, correct?</p> <p>19 A. Yeah, I wouldn't -- I wouldn't be the</p> <p>20 one to change it anyway.</p> <p>21 Q. You were the one she was asking about</p> <p>22 whether to change or stay the same, right?</p> <p>23 MS. BROWN: Objection to the form.</p> <p>24 A. Yes, yes, she is.</p> <p>25 Q. Okay. Just to be clear, Dr. Mann,</p>                             |

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| <p style="text-align: right;">Page 154</p> <p>1 A. Yes.</p> <p>2 Q. Did you tell your boss, Joan</p> <p>3 Casalvieri, that the specs required no asbestos?</p> <p>4 MS. BROWN: Objection to the form.</p> <p>5 A. I believe that is the spec.</p> <p>6 Q. What spec that Johnson &amp; Johnson has</p> <p>7 ever had requires zero asbestos?</p> <p>8 MS. BROWN: Objection to the form.</p> <p>9 A. Again, I'm not in Quality Assurance.</p> <p>10 You will have to talk to them about what the specs</p> <p>11 were, how they were developed.</p> <p>12 Q. All right. And you said that</p> <p>13 "There's no new toxicology here."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And at this time, you believed that</p> <p>17 if there's no asbestos in the talc, that it's not</p> <p>18 carcinogenic, correct?</p> <p>19 A. Correct.</p> <p>20 Q. But if there is asbestos in the talc,</p> <p>21 then it is carcinogenic, correct?</p> <p>22 MS. BROWN: Objection to the form.</p> <p>23 A. There's no known safe level for</p> <p>24 asbestos.</p> <p>25 Q. And that was your view when you</p>                                                                                                                                                                | <p style="text-align: right;">Page 156</p> <p>1 issues of getting false results.</p> <p>2 Q. Move to strike the portion that is</p> <p>3 nonresponsive.</p> <p>4 Dr. Mann, you can't point to anything</p> <p>5 that was done wrong in the Forensic Analytical</p> <p>6 testing, correct?</p> <p>7 MS. BROWN: Objection to the form;</p> <p>8 misstates the evidence.</p> <p>9 A. We were not able to get any</p> <p>10 follow-up.</p> <p>11 Q. You never contacted the laboratory,</p> <p>12 correct?</p> <p>13 MS. BROWN: Objection to the form;</p> <p>14 assumes facts.</p> <p>15 A. They reached out.</p> <p>16 Q. No, no, sir. Strike that.</p> <p>17 Sir, the public relations person,</p> <p>18 Sarah Colamarino, only reached out to the TV</p> <p>19 station, correct?</p> <p>20 A. Correct.</p> <p>21 MS. BROWN: Objection to the form.</p> <p>22 A. We have no record that they tried to</p> <p>23 actually contact the lab. They went back to the</p> <p>24 source of the information.</p> <p>25 Q. Move to strike the portion after "the</p> |
| <p style="text-align: right;">Page 155</p> <p>1 worked at Johnson &amp; Johnson Consumer, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And you even recommended that RJ Lee</p> <p>4 be used when you were at Johnson &amp; Johnson, correct?</p> <p>5 A. Based on Bill's recommendation, yes.</p> <p>6 Q. Okay. And not based on anything you</p> <p>7 knew yourself; you actually, yourself, recommended</p> <p>8 that RJ Lee be used, correct?</p> <p>9 MS. BROWN: Objection to the form.</p> <p>10 A. Because I believe the people had told</p> <p>11 me what they're telling me.</p> <p>12 Q. So while you worked at J&amp;J, the</p> <p>13 company used talc as a raw material in baby powder</p> <p>14 that you knew would be used on babies, on people's</p> <p>15 bodies, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you believe there are possible</p> <p>18 analytical issues in testing that talc, correct?</p> <p>19 A. Not if we are doing it correctly.</p> <p>20 Q. You wrote in this e-mail, "Yes, I am</p> <p>21 aware there are possible analytical issues,"</p> <p>22 correct?</p> <p>23 A. Yeah, not ours. That if other people</p> <p>24 such as whoever did that testing for the TV are not</p> <p>25 using the appropriate methods, there are potential</p> | <p style="text-align: right;">Page 157</p> <p>1 lab."</p> <p>2 Let's just go off the record for a</p> <p>3 moment.</p> <p>4 VIDEOGRAPHER: Stand by. The time is</p> <p>5 approximately 12:54. We are going off the video</p> <p>6 record.</p> <p>7 (Luncheon recess: 12:54 p.m. to</p> <p>8 1:25 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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| <p style="text-align: right;">Page 158</p> <p>1 AFTERNOON SESSION</p> <p>2 VIDEOGRAPHER: Time is approximately</p> <p>3 1:25. We are back on the video record.</p> <p>4 BY MR. BLOCK:</p> <p>5 Q. Dr. Mann, in May, 2004, you learned</p> <p>6 that the National Toxicology Program had officially</p> <p>7 announced that it proposed listing talc as a</p> <p>8 carcinogen in its report on carcinogen, correct?</p> <p>9 A. Can you get me back to where we were?</p> <p>10 I shut my book before.</p> <p>11 Q. I'm not asking about an exhibit right</p> <p>12 now.</p> <p>13 A. Oh, okay. Sorry.</p> <p>14 Q. Sir, in May 2004, you learned that</p> <p>15 the National Toxicology Program had officially</p> <p>16 announced that it proposed listing talc as a</p> <p>17 carcinogen, correct?</p> <p>18 A. They're going to renew it. I don't</p> <p>19 recall what they were going to list.</p> <p>20 Q. Let's look at Exhibit 24 to your</p> <p>21 deposition.</p> <p>22 A. Okay.</p> <p>23 Q. Okay. And if you go to the bottom of</p> <p>24 Exhibit 24, you see that you received an e-mail from</p> <p>25 the CTFA, Johnson &amp; Johnson's trade association,</p> | <p style="text-align: right;">Page 160</p> <p>1 A. Yes.</p> <p>2 Q. And at that time you knew that it was</p> <p>3 important for Johnson &amp; Johnson to be completely</p> <p>4 truthful with the U.S. Government about any</p> <p>5 information it had about the safety of talc,</p> <p>6 correct?</p> <p>7 A. Published literature, yes. Yes, of</p> <p>8 course.</p> <p>9 Q. Well, let me ask you this: When you</p> <p>10 received this e-mail from Linda Loretz announcing</p> <p>11 the proposal to list talc as a carcinogen, did you</p> <p>12 think to yourself that you needed legal advice?</p> <p>13 MS. BROWN: Objection to the form of</p> <p>14 the question. And again, I'll counsel you,</p> <p>15 Dr. Mann, not to disclose any information you</p> <p>16 learned from or shared with lawyers from Johnson &amp;</p> <p>17 Johnson.</p> <p>18 A. I don't recall feeling like I needed</p> <p>19 that, no.</p> <p>20 Q. Okay. Can you think of any reason</p> <p>21 why after finding out that the NTP -- strike that.</p> <p>22 Can you think of any reason why after</p> <p>23 getting this notice that the NTP was proposing</p> <p>24 listing talc as a carcinogen you would seek out</p> <p>25 legal advice?</p> |
| <p style="text-align: right;">Page 159</p> <p>1 from Linda Loretz?</p> <p>2 A. Okay, yeah.</p> <p>3 Q. And her e-mail that you received on</p> <p>4 May 19, 2004 says, "The National Toxicology Program</p> <p>5 is requesting public comment on 21 substances</p> <p>6 proposed for listing in the 12th edition of the</p> <p>7 Report on Carcinogens."</p> <p>8 Do you see that?</p> <p>9 A. Right, yeah, okay. That's the public</p> <p>10 comment.</p> <p>11 Q. Okay. And so the NTP proposed</p> <p>12 listing talc as a carcinogen and you knew that in</p> <p>13 May 2004, correct?</p> <p>14 A. Looks like it.</p> <p>15 Q. And she attached what's called a</p> <p>16 "Federal Register Notice."</p> <p>17 And do you see that it lists</p> <p>18 Department of Health and Human Services, Public</p> <p>19 Health Service, National Toxicology Program.</p> <p>20 You see that?</p> <p>21 A. Yes.</p> <p>22 Q. All right. And you understand that</p> <p>23 this is a government agency in the United States</p> <p>24 Government, correct?</p> <p>25 MS. BROWN: Objection to the form.</p>                                                                          | <p style="text-align: right;">Page 161</p> <p>1 MS. BROWN: I instruct you not to</p> <p>2 answer that question, Dr. Mann, as it's invading the</p> <p>3 attorney-client privilege.</p> <p>4 BY MR. BLOCK:</p> <p>5 Q. Okay. What you did with this e-mail</p> <p>6 from Linda Loretz that attached this from the NTP</p> <p>7 about listing talc as a carcinogen was you forwarded</p> <p>8 the e-mail to certain people at Johnson &amp; Johnson,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And you forwarded the e-mail to John</p> <p>12 O'Shaughnessy, a lawyer for J&amp;J Johnson &amp; Johnson</p> <p>13 corporate, correct?</p> <p>14 A. Correct.</p> <p>15 Q. He knew about the Forensic Analytical</p> <p>16 testing, correct?</p> <p>17 MS. BROWN: Objection to the form.</p> <p>18 A. I'm sorry. Who knew about what?</p> <p>19 Q. Well, you know that John</p> <p>20 O'Shaughnessy knew about the Forensic Analytical</p> <p>21 testing --</p> <p>22 A. Oh, the TV thing. Yes.</p> <p>23 Q. Do you know what I'm talking about</p> <p>24 when I say "the Forensic Analytical testing"?</p> <p>25 Remember that?</p>                                                                                                 |

## MANN - Direct

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| <p style="text-align: right;">Page 162</p> <p>1 A. I do now. For a moment there I was<br/>2 like ditzing out, yeah.<br/>3 Q. Let's start again.<br/>4 You forwarded the NTP notice to John<br/>5 O'Shaughnessy who knew about the Forensic Analytical<br/>6 testing, correct?<br/>7 MS. BROWN: Objection to the form of<br/>8 the question.<br/>9 A. I believe so.<br/>10 Q. You forwarded the notice to Sarah<br/>11 Colamarino who knew about the NTP testing, correct?<br/>12 A. Who knew about the testing?<br/>13 Q. Strike that.<br/>14 You forwarded the NTP notice to Sarah<br/>15 Colamarino who knew about the Forensic Analytical<br/>16 testing, correct?<br/>17 A. Yes, yes.<br/>18 Q. Also to Nancy Musco who knew about<br/>19 the Forensic Analytical testing, correct?<br/>20 A. Yeah, I guess. I can't remember now<br/>21 who knew and who didn't. I forwarded it to her.<br/>22 Q. Okay. And did you ever tell your<br/>23 boss, Joan Casalvieri, about the Forensic Analytical<br/>24 testing?<br/>25 MS. BROWN: Objection to the form.</p>                                                                      | <p style="text-align: right;">Page 164</p> <p>1 moment to look at the whole chain?<br/>2 Q. If you would like to do so, but I'm<br/>3 only going to ask you about this particular e-mail.<br/>4 MS. BROWN: Of course you're entitled<br/>5 to take as long as you need to look at the document,<br/>6 Dr. Mann.<br/>7 A. Let me just scan down through this,<br/>8 please.<br/>9 Okay. To the one that you're<br/>10 referring, yes.<br/>11 Q. Looking at your e-mail dated<br/>12 June 1st, 2004 on the screen, you wrote to Susan<br/>13 Gleckner and Lorena Telofski.<br/>14 Do you see that?<br/>15 A. Yes.<br/>16 Q. All right. And part of the subject<br/>17 reads "Talc Literature Update Urgent."<br/>18 Do you see that?<br/>19 A. Yes.<br/>20 Q. And you wrote, "Sue, this is just<br/>21 about as critical and top priority as they come!"<br/>22 Is that what you wrote?<br/>23 A. Yes.<br/>24 Q. "The NTP is asking for comments which<br/>25 must be submitted by July 16 against their proposal</p>                                                                                                                                                                                                                                |
| <p style="text-align: right;">Page 163</p> <p>1 A. I don't recall.<br/>2 Q. Now, when you received this notice<br/>3 from NTP, in your mind this was critical and top<br/>4 priority because Johnson's Baby Powder was Johnson &amp;<br/>5 Johnson's flagship product, correct?<br/>6 A. In the past, NTP had missed a lot of<br/>7 literature so it was important because we wanted to<br/>8 be sure they had updated, you know, a literature<br/>9 search. So yes, it is important.<br/>10 Q. Sir, did you ever refer to Johnson's<br/>11 Baby Powder as "Johnson &amp; Johnson's flagship<br/>12 product"?<br/>13 A. I don't know if I used those terms,<br/>14 but we've kind of crossed that with the sacred cow<br/>15 thing.<br/>16 Q. Let's look at Exhibit 25 to your<br/>17 deposition. Exhibit 25 --<br/>18 A. 25. Okay.<br/>19 Q. And it's an e-mail chain and I want<br/>20 to go down to the second page at the top, to the<br/>21 e-mail that you wrote on June 1st, 2004.<br/>22 You see that?<br/>23 A. Hold on. June 1st.<br/>24 Q. The second page of the e-mail.<br/>25 A. If this is the chain, can I take a</p> | <p style="text-align: right;">Page 165</p> <p>1 to list cosmetic talc used in J&amp;J's flagship baby<br/>2 powder as a carcinogen."<br/>3 Do you see that?<br/>4 A. Yes.<br/>5 Q. And it was your belief and<br/>6 understanding at this time when you worked for J&amp;J<br/>7 Consumer in 2004 that Johnson's Baby Powder was<br/>8 Johnson &amp; Johnson's flagship product, correct?<br/>9 MS. BROWN: Objection to the form.<br/>10 A. Flagship baby product would be fair.<br/>11 You know, very well, hundred-year-old brand,<br/>12 everybody knows it. Everybody has used it, yeah.<br/>13 Q. As Director of Toxicology in response<br/>14 to the NTP evaluation of talc, you called upon your<br/>15 company to devote major corporate resources and<br/>16 utilize all its power to defend against the NTP,<br/>17 correct?<br/>18 A. What I was doing here was basically<br/>19 making sure that this got on people's radar screen<br/>20 so they don't sit it on the side while they're busy<br/>21 with all their other work.<br/>22 I want to make sure that we get any<br/>23 literature or whatever responses we want together in<br/>24 a timely fashion and we do not miss the date, cutoff<br/>25 date for public comment.</p> |



## MANN - Direct

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| <p style="text-align: right;">Page 166</p> <p>1 Q. Dr. Mann, do you admit that you<br/>2 called upon J&amp;J to devote major corporate resources<br/>3 and utilize all its power to defend against NTP<br/>4 listing talc as a carcinogen; yes or no?<br/>5 A. No, I would not say it that way.<br/>6 Q. Next exhibit, Exhibit 26. And if you<br/>7 can go to Exhibit 26, do you see the e-mail that you<br/>8 wrote to Kathleen Wille and others at Johnson &amp;<br/>9 Johnson Consumer?<br/>10 A. Yes. Let me read this for a minute.<br/>11 Q. The one at 5:08 p.m. on Friday,<br/>12 October 29, 2004.<br/>13 A. Right.<br/>14 Yes. Okay.<br/>15 Q. Looking at your e-mail from<br/>16 October 29, 2004 at 5:08 p.m., you wrote to Kathleen<br/>17 Wille, Susan Nettesheim and others, correct?<br/>18 A. Nettesheim, yes.<br/>19 Q. Okay. What was her position, Susan<br/>20 Nettesheim?<br/>21 A. She was VP of baby products.<br/>22 Q. And you wrote, "Kathy and Susan, I<br/>23 want to raise the level of risk to J&amp;J from the NTP<br/>24 talc issue from moderate to high."<br/>25 Did you see that?</p> | <p style="text-align: right;">Page 168</p> <p>1 public couldn't trust the safety of Johnson's Baby<br/>2 Powder, then they couldn't trust Johnson &amp; Johnson,<br/>3 correct?<br/>4 MS. BROWN: Objection to the form of<br/>5 the question.<br/>6 A. Yeah, I can't make that leap, but<br/>7 what I'm saying there is that this was an important<br/>8 brand that in the minds of consumers is very iconic<br/>9 for Johnson &amp; Johnson.<br/>10 Q. And at this time, you felt that if<br/>11 there was a negative view of Johnson's Baby Powder,<br/>12 then the public would view Johnson &amp; Johnson<br/>13 negatively, correct?<br/>14 MS. BROWN: Objection to the form.<br/>15 A. Yeah, I would think. You know, that<br/>16 is what I am concerned is that if it gets falsely<br/>17 or, you know, labeled, it's going to, you know,<br/>18 because it's such a well-recognized brand.<br/>19 Q. Move to strike the portion that was<br/>20 not responsive.<br/>21 You didn't say anything about false<br/>22 ruling. You said "unfavorable ruling," correct?<br/>23 A. Yep, I did.<br/>24 Q. And it's true that one of the major<br/>25 corporate resources that you believed was important</p> |
| <p style="text-align: right;">Page 167</p> <p>1 A. Yes.<br/>2 Q. And going down two sentences, you<br/>3 wrote, "There is a significant chance that NTP could<br/>4 make an unfavorable ruling and that would have a<br/>5 major ripple effect as J&amp;J Baby Powder is a primary<br/>6 link to the positive J&amp;J name in the public mind."<br/>7 Did you right that?<br/>8 A. Yes.<br/>9 Q. And then you wrote, "I think we may<br/>10 be at the point where we need to call upon major<br/>11 corporate resources and utilize all our power to<br/>12 defend against this."<br/>13 Did you write that?<br/>14 A. Yes, I did.<br/>15 Q. All right. And you said that; you<br/>16 use the term "major ripple effect," right?<br/>17 A. Um-hum.<br/>18 Q. Correct?<br/>19 A. Yeah.<br/>20 Q. And it was your belief at this time<br/>21 in 2004 that J&amp;J Baby Powder is a primary link to<br/>22 the positive J&amp;J name in the public mind, right?<br/>23 A. Yes, like Band-Aids and a few others.<br/>24 Q. Right.<br/>25 And you knew at this time that if the</p>                                            | <p style="text-align: right;">Page 169</p> <p>1 for Johnson &amp; Johnson to utilize to defend talc and<br/>2 NTP process was Johnson &amp; Johnson's legal<br/>3 department, correct?<br/>4 MS. BROWN: Objection to the form of<br/>5 the question.<br/>6 A. No, I'm not implying that. No.<br/>7 Q. Did you ever write that John<br/>8 O'Shaughnessy was especially important to be at any<br/>9 meetings regarding the NTP talc process?<br/>10 A. I don't recall doing that.<br/>11 Q. Was the lawyer from Johnson &amp;<br/>12 Johnson, John O'Shaughnessy, especially important in<br/>13 defending talc in the NTP process?<br/>14 MS. BROWN: Objection to the form of<br/>15 the question.<br/>16 A. He's an important person, but that's<br/>17 all I can say. I don't recall that, no.<br/>18 Q. Important in what way?<br/>19 MS. BROWN: And I will caution you<br/>20 again here, Dr. Mann, not to reveal any substantive<br/>21 conversations you had with Mr. O'Shaughnessy or<br/>22 anything that would implicate Mr. O'Shaughnessy's<br/>23 legal advice to you as an employee of Johnson &amp;<br/>24 Johnson.<br/>25 A. Yeah, right. Simply because of his</p>                            |

## MANN - Direct

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| <p style="text-align: right;">Page 174</p> <p>1 A. Yes.</p> <p>2 Q. And Johnson &amp; Johnson did use</p> <p>3 financial resources to again pay Dr. Wehner to write</p> <p>4 a paper addressing why the NTP should not list talc</p> <p>5 as a carcinogen; true?</p> <p>6 A. Yes.</p> <p>7 MS. BROWN: Objection to the form.</p> <p>8 I'm sorry, belated objection to that question.</p> <p>9 BY MR. BLOCK:</p> <p>10 Q. And Dr. Wehner submitted a paper to</p> <p>11 the National Toxicology Program stating that</p> <p>12 cosmetic talc does not contain any asbestos fibers</p> <p>13 or fibers of any kind at all.</p> <p>14 You know that, right?</p> <p>15 MS. BROWN: Objection to the form.</p> <p>16 A. Yeah, I don't remember what's in that</p> <p>17 paper.</p> <p>18 Q. Let's go to Exhibit 28, please, and</p> <p>19 if we go to Exhibit 28, the e-mail at the very top</p> <p>20 of the page is one written by you on July 12, 2004,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. All right. And then you include</p> <p>24 Dr. Wehner in this e-mail, right?</p> <p>25 A. Oh, yes, there he is. Yes.</p> | <p style="text-align: right;">Page 176</p> <p>1 BY MR. BLOCK:</p> <p>2 Q. Dr. Mann, was Johnson &amp; Johnson</p> <p>3 paying Dr. Wehner in 2004; yes or no?</p> <p>4 MS. BROWN: Same objection.</p> <p>5 A. Again, I don't recall the specifics,</p> <p>6 whether he was on retainer, that would be counted as</p> <p>7 paying. I just, I just don't remember all of it.</p> <p>8 Q. Go to Exhibit 30 on this issue of --</p> <p>9 A. You said 30?</p> <p>10 Q. 30.</p> <p>11 A. Okay.</p> <p>12 Q. You know that Dr. Wehner from 2001 to</p> <p>13 2002 --</p> <p>14 MS. BROWN: Jerry, your sound is</p> <p>15 cutting out. We can't hear you.</p> <p>16 BY MR. BLOCK:</p> <p>17 Q. All right. Can you hear me,</p> <p>18 Dr. Mann?</p> <p>19 A. Yes.</p> <p>20 Q. Dr. Mann, you know that from 2001</p> <p>21 through 2006 that you were responsible for</p> <p>22 Dr. Wehner's contract with Johnson &amp; Johnson,</p> <p>23 correct?</p> <p>24 A. Yeah, I don't remember the timeframe</p> <p>25 that I was specifically involved. I think Bill</p>                                                                                                                              |
| <p style="text-align: right;">Page 175</p> <p>1 Q. You included Johnson &amp; Johnson's</p> <p>2 lawyer, Mr. O'Shaughnessy, in this e-mail, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you write in this e-mail,</p> <p>5 "Al Wehner's document which will be included in the</p> <p>6 CTFA submission."</p> <p>7 See that?</p> <p>8 A. Yes.</p> <p>9 Q. If we look at -- and Johnson &amp;</p> <p>10 Johnson was paying Dr. Wehner at this time, correct?</p> <p>11 MS. BROWN: Objection to the form of</p> <p>12 the question; vague as to the scope of that</p> <p>13 involvement.</p> <p>14 MR. BLOCK: Do not make speaking</p> <p>15 objections.</p> <p>16 Can I have the question read back,</p> <p>17 please.</p> <p>18 (The following Question is read back:</p> <p>19 "QUESTION: And Johnson &amp; Johnson was</p> <p>20 paying Dr. Wehner at this time, correct?")</p> <p>21 MS. BROWN: I'm going to object as</p> <p>22 vague.</p> <p>23 A. I'm sorry?</p> <p>24 MS. BROWN: I'm objecting to the form</p> <p>25 of the question, Dr. Mann, as the --</p>                                                         | <p style="text-align: right;">Page 177</p> <p>1 Ashton was the main contact there until, I think</p> <p>2 either Bill was becoming ill or something, but I</p> <p>3 recall this vaguely that I got involved in this</p> <p>4 retainer at about this time, in May of 2006, and I</p> <p>5 think I left the company a month later.</p> <p>6 Q. On this issue of Dr. Wehner's</p> <p>7 payments from Johnson &amp; Johnson and your involvement</p> <p>8 in those payments, please go back to Exhibit 6 from</p> <p>9 the earlier volume.</p> <p>10 A. Oh, hold on. It's in the other</p> <p>11 volume. Where did we leave off here, 30?</p> <p>12 Q. Yeah. I'll direct you back to this</p> <p>13 volume.</p> <p>14 A. Give me a minute to step away and get</p> <p>15 the other book.</p> <p>16 6, you said?</p> <p>17 Q. Yes.</p> <p>18 Dr. Mann, isn't it true that you had</p> <p>19 been in charge of Dr. Wehner's contract with J&amp;J</p> <p>20 going back to 2002?</p> <p>21 A. Like I said, I didn't remember,</p> <p>22 whatever this says.</p> <p>23 Q. Let me read you -- let's look at</p> <p>24 Exhibit 6 which is an e-mail from Lorena Telofski.</p> <p>25 A. Okay.</p> |

## MANN - Direct

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| <p style="text-align: right;">Page 178</p> <p>1 Q. And it says, "I also had a previous<br/>2 transfer discussion with Joe Melnik about the Al<br/>3 Wehner contract."<br/>4 Do you see that?<br/>5 A. No, I'm lost where you are.<br/>6 Q. Second bullet on the first page of<br/>7 Exhibit 6.<br/>8 A. Where it says "Another Comment"?<br/>9 Q. Yes.<br/>10 A. Okay.<br/>11 Q. Okay. It says, "I also had a<br/>12 previous transfer discussion with Joe Melnik about<br/>13 the Al Wehner contract and his billings."<br/>14 Do you see that?<br/>15 A. Yes.<br/>16 Q. And it says, "At the time Joe had<br/>17 directed me to transfer that matter to Steve Mann,<br/>18 which I did."<br/>19 Do you see that?<br/>20 A. Okay. Yes, I see that.<br/>21 Q. Lorena Telofski transferred the Al<br/>22 Wehner contract to you in 2002, correct?<br/>23 A. Like I said, I don't recall.<br/>24 Q. Well, you think that Lorena Telofski<br/>25 is wrong in the --</p>                                                                                                                     | <p style="text-align: right;">Page 180</p> <p>1 Q. Thank you.<br/>2 Let's go back now to Exhibit 28. And<br/>3 I want to ask you about the document that Dr. Wehner<br/>4 wrote that the CTFA submitted to the National<br/>5 Toxicology Program in 2004. Okay?<br/>6 A. Um-hum.<br/>7 Q. Are you on Exhibit 28?<br/>8 A. Yes.<br/>9 Q. And if we look at what Dr. Wehner<br/>10 wrote that was submitted to the NTP, it says here,<br/>11 above the Summary and Conclusion.<br/>12 Can you see it at the center of the<br/>13 screen?<br/>14 A. Yes.<br/>15 Q. And Dr. Wehner writes, "The aspect<br/>16 ratio of their fibers is believed to be mainly<br/>17 responsible for the carcinogenicity of asbestos<br/>18 fibers."<br/>19 Do you see that?<br/>20 A. Yes.<br/>21 Q. And then Dr. Wehner writes in this<br/>22 submission that was submitted to the National<br/>23 Toxicology Program, "Cosmetic talc does not contain<br/>24 fibers."<br/>25 You see that?</p>                                                                                                                           |
| <p style="text-align: right;">Page 179</p> <p>1 A. No, I'll accept it for what it says.<br/>2 I'm just saying I don't remember.<br/>3 Q. And that contract for Dr. Wehner in<br/>4 2002 was \$12,000 annually, correct?<br/>5 A. Is that what it's saying here?<br/>6 Q. I underlined it in red.<br/>7 A. Yes, it was.<br/>8 Q. And you were the one that would get<br/>9 Dr. Wehner's invoices starting in 2002, correct?<br/>10 A. I don't recall but...<br/>11 Q. All right. Let's go back now to<br/>12 Exhibit 30.<br/>13 And in 2006, Dr. Wehner was still on<br/>14 an annual contract with Johnson &amp; Johnson, correct?<br/>15 MS. BROWN: Objection to the form.<br/>16 A. Yeah, I guess that's what the issue<br/>17 was here, whether we were continuing it or not.<br/>18 Q. Right.<br/>19 You were e-mailing your boss and<br/>20 saying that as of May 2006, you had decided not to<br/>21 renew Dr. Wehner's \$15,000 a year contract, correct?<br/>22 A. Um-hum, yeah.<br/>23 Q. So it still existed as of May 2006,<br/>24 correct?<br/>25 A. It appears so, yes.</p> | <p style="text-align: right;">Page 181</p> <p>1 A. Yes, I see it.<br/>2 Q. Okay. So while Johnson &amp; Johnson was<br/>3 paying Dr. Wehner, he wrote a paper that was<br/>4 submitted to the National Toxicology Program that<br/>5 said that "cosmetic talc does not contain fibers,"<br/>6 correct?<br/>7 A. Yes, that's what it says.<br/>8 Q. And there's no disclosure in<br/>9 Dr. Wehner's biography here about him being paid by<br/>10 Johnson &amp; Johnson, correct?<br/>11 If you look at --<br/>12 MS. BROWN: Objection to the form.<br/>13 A. What I'm looking at doesn't seem to<br/>14 address it.<br/>15 Q. If you look at the paper that<br/>16 Dr. Wehner submitted to the NTP in 2004, Dr. Wehner<br/>17 says where he works, right, Battelle Pacific<br/>18 Northwest, correct?<br/>19 A. Yeah. Where are you?<br/>20 Q. Page 2 of the document that's in<br/>21 front of you, Exhibit 28.<br/>22 A. The pages aren't numbered, so. It's<br/>23 the second page over from the heading page?<br/>24 Q. It is double-sided copying. It's<br/>25 page number 2 of the document.</p> |

## MANN - Direct

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| <p style="text-align: right;">Page 182</p> <p>1 Are you on the page, sir?</p> <p>2 A. No, I'm having a hard time finding</p> <p>3 where you are. Starts with, As a project director.</p> <p>4 Q. Yes. That's exactly --</p> <p>5 A. I'm reading off of yours but I can't</p> <p>6 find it in the thing.</p> <p>7 Q. All right. Go to Exhibit 28.</p> <p>8 A. I am.</p> <p>9 Q. All right. And since it's</p> <p>10 double-sided copying, it's the back of the first</p> <p>11 page.</p> <p>12 A. Oh, yeah. Okay. Oh.</p> <p>13 Q. And it's the second --</p> <p>14 A. Second paragraph. Okay. Sorry. I</p> <p>15 thought we were on another page.</p> <p>16 Q. And so Dr. Wehner describes who he is</p> <p>17 to the National Toxicology Program, correct?</p> <p>18 A. Yes, yes, yes, yes.</p> <p>19 Q. And he says he works at Battelle,</p> <p>20 right?</p> <p>21 A. Okay.</p> <p>22 Q. Yes, he says --</p> <p>23 A. That's what it says.</p> <p>24 Q. And he cites to a prior publication</p> <p>25 that he did in 2002 on cosmetic talc, correct, third</p>                                                                                                                                                                          | <p style="text-align: right;">Page 184</p> <p>1 A. No. I look at all these things as</p> <p>2 trying to get the science right, trying to get the</p> <p>3 information out.</p> <p>4 Your document disappeared from my</p> <p>5 screen.</p> <p>6 Q. I'm asking you questions.</p> <p>7 Sir, you actually knew from</p> <p>8 Dr. Wehner that he considered the NTP to be his</p> <p>9 opponents, correct?</p> <p>10 A. I can't remember him saying that.</p> <p>11 Q. You knew that Dr. Wehner viewed the</p> <p>12 NTP's process of evaluating the carcinogenicity of</p> <p>13 talc to be a battlefield?</p> <p>14 MS. BROWN: Objection to the form.</p> <p>15 A. I don't recall that.</p> <p>16 Q. You knew that Dr. Wehner considered</p> <p>17 himself to be in Johnson &amp; Johnson's camp, right?</p> <p>18 MS. BROWN: Objection to the form.</p> <p>19 A. Yeah, I consider him a scientist,</p> <p>20 and --</p> <p>21 MS. BROWN: Let him finish, Jerry.</p> <p>22 A. An academic that, you know, we</p> <p>23 consult with, had a long history of involvement in</p> <p>24 issues with talc, so...</p> <p>25 Q. And you talked to Dr. Wehner all the</p> |
| <p style="text-align: right;">Page 183</p> <p>1 paragraph?</p> <p>2 A. Yeah. Hold on.</p> <p>3 All right. Listed his times when he</p> <p>4 was at Battelle that go through 1989 and there's</p> <p>5 this other paragraph just saying that he recently</p> <p>6 published this peer-reviewed in the journal of</p> <p>7 Regulatory. Yeah.</p> <p>8 Q. And Johnson &amp; Johnson paid for that</p> <p>9 article, too, like we looked at earlier, right?</p> <p>10 MS. BROWN: Objection to the form;</p> <p>11 calls for speculation.</p> <p>12 A. Again, I am getting lost with all the</p> <p>13 paid for what, when and where.</p> <p>14 Q. Dr. Wehner again did not disclose his</p> <p>15 funding that he received from Johnson &amp; Johnson to</p> <p>16 the National Toxicology Program; true or not true?</p> <p>17 MS. BROWN: I object to the form;</p> <p>18 lacks foundation; calls for speculation.</p> <p>19 A. Yeah, I don't see it, so I guess</p> <p>20 that's correct.</p> <p>21 Q. When you were paying Dr. Wehner and</p> <p>22 he was submitting articles to NTP, you actually knew</p> <p>23 that Dr. Wehner considered the NTP to be his</p> <p>24 opponent, correct?</p> <p>25 MS. BROWN: Objection to the form.</p> | <p style="text-align: right;">Page 185</p> <p>1 time, right?</p> <p>2 A. No, actually I didn't talk to him</p> <p>3 very often that I recall.</p> <p>4 Q. He wrote you letters, right?</p> <p>5 A. Yeah. I don't recall how many. It's</p> <p>6 been a long time.</p> <p>7 Q. Let's look at Exhibit 29 which is a</p> <p>8 letter that Dr. Wehner wrote to you.</p> <p>9 A. 29?</p> <p>10 Q. Yes.</p> <p>11 And this is a letter that Dr. Wehner</p> <p>12 wrote to you on October 13, 2004 during the NTP talc</p> <p>13 process.</p> <p>14 Do you see that?</p> <p>15 A. Sorry. 29? Sorry. Okay.</p> <p>16 October 13. Okay. Let me take a look at this.</p> <p>17 Okay. I see the "battlefield" term</p> <p>18 and all that.</p> <p>19 Q. Let me ask you about the letter.</p> <p>20 Dr. Wehner wrote you a letter dated</p> <p>21 October 13, 2004, correct?</p> <p>22 A. Yes.</p> <p>23 Q. You had a conference call with him</p> <p>24 before he wrote you the letter, correct?</p> <p>25 A. I guess. I don't remember.</p>                                                                                                                                |

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| <p style="text-align: right;">Page 214</p> <p>1 not responsive.</p> <p>2 Isn't it true, Dr. Mann, as the</p> <p>3 direct result of your efforts, the NTP made the</p> <p>4 decision to withdraw its proposal to list talc as a</p> <p>5 carcinogen?</p> <p>6 MS. BROWN: Objection to the form.</p> <p>7 A. I would not draw that conclusion. I</p> <p>8 was getting science to them.</p> <p>9 Q. Let's look at Exhibit 35 and see what</p> <p>10 you wrote back at the time.</p> <p>11 MS. BROWN: Jerry, we've been going</p> <p>12 for more than an hour now. When you get to a good</p> <p>13 point, can we take a another break, please?</p> <p>14 MR. BLOCK: Yeah, just after this</p> <p>15 exhibit.</p> <p>16 MS. BROWN: Sure.</p> <p>17 BY MR. BLOCK:</p> <p>18 Q. And, Dr. Mann, can you please look at</p> <p>19 the e-mail that you wrote on October 18, 2005 at</p> <p>20 3:02 p.m.?</p> <p>21 A. Yes, I see that.</p> <p>22 Q. And the subject of your e-mail -- you</p> <p>23 wrote this e-mail to a large group of people, right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And this e-mail, the subject</p> | <p style="text-align: right;">Page 216</p> <p>1 others on this e-mail, correct?</p> <p>2 A. Yes, it seems that way. Yes.</p> <p>3 Q. Okay. Al Wehner is on this e-mail,</p> <p>4 right, and Dr. Al Wehner, he helped do it, right?</p> <p>5 MS. BROWN: Objection to the form.</p> <p>6 A. Yes. Again, I can't say that I'm</p> <p>7 unhappy that getting good science to them may have</p> <p>8 influenced them. Not necessarily my intent. My</p> <p>9 intent was just to get good science to them. What</p> <p>10 they do with it is their choice.</p> <p>11 Q. Move to strike the portion that was</p> <p>12 not responsive.</p> <p>13 And in this e-mail where you wrote it</p> <p>14 was a direct result of our efforts; you sent the</p> <p>15 e-mail to Johnson &amp; Johnson's lawyer, John</p> <p>16 O'Shaughnessy, correct?</p> <p>17 MS. BROWN: Objection to the form.</p> <p>18 A. If he's on the list there, yes.</p> <p>19 Q. I just underlined his name.</p> <p>20 Do you see that you did e-mail it to</p> <p>21 him?</p> <p>22 A. I'm looking. Yes.</p> <p>23 Q. Okay. And in this e-mail where you</p> <p>24 wrote, "We did it!" you sent this to Dr. John</p> <p>25 Hopkins, correct?</p> |
| <p style="text-align: right;">Page 215</p> <p>1 is "NTP Withdraws Talc Nomination," right?</p> <p>2 A. Yep. That's what it says.</p> <p>3 Q. And what you wrote to this group in</p> <p>4 part is, "Great news." NTP has withdrawn talc from</p> <p>5 consideration for listing on the 12th Report on</p> <p>6 Carcinogens."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it says, "Talc was the only</p> <p>10 material withdrawn."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. We looked before, the NTP had</p> <p>14 proposed listing over 20 materials as carcinogens.</p> <p>15 Remember that?</p> <p>16 A. Yes.</p> <p>17 Q. And the only one that the NTP</p> <p>18 withdrew was talc, right?</p> <p>19 A. Appears to be.</p> <p>20 Q. And you wrote, "This as a direct</p> <p>21 result of our efforts in coordination with Luzenac</p> <p>22 and CTFA. We did it!"</p> <p>23 Is that what you wrote?</p> <p>24 A. Yes, that's what I wrote.</p> <p>25 Q. And you were also sharing credit with</p>                                                                              | <p style="text-align: right;">Page 217</p> <p>1 MS. BROWN: Same objection.</p> <p>2 BY MR. BLOCK:</p> <p>3 Q. You sent this e-mail to Nancy Musco,</p> <p>4 correct?</p> <p>5 A. Yep, all those people that are on the</p> <p>6 list.</p> <p>7 Q. You sent this e-mail to Marc Monseau,</p> <p>8 the person who was the one who sent you the Forensic</p> <p>9 Analytical testing, right?</p> <p>10 A. Yes.</p> <p>11 Q. And this was no small feat to get</p> <p>12 talc removed from the listing by the NTP, was it?</p> <p>13 MS. BROWN: Objection to the form of</p> <p>14 the question.</p> <p>15 A. Again, I can only speak to what we</p> <p>16 were saying. I have no idea what other factors they</p> <p>17 were taking into account, other submissions they may</p> <p>18 have gotten.</p> <p>19 Like I said, I won't deny that we</p> <p>20 were, that I would be pleased that they were not</p> <p>21 going to pursue it because we have always felt that</p> <p>22 it was safe and asbestos-free. So that's not</p> <p>23 something I would actually be surprised at but...</p> <p>24 Q. In response to -- so in response to</p> <p>25 your e-mail where you stated, "This is a direct</p>      |



## MANN - Direct

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| <p style="text-align: right;">Page 222</p> <p>1 Make sure it gets added to your accomplishments."<br/> 2 Do you see that?<br/> 3 A. Yes. Hold on. Wait a minute. Where<br/> 4 am I? Down here. The middle page. Yes.<br/> 5 Q. And then you responded to Miss Wille<br/> 6 and you said, "Yes, very cool!"<br/> 7 Do you see that?<br/> 8 A. Yes.<br/> 9 Q. And you wrote, "That represents about<br/> 10 a year and a half of behind the scenes work for me."<br/> 11 Do you see that?<br/> 12 A. Yes.<br/> 13 Q. And that's true that you worked for a<br/> 14 year and a half behind the scenes on defending talc<br/> 15 in the NTP process, correct?<br/> 16 MS. BROWN: Objection to the form of<br/> 17 the question.<br/> 18 A. Again, behind the scenes to me is,<br/> 19 you know, getting the literature through to CTFA and<br/> 20 getting it into the different agencies. That's what<br/> 21 I'm thinking.<br/> 22 Q. Miss Wille says in the e-mail below,<br/> 23 "In the meantime we still have the IARC issue.<br/> 24 Yuck."<br/> 25 Do you see that?</p>        | <p style="text-align: right;">Page 224</p> <p>1 Do you see that?<br/> 2 A. Yes. Okay.<br/> 3 Q. But then Mr. Zazenski tells<br/> 4 Mr. Ashton in 1986, "They also concluded that talc<br/> 5 containing asbestiform fibers was a known human<br/> 6 carcinogen."<br/> 7 Do you see that?<br/> 8 A. Yes, I see that.<br/> 9 Q. And did you know when you worked at<br/> 10 J&amp;J Consumer that IARC had determined that talc<br/> 11 containing asbestiform fibers was a known human<br/> 12 carcinogen?<br/> 13 A. If it had asbestiform, you know,<br/> 14 asbestos in it, yeah, it would be.<br/> 15 Q. And you knew when you worked at J&amp;J<br/> 16 Consumer that if talc had asbestos in it, it was<br/> 17 carcinogenic, correct?<br/> 18 MS. BROWN: Objection to the form.<br/> 19 A. Yeah, no known safe levels for<br/> 20 asbestos if it's there.<br/> 21 Q. Okay. And that was your<br/> 22 understanding when you worked at J&amp;J Consumer,<br/> 23 correct?<br/> 24 A. Again, just going back to what are we<br/> 25 talking about here, things that were from 1986 and</p>                                                                                                                                                                              |
| <p style="text-align: right;">Page 223</p> <p>1 A. Yeah. I see that.<br/> 2 Q. Okay. And did you know the history<br/> 3 in terms of IARC and its evaluation of talc?<br/> 4 MS. BROWN: Objection; vague.<br/> 5 A. I don't recall much about IARC. I<br/> 6 think they were also beginning to go look at it<br/> 7 later in my tenure there, but --<br/> 8 Q. Look at Exhibit 36A please.<br/> 9 A. Okay.<br/> 10 Q. And do you see Exhibit 36A is a fax<br/> 11 from Rich Zazenski from Luzenac to Bill Ashton at<br/> 12 Johnson &amp; Johnson?<br/> 13 A. Yes, right.<br/> 14 Q. Okay. And do you see there's a note<br/> 15 on the fax that says "Confidential"?<br/> 16 A. Bill, I see that.<br/> 17 Q. And Mr. Zazenski writes, "Bill," and<br/> 18 he's talking about IARC, correct?<br/> 19 MS. BROWN: Objection to the form;<br/> 20 lacks foundation.<br/> 21 A. Right.<br/> 22 Q. And it says, he's talking about IARC,<br/> 23 "They reviewed talc and concluded there was<br/> 24 inadequate evidence to classify talc as a potential<br/> 25 human carcinogen."</p> | <p style="text-align: right;">Page 225</p> <p>1 2002, again, IARC wasn't much on my radar screen<br/> 2 that I can recall but...<br/> 3 Q. Okay. So did you understand that<br/> 4 when IARC began to look at talc again in 2000, now<br/> 5 they were going to look at talc that does not<br/> 6 contain asbestos?<br/> 7 A. Yeah, I don't know when I was aware<br/> 8 of that. I do seem to recall that that was the case<br/> 9 that they considered talc, you know, that doesn't<br/> 10 have asbestos.<br/> 11 Q. Okay. So you recall when you were at<br/> 12 J&amp;J Consumer that IARC had already decided that talc<br/> 13 containing asbestos is carcinogenic, correct?<br/> 14 A. Again --<br/> 15 MS. BROWN: Objection to the form.<br/> 16 Objection to the form. Hang on a second. Goes<br/> 17 beyond the scope of this deposition. Go ahead.<br/> 18 A. I was just going to say, I don't<br/> 19 recall knowing this when I got there.<br/> 20 Q. Okay. Now, when IARC began to look<br/> 21 into talc again in the 2000s, and to look at talc<br/> 22 that did not contain asbestos, you recommended that<br/> 23 Johnson &amp; Johnson fund a war room having to do with<br/> 24 those meetings, correct?<br/> 25 MS. BROWN: Objection to the form.</p> |

## MANN - Direct

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| <p style="text-align: right;">Page 254</p> <p>1 Q. "Carbon Black, Titanium Dioxide, and<br/>2 Talc."<br/>3 Do you see that?<br/>4 A. Yes.<br/>5 Q. And do you see, "This publication<br/>6 represents the views and expert opinions of an IARC<br/>7 Working Group."<br/>8 A. Right.<br/>9 Q. And it says, "which met in Lyon<br/>10 February 7 to 14 2006."<br/>11 Do you see that?<br/>12 A. Yes.<br/>13 Q. So this pertains to the meetings that<br/>14 we looked at in previous e-mails, correct?<br/>15 A. Right. This was published in 2010.<br/>16 Q. Okay. Yes.<br/>17 Now, and if you read it, I want to<br/>18 ask you --<br/>19 MS. BROWN: Anything from 2010 is<br/>20 going to lack foundation, so I object.<br/>21 BY MR. BLOCK:<br/>22 Q. If you go to page 39, these are<br/>23 excerpts and there's a page on the bottom center<br/>24 which is labeled "39." Okay?<br/>25 MS. BROWN: Okay. I object to the</p>                                                                                                                                                              | <p style="text-align: right;">Page 256</p> <p>1 scientific community recognized that asbestos is a<br/>2 carcinogen.<br/>3 Q. And if there were any asbestos in<br/>4 talc, that talc would be capable of causing cancer,<br/>5 correct?<br/>6 MS. BROWN: I object. Now you're<br/>7 calling for an expert opinion. I object.<br/>8 BY MR. BLOCK:<br/>9 Q. Withdraw the question.<br/>10 When you worked at J&amp;J Consumer you<br/>11 knew that if there was any asbestos in talc that<br/>12 that talc could cause cancer, correct?<br/>13 MS. BROWN: That's the same<br/>14 objection; calls for an expert opinion.<br/>15 MR. BLOCK: Let's have the question<br/>16 read back, please.<br/>17 (The following Question is read back:<br/>18 "QUESTION: When you worked at J&amp;J<br/>19 Consumer you knew that if there was any asbestos in<br/>20 talc that that talc could cause cancer, correct?")<br/>21 MS. BROWN: Same objection.<br/>22 A. Yeah, I would just say there's no<br/>23 known, no known safe level for asbestos.<br/>24 Q. Okay. And because while you worked<br/>25 at J&amp;J Consumer you knew that there was no known</p> |
| <p style="text-align: right;">Page 255</p> <p>1 selective portions of this document that the witness<br/>2 has been shown as well as to the fact it was<br/>3 published after he left the company.<br/>4 BY MR. BLOCK:<br/>5 Q. Okay. Are you on page 39, sir?<br/>6 A. Yes.<br/>7 Q. Okay. And on page 39 in regards to<br/>8 this IARC Working Group that met in February 2006,<br/>9 do you see that it says, "The present working group<br/>10 also decided to expand the name of the Group-1 agent<br/>11 from talc containing asbestiform fibers to talc<br/>12 containing asbestos or other asbestiform fibers."<br/>13 Do you see that?<br/>14 A. Yes.<br/>15 Q. And it says, "No update was<br/>16 undertaken for this Group-1 agent."<br/>17 Do you see that?<br/>18 A. Yes.<br/>19 Q. So when you were working at Johnson &amp;<br/>20 Johnson Consumer, you understood that talc<br/>21 containing asbestos was the highest level of<br/>22 carcinogen, correct?<br/>23 MS. BROWN: Objection to the form of<br/>24 the question.<br/>25 A. Again, I recognize and I think the</p> | <p style="text-align: right;">Page 257</p> <p>1 safe level of asbestos, you also knew that if there<br/>2 was any asbestos in talc, that it could cause<br/>3 cancer, correct?<br/>4 MS. BROWN: I object; this goes<br/>5 beyond his --<br/>6 A. Yeah, you're getting into issues of<br/>7 levels of a carcinogen and I can't respond.<br/>8 Q. You don't have the expertise to<br/>9 answer --<br/>10 A. I do not.<br/>11 Q. Strike that.<br/>12 A. I do not.<br/>13 Q. Strike that.<br/>14 You don't have -- actually, I'm not<br/>15 striking that, but let me ask a new question.<br/>16 You do not have the expertise to give<br/>17 an opinion about the levels of asbestos that can<br/>18 cause mesothelioma, correct?<br/>19 A. Correct, yes, I cannot -- I don't<br/>20 have the expertise to get into mechanisms of<br/>21 carcinogenicity or levels. Just, I know asbestos<br/>22 has a known carcinogen and it cannot be in our talc<br/>23 and everything that I know is it is not.<br/>24 Q. I'll move to strike the portion that<br/>25 was not responsive.</p>                                                                       |

| <p style="text-align: right;">Page 282</p> <p>1 MR. BLOCK: Okay. And even though</p> <p>2 the rule also says that depositions are supposed to</p> <p>3 continue day-to-day until completed unless there's a</p> <p>4 stipulation between the parties, with that agreement</p> <p>5 we just made, and via what the rule says, I will</p> <p>6 agree to continue on Friday but I would like to</p> <p>7 start at 10 in the morning. I do not want to start</p> <p>8 in the afternoon on Friday and starting in the</p> <p>9 afternoon is a problem for me, so I need to have</p> <p>10 that compromise.</p> <p>11 MS. BROWN: That's fine.</p> <p>12 MR. BLOCK: Okay. So we will</p> <p>13 continue then Friday at 10 o'clock.</p> <p>14 MS. BROWN: Okay. Agreed.</p> <p>15 I am only going to contact Dr. Mann</p> <p>16 to tell him that.</p> <p>17 MR. BLOCK: Okay.</p> <p>18 MS. BROWN: All right.</p> <p>19 (Deposition adjourns at 4:24 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 284</p> <p>1 ERRATA SHEET</p> <p>2 Priority-One Court Reporting/Veritext</p> <p>3 718-983-1234</p> <p>4 ASSIGNMENT NO. P1-4436122</p> <p>5 CASE NAME: Pulido/Weathers v. Asbestos</p> <p>6 DATE OF DEPOSITION: 2/15/2021</p> <p>7 WITNESS' NAME: Steven Mann</p> <p>8</p> <table border="1"> <thead> <tr> <th>PAGE/LINE(S)/</th> <th>CHANGE</th> <th>REASON</th> </tr> </thead> <tbody> <tr><td>6</td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td></tr> <tr><td>8</td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td></tr> </tbody> </table> <p>21 Steven Mann</p> <p>22 (Notary not required in California)</p> <p>23 SUBSCRIBED AND SWORN TO</p> <p>24 BEFORE ME THIS DAY</p> <p>25 OF , 2021.</p> <p>NOTARY PUBLIC</p> <p>MY COMMISSION EXPIRES</p> | PAGE/LINE(S)/ | CHANGE | REASON | 6 |  |  | 7 |  |  | 8 |  |  | 9 |  |  | 10 |  |  | 11 |  |  | 12 |  |  | 13 |  |  | 14 |  |  | 15 |  |  | 16 |  |  | 17 |  |  | 18 |  |  | 19 |  |  | 20 |  |  |
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| <p style="text-align: right;">Page 283</p> <p>1 CERTIFICATE OF OFFICER</p> <p>2</p> <p>3 I CERTIFY that the foregoing is a true</p> <p>4 and accurate transcript of the testimony and</p> <p>5 proceedings as reported stenographically by me at</p> <p>6 the time, place and on the date as hereinbefore set</p> <p>7 forth.</p> <p>8 I DO FURTHER CERTIFY that I am neither</p> <p>9 a relative nor employee nor attorney or counsel of</p> <p>10 any of the parties to this action, and that I am</p> <p>11 neither a relative nor employee of such attorney or</p> <p>12 counsel, and that I am not financially interested in</p> <p>13 the action.</p> <p>14</p> <p>15 <i>Andrea Nocks CCR CRR</i></p> <p>16 ANDREA NOCKS, CCR, CRR</p> <p>17 Certificate No. XI001573</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                  | <p>72 (Pages 282 - 284)</p> <p>Priority-One Court Reporting Services Inc. – A Veritext Company</p> <p>718-983-1234</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |               |        |        |   |  |  |   |  |  |   |  |  |   |  |  |    |  |  |    |  |  |    |  |  |    |  |  |    |  |  |    |  |  |    |  |  |    |  |  |    |  |  |    |  |  |    |  |  |

# EXHIBIT M



THE COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION

March 18, 2002

**E. EDWARD KAVANAUGH**  
P R E S I D E N T

Dr. Kenneth Olden  
Director, National Toxicology Program and  
National Institute of Environmental Health Sciences  
U.S. Department of Health and Human Services  
P.O. Box 12233  
Research Triangle Park, NC 27709

Dear Dr. Olden:

The Cosmetic, Toiletry, and Fragrance Association (CTFA) appreciates the opportunity to submit further information on talc not containing asbestiform fibers following NTP's deferral on the decision to list in the Report on Carcinogens. The enclosed information is submitted in response to the offer of collaboration which you extended in your July 9 letter.

In an attempt to clarify issues that were raised in the initial Draft Background Document (DBD), in discussions at the RoC Subcommittee meeting, and in your letter of July 9<sup>th</sup>, we have completed an updated review and analysis of the literature. Our findings include some 90 studies, articles, and commentaries, more than 50 of which (the ones preceded by an asterisk) are not referenced in the initial DBD. While not all of the additional references may meet NTP criteria for use in a DBD, we believe that they provide useful information relevant to the subject matter.

A summary of our findings from this further review, including the literature references, is contained in the Attachment to this letter.

Our review during the 10<sup>th</sup> RoC proceedings, together with this additional literature review, indicates that the scientific literature on which the initial RoC nomination for non-asbestiform talc was based was incomplete, and that findings in the DBD are unsupported on certain key points. Re-analysis of the pertinent literature further supports our confidence in the safety of cosmetic talc. While we do not intend to represent that our literature research is totally exhaustive at this point, we do believe it is balanced and that it raises or highlights significant points that deserve further attention as NTP reviews this matter.

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**EXHIBIT**  
Defense 7



Page 2

Again, CTFA appreciates the opportunity to provide input on talc. We continue to be open to further discussion, including meeting with you at your convenience. Please let us know if there is additional information that we can provide.

Sincerely,

A handwritten signature in black ink, appearing to read "G. N. McEwen, Jr.", with a stylized flourish at the end.

Gerald N. McEwen, Jr., Ph.D., J.D.  
Vice President - Science

## ***A Supplemental Analysis of Cosmetic Talc Issues and Literature Evidence Regarding Ovarian Cancer Risk***

### **Cosmetic talc vs. asbestos**

In 1976, CTFA promulgated a specification for cosmetic talc to ensure that it is free of asbestos. As a practical matter, that specification is self-enforcing. Asbestos has been listed as a known human carcinogen, is highly regulated, and no consumer products company would knowingly run the risk of asbestos being present in its product, even in minute quantities. This is a matter both of public perception and potential litigation exposure. Therefore, both suppliers and end users go to great lengths to assure that the CTFA specification is met. In some cases, cosmetic talc producers augment the quality assurance process by utilizing additional detection precautions such as transmission electron microscopy.

The literature clearly does not support the statements that were originally made in the DBD, and in many of the epidemiologic studies, that talc has a mineralogical and chemical similarity to asbestos, and that this similarity supports the biological plausibility of the findings of weak associations in the epidemiologic studies of ovarian cancer. (E.g., DBD at 24, 28.) This was a central point of dispute by the commenters in the RoC Subcommittee meeting. Dr. A.P. Wehner has commented, "Talc is as similar to asbestos as graphite is to diamond." [\*84] Krause and Ashton, by way of explaining that chemical composition does not in any way by itself determine the properties of a substance, have used the metaphor that "a pearl [calcium carbonate] is not a piece of chalk [calcium carbonate]." [\*49] Rather, the biological effects of a substance are determined by a combination of chemical composition, morphology, and molecular structure. [*Id.*] Zazenski et al. have clearly explained and illustrated the great dissimilarities between pure talc and asbestos in terms of morphology, chemical structure, and surface properties. [92,\*93] When considered in its totality, pure talc bears little to no resemblance to asbestos. The idea that talc is like asbestos, repeated many times in the literature (and the DBD) without critical examination, has done considerable harm to the industry.

The dissimilarities between pure talc and asbestos are borne out by the extensive literature on the biological effects of the substances. Asbestos has long been listed (since the 1st RoC in 1980) as a known human carcinogen, and has shown clear carcinogenic action in both humans and animals. Asbestos is known to induce pleural and respiratory system cancers. While its exact carcinogenic mechanism has not been determined and probably involves several different effects, it has demonstrated cancer promotion activity in experimental animals and *in vitro*, including induction of chromosomal changes (aneuploidy) and cell transformation. [\*4,\*5, 79,\*80] These biological effects of asbestos have been attributed to its fibrous structure and dimensions, as well as properties such as fiber durability and physiochemical surface properties. [*Id.* and \*52] Such properties differentiate asbestos from pure talc and talc associated with calcite, dolomites, etc.

There is also epidemiologic evidence for a relationship between asbestos exposure and ovarian cancer. [\*1,\*6, 24,\*47,\*78,\*90] This evidence is consistent with the other epidemiologic and mechanistic evidence concerning asbestos carcinogenicity.

For talc, on the other hand, putting aside for the moment the issue of the ovarian cancer epidemiologic studies, there is a distinct lack of evidence of carcinogenic activity. Talc is recognized as a fibrotic and sclerosing agent (at a high enough dose) in the lungs, bronchia, and pleura, and has been implicated as causing granulomas in the peritoneum when introduced via surgeons' gloves (in the past). In clear contrast to asbestos, however, pure talc has not been associated with human respiratory, pleural, or peritoneal cancers. Nor has its use in pharmaceuticals been associated with cancer in the gastrointestinal

tract or other organs. To the contrary, pure talc has been accepted in the medical community for decades as a highly effective agent for therapeutic pleurodesis (*i.e.*, with no indication of carcinogenic activity) of malignant pleural effusion and pneumothorax with no observed risk of cancerous activity. [\*65,\*86] Additionally, talc has not been shown to have potential carcinogenic activity in animal or *in vitro* experiments. While it has been hypothesized that talc fibrosis in the ovaries due to use of talc on condoms could lead to ovarian cancer [\*46], there have been no observations of ovarian fibrosis associated with ovarian cancer.

### **Evaluation of the Ovarian Cancer Epidemiologic Studies**

Several of the generally accepted Bradford Hill evaluation factors for judging the credibility of a causal relationship appear to have received insufficient attention to this point. With regard to strength, the statistical associations observed have been weak, generally well under 2.0, with the majority of findings lacking statistical significance. Also, a number of commenters, as well as study authors themselves, have observed the distinct absence of a clear dose-response trend in most of the studies. Dr. Ernst Wynder, one of the founding practitioners of epidemiology in the U.S., and a colleague (Muscat JE) commented specifically on this point, noting that lack of a clear dose-response is particularly significant in the case of consistently weak associations, since it is likely to indicate presence of a consistent bias. [\*54]

The potential for recall bias in case-control studies is well recognized. [*Id.*] Muscat and Wynder [*id.*] have pointed out that in the talc-ovarian cancer case-control studies there is very wide variability in the percentage of controls reporting use of talc for perineal dusting, and that this indicates a lack of reliability in the subject's recall and reporting. In the ten case-control studies of U.S. subjects, we found that the percentage of controls reporting perineal dusting ranged from <5% to 46%. This is in line with the range found by Muscat and Barish of approximately 3% to 50%. [\*53] The subjects' consistent reporting of slightly more use of perineal dusting than controls, despite this wide variation in reported use, raises a very strong suspicion of consistent recall bias. The conclusion in the DBD (at iii and v) that bias is unlikely is not supported. The failure of Cramer et al. to find a trend of higher reported usage in the more recent studies, given as a reason for such a conclusion (DBD at 28), does not address this point made by Barish Muscat, and Wynder. The high amount of publicity surrounding the allegations of asbestos in talc in the 1970s and subsequent epidemiologic study reports provides a very plausible basis for such a recall bias.

In addition to the lack of strength, lack of dose-response trend, and likelihood of bias, we also believe the Hill factors of consistency and biological plausibility require more attention.

### **Consistency**

The discussion in the DBD and the RoC Subcommittee meeting focused almost exclusively on the consistency among a majority of epidemiologic study findings with regard to use of powders in the perineal area, although the RG1 and RG2 findings of consistent association appeared to also include use of talc on sanitary napkins and diaphragms. (At iii and v.) Such a conclusion regarding those other modes of exposure is not supported. The study results were far from consistent for talc on sanitary napkins, talc on diaphragms, and talc on condoms. All of these modes of exposure would more plausibly expose the ovaries to talc than external dusting. (The translocation issue is discussed below.)

For talc on sanitary napkins, nine studies reported results. Four reported results below the null (non-significant) [87, 14, 25, 91], and five reported increases ranging from 1.3 to 4.8 (one result significant, one barely significant). [12, 17, 19, 69, 56]

For talc on diaphragm or cervical cap, eight studies reported results or conclusions. Three reported results at or below the null (non-significant) [36, 27, 56], one relied on two previous studies for considering the risk to be non-significant [19], one reported a RR of 3.0 (non-significant) [69], one a RR of 1.5 (non-significant) [87], one a RR of 1.2-1.6 (non-significant) [17], and one a RR of 1.1 (non-significant). [34]

For talc on condoms, four studies reported results or conclusions. Two of these studies reported no elevation in risk [17, 27], one relied on previous studies in considering that there was no significant risk [19], while one reported a non-significant RR of 1.6. [69]

Considering all modes of exposure examined in the studies, there was pronounced inconsistency in the findings.

### **Biologic plausibility**

As discussed above, there is a notable lack of mechanistic evidence for the carcinogenicity of talc supporting the findings in the case-control studies of ovarian cancer; and the mechanistic evidence argues strongly against biologic plausibility. The absence of consideration of this point in connection with the epidemiologic data in the DBD is surprising in view of the NTP emphasis on consideration of mechanistic data in the last several years. Most of the discussion in the DBD focused on the biologic plausibility of whether talc can translocate from the external perineal region to the ovaries, not whether there is mechanistic evidence supporting the biologic plausibility that exposure of the ovaries to talc will cause cancer.

In considering the issue of translocation, there are basically three components: (1) Observations of the presence of talc in the ovaries or ovarian tumors; (2) findings from controlled experiments designed to test for translocation; and (3) findings of reduced risk of ovarian cancer in epidemiologic studies of subjects who had undergone tubal ligation or hysterectomy. We will address each of these briefly.

(1) The observations by Henderson et al. in 1971 of talc particles embedded in ovarian tumors led to the hypothesis that talc might be related to ovarian carcinogenesis, although Henderson et al. did not propose such a hypothesis. [42, 43] They also reported finding even larger quantities of talc in healthy ovaries. A more recent study showed the presence of talc particles in the ovaries of all of both supposedly unexposed and perineally exposed subjects, although some of the “unexposed subjects appeared to have been exposed during diapering.” [40] Asbestos fibers have also been found in ovarian tumors and malignant peritoneal mesotheliomas of women who had no recorded asbestos exposure history. [41,\*38]

(2) Experiments attempting to test the hypothesis that talc or other particles can translocate from the vagina to the ovaries have produced conflicting results, and experimenters who have found no translocation have offered explanations for the opposing findings. [82,\*21, 23,\*62,\*77]

(3) A number of epidemiologic case-control studies have consistently found a reduced risk of ovarian cancer in women who have undergone tubal ligation or hysterectomy and had been exposed to cosmetic talc. However, at least one study has also found significantly reduced risk in cases that had not reported being exposed to cosmetic talc. [\*31] Some have hypothesized that such surgical procedures block external environmental agents such as talc or asbestos from entering the ovaries. However, this has not been the sole, or even the preferred hypothesis. It has also been hypothesized that, since there is now a considerable body of evidence indicating that ovarian cancer risk is influenced by hormonal and ovulatory factors, reduced risk from such procedures could be due to disruption of ovulation and certain hormone levels. [\*15,\*70] It has also been noted that such procedures could result in incidental removal of cancerous tissue. [\*75]

Thus, it seems clear that some talc particles, as well as asbestos fibers, can reach the human ovaries; however, how this occurs is still unclear. It has not been established that talc particles can reach the human ovaries through vaginal translocation as a result of perineal exposure, and there is some evidence that talc, as well as other mineral particles of low toxicity and low solubility, can be transported to various internal organs through the human body's systemic circulation. [85,\*11] Of course, the mere presence of talc in the ovaries does not indicate that it is a cause of ovarian cancer, and there is not a biologically plausible explanation for cancer causation by pure talc.

#### **Historical contamination of cosmetic talc with asbestos**

Two studies, one in 1968 and one in 1976, reported finding fibrous-like materials and asbestos in off-the-shelf consumer talc products. [16, 68] In the latter study, half the brands had detectable asbestos. This occurred at a time when evidence was accumulating concerning the human carcinogenicity of asbestos. Although there were doubts concerning the validity of the studies [\*48,\*49], and given the lack of previous awareness of the dangers of asbestos, it is quite possible that there was in fact asbestos contamination in some brands of cosmetic talc powders prior to 1976. Recognizing this, CTFA promulgated its specification for cosmetic talc in 1976, which required a complete absence of detectable asbestos in cosmetic talc.

A review of the epidemiologic studies on ovarian cancer and talc exposure shows that a large portion of the exposures in all of the studies must have occurred prior to 1976. In addition, none of those studies were able to characterize the composition of the powders or identify brands. Thus, in addition to the analytical weaknesses discussed previously, the exposures might have involved exposure to asbestos, making the studies essentially lacking in utility and data quality for the purpose of evaluating the safety of present-day cosmetic talc.

#### **Conclusion**

Present-day cosmetic talc must be assumed to be free of asbestos, consistent with the CTFA specification and absent evidence to the contrary. It is simply a marketplace requirement. The current biologic evidence is overwhelming that pure cosmetic talc is not a risk factor in inducing cancer. Epidemiologic findings concerning ovarian cancer and cosmetic talc are extremely weak, equivocal, and cannot be considered relevant to present-day cosmetic talc. Consequently, at present we do not see any way to define cosmetic talc in a manner that would support a RoC listing nomination.

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**REFERENCES****\*Indicates material not referenced in the Draft Background Document**

- \*1. Acheson E, Gardner MJ, Pappard EC, and Grime LP. 1992. Mortality of two groups of women who manufactured gas masks from chrysotile and crocidolite asbestos: A 40-year follow-up. *Br J Med* 39: 344-48.
- \*2. Barrett JC, Lamb PW, and Wiseman RW. 1989. Multiple mechanisms for the carcinogenic effects of asbestos and other mineral fibers. *Environ Health Perspect* 81: 81-89.
- \*3. Barrett JC. 1994. Cellular and molecular mechanisms of asbestos carcinogenicity: Implications for biopersistence. *Environ Health Perspect* 102, Supp. 5: 19-23.
- \*4. Berry G, Newhouse ML, and Wagner JC. 2000. Mortality from all cancers of asbestos factory workers in east London 1933-80. *Occup Environ Med* 57 (11): 782-85.
- \*5. Campos JRM, Werebe EC, Vargas FS, Jatene FB, Light RW. 1997. Respiratory failure due to insufflated talc (research letter). *Lancet* 349 (9047): 251-52.
6. Chang S and Risch HA. 1997. Perineal talc exposure and risk of ovarian carcinoma. *Cancer* 79: 2396-2401.
7. Cook LS, Kamb ML, and Weiss NL. 1997. Perineal powder exposure and the risk of ovarian cancer. *Am J Epidemiol* 145: 459-465.
- \*8. Cornelison TLK, Natarajan N, Piver MS, and Mettlin CJ. 1997. Tubal ligation and the risk of ovarian carcinoma. *Cancer Detect Prev* 21(1): 1-6.
9. Cralley LJ, Key MM, Groth DH, Lainhart WS, and Ligo RM. 1968. Fibrous and mineral content of cosmetic talcum products. *Am Ind Hyg Assoc J* 29 (4): 350-54.
10. Cramer DW, Welch WR, Scully RE, and Wojciechowski CA. 1982. Ovarian cancer and talc: A case-control study. *Cancer* 50: 372-376.
11. Cramer DW, Liberman RF, Titus-Ernstoff L, Welch WR, Greenberg ER, Baron JA, and Harlow BL. 1999. Genital talc exposure and risk of ovarian cancer. *Int J Cancer* 81: 351-356.
- \*12. DeBoer CH. 1972. Transport of particulate matter through the human female genital tract. *J Reprod Fert* 28: 295-97.
13. Egli GE and Newton M. 1961. The transport of carbon particles in the human female reproductive tract. *Fertil Steril* 12: 151-55.
14. Germani D, Belli S, Bruno C, Grignoli M, Nesti M, Pirastu R, Comba P. 1999. Cohort mortality study of women compensated for asbestosis in Italy. *Am J Ind Med* 36: 129-34.
15. Gertig DM, Hunter DJ, Cramer DW, Colditz GA, Speizer FE, Willett WC, and Hankinson SE. 2000. Prospective study of talc use and ovarian cancer. *J Natl Cancer Inst* 92: 249-252.

16. Green A, Purdie D, Bain C, Siskind V, Russell P, Quinn M, and Ward B. 1997. Tubal sterilisation, hysterectomy and decreased risk of ovarian cancer. *Int J Cancer* 71 (6): 948-51.
- \*17. Hankinson SE, Hunter DJ, Dolditz GA, Willett WC, Stampfer MJ, Rosner B, Hennekens CH, and Speizer FE. Tubal ligation, hysterectomy, and risk of ovarian cancer: A prospective study. 1993. *JAMA* 270: 2813-18.
18. Harlow BL, Cramer DW, Bell DA, and Welch WR. 1992. Perineal exposure to talc and ovarian cancer risk. *Obstet Gynecol* 80: 19-26.
19. Hartge P, Hoover R, Leshner LP, and McGowan L. 1983. Talc and ovarian cancer [letter]. *JAMA* 250: 1844.
- \*20. Heller DS, Gordon RE, Clement PB, Turnnir R, and Katz N. 1999. Presence of asbestos in peritoneal malignant mesotheliomas in women. *Int J Gynecol Cancer* 9: 452-55.
21. Heller DS, Westhoff C, Gordon RE, and Katz N. 1996. The relationship between perineal cosmetic talc usage and ovarian talc particle burden. *Am J Obstet Gynecol* 174: 1507-1510.
22. Heller DS, Gordon RE, Katz N. 1999. Correlation of asbestos fiber burdens in fallopian tubes and ovarian tissue. *Am J Obstet Gynecol* 181 (2): 346-47.
23. Henderson WJ, Joslin CA, Turnbull AC, and Griffiths K. 1971. Talc and carcinoma of the ovary and cervix. *J Obstet Gynecol Br Commonw* 78: 226-72.
24. Henderson WJ, Hamilton TC, and Griffiths K. 1979. Talc in normal and malignant ovarian tissue [letter]. *Lancet* 1 (8114): 499.
- \*25. Kasper CS and Chandler PJ. 1995. Possible morbidity in women from talc on condoms [letter]. *J Amer Med Ass* 273: 846-47.
- \*26. Keal EE. 1960. Asbestos and abdominal neoplasms. *Lancet* 2: 1211-16.
- \*27. Krause JB. 1977. Mineralogical characterization of cosmetic talc products [letter]. *J Toxicol Environ Health* 2 (5): 1223-26.
- \*28. Krause JB and Ashton WH. 1978. Misidentification of asbestos in talc. In *National Bureau of Standards Special Publication 506. Proceedings of the Workshop on Asbestos: Definitions and Measurement Methods*, NBS, Gaithersburg, MD, July 180-20, 1977, pp. 339-52.
- \*29. Mossman B, Light W, Wei E. 1983. Asbestos: Mechanisms of toxicity and carcinogenicity in the respiratory tract. *Annu Rev Pharmacol Toxicol* 23: 595-615.
- \*30. Muscat JE and Barish M. 1998. Epidemiology of talc exposure and ovarian cancer: A critical assessment. *Comments Toxicol, Special Issue on Talc* 6 (5): 327-35.
- \*31. Muscat JE and Wynder EL. 1997. Re: Perineal powder exposure and the risk of ovarian cancer [letter]. *Am J Epidemiol* 146 (9): 786.

32. Ness RB, Grisso JA, Cottreau C, Klapper J, Vergona R, Wheeler JE, Morgan M, and Schlesselman JJ. 2000. Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer. *Epidemiology* 11: 111-117.
- \*33. Phillips JC, Young PJ, Hardy J, and Gangolli SD. 1978. Studies on the absorption and disposition of <sup>3</sup>H-labelled talc in the rat, mouse, guinea-pig and rabbit. *Fd Cosmet Toxicol* 16: 161-63.
- \*34. Research Committee of the British Thoracic Association and the Medical Research Council Pneumoconiosis Unit. 1979. A survey of the long-term effects of talc and kaolin pleurodesis. *Br J Dis Chest* 73: 285-88.
35. Rohl AN, Langer AM, Selikoff IJ, Tordini A, Klimentidis R, Bowes DR, and Skinner DL. 1976. Consumer talcums and powders: Mineral and chemical characterization. *J Toxicol Environ Health* 2 (2): 255-84.
36. Rosenblatt KA, Szklo M, and Rosesshein NB. 1992. Mineral fiber exposure and the development of ovarian cancer. *Gynecol Oncol* 45: 20-25.
- \*37. Rosenblatt KA and Thomas DB. 1996. Reduced risk of ovarian cancer in women with tubal ligation or hysterectomy. The World Health Organization Collaborative Study of Neoplasia and Steroid Contraceptives. *Cancer Epidemiol Biomarkers Prev* 5 (11): 933-35.
- \*38. Tortolero-Luna G, Mitchell MF, and Rhodes-Morris H. 1994. Epidemiology and screening of ovarian cancer. *Obstet Gynecol Clinics N Amer* 21 (1): 1-23.
- \*39. Venter PE and Iturralde S. 1979. Migration of a particulate radioactive tracer from the vagina to the peritoneal cavity and ovaries. *S Afr Med J* 55: 917-19.
- \*40. Vigliani EC, Ghezzi I, Maranzana P, Pernis B. 1969. Epidemiology study of asbestos workers in northern Italy. *Med Lav* 59 (8): 481-85.
41. Voytek P, Anver M, Thorslund T, Conley J, and Anderson E. 1990. Mechanisms of asbestos carcinogenicity. *J Am Coll Toxicol* 9: 541-546.
- \*42. Walker C, Everitt J, Barrett JC. 1992. Possible cellular and molecular mechanisms for asbestos carcinogenicity. *Am J Ind Med* 21 (2): 253-73.
43. Wehner AP, Weller RE, and Lepel EA. 1986. On talc translocation from the vagina to the oviducts and beyond. *Fd Chem Toxicol* 24: 329-38.
- \*44. Wehner AP. 1998. Is cosmetic talc "safe"? *Comments Toxicol, Special Issue on Talc* 6 (5): 336-66.
45. Werebe EC, Pazetti R, De Campos JRM, Fernandez PP, Capelozzi VL, Jatene FB, and Vargas FS. 1999. Systemic distribution of talc after intrapleural administration in rats. *Chest* 115 (1): 190-93.
- \*46. Weissberg D and Ben-Zeev I. 1993. Talc pleurodesis: Experience with 360 patients. *J Thor Card Surg* 106 (4): 689-95.

47. Whittemore AS, Wu ML, Paffenbarger RS Jr., Sarles DL, Kampert JB, Grosser S, Jung DL, Ballon S, and Hendrickson M. 1988. Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee. *Am J Epidemiol* 128: 1228-1240.
- \*48. Wignall BK and Fox AJ. 1982. Mortality of female gas mask assemblers. *Br J Indus Med* 39: 34-38.
49. Wong C, Hempling RE, Piver MS, Natarajan N, and Mettlin CJ. 1999. Perineal talc exposure and subsequent epithelial ovarian cancer: A case-control study. *Obstet Gynecol* 93: 372-376.
50. Zazenski R, Ashton WH, Briggs, D, Chudkowski M, Kelse JW, MacEachern L, McCarthy EF, Nordhauser MA, Roddy, MT, and Teetsel NM. 1995. Talc: Occurrence, characterization, and consumer applications. *Regul Toxicol Pharmacol* 21: 218-29.
- \*51. Zazenski RJ. 1998. The commercial significance of talc. *Comments Toxicol, Special Issue on talc* 6 (5): 313-26.

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**REFERENCES REVIEWED – NOT CITED**
**\*Indicates material not referenced in the Draft Background Document**

- \*52. Anonymous. 1977. Cosmetic talc powder [editorial]. *Lancet*: 1348-49.
- \*53. Anteby SO, Mos Yosef S, and Schenker JC. 1983. Ovarian cancer: Geographical, host and environmental factors – An overview. *Arch Gynecol* 234 (2): 131-48.
- \*54. Blejer HP and Arlon R. 1973. Talc: A possible occupational and environmental carcinogen. *J Occup Med* 15 (2): 92-97.
- \*55. Blount AM and Vassiliou AH. 1983. Identification of chlorite and serpentine in cosmetic or pharmaceutical talc. *Environ Health Perspect* 51: 379-85.
- \*56. Blount AM. 1991. Amphibole content of cosmetic and pharmaceutical talcs. *Environ Health Perspect* 94-225-30.
57. Booth M, Beral V, Smith P. 1989. Risk factors for ovarian cancer: A case-control study. *Br J Cancer* 60: 592-598.
58. Chen Y, Wu PC, Lang JH, Ge WJ, Hartge P, and Brinton LA. 1992. Risk factors for epithelial ovarian cancer in Beijing, China. *Int J Epidemiol* 21: 23-29.
- \*59. Cramer DW. 1999. Perineal talc exposure and subsequent epithelial ovarian cancer [letter]. *Obstet Gynecol* 94 (1): 160-61.
- \*60. Daly M and Oubrams GI. 1998. Epidemiology and risk assessment for ovarian cancer. *Semin Oncol* 25: 255-64.
- \*61. Dement JM. 1984. [Letter re fiber in New York talc – responding to letter from Dunn JR (apparently Chairman of Schering-Plough Corp.)]. *Am Ind Hyg Assoc* 45 (4): B-8 to B-9.

62. Godard B, Foulkes WD, Provencher D, Brunet JS, Tonin PN, Mes-Masson AM, Narod SA, and Ghadirian P. 1998. Risk factors for familial and sporadic ovarian cancer among French Canadians: a case-control study. *Am J Obstet Gynecol* 179: 403-10.
- \*63. Grexa RW and Parmentier CJ. 1979. Cosmetic talc properties and specifications. *Cosmetics & Toiletries* 94: 29-33.
64. Gross AJ and Berg PH. 1995. A meta-analytical approach examining the potential relationship between talc exposure and ovarian cancer. *J Expo Anal Environ Epidemiol* 5: 181-95.
- \*65. Hamer DH, Rolle FR, and Schelz JP. 1976. Characterization of talc and associated minerals. *Am Ind Hyg Assoc J* 37 (5): 296-304.
- \*66. Comments on above article by Hankinson et al. Myers ER and Silver A-LS. 1994. [Letter]. *JAMA* 71 (16): 1235-37.
67. Harlow BL and Weiss NS. 1989. A case-control study of borderline ovarian tumors: The influence of perineal exposure to talc. *Am J Epidemiol* 130: 390-394.
68. Harlow BL and Hartge PA. 1995. A review of perineal talc exposure and risk of ovarian cancer. *Regul Toxicol Pharmacol* 21: 254-60.
69. Hartge P and Stewart P. 1994. Occupation and ovarian cancer: a case-control study in the Washington, DC metropolitan area, 1978-1981. *J Occup Med* 36: 924-27.
70. Heller DS, Gordon RE, Westhoff C, and Gerber S. 1996. Asbestos exposure and ovarian fiber burden. *Am J Indust Med* 29: 435-39.
- \*71. Hildick-Smith GY. 1976. The biology of talc. *Br J Ind Med* 33 (4): 217-29.
- \*72. Hildick-Smith G. 1977. [Letter]. *J Toxicol Environ Health* 2 (5): 1221-22.
- \*73. Longo DL and Young RC. 1979. Cosmetic talc and ovarian cancer. *Lancet* ii: 349.
- \*74. Marconi A, Maccione M, Rossi L. 1986. Asbesto E. Talco: Determinazione del contenuto di particelle minerali fibrose in polveri di talco commerciali mediante tecniche associate di microscopia ottica [Asbestos and talc: Determination of mineral fibre content in commercial talc using combined optical microscope techniques]. *Med Lav* 77: (5): 496-510.
- \*75. Natow AJ. 1986. Talc: Need we beware? *Cutis* 37 (5): 328-29.
76. Ness RB and Cottreau C. 2000. Response: re: possible role of ovarian epithelial inflammation in ovarian cancer [letter]. *J Natl Cancer Inst* 92 (2):163.
- \*77. Newhouse ML, Berry G, Wagner JC, and Turok ME. 1972. A study of the mortality of female asbestos workers. *Brit J Indust Med* 29: 134-41.
- \*78. Paoletti L, Caiazza S, Donelli G, and Pocchiari F. 1984. Evaluation by electron microscopy techniques of asbestos contamination in industrial, cosmetic, and pharmaceutical talcs. *Regul Toxicol Pharmacol* 4 (3): 222-35.



- \*79. Parazinni F, Freseschi S, LaVecchia D, and Fasoli M. 1991. The epidemiology of ovarian cancer – review. *Gynecol Oncol* 43: 9-23.
- \*80. Parmentier CJ and Gill CJ. 1978. Practical aspects of talc and asbestos. In *National Bureau of Standards Special Publication 506. Proceedings of the Workshop on Asbestos: Definitions and Measurement Methods*, NBS, Gaithersburg, MD, July 180-20, 1977, pp. 403-11.
- \*81. Phillipson IM. 1980. Talc quality [letter]. *Lancet* 1 (8158): 48.
- 82. Purdie,D., Green A, Bain C, Siskind V, Ward B, Hacker N, Quinn M, Wright G, Russell P, and Susil B. 1995. Reproductive and other factors and risk of epithelial ovarian cancer: An Australian case-control study. Survey of Women's Health Study Group. *Int J Cancer* 62: 678-684.
- \*83. Rohl AN. 1974. Asbestos in talc. *Environ Health Perspect* 9: 129-32.
- 84. Rohl AN and Langer AM. 1974. Identification and quantitation of asbestos in talc. *Environ Health Perspect* 9: 95-109.
- \*85. Russell RS, Merz RD, Sherman WT, and Silvertson JN. 1979. The determination of respirable particles in talcum powder. *Fd Cosmet Toxicol* 17: 117-22.
- 86. Shoham Z. 1994. Epidemiology, etiology, and fertility drugs in ovarian epithelial carcinoma: Where are we today? *Fertil Steril* 62: 433-448.
- \*87. Shushan A, Taltiel O, Iscovich J, Elchalkal U, Peretz T, and Schenker JG. 1996. Human menopausal gonadotropin and risks of epithelial ovarian cancer. *Fertil Steril* 65: 13-18.
- \*88. Tavani A, Negri E, Franceschi S, Parazzini F, La Vecchia C. 1993. Risk factors for epithelial ovarian cancer in women under age 45. *Eur J Cancer* 29A (9): 1297-12301.
- 89. Tzonou A., Polychronopoulou A, Hsieh CC, Rebelakos A, Karakatsani A, and Trichopoulos D. 1993. Hair dyes, analgesics, tranquilizers and perineal talc application as risk factors for ovarian cancer. *Int J Cancer* 55: 408-410.
- 90. Wehner AP, Hall AS, Weller RE, Lepel EA, and Schirmer RE. 1985. Do particles translocate from the vagina to the oviducts and beyond? *Fd Chem Toxicol* 23: 367-72.
- 91. Wehner AP. 1994. Biological effects of cosmetic talc. *Food Chem Toxicol* 32: 1173-84.
- \*92. Whittemore AS, Harris R, Itnyre J, and the Collaborative Ovarian Cancer Group. 1993. Characteristics relating to ovarian cancer risk: Collaborative analysis of 12 US case-control studies. II. Invasive epithelial ovarian cancers in white women. *Am J Epidemiol* 137 (8): 928-29.
- 93. Whysner J. and Mohan M. 2000. Perineal application of talc and cornstarch powders: evaluation of ovarian cancer risk. *Am J Obstet Gynecol* 182 (3): 720-724.

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**From:** Mann, Steven [CPCUS]  
**Sent:** Monday, July 12, 2004 1:31 PM  
**To:** Colamarino, Sarah [CPCUS]; Ferguson, John [CPCUS]; Head, Michael [CPCUS]; Hopkins, John; Linares, Carlos [CPCUS]; Loretz, Linda; Moeller, Lisa [CPCUS]; Monseau, Marc [JJCUS]; Musco, Nancy [CPCUS]; O'Shaughnessy, John [JJCUS]; Telofski, Lorena [CPCUS]; Wehner, Al; Wille, Kathleen K. [CPCUS]  
**Cc:** Casalvieri, Joan [CPCUS]; Matheson, J. Neal [CPCUS]; Nettesheim, Susan [CPCUS]; Rouleau, Gaetan [CPCUS]; Sinicio, Telma [CPCUS]  
**Subject:** FW: Talc Document - Dr. Wehner  
**Attachments:** WehnerTalcComments 2.doc

Al Wehner's document which will be included in the CTFA submission.

Steve

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

From: Linda Loretz [mailto:loretzl@ctfa.org]  
 Sent: Monday, July 12, 2004 9:06 AM  
 Subject: Talc Document - Dr. Wehner

Please see the attached comments from Dr. Al Wehner, regarding the cosmetic talc nomination for listing in the 12th RoC. This document will be included as another attachment in the submission to NTP, with a reference added to the cover letter. The comments will be submitted to NTP this week (due on Friday).

**Alfred P. Wehner, DMD, ScD, Cand Med, FATS, FTAS  
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## **Comments on Links between Hygienic Use of Cosmetic Talc and Ovarian Cancer**

### **Introduction**

On May 19, 2004, the National Toxicology Program (NTP) published a *Federal Register Notice* (69, 97:28940-28944) requesting public comments on 21 chemicals proposed for listing in the 12<sup>th</sup> edition of the Report on Carcinogens (RoC). Among the proposed chemicals was cosmetic talc. The rationale for reviewing cosmetic talc for possible listing in the RoC refers to human epidemiological studies reporting an increased risk of ovarian cancer among women using cosmetic talc for personal hygiene.

As project director and toxicologist at Battelle Pacific Northwest National Laboratory (1967-1989) I have conducted with my research team a number of studies with cosmetic talc, which have been published in peer-reviewed scientific journals and, having maintained my interest in this field, I am familiar with the relevant professional literature. I therefore consider myself qualified to comment knowledgeably on the issues at hand.

I recently published a review of biological effects of cosmetic talc in the peer-reviewed journal *Regulatory Toxicology and Pharmacology*, based on 81 literature references (Wehner, 2002). This review included a detailed analysis of exactly the issues that prompted NTP to consider listing cosmetic talc in the 12<sup>th</sup> RoC, namely the reported weak association of hygienic talc use and ovarian cancer in several epidemiological studies, but not in others. For ready reference I am excerpting in my comments below relevant parts from my review.

### **Epidemiological Studies on Hygienic Talc Use and Ovarian Cancer**

Epidemiology is a non-experimental science that yields fragile data which are subject to interpretation. Even with adequate statistical power, low risk levels are always suspect of possibly being due to confounding by measured or unmeasured risk factors or various biases, foremost among them recall bias in case-control studies. Epidemiology is too blunt a tool to reliably estimate relative risks (RR) less than 2. In his paper in *Science*, Taubes (1995) cites a number of prominent epidemiologists who postulate RRs or odds ratios (OR) of 3, or even 4, before results should be considered *biologically* significant and meaningful even though they might reach *statistical* significance with RRs or ORs of 2 or lower. Such studies can gain more weight if they are supported by consistency of results among the studies and by demonstrating consistent dose-response relationships (Wynder, 1987).

To the case in point, 21 case-control studies have been conducted to investigate a possible association of hygienic talc use and ovarian cancer. The results of 15 of these studies showed a weak, statistically (barely) significant link while 6 did not. The overall ORs or RRs in those studies reporting a positive association generally were below 2, mostly between 1.3 and 1.6. For details, analyses and critiques of the case-control studies I refer to Gross and Berg ((1995), Goodman (1995) and Muscat and Barish (1998).

All epidemiological studies published before 1994 were scrutinized by a panel of experts at a public workshop titled "Talc: Consumer Uses and Public Health Perspectives". The workshop, cosponsored by the International Society of Regulatory Toxicology and Pharmacy (ISRTP) and the U.S. Food and Drug Administration (FDA), was held January 31-February 1, 1994, in Bethesda, MD, and attended by close to 100 individuals from academia, government agencies, industry, private enterprise and the general public. Following are excerpted opinions expressed by the experts, as published in the executive summary (Carr, 1995).

Gori (Health Policy Center, Bethesda, MD) pointed out that human cancers are multifactorial diseases arising from a combination of simultaneous exposures to many potential etiologic determinants. To extricate the significance of any one of these factors from the integrated effects of all others is a challenging task. If one adds the technical problems in the execution of these studies, the "epidemiologic fog" is just as difficult to penetrate as the one generated by animal bioassays.

Rothman (1986), a leading theoretician on epidemiology who has extensively reviewed the difficulties of interpreting causal inferences, is quoted as follows: "Despite philosophic injunctions concerning inductive inference, criteria have commonly been used to make such inferences. The justification offered has been that the exigencies of public health problems demand action and that despite imperfect knowledge causal inferences must be made." This approach is scientifically untenable because it can lead to a solution being proffered before the cause of a problem has been identified.

In their review of epidemiological studies, Hartge (National Cancer Institute) and Harlow (Harvard University) point out the many interpretive difficulties of epidemiology as an observational science.

Wynder (American Health Foundation) stressed the specific problems of weak associations in epidemiology: Biases of respondents and investigators, known and unknown confounding factors, and "the irresistible urge to interpret results as if only a reduced set of variables of interest was operant, without acknowledging or controlling for a more multifactorial reality."

The panel pointed out biases (e.g., recall bias, publication bias) and potential confounders (e.g., parity, contraceptive use, ovulatory frequency, age at menarche and menopause, family history, diet) as well as exposure misclassification as inherent weaknesses of the retrospective case-control studies and found the epidemiological data "conflicting" and "equivocal." The panel concluded: "The possibility of an association of talc exposure and

ovarian cancer is an important hypothesis of potential public health importance. However, this association remains a research hypothesis whose verification or falsification needs additional study.” That additional *epidemiological* studies would not serve this purpose is expressed in the last sentence of the executive summary: “However, epidemiologic studies have provided weak and conflicting risk signals for this association, and it is unlikely that further studies may prove adequate to raise concern at a level to warrant regulatory or public health measures” (Carr, 1995).

Since the workshop, additional epidemiological studies have been published (Purdie *et al*, 1995; Heller *et al*, 1996; Cook *et al*, 1997; Chang and Risch, 1997; Goddard *et al*, 1998; Cramer *et al*, 1999; Wong *et al*, 1999). None of these papers presented new evidence that would have required a reassessment of the conclusions of the workshop panel of experts. The results lacked dose-response relationships, were inconsistent and had the inherent weaknesses of retrospective case-control studies (various biases and confounding factors) that caused the experts to consider the pre-workshop studies inconclusive.

More specifically, Purdie *et al* reported an OR of 1.27 (CI 1.04 -1.54) which statistically is barely significant and falls within the controversial gray area below 2. Heller *et al* investigated ovarian asbestos fiber and talc particle burdens in 13 exposed and 17 control subjects with no history of known exposures. They found large numbers of asbestos fibers in approximately 70% of the asbestos-exposed group, *but also in 35% of the controls*. They also observed talc particles in 85% of the talc-exposed group, *but most remarkably also in 100% of the controls!* Cook *et al* reported an RR of 1.6 (CI 1.1-2.3). However, there was no trend in ORs with increasing numbers of perineal talc applications despite a fivefold difference between the lowest and the highest exposure groups, as criticized by Muscat and Wynder (1997). Chang and Risch found an overall OR of 1.42 (CI 1.08-1.86). Their data show an *inverse* dose-response relationship.

Cramer *et al* investigated the link of hygienic talc exposure and ovarian cancer in a case-control study involving 536 subjects and 523 controls. The authors observed an OR of 1.60 (CI 1.18-2.15) and calculated an overall OR of 1.36 for all epidemiological studies showing an association of genital talc use and ovarian cancer. The studies by Hartge *et al* (1983), Rosenblatt *et al* (1992), Tsonou *et al* (1993), Godard *et al* (1998), Wong *et al* (1999), and especially the prospective study by Gertig *et al* (2000), discussed separately below, showed no statistically significant link.

The paper by Gertig *et al* (2000) deserves special attention because it describes the only major *prospective* study specifically designed to investigate whether or not there is an association between hygienic use of cosmetic talc and ovarian cancer. As is generally acknowledged, prospective studies yield less fragile data than retrospective studies and therefore carry more weight. Yet the authors did not find a biologically meaningful link between hygienic use of cosmetic talc and ovarian cancer.

Participants in Gertig's Nurses' Health Study formed a cohort of 78,630 women for analysis. Within the study's 20-year duration, 307 cases of epithelial ovarian cancer were diagnosed. This is the type of cancer most frequently observed in the (retrospective) case-



control studies. Gertig *et al* state: "We did not observe an overall association with ever use of talc and ovarian cancer (RR =1.09; 95% CI, 0.86-1.37). There was also no elevation in risk among daily users of perineal talc, and no trend was seen with increasing frequency of use. Talc use on sanitary napkins was *inversely* (emphasis added) related to ovarian cancer, but the association was statistically not significant. Exclusion of use of talc on sanitary napkins from the ever use of talc variable did not substantially alter the results. We also evaluated the risk for women who used both perineal talc and talc on sanitary napkins but did not see an effect compared with never users (RR =0.90; 95% CI, 0.59-1.37)"

Only when the authors stratified by histological subtype did they observe a statistically barely significant increase in risk for "Ever Talc Use" for *serous invasive* cancers (RR =1.40; 95% CI, 1.02-1.91) but not for all serous cancers (including borderline cancers), endometrial cancers, or mucinous cancers.

The capriciousness of epidemiological data even from prospective studies is illustrated by the observed *inverse* relationship between ovarian cancer and talc use on sanitary napkins. By the same token, this capriciousness might have pushed the relatively small serous invasive cancer groups (84/76) into the statistically barely significant region (multivariate RR=1.40; 95% CI, 1.02-1.91). Furthermore, a slightly higher random incidence of the mutant genes BRCA1 and/or BRCA2 (for which was not tested) in the talc-using serous invasive cancer group, compared to their non-talc-using group, could account for the slightly higher cancer incidence, rather than talc use. Gertig *et al* point out the lack of a dose-response relationship in their study as well as in previous case-control studies and conclude that "the biologic evidence for the association of talc and ovarian cancer is incomplete."

In summary, the epidemiological data juxtapose questionable, statistically barely significant links in 15 studies versus negative results in 6 studies. The data are inconsistent, ambiguous, lack dose-response relationships and are therefore inconclusive. They do not support a causal relationship. Muscat and Barish (1998) concluded, "epidemiologic studies have generated but not tested the hypothesis that talcum powder is a risk factor for ovarian cancer."

### **Do Talc Particles translocate from the Perineum to the Ovaries?**

This question is relevant to the epidemiological findings. If poorly soluble talc particles, deposited in the genital area, are suspected of causing ovarian cancer, they must be able to reach the ovaries in sufficient numbers and remain there for a sufficiently long period of time to cause this disease. The evidence for this to occur is as inconsistent, ambiguous and inconclusive as for the epidemiological studies.

It would violate the laws of physics if inanimate particles without locomotion of their own and unable to respond to chemotactic stimuli were capable on their own of migrating up the vagina, breach the formidable barrier presented by the cervix, traverse the uterus and swim "upstream" against the ciliary beat through the oviducts to reach the ovaries.

Yet, there are the observations by Henderson *et al* (1971; 1978) and others who reported numerous particles in or on ovarian tissues. Furthermore, there are the frequently cited publications by Egli and Newton (1961), Venter and Iturralde (1979) and DeBoer (1972) in support of particle translocation. In addition, it is well known that particles can achieve this feat if assisted by inadvertent or deliberate manipulation, the latter, for example, in patients in a supine or in the Trendelenburg position, or by a lacerated or a dilated cervix. Gases and liquids, such as radio-opaque contrast material and dyes, can be passed through the cervix by appropriate manipulation, and retrograde menstrual flow is a known phenomenon. But can particles such as talc translocate unaided from the perineum or the vagina to the ovaries under normal physiological and anatomical conditions?

Egli and Newton reported purported translocation of carbon black particles in two of three hysterectomy patients. The major flaw of their (non-quantitative) study was that their experimental protocol did not include examination of blank solution or filter samples as negative controls. This renders their results inconclusive as proof of translocation, as demonstrated by Wehner *et al* (1985). The latter authors attempted to replicate Egli and Newton's findings in cynomolgus monkeys, the animal model anatomically and physiologically most closely resembling the human female. Following Egli and Newton's experimental protocol as closely as possible, Wehner *et al* did, indeed, find carbon particles on the ovaries and in the solution with which the oviducts were rinsed. Had they ended their experiment at this point as Egli and Newton did, they would have confirmed particle translocation. However, upon examination of their filter and solution *blanks*, Wehner *et al* observed as many carbon black particles on and in the blanks as in the test samples. This strongly suggests a false positive by sample contamination with ubiquitous carbon black particles rather than particle translocation. The possibility of sample contamination and the paper by Lee *et al* (1995) on this subject is discussed below.

Venter and Iturralde (1979) also published seemingly convincing evidence of particle translocation. They deposited  $^{99m}\text{Tc}$ -labeled human albumin microspheres (HAM) in the vaginas of 14 hysterectomy patients. After surgery, the uteri, oviducts and ovaries were analyzed for the radioactive tracer. In 9 of 14 cases radioactivity was detected in oviducts and ovaries. The weakness in the experimental design of that study is the use of only *one* radionuclide. Radioactive tracers are known to leach from the particles to which they are attached ( Subramanian *et al*, 1995; Wehner *et al*, 1977; Wilkerson *et al*, 1977; Wehner and Wilkerson, 1981; Wehner *et al*, 1984 ). Bolles *et al* (1971) specifically describe this phenomenon for  $^{99m}\text{Tc}$ -labeled HAMs. Particularly the findings by Wehner *et al* (1986) strongly suggest that Venter and Iturralde, too, observed a false positive, in this case by incorrectly assuming that the leached radioactive marker represented translocated HAMs. This problem can be avoided by using and analyzing for more than one radionuclide. Each radionuclide species has its own characteristic leaching rate. Leaching can be differentiated from particle translocation by comparing activities of several radionuclides in the neutron-activated bulk sample before exposure with these activities in the tissue samples after exposure.

Wehner *et al* (1986) deposited 125 mg neutron-activated talc, suspended in 0.3 ml physiological saline solution, in the posterior vaginal fornix of each of six sedated cynomolgus monkeys in each of 30 applications within a 45-day period, i.e., through at least one menstrual cycle. Two days after the final talc application the animals were sacrificed. Abdominal lavage fluid, ovaries, oviducts, uterus and vagina with cervix were collected for  $\beta$ -ray analysis. The radioisotopes  $^{46}\text{Sc}$ ,  $^{60}\text{Co}$ ,  $^{59}\text{Fe}$  and  $^{51}\text{Cr}$  in the activated talc were used as tracers. Six sham-exposed animals served as controls. Only the vaginas and cervices - i.e., the site of deposition - of the exposed animals contained varying quantities of talc. No talc was found in the uteri, oviducts, ovaries and the abdominal lavage fluid of the dosed monkeys. The system used for  $\beta$ -ray analysis could detect as little as  $\sim 0.5 \mu\text{g}$  talc, or approximately  $1/250\,000^{\text{th}}$  of the talc quantity deposited with each application. Analysis of neutron activated talc is not only a very sensitive analytical technique, it also eliminates the problem of sample contamination by ubiquitous environmental talc.

Phillips *et al* (1978), using the rabbit as an animal model, observed no translocation of  $^3\text{H}$ -labeled talc from the vagina to the ovaries.

The findings of DeBoer (1972) highlight the role of the cervix as a barrier. Before abdominal surgery he deposited a carbon black suspension into the uterus, the cervix or the vagina of more than 100 patients. He found rapid migration to the oviducts of particles deposited in the uterine cavity, and to a lesser degree of particles placed in the cervical canal. However, in only two of 37 patients did he observe translocation of particles deposited in the vagina. One of those two was a multipara (6 children) with a lacerated cervix. All of DeBoer's patients had been placed in the Trendelenburg position in which the legs are elevated at an angle of 45 degrees and the head being lower than the hips. In this position the abdominal organs are pushed toward the diaphragm by gravity. DeBoer observed that "in this position, especially under anesthesia, there is a negative intraabdominal pressure which may be sufficient to draw up material from the vagina into the uterus, particularly through a relaxed cervix."

This brief overview must suffice to demonstrate that the translocation studies are inconsistent and therefore inconclusive. For details I refer to the cited literature.

This still leaves the findings of Henderson *et al* (1971; 1978) unexplained. The authors reported large numbers of talc particles in and on human ovarian tissue. No plausible hypothesis has been proposed of how inanimate, poorly soluble particles can translocate unaided from the perineum to the ovaries under normal anatomical and physiological conditions. This suggests contamination with ubiquitous pollutants (talc and carbon particles, asbestos fibers) during sample collection and processing as a distinct possibility. This statement is supported by the findings of Wehner *et al* (1985) *versus* Egli and Newton (1961); by Heller *et al* (1996) who unexplicably found talc particles on the ovaries in 100% of their unexposed control group compared to 85% in the exposed group, and who observed asbestos fibers in 70% of their asbestos-exposed group, but also in 35% of their controls; and especially by the findings of Lee *et al* (1995).

Lee *et al* detected asbestos fiber contamination in paraffin of the tissue block during analysis of tissue samples for asbestos fibers. They state that this "raises significant concerns about the validity of analyses for asbestos in tissue embedded in paraffin. In particular, diagnoses in which the presence of asbestos in tissue samples is taken as being indicative of past asbestos exposure, especially for those cases in which no known exposure has occurred, and studies purporting to show migration of asbestos to other organs in the body following inhalation or ingestion of asbestos require critical re-evaluation. The need for re-evaluation is particularly acute if appropriate control blanks were not evaluated as part of the studies." The relevance to the talc situation is striking. If it can be established that talc particles observed on ovarian tissue were deposited there by contamination rather than by translocation, the talc/ovarian cancer issue would be resolved. Even if the poorly soluble talc particles were carcinogenic - and no convincing evidence has ever been presented that they are - they would have to be capable of migrating from their site of deposition to the ovaries to be able to cause ovarian cancer.

Talc is a recognized fibrogenic agent. Assuming for the sake of discussion that talc particles are carcinogenic and somehow manage to translocate from the perineum/vagina to the ovaries in sufficient numbers and remain there for a sufficiently long period of time to cause cancer, where is the ovarian fibrosis that could be expected to occur long before cancer develops? Yet in none of the cases in which ovarian cancer has been linked to hygienic use of talc has ovarian fibrosis been reported. This question, first raised at the 1994 ISRTP/FDA workshop, is still awaiting an answer.

### **Meta-Analysis by Huncharek *et al***

Huncharek *et al* (2003) subjected the epidemiological data suggesting an association between hygienic use of cosmetic talc and ovarian cancer to meta-analysis. Meta-analysis is a statistical method, employed to results indicating weak associations, in an attempt to overcome the inherent problems of weak associations by pooling results of the studies. To be included in meta-analysis, studies have to meet stringent criteria.

Huncharek *et al* essentially confirm what I have documented in my comments. Their findings can best be summarized in their own words (p.1955): "Despite the availability of a number of observational studies suggesting an association between perineal talc application and ovarian cancer development, serious questions remain regarding the validity of this finding. These include: (1) the relatively small sample size of most studies limiting statistical power to detect an effect; (2) lack of consistent positive association across studies; (3) absence of demonstrable dose-response relationship; (4) lack of supporting evidence of carcinogenicity from animal or *in vitro* analyses; and (5) the possible presence of uncontrolled confounding producing a spurious positive association between talc use and ovarian cancer risk."

On two occasions in their paper, the authors refer to the "structural similarity between talc and asbestos, a well-recognized human carcinogen," further fuelling concern that there might be a causal relationship between hygienic talc use and ovarian cancer. This statement requires comment. "Structural similarity" is, of course, a subjective term and

can mean different things to different people. Be that as it may, it should be noted in this context that structural or even elemental similarity does not necessarily mean similar biological effects. Different physical properties (e.g., shape and surface characteristics) of elementally similar chemicals can have significantly different biological effects. The pharmacological action of certain elementally and structurally *identical* agents (isomers) depends on whether they are dextrorotary or levorotary. The crystal structure of chrysotile, the most common asbestos species, consists of a two-layer silica-brucite sheet rolled into a number of tiny fibrils. Talc has three-layer silica-brucite-silica sheets stacked together in small platy packets. The outer surface of chrysotile is brucite (MgOH) which is relatively soluble and hydrophilic. The outer surface of talc is silica which is highly insoluble and hydrophobic. The aspect ratio of their fibers is believed to be mainly responsible for the carcinogenicity of asbestos fibers. Cosmetic talc does not contain fibers. Cosmetic talc is as similar to asbestos as graphite is to diamond.

### Summary and Conclusion

As I have documented by appropriate literature references in my comments, the results of the epidemiological studies are inconsistent, ambiguous and inconclusive. Injection of talc into the ovaries of rats, a species recognized for its positive response to carcinogens, induced no cancers (Hamilton *et al*, 1984). Results of studies investigating translocation of talc from the perineum or the vagina to the ovaries also are inconsistent, ambiguous and inconclusive. Thus, no convincing evidence exists in the opinion of numerous experts and investigators cited in my comments to demonstrate a causal association between hygienic use of cosmetic talc and ovarian cancer.

### Literature References

- Bolles, T. F. *et al*. (1971). <sup>99m</sup>Tc-labeled albumin (human) microspheres. In *Proceedings of the Symposium on New Developments in Radiopharmaceuticals and Labeled Compounds*. March 26-30, 1973, Copenhagen. Vol. 1, p.151.
- Carr, C.J. (1995). Talc: Consumer uses and health perspectives. *Regul. Toxicol. Pharmacol.* **21**, 211-215.
- Chang, S. and Risch, H.A. (1997). Perineal talc exposure and risk of ovarian carcinoma. *Cancer*, **79**, 2396-2401.
- Cook, L.S. *et al*. (1997). Perineal powder exposure and risk of ovarian cancer. *Am. J. Epidemiol.* **145**, 459-465.
- Cramer, *et al*. (1999). Genital talc exposure and risk of ovarian cancer. *Int. J. Cancer*, **81**, 351-356.



- DeBoer, C. H. (1972). Transport of particulate matter through the human female genital tract. *J. Reprod. Fert.* **28**, 295-297.
- Egli, G.E. and Newton, M. (1961). The transport of carbon particles in the human female reproductive tract. *Fertil. Steril.* **12**, 151-155.
- Gertig, D.M. *et al.* (2000). Prospective study of talc use and ovarian cancer. *J. Natl. Cancer Inst.* **92**, 249-252.
- Godard, B. *et al.* (1998). Risk factors for familial and sporadic ovarian cancer. *Amer. J. Obstet. Gynecol.* **179**, 403-410.
- Goodman, J. I. (1995). An analysis of the National Toxicology Program's (NTP) Technical Report (NTP TR 421) on the toxicology and carcinogenesis studies of talc. *Regul. Toxicol. Pharmacol.* **21**, 244-249.
- Gross, A.J. and Berg, P.H. (1995). A meta-analytical approach examining the potential relationship between talc exposure and ovarian cancer. *J. Expo. Anal. Environ. Epidemiol.* **5**, 181-195.
- Hamilton, T.C. *et al.* (1984). Effects of talc on the rat ovary. *Br.J. Exp. Path.* **65**, 101-106.
- Hartge, P. *et al.* (1983). Talc and ovarian cancer. *J. Amer. Med. Assoc.* **250**, 1844.
- Health Effects Institute (1995). *Diesel exhaust: A critical analysis of emissions, exposure, and health effects*. HEI, Cambridge, MA.
- Heller, D.S. *et al.* (1996). Asbestos exposure and ovarian fiber burden. *Am. J. Ind. Med.* **29**, 435-439.
- Henderson, W. J. *et al.* (1971). Talc and carcinoma of the ovary and the cervix. *J. Obstet. Gynecol. Br. Commonw.* **78**, 226-232.
- Henderson, W. J. *et al.* (1978). Oxygen incineration and electron X-ray microanalysis of mineral particles in biological tissues. *J. Histochem. Cytochem.* **26**, 1087.
- Huncharek, M. *et al.* (2003). Perineal application of cosmetic talc and risk of invasive epithelial ovarian cancer: A meta-analysis of 11, 933 subjects from 16 observational studies. *Anticancer Res.* **25**, 1955-1960.
- Lee, R.J. *et al.* (1995). Asbestos contamination in paraffin tissue blocks. *Arch. Pathol. Lab. Med.* **119**, 528-532.
- Muscat, J. E. and Barish, M. (1998). Epidemiology of talc exposure and ovarian cancer: A critical assessment. *Comments Toxicology*, **6**, 327-335.

- Muscat, J.E. and Wynder, E.L. (1997). Re: Perineal powder exposure and the risk of ovarian cancer. *Am. J. Epidemiol.* **146**, 786 (letter).
- Phillips, J.C. *et al.* (1978). Studies in the absorption and disposition of  $^3\text{H}$ -labelled talc in the rat, mouse, guinea-pig and rabbit. *Fd. Cosmet. Toxicol.* **16**, 161-163.
- Purdie, D. *et al.* (1995). Reproductive and other factors and risk of epithelial ovarian cancer: An Australian case-control study. Survey of Women's Health Study Group. *Int. J. Cancer*, **62**, 678-684.
- Rosenblatt, K.A. *et al.* (1992). Mineral fiber exposure and the development of ovarian cancer. *Gynecol. Oncol.* **45**, 20-25.
- Rothman, K.J. (1986). *Modern Epidemiology*, p.17. Little, Brown & Co., Boston, MA.
- Subramanian, G. *et al.* (Eds). (1975). Radiopharmaceuticals, p.271. Society of Nuclear Medicine, New York.
- Taubes, G. (1995). Epidemiology faces its limits. The search for subtle links between diet, lifestyle, or environmental factors and disease is an unending source of fear - but often yields little certainty. *Science*, **269**, 164-169.
- Tsonou, A. *et al.* (1993). Hair dyes, analgesics, tranquilizers and perineal talc application as risk factors for ovarian cancer. *Int. J. Cancer*, **55**, 408-410.
- Venter, P.E. and Iturralde, M. (1979). Migration of particulate radioactive tracer from the vagina to the peritoneal cavity and ovaries. *S. Afr. Med. J.* **55**, 917-919.
- Wehner, A.P. *et al.* (1977). Pulmonary deposition, translocation and clearance of inhaled neutron-activated talc in hamsters. *Fd. Cosmet. Toxic.* **15**, 213-224.
- Wehner, A.P. and Wilkerson, C.L. (1981). Determination of pulmonary deposition, translocation and clearance using neutron activation techniques. *Zschr. Erkrank. Atmungsorg.* **157**, 238-246.
- Wehner, A.P. *et al.* (1985). Do particles translocate from the vagina to the oviducts and beyond? *Food Chem. Toxicol.* **23**, 367-372.
- Wehner, A.P. *et al.* (1986). On talc translocation from the vagina to the oviducts and beyond. *Food Chem. Toxicol.* **24**, 329-338.
- Wehner, A.P. *et al.* (1984). Lung clearance of neutron-activated Mount St. Helens volcanic ash in the rat. *Environ. Res.* **35**, 211-217.

Wehner, A.P. (2002). Cosmetic talc should not be listed as a carcinogen: Comments on NTP's deliberations to list talc as a carcinogen. *Reg. Toxicol. Pharmacol.* **36**, 40-50.

Wilkerson, C.L. *et al.* (1977). Leaching of radionuclides from neutron-activated talc in serum and in dilute hydrochloric acid. *Fd. Cosmet. Toxicol.* **15**, 589-593.

Wong, C. *et al.* (1999). Perineal talc exposure and subsequent epithelial ovarian cancer : A case-control study. *Obstet. Gynecol.* **93**, 372-376.

Wynder, E.L. (1987). Guidelines to the epidemiology of weak associations. *Prev. Med.* **16**, 211-212.

Respectfully submitted on June 10, 2004

Dr. Alfred P. Wehner

[Page]

# EXHIBIT N



**Trial - Day 11 AM and PM Sessions**  
**April 08, 2025**

ELECTRONICALLY FILED - 2026 Sep 29 12:04 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4006111

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - NORWALK

DEPARTMENT H

HON. ROGER ITO, JUDGE

JOHN DOOMEY AND ELIZABETH  
DOOMEY,

PLAINTIFFS,

VS.

ALBERTSONS COMPANIES, INC., ET  
AL.,

DEFENDANTS.

CASE NO 21STCV47286

**CERTIFIED COPY**

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

DAY 11

TUESDAY, APRIL 8, 2025

A.M. SESSION

(APPEARANCES OF COUNSEL ON FOLLOWING PAGE)

REPORTED BY: RHONA REDDIX, CRR, RMR, CSR NO. 10807  
OFFICIAL REPORTER PRO TEMPORE

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M A S T E R   I N D E X

APRIL 8, 2025 A.M. SESSION

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M A S T E R   I N D E X

APRIL 8, 2025 A.M. SESSION

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|---------|--------|--------|---------------------------------|
| (NONE.) |        |        |                                 |



CASE NUMBER: 21STCV47286  
CASE NAME: DOOMEY VS. ALBERTSONS  
LOS ANGELES, CALIFORNIA APRIL 8, 2025  
DEPARTMENT H HON. ROGER ITO, JUDGE  
REPORTER: RHONA S. REDDIX, CSR 10807  
TIME: A.M. SESSION  
APPEARANCES: (SEE TITLE PAGE.)

(OUT OF THE PRESENCE OF THE JURY AND  
ALTERNATE JURORS:)

THE COURT: OKAY. SO WE'RE BACK ON THE RECORD OF  
THE MATTER OF DOOMEY VERSUS JOHNSON, ET AL. THE ISSUE  
THAT WAS LEFT OVER FROM YESTERDAY -- AND I INDICATED TO  
COUNSEL THAT I WANTED TO HAVE AN OPPORTUNITY TO REVIEW  
THE EXPERT'S TESTIMONY THAT WAS SUBJECT TO THE MOTION TO  
STRIKE.

AND I THINK THAT THE -- MR. DOOMEY HAD  
INDICATED IT WAS AROUND AREA WHERE THE WORDING WAS -- I  
THINK IT WAS MR. SANDOVAL'S WORDING WAS IS THERE A RULE  
OF THUMB WHEN YOU CONSIDER NET WORTH? AND ULTIMATELY  
THE ANSWER FROM DR. FRACTOR WAS -- AND I SHOULD SAY IN  
THE CONTEXT OF PUNITIVES IS THERE A RULE OF THUMB WHEN  
YOU CONSIDER NET WORTH?

AND IT SAYS IT'S VERY COMPLEX. IT USED TO  
BE THAT 5 PERCENT WAS A MEASURE, AND THERE ARE OTHER  
ARTICLES IN THE LITERATURE DEALING WITH LEGAL CASES

1 IN THE E-MAIL THAT YOU WERE ON IT TALKED  
2 ABOUT HOW DR. WEHNER IS ON THE EDITORIAL  
3 BOARD OF REGULATORY TOXICOLOGY AND  
4 PHARMACOLOGY?

5 A YES.

6 Q DO YOU REMEMBER THAT? AND SO  
7 DR. WEHNER GOT THE PAPER THAT JOHNSON &  
8 JOHNSON PAID FOR IN THE JOURNAL THAT HE  
9 WAS ON THE EDITORIAL BOARD OF; RIGHT?

10 A IT'S PUBLISHED THERE. I DON'T  
11 KNOW HOW IT ENDED UP GETTING REVIEWED OR  
12 PUT ON. I WOULDN'T KNOW THAT.

13 Q OKAY. BUT IT'S PUBLISHED IN  
14 THE SAME JOURNAL THAT DR. --

15 A YES.

16 Q -- WEHNER WAS ON THE EDITORIAL  
17 BOARD OF; RIGHT?

18 A THAT APPEARS TO BE CORRECT. I  
19 DON'T RECALL.

20 Q ALL RIGHT. AND THE TITLE OF  
21 THIS PAPER IS, 'COSMETIC TALC SHOULD NOT  
22 BE LISTED AS A CARCINOGEN: COMMENTS ON  
23 N.T.P.'S DELIBERATIONS TO LIST TALC AS A  
24 CARCINOGEN.' DO YOU SEE THAT?

25 A YES, I DO. YES.

26 Q OKAY. LET'S LOOK AT WHAT  
27 DISCLOSURE HE ACTUALLY MADE. DO YOU SEE  
28 FOOTNOTE 2? DR. WEHNER -- DR. WEHNER

1       LISTS -- LISTS HIS NAME AND THEN HE  
2       LISTS TWO -- TWO NOTES, NOTE 1 AND 2.  
3       DO YOU SEE THAT? THERE IS HIS NAME AND  
4       IT LISTS FOOTNOTE 1 AND 2. DO YOU SEE  
5       THAT --  
6           A       YES.  
7           Q       -- ON THE SCREEN? OKAY.  
8       LET'S GO TO -- LET'S GO TO THOSE  
9       FOOTNOTES, SEE WHAT HE SAYS. SO ONE  
10      FOOTNOTE IS JUST TELLING PEOPLE HOW TO  
11      CONTACT HIM; RIGHT?  
12           A       YEP, YES.  
13           Q       THE OTHER FOOTNOTE SAYS, 'THIS  
14      REVIEW WAS CONDUCTED INDEPENDENTLY AND  
15      THE OPINIONS EXPRESSED IN IT ARE SOLELY  
16      THOSE OF THE AUTHOR.' DO YOU SEE THAT?  
17           A       YES, I DO.  
18           Q       AND HE DOES NOT SAY ANYTHING  
19      ABOUT JOHNSON & JOHNSON; CORRECT?  
20           A       NO.  
21           Q       ALL RIGHT. AND THEN IF WE GO  
22      TO THE ACKNOWLEDGMENT PART OF THE  
23      ARTICLE, AT THE VERY END OF THE ARTICLE  
24      UNDER CONCLUSION --  
25           A       UH-HUH.  
26           Q       -- DO YOU SEE WHERE IT SAYS  
27      ACKNOWLEDGMENT?  
28           A       YES.

09:56:05  
09:56:05  
09:56:11  
09:56:11  
09:56:20  
09:56:20  
09:56:30  
09:56:32  
09:56:48  
09:56:48  
09:56:51

09:56:55  
09:57:05  
09:57:06  
09:57:11  
09:57:12  
09:57:24  
09:57:30  
09:57:41  
09:57:47

1 Q AND DR. WEHNER SAYS, 'I AM  
2 INDEBTED TO DR. JOHN HOPKINS, INNOVANT  
3 RESEARCH, UNITED KINGDOM, FOR HIS REVIEW  
4 OF THIS MANUSCRIPT AND HIS CONSTRUCTIVE  
5 COMMENTS.' DO YOU SEE THAT?  
6 A YES, I DO.  
7 Q AND ONCE AGAIN, JOHNSON &  
8 JOHNSON IS NOT MENTIONED; CORRECT?  
9 A THAT IS CORRECT.  
10 Q AND -- AND DR. WEHNER DOESN'T  
11 MENTION IN THAT ACKNOWLEDGMENT THAT  
12 DR. JOHN HOPKINS WORKED FOR JOHNSON &  
13 JOHNSON COMPANIES FOR MORE THAN 20  
14 YEARS; CORRECT?  
15 A THAT'S CORRECT.  
16 Q AND THIS ARTICLE BY DR. WEHNER  
17 THAT SAID THAT THERE IS NO ASBESTOS IN  
18 TALC WAS SENT TO A NUMBER OF GOVERNMENT  
19 AGENCIES; CORRECT?  
20 A I BELIEVE SO, YES.  
21 Q OKAY. AND MR. ASHTON WRITES  
22 ON OCTOBER 23RD, 2002, 'ATTACHED IS A  
23 COPY OF DR. WEHNER'S ARTICLE THAT WAS  
24 ISSUED LAST WEEK. IT IS A MASTERFUL  
25 PIECE OF WORK IN SUPPORT OF THE SAFETY  
26 OF OUR TYPE TALC AND IS A MAJOR DOCUMENT  
27 THAT TALC IS NOT A CARCINOGEN.' DO YOU  
28 SEE THAT?

1 PROFESSIONAL SERVICES RENDERED FROM  
2 DECEMBER THROUGH FEBRUARY 2002?

3 A YEAH. I'M LOOKING AT YOUR 14:26:5  
4 SCREEN NOW, BUT, YES.

5 Q AND DOES THAT REFRESH YOU, 14:26:5  
6 DR. MANN, THAT JOHNSON & JOHNSON PAID  
7 DR. WEHNER A CONSULTANCY FEE FOR A  
8 PERIOD OF TIME WHEN HE PROVIDED SERVICES  
9 IN CONNECTION WITH TALC SAFETY?

10 A YES. 14:27:1

11 Q I WANT TO LOOK AT WHAT WAS 14:27:12  
12 MARKED AS PLAINTIFF'S EXHIBIT 10. THIS  
13 WAS AN E-MAIL THAT ATTACHED ANOTHER  
14 ARTICLE THAT DR. WEHNER WROTE. YOU SEE  
15 HIS NAME HERE. THIS TITLE WAS 'COSMETIC  
16 TALC SHOULD NOT BE LISTED AS A  
17 CARCINOGEN, COMMENTS ON N.T.P.'S  
18 DELIBERATIONS TO LIST TALC AS A  
19 CARCINOGEN.' DO YOU SEE THAT?

20 A YEAH, I SEE THE TITLE, YEAH. 14:27:4

21 Q AND WHAT DOES, IF YOU CAN READ 14:27:45  
22 IT -- AND I DON'T KNOW IF I EVEN HAVE  
23 IT, BUT WHAT DOES DR. WEHNER SAY IN  
24 FOOTNOTE 2 OF THIS PAPER?

25 A 'THIS REVIEW WAS CONDUCTED 14:27:56  
26 INDEPENDENTLY AND THE OPINIONS EXPRESSED  
27 IN IT ARE SOLELY THOSE OF THE AUTHOR.'

28 Q AND IF WE LOOK AT THE 14:28:07



1 ACKNOWLEDGMENTS ON THIS PAPER, TELL US  
2 WHO, IF ANYONE, DR. WEHNER ACKNOWLEDGES  
3 HERE?

4 A DR. JOHN HOPKINS IN THE U.K.,  
5 FOR HIS REVIEW.

6 Q IS THERE ANY REFERENCE IN THIS  
7 PUBLISHED PAPER OF DR. WEHNER'S, THAT  
8 JOHNSON & JOHNSON PAID DR. WEHNER TO  
9 WRITE THIS 2002 PUBLISHED PAPER TITLED  
10 'COSMETIC TALC SHOULD NOT BE LISTED AS A  
11 CARCINOGEN'?

12 A HE DOES NOT LIST THAT AS AN  
13 ACKNOWLEDGMENT.

14 Q AND, YOU KNOW, COUNSEL ASKED  
15 YOU A LOT OF QUESTIONS ABOUT THIS PAPER.  
16 DO YOU REMEMBER THAT?

17 A AGAIN, MANY, MANY QUESTIONS.

18 Q YEAH. AND EVERY TIME HE  
19 REFERRED TO THIS PAPER, HE ASKED YOU  
20 SOMETHING LIKE THIS: I WANT TO ASK YOU  
21 SOME QUESTIONS ABOUT THIS PAPER THAT  
22 JOHNSON & JOHNSON PAID DR. WEHNER TO  
23 WRITE. DO YOU REMEMBER THOSE QUESTIONS?

24 A I REMEMBER THE QUESTION.

25 Q AND LOOKING AT THIS PAPER  
26 THOUGH, IS THERE ANY INDICATION IN THE  
27 PAPER ITSELF THAT JOHNSON & JOHNSON DID  
28 WHAT COUNSEL ASKED YOU, WHICH IS PAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT H

HON. ROGER ITO, JUDGE

JOHN DOOMEY AND ELIZABETH  
DOOMEY,

PLAINTIFFS,

VS.

ALBERTSONS COMPANIES, INC., ET  
AL.,

DEFENDANTS .

) SUPERIOR COURT  
) NO. 21STCV47286  
)  
) REPORTER'S  
) CERTIFICATE

I, RHONA S. REDDIX, OFFICIAL REPORTER OF  
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE  
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
FOREGOING PAGES, 3001 THROUGH 3219, COMPRISE A FULL,  
TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN IN  
THE ABOVE ENTITLED CAUSE ON APRIL 8, 2025.

DATED THIS 11TH OF APRIL, 2025.

Chona S. Reddy

\_\_\_\_\_, CSR, RPR, RMR, CRR #10807  
OFFICIAL REPORTER

# EXHIBIT O

# A Review of the Talc Industry's Influence on Federal Regulation and Scientific Standards for Asbestos in Talc

Tess Bird<sup>1</sup> , Joan E. Steffen<sup>2,3</sup>, Triet H. Tran<sup>2</sup> and David S. Egilman<sup>2,4</sup> 

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Health Policy  
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## Abstract

The talc industry and Food and Drug Administration (FDA) have asserted that talc has been asbestos-free since 1976 when the industry created a voluntary specification for the asbestos content of cosmetic talc. However, recent evidence reveals that cosmetic talc is not and never was asbestos-free. This narrative review examines the talc industry's role in delaying and ultimately blocking federal regulation of cosmetic talc from the 1970s to today. We review primary source material, including corporate documents released in recent litigation and FDA documents released in response to Freedom of Information Act requests. Our results indicate that the talc industry exerted considerable influence over three key areas: regulatory proceedings at the FDA; testing methods and the manipulation of test results (including undisclosed results); and press coverage and the medical literature. The talc companies' actions and FDA indifference have had a lasting effect on consumer health, including the regulation of talc by other government agencies.

## Keywords

regulation, deregulation, asbestos, talc, cosmetics industry, FDA

## Introduction

Numerous authors have sought to categorize the various methods corporations use to influence scientific research, government regulation, and public discourse in an effort to avoid regulation.<sup>1–8</sup> These methods rely on industry connections to and influence on regulatory agencies. They often include the production, interpretation, and dissemination of industry-approved science, the manipulation of safety standards, and the creation of strategic public relations campaigns that promote uncertainty about product safety. In the United States, instances of conflicts of interest in the Food and Drug Administration (FDA) and other regulatory bodies are well documented, including a “revolving door” of employment between government organizations and industry.<sup>9,10</sup> However, few have published accounts of the behind-the-scenes negotiations between federal agencies, industry executives, and industry scientists. Here, we provide a case study on cosmetic talc that relies on industry documents, released through litigation, and FDA documents, acquired through Freedom of Information Act (FOIA) requests. This case study examines a nearly fifty-year industry campaign to avoid

government regulation of cosmetic talc. It provides insights regarding the lasting impact on public health policy in the United States of decisions made in the 1970s, a contentious decade for government regulation.

Concerns about the health effects of cosmetic talc have recently come into the public sphere due to allegations that Johnson and Johnson (J&J) baby powder contains asbestos, causing both mesothelioma and ovarian cancer.<sup>11</sup> J&J has since stopped sales of talc-based baby powders in North America,<sup>12</sup> but there is still no

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regulatory oversight. Representatives from several talc mining and manufacturing companies (TM&MCs) have maintained that talc has been asbestos-free since 1976. In that year, the Cosmetic, Toiletry and Fragrance Association (CTFA), which represents the personal care products industry, claimed they implemented “stringent safety and quality control measures designed to ensure the absence of asbestos fibers from consumer talc products” (p. 218).<sup>13</sup> As part of these measures, the CTFA developed a test method for the determination of the asbestos content of talc, known as the J4-1 method.<sup>14</sup> CTFA is now known as the Personal Care Products Council.

As we show, the TM&MCs have long been aware that historical and current tests for asbestos in talc reveal that talc is not and never was asbestos-free. Moreover, the claim that talc is asbestos-free has had a lasting effect on the regulation of cosmetic talc by the FDA and the National Toxicology Program (NTP), as well as on the characterization of the risks associated with the use of talc in the medical literature.<sup>15</sup>

The 1976 J4-1 method was part of a voluntary, unenforced industry self-regulation plan, implemented after the industry pressured the FDA to renounce regulatory control. We reviewed correspondence among the FDA, TM&MCs, and research institutions around key regulatory events prior to 1976. The TM&MCs, particularly J&J (which held the majority of the talc powder market share in 1976<sup>16</sup>), exerted considerable influence over:

1. Regulatory proceedings at the FDA;
2. Testing methods and the manipulation of test results (including undisclosed results); and
3. Press coverage and the medical literature.

These efforts led to the continued sale of cosmetic talcum powders containing asbestos and fibrous talc (which the Occupational Safety and Health Administration has regulated as asbestos<sup>17</sup>). There were significant downstream consequences well into the twenty-first century for scientific practice, regulation at agencies other than FDA, and public health. While concerted action on the part of industry to hide the asbestos content of talc over the course of fifty years is apparent, our review also questions the FDA’s role in sustaining scientific uncertainty around an important public health concern.

## Methods

We reviewed primary source material consisting of corporate documents uncovered in litigation and government documents released through FOIA requests. Talc-related documents were deposited in a searchable database that was accessible to researchers during *Gail Ingham, et al. v.*

*Johnson & Johnson, et al.*, a St. Louis lawsuit regarding the use of commercial talcum powder. This document database included records produced by numerous TM&MCs.<sup>a</sup> In addition, we reviewed talc-related laboratory records.<sup>b</sup> We initially searched for asbestos-related terms, such as the names of asbestos minerals, “fiber(s),” “fibrous,” “acicular,” and “needle(s).” We then conducted additional searches based on themes that emerged within this initial data set, focusing on terms associated with testing protocols, quality control measures, test results, and specific talc mines and mills. The authors reviewed depositions of individuals connected to talc litigation. In addition, we conducted a review of the published literature on the asbestos and talc relationship, and the relationship of talc to ovarian cancer.

We provide a narrative review of meetings, events, newspaper reports, tests, research, and decisions by FDA and industry. The review is organized chronologically, with some exceptions to facilitate understanding of context. Unless otherwise specified, the word “talc” should be read as “talc used in cosmetics” and not “cosmetic talc” which, as we show, is a marketing construct. Because there is too much to cover in a single article, we have prepared a supplementary file with thirteen sections which include additional references and details on particular events and issues. Where relevant in this text, we refer to the supplementary file and section. So that readers can easily find cited statements from source documents, we have also included page numbers in parentheses to indicate where the information can be found in the source document.

In recent litigation, the CTFA, J&J, and Luzenac have claimed that many of the documents we cite were “confidential trade secrets.” The complete set of cited documents and other public documents are available at <https://repository.library.brown.edu/> under “David Egilman Papers.” Our review of documents is limited to the documents made available to us, as well as those released to the public domain.

## Results

### Historical Background

An association between talc and asbestos was established as early as 1898.<sup>18</sup> Subsequent studies noted the presence of asbestos in talc deposits and the health effects of talc exposure.<sup>18–26</sup> However, it was not until the late 1960s that scientists reported “fibrous talc” and probably asbestos in cosmetic talc products.<sup>27,28</sup> Around that time, the research and advocacy efforts of Dr. Irving Selikoff at the Mt. Sinai School of Medicine in New York City were calling widespread public attention to the link between asbestos and cancer. Selikoff had organized a 1964 meeting of the New York Academy



of Sciences which publicized the fact that there was no known safe level of asbestos exposure.<sup>29</sup> In 1971, *The New York Post* publicized the fact that researchers at Mt. Sinai had found asbestos in talcum powder.<sup>30</sup>

According to Rosner et al.,<sup>31</sup> authors of *The Politics of Measurement of Asbestos in Talc*, in the 1970s,

Skepticism of large institutions was burgeoning, with activist ire aimed at everything from major research universities to the military to large corporations. Advocacy for the interests of the everyday consumer, particularly around health and safety concerns, was exemplified by the attorney Ralph Nader, who became the public face of a revived consumer movement that thrived from the early 1960s into the 1980s.

The advocacy efforts of Ralph Nader, Irving Selikoff, and others as well as the establishment of government institutions such as Occupational Safety and Health Administration and the National Institutes of Occupational Safety and Health helped advance public, worker, and consumer health through regulatory action. This was met by a neoliberal backlash promoting industry self-regulation, privatization, and market liberalism. Scholars of this period have explained the long-term degradation of public health in the United States as a result of neoliberal structural adjustments and destabilization of the public sector.<sup>32,33</sup>

Rosner et al.<sup>31</sup> provide a summary of the testing methodology debate that followed Mt. Sinai's disclosure of asbestos in talc products. They focus on exchanges between the CTFA and FDA, relying on many of the same sources as we do. We build on their narrative, drawing attention to the integral role that J&J played in blocking regulation.

### ***Evidence of Asbestos in Talc: Early Public and FDA Knowledge (1970–1973)***

After learning of Mt. Sinai's findings, Jerome Kretchmer of New York City Environmental Protection Agency urged the FDA to take three actions with respect to talcum powder:

1. Sampling all available brands;
2. Recommend that manufacturers revise their formulations or take asbestos-containing product off the market; and
3. Perform a follow-up epidemiologic study.<sup>34</sup>

On 3 August 1971, the FDA held a meeting with city and federal officials, the cosmetic companies, and researchers.<sup>35</sup> At the meeting, tensions between the regulatory agencies and the TM&MCs were evident. Participants debated about methods for identifying

asbestos in talc and about “... the medical significance of asbestos and other fibers, and the mineralogy of asbestos and talc ore deposits” (p. 2).<sup>35</sup> After the meeting, the FDA and the CTFA began to conduct a series of tests that would form the basis for a proposed specification for talc.<sup>36</sup>

On 16 June 1972, *The New York Times* (NYT) reported on asbestos found in textured ceiling paint and talcum powder in the Mt. Sinai studies, revealing that two brands tested showed from 5 to 25 percent asbestos fibers and that “after repeated inquiries from newsmen, the [EPA] released a letter [ ... ] naming Landers and Johnson & Johnson as the brands.”<sup>37</sup> The article reported that the FDA “was still awaiting results of tests on other brands, and that the agency suspected that ‘virtually every talcum powder contains some asbestos.’”<sup>37</sup> The article also reported Kretchmer's advice that the public should “stop using talcum powder until suspicions about its asbestos content were cleared up.”<sup>37</sup>

After J&J was named in the 1972 NYT article, Dr. Wilson Nashed, J&J's Associate Director of Research, called the FDA, the New York City Environmental Protection Agency, and Mt. Sinai to request a correction to the story.<sup>38</sup> Dr. Arthur M. Langer, the researcher at Mt. Sinai who had tested the talc products, expressed to Nashed that he was not consulted about his “very, very preliminary findings” but maintained that J&J products contained traces of asbestos.<sup>38</sup> Nashed succeeded in convincing the FDA to assure the NYT that talc was safe to use.<sup>38</sup> The next day, the NYT published a correction, *Talc Warning is Labeled False*, quoting Langer as stating that the talc samples contained only “trace” amounts of asbestos and that J&J's is the “most pure” of the ones they had examined.<sup>39</sup> The article also reported that the FDA spokesman did not believe a warning was required on talc.

By 3 August 1972, the FDA received a report from Dr. Seymour Lewin, a Professor of Chemistry at New York University, whom they had hired to test various commercial talc products purchased at retail outlets in the Northeast for asbestos.<sup>40</sup> Lewin reported that 43 out of 102 commercial talc product samples contained tremolite and/or chrysotile asbestos. The report found 5 percent chrysotile asbestos by weight in J&J's Shower to Shower (see Table 1).<sup>40</sup> Several days later, the Associate Director of Technology for the FDA, Dr. Robert Schaffner, told Nashed of J&J that “the Naderites have been pressuring him to release Dr. Lewin's report” as public information (p. 1).<sup>44</sup> Nashed was adamant that J&J's private tests showed no asbestos in their products, which was incorrect, and contended “that Dr. Lewin's technique may be inaccurate” (p. 2)<sup>44</sup> (see Table 3).

Representatives of the CTFA and its member companies disputed Lewin's results during a meeting with the

**Table 1.** FDA Knowledge: Studies Conducted by the FDA Regarding J&J Products.

| Year | Consultant                                            | Tested                                                                                | Method                                    | Results                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------|-------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1972 | Lewin, New York University <sup>40,47</sup>           | J&J Shower to Shower; Baby Powder; Medicated Powder; 102 total products (not all J&J) | XRD; supplemented with optical microscopy | "The analyses show that 59 of the products have no detectable amounts of any of the asbestiform minerals (by the technique employed, proportions by weight of 1–2% or less could escape detection), 20 had small but definite percentages of tremolite, 7 had small percentages of chrysotile, 9 had small percentages of both tremolite and chrysotile, and 7 had substantial percentages of one or both of these asbestiform minerals." <sup>47</sup> Shower to Shower—5% chrysotile. Lewin repeat tests on J&J products found 2-5 percent chrysotile in Baby Powder and Shower to Shower, and 4 percent tremolite in Medicated Powder. |
| 1972 | Sperry Rand <sup>41</sup>                             | J&J Shower to Shower (Lewin sample)                                                   | Polarized light microscopy (PLM)          | Fibers with length-to-width ratios of 10-to-1 to 50-to-1; diameter less than .05 micron; "characteristic of chrysotile and not tremolite"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 1973 | Lewin, New York University; FDA; Pfizer <sup>42</sup> | J&J Shower to Shower; Baby Powder; Medicated Powder; 195 total products (not all J&J) | XRD; supplemented by optical microscopy   | 195 products tested; 13 had both tremolite and chrysotile, 6 had chrysotile only, and 24 had tremolite only (43 positives in total). Trace tremolite in J&J Medicated Powder.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 1974 | FDA—Dr. Stuart <sup>43</sup>                          | J&J Shower to Shower                                                                  | Optical microscopy                        | No chrysotile; found tremolite/actinolite fibers.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

Note. XRD = X-ray diffraction; FDA = Food and Drug Administration.

FDA on 11 August 1972. They argued that other tests had failed to detect chrysotile, and they pressured Lewin to "confirm" his results using a different method.<sup>45,46</sup> Lewin ultimately agreed to retest the samples. He said that if no asbestos was found, "the sample will be declared 'no detectable asbestos' notwithstanding the [original] X-ray finding" (p. 5).<sup>45</sup> However, the attendees at the meeting understood that this new method, light microscopy, was "not capable of detecting fine chrysotile fibers" (p. 5). Despite these concerns, Dr. Alfred Weissler, the Acting Director of Cosmetics at the FDA, acquiesced: "I understand that some samples will be passed even though they contain such fibers, but we are willing to live with it" (p. 5).<sup>45</sup> J&J did not inform the FDA that other consultants had already found chrysotile in their products (see Table 3). The FDA ultimately agreed that Lewin should "confirm" the results using light microscopy<sup>45</sup> (Supplement Section 1).

Lewin found 2–5 percent chrysotile in his repeat analysis of Johnson's Baby Powder and Shower to Shower,

and 4 percent tremolite asbestos in J&J Medicated Powder; J&J received a copy of Lewin's report a little over a month later.<sup>47</sup> By this point, another FDA test confirmed the presence of chrysotile (see Table 1). At a September 21st meeting with the FDA, Lewin, and J&J's consultants, Nashed again challenged Lewin's chrysotile findings, presenting evidence of the absence of chrysotile in their Italian mine and talc products.<sup>48</sup> As the meeting began to "deteriorate into a non-fruitful pathway," Nashed suggested a "compromise:" that Lewin work with J&J's consultant laboratory, McCrone Associates Inc., to "establish the best microscopy technique to be followed" (p. 4).<sup>48</sup> After working with McCrone labs, Lewin admitted an error in his analysis of another company's product but did not change his opinion on J&J products.<sup>49</sup>

J&J personnel continued to pressure the FDA to not release Lewin's "erroneous findings."<sup>49</sup> Nashed insisted that Mt. Sinai had not found chrysotile in J&J's Shower to Shower and continued to find reasons for possible

**Table 2.** FDA Knowledge: J&J Disclosed Tests on Shower to Shower as Presented to FDA and Discussed September 21st, 1972.<sup>56</sup>

| Year | Consultant                                                                                                                         | Tested                                         | Method                        | Results                                                                                                                                                                                                |
|------|------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1972 | Fred Pooley, J&J consultant, a professor in the Department of Mineral Exploitation at the University College Cardiff <sup>56</sup> | Val Chisone Talc (source for Shower to Shower) | Various                       | Reported no evidence of chrysotile; Pooley found tremolite fibers, but J&J did not report this to FDA                                                                                                  |
| 1972 | Dr. W. T. Caneer, The Colorado School of Mines <sup>56</sup>                                                                       | Shower to Shower                               | Step scanning XRD             | No chrysotile; LOD 1%                                                                                                                                                                                  |
| 1972 | Professor Gordon Brown, Department of Geology of Princeton University <sup>56</sup>                                                | Shower to Shower                               | Step scanning XRD             | No chrysotile; LOD 1%                                                                                                                                                                                  |
| 1972 | Walter McCrone <sup>56</sup>                                                                                                       | Shower to Shower                               | “Optical staining” techniques | None detected: LOD 1%<br>The report found 0.2-0.5% tremolite, but this report was replaced by another version that reported finding “only a few isolated crystals” (see Figure 1 and 2). <sup>57</sup> |
| 1972 | Jack Sheltz <sup>56</sup>                                                                                                          | Shower to Shower                               | Differential thermal analysis | None detected; LOD 1%                                                                                                                                                                                  |

Note. LOD = Level of Detection; FDA = Food and Drug Administration; XRD = X-ray diffraction.

errors in Dr. Lewin’s tests.<sup>49</sup> In a “frank, friendly talk” with Schaffner of the FDA on 1 November 1972, Fuller of J&J “concluded that unless [Dr. Schaffner] could assure me that the [Lewin] report would not be published I was instructed to make an appointment with FDA Commissioner Edwards and make our viewpoint known to him” (p. 2).<sup>50</sup> Schaffner replied that he was not happy with Lewin’s report, which “would be issued only over my dead body” (p. 3) but also noted his fear of “favoritism” toward J&J were their products to be cleared.<sup>50</sup> However, on 22 November 1972, Schaffner told J&J that he believed Shower to Shower was “off the hook” and the report “will not be issued ‘unless I drop dead.’”<sup>51</sup> The FDA stood by its word to J&J. The FDA has not produced Lewin’s original “report” in response to FOIA requests; we reviewed copies present in industry files.

However, pursuant to a FOIA request, the FDA produced a second version of Lewin’s results dated 7 December 1972.<sup>52</sup> Results for J&J products that had previously tested positive for chrysotile were reclassified as “n.d.” or “none detected” except for a trace of tremolite in Johnson’s Medicated Powder (which Lewin had previously reported contained 4% tremolite). These findings were based on a new analysis using acid treatment,<sup>51</sup> which can dissolve chrysotile.<sup>53</sup> On 8 December, the FDA relayed these findings to J&J.<sup>54</sup> Apparently

satisfied, J&J “no longer considered it necessary” to meet with the FDA commissioner.<sup>54</sup>

The FDA provided a report on 31 July 1973 that included the final tabulation of Lewin’s results, results from different laboratories on the same products Lewin used (see Table 1), and tests on an additional ninety-three products.<sup>42</sup> The FDA reported that of the 195 samples tested, 17 were positive for chrysotile and 36 were positive for tremolite asbestos.<sup>42</sup> Lewin’s tremolite findings in J&J products were left out.<sup>42</sup> The FDA assured the Environmental Defense Fund that this final information was accurate<sup>55</sup> (see Supplement Section 1).

### CTFA and TM&MC Private Testing (1970–1974)

In the same time frame, the TM&MCs conducted numerous tests on their own products. They appear to have cherry-picked which tests they delivered to the FDA. On the basis of the reports summarized in Table 2, which were given to the FDA, Nashed argued to the FDA that the Lewin samples did not contain chrysotile.<sup>58</sup> However, the companies did not provide their own test results finding tremolite and chrysotile in numerous products, including baby powder, Shower to Shower, talc ore, and ovarian tissue, as we detail in Table 3. There is evidence that J&J and at least one of its

**Table 3.** J&J Tests Not Presented to the FDA.

| Year      | Consultant                                                                                                         | Tested                                                                               | Method                                           | Results                                                                                                                                                                                                                                                                                                                    |
|-----------|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1958      | Battelle <sup>59</sup>                                                                                             | Italian Talc No. 1 for Baby Powder                                                   | Microscopic examination                          | Fibrous tremolite                                                                                                                                                                                                                                                                                                          |
| 1966      | J&J internal test <sup>60</sup>                                                                                    | Historic baby powder                                                                 | Microscopic examination                          | Tremolite in domestic talc, Italian talc and fibrous talc.                                                                                                                                                                                                                                                                 |
| 1971      | Langer at Mt. Sinai <sup>61–63</sup>                                                                               | Ovarian tissue samples from the Tenovus Institute for Cancer Research. <sup>64</sup> | Electron diffraction                             | Talc and chrysotile                                                                                                                                                                                                                                                                                                        |
| 1971      | Langer at Mt. Sinai <sup>61–63</sup>                                                                               | Johnson & Johnson Baby Powder.                                                       | Electron diffraction                             | Talc and chrysotile                                                                                                                                                                                                                                                                                                        |
| 1971      | J&J internal test <sup>65</sup>                                                                                    | Baby Powder                                                                          | Microscope and XRD                               | Tremolite needles, actinolite                                                                                                                                                                                                                                                                                              |
| 1971      | McCrone <sup>66</sup>                                                                                              | Grantham Ore; Shower to Shower; and Medicated Powder (344 L baby powder)             | Electron diffraction; electron microprobe        | Tremolite and chrysotile in Grantham Ore; chrysotile fibers in Medicated Powder and Shower to Shower (no asbestos in 344 L baby powder)                                                                                                                                                                                    |
| 1972      | Fred Pooley, a professor in the Department of Mineral Exploitation at the University College Cardiff <sup>67</sup> | Val Chisone Talc (source for all J&J cosmetic talc powders 1946–1968 and 1981–1982)  | Various                                          | Tremolite fibers                                                                                                                                                                                                                                                                                                           |
| 1972      | Dr. Thomas Hutchinson, professor at the University of Minnesota <sup>68</sup>                                      | Lewin's sample of Shower to Shower                                                   | TEM                                              | 5 “unmistakably chrysotile asbestos” fibers and 3 serpentine material in “perfect chrysotile patterns”                                                                                                                                                                                                                     |
| 1972      | McCrone <sup>69</sup>                                                                                              | 108T and 109 T baby powder talc lots (Lewin samples 133 and 134)                     | XRD, light microscopy, TEM, electron diffraction | 0.2%–0.5% tremolite “rods”                                                                                                                                                                                                                                                                                                 |
| 1972      | J&J/Sperry Rand internal test <sup>41</sup>                                                                        | Shower to Shower                                                                     | SEM                                              | Chrysotile fibers                                                                                                                                                                                                                                                                                                          |
| 1972–1973 | Lewin, unfinished study, funds withdrawn <sup>70</sup>                                                             | Unfinished                                                                           | Unfinished                                       | J&J privately funded Lewin to study asbestos content of talc in baby powder, including funding a stipend for a graduate student, Avriam Elkies, to work on the project. Elkies testified that midway through 1973, J&J withdrew the scholarship and took all his research results. These results have never been produced. |
| 1973      | Fred Pooley, a professor in the Department of Mineral Exploitation at the University College Cardiff <sup>71</sup> | Vermont talc (source for J&J cosmetic talc powders from 1968 to 2003 and 2010)       | Preconcentration of asbestos with XRD            | Tremolite .05% in Vermont talc                                                                                                                                                                                                                                                                                             |

Note. XRD = X-ray diffraction; TEM = transmission electron microscopy; SEM = scanning electron microscopy.



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EXAMINATION

OF

JOHNSON AND JOHNSON'S BABY POWDER

Date: 27 October 1972

MA Number: 2546

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**Figure 1.** Writing on McCrone Associates original report to J&J.

consultant laboratories also manipulated the findings of tests delivered to the FDA, as evidenced by Figures 1 and 2 (see Supplement Section 2 for full details).<sup>57</sup>

J&J further promoted the myth that their own talc was from a “good source” that they “... subject to refining with multiple washing before we obtain the baby powder grade; this together with extensive studies by world experts assures its freedom from asbestos” (p. 3).<sup>72</sup> However, J&J knew that “asbestos-form particles” could not be completely removed from talc ore, a fact which they told the hearing clerk at the U.S. Department of Health, Education, and Welfare,<sup>73</sup> and that they could not rely on the “clean mine” (asbestos-free) approach to assure the absence of asbestos in talc.<sup>74</sup>

#### ***A Debate Over Test Methodology (1973–1976)***

The Center for Science in the Public Interest and the Environmental Defense Fund petitioned the FDA on 27

June 1973 for the “promulgation of regulations [ . . . ] to prohibit the adulteration of food and drugs with asbestos.”<sup>75</sup> On 28 September 1973, the FDA published a proposed regulation for asbestos in talc in the Federal Register, which called for a 99.9 percent purity for amphibole asbestos fiber and 99.99 percent for chrysotile and proposed the use of a polarized microscope.<sup>75</sup> The CTFA responded to the proposed regulation by completing a “critical review” of the FDA method through round robin testing of five different samples of cosmetic talc and one talc sample spiked with asbestos.<sup>76</sup> They informed the FDA that their proposed method was unreliable and should not be implemented, stating: “It results in both false-positive and false-negative findings. It is also tedious and may consume as much as one half day per sample” (p. 2).<sup>76</sup> They proposed that the TM&MCs work with the FDA to develop a “more reliable and more practical” method (p. 3) and summarized seven alternative test methods.<sup>76</sup> The CTFA determined that of the



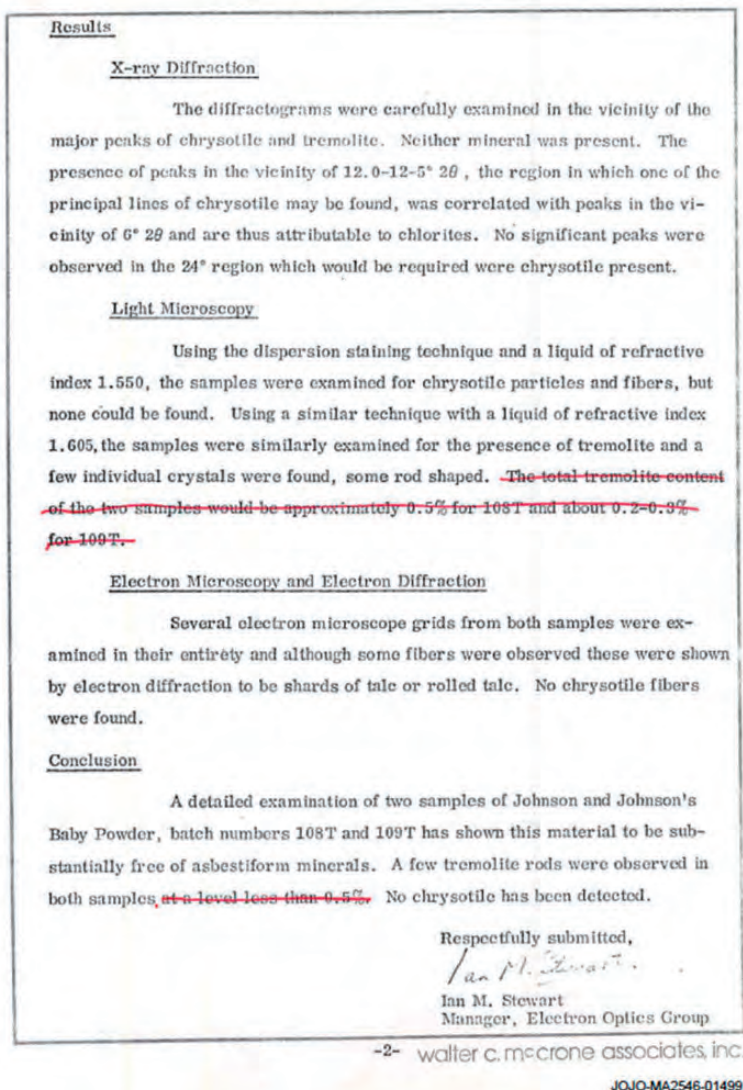


Figure 2. A copy of McCrone Associates initial report to J&J with handwritten edits.

seven methods, transmission electron microscopy with electron diffraction “appears to offer the best, most reliable method and is probably capable of detecting chrysotile and tremolite (fibrous), both at a level of 0.1%” (p. 9).<sup>76</sup> However, some CTFA members expressed “grave concern” (p. 3) over the inclusion of transmission electron microscopy, which they said was too sensitive and cost prohibitive for small manufacturers.<sup>77</sup> J&J’s consultant had found chrysotile in Lewin’s J&J product samples using transmission electron microscopy (see Table 3). In a memo to file about a January 1974 meeting with the FDA, Nashed states that “Our very preliminary calculation indicates that substantial asbestos can be allowed safely in a baby powder” (p. 2).<sup>78</sup>

Rosner et al.<sup>31</sup> offer some historical context for the CTFA’s confidence in pressuring the FDA:

The industry was willing to challenge the FDA since some privately believed that the “FDA is reluctant to take any legal action in any problems with industry.” The CTFA had been told that the FDA had “neither the money nor the manpower to pursue matters so that they will have airtight cases in scientific matters.”

In December 1974, J&J wrote to the CTFA concerned that they needed to preempt FDA’s adoption of more sensitive asbestos detection methods: “We believe it is critical for the CTFA to now recommend these methods to the FDA before the art advances to more sophisticated techniques with higher levels of sensitization [sic]” (p. 1).<sup>79</sup> J&J’s consultants had already developed a centrifugation method that would concentrate asbestos in talc so that it could be detected microscopically.<sup>80</sup> They

deemed this method “too sensitive”<sup>71</sup> and noted in a memo: “we deliberately have not included a concentration technique as we felt it would not be in worldwide company interests to do this” (Supplement Section 3a).<sup>81</sup> There is no evidence that they shared the consultant recommendations on the concentration test method with the FDA or the CTFA. However, the FDA explored a similar method themselves in 1975, which one J&J representative described as “more disturbing” than other proposed methods<sup>82</sup> (Supplement Section 3b).

The CTFA ultimately recommended X-ray diffraction as the primary screening method for amphibole asbestos, to be used in the CTFA J4-1.<sup>14</sup> At best, this method could detect levels of asbestos above 0.5 percent.<sup>14</sup> The CTFA also convinced the FDA that the method did not need to test for chrysotile, the only non-amphibole form of asbestos, as they falsely claimed it had never been detected in talc (p. 3).<sup>83</sup> By this time, there was ample evidence of chrysotile in various companies’ products and talc mines (see Table 3). (See Supplement Section 4 on X-ray diffraction and Supplement Section 5 on chrysotile.)

In 1975<sup>84</sup> and 1976,<sup>85</sup> the CTFA sent the FDA updates on the latest approved CTFA Cosmetic Talc Specification as well as their internal analyses of talcs that were meant to illustrate the “responsibility of industry in monitoring its talc” and to “give [the FDA] assurance as to the freedom from contamination by asbestos from materials of cosmetic talc products” (p. 1).<sup>85</sup> Unfortunately, the letters contained multiple misrepresentations, notably the exclusion of positive results for chrysotile and tremolite (see Supplement Section 6a for details). After 1976, the FDA requested that the companies periodically report results of their own analyses on talc, but the companies resisted (Supplement Section 6b for exchange).<sup>86</sup> No subsequent test reports from industry were found in FDA records. J&J admitted they did not provide any test results to the FDA performed after 1973.<sup>87</sup>

In March of 1975, the FDA announced that the proposed regulations for asbestos content in talc would be delayed, in part because the proposed method was “difficult to use, laborious, and not practical for its intended purpose.”<sup>88</sup> In 1976, Dr. Heinz Eiermann, the FDA commissioner in charge of cosmetics from 1973 to 1991, privately criticized the adequacy of the industry testing, particularly noting that their “analytical effort” was very small considering the “business volume” of the top cosmetic talc producers.<sup>89</sup> However, Eiermann publicly defended J&J, stating that their talc “has been found to be virtually free of asbestos” (p. 4) and that there is “no evidence” baby powder is hazardous, citing J&J’s own testing of

talc (p. 3)<sup>90</sup> (see Supplement Section 7 for details on Eiermann).

The agency never issued a final regulation for asbestos in talc.

### Final CTFA Specifications (1976–1977)

In July of 1976, the CTFA discussed a definition of “cosmetic talc” which did not require that talc be “asbestos-free”<sup>91</sup>:

*Talc is an essentially white, odorless, fine powder which is ground from naturally occurring rock ore. It consists of a minimum of 90% hydrated magnesium aluminum silicate, having the ideal formula  $Mg_6(Si_8O_{20}) \cdot (OH)_4$ , with the remainder consisting of naturally associated minerals such as calcite, chlorite, dolomite, kaolin, and magnesite, and containing no detectable asbestos minerals. [Emphasis added; p. 2]*

The CTFA’s method, known as CTFA Method J4-1, was issued on 7 October 1976 for “the detection of amphibole minerals in cosmetic talc.”<sup>14</sup> This framing, “no detectable asbestos” essentially allowed for asbestos to be present in levels that were *undetectable* based on the test method; this meant that any amount of chrysotile—which was not included in J4-1—was permitted. CTFA Method J4-1 was an unenforced specification that the CTFA never formally codified; the organization omitted any, even voluntary, compliance requirements<sup>13,92</sup> (see Supplement Section 8 for details).

In 1977, the CTFA coordinated a round robin and determined that the J4-1 method was not “accurate, reliable and practical” [emphasis in original, p. 1].<sup>93</sup> Three of the open market products tested positive for more than 0.5 percent asbestos by two to three labs.<sup>93</sup> Those products with “inconsistent results” would be retested.<sup>93</sup> We could not locate the results of the second round robin, but four of the seven samples tested contained tremolite and/or anthophyllite at levels over 0.5 percent<sup>94</sup> (see Supplement Section 9 for details on round robin testing).

Mt. Sinai continued to find asbestos in various cosmetic talc products, ten of which were reported in a 1976 article in the NYT.<sup>95</sup> In 2019, the FDA detected chrysotile asbestos in J&J baby powder; this asbestos-containing J&J baby powder lot passed both the CTFA J4-1 method and J&J’s transmission electron microscopy method TM7024.<sup>96</sup>

There is a safe and effective alternative to cosmetic talc. Cornstarch powders have been on the market since at least the 1890s (p. 37).<sup>97</sup> In 1977, J&J compared the qualities of corn starch and talc powders and found that cornstarch “overall is rated significantly higher by

mothers” (p. 5).<sup>98</sup> There is no evidence that corn starch is a carcinogen of any kind.

### Downstream Implications of the 1976 Specification (1977–Present)

**Continued industry self-regulation of talc despite citizen petitions to the FDA.** The FDA received four citizen petitions filed in 1978,<sup>99</sup> 1983,<sup>100</sup> 1994,<sup>101</sup> and 2008,<sup>101</sup> which each asked the FDA regulate talc due to its possible carcinogenicity. They also received a FOIA request in 1977 (see Supplement Section 10a–e for details on each).<sup>102</sup> The FDA continued to rely on information provided by the industry, including contacting J&J or the CTFA for information on the industry products.<sup>102,103</sup> The FDA denied the 1978 and 1986 petitions in 1979<sup>99</sup> and 1986,<sup>104</sup> respectively, citing inconclusive evidence and relying on tests provided by the industry. The FDA did not deny the 1994 and 2008 petitions, both from the Cancer Prevention Coalition, until 2014, a few months after a South Dakota jury found that J&J talc caused a plaintiff’s ovarian cancer.<sup>105,106</sup> J&J used the 2014 FDA decision as part of its defense in an ongoing ovarian cancer trial in 2014 soon after the FDA released it.<sup>107</sup> In their reasons for denying the petitions, the FDA concluded that the epidemiologic data were insufficient to merit a cancer warning because the petition did not cite any evidence of “current” (post-1976) talc containing asbestos and that current talc comes from “asbestos-free” mines and can be purified.<sup>105</sup>

**The companies continued to provide the FDA with industry-influenced “scientific” support.** For instance, in 1994, the FDA and industry cofunded a workshop, *Talc: Consumer Uses and Health Perspectives*, with the International Society of Regulatory Toxicology and Pharmacology.<sup>108</sup> International Society of Regulatory Toxicology and Pharmacology is financed in part by the tobacco, pharmaceutical, and chemical industries and had a direct influence on those in attendance at the workshop (see Supplement Section 11a for details on influence).<sup>109</sup> The TM&MCs used the workshop as a platform to attempt to discredit a recently-completed NTP animal study demonstrating talc lung carcinogenicity (see Supplement Section 11b for details on study and TM&MC influence).<sup>110</sup> In response to the 2008 petition, the CTFA offered the FDA<sup>111</sup> a recently published narrative review and meta-analysis of talc and ovarian cancer, compiled by Drs. Michael S. Huncharek and Joshua E. Muscat,<sup>112</sup> which J&J and Luzenac had jointly funded via a law firm, Crowell & Moring, “so as to preserve the benefit of the attorney work product privilege, which is helpful in protecting confidentiality” (p. 2).<sup>113</sup> Huncharek and Muscat agreed that the funders could review the report and suggest changes before

submission to the NTP and publication (see Supplement Section 10e).<sup>114</sup>

**Use of the 1976 specification to prevent talc from being labeled a carcinogen.** The TM&MCs also influenced other regulatory agencies and standards-setting organizations, including influencing the NTP’s decision to not include talc as a carcinogen in their *10th Report on Carcinogens* in the early 2000s. In October 2000, the NTP released a Draft Background Document citing evidence regarding the relationship between talc and cancer and recommending that both talc containing and not containing asbestiform fibers were “reasonably anticipated to be a human carcinogen.”<sup>115</sup> The *Report on Carcinogens* Subcommittee would meet in December 2000 to make a final determination on the carcinogenic status of talc.

Ahead of the meeting, Luzenac began to craft a campaign to “create a reasonable doubt” in the mind of the NTP’s Board of Scientific Counselors that “they may not be acting on the best advice from their consultants” (p. 2).<sup>116</sup> Luzenac had now taken the lead from J&J in defending the safety of talc (Luzenac was owned by Rio Tinto until 2011, when it was sold to Imerys). Luzenac retained the services of Dr. Alfred Wehner, who had served as a consultant to J&J, and sought the help of the Center for Regulatory Effectiveness (CRE), a private consulting firm and lobbyist group that helped clients oppose government regulation.<sup>117</sup> CRE claims they offer “independent analyses of agency regulations” on their website, but Luzenac retained their services to lobby against regulation of talc<sup>118</sup> (see Supplement Section 12a for details on CRE). Luzenac then “discovered” what they claimed was a “fatal flaw” in the NTP report: the report “assumed” that talc without specification of mineralogy or morphology may contain asbestos fibers due to the widespread contamination of talc with asbestiform minerals.<sup>119,120</sup> CRE advanced the “fatal flaw” argument as their primary critique of the Draft Background Document: CRE argued that because the industry took steps to ensure that talc was “virtually free of asbestiform fibers” after 1976, and the available epidemiologic evidence did not differentiate between asbestiform and non-asbestiform talc before and after this date, there was not enough “scientific support” for the NTP’s “assumption” that there was a “widespread contamination” of talc.<sup>120</sup> As a second point, CRE attacked the adequacy of the NTP animal study, citing the International Society of Regulatory Toxicology and Pharmacology 1994 workshop.<sup>120</sup> The CTFA adopted a more polished version of the “fatal flaw” argument in their 2002 comments on the 10th Report on Carcinogens and used it again in their 2004 comments on the 12th Report on Carcinogens.<sup>121</sup> Their comments hinged on the distinction between “pure” cosmetic talc and talc containing asbestos, stating that while there was





**Figure 3.** Comparison of regulation to monopoly game.

epidemiological evidence for a relationship between asbestos and ovarian cancer, “pure” or “asbestos-free” talc was “accepted in the medical community for decades” (p. 2). They then argued:

*A review of the epidemiologic studies on ovarian cancer and talc exposure shows that a large portion of the exposures in all of the studies must have occurred prior to 1976. In addition, none of those studies were able to characterize the composition of the powders or identify brands. Thus, in addition to the analytical weaknesses discussed previously, the exposures might have involved exposure to asbestos, making the studies essentially lacking in utility and data quality for the purpose of evaluating the safety of present-day cosmetic talc. [ . . . ] Present-day cosmetic talc must be assumed to be free of asbestos, consistent with the CTFA specification and absent evidence to the contrary.* (p. 4) [Emphasis Added]

Of course, as we have illustrated, the 1976 specification *did not* assure that talc was asbestos-free.

The NTP ultimately deferred voting on both asbestiform and non-asbestiform talc.<sup>119</sup> Rich Zazenski of Luzenac took credit for finding the “flaw,” asserting that this argument “would be our winning hand; if not during the NTP review process, certainly it would prevail in the courts . . .” (p. 2).<sup>119</sup> He also attributed this early success with the NTP to the companies’ creation of “confusion” around the “fatal flaw” but suggested that the NTP might remove the “fatal flaw assumptions” (pp. 2–3) in a subsequent draft.<sup>122</sup> In response to this

potential problem, his colleague Robert Bernstein noted: “Time to come up with more confusion!”<sup>122</sup> David Michaels further details these events as classic examples of the corporate production of scientific doubt.<sup>8</sup> However, he notes that the industry also relied on political clout and their connections to the Bush Administration to make this strategy work (see Michaels<sup>8</sup> and Supplement Section 12c). Luzenac would retrospectively, in a 2011 presentation, reflect on this experience with the NTP as a “regulatory challenge” that they “could not afford to lose,” (p. 2) and use the image shown in Figure 3 to compare the response to regulation to a monopoly game.<sup>123</sup>

Industry legal consultants also promoted the “fatal flaw” argument to the International Agency for Research on Cancer (IARC) in 2005 and the Cosmetic Ingredient Review—an “independent” review body supported by the FDA, the Consumer Federation of America, and the Personal Care Products Council—in 2012.<sup>124–126</sup> Both organizations accepted the representation that the CTFA’s voluntary standards ensured the purity of talc sold after 1976 (see Supplement Section 13a/b for details).

The 1976 talc specification has continued to mislead epidemiologists studying talc carcinogenicity. Of thirty-two epidemiologic studies of talc and ovarian cancer, twelve accepted the claim that cosmetic talc products have been asbestos-free since 1976.<sup>15</sup> Without an alternative mechanistic explanation, some researchers rejected causal associations between talc use and ovarian cancer.<sup>15</sup>

## Discussion

The documents reviewed indicate that the CTFA, J&J, and other industry representatives exerted considerable influence in three key areas in the 1970s: (1) regulatory proceedings at the FDA; (2) testing methods and the manipulation of test results (including undisclosed results); and (3) press coverage and the medical literature. After 1976, when the industry succeeded in preventing government regulation of cosmetic talc products, their influence continued. The actions undertaken by the CTFA and J&J reflect what David Michaels and others have called manufacturing uncertainty or doubt about the harmful effects of a product.<sup>5,8</sup>

Our review also indicates that the industry successfully pressured the FDA to ignore evidence that talc contained asbestos and be “willing to live” with inadequacies of the J4-1 method which would not assure the absence of asbestos in talc.<sup>42</sup> We shed light on the insidious nature of corporate influence over regulatory bodies, and public health policy in particular. For this reason, it is worth noting the several cases of revolving-door employment in this case study. The FDA commissioner in charge of cosmetics from 1973 to 1991, Dr. Heinz Eiermann, worked for J&J and Shulman, two talc manufacturers, before coming to the FDA, and both Dr. John Wenninger, deputy director of the FDA Division of Cosmetics and Technology in the 1970s and 1980s, and Dr. John Bailey, the director of the FDA Office of Cosmetics and Color from 1992 to 2002, went on to work for CTFA.<sup>127–130</sup> Bailey spent nine years with the CTFA eventually serving as the Executive Vice-President of Science; he currently works for EAS, a consulting company focused on lobbying the FDA and testifies as an expert witness for J&J and Colgate in talc litigation.<sup>128,131</sup> Wenninger coauthored the updated 1992 and 2002 CTFA Cosmetic Ingredient Handbooks (he had also served on the editorial advisory board of the 1977 Handbook).<sup>132,133</sup> The industry also understood who to target in the FDA. For instance, the Senior Vice President of Science for the CTFA, Dr. Norman Estrin, once noted that Weissler was “... a weak member of the FDA group and he will probably bury the [asbestos test] methodology in a lot of paper.”<sup>134</sup>

As Historians Rosner et al. describe, the 1970s witnessed a political and economic battle surrounding public health and regulation. While significant traction was made in the early 1970s in terms of establishing government organizations to protect worker, consumer, and public health, by 1980, a conservative backlash ushered in what David Harvey calls an “emphatic turn towards neoliberalism:” “Deregulation, privatization, and withdrawal of the state from many areas of social provision have been all too common” (pp. 2–3).<sup>32</sup> While

historically we can situate this case study within this contentious period, the downstream effects of deregulation (i.e. industry self-regulation) of talc on public health are apparent. Further, as neoliberalism has become the dominant political-economic rationale of the current era, scholars have called into question the influence of neoliberalism on numerous public health concerns.<sup>33</sup>

In a similar review of corporate and government documents, Hessari et al.’s<sup>9</sup> analysis of conversations between the CDC and Coca-Cola similarly points out the inappropriateness of “allowing conflicted corporate actors to engage in well-established tactics to further commercial goals” for “an organization established to protect public health.” Corporate interests must be prevented from yielding power over regulatory proceedings and decision-making. Otherwise, regulatory bodies become complicit in protecting industry profits rather than public health. By its own definition, the FDA is first and foremost “responsible for protecting the public health by ensuring the safety, efficacy, and security of human and veterinary drugs, biological products, and medical devices; and by ensuring the safety of our nation’s food supply, cosmetics, and products that emit radiation.”<sup>12</sup> As criminologists Lynch et al.<sup>135</sup> state, the agency should be recognized as central to policing corporate crime in addition to protecting the public’s health. Our review indicates that a number of government and public interest groups including the New York City Environmental Protection Agency, the Cancer Prevention Coalition, and private citizens regularly petitioned the FDA (from 1971 to 2008) to address concerns around talc carcinogenicity. In each instance, the FDA adopted industry’s profit-driven position over that of public health.

The FDA’s 2014 rejection of the 2008 citizen’s petition and J&J’s subsequent use of this rejection in a trial is also concerning. Industries often use the FDA’s product approval as a defense against lawsuits.<sup>136</sup> In the case of pharmaceuticals, Kesselheim and Avorn<sup>136</sup> warn that if this defense is accepted in the majority of courts, “FDA approval of a drug would absolve companies of responsibility for failing to adequately evaluate or report the risks associated with their products.” In this case, the FDA chose to leave talc unregulated and J&J used this account of FDA inaction to support its defense of talc to the public and to juries in court.

Large industries continue to influence scientific research, specifications, standards, and other forms of safety regulation with the motivation of protecting sales and preventing lawsuits, often when other, safer substitutes are available. Industry wealth and networks of power can undermine adequate government oversight.



## Conclusion

The FDA and TM&MC assertion that cosmetic talc has been “asbestos-free” since 1976 relies on the publication of the 1976 CTFA J4-1 method not on actual test results. This test method replaced a proposed FDA regulation on talc, was voluntary, and was never formally codified.<sup>14</sup> In addition to being unenforceable, the 1976 CTFA J4-1 specification was also defective: it permitted the presence of the carcinogens (including chrysotile and fibrous talc) and only detected amphiboles at levels over 0.5 percent.<sup>14,94</sup> The TM&MCs suppressed evidence of asbestos in talc products and withheld information on superior testing methods from the FDA and the scientific community. As a result, epidemiological and other studies that seek to define the relationship between talc and various cancers also repeat the misleading notion that talc has been asbestos-free since 1976.<sup>15</sup>

Representatives from several TM&MCs have maintained—and still maintain—that in 1976 the industry implemented “stringent safety and quality control measures designed to ensure the absence of asbestos fibers from consumer talc products.”<sup>13</sup> J&J’s website, for instance, as of December 2020, falsely states that: “JOHNSON’s talc products do not contain asbestos. A frequent misperception is that JOHNSON’s baby powder contains talc made with asbestos, a substance classified as cancer-causing. Since the 1970s, talc used in consumer products has been required to be asbestos-free.”<sup>137</sup> However, “no detectable asbestos” is not the same as “asbestos-free.” As Rosner et al.<sup>31</sup> state on this issue: “The difference in these methodologies meant that potentially billions of asbestos fibers could be released into the air when babies were powdered or adults powdered themselves” (p. 1). In 1974, J&J told the FDA that they would follow a precautionary principle,

Dr. Fuller stressed Johnson & Johnson’s policy of full cooperation with FDA and that if the results of any scientific studies show any question of safety of talc, Johnson & Johnson will not hesitate to take it off the market. (p. 3)<sup>78</sup>

However, in practice, at every crossroad, J&J and the FDA interpreted “doubt” as a basis for inaction rather than a basis for protection of the public’s health. The FDA has still not initiated any regulatory process for talc. J&J discontinued sales of talc-based baby powder in North America in April 2020, shortly after the FDA found asbestos in J&J baby powder.<sup>12</sup> They did not issue a recall and continued to sell products that were on store shelves.

Since the 1960s, doctors had advised against the use of cosmetic talc for the undisputed harms they cause, asphyxiation and talcosis, and the increase risk of cancer and support legislation that bans the use of talc

in cosmetic powders.<sup>138</sup> It is crucial that researchers continue to investigate and publish ongoing examples of regulatory oversight and internal conversations so that methods to improve government agencies become more apparent. Physicians, policy makers, and regulatory body themselves must become adept at identifying industry influence over issues that may cause harm to human and environmental health. We must work to curb instances of corporate influence on the FDA and other regulatory bodies. In the very least, we need independent, democratic watchdogs with science boards of researchers who do not collaborate in any way with the related industries, keeping industry and the government in check.

## Limitations

Due to the elaborate nature of these events, this review is not exhaustive and much detail is omitted. Our review of documents is further limited to the documents made available to us, as well as those released to the public domain.

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The author(s) declared the following potential conflicts of interest with respect to the research, authorship, and/or publication of this article: David S. Egilman serves as an expert witness in litigation at the request of people who claim injuries resulting from the use of talcum powders. Triet H. Tran works for David S. Egilman. Joan E. Steffen and Tess Bird worked for David S. Egilman during the initial phases of research and writing. Dr. Egilman was not compensated for work on this article. Triet H. Tran, Joan E. Steffen, and Tess Bird were not compensated by law firms for work on this article. No party to these litigations reviewed this commentary or had input into its content. A copy of the article was sent to lawyers representing Johnson & Johnson for comments prior to publication.

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## Supplemental material

Supplemental material for this article is available online.

## Notes

- a. TM&MCs include: Avon, BASF, Chanel, Colgate-Palmolive, CTFA, Cyprus, Imerys/Rio Tinto Materials/Luzenac, J&J, Johns-Manville, Pfizer, R.T. Vanderbilt, Shulton, and Whittaker, Clark & Daniels.

- b. Laboratories include: ES Laboratories, RJ Lee, National Institutes of Occupational Safety and Health, the Colorado School of Mines, McCrone Associates Inc., Dartmouth, Bain Environmental, Mount Sinai Hospital, and the Mine Safety and Health Administration.

## References

1. Egilman D and Bohme S. Over a barrel: corporate corruption of science and its effects on workers and the environment. *Int J Occup Environ Health* 2005; 11: 331–337.
2. Ong EK and Glantz SA. Constructing ‘sound science’ and ‘good epidemiology’: tobacco, lawyers, and public relations firms. *Am J Public Health* 2001; 91: 1749–1757.
3. Moodie R. Profits and pandemics: prevention of harmful effects of tobacco, alcohol, and ultra-processed food and drink industries. *Lancet* 2013; 381: 670–679.
4. Michaels D. *Doubt is in their product: how industry's assault on science threatens your health*. Oxford: Oxford University Press, 2008.
5. Michaels D and Monforton C. Manufacturing uncertainty: contested science and the protection of the public's health and environment. *Am J Public Health* 2005; 95: S39–S48.
6. Stuckler D, McKee M, Ebrahim S, et al. Manufacturing epidemics: the role of global producers in increased consumption of unhealthy commodities including processed foods, alcohol, and tobacco. *PLoS Med* 2012; 9: 1–8.
7. Shulman S, Abend K, Meyer A, et al. *Smoke, mirrors, and hot air: how ExxonMobil uses big tobacco's tactics to manufacture uncertainty on climate science*. Cambridge, MA: Union of Concerned Scientists, 2007.
8. Michaels D. *The triumph of doubt: dark money and the science of deception*. Oxford: Oxford University Press, 2020.
9. Hessari N, Ruskin G., McKee M, et al. Public meets private: conversations between Coca-Cola and the CDC. *Milbank Q* 2019; 97: 74–90.
10. Piller C. FDA's revolving door: companies often hire agency staffers who managed their successful drug reviews. *Science Magazine*, 5 July 2018, <https://www.sciencemag.org/news/2018/07/fda-s-revolving-door-companies-often-hire-agency-staffers-who-managed-their-successful> (accessed 9 February 2021).
11. Shoot B. Jury awards \$29 million in latest Johnson & Johnson cancer-causing baby powder lawsuit. *Fortune Magazine*, 15 March 2019, <http://www.fortune.com/2019/03/15/cancer-asbestos-johnson-jnj-baby-talcum-powder-trial/> (accessed 9 February 2021).
12. Hsu T and Rabin R. Johnson & Johnson to end talc-based baby powder sales in North America. *The New York Times*, 19 May 2020, <http://www.nytimes.com/2020/05/19/business/johnson-baby-powder-sales-stopped.html> (accessed 9 February 2021).
13. Zazenski R, Ashton W, Briggs D, et al. Talc: occurrence, characterization, and consumer applications. *Regul Toxicol Pharmacol* 1995; 21: 218–229.
14. CTFA Method J4-1: asbestiform amphibole minerals in cosmetic talc. Washington, DC: CTFA, <https://repository.library.brown.edu/studio/item/bdr:841542/> (1976, accessed 9 February 2021).
15. Tran T, Steffen J, Clancy K, et al. Talc, asbestos, and epidemiology: corporate influence and scientific incognizance. *Epidemiology* 2019; 30: 783–788.
16. Lee G. Letter to Dr. Norman Estrin (CTFA). Raritan, N.J.: J&J, 5 October 1976, <https://repository.library.brown.edu/studio/item/bdr:858421/> (accessed 9 February 2021).
17. Appendix A to § 1926.55—1970 American Conference of Governmental Industrial Hygienists' threshold limit values of airborne contaminants threshold limit values of airborne contaminants for construction OSHA, <https://http://www.osha.gov/laws-regs/regulations/standaradnumber/1926/1926.55AppA> (accessed 9 February 2021).
18. Dana E. *A textbook of mineralogy*. New York: John Wiley & Sons, 1898.
19. Schulz R and Williams C. Commercial talc: animal and mineralogical studies. *J Ind Hyg Toxicol* 1942; 24: 75–79.
20. Siegal W, Amith A and Greenburg L. The dust hazard in tremolite talc mining, including roentgenological findings in talc workers. *AJR Am J Roentgenol* 1943; 49: 11–29.
21. Pask J and Warner P. Fundamental studies of talc: I, constitution of talcs. *J Am Ceram Soc* 1954; 37: 118–128.
22. Gillson J. *Industrial minerals and rocks*. New York: The American Institute of Mining, Metallurgical, and Petroleum Engineers, 1960.
23. Fyfe W. On the relative stability of talc, anthophyllite, and enstatite. *Am J Sci* 1962; 260: 460–466.
24. Hunt AC. Massive pulmonary fibrosis from the inhalation of talc. *Thorax* 1956; 11: 287–294.
25. Porro F and Patton J. Pneumoconiosis in the talc industry. *AJR Am J Roentgenol* 1942; 518: 47.
26. Waldermar D. Effects of certain silicate dusts on the lungs. *J Ind Hyg* 1933; 15: 66–78.
27. Gross P, deTreville RTP, Cralley LJ, et al. Pulmonary ferruginous bodies: development in response to filamentous dusts and a method of isolation and concentration. *Arch Path* 1968; 85: 539–546.
28. Cralley L, Key M, Groth D, et al. Fibrous and mineral content of cosmetic talcum products. *Am Ind Hyg Assoc J* 1968; 29: 350–354.
29. Selikoff IJ. *Biological effects of asbestos*. New York: New York Academy of Sciences Section of Biological and Medical Sciences, 1964.
30. Lawrence S. Asbestos in talcum? FDA to test. *The New York Post*, 13 August 1971, <https://repository.library.brown.edu/studio/item/bdr:841666/> (accessed 9 February 2021).
31. Rosner D, Markowitz G and Chowkwanyun M. Nondetected”: the politics of measurement of asbestos in talc, 1971–1976. *Am J Public Health* 2019; 109: 969–974.
32. Harvey D. *A brief history of neoliberalism*. Oxford: Oxford University Press, 2005.
33. Schrecker T and Bamba C. *How politics make us sick: neoliberal epidemics*. London: Palgrave Macmillan, 2015.

34. Kretchmer J. *Letter to E. Richardson (Department of Health, Education, and Welfare)*. Washington, DC: Environmental Protection Agency, 28 June 1971, <https://repository.library.brown.edu/studio/item/bdr:858524/> (accessed 9 February 2021).
35. Weissler A. *Discussion session on "asbestos and talc"*. Washington, DC: FDA, 3 August 1971, <https://repository.library.brown.edu/studio/item/bdr:1104405/> (accessed 9 February 2021).
36. Sandland G. Report of CTFA talc subcommittee on method to detect chrysotile and tremolite in talc. Washington, DC: CTFA, 10 December 1973, <https://repository.library.brown.edu/studio/item/bdr:925786/> (accessed 9 February 2021).
37. Lichtenstein G. High levels of asbestos found in 3 paints and 2 talcums here. *The New York Times*, 16 June 1972, <https://www.nytimes.com/1972/06/16/archives/high-levels-of-asbestos-found-in-3-paints-and-2-talcums-here.html> (accessed 9 February 2021).
38. Nashed W. Memo to file, talc/asbestos. New Brunswick, N.J.: J&J, 17 June 1972, <https://repository.library.brown.edu/studio/item/bdr:858453/> (accessed 9 February 2021).
39. Lichtenstein G. Doctor admits he may have been mistaken. *The New York Times*, 17 June 1972, <https://repository.library.brown.edu/studio/item/bdr:858557/> (accessed 9 February 2021).
40. Lewin S. L. T. Alfred Weissler (FDA), with attached tabulation of X-ray diffraction analyses of commercial products containing talc. Department of Chemistry, New York University, 3 August 1972, <https://repository.library.brown.edu/studio/item/bdr:858455/> (accessed 9 February 2021).
41. Nashed W. Memo to Fuller (J&J), talc/asbestos, Shower to Shower talc. New Brunswick, N.J.: J&J, 24 August 1972, <https://repository.library.brown.edu/studio/item/bdr:858458/> (accessed 9 February 2021).
42. Weissler A. *Memo to Schaffner, summary and comments on Prof. Lewin's analytical results for asbestos in talc*. Washington, DC: FDA, 31 July 1973, <https://repository.library.brown.edu/studio/item/bdr:858452/> (accessed 9 February 2021).
43. Stuart JW. Analyst work sheets (Lewin samples). Washington, DC: FDA, 23 April 1974, <https://repository.library.brown.edu/studio/item/bdr:1104409/> (accessed 9 February 2021).
44. Nashed W. Memo to Fuller (J&J), confidential, talc/asbestos. New Brunswick, N.J.: J&J, 8 August 1972, <https://repository.library.brown.edu/studio/item/bdr:858457/> (accessed 9 February 2021).
45. Nashed W. Memo to file, talc/asbestos FDA meeting August 11, 1972. New Brunswick, N.J.: J&J, 14 August 1972, <https://repository.library.brown.edu/studio/item/bdr:841504/> (accessed 9 February 2021).
46. Wenniger J. Memorandum of meeting. Washington, D. C.: FDA, August 11, 1972, <https://repository.library.brown.edu/studio/item/bdr:858459/> (accessed 9 February 2021).
47. Nashed W. Memo to fuller (J&J), talc/asbestos, with attached findings on Johnson & Johnson products from a report by Dr. S. Lewin (consultant to the FDA). New Brunswick, N.J.: J&J, 26 September 1972, <https://repository.library.brown.edu/studio/item/bdr:858464/> (accessed 9 February 2021).
48. Nashed W. Memo to file, Shower to Shower/asbestos, FDA meeting, September 21, 1972. New Brunswick, N. J.: J&J, 25 September 1972, <https://repository.library.brown.edu/studio/item/bdr:1078410/> (accessed 9 February 2021).
49. Nashed W. Memo to fuller (J&J), talc/asbestos, FDA meeting, October 19, 1972. New Brunswick, N.J.: J&J, 20 October 1972, <https://repository.library.brown.edu/studio/item/bdr:858467/> (accessed 9 February 2021).
50. Fuller R. Talc file, meeting November 1, 1972 with Dr. Schaffner - F.D.A. New Brunswick, N.J.: J&J, 13 December 1972, <https://repository.library.brown.edu/studio/item/bdr:858470/> (accessed 9 February 2021).
51. Fuller R. Talc file, phone call - Dr. Schaffner (on November 22, 1972). New Brunswick, N.J.: J&J, 13 December 1972, <https://repository.library.brown.edu/studio/item/bdr:858472/> (accessed 9 February 2021).
52. Weissler A. *Handwritten note, Lewin results on J&J products*. Washington, DC: FDA, 7 December 1972, <https://repository.library.brown.edu/studio/item/bdr:1104408/> (accessed 9 February 2021).
53. Addison J and Davies LS. Analysis of amphibole asbestos in chrysotile and other minerals. *Ann Occup Hyg* 1990; 34: 159–175. AprPubMed PMID: 2169219.
54. Fuller R. Memo to Nashed (J&J), Dr. Schaffner - F.D. A. New Brunswick, N.J.: J&J, 8 December 1972, <https://repository.library.brown.edu/studio/item/bdr:858474/> (accessed 9 February 2021).
55. Weissler A. L. T. *Adamson and Lang (Environmental Defense Fund)*. Washington, DC: FDA, 2 March 1973, <https://repository.library.brown.edu/studio/item/bdr:858475/> (accessed 9 February 2021).
56. Buerger M. The Washington meeting of September 21, 1972 of Johnson and Johnson with the Food and Drug Administration and conclusions to be drawn from the meeting. New Brunswick, NJ: J&J, 7 October 1972, <https://repository.library.brown.edu/studio/item/bdr:858478/> (accessed 9 February 2021).
57. Stewart I. *Letter to Goudie (J&J)*. Chicago, IL: McCrone Associates, 15 November 1972, <https://repository.library.brown.edu/studio/item/bdr:841514/> (accessed 9 February 2021).
58. Nashed W. L. T. Robert Schaffer (FDA). New Brunswick, NJ: J&J, 29 November 1972, <https://repository.library.brown.edu/studio/item/bdr:841522/> (accessed 9 February 2021).
59. Smith WL. *Progress report on further studies on the measurement and correlation of the physical properties of talc*. Columbus, OH: Battelle Memorial Institute, 9 May 1958, <https://repository.library.brown.edu/studio/item/bdr:841507/> (accessed 9 February 2021).
60. Ashton WH. Microscopic examination museum baby powder samples. New Brunswick, NJ: J&J, 13 July 1966, <https://repository.library.brown.edu/studio/item/bdr:841508/> (accessed 9 February 2021).



61. Langer AM. *Letter to Henderson (Tenovus Institute)*. New York, NY: Mount Sinai School of Medicine, 22 August 1971, <https://repository.library.brown.edu/studio/item/bdr:858491/> (accessed 9 February 2021).
62. Hildick-Smith GL. Letter to Dr. Selikoff (Mt. Sinai School of Medicine). New Brunswick, NJ: J&J, 9 August 1971, <https://repository.library.brown.edu/studio/item/bdr:858526/> (accessed 9 February 2021).
63. Langer A. Letter to Hildick-Smith (J&J). New York, NY: Mt. Sinai School of Medicine, 10 November 1971, <https://repository.library.brown.edu/studio/item/bdr:858480/> (accessed 9 February 2021).
64. Henderson WJ, Joslin CA, Turnbull AC, et al. Talc and carcinoma of the ovary and cervix. *J Obstet Gynaecol Br Commonw* 1971; 78: 266–272. March 1PubMed PMID: 5558843. Epub 1971/03/01. eng.
65. Ashton WH. Letter to Hildick-Smith (J&J), assay of talc in baby powder (p.16). New Brunswick, NJ: J&J, 14 May 1971, <https://repository.library.brown.edu/studio/item/bdr:858469/> (accessed 9 February 2021).
66. Grieger G. *Preliminary report on examination of Grantham ore, medicated talcum powder, and shower to shower talcum powder*. Chicago, IL: McCrone Associates, 3 September 1971, <https://repository.library.brown.edu/studio/item/bdr:841528/> (accessed 9 February 2021).
67. Pooley FD, Kingston GA and Lightfoot J. *An examination of Italian mine samples and relevant powders*. Cardiff, Wales: Department of Mineral Exploitation, University of Cardiff, 8 September 1972, <https://repository.library.brown.edu/studio/item/bdr:1161225/> (accessed 9 February 2021).
68. Hutchinson T. *Investigation of possible asbestos contaminations in talc samples*. Minneapolis, MN: University of Minnesota Space Science Center, 1972, <https://repository.library.brown.edu/studio/item/bdr:1104412/> (accessed 9 February 2021).
69. Stewart I. *Examination of Johnson and Johnson's baby powder (labeled "Do Not Use This Report")*. Chicago, IL: McCrone Associates, 27 October 1972, <https://repository.library.brown.edu/studio/item/bdr:1104411/> (accessed 9 February 2021).
70. Elkie A. Deposition in Swann vs. J&J in the circuit court of the city of St. Louis state of Missouri case no. 1422-cc-09326 (15 December 2016), <https://repository.library.brown.edu/studio/item/bdr:858414/> (accessed 9 February 2021).
71. Rolle R. Memo to Shelley (J&J), proposed specs for analyzing talc for asbestos (p. 3). New Brunswick, NJ: J&J, 16 May 1973, <https://repository.library.brown.edu/studio/item/bdr:858501/> (accessed 9 February 2021).
72. Nashed W. Memo to Fuller (J&J), talc/asbestos. New Brunswick, NJ: J&J, 31 January 1973, <https://repository.library.brown.edu/studio/item/bdr:858434/> (accessed 9 February 2021).
73. Nashed WL. Letter to the Hearing Clerk, Department of Health, Education, and Welfare. New Brunswick, NJ: J&J, 11 October 1972, <https://repository.library.brown.edu/studio/item/bdr:858466/> (accessed 9 February 2021).
74. Petterson D. Memo to DD Johnston (J&J), subject: Windsor Minerals and Talc. New Brunswick, NJ: J&J, 26 April 1973, <https://repository.library.brown.edu/studio/item/bdr:841512/> (accessed 9 February 2021).
75. Asbestos Particles in Food and Drugs. Notice of proposed rulemaking. *Fed Regist* 1973; 38: 27976–27981.
76. Sandland G. Letter to FDA Hearing Clerk, proposed order method for asbestos in talc published in the federal register. Washington, DC: CTFA, 26 December 1973, <https://repository.library.brown.edu/studio/item/bdr:858497/> (accessed 9 February 2021).
77. Sandland G. Meeting notes of CTFA talc subcommittee. Washington, DC: CTFA, 4 December 1974, <https://repository.library.brown.edu/studio/item/bdr:858498/> (accessed 9 February 2021).
78. Nashed W and Hildick-Smith G. Memo to file, meeting with Commissioner Schmidt (FDA) January 16, 1974. J&J, 18 January 1974, <https://repository.library.brown.edu/studio/item/bdr:1151835/> (accessed 9 February 2021).
79. Steinberg W. Letter to Estrin (CTFA) et al., Talc. New Brunswick, NJ: J&J, 17 December 1974, <https://repository.library.brown.edu/studio/item/bdr:858495/> (accessed 9 February 2021).
80. Scheltz J. Memo to R. Rolle, review of experimental techniques for the concentration of asbestos minerals in talc - Project #0503-00. New Brunswick, NJ: J&J, 27 November 1974, <https://repository.library.brown.edu/studio/item/bdr:1082590/> (accessed 9 February 2021).
81. Sloan IW. Memo to R. Rolle. New Brunswick, NJ: J&J, 18 February 1975, <https://repository.library.brown.edu/studio/item/bdr:858547/> (accessed 9 February 2021).
82. Ashton WH. Memo to G. Lee. New Brunswick, NJ: J&J, 24 November 1976, <https://repository.library.brown.edu/studio/item/bdr:858439/> (accessed 9 February 2021).
83. Estrin NC. Talc taskforce minutes. Washington, DC: CTFA, 7 February 1975, <https://repository.library.brown.edu/studio/item/bdr:841518/> (accessed 9 February 2021).
84. Estrin N. L T. Schaffner (FDA). Re: summary of analyses of talcs from the United States and other parts of the world. CTFA, 23 September 1975, <https://repository.library.brown.edu/studio/item/bdr:1104416/> (accessed 9 February 2021).
85. Estrin N. L T. Eiermann (FDA). Washington, DC: CTFA, 15 March 1976, <https://repository.library.brown.edu/studio/item/bdr:841459/> (accessed 9 February 2021).
86. Estrin N. CTFA talc subcommittee minutes. Washington, DC: CTFA, 31 March 1976, <https://repository.library.brown.edu/studio/item/bdr:841677/> (accessed 9 February 2021).
87. Videotape Deposition of Susan Nicholson, MD. Superior Court of New Jersey, Law Division: Middlesex County. Brody Deposition Services (6 March 2019), <https://repository.library.brown.edu/studio/item/bdr:925795/> (accessed 9 February 2021).
88. Rules and regulations. *Fed Regist* 1975; 40: 11865–11869.
89. Eiermann H. *Memo to Schaffner, asbestos in talc - summary company tests*. Washington, DC: FDA, 18 March

- 1976, <https://repository.library.brown.edu/studio/item/bdr:858441/> (accessed 9 February 2021).
90. Walcott J. Talc tests wanting, FDA experts admit. Record Bergen County, N.J., 11 March 1976, <https://repository.library.brown.edu/studio/item/bdr:1082643/> (accessed 9 February 2021).
91. Estrin N. Minutes: CTFA talc subcommittee. CTFA, 8 July 1976, <https://repository.library.brown.edu/studio/item/bdr:1078416/> (accessed 9 February 2021).
92. Brenard C. Email to T McCarthy, K Wylie, et al. (J&J), URGENT: talc in cosmetic products. Rio Tinto Minerals, 25 April 2009, <https://repository.library.brown.edu/studio/item/bdr:841519/> (accessed 9 February 2021).
93. Minutes: CTFA Task Force on Round Robin Testing of consumer talcum [sic] products for asbestiform amphibole minerals. Washington, DC: CTFA, 17 May 1977, <https://repository.library.brown.edu/studio/item/bdr:841544/> (accessed 9 February 2021).
94. Scheltz J. Memo to George Lee (J&J), NF Estrin (CTFA) and G. Sandland (Bristol-Myers Products) Re: CTFA Task Force On Round Robin Testing of Consumer Talcum Products. New Brunswick, NJ: J&J, 29 September 1977, <https://repository.library.brown.edu/studio/item/bdr:841520/> (accessed 9 February 2021).
95. Asbestos found in ten powders. *The New York Times*, 10 March 1976, <http://www.nytimes.com/1976/03/10/archives/asbestos-found-in-ten-powders.html> (accessed 9 February 2021).
96. Steffen J, Tran T, Yiman M, et al. Serous ovarian cancer caused by exposure to asbestos and fibrous talc in cosmetic talc powders – a case series. *J Occup Environ Med* 2020; 62: e-e77.
97. J&J powder management (presentation). New Brunswick, NJ: J&J, 12 January 2000, <https://repository.library.brown.edu/studio/item/bdr:925812/> (accessed 9 February 2021).
98. Hielle-Tucker L. Memo to C.E. LaRosa (J&J), JOHNSON'S baby powder with corn starch U/A analysis. New Brunswick, NJ: J&J, 18 July 1977, <https://repository.library.brown.edu/studio/item/bdr:925704/> (accessed 9 February 2021).
99. Kennedy D. *Letter to Dr. SM Wolfe and Dr. B Gordon (public citizen)*. Washington, DC: FDA, 11 January 1979, <https://repository.library.brown.edu/studio/item/bdr:1104345/> (accessed 9 February 2021).
100. Douilett P. Petition for labeling of warning of the hazardous effects produced by asbestos in cosmetic talc. 8 November 1983, <https://repository.library.brown.edu/studio/item/bdr:858510/> (accessed 9 February 2021).
101. Cashen J and Epstein SS. FDA citizen petitions from cancer prevention coalition, 1994 and 2008. 17 November 1994; 13 May 2008, <https://repository.library.brown.edu/studio/item/bdr:1161226/> (accessed 9 February 2021).
102. Waggoner W. FDA call file, subject: FOI and Johnson's baby powder. New Brunswick, NJ: J&J, 20 June 1977, <https://repository.library.brown.edu/studio/item/bdr:936011/> (accessed 9 February 2021).
103. Kavanaugh E. Letter to the FDA, Re: FDA Docket No. 94P-0420/CP 1. Washington, DC: CTFA, 16 June 1995, <https://repository.library.brown.edu/studio/item/bdr:841681/> (accessed 9 February 2021).
104. Swanson J. *Letter to Phillippe Douilett (citizen petition)*. Washington, DC: FDA, 11 July 1986, <https://repository.library.brown.edu/studio/item/bdr:841680/> (accessed 9 February 2021).
105. Musser SM. *Letter to Samuel Epstein (cancer prevention coalition)*. Re: RE: Docket Numbers 94P-0420 and FDA-2008-P-0309-000IICP. Silver Spring, MD: FDA, 1 April 2014, <https://repository.library.brown.edu/studio/item/bdr:841690/> (accessed 9 February 2021).
106. Leader A. South Dakota jury ties talc powder to cancer risk. *Rapid City Journal*, 5 October 2013, [https://rapidcityjournal.com/news/south-dakota-jury-ties-talc-powder-to-cancer-risk/article\\_78bd7792-b78c-5adb-b684-e6b2c2db10ed.html](https://rapidcityjournal.com/news/south-dakota-jury-ties-talc-powder-to-cancer-risk/article_78bd7792-b78c-5adb-b684-e6b2c2db10ed.html) (accessed 9 February 2021).
107. Hegarty M. Defendants Johnson & Johnson and Johnson & Johnson Consumers Inc.'s first amended responses to plaintiffs' first request for production. In: Ingham et al. v. Johnson & Johnson, et al. Circuit Court of the City of St. Louis, State of Missouri, 27 May 2016, <https://repository.library.brown.edu/studio/item/bdr:927172/> (accessed 9 February 2021).
108. Kavanaugh E. CTFA response statement: talc. Washington, DC: CTFA, 17 November 1994, <https://repository.library.brown.edu/studio/item/bdr:925809/> (accessed 9 February 2021).
109. Velicer C. Tobacco papers and tobacco industry ties in regulatory toxicology and pharmacology. *J Public Health Pol* 2018; 39: 34–48.
110. Baker RD and Ducasse B. Workshop on talc: consumer uses and health perspectives. Imerys, 11 February 1994, <https://repository.library.brown.edu/studio/item/bdr:841684/> (accessed 9 February 2021).
111. Memorandum of meeting at FDA. Imerys, 8 May 2009, <https://repository.library.brown.edu/studio/item/bdr:858443/> (accessed 9 February 2021).
112. Muscat JE and Huncharek MS. Perineal talc use and ovarian cancer: a critical review. *Eur J Cancer Prev* 2008; 17: 139–146.
113. Hall R. Email to S. Mann (J&J). NTP proposal to list talc (SFxE30.pdf). Crowell & Moring LLP, 1 February 2005, <https://repository.library.brown.edu/studio/item/bdr:858515/> (accessed 9 February 2021).
114. Huncharek M. Fax to Robert Glenn (Crowell & Moring). Talc projects letter of agreement. Meta-Analysis Research Group, 6 October 2004, <https://repository.library.brown.edu/studio/item/bdr:858517/> (accessed 9 February 2021).
115. Technology Planning and Management Corporation. *Draft report on carcinogens background document for talc asbestiform and non-asbestiform*. Meeting of the NTP Board of Scientific Counselors Report on Carcinogens Subcommittee. U.S. Department of Health and Human Services, 13–14 December 2000, <https://repository.library.brown.edu/studio/item/bdr:841468/> (accessed 9 February 2021).



116. Turner E. Email to Rich Zazenski, drafting of EUROTALC submission to NTP. Luzenac, 13 November 2000, <http://www.toxicdocs.org/d/3JmOnNyr5wqdb683EMBV4yagE> (accessed 9 February 2021).
117. Zazenski R. Email to Kent Cutler, Jerry Gauntt (Luzenac), Fwd: Talc/NTP Update. Luzenac, 1 November 2001, <https://repository.library.brown.edu/studio/item/bdr:858552/> (accessed 9 February 2021).
118. CRE Invoices. Multinational Business Services, Inc., 2001-2015, <https://repository.library.brown.edu/studio/item/bdr:1153278/> (accessed 9 February 2021).
119. Zazenski R, Memo to D. Harris, et al., 2001 major objectives or goals. Luzenac, 17 May 2001, <https://repository.library.brown.edu/studio/item/bdr:1153282/> (accessed 9 February 2021).
120. Comments by CRE on the listing proposed for talc not containing asbestiform fibers in the report on carcinogens, tenth edition. Washington, DC: CRE, 29 November 2000, <https://repository.library.brown.edu/studio/item/bdr:1153283/> (accessed 9 February 2021).
121. McEwen G. Letter to K. Olden (NTP), review of cosmetic talc for listing in the report on carcinogens, twelfth edition (69 Federal Register 28940). Washington, DC: CTFA, 18 March 2004, <https://repository.library.brown.edu/studio/item/bdr:841466/> (accessed 9 February 2021).
122. Zazenski R. Email to Eric Turner, Robert Bernstein (Luzenac), summary of CRE meeting, time to come up with more confusion. Luzenac, 2 January 2001, <https://repository.library.brown.edu/studio/item/bdr:841483/> (accessed 9 February 2021).
123. Identifying/managing product stewardship issues: "license to market." Presentation slides. Luzenac, 2011, <https://repository.library.brown.edu/studio/item/bdr:1161056/> (accessed 9 February 2021).
124. Kelly W. Draft of Letter to Dr. Baan (IARC). Imerys, 20 December 2005, <https://repository.library.brown.edu/studio/item/bdr:858446/> (accessed 9 February 2021).
125. Deposition of William Kelly. Leavitt and McElroy v. Johnson & Johnson, et al. Superior Court of California, County of Alameda (5 November 2018), <https://repository.library.brown.edu/studio/item/bdr:938039/> (accessed 9 February 2021).
126. Kelly W. Letter to Alan Andersen (CIR). Initial comments on CIR draft scientific literature review for "talc as used in cosmetics". Washington, DC: CRE, 19 October 2012, <https://repository.library.brown.edu/studio/item/bdr:858536/> (accessed 9 February 2021).
127. Draft minutes talc interested party task. Washington, DC: CTFA, 21 July 1993, <https://repository.library.brown.edu/studio/item/bdr:858433/> (accessed 9 February 2021).
128. John B. Ph.D. Colors and cosmetics: EAS Consulting Group, <https://easconsultinggroup.com/about-us/professionals/independent-advisors/john-bailey/> (2018, accessed 14 Jan 2021).
129. Obituary For Heinz Josef Eiermann, Loudon Funeral Home, <http://www.loudounfuneralchapel.com/obituaries/Heinz-Eiermann/> (2012, accessed 14 Jan 2021).
130. Gettings S. Scientific Advisory Executive Committee Minutes. Personal Care Products Council, 11 April 1995, <https://repository.library.brown.edu/studio/item/bdr:925804/> (accessed 9 February 2021).
131. Bailey J, Expert Report of Dr. John E. Bailey, Jr. for Colgate-Palmolive Company in Hayes v. Colgate-Palmolive, et al. (29 July 2018), <https://repository.library.brown.edu/studio/item/bdr:1104316/> (accessed 9 February 2021).
132. Estrin N, editor. *CTFA cosmetic ingredient dictionary*. Washington, DC: CTFA, 1977.
133. Wenniger J and McEwan G. *CTFA cosmetic ingredient handbook*. Washington, DC: CTFA, 1992.
134. Nashed W. Memo to JC Walcott (J&J), Special talc project No. 503, CTFA phone call. New Brunswick, NJ: J&J, 17 July 1971, <https://repository.library.brown.edu/studio/item/bdr:936887/> (accessed 9 February 2021).
135. Lynch M, Burns R., Holcomb J. Food for thought: an investigation of food and drug administration reporting practices, 1995-1999. *Crim Justice Rev* 2005; 30: 293-311.
136. Kesselheim AS and Avorn J. The role of litigation in defining drug risk. *JAMA* 2007; 297: 308-311.
137. The facts about talc safety, <http://www.jnj.com/our-products/the-facts-about-talc-safety> (2016, accessed 23 December 2020).
138. Hughes W and Kalmer T. Massive talc aspiration: successful treatment with dexamethasone. *Am J Dis Child* 1966; 111: 653-654.

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## **Supplement**

### **A Review of the Talc Industry's Influence on Federal Regulation and Scientific Standards for Asbestos in Talc**

**Tess Bird, Joan Steffen, Triet Tran, David Egilman**

**Note:** Wherever page numbers are found in parentheses, this indicates the pages in the source material where the cited data can be found.

#### **Section 1: Further information on conversations with the press and Environmental Defense Fund.**

In January of 1973, Dr. Seymour Lewin, a Professor of Chemistry at New York University (NYU), told a journalist at the *Wall Street Journal* that his tests on talc revealed that “10% of [cosmetic] talc products he examined contained 2 to 3% asbestos”, information which the journalist then discussed with Dr. Wilson Nashed, Johnson & Johnson’s (J&J) Associate Director of Research.<sup>1, 2</sup> Nashed responded that “although we had not talked to Dr. Lewin the FDA was very clear in stating that Lewin had found our products to be free of asbestos” (p. 2).<sup>2</sup> Nashed assured the journalist that J&J “not only ha[s] a good source of talc, but we subject it to refining with multiple washing before we obtain the baby powder grade; this together with extensive studies by world experts assures its freedom from asbestos” (p. 3).<sup>2</sup> This contradicted what J&J knew about the inadequacies of the “clean-mine” approach by 1973.<sup>3-5</sup>

After the publication of the *Wall Street Journal* article, the U.S. Food and Drug Administration (FDA) received a letter from the Environmental Defense Fund concerning the

health hazards of asbestos in talc.<sup>6</sup> In his response in March of 1973, Dr. Alfred Weissler, the Acting Director of Cosmetics at the FDA, characterized Lewin's previously positive test results as over-zealous:<sup>6</sup>

*In his eagerness to protect the public interest to the fullest extent, Dr. Lewin in certain cases interpreted borderline results as showing the presence of asbestos, in his earlier reports, but he later used a more conservative interpretation. He has spent a lot of time- and energy in creative scientific work aimed at resolving the ambiguities (for which the public and FDA owe him a debt of gratitude) and he has succeeded for the most part. (p. 2)*

The FDA also assured the Environmental Defense fund that Lewin's results were based on "creative scientific work aimed at resolving the ambiguities (for which the public and FDA owe him a debt of gratitude)" (p. 2).<sup>6</sup>

## **Section 2: McCrone Labs Report.**

J&J hired Walter C. McCrone Associates, Inc. to test their products. On October 27, 1972, McCrone provided a report to J&J finding asbestiform tremolite at varying percentages in two bottles of J&J Baby Powder.<sup>7</sup> The results of the first test, and original report were marked DO NOT USE THIS REPORT. REPLACED BY ANOTHER VERSION (Figure 1 in article).<sup>8</sup> Another copy of the report shows handwritten edits (Figure 2 in article).<sup>7</sup> On November 15, 1972, after retesting the same two samples, McCrone told J&J that "After looking at several fresh samples on the light microscope, we have not been able to substantiate the tremolite levels we originally reported" (p. 1-5)<sup>7</sup> Rather than issue a second report, disclosing the results of both tests, McCrone edited the original report, reflecting their "modified thinking," and changed the

results to conform to the results of the second test.<sup>7</sup> They dated it to October 27, 1972, the date of the original test results. The new report deleted the percentage details of what was found (as noted in **Error! Reference source not found.**), reporting only “a few isolated crystals” of tremolite rather than 0.2-0.5% tremolite, as noted in the original report.<sup>7</sup> J&J gave the modified report to the FDA.<sup>9</sup>

### **Section 3: Further details on the Concentration Method.**

- a. By 1973, Dr. Fred D. Pooley of University College, in Cardiff, Wales, developed a method for preconcentration to better detect amphibole asbestos nicknamed the “Pooley method”.<sup>10</sup> J&J noted that the “Pooley method” “has not been written up yet, but evidently when applied to Vermont talc, 0.05% of tremolite-type [asbestos] is found. The limitation of the method is that it may be too sensitive” (p. 6).<sup>10</sup> The Colorado School of Mines Research Institute (CSMRI) also recommended a pre-concentration method to J&J in 1973: “As a result of the requirement to detect the proverbial ‘needle in a haystack,’ we have evolved a procedure which preconcentrates the impurities prior to examination” (p. 3).<sup>11</sup> CSMRI concluded, “Based on past experience with detecting and identifying minerals when present at low levels, a concentration of the phases to be detected was considered essential to the success of any suggested procedure” (p. 4).<sup>11</sup> Robert C. Reynolds at Dartmouth College also shared a concentration method with J&J’s talc mining subsidiary, Windsor Minerals, in March of 1974.<sup>12</sup> Reynolds found asbestos in J&J’s Vermont talc with his method and J&J later replicated this positive result using the same method.<sup>13</sup> In 1991, another J&J consultant, Alice Blount, developed a similar method using centrifugation to concentrate asbestos and found asbestos in J&J talc ores used in J&J cosmetic powders and in off-the-shelf J&J Baby Powder.<sup>14-17</sup> By 1993, J&J

consultants R.J. Lee had also adopted the Blount concentration method.<sup>18</sup> In 2014, the International Organization for Standardization (ISO) published a concentration method for asbestos in bulk materials.<sup>19</sup>

- b. In 1976, J&J's William Ashton, who was responsible for evaluating potential talc mines, expressed concerns about an FDA proposal that was "more disturbing" than others because of its relationship to "concentration procedures":<sup>20</sup>

*I find this proposal more disturbing than other proposals up to now because it aims at separation and isolation of asbestos from a wide scope of products and animal tissues. Up to now, our main problems have had to do with identification, whereas, now it looks like the FDA is getting into separation and isolation methodology which will mean concentration procedures. As I have pointed out many times, there are many talcs on all markets which will be hard pressed in supporting purity claims, when ultra sophisticated assay separation and isolation techniques are applied. Chances are that this FDA proposal will open up new problem areas with asbestos and talc minerals. (p. 2)*

#### **Section 4: Further details on XRD and TEM.**

Minutes from a December 4, 1974 meeting of the Cosmetic, Toiletry and Fragrance Association (CTFA) talc subcommittee state: "It was concluded that we can recommend [to the FDA] x-ray diffraction with the optical microscope as back-up for the detection of amphibole at a 1% level" (p. 3).<sup>21</sup> This level of detection was ten times less sensitive than the proposed FDA limit for amphiboles in talc and 100 times greater than the FDA-proposed limit for chrysotile.<sup>22</sup> Per the CTFA, it was also ten times less sensitive than TEM analysis.<sup>23</sup> The CTFA continued to pursue optical microscopy methods despite finding that "false negatives are possible" (p. 3).<sup>24</sup>



## **Section 5: Convincing the FDA that testing for chrysotile was not needed despite finding chrysotile in undisclosed tests.**

By 1975, before a scheduled meeting with the FDA, the CTFA “planned to propose the 0.5 to 1.0% limit for each fibrous tremolite and chrysotile in cosmetic talc” (p. 4).<sup>25</sup> However, when they met with the FDA, the CTFA questioned the need to test for chrysotile in talc at all on the basis that “no [talc] sample has yet to be confirmed as containing this material” (p. 3).<sup>26</sup> This was not true. The discussion went as follows:

*Dr. Berdick questioned the need for a regulation on chrysotile since no sample has yet to be confirmed as containing this material.*

*Mr. Eiremann responded that he sees no problem with a regulation covering both amphiboles and chrysotile, since “if chrysotile is not there, you should have no problems.”*

*Dr. Estrin and Dr. Berdick objected, stating that Mr. Eiremann was proposing regulations for the sake of regulation, and has not considered the wasteful tax on resources that would arise from inclusion of a standard for chrysotile. Dr. Berdick and Dr. Estrin concluded that if a regulation is not necessary, it should not be proposed.*

*Dr. Schaffner responded with a suggestion that CTFA send in a letter with documentation, showing the extent of tests and results which would support a recommendation about the inappropriateness of a regulation for chrysotile.*

*It was noted that Professor Lewin was the only scientist to ever have mentioned chrysotile in his report and the lack of confirmation of his results by other scientists. (p.*

*3)*

Two other testing facilities found chrysotile in Whittaker, Clark, & Daniels talc ore;<sup>27, 28</sup> Johns-Manville found chrysotile in Val Chisone talc ore, which was used in Avon, Colgate-

Palmolive, and J&J cosmetic talc products;<sup>29</sup> and McCrone found chrysotile in Cashmere Bouquet.<sup>30</sup> The CTFA justified its failure to test for chrysotile in a January/February 1976 issue of the CTFA journal.<sup>31</sup> Sandland of Bristol-Myers, the author of the article and chairman of the CTFA talc subcommittee, wrote that the equipment for detecting chrysotile was expensive and “not readily available” (p. 6).<sup>31</sup> He explained that because “the committee had been unable to find a sample of cosmetic talc containing naturally occurring chrysotile [...] therefore, a backup method would not be necessary anyway” (p. 6).<sup>31</sup>

#### **Section 6: CTFA submissions to FDA.**

- a.* On September 23, 1975, the CTFA sent the FDA “the latest approved CTFA Cosmetic Talc Standard” and a “summary of 3,397 analyses of tales from the United States and other parts of the world, along with documenting correspondence from five companies” (p. 1).<sup>32</sup> They told the FDA that:<sup>32</sup>

*The statistically significant limit of detection for amphibole is about 0.5%. While this number is greater than the level originally recommended in the September 28, 1973 Proposed Regulations, it represents the realistic limitation of the average instrumentation and technology available in the industry today. (p. 4)*

The following table illustrates talc mining and manufacturing companies’ (TM&MCs) misrepresentations to the FDA in a March 15, 1976 submission.<sup>33</sup>

| Company            | 1976 misrepresentation to the FDA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | One contradictory finding to TM&MCs' claim*                                                                                                                                                                                                                                                                                                                       |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Avon               | <p>“A total of 170 samples of talcs used in our products were examined [for chrysotile] by McCrone [...] and can be reviewed by authorized people. The results were negative. Since February, 1974, we have analyzed about 250 samples of talc receipts in-house by DTA for chrysotile and IR for tremolite [...] The results were negative.”<sup>33</sup> (p.2)</p>                                                                                                                                                                                                      | <p>3/14/1972: 3-10% tremolite in three samples of talc<sup>34</sup></p>                                                                                                                                                                                                                                                                                           |
| Colgate-Palmolive  | <p>“The results of these analyses indicate to us that talc products produced by the Colgate-Palmolive Company since 1972 are free of asbestos minerals when subjected to the most sophisticated methodology available.”<sup>33</sup> (p. 3)</p>                                                                                                                                                                                                                                                                                                                           | <p>2/5/1974: chrysotile fibers in Cashmere Bouquet, N.C. Regal, and Sample 516 (using transition electron microscopy and electron diffraction)<sup>30</sup></p>                                                                                                                                                                                                   |
| J&J                | <p>“During the period December 1972 to October 1973, 93 lots were individually sampled and examined by X-ray diffractometry for the presence of asbestos minerals. <u>No</u> amphiboles or serpentine minerals were detected in any sample. Beginning in October 1973 [...] differential thermal analysis and X-ray diffractometry were instituted for the routine examination of sequential lots. A further 100 lots have since been examined [...] Again, <u>no</u> amphibole or serpentine minerals have been detected.”<sup>33</sup> (p. 6, emphasis in original)</p> | <p>J&amp;J's had numerous positive tests before the time period described to the FDA (see Table 1 in article); e.g. tremolite needles in baby powder;<sup>35</sup> chrysotile in Val Chisone talc, 2-3% Chrysotile in J&amp;J Baby Powder and Shower to Shower;<sup>36</sup> chrysotile fibers in J&amp;J medicated powder and Shower to Shower.<sup>37</sup></p> |
| McCrone Associates | <p>“No chrysotile asbestos was found in these talcs [examined before 1973].<sup>33</sup> (p. 8)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>10/27/1972: McCrone removed percentages of tremolite findings, noting “a few individual</p>                                                                                                                                                                                                                                                                    |

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                 |
|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                    | crystals” (see Section 2). <sup>8</sup>                                                         |
|                                  | “Since 1973 none of the talcs which we have examined and which have been identified to us as production materials have shown any detectable levels of either chrysotile or asbestiform amphibole.” <sup>33</sup> (p. 8)                                                                                                                                                                                            | 5/14/1974: Chrysotile fibers in Windsor Minerals talc, 66 used in J&J Baby Powder <sup>38</sup> |
| Whittaker, Clark & Daniels (WCD) | “In August 1971 a test program was instituted by our company to ensure customers using our cosmetic grade talcs that they are free of fibrous asbestos [...] Our file contains reports on various grades of cosmetic talc [...] based on approximately 74 ground ore samples analyzed over a period of four years all of which show non-detectable amounts of fibrous asbestos form minerals.” <sup>33</sup> (p.9) | 10/16/1973: Chrysotile found in WCD talc <sup>28</sup>                                          |

*\*There are more positive test results for asbestos in cosmetic talcum products that are too voluminous to include here.<sup>39</sup>*

- b. **Company resistance to providing further updates:** After the FDA requested that the companies periodically report results of their own analyses of talc, the companies resisted. According to the minutes of a March 15, 1976 meeting of the CTFA talc subcommittee, Dr. Murray Berdick of Chesebrough-Ponds “stated categorically it was not feasible to develop a statistically valid sampling plan for talc” (p. 3) while Dr. Norman Estrin, the Senior Vice President of Science for the CTFA, “expressed bewilderment that after reviewing the nearly 4,000 analyses provided at this meeting, FDA would need anything further” (p. 3).<sup>40</sup> While Estrin promised to give serious consideration to the FDA request, in a March 31, 1976 meeting of the CTFA subcommittee, he “suggested the subcommittee should not obligate itself to give periodic reports to FDA but urged members to build their database so that at some time in the

future the subcommittee can decide whether the time is right to present FDA with an update on industry analysis” (p. 2).<sup>41</sup>

## Section 7: Eiermann’s Mixed Messaging.

Dr. Heinz Eiermann was the FDA commissioner in charge of cosmetics from 1973 to 1991. As we note in the article, he privately criticized industry testing. In response to the CTFA test results submitted in March 1976, Eiermann concluded:<sup>42</sup>

*In summary, though the submission by the CTFA Talc Subcommittee looks impressive at first hand, it **does not offer much assurance that cosmetic talcs are adequately tested for asbestos**. If this is all that can be expected from the cosmetic industry in the form of analytical effort in the light of the asbestos in talc publicity since 1971, **we have not much choice but to move ahead as speedily as possible with a proposal of a regulation on asbestos in talc** using X-RD and DTA procedures and basing the levels of adulteration of talc with asbestos fibers on the levels of sensitivity provided by these methods. (p. 3 emphasis added)*

However, Eiermann had publicly defended J&J talc just one week earlier, stating that their talc “has been found to be virtually free of asbestos” (p. 4) and that there is “no evidence” baby powder is hazardous (p. 3), citing J&J’s own testing of talc.<sup>43</sup> Eiermann conceded that, “because talc and asbestos often are mixed together in infinitely variable concentrations, tests on such small samples do not accurately reflect asbestos levels in larger samples of talc” (p. 3).<sup>43</sup> He further stated that the FDA supports a bill “which would require cosmetic manufacturers to safely test their products and to submit the test results to the FDA for approval before the products could be sold” (p. 3).<sup>43</sup> Despite the fact the FDA’s own tests had found asbestos in commercial talc products in 1974, in October 1976, Eiermann told the *Washington Post* that,



“Once the methodology has been worked out to our satisfaction we may propose regulations on asbestos. Our investigations of talc products demonstrated that none of the talcs used in these products contained asbestos as a contaminant.”<sup>44</sup> However, *The New York Times* also reported in 1976 that:<sup>45</sup>

*The tests at Mt. Sinai, which Federal health officials described as the country's leading research facility looking into the possible dangers of asbestos, used an electron microscope, which Heinz J. Eiermann [sic], director of cosmetics technology in the Food and Drug Administration, said was too expensive and time-consuming for his agency to use.*

In a 1978 article, Eiermann wrote that FDA efforts to improve the levels of detection for asbestos was “met with little success” and that “disappointments in analytical research have been somewhat offset by the virtual disappearance of asbestos-contaminated talc from cosmetic raw material inventories” (p.159).<sup>46</sup> Eiermann also complained about the FDA cosmetics division’s limited resources and lack of industry cooperation.<sup>43, 46</sup> In 1976, he stated that his division only had eight chemists to monitor 250,000 cosmetic products and 4,000-5,000 manufactures.<sup>43</sup> Two years later he complained his department suffered an increase in research duties with no increase in staff, and that the department suffered “major disappointments.”<sup>46</sup> In 1978, his division had a 28-person staff, a budget of \$2.85 million to monitor over 25,000 different products and 2,500 manufacturing facilities.

### **Section 8: Final CTFA Specification.**

The CTFA Method J4-1 stated that XRD results should be reported as either “Non Detected” or “Detected at approximately X% level” and Optical Microscopy and Dispersion-Staining Method results should be reported as “Asbestiform Amphibole Present” or

“Asbestiform Amphibole Absent.”<sup>47</sup> If XRD was negative optical microscopy was not to be performed. Thus, if asbestos was not detected at the XRD LOD of 0.5%, the product was passed and sold. XRD cannot distinguish fibers from non-fibrous amphiboles and thus some form of microscopy (light or electron) is needed to determine if fibers are present (chrysotile only forms as fibers).<sup>47</sup> However, fibers that are thin or in low concentrations may be missed using microscopy.<sup>3</sup> For this reason, the British cosmetic industry organization, in which J&J was a member, had a standard that called for the rejection of any talc with a positive XRD result for any mineral with asbestos chemistry and did not require microscopy.<sup>48</sup>

The 90% definition for purity was suggested to differentiate cosmetic talc from industrial talc “on the basis of composition, especially talc purity.”<sup>49</sup> During the deliberating meetings, J&J “pleaded for (1) adoption of the 90% talc limit in the general definition for the CTFA cosmetic talc, and (2) setting a quantitative limit of 0.5% for fibrous tremolite (matching the limit of reliability of the method)” (p. 2).<sup>49</sup> Both proposals were “met with general opposition from other CTFA committee representatives” (p. 2).<sup>49</sup> Estrin suggested that the “‘non detectable fibrous amphibole’ phraseology” was “more palatable to reviewing bodies” (p. 3).<sup>49</sup> J&J continued to stress “the danger of being tied to more sensitive methodology which may evolve in the future” (p. 3).<sup>49</sup> Harold Stanley, a research chemist from Pfizer, who was not in attendance at the meeting noted that “had I been there I would have objected to their definition.” (p. 1)<sup>50</sup> He particularly objected to the requirement that talc contain “no detectable asbestos,” writing that the omission of a specific detection level “can lead to some very serious breaks in communication between the buyer and the seller” (p. 1).<sup>50</sup>

## **Section 9: Round robin test of CTFA J4-1 method.**

As noted in the article, in 1977, the CTFA coordinated a round robin to test the J4-1 method. J&J sent talc spiked with 0.5% tremolite and 3.5% anthophyllite as well as seven cosmetic talcs purchased on the open market, to seven laboratories, including the FDA, for analysis.<sup>51</sup> Three of the open market products tested positive for more than 0.5% asbestos in two to three labs.<sup>52</sup> All seven of the spiked talc detected anthophyllite, but only one lab (the FDA's) was able to detect 0.5% tremolite; thus, the round robin results demonstrate a false negative rate of 86%.<sup>52</sup> The meeting minutes from May 1977 reported that the objective of an "accurate, reliable, and practical" method had not been achieved and that those products with "inconsistent results" would be retested (p. 1).<sup>52</sup> We could not locate the results of the second round robin. However, in October 1977, the CTFA received a report from Dr. Rohl, a researcher at Mt. Sinai, who found 0.9 to 1.8 % tremolite and 2.0 to 3.2 % anthophyllite in four of the original seven round robin samples using his own method.<sup>53</sup> Then, in March of 1978, the CTFA disclosed the round robin results to the manufacturers of the products tested, after which the CTFA said they would destroy the only copy of the table of codes that identified the individual product results.<sup>54</sup> The CTFA also told the companies that "no talcum product failed CTFA Method J4-1, Parts I and II; i.e., no product was found to contain asbestiform amphibole at a level equal to or greater than 0.5% by weight" (p. 1, emphasis in original).<sup>54</sup> We have not been able to locate an explanation for the different findings in the first and second round robins and the Mount Sinai tests.

## **Section 10: FDA Petitions & FOIA Requests.**

- a. **1977:** The FDA received a FOIA request for safety data on J&J baby powder.<sup>55</sup> Dr. Robert Schaffner, the Associate Director of Technology for the FDA, told W.C.

- Waggoner at J&J that the FDA “had no data.” Waggoner suggested that J&J “prepare a summary package of published information on J&J’s baby powder and send it to the FDA. This package could then be used for FOI requests on the product” and “Dr. Schaffner agreed that it would be an appropriate step” (p. 2).<sup>55</sup>
- b. **1978:** Public Citizen cited two letters to the *New England Journal of Medicine* suggesting that asbestos in talc was a potential carcinogen and requested that the FDA ban its use in drugs and cosmetics.<sup>56</sup> The FDA denied the petition, claiming that “there is to date no conclusive evidence that talc is carcinogenic in man or animals” (p. 2).<sup>56</sup> They instead blamed asbestos contamination of talc as the “offending exposure” and that the industry had improved the “mining and processing of talc to minimize asbestos contamination” (p. 2).<sup>56</sup> The letter further summarized a 1977 investigation of forty-six talc samples, and noted that J&J had done extensive testing and that “all results to date have been negative” (p.3). The response attached a package of information that likely had been supplied to the FDA by J&J in response to the 1977 FOI request.
- c. **1983:** In November of 1983, Phillipe Douillet, a graduate student in marine biology, petitioned the FDA to require a “warning on the hazardous effects produced by asbestos in cosmetic talc” (p. 1) due to concern about talc causing mesothelioma.<sup>57</sup> In early 1984, John Wenninger of the FDA cosmetics division informed J&J of the citizen’s petition, thanked them for the information they had already provided, and stated that they did not have any data on currently marketed talc products.<sup>58</sup> On March 5, 1984, J&J hired Wayne Pines, a former FDA employee and then crisis manager for Burson-Marsteller, a public relations firm, to contact the FDA about the

petition.<sup>59</sup> Pines wrote: “At the present time it appears likely the agency will reject the petition. There appears to be no new data in the petition and the agency feels comfortable that there is no asbestos in talc” (p. 2).<sup>59</sup> On July 11, 1984 Wenninger wrote an “FDA memo” denying the petition (this memo is cited in another document and it is unclear who it was to).<sup>60</sup> Five months later, in November 1984, an FDA analyst, Linda Taylor, Ph.D., completed a *Quantitative analysis of Risk from Potential Exposure to Asbestos from Cosmetic Talc Use* and concluded: “The exposure of a baby from baby powder could be  $6.6 \times 10^6$  f/year [...] If a more realistic value of 1% asbestos is used, the number of fibers is calculated to be  $6.6 \times 10^4$  f/year” (p. 25).<sup>61</sup> She later stated: “Infants exposed to asbestos from talc could be exposed to an additional amount above the background [exposure to asbestos] of the order of 0.04 to 0.08 f/cc for 2 years. This would result in an increase of 0.05% in the cumulative lifetime exposures [...] with a similar increase in the lifetime risk. [...] the estimated exposure level is 100 to 200 times greater than background” (p. 26). On June 6, 1985, her supervisor, Robert Brown, revised Taylor’s risk estimate to: “less than  $10^{-8}$  added lifetime [cancer] risk” including mesothelioma and lung cancer (p. 9).<sup>60</sup> He noted it could be “possibly several orders of magnitude lower risk still, depending on assumptions and uncertainties alluded to above, especially those regarding geometrical shape of any possible asbestos fibers in talc, and limits of detection for asbestos in talc” (p. 9). On July 11, 1986, the FDA Acting Associate Commissioner for Regulatory Affairs, H.J.W. Swanson, wrote to Douillet denying the petition. The letter explained the FDA’s position:<sup>62</sup>

*Because of the questionable nature of analytic results, the agency was not able to assess reliability of the levels of asbestiform minerals in cosmetic talc then in the*



*marketplace. Under these circumstances, FDA decided that the most appropriate actions that it could take to protect the public health would be to make the reports public and to request assistances from the affected industry in developing acceptable analytical procedures. This approach apparently has led to considerable improvement in the quality of this talc. (p. 1-2)*

The letter then informed Douillet of the CTFA's specification and concluded:<sup>62</sup>

*Consequently, we find that there is no basis at this time for the agency to conclude that there is a health hazard attributable to asbestos in cosmetic talc. Without evidence of such a hazard, the agency concludes that there is no need to require a warning label on cosmetic talc. (p. 2)*

- d. **1994:** On November 17, 1994, the Cancer Prevention Coalition petitioned the FDA to place carcinogenic labeling on all cosmetic talc products.<sup>63</sup> This petition, citing Cramer et al. (1982) and Harlow et al. (1992), asserted that "talc is a carcinogen with or without the presence of asbestos-like fibers" (p. 3).<sup>63-65</sup> On June 16, 1995, the CTFA submitted a comment to the FDA claiming that, "the Petitioner's arguments are without scientific merit" (p. 1) and that "there is no evidence to suggest that cosmetic-grade talc is a human carcinogen" (p. 5).<sup>66</sup> Contrary to their internal analyses in 1973, the CTFA told the FDA that cosmetic talc was mined from asbestos-free ore and that asbestos could be avoided by selective mining.<sup>66</sup> The CTFA also cited a 1994 workshop where "a panel of experts" reviewed "the latest toxicological and epidemiological studies on talc," and concluded that there is "not sufficient warning for concern" (p. 5).<sup>66</sup> After the workshop, in July 1995, Bailey

responded to the 1994 petition (from the Cancer Prevention Coalition), stating that “we have not been able to reach a decision on your petition [...] because of the limited availability of resources and other agency priorities” (p. 1).<sup>67</sup>

- e. **2008:** the Cancer Prevention Coalition submitted another petition to the FDA calling for ovarian cancer warnings to be placed on baby powder products.<sup>63</sup> In July, Dr. Kathleen Wille, the Senior Director of Scientific and External Regulatory Policy, judged that the petition “singled out” (p. 2) J&J and determined that the next steps were to “secure funding and engage experts” and “determine level of external support” from their supplier (Luzenac) and the CTFA (p. 3).<sup>68</sup> J&J and Luzenac agreed to pay Drs. Huncharek and Muscat of the Meta-Analysis Research Group to conduct a narrative review and meta-analysis of talc and ovarian cancer via a law firm, Crowell & Moring, “so as to preserve the benefit of the attorney work product privilege, which is helpful in protecting confidentiality” (p. 2).<sup>69</sup> Huncharek and Muscat agreed that the funders could review the report and suggest changes before submission to the National Toxicology Program (NTP) and publication.<sup>70</sup> By November 2008, Craig Bernard of Rio Tinto Minerals noted that “a key figure” at the FDA planned to rule against the petition, but that they needed “scientific support from industry that will help justify their position” from the TM&MCs:<sup>71</sup>

*Kathy Wille at J&J informed me that at a recent science meeting in Washington DC she had a side conversation with a key figure from the FDA cosmetic group that is responsible for responding to the Citizen's Petition. He indicated that the FDA would rule against the petition and would not require warning labels on cosmetic products. But the FDA is looking for scientific support from industry that will help justify their position. She suggested that there is a collective group*

*working to have comments submitted to the FDA. Principal among this effort will be comments that Professors Muscat and Huncharek are co-developing. (p .1)*

The CTFA presented the Huncharek and Muscat report to the FDA in May 2009.<sup>72</sup> After the presentation, the FDA indicated “that the Citizens Petition is not on their priority list, and they will likely not respond” (p. 2).<sup>73</sup>

## **Section 11: CTFA influence on 1994 workshop to counter NTP animal and epidemiology studies**

- a. As we note in the article, the FDA and industry co-funded a workshop, *Talc: Consumer Uses and Health Perspectives*, with the International Society of Regulatory Toxicology & Pharmacology (IS RTP), an industry-funded organization which had a direct influence on those in attendance at the workshop. The CTFA sent the IS RTP names and addresses of participants they wanted to attend the workshop.<sup>74</sup> Several speakers did not disclose their affiliations with industry.<sup>75</sup> Dr. John Bailey and Dr. Gio Gori co-chaired the symposium. Dr. Gori had previously consulted for tobacco industry lawyers and served as Vice President of a consulting firm that received large sums of money from the tobacco industry.<sup>76, 77</sup> At least one participant noted the meeting’s slant: Bev Zacharias, of the Woman’s Cancer Advocacy Group, expressed that the panel had “strong bias against the consumer and patient” (p. 14).<sup>78</sup> Indeed, “only two consumer representatives attended” (p. 2).<sup>78</sup>
- b. The TM&MCs used the workshop as a platform to attempt to discredit a recently-completed NTP animal study demonstrating talc lung carcinogenicity. The NTP animal study was a 1993 technical report that found a statistically significant increase

of alveolar/bronchiolar adenoma, carcinoma, and adenoma or carcinoma (combined) in female rats and concluded that there was “clear evidence of carcinogenic activity of talc” in rats (p. 7).<sup>79</sup> The CTFA funded Drs. Gori and Carr, secretary of ISRTP, to prepare a set of papers from the 1994 conference for publication in the April 1995 issue of the ISTRP’s journal that undermined the cancer findings of the NTP study.<sup>80</sup>

<sup>81</sup> The CTFA made suggestions on a draft of least one of these papers, entitled, *The lack of an ovarian effect of lifetime talc exposure in F344/N rats and B6C3F1 mice*.<sup>82</sup>

<sup>83</sup> Dr. Gettings of the CTFA advised the author of this paper, Dr. Boorman, against using the term “talc fiber,” which the industry was concerned about perpetuating, and use “talc particle” instead.<sup>84, 85</sup> However, following this advice, Boorman still used “fibers” in the minutes of a National Institute of Environmental Health Sciences (NIEHS) meeting. Ashton of J&J encouraged the CTFA to make another effort to have Boorman change his paper.<sup>86</sup> Dr. Boorman changed “fibers” to particles throughout the published version of his paper.<sup>82</sup>

## Section 12: Influence on the NTP

- a. **Center for Regulatory Effectiveness (CRE):** In 1996, Jim Tozzi, who had been director of the Office of Management and Budget’s (OMB) Office of Regulatory Affairs under President Reagan,<sup>87</sup> founded the Center for Regulatory Effectiveness. CRE is a consulting firm and lobbying group that represents itself to the public as an agency that provides Congress “independent analyses of agency regulations.”<sup>87, 88</sup> CRE also does business as the Multinational Business Services, Inc. (MBS).<sup>89</sup> In its mission statement, CRE claims it is a “regulatory watchdog” that “ensures regulators

comply with the ‘good government’ laws that ‘regulate the regulators.’”<sup>88</sup> Under “CRE Accomplishments,” CRE claims credit for the establishment of the Office of Information and Regulatory Affairs within the OMB, the passage of the Data Quality Act of 2002 (also known as the Information Quality Act), and the introduction of benefit-cost analysis into federal rulemaking.<sup>88</sup> CRE used the Data Quality Act of 2002 to facilitate challenges to regulations, including challenging the listing of talc on the NTP’s 12th *Report on Carcinogens* (see 12b below).<sup>90</sup>

As we note in the article text, Luzenac retained CRE in November 2000 at a “retainer rate of \$12,000 per month to work on the NTP talc listing” (p. 2).<sup>89</sup> The CRE/MBS sent itemized invoices to Luzenac (and later Imerys, which acquired Luzenac in 2011) for \$6,000-\$24,000 a month from 2001 to 2015 for “services rendered.”<sup>91</sup> One Imerys document describes CRE’s role as follows:<sup>92</sup>

*CRE is not a traditional "contractor" or "consultant." It is a federal regulatory "watchdog" organization that assists mainly corporations with advice and intervention in federal regulatory issues that threaten their business. Its staff is comprised mainly of former federal government officials and lawyers who understand and intervene in the regulatory system. **Companies who enlist the assistance of CRE are considered "sponsors" who make "donations" to CRE and request its help on specific issues that have wide significance.** In doing its work for such sponsors, CRE retains a high degree of independent judgment and decision-making, and does not "represent" companies in the traditional legal sense. However, CRE is part of a consortium of companies that work on regulatory/informational issues, and that consortium includes Multinational Legal Services (MLS), PLLC, a law firm, and Multinational Business Services, Inc, a*



*traditional consulting firm. At times, Luzenac has dealt with MLS in order to have the benefit of attorney/client relationship. (p. 1) [Emphasis added]*

Luzenac used their attorney-client relationship with the CRE to cloak certain activities in secrecy: they withheld over 8,000 documents as privileged under their attorney-client relationship with Luzenac.<sup>93</sup> The CRE told the NTP, IARC, and the Cosmetic Ingredient Review (CIR) it was independent of industry ties and never disclosed the dual nature of its relationship with Luzenac.<sup>94</sup>

**CRE's Political Clout:** In his 2020 book, *The Triumph of Doubt*, David Michaels described how “over the next few years, Tozzi and CRE kept up the pressure on the NTP, regularly conveying a message that they could inflict pain, and that the pain would disappear if the NTP dropped talc from consideration.” (p. 154).<sup>95</sup> In 2004, for instance, the CRE wrote to the Department of Health and Human Services, asking them to review the budget for the *Report on Carcinogens*.<sup>96</sup> According to CRE, as a “highly influential scientific assessment,” the Report was subject to the new information quality peer review requirement (the Data Quality Act of 2002), which barred government employees from participating in the listing process.<sup>96</sup> In response to CRE complaints, the head of the White House Office of Information and Regulatory Affairs wrote to the Director of the National Institutes of Health (NIH) and required several changes to the NTP process for the *Report on Carcinogens*.<sup>97</sup> Please see David Michael's book for a more complete review of this period.

### **Section 13: Influencing Other Regulatory Bodies.**

- a. In 2005, IARC announced that it would evaluate non-asbestiform talc for its forthcoming monograph 93.<sup>98</sup> IARC ultimately concluded that there was inadequate evidence that inhaled talc not containing asbestos or asbestiform fibers caused cancer in humans, but that there was limited evidence of the carcinogenicity of perineal talc use.<sup>99</sup> The IARC monograph 93 noted the 1976 voluntary CTFA guidelines for asbestos in talc and specified that, although studies suggested the presence of anthophyllite, chrysotile, and tremolite in consumer talc products in the past, “after 1976, these powders probably did not contain anthophyllite, chrysotile or tremolite ....” (p. 309).<sup>99</sup> They reiterated that the agency considers talc containing asbestos or other asbestiform fibers a Group-1 carcinogen in humans.
- b. In 2012, CIR, an “independent” review body supported by the FDA, the Consumer Federal of America, and the Personal Care Products Council (PCPC), began a safety assessment of talc as used in cosmetics.<sup>100</sup> Luzenac again retained the CRE’s services to respond.<sup>91</sup> The CRE again used the “fatal flaw” argument in comments to the CIR to argue against talc carcinogenicity.<sup>101</sup> The CIR concluded in its final Safety Assessment that “talc is safe in the present practices of use and concentration described in this safety assessment” and cited the CRE’s comments (submitted by Kelly) as evidence against the possibility of transvaginal talc migration.<sup>100</sup> Kelly expressed shock that the CIR relied on his comments for medical questions, commenting that “it’s very unusual. Perhaps they think I am a Ph.D. gynecologist!” (p. 2).<sup>102</sup> The CIR claims it provides independent safety reviews.<sup>103</sup> However, Kelly noted that “we [the CRE] engineered the CIR report from the outset ....” (p. 2-3).<sup>104</sup> As part of its effort to “market the [CIR] report” (p. 2) at Luzenac’s request, Tozzi

and Kelly of the CRE discussed using the FedFocus.org to post information “showing that the CIR is unbiased” (p. 1) because the CRE website “is a .com and has acquired an industry reputation).”<sup>104</sup> According to its website, Federal Focus is a “non-profit research and educational foundation,” funded by “grants, contributions, or cooperative arrangements.”<sup>105</sup> They provide a list of entities that have given such contributions, which primarily includes businesses and industry groups. Federal Focus is recognized as an industry front group chaired by Jim Tozzi.<sup>106</sup>

## References

1. Spivak J. FDA Plans to Impose Limits on Asbestos in Certain Cosmetics. *Wall Street Journal*, 26 February 1973.
2. Nashed W. Memo to Fuller (J&J), Talc/Asbestos. J&J, 31 January 1973. Available from: <https://repository.library.brown.edu/studio/item/bdr:858434/>.
3. Nashed W. Memo to File, Talc/Asbestos FDA Meeting August 11, 1972. J&J, 14 August 1972. Available from: <https://repository.library.brown.edu/studio/item/bdr:841504/>.
4. Nashed W. Letter to the Hearing Clerk, Department of Health, Education, and Welfare. J&J, 11 October, 1972. Available from: <https://repository.library.brown.edu/studio/item/bdr:858466/>.
5. Petterson D. Memo to DD Johnston (J&J), Subject: Windsor Minerals and Talc. J&J, 26 April 1973. Available from: <https://repository.library.brown.edu/studio/item/bdr:841512/>.
6. Weissler A. Letter to Adamson and Lang (Environmental Defense Fund). Department of Health, Education, and Welfare, 2 March 1973. Available from: <https://repository.library.brown.edu/studio/item/bdr:858475/>.
7. Stewart I. Letter to Goudie (J&J). McCrone Associates, 15 November 1972. Available from: <https://repository.library.brown.edu/studio/item/bdr:841514/>.
8. Stewart I. Examination of Johnson and Johnson's Baby Powder (labeled "Do Not Use This Report"). McCrone Associates, 27 October 1972. Available from: <https://repository.library.brown.edu/studio/item/bdr:1104411/>.
9. Nashed W. Letter to Robert Schaffer (FDA). J&J, 29 November 1972. Available from: <https://repository.library.brown.edu/studio/item/bdr:841522/>.

10. Rolle R. Memo to Shelley, Proposed Specs For Analyzing Talc For Asbestos. J&J, 16 May 1973. Available from: <https://repository.library.brown.edu/studio/item/bdr:858501/>.
11. Ponder H, Link J, Krause J. A Procedure to Examine Talc for the Presence of Chrysotile and Tremolite-Actinolite Fibers (Prepared for J&J). Colorado School of Mines Research Institute, 27 December 1973. Available from: <https://repository.library.brown.edu/studio/item/bdr:841470/>.
12. Reynolds RC. Confidential Report to Windsor Minerals. Subject: Analysis of Talc Products and Ores for Asbestiform Amphiboles. Department of Earth Sciences, Dartmouth College, March 1974. Available from: <https://repository.library.brown.edu/studio/item/bdr:858503/>.
13. Scheltz J. Letter to R. Rolle (J&J), Review of experimental techniques for the Concentration of Asbestos minerals in Talc - Project #0503-00. J&J, 27 November 1974. Available from: <https://repository.library.brown.edu/studio/item/bdr:1082590/>.
14. Blount AM. Amphibole content of cosmetic and pharmaceutical talcs. Environ Health Perspect. 1991 Aug;94:225-30. PubMed PMID: 1659533. Pubmed Central PMCID: PMC1567955.
15. Blount AM. Letter to Michelle Refregier, Talc De Luzenac, Re: Paper in Environmental Health Perspectives. The Newark Museum, 10 February 1992. Available from: <https://repository.library.brown.edu/studio/item/bdr:1104413/>
16. Blount A. Letter to R. Hatcher (Mehaffy and Weber). 23 April 1998. Available from: <https://repository.library.brown.edu/studio/item/bdr:858504/>.
17. Blount A. Alice Blount Deposition in Ingham vs. J&J et al. Circuit Court of the City of St. Louis, State of Missouri, Case Number 1522-CC10417-01 (April 13, 2018). Available from: <https://repository.library.brown.edu/studio/item/bdr:858554/>.



18. Stewart I. Letter to Allen Joslyn, Esq. (Cahill, Gordon, and Reindel), Re: Talc Sample Analysis, RJ Lee Group Project Number LBH211626. RJ LeeGroup, Inc., 27 January 1993. Available from: <https://repository.library.brown.edu/studio/item/bdr:925805/>.
19. ISO 22262-2:2014 - Air quality - Bulk materials - Part 2: Quantitative determination of asbestos by gravimetric and microscopical methods. International Organization for Standardization (ISO), 2014. Available from: <http://www.iso.org/standard/56773.html>
20. Ashton WH. Memo to G. Lee (J&J). J&J, 24 November 1976. Available from: <https://repository.library.brown.edu/studio/item/bdr:858439/>.
21. Sandland G. Meeting Notes of CTFA Talc Subcommittee. CTFA, 4 December 1974. Available from: <https://repository.library.brown.edu/studio/item/bdr:858498/>.
22. Asbestos Particles in Food and Drugs. Notice of Proposed Rulemaking. Fed Regist. 1973 Sep;38(188):27976-81.
23. Sandland G. Letter to FDA Hearing Clerk, Proposed Order Method for Asbestos in Talc Published in the Federal Register. CTFA, 26 December 1973. Available from: <https://repository.library.brown.edu/studio/item/bdr:858497/>.
24. Sandland G. Position I (No) Optical Microscope method is unacceptable. CTFA, 26 February 1975. Available from: <https://repository.library.brown.edu/studio/item/bdr:858448/>.
25. Sandland G. Minutes of the CTFA Talc Subcommittee Meeting. CTFA, 4 February 1975. Available from: <https://repository.library.brown.edu/studio/item/bdr:858505/>.
26. Estrin N. CTFA Talc Taskforce Minutes. CTFA, 7 February 1975. Available from: <https://repository.library.brown.edu/studio/item/bdr:841518/>

27. Unknown. Talc Analysis (Asbestos). ES Laboratories, 12 June 1971. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841675/>.
28. Stevens RE. Determination of Asbestos in Talc by Light-Optical Microscopy for Whittaker, Clark & Daniels, Inc. Ernest F. Fullam, Inc., 20 November 1973. Available from: <https://repository.library.brown.edu/studio/item/bdr:858549/>.
29. Wolkodoff V. Internal Correspondence to R.S. Lamar. Subject: Petrographic Calculation of Chrysotile and Tremolite Family Fibers in Commercial Talc by FDA Proposal of August 20, 1973. Johns-Manville, 4 September 1973. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858551/>.
30. Shimps R. Letter to J.P. Simko (Colgate-Palmolive Company). McCrone Associates, 4 February 1974. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841588/>.
31. Sandland G. Talc and Asbestos. CTFA Cosmetic Journal. 1976 January/March;8(1):21-22. Available from: <https://repository.library.brown.edu/studio/item/bdr:858522/>
32. Estrin N. Letter to R. Schaffner (FDA). Re: Summary of analyses of talcs from the United States and other parts of the world. CTFA, 23 September 1975. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:1104416/>.
33. Estrin N. Letter to H. Eiermann (FDA). CTFA, 15 March 1976. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841459/>.
34. Saad HY. Office memo to C. S. Rowland. Talcs - Supply and Asbestos Situation. Avon Products, 3 Dec 1971. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841526/>.

35. Ashton WH. Letter to Hildick-Smith (J&J), Assay of Talc in Baby Powder (p.16). J&J, 14 May 1971. Available from: <https://repository.library.brown.edu/studio/item/bdr:858469/>.
36. Ashton WH. Letter to W. T. Caneer (Colorado School of Mines Research Institute). J&J, 6 August 1971. Available from: <https://repository.library.brown.edu/studio/item/bdr:841530/>.
37. Grieger G. Preliminary Report on Examination of Grantham Ore, Medicated Talcum Powder, and Shower to Shower Talcum Powder. McCrone Associates, 3 September 1971. Available from: <https://repository.library.brown.edu/studio/item/bdr:841528/>.
38. Zeitz V. New Regent Systems, Plant Trial at Windsor Minerals, Inc. Windsor Minerals, 14 May 1974. Available from: <https://repository.library.brown.edu/studio/item/bdr:841601/>.
39. Steffen J, D. E, Fassler E, Tran T, editors. Presence of asbestos in consumer talc products: Evaluating a “zero tolerance” policy. *APHA Annual Meeting and Expo*; Atlanta, Georgia, 4-8 November 2017.
40. Estrin N. Talc Subcommittee Minutes. CTFA, 15 March 1976. Available from: <https://repository.library.brown.edu/studio/item/bdr:858438/>.
41. Estrin N. CTFA Talc Subcommittee Minutes. CTFA, 31 March 1976. Available from: <https://repository.library.brown.edu/studio/item/bdr:841677/>.
42. Eiermann H. Memo to Schaffner (FDA), Asbestos in Talc - summary company tests. FDA, 18 March 1976. Available from: <https://repository.library.brown.edu/studio/item/bdr:858441/>.
43. Walcott J. Talc Tests Wanting, FDA Experts Admit. *Record Bergen County, N.J.*, 11 March 1976. Available from: <https://repository.library.brown.edu/studio/item/bdr:1082643/>.

44. Eiermann H. Memo of Visit with Rachel Scott, Correspondent at The Washington Post. FDA, 28 September 1976. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858508/>.
45. Asbestos Found In Ten Powders. *The New York Times*, 10 March 1976. Available from:  
<http://www.nytimes.com/1976/03/10/archives/asbestos-found-in-ten-powders.html>
46. Eiermann H. Cosmetic Regulatory Activities In The United States: Past, Present And Future. *Contact Derma*. 1978;4:8.
47. CTFA Method J4-1: Asbestiform Amphibole Minerals in Cosmetic Talc. CTFA, 7 October 1976. Available from: <https://repository.library.brown.edu/studio/item/bdr:841542/>.
48. Ayres P, Boughton R, Cowan A, et al. *Cosmetic Talc: A CPTA Guide*. London: The Cosmetic, Toiletry, and Perfumery Association Limited, 2016. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:1151836/>.
49. Lee G. Letter to Talc Advisory Group. CTFA Cosmetic Talc Specification. J&J, 26 August 1975. Available from: <https://repository.library.brown.edu/studio/item/bdr:858538/>.
50. Stanley H. Letter to R.E. Norwood. Subject: Minutes of the CTFA Talc Subcommittee Meeting. 27 July 1976. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841678/>.
51. Scheltz J. Cover letter for CTFA Round Robin. J&J, 13 December 1976. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:1078414/>
52. Minutes: CTFA Task Force on Round Robin Testing of Consumer Talcim [sic] Products for Asbestiform Amphibole Minerals. CTFA, 17 May 1977. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841544/>

53. Scheltz J. Memo to George Lee (J&J), NF Estrin (CTFA) and G. Sandland (Bristol-Myers Products) Re: CTFA Task Force On Round Robin Testing Of Consumer Talcum Products. J&J, 29 September 1977. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841520/>
54. Schelz J. Confidential letter to Mr. Charles Haynes (CTFA). J&J, 1 March 1978. Available from: <https://repository.library.brown.edu/studio/item/bdr:936323/>.
55. Waggoner W. FDA Call File, Subject: FOI and Johnson's Baby Powder. J&J, 20 June 1977. Available from: <https://repository.library.brown.edu/studio/item/bdr:936011/>.
56. Kennedy D. Letter to Dr. SM Wolfe and Dr. B Gordon (Public Citizen). FDA, 11 January 1979. Available from: <https://repository.library.brown.edu/studio/item/bdr:1104345/>.
57. Douilett P. Petition for labeling of warning of the hazardous effects produced by asbestos in cosmetic talc. 8 November 1983. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858510/>.
58. Kohler R. FDA Call File Re: Talc Citizen Petition. J&J, 14 February 1984. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:925813/>.
59. Pines W. Memo to Kathie O'Callaghan, Johnson & Johnson Asbestos in Talc. Burson-Marsteller, 5 March 1984. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:925814/>
60. Brown R. Memo to Gary Flamm, Asbestos in Talc. QRAC (Quantitative Risk Assessment Committee). Department of Health and Human Services, 6 June 1985. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858427/>.



61. Taylor L. Response to Request for Quantitative Analysis of Risk from Potential Exposure to Asbestos from Cosmetic Talc Use. J&J, 15 November 1984. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:925808/>.
62. Swanson J. Letter to Phillippe Douilett (citizen petition). FDA, 11 July 1986. Available from: <https://repository.library.brown.edu/studio/item/bdr:841680/>.
63. Cashen J, Epstein SS. FDA Citizen Petitions from Cancer Prevention Coalition, 1994 and 2008. 17 November 1994; 13 May 2008. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:1161226/>.
64. Cramer DW, Welch WR, Scully RE, Wojciechowski CA. Ovarian cancer and talc: a case-control study. Cancer. 1982 July 15;50(2):372-6. PubMed PMID: 7083145.
65. Harlow BL, Cramer DW, Bell DA, Welch WR. Perineal exposure to talc and ovarian cancer risk. Obstet Gynecol. 1992 July;80(1):19-26. PubMed PMID: 1603491.
66. Kavanaugh E. Letter to the FDA, Re: FDA Docket No. 94P-0420/CP 1. CTFA, 16 June 1995. Available from: <https://repository.library.brown.edu/studio/item/bdr:841681/>.
67. Bailey J. Response to Jill Cashen (citizen petition). FDA, 11 July 1995. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858513/>.
68. Wille K. Email to Clayton Paterson, et al., Talc Citizen's Petition- Next Steps. J&J, 17 May 2008. Available from: <https://repository.library.brown.edu/studio/item/bdr:841689/>.
69. Hall R. Email to S. Mann (J&J). NTP Proposal to List Talc (SFXE30.pdf). Crowell & Moring LLP, 1 February 2005. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858515/>.

70. Huncharek M. Fax to Robert Glenn (Crowell & Morning). Talc Projects Letter of Agreement. Meta-Analysis Research Group, 6 October 2004. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858517/>.
71. Bernard C. Email to Mark Zamek (Rio Tinto Minerals), Meeting w/ J&J. Rio Tinto Minerals, 3 November 2008. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858509/>.
72. Memorandum of Meeting at FDA. Imerys, 8 May 2009. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858443/>.
73. Bernard C. Product Stewardship: Key Issues and Initiatives Update. Rio Tinto Minerals, 29 March 2011. Available from: <https://repository.library.brown.edu/studio/item/bdr:858520/>.
74. Gettings S. Memorandum to Sallie Carr (ISRP), Talc Symposium. CTFA, 28 September 1993. Available from: <https://repository.library.brown.edu/studio/item/bdr:858415/>.
75. List of Participants ISRTP and FDA Workshop: Talc Consumer Uses and Health Perspectives. Imerys, 31 January to 1 February 1994. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858418/>.
76. Drope J, Bialous SA, Glantz SA. Tobacco industry efforts to present ventilation as an alternative to smoke-free environments in North America. Tob Control. 2004 March;13 Suppl 1:i41-7. PubMed PMID: 14985616. Pubmed Central PMCID: PMC1766145. Epub 2004/02/27.
77. M.S. The Franklin Institute Policy Analysis Center: Contract Terms. 20 June 1980. Available from: <http://industrydocuments.library.ucsf.edu/tobacco/docs/gymd0143>

78. Baker RD, Ducasse B. Workshop on Talc: Consumer Uses and Health Perspectives. Imerys, 11 February 1994. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841684/>
79. NTP Technical Report on the Toxicology and Carcinogenesis Studies of Talc in F344/N Rats and B6C3F1 Mice (Inhalation Studies). National Institutes of Health, US Department of Health and Human Services, Publication No. 93-3152, September 1993. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858543/>
80. Gettings SD. Draft Minutes Talc Interested Party Task Force. CTFA, 25 July 1994. Available from: <https://repository.library.brown.edu/studio/item/bdr:841685/>
81. Regulatory Toxicology and Pharmacology, Full Volume 21, Issue 2; pp: 207-325 1995 [updated April]. Available from: <http://www.sciencedirect.com/journal/regulatory-toxicology-and-pharmacology/vol/21/issue/2>
82. Boorman GA, Seely JC. The lack of an ovarian effect of lifetime talc exposure in F344/N rats and B6C3F1 mice. Regul Toxicol Pharmacol. 1995 Apr;21(2):242-3. PubMed PMID: 7644712.
83. Carr C. Letter to Stephen Gettings (CTFA). International Society of Regulatory Toxicology and Pharmacology, 2 March 1994. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841683/>
84. Gettings SD. Letter to Jelleff Carr (International Society of Regulatory Toxicology and Pharmacology) Re; Change Fibers to Particles in Borman's Manuscript. CTFA, 22 September 1994. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841686/>

85. Gettings SD. Letter to Boorman (National Institute of Environmental Health Sciences). CTFA, 7 October 1994. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:937613/>.
86. Ashton WH. Letter to S. Gettings CTFA Re: 94-TA-45 Boorman Final Minutes Changing Fibers to Particles. J&J, 26 October 1994. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841688/>.
87. Weiss R. 'Data Quality' Law Is Nemesis Of Regulation. *Washington Post*, 16 August 2004.
88. Center for Regulatory Effectiveness, What is CRE?, <https://www.thecre.com/about.html> (2018, accessed 14 January 2021).
89. Tozzi J. Letter to Richard Zazenski (Luzenac). Multinational Business Services, Inc., 27 November 2000. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:1153281/>.
90. Kelly W. Letter to Kerry Weems (U.S. Department of Health and Human Services). CRE, 3 March 2004. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841464/>.
91. CRE Invoices. Multinational Business Services, Inc., 2001-2015. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:1153278/>.
92. Sharma S. Email to Eve Brooks, Re: Contractors. Imerys, 12 August 2011. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:1155509/>.
93. CRE Privilege Log. CRE, 29 Oct 2018. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:1153280/>.

94. Deposition of William Kelly. Leavitt and McElroy v. Johnson & Johnson, et al. Superior Court of California, County of Alameda, (November 5, 2018). Available from:  
<https://repository.library.brown.edu/studio/item/bdr:938039/>.
95. Michaels D. *The Triumph of Doubt: Dark Money and the Science of Deception*. Oxford: Oxford University Press; 2020.
96. Zazenski R. Email to S. Mann (J&J), Re: Letter to NIEHS and OMB. Luzenac, 11 January 2005. Available from: <https://repository.library.brown.edu/studio/item/bdr:1161057/>.
97. Graham J. Letter to Elias Zerhouni (NIH). Office of Information and Regulatory Affairs, 16 November 2004. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:841460/>.
98. Mann S. Email to Linda Loretz (CTFA) Subject: RE: IARC Re-evaluation of Talc - Input Requested & Conference Call. J&J, 23 June 2005. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858539/>.
99. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Volume 93: Carbon Black, Titanium Dioxide, and Talc. Lyon, France: World Health Organization and International Agency for Research on Cancer, 2010. Available from:  
<https://publications.iarc.fr/Book-And-Report-Series/Iarc-Monographs-On-The-Identification-Of-Carcinogenic-Hazards-To-Humans/Carbon-Black-Titanium-Dioxide-And-Talc-2010>.
100. Fiume M, Boyer I. Safety Assessment of Talc as Used in Cosmetics. Cosmetic Ingredient Review, 12 April 2013. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858558/>



101. Kelly W. Letter to Dr. F. Alan Andersen, Initial Comments of CIR draft Scientific Literature Review. CRE, 19 October 2012. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:858536/>.
102. Kelly W. Email to Jim Tozzi, Re: CIR Document. CRE, 27 Nov 2012. Available from:  
<https://repository.library.brown.edu/studio/item/bdr:1153277/>.
103. Cosmetic Ingredient Review, <http://www.cir-safety.org/> (2018, accessed 12 Jan 2021).
104. Kelly W, Tozzi J. Email Exchange, Re: missed Kelly phone call. CRE, 15 April 2013.  
Available from: <https://repository.library.brown.edu/studio/item/bdr:1155510/>.
105. Federal Focus Website, <http://www.fedfocus.org> (accessed 15 December 2020).
106. Blum R, Cockrill J, Collins R, et al. *Lifting the Veil of Secrecy: Corporate Support for Health and Environmental Professional Associations, Charities, and Industry Front Groups*. Washington, D.C.: Integrity in Science Project, Center for Science in the Public Interest; 2003.

# EXHIBIT P



## Biomedical & Environmental Consultants, Inc.

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Indoor Air Quality  
Inhalation Technology/Toxicology  
In Vitro Bioassays  
Management Consulting  
Medicine  
Molecular Biology  
Nutrition  
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Pathology  
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Pharmacodynamics  
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Radiation Safety/Protection  
Safety Evaluation  
Risk Assessment  
Toxicology

September 19, 2002

**Dr. Steve Mann, Manager**

**Preclinical Toxicology**

**J&J Consumer Products**

**199 Grandview Road**

**Skillman, NJ 08558-9418**

Dear Steve,

I am enclosing BEC's invoice for professional services as discussed. Do you know what the status of the Krushinski litigation is?

I have not heard anything yet regarding the publication of my paper other than that is in press. I will let you know when it is published and send 50 reprints to Bill Ashton when they become available.

Kind regards

**Dr. Alfred P. Wehner**

312 Saint Street, Richland, WA 99352 • (509) 375-0873 • FAX (509) 375-5693

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215-938-0922 (Ceshten)



**From:** O'Shaughnessy, John [JJCUS]  
**Sent:** Tuesday, October 18, 2005 7:14 PM  
**To:** Mann, Steven [CPCUS]; Bianchini, Robert [CPCUS]; Caldwell, Daniel [JJCUS]; Casavieri, Joan [CPCUS]; Grossman, Iris [CPCUS]; HENGESBERGER, CORINNA [CONDE]; Lange, Rainer [CONFR]; Pai, Vivian [JJCUS]; Perrodin, Francoise [CONFR]; Porracchia, Jean-Francois [CPCUS]; Predale, Robert A. [CPCUS]; 'Randolph Haviland'; Ries, Gerd [CONDE]; RIETZEL, MATHIAS [CONDE]; Rouleau, Gaetan [CPCUS]; Weytjens, Dirk [JanBe]; Wille, Kathleen K. [CPCUS]; Wilson, Mike [NEUUS]; Ferguson, John [CPCUS]; Head, Michael [CPCUS]; 'Hopkins, John'; Moeller, Lisa [CPCUS]; Monseau, Marc [JJCUS]; Musco, Nancy [CPCUS]; Telofski, Lorena [CPCUS]; 'Wehner, Al'; Devine, Danielle J [CPCUS]; Matheson, J. Neal [CPCUS]; Nettesheim, Susan [CPCUS]; Paterson, Clayton H. [JJCUS]; Sinicio, Telma [CPCUS]  
**Cc:** Sterchele, Paul [CPCUS]; McGowan, Claude [CPCUS]; Chase, David J. (Dr.) [CPCUS]; Wong, Jeremy [CPCUS]  
**Subject:** RE: NTP Withdraws Talc Nomination

great job Steve et al.  
 This is no small feat!  
 John

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

**From:** Mann, Steven [CPCUS]  
**Sent:** Tuesday, October 18, 2005 3:02 PM  
**To:** Bianchini, Robert [CPCUS]; Caldwell, Daniel [JJCUS]; Casavieri, Joan [CPCUS]; Grossman, Iris [CPCUS]; HENGESBERGER, CORINNA [CONDE]; Lange, Rainer [CONFR]; Pai, Vivian [JJCUS]; Perrodin, Francoise [CONFR]; Porracchia, Jean-Francois [CPCUS]; Predale, Robert A. [CPCUS]; Randolph Haviland; Ries, Gerd [CONDE]; RIETZEL, MATHIAS [CONDE]; Rouleau, Gaetan [CPCUS]; Weytjens, Dirk [JanBe]; Wille, Kathleen K. [CPCUS]; Wilson, Mike [NEUUS]; Ferguson, John [CPCUS]; Head, Michael [CPCUS]; Hopkins, John; Moeller, Lisa [CPCUS]; Monseau, Marc [JJCUS]; Musco, Nancy [CPCUS]; O'Shaughnessy, John [JJCUS]; Telofski, Lorena [CPCUS]; Wehner, Al; Devine, Danielle J [CPCUS]; Matheson, J. Neal [CPCUS]; Nettesheim, Susan [CPCUS]; Paterson, Clayton H. [JJCUS]; Sinicio, Telma [CPCUS]

**Cc:** Sterchele, Paul [CPCUS]; McGowan, Claude [CPCUS]; Chase, David J. (Dr.) [CPCUS]; Wong, Jeremy [CPCUS]  
**Subject:** NTP Withdraws Talc Nomination  
**Importance:** High

To All,  
 I apologize if some of you get this message twice as I am sending it to several distribution lists and some of you maybe be on more than one of my lists.

Great news. NTP has withdrawn talc from consideration for listing on the 12th Report on Carcinogens. They also have not listed it for consideration on the 13th RoC, as they did for some other materials. Talc was the only material withdrawn.

This is a direct result of our efforts in coordination with Luzenac and CTFA. We did it!

<http://ntp-server.niehs.nih.gov/files/12thRoCFR.pdf>

Regards,  
 Steve

**Steven W. Mann, Ph.D., D.A.B.T.**  
**Director, Toxicology**  
**Johnson & Johnson Consumer & Personal Products Worldwide**  
**199 Grandview Road**  
**Skillman, NJ 08558-9418**  
**Tel: (908) 874-1232; Fax: (908) 904-3738**

# EXHIBIT Q



## **EXPERT PANEL WITH THE FDA ON TALC**

**Date:** June 3, 2025

**Court Reporter:** Carol A. Nelson, RPR, CCR, CSR

Paszkiewicz Court Reporting  
Phone: (618) 307-9320 / (855) 595-3577 toll-free  
Fax: 618-855-9513  
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EXPERT PANEL WITH THE FDA ON TALC

Transcribed by

Carol A. Nelson, RPR, CCR, CSR

1 DR. MAKARY: Okay. Welcome. Great to see  
2 everybody. This is the FDA expert roundtable  
3 on talc, and it's so good to see a packed  
4 house. And our experts from around the world,  
5 thank you for being here.

6 Scientists for a long time have been  
7 pointing to an urgent problem, and that is the  
8 potential carcinogenic activity of talc. Talc  
9 has increasingly been recognized to have health  
10 concerns beyond just cancer, also with  
11 inflammation. For these reasons, talc has been  
12 removed from certain topical products  
13 voluntarily in the industry. Yet at the same  
14 time we're eating it. Talc is in candy that  
15 children eat. It's in food. It's in the  
16 number one, three, nine and ten most common  
17 medications in the United States. 20 million  
18 people in the United States are estimated to be  
19 eating talc on a regular basis.

20 Why are we not talking about this at our  
21 oncology meetings? As a surgical oncologist, I  
22 go to a lot of conferences. We talk about  
23 chemotherapy and radiation and proton beam  
24 therapy and CAR T and immunotherapy and so many  
25 other cutting-edge treatments that are

1 important and have value.

2 But why are we not talking about root  
3 causes at our meetings? Why don't we talk  
4 about at our oncology meetings the 1993  
5 National Toxicology Program results that found  
6 quote, unquote, clear evidence of carcinogenic  
7 activity of talc in animal studies. Why don't  
8 we talk at our oncology meetings about the  
9 review of studies from 1990 to 2013 suggesting  
10 ovarian cancer and talc were associated with an  
11 odds ratio of 1.3 with statistical  
12 significance.

13 At our oncology meetings, why don't we  
14 talk about the 2019 review of 30 studies  
15 affirming an odds ratio of approximately 1.3.  
16 Why don't we talk about the Taiwan study where  
17 orally ingested talc was associated with  
18 stomach cancer. The mechanism is entirely  
19 plausible. As a matter of fact, the  
20 International Agency for Research on Cancer,  
21 the IARC, in an expert body of 29 individuals  
22 concluded, quote, unquote, strong mechanistic  
23 evidence.

24 Are we ignoring these results because  
25 we're concerned about what it means for our



1 lives? Are we ignoring these results because  
2 we're concerned about the potential that we  
3 might have to change the way medications and  
4 candy and food is made? Are we putting our  
5 head in the sand?

6 Well, today is one of those opportunities  
7 for us to learn about the different opinions  
8 and the scientific evidence on this topic.  
9 We're hosting this panel at the FDA so that we  
10 can hear and listen to all of you, the experts,  
11 and listen to what you think we should be doing  
12 about it, if anything at all.

13 It's not just cancer that talc has been  
14 associated with. It's inflammation. I  
15 remember in my surgical residency putting talc  
16 in chest tubes in patients after a spontaneous  
17 pneumothorax and that I was told to have the  
18 patient rotate to get the talc to be exposed to  
19 as much of the pleuritic surface of the lung as  
20 possible. Why were we using talc? Because it  
21 was well known that talc had very strong  
22 inflammatory characteristic. It ignited an  
23 inflammatory response greater than many other  
24 substances, and that inflammatory response  
25 would result in an acute inflammatory response

1 resulting in a litany of events that would  
2 eventually culminate in scar tissue. And that  
3 scar tissue would help the lung cavity stay  
4 adherent to the pleural cavity. We were doing  
5 that. We were doing that until it was  
6 recognized that talc may have other harms.

7 Well, 40 percent of American kids have a  
8 chronic condition. Nobody seems to know why.  
9 I'm not suggesting that talc is the driver of  
10 our chronic disease epidemic. But if we  
11 generally believe it's pro-inflammatory and  
12 kids are ingesting it, aside from the potential  
13 cancer-causing effects, shouldn't there be  
14 reason for concern? Many chronic conditions  
15 are the result of general body inflammation  
16 often in conjunction with insulin resistance.  
17 And so I think this issue deserves a hard look  
18 by the FDA which is why we're having this  
19 panel.

20 So thank you all of us for being here and  
21 Deputy Commissioner Sara Brenner is going to  
22 take it from here. Thank you, Sara, for  
23 moderating our panel today.

24 DR. BRENNER: Thank you so much,  
25 Commissioner Makary.

1           It is fantastic to see folks here, and  
2   thank you again for joining us in our main  
3   voyage of roundtables on special topics. We're  
4   excited to hear what you have to share with us  
5   today.

6           We have invited top scientific experts  
7   from around the world to evaluate the safety  
8   and necessity of talk as an additive in food,  
9   drug and cosmetic products, all of which are  
10   regulated here at the FDA.

11          I'd like to welcome, and I'll go around  
12   and introduce our guest experts as well as  
13   their titles, where they're working currently.  
14   Dr. George Tidmarsh, MD, Ph.D., Adjunct  
15   Professor, Pediatrics, Neonatology at Stanford  
16   University. Should we make him wave? Yeah.  
17   All right.

18          John Joseph Godleski, MD, Professor of  
19   Pathology Emeritus at Brigham and Women's  
20   Hospital.

21          Sandra McDonald, MD, Staff Pathologist,  
22   John J. Godleski, MD, PLLC. Thank you.

23          Daniel Cramer, MD, ScD, Professor of  
24   Obstetrics, Gynecology and Reproductive Biology  
25   Part-time at Brigham and Women's Hospital.

1 Joellen Schildkraut, Ph.D., MPH,  
2 Professor, Department of Epidemiology, Emory  
3 University.

4 All right. Swinging over here. Malcolm  
5 Sim, Emeritus Professor of Planetary Health,  
6 Monash University Australia. That's a long  
7 ways.

8 Steven Pfeiffer, Senior Vice President of  
9 Technical Operations, Miridor Therapeutics.

10 Nicolas Wentzensen, MD, Ph.D., MS,  
11 Clinical Genetics Branch, National Cancer  
12 Institute, NIH.

13 And Nicole Kleinstreuer, Ph.D, Acting NIH  
14 Deputy Program Director for Program  
15 Coordination, Planning and Strategic  
16 Initiatives.

17 All right. So here we are.

18 Talc has some under increased scrutiny due  
19 to concerns about potential health effects,  
20 especially when contaminated with asbestos or  
21 consumed over prolonged periods of time.

22 Today's expert panel will review data related  
23 to talk exposure and evaluate it's continued  
24 use within the context of public health need  
25 and alternatives that are available.

1 Hospital for more than 35 years and at the same  
2 time was in charge of analytical electron  
3 microscopy at Harvard School of Public Health  
4 and led an inhalation toxicology research group  
5 setting in the health effects of inhaled  
6 particles. I retired from these academic  
7 positions in 2017 and was name professor of  
8 pathology emeritus at Harvard Medical School.

9 My plan for retirement was to start a  
10 small consulting business focusing on finding  
11 and identifying foreign particles in human  
12 tissue. My interest in talc has been  
13 long-standing. As a pulmonary pathologist, I  
14 saw patients who had undergone talc pleurodesis  
15 which required the use of very large-particle  
16 talc in order to sequester talc in the  
17 inflammatory process in the pleural space and  
18 avoid development of pulmonary inflammation,  
19 which happened when smaller particles were used  
20 as part of talc pleurodesis.

21 As the primary pathologist for one of the  
22 largest mesothelioma treatment programs in the  
23 country, we had a number of talc miners  
24 referred to our program with mesothelioma.  
25 It's well known that talc is contaminated with

1 tremolite and chrysotile asbestos and this is  
2 thought to be the basis of these patients'  
3 disease.

4 In 2006, Dr. Dan Cramer who devoted much  
5 of his career to the epidemiology of talc and  
6 ovarian cancer came to my office at Harvard  
7 School of Public Health and asked if I thought  
8 I could find and identify talc in gynecologic  
9 tissue. I studied some of his case material  
10 with polarized light microscopy and was really  
11 shocked to see the large number of birefringent  
12 particles in pelvic lymph nodes as well as  
13 other tissues. We made histologic sections of  
14 these tissues, studied the particles by  
15 scanning electron microscopy and energy  
16 dispersive analysis, identified the particles  
17 as magnesium silicate and with the chemistry of  
18 talc. We published this as a case report in  
19 2007.

20 Since 2017, my company has studied over  
21 300 cases of genital talc exposure with the  
22 development of ovarian cancer. In these cases  
23 using polarized light microscopy and in situ  
24 standing electron microscopy, essentially  
25 studying two-micron-thick sections of tissue.



1 We found talc in 90 percent of the cases. We  
2 have found as many as a thousand talc particles  
3 in these very small samples. We have found  
4 asbestos fibers in just under 10 percent of the  
5 cases. The talc particles and talc fibers were  
6 in multiple pelvic sites, including the ovary,  
7 fallopian tube and especially lymph nodes.

8 We've studied cases of pleural  
9 mesothelioma where the only known exposure was  
10 talc and have found significant amounts of talc  
11 in these patients' lung tissue. Along with our  
12 colleagues Alexei Federov and David Gregory and  
13 others, we studied the effect of talc particles  
14 on phagocytes in coculture with ovarian cancer  
15 cells. We found that the growth of the cancer  
16 cells cocultured with macrophages treated with  
17 talc and estradiol was significantly better  
18 than growth of cancer cells cocultured with  
19 macrophages treated with various control  
20 particles and estrogen. This suggested that  
21 talc plus estrogen may compromise immuno  
22 surveillance function of macrophages and allow  
23 the cancer cells to grow unchecked.

24 Overall, in the last few years, I've  
25 contributed more than 15 papers and

1 presentations dealing with talc. Based on my  
2 experience in studying talc in tissues as well  
3 as reports of others who have found talc in  
4 tissues after ingestion, it is my opinion that  
5 more studies of ingested talc are needed, but  
6 moving toward a ban of human ingestion of talc  
7 in the United States is appropriate and really  
8 overdue. Thank you.

9 DR. BRENNER: Our next panelist is Sandra  
10 McDonald, MD, Staff Pathologist, John J.  
11 Godleski, MD, PLLC. Go ahead.

12 DR. McDONALD: Thank you, Dr. Brenner, and  
13 thank you to the FDA for inviting me and the  
14 other panelists here for this very important  
15 discussion. I appreciate it.

16 My name is Sandra McDonald. I am an  
17 anatomic and clinical pathologist having  
18 graduated from Duke University School of  
19 Medicine and the pathology residency program at  
20 Duke University Medical Center. My board  
21 certification is from the American Board of  
22 Pathology.

23 My experience in pathology spans  
24 academics, private practice, pharmaceutical  
25 industry in consultative roles. Including my

1 time in the residency program, I have been a  
2 pathologist for 35 years. My specialties  
3 include general surgical pathology, lung  
4 pathology and electron microscopy. I also  
5 evaluated numerous cases of gastrointestinal  
6 pathology during my years in academic practice  
7 including colonic malignancy, colonic polyps  
8 and inflammatory bowel disease.

9 While a pathology resident at Duke  
10 University Medical Center, I used analytical  
11 scanning electron microscopy to identify  
12 exogenous particles in human lung and other  
13 tissue sites which helped to explain disease  
14 processes, established links with prior  
15 exposure or both. This led to the authorship  
16 or coauthorship of several publications in the  
17 area. In recent years I have worked closely  
18 with Dr. John Godleski, of course who's a  
19 panelist here and who just spoke, to use these  
20 same methods for the identification of talc in  
21 the surgically obtained gynecologic tissues of  
22 patients who had used talc in the perineal area  
23 and who subsequently developed ovarian cancer.  
24 My experience has led to the authorship or  
25 coauthorship of several publications including

1 talc in this area. One of those papers  
2 published in the American Journal of Clinical  
3 Pathology in 2019 established that polarizing  
4 light microscopy can and should be used as a  
5 screening device for the tissues from such  
6 patients. Since talc is birefringent and can  
7 migrate from the perineum to other pelvic  
8 tissue sites where it first may be detected  
9 with polarizing light microscopy and then  
10 subsequently confirmed with analytical electron  
11 microscopy.

12 In another paper, we established using  
13 mathematical principles, the threshold  
14 elemental ratios that should be used to qualify  
15 a particle as talc.

16 In yet another paper, we described the  
17 typical size ranges and aspect ratios that are  
18 typically found for talc particles in patients  
19 with perineal exposure and drew comparisons  
20 with the characteristics of talc particles  
21 typically found in commercially available talc  
22 powder.

23 For individual patients, such data has  
24 been helpful in confirming links with prior  
25 exposure and documenting the presence of talc

1 in pelvic tissues where ovarian cancer is known  
2 to have arisen or spread nearby.

3 The analytic method we used, scanning  
4 electron microscopy combined histopathologic  
5 evaluation of matching tissue sections is an  
6 especially powerful method for the evaluation  
7 of talc in human tissues. The reason is that  
8 it geographically correlates the light  
9 microscopic and spectra analytic findings, thus  
10 providing detailed location information for the  
11 particles in tissue such as where lodged, what  
12 anatomic landmarks are nearby and what  
13 inflammatory infiltrates or other pathologic  
14 process may be in the vicinity. This has been  
15 especially helpful in establishing tissue  
16 migration patterns for talc when the initial  
17 exposure is the peroneal area. Such methods  
18 can also readily provide information on  
19 asbestos fibers or other substances that may be  
20 present in tissues that have had talc  
21 exposures.

22 So I believe that the application of  
23 pathologic knowledge, analytic microscopy,  
24 principles of carcinogenesis and sound  
25 scientific methods that helped establish the

1 self-report and there are problems with that.  
2 As Joellen alluded to, we know that there is  
3 differences in self-report between those who  
4 are affected with cancer and those who are not  
5 affected with cancer. And it's hard to assess  
6 the dose-response between these products and  
7 the outcome because they're so hard to measure.  
8 But I think Dan Cramer and others have done a  
9 great job of getting as close to that as  
10 possible but it's still very hard to do that.

11       There's also a lot of, I think, problems  
12 with the talc terminology. Talc exists in  
13 different states and I think we -- I learned a  
14 lot from the mineralogists who were at the IARC  
15 panel talking about lamellar talc, fibrous  
16 talc, asbestiform fibers, but not asbestos.  
17 And then the whole world of asbestos  
18 contamination. That is a real problem in that  
19 data that we look at. The problem is that talc  
20 and asbestos co-occur in these mines and the  
21 mines where it's well-documented that they are  
22 present at the same time and they are certainly  
23 in any product that would be coming from these  
24 mines. There are other places where there's  
25 likely less contamination but it's really very



1 what goes in our foods and medicines is an  
2 assessment of benefits and drawbacks and we've  
3 heard today from the panel that there are safer  
4 alternatives that aren't dramatically more  
5 expensive or troublesome that could be  
6 implemented in place of talc where it's used in  
7 food and medicine. So we know that there's  
8 considerable risk. We've discussed that as  
9 well. So I think the benefits and drawbacks do  
10 support the consensus that the panel is  
11 recommending today, that we move forward to  
12 using those other alternatives that exist.

13 The second point I would make is that I  
14 think even if we removed all the exposure  
15 tomorrow, it would still be a good idea to  
16 continue to study the pathologic effects of  
17 talc in the GI tract because there's a lot  
18 that's not known, as well as in other body  
19 systems as well. And the reason for that is  
20 even if we remove exposure today, no one's  
21 exposed to talc today going forward, we still  
22 have all the past or legacy exposures that have  
23 occurred that we need to know what's going to  
24 happen or what might happen. And we see, for  
25 example, in asbestos exposure, asbestos fiber

1 exposure, we know the patients might have been  
2 exposed decades ago and then they develop  
3 disease many decades later. So we still need a  
4 good understanding of what's going on because  
5 of all the past exposures.

6 I guess the third point I would just  
7 recommend kind of reflecting my own experience  
8 as a pathologist, we talked about dissemination  
9 of information to the general public. My  
10 feeling is that pathologists have an important  
11 role in disseminating information about things  
12 like this to other physicians. And this  
13 occurred to some degree with the issue of talc  
14 in the perineal area. In the sense that for  
15 example, the paper we published that said if  
16 you know a patient has exposure in talc, take a  
17 look at those tissues really carefully to see  
18 what's there. So I think we pathologists have  
19 an important role in just disseminating  
20 information going forward.

21 DR. CRAMER: Well, I described my study of  
22 talc in ovarian cancer, the first one to make  
23 the association. That was published in 1982.  
24 And it took 30 years or more for the dangers to  
25 be fully appreciated and action taken to remove

1 talc from the baby powders. We can't wait  
2 another 30 years to realize all the harms that  
3 may come from ingested talc. With safer  
4 alternatives we need to make take some action  
5 now.

6 DR. SCHILDKRAUT: Okay. In terms of the  
7 three points, I could echo almost everything  
8 that was said. I will say that I've been more  
9 surprised than I expected to be about the food  
10 contamination. That's very worrisome to me.

11 Again, I'll echo the fact that I'm  
12 concerned about contamination with asbestos in  
13 talc. And that route of contamination needs  
14 more study as well because we do know that  
15 coming in through ovarian cancer that the  
16 genital exposure coming in through the vagina  
17 is where we see the strongest association. So  
18 I do -- I have a curiosity and I would like to  
19 know more about how, say, it's ingested or  
20 pulmonary, you know, what you breathe could  
21 affect the ovaries. Because this is one of the  
22 cancers that most established association, I  
23 guess you could say.

24 The other thing that I haven't heard that,  
25 you know, what I haven't heard is really more

1 REPORTER CERTIFICATE

2 I, Carol A. Nelson, Certified Court  
3 Reporter, do hereby certify that there came before  
4 me on June 3, 2025, via videoconference

5 FDA PHYSICIAN ROUNDTABLE

6 That said roundtable discussion was  
7 reported by myself and translated using  
8 computer-aided transcription, and the above  
9 transcript of proceedings is a true and accurate  
10 transcript of my notes as taken at the time of the  
11 discussion.

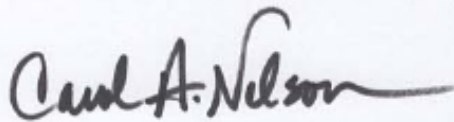
12 I further certify that I am not  
13 related to nor employed by any of the parties to  
14 which this roundtable was transcribed; further, that  
15 I am not a relative or employee of any parties  
16 hereto interested in this action.

17 Dated this 3rd day of June, 2025.

18

19

20

A handwritten signature in black ink that reads "Carol A. Nelson". The signature is written in a cursive style with a long, sweeping underline.

21

Carol A. Nelson, RPR, CCR, CSR

22

23

24

25

# EXHIBIT R

June 9, 2025

Dr. Martin Makary  
Commissioner  
Food and Drug Administration (FDA)  
10903 New Hampshire Avenue  
Silver Spring, MD 20993-0002

Re: Response to "FDA Expert Panel on Talc"

Dear Commissioner Makary:

We write as a wide group of scientists and medical doctors, representing various areas of knowledge, including mineralogy, geology, toxicology, pathology, epidemiology, risk assessment, molecular biology, oncology, and others. Many of us studied talc safety for years or have significant experience in evaluating mineral particles and assessing their health effects. Our group also includes medical professionals who have long treated patients in the field of gynecologic oncology and different types of malignancies, as well as have performed in-depth research on the etiology of gastrointestinal cancers.

We have followed with great interest the ongoing debate concerning the safety of talcum powder and were eager to hear from FDA and participate in a discussion regarding talc science and safety with the agency. Each of the below signatories either attended the roundtable regarding talc safety that FDA held on May 20, 2025 ("Roundtable") live, or watched the Roundtable online because we were unable to attend for a variety of reasons (including an inability to move patient appointments) given the short notice FDA provided.

Unfortunately, not only were we deprived of the opportunity to participate in the discussion held at the Roundtable, but the entire process that FDA employed for the Roundtable did not allow for an open, fair and balanced discussion regarding talc safety. Thus, we write to convey our serious concerns regarding various scientific deficiencies that were readily apparent within the panel's discussion, including most notably the panel's failure to address the Gold Standard scientific studies that refute the propositions and recommendations made by many of the panel members. These failures are particularly troubling in view of the broad stated mandate of the Roundtable, encompassing talc safety in food, drugs and cosmetics. The panel's misplaced and misleading contentions regarding talc safety and related use recommendations therefore have significant economic, regulatory, and legal implications across a wide spectrum of industries. More concerning to the undersigned, those conclusions and recommendations may create serious health concerns to the extent patients are dissuaded from taking life-saving medications due to the panel's unsubstantiated claims concerning the safety of talc.



As an initial matter, the process FDA employed to announce and hold the Roundtable foreclosed the sort of fair, balanced and transparent discussion that FDA itself has emphasized is necessary to ensure appropriate scientific decisions are made, and public confidence is maintained in the agency.<sup>1</sup> As we were informed, FDA first “announced” the meeting in your unscripted comments at a small conference on Thursday, May 15, 2025. Then, a day later, the agency officially announced the meeting on its website, to be held only *two business days later*: Tuesday, May 20, 2025. That short notice made it extremely difficult for interested parties to attend, including many signatories to this letter who had previously scheduled professional obligations. The lack of any meaningful notice is particularly troubling in light of the broad scope of the meeting that covered talc not just in cosmetics or consumer goods, but also in food and drugs. As FDA is no doubt aware, talc serves as an inactive ingredient *in over 14,000 medications*.

Even more troubling was the manner in which panel met, which had been billed as a “public” discussion. Instead, FDA prohibited members of the audience from any form of participation, stating that attendees must be in “listening mode” only. FDA even turned off comments on its YouTube feed of the event. All this combined to ensure that a robust, objective discussion of the scientific evidence could not occur.

Further, FDA billed the event as a “roundtable discussion of an independent panel of scientific experts” without explaining how the panel members were chosen, opening an application process for interested experts, or giving any advanced notice of who the panel members would be. Unfortunately, the participating panelists were largely anything but “independent.” As we know, the panel included several paid plaintiff-side experts in talc-related litigation, none of whom disclosed their conflict of interest during the discussion. The panel did not include any defense-side experts with counterbalancing views.

The panel members correctly acknowledged that the best way to evaluate the issue of talc safety was through epidemiological studies. Yet the panel did not discuss, or even acknowledge, the highest quality epidemiological studies with prospective cohort designs described below, each of which concluded that talc does not cause ovarian cancer. Instead, the panel only discussed case-control studies that they conceded had many biases (such as recall bias) and that at best show a weak association, not causation, between talc and certain cancers. As Dr. Schildkraut aptly noted: “What I can caution about these studies is *we can’t determine causality*.” Certain panel members also mentioned *in vitro* studies that purportedly support talc as a carcinogen, yet serious methodological flaws of those studies were not acknowledged, nor was their relevance to humans discussed.

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<sup>1</sup> The process, and the limited and one-sided science referenced and discussed during the meeting of the panel, also runs directly contrary to the goals and directives announced by President Trump in an Executive Order (“EO”) issued May 23, 2025. That EO directs FDA and other federal agencies to Restor[e] Gold Standard Science, and in particular, ensure that agencies avoid the promotion of “scientific information in a highly misleading manner” and guarantee that decisions “are informed by the most credible, reliable, and impartial scientific evidence available.”

In lieu of addressing the highest quality epidemiology studies, the panel instead relied heavily on a pending, re-designation of talc as “probably carcinogenic” from the International Agency for Research on Cancer (“IARC”). But that designation is not final, and the final evaluation is not expected to be published until later this year.<sup>2</sup> More importantly, as at least one panel member recognized, that designation was not based on any new evidence but rather “reassessment of things that we already had known, not major new studies that showed new things.” Importantly, moreover, with respect to the best evidence of safety, the relevant IARC working group itself found that the epidemiological studies showed only “limited” evidence that talc causes ovarian cancer in humans. That is, the Working Group concluded that chance, bias, and confounding could not be ruled out in these studies.

The panel also did not discuss the weight of evidence for alleged expansion of the possible health effects of talc, to include gastrointestinal cancers in children and young adults. We do not have any evidence that IARC ever confirmed pure talc to be a probable gastrointestinal carcinogen or robust epidemiologic studies to support such an allegation. The panelists mentioned alleged inflammogenicity of pure talc as evidence for possible causation of cancer by ingestion pathway. However, there are numerous inflammogenic agents that are not carcinogenic by every specific route of exposure, if at all.

Also, epidemiological and toxicological studies distinguished between pure talc and talc containing various associated minerals (such as asbestiform particles). There is also a difference between various types of talc (industrial vs. cosmetic grade) that were demonstrated to have different characteristics and associated minerals, relevant for carcinogenic risk assessment. As numerous studies have shown, elongate mineral particles in cosmetic talc typically belong to non-asbestiform category that is not associated with carcinogenic effects. However, all the panel discussion was related to “talc” in general, independent of exposure pathways, mineralogical type, origin, and composition.

These shortcomings are significant, and they lead to an entirely biased and misleading understanding of the true state of Gold Standard Science as it relates to the safety of talc. Had we been able to participate in the meeting in any way beyond “listening mode,” this is what we would have told the panel and the members of the public who listened to the event.

A robust body of scientific literature examining the safety of talc has been amassed over the past several decades. For example, the largest, highest quality epidemiological studies that certain of the below signatories have studied closely and rely upon in treating women ***do not establish that talc causes ovarian cancer***:

- The **Nurses’ Health Study**—the largest women’s health study ever conducted—followed nearly 80,000 women for 24 years, about 40% of whom reported using talcum powder on their genital area or on sanitary napkins. The study showed no increase in the overall rate of ovarian cancer among the talc users, regardless of how often they used talc.

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<sup>2</sup> [https://www.iarc.who.int/wp-content/uploads/2024/07/pr352\\_E.pdf](https://www.iarc.who.int/wp-content/uploads/2024/07/pr352_E.pdf)

- The **Women's Health Initiative Study** included nearly 62,000 women, 53% of whom said they had used powder on their genitals, sanitary napkins, or diaphragms, some for over 20 years. The women were followed from 1993 to 2012, and the analysis showed no increased risk of ovarian cancer in women who used talcum powder. There was also no increase in risk among women who used powder for longer periods of time.
- The **Sister Study** was conducted from 2003-2009 with the support of the National Institutes of Health and the National Institute of Environmental Health Sciences. The study enrolled nearly 42,000 women in the United States and Puerto Rico ages 35-74 who had a full or half-sister who had been diagnosed with breast cancer and were asked about talc use over the prior 12 months. Over the course of the study, no association was found between perineal talc use and subsequent diagnosis of ovarian cancer. While douching was more common among talc users, it was found that douching, but not talc, was associated with the increased risk of ovarian cancer.
- The most recent cohort study, published in the Journal of the American Medical Association (**JAMA**), pooled a number of high-level epidemiological studies and found no statistically significant increased risk of ovarian cancer with talc use. The study reconfirms that a statistical association between ovarian cancer and powder users is not found in large, prospective cohort studies, although some, but not all, case-control studies do indicate a slight statistical association. One potential reason that some have found slight statistical associations is the potential for an overestimation of the true association due to "recall bias." Recall bias is when people with a disease are more likely to overestimate their prior exposures to these risk factors than people without that disease.

Consistent with these studies, the National Cancer Institute of the National Institutes of Health has confirmed in its Physician Data Query ("PDQ") that "the data are inadequate to support an association between perineal talc exposure and an increased risk of ovarian cancer."

In addition to these ovarian cancer focused studies, epidemiology studies also show no association between cosmetic talc exposure and the development of the rare cancer, *mesothelioma*:

- Several cohort studies have measured the health of cosmetic talc miners and millers, who were exposed to large quantities of talc dust daily for their entire working careers. If talc were contaminated with asbestos and caused mesothelioma, one would expect these studies to show an increased risk of mesothelioma, but they uniformly report no such risk.
- Epidemiological studies of barbers, hairdressers, and cosmetologists who typically use talc powder in their occupations also have not shown any increased risk of mesothelioma.
- There also have been epidemiological studies of patients who have undergone a procedure called talc pleurodesis, which involves direct injection of talc into the lining of the lung, and these studies have reported zero cases of mesothelioma.
- Recent toxicological publications confirmed that elongate mineral particles reported in some samples of cosmetic talc were of "non-asbestiform" variety, or so-called cleavage fragments, that were not associated with elevated risk of cancers in any epidemiological studies, and

confirmed to be non-carcinogenic by *in vitro* testing and quantitative structure-activity relationship (QSAR) modeling.

Also, as we know, FDA has followed talc safety issues for decades. In the 1970s there were two scientists who reported finding trace amounts of asbestos in various cosmetic talcum powders. This led to collaboration between FDA and industry to widely test the talc on the market at the time and to develop an appropriate set of methods and techniques to test talc for the presence of asbestos. As a result of this work, extensive testing and investigation of the initial reported findings showed that many of the early results were unreliable due to methodological flaws. Thus, far from a new or novel issue, FDA and the numerous industries that utilize talc have been aware of the potential for contamination and, of equal importance, sensitive to and monitoring for any potential adverse health impacts for *decades*. This awareness in the scientific community has led to the above-described robust body of scientific literature that has thoroughly examined the safety of talc and continues to explore the issue of talc safety today.

As a direct result of the robust science, FDA has rejected citizen petitions in the 1980s, 1990s, and early 2000s, all of which sought warnings on cosmetic talcum powders either for the presence of asbestos or an association with certain cancers. In fact, to date, FDA has *not* concluded that there is a causal relationship between talc and cancer, nor has FDA required that a warning regarding the alleged risks of talc be placed on the packaging of talc products in the United States. Significantly, despite the focus on likely biased case control and similar studies, the panel did not reach such a conclusion either.

In short, the overwhelming weight of the very best science – which has been a focus of both FDA and the larger scientific, medical and academic communities for decades – does not support carcinogenicity of pure talc. Clearly, the general public and scientific community would have been better served by a more fulsome discussion of these important issues, and the full scope of literature illuminating them, rather than a process that precluded all questions and commentary.

We urge FDA to schedule a second meeting that promotes and allows for true discussion and public input on this important subject.

Respectfully submitted\*,

Andrey Korchevskiy, PhD, Diplomate of American Board of Toxicology (DABT), Certified Industrial Hygienist (CIH), Director of Research & Development at Chemistry & Industrial Hygiene, Inc., Chair of the AIHA Risk Committee, ACGIH consultant, full member of the Society of Toxicology (SOT) (corresponding author, [akorchevskiy@c-ih.com](mailto:akorchevskiy@c-ih.com)),



Signature

06/09/2025

Co-signatories:

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Julie E. Goodman, Ph.D., DABT, FACE, ATS, Principal, Gradient

Brooke Taylor Mossman, MS, PhD, University Distinguished Professor, Professor Emerita, Department of Pathology and Laboratory Medicine, University of Vermont Larner College of Medicine

Jennifer B. Permuth, PhD, Associate Professor of Molecular Epidemiology and Vice Chair of Research in Gastrointestinal Oncology

Victor L. Roggli, MD, Professor of Pathology, Duke University Medical Center

Matthew S. Sanchez, PhD, Principal Investigator, RJ Lee Group, Inc.

Shu-Chun Su, Ph.D., independent researcher

Ann G. Wylie, PhD, Distinguished Scholar Teacher, Professor Emerita, University of Maryland.

\* Above signatories have consulted on behalf of defendants in asbestos and/or talc related litigation matters.

# EXHIBIT S



1  
2 STATE OF SOUTH CAROLINA § IN THE COURT OF COMMON PLEAS  
3 COUNTY OF RICHLAND §  
4 § FOR THE FIFTH JUDICIAL  
5 ANDREW T. GERKEN, as §  
6 Personal Representative of the Estate of ANNA §  
7 MARIE L. GERKEN, § C/A NO. 2023-CP-40-06111  
8 Deceased, §  
9 § In Re:  
10 Plaintiff, § Asbestos Personal Injury  
11 V. § Litigation Coordinated  
12 § Docket  
13 §  
14 AVON PRODUCTS, INC., §  
15 et al., §  
16 §  
17 Defendants. §

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18 STATE OF SOUTH CAROLINA § IN THE COURT OF COMMON PLEAS  
19 COUNTY OF RICHLAND §  
20 § FOR THE FIFTH JUDICIAL  
21 § CIRCUIIT  
22 GREGORY S. JOHNSON and §  
23 BARBARA J. JOHNSON, §  
24 §  
25 Plaintiffs, § C/A NO. 2023-CP-40-06819  
§  
V. § In Re:  
§ Asbestos Personal Injury  
AMERICAN INTERNATIONAL § Litigation Coordinated  
INDUSTRIES, et al., § Docket  
§  
Respondents. §

26  
27 VIDEO-RECORDED ORAL DEPOSITION OF  
28 DR. EDWIN KUFFNER  
29 AS CORPORATE REPRESENTATIVE OF  
30 JOHNSON & JOHNSON HOLDCO (NA) INC.  
31 CONDUCTED VIA VIDEOCONFERENCE  
32 September 10, 2025  
33 VOLUME 1

1 Job No.: 599530  
2 Pages: 1 - 260  
3 Reported By: Linda Russell  
4

5 Remote Videotaped 30(b)(6) Deposition of  
6 JOHNSON & JOHNSON HOLDCO (NA) INC., BY AND THROUGH  
7 DR. EDWIN KUFFNER, produced as a witness at the  
8 instance of Plaintiffs, and duly sworn, was taken  
9 in the above-styled and numbered cause on  
10 September 10, 2025 from 9:06 a.m. to 5:01 p.m.,  
11 before Linda Russell, CSR in and for the State of  
12 Texas, recorded by machine shorthand, held via  
13 Zoom Videoconference, pursuant to the South  
14 Carolina Rules of Civil Procedure and any  
15 provisions stated on the record or attached  
16 hereto.  
17  
18  
19  
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24  
25

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS ANDREW T. GERKEN,  
AS PERSONAL REPRESENTATIVE OF THE ESTATE OF  
ANNA MARIE L. GERKEN, DECEASED And PLAINTIFFS  
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18 INC., CVS HEALTH CORPORATION, FOOD LION LLC,  
19 PIGGLY WIGGLY LLC, C&S WHOLESALE GROCERS INC.:

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1 need to be on video, but let's do a read back and  
2 just make sure.

3 THE COURT REPORTER: Okay. One second,  
4 please. I'll go back a couple of questions.

5 QUESTION: "Okay. When is the first time  
6 that you learned that this letter existed?

7 ANSWER: Yesterday when I was preparing  
8 for this deposition.

9 QUESTION: Had you heard that there was  
10 going to be a letter of this nature that went  
11 to FDA following the Expert Panel discussion?

12 ANSWER: No.

13 QUESTION: So the first time that you  
14 learned either of the existence of this letter  
15 or of the contemplated existence of this letter  
16 was yesterday, correct?

17 ANSWER: Correct."

18 BY MR. STUEMKE:

19 Q Dr. Kuffner, when did you speak with  
20 Mr. Hynes relating to this letter?

21 A Yesterday.

22 Q And without getting into any advice or  
23 recommendations that he may have offered you or  
24 any questions that you may have asked him that may  
25 relate to any decision-making or anything like

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04:47:12  
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04:48:43  
04:48:57  
04:48:59  
04:49:01

1 that, can you tell me the facts that you sought to  
2 learn from Mr. Hynes and what he conveyed to you  
3 regarding those facts?

4 MS. DIWAN: Just to be clear, we're --  
5 you're not seeking any sort of privileged  
6 information.

7 Limited simply to the facts of what  
8 Mr. Hynes relayed to you.

9 MR. STUEMKE: That is exactly what I'm  
10 trying to do, without --

11 MS. DIWAN: Yeah.

12 MR. STUEMKE: -- inviting him to  
13 accidentally share anything I'm not entitled to.

14 MS. DIWAN: No, no, I appreciate that.

15 A So I wanted to understand were any of the  
16 signatories on the letter specifically paid to  
17 write the letter, and I confirmed that they were  
18 not.

19 I wanted to know whose idea it was to  
20 write the letter, and learned that it was  
21 Dr. Korchevskiy's idea to write the letter.

22 I wanted to learn how did Dr. Korchevskiy  
23 assemble the -- or who determined who was going to  
24 assemble that group, and it was Dr. Korchevskiy  
25 who determined who I guess he would like to invite

04:49:02  
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04:50:30  
04:50:39

1 to participate in the letter.

04:50:43

2 And then I wanted to know were -- was

04:50:49

3 there any -- did Kevin Hynes have any involvement

04:50:49

4 in the letter. And he said no. He said that

04:50:56

5 Dr. Korchevskiy had reached out to him to get some

04:51:00

6 contact information from a number of different

04:51:11

7 people and that he provided that contact

04:51:13

8 information to Dr. Korchevskiy.

04:51:18

9 Q And you understand the contact information

04:51:20

10 being provided related to the individuals who

04:51:29

11 signed on to this letter?

04:51:33

12 A I -- I didn't -- I probably should have

04:51:41

13 been more clear, maybe, in asking the question.

04:51:44

14 I -- I couldn't say that did he provide contact

04:51:44

15 information for someone who potentially didn't

04:51:50

16 sign the letter, I didn't ask that -- that

04:51:54

17 specific question, but it was my understanding

04:51:57

18 that he did provide some contact information for

04:52:00

19 people who may have signed the letter, if that --

04:52:04

20 if that distinction makes sense to you.

04:52:07

21 Q I think so.

04:52:10

22 Do you know if Mr. Hynes provided any

04:52:19

23 contact information for individuals who did not

04:52:21

24 ultimately sign on to the letter?

04:52:23

25 A I did not ask that question, so I can't

04:52:26

## 1 CERTIFICATE OF SHORTHAND REPORTER

2  
3 I, Linda Russell, the officer before whom  
4 the foregoing deposition was taken, do hereby  
5 certify that the foregoing transcript is a true  
6 and correct record of the testimony given; that  
7 said testimony was taken by me stenographically  
8 and thereafter reduced to typewriting under my  
9 direction; that reading and signing was requested;  
10 and that I am neither counsel for, related to, nor  
11 employed by any of the parties to this case and  
12 have no interest, financial or otherwise, in its  
13 outcome.  
14

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand this 13th day of September, 2025.  
17

18 

19 Linda Russell, Texas CSR No. 2965  
20 Expiration Date: 04/30/27

21 Planet Depos  
22 451 Hungerford Drive, Suite 400  
23 Rockville, MD 20850  
24 888.433.3767  
25 Firm Registration 686

# EXHIBIT T

In the Matter Of:  
CAROLYN M. GAUTIER  
VS  
ADRIATIC INSURANCE CO., et al.

Dr. Edwin Kuffner Vol II  
May 06, 2026



19th JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

CAROLYN M. GAUTIER, \*

Plaintiff, \* NO: C-753560

VS. \* SECTION: 24

ADRIATIC INSURANCE \*

COMPANY, ET. AL., \* DIVISION: B

Defendants. \*

AND

CIVIL DISTRICT COURT  
FOR THE PARISH OF ORLEANS  
STATE OF LOUISIANA

LYNNE L. ROY \*

Plaintiff, \* NO: 2020-02718

VS. \*

COLEGATE-PALMOLIVE \* DIVISION: A-16

COMPANY, ET. AL., \*

Defendants. \*

REMOTE VIDEOCONFERENCE DEPOSITION OF

JOHNSON & JOHNSON

GIVEN BY DR. EDWIN KUFFNER

VOLUME II

Taken on May 6, 2026

1       The video-recorded remote deposition of  
2 Dr. Edwin Kuffner was taken in the above-entitled  
3 cause, pursuant to the following stipulations before  
4 Meredith L. Hoffpauir, Registered Court Reporter,  
5 Louisiana Certified Court Reporter, Texas Certified  
6 Shorthand Reporter, reported by stenotype machine on  
7 May 6, 2026, beginning at 11:26 a.m.

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1 REPORTED BY: Meredith Hoffpauir, RPR, CCR, CSR

2 VIDEOGRAPHER: Brian Hood, CLVS

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STIPULATIONS

It is hereby stipulated by and between counsel for the parties that the deposition of the aforementioned witness was taken pursuant to notice and in accordance with the Louisiana Code of Civil Procedure as provided by law on May 6, 2026.

The parties hereby waive all formalities in connection with the taking of the deposition with the exception of the swearing of the witness and the reduction of the questions and answers to typewriting. Further, the deponent and/or party did request to read and sign a completed transcript of the testimony.

Counsel for all parties reserve all objections except as to the form of the question and responsiveness of the answer at the time of taking of said deposition, and they also reserve the right to make objections at the time that taking of said deposition or any part thereof may be offered into evidence, with the same rights as if the testimony had been given in open court.

Meredith Hoffpauir, RPR, CCR, CSR, officiated in administering the oath to the witness.

1 called a sketch outline; correct?

2 A. Yes.

3 Q. Did you ask him what he meant by a sketch  
4 outline?

5 A. I don't recall specifically asking him that.  
6 I interpreted that as the general outline of what he  
7 was thinking about saying. But I did not go into  
8 detail with him on that.

9 Q. Okay. So you don't know if that sketch  
10 outline was any more developed than, you know,  
11 general concepts that should be addressed in the  
12 meetings such as mineralogy, such as epidemiology,  
13 such as whatever else he decided to put in there?  
14 You just don't have any idea?

15 A. I didn't ask him specific questions about  
16 the sketch outline.

17 Q. Okay. And so specifically, what questions  
18 did you ask Dr. Korchevskiy to try to determine what  
19 part of that letter came from his own independent  
20 thinking and what part of it came from Johnson &  
21 Johnson's litigation attorneys?

22 A. So I specifically wanted to know that. And  
23 essentially, you know, Dr. Korchevskiy said that all  
24 the thoughts are his own.

25 Q. Okay. Your notes state that "On a second

1 call with Kevin and Lucy, Johnson & Johnson's  
2 lawyers, Dr. Korchevskiy said that he shared  
3 additional thoughts about the letter. At that second  
4 meeting, Dr. Korchevskiy told me that Kevin wrote his  
5 thoughts down. Mr. Hynes said that during that  
6 second meeting he shared his computer screen and told  
7 me that he acted as a scribe for Dr. Korchevskiy."

8 So here in that portion of your notes,  
9 you're relaying what Dr. Korchevskiy said to you and  
10 also what the lawyer, Kevin Hynes, said in that  
11 conversation; correct?

12 A. That's correct.

13 Q. Now, do you know Kevin Hynes personally?

14 MR. KARP: Object to form.

15 A. I do not know him personally. I have met  
16 him, but I don't know him personally. If you want to  
17 say do I socialize with him? No.

18 Q. And I should have been more clear. Have you  
19 worked extensively with Kevin Hynes?

20 MR. KARP: Object to form.

21 A. I have not.

22 Q. Okay. You would agree you've worked  
23 extensively with Andrew Karp; correct?

24 A. Yes.

25 Q. I just wanted to see if we were drawing a

1 like, for example, if you turn to page 2, in the --  
2 one, two, three, four five, like, the second main box  
3 with the words in it. It says "Kevin Hynes told me  
4 he could not remember for sure for whom he provided  
5 contact information to Dr. Korchevskiy. But said he  
6 believed he provided it for both Dr. Finan and  
7 Dr. Permuth."

8 My understanding in talking to  
9 Dr. Korchevskiy was that he asked Kevin Hynes  
10 specific information related to, you know, other  
11 experts.

12 Q. Right. But did Dr. Korchevskiy say to  
13 Mr. Hynes "I need the contact information for  
14 Dr. Finan and Dr. Permuth?" Or did Dr. Korchevskiy  
15 ask Kevin Hynes for the contact information of other  
16 experts who may be willing to cosign the letter?

17 MR. KARP: Object to form.

18 A. I don't recall asking the specific question  
19 in the way that you just did.

20 Q. You see the distinction there though;  
21 correct?

22 A. I do see the distinction, yes.

23 Q. Okay. And you don't know the answer; fair?

24 A. I didn't ask it specifically that way. My  
25 general understanding was that Dr. Korchevskiy asked

**REPORTER'S READ AND SIGN CERTIFICATE**

I, Meredith Hoffpauir, RPR, CCR, CSR, having duly prepared this transcript and forwarded a copy to the witness, Dr. Edwin Kuffner.

After 30 days had elapsed, I was not notified of any changes.

Now, therefore, in accordance with CCP Article 1445, I have signed the transcript.

---

Meredith Hoffpauir, RPR, CCR, CSR  
Louisiana Certificate No. 2018002  
Texas Certificate No. 11955

REPORTER'S PAGE

I, Meredith Hoffpauir, Certified Court  
Reporter in and for the States of Texas and  
Louisiana, the officer, as defined in Rule 28 of the  
Federal Rules of Civil Procedure and/or the Article  
1434(B) of the Louisiana Code of Civil Procedure,  
before whom this proceeding was taken, do hereby  
state on the record:

That due to the spontaneous nature of the  
interaction and discourse of the proceeding,  
double-dashes (--) have been used to indicate pauses,  
changes of thought, and/or talkovers; that such is  
the universally accepted method for a court  
reporter's transcription of a proceeding; that  
double-dashes (--) do not indicate that words or  
phrases have been left out of the transcript;

And that the spelling of any words and/or  
names which could not be verified through reference  
resources have been denoted with the parenthetical  
phrase "(phonetic)." After every effort has been  
made to verify a spoken word, the parenthetical  
phrase "(inaudible)" or "(unintelligible)" may be  
used.



REPORTER'S CERTIFICATION

This certification is valid only for a transcript accompanied by my original signature and original seal on this page or my digital signature on this page.

I, Meredith Hoffpauir, Certified Court Reporter in and for the for the States of Texas and Louisiana, as the officer before whom this testimony was taken, hereby certify that Dr. Edwin Kuffner after having been duly sworn by me upon authority of R.S. 37:2554, testified as set forth in these 213 pages, that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding.

The transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board. I am informed about the complete arrangement, financial or otherwise, with the person or entity making arrangements for deposition services; that I have acted in compliance with the prohibition on contractual relationships, as defined by Louisiana Code of Civil Procedure Article 1434 and in rules and

1 advisory opinions of the board.

2 I have no actual knowledge of any prohibited  
3 employment or contractual relationship, direct or  
4 indirect, between a reporting firm and any party  
5 litigant in this matter, nor is there any such  
6 relationship between myself and party litigants in  
7 this matter.

8 I am not of counsel, not related to counsel  
9 or the parties herein, nor am I otherwise interested  
10 in the outcome of this matter.

11  
12 Signed on May 8, 2026.

13  
14  
15  
16 Meredith Hoffpauir, RPR, CCR, CSR  
17 RPR CERT NO. 971010  
18 LA CCR NO. 2018002  
19 TX CSR NO. 11955  
20  
21  
22  
23  
24  
25

# EXHIBIT U

|                                           |   |                           |
|-------------------------------------------|---|---------------------------|
| IN RE: BALTIMORE CITY                     | * | IN THE                    |
| ASBESTOS LITIGATION                       | * | CIRCUIT COURT             |
|                                           | * | FOR BALTIMORE CITY        |
| * * * * *                                 | * | * * * * *                 |
| CHERIE A. CRAFT                           | * |                           |
| Plaintiff,                                | * | CT-4 Other Asbestos Cases |
| v.                                        | * | Case No. 24X24000005      |
| AHOLD DELHAIZE USA, INC., <i>et al.</i> , | * |                           |
| Defendants.                               | * |                           |
| * * * * *                                 | * | * * * * *                 |

**DEFENDANTS JOHNSON & JOHNSON, PECOS RIVER TALC LLC, KENVUE, INC.,  
AND JOHNSON & JOHNSON HOLDCO (NA), INC.’S MOTION FOR A NEW TRIAL  
OR REMITTITUR**

Defendants, Johnson & Johnson, Pecos River Talc LLC, Kenvue, Inc. and Johnson & Johnson Holdco (NA), Inc. by and through their undersigned counsel, pursuant to Maryland Rule 2-533, respectfully submit this Motion for a New Trial or Remittitur, and in support thereof incorporate the reasons set forth in the accompanying Memorandum, as if fully set forth herein.

WHEREFORE, Defendants respectfully request that the Court grant the Motion and order a new trial on all issues, or in the alternative, order remittitur.

***[Signature on Following Page]***

Respectfully submitted,

/s/ Robin Silver

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***Johnson & Johnson, Pecos River Talc  
LLC, Kenvue, Inc., and Johnson &  
Johnson Holdco (NA), Inc.***

### **Request for Hearing**

Pursuant to Maryland Rule 2-311, Johnson & Johnson, Pecos River Talc LLC, Kenvue, Inc., and Johnson & Johnson Holdco (NA), Inc. respectfully request a hearing on their Motion for a New Trial or Remittitur.

/s/ Michael L Haslup

Michael L. Haslup

IN RE: BALTIMORE CITY  
ASBESTOS LITIGATION

\* IN THE  
\* CIRCUIT COURT  
\* FOR BALTIMORE CITY

\* \* \* \* \*

\* \* \* \* \*

CHERIE A. CRAFT

\*

Plaintiff,

\*

CT-4 Other Asbestos Cases

v.

\*

Case No. 24X24000005

AHOLD DELHAIZE USA, INC., *et al.*,

\*

Defendants.

\*

\* \* \* \* \*

\* \* \* \* \*

**DEFENDANTS JOHNSON & JOHNSON, PECOS RIVER TALC LLC, KENVUE, INC.,  
AND JOHNSON & JOHNSON HOLDCO (NA), INC.'S  
MEMORANDUM OF LAW IN SUPPORT OF THEIR  
MOTION FOR A NEW TRIAL OR REMITTITUR**



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Defendants Johnson & Johnson (“J&J”); Pecos River Talc LLC (“Pecos River”); Kenvue, Inc. (“Kenvue”); and Johnson & Johnson Holdco (NA), Inc. (“Holdco”) (collectively, “Defendants”), by and through their undersigned counsel, hereby move this Court for a new trial pursuant to Maryland Rule 2-533.

## INTRODUCTION

The jury’s eye-popping \$1.5 billion punitive damages award—nearly identical to the Powerball jackpot on the day of the verdict—is the largest single-plaintiff personal injury verdict in the history of Maryland. It’s not even close. More importantly, the award is plainly unconstitutional. That also is not even close. The ratio of punitive to compensatory damages far exceeds what is permissible under both U.S. Supreme Court and Maryland caselaw.

The trial resulted in such an outrageous punitive damages award because the jury was inflamed with incendiary themes, improper evidence, and unlawful arguments—all of it highlighted and emphasized to the jury in closing argument. The jury heard racially charged arguments that Defendants were “targeting” the African American community, which has no bearing on any issue in the case. Testimony and evidence were elicited regarding ovarian cancer—a disease not at issue here—leading to a closing argument that “tens of thousands of people that have died” of “ovarian cancers and the other cancers associated with asbestos” due to Defendants’ conduct. Tr. 8595:12-17.<sup>1</sup>

The trial was also replete with evidence of Defendants’ corporate restructuring and the Kenvue spinoff which has no bearing on any issue the jury needs to decide. But it led counsel to tell the jury in closing that because Defendants’ scientific arguments were not successful, Defendants “start[ed] creating all these corporate machinations” including “corporate shenanigans”

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<sup>1</sup> Relevant provisions of the trial transcript are attached hereto as Exhibit 55.

where “they created an entity with all the good stuff and another entity with all the liabilities.” Tr. 8587:15-8588:4; 8601:9-12.

And despite this Court’s ruling that Ms. Craft’s treating physician Dr. Johnston was not offered for expert testimony, that is precisely how his testimony was presented to the jury in closing. Counsel used Dr. Johnston’s testimony to argue that spontaneous mesothelioma does not exist and Ms. Craft’s mesothelioma was caused by asbestos exposure, describing that as “one of the most powerful things” he said. Tr. 8598:5-7. Exacerbating the prejudice, counsel emphasized to the jury Dr. Johnston’s neutrality, telling them that he was not “paid by anybody” and had “no dog in the fight.” Tr. 8598:5-17; 8686:10-8687:2.

On top of everything, multiple Plaintiff’s experts relied on the testing of Dr. Longo, but Dr. Longo then did not appear at trial, ensuring that the jury would not hear a cross-examination that would have exposed his biases and the flaws in his analysis. For example, the jury did not hear that Dr. Longo previously testified that the concept of asbestos in talc is an “urban legend.” Nor did the jury hear Dr. Longo’s testimony that his lab will call particles asbestos even if they are not.

The trial culminated in improper damages arguments. Counsel told the jury to award “at least 59 million” dollars in compensatory damages. Tr. 8731:11-8732:7. Counsel asked the jury to arrive at this number by multiplying two figures: 29.5 years of lost life x \$2 million per year (which equals \$59 million). But each of those figures was improper. The jury should not be evaluating the value of 29.5 years of lost life because lost years of life are not compensable under Maryland law. And the \$2 million per year figure was also improper because it bore no relationship to actual damages. It was based on twice the annual compensation of Defendants’ witness, Dr. Kuffner, an amount which has absolutely nothing to do with redressing Ms. Craft’s injury. The jury plainly

followed this improper argument as they awarded the just-over \$59 million in compensatory damages that counsel requested.

All this improper evidence and argument to inflame the jury led to a predictable result: the jury was inflamed. They awarded an impossibly high \$1.5 billion in punitive damages. That is not constitutional. Under the federal constitution, when “compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages [*i.e.*, 1-to-1], can reach the outermost limit of the due process guarantee.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003). Given each defendant’s share of the compensatory award, this Court should reduce the punitive damages award to at most \$15 million for J&J and \$15 million for Pecos River. But the Court need not even reach this issue because it should order a new trial on all issues.

### LEGAL STANDARD

On a motion for new trial, the Court “may set aside all or part of any judgment entered and grant a new trial . . . on all of the issues, or some of the issues if the issues are fairly severable.” Md. Rule 2-532(c); *Montgomery Ward & Co. v. Keulemans*, 23 Md. App. 81, 85 (1974).

“[T]he circuit court has wide discretion regarding whether to reduce a verdict as excessive.” *Francis v. Johnson*, 219 Md. App. 531, 562 (2014). With this power, a court can order a new trial, lower the amount of damages awarded by the jury, or require the plaintiff to choose between the two alternatives. *Rodriguez v. Cooper*, 458 Md. 425, 437 n.8 (2018). A court should grant a motion for remittitur when the verdict is “grossly excessive” or “shocks the conscience of the court.” *Cunningham v. Balt. Cnty.*, 246 Md. App. 630, 703 (2020).

## ARGUMENT

### I. The Compensatory Damages Award Should Be Vacated Or Reduced.

#### A. The compensatory damages award was not proper.

Compensatory damages are of course to compensate plaintiffs for any pain and suffering they experience. But compensatory damages cannot be based on either the shortening of life itself or factors unrelated to actually compensating the plaintiff. Plaintiff's counsel's closing argument asking the jury to award \$2 million per year of lost life was therefore doubly improper. Compensatory damages cannot be based on *any amount* of money per year of the plaintiff's lost life. That is not permitted. Second, the \$2 million per year figure was based on twice the annual compensation of Defendants' employee Dr. Kuffner—a factor completely unrelated to compensating Ms. Craft for anything. The jury then issued an award nearly identical to counsel's improper request. The compensatory damages award should therefore be vacated.

It has long been Maryland law that “damages cannot be recovered for the loss or shortening of life.” *Rhone v. Fisher*, 224 Md. 223, 231 (1961). Numerous cases stand for this basic principle. *See, e.g., Wadsworth v. Sharma*, 251 Md. App. 159, 189 (2021) (“lost years” are “not compensable”); *Monias v. Endal*, 330 Md. 274, 281 (1993) (rejecting damages for “lost years”); *Burke v. United States*, 605 F. Supp. 981, 988 (D. Md. 1985) (no separate damages for shortening life expectancy under Maryland law).<sup>2</sup>

Other states follow this rule as well. *See, e.g., Johnson v. Monsanto Co.*, 266 Cal. Rptr. 3d 111, 127 (Cal App. 2020), *as modified on denial of reg'h* (Aug. 18, 2020) (“shortened life expectancy” not “recognized as recoverable in California”); *Verni ex rel. Burstein v. Harry M.*

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<sup>2</sup> While certain *economic* damages may account for posthumous years in limited contexts (*e.g.*, future loss of earnings), the “years” themselves are not a separate compensable injury under Maryland law. *Monias*, 330 Md. at 280-81.

*Stevens, Inc.*, 903 A.2d 475, 501 (N.J. Super. Ct. App. Div. 2006) (while the “loss of enjoyment of normal activities” is compensable, the “loss of enjoyment of the years taken from a person” is not).

Yet over Defendants’ objection, Plaintiff’s counsel directly asked the jury to cross that line during closing argument, requesting “\$2 million for every year of [Plaintiff’s] life lost” for “29.5 years.” Tr. 8728:20-21; 8732:1-7. That is not a request to compensate pain and suffering during life; it is an improper request to put a dollar figure on the shortening of life expectancy. Based on that impermissible framework, counsel calculated that the jury’s compensatory damages award should be “at least 59 million” (*i.e.*, \$2 million x 29.5 years = \$59 million). Tr. 8731:11-8732:7. The jury returned a compensatory award of \$59,840,000—nearly the exact figure Plaintiff proposed.

This is not some isolated mistake. This “millions per year of lost life” theory is a recurring part of counsel’s playbook. An objection to Plaintiff’s counsel’s closing in *Garcia* was sustained and the jury was instructed “not to consider the shortened life expectancy of Ms. Garcia.” Ex. 1, *Garcia* 4/17/24 Tr. 170:17-19. Immediately after that instruction, counsel barreled ahead anyway: “To me, the easiest way to think about this is what a year of a person's life should be worth,” to which Defendants’ objection was again sustained. *Id.* at 171:1-3; *see also id.* at 169:6-17 (sustained objection to comparisons to “baseball players that get \$150 million for signing a contract” and “actors that do a part for three months and get \$25 million”).

That is not the only example. In *Lee*, the court *granted a new trial* in part due to these same arguments from counsel from the Dean Omar firm. Plaintiff’s counsel there explicitly urged the jury to award plaintiff “one million dollars per year for the 37.7 years of life following her death,” which the court explicitly stated “is not a compensable noneconomic harm” and was a clear

“disregard of the Court’s damages instructions to the jury and the controlling law” and “invited the jury to engage in misconduct.” Ex. 2, *Lee* Order at 6-7; *see also* Ex. 3, *Doomey* 4/14/25 Tr. 3942:1-9; 3943:1-14 (closing on lost years “would be objectionable, and I would admonish the jury”)

But the impropriety does not end there. “Compensatory damages should be precisely commensurate with the injury; nothing more, nor less.” *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 399-400 (2013) (citation omitted). Plaintiff’s counsel began by “anchoring” the jury with large figures—“a tactic whereby attorneys suggest damages amounts by reference to objects or values with no rational connection to the facts of the case.” *Gregory v. Chohan*, 670 S.W.3d 546, 557 (Tex. 2023). The *Gregory* Court for example found it improper that counsel in closing referenced a “\$71 million Boeing F-18 fighter jet and a \$186 million painting by Mark Rothko” with the “stated purpose of helping them place a ‘monetary value on human lives.’” *Id.* at 557-58.

Over Defendants’ objection, counsel here referenced that “we pay sports people and actors millions of dollars,” “30-million-dollar planes,” and “\$5 million for a Paul Newman watch.” Tr. 8729:6-8730:8. That was solely to put into the jurors’ heads large monetary numbers that are totally divorced from any measure of compensatory damages.

But then counsel’s argument managed to become even more improper. Counsel told the jury that Defendants’ witness Dr. Kuffner “makes a million dollars a year.” Tr. 8591:18. Counsel then argued to the jury—again over objection—that “[w]e know that they are willing to spend a million a year to have someone tell their script” and that “if they are paying individuals to use a script a million, that you must give more than that, at minimum, \$2 million for every year of her life lost,” which is \$59 million. Tr. 8731:11-8732:7. In other words, the \$2 million per year figure discussed above was intended to be twice Dr. Kuffner’s annual compensation.



But that amount bears no relationship whatsoever to any measure of compensatory damages. Plaintiff's counsel stated she hadn't made an argument tying a plaintiff's compensatory damages to Dr. Kuffner's compensation in the past. Tr. 8935:19-8936:4 ("That's fairly unique to this case."). Courts have held that arguing for compensatory damages based on the amount a defendant pays witnesses is improper. *See, e.g., In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 787 n.71 (5th Cir. 2018) (ordering a new trial, in part due to plaintiffs' request that "[the defendants] will pay their experts a thousand dollars an hour to come in here, when you do your math back there don't tell these plaintiffs that a day in their life is worth less than an hour's time of this fellow, or people they put on the stand"); *Allstate Ins. Co. v. Marotta*, 125 So. 3d 956, 959, 962 (Fla. Dist. Ct. App. 2013) (ordering a new trial based on, among other things, closing argument that encouraged the jury to consider for compensatory damages that Allstate paid its experts \$500 to \$750 per hour); *Konewko v. Advoc. Health & Hosps. Corp.*, 180 N.E.3d 179, 199, 204 (Ill. Ct. App. 2020) (reversing and remanding for a new trial where plaintiff's closing argument invited the jury to value damages based on defense's ability to pay experts).<sup>3</sup>

The Court's instruction to the jury did not cure the prejudice, particularly given the extent of the improper statements as discussed above. The instruction occurred three days later on Monday, after the arguments had an entire weekend to sink in. *See Simpson v. State*, 442 Md. 446,

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<sup>3</sup> On top of everything, Plaintiff expressly tied compensatory damages to Defendants' ability to pay. Counsel explicitly told the jury of the \$59 million in compensatory damages it was requesting: "to J&J, that's nothing." Tr. 8732:6. But Defendants' ability to pay is not relevant to compensatory damages. Indeed, Plaintiff conceded that a jury "should not consider the defendant's financial circumstances in reaching its decision of an appropriate award of compensatory damages." Tr. 8933:9-12; *see also Harley-Davidson Motor Co. v. Wisniewski*, 50 Md. App. 339, 347 (1981) ("This Court, however, has held that evidence of a defendant's wealth is probative and admissible only where a prima facie case for punitive damages has been established.").

463 (2015) (finding instruction “given three days later and in the midst of what amounted to seventeen transcript pages of jury instructions” did not “‘cure’ the error”). The instruction only told the jury not to consider the “financial circumstances” of a defendant when awarding compensatory damages. Tr. 8966:18-8967:1. It did not tell the jury it could not base its award on the \$2 million per year amount. The instruction also said nothing about the impropriety of considering “lost years” or shortened life expectancy discussed above. And of course, the jury awarded exactly what plaintiff’s counsel asked for: just over \$59 million in compensatory damages, demonstrating the futility of the instruction.

The ultimate compensatory damages award based on factors completely divorced from the types of injuries that are compensable was both improper and grossly excessive. *See Blitzer v. Breski*, 259 Md. App. 257, 281 (2023). The over \$59 million compensatory award is the largest single-plaintiff personal injury compensatory award upheld in Maryland.

The compensatory award cannot stand. And without it, the punitive damages award falls as well. As discussed below, comparing the compensatory damage award to the punitive damages award is a critical component of evaluating the excessiveness of a punitive damages award under both Maryland law and the federal constitution. The punitive damages award should be vacated because the Court is left without an “adequate starting point for comparing the amount of punitive damages to the compensatory damages and determining that the punitive damages award is not excessive.” *Philip Morris USA Inc. v. Danielson*, 224 So. 3d 291, 297 (Fla. Dist. Ct. App. 2017).

**B. In the alternative, the non-economic damages award should be reduced to the statutory limit.**

Section 11-108(b)(1) of the Courts and Judicial Proceedings Article of the Maryland Code—*i.e.*, the cap on noneconomic damages related to personal injury—provides: “In any action for damages for personal injury in which the cause of action arises on or after July 1, 1986, an

award for noneconomic damages may not exceed \$350,000.” Md. Code Ann., Cts. & Jud. Proc. § 11-108(b)(1). That statute applies here for the reasons stated in Defendants’ Opposition To Plaintiff’s Proposed Question No. 9 On The Verdict Form (TID 78007279), which Defendants incorporate herein by reference.

“[A] cause of action arises for purposes of the cap statute when facts exist to support each element of the cause of action, with the fact of the injury being the last element to come into existence.” *Owens-Illinois, Inc. v. Gianotti*, 148 Md. App. 457, 481-82 (2002); *see also Duffy v. CBS Corp.*, 458 Md. 206, 236 (2018). Ms. Craft’s diagnosis occurred in 2024, and she testified that was the last day she used Johnson’s Baby Powder. Tr. 3849:20-3850:2; 3857:21. Section 11-108(b)(1) therefore applies to limit damages.

The question on the verdict form—asking whether the exposure was “sufficient” to cause cellular changes is not proper. To the extent cellular changes were relevant, there was no evidence that Plaintiff inhaled asbestos fibers that **caused** cellular changes that **led** to Ms. Craft’s peritoneal mesothelioma before July 1, 1986. And Plaintiff bears the burden on this issue. *John Crane, Inc. v. Scribner*, 369 Md. 369, 395 (2002).

As Plaintiff’s own expert, Dr. Haber, acknowledged, you can have a “cellular injury that causes a genetic abnormality” that’s “not a driver of cancer.” Tr. 3342:18-3343:1. And he admitted he could not answer when the cellular changes that led to her cancer occurred. Tr. 3342:4-9. Dr. Brody gave the same testimony. *See* Tr. 1056:12-15 (“[A] lot of cellular injury or damage can occur without ever beginning a process that ultimately leads to a cancer . . . .”); Tr. 1057:11-18 (“[E]ven if somebody is exposed to asbestos, in most circumstances it may never start a process that ultimately would lead to the development of cancer.”); Tr. 1058:11-16 (“[T]here’s no test by

which you can go back and pinpoint, okay, yes, that -- that is a specific exposure that led to a cellular injury that started the cancer process.”).

The noneconomic damages award should therefore be reduced to the § 11-108 maximum.

## **II. The Punitive Award Should Be Vacated Or Remitted.**

Limits on punitive damages awards are necessary to “avoid an arbitrary determination of an award’s amount.” *Philip Morris USA v. Williams*, 549 U.S. 346, 352 (2007). Thus, both federal and Maryland law impose limits on punitive damages to ensure that neither states nor juries impose large punitive awards that act as arbitrary “policy choice[s],” *id.* at 352-53, that “frustrate[] the dual purposes of punishment and deterrence.” *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 458-59 (1992). This is precisely why the Supreme Court directs courts to review “arbitrary” punitive awards that “reflect not an application of law but a decisionmaker’s caprice.” *Philip Morris*, 549 U.S. at 352 (quoting *State Farm Mut.*, 538 U.S. at 418) (internal quotation marks omitted). The massive \$1.5 billion punitive damages award demonstrates precisely why these limitations exist.

“Obviously, in reviewing a punitive damages award for excessiveness, a trial court cannot properly leave in effect an award which exceeds constitutional limits.” *Bowden v. Caldor, Inc.*, 350 Md. 4, 26 (1998). The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution prohibits the imposition of excessive punitive damages under state law. *State Farm*, 538 U.S. at 416. Courts are to consider three “guideposts” in determining whether a punitive damages award is excessive under the federal constitution: “the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award;” “the degree of reprehensibility of the defendant’s misconduct;” and “the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” *Id.* at 409.

Under Maryland law as well, “the amount of punitive damages awarded by a jury is reviewable by the trial court for excessiveness.” *Bowden*, 350 Md. at 21. The *Bowden* court outlined numerous potential factors to be considered, some of which overlap with the federal constitutional guideposts. *Id.* at 29-41, 47. These factors are not “intended to be exclusive or all encompassing,” and “not all of the . . . factors are pertinent in every case involving court review of punitive damages awards.” *Zachair, Ltd. v. Driggs*, 135 Md. App. 403, 417 (2000). In addition to the federal constitutional guideposts, courts compare the punitive damages award to “other final punitive damages awards in the jurisdiction and particularly with awards in somewhat comparable cases” and evaluate “other final and satisfied punitive damages awards against the same defendant for the same conduct.” *Id.* at 416.

**A. The punitive to compensatory ratio is unconstitutionally excessive.**

The punitive damages award is grossly disproportionate to the compensatory damages award (which is itself improperly excessive as discussed above). The ratio between the punitive damages and the compensatory damages far exceeds constitutional limits and cannot stand.

The constitutional limit of reasonableness depends on the magnitude of the compensatory damages. *State Farm*, 538 U.S. at 426. “[F]ew awards exceeding a single-digit ratio [*i.e.*, 9-to-1] between punitive and compensatory damages, to a significant degree, will satisfy due process.” *Id.* But when “compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages [*i.e.*, 1-to-1], can reach the outermost limit of the due process guarantee.” *Id.*; see also *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 515 n.28 (2008) (“[T]he constitutional outer limit” for punitive damages in such cases “may well be 1:1.”).

The compensatory award here is indisputably “substantial” under *State Farm*, warranting a reduction of the punitive damages award to at most a 1-to-1 ratio to compensatory damages. *State Farm* itself described \$1 million as substantial. 538 U.S. at 426. Indeed, courts across the

country regularly find that compensatory awards of far less than the amount awarded here are “substantial.” *See Saccameno v. U.S. Bank Nat’l Ass’n*, 943 F.3d 1071, 1088-90 (7th Cir. 2019) (noting that courts have found compensatory awards “substantial” when they are “roughly th[e] magnitude” of a compensatory award of \$582,000); *Bach v. First Union Nat’l Bank*, 486 F.3d 150, 156 (6th Cir. 2007) (\$400,000); *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004) (\$600,000); *Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1069 (10th Cir. 2016) (noting that compensatory damages are “substantial” when “they are over \$1,000,000.”); *see also Butler v. Windsor*, 143 F. Supp. 3d 332, 341 (D. Md. 2015) (describing damages of \$300,000 and over \$5 million as “substantial”).

Where substantial compensatory damages are awarded, courts have limited punitive damages to a 1-to-1 ratio limit, even where they have found that the defendant’s conduct was “highly reprehensible.” *E.g., Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 602-03 (8th Cir. 2005).<sup>4</sup>

“Whether a punitive damages award bears a reasonable relationship to the compensatory damages” is also a factor when evaluating the excessiveness of a punitive damages award under Maryland law. *See Bowden*, 350 Md. at 39. “When the ratio of punitive damages to compensatory damages is greater than three to one [3-to-1], it is likely—but by no means certain—that the relationship is not reasonable.” *Zachair*, 135 Md. App. at 424.

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<sup>4</sup> The 20-to-1 ratio upheld in *Harvey-Jones v. Coronel* involved very different circumstances. 239 Md. App. 145 (2018). The compensatory award there was only \$10,000, allowing for a higher ratio. *Id.* at 155. The punitive damages award of \$200,000, *id.* at 158, was also 7,500 times lower than the \$1.5 billion in punitive damages awarded here. And the Court relied on the fact that that case involved defamation where “actual harm is often difficult to prove, resulting in lower compensatory damages awards.” *Id.* at 166.



Here, the jury awarded just under \$60 million for four defendants, who are jointly and severally liable. In this scenario, the Court should evaluate each defendant's pro rata share of the compensatory damages award for purposes of the ratio analysis: approximately \$15 million each here. *See Grabinski v. Blue Springs Ford Sales, Inc.*, 203 F.3d 1024, 1026 (8th Cir. 2000) (calculating punitive ratio pro rata for each defendant by equally apportioning joint and several compensatory award). The \$1 billion punitive damages award against J&J represents a 66.67-to-1 ratio when compared against \$15 million of compensatory damages. The \$500 million punitive damages award against Pecos River represents a 33.33-to-1 ratio. Even comparing the entire \$1.5 billion punitive damages award for both defendants to the entire approximately \$60 million compensatory damages award yields a 25-to-1 ratio. These ratios dwarf the constitutional limits.

The Court should reduce the punitive-damages awards to at most a 1-to-1 ratio: \$15 million against J&J and \$15 million against Pecos River. By no means should the punitive damages awards exceed a 3-to-1 ratio (\$45 million against J&J and Pecos River).

**B. The amount of punitive damages is disproportionate to the gravity of the claimed wrong.**

To evaluate the constitutionality of a punitive damages award, courts also evaluate the “degree of reprehensibility” of Defendants’ conduct. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574-75 (1996). Maryland law similarly instructs that the “amount of punitive damages must not be disproportionate to the gravity of the defendant’s wrong.” *Bowden*, 350 Md. at 27 (internal quotation marks omitted). Even where a defendant has engaged in “heinous” or “egregiously bad conduct,” that “does not necessarily justify a large award of punitive damages.” *Id.*

This factor is discussed in detail in Defendants’ motion for judgment notwithstanding the verdict, which Defendants incorporate herein by reference. JNOV Mot. at 1-12.

*First*, as set forth in that motion, Defendants’ conduct is not highly reprehensible because J&J did not intentionally harm Ms. Craft or any other consumers. Just the opposite: Defendants took great pains to avoid harming consumers by repeatedly testing their talc to ensure that it did not contain asbestos, even trace amounts. JNOV Mot. at 6-10. Indeed, Defendants tested for asbestos at every stage—from selecting asbestos-free mines and deposits, to testing talc ore deposits, to testing the talc powder throughout production. *Id.* It is undisputed that expert labs and scientists conducted thousands of tests and consistently reported decade after decade, year after year, that J&J’s talc was asbestos-free. *Id.*

Defendants insisted on exceeding industry standards and used the most sophisticated methods available. A company that exhibits a high degree of reprehensibility would not go to such great lengths to ensure its product did not contain harmful materials, nor would it voluntarily allow independent regulatory organizations like NIOSH to test its mines and products for asbestos.

**C. Comparable sanctions show that the punitive damages award is excessive.**

Under the federal constitutional framework, courts also consider “the disparity between the punitive damages award and the civil penalties authorized or imposed in comparable cases.” *State Farm*, 538 U.S. at 428 . In *State Farm*, the Supreme Court evaluated that “[t]he most relevant civil sanction under Utah state law for the wrong done to the Campbells appears to be a \$10,000 fine for an act of fraud, an amount dwarfed by the \$145 million punitive damages award.” *Id.* (citations omitted). Here too, the punitive damages award dwarfs any comparable sanction.

Though FDA declined to penalize J&J after a thorough investigation, if FDA had decided to punish J&J for its actions in the 1970s, it would have done so under the Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 331 *et seq.* (1976), which prohibits selling adulterated or misbranded food, drugs, and cosmetics. A person found guilty of violating § 331 can be imprisoned for up to a year or fined up to \$1,000. *Id.* § 333(a)(1). A person who violates § 331 for a second time can be

imprisoned for up to three years or fined up to \$10,000. *Id.* § 333(a)(2). Under this federal statutory regime, the comparable sanction would not come close to supporting a \$1.5 billion punitive damages award for a single case.

**D. Other punitive awards in like cases are significantly smaller.**

Courts assessing excessiveness also consider the size of punitive awards imposed for comparable conduct. *See Bowden*, 350 Md. at 30-33. This too demonstrates the award is excessive.

Courts confronting similar allegations—often involving severe illness or death—have authorized punitive damages orders of magnitude smaller than the award here. In asbestos and talc litigation, punitive awards typically fall in the single-digit millions or low tens of millions or even less—not the billions. *Matter of New York City Asbestos Litig.*, 236 A.D.3d 493, 495 (N.Y. App. Div. 2025) (\$6.5 million); *Keene v. CNA Holdings, LLC*, 827 S.E.2d 183, 198-99 (S.C. Ct. App. 2019), *aff'd*, 870 S.E.2d 156 (2021) (\$2 million); *Poage v. Crane Co.*, 523 S.W.3d 496, 506 (Mo. Ct. App. 2017) (\$10 million); *Pfeifer v. John Crane, Inc.*, 164 Cal. Rptr. 3d 112, 122 (Cal. Ct. App. 2013) (\$14.5 million); *cf. Zenobia*, 325 Md. at 429 (\$372,000, \$235,000, and \$2,500 against three defendants vacated on appeal); *ACandS, Inc. v. Godwin*, 340 Md. 334, 347, 380, 382, 392 (1995) (\$1.1 million and lower vacated on appeal).

Even in other toxic-tort cases involving widespread exposure and serious disease, courts have authorized punitive awards far smaller than \$1.5 billion. *See, e.g., Anderson v. Monsanto Co.*, 719 S.W.3d 755, 788 (Mo. Ct. App. 2025) (\$550 million total for three plaintiffs); *Erickson v. Pharmacia LLC*, 578 P.3d 306, 314 (Wash. 2025) (\$135 million total for three plaintiffs); *Caranci v. Monsanto Co.*, 338 A.3d 151, 159 (Pa. Super. Ct. 2025) (\$150 million); *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294, 299 (Fla. 2017) (\$30 million).

Courts also regularly remit punitive awards that are substantial yet still far less than the eye-popping \$1.5 billion award issued here. *See Hardeman v. Monsanto Co.*, 997 F.3d 941, 976

(9th Cir. 2021) (affirming remittitur from \$75 million to \$20 million); *Dennis v. Monsanto Co.*, 339 Cal. Rptr. 3d 175, 179, 189-90 (Cal. Ct. App. 2025) (affirming remittitur from \$325 million to \$21 million); *Johnson v. Monsanto Co.*, 266 Cal. Rptr. 3d 111, 120, 136 (Cal. Ct. App. 2020) (reducing \$250 million punitive award to approximately \$10 million).

And in talc cases against Defendants, in addition to many defense verdicts, numerous juries that have found liability nevertheless awarded no punitive damages at all. *See* Ex. 4, *Cabibi* verdict (no punitive damages); Ex. 5, *Leavitt* verdict (no punitive damages); Ex. 6, *Moure-Cabrera* verdict (no punitive damages); Ex. 7, *Schmitz* verdict (no punitive damages); Ex. 8, *Valadez* verdict (no punitive damages); Ex. 9, *Garcia* verdict (no punitive damages). In still others, juries issued punitive damages awards orders of magnitude lower than the one here. *See* Ex. 10, *Prudencio* verdict (\$100,000); Ex. 11, *Anderson* verdict (\$4 million); Ex. 12, *Shawn Johnson* verdict (\$25 million). No punitive damages sustained on appeal in a J&J talc case are remotely close to the verdict here.<sup>5</sup>

Through every lens of comparison, the \$1.5 billion punitive award here is an extreme outlier, confirming that the verdict is grossly excessive and cannot stand.

**E. Paying duplicative punitive damages for the same conduct further merits reduction of the punitive damages award here.**

Maryland's excessiveness review also expressly directs courts to consider "other final and satisfied punitive damages awards against the same defendant for the same conduct." *Bowden*, 350 Md. at 34. The point is straightforward: punitive damages are justified only to the extent they are

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<sup>5</sup> The 22-plaintiff consolidated case *Ingham*, discussed in more detail below, was an outlier. After rulings on personal jurisdiction, 20 plaintiffs were awarded \$900 million against Johnson & Johnson Consumer Inc. representing \$45 million per plaintiff and 5 plaintiffs were awarded just over \$715 million against J&J for approximately \$143 million per plaintiff. *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 725 (Mo. Ct. App. 2020).

necessary to punish and deter. *Id.* at 22-23. When a defendant has already been punished through prior punitive awards for the same alleged course of conduct, additional punishment must be mitigated to avoid duplicative, serial punishment untethered to legitimate deterrence.

This principle applies strongly here to reduce the punitive damages award. Plaintiff's punitive theory targeted an alleged talc-related course of conduct that has been litigated repeatedly and has resulted in punitive awards against J&J in other talc cases. From the verdict in the *Ingham* case involving similar allegations that asbestos in talc causes cancer for 22 plaintiffs, Pecos River's predecessor (Johnson & Johnson Consumer Inc.) has already paid \$900 million in punitive damages, and J&J paid over \$715 million in punitive damages. Ex. 13, White Decl. ¶ 15; *see also Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 722 (Mo. Ct. App. 2020). This prior punitive award already served the retributive and deterrent functions that punitive damages are meant to accomplish. Additional awards would merely be duplicative, particularly considering Defendants no longer sell talc-based baby powder, diminishing the deterrence value of a punitive damages award.

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The \$1.5 billion punitive damages award is excessive on every measure and should be drastically reduced under both Maryland law and the United States Constitution.

### **III. This Court Should Grant A New Trial On All Issues.**

There's a reason the jury ended up issuing a punitive damages award high enough to purchase a major league baseball team.<sup>6</sup> The jurors were inflamed by improper arguments

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<sup>6</sup> Several teams are valued at \$1.5 billion or lower, and the Baltimore Orioles sold for \$1.73 billion in 2024. Michael Ozanian, *CNBC's Official MLB Team Valuations 2025: Here's how the 30 franchises stand up*, CNBC (Apr. 16, 2025), <https://www.cnbc.com/2025/04/11/cnbc-official-mlb-team-valuations-2025.html>.

designed to rouse their passions after having seen a skewed and unfair presentation of the evidence. The Court should order a new trial for these reasons alone.

**A. Plaintiff employed improper, racially charged arguments.**

Maryland law does not permit a civil verdict to be driven by race-based themes untethered to the pleaded merits. In *Tierco Maryland, Inc. v. Williams*, the Supreme Court ordered a new trial where plaintiffs repeatedly injected insinuations of racial discrimination into a case that did not plead discrimination and where the record showed a “significant probability” that substantial damages were “influenced by . . . irrelevant and improper injection of racial considerations into the trial.” 381 Md. 378, 409 (2004). The law is clear: race-based references are improper when used to inflame passions or overwhelm the material issues rather than to prove an element of the claims submitted to the jury. *Id.* at 409-12.

That is what occurred here. Plaintiff repeatedly asked the jury to condemn Defendants for their alleged conduct toward Black consumers and “communities” through group-level “targeting” themes—without tying any identified campaign, channel, or message to Ms. Craft’s actual exposure, reliance, or use.

Yet courts frequently preclude plaintiffs in talc cases from referencing demographic targeting for the precise reason that it “may enflame jurors and suggest racism and sexism.” Ex. 14, *Van Klive* Order at 15-17; Ex. 15, *O’Hagan* Order at 6; Ex. 16, *Barden* Order; Ex. 17, *Chatfield* Order at 13; Ex. 18, *Levin* Tr. 246:9-12; Ex. 19, *G. Johnson* Pre-Trial Hr’g Tr. 288:14-21.

This Court reserved ruling pre-trial, with “the idea being that Cherie Craft had to rely on these or similar advertising campaigns at the time.” Tr. 7598:1-6. But once the Court permitted the documents to be admitted, Plaintiff exploited them precisely how Defendants predicted: to inflame the jury. No evidence existed that any sort of advertising played any role in Ms. Craft’s purchasing decisions. Yet Plaintiff elicited broad testimony about marketing strategies directed at African



American consumers and invoked community-channel efforts such as free samples to “beauty salons, churches,” and “radio campaigns” “to market to [B]lack women,” without tying any of those asserted channels to what Ms. Craft actually encountered or relied upon. Tr. 4678:4-4679:14.

Over objection, Plaintiff argued to the jury in closing that Defendants were “[t]argeting communities when [they] know that there is a cancer problem” pointing to documents “noting that Johnson’s Baby Powder has a high usage among African Americans.” Tr. 8696:2-8697:3; *see also* PX218, PX221. This was used supposedly as evidence of Defendants’ lack of “reasonable care” for purposes of negligence. Tr. 8693:9-14; *see also* Tr. 8697:8 (“That is not reasonable.”). Counsel continued the theme, urging jurors again to consider targeting the African American community: “One company, one side delivers bottles of baby powder to the community. They go to barbershops, they go to churches. Here’s free samples of our baby powder. This is J&J. It’s a group they can target.” Tr. 8596:17-21. This issue was so important to Plaintiff’s strategy that counsel ended closing argument on the topic as well: “They targeted her and her community, they targeted women and mothers, and they have not done right by her. And we need your help.” Tr. 8910:20-8911:2.

That Defendants were marketing specifically to African Americans has no bearing on negligence whatsoever, or any other issue in the case. This line of argument was improper because it invited a verdict driven by identity-based condemnation of how Defendants allegedly treated a community, rather than a plaintiff-specific showing of exposure, reliance, and causation—the very risk *Tierco* found intolerable where the verdict may be “induced by irrelevant racial considerations.” 381 Md. at 381. Courts elsewhere likewise reverse where counsel uses racial/ethnic “community” appeals or discrimination insinuations to divert the jury from the merits. *Gen. Motors Acceptance Corp. v. Baymon*, 732 So. 2d 262, 271-72 (Miss. 1999) (holding trial

court erred in allowing irrelevant and inflammatory testimony and argument implying defendant's insurance program disproportionately targeted/impacted African American customers); *see also Texas Emps. ' Ins. Ass'n v. Guerrero*, 800 S.W.2d 859, 862, 866 (Tex. App. 1990) (reversing where counsel urged jurors to "stick together as a community" on ethnic lines); *F.J.W. Enters., Inc. v. Johnson*, 746 So. 2d 1145, 1147 (Fla. Dist. Ct. App. 1999) (granting new trial where plaintiff's counsel prejudiced the jury by accusing the defense of "play[ing] the race card"); *LeBlanc v. Am. Honda Motor Co., Inc.*, 88 A.2d 556, 558-59 (N.H. 1997) (holding new trial was required where closing statements were calculated to prompt decision based on national-origin bias).

These race-based arguments were improper and warrant a new trial.

**B. Plaintiff's introduction of ovarian cancer was highly prejudicial.**

Plaintiff's discussion of ovarian cancer further served to prejudice the jury with irrelevant evidence. Courts consistently preclude discussion of ovarian cancer in talc-mesothelioma cases. In one, the court granted a motion to exclude references to talc causing ovarian cancer, but a witness nevertheless mentioned it. Recognizing the extreme prejudice such references cause, the court granted a mistrial. *See* Ex. 21, *Herford* 10/10/17 Tr. 5:26-7-11, 24:5-9. The court explained that the testimony about ovarian cancer was "so prejudicial as to be incurable by striking it and admonishing the jurors to disregard." *Id.* at 8:9-14. Another court admonished, "I don't want even the phrase 'ovarian cancer' stated without permission of the Court going forward, because that's the concern I have." Ex. 22, *Leavitt* 2/6/19 Tr. 22:17-19.

These rulings do not stand alone. Courts across the country have precluded mentions of ovarian cancer. *See* Ex. 23, *Moore* Order at 6; Ex. 24, *Domey* Order at 13; Ex. 25, *Fowler* Order at 3; Ex. 26, *Prudencio* Order; Ex. 15, *O'Hagan* Order at 4; Ex. 20, *M. Lee* Pre-Trial Hr'g Tr. 18:21-19:12; Ex. 27, *Fong* Order at 4; Ex. 28, *Blinkinsop* Order at 1; Ex. 29, Ex. B. to *Von Salzen* Order at 1; Ex. 30 *Lewis* Order; Ex. 31, *Hayes* Pre-Trial Hr'g Tr. 150:10-20; Ex. 32, *Lovell* Order

at 5; Ex. 33, *Paluzzi* Tr. 29:7-24; Ex. 34, *Weirick* Order at 5. In many others, the parties stipulated not to mention ovarian cancer. *See* Ex. 36, *Cabibi* Order at 6; Ex. 37, *Moure-Cabrera* Hr’g at 337:4-18; Ex. 38, *Koretzoff* Order at 2; Ex. 39, *Crudge* Order at 2-3; Ex. 40, *Kerkhof* Hr’g at 20:1-25.

Yet Plaintiff cross examined Dr. Diette regarding ovarian cancer causation. *See* Tr. 6716:9-13. Exhibits were also introduced discussing ovarian cancer. *See, e.g.*, Tr. 7594:3-6 (PX126, PX 182, and PX 187); Tr. 7624:13-17 (PX3486 and PX3488). This all culminated with closing arguments where counsel told the jury: “And so those tens of thousands of people that have died just in the years that Cherie Craft has been alive has nothing to do with them. Those women that are dying of ovarian cancers and the other cancers associated with asbestos.” Tr. 8595:12-17. While the Court sustained the objection to that comment, the Court did not expressly tell the jury that the comment was stricken per Defendants’ request. *See* Tr. 8596:1-3. And by that point, the bell could not be unrung in any event, as the *Herford* court concluded.

The comment was particularly improper because there was no evidence that exposure to talc has caused the deaths of tens of thousands of women, which would require specific causation expert testimony tens of thousands of times over. That of course does not exist anywhere in the transcript. *See Fuentes v. State*, 454 Md. 296, 319 (2017) (“Arguing facts not in evidence is highly improper.”).

Nor was this some heat-of-the-moment impromptu comment. It too is part of the playbook. As Defendants informed the Court pre-trial (TID 76768537), in an opening statement in another case, counsel stated that Defendants “understood tens of thousands of people would die. Most of them women.” Ex. 41, *Henderson* 1/22/24 Tr. 6:1-2. The *Henderson* court admonished counsel for the comment: “But Ms. Dean, I want to admonish you. This case is about Ms. Jeannine Henderson, what transpired with her, what adversely impacted her, the possible sources, if you can

prove them et cetera. We are not trying this case for millions of thousands of other people. We are not.” *Id.* at 11:13-26. Then, in the very next case counsel tried, she again echoed her improper argument during closing: “[if] you don’t think this is related to justice to 40 years of women that didn’t have to die, send us home.” Ex. 1, *Garcia* 4/17/24 Tr. 308:15-18. The *Garcia* court sustained an objection to this argument and struck it. *Id.* at 308:22-23. The only rational reason Plaintiff’s counsel could be continuing to make these comments knowing they are improper and knowing objections to them will be sustained is a belief that any instruction to disregard from the Court will not be effective at counteracting the powerful influence on the jury. That is precisely why a new trial is warranted.

**C. Plaintiff introduced irrelevant evidence regarding Defendants’ corporate restructuring.**

Plaintiff was permitted to introduce extensive evidence across multiple witnesses about the corporate restructuring that led to both the creation of the LTL Management LLC and the Kenvue spinoff (*i.e.*, Project Plato and Project Diamond). While this evidence was introduced ostensibly for purposes of successor liability, this Court agreed that successor liability is a matter of equity for the Court to decide and stated it would “act[] as the trier of fact” on that issue. Tr. 3666:2-3667:18; Order Mot. Separate Bench Trial at 3-4 (TID 77837288); Tr. 8290:21-8291:4.

Permitting the jury to hear evidence on these issues served only to create a narrative that Defendants were attempting to evade liability.<sup>7</sup> For example, counsel told the jury during questioning that “[a] company that has nothing but liabilities and it makes nothing needs to have some money, if people get hurt and are seeking redress.” Tr. 4345:12-15. Counsel then went on to

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<sup>7</sup> Courts have consistently excluded references to the bankruptcy. *See* Ex. 23, *Moore* Order; *see* Ex. 24, *Doomey* Order at 22; Ex. 25, *Fowler* Order at 9; Ex. 42, *Valadez* Trial Tr. 123:24-124:3; Ex. 43, *Sugarman* Hr’g Tr. 161:8-21; Ex. 44, *M. Lee* Order; Ex. 35, *K. Lee* Order at 63-67; Ex. 45, *Newton* Order at 3; Ex. 46, *Spinks* Hr’g at 72:24-73:17.

discuss funding agreements, telling the jury that “Johnson & Johnson *claims* that this funding agreement acts to ensure that there’s coverage for liabilities; right?” Tr. 4348:2-4 (emphasis added).

She described the funding agreement as a “promise” for Pecos River to be able to acquire “money.” Tr. 4352:9-12. She then told the jury the funding agreement was ephemeral, asking: “You have certainly heard of the concept that something can be an illusion of a promise? It looks like a promise, it looks like it has power, but when you dig into the details, you find out there’s literally no obligation whatsoever.” Tr. 4357:14-20. She suggested that Holdco could end up “shifting their money from one company to another to another to another at any point in time.” Tr. 4359:17-21; *see also* Tr. 4361:16-4362:5. She even suggested that the funding agreement contained an exception if Defendants believed “its [sic] not fair to pay someone.” Tr. 4364:5-9.

Plaintiff then continued to exploit this theme in closing. Plaintiff argued to the jury that when Defendants’ supposed argument that “most women are just failing in their bodies” was not successful, Defendants “start[ed] creating all these corporate machinations,” discussing companies “literally run entirely by lawyers and accountants.” Tr. 8587:15-8588:4. Counsel then went on to argue that Project Plato represented “corporate shenanigans” where “they created an entity with all the good stuff and another entity with all the liabilities.” Tr. 8601:10-12.

This issue has no relevance. And to the extent it has any minimal relevance, that was substantially outweighed by the prejudice the introduction of this issue caused. The extensive discussion of the corporate restructuring served only to prejudice the jury and warrants a new trial

**D. Dr. Johnston gave improper expert opinion.**

Because causation is not a matter of common experience, “expert testimony has become central to toxic tort litigation.” *Ross v. Hous. Auth. of Balt. City*, 430 Md. 648, 651 (2013). The proponent of expert testimony bears the burden of qualifying their witness on each discrete area

of expertise. *Streaker v. Boushehri*, 230 Md. App. 101, 111 (2016); *Mack v. State*, 244 Md. App. 549, 563-64 (2020).

Plaintiff's treating physician, Dr. Johnston, testified extensively regarding causation issues. This was improper for multiple reasons. As a threshold matter, that testimony was undisclosed and Dr. Johnston lacked the qualifications and foundation to give those opinions, as Defendants argued in their motion in limine and incorporated herein by reference. *See* Mot. in Limine #13 (TID 77136566). Nevertheless, this Court concluded that the term "diagnosis" in Dr. Johnston's disclosure permitted at least some limited testimony on causation: "I'm going to call it limited causation opinions based on what he knows through his research available to him that enables him to give a differential diagnosis, meaning -- and where I see this going is the paperwork says that, and I have no reason to doubt that paperwork, and that's why I'm making that diagnosis." Tr. 594:18-595:1. So Defendants requested an opportunity to *voir dire* Dr. Johnston about causation before he offered opinions about it, which the Court granted. Tr. 598:15-599:3.

The Court then asked Plaintiff's counsel, "When we get to that section [regarding causation issues], would it be possible to introduce that topic as saying I would now like to ask you questions that relate to, you know, the operative language [defense counsel] just said so it's easier to spot in the record." Tr. 1179:19-1180:2. But counsel did not adhere to that, instead going directly into causation questions without warning: "What is the most common risk factor for malignant peritoneal mesothelioma?" Tr. 1227:6-7.

But throughout it all, Plaintiff never tendered Dr. Johnston as an expert. This Court therefore ruled his testimony was "lay testimony." Tr. 1271:1-2. As this Court explained: "the reason why this wasn't form over substance, when one party doesn't offer someone as an expert,



you deprive the other side the opportunity to *voir dire* them and question that expertise.” Tr. 1365:5-9. Because the witness is not formally tendered, that “deprived the defense [of] the opportunity to do that.” Tr. 1365:13-15.

Defendants therefore could not have waived any objection, since it is the formal tender that gives the opportunity to *voir dire*. Moreover, Defendants extensively objected to Dr. Johnston’s ability to give an opinion on causation issues pre-trial. Defendants immediately objected when counsel began questioning about causation issues. Tr. 1227:8. And the Court gave a continuing objection to the entire topic. Tr. 1229:1-16; *see also* Tr. 1178:4-17; 1180:15-16.

Dr. Johnston gave testimony that went beyond what the Court had allowed. There was no consequence for this—the jury was not told about the Court’s limits on his testimony, and they did not receive any special instructions about how to consider what he said. *See Jun v. State*, 265 Md. App. 459, 471 (2025) (“[W]hen a court permits a lay witness to testify to matters requiring expert testimony under Maryland Rule 5-702, the court commits legal error and abuses its discretion.” (internal quotation marks omitted)).

Despite this Court’s ruling that Dr Johnston only provided lay testimony, Plaintiff used him as a causation expert in closing. Counsel emphasized Dr. Johnston’s neutrality by pointing out to the jury that he was “[n]ot paid by anybody.” Tr. 8598:5-17. And counsel told the jury that “one of the most powerful things of Dr. Johnston is what he said about” Ms. Craft—that “[h]er body did not fail her. She was poisoned.” Tr. 8598:5-10; *cf. In re DePuy Orthopaedics, Inc.*, 888 F.3d at 791 (ordering new trial where counsel emphasized a witness’s neutrality when in fact the party was paying the witness).

This occurred on more than one occasion in closing. Counsel also emphasized Dr. Johnston neutrality to argue that spontaneous mesothelioma does not exist: “But her treater who has no dog

in the fight, who was not paid, who published a consensus group, a white paper who he says is at the cutting edge that says asbestos is the number one risk factor says, unequivocally, when I asked him, when we're not talking about any cancer but malignant mesothelioma, is this the type of cancer that just occurs spontaneously in a person without any kind of outside influence? Precisely what Dr. Diette is saying is happening. You don't generally think that. We do think that there is some outside influence even if you can't identify them." Tr. 8686:10-8687:2

Dr. Johnston's improper testimony was highly prejudicial and warrants a new trial.

**E. Plaintiff used Dr. Longo's work as substantive proof while keeping him off the stand.**

**1. Plaintiff's experts treated Dr. Longo's findings as substantive proof, without Dr. Longo appearing to be subject to cross-examination.**

Plaintiff's experts Dr. Madigan and Mr. Bailey relied on Dr. Longo's testing of Defendants' talc products. Yet weeks after those experts took the stand, Plaintiff informed the Court and Defendants that they no longer intended to call Dr. Longo as a witness due to purported scheduling conflicts. Tr. 6374:16-6376:20. This tactic allowed the jury to hear the substance of Dr. Longo's scientifically suspect opinions for their truth while at the same time depriving Defendants of any ability to cross examine Dr. Longo to expose to the jury the flaws in that testing.

Rule 5-702 requires that an expert's opinion be supported by "a sufficient factual basis." Rule 5-703, in turn, limits the types of "facts or data" on which an expert may reasonably rely. For example, "[a] scientist, however well credentialed he may be, is not permitted to be the mouthpiece of a scientist in a different specialty. That would not be responsible science." *United States v. Zolot*, 968 F. Supp. 2d 411, 426 (D. Mass. 2013) (quoting *Dura Auto. Sys. of Ind., Inc. v. CTS Corp.*, 285 F.3d 609, 614 (7th Cir. 2002)).<sup>8</sup>

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<sup>8</sup> Rule 5-703 is "derived from Fed R. Evid. 703." Rule 5-703 Committee Note.

Rule 5-703 does not permit an expert to serve as a conduit for another expert's opinions. "[A]lthough an expert may rely on other witness's testimony or other expert conclusions to form an opinion, the expert must do more than parrot another expert's conclusions." *Cashman Dredging & Marine Contracting Co., LLC v. Belesimo*, 759 F. Supp. 3d 120, 156 (D. Mass. 2024) (quoting *Iconics, Inc. v. Massaro*, 266 F. Supp. 3d 461, 469 (D. Mass. 2017)). Rather, "[a]n expert is responsible for ensuring that his opinion is based on reliable data." *Id.* (quoting *Iconics, Inc.*, 266 F. Supp. at 469). Otherwise, "an expert who does as much is merely a 'ventriloquist's dummy.'" *Trs. of Bos. Univ. v. Everlight Elecs. Co.*, 141 F. Supp. 3d 147, 149 (D. Mass. 2015) (quoting *United States v. Brownlee*, 744 F.3d 479, 482 (7th Cir. 2014)).

Accordingly, courts routinely reject "parroting testimony." *See, e.g., Belesimo*, 759 F. Supp. 3d at 156; *Soto-Gonzalez ex rel. AMS v. Drs' Ctr. Hosp.*, 2024 WL 753565, at \*8 (D.P.R. Feb. 23, 2024); *Sykes v. RBS Citizens, N.A.*, 2015 WL 10963743, at \*3 (D.N.H. Sept. 23, 2015). And for good reason: allowing such testimony would be fundamentally unfair, as it permits one side to smuggle untested scientific assertions into evidence without cross-examination or any assurance of reliability.

That is exactly what happened here. During his testimony, Dr. Madigan relied on the results of testing by Dr. Longo. Dr. Longo's testing—and only Dr. Longo's testing—served as the inputs for Dr. Madigan's statistical analysis. Tr. 2480:10-16; 2482:2-12; 2486:9-13. For his analysis, Dr. Madigan was "assuming in this case that what Dr. Longo reports as asbestos is actually asbestos." Tr. 2480:20-2481:13. And *Plaintiff* elicited from Dr. Madigan that if there are issues with Dr. Longo's data, "those are questions for him," not Dr. Madigan. Tr. 2381:11-12.

Yet weeks after Dr. Madigan's testimony, Plaintiff stated that they would not be calling Dr. Longo as a witness. This tactic prevented the Defendants from being able to cross examine

Dr. Longo regarding the results of his testing to demonstrate its flaws to the jury. For example, Dr. Longo has admitted he will call particles he finds asbestos, *even if they're not*.

As discussed in Defendants' motion to exclude Dr. Longo's testing (which Defendants incorporate herein by reference), the term "asbestiform describes the pattern of growth of a mineral that is referred to as a 'habit.'" Ex. 47, IARC 2010 Monograph at 277. The term "asbestos" "describes six minerals that occur in the asbestiform habit" and only "when asbestiform, [do] they constitute asbestos." *Id.* Dr. Longo acknowledges that the "structure [that] comes from breaking apart non-asbestos" minerals does "not magically become, in fact, asbestos." Ex. 48, Longo *Rimondi* Tr. Vol. I 149:14-17. But his lab will nevertheless "count it and report it in [his] reports as asbestos." *Id.* at 149:18-20. Put another way, Dr. Longo has agreed that if one of his "analysts who is conducting the test sees a non-asbestiform amphibole cleavage fragment," of a certain size and shape, "the analyst will count that as an asbestos structure." Ex. 49, Longo *Olson* Tr. 1717:3-9.

Dr. Longo has *said* (under oath) that he has tested cosmetic talc only for purposes of litigation, and only began doing so in 2017 after being contacted by plaintiffs' attorneys. Ex. 50, Longo *Leavitt* Tr. 170:16-171:11. But back in 2002—before he was hired for this litigation—he testified: "[W]e have done our own studies on talc, but what I haven't been able to do is find a cosmetic where I can say, yes, that has asbestos in it." Ex. 51, Longo 7/18/02 *Starkweather* Dep. 155:20-23. He said then that he was "very familiar" with the issue and that cosmetic talc containing asbestos was "an urban legend." *Id.* at 155:10-23; *see also* Ex. 52, Longo 5/28/02 *Manbodh* Dep. 106:11-19 ("We've looked. We have not found it.").

Nevertheless, Dr. Madigan simply accepts Dr. Longo's testing as true at face value even though Dr. Madigan has no expertise in asbestos testing. And without Dr. Longo as a witness, Defendants could not cross examine Dr. Longo regarding these flaws in his testing. A similar

problem was present for Mr. Bailey's testimony. He also relied on the testing of Dr. Longo without Dr. Longo present to testify. By having Dr. Madigan and Mr. Bailey rely on Dr. Longo but not bringing Dr. Longo as a witness, Plaintiff tactically arranged matters so that the jury would hear the part of Dr. Longo's testing that helps their case while limiting Defendants' ability to explain to the jury the flaws of that testing.

Plaintiff's end-run was not limited to having other experts blindly rely on Dr. Longo's work. Plaintiff also admitted under Rule 5-703 images of Dr. Longo's talc findings even though he was not present to provide any foundation for that admission and without giving the opportunity for the defense to cross examine Dr. Longo. *See* PX422. Images from Dr. Compton's testing—also a plaintiff's expert—were also admitted despite Dr. Compton's absence from trial. PX433. Plaintiff then jumped at the chance to display them in closing and argued the “check-the-boxes” conclusion directly off the images themselves—“Tremolite, check. . . . We know that's asbestos.” Tr. 8618:17-8619:10; *see also* Tr. 8620:3-10.

**2. Plaintiff's counsel tried to cover up Dr. Longo's absence from the jury by admitting facts outside of the record.**

To make matters worse, after displaying and arguing from Dr. Longo's images (Exhibit 422), Plaintiff tried to explain away his absence in closing. After discussing Dr. Madigan and how he relied on Dr. Longo, counsel told the jury: “We wanted Dr. Longo to be here. It didn't work out for a lot of reasons.” Tr. 8629:6-7. This Court itself noted it “really didn't want this to even come up” and that it did not “know how to unring that bell right now.” Tr. 8632:2-9. Though of course the jury was ultimately instructed to disregard the comment. Tr. 8652:10-19. *But see State v. Pemberton*, 796 P.2d 80, 85 (Haw. 1990) (ordering a new trial where, though “the trial court acted properly in trying to cure any possible prejudice, the fact that defense counsel was repeatedly forced to object and the court repeatedly forced to sustain those objections and to issue cautionary

instructions is likely to have had the reverse effect of focusing the jury's attention on that evidence and the fact that it was being suppressed.").

The prejudice here is compounded by the fact that Plaintiff's "explanation" to the jury of Dr. Longo's absence echoed a broader, recurring misrepresentation dispute about Dr. Longo's supposed "unavailability." For example, counsel on December 4 claimed that Dr. Longo was "on the stand in California right now" Tr. 5335:10-11. But that was simply not true. *See* Ex. 53, Longo Testimony List; Ex. 54, Longo 12/12/25 *Smith* Dep. 10:11-21 (noting, on December 12, 2025, that his testimony in "[t]he trial in Los Angeles" was "maybe a month ago or so" and thus "not the last couple weeks"); *see also* Tr. 6045:11-13 (counsel admitting she did not know "one way or another whether he was in a deposition or not").

Counsel's statement in closing that Plaintiff "wanted Dr. Longo to be here," after obfuscating his availability throughout the trial, was improper and warrants a new trial.

\* \* \*

The trial was replete with irrelevant and prejudicial material, including the improper compensatory damages arguments discussed in Section I. That the "evidence" and argument was used to inflame the jury was on full display during closing arguments. This Court should grant a new trial for each of these reasons individually, and also cumulatively.

#### **IV. A New Trial Should Be Granted As The Verdict Was Against The Weight Of The Evidence.**

A new trial should be granted where the "verdict [was] against the weight of the evidence." *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 60 (1992). "[A] claim that the verdict is against the weight of the evidence requires assessment of credibility and assignment of weight to evidence—a task for the trial judge." *Id.* The jury's verdict was against the weight of the evidence for all the reasons argued in Defendants' motion for judgment notwithstanding the verdict, which



Defendants incorporate herein by reference. This serves as yet another reason a new trial is warranted.

### **CONCLUSION**

This Court should order a new trial, or in the alternative, reduce the amounts of the compensatory and punitive damages awards.

Respectfully submitted,

/s/ Robin Silver

Robin Silver (AIS # 8501010573)

Michael L. Haslup (AIS #0412140327)

Bridget K. M. Brodie (AIS # 2012170245)

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Attorneys for Defendants Johnson &

Johnson and Pecos River Talc LLC

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of January, 2026, a copy of the foregoing Motion for a New Trial or Remittitur was electronically filed and served on all counsel of record pursuant to this Court's First Amended Case Management Order for the Electronic Filing of Pleadings, Papers and Documents in Asbestos Personal Injury Cases.

/s/ Robin Silver

Robin Silver

# EXHIBIT V

HONORABLE REGINA S. CAHAN  
Trial Date: May 3, 2021

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

WENDI J. HIRSHBERG and RICHARD  
HIRSHBERG, Wife and Husband,

Plaintiffs,

vs.

JOHNSON & JOHNSON, et al.,

Defendants..

No. 20-2-05603-1 SEA

ORDER GRANTING IN PART  
PLAINTIFFS' MOTION TO COMPEL  
COMPLIANCE WITH SUBPOENA  
DUCES TECUM AND EXPERT  
DISCLOSURE OF MATTHEW  
SANCHEZ, PH.D.

THIS MATTER comes before the Court on Plaintiffs' Motion to Compel Matthew Sanchez, PH.D. In adjudicating this Motion, the Court has considered the argument of counsel and the following pleadings submitted by the parties:

1. Plaintiffs' Motion to Compel Compliance with Subpoena Duces Tecum and Expert Disclosure of Matthew Sanchez, Ph.D.;
2. Declaration of Benjamin H. Adams in support of Plaintiffs' Motion to Compel Compliance with Subpoena Duces Tecum and Expert Disclosure of Matthew Sanchez, Ph.D., and the exhibits thereto;
3. Defendants' Johnson & Johnson and Johnson Consumer Inc.'s Response in Opposition to Plaintiffs' Motion to Compel Matthew Sanchez, Ph.D.;
4. Declaration of Taryn Basauri in Support of Defendants' Response in Opposition to Plaintiffs' Motion to Compel Matthew Sanchez, PH.D. and the exhibits thereto;
5. Plaintiffs' Reply to their Motion to Compel Matthew Sanchez, Ph.D.; and

ORDER GRANTING IN PART PLAINTIFFS' MOTION TO  
COMPEL MATTHEW SANCHEZ, PH.D. - 1

**WEINSTEIN CAGGIANO PLLC**  
600 UNIVERSITY STREET, SUITE 1620  
SEATTLE, WASHINGTON 98101  
(206) 508-7070 - Fax (206) 237-8650

6. Declaration of Benjamin H. Adams in support of Plaintiffs' Reply to their Motion to Compel Matthew Sanchez, Ph.D., and the exhibits thereto.

IT IS THEREFORE ORDERED that Plaintiffs' Motion to Compel Matthew Sanchez, Ph.D. is GRANTED as follows:

1. Dr. Sanchez must provide all documents regarding payment from J&J to RJ Lee, Matt Sanchez or any other employee or former employee affiliated with RJ Lee regarding this case by 3/29/21.
2. Dr. Sanchez must provide a summary of payments received from J&J to RJ Lee, Matt Sanchez or any other employee or former employee affiliated with RJ Lee to provide the amounts received, this includes litigation and not litigation sources, by year for the last ten years by 3/29/21.
3. The court denies the request that Dr. Sanchez must provide the billing records themselves and finds a summary would be sufficient to address issues of bias.
4. Dr. Sanchez shall produce the specific documents he relied on to form the basis of his opinions in this case; specifically, those on his reliance list by 3/29/21.
5. Dr. Sanchez shall make himself available to complete his deposition on or before March 31, 2021. If the parties cannot agree on a date, it shall be scheduled on March 31, 2021.

DATED this 24th Day of March, 2021.

*Electronic Signature Attached*

---

HONORABLE REGINA S. CAHAN  
JUDGE OF THE SUPERIOR COURT

Presented by:

DEAN OMAR BRANHAM SHIRLEY, LLP



1 /s/ Benjamin H. Adams

Benjamin H. Adams CASB #272909

2 *Admitted Pro Hac Vice*

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12 Counsel for Plaintiffs

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 20-2-05603-1  
Case Title: HIRSHBERG ET ANO vs JOHNSON & JOHNSON ET AL  
Document Title: ORDER RE GRANTING IN PART P'S MTC DR. SANCHE  
Signed By: Regina Cahan  
Date: March 25, 2021



---

Judge: Regina Cahan

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: AB8C2D4446EBEB4BB439ECF0CC0EE090B63DC727  
Certificate effective date: 7/16/2018 1:46:58 PM  
Certificate expiry date: 7/16/2023 1:46:58 PM  
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,  
O=KCDJA, CN="Regina Cahan:  
GoGvw4r95BGhF7dmHl1GsA=="

# EXHIBIT W

HONORABLE REGINA CAHAN  
Trial Date: May 3, 2021

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

WENDI J. HIRSHBERG and RICHARD  
HIRSHBERG, Wife and Husband,

Plaintiffs,

vs.

JOHNSON & JOHNSON, et al.,

Defendants.

No. 20-2-05603-1 SEA

DECLARATION OF MATTHEW S.  
SANCHEZ, PH.D.

I, Matthew S. Sanchez, Ph.D., declare as follows:

1. I am a scientist employed by the RJ Lee Group ("RJLG") and have been retained by defendants Johnson & Johnson and Johnson & Johnson Consumer Inc. ("JJCI") (collectively, the "J&J defendants") as an expert in this case.

2. The approximate total amounts invoiced by RJLG to law firms in connection with my work as a testifying witness on behalf of the J&J defendants in lawsuits regarding cosmetic talcum powder, such as my time spent testifying in deposition in trial, my time preparing for deposition and trial testimony, hundreds of cosmetic talcum powder analyses conducted by RJLG, drafting dozens of reports, reviewing and assessing reports submitted by other experts, and inspections conducted by RJLG, for the period from 2011 to the present follows:

- a. 2011: \$0
- b. 2012: \$0
- c. 2013: \$0
- d. 2014: \$0

- e. 2015: \$0
- f. 2016: \$0
- g. 2017: \$286,000
- h. 2018: \$1,590,000
- i. 2019: \$1,104,000
- j. 2020: \$1,466,000
- k. 2021: \$239,000

3. The approximate total amounts invoiced by RJLG to the J&J defendants for work performed related to talc in the ordinary course of business, including routine testing, (including quarterly testing), of cosmetic talc from sources used by J&J for talcum powder products sold in the United States; testing and investigation done by RJLG of the Johnson's Baby Powder samples tested by AMA at the request of the FDA; and testing of some of the talc sources used by J&J for talcum powder products sold in other parts of the world, for the period of 2011 to the present follows:

- a. 2011: \$139,000
- b. 2012: \$88,000
- c. 2013: \$49,000
- d. 2014: \$49,000
- e. 2015: \$67,000
- f. 2016: \$88,000
- g. 2017: \$42,000
- h. 2018: \$105,000
- i. 2019: \$158,000
- j. 2020: \$251,000
- k. 2021: \$42,000

1           4.     I did not assist in the compiling of the sums of payment in this declaration.  
2 My understanding is that these figures were compiled by counsel for the J&J defendants  
3 based on searches of reasonably available payment systems.  
4

5           I declare under penalty of perjury under the laws of the state of Washington that the  
6 foregoing is true and correct to the best of my knowledge.  
7

8           Dated: March 29, 2021

A handwritten signature in blue ink, appearing to read "Matt S. Sanchez", is written over a horizontal line.

Matthew S. Sanchez, Ph.D.



# EXHIBIT X

**SERVICE COPY**

**NOTICE OF SIGNING OF JUDGMENT**

(Served in Accordance with LSA R.S. 13:3201 et seq.)

**CAROLYN M GAUTIER**  
(Plaintiff)

**NUMBER C-753560 24**

**VS**

**19<sup>TH</sup> JUDICIAL DISTRICT COURT**

**ADRIATIC INSURANCE COMPANY, ET AL**  
(Defendant)

**PARISH OF EAST BATON ROUGE**

**STATE OF LOUISIANA**

(Served in Accordance with LSA R.S. 13:3201 et seq.)

**TO: DEAN OMAR BRANHAM SHIRLEY, LLP**

You are hereby notified that a **JUDGMENT ON CAROLYN M. GAUTHIER'S MOTION TO COMPEL DEFENDAND JOHNSON & JOHNSON'S COMPLIANCE WITH THE COURT'S FEBRUARY 9, 2026 ORDER AND FOR SANCTIONS** was signed on **JULY 13, 2026**. A certified copy whereof is attached hereto, as requested by **SIMON, DANA CASSELLI**.

This notice was issued by the Clerk of Court for East Baton Rouge Parish, on **JULY 17, 2026**.



*Raemi Madgoney*

Deputy Clerk of Court for  
Doug Welborn, Clerk of Court

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. C-753560

SECTION 24

DIVISION "B"

CAROLYN M. GAUTIER

VERSUS

ADRIATIC INSURANCE COMPANY, ET AL.

FILED:

DEPUTY CLERK

JUDGMENT

ON CAROLYN M. GAUTIER'S MOTION TO COMPEL DEFENDANT JOHNSON & JOHNSON'S COMPLIANCE WITH THE COURT'S FEBRUARY 9, 2026 ORDER AND FOR SANCTIONS

This matter came before the Court on June 26, 2026, on Plaintiff, Carolyn M. Gautier's *Motion to Compel Defendant Johnson & Johnson's Compliance with the Court's February 9, 2026 Order and for Sanctions*, filed on May 15, 2026. Defendant, Johnson & Johnson opposed the Motion:

Present were:

Dana Simon, Attorney for Plaintiff Carolyn M. Gautier; and

Andrew M. Karp and Jourdan M. Curet, Attorneys for Johnson & Johnson.

After considering the motion, the opposition, the exhibits, the prior judgment of this Court, the arguments of counsel, the applicable law, and the record of these proceedings, the Court finds that the motion should be granted in part and denied in part.

The Court previously ordered Defendant Johnson & Johnson to produce a La. C.C.P. art. 1442 corporate representative on or before April 1, 2026, to address the topics set forth in Plaintiff's First Amended Notice of La. C.C.P. art. 1442 Videotaped Deposition. The Court finds that Plaintiff has shown that Johnson & Johnson's corporate representative was not sufficiently prepared to testify regarding Topic No. 4, which concerns payments made to expert witnesses in cosmetic talc litigation over the past fifteen years.

The Court further finds that the expert-compensation discovery sought by Plaintiff is discoverable under the Louisiana Code of Civil Procedure. Considering the nature of the claims, the issues in dispute, and Plaintiff's stated purpose of exploring potential bias, financial interest, and the relationship between Johnson & Johnson and its expert witnesses, the Court finds that La. C.C.P. art. 1425, read together with the broader discovery provisions of the Louisiana Code of

*Naomi McGonney*



Civil Procedure, is sufficient to permit the requested discovery. The Court further finds that the requested information is relevant and proportional to the needs of this litigation.

The Court does not find, however, that sanctions are warranted at this time. Although Johnson & Johnson's position is rejected, the Court finds that its opposition to the motion was not shown to be in bad faith or so unjustified as to require sanctions under the circumstances.

Accordingly,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff Carolyn M. Gautier's *Motion to Compel Defendant Johnson & Johnson's Compliance with the Court's February 9, 2026 Order and for Sanctions* is **GRANTED IN PART AND DENIED IN PART**.

**IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED** that the motion is **GRANTED** to the extent that Defendant Johnson & Johnson shall produce a properly prepared La. C.C.P. art. 1442 corporate representative to testify regarding Topic No. 4 of Plaintiff's First Amended Notice of La. C.C.P. art. 1442 Videotaped Deposition, including payments made to expert witnesses in cosmetic talc litigation over the past fifteen years.

**IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Johnson & Johnson shall produce all non-privileged documents responsive to Topic No. 4 of Plaintiff's First Amended Notice, including documents sufficient to show payments made to expert witnesses in cosmetic talc litigation over the past fifteen years, within 15 days of this Judgment, or no later than five days before the continuation of the La. C.C.P. art. 1442 deposition, whichever occurs first.

**IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's request for sanctions, attorney's fees, costs, expenses, contempt, or other sanctions-related relief is **DENIED** at this time.

**IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED** that nothing in this Judgment shall be construed to require the production of privileged material, attorney work product, or information protected by any applicable protective order, except to the extent such information is otherwise discoverable under law and subject to appropriate redaction or confidentiality protections.

**JUDGMENT READ, RENDERED, AND SIGNED** on the 13<sup>th</sup> day of July 2026, in Baton Rouge, Louisiana.

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS FOR JUDGMENT / JUDGMENT / ORDER / COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED. SEE ATTACHED LETTER FOR LIST OF RECIPIENTS.

DONE AND MAILED ON July 20, 2026

2

*Raani Montgomery*  
DEPUTY CLERK OF COURT

*HONORABLE DONALD R. JOHNSON*  
CHIEF JUDGE, 19TH JUDICIAL DISTRICT COURT

*Raani Montgomery*



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East Baton Rouge Parish  
Deputy Clerk Of Court

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# EXHIBIT Y





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**Court of Appeal, First Circuit**  
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**Rodd Naquin**  
Clerk of Court

**Post Office Box 4408**  
**Baton Rouge, LA**  
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**(225) 382-3000**

**Notice of Judgment and Disposition**

September 09, 2026

Docket Number: 2026 - CW - 1038

Carolyn M. Gautier  
versus  
Anco Insulation, Inc., et al

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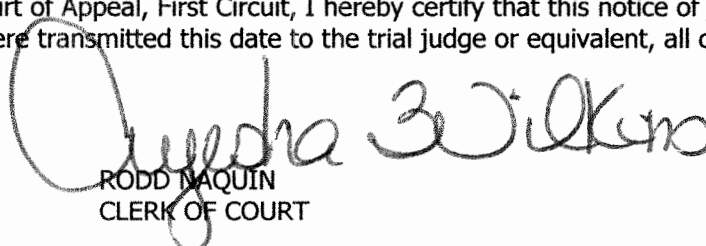
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Hon. Donald R. Johnson  
300 North Boulevard  
Suite 8401  
Baton Rouge, LA 70801  
VIA EMAIL

In accordance with Local Rule 6 of the Court of Appeal, First Circuit, I hereby certify that this notice of judgment and disposition and the attached disposition were transmitted this date to the trial judge or equivalent, all counsel of record, and all parties not represented by counsel.

  
RODD NAQUIN  
CLERK OF COURT

# STATE OF LOUISIANA

## COURT OF APPEAL, FIRST CIRCUIT

CAROLYN M. GAUTIER

NO. 2026 CW 1038

VERSUS

ADRIATIC INSURANCE COMPANY,  
ET AL.

SEPTEMBER 9, 2026

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In Re: Johnson & Johnson, applying for supervisory writs, 19th  
Judicial District Court, Parish of East Baton Rouge, No.  
753560.

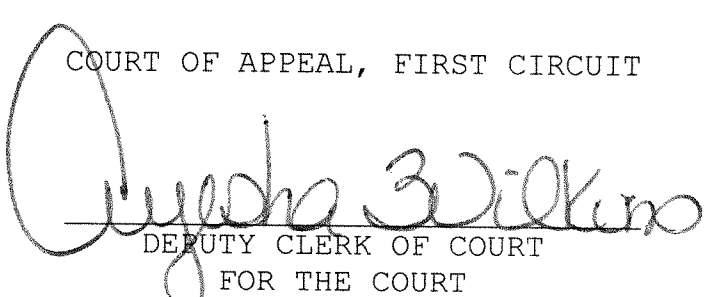
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**BEFORE: THERIOT, GREENE, AND EDWARDS, JJ.**

**WRIT GRANTED.** While recognizing that in ruling on discovery matters, the trial court is vested with broad discretion, we have found an abuse of discretion in this matter. The trial court's July 13, 2026 judgment requiring Johnson & Johnson to produce documents responsive to Topic No. 4 of Plaintiff's First Amended Notice, including documents sufficient to show payments made to experts witnesses in cosmetic talc litigation (other than the experts in this case) over the past fifteen years is overbroad, unduly burdensome, and outside the scope of La. Code Civ. P. art. 1425(B). See Stolzle v. Safety & Sys. Assurance Consultants, Inc., 2002-1197 (La. 5/24/02), 819 So.2d 287, 289 (per curiam); See also DirecTV, LLC v. Bridges, 2021-646 (La. App. 5th Cir. 1/21/22), 2022 WL 198864 (unpublished). Accordingly, the trial court's July 13, 2026 judgment is reversed to the extent the judgment ordered Johnson & Johnson to produce expert compensation discovery relating to experts not designated to testify in Ms. Gautier's case. For the reasons stated, the August 21, 2026 judgment ordering the deposition of Kristen Fournier concerning the contents of her "Declaration" is also reversed.

MRT  
HG  
BDE

COURT OF APPEAL, FIRST CIRCUIT



DEPUTY CLERK OF COURT  
FOR THE COURT

# EXHIBIT Z

subjects, whether manifest in the fasting or in the stimulated state, is independent of coexisting obesity and glucose intolerance although both are often contributory factors. Which is chicken and which is egg is unresolved but experimental evidence favours a causal role for hyperinsulinemia. Long-continued administration of insulin to animals in supra-optimal doses can give rise to histological and biochemical lesions resembling those of human atheroma<sup>11</sup> and insulin encourages the synthesis of cholesterol and other lipids by arterial-wall tissue<sup>12,13</sup> both in vivo and in vitro. Of the many factors known to cause exaggerated insulin secretion some, such as obesity and high sucrose consumption,<sup>14</sup> have been implicated, on epidemiological grounds, in the pathogenesis of atherosclerosis whilst others, such as increased consumption of sugary alcoholic drinks,<sup>15</sup> have so far not been. Conversely, certain types of vegetable fibre, the exclusion from the diet of which have been claimed to increase the risk of atheroma,<sup>16</sup> reduce the immediate and overall insulin secretory response to ingested carbohydrate<sup>17</sup> without adversely affecting glucose tolerance. The role of the insulinotropic gastrointestinal hormones in providing the link between composition of the diet and the hyperinsulinemia of atherosclerosis is undetermined and awaits investigation by the newer methods of measuring them in blood.

#### COSMETIC TALC POWDER

FROM time immemorial man, like his evolutionary predecessors, has been exposed to airborne dusts. Such exposure is a corollary of living and survival. Not unexpectedly, therefore, the lungs have efficient means of clearing themselves of inhaled particles and a functional reserve such that the accumulation of uncleared dust may be considerable before there is any obvious loss of work-capacity. However, it has long been recognised that heavy exposure to dusts, such as quartz and asbestos, may lead to loss of function and, in the case of asbestos, to cancer of the pleura and of the lung itself. The observation that even casual exposure to asbestos may be associated with increased risk of mesothelioma, now occurring at the rate of nearly 200 new cases a year in the United Kingdom,<sup>1</sup> has brought into question the safety of other common dusts such as cosmetic talc. There are two main concerns. Firstly, will inhalation of a dust cause loss of function through fibrosis or emphysema? And, secondly, will it predispose to cancer?

Although talc can cause granulomas when introduced into the tissues or body cavities,<sup>2</sup> exposure to cosmetic talc has been widely assumed not to predispose to pulmonary fibrosis. However, the fact that no association has been seen between the use of talc and loss of lung function might simply reflect the lack of methods sensitive enough to detect losses of function that are small compared with those due, for example, to smoking and to heterogeneity in  $\alpha_1$ -antitrypsin status. For similar reasons any effect of talc exposure on cancer incidence would probably escape notice unless deliberately sought. Until lately facilities for studying the long-term effects of inhalation of dusts in laboratory animals have been scarce, and even now the predictive value of animal models is questionable. Thus, even in the case of tobacco smoke, where the cancer hazard to man is indisputable, duplication of the effect, by the inhalation route, in laboratory animals has proved difficult or impossible,<sup>3</sup> although inhaled asbestos dust has given positive results in animals.<sup>4</sup>

The possibility that talc causes cancer dramatically hit the headlines of the daily Press when workers in Cardiff reported finding talc particles in cancers of the ovary and uterine cervix. The report was greeted with scepticism because the particles were not positively identified as talc, because their presence did not prove causation, and because they might have found their way onto the sections as a result of contamination of tissues after removal from the body. Subsequent mineral analysis failed to confirm that the particles were talc<sup>5</sup> and the passage of six years without publication of confirmatory evidence suggests that the early scepticism was well-founded. A meeting of talc-powder manufacturers and independent scientists took place at Cardiff during May, 1976, under the chairmanship of Dr J. C. Gilson, director of the Medical Research Council Pneumoconiosis Unit. At that meeting the toxicology of talc was reviewed and the need for further information discussed. Assessment of toxicity necessarily starts with a consideration of the physical and chemical specifications of the test material, and this, unfortunately, is also where much of the assessment ends in the case of cosmetic talc because most of the published reports—epidemiological, clinical, and experimental—concern exposure either to industrial talcs that are variously contaminated with minerals known to be hazardous or to talc of undefined physical and chemical characteristics.

The long thin fibrous shape of asbestos particles enables them to be carried more deeply into the lungs than spherical particles of similar mass. The fact that the normally effective clearance mechanisms have difficulty in coping with large, long thin particles deposited deeply in the lungs is an important determinant of the hazards from asbestos dust. Geologically, talc (which is nominally a hydrated magnesium silicate) and certain amphiboles—tremolite, actinolite, and anthophyllite—may occur in juxtaposition and consequently talc may be contaminated with these minerals. Apart

10. Slone, J. M., Mackay, I. S., Sheridan, B. *ibid.* 1970, ii, 330.
11. Navsarp, M. L., Magill, F., Rojas, L., Hoffman, M. M. *Can. med. Ass. J.* 1970, 102, 1165.
12. Stout, R. W., Bierman, E. L., Branzell, J. D. In *Diabetes: its Physiological and Biochemical Basis* (edited by J. Vallance-Owen). Lancaster, 1977.
13. Stout, R. W. *ibid.* 1970, iii, 465.
14. Stout, R. W. *Lancet*, 1969, ii, 467.
15. Stout, R. W., Buchanan, K. D., Vallance-Owen, J. *Atherosclerosis*, 1973, 38, 151.
16. Szabo, N., Andelin, I. *Postgrad. med. J.* 1969, 45, 402.
17. O'Keefe, S. J. D., Marks, V. *Lancet*, June 18, 1977, p. 1286.
18. Clave, L. L. In *The Saccharine Disease*. Bristol, 1974.
19. Imvins, D. E. A., Goff, D. V., Leeds, A. R., Alberta, K. G. M. M., Wolaver, T. M., S. (1976), M. A., Hockaday, T. D. *Lancet*, 1976, ii, 172.
1. Greenberg, M., Lloyd Davies, T. A. *Br. J. med.* 1974, 31, 91.

2. Bluemel, G., Piza, F., Zschka-Koners, W. *Wien. klin. Wochs.* 1967, 79, 12.
3. Davis, R. R., Whitehead, I. K., Gill, M. E., Lee, P. S., Butterworth, A. D., Row, F. J. C. *Br. J. Cancer*, 1975, 31, 469.
4. Wagner, J. C., Berry, G., Seldman, J. W., Timbrell, V. *ibid.* 1974, 29, 252.
5. Henderson, W. J., Jolin, C. A. F., Turnbull, A. C., Griffiths, S. J. *Obstet. Gynaec. Br. Comm.* 1971, 78, 266.
6. Hildick-Smith, G. V. *Br. J. Ind. Med.* 1976, 33, 217.



from this, talc may contain chlorite, quartz, carbonates (such as calcite, dolomite, and magnesite), and occasionally other minerals in lesser amounts. During the past few years, major cosmetic manufacturers in the United Kingdom and the United States of America, as represented by the Toilet Preparations Federation and the Cosmetic, Toiletry and Fragrance Association, have drawn up specifications for cosmetic talc which ensure the virtual absence of fibrous amphiboles.<sup>7-10</sup> At present there is no direct statutory control of the quality of cosmetic talc in any country and it is questionable whether such control is necessary to bring minor manufacturers into line with the standards now adopted by the major firms. The presence of fibrous particles in talc reduces its free flow and lubricity, thereby rendering it less cosmetically desirable. Such contamination is thus self-limited. More important, however, is the fact that the fibrous materials most likely to contaminate talcs which do not comply with the specifications—namely, tremolite, anthophyllite, and actinolite—are not those most clearly associated with carcinogenic hazard (crocidolite, amosite, and chrysotile). Furthermore, it would be sensible to consider what controls, if any, are necessary for talc as used in medicines, before introducing legislation specifically in relation to cosmetic talc.

If the inhalation of particles of amphibole and silica contaminated talc dust were found to be harmless, one might reasonably assume that talc free from these materials is safe. Kleinfeld and his colleagues have studied the incidence of cancer and respiratory diseases in talc miners and millers in New York State. The talc concerned, which is heavily contaminated with both amphiboles and free silica, was initially reported to be associated with an increased mortality from mesothelioma and cor pulmonale.<sup>11</sup> Later the same workers reported that men employed in the mine after dust levels had been reduced had death-rates from malignant diseases that were similar to those for White males in the U.S.A. generally.<sup>12</sup> Also in the U.S.A., Fine and his colleagues<sup>13</sup> have reported a higher prevalence of productive cough and chronic obstructive lung disease among rubber workers exposed to a non-fibrous industrial-grade talc than among control workers. From their data they calculated that a safe exposure level would be provided by a threshold limit value of 0.25 mg/m<sup>3</sup> mass-respirable particulate talc. In Italy, Rubino and his colleagues<sup>14</sup> compared the spectra of causes of death among talc miners, talc millers, and agricultural workers. The talc miners were exposed to dusts containing 5% silica at levels far in excess of threshold limit value. Significantly more of them than of the controls died from respiratory disease, but death-rates from all forms of cancer, including lung cancer, were significantly lower among the

miners than among the controls. By contrast, among the talc millers, exposed to dusts containing 0.05% silica, but no detectable asbestos, at concentrations of 20 million particles per cubic foot (27 litres), there was no excess of deaths from pulmonary disease or cancer of any site compared with the control group. The deficit of lung cancer among the talc miners is plausible in so far as a similar deficit of lung cancer among coal miners seems to be real.<sup>15</sup> A continuing study of over 3200 persons, mainly women, at a factory in Britain where cosmetic talc has been made and packed for over fifty years, has so far revealed no evidence of health hazard,<sup>16</sup> but follow-up would need to be extended for at least a further decade before one could be confident of a negative result. Other less informative epidemiological studies are reviewed by Hildick-Smith.<sup>1</sup>

In most of the work in animals the quality of the talc has not been specified. An exception is a report by Wehner and others<sup>17</sup> who studied the effects in hamsters of repeated exposure to aerosols of cosmetic talc up to total doses of respirable particles equal to nearly 2000 times those received by humans using cosmetic talc during baby care. Exposure had no adverse effect on body-weight, survival, incidence of pathological changes in the respiratory tract, or incidence of neoplasia at any site. Another exception is the report by Wagner and his colleagues,<sup>18</sup> who saw no mesotheliomas in 48 rats after intrapleural administration of cosmetic talc whereas 13 out of 48 rats similarly exposed to chrysotile asbestos acquired such tumours. The same workers exposed rats to cosmetic talc by the inhalation route on five days a week for up to a year. At the highest level of exposure—about three times that studied by Wehner and his colleagues<sup>17</sup>—there was slightly more pulmonary fibrosis than in controls, but no substantial excess of pulmonary neoplasms. A number of less relevant animal studies, all of which gave negative results for carcinogenicity, are reviewed by Hildick-Smith.<sup>1</sup> In summary, there is no reason to believe that normal consumer exposure to cosmetic talc has in the past led either to cancer at any site or to measurable loss of lung function. It seems unlikely that future exposure to cosmetic talc of the specifications now agreed to by major manufacturers will present a health hazard.

#### HAEMOPHILUS ENDOCARDITIS

*Haemophilus* endocarditis is rare. Until lately the published reports were small-scale and conflicting; now three substantial and independent investigations have been reported from the United States.<sup>1-3</sup>

7. Toilet Preparations Federation Ltd., specification no. 12: Cosmetic Talc, 1977.

8. C.I.F.A. Specification Talc, Cosmetic, Cosmetics, Toiletry and Fragrance Association, Inc., issue 10-7, 1976.

9. Toilet Preparations Federation Ltd., analytical method 77: Cosmetic Talc, 1977.

10. Haines, D. H., Kelle, E. R., Scholz, J. P. A., and Hyatt, J. J. 1976, 37, 266.

11. Kleinfeld, M., Mesite, J., Kroyman, O., Zito, M. H. *Arch. env. Hlth.* 1967, 14, 662.

12. Kleinfeld, M., Mesite, J., Zito, M. H. *J. occup. Med.* 1974, 16, 344.

13. Fine, L. J., Peters, J. M., Burrows, W. A., Di Santoro, L. J. *Arch. env. Hlth.* 1976, 31, 175.

14. Rubino, G., Saffron, V., Polatto, G., Romano, G. *J. occup. Med.* 1975, 18, 140.

15. Goldman, K. P. *Br. J. Ind. Med.* 1967, 22, 77.

16. Newhouse, M. L., Miller, B. F., Moore, W. S. S. Paper given at seminar on Biology of Talc Used in Health Products, Cardiff, May, 1976.

17. Wehner, A. P., Zwieski, G. M., Cannon, W. C., Watson, C. R., Carlson, W. W. *Expos. Toxicol.* 1977, 15, 121.

18. Wagner, J. C., Berry, G., Cooke, T. L., Hill, R. J., Stadman, J. W. in *Proceedings of Fourth International Symposium on Inhaled Particles and Vapour*, Oxford, 1977.

1. Geraci, J. E., Wilkowske, C. J., Wilson, W. R., Washington, J. A. *Mayo Clin. Proc.* 1977, 52, 209.

2. Chunn, C. J., Jones, S. R., McCutchan, J. A., Young, E. J., Gilbert, D. N. *Medicine, Baltimore*, 1977, 56, 54.

3. Lyon, D. J., Kane, J. G., Parker, R. H. *ibid.* 1977, 55, 115.

# EXHIBIT AA



## Retraction: Cosmetic talc powder



On June 25, 1977, *The Lancet* published an unsigned commentary<sup>1</sup> that discussed the possibility of asbestos in talcum powder causing cancer and other fatal diseases. It concluded: "there is no reason to believe that normal consumer exposure to cosmetic talc has in the past led either to cancer at any site or to measurable loss of lung function. It seems unlikely that future exposure to cosmetic talc of the specifications now agreed to by major manufacturers will present a health hazard".<sup>1</sup> On Dec 8, 2025, we received an email and letter from Professors David Rosner and Gerald Markowitz,<sup>2</sup> which showed the published commentary was written by a paid consultant of Johnson & Johnson, one of the world's leading producers of cosmetic talc products. Furthermore, Rosner and Markowitz have provided

us with evidence that an advanced draft of this piece was shared by the author with Johnson & Johnson and amended following their feedback. Had *The Lancet's* editors at the time known of this situation and been aware of the author's undeclared competing interest, they would not have published this commentary.<sup>3</sup> Therefore, we are now retracting this article.

### *The Editors of The Lancet*

The Lancet Group, London EC2Y 5AS, UK

- 1 No authors listed. Cosmetic talc powder. *Lancet* 1977; 1: 1348–49.
- 2 Rosner D, Markowitz G. Asbestos, talc, and *The Lancet's* 1977 publication. *Lancet* 2026; published online March 25. [https://doi.org/10.1016/S0140-6736\(26\)00558-1](https://doi.org/10.1016/S0140-6736(26)00558-1).
- 3 The Editors of *The Lancet*. Asbestos, talc, and *The Lancet's* 1977 publication—Editors' reply. *Lancet* 2026; published online March 25. [https://doi.org/10.1016/S0140-6736\(26\)00559-3](https://doi.org/10.1016/S0140-6736(26)00559-3).

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[https://doi.org/10.1016/S0140-6736\(26\)00558-1](https://doi.org/10.1016/S0140-6736(26)00558-1) and  
[https://doi.org/10.1016/S0140-6736\(26\)00559-3](https://doi.org/10.1016/S0140-6736(26)00559-3)

# EXHIBIT AB

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**From:** Hall, Ridgway [RHall@crowell.com]  
**Sent:** Monday, February 28, 2005 8:26 PM  
**To:** ralph.godell@america.luzenac.com; Zazenski, Rich (LNA); Mann, Steven [CPCUS]  
**Cc:** Glenn, Robert  
**Subject:** NTP Talc Matter  
**Attachments:** Huncharek Muscat w original Agreement Feb 2005(v1).DOC; MHuncharek re RETAINER LETTER re talc(v1).DOC

<<Huncharek Muscat w original Agreement Feb 2005(v1).DOC>> <<MHuncharek re RETAINER LETTER re talc(v1).DOC>>

Dear Colleagues: The retainer letter is going out today in final form for execution by Drs. Huncharek and Muscat. Attached for your info are the transmittal letter and the retainer letter. Signed copies, along with Attachment A, are on their way to each of you by snail mail. When I receive back the executed letters we'll owe Dr. Huncharek's group, Meta-Analysis Research Group, the first installment of \$13,950 (one third of the total). To maximize the effectiveness of our use of the attorney work product privilege for their work, I will plan to send them a Crowell & Moring check in that amount, to be reimbursed to us by Luzenac and Johnson & Johnson in whatever proportions you agree on. Please let me know if you have any questions on any aspect of this.

Regards,  
Ridge  
2-28-05

Ridgway M. Hall, Jr.  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2595  
Telephone: 202-624-2620  
Fax: 202-628-5116

# EXHIBIT AC

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

NO. C-753560                                      SECTION: 24                                      DIVISION: “B”

CAROLYN M. GAUTIER

VERSUS

ADRIATIC INSURANCE COMPANY, ET AL

FILED: \_\_\_\_\_  
DEPUTY CLERK

DECLARATION OF KRISTEN FOURNIER IN SUPPORT OF  
DEFENDANT JOHNSON & JOHNSON’S REQUEST FOR CLARIFICATION  
OF THE COURT’S JULY 13, 2026 ORDER

1. My name is Kristen Fournier. I am a Partner at the law firm Kirkland & Ellis LLP, which represents Johnson & Johnson (“J&J”) in the above-captioned matter.
2. I am a person of the full age of majority and am of sound mind and competent to testify.
3. I have personal knowledge of the matters set forth in this Declaration.
4. I estimate that J&J has retained and disclosed experts in over 1,000 cases involving cosmetic talc products in state and federal courts around the country over the last fifteen years. The exact number of such cases is not known.
5. I estimate that J&J has retained over 100 individuals as testifying experts in talc cases over the last fifteen years. Again, the exact number is not known.
6. The four designated experts in this case—Dr. Vachani, Dr. Sanchez, Mr. Watson, and Dr. Diette—were first retained between 2016 and 2019, and one more of them has likely testified in hundreds of cases since that time.
7. The exact numbers of cases in which each J&J expert has testified and submitted an invoice over the last 10-15 years is unknown, and unascertainable, because, among other reasons, J&J does not maintain a centralized, historical database that identifies its litigation experts, let alone which experts were designated in which cases during this timeframe.
8. The exact numbers of cases and experts are further unknown, and are unascertainable, because, among other reasons, many different law firms have retained experts on J&J’s behalf over the past fifteen years.

EXHIBIT  
B

9. In addition, J&J's talc litigation experts are typically engaged directly by J&J's outside counsel, not J&J itself. Invoices from these experts are sent to and processed by J&J's outside counsel. Dozens of law firms have represented J&J in talc litigation over the past fifteen years, acting in various capacities, including local counsel, trial counsel, national coordinating counsel, or other specialized roles. Though many of these firms still represent J&J, a number of others do not, and some have not been involved in talc litigation for years. In addition, some lawyers have retired, while others have moved firms.

10. Making things more complicated, some expert invoices are sent in the name of the expert's institution and not in the name of the expert herself. For these invoices, identifying which of the institution's invoices actually relate to a particular expert's work may involve manual review.

11. As such, collecting invoices even for the four experts in this case would be extremely time-consuming and tedious, and there would be no way to confirm that the productions are complete.

12. Attempting to do the same for more than 100 experts would be exponentially more burdensome and less certain.

13. In short, attempting to comply with the Court's order would be enormously tedious and burdensome, and J&J would not be able to confirm that any ultimate production is complete.

14. I declare that the foregoing statements are true and correct to the best of my knowledge, information, and belief, under penalty of perjury pursuant to La. R.S. 14:123.

Dated: July 22, 2026

/s/ Kristen Fournier

Kristen Fournier