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Attachment 4

**10/02/2026 J&J /Kenvue Reply in Support of Motion to Quash
and for Protective Order with exhibits**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
DEBRA McANDREW BARNETT,)
Plaintiff,)
v.)
JOHNSON & JOHNSON, et al.,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case 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

Case No.: 2023-CP-40-06111

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

**DEFENDANTS JOHNSON & JOHNSON AND KENVUE INC.’S REPLY IN SUPPORT
OF MOTION FOR A PROTECTIVE ORDER AND OPPOSITION TO PLAINTIFFS’
MOTION TO COMPEL**

On September 2, Defendants Johnson & Johnson (“J&J”) and Kenvue Inc. (“Kenvue”) (collectively, “the J&J Defendants”) moved to quash Plaintiffs’ Amended Notices of Deposition

and for a protective order.¹ Subsequently, on September 11, Plaintiffs withdrew both Amended Notices of Deposition, instructing the J&J Defendants that “[t]he deposition[s] . . . scheduled for September 18, 2026 will not be going forward[.]” *See* 9/11/2026 Pepin Email (Ex. 17). Plaintiffs never served another notice of deposition on the J&J Defendants. Instead, on September 29, Plaintiffs submitted a response to the J&J Defendants’ motion for a protective order and a cross-motion to compel, seeking to force the J&J Defendants to produce a corporate representative deponent on October 23 or 29 and **additional** expert compensation discovery beyond that requested in the Amended Notices. South Carolina rules mandate that a party seeking a deposition must properly notice a deposition (including “stat[ing] the time and place for taking the deposition”). S.C.R.C.P. 30(b)(1). Plaintiffs’ failure to serve a notice of deposition on the J&J Defendants means there is no notice of deposition currently pending, and the J&J Defendants should not be required to produce further discovery.

Even if this Court were to consider the discovery requests contained in Plaintiffs’ withdrawn Amended Notices of Deposition, Plaintiffs provide no basis to compel the J&J Defendants to produce the requested discovery. Indeed, in their response, Plaintiffs concede that the definitions included in their Amended Notices of Deposition—which on their face seek corporate representative testimony that encompasses discovery from hundreds of J&J subsidiaries, Mot. at 6 n.3—are overbroad. Resp. at 5. Plaintiffs’ deposition topics and document requests are similarly improper for multiple reasons.

First, Plaintiffs’ response wholly fails to demonstrate that testimony and documents

¹ Plaintiffs claim that the J&J Defendants did not “engage[] in discussions” with Plaintiffs about the propriety of their noticed topics. Resp. at 2. The parties have a long history of disagreements about the scope of discovery on the very topics implicated in the Amended Notices of Deposition. Plaintiffs’ correspondence with the J&J Defendants regarding the notices made clear that any negotiation would be futile. Thus, in accordance with Rule 11, the J&J Defendants certified “that further consultation would serve no useful purpose.” Mot. at 31. Plaintiffs’ response to the J&J Defendants’ Motion further confirms as much.

pertaining to recent non-final regulatory actions (foreign and domestic) and the J&J Defendants' lobbying activities that occurred long after Plaintiffs were allegedly injured by their use of talc products are necessary to litigate their cases. Plaintiffs argue that discovery of lobbying activities is proper and that they can overcome the *Noerr-Pennington* doctrine because the information is relevant to the J&J Defendants' knowledge. But evidence related to lobbying that occurred long after Plaintiffs' alleged exposure to talcum powder says nothing about the J&J Defendants' knowledge during the relevant time period. Further, Plaintiffs cannot dispute that much of the requested discovery is privileged; thus, forcing the J&J Defendants to search, cull through, and compile voluminous materials would be unduly burdensome (and ultimately futile).

Second, Plaintiffs' response seeks discovery of expert compensation for all experts in all matters (even those not disclosed in Plaintiffs' cases) over the last 5 years—a request that is far more expansive than the topics in their Amended Notices of Deposition. Notably, Plaintiffs gloss over the holding of a recent decision from the First Circuit Court of Appeals in Louisiana, which explicitly rejected Plaintiffs' counsel's bid for the same discovery, finding that “expert compensation discovery relating to experts not designated to testify in [the plaintiff's] case” was “overbroad,” “unduly burdensome” and impermissible. Resp. Ex. Y. That holding applies in spades here, where Plaintiffs entirely ignore the attorney declaration submitted by the J&J Defendants, detailing why it would be unduly burdensome—and ultimately, impossible—for the J&J Defendants to compile the expert payment information.

Third, Plaintiffs do not seriously dispute that the requested deposition topics and discovery requests are duplicative of the enormous amount of discovery the J&J Defendants have produced to date, including a corporate representative deposition in the *Gerken* case covering substantively identical topics as those in Plaintiffs' Amended Notices of Deposition. Instead, Plaintiffs generally

argue that they are entitled to “updates” (that do not exist), discovery from Kenvue Inc. (that Plaintiffs already have), and discovery for the *Barnett* case specifically (even though Plaintiffs’ counsel made clear at the *Gerken* deposition that it would be used in other cases). None of these excuses should require the J&J Defendants to repeatedly reproduce discovery at Plaintiffs’ whim.

Lastly, Plaintiffs’ response includes a “cross-motion to compel.” But as explained above, there is no outstanding deposition notice to compel. And even if there were, the J&J Defendants should not be compelled to produce irrelevant, improper, unduly burdensome, and privileged information for all the same reasons set forth in the J&J Defendants’ motion for protective order.

For all of these reasons, the J&J Defendants’ Motion for a Protective Order should be granted, and Plaintiffs’ cross-Motion to Compel should be denied.

ARGUMENT

I. CORPORATE REPRESENTATIVE TESTIMONY PERTAINING TO RECENT REGULATORY ACTIONS AND LOBBYING IS IRRELEVANT, BURDENSOME, AND IMPROPER.

As set forth in the J&J Defendants’ Motion, Plaintiffs’ request for discovery regarding regulatory and lobbying topics (both foreign and domestic) should not be permitted because: (1) the requested discovery would violate the *Noerr-Pennington* doctrine and impinge upon the J&J Defendants’ First Amendment rights; (2) any lobbying occurred after Ms. Barnett and Mr. Gerken stopped using the J&J Defendants’ talc products and is therefore irrelevant; and (3) the lobbying at issue required the legal advice of counsel, rendering any discovery privileged. Mot. at 15-23. Plaintiffs’ response fails to demonstrate otherwise.

A. Corporate Representative Testimony Pertaining To Recent Regulatory Actions Would Contravene The Noerr-Pennington Doctrine And Violate The J&J Defendants' Rights Under The First Amendment.

The law is well established that, pursuant to the *Noerr-Pennington* doctrine, evidence related to recent regulatory actions and lobbying is not admissible at trial; thus, the evidence is irrelevant. Mot. at 16-18.² Plaintiffs do not seriously argue that the discovery they seek—i.e., corporate representative testimony and documents pertaining to lobbying efforts (both foreign and domestic)—would be admissible at trial. See Resp. at 14 (acknowledging “the Court [may] rule[] the FDA’s non-final rule is inadmissible”); *id.* (“Whether any of the evidence gathered will be admitted at trial, is not the question to be answered today.”); *id.* at 13 (“evidence of a defect post-dating the injury may not be proper to prove the product was defective”). Instead, Plaintiffs argue that the *Noerr-Pennington* doctrine is “not a bar to discovery of evidence.” *Id.* at 10 (citation omitted). But the case Plaintiffs cite for that proposition expressly noted that discovery into lobbying efforts would be allowed in that antitrust case because “*if relevant*,” “the evidence is arguably admissible, [and thus] certainly it should be discoverable.” *N. Carolina Elec. Membership Corp. v. Carolina Power & Light Co.*, 666 F.2d 50, 53 (4th Cir. 1981) (cited in Resp. at 10-11). For the reasons set forth below, Plaintiffs have not—and cannot—demonstrate that lobbying efforts that have *nothing to do with these Plaintiffs’* claims are relevant.

Plaintiffs’ argument also ignores that, as Courts have explicitly recognized, lobbying evidence deemed inadmissible pursuant to the *Noerr-Pennington* doctrine is not “reasonably likely to lead to the discovery of admissible evidence.” Mot. at 17 (quoting *Uber* Order at 7 and citing

² Plaintiffs also half-heartedly claim that the *Noerr-Pennington* doctrine is not implicated because “Plaintiffs do not seek to impose liability on the J&J Defendants for lobbying a federal agency.” Resp. at 14. In the same breath, Plaintiffs state that they intend to use lobbying evidence to “show[that] the J&J Defendants engaged in a pattern of deceptions” “in support of the fraud count and punitive damages.” *Id.* at 13. This is *exactly* what the *Noerr-Pennington* precludes.

authority). Plaintiffs attempt to distinguish this authority based on the “context[s] of th[e] case[s]” and their claim that “discoverability centers around the facts of the case[.]” Resp. at 11-12. But Plaintiffs fail to address the “facts of the case at hand” that present an even **more** compelling case for application of the *Noerr-Pennington* doctrine—specifically, that discovery pertaining to **ongoing** FDA rulemaking would allow Plaintiffs to interfere with the J&J Defendants’ participation in regulatory rulemaking and infringe upon the J&J Defendants’ First Amendment rights. As such, the Court should not permit discovery into the J&J Defendants’ recent lobbying efforts and regulatory actions.

B. Corporate Representative Testimony Pertaining To Recent Regulatory Actions And Lobbying Is Not Relevant Or Necessary.

As set forth in the J&J Defendants’ Motion, discovery into the recent regulatory actions and the J&J Defendants’ lobbying activities would be irrelevant because: (1) discovery into lobbying activities has no bearing on Plaintiffs’ product liability claims; and (2) each of the regulatory and lobbying actions included in Plaintiffs’ notice was implemented and/or occurred **after 2023—after** Ms. Barnett and Mr. Gerken were allegedly exposed to the J&J Defendants’ products.

Plaintiffs argue in response that lobbying evidence is relevant to show that “the J&J Defendants knew of the dangerous nature of their products and chose not to warn consumers.” Resp. at 12-13. But any “knowledge” relevant to Plaintiffs’ cases **must** be tied to Plaintiffs’ actual use of the products; evidence pertaining to the J&J Defendants’ “knowledge” post-injury is entirely irrelevant. *See* Mot. at 19 (citing authority). Plaintiffs’ cited cases confirm as much. In *Wolfe v. McNeil-PPC, Inc.*, the Court held that petitions submitted to the FDA in 1984 (a decade before plaintiff become ill) were “relevant to defendants’ knowledge regarding the safety of ibuprofen and the adequacy of its labeling.” No. 07-348, 2012 WL 38694, at *6 (E.D. Pa. Jan. 9, 2012) (cited

in Resp. at 12). But the court **excluded** evidence that “was filed nearly a decade **after** plaintiff became ill” because such evidence “could not have put defendants on notice[.]” *Id.* at *5 (emphasis added).³ The same result should follow here, because Plaintiffs seek discovery of lobbying efforts that occurred **after** Plaintiffs ceased use of the products and **after** the products were withdrawn from the market.

As for foreign regulatory actions, Plaintiffs do not even attempt to argue that the requested discovery is relevant, which should be dispositive. And Plaintiffs’ cited cases further confirm that such irrelevant discovery should not be permitted. *See Wolfe*, 2012 WL 38694, at *7 (granting Defendants’ motion “to preclude plaintiff from introducing any evidence of foreign labeling materials and regulatory actions involving ibuprofen products”) (cited in Resp. at 12).

C. Corporate Representative Testimony Pertaining To Recent Regulatory Actions And Lobbying Would Violate The Attorney-Client Privilege And Work-Product Doctrine And Be Unduly Burdensome And Disproportionate.

Discovery into recent (wholly inapplicable) regulations and the J&J Defendants’ lobbying activities should also not be permitted because it would invade the attorney-client privilege and be highly burdensome. Mot. at 20-23.

Plaintiffs argue that the J&J Defendants have not met their burden of demonstrating privilege, and that such burden can only be satisfied once Plaintiffs assess a detailed privilege log. Resp. at 14-15. But Plaintiffs ignore that many of the documents at issue involve the J&J Defendants’ counsel’s **legal** advice, including a substantial number of documents that involve communications sent by, to, or among the J&J Defendants’ in-house or outside counsel. This more than satisfies the J&J Defendants’ “initial burden to make a prima facie showing that the

³ Plaintiffs’ citation to *Hernandez v. Amcord, Inc.*, 215 Cal. App. 4th 659 (2013), is inapposite for the same reason. In that case, the court held that lobbying activities in 1975 “**might** be relevant to show a defendant’s knowledge of the dangerous nature of its product,” where plaintiff was diagnosed with malignant mesothelioma in 2008. *Id.* at 680 (emphasis added). The case did not involve post-injury lobbying evidence, which is at issue here.

communications in question are privileged,” and thus, as Plaintiffs’ cited authority acknowledges, it is now **Plaintiffs’** burden to establish “the communications are otherwise discoverable under an exception or waiver.” *In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 169, 829 S.E.2d 707, 713 (2019) (cited in Resp. at 15). Plaintiffs do not attempt to make such a showing.

Plaintiffs also do not address (much less dispute) the heavy burden on the J&J Defendants if forced to search and cull through documents and ultimately create a lengthy privilege log just to protect their non-discoverable information. Nor do Plaintiffs dispute that the J&J Defendants have already produced extensive discovery pertaining to regulatory communications over the period Plaintiffs actually used the products (including approximately 19,000 documents), meaning that the lack of these documents will not in any way “impair” Plaintiffs’ ability to try their claims on the merits. *See Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009). Indeed, Plaintiffs’ response highlights testimony from the J&J Defendants’ corporate representative on Plaintiffs’ noticed topic of the Korchevskiy Letter in the *Gerken and Gautier* cases.⁴ The fact that Plaintiffs have already questioned a corporate representative in two separate cases on this same topic highlights the cumulative and harassing nature of Plaintiffs’ repetitive requests.

In sum, the J&J Defendants have amply identified a “particularized harm” that will result if the J&J Defendants are forced to produce discovery regarding recent lobbying and regulatory events. *Hollman*, 384 S.C. at 578. Plaintiffs have come nowhere close to meeting their “burden of showing the information sought is ‘relevant and necessary’ to the case.” *Id.* Rather, Plaintiffs’ demand for corporate representative discovery on lobbying efforts is clearly “abusive,” exceeds the bounds of permissible discovery and should not be permitted.

⁴ Plaintiffs claim that J&J has “provided inconsistent statements and been less than forthcoming regarding its involvement with the Korchevskiy Letter.” Resp. at 8-9. But a review of Plaintiffs’ cited testimony reveals no inconsistencies.

II. PLAINTIFFS ALSO SEEK CERTAIN EXPERT-RELATED DISCOVERY THAT EXCEEDS THE BOUNDS OF PERMISSIBLE DISCOVERY.

A. Plaintiffs Should Not Be Allowed To Obtain Overbroad Discovery Regarding Expert Compensation.

Plaintiffs’ noticed topics sought corporate representative testimony pertaining to payments to “**experts in this case** for any matter for the last five years.” J&J Not. at 5-6, Topics 10-11 (Mot. Ex. 5) (emphasis added); Kenvue Not. at 5, Topics 10-11 (Mot. Ex. 1). The J&J Defendants explained—with supporting evidence—that discovery of all payment information for experts **in this case** was not relevant and unduly burdensome. Mot. at 23-28. For the first time in their response, Plaintiffs now seek even **more** than the discovery requested in their Amended Deposition Notices, claiming they are entitled to “payments to **all** experts” from all cases. Resp. at 18. But a party is not “allow[ed] . . . to compel discovery of items not requested in accordance with discovery procedures.” *Womack v. Memphis City Schs.*, No. 2:11-CV-02831-SHM, 2013 WL 5739003, at *9 (W.D. Tenn. Oct. 22, 2013); *see also Flame S.A. v. Indus. Carriers, Inc.*, No. 2:13-cv-658, 2014 WL 12775327, at *2-3 (E.D. Va. Apr. 30, 2014) (concluding the plaintiff “can only seek to compel production of those documents originally requested in the Second Request for the Production of Documents, and the scope cannot be expanded through the instant motion to compel”).

In any event, this exact request has been recently addressed—**and denied**—by the First Circuit Court of Appeals in Louisiana. In the *Gautier* case, the same counsel representing Plaintiffs here sought payment information for all experts in all talc matters. The Court of Appeals “reversed . . . the judgment [that] ordered Johnson & Johnson to produce expert compensation discovery relating to experts not designated to testify in Ms. Gautier’s case,” finding that such information was “overbroad” and “unduly burdensome.” Resp. Ex. Y. Plaintiffs now seek a workaround that ruling, seeking the same information in this case. Resp. at 20 (“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.”). Plaintiffs should not be allowed to circumvent appellate rulings by obtaining in this Court that which was barred in another.

1. Discovery Of Information Pertaining To Non-Testifying Experts Is Not Permitted.

As set forth in the J&J Defendants’ motion, Plaintiffs’ request for payment information from non-testifying experts is plainly prohibited by the attorney work product doctrine and exceeds the permissible bounds of discovery permitted by the South Carolina Rules of Civil Procedure. Mot. at 23-25.

In response, Plaintiffs argue that because they are “not seeking facts or opinions from consulting experts,” the evidence is not precluded “by South Carolina Rule of Civil Procedure 26(b)(4).” Resp. at 17. But Plaintiffs ignore that the Rule explicitly states that “[a] party is not required to disclose . . . an expert who . . . consulted and [was] not retained.” Rule 26(b)(4), SCRCPP. It defies logic to conclude (as Plaintiffs do) that a party does not need to disclose its non-testifying experts, and yet should be forced to produce payments made to those experts. Courts around the country have concluded as much and routinely deny requests for compensation related to an opposing party’s consulting experts. Mot. at 24 (citing authority). Plaintiffs attempt to minimize the import of these holdings by stating that they are “non-binding cases from other jurisdictions,” Resp. at 16, but because the cases all apply the analog to S.C. R. Civ. P. 26(b)(4), the holdings are persuasive and important in this context.

Plaintiffs also argue that because “billing records are prepared in the ordinary course,” they are not subject to work product protection. Resp. at 17. This argument ignores that the consulting experts were specifically retained and paid for work “**because of**” litigation,” and thus, the work product doctrine applies. *Doe v. Lahey Health Sys., Inc.*, No. 19-CV-11014-PBS, 2020 WL

13561720, at *11 (D. Mass. Aug. 12, 2020) (emphasis added) (holding “legal invoice[s]” were not discoverable and rejecting argument that “the production of invoices” was “not protected by the work product doctrine as they are created for billing purposes, not for litigation”). But even if the work product doctrine is not applicable, the “‘non-testifying expert’ privilege is distinct from the work-product doctrine,” *Genesco, Inc. v. Visa U.S.A., Inc.*, 302 F.R.D. 168, 189 (M.D. Tenn. 2014), and still bars Plaintiffs’ non-testifying expert discovery requests.

2. Expert Compensation Paid In Other Matters Is Not Relevant.

Plaintiffs argue that expert payment information for all experts in all matters is somehow relevant “to assess each experts’ bias and credibility.” Resp. at 17. But as the J&J Defendants explained in their Motion—and Plaintiffs again ignore—Plaintiffs either already possess or will soon possess compensation information paid to testifying experts for their work *in these cases*, see Herfel Rep. at 3 (“My billing rate for this research is \$255/hour. Deposition or trial testimony is billed at \$475/hour.”) (Mot. Ex. 9), *and* Plaintiffs specifically questioned the experts about their compensation *in other cases* at their depositions, see 8/21/2025 Nony Dep. 18:5-19:4 (Mot. Ex. 10); *see also* Resp. at 19-20 (Plaintiffs admitting they have “a declaration outlining payments from J&J” from Dr. Sanchez already). Nothing further is needed for Plaintiffs to evaluate any potential bias of any of the J&J Defendants’ experts.

This is all the more true for experts that were not retained in these Plaintiffs’ cases. “A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.” Rule 611(b), SCRE. This rule self-evidently applies only to experts designated in a particular case. Plaintiffs have no conceivable reason to explore the potential bias of J&J’s non-retained experts and/or litigation experts in other cases, who will not offer testimony at Plaintiffs’ trials. Plaintiffs do not seriously contend otherwise, but instead baldly claim that they “do not know

who th[e experts] are or the role that they played in influencing talc safety on behalf of the J&J Defendants.” Resp. at 18. This conclusory assertion comes nowhere near justifying Plaintiffs’ expansive request for all payments to all experts. Moreover, even if the J&J Defendants’ experts had any involvement in “influencing talc safety,” that would not necessarily place the purported bias of these individuals at issue. Plaintiffs allege asbestos exposures beginning in the 1940s and 1950s, *see* Gerken Am. Compl. ¶ 2; Barnett Compl. ¶ 29, before some of the J&J Defendants’ litigation experts were born. Whether those experts went on to serve as litigation experts has no bearing on the questions at issue in this litigation—i.e., whether the J&J Defendants acted reasonably or provided adequate warnings at the time of Plaintiffs’ alleged exposures.

For these reasons, the compensation J&J paid to all experts in all matters within the last five years is plainly irrelevant to the case at hand.⁵

3. Discovery Of Expert Compensation Paid In Other Cases Would Be Unduly Burdensome.

The J&J Defendants explained—including in a detailed supporting declaration—that it would be enormously burdensome for the J&J Defendants to identify all payments to experts in any matter over the last five years. Mot. at 27-28.

In response, Plaintiffs disregard the wealth of authority denying requests for discovery of expert compensation information from other cases because of its “potential” for “undue burden or expense.” *Id.* at 27 (citing authority). Instead, Plaintiffs argue that “[u]nless the J&J Defendants can provide concrete evidence that it would be burdensome or otherwise invade attorney client privilege,” the expert payment compensation should be produced. Resp. at 20. But the J&J Defendants **have** produced “concrete evidence” that the production of all payment information for

⁵ Plaintiffs’ response fails to address the J&J Defendants’ specific argument that Plaintiffs’ request for payments made to “Shu-Chun Su or Ann Wylie for any matter for the last five years” should not be permitted. *See* Mot. at 25-26. The issue is thus undisputed.

all experts in all matters over the last five years would be highly burdensome—indeed, impossible. *See generally* Fournier Decl. (Mot. Ex. 16). Plaintiffs’ decision to disregard the J&J Defendants’ evidence of undue burden does not render it nonexistent. *See, e.g., First Horizon Nat’l Corp. v. Houston Cas. Co.*, No. 2:15-CV-2235-SHL-DKV, 2016 WL 5869580, at *8 (W.D. Tenn. Oct. 5, 2016) (rejecting plaintiffs’ argument that discovery sought was not unduly burdensome where “the affidavits attached by the Defendants refute this argument”).

Plaintiffs also claim that “J&J’s past ability to provide [payment] information when pushed by courts” proves the task is not burdensome. Resp. at 19. But Plaintiffs cite to an instance where a single expert was able to produce only his compensation information within four days. *Id.* Plaintiffs’ example thus supports the J&J Defendants’ argument because it took **four days** to gather the information for **a single expert witness**. And Plaintiffs here are asking for payment information for more than 100 experts. The burden of such a task is well beyond anything contemplated under the South Carolina rules. Rule 26(c), SCRPC.

Alternatively, Plaintiffs posit that they are willing to make their request “even easier” by accepting the following discovery: (1) a list of all experts ever retained by the J&J Defendants, including the name “and a summary of the basis for payment”; (2) billing records for “the experts identified in this case”; and (3) billing records for “an additional 10 experts selected by Plaintiffs.” Resp. at 20. This so-called concession does nothing to alleviate the undue burden because it still requires the J&J Defendants to compile information on every single expert in all matters—even though most of those experts have nothing to do with Plaintiffs’ cases.

B. Corporate Representative Testimony Pertaining To Expert Opinions Is Improper.

Plaintiffs’ Amended Deposition Notices seek corporate representative testimony pertaining to “any opinions [the J&J Defendants’ experts] intend to give at trial in this case.” Kenvue Not. at

6 (Topic 16); J&J Not. at 6 (Topic 17); Mot. at 28-29. Plaintiffs claim—without any supporting authority—that “the J&J Defendants’ corporate understanding of the opinions their experts will offer . . . is valid to the extent the testimony reflects the corporation’s own knowledge and strategy[.]” Resp. at 21. But the J&J Defendants’ knowledge of the experts’ litigation reports—which were drafted well after Plaintiffs’ alleged exposures—has no relevance to Plaintiffs’ claims. Plaintiffs also argue that they are “entitled to understand the scope of anticipated expert testimony to prepare for trial.” *Id.* That is exactly the purpose of expert discovery. Nothing more (from individuals other than the experts themselves) is necessary or appropriate.

III. PLAINTIFFS’ TOPICS AND DOCUMENT REQUESTS ARE IMPROPER BECAUSE THEY HAVE ALREADY BEEN COVERED BY PRIOR DISCOVERY.

Plaintiffs’ noticed topics are also improper because they have already been covered by prior discovery, including another corporate representative deposition in the *Gerken* case just one year ago. Resp. at 29-31. Plaintiffs do not seriously argue otherwise. Instead, they claim that duplicative questioning is necessary because the prior deposition was specific to the *Gerken* case, and “Plaintiffs have not deposed Kenvue, Inc. in either matter.” Mot. at 21-22. These arguments are disingenuous. Plaintiffs plainly intend to use discovery procured in the *Gerken* case in the *Barnett* case. And Dr. Kuffner testified as a corporate representative in the *Gerken* case for all the J&J Defendant corporate entities. This was made clear at the start of the corporate representative deposition in the *Gerken* case, where Plaintiffs’ counsel explicitly stated that “Dr. Kuffner [was here] on behalf of these corporate entities” and that he was “testifying . . . with the expectation that this video will be played at the trial of this case and perhaps in other matters.” 9/10/2025 Kuffner Dep. 12:3-6 (Ex. 18).

Plaintiffs also argue that “to the extent information pertaining to the topics in the deposition notices has evolved[,]” “Plaintiffs are entitled to updated testimony.” Resp. at 21-22. But Plaintiffs

have presented no information to suggest that any information has “evolved” since they deposed a corporate representative last year. To the contrary, there are a number of deposition topics and document requests that involve events that happened *years* ago—such as the decision to stop selling talc, the Comprehensive Review, and talc testing—and there can thus be no “updates” to those events. Further, Plaintiffs’ mere belief that they are entitled to “updated testimony” is no basis to force the J&J Defendants to produce the same discovery, year after year.⁶

Finally, Plaintiffs acknowledge that “the J&J Defendants previously produced numerous documents to Plaintiffs,” but argue that prior discovery is not enough to satisfy them. Resp. at 22. Plaintiffs miss the point entirely. The important consideration is not that the J&J Defendants have produced 2.5 million pages of documents to Plaintiffs; the point is that the 2.5 million pages of documents (and hundreds of pages of corporate representative testimony) are the *exact discovery* Plaintiffs now seek yet again in their Amended Deposition Notices. For example, The J&J Defendants have already produced approximately 19,000 documents regarding regulatory communications and approximately 69,000 documents regarding talc testing, and there is nothing left to produce on these topics. Plaintiffs’ desire to conduct discovery on the same issues over and over again is the epitome of duplicative and harassing discovery that should not be allowed.

IV. PLAINTIFFS’ CROSS-MOTION TO COMPEL SHOULD BE DENIED.

As set forth above, Plaintiffs withdrew their Amended Notices of Deposition and have not issued new notices in compliance with South Carolina Rule of Civil Procedure 30(b)(1). There is thus no deposition to compel at this juncture, and Plaintiffs’ cross-motion to compel should be denied on this basis.

⁶ Plaintiffs complain that “J&J was also not prepared to testify regarding certain topics.” Resp. at 22. But Plaintiffs never suggested in the year after the *Gerken* corporate representative deposition that the testimony was deficient in any respect. Plaintiffs cannot belatedly use this as an excuse to re-notice identical topics.

In any event, Plaintiffs' noticed topics and document requests are improper, irrelevant, and/or unduly burdensome and duplicative, for all the reasons discussed above. "[T]he party seeking to compel discovery has the burden of proving that a discovery response is inadequate." *Abt v. Jewell*, 303 F.R.D. 166, 169 (D.D.C. 2014). Plaintiffs have failed to meet that burden.

CONCLUSION

For all of these reasons, and those set forth in their opening brief, the J&J Defendants request that the Court quash Plaintiffs' corporate representative deposition notice and accompanying document requests and grant a protective order.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Blake T. Williams

C. Mitchell Brown
S.C. Bar 012872
mitch.brown@nelsonmullins.com
A. Mattison Bogan
S.C. Bar 72629
matt.bogan@nelsonmullins.com
Blake T. Williams
S.C. Bar 100794
blake.williams@nelsonmullins.com
1320 Main Street, 17th Floor
Columbia, SC 29201
803.799.2000

Attorneys for Defendants Johnson & Johnson and Kenvue, Inc.

Columbia, South Carolina

October 2, 2026

EXHIBIT 17

From: Scott Pepin <spepin@dobslegal.com>

Sent: Friday, September 11, 2026 11:15 AM

To: angela.strickland@bowmanandbrooke.com; patrick.cleary@bowmanandbrooke.com; Samantha.lejune@bowmanandbrooke.com; Lyndsay.gilliam@bowmanandbrooke.com; Samuel.Boyd@bowmanandbrooke.com; jtamasis@williamsmullen.com; rwillis@williamsmullen.com; kmartin-rothrock@williamsmullen.com; sjones@williamsmullen.com; styer@williamsmullen.com; zzWilliam Coates <wac@roecassidy.com>; carlpierce@piercesloan.com; pattiwilliams@piercesloan.com; bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com; elizabethtaylor@piercesloan.com; daniellynch@piercesloan.com; treypierce@piercesloan.com; willearly@piercesloan.com; hollyparker@piercesloan.com; robinspitz@piercesloan.com; kristinhoward@piercesloan.com; caseyhewett@piercesloan.com; anniefranklin@piercesloan.com; jessicamiller@piercesloan.com; katiemiller@piercesloan.com; toddrainsford@piercesloan.com; jessicaturano@piercesloan.com; mmontgomery@robinsongray.com; hsaxby@robinsongray.com; hmoorman@robinsongray.com; spugh@richardsonplowden.com; wharte@richardsonplowden.com; cmcqueen@richardsonplowden.com; mmayden@richardsonplowden.com; mdalton@richardsonplowden.com; asanzgiri@richardsonplowden.com; cberthelsen@richardsonplowden.com; jelliott@richardsonplowden.com; bnicholson@richardsonplowden.com; HElliott@richardsonplowden.com; JMTechman@EWHlaw.com; ASRogers@EWHlaw.com; PLSisk@ewhlaw.com; KEBaird@ewhlaw.com; PAMcGrath@ewhlaw.com; Mark Phillips <mark.phillips@nelsonmullins.com>; robert.meriwether@cs-law.com; jase.glenn@cs-law.com; sc-asbestos@cs-law.com; Matt Patterson <Matt.Patterson@nelsonmullins.com>; James Burns <James.Burns@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>; Ashley Peoples <ashley.peoples@nelsonmullins.com>; Kelli Martin <Kelli.martin@nelsonmullins.com>; Linda Wilson <Linda.wilson@nelsonmullins.com>; Trish Koester <Trish.koester@nelsonmullins.com>; Jenny Jordan <jenny.jordan@nelsonmullins.com>; Erika Fedelini <erika.fedelini@nelsonmullins.com>; Jack Slosson <jack.slosson@nelsonmullins.com>; Ashia Carpenter <Ashia.carpenter@nelsonmullins.com>; mollysue.harmon@cs-law.com; Harrison Williams <Harrison.williams@nelsonmullins.com>; Mitch Brown <mitch.brown@nelsonmullins.com>; Matt Bogan <matt.bogan@nelsonmullins.com>; Blake Williams <blake.williams@nelsonmullins.com>; fgordon@gssattorneys.com; oelhamzaoui@gssattorneys.com; kelliott@gssattorneys.com;

sgflynn@FoxRothschild.com; ncherry@FoxRothschild.com; TPeck@foxrothschild.com;
matthewhughes@foxrothschild.com; efowler@FoxRothschild.com; lrussell@foxrothschild.com;
kkolb@foxrothschild.com; sguerriere@grsm.com; ehawkins@grsm.com; vrawl@grsm.com;
wkleindienst@grsm.com; maadams@grsm.com; jldeleon@grsm.com; Bahnson-GRSM@grsm.com;
kcraig@grsm.com; bbihun@grsm.com; sasmith@grsm.com; bdarnell@grsm.com;
wbennett@grsm.com; psiachos@grsm.com; ashley.brathwaite@elliswinters.com;
curtis.shipleigh@elliswinters.com; joe.hammond@elliswinters.com; CovilParalegal@elliswinters.com;
Scottie.Lee@elliswinters.com; Chris.Flurry@elliswinters.com; Christopher.rhodes@elliswinters.com;
ageddes@maynardnexsen.com; awaring@maynardnexsen.com; AAustin@maynardnexsen.com;
bjowers@maynardnexsen.com; jwilson@maynardnexsen.com; KJones@maynardnexsen.com;
rcavalchire@maynardnexsen.com; bstewart@gssattorneys.com; ymcleod@maronmarvel.com;
Bl@maronmarvel.com; JRenner@maronmarvel.com; kln@maronmarvel.com;
cla@maronmarvel.com; FOcel@maronmarvel.com; cgourdine@maronmarvel.com;
mmiller@maronmarvel.com; jsalley@maronmarvel.com; sschuster@maronmarvel.com;
tara.sullivan@klgates.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com;
tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; dbarfield@hsblawfirm.com;
Elizabeth.ONeill@wbd-us.com; WBD.SCASBESTOS@wbd-us.com; Michael.Bogle@wbd-us.com;
Kimberly.Sullivan@wbd-us.com; Rosa.Rubenstein@wbd-us.com; Jennifer.Hitney@wbd-us.com;
Jacob.bibis@vonbriesen.com; Philip.reid@vonbriesen.com; Maria.piraino@vonbriesen.com;
Laurie.mcleroy@vonbriesen.com; todd.carroll@wbd-us.com; sarah.wells@wbd-us.com;
Deborah.lehman-wooten@wbd-us.com; Ted.Roberts@wbd-us.com; michael.sullivan@wbd-us.com;
Debbie.Brockman@wbd-us.com; Clark.drummond@wbd-us.com; SILICA - Daniel White
<dwhite@gwblawfirm.com>; wmaurides@gwblawfirm.com; ctowers@gwblawfirm.com;
rtate@gwblawfirm.com; jlaffitte@gwblawfirm.com; pholland@gwblawfirm.com;
eshofner@hpylaw.com; nturner@hpylaw.com; mdc@barnwell-whaley.com; bwagner@barnwell-
whaley.com; olevine-sass@barnwell-whaley.com; Mark.Wall@WallTempleton.com;
Tommy.Boger@WallTempleton.com; jennamcgee@parkerpoe.com; connorhoy@parkerpoe.com;
nicknybo@parkerpoe.com; kellygouin@parkerpoe.com; celestemallett@parkerpoe.com;
Chip.Collins@mgclaw.com; Caroline.slough@mgclaw.com; Hannah.marrero@mgclaw.com;
jdavis@ycrlaw.com; mridle@ycrlaw.com; tgandy@ycrlaw.com; aphillips@ycrlaw.com;
klynnes@ycrlaw.com; wbarnes@btblawfirm.com; vbailey@btblawfirm.com;
jbynum@btblawfirm.com; eboles@btblawfirm.com; sbrown@ycrlaw.com; bdennis@ycrlaw.com;
golive@ycrlaw.com; jay.thompson@murphygrantland.com; skozick@kernodlclaw.com;
rlr@lafavebagley.com; angie@lafavebagley.com; aries@smithlaw.com;
Vanessa.merassaint@qpwbllaw.com; Carmen.bickerdt@qpwbllaw.com;
jacquese.gray@qpwbllaw.com

Cc: David Humen <dhumen@dobslegal.com>; Theile McVey <tmcvey@kassellaw.com>;
jrutkoski@kassellaw.com; jkassel@kassellaw.com; Roxana Martinez <rmartinez@dobslegal.com>

Subject: Barnett - Deposition of Kenvue, Inc.

Counsel,

The deposition of Kenvue, Inc. scheduled for September 18, 2026 will not be going forward at that time. It will be rescheduled to a date to be forthcoming.

Thank you,

SCOTT PEPIN | Case Managing Paralegal



O: (214) 722-5990 | **D:** (469) 718-1988

1801 North Lamar Street, Suite 300
Dallas, TX 75202

www.dobslegal.com

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EXHIBIT 18

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. §

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 VIDEO-RECORDED ORAL DEPOSITION OF
27 DR. EDWIN KUFFNER
28 AS CORPORATE REPRESENTATIVE OF
29 JOHNSON & JOHNSON HOLDCO (NA) INC.
30 CONDUCTED VIA VIDEOCONFERENCE
31 September 10, 2025
32 VOLUME 1

1 any party that wishes to ask questions either in
2 follow-up or their own independent questions of
3 Dr. Kuffner on behalf of these corporate entities
4 he is testifying on today should do so with the
5 expectation that this video will be played at the
6 trial of this case and perhaps in other matters.

7 I think subject to --

8 MS. DIWAN: We -- sure. I was going to
9 say we stipulate to an objection for one is an
10 objection for all. And we reserve our right to
11 conduct further questioning at the time of trial
12 for Dr. Kuffner.

13 MR. STUEMKE: Sure.

14 For the record, I want to introduce -- or
15 I want to mark the Notices of Deposition that are
16 currently live in these cases as to this
17 deposition as Exhibits 1 through 4.

18 Exhibit 1 will be in the Gerken matter,
19 the Fourth Amended Notice of the 30(b)(6)
20 Deposition of Defendant Johnson & Johnson
21 HoldCo (NA) Inc.

22 (Exhibit 1 marked for identification.)

23 MR. STUEMKE: Exhibit 2 will be in the
24 Johnson matter, the Fourth Amended Notice of
25 Deposition of Johnson & Johnson HoldCo (NA) Inc.

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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