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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Judge

Appellate Case No. 2016-000227
Case No. 2013-CP-42-3915

Angie Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay,..... Respondents,

v.

CNA Holdings, LLC..... Appellant.

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Certificate of Counsel

STATE OF SOUTH CAROLINA	§	IN THE COURT OF
	§	COMMON PLEAS
COUNTY OF SPARTANBURG	§	
	§	Civil Action No.
	§	2013-CP-42-03915
ANGIE KEENE, Individually and as Personal Representative of the Estate of DENNIS SEAY, Deceased, and LINDA SEAY, *Plaintiffs*	§	
v.	§	
CNA HOLDINGS, LLC *Defendant.*	§	

ORDER DENYING DEFENDANT CNA HOLDINGS, LLC'S POST-TRIAL MOTIONS

In this asbestos case, Defendant CNA Holdings, LLC ("Celanese") moves for relief from the jury's October 8, 2015 verdict. For the reasons set forth below, Celanese's motions for judgment notwithstanding the verdict, new trial absolute, and new trial nisi remittitur are DENIED.

I. The Evidence at Trial

Viewing the record in the light most favorable to Plaintiffs, sufficient evidence supports the jury's finding that Decedent Dennis Seay died from malignant pleural mesothelioma proximately caused by exposure to asbestos. Mr. Seay died in December 2014, at the age of 70. Mr. Seay's daughter and the representative of his estate, Angie Keene, and Mr. Seay's widow, Linda Seay, brought this premises liability action against Celanese, which owned the polyester fiber plant in Spartanburg, South Carolina where Mr. Seay was a full-time contract maintenance worker from 1971 to 1980. Mr. Seay's employer was Daniel Construction Company ("Daniel"), which contracted with Celanese to handle all maintenance at the Spartanburg facility. The evidence showed that Mr. Seay's regular duties as a millwright involved repairing and

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maintaining pumps, valves, condensers, and other equipment, which brought him into contact with asbestos gaskets, packing, and insulation materials at Celanese.

The uncontradicted evidence showed that Mr. Seay's only source of asbestos exposure was his work at Celanese. The exposure testimony came from Mr. Seay, who was deposed in a videotaped deposition prior to his death, and Mr. Seay's co-worker, Ronnie Thompson. Mr. Thompson worked side-by-side with Mr. Seay at Celanese from 1973 to 1975.

Celanese does not dispute that asbestos insulation, gaskets, and packing were used at its plant in the 1970s. There were "miles and miles of steam lines" at the Celanese plant. All of the steam lines and Dowtherm pipelines at Celanese were insulated with asbestos insulation. Celanese continued to use asbestos insulation until 1973, and asbestos insulation remained on many pipes and pieces of equipment throughout the 1970s.

Mr. Seay had to tear off a lot of exterior pipe insulation in order to access the equipment he needed to repair. Mr. Thompson estimated that they had to remove insulation about 50% of the time. The pipes were insulated all the way up to the flange connection, and the insulation covered the nuts and bolts on the equipment. Mr. Seay had to tear, chisel, saw, and brush the asbestos insulation off in order to get a wrench onto the nut to loosen the flange. He had to tear back the insulation just to change a gasket. The testimony established that it was dusty when Mr. Seay tore off asbestos pipe insulation, and that Mr. Seay had to clean up his work area after he removed the insulation.

In addition to his exposure through tearing off insulation, Mr. Seay sometimes worked around the insulators when they were installing insulation. When they were working on the same line, Mr. Seay would be within 10 feet of the insulators. There was dust generated by the insulators' work. It was a daily occurrence for him to be around the dust from pipe insulation

used by the insulator group. Most of the plant had grated floors and a vacuum fan system that drew air upwards, so if insulators were working on lower floors he would get a dose of asbestos insulation dust.

There were gaskets on most of the equipment that Mr. Seay maintained at Celanese. Every time Mr. Seay and Mr. Thompson worked together, they replaced gaskets. They both were able to identify asbestos gaskets and provided testimony that asbestos gaskets were used on the majority of pumps and valves at Celanese.

Mr. Seay usually had to make flange gaskets from sheet gasket material. He testified that all of the sheet gaskets he worked with were asbestos. He identified four brands of asbestos-containing sheet gaskets, including John Crane. The evidence showed that Mr. Seay cut John Crane asbestos sheet gaskets once or twice a week throughout the entire nine years of his employment at Celanese. One of the styles of John Crane asbestos gaskets used by Mr. Seay contained crocidolite asbestos, the most potent type of asbestos fiber.

When Mr. Seay was assigned to cut asbestos sheet gaskets, he would spend four to six hours cutting out a large supply because they used so many of them. Either Mr. Seay or another millwright had to cut gaskets once or twice a week. Sometimes it would take 30 or 40 minutes to cut out a gasket. Cutting gaskets from asbestos sheet gasket material was dusty.

When Mr. Seay removed gaskets, he usually had to scrape and work to get the gasket off. He had to scrape out the gaskets about 95% of the time because he was generally working on hot systems. He used a putty knife, wire brushes, and drill motors, depending on how badly the gasket was stuck. It would sometimes take at least an hour or longer to remove the gasket and clean the flange. There was "a whole lot of dust" created from the process of removing a gasket from a pump or valve.

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Mr. Thompson testified that every time Mr. Seay worked on the vacuum condensers, he had to remove and install a new gasket. Mr. Seay cleaned out a condenser about once a week. All the gaskets on the condensers were asbestos-containing. Mr. Seay cut John Crane asbestos sheet gaskets every time he had to replace a gasket on a condenser. Cutting the sheet gaskets created visible dust that Seay breathed. After he cut the sheet gaskets, Mr. Seay had to clean up his work area.

There were thousands of valves at the Celanese Spartanburg plant. Mr. Seay worked on valves once or twice a day, which he characterized as "pretty often." On valves, there were two asbestos gaskets on the flanges and one on the valve bonnet. There were about two-hundred pumps at Celanese. He worked on pumps and gearboxes, respectively, about once every week or two on average. There were times when he worked on the same pump or valve more than once.

Mr. Seay also worked in close vicinity to other millwrights when they were changing asbestos gaskets and packing on valves and pumps. He said it got "pretty dusty" when a lot of gasket and insulation repairs were going on at the same time.

Mr. Seay routinely worked with asbestos packing on valves, pumps, and degassers. Mr. Seay used square packing and rope packing, and it all had asbestos in it. When Mr. Seay removed the packing from a valve or pump, he used a screw-type tool or a packing puller. When he removed the old packing, it was often brittle and dried out. He used compressed air to completely remove all the old packing from the valve stem. It would take Mr. Seay about an hour or an hour-and-a-half for the whole process—remove the insulation, replace the packing, and clean up his work area. The removal of asbestos packing created dust.

Plaintiffs' medical experts, Dr. Richard Kradin and Dr. Edwin Holstein, both testified that Mr. Seay was exposed to asbestos at Celanese well above background levels, and that his

exposure to asbestos insulation, gaskets, and packing at Celanese was a substantial factor in causing his mesothelioma. Celanese called no experts. The defense experts called by a co-defendant at trial, John Crane, Inc., agreed with Plaintiffs' experts on the causative role of Mr. Seay's asbestos insulation exposure at Celanese. Dr. Victor Roggli and Dr. James Crapo both testified that Mr. Seay had an asbestos-caused mesothelioma and that his exposure to insulating products at Celanese created his risk for mesothelioma.

A jury trial was held against Celanese and a co-defendant, John Crane, Inc., in September and October 2015. The jury found that Celanese had been negligent but that John Crane, Inc., was not negligent. The jury returned a verdict of $2 million in survival damages to Mr. Seay's estate, $5 million in loss of consortium damages to Linda Seay, and $5 million in wrongful death damages to Mr. Seay's heirs. After a bifurcated trial on punitive damages, the jury found Celanese had acted willfully and wantonly and awarded $2 million in punitive damages.

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

II. Standard of Review

In ruling on a motion for JNOV, the trial judge must view the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party. JNOV should be granted when only one reasonable inference can be drawn from the evidence and no reasonable jury could have reached the challenged verdict. The trial judge does not have authority to decide credibility or resolve conflicts in the evidence. Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003); Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000).

If the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive, the trial judge is required to grant a new trial absolute. Cock-N-Bull Steak House v. Generali Ins. Co., 321 S.C. 1, 466 S.E.2d 727 (1996); Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).

A trial court has wide discretion to reduce an excessive verdict by granting a new trial nisi remittitur. The reduced judgment is a suggested settlement figure, which the plaintiff may accept, or reject and request a new trial. Ruling on a new trial nisi remittitur "requires the court to consider the adequacy of the verdict in light of the evidence presented." Waring v. Johnson, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000). The touchstone for deciding whether to disturb a jury's verdict by granting a nisi motion is whether the award excessively compensates the injured party. Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984). A famous decision by Judge Medina drives home the point: "[t]he very nature of the problem counsels restraint. Just as the trial judge is not called upon to say whether the amount is higher than he personally would have awarded, so are we appellate judges not to decide whether we would have set aside the verdict if we were presiding at the trial, but whether the amount is so high that it would be a denial of justice to permit it to stand." Dagnello v. Long Island R. Co., 289 F.2d 797, 806 (2d Cir. 1961).

III. Ruling

A. Negligence

Celanese contends that there is "insufficient evidence" to support the jury's finding that Celanese was negligent and that its negligence was a proximate cause of Mr. Seay's mesothelioma. The Court disagrees. The evidence established that Celanese owed a duty to Mr.

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Seay as an invitee and that it breached that duty by requiring contract maintenance workers to utilize asbestos materials without warning them of the known dangers.

1. Duty

The parties agreed that Mr. Seay was an invitee on the premises owned by Celanese. Celanese therefore owed Mr. Seay a duty of utmost care. "The owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty." Sims v. Giles, 343 S.C. 708, 718, 541 S.E.2d 857, 863 (Ct. App. 2001). The landowner has a duty to warn an invitee of latent or hidden dangers of which the landowner has knowledge or should have knowledge. Id.

Celanese's duty was an active or affirmative duty. Graham v. Whitaker, 282 S.C. 393, 398, 321 S.E.2d 40, 43 (1984). "It includes refraining from any act which may make the invitee's use of the premises dangerous or result in injury to him." Id. Celanese did not have to foresee the precise manner in which the injuries were sustained, as long as there is a "reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range." Id.

2. Knowledge of the Danger

The record supports the jury's finding that Celanese failed to provide a reasonably safe premises to Mr. Seay. By the time Mr. Seay began working at the Celanese plant in 1971, Celanese knew or should have known that working with asbestos products could cause fatal disease. Celanese admits such actual knowledge as of the passage of the Occupational Safety and Health Administration (OSHA) asbestos regulations in 1971-72. Celanese specified and supplied asbestos insulation, gaskets, and packing for use in maintaining its equipment. Celanese did not, however, make any effort to warn contract workers like Mr. Seay who were using asbestos

products at the Celanese plant. It also did not provide any type of personal protective equipment or instructions for reducing the risk of asbestos-related disease.

The evidence supports the jury's determination that Celanese knew or should have known about the danger of asbestos-related disease, including mesothelioma, prior to Mr. Seay's tenure as a contract worker at the Spartanburg plant. Dr. Holstein testified about the historical information available to Celanese regarding the dangers of asbestos exposure. By 1964, there were about 700 scientific and medical articles on the health effects of asbestos. The first article showing that asbestos could cause fatal illness was published in 1898. In 1930, Merewether and Price published the first epidemiological study showing an increased incidence of asbestos-related disease among textile workers in England. They wrote that asbestos-related disease could be prevented or diminished by reducing exposure to asbestos dust.

The 1930 Merewether and Price article was also significant because it outlined a number of simple methods for reducing the hazard, including the use of alternative materials where available, wet down methods, exhaust ventilation, isolating workers, providing respiratory protection, and educating workers about the nature of the danger and the need to take precautions. Dr. Holstein testified that all of the recommendations that Merewether and Price made in 1930 still remain the essential methods for reducing the risk of asbestos-related disease today. In a follow-up article by these same authors, gaskets (called "jointings") were among the products listed as potentially hazardous if abraded.

In 1938, an article published by the United States Public Health Service, based on a study of South Carolina textile workers, recommended that asbestos exposures be kept below a particular air concentration of 5 million particles per cubic foot (mppcf) of air. In the next ten years, a number of states adopted that standard as the limit for occupational exposure. By 1955,

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it was definitively established that asbestos exposure could cause lung cancer. By 1960, with the publication of a case series by Wagner, it was established beyond any reasonable doubt that asbestos exposure could cause mesothelioma.

There was also substantial evidence that Celanese had actual knowledge of the danger of asbestos-related disease from working with asbestos products, including asbestos insulation. In 1964, Celanese's medical director attended the 1964 Selikoff conference on asbestos-related diseases. One of the papers published in the Selikoff conference book was by W.C. Hueper, and it stated that workers who were even only intermittently exposed to asbestos were at risk. He listed a number of types of asbestos products that posed a risk, including block insulation, pipe covering, gaskets, and pump packings.

Bruce Bowyer, Celanese's corporate representative, testified that Celanese was founded in the 1930s. It was a large company, with about 2,000 employees at the Spartanburg plant alone. Celanese manufactured an asbestos-containing product called Celanex at its plant in Bishop, Texas, from 1971 until about 1980. Celanese was aware of all laws and regulations that applied to its plants. As of 1958, Texas had an occupational health regulation that limited asbestos exposures to 5 mppcf and distinguished asbestos from a nuisance dust. Celanese was also aware of 1958 asbestos regulations in the state of New York, where it maintained its headquarters.

The OSHA asbestos regulations applied to Celanese and Celanese was aware of them. In 1971, OSHA's first act was to pass an emergency asbestos standard. It required employers to keep asbestos exposures below an average threshold limit value (TLV) or permissible exposure limit (PEL) of 12 fibers per cubic centimeter of air (fibers/cc). That was lowered to 5 fibers/cc in 1972 and 2 fibers/cc in 1976. In addition, short-term exposures could never exceed 10 fibers/cc. In its regulations, OSHA stated that these exposure limits were not designed to protect against all

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cancer and that some cancers would still occur at these exposure levels. The OSHA asbestos regulations also required warnings, dust measurements, medical examinations, showers, separate lockers, and other measures. Dr. Holstein testified that Mr. Seay would have been exposed to asbestos above both the time weighted average and ceiling limits for asbestos under OSHA.

Celanese also learned of the dangers of asbestos through its memberships in the National Safety Council (NSC) and Industrial Hygiene Foundation (IHF). Celanese received NSC publications, including the National Safety News and the Transactions of the NSC, which published numerous articles in the 1950s regarding the dangers of asbestos exposure. It similarly received the Industrial Hygiene Digest of the IHF, which published dozens of articles about asbestos-related diseases in the 1950s and 1960s.

Charles Laubly, who was employed as an industrial hygienist with Celanese from 1966 to 1979, testified that he received Industrial Hygiene Digest. He forwarded IHF publications to Celanese's corporate library where all employees would have access to them. The jury heard about the many abstracts of scientific articles published in the Industrial Hygiene Digest that stated that asbestos can cause asbestosis, lung cancer, and mesothelioma. Some of the abstracts published in 1964 and 1967 pertained to the risk of mesothelioma among insulators specifically. Mr. Laubly admitted that as early as 1949 he had personal knowledge that exposure to asbestos could cause asbestosis and that asbestosis could be fatal.

In 1970, Union Carbide sent a report to Celanese informing it that mesothelioma could "occur in individuals with histories of only slight exposures." (TT 10/7 PM, at 1358:16-1361:3). Further, "[f]rom the data available, it appears that the TLV of 5 million particles per cubic foot is not low enough to protect against mesothelioma, and it is quite possible that 2 million particles per cubic foot is not either." (TT 10/7 PM, at 1360:20-1361:3).

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In 1977, an internal Celanese memorandum acknowledged that research studies over the previous ten years had "raised serious questions concerning human exposure to cancer-producing agents," and that some researchers had suggested that, "there is no safe exposure to a human carcinogen." (TT 10/7 PM, at 1361:7-1363:25).

3. Failure to exercise reasonable care

There is substantial evidence that Celanese made the decision to use asbestos materials at the Spartanburg plant and purchased those materials for its contract workers to use in maintaining the plant equipment. Mr. Bowyer acknowledged that Celanese was the owner of the plant and everything in it, including the equipment and the pipelines, and the insulation, gaskets, and packing.

Celanese, not contractors, specified what materials were to be used for the insulation and gaskets in its plants. Mr. Seay's employer, Daniel, was hired to build the Celanese plant but Celanese designed the plant and specified all the equipment and materials that went into the plant. Daniel was obliged to follow Celanese's plant design specifications. The contracts between Daniel and Celanese specified that purchase orders for materials were issued in the name of Celanese.

Celanese chose asbestos gaskets over other, safer gasket materials. In 1949, Celanese tested several different gasket materials and determined that Teflon performed the best. However, for costs reasons, Celanese decided to use asbestos gaskets instead. Celanese was still using asbestos gaskets for high temperature applications in 1988, despite the existence of safer alternatives.

Spartanburg also used asbestos-containing calcium silicate pipe insulation. Celanese claims that it discontinued the use of asbestos insulation in 1973 due to OSHA regulations.

However, up until at least 1978, asbestos insulation was still present on many of the high temperature lines at Spartanburg.

Celanese had a huge supply room that stocked all the spare parts and materials needed for maintenance of the equipment at the plant. The supply room was run by Celanese and Celanese ordered all the parts and materials that were stocked for on-site use. Celanese supplied the asbestos insulation used at the plant. Mr. Seay got asbestos sheet gaskets (and other asbestos materials) from the Celanese supply room.

Mr. Seay's daily work assignments came from Celanese, either directly or via his Daniel supervisor who got his instructions from Celanese. Celanese decided what insulation work might need to be done on a given day. Celanese determined when the work was to be done, where it was to be done, and how it was to be done.

Celanese never warned Mr. Seay about the dangers of asbestos exposure even though Celanese agrees that contract workers should be told about hazardous substances in use on its premises. In the 1970s, Celanese did not warn contractors not to use abrasive techniques to remove asbestos gaskets, or provide that non-asbestos gaskets should be used when gaskets could not be removed without the potential release of asbestos fibers.

There were no asbestos warning signs posted anywhere at the Celanese plant. Celanese owned the walls at the plant and could have put up signs on its own walls at any time. If Mr. Seay's employer, Daniel, had wanted to put a sign on the wall, it would have had to get permission from Celanese. Nothing in the OSHA asbestos regulations prevented Celanese from posting warning signs in areas where they knew asbestos materials were present.

The evidence showed that Celanese made a conscious choice not to warn for fear of liability. As of 1963, Celanese had a policy of not putting information about hazardous products

in writing due to a concern that written evidence of its knowledge of the danger could later be used in lawsuits. Its policy, signed by the president of Celanese, was to only communicate hazard information orally so as to avoid a paper trail. Mr. Bowyer could not say whether that policy had been changed as of 1978. In the 1970s, Celanese had an official policy that it would not give workers written interpretive statements of asbestos sampling results. If an employee requested hazard information on a particular product, the plant supervisor was instructed to state that the data was inconclusive, no matter what the product was. Mr. Bowyer himself authored a memo in 1988 stating that because interpretive statements of exposure monitoring results were not required to be communicated to employees by law, the company would not require it.

Celanese could have disseminated information about asbestos to contractors during safety meetings. However, during Mr. Seay's years of employment at the Spartanburg plant, Daniel employees did not attend the safety meetings that Celanese held for its own workers. As of 1962, some Celanese plants did have a practice of requiring contract workers to attend regular plant safety meetings and that suggestion was circulated to other plants.

The evidence also showed that Celanese failed to take other precautions to protect contract workers. Charles Laubly, an industrial hygienist at Celanese in the 1960s and 1970s, had no knowledge of any measures being taken by Celanese to prevent maintenance employees from being exposed to asbestos. Mr. Bowyer testified that Celanese could have tested the pipe insulation to determine the areas where asbestos insulation was present, but it never did so. Celanese did not inform contract workers about the areas where asbestos pipe insulation was present. Celanese did not require the use of respirators or masks when working around asbestos dust.

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Celanese had a shared responsibility for worker safety. Celanese had a contractual obligation to audit Daniel's safety and health program at the Spartanburg plant. There is no evidence that Celanese ever performed those safety audits of Daniel at Spartanburg in the 1970s.

Mr. Bowyer agreed that it was good corporate policy to work with contractors to ensure the safety of contract employees. There is no evidence, however, that this policy was actually implemented by Celanese during Mr. Seay's years.

Celanese later implemented policies designed to protect contract workers like Mr. Seay. As of 1980, Celanese had a policy of protecting the health and safety of contract workers on its property. As of 1980, its hazard communication policy provided that contract employees would be given the same health and safety information about products and materials at Celanese that Celanese would provide to its own employees if they were performing the work. In 1991, Celanese had a contractor safety program providing that contractors could not remove insulation before finding out from Celanese whether the insulation was asbestos-free. Celanese was also responsible for evaluating insulation and determining how to and who would remove it. Removal of asbestos insulation was required to be done according to the plant asbestos removal procedure. Contractors were forbidden from removing asbestos insulation not identified and cleared for removal by Celanese. Mr. Bowyer agreed that those were all good corporate policies. Celanese could have put those policies in place in the 1960s and 1970s.

During the years of Mr. Seay's employment, Mr. Bowyer admitted that Celanese could have tagged lines that contained asbestos insulation and warned contractors not to touch lines and equipment in the tagged areas. Celanese could have put up signs stating that contractors should not touch insulation in tagged areas because asbestos can cause cancer, disability, and death. Celanese could have posted warning signs that gaskets may contain asbestos and that

contractors should not begin work with gaskets until cleared by Celanese. Celanese could have put a sign stating that asbestos exposure could be deadly and that wet down methods, vacuums, and respirators should be utilized.

If Celanese had pertinent safety policies in place, Daniel employees were required to follow them. Dr. Holstein testified that if Celanese had implemented a policy that contract workers should avoid areas with asbestos insulation at the Celanese plant, that would have helped prevent Mr. Seay's mesothelioma. If Celanese had implemented any safety rules pertaining to areas of the plant where asbestos was present, then Daniel could have passed that policy information to Mr. Seay as it was required to do under the contracts between Daniel and Celanese.

The Court finds that the evidence supports the jury's finding that Celanese's failed to act with reasonable care to protect the health and safety of Mr. Seay. Celanese knew or should have known that asbestos exposure could cause fatal disease when Mr. Seay began working at the Spartanburg facility in 1971, and yet it purchased and required the use of asbestos insulation, gaskets, and packing. It continued to use asbestos gaskets even when alternative materials were available and more effective. Celanese had the authority and opportunity to warn of the dangers of asbestos through signage, safety meetings, or company policies and procedures, but did not warn in any way during Mr. Seay's tenure at the Spartanburg plant. Its later conduct showed the feasibility of such measures. The Court concludes that the jury reasonably found that Celanese was negligent.

B. Causation

Celanese contends that "Plaintiffs failed to establish causation." The Court cannot agree. It is undisputed that Mr. Seay had an asbestos-caused mesothelioma and that his exposure to

asbestos at Celanese for nine years was his only known exposure. Plaintiffs presented sufficient evidence to support the jury's causation finding against Celanese.

The Supreme Court has adopted the Lohrmann causation standard for asbestos cases. See Henderson v. Allied Signal, Inc., 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). Under Lohrmann, "[t]o support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Id.* (quoting Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156, 1162 (4th Cir.1986)). Owen recognizes that the Lohrmann standard for proving causation in asbestos cases is "a variant of the substantial-factor test." David G. Owen, Product Liability Law 778 (2d ed. 2008).

Plaintiffs offered expert testimony from Dr. Arnold Brody, a cellular biologist and experimental pathologist specializing in the biological mechanisms of asbestos-related disease; Dr. Kradin, a practicing physician board-certified in internal medicine, pulmonary medicine, and pathology; and Dr. Holstein, a physician board-certified in internal medicine and preventive and occupational medicine. Celanese has not challenged their expertise or the admissibility of their opinions.

Dr. Brody offered only general causation opinions. He testified that the only generally accepted cause of mesothelioma in the United States is asbestos exposure. He testified that mesothelioma is a dose-response disease, that mesothelioma is caused by a person's cumulative asbestos exposure, and that all asbestos exposures at an occupational level contribute to the cumulative dose and increase the risk of disease. Dr. Brody explained that scientists have not found a safe level of asbestos exposure above background level.

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Dr. Kradin testified that Mr. Seay had a history of substantial exposures to asbestos insulation, gaskets, and packing at Celanese. He testified that the scientific literature has shown that working with these asbestos products in the manner described by Mr. Seay releases asbestos fibers well in excess of background levels. Further, the epidemiological literature has established that even low levels of asbestos exposure increase the risk of developing mesothelioma. Dr. Kradin offered the opinion that Mr. Seay's exposures to asbestos insulation, gaskets, and packing at Celanese were all substantial factors in causing his mesothelioma.

Dr. Holstein testified about the range of asbestos fiber release that has been measured and reported in the scientific literature for the type of work practices with asbestos insulation that are at issue in this case, including removing, cutting, and bystander exposure. Dr. Holstein testified that measurements from work with asbestos insulation range from less than 1 fiber per cubic centimeter of air (fiber/cc) up to hundreds of fibers/cc. Dr. Holstein testified that, based on Mr. Seay and Mr. Thompson's descriptions of their work with and around asbestos insulation, Mr. Seay's range of exposure would be .1 fiber/cc to 100 fibers/cc. Because the average exposure for insulators has been reported to be 6 fibers/cc, and Mr. Seay was often only a bystander to insulation work, in Dr. Holstein's opinion Mr. Seay's average exposure to asbestos insulation at Celanese was 4 fibers/cc.

By comparison, Dr. Holstein testified that the background level of asbestos in the ambient air is only 0.00005 fibers/cc. Dr. Holstein explained that an exposure of 1 fiber/cc is thus 20,000 times above background. On many occasions, Mr. Seay's asbestos exposures were far in excess of the background levels.

Dr. Holstein testified that, according to the industrial hygiene literature, cutting new gaskets results in asbestos exposures from .1 fiber/cc to 2 fibers/cc. Removing asbestos gaskets

with the tools that Mr. Seay used, including putty knives, wire brushes, and power wire brushes, generates asbestos exposures between .1 fiber/cc and 31 fibers/cc. The high end of the range, 31 fibers/cc, is from power wire brushing, and that would be 622,000 times above background levels. On the lower end, a study funded by John Crane measured exposures from gasket removal at .166 fibers/cc, which is still 3,320 times above background levels.

In Dr. Holstein's opinion, when Mr. Seay was working with asbestos gaskets his exposures would have exceeded the short-term limits set by OSHA on many, but not all, occasions that he was using a power wire brush and even occasionally when he was using a hand wire brush to remove asbestos gaskets. Once the OSHA TLV dropped to 2 fibers/cc in 1976, it is possible that Mr. Seay was exposed in excess of OSHA limits.

Dr. Holstein has concluded that Mr. Seay's mesothelioma was caused by his asbestos exposures and that those exposures were limited to the period of time when he was working at Celanese. He relied on the fact witness testimony that Mr. Seay regularly breathed in asbestos fibers from working with and around asbestos insulation and gaskets for about a decade. In Dr. Holstein's medical opinion, Mr. Seay's work around asbestos insulation and gaskets were substantial factors in the development of his mesothelioma.

Celanese offered no expert testimony. Dr. Victor Roggli was a medical expert brought by a co-defendant at trial, John Crane, Inc. He is of the opinion that Mr. Seay's exposure to asbestos insulation was a substantial factor in causing his mesothelioma. John Crane's expert Dr. James Crapo similarly testified that Mr. Seay had an asbestos-caused mesothelioma and that his exposure to insulating products at Celanese created his risk for mesothelioma.

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Celanese does not really dispute that Plaintiffs have demonstrated substantial factor causation, and instead argues that Plaintiffs failed to show "but for" causation.[1] This contention has no merit. All of the testifying medical experts in this case agreed that Mr. Seay's exposures at Celanese caused his disease. This consistent medical causation testimony was uncontradicted by Celanese. As Mr. Seay's only source of asbestos exposure was at Celanese, the jury reasonably concluded that Mr. Seay would not have developed mesothelioma without his exposure at Celanese.

The evidence of Mr. Seay's exposure to asbestos at Celanese was more than sufficient to create a fact issue for the jury on the issue of causation.

C. Superior Knowledge

Celanese challenges the verdict based on its related contentions that the jury was improperly charged on premises liability law and that Plaintiffs failed to create a jury question on the superior knowledge requirement. Neither of these arguments is meritorious.

First, Celanese contends that the jury should only have been charged under the superior knowledge language of Lanier Constr. Co. v. Bailey & Yobs, Inc., 384 S.C. 275, 681 S.E.2d 909 (Ct. App. 2009) and that the standard premises liability law does not apply to independent contractors such as Mr. Seay.

Plaintiff contends this argument has been waived because Counsel for Celanese agreed to Plaintiffs' jury instructions on premises liability. The Court disagrees and finds that no such waiver occurred.

The Court does not agree, however, with Celanese's reading of the law. There is nothing in Lanier suggesting that a premises owner does not a duty of care to an invitee when a

[1]At trial, Celanese took the position that Plaintiffs did not have to show but-for causation in a premises liability case.

contractor is involved. Lanier clearly holds, consistent with black letter South Carolina law, that a landowner owes a duty of care to its invitees. 384 S.C. at 279. "'A property owner owes an invitee or business visitor the duty or exercising reasonable or ordinary care for his safety and is liable for injuries resulting from any breach of such duty.'" Id. (quoting Sides v. Greenville Hosp. Sys., 362 S.C. 250, 256, 607 S.E.2d 362, 365 (Ct. App. 2004)). Lanier followed other South Carolina cases holding that a general contractor may also owe a duty of care to invitees. Id. at 279 (following Sides and Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000)). A general contractor only owes a duty to invitees, however, if it has superior knowledge of the danger. See id. at 279-80. In Lanier, a subcontractor invited onto the property by the general contractor was considered the general contractor's invitee and the property owner did not owe a duty because it lacked superior knowledge of the danger as compared to the general contractor. See id. at 281. The Lanier opinion also stated that the property owner had discharged its duty to warn by warning the general contractor. See id.

Here, there is absolutely no evidence that Celanese discharged its duty by warning Daniel, and Celanese has not even made that claim. Regardless of any duty that Daniel may have owed to Mr. Seay, Celanese owed a duty to Mr. Seay as an invitee. The general premises liability instruction regarding Celanese's duty to its invitees was a correct statement of the law.

Celanese also contends that there was "no evidence" that it had superior knowledge of the asbestos hazard compared to Daniel. The Court disagrees. Plaintiffs presented evidence that Celanese had earlier and far more extensive knowledge of asbestos hazards than Daniel—and there were no facts elicited at trial to contradict this. Celanese knew about the danger of asbestos-related disease long before Daniel did. The medical director of Celanese, Dr. Dixon, attended the 1964 Selikoff conference on asbestos-related diseases. At that conference, attendees

learned that asbestos causes mesothelioma and that even slight exposures or non-occupational exposures created a risk of mesothelioma. On the other hand, an employee for Daniel, Dan Buck, testified that Daniel was not aware that in 1964 asbestos researchers at the Selikoff conference had stated that there is no safe level of asbestos exposure. As of 1970, Daniel did not even know that asbestos could cause mesothelioma.

In the 1950s and 1960s, Celanese learned about asbestos-related diseases, including mesothelioma, from its membership in the IHF. At the same time Celanese was receiving almost monthly updates from the IHF about asbestos-related diseases, including mesothelioma, Daniel was not a member of the IHF and did not receive the Industrial Hygiene Digest.

Documentary evidence showed that Celanese knew as of 1970 that mesothelioma could be caused by relatively small levels of exposure to asbestos, and that the PEL was not protective against cancer. As of 1970, Daniel did not know that only slight exposures could cause mesothelioma and was not aware that the published TLVs were not protective against mesothelioma. In fact, Daniel was under the impression that asbestos could be used safely if exposures were kept below the PEL. Daniel was not aware that PEL did not protect against cancer.

This evidence was sufficient for the jury to determine that Celanese had much earlier knowledge and more extensive knowledge than Daniel did about the specific danger of mesothelioma and the types of exposures that could cause this disease.

D. Statutory Employer

Celanese again raises the statutory employer defense that was decided in Plaintiffs' favor at the pre-trial stage. This Court previously determined that Mr. Seay was not a statutory employee of Celanese because, as a contract maintenance worker employed by Daniel, he was not engaged in work that was part of Celanese's regular business operations. The Court found the decision in Raines v. Gould, Inc., 288 S.C. 541, 543, 343 S.E.2d 655, 657 (Ct. App. 1986) to be dispositive. Raines held that construction work on behalf of a manufacturer will not be considered part of the manufacturer's trade or business unless the manufacturer had its own construction division or its own employees performed construction work. 288 S.C. at 543, 545. There, the plaintiff who helped install an electrical system in a plant being constructed by the defendant was not considered a statutory employee because, "[a]lthough [the defendant] has been involved with the construction of numerous facilities on the property which it owns or leases or manages, the record does not indicate that it had a construction division or that any construction work was performed by its regular employees." Raines, 288 S.C. at 547. Further, "[e]very manufacturer must have a plant, but this fact alone does not make the work of constructing a plant part of the trade or business of every manufacturer who engages a contractor to construct a plant." Id.

The facts at trial bore out that Mr. Seay is not a statutory employee of Celanese. The evidence was that Celanese plant manufactured polyester fibers. All Celanese employees were production workers who were making polyester fibers. Dr. Frederick Toca, who was the Director of Occupational Health and Safety for Celanese in the 1990s, testified that Celanese was, "the second largest chemical company in the world." (TT 10/6 AM, at 932:18-933:22). The purpose of the company was the production of fibers, chemicals, pharmaceuticals, and agrochemicals.

Celanese did not have its own maintenance division or its own construction division. All of the maintenance workers at Celanese were employed by Daniel. No Celanese employees ever did the type of maintenance work performed by Mr. Seay and other Daniel workers. The Daniel workers and the Celanese employees performed "significantly different" work.

The question of statutory employment status turns on whether the work performed by the subcontractor is "part of the trade, business, or occupation" of the owner. Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 484 (2003); Glass v. Dow Chemical Co., 325 S.C. 198, 201, 482 S.E.2d 49, 50 (1997); Hopkins v. Darlington Veneer Co., 208 S.C. 307, 311, 38 S.E.2d 4, 6 (1946); Raines, 288 S.C. at 543, 343 S.E.2d at 657. A worker is only engaged in part of the owner's trade or business if the activity is: (1) an important part of the owner's business or trade, (2) a necessary, essential, and integral part of the owner's business, or (3) has previously been performed by the owner's employees. Glass, 325 S.C. at 201, 482 S.E.2d at 50. The Supreme Court has held that there is no easy formula or bright-line rule for determining whether the work was part of the owner's trade or business, and that each case must be decided on its own facts. Abbott v. The Limited, Inc., 338 S.C. 161, 526 S.E.2d 513 (2000); Glass, 325 S.C. at 201, 482 S.E.2d at 51.

The Supreme Court's approach to the question of whether work was important, necessary, or integral focuses on whether the work was part of the business of the owner. 526 S.E.2d at 163-64, 526 S.E.2d at 514. In Abbott, the Court of Appeals had found that the plaintiff, who drove a delivery truck for a common carrier, was a statutory employee of the retailer to whom he made a delivery. See id. at 162, 526 S.E.2d at 514. The worker was injured when he slipped and fell while unloading boxes on the retailer's premises. See id. The Court of Appeals reasoned that because the efficient delivery of goods was important to the business of the retailer,

whose business depended on such deliveries to restock its stores, the driver was a statutory employee. See id. at 163, 526 S.E.2d at 514. The Supreme Court disagreed, holding that, "[t]he fact that it was important to Retailer to receive goods does not render the delivery of goods an important part of the Retailer's business." Id. Simply because such deliveries were important to the conduct of the business, "'that does not mean that the transportation of the goods is a part or process of the business.'" Id. at 164, 526 S.E.2d at 514 (quoting Caton v. Winslow Bros. & Smith Co., 309 Mass. 150, 154, 34 N.E.2d 638, 641 (1941)) (emphasis added).

Under Abbott, it is still necessary to conduct a case-specific analysis, but the focus must be on what type of business the defendant conducts. Olmstead, 354 at 426, 581 S.E.2d at 486. In Olmstead, the defendant was in the business of designing and manufacturing fiberglass products. See id. at 426, 581 S.E.2d at 486. The Court focused on the nature of the business in holding that a worker involved in transporting the company's fiberglass products was not a statutory employee:

> Shakespeare designs and manufactures fiberglass products. It is not in the transportation business; it did not own any delivery trucks and none of its employees participated in the delivery of its products beyond the loading stage. All of the raw materials used to manufacture Shakespeare's products arrive at Shakespeare by common carrier and almost all of its finished products leave the plant by common carrier . . . . Although delivery by common carrier was certainly important to Shakespeare's operation, it does not follow that such delivery was "part or process" of its manufacturing business.

Id. (emphasis added).

Cases involving construction workers illustrate that an evaluation of the nature of the defendant's business is dispositive of the statutory employer question. Where construction is a part of a company's documented business purpose, or the company has a construction division or has handled its own construction in the past, then construction contractors have been found to be statutory employees. See MacMullen v. South Carolina Elec. & Gas Co., 312 F.2d 662, 663 (4th

Cir. 1963); Parker v. Williams & Madjanik, Inc., 275 S.C. 65, 267 S.E.2d 524 (1980); Fortner v. Thomas M. Evans Const. and Development, LLC, 402 S.C. 421, 741 S.E.2d 538 (Ct. App. 2013); Ewing v. A.W. Chesterton Co., No. 09-CP-40-8342, at p. 5 (Ct. Cmn. Pleas 2010). Conversely, if the defendant is not in the business of construction, and the construction work cannot fairly be characterized as part of the defendant's business, courts will not find the construction worker to be a statutory employee. See Glass, 325 S.C. at 202; Raines, 288 S.C. at 547, 343 S.E.2d at 659. For example, in Raines the court noted that, "the nature of [the defendant's] business, according to its application to transact business in South Carolina, is the 'manufacturing and selling [of] batteries of all kinds and related products.'" 288 S.C. at 547, 343 S.E.2d at 659. Further, "the record does not indicate that [the defendant] had a construction division or that any construction work was performed by its regular employees." Id. Therefore, the plaintiff's construction work was not part of the defendant's trade or business and he was not a statutory employee. Id.

The construction cases demonstrate that a determination that work is part of an owner's trade or business depends heavily on the company's stated business purpose. See MacMullen, 312 F.2d at 663; Parker, 275 S.C. at 73; Fortner, 402 S.C. at 431; *Raines*, 288 S.C. at 547; Ewing, at p. 5. Where the corporate documents, partnership agreements, state business filings, or plain language of the company name showed construction as a business activity, the business was found to be in the construction business. *MacMullen*, 312 F.2d at 663; Parker, 275 S.C. at 73; Fortner, 402 S.C. at 431; Ewing, at p. 5. Employees of construction contractors or subcontractors were therefore found to be statutory employees. Parker, 275 S.C. at 74; Fortner, 402 S.C. at 432; MacMullen, 312 F.2d at 671-72; and Ewing at 6. On the other hand, in Raines

where the stated business purpose was to manufacture batteries, the court could not find that construction was part of the company's business. 288 S.C. at 547.

The focus must thus be on the type of business that Celanese conducted. Celanese manufactures synthetic fibers. It is not in the maintenance business. It did not have a maintenance division and none of its employees ever conducted maintenance (until after Mr. Seay stopped working for Celanese). Generally, "where repairs are major, specialized, or of the sort which the employer is not equipped to handle with its own work force, they are not part of the business." Glass, 325 S.C. at 202, 482 S.E.2d at 51.

Although maintenance of the equipment in the plant may have been important to Celanese's operation, it does not follow that such maintenance was a "part or process" of its synthetic fiber manufacturing business. Celanese has presented no evidence that its corporate purpose included equipment maintenance. Mr. Seay was not its statutory employee under South Carolina law.[2]

E. Jury Conduct

Celanese contends that the jury engaged in "improper discussions" around the statement by Juror 16 that he worked at the same plant and in the same job as Mr. Seay. The Court finds, however, that Celanese has presented no evidence of any jury impropriety.

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[2] The Court does not need to reach Plaintiffs' arguments that even if Mr. Seay was determined to be a statutory employee of Celanese, they do not have a workers' compensation claim against Celanese and their remedy is in the tort system. Plaintiffs argue that occupational diseases are only compensable under the Workers' Compensation Act if they arise within one year of workplace exposure, or, in the case of pulmonary diseases, within two years of exposure. S.C. Code Ann. § 42-11-70. Mr. Seay did not develop malignant mesothelioma until 2013, 35 years after his last exposure to asbestos at Celanese. Plaintiffs additionally argue that Celanese has failed to prove that it complied with the Act's requirement that it obtain workers' compensation insurance or provide proof that it was financially able to self-insure. S.C. Code Ann. §§ 42-5-10, 42-5-20. An employer who fails to secure the payment of compensation as required by the Act loses its immunity under the Act's exclusive remedy provision and may be sued in tort. S.C. Code Ann. § 42-5-40; Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 325-26, 523 S.E.2d 766, 772 (1999).

When a party alleges irregularities in the jury's deliberations, "[t]he test is whether there is reason to suppose outside influences affected the jury's verdict." Parker v. Evening Post Publ. Co., 317 S.C. 236, 248, 452 S.E.2d 640, 647 (Ct. App. 1994). The trial court may evaluate such a claim based on its "opportunity to view the trial, the character and intelligence of the jurors, and to consider whether the verdict, in light of the evidence, has so little support as to indicate corrupt or improper influence." Id.

There is simply no evidence that any outside influences affected the jury's verdict in this case. Juror 16 stated in voir dire, in front of the entire jury panel, that he works at the Auriga Polymers plant that used to be the Celanese plant. When asked if he had any opinions about Celanese that would affect his ability to be fair and impartial, he said he did not. Later, on Day 4 of trial, Juror 16 approached the Court with a concern that he worked at the same plant as Mr. Seay and had the same maintenance job repairing equipment. He was ultimately dismissed.

Based on Juror's 16 explanation of the limited nature of what he had told the other jurors, the Court cannot conclude that there were any premature deliberations. The conversation that Juror 16 had with other jurors was limited to the fact that he worked at the former Celanese plant, and that had already been disclosed. Although one of the jurors asked him about the use of asbestos at the plant, he did not answer. There is every indication that the jury complied with the instruction not to discuss the case, and no evidence of premature deliberations. See State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999).

The Court cannot find that there was any prejudice to either side's right to a fair trial based on Juror 16's presence on the jury up to the point at which he was dismissed. Celanese has not offered any reason for the Court to find that outside evidence was offered by Juror 16 or improperly considered by the jury.

F. Video Evidence

Celanese next complains that Plaintiffs' counsel published "unauthorized audio" to the jury. The video at issue was a five-second clip of Mr. Seay in obvious pain and begging Jesus for help. The Court cannot agree that this video clip was "unauthorized." Plaintiffs' counsel disclosed this video in pre-trial discovery and notified defense counsel that he planned to play a portion of the clip in which Mr. Seay mentioned Jesus.

The Court also finds that Celanese has waived this argument by failing to make a contemporaneous objection. "To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court." State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (citing State v. Johnson, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996)). If Celanese truly believed the video of Mr. Seay to be "unauthorized" or "severely prejudicial," it should have objected at the time the video was played. Counsel for Celanese claims that he did not object because he thought the video "had been cleared with someone else on the defense side," again suggesting that the video was not in fact particularly objectionable. Not only did Celanese fail to object at the time, it failed to object at any time on the day the clip was played. Celanese only decided to voice an objection four days later, after a long weekend break. It thus failed to preserve its objection.

Finally, Celanese has failed to show any undue prejudice from this clip. The jury heard other evidence in this case establishing that Mr. Seay died an agonizingly painful death from mesothelioma. This was an undisputed fact in this case. Celanese also fails to explain how invoking the name of Jesus makes the video clip objectionable or unduly prejudicial. The jury had already heard evidence that Mr. Seay was a Christian and relied on his faith during his

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illness. The Court cannot conclude that Celanese suffered any undue prejudice from this evidence.

G. Evidentiary Rulings

Celanese challenges two main categories of the Court's evidentiary rulings. First, Celanese contends that the admission of Plaintiffs' Exhibit 821 was "severely prejudicial" and "harmful error." This document is an internal Celanese memorandum from 1963 in which Celanese states its policy not to put any research about hazardous products in writing for fear of liability. Celanese has not established that this document is inadmissible under South Carolina law.

The standard is not whether evidence is "severely prejudicial," but whether the probative value of evidence is substantially outweighed by the danger of unfair prejudice. S.C. R. Evid. 403. The Court finds the 1963 Celanese memorandum to be highly probative of Celanese's attitude about warning of dangerous products on its property. Celanese has not argued that there is anything unfair about the admission of this 1963 memorandum, and nor could it. These are its own statements, signed and endorsed by the President of the company, about its own internal policies on providing warnings. The statements were presented in the context of the entire document. Celanese has failed to show that the admission of this document was erroneous.

Celanese also complains that Plaintiffs should not have been permitted to publish to the jury numerous documents regarding Celanese's knowledge about the hazards of asbestos exposure prior to and during Mr. Seay's employment. It again argues that it was error to allow publication because the documents are "severely prejudicial." This is not a reason to exclude relevant evidence: "Evidence cannot be excluded simply because it is prejudicial. Almost all

evidence is prejudicial to somebody. Saying evidence is prejudicial is another way of saying it is relevant." State v. Bostick, 307 S.C. 226, 229, 414 S.E.2d 175, 177 (Ct. App. 1992).

The Court finds that evidence of Celanese's knowledge and conduct with regard to the dangers of asbestos exposure and the use of asbestos products on its premises is unquestionably relevant to Plaintiff's premises liability claims. "To recover damages for injuries caused by a dangerous or defective condition on a defendant's premises, a plaintiff 'must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it.'" Pringle v. SLR, Inc., 382 S.C. 397, 404, 675 S.E.2d 783, 787 (Ct. App. 2009) (quoting Anderson v Racetrac Petroleum, Inc., 296 S.C. 204, 205, 371 S.E.2d 530, 531 (1988)).

The South Carolina Supreme Court has recognized that evidence of constructive knowledge of the danger is relevant to a premises liability claim. See Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 331, 673 S.E.2d 801, 803 (2009) (reversing summary judgment for premises owner because "evidence show[ed] that Respondent knew or should have known that a dangerous condition existed on its premises and that invitees would have to encounter this condition"); JKT Co. v. Hardwick, 274 S.C. 413, 419, 265 S.E.2d 510, 513 (1980) ("documents prepared by Celotex employees ... constituted admissions which were decidedly relevant to the issue whether Celotex knew or should have known those materials were defective"); see also Williams v. CSX Transp., Inc., 176 N.C. App. 330, 341, 626 S.E.2d 716, 726 (N.C. Ct. App. 2006) (finding sufficient evidence of employer's constructive knowledge of asbestos risk from medical literature, defendant's membership in industrial organization "whose publications and

annual meeting minutes acknowledged the danger of asbestos exposure beginning in 1937" and documents from defendant's files about asbestos risks).

The Court concludes that the documents at issue were highly probative of Celanese's knowledge and conduct regarding asbestos products on its premises. Celanese has failed to show that the probative nature of the documents was outweighed by any unfair prejudice.

H. Compensatory Damages

Celanese contends that there was insufficient evidence to support the jury's damages awards on Plaintiffs' claims for survival, loss of consortium, and wrongful death. In the alternative, it seeks a new trial nisi remittitur, asking for a reduction of the survival award from $2 million to $1.5 million, and a reduction of the loss of consortium and wrongful death awards from $5 million each to $1 million each. Given the substantial evidence that Mr. Seay and his family have suffered enormously as a result of his mesothelioma diagnosis and death, the Court does not find these awards to be excessive or unduly liberal, and finds no compelling reason to reduce them.

1. Survival

Damages in a survival action include recovery for the deceased's conscious pain and suffering and medical expenses. Smalls v. South Carolina Dep't of Educ., 339 S.C. 208, 216, 528 S.E.2d 682, 686 (Ct. App. 2000). The parties stipulated that Mr. Seay's medical bills were $280,457.91.

The jury's survival damages award of $2 million is supported by the evidence of substantial injuries suffered by Mr. Seay. Mr. Seay was diagnosed with cancer in August 2013. He had suffered with a lot of pain in his chest and lungs even before his diagnosis. He had to have fluid drained from his lungs eleven separate times, which involved cutting his side and

putting a drainage tube in. At the time of his deposition in January 2014, he had two broken ribs that could not be repaired because his doctors were concerned about cutting him open again.

In the months leading up to his mesothelioma diagnosis, Mr. Seay suffered a collapsed lung on three separate occasions. Each time required an operation to re-inflate his lung. After the first two surgeries he was told he did not have cancer. When Mr. Seay was diagnosed with mesothelioma after the third surgery, his doctor told him that he only had 12 to 18 months to live. Mr. Seay testified that the news "hit me like a tractor and trailer truck had run over me or something," because after the other two operations he had been told he was cancer free. He testified that, to be "hit with something like that afterwards and tell me my lifespan was that short, it was a terrific blow."

Mr. Seay underwent chemotherapy that made him so sick he had to discontinue the treatment. He had a lot of serious problems with dehydration after his diagnosis. He had to go to the hospital three times a week for fluids, and was even hospitalized several times for dehydration. After his third lung operation, Mr. Seay never really recovered physically. He testified that, "in the last couple of months, I haven't had no life other than sitting in this chair and going to the doctor and laying in the bed."

Mr. Seay testified that he stayed in pain all the time. He had completely lost his appetite and could not keep food down. He could not sleep and laid awake in pain most of the night.

Prior to his mesothelioma diagnosis, Mr. Seay led a very active life. Although he retired right before he turned 65, he came out of retirement almost immediately, worked another year, and then went to a schedule of working full-time about six months each year. After his mesothelioma diagnosis, he became too sick to work and had to quit. He testified that he had

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planned to keep working indefinitely and that if he had not developed mesothelioma he would still be working.

Mr. Seay was strong and in very good physical shape before his mesothelioma diagnosis. He used to stay active with hobbies like fishing and working in his yard every day. When his physical condition deteriorated he felt the loss keenly. He testified that, "I enjoy getting out and working in the yard and – and all of that. And I just don't have that kind of life no more. And I miss it and I wished I had it back."

Every year Mr. Seay and his entire family, including children and grandchildren, took trips to the mountains and to the beach. He could no longer take those trips after he got sick. The whole family really missed taking those vacations together, and his grandchildren would even ask him when they were going to go on a trip to the mountains again.

Mr. Seay testified that the hardest part about having mesothelioma was knowing he was going to die soon. He also said that he was in pain 24 hours a day and that because of the constant pain it had been a "terrible, terrible year." At times he was in such agony that he was hoping and praying to die, but at the same time he wanted to be healed so he could have more a little more time with his family.

His daughter, Angie Keene, testified that Mr. Seay was in a lot of pain when his lung collapsed. She said that she had never seen her father cry, but that when his lung collapsed "he would be just screaming and crying." She described that when he had to go in for the third surgery, it was really terrible:

> The surgery was going to be excruciating. And they – where they cut him, they broke two ribs. And he had also cut through a lot of nerves that couldn't heal. And no pain medicine could help. And he had to endure that for another month or so before it collapsed again.

(TT 10/2, at 866:22-867:2).

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Dr. Kradin testified that Mr. Seay's disease was incurable. He was treated with a number of surgeries and chemotherapy, but those measures were not taken to cure him but to try to make him more comfortable for the little time he had left. Mr. Seay had at least 8 pneumothoraces, a condition where air accumulates around the lung. That is treated by inserting a chest tube to evacuate the air. Mr. Seay also had a decortication procedure that involved removing the lining of his lung.

Mr. Seay also had multiple thoracentesis procedures to remove fluid from the pleural space around the lungs. Dr. Kradin explained:

> Mesotheliomas, in addition to being a space-occupying mass, tend to produce an inordinate amount of fluid as they grow, and this often requires multiple procedures to remove the fluid in order to make it more comfortable for the patient to breathe as the fluid tends to collapse the underlying lung.
>
> So in this case, multiple thoracentesis were performed. Multiple efforts at evacuating air, which had ruptured into the pleural space had been performed, and ultimately there were efforts to close the pleural space by the talc pleurodesis.

(Kradin Video Depo., at 38:19-39:4).

Dr. Kradin testified that Mr. Seay's death from mesothelioma occurred primarily through suffocation when the tumor grows around the lung. The tumor encases and constricts the lung, making it difficult and painful to breathe. In addition, there is a wasting phenomenon with mesothelioma because the patient cannot eat very much, loses weight, and grows increasingly weaker. The mesothelioma tumor also encroaches on the large vessels of the chest, including the aorta and the vena cava, and interferes with circulation.

The evidence of Mr. Seay's continuous, intense pain for more than a year prior to his death certainly supports the jury's award for survival damages in this case. There was substantial evidence that Mr. Seay underwent great physical agony, as well as extreme emotional and mental distress. He lived with the knowledge that his disease was fatal and incurable, and suffered

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progressive physical disablement that prevented him from doing the things he loved. The evidence was more than sufficient to support the jury's $2 million award for survival damages.

The Court does not find any compelling reason to reduce the award by $500,000, as Celanese requests. The award of $2 million is at or below similar survival awards for plaintiffs who died from pleural mesothelioma. See, e.g., Bobo v. TVA, 2015 U.S. Dist. LEXIS 130741, at *111 (N.D. Ala. Sept. 29, 2015) (awarding the plaintiff $3 million for the decedent's physical pain and suffering when she died of mesothelioma at 71 years of age); In re New York Asbestos Litig., 847 F. Supp. 1086, 1096-97 (S.D.N.Y. 1994) (denying remittitur of an award of $7.5 million in pain and suffering to the estate of a mesothelioma victim who suffered with the disease for 18 months before death because his suffering was "continual, severe and unrelenting"); In re Joint E. & S. Dists. Asbestos Litig., 798 F. Supp. 925, 937-38 (E.D.N.Y 1992), rev'd on other grounds, 995 F.2d 343 (2d Cir.), and rev'd on other grounds, 995 F.2d 346 (2d Cir. 1993) (declining to reduce an award of $4.5 million in pain and suffering when the decedent suffered from the disease 11 months before succumbing).

As Celanese points out, in Garvin, this Court did remit the pain and suffering awarded to Mr. Garvin from $10 million to $1.5 million. But the cases are very different. Mr. Garvin was alive and cancer free at the time of his trial, whereas Mr. Seay suffered unrelenting pain until his mesothelioma killed him. Mr. Garvin was four years older at the time of trial than Mr. Seay was at his death, and Mr. Garvin's life expectancy was a number of years shorter. Mr. Garvin suffered from a testicular form of mesothelioma, while Mr. Seay suffered from pleural mesothelioma that caused his death by suffocation. The Court therefore finds that the award of $2 million to Mr. Seay's estate is not unduly liberal and should not be reduced.

2. Loss of Consortium

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Damages for loss of consortium compensate the plaintiff for the loss of a spouse's "companionship, aid, society and services." S.C. Code Ann. § 15-75-20. "Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative." Preer v. Mims, 323 S.C. 516, 521, 476 S.E.2d 472, 474 (1996) (citing S.C. Code Ann. § 15-75-20).

The jury's loss of consortium damages award of $5 million is supported by the evidence that Linda Seay suffered extreme hardship and loss because of the illness and death of her husband. Linda and Dennis Seay met when they were young. They got married after only knowing each other for two days, and stayed married for 47 years. Their daughter described them as best friends. They did not have a lot of other friends and "[t]hey were just together, just the two of them." Linda Seay confirmed that, testifying that, "[w]e were just together all the time." When she was eight months pregnant she went on a fishing trip with Mr. Seay, "just to be with him."

Linda took care of him when he got mesothelioma. He always wanted her right beside him. He wanted to maintain a dignified appearance and asked her to shave him every day.

Toward the end, Mr. Seay's mind started to go and he was having such trouble breathing that he was convinced his breathing tube was crimped even though it was not. Every night, in the middle of the night, Linda Seay would have to crawl under his bed and tell him she was fixing the tubes, even though they were perfectly fine.

Linda Seay misses her husband terribly. She testified:

> I just miss talking with him. I mean, you know, we talked all the time. We had -- we would -- I mean, we were together for 48 years. We – I didn't have friends. He didn't have friends. We were just together all the time. And I miss talking to him.
>
> Sometimes I talk to him when I -- when --knowing he's not even there.

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(TT 10/2 at 893:16-23). She said they used to take drives into the country about every other Sunday, and that she really misses that. She said, "I just sit there at night. And it's terrible." Her whole life she always looked forward to telling her husband about anything that happened in her life, but now she thinks about wanting to do that and he's not there and "[it] is really terrible."

The jury's $5 million loss of consortium award is supported by the evidence and is not unduly liberal. Other widows in mesothelioma cases have received substantial awards for loss of consortium. For example, in Baccus v. Atl. Richfield Co., 2010 Phila. Ct. Com. Pl. LEXIS 8, *30-31 (Pa. C.P. 2010), the court denied remittitur in a mesothelioma case where the jury awarded $1 million on the survival action, $2.5 million on the wrongful death action, and $3.5 million on the wife's loss of consortium claim. The decedent had survived 11 months before succumbing to his disease. *Id.* at *28. Mrs. Seay took care of her husband through a significantly longer illness. Like Mrs. Seay, the widow in Baccus was awarded substantially more on the loss of consortium claim than the jury awarded on the survival claim. See also Schroeder v. Anchor Darling Valve Co., 2010 Phila. Ct. Com. Pl. LEXIS 283, *2, 16 Pa. D. & C.5th 449, 451 (Pa. C.P. 2010) (after a bench trial awarding $2 million in survival damages for a mesothelioma victim, $3 million in wrongful death damages, and $5 million for the widow's loss of consortium).

In Garvin, this Court found "no compelling reason to disturb" an award of $1 million for loss of consortium when there was none of the evidence the jury saw here—of a wife caring for her husband as he dies, shaving him every day, and comforting him through the loss of his mental faculties. The award was substantially higher in this case, and the evidence of Mrs. Seay's loss of consortium was likewise substantially greater.

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Celanese seems to suggest that, because Mr. Seay and his wife were older and had been married a long time, her loss of consortium should not be as high as a younger wife's loss might be. The Court does not agree with this reasoning. Mr. Seay and his wife were best friends, married for 47 years. They did not have a lot of other friends and relied almost entirely on one another. The loss of such an intensely intimate and all-encompassing relationship—the relationship Mrs. Seay had built her entire life around—represented an overwhelming loss. As Celanese points out, Mrs. Seay is not a young woman, prepared to rebuild her life. When Dennis Seay got sick, Linda Seay lost everything she had built with her husband. She lost his strength and ability to care for and protect her, and she became the caretaker. And then she lost even the chance to take care of him.

In light of the damages evidence presented to the jury, the loss of consortium award is not unduly liberal and will not be disturbed.

3. Wrongful Death

"Unlike a number of other states, South Carolina's Wrongful Death Act has been interpreted by this Court to extend beyond pecuniary damages to beneficiaries. Mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship are recoverable in a wrongful death action." Garner v. Houck, 312 S.C. 481, 487-88, 435 S.E.2d 847, 850 (1993) (citing Smith v. Wells, 258 S.C. 316, 188 S.E.2d 470 (1972)).

The Court rejects Celanese's contention that there is insufficient evidence to support the jury's wrongful death award. Testimony about the losses of Seay's family came from his daughter, Angie Keene, and his widow, Linda Seay. Seay had three children—a daughter and two sons—and six grandchildren. His wife and daughter described a very rich family life and described what a loving husband and father he was. The family spent a lot of time together and

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always got along very well. Every year, they took a trip to the beach together with the kids and grandkids. When the grandchildren would come over to Mr. Seay's house, they always went straight to see him. His wife testified that he was really good to the grandchildren.

As adults, the children were best friends with each other and their parents. His daughter lived only 15 miles away. Mr. Seay was even close to his son-in-law, which Ms. Keene described as one of his best friends. That was a value that Mr. Seay instilled in the family: "it's something that Dad made us always know that we had one another and that we needed to put love first beyond any kind of feelings that we might would have."

Ms. Keene testified that even as adults, she and her brothers still went to their father for "every decision." He was always there for them and would help them with whatever they needed. Mr. Seay instilled his Christian faith in his family, which they all relied on in coping with his illness and death. Mr. Seay was also a role model for his children in terms of his generosity.

All of Mr. Seay's children helped take care of him. Ms. Keene stayed with her father throughout his illness. Mr. Seay's youngest son, Justin, moved back home to help take care of his father when he got sick. Mr. Seay's oldest son, Dennis, Jr., was also there for him.

Ms. Keene took her father to Emory for his many doctor visits and treatments, which sometimes required overnight stays. She had to take off work to do it, but she treasured the time she got to spend with him. Every night, Ms. Keene would come to see her father after she put her own family to bed. She would get into bed beside him and they would watch TV together. She would pet his hand until he went to sleep.

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Mr. Seay's family saw him in extreme pain during the course of his illness. When his lung collapsed, they saw him screaming and crying in pain. His daughter testified that he suffered "worse than I can imagine anybody suffering."

Even when Mr. Seay was very sick, he tried to reassure his family, especially his grandchildren. If Mr. Seay had not developed mesothelioma, he would have had a life expectancy of 13 years. Ms. Keene testified that the hardest part of losing her father is that she will have to live so long without seeing him again. She and her daughters wear necklaces with an impression of her father's fingerprint.

The jury's $5 million award for wrongful death damages is supported by the evidence presented to the jury in this case. The evidence showed that Mr. Seay's children were exceptionally close to him, even as adults, and that they continued to value his love, comfort, and advice up until the time of his death. They feel his absence acutely and have suffered tremendous grief. Mr. Seay's heirs have lost 13 additional years with their father due to his difficult and untimely death.

The Court also does not find the award to be unduly liberal. A relatively recent case from New Jersey provides a helpful point of comparison. In Buttitta v. Allied Signal, Inc., 2010 N.J. Super. Unpub. LEXIS 703, *2-3, 2010 WL 1427273 (App. Div. Apr. 5, 2010), a mesothelioma case in which a father had died, the jury awarded $3 million for each of three daughters for loss of parental care and guidance—or a total of $9 million solely for loss of parental care and guidance. Remittitur was denied.

As Celanese has not provided a compelling reason to reduce the wrongful death award to $1 million, the jury's award will not be disturbed.

I. Willful and Wanton Conduct

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Celanese next argues that Plaintiffs failed to introduce any evidence to support the jury's finding that it acted willfully, wantonly, or recklessly with regard to the safety of Mr. Seay. This argument is contradicted by the record at trial, which was more than sufficient to permit the jury's reasonable conclusion that Celanese's conduct warranted punitive damages.

Plaintiffs' evidence showed that Celanese knew or should have known about the dangers of the asbestos materials it purchased and required its contract workers to use on its property. Both categories of evidence are relevant in evaluating whether Celanese's conduct was willful, wanton, and reckless, and in assessing punitive damages.

There was evidence that Celanese had access to knowledge since the 1930s that asbestos exposure causes fatal disease. Celanese thus knew of asbestos hazards several decades before Mr. Seay went to work at its Spartanburg facility in 1971. Celanese's medical director, Dr. Dixon, attended an entire conference on asbestos-related diseases in 1964, where he learned about the danger of asbestosis, lung cancer, and mesothelioma. Celanese's industrial hygienist Charles Laubly had actual knowledge that asbestos could cause fatal disease when he started with Celanese in 1966. Celanese was receiving publications from the NSC and IHF throughout the 1950s and 1960s with numerous medical abstracts about mesothelioma and other asbestos-related diseases, and those publications were kept in Celanese's library. As of the 1950s, Celanese was required to follow the asbestos exposure limits in other states where it had plants, including Texas and New York. In 1970, Union Carbide told Celanese that mesothelioma was caused by slight exposure and the PEL was not protective. All of this was known to Celanese prior to Mr. Seay's work at the Spartanburg plant.

Celanese does not deny that it knew of the health hazards of asbestos exposure, including mesothelioma, as of the passage of the OSHA asbestos regulations in 1971. OSHA regulations

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were in existence the entire time Mr. Seay worked for Daniel on Celanese's premises. In 1971, Celanese knew that it had to follow OSHA exposure limits but that those limits would not protect against cancer, only asbestosis, and knew that multiple precautions had to be taken to reduce exposures. Celanese is aware of OSHA's position that there is no safe level of exposure to asbestos.

The jury was presented with evidence that Celanese required contract maintenance workers to use asbestos insulation, gaskets, and packing for many years after it had knowledge of the danger. With respect to gaskets, Celanese deliberately selected asbestos gaskets over other available gasket materials that offered superior performance but were more expensive. The jury could reasonably conclude that Celanese chose to save money on gaskets rather than to prevent asbestos exposures. Celanese also purchased and required contract workers to use asbestos sheet gaskets that contained crocidolite asbestos, long known to be the most carcinogenic asbestos fiber.

Plaintiffs presented evidence that Celanese did not warn contract workers about the hazards of asbestos exposure during Mr. Seay's tenure. The evidence showed that Celanese made a deliberate decision to conceal the hazards of asbestos exposures from those working on its property. Its policy was not to place any information about hazardous products in writing. This policy was continued throughout the 1970s, when Celanese decided not to give employees interpretive statements of sampling results, and to claim, as a matter of policy, that hazard information was inconclusive.

The jury heard evidence that even though Celanese required asbestos insulating materials, and knew working with those materials could cause fatal diseases, Celanese took no measures to protect contract workers like Mr. Seay who worked with those asbestos materials on a daily

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basis. Celanese had no work practice requirements for asbestos, and never audited Daniel to see if they were implementing measures to protect their workers from the asbestos products that Celanese purchased and required for use on Celanese property. Celanese never warned, even though it was the only one with the power to post warning signs on its premises. Celanese did not invite contract workers to safety meetings, even though some plants had implemented such a practice years before Mr. Seay went to work at Celanese. These failures continued throughout Seay's nine-year tenure at Celanese. Celanese's decision not to protect or warn Mr. Seay continued for many years after the OSHA asbestos regulations were the law of the land. Celanese admitted that it could have implemented numerous safety measures during the 1970s that it ultimately implemented in the 1980s and 1990s.

Plaintiffs also presented evidence that the magnitude of the risk was quite significant. OSHA has stated that there is an increased risk of mesothelioma even if exposures are kept at the current PEL of 0.1 fiber/cc. OSHA expects an additional 200 cases of mesothelioma each year at exposures at that level.

The evidence supports the jury's finding that Celanese's conduct rose to the level of knowing and conscious failure to exercise due care for the health and safety of contract workers on its premises.

J. Punitive Damages

Celanese challenges the jury's $2 million damages award as unsupported by the evidence and disproportionate to the injuries suffered and to its conduct. In the alternative, it asks that the reward by reduced to $50,000. Both of these motions will be denied, as the jury's relatively modest award is rooted in the factual record and is easily within constitutional limits.

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"[P]unitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights." Clark v. Cantrell, 339 S.C. 369, 379, 529 S.E.2d 528, 533 (2000). Although reviewable for compliance with due process, James v. Horace Mann Ins. Co., 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006), a jury's punitive damages award is "entitled to a strong presumption of validity." TXO Production Corp. v. Alliance Res. Corp., 509 U.S. 443, 453 (1993). In Mitchell v. Fortis Ins. Co., 385 S.C. 570, 686 S.E.2d 176 (2009), the South Carolina Supreme Court set forth three guideposts to be applied in conducting a post-judgment review of a punitive damages award: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135, 150-151 (2010). These guideposts incorporate the relevant factors set forth in Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991) and BMW of North America v. Gore, 517 U.S. 559 (1996). See Mitchell, 385 S.C. at 587, 686 S.E.2d at 185.

The United States Supreme Court has noted that the degree of reprehensibility of a defendant's conduct is "perhaps the most important indicium of the reasonableness of a punitive damages award," *BMW of North America v. Gore*, 517 U.S. 559, 565 (1996), for the simple reason that some things are worse than others. In evaluating reprehensibility, a court should consider factors such as whether:

> the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the

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conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 419 (2003).

Substantial evidence supports the jury's determination that Celanese's conduct was reprehensible. That evidence included Celanese's decision to continue using asbestos products when there were available alternatives, and deliberately concealing the nature of the danger from contract workers like Mr. Seay. This was not isolated conduct, but continued for almost a decade, including many years after OSHA required warnings and precautionary measures from Celanese.

Also relevant is the ratio between the compensatory damages award, which represents the plaintiff's actual or potential harm, and the punitive damages award. Mitchell, 385 S.C. at 588. "[A] court, when determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay." Id. A single-digit ratio is generally thought to comport with due process.

The legislature has capped punitive damages at three times the compensatory award. S.C. Code Ann. §15-32-530. Such a cap is a public policy judgment that a 3:1 ratio is an inherently reasonable limit on punitive damages. The jury's award was well within this presumptively reasonable ratio. The award was only a fraction of the entire compensatory award of $12 million, and equal to the $2 million survival damages award alone.

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The Court finds that the jury's punitive damages award serves the punishment, deterrence, and compensatory purposes outlined by the South Carolina Supreme Court. The award is not unduly liberal and is consistent with due process.

IV. Order

The Court **DENIES** Celanese's motions for judgment notwithstanding the verdict, new trial absolute, and new trial nisi remittitur. The jury's verdict of $14 million against Celanese will stand. Plaintiffs are awarded costs in the amount of $3,047.50, as well as interest on the judgment as allowed by law.

IT IS SO ORDERED.

D. Garrison Hill
Circuit Judge

January 8, 2016
Greenville, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Angela D. Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay, Plaintiffs, vs. 3M COMPANY., *et al.*, Defendants.	)	C/A No. 2013-CP-42-03915 **ORDER**

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In this asbestos case, Defendant CNA Holdings, LLC's ("CNA") moves to Dismiss Plaintiff's Complaint for Failure to State a Claim or in the Alternative for Summary Judgment, based on the Statutory Employee Doctrine. CNA's motions were brought under Rule 12(b)(6) and 56, SCRCP and heard on July 27, 2015. After considering the evidence of record, the arguments of counsel, and the applicable law, the Court denies the motions.

I. Facts

Plaintiffs allege Mr. Dennis Seay worked with or around various asbestos-containing materials while employed by Daniel Construction Company at Hoechst Celanese in Spartanburg, South Carolina. Mr. Seay testified in his deposition that he worked at Hoechst Celanese for Daniel Construction from 1969 until about 1978. Mr. Seay was a Daniel employee during the entire time that he worked at the Hoechst Celanese facility. As a millwright helper and millwright, Mr. Seay was responsible for repairs and preventive maintenance work on equipment at Hoechst Celanese.

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Daniel was the exclusive maintenance provider at the Hoechst Celanese facility. Hoechst Celanese did not have its own maintenance or construction division before or during the time Mr. Seay worked at the facility. All maintenance work at the facility was performed by Daniel employees.

II. Issue

The question presented is whether Dennis Seay—a direct employee of Daniel—was a statutory employee of Hoechst Celanese at the time of his alleged asbestos exposure and engaged in an activity that was part of Hoechst Celanese's "trade, business or occupation," S.C. Code § 42-1-400.

III. Law/Analysis

The statutory employment concept is derived from South Carolina Code Ann. § 42-1-400. Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 484 (2003). That section provides,

> When any person, in this section and §§ 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute *any work which is a part of* ***his trade, business or occupation*** and contracts with any other person (in this section and §§ 42-1-420 to 42-1-450 referred to as " subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

S.C.Code Ann. § 42-1-400 (Supp.2002) (emphasis added). Our supreme court has found that this legislation "is a protection of the employees of irresponsible contractors who do not provide workmen's compensation coverage for their employees, and prevents employers from escaping liability by doing through independent contractors what they would otherwise do through their own employees." Adams v. Dawson-Paxon Co., 230 S.C. 532, 545, 96 S.E.2d 566 (1957) (emphasis added). Whether an individual is a statutory em-

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ployee is not an issue of subject matter jurisdiction, but rather one of exclusive jurisdiction. Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002).

In deciding whether an employee was doing something that was "part of the trade, business or occupation" of the owner, our supreme court has devised the following disjunctive inquiry: (1) whether the activity is an important part of the trade or business, (2) whether the activity is a necessary, essential and integral part of the business, or (3) whether the identical activity in question has been performed by employees of the principal employer. Glass v. Dow Chemical Co., 325 S.C. 198, 201, 482 S.E.2d 49, 50 (1997).

If the activity meets even one of these criterion, then the injured worker becomes a statutory employee of the owner within the meaning of the Workers Compensation Act. However, unless a court wishes to flee reality and be led down a rabbit hole of terminology it must remember that despite the three-fold test, "there is no easily applied formula", and "'the guidepost is whether ... that which is being done is or is not a part of the general, trade, business or occupation of the owner.'" Abbott v. The Limited, Inc., 338 S.C. 161, 163, 526 S.E.2d 513 (2000) (quoting Hopkins v. Darlington Veneer Co., 208 S.C. 307, 311, 38 S.E.2d 4, 6 (1946)).

In deciding whether Hoechst Celanese can meet the first two Glass tests – i.e., whether the activity at issue was either an "important part," or a "necessary, essential, and integral part" of Hoechst Celanese's business - this court must apply Abbott v. The Limited, Inc., 338 S.C. 161, 526 S.E.2d 513 (2000) and Olmstead v. Shakespeare, 354 S.C. 421, 581 S.E.2d 483 (2003). In Abbott, the court held that an employee of a common carrier who had slipped and injured himself while delivering and stocking goods which in turn were sold by a retailer did not render the worker a statutory employee of retailer. The

court reasoned that while the receipt of goods was integral to retailer's business, the actual delivery of the goods was not a "part or process" of retailer's business. Abbott, 338 S.C. at 163 ("The fact that it was important to Retailer to receive goods does not render the delivery of goods an important part of Retailer's business.") (emphasis in original). As the supreme court later emphasized, "Abbott represents a change in this state's jurisprudence on what activity constitutes 'part of [the owner's] trade, business or occupation' under section 42-1-400." Olmstead v. Shakespeare, 354 S.C. 421, 426, 581 S.E.2d 483 (2003). In Abbott, the court had overruled two Court of Appeals cases. Abbot, 338 S.C. at 164 n.1. Expanding on Abbot, the Court in Olmstead announced that "we now overrule all prior cases to the extent they are in conflict with our holding in Abbott and now in this case." Olmstead, 354 S.C. at 427.

The court also noted that Abbott "establishes that transportation of goods is important to nearly all businesses and, that transportation of goods by a common carrier alone, without something more, does not qualify as 'part of [the owner's] trade, business or occupation' under any of the three established tests for statutory employment." Olmstead, 354 S.C. at 426.

Charles Olmstead was a truck driver engaged by his employer to pick up a load of fiberglass poles from Shakespeare's nearby plant for delivery to Shakespeare customers in Montana. As Olmstead was removing some of the poles from his flatbed trailer per Shakespeare's instruction, several poles fell off the trailer and injured him. In affirming the court of appeals' finding that Olmstead was not a statutory employee of Shakespeare, the supreme court held as follows:

> Shakespeare manufactures fiberglass products and was shipping a finished product to a customer via a common carrier. As this Court noted in *Abbott*,

> "[t]he fact that it was important to [defendant retailer] to *receive* goods does not render delivery of goods an important part of the [defendant retailer's] business" for statutory employment purposes. Likewise, the fact that it was important to Shakespeare to deliver its finished product to its customer in order to consummate a sale does not render the delivery of its products an important part of its business for purposes of statutory employment.
>
> *******
>
> Shakespeare designs and manufactures fiberglass products. It is not in the transportation business; it did not own any delivery trucks and none of its employees participated in the delivery of its products beyond the loading stage. All of the raw materials used to manufacture Shakespeare's products arrive at Shakespeare by common carrier and almost all of its finished products leave the plant by common carrier. Shakespeare's representative testified in his deposition that Shakespeare pays for delivery to its customer only when the order exceeds $3,000. Although delivery by common carrier was certainly important to Shakespeare's operation, it does not follow that such delivery was " 'part or process' " of its manufacturing business.

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Id. at 425-26 (citations omitted).

Abbot and Olmstead teach that the three tests for statutory employment must be applied practically rather than mechanically. One could superficially say that maintenance was "important" to Hoechst Celanese's business, but that does not end the normative inquiry Glass, Abbot, and Olmstead demand. If that were true, then virtually anyone directly employed by another who worked on Hoechst Celanease property would by definition be a statutory employee, unless Hoechst Celanease asserts it engages in unnecessary work. The key question is whether the activity is an important or integral "part or process" of the subject business. With regard to maintenance work specifically, "where repairs are major, specialized, or of the sort which the employer is not equipped to handle with its own work force, they are not part of the business." Glass v. Dow Chemical Co., 325 S.C. 198, 202, 482 S.E.2d 49, 51 (1997).

The Court in Olmstead overruled "all prior cases to the extent they are in conflict with [its] holding in Abbott and now in this case." 354 S.C. at 427. Under Abbott, it is necessary to conduct a case-specific analysis, but the focus must be on what type of business the defendant conducts. Id. at 426. Olmstead acknowledged that the test does "not eliminate the need for an individualized determination of the facts of each case in which statutory employment is alleged." Olmstead, 354 S.C. at 426. This interpretation is faithful to the actual, plain language of the statute, and appears to be an approach favored by many courts, including the Fourth Circuit, which has noted that courts interpreting the "trade, business or occupation" and similar statutory language have, "with a surprising degree of harmony ... agree[d] upon the general rule of thumb that the statute covers all situations in which work is accomplished which this employer ... would ordinarily do through employees." See Corollo v. S.S. Kresge, Co., 456 F.2d 306, 312 n. 8 (4th Cir. 1972) (quoting 1A Larson, Workmen's Compensation Law, § 49.12 at 859-60) (applying S.C. law)).

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While Glass, Abbot and Olmstead provide the analytical framework for deciding Hoechst Celanese's motion, Chief Judge Sanders' opinion in Raines v. Gould, Inc., 288 S.C. 541, 343 S.E.2d 655 (Ct.App. 1987) is acutely relevant authority. Raines was injured while employed by a subcontractor to install an electrical system at a plant being constructed by Gould, a battery manufacturer, by a general contractor. The court observed that "[o]rdinarily construction work, such as building a factory structure or making electrical installations, is considered outside the trade or business of a manufacturer." Raines, 288 S.C. at 543 (citations omitted).

The court acknowledged that "[i]f however a business by its size and nature is accustomed to carrying on a more or less ongoing program of construction, perhaps having a

construction division, or has handled its own construction in the past, construction work delegated to a contractor may be considered a part of its trade or business." Raines, 288 S.C. at 545 (citations omitted). Here, there is no evidence Hoechst Celanese had a maintenance division or has in the past performed maintenance projects of the size and scope Mr. Seay worked on.

The Raines court ultimately decided that the work Raines did in constructing the Gould plant was not part of Gould's trade or business. Gould, the court found, was in the business of manufacturing and selling batteries. Id. at 547. Judge Sanders' concluding language is especially pertinent to, and dispositive of, Hoechst Celanese's claims in this case:

> Although Gould has been involved with the construction of numerous facilities on property which it owns or leases and manages, the record does not indicate that it had a construction division or that any construction work was performed by its regular employees. Rather, the record indicates Gould merely "prepares the specific designs for certain parts of the facilities, or oversees such designs, approves engineering plans and, in some instances, provides supervisory personnel to provide general assistance in the contacting of the contractors and subcontractors and coordinating their activities."
>
> Furthermore, the record does not indicate the work being performed by Raines in constructing the plant for Gould was an integral part of its operations without which it cannot function. Every manufacturer must have a plant, but this fact alone does not make the work of constructing a plant a part of the trade or business of every manufacturer who engages a contractor to construct a plant. Otherwise, the employees of every contractor so engaged would be the statutory employees of every such manufacturer. We are aware of no case in any jurisdiction holding this and do not believe this is what the legislature intended when it enacted the South Carolina Workers' Compensation Act.
>
> Id.

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IV. Conclusion

Because the Statutory Employee defense does not apply, the court respectfully denies Defendant CNA Holdings, LLC's Motion to Dismiss for Failure to State a Claim, or in the Alternative, Motion for Summary Judgment.

IT IS SO ORDERED.

July 28, 2015

D. Garrison Hill
Circuit Judge

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
Angela D. Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay, Plaintiffs, vs. 3M COMPANY., *et al.*, Defendants.	)	C/A No. 2013-CP-42-03915 **ORDER**

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In this asbestos case, Defendant CNA Holdings, LLC's ("CNA") moves to Dismiss Plaintiff's Complaint for Failure to State a Claim or in the Alternative for Summary Judgment, based on the Statutory Employee Doctrine. CNA's motions were brought under Rule 12(b)(6) and 56, SCRCP and heard on July 27, 2015. After considering the evidence of record, the arguments of counsel, and the applicable law, the Court denies the motions.

I. Facts

Plaintiffs allege Mr. Dennis Seay worked with or around various asbestos-containing materials while employed by Daniel Construction Company at Hoechst Celanese in Spartanburg, South Carolina. Mr. Seay testified in his deposition that he worked at Hoechst Celanese for Daniel Construction from 1969 until about 1978. Mr. Seay was a Daniel employee during the entire time that he worked at the Hoechst Celanese facility. As a millwright helper and millwright, Mr. Seay was responsible for repairs and preventive maintenance work on equipment at Hoechst Celanese.

Daniel was the exclusive maintenance provider at the Hoechst Celanese facility. Hoechst Celanese did not have its own maintenance or construction division before or during the time Mr. Seay worked at the facility. All maintenance work at the facility was performed by Daniel employees.

II. Issue

The question presented is whether Dennis Seay—a direct employee of Daniel—was a statutory employee of Hoechst Celanese at the time of his alleged asbestos exposure and engaged in an activity that was part of Hoechst Celanese's "trade, business or occupation," S.C. Code § 42-1-400.

III. Law/Analysis

The statutory employment concept is derived from South Carolina Code Ann. § 42-1-400. Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 484 (2003). That section provides,

> When any person, in this section and §§ 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute *any work which is a part of his trade, business or occupation* and contracts with any other person (in this section and §§ 42-1-420 to 42-1-450 referred to as " subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

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S.C.Code Ann. § 42-1-400 (Supp.2002) (emphasis added). Our supreme court has found that this legislation "is a protection of the employees of irresponsible contractors who do not provide workmen's compensation coverage for their employees, and prevents employers from escaping liability by doing through independent contractors what they would otherwise do through their own employees." Adams v. Dawson-Paxon Co., 230 S.C. 532, 545, 96 S.E.2d 566 (1957) (emphasis added). Whether an individual is a statutory em-

ployee is not an issue of subject matter jurisdiction, but rather one of exclusive jurisdiction. Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002).

In deciding whether an employee was doing something that was "part of the trade, business or occupation" of the owner, our supreme court has devised the following disjunctive inquiry: (1) whether the activity is an important part of the trade or business, (2) whether the activity is a necessary, essential and integral part of the business, or (3) whether the identical activity in question has been performed by employees of the principal employer. Glass v. Dow Chemical Co., 325 S.C. 198, 201, 482 S.E.2d 49, 50 (1997).

If the activity meets even one of these criterion, then the injured worker becomes a statutory employee of the owner within the meaning of the Workers Compensation Act. However, unless a court wishes to flee reality and be led down a rabbit hole of terminology it must remember that despite the three-fold test, "there is no easily applied formula", and "'the guidepost is whether .... that which is being done is or is not a part of the general, trade, business or occupation of the owner.'" Abbott v. The Limited, Inc., 338 S.C. 161, 163, 526 S.E.2d 513 (2000) (quoting Hopkins v. Darlington Veneer Co., 208 S.C. 307, 311, 38 S.E.2d 4, 6 (1946)).

In deciding whether Hoechst Celanese can meet the first two Glass tests – i.e., whether the activity at issue was either an "important part," or a "necessary, essential, and integral part" of Hoechst Celanese's business - this court must apply Abbott v. The Limited, Inc., 338 S.C. 161, 526 S.E.2d 513 (2000) and Olmstead v. Shakespeare, 354 S.C. 421, 581 S.E.2d 483 (2003). In Abbott, the court held that an employee of a common carrier who had slipped and injured himself while delivering and stocking goods which in turn were sold by a retailer did not render the worker a statutory employee of retailer. The

court reasoned that while the receipt of goods was integral to retailer's business, the actual delivery of the goods was not a "part or process" of retailer's business. Abbott, 338 S.C. at 163 ("The fact that it was important to Retailer to receive goods does not render the delivery of goods an important part of Retailer's business.") (emphasis in original). As the supreme court later emphasized, "Abbott represents a change in this state's jurisprudence on what activity constitutes 'part of [the owner's] trade, business or occupation' under section 42-1-400." Olmstead v. Shakespeare, 354 S.C. 421, 426, 581 S.E.2d 483 (2003). In Abbott, the court had overruled two Court of Appeals cases. Abbot, 338 S.C. at 164 n.1. Expanding on Abbot, the Court in Olmstead announced that "we now overrule all prior cases to the extent they are in conflict with our holding in Abbott and now in this case." Olmstead, 354 S.C. at 427.

The court also noted that Abbott, "establishes that transportation of goods is important to nearly all businesses and, that transportation of goods by a common carrier alone, without something more, does not qualify as 'part of [the owner's] trade, business or occupation' under any of the three established tests for statutory employment." Olmstead, 354 S.C. at 426.

Charles Olmstead was a truck driver engaged by his employer to pick up a load of fiberglass poles from Shakespeare's nearby plant for delivery to Shakespeare customers in Montana. As Olmstead was removing some of the poles from his flatbed trailer per Shakespeare's instruction, several poles fell off the trailer and injured him. In affirming the court of appeals' finding that Olmstead was not a statutory employee of Shakespeare, the supreme court held as follows:

> Shakespeare manufactures fiberglass products and was shipping a finished product to a customer via a common carrier. As this Court noted in *Abbott*,

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> "[t]he fact that it was important to [defendant retailer] to *receive* goods does not render delivery of goods an important part of the [defendant retailer's] business" for statutory employment purposes. Likewise, the fact that it was important to Shakespeare to deliver its finished product to its customer in order to consummate a sale does not render the delivery of its products an important part of its business for purposes of statutory employment.
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> Shakespeare designs and manufactures fiberglass products. It is not in the transportation business; it did not own any delivery trucks and none of its employees participated in the delivery of its products beyond the loading stage. All of the raw materials used to manufacture Shakespeare's products arrive at Shakespeare by common carrier and almost all of its finished products leave the plant by common carrier. Shakespeare's representative testified in his deposition that Shakespeare pays for delivery to its customer only when the order exceeds $3,000. Although delivery by common carrier was certainly important to Shakespeare's operation, it does not follow that such delivery was " 'part or process' " of its manufacturing business.

Id. at 425-26 (citations omitted).

Abbot and Olmstead teach that the three tests for statutory employment must be applied practically rather than mechanically. One could superficially say that maintenance was "important" to Hoechst Celanese's business, but that does not end the normative inquiry Glass, Abbot, and Olmstead demand. If that were true, then virtually anyone directly employed by another who worked on Hoechst Celanease property would by definition be a statutory employee, unless Hoechst Celanease asserts it engages in unnecessary work. The key question is whether the activity is an important or integral "part or process" of the subject business. With regard to maintenance work specifically, "where repairs are major, specialized, or of the sort which the employer is not equipped to handle with its own work force, they are not part of the business." Glass v. Dow Chemical Co., 325 S.C. 198, 202, 482 S.E.2d 49, 51 (1997).

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The Court in Olmstead overruled "all prior cases to the extent they are in conflict with [its] holding in Abbott and now in this case." 354 S.C. at 427. Under Abbott, it is necessary to conduct a case-specific analysis, but the focus must be on what type of business the defendant conducts. Id. at 426. Olmstead acknowledged that the test does "not eliminate the need for an individualized determination of the facts of each case in which statutory employment is alleged." Olmstead, 354 S.C. at 426. This interpretation is faithful to the actual, plain language of the statute, and appears to be an approach favored by many courts, including the Fourth Circuit, which has noted that courts interpreting the "trade, business or occupation" and similar statutory language have, "with a surprising degree of harmony ... agree[d] upon the general rule of thumb that the statute covers all situations in which work is accomplished which this employer ... would ordinarily do through employees." See Corollo v. S.S. Kresge, Co., 456 F.2d 306, 312 n. 8 (4th Cir. 1972) (quoting 1A Larson, Workmen's Compensation Law, § 49.12 at 859-60) (applying S.C. law)).

While Glass, Abbot and Olmstead provide the analytical framework for deciding Hoechst Celanese's motion, Chief Judge Sanders' opinion in Raines v. Gould, Inc., 288 S.C. 541, 343 S.E.2d 655 (Ct.App. 1987) is acutely relevant authority. Raines was injured while employed by a subcontractor to install an electrical system at a plant being constructed by Gould, a battery manufacturer, by a general contractor. The court observed that "[o]rdinarily construction work, such as building a factory structure or making electrical installations, is considered outside the trade or business of a manufacturer." Raines, 288 S.C. at 543 (citations omitted).

The court acknowledged that "[i]f however a business by its size and nature is accustomed to carrying on a more or less ongoing program of construction, perhaps having a

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construction division, or has handled its own construction in the past, construction work delegated to a contractor may be considered a part of its trade or business." Raines, 288 S.C. at 545 (citations omitted). Here, there is no evidence Hoechst Celanese had a maintenance division or has in the past performed maintenance projects of the size and scope Mr. Seay worked on.

The Raines court ultimately decided that the work Raines did in constructing the Gould plant was not part of Gould's trade or business. Gould, the court found, was in the business of manufacturing and selling batteries. Id. at 547. Judge Sanders' concluding language is especially pertinent to, and dispositive of, Hoechst Celanease's claims in this case:

> Although Gould has been involved with the construction of numerous facilities on property which it owns or leases and manages, the record does not indicate that it had a construction division or that any construction work was performed by its regular employees. Rather, the record indicates Gould merely "prepares the specific designs for certain parts of the facilities, or oversees such designs, approves engineering plans and, in some instances, provides supervisory personnel to provide general assistance in the contacting of the contractors and subcontractors and coordinating their activities."
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> Furthermore, the record does not indicate the work being performed by Raines in constructing the plant for Gould was an integral part of its operations without which it cannot function. Every manufacturer must have a plant, but this fact alone does not make the work of constructing a plant a part of the trade or business of every manufacturer who engages a contractor to construct a plant. Otherwise, the employees of every contractor so engaged would be the statutory employees of every such manufacturer. We are aware of no case in any jurisdiction holding this and do not believe this is what the legislature intended when it enacted the South Carolina Workers' Compensation Act.
>
> Id.

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IV. Conclusion

Because the Statutory Employee defense does not apply, the court respectfully denies Defendant CNA Holdings, LLC's Motion to Dismiss for Failure to State a Claim, or in the Alternative, Motion for Summary Judgment.

IT IS SO ORDERED.

July 28, 2015

D. Garrison Hill
Circuit Judge

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

Dennis Seay and Linda Seay,) C/A No. 2013-CP-42-03915
)
Plaintiffs,)
)
v.)
)
3M COMPANY a/k/a MINNESOTA MINING & MANUFACTURING COMPANY, A Delaware Corporation;) Former Machinist Helper, Machinist, Millwright Helper, Millwright and Maintenance Worker
)
(Spartanburg, South Carolina); Mesothelioma

CBS CORPORATION (a Delaware Corporation) f/k/a VIACOM, INC. (sued as successor-by-merger to CBS CORPORATION (a Pennsylvania Corporation) f/k/a WESTINGHOUSE ELECTRIC CORPORATION), A Delaware Corporation;

ORDER GRANTING PLAINTIFFS' MOTION TO AMEND COMPLAINT

CHICAGO PNEUMATIC TOOL COMPANY, LLC, A Delaware Corporation;

CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. d/b/a HOKE, A Delaware Corporation;

CNA HOLDINGS LLC (sued individually and as successor to HOECHST CELANESE CORPORATION), A Delaware Corporation;

CRANE CO. (sued individually and as successor-in-interest to CHAPMAN VALVE COMPANY), A Delaware Corporation;

CROSBY VALVE, INC., A Massachusetts Corporation;

FMC CORPORATION (sued individually

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and as successor-in-interest to CHICAGO PUMP COMPANY and also CROSBY VALVE, INC.),
A Delaware Corporation;

GOODRICH CORPORATION (sued individually and as successor-in-interest to THE B.F. GOODRICH COMPANY),
A New York Corporation;

THE GOODYEAR TIRE & RUBBER COMPANY,
An Ohio Corporation;

HIGBEE, INC. f/k/a HIGBEE GASKETS AND SEALING PRODUCTS, INC.,
A New York Corporation;

HOKE. INC. - DELAWARE,
A Delaware Corporation;

INGERSOLL RAND COMPANY ;
A New Jersey Corporation,

JOHN CRANE, INC.;
A Delaware Corporation,

METROPOLITAN LIFE INSURANCE COMPANY,
A New York Corporation;

SPECIAL ELECTRIC COMPANY, INC., (sued individually and as alter-ego and successor-in-interest to SPECIAL MATERIALS, INC.-WISCONSIN),
A Wisconsin Corporation;

SPIRAX SARCO, INC.,
A Delaware Corporation;

SULZER PUMPS (US), INC. d/b/a SULZER PUMPS HOUSTON, INC. (sued as successor-in-interest to PACO PUMPS f/k/a PACIFIC PUMPING COMPANY),
A Delaware Corporation;

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UNION CARBIDE CORPORATION,
A New York Corporation;

THE WILLIAM POWELL COMPANY,
An Ohio Corporation;

Defendants.

This matter comes before the Court upon Plaintiffs' Motion to Amend Complaint to add wrongful death and survival causes of action. This is a Mesothelioma case that was filed on September 25, 2013. On December 29, 2014, Plaintiff Dennis Seay died as a result of advanced mesothelioma. The death certificate was issued on March 13, 2015. Angela D. Keene was appointed Personal Representative of the Estate of Dennis Seay on March 31, 2014. Plaintiff's Second Amended Complaint also seeks to omit from the case caption defendants that are no longer a party to this case. Rule 15 provides that "leave [to amend the pleadings] shall be freely given where justice so requires."

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion to Amend Complaint to add wrongful death and survival causes of action and to omit from the case caption defendants that are no longer parties to this action, is GRANTED, and the Complaint shall be amended to add wrongful death and survival causes of action and to omit from the case caption defendants that are no longer parties to this action.

AND IT SO ORDERED this 24 day of April 2015.

D. Garrison Hill
Circuit Court Judge

Greenville, South Carolina.

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M. HOPE BLACKLEY

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4203915

PLAINTIFF(S)	DEFENDANT(S)	
Angie Keene, as Personal Representative of the Estate of Dennis Seay and Linda Seay, Individually	CBS Corporation Fka CNA Holdings LLC Highbee Inc Ingersoll Rand Company Metropolitan Life Insurance Company	Chicago Pneumatic Tool Company Llc Crane Co Hoke Inc- Delaware John Crane Inc

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

2015 OCT 15 PM 1:58

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: **See page 2**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Gen Li — 2138 — 10.14.15

Circuit Court Judge **Judge Code** **Date**

CPFORM4Cm
SCCA/SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 16 day of October 2015, and a copy mailed first class or placed in the appropriate attorney's box on 16 day of October 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Christopher J. Panatier - 3232 McKinney Avenue, Suite 610, Dallas TX 75204
Kevin Paul - 3232 McKinney Avenue, Suite 610, Dallas TX 75204
Theile McVey - 1330 Laurel St., Columbia SC 29201

James Elliott - 40 Calhoun St., Suite 220, Charleston SC 29401
Lane Young - Hawkins Parnell Thackston & Young Llp 303 Peachtree St, Ne Ste 4000 Atlanta GA 30308
Chris Collier - Hawkins Parnell Thackston & Young Llp 303 Peachtree St Ne Ste 4000 Atlanta GA 30308
Elaine Shofner - 4000 Suntrust Plaza 303 Peachtree Street, N.E. Atlanta GA 303083243
Mark Tivin - 135 S. LaSalle Street, Suite 2300 Chicago, Illinois 60603
Samia Nettles - 40 Calhoun St., Suite 220, Charleston SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

Hollie Jenkins

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Blackley

M Hope Blackley - Clerk of Court Tracy Jones DC

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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The jury finds by unanimous consent that John Crane, Inc was NOT negligent and it was not a proximate cause of the plaintiff's injuries and damages and the Defendant John Crane, Inc is hereby Dismissed from this action.

The jury finds by a unanimous consent that Celanese was negligent and its negligence was a proximate cause of the plaintiff's injuries and damages. $2,000,000 actual damages for the Survival action $5,000,000 actual damages for the Wrongful Death action $5,000,000 actual damages for the Loss of Consortium action

The Jury Finds by unanimous consent clear and convincing evidence that Celanese was willful, wanton, or reckless. As to Plaintiffs' claims against Celanese for punitive damages the jury by unanimous consent finds by clear and convincing evidence for Plaintiffs in the amount of $2,000,000 punitive damages.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA	§	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	§	C/A No. 2013-CP-42-03915
ANGIE KEENE, Individually and as Personal Representative of the Estate of DENNIS SEAY, Deceased, and LINDA SEAY,	§	
Plaintiffs	§	
v.	§	
CELANESE and JOHN CRANE, INC.,	§	
Defendants.	§	

VERDICT FORM

1. We, the jury, find by unanimous consent that John Crane, Inc. was negligent and its negligence was a proximate cause of the plaintiff's injuries and damages:

   _____ Yes ___✓___ No

2. We, the jury, find by unanimous consent that Celanese was negligent and its negligence was a proximate cause of the plaintiff's injuries and damages:

   ___✓___ Yes _____ No

3. If your answer is yes as to one or both defendants, please state the amount of actual damages that have been proven by the greater weight of the evidence:

   $ 2,000,000 actual damages for the Survival action

   $ 5,000,000 actual damages for the Wrongful Death action

   $ 5,000,000 actual damages for the Loss of Consortium action

Foreperson

10-8-15
Date

STATE OF SOUTH CAROLINA	§	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	§	C/A No. 2013-CP-42-03915
ANGIE KEENE, Individually and as Personal Representative of the Estate of DENNIS SEAY, Deceased, and LINDA SEAY,	§	
Plaintiffs	§	
v.	§	
CELANESE and JOHN CRANE, INC.,	§	
Defendants.	§	

VERDICT FORM – PHASE II

1. We, the jury, by unanimous consent find by clear and convincing evidence that Celanese was willful, wanton, or reckless:

✓ Yes _____ No

If no, stop deliberations. If yes, answer question 2.

2. As to Plaintiffs' claims against Celanese for punitive damages, we, the jury, by unanimous consent, find by clear and convincing evidence:

✓ for Plaintiffs in the amount of $ 2,000,000 punitive damages

Foreperson

10-8-15
Date

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT
)
Dennis Seay) C/A No. 2013-CP-42-03915
and Linda Seay,)
)
Plaintiffs) Former Machinist Helper, Machinist,
) Millwright Helper, Millwright and
v.) Maintenance Worker
)
3M COMPANY a/k/a MINNESOTA MINING & MANUFACTURING COMPANY) (Spartanburg, South Carolina);
A Delaware Corporation) Mesothelioma
)
CBS CORPORATION (a Delaware Corporation) f/k/a VIACOM, INC. (sued as successor-by-merger to CBS CORPORATION (a Pennsylvania Corporation) f/k/a WESTINGHOUSE ELECTRIC CORPORATION)
A Delaware Corporation

CHICAGO PNEUMATIC TOOL COMPANY, LLC
A Delaware Corporation

CNA HOLDINGS LLC (sued individually and as successor to HOECHST CELANESE CORPORATION)
A Delaware Corporation

CRANE CO. (sued individually and as successor-in-interest to CHAPMAN VALVE COMPANY)
A Delaware Corporation

CROSBY VALVE, INC.
A Massachusetts Corporation

FMC CORPORATION (sued individually and as successor-in-interest to CHICAGO PUMP COMPANY and also CROSBY VALVE, INC.)
A Delaware Corporation

GOODRICH CORPORATION (sued individually and as successor-in-interest to THE

COMPLAINT
(Personal Injury)

Plaintiffs Demand
A Jury Trial

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CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 25 PM 2:49

B.F. GOODRICH COMPANY)
A New York Corporation

THE GOODYEAR TIRE & RUBBER COMPANY
An Ohio Corporation

HIGBEE, INC. f/k/a HIGBEE GASKETS AND SEALING PRODUCTS, INC.
A New York Corporation

HOKE. INC. - DELAWARE
A Delaware Corporation

INGERSOLL RAND COMPANY
A New Jersey Corporation

JOHN CRANE, INC.
A Delaware Corporation

METROPOLITAN LIFE INSURANCE COMPANY
A New York Corporation

SPECIAL ELECTRIC COMPANY, INC. (sued individually and as alter-ego and successor-in-interest to SPECIAL MATERIALS, INC.-WISCONSIN)
A Wisconsin Corporation

SPIRAX SARCO, INC.
A Delaware Corporation

SULZER PUMPS (US), INC. d/b/a SULZER PUMPS HOUSTON, INC. (sued as successor-in-interest to PACO PUMPS f/k/a PACIFIC PUMPING COMPANY)
A Delaware Corporation

UNION CARBIDE CORPORATION
A New York Corporation

THE WILLIAM POWELL COMPANY
An Ohio Corporation,

Defendants.

Now come Plaintiffs, Dennis Seay and Linda Seay, citizens and residents of the State of South Carolina, and sue the Defendants and allege as follows:

JURISDICTION

1. Plaintiffs are citizens and residents of the County of Spartanburg, State of South Carolina.

2. As is evidenced by the caption of the instant Complaint which is specifically incorporated herein, some of the Defendants are foreign corporations who are amenable to jurisdiction in the Courts of South Carolina by virtue of their respective contacts with the State of South Carolina and/or their respective conduct of substantial and/or systematic business in South Carolina which subjects them to the jurisdiction of the South Carolina Courts pursuant to the South Carolina Long-Arm Statute. Each Defendant mined, manufactured, supplied, processed, imported, converted, compounded and/or retailed substantial amounts of asbestos and asbestos-related materials which are or were sold, distributed and/or used in South Carolina. Plaintiff Dennis Seay was exposed to Defendants' asbestos-containing products which caused his contraction of mesothelioma by breathing dust from Defendants' asbestos-containing products.

FOR A FIRST CAUSE OF ACTION

3. Defendants, and each of them, are or at times relevant were hereto miners, manufacturers, suppliers, processors, importers, converters, compounders and/or retailers of asbestos and asbestos-related materials, including, but not limited to, asbestos-containing equipment and machinery, friction products and construction materials.

4. The Defendants, acting through their agents, servants, and/or employees cause and have caused in the past certain asbestos and asbestos-related materials to be placed in the stream of interstate commerce with the result that said asbestos and asbestos-related materials came into use by Plaintiff Dennis Seay.

5. Plaintiff Dennis Seay was exposed to asbestos-containing products and equipment requiring or calling for the use asbestos and/or asbestos-containing products while working as a machinist helper, machinist, millwright helper, millwright and maintenance worker in Spartanburg, South Carolina.

6. During the course and scope of his employment, Plaintiff Dennis Seay was exposed to Defendants' asbestos and asbestos-related materials and/or equipment requiring or calling for the use asbestos and/or asbestos-containing products, which exposure directly and proximately caused him to develop an illness known and designated as mesothelioma and other industrial dust diseases caused by breathing dust from Defendants' asbestos-containing products.

7. The illness and disability of Plaintiff Dennis Seay are the direct and proximate result of the negligence, recklessness and willfulness of the Defendants, jointly and severally, in that they produced, sold and otherwise put into the stream of interstate commerce, asbestos and asbestos-related materials which the Defendants, and each of them, knew were deleterious, poisonous and highly harmful to Plaintiff's body, lungs, respiratory system and health.

8. The illness and disability of Plaintiff Dennis Seay are the direct and proximate result of the negligence, recklessness, and willfulness of the Defendants, jointly and severally, in that, even though the Defendants knew, or, in the exercise of ordinary care, should have known, that the asbestos and asbestos-related materials were deleterious, poisonous and highly harmful to Plaintiff Dennis Seay's body, lungs, respiratory system and health, the Defendants nonetheless:

(a) Failed to advise Plaintiff Dennis Seay of the dangerous characteristics of their asbestos and asbestos-related products;

(b) Failed or omitted to provide Plaintiff Dennis Seay with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliance, if, in truth, they were in any way able to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful asbestos-related materials;

(c) Failed and omitted to place any warnings or sufficient warnings on their containers of said asbestos and asbestos materials to warn the handlers thereof of the dangers to health in coming in contact with said asbestos and asbestos materials;

(d) Failed and omitted to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and installing said asbestos and asbestos materials;

(e) Inadequately warned, if, in fact, they warned at all, persons such as Plaintiff Dennis Seay of the dangers to their health in coming in contact with and breathing said asbestos and asbestos-related materials, even after they knew of the dangers and cancer-causing effects and up until the present time;

(f) Did not recommend methods to improve the work environment;

(g) Did not develop alternative products;

(h) Continued to use a known cancer-causing product, to wit: asbestos;

9. At all times relevant, it was feasible for Defendants to have warned Plaintiff Dennis Seay, tested their asbestos products, designed safer asbestos products and/or substituted asbestos-free products.

10. As a result of the negligence, recklessness and willfulness, Plaintiffs have been damaged severely as is set forth below.

FOR A SECOND CAUSE OF ACTION

11. Plaintiffs repeat the allegations of the First Cause of Action where relevant.

12. That subsequent to the time the Defendants caused the asbestos products to be sold and placed in buildings and on jobsites, the Defendants knew, or in the exercise of ordinary care, should have known, that asbestos is deleterious, carcinogenic, and harmful to persons using the materials or on jobsites, but nevertheless, the Defendants negligently and recklessly failed and refused to warn and advise Plaintiff Dennis Seay of the dangerous characteristics thereof, and the dangers to the health and welfare of persons coming in contact with and breathing products even until the present, despite their knowledge of the presence of their products in the buildings or on jobsites. That to the present, possessed with information uniquely available to them relating to the dangerous effects of continued asbestos exposure, the Defendants have refused to provide that information to Plaintiff Dennis Seay, despite the Defendants' knowledge that their asbestos has contaminated Plaintiff Dennis Seay's workplaces and jobsites.

13. Plaintiff Dennis Seay has furthermore suffered continuing and lingering injury to himself due to the Defendants' asbestos fibers previously inhaled. Said fibers, once inhaled, caused repeated and continuing injury to Plaintiff Dennis Seay and will ultimately result in his death.

14. That as a proximate result of the aforesaid acts of the Defendants, and the continued presence and use, both by the Plaintiff Dennis Seay and others, of asbestos products in buildings and on jobsites, Plaintiffs have been damaged as herein set forth.

FOR A THIRD CAUSE OF ACTION

15. Plaintiffs repeat the allegations of the First and Second Causes of Action where relevant.

16. The Defendants, and each of them, impliedly warranted that said asbestos materials were of good and merchantable quality and fit for their intended use.

17. The implied warranty made by the Defendants, and each of them, that the asbestos and asbestos-related materials were of good and merchantable quality and for the particular intended use was breached and that certain harmful, poisonous and

deleterious matter was given off into the atmosphere wherein Plaintiff Dennis Seay carried out his duties working with asbestos and asbestos-related materials.

18. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff Dennis Seay developed an illness, to-wit: mesothelioma caused by breathing dust from Defendants' asbestos-containing products.

FOR A FOURTH CAUSE OF ACTION

19. Plaintiffs repeat the allegations of the First, Second and Third Causes of Action where relevant.

20. Plaintiffs further allege that at the time the Defendants, and each of them sold and/or delivered the aforesaid asbestos and asbestos-related products and at the time said products were used by Plaintiff Dennis Seay in the manner and environment intended, they were in a defective condition and were unreasonably dangerous and unfit for their intended use in that they were deleterious, poisonous and highly harmful to Plaintiff Dennis Seay's body.

21. The above was the proximate cause of the severe damages sustained by Plaintiffs as hereinafter set forth.

FOR A FIFTH CAUSE OF ACTION

22. Plaintiffs repeat and reallege the portions of the above paragraphs where relevant.

23. That at various times from the late 1800's to the filing of this lawsuit, Defendants had actual knowledge of the dangers to Plaintiff Dennis Seay of asbestos exposure, nevertheless, Defendants deliberately, intentionally and purposefully withheld such information from Plaintiff Dennis Seay, thus denying him of the knowledge with which to take necessary safety precautions, and avoiding further dust exposure, the specifics of Defendants' intentional acts including but not limited to the following:

(a) Never issued recall-type letters or notices to prior users;

(b) Frustrated the publication of articles on the asbestos health hazards in the literature;

(c) Top management officials of Defendants rejected advice of other corporate officials to warn of the hazards of their asbestos products; such rejection by top management officials being motivated by the possibility of adverse effects on profits;

(d) Intentional inadequacy and delay of use of warnings on asbestos products;

(e) Failed to advise Plaintiff Dennis Seay of medical findings known to Defendants concerning the dangers of asbestos exposure;

(f) Suppressed the dissemination of information to Plaintiff Dennis Seay concerning the hazards of asbestos exposure.

24. The foregoing deliberate, intentional and purposeful acts of the Defendants were the direct and proximate cause of Plaintiffs' injuries and damages hereinafter described, and the Plaintiffs are, therefore, entitled to compensation and punitive damages.

FOR A SIXTH CAUSE OF ACTION

25. Plaintiffs repeat and reallege the portions of the above paragraphs where relevant.

26. That during, before and after Plaintiff Dennis Seay's exposure to asbestos products manufactured by Defendants, the Defendants falsely represented facts, including the dangers of asbestos exposure to Plaintiff Dennis Seay in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff Dennis Seay. And while Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

27. The foregoing representations were material conditions precedent to Plaintiff Dennis Seay's continued exposure to asbestos-containing products and Defendants each intended that Plaintiff Dennis Seay act upon the representations by continuing his exposure to the asbestos products. Plaintiff Dennis Seay was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

28. As a direct and proximate result of Plaintiff Dennis Seay's reliance upon Defendants' false representations, Plaintiffs have suffered injury and damages hereinafter described.

FOR A SEVENTH CAUSE OF ACTION

29. Plaintiffs repeat and reallege the portions of the above causes of action which are relevant.

30. The Defendants had a post-sale duty to warn, which duty was breached and, as a result, Plaintiffs suffered injury and damages as hereinafter described.

FOR AN EIGHTH CAUSE OF ACTION

31. Plaintiffs repeat and reallege the portions of the above causes of action which are relevant.

32. Plaintiff Dennis Seay worked at premises owned and/or controlled by **CNA HOLDINGS LLC** (sued individually and as successor to HOECHST CELANESE CORPORATION) (hereinafter "Premise Defendant") at which he was exposed to asbestos products and dust from asbestos products.

33. While present at premises owned and/or controlled by the Premise Defendant, Plaintiff Dennis Seay was continuously exposed to asbestos and asbestos-containing dust without the provision of appropriate safeguards by the Premise Defendant who had the responsibility for such.

34. Plaintiff Dennis Seay would further show his injuries and diseases were the result of intentional acts and/or omissions and/or negligence, gross negligence and malice in the use of asbestos at the Premise Defendant's premises. The Premise Defendant failed to properly remove and/or abate said asbestos at its facility during the time Plaintiff Dennis Seay was working there.

35. Plaintiff Dennis Seay would show that the Premise Defendant was negligent, grossly negligent and malicious, and committed certain intentional acts, all of which were the proximate cause of the disease and injuries resulting in mesothelioma from exposure to asbestos.

36. In particular, Plaintiff Dennis Seay would show that the Premise Defendant demonstrated such an entire want of care as to establish that its acts and omissions were the result of actual conscious indifference to the rights, safety, and welfare of the Plaintiff Dennis Seay, and that such intentional acts and omissions proximately caused his disease and injuries.

37. Specific intentional acts and acts constituting negligence, gross negligence and malice committed by the Premise Defendant that proximately caused Plaintiff Dennis Seay's injuries, and disease include:

(a) Failure to provide safe equipment for Plaintiff Dennis Seay to use;

(b) Failure to provide adequate safety measures and protection against deadly and life-threatening asbestos dust, all despite Premise Defendant's knowledge of the extreme risk of harm inherent to asbestos exposure;

(c) Failure to adequately warn Plaintiff Dennis Seay of the inherent dangers of asbestos contamination;

(d) Failure to maintain the ambient and environmental conditions of the premises in proper and safe condition;

(e) Failure to follow and adhere to various states and U.S. Government statutes, regulations and guidelines pertaining to asbestos and the exposure to asbestos of individuals. Such failure constituted negligence per se at a minimum. Plaintiffs are not making claims for damages under federal law.

38. Plaintiffs would further show that the Premise Defendant intentionally, knowingly, and/or due to negligence, gross negligence and malice, failed to ensure that individuals such as Plaintiff Dennis Seay were protected from the inhalation of asbestos and asbestos fibers. Such actions proximately caused Plaintiff Dennis Seay's injuries and illness.

39. Additionally, specific actions or omissions on the part of the Premise Defendant that proximately caused Plaintiff Dennis Seay's injuries and illness were:

(a) Attempting to remove asbestos dust in Plaintiff Dennis Seay's workplace without taking adequate precautions for the protection of workers in the vicinity and/or in the premises generally;

(b) Failing to provide proper protective gear for individuals exposed to asbestos;

(c) Failing to provide adequate ventilation to ensure that individuals in the vicinity were not exposed to asbestos;

(d) Failing to provide a proper and safe method for the use of asbestos and asbestos fibers;

(e) Failing to adhere to industry safe standards and other established measures to protect workers from harm;

(f) Failing to adequately warn of the extreme risk of danger of inherent to asbestos exposure.

40. The Premise Defendant demonstrated such an entire want of care as to establish that its acts and omissions alleged above were the result of actual conscious indifference to the rights, safety, and welfare of Plaintiff Dennis Seay.

FOR A NINTH CAUSE OF ACTION

41. Plaintiffs repeat and reallege the portions of the above causes of action which are relevant.

42. Defendant **METROPOLITAN LIFE INSURANCE COMPANY** rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Plaintiff Dennis Seay was exposed, and such assistance by Metropolitan Life aided and abetted the negligence and the marketing of unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Plaintiff Dennis Seay's illness, injuries and disabilities.

43. Defendant, **METROPOLITAN LIFE INSURANCE COMPANY**, through its Policyholders Service Bureau undertook duties owed by the asbestos-producing Defendants to Plaintiff Dennis Seay by the testing of asbestos workers and the conduct of scientific studies. These duties included without limitation, the duty:

(a) to test fully and adequately for health risks concomitant to the normal and intended use of their products; and

(b) to instruct fully and adequately in the uses of their products so as to eliminate or reduce the health hazards concomitant with their normal or intended use.

In undertaking these duties, **METROPOLITAN LIFE** knew or should have known that it was providing testing services for the ultimate protection of third persons, including Plaintiff Dennis Seay.

44. In both conducting said tests and in publishing their alleged results, **METROPOLITAN LIFE** failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. **METROPOLITAN LIFE** also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

45. Plaintiff Dennis Seay unwittingly but justifiably relied upon the thoroughness of **METROPOLITAN LIFE's** tests and information dissemination, the results of which Metropolitan Life published in leading medical journals.

46. As a direct and proximate contributing result of **METROPOLITAN LIFE's** failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so: (i) the risk of harm to Plaintiff Dennis Seay from asbestos exposure was increased, and (ii) Plaintiff Dennis Seay suffered the injuries described below.

47. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the asbestos-producing Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain,

METROPOLITAN LIFE acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Plaintiff Dennis Seay.

FOR A TENTH CAUSE OF ACTION

48. Plaintiffs repeat the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action where relevant.

49. As a direct and proximate result of the injuries and damages complained of herein with respect to Plaintiff Dennis Seay, and as a direct and proximate result of the acts and omissions of the Defendants, Plaintiff Linda Seay has also suffered and will continue to suffer loss of the consortium, society, companionship, fellowship and other valuable services of her husband.

DAMAGES

50. As a result of the development of mesothelioma caused by breathing dust from Defendants' asbestos-containing products, Plaintiff Dennis Seay has suffered and sustained very serious injuries to his person requiring medical treatment.

51. Plaintiff Dennis Seay has further suffered great pain, extreme nervousness and mental anguish as a direct result of the aforesaid injuries.

52. Plaintiff Dennis Seay verily believes that his injuries and illnesses are permanent in nature and that he will be forced to suffer same for the remainder of his life, that his enjoyment of life has been greatly impaired and, further, that his expected life span has been greatly shortened.

53. Plaintiff Dennis Seay alleges that as a result of the aforesaid illnesses, he has been forced to incur large amounts of medical expenses by way of doctor and drug bills and verily believes that he will be forced to incur additional expenses in an effort to treat his illnesses as aforesaid, all the Plaintiff's damages, compensatory and punitive, in amounts to be determined by the trier of fact.

WHEREFORE, Plaintiff Linda Seay verily believes that she is entitled to actual damages against the Defendants, jointly and severally, by reason of said loss of consortium and society, proximately caused by the fault of the Defendants, and punitive damages in an amount to be determined by the trier of fact, plus the costs of this action.

WHEREFORE, Plaintiffs pray for judgment against all Defendants for actual and punitive damages in amounts to be determined by the trier of fact, and costs.

[Signature appears on the following page.]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF COLUMBIA) FOR THE SEVENTH JUDICIAL CIRCUIT

Dennis Seay
and Linda Seay,) C/A No. _____
)
Plaintiffs) Former Machinist Helper, Machinist, Millwright Helper, Millwright and Maintenance Worker

v.)

3M COMPANY a/k/a MINNESOTA MINING & MANUFACTURING COMPANY
A Delaware Corporation) (Spartanburg, South Carolina); Mesothelioma

CBS CORPORATION (a Delaware Corporation) f/k/a VIACOM, INC. (sued as successor-by-merger to CBS CORPORATION (a Pennsylvania Corporation) f/k/a WESTINGHOUSE ELECTRIC CORPORATION)
A Delaware Corporation

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A Delaware Corporation

GOODRICH CORPORATION (sued individually and as successor-in-interest to THE

COMPLAINT
(Personal Injury)

Plaintiffs Demand
A Jury Trial

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SPARTANBURG COUNTY
2013 SEP 25 PM 2:49
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KASSEL MCVEY, ATTORNEYS AT LAW

By: _____

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Attorneys for Plaintiffs

September 23, 2013

Columbia, South Carolina.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 25 PM 2:49
[illegible] CAROLINA

James A. Robb, MD
11613 Kensington Court
Boca Raton, FL 33428-2415

NAME: SEAY, DENNIS D. **JAR #: DDS-13**

****

EVALUATION SUMMARY PREPARED FOR SIMON, ET. AL.: 9/18/13

****

I am an American Board of Pathology diplomat in Anatomic Pathology, Clinical Pathology, Dermatopathology, and Cytopathology with a 10 year recertification in Anatomic and Clinical Pathology beginning 1/1/2007. I have active, unrestricted medical licenses in good standing in California, Colorado, Florida, Georgia, Illinois, North Carolina and South Carolina.

The diagnosis of early or diffuse malignant mesothelioma is a very important diagnosis for both prognostic and legal reasons. The diagnosis should be made with the maximum confidence using the pertinent clinical information and the appropriate histological techniques, when necessary, on the available tissue.

I am making the diagnosis of diffuse malignant mesothelioma of biphasic type of the right pleural cavity at greater than the 99% medical certainty level based upon the record analysis and supporting references to the pathology literature listed below. The malignant neoplasm is, within biological variation and sampling limitations, reported to be similar in sections where the neoplasm is present. The inhalation of asbestos fibers by Mr. Seay, within a reasonable degree of medical probability, caused his malignant mesothelioma.

TISSUE EXAMINED: Record analysis was performed on case S13-25952 (right pleural biopsy) from the Department of Pathology, Emory Healthcare, New Orleans, LA (attachment #1). The immunohistochemical (CEA, BerEP4, MOC-31, TTF-1, keratin, calretinin, WT-1, D2-40) stains were reported.

I. CLINICAL PRESENTATION

Mr. Seay, age 69 at time of biopsy on 8/8/13 and final diagnosis on 8/14/13, had progressive and recurrent right pleural effusion and diffuse right pleural thickening (attachment #1). Right sided pleural biopsy was positive for a biphasic malignancy, which was diagnosed as a malignant mesothelioma with both epithelioid and sarcomatous components by the diagnosing pathologist (attachment #1). A talc pleurodesis had been performed before the biopsy. The malignant process persisted in the right pleural cavity. This is a classic clinical presentation of a malignant mesothelioma arising in the pleural space.

Mr. Seay had exposure to asbestos fibers (work history and a diagnosis of mesothelioma, without a history of therapeutic radiation to the right pleural cavity).

References:

1) McCaughey, Kannerstein, and Churg. Tumors and Pseudotumors of the Serous Membranes. Atlas of Tumor Pathology, Second Series, Fascicle 20. Armed Forces Institute of Pathology, 1985.
2) Battifora and McCaughey. Tumors of the Serosal Membranes. Atlas of Tumor Pathology, Third Series, Fascicle 15. Armed Forces Institute of Pathology, 1995.

3) Husain, Colby, Ordonez, et. al. Guidelines for Pathologic Diagnosis of Malignant Mesothelioma. A Consensus Statement from the International Mesothelioma Interest Group, Arch Pathol Lab Med. 2009;133:1317-1331.

II. GROSS AND LIGHT MICROSCOPIC MORPHOLOGY

The right pleural malignancy was reported to have both an epithelial pattern and a spindle cell (sarcomatous) component (biphasic). This pattern is strongly consistent with malignant biphasic mesothelioma of the pleural space.

Reference: 1) See AFIP references #I.1,2 (rim vacuoles, 1: pp. 62-63) above.
2) Dail & Hammar, Pulmonary Pathology, 2nd Ed., pp. 1503 &1534, 1994.

III. IMMUNOHISTOCHEMISTRY (IHC)

A. Carcinoembryonic antigen (CEA) Mesotheliomas very rarely make this antigen. Pseudomesotheliomatous adenocarcinomas are positive. This malignancy is reported to be negative for CEA.

B. BerEP4 This antibody stains most pseudomesotheliomatous adenocarcinomas in a strong predominately membrane pattern. Mesotheliomas are usually negative, but some may have focal cytoplasmic and/or membrane staining. This malignancy is reported to be negative for BerEP4.

C. MOC-31 This antibody stains most pseudomesotheliomatous adenocarcinomas in a strong predominately membrane pattern. Mesotheliomas are usually negative, but some may have focal cytoplasmic and/or membrane staining. This malignancy is reported to be negative for MOC-31.

D. TTF-1 This antibody stains adenocarcinomas with a cytoplasmic/nuclear pattern and is negative in mesotheliomas, although occasional although weak focal cytoplasmic staining may occur. This malignancy is reported to be negative for TTF-1.

E. Keratin The presence of keratin intermediate filaments in the atypical, spindled cells of a malignant diffuse pleural sarcomatous (fibrous) neoplasm, as reported for block A2, establishes the neoplasm as a malignant mesothelioma rather than a true sarcoma.

F. Calretinin This antibody stains mesotheliomas with a cytoplasmic/nuclear pattern and is negative in non-mesothelial pseudomesotheliomatous carcinomas, although occasional weak focal cytoplasmic staining may occur. This malignancy is reported to be positive for calretinin.

G. D2-40 This antibody stains most mesotheliomas in a strong predominately membrane pattern. Pseudomesotheliomatous adenocarcinomas are usually negative, but some may have focal staining. This malignancy is reported to be positive for D2-40.

H. Wilms' Tumor Suppressor Gene Antigen (WT-1) This antibody usually stains mesotheliomas with a nuclear pattern and is usually negative in non-mesothelial pseudomesotheliomatous carcinomas, although occasional weak focal cytoplasmic staining may occur. This malignancy is reported to be positive for WT-1.

References:

1) McCaughey, WTE, Colby, TV, Battifora, H, Churg, A, Corson, JM, Greenberg, SD, Grimes, MM, Hammar, S, Roggli, VL, and Unni, KK, Diagnosis of Diffuse Malignant Mesothelioma: Experience of a US/Canadian Mesothelioma Panel, Mod Pathol 1991;4:342-353.

2) JA Robb, personal observations.

3) See AFIP reference #1.2 above.

4) Ordonez, NG, Immunohistochemical Diagnosis of Epithelioid Mesothelioma: An Update, Arch Pathol Lab Med. 2005;129:1407-14.

5) Dabbs, DJ, Diagnostic Immunohistochemistry, Churchill-Livingstone, New York, 2002.

6) Lyons-Boudreaux, V, Mody, DR, et. al., Cytologic Malignancy Versus Benignacy: How Useful Are the "Newer" Markers in Body Fluid Cytology?, Arch Pathol Lab Med, 2008;132:23-28.

IV. FINAL DIAGNOSTIC SUMMARY TABLE SUPPORTING DIAGNOSIS OF MESOTHELIOMA IN THE RIGHT PLEURA

	EXPECTED		
FINDING/RESULT	PSEUDOMESO ADCA	MESOTHELIOMA	SEAY
1. INCIDENCE	APPROX. 1/YR **	1000/YR **	
2. MORPHOLOGY	GLANDULAR	MESOTHELIAL	MESOTHELIAL
3. CEA	POSITIVE	NEGATIVE	NEGATIVE
4. BerEP4	POSITIVE	NEGATIVE	NEGATIVE
5. MOC-31	POSITIVE	NEGATIVE	NEGATIVE
6. TTF-1	POSITIVE	NEGATIVE	NEGATIVE
7. D2-40	NEGATIVE	POSITIVE	POSITIVE
8. KERATIN	SARC NEGATIVE	SARC POSITIVE	SARC POSITIVE
9. CALRETININ	NEGATIVE	POSITIVE	POSITIVE
10. WT-1	NEGATIVE	POSITIVE	POSITIVE

** <1/600 = < 0.16% chance of being a pseudomesotheliomatous carcinoma/sarcoma

****

CONCLUSION: THE ABOVE TOTAL PROFILE SUPPORTS THE DIAGNOSIS OF MALIGNANT MESOTHELIOMA. THE PROBABILITY OF A PSEUDOMESOTHELIOMATOUS BIPHASIC ADENOCARCINOMA HAVING THIS PROFILE IS LESS THAN 1% **.



Date Completed: 9/18/13

James A. Robb, M.D.

(1A)

Emory Healthcare Confidential Document:
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* Final Report *

Document Type:	Anat Path Reports
Document Date:	08 August 2013 00:00
Document Status:	Auth (Verified)
Document Title:	Histology
Performed By:	Sica, Gabriel L on 08 August 2013 00:00
Verified By:	Sica, Gabriel L on 08 August 2013 00:00
Encounter Info:	43186843213, EUH, Inpatient, 8/8/2013 -

* Final Report *

APRPT (Verified)

Patient Name	SEAY, DENNIS DELANE			Acc #	S13-25952
MRN	1173215	DOB:	1/28/1944 (Age: 69)		Pulmonary Big
Location	B5-S B586-01	Gender	M	Collected:	8/8/2013
Client	Emory University Hospital			Received:	8/9/2013
Submitting Phys	Seth D. Force, M.D.			Reported:	8/14/2013
Copy To Phys	Korrin Jean Scott, MD				

Final Surgical Pathology Report

Final Pathologic Diagnosis

A. **PLEURA, RIGHT, BIOPSY:**
- MALIGNANT MESOTHELIOMA, SEE COMMENT.
- TALC PLEURITIS.

B. **PLEURA, RIGHT, BIOPSY:**
- MALIGNANT MESOTHELIOMA, SEE COMMENT.
- TALC PLEURITIS.

(13)

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* Final Report *

C. PLEURA, RIGHT VISCERAL, BIOPSY:
- MALIGNANT MESOTHELIOMA, SEE COMMENT.
- TALC PLEURITIS.

Comment
The malignant mesothelioma is predominantly epithelioid in the sampled biopsies with focal areas of sarcomatoid/desmoplastic mesothelioma. The differential includes an epithelioid mesothelioma versus a biphasic mesothelioma. Final classification is difficult based on the biopsy/limited excision.

The mesothelioma in part A is predominantly desmoplastic and is best seen in the additional (non frozen) sections. Case discussed with Drs Gal and Force, 8/14/13.

Immunohistochemical stain results:
- AE1/AE3 (blocks A2, B2, C1): positive
- D2-40 (blocks A2, B2, C1): positive
- Calretinin (blocks B2, C1): positive
- WT1 (block C1): positive
- BerEP4, mCEA, Moc31, TTF1 (all block C1): negative

gs

Electronically Signed by Gabriel L Sica, MD, PhD, Pathologist
8/14/2013 14:56
Assisted by Muhammad A Malik, MD BS, Fellow
Rachel L Geller, MD, Resident

Clinical History
Redo right thoracotomy. Recurrent right pneumothorax

Specimen(s) Received
A: Right pleural biopsy
B: Right pleural biopsy
C: Right visceral pleura

Gross Description
Three specimens are received, each labeled with the patient's name and medical record number.

Specimen A is received fresh for intraoperative consultation and is labeled "right pleural biopsy." It consists of a fragment of firm tan tissue measuring 2.1 x 1.3 x 0.6 cm. A representative section is submitted for frozen section diagnosis in cassette

(1c)

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* Final Report *

"A1FS." The remainder of the specimen is submitted in cassette "A2." (Dictated by Valerie Wilson Dorton, P.A. ASCP)

Specimen B is received in formalin and is labeled "right pleural biopsy." It consists of an elliptical excision of white fibrous tissue measuring 2.4 x 1.1 cm and is excised to a maximum depth of 0.7 cm. The specimen is serially sectioned and submitted entirely in cassettes "B1" and "B2." (Dictated by Valerie Wilson-Dorton, P.A. ASCP)

Specimen C is received in formalin and is labeled "right visceral pleural." It consists of multiple fragments of fibromembranous and fibroadipose tissue measuring in aggregate 5.2 x 2.8 x 0.9 cm. The specimen is submitted entirely in cassettes "C1" through "C3." (Dictated by Valerie Wilson-Dorton, P.A. ASCP)

mpicad 8/9/2013

Intraoperative Consult Diagnosis

A1FS RIGHT PLEURAL BIOPSY (FROZEN SECTION): IN SAMPLED AREA, PLEURAL WITH FIBROSIS AND TALC PENDING FURTHER WORK-UP.
Frozen section results were communicated to the surgical team and were repeated back by Dr. Force on 8/8/13 at 4:31
p.m. and the specimen was received at 4:15 p.m.

Patnologist, Dr. Ge

Microscopic Description

ANALYTE SPECIFIC REAGENT (ASR)DISCLAIMER:
Some of the above tests may use Class I ASRs. These tests were developed and their performance characteristics determined by Emory Medical Laboratory. They have not been cleared or approved by the Federal Drug Administration (FDA). The FDA does not require these tests to go through premarket FDA review. These tests are used for clinical purposes, and should not be regarded as investigational or for research. Emory Medical laboratory is certified under the Clinical Laboratory Improvement Amendments (CLIA) as qualified to perform high complexity clinical laboratory testing.

James R. Cook, Pathologist, Emory Medical Laboratory
Jean Reddy, MD, PhD, Associate Director of Laboratory Medicine
N. Volkan Adsay, MD, Medical Director, Division of Anatomic Pathology
Emory University Hospital - 1364 Clifton Rd. NE, Atlanta, GA 30322 - (404) 712-0374
Emory University Hospital Midtown - 550 Peach Tree St. NE, Atlanta, GA 30308 - (404) 686-1900

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
DENNIS SEAY and LINDA SEAY,	)	C/A No. 2013-CP-42-03915
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
3M COMPANY., *et al.*,	)	**ANSWER OF CNA HOLDINGS, LLC TO PLAINTIFFS' COMPLAINT**
	)	
Defendants.	)	

COMES NOW Defendant CNA Holdings, LLC, identified in the caption as "CNA Holdings, LLC (sued individually and as successor to Hoechst Celanese Corporation)" ("Celanese" or "Defendant"), and subject to and without waiving any defenses, responds to the Complaint of Plaintiffs Dennis Seay and Linda Seay (collectively, "Plaintiffs"), and alleges and says as follows:

DEFENDANT'S FIRST DEFENSE
(Specifically responding to the numbered Paragraphs in the Complaint)

In response to the numbered paragraphs of Plaintiffs' Complaint, Celanese responds as follows:

(Specifically responding to the Jurisdiction allegations)

1. Celanese has insufficient information to respond to the factual allegations of Paragraph 1 of the Complaint.

2. The allegations of Paragraph 2 of the Complaint concerning jurisdiction state legal conclusions to which no response is required. To the extent that Paragraph 2 alleges facts to which a response is required, it is admitted that Celanese is a corporation organized under the laws of the State of Delaware with its principal place of business in a state other than South Carolina. Celanese admits that it formerly owned premises in the State of South Carolina but

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SPARTANBURG

denies that Plaintiff Dennis Seay worked with or around any asbestos-containing products at any premises owned or operated by Celanese. Except as herein specifically admitted, all remaining allegations of Paragraph 2 of the Complaint are denied, particularly any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

(Specifically responding to the First Cause of Action)

3. With respect to the allegations of Paragraph 3 of the Complaint, it is specifically denied that Celanese mined, manufactured, supplied, processed, imported, converted, compounded, or sold asbestos-containing products, equipment, or machinery that Plaintiff Dennis Seay worked with or around. It is further specifically denied that Plaintiff Dennis Seay worked with or around any asbestos-containing products at any Celanese-owned facility.

4. The allegations of Paragraph 4 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

5. The allegations of Paragraph 5 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

6. The allegations of Paragraph 6 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

7. The allegations of Paragraph 7 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around

any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

8. The allegations of Paragraph 8, including subparts (a) through (h), of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

9. The allegations of Paragraph 9 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

10. The allegations of Paragraph 10 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Second Cause of Action)

11. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 10 of the first defense of this answer.

12. The allegations of Paragraph 12 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

13. The allegations of Paragraph 13 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

14. The allegations of Paragraph 14 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Third Cause of Action)

15. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 14 of the first defense of this answer.

16. The allegations of Paragraph 16 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

17. The allegations of Paragraph 17 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

18. The allegations of Paragraph 18 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around

any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

(Specifically responding to the Fourth Cause of Action)

19. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 18 of the first defense of this answer.

20. The allegations of Paragraph 20 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

21. The allegations of Paragraph 21 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Fifth Cause of Action)

22. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 21 of the first defense of this answer.

23. The allegations of Paragraph 23, including subparagraphs (a) through (f), of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

24. The allegations of Paragraph 24 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around

any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Sixth Cause of Action)

25. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 24 of the first defense of this answer.

26. The allegations of Paragraph 26 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

27. The allegations of Paragraph 27 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

28. The allegations of Paragraph 28 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Seventh Cause of Action)

29. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 28 of the first defense of this answer.

30. The allegations of Paragraph 30 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around

any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Eighth Cause of Action)

31. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 30 of the first defense of this answer.

32. The allegations of Paragraph 32 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

33. The allegations of Paragraph 33 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

34. The allegations of Paragraph 34 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

35. The allegations of Paragraph 35 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

36. The allegations of Paragraph 36 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

37. The allegations of Paragraph 37, including subparagraphs (a) through (e), of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

38. The allegations of Paragraph 38 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

39. The allegations of Paragraph 39 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

40. The allegations of Paragraphs 40 of the Complaint are denied as to Celanese.

(Specifically responding to the Ninth Cause of Action)

41. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 40 of the first defense of this answer.

42-47. The allegations of Paragraphs 42-47, including all subparagraphs contained therein, do not apply to Celanese. To the extent a response is deemed necessary, the allegations of Paragraphs 42-47 are denied insofar as they are intended to relate to Celanese.

(Specifically responding to the Tenth Cause of Action)

48. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 47 of the first defense of this answer.

49. The allegations of Paragraph 49 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

DAMAGES

50. The allegations of Paragraph 50 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

51. The allegations of Paragraph 51 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

52. The allegations of Paragraph 52 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

53. The allegations of Paragraph 53 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

UNNUMBERED PRAYER FOR RELIEF

The allegations of this paragraph are denied. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs are entitled to collect damages from Celanese in any amount or for any reason whatsoever.

Any allegation not specifically responded to in Plaintiffs' Complaint is herewith specifically denied.

DEFENDANT'S SECOND DEFENSE

Plaintiffs' claims are or may be barred by the exclusivity of the North Carolina Workers' Compensation Act, North Carolina General Statutes, Chapter 97, *et.seq.* and/or South Carolina Workers' Compensation Law, South Carolina Code of Laws, Title 42, *et. seq.*

DEFENDANT'S THIRD DEFENSE

Celanese denies it was negligent, whether in the manner described in Plaintiffs' Complaint or otherwise, and states as an affirmative defense that if Plaintiffs suffered damages as alleged, which damages are specifically denied, such damages resulted from the acts or omissions of persons or parties other than Celanese over whom Celanese exercised no control, and for which acts or omissions Celanese is in no way liable.

DEFENDANT'S FOURTH DEFENSE

If it is determined pursuant to this action that Celanese was in any way negligent, which is specifically denied, then Celanese asserts as an affirmative defense that its alleged acts and omissions, if any, were not a proximate cause of the injuries and damages of which Plaintiffs complain.

DEFENDANT'S FIFTH DEFENSE

If it is determined pursuant to this action that Celanese was in any way negligent, which negligence is specifically denied, then Celanese assert as an affirmative defense that Plaintiff Dennis Seay's injuries and/or death were caused by the comparative negligence of Plaintiff Dennis Seay and/or Plaintiff Dennis Seay's family members, which negligent acts included, upon information and belief, the failure to exercise reasonable care for their own health and safety.

DEFENDANT'S SIXTH DEFENSE

To the extent these claims are barred by the applicable statutes of limitations and statutes of repose, Celanese asserts those statutes as an affirmative defense in bar of Plaintiffs' claims.

DEFENDANT'S SEVENTH DEFENSE

If it is determined pursuant to this action that Plaintiffs are entitled to any recovery from Celanese, which is specifically denied, then Celanese is entitled to have any such recovery

reduced by the amount of any workers' compensation payment made to Plaintiffs or on Plaintiffs' behalf in connection with any workers' compensation claim asserted by Plaintiffs or on Plaintiffs' behalf in connection with a claimed asbestos-related disease.

DEFENDANT'S EIGHTH DEFENSE

Celanese asserts as an affirmative defense that the state of medical and scientific knowledge and all materials relating thereto at all times material herein were such that Celanese neither knew nor could have known that the asbestos-containing materials, if any, which Plaintiff Dennis Seay allegedly encountered presented a significant risk of harm if properly used.

DEFENDANT'S NINTH DEFENSE

With respect to Plaintiffs' demands for punitive damages, Celanese asserts its conduct as alleged herein does not rise to the level required to sustain a claim for punitive damages. Further, the award or assessment of punitive damages as prayed for by Plaintiffs would violate Celanese's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution and, therefore, may not be awarded to Plaintiffs in that:

(a) The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

(b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) Any award of punitive damages based upon the wealth of a defendant violates due process guarantees;

(d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards, is arbitrary, promotes grossly excessive awards and is inconsistent with due process guarantees;

(e) Assuming *arguendo* that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

(f) Plaintiffs' claims for punitive damages violates the equal protection clause of the 14th Amendment of the United States Constitution and Article 1, Section 3 of the

South Carolina Constitution in that the amount of punitive damages is based upon the wealth of a defendant.

Celanese specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damage awards which arose in the decisions of State Farm v. Campbell, U.S. Supreme Court, Op. No. 01-1289, (April 7, 2003); BMW of North America v. Gore, 517 U.S. 559 (1996) and Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001), together with all such standards applicable under state law.

DEFENDANT'S TENTH DEFENSE

Punitive damages are a punishment, a quasi-criminal sanction for which Celanese has not been afforded the specific procedural safeguards prescribed in the Fifth and Sixth Amendments to the United States Constitution and in the Constitution of South Carolina.

DEFENDANT'S ELEVENTH DEFENSE

If it is determined pursuant to this action that Plaintiffs are entitled to any recovery from Celanese, which is specifically denied, then Celanese is entitled to have any such recovery reduced by the amount of any verdict, award, payment, settlement payment, or like payment made to Plaintiffs or on Plaintiffs' behalf by any other defendant in this case or by any manufacturer, supplier, or any other party to any action brought by Plaintiffs or on Plaintiffs' behalf seeking recovery for the injuries and damages for which recovery is sought in this action.

DEFENDANT'S TWELFTH DEFENSE

To the extent Plaintiffs cannot prove that Plaintiff Dennis Seay had actionable exposure within South Carolina, Celanese asserts the South Carolina Door Closing Statutes, S.C. Code Ann. § 15-5-150, *et seq.*, as an affirmative defense in bar of Plaintiffs' claims.

DEFENDANT'S THIRTEENTH DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief may be granted against Celanese.

DEFENDANT'S FOURTEENTH DEFENSE

Plaintiffs' Complaint is or may be barred by the doctrine of laches.

DEFENDANT'S FIFTEENTH DEFENSE

To the extent that Plaintiffs prove that Plaintiffs incurred any injuries or damages, which are denied, Plaintiff Dennis Seay voluntarily and knowingly assumed the risk of incurring any of the injuries or damages alleged in Plaintiffs' Complaint. Plaintiffs are therefore not entitled to recover from Celanese.

DEFENDANT'S SIXTEENTH DEFENSE

Celanese denies that any action or inaction on its part injured or damaged Plaintiffs in any way and further shows that it did not mine, manufacture, process, import, convert, compound, retail, market, purchase or use asbestos or asbestos-containing materials during some or all of the times when Plaintiff Dennis Seay claims to have worked with said materials, or claims Plaintiff Dennis Seay was exposed to said materials, or claims Plaintiff Dennis Seay was injured or damaged from said materials.

DEFENDANT'S SEVENTHEENTH DEFENSE

Plaintiff Dennis Seay was not exposed to any asbestos-containing materials through any act or omissions of Celanese or, if such exposure occurred, which is denied, such exposure was of such insufficient quantities, at such infrequent intervals, for such short periods of time or under such conditions as to amount to no proximate cause of Plaintiffs' damages, if any, as a matter of law. Therefore, Celanese denies that any alleged action or inaction on its part has damaged or injured Plaintiffs in any manner or at any time.

DEFENDANT'S EIGHTEENTH DEFENSE

To the extent Plaintiff Dennis Seay misused or improperly used the products manufactured by the defendants referred to in Plaintiffs' Complaint, such misuse or improper use proximately caused or contributed to, in whole or in part, the alleged conditions described in the Complaint and the alleged damages Plaintiffs claim to have sustained. Celanese is therefore not liable for any injuries or damages claimed by Plaintiffs.

DEFENDANT'S NINTEENTH DEFENSE

There is or may be a lack of joinder of one or more parties who should or must be joined and, without the joinder of these proper parties, complete relief cannot be accorded among those already attempting to be made parties to this civil action.

DEFENDANT'S TWENTIETH DEFENSE

To the extent Plaintiffs have received payment from any alleged joint tortfeasor in full satisfaction of any of the alleged injuries and/or claims against Celanese and/or other alleged joint tortfeasors, Plaintiffs' Complaint and each and every count and cause of action alleged therein is barred by the defenses of payment and accord and satisfaction.

DEFENDANT'S TWENTY-FIRST DEFENSE

Plaintiffs failed to mitigate Plaintiffs' damages, if any.

DEFENDANT'S TWENTY-SECOND DEFENSE

This Court lacks jurisdiction over the subject matter of Plaintiffs' Complaint.

DEFENDANT'S TWENTY-THIRD DEFENSE

The knowledge of Plaintiff Dennis Seay's employers pertaining to the possible hazards to Plaintiff Dennis Seay associated with the use of any asbestos-containing products was equal to or superior to that of Celanese and, by reason thereof, Celanese is not liable to Plaintiffs under any theory of law asserted in this civil action.

DEFENDANT'S TWENTY-FOURTH DEFENSE

Plaintiffs' claims against Celanese should be denied by reason of the sophisticated commercial user/learned intermediary doctrines since Plaintiff Dennis Seay's employers were, upon information and belief, so experienced and sophisticated with regard to the products at issue that no duty to warn existed. The knowledge of Plaintiff Dennis Seay's employers regarding the potential hazards of asbestos was equal to or superior to that of Celanese. Accordingly, Celanese had no duty to warn Plaintiff Dennis Seay because Plaintiff Dennis Seay was an employee of sophisticated commercial purchasers/users who furnished asbestos-containing products to their employees for their use, were obligated to be aware of the possible health hazards associated with the use of such products, and were thus under an independent duty to warn their employees thereof.

DEFENDANT'S TWENTY-FIFTH DEFENSE

Celanese incorporates all of the Asbestos Defendants' Master Affirmative Defenses, including all amendments and supplements thereto, herein by reference in bar of all claims, causes of actions, theories of recovery and alleged damages asserted by Plaintiffs in the Complaint.

WHEREFORE, having fully answered Plaintiffs' Complaint and asserted the foregoing defenses, Celanese respectfully prays the Court to grant the following relief:

1. Plaintiffs recover nothing from Celanese;
2. Dismiss Plaintiffs' actions against Celanese with prejudice to Plaintiffs;
3. Tax the costs of this action against Plaintiffs;
4. Direct that all issues of fact raised pursuant to this action be determined by a jury; and
5. Grant such other and further relief as the Court may deem just and proper.

This the 8th day of November, 2013.

HAWKINS PARNELL THACKSTON & YOUNG LLP

Elisabeth M. Bond
South Carolina Bar No. 81428
Counsel for Defendant CNA Holdings, LLC, identified in the caption as "CNA Holdings, LLC (sued individually and as successor to Hoechst Celanese Corporation)"

4000 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3243
(404) 614-7400

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SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA	§	IN THE COURT OF
	§	COMMON PLEAS
COUNTY OF SPARTANBURG	§	
	§	C/A No. 2013-CP-42-03965
DENNIS SEAY, and	§	
LINDA SEAY	§	
Plaintiff	§	
	§	
v.	§	
	§	
3M COMPANY, et al.,	§	
Defendants	§	

MOTION TO AMEND THE COMPLAINT

TO: ALL DEFENDANTS:

Pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure, Plaintiff respectfully moves before this Court for an Order granting them leave to amend their Complaint in the above referenced case. The Third Amended Complaint is attached hereto as Exhibit 1. Rule 15 provides that "leave [to amend the pleadings] shall be freely given where justice so requires."

The Complaint in this case was filed on September 25, 2013. Since that Complaint was filed, Dennis Seay died as a result of advanced mesothelioma on December 29, 2014. The death certificate was issued on March 13, 2015. Angela D. Keene was appointed Personal Representative of the Estate of Dennis Seay on March 31, 2015. The Plaintiff now seeks to amend her complaint to add survival and wrongful death causes of action.

The Third Amended Complaint also reflects defendants who are no longer parties to this action.

Based on the foregoing, Plaintiff respectfully requests the Court to enter an order GRANTING Plaintiff's leave to file the proposed Third Amended Complaint.

Respectfully submitted, this 16 day of April, 2015.

Respectfully submitted,

KASSEL MCVEY ATTORNEYS AT LAW

John D. Kassel (SC Bar No. 03286)
Theile B. McVey (SC Bar No. 16682)
1330 Laurel Street
Columbia, South Carolina 29202

SIMON, GREENSTONE, PANATIER, BARTLETT, PC

Darren McDowell- Pro Hac Vice
TX Bar No. 24025520
3232 McKinney Avenue Suite 610
Dallas, TX 75204

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C/A No. 2013-CP-42-03915
	)	
	)	Former Machinist Helper, Machinist,
Angela D. Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay,	)	Millwright Helper, Millwright and Maintenance Worker
	)	
	)	(Spartanburg, South Carolina); Mesothelioma
Plaintiff	)	
	)	
v.	)	
	)	
	)	
AURORA PUMP COMPANY A Minnesota Corporation	)	**THIARD AMENDED COMPLAINT** Personal Injury; Wrongful Death and Survival
	)	
CHICAGO PNEUMATIC TOOL COMPANY, LLC A Delaware Corporation	)	Plaintiff Demand A Jury Trial
	)	
CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. d/b/a HOKE A Delaware Corporation	)	
	)	
CNA HOLDINGS LLC (sued individually and as successor to HOECHST CELANESE CORPORATION) A Delaware Corporation	)	
	)	
CRANE CO. (sued individually and as successor-in-interest to CHAPMAN VALVE COMPANY) A Delaware Corporation	)	
	)	
FLOWSERVE CORPORATION f/k/a THE DURIRON COMPANY, INC. (successor-by-merger to DURCO INTERNATIONAL) A New York Corporation	)	
	)	
THE GOODYEAR TIRE & RUBBER COMPANY An Ohio Corporation	)	
	)	
HOKE. INC. - DELAWARE A Delaware Corporation	)	

JOHN CRANE, INC.
A Delaware Corporation

LINK-BELT CONSTRUCTION EQUIPMENT COMPANY, L.P., LLLP
A Delaware Corporation

SPIRAX SARCO, INC.
A Delaware Corporation

SULZER PUMPS (US), INC. d/b/a SULZER PUMPS HOUSTON, INC.
(sued as successor-in-interest to PACO PUMPS f/k/a PACIFIC PUMPING COMPANY)
A Delaware Corporation

THE WILLIAM POWELL COMPANY
An Ohio Corporation,

YORK INTERNATIONAL CORPORATION
A Delaware Corporation

Defendants

NOW COMES Plaintiff Angela D. Keene, Individually and as Representative of the Estate of Dennis Seay, Deceased, citizen and resident of the State of South Carolina and Linda Seay surviving spouse of Decedent Dennis Seay, and sue the Defendants and allege as follows:

JURISDICTION

1. That as is evidenced by the caption of the instant Complaint which is specifically incorporated herein, some of the Defendants are foreign corporations who are amenable to jurisdiction in the Courts of South Carolina by virtue of their respective contacts with the State of South Carolina and/or their respective conduct of substantial and/or systematic business in South Carolina which subjects them to the jurisdiction of the South Carolina Courts pursuant to the South Carolina Long-Arm Statute. Each Defendant mined, manufactured, supplied, processed, imported, converted, compounded and/or retailed substantial amounts of asbestos and asbestos-related materials which are

or were sold, distributed and/or used in South Carolina. Decedent Dennis Seay was exposed to Defendants' asbestos-containing products which caused his contraction of mesothelioma by breathing dust from Defendants' asbestos-containing products.

FOR A FIRST CAUSE OF ACTION

2. Defendants, and each of them, are or at times relevant hereto were, miners, manufacturers, suppliers, processors, importers, converters, compounders and/or retailers of asbestos and asbestos-related materials, and/or equipment, and/or equipment designed to be used with asbestos-containing products including, but not limited to, asbestos-containing equipment and machinery and construction materials.

3. The Defendants, acting through their agents, servants, and/or employees cause and have caused in the past certain asbestos and asbestos-related to be placed in the stream of interstate commerce with the result that said asbestos and asbestos-related materials and equipment came into use by Decedent Dennis Seay.

4. Decedent Dennis Seay was exposed to asbestos-containing products and equipment requiring or calling for the use asbestos and/or asbestos-containing products while working as a machinist helper, machinist, millwright helper, millwright and maintenance worker in Spartanburg, South Carolina.

5. During the course and scope of his employment, Decedent Dennis Seay was exposed to Defendants' asbestos and asbestos-related materials and/or equipment requiring or calling for the use asbestos and/or asbestos-containing products, which exposure directly and proximately caused him to develop an illness known and designated as mesothelioma and other industrial dust diseases caused by breathing dust from Defendants' asbestos-containing products.

6. The illness and death of Dennis Seay are the direct and proximate result of the negligence, recklessness and willfulness of the Defendants, jointly and severally, in that they produced, sold and otherwise put into the stream of interstate commerce, asbestos and asbestos-related materials which the Defendants, and each of them, knew were deleterious, poisonous and highly harmful to Decedent's body, lungs, respiratory system and health.

7. The illness and death of Dennis Seay are the direct and proximate result of the negligence, recklessness, and willfulness of the Defendants, jointly and severally, in that, even though the Defendants knew, or, in the exercise of ordinary care, should have known, that the asbestos and asbestos-related materials were deleterious, poisonous and highly harmful to Decedent Dennis Seay's body, lungs, respiratory system and health, the Defendants nonetheless:

(a) Failed to advise Decedent Dennis Seay of the dangerous characteristics of their asbestos and asbestos-related products;

(b) Failed or omitted to provide Decedent Dennis Seay with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliance, if, in truth, they were in any

way able to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful asbestos-related materials;

(c) Failed and omitted to place any warnings or sufficient warnings on their containers of said asbestos and asbestos materials to warn the handlers thereof of the dangers to health in coming in contact with said asbestos and asbestos materials;

(d) Failed and omitted to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and installing said asbestos and asbestos materials;

(e) Inadequately warned, if, in fact, they warned at all, persons such as Decedent Dennis Seay of the dangers to their health in coming in contact with and breathing said asbestos and asbestos-related materials, even after they knew of the dangers and cancer-causing effects and up until the present time;

(f) Did not recommend methods to improve the work environment;

(g) Did not develop alternative products;

(h) Continued to use a known cancer-causing product, to wit: asbestos;

8. At all times relevant, it was feasible for Defendants to have warned Decedent Dennis Seay, tested their asbestos products, designed safer asbestos products and/or substituted asbestos-free products.

9. As a result of the negligence, recklessness and willfulness, Plaintiff has been damaged severely as is set forth below.

FOR A SECOND CAUSE OF ACTION

11. Plaintiff repeats the allegations of the First Cause of Action where relevant.

12. That subsequent to the time the Defendants caused the asbestos products and equipment to be sold and placed in buildings and on jobsites, the Defendants knew, or in the exercise of ordinary care, should have known, that asbestos is deleterious, carcinogenic, and harmful to persons using the materials or on jobsites, but nevertheless, the Defendants negligently and recklessly failed and refused to warn and advise the Decedent of the dangerous characteristics thereof, and the dangers to the health and welfare of persons coming in contact with and breathing products even until the present, despite their knowledge of the presence of their products in the buildings or on jobsites. That to the present, possessed with information uniquely available to them relating to the dangerous effects of continued asbestos exposure, the Defendants have refused to provide that information to Decedent Dennis Seay, despite the Defendants' knowledge that their asbestos has contaminated Decedent Dennis Seay's workplaces and jobsites.

13. Decedent Dennis Seay furthermore suffered continuing and lingering injury to himself due to the Defendants' asbestos fibers previously inhaled. Said fibers, once inhaled, caused repeated and continuing injury to Decedent Dennis Seay and resulted in his death.

14. That as a proximate result of the aforesaid acts of the Defendants, and the continued presence and use, both by the Decedent Dennis Seay and others, of asbestos products in buildings and on jobsites, Plaintiff has been damaged as herein set forth.

FOR A THIRD CAUSE OF ACTION

15. Plaintiff repeats the allegations of the First and Second Causes of Action where relevant.

16. The Defendants, and each of them, impliedly warranted that said asbestos materials were of good and merchantable quality and fit for their intended use.

17. The implied warranty made by the Defendants, and each of them, that the asbestos and asbestos-related materials and equipment were of good and merchantable quality and for the particular intended use was breached and that certain harmful, poisonous and deleterious matter was given off into the atmosphere wherein Decedent carried out his duties working with asbestos and asbestos-related materials and equipment.

18. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Decedent developed an illness, to-wit: mesothelioma by breathing dust from Defendants' asbestos-containing products and equipment.

FOR A FOURTH CAUSE OF ACTION

19. Plaintiff repeats the allegations of the First, Second and Third Causes of Action where relevant.

20. Plaintiff further alleges that at the time the Defendants, and each of them sold and/or delivered the aforesaid asbestos and asbestos-related products and equipment and at the time said products were used by Decedent Dennis Seay in the manner and environment intended, they were in a defective condition and were unreasonably dangerous and unfit for their intended use in that they were deleterious, poisonous and highly harmful to Decedent Dennis Seay's body.

21. The above was the proximate cause of the severe damages sustained by Decedent as hereinafter set forth.

FOR A FIFTH CAUSE OF ACTION

22. Plaintiff repeats and realleges the portions of the above paragraphs where relevant.

23. That at various times from the late 1800's to the filing of this lawsuit, Defendants had actual knowledge of the dangers to the Decedent of asbestos exposure, nevertheless, Defendants deliberately, intentionally and purposefully withheld such information from Decedent Dennis Seay, thus denying the Decedent of the knowledge with which to take necessary safety precautions, and avoiding further dust exposure, the specifics of Defendants' intentional acts including but not limited to the following:

(a) Never issued recall-type letters or notices to prior users;

(b) Frustrated the publication of articles on the asbestos health hazards in the literature;

(c) Top management officials of Defendants rejected advice of other corporate officials to warn of the hazards of their asbestos products; such rejection by top management officials being motivated by the possibility of adverse effects on profits;

(d) Intentional inadequacy and delay of use of warnings on asbestos products;

(e) Failed to advise the Decedent of medical findings known to Defendants concerning the dangers of asbestos exposure;

(f) Suppressed the dissemination of information to the Decedent Dennis Seay concerning the hazards of asbestos exposure.

24. The foregoing deliberate, intentional and purposeful acts of the Defendants were the direct and proximate cause of the Decedent' injuries, damages and death hereinafter described, and the Plaintiff is, therefore, entitled to compensation and punitive damages.

FOR A SIXTH CAUSE OF ACTION

25. Plaintiff repeats and realleges the portions of the above paragraphs where relevant.

26. That during, before and after Decedent Dennis Seay's exposure to asbestos products and equipment manufactured by Defendants, the Defendants falsely represented facts, including the dangers of asbestos exposure to Decedent Dennis Seay in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Decedent Dennis Seay. And while Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

27. The foregoing representations were material conditions precedent to Decedent Dennis Seay's continued exposure to asbestos-containing products and equipment and Defendants each intended that the Decedent act upon the representations by continuing his exposure to the asbestos products. Decedent Dennis Seay was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

28. As a direct and proximate result of the Decedent Dennis Seay's reliance upon Defendants' false representations, Plaintiff and Plaintiff's Decedent suffered injury and damages hereinafter described.

FOR A SEVENTH CAUSE OF ACTION

29. Plaintiff repeats and realleges the portions of the above causes of action which are relevant.

30. The Defendants had a post-sale duty to warn, which duty was breached and, as a result, Plaintiff and Plaintiff's Decedent suffered injury and damages as hereinafter described.

FOR AN EIGHTH CAUSE OF ACTION

31. Plaintiff repeats and reallege the portions of the above causes of action which are relevant.

32. Plaintiff Dennis Seay worked at premises owned and/or controlled by **CNA HOLDINGS LLC** (sued individually and as successor to HOECHST CELANESE CORPORATION) (hereinafter "Premise Defendant") at which he was exposed to asbestos products and dust from asbestos products.

33. While present at premises owned and/or controlled by the Premise Defendant, Decedent Dennis Seay was continuously exposed to asbestos and asbestos-containing dust without the provision of appropriate safeguards by the Premise Defendant who had the responsibility for such.

34. Decedent Dennis Seay would further show his injuries and diseases were the result of intentional acts and/or omissions and/or negligence, gross negligence and malice in the use of asbestos at the Premise Defendant's premises. The Premise Defendant failed to properly remove and/or abate said asbestos at its facility during the time Decedent Dennis Seay was working there.

35. Decedent Dennis Seay would show that the Premise Defendant was negligent, grossly negligent and malicious, and committed certain intentional acts, all of which were the proximate cause of the disease and injuries, and ultimate death, resulting in mesothelioma from exposure to asbestos.

36. In particular, Decedent Dennis Seay would show that the Premise Defendant demonstrated such an entire want of care as to establish that its acts and

omissions were the result of actual conscious indifference to the rights, safety, and welfare of the Decedent Dennis Seay, and that such intentional acts and omissions proximately caused his disease, injuries and ultimate death.

37. Specific intentional acts and acts constituting negligence, gross negligence and malice committed by the Premise Defendant that proximately caused Decedent Dennis Seay's injuries, disease and ultimate death include:

(a) Failure to provide safe equipment for Decedent Dennis Seay to use;

(b) Failure to provide adequate safety measures and protection against deadly and life-threatening asbestos dust, all despite Premise Defendant's knowledge of the extreme risk of harm inherent to asbestos exposure;

(c) Failure to adequately warn Decedent Dennis Seay of the inherent dangers of asbestos contamination;

(d) Failure to maintain the ambient and environmental conditions of the premises in proper and safe condition;

(e) Failure to follow and adhere to various states and U.S. Government statutes, regulations and guidelines pertaining to asbestos and the exposure to asbestos of individuals. Such failure constituted negligence per se at a minimum. Plaintiff is not making claims for damages under federal law.

38. Plaintiff would further show that the Premise Defendant intentionally, knowingly, and/or due to negligence, gross negligence and malice, failed to ensure that individuals such as Decedent Dennis Seay were protected from the inhalation of asbestos and asbestos fibers. Such actions proximately caused Decedent Dennis Seay's injuries, illness and ultimately death.

39. Additionally, specific actions or omissions on the part of the Premise Defendant that proximately caused Decedent Dennis Seay's injuries and illness and ultimate death were:

(a) Attempting to remove asbestos dust in Decedent Dennis Seay's workplace without taking adequate precautions for the protection of workers in the vicinity and/or in the premises generally;

(b) Failing to provide proper protective gear for individuals exposed to asbestos;

(c) Failing to provide adequate ventilation to ensure that individuals in the vicinity were not exposed to asbestos;

(d) Failing to provide a proper and safe method for the use of asbestos and asbestos fibers;

(e) Failing to adhere to industry safe standards and other established measures to protect workers from harm;

(f) Failing to adequately warn of the extreme risk of danger of inherent to asbestos exposure.

40. The Premise Defendant demonstrated such an entire want of care as to establish that its acts and omissions alleged above were the result of actual conscious indifference to the rights, safety, and welfare of Decedent Dennis Seay.

FOR A NINTH CAUSE OF ACTION
(Survival Action)

41. Plaintiff repeats the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth, and Ninth Causes of Action where relevant.

42. As a direct and proximate result of the actions of all Defendants, Decedent Dennis Seay underwent much physical pain, physical disfigurement, suffering, mental anguish, and emotional distress and impairment of bodily efficiency before his death and incurred expenses for medical care.

FOR A TENTH CAUSE OF ACTION
(Wrongful Death Action)

43. Plaintiff repeats and realleges the portions of the above paragraphs where relevant.

44. As a direct and proximate result of the injuries and damages complained of herein with respect to Decedent Dennis Seay, and as a direct and proximate result of the acts and omissions of the Defendants, the statutory beneficiaries of the Estate of Dennis Seay have suffered and will continue to suffer:

a. Grief
b. Shock
c. Sorrow
d. Loss of Companionship
e. Loss of Deceased's counsel on family matters
f. Emotional Distress
g. Pecuniary loss in funeral expenses
h. Medical expenses incurred by Dennis Seay

DAMAGES

WHEREFORE, Plaintiff prays for Judgment on this matter in a sum sufficient to adequately compensate the estate and statutory beneficiaries of Decedent Dennis Seay for their damages, for punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

KASSEL MCVEY ATTORNEYS AT LAW

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SIMON, GREENSTONE, PANATIER, BARTLETT, PC

Darren McDowell- Pro Hac Vice
TX Bar No. 24025520
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Dallas, TX 75204

Attorneys for Plaintiff

This 16 day of April, 2015.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
Angela D. Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay.	)	C/A No. 2013-CP-42-03915
Plaintiffs,	)	**ANSWER OF CNA HOLDINGS, LLC TO PLAINTIFFS' THIRD AMENDED COMPLAINT**
vs.	)	
AURORA PUMP COMPANY, *et al.*,	)	
Defendants.	)	

COMES NOW Defendant CNA Holdings, LLC, identified in the caption as "CNA Holdings, LLC (sued individually and as successor to Hoechst Celanese Corporation)" ("Celanese" or "Defendant"), and subject to and without waiving any defenses, responds to the Third Amended Complaint ("Plaintiffs' Complaint") of Plaintiffs Angela D. Keene, Individually and as Personal Representative of the Estate of Dennis Seay, deceased, and Linda Seay (collectively, "Plaintiffs"), and alleges and says as follows:

DEFENDANT'S FIRST DEFENSE
(Specifically responding to the numbered Paragraphs in the Complaint)

In response to the numbered paragraphs of Plaintiffs' Complaint, Celanese responds as follows:

(Specifically responding to the Jurisdiction allegations)

1. The allegations of Paragraph 1 of the Complaint concerning jurisdiction state legal conclusions to which no response is required. To the extent that Paragraph 1 alleges facts to which a response is required, it is admitted that Celanese is a corporation organized under the laws of the State of Delaware with its principal place of business in a state other than South Carolina. Celanese admits that it formerly owned premises in the State of South Carolina but

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denies that Plaintiff Dennis Seay worked with or around any asbestos-containing products at any premises owned or operated by Celanese. Except as herein specifically admitted, all remaining allegations of Paragraph 1 of the Complaint are denied, particularly any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

(Specifically responding to the First Cause of Action)

2. With respect to the allegations of Paragraph 2 of the Complaint, it is specifically denied that Celanese mined, manufactured, supplied, processed, imported, converted, compounded, or sold asbestos-containing products, equipment, or machinery that Plaintiff Dennis Seay worked with or around. It is further specifically denied that Plaintiff Dennis Seay worked with or around any asbestos-containing products at any Celanese-owned facility.

3. The allegations of Paragraph 3 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

4. The allegations of Paragraph 4 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

5. The allegations of Paragraph 5 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

6. The allegations of Paragraph 6 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around

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any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

7. The allegations of Paragraph 7, including subparts (a) through (h), of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

8. The allegations of Paragraph 8 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

9. The allegations of Paragraph 9 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Second Cause of Action)

11. (sic) Celanese reasserts and incorporates herein by reference Paragraphs 1 through 9 of the first defense of this answer.

12. The allegations of Paragraph 12 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

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13. The allegations of Paragraph 13 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

14. The allegations of Paragraph 14 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Third Cause of Action)

15. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 14 of the first and second defense of this answer.

16. The allegations of Paragraph 16 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

17. The allegations of Paragraph 17 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

18. The allegations of Paragraph 18 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around

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any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

(Specifically responding to the Fourth Cause of Action)

19. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 18 of the first, second and third defense of this answer.

20. The allegations of Paragraph 20 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese.

21. The allegations of Paragraph 21 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Fifth Cause of Action)

22. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 21 of the first, second, third, and fourth defense of this answer.

23. The allegations of Paragraph 23, including subparagraphs (a) through (f), of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

24. The allegations of Paragraph 24 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around

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any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Sixth Cause of Action)

25. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 24 of this answer.

26. The allegations of Paragraph 26 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

27. The allegations of Paragraph 27 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

28. The allegations of Paragraph 28 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Seventh Cause of Action)

29. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 28 of this answer.

30. The allegations of Paragraph 30 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around

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any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Eighth Cause of Action)

31. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 30 of this answer.

32. The allegations of Paragraph 32 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

33. The allegations of Paragraph 33 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese.

34. The allegations of Paragraph 34 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

35. The allegations of Paragraph 35 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

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36. The allegations of Paragraph 36 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

37. The allegations of Paragraph 37, including subparagraphs (a) through (e), of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

38. The allegations of Paragraph 38 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

39. The allegations of Paragraph 39, including subparagraphs (a) through (f), of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

40. The allegations of Paragraph 40 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies

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that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

(Specifically responding to the Ninth Cause of Action)

41. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 40 of the first defense of this answer.

42. The allegations of Paragraphs 42 are denied insofar as they are intended to relate to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof

(Specifically responding to the Tenth Cause of Action)

43. Celanese reasserts and incorporates herein by reference Paragraphs 1 through 42 of this answer.

44. The allegations of Paragraph 44 of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese, or that Plaintiff Dennis Seay contracted mesothelioma as a result of any action or inaction of Celanese. Celanese further denies that the statutory beneficiaries of the Estate of Dennis Seay have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

DAMAGES

The allegations of the un-numbered Damages Paragraph of the Complaint are denied as to Celanese. Celanese specifically denies any allegations that Plaintiff Dennis Seay worked with or around any asbestos-containing products on premises attributable to Celanese. Celanese

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further denies that Plaintiffs have incurred or are entitled to any damages whatsoever and demands strict proof thereof.

Any allegation not specifically responded to in Plaintiffs' Complaint is herewith specifically denied.

DEFENDANT'S SECOND DEFENSE

Plaintiffs' claims are or may be barred by the exclusivity of the South Carolina Workers' Compensation Law, South Carolina Code of Laws, Title 42, *et. seq.*

DEFENDANT'S THIRD DEFENSE

Celanese denies it was negligent, whether in the manner described in Plaintiffs' Complaint or otherwise, and states as an affirmative defense that if Plaintiffs suffered damages as alleged, which damages are specifically denied, such damages resulted from the acts or omissions of persons or parties other than Celanese over whom Celanese exercised no control, and for which acts or omissions Celanese is in no way liable.

DEFENDANT'S FOURTH DEFENSE

If it is determined pursuant to this action that Celanese was in any way negligent, which is specifically denied, then Celanese asserts as an affirmative defense that its alleged acts and omissions, if any, were not a proximate cause of the injuries and damages of which Plaintiffs complain.

DEFENDANT'S FIFTH DEFENSE

If it is determined pursuant to this action that Celanese was in any way negligent, which negligence is specifically denied, then Celanese assert as an affirmative defense that Plaintiff Dennis Seay's injuries and/or death were caused by the comparative negligence of Plaintiff Dennis Seay and/or Plaintiff Dennis Seay's family members, which negligent acts included,

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upon information and belief, the failure to exercise reasonable care for their own health and safety.

DEFENDANT'S SIXTH DEFENSE

To the extent these claims are barred by the applicable statutes of limitations and statutes of repose, Celanese asserts those statutes as an affirmative defense in bar of Plaintiffs' claims.

DEFENDANT'S SEVENTH DEFENSE

If it is determined pursuant to this action that Plaintiffs are entitled to any recovery from Celanese, which is specifically denied, then Celanese is entitled to have any such recovery reduced by the amount of any workers' compensation payment made to Plaintiffs or on Plaintiffs' behalf in connection with any workers' compensation claim asserted by Plaintiffs or on Plaintiffs' behalf in connection with a claimed asbestos-related disease.

DEFENDANT'S EIGHTH DEFENSE

Celanese asserts as an affirmative defense that the state of medical and scientific knowledge and all materials relating thereto at all times material herein were such that Celanese neither knew nor could have known that the asbestos-containing materials, if any, which Plaintiff Dennis Seay allegedly encountered presented a significant risk of harm if properly used.

DEFENDANT'S NINTH DEFENSE

With respect to Plaintiffs' demands for punitive damages, Celanese asserts its conduct as alleged herein does not rise to the level required to sustain a claim for punitive damages. Further, the award or assessment of punitive damages as prayed for by Plaintiffs would violate Celanese's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution and, therefore, may not be awarded to Plaintiffs in that:

(a) The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

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(b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) Any award of punitive damages based upon the wealth of a defendant violates due process guarantees;

(d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards, is arbitrary, promotes grossly excessive awards and is inconsistent with due process guarantees;

(e) Assuming *arguendo* that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

(f) Plaintiffs' claims for punitive damages violates the equal protection clause of the 14th Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of a defendant.

Celanese specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damage awards which arose in the decisions of State Farm v. Campbell, U.S. Supreme Court, Op. No. 01-1289, (April 7, 2003); BMW of North America v. Gore, 517 U.S. 559 (1996) and Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001), together with all such standards applicable under state law.

DEFENDANT'S TENTH DEFENSE

Punitive damages are a punishment, a quasi-criminal sanction for which Celanese has not been afforded the specific procedural safeguards prescribed in the Fifth and Sixth Amendments to the United States Constitution and in the Constitution of South Carolina.

DEFENDANT'S ELEVENTH DEFENSE

If it is determined pursuant to this action that Plaintiffs are entitled to any recovery from Celanese, which is specifically denied, then Celanese is entitled to have any such recovery reduced by the amount of any verdict, award, payment, settlement payment, or like payment made to Plaintiffs or on Plaintiffs' behalf by any other defendant in this case by any

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manufacturer, supplier, or any other party to any action brought by Plaintiffs or on Plaintiffs' behalf seeking recovery for the injuries and damages for which recovery is sought in this action.

DEFENDANT'S TWELFTH DEFENSE

To the extent Plaintiffs cannot prove that Plaintiff Dennis Seay had actionable exposure within South Carolina, Celanese asserts the South Carolina Door Closing Statutes, S.C. Code Ann. § 15-5-150, *et seq.*, as an affirmative defense in bar of Plaintiffs' claims.

DEFENDANT'S THIRTEENTH DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief may be granted against Celanese.

DEFENDANT'S FOURTEENTH DEFENSE

Plaintiffs' Complaint is or may be barred by the doctrine of laches.

DEFENDANT'S FIFTEENTH DEFENSE

To the extent that Plaintiffs prove that Plaintiffs incurred any injuries or damages, which are denied, Plaintiff Dennis Seay voluntarily and knowingly assumed the risk of incurring any of the injuries or damages alleged in Plaintiffs' Complaint. Plaintiffs are therefore not entitled to recover from Celanese.

DEFENDANT'S SIXTEENTH DEFENSE

Celanese denies that any action or inaction on its part injured or damaged Plaintiffs in any way and further shows that it did not mine, manufacture, process, import, convert, compound, retail, market, purchase or use asbestos or asbestos-containing materials during some or all of the times when Plaintiff Dennis Seay claims to have worked with said materials, or claims Plaintiff Dennis Seay was exposed to said materials, or claims Plaintiff Dennis Seay was injured or damaged from said materials.

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DEFENDANT'S SEVENTHEENTH DEFENSE

Plaintiff Dennis Seay was not exposed to any asbestos-containing materials through any act or omissions of Celanese or, if such exposure occurred, which is denied, such exposure was of such insufficient quantities, at such infrequent intervals, for such short periods of time or under such conditions as to amount to no proximate cause of Plaintiffs' damages, if any, as a matter of law. Therefore, Celanese denies that any alleged action or inaction on its part has damaged or injured Plaintiffs in any manner or at any time.

DEFENDANT'S EIGHTEENTH DEFENSE

To the extent Plaintiff Dennis Seay misused or improperly used the products manufactured by the defendants referred to in Plaintiffs' Complaint, such misuse or improper use proximately caused or contributed to, in whole or in part, the alleged conditions described in the Complaint and the alleged damages Plaintiffs claim to have sustained. Celanese is therefore not liable for any injuries or damages claimed by Plaintiffs.

DEFENDANT'S NINTEENTH DEFENSE

There is or may be a lack of joinder of one or more parties who should or must be joined and, without the joinder of these proper parties, complete relief cannot be accorded among those already attempting to be made parties to this civil action.

DEFENDANT'S TWENTIETH DEFENSE

To the extent Plaintiffs have received payment from any alleged joint tortfeasor in full satisfaction of any of the alleged injuries and/or claims against Celanese and/or other alleged joint tortfeasors, Plaintiffs' Complaint and each and every count and cause of action alleged therein is barred by the defenses of payment and accord and satisfaction.

DEFENDANT'S TWENTY-FIRST DEFENSE

Plaintiffs failed to mitigate Plaintiffs' damages, if any.

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DEFENDANT'S TWENTY-SECOND DEFENSE

This Court lacks jurisdiction over the subject matter of Plaintiffs' Complaint.

DEFENDANT'S TWENTY-THIRD DEFENSE

The knowledge of Plaintiff Dennis Seay's employers pertaining to the possible hazards to Plaintiff Dennis Seay associated with the use of any asbestos-containing products was equal to or superior to that of Celanese and, by reason thereof, Celanese is not liable to Plaintiffs under any theory of law asserted in this civil action.

DEFENDANT'S TWENTY-FOURTH DEFENSE

Plaintiffs' claims against Celanese should be denied by reason of the sophisticated commercial user/learned intermediary doctrines since Plaintiff Dennis Seay's employers were, upon information and belief, so experienced and sophisticated with regard to the products at issue that no duty to warn existed. The knowledge of Plaintiff Dennis Seay's employers regarding the potential hazards of asbestos was equal to or superior to that of Celanese. Accordingly, Celanese had no duty to warn Plaintiff Dennis Seay because Plaintiff Dennis Seay was an employee of sophisticated commercial purchasers/users who furnished asbestos-containing products to their employees for their use, were obligated to be aware of the possible health hazards associated with the use of such products, and were thus under an independent duty to warn their employees thereof.

DEFENDANT'S TWENTY-FIFTH DEFENSE

Celanese incorporates all of the Asbestos Defendants' Master Affirmative Defenses, including all amendments and supplements thereto, herein by reference in bar of all claims, causes of actions, theories of recovery and alleged damages asserted by Plaintiffs in the Complaint.

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WHEREFORE, having fully answered Plaintiffs' Complaint and asserted the foregoing defenses, Celanese respectfully prays the Court to grant the following relief:

1. Plaintiffs recover nothing from Celanese;
2. Dismiss Plaintiffs' actions against Celanese with prejudice to Plaintiffs;
3. Tax the costs of this action against Plaintiffs;
4. Direct that all issues of fact raised pursuant to this action be determined by a jury; and
5. Grant such other and further relief as the Court may deem just and proper.

This the 18th day of May, 2015.

HAWKINS PARNELL THACKSTON & YOUNG LLP

Elaine Shofner
South Carolina Bar No. 100501
S. Christopher Collier
Admitted Pro Hac Vice

Counsel for Defendant CNA Holdings, LLC, identified in the caption as "CNA Holdings, LLC (sued individually and as successor to Hoechst Celanese Corporation)"

303 Peachtree Street, N.E.
Suite 4000
Atlanta, Georgia 30308-3243
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Angie Keene as Personal Representative of the Estate of Dennis Seay and Linda Seay,	)	TRANSCRIPT OF RECORD
	)	2015-CP-42-03915
Plaintiff,	)	
-vs-	)	
3M Company, et al.,	)	
	)	December 3, 2015
Defendants.	)	Spartanburg, South Carolina

B E F O R E:

HONORABLE D. GARRISON HILL, JUDGE

A P P E A R A N C E S:

CHRISTOPHER J. PANATIER, ESQUIRE
THEILE BRANHAM MCVEY, ESQUIRE
Attorneys for the Plaintiff

S. CHRISTOPHER COLLIER, ESQUIRE
WILLIAM PEELE EARLY, ESQUIRE
ROBERT D. GILBREATH, ESQUIRE
Attorneys for the Defendants

Margaret A. Woods
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Frankie Van Hammett and)
Shirley Hammett,) TRANSCRIPT OF RECORD
) 2014-CP-42-1896
Plaintiffs,)
-vs-)
)
Aurora Pump Company, et)
al.,)
) December 3, 2015
Defendants.) Spartanburg, South Carolina

B E F O R E:

HONORABLE D. GARRISON HILL, JUDGE

A P P E A R A N C E S:

CHRISTOPHER J. PANATIER, ESQUIRE
THEILE BRANHAM MCVEY, ESQUIRE
Attorneys for the Plaintiff

S. CHRISTOPHER COLLIER, ESQUIRE
WILLIAM PEELE EARLY, ESQUIRE
ROBERT D. GILBREATH, ESQUIRE
Attorneys for the Defendants

Margaret A. Woods
Circuit Court Reporter

THE COURT: So we're on the record with, uh, Angie Keene, individually and as personal representative of the Estate of Dennis Seay and Linda Seay vs. CNA Holdings, LLC, these are post-trial motions, uh, CNA Holdings' motion for new trial, new trial nisi remittitur JNOV and believe there's also a motion by the plaintiffs for costs, so whoever wants to go first.

MR. GILBREATH: Good mornin', Your Honor, ---

THE COURT: Yes, sir.

MR. GILBREATH: --- Robert Gilbreath for the defendant.

THE COURT: Okay.

MR. GILBREATH: Thank, uh, I'm aware a the Court's time constraints and I'll stick within them and perhaps give the Court time back if I can, uh, and I thank you for agreeing to hear argument on our post-trial motions, I know that a lotta times at least in other courts a hearing like this is kinda just a formality but in this instance Celanese has meritorious and, uh, strong grounds for post-verdict relief, ---

THE COURT: Okay, sir.

MR. GILBREATH: --- the strongest of which I would submit to the Court is that a JNOV is warranted based on our statutory employer defense. Now I know that the Court heard and carefully considered that defense at the summary judgment stage but now that trial is completed it's clear to me anyway that the evidence conclusively establishes our defense and

specifically it was undisputed at trial that as a Daniel employee Mr. Seay provided routine regular and ordinary maintenance necessary to the continued and smooth operation of the Celanese plant and that fact alone entitles us to the benefit of the statutory employer defense. Now I know the plaintiffs' position is that we are not entitled to that defense because Celanese was not in the business of providing factory maintenance and repairs but that argument is deeply flawed; in fact, I'll get to this in a moment but one court called that same type of argument "illogical," let me back up though and start at the beginning to explain why I think we're entitled to the defense and hopefully persuade the Court to change your mind on a summary judgment ruling, so first let's go back to the Court's summary judgment order. In that order the Court relied to a large extent on the Supreme Court's decisions in *Abbott* and *Olmstead,* well both a those cases dealt exclusively with the issue of whether a plaintiff transporting goods for the defendant was a statutory employee. Uh, now I know that this court correctly noted that in *Olmstead* the Supreme Court said, Well *Abbott* represents a change in our state jurisprudence but I'd submit to the Court that the change in the law was limited to transportation of goods cases and ---

THE COURT: Where ---

MR. GILBREATH: --- I've ---

THE COURT: --- where does it say that in those opinions?

MR. GILBREATH: It doesn't say that directly but hopefully by the time I finish my argument I'll have persuaded you to believe that, Your Honor.

THE COURT: Okay, well I'll let you go ahead and do that.

MR. GILBREATH: It doesn't say it directly you're right. Uh, it's my reading of those cases that it is limited to transportation cases, uh, after all, the cases that the *Abbott* court overruled were all transportation cases and in my view *Olmstead* gave no indication that the Court intended to change the analysis for other types a cases and I think that's the reason why this court and correctly so turned away from *Olmstead* and *Abbott* towards the middle portion of its analysis and said, Look, I wanna look at *Raines*, I consider the *Raines* vs. *Gould* case to be acutely relevant authority, well I agree that *Raines* is directly relevant but for a different reason than the Court said in its summary judgment order, so first let me explain why I think *Raines* is not instructive and the reason is is that the *Raines* case dealt with new construction, not ordinary regular maintenance. See, the plaintiff in *Raines* was employed by a subcontractor to install an e -- new electrical system at a plant that was under construction for the defendant by a general contractor, well Mr. Seay's work didn't involve new construction but, again, rather ordinary regular maintenance to keep the existing plant operating. Now

the reason that I think *Raines* is instructive is because the Court in that case explained and I quote, "We have recently held that even work which a business might never perform with its own employees may be considered part of its trade or business if the work is an integral part of its operations without which it cannot function." Well that was very much true of Mr. Seay's work, without his work and Daniel's work to keep the plant operating it could not function.

Now let's turn to another case similar to *Raines*, uh, but with facts more like ours and that's the 1982 decision by the federal court here in South Carolina in which the Court explained that since 1939, which a course would be the *Marchbanks* decision, the South Carolina Supreme Court has consistently held that a person is performing the trade, business or occupation of the defendant if the person contracts to perform a duty essential to the function of the defendant's continued business, quote, despite the fact that the owner may never have performed the same chore with its own employees, that's the *Singleton* case, uh, from 1982, so I would submit that under settled South Carolina law it doesn't matter whether Celanese chose to use its own employees or a contractor to do regular ordinary maintenance necessary to keep the plant operating and I would submit that this case is much more like *Singleton* than it is *Raines;* again, *Raines* dealt with new construction, *Singleton* dealt with what we had

here: maintenance and repair work. The plaintiff in Singleton was injured while repairing an electrical line at a textile mill and a course I -- it was undisputed that those power lines were essential to the functioning of the plant, a -- so the Court in *Singleton* citing South Carolina state court precedence said I quote, "It is of no moment that Stevens did not directly hire its own electricians to perform the repair work in question, it is undisputed that repair and maintenance of the electrical lines owned by Stevens were routine. The continued maintenance and repair of these electrical lines were absolutely essential to the continued operation of the plant," again, that's true, very much true the work done by Mr. Seay.

THE COURT: Can you give me an example of, uh, when a worker, uh, outside worker, could perform activity that was unimportant and unnecessary for the business?

MR. GILBREATH: Let me give you an example, Your Honor, uh, I'll ---

THE COURT: Seems like the board of directors a the company might have a problem with ---

MR. GILBREATH: I unders ---

THE COURT: --- employing people who were doin' unnecessary work.

MR. GILBREATH: I I agree, I I understand that point, the best, and the best example I can come up with off the top a my

head, Your Honor, would be janitorial work, uh, and the Court might, a court might be justified in saying, Well, you know, that's, uh, not essential to keep the plant operating, the plant could operate with dirty bathrooms and dirty floors, so that's, that's one example. One a the cases that is cited by the Court in *Singleton* was the South Carolina Supreme Court decision in *Boseman vs. Pacific Mills* and there the plaintiffs were contractors who were injured while painting an elevated water tank at a mill. The evidence showed that this work had never before been done by the defendant's own employees and yet the South Carolina Supreme Court still said that because that water tank was an integral part of the mill and its business, those were statutory employees.

Now, uh, courts in other jurisdictions that recognize the Statutory Employer Doctrine also hold that routine maintenance necessary to keep a defendant's business operating is within the trade business or occupation of the defendant, let me give you an example. There's a 2011 decision from the United States Court of Appeals for the Sixth Circuit that explained under Kentucky law and I quote, "Employees of contractors hired to perform routine repairs or maintenance are generally viewed as being statutory employees under the act, such maintenance work on an employer's physical plant is classified as a matter of law to be a regular and recurrent part a the employer's business." Now let's look back again at the

Marchbanks case for a moment, there there we read that the other day and the Court said, You know what, our South Carolina Workers' Comp Act is most like the acts in Louisiana, Virginia, and Kansas, so the Court looked to decisions from those states, so let's take a look at cases from those jurisdictions on the maintenance and repair issue. I have a 1996 case, a federal court in Louisiana there explained that the Louisiana Supreme Court has consistently, even though its changed its analysis several times over the years, it has consistently held that the maintenance and repair work is part of a defendant's trade business and occupation, that's the *Hester* case from 1996, I have copies of these cases which I'd be happy to provide to the Court at the end a the hearing.

THE COURT: Alright, thank you, sir.

MR. GILBREATH: Uh, now let's turn to Virginia. In a 2004 case the Virginia Supreme Court said that asbestos abatement work by a plaintiff was part a the maintenance of the defendant's buildings and therefore the plaintiff was involved in the trade business or occupation of the defendant, that's the *Jones* case from 2004, and then finally Kansas. In a 1986 case, Kan, the Kansas Supreme Court held that a plaintiff doing repair work on a boiler at a fertilizer factory was a statutory employee because the boiler was part a the integral equipment necessary to keep the plant operating, that's the *Hollingsworth* case, so these cases are consistent I

submit with South Carolina jurisprudence as reflected in *Marchbanks*, *Boseman*, and *Singleton*. Uh, maintenance necessary to the smooth operation of defendant's plant is part a the trade business or, uh, occupation of the defendant and it's no, there's no question again the work Mr. Seay was doing was routine maintenance necessary to keep the plant operating. Here's where I get to the case that says their argument is illogical. Missouri Federal District Court said this of a steel company, which I would say is roughly analogous here, and I quote, "Modification, modernization and maintenance were a continuing process at the plant. Obviously in a large industrial establishment such as Sheffield's Steel, this type of activity is a necessity. To hold that the scope of the usual business there conducted is limited solely to the manufacture of steel would be illogical. Improvement and repair are an integral part a the process," so to hold that Celanese was solely, its trade business or occupation was solely limited to the manufacture of at that time Polyester Fibers, this court would say would be illogical because improvement and repair are an integral part a the business, it couldn't perform without it and that's the *Kirche* (phonetic) case from 1959 Western District a Missouri.

THE COURT: Well how did the, that the companies in *Abbott* and *Olmstead* function without transportation?

MR. GILBREATH: Well that's a good point, Your Honor, and

I want to turn now and you -- your timing is good 'cause this is a point in my argument where I wanted to turn back to *Olmstead* because I knew this -- those cases were -- are weighing heavily on your mind and I understand why you, uh, are reading them the way ya do. Uh, in *Olmstead* the Court said and I quote just briefly, Although delivery by common carrier was certainly important to *Shakespeare's* operation, it does not follow that such delivery was, quote, part or process of its manufacturing business. Well the maintenance and repair work that Mr. Seay did was part or process of the manufacturing business, it wasn't just important to the business, it couldn't operate without it. Now more to to the point to your question, Your Honor, for a long time courts have, *Olmstead* and *Abbott* were not the first time a court in this country said, You know what, we don't think transportation, uh, activities make you a statutory employee, I'm thinking back to a 1945 decision from Massachusetts where a court said the same thing, uh, and yet courts over the ensuing decades have not made the leap from that holding to saying that maintenance and repair is not part of trade business and occupation and a more case that's closer to home, uh, the *Dickerson vs. Eastman Kodak* case, that's heard from the federal court here in South Carolina, the Court, that's a 1983 case that jumped the gun on *Olmstead* and *Abbott* and in that case the Court said, No, transportation doesn't make ya a

statutory employee, and in the Court's analysis, what it said was, I think this is worth a quick review, the Court said, here's the cases that the defendants argue, uh, In its support of its position the defendant has relied on several cases where workmen have been held to be statutory employees, the Court however finds these cases to be distinguishable in that the activities performed by the workmen there were clearly identified with the principle employer's trade and business, moreover, none of these cases discusses the situation in which the activity involved transportation and shipping and the cases that the Court said were distinguishable are familiar to this court, we've talked about 'em today, *Marchbanks*, *Boseman*, and *Singleton*, so the Court, the federal court back in '83 when it did what the *Olmstead* and *Abbott* courts did, it didn't go any further, so those cases are distinguishable, *sui*, uh, transportation cases are *sui generis*, uh, but the *Marchbanks*, *Boseman*, and *Singleton* cases are all still good law or at least they don't apply here, so I think a distinction can and should be made between the transportation cases and our case, uh, as I said, courts for a long time now have made that distinction without altering the law across the board to say the same analysis that the plaintiffs want you to apply that if Celanese wasn't in the business of repairing and maintaining factories then that, we don't have a statutory employer situation, that's just not the law, we can have both

cases side by side. We can have *Olmstead* and *Abbott*, transportation doesn't count, repair and maintenance does count for purposes of the analysis and so ---

THE COURT: So ---

MR. GILBREATH: --- I ---

THE COURT: --- delivery of the product would not be part a the trade or the business.

MR. GILBREATH: Correct.

THE COURT: Well wh -- I wonder why Jeff Bezos is so obsessed with drones and ---

(Laughter.)

MR. GILBREATH: Hah, I think that's a fair question, Your Honor, uh, I don't think those drones are gonna work.

THE COURT: Might be a crowded sky.

MR. GILBREATH: Yes, sir. Uh, so that's that's our centerpiece argument for a JNOV but we have other arguments that I'd like to present today which I think are, uh, also entitle us to a JNOV, I don't know how much a my time I've used up, I'm sure the Court will tell me to shut up when it's time.

Uh, I want to touch on briefly the issue of superior knowledge. We, uh, I know the Court is familiar with that argument as we've made it throughout trial but as I know the Court knows that we have to, plaintiffs had to show that we had superior knowledge of the, uh, dangers to Mr. Seay and

knowledge superior to that of his employer Daniels and if there wasn't a superior knowledge, we had no duty to warn. The way we see it is the issue here is whether there's any evidence that Celanese knew Daniel was not going to provide Mr. Seay a safe workplace as required by OSHA and the evidence that we submit to the Court is key on this is the fact that the evidence showing that Daniel was aware of and it followed OSHA requirements regarding asbestos exposure, now stay on the plaintiff's argument and it's this, they they say, Well that's fine but you, uh, Celanese, you needed to tell Daniel that the OSHA PEL and TLV requirements were not sufficient to protect Mr. Seay against, uh, the risk of mesothelioma. Their expert Holstein said this was expressly stated in OSHA's PELs and he said that the TLV, quote, Said nothing about cancer, was only about scarring of the lungs, so we say that by virtue of its own knowledge of the OSHA regs, Daniel had equal knowledge that they were not sufficient, I mean, if it's in the OSHAs, if it's said in OSHA then we know it because we saw it, we can, you know, allegedly we knew it because it was there in writing, same would be true if Daniel had the same knowledge, that we didn't have superior knowledge so that means that there's no evidence of superior knowledge and that defense should entitle us to a JNOV.

Now pur, the third argument I wanna cover here today for JNOV purposes is punitive damages. I know I may have an

uphill battle here after reading the Court's due process analysis but it's our opinion that, uh, the plaintiffs are not entitled to punitive damages here because under our view of the law an independent contractor rather than the landowner is charged with the responsibility of preventing injury to its employees and this we would say is a fundamental rule across American jurisdictions. I know Mr. Young brought this up to the Court and I was reading the transcript and Court had an interesting comment about the Napoleonic Code and I actually was kind of intrigued by that so I did a little, uh, quick research on Google which is not to say, uh, that scholarly but, uh, I didn't find any conclusive answer to that question whether Georgia has some sort a version of the Napoleonic code and and its law but I thought it was interesting ---

THE COURT: I I'm pretty sure they do but ---

MR. GILBREATH: I'm not in a position to dispute it, I'm curious, now you've got ---

THE COURT: They do have se -- tests some influence on it, I don't, I don't know what it is, I try to stay outta Georgia.

(Laughter.)

MR. GILBREATH: Well I have to be there sometimes so I'm gonna track that down but but we still believe that's a fundamental rule across, uh, the country and I I like the way they said that, the Georgia Supreme court said it this year,

Look, an independent contractor is expected to determine for himself whether his place of employment is safe or unsafe and ordinarily may not recover against the owner for injuries sustained in the performance a the contract, well I think that li -- that same principle is embedded in the premises liability rules that were set forth in the South Carolina Court of Appeals decision in *Lanier*, course it doesn't say it that way but I think if you read it carefully I think South Carolina either will -- does or will recognize that rule so we would urge the Court to give that serious consideration that we were entitled to rely on Daniel to protect Mr. Seay so that at the very least punitive damages are not warranted here.

Now I'd like to turn to the question of remittitur, uh, and I'm gonna briefly just, I'm gonna touch on this only briefly because I know from it's true in every jurisdiction but particularly here in South Carolina, this is an issue that's committed to your sound discretion, I know from, uh, past cases that you've exercised that discretion and this is not something I need to, particularly need to educate or preach to the Court about, uh, but I do wanna say this: I believe a persuasive argument can be made that consistency and symmetry of damage awards is particularly important in the mass tort setting where the source of injury is the same product. In this mass tort setting, I would submit large variations in damage awards raise questions of outcome

fairness. I I would e -- suggest that the Court think about it this way: When plaintiff attorneys reach aggregate settlements in mass tort cases, do they just randomly and arbitrarily distribute the money to their multiple clients with some getting far more and some getting far less even though the facts of their individual claims are similar? well course not. Plaintiff attorneys typically use a matrix to ensure that settlement proceeds are fairly distributed so I would ask the Court does it make sense then for some plaintiffs in litigated cases to receive disproportionately large damage awards. Uh, in looking, you know, these remittitur cases are hard to argue so I went far and wide and I found one article that I wanted to talk to you just briefly about, it was an article by a Harvard professor, 1996 article dealing with mass torts and damages and he said, he argued that what he called "collectivized damage awards" promote individual justice. What he said was such awards, basically awards that are not too unequal, provide plaintiffs with the levels of compensation that they would rationally select on their own if they were to choose a system, compensation system from behind a veil of ignorance so; in other words, if asbestos plaintiffs didn't know how their own cases were gonna turn out, they'd choose a system that compensates plaintiffs with similar claims consistently and roughly equally. Alright, so we have provided the Court with numerous examples

of damage awards in mesothelioma cases that are lower, some instances much lower than the damages that were awarded here and yes, I will concede there have been higher, even much higher damage awards but I'd sub -- would submit that those are outlier verdicts, so the comparison cases we provided the Court suggest I would submit that the jury was unduly liberal in its awards here and I know the Court is well aware that that's the standard here, it's just whether the awards were unduly liberal and yes, I believe they were, uh, based on the comparison cases we submitted and I'm not, ya know, I don't, I, sometimes when you argue for remittitur, uh, and I know it won't happen here but the plaintiff attorney wants to portray the defense attorney as heartless and cold and unfeeling, that I hope that the Court doesn't feel that way, I've suffered my own loss a my father at age 44 when I was 15, uh, I know how painful that can be, uh, but our system, uh, our judicial system can only compensate for injured feelings and emotions and and sadness to a certain extent and we we cannot give each plaintiff the perhaps tens and twenties and thirties of millions a dollars that some might say would compensa -- they ought would be enough to compensate for those losses. What we have seen from the comparison cases is that, uh, the numbers in this case oughta be remitted and we have suggested survival damages from 2 million to 1.5 million, wrongful death and loss of consortium damages from 5 million each to 1 million each

and we have argued to the Court that because of the reason I gave a moment ago, punitive damages if awarded at all ought to be reduced to $50,000 'cause we were entitled to at, to expect that Daniel would protect its own employees.

And the final point I wanna cover is under our motion for new trial. The, and this issue I know was, uh, dealt with at trial and that is the jury instructions, we think the Court ought to order a new trial because we say that the jury was not properly charged on premises liability law, we say that the Court should only have instructed the jury under the *Lanier* case that the plaintiffs had to prove that Celanese's knowledge of hazards, of the hazards of Daniel's work with asbestos was superior to that of Daniel's, uh, and the reason we've made that argument is Mr. Seay was the employee of an independent contractor with expertise and experience in handling allegedly dangerous conditions on the premises and let me add that the, I understand that, uh, Celanese supplied the asbestos products that were used for insulation, they were in our storeroom as is my understanding a the facts but those products were, uh, essentially inert as they said in the storeroom and did not become allegedly dangerous until Daniels' employees, Daniels and its employees got those products and used them and we know, I believe the evidence shows that Daniels was an expert with respect to these types of, uh, activities and as we said had at least equal knowledge

of the dangers of asbestos, so that fact taken together with Daniels' status as an ex -- as a expert independent contractor lead us to believe that the jury should only have been charged under under the *Lanier* case, that the other instructions that do not, that are more general premises liability instruction should not have been given. Now the plaintiffs say we waived that complaint, uh, but we didn't, we objected after the, uh, charge was read to the jury which is when you're supposed to do it under, uh, South Carolina law, they've cited in their response a colloquy where Mr. Young said, uh, Fine, fine, fine, let's get along with it, I'll agree, uh, but I think if you read that carefully he's saying, Let's -- I -- we don't want us to be here all night, let's not argue, I'll make my objection at the proper time.

THE COURT: Well that m -- course the record'll stand on its own but, uh, I read that, uh, too and the motion or response in motion and, uh, you know, our state has, uh, fairer preservation rules and waiver rules, I see Mr. Brown back there, he can probly recite 'em in his sleep but, uh, my memory of that was Mr. Young who I thought did a fine job did argue, uh, vehemently about this particular issue, this is what his main focus was in terms of jury, uh, charge conference and I do recall that he, uh, uh, made the statement that is in the record but he immediately walked from where you're standin' over to court reporter and gave her a copy of

his request to charge which he wouldn't have done if he was goin' to, uh, capitulate on that issue so, I mean, that's up to the appellate courts if it gets that far but, uh, that's my memory just to put it in context.

MR. GILBREATH: Thank Your Honor, so, uh, that would conclude my arguments on the motion for a new trial and all of my arguments really. I just wanna conclude by urging the Court, uh, to think about, uh, the statutory employer issue, that the distinction between the transportation cases and the maintenance cases and how I think the most salient point I've tried to make here today is that for a long time now courts have said transportation no, but they haven't as a result said that same rule applies to maintenance and repair. I think that perhaps the best local example of that is the *Dickerson vs. Eastman Kodak* case, it's 5, let me get my glasses out, 569 Fed Supp 1221, 1983 from, uh, uh, Columbia Division District South Carolina where the Court said, Yeah, transportation no, but I'm distinguishing the *Marchbanks*, *Boseman*, and *Singleton* cases 'cause they are different, I think the two can coexist now and I would urge the Court to, I would hope I can get the Court to come around to the same view. Thank your for listening, Your Honor.

THE COURT: May I ask ya a question, Mr. Gilbreath?

MR. GILBREATH: Yes.

THE COURT: So what evidence is there about Mr. Seay's

workers' compensation claim against Daniel?

MR. GILBREATH: I am going to have to ask my co-counsel for the answer to that if it's alright, Mr. Collier.

THE COURT: Yeah, sure.

MR. COLLIER: Sure, Your Honor.

THE COURT: Mr. Collier, yes, sir, good to see ya.

MR. COLLIER: Good to see you. Uh, my understanding is is that he did not file workers' compensation claim against Daniel and that's ---

THE COURT: I mean, is there anything in the record on now?

MR. COLLIER: No, there's not.

THE COURT: Okay.

MR. GILBREATH: Uh, Your Honor, if if we have any minutes left, I, uh, there was one issue that's before the Court on a motion to compel, uh, settlement agreements far as a setoff, I, if I've used all the time then we'll -- I'll sit down and will be quite, otherwise, Mr. Early may have something to say about our ---

THE COURT: Uh, ---

MR. GILBREATH: --- request for that.

THE COURT: --- okay, let let me just, let me just ask you a couple more things while you're ---

MR. GILBREATH: Oh.

THE COURT: --- you're up there if you don't mind.

MR. GILBREATH: Okay.

THE COURT: Uh, what I'm curious about this Statutory Employer Doctrine, uh, is wa -- I mean, was there evidence that Celanese had a maintenance division? My memory was that that the, uh, motion to dismiss, uh, that essentially they conceded, they did not?7

MR. GILBREATH: Uh, that that it's basically true, Your Honor, but I think the Court should not overlook and should give weight to the fact that I think after Mr. Seay's tenure we did hire Daniel employees to do this work for us so it's something that we could have done with our own employees and eventually did and then I wanna reiterate the many cases I cited: *Singleton*, uh, *Boseman* and there may be one other where the Court said it doesn't matter, uh, whether they did it with their own employees or not, uh, that's just not a important portion of the analysis ---

THE COURT: Okay.

MR. GILBREATH: --- so . . .

THE COURT: So my understanding from the cases, uh, and I, I don't recall if *Marchbanks* says this or not but I know the earlier cases that developed this doctrine or it it had originated with stated that the purpose of the Statutory Employer Doctrine was to give a double layer protection to employees, uh, how does this further that, uh, purpose?

MR. GILBREATH: Well I think it does for this reason,

Your Honor, and I've thought about that too a lot because I noticed that you were focused in your summary judgment or -- order on sort of the overarching purpose of this whole rule and, uh, and I, that the best example I could come up with and still a little half-baked is a situation where, uh, let's say a company like Celanese decides, uh, if the plaintiffs are right about the law then that means we can hire people to come and operate our pl -- do certain operations at our plant from some shady contractor who doesn't buy comp and we won't be on the hook as a statutory employer, uh, so when the employee is injured they won't have any workers' comp coverage. I see you're quizzical ---

THE COURT: I'm not ---

MR. GILBREATH: --- look ---

THE COURT: --- follow -- I'm not followin' that, I mean, ---

MR. GILBREATH: It, well I, well I think it's, it would work this way: Uh, whenever a a factory owner let's say is not going to be considered a statutory employer, that puts the onus, if the, if the employee is to have comp coverage, which we all know the benefits of comp coverage, right, it's no fault basically, ---

THE COURT: Right, yeah.

MR. GILBREATH: --- you don't have to go to court to litigate, uh, what if the contractor doesn't, it's a shady

contractor, they don't provide comp coverage, well then what happens, I mean, the employee and can't get it from Celanese or the factory owner so I think if we meant the whole purpose behind this provision in the statute was to make sure that somebody like Celanese was there to step in and fill the gap if the contractor was not providing coverage.

THE COURT: Well that would -- that was the whole idea behind ---

MR. GILBREATH: Yeah, ---

THE COURT: --- and so ---

MR. GILBREATH: --- so ---

THE COURT: --- this is kind of a perversion of it, isn't it? I mean, it's it's the other way around, its purpose is to increase coverage for workers instead of increasing liability protection for employers.

MR. GILBREATH: Well I learned somethin' yesterday in doin' all this, this my first statutory employee case, we don't really have this where I'm from in Texas so I over the last few weeks have learned a lot but, uh, the courts that in some jurisdictions call that is this a right-side up case or an upside ---

THE COURT: I ---

MR. GILBREATH: --- down case, I don't know if you heard that but that up ---

THE COURT: No, I haven't heard that.

MR. GILBREATH: --- but up, an upside down case is where the employer's, uh, invoking the exclusivity ---

THE COURT: Right.

MR. GILBREATH: --- bar and a right-side up is where the employees say, Hey, no, you're my employer, uh, and the courts say, Doesn't matter whether it's a right-side up case or an upside down case, uh, where the same analysis is going to apply.

THE COURT: Well I can see that, I don't know why it would matter either but it, uh, it it may, I don't know. If it, if it, if the idea of it is to, uh, further a purpose that's been, uh, acknowledged for decades in our law, uh, I don't know if doin' it upside down furthers that purpose, you understand what I'm saying, ---

MR. GILBREATH: I do, I do ---

THE COURT: --- but I don't know the answer to that analyses.

MR. GILBREATH: --- I do and the the only thing I can say is when I dug into this is, uh, I found so many cases that say, Look, if it's routine ordinary maintenance, it's not specialized, that's statutory employer in case after case, especially in Louisiana where this doctrine, uh, is particularly, uh, robustly endorsed, like I say if -- and we don't have it in Texas so I wasn't familiar but, uh, when I found case after case in Louisiana saying this is black letter

law and then other cases I've cited too from other jurisdictions as well: Virginia, Kansas, ---

THE COURT: Right.

MR. GILBREATH: --- uh, so ---

THE COURT: Well that's why I was curious about Mr. Seay's, uh, actual claim, uh, under the Workers' Comp Act. Uh, if, I mean, if if an employee had successfully made a workers' comp claim against Daniel for instance in this situation, could Celanese still come in and argue the statutory employer?

MR. GILBREATH: Based on my understanding yes, we would have to, uh, reimburse, the law is that we would have to reimburse Daniel's comp carrier.

THE COURT: Okay. Alright, thank you very much for your arguments. Mr Early, be glad to hear anything you wanna ---

MR. EARLY: I do, ---

THE COURT: --- say ---

MR. EARLY: --- Your Honor, but I didn't know if you wanna let the plaintiff respond to those motions or mine will be very brief but I ---

THE COURT: Yeah, why don't you just go ahead.

MR. EARLY: Sure.

THE COURT: Glad to have ya here.

MR. EARLY: Thank you, Your Honor. Your Honor, we've got a motion, uh, well I believe we've got an agreement on the

setoff issue at least ---

THE COURT: Okay.

MR. EARLY: --- but we do have a motion to compel the settlement documents and we at a minimum would ask the Court to review those, we don't have any way to verify those numbers, uh, I think prior to the hearing these guys conceded that the Court, they would allow the Court to review what they have in camera, I don't know what they have, Mr. Panatier used to tell me that the documents don't even have numbers on them so we would like some way to verify that. Uh, I was, if this was a wreck case obviously and there were medical bills, you know, we would be able to look at those, uh, I think the number that they gave the Court and put in their brief is one million two hundred fourteen thousand somethin'. We we believe we're entitled to look at those, uh, we're glad to enter into a protective order that we could agree to to define the parameters and what we could do with those numbers or documents, uh, and the other issue's bankruptcy trust, I know they said that they haven't filed any and don't intend to file any I believe is the language they used and if that's the case and they say that as officer of the Court that's fine, uh, we believe that if there are bankruptcy trust dollars available that we should be able to step in the shoes of the plaintiff and file those ourselves, uh, because any future recovery would also apply to a setoff. As the Court's aware both

equitably now under the statute that, you know, recoveries that they -- that it's to to preclude a double recovery so ---

THE COURT: Okay.

MR. EARLY: --- bankruptcy trust documents, if there aren't any, that's fine, we believe that we would, we should be able to step in the shoes of plaintiff and do that ourselves, uh, and at a minimum we would ask that Your Honor look at the, whatever settlement documents are out there to verify that number and I don't think those are outlandish requests by any means.

THE COURT: Alright, ---

MR. EARLY: Thank you.

THE COURT: --- thank you, sir.

MR. GILBREATH: Your Honor, may I approach with the cases I promised?

THE COURT: Yes, sir, Mr. Gilbreath.

(Whereupon, counsel handed the documents to the Court.)

MR. GILBREATH: Thank you.

THE COURT: Thank you very much. Alright, Panatier, ---

MR. PANATIER: Sure, uh, ---

THE COURT: --- Ms. McVey.

MR. PANATIER: --- good morning.

THE COURT: Good morning.

MR. PANATIER: Uh, so I'll I'll just kinda go in order and I guess the statutory e -- statutory employee, uh,

argument would be irrelevant to Hammett too although I guess we're not technically on Hammett but it's the same issue. Uh, we argued all a this out, I think I would just like to make a few observations about this which is, you know, *Abbott* and *Olmstead* which important to sort of change the jurisprudence on the issue from whether or not a contractor's activity was integral or important to whether or not it was in the line of work that the, uh, owner was doing. At no point do they state this holding only applies to transportation cases or extre -- extraordinarily basic services being provided to the employer or the owner, they don't say that and what I think is interesting is *Ewing* is 2010, so *Ewing* comes out and *Ewing* actually found that the plaintiff was a statutory employer on the grounds that DuPont the, uh, premises owner had their own maintenance and construction division. At no point do they come out and say We're over, you know, we we are throwing away *Abbott* and *Olmstead*, we're not considering those, those were only transportation cases, so really you got, you do have two cases that are right on point, you got *Raines* on one end and you got *Ewing* on the other and *Raines* on the one end is saying, Look, if if the the owner wasn't engaged in regular construction and maintenance activities then you don't have, then that's not part of their their work. In ---

THE COURT: Is *Raines* the one that was, uh, Judge Sanders?

MS. MCVEY: Yes.

MR. PANATIER: Yeah.

MS. MCVEY: Yeah.

THE COURT: Just wanna as a footnote 'cause I think this oughta be on the record, uh, when we had the hearing on that, I think I quoted Judge Sanders, uh, that mornin' right before the trial and I made the ruling and coincidentally I went to lunch that day and I ran into, uh, Zoe Sanders who was up here for a funeral in Spartanburg for some reason and I told her that I'd just quoted her dad and after I quoted her dad the other side immediately appealed.

(Laughter.)

MR. PANATIER: And it's tr -- that is true.

(Laughter.)

THE COURT: Thank you for verifying that.

MR. PANATIER: That did happen ---

THE COURT: I wanna make sure ---

MR. PANATIER: --- uh, ---

THE COURT: --- that ---

MR. PANATIER: --- uh, ---

THE COURT: --- and ---

MR. PANATIER: --- but but ---

THE COURT: --- Mr. Brown can report back that that did in fact ---

MR. PANATIER: That's ---

THE COURT: --- happen.

MR. PANATIER: --- right, uh, so so I think, I think *Abbott* and *Olmstead* that that they don't limit themselves transportation cases, uh, and *Ewing* doesn't distinguish them and say those are only transportation cases, they actually used the analysis from *Raines* and it's consistent but in one hand the the owner was engaged in the maintenance activities and thus they found that the contractor employee was a, uh, was a statutory employer and in *Raines* you've got the other side of it so I think Ewing and Raines actually provides you both sides a the spectrum on the issue and I I certainly believe the Court has it correct on that issue.

Uh, going to the next point which is the superior knowledge, so we have to make sure we're talking about this in the right way. Fir -- first of all, I do believe that that Celanese agreed to the premises liability instruction but even if they didn't it's -- that's the law. Uh, if anything, the superior knowledge doctrine where you had two to three levels of a an independent contractor and a subcontractor and then a third party getting injured in some a those cases, if anything those would be a a add-on or an exception to the, to the general rule and you can put, you can phrase it either we had the burden to to show Celanese had superior knowledge or if Celanese had superior knowledge, they -- their responsibility to their duties can be vitiated. I think under *Lanier* and

those cases we looked at during the, uh, during the charge conference that there's actually an argument to be made that it all comes back to the, to the by premises owner anyway but, uh, their argument seems to be Daniel knew about OSHA, we knew about OSHA, at worst it's a push so the plaintiff should lose. Uh, I don't think that is an accurate summation of the evidence at all, uh, Mr. Buck came here, uh, as the corporate representative from Daniel and I actually confronted him with all of the, certainly not as long as I took with Mr. Bowyer but I confronted him with the different types of information that we knew Celanese had and had admitted to having and I said, Did you know this, did you know this, did you know this, and the answer to every question was no and on the issue of the PELs it was Dr. Holstein who said, Look, the PELs were never intended to protect against cancer, that statement is not in the OSHA publication, what it says is we understand that cancer may occur at lower exposures, that's what it said, but what Celanese had was a document; one, they had a man at the Selikoff conference in '64, uh, where it said, We don't think that PELs are protective; two, they had a 1970 document from Union Carbide that they received that said PELs aren't protective and I asked Mr. Buck about both, I said, Did Daniel know that, and he said, No, we had no idea, we just thought if we followed OSHA we would protect the workers, so what you have on the one hand is you have Daniel who says, We we had,

we we knew about OSHA, and on the other side we have Celanese who has OSHA, the New York regulations, the Texas regulations, the Industrial Hygiene Foundation, dozens and dozens of articles, the National Safety Council, you have their corporate industrial hygienist Mr. Laubly admitting to knowledge of asbestos hazards as of 1949, you have Dr. Ernest Dixon who went to the conference in 1964, the Selikoff conference and was a session chairman, uh, and then you have on top a that the two plus hours of internal corporate documents that I crossed Mr. Bowyer with showing their different, the different levels of knowledge and also showing in fact that in 1977 they said, We don't believe there is a safe level for carcinogens, all those were during the period of time that Mr. Seay was still working there and then; lastly, on the issue of punitive damages, two million in the context of these cases is extraordinarily modest, uh, and it's extraordinarily modest when compared with the compensatory damages in the case as well, two million dollars, and one of the things that the jury was told to consider is the whether or not there was concealment. We know that in 1963 the president of the company, it was one a the documents we offered into evidence, the president of the company said, If you're going to make a hazard, safety or hazard determination for a chemical, don't put it in writing, you speak only orally about it because we could get in trouble in litigation, and

then we have Mr. Bowyer who actually took the stand and was an author in I believe it was the s -- at, uh, early 1980s of a memo that said, We do not have to interpret results of monitoring that we take for the po -- the folks who are exposed to different chemicals and different ---

THE COURT: But ---

MR. PANATIER: --- hazards.

THE COURT: --- which one a those memos was, there was evidence that it was not to be copied and kept in the counsel's office?

MR. PANATIER: That was exhibit, I think it's 8, it's either 821 or 812, fact I have the number. Uh, that was 1963, uh, --

THE COURT: So that was the ---

MR. PANATIER: --- signed by the president and that was, yeah, that was the one, that was the one we actually offered into evidence and so you've got that policy set very early by the president and then what we did is we went through the 1970s and even into the 1980s and we showed how that general policy was still being employed. In the 1970s we had an interpretation memo, uh, from another man and then in the 1980s Mr. Bowyer had one where he said, Look, we don't have to interpret any results for our employees, uh, so you can give them the number and say you've been exposed to a hundred decibels or you've been exposed to five fibers per CC or

whatever but we don't have an obligation to tell you what that means and so that's one of the considerations that the jury had, another one they had was duration of conduct and so you have the duration a Mr. Seay's employment which is ten years, uh, and, in fact, I suggested to the jury a number for punitive damages that would have come to six to seven million dollars, uh, and they came in way lower, uh, and and I said, Look, that that would have been, uh, anywhere from, uh, two hundred to seven hundred thousand dollars per year the way I did the math, the way I suggested the math and they they came in much lower than that. Uh, I think it's a, it's a modest number when you consider the breadth of Celanese's knowledge but also the actions, remember, a big part of this was contractually, Mr. Bowyer admitted this, they had an obligation to audit Daniel's safety and hazard policies and whether or not they were actually being implemented. This wasn't a sole responsibility-type thing, contractually Celanese said, You have to follow our safety rules and we're going to be auditing you, so and I told the jury at the end, I said, Look, we know Daniel wasn't doing it and we're not gonna argue they were but we also know Celanese wasn't pulling up their end because they were supposed to be auditing him and; lastly, the policies that Celanese put in place right after Mr. Seay left in 1981 and then later 1990, it was Mr. Bowyer who did it, was that contractors weren't to touch asbestos at

all and that Celanese would flag it and make it very clear contractors don't touch it and I asked Mr. Bowyer, I said, You coulda done that in 1972, as soon as OSHA came out you could've done that, he said, Yeah, we could've, and I said, Why, and he didn't have a reason, he didn't give a reason, that the only reason he gave for not going through the plan and sampling was, and I did a double take on this, he said, You didn't want to go take samples of the asbestos because it would cause asbestos exposure because I, Mr. Bowyer, a certified industrial hygienist would drill into it and take a core sample like they do in Antarctica, and so that was his reason for not doing bulk sampling and I said, Well, why don't you do it when the guys are actually removing asbestos and doing their work, he didn't have an answer for that, so Celanese had all the knowledge, they had far more knowledge than Daniel, they had the knowledge of the different policies that actually could've put the contractors at lower risk. In 1962 we had a memo that one of their plants the contractors were invited to the safety meetings for Celanese at one of their plants but none at this plant, of course Mr. Bowyer acknowledged they were all the same corporate entity, they were just different divisions. On the remittitur, so so on the remittitur of pun -- punitive damages, Your Honor, I think there's ample evidence, uh, of their knowledge, their conduct, uh, the the broad theme of concealment. Uh, he admitted, We

could have put up signs, we could have tagged that stuff but we simply did not do it, and that woulda been beneficial to the contractor. I asked Mr. Buck, Would that have been beneficial to you and your employees and he said, Yeah.

Uh, on the issue of -- oh; lastly, it has been repeated through, uh, through the case and now here again where Celanese has repeatedly said Daniel had all this knowledge, they specialized in this work, they specialized in construction, they specialized in maintenance but it was Mr. Young who kept repeating at trial regardless of it its absence in the record that Daniel was an a -- asbestos abatement contractor, we were not. I asked Mr. Buck, Were you an asbestos abatement contractor, he said, No, we were not, we used whatever they gave us and that's what we put in and certainly that doesn't take away the fact that they had some responsibility, I said that throughout the trial, but this is not an issue of sole responsibility, uh, and on the motion to compel, we, we're officers of the Court, uh, we've, uh, disclosed that, uh, the total recovery was one million two hundred fourteen -- one million two hundred fourteen thousand dollars, uh, that's the offset that should be applied against the compensatory damages, obviously punitives don't have an offset, uh, and related to that we've asked for a very very small amount of costs, we -- uh, Your Honor has our motion, I I attached an affidavit with, uh, our receipts, uh, that's

three thousand forty-seven dollars and fifty cents, uh, so we'd like that added on I think. The judgement we're asking for, Your Honor, would be ten million seven hundred eighty-six thousand in compensatories, that's after the offset, plus two million in punities, punities -- punitives, plus three thousand forty-seven dollars, uh, the total would be twelve million seven hundred eighty-nine thousand forty-seven dollars and I'll just say this about, uh, there was a a broad argument made about the damages in the case, uh, Your Honor, obviously had the *Garvin* case where you exercised your ability to, uh, remit portions of that for various reasons. If Your Honor, uh, would like us to compare the two, we did it in our, we did in our paper, I think that this case, the damages in this case were, uh, were very well-documented, uh, there's a lotta differences between this case and *Garvin*, you had more heirs, this was a death case so we knew the full breadth and length the disease and how it affected Mr. Seay, I'm I'm open to any questions if you have any questions, Your Honor.

THE COURT: Your closing argument with the, uh, red flags, uh, how many flags did you put out, do you remember?

MR. PANATIER: I think it was, I think it was a little over three dozen, I think it was about forty to forty-two flags.

THE COURT: And those were to, uh, mark, uh, articles and other information that would show Celanese's superior

knowledge?

MR. PANATIER: That's right, uh, ---

THE COURT: The jury could infer that?

MR. PANATIER: Yes, I mean, I went through each, I went through each document that I crossed Mr. Bowyer with, uh, establishing that and and in in my, uh, to try to speed it up, I I repeatedly didn't even put out all the flags for each article but I had three or four dozen flags out there. I've since ---

THE COURT: Alright.

MR. PANATIER: --- lost those flags, I don't know where they are, they got shipped back allegedly and now I'm really upset because now I have to make new flags.

(Laughter.)

THE COURT: Alright, thank you very much, sir. Any further argument, ---

MR. GILBREATH: Uh, Your Honor, I just, ---

THE COURT: --- we're about to ---

MR. GILBREATH: --- in about ten seconds I'll ---

THE COURT: Yes.

MR. GILBREATH: --- just say we really urge the Court to carefully consider that the, uh, transportation cases and the maintenance cases can coexist, I wanted to say if you, uh, if you arrive at the contrary conclusion, that would be a Seay change in the law but I know that's not a very funny attempt

at a pun and I didn't mean it that way, uh, but it would be a drastic change in the law to say that those two cases can't coexist, uh, and that's all I have to say on that. Thank you, Your Honor.

THE COURT: Thank you, sir.

MR. EARLY: Your Honor, briefly may I be heard just on the motion a cost very briefly. I think they included and and we did in our responsive brief the -- they they included with their filing fees all a their pro hac, I think their, what their affidavits show was that out of the one thousand one hundred seventy-seven dollars and fifty cents of filing fees that actually eight hundred twenty-five a those were with regards to pro hac motions, etcetera and they also included service a process fees of one thousand eight hundred seventy dollars only of which sixty-five, uh, is attributed to service a process to Celanese, if you take those two numbers, we believe that their motion for cost should only be about four hundred and seventeen dollars and fifty cents. Thank Your Honor.

THE COURT: Yeah, those costs are always tricky 'cause we don't have much guidance on what's recoverable or not. Only thing we really have is that *Roche* case which is based on some old rules, uh, but I'll look at it and let you know my decision. As to the motion to compel, I'll be glad to look at the documents in camera, uh, and, uh, the other motions I'll

take under advisement, let you know my decision as soon as I can.

MR. EARLY: Thank you, Your Honor.

THE COURT: Thank you for your ---

MR. GILBREATH: Uh, Your Honor, ---

THE COURT: Yes.

MR. GILBREATH: --- on the, uh, on the, uh, in camera review so I have on my computer I've got all the releases, the -- for some of them I may have to provide a a another letter in addition to that 'cause for some reason I don't know why some companies when you -- when they give you their proposed release, you may settle with 'em for a hundred thousand dollars and the release says in consideration of one dollar. I I've never understood that, I don't know why they do that but so some of the releases you're gonna get if you just added up the releases it would be actually considerably less than the 1.2, uh, 1.2, uh, 14 is the actual number so what I'll try to do is provide Your Honor with the releases where it says the amount and then like confirming letter with opposing counsel on the other ones where it doesn't say the amount in the release so that's what you're getting if you say why is this letter here. The letter's there because the release doesn't mention it and the defendant doesn't want it in there.

THE COURT: I I'd be willin' to bet that they don't say

like sometimes you see in deeds one dollar in love and affection.

(Laughter.)

MR. GILBREATH: Ju -- they do not say that.

(Laughter.)

MR. GILBREATH: Uh, ju -- I think there's there's Hammett too but I I assume that's addressed.

THE COURT: Yeah, Hammett we got.

MR. COLLIER: Oh, ---

(Indiscernible cross-talk.)

MR. COLLIER: --- are you ready?

THE COURT: Yes, sir, ---

MR. COLLIER: You're ---

THE COURT: --- go ahead.

MR. COLLIER: --- with that?

THE COURT: Mr. Collier.

MR. COLLIER: Yes, Your Honor, thank you and I'll be, I'll be brief because some of this has already been covered and understanding the the time limitations and the fact that you've already heard a lot of this law this morning. Uh, under the *Glass v. Dow* chemical criteria Celanese would submit that it meets either the first or the second test, that the activity performed by Mr. Hammett was an important part or a necessary part of Celanese's business such that any doubt as to Mr. Hammett's status is to be resolved in favor of coverage

under the act. Uh, Mr. Hammett was employed by Daniel to perform new construction expansions at Celanese between 1971 and the mid 1970s and he worked as an insulator helper ordering materials and assisting insulators and pipe fitters. According to his own testimony, quote, Daniel paid me but I worked for Hoechst. Under the contracts between Celanese and Daniel, Celanese was obligated to pay the cost of the workers' compensation coverage on all of the construction workers including Mr. Hammett which is something you heard about earlier today and have heard previously. Uh, the expansion work that Mr. Hammett performed was an important and necessary part of Celanese's business because according to Mr. Bowyer, based on customer demands, Celanese had to expand production and to do that they would hire Daniel to come in and construct the expansion including insulation work that Mr. Hammett performed. Uh, Mr. Hammett testified that Daniel was hired because of his expertise in performing insulation work and that the work Daniel performed was necessary for Celanese's business to operate and during construction projects like this all of the insulation materials that were used were delivered to a Daniel warehouse on site where they were stored and available for employee's, Daniel employee's use such as Mr. Hammett, that's according to Mr. Bowyer. Uh, Mr. Hammett testified that once Daniel finished working on the new construction of a pipeline Celanese would place that line

into production and so the insulation that Mr. Hammett was assisting installing was necessary both from a worker protection standpoint and for the plant's ongoing operation as both Mr. Hammett and Mr. Bowyer testified to and Mr. Hammett agreed that the plant would not have been able to continue to operate and function without the insulation work that Daniel employees including himself were performing and; finally, with respect to the work that Daniel was doing on site, uh, Daniel had had control of the areas in which they were working, Celanese, uh, only had supervision and acceptance, uh, of the final product. Uh, Your Honor, earlier today the the *Boseman* case was discussed, uh, and it's also mentioned in our, in our motion in this case and that case found that a subcontractor who was injured, uh, on the job was the statutory employee of Pacific Mills. Like the painting of the tank in the *Boseman* case for fire protection purposes, the installation of the insulation on the piping systems at Celanese by Mr. Hammett was a safety measure that was necessary for Celanese's continued manufacturing operations and insulation of the piping and equipment was necessary for Celanese to continue its business and expansions of its facilities were necessary to meet the customer needs according to Mr. Bowyer. Uh, the Fourth Circuit analyzed the *Boseman* case in *Blue Ridge Rural Electric Cooperative v. Byrd* and stated that, quote, It would defeat the purpose a the act to make the prime mover of an

enterprise liable to pay compensation for injuries suffered in the work of maintenance or repair whether he is negligent or not but to exempt him in the more important and extensive field of new construction, for the same reason it cannot be held that an owner is not obliged to provide compensation for injuries incurred in the course of construction work performed on his behalf as part of his business if he customarily lets the work out to independent contractors and does not perform it himself. Uh, and that language was cited in a subsequent Fourth Circuit case of *MacMullen v. South Carolina Electric & Gas* where the construction contractor was also found to be a statutory employee of the premises owner and other courts have made similar findings, uh, such as the Western District of Missouri in a case that, uh, Mr. Gilbreath addressed earlier today, the *Kirche* (phonetic) *v. Sheffield Steel* case which involved a contractor performing construction expansion work at a steel mill and although the purpose of a steel mill was obviously to manufacture steel, the Court stated that, quote, To hold that the scope of the usual business there conducted is limited solely to the manufacture of steel would be illogical, improvement and repair are an integral part of the process, and even in the *Raines* case which Your Honor relied upon, uh, in in Seay and whi -- which has been addressed, uh, at length here today, that case states that each case must be decided on its own facts, uh, and and Raines involved more

limited work that was related to the installation of an electrical system in comparison to the multiple year, multiple years of work that Mr. Hammett performed here to expand the Celanese plant and according to Mr. Bowyer the Celanese plant was constantly under construction and expansion, uh, during the late 1960s and throughout the 1970s and the Daniel Construction contracts that we've, uh, that we've produced, uh, support that, support that finding and even *Raines* concedes in its analysis, uh, that such an ongoing program of construction delegated to a contractor may be considered part of its trade or business. Uh, you've already heard about the the workers' compensation issue, uh, but Celanese was was obligated, uh, under these contracts in the Hammett case, uh, to reimburse Daniel for its workers' compensation coverage just like it was with the, uh, maintenance folks like Mr. Seay and that's consistent with Mr. Bowyer's testimony, uh, ---

THE COURT: Wasn't ---

MR. COLLIER: --- in in ---

THE COURT: --- wasn't there evidence ---

MR. COLLIER: --- both cases.

THE COURT: --- that they didn't do that in ---

MR. COLLIER: I'm sorry?

THE COURT: Wasn't there evidence that they didn't in fact do that?

MR. COLLIER: Well I think, I think what you're referring

to is that the policies that we have been able to locate to date started in the late '60s before and during the time that Mr. Seay and Mr. Hammett started working there and then there, you know, admittedly there's a period of time in the middle where we've been unable to find the actual policies that were in place then there are policies that are in place again starting in the mid to late 1970s and and going going ---

THE COURT: Okay.

MR. COLLIER: --- on from there. Uh, so so, Your Honor, uh, Celanese would submit that Mr. Hammett is a statutory employee of Celanese thus conferring exclusive jurisdiction to the South Carolina Industrial Commission, uh, any doubt, uh, is to be resolved in favor of coverage under the South Carolina Workers' Compensation law as held in the *Adams* v. *Davison*, uh, *Paxon* case, uh, and thus Celanese would request that Court grant its motion to dismiss under 12(b)(1) or 12(b)(6) or in the alternative motion for summary judgment. Thank you ---

THE COURT: Thank you ---

MR. COLLIER: --- Your honor.

THE COURT: --- very much, Mr. Collier. Panatier.

MR. PANATIER: Just briefly, uh, so so there is new construction in this case and that was, ten minutes ago that was the distinguishing factor for *Raines*, so Celanese has told the Court, Look, *Raine* was only new construction so it doesn't

apply to Mr. Seay but here where Mr. Hammett did new construction they're still asking for summary judgment saying that he was a statutory employee. I don't think it's an important distinction whether or not it was new construction or or maintenance contract, what's important is *Ewing* in 2010 that says, If this was something the company did, uh, they had a maintenance division or whatever, then you can have a statutory employee finding, if it's not something they did then you don't, and I think that's the cru -- that's the cleanest way to look at *Raines,* then the additional reasoning in *Olmstead* and *Abbott* and then *Ewing*. Uh, there is a 5.5-year, 5 1/2-year gap, uh, of coverage, uh, so I, look, I I I appreciate that Celanese wants to say we we were a responsible company and we had that coverage but there's a 5-year gap from November of 1972 until May of 1978, right in the meat of both of these men's employment, uh, with Daniel out there.

THE COURT: Now ---

MR. PANATIER: Uh, ---

THE COURT: --- is there any evidence about the Mr. Hammett's, uh, workers' compensation claims if any?

MR. PANATIER: Nothing's been filed. Uh, and then, Your Honor, I really don't, I I can just repeat myself, I won't do that, uh, do -- does Your Honor have any other questions? Okay.

THE COURT: No, sir. Alright.

MR. COLLIER: Your Hon -- Your Honor, the only other thing I would add is that I think under the, uh, 42, it's either 42-11-70 or 42-12-50, uh, I believe Mr., uh, Hammett still has until some time in January to file a workers' compensation claim which we we have disagreements with plaintiffs as to whether he can or not but under the statute we would submit that he's able to until some date January of '16.

MR. PANATIER: And can I just ble -- briefly address that, Your Honor?

THE COURT: Sure.

MR. PANATIER: Just very briefly. We we did argue this a little bit last time with Seay, uh, it was not, uh, one of the factors Your Honor considered in your, in your order at least but the -- it -- we argued there and we would argue here too that there is, that any claim for a, uh, disease such as asbestos-related diseases that are latent have to be filed two years after the exposure and then there's a 2-year statute a limitations for that, that if we were to go in front of Workers' Compensation Commission and ask for compensation in this case, we wouldn't get it and it's on all fours with the *Truax* case which we, which we, uh, provided in our responses to the Seay motion and this motion.

THE COURT: Thank you. Alright, well thank ya'll very

much for your arguments ---

MR. PANATIER: Thank Your Honor.

THE COURT: --- we appreciate ya'll, uh, squeezin' it in based on the criminal docket I gotta take care of. Thank you.

MR. GILBREATH: Thank you, Your Honor.

MS. MCVEY: Thank you.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

ANGIE D. KEENE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DENNIS SEAY, DECEASED, AND LINDA SEAY,
PLAINTIFF,

vs.

CNA HOLDINGS, LLC, AND JOHN CRANE INCORPORATED,
DEFENDANTS.

COURT OF COMMON PLEAS
2013-CP-23-03915

ORIGINAL

TRANSCRIPT OF RECORD

VOLUME I

September 28, 29, and 30, 2015
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE; and a jury.

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I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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MONDAY, SEPTEMBER 28, 2015

THE COURT: Good morning -- actually, good afternoon. I apologize.

Okay. We've got some motions in limine.

Are y'all ready to tackle that?

MR. COLLIER: Yes, Your Honor.

MR. PANATIER: Yes, Your Honor.

THE COURT: All right. Which one is first?

MR. PANATIER: As the Plaintiffs, Your Honor, we have just one that we'd like to address, if that's okay.

THE COURT: Yes. Go ahead.

MR. PANATIER: The rest of ours are all deferred. I think we'll be able to take them up issue by issue, if it comes up.

But the only one that needs to be addressed is we have a motion in limine to exclude any reference that smoking could cause or contribute to mesothelioma in any way. Now, this is a pretty cut-and-dry issue. No one is going to stand up and say that smoking contributes to the disease mesothelioma.

Also, I want to be clear. We're not seeking to exclude our client's smoking. He smoked. It goes to his life expectancy, his general health.

The one thing that we are seeking to exclude is any reference that smoking damages the defense mechanisms that

you have in your body. The only way that that would be relevant is if smoking played a role in the development of mesothelioma, which it doesn't. And that's agreed across the board.

So the Defendants have said, look, we want to be able to get into that. It can damage the defense mechanisms and the bronchi in the lungs. And my point is, if it doesn't cause or contribute to mesothelioma in any way, that that's not relevant.

That's the motion.

THE COURT: Thank you.

MR. COLLIER: Your Honor, Chris Collier.

That, essentially, does sum up where we are. We're not arguing that the smoking causes mesothelioma, but it allows for potentially more fibers to get into the lungs and, therefore, into the pleura.

At least, two of the experts that Plaintiffs are calling to testify have previously testified that smoking affects the lung's ability to defend itself, and that it can inhibit these defense mechanisms such as the mucociliary escalator, which we'll hear about I'm sure.

Dr. Brody, who's, I believe, the first expert that they're calling, has testified to it in prior cases. And Dr. Kradin, who's been deposed in this case, has testified to it.

So we would just say that it is -- it is relevant, that we should be able to talk about the effect on the lungs defense mechanisms during -- during opening and then in examination of these experts.

THE COURT: Is anybody going to say that that decreased the life expectancy?

MR. PANATIER: No one is going to say -- no one is going to say that the harm on the defense mechanisms decreased life expectancy, just being a smoker and inhaling smoke for years and years decreases life expectancy.

MR. COLLIER: I think everybody will agree to that.

MR. PANATIER: Yeah.

The issue of the defense mechanisms and whether or not the smoke itself can cause them to go dormant for a bit and then maybe additional asbestos fibers could get in has never been tied to an actual increased risk in mesothelioma. So that's my only point, is, if you're going to cross-examine my experts, who will admit that it does damage the defense mechanisms, there's got to be some relevance to it.

THE COURT: Right.

MR. PANATIER: The problem is there isn't. Because no one has shown -- they've said, look, we've done tons of studies where we've compared smokers exposed to asbestos

with non-smokers exposed to asbestos. They have the exact same rate of mesothelioma.

So the issue -- the fact that it affects the defense mechanisms is not relevant. And I would argue it's prejudicial. Because it would suggest to the jury that Mr. Seay, actually, harmed himself with the smoking in some way that allowed more asbestos into his lungs. But it didn't result in it as far as mesothelioma goes.

MR. COLLIER: Your Honor, our response to that would just be that the harm to the defense mechanisms thereby allows more fibers -- or could potentially allow more fibers to get into the lungs to get into the pleura. And that's what we'd like to examine their witnesses about.

THE COURT: So you'll have an expert that will say because someone smokes, it allows more in and, therefore, in this case, as to Mr. Seay, that was the proximate cause of this disease?

MR. COLLIER: Your Honor, we don't -- we will not be presenting a medical expert on our behalf. We would like to cross-examine their medical experts about that.

THE COURT: But that's not -- you're not linking it up to any kind of proximate cause, are you?

(WHEREUPON, there was no response.)

THE COURT: How does it meet the standard of proof for medical opinion causation testimony then?

MR. COLLIER: Well, I mean, Your Honor, I guess from the standpoint of -- of proximate cause, it's -- you're never going to be able to tell which fiber did it, I guess. So, you know, we would just stand on that argument that --

THE COURT: How does that --

MR. COLLIER: -- it allows additional fibers to get into the pleura to possibly cause the --

THE COURT: Doesn't that kind of go against your argument on the each and every exposure?

MR. COLLIER: I'm going to -- I'm going to defer on that one, Your Honor.

THE COURT: All right.

MR. TIVIN: Your Honor, I guess, technically, that's John Crane's argument.

THE COURT: Okay. I understand.

I'm not -- I do think it's prejudicial. To the extent it should be excluded under Rule 403, if you can't link it up to opinion testimony, it wouldn't be admissible.

So I would have to grant that motion of the Plaintiff.

MR. TIVIN: And, Your Honor, Mark Tivin on behalf of John Crane.

Just to be clear, this is the motion of the Plaintiff

and is only regarding the damage to the body's defense mechanisms and any link between smoking and mesothelioma causation?

MR. PANATIER: Correct.

We're not seeking to exclude smoking. I think smoking is relevant.

THE COURT: Okay.

MS. SHOFNER: I think I'm next then.

THE COURT: Ms. Shofner.

MS. SHOFNER: The -- just as, I guess, a preliminary matter. We understand that CVN will be videotaping the trial. But -- and we have reached an agreement that neither party is going to comment on that videotaping or their presence here in any way whatsoever to the jury. We just feel that that's unnecessary and would be prejudicial. And I just wanted to make sure that the Court is aware of that.

The motion that I have is our -- Celanese's motion regarding the state of the art of medical literature as it applies to a premise owner. And we are requesting that the evidence of state of the art medical and scientific articles be excluded as evidence against Celanese showing that we had the knowledge or should have had the knowledge of asbestos exposure.

We're not held to the same standard as a manufacturer

who is held to an expert standard and has to keep abreast of current state of the art of what was known and knowable out there about their asbestos-containing product.

We are a premise manufacturer -- or we are a premise owner, which our duty is -- the duty of a premise owner is to provide an invitee a safe workplace for items under their control. And that there's no -- there's nothing in the duty, or standard, or the South Carolina law that requires us to meet an expert standard of knowing everything that there is about the products that may have contained asbestos that went into our manufacturing facility.

So we just feel that since we're not a manufacturer that before they can show these articles to any of the experts and say, this is what Celanese should have known, that asbestos was harmful way back when, or however -- or during whatever time frame that it's not relevant as to what our duty was and what our -- what our requirement is.

THE COURT: Thank you.

MR. PANATIER: Certainly, I can't stand up and say that they're held to the standard of an expert like a manufacturer. I'm not going to do that.

But it is my burden of proof to show that they either knew or should have known of the dangerous condition on their premises. And part of doing that is demonstrating

various literature that either they received or they were a member of a body that sent out literature that would have put them on notice.

I have the notice burden. But I'm, certainly, not going to argue that they should have -- should be held to the standard of an expert. But under the instructions -- and I'm just -- you know, the Ralph King Anderson instructions, it's one of the standard instructions for a premises defendant, that I have the burden to show that they knew or should have known of the dangerous condition. And I can show that through actual or constructive knowledge.

So, obviously, we're going to get into their knowledge of asbestos hazards. But I won't make any representation about whether they should have been an expert about it.

MS. SHOFNER: And I think it -- I think that's the issue is that they have to show what we knew, what we, actually, had knowledge of. And so they can't show a document -- or a scientific or medical literature that they can't prove was in our possession or that we had actual knowledge of it in some way.

So they can't say -- like something from 1920 that we may have never known about that they can't show we, actually, had knowledge of, they can't say, well, they

should have known about this, because they had this duty to go and find all this information about asbestos-containing products.

So they have to -- before they can attribute that knowledge or understanding to Celanese, they have to, actually, show that we had actual knowledge and knew about those dangers -- or that article before they can say, here's an article and this is what they should have known.

MR. PANATIER: May I respond briefly?

I don't think that's totally accurate. One of the three ways that they can be held liable is through actual knowledge. Another is constructive knowledge. And the standards -- standard of due care is a negligence standard.

So if -- if it is shown to the jury that, look, here's everything that was out there. And the jury determines that the standard of due care is they should have done some basic research and they could have found X, Y, or Z, then I think that's completely fair game.

I can do it constructively or through actual knowledge. And I -- actually, in the case, I plan to do it both ways.

MS. SHOFNER: And I think what he's just said is exactly what -- what we're not required to do. I mean, we're not required to go out there and search all the

medical literature and the scientific literature. That's what an expert is supposed to do. And that's what it, specifically, says as to a manufacturer. It doesn't say anything about that as to a premise owner or the -- what our duty is.

Our duty is to provide a safe workplace. It's not to know everything that -- about asbestos products that could have come into -- come into our premises as part of a maintenance issue. And that's -- and he's holding us to the -- he's doing exactly what he would do as to a manufacturer, except as to us. And that's not fair to hold us to the same burden and standard.

THE COURT: I would have to see the specific evidence y'all are quibbling about.

But I think, generally, I would have to agree with the Plaintiff. They could elicit evidence about whether it was reasonable for Celanese as a premises owner to know about or have some duty to learn about conditions that might affect the safety of the premises. So that would be up to the jury to determine whether or not their conduct was reasonable and their level of knowledge was reasonable.

But I think the evidence itself, generally, without knowing exactly what y'all are talking about, would be admissible.

MS. SHOFNER: And I think the final issue that we have -- or that we could not reach an agreement on was about publishing of pleading to the jury. I know we talked about this in Muldoon and, also, in Garvin.

I believe that, under South Carolina law, we have a right to publish the pleading to the jury. We're, certainly, not going to do it in opening. And we're not going to do it unless we have a witness on the stand to talk about that pleading. But that's our right to be able to show the pleadings and publish it to the jury.

MR. PANATIER: So the reason that I'm opposing this one is because, obviously, they have every right to say we have alleged other exposures. There were other exposures. There were other companies that have blame and that the Plaintiffs have blamed them.

But to show the complaint is prejudicial. Because the complaint is merely a good-faith basis. It is a claim that is filed prior to discovery. And all of the subsequent things that happen after the complaint is filed -- you do discovery, you figure out maybe someone wasn't there, you let them go. You figure out maybe the time period was wrong for liability for someone else. You let them go or they're dismissed.

And so it's prejudicial to us that I can't stand up and explain all of that. If they show the complaint,

they'll look who they sued. They're not prejudiced by saying there are other exposures, which there are. I'm going to probably be the first person that says that.

But the complaint itself, Your Honor, I think they can get every bit of evidence they want to get through the actual testimony on documentary evidence in the case, rather than the complaint that was filed. Because that sort of leads us into a bit of a briar patch as far as the -- in order to let the jury understand the scenario, I would ask for an instruction that, look, when a plaintiff files a case, they have a certain amount of time to do it. No discovery is conducted beforehand. And they have to make a good faith -- they have to sue people in good faith who they believe may be responsible, but they may not be.

So I think they can get every bit of evidence they want without reading in the complaint, Your Honor.

MS. SHOFNER: I think that -- I understand why they don't want it in. But we have -- the law says that we can. Under South Carolina Rule 43(G), it says that we have the right to do that.

THE COURT: How did we handle it in Garvin? I remember it coming up, but I just don't remember the --

MS. SHOFNER: I'm not sure I remember -- I think in Muldoon, it became a non-issue because we ended up not having that. We were more focused on the bankruptcy

issues in the Muldoon case.

And Garvin, I wasn't there. So I don't know exactly how you -- how it, actually, was dealt with, or even if it did come in, or -- I know that there was some argument on it. And I, actually, tried to look at the Garvin transcript last night and just couldn't pull it up. Somehow, it was blocked from me accessing it.

So I'm not sure exactly how -- what the final outcome with Garvin was.

Maybe Theile remembers.

MS. MCVEY: Yeah. I think what we did in Garvin is that they were allowed to put up the names of people who had been sued in the complaint, but not the actual document. In other words, we blamed -- the Plaintiff blamed X, Y, and Z, without putting in the actual complaint.

MR. PANATIER: And I agree with the reading of 43(G). It says that any party can read any party's pleadings. I think, though, it's still subject to the further rules of evidence.

And I'm just making a prejudice and relevance objection.

THE COURT: I think it's fair game. I'll let it in.

MS. SHOFNER: Thank you, Your Honor.

That's it.

MR. ELLIOTT: Your Honor.

THE COURT: Yes, sir, Mr. Elliott.

MR. ELLIOTT: Thank you.

James Elliott for John Crane, for the record.

Your Honor, we have a number of motions that were outstanding. However, over the last few weeks, we've agreed to take up the vast majority of the motions on a case-by-case basis.

The remaining motion of John Crane is our motion to exclude portions of any expert testimony of the Plaintiff that each and every exposure is a substantial contributing factor to the development of disease. And I know Your Honor has heard this motion once or twice.

The Plaintiffs, I believe, in response, initially, will say, our experts aren't going to testify that each and every exposure causes disease. They're going to say each and every exposure above background level causes the disease. But it's the same thing.

They want to be able to have their experts, Dr. Brody and whomever, say that one use of a gasket is a substantial contributing factor to causing mesothelioma. And, Your Honor, nothing supports that.

What they do is, basically, rely on the viewpoint that science hasn't developed a minimum exposure level that contributes -- that causes the disease or is -- or

science hasn't determined that there is any safe level of exposure that causes the disease. Therefore, we've got to -- we have to include everything.

That's not sufficient, under South Carolina law, to prove causation. It's not sufficient for scientific evidence in South Carolina. It doesn't meet the proximate cause requirement. And it doesn't meet the exposure requirement of frequency, regularity, and proximity that we've adopted in South Carolina.

It's really the difference between a witness saying this is a potential cause, rather than this is the proximate cause or the probable cause of his disease. And the evidence has to meet that threshold of a proximate cause or probable cause.

Now, they can say -- if the expert can get up and testify, we know that Mr. Seay was exposed to X number of fibers while doing his gasket work, and we know the fiber type was whatever it is, X. And with that information, we can testify to a reasonable degree of certainty that that was sufficient to cause the disease. That is acceptable.

But what these -- in particular, I think Dr. Brody and, perhaps, some other witnesses they're going to offer, that's not what they're saying. And I know Your Honor has heard this motion before, and -- in cases that I haven't been involved in. But there are, I think, a number of cases that

have been decided relatively recently across the country. And my review of the cases is that the various jurisdictions are rejecting the "each and every" theories on an increasing rate.

And you have our brief, Your Honor.

THE COURT: Yes, sir.

MR. ELLIOTT: And there's a whole bunch of cases that we've attached. And I don't want to -- I'm not going to go through each and every case. But there's a couple I would like to point out, just a small blurb about.

Exhibit B is a case -- I believe it's pronounced Krik v. Crane Co. It's out of the Northern District of Illinois, decided December 2014. And that federal district court rejected the "each and every exposure" theory.

And, interestingly -- and why I point this case out is because the Court notes that Illinois had adopted the frequency -- frequency, regularity, and proximity test. And the Court said that test precludes the acceptance of any single exposure theory, and stated more than a single or de minimis exposure is required to prove causation.

A little bit closer to home, this year, was a case out of the Eastern District of North Carolina, and it's a district court order, Yates v. Ford Motor Company. It's Exhibit C to our papers.

And the Court there excluded Brody's "each and every exposure" theory. And I'd like to read just a portion of the -- an excerpt from that case.

THE COURT: Yes, sir.

MR. ELLIOTT: Briefly, it says that, "The theory that each and every exposure to asbestos products results in injury to the person so exposed has made repeated appearances in the realm of asbestos litigation. Also referred to as 'any exposure theory' or 'single fiber theory,' it represents the viewpoint that because science has failed to establish that any specific dosage of asbestos causes injury, every exposure to asbestos should be considered a cause."

And this goes on to say numerous courts have excluded that type of testimony or evidence, reasoning that lacks support in facts and data.

One other case, Your Honor. I think it's Moeller v. Garlock Sealing Tech. It's out of the Sixth Circuit, a 2011 case. Exhibit D in our papers.

That was a case where, similar to this case, the plaintiff was claiming exposure to a -- products of a gasket and packing manufacturer, but, also, claiming massive exposure to asbestos through other sources, more likely than not, I believe, through thermal insulation.

And the plaintiffs expert, just like here, testified

that various exposures could not be differentiated. Instead, all the plaintiffs exposures contributed to his developing the disease.

And rejecting that opinion, the Sixth Circuit explains that liability against a gasket and packing manufacturer based on such evidence is like throwing a bucket of water into the ocean and determining that that bucket of water increased the volume of water in the ocean, Your Honor.

And it says -- it went on to say, "As the Court had previously reasoned, such testimony would render the substantial factor test meaningless." And there are numerous other cases that reject the opinion. And the rationale is, basically, the same as those cases that we've outlined in our brief.

Now, the Plaintiffs reply, I believe, by pointing to some regulatory statements that say, any exposure increases the possibility of disease. Well, that doesn't meet the threshold of causation that's required in South Carolina. It doesn't meet the proximate cause -- that's a probable cause or the frequency, regularity, and proximity requirement.

Similarly, in the Yates case, a copy of which you have, like the Plaintiffs here, the plaintiffs admitted a whole library of materials and studies in support of their

position that this "each and every" testimony should be allowed. And the court there said that those studies failed for one or two reasons. Either that the studies don't distinguish the fiber types, or they don't state at what dose levels the type of fiber causes the disease.

And the Yates court looked at similar studies that the Plaintiffs put forward here in the reply, the Iwatsubo study, Rodelsperger, and Thorax studies, and said they didn't separate the fibers, so they weren't reliable.

And I believe the Plaintiffs cite the Wright study. And the Court, I believe, in Yates said that that study did not look at a sufficiently large sample. And, as a result, it wasn't liable and as -- wasn't reliable.

As a result, Your Honor, we'd ask that Plaintiffs experts be -- Your Honor, Dr. Kradin is, also, an expert offered by the Plaintiffs.

THE COURT: Yes, sir.

MR. ELLIOTT: And I believe in his deposition, he testified that every occupational exposure is a substantial factor, notwithstanding the frequency, proximity, and regularity of the exposure, which is in direct contradiction to the law of South Carolina.

And we'd submit that any testimony from any of these experts that each and every exposure above background level is the same thing as the "each and every" exposure

theory proffered all over the country by these experts, and it shouldn't be allowed, because it doesn't meet the standard in South Carolina.

THE COURT: Well, it seems to me that the frequency, regularity, and proximity is a legal rather than scientific formulation. And what I mean by that is that doesn't mean that the scientific testimony in an asbestos case has to be that the exposure has to be frequent, regular, and proximate in order to be admissible.

It just means that you can't get it to the jury, unless you have that evidence; isn't that right?

MR. ELLIOTT: I think that's one level and one standard, Your Honor. But there's, also, a requirement that you -- that an expert has to base his testimony on some scientific foundation in order to allow the jury to be presented with that testimony.

Here, they're, basically, telling the jury that they don't have to prove proximate cause. They don't have -- because they can just say one use of a gasket is a substantial contributing factor. And the jury is going to hear that and believe it, potentially.

And, Your Honor, I don't think that meets our causation requirement. I don't think it meets the standard for the introduction of scientific testimony.

THE COURT: But is there any scientific evidence that

supports the frequency, and regular, and proximate opinion?

I mean --

MR. ELLIOTT: Well --

THE COURT: -- that was a political judgment, wasn't it, about product liability, right?

MR. ELLIOTT: It was what?

THE COURT: It was a political judgment about product liability.

MR. ELLIOTT: I don't know about that, Your Honor. But besides --

THE COURT: It was a policy decision.

MR. ELLIOTT: A policy --

THE COURT: So -- but, I mean --

MR. ELLIOTT: But I guess --

THE COURT: If a doctor or a scientist testified that only frequent, regular, and proximate exposures cause mesothelioma, they'd be laughed out of the academy, wouldn't they?

MR. ELLIOTT: Well, and, also, if they said that some -- an exposure causes the disease when they can't identify the volume of fibers that they were exposed to or the type of fibers they were exposed to, the default is, well, we don't know. And, therefore, we say it's a substantial factor. And that's what the law doesn't

allow.

I think they -- they can absolutely look at Mr. Seay's work history and determine, based on the testimony and the evidence, that he was exposed to asbestos from these various work processes. And they can say, we know based on testing that that causes disease. But that's not what we're fighting over here.

We're fighting over they're saying, we don't know how many fibers he was exposed to. We don't know how many type -- what type he was exposed to. We just know he used, for example, the John Crane gasket. And because that one-time exposure is above background, it's a substantial contributing factor or a proximate cause of the disease, where we don't think there's any science that supports that.

It could be -- for example, if we have a pipefitter that all his life he's worked -- or an insulator, all his life he's worked on insulation only. And on one day, he's required to remove and replace a John Crane gasket. They want to be able to say that is a substantial contributing factor. The John Crane gasket used on one occasion is a substantial contributing factor to the disease. And we don't believe there's any studies, articles, or evidence that supports that.

THE COURT: All right. Thank you.

MR. PANATIER: Yeah. As a matter of fact, we're going to present the regularity, frequency, and proximate testimony through Mr. Seay and his coworker. And that's where that's going to come from. And that's what the experts are relying upon.

None of my experts are going to say working on one gasket one time caused this disease. None of them have said that. None of them are going to say that. I might love that as a plaintiffs lawyer, but it's just not going to happen.

We already deposed on video -- our pathologist couldn't be here live, so he's in the box. And what he testified is -- I asked him, Now, you were asked the question whether you believed that each and every occupational exposure increases the risk to mesothelioma. Now, is that different than saying each and every exposure?

He said, Yes.

And I said, How is it different?

And he answered, "Well, it's as -- it's as we've just talked about. Occupational exposures, generally, are a magnitude higher to what you would expect from background levels of exposure. They're not trivial. They're not -- we're not talking about having one or two fibers of asbestos released into your breathing zone. We're talking

about having tens of thousands to millions of fibers released into your breathing zone, if not more. And so there's a major categorical difference in the magnitude of these exposures.

And then I followed up, And to be clear, am I correct that you are not saying that any exposure from any source can cause mesothelioma, are you?

Absolutely not. Again, you know, one can pass by an area where asbestos is in disrepair and just walk by it. I think your risk of developing mesothelioma from that type of exposure would have to be trivial.

But if you're working in a workplace in a factory where these products are being used, and cut, and manipulated in ways where dust is being released, that is often visible dust, these are major league exposures.

And this is after he's detailed all of the work history that he read and the depositions he read of Mr. Seay to obtain that work history.

THE COURT: All right. Well, like I -- I think I told y'all I have to leave at 1:00 today, which it is now 1:00. So I apologize it took so long for the qualifications.

But as far as in the morning -- this afternoon, I suspect the questionnaires are being handed out; is that right?

MS. SHOFNER: I think that they're already done.
THE COURT: Oh, they're done?
MS. SHOFNER: I think we've got them and we're copying them now.
MR. ELLIOTT: Can I approach?
We've got a pro hoc --
THE COURT: All right.
MR. ELLIOTT: Would you mind signing -- would you mind doing that?
THE COURT: Yes, sure.
MR. ELLIOTT: Sorry.
Thank you so much.
THE COURT: Thank you, sir.
MR. ELLIOTT: Thank you.
THE COURT: So we will just reconvene at 9:30.
(WHEREUPON, the proceedings were concluded at approximately 1:03 p.m., to be reconvened on Tuesday, September 29, 2015.)

TUESDAY, SEPTEMBER 29, 2015

THE COURT: We have a number of matters to take up before the jury panel comes in. As I understand it, y'all want me to inquire of the panel about these various parties who are, I guess, no longer parties or entities, including some of the Celanese subsidiaries or affiliated companies, which I'm glad to do.

You want me to talk about a two-week trial. And I understand one of the Defendants has something to take up before the opening, but not before the jury selection.

Is there anything else, other than the "each and every exposure" issue?

MR. YOUNG: I don't -- I don't think so, Your Honor.

MR. ELLIOTT: No, Your Honor.

MR. YOUNG: I'm Lane Young for the court reporter.

THE COURT: Sir?

MR. YOUNG: I'm just saying I'm Lane Young for the court reporter.

THE COURT: All right. Yes, sir.

MR. YOUNG: They probably don't know who I am.

THE COURT: All right. So going back to the "each and every exposure" issue, tell me exactly what the Plaintiffs are intending to elicit concerning the exposure.

I know there's a lot of stuff in the memos about what

Dr. Brody has said in other cases. I don't remember him ever getting into specific causation when I've heard him testify.

But what are y'all intending to elicit on this topic?

MR. PANATIER: Sure.

Dr. Brody is not going to do specific causation. He's just going to do general causation, general medicine, so to speak, but not specific causation. The only specific causation experts will be Dr. Kradin, who has already testified by video, and then Dr. Holstein is going to talk about exposure from an industrial-hygiene, occupational-medicine perspective.

The testimony as far as what exposures contribute to the risk will be along the lines of what Dr. Kradin already testified to, that occupational exposures, which are tens to hundreds to thousands of times above background, that have been shown in the literature to increase the risk are those that contribute to the disease mesothelioma. That's going to be what Dr. Holstein says, too.

There won't be any general testimony elicited from the Plaintiff that each and every exposure, regardless of the source, contributes to the disease. That simply will not be elicited by the Plaintiffs.

The testimony will be exposures of an occupational

nature that are above background contributed to the disease mesothelioma and are a substantial factor.

THE COURT: All right.

MR. TIVIN: Good morning, Your Honor.

THE COURT: Yes, sir.

MR. TIVIN: Mark Tivin on behalf of John Crane.

What Dr. Kradin said under cross-examination is that every occupational exposure is substantial, and all contributes to the burden, you can't split anything out from the burden, and that every exposure is substantial. And that's what he based his opinion on. I -- these are both medical doctors. There is going to be no industrial hygienist coming in from the Plaintiff to quantify any comparison or any specific fiber release from any products.

So we don't believe that a medical doctor can lay that sort of foundation as to what -- how much a fibrous product may or may not release. But the fact of the matter is both of these witnesses are on [phonetic].

And as far as Dr. Brody, Dr. Brody is going to say the same thing. When he talks about general causation, he's going to say that it adds to the burden and that's what causes mesothelioma.

So that is "each and every exposure" in another -- in another breadth. I mean, as soon as they say it's the

cumulative -- it's the cumulative exposure, and that's what causes the disease, that's each and every breadth. Because they say you can't take anything out of the total burden. They don't meet the specific causation requirements in this state that says it has to be a substantial factor.

When everything is substantial, nothing is substantial. And I believe that's the point the court made in the Lindstrom decision -- the federal court made in the Lindstrom decision in the Sixth Circuit.

It takes the meaning out of the -- they put "substantial" in front of "factor" for a reason. And they -- in order for there to be a substantial factor, that means there has to be a factor. And Dr. Kradin says there can't be a factor. Dr. Holstein says there can't be a factor.

Every factor is substantial. And that takes away the -- the meaning of the jury instruction in the causation standard.

THE COURT: What's the response to that?

MR. PANATIER: I think it's a falsitude to say that because all occupational exposures play a role and it is a cumulative disease -- I mean, that's a fact. No one disputes that it's a cumulative disease.

The Defendants, when they try to apportion

responsibility to other exposures, will make the same argument that --

THE COURT: That it's a dose-responsive?

MR. PANATIER: Exactly.

And we have a -- like I said yesterday, we have a legal burden under Lohrmann. And if we meet that, we are far beyond the realm of a minuscule or a trivial -- trivial exposure.

And if our experts, based on the work history, say, look, based on this entire work history, he had regular, frequent, proximate exposures, then we're outside of this hypothetical realm of one gasket exposure, could that play a role and whatnot.

No one is saying that every exposure, regardless, plays a role. Our experts have said -- and Dr. Kradin said -- and he said on redirect examination as well, look, we're not talking about a one-time exposure to one gasket. We're not talking about just above background. We're talking about orders of magnitude above background exposures, which are the occupational exposures at issue. Those are a substantial factor.

No one is going to come in and say one fiber above background plays a role, or two fibers. No one is doing that. We're talking about extremely high levels above background, tens to thousands of times above. I'm going

to open on that very issue.

So I don't think that the fact that it is a dose-response cumulative disease is in any way out of bounds, legally speaking. That's the truth of the disease. And the Defendants will elicit the same testimony when they're trying to apportion responsibility to other alternative causes.

MR. TIVIN: And just briefly, Your Honor. I understand the point that Mr. Panatier is making. However, they have no industrial hygienist or material scientist that is going to be called that is going to quantify these exposures.

A doctor just can't come in and say, it's thousands of times above. There's no foundation for that. I don't care if he's -- he's -- that's not their expertise. Their expertise isn't material science. Their expertise is the diagnosis and causation of disease. And there's absolutely no industrial hygienist or material scientist coming in for the Plaintiff to lay the foundation that it's hundreds or thousands of times above background, number one.

Number two, we -- John Crane will be seeking apportionment. But we're not going to be seeking apportionment -- what we're going to say is the fiber release from gaskets and packing, there's no evidence that

those levels of exposure -- and we have an industrial hygienist who is going to come in and testify as to what those levels of exposure are -- don't increase the risk.

You just can't have a doctor come in and say, these exposures are thousands of times more, therefore, it's a cause. The fact that the science isn't advanced enough to say it doesn't excuse them of the legal requirement that they have to prove that it's a substantial factor. And it gets back again when Dr. Kradin talks about these thousands of times if -- once again, if every factor is substantial, none of them are.

And because of that, that does not meet the evidentiary requirements in the state.

Thank you.

MR. PANATIER: Your Honor, may I respond just to the issue of the industrial hygienist?

THE COURT: Yes, sir.

MR. PANATIER: Mr. Tivin has cross-examined Dr. Holstein. Dr. Holstein has testified numerous times. He's an occupational medicine doctor. And we're going to lay that foundation that he has evaluated the industrial hygiene literature from an occupational medicine perspective where he evaluates the levels of exposure that people have when they work with insulation, gaskets, and packing. He's taken the measurements himself.

So that foundation will be there. To just say there's no industrial hygienist is fine. He doesn't have the title industrial hygienist. There's no requirement that there be an industrial hygienist. There is a requirement that we elicit testimony of exposure, and that we have a properly qualified expert to do so, who we do in Dr. Holstein.

And then, secondly, Mr. Tivin said that we won't have any quantification. There is -- first of all, there's no requirement of a dose quantification in this state. There's one state that has that. It's my state, my home state, Texas.

Second of all, we are going to be eliciting a quantification number ranges for the levels of exposure through Dr. Holstein, who's qualified to do so, about the different levels of exposure from insulation, from gaskets, from packing, other work that Mr. Seay was doing. And he has done that countless times as an occupational medicine doctor. That's within his purview.

So we are going to be providing, for the record, the exposure testimony from the literature.

THE COURT: Okay. Well, I respectfully deny the Defense motion on this issue. From what I've been presented in limine -- and this is an in limine ruling -- there's sufficient evidence to satisfy the Daubert

standard and the standards under Rule 702 and 703.

So the next issue would be inquiring of the jurors about additional voir dire. I understand some of the jurors didn't complete the questionnaire fully; is that correct?

MR. TIVIN: That would be an understatement, Your Honor.

MS. SHOFNER: Yes, Your Honor.

I think there were -- I think we got it down to nine jurors that either didn't complete it at all or left the majority of it blank. So we have now given them back to the Clerk to ask them to complete those questionnaires that are left on our --

THE COURT: They're doing it right now?

MS. SHOFNER: They're doing it right now.

THE COURT: Do we know when they might be through with that?

THE BAILIFF: I can find out.

THE COURT: Okay. Yes, ma'am.

Thank you.

MR. PANATIER: And for scheduling, because there's nine of them, we'll stipulate we don't need to see -- we don't need copies of them. If we could just look at the one they fill out. We don't have to make separate copies for us, if that helps move things along.

MR. YOUNG: Your Honor, are you going to give us the orders so we can shuffle around the questionnaires before they start coming in?

THE COURT: The orders?

MR. YOUNG: That question making -- the order like which juror will come in first and --

THE COURT: Oh.

MR. YOUNG: I had asked around so I wouldn't have to ask you, but nobody seemed to know the answer to that question.

THE COURT: You mean the order of the jurors?

MR. YOUNG: Yeah.

Your Honor, my understanding is that you bring them in. And after you do the general qualifications and things and -- and then they're asked questions. I was wondering if we could get the order that they're going to come in so we can put the questionnaires in the right order and start --

THE COURT: Okay. Yes, sir.

MR. YOUNG: Is that --

THE COURT: I don't know why we wouldn't do it by just chronological order, numerical order of the jurors.

MR. YOUNG: Okay. I...

THE COURT: Unless you've got a better idea.

MR. YOUNG: It's, obviously, your decision. I

just -- so, the lowest number first; is that --

THE COURT: Right.

MR. YOUNG: Okay. Some of them didn't put their number on their questionnaires either --

MS. NETTLES: We figured it out.

MR. PANATIER: We figured it out.

MR. YOUNG: We did?

MS. NETTLES: We figured it out.

MR. YOUNG: Okay. Good.

MR. PANATIER: But -- but there are -- we have some -- I don't know -- one million jury questionnaires. But now we understand that a jury has been -- the chunk that we're going to see today has been pulled out.

Can we find out who of the -- what group we have so we can, actually, pull out the JQs that are in other courts? Can we get that list?

THE COURT: Yes.

THE CLERK: I can tell you the number -- the juror number --

MR. PANATIER: Okay.

THE CLERK: -- if that will work.

MR. PANATIER: That we have?

THE CLERK: Yes.

MR. PANATIER: Okay. Great.

THE CLERK: The first one is Juror #5.

MR. PANATIER: Okay.

THE CLERK: #8, #11, #15, #16, #19, #25, #26, #38, #40, #46, #48, #49, #51, #52, #53, #56, #57, #59, #78, #79, #84, #87, #90, #92, #95, #99, #100, #105, #109, #111, #113, #116, #119, #120, #122, #125, #128, #129, #130, #134, #141, #142, #146, #150, #151, #152, #154, #156, #157, #162, #165, #169, #170, #171, #174, #180, #185, #187, #189, #192, #193, #195, #197, #198, #210, #211, #212, #215, #217, #227, and #233.

THE COURT: How many is that?

THE CLERK: There's 72 active, and only 67 have been marked present today.

THE BAILIFF: Your Honor.

THE COURT: Yes, ma'am.

THE BAILIFF: The jury coordinator said that she would bring the forms back when they're finished.

THE COURT: Okay. Thank you.

THE BAILIFF: Yes, sir.

MR. TIVIN: Your Honor, there was one of the witnesses -- and I don't know if I'm ahead -- who is named Seay -- one of the jurors was named Seay.

THE COURT: Okay.

MR. TIVIN: And we didn't know --

MR. ELLIOTT: It's #195.

MR. TIVIN: He's #195. And we just didn't know if he

was related to...

MR. PANATIER: We don't think he's related, but we can bring him in and ask him.

THE CLERK: And he is one of the active and present jurors.

THE COURT: Wouldn't it make sense just to cut this list down to about 45 or 50, instead of just randomly?

Can y'all do that?

THE CLERK: Yes, sir.

THE COURT: Do you think 45 will give us enough?

MR. PANATIER: Yeah.

MR. YOUNG: Judge, from looking at the questionnaires, I would say for sure. They weren't filled out.

MR. PANATIER: Yeah. There's not a lot of strong opinions being expressed.

MR. YOUNG: Yeah. It seemed like it -- it seemed like it was a pretty -- there were a few flamethrowers on there, as we call them, but not as many as you usually see.

THE COURT: We could make it interesting and let y'all pick six and let you pick six.

MR. PANATIER: No thanks. Some of those flamethrowers I don't want to be near at all.

THE COURT: All right. So we'll just cut it down to 45.

THE CLERK: 45?

THE COURT: Yes, ma'am.

MR. YOUNG: Judge, I think there was one juror that everybody agreed might not be a good juror for --

THE COURT: Yes. If there's some that y'all agree on, we can go ahead and cut down.

MR. TIVIN: I think we agreed the man who was not convicted, but --

Oh, you weren't there.

MR. PANATIER: What number is he?

MS. MCVEY: It's Poston, #174.

MR. YOUNG: Poston --

MR. COLLIER: #174.

MR. TIVIN: Improper contact with a child, but he wasn't convicted of it. I think everyone agreed that --

MR. YOUNG: #174, apparently, Judge.

MR ELLIOT: And he was last on this list.

THE COURT: All right. So we'll take him out.

MR. PANATIER: Yep.

MR. TIVIN: And if we could just agree that Mr. Seay is -- we could not have him in the -- just so it doesn't leave any...

MR. PANATIER: If -- I don't know anything about him. I don't think he's related to anybody. I don't want to kick a guy because of his last name. We can ask him if

he --

THE COURT: It's a pretty common name around here.

MS. MCVEY: Yeah, it is.

(WHEREUPON, the attorneys had an off-the-record discussion among themselves that was out of the hearing of the court reporter.)

THE COURT: I want to confirm that everybody here has a copy of the standing order about trial procedures filed back in January of this year and has read it.

MR. PANATIER: We have, Your Honor.

Subject to what your order says, the Defendants have kindly agreed to give me an extra 15 minutes for opening, if that's okay, and -- just because there's two Defendants. And then I've, also, already given back several hours, I think, to the Court for -- based on the videos that have already occurred.

My direct examination of Dr. Kradin was 40 minutes. My cross of Dr. Crapo was one hour. So we're -- I'm trying to keep it down as far as I can.

But if the Court is okay with that -- with the extra 15 minutes for opening for me, I'd like to do that.

MR. YOUNG: Judge, it was the last thing I read this morning before I came over here, so.

THE COURT: Oh, good.

MR. YOUNG: I take it with me everywhere I go.

MR. TIVIN: Your Honor.

THE COURT: Yes, sir.

MR. TIVIN: With regards to 30 minutes, I would be surprised if I went 30 minutes. But is there someone I can look to to give me a heads-up, as my watch broke and I'm not wearing one?

I didn't know if you had a standing like just tap on the thing if there's five minutes left and I can say, all right, see you later. I'm done.

THE COURT: I mean, I can just say you've got five minutes. Is that okay?

MR. TIVIN: That's perfect.

THE COURT: That won't --

MR. TIVIN: That won't interrupt my flow.

THE COURT: -- bother you. I could do the tapping, but then people might think I've got some nervous tic other than the ones I already have.

MR. YOUNG: Judge, Elaine said that if we had a motion to excuse a juror for cause, we should make that once the questioning of that juror is completed, is that correct?

Or do we wait until -- what should we do?

THE COURT: Do you have your grounds now?

MR. YOUNG: No. We need to hear the questions.

THE COURT: Oh, okay. Yes.

MR. YOUNG: Sorry. I just wanted to make sure that I was following the proper procedure. Some courts, you have to wait until we've got an X number of people and then make them all at one time. Elaine said that you, typically, would do it -- entertain a strike for cause after questioning of that individual juror was completed. Not a peremptory, but just a strike for cause.

THE COURT: Yes, sir. We'll do it that way. That way, it's fresh in everybody's mind.

All right. Anything else before we bring the panel in?

(WHEREUPON, there was no response.)

THE CLERK: They aren't ready.

THE COURT: They aren't ready. I guess we don't have all the questionnaires.

(Pause.)

(WHEREUPON, the jury panel entered the courtroom.)

THE COURT: Okay. Good morning, everyone.

My name is Gary Hill. I'm one of the circuit judges here in South Carolina. And I'm, actually, from Greenville. But I'm assigned over here this week.

And we are about to select a jury in the case of Angie Keene -- that's K-E-E-N-E -- individually, and as the personal representative of the estate of Dennis Seay, S-E-A-Y --

Is that the correct pronunciation?

MR. PANATIER: Yes, Your Honor.

THE COURT: -- who is deceased, and Linda Seay. They are the Plaintiffs, the parties who have brought this action. And the Defendants are CNA Holdings, LLC, and John Crane, Incorporated.

As you probably figured out from the questionnaire, this case involves alleged exposure to asbestos. And I thank you for completing the questionnaires. And we will proceed now with some further questions to ensure we can find a jury that will be fair and impartial in this matter.

JURY QUALIFICATION

THE COURT: And the first question I want to ask, is there anyone who is related by blood or marriage to Angie Keene, or Dennis Seay, or Linda Seay?

If so, please, stand.

JUROR #195, RONALD SEAY: I'm a Seay. And I'm not sure about that.

THE COURT: You're not sure about that.

Okay. Tell me, were you born and raised here, sir?

JUROR #195, RONALD SEAY: Yes, sir.

THE COURT: And those names don't sound familiar to you, but you don't --

JUROR #195, RONALD SEAY: There's a lot of us.

THE COURT: You're saying, if need be, you might claim them; is that right?

JUROR #195, RONALD SEAY: You never know when you might need somebody.

THE COURT: I understand that. Usually, the problem is the people I claim won't claim me.

All right. Well, we'll excuse you. Okay. I don't want to put you in an awkward spot, sir.

THE BAILIFF: Have a seat.

THE COURT: He can leave.

THE BAILIFF: He can?

THE COURT: Yes.

Does anyone have any personal, social, or business relationship with either Angela D. Keene, or the late Dennis Seay, or Linda Seay?

(WHEREUPON, there was no response.)

THE COURT: Is there anyone here who has ever been employed by or had a member of their immediate family be employed by -- and by immediate family, I mean a spouse, parent, or child -- CNA Holdings, LLC, or John Crane, Incorporated?

If so, please, stand.

MR. YOUNG: Judge --

THE COURT: Yes, sir.

MR. YOUNG: -- Celanese might be more familiar to

them --

THE COURT: Okay.

MR. YOUNG: -- than CNA Holdings. I think we gave you the wrong name.

Is that okay with you, Chris?

MR. PANATIER: Yeah.

THE COURT: All right. So CNA Holdings, LLC, is Celanese?

MR. YOUNG: Yes, Your Honor.

THE COURT: Has anybody had a member of their immediate family be employed by Celanese or John Crane, Incorporated, or were you yourself employed by them?

Yes, sir.

JUROR #174, DAVID POSTON: David Poston, #174.

THE COURT: Yes, sir.

JUROR #174, DAVID POSTON: I used to work for a company that did business with Celanese and did, basically, the same thing they did.

THE COURT: Would that affect your ability to be fair and impartial in this case, sir?

JUROR #174, DAVID POSTON: No, it wouldn't.

THE COURT: You could decide the case on the evidence and the law?

JUROR #174, DAVID POSTON: Yes, sir.

THE COURT: Thank you, Mr. Poston.

Does anyone have any business, social, or personal relationship with CNA Holdings, or Celanese, or John Crane, Inc., or any of their executives or employees?

If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: All right. Is there anyone here who owns stock in any of these companies?

If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Does anyone know anything about this case, other than what you've heard from me here this morning, or from the Court, perhaps, yesterday?

If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: All right. I'm going to ask the lawyers who are going to be involved in the case to introduce themselves and everybody at their table.

So, yes, sir, Mr. Panatier, or, Ms. McVey.

MR. PANATIER: Thank you, Your Honor.

Good morning, everybody.

My name is Chris Panatier. And I represent the Seay family in this case.

MR. HENDERSON: Good morning.

My name is David Henderson. I, also, represent the Seay family in this case.

MS. MCVEY: And I'm Theile McVey. And I, also, represent the Seay family.

MR. YOUNG: Good morning, everybody.

My name is Lane Young. And I'm one of Celanese's lawyers.

I'll just let everybody -- this is Cindy Andrews. She's helping us today. And Wanelle [phonetic] Hall. She makes sure that we don't mess up any of the computer equipment and waste y'all's time. And then I'll let the other lawyers from my office introduce themselves.

MS. SHOFNER: Hello.

My name is Elaine Shofner. And I represent Celanese.

MR. COLLIER: Good morning.

I'm Chris Collier. And I, also, represent Celanese.

MR. ELLIOTT: Good morning, ladies and gentlemen.

My name is James Elliott. I'm an attorney with Richardson Plowden in Charleston, South Carolina. And I'm representing John Crane, Incorporated.

MR. TIVIN: Good morning.

My name is Mark Tivin. And I, also, represent John Crane, Incorporated.

MR. PURNELL: Good morning.

I'm here with Mr. Tivin. My name is Simon Purnell. And I represent John Crane.

MS. NETTLES: Good morning.

I'm Sam Nettles. I, also, represent John Crane.

THE COURT: All right. Thank you.

Is anyone related by blood or marriage, or kin to any of the lawyers or anyone they introduced?

If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Does anyone have any personal, social, or business relationship with any of the lawyers or their law firms?

If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Has anyone ever been represented by any of these lawyers or their law firms, or been involved in a dispute where -- or a transaction where the other side was represented by them?

If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Now, there are other companies that I wish to ask you about. And I just want to know if anyone ever worked for any of these companies, or had a member of their immediate family work for them, or if you've ever had any interest in these companies, owned stock in them, or been on the board, or been a supplier or a vendor to them, or had any kind of business relationship with these companies. And I'll go through all the companies and

there're quite a few. And they are: Armstrong, Garlock, Cranite, Flexitallic, Johns Manville, Pabco, P-A-B-C-O, Allis-Chalmers, Worthington, Pacific, Chicago Pumps, Ingersoll Rand, Aurora Pumps, Durco, Goulds Pumps, Barmary, B-A-R-M-A-R-Y, Crane, Chapman, Crosby, Henry Vogt, V-O-G-T, Klinger, Powell, Westinghouse, Babcock & Wilcox, 3M. And then there were some other companies who were affiliated with or related to Celanese, and that would be: Hystron, Hystron Fibers, Hoechst, Hoechst Fibers, Hoechst Celanese.

Has anyone ever worked for them, or had a member of their immediate family work for them, or have any relationship whatsoever with these companies?

If so, please, stand.

Yes, sir.

JUROR #95, JACOB HUNTER: Yes, sir.

THE COURT: Just tell me your juror name and your number, if you would.

JUROR #95, JACOB HUNTER: Jacob Hunter, #95.

THE COURT: Thank you.

JUROR #95, JACOB HUNTER: I worked for Hoechst Celanese -- Hoechst Fibers in the early '70s.

THE COURT: Okay. Thank you.

JUROR #16, YEVGENIY BONDARCHUK: Yevgeniy Bondarchuk, Juror #16.

I'm working for Auriga Polymers, which used to be called Celanese. I know some people that worked for Hoechst Celanese.

THE COURT: Okay.

JUROR #5, EARL BARRIER: Earl Barrier, #5.

I used to work for a division of Ingersoll Rand. That was Torrington [inaudible] about 10 years ago.

THE COURT: Can you repeat that? We couldn't hear you, sir.

JUROR #5, EARL BARRIER: I used to work for a division of Ingersoll Rand, Torrington. It was bearings manufacturing. And that's been about 10 years ago.

THE COURT: All right. Thank you, sir.

JUROR #174, DAVID POSTON: David Poston, #174.

I used to work for a man that used to work at Hoechst Celanese. And we did, basically, the same thing they did.

THE COURT: Okay. Thank you.

Yes, sir.

JUROR #78, MICHAEL GURLEY: I got a brother-in-law that works for Hoechst Celanese. And I don't know what the name of all of it is now because everything has changed.

THE COURT: Right. Tell me --

JUROR #78, MICHAEL GURLEY: My name is Mike Gurley, #78.

THE COURT: Thank you.

All right. As to those of you who just responded, is there anything, given your relationship with the various companies, that would keep you from being fair and impartial in this case?

If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Do you know of any reason why you couldn't decide the case solely on the evidence and the law?

If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: All right. I don't believe it was explained yesterday, but this case may take up to two weeks to try, and should conclude no later than next Friday. And if you have some extreme and compelling circumstance that would interfere with your ability to serve on the jury through next Friday, I need to know about that.

I can't excuse you just for general inconvenience. It has to be something extreme and compelling, some type of preplanned trip with paid tickets, that type of thing, or some serious issue.

So if you wish to speak with me about that, I'll be glad to talk with you about it. But, as I said, I will

only consider it if it's something very serious and compelling.

(WHEREUPON, there was no response.)

THE COURT: All right. Any further inquiries of the panel before we move on to the individuals?

MR. PANATIER: No, Your Honor.

THE COURT: All right. So what we're going to do at this point is, there are some further questions that we need to ask some of you individually. And we'll ask that the jury panel go to another room. And then we'll bring each juror in separately.

Okay. And the first juror would be --

Which one do y'all have?

MR. PANATIER: #187.

THE COURT: Okay.

(WHEREUPON, the jury panel exited the courtroom, but Juror #187, Yvonne Robinson, remained in the courtroom.)

(WHEREUPON, a bench conference was held.)

MS. SHOFNER: And, Your Honor, it just may be easier for us to listen to you and the jurors answers if we're -- if she's on the witness stand and we're all facing the same way.

THE COURT: Yes. That's fine.

MS. SHOFNER: That seems to make more sense.

THE COURT: Okay. Ms. Robinson, come on up.

Okay. You can swear her in.

THE CLERK: If you would, please, stand.

And raise your right hand.

WHEREUPON,

YVONNE ROBINSON,

after first having been duly sworn, testified as follows:

THE COURT: Okay. Ms. Robinson, you left quite a bit of this blank. So we're going to have to take the time to go through it right now.

JUROR #187, YVONNE ROBINSON: Okay.

THE COURT: First of all, could you tell me what your late spouse's job was?

JUROR #187, YVONNE ROBINSON: He worked at General Electric. He started off as a welder and ended up, I think, as a pipefitter.

THE COURT: Okay. And have you ever filed a lawsuit or a claim of any kind?

JUROR #187, YVONNE ROBINSON: No.

THE COURT: Have you ever been a union member?

JUROR #187, YVONNE ROBINSON: No.

THE COURT: Have you ever been sued, or have you ever sued anyone?

JUROR #187, YVONNE ROBINSON: No, sir.

THE COURT: Has anyone in your immediate family been

sued or sued anyone, to your knowledge?

JUROR #187, YVONNE ROBINSON: Yes.

THE COURT: Okay. What was the nature of that?

JUROR #187, YVONNE ROBINSON: I have a brother who used to be a professional basketball player. And he's been sued.

THE COURT: Okay. Have you ever had any family member or have you yourself ever been involved in the insurance business or claims adjusting?

JUROR #187, YVONNE ROBINSON: No.

THE COURT: Do you have any opinion about lawsuit awards?

JUROR #187, YVONNE ROBINSON: No, I don't.

THE COURT: In terms of the amount of them, whether they're too high or not high enough, or just right?

JUROR #187, YVONNE ROBINSON: No. I think it just depends on the case.

THE COURT: Okay. Do you have any opinions about asbestos lawsuits or asbestos-containing products?

JUROR #187, YVONNE ROBINSON: No, I don't. Because I know very little about asbestos.

THE COURT: Ma'am?

JUROR #187, YVONNE ROBINSON: I know very little about asbestos.

THE COURT: Okay. Do you think there ought to be a

limit or cap on the amount of money a person can recover in a lawsuit?

JUROR #187, YVONNE ROBINSON: Again, it just depends.

THE COURT: You mentioned someone close to you had lung cancer; is that right?

JUROR #187, YVONNE ROBINSON: I had a half-sister who passed away in '86 from lung cancer.

THE COURT: Well, this case involves Mr. Seay's alleged exposure to asbestos, which is a claim that caused him to have mesothelioma, which is a type of cancer. Would your experience with a family member who had lung cancer affect your ability to be fair and impartial in this case?

JUROR #187, YVONNE ROBINSON: No. It wouldn't affect that.

THE COURT: And you said something about, as a juror, if the law and the Court's instructions conflict with your opinions or belief, which would you follow, and you wrote down "God's law."

So the question is, in order to be a juror, you have to take an oath that you'll follow the Court's instructions. Do you think you can take an oath, Ms. Robinson?

JUROR #187, YVONNE ROBINSON: I could.

THE COURT: And you could follow the law that the

Court gave you and apply it to the facts of the case, regardless of your religious beliefs that might conflict with it?

JUROR #187, YVONNE ROBINSON: Yes, I could.

THE COURT: Okay. Any further questions?

MR. PANATIER: No, Your Honor.

THE COURT: Thank you very much, ma'am.

(WHEREUPON, Juror #187, Yvonne Robinson, exited the courtroom.)

THE COURT: All right. Who's next?

MS. SHOFNER: I think if we go numerically, #5 is next; correct?

MR. ELLIOTT: Juror #5.

MR. PANATIER: Wait. Juror #5 is last -- is like the second-to-last person in the --

MS. SHOFNER: I know. We're going in numerical order.

But however the Judge wants to do it, whether it's from numerical order or from this list that they pulled.

MR. PANATIER: If the list is going to be the list we're going to pick from, I think we should go from the list.

THE COURT: Well, I, of course, probably confused everybody by saying we'll go numerical when we've got two numbers to go by. I would omit the numbers on the left.

And I agree we ought to go by those, because it may be we get to a point where we don't need to go any further.

MS. MCVEY: Right.

(Pause.)

MR. YOUNG: Judge, we had our questionnaires in the other order. So we're just trying to get situated here.

MR. PANATIER: Your Honor, we would -- we would -- Juror #12 on the left-side number is Rebecca Phillips. She's #171.

We'd just ask that the Court just question her on the same question, #40. My opinions and beliefs is what she checked, instead of the Court's instructions. That's really the only inquiry for her that the Plaintiff's would like.

MR. YOUNG: That's not the next juror.

MR. PANATIER: It's the next juror that we would ask -- that we have a question on.

MR. YOUNG: Oh.

THE COURT: So y'all don't have any problems with #2 through #11, is that what you're saying?

MR. PANATIER: No more specific follow-up questions.

MR. ELLIOTT: Your Honor, #8 on the left.

MR. TIVIN: Does anyone have any questions on #2?

MR. YOUNG: Yeah, we do.

THE COURT: Okay. Well, bring her in. Juror #90.

(WHEREUPON, Juror #90, Kim Holliday, entered the courtroom.)

THE BAILIFF: Juror #90.

THE CLERK: Ma'am, if you will, please, stand.

Raise your right hand and place your left hand on the Bible.

WHEREUPON,

KIM HOLLIDAY,

after first having been duly sworn, testified as follows:

THE COURT: Okay. Ms. Holliday, good morning.

JUROR #90, KIM HOLLIDAY: Good morning.

THE COURT: Just a couple questions. Your questionnaire, on #42, "What are your opinions about punitive damages?" And you put a question mark. Can you just clarify for us?

JUROR #90, KIM HOLLIDAY: I guess I really don't know enough about the legal talk of -- is that just --

THE COURT: That means it doesn't stop people from having an opinion.

JUROR #90, KIM HOLLIDAY: Yes. I didn't feel like I had enough information.

Is that when someone is awarded in a case? Is that what that is?

THE COURT: Yes, ma'am.

In a civil case, a party could, assuming it meets

certain criteria, be awarded punitive damages. It's -- they're authorized under the law.

In civil cases, under limited circumstances -- it's a potential recovery in this case. It just depends on what the evidence shows and --

JUROR #90, KIM HOLLIDAY: Yeah. And I guess that's what -- I don't -- I would have to understand what happened.

THE COURT: Okay. So you're not -- you don't have any real opinion on whether --

JUROR #90, KIM HOLLIDAY: Whether it's --

THE COURT: -- they should be allowed or not allowed?

JUROR #90, KIM HOLLIDAY: No. I don't think so.

THE COURT: You can follow the law regardless?

JUROR #90, KIM HOLLIDAY: Right.

THE COURT: Okay. And you, also, said in Question #46, "Do you believe corporations and individuals should be treated equally under the law?" And you said, No. Can you explain that?

JUROR #90, KIM HOLLIDAY: I think that corporations have a lot of responsibility and liabilities that are separate from an individual. I believe that.

I was a small business owner at one time. So I think that it has to be -- it has to be separate.

THE COURT: So, again, the law treats corporations

and individuals equally. And in -- the instruction at the end of the case will be something along the lines of, in the eyes of the law, corporations and individuals are to be treated the same. Do you feel like could you follow that law?

JUROR #90, KIM HOLLIDAY: Yes, I do.

THE COURT: All right. Do you feel you could be fair and impartial, even though the Defendants are corporations and the Plaintiff is an individual?

JUROR #90, KIM HOLLIDAY: Yes, I do.

THE COURT: And you could base your decision entirely on the evidence and the law?

JUROR #90, KIM HOLLIDAY: Yes.

THE COURT: Okay. Any further questions?

MR. PANATIER: No, Your Honor.

MR. YOUNG: No, Your Honor.

MR. TIVIN: No, Your Honor.

THE COURT: All right. Thank you very much, Ms. Holliday.

JUROR #90, KIM HOLLIDAY: Thank you.

(WHEREUPON, Juror #90, Kim Holliday, exited the courtroom.)

MR. YOUNG: Judge, can I get that questionnaire back from you?

THE COURT: Yes, sir.

MR. YOUNG: Thank you, Your Honor.

Judge, this juror is another one that really didn't answer, in our opinion.

MR. PANATIER: What number?

MR. YOUNG: #11.

MR. PANATIER: That's what I thought.

MR. YOUNG: Any of the significant questions at all.

THE COURT: All right. So that would be #51. If y'all could bring Ms. Black in.

MR. PANATIER: She's #11.

MS. MCVEY: She's #11.

MS. SHOFNER: She's #11.

THE COURT: Well, they're using the badge numbers.

MS. MCVEY: That is her badge number.

MR. PANATIER: Yes.

MR. YOUNG: Did I end up giving the wrong one?

MR. PANATIER: Is it Ms. Black?

MS. SHOFNER: Yes.

MR. PANATIER: That's #11.

MR. YOUNG: #11.

THE COURT: Oh, okay. Once again, I confused myself. Sorry.

MR. YOUNG: Well, I could have done that, Judge.

THE COURT: No. That's all right. I wasn't looking.

THE BAILIFF: Juror #51?

THE COURT: I'm sorry. I misspoke.

THE BAILIFF: Oh, excuse me.

THE COURT: #11 is who we need.

THE BAILIFF: #11. Okay.

(WHEREUPON, Juror #11, Adajha Black, entered the courtroom.)

THE BAILIFF: Juror #11, Your Honor.

THE COURT: Okay. Ms. Black, come on and have a seat, ma'am.

THE CLERK: If you'll, please, stand.

Place your left hand on the Bible and raise your right hand.

WHEREUPON,

ADAJHA BLACK,

after first having been duly sworn, testified as follows:

THE COURT: Okay. Ma'am, we're going to have to go through some of these questions that you didn't answer and take the time to do that right now.

The questionnaire -- the first question, #14, "If you were harmed by the negligence of another person or company, would you file a lawsuit?" You didn't answer that question.

JUROR #11, ADAJHA BLACK: No.

THE COURT: You would say, no, you would not file a lawsuit?

JUROR #11, ADAJHA BLACK: No.

THE COURT: Okay. Do you have any opinions about companies or corporations, in general?

JUROR #11, ADAJHA BLACK: No.

THE COURT: Do you believe awards in lawsuits -- in lawsuits are too high, or too low, or just right, or do you just not have an opinion about that?

JUROR #11, ADAJHA BLACK: I don't have any opinion.

THE COURT: All right. Do you know anyone who's ever been involved in an asbestos lawsuit, or claim, or a lawsuit involving an alleged hazardous substance?

JUROR #11, ADAJHA BLACK: No.

THE COURT: Do you have any opinion about asbestos-containing products?

JUROR #11, ADAJHA BLACK: No.

THE COURT: Do you know anything about asbestos fibers?

JUROR #11, ADAJHA BLACK: No.

THE COURT: Do you think there ought to be caps on lawsuits?

MR. PANATIER: They asked her to re-fill in this jury questionnaire and she did.

THE COURT: Okay. Well, I stand corrected.

Apparently, this was -- you did complete it the second time around.

You did put on #40, "If the law and the Court's instructions conflict with your opinions or belief, which would you follow?" And you put, your opinions or beliefs. Tell me about that.

JUROR #11, ADAJHA BLACK: I answered the law?

THE COURT: You said your own opinions and beliefs.

JUROR #11, ADAJHA BLACK: (Inaudible.)

THE COURT: Okay. You would follow the Court's instruction on the law?

JUROR #11, ADAJHA BLACK: Uh-huh.

THE COURT: Is that a "yes"?

JUROR #11, ADAJHA BLACK: Yes.

THE COURT: Okay. Do y'all want to look at this?

MR. YOUNG: Yes, Your Honor, if you don't mind.

THE COURT: Are there any others that we had supplemental answers?

MS. MCVEY: Yes, sir. But I think we circulated them.

(Pause.)

MR. YOUNG: All right. The only additional question we have is there's no answer to --

THE COURT: Okay.

MR. YOUNG: And I apologize for giving you the wrong one.

THE COURT: That's okay.

Have you or anyone close to you had cancer?

JUROR #11, ADAJHA BLACK: No.

THE COURT: Okay. Thank you, ma'am.

(WHEREUPON, Juror #11, Adajha Black, exited the courtroom.)

THE COURT: Okay. Who's next?

MR. TIVIN: #146.

THE COURT: Is there anybody we're not going to have to bring in here?

MR. YOUNG: Probably not, Judge. But we limited our questions fairly significantly.

THE COURT: Okay.

MR. ELLIOTT: I just couldn't read his answer to the last question.

Judge, this is an extra copy. I just couldn't read his last answer.

THE COURT: Okay. So this is #146?

MR. TIVIN: Yes, Your Honor.

THE COURT: All right. You can bring in #146, please.

(WHEREUPON, Juror #146, Darrell McNeill, entered the courtroom.)

THE BAILIFF: Juror #146.

THE COURT: Okay. Mr. McNeill, come on and have a seat, please, sir. And Ms. Jones will swear you in.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

DARRELL MCNEILL,

after first having been duly sworn, testified as follows:

THE COURT: Okay. Good morning.

JUROR #146, DARRELL MCNEILL: Good morning.

THE COURT: I just wanted to get you to clarify some of the answers you have in the questionnaire. And you had some responses about corporations and asbestos.

And to kind of cut to the chase, this is a case that alleges asbestos exposure that caused Mr. Seay's death. And the Defendants are two corporations.

Do you think you can be fair and impartial in this case, sir?

JUROR #146, DARRELL MCNEILL: I do.

THE COURT: Okay. And so you -- in Question #24, you state your thoughts about asbestos-containing products are -- and you wrote "hazardous." Is there anything you want to clarify about that or --

JUROR #146, DARRELL MCNEILL: No, sir.

THE COURT: You don't have to. I'm just --

JUROR #146, DARRELL MCNEILL: I just know you have to use precautions when you're working around them.

THE COURT: Okay. And are you the person who had

asthma?

JUROR #146, DARRELL MCNEILL: Yes, sir.

THE COURT: Okay. Is that a condition you still have, sir?

JUROR #146, DARRELL MCNEILL: That's correct.

THE COURT: Okay. You say you haven't been exposed to asbestos, but you are concerned about negative health effects?

JUROR #146, DARRELL MCNEILL: Correct.

THE COURT: Personally?

JUROR NUMBER 146, DARRELL MCNEILL: Personally?

THE COURT: Yes.

JUROR #146, DARRELL MCNEILL: No, not personally.

THE COURT: Okay. But just in general?

JUROR #146, DARRELL MCNEILL: Yes, sir.

THE COURT: Okay. Who did you care for who had a terminal illness or chronic condition?

JUROR #146, DARRELL MCNEILL: That was my mother. She had a stroke.

THE COURT: Yes, sir. All right.

Question #46, you -- which was, "Do you believe corporations and individuals should be treated equally under the law?" And I think you said, "Higher standard corporations." And under that it says, "Re: Ethical."

And I couldn't read the last word. Is that "competence" or --

Do you want to look at it?

JUROR #146, DARRELL MCNEILL: Yes, sir. Let me...

Ethical competence.

THE COURT: Ethical competence. Okay.

So, sir, the law states that the corporations and individuals are supposed to be treated equally. And in the eyes of the law, they are equal for purposes of civil liability. If you were instructed that that was the law that applies to the facts of this case, could you follow that instruction?

JUROR #146, DARRELL MCNEILL: Yes, sir.

THE COURT: All right. Any further questions?

MR. PANATIER: No, Your Honor.

MR. ELLIOTT: No, Your Honor.

THE COURT: Thank you very much.

JUROR #146, DARRELL MCNEILL: Thank you.

(WHEREUPON, Juror #146, Darrell McNeill, exited the courtroom.)

MR. YOUNG: Your Honor, on the ones that say that there shouldn't be a cap on awards, would you consider just asking them if they could follow the law on that issue, as opposed to what --

THE COURT: Which number is that, Mr. Young?

MR. YOUNG: It's #26.

THE COURT: If they say no?

MR. YOUNG: Yes, Your Honor.

I just -- the last guy had said no, too, I think. I can't remember.

THE COURT: I'm not willing to do that. I mean, y'all came up with this questionnaire. We'll be here all day if we have to clarify each question.

MR. YOUNG: All right. Judge, on #87, they didn't answer, "What do you think about corporations." And this juror had lung disease, and --

THE COURT: Okay.

MR. YOUNG: But just that one page, Judge, is -- that's all we've got.

THE COURT: Okay.

MR. YOUNG: Just this page right here.

THE COURT: All right, sir.

#87.

(WHEREUPON, Juror #87, Wendy Hines, entered the courtroom.)

THE BAILIFF: Juror #87.

THE COURT: Thank you.

Come on up, ma'am, Ms. Hines.

THE CLERK: If you'll place your left hand on the Bible and raise your right hand.

WHEREUPON,

WENDY HINES,

after first having been duly sworn, testified as follows:

THE COURT: Okay. Ma'am, just a couple questions. Are you doing okay this morning?

JUROR #87, WENDY HINES: Yes, sir.

THE COURT: You didn't answer the question about what your opinions are about companies or corporations in general. What is your answer to that?

JUROR #87, WENDY HINES: No, no.

THE COURT: You don't have an opinion?

JUROR #87, WENDY HINES: Huh-uh.

THE COURT: Okay. And do you know anyone who's ever been involved in a lawsuit or a claim due to asbestos or some hazardous substance?

JUROR #87, WENDY HINES: No, sir.

THE COURT: All right. And you -- the issues that you said you had with lung conditions, those aren't related in any way to asbestos?

JUROR #87, WENDY HINES: Exactly.

THE COURT: Okay. Thank you.

Thank you, ma'am.

(WHEREUPON, Juror #87, Wendy Hines, exited the courtroom.)

THE COURT: All right. So #141 is the next one?

MR. YOUNG: Your Honor, just two things. You know, one of the big issues in the case is going to be how much asbestos you have to breathe, what type, and for how long. She said, "I think asbestos is very damaging to the lungs."

If you could just ask her if she, you know, has an opinion about how much or how long -- you know, if the evidence is contrary to what she thinks, would she...

And then she had a friend with breast cancer. Those are the only two questions we have.

MR. PANATIER: There's probably going to be lots of people saying asbestos is dangerous to the lungs and they haven't expressed any other opinions. And no one here is going to say it's not dangerous to the lungs, I think.

MR. YOUNG: Well, that's not true, Judge. There's going to be a significant amount of testimony that small amounts of asbestos are not damaging to the lungs. It's a big issue in the case --

MR. PANATIER: I mean, if she had said --

MR. YOUNG: -- certainly for John Crane.

MR. PANATIER: If she had small amounts don't hurt people, then there might be a prep to follow.

MR. YOUNG: Well, Judge, it's in heavy pen in big letters. We're not asking for but two questions, Judge. I don't think we're being dilatory.

And, Judge, I had a trial -- the reason the cancer question is important to me is because we had a trial in Seattle where the juror didn't say that she had cancer, and then later went in the jury room and pretty much destroyed us. And then we got a new trial because of that.

So the cancer question is particularly important to me, you know. Cancer --

THE COURT: You just want to know whether it's her?

MR. YOUNG: Or if the fact that she or one of her close friends has had cancer. I mean, a lot of people, Judge, will say, I can't sit on a cancer case.

THE COURT: Okay. Juror #141.

(WHEREUPON, Juror #141, Marcia McElrath, entered the courtroom.)

THE BAILIFF: Juror #141.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

MARCIA MCELRATH,

after first having been duly sworn, testified as follows:

THE COURT: How are you doing today?

JUROR #141, MARCIA MCELRATH: Just fine.

THE COURT: Have a seat, ma'am.

Just a couple of questions to clarify your response

to Question #24, which was, "What are your thoughts about asbestos-containing products?" You said, "I think asbestos is very damaging to lungs."

Can you tell me more about your opinion on that or --

JUROR #141, MARCIA MCELRATH: Well, you're breathing it. If you're around asbestos, are you not breathing it?

THE COURT: Okay.

JUROR #141, MARCIA MCELRATH: And, to me, that would be damaging to your lungs.

THE COURT: Okay. But are your opinions about asbestos and potential damage that it might allegedly cause -- are they such that you don't think you could set them aside and decide this case based on the evidence you heard in the courtroom and the law?

JUROR #141, MARCIA MCELRATH: That wouldn't have any bearing onto my being on the jury or decision-making, no.

THE COURT: In other words, you're going to -- you would decide the case based on what you heard in the courtroom?

JUROR #141, MARCIA MCELRATH: Yes.

THE COURT: And if you had some contrary idea from your own experience before the case started, you could put that out of your mind. Is that what you're telling me?

JUROR #141, MARCIA MCELRATH: Yes.

THE COURT: All right. And Question #29, you mention

someone close to you had cancer -- breast cancer, actually. And you cared for someone with a terminal illness or chronic health condition. And is that -- could you tell me who that person was?

JUROR #141, MARCIA MCELRATH: It's my father. He has Parkinson's. And we are caring for him. He is now in a nursing home.

THE COURT: All right, ma'am. And who had breast cancer?

JUROR #141, MARCIA MCELRATH: My sister.

THE COURT: Okay. Now, this case of Mr. Seay, there will be evidence that he had mesothelioma, which is a form of cancer. Do you feel like you could be fair and impartial in this case?

I know experiences with family members who have cancer can sometimes be overwhelming and unquestionably traumatic. So I just want to make sure you'll be comfortable being on a jury where one of the allegations is that the exposure caused mesothelioma, or if you think your experience would be such that it might affect your ability to be fair and impartial.

JUROR #141, MARCIA MCELRATH: I could be fair and impartial. I wouldn't be unfair, no, sir.

THE COURT: Okay. Thank you, ma'am.

JUROR #141, MARCIA MCELRATH: Okay. Is that --

THE COURT: Oh, wait up. I've got one other question. What is Ghost Whisperer?

JUROR #141, MARCIA MCELRATH: Ghost Whisperer is -- it comes on Channel 305. And she is -- can see people who have passed on.

THE COURT: Okay.

JUROR #141, MARCIA MCELRATH: And they come back. And it's like family members trying to get in touch with the families here that they've left --

THE COURT: Okay.

JUROR #141, MARCIA MCELRATH: -- something unresolved between the family members. So she can see those.

THE COURT: Interesting. I wasn't familiar with that one.

JUROR #141, MARCIA MCELRATH: Her last name is Hewitt. I can't remember what her first name is, but, yeah.

THE COURT: Thank you.

JUROR #141, MARCIA MCELRATH: Thank you.

(WHEREUPON, Juror #141, Marcia McElrath, exited the courtroom.)

THE COURT: Okay. #116.

MR. YOUNG: Judge, the only follow-up that we have there is that she said that she had -- someone close to her had all types of cancer, and that she had to care for

someone with a terminal illness or condition. If you could just ask those same questions.

MR. PANATIER: Do you have the right one? You said, "she."

MR. YOUNG: Oh, he. I'm sorry.

MR. PANATIER: Okay. That's fine.

MR. YOUNG: I apologize.

THE COURT: Okay.

MR. YOUNG: I'm taking the stickies off as fast as I can, Judge, but...

THE COURT: All right. #116.

(WHEREUPON, Juror #116, Patrick Lausier, entered the courtroom.)

THE BAILIFF: Juror #116.

THE COURT: Okay. Come on up, Mr. -- is it Lausier?

JUROR #116, PATRICK LAUSIER: Lausier.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

PATRICK LAUSIER,

after first having been duly sworn, testified as follows:

THE COURT: Just a couple questions, sir.

JUROR #116, PATRICK LAUSIER: Okay.

THE COURT: Based on your questionnaire, you mention that you had cared for someone who had a terminal illness

or chronic health condition, that either you or someone else -- someone close to you had had cancer.

In this case, there will be evidence concerning mesothelioma that allegedly caused the death of Mr. Seay. I don't know much about the case either. So I'm just telling you, essentially, what I know. That's what I anticipate the evidence will be. It will be concerning mesothelioma. And there will be quite a bit of testimony about that.

And I just want to make sure, based on your experience with a family member or someone close to you, do you think you'll be comfortable sitting on that type of case? And could you be fair and impartial in that type of case?

JUROR #116, PATRICK LAUSIER: Yeah, I could.

THE COURT: Okay. And do you mind just telling me a little bit more about who was it that you cared for or had cancer?

JUROR #116, PATRICK LAUSIER: Okay. It was my son. He was 23 years old and had leukemia, acute lymphocytic leukemia.

THE COURT: Okay, sir.

JUROR #116, PATRICK LAUSIER: He suffered with it for two years.

THE COURT: All right. Thank you very much.

And I apologize for having to pry into that.

JUROR #116, PATRICK LAUSIER: Okay.

THE COURT: Okay. That's all the questions I have. Thank you.

JUROR #116, PATRICK LAUSIER: Okay. I guess I leave, right?

THE COURT: Yes, sir.

Thank you.

(WHEREUPON, Juror #116, Patrick Lausier, exited the courtroom.)

THE COURT: All right. #128.

MR. YOUNG: Judge, there are a lot of "not applicable" on the important questions. And then the cancer -- two cancers in this one. So we would just -- if you wouldn't mind looking. And I assume not applicable might be I don't have an opinion, but I'm not sure.

THE COURT: All right. That's #128.

(WHEREUPON, Juror #128, Sarah Martin, entered the courtroom.)

THE BAILIFF: Juror #128.

THE CLERK: If you'll place your left hand on the Bible and raise your right hand.

WHEREUPON,

SARAH MARTIN,

after first having been duly sworn, testified as follows:

THE COURT: How are you?

JUROR #128, SARAH MARTIN: Good.

How are you?

THE COURT: What's The Farmer's Table?

JUROR #128, SARAH MARTIN: It's a restaurant.

THE COURT: Okay. Where is it?

JUROR #128, SARAH MARTIN: It's on East Kennedy Street.

THE COURT: A couple questions. You marked a lot of these responses N/A? Does that mean -- for instance, like, "What are your opinions about companies and corporations generally?" You put N/A. Does that mean you don't have an opinion?

JUROR #128, SARAH MARTIN: Right. Yeah. Not really.

THE COURT: So we can take it that if you say "N/A," you just don't have an opinion?

JUROR #128, SARAH MARTIN: Yes, sir.

THE COURT: And you indicated you had a family member and a friend who had cancer. This case will have evidence concerning mesothelioma. And that is what Mr. Seay died of. Would that make you uncomfortable, based on your own experiences with close friends and family members, to the extent that you couldn't be fair and impartial?

JUROR #128, SARAH MARTIN: No, sir.

THE COURT: You could still follow the evidence --

JUROR #128, SARAH MARTIN: Yes, sir.

THE COURT: -- and the law?

JUROR #128, SARAH MARTIN: Yes, sir.

THE COURT: And base your decision solely on that?

JUROR #128, SARAH MARTIN: Yes, sir.

THE COURT: Okay. Thank you.

JUROR #128, SARAH MARTIN: Are we supposed to talk to you about not being able to do it for two weeks?

THE COURT: I was hoping nobody was going to talk to me about that.

JUROR #128, SARAH MARTIN: I'm sorry.

THE COURT: You can bring it up, sure.

JUROR #128, SARAH MARTIN: Okay. The owners of the restaurant have a scheduled trip to Michigan next week. And I'm the only other person responsible for the restaurant.

THE COURT: Okay. Well, are you all open for lunch and dinner, or just dinner?

JUROR #128, SARAH MARTIN: Just lunch.

THE COURT: Just lunch.

JUROR #128, SARAH MARTIN: 8:00 to 3:00, Sunday through Friday.

THE COURT: I'm going to make a note of that. Thank you for telling me.

JUROR #128, SARAH MARTIN: Thank you.

Is that all?

THE COURT: Yes, ma'am.

(WHEREUPON, JUROR #128, Sarah Martin, exited the courtroom.)

THE COURT: All right. How about #113?

MR. YOUNG: Judge, this juror has a close someone -- either the juror or someone close to him had lung cancer, which is important to us.

And then the last page of, at least, the one that we have is blank. I don't know if Mr. Panatier has a filled-out page.

MR. PANATIER: For #114?

MR. YOUNG: Yeah.

MR. ELLIOTT: #113.

MR. YOUNG: #113.

But the last question, you know, about treating corporations and individuals equally is important to us. So that's all, just the cancer question and then the last page.

MR. ELLIOTT: We would ask that you follow up on Question #21. He said he was exposed or someone close was exposed to asbestos.

THE COURT: Okay.

(WHEREUPON, Juror #113, Belton Lane, entered the courtroom.)

THE COURT: Mr. Lane?

JUROR #113, BELTON LANE: Yes, sir.

THE COURT: Yes, sir. Come on up and have a seat.

THE CLERK: If you'll place your left hand on the Bible and raise your right.

WHEREUPON,

BELTON LANE,

after first having been duly sworn, testified as follows:

THE COURT: Good morning, sir.

JUROR #113, BELTON LANE: Good morning.

THE COURT: Just a couple of questions to follow up on your questionnaire.

JUROR #113, BELTON LANE: Yes, sir.

THE COURT: You stated "yes" in response to the question, "Have you or has anyone close to you ever been exposed to asbestos?" Can you expand on that?

JUROR #113, BELTON LANE: Yes, sir. Years ago, we worked -- me and my brother both worked for the Transcontinental Gas Pipeline. And some of the lining that they had in the walls had asbestos in them. So they had to take that asbestos out of the building. And they did have up sheets of plastic to try to contain it, you know, so the rest of the workers wouldn't get exposed to it, you know. They had a company come in to take and remove it. But --

THE COURT: When was that?

JUROR #113, BELTON LANE: Sometime during the late '80s or early '90s.

THE COURT: Where was that?

JUROR #113, BELTON LANE: Transcontinental Gas Pipeline.

THE COURT: Where was that located?

JUROR #113, BELTON LANE: In Moore, South Carolina.

THE COURT: Oh, okay.

And you said you -- someone close to you had lung cancer. Can you tell me who that was?

JUROR #113, BELTON LANE: My brother.

THE COURT: And so this case involves allegations of asbestos exposure that caused mesothelioma, which is a form of cancer in the lung. And do you feel you could be fair and impartial in such a case, given your family experience with lung cancer?

JUROR #113, BELTON LANE: Yes, sir.

THE COURT: All right. And there were some questions that I don't know if you answered. And that would be: Have you ever worn personal protective equipment on a job?

JUROR #113, BELTON LANE: Personal protection equipment?

THE COURT: Yeah.

JUROR #113, BELTON LANE: Yes, sir.

THE COURT: Okay. Was it mandatory or optional?

JUROR #113, BELTON LANE: Optional.

THE COURT: What do you think an employer's responsibility is to an employee concerning health and safety?

JUROR #113, BELTON LANE: Well, I think they would share in some of the responsibility for making sure that you're in a safe environment.

THE COURT: Have you ever made a workers' comp claim?

JUROR #113, BELTON LANE: Yes, sir.

THE COURT: Were you compensated?

JUROR #113, BELTON LANE: Yes, sir.

THE COURT: And do you mind telling us a little more about that? What kind of injury was it?

JUROR #113, BELTON LANE: Knee -- tear in my knee, meniscus tear.

THE COURT: Oh, okay.

And, finally, do you believe corporations and individuals should be treated equally under the law?

JUROR #113, BELTON LANE: Yes, sir.

THE COURT: Okay. And, again, you don't have any issues in serving on a case about alleged asbestos exposure?

JUROR #113, BELTON LANE: No, sir. I don't have a problem with it.

THE COURT: You can be fair and impartial and decide your case -- decide the case on the evidence and the law?

JUROR #113, BELTON LANE: Yes, sir.

(WHEREUPON, a bench conference was held.)

THE COURT: Well, do you have any concerns about your health due to the asbestos exposure you mentioned?

JUROR #113, BELTON LANE: No, sir.

THE COURT: Okay. Thank you.

Thank you, Mr. Lane.

JUROR #113, BELTON LANE: Yes, sir.

(WHEREUPON, Juror #113, Belton Lane exited the courtroom.)

THE COURT: All right. #49.

(WHEREUPON, Juror #49, Deborah Dawkins, entered the courtroom.)

THE BAILIFF: Juror #49.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

DEBORAH DAWKINS,

after first having been duly sworn, testified as follows:

(WHEREUPON, a bench conference was held.)

THE COURT: Ms. Dawkins, good morning.

JUROR #49, DEBORAH DAWKINS: Good morning.

THE COURT: A couple questions to follow up on your

questionnaire. You mentioned that you cared for someone who had a terminal illness or a chronic health condition, and, also, that you or someone close to you has had cancer.

JUROR #49, DEBORAH DAWKINS: Yes, sir.

THE COURT: Do you think that experience -- or those experiences would affect your ability to be fair and impartial in this case where there's allegations of asbestos exposure that led to the death of Mr. Seay from mesothelioma?

JUROR #49, DEBORAH DAWKINS: No, sir.

THE COURT: And you said you made a workers' comp claim?

JUROR #49, DEBORAH DAWKINS: Yes, sir.

THE COURT: Can you tell me about what that was?

JUROR #49, DEBORAH DAWKINS: I injured my finger and --

THE COURT: Okay.

JUROR #49, DEBORAH DAWKINS: Do you want further detail?

THE COURT: No. That's all right.

Who -- somebody worked for Daniel, or Fluor, or --

JUROR #49, DEBORAH DAWKINS: Fluor Daniel, my husband did.

THE COURT: Your husband.

Who worked -- somebody worked for Celanese? Did somebody work for Hoechst Celanese?

JUROR #49, DEBORAH DAWKINS: It was Daniel Construction through Hoechst Fibers.

THE COURT: Okay. Did he ever work for Daniel at Celanese?

JUROR #49, DEBORAH DAWKINS: I don't recall that. He was working at Hoechst Fibers on 85. And it was through Daniel Construction.

THE COURT: Okay. Any further questions?

(WHEREUPON, there was no response.)

THE COURT: Thank you, ma'am.

(WHEREUPON, Juror #49, Deborah Dawkins, exited the courtroom.)

THE COURT: #51.

MR. YOUNG: Judge, the only question we have is #39, "Do you have any concern about your ability to be fair in a jury trial?" And she said, "Yes."

THE COURT: Okay.

MR. YOUNG: And that's it for us.

MR. PANATIER: Just #26 [inaudible].

(WHEREUPON, Juror #51, Cody Denson, entered the courtroom.)

THE BAILIFF: Your Honor, #51.

THE COURT: Mr. Denson, come on up.

THE CLERK: If you'd place your left hand on the Bible and raise your right hand.

WHEREUPON,

CODY DENSON,

after first having been duly sworn, testified as follows:

THE COURT: Good morning.

JUROR #51, CODY DENSON: Good morning.

THE COURT: A couple of questions to follow up on your answers to the questionnaire.

You said there should be a limit or cap on money someone can recover in a lawsuit. You stated you feel like some people try to get as much as they could out of a lawsuit.

Do you think your feelings about the civil justice system are such that you couldn't be fair and impartial to both the Plaintiff and the Defense?

JUROR #51, CODY DENSON: No, sir.

THE COURT: You would judge each case on the merits?

JUROR #51, CODY DENSON: Yes, sir.

THE COURT: You said you did have a -- you had a concern about your ability to be fair in a jury trial. Tell me what that -- what you mean by that.

JUROR #51, CODY DENSON: I had no clue what asbestos was. So I felt like that would be unfair.

THE COURT: Oh, your lack of knowledge about it would

be unfair?

JUROR #51, CODY DENSON: Yeah.

THE COURT: But you could decide the case based on the evidence you heard during the trial, not any other source?

JUROR #51, CODY DENSON: Yes, sir.

THE COURT: And you could follow the law?

JUROR #51, CODY DENSON: Yes, sir.

THE COURT: All right. Thank you very much.

(WHEREUPON, Juror #51, Cody Denson, exited the courtroom.)

MR. YOUNG: Judge, the only question we have is on -- is the one cancer question for this one.

THE COURT: Okay.

MR. PANATIER: And our question on her would be #26, she believes in caps, says they're often outrageous. And opinion awarding money from the -- she said doubtful. So I'd just like to know if she could be fair and impartial.

THE COURT: #171.

MR. YOUNG: Judge, following up on that earlier discussion, I think the cap question should be fairly evenhanded. Do you believe you can follow the evidence with respect to awarding damages, or something like that. Obviously, it's your decision.

(WHEREUPON, Juror #171, Rebecca Phillips, entered the courtroom.)

THE BAILIFF: Juror #171.

THE COURT: Ms. Phillips, good morning.

JUROR #171, REBECCA PHILLIPS: Good morning.

THE CLERK: If you would, place your left hand on the Bible -- you need to stand.

Place your left hand on the Bible and raise your right hand.

WHEREUPON,

REBECCA PHILLIPS,

after first having been duly sworn, testified as follows:

THE COURT: Just a couple of questions to follow up on your questionnaire.

JUROR #171, REBECCA PHILLIPS: Okay.

THE COURT: All right. You stated -- in response to the question, "Do you believe there should be limits or caps on the amount of money a person can recover in a lawsuit?"

You said, "Yes."

"Why?"

"Often outrageous for a lawsuit."

So the question really is, do you feel like you could follow the law and base your decision, as a juror, on the law and the evidence, or would your personal opinions be

such that you could not be fair and impartial?

JUROR #171, REBECCA PHILLIPS: No. I could follow the law.

THE COURT: Now, you said in #40 that "As a juror, if the law and the Court's instructions conflicted with your opinions or beliefs, which would you follow?"

And you stated, "My opinions/beliefs."

Is that right?

JUROR #171, REBECCA PHILLIPS: Yes. I mean --

THE COURT: So it's real simple. To be a juror, you have to take an oath that says you can follow the law.

JUROR #171, REBECCA PHILLIPS: Well, I would follow the law, yes. I just -- I don't -- I guess it was confusing to me. I don't know --

THE COURT: Yeah, sure.

So if -- if your personal opinions were contrary to what the law was, could you follow the law, or would you let your personal opinions trump?

JUROR #171, REBECCA PHILLIPS: I could follow the law. I think -- but I do think that my personal opinions -- I don't know. I've never been on a jury before. So, you know, it would -- I would follow the law. But I think just, in general, when I read cases and stuff, you know, my opinions -- but that's like on TV and stuff like that, you know. So I've never been on a -- sat on a

jury.

THE COURT: So you can take that oath?

JUROR #171, REBECCA PHILLIPS: I would take an oath.

THE COURT: And you'd follow that oath?

JUROR #171, REBECCA PHILLIPS: And I would follow the oath, yes, sir.

THE COURT: And if, at some point, if you were seated as a juror and you found that your personal beliefs and opinions were such that you could no longer follow that oath, would you tell me that and ask to be excused?

JUROR #171, REBECCA PHILLIPS: I would.

THE COURT: And you, also, stated that you've cared for someone who had a chronic illness, and that you or someone close to you had cancer.

This case involves allegations that Mr. Seay had mesothelioma that was allegedly caused by asbestos exposure. We don't want to make anyone uncomfortable due to their personal experiences with diseases or illness. So do you think you could sit fairly and impartially as a juror on such a case, even though you've had these experiences with --

JUROR #171, REBECCA PHILLIPS: I do.

THE COURT: All right. Any further questions?

MR. PANATIER: No, Your Honor.

MR. YOUNG: No, Your Honor.

THE COURT: All right. Thank you, Ms. Phillips.

JUROR #171, REBECCA PHILLIPS: Thank you.

THE COURT: You have quite a lot of accomplished children. Congratulations.

JUROR #171, REBECCA PHILLIPS: Thank you.

You should think before you have five. No, I'm just kidding.

(WHEREUPON, Juror #171, Rebecca Phillips, exited the courtroom.)

THE COURT: #134.

MR. YOUNG: Judge, just two things. She -- I'm sorry. He has some strong opinions about asbestos being bad. And then if you could just ask him if he would listen to the evidence.

THE COURT: Okay.

MR. YOUNG: And then there's -- about cancer. And that's it.

(WHEREUPON, Juror #134, Eric McCarty, entered the courtroom.)

THE BAILIFF: Juror #134.

THE CLERK: If you'd place your left hand on the Bible and raise your right hand.

WHEREUPON,

ERIC MCCARTY,

after first having been duly sworn, testified as follows:

THE COURT: Okay. Mr. McCarty, good morning, sir.

JUROR #134, ERIC MCCARTY: Good morning, sir.

THE COURT: Well, it's, actually, afternoon now.

JUROR #134, ERIC MCCARTY: Yeah, really.

THE COURT: A couple questions to follow up on your questionnaire. First, you said your thoughts about asbestos-containing products were not good.

The question is, this case involves claims that Mr. Seay was exposed to asbestos that caused his death from mesothelioma. Do you feel like you could decide this case based on the evidence you heard during the trial, and the law, and not let your opinions about asbestos-containing products that you have right now interfere with that?

JUROR #134, ERIC MCCARTY: No. I just answered that as it causes cancer, so I figured it was bad.

THE COURT: Okay. But --

JUROR #134, ERIC MCCARTY: I mean -- oh, you're talking about overall the case?

THE COURT: Well, I mean, I guess the question really is, you have to take an oath to be a juror --

JUROR #134, ERIC MCCARTY: Yeah.

THE COURT: -- and you have to say you can follow the law --

JUROR #134, ERIC MCCARTY: Uh-huh.

THE COURT: -- and base your decision on the evidence

you hear during the case. So can you do that?

JUROR #134, ERIC MCCARTY: Yeah. I believe I could.

THE COURT: All right. And if you found something out during the case about asbestos that might conflict with the opinion you have now or be contrary to it, could you put your own opinions that you might have now aside and base your decision solely on the evidence and the law?

JUROR #134, ERIC MCCARTY: Yes. I believe I could. I would separate the two.

THE COURT: Okay. And you indicated that you had some experience with cancer, or that someone close to you, or --

JUROR #134, ERIC MCCARTY: Yeah.

THE COURT: And the question again is, can you be fair and impartial in this case that alleges a death from mesothelioma, which is a form of cancer? In other words, we don't want to put you in a situation where, because of your past experience with that disease, you don't feel like you could be fair and impartial. Do you think you could be?

JUROR #134, ERIC MCCARTY: Yes, I could be. That was totally different.

THE COURT: All right, sir. Thank you very much.

JUROR #134, ERIC MCCARTY: Uh-huh. I understand.

(WHEREUPON, Juror #134, Eric McCarty, exited the courtroom.)

THE COURT: All right. #197.

(WHEREUPON, Juror #197, Deborah Shea, entered the courtroom.)

THE BAILIFF: Juror #197.

THE CLERK: Place your left hand on the Bible and raise your right.

WHEREUPON,

DEBORAH SHEA,

after first having been duly sworn, testified as follows:

(WHEREUPON, a bench conference was held.)

THE COURT: Ms. Shea --

JUROR #197, DEBORAH SHEA: Yes.

THE COURT: -- good afternoon.

Just a couple questions about your questionnaire.

JUROR #197, DEBORAH SHEA: Uh-huh.

THE COURT: You didn't answer some of the questions, and I was going to get your response.

"There are too many restrictions and regulations on companies today." And it asks you whether you strongly agree, agree, disagree, or strongly disagree.

JUROR #197, DEBORAH SHEA: I had no opinion.

THE COURT: Oh, okay. Do you have any opinion or thoughts about asbestos-containing products?

JUROR #197, DEBORAH SHEA: No, I don't.

THE COURT: All right. "Have you" -- it says, "Have you cared for someone with a terminal illness or current health issue?" You wrote, "Yes." Can you tell me more about that?

JUROR #197, DEBORAH SHEA: Sure. My mother had a severe heart attack. And I was her primary caregiver.

THE COURT: Okay.

JUROR #197, DEBORAH SHEA: She's since passed away.

THE COURT: I'm sorry.

And you, also, stated you believe that corporations and individuals should not be treated equally under the law.

If you're selected as a juror, you have to take an oath to follow the law. And the law is that corporations and individuals are to be treated the same for purposes of civil liability. Do you feel like you could follow that law, ma'am?

JUROR #197, DEBORAH SHEA: Yes.

THE COURT: All right. Any further questions?

MR. PANATIER: No, Your Honor.

MR. ELLIOTT: No, Your Honor.

THE COURT: Thank you very much.

(WHEREUPON, Juror #197, Deborah Shea, exited the courtroom.)

THE COURT: #95.

(WHEREUPON, Juror #95, Jacob Hunter, entered the courtroom.)

(WHEREUPON, a bench conference was held.)

THE COURT: Yes, sir, Mr. Hunter.

JUROR #95, JACOB HUNTER: Yes, sir.

THE COURT: Come on up and have a seat, please, sir.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

JACOB HUNTER, JR.,

after first having been duly sworn, testified as follows:

THE COURT: How are you today?

JUROR #95, JACOB HUNTER: Fine, sir.

THE COURT: A couple questions about your questionnaire. You stated, I believe, your spouse had a lawsuit related to a chemical exposure?

JUROR #95, JACOB HUNTER: Right.

THE COURT: Can you tell me more about that?

JUROR #95, JACOB HUNTER: Right. She was -- she was working at Karmet [phonetic] Industries. And she had some spills and excessive exposure to trichloroethylene, I think it was, a cleaning chemical.

And it caused her to -- she severely damaged her skin. It caused her to break out. She can't get too hot,

or she can't get too cold.

THE COURT: Okay. Is the case concluded?

JUROR #95, JACOB HUNTER: Yes.

THE COURT: And you, also, answered that you or someone close to you have been exposed to asbestos. Who was that?

JUROR #95, JACOB HUNTER: Right. That was me, sir.

THE COURT: You. Okay.

JUROR #95, JACOB HUNTER: I worked for Southern Railway back in the early '70s.

THE COURT: And you're concerned about negative health effects on you personally?

JUROR #95, JACOB HUNTER: I haven't experienced any so far, but, yeah.

THE COURT: Okay. And you, also, said that someone close to you had had cancer, and you've, also, cared for someone with a chronic illness.

JUROR #95, JACOB HUNTER: That was my mother, sir.

THE COURT: All right. This case would involve testimony and evidence about Mr. Seay's mesothelioma. Do you feel that, given your own experience with caring for someone who's chronically ill, you could be fair and impartial in this case hearing that type of testimony?

JUROR #95, JACOB HUNTER: I think -- I think I can.

THE COURT: Well, could you base your decision solely

on the evidence and the law?

JUROR #95, JACOB HUNTER: I'll do my best. I'll do my best. That's all I can --

THE COURT: Have you got some concerns about it?

JUROR #95, JACOB HUNTER: Well, I -- I've got sort of a -- well, let me see how to word it. How I would say it as far as -- I wasn't personally satisfied with the outcome of my wife's case there.

THE COURT: Okay. Do you think that might affect your judgment in this case?

JUROR #95, JACOB HUNTER: I think it might.

THE COURT: Okay.

JUROR #95, JACOB HUNTER: I think it might.

THE COURT: All right. Well, I'm going to excuse you then from this case.

I saw you were president and founder of an investment club. Is that still going on?

JUROR #95, JACOB HUNTER: No, sir. We had to stop because of lack of individuals wanting to work. Everybody wanted to invest, but nobody wanted to do the work that was involved to make it profitable.

THE COURT: I just hope yours did better than mine did.

JUROR #95, JACOB HUNTER: We did good there. For a time, we did. We did good.

THE COURT: All right. Thank you.

I'm going to excuse you from the case, sir.

(WHEREUPON, Juror #95, Jacob Hunter, exited the courtroom.)

THE COURT: #16.

THE BAILIFF: What was that, Your Honor?

THE COURT: #16. I'm sorry.

(WHEREUPON, Juror #16, Yevgeniy Bondarchuk, entered the courtroom.)

THE BAILIFF: Juror #16.

(WHEREUPON, a bench conference was held.)

THE CLERK: If you would place your left hand on the Bible and raise your right hand.

WHEREUPON,

YEVGENIY BONDARCHUK,

after first having been duly sworn, testified as follows:

THE COURT: Good afternoon.

A couple questions about your questionnaire.

JUROR #16, YEVGENIY BONDARCHUK: Okay.

THE COURT: All right. First of all, you said you work with Celanese?

JUROR #16, YEVGENIY BONDARCHUK: No. The Auriga Polymers plant where I work now used to be Hoechst Celanese.

THE COURT: Okay. So you never were employed by

them?

JUROR #16, YEVGENIY BONDARCHUK: No.

THE COURT: Do you have any opinions about Celanese or any beliefs that might affect your ability to be fair and impartial in this case where they're a Defendant?

JUROR #16, YEVGENIY BONDARCHUK: No.

THE COURT: You, also, stated that, as a juror, you would follow your opinions and beliefs if they conflicted with the law. Can you tell me about that?

JUROR #16, YEVGENIY BONDARCHUK: Well, it depends on the situation, I guess. I didn't know which -- what exactly would be the case. So it's -- I understand if the law says it is what it is, then it is. But, sometimes -- I don't know. It depends on the case.

THE COURT: You could take an oath to follow it and you could follow your oath?

JUROR #16, YEVGENIY BONDARCHUK: Yes.

THE COURT: All right. And you said you had or had not filed a workers' comp claim?

JUROR #16, YEVGENIY BONDARCHUK: No, I haven't.

THE COURT: Okay. You didn't answer the question about corporations and companies, about whether you had any -- do you have any opinions about them, in general?

JUROR #16, YEVGENIY BONDARCHUK: Well, they provide me my job, so they pay my bills.

THE COURT: And do you agree or disagree with the statement that there are too many restrictions and regulations on companies today?

JUROR #16, YEVGENIY BONDARCHUK: I'm kind of neutral about it.

THE COURT: Okay. Thank you.

JUROR #16, YEVGENIY BONDARCHUK: I can go?

THE COURT: Yes, sir.

(WHEREUPON, Juror #16, Yevgeniy Bondarchuk, exited the courtroom.)

THE COURT: #185.

MR. YOUNG: This juror's husband, apparently, had an asbestos disease.

THE COURT: Okay.

(WHEREUPON, Juror #185, Robin Robbins, entered the courtroom.)

(WHEREUPON, a bench conference was held.)

THE COURT: Ms. Robbins.

JUROR #185, ROBIN ROBBINS: Yes, sir.

THE COURT: Yes, ma'am.

THE CLERK: If you'd place your left hand on the Bible and raise your right hand.

WHEREUPON,

ROBIN ROBBINS,

after first having been duly sworn, testified as follows:

THE COURT: Good afternoon, ma'am.

JUROR #185, ROBIN ROBBINS: Good afternoon.

THE COURT: Just to clarify about some of your responses on this questionnaire. Your husband -- what specific disease did he have?

JUROR #185, ROBIN ROBBINS: Asbestos.

THE COURT: Okay.

JUROR #185, ROBIN ROBBINS: He was in the military.

THE COURT: Obviously, this case involves allegations of asbestos exposure that caused mesothelioma. Do you think you can be fair in such a case?

JUROR #185, ROBIN ROBBINS: Pardon me?

THE COURT: Do you think you could be fair in such a case?

JUROR #185, ROBIN ROBBINS: Yes, sir.

THE COURT: And put aside your experiences with your husband, and his experiences, and decide this case solely on the evidence and the law?

JUROR #185, ROBIN ROBBINS: Yes, sir.

THE COURT: You said you knew someone who had been involved in an asbestos lawsuit. Who was that?

JUROR #185, ROBIN ROBBINS: My husband.

THE COURT: Okay. Did he, actually, sue over it?

JUROR #185, ROBIN ROBBINS: No. Actually, the lawyers called us. We didn't --

THE COURT: Oh, really?

JUROR #185, ROBIN ROBBINS: We -- he had done been diagnosed with asbestos and was getting a DAV check. And then the lawyers called. We never did call the lawyer.

THE COURT: But you brought a lawsuit?

JUROR #185, ROBIN ROBBINS: The Navy -- they brought a lawsuit against the Navy.

THE COURT: Oh, okay. Who called you?

JUROR #185, ROBIN ROBBINS: Some lawyer. I couldn't tell you his name. That was back in '96.

THE COURT: You, also, stated that someone close to you had had brain cancer?

JUROR #185, ROBIN ROBBINS: My father.

THE COURT: Okay. Would that experience affect your ability to be fair and impartial in this case where there will be evidence about a form of cancer, namely mesothelioma?

JUROR #185, ROBIN ROBBINS: No, sir.

THE COURT: You stated you'd be inclined to favor the Plaintiff in an asbestos exposure case. The question will be, can you follow your oath as a juror?

Because at the end of the case, you'll be instructed that you have to base your decision on the evidence and the law, and you can't be influenced by any prejudice, or bias, or undue sympathy.

Do you feel like you could follow such an instruction in an asbestos case?

JUROR #185, ROBIN ROBBINS: Yes, sir.

THE COURT: So do you still stand by your statement that you would favor the Plaintiff in an asbestos case?

JUROR #185, ROBIN ROBBINS: Is that what I said?

THE COURT: I'll let you look at it if you want. #35.

JUROR #185, ROBIN ROBBINS: Yes.

THE COURT: Do you still stand by that?

JUROR #185, ROBIN ROBBINS: Yes, sir.

THE COURT: Okay. Any further questions?

(WHEREUPON, there was no response.)

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

JUROR #185, ROBIN ROBBINS: Thank you.

MR. YOUNG: Your Honor, Celanese would --

THE COURT: Hold on one second.

MR. YOUNG: Sorry.

(WHEREUPON, Juror #185, Robin Robbins, exited the courtroom.)

THE COURT: Okay. I'm excusing her based on what I find to be her bias and prejudice, and lack of credible responses. And I base that on her responses, her demeanor, and her inconsistent statements, and her questionnaire.

All right. What about #169?

MR. YOUNG: Judge, this juror has some very strong opinions about asbestos throughout the questionnaire. So if you could just follow up like you did before. And then there's a lung cancer answer. And then there's no answer to the question -- #35, the one that you just showed the juror. And that's it for us.

THE COURT: Okay.

MR. ELLIOTT: Your Honor, he indicates someone worked at Celanese.

THE COURT: Okay.

(WHEREUPON, Juror #169, Ray Pearson, entered the courtroom.)

THE BAILIFF: #169.

THE COURT: Mr. Pearson?

JUROR #169, RAY PEARSON: Yes.

THE COURT: How are you?

JUROR #169, RAY PEARSON: Good, sir.

Do I need --

THE CLERK: Yes, sir.

If you'll place your left hand on the Bible and raise your right hand.

WHEREUPON,

RAY PEARSON,

after first having been duly sworn, testified as follows:

THE COURT: A couple questions, sir, to follow up on your questionnaire responses.

You said someone close to you had lung cancer; is that right?

JUROR #169, RAY PEARSON: Yes, sir.

THE COURT: Who was that?

JUROR #169, RAY PEARSON: That would have been -- let me think. That would have been my -- my first cousin.

THE COURT: Would that affect your ability to be fair and impartial in this case, which will have evidence about mesothelioma, which is a form of cancer?

JUROR #169, RAY PEARSON: Sir?

THE COURT: Is it going to make you uncomfortable to be a juror on this case?

JUROR #169, RAY PEARSON: No, sir.

THE COURT: Okay. Who worked at Celanese?

JUROR #169, RAY PEARSON: My first cousin.

THE COURT: Okay. The same person?

JUROR #169, RAY PEARSON: Uh-huh.

THE COURT: That's "yes"?

JUROR #169, RAY PEARSON: Yes, sir.

THE COURT: Okay. Do you have any opinions about Hoechst Celanese?

JUROR #169, RAY PEARSON: No, sir, I don't.

THE COURT: Okay. You didn't answer some of the

questions about -- have you ever worn personal protective equipment on the job?

JUROR #169, RAY PEARSON: No, sir.

THE COURT: What do you think an employer's responsibility is to an employee regarding health and safety?

JUROR #169, RAY PEARSON: Well, I think -- I think an employee should be held accountable.

THE COURT: Employee?

JUROR #169, RAY PEARSON: The employer.

THE COURT: Oh, okay. What does that mean?

JUROR #169, RAY PEARSON: Well, it -- say, for instance, if you -- if you get hurt, you should be compensated for it.

THE COURT: Under any circumstances or --

JUROR #169, RAY PEARSON: Not under any circumstances, no, sir. If -- if the negligence is on your part, you shouldn't be.

THE COURT: Okay. You mean -- I don't want to --

JUROR #169, RAY PEARSON: Take, for instance, if you go in -- if you go to work and you go in -- you go to work -- you go in intoxicated and something -- say, you get hurt on the job, you shouldn't -- you shouldn't be compensated for that, because that's negligence on your part.

THE COURT: Okay. I don't want to put words in your mouth. So I'm just going to try to paraphrase what I think you're saying. If you're not saying it --

JUROR #169, RAY PEARSON: Okay.

THE COURT: -- just say, you're dead wrong.

JUROR #169, RAY PEARSON: Okay.

THE COURT: Because there's no right or wrong answer.

Are you saying that someone who's injured on the job should have the right to recover if the law allows for such a recovery?

JUROR #169, RAY PEARSON: Yes, sir. That's what I'm saying.

THE COURT: All right. And that would be up to the law; right?

JUROR #169, RAY PEARSON: Right, right, up to the law. Yes, sir.

THE COURT: Have you ever made a workers' comp claim?

JUROR #169, RAY PEARSON: No, sir, I haven't.

THE COURT: Do you believe corporations and individuals should be treated equally under the law?

JUROR #169, RAY PEARSON: Yes, sir.

THE COURT: Yes, sir.

(WHEREUPON, a bench conference was held.)

THE COURT: Do you think your cousin's lung cancer was work-related in any way?

JUROR #169, RAY PEARSON: No, sir.

THE COURT: All right. What is this show Bizarre Foods? I've never heard of that.

JUROR #169, RAY PEARSON: Andrew Zimmern.

THE COURT: What?

JUROR #169, RAY PEARSON: Andrew Zimmern.

THE COURT: He's -- what is he? A chef?

JUROR #169, RAY PEARSON: Yeah.

THE COURT: And you're a chef, too?

JUROR #169, RAY PEARSON: Yeah.

He goes around to different locations trying out different foods.

THE COURT: Has he ever been to your restaurant?

JUROR #169, RAY PEARSON: No, sir.

He has been to the Beacon Drive-In before.

THE COURT: Well, I believe that.

JUROR #169, RAY PEARSON: But he hasn't been to Wade's, no.

THE COURT: What channel does that come on?

JUROR #169, RAY PEARSON: It's on 277, yeah. Food Network.

THE COURT: Okay.

JUROR #169, RAY PEARSON: Let me rephrase that. On the Travel Channel.

THE COURT: Oh, okay. Right.

JUROR #169, RAY PEARSON: 277.

THE COURT: All right. Thank you, Mr. Pearson.

JUROR #169, RAY PEARSON: Yes, sir.

Y'all have a good day.

THE COURT: You, too.

(WHEREUPON, Juror #169, Ray Pearson, exited the courtroom.)

THE COURT: All right. #92.

MR. YOUNG: Judge, that restaurant was in the Atlanta paper. I've got it in my briefcase.

(WHEREUPON, Juror #92, Monica Holmes, entered the courtroom.)

(WHEREUPON, a bench conference was held.)

THE COURT: All right. Ms. Holmes.

THE CLERK: Stand for me.

If you'll place your left hand on the Bible and raise your right hand.

WHEREUPON,

MONICA HOLMES,

after first having been duly sworn, testified as follows:

THE COURT: Ma'am, just a couple questions about your questionnaire to follow up. You didn't answer the question of what's your opinion about people who file lawsuits about asbestos-containing products. Do you have an opinion on that?

JUROR #92, MONICA HOLMES: No, sir, I don't.

THE COURT: Okay. You stated that someone close to you had lung cancer. Can you tell me who that was, ma'am?

JUROR #92, MONICA HOLMES: That was my first cousin.

THE COURT: This case involves evidence about mesothelioma, which is a form of cancer in the lung. Do you feel like you could fairly and impartially decide such a case given that experience you had with your cousin?

JUROR #92, MONICA HOLMES: Yes, sir.

THE COURT: All right. You stated that you would favor the Plaintiff -- or be inclined to favor the Plaintiff in an asbestos exposure lawsuit. Does that mean that you would view the evidence more favorably to the Plaintiff?

JUROR #92, MONICA HOLMES: Yes, sir.

THE COURT: Do you think you could base your decision on the evidence in the case and the law?

JUROR #92, MONICA HOLMES: Yes, sir. It would be based on the evidence.

THE COURT: All right. So, at the end of the case, I would instruct the jury that you had to decide the case on the evidence and the law, and you couldn't let any personal likes, or dislikes, or prejudices, or undue sympathy come into your deliberations or your decision.

Do you think you could follow that instruction?

JUROR #92, MONICA HOLMES: Yes, sir.

THE COURT: So that seems to conflict with your answer about -- that you'd be inclined to favor the Plaintiff.

JUROR #92, MONICA HOLMES: Like I say, sir, it would just be based on the evidence that was presented.

THE COURT: Okay. So if the evidence convinced you, for example, that you should find for the Defendant, you could do that, too?

JUROR #92, MONICA HOLMES: Yes, sir.

THE COURT: You wouldn't be prejudiced against the Plaintiff or the Defendants?

JUROR #92, MONICA HOLMES: No, sir.

THE COURT: All right. Thank you.

(WHEREUPON, a bench conference was held.)

THE COURT: Is there any reason you answered that question about you'd be inclined to favor the Plaintiff?

JUROR #92, MONICA HOLMES: Because if they have a complaint, sir, then they should have evidence that states that it was related to their complaint.

THE COURT: So -- but if the evidence convinced you that that was not true, then would you not have a problem --

JUROR #92, MONICA HOLMES: No, sir.

THE COURT: -- concluding that was not true?

JUROR #92, MONICA HOLMES: No, sir.
THE COURT: All right. Thank you.
That's all.
(WHEREUPON, Juror #92, Monica Holmes, exited the courtroom.)
MR. YOUNG: Your Honor, I think what she was trying to say is that she felt like if you filed a lawsuit that, theoretically, you must have had some evidence to support it or it couldn't be filed. But I assume you're going to --
THE COURT: I think that's what Rule 11 says, too.
MR. YOUNG: Right. But I assume you're going to -- you'll have a charge on burden of proof at the beginning.
THE COURT: Oh, yeah, sure.
I think based on her --
MR. YOUNG: Yeah. We're not moving for cause.
THE COURT: I understand.
MR. YOUNG: I just wanted to make sure.
THE COURT: All right. We're going to take about a five-minute break. And then we'll come back.
(WHEREUPON, a break was taken.)
THE COURT: So we've got 17. If we have -- to get 12, we need 20. And then to have three alternates, we need 26; right?
MS. MCVEY: 29.

MR. PANATIER: 29.

THE COURT: Yeah, right, 29.

Probably some of them are going to fall out because of the two-week thing, so.

MR. TIVIN: We've been having pretty good luck so far, knock on wood.

THE COURT: All right. So how about #189?

(WHEREUPON, Juror #189, Corry Rudisill, entered the courtroom.)

(WHEREUPON, a bench conference was held.)

THE BAILIFF: Juror #189.

THE COURT: Mr. Rudisill.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

CORRY RUDISILL,

after first having been duly sworn, testified as follows:

THE COURT: Yes, sir. Just a couple questions about your responses to the questionnaire.

JUROR #189, CORRY RUDISILL: Yes, sir.

THE COURT: You said companies or corporations -- and you make some comments about "they're out to make themselves rich. Employees get raw end of deal."

So we have corporations in this lawsuit as Defendants. Do you think you can be fair and impartial

and treat them like you would treat individuals in terms of liability?

JUROR #189, CORRY RUDISILL: Yes, I can.

THE COURT: You, also, stated that you felt like if the law and the Court's instructions conflict with your opinions or beliefs, you would follow your opinions or beliefs. Is that your position?

JUROR #189, CORRY RUDISILL: Yes, yes.

THE COURT: So it doesn't matter what the law says, you'd follow your --

JUROR #189, CORRY RUDISILL: My beliefs, my religious beliefs.

THE COURT: Religious beliefs. Okay.

And if your religious beliefs conflicted with what you were instructed about the law, you're going to follow your religion?

JUROR #189, CORRY RUDISILL: Yes.

THE COURT: All right. What does your religion say about civil lawsuits?

JUROR #189, CORRY RUDISILL: That, basically, we'd just follow by the law. It's kind of hard to explain, I guess.

THE COURT: Do you know of anything that would -- do you have any religious beliefs or opinions that might conflict with your ability to be a juror in a civil case?

JUROR #189, CORRY RUDISILL: In this particular case, no, sir.

THE COURT: Or any -- well, give me an example of what you're talking about where you would follow your religious beliefs, rather than the law.

JUROR #189, CORRY RUDISILL: If it was a situation where -- like a murder trial, then I would definitely go by my religion, an eye for an eye.

THE COURT: Right. Okay.

So if something came up -- so, Mr. Rudisill, to take -- to be a juror, you have to take an oath that says you'll, essentially, follow the law and base your decision on the law and the evidence. Do you think you could do that?

JUROR #189, CORRY RUDISILL: Yes, sir.

THE COURT: So if something came up in this case and it dawned on you that, you know, what that judge said is contrary to my religious beliefs, would you tell me that and ask to be excused?

JUROR #189, CORRY RUDISILL: I mean, everybody's -- have the right for their own opinion.

THE COURT: Right, sure.

JUROR #189, CORRY RUDISILL: And I would do what the law would -- I would follow the law.

THE COURT: But let's say a situation came up in this

case, if you were on the jury and you realized you couldn't follow the law because of your religious opinions, which everybody here respects, nobody is questioning it, what would you do in that situation?

JUROR #189, CORRY RUDISILL: I'm not sure. I've never been in that position before.

THE COURT: But if you were in that position in this case, what I'm asking is, would you alert me to it and tell me, listen, I've realized I can no longer abide by the oath I took?

JUROR #189, CORRY RUDISILL: Yes, sir.

THE COURT: Okay. And you stated that someone close to you had cancer, at least, one person. This case involves evidence concerning mesothelioma. Do you believe you could be fair and impartial in such a case given your experience with people who have had cancer?

JUROR #189, CORRY RUDISILL: Yes. Yes, sir.

THE COURT: All right. Any further questions?

MR. YOUNG: Yes, Your Honor. Just one.

(WHEREUPON, a bench conference was held.)

THE COURT: I guess going back to your questions about the corporations -- or your answers about that. Do you -- do you think if someone is injured that they're entitled to be compensated, regardless of the circumstances?

JUROR #189, CORRY RUDISILL: If someone is rightfully injured, it -- with a company, or at a store, or whatever, and they're not trying to work the system to get a payday, then, yes, I'm a firm believer that if they are not trying to bleed somebody to death, then they -- they're right for their compensation.

THE COURT: So if they presented evidence that would entitle them to recover under the law, you would allow them to recover?

JUROR #189, CORRY RUDISILL: Yes, sir.

THE COURT: All right. And if the law didn't allow them to recover, you wouldn't allow them to recover?

JUROR #189, CORRY RUDISILL: Correct.

THE COURT: All right. Thank you.

JUROR #189, CORRY RUDISILL: Thank you.

(WHEREUPON, Juror #189, Corry Rudisill, exited the courtroom.)

THE COURT: All right. #38.

(WHEREUPON, Juror #38, Hayley Cook, entered the courtroom.)

(WHEREUPON, a bench conference was held.)

THE COURT: Ms. Cook?

JUROR #38, HAYLEY COOK: Yes.

THE BAILIFF: Juror #38.

THE CLERK: Place your left hand on the Bible and

raise your right hand.

WHEREUPON,

HAYLEY COOK,

after first having been duly sworn, testified as follows:

THE COURT: I'm going to go ahead and ask Ms. Jones just to tell all the jurors after #32, they can call -- maybe if they call back at 2:30.

THE CLERK: 2:30.

THE COURT: So they can go ahead and leave.

THE CLERK: Okay.

THE COURT: So that would be everybody from #33 to #45.

THE CLERK: Okay. #33 to #45.

THE COURT: Yes, ma'am. Good afternoon.

JUROR #38, HAYLEY COOK: Hi.

THE COURT: A couple follow-up questions on your responses to the questionnaire. You say that in a case involving claims of asbestos exposure, you'd be inclined to favor the Plaintiff. Can you explain that?

JUROR #38, HAYLEY COOK: Well, I know it's very dangerous. And if someone thinks they have asbestos in their home or in a building that they live in, I think it should be taken seriously.

THE COURT: All right, ma'am. When you say you're inclined to favor them and the claim should be taken seriously, does that mean that you would be predisposed to

find in their favor, regardless of the evidence?

JUROR #38, HAYLEY COOK: Well, it depends on the evidence in the case. Yes, sir.

THE COURT: All right. And you mentioned someone close to you had cancer. This case involves evidence of mesothelioma. Do you think you'd be able to fairly and impartially sit as a juror in the case given your own experience with cancer?

JUROR #38, HAYLEY COOK: I'm sorry. Can you say that one more time?

THE COURT: You mentioned that someone close to you had --

JUROR #38, HAYLEY COOK: Breast cancer.

THE COURT: This case involves allegations of mesothelioma, which is a form of cancer.

JUROR #38, HAYLEY COOK: Uh-huh.

THE COURT: Do you think you could fairly and impartially sit on such a case given your own experience with breast cancer?

JUROR #38, HAYLEY COOK: Yes.

THE COURT: All right. Anything further?

MR. PANATIER: No, Your Honor.

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

(WHEREUPON, Juror #38, Hayley Cook, exited the courtroom.)

THE COURT: #130.

(WHEREUPON, a bench conference was held.)

(WHEREUPON, Juror #130, Matthew Mason, entered the courtroom.)

THE BAILIFF: #130, Your Honor.

THE COURT: All right. Mr. Mason.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

MATTHEW MASON,

after first having been duly sworn, testified as follows:

THE COURT: Mr. Mason, you answered a lot of these -- you put "N/A." That means -- so it doesn't apply to you, obviously, not applicable.

But, for instance, "Has anyone close to you filed a claim or lawsuit of any kind, or have you?" You put "N/A."

JUROR #130, MATTHEW MASON: I'm not too sure if anyone ever has.

THE COURT: Have you ever sued anybody or been sued?

JUROR #130, MATTHEW MASON: No, sir.

THE COURT: So if you said "N/A," it just means you don't know or infer no --

JUROR #130, MATTHEW MASON: Yes, sir.

THE COURT: -- is that fair?

You, also, said that you believe corporations and individuals should not be treated equally under the law. What do you mean by that?

JUROR #130, MATTHEW MASON: I really didn't know what to put, so I just put that.

THE COURT: If you were instructed that the law was that you were to treat them the same, would you follow that law?

JUROR #130, MATTHEW MASON: Yes, sir.

THE COURT: All right. Thank you.

That's all.

Thank you, Mr. Mason.

JUROR #130, MATTHEW MASON: Thank you.

(WHEREUPON, Juror #130, Matthew Mason, exited the courtroom.)

THE COURT: #215.

THE BAILIFF: The number, Your Honor?

THE COURT: I'm sorry. #215.

THE BAILIFF: #215.

(WHEREUPON, Juror #215, Heather True, entered the courtroom.)

(WHEREUPON, a bench conference was held.)

THE COURT: Yes, ma'am.

THE CLERK: Place your left hand on the Bible and raise --

JUROR #215, HEATHER TRUE: You said left?

THE CLERK: Yes, ma'am.

Place your left hand on the Bible and raise your right hand.

WHEREUPON,

HEATHER TRUE,

after first having been duly sworn, testified as follows:

THE COURT: How are you doing today?

JUROR #215, HEATHER TRUE: Fine.

Thank you.

THE COURT: A couple of questions about your responses to the questionnaire. A number of responses, you just say "N/A." Is it fair to say that just means no or you don't know?

JUROR #215, HEATHER TRUE: A lot of them, I would have to have more time and more information.

THE COURT: Okay. You said that if the law and the Court's instructions conflict with your opinions or beliefs, you would follow your opinions or beliefs. Can you tell me what that means?

JUROR #215, HEATHER TRUE: If for some reason the law was against God's Word, then I would go with what God's Word said.

THE COURT: Okay. And do you know of anything that might arise in a civil case that would conflict with your

religious beliefs?

JUROR #215, HEATHER TRUE: Not that I know of. I mean, I don't know.

THE COURT: And you could -- if you are selected as a juror, you have to take an oath that says you swear or affirm to follow the law --

JUROR #215, HEATHER TRUE: Uh-huh.

THE COURT: -- and base your decision on the law and the evidence. And do you believe you could do that?

JUROR #215, HEATHER TRUE: I guess I don't -- I mean, assuming that the law doesn't conflict with God's word, but I don't know. I'm not sure.

THE COURT: So if you were selected as a juror and you did take the oath -- and you're not telling me you can't take it, you're just telling me that if something came up and you realized you couldn't keep that oath, would you alert me to that?

JUROR #215, HEATHER TRUE: Yes.

THE COURT: And ask to be excused on that basis?

JUROR #215, HEATHER TRUE: Uh-huh.

THE COURT: But there's not anything about the civil justice system or the court system, in general, that would, in your opinion, keep you from serving on the jury and taking that oath?

JUROR #215, HEATHER TRUE: No, sir.

THE COURT: All right.

MR. YOUNG: Your Honor.

THE COURT: Yes.

(WHEREUPON, a bench conference was held.)

THE COURT: Thank you.

(WHEREUPON, Juror #215, Heather True, exited the courtroom.)

THE COURT: #56.

(WHEREUPON, Juror #56, Margaret Evatt, entered the courtroom.)

(WHEREUPON, a bench conference was held.)

THE COURT: All right. Ms. Evatt.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

MARGARET EVATT,

after first having been duly sworn, testified as follows:

THE COURT: How are you?

JUROR #56, MARGARET EVATT: I'm fine.

Thank you.

THE COURT: Just a couple of follow-up questions about your questionnaire.

JUROR #56, MARGARET EVATT: Okay.

THE COURT: And just to kind of cut to the chase, you've got some opinions you expressed here. And there's

no right or wrong answer. I mean, this isn't a test or anything.

JUROR #56, MARGARET EVATT: Right.

THE COURT: But we just need to make sure we have a fair and impartial jury. So, to be on the jury, you have to take an oath that says, in essence, you can follow the law and base your decision on the law and the evidence in the case and not from any other source. And do you think you can do that in this case?

JUROR #56, MARGARET EVATT: I think so. I would weigh both sides of the coin.

THE COURT: Okay. And you said your opinion on punitive damages was conflicted. Can you expand on that?

JUROR #56, MARGARET EVATT: On what? I'm sorry.

THE COURT: Punitive damages.

JUROR #56, MARGARET EVATT: Oh. Well, I think that sometimes they're used as a punishment, and it may not be warranted. So I would need to know more information about the circumstances. I guess you need to know both sides of it and whether it was really the fault of one side versus the other. That may not make sense.

THE COURT: No, it does. I -- you're saying if the law provided for them and the evidence warranted it, you would consider opposing it. And if --

JUROR #56, MARGARET EVATT: Yes.

THE COURT: If the evidence didn't justify it or the law didn't warrant it, you wouldn't?

JUROR #56, MARGARET EVATT: Correct.

THE COURT: All right. You mentioned, based on your occupation, you had a lot of experience with lung diseases. And this case involves allegations of mesothelioma caused by asbestos exposure. Do you think you could be fair and impartial in such a case given your work experiences?

JUROR #56, MARGARET EVATT: I would hope so. Again, it kind of depends on the circumstances. You need to know more to be able to decide. But I think I can be fair and impartial regardless.

THE COURT: Is there anything about your experience as a caregiver, both professionally and personally, apparently, for someone close to you, that would prevent you from being fair and impartial in a case involving mesothelioma?

JUROR #56, MARGARET EVATT: I don't -- I don't think so. I like to think of myself as being broad-minded, but...

THE COURT: Any other questions?

MR. PANATIER: Just --

THE COURT: Which one?

MR. PANATIER: #26, the cap question.

THE COURT: Oh, okay. Yeah. I'm sorry.

You said there ought to be a limit or a cap on the amount of money a person can recover in a lawsuit, and you gave a reason. Does your belief as to the caps or limits go to the point where you couldn't follow the law?

JUROR #56, MARGARET EVATT: No, sir.

THE COURT: So if the law, for example, said there weren't any limits or caps, you wouldn't put your own cap in place?

JUROR #56, MARGARET EVATT: I don't think so. I think I might defer to the foreman of the jury.

THE COURT: Or maybe the judge.

JUROR #56, MARGARET EVATT: Yes, absolutely. You would set those caps.

THE COURT: Is there anything about the civil justice system or any belief you have about it or opinion that you think would conflict with your ability to take an oath that you -- to follow the law as it was given to you by the judge?

JUROR #56, MARGARET EVATT: No, sir.

THE COURT: All right. Thank you.

JUROR #56, MARGARET EVATT: You're welcome.

(WHEREUPON, Juror #56, Margaret Evatt, exited the courtroom.)

THE COURT: All right. #150.

MR. PANATIER: Your Honor, I'm going to move for cause on Juror #56, Margaret Evatt.

THE COURT: Okay.

MR. PANATIER: She -- when she was asked the final question, she noticeably hesitated a lot. She said, I don't think so. I'd like to think so.

Her answers were very similar to Mr. Hunter's, who you struck, who said, despite his experiences at Hoechst Celanese, he would try -- he would try to follow the Court's instructions. And she repeatedly gave answers like that.

And if you take her -- if you take her answers on her form, this is someone who -- hold on one second.

(Pause.)

MR. PANATIER: This is someone who said that only minimal money should be awarded, that excessive awards cripple companies and put other jobs in jeopardy, that she favored caps, and that she was conflicted on punitive damages. I just think that in the totality and the fact that she didn't -- she didn't say, I will follow the law. She said, I would do my best. And that was very similar to what Mr. Hunter said.

So the Plaintiffs do have a motion for cause on this juror, Your Honor.

MR. YOUNG: Judge, I wrote down that Mr. Hunter,

ultimately, said he couldn't be fair. I believe this juror said, at least, four times that she would follow the evidence and base her verdict on the evidence and the law.

And I -- so we would respectfully disagree with Mr. Panatier about this juror. I don't think that her answers were anything at all like Mr. Hunter's, nor is her -- I mean, Mr. Hunter's -- was it -- an asbestos lawsuit. I mean, his wife had a chemical exposure case. He was exposed to asbestos himself. I just don't see the two similar at all, Judge.

MR. PANATIER: Just for the record, Your Honor, you know, I just think that based on the answers I've already addressed, but, also, her years of experience as an R.N., I think she's prejudging the case. I mean, she said so in answer #24. She said if prior knowledge of dangers of asbestos -- if prior to knowledge of dangers of asbestos, companies should not be liable. And that's in direct conflict with the law of products liability. We don't have to prove knowledge.

THE COURT: Well, she -- based on my personal observations of her while testifying, she was candid. She demonstrated an ability to understand clearly my questions. She answered them clearly.

There's no question she has strong opinions. And I don't think she's going to be one who commonly gets

tangled up in gray areas.

However, she expressed to me fairly unequivocally that she could follow the law, and was willing to take an oath to do just that. And I don't find anything that would disqualify her for cause.

So I respectfully deny the motion.

#150.

(WHEREUPON, Juror #150, Mattie Moates, entered the courtroom.)

THE BAILIFF: #150, Your Honor.

THE COURT: Thank you.

(WHEREUPON, a bench conference was held.)

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

MATTIE MOATES,

after first having been duly sworn, testified as follows:

THE COURT: All right. Ms. Moates, you -- how are you doing today?

JUROR #150, MATTIE MOATES: All right.

How are you doing?

THE COURT: I'm sorry to ask you this. But you said that you had cared for someone with a terminal illness before, and you, also, had someone close to you that experienced -- someone who had breast cancer.

JUROR #150, MATTIE MOATES: Yeah.

THE COURT: All right. This case is going to have evidence in it about mesothelioma, which is a form of cancer. Do you feel like you could be fair and impartial in such a case given those experiences you personally had?

JUROR #150, MATTIE MOATES: Yes, sir.

THE COURT: And you answered a lot of these "N/A." Does that mean you just don't have an opinion or --

JUROR #150, MATTIE MOATES: No, sir. It depends.

THE COURT: It just depends.

Like, for instance, you said -- Do you have any concern about your ability to be fair in a jury trial? And you put "N/A."

JUROR #150, MATTIE MOATES: Uh-huh.

THE COURT: What does that mean?

JUROR #150, MATTIE MOATES: Well, it depends on what it is.

THE COURT: Oh, okay. Do you know of any specific reason why you couldn't be fair in this case?

JUROR #150, MATTIE MOATES: No, sir.

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

(WHEREUPON, Juror #150, Mattie Moates, exited the courtroom.)

THE COURT: #217.

(WHEREUPON, a bench conference was held.)

(WHEREUPON, Juror #217, David Vizcaya, entered the courtroom.)

THE BAILIFF: #217, Your Honor.

THE COURT: Yes, sir. Come on around.

THE CLERK: Will you stand?

And place your left hand on the Bible and raise your right hand.

WHEREUPON,

DAVID VIZCAYA,

after first having been duly sworn, testified as follows:

THE COURT: All right. A couple questions just to follow up on your questionnaire.

JUROR #217, DAVID VIZCAYA: Okay.

THE COURT: You said that you had been exposed to asbestos.

JUROR #217, DAVID VIZCAYA: I think so. Because I work in the automotive field with brake material and clutch material. And I know that, at one point, they used asbestos as a...

THE COURT: And you're concerned about negative health effects because of that?

JUROR #217, DAVID VIZCAYA: Possibly.

THE COURT: Do you feel you can be fair and impartial in this case, which alleges a disease caused by asbestos exposure?

JUROR #217, DAVID VIZCAYA: Yes.

THE COURT: You, also, said that if the Court's instructions or the law conflicted with your own opinions and beliefs, you'd follow your own opinions and beliefs. Tell me about that.

JUROR #217, DAVID VIZCAYA: Well, I don't know. I just feel like I'm an open-minded person. I can see like more than one side.

THE COURT: Okay. But if you're a juror, you have to take an oath saying you'll follow the law.

JUROR #217, DAVID VIZCAYA: Yeah.

THE COURT: You can do that?

JUROR #217, DAVID VIZCAYA: Yeah.

THE COURT: And if -- you're not saying that you'd follow your own opinions and beliefs?

JUROR #217, DAVID VIZCAYA: Oh, no.

THE COURT: All right. And you, also, said "no" to the question, "Do you believe corporations and individuals should be treated equally under the law?"

What do you mean by that?

JUROR #217, DAVID VIZCAYA: I think that corporations are -- should be -- like are bigger than an individual.

THE COURT: Okay. But if the law instructed you that, for purposes of civil liability, they're supposed to be treated the same, you could follow that instruction?

JUROR #217, DAVID VIZCAYA: Yes.
THE COURT: All right. Thank you.
(WHEREUPON, Juror #217, David Vizcaya, exited the courtroom.)
THE COURT: All right. #170.
MR. YOUNG: Judge, I'm happy to report that we, finally, have a juror where we don't have any follow-up questions.
THE COURT: Oh, we don't need her. Okay.
MR. YOUNG: I don't know if the Plaintiffs do.
MR. PANATIER: No.
THE COURT: Okay. So #52.
MR. YOUNG: Judge, can we wait on James -- John Crane. Sorry.
THE COURT: Sure.
MR. ELLIOTT: No questions.
MR. PANATIER: The Plaintiffs have none for #52.
MR. YOUNG: Is there a new questionnaire for this juror?
THE COURT: #52?
MR. PANATIER: Do you have questions for #52?
MR. YOUNG: Yeah.
(WHEREUPON, Juror #52, Dustin Duncan, entered the courtroom.)
(WHEREUPON, a bench conference was held.)

THE BAILIFF: #52, Your Honor.

THE COURT: Come on up, sir.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

DUSTIN DUNCAN,

after first having been duly sworn, testified as follows:

THE COURT: All right. Mr. Duncan, there's a lot of stuff you didn't answer on here. Do you have any opinions about companies or corporations in general, or about asbestos-containing products, or lawsuits?

JUROR #52, DUSTIN DUNCAN: No, sir.

THE COURT: And do you know anything about asbestos fibers?

JUROR #52, DUSTIN DUNCAN: No, sir.

THE COURT: Do you have any opinion about awarding money for mental anguish?

JUROR #52, DUSTIN DUNCAN: No, sir.

THE COURT: Okay. In a case involving a claim of asbestos exposure, would you be inclined to favor the plaintiff or the defendant, or are you not sure?

JUROR #52, DUSTIN DUNCAN: I'm not sure.

THE COURT: Do you believe companies do enough to warn consumers about health hazards?

JUROR #52, DUSTIN DUNCAN: Yes, sir.

THE COURT: Do you believe employers did enough to warn employees about health hazards in the '60s and '70s?

JUROR #52, DUSTIN DUNCAN: No, sir.

THE COURT: You don't think they did?

JUROR #52, DUSTIN DUNCAN: No, sir.

THE COURT: Do you have any concern about your ability to be fair in a jury trial?

JUROR #52, DUSTIN DUNCAN: No, sir.

THE COURT: Do you have any feelings about punitive damages?

JUROR #52, DUSTIN DUNCAN: No, sir.

THE COURT: Have you ever worn personal protective equipment on the job?

JUROR #52, DUSTIN DUNCAN: Safety glasses and gloves.

THE COURT: Have you ever made a workers' comp claim?

JUROR #52, DUSTIN DUNCAN: No, sir.

THE COURT: What do you think an employers responsibility is to an employee concerning health and safety?

JUROR #52, DUSTIN DUNCAN: I'm not sure.

THE COURT: Do you believe corporations and individuals should be treated equally under the law?

JUROR #52, DUSTIN DUNCAN: Yes, sir.

THE COURT: Have you, or a close friend, or family member ever been in charge of worker safety or risk

management at a workplace?

JUROR #52, DUSTIN DUNCAN: No, sir.

THE COURT: Do you know of any reason why you'd be biased or prejudiced towards either the plaintiff or the defense in an asbestos exposure case?

JUROR #52, DUSTIN DUNCAN: No.

THE COURT: All right. Thank you.

JUROR #52, DUSTIN DUNCAN: Thank you.

(WHEREUPON, Juror #52, Dustin Duncan, exited the courtroom.)

THE COURT: #227.

(WHEREUPON, Juror #227, Terry White, entered the courtroom.)

(WHEREUPON, a bench conference was held.)

THE BAILIFF: #227, Your Honor.

THE COURT: Yes, sir. Come on around, please.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

TERRY MICHAEL WHITE,

after first having been duly sworn, testified as follows:

THE COURT: Okay. Mr. White, how are you doing?

JUROR #227, TERRY WHITE: Good.

How are you, sir?

THE COURT: Just a couple of questions about your

responses to the questionnaire. I don't think you answered the question about your opinion of people who file lawsuits about asbestos-containing products. Do you have an opinion about that?

JUROR #227, TERRY WHITE: No, sir, not really.

THE COURT: You said you believed there ought to be limits or caps on the amount of money a person can recover in a lawsuit, a reasonable amount to cover expenses out of pocket. A reasonable amount -- the law, of course, sets forth certain elements of damages that people can recover if they prove someone is liable. Could you follow that law, or would you set your own standard?

JUROR #227, TERRY WHITE: I would follow the law.

THE COURT: All right.

JUROR #227, TERRY WHITE: I believe it would be reasonable within the law.

THE COURT: And you appear to have some opinions about asbestos. Again, do you know of any reason why you couldn't be fair and impartial in this case?

JUROR #227, TERRY WHITE: No, sir. I don't know of any reason.

THE COURT: Okay. Any further questions?

MR. ELLIOTT: #10. Could you ask him to elaborate just a bit?

THE COURT: Oh, I'm sorry.

You worked as a millwright, or a machinist, or worked with valves, gaskets, or packing?

JUROR #227, TERRY WHITE: I had a summer job at Dupont while I was going to college. And I worked with a minor construction crew that we did pipefitting.

THE COURT: Where was that?

JUROR #227, TERRY WHITE: It was in New Johnsonville, Tennessee.

THE COURT: Okay. Thank you.

JUROR #227, TERRY WHITE: Thank you.

MR. ELLIOTT: Your Honor, quickly, would that have involved packing and gaskets?

THE COURT: Would that have involved packing, or gaskets, or valves?

JUROR #227, TERRY WHITE: Not packing of gaskets or valves. But the plant there made titanium dioxide, which is a pigment that goes into paint. And it was packed in bags or super sacks.

THE COURT: All right. And your position, again, was what?

JUROR #227, TERRY WHITE: I was just a temporary summer help. It fluctuated, utility type of college, you know, job.

THE COURT: It all flows downhill, doesn't it?

JUROR #227, TERRY WHITE: Yes, sir.

THE COURT: Okay. Thank you.

JUROR #227, TERRY WHITE: Thank you.

(WHEREUPON, Juror #227, Terry White, exited the courtroom.)

THE COURT: All right. #109.

(WHEREUPON, a bench conference was held.)

(WHEREUPON, Juror #109, Steven Kelly, entered the courtroom.)

THE BAILIFF: #109, Your Honor.

THE COURT: Come on up, sir.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

STEVEN KELLY,

after first having been duly sworn, testified as follows:

THE COURT: Mr. Kelly.

JUROR #109, STEVEN KELLY: Yes, sir.

THE COURT: One question about your questionnaire. You had stated that someone close to you had lung cancer.

JUROR #109, STEVEN KELLY: Stage four.

THE COURT: This case will involve evidence of Mr. Seay and mesothelioma, which is a form of cancer in the lung.

JUROR #109, STEVEN KELLY: Yes, sir.

THE COURT: Do you feel you could be fair and

impartial in this case given your experience with cancer?

JUROR #109, STEVEN KELLY: Yes.

THE COURT: You could put that aside and decide this case solely on the evidence and the law?

JUROR #109, STEVEN KELLY: I can.

THE COURT: Thank you.

JUROR #109, STEVEN KELLY: I was needing to speak to you for a second, if I could.

THE COURT: Go ahead.

JUROR #109, STEVEN KELLY: I -- it's about this case. I don't think I'm going to be able to do it. Because I can't miss any more work. Because -- I was wanting to talk to you about that.

THE COURT: Where do you work?

JUROR #109, STEVEN KELLY: Bi-Lo, third shift.

THE COURT: Oh, okay.

JUROR #109, STEVEN KELLY: And they're very strict on me.

THE COURT: Well, I understand that. And I appreciate that. The law doesn't allow someone to be excused for work, unless it's --

JUROR #109, STEVEN KELLY: I just don't want to lose my job. That's all.

THE COURT: Well, they can't -- they can't make any kind of detrimental employment decision about you serving

on jury duty. There's specific laws about that.

JUROR #109, STEVEN KELLY: It's just my -- I just don't want to -- they're really strict about their attendance, and stuff. So I -- and we're pretty low on staff right now because they got rid of a few people, so.

THE COURT: Okay. Who is your supervisor?

JUROR #109, STEVEN KELLY: His name is Alex.

THE COURT: Well, if you give me his phone number, I'll be glad to call him.

JUROR #109, STEVEN KELLY: I don't know his number, but I got the store number.

THE COURT: We can give you a written explanation.

JUROR #109, STEVEN KELLY: If you could just write something on paper or something.

THE COURT: Yeah. Absolutely. They do that all the time.

JUROR #109, STEVEN KELLY: Okay. All right. That'll work.

THE COURT: Thank you.

JUROR #109, STEVEN KELLY: Thank you.

THE COURT: And you may or may not get chosen anyway, so.

JUROR #109, STEVEN KELLY: Okay.

THE COURT: But if you are, we'll be glad to give you the paper.

JUROR #109, STEVEN KELLY: All right. Thank you, sir.

(WHEREUPON, Juror #109, Steven Kelly, exited the courtroom.)

THE COURT: All right. #84.

(WHEREUPON, Juror #84, John Herbert, entered the courtroom.)

(WHEREUPON, a bench conference was held.)

THE BAILIFF: #84, Your Honor.

THE COURT: Yes, sir. Mr. Herbert.

JUROR #84, JOHN HERBERT: Yes.

THE COURT: Come on up, sir, if you would, please.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

JOHN HERBERT,

after first having been duly sworn, testified as follows:

THE COURT: How are you today?

JUROR #84, JOHN HERBERT: Good.

THE COURT: Just a couple follow-up questions on your responses to the questionnaire. You said you knew a little bit about asbestos in terms of health issues. This is an asbestos case, obviously. Do you think you can be fair and impartial in a case where it's alleged that asbestos exposure caused someone's death from

mesothelioma?

JUROR #84, JOHN HERBERT: Yes, sir.

THE COURT: And you, also, indicated, I think, you had been a caretaker for someone who's chronically ill at one point. Again, there will be medical evidence in this case about Mr. Seay and his illness. Do you think you'd be comfortable hearing such testimony, and could you fairly and impartially weigh such testimony?

JUROR #84, JOHN HERBERT: Yes, sir.

THE COURT: All right. Thank you, sir.

(WHEREUPON, Juror #84, John Herbert, exited the courtroom.)

THE COURT: Okay. So that gives us 29, I think, potential. So when we come back at 2:30, we'll bring them in and see if anybody raises the two-week issue. So -- and then we can -- assuming we've got enough, we can go ahead and select a jury.

MR. PANATIER: Your Honor, since it appears we'll have enough, can we go one more and let Sarah Martin go? I'm just concerned that she's going to want off the jury next week. She's the one that is the only one that can manage that restaurant. And my concern is we're going to lose her any way.

So if we could just -- we'd -- I mean, we'd stipulate to let her go. And then just go one more -- get one more

juror so we don't have to worry about that issue.

THE COURT: I don't want to start some me-too thing right now.

MR. PANATIER: I hear you.

THE COURT: So we'll be back at 2:30.

(WHEREUPON, a lunch break was taken.)

THE COURT: Okay. So we've got 29.

MR. TIVIN: Yeah. We have a -- we have enough.

And, Your Honor --

THE COURT: Yes, sir.

MR. TIVIN: -- before we go on the record, there's a little bit of confusion on the Defense side. When it comes to the alternates in each group of three, do we have to use a strike?

I'm fine either way. I just wanted -- like if there's a group of three and I don't care about any of them, I mean, do I have to strike one?

THE COURT: That's an interesting question. I've thought about that before, but I've never had to rule on it.

What does the Plaintiff think?

MR. PANATIER: I don't think you should be forced to use a strike. But I don't know what the -- honestly, I don't know if there's a state law on it that says you have to.

I don't think -- for instance, if we were on the first group before we got to the alternates and he didn't want to use any strikes, I don't think he has to. I don't think it should be any different for the alternates. So if John Crane doesn't want to strike, I don't --

MR. TIVIN: Because we're just going to do --

MR. PANATIER: -- have an objection.

MR. TIVIN: -- the Defense as a group, so. And we've already kind of decided everything. And we're in agreement on everything, so.

THE COURT: Well, you could just say -- I mean, I don't know of any authority that would require you to strike somebody. It seemed to be grossly inefficient. But assuming there's no objection. For instance, if we got the first alternate between -- let's just say #23, #25, and #26, then Plaintiff strikes -- say, the Plaintiff strikes #23, and then the Defense could say, we don't have a strike. We just -- #25 would be the first alternate.

MR. TIVIN: Right. And then #26, #27, and #28 would be consecutive.

THE COURT: Right.

MR. TIVIN: Okay. Does that suit everybody?

MR. YOUNG: Judge, if we didn't strike -- are you talking about if we didn't strike -- are we done after -- God, I hope I can talk better when I open.

Let's say we skip the first time. Then are we able to come back and do another strike after we see what's left of the -- after the Plaintiffs do their strikes?

MR. PANATIER: Back strike?

MR. YOUNG: On the alternates, yeah.

MR. PANATIER: So back-strike after I make my strike?

MR. YOUNG: Well, it wouldn't really be a back-strike.

THE COURT: I'm not sure I follow.

MR. PANATIER: Me either.

MR. ELLIOTT: There would only be three people you strike -- you'd end up striking them all even -- before putting on that additional alternate.

MR. PANATIER: You have a group of three. You can make a strike or not. And then you go to the next group.

MS. MCVEY: Until you get three.

THE COURT: You're probably wanting to carry over is what you want.

MR. YOUNG: Right.

MR. PANATIER: I would not stipulate to that.

MR. YOUNG: Judge, on the regular panel, I assume we can strike anybody we want to from the 20 with any of our strikes, as opposed to doing them in order?

THE COURT: That's right.

Okay. So we can bring in the first --

THE BAILIFF: Your Honor, I need to check to see if they're all back before we bring them next door. So I'll check and see if they're back. Because we had them seated next door.

THE COURT: Okay.

MR. YOUNG: All right. So, Judge, I understand now. We skip on alternate one, we're not waiving for alternate two.

THE COURT: No, no.

MR. YOUNG: That's what I was trying to very inartfully ask.

THE COURT: No. Okay. There's no waiver. You can choose to strike or not strike.

THE BAILIFF: Your Honor, they've all arrived. We'll get them over there. And then we'll bring them in.

THE COURT: So we ought to have 29 people; right?

THE BAILIFF: Yes, sir.

MR. TIVIN: Your Honor, I have one final question. I don't mean to be a stickler. When we announce the number, do you want us to announce the number on the left or the juror number?

THE COURT: Yes, the left.

MR. TIVIN: Okay. I can do that.

THE COURT: Okay. Well, we do have -- I guess we need to get a couple more people. Because, as

Mr. Panatier was suggesting before we broke before lunch, you know -- I'm going to excuse Ms. Martin. I just didn't want her to be excused before lunch and then other jurors say, I got out of it -- she -- well, you know what I was trying to do.

But -- so in light of that, why don't we go ahead and try to qualify a few more, maybe three more in case we have anybody else that falls off.

Does that suit everybody?

MR. PANATIER: Yeah.

THE COURT: So we'd have to -- we would need Juror #48.

MR. YOUNG: Judge, can you give us just one second before we --

THE COURT: Yeah.

MR. YOUNG: Because we weren't...

(Pause.)

(WHEREUPON, Juror #48, Willeisha Davis, entered the courtroom.)

THE BAILIFF: #48, Your Honor.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

WILLEISHA DAVIS,

after first having been duly sworn, testified as follows:

THE COURT: Bear with us one second. They're trying to find something.

(WHEREUPON, a bench conference was held.)

THE COURT: All right. Ms. Davis, you stated on your questionnaire that your mom is disabled.

JUROR #48, WILLEISHA DAVIS: Yes, sir.

THE COURT: Is she still living?

JUROR #48, WILLEISHA DAVIS: Yes, sir.

THE COURT: And are you her caregiver or --

JUROR #48, WILLEISHA DAVIS: She has fibromyalgia. She's on total disability.

THE COURT: Okay. You don't take care of her, other than just as a daughter would?

JUROR #48, WILLEISHA DAVIS: Yeah.

THE COURT: All right. Thank you.

MR. TIVIN: Your Honor --

JUROR #48, WILLEISHA DAVIS: Is that it?

(WHEREUPON, a bench conference was held.)

THE COURT: Okay. You, also, responded that, "If the law and the Court's instructions conflicted with your opinions or beliefs, which would you follow?" And you put, "Your own opinions or beliefs." Can you explain that?

JUROR #48, WILLEISHA DAVIS: Excuse me. I can't hear you.

THE COURT: You stated that if the law and the Court's instructions conflicted with your opinions or beliefs, you would follow your opinions or beliefs. What do you mean by that?

JUROR #48, WILLEISHA DAVIS: Just like my religious values.

THE COURT: Okay. So do you know of any reason how your religious opinions or beliefs would affect your ability to serve as a juror in a civil case?

JUROR #48, WILLEISHA DAVIS: No, sir.

THE COURT: You're not -- you're not thinking of anything specific. You're just saying in general --

JUROR #48, WILLEISHA DAVIS: Yes, sir.

THE COURT: -- if there was some conflict, you would follow your religious beliefs?

JUROR #48, WILLEISHA DAVIS: Yes, sir.

THE COURT: And if you were selected as a juror, you have to take an oath saying you can follow the law as the judge gives it to you. So if some conflict came up between your oath, and your obligation as a juror, and your religion where you felt like you could no longer abide by that oath, would you alert me to that --

JUROR #48, WILLEISHA DAVIS: Yes, sir.

THE COURT: -- and ask to be excused on that basis?

JUROR #48, WILLEISHA DAVIS: Yes, sir.

THE COURT: All right. Thank you.

JUROR #48, WILLEISHA DAVIS: Thank you.

(WHEREUPON, Juror #48, Willeisha Davis, exited the courtroom.)

THE COURT: #151.

(WHEREUPON, a bench conference was held.)

(WHEREUPON, Juror #151, Francena Moore, entered the courtroom.)

THE BAILIFF: #151, Your Honor.

THE COURT: Come on up, Ms. Moore.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

FRANCENA MOORE,

after first having been duly sworn, testified as follows:

THE COURT: Ms. Moore. Just a couple questions, ma'am.

JUROR #151, FRANCENA MOORE: Yes.

THE COURT: You indicated on the questionnaire that you had been a caregiver to someone who had a terminal or chronic illness, and someone close to you, also, had lung cancer.

This case involves allegations of mesothelioma caused by asbestos exposure. Do you feel like you could be fair and impartial in that type of case given your experience

with cancer?

JUROR #151, FRANCENA MOORE: Sure.

THE COURT: And you, also -- the question about punitive damages, you just wrote like a zero with a slash through it. What does that mean? You don't have an opinion or --

JUROR #151, FRANCENA MOORE: I really didn't know what it was.

THE COURT: All right. Thank you.

(WHEREUPON, Juror #151, Francena Moore, exited the courtroom.)

THE COURT: #120.

(WHEREUPON, Juror #120, Victoria Lewis, entered the courtroom.)

THE BAILIFF: Juror #120, Your Honor.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

VICTORIA LEWIS

after first having been duly sworn, testified as follows:

THE COURT: How are you, ma'am?

JUROR #120, VICTORIA LEWIS: I'm good.

THE COURT: Ms. Lewis, a couple things I don't think you answered on the questionnaire. Can you tell us if you've ever filed a claim or a lawsuit?

JUROR #120, VICTORIA LEWIS: No, I have not.

THE COURT: What kind of business is your parents occupation?

JUROR #120, VICTORIA LEWIS: My parents?

THE COURT: Yeah.

JUROR #120, VICTORIA LEWIS: My mother was in nursing. My dad, my grandparents, all of them coal miners, originally, from West Virginia.

THE COURT: Okay. And a lot of these questions, you put "N/A." Tell me what you mean by that. You just don't have an opinion or --

JUROR #120, VICTORIA LEWIS: I do, and I don't. A lot of them -- you know, when they, originally, gave us the paperwork, they told us that we really didn't have to answer them.

THE COURT: Who told you that?

JUROR #120, VICTORIA LEWIS: When they gave us the paperwork. So that was how come --

THE COURT: No, no. Wait. Who told you that?

JUROR #120, VICTORIA LEWIS: The lady that gave us the paperwork yesterday when we all first got here. That's how come that there was like five people that didn't fill out theirs and had to be brought back this morning.

THE COURT: Does she have a name or --

JUROR #120, VICTORIA LEWIS: I wasn't paying attention. I don't know her name.

THE COURT: All right. So do you have any opinions about companies or corporations in general?

JUROR #120, VICTORIA LEWIS: It would depend on what you're wanting to know. I mean, are you talking about if -- you know, for liabilities? I mean, it was a little vague.

THE COURT: Okay. Well, do you believe there are too many restrictions and regulations on companies today?

JUROR #120, VICTORIA LEWIS: I don't think there's enough.

THE COURT: So you would disagree?

JUROR #120, VICTORIA LEWIS: Yes, sir.

THE COURT: And it, also, asks strongly disagree -- would you strongly disagree or just disagree?

JUROR #120, VICTORIA LEWIS: I would strongly disagree.

THE COURT: Okay. Do you believe awards in lawsuits are too high, just right, too low?

JUROR #120, VICTORIA LEWIS: I think it would depend on the situation. And in some cases, I think it's not enough.

THE COURT: Do you know anything about asbestos lawsuits or asbestos-containing products?

JUROR #120, VICTORIA LEWIS: No, nothing about asbestos. No.

THE COURT: Do you have any opinion about people who file lawsuits in general?

JUROR #120, VICTORIA LEWIS: I feel that goes both ways. I think some lawsuits are warranted, and I think some are people just trying to get money. I think it depends on the situation.

THE COURT: Do you have any opinion about awarding money for mental anguish?

JUROR #120, VICTORIA LEWIS: Yes, I do. I think sometimes it's highly deserved.

THE COURT: You said you'd been a caregiver for someone who had terminal health conditions or chronic --

JUROR #120, VICTORIA LEWIS: My grandmother.

THE COURT: And you, also, said that somebody close to you had had cancer.

JUROR #120, VICTORIA LEWIS: My mother, my sister.

THE COURT: So this case involves Mr. Seay, who had mesothelioma.

JUROR #120, VICTORIA LEWIS: Uh-huh.

THE COURT: Do you think you could sit on such a case and be fair and impartial given your experiences with cancer and chronic illnesses?

JUROR #120, VICTORIA LEWIS: It would be hard for me,

it really would. Because, in my opinion, asbestos -- as I said, I come from a family of coal miners. It all affects the lungs, black lung, COPD. I would have a hard time with it. Because, basically, it shortens the life, no matter what.

THE COURT: Okay. Thank you.

(WHEREUPON, Juror #120, Victoria Lewis, exited the courtroom.)

THE COURT: Okay. I'm going to excuse her for cause. I think her last statement was disqualifying and some of her earlier answers, in fact. But she demonstrated to me a definite bias, not only towards asbestos but work-related injuries in general.

Okay. Well, let's try to go with what we've got.

So I think the way to handle it, Ms. Camp, and, Mr. Sanders, will be to -- I can give you a list of the people we don't need. And then tell everybody else to come in here.

How about that?

THE BAILIFF: Yes, sir.

THE COURT: So we don't need -- we do not need #198, #174, #78, #8, #119, #233, #100, #129, #26, #5.

MR. YOUNG: Judge, on my list, it's got #174 scratched out and #122 written in. I don't know if that was --

MR. PANATIER: #122 -- #122 was added, yeah.
MS. SHOFNER: Yeah. Mr. Poston is here, yeah.
MR. YOUNG: Oh, he is?
MS. SHOFNER: He's here. He was already in line. So they just didn't take him out of the line.
MR. YOUNG: Oh, okay.
MR. PANATIER: We had agreed on him, but --
MS. SHOFNER: Yeah.
MR. PANATIER: -- #122 was still added. So she's out there.
MS. SHOFNER: Yes.
THE COURT: Okay. #122. We don't need #195. We don't need #120. We don't need #185. And we don't need #95. And we don't need the -- #128, who's the Farmer's Table lady. Everybody else can come in.
Do you want to read it back to me?
THE BAILIFF: #198, #174, #78, #8, #119, #233, #100, #129, #26, #5, #122, #195, #120, #185, #95, and #128.
THE COURT: Beautiful.
THE BAILIFF: Yes, sir.
MR. YOUNG: Judge, can we have just a few minutes to talk? There's a little bit of change.
THE COURT: Yeah, sure.
MR. YOUNG: Okay. If the jurors are going to come in here, is there somewhere that we can go real fast?

THE COURT: I don't know what's out there.

(WHEREUPON, a break was taken.)

(WHEREUPON, the jury panel entered the courtroom.)

THE COURT: Ladies and gentlemen, we're going to select a jury here in just a moment. The lawyers who aren't here, as you can see, they're out studying the list, since we just completed it. So we'll give them a little time to do that.

(WHEREUPON, a brief recess was taken.)

THE COURT: All right. Is everybody ready?

MR. TIVIN: I believe so, Your Honor.

THE COURT: All right.

JURY SELECTION

THE CLERK: At this time, I will ask the attorneys to give me your strikes with the Plaintiff going first and then alternating with the Defense using the number to the left of the name.

MR. PANATIER: Our first strike is #14.

MR. TIVIN: The Defense would excuse #4.

MR. PANATIER: The Plaintiff would excuse #12.

THE COURT: Hold on a second.

I want to make sure everybody is on the same page here. So we would be striking out from numbers #1 through #23; correct?

MR. PANATIER: Yes.

THE COURT: On the old list?
MR. PANATIER: Yes.
THE COURT: Everybody on --
MR. TIVIN: Yes.
THE COURT: Okay. I just want to make sure. Proceed.
MR. TIVIN: The Defendants would strike -- would excuse Juror #10.
MR. PANATIER: The Plaintiffs will strike #11.
MR. TIVIN: The Defense would strike #9.
MR. PANATIER: The Plaintiffs use their peremptory on #7.
MR. TIVIN: Excuse me?
MR. PANATIER: #7.
MR. TIVIN: The Defense would excuse #19.
THE CLERK: And now for the alternates.
MR. PANATIER: We're going #24 through #26?
THE COURT: #25.
MR. TIVIN: #25.
MR. PANATIER: I'm sorry. Yeah, #24 -- #25 through #27.
The Plaintiffs would strike #25.
MR. TIVIN: The Defense would excuse #27.
MR. PANATIER: The Plaintiffs would excuse #30.
MR. TIVIN: The Plaintiff -- Defense has no strikes

in the second group. So we would accept #28.

THE COURT: All right.

MR. TIVIN: And the last final group would be #29, #31, and #32.

THE COURT: All right.

MR. PANATIER: Just to be clear, which group are we striking from then?

MR. TIVIN: #29, #31, and #32.

MR. PANATIER: The Plaintiffs would strike #32.

MR. TIVIN: The defense would accept #29 as the third alternate.

Your Honor, if we could approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held.)

THE CLERK: At this time, I'll read back your selections. #1, #2, #3, #5, #6, #13, #16, #18, #20, #21, #22. And for the alternates -- I'm sorry. #23. And for the alternates, #26, #28, and #29.

Ladies and gentlemen of the jury, at this time, I will be calling your name and juror number that have been selected for your service of this trial. When your name and number is called, please, bring all your belongings with you and have a seat in the jury box.

Yvonne Robinson, #187; Kim Holliday, #90; Adajha Black, #11; Wendy Hines, #87; Marcia McElrath, #141; Eric

McCarty, #134; Yevgeniy Bondarchuk, #16; Ray Pearson, #169; Corey Rudisill, #189; Haley Cook, #38; Matthew Mason, #130; Heather True, #215.

And the alternates: Mattie Moates, #150; Jane Petty, #170; Dustin Duncan, #52.

Your Honor, the jury has been selected.

THE COURT: All right. Ladies and gentlemen, just to state it again so there's no confusion or misunderstanding, this trial is potentially going to go into next week and be concluded on next Friday. So I've already asked if anyone has any compelling, extreme conflict with serving on the jury, whether work-related or personally-related.

So if anybody failed to tell me about that, now's the time to tell me, so -- or forever hold your peace. Okay.

JUROR #11, ADAJHA BLACK: I would have to call my job today, later on today, and see would they would excuse me for--

THE COURT: Where do you work?

JUROR #11, ADAJHA BLACK: Amazon.

THE COURT: Okay. Well, they --

JUROR #11, ADAJHA BLACK: Yeah. I don't know how many more days I can miss.

THE COURT: Okay. Well, I can't excuse you. So they can't --

JUROR #11, ADAJHA BLACK: So what if I lose my job?

THE COURT: They can't do that to you, ma'am. State law would not -- specifically, prohibits that, so.

Okay. Any matters or motions related to the selection process or composition of the jury?

MR. PANATIER: No, Your Honor.

MR. YOUNG: No, Your Honor.

MR. TIVIN: No, Your Honor.

THE COURT: All right. I find it complies with all statutory and Constitutional requirements.

Okay. Ladies and gentlemen, I'll just ask you to go to the jury room. And don't talk about the case. We'll have the opening statements here in just a few moments.

Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 3:36 p.m.)

THE COURT: Okay. Ladies and gentlemen, those of you who weren't chosen, thank you for your patience and cooperation. I know it was no fun sitting around today waiting on this. But we did the best we could under the circumstances.

And there are other trials that will be scheduled this week in other courtrooms. So if you'll just call back tonight to the number you were given. And I understand you could call back at midnight.

Is that right?

THE CLERK: After --

THE COURT: 6:00.

THE CLERK: -- 6:00.

THE COURT: After 6:00.

All right. Thank you very much.

(WHEREUPON, the remaining jury panel members exited the courtroom.)

THE COURT: Mr. Young.

MR. YOUNG: Yes, Your Honor.

I had one issue I wanted to bring up to the Court before we open.

THE COURT: Yes, sir.

MR. YOUNG: Yesterday, Your Honor heard what we call the mucociliary escalator argument. And it -- I wasn't here. I, actually, didn't think this was going to be argued. So this is the first time anybody has ever objected to that.

But Dr. Kradin, the Plaintiffs witness, whose videotape's been taken, was cross-examined by Mr. Parnell without objection. And I just want to read a couple of these things to you. Because, Your Honor, I'm not sure that the whole picture was presented on this issue.

He was asked, one of the defense mechanisms that prevents particulate matter from getting to the lung is

something some people refer to as a mucociliary escalator. No objection.

Then he, also, was asked, And smoking damages the mucociliary escalator?

He said, Yes.

And then this is the issue for us, Judge. This is the important question.

So in this -- in the case of asbestos, one who has a significant history of smoking and if, in fact -- I'll ask you the same hypothetical Mr. Panatier did. If you assume the cilia has been adversely affected, then that will allow more particles to get into the lungs; isn't that correct?

And he said, That's a yes.

And, Judge, that's our whole kind of argument here. Daniel didn't follow OSHA. So the guy had more exposure than he should have had. Because he smoked he had more exposure to asbestos than he should have. And all of that contributed to this burden you heard so much about this morning and increased his risk of mesothelioma.

So this is absolutely a causation opinion. And it's in the record in this case by Dr. Kradin, their witness, unobjected to, in an evidentiary videotaped deposition.

So I feel like it's relevant and legitimate testimony for the trial. And so I'd ask Your Honor to reconsider

your ruling.

And I will say that Mr. Panatier and I gee-hawed about this last night by e-mail a lot. So I'm not sandbagging him. I told him that we were going to take it up.

And, I would add, their -- both of their other witnesses said exactly the same thing, but not in an evidentiary deposition.

So we think it's very probative, Judge, on the issue of causation and very important to Celanese, who's being sued. Because I assume they're going to claim that we allowed a too-high exposure to asbestos at our plant.

And so we think it's relevant, Judge.

MR. PANATIER: It doesn't change anything about the fact that there's zero link from any expert from smoking to an increased risk of mesothelioma, regardless of the effect that it has on any of the body's defense mechanisms. No one knows how much additional particulate gets in. It seems to be very little since there is zero link from any experts.

The same question Your Honor asked yesterday, where's the link to -- from smoking to an increased risk for mesothelioma, which the case is about? It doesn't exist. This is -- the evidence has not changed.

THE COURT: Well, if -- if you're allowed to put in

the evidence about no safe level of exposure, why is it fair to disallow this?

MR. PANATIER: Because no safe level of exposure has scientific backup. It has -- it has oodles of it. And, you know, we're going to introduce that in evidence.

THE COURT: Right.

MR. PANATIER: It, actually, has scientific backup, whereas this has none. There's no scientific backup for any relevance for the fact that smoking may affect the hairs in your throat and in your bronchus, and an increased risk for mesothelioma. It simply does not exist. But there is plenty of scientific evidence for no known safe level, which we're going to introduce.

The no known safe level, it's backed up by the epidemiology, the scientific and regulatory bodies. And then we're going to link that to -- we're going to link that to not a few particles, because no one -- you know, we have to introduce information about the exposure levels from the different products and the work practices, which we're going to do.

But no one -- there's no testimony from anybody about how much more asbestos gets into the lungs because you smoked a cigarette. There's zero of that. And so there would have to be some evidence, just like I have to introduce evidence of substantially increased levels of

asbestos exposure by virtue of work practices, which I'm going to do.

The record is completely absent and will be absent of, okay, how much more asbestos did the guy breathe because he smoked? There is none of that. And then that's the -- that's the A. And the Z is then there's no ultimate science showing an increased risk.

So there isn't any evidence that can be introduced as to how many more fibers go in. If we're talking about a hundred or a thousand fibers, that doesn't get there.

MR. YOUNG: Judge, I just -- I think the scientific evidence -- I just read it to you. I mean, they all say it's a dose-response disease. And they all say that the smoke -- his heavy smoking history adversely affected his mucociliary escalator, and increased his dose of asbestos.

And that's, basically, the claim against us, Judge. And I don't see how evidence that their own witness gave, unobjected to, on things that increased the dose is not relevant. I guess I'm not following the logic.

I don't want to argue about whether there is or is not scientific evidence of no safe level. But Dr. Kradin -- I just read you what he said. He said that an adversely affected mucociliary escalator from cigarette smoking increased the dose of asbestos in Mr. Seay, and that, you know, it's a dose-response disease.

So, Judge, I just really feel like it's a relevant thing for the jurors to hear.

MR. PANATIER: Your Honor, if I can just respond. This is -- this is "each and every" being thrown back at us, which is something we're not doing. We are not alleging each and every exposure. This is --

THE COURT: Right.

MR. PANATIER: And it's with no actual data of what the exposure would be. There's none of it.

And Dr. Kradin makes it very clear. He says -- in response to Mr. Parnell's question, he says -- Mr. Parnell says, There has, in fact, never been an epidemiological study which, specifically, studied the effect of smoking on the cilia and asbestos; isn't that correct?

This is their lawyer.

Answer: Sir, there is no study of that nature. You can't do epidemiological studies of that nature. They're too complicated. But the fact of the matter is there is an associate -- there is an association between cigarette smoking and asbestosis. But there's no association between cigarette smoking and mesothelioma.

And, again, Mr. Parnell says, There's been no study whatsoever that them -- he says, There's no association between cigarette smoking and mesothelioma.

Without any -- this is -- this is -- there's no

scientific evidence of what the levels are of exposure. And there's no scientific evidence of an increased risk.

THE COURT: We went over this yesterday. I don't see anything new. I find that even if -- its relevance is outweighed by the tendency of this evidence to mislead the jury under Rule 403. So I find it would be misleading to let it in. Any probative value it adds is vastly outweighed by that tendency to mislead, confuse the issues, and cause unfair prejudice.

All right. Anything further?

MR. PANATIER: No, Your Honor.

THE COURT: Let's just take about a five-minute break and let everybody get comfortable before we do the opening statements.

Are y'all -- is there going to be a witness today or --

MR. PANATIER: If we get to, it would be to start Dennis Seay's video.

THE COURT: Okay. Thank you.

We'll take a five-minute break.

(WHEREUPON, a break was taken.)

THE COURT: Okay. Anything before we bring the jury in?

(WHEREUPON, there was no response.)

THE COURT: Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 3:55 p.m.)

INTRODUCTORY REMARKS

THE COURT: All right. Ladies and gentlemen, good afternoon.

We're going to begin the trial now of Angie Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay versus CNA Holdings, LLC, and John Crane, Incorporated.

This is a civil case, as you know. I'm going to give you some preliminary instructions before we get underway.

I want to thank you again for your service this week. You're making it possible for the parties here to exercise their right to a jury trial. That's a right that is so fundamental to our country. It's so important to the founders of our country that they put the right to a jury trial not only in our State and Federal Constitutions, but in three of the first Ten Amendments, or the Bill of Rights. And that -- those rights can only work today if good citizens like you come in and serve on the jury.

So the reason you got called to come to the courthouse and got the summons was because you're either registered to vote, or you have an identification card issued by the DMV, and the -- or you have a driver's

license.

And you may be curious as to why you got selected to be on this particular jury. And the reason is because both sides in this case -- in fact, all three parties believe you can be fair and impartial.

And we went to a good deal of trouble today and yesterday, and so did you, trying to find a jury that could be fair and impartial.

So we thank you for your patience and cooperation with that process.

Now, you met the lawyers. They introduced themselves to you. And, again, I'm Gary Hill. I'm one of the circuit judges here in South Carolina. And I'm from Greenville. But I'm glad to be serving with you in Spartanburg this week. You have not met some of the other people who are essential to this process.

And just to kind of demystify the surroundings for you a little bit and let you know what everybody's job is, I'm going to introduce those people and let you know what their role is. And then I'm going to tell you what your role is in this process.

So the first person I'll introduce is the court reporter. We have the official court reporter, Hollie Jenkins, who is right here to my immediate right. Circuit court is a court of record, so everything that is said is

taken down.

In this particular case, we, also, have Ms. Cindy Hayden, who is here as a court reporter as well.

You may have noticed there's a camera in the back of the courtroom. Sometimes proceedings are filmed, but don't -- don't make anything of that. It's simply something that happens from time to time in court cases.

And the other people I want to introduce are the bailiffs. You've already met them, of course. But that's Ms. Camp and Mr. Sanders. And they're here for your assistance while you serve on the jury.

And then Ms. Casey Jones is with the clerk's office. And, as you saw, she helped with the jury selection and helps run things smoothly.

And then up here on the bench with me is Candace Clark, who is one of my law clerks. She's, actually, from Spartanburg County originally.

And then Jacob Goldstein is another one of my law clerks. And he's seated down here to my left. And they help me with research and with issues that arise during the trial. So you may see them coming in and out as we proceed.

But everybody I introduced to you -- and, certainly, the lawyers have done this, and I have done this -- we've all taken an oath to do our job. And you're going to take

an oath to do your job.

So I'm going to ask Ms. Jones, at this time, to administer that oath to you, then I'll elaborate on it. But pay careful attention to the words in the oath, because they've been around a long time. And they do tell you in a nutshell what your job is.

So, yes, ma'am.

THE CLERK: If you'll, please, stand. And raise your right hand.

(WHEREUPON, the jury was sworn at approximately 3:59 p.m.)

THE CLERK: Thank you.

THE COURT: Anytime a case is tried in circuit court with a jury, there are always two judges. There's the judge of the law, which is the role that I fill. And there's the judge of the facts, which is the role you, the jury, discharge.

I'll tell you about my job first as the judge of law, because it's much easier than your job. As the judge of the law, I have two main responsibilities. The first is to rule on the admissibility of evidence.

Now, I know very little about this case. That's just the way our system is set up. But I anticipate during the trial, there may be objections to evidence. One side or the other may think certain evidence is improper and

should not be allowed under the law.

My job is to decide whether the evidence is proper under the law. So I will usually be able to handle that on the spot. And sometimes, if things get a little complicated, we'll have to take a break so we can do it outside of your presence to do it a little more efficiently. But, nevertheless, if I sustain the objection, that simply means the evidence is not something you can consider in this particular case. If I overrule the objection, it just means it's something you can consider in this case.

The second job I have as the judge of the law is that I will instruct you on the law that applies to the facts of this case. And I'll do that at the end of the trial. So those are the two main things I do.

You have a much more difficult job as the judge of the facts. Our constitution, specifically, makes the jury the sole and exclusive judge of the facts in a trial. I'm not going to comment on the facts or intimate to you what I think the facts are, what your verdict should be. And don't construe anything I do during this trial as any indication as to what I think about those things. Because, under our system of justice, you, the jury, are the sole and exclusive finders of the facts.

Now, how do you determine what the facts are? You do

that by weighing and considering the evidence in this trial. Evidence consists of two sources. The first is the one you're probably the most familiar with, and that is sworn witness testimony. We will have people who come in who are sworn and sit in this chair here and tell you things they know about this case, or that are relevant to the case. So that's one source or type of evidence you can consider in determining what the facts are.

The second source or type of evidence is by way of an exhibit. An exhibit is simply a physical, tangible object. It's something usually in the nature of a photograph or a map. And you'll know it's an exhibit and you'll know it's something you can use to determine what the facts are, because it will be back in the jury room with you at the end of the trial. And it will have a little sticker on it that says exhibit number so-and-so.

Now, those are the only things you can use to determine the facts, sworn witness testimony and exhibits. Nothing else is evidence. So keep that in mind as we go through the trial.

What the lawyers say -- and we have excellent lawyers in this case. And what they say should be closely watched. And you should pay keen attention to what they're saying. Because they're trying to help you understand the evidence. But, please, remember that the

lawyers are not witnesses. So what they say is not evidence in itself.

So, as the judge of the facts, you will have to, by necessity, determine the credibility of all the evidence. So that means for every witness who testifies and every exhibit that's admitted, you'll have to gauge its believability.

Now, I can give you some guidelines on how to consider or gauge credibility in the case of a witness who testifies. You may take into account, if you determine it's proper to do so in a witnesses testimony, how they act on the stand, what is their demeanor. You may consider how their testimony stacks up to the other evidence in the case. Is it consistent or inconsistent?

You may consider what opportunity the witness had to observe or know about the things they're here telling you about. You may consider whether the interest has -- whether the witness has some interest in the outcome of this case, that is, whether they have some bias or prejudice for someone or some issue involved in the case. And you can use whatever you use in your day-to-day life to determine whether something or someone is believable. Because your common sense, certainly, didn't evaporate when you walked into the Spartanburg County Courthouse.

Now, ladies and gentlemen, how many of y'all have

ever served on a civil trial before as a juror? If you can just raise your hand.

(WHEREUPON, there was no response.)

THE COURT: Okay. Well, that's not uncommon. But you may know from your own experience a little bit about how a civil trial unfolds and what the structure of it is. But just to further demystify things, let me tell you about how the structure of a civil trial is built.

In just a moment, you're going to hear the opening statements of the Plaintiff. And Ms. Keene's lawyers will give an opening statement. They go first because the Plaintiff in a civil suit has the burden of proof. So they will give you a brief outline of what they think the evidence will show and what the issues will be in the case.

Then the Defendants, CNA Holdings, LLC, and John Crane, Incorporated, will each have the opportunity to give an opening statement. And then we'll go into the evidence portion of the trial where the Plaintiff, bearing the burden of proof, will, again, go first and present the testimony and exhibits that the Defense may confront.

And then after the Plaintiff completes her presentation of evidence, we will have the opportunity for the Defense to present any evidence they wish to, which the Plaintiff may contest.

Now, there are two Defendants in this case. And you'll have to keep the evidence as to each separately, and not let certain evidence come in against one as it might come in against the other. And if something happens regarding that, I'll give you an instruction on it. But bear in mind that they're each entitled to individual and separate consideration by you, the jury.

And you should know the legal yardstick that you will have to use in a civil case for the burden of proof. In order to obtain a verdict in a civil case, a party must convince you of their case by the greater weight of the evidence. And that simply means that, in order to win, they must convince you that what they're trying to prove is more likely true than not true.

This is not a criminal case. And you may be familiar with the burden of proof in a criminal case, which is proof beyond a reasonable doubt. Before the State can convict someone of a crime, they must convince you, the jury, of proof beyond a reasonable doubt as to each and every element of the crime. You're probably familiar with that standard.

This is a civil case. And the burden of proof is lower. And that burden is the greater weight of the evidence. So keep that in mind as we go through the trial.

Now, ladies and gentlemen, these trials are often like jigsaw puzzles. And in that, I mean that the lawyers have to lay them out one piece at a time. And it is very important that you keep an open mind. You're going to hear witnesses for a number of days. And it would not be proper for you, it would not be in keeping with your oath for you to discuss that testimony, or discuss any aspect of this case amongst yourselves or with anyone else until you've heard all the evidence, and you've heard the closing arguments, and you've heard the instruction that I'm going to give you on the law.

Now -- because only at that point will you have all the pieces of the puzzle in the box. And you, certainly, wouldn't start trying to complete a puzzle and solve it if you didn't have all those pieces. And so I need to -- and I will continue to remind you that you're not to discuss the case, and you're not to do anything in this case in terms of outside research.

We are all very curious with the easy accessibility of the Internet. We want to learn things and find out things. And you may hear of some interesting things. I know you will hear some interesting things in this case. And the human curiosity that we all have would probably impel you to go out and investigate that on your own. And that would not be proper. You must confine your decision

to the evidence you hear in the courtroom, and not from any outside source.

So don't do any outside investigation. Don't get on the Internet. Don't get on social media and tell all your friends what you're doing. Because that wouldn't be proper as well. And that often causes serious troubles in trials when people do that.

Now, the lawyers in this case are advocates. They're going to do their best to zealously represent their clients to the best of their ability.

You and I, ladies and gentlemen, are not advocates. We are to be fair and impartial. Your job is to determine if a party has met their burden of proof, and determine the facts from the case, and take the law as I give it to you and apply those facts, and reach a verdict fairly and impartially. So keep that in mind as we go through. You're not to be partisans or advocates for either the Plaintiff or the Defense. Your job is to be fair and impartial.

So thank you for your attention to me. And, at this time, we'll have the opening statement.

And, yes, sir, Mr. Panatier.

MR. TIVIN: Your Honor, may I approach?

THE COURT: Yes, sir.

(WHEREUPON, a bench conference was held.)

THE COURT: Let me just clarify one matter. I spoke to you about the burden of proof. You're going to hear about the Plaintiffs claim for punitive damages. And I'll instruct you on the law at the end of the case about this. But punitive damages does require a higher burden of proof.

In order to obtain punitive damages, the proof must be clear and convincing. And I'll elaborate on that at the end of the trial, if we get to that point. But that's a higher standard than the greater weight of the evidence.

So just keep that in mind as we go through. As to liability, the burden is the greater weight of the evidence. But if you're considering punitive damages, it's a higher burden of clear and convincing evidence.

Okay. Yes, sir.

MR. PANATIER: Thank you, Your Honor.

May it please the Court.

THE COURT: Yes, sir, Mr. Panatier.

OPENING STATEMENT

MR. PANATIER: Good afternoon, everybody.

My name is Chris Panatier. And I represent the Seay family. Let me show you a picture of them. My -- my -- the person that this case is about is this man sitting under this pile of little girls right here. His name is Dennis Seay. And he has passed away.

Let me introduce real fast some of his family that is here. This is Linda Seay, Dennis' wife. This is his daughter, Angie. This is Justin Seay and Justin's wife, Lizzie.

You'll notice that there are six granddaughters there. There were six -- yep, all six are there. The first boy is right in here right now.

The case isn't just about Mr. Seay and the Seay family, though. It's, also, about -- you're going to primarily hear about two companies in this case, Celanese and John Crane.

Just as a brief introduction. Celanese was a fiber producer. And Mr. Seay worked there as an employee of Daniel Construction for about eight to nine to 10 years. He -- his recollection was late '60s to late '70s. His social security records say early '70s to about '80. It doesn't make a big difference. But it's about almost a decade of time that he was at Celanese.

He was a machinist. He was a laborer. He did a lot of work with his hands. And one of the products he worked with was a product made by a company called John Crane. And what they made were sealing devices, which is like gaskets; right?

So if you think about your faucet at home, your faucet has a little teeny rubber piece in it to keep it

from leaking. That's a gasket. But these are industrial gaskets. And they range in size from very small to very big. And they were, typically, made from a substance called asbestos. Okay. I'm going to talk to you about what asbestos is, and the diseases it causes shortly.

So we have the burden of proof, the Plaintiff, since we brought this case. This is a case where we're asking for money for this family. This isn't a criminal case where anybody goes to jail.

So because we're asking for a lot of money for this family, we have the burden of proof. If we don't meet our burden of proof, we lose. You say, you go home with nothing. Okay.

But here's what we're going to prove to you. We're going to prove that these Defendants had the knowledge to protect Mr. Seay and the other workers there. They had the opportunity to protect him. And they failed to protect him.

This case is going to be -- you're going to hear about a shared responsibility for worker safety. That a worker's employer has some responsibility for their safety. The plant where they are working -- for instance, a lot of us work -- we're employed by a place. And we work at our employer's place of business.

But a lot of folks are employed by someone, and then

they go into somebody else's plant to do their work. And that's what Mr. Seay did. And then they work with other companies products.

So there's three kind of groups that bear the responsibility for worker safety, the employer, the product manufacturer, and the plant owners. And, believe me, I haven't forgot about the worker himself; right? If the worker himself is knowledgeable of the hazards, he bears responsibility, too. Okay.

How -- how does -- how does a case start? Let me tell you a little bit about it. Mr. Seay started to feel some pain in his chest. And he went to the doctors a few times. And they said it was one thing or another. When mesothelioma starts, doctors sometimes think it's a cough. Sometimes, they just say you've got a cramp. You might hear that people get a muscle relaxer prescribed. Because it doesn't all of a sudden jump on you as cancer. But it starts slowly and then it progresses.

And so, ultimately, he was diagnosed with mesothelioma. Mesothelioma is an asbestos cancer. The only accepted cause of mesothelioma in the United States is asbestos exposure.

It's not like something like lung cancer where smoking can cause lung cancer, or exposure to other chemicals can cause lung cancer. Mesothelioma is an

asbestos cancer. In fact, you may hear mesothelioma referred to as a single tumor, which means if you are diagnosed with mesothelioma, the question your doctors ask is, where were you exposed to asbestos?

So that happened for Mr. Seay. He was diagnosed with mesothelioma. And the doctors said, this is from asbestos.

So the family, ultimately they hired lawyers. And our job is to investigate the case and find out where were you exposed to asbestos, how were you exposed to asbestos, in order to try to get the family compensation.

So one of the things we do is we -- we take the knowledge we have about different products, and we file a lawsuit. This is a copy of a lawsuit. It's called a complaint. And we sue the different parties that we think may potentially play a role in this disease.

Let me just show you what it looks like. Oh, one more. Oops. One more. There it is.

Okay. So this is a complaint. This is a lawsuit. And you can see that there's various different companies named here. There's Celanese. And there's John Crane. Okay.

Now, I'm going to be the first person to tell you in this case, Mr. Seay had other exposures to asbestos. And many of those were represented by these other companies

that were sued. In this case, you're being asked, should these two companies, also, bear responsibility. I'm going to tell you that he had other exposures to asbestos, and they played a role in his disease, absolutely.

But what this jury is here to decide is, should these companies bear their share of responsibility. That's what this case is about.

So let's talk a little bit about how this works, how asbestos works. What is it? Right? Because what is asbestos? Let me show you. So assuming -- oh, I'm going to screw this up.

Okay. Look, here's a picture of asbestos. The easiest way to describe it is, it is a rock. It is mined out of the ground. There's different types of it. Over here, I think I have a laser. Okay. There's my laser.

When it's pulled out of the ground, it kind of looks like this. It just looks like any other rock. But you can see there's some fibers coming off of it. And then it's milled. It's put in a mill. A lot of asbestos mills on the East Coast. And there's different types of asbestos.

This one is the white asbestos. You're going to hear us say white, brown, and blue. Chrysotile is white. Crocidolite is blue. Amosite is brown. And the evidence you'll hear in the case is that this one up top,

chrysotile, was used in about 95 percent of all the asbestos products that were sold in this country over the last hundred years. That's the main one.

Now, there's a couple of others you might hear about. One is called actinolite. And another one is called tremolite. And these are just often found as contaminants in chrysotile.

I'm already ahead of myself. The bottom line is, they're all asbestos. And the evidence will be they all cause disease. And they're all very, very dangerous. But there's just different types of them. Some products had chrysotile, some had amosite, some had a mixture, and some were crocidolite.

So one of the questions you may be asking yourself is, what do these guys know? What was known? Right? Because surely if someone knew about the hazard of a product, they would tell people.

The evidence you're going to hear in the case is that starting in the late 1800s, there were already publications about the hazards of asbestos in the medical and scientific literature. And you're going to hear that people were already getting sick from asbestos exposure.

And then as you get into the early 1900s, people were getting sick in mills working with asbestos, the actual workers. And they were getting a disease called

asbestosis.

Asbestosis is not what Mr. Seay had. He had mesothelioma, which is a cancer. But asbestosis was the first disease that researchers started to say, hey, this stuff is -- it's not only making people sick, but it's killing them. It's a scarring of the lungs. You breathe in too much of it, it's a progressive scarring. So it, basically, turns the lungs to concrete. They stop functioning, and you suffocate. That's the 1930s.

Then in the 1940s and 1950s, they started to see cancer. And what they realized was asbestos diseases are a latent disease. What does that mean? It means they take time to develop. It's not like if you are on the bus and someone else has the flu, and you get the flu a few days or a week later. It's not like that.

Asbestos diseases occur 30, 40, 50 years after the exposure, which is why we're here today, right? We're talking about something that these companies did back in the 1970s and 1980s. We're not talking about something they did yesterday. Because this disease takes decades to develop. And that's what happened with Mr. Seay.

And then the progression of knowledge. What did we know? Well, the first people that they saw really getting cancer and getting very sick were the people who were pulling it out of the ground, the miners. But it didn't

stop there. The literature then showed that the people who were taking the mined asbestos and turning it into products, textiles, gaskets, insulation, those types of things, they started to get sick.

And then the actual people -- so you have got the millers who are milling the raw stuff. And then the people who are making it got sick. And then you've got the workers.

That's a picture of Dennis way back when.

And those are the people who are working in an industrial setting or a construction setting. And they're working with and side by side with guys who were using asbestos products. And they're breathing it in. And then decades later, they get sick.

Ladies and gentlemen, we are not going to tell you that these companies knew something that we only learned yesterday. What we're going to tell you is at the very time, decades before he set foot at Celanese, they already knew. Not only did they -- should they have known, but these two companies had actual knowledge that asbestos caused disease, and that it was killing people.

By 1960 -- this is about 10 years before he shows up at Celanese, there's hundreds of published articles on asbestos making people sick and killing them. One of the books that we're going to talk about is this one right

here.

In 1964, there was a researcher named Irving Selikoff. And he took an interest in asbestos workers. And he held a big conference in 1964 where they had dozens and dozens of speakers come and talk about it in New York. I believe it was a few blocks away from Celanese's headquarter at that -- headquarters at that time.

And, in fact, in 1964, there was a man named Ernie Dixon. And he was a doctor. And he went to this conference. And he learned -- in fact, he was a section head. So they had -- they had people -- doctors and professionals that were the head of these sections. And this entire thing is about the -- it's called the biological effects of asbestos. And he was involved. And he was at that conference.

The next year he was hired as the chief medical director of Celanese, the next year in 1965. That's seven years before -- six or seven years before Mr. Seay even showed up. That's just part of it. And the evidence will show that they had plenty of information about asbestos hazards to protect not only their own workers, but the contractors who were there and making their everyday wage there at their plant. That's part of it.

The other part of it is that -- and I put a light bulb up there, right? Like you have an idea, you learn

something, a light bulb goes off.

And throughout the 1930s, '40s, '50s, and '60s, and then in the '70s, especially with OSHA -- probably most people have heard of OSHA -- these companies absolutely knew that asbestos was killing people. And they knew it long before Mr. Seay started his work.

So you're going to hear from an occupational perspective. There's different rules that we follow. And everybody agrees with these rules. And I think that when Mr. Bowyer testifies -- Mr. Bowyer is Celanese's company representative. And he's going to be here next week. And I think he's going to agree with these safety rules. That a company must make a safe product, if you make one, and have a safe workplace. That a company must test its products/workplace. And a company must warn workers of hazards.

Those are pretty -- pretty easy rules. Those are simple rules to protect workers. And I think the evidence is going to show -- what you're going to hear at the end of this case is that both John Crane, who made the asbestos products, and Celanese, who utilized the asbestos and specified the asbestos at their plant, failed to follow these rules. And they failed to protect Mr. Seay.

You're not going to hear that Mr. Seay was ever educated about asbestos. We wouldn't be here if Mr. Seay

was educated about asbestos and ignored his education. We wouldn't be here, because that would be his fault. If he didn't take precautions, and he knew, that would be on him. But he wasn't educated.

I said there was a shared responsibility for worker safety, the product manufacturers, the employers, and the plant owners. And I put OSHA up there, because, in 1970, our government passed the Occupational Safety and Health Act. And the very first substance that they addressed was asbestos, the very first one.

And Celanese will admit and John Crane will admit they were aware of OSHA. They knew about it. And what I -- what I want you to pay attention to is, well, how did they react? What did they do after OSHA to protect these workers? The evidence, I believe, is going to show that they did not do enough, if anything.

What did Celanese do with asbestos? Keep in mind, Daniel Construction was there to maintain equipment. They weren't an asbestos abatement company. They were there to maintain equipment. And that's what Mr. Seay did.

Celanese failed to post warnings. They failed to specify and buy non-asbestos substitutes when they were available. And I'm not saying they were always available. Sometimes, they weren't. Sometimes, asbestos was the only thing available, in which case the evidence will be, well,

then you educate. You try to protect and prevent dust release, if that's the case.

They failed to flag asbestos versus non-asbestos. If someone has to go in and work on a piece of equipment and there's asbestos on it or there's insulation, it would be good to know is this asbestos or not asbestos. And whose responsibility is that? That's the plant. That's the people who own the plant.

And then they failed to abate, which means to pull out the asbestos in a reasonable amount of time.

So there was no workplace testing. They didn't test the air. There was no warning.

What are his other exposures to asbestos? What are Dennis Seay's other exposures? Now, he had some other work periods in his life. And you're going to hear really the only one where he had asbestos exposure was at Celanese.

But he worked at a place called Bristol Metals. He did a lot of metal work. But he wasn't working with asbestos when he was there.

Then from '71 to approximately '80, he's at Celanese. Then he goes to Precision Bearings. And you're going to see him testify. We took his video deposition. We asked him questions. The lawyers for the Defendants asked him questions before he died. So that's how he's going to

tell you his testimony is he's -- you're going to see him on video probably starting tomorrow morning.

And he's going to tell you, look, I worked at those other places, but I wasn't working around any asbestos. It was really at Celanese.

And there's really two categories. There's the gaskets that go between two metal surfaces to make sure they don't leak. And then there's the insulation.

There's a few others. There's asbestos cement that can be mixed and put on pipes and equipment, and stuff like that. But it's two general categories. It's sealing devices and insulation.

This is a picture I made. There -- with asbestos, it's not -- it's not just one product that you're exposed to that causes the disease. The evidence will be that it's all of the exposures, all of your occupational exposures that increase your risk for a disease like mesothelioma.

You're going to hear about it's a dose-response disease. The higher the dose, the higher the risk for disease. And so in a little hypothetical where you have a fish in a pond, if one factory poisons the fish in the pond, you would say that's it. Then you would say that factory is responsible.

But it's, also, possible for the other factories to

poison the fish. And they would all be responsible. Now, some may poison the fish a little bit more or a little bit less. And I'm going to tell you right now, he had immense exposures to gaskets and packing from John Crane's -- or from gaskets from John Crane's manufacturer.

But he had immense exposures attributable to Celanese. Because, at Celanese, he was exposed to other gaskets and the insulation. Okay. He had exposures from several sources. And they all contributed to play a role in the development of his disease.

I don't want to repeat myself. But he worked with and around gaskets.

Packing -- packing is if you have a valve that controls the flow of fluid, lots of different things, gaskets, fluids, water, steam. They put these rings -- it looks like little bits of rope -- in the big wheel they use to open and shut the valves. And that's called packing.

And you always kind of have it leaking a little bit to keep the pressure even, but that's made of asbestos heat. He used that. He was exposed to that and, of course, the insulation.

He used several different brands of gaskets, one of which was John Crane, who is here today.

Those are not pictures from Celanese. Those are

examples. I don't have any pictures from Celanese. They -- they don't own that plant anymore.

But these are what degraded asbestos insulation looks like. It falls apart. And it's very dusty. It's very dusty when you pull it off of something and you are working with it. Whether you do it with a hammer or a screwdriver, you take it off. It's extremely dusty, and you're exposed to asbestos. There was a lot of this at the Celanese plant. It's a very, very large facility.

This is a close-up of an old gasket. So what happens with gaskets is, over time, you put them in a flange. And, let's say -- a flange, by the way, is like you have two pipes that come together and then you have a mating surface, a flat surface; right, that's around the pipe. And you push those together.

Now, if you screw those together without putting something in between them, the way metal works, it would just spray out. It wouldn't be sealed. So you have to put something in between. That's what a gasket does. And, over time, these are -- a lot of these are very hot surfaces. There are some cold surfaces. A lot of it is hot. A lot of it is steam. And over time and pressure, those gaskets, literally, bake onto the flange.

And this is what you're looking at here. You're looking at one side of a flange where someone opened a

pipe, and they peeled it away like this. And then you have the two halves of the gasket on either side. And all of that is about 75 to 85 percent asbestos.

Before you can put in a new gasket -- you can't just throw a gasket onto that. Because if you do, it won't be an even surface and it will have a leak. So the worker -- and this is what Mr. Seay did a lot. The worker has to go in, and he's got to scrape it off, and clean it off before he puts in a new gasket. And so he might use a paint scraper like that.

Here's another picture of a cooked-on gasket.

He might use a wire brush or a power-wire brush. And you're going to hear evidence that the highest exposures come from those things, the power-wire brush. Because you're putting so much energy into getting that gasket off of the flange with a mechanical -- well, a machine like that. The exposures are very, very high. They can be higher than working with even insulation, than sawing insulation. And Mr. Seay did a lot of that to get those gaskets off so he would have a clean surface to put in a new gasket.

You're going to hear plenty about this. Gaskets contain several different types of asbestos, primarily chrysotile. That was the majority of what was in them, but, also, some tremolite, actinolite. And then there was

some crocidolite gaskets, too.

That's just a little picture from their catalog, John Crane's catalog of -- John Crane 333. It's just a medium service gasket. It came in a sheet like that. And the guys would have to cut it out. They would use a little gasket cutter, or they would use a ball-peen hammer, hold it over a flange. And they just hammer it out. And then hammer out the bolt holes, and they put it on. So that's what it looks like at first.

That's a valve. And that's, actually, a valve made by -- this is a bit confusing -- it's made by a company called Crane, not the same company. There's John Crane and Crane. Sometimes, John Crane was called Crane Packing Company. So it can be confusing. They didn't make valves. Okay. So that's not John Crane.

But I'm showing you this because what you're looking at right here are two flanges with a gasket in them, and two flanges here with a gasket. So here's the valve controls. You turn this, it controls flow of liquid. And the pipes go this way and this way. And so the gaskets go here, here, and here. That's, basically, what we're talking about.

There are some pumps that he worked on, too, some gearboxes. They all dealt with this type of insulation or gaskets.

This is a microscopic view of an unused gasket. Like I said, the gaskets are about 85 percent asbestos, 75 to 85 percent. And then they have rubber, and other stuff. And I want to show you that -- oops. Let me back up. Back up.

The asbestos is all over the place in these, because it's the majority of what they were made with. So those -- you're seeing actual fibers of asbestos. And here's even closer. Here's the asbestos. And these little guys right here, that's like the rubber that is holding it all together.

So the evidence will be, naturally, when these things are cooked onto a flange and you grind it off and scrape it off, all of this stuff is coming off into the air. And that's what you're breathing.

All right. So we're all exposed to a teeny, teeny, tiny minuscule amount of asbestos. And it's called background. And it's in the air that we breathe. It's because it's been used in products. Some places like California have natural outcroppings of asbestos. And if you go in and you just scrape it, you can release it into the air. There is asbestos in the air. But the air that is in the background for us that we all have in our -- the asbestos that we all have in our lungs is very, very small compared to occupational exposures.

So gasket dust may be as high as 100,000 times above background when you're scraping it and wire-brushing it. Insulation dust can go even higher.

So we're all exposed to a small level of asbestos. And there's no evidence that that hurts anybody. It's very, very small. What hurts people is occupational exposures to asbestos.

We already went over that.

But I think the evidence is going to be in this case that his employer gets a grade of an F. Celanese gets an F. And John Crane gets an F for their efforts to protect employees, and people they're selling their products to, and the workers at the plant.

Let me talk about mesothelioma a little bit. Asbestos causes cancer, really, wherever it goes. The evidence in the case is going to be that it causes cancer in your throat, laryngeal cancer. It causes lung cancer. And it causes mesothelioma, both on the outside of your lungs and in your gut.

Now, let me explain what I mean by that. We've all heard of lung cancer. And asbestos can cause lung cancer. But lung cancer is not mesothelioma. Lung cancer is -- basically, it's a tumor. It's like a balled tumor, and it's inside the lung. It's in the meat of the lung. Mesothelioma is different.

Mesothelioma is in the mesothelial lining of the lung. When you breathe, it shouldn't hurt, unless you have pleurisy, right? If you've ever had pleurisy, it really, really hurts to breathe. Because the pleura, the little one-cell-thick layer -- it's like Saran Wrap -- around your lungs is inflamed. And that's why when someone has pleurisy, it hurts to breathe. If you don't have pleurisy and you don't have mesothelioma, you shouldn't feel it when you breathe. It shouldn't hurt.

But asbestos fibers, they move out to the pleura of the lung. And they can cause mesothelioma. It's a cancer of the mesothelial cells. That's why they call it mesothelioma. And it spreads across that thin Saran Wrap layer of cells that are around your lungs. So it's different from lung cancer.

We have the same cells here holding all our guts in. We have that, too. And so people can even develop mesothelioma in their stomach.

Here's a picture -- none of this is from Mr. Seay. This is just an example. There's a healthy lung right there. And it's shiny. That shiny surface you're seeing is the pleura. You don't, actually, even see the pleura it's so thin. You just see a reflection right there.

This is mesothelioma. What you're looking at here is the heart. That's a heart. And that's a lung. And this

should not look like that. That is the tumor. It's called diffuse malignant mesothelioma. That's what Mr. Seay had. And it's a tumor that spreads on the outside of the lung until the lung stops working.

Why is asbestos so dangerous? There's nothing about it -- like if you're cutting an onion, you know you're cutting an onion. You can smell it. It makes your eyes water; right? There's all sorts of weird things people tell you to -- like put a match in your mouth. And so -- it doesn't work. You always smell the onion.

But asbestos doesn't have any natural warning -- warning things. It doesn't cause you to itch. You don't smell it. It doesn't make your eyes water. It just goes in your lungs and you have no idea.

I already told you it takes many years to develop, 20 to 60 years, depending on how long you -- you live.

Now, there's no cure for mesothelioma. People who are diagnosed with mesothelioma, they undergo chemotherapy a lot of times just to try to slow the growth of the tumor. That's really all it -- all it does. In some cases, they try to do what's called a decortication, which is where the doctor goes in and with a scalpel, actually, just cuts away as much tumor as they possibly can. That doesn't save anybody's life. That just -- it's just designed to give you a few extra months.

The evidence in the case will be that the average lifespan of someone who's diagnosed with mesothelioma is anywhere from a year to two years. There's a few cases of people living a little bit longer, but that's really it. The evidence will be, if you get mesothelioma, you know what happens. You don't live.

I'm putting the logos of a variety of regulatory and scientific agencies up here. And the evidence you're going to hear in this case is that all of these agencies -- OSHA, NIOSH, American Cancer Society, and so forth -- are all of the opinion that all the different types of asbestos will cause mesothelioma, and there is no known safe level. No known safe level.

What they know is, the more exposure you have, the more likely you are to get the disease. But there's no level that anyone has come out with, other than background, what's in -- just kind of in the general air. There is no level that anybody has come out with and said, this is a safe level. This much is safe.

OSHA -- you'll hear about OSHA setting permissible exposure limits. And that's something they did in conjunction with industry to try to do something that said, hey, we're going to try to keep asbestos dust down, but it's not going to protect everybody. And it was never intended to protect against cancer, only asbestosis.

So you will hear that OSHA had a standard that said, here's a permissible exposure limit that employers can expose people to. But it wasn't, actually, designed to protect from cancer.

I want to talk to you about, ultimately, the reason we're here. We're asking you to find for the Seay family and to compensate them for the loss of Dennis Seay, quite plainly. And you decide whether or not we've met our burden of proof. And you decide whether or not to award money, and how much. It's your decision. And I already told you that we're here asking for a lot of money. We think the evidence will support $10 million to $15 million once you hear it all. Let me show you why I'm talking about that much money.

What happened to Dennis? So I told you he felt a sharp pain in his chest wall. And that's how mesothelioma, typically, starts, or by shortness of breath. You used to be able to take a walk with the dog, and now you can only go to the end of the driveway.

He had what's called a thoracotomy and a biopsy where they, actually, go in and they pull out a chunk of the tumor. And then they look at it to try to diagnose it. And that's how he got diagnosed in August of 2013.

Then he had a thoracentesis. Let me tell you what this is. When the pleura is affected like it is with

mesothelioma, it gives off fluid. And it's like a -- they -- doctors say it's a straw-colored fluid. It's kind of got a little bit of a bloody tinge to it. And it -- and it restricts the ability of the lung to function.

And he had that fluid removed 11 times. They had to go in -- they go in with a pipette, a very, very small needle -- well, it's big -- it's big to get the fluid out. But it's -- you know, it's not this big, but it's a good-sized needle. And they pull that fluid out so his lung continues to work. That happened 11 times. He had six-plus chest tubes. His lung collapsed 10 times.

When you see him testify, you're not going to see a guy that's a complainer. He worked very hard his whole life. But this really -- it really hit him very, very hard.

He had what's called a talc pleurodesis. The evidence you will hear is that when -- when it gets so bad that the fluid is building up so much, in order to try to keep that fluid from building up between the lung and the chest wall, they, actually, do a procedure that destroys the lung to try to keep it from happening. It's called a talc pleurodesis. They go in with another big needle and they spray talc, powder, in between the lung and the chest wall so that the lung scars itself to the chest wall. It completely disables the lung, but it keeps the fluid from

coming back. So he had that done.

They went in, they did a pleural pulmonary decortication. I told you about that. That's when they go in with the knife and they pull out as much -- they're not trying to save his life. That's the thing. All of these things were done just to try to make him feel better, or give him a few extra months. But they try to take away as much of the tumor as they can, but it always comes back. They never get it all.

They did chemotherapy. He was diagnosed in August 2013. He went into hospice. And he died on December 29th, at age 70.

One of the things you're going to hear in this case is that if you live to be age 70, your life expectancy -- the average life expectancy from 70 years old, if you don't have mesothelioma or some other disease, is 14 years. I didn't know that. But if you get to be 70 years old, you have every reason to think you're going to live another 14 years. But that was, of course, taken from him. He died at 70.

Now, I'm going to show you two pictures. We've got more of these. And I'm going to -- we'll show some with Linda. But I'm going to show you a picture. It may be a little bit disturbing. I'm not going to show it for that long. But I want to show you what Dennis looked like

right before he died. Okay.

That's two days before he died. And this is what he looked like one year earlier, right after he was diagnosed. And that's what he looked like two days before he died. So there he is starting his treatment.

The reason he looked like that is because mesothelioma, it's -- the tumor is almost an organ. It almost becomes its own organ. To grow, it has to eat. And so it, actually, steals your food. It takes your food. And you're not hungry.

So that's what happened to this man. And that's why we're asking for the compensation we're asking for. Because when it comes to cancers, this is one of the most aggressive. And it's one of the most -- it's just awful.

So the evidence in this case that we're going to prove, because we have the burden of proof, is that these companies had the knowledge to protect, the opportunity, and the failure to protect. And they failed in their shared responsibility, along with Mr. Seay's employer, to protect him. And that they were guilty of negligence and willful, wanton, or reckless conduct.

And then we're going to ask you to award damages at the end of this case for the 14 years that he should have had. This was -- this will be my only time to talk directly to you until closing statement.

I'm going to try to give you all of the evidence that you need to decide this case as we're going to ask you to decide it. We're going to respect your time. But, at the same time, at the very end of the case, I don't want you to say, boy, I wish I had this.

So, sometimes, I might go a little bit with these witnesses. But I'm just trying to give you what you need.

Thank you so much for your attention and for your jury service.

And I look forward to putting on this case with you.

THE COURT: Thank you, Mr. Panatier.

Yes, sir. Mr. Tivin.

MR. TIVIN: May it please the Court.

One second while we have technical difficulties.

(Pause.)

MR. TIVIN: Good afternoon.

My name is Mark Tivin. And I represent a company called John Crane, Inc.

And I can tell you right now that it is 4:47, and you want to go home. I'm not going to take that long.

But what I have to say, first of all, is thank you for your time and service here. This is an important case to John Crane, just as it's an important case to the Seay family and to Hoechst Celanese.

One of the things when you start these cases, I

always have the same saying and it's keep your eye on the ball. You're going to hear a lot of evidence. And you're going to hear a lot of things that are going to tear at your heartstrings, a lot of things that are disturbing to see, like that picture you just saw.

But one of the things that John Crane is going to ask you to do is to keep your eye on the ball. Because what is this case about for John Crane? And, in doing so, you can fulfill your role, which is to render a true and fair verdict, based on the evidence, using your common sense without sympathy.

Who's John Crane, Inc.? They're located in Morton Grove, Illinois, which is a suburb outside the city of Chicago.

Here's what John Crane isn't. John Crane isn't an asbestos company. We never mined asbestos. We never milled asbestos, which you heard him talk about. We never made pipe insulation. We never made block insulation or refractory material. We made engineered sealing devices, which is gaskets.

Here's a picture of what a gasket looks like. These are not the type of gaskets that Mr. Seay identified, but they look exactly like this. There are two types.

Let's see if I can do this right.

This is called a sheet. And if you have a sheet

gasket, it's exactly what it looks like. It looks like a big sheet. And then if you need to put it into a flange, you're supposed to use a gasket cutter. And you can cut the circle. And then you can put it in there.

Or John Crane, also, sold -- and you'll hear evidence about it in this case -- precut gaskets. What are precut gaskets? Well, in places -- in big plants like that where you're using gaskets all the time, they already know the size. They already know that this is the size pipe we have running through the plant.

And we don't want to waste -- if you've ever cut cookies, you know that you waste -- you can't use all the dough. So you get a precut one. Precut ones are already sized, already fit. And you already know that they fit in the pipes.

This case is about whether any products that were sold by John Crane -- and John Crane didn't manufacture gaskets. It sold them. Sold by John Crane were a cause or a substantial factor in Mr. Seay's mesothelioma.

In order for the Plaintiff to fulfill his burden of proof, they have to prove several things. One, that John Crane was negligent. But they have to do more than prove they were negligent. They have to prove that John Crane's products were a substantial factor in causing Mr. Seay's disease. And if they want punitive damages, they have to

prove by clear and convincing evidence.

Now, Mr. Seay worked at Hoechst Celanese. And you heard that already from Mr. Panatier. But here's what he did. You're going to hear the testimony from Mr. Seay. There's going to be a videotape. And then there's, also -- he gave some other depositions. And you're going to hear that read to you. So you're going to hear his testimony, in addition to his videotape. And we believe you'll, also, hear the testimony of one of his coworkers.

But what they did, they did millwright maintenance. They maintained all the -- almost all the equipment. They worked around insulators. They worked on insulation. They built -- rebuilt pumps and valves every week. And they worked with gaskets. And they were exposed to these types of products, insulation, packing, and gaskets.

I am not going to stand here and tell you that Mr. Seay didn't work with John Crane gaskets. He did. He identified them. And I'm not going to go down that road. He identified them. That's true. But these products are different. And they're inherently different. There's thermal insulation and gaskets.

Thermal insulation are what's called friable. When you have that pipe covering, that means you can crush it in your hand and it turns to dust. They've tested thermal insulation for fiber release. The numbers are the highest

out of any of the products that there are.

Thermal insulation when -- at the conference that you just heard about in 1964, thermal insulation was the very first product that was associated -- end product that was associated with mesothelioma.

Gaskets are used in between flanges. And when you look at a -- you -- they're not friable. You can't take a gasket and crush it up in your hand. You can bang it on something. It won't break. That's why you have to cut it. And it's because if you're losing -- if you were able to crush it in your hand, it wouldn't be able to do its job. And if it didn't do its job, you'd have a steam leak. And steam leaks at these types of plants are deadly.

And they have very low fiber release. It can be thousands of times less than insulation for every single time you use the products. And though you will, also, hear --

Go back.

You can, also, hear that, although there have been studies which have, specifically, linked thermal insulation to the development of mesothelioma, there's never been one that, specifically, links gaskets with it.

We agree that Mr. Seay was diagnosed with mesothelioma, and that asbestos caused it. I'm not here

saying asbestos is the magic mineral, hooray for asbestos. I'm not here to defend asbestos. I represent John Crane. And we do not agree that John Crane products were a substantial factor or a cause of Mr. Seay's mesothelioma.

What caused it? Mr. Seay is going to -- you're going to hear him say that he worked hands-on with insulation. In addition to working hands-on with the insulation, he worked around insulators. You'll hear that all the insulation that he worked with, none of it was from John Crane.

When you have these steam lines, they're all -- that the gaskets are in that you would use asbestos in, they're all insulated. Because the pipes are a couple hundred degrees. And if you touch them, you'll get burned. And they need to keep the steam hot.

So they're all covered with insulation. In order to get at the gasket, you have to remove the insulation. Everywhere where these hot surfaces are, you have to remove it. So when Mr. Seay would want to -- when his job called for him in those times to remove gaskets, he would have to remove insulation.

You're, also, going to hear that at that plant there were grated floors. That means instead of a solid floor like this, they're just metal grates. And there would be times when the insulators would be working above him on

the floor above, and the insulation would just rain. It would just rain down on him.

And, once again, you'll be hearing from the witnesses about the releases from insulation. These are the manufacturers of -- you're going to hear a lot of testimony about all the gasket work that he did, and it was common. John Crane wasn't the only one. Mr. Seay identified, at least, these.

And you're, also, going to hear testimony that John Crane wasn't the main gasket manufacturer. The testimony you're -- I believe you're going to hear is that he used all of them equally. He couldn't say he used one more than any other one.

He'd had a lot -- I am -- I'm not that good at PowerPoint in that I can type things on a slide. And I -- you saw a bunch of slides with the files folding -- falling over and showing all the knowledge.

There's not a single medical article that mentions the word "substantial factor." There's not a single article -- you're going to hear something called epidemiology. Epidemiology is the study of the cause of disease.

And you'll hear that there were epidemiologic studies of miners. And they link -- that's how they linked it. They -- mesothelioma to asbestos, they linked it through

miners. That's an epidemiology study.

You're going to hear there was an epidemiology study regarding thermal system insulation, and about how those people had asbestos-related diseases. There's not one that focuses on gaskets.

The studies you're going to hear about fiber release from gaskets, 99 percent of them -- and that's a conservative number -- were done after Mr. Seay stopped working with gaskets. It was never a focus of any of the medicine. Of any of the articles about asbestos and disease, none of them talked about -- none of them focused on gaskets. They all focused on the same thing, miners, millers, the people that worked in the plant, which is almost the same thing as a miller because they would be using raw asbestos there. And the only end products they talk about is thermal insulation.

You're going to hear evidence about ambient levels of asbestos. You've heard people say that there's no safe level of asbestos. And I'm not here to say asbestos is good, or anything. But it's -- every expert will say there's no evidence that asbestos in the ambient air can cause or even contribute to disease.

Why is that important? I mean, who cares? Because the evidence is going to show that the -- throughout history, it's been that way. And the ambient levels of

asbestos, as companies have used less -- there's less asbestos now, obviously, than there was in the '60s. The ambient air numbers have gone down.

But if you look at the ambient air numbers back in the '50s -- the '40s, and the '50s, and the '60s, that never caused disease either.

Dr. Kradin is going to testify that the number that he used -- I believe it was -- and you can -- he'll testify. This is just my memory. I believe it was .05. That's how they measure these numbers, 05 fibers per CC.

You're going to hear other doctors say, well, right now that the ambient level numbers are .0004. Well, of course, .0004 doesn't cause disease if .05 doesn't cause disease.

So there is a level. However, nobody knows what it is. No one knows what it is. But they do know that the level is there. And we do, also, know that the body has defense mechanisms. And when you're exposed to extremely low doses, the body can handle extremely low -- extreme low doses. You have defense mechanisms like your mucociliary escalator. And there are macrophages. You're going to hear a variety of things.

And one of the things you don't even think about is that when you breathe in asbestos, you can go -- breathe it, most of it goes right back out. That's one of your

body's defense mechanisms is that not everything gets deposited in it. The body can handle levels. And the types of asbestos stay in the body different times. So we know that low levels don't contribute, extreme low levels, like the levels that are found in gaskets.

And, once again, this isn't a case about defending asbestos. This is a case about whether John Crane products were a substantial cause. And I believe when you hear the evidence, you're going to hear that the John Crane exposure -- any asbestos from John Crane was minimal. While his exposure to thermal insulation was tens to hundred thousands -- hundreds of -- tens of thousands times as much each time.

And, because of that, John Crane is going to be asking you to keep your eye on the ball, and return a verdict that is just and fair.

Thank you.

THE COURT: Thank you, sir.

Mr. Young.

MR. YOUNG: Judge, are we okay for me to start?

THE COURT: Yes.

MR. YOUNG: Ladies and gentlemen, now it's 5:00. And I don't make the time rules. But I'm last. So bear with me, if you will, because the case is important to everybody. It's important to Celanese. And I do have

something to tell you.

My name is Lane Young. I'm here with Chris Collier and Elaine Shofner.

And I'd like to start like everybody else, by thanking you.

We're here because Celanese got sued. And Celanese disputes the claims in that lawsuit that Mr. Panatier showed you. And the Judge has already told you that without y'all, we can't resolve that dispute.

And I know for certain, if I ask you to raise your hand, that none of y'all were planning on doing this for the next two weeks. I'm confident you had something else that you probably thought you were going to be doing. But, please, bear with us and hang in there. Our evidence won't be till next week. But we're not going to waste your time. We are going to put on evidence for y'all to hear about why we're defending the case.

And, ladies and gentlemen, the Judge told you, when someone is sued, you have two choices. You can say, well, Mr. Panatier, you're right. Let's work it out. How much do we owe? Or you can say, Mr. Panatier, we don't really think that's right. We don't think we were negligent. We think that hiring Daniel, a huge, well-respected, good construction company, to come do work at Celanese with asbestos -- Celanese wasn't working with asbestos. Daniel

did all the asbestos work.

You're going to hear evidence, ladies and gentlemen, that a polyester fiber plant believed that hiring Daniel Construction Company -- it's not some fly-by-night person that drove up in a pickup truck and started working on asbestos. It's a big -- we believe it was one of the most well-respected contractors in this state, or any state, that we hired. They agreed to come and do work safely, and to protect their employees.

They were the ones working with asbestos. The insulators you heard about, the insulation you saw up there, that was all Daniel's work. And you will see that they agreed in a writing to be safe and to follow OSHA.

So I would ask for you to wait and hear our evidence. Mr. Panatier is not going to put on any of our evidence this week, I can guarantee you that. And see if they've met their burden of proof. But let me -- I just told you a little bit about what the case is about. And you saw the complaint with the folks in it.

Let me tell you what they do not have to prove, ladies and gentlemen. They don't have to prove that Mr. Seay had mesothelioma. And they don't have to prove that it's bad. If we raised our hand at the end of this case, every single person in here is going to say, I wish Mr. Seay had never gotten mesothelioma. And I wish that

we had never had this case. It's a bad disease. And nobody is going to tell you that it isn't.

We, also, ladies and gentlemen -- his family is nice folks. If all we were trying is, is asbestos -- I'm sorry -- is mesothelioma a bad disease, and is Mr. Seay a good fellow and his family, we could do that in two minutes. That wouldn't take two weeks.

And I just want to tell you before I get into the case -- because there's two parts to every lawsuit. Mr. Panatier started with liability and ended up with damages. But they're both important. Because you never get to the question of damages until you decide liability. Have they proved their case that Celanese was negligent? And that's what I'm going to tell you about.

But, ladies and gentlemen, nothing that I'm going to say, none of the evidence that we're going to put on is meant to be disrespectful to the Seays, or to the severity of his injury, and his mesothelioma, and his passing away. It was bad. And we're all going to agree to that.

But I am going to tell you, ladies and gentlemen, at seven after 5:00, after everybody is exhausted, as fast as I can -- and I can't talk that fast, but I'm going to try -- about the liability part of the case.

They have to prove that Celanese was negligent. They have to prove that our hiring Daniel, a large,

well-respected, good contractor to come in and do the asbestos work was negligent. That it was not something that an ordinary, prudent person would do. And, ladies and gentlemen, we believe the evidence in the case will be the exact opposite of that.

But, as I said, wait on our evidence. Because we don't get to go until second. Because we don't have the burden of proof. But just -- I want to have a -- I guess a highlight film. Because I know you guys want to go home. But I have to tell you some things about Celanese.

Mr. Seay was an employee of Daniel. They were hired by Celanese to do maintenance work at Celanese 40 years ago. Celanese was not manufacturing asbestos-containing products. It made polyester, resin, and fiber.

The insulators you heard about, they worked for Daniel. They didn't work for Celanese. And, ladies and gentlemen, in that big stack of falling-over articles, there's not one word in there about asbestos disease at a polyester resin, and, fiber plant. There's no mining and milling of asbestos going on at Celanese. They were making polyester fiber.

And they didn't do their own maintenance or insulation work. They relied upon Daniel to properly and safely do the work. And, ladies and gentlemen, this is important.

And the years that Mr. Seay worked there are important. His records show he started in '71 and went to '78. That's the exact period of OSHA coming in and requiring employers like Daniel to comply with the asbestos regulations, and provide a safe workplace for their employees at Celanese.

And, ladies and gentlemen, you're going to hear -- I agree with Mr. Panatier about one thing, Daniel got an F. But you're going to hear that if they had complied with OSHA and done the things that OSHA required, give people respirators when that insulation and -- dusty insulation that you saw was being worked with, that it would have significantly reduced and likely eliminated Mr. Seay's chance of getting mesothelioma. So, yes, F is right.

The plant was built in the 1960s by Daniel. Daniel's built over 400 plants of this type. It's a big plant, ladies and gentlemen. A lot going on there. That's why they turned Daniel -- the maintenance over to Daniel. They didn't have any maintenance folks. They were making polyester fiber. There's no mining or milling of asbestos.

I promised myself I wasn't going to repeat anything. And I apologize for that. But this is how you make polyester. There's no asbestos in that at all anywhere. Listen and see if you hear that there was. There's no

asbestos in polyester fibers. It really just has nothing to do with asbestos, ladies and gentlemen. It's not an asbestos product. And that's why they got Daniel to maintain the plant. They did all the work involving asbestos. And Celanese was making polyester fiber.

He was -- he worked at Celanese for Daniel from '71 to '80. OSHA is involved the whole time. Daniel was hired because of its experience, knowledge, and expertise. You'll hear that. And we assumed, because of what they told us and what they signed, that Daniel would provide a safe workplace for all Daniel's employees, including Mr. Seay.

The contract itself made Daniel responsible for their own employees safety. And they had a duty under the law, under OSHA, to provide its employees a safe place to work. And you'll see the contract.

And I already mentioned it was a well-respected company and doing work pursuant to a formal, good contract. And they agreed to apply with OSHA -- comply with OSHA and provide a safe workplace.

And, ladies and gentlemen, you will hear, as Mr. Panatier mentioned, that OSHA did set permissible exposure levels for asbestos. And you'll hear that Daniel knew about OSHA, knew they were required to comply with the permissible exposure levels. They knew their

employees were working with asbestos, that they were putting on, taking off insulation. And, all the while, Celanese is making polyester fiber. So, ladies and gentlemen, what better company to rely upon to comply with OSHA and protect Mr. Seay?

Don Buck will be here from Daniel. He doesn't work for Celanese. And he agrees that Daniel was obligated to comply with OSHA while doing work at Celanese. He agreed Daniel should provide a safe workplace for Mr. Seay. And that Daniel should properly control dust from asbestos insulation, and provide respirators when appropriate.

Ladies and gentlemen, listen for that evidence. It's really important. If Daniel had just given Mr. Seay a respirator, the evidence in this case would be we likely wouldn't be here.

Those pictures of insulation you saw, that's what Daniel was doing, ladies and gentlemen.

So the evidence will be from all the doctors that the lower the dose, the less likely you'll get -- have chances of getting a disease. And that if Daniel had complied with OSHA, complied with the PEL, complied with the requirement for respirators that there's a huge chance -- well, Mr. Seay's chance of getting mesothelioma -- mesothelioma definitely would be reduced, and a good chance that it would be eliminated.

And, ladies and gentlemen, you'll hear that's what Celanese expected to have happen. That Daniel would follow the rules, provide a safe workplace, and protect Mr. Seay. And you'll -- Mr. Tivin talked to you about that, but I'm not going to go into it too much.

But that's important, ladies and gentlemen. Because everybody agrees that mesothelioma and all asbestos diseases are dose-response diseases. So the less dose you have, the less chance you have of getting a disease. So complying with OSHA and following the OSHA requirements would definitely have reduced or eliminated his exposure and, hopefully, prevented us from being here.

And we know that the lower exposures are not hazardous for the reasons Mr. Tivin just told you. There's asbestos in the ambient air. People breathe it. And everybody doesn't get mesothelioma. Everybody has some asbestos in their lungs, but they don't all get mesothelioma. And that's because of the defense mechanisms that you heard about a little bit.

But these little cilia here, they're all in your windpipes. And that's what happens when you get sick. You know, fluid would come up. That constantly -- this -- this is in your throat, all your airways. It's constantly moving dust out, constantly.

And then when it gets in your lungs, there are little

things called macrophages that will eat up the fibers. So your body can deal with a small dose. It's the large dose that the body has a hard time with. And that's why it's important that if Daniel had followed OSHA and provided a safe workplace that the chance of Mr. Seay's illness would either have been significantly decreased or eliminated.

So, ladies and gentlemen, I just want to summarize, so, hopefully, we can go home. I know everybody is tired.

But we believe the evidence in this case will be that Celanese was not negligent, that -- in the exercise of safety, it hired a well-respected company to do maintenance and insulation work in a manner safe to everyone. And that it was Daniel who got the F and brought us here.

There's one thing that I missed, ladies and gentlemen. And I apologize for this. But you're, also, going to hear from one of Mr. Seay's coworkers. There was a lot said generally about Celanese. But you're going to hear from Mr. Ronnie Thompson, who worked with Mr. Seay at Celanese. And he was a Celanese employee. And he is, actually, going to be called to testify by Mr. Panatier.

And he's going to tell you that safety was important to Celanese, that Celanese was a safety-conscious company, that it would never withhold information about the hazards of asbestos from its employees. And that the management

of Celanese and its employees worked in the same conditions as Mr. Seay in the plant. And assuming all the while that Daniel was providing a safe workplace.

So, ladies and gentlemen, our defense here is really pretty simple. And I guess it's no surprise. At the conclusion of the case, we are going to ask for you to find that Celanese was not negligent in hiring Daniel, and assuming that Daniel would provide a safe workplace for Mr. Seay.

I just want to close by ending where I started. I'm not trying to be disrespectful to the Plaintiffs or Mr. Seay. I'm just presenting you with the evidence as to why we're here and why we're defending the case.

And it's an honor to be here. I like Spartanburg. And I look forward to trying the case with y'all.

So thank you very much.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Young.

All right. Ladies and gentlemen, I'm just going to ask you to be back in the jury room at 9:15 in the morning. And we'll start with the testimony at that time. Don't talk about the case. Keep an open mind. Don't do any outside investigation.

And thank you again for your enormous patience today.

We'll see you back at 9:15.

Thank you.

(WHEREUPON, the jury was excused from open court at approximately 5:22 p.m.)

THE COURT: I'll see everybody back at 9:15.

MR. TIVIN: Your Honor.

THE COURT: Yes.

MR. TIVIN: It's my understanding that the Plaintiffs are going to be starting with Dr. Brody in the morning. And then they're going to be playing the Dennis Seay video after Dr. Brody is completed.

I wanted to bring to Your Honor's attention, there is one question that John Crane is pressing an objection on in the Seay video that needs to be dealt with before the video gets played. I didn't know if you wanted to do it before Dr. Brody or --

MR. PANATIER: It can be handled today or at a break. It's one question.

MR. TIVIN: I have it right here.

THE COURT: I will have a look at it.

MR. TIVIN: Your Honor, looking at Page 54, the question is at Line 12, the objection. And then the answer is right after it.

It's John Crane's position that the -- that question is entirely leading. And that we objected at the time. And the Plaintiff made absolutely no attempt to correct

the form of the question properly.

THE COURT: Okay. Mr. Panatier.

MR. PANATIER: It's a yes-or-no question. It's not leading.

THE COURT: I'll sustain the objection.

MR. TIVIN: Thank you, Your Honor.

THE COURT: Okay. See y'all in the morning. Thank you.

(WHEREUPON, the proceedings were concluded at approximately 5:25 p.m., to be reconvened on Wednesday, September 30, 2015.)

WEDNESDAY, SEPTEMBER 30, 2015

THE COURT: Good morning.

All right. Is everybody ready for the jury?

MR. TIVIN: Your Honor, I have one question.

THE COURT: Yes, sir.

MR. TIVIN: I know that there are no -- I don't want to making a speaking objection. If by possibility that Dr. Brody begins to testify about "each and every" and I want to renew my objection, do I just mention the previous motion, or do I --

THE COURT: Yeah. That's fine.

MR. TIVIN: But I -- you know, I didn't know if you wanted me to say that in front of the jury to let them know that that's -- I imagine it's going to occur at some point in there. I can just ask for a quick -- I can just quickly ask to approach and just say this is what the subject of the previous motion was, and then sit back down. However Your Honor would like to...

THE COURT: I mean, you can just say, objection based on the previous objection to the "each and every" exposure.

MR. TIVIN: Okay. I just didn't want to run afoul on that.

MR. YOUNG: Judge, we had joined in that motion. Can we just have an agreement that an objection by one

Defendant is an objection for both, unless we, specifically, opt out on the issues where we both joined in the motion? I mean, that's what we usually do. But we can just say, join, if you'd be more comfortable with that.

MR. PANATIER: I think the only one was "each and every."

MR. YOUNG: Right. That's the only one.

MR. PANATIER: So I'll stipulate that if one of you objects to "each and every," you're both objecting.

THE COURT: That's fine.

Thank you.

MR. YOUNG: That's the way we usually do it, Judge.

MR. TIVIN: I'll just say, objection to each and every. And then we'll know that that's what it was.

THE COURT: Well, that's probably the safest way to do it. Our state has certain rules about error of preservation that are beyond my control.

All right. Let's bring the jury in.

(Pause.)

THE COURT: Okay. I understand that there was some request to proffer some testimony of Dr. Brody. We're waiting on a juror.

So if y'all want to do that now, it's probably a good time to do it.

MR. PANATIER: Proffer testimony?

MR. YOUNG: Yeah, on the mucociliary escalator.

MS. SHOFNER: To protect the record.

MR. PANATIER: You guys want to do it? I don't understand. I don't understand what's being requested.

THE COURT: How about y'all making sure the other side knows what's going on when you approach me or my clerks. Okay. Please don't come talk to me or the law clerks without the other people being present.

Thank you.

MR. PANATIER: Okay. Your Honor, we can do that now.

THE COURT: Dr. Brody, how are you, sir?

DR. BRODY: Fine.

Thank you, Your Honor.

THE CLERK: If you'll place your left hand on the Bible and raise your right hand.

WHEREUPON,

ARNOLD R. BRODY, Ph.D.,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. COLLIER:

Q Good morning, Dr. Brody.

A Good morning.

Q My name is Chris Collier.

I've got just a few questions for you. Okay.

Dr. Brody, you would agree that smoking does have an effect on the lung's ability to defend itself; correct?

A Sure.

Q And the defense mechanisms that I anticipate you will be discussing in your testimony here today like the mucociliary escalator, they don't work very well when someone has a significant smoking history, do they?

A Well, it differs from person to person. But -- but they are less efficient in a smoker to varying degrees, depending on how much the person smoked.

Q And you don't know anything about how much Mr. Seay smoked in this particular case, do you?

A That is true.

Q Okay. You would, also, agree that there are many toxic agents in cigarette smoke; correct?

A Of course.

Q And they'll paralyze the cilia as part of the defense mechanism so that they can't do their job of ridding the body of foreign substances; correct?

A True.

Q And you would agree that cigarette smoking does have an impact on the body's natural defense mechanisms, which would cause more fibers to reach the lung than in a nonsmoker; correct?

A Correct.

MR. COLLIER: Okay. Thank you, Dr. Brody.

THE WITNESS: You're welcome.

MR. PANATIER: I just have two follow-ups.

THE COURT: Yeah, sure. Go ahead.

CROSS-EXAMINATION

BY MR. PANATIER:

Q Dr. Brody, is there any scientific data that you're aware of that shows just how much more asbestos fiber gets into the lungs by virtue of smoking?

A No.

Q Is there any scientific data that shows that smokers exposed to asbestos are at any more increased risk for mesothelioma than nonsmokers exposed to asbestos?

A No. There's no apparent effect of cigarette smoking on the likelihood of developing mesothelioma.

Q Okay. And has that been the case for decades and decades?

A Yeah.

MR. PANATIER: I have no further questions.

THE COURT: Okay.

MR. COLLIER: Your Honor, one more.

REDIRECT EXAMINATION

BY MR. COLLIER:

Q Dr. Brody, if -- if more fibers were to reach the

lung, would that increase the risk of developing or contracting mesothelioma?

A No.

Q And why is that?

A Apparently not. I mean, if it's related to cigarette use, the answer is no. But mesothelioma, like any other asbestos disease, is a dose-response disease. But we're talking about dose at the pleura.

Q And if more fibers are able to get past the defense mechanisms and into the lung, would that not increase the risk?

A Well, the disease develops at the pleura. So the target cell are the mesothelial cells. So, apparently, cigarette use does not influence the number of fibers that reach the pleura and, therefore, cause mesothelioma. That's why there's no epidemiologic evidence that there is any increase in the risk of getting mesothelioma in smokers.

Q But it does impact the body's natural defense mechanisms; correct?

A No. That's not a "but." Right? It does influence the body's defense mechanisms. But that does not influence the risk of getting mesothelioma.

Q It does allow more fibers to reach the lung than a nonsmoker?

A And that's exactly right. And the number of fibers that reach the pleura, apparently, are not influenced by whether or not a person smokes.

Q Thank you, Dr. Brody.

A You're welcome.

MR. PANATIER: I don't have any follow-up.

THE COURT: All right. You can step down, sir.

THE WITNESS: Thank you, Your Honor.

THE COURT: Is the juror here?

THE CLERK: She is not, no, sir.

THE COURT: She's not here yet?

THE CLERK: No, sir.

THE COURT: But she's on the way?

THE CLERK: Yes, sir.

The jury coordinator has spoken with her boyfriend, and she is on her way.

(WHEREUPON, a break was taken.)

THE BAILIFF: The juror is here.

THE COURT: Okay. Bring the jury in, please.

(WHEREUPON, the jury came into open court at approximately 9:39 a.m.)

THE COURT: All right. Good morning, ladies and gentlemen.

I apologize for the delay. If somebody is going to be running late, just, please, call the jury coordinator