

The State of South Carolina
In the Court of Appeals

Appeal from York County
Court of Common Pleas
Jean H. Toal, Circuit Court Judge

Appellate Case No. 2019-000649
Case No. 2013-CP-46-00368

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SC Court of Appeals

Stephen R. Edwards, Individually
and as Personal Representative of the
Estate of Steven R. Stewart, ...Respondent,

v.

Scapa Waycross, Inc., ...Appellant.

**RECORD ON APPEAL
VOLUME FOUR**

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1 BY MR. YOUNG:

2 Q Dr. Crapo, what is your opinion with respect to whether
3 or not it would be appropriate to use the EPA and OSHA to
4 suggest that chrysotile causes mesothelioma in low doses?

5 A It is my opinion this model is not appropriate to tell
6 you what chrysotile would do at low doses. I can get some
7 more data on this to show you what I would determine it as.
8 For example, there's a study of Canadian -- I had it in my
9 previous graph with Canadian miners. Remember, I said there
10 were 36 mesos and 8,000 deaths. On this graph, it would be
11 right down here. They had very, very high exposures,
12 roughly, a thousand fiber cc years and you have chrysotile
13 associated with mesothelioma at that level. That's the same
14 data I showed you earlier on that one graph.

15 There was a group of women who lived right next to the
16 mines, they found that they on the average were exposed to
17 225 fiber cc years. And there were seven mesotheliomas
18 among those women. So their estimate is really low, which
19 is right here. And that could raise the possibility that
20 that 200 fiber cc years of chrysotile could cause some
21 disease. Each of these has some amphibole in it, but I'm
22 just going to assume they're chrysotile. They will actually
23 have ambient air. Ambient air on this graph would be right
24 there. Ambient air would be this region. And ambient air
25 has no associated risk of disease.

1 So if I were to draw a chrysotile curve, I'll put it on
2 this in black, a chrysotile curve would look like this. You
3 would have no risk of disease until it's up around a hundred
4 fiber cc years and then a small increase. This is, to me,
5 the correct curve when you're trying to assess chrysotile.
6 And this would be a regulatory curve when you're trying to
7 protect human health, particularly the amphibole exposure.

8 Q Where would dryer felts be on here if there was
9 exposure?

10 A If dryer felts were put on here, their level would be
11 low end, which would be some place down in here.

12 Q Thank you, Dr. Crapo. I need to ask you just a couple
13 more questions. Are you charging for your time today?

14 A Yes.

15 Q And how much is that?

16 A I charge \$600 an hour for medical legal consulting.

17 Q And I believe I've already asked you this, but have all
18 the opinions you've given the ladies and gentlemen of the
19 jury and the Court today been to a reasonable degree of
20 medical and scientific certainty most probably?

21 A Yes.

22 MR. YOUNG: Thank you, Your Honor.

23 Thank you, Dr. Crapo.

24 THE COURT: All right. Before Mr. Jekell begins his
25 cross-examination, we'll take a break at this time. Please

1 be back about 10 minutes of 11:00. Thank you.

2 (WHEREUPON, the jury exits the courtroom.)

3 THE COURT: Dr. Crapo, you can move about, just don't
4 discuss your testimony.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: Bring the jury in.

7 (WHEREUPON, the jury enters the courtroom.)

8 THE COURT: Ladies and gentlemen of the jury, we will
9 proceed with the cross-examination of Dr. Crapo by Mr.
10 Jekell.

11 MR. JEKELL: Good morning, ladies and gentlemen.

12 CROSS-EXAMINATION

13 BY MR. JEKELL:

14 Q Good morning, Dr. Crapo.

15 A Good morning.

16 Q I want to apologize. As you know, you're the last live
17 witness here. We've been going at it hard and I'm a little
18 tired, maybe just a little frayed, so I just wanted to let
19 you know that I mean no disrespect. But being in a
20 courtroom is nothing new to you, is it, sir?

21 A No.

22 Q You've testified a fair amount over your career, right?

23 A I have.

24 Q In the last few years, you would agree with me that you
25 make about \$800,000 a year on your medical legal consulting?

1 A That's correct.

2 Q And that's personal income, right?

3 A Yes.

4 Q You're 74 years old; is that right?

5 A Next month.

6 Q And you're still very active, yes?

7 A Yes.

8 Q And it's true, is it not, that over the course of your
9 medical legal consulting career, since the mid to late
10 1980s, you've made around eight to nine million dollars
11 personal income from that consulting, right?

12 A I've never actually calculated the total, but I have no
13 reason to disagree with that.

14 Q Well, if you want to give us your accountant's name,
15 we'll take that?

16 A I haven't had him do it either.

17 Q And this includes money you got in the mid 1980s from
18 RJR Company, didn't it?

19 A I didn't receive personal money from RJR and it's not
20 part of what we're talking about.

21 Q I'm looking here at a letter from RJR dated January
22 17th, 1986, addressed to Dr. James D. Crapo, M.D., chief
23 division of allergy critical care and respiratory medicine,
24 Duke University. Was that your position?

25 A Yes.

1 Q And it says, Dear Jim, and it's signed by an A.
2 Wallace, Ph.D from RJR. Do you remember Mr. Wallace?

3 A Yes.

4 Q It says, Dear Jim, Enclosed is our check for --

5 MR. YOUNG: Your Honor, I object --

6 THE COURT: Just one moment. Let me do one thing
7 before you interpose your objection.

8 Mr. Jekell, sometimes we can hear you well, sometimes
9 we can't hear you well. I think it would be well if you
10 speak into the microphone.

11 And the second thing is, you have an objection, Mr.
12 Young?

13 MR. YOUNG: Yes, Your Honor. The document is hearsay.

14 MR. JEKELL: It's not hearsay, Your Honor.

15 THE COURT: Let me see the document, that's the best
16 way. This is a letter from R. J. Reynolds Tobacco Company,
17 A. Wallace Hayes, Ph.D to James D. Crapo, M.D., dated
18 January 17th, 1986. I find it's a proper subject for
19 cross-examination by Mr. Jekell.

20 MR. YOUNG: Your Honor, if Mr. Jekell --

21 THE COURT REPORTER: I can't hear any of that.

22 THE COURT: She can't hear you.

23 MR. YOUNG: I'd just like an opportunity to see the
24 document before he marches into a question.

25 THE COURT: Well, stop right here and take a look at

1 it.

2 MR. JEKELL: Mr. Young, these were all --

3 THE COURT: These are all documents that Mr. Jekell got
4 from your client, so this is not something, I don't think is
5 unfamiliar.

6 MR. JEKELL: Your Honor, I'd just like to make for the
7 record that all of these documents were -- we talked about
8 in the 2016 depositions, these were all documents that were
9 shown to the witness and to Mr. Young at that time.

10 MR. YOUNG: Right, but, first of all, I don't have them
11 all memorized and, second of all, I might have an objection.

12 THE COURT: That's fine. That's fine. We just don't
13 need to -- this thing could take all year if we banter with
14 this back and forth with documents that you two gentlemen
15 know very well from all the prep you've had for this case.
16 So when he examines and says something about a document, pay
17 some attention, you'll probably know what it is. And if
18 you've got an objection, fine, but I'm not going to stop
19 every single time to have you examine a document that y'all
20 have already previously scrapped over or, at least, seen.
21 If you've got an objection to it, interpose it, I'll rule on
22 it and we'll move on. Is that understood?

23 MR. YOUNG: Yes, Your Honor.

24 THE COURT: Very good. So is the objection withdrawn
25 or am I to simply rule on it? It's not hearsay.

1 MR. YOUNG: I would prefer that you rule on it, Your
2 Honor.

3 THE COURT: Okay.

4 MR. JEKELL: The objection is hearsay?

5 THE COURT: Yes. Overruled.

6 BY MR. JEKELL:

7 Q Dr. Crapo, did you get this letter from RJR back in
8 1986 with a check for \$89,958.25?

9 A I believe the answer is yes. I don't remember the
10 exact amount, but this was a check to Duke University to be
11 spent on research in the pulmonary medicine division of
12 Duke. It was not money to me personally.

13 Q This amount -- the letter to you goes on to say, This
14 amount represents one-fourth of the \$359,833 requested for
15 1986 to fund your research entitled Mechanisms of Lung
16 Injury and Repair in Nonhuman Primates. Is that right?

17 A That's correct.

18 Q In fact, you received three payments over about four
19 years totalling a little over a million dollars; is that
20 right?

21 A That's correct. And they did support a project. This
22 was not tobacco research. This was research on acute lung
23 injury in a nonhuman primate. It was an ICU model of a
24 primate undergoing intense inflammatory stress to their
25 lung, looking for a way to treat and manage that, much like

1 a person that has ICU admission for lung disease.

2 Q Haven't you testified before that the RJR research was
3 to be on a smokeless cigarette? Or is that other research
4 you did for RJR?

5 A I never did research on a smokeless cigarette, but
6 there is a part of the story that's separate from this. But
7 they did develop a cigarette much like the vaping materials
8 we have today where they would heat the tobacco and not burn
9 it. And I reviewed their product and it actually was very
10 good. It contained no combustion products. And just like
11 the vaping materials we have today, it had -- it would have
12 had less toxicity to it.

13 Q So you know the folks at RJR fairly well, do you not?

14 A Well, RJR was a major corporate partner in North
15 Carolina and they did a lot of sponsoring of various things
16 at Duke University where I was, so yes, I knew them. And
17 Dr. Hayes is really renowned toxicologist.

18 Q That was in the 1990s that the chrysotile manufacturers
19 found you and you started testifying in trials like this
20 one; isn't that true?

21 A After I finished my research on asbestos, I did start
22 offering testimony for -- about my opinions in cases
23 involving asbestos-related disease.

24 Q And they're all companies that manufactured and
25 utilized chrysotile asbestos, right?

1 A Some of them did the other, but, obviously, they were
2 not mesothelioma cases. I provided some testimony for some
3 of the thermal insulation manufacturers, but never for a
4 mesothelioma case because I testified that mesothelioma was
5 caused by their product. But in other cases, they did seek
6 my opinion in the 1990s.

7 Q You've testified on behalf of Georgia Pacific that used
8 chrysotile asbestos in joint compound and you tell juries
9 like this, Georgia Pacific's joint compound doesn't cause
10 mesothelioma, right?

11 A I testified that low levels of exposure to that
12 compound would not cause a problem, yes, that's correct.

13 Q W. R. Grace, is that another chrysotile company you've
14 testified for?

15 A Well, W. R. Grace had a variety of products. I've
16 never testified -- in fact, I don't recall testifying for W.
17 R. Grace, but if I did, it would not have been a
18 mesothelioma case.

19 Q But you understand that W. R. Grace had a plant in
20 Travelers Rest, South Carolina, are you familiar with that?

21 A I don't recall the details of it. And I don't think
22 I've ever testified for them on that.

23 Q U.S. Gypsum, have you testified for the United States
24 Gypsum company about their chrysotile asbestos products?

25 A Yes.

1 Q Rabestos Manhattan, have you testified on their behalf?

2 A Yes.

3 Q You understand Rabestos Manhattan was one of the yarn
4 suppliers for Scapa, right? Did they tell you that?

5 A They didn't, no. The studies -- the times that I
6 testified for Rabestos were not mesothelioma cases and was
7 in the 1990s, I think.

8 Q What about John Crane Gaskets, you testified for them,
9 right?

10 A Yes.

11 Q They've paid you almost a million six, haven't they?

12 A Again, I can't validate that, but that's -- I think
13 people have obtained that from court records.

14 Q Ford, you testified for Ford and you tell the juries
15 that the chrysotile in those brakes, they don't cause
16 disease, do they?

17 A They don't. And I said that today already.

18 Q You didn't talk about forsterite, though, did you? Yes
19 or no, forsterite? I didn't hear forsterite.

20 A Well, I can tell you about it if you'd like.

21 Q That's all right, you just never mentioned it. It's
22 okay. General Motors, you testified for General Motors,
23 too, did you not?

24 A I have, yes.

25 Q And AC&S, right?

1 A Yes.

2 Q Union Carbide Company?

3 A Yes.

4 Q Garlock Gaskets?

5 A Yes.

6 Q Crane Company?

7 A Yes.

8 Q Dupont Company?

9 A Yes.

10 Q Union Carbide, did I say that already?

11 A I think you already said that.

12 Q Bondex?

13 A Yes.

14 Q Abex?

15 A Yes.

16 Q Napa Parts?

17 A Yes.

18 Q Marymount Brakes?

19 A I think so, yes.

20 Q Borgwarner Clutches?

21 A Yes.

22 Q I may have missed a couple, too, haven't I?

23 A Frequently, cases will have five or ten defendants and

24 they'll be all at one time, yes.

25 Q And you may have sat for deposition over 1200 times,

1 isn't that fair?

2 A I've never tried to calculate it.

3 Q Is that out of the range of possibilities?

4 A I think it's pretty high. I don't think it's that
5 high.

6 Q It's a fair amount, though, isn't it?

7 A I've testified over 10, 20 times a year for
8 depositions, yes.

9 Q And that \$600 rate, when you leave this courthouse,
10 you're going to go to the Charlotte International Airport
11 and get on a plane back to Denver, right?

12 A Yes.

13 Q And you're still going to be charging Scapa \$600 an
14 hour when you sit up there in first class, right?

15 A I will charge them \$600 for all of my travel time and
16 my working time, but not for personal time.

17 Q Okay. You agree that the gold standard diagnostic
18 criteria for mesothelioma is pathology, yes?

19 A Yes, for the diagnosis.

20 Q You're not a pathologist?

21 A I am not a clinical pathologist. I'm a professor of
22 pathology at Duke University, actually, and still hold that
23 appointment. But I teach experimental pathology and not
24 clinical pathology.

25 Q Are you board certified in pathology?

1 A I said I'm not a clinical pathologist, that would be a
2 board certification. But a large majority of my
3 publications are in pathology. I teach graduate students in
4 pathology and I have an appointment as a pathologist.

5 Q Earlier, when you were being qualified -- let's move on
6 for a second. I asked you to identify the low dose
7 chrysotile exposure or the rat study you did where you
8 looked at levels of exposure to cause disease. And you said
9 it was a Pinkerton?

10 A Pinkerton was the first author, it was in 1988.

11 Q I see Pinkerton from 1989 that studies exposure to low
12 levels of ozone resulting in enhanced pulmonary retention of
13 inhaled asbestos fibers, is that the one?

14 A No, that's related, but it's not the one.

15 Q The other one is alveolar type two cell response to
16 chronic inhalation of chrysotile asbestos in rats. It's not
17 that one either?

18 A It's not that one either.

19 Q Now, your first board certification as an M.D. was an
20 internist, right?

21 A Yes.

22 Q And then you went and tried to take the boards for
23 pulmonary medicine, right?

24 A That's true.

25 Q And you failed the boards the first time because you

1 didn't study, right?

2 A I was chief of pulmonary medicine at Duke by that time
3 and I was teaching it and I thought I could take the exam
4 without studying, and I couldn't. I actually tried that
5 twice and then I finally studied and I passed the exam fine.

6 Q So --

7 A It was a pretty humbling part of my career to be a
8 professor at Duke and not pass the board. But they asked a
9 lot of really challenging questions and you have to study
10 the details.

11 Q And you took it again and you failed it?

12 A That's correct.

13 Q Third time was a charm, though, and now you're board
14 certified in pulmonology, right?

15 A I am, yes.

16 Q Now, that Powerpoint that you did, that's a semi-meta
17 analysis, right? You're talking about all these studies and
18 saying what's good about them and what's bad about them,
19 right?

20 A I wouldn't call it a meta analysis. I didn't try to
21 use that formal analytic technique. What I tried to do was
22 to summarize the result of all the studies.

23 Q Because a meta analysis requires some statistical
24 analysis of all the studies, right?

25 A If you try to integrate them and do a statistical

1 analysis. Others have done that, but that was not my
2 purpose.

3 Q And you've never sought to put your opinions in that
4 Powerpoint down in a journal, write it up, send it to other
5 doctors and have them critique it, have you?

6 A No, I have not.

7 Q And you're not a statistician, are you?

8 A I'm not a statistician.

9 Q You've not done any original research on mesothelioma
10 and chrysotile; is that true?

11 A That's correct.

12 Q Doctor, I showed this to -- I had showed these to
13 counsel before. You're at National Jewish, right?

14 A Yes.

15 Q And when you went there, you stopped seeing patients --
16 asbestos victims on a regular basis, right?

17 A Yes, that's correct.

18 Q Now, you appear on the National Jewish website, do you
19 know that?

20 A I do. And I haven't entered it for a while, but each
21 person writes their own profile for the website.

22 Q Well, there's something that I wanted -- you're
23 familiar with what that says?

24 A Generally, yes.

25 Q You would agree with me, Dr. Crapo, that the website at

1 National Jewish does not -- your bio does not mention the
2 word asbestos?

3 A No, the bio on National Jewish is for patients. I
4 haven't seen patients in about five or six years. But after
5 going to National Jewish, I limited the patients that I saw
6 to COPD and asthma.

7 Q Okay. And there's also the following on that website,
8 industry relations and calibrations. And National Jewish
9 Health physicians and scientists may collaborate with
10 pharmaceuticals and other industries, but they have to
11 disclose it, right? You're familiar with that disclosure?

12 A Yes.

13 Q And you've identified a biometrics company. That's
14 your private anti-oxidant company?

15 A Biomimetics, yes.

16 Q Isn't that kind of anti-aging stuff?

17 A It's an anti-oxidant, anti-inflammatory. I wouldn't
18 call it anti-aging.

19 Q You've got Pharma Partners identified. Is that another
20 one of your companies?

21 A That's the investment group that works with
22 Biomimetics, yes.

23 Q You've got an interest in that, do you not?

24 A I do, yes.

25 Q What percentage of that do you own?

1 A Probably close to half.

2 Q And then it's got the COPD Foundation. And truth be
3 told, since 1996, that's where your real focus is, is it
4 not?

5 A Well, COPD Foundation, I'm on their board. It's a not
6 for profit patient-oriented board that teaches about lung
7 disease. And I'm a board member. And COPD is the primary
8 area of my research at National Jewish.

9 Q I want to show the jury this next one.

10 MR. JEKELL: Can we put this on the Elmo?

11 Q You know it's going to take me a while, but I'm going
12 to get it right sooner or later. At the very bottom here,
13 it says multiple law firms expert witness 101,000 dash more.
14 That's all you disclosed to National Jewish?

15 A This is part of my internal disclosure of conflicts of
16 interest at National Jewish. And I have always ascribed to
17 them that I'm doing medical legal work as well.

18 Q But you're really here testifying on behalf of Scapa
19 Corporation, not the law firm, right?

20 A You're right. It's the law firm that engaged my time,
21 but Scapa is the original defendant, I guess, in this case.

22 Q And I went through all the companies that you've
23 testified before and RJR, none of those names appear on that
24 disclosure, do they?

25 A Well, it wouldn't be appropriate.

1 Q Okay. Dr. Crapo, you talked about Dr. Selikoff and you
2 didn't -- again, I want to ask you before we get into the
3 heart of this, none of the articles that you talked about
4 did you bring with you, right? Do you have the hard copies
5 in your briefcase?

6 A I've got a lot of them on my computer there in my
7 briefcase. I'd have to bring massive boxes to walk in with
8 all those articles.

9 Q Right. As you mentioned, there's a lot of them out
10 there. And you picked out 60 of them or whatever the number
11 was?

12 A There's 60 different studies that I referred to and
13 some of them had five, 10 reports on them, yes.

14 Q And you would agree with me that those are not the only
15 studies in the published literature that look at the ability
16 of chrysotile to cause mesothelioma, yes?

17 A In terms of an epidemiologic study, at the time I did
18 that, that's correct. There's probably a half a dozen more
19 studies by now, none of which have changed those opinions.
20 But I looked at every article that met simple criteria
21 identifying the cohort, identifying --

22 Q Doctor, can I ask a question?

23 A Sure.

24 Q When you went and selected these articles, did you
25 follow a written methodology that's been out there that said

1 when you're looking at medical articles and you're weighing
2 the data, you should make sure you look for articles that
3 have A, B, C and D? Did you follow any written protocol in
4 selecting the articles you discussed with the jury?

5 A I did. I set the protocol. You cut me off, I was
6 describing what the protocol was. What I did was I looked
7 at the entire medical literature and searched it with AMED
8 and I used the criteria that an epidemiologic study meeting
9 epidemiological criteria, which means it was controlled.
10 And I looked at cohort to cohort's exposure to asbestos
11 where they identified with some, even rough quantification
12 of the amount and type of asbestos exposed and where they
13 reported the incidents of mesothelioma. I used those --
14 there's a fairly broad criteria and I said I'm going to look
15 at every single study. Many people refine what's more
16 narrow criteria and have come up with like a dozen or 20
17 studies. And I looked at everything I could find. And when
18 I did that, it was about 63. And I've continued to follow
19 it, it's about up to 70 now. That's every single study that
20 has those basic criteria that I defined.

21 Q Great. All right. Let's get back to Dr. Selikoff, the
22 Sideman guy that you mentioned up here, he did a lot of
23 these studies with Dr. Selikoff?

24 A He did work with Dr. Selikoff.

25 Q Now, you're familiar with this, the jury has seen this,

1 this is a copy of the 1964 conference that Dr. Selikoff had
2 in New York City where he presented those results on his
3 article entitled Asbestos in Neoplasia, right?

4 A Yes.

5 Q So you're familiar with they had a meeting in New York
6 City in late 1964 and experts from all around the world came
7 and presented on asbestos, right?

8 A That's basically correct, yes.

9 Q And you've seen a lot of these articles, have you not?

10 A I've read that book.

11 Q You've read the book, great. So you're familiar with
12 it?

13 A Not recently, but I've read it previously, yes.

14 Q Well, that's good enough for me. I can ask you about
15 it. You're not going to feel uncomfortable if I ask you
16 about it?

17 A I would probably like to see the section if I'm going
18 to be asked details because it's been several years.

19 Q I'll come show it to you. But you understand that
20 industry came to this conference as well, right?

21 A Yes.

22 Q I mean, you know who Dr. Ken Smith is, right?

23 A I don't remember.

24 Q I'll refresh your memory. If I were to tell you that
25 Dr. Kenneth Smith was the medical director at

1 Johns-Manville, would that help refresh your recollection?

2 A Yes, that would.

3 Q Now, he presented at this conference, did he not?

4 A Again, it been several years since I read the book.
5 Show me the section you want.

6 Q I will. Turner Brothers was here. You know who Turner
7 Brothers are, right?

8 MR. YOUNG: Your Honor, this is all hearsay and I'd
9 object.

10 THE COURT: Mr. Young, there's an exception to the
11 hearsay rule for the use of learned treatises. This is a
12 learned treatise. He has identified it as -- the witness
13 has identified it as a learned treatise in the area in which
14 I have qualified him, which is asbestos. And Mr. Jekell is
15 now asking him about learned research in the area in which
16 he's declared to be an expert. I don't see the violation of
17 hearsay in that.

18 MR. YOUNG: Your Honor, I did not recall that Dr. Crapo
19 said the entire booklet was a learned treatise. If he did,
20 I will withdraw my objection.

21 THE COURT: Dr. Crapo, is this a learned treatise that
22 is a standard reference in your profession?

23 THE WITNESS: It's a book and it's quoting people who
24 took part in that conference. Not everything is going to be
25 --

1 THE COURT: I'm not ask you --

2 THE WITNESS: I'm not sure what you define as learned
3 treatise. I've read everything in it and I consider it.

4 THE COURT: I'm not asking you to embrace all the
5 opinions expressed. There are a variety of different
6 opinions expressed. But this is a collection of articles
7 presented at a conference about asbestos, a national
8 conference about asbestos. Am I correct?

9 THE WITNESS: Yes.

10 THE COURT: And a learned treatise is either a writing
11 by one or several that gathers together research and
12 opinions in a particular area of expertise. Would this
13 document qualify for that?

14 THE WITNESS: Yes.

15 THE COURT: Very good.

16 The objection is withdrawn as I understand it?

17 MR. YOUNG: Correct, Your Honor.

18 THE COURT: You may proceed, Mr. Jekell.

19 BY MR. JEKELL:

20 Q You've heard of Dr. Vaugner, right?

21 A I have.

22 Q And Dr. Vaugner, in 1960, published a seminal article
23 where he actually found a link between asbestos exposure and
24 mesothelioma, right?

25 A Yes. It was specifically crocidolite. He made that

1 discovery in 1960 in South Africa.

2 Q You've heard of Cape Asbestos, haven't you?

3 A I have, yes.

4 Q Did they have a mine down there in South Africa?

5 A Interestingly, they had several mines there. They had
6 a crocidolite mine that had high incidents of mesothelioma
7 of people working in the mine or living there around. They
8 also had a chrysotile mine that had no amphibole and there
9 was no mesotheliomas there. So South Africa is a complex
10 area with different deaths occurring.

11 Q And Big Asbestos has gone after the research at every
12 turn. Even in 1965, Cape Asbestos was going after Dr.
13 Vaugner about his mesotheliomas, weren't they? You're aware
14 of that, aren't you?

15 A It's been a long time since I've read all that, so I'd
16 like to see the article you're talking about. I have no
17 reason to dispute it, but --

18 Q Well --

19 THE COURT: Mr. Jekell, let the gentleman complete his
20 answer and then you may propound your next question.

21 Go ahead, Dr. Crapo.

22 BY MR. JEKELL:

23 Q Dr. Crapo, I think there's a screen right there in
24 front of you, do you see that?

25 A Yes.

1 Q And R. Gaze, it says -- again, this is Page 628 and
2 this follows presentation on an article on -- let's see what
3 the article was on.

4 MR. YOUNG: Your Honor, I'm going to object to this on
5 the grounds of relevancy.

6 THE COURT: Overruled.

7 MR. YOUNG: Yes, Your Honor.

8 BY MR. JEKELL:

9 Q Mr. Gaze is asking -- and this was following a
10 discussion on some mesothelioma cells. And Dr. Gaze, he
11 said, Another thing that puzzles me and I say this quite
12 frankly because Chris Vaugner is a great friend of mine and
13 he's a very fine investigator and I'm sure you will agree.
14 But it does puzzle me that since he has left South Africa,
15 there has been almost no new cases of mesothelioma. In
16 fact, I understand now and I am waiting very anxiously to
17 hear what Dr. Webster has to say that of the 120 cases
18 originally reported, there are now only 30 cases certain to
19 be mesothelioma. Dr. Vaugner is being attacked, is he not?

20 MR. YOUNG: Your Honor, may I have a continuing
21 objection to this line of questioning?

22 THE COURT: Yes, you may. Note the objection on a
23 continuing basis.

24 THE WITNESS: Dr. Vaugner put out his seminal article,
25 which is renowned, 1960 and it's held up. But in 1965,

1 there's discussion about it still. People were trying to
2 understand it and it looks like the Cape Asbestos Company's
3 trying to downplay it. I would agree with that.

4 BY MR. JEKELL:

5 Q And Dr. Vaugner, Big Asbestos, Cape had a lot at stake
6 when it came to mesothelioma, right?

7 A Well, they were producing crocidolite asbestos, which
8 has turned out to be a primary cause in many cases of
9 mesothelioma.

10 Q Dr. Vaugner says, With regard to Dr. Gaze's suggestion,
11 again, Cape Asbestos, that's a doctor, a medical doctor
12 doing this, suggestion that I had removed all the
13 mesotheliomas from South Africa to Britain. You understand
14 Dr. Vaugner went from South Africa where he looked to
15 miners, came to England to study industrial population
16 working with products, right?

17 A I believe he went to Wales, yes.

18 Q Wales, yes. Fair enough. To Britain, this is no
19 longer true. I have new -- not only have new cases been
20 diagnosed in Johannesburg by Webster, but also by Professor
21 Tompson in Capetown. But the point is, is the asbestos
22 companies have always challenged the science, haven't they?

23 MR. YOUNG: Your Honor, I would object on the grounds
24 of relevancy. It has nothing to do with Scapa and there's
25 no evidence that Scapa did any of that. That is highly

1 prejudicial.

2 THE COURT: Mr. Jekell, we could spend a whole lot of
3 time on the proceedings of this New York conference. You
4 can certainly test his knowledge about what was going on in
5 the area, but I don't know that it's completely pertinent to
6 this case to spend a lot of time talking about Big Asbestos
7 and what they were doing in the 60s.

8 MR. JEKELL: Fair enough, Your Honor. I will move on.
9 There is one other thing in this that I do believe is highly
10 relevant.

11 BY MR. JEKELL:

12 Q You would agree with me, would you not, that there were
13 representatives from British Belting and Asbestos and U. S.
14 Rubber? U. S. Rubber made textiles yarn, didn't they?

15 A I'm not familiar with all the details of that. It's
16 been a long time since I read that, so I can't dispute you,
17 but I can't validate it.

18 Q But they both said, British Belting and U. S. Rubber
19 that in their opinion, there was no safe level of any
20 exposure to asbestos, you understand that, right?

21 A Actually, I haven't read it recently, so I can't
22 dispute it, but I --

23 Q Would you like to read it?

24 A Well, I mean, if you want me to say it's in there, I'd
25 like to see it.

1 Q Okay. Well, let's take a look together. You see Dr.
2 -- or it's Mr. Addingly, do you see that, Dr. Crapo?

3 A I do.

4 Q I would just like to make one point, he says, Dr. Roach
5 said that in Britain, mention is made of a safe limit of
6 four fibers per milliliter and this is lower than the
7 American limit. I would like to say that this is the first
8 time that any limit has been specifically stated as far as
9 the United Kingdom industry is concerned. We do not believe
10 there is any safe limit. We have our ideas as to how we can
11 get and we are always striving to get right down to zero.
12 Do you see that?

13 A Yes.

14 Q And down here, you see Mr. Wells from U. S. Rubber,
15 Newman, Georgia, right?

16 A Okay.

17 Q And he talks for a little while, but we'll get to the
18 point. Our own conclusion as we began seeing what was
19 happening in our own processes was that the only safe amount
20 of asbestos dust exposure was zero and that the efforts and
21 in terms of achieving the lay basically in engineering and
22 secondly, in education.

23 A You've read that correctly.

24 Q So you do agree with me now there were industry folks
25 in 1965 telling us their opinion was no safe level of

1 asbestos?

2 A That's what they said there. I don't think they
3 specified fiber type and really dealt with dose, but yes,
4 that's what they said.

5 Q We've all got a lot of stuff going around this
6 courtroom, so excuse me. Doctor, you would agree that
7 chrysotile -- or the companies that used it in the 60s and
8 70s and Scapa until the 80s that chrysotile was 95 percent
9 of all the asbestos used in the world?

10 A That's been said many times, yes.

11 Q Have you done any independent study into that?

12 A No, no, no. It was the most common fiber used.

13 Q Doctor, the slide show you showed us this morning was a
14 little different than you've used in the past. Is this the
15 first time you've used that slide presentation?

16 A No, there was just a couple tiny changes in court
17 today, but other than that, it's one I've used quite -- a
18 number of times before.

19 Q Did you review any new literature on asbestos and
20 mesothelioma on the way down to South Carolina?

21 A Not on the way down here, but I do review that
22 regularly. In the last week, I've reviewed new literature,
23 yes.

24 Q Doctor, I've got here a copy, it's from the
25 International Journal of Cancer. Have you heard of that

1 one?

2 A Yes.

3 Q Do you think that's a fair and respectable
4 authoritative journal?

5 A I've not looked at what its quality of publication is,
6 I can't really comment on that.

7 Q Okay. Well, I'm looking at an article here that
8 appeared in -- it's an article from 2017, it was accepted
9 September 1st, 2017. It's entitled Hand Spinning Chrysotile
10 Exposure and Risk of Malignant Mesothelioma, a case
11 controlled study in southern China. Have you read this
12 article before? It's by an author last name Jiang,
13 J-I-A-N-G.

14 A I think I've seen that. I'd like to look at it to be
15 sure. There's several reports of work done in China.

16 Q They have found that folks hand spinning chrysotile
17 were getting mesothelioma in China, right?

18 MR. YOUNG: Your Honor, I would object and move to
19 strike it. It hasn't been established that this is
20 something that he feels is authoritative or he's familiar
21 with.

22 THE COURT: He just said he was familiar with it, so I
23 think he's established he's familiar. You know, he's
24 expressing opinions as an expert and this is an attempt to
25 show what the expert opinion on a particular subject is. I

1 think it's proper cross-examination. I'll permit it.

2 BY MR. JEKELL:

3 Q Now, this is in a line of studies that have been done
4 in this area of China, is it not, Doctor?

5 A Yes.

6 Q And that's what you were referring to, you're familiar
7 with some of the other studies?

8 A Well, I might know that one if you show it to me.

9 Q I'm about to come around and give you a copy. Is that
10 okay, Doctor?

11 A Yes.

12 Q Would you let me know when you've had an opportunity to
13 review that?

14 A I've reviewed the abstract. And I've seen this
15 already, yes, and I've seen other ones related to it.

16 Q And it is true, is it not, that they found they were
17 getting an increased risk of mesotheliomas in folks who had
18 hand spun chrysotile asbestos?

19 A It's true, but, again, you have -- if you look at all
20 the studies in this area, the dose is incredible. These
21 women worked almost 18 hours a day in a home environment
22 with chrysotile spinning cloth out of it. And they're
23 exposed to levels that make the miners look small. It's
24 massive, thousands of fiber cc years, although some of their
25 analysis come up with smaller numbers. In fact, these

1 women, when they've been looked at, have massive amounts of
2 exposure. It's consistent -- and there's also poor
3 industrial hygiene in China, so there's other people who
4 would claim there's some tremolite or some amphibole
5 involved in some of this. Irrespective of that, it's
6 consistent with very high dose chrysotile causing these
7 mesotheliomas. That's basically what I testified to.

8 Q So you agree with the conclusion that this is the first
9 case controlled study investigating the association of
10 chrysotile exposure with risk of malignant mesothelioma in
11 southern China where the majority of cases were women,
12 right?

13 A I don't know that it's the first, but it, certainly, is
14 one.

15 Q And they did find a dose response relationship of
16 chrysotile exposure probability, intensity, and frequency,
17 exposure, duration and CEI risk with risk of mesothelioma,
18 yes?

19 A Yes, that's what they report.

20 Q And there have been studies of the chrysotile in China
21 and some say it's a purer chrysotile with no tremolite
22 exposure, isn't that true?

23 A Some have said that, but others have said that's wrong.

24 Q And you've never put any of that chrysotile under a
25 microscope yourself, have you?

1 A No. But this is clearly a case of very, very high
2 chrysotile exposure. It has no relevance to what we're
3 talking about in this case today.

4 Q Doctor, are you aware that Johns-Manville was a yarn
5 supplier to Scapa?

6 A No.

7 Q Were you aware that American Asbestos was a yarn
8 supplier to Scapa?

9 A I don't know the suppliers of the chrysotile that they
10 used in the Scapa products.

11 Q The reason I asked is because you talked about Dr.
12 Millette's testing of some yarns for tremolite, do you
13 recall that?

14 A Yes.

15 Q Doctor, Mr. Young did not tell you that Mr. Crapo
16 testified about one set of Uniroyal yarns he tested for
17 tremolite. Did you actually read his testimony?

18 A You said Crapo, did you mean Millette?

19 Q I meant Millette, I apologize, Dr. Crapo.

20 A I only meant he had one patch and does not -- I would
21 make no assumption that was universally for all the yarns.

22 Q So Scapa -- let's be clear about this, you haven't seen
23 any testing Scapa did on its yarn from Manville, Rabestos,
24 Manhattan, American Asbestos, Amitex, Turner Brothers to see
25 if their chrysotile yarns were contaminated with tremolite,

1 right?

2 A I haven't seen that, but I've seen many, many studies
3 of different products from those sources that have been
4 evaluated for tremolite and they've never found significant
5 tremolite in any finished product.

6 Q What studies are those? Do you have those on your CV?

7 A Mostly -- no, no. I didn't do them. But I'm talking
8 about industrial hygienes and I'm talking about what's
9 happened in court settings like this, when either plaintiff
10 industrial hygienist or defense industrial hygienist
11 analyzed tremolite in a finished product. What they find is
12 that the mine may have had one or two percent tremolite in
13 it, but the finished products do not.

14 And there's a good reason why, when they make the
15 finished product, they put it through a hydro cyclone and
16 they blow the fibers up through a hydro cyclone and they
17 take them off at different levels. And the level where they
18 take off the chrysotile in various combinations has much
19 lower tremolite in it than the tremolite that starts.
20 Tremolite doesn't float the same.

21 And the bottom line is when you look at finished
22 products to see if there's any tremolite contaminating the
23 chrysotile, the answer consistently from both defense and
24 plaintiff experts have been that there's either zero or a
25 trace amount. It's never one or two percent. That's been

1 my observation consistently.

2 Q You have any of those with you today?

3 A I don't. If you have one that shows higher, please
4 show it to me.

5 Q Well, I just -- let's talk about the Johns-Manville
6 mines. How many Manville mines were there?

7 A I'm not an expert on the --

8 Q Well, you just told the jury the Johns-Manville yarns
9 don't have any tremolite and you can't even tell me what
10 mines they come from, is that it?

11 A No, I said -- they had multiple mines and they had
12 mines in the central part of the Canada. They have started
13 in the mines with one to two percent tremolite. They
14 clearly had that because that's one of the major sources.
15 But when you look at their finished products, I've never
16 seen an evaluation -- a bulk sample evaluation of a finished
17 product that shows one to two percent tremolite. It always
18 shows zero, trace or hundredth of one percent. So if you
19 have data that's opposite to that, show it to me, please.

20 Q The Jeffrey mine, was that the mine that had the
21 tremolite in it?

22 A Jefferey mine did have tremolite in it. I looked at --
23 now, all of my studies were done on Jeffrey mine chrysotile.
24 You have to remember in the mine itself, it has one to two
25 percent tremolite, but when it goes through the hydro

1 cyclone and they put the finished product in a bag and then
2 they took that bag to the NIH where I had a chance to look
3 at it, there was no tremolite in it.

4 So my experience with the Jeffrey mine chrysotile is
5 that the finished chrysotile that emerges from the mine in a
6 bag for sale does not have tremolite in it. And that's
7 consistent with everything that's been reported by
8 industrial hygienists working for both sides of these legal
9 cases.

10 Q Doctor, I want to talk about -- you talked about a
11 Salazar report?

12 A Yes.

13 Q What were the levels? Do you have a copy of that on
14 your computer? Let's crank it up and see it.

15 A I don't have that on my computer, but I'm sure we can
16 get it for you.

17 Q Well, do you have it? Is it in your briefcase over
18 here? Is it in your --

19 A Mr. Carlson showed it to me last night.

20 Q Mr. Carlson showed it to you last night?

21 A Yes.

22 Q So you had a meeting with Mr. Carlson yourself? Was
23 Mr. Collier there?

24 A Yes.

25 Q Was Mr. Young there?

1 A Yes.

2 Q How about Mr. Early?

3 A I can't remember if he stayed in the room. He was
4 there for part of it, but not for that part.

5 Q So y'all got together. Now, this wasn't a published
6 report by Mr. Salazar, was it?

7 A It was part of the industrial hygiene on the Crown
8 Zellerbach plant that he was an industrial hygienist for.

9 Q It was an internal sampling memo by a company man at
10 his company, right?

11 A Yes. It reported the levels that he found when the
12 mine -- at the time that the paper machine was operating
13 with an asbestos felt.

14 Q Let's talk about that. What actual proof have you
15 seen, Dr. Crapo, that the dryer felts during the sampling
16 that Salazar did in 1978 contained asbestos?

17 A It's personal communication from Mr. Carlson.

18 Q You know he didn't even show us the Salazar study when
19 he was here yesterday?

20 A I wasn't part of that, so I don't know what he did.

21 Q So, again, you're relying on Mr. Carlson for your
22 belief that that was an asbestos-containing felt on the
23 Crown Zellerbach machine when the Crown Zellerbach
24 industrial hygienist did the sampling, is that a fair --

25 A That's fair. And you'll notice that you brought this

1 up, not me.

2 Q No, you brought it up on your direct examination when
3 you were talking about no exposure from dryer felts. You
4 don't recall that already?

5 A I said that the level was in the ambient level if it
6 was there. And that's what that shows and it also what Mr.
7 Carlson showed.

8 Q But you don't even know that it was an asbestos felt.
9 If it wasn't an asbestos felt, you don't know where those
10 fibers came from?

11 A We know the thermal insulation contained both amosite
12 and chrysotile because that was found in bulk sampling.

13 Q Let's talk about that. Doctor, the insulation that
14 feeds the dryer cans on the back of the dryers at Bowater,
15 jacketed or nonjacketed, the insulation?

16 A In order for me to be accurate in telling you which
17 contained which -- there was an abatement done in about
18 1991, I think. We can get those abatement records and read
19 them if you'd like.

20 Q There were over 1,600 pages of them and we didn't see
21 one of them yesterday. Have you seen them?

22 A I've seen four or five pages of it, yes.

23 Q Four or five pages, okay.

24 A I think I've got it in my briefcase if you'd like me to
25 get it out for you.

1 Q That's okay, Doctor. You don't know whether the
2 thermal insulation at Bowater was jacketed or not jacketed
3 during the time Mr. Stewart was working there, do you?

4 A I know it contained it and there were reports of in
5 very poor repair and a lot of debris and dust in various
6 parts of the machinery, but I wasn't there. I'm relying on
7 industrial hygiene reports and I got most of my information
8 from Mr. Carlson.

9 Q All right. I just want to make it clear because you
10 said some things about thermal insulation being the cause of
11 it pretty strong, and I want to make sure I know what you
12 know about the insulation there. So you've got -- you
13 couldn't tell us where any of the deteriorating thermal
14 insulation was that Mr. Stewart worked with, could you?

15 A What he specifically worked?

16 Q Answer that yes or no.

17 A I don't have data on what he did personally.

18 Q Okay.

19 A But I have seen the reports about what was there in the
20 plant.

21 Q Dr. Gottschall, Bridgette Gottschall, you know Dr.
22 Gottschall, don't you?

23 A Yes.

24 Q You believe Dr. Gottschall is a very good physician, do
25 you not?

1 A She is.

2 Q You hired her?

3 A That's correct.

4 Q She's board certified in occupational medicine?

5 A Yes.

6 Q Dr. Gottschall treats mesothelioma patients, does she
7 not?

8 A Yes, she does.

9 Q Dr. Gottschall has published on asbestos, lung cancer
10 and mesothelioma, has she not?

11 A She has.

12 Q Dr. Gottschall disagrees with your opinion on low dose
13 chrysotile exposure, yes?

14 A I don't think so.

15 Q Okay. We'll see in a second. Dr. Cecile Rose, you
16 know her?

17 A Yes.

18 Q In fact, Dr. Rose is the one at National Jewish who's
19 identified as the asbestos expert out there, isn't she?

20 A Well, some people say that, yes.

21 Q The website says it, Doctor?

22 A She could put that on her website, sure.

23 Q No, the National Jewish put it on the website?

24 A She controls what's said about her, but that's okay.

25 Q Dr. Rose, you think she's a good doctor?

1 A She is very good.

2 Q She treats mesothelioma?

3 A She does.

4 Q Dr. Rose has published on asbestos?

5 A She has.

6 Q Dr. Rose disagrees with your opinion on low dose
7 chrysotile exposure being a cause of mesothelioma?

8 A I think you need to have her speak for herself what her
9 threshold would be. She wouldn't claim that ambient levels
10 cause it like we're talking about, but I think -- well, you
11 should ask her. I'm confident she would not say that
12 ambient levels of asbestos causes disease.

13 Q We have never said ambient levels cause disease?

14 A Well, the levels you get when you measure things from
15 the dryer felts were in the ambient range.

16 Q You're relying on Dr. Carlson for all that information
17 --

18 A That's not correct. The Western Michigan study also
19 validates that and every other industrial hygienist does.
20 There are multiple reports of that and they consistently and
21 there are not high levels of chrysotile associated with
22 dryer felts.

23 Q We went over this yesterday with Dr. Carlson. Can you
24 tell me what we're looking at on the screen, the monitor
25 there? Do you know what that is, Doctor?

1 A It looks like a piece of the data table from the report
2 in Western Michigan.

3 Q Doctor, would you agree with me that the scanning
4 electron microscope level I'm looking at is a number --
5 these are counting fibers of chrysotile released off the
6 Scapa asbestos-containing dryer felt?

7 A I don't know that for sure. You can't show me one
8 little data and have me fully describe what's going on. The
9 bottom line from the Western Michigan trial was there was no
10 significant level of chrysotile released and the ultimate
11 levels in terms of a dose were well within the ambient level
12 range. So that's from my memory of reading the whole
13 report.

14 Q Oh, okay. Well, you didn't recognize the count sheets?

15 A Well, I didn't say I memorized the report.

16 Q Let's move on. You know who Dr. Laura Welch is, don't
17 you?

18 A I do.

19 Q And it's true, is it not, that she was so put off by
20 some of the things that were being said about low dose
21 asbestos exposure and chrysotile as a cause of mesothelioma
22 that she and 51 other doctors filed a brief in the Michigan
23 Supreme Court to let the Court know they didn't agree with
24 those opinions, isn't that right?

25 MR. YOUNG: Your Honor, certainly, no foundation has

1 been laid for him to be examined about this document. I
2 can't imagine a brief to the Supreme Court as an
3 authoritative medical document. So I object.

4 THE COURT: What I understand is being offered is a
5 amicus submission by 52 doctors expressing their medical
6 opinion. Am I right about that?

7 MR. JEKELL: Yes, Your Honor. And if I could just --

8 BY MR. JEKELL:

9 Q You're aware, Dr. Crapo, that this was published -- a
10 copy of the amicus was published in the International
11 Journal of Occupational Environmental Health in 2007, yes?

12 MR. YOUNG: Your Honor --

13 THE COURT: Just a second, let him complete the answer
14 whether he's aware that it was published in a scholarly
15 journal for occupational disease.

16 THE WITNESS: I was going to say yes, but it's not a
17 scholarly journal. This does not appear to be a scholarly
18 article, but yes, it was published.

19 BY MR. JEKELL:

20 Q And yes, you've seen it?

21 A I did.

22 Q And yes, you're aware of the criticisms she raises in
23 here, right?

24 A Yes.

25 THE COURT: Now, let's be orderly here.

1 MR. JEKELL: Okay.

2 THE COURT: Mr. Young objects to the use of this
3 document on what basis, Mr. Young?

4 MR. YOUNG: Judge, it's a brief to a Supreme Court.
5 It's obviously something for litigation. It cannot possibly
6 --

7 THE COURT: Overruled. The fact that the medical
8 opinion is expressed in connection with litigation is not
9 disqualifying, otherwise, Dr. Crapo would not be testifying
10 here at this time and offering his opinion. It's contained
11 in a brief, but it is an expression of an opinion by
12 physicians about this issue of dosage. I will allow it and
13 overrule your objection.

14 MR. YOUNG: Your Honor, just note for the record he
15 still hasn't said it's authoritative. In fact, I think he
16 said it wasn't.

17 THE COURT: He disagrees with it. I think that's the
18 direction of the question is to question him about opinions
19 that disagree with his. So I understand your observation,
20 but I think it's proper cross-examination and I will allow
21 it.

22 BY MR. JEKELL:

23 Q Doctor, I'm going to get you a copy of this and walk up
24 there. Now, let me ask you this, Doctor, have you ever seen
25 51, 52 medical professionals get so incensed with things

1 that are happening in court that they file an amicus brief
2 to let somebody know that the physicians who do this don't
3 like what's going on? Have you ever in your career seen
4 that?

5 A No, this is quite unusual. And I really don't know how
6 agitated they all were, but this is quite unusual and it's
7 very unusual for something like this to be published in a
8 medical journal.

9 Q But Dr. Welch stated that the mainstream scientific
10 community has long recognized and continues to recognize
11 that there is no safe level of exposure to asbestos, yes?

12 MR. YOUNG: Your Honor, can I have a continuing
13 objection to this line of questioning?

14 THE COURT: You don't need to say that every time. You
15 know very well that all these objections continue.

16 MR. YOUNG: Thank you.

17 BY MR. JEKELL:

18 Q You disagree with that?

19 A I would disagree with that.

20 Q And she said attempts to postulate thresholds for
21 exposure have been dismissed as "logical nonsense", she said
22 that, yes?

23 A Yes.

24 Q She cites Dr. Lemen -- now, you know who Dr. Lemen is,
25 right?

1 A Yes.

2 Q Dr. Lemen, wasn't he former surgeon general, something
3 like that?

4 A I think he was assistant surgeon general.

5 Q Assistant surgeon general. And I think it was during
6 C. Everette Koop, was that when he was there? It's been a
7 while?

8 A It's been a while for me, too, but yes.

9 Q And she quotes from Dr. Lemen, Specific occupations do
10 not need to be studied nor do epidemiological studies need
11 to be performed to show risk of disease before preventive
12 actions are taken or causal connections concluded. To wait
13 for epidemiological studies of each occupational group is
14 not warranted, but has been taken by many in the medical,
15 legal profession as the only way to prove causation by
16 occupation. Such misconceived thinking has been very
17 harmful to the future prevention of asbestos-related
18 diseases. Now, I kind of butchered that a little, Doctor,
19 were you able to follow along?

20 A Yes.

21 Q Did I read that somewhat correctly?

22 A You read it correctly. And you should know that I --
23 in this case, it's kind of funny because he's saying you
24 don't know to study epidemiologic to take action, but, in
25 fact, there had been more than a dozen epidemiologic studies

1 of the topic they're talking about, all of which were
2 negative, said there was no problem. So it's a bizarre
3 statement and a bizarre paper.

4 Q Well, I thought on direct you told the jury that there
5 had been no epidemiological studies on paper makers working
6 with asbestos dryer felts and that that was significant?

7 A He's talking about -- this article is about brake
8 manufacturers of automotive brakes. And I had up there a
9 whole lot of studies that were all negative. I showed them
10 the slide.

11 Q And how --

12 A This is not about paper making. Paper making has a
13 lower chrysotile risk from the dryer felt than automotive
14 brakes do.

15 Q Weren't they really being critical of the fact that the
16 auto manufacturers who used chrysotile asbestos were getting
17 doctors like you and scientists to do these articles finding
18 zero risk and getting them published in the medical
19 literature? Isn't that what they're talking about in here?

20 A No, that's not what they're talking about. First of
21 all, I didn't do any of these. They were done in about six
22 different countries. Most of those countries -- they're
23 talking about Denmark and Britain and Germany and more --
24 five different countries besides the United States where
25 there's no litigation in this area hardly. And you're

1 talking about single one of them have the same result, that
2 there's no increased risk of mesothelioma in people who do
3 brake work. The bottom line is the literature is just
4 dramatically against what's in this article. And that's why
5 I would not give it credibility.

6 Q Well, maybe it's time you published something on it,
7 Dr. Crapo. Instead of coming into court and telling juries
8 chrysotile doesn't cause mesothelioma, maybe you should
9 publish, right?

10 A It has been published on, that's the point I'm telling
11 you about.

12 Q Well, let's go on. The claim of the asbestos brake
13 manufacturers and the studies upon which they rely trump all
14 other scientific knowledge is scientifically unsupportable.
15 You disagree with her? She gives a whole section on that,
16 right?

17 A There's a lot of very poor statements in this article,
18 yes.

19 Q She goes on to say on Page 323, While the asbestos
20 brake manufacturers claim that the average amount of
21 asbestos released from brake work is invariably low, there
22 is no reasonable dispute that exposure levels were higher
23 when mechanics routinely ground, filed and sanded brakes and
24 used compressed air to blow out debris. Do you agree with
25 that?

1 A I'm not sure what she said there. The bottom line is
2 when they were blowing and sanding, there was higher levels
3 for very short periods of time. The total exposure is
4 incorporated in the studies that I talked about.

5 Q Let me ask you this, the jury's seen a felt that was on
6 the number one machine at Bowater. It was felt NI9126. It
7 was 200 something feet long by about 20 something feet wide.
8 Do you know how much asbestos was in that felt?

9 A No.

10 Q Over a thousand pounds. Did you know that?

11 A No.

12 Q Scapa's never shown any of that information, have they?

13 A I'm not their industrial hygienist, so I don't know
14 that kind of data.

15 Q Now, you understand -- you talked about the textile and
16 the weaves, you understand that in that felt, both the weft
17 yarns and the warped yarns contained asbestos?

18 A I'm not an expert in that area, so I can't agree or
19 disagree with what you're saying.

20 Q Do you know what a Stanley knife is?

21 A I assume it's like a small hand knives we use for box
22 cutters.

23 Q If you had to cut a thousand -- a felt that weighed
24 1200 pounds with a thousand pounds of it being asbestos,
25 cutting across it length-wise, you're cutting across those

1 fibers that you say break up, right?

2 A I would assume so if that's the case, yes.

3 Q And they're down there cutting that thing, you don't
4 think they're going to get any exposure?

5 A Well, I think you have to actually measure the
6 exposure. First of all, cutting the thing occurs
7 periodically when they're changing the whole thing and it
8 occurs over a short period of time. So it's the same as a
9 brake mechanic that's sanding or machining the brake.
10 There's a period of time when higher fibers are released,
11 but you're exposure is time -- is level times time. And you
12 have to look at the total exposure. Cutting this thing
13 would be part of the total exposure. In no way would this
14 come even close to a miner that's doing this all day long or
15 one of these fabric weavers in China that's weaving the raw
16 stuff all day long.

17 Q And you're basing this on absolutely no study done of
18 cutting one of these asbestos dryer felts. Thank you for
19 that, Doctor. Let's move on. I did want ask you about some
20 people. The signatories, you've got Henry Anderson from
21 Madison, Wisconsin. He's testified about mesothelioma in
22 custodians and janitors and things like that, hasn't it?

23 A I'm not familiar with his testimony.

24 Q You're not familiar with his published work in the
25 literature, Doctor?

1 A I'm not sure I am, no.

2 Q He did studies where they pulled cable and things like
3 that. Nothing?

4 A I don't recall. If you'd like to show it to me, I'll
5 take a look at it and tell you if I've read it.

6 Q Well, let's just go down. We've got Dr. Barnes from
7 the University of California in San Francisco. You see
8 that? He signed on, right?

9 A Yes.

10 Q Let's see. Arnold Brodie, you know Arnold Brodie,
11 right?

12 A I do, yes.

13 Q He did some studies with you on the rats, right?

14 A Yes.

15 Q And I want to talk about that because Dr. Brodie came
16 in here and said those studies that he and you did on rats
17 were not designed to determine a level of exposure. Do you
18 disagree with that?

19 A I think you're probably misquoting him because we had
20 very concise exposure conditions and we knew the exact
21 exposure. They weren't designed to tell you human exposure,
22 but they're designed to tell you the rat exposure very
23 accurately.

24 Q But, Doctor, Brodie explained that those rats were
25 intentionally overexposed to produce the physical response

1 of how the fibers move and where they go. That's what he
2 told the jury, do you disagree with that?

3 A Well, the majority of the ones we did were exposed the
4 animals to very, very high doses for seven hours a day, five
5 days a week for either three months or a full year. And
6 that's exactly what Dr. Brodie -- they were designed for a
7 massive overexposure so we could get a response in the
8 animals and see what was happening.

9 But we also exposed animals to a single one hour of
10 exposure to a high level and gave them -- what we did in
11 that experiment is we took the level that you might be
12 exposed to, let's say, in San Francisco or West Coast city
13 for an entire 70-year lifetime and we compressed that to one
14 hour and gave it to the rat for one hour and then looked to
15 see what we could find in that over a period of time. So
16 Dr. Brodie and I did those together in the 1980s.

17 Q This is the last thing on this, we talked about Dr.
18 Rose. She was a signatory on this amicus brief as well. Do
19 you see that?

20 A Dr. Rhodes?

21 Q Rose?

22 A Rose, yes, she was.

23 Q Now, I want to ask you about -- there's been some other
24 studies -- I've got a lot of papers here, Doctor, excuse me.
25 Again, you've never written NIEHS or any OSHA or anybody

1 like that and said you know, I can develop a study to find a
2 safe level for -- a safe threshold for chrysotile asbestos,
3 right?

4 A No, that's not what I've done.

5 Q You're familiar with Dr. Nicholson and Dr. Landergand's
6 (ph) work on mesothelioma and chrysotile?

7 A Yes.

8 Q The carcinogen of chrysotile asbestos?

9 A I've read their articles.

10 Q You've read that. You're familiar with Allan Smith and
11 Kathryn Wright, chrysotile asbestos is the main cause of
12 pleural mesothelioma?

13 A I've read the article and there's some serious flaws in
14 that article.

15 Q And there are others, asbestos and brakes exposure and
16 risk disease by Dr. Lemen?

17 A Again, it's an opinion paper with no data in it, yes.

18 Q You're certainly easy and quick to criticize other
19 authors, aren't you, Doctor?

20 A I think you have to use data. If you want to see if
21 brake exposure causes mesothelioma, you look at somebody
22 that studied that question and they tell you how many people
23 they studied and how many controls they had and how many
24 cases of mesothelioma they found in both and they compare
25 the answer. And when you do that, many, many, many times,

1 it's always no increase risk with brakes. Now, when someone
2 like Lemen publishes and says it causes mesothelioma, but
3 provides no data to contrast with what's published by many
4 other authors, I discount it.

5 Q Are you done?

6 A Yes.

7 Q I want to see if we can come back to some agreement.
8 Dr. Oury was here. And Dr. Oury agreed -- Dr. Brodie talked
9 about it and I'm going to ask you this. These chrysotile
10 fibers that we talked about, they can get to the pleura,
11 right? I mean, they get out there, don't they?

12 A Not as a long fiber. If you look at the pleura, all
13 you find is these little teeny short fragments that I showed
14 you pictures of. Multiple people have looked in the pleura
15 for chrysotile fibers. They always report that they're all
16 little teeny fragments. They never report the long, like
17 the 10, 20, 30 micron chrysotile fiber. But the long
18 amphiboles have been reported in the pleura.

19 Q Doctor, I will let you explain any answer you want if
20 you would, at least, give me a clear answer. You answered
21 my question no, and then you said we found small chrysotile
22 at the pleura. Can we agree that a chrysotile fiber is
23 capable of reaching the pleura, yes?

24 A We first have to agree on a definition of the word
25 fiber. Because by fiber, if you mean five to 20 or more

1 microns in length, then the answer is no. If by that, you
2 mean a fragment of a fiber, that's a tenth of a micron in
3 length, the answer is yes.

4 Q Well, you just talked about a half life. And
5 chrysotile can get to the alveolar spaces, can it not?

6 A Yes, it can.

7 Q And chrysotile can cause asbestosis, can it not?

8 A Yes.

9 Q It can cause pleura plaques, can it not?

10 A Not as well as the other, but it can. That's really
11 not well proven, but the bottom line is by high dose, you
12 can get chrysotile long fibers down there, yes.

13 Q Now, how long a chrysotile stays in the pleura is a
14 function of how long that fiber is, isn't it?

15 A Even reaching it -- the bottom line is when people look
16 at the pleura and look at the fibers, they don't report long
17 fibers. They report fibrils, a little half micron, tenth of
18 a micron short fibrils.

19 Q Years after the person was exposed, right?

20 A Sometimes it's done acutely, too. I mean, most of them
21 are years after.

22 Q And you just talked to the jury about how those
23 chrysotiles get smaller and start dissolving, so it doesn't
24 really surprise you that years after a chrysotile fiber
25 reaches the pleura, it gets smaller or disappears?

1 A In my opinion, it gets smaller on the way to the pleura
2 because they never even find -- even with a very, very high
3 dose, you find only the small fragments there. You find
4 long amphibole fibers. And remember, it's the long fiber
5 that both reaches the pleura and stays there for decades
6 that carries risk of this disease.

7 Q I look forward to seeing that paper if you get around
8 to publishing it, Doctor. I have one last question for you.
9 Doctor, can you tell the jury how an internist who -- oh, I
10 want to ask you one other thing. You're an English major?

11 A That was my minor in college.

12 Q Yes. But that book chapter you talked about on
13 asbestos, you were the senior editor of that book, weren't
14 you, the chapter on asbestos? Yes?

15 A I've published about 10 textbooks and one of them --
16 the textbook on pulmonary disease had a chapter on asbestos
17 and I think that's what you're referring to.

18 Q Yes, where you had a typographical error where you
19 referred to crocidolite as chrysotile?

20 A Okay. You're really bringing up minutia. One of the
21 textbooks that I published, the chapter on chrysotile was
22 written by a person from the midwest and since I was
23 testifying in that field, I did not edit that chapter. I
24 gave it one of the other editors to do the editing work.
25 And in the typesetting, they misspelled the word chrysotile

1 as crocidolite. They switched them, but they got the colors
2 right. Crocidolite is blue and chrysotile is white, so they
3 said blue chrysotile and they said white crocidolite. And
4 that was a typesetting error by the typesetter. It wasn't
5 picked up by either the editor or the author. While I'm the
6 senior editor on that book, I specifically did not review
7 that chapter to avoid conflicts of interest.

8 Q Because you were too busy, right, just like you were
9 when you failed to study for your pulmonary boards, right?

10 A I wasn't too busy. I felt it was a conflict of
11 interest for me to edit that chapter.

12 Q So, Doctor, how does a man who failed the pulmonary
13 boards twice, has not published on mesothelioma become the
14 go-to guy for the chrysotile industry to tell juries that
15 chrysotile exposure doesn't cause disease?

16 A You really want me to answer the question?

17 MR. JEKELL: I'll withdraw it. Have a safe flight back
18 to Denver.

19 THE WITNESS: Thank you.

20 THE COURT: Redirect, Mr. Young?

21 MR. YOUNG: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. YOUNG:

24 Q Dr. Crapo, you were asked some questions about Cape
25 Asbestos, do you remember that?

1 A Yes.

2 Q Has anything you've seen shown any relationship between
3 Cape Asbestos and the Defendant in this case, my client,
4 Scapa?

5 A No, Cape Asbestos was selling crocidolite back in the
6 60s and there's no relationship with Scapa.

7 Q Any confusion in the literature about the amphibole
8 crocidolite causing mesothelioma?

9 A No, it's well established that crocidolite is a big
10 cause for mesothelioma.

11 Q You were asked a couple questions about British Belting
12 and U. S. Rubber, remember that?

13 A Yes.

14 Q Do you know if those gentlemen were discussing
15 amphibole asbestos?

16 A Well, the conference that they were dealing with there,
17 most of the things they were dealing with were amphiboles.
18 And the issue of how well chrysotile was doing really didn't
19 get addressed for almost another 10 years. But many of the
20 products had mixtures of chrysotile and amphibole in it.
21 And they weren't really making any distinction in 1965.

22 Q Dr. Crapo, you were shown a chart from the Western
23 Michigan test reflecting 101 fibers, you recall that?

24 A I saw the numbers, I couldn't really -- I didn't get a
25 chance to study it.

1 Q Tell the ladies and gentlemen of the jury how long if
2 you're breathing ambient air it would take to breathe in 101
3 fibers?

4 A Well, if you were in San Francisco, you would probably
5 breathe in 101 fibers every minute. In New York, you might
6 do it every 10 minutes and then some rural parts about once
7 an hour.

8 Q So would that be more or less than a daily ambient air
9 exposure?

10 A Oh, we breath 10, 20 asbestos fibers with almost every
11 breath in many parts of the United States. And it varies in
12 a thousand fold, so I can't give you an exact number of time
13 without going to a specific place in time to figure out the
14 concentration. But the bottom line is that we inhale a lot
15 of asbestos fibers everyday. They're all chrysotile,
16 they're primarily small, and they do not cause disease.

17 Q Dr. Laura Welch, you were asked about her?

18 A Yes.

19 Q Just so we can be clear here, interestingly enough, did
20 Dr. Brodie sign that paper?

21 A He did, yes.

22 Q And we know from this case that he testifies for
23 plaintiffs, right?

24 A Yes.

25 Q Dr. Welch testifies for plaintiffs in asbestos

1 litigation?

2 A I don't really follow her career, but I think she does.

3 MR. YOUNG: Thank you, sir. That's all I have.

4 Thank you, Your Honor.

5 THE COURT: All right. Very good.

6 Dr. Crapo, thank you very much for your testimony. You
7 may step down.

8 MR. YOUNG: Judge, I don't know if I'm supposed to ask
9 this every time, but may he be excused?

10 THE COURT: Yes.

11 Dr. Crapo, you may be excused.

12 Now, I think you have a video?

13 MR. YOUNG: It's not a video, Your Honor. It's a
14 eight-minute reading.

15 THE COURT: Very good. You may proceed.

16 MR. JEKELL: Your Honor, just for the record, we've
17 allowed them to read whatever -- they're going to read it
18 all.

19 THE COURT: Come to the stand, Mr. Early, sir.

20 (Mr. Early approaches the witness stand.)

21 THE COURT: Mr. Collier, are you going to be the reader
22 and Mr. Early be the witness?

23 MR. COLLIER: Yes, Your Honor.

24 THE COURT: Very good, you may proceed.

25 (WHEREUPON, the following was read into the record with

1 Mr. Collier reading the questions and Mr. Early reading the
2 answers.)

3 Q Would you please state your full name for me?

4 A Steven Redfearn Stewart.

5 Q And how do you spell your middle name?

6 A R-E-D-F-E-A-R-N.

7 Q All right, sir, and what is your date of birth?

8 A August 22nd, 1943.

9 Q And how old are you?

10 A Sixty-nine.

11 Q Tell me a little bit about your work history.

12 A Well, I went to work at Bowater in 1963, November of
13 1963, and worked nearly 40 years there.

14 Q Was Bowater your first full time job?

15 A I -- I think so.

16 Q What jobs did you work before you worked at Bowater?

17 A No response.

18 Q What type of jobs -- if you can't remember the specific
19 jobs, like a clerk or cashier?

20 A Well, I can't -- to tell you the truth, that was a long
21 time ago. There was a little company in Waxall, North
22 Carolina. I believe it was owned by U. S. Rubber Company.
23 I worked there just a couple of months before I was called
24 to Bowater. I do not remember how long, but it was short,
25 really short.

1 Q When you first began working at Bowater, what were your
2 job duties or what was your title?

3 A I started out as a utility, which is a bottom job,
4 basically, a gopher, go for whatever is needed, and cleaning
5 up the paper machine from whatever might not be cleaned for
6 standard operating work.

7 Q Did you work in the utility department the entire time
8 or did you move around the plant into different departments?

9 A I moved up through the line of progression over time.

10 Q Okay. Tell me what jobs you were in and operated that
11 exposed you to asbestos. I know you believed all of them.

12 A Indicating yes.

13 Q But which ones do you know for certain?

14 A Well, I know for certain fifth hand position, uti --
15 well, utility fifth hand and I know the top job had some
16 exposure. Shortly, right before I quit, retired, within a
17 year, guesstimation, of removing asbestos from piping and
18 things in my job area.

19 Q When you would remove?

20 A No, I didn't.

21 Q Oh, okay. When piping was removed or any insulation
22 was removed, what safety precautions were taken to the best
23 of your observation or recollection?

24 A Are you speaking utility?

25 Q At utility, and you can just go down the list, yes,

1 sir.

2 A Okay. None. I think that no one was really aware of
3 the problem back then is my understanding. I don't know
4 when it became knowledge that asbestos was a problem, but it
5 sure wasn't told to us. It was just there constantly. It
6 was so heavy. You can't see it. I'll tell you, you can. I
7 know I saw it, but I don't know what it was at the time --
8 but I didn't know what it was at the time, excuse me.

9 Q When was the last time you think you saw it or was
10 exposed to it?

11 A Well, when I know I could actually see it in the paper
12 machine drying area, it would have been utility fifth hand,
13 probably fourth hand. When I was a machine tender, the top
14 job, the company started having asbestos removed. You know,
15 out of, I guess, everywhere they knew it was, which covered
16 all the piping, hot steam and so forth. Yeah, that was it.

17 Q Do you think it was evident or did you see or were you
18 exposed to asbestos in the years 2000 to 2002 or do you
19 think it was before that?

20 A Both. Both.

21 Q So up until 2002?

22 A I was still being --

23 Q You were exposed?

24 A -- exposed to it because the company was having
25 asbestos material removed off of piping right on the paper

1 machine in my work operation.

2 Q Now --

3 A That was what they were called in there for, to replace
4 it with whatever else insulation.

5 Q Let me ask you this, and that's because I don't
6 understand. When they were removing this insulation, were
7 you working, running your machine?

8 A I was running my machine.

9 Q Did they seal it off with any type of plastic or any
10 type of material so that the insulation dust wouldn't get to
11 you?

12 A They tried to.

13 Q Okay.

14 A They strung up plastic, but still, it was right beside
15 my machine which generates a volume of air outward. You
16 know the plastic was not completely sealed because they had
17 to go in and out, you know, to carry their buckets or
18 whatever. Because it was in a part of my operation, I did
19 have to go through it, but I tried to avoid it because I --
20 they -- you know, it was known it was asbestos material they
21 were taking out. It took in also the area by the bathroom,
22 which was in my area of operation.

23 Q So the asbestos removal was taking place near the area
24 of the bathroom?

25 A Yeah. Yeah.

1 Q So --

2 A As close as you and I is.

3 Q All right. So it's right there where your machine is
4 where you're working?

5 A Right on the side of it.

6 Q And then if you want to take a break to go to the
7 restroom, it's right there?

8 A Right there.

9 Q Now, the workers who were removing the asbestos, were
10 they in any type of special suits or anything of that
11 nature?

12 A I really don't recall.

13 Q Do you recall them wearing any type of respirator or
14 air mask?

15 A I can't recall.

16 Q Did Bowater fit its employees with any type of
17 protective clothing or protective gear to prevent them from
18 inhaling asbestos while this insulation was being removed?

19 A No. I think the answer was just to try to avoid it,
20 try to stay out of it.

21 Q During this time they were removing the insulation, how
22 long were they there removing it in your work area, in
23 particular?

24 A I can't recall specifically.

25 Q If you had to guess?

1 A A week, two weeks. It's a lot of piping. If you've
2 been to a paper mill, you see a lot of piping, steam, really
3 hot water, return steam to the boiler and maybe some other
4 type of piping. You know, I don't know what it might have
5 been, but, basically, anything that was warm was insulated
6 to conserve energy.

7 Q If I ask you the greatest amount of asbestos which you
8 think you were exposed, did it occur while you were a
9 machine tender -- I'm sorry if I -- yes, or utility, where
10 would it be?

11 A No response.

12 Q Which job exposed you to the greatest amount of
13 asbestos dust is what I'm asking?

14 A I would say the lower job, not just in utility, but
15 even up on through my -- line of progression because the
16 nature of the work that we had to do and machine brakes that
17 you had to clean up, even on the third hand, fourth hand and
18 even back tender. So we basically all did little portions
19 to get everything presentable, if you will, make the
20 operation be right.

21 Q When you were hospitalized for your heart attack, did
22 the doctor tell you what caused it? What was the basis of
23 you having a heart attack?

24 A Clogged up artery with cholesterol. The heart was
25 good. The heart was good.

1 Q Now, how tall are you and how much do you typically
2 weigh?

3 A I'm approximately six foot. Right now, I weigh 180
4 pounds or so varying.

5 Q What's your normal weight?

6 A That has become my normal. I was heavier at the time,
7 210, 20, something like that. I was in good health and --
8 no further response.

9 Q Have you ever smoked?

10 A Yes.

11 Q How long of a smoking history -- or how long did you
12 smoke cigarettes? I'm assuming you smoked cigarettes?

13 A I started smoking approximately when I went to college.
14 I believe it was 2002 I quit.

15 Q And when you smoked, or up until the time you last
16 smoked, how many cigarettes or packs of cigarettes did you
17 smoke per day?

18 A Before I quit?

19 Q Yes, sir.

20 A Approximately one pack, maybe a little less.

21 Q Has any physician that you've seen associated your lung
22 problems with smoking or anything else other than asbestos?

23 A Repeat.

24 Q Yes, sir. Have any of the doctors you've seen
25 associated your breathing problems with smoking?

1 A Not that I can recall.

2 MR. JEKELL: That's it, Your Honor.

3 THE COURT: All right. That concludes the reading of
4 the deposition.

5 Mr. Young?

6 MR. YOUNG: Your Honor, could we approach?

7 THE COURT: You may.

8 (WHEREUPON, a bench conference was held.)

9 THE COURT: Ladies and gentlemen of the jury, this
10 concludes the offered testimony by the Defendant. I don't
11 believe there's any reply from the Plaintiff, but I am not
12 going to close Defendant's case at this time because both
13 sides need to go with the court reporter and the clerk and
14 be sure all exhibits are where they're supposed to be before
15 we actually close the case.

16 But here's what the schedule is doing to be. I'm going
17 to let you go today at this time as soon as I kind of
18 explain where we are. We'll talk for a minute about when
19 you come tomorrow. But tomorrow, what would happen is we
20 will formally close the Defendant's case and proceed to the
21 closing statements of both the Plaintiff and Defendant, my
22 charge to you on the law, and then you would retire to your
23 jury room and consider your verdict in this matter. So that
24 will all happen tomorrow. I imagine the case will be put in
25 your hands to consider your verdict before lunchtime. Then,

1 there is no restriction on the amount of time it will take
2 you to have a complete discussion of this matter and render
3 your verdict. But that's kind of what the schedule is just
4 so you will know.

5 At the present time, if there aren't any questions from
6 you, I am going to dismiss you. I would like to begin court
7 at 9:00 o'clock tomorrow if we think we can get everything
8 in by then.

9 Counsel, do you think that gives us plenty of time?

10 MR. JEKELL: Yes, Your Honor.

11 MR. YOUNG: Yes, Judge.

12 THE COURT: Very good.

13 Because we're going to have some conversation about the
14 charges and so forth and so on, but we don't want to hold
15 the jury hostage for our preparation to make everything run
16 smoothly tomorrow.

17 So any questions from the jury, Madam Foreman?

18 MADAM FOREMAN: No, ma'am.

19 THE COURT: Very good.

20 Ladies and gentlemen of the jury, you're dismissed for
21 the day and we'll see you tomorrow at 9:00 o'clock. Be here
22 maybe a little bit before then so we can try to smoothly
23 begin at 9:00. Thank you so much again for your attention.
24 Don't discuss the case, but you're close to being able to
25 discuss it. Thank you.

1 (WHEREUPON, the jury was released for the day.)

2 THE COURT: Listen up here for a note from one of the
3 members of -- this is from Juror No. 18, full disclosure.
4 There has been -- this has been the first mention of Georgia
5 Pacific and U. S. Gypsum, two companies of which I am
6 familiar with as I work for their competitor, National
7 Gypsum Company. I am currently only an alternate juror. I
8 do not know the types of fibers that were disputed in these
9 asbestos litigations. I am aware of the outcome as it
10 related to National Gypsum Company.

11 Now, this is an alternate who now discloses this. And
12 the question is -- and what I would propose to do is call
13 the alternate in and ask whether the connection with this
14 would render this alternate unable to render a fair verdict
15 in the case.

16 MR. JEKELL: Your Honor, again, this was the juror that
17 I had raised the issue about earlier and that was overruled
18 because of that. But I'm happy for you to do that. If it's
19 an alternate, I think it's a very minimal chance she's going
20 to have deliberate anyway, but I'm fine with how --

21 THE COURT: Well, we don't know that until we ask the
22 juror to come.

23 So please bring the juror in, please.

24 (WHEREUPON, alternate juror enters the courtroom.)

25 THE COURT: Please have a seat in the witness box,

1 Madam Juror.

2 Madam Clerk, would you give the juror the oath?

3 (WHEREUPON, the alternate juror was sworn.)

4 THE COURT: I'm standing only because I'm so short, I
5 can hardly see over to them when I'm down like this. And
6 please don't be frightened. This is standard operating
7 procedure when a juror sends a note as you did.

8 ALTERNATE JUROR: Okay.

9 THE COURT: Then I'm required to ask very standard
10 questions. You've done nothing wrong. You are perfectly
11 fine, but I need to put on the record the questions that I
12 will propound to you at this time.

13 ALTERNATE JUROR: That's why I gave you the note.

14 THE COURT: Thank you very much for your honesty. You
15 have indicated that you are familiar with Georgia Pacific
16 and U. S. Gypsum because you work for their competitor,
17 National Gypsum Company.

18 ALTERNATE JUROR: Correct.

19 THE COURT: You said, I'm currently only an alternate.
20 I do not know the type of fibers that were disputed in these
21 asbestos litigations. I am aware of the outcome as it
22 related to National Gypsum Company.

23 ALTERNATE JUROR: That is correct.

24 THE COURT: Is anything you know about National Gypsum
25 Company in connection with any litigation such that it would

1 render you unable to render a fair and objective verdict in
2 this case?

3 ALTERNATE JUROR: No, there is not, but I wanted to
4 fully disclose the fact that they brought up those two
5 companies.

6 THE COURT: Sure. Understood. Very well.

7 Counsel, anything further you would like me to ask the
8 juror?

9 MR. JEKELL: No, Your Honor.

10 MR. YOUNG: Not from the Defendant, Your Honor.

11 THE COURT: Very good. I find that the jury can render
12 a fair and impartial verdict and, therefore, you will
13 continue to be an alternate in the case.

14 ALTERNATE JUROR: Okay.

15 THE COURT: Thank you so much. We'll see you tomorrow.

16 (WHEREUPON, the alternate juror was excused for the
17 day.)

18 THE COURT: Now, here's what we've got, several things.
19 First of all, we've got an offer of proof on the bankruptcy
20 trust matter. The rulings were made on the use of
21 bankruptcy trust information pretrial, carried over to the
22 trial, put upon the record. And Mr. Early, on behalf of the
23 Defendants, would like -- as the Defendants wanted to go
24 into bankruptcy trust, of course, having provided the
25 information disclosed to the jury, I ruled that that could

1 not be done. And now, what Mr. Early would like to do is
2 proffer some material with respect to Mr. Stewart's filing
3 with the bankruptcy trust?

4 MR. EARLY: Well, Your Honor, this -- I'll tell you
5 what it is. Before the pretrial -- before we knew that the
6 Court was not going to allow us to introduce any bankruptcy
7 trust -- I want to give you some context first.

8 THE COURT: Sure.

9 MR. EARLY: We hired an expert, a gentleman by the name
10 of Mark Scarcella. Mr. Scarcella is an expert in bankruptcy
11 trust. And the Friday before the pretrial, I called Fritz
12 and gave him a heads up. I said we're about to name this
13 guy. And I sent him an e-mail and I said we were amending
14 our witness list and here are two dates for depositions
15 between and trial you can depose him. That was on Friday.
16 We had the pretrial on Tuesday. Your Honor, at the
17 pretrial, ruled against us, we can't bring up the bankruptcy
18 trust. We understood that. So now, there's no reason for
19 us to call Mr. Scarcella.

20 What I would like to do now is introduce his report as
21 an offer of proof and his supporting documents because we
22 can't call him as a witness. And I think Fritz told me he
23 had a problem with that because of timing.

24 MR. JEKELL: Your Honor, again, I will let the
25 Defendant make the record. I wanted it to be clear that our

1 objection to Mr. Scarcella at the pretrial was that he was
2 not disclosed in accordance with the scheduling order. And
3 I did tell Mr. Early -- because I've seen a lot of these
4 experts. And if it was another IH because somebody couldn't
5 make it or another MD, I could handle that, but when I saw
6 it was a bankruptcy expert disclosed two days before our
7 pretrial, I told Mr. Early that's not something I'm willing
8 to do because he was late disclosed. And I just -- I am
9 fearful that this is all an attempt to get a report that was
10 late disclosed when we've been litigating this case since
11 2013, that it could have been disclosed early. But that was
12 what I wanted to put on the record, but if Your Honor will
13 let it in --

14 THE COURT: Well, here's what I will do. I routinely
15 allow proffers to be made. There are proffers of what would
16 have been offered had I not excluded it. I excluded the
17 witness on the motion in limine phase primarily because the
18 bankruptcy trust information as I think precluded from
19 introduction by Smith v. Tiffany and by other rulings that
20 have been made about the propriety of the use of bankruptcy
21 trust information even beyond Smith v. Tiffany in asbestos
22 and mesothelioma litigation. It's not been viewed as
23 proper, just as the information about worker's comp or
24 insurance or other payments to other defendants is not
25 appropriate because of a combination of our rulings by South

1 Carolina Supreme Court and general rulings about the use of
2 bankruptcy trust information all around the country.

3 Now, I certainly would have ruled if I had been
4 required to on the late disclosure of Mr. Scarcella. He was
5 late disclosed. That would have been in violation of the
6 order. So that is, perhaps, another reason that could have
7 been used, but it's not the reason I used. I used the
8 reason that I thought the subject matter. Now, Mr. Early
9 would like to put upon the record what the witness would
10 have said by way of a proffer and I'm going to allow that.
11 I haven't looked at it or seen it. I didn't see it when I
12 made the ruling because my ruling was based on the
13 excludability of that general topic from use in this kind of
14 litigation.

15 So with that having been said by way of explanation of
16 my ruling, you may proffer the document, Mr. Early.

17 MR. EARLY: Thank you, Your Honor.

18 MR. GRAHAM: Your Honor, briefly, is Mr. Early offering
19 Mr. Scarcella as an expert in this area?

20 THE COURT: I don't know what he's doing. But I
21 excluded the use of Mr. Scarcella because he was being
22 offered to discuss the bankruptcy trust. Yes, I think he
23 was an expert -- or is an expert in bankruptcy. And I think
24 that's why he was being offered to talk about what
25 bankruptcy trust is and what it means and this kind of

1 thing. I don't think any of that is an appropriate topic
2 for this type of litigation and, therefore, I don't need to
3 evaluate whether he truly is an expert. I will assume for
4 purposes of this ruling that he is a bankruptcy lawyer or
5 bankruptcy expert. I will accept the proffer on that basis,
6 but I have excluded it for the reasons I explained.

7 MR. GRAHAM: Yes, Your Honor, but for whoever reads
8 this record in the future, Mr. Scarcella is just a fellow
9 who's done some work for some bankruptcy trusts and has been
10 disqualified as an expert on a previous occasion, but I
11 understand Your Honor's ruling.

12 THE COURT: Yeah, I haven't made any determination
13 about the breadth of his expert knowledge, but he was being
14 offered as an expert and this is a proffer of what his
15 report would have been, and I am accepting that proffer on
16 that basis. I don't need to make any further determination
17 about his expertise and so forth. Mr. Early is completely
18 entitled in my view to make a proffer of what he would have
19 offered had the topic been allowed to be explored.

20 MR. EARLY: Thank you, Your Honor. And I don't know
21 that I need to sit here and read the report.

22 THE COURT: I think you're protected.

23 MR. EARLY: I'll have it marked as Defense Exhibit --
24 and I can't remember one is next.

25 THE COURT REPORTER: Eleven.

1 MR. JEKELL: It's a proffer. It would have a different
2 number.

3 THE COURT: I think Defendant's Proffer No. 1 would be
4 --

5 MR. JEKELL: I think there were two or three previous,
6 though.

7 MR. EARLY: That's the problem, we've actually handed
8 up two bankruptcy trust --

9 THE COURT: Oh, that's right, so this is probably about
10 4.

11 MR. EARLY: That's right, Your Honor. Mike's not here
12 and I haven't done one since --

13 THE COURT REPORTER: Is it going to be a Court's
14 Exhibit?

15 THE COURT: No, these things have a red tag on them and
16 -- there, there's one of them.

17 THE COURT REPORTER: He's got the red tags as being a
18 Court's Exhibit.

19 MR. JEKELL: The bankruptcy one was just a proffer and
20 it's listed as --

21 THE COURT: Get them all the same color and don't call
22 them Court's Exhibits, call them Defendant's Proffer.

23 MR. EARLY: Defendant's 6 ID, Your Honor, we'll do
24 that.

25 THE COURT: All right. Defendant's No. 6 ID, and the

1 description of it is?

2 MR. EARLY: Report of Mark C. Scarcella, M.A., January
3 24th.

4 (WHEREUPON, Defendant's Exhibit No. 6 was marked for
5 identification.)

6 THE COURT: Now, that's the proffer.

7 MR. GRAHAM: Your Honor, at some point, I don't know if
8 you want -- I don't know your schedule today, but we do need
9 to talk about charges --

10 THE COURT: Oh, yes, we're going to talk about charges
11 right now. Let me bring up one other matter before we get
12 to the charges, which is the only other thing I know we need
13 to take up right now.

14 I am having buyer's remorse for having not sustained
15 Mr. Long's [sic] objection to the last bit of testimony of
16 Mr. Steele in the Plaintiff's case where he discussed a
17 telephone call he had with Mr. Stewart and said that Mr.
18 Stewart said something to him along the lines of I'll see
19 you on the other side or words to that effect. Do y'all
20 recall that bit of testimony?

21 MR. GRAHAM: Yes, Your Honor.

22 MR. YOUNG: Very well, Your Honor.

23 THE COURT: Well, I am having buyer's remorse for
24 having allowed that piece of hearsay in. And I can tell you
25 what I think I'm going to do about that testimony. I am

1 going to tell the jury that I am striking it from the record
2 because it's hearsay.

3 Now, that will leave the -- the Defendant's will
4 probably object to my doing that, which they've got every
5 right to do, because that's a nice little piece of error
6 that they would like to preserve. And I don't blame them
7 for that, so I'm not precluding them from placing on the
8 record any objection to any statement by myself to the jury
9 that I'm going to strike it, but I think that's what I'm
10 going to do.

11 MR. YOUNG: We think the toothpaste is out of the tube.

12 THE COURT: Sure. Sure. And I don't blame you for
13 that and that's exactly what you should say. I think it is
14 -- in the course of the whole trial, probably if it's error,
15 is not prejudicial. But it was an error and I'm doing it
16 because I don't want it to be referred to in front of the
17 jury. And the only way I can be assured of that is to
18 strike it from the record. So that's why I'm doing that.
19 But you will be able to fully protect the record about that
20 when I do it.

21 MR. JEKELL: Your Honor, I just want to make sure --

22 THE COURT: And if y'all have got a daily, and y'all
23 were getting dailies back at that time, how about excerpt
24 for me that little piece and shoot it to me. Include the
25 objection of Mr. Long or whoever made the objection --

1 MR. COLLIER: Mr. Young did make it.

2 THE COURT: I want to call him Mr. Long, I don't know
3 why.

4 MR. YOUNG: I've been called worse.

5 THE COURT: One of my best buddies in the world last
6 name is Long and he's a handsome gentleman just like
7 yourself.

8 MR. YOUNG: I don't know about that.

9 THE COURT: But if you'll excerpt, Will, from the time
10 Mr. Young enters the objection -- the question is asked and
11 then he makes the objection and then I say I'm going to
12 permit it or words to that effect. And then Mr. Steele
13 makes whatever statement he makes. Put all that together
14 for me and shoot it to me.

15 MR. JEKELL: And you're just going to make clear, Your
16 Honor, that it was something that you should not have
17 allowed at the time --

18 THE COURT: I should not have allowed --

19 MR. JEKELL: That it doesn't necessarily reflect on any
20 other portion --

21 THE COURT: No, no, no.

22 MR. JEKELL: -- of Mr. Steele's testimony?

23 THE COURT: No, no.

24 MR. JEKELL: Thank you, Your Honor.

25 MR. YOUNG: Your Honor, I know you've got this on your

1 list, but we need to make a directed verdict motion at some
2 point.

3 THE COURT: Yes, we could do that now.

4 MR. YOUNG: I mean, we haven't officially rested, but
5 --

6 THE COURT: I think we ought to do that now, get all
7 that on the record.

8 MR. EARLY: Can I do that now, Your Honor?

9 THE COURT: Yes. If you'd like to do that before we go
10 to charges, I think that would be perfect.

11 MR. YOUNG: I wasn't trying to take over, Judge.

12 THE COURT: No, no, we need to get that done.

13 Mr. Early is recognized for directed verdict motions
14 and the floor is yours, sir.

15 MR. EARLY: Thank you, Your Honor. If the Court will
16 remember, we broke Friday afternoon. And under Rule 50, you
17 summarily denied our directed verdict motion at that time,
18 both myself and Mr. Jekell's directed motions we hastily
19 made at that time for scheduling. So, again, I'm not
20 waiving anything that could have been done Friday. We're
21 here to close both of our cases now. Under Rule 50, I'm
22 renewing that, renewing all objections we made for
23 preservation and also making my full motion under Rule 50 at
24 this time.

25 As the Court knows, there are three causes of action in

1 this case. We've seen the complaint. We've got negligence,
2 strict liability, which is basically a design defect strict
3 liability if I read the complaint correctly. And then
4 they've got a -- I think Mr. Jekell referred to it in his
5 opening as a failure to warn, what is essentially a breach
6 of implied warranty is what their pleading actually says.
7 And I'm not going to go through all the elements because I
8 don't think I need to, but I don't think they've proven
9 their case for what it takes to get past this stage of the
10 game and what it took Friday to get past their stage of the
11 game.

12 Specifically, all three elements have in common the
13 element of proximate cause. And we've heard a lot about
14 that in the evidence so far. And, Judge, as you know, and I
15 think we've seen your proposed charge already, the Henderson
16 decision that came out, Judge Hayes tried that in 2005, '06
17 or '07. I think the decision came out in 2007. The Supreme
18 Court adopted the Lorman case, which is a fourth circuit
19 case. And under Lorman, the plaintiff is required to prove
20 for causation an actual exposure, which requires the
21 defendant's product, the defendant's asbestos-containing
22 product, which in this case would be a Scapa dryer felt or
23 more than one, that the decedent, Mr. Stewart, works
24 regularly in proximity and frequently to a Scapa
25 asbestos-containing dryer felt. And there's certainly no

1 direct evidence of that, Your Honor.

2 If you look at the testimony of the witnesses you just
3 referred -- well, first of all, let me talk about the
4 experts real quick. So what were the exposures? Their
5 expert, Mr. DePasquale, who was their certified industrial
6 hygienist, testified -- he was asked, You don't have any
7 information that when they're just going through and making
8 paper, nothing else is going on that there's any fiber
9 release; is that correct? He says, There's a potential, but
10 I'm not sure whether it occurs or not.

11 And then Mr. Millette, who is a material scientist, I
12 think he's a Ph.D, so he's Dr. Millette, he was asked about
13 -- I think he had three different test. One was the sticky
14 note test, one was the wet finger test, then, of course,
15 he's got the glove box test that was talked about in the
16 last couple of witnesses. But during those first couple of
17 tests, the sticky note test nor the glove box test, he
18 testified during neither one of those would anything like
19 that replicate an actual respirable exposure. He does think
20 it would with -- if you blow on it. And there's been a lot
21 of testimony about blowing across it or blowing directly on
22 it I think he did for a substantial amount of time.

23 So the only evidence from their experts that there
24 could be an actual exposure or Mr. Stewart would be if he
25 was around when it was blown upon or manipulated in some

1 way, cut, torn. And again, there's zero direct evidence of
2 that. They called in their case in chief, a gentlemen, who
3 I played, I thought I did a pretty good job, Mr. Hegler, who
4 testified -- he was asked, And you didn't see a Scapa dryer
5 felt taken out of a box. Would you know whether or not
6 you've ever seen anyone replace a dryer felt? He said, I
7 don't know. You can't offer any testimony that you ever saw
8 Mr. Stewart work with or around a Scapa dryer felt? I
9 cannot.

10 Mr. Steele, who we just talked about, delightful
11 gentleman, he was asked, So when a felt was installed on a
12 paper machine, unless you saw the box that it came out of,
13 you wouldn't know who made the felt just by looking at it,
14 would you? That's correct. When a felt is removed from the
15 paper machine, you wouldn't be able to tell who manufactured
16 the product -- and I'm summarizing a little bit. That's
17 correct. And you wouldn't be able to tell whether a felt
18 contained asbestos or not? I would not.

19 And then the other gentleman, whose name escapes me
20 now, I think it was Mr. Ward. You don't know one way or
21 another -- and Mr. Ward testified -- I think he was the
22 gentleman who testified whether it was a Scapa
23 asbestos-containing or nonasbestos-containing, that's in
24 dispute based on the Mastercard, but he testified that there
25 was an event, his second or third day, I forget which one it

1 was, where he called it a commotion, if I remember
2 correctly, but what he did say is that Mr. Stewart wasn't
3 even on that shift or the next shift, but the following
4 shift, so he certainly wasn't around during that time.

5 So there's no direct evidence by Mr. Steele, by Mr.
6 Ward or Mr. Heglar, who testified by deposition, that any of
7 these exposures that DePasquale talked about or Dr. Millette
8 talked about, Mr. Stewart was ever around one time, much
9 less frequently, with regularity and in close proximity to
10 that which the Lorman test requires, Your Honor. And I
11 think what they're asking the jury here to do is speculate.
12 And I think our circumstantial evidence charge that we'll
13 talk about in a minute prevents that. I think it requires
14 more than a speculation. It requires a probability, not a
15 possibility.

16 So my directed verdict on the three causes of action
17 that are universal to all three deal with the fact that
18 there's zero direct evidence. And the circumstantial
19 evidence would be based upon the fact that yes, there were
20 23 Scapa asbestos-containing dryer felts for however many
21 years that Mr. Stewart was there. And if you do that math,
22 I think we came up to it's less than four percent.

23 So from circumstantial, can you say -- can a jury say
24 with probability, not possibility, without speculating that
25 Mr. Stewart had frequent, regular and proximate exposures to

1 Scapa asbestos-containing dryer felts? And I think the
2 evidence fails and I think as a matter of law, the Court
3 should direct a verdict for that.

4 With regards to the strict liability. I think the
5 Plaintiffs are also required to prove several other things
6 that are unique just to that cause of action. One of which
7 was that there was a modification that was not foreseeable.
8 So the fact the felts -- the actual exposures talked about
9 by Millette and DePasquale require things that we did not
10 do. They left the Scapa factory in the same substantial
11 condition -- I forget the exact terms of art, but certainly
12 as Mr. DePasquale says, if they're running like we've
13 designed them to run, there would be no actual exposure.

14 Another thing with strict liability, I think they also
15 have to prove an alternative design, which they haven't done
16 in this case. I haven't heard any testimony that there was
17 an alternative design that was safer at the time. I think
18 Mr. Doherty testified in our case that Bowater loved the
19 asbestos-containing felt, all the paper mills did.

20 Fritz, come on, man. You're laughing at me.

21 THE COURT: Now, y'all, please, no commentary while Mr.
22 Early is arguing, please.

23 Go ahead, Mr. Early.

24 MR. EARLY: Well, my point was, I don't think we've
25 seen any evidence put forth by the Plaintiff that there was

1 a sufficient alternative design that would rise to the level
2 of our strict liability statute. And for those reasons, I
3 think, Your Honor, the Court should have directed a verdict
4 Friday and, certainly, now. And that's my argument. Thank
5 you.

6 THE COURT: Very good.

7 Mr. Jekell.

8 MR. JEKELL: I'm going to let me Hyland handle this,
9 Your Honor.

10 THE COURT: Very good.

11 MR. HYLAND: Your Honor, as for the negligence cause of
12 action, the Lorman standard requires frequency, proximity
13 and regularity. In their opening, the Defendants in this
14 case admitted that there were 23 asbestos-containing felts
15 on paper machine number one during the period of time that
16 our client worked on the paper machine number one. He only
17 worked on paper machine number one.

18 And, in fact, over a period -- by looking at the
19 Mastercards that were moved into evidence without objection,
20 you can establish a timeline that for almost 15 years of his
21 40 years at Bowater paper machine number one, there was
22 virtually always a Scapa asbestos-containing felt somewhere
23 on that machine. A machine that he had regular contact with
24 over the entire machine due to the requirements of his job.
25 And that is demonstrated by both his testimony and

1 corroborated by coworker testimony.

2 The idea that you would have to inject a most probably
3 test into that is a little bit of an inflation of the
4 standards because the most probably rule applies to a
5 medical context, where -- we already satisfied the Lorman
6 factors here and direct evidence is not required. In fact,
7 it discussed in that case to the point where it would be
8 very difficult to have direct evidence showing that he
9 worked with the Scapa felt specifically on a specific date.
10 That's one of the points of the Lorman test, to be able to
11 establish that through circumstantial evidence, of which we
12 have a significant amount of evidence before the Court
13 already. It's just common sense that this man came into
14 contact with these felts on a regular basis. These felts,
15 which you could not identify the manufacturer because they
16 did not have any markings on them other than if they had a
17 sign or some type of lettering on the box, which was removed
18 in the very beginning.

19 Furthermore, we also had expert testify as to issuing
20 an opinion that directly stated that the Scapa asbestos
21 dryer felts were a substantial contributing factor to Mr.
22 Stewart's illness. And that was directly in the record in
23 this case.

24 As to strict liability, this was a necessarily
25 dangerous product, unreasonably dangerous. It had asbestos

1 in it. So we've had lots of evidence about knowledge of the
2 risks of asbestos as causing lung disease, specifically,
3 mesothelioma. And we also have lots of evidence in that
4 discusses how these felts were expected to degrade. They
5 were expected to be cleaned. They were expected to be
6 handled by these workers on these paper machines and changed
7 out. We actually had evidence that these manufacturers
8 provides knives to the workers to cut these felts. They
9 absolutely knew what was going on with these felts and that
10 these workers were in regular, frequent contact with these
11 felts.

12 Furthermore, as far as an alternative design, there was
13 testimony before the Court as to the fact that nonasbestos
14 felts were available and manufactured at the same time
15 period as these asbestos felts were being marketed and
16 supplied to the Bowater plant. I believe that's all we
17 have. Thank you.

18 MR. EARLY: Your Honor, may I briefly respond on one
19 thing?

20 THE COURT: Just a second.

21 (Pause.)

22 THE COURT: All right, Mr. Early?

23 MR. EARLY: Your Honor, just one thing that Mr. Hyland,
24 my colleague, said I was confusing the issues about most
25 probably. And I understand that's an expert rule, but with

1 regard to circumstantial evidence, there are several cases
2 -- and I think it's a Vietnamese name, N-G-U-Y-E-N vs.
3 Uniflex and the Harris v. Roses Stores case. The charge
4 from those cases and the direct quote from the Court of
5 Appeals in Uniflex says, Although causation may be
6 established by circumstantial evidence, it nonetheless, must
7 be based on probabilities and not mere possibilities. In
8 the Harris vs. Roses Stores case says, Causation based upon
9 a possibility rather than a probability is not sufficient
10 for a plaintiff to recover in a products liability case.

11 So I am talking about circumstantial evidence when I
12 say probabilities rather than possibilities. And I'm not
13 talking about medical or expert testimony. I think it's
14 incumbent on them to prove that it's more probable than not
15 that he worked around an asbestos-containing dryer felt
16 manufactured by Scapa on a frequent, regular and in close
17 proximity to it and they haven't done that.

18 THE COURT: All right.. In ruling on a directed verdict
19 motion, of course, we begin with the proposition that it is
20 not my job to weigh the evidence, but it's rather my job to
21 look at the existence of evidence. And the existence of any
22 evidence in support of the case that Plaintiff has put
23 forward is enough to send it to the jury. The jury will be
24 instructed, of course, as to what they must find. But I've
25 got to determine whether on the basis of the evidence that

1 has been admitted the jury could find, using the law as its
2 given, that the Plaintiffs have proven their causes of
3 action, these three causes of action. That doesn't mean I
4 talk about the weight of the evidence or the volume of the
5 evidence, if you understand the distinction I'm making.

6 With respect to the negligence cause of action, we do
7 use the Lorman standard, which requires frequency,
8 regularity and proximity of exposure. This is primarily a
9 circumstantial evidence case rather than a direct evidence
10 case in terms of the identity of which manufacturer's dryer
11 felt was being used at a particular time. But it is --
12 there is a combination of direct and circumstantial evidence
13 in this record about the existence and use of Scapa felts.

14 The testimony is undisputed that there were 23 Scapa
15 felts. And I have heard a couple of numbers thrown around,
16 but they're in the 200 range of the total amount of felts
17 that were used in the period when these 23 felts that were
18 asbestos-containing felts from Scapa. There were other
19 nonasbestos-containing felts of Scapa. And there was a
20 combination of asbestos and nonasbestos-containing felts
21 otherwise used in the plant during the period we're talking
22 about that comprised a total volume of somewhere between 220
23 to 280. Y'all have used all kind of different figures.

24 But it looks to me like about 10 percent of the felts
25 that were used during the period of time we're talking about

1 were Scapa asbestos-containing felts. I don't know where
2 that other figure comes from that's been tossed around and
3 what the dynamics are of the mathematics that leads to it,
4 but I just use plain old ordinary common how many felts were
5 there and how many of them were asbestos-containing felts to
6 say that I believe the jury could on the basis of the
7 testimony that's been offered find that about 10 percent of
8 the felts that were used during the period that Mr. Stewart
9 was exposed were Scapa felts.

10 The testimony of the workers about how those felts were
11 used is where I begin my analysis of whether there's enough
12 direct and circumstantial evidence to send a negligence
13 cause to the jury. The workers testified that there were no
14 warnings on any of this material that it was asbestos. And
15 the workers testified that they were not told by anybody
16 that these materials were asbestos. The workers testified
17 that they removed felts, including Scapa felts from wooden
18 boxes that contained the name of the manufacturer on them,
19 but no warning as to whether they contained asbestos nor was
20 there any other warning anywhere around the area that told
21 them that asbestos felts were dangerous and so forth.

22 The workers themselves, and that includes Stewart,
23 Steele, Ward and Heglar, all testified that particularly
24 when one occupied the position of utility, which all of them
25 did as an entry level position, that they were in that

1 basement receiving the felts at the end of the process, not
2 when they were wet and not when they were in the wet part of
3 the process, but when they were in the dry part of the
4 process, by which time, the felts were dry and contained
5 about five percent moisture from what some testimony was
6 offered, much like the paper itself did that was produced at
7 the end of the dry part of the process.

8 And they testified that they had to manhandle these
9 felts, that they did not do that while the machines were
10 running, but rather, they shut off the machines and the
11 felts would sometimes be frayed in certain areas, they would
12 be split at certain seams from time to time and that they
13 would pull these felts off of the cans and the various loops
14 and configurations they went through at the dry end of the
15 process and push them down an opening into the basement.

16 And when they were in the basement, they were folded up
17 and manhandled to get them in kind of a manageable position
18 and put on pallets and stacked in a corner. And that in
19 order to get them out to disposal, they were quite often cut
20 up with a knife and that that threw a lot of dust into the
21 atmosphere, quite apart from the dust that was in the
22 atmosphere from blowing dust with an air hose on the floor,
23 but just the process of handling these felts threw a lot of
24 dust in the air.

25 All of the workers also testified as to the process for

1 blowing on these felts when they were still running on the
2 machines. And the testimony was that one of the things that
3 would happen is you would shut the machine off and you would
4 take these air hoses and blow directly on the felts to try
5 and dislodge trash and paper and so forth and that all kinds
6 of dust would go into the atmosphere from the felts and from
7 the material that was being blow off of the felts.

8 Then you have expert testimony which says, in part,
9 that that process of handling those felts and blowing off
10 the felts put respirable asbestos into the air. There was a
11 lot of testimony about the use of the resin to coat and the
12 fact that the resin comes off, which logic would certainly
13 dictate that when they're spinning around all the time that
14 the resin that coats them, which was intended to incapsulate
15 the asbestos in the yarns, would wear off. And they
16 testified to that.

17 So I believe that the combination of the materials and
18 expert testimony that I've recited is plenty enough to allow
19 the jury to go beyond mere speculation and mere
20 possibilities and find the probability that felts
21 contributed to the -- contributed substantially to Mr.
22 Stewart's contraction of mesothelioma. That analysis then
23 would carry over into the analysis of strict liability
24 causes.

25 With respect to the strict liability causes, first of

1 all, on the foreseeability of any modification that took
2 place after the felts left the factory and arrived at
3 Bowater, I think the evidence indicates that these
4 manufacturers could fully foresee that these workers would
5 do more than just blow across the felts, that they were
6 blown with air hoses on the felts, that they could cut the
7 felts up, that they would handle the felts as they frayed
8 and that respirable dust would come out of these felts. So
9 if there were any modification by means of the cutting up
10 and the manhandling and the pulling off of the felts, I
11 think all that in the paper making process was completely
12 foreseeable by Scapa.

13 Alternative design is proved, really simply, by the
14 fact that they knew way back when that it was possible to
15 manufacture nonasbestos-containing felts. They knew and the
16 industry knew that asbestos was something that could lead to
17 the contraction of asbestos-related lung diseases, such as
18 mesothelioma. All that information was readily available
19 beginning well prior to 1963 when Mr. Stewart began to work
20 for Bowater. Of course, the proof is in the pudding, they
21 ultimately in their English mother ship as well the Scapa
22 Waycross themselves directly knew that asbestos-containing
23 felts were going to give way to nonasbestos-containing
24 because of safety concerns. And, in fact, Scapa directed
25 that they not publicize their ability to do the asbestos --

1 to switch from asbestos to nonasbestos because they wanted
2 to be sure they could sell all the asbestos felts they had
3 already manufactured.

4 So I think all of that shows that -- from the strict
5 liability causes of actions, I think they could expect these
6 felts would be degraded. They could expect they would be
7 used in the ways that they were, it was foreseeable that
8 when they were used in those ways respirable asbestos could
9 be released. And there is plenty in the record to indicate
10 that although it's the battle of the experts as to who the
11 jury believes, the jury could believe the expert offered by
12 Plaintiff who say that chrysotile asbestos can cause
13 mesothelioma. Certainly, the medical testimony by Mr.
14 Stewart's experts indicate that he had mesothelioma, that he
15 had a vast amount of plaque described by one as two hands
16 wide of plaque in his lungs, that that plaque came from the
17 respiration of asbestos fibers.

18 I did not -- the testimony -- there is certainly
19 testimony about thermal insulation and there is a real
20 battle of the experts as to what this material actually
21 contained. There's no records from Bowater as to exactly
22 what this material was, so it's really kind of a guess on
23 the part of the people who've testified both ways as to what
24 was in this pipe coating. But there's certainly testimony
25 by the people who actually worked there that you would have

1 to bust it at times and open it up in normal maintenance, in
2 breakdown situations where the steam was starting to escape
3 and the result of it would be that fibers -- I mean, that
4 chunks of white stuff from the pipes would be discarded on
5 the floor, either during repairs or otherwise, and that
6 particularly those who worked in utility, but also those on
7 up the chain of responsibility, just as were continuing to
8 be exposed to the felts, they were also exposed to whatever
9 came down from these pipes in the form of asbestos. Some
10 contends it's amphibole, some contends it's chrysotile, some
11 contends it's a combination of both, but there's plenty of
12 information to the jury to conclude that thermal insulation
13 was also part of the frequency and regularity and proximity
14 of exposure by Mr. Stewart. But more than one exposure does
15 not preclude the finding that Scapa meets the Lorman test in
16 terms of its contribution to the mesothelioma.

17 And with respect to failure to warn, if that's what
18 this breach of implied warranty is, I think there is enough
19 evidence to show that there was knowledge and failure to
20 warn on the part of Scapa. It knew what its suppliers were
21 supplying it, that is Turner Yarns and the other ones, and
22 it put into the stream of commerce materials that contained
23 the asbestos and did not warn about it.

24 So on the basis of those recitations, I will deny the
25 motion for directed verdict on the three grounds stated.

1 Mr. Early, anything to add or have I covered all of
2 what you feel you put into motion in the motions that you
3 made?

4 MR. EARLY: Nothing further, Your Honor.

5 THE COURT: Very good.

6 Now, Mr. Jekell, anything from you by way of any
7 motions on your part?

8 MR. JEKELL: Well, I think we have proven that the
9 felts are unreasonably dangerous. I think we've met all the
10 requirements of strict product liability and that a directed
11 verdict should be granted on strict products liability.
12 It's an unreasonably dangerous product that hadn't
13 materially changed since it left Waycross, Georgia and got
14 to Bowater. There was an alternative nonasbestos design.
15 They didn't provide any precautions with it. They didn't
16 tell them about the safety precautions to use with it. They
17 know that in order to use that product, it needed to get on
18 the dryer machine, it needed to run and you needed to take
19 it off. And those are the areas where the exposures
20 occurred.

21 Also, with strict products liability, there is the
22 failure to warn. There's been no evidence, Your Honor, that
23 Bowater, other than some statements by Mr. Doherty, who
24 wasn't there and didn't talk with anybody at Bowater, that
25 Bowater asked for asbestos or knew it had asbestos. What

1 Mr. Doherty said conclusive was that we did not warn. I
2 think Mr. Lane Young asked him that in his direct and he
3 said he did not warn, they did not advertise the asbestos.
4 We went over the nomenclature. So I do believe that on
5 those causes of action that a verdict should be directed of
6 strict products liability.

7 THE COURT: Mr. Early?

8 MR. EARLY: Your Honor, as I said in my initial motion,
9 I think the common element in all three of these causes of
10 action is proximate cause. That's the easy answer. And I
11 think there was, certainly, as the Court has stated in your
12 ruling earlier, there is evidence on both sides that they
13 conclude one way, they could conclude the other way. But as
14 far as the dangerousness of the product, what is required to
15 be the defective product, we've had some experts come in
16 here and testify that it wasn't defective. I mean, you've
17 got a battle of the experts, just like the Court said, and I
18 don't think it's ripe for a directed verdict on anything as
19 far as the Plaintiff's cause of action. And I would
20 respectfully ask the Court to decline that motion.

21 THE COURT: I find that the Plaintiff's motion should
22 be denied. The Defendant does offer evidence that the
23 product was not defective and that the dryer felts with
24 asbestos only released ambient air dosages of asbestos and,
25 therefore, they're not dangerous and, therefore, that would

1 lead to no unreasonably dangerous product nor a product for
2 which warnings would have to be given or an alternative
3 design offered. So I would deny those motions.

4 Now, are we completely covered on our directed verdict
5 motions for both sides. Very good.

6 Let's talk a little bit now, if we could, about our
7 charges. The only communication I have had is one from Will
8 about asking that a but for charge be added per what Judge
9 Hill did. I am not a fan of the Seay or the Garvin
10 formulation, but I am looking at Muldune, at that
11 formulation, and I am going to work something into my charge
12 that will deal with that.

13 MR. EARLY: Thank you, Your Honor. I copied Fritz --

14 MR. JEKELL: I haven't seen it yet, but I'm not denying
15 it.

16 THE COURT: What he's asking for is a slight addition.
17 And it would be literally half a sentence worth of addition
18 to the charge on proximate cause that says you have to find
19 but for the negligence of the Plaintiffs, the Defendant
20 would not have -- negligence of the Defendant, the Plaintiff
21 would not have suffered the injury the Plaintiff suffered.
22 That's okay. You know, I think the big thing to keeping the
23 charge that is a little bit different in this kind of case
24 is the Lorman formulation and the formulation of substantial
25 factor. But I have no problem with adding something along

1 the lines of what Will has done and I'll work with Jamie to
2 put something in.

3 Do you have any particular place you want it?

4 MR. EARLY: Well, Your Honor, obviously, I think it
5 should be where your design of actual causation.

6 THE COURT: Right.

7 MR. EARLY: And we're fine with what Mr. Jekell put in
8 his charges, his sentence is fine. It says, And that is
9 proven by showing the injury would not have occurred but for
10 the Defendant's negligence.

11 THE COURT: And I'll put something along those lines in
12 there.

13 Other than that, anything else?

14 MR. JEKELL: Your Honor, I'm going to let Mr. Hyland
15 handle this. We do have a few issues.

16 THE COURT: Mr. Hyland.

17 MR. HYLAND: Your Honor, probably the first and maybe
18 the most important is with regard to -- maybe not the most
19 important for this point, but the expert testimony causation
20 portion --

21 THE COURT: Where are you?

22 MR. HYLAND: I believe it appears on Page 8. The --

23 THE COURT: Wait a minute. Wait a minute. I've got a
24 different numbered thing here, so I'm going to have to --
25 just a second.

1 MR. YOUNG: Your Honor, I hate to interrupt, but
2 remember I told you that sometimes I may have to go to the
3 rest room.

4 THE COURT: Yeah, yeah. It's okay. You go.

5 MR. YOUNG: Mr. Early is going to do this. Thank you.

6 MR. HYLAND: It actually starts at the bottom of Page 8
7 and continues at the top of Page 9.

8 THE COURT: All right. Just hang on, I'm going to get
9 where you are.

10 (Pause.)

11 THE COURT: All right.

12 MR. HYLAND: Your Honor, there's some language here
13 that comes from the Eubanks case and there's some language
14 here that didn't appear in the Eubanks case. And the
15 problem I have with this instruction is that it makes it
16 sound like the expert must do something that's not
17 necessarily required of them. In general, I believe this is
18 -- the most probable language here, the most probably that's
19 taken from Eubanks is more so talking about the threshold of
20 admissibility of testimony more so than how it is actually
21 considered by a jury in a charge.

22 But nonetheless --

23 THE COURT: Well, I'm going to put most probably in
24 there. That is just so standard that --

25 MR. HYLAND: I understand. But my main problem with

1 this is it makes it sound like most probably is a magic word
2 that must be included and that's not the law in our state.

3 THE COURT: Well, number one, I cannot remember any
4 expert that's testified in this case that did not testify
5 using that standard.

6 MR. HYLAND: I agree with you, Your Honor. All of a
7 sudden, we had -- just yesterday, Mr. Young said my South
8 Carolina counsel tells me I need to say most probably. And
9 all of a sudden, the Defense experts say most probably. And
10 this is -- by putting this in quotations and everything
11 else, it's -- normally, the --

12 THE COURT: I'll take out the quotes, but I'm not going
13 to do anything with that. That is just standard operating
14 procedure. If you want me to take out the quotes, I'll take
15 those out, but most probably is the rule.

16 MR. HYLAND: Correct, Your Honor. My problem with it
17 is that the rule also states that you do not necessarily
18 need to use the language most probably.

19 THE COURT: You've said that three times now, I've got
20 you. I'm not going to agree with you.

21 MR. HYLAND: I would just request an explanation of
22 that --

23 THE COURT: I say the expert must go further -- it is
24 not sufficient that the condition in question possibly or
25 could have or might have resulted from the injury. The

1 expert must go further and testify that taking into
2 consideration all the facts, it is his or her professional
3 opinion that the result in question most probably came from
4 the cause alleged.

5 MR. HYLAND: And that seems to create a requirement of
6 --

7 THE COURT: It is a requirement. You might not have to
8 use the magic words, but the requirement is there. I will
9 take out the quotations, but, otherwise, I'm going to charge
10 it just like I told you. Okay?

11 MR. HYLAND: All right. Thank you, Your Honor.

12 MR. EARLY: Your Honor, can we go page by page?
13 Because Greg's got one on Page 8, I think that was Page 8, I
14 might have it on Page 9. I just want to do it orderly. I
15 don't care if he goes first or how you want to do it -- how
16 the Court would like to do it. If I've got something to add
17 or if you want to do mine at the end or address all of his
18 now, however you want to do it.

19 THE COURT: Okay. Let's go back and start at the
20 beginning. I'm going to tell you what's going to have to be
21 done, though. Y'all are going to have to be at ease for
22 about five minutes because I'm going to get you to send to
23 Lynn the one they're using so I won't have to flip back and
24 forth between you and me.

25 Y'all take a break for a minute and let me get this

1 straightened out and I'll come right back to you.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: Okay. I'm ready.

4 MR. EARLY: Your Honor, Mr. Hyland and I talked at
5 break. He doesn't have that many, so he's going to ask
6 about his first and I may be able to agree with one or two
7 of them and then we'll flip through mine.

8 THE COURT: Very good.

9 MR. HYLAND: Just let me know when you're ready, Your
10 Honor.

11 THE COURT: I'm ready.

12 MR. HYLAND: Well, the next thing besides the language
13 that you declined to include about the most probably, the
14 next in line would be I'd like to insert a charge here about
15 conflict in testimony of expert witnesses.

16 THE COURT: Where are you?

17 MR. HYLAND: Well, it's not there. I'd like to add it
18 right beneath expert witnesses and causation.

19 THE COURT: So Page 8 right in between expert witnesses
20 and deposition testimony?

21 MR. HYLAND: I believe the next one that you have is
22 summary of Plaintiff's claims after that, but maybe we're
23 still looking at different copies.

24 THE COURT: Expert witnesses and causation and then
25 summary of the Plaintiff's claim?

1 MR. HYLAND: Expert testimony does appear in this one
2 I'm looking at now.

3 THE COURT: Okay.

4 MR. HYLAND: And what I've done, I've essentially
5 copied a charge from Judge Anderson's book that reads as
6 follows: In this case, there has been a conflict in the
7 testimony of expert witnesses. To that end, you must weigh
8 one expert's opinion against that of the other and you must
9 consider the reasons given by one as compared with those of
10 the other. You should consider the relative credibility and
11 knowledge of the experts who have testified. Thereupon, you
12 should find in favor of that expert's testimony, which in
13 your opinion is entitled to the greater weight of the
14 evidence. Obviously, we've had a battle of the experts in
15 this case and I think that --

16 THE COURT: I don't know that I agree with that
17 statement as a matter of law. What I have told the jury
18 already is that you can believe everything a witness says,
19 you can believe nothing a witness says. You may believe
20 part of a witness's testimony, you may disbelieve other
21 parts. You may believe one witness over several or several
22 over the one. You, certainly, don't decide this matter of
23 credibility by simply counting up the witnesses on one side
24 or the other because your sole object is to determine the
25 truth in this case and it doesn't matter to you whether that

1 truth comes from a witness for the Plaintiff or from
2 Defendant.

3 That, to me, is the formulation. I don't know that you
4 have to weigh the witness's one against the other. I think
5 that's a little deceptive. What you have to do is look at
6 each witness's testimony, including expert's testimony, and
7 decide whether or not the witness's testimony is credible.
8 So I don't know that I agree with that. This is Ralph
9 Anderson's charge book?

10 MR. HYLAND: Yes, ma'am.

11 THE COURT: Well, I can just simply tell you, I love
12 Ralph Anderson and Tom Irving, but I don't charge everything
13 that's in either of their books because some of them I don't
14 think are completely reflective of what the law is. And
15 I've got some concerns about that.

16 Mr. Early?

17 MR. EARLY: I don't have anything to add, Your Honor.

18 MR. HYLAND: And Your Honor, once you reread that to
19 me, I can see that it is pretty well covered already.

20 THE COURT: I think that's better than trying to say
21 before you can take as the gospel one expert, you've got to
22 find that he out trumps the other expert, I don't know that
23 that's the way you want -- I don't think y'all really want
24 that charge to the jury.

25 MR. EARLY: To be fair, I think prior to -- at least,

1 the first couple of experts, you did a pretty good
2 preemptory charge as to what an expert is and all that
3 stuff, too. So you've got two different areas in here
4 talking about experts. I don't have a strong opinion either
5 way, but I'd rather it not come in.

6 THE COURT: Okay.

7 MR. HYLAND: The next item, Your Honor, would come
8 underneath deposition testimony to be inserted. It doesn't
9 necessarily have to appear there, but it seems like a
10 natural place for me. Mr. Early and I agree on the fact
11 that something needs to be said about the life expectancy
12 tables.

13 THE COURT: The mortality tables, yes, I charge the
14 mortality tables and I just forgot to put it in here, but
15 y'all give me a charge on the mortality tables and I will
16 charge it. You can see in the Jolly case that I've got a
17 charge on the mortality tables. Just take it out of that,
18 write it up for me and send it to Jamie and we'll put it in
19 there.

20 MR. EARLY: And I agree. I think -- he had like a
21 judicial stipulation. I think you can charge the actual
22 life expectancy table. I find that at the time of his death
23 Mr. Stewart was --

24 THE COURT: That's what I think is the best because
25 it's really a matter of law. It's a section of the statute

1 that --

2 MR. HYLAND: Yes, Your Honor. I just wasn't sure
3 whether to put it in as judicial notice or what. That will
4 work.

5 Let's see. There are a few places -- under the section
6 of causation substantial factor, which begins at the bottom
7 of Page 10 and continues to the top of Page 11, there are
8 just a few instances in here where it says to prove actual
9 exposure to a defendants. There's a few different places
10 where it says a defendants. I would just request that it be
11 replaced with the defendants, Your Honor.

12 THE COURT: You've got to show me. I see a defendant.
13 I'm just going to strike from a --

14 MR. HYLAND: Yes, Your Honor, there's three incidents
15 in that paragraph at the top of the page, just strike a and
16 replace it with the.

17 MR. EARLY: No objection, Your Honor.

18 THE COURT: You say there are three?

19 MR. HYLAND: Yes, Your Honor. The last one is the
20 third to last word in that top paragraph.

21 THE COURT: Okay. I've got all three of them. That'll
22 be done.

23 MR. HYLAND: Next, is another just clerical issue.
24 Towards the last sentence of the next paragraph, the word
25 contributed is spelled incorrectly. I don't think that's

1 going to affect your reading --

2 THE COURT: Yes, the U and the B have been transposed.
3 Thank you.

4 MR. HYLAND: And that may be it. Let me check. I've
5 got a couple more here. Going down to the section titled
6 products liability design defect, negligence.

7 THE COURT: Strict liability design defect?

8 MR. HYLAND: No, Your Honor, it's actually entitled
9 products liability design defect.

10 THE COURT: What page?

11 MR. HYLAND: That would be on Page 19.

12 THE COURT: All right.

13 MR. HYLAND: And I would just ask to insert the
14 following language after the first paragraph.

15 THE COURT: And the first paragraph ends?

16 MR. HYLAND: Steps to correct it.

17 THE COURT: This burden may be met by?

18 MR. HYLAND: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. HYLAND: And this would be the proposed language:
21 Manufacturers have a duty to possess expert knowledge in the
22 field of their products and to exercise reasonable care in
23 placing the product in the market, which duty must be met by
24 inspection and testing. Usually, the degree of care depends
25 on and must commensurate with the risk of harm flowing from

1 normal use of the product or is proportionate to the
2 seriousness of the consequences reasonably anticipated.

3 THE COURT: Where did you get that from?

4 MR. HYLAND: From Judge Anderson's book, Your Honor.

5 THE COURT: What do you say about that, Mr. Early?

6 MR. EARLY: Well, Your Honor, I think -- first of all,
7 I think that that's covered very well in another section
8 where you talk about industry standards, you've been talking
9 about the whole industry lagging behind. So I'm going to
10 say that's charging it twice between we do have a lot of
11 overlap between the negligence charge already and some of
12 your strict liability. But that certainly is covered in
13 another charge. I've never seen that before. That
14 certainly wasn't proposed in their initial jury charges
15 proposal. And i think that's overkill and I think it's
16 prejudicial based upon what you're already going to charge
17 on that.

18 THE COURT: I'll decline to charge it.

19 MR. HYLAND: Thank you, Your Honor. Next, Your Honor,
20 would be -- under sophisticated user, which I believe starts
21 at Page 22 --

22 THE COURT: I will tell y'all about sophisticated user
23 that I have more heartburn about this particular charge than
24 anything in the world. Lawing v. Univar is a moving target
25 and I don't know where the Court or the legislature or both

1 of them are going to end up on sophisticated user.

2 I don't know that sophisticated user was as much
3 emphasized in this case as it was in Jolly, where there was
4 a lot of proof about the specifications that Duke made of
5 specifying asbestos gasket parts. That was a pump and
6 gasket case. Duke actually had order cards and, of course,
7 they were ordering off the specs, but it was -- they
8 specified asbestos flange gaskets and other kind of
9 asbestos-containing products. And out of a super abundance
10 of caution and much over the objection of Plaintiff, I
11 charged sophisticated user. I just don't know whether this
12 case has got nearly as much information about sophisticated
13 user in it that the other one did.

14 You tell me what you want me to do about sophisticated
15 user.

16 MR. HYLAND: Well, I would like to take out the entire
17 charge.

18 THE COURT: Yeah.

19 MR. HYLAND: But, in particular, I would call attention
20 to -- I'd like to remove it entirely because I don't even
21 know that there's really even evidence in this case that
22 would point to it. It would be more confusing than anything
23 else. But there is some pretty strong language in here
24 saying that -- towards the end here, at the last sentence,
25 it says, Therefore, if you find that Bowater was aware of

1 the potential risks associated with the Defendant's
2 products, which Bowater purchased for use in its business,
3 you must find for the Defendant. I believe that is a
4 misstatement of how sophisticated user is to be construed
5 and how that defense operates, Your Honor. The knowledge of
6 the employer can be irrelevant.

7 THE COURT: I understand what you're saying there.
8 Will?

9 MR. EARLY: I don't know if you want me to address
10 Lawing first or this. Let me address this first, Your
11 Honor. I think sophisticated user is essentially a fancy
12 term for intervening or superseding cause. We're insulated
13 by Bowater. There's certainly been evidence in this case
14 or, at least -- I wasn't at Jolly, so maybe not as much, but
15 there's certainly been talk about Bowater and OSHA and
16 certain things like that.

17 So to shift or to insulate us from liability what
18 Bowater knew. We sold them a product, which we think is
19 safe. What they do with it, how they do with it, if they
20 allow people to take stuff home and sleep with it and make
21 tents out of it. I think Bowater would have to bear some
22 responsibility in all that. I don't think Lawing -- Your
23 Honor read Lawing and you know a lot more about it than I
24 do.

25 THE COURT: As you know, it was a split decision --

1 MR. EARLY: It was, but what it doesn't do is abrogate
2 the defense in South Carolina. It doesn't say it's not
3 about the defense anymore. Bragg v. Highranger specifically
4 makes it a defense in South Carolina. I think --

5 THE COURT: No question about it, but Lawing is
6 certainly a little bit of a different twist on things than
7 Bragg v. Highranger.

8 MR. EARLY: What I'm trying to tell you is I think
9 you're right, it is a moving target. But as we sit here
10 today, February 2018, I think it's a valid defense in South
11 Carolina. I think it's charged properly in your proposed
12 charge. Not only that, but the Plaintiff's, I mean, their
13 proposed charges had it in there as well.

14 THE COURT: At the minimum, I will take out the last
15 sentence.

16 MR. HYLAND: And, Your Honor, it may just be duplicatus
17 to have both the intervening cause and sophisticated user in
18 this charge. If we're going to try to streamline things and
19 not add in any clarification at any point, I think this, in
20 general, this whole instruction would really just muddy the
21 waters, especially considering the lack --

22 THE COURT: See, here's the problem you've got in this
23 sophisticated user charge here -- and this is the fact
24 component that's very different from Lawing vs. Univar in
25 this case. In Lawing v. Univar, you know, these sacks of

1 bromate were -- that product was compounded and packaged in
2 China. And what these guys over there did was to put a
3 warning on one side of these fiber sacks, but did not put it
4 on the other side. And then they stacked these things and
5 shrink wrapped them and they were shipped like that on
6 pallets in containers, not touched at all. And then, you
7 know, they came on in the factory.

8 The things were stacked in such a way that, quite
9 often, the warning was obscured because the sacks were
10 turned upside down and they -- sometimes these bromate and
11 other hazardous type materials claim when they ship them
12 like that, number one, they label both sides of the sack and
13 number two, under the shrink wrap they put something that's
14 visible that also has a warning on it or something so you
15 can readily see even when the thing's all in a bunch of
16 shrink wrap that it contains hazardous materials, so it has
17 that hazardous chemical symbol and so forth. That was very
18 different.

19 Here, there was no warning whatsoever put on this stuff
20 by anybody. The manufacturer's duty to warn is in most
21 cases discharged -- whether they want to discharge it and
22 say we warned and then the sophisticated intermediary who
23 knew about it didn't do anything with it. That's what's
24 very different here and giving me some heartburn.

25 MR. HYLAND: Yes, Your Honor. And in the Lawing case,

1 in addition to the warnings on the product, they also
2 provided MSDS sheets which indicated this is combustible
3 material. There were no warnings whatsoever in this case.

4 And the other aspect that goes into a sophisticated
5 user defense is that the manufacturer would have -- under
6 the circumstances could reasonably rely on the employer's
7 knowledge of the associated risks.

8 In this case, there was no sharing of information as to
9 the risks, that's clear. There's no evidence of that. And
10 so the sophisticated user defense shouldn't even apply.

11 MR. EARLY: Your Honor, if I could, in Lawing -- I
12 understand about the warning, but in Lawing, the warning is
13 really an immaterial issue because in Lawing, the warning
14 wasn't seen and it was a mislabeling. It was a yellow tag
15 versus a blue tag. It was mislabeled.

16 That's not what the case is here. Bowater knew they
17 were getting asbestos-containing materials. Mr. Doherty
18 testified they wanted them. Their own experts --

19 THE COURT: Mr. Doherty didn't testify anything about
20 Bowater wanted. He didn't come to work for Scapa until
21 1991. He knew nothing about what Bowater did or didn't do
22 back in '63 through 2002 when he stopped working for them.
23 So he -- I mean, the problem I've got is this record really
24 doesn't contain anything that shows you what Bowater knew
25 other than what people generally in the industry would have

1 known as opposed to the Duke case and Jolly where Duke was
2 ordering specific stuff from Crosby and Fisher that was
3 asbestos-containing. Crosby and Fisher was sending things,
4 this is how you're supposed to dismantle it and so forth and
5 so on. So there was a lot more conflict in the evidence
6 about what Crosby and Fisher told Duke and what Duke ordered
7 from them and what they knew. And none of that is in this.

8 MR. EARLY: Well, Your Honor, their own experts that --
9 you used the word Duke, but in Bowater in this case, had a
10 duty to provide a safe workplace.

11 THE COURT: No question about that. But sophisticated
12 user is something a little bit more -- it is in the nature
13 of an independent intervening cause, no question about that.
14 And I'm just wondering whether we've really got enough to
15 include that thing in here.

16 Right now, here's where I am, I'm going to -- if I
17 charge anything, it will be the first paragraph only. I
18 will not charge the second and the third paragraph. But let
19 me just think about it some.

20 MR. HYLAND: That's it, Your Honor.

21 THE COURT: Okay. Now, Will, what you got?

22 MR. EARLY: Yes, ma'am. First of all, we didn't set
23 forth any evidence in this case about comparative negligence
24 and don't plan to. I don't think that needs to be charged.
25 I don't think it needs to be on the verdict form. So to the

1 extent -- I had to raise it as an affirmative defense back
2 in 2013 or I waived it. I mean, Fritz has already used that
3 obviously and we respectfully thought that was an error, but
4 I want to take that out of the charge as well as off the
5 verdict form. So it's either them or us.

6 THE COURT: Where is it in the charge?

7 MR. EARLY: It is on what I have as Page 24, Your
8 Honor. The problem is it's not labeled. It's right above
9 damages, dash, compensatory damages. It's that one
10 paragraph that starts with furthermore.

11 THE COURT: Yeah. I think that is a little inaccurate.

12 Mr. Hyland, what do you say about that?

13 MR. HYLAND: Well, Your Honor, as Mr. Early just
14 mentioned, he tried to mention some of these uses down the
15 line of cutting up felts, maybe taking them home, anything
16 else. May well be that they wanted this to be an issue in
17 front of the jury. I mean, they didn't amend their answer
18 or anything like that.

19 THE COURT: But we don't send them to the jury anyway,
20 so.

21 MR. EARLY: There was no testimony that Mr. Stewart did
22 that. There was testimony that others did that. And here's
23 what they're trying to do, Your Honor -- I mean, I'm a
24 lawyer, I have a duty to my client. These are my clients.
25 I have to raise these as affirmative defenses. Do I have to

1 go amend everything?

2 Because what has happened in these cases is sometimes
3 these guys -- you'll have testimony down the line that
4 they're walking through areas. They don't wear -- they're
5 provided respirators and they don't wear them. And it
6 becomes applicable sometimes. But if I don't raise it and
7 that happens, then they say well, guess what, you didn't
8 raise it in your answer, you waived it.

9 THE COURT: I'm going to strike it and I'm going to
10 strike it from your answer.

11 MR. EARLY: Thank you, Your Honor. And just to be
12 clear -- I mean, I understand and I respect the Court's
13 decision early on not allowing us to cross-examine Mr.
14 Edwards or anybody else with the complaint. We had that
15 happen to us with the answer. Since you've stricken it from
16 the answer, they can't use that in their closing?

17 THE COURT: That's correct. I'm striking it from the
18 charge and I'm striking it from your answer.

19 MR. JEKELL: I'm not allowed to say that Scapa believes
20 that Mr. Stewart willfully caused his own mesothelioma?

21 MR. HYLAND: And that's really another part of this.
22 And I understand Your Honor has already indicated how she's
23 inclined to rule, but if we have a charge trying to get out
24 of punitive, willful and wanton behavior, I think it's
25 absolutely relevant that they have asserted that same

1 counterclaim -- or defense, rather, against our client. And
2 if they can do that, if they think that's something
3 necessary and applicable to the case, well, then, the jury
4 should be able to weigh who was willful and wanton,
5 especially because their causes of actions that are in this
6 case. If all of a sudden now it suits them better because
7 they don't want to look like they did something bad, well,
8 that's no reason that that should be taken away from the
9 jury's consideration.

10 MR. EARLY: Again, Your Honor, I had to do this within
11 probably 15 days of getting a piece of paper that had
12 allegations on it that I can't use. These are my
13 affirmative defenses back in 2013 that I had to raise or I
14 waived.

15 MR. HYLAND: And there was four years to change it.

16 MR. EARLY: But I --

17 THE COURT: Let me ask you this, what proof is there in
18 this record that Mr. Stewart was in any way negligent?

19 MR. EARLY: As I said, Your Honor, I alleged that, I
20 raised it, but since then, I have seen none. But if I
21 wouldn't have done that and we found out that Bowater gave
22 him respirators and he didn't use it, you know what Fritz
23 Jekell would be saying to me, you waived it. You can't
24 raise that because you waived it.

25 THE COURT: In this particular thing, I don't think

1 anything was raised about Mr. Stewart doing anything wrong.

2 MR. JEKELL: But now if we can't address that, Your
3 Honor, somehow I look like I did something wrong in crossing
4 the corporate representative on the answer they filed in
5 this case not only denying responsibility, but blaming the
6 decedent. I mean --

7 THE COURT: When did you ask that? Did you ask that of
8 Mr. Doherty?

9 MR. JEKELL: Mr. Doherty.

10 MR. EARLY: Over our objection.

11 THE COURT: That puts a different cast on it. I had
12 not remembered that.

13 MR. JEKELL: Well, I --

14 THE COURT: You've made your point, Mr. Jekell.

15 I'll reverse course. I had forgotten that was brought
16 up. It was asked of Mr. Doherty. It was legitimate to be
17 asked of him because it was in the answer at that time.

18 So, I'm sorry, Will, but I've got to -- that's in the
19 record.

20 MR. EARLY: I understand, Your Honor. Just so I
21 understand --

22 THE COURT: Now, the question is, number one, I'm not
23 going to strike -- so I'm retreating from striking it from
24 your answer, it's in your answer.

25 MR. EARLY: I understand, Your Honor.

1 THE COURT: Now, the question becomes do I charge
2 comparative negligence?

3 MR. EARLY: There's been zero evidence. As I said,
4 since I've signed that answer -- actually, my partner, Carl,
5 signed that answer --

6 THE COURT: I don't think the failure to charge
7 comparative negligence is going to preclude Mr. Jekell from
8 arguing that the corporate representative is trying to blame
9 Mr. Stewart. That's fine. But I don't see any necessity
10 for me to charge comparative negligence because the fact of
11 the matter is none has been shown.

12 MR. EARLY: Your Honor, based upon that, you know,
13 under Rule 15, we can move to amend the pleadings at any
14 time, including at the close of evidence. I would make a
15 motion to amend out answer to take that out.

16 THE COURT: Well, I'm going to deny that because the
17 problem is it should have been done before the corporate
18 representative was asked the question. You denied even then
19 trying to amend your answer. You simply didn't want him
20 questioned on the answer for other reasons. So I don't
21 think I can do that.

22 MR. EARLY: I understand. Just my point, though, we
23 couldn't ask them about what's in the complaint, but they
24 can ask us about what's in --

25 THE COURT: Now, wait a minute. I don't recall my

1 forbidding you from -- you couldn't ask what's in the
2 complaint that is precluded from being asked them by Smith
3 vs. Tiffany.

4 MR. EARLY: That's right.

5 THE COURT: That's a different kettle of fish entirely.
6 The Supreme Court addressed that and we don't need to plow
7 that ground again. But that's why the pleadings are not
8 going back because you can't -- the Supreme Court has told
9 us you can't put that information in front of the jury.

10 MR. EARLY: Yes, ma'am.

11 MR. HYLAND: Your Honor, as far as the comparative
12 negligence, are you talking about number six?

13 THE COURT: I'm talking about at the bottom of Page 23
14 --

15 MR. HYLAND: On the charge, I'm sorry.

16 THE COURT: I'm talking about the charge.

17 MR. HYLAND: I'm sorry, I thought we had switched over
18 to the verdict form.

19 THE COURT: No. I'm going to deal with the verdict
20 form in a minute and I'm going to strike it out of the
21 verdict form because I don't see any necessity for it.

22 MR. EARLY: Your Honor, next, there's a paragraph --
23 it's on my Page 26. I think we got flipped around somehow,
24 but we can find it. It's on punitive damages. I don't
25 think that's proper at this stage. I think the jury should

1 be asked at this portion of the bifurcation whether or not
2 they think that -- you know, the requisite questions to go
3 to the next stage, but I certainly don't think they should
4 even hear the words punitive damages right now.

5 THE COURT: I agree with that and I will pull that out
6 of the materials that go to the jury because we will have a
7 second phase if they utilize the jury form in such a way
8 that they find willful and wanton conduct. So that bottom
9 of 26, we will hold that and that will go to the jury only
10 if we reach that stage.

11 MR. EARLY: Thank you, Your Honor.

12 THE COURT: Good point.

13 MR. EARLY: My next one goes to somewhat of what I was
14 arguing in my motion for directed verdict. And it's on my
15 Page 5 and 6. It's called direct and circumstantial
16 evidence.

17 THE COURT: I think I've already said to you that --
18 yeah, I've got direct and circumstantial evidence.

19 MR. EARLY: Yes, ma'am. So at the bottom of that, I
20 would add -- I would request to add the language that we
21 initially requested to charge on that. And those were the
22 cases that I cited during my directed verdict motion, the
23 Nguyen case and the Harris vs. Roses Stores about
24 circumstantial evidence must be based upon probabilities
25 over possibilities, speculation and all that stuff.

1 THE COURT: I think I've already got that in that final
2 paragraph where I say where circumstantial evidence is
3 relied upon, it's incumbent on the party presenting the
4 evidence to show the existence of such circumstances that
5 would justify the inference that a particular event actually
6 occurred and not to leave the question of speculation and
7 conjecture if circumstances are proved to your satisfaction
8 may infer facts, et cetera. I decline to do that. I think
9 it's already covered.

10 MR. EARLY: Yes, ma'am. I respect your ruling. The
11 next one would be causation. Mr. Hyland was asking about
12 that a second ago.

13 THE COURT: What page is it on?

14 MR. EARLY: It's my Page 10.

15 THE COURT: Yeah, I've got another version now that's
16 got your same pages on it.

17 MR. EARLY: Okay. It's actually the paragraph where it
18 was misspelled earlier.

19 THE COURT: Evidence was presented of other parties?

20 MR. EARLY: Yes, ma'am, it starts with that. And I
21 think where the quote, is it is proper for you to consider.
22 And I agree that's probably what should be done here, I just
23 think that the last paragraph -- the last sentence, starting
24 with, and to assess whether the actions of those other
25 parties affected whether Defendant, Scapa Waycross, Inc.,

1 substantially contributed to Mr. Stewart's injuries should
2 come out. I think it's covered before that --

3 THE COURT: So you want to strike from and to?

4 MR. EARLY: And to assess, yes, ma'am. Because we're
5 going to get later down to the Bowater part about the true
6 charge on the worker's comp -- not Defendant, but the empty
7 chair.

8 THE COURT: That's fine with me.

9 MR. HYLAND: I don't have an issue with that.

10 THE COURT: Yeah, I agree with that. Take that out.

11 MR. EARLY: Looking further, Your Honor, on Page --
12 it's my 11 and 12, it would be strict liability, the
13 elements portion.

14 THE COURT: The elements portion, yeah.

15 MR. EARLY: If you look at the last paragraph of that,
16 the last sentence, it says, in the overall balance of risks
17 and the utility of the product, it's an incomplete sentence.
18 And I think Your Honor and Jamie probably took that directly
19 from my proposed charge number 25. And what that sentence
20 should be completed is, evidence of industry custom is
21 relevant to the ordinary users expectations.

22 So you charged exactly my number 25, which is that last
23 paragraph, but you -- after the comma, you left off the rest
24 of that. And it wouldn't make sense if it was just in the
25 overall balance of risks and utility of the product, period.

1 THE COURT: I get that. Just tell me what is supposed
2 to be added there.

3 MR. EARLY: If you look at my request to charge --

4 THE COURT: I haven't got it.

5 MR. EARLY: I understand. I'll help you find it.

6 THE COURT: Send me --

7 MR. EARLY: May I approach the bench?

8 THE COURT: Yes. Okay. We got it. Okay. What else?

9 MR. EARLY: Your Honor, on Page 13 of your proposed
10 charges, which would be a section called strict liability --

11 THE COURT: Failure to warn.

12 MR. EARLY: Failure to warn. Again, if you look at
13 their complaint, that is not pled at all. I mean, it's a
14 strict liability complete just boiler plate design defect.
15 And this also -- this language in here is also -- the
16 majority of it is included in the negligence portion of the
17 charge. So I would request that it's redundant to have
18 strict liability failure to warn and have it as an element
19 or as a breach of the duty in the negligence charge as well,
20 especially since it wasn't pled in the complaint, since
21 we're talking about pleadings.

22 MR. HYLAND: Your Honor, I would just submit that
23 failure to warn is an element of strict liability. Whether
24 or not it's been warned of --

25 THE COURT: Well, it's not. Strict liability can be

1 based on several kinds of sins, design defects, and one of
2 the other things that a person can be strictly liable for
3 without proving negligence is the failure to warn. And what
4 he's saying is that strict liability -- independent strict
5 liability cause has not been pled by y'all. And he's right
6 about that. What you all did was to plead design defect,
7 but you didn't not plead specifically failure to warn, as I
8 read your complaint.

9 MR. HYLAND: Well, I'm not looking at it right now, but
10 if I recall correctly, instead of saying strict liability
11 failure to warn, we had failure to warn, which is just
12 parsing it out.

13 THE COURT: Right, but was that a negligence cause or a
14 strict liability cause, that's the question?

15 MR. HYLAND: Well, it would be a strict liability
16 cause, Your Honor.

17 THE COURT: Well, how can I tell that? Third cause of
18 action strict liability.

19 MR. EARLY: And I agree they've raised it in their
20 negligence cause of action, Your Honor. I'm not disagreeing
21 with that. I just don't think it needs to be in both
22 sections.

23 THE COURT: Strict liability in the third cause of
24 action does not say it. Go back up to the negligence.
25 Yeah, the failure to warn is -- that's all in the negligence

1 cause.

2 MR. EARLY: That's right, that's what I'm saying, Your
3 Honor. Because you've got all these sections on strict
4 liability, including design defect. I just think it needs
5 to be taken out, the failure to warn there. It's pled and
6 addressed in your negligence charge.

7 THE COURT: What I'm going to do is this. I'm going to
8 take it out here, I think you're right about that. And I
9 will look again --

10 Jamie, look again at the negligence failure to warn
11 charge and make sure it contains all of this failure to warn
12 type information that needs to be in it.

13 Okay. What else?

14 MR. EARLY: Your Honor, if you look at the negligence
15 charge, which is my Page 16 and 17 -- it starts at the
16 middle of Page 16 and goes to about the middle of Page 17.

17 THE COURT: Yes.

18 MR. EARLY: At the bottom of Page 16, it says the
19 Defendant will owe a duty of care when the Defendant knows
20 the risks of harm, et cetera.

21 THE COURT: Where?

22 MR. EARLY: It's at the bottom of Page 16. It's the
23 second to last sentence.

24 THE COURT: A defendant will owe a plaintiff a duty of
25 care when the defendant knows of the risks of harm. This

1 may be met by showing the defendant was aware of the danger
2 and failed to take reasonable steps to correct where a
3 product is actually designed, manufactured by another
4 company that the seller sells. I see all that.

5 MR. EARLY: My only proposed addition -- and I don't
6 want to have to add all that on, but my request to charge
7 number 18, which comes from the Carter case, it says, The
8 law does not make a person insurer against all possible harm
9 he may be cause. I would ask that that be added.

10 THE COURT: I thought I said that somewhere else in
11 here.

12 MR. EARLY: If you did, last night when I was reading
13 this, I did not catch it, but I'm not saying you didn't.

14 THE COURT: Just make a note that we need to be sure we
15 have some little phraseology that says the manufacturer is
16 not the insurer, et cetera. I think it's in here some place
17 else.

18 MR. EARLY: Also, in that same section --

19 THE COURT: I can tell you where it is.

20 MR. EARLY: All right.

21 THE COURT: Okay. It's in strict liability. It's in
22 the elements of strict liability.

23 MR. EARLY: I'm not going to look for it. If you say
24 it's in there, it's in there.

25 THE COURT: It's in there.

1 MR. EARLY: Okay. Your Honor, also, in that section, I
2 think there needs to be something about industry standards,
3 like, for example, we talked about a second ago that if we
4 didn't comply with industry standards or even if our whole
5 industry is lagging behind, and we talked about that a
6 second ago, in my request to charge number 34 --

7 THE COURT: Well, I've got a manufacturer is held to
8 the skill of an expert in the field and is charged with an
9 expert's knowledge of materials and the process used in the
10 industry. A manufacturer has the duty to stay aware of
11 current standards and scientific knowledge in the industry
12 and, therefore, since the seller assumes the duties of the
13 manufacturer, the seller is held to the skill of an expert
14 in the field as well as has the duty to be aware of current
15 standards, et cetera.

16 MR. EARLY: I understand that.. All that's real bad for
17 me, I get that. I'm asking you to add a sentence that's
18 good for me. To complete it in context, which was from my
19 charge, it says manufacturer's compliance with industry
20 standards such as OSHA constitutes -- and I've got that
21 redundant. I don't know how I --

22 THE COURT: I'm not doing that. I did not do that in
23 Jolly. I made a conscious decision not to do that because I
24 think that confuses the jury and leads them to believe that
25 they can have a complete defense to their negligence and

1 even strict liability cause if they show that the OSHA
2 standards -- they followed the OSHA standards. I don't
3 think that's a standard for negligence or strict liability
4 in this area, so I'm not going to charge that.

5 MR. EARLY: I understand, Your Honor. I respect your
6 ruling.

7 Finally, Judge, we talked a little bit earlier that the
8 proximate cause and the but for, you're going to look at
9 that, I understand that.

10 THE COURT: I'm going to put something in there.

11 MR. EARLY: Right. So at the end of the -- when you
12 talk about there could be more than one cause, that
13 paragraph, so you've got a paragraph called causation and
14 there could be more than one cause, which I'll read -- I
15 have your Jolly charge. You got it straight from Jolly.
16 And I think -- I know, actually, the language from that
17 charge comes from the Thomas Sands case and also a tobacco
18 case called Little v. Randall Williamson. And it has that
19 language in there, but it also has -- it says, In addition,
20 a Plaintiff -- talking about the more than one cause. In
21 addition, a Plaintiff under this rule must show that it is
22 more likely than not that the conduct of the Defendant was a
23 substantial factor in bringing about the result. A mere
24 possibility of such causation is not enough and when the
25 matter one of pure speculation and conjecture where the

1 probabilities are, at best, evenly balanced, it becomes the
2 duty of the Court to direct a verdict for the Defendant.

3 THE COURT: I've already got something in there that
4 says that, but it doesn't say the thing about then it's the
5 responsibility to direct a verdict.

6 MR. EARLY: It doesn't say that, Your Honor.

7 THE COURT: I'm not going to say that.

8 MR. EARLY: You're right, it shouldn't say that, but I
9 think -- if you're going to charge this one of may causes
10 that we could be held liable for, this needs to be put in
11 there, too, because it's in those cases. I pulled those
12 cases and it does have -- if you look -- and it's from the
13 Fourth Circuit citing South Carolina law, Fitzgerald v.
14 Manning, 679 F2d 341, I just quoted directly from that case.
15 And I agree with you, you shouldn't put anything in there
16 about directing a verdict, but if you're going to have all
17 this in there, I think you also should put in there, you
18 know, possibility, causation, speculation, all that stuff,
19 what I just read.

20 THE COURT: I think I've got something in there that
21 talks about it's not mere speculation, et cetera.

22 MR. EARLY: If it is in the causation section, I don't
23 see it, Your Honor.

24 THE COURT: Well, send me what you want.

25 MR. EARLY: I will. I'll just e-mail you this

1 paragraph.

2 THE COURT: Okay.

3 MR. EARLY: If you would consider that. And Your
4 Honor, that would be substantively all I have at this time.

5 THE COURT: Very good.

6 Anything else?

7 MR. HYLAND: No, ma'am.

8 THE COURT: Okay. We will --

9 MR. EARLY: See you tomorrow morning.

10 THE COURT: -- see you tomorrow morning. What I would
11 suggest is that y'all be in place at 8:30 so that we can
12 look at these charges one more time and y'all will know what
13 I'm going to do before you start arguing before the jury.

14 MR. EARLY: We didn't talk about the verdict form. Do
15 you want to do that today, Your Honor, or tomorrow morning?

16 THE COURT: Yeah, I'm trying to get out of here.

17 MR. EARLY: I'm sorry. The biggest concern I have is
18 the language it's -- it's almost suggestive to the jury.
19 All it says, We, the jury, find da, da, da, yes, as opposed
20 to do you find. I think the language of the verdict form
21 should be --

22 THE COURT: I'm not going to change that.

23 MR. EARLY: Okay. And then, obviously, you're going to
24 take out comparative?

25 THE COURT: Yes.

1 MR. EARLY: So that would wipe out a couple of
2 paragraphs. When you get down to damages, Your Honor, this
3 is a --

4 THE COURT: Wait a minute.

5 (Pause.)

6 MR. EARLY: Finally, Your Honor, if you look at
7 paragraph five, I think it's paragraph five of Mr. Hyland's
8 proposed charges. I think --

9 MR. JEKELL: This is the one that Jamie sent.

10 MR. EARLY: I'm sorry, the one that Jamie sent. It has
11 three blanks. And I think there is a wrongful death
12 survival -- both, wrongful death and survival cause of
13 action. Don't deny that. One of which would be the damages
14 of Mr. Stewart before he passed away, that would be his
15 damages survived. The wrongful death cause of action, it's
16 got two spots, one for Mr. Edwards and one for Ms. Kingston.
17 It should be one blank there because it's for the Estate of
18 Steven Redfearn Stewart. I don't know -- I mean, if I had
19 six children, they wouldn't all be on there --

20 THE COURT: Mr. Edwards is named individually and as
21 the PR, right? Ms. Kingston, she is also identified
22 individually as a Plaintiff. And they are in that capacity
23 for their cause of action for loss of companionship. That's
24 why it's in there and that's why I charged on the loss of
25 companionship and what that means is the loss of society and

1 so forth and so on. They have the cause of action for loss
2 of companionship. And the estate has the cause of action
3 for the damages to Mr. Stewart, his damages. But the
4 damages that they have are damages for the loss of his
5 companionship.

6 MR. EARLY: I've never seen it done that way, Your
7 Honor. Wrongful death for one and survival of the other.
8 I've seen a wrongful death blank and survival blank. I've
9 never even seen names, but I understand. I mean, if you
10 have five children, it wouldn't be five blanks, I don't
11 think.

12 THE COURT: Well, I can do it that way.

13 MR. EARLY: I think it should be one blank for survival
14 and one blank for wrongful death.

15 THE COURT: That's fine. Instead of doing it the way
16 we're doing it, I'll be glad to do it that way.

17 MR. JEKELL: I don't have any objection to that.

18 THE COURT: That's all right with me.

19 MR. EARLY: Thank you.

20 THE COURT: What I'm going to do here is put damages
21 for wrongful death and damages for survivor, that's all I'm
22 putting there. Then I will explain to the jury, I'll add
23 something to the charge that explains to the jury that the
24 wrongful damages are Mr. Stewart's damages that are being
25 sought by his estate now as a substitute for him. And the

1 survival actions are damages that are requested by the two
2 children as far as the loss of his companionship.

3 MR. EARLY: I think you're getting that backwards.
4 Survival would be his damages --

5 THE COURT: Excuse me, survival is his -- they survive
6 his death.

7 MR. EARLY: That's right.

8 THE COURT: And wrongful death is their loss of
9 companionship.

10 MR. EARLY: Understood, yes, ma'am.

11 THE COURT: Thank you. We'll get that done right.

12 Okay. We're out of here. See you at 8:30 tomorrow.

13 (WHEREUPON, court was adjourned for the day to be
14 reconvened on Friday, February 9, 2018.)

15 FRIDAY, FEBRUARY 9, 2018

16 (WHEREUPON, Defendant's Exhibit No. 11 was admitted
17 into evidence.)

18 THE COURT: Are we ready to go?

19 MR. EARLY: Yes, ma'am.

20 THE COURT: Our jurors are assembled. You got anything
21 else for me? I'm going to bring the jury in.

22 MR. EARLY: Let us rest and we'll start, that's it.

23 THE COURT: Well, my commentary, then you'll rest --
24 then I'll turn it to you after my commentary and preserve
25 your objection. Then you all will formally close your case

1 and then we'll commence arguments for the jury.

2 What is your timeframe, Mr. Jekell?

3 MR. JEKELL: I will probably use about 15 minutes on my
4 initial closing and then hold about 10.

5 THE COURT: And hold about 10. That's up to you.

6 MR. JEKELL: We'll just how fast I can get through it
7 all, Your Honor.

8 THE COURT: I understand. I'm not one of these people
9 that cuts you off mid-sentence. If there's any need for a
10 slight variation and you go over, then I just give the other
11 side the same thing.

12 MR. JEKELL: I think I'm pretty tight.

13 THE COURT: Very good.

14 Bring in the jury, please.

15 (WHEREUPON, the jury enters the courtroom.)

16 THE COURT: Please be seated, ladies and gentlemen of
17 the jury.

18 Ladies and gentlemen of the jury, let me tell you what
19 will occur this morning. I am going to begin these
20 proceedings by placing a correction in the record that I've
21 gone over with counsel. I will preserve their objections to
22 my corrections. So I will recite a correction about a
23 ruling I made to you. And then I'll turn to the Defense,
24 who will close their case. And then I'll turn to the two
25 parties to make their closing arguments to the jury.

1 After the closing arguments are made -- each of the
2 closing arguments will be around an hour. I will look to
3 you at the end of the Plaintiff's closing to see if you need
4 a break. If you want a break at the end of the first
5 closing argument, we'll take one and then we'll come back
6 for the close of the Defense and the reply. And then we'll
7 take a short break and then I will charge you on the law.
8 Then I will instruct you as to when to begin your
9 deliberations.

10 I've still got to talk with the jurors, my alternates
11 -- I mean, to the parties and see whether there's any need
12 to keep you in case for some unforeseen reason we needed
13 your services in the middle of the deliberations. I can
14 tell you that if you're dismissed from service, you are
15 certainly welcome to stay if you want to until the jury
16 comes back with its verdict. So that's kind of how we will
17 proceed this morning.

18 So let me begin, I made a ruling -- and this has been
19 some time ago now, on January 31st, which was the Wednesday
20 of the first week of trial. It was in the Plaintiff's case
21 and I made a ruling with respect to Mr. Steele's testimony,
22 he was one of the coworkers. And this was right at the end
23 of his testimony. And I made a ruling allowing a certain
24 comment to be made by Mr. Steele and I overruled the
25 Defense's objection. I am now going to reverse that ruling

1 and strike from the record the testimony I'm going to read
2 to you right now.

3 And when I strike from the record, as I will discuss
4 with you further in the charges, that means you may not
5 consider that piece of evidence. It's a small thing, but I
6 want the record to reflect it. The Defense has interposed
7 an objection. We had a complete discussion about that and I
8 will turn to Mr. Early to preserve the Defense's position on
9 the matter after I finish striking the evidence. So here's
10 the evidence. It was at the end of Mr. Steele's testimony.

11 Court reporter, for your purposes, it's page 112 of the
12 record in these proceedings for Wednesday, January 31st,
13 2018. It's the direct testimony of Mr. Steele.

14 And Mr. Steele says in the process of discussing a
15 conversation -- it's the end of his direct testimony where
16 he discusses a final visit he had and a final conversation
17 he had with Mr. Stewart. And he said, Steve was not doing
18 well, as I said, and I was going to have to go out of town.
19 We had planned to go out of town. I don't remember the day.
20 I told as we were talking, I said I had to go out of town.
21 And I told Steve, I said, Steve, I probably won't see you
22 again. Question: What did he say to you? Objection, Your
23 Honor, hearsay. I allowed what follows to come in and I'm
24 now going to strike what follows from the record. He said,
25 I think Steve may have said we'll see one another again.

1 I'm striking that from the record.

2 And I turn to Mr. Early. And I preserve your objection
3 been fully argued and ruled upon yesterday afternoon.

4 MR. EARLY: Thank you, Your Honor.

5 THE COURT: Very good.

6 All right. Mr. Young, I recognize you for the purposes
7 of closing your case.

8 MR. YOUNG: Yes, Your Honor, the Defense rest.

9 THE COURT: Very good. The Defense rest. The evidence
10 is now fully in and both cases have been closed. It's time
11 for the closing arguments.

12 Mr. Jekell, for the Plaintiff.

13 MR. JEKELL: Good morning. We're finally here. And I
14 want to note at the outset that y'all have been a very
15 attentive and engaged jury. When we have jurors that want
16 to come in at 8:30 and 8:45, we recognize there's a lot of
17 sacrifice going on. And your service has been duly noted by
18 all. But the hard work is just about to begin and I want to
19 talk a little bit about that. Y'all, in a few minutes or a
20 couple hours, are going to get to go back there and finally
21 talk about the case.

22 And I want to talk a little bit about your
23 responsibilities as jurors because when you're back there,
24 y'all have to deliberate. And if you see a fellow juror
25 who's not willing to deliberate or not considering evidence,

1 it is appropriate for you to challenge that juror. And
2 you're going to say to yourself well, why would I need to
3 challenge a fellow juror? Well, I'm going to explain it to
4 you. There's been a lot of slight of hand going on in this
5 courtroom. There's been a little deception going on in the
6 courtroom. And I think y'all have seen through it. And you
7 may ask yourself, why would we see this deception? Why
8 would we see this slight of hand? Because Scapa knows that
9 in order for the Plaintiff to recover, I need a unanimous
10 verdict. And they'll throw these little deceptions out
11 there hoping that one or more of you will hold onto that
12 deception and allow Scapa to escape responsibility.

13 MR. YOUNG: Your Honor, I don't think that's
14 appropriate closing argument. I object.

15 THE COURT: Your objection is noted and overruled.

16 MR. JEKELL: Now, before we get into the facts, we're
17 going to talk a little bit about the claims again. If you
18 don't all mind, I'm going to stand back here. If there is
19 anyone who has trouble hearing me, if you will raise your
20 hand, I will attempt to speak a little louder.

21 The first thing we want to know is the A, B, C, D's of
22 asbestos. Asbestos breathed in causes cancer, mesothelioma
23 and death. That's what we have here, the A, B, C's of
24 asbestos.

25 Now, one of the claims that we brought -- we're going

1 to talk a little bit about the law before we get into the
2 facts. The first claims are the negligence claims. We have
3 negligence in the manufactured design of the
4 asbestos-containing dryer felts. We have negligent failure
5 to warn. We've got strict products liability and we've got
6 implied warranty of merchantability of fitness for a
7 particular purpose. And I'm going to talk a little bit
8 about the law, but as we go through this, the one thing you
9 need to know is my statement of the law does not count. It
10 is Her Honor's statement of the law. I'm going to do my
11 best based on what I've seen to talk with you about the law,
12 but Her Honor's charge is the law.

13 The first thing we're going to talk about is causation.
14 One of the burdens that we have is to prove that the
15 exposure to the chrysotile from the Scapa dryer felts caused
16 Mr. Stewart's mesothelioma. Causation. No single asbestos
17 exposure causes mesothelioma. We need not prove that Scapa
18 was the only cause, but a substantial contributing cause.
19 It is no defense that Steve Stewart's other exposures were
20 also a cause so far as Scapa exposure was a substantial
21 contributing cause.

22 Let's talk a little bit about strict products liability
23 first. Strict products liability, unreasonably dangerous.
24 It's got four basic elements. First, the product must be
25 unreasonably dangerous. Dryer felts were in a defective

1 condition because they contained asbestos and had the
2 propensity to release fibers. That the dryer felts were in
3 the same condition when they got to Bowater and were used by
4 Steven Stewart as they were when they left Waycross.
5 Clearly, they were. There's been no evidence that they were
6 substantially changed. That the defective condition in the
7 Scapa dryer felt caused Steven Stewart's injury, the
8 mesothelioma. And then the last element of strict liability
9 is there was a reasonable alternative design. Well, that's
10 easy, too. We all know that while Scapa was selling
11 asbestos-containing felts to Bowater, they were also selling
12 nonasbestos-containing felts. You've heard about them, they
13 were making nonasbestos-containing felts at the same time.
14 So we believe all those four elements would have been
15 established.

16 Let's talk a little bit about the negligence.
17 Negligence, again, the big difference between negligence and
18 strict products liability is in negligence, you do consider
19 the conduct of the defendant. We must establish that Scapa
20 failed to use the ordinary and reasonable care that a
21 reasonable and prudent manufacturer would use under the same
22 circumstances.

23 Now, a few things that are significant when we look at
24 negligence. First, Scapa is charged with the knowledge of
25 an expert in the field. They are supposed to stay current

1 with the scientific knowledge on all matters that affect
2 their product. They are also charged with the state of the
3 art of the knowledge, with what was known and knowing.
4 That's why you got a little history lesson. And y'all know
5 by now, this was the state of the art in 1965. So that's
6 what negligence is, failure to use reasonable ordinary care.

7 We believe that Scapa was negligent in designing and
8 manufacturing a product that contained hundreds, if not a
9 thousand pounds of asbestos per felt. A product that they
10 know the asbestos was brittle, would flake off, would cause
11 exposure and that they were negligent in the failure to
12 warn. There has been absolutely no testimony that Scapa
13 provided a warning or that anybody knew these felts
14 contained asbestos.

15 Now, what we also must prove is that they breached that
16 standard of care, that that breach caused injury, that the
17 asbestos exposure caused injury to Steven Stewart and that
18 he was ultimately damaged. We believe the evidence is going
19 to establish by the greater weight of the evidence all of
20 those elements.

21 I want to move on to breach of implied warranty. And
22 again, if you are a manufacturer and sell to the public a
23 product, in this case, dryer felts, you are warranting to
24 purchasers and users that the product will be -- will not be
25 defective and will not be unreasonably dangerous when it's

1 used in its intended manner.

2 Well, let's talk about that for a second. What is the
3 intended use of a Scapa dryer felt? Well, first thing,
4 again, y'all know these are huge, huge pieces of textile.
5 You've got to get it out of the box. You've got to get it
6 on the machine. You've got maintain it on the machine.
7 You've got to keep it clean when it's on the machine. And
8 at some point in time, when it's worn out, you got to take
9 it off the machine and you got to get rid of it. At each
10 one of those stages, that's its intended use, that's where
11 the exposures are. Don't get caught up in the machine's
12 moving at whatever the speed was. That's not where all the
13 exposures happened, folks. It's taking it out of the box,
14 putting it on the machine, keeping it clean, adjusting it,
15 taking it off and disposing it. That's where it happens.

16 So those are the claims. And again, Her Honor will
17 give you more on the law in a minute.

18 So what's next. Well, we have the burden to establish
19 exposure. Exposures must be frequent, proximate and
20 regular. Well, what do we know about that? Putting on the
21 felts, working with the felts, removal from the machine,
22 disposal and reuse of felts in the mill. But what else do
23 we know? Mr. Stewart only worked at the number one paper
24 machine. Utility, fifth man, fourth man, all the way up.
25 You've heard it all. I'm not going to waste a lot of time

1 talking about that. The number one paper machine was -- he
2 was there everyday. That's frequent. He was on that
3 machine everyday, that's proximate. They saw those felts
4 everyday, that's regular.

5 So I would submit to you that Mr. Stewart did have
6 frequent, proximate, regular exposure to Scapa
7 asbestos-containing dryer felts. We know there were 23 of
8 them. When you look at this, the Mastercards, you look at
9 them closely. From 1963 to around 1980, there's a Scapa
10 asbestos-containing dryer felt on machine number one
11 throughout that entire period.

12 Now, how did we establish this exposure? Well, we
13 talked a little bit about Mr. Steele just a minute ago with
14 Your Honor, but you heard a lot of from the actual guys in
15 the plant who were making paper, the paper makers. The guys
16 that were there with Steve. And you know what Mr. Steele
17 said, they cut dryer felts off of number one. He saw Scapa
18 there. He saw Steve work with Scapa felts. And he never
19 saw any kind of warning.

20 What else did they tell us? All those steam lines, all
21 that insulation, clad. And that makes sense, common sense.
22 Her Honor is going to tell you, you can use your common
23 sense when you evaluate these things.

24 Now, in addition to Mr. Steele, Mr. Ward came in. Mr.
25 Ward, y'all remember Mr. Ward, he was the one that a few

1 days after he got to Bowater, he had the problem with one of
2 those felts and Scapa was going back and forth whether it
3 was asbestos or nonasbestos. That's not really the point.
4 The point is Harold Ward remembers what happened at Bowater.
5 Harold Ward remembers Scapa. They talked about how they
6 used that high pressure air to clean each other off, to
7 clean up the machine, to clean up the basement where they
8 were cutting up the felts. Y'all remember that.

9 You also remember that high pressure air, what did we
10 learn about that high pressure air? Well, the asbestos gets
11 in the air, it will settle out and you hit it with the high
12 pressure air and you continue to expose yourself to this
13 asbestos. And Mr. Ward told you about that. He remembers
14 Scapa felts on number one. He saw Steven Stewart cut Scapa
15 felts. He also saw clad steam lines.

16 Now, you also heard from Mr. Steven Stewart himself.
17 He gave a deposition before he passed away and he was able
18 to tell you in his own words what he did at Bowater and with
19 the Scapa asbestos-containing dryer felts. He identified
20 Scapa on the boxes. He analogized cutting felts to cutting
21 carpet with the Stanley. And again, you're cutting through
22 two weaves of thick asbestos yarns. He was directly
23 handling Scapa felts on the number one machine and was
24 exposed to asbestos.

25 Next, we heard from -- we don't have a picture of Mr.

1 Heglar because y'all understand Mr. Heglar was not with us
2 anymore, but we were able to get his deposition and you
3 heard from Mr. Heglar. The thing that is important to
4 remember about Mr. Heglar, he was a pipefitter. I think you
5 will recall he was a pipefitter, but he saw the guys on the
6 number one machine and he knew what the felts were. But you
7 know what he told us, pipefitters fit pipe, insulators
8 insulated, paper makers made paper. It was a union shop. I
9 mean, there were some points in this trial you'd think
10 Steven Stewart was an insulator. Well, that just didn't
11 happen. And Mr. Heglar told you that. He did it. I seen
12 him blow down -- I've seen Steve covered with dust from head
13 to toe from blowing that thing down when it shut down.
14 Again, they identified the activities where the exposures
15 really would have occurred and that's what's significant.

16 I don't know if y'all remember, it was Harold Ward that
17 was talking about the whole crew would need to be there
18 manhandling this felt with their faces up in it, crawling on
19 it. I mean, a thousand-pound piece of felt, you're holding
20 on the edges. I mean, I'm not a big guy, but I've helped a
21 lot of people furniture. And you know how it is when you're
22 holding onto a heavy couch, you're straining. That's what
23 these guys were doing with the felt putting it on the
24 machine. They're all over it.

25 What else do we know? If you put your finger on an

1 asbestos-containing felt, you're going to take asbestos off.
2 And it's on their chest, their faces are in that felt. And
3 that's what these guys told you. So don't forget, the
4 exposures all didn't happen when the machine was running at
5 speed other than for the blow downs that may have happened
6 or the hay outs that may have happened. Don't forget those
7 felts needed to be cleaned. And you've seen a lot of the
8 evidence. They talked a lot about that 90-degree angle.
9 That never happened, did it? Well, y'all saw their own
10 documents, they knew air cleaning of felts. You're going to
11 blow 90 degrees on that felt to get it clean because you got
12 to keep it clean, get the water out of it.

13 In addition to the coworkers, you've seen a lot of
14 expert witnesses. And I'm going to run through these guys
15 really quick. Dr. Arthur Frank. You remember Arthur Frank
16 wasn't here. We played his video early on. But he said
17 Scapa asbestos caused Steven Stewart's mesothelioma. Dr.
18 Frank said exposure to Scapa asbestos-containing dryer felts
19 was a substantial contributing cause to his disease.

20 Dr. Brodie, y'all remember Dr. Brodie. Dr. Brodie told
21 you in no uncertain terms low level chrysotile exposure
22 causes mesothelioma. How did he know that? Because he did
23 it. He overexposed mice to prove chrysotile gets to the
24 pleura spaces. It stays there and what happens? What do we
25 know about mesothelial lining? It's a thin layer. Remember

1 that? Remember he talked about how often the mesothelial
2 cells reproduce and recreate and split. There's more
3 opportunity at the pleura where the mesothelial cells are
4 for the chrysotile to interact with the genetic, but there's
5 nothing special about chrysotile. It can cause all the
6 genetic changes of the other asbestoses. And he did the
7 science and he told you about it.

8 I wanted to show you a clip real quick of Dr. Frank.

9 (WHEREUPON, video was shown to the jury.)

10 MR. JEKELL: That was Dr. Frank and I'm sure you
11 remember a lot of that.

12 Who else did we bring? Well, we brought in Dr. Jim
13 Millette. And I want to make certain about something. Dr.
14 Millette has taken a lot of heat from Scapa in this trial.
15 They talked about the one by one felt that he used in the
16 glove box to make sure he didn't spray himself with
17 asbestos. I hope y'all remember, there were a few times in
18 the trial that it was pointed out. You know how big a
19 sample Scapa used to test when it tested its felt? A one by
20 one. It's the same size Scapa used.

21 But you know what? Dr. Millette didn't have access to
22 all the Scapa felts. I mean, you've seen it. He looked at
23 two Scapa felts. What did he find? One of those yarns
24 wasn't resin coated. The other yarn was. And it's this
25 one, the picture up there. The only folks that have shown

1 you actual asbestos fibers coming off the Scapa dryer felt
2 are the Plaintiff. And there they are. Those aren't
3 pictures from something else. Those are asbestos fibers
4 from a Scapa dryer felt. You see in the bottom I've
5 highlighted that, that was the five micron. Remember that?
6 Now, Dr. Crapo said a lot of stuff, but he said eight
7 microns was a long chrysotile fiber. Look at those. You've
8 got chrysotile fibers coming off Scapa felts that are 40,
9 50, 60 microns long. Look at them. That's from their felt.

10 What else did Dr. Millette tell you? Routine daily
11 activities with the felt will cause release. And he told
12 you that only one felt -- and we know there's a couple of
13 this type felt there. 1088 pounds of chrysotile asbestos in
14 one felt. I think he said it was 96 quadrillion asbestos
15 fibers. Now, all that means, ladies and gentlemen, is what
16 should a reasonable manufacturer do putting that much
17 asbestos into a felt that people are going to handle? And
18 it's a lot of potential for exposure. And that's what Dr.
19 Millette said.

20 The other folks we had -- and I'm going to talk about
21 Christopher DePasquale, the industrial hygienist. Again, he
22 confirmed that installation and removal will cause exposure.
23 Cutting and the blowing will cause exposure. And he told
24 you about that room in the basement. I called it an
25 exposure enclosure. There were no windows. There was no

1 ventilation in there where the guys are sawing through the
2 felts with a Stanley knife and where they've got to use the
3 air to clean up the basement floor, Mr. DePasquale told you.
4 And he also told you that the 23 asbestos Scapa felts, a
5 substantial occupational exposure to asbestos.

6 Then we had Dr. Harpole. And I think y'all remember
7 Dr. Harpole's picture. And I hope I don't have to remind
8 you what that's a picture of. But Dr. Harpole came in and
9 told you, number one, he said, Mr. Stewart when he came to
10 see me was a young man. He was 70 years old who was in
11 basically good health. His conditions were being well
12 maintained. And that's why he did the pleurectomy. That's
13 why he wanted that tumor out of his chest.

14 What else did he tell you, he said for a healthy man,
15 that surgery would be hard. For a man who just went through
16 chemotherapy, that surgery is really tough. A lot of pain.
17 And he talked about how he opened up his chest, isolated the
18 right lung, took two ribs out and carefully scraped the
19 pleura and the plaque and the tumor off. And then he sealed
20 that lung with the argon laser. That's tough stuff.

21 So, basically, we have established through this
22 evidence that Scapa skipped important parts. They never
23 tested their yarns. They never warned. They failed to
24 research asbestos. Well, they didn't really, which you'll
25 see in a minute. They knew. They knew. We're going to

1 show you. They failed to test, that's clear. I mean, Mr.
2 Doherty, we're going to talk about Mr. Doherty, but
3 everybody from Scapa admitted I didn't see any testing of
4 these felts. They failed to warn. I mean, even Mr. Doherty
5 when forced to answer -- I think Mr. Young even asked him,
6 Did you warn about asbestos? He readily admitted, We did
7 not warn about asbestos. Scapa had the knowledge. They had
8 the resources. I hope y'all remember we talked a little
9 about their R & D, their research and development lab they
10 had in Waycross. What were they doing down there? They
11 weren't looking at the asbestos.

12 There was a couple of other witnesses, remember, Harry
13 Merck. Harry Merck was the executive, who, again, is no
14 longer with us. And he gave a deposition over three days
15 and we read it and it took a long time. But he told you a
16 few things. He was an executive in Waycross. He said -- he
17 explained the relationship between Scapa Blackburn in
18 England and Waycross as mother to child.

19 And why is that important? Well, we learned there was
20 a lot going on in England and London before it got here,
21 before OSHA started heating up. Again, no testing. But
22 remember this, in 1974, he told you, oh, no, we destroyed
23 those documents. We got rid of them. We had a fire. We
24 didn't make an index. We didn't make copies. We put them
25 in the fire. He told you that from his own words.

1 Now, who else came in? And Mr. Doherty, you know, he
2 came in here as a corporate representative. I'm going to
3 submit to you he was ill prepared for the job in front of
4 him. And, unfortunately, you know, points had to be made
5 with him. But what did he say? We all know why he came in.
6 I mean, he was the only person willing to get up there on
7 that stand and tell you that a dryer felt is a wet rug that
8 stays wet for a month.

9 I've got something over here that I wanted to show you.
10 Y'all saw Dr. Millette's burnt rug. You remember these
11 pictures from Dr. Millette, burned. He showed you, that's
12 from the dryer felt. This felt -- you remember the Western
13 Michigan pilot plant study? That dryer felt came off of
14 there. Wet rugs don't get burn marks on them. But again,
15 Mr. Doherty came in, he admitted no testing, no warning, but
16 the only reason he was here was to talk about a wet rug.

17 All right. I want to talk a little more -- let's
18 really focus in on what Scapa knew and things like that.
19 Now, Scapa knew disease well before 1975. This is a 1976
20 memorandum and it says, The recent adverse publicity on use
21 of asbestos may cause some concern to our personnel within
22 Scapa. And I would like to detail the measures. And he
23 goes on to say, Many years ago, I worked in the asbestos
24 industry and was not unaware of the possibility of such a
25 disease being contracted. That's knowledge of the hazards

1 of asbestos.

2 So what else do we know? During this time, Scapa is
3 buying asbestos yarns every month, every year, millions of
4 pounds of asbestos. Remember, Mr. Doherty admitted asbestos
5 was a monthly budget item every year from '63 to, at least,
6 '79. Why did they need to keep buying all of this asbestos?
7 Why? Well, we know what Scapa knew and felts deteriorate,
8 dryer felts deteriorate. The documents are in there, take a
9 look at them. But they know they deteriorate and they know
10 they wear out and they know they needed asbestos to sell
11 more felts. So don't kid yourself. This is entitled
12 deterioration of fiber in dryer felts. And they want to
13 come in here and tell you that asbestos doesn't come off
14 those felts.

15 So now we're up until about the 70s. What's happening
16 in the 70s? Well, we've got OSHA coming on. We've got '71,
17 '72, OSHA. People are recognizing that asbestos is
18 dangerous. People are starting to ask more questions. And
19 what's going on in Waycross, Georgia? Again, Mr. Merck says
20 hey, there's heat, pressure is coming on, let's all get
21 together. What do they do? They have a fire. They have a
22 fire. What do you think was in there? I bet some of those
23 Manville documents on the resin were in there. I bet.

24 Now, 1974 -- and again, all during this time, more
25 felts were going to Bowater, more asbestos felts, along with

1 the nonasbestos felts. Well, by 1975, Scapa said whoa,
2 let's take a look at this. Waycross are planning to have
3 asbestos out of all designs in 1977. That's good public
4 policy, right? Let's get the asbestos out. And we are
5 already being made in their nonasbestos equivalents. Well,
6 they can always make the nonasbestos equivalents. The
7 details of the changeover are -- look at that, caps,
8 underline, 1975. We are not discussing with sales and
9 customer. Fourth year they won't want it.

10 What else do they know? They should have them all out
11 by 1976. It's not a priority project, by the way.
12 Replacement yarn. There's a lot of documents I didn't show
13 you on replacement yarns. But look at this next section.
14 75 percent of all felts contain asbestos. Scapa says --
15 they played this number game with you, 23 of so many is
16 three percent, six percent. The evidence that you have
17 before you is there were 23 asbestos-containing felts at
18 Bowater from '63 to 1980. That's it. Those 23 asbestos
19 felts are 100 percent of the asbestos felts that have been
20 established by the evidence. Don't fall into this number
21 game.

22 What else do we know was going on? So publically,
23 Scapa is saying hey, replacing the yarns is a priority,
24 we're getting out of the asbestos business. That's not
25 exactly what they were saying internally. They say -- look

1 at this, We need the assurance of an asbestos supply. 1976,
2 '75, OSHA is out there. Remember this, folks, by 1973,
3 thermal insulation was asbestos free. We showed you that.
4 But they want their own plant. They want to be
5 self-sufficient in making asbestos yarns in 1975. Was
6 getting out of the asbestos business really a priority?

7 What else do we know around this time of 1975? Well,
8 we know from the testing in Blackburn, resin yarns release
9 asbestos fibers. Again, A, not all yarns were resin coated.
10 You saw the Manville document. They started in 1970. Dr.
11 Millette said one of the felts he tested had no resin on it.
12 Didn't help them from releasing fibers. And you remember, I
13 showed Mr. Doherty, I showed Mr. Carlson this very topic and
14 I asked them doesn't that establish that even resin-coated
15 yarns can release fibers? And when push came to shove, they
16 had to say yes. And they do.

17 What else? We've got asbestos yarns replacements. And
18 now Blackburn reaches out to Waycross and said hey, we're
19 getting a lot of heat over here on asbestos in England, what
20 is your policy on use of asbestos yarns? I'm meeting with
21 Turner personnel on Wednesday and they would like this
22 information. Turner was a yarn supplier for them. Let's
23 not forget, Scapa had a large number of asbestos yarn
24 supplier, Rabestos Manhattan, Johns-Manville, Turner
25 Brothers, Uniroyal, a lot of them. And what's the reply

1 from Waycross, Georgia? Asbestos, no policy today.
2 However, again, they're keeping the public -- yarn suppliers
3 continue to render samples for substitutions to move away by
4 July 1st, July 1st, 1976. Well, how well did that go? Not
5 real well.

6 What else is happening during this time? Well, again,
7 more felts being sold to Bowater. They've got over five
8 tons. By this time, about 23 of these monsters have been
9 sold to Bowater. And look, they all told you it's 500
10 pounds. The two felts Dr. Millette looked at were almost a
11 ton together, two felts. That's what they're doing;
12 continue to sell asbestos to Bowater.

13 And when they did get out of the asbestos business?
14 Not until well after 1980. And again, look at those
15 numbers. In 1980, the SRA, synthetic reinforced asbestos,
16 we went over that. Look at that document. They sold over a
17 half million dollars worth of asbestos yarn one type in
18 1980. Yet, getting out of the asbestos yarn business is the
19 priority. Well, that's what was really going on, ladies and
20 gentlemen.

21 Now, I want to shift my focus to some defenses.
22 Because, again, I've told you Scapa came in here denying
23 responsibility. And they have a few defenses. And the
24 first one is intervening cause. Now, y'all remember -- I
25 knew you were a very attentive jury when after Mr. Heglar's

1 deposition, y'all sent us out a note. Y'all said we're
2 hearing these companies, Albany, Asten, Mt. Vernon, whatever
3 they were, well, that's this. This is their defenses.

4 Now, on the defenses, let's remember we talked about
5 burden of proof. I had the burden of proof up until this
6 point. I had to establish the exposures, the causation and
7 all of that, the liability by the greater weight. Scapa
8 bears the burden on these. And what they need to establish
9 is someone or something breaks the chain of causation for
10 Steven Stewart's mesothelioma. And they're claiming that
11 the Albany felts, the Asten felts, maybe the thermal
12 insulation. But what have they really proven in this
13 regard? We're going to go over that in a second, but listen
14 closely because I don't believe you've seen a whole lot of
15 proof of anything with regards to these defenses. Again,
16 there's a little slight of hand going on, a lot of names
17 going out. You didn't see any invoices for any of that
18 stuff. Did you? I mean, the only person who showed you an
19 invoice for thermal insulation was me. And it had canvas on
20 it.

21 What else are they going to say? Sophisticated user.
22 Scapa can avoid its responsibility and duty only if Scapa
23 can prove number one, they actually warned Bowater that the
24 Scapa felts contained asbestos. But what else must they
25 establish here? They must establish that Bowater knew about

1 the specific asbestos dangers at the time and that Scapa
2 could rely on Bowater to do the right thing. It's a
3 two-part test. So remember that.

4 Now, as they were putting on their case and doing some
5 of this, I was saying to myself, where's the proof? Where
6 is Scapa's proof? And as things were being said, I started
7 to make a list of things that were said that I don't believe
8 were ever established. Let's go over a few of those.

9 What's the first one? Well, all yarns from all
10 suppliers are resin coated. And you heard that from Scapa's
11 lawyer. Right up front, we know that's not true. We've not
12 seen any proof of any resin. Millette tells you it's not
13 true. Johns-Manville document tells you it's not true. And
14 nobody from Scapa can prove it other than Mr. Young's
15 statement.

16 Here's another one. And when I'm hearing this
17 testimony, my ears perk up. Mr. Carlson's talking about
18 I've seen air sampling on the number one paper machine at
19 Bowater. I'm like I want to see this. I need to
20 cross-examine him on this. Where is it? Again, my ears
21 perk up. Mr. Carlson, I didn't see it. I didn't see any
22 air sampling at any time around paper machine number one. I
23 didn't see any of that other sampling he talked about
24 either.

25 What else did they say? Again, Mr. Carlson, certainly

1 knew a lot about the condition of insulation material that
2 he never saw, that he got from documents he never showed
3 you. He talked about a survey that said there was all this
4 deteriorated insulation. Did you ever see that? Again, the
5 only person that showed you a survey from abatement
6 activities was the Plaintiff because we aren't afraid of it.
7 We know it was there. But he never showed it to you. Why
8 didn't he? Where is that thermal insulation that he says is
9 falling off? They were clad and he knew it and that's why
10 he did that.

11 What else? You heard Mr. Doherty, Bowater asked for
12 asbestos. No, they didn't. When pushed on it, he had to
13 admit no, what did the paper makers want? Less hydrolysis.
14 That's what they cared about at the paper mill. Well,
15 ultimately, Mr. Doherty had to admit, well, they wanted less
16 hydrolysis. They weren't out there asking for asbestos.
17 And there's no knowledge that they were. What else? Mr.
18 Doherty also said Scapa advertised its asbestos content. I
19 don't see any of that. Did you?

20 So again, did Bowater know? I haven't seen proof of
21 it. And if you don't think there are people at Bowater
22 around to come talk about these things? There are. We have
23 depositions. We read in depositions from 20 years ago.
24 This information is out there. They didn't bring it to you.
25 That any other companies asbestos felts were on paper

1 machine number one. Again, Scapa's lawyers tell you well,
2 Mt. Vernon was the biggest supplier. I'm sure you're going
3 to hear some of it in a minute. What did they actually
4 prove?

5 Here's another one, I heard -- again, my ears are
6 perking up when I hear this. They're asking Mr. Carlson
7 about an invoice for a million pounds of stuff. Now, I'm
8 sure they used the million pounds because I had gotten Mr.
9 Doherty to admit that Scapa always had a million pounds of
10 asbestos yarn in the warehouse. But again, my ears perked
11 up. An invoice for a million pounds of something? I want

12 to see that. I never did. So that's what Scapa has done, a
13 little slight of hand, a little diversion.

14 All right. I'm about done. I've given you a little
15 law. I've given you the facts. You're going to have all
16 the evidence and I trust that y'all know the evidence.

17 The next thing I'm going to do for the next little
18 minute, I'm going to go over the verdict form with you.
19 There's five questions on the verdict form. And,
20 ultimately, these are the questions that you'll need to
21 answer after the Judge gives you the law.

22 Number one, we, the jury, find that Scapa Waycross was
23 negligent and its negligence was the proximate cause of
24 Steven Stewart's injury? I say yes.

25 Question two, strict liability. We, the jury, find the

1 Defendant Scapa Waycross is strictly liable for selling
2 products that proximately caused injury to Mr. Steven
3 Stewart. Again, I think we've established that it's
4 unreasonably dangerous. There were alternatives. It
5 releases fibers.

6 Question three, implied warranty. We, the jury, find
7 the Defendant Scapa Waycross breached the implied warranty
8 and the breach was the proximate cause. Yes.

9 Now, those, I think, are the easy questions. The next
10 one, if you answered yes -- you could answer yes to question
11 one, two or three and you have to answer question four,
12 okay. This is the hard work. What is -- what do we put in
13 there? We're going to talk about damages. There's two
14 elements of damages in this case. We've got the damages to
15 Steven Stewart himself. And what do those include? The
16 Judge is going to charge you, but it's mental anguish, it's
17 pain and suffering, it's loss of his 14 years of life that
18 he had left, loss of enjoyment of life and it's also medical
19 bills. And a long time ago in this case, you heard that Mr.
20 Stewart had over 241,000 in medical bills and that was a
21 stipulation that we all agreed to.

22 So the first line here, you need to talk about Mr.
23 Stewart's damages. And it's a very difficult situation.
24 What has Steven Stewart lost? And, you know, he lost Davis
25 and Steven, his grandkids. Remember, Dr. Harpole said he

1 did that really terrible surgery in the hopes that he'd see
2 another life goal. Maybe Steven or Davis getting into high
3 school, maybe buying their first junker where Gramps had to
4 help them fix it. That's what he's missing. Just hanging
5 out with his two kids, that's what he lost.

6 What did he suffer? He suffered tremendous pain. Dr.
7 Harpole told you -- and I'm going to tell you, big pain, big
8 damages, yes. Was this big pain? Was this a big loss,
9 dying a painful death from mesothelioma? Yeah, it's awful,
10 folks. And you already know that. Big damages. But again,
11 we're here for your collective judgment.

12 But I want to tell you, how do you put this in
13 perspective? How do you wrap your hands putting a number in
14 that box? And I'm going to tell you a little story about me
15 that I hope helps put it in a little better perspective.
16 Years ago, I used to fly a lot. I would fly a lot from
17 Laguardia in New York City to Charlotte. I'd be on that
18 plane a lot. And I'd always see friends in either Laguardia
19 or Charlotte from Greenville, Columbia and Charleston. And
20 I would look forward to that. Get to the airport, see a
21 friend, maybe have a cocktail with them. But there came a
22 point in 2009 where I was somewhere and I looked up at the
23 TV and there's a caption. And I see a plane in the Hudson
24 River. And I'm like, oh. It was a flight from Laguardia to
25 Charlotte. And it caught my breath because I see an Airbus

1 A320 starting to sink in the Hudson. And I'm like, oh, my
2 goodness, what's happening? And that plane was going down.
3 And it's a 75 million dollar plane. And I'm like where is
4 everybody? What's going on? Finally, that door opened and
5 people started walking out on the wing. And everybody was
6 let out on the side of the wing. Oh, they're going to be
7 okay. And as more people kept walking out on those wings,
8 that 75 million plane kept going in the water and nobody
9 cared about that because a plane is replaceable. Those
10 people on the wing aren't. And that's really what we're
11 talking about here.

12 So again, I'm going to -- you know, lawyers -- I know
13 juries are always skeptical of lawyers. And I'm going to
14 write a number down here. You're saying oh, this should be
15 good. Well, you know, y'all are very intelligent. I mean,
16 I could get up here and be like one of these TV lawyers up
17 here, 60 million dollars. Well, that would insult your
18 intelligence. You've all seen the case. You know the case.
19 Steven Stewart had 14 good years left to spend with his
20 kids, with his grandkids, Davis and Steven. So I'm going to
21 say Steven Stewart's damages \$4,600,000. Now, listen,
22 that's my judgment. We're not here for my opinion. The
23 Stewart family is here to take your collective judgment,
24 okay, but that's what I would think.

25 Now, what was the other element of damages? The other

1 element of damages are their loss, Kathryn and Steven. And
2 I want to talk to you a little bit about that. You know,
3 Kathryn, I mean, she got all emotional on the stand. And
4 I'm sure you're going to hear from the Defendants something
5 about something she said, this stupid stuff. I'm sure
6 you're going to hear it. But she wasn't talking about your
7 work or my work, she was talking about while she's thinking
8 about her dad dying from mesothelioma and the defense
9 lawyers talking to her about adoption and whether she called
10 this one dad or this one daddy. And why she couldn't be
11 there when he was on his deathbed because she worked for a
12 bad boss. You're going to hear some of that.

13 But you know Kathryn's story. There came a point in
14 her life when she was in Texas, thousands of miles away from
15 her family. She was in an abusive relationship. What did
16 she do? She calls dad. What did dad do? Get your butt
17 home. I've got you. And he did. He made sure she was
18 okay. And she will be forever thankful.

19 So they've lost a great deal. Her children are not
20 going to see their granddad. And that's the other element
21 of the damages. And again, this is your decision. But
22 Steven has lost, too, just hanging out with his dad, maybe
23 going out to try to get that buck. But again, I'm going to
24 say that is worth 600,000.

25 Now, the last question you have to consider, again, by

1 unanimous vote and by clear and convincing evidence, okay.
2 Clear and convincing is a larger burden than the greater
3 weight of the evidence. That's the first thing you want to
4 talk about. But we, the jury, by unanimous vote find by
5 clear and convincing evidence that the conduct of the acts
6 of the Defendant were willful, wanton and reckless. Well,
7 if you're putting a thousand pounds of asbestos that can
8 flake off and get in your mouth and kill you, you never test
9 it or never tell somebody hey, that's got asbestos in it.
10 Don't breath the dust. I tell you, that's willful, wanton
11 and reckless.

12 And I think -- you've seen the evidence, you've heard
13 my arguments and it's going to be in your hands. Now, I'm
14 going to get a few minutes to talk to you after Mr. Young is
15 done, but I thank you for your attention.

16 THE COURT: Ladies and gentlemen of the jury, you've
17 heard the closing statement on behalf of the Plaintiff. I'm
18 going to let you stretch for a minute. Let's go to the jury
19 room for 10 minutes and be refreshed and take a stretch and
20 then we'll hear the closing arguments of the Defendant.

21 (WHEREUPON, the jury leaves the courtroom.)

22 THE COURT: Court will be at ease for 10 minutes.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: Let's see if they're ready.

25 (WHEREUPON, the jury enters the courtroom.)

1 THE COURT: Please be seated, ladies and gentlemen of
2 the jury. Ladies and gentlemen of the jury, it's now time
3 for the closing statement for the Defense.

4 Mr. Young.

5 MR. YOUNG: Thank you, Your Honor.

6 Ladies and gentlemen, it's the last time you'll hear
7 from me. I haven't gotten a chance to address you since
8 opening statement. But the first thing I really want to do
9 and Scapa wants to do is thank you. Y'all have been
10 extremely attentive to a very complicated case. And I
11 always say the devil is in the details. And as I told you
12 at the very beginning of the case, ladies and gentlemen, we
13 would ask that you decide the case based upon all the facts
14 and not isolated facts. And they call this closing
15 argument, but I'm not really going to try to argue y'all
16 into anything. I do want to give you the facts that we
17 believe support the reason we defended the case, the reason
18 that we came and claimed that thermal insulation did it and
19 that our small number of dryer felts did not.

20 And I want to take issue with a couple of things that
21 have just been said. I'm not much of a screamer or
22 whatever, but we're not trying to deceive anyone and we're
23 not trying to do any sort of slight of hand. We did our
24 best to bring you our evidence in an organized,
25 understandable, legitimate fashion. And if any of y'all

1 thought that Chris or I were trying to do a slight of hand
2 or deceive anyone, I apologize for that. That was not our
3 intention. And please don't hold that against Scapa.
4 That's not why we're here. We're here, as the Judge told
5 you at the beginning of the case, for you to decide the case
6 on the truth of the evidence in the case.

7 So ladies and gentlemen, it's not a secret that our
8 defense is that we don't believe that Scapa dryer felts
9 caused or substantially contributed to Mr. Stewart's
10 mesothelioma. We believe the thermal insulation that Mr.
11 Jekell never mentioned in his opening statement, but we
12 showed you and brought you full evidence of it was the
13 cause. And what I'm going to do right now is run through
14 the evidence that we believe supports our defense, but I
15 want to tell you all something very seriously first.

16 Y'all may remember Mr. Jekell cross-examining Mr.
17 Doherty about an answer that was filed in this case that he
18 had nothing to do with. But, ladies and gentlemen, we have
19 never claimed and do not claim that Mr. Stewart was in any
20 way responsible for his illness. He was a good fellow.
21 We're not here to be disrespectful to his family. Nobody in
22 this courtroom, including Scapa -- everyone wishes that Mr.
23 Stewart had never gotten mesothelioma and that we had never
24 had this trial. But he did, ladies and gentlemen, and he
25 sued. And as the Judge will tell you later, in America,

1 there's a right to sue, but there's also a right to defend.
2 And if you don't believe that the allegations that the
3 Plaintiff makes in the complaint are correct or valid or
4 provable, then it's our job to come in and tell y'all why.

5 And you're going to hear a lot about this, but the
6 Plaintiff has the burden of proof on each and every claim
7 that they made in this case. Scapa doesn't have a burden of
8 proof on any of those claims. Mr. Jekell has to prove
9 negligence, strict liability, breach of warranty, damages,
10 everything. And, ladies and gentlemen, this is important
11 and I'm going to talk to you more about it in just a minute
12 because of the evidence in the case. They not only sued us,
13 but as you just heard, they sued us for a heap of money.
14 And that makes this burden of proof even more important.

15 Ladies and gentlemen, Mr. Jekell just asked you for
16 over five million dollars. Now, let's look and see what the
17 evidence is on his claims. And this is important, ladies
18 and gentlemen, and this is why we spent so much time on
19 this. The Judge is going to tell you in order for the
20 Plaintiffs to recover, they must establish that Mr. Stewart
21 worked around Scapa asbestos-containing dryer felts with
22 frequency, regularity and proximity.

23 Now, the only thing that was mentioned in opening by
24 Plaintiff was our dryer felts. No insulation, none of the
25 other dryer felt manufacturers. But what is the truth of

1 the evidence you heard on the question of regular, frequent
2 and proximate work around those 23 Scapa dryer felts. And,
3 you know, ladies and gentlemen, I'd ask you not to chase
4 some rabbits. We heard so much about this document
5 destruction in 1974. Well, all the Mastercards are in
6 evidence. And you will see that there are Mastercards
7 before 1974. There was no lawsuit pending by Mr. Stewart
8 then. There was no reason to rush out and destroy
9 documents. Scapa had a huge amount of documents. They
10 called the government and they did exactly what the
11 government told them they should do with respect to document
12 destruction.

13 And one other thing I want to mention. I'll mention it
14 to you again in a minute, but the entire set of Mastercards
15 from Scapa to Bowater will be in evidence. And Mr. Jekell
16 kept saying '63 to '81. Ladies and gentlemen, the truth is,
17 the first asbestos-containing felt was in 1969. And those
18 are the types of details that I ask you to pay attention to
19 because remember, Mr. Stewart said that his primary work
20 down in the basement cutting felts and toting them off was
21 when he was a utility worker and a fifth hand and a fourth
22 hand. Well, that was all before 1969. So when all that was
23 going on, ladies and gentlemen, we did not have one single
24 asbestos-containing felt there. So I ask you not to get
25 caught up in generalities, but to please look at the

1 evidence because the evidence will be in the jury room and
2 you'll be able to look at it and see what's right and what's
3 wrong.

4 What was the evidence as to Scapa dryer felts and Mr.
5 Stewart? Mr. Stewart did not testify having worked with
6 Scapa asbestos-containing felts. Mr. Ward, Mr. Heglar and
7 Mr. Steele were specifically asked can you testify that Mr.
8 Stewart worked with a Scapa asbestos-containing felt. And
9 they all truthfully said no. Mr. Jekell, as I heard what he
10 said, he sort of suggested this was a no-brainer. But,
11 ladies and gentlemen, on the burden of proof for frequency,
12 regularity and proximity, this is important. Because this
13 is the kind of evidence that you need to establish and the
14 Plaintiffs did not put on any such evidence.

15 Interestingly enough, ladies and gentlemen, we had a
16 big to-do about a Scapa felt running off the machine in
17 December of 1972. That was remembered by a coworker. It
18 turned out that it probably wasn't a Scapa felt, but, more
19 importantly, ladies and gentlemen, it turned out that Mr.
20 Stewart wasn't even working on that shift when that happened
21 and he didn't have anything to do with that felt running off
22 or taking it off or putting something back on. But the
23 point is, ladies and gentlemen, that event was remembered,
24 yet no one remembered, none of the coworkers who testified
25 at length that Mr. Stewart had worked with or around a Scapa

1 asbestos-containing felt.

2 Now, ladies and gentlemen, I want to be clear about
3 something. We're not blaming anything on Lockport, Mt.
4 Vernon, Asten or Albany, but the truth of the case is,
5 ladies and gentlemen, which we told you, not the Plaintiff,
6 there were five dryer felt suppliers at Bowater. And the
7 workers all said Mt. Vernon was the major supplier. And,
8 you know, it's funny, the Plaintiff has the burden of proof,
9 yet you just heard that we didn't prove that any of those
10 other felts had asbestos in it. Well, ladies and gentlemen,
11 Mr. Jekell didn't prove anything about those felts. He
12 didn't even tell you that those manufacturers were there
13 until we brought it out in the evidence.

14 But the point is, we had 23 asbestos-containing felts
15 there during Mr. Stewart's 40-year career. And during that
16 time, there were 624 dryer felts used on paper machine
17 number one. So our point is it would be essentially
18 impossible given that small percentage for there to have
19 been -- Mr. Stewart to have had frequent and regular work
20 with or around Scapa felts. I mean, ladies and gentlemen,
21 frequent and regular means a lot, not just a little bit.
22 And that's the law. We didn't make the law, the Judge makes
23 the law. And that's important.

24 I mentioned this to you just a minute ago, remember,
25 Mr. Stewart started as a utility man, '63 to '66, fifth

1 hand, '66 to '67, fourth hand, '67 to '68. That's when --
2 those are the positions that usually cut up the felts in the
3 basement. But look at the Mastercards, ladies and
4 gentlemen, because our first asbestos-containing felt did
5 not arrive at Bowater until 1969 after Mr. Stewart had moved
6 out of that position. Now, those are details, ladies and
7 gentlemen, but that's what the case is supposed to be
8 decided on, is the true and complete and whole facts, not
9 glossed over generalities. So it's important, ladies and
10 gentlemen, to consider that on the Plaintiff's burden of
11 proof for frequent, regular and proximate.

12 And the Judge is going to charge you on something
13 called circumstantial evidence. And if the Plaintiff tells
14 you when he gets to talk again that they're relying on
15 circumstantial evidence to provide regularity and frequency
16 and proximity, the Judge is going to tell you that that type
17 of evidence, which, in my opinion, is really all there is,
18 it has to lead to the conclusion they're seeking with
19 reasonable certainty. You have to believe with reasonable
20 certainty that Mr. Stewart worked regularly, frequently and
21 in proximity to Scapa asbestos-containing felts.

22 And, ladies and gentlemen, circumstantial evidence
23 cannot leave the matter to be proven by speculation or
24 conjecture. 23 out of 624 felts with no evidence of anyone
25 saying that he actually worked with one of the 23. We don't

1 believe that's anything more, ladies and gentlemen, than
2 speculation and conjecture on frequency, regularity and
3 proximity.

4 So this applies to every cause of action. We do not
5 believe the Plaintiffs proved that Mr. Stewart worked
6 regularly with a Scapa asbestos-containing felt, frequently
7 with a Scapa asbestos-containing felt or in proximity of
8 one. There's certainly no direct evidence of that. And if
9 you so find, ladies and gentlemen, that your answer, the
10 Judge will tell you, to the first three questions should be
11 no, then that would end your deliberations.

12 Now, the Judge is going to tell you that the Plaintiffs
13 must prove causation in fact. And that's sort of a fancy
14 legal term. But what it means is they have to prove that
15 the Scapa asbestos-containing dryer felts were a
16 substantial, not any, but a substantial contributing factor
17 of Mr. Stewart's mesothelioma. And they also have to prove
18 -- and this is important, ladies and gentlemen, that but for
19 any asbestos exposure from a Scapa dryer felt, Mr. Stewart
20 would not have contracted mesothelioma. In other words,
21 more simply, if y'all conclude that thermal insulation alone
22 was sufficient to cause his mesothelioma, then the but for
23 requirement has not been met and you would find in favor of
24 Scapa.

25 And, ladies and gentlemen, I'm going to run through

1 this a little bit in a minute, but every single expert that
2 testified in this case told you that thermal insulation has
3 been the leading cause of mesothelioma for 60 years. Even
4 Dr. Frank said that. Dr. Brodie said that. That is the
5 most undisputed fact in this case.

6 But let's look at the question of proof of a
7 substantial contributing factor. It's interesting, ladies
8 and gentlemen, Dr. Millette and Mr. DePasquale did not
9 provide a dose of asbestos Mr. Stewart would have received
10 from Scapa asbestos-containing felts. The only evidence you
11 have in this case is from Mr. Carlson and our experts that
12 said if there was a dose, it was in the level of ambient air
13 that everyone breathes and it does not cause disease. And
14 that in and of itself, ladies and gentlemen, shows that
15 there is a safe level of asbestos exposure. So it's another
16 rabbit that I don't think has anything to do with the case.

17 It was interesting to me, ladies and gentlemen, Dr.
18 Harpole is a treating physician and he testified -- first of
19 all, I'm a treating physician and I'm charging \$5,000 to
20 come and testify about my patient? Is he really a treating
21 physician? Ladies and gentlemen, after saying he thought
22 dryer felts did it, he just immediately admitted I don't
23 know anything about dryer felts. I don't know how they're
24 made. I don't know if there's any fiber release. I don't
25 know anything about them. So why did he said that, ladies

1 and gentlemen? That's not fair and that's not the truth of
2 the case.

3 Dr. Oury, Dr. Crapo and Mr. Carlson explained to you in
4 very understandable terms, I believe, and I apologize, some
5 of it was repetitive, but we wanted you to see those
6 pictures that Dr. Crapo had of lung defense mechanisms and
7 so on. They explained to you in a very understandable way
8 why Scapa dryer felts were not a substantial contributing
9 factor to Mr. Stewart's illness.

10 You saw how they were used -- we showed you how they
11 were used in a wet, humid, ventilated area. We showed you a
12 blow down. We showed you the towel and the ventilation
13 sucking everything up out of there. We showed you how the
14 dryer felt works and why they would need to blow across the
15 machine and not directly into the felt.

16 And, ladies and gentlemen, you heard so much about this
17 Scapa document, about the 90 degrees. Nobody from the mill
18 ever told you or Mr. Jekell, oh, yeah, I saw that, that's
19 what we were supposed to do. We knew that. All of those
20 coworkers testified truthfully, ladies and gentlemen. The
21 paper comes down, it's crumpled up, the dryer felt's going,
22 take a pole, pull it out and then we blow directly across
23 the machine to get the stuff out the other side so we can
24 rethread the sheet. And I'll mention this again in a
25 minute, but all the evidence in the case was there's no

1 fiber release from a dryer felt when you're just making
2 paper or when you blow across the machine. That's
3 undisputed.

4 So what was the substantial contributing factor to Mr.
5 Stewart's mesothelioma? We brought you evidence, three
6 quarters of a mile of thermal insulation connected to paper
7 machine number one. Perhaps, I heard things different than
8 Mr. Jekell, but I recall Mr. Stewart himself and every
9 coworker testifying about working regularly, frequently and
10 in proximity to this thermal insulation repair and cleanup.
11 Mr. Stewart truthfully told in what we read yesterday that
12 he was still being exposed to asbestos from thermal
13 insulation as late as 2002.

14 Do we blame Bowater? Yes, we do, ladies and gentlemen.
15 What are they doing? If Mr. Jekell says they don't know
16 anything about asbestos, well, OSHA came in in '71, they
17 were required by law to remove the asbestos products at
18 their mill and to be sure that they're safe for their
19 workers. We had no control over that. We had no control
20 over all this insulation and this insulation work and this
21 insulation exposure. It's not wet, not humid, not
22 ventilated. They all told you that it was dusty.

23 Mr. Heglar told you there was steam leaks and
24 insulation problems everyday. And Mr. Heglar, y'all may not
25 remember this, said he beat insulation off the steam pipes

1 with a hammer or a hacksaw, which created dust. And that
2 the lines that were taking the steam away from the dryer
3 pans that the whole line of insulation would fall down in
4 this basement you heard about from the vibrations and people
5 would be exposed to asbestos from the thermal insulation.
6 That's the whole story, ladies and gentlemen.

7 And, you know, it's interesting, ladies and gentlemen,
8 Dr. Frank, the first thing he said as one of his
9 qualifications is I studied workers that manufactured
10 asbestos-containing pipe covering and told you -- and then
11 he told you thermal insulation has always been the leading
12 cause of mesothelioma. He told you that work with thermal
13 insulation generates large amounts of asbestos in the air
14 and that the first epidemiological studies showing
15 insulation causes mesothelioma in high rates was in 1964.
16 Y'all can figure out how long ago that was, but that's the
17 year after Mr. Stewart started at Bowater.

18 Dr. Harpole told you that most of the individuals he
19 sees with mesothelioma had thermal insulation exposure. Dr.
20 Oury, Dr. Crapo and Dr. Brodie told you thermal insulation
21 has been the leading cause of mesothelioma for 60 years. In
22 contrast, ladies and gentlemen, every expert in this case
23 agreed that no article or study has ever been written that
24 says that work with asbestos-containing dryer felts causes
25 or increases the risk of mesothelioma, the exact opposite of

1 thermal insulation.

2 I know y'all were about to shoot us when we went into
3 amphibole versus chrysotile again. But what did cause Mr.
4 Stewart's mesothelioma? There's no question but what all
5 the doctors agreed amphibole asbestos from thermal
6 insulation causes mesothelioma and, certainly, was the
7 substantial contributing factor to Mr. Stewart's
8 mesothelioma. And this is important, ladies and gentlemen,
9 all the doctors, including the Plaintiff's doctors agreed
10 that amphibole asbestos from insulation stays in the body
11 for decades, unlike the chrysotile in dryer felts that goes
12 out in weeks or months.

13 And why is that important? Because all the doctors
14 told you it takes decades of asbestos exposure to cause
15 mesothelioma. And it's only the amphiboles, ladies and
16 gentlemen, that stay in the body long enough to cause
17 mesothelioma. And the reason that they do that, they're
18 straight and rigid and they have an iron core and the
19 defense mechanisms just can't do away with them like they
20 can with chrysotile.

21 And, ladies and gentlemen, we believe that this is an
22 important issue. Mr. Stewart did have surgery with respect
23 to his mesothelioma. And at that time, the doctors
24 acknowledged his lung tissue could have been sampled. They
25 were right there. And the Plaintiffs -- Mr. Stewart had a

1 lawyer at that time and they could have asked Dr. Harpole do
2 a tissue analysis. They're claiming their chrysotile
3 product didn't have anything to do with this. They're
4 saying amphiboles from insulation did it. Let's look at
5 that tissue so we can prove to the ladies and gentlemen of
6 the jury that it was chrysotile, not amphiboles.

7 We did not have the burden of proof on that, ladies and
8 gentlemen, the Plaintiff did. And they did not provide you
9 with that evidence. What do you think the tissue analysis
10 would have shown based upon the evidence that you've heard
11 so far? There's a reasonable inference that it would have
12 had amphiboles in it from the insulation because they stay
13 in there so much longer. But we just don't know, ladies and
14 gentlemen. That was an important piece of proof and
15 evidence that we never received.

16 Ladies and gentlemen, the Judge is going to tell you
17 that the Plaintiffs must also prove legal causation. And a
18 part of this is, as Mr. Jekell has already told you, what
19 did Scapa expect would happen? We can't be liable for
20 things that we did not expect to happen. And they have to
21 prove that the Scapa asbestos-containing dryer felts were
22 unreasonably dangerous. Not that chrysotile asbestos was,
23 but that the dryer felts were and that the scientific
24 community agreed with that.

25 Mr. Doherty did tell you that the felts were made with

1 resin-coated yarns. And he explained to you why, if it was
2 going from the creel to the loom and there was nothing on
3 it, it would fall apart. We've heard umpteen evidence about
4 all that. And the bottom line is, ladies and gentlemen,
5 nobody presented any evidence that there weren't resin
6 coatings on the yarns or the felts that went to Bowater.
7 But it was still -- it was used in a very wet, humid,
8 ventilated environment.

9 The things Mr. Jekell were talking to you about were at
10 the plant where the felt was being made, not after it was
11 made, tightly woven. Many times, the whole felt was
12 resin-coated, but, certainly, not with 3.3 million gallons
13 of water going through it everyday and 288 million cubic
14 feet of air being ventilated out the roof everyday. So it's
15 a completely different environment in use.

16 Scapa made these felts for the purpose of drying paper
17 pulp into paper. And as I mentioned earlier, all the
18 experts agreed there was no fiber released when the felts
19 were just making paper. That's undisputed. All the workers
20 that you heard from testified that when there was a blow
21 down, it blew across the felt to get the stuff out, parallel
22 to the dryer felt. And all the experts agreed, including
23 Millette that that did not cause any fiber release. So,
24 ladies and gentlemen, that was the reasonably foreseeable
25 use of the dryer felt.

1 Now, couple more things. I want to address what I
2 think Mr. Jekell was saying. Mr. Doherty and the coworkers
3 told you that there was also significant build up on the
4 felt from the paper making process. Mr. Doherty said when
5 they came back after they had been used, there was gunk on
6 them, was even -- made them even more impregnated. And all
7 the experts agreed this buildup, including the pipe expert,
8 this water usage, ventilation and humidity would significant
9 decrease the opportunity for any fiber release from the
10 felt. The very first article that Dr. Frank mentioned,
11 Meriweather and Price, they said at the end wet asbestos and
12 ventilate it so it could be used properly. That was in
13 1930. And, ladies and gentlemen, a paper mill is exactly
14 what the industrial hygienist said to do to any type of
15 asbestos to decrease or preclude the potential for exposure,
16 wet it and ventilate it.

17 And Mr. Doherty also told you that he looked at
18 asbestos-containing felts when they came back to the factory
19 after use. And there was some suggestion that they were
20 real thin. No evidence of that. That they were shaved
21 fibers. No evidence of that. And remember, Mr. Carlson
22 told you that at Crown Zellerbach where he worked, they did
23 an air sampling with asbestos-containing felts in use and
24 then one with no asbestos-containing felts in use and the
25 fiber levels in the air were exactly the same. And thus,

1 they concluded that nothing was coming from the dryer felts.
2 And that was not anything that was rebutted in this case at
3 all. Mr. Doherty told you that he worked with
4 asbestos-containing dryer felts, so did his father. He told
5 you that he believed the dryer felts were safe and that
6 Scapa dryer felts were safe.

7 Ladies and gentlemen, Mr. Jekell just said something
8 about willful, wanton and reckless. Mr. Doherty worked with
9 asbestos-containing dryer felts and so did his dad with no
10 respirator. There's no evidence that Scapa willfully and
11 wantonly put some unsafe product out on the market. They
12 felt like that the way it was going to be used that it was
13 safe. And there's no evidence contrary to that. They did
14 know that blue asbestos was hazardous. And I'm going to
15 talk to you about that in a minute. But remember, ladies
16 and gentlemen, no paper mill ever called Scapa to complain
17 there was any type of asbestos hazard from dryer felts or
18 that anyone was getting sick from working around them.

19 And, you know, ladies and gentlemen, Mr. Jekell just
20 talked to you about the Plaintiff's Exhibit 69, it's the
21 Scapa memo from March of 1977. And it does say that they're
22 not telling customers about the change over from asbestos to
23 nonasbestos. And Mr. Doherty explained that to you. I want
24 you to look at this document. Ladies and gentlemen, there
25 are no lawsuits going on at this time. This is not written

1 by a lawyer. And there's not one single word in here about
2 asbestos hazard. Mr. Doherty told you in his entire career
3 that what happens if you change the felts in any fashion,
4 the people wanted the new felts, not the old felts. So I
5 ask you, ladies and gentlemen, for you to read the whole
6 memo and consider whether it actually suggest what Mr.
7 Jekell told you it suggest. Because we do not believe that
8 that's a fair assessment of that document.

9 Ladies and gentlemen, Mr. Doherty told you the yarn
10 manufacturers told Scapa there was no need to put a warning
11 on the asbestos-containing dryer felts because the yarns
12 were resin coated. And you'll have this document in
13 evidence, but Mr. Jekell put it in evidence for us. But
14 read the whole document. The Turner Brothers in 1972 says
15 to Scapa in Waycross, In case there are assistance, we are
16 attaching a copy of the OSHA regulations and reports from
17 the Asbestos Information Association. You will note that
18 the requirement for labels apply to unsaturated or uncoated
19 yarns only. These regulations do not apply to yarn which
20 was bonded or resonated. All yarns shipped to you are
21 either bonded or resinated and, therefore, the cautionary
22 notice is not required for your orders.

23 Scapa had asked about that and that's what they were
24 told. And they got the exact same memo from Uniroyal, which
25 we can't find, but Mr. Doherty told you about it. OSHA

1 never required a warning on dryer felts. Every expert
2 agreed that no article has ever been written suggesting work
3 with an asbestos-containing dryer felt was hazardous or
4 caused asbestos disease.

5 And, ladies and gentlemen, this is where I ask that you
6 look at the whole document and not just a little piece of
7 it. Mr. Jekell told you that Scapa knew asbestos was
8 hazardous in 1976. And there was a letter from Scapa UK to
9 Scapa Waycross on April 8th, 1976, talking about asbestos
10 hazards. And let's look at what it said so you'll have the
11 whole context because now, you've guys have heard a ton
12 about asbestos and you know the difference between
13 crocidolite, blue asbestos used in insulation, and the
14 chrysotile used in dryer felts.

15 This document, if you read the whole thing, says the
16 generally named disease of asbestos is associated with blue
17 asbestos, technically known as crocidolite. At Scapa, we
18 have always used the white form of asbestos, technically
19 known as chrysotile. All recent publicity concerning the
20 mill is referred to personnel working with blue asbestos for
21 use in the lagging industry. The lagging industry, ladies
22 and gentlemen, is insulation. That's the information that
23 we had. No one, no one -- there was no evidence of anybody
24 suggesting that chrysotile asbestos as incorporated in a
25 dryer felt and used in a paper mill was hazardous to anyone.

1 No paper mill said that, no expert said that, no one said
2 that.

3 So y'all heard enough of this to make you want to fall
4 over, but I do want to mention, recall Dr. Millette admitted
5 his glove box test did not simulate real mill conditions.
6 No paper. No water. No movement. No ventilation. No
7 paper mill level of humidity. And this is important, ladies
8 and gentlemen, because you will recall that on his post-it
9 note and finger test, he had no evidence, no evidence
10 presented to you of any respirable asbestos fibers. Now,
11 that's important, ladies and gentlemen, because in order for
12 asbestos to do any harm to anyone, it has to be respirable.
13 We don't have any evidence that any of that -- either one of
14 those tests generated any respirable asbestos that might be
15 breathed by Mr. Stewart.

16 I went through this a little bit last night, I didn't
17 write it all down, but you may recall that a number of the
18 workers said well, yeah, when I'd brush up against a felt or
19 something, there would be nothing. It wouldn't be any dust.
20 It wouldn't be anything on me. And that's the truth, ladies
21 and gentlemen. These things are all gunked up after they've
22 come from the factory very tightly woven with resin-coated
23 yarns.

24 The dryer felts from Scapa did only contain chrysotile
25 asbestos. I'm not going to go through all of that with you,

1 but it was explained to you by Dr. Oury and Dr. Crapo, I
2 think, very simply and understandably why low levels of
3 chrysotile do not and cannot cause mesothelioma. They're
4 curly and flexible and they have low biopersistence. That
5 means they get stuck on the defense mechanisms and expelled,
6 or if they get down into the lungs, the macrophages eat them
7 and do away with them.

8 But, ladies and gentlemen, to me, this is the most
9 important thing that they showed you. Dr. Crapo presented
10 to you a number of studies involving exposures to various
11 kinds of asbestos and what happened, who contracted
12 mesothelioma and who didn't. And it won't shock you that
13 the amphibole exposed people had very high levels of
14 mesothelioma. Chrysotile insulators, you've already heard
15 -- I mean, amosite and chrysotile insulators, you already
16 heard that was about nine percent. Then you get down here
17 to the studies of the auto mechanics, the South African
18 miners and the chrysotile gas masks workers with no
19 tremolite, nothing in there but pure chrysotile and there
20 are no mesotheliomas. And, ladies and gentlemen, they told
21 you dryer felts is down here. If there is fiber released,
22 it's at ambient air level, which we all heard was safe.

23 And my question, ladies and gentlemen, where was there
24 a study presented to you by Plaintiffs that showed that low
25 dose chrysotile caused mesothelioma? Where was the contrary

1 study to any of these? We never saw it. These studies, to
2 me, are very telling on whether low dose chrysotile causes
3 mesothelioma. It's large groups of people studied to see
4 what happened.

5 So, ladies and gentlemen, we believe the Plaintiffs did
6 not prove dryer felts were unreasonably dangerous for their
7 intended purpose. Plaintiffs did not prove that Scapa knew
8 or had reason to know its asbestos-containing dryer felts
9 were unreasonably dangerous. And they certainly didn't
10 prove, ladies and gentlemen, that but for Mr. Stewart's work
11 with dryer felts he would not have contracted mesothelioma.
12 It is undisputed in this case that insulation exposure alone
13 was sufficient to cause his mesothelioma. Even Plaintiff
14 experts admitted that, but our expert said that that was the
15 cause.

16 I mentioned this a minute ago. Bowater was Mr.
17 Stewart's employer for 40 years. They knew
18 asbestos-containing products were used at the mill while Mr.
19 Stewart was there. They had a lot of it taken out later.
20 And they had an obligation to provide them a safe workplace.
21 Mr. Stewart himself told you that they were not safety
22 conscious. And, ladies and gentlemen, Scapa was not in
23 charge of Bowater. Bowater was. It was a sophisticated
24 company. And, certainly, as the company running the mill,
25 they were in a better position than Scapa to understand any

1 potential risks to their employees. We didn't have anything
2 to do with how the thermal insulation was or was not used
3 there.

4 Bear with me. I'm tired. I'm almost done. I'm
5 getting there. Mr. Jekell just talked to you about Mr.
6 Stewart's life expectancy. And again, ladies and gentlemen,
7 this is not meant to be disrespectful to anyone, but Dr.
8 Harpole did tell you that Mr. Stewart had a large number of
9 other medical problems that would affect his left expectancy
10 and that he couldn't tell you what his life expectancy
11 actually was without regard for whether he contracted
12 mesothelioma.

13 We thank you very much for your hard work and time.
14 It's really amazing and above and beyond. We ask that you
15 find that the Plaintiff did not meet their burden of proof
16 and that you check no as to the first three questions. And,
17 ladies and gentlemen, we certainly ask you to check no as to
18 this willful, wanton and reckless question considering all
19 the evidence in the case.

20 Now, Mr. Jekell has asked for 5.2 million dollars. We
21 don't think you should award anything. But, ladies and
22 gentlemen, given the lack of proof here, a number in that
23 range, we do not believe is fair or the truth of the case.
24 Is a number in a range of the medical bills reasonable if
25 you decide to give an award? That's something y'all will

1 have to decide. But given the failure to prove here, ladies
2 and gentlemen, 5.2 million dollars is way, way, way higher
3 than anything that's fair and the truth of the case. And we
4 would ask you not to consider a number like that at all.
5 And if you do decide to give a number, it should be
6 significantly, significantly lower than that.

7 Now, ladies and gentlemen, the way our system is, Mr.
8 Jekell gets to stand up and talk to you and I don't get
9 another chance. And when I first started practicing law,
10 they said that I can't object and stand up and say oh,
11 that's not right, remember what the evidence was. Justice
12 Toal would put me in jail. They say it's like a mule being
13 hitched to a post in a hailstorm, but I can't do that. I
14 can't say anything. So I just ask you to think about what
15 Lane would say in response to the things he says. But more
16 importantly, I ask you to look at the evidence and get the
17 truth of the case. Not gloss over, not generalities, but
18 the specifics and the truth of the case.

19 And, ladies and gentlemen, I ask you to consider one
20 more thing for me. If you get back in the jury room and
21 you're thinking about finding for the Plaintiff, ask
22 yourself these questions -- you don't have to, but I'm just
23 asking, why has no article ever been written saying
24 asbestos-containing dryer felts are hazardous? Why were
25 asbestos-containing dryer felts never banned? Why didn't

1 OSHA require a warning on asbestos-containing dryer felts?
2 Why was the asbestos level in Mr. Carlson's mill the same
3 with and without asbestos-containing felts? Why didn't any
4 paper mill ever complain about health hazards from the use
5 of the dryer felts? If thermal insulation did not cause his
6 mesothelioma, why did every doctor who testified tell you
7 that thermal insulation was and always has been the major
8 cause of mesothelioma in the United States? And if thermal
9 insulation didn't do it, why have articles been written for
10 60 years saying that thermal insulation is the leading cause
11 of mesothelioma? Why was there no proof, direct proof, why
12 was no one able to say, including someone who removed --
13 remembered a dryer felt running off 45 years ago able to say
14 Mr. Stewart actually worked with the Scapa
15 asbestos-containing felt? Was it because we only had 23 out
16 of 600 and something? Why did we have to tell you about the
17 other dryer felt manufacturers and the insulation that was
18 there?

19 Ladies and gentlemen, finally, why didn't Mr. Jekell or
20 any of his doctors submit to you an epidemiological study
21 that showed yes, aha, low dose chrysotile causes
22 mesothelioma? And in that regard, ladies and gentlemen, why
23 didn't we have a fiber burden that would have solved the
24 whole thing for us?

25 I really appreciate your time, I can't tell you how

1 much. I know your verdict will speak the truth in the case
2 and we look forward to receiving it. Thank you very much.

3 THE COURT: Mr. Jekell.

4 MR. JEKELL: I told you it was coming. The deception
5 started right off the bat. You saw what Mr. Young did. He
6 started and said we haven't tried to blame Mr. Stewart.
7 That's hogwash. I read paragraph 21 and 23. Their
8 corporate representative, he said, I don't know what those
9 lawyers are doing over there. And I've been honest with you
10 all. I read you that about the blue asbestos right at the
11 beginning of the case. I showed you the surveys for the
12 thermal insulation. But you know why that's not
13 responsible, folks, these are Mr. Carlson's photos that were
14 not admitted into evidence. Cladding, cladding, cladding.
15 Thermal insulation, thermal insulation, blue insulation.
16 Never the chrysotile. The chrysotile industry fights hard,
17 ladies and gentlemen.

18 Now, I do want to go back -- I really, this, do you
19 realize this is the kind of ventilation that was on that
20 paper machine? When there's a paper break, that paper is
21 going right out of the chimney. You saw the paper. Mr.
22 Carlson, when really faced to talk about ventilation, was
23 like, yeah, it wouldn't be sucking the towel up off the
24 dryer section in that machine. It wouldn't, he told you.
25 It's a trick. It's that slight of hand that I've been

1 telling you about.

2 Again, they mentioned Albany, Lockport. You know why I
3 didn't mention them, I told you from the beginning, we are
4 here because of Scapa asbestos-containing dryer felts. And
5 we did read to you from articles about why. They used
6 chrysotile in almost everything. I don't know if you know
7 Merlin Olson, but he got sick from asbestos from snow that
8 they used in Hollywood containing asbestos. You can't do an
9 epidemiological study on more than 3,000 products. So yeah,
10 insulators did get sick. And Mr. Heglar worked with a lot
11 of insulation because he was a pipefitter. He wasn't a
12 paper maker.

13 But let's talk about frequent, proximate and regular
14 exposure because there's two instances -- again, I told you
15 they were going to play the number game on you, and they did
16 it. First, how many felts were on that machine and what's
17 the relevant timeframe? Stewart was there from '63 to 2002.
18 But the asbestos was only being used in the felts through
19 the 80s. That's why I was talking about that. And they
20 admit that's only 280 felts. Again, it's a little slight of
21 hand. You play with enough numbers, you're going to get
22 them to say what you want.

23 I'm still waiting to see the evidence that there was
24 deteriorated insulation on the number one machine that
25 wasn't cladded. I'm still waiting for Scapa to show you

1 that there was actually an Albany asbestos-containing felt
2 on machine number one. I'm still waiting to see the actual
3 air samples that Mr. Carlson talked about. You didn't see
4 any of that. Mr. Carlson got up there and said it, but when
5 he was pushed, he couldn't -- he didn't show you a survey.
6 He didn't show you an invoice. We showed you the invoice
7 and the survey. There was no crocidolite there. There was
8 amosite.

9 Let's talk about this fiber -- well, before I get to
10 the fiber digestion, I do want to talk about the felts
11 because the crew that was there, the guys -- there was a few
12 situations on machine number one when it was all hands on
13 deck. Putting them on, taking them off, and the regular
14 maintenance that was done on those felts when the machine
15 was off.

16 I think y'all will remember Mr. Stewart's testimony
17 that, you know, occasionally, he would be walking down the
18 machine and if he saw something that needed to be done, he
19 did it. Scapa, we don't know what they knew. It's easy to
20 say oh, there was nothing in there that was destroyed.
21 Because we don't know. And neither did Mr. Doherty, he
22 wasn't there in the 70s. It's certainly easy for Mr.
23 Doherty to tell you that they were caked on and they were
24 wet. Well, he wasn't there. It's easy for him to tell you
25 what paper mills were saying in 1974, but he wasn't there.

1 He was somewhere else, but he wasn't at Scapa.

2 And how would a mill know to call Scapa? Scapa never
3 told them look, there's a thousand pounds of asbestos in
4 that felt. You look at the dryer felt. You'll see there's
5 a Scapa felt on there throughout the time that asbestos was
6 being used. And there were hands-on deck moments where
7 everybody was helping out. And he did work with it.

8 But for. You know, I -- there was testimony and we
9 brought it to you. Mr. Stewart said yeah, occasionally, I'd
10 have to clean up after an insulator when they didn't clean
11 up well enough. Did anybody give you a number about what
12 that level exposure is? No. They're painting with a bigger
13 brush. Thermal insulation, thermal insulation, thermal
14 insulation. They didn't bring in an invoice of thermal
15 insulation, we did. They didn't tell you about how the
16 cladding was available forever, we did. Slight hand.

17 He worked on paper machine number one. No warnings, no
18 safe work practices. You heard reference in there from 1972
19 about the asbestos information act, the Asbestos Information
20 Association. I had a document at some point in time I was
21 asking him about. Safe work practices, that's all they had
22 to do, folks. Safe work practices. Was it available?
23 Sure, it was available, the asbestos information. So
24 anyway, they did blame Steven Stewart. And he got right up
25 here and the first thing he did was tell you that he didn't.

1 That's what we're dealing with. So I do want you to think.

2 This is what the case has been about since the
3 beginning. Mr. Stewart worked on machine number one and his
4 death. He's enjoying retirement. He's enjoying his family.
5 He worked 40 years in that mill on machine number one, all
6 over it everyday. He's retired. He's getting to travel.
7 2010, still sees Kathryn. It's a great picture.

8 MR. JEKELL: Next.

9 And then you see Steve.

10 (WHEREUPON, a portion of video was played.)

11 MR. JEKELL: Let's not forget that. March 2013, he's
12 recently been diagnosed with mesothelioma. And, you know,
13 he couldn't tell Kathryn he just got the death sentence. He
14 kept telling her it would be okay. He was a fighter, but he
15 couldn't carry the fight on.

16 That's Buddy. Again, you see, this is early July, Mr.
17 Stewart is getting sicker. And then shortly thereafter, you
18 see what he looked like on August 20th. Unfortunately, Mr.
19 Stewart died a few days later. And yet, the kids weren't
20 there and it tears them up everyday that they didn't get
21 that last visit with dad.

22 But you know what, I told you at the very beginning,
23 this case is about responsibility and it is. And it's about
24 corporate responsibility. And if you'll bear with me just a
25 second. Corporate responsibility, you know, your verdict --

1 that verdict form that we talked about, they're going to
2 file it down there in Madam Clerk's office and it's going to
3 sit there forever. And when people want to know what does
4 York County feel about folks who put dangerous carcinogens
5 in products and don't do anything about it, you will set the
6 standard for corporate responsibility here in York County.

7 MR. YOUNG: Your Honor, I don't think this is
8 appropriate argument for this portion of the case and I
9 object.

10 THE COURT: Mr. Jekell, you're coming to the edge of
11 where you need to be.

12 MR. JEKELL: Understood, and I've said what I need to
13 say.

14 THE COURT: Sustained.

15 MR. JEKELL: But I wanted to read something to you guys
16 now. Is it good enough to get by? If it works right then,
17 it'll pass. Will it get by the foreman? Nowadays, one
18 often hears negative, irresponsible, even dangerous remarks
19 of this sort. Irresponsible is the key word. The
20 deliberate avoidance of responsibility, adult
21 responsibility. Personal responsibility toward the
22 community, toward other people, to society is without doubt
23 an extremely important characteristic in a person's makeup
24 and it becomes essential if that person is to be successful
25 in any walk of life where there is contact with other human

1 beings. You ask yourself, where did that come from?

2 Well, let's go to the Elmo. You do all this
3 preparation and you do all this work and you try to pull it
4 off, that, folks, came from Scapa. That responsibility came
5 from Scapa. This is 1962. You remember the Bowater
6 picture. Plaintiff's 70. Responsibility, 1962. How far
7 they have come. Remind them. Thank you.

8 THE COURT: Ladies and gentlemen of the jury, you have
9 now heard the closing arguments of both sides. If you will
10 retire to your jury room for a moment and I will prepare the
11 charge documents so that I can give you the charge. Why
12 don't you go to your jury room. I think it's going to take
13 me about five minutes to get this prepared and then give you
14 the charge.

15 (WHEREUPON, the jury leaves the courtroom.)

16 THE COURT: Ladies and gentlemen, I'm going to give you
17 each the written jury charges. And note one thing, and I've
18 e-mailed this to you, as we know, the verdict form has on it
19 the clear and convincing standard for the finding of
20 recklessness and gross negligence.

21 And in order to make my charge complete, I pulled the
22 clear and convincing standard out of my punitive damages
23 charge. I'm not charging the whole punitive damages charge,
24 of course, that would not be done unless it were needed.
25 But in order to advise the jury of what clear and convincing

1 means, I have put that -- and you've seen that before. And
2 I've put it there at the end and it's in the portion, I
3 think 28 and 29 or 27 and 28 where I'm talking about the
4 verdict form. You will see that I have defined clear and
5 convincing in there as well. I just wanted to advise you
6 that that's going to be in there when I begin to read the
7 charge.

8 Let's be at ease for a second.

9 (WHEREUPON, a short break was taken.)

10 THE COURT: Okay. Bring in the jury.

11 (WHEREUPON, the jury enters the courtroom.)

12 THE COURT: Please be seated, ladies and gentlemen.

13 All right, ladies and gentlemen, I'm going to charge
14 you on the law that applies in this case. And it applies to
15 the facts of this case. It is your duty to find the facts
16 from the evidence, yours and yours alone. And you must
17 apply the law as I give it to you and you must decide this
18 case based on the evidence and the law.

19 You should not be concerned with what the law should
20 be, but with what it is. And you must not be influenced in
21 this case by any personal likes or dislikes or any undue
22 sympathy or undue prejudice. And that means you must decide
23 this case solely on the evidence before you according to the
24 law. And you will remember, perhaps, you took an oath to do
25 just that when you began this trial.

1 So follow my instructions, you must follow all of them
2 and not single out some and ignore others because they are
3 all equally important. Please don't read into these
4 instructions or into anything I may have said or done during
5 this trial any indication of what I think the facts are,
6 what I think your verdict should be. Because under our
7 system of justice, you, the jury, are the sole and exclusive
8 judge of the facts. And I'm certainly not going to intrude
9 on your constitutionally guaranteed right and duty to
10 determine the facts, just as I know you're not going to
11 intrude on my responsibility under the Constitution to
12 charge you what the law is.

13 Now, ladies and gentlemen, how do you decide what the
14 facts are? You do that by evaluating or weighing the
15 evidence you have heard during this trial. There is no
16 other way for you to weigh the evidence in a literal sense
17 and I'm not going to give you a set of scales to go back and
18 conduct experiments. That's not what I'm talking about.
19 You weigh and evaluate the evidence simply by using your own
20 good common sense, your sense of logic, your sense of reason
21 and your life experiences and you bring those things to bear
22 on the evidence you've heard during this case. And once you
23 do that, you will be able to determine the true facts of
24 this case and you will take the law that I'm about to give
25 you and apply it to those facts and you will be able to

1 reach a decision and a verdict in this case.

2 In deciding the facts in this case, you must not be
3 swayed by bias or prejudice or favor as to any party. Our
4 system of law does not permit jurors to be governed by
5 prejudice or sympathy or public opinion. This case should
6 be considered and decided by you as an action between
7 persons of equal standing in the community, of equal worth
8 and holding the same or similar stations in life. A
9 corporation is entitled to the same fair trial at your hands
10 as a private individual. All persons, including
11 corporations, stand equal before the law and are to be dealt
12 with as equals in this court of justice. .

13 You must not consider as evidence any statement of
14 counsel made during the trial. Statements of counsel do not
15 constitute evidence, rather counsel is articulating the
16 position and contention of his or her client. This rule
17 applies to the opening statement and the closing argument.
18 Attorneys are officers of the court.

19 Attorneys have absolute right and duty to bring matters
20 to the attention of the Court by way of objection. So do
21 not inferentially or otherwise be upset or disturbed by
22 counsel by virtue of an objection. Our trial procedure
23 includes the objection process as a means of controlling the
24 evidence, letting in proper evidence and keeping out
25 improper evidence. Counsel, by objecting, are simply

1 performing their role in the trial of this case. Once the
2 Court makes a ruling on an objection, the jury is bound by
3 that ruling. If the objection is sustained, the question is
4 improper. If the objection is overruled, the question is
5 proper.

6 In that regard, the jury must not under any
7 circumstances derive any inference of any ruling made by the
8 Court on an objection as to any opinion the Court might have
9 about this case. The Judge does not have an opinion on the
10 evidence and is not entitled to an opinion under the law.
11 The Judge is performing her role in this case as the Judge
12 in the trial of this case. As to any questions to which an
13 objection was sustained, you must not speculate as to what
14 the answer might have been or as to the reason for the
15 objection.

16 Burden of proof. I told you at the beginning of this
17 case the Plaintiffs had the burden of proving their case.
18 And the burden of proof in a civil case is by the greater
19 weight of the evidence. And that means that the Plaintiffs
20 in order to obtain a verdict must produce evidence which
21 considered in the light of all the facts leads you to
22 believe that what they are claiming is more likely true than
23 not true.

24 The better way to visualize it, perhaps, is to envision
25 a set of scales. And if you were to put the Plaintiff's and

1 Defendant's evidence on opposite sides of the set of scales,
2 in order to reach your verdict, the Plaintiffs would have to
3 tip the scales slightly in their favor. And they would be
4 -- even if they tip it by the most minute portion, the
5 Plaintiff would be entitled to a verdict because then the
6 greater weight of the evidence would be on their side.

7 If the scales remain -- after your review of the
8 evidence, if the scales remain evenly balanced, then there's
9 no greater weight on either side or if the scales are tipped
10 in the Defendant's favor, then the Defendant's would be
11 entitled to a verdict. So what you must do is mentally
12 weigh this evidence and place it on the scales and see which
13 side's evidence has the greater weight in your mind.

14 Now, some of you may be familiar with the burden of
15 proof in a criminal case. In a criminal case, before the
16 State can convict someone of a crime, they must prove each
17 element of that crime beyond a reasonable doubt, which is
18 one of the highest standards of proof the law knows and it
19 has no place in this civil trial.

20 The standard of proof that you must use in this civil
21 trial and the yardstick you must apply is the burden -- is
22 that the -- is the burden -- apply to the burden is the
23 greater weight of the evidence. That's the sole standard of
24 proof in this case as to the Plaintiff's claim and their
25 claim for actual damages.

1 Now, let's talk about the evidence. As I told you, you
2 must decide what the facts are from the evidence. And the
3 evidence consist of sworn statements of the witnesses and
4 testimony and exhibits. Nothing else is evidence. We've
5 had excellent lawyers, and I think you will agree with me
6 about that, who zealously advocated in this case for their
7 client's position, but they are not witnesses. So what they
8 say is not evidence. If you remember something differently
9 from the way the lawyers have recited it, then your memory
10 controls. What they have said in arguments is very
11 important for you to listen to because, as I said at the
12 outset, they're trying to help you understand the evidence.
13 But do keep in mind that what they say is not itself
14 evidence.

15 Direct and circumstantial evidence. Ladies and
16 gentlemen, in any type of case, there are different types of
17 evidence. So what I'm discussing now is direct and
18 circumstantial evidence. Direct evidence is the testimony
19 of a witness who claims to have actual and direct knowledge
20 of the facts, such as an eyewitness to a fact. It is
21 evidence that if believed immediately would establish the
22 fact.

23 Now, another type of evidence is circumstantial
24 evidence. I'm sure you've heard that term before.
25 Circumstantial evidence is indirect evidence. Put another

1 way, circumstantial evidence is proof of a chain of facts
2 and circumstances from which you could find that another
3 fact exist even though it has not been proven to you
4 directly. In modern province, we call this connecting the
5 dots. The law makes no distinction between the weight or
6 value to be given to direct evidence or circumstantial
7 evidence. They both have equal value. You may consider
8 both kinds of evidence in this case.

9 And by way of example, if a witness testified that a
10 witness saw that it was raining outside, that would be
11 direct evidence that it is raining. But if a witness
12 testified that they saw someone entering a room wearing a
13 raincoat covered with drops and carrying a wet umbrella,
14 that would be circumstantial evidence that it was raining
15 from which you could conclude it was raining outside.

16 Where circumstantial evidence is relied upon, it's
17 incumbent upon the party presenting the evidence to show the
18 existence of such circumstances as would justify the
19 inference that a particular event actually occurred and not
20 to leave questions to speculation or conjecture. If
21 circumstances are proved to your satisfaction, then you may
22 infer a fact from those circumstances. The circumstances
23 must lead to the conclusion with reasonable certainty. If
24 circumstances are not proven to your satisfaction, then you
25 should not infer the facts.

1 Evidence in evaluating a witness's testimony. Now,
2 ladies and gentlemen, you must consider all the evidence in
3 deciding what the facts are. If there has been evidence
4 that has been stricken from the record or I told you to
5 disregard, that's no longer a part of the record or the
6 evidence in the case and you can't consider it. But you
7 must be the judge of the facts by necessity and determine
8 the credibility of all the evidence. And so, as I told you
9 at the beginning, I'm not going to repeat it all here
10 because I know you heard me the first time. For every
11 witness who testifies and every exhibit that is admitted,
12 you will have to determine whether those things are worthy
13 of belief.

14 How do you do that? In the case of a witness who
15 testifies, I can give you some general guidelines. First,
16 you may consider whether the witness had some interest in
17 the outcome of the case, whether they had some bias or
18 prejudice towards someone or some issue in the case, whether
19 they had something to gain by their testimony. Second, you
20 may consider what opportunity the witness had to observe the
21 things they were telling you about. Third, you may consider
22 how the witness's evidence or testimony stacks up against
23 other evidence in the case. Is it consistent or
24 inconsistent? Fourth, you may consider their demeanor on
25 the stand. Was the witness hesitant or forthright in their

1 testimony? Fifth, you may certainly use as well what you
2 use in your day-to-day life to determine whether someone is
3 telling you the truth because you didn't surrender your
4 common sense when you came into this courthouse almost two
5 weeks ago.

6 I'll also tell you that you may believe everything a
7 witness says or you may believe nothing a witness says. You
8 may believe parts of a witness's testimony and disbelieve
9 other parts. You may believe one witness over several or
10 several over one. But you certainly don't decide the matter
11 of credibility simply by counting up the witnesses on one
12 side as opposed to another. Because your sole object,
13 ladies and gentlemen, is to determine the truth in this
14 case. And it does not matter whether that truth comes from
15 a witness for the Plaintiff or for the Defendant.

16 Expert testimony. Now, you've heard testimony from
17 people who have been described and qualified as experts.
18 They were qualified as experts because they, by reason of
19 their education, training or experience, achieved some
20 expertise in their given field. And they can therefore
21 state their opinions on matters in their field and they may
22 state their reasons for their opinions. But expert
23 testimony, as I told you when we had the first expert
24 qualified, must be judged by you just as any other testimony
25 is judged. You, the jury, are the sole judges of

1 credibility. You may believe the expert witness's testimony
2 and accept it or you may reject it. You may give it
3 whatever weight you think it deserves.

4 Deposition testimony. You've also heard some testimony
5 presented through depositions. And I just want to remind
6 you this is sworn testimony just as if they were on the
7 witness stand and is entitled to the same weight and
8 consideration you would give if the witness had been present
9 testifying from the witness stand.

10 Taking notes. Now, some of you have taken notes during
11 the trial. I gave you an instruction on that. I just
12 wanted to remind you that the notes are for your personal
13 use and the notes certainly don't trump anybody else's
14 independent recollection of the testimony. They are not a
15 substitute for your own memory of the matter.

16 Expert witnesses and causation. Now, when someone
17 relies on expert testimony to show a causal connection
18 between an injury and a subsequent condition, the testimony
19 must meet the most probably rule. And it's not sufficient
20 that the condition in question possibly or could have or
21 might have resulted from the injury. The expert must go
22 further and testify that taking into consideration all the
23 facts, it is his or her professional opinion that the result
24 in question most probably came from the cause alleged.

25 Now, let's summarize the Plaintiff's claims. This is a

1 claim for damages from a personal injury that has been
2 alleged. And I want to go over with you the various claims
3 that are being made in this case. The Plaintiffs, the
4 Estate of Steven Stewart, represented by Mr. Steven Edwards,
5 his son. Steven Edwards, individually, is the son of Mr.
6 Stewart, and Ms. Kathryn Stewart Kingston, individually, as
7 the daughter of Mr. Steven Stewart. They're seeking to
8 recover damages for personal injury arising out of the
9 alleged exposure of Steven Stewart to asbestos from
10 Defendant's products.

11 The mere fact that an injury occurred or that an
12 accident happened standing alone does not permit you to draw
13 a conclusion or inference that such an injury or accident
14 had been caused by anyone's negligence or fault.
15 Plaintiff's claims in this case are based on three theories.
16 The first theory is negligence. The second is called strict
17 liability. And the third is called breach of implied
18 warranty.

19 The Plaintiffs are not required to prove all of these
20 theory to recover. Proof of claim under any of these
21 theories would enable you to find the Plaintiffs are
22 entitled to a verdict. But the Plaintiffs must meet their
23 burden of proof as to, at least, one of these theories in
24 order to recover. If you find they have not, then the
25 Defendants would be entitled to a verdict.

1 Causation, substantial factor. Now, before you can
2 hold the Defendants liable, the Plaintiffs must prove that
3 the Plaintiff's exposure to that Defendant's asbestos
4 product was of such frequency, regularity and duration that
5 it was a substantial factor in bringing about the disease or
6 injury. The mere fact that an injury or accident occurred
7 standing alone does not permit you to draw a conclusion that
8 the injury or accident was caused by anyone's negligence or
9 breach of warranty of strict liability.

10 For the Plaintiff to prove actual exposure to the
11 Defendant's product, Plaintiff must present evidence of
12 exposure to asbestos from the Defendant's product on a
13 regular basis, over some extended period of time, in
14 proximity to where the Plaintiff worked. This evidence must
15 show more than a casual or minimal contact to asbestos from
16 the Defendant's product.

17 Evidence was presented of other parties contributing to
18 Mr. Steven Stewart's contraction of mesothelioma. It's
19 proper for you to consider the action of those other
20 parties, but only insofar as you assess and determine
21 whether this Plaintiff has met his burden of proving the
22 elements of the claim necessary to recover against this
23 Defendant.

24 Strict liability elements. First theory I'm going to
25 go over with you is strict liability. Plaintiff's claims

1 are that Scapa Waycross, Inc. should be held strictly liable
2 for the Plaintiff's injury. Strict liability means
3 liability without fault. Under the law, the theory of
4 strict liability says that even if the Defendant used due
5 care, the Defendant may still be responsible for Plaintiff's
6 injuries. In other words, it does not matter under this
7 strict liability whether the Defendant was negligent or not
8 negligent if the product was defective and unreasonably
9 dangerous when the product left Defendant's hands.

10 The Defendants are liable even if all reasonable care
11 was taking in the making the product and selling the product
12 and even if the Plaintiff did not buy the product from any
13 of the Defendants or enter into any contract with the
14 Defendants because the Plaintiffs do not have to show
15 negligence as a theory under the theory of strict liability.
16 The Plaintiff must only prove that the product was defective
17 and unreasonably dangerous when it was placed in the stream
18 of commerce. Your focus should be on the product itself and
19 not the conduct of the Defendant. The defect must exist at
20 the time it leaves Defendant's control when liability is
21 sought to be imposed under the strict liability theory.

22 The existence of a defect is crucial because a
23 manufacturer is not an insurer against all risk of injuries
24 associated with the product. In a products liability case
25 against a manufacturer, the Plaintiff has the burden of

1 proving that the product in question was defective at the
2 time the Defendant had possession or control and when the
3 product was delivered or purchased. There is no duty on the
4 manufacturer to furnish a product that will not wear out. A
5 party who sells a product in a defective condition,
6 unreasonably dangerous is subject to liability for physical
7 harm caused to the user if the manufacturer is engaged in
8 the business of producing and selling a product and it is
9 expected to reach and it reaches the consumer without a
10 substantial change in the condition. To recover under
11 strict liability, the Plaintiffs must prove four things by
12 the greater weight or preponderance of the evidence.

13 First, that the product was in a defective condition
14 unreasonably dangerous to Plaintiff. Second, at the time of
15 the injury, the product was in essentially the same
16 condition as when it left the Defendant's hands. Third, the
17 Plaintiffs were injured by the product. And fourth, there
18 was a reasonable alternative design.

19 In any products liability claim, whether for strict
20 liability or negligence, failure to warn or design defect,
21 the Plaintiff must prove the existence of a reasonable
22 alternative design. If Plaintiff does not show that the
23 Defendant could have designed the product in an alternative
24 manner that would have eliminated any defect, the Plaintiff
25 cannot recover under a design defect failure to warn theory.

1 In this state, we balance the utility of the risks
2 inherent in the design of product with the magnitude of the
3 risk to determine the reasonableness of the manufacturer's
4 actions in designing the product. This balancing act is
5 also relevant to the determination that the product as
6 designed is unreasonably dangerous and its failure to
7 confirm to the ordinary user's expectations. In the overall
8 balance of risks and utility of the product, evidence of
9 industry custom is relevant to the ordinary user's
10 expectations.

11 Strict liability design defect. Now, as to the
12 defective condition, the Plaintiff must first prove that the
13 Defendant sold the product and at the time of sale, it was
14 unreasonably dangerous to the user. A defect does not have
15 to be a manufacturing error. With a design defect, there's
16 nothing wrong with the manufacturing process and the product
17 is made according to design, however, there is a flaw in the
18 product's design. The Plaintiff must prove that the product
19 as designed was in a defective condition, unreasonably
20 dangerous. The test is not whether the product could be
21 made safer, but whether its design was unreasonably
22 dangerous.

23 Strict liability defective and unreasonably dangerous
24 product. If you find that it was probable that a user would
25 be injured by the product and the injury was not reasonably

1 perceivable to the user, the produce is defective. You
2 cannot find the product defective if it were only possible
3 that such injury would occur. In deciding whether a product
4 is unreasonably dangerous and defective, you should consider
5 the dangers that would reasonably be anticipated by a
6 particular user of a product of this kind. Then you should
7 decide whether the product involved in this case had a
8 tendency for causing danger beyond that that an ordinary
9 user with common knowledge of the product's characteristics
10 would anticipate. You should also consider whether the
11 dangers associated with the use of the product outweighs the
12 usefulness of the product.

13 The cost involved for adding safety, the likelihood and
14 seriousness of injury and the obviousness of the danger.
15 Now, many products cannot be made completely safe for their
16 use. If products are useful and designed and properly
17 prepared and manufactured and packaged and accompanied with
18 adequate warnings and instructions, they cannot be said to
19 be defective. The fact that a product may be made safer
20 alone does not make the product unreasonably dangerous. In
21 order for the Defendant to be held responsible, the product
22 must have been in such a condition not contemplated by the
23 ultimate user which would be unreasonably dangerous to the
24 user when the product was used in the foreseeable manner,
25 including any intended use of the product at the time it

1 left Defendant's hands.

2 Implied breach of warranty. Next thing I want to talk
3 to you about is the Plaintiff's claim for implied warranty
4 of merchantability. In order to recover under this theory,
5 the Plaintiff must prove by the greater weight of the
6 evidence the same factors I've explained to you for strict
7 liability, that the Defendant manufactured or sold the
8 product, which at the time of sale was in a defective
9 condition, unreasonably dangerous to the user, and that the
10 product was expected to and did reach the ultimate user
11 without substantially changing condition in which the
12 Defendant sold it and that the Plaintiff's injuries were
13 proximately caused by the defective product.

14 A warranty is a pledge by the seller that the product
15 is as it is recommended to be. An implied warranty is one
16 that the law presumes to have been made by the sale of any
17 goods, whether it was actually stated by the seller or not.
18 The sale of a product always carries with it the implied
19 warranty that the product is fit for the original purpose
20 for which the product is normally used. And this is called
21 implied warranty for merchantability.

22 This warranty is based on the buyer's reasonable
23 expectations that the goods purchased from a merchant who
24 sells goods of this kind will be free from significant
25 defects and will perform the way goods of that kind should

1 perform.

2 In deciding whether a product is safe for its intended
3 use, the person who makes the warranty must foresee the
4 conditions under which the product will be used and is
5 presumed to know about the normal environment that the
6 product will be used and the reasonably foreseeable risks
7 that will accompany such use. A warranty that the goods
8 shall be merchantable is implied under the contract of their
9 sale if the seller is a merchant with respect to goods of
10 that kind. To be merchantable, goods must at least pass
11 without objection in the trade in the contract description.

12 In order to recover for breach of an implied warranty
13 of merchantability, the Plaintiffs must prove that the
14 merchant sold the goods, the goods were not merchantable at
15 the time of the sale and their injuries were proximately
16 caused by the defective nature of the goods.

17 Negligence. Third and final theory of the Plaintiffs
18 is one of negligence. And the focus under negligence is on
19 the conduct of the Defendant. In order to prevail under
20 this claim, the Plaintiffs must prove by the greater weight
21 of the evidence that the Defendant failed to exercise due
22 care in some respect. And if you're having a hard time with
23 that phrase, you can substitute the word careless because it
24 means the same thing. It means that the failure to act as a
25 reasonably prudent person would act under the same or

1 similar circumstances or doing something that a reasonable
2 person would not do under the same or similar circumstances.

3 You must first determine if the Defendant owed the
4 Plaintiff a duty. A Defendant will owe a Plaintiff a duty
5 of care when the Defendant knows of the risks of harm. This
6 may be met by showing the Defendant was aware of the danger
7 and failed to take reasonable steps to correct it.

8 Where a product is actually designed and manufactured
9 by another company, the seller assumes the duty of the
10 manufacturer and labels and sells the product as its own. A
11 manufacturer is held to the skill of an expert in the field
12 and is charged with an expert's knowledge of materials and
13 processes used in the industry.

14 A manufacturer has the duty to stay aware of current
15 standards and scientific knowledge in the industry. And
16 therefore, since the seller assumes the duties of the
17 manufacturer, a seller is held to the skill of an expert in
18 the field as well as has the duty to stay aware of current
19 standards and scientific knowledge in the industry.

20 Although evidence of industry standards may be
21 considered as evidence of the standard of care, an industry
22 cannot set its own unreasonable standards. An entire
23 industry may lag behind in the adoption of new and available
24 products or safety features. And the failure to use due
25 care, even if no one in the industry uses due care, does not

1 excuse negligence. It is for you to decide whether the
2 standard of care was proper considering what a reasonable
3 person would have done in similar circumstances.

4 Now, duty of product manufacturers and sellers. A
5 manufacturer owes a duty of care in the manufacture of its
6 products proportionate to the dangers involved in the
7 products use. Under a plan or design that makes the product
8 dangerous for a user for the use to which the product is
9 made, a manufacturer of a product may owe a duty to use
10 reasonable care in the adoption of a safe plan or design to
11 those manufacturer's you would expect to use the product or
12 a danger by its probable use. A seller owes a duty to
13 conduct adequate tests and inspections of its product to
14 discovery latent defects or defects that are not visible or
15 apparent on a reasonable inspection.

16 If a seller has reason to know that a product was
17 likely to be dangerous or defective, the seller has a duty
18 to exercise and use reasonable care inspecting and testing
19 the product before selling it if a reasonable inspection of
20 a test would have disclosed the defect.

21 A manufacturer who incorporates a defective component
22 part into its finished product and places the finished
23 product in the stream of commerce is liable for injury
24 caused by the defective in the component part. A Defendant
25 cannot, however, be liable for an allegedly defective

1 product it did not design, recommend, specify, require,
2 manufacture, sell or place in the stream of commerce.

3 .In deciding whether the Defendant has a duty to test a
4 product, you should consider the Defendant's ability to
5 conduct a test at the time the product was sold. A seller
6 of a defective product has a duty to warn users of the
7 product and any dangers created by its product with which
8 the manufacturer is or should be aware at the time the
9 product is sold.

10 The supplier of a product who knew or should have known
11 that the product is or might be dangerous during its
12 perceivable use and had reason to believe that the ultimate
13 user would not appreciate the dangers has a duty to clearly
14 and understandably warn the ultimate user of the danger. A
15 seller is required only to warn about dangers that are
16 unreasonable or which are dangerous beyond the expectation
17 of general knowledge an ordinary person who buys the product
18 with ordinary common knowledge about the product's
19 characteristics. In other words, there's a duty to warn not
20 when scientific certainty is established, but when a
21 reasonable person would want to be informed of the risks.
22 In deciding whether the directions or instructions or
23 warranties are adequate, you should consider their location,
24 language and size.

25 Products liability design defect negligence. In an

1 action based on negligence, the Plaintiff must prove the
2 product's design was in a defective condition unreasonably
3 dangerous to the user when it left the control of the
4 Defendant and the defect caused his injury. In addition,
5 liability for negligence requires proof that the
6 manufacturer breached its duty to exercise reasonable care
7 to adopt a safe design. This burden may be met by showing
8 that the manufacturer was aware of the danger and failed to
9 take reasonable steps to correct it. A manufacturer of a
10 product made under a plan or design which makes it dangerous
11 for the uses for which it was manufactured is subject to
12 liability to others who he should expect to use the product
13 or be endangered by its probable use for physical harm
14 caused by his failure to exercise reasonable care and the
15 adoption of a safe plan or design.

16 Breach of duty. I've talked to you about the duty of
17 care. If you find the Defendant owed the Plaintiff a duty
18 of care, then the next thing a Plaintiff must prove by the
19 greater weight of the evidence is that the Defendant
20 breached that duty of care by a negligent act or omission.

21 In deciding whether the Defendant breached the duty of
22 care, you should consider whether the Defendant has followed
23 the normal and customary practices and procedures in the
24 industry in light of the Defendant's expertise and ability
25 to see and appreciate the problem and its cause. If

1 Defendant has failed to exercise reasonable care fulfilling
2 any of its duties, the Defendant would be responsible for
3 the injuries to any person the Defendant should expect to
4 use its product, assuming the injuries have been proven to
5 have been proximately caused by that breach.

6 Causation. Finally, in a negligence claim, the
7 Plaintiff's must prove by the greater weight of the evidence
8 that the Defendant's negligence proximately caused the
9 injury to the Plaintiffs and that the damages suffered were
10 proximately caused by the Defendant's breach of its duty of
11 due care. Proximate cause is conduct that produces a
12 natural chain of events and in the end brings about the
13 injury. It is the direct cause of the injury.

14 To prove the Defendant's negligence proximately caused
15 the Plaintiff's injury, the Plaintiff must first prove
16 something called causation in fact. Causation in fact is
17 demonstrated by establishing that the Plaintiff's injury
18 would not have occurred but for the Defendant's negligence.

19 The Plaintiff must also prove something called legal
20 cause. That is proven by showing the injury was
21 foreseeable. And that means the injury occurred as a
22 natural and probable consequence of the Defendant's
23 negligence. The Plaintiff must prove that some injury from
24 the Defendant's negligence was foreseeable, but they do not
25 have to prove that the particular injury that occurred was

1 foreseeable. However, a Defendant cannot be held
2 responsible for something that could not be expected to
3 happen.

4 There can be more than one cause. Proximate cause does
5 not mean the only cause. The Defendant's action can be a
6 proximate cause of Plaintiff's injury if there was, at
7 least, one of a direct occurring causes of the injury.
8 Where two or more causes combined to produce an injury, a
9 Defendant is not relieved from liability for negligence
10 because it is responsible for only one of the causes. It is
11 sufficient that its negligence is a proximate cause without
12 which the injury would not have resulted to a greater
13 extent.

14 Consequently, if a Defendant's negligence is a
15 proximate cause of an injury to another, the fact that the
16 negligence of a third party occurred with its own negligence
17 to produce the harm does not relieve it of liability. In
18 such cases, each wrongdoer is in breach of the duty of care
19 over the Plaintiff. And because the negligence each
20 concurred to produce the injury, they could all be liable.

21 In addition, a Plaintiff under this rule must show that
22 it is more likely than not that the conduct of the Defendant
23 was a substantial factor in bringing about the result. A
24 mere possibility of such causation is not enough when the
25 matter remains one of pure speculation or conjecture or

1 probabilities at the most are evenly balanced.

2 Sophisticated user. A manufacturer has no duty to warn
3 of potential risks or dangers inherent of a product if a
4 product is distributed to a sophisticated user or customer
5 who is in a position to understand and assess the risks
6 involved and to inform the ultimate user of those risks and
7 can thereby warn the ultimate user of any alleged inherent
8 dangers involved in a product.

9 Under this rule, a manufacturer may discharge its duty
10 to warn any users about alleged risks of the product if it
11 one, produces adequate warnings to the immediate purchaser
12 of the product or sells to a sophisticated user or customer
13 that it knows is aware or should be aware of the specific
14 danger. And two, reasonably relies on the purchaser to
15 convey appropriate warnings to downstream users who will
16 encounter the product.

17 State of the art. Now, something you must consider in
18 assessing the Defendant's product and conduct is the state
19 of the art at the time the products left the Defendant's
20 hands. The issue of due care as well as breach of any
21 warranty must be assessed in the light of circumstances
22 existing at the time of the sale.

23 In order for the Plaintiffs to prove their case in a
24 products liability action, they must show that the product
25 was in a defective condition at the time it left the hands

1 of a particular seller. The products must be made against
2 the standards existing at the time of the sale. State of
3 the art includes all the reasonably available scientific
4 knowledge on the subject at a given time. This includes
5 scientific, medical, engineering or other knowledge that may
6 be available. State of the art includes the element of
7 time, what is known, when this knowledge was available.

8 If a product was nondefective under the standards
9 existing at the time it was manufactured, the manufacturer
10 does not have a post-sale duty to warn. You should return a
11 verdict in favor of the Plaintiff only if considering the
12 state of the art existing at the time the Defendant's
13 product was defective.

14 Intervening cause. The chain of causation between the
15 Defendant's negligence and injury may be broken by the
16 independent intervening acts or omissions of another over
17 whom the Defendant has no control. In order to decide
18 whether an intervening act breaks the chain of causation,
19 you must determine whether the intervening act or omission
20 was reasonably perceivable by the Defendant. If the
21 intervening act or omission was a probable consequence of
22 Defendant's negligence, the Defendant is responsible for the
23 Plaintiff's injury. If, however, you find that the
24 intervening act or omission was not foreseeable, the
25 Defendant is not liable unless his actions alone would have

1 caused the Plaintiff's injury even without the intervening
2 act or omission.

3 Under South Carolina law, a Defendant is entitled to
4 assert that other persons or entities contributed to the
5 alleged injury or damages. The matter of others alleged
6 fault in causing the Plaintiff's injuries has been raised by
7 the Defendant. And it's proper for you to consider the
8 actions of others. But only insofar as Plaintiff's have met
9 their burden of proof.

10 The Plaintiff, Steven R. Stewart, was and is prohibited
11 from suing his employer in this court. At the time of the
12 injuries in question, Plaintiff was employed and the
13 injuries occurred during the course and scope of his
14 employment. As to the employer, a claim by Mr. Stewart is
15 governed by worker's compensation laws and an employer's
16 responsibility, if any, for employee's injuries will be
17 determined or has been determined in another forum. A
18 worker's compensation claim is not before you and you shall
19 not give any consideration -- give it any consideration in
20 reaching a verdict in this case. However, the matter of the
21 employer's alleged fault in causing the injury has been
22 raised by the Defense and it is proper for you to consider
23 the employer's actions.

24 Damages, compensatory damages. Now, if you find the
25 Plaintiffs have met their burden of proving, at least, one

1 of these theories, that is strict liability, implied
2 warranty of merchantability or negligence by the greater
3 weight of the evidence and that their damages were
4 proximately caused by the Defendant's conduct and/or
5 product, then you would move on to assess any damages. And
6 that is how much money the Defendant should be required to
7 pay.

8 Actual damages are designed to compensate a party for
9 their loss and to make that party whole, as near as money
10 can do so, or put him or her in the same position they were
11 before the incident or accident occurred. Actual damages
12 would be actual losses and expenses the Plaintiffs may have
13 incurred. Actual damages include several areas recognized
14 by the law.

15 In personal injury actions, the Plaintiffs may recover
16 for the necessary and reasonable expenses caused by an
17 injury, such as amounts necessarily incurred for medical
18 treatment. A person who suffers personal injuries because
19 of misconduct of another is entitled to reasonable value of
20 medical care and expenses incurred for the treatment of
21 injuries as of the time of trial as well as those incurred
22 in the future -- well, future medical damages are not an
23 issue in this case. A Plaintiff may recover for amounts
24 incurred for past medical care, including hospital,
25 physicians, nursing care costs, medicine, or other out of

1 pocket or anticipated expenses.

2 Pain and suffering is also recognized as an element of
3 damages properly considered under the law. Pain and
4 suffering compensates Plaintiff for physical discomfort and
5 emotional response to the sensation of pain caused by the
6 injury. There's no definite standard I can give you to
7 determine the amount of damages. You, the jury, will have
8 to use your calm and reasonable judgment to determine them
9 in the light of your own experiences and in the light of the
10 testimony and the evidence presented in this case.

11 Another form of damages is loss of enjoyment of life.
12 This compensates a Plaintiff for the limitations on the
13 ability to participate and derive pleasure from the normal
14 activities of daily life. Another category is mental
15 suffering. And that is compensation for shock, fright,
16 anxiety, emotional upset.

17 Actual damages for the Plaintiff who has been
18 physically injured include pain and suffering, mental
19 anguish. Mental anguish is more than a mere disappointment
20 or anger or worry or embarrassment or resentment, although
21 it may include those things. It also includes mental
22 sensation of pain resulting from painful emotion, such as
23 grief, wounded pride, shame and humiliation. It may be
24 composed of fright, nervousness, grief, anxiety and worry
25 for an ordeal.

1 Life expectancy table. If you, the jury, deem it
2 necessary, you may take into consideration the Plaintiff's
3 age and life expectancy. The evidence in this case has
4 established the decedent was at the time of his death 69
5 years of age. According to the governing life expectancy
6 table for a male of that age, the decedent had a life
7 expectancy of an additional 13.99 years as indicated by the
8 South Carolina code.

9 Damages for loss of companionship. Now, the
10 Plaintiffs, Steven Edwards and Kathryn Kingston, also claim
11 loss of companionship because of injuries received by their
12 father, Steven Stewart. The companionship or society of a
13 loved one are not articles of commerce that can be weighed
14 or measured or bought or sold. No expert is competent to
15 testify as to their value. There's no way we can determine
16 their marketplace, of course. And the consideration on
17 which they're based is not monetary.

18 But the Plaintiff is entitled to compensation in money
19 for their loss, the loss of companionship, including
20 afforded services provided by the loved one, love,
21 companionship, affection, society, comfort, solace and
22 guidance. Plaintiffs are entitled to recover the value of
23 those services of their father which were lost, including
24 the lost of their father's society and companionship in
25 their home and for any expenses in the care and treatment of

1 their father.

2 Jury deliberations. Now, I'm through with my
3 instructions on the law and I just want to give you some
4 final instructions on your deliberations. Before we do
5 that, I want to remind you that you were chosen in this case
6 not to be partisans or advocates for either the Stewarts or
7 Scapa Waycross. You were chosen because each of them and
8 all of them believed that you could be fair and reasonable
9 and you could be a juror who can decide a case without any
10 kind of bias or prejudice or partisanship, so you are the
11 judges, the judges of the facts. And your sole interest is
12 to determine the true facts from the evidence in this case
13 and to take the law as I just gave it to you and to apply it
14 to those facts and you will ultimately be able to reach a
15 verdict.

16 Now, you should know that the record is now closed.
17 There aren't going to be any more witnesses. There are not
18 going to be any more exhibits. So if something was referred
19 to during this trial, such as a document, whatever it may
20 have been and you don't have it back there as an exhibit, I
21 can't give it to you. So keep in mind that the record is
22 closed. You have everything that you can have to make your
23 decisions based on the exhibits and your memory of the
24 evidence.

25 A jury, if you look up the word in the dictionary,

1 would be defined as a company of people sworn to render a
2 verdict, a true verdict. And that's what you've been called
3 upon to do, is to determine the true facts of this case.
4 And ladies and gentlemen, you each have a vote in this case.
5 And your vote is exactly that, it's your vote and no one
6 else's. Don't be afraid to change your mind if the
7 discussion that you're going to have persuades you that you
8 should because that's what deliberations are all about. But
9 don't surrender an honestly or conscientiously held belief
10 simply to get the case over with or reach a unanimous
11 verdict because these parties have waited a long time and
12 this is their day in court. And I know you recognize the
13 importance of it to them. We appreciate the seriousness and
14 respect that you have given everyone involved in this case
15 and we appreciate your patience with us.

16 Now, you will have a verdict form, two-page verdict
17 form that I am going to give to you. And briefly, under the
18 Constitution of this state, the jury verdict is to be
19 unanimous. Unanimity is mandated. Every single juror must
20 agree upon the jury verdict. It can't be any split or
21 divided vote in any form or fashion, such as 11 to one or 10
22 to two or nine to three. Every single juror must agree on
23 the jury verdict. And when the foreperson writes the
24 verdict and signs her name as the foreperson, that assures
25 the Court that the jury verdict is unanimous.

1 But what it does is, first of all, ask you about claims
2 against Scapa and whether you find Scapa was negligent and
3 that its negligence was the proximate cause of the
4 Plaintiff's injury and damages.

5 Question two asked if Scapa Waycross is strictly liable
6 for selling products that proximately caused injury to the
7 Plaintiff.

8 Question three ask if Defendant Scapa Waycross breached
9 an implied warranty in selling its products and if its
10 breach was the proximate cause of the Plaintiff's injury.

11 If you answer yes to questions one, two and three, then
12 you must answer question four. And question four ask you to
13 set the amount of damages and it ask you to set the amount
14 of damages for survival and damages for wrongful death.

15 Survival damages for Mr. Steven R. Stewart's estate are
16 the damages that Mr. Stewart would have been able to recover
17 if he were still alive, such damages for medical, surgical
18 and hospital bills, conscious pain and suffering and mental
19 distress of the deceased if it has been proven by the
20 greater weight of the evidence.

21 Wrongful death damages are the damages that go to Mr.
22 Steven Edwards and Ms. Kathryn Kingston in their claim for
23 loss of companionship as you see fit when proven by the
24 greater weight of the evidence.

25 And finally, there is a fifth question that simply ask

1 whether you find any of the Defendant's conduct to be
2 willful, wanton or reckless by clear and convincing
3 evidence. This is one time when the standard of proof is
4 more than just a preponderance of the evidence. The
5 evidence must clearly and convincingly establish that the
6 Defendant was actually reckless or willful or wanton,
7 meaning there was a conscious failure to exercise due care
8 or conscious indifference to the rights and safety of others
9 or a reckless disregard of the rights and safety of others.
10 Now, the only time you answer this fifth question is if you
11 actually awarded actual damages in question four. So that
12 then is the verdict form.

13 Now, I thank you all for your attention to me and your
14 patience with me. Don't start deliberating about this case
15 until you receive the exhibits. That will be your signal
16 that you can begin talking about the case. Right now,
17 believe it or not, as long as I've been talking, I may have
18 left something out. And if I have, I'm sure that counsel
19 will quickly remind me of it.

20 So what I want you to do at this time, all of you,
21 including the alternates, go back to the jury room. Please
22 do not begin to deliberate. I will then get you the
23 exhibits and that will be the signal for me to bring out the
24 alternates and allow the jury to begin to deliberate.

25 And I will give the alternates instruction after I

1 converse with counsel as to what your position is now.

2 So all may retire to the jury room at this time.

3 (WHEREUPON, the jury leaves the courtroom.)

4 THE COURT: All right, counsel, what is your position
5 on dismissing the alternates at this time?

6 MR. JEKELL: I think they can go home, Your Honor.

7 THE COURT: That's kind of what I thought.

8 MR. YOUNG: What happens if somebody gets sick during
9 deliberations?

10 THE COURT: Well, that's why I asked you this question.

11 MR. YOUNG: Well, Your Honor, we don't have authority
12 to go with 11, so I don't know.

13 THE COURT: You don't have the authority from your
14 client to go with 11?

15 MR. YOUNG: Right, right. I have authority to do
16 whatever you tell me to do, but I don't have authority from
17 my client to agree to 11.

18 THE COURT: Well, in that case --

19 MR. YOUNG: I don't want to be difficult --

20 THE COURT: No, you're not being difficult. You have
21 the perfect right to do that. You do what your client
22 instructs you. I'm not offended by that one bit. No
23 worries there.

24 Here's what I think we might want to do is take out the
25 alternates and sequester them in another place. And that's

1 what I will instruct be done so that if any consequence
2 arises where another juror is needed, they will still be
3 here.

4 Bring the jury out and I will give them that
5 instruction.

6 MR. EARLY: Your Honor?

7 THE COURT: Wait a minute.

8 MR. EARLY: With regard to charge, you want to hear
9 that now, I assume, right?

10 THE COURT: Yes, ma'am.

11 MR. EARLY: Your Honor, on Page 10, and I think it was
12 just an oversight, but as far as the Henderson standards of
13 charge to the jury, in the first sentence -- and I think --
14 our position is we could just change it on the form and not
15 bring them out and recharge them, but Your Honor charged
16 that the Defendant's products was of such frequency,
17 regularity and duration. The word duration should be
18 proximity. And it's correctly charged in the next
19 paragraph, but if you're going to send the actual charges
20 back to the jury, I would ask that duration be changed to
21 proximity since both Plaintiff and Defendant argued that
22 same thing in closing.

23 THE COURT: All right.

24 MR. YOUNG: Your Honor, we're fine if you just change
25 it on the written version.

1 THE COURT: All right. We'll do that right now. Just
2 stand in place.

3 MR. EARLY: And Your Honor, I would obviously renew my
4 objections from yesterday's charge to preserve everything we
5 argued yesterday in my proposed Defendant's charges as well.

6 THE COURT: Yes, let me certainly preserve the record
7 by saying that we had a lengthy charge conference yesterday
8 and all objections by both sides were placed upon the record
9 and I tried to make rulings on every one of them. And those
10 are preserved as if they were renewed and made again right
11 now.

12 The same goes for the motions with respect to directing
13 the verdict made by each side. I denied those after a very
14 complete conference which all foundation and grounds were
15 discussed and ruled upon by me. Those are matters, again,
16 that will receive the same sort of effects as if that
17 conference and those rulings occurred after Mr. Young closed
18 Defendant's case.

19 MR. EARLY: Thank you, Your Honor.

20 THE COURT: All right. Bring the jury in.

21 (WHEREUPON, the jury enters the courtroom.)

22 THE COURT: Please be seated for a moment, ladies and
23 gentlemen of the jury. I will be sending back with you two
24 different things. First is the jury form, the two-page jury
25 form that I showed to you, that will go back with you. And

1 then there is a document that is 28 pages long, that is the
2 jury charges that I just read you. I know that y'all have
3 been taking notes, but it's helpful sometimes to have the
4 actual charge itself. Some judges don't do that, but I
5 always do, particularly when you've got a technical
6 complicated case. Now, I hope you don't try to become law
7 review experts and sit there and spend all your time parsing
8 it, but if you need it, you don't need to come back out here
9 and have it reread, you've got it in the jury room and you
10 can refer to it.

11 Now, alternates on the jury, it would be mighty foolish
12 of me to dismiss you and then have something that we don't
13 know occur that requires your services. So what we're going
14 to do with our alternates is to have you have your lunch in
15 a place that the clerk will provide for you and have y'all
16 remain there while your colleagues deliberate the case. If
17 there's any need for your services, I then will be able to
18 utilize you. Otherwise, if we have a situation where we did
19 not have a whole jury, South Carolina law does not let us
20 proceed with less than 12, so it would awfully foolish to
21 have had you sit here for two weeks and then not have you
22 available if we need you. So we're going to keep you here
23 if that's okay. And that is by request of both sides and
24 myself. So that is how we will do it.

25 So now what we will do is I will give these to the

1 clerk and she will send -- what we will do first is if the
2 12 regular jurors will rise at this time and proceed to your
3 jury room.

4 (WHEREUPON, the jury leaves the courtroom.)

5 THE ALTERNATE: I have a coat in the jury room.

6 THE COURT: Oh, you're going to have a chance to get
7 and get it. Don't worry. No worries. They're not going to
8 deliberate until I send the exhibits back anyway. So no
9 worries.

10 Now, Madam Clerk, if you will give that to the jury and
11 then come back out here and get your three alternates and
12 take them to wherever you want to have them stay.

13 And, ma'am, and all of you can get any personal
14 possessions out of the jury room, of course. I won't allow
15 the exhibits to go back and deliberation to begin until
16 you've retrieved everything you need to. Just be patient
17 with me for a second.

18 THE BAILIFFS: Let the alternates get what they need
19 now, Judge?

20 THE COURT: Yes, sir.

21 (WHEREUPON, the alternates leave the courtroom.)

22 THE COURT: Let me know when they're out so we can send
23 the exhibits back.

24 (Pause.)

25 (WHEREUPON, Defendant's Exhibit Proffer No. 12 was

1 marked for identification.)

2 (WHEREUPON, Court's Exhibit Nos. 3 and 4 were changed
3 to Court's Exhibit Nos. 4 and 5 due to previous Court
4 Exhibit No. 3 being marked previously.)

5 (WHEREUPON, the jury begins deliberating at 12:41 p.m.)

6 (WHEREUPON, Court was in recess awaiting a verdict.)

7 THE COURT: The jury has sent me a note that says the
8 jury has completed their deliberations. So as soon as we
9 bring the alternates up and let them sit, I'm sure they will
10 want to listen to the verdict, then we'll bring the jury in
11 to see what they tell us.

12 (WHEREUPON, the alternates enter the courtroom.)

13 THE COURT: Let's bring in the jury.

14 (WHEREUPON, the jury enters the courtroom.)

15 THE COURT: Ladies and gentlemen of the jury, you may
16 take your seats. I have a communication from your foreman
17 that the jury has completed their deliberations.

18 Madam Foreman, do you have a verdict for me?

19 MADAM FOREMAN: Yes, ma'am.

20 THE COURT: Very well. If you will hand that verdict
21 to the clerk.

22 All right. The verdict of the jury is as follows:
23 Negligence, one, we, the jury, find that Defendant Scapa
24 Waycross, Inc. was negligent and its negligence was a
25 proximate cause of Steven R. Stewart's injury and damages?

1 Yes.

2 Number two, strict liability. We, the jury, find the
3 Defendant Scapa Waycross, Inc. is strictly liable for
4 selling products that proximately caused injury to Steven R.
5 Stewart? No.

6 Implied warranty. We, the jury, find the Defendant
7 Scapa Waycross, Inc. breached the implied warranty in
8 selling its products and its breach was the proximate cause
9 of Steven R. Stewart's injury and damages? No.

10 Number four, if you answered yes to any of questions
11 one, two or three, please state the amount of actual damages
12 that have been proved by the greater weight of the evidence.
13 Damages for survivor, \$600,000. Damages for wrongful death,
14 \$100,000.

15 Number five, if you answered yes to question one,
16 please answer question five. We, the jury, by unanimous
17 verdict find by clear and convincing evidence that the
18 conduct of the following Defendant was willful, wanton or
19 reckless, Scapa Waycross? No.

20 Signed by the foreperson of the jury, dated 2/9/2018.

21 The verdict is in regular form.

22 Counsel, would you like the jury polled?

23 MR. YOUNG: No, Your Honor, not by the Defense.

24 MR. JEKELL: No, Your Honor.

25 THE COURT: Very good.

1 I hand this verdict form to you, Madam Clerk.

2 Ladies and gentlemen of the jury, this completes your
3 service on this case. I've been in this business for, this
4 October, 50 years. My husband and I graduated from law
5 school in 1968, so I've had a lot of experience trying cases
6 as a lawyer and presiding as a judge for 27 plus years.
7 I've seen a lot of juries. I don't believe I've seen a jury
8 in my time that was any more attentive or committed to their
9 job than this jury has been. I just thank you so much for
10 your service to your county, to the state and to our country
11 by being willing to stay with this very complex problem
12 until you gave us and rendered your true verdict. You're
13 each to be congratulated.

14 Alternates, thank you so much for staying with this
15 process. It's only by the luck of the draw that you are
16 alternates rather than regular jurors, but in every sense,
17 you are part of the jury that made this result possible.

18 So on behalf of the parties and York County and,
19 certainly, on behalf of myself, I thank all of you very
20 much. You may all be dismissed. Thank you.

21 (WHEREUPON, the jurors and alternates were dismissed
22 and left the courtroom.)

23 THE COURT: Counsel, we've got several things at hand
24 at the present time. Certainly, there are the post-trial
25 motions. In addition to that, there will be apportionments

1 that needs to be done pursuant to our contribution statute.
2 And so I ask you first --

3 Turning first to Mr. Jekell, how would you like to
4 proceed, Mr. Jekell?

5 MR. JEKELL: Your Honor, I think everybody's a little
6 bit wore out. Post-trial motions, isn't that normally 10
7 days?

8 THE COURT: It is. And, you know, what I would advise
9 both sides to do in that regard is simply to file something
10 within the requisite period of time and then you will have
11 met your burden, your 10-day burden. Then we will schedule
12 something, which may be here, it may be in Columbia, just
13 depending on what is convenient for folks to hear those
14 post-trial motions.

15 Let's talk a little bit about that. Both sides will
16 file their motions within 10 days?

17 MR. EARLY: Correct.

18 THE COURT: And that's, as we know, an absolute
19 deadline, cannot be extended.

20 MR. JEKELL: Yes.

21 THE COURT: So that needs to be done.

22 MR. JEKELL: Yes.

23 THE COURT: And then the memorandum of law should
24 certainly be filed. And I will give each side -- what do
25 you want for a memorandum of law?

1 MR. EARLY: Is 30 days too long for that, Your Honor?

2 THE COURT: I don't think it is. I think each side
3 could file within 30 days briefs and memoranda to support
4 your point of view on your -- there will be motions on both
5 sides, of course. And then each side will have 10 days to
6 respond to the other side's filing. And then when that is
7 complete, I will set a time for us to come together. The
8 same is true of the apportionment of the contributions.
9 Plaintiff will prepare for us at some point after we've
10 discussed these post-trial motions a document that lets me
11 know what the other contributions are. And I generally have
12 that filed with me. I take it and examine it to see how
13 they apportion it and then decide in what format it will be
14 able to be examined by the Defense. But we'll provide all
15 that and then we'll make our apportionment.

16 THE COURT: Yes, sir.

17 MR. YOUNG: Your Honor, I hate to be stupid, but --

18 THE COURT: Rely on your local counsel. He knows
19 exactly how this operates.

20 MR. YOUNG: You're talking about settlements?

21 THE COURT: I'm talking about -- our contribution among
22 joint tort feisor statute provides for certain offsets that
23 take into account settlements that have been made by other
24 named parties. And that is what I am referring to. Of
25 course, those settlements, we protect the confidentiality

1 that has to be protected, but the settlements and
2 Plaintiff's approach to it involves some apportionment
3 between various aspects of the case. And I won't suggest
4 how they're going to handle that, I will simply tell you
5 that's a part of the process that we have to engage in.

6 MR. EARLY: Your Honor, you mean allocations versus
7 apportionment, correct?

8 THE COURT: Allocation, I'm sorry. I don't mean
9 apportionment at all.

10 MR. EARLY: Just so the record is clear, Your Honor,
11 allocations have been made at the time of the settlement
12 with the settling defendants before, the jury has made their
13 allocation today.

14 THE COURT: That's correct. I don't mean to change any
15 law. I'm trying to operate under the provisions of the
16 contributions among joint tort feasons act and that's what
17 I'm referring to.

18 MR. EARLY: Thank you.

19 THE COURT: Anything else?

20 MR. EARLY: Nothing from the Defendant, Your Honor.

21 THE COURT: Gentlemen, I thank both sides for a very
22 well tried case. And I appreciate very much your putting up
23 with my pushing things along in what is sometimes the way
24 judges do trying to get the parties to move things along,
25 but I do appreciate very much the professional way in which

1 you all have tried to respond to the way this trial has been
2 handled.

3 Ms. Kingston and Mr. Stewart, nothing will ever replace
4 your dad or bring him back, but you can be comforted by the
5 fact that you have gotten fine attorneys that have really
6 done a beautiful job for you. And I know you agree with
7 that as well. Good people and very zealous advocates. And
8 I have been very impressed with both of you and the way you
9 handled yourself throughout these proceedings. I thank you
10 very much for the way you have approached this matter.

11 You may tell Mr. Doherty on behalf of your clients that
12 I appreciate the way the client has handled these matters.
13 I think it's been very professionally handled. It's been a
14 joy for me and an honor for me to have been the one to have
15 presided over this case. It's a nice first one for York
16 County. This is the first case in their renovated
17 courthouse, so you all have been our guinea pigs and me,
18 too, to some extent.

19 So I say to you, Madam Clerk and your staff, and
20 bailiffs and your staff and sheriff and your staff, it's
21 been a joy to be here in York County. What a refreshing
22 group. I can tell you, this approach is not always followed
23 in other counties that I've tried cases, but I've really
24 enjoyed this very much.

25 Court will be adjourned.

1 (WHEREUPON, Court Exhibit Nos. 6 through 11 were marked
2 for identification.)

3 *****END OF PROCEEDINGS*****
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CERTIFICATE OF REPORTER

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3 STATE OF SOUTH CAROLINA)

4 COUNTY OF AIKEN)
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6 I, PENNY M. JOHNSON, Official Court Reporter for the
7 Second Judicial Circuit of the State of South Carolina, do
8 hereby certify that the foregoing is a true, accurate, and
9 complete Transcript of Record of the proceedings had and the
10 evidence introduced in the trial of the captioned case,
11 relative to appeal, in Court of Common Pleas for York
12 County, South Carolina, on the days of February 7-9, 2018.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.
15

16 February 28, 2018
17
18

19 Penny M. Johnson
20 Penny M. Johnson
21 Official Court Reporter
22
23
24
25

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF YORK) CASE NO. 2013-CP-46-00368

3

4 Steven R. Edwards,)
Individually and as)
5 Personal) Transcript of Record
Representative of the)
6 Estate of Steven)
Redfearn Stewart,)
7) Date: July 11, 2018
Plaintiff,)
8)

9 vs.

10 SCAPA Waycross, Inc,
11 Defendants.

12 * * * * *

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B E F O R E:

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The Honorable Jean Toal

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Denise J. Lauder, RPR

25

Ninth Judicial Circuit

26

1 A P P E A R A N C E S

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(No exhibits were offered or
marked for identification.)

1 (The following proceedings were held
2 July 11, 2018, 9:38 a.m., Richland County Common
3 Pleas Court.)

4 THE COURT: The next motion is the
5 plaintiffs' motion for additur. Mr. Jekel.

6 MR. JEKEL: Mr. Stewart is going to --
7 Mr. Hyland is going to --

8 MR. HYLAND: Greg Hyland on behalf of
9 Mr. Stewart.

10 THE COURT: Mr. Hyland.

11 MR. HYLAND: Thank you, Your Honor. In
12 a case where a jury has spoken, but their verdict
13 is inadequate, the Court certainly has the
14 authority to come in and add to a verdict that is
15 merely inadequate.

16 In certain instances if it is motivated
17 by prejudice or capricious and just so far out of
18 reality, then the Court can grant a new trial
19 altogether. That's not the standard here. That's
20 the standard for a new trial. What we're asking
21 for is to add to the damages in this case.

22 There's two causes of action, one for
23 survival and one for wrongful death. The jury on
24 the verdict form gave \$600,000 in survival damages
25 and \$100,000 in wrongful death damages for the

1 daughter and son of Mr. Stewart. It was stipulated
2 in this case to the medical damages, which the
3 economic damages of \$241,822.70. No controversy as
4 to those economic damages.

5 And with regards to a wrongful death
6 award as far as -- with regards to a survival
7 damages award, compensatory damages, to have a
8 verdict of only \$600,000 is -- it falls way short
9 of any other reasonable verdicts of a similar
10 nature.

11 For this case, this is a man who died
12 of mesothelioma. It is a disease incredibly
13 painful to have. He underwent a maximally invasive
14 surgery that his surgeon described as removing a
15 rib, shaving down scar tissue from the lung like an
16 orange, using a knife for hours to scrape the tumor
17 off and scrape larger pleural plaques out of the
18 lung.

19 The recovery took -- would have taken
20 several months involving intense pain. Mr. -- now
21 even before this surgery, Mr. -- Mr. Stewart had
22 three months of chemotherapy, which in itself would
23 include two forms of toxic chemo drugs that he was
24 subjected to; and once or twice a week for these
25 three months, he had to have fluid, quarts, drained

1 out of his lungs with a large needle. That in
2 itself was painful enough to add to the
3 chemotherapy he was undergoing.

4 This -- the -- now, Mr. Stewart had
5 gotten sick. He was feeling pain already in 2012.
6 He hadn't -- he was diagnosed in that year. He was
7 feeling extreme pain. He had some other health
8 problems that were managed, and he was otherwise
9 fine, but he was diagnosed with mesothelioma. He
10 doesn't share it with his kids right away.

11 He hides it from his kids actually for
12 a while, and it was painful for him to admit it to
13 him that he was diagnosed with a terminal disease,
14 one of which he was experiencing increasing pain on
15 a daily basis.

16 He would -- his daughter would end up
17 spending the time with him when he decided that he
18 was going to try to extend his life, but the fear
19 of dying so soon that he didn't want to miss out on
20 the life that he had he chose to undergo the
21 surgery, which he was approved for and fit to go
22 through.

23 The surgery was intense, his daughter
24 was with him for an entire month going through the
25 surgery and the difficult recovery that was

1 involved.

2 He would then have -- with the
3 therapies involved, he tried hard. He had a long
4 rehab program, but in the words of Dr. Harpole, he
5 was too debilitated, he was just too debilitated to
6 get through that rehab, and he would eventually go
7 into Hospice and died as a result. He died a slow
8 painful death.

9 He died at age 70. He had 14 years --
10 13 years right in between on the life expectancy
11 tables and that is what the jury was instructed on.
12 Thirteen years of his life was gone.
13 Thirteen years of his life that his family members,
14 his two grandsons, his son and his daughter didn't
15 get to spend with him.

16 In our motion we have suggested and
17 requested that the Court take the verdict that they
18 have and look at the medicals which are round about
19 \$250,000 and take a ten-times multiplier and take
20 it into the realm of reasonableness. As it is, we
21 submit this is an unduly conservative verdict.

22 If we were to take it to a ten-times
23 multiplier, it would be within the range of cases
24 that have been before this Court before, that have
25 been discussed by this Court when dealing with

1 motions for remittitur and additur in previous
2 cases.

3 And that number alone would be
4 reasonable, but I also submit that this is so --
5 it's so unduly conservative with the \$600,000 that
6 you would take -- if you were to take on his worst
7 day a similar case, a three-times multiplier, it
8 would get you into the realm just being at the
9 bottom level of what is normally considered
10 acceptable.

11 And so we would submit that four times
12 medicals in this case would still be a reasonable
13 amount, that would be a million dollars to add to
14 the verdict here, or at least to use for
15 non-economic damages, for the survival claim.

16 Now, on the side of the wrongful death
17 claim, again, he had these two -- Katherine
18 Kingston and Steven Edward who live in South
19 Carolina and were close with their father, friends
20 with him.

21 Katherine was a single mother who
22 Mr. Stewart had taken in after she got out of a bad
23 relation and actually helped put her into a house
24 and paid for it and provided continued emotional
25 financial support to her and to the grandchildren,

1 visiting often in Moncks Corner, having them come
2 and visit him at his home in Rock Hill, and also
3 meeting in between in Columbia.

4 The son Steven also visited along with
5 his -- with his wife. The son, daughter witnessed
6 how -- along with his friends, Fred Steel and
7 others, witnessed how Mr. Stewart was missing out
8 on the normal enjoyment of his daily life. He
9 enjoyed gardening; he enjoyed travelling; he
10 enjoyed motorcycling; he enjoyed his dog, Buddy; he
11 enjoyed spending a lot of time outside tending to
12 his yard.

13 As the disease got worse, he wasn't
14 able to do any of these things. He wasn't able to
15 enjoy his own life in that respect, and he wasn't
16 able to travel and spend time with his
17 grandchildren. He couldn't garden; he couldn't
18 even tend to the dog; he had to give up his
19 motorcycle; he couldn't travel to Moncks Corner;
20 and at one point couldn't even travel to Columbia,
21 which he often liked to meet for dinner or lunch
22 and go to the zoo, things like that.

23 Katherine, herself, as I mentioned,
24 spent one month with her father, saw him on a
25 normal basis, but in that one month she saw the

1 surgery and saw what he had to go through during
2 that time had -- she expressed as being enormously
3 shocking and terribly sad.

4 The 14 years that these -- these family
5 members have been cut short from their lives to
6 spend with the father. He had an untimely death
7 and a difficult death, and the \$100,000 that was
8 awarded to these family members for that loss, that
9 loss of time, that depravation of his society is
10 inadequate.

11 We submit that it should be increased
12 by at least \$400,000, and in that realm, as it were
13 at around \$500 or more, it would be at least
14 perhaps half of what a survival damages award would
15 be, but their illogical relation to a damages
16 verdict -- compensatory damages verdict and -- or
17 award which would make sense.

18 And, again, it would be conservative,
19 but at least no longer unduly conservative. We
20 would beg the Court to do so thank you.

21 THE COURT: Mr. Early.

22 MR. EARLY: With your longstanding
23 rule, Will Early; we have Scapa, the Defendant
24 Scapa Waycross.

25 As everybody else has said, I think I

1 would be remiss if I didn't mention the passing of
2 my friend, Lane Young. He was very dear to me; he
3 was very good to me personally and to my career. I
4 will miss him as well.

5 Your Honor, with regards to the
6 additur, I feel like we just heard a closing
7 argument again. And that was very well vetted in
8 front of the jury. Mr. Jekel did an extremely good
9 job laying out all of those same numbers, and even
10 more so to the jury in their closing argument, as
11 did Mr. Young in ours.

12 But before I talk about the law in the
13 case, I do want to read a little bit of the
14 transcript. A couple of things -- two real
15 statements. The first is from Mr. Jekel's closing
16 argument. He says, right out of the bat, good
17 morning. We're finally here, and I want to note at
18 the outset that you-all have been a very attentive
19 and engaged jury.

20 And he went on to talk about how, if
21 you remember, Your Honor, this jury showed up, they
22 wanted to come up at 8:30 in the morning, they
23 asked questions, they submitted written questions.

24 We, I think -- they were so attentive
25 they asked a question about Machin v. Carus

1 Corporation, and they're not lawyers, but Your
2 Honor even had a charge on that. And I was
3 dumbfounded when they asked that question, frankly,
4 because they were talking about things like
5 worker's comp and other defendants and things that,
6 frankly, our Supreme Court just talked about in
7 Smith v. Tiffany and Machin.

8 The second statement I want to read
9 from the record is, ladies and gentlemen of the
10 jury, this completes your service on this case.
11 I've been in this business for, this October, 50
12 years. My husband and I graduated from law school
13 in 1968, so I've had a lot of experience in trying
14 cases as a lawyer and presiding as a judge for 27
15 plus years.

16 I've seen a lot of juries. I don't
17 believe I've ever seen a jury in my time that was
18 any more attentive or committed to their job than
19 this jury has been.

20 And Your Honor went on to thank the
21 jury. Of course that came from yourself after the
22 verdict was read. And they were attentive, this
23 jury.

24 And Mr. Jekel just talked about it
25 during his JNOV how attentive the jury was and they

1 did the right thing. Well, now they want to say
2 the jury wasn't attentive and they did the wrong
3 thing.

4 If you look at their brief, Your Honor,
5 on page 5, they highlight a charge and come up with
6 why the jury did what they did.

7 They say with regard to Your Honor's
8 charge, the evidence of other parties, but you're
9 only -- for as far as causation -- but you're only
10 to look at this defendant when you're determining
11 damages.

12 And they say that Mr. Young in his
13 closing made somewhat of a market share argument,
14 they don't cite to the record, because, of course,
15 he didn't do that, but in that -- and they say, in
16 rendering such a verdict, the jury ostensibly
17 violated the court's charge.

18 So we have a very attentive jury who
19 listened to all of the evidence, factual, from the
20 witness stand, listened to the law as Your Honor
21 charged it, listened to Mr. Jekel's closing
22 argument, my colleague, the late Lane Young's
23 closing argument, and now they're saying they
24 didn't pay attention and they didn't follow the
25 law. Well, the fact of the matter is, they did,

1 Your Honor.

2 What Mr. Young said in his closing
3 argument, and I have it, he said that Mr. Jekel
4 asked for \$5.2 million. We don't think you should
5 award anything. The fact of the matter is, that
6 wasn't the truth of the case. Is the number in the
7 range of the medical bills reasonable for you to
8 decide to give as an award? That's something
9 you-all have to decide.

10 And, in fact, the jury in this case,
11 Your Honor, gave almost -- well, over three times
12 -- almost three times the medical bills, which
13 is -- you know, that is certainly in their province
14 of the jury to do.

15 They're asking you to invade the
16 province of this very attentive jury that heard
17 evidence for two weeks. They heard their evidence
18 and they heard ours, albeit brief, we had two days
19 cut short, but they heard it all. And now they
20 want to invade the province of the jury.

21 So what has to be done to do that? In
22 my colleague Greg's brief, he highlighted on some
23 of the terms of art. Well, first of all, there's
24 got to be -- compelling evidence must be given to
25 justify invading the province of the jury. And the

1 jury's damages award must be so shockingly
2 disproportionate to the injuries as to indicate the
3 jury was moved or actuated by passion, caprice,
4 prejudice, or other considerations not found in
5 evidence.

6 And both of those came from the --
7 those quotes came from the Riley case, Riley v.
8 Ford, where Judge Early, my dad, granted additur in
9 that case on the wrongful death -- on the wrongful
10 death case claim. So, in this case, the jury gave
11 more than double medical bills.

12 I did hear him talk about Jolly, Your
13 Honor, but if you remember, some of my colleagues
14 in the courtroom tried the Jolly case, and I think
15 Your Honor determined based upon -- I don't think
16 the medical bills were put in in that case, but
17 there was essentially 58,000 left over, what I
18 think Your Honor termed that they gave were
19 noneconomic damages of pain and suffering. Well,
20 they gave seven times that in this case.

21 And this is a jury in York County
22 where, you know, we -- juries tend to be
23 conservative in some parts of the state. They know
24 that. I asked Mr. Graham if we could move this
25 case somewhere else so we could get a faster trial,

1 but he didn't want to do that.

2 So the fact that we have a jury that's
3 conservative doesn't necessarily mean they were
4 moved by passion or caprice or prejudice or
5 anything like that. In fact, the jury heard
6 evidence from their own expert and medical records
7 that Mr. Stewart -- we don't deny he had
8 mesothelioma and he passed away from that, but he
9 also suffered from a heart attack, at least one,
10 hypertension, he had a bypass surgery, COPD,
11 another lung disease, bladder cancer, prostate
12 cancer, skin cancer.

13 We asked Dr. Harpole, their damages
14 expert, his surgeon, we asked him if, based upon
15 all of those things -- and, again, I just heard the
16 term 14 years, 13 years, but Dr. Harpole couldn't
17 even say what his life expectancy would be because
18 he had all of those myriad of problems.

19 If you look at the Riley case, Your
20 Honor, which is a seminal case, the most recent
21 case and the only one that I'm aware of really
22 granting any additur, in that case -- once again,
23 survival didn't go to the jury -- do you want me to
24 wait, Your Honor?

25 THE COURT: No. No. Go ahead.

1 MR. EARLY: Okay. Survival didn't go
2 to the jury, and I think there was a trial
3 decision -- that case was tried in my own hometown
4 in front of my dad. And, I think, actually Greg's
5 wife was my dad's law clerk in that case. But,
6 anyway, that case was tried and the survival case
7 did not go to the jury. Wrongful death did.

8 And in that case, Sheriff Riley, he was
9 the sheriff of Jasper County, long-time sheriff of
10 Jasper County, five children, lived with his wife
11 for a gazillion years. The quotes from the trial
12 where the Court -- the Supreme Court, which you
13 were on, found compelling evidence that Mr. Riley
14 was a loving father, husband, central figure in the
15 life of his family for the entire time throughout
16 his life. He supported them morally, economically.
17 They were married. Sheriff Riley and his wife were
18 best friends.

19 Your Honor, in this case we have -- and
20 I'm not casting judgment, but the jury certainly
21 heard all these things -- that the children were
22 not in their dad's life. Mr. Stewart, as you know,
23 and heard from the evidence, relinquished his
24 parental rights when the children were babies.

25 They moved to Texas. He saw them

1 sometimes once every two years. No financial
2 support. He saw them when he came -- when they
3 came to South Carolina. He was diagnosed with
4 mesothelioma, and only after that did he readopt
5 them as adults. And it was admitted that they did
6 that so they could inherit from their dad.

7 When he lived in South Carolina -- and,
8 again, this is not Will Early casting judgment, but
9 the evidence showed that they lived right down the
10 road in the Charleston area. They knew their
11 father was passing away, and neither one of them
12 was there when Mr. Stewart died. The jury heard
13 all that; they considered all of those things.

14 So, Your Honor, I would ask the Court
15 to not invade the province of this York County jury
16 who heard for two weeks all the evidence, all the
17 facts, closing arguments, deliberated, asked very
18 good questions, they were very attentive. I don't
19 think there's a compelling reason to do so.

20 And, certainly, I don't think there's
21 any finding in the record that this jury -- this
22 very attentive jury, as Your Honor called them, was
23 driven by any passion, caprice, or prejudice. And
24 I would respectfully ask Your Honor to deny any
25 motion for additur.

1 THE COURT: Thank you, Mr. Early.

2 Mr. Jekel -- excuse me, Mr. Graham,
3 reply?

4 Oh, excuse me, Greg. I'm sorry. I was
5 trying to put you in --

6 MR. HYLAND: I'll stand up --

7 THE COURT: -- co-counsel --

8 MR. HYLAND: Your Honor, for starters,
9 I would just like to clear up, as I'm sure Your
10 Honor is aware, the standard for additur is not
11 that a jury's verdict was clearly motivated by
12 prejudice, capriciousness, or anything like that.

13 The Court is required to delineate
14 between whether or not -- in granting additur or
15 deciding to grant a new trial, whether or not the
16 evidence or the award was merely inadequate or
17 unduly conservative or if it was that prejudice,
18 capricious sort of decision.

19 And, in this case, as I indicated,
20 we're not contending that a new trial is necessary
21 because of that standard -- because of that
22 underlying premise that it would be prejudice --
23 prejudice or capricious, but it is an additur and
24 that's what the standard is and the discretion is
25 with the court, Your Honor.

1 And just to point to the two cases that
2 my colleague, Mr. Early, mentioned, in the Ford v.
3 Riley case, which is very instructive on what to do
4 in these instances, in that case it was wrongful
5 death. We weren't talking about survival.
6 Interestingly enough, the initial award was
7 \$300,000, and that was tripled and upheld by the
8 Supreme Court.

9 In this instance, the wrongful death
10 damages awarded by the jury were \$100,000, and
11 we're only asking the Court to increase those to a
12 level that is a fraction what was increased in the
13 Ford case.

14 Some of the facts are different, but,
15 in any event, we're not looking to have a large
16 bonus or anything out of what is reasonable, but
17 the initial award is what is inadequate. Now --

18 THE COURT: Let me be clear what you're
19 asking for in the wrongful death. \$100,000 was
20 awarded for wrongful death, correct?

21 MR. HYLAND: Yes, Your Honor.

22 THE COURT: And what did Mr. Jekel ask
23 for? Three times? Four times -- or what are you
24 asking for?

25 MR. HYLAND: Asking for an additur of

1 \$400,000.

2 THE COURT: To \$400,000? Of \$400,000?

3 MR. HYLAND: Of \$400,00.

4 THE COURT: So you're asking for

5 \$500,000.

6 MR. HYLAND: Yes, Your Honor.

7 THE COURT: Well --

8 MR. HYLAND: I would suggest that in

9 our --

10 THE COURT: In Riley, it was \$300,000
11 and the Supreme Court approved a trebling, right?

12 MR. HYLAND: Well, yes, Your Honor.

13 Judge Early increased it by 600, taking it from 300
14 to 900.

15 THE COURT: Right.

16 MR. HYLAND: And so we're asking --

17 THE COURT: So you're asking for
18 something a little bit higher than Riley is what
19 I'm hearing you ask for, not lower.

20 MR. HYLAND: Well, the multiplier is
21 higher, but --

22 THE COURT: Well, the number is -- I
23 understand what your argument is, but -- go ahead.

24 MR. HYLAND: All right. And, also, to
25 touch on the other medical conditions, Your Honor,

1 the Garvin case previously before this Court, it
2 was a remittitur decision --

3 THE COURT: We're switching over to
4 survival now?

5 MR. HYLAND: We are switching back over
6 to survival. I should have been clear, I
7 apologize. Back on the survival side of this,
8 Mr. -- Mr. Garvin, he suffered from a number of
9 serious medical conditions. He was actually -- he
10 was in remission at the time from a different type
11 of -- a different form of mesothelioma.

12 And he was dealing with those health
13 issues alone. Okay? And he was -- this was a
14 living case. The judge -- Judge Hill, in that
15 case, decided that he was going to grant remittitur
16 and take what were somewhat similar medicals he
17 said were somewhere between -- including future
18 medicals, would have been 300 to \$450,000 at most.

19 And then he took the verdict -- or the
20 award down to one and a half million for survivor
21 damages. And, again, I believe that's instructive
22 even in a case with serious medical conditions; the
23 difference being that he was not dead, but dying of
24 mesothelioma, and was suffering from them himself.
25 He died at -- he was 74 years old at the time of

1 trial. He had 10.78 years left in his life.

2 But, then again, you're looking at a
3 similar multiplier to the formulation that I have
4 proposed here. And he was -- then had a four times
5 multiplier at least there for his noneconomic
6 damages. And so certainly, as I said, we're
7 looking to take this from the realm of unduly
8 conservative to reasonable.

9 And a ten-times multiplier I believe
10 would be appropriate, be great, but perhaps a
11 conservative -- a reasonably conservative
12 multiplier here is four times the medicals to add
13 on top of the actual medicals for survival. Thank
14 you.

15 THE COURT: Ladies and gentlemen, I
16 have struggled mightily with this issue of additur.
17 This was a very discerning jury, and I stand by the
18 observations that were made at the time. I haven't
19 seen a more attentive jury in my very lengthy time
20 in practice, both as a trial practitioner as well
21 as an appellate judge and now a trial judge.

22 But one thing that presents some
23 difficulty in this case is the empty chair, which
24 was argued very, very heavily in this case. And,
25 really, the empty chair, and I charged the jury

1 this way, is not a doctrine that has any impact on
2 the award of damages. The empty chair is a focus
3 on who is responsible -- what entity or who is
4 responsible for the injury suffered by plaintiff.
5 It's a liability doctrine.

6 And the defendant, even when both
7 parties are no longer in the case or never were in
8 the case may argue it, if the evidence supports it,
9 that entities mentioned the during the course of
10 the trial or discussed during the trial or evidence
11 presented during the trial were responsible for the
12 injury and not the defendant who is before the
13 jury.

14 And that was argued, but the jury asked
15 a lot of questions about this issue. And, again, I
16 attempted to make a distinction between the empty
17 chair as a function of liability and damages. And
18 I tried to stick very close to what our court has
19 said in that regard, and the charges that I gave
20 are charges that reflect the language that the
21 court has given us to use as trial judges.

22 But I am not concerned about the
23 wrongful death claim. I think that is much more a
24 judgment call by the jury, and I say that with no
25 disrespect for the children of Mr. Stewart. There

1 certainly was a time in their lives when they had
2 no relationship with their father, but during the
3 last years of his life they had a very strong
4 relationship with him and suffered a loss. And it
5 was up to the jury to decide what to award for
6 that, and I would not disturb that.

7 I am a little concerned about the
8 survival damages. Yes, Mr. Stewart had other
9 medical conditions which were under control as far
10 as what I understood his treating physician to
11 discuss. And while the treating physician gave no
12 life expectancy, nor did the treating physician
13 give any indication that his life would be
14 shortened by these other conditions.

15 The treating physician simply did not
16 give any evidence on that point, but simply gave
17 evidence about what the state of those conditions
18 was when Mr. Stewart suffered the mesothelioma.

19 The evidence in this case disclosed
20 mesothelioma could only come from asbestos. There
21 may be a debate about that in other mesothelioma
22 cases, but there was no debate in this case but
23 that Mr. Stewart's contraction and death from
24 mesothelioma was a result of cancer. A cancer that
25 was caused by asbestos, and the treatment that he

1 received at the very last was extremely painful.

2 Both the plaintiffs' and defendants'
3 experts said that it is a terrible death and a very
4 painful death. So I debate with myself about that.

5 The medical damages were in the realm
6 of \$240,000, and the jury awarded a total of
7 \$600,000, which is approximately three times the
8 medical damages. Would I have awarded more? Yes.
9 And this is a discretionary call. The standard for
10 discussing additur is whether the award is unduly
11 conservative in the discretion of the judge.

12 I don't think there is any request for
13 treatment of this verdict as grossly inadequate or
14 shockingly disproportionate. This is a motion on
15 the basis of inadequacy, and that is under Graham v
16 Whitaker and a bunch of other cases and, of course,
17 Riley v Ford, within the discretion of the judge.
18 That discretion must be exercised with
19 consideration, and so that's what I'm faced with
20 here.

21 I believe that some increase is
22 appropriate, and I would choose to exercise my
23 discretion to increase the survival damages by the
24 sum of \$400,000, which will give an award for
25 survival damages of \$1 million. So that is my

1 ruling on the survival motion.

2 Now we come to the setoff. Mr. --.

3 MR. EARLY: I'm going to take that up
4 too, Your Honor.

5 THE COURT: Yes, sir. Hang on a moment
6 and let me get my notebook.

7 All right. Mr. Early, you are
8 recognized.

9 MR. EARLY: Thank you.

10 THE COURT: You have two motions in
11 that regard.

12 MR. EARLY: Well, I think I can
13 dispense with them both fairly quickly because
14 they're both -- you know, they're for the same
15 reason, if you will.

16 I have -- I have been in contact with
17 Mr. Graham a lot over the last week or week and a
18 half about the setoff, if you will. And our motion
19 for production of settlement documents really goes
20 hand in hand with that. I was here, and I've read
21 your ruling on Jolly, Your Honor, and I respect
22 that.

23 Your Honor, I believe the Huck case,
24 which came out in March of this year, allows for
25 the production of the documents, and the court in

1 that case found for different reasons.

2 THE COURT: Right. Draw that case to
3 my attention again.

4 MR. EARLY: I can, Your Honor. If I
5 can --

6 THE COURT: Just spell the --

7 MR. EARLY: Let me hand it up. Make it
8 easier. For the record, Your Honor, it's 422 S.C.
9 430, 813 S.E.2d, 288, rehearing denied March 28th.
10 I think the opinion was in March of this year.

11 And I'm not going to -- that -- the
12 reason they don't want to produce the settlement
13 documents in this case is because the settlement
14 was confidential, and I get that. The Huck case
15 was because the settlement agreement was done in
16 the furtherance of mediation, and under ADR rules,
17 et cetera.

18 So we're talking about two different
19 things, but I still think we're entitled to them,
20 Your Honor, and I understand your ruling in Jolly.

21 If you don't find that way, I would ask
22 you to do the same thing you did in Jolly. I trust
23 Mr. Graham. He sent me the orders to the
24 settlement, but as we often do -- as plaintiffs'
25 lawyers often do, they -- you know, when you have a

1 confidential settlement, the meat and potatoes, the
2 part we really want to see is the last two pages
3 which is the numbers and the split, if you will.

4 So, I've got the orders. I would
5 simply ask the Court, if you were not inclined to
6 allow production to me on those documents, to look
7 at them in camera, like you did in Jolly, verify
8 them. I don't have a problem -- as you may know,
9 clients want verification. And it's not that -- I
10 certainly trust Bill Graham. If the Court would be
11 inclined to look at those numbers in camera and
12 determine what they are.

13 Bill has given me the number and I
14 think it's --

15 THE COURT: Let me help you there. I
16 have had submitted to me by Mr. Jekel a Memorandum
17 regarding -- or by, I think, Mr. Graham perhaps, a
18 Memorandum regarding settlement information. And
19 this memorandum contains, number one, a chart which
20 shows me the settlements that were reached for 12
21 defendants, including the settlement that was
22 reached with respect to the workers' compensation
23 defendant, which is in a little different category
24 in terms of how you set it off.

25 It includes ten entities which were

1 defendants in this matter, and one empty, which was
2 not a part in this matter, but settled. So it's 11
3 defendants, plus the employer, Bowater. And I have
4 numbers attached to each of those and in each case
5 these were settlements. Some of them have been
6 received and some of them are still pending, but
7 they have all been settled, as I understand it.

8 Attached to that in the tabs are the
9 various documents that represent the petition for
10 approval of settlement or settlement documents. So
11 I have got a notebook which discloses this
12 information to me.

13 One of the things that I want you to
14 cover in your presentation -- and, again, I'm
15 deciding whether to let the numbers in or out, this
16 may be a different situation from Jolly. I want to
17 hear what the defendant has to say.

18 And I want to also take that back to
19 the Huck case. Huck is a situation that is a -- an
20 encounter of a different animal from the animal --
21 for contribution function of the joint tortfeasors.
22 In the Huck case, you've got a reduction that
23 reflects the percentage of responsibility that the
24 jurors put on plaintiffs and defendants in this
25 case, as I understand it.

1 So I want some discussion by you as to
2 how you think the Huck case applies in the
3 contribution function of the joint tortfeasors
4 context.

5 MR. EARLY: Your Honor, I hadn't
6 thought about it in that regard. I was simply
7 thinking about it because it's germane to what the
8 potential judgment against my client would be in
9 this case. So if -- if the Court has those numbers
10 and you're willing to look at them --

11 THE COURT: I am willing to look at
12 them.

13 MR. EARLY: -- I don't have too much
14 heartburn about them not giving them to us. You
15 know, to be candid here, in the Jolly case, my
16 friend Mr. McLeod was arguing, you know, they
17 should be able to see it. I was the settling
18 defendant in that case and was saying in that case
19 they shouldn't be.

20 So I'm just being fair here. If Your
21 Honor is willing to look at these numbers with the
22 attachments that I talked about in camera, I'm okay
23 with that.

24 THE COURT: And one of the things that
25 I would also want to understand from you is how you

1 think your argument is that the entire amount of
2 these awards -- and I would assume you're saying
3 minus the comp case?

4 MR. EARLY: Correct. Comp is a
5 different animal. Mr. Stewart was alive and had a
6 workers' compensation case, and my other client
7 will be arguing about that later today, but the
8 numbers for the settling defendants for the same
9 injury, if you will, and if the -- so a couple of
10 things.

11 I was informed for the first time on
12 Monday -- and I've asked Mr. Graham for awhile, and
13 he'd agreed to give us these numbers and splits
14 before the passing of Mr. Young. We had a hearing
15 teed up about three weeks ago, as you remember.
16 That never happened.

17 It's not his fault -- it may not be his
18 fault, nor mine, but I finally got them on Monday
19 of this week and I just got the split. And what he
20 indicated to me is by e-mail -- and, again, I don't
21 have a reason to disbelieve him. I've asked Your
22 Honor to look at the documents for my client --
23 that there was a split. They put 80 percent of all
24 settlements on wrongful death and 20 percent on
25 survival.

1 Because I got that on Monday, Your
2 Honor, because you just said you were going to
3 cogitate a little bit, I would ask the Court to
4 give me a little bit of time to brief a motion for
5 reallocation, which is different than my motion
6 here for setoff. I don't think Mr. Graham or Mr.
7 Jekel deny the fact that there is an absolute right
8 to setoff in this case for the same injuries.

9 And, clearly, Mr. Stewart died of
10 mesothelioma. We're all talking about the same
11 injuries here, but his tinkering with the
12 80 percent v 20 percent is exactly what they asked
13 the jury to do and exactly what Mr. Hyland just
14 asked you to do on the numbers.

15 They agreed survival was way higher and
16 the wrongful death number was much lower, when, in
17 fact, they settled the case as opposite. So in
18 Riley, if you look at Riley, when Judge Early
19 granted additur, it went up to the Court of
20 Appeals. The Court of Appeals reversed Judge
21 Early, and they also granted Ford's motion to
22 reallocate in that case.

23 Now, of course, this is before you got
24 on, the Supreme Court reversed the Court of Appeals
25 and reinstated Judge Early's initial order.

1 So I would ask, only because I just got
2 these numbers on Monday and only because I was just
3 able to talk to my client about it yesterday while
4 I was getting ready for this case and the Crawford
5 case we're about later, that I be given another two
6 weeks max to file a motion and brief it.

7 We could probably hear that during the
8 trial with our Crawford case on a break, if the
9 Court is inclined to do that. I didn't know that
10 until Monday.

11 THE COURT: I understand, and let me
12 just say this: I certainly understand the argument
13 taking one position about the additur and then
14 taking another position about how they want this
15 thing allocated. The allocations, if you look at
16 it from the standpoint of what I have just done
17 with the additur is 90/10; is it not?

18 MR. EARLY: The other way, yes, ma'am.
19 The opposite way they wanted it allocated. So
20 we're on the same page, yes, ma'am.

21 THE COURT: I mean, there is a big
22 potentially disconnect here.

23 MR. EARLY: I 100 percent agree.
24 That's why I would ask -- I just found out about
25 the 80/20. I was kind of dumbfounded when I saw

1 that they put 80 percent on wrongful death and only
2 20 on survival, when they tried the majority of
3 their case, and they're asking the Court today to
4 do the opposite.

5 THE COURT: I can certainly receive
6 further information from Mr. Jekel or Mr. Hyland or
7 Mr. Graham to argue this, but I understand what
8 you're arguing and --

9 MR. EARLY: And I would like a couple
10 of days to brief it if I could, Your Honor.

11 THE COURT: Sure. Sure. And I was
12 simply saying, in Jolly, we allocated, but there
13 was not a whole lot of dispute about percentage
14 allocation, and I verified the allocation by
15 looking at the materials that were submitted by
16 plaintiffs' counsel.

17 And I certainly can do that here, but I
18 would simply send the word of warning out that
19 what's sauce for the goose is sauce for the gander.
20 And if we're going to have an additur and
21 allocation, then I'm going to be inclined to
22 allocate along the lines of what the verdict is
23 that -- with the additur that have been projected.

24 MR. EARLY: Thank you, Your Honor.

25 THE COURT: I'm not going to preclude

1 you, Mr. Graham. So, briefly.

2 MR. GRAHAM: Your Honor, thank you.

3 THE COURT: I'm going to let this be
4 briefed. That's why I say, I'm not going to
5 preclude you from saying something at the moment,
6 but I think this matter needs to be briefed in
7 light of what has been done in the other case and
8 in light of what's been done about the additur.

9 MR. GRAHAM: Yes, Your Honor. For the
10 record, Bill Graham for the plaintiffs.

11 Good to see you again this morning,
12 Your Honor. Thank you for allowing me to
13 participate in the trial in York County in this
14 case. I thoroughly enjoyed myself, and I want to
15 say to the members of Lane Young's firm that we're
16 sorry that he's not here and wish them condolence.

17 Your Honor, briefly, as you stated. We
18 -- I did transmit to Mr. Early -- although, I would
19 say your dad was right in the matter in the fore
20 case, I did transmit Judge Hill's approval --

21 THE COURT: I understand the Garvin
22 case and I understand what was done there, but
23 we're here and the total number is something that
24 we can disclose, correct?

25 MR. GRAHAM: Correct.

1 THE COURT: So the total number is?

2 MR. GRAHAM: 1.036 million.

3 THE CLERK: Does that include the
4 workers' compensation?

5 MR. GRAHAM: It does not.

6 THE COURT: Well, that doesn't line up
7 with the calculations we made, but we might be
8 wrong.

9 All right. You say that the total is
10 how much?

11 MR. GRAHAM: This is where lawyers
12 should not do math in public, but I've got 1.036,
13 Your Honor.

14 THE COURT: All right.

15 MR. GRAHAM: And 117 of that is to be
16 received and 919 has been received so far.

17 THE COURT: All right. Okay. Have you
18 got anything further you need to say?

19 MR. GRAHAM: Your Honor, I don't think
20 so.

21 THE COURT: I think what we need to do
22 is this: Mr. Early wants to brief the matter.
23 And, Mr. Early, could you have me a brief within
24 ten days?

25 MR. EARLY: Yes, ma'am, certainly.

1 THE COURT: Well, if I do it that way,
2 we may not be able to argue it during the course of
3 the Whitmire case, but let's not worry about doing
4 it that way. Let's just go on and provide some
5 reasonable period of time.

6 What do you think is reasonable?

7 MR. EARLY: You're asking if ten days
8 is reasonable, or are you the talking the hearing?

9 THE COURT: Ten days.

10 MR. EARLY: Ten days for the motion? I
11 will file a motion for the reallocation, but I
12 guess -- Mr. Graham, so it's 80/20, wrongful
13 death/survival?

14 THE COURT: That's what he's asking
15 for.

16 MR. EARLY: Okay.

17 THE COURT: And you're asking for the
18 flip side of that?

19 MR. EARLY: At least. You just did 90
20 the other way, but, anyway, if we had the brief in
21 ten days and give him ten days to respond, if he
22 wants to respond to my brief, and then whenever --
23 if Your Honor feels the need to have more argument,
24 we can do it whenever it suits Your Honor.

25 THE COURT: Let's do it that way. Mr.

1 Graham, we'll just schedule it at some point. I
2 think this is important enough -- as I say, I have
3 some questions about whether Huck completely
4 addresses what we're doing here because there was
5 another wrinkle in what was being done there.

6 Let me let you-all brief this rather
7 than try to kind of wing it on the basis of what I
8 think.

9 MR. EARLY: Your Honor, just to be
10 clear. I'm not standing on Huck for the position
11 that allows me to reallocate. There will be other
12 cases for that.

13 THE COURT: I understand.

14 MR. EARLY: Thank you.

15 THE COURT: Thank you.

16 (These proceedings were concluded at
17 10:25 a.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
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7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 17th day of July, 2018 at
13 Charleston, Charleston County, South Carolina.

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Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF YORK
3 Steven R. Edwards,
Individually and as
4 Personal Representative of the
Estate of Steven
5 Redfearn Stewart,
6 Plaintiff,
7 vs. CASE NO. 2013-CP-46-00368
8 SCAPA Waycross, Inc.,
9 Defendant.

10
11 H E A R I N G
BEFORE THE HONORABLE JEAN TOAL

12 DATE: October 10, 2018
13 TIME: 9:47 a.m.
14 LOCATION: Richland County Courthouse
1701 Main Street
15 Courtroom 3-B
Columbia, South Carolina
16
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P R O C E E D I N G S

THE COURT: All right. Welcome, ladies and gentlemen. I -- what I'm intending to do -- all right. And I don't know how y'all want to proceed with this, but this is how I'm thinking about proceeding is Stewart first. Is that how y'all are thinking? Good.

What I want you to do is give her a caption on the Stewart case so she -- has she got one already?

MR. EARLY: I'll give her one right now, Your Honor.

THE COURT: Okay. Let's give her a caption and then let's identify --

MR. EARLY: I will --

THE COURT: -- all the players here so she'll have that.

MR. EARLY: Would you like for me to do that, Judge?

THE COURT: Yes, let's identify everyone for the court reporter.

MR. EARLY: Thank you, Your Honor. Will Early for the defendants SCAPA Waycross. I guess I'll introduce the appearances. Fritz Jekel, Bill Graham, Greg Hyland, myself Will

MR. EARLY: That's what it is.

THE COURT: Right.

All right. Thank you, you may proceed.

MR. FLETCHER: Thank you, Your Honor. I know you must be thinking what in the world is an old Georgia lawyer doing in this Court, and I -- I'll tell you, Bill Barwick called me a few weeks ago and asked would I consider coming in and assisting in representing SCAPA, and after reviewing most of the posttrial matters, including the transcript of July 11th, I gladly said yes because I think it's an interesting point, and also it's the first time since being admitted to the Bar in 1958 that I've ever had the privilege of attending court in South Carolina.

So that's -- I -- my home is in Rome, Georgia, and I've been affiliated of-counsel with the Rome firm of Brinson Askew Berry for the past 13 years and I'm primarily involved with matters involving appellate matters and posttrial matters and then quite a bit of ADR. I don't do so much that it interferes with my wife and I travelling.

So -- and I do understand what's the

Early, my new friend Fletcher -- Norman Fletcher from the Georgia Bar.

THE COURT: Mr. Chief Justice, welcome.

MR. FLETCHER: Thank you, Your Honor.

MR. EARLY: Chris Collier.

THE COURT: All right.

MR. EARLY: Thank you, Your Honor.

And -- and Justice -- Mr. Fletcher is going to argue our motion.

THE COURT: Very good. All right.

Mr. Fletcher, you may begin.

Well, let me just set the stage for this, as I understand it.

You can come right on up to the podium, Mr. Fletcher.

We've had a hearing on this matter, and I made certain rulings with respect to the matter of the verdict, and now we are having a hearing about the allocation of that verdict on the motion of Mr. Early, as I understand it. Am I right?

MR. EARLY: You are correct, Your Honor. Essentially it's a motion for reallocation of previous settlements.

THE COURT: Right. Right.

purpose of this hearing. I think I would be remiss, though, if I did not mention just casually that since you did postpone ruling on the additur motion at that time, SCAPA still feels that -- that the plaintiff is not entitled to any additur for all of the reasons that were previously stated at the hearing and the responses.

But if Your Honor remains convinced of the additur award of an additional \$400,000 in survival damages and no additional award in the wrongful death claim, I would like to say we believe you're absolutely correct in concluding that the proper allocation of settlement proceeds is 90 percent survival and 10 percent wrongful death, and we would urge you to so rule on the allocation -- reallocation motion.

As you know, South Carolina law provides an allocation of settlement proceeds between survival and wrongful death claims must yield a fairness of justice. And under its equity powers this Court has the discretion to reallocate settlement funds between the two claims or two causes of actions in this case. The 80 percent wrongful death claim, 20 percent

1 survival claim allocation requested by plaintiff
2 is not reasonable under the facts of this case.

3 This Court on July 11th found no reason to
4 increase the jury's award of \$100,000 for the
5 wrongful death claim, and the Court stated the
6 reasons were based on the evidence presented to
7 the jury, considered by the jury and heard by
8 Your Honor during the trial.

9 Regarding survival claim, this court
10 determined that the evidence supported a 67
11 percent increase; that is, an additional
12 \$400,000, and this results in a total damage
13 award of \$1,000,000 for survival damages and
14 \$100,000 for wrongful death claim. Such results
15 totally supports this Court's conclusion that
16 allocation should be 90 percent for survival
17 claims and 10 percent for the wrongful death
18 claim rather than 80 percent wrongful death and
19 20 percent survival as now urged by the
20 plaintiff's counsel.

21 I also direct the Court's attention to the
22 fact that the 90 percent/10 percent allocation
23 is also consistent with plaintiff's argument at
24 the July 11th hearing on plaintiff's posttrial
25 additur motion, and it's also consistent with

1 THE COURT: All right, sir. Well, let me
2 hear first from -- from plaintiffs and then I'll
3 come back to you. I do have some questions, but
4 let me get the whole claim.

5 MR. FLETCHER: Very good. Thank you.

6 THE COURT: Thank you, sir.

7 Mr. Hyland.

8 MR. HYLAND: Thank you, Your Honor. Greg
9 Hyland on behalf of the plaintiffs.

10 Your Honor, I believe the -- the important
11 thing to pay attention to here is what is the
12 correct standard for determining the validity of
13 the allocations that the plaintiffs are entitled
14 to make and what are -- and under what
15 circumstances is it appropriate to invade and
16 invalidate that right that plaintiffs have to
17 allocate settlement proceeds in a fashion that
18 favors them and perhaps could create an
19 advantage for them at trial.

20 The mere fact that our allocation of
21 settlement proceeds may create a disadvantage
22 for the defendant in this case is not reason
23 enough to find that this allocation is improper,
24 and indeed the standard would be, as enunciated
25 in Riley v. Ford in adopting the approach of

1 the plaintiff's -- plaintiff's closing argument
2 for the jury at the close of the evidence.

3 Near the close of the July 11th hearing,
4 you reminded the parties, and I quote, The
5 allocations, if you look at -- at it from the
6 standpoint of what I've just done with the
7 additur, it's 90/10. You further stated,
8 "What's sauce for the goose is sauce for the
9 gander, and if we're going to have an additur in
10 allocation, then I'm going to be inclined to
11 allocate along the lines of what the verdict is
12 with the additur that has been projected."

13 Justice Toal, that is the 90/10 allocation
14 that you stated at the hearing. So if -- if
15 you're not going to reconsider your oral
16 determination on additur, we respectfully
17 request that you stay with the 90 percent/10
18 percent allocation of the proceeds which is
19 certainly within your discretion and also
20 consistent with the facts of South Carolina law.

21 If -- if you have any questions from us,
22 Justice Toal, I'll -- either Mr. Early or I will
23 attempt to answer them. Otherwise, that -- that
24 is all that we have to say on the reallocation
25 at this time.

1 Illinois courts, is that it must be -- the
2 burden is on the defendants to prove that the --
3 that the allocation is -- or reallocation is
4 just, fair and bona fide.

5 The corollary to that is that it would
6 be -- that the plaintiff's allocation is unjust,
7 in bad faith, nefarious. They presented no
8 evidence of such a fit. The only argument that
9 they rest upon is that of a percentage analysis,
10 that of comparing proportionality of the actual
11 verdict and additur verdict obtained in this
12 case, or at least tentatively, versus that of
13 the settlement proceeds -- settlements that were
14 entered into and previously approved as being
15 just, fair and bona fide by this very court.

16 The -- South Carolina's contribution among
17 Tortfeasors Act has two -- two main things that
18 it balances between. It's to prevent -- to
19 prevent a double recovery for plaintiffs, but
20 also and importantly to promote a strong public
21 policy of this state favoring settlement of
22 disputes.

23 And with that, our court has been very
24 clear in saying that plaintiffs have the
25 leverage, they're in a position of advantage to

1 settle cases according to terms that fit their
2 strategy, that allow them to say -- excuse me,
3 that encourages dispute and encourages a
4 otherwise unwilling defendant to perhaps
5 consider settling this case.

6 And you end up with a free -- free rider
7 problem where if they sit back long enough,
8 perhaps they won't have to pay enough. And then
9 another opportunity would be to come in and
10 argue after getting a verdict in the case, "Oh,
11 wait. It turns out that the way they set up
12 their settlement allocation doesn't work for us,
13 doesn't necessarily fit the verdict."

14 Well, that alone is not enough, and -- and
15 the plaintiffs submit that is insufficient
16 reason to invalidate -- or invade the province
17 of the plaintiffs to allocate the settlement
18 proceeds as they so desire.

19 The -- and I would -- I would particularly
20 point out the -- the next case -- the primary
21 case cited by the defense in this case is
22 *Riley v. Ford* which was a personal injury action
23 that was appealed, and the trial court judge
24 left alone an allocation of settlement proceeds
25 that was in reverse proportionality relative to

1 the settling parties in the interest of these
2 parties. If a position of the non-settling
3 defendant is worsened by the terms of the
4 settlement, this is the consequence of a refusal
5 to settle. A defendant who fails to bargain is
6 not rewarded with the privilege of fashioning
7 and -- and ultimately extracting a benefit from
8 the decisions of those who do."

9 And in particular, the writing before --
10 that our Supreme Court in that case specifically
11 said that it was improper to reapportion a --
12 settlement allocations for purposes of setoff
13 even in an additur case on the grounds of the
14 proportionality or percentages analysis.

15 Going a bit further into the Illinois case,
16 because we do not have much law per -- in -- on
17 this subject -- there's maybe a handful of cases
18 that really directly address it over the years.
19 In the -- in the case of *Johnson v. Belleville*
20 *Radiologists*, the Illinois Court of Appeals
21 explicitly stated, "In testing of pretrial
22 settlement for good faith -- again, the standard
23 as of which we measure -- or a trial court would
24 measure whether to invade the province of the
25 plaintiffs to allocate and keep that

1 the actual verdict in that case. And that was
2 also an additur verdict.

3 The Supreme Court said the trial court was
4 absolutely in the right and the Court of Appeals
5 should have never stepped in using a
6 proportionality percentage analysis to -- as a
7 basis to say that the verdict should be adjusted
8 for setoff purposes. The -- the allocation
9 should match what the resulting verdict in the
10 case is.

11 And that -- that -- the language in that
12 case is -- is very much instructive, and I'll
13 just read one quote here from the Ill -- the
14 Illinois case which they cite after explaining
15 that they agree with the approach taken by the
16 Illinois Court of Appeals.

17 It says, "A plaintiff who enters into a
18 settlement with a defendant gains a position of
19 control and acquires leverage in relation to a
20 non-settling defendant. This posture is
21 reflected in the plaintiff's ability to
22 apportion the settlement proceeds in the manner
23 most advantageous to it. Settlements are not
24 designed to benefit non-settling third parties.
25 They are instead created by the settlement --

1 allocation" -- and I'll start over.

2 "In testing of pretrial settlement for good
3 faith, the Illinois courts have rejected the
4 ratio test which compares amounts of settlements
5 with verdicts ultimately returned," and it cites
6 a number of cases going on to say, "and treat it
7 as only one factor in determining good faith
8 because damages awards are often difficult to
9 predict."

10 Your Honor, I submit in this case, even
11 though I don't understand the -- SCAPA to
12 contend that there was any bad faith in this
13 case on behalf of the plaintiffs, I would
14 certainly describe various reasons why in good
15 faith plaintiffs do allocate things -- allocate
16 between wrongful death and survival in a way
17 that we have done in this case.

18 Indeed we have multiple settlements, and
19 for each one, almost individually -- some of
20 them were grouped together. We had separate
21 petitions and orders approving the settlements
22 and their allocations between wrongful death and
23 survival. We chose 80 percent to wrongful death
24 and 20 percent to survival with various reasons
25 in mind.

1 One, perhaps the easiest, is that it's
2 customary. It's something that is typically
3 done by plaintiffs' firms in settling -- in
4 settling such matters. It's an easy default if
5 nothing else. But perhaps part of the reason
6 that we came to that default is because when
7 you're dealing with a wrongful death situation,
8 quite simply the real plaintiff isn't there to
9 collect or spend the money; the heirs are. And
10 as a matter of logistics and practicality, often
11 if the estate is simple or one otherwise doesn't
12 exist, it doesn't make sense to assign damages
13 in a settlement to survival which would
14 therefore go through an estate, but rather it
15 can be transferred to the heirs in a more direct
16 manner via wrongful death damages.

17 But it doesn't end there. Plaintiffs when
18 trying to decide whether or not to -- what
19 allocation to use, they are subjected -- they're
20 dealing with this uncertainty -- this vast
21 uncertainty of what may happen in court.
22 What -- what verdict they may receive, whether
23 or not that verdict is going to be unduly
24 liberal or unduly conservative, whether or not
25 it's going to be reasonable. Well, here they

1 figured out it was unduly conservative, and we
2 support that position.

3 But one of the things that -- in these
4 considerations, these factors that plaintiffs
5 have, they're looking at the uncertainties.
6 They're looking at how they may -- their
7 parties, their witnesses, their -- their lawyers
8 alone may appear to a jury in that case.
9 They're looking at potential evidentiary issues,
10 for instance, whether or not something would
11 come in about whether a father gave up his
12 rights so that his children could be raised in
13 another family without -- without any
14 interference or confusion but later readopted
15 them, such things as this.

16 Well, if you have these considerations as a
17 plaintiff and you would like to perhaps hedge
18 your -- your bets or think to yourself how could
19 we guarantee that we collect on a claim that --
20 that may end up not presenting well or being
21 accepted well by a jury, again, we're uncertain
22 of it, we choose to do something in such a way
23 that would give us some advantage and give us
24 leverage over non-settling defendants.

25 That's what's happened here. There's no

1 evidence of bad faith. There's really no
2 evidence it's unjust.

3 THE COURT: Mr Hyland, let me ask you this
4 question. Can I ask it not so much for me as I
5 do for this record? I know what happens with
6 these cases where I perhaps enjoy appellate
7 review. So I want to be sure the whole picture
8 is in front of anyone who reviews these
9 proceedings.

10 You made arrangements with various folks
11 who are defendants in this lawsuit that involve
12 settlements, and the parties agreed upon the
13 allocations in those settlements, correct?

14 MR. HYLAND: Correct.

15 THE COURT: And those settlements were
16 approved, correct?

17 MR. HYLAND: Correct.

18 THE COURT: All right. Because of the
19 contribution among Joint Tortfeasors Act, though
20 those defendants are not involved and not even
21 allowed because of Smith versus Tiffany to be
22 mentioned in the trial that -- that ensued
23 against SCAPA, other than perhaps as empty
24 chairs, the jury is instructed to in effect
25 award all the damages they think are due,

1 correct?

2 MR. HYLAND: Yes, Your Honor.

3 THE COURT: All right. Now, SCAPA would
4 like to take advantage of a reallocation to
5 change the way you settle with previous --
6 they're already going to get a setoff because of
7 contributions, so they want to increase that
8 setoff by having me change the way you allocated
9 settlement proceeds which occurred prior to the
10 time this case was tried. Is that essentially
11 it?

12 MR. HYLAND: Essentially, yes, Your Honor.

13 THE COURT: I want to put on the record not
14 the individual settlements. I don't do that,
15 and I don't know of any trial judge that does.
16 They're confidential and I protect that
17 confidentiality.

18 But in this case what in practical terms
19 does it mean and what kind of advantage does
20 SCAPA get if they are allowed to reallocate the
21 settlements from the 80 percent/20 percent that
22 you all established to a 90 percent survival/10
23 percent wrongful death?

24 MR. HYLAND: What it is -- what it --

25 THE COURT: In other words, what's the

1 total amount of your settlements and how -- and
2 dollar-wise how were they allocated?

3 MR. HYLAND: Well, as -- as a general
4 principle, it would in practice allow them a
5 second bite at the apple at arguing the additur
6 or writ because of the actual amounts that they
7 would end up paying.

8 THE COURT: Paying, exactly. And that's
9 what I'm trying -- what I'm trying to come to as
10 a bottom line is what difference numbers-wise
11 does it make to SCAPA if their reallocation
12 motion is granted?

13 MR. HYLAND: It --

14 THE COURT: What will they have to pay?

15 MR. HYLAND: In this case, you're looking
16 at -- if you look at the amounts collected -- or
17 actually paid, which is my understanding of how
18 setoff works --

19 THE COURT: Right.

20 MR. HYLAND: -- then you are -- if you were
21 to do an overall setoff without any -- any
22 allocation --

23 THE COURT: Right.

24 MR. HYLAND: -- taking the total amount,
25 they -- they would be looking at paying, if I

1 Honor? I mean, it's got --

2 THE COURT: Greg -- Greg, do you have a
3 copy of it?

4 MR. HYLAND: I -- I have this copy. I
5 haven't had an opportunity to review it. I do
6 have the figures that were previously crunched
7 on my computer.

8 THE COURT: Well, how about let's do this.
9 All right. How about y'all take five minutes or
10 ten minutes to get that copied, which we can do.

11 If you'll go down, Tyler, and get from them
12 whatever needs to be copied. We can copy it and
13 bring it right back to me.

14 And you look at your notes, and then let's
15 put those -- let's put those -- let's put those
16 numbers out there where we can talk about it.

17 MR. HYLAND: That -- I would prefer to do
18 that versus estimate numbers.

19 THE COURT: Right. I don't want you to
20 have to do that right now, but I think that's
21 important for us to put in this record is, you
22 know, what financially are we really talking
23 about. Okay?

24 MR. HYLAND: All right, Your Honor.

25 THE COURT: All right. It's 17 minutes

1 recall correctly, somewhere around \$200,000.

2 THE COURT: All right, sir.

3 MR. HYLAND: If -- if they -- if the --
4 really no matter how you flip it, it -- the best
5 they could do would be to limit it in -- in some
6 way around that figure. If -- because if they
7 were pay -- if the Court was inclined to
8 essentially flip those proportions --

9 THE COURT: Right.

10 MR. HYLAND: -- in the manner that they
11 request, just general math principle, it
12 would -- it would really result in essentially
13 the same thing I just described. Okay? At
14 least with these figures.

15 THE COURT: And what -- what -- what would
16 be the result if we stay with the allocation
17 that you had made when you settled with others?

18 MR. EARLY: Your Honor, if I may. We've
19 got a chart with those numbers on it. I'm just
20 helping Greg out. It's got whether you
21 reallocate or not, whether you grant additur or
22 not, we've kind of done a chart --

23 THE COURT: That's what I want to get at
24 and put in the record.

25 MR. EARLY: Could I hand this up to Your

1 after. Why don't we come back together at 27
2 after.

3 MR. HYLAND: Thank you, Your Honor.

4 THE COURT: And, Tyler, you go down there
5 and get with them and get -- get these things
6 copied.

7 (A recess transpired.)

8 THE COURT: Now that we have this chart,
9 how about -- I'm going to enter it as Court's
10 Exhibit 1.

11 (Court Exhibit 1, Chart, marked for
12 identification.)

13 THE COURT: Mr. Hyland, how about give us
14 an explanation of how this -- what this chart
15 says and whether you agree with it.

16 MR. HYLAND: My pleasure, Your Honor.

17 This -- this chart here that's been admitted
18 as -- I believe it's Court's Exhibit 1 to this
19 hearing was prepared presumably by Mr. Early or
20 some of his colleagues on behalf of SCAPA. I've
21 had a few minutes to review it, and -- but what
22 it purports to show are the various different
23 scenarios that -- and how they would impact what
24 SCAPA would be subject to paying and -- and of
25 course on the other side of it what the

1 plaintiffs stand to receive.

2 And although the exact figures -- I -- I
3 believe we have some differences over which
4 could be likely resolved at the time of actually
5 calculating setoff.

6 THE COURT: All right, sir.

7 MR. HYLAND: The general figures are in the
8 ballpark.

9 And on -- on the first segment here what we
10 have is an explanation of what prior settlements
11 that -- a total calculation for it, and they
12 separated out based off the allocation that was
13 included in those settlements themselves, and on
14 that level you have -- and I'll just use
15 roundabout figures for the purposes of
16 brevity -- approximately 200,000 for settled
17 survival and 830 for settled wrongful death,
18 whereas --

19 THE COURT: And that -- that is if --
20 that -- that's the one, correct, on the bottom
21 of the page, \$207,200 for survival that SCAPA
22 would pay rather than the 400 that was --
23 that -- that the jury --

24 MR. HYLAND: That's -- that's correct.

25 THE COURT: -- and then 800 and --

1 MR. HYLAND: All right. And my
2 understanding of this is -- Your Honor, I had a
3 very expensive economics degree, but I don't
4 know that it's done me a whole lot of good. The
5 prior settlements, absent the allocation that
6 was included in there by the plaintiffs, was 20
7 percent to survival and 80 percent to wrongful
8 death.

9 THE COURT: Right. That -- that's what you
10 settled for in your other settlements.

11 MR. HYLAND: Correct. The -- and so if
12 we're going down from really the first entry on
13 line three of this entire chart, that's what
14 that parenthetical is referring to.

15 THE COURT: Right.

16 MR. HYLAND: The next in line is jury which
17 is what the jury's verdict as returned was, and
18 that was 600,000 for survival. You have
19 survival action and a hundred thousand --
20 100,000 for wrongful death.

21 THE COURT: Right.

22 MR. HYLAND: So the total judgment or total
23 recovery before -- or with setoff for each --
24 each one of these would be 392,800 for survival
25 and zero dollars. It would be completely

1 MR. HYLAND: And I believe that's the
2 corresponding --

3 THE COURT: Wait, wait a minute,
4 Mr. Hyland. Let me just -- I'm just trying to
5 get what the numbers are and put them on the
6 record so whoever looks at this will understand.

7 The \$207,200 represents what SCAPA would
8 pay after allocation based on the settlement
9 proceeds for the other survival cases as well as
10 the verdict rendered for its -- for damages by
11 way of survival in its case, right?

12 MR. HYLAND: Actually, Your Honor, I -- I
13 think that's close to it, but the bottom line
14 figure is actually -- if -- yes. If we're
15 talking about the bottom right-hand corner, a --

16 THE COURT: I -- I am talking about -- I am
17 first trying to understand the big tables there.

18 MR. HYLAND: Okay.

19 THE COURT: And prior settlements 20/80 is
20 207,200 for the survival and 828,800 for the
21 wrongful death?

22 MR. HYLAND: Yes.

23 THE COURT: Now, at the top of that, if you
24 flip the prior settlements, it's the reverse
25 figures. Explain what those figures mean.

1 cancelled out, the setoff for wrongful death --

2 THE COURT: Right.

3 MR. HYLAND: -- under that scenario.

4 THE COURT: All right.

5 MR. HYLAND: The next scenario which
6 addresses reallocation denied and additur
7 granted using those first two lines I
8 described --

9 THE COURT: Right.

10 MR. HYLAND: -- as -- in addition to an
11 additur of -- in this set here, this segment, it
12 uses the \$400,000 additur or additional amount
13 that Your Honor has indicated he's inclined to
14 rule. In that scenario, the -- the --

15 THE COURT: You take a million dollars and
16 take off the prior settlements, 207, and you
17 arrive at a figure of 170 -- 192,800, right?

18 MR. HYLAND: Correct. So that -- that
19 would be the potential if the -- what -- what
20 that means is the allocation remains the same.
21 It's undisturbed.

22 THE COURT: Right.

23 MR. HYLAND: The --

24 THE COURT: And on the wrongful death side
25 the settlements were 828. The jury awarded a

1 hundred, and so there would be nothing
2 additional for that, right?
3 MR. HYLAND: That is correct.
4 THE COURT: All right. Okay. Now go to
5 the next one.
6 MR. HYLAND: Going on down, the next
7 scenario is -- in the parenthetical is 90/10.
8 THE COURT: This is the position that's
9 advocated by the defendant?
10 MR. HYLAND: Correct. Which would be 90
11 percent to survival and 10 percent to wrongful
12 death.
13 THE COURT: And that would mean that the
14 jury in this case awarded a verdict of 600 and
15 100 and an additur, if I do, to a million, so
16 that the total amount in this case would be --
17 if -- unallocated would be \$1,100,000.
18 MR. HYLAND: Correct. Zero.
19 THE COURT: All right.
20 MR. HYLAND: And then of course under the
21 next scenario would be the same as we just
22 described, but keeping that \$400,000 figure for
23 additur to survival only, keeping wrongful death
24 at -- at the jury's verdict of 100,000 which
25 would create a scenario where if -- if, again,

1 would like to -- to have some guidance as to
2 whether or not Your Honor is actually
3 considering further argument as to the additur
4 scenario alone because it certainly was included
5 in the brief and -- and -- and argued by --
6 THE COURT: I will say to both parties now
7 that was extensively argued. Both sides went
8 back and forth several times. It was
9 extensively briefed. We talked at length about
10 Riley versus Ford, and I am not inclined -- and
11 we talked about the cases that involved the
12 actual additur situation, talked about the
13 Thirteenth Juror Doctrine and all the rest of
14 that, and I made the decision that justices
15 supported adequately.
16 So I will announce to the court -- to the
17 both of you at this time that I will stay with
18 that decision, and based on the reasons given at
19 the previous hearing, I will add to the verdict
20 as I indicated, \$400,000 additional.
21 I also then discussed an allocation that
22 would be very, very different from what you
23 argued, and that's what we're here today about.
24 I don't -- I don't propose to change the numbers
25 with the additur, but I am here to talk about

1 the Court were to reallocate based off of
2 exactly on the SCAPA's request, they would
3 stand --
4 THE COURT: So that means not only -- that
5 means reallocating not just the verdict in this
6 case, but the entire settlement proceeds, right?
7 MR. HYLAND: That -- that is correct.
8 That -- that is all settlements whether received
9 or --
10 THE COURT: And no matter what they said
11 about what the allocation was, this would
12 reallocate it 90 percent to the survival action?
13 MR. HYLAND: Correct. To the one that
14 favors the defendant --
15 THE COURT: Right.
16 MR. HYLAND: -- SCAPA.
17 And that figure -- all they would stand to
18 pay would be 67,600 according to their
19 calculations on this table. So in follow-up and
20 according to their calculations and how they
21 approach this request, they stand to save
22 \$724,200 which I would submit is effectively a
23 substantial remitter by way of reallocation.
24 It's significant.
25 And while we're on the subject, I -- I

1 how we allocate to the -- taking into account
2 the previous settlement sums and the basis upon
3 which they were settled.
4 MR. HYLAND: Thank you, Your Honor.
5 And -- and along those lines, if I may take
6 time for the -- for the -- to the extent that it
7 affects -- or could potentially affect the
8 analysis of the scenario, I -- I do wish to
9 clarify one point. That -- that is with regard
10 to -- there's stuff -- much mention whether in
11 brief or in argument about what I previously
12 argued at -- at the additur motion and what that
13 means presumably as for the plaintiff's
14 position.
15 And if I may just clarify one thing to make
16 clear. The request on behalf of the plaintiffs
17 was to substantially increase both survival and
18 wrongful death because both were, in our
19 position, unduly conservative which is going
20 beyond just being unreasonable.
21 And for purposes of illustration, I discuss
22 a scenario really in comparison to some -- some
23 comparable cases even where remittitur was
24 granted to show where the Court on the other
25 side of the spectrum decided that something was

1 unduly conservative. To underscore the point of
2 just how unduly conservative the -- a verdict
3 was, I made an illustration as to what could
4 potentially in light of comparable decisions
5 regarding additur and remittitur in the previous
6 verdict what would be perhaps in the realm of
7 even a conservative verdict.

8 And to be clear, any such arguments were
9 not a concession on the part of the plaintiffs
10 that as to a weakness or strength of any part of
11 the case or to the reasonableness of any such
12 resultant proportionality as may be compared to
13 those in the settlement. And I'd just like
14 to -- to very much --

15 THE COURT: And I -- I understand that very
16 well, Mr. Hyland, and I don't regard your
17 remarks as being any kind of concession. My
18 ruling about the additur and where -- and what
19 to additur was based very much on what I heard
20 in testimony and particularly the amount of
21 medical expenses but also the -- the amount of
22 pain and suffering and loss of enjoyment of life
23 and other things that occurred with respect to
24 the plaintiff's decedent.

25 And I think I talked about that at length

1 that's behind that decision cannot be
2 equivocated with the same rationale in reviewing
3 their analysis an allocation -- or reallocation
4 is appropriate. They're much different
5 standards and --

6 THE COURT: I -- I understand that
7 completely. I'm looking straightly at Riley v.
8 Ford now. When the Court began to review the
9 Court of Appeals decision in that case, it said,
10 "They Find the Court of Appeals erred in
11 reapportioning the settlement proceeds on the
12 sole basis that the particular agreed upon
13 allocations between the survival and wrongful
14 death claims did not seem to be in the Court of
15 Appeals' view proportionately reasonable."

16 So I get that when reviewing the request
17 for reallocation the Court is not simply subject
18 to its view of what it thinks is reasonable for
19 the parties arrived at before the case under
20 consideration for trial.

21 MR. HYLAND: Thank you, Your Honor.

22 THE COURT: All right. Mr. Fletcher,
23 Mr. Early, any reply?

24 MR. EARLY: Your Honor, I -- well, briefly.
25 I don't know that -- since the Court has

1 in the hearing in July, so I won't repeat those.
2 But that was the basis for the additur as
3 opposed to the wrongful death which is more of
4 an evaluation of the loss of the comfort and
5 association with the decedent, the -- the -- and
6 that is the basis upon which I decline to do
7 anything with respect to an additur on the
8 wrongful death.

9 But I quite understand that you were trying
10 to go through various scenarios to paint a
11 portrait of what would happen under various
12 scenarios about both an increase and a
13 remittitur or reduction. So I don't regard
14 those as concession.

15 MR. HYLAND: Thank you, Your Honor. I
16 didn't necessarily doubt that, but I appreciate
17 you indulging the time to clear that up on the
18 record. And I won't take much more time. I'll
19 just wrap up on this.

20 In that scenario when we're looking at
21 additur and we're possibly considering
22 reallocation of setoff, the -- the two standards
23 are separate and distinct, and if the Court sees
24 justification for granting additur in the case
25 as to one claim and not another, the rationale

1 already ruled, I'm not going to rehash anything
2 with regard to the additur, Your Honor. But I
3 guess that would essentially, if we're looking
4 at Court's Exhibit 1 --

5 THE COURT: Yes, sir.

6 MR. EARLY: -- wipe out where it says
7 additur denied, those two. So what you could --
8 the two scenarios now what we'd be talking about
9 would be entering a judgment on behalf of the
10 plaintiff in the amount of either \$67,600 or
11 \$792,800, and Mr. Fletcher was -- he brought up
12 everything I wanted to bring up with regards to
13 the motion for reallocation. But I did want to
14 touch on one thing.

15 Mr. Hyland did bring up the fact that, you
16 know, there were -- there were two reasons
17 behind the Joint Tortfeasors Act -- I forgot
18 what it's called exactly, but we're talking
19 about the same act here. And the first one
20 would be preventing other recovery, and what
21 essentially would be allowed if it's not
22 reallocated is a double recovery because as Your
23 Honor did state just now, the Court knows very
24 well after Smith versus Tiffany that we can't
25 put other parties on the verdict form.

1 So the only thing we've got -- the only
2 thing we've got to protect us at all is -- from
3 those earlier numbers is the setoffs. And if
4 the Court is inclined to allow the plaintiffs to
5 make an argument that, "Your Honor, you know
6 what, we should invade the province of the jury
7 and add to this verdict, but they shouldn't be
8 able to invade our prior allocation of
9 settlements," we've got a real problem because
10 what's good for the goose is not good for the
11 gander.

12 I don't know how else I can say it.

13 THE COURT: Well, of course, you know, you
14 would have been free to argue for a remittitur
15 yourself. I mean, they're -- both sides can ask
16 the Court to look at ways -- the verdict of the
17 jury dollar-wise and deal with questions of
18 additur or remittitur.

19 MR. EARLY: Sure.

20 THE COURT: All right. But what I'm
21 struggling with is the direction of the Court in
22 Riley versus Ford where the Court has made it
23 clear that it gives primacy to the decisions
24 that were made to allocate before the case was
25 tried. If this were a case where after all was

1 interpretation of Riley versus Ford.

2 MR. EARLY: Your Honor, I argued Riley
3 until I was blue in the face at the last
4 hearing, but I -- you know, I think there's a
5 couple of small distinctions with regard to the
6 reallocation.

7 One, first and foremost -- and, again, it
8 wasn't Mr. Graham's fault, I don't think. But
9 we didn't get these numbers until like the day
10 before that hearing. But when I got them, I
11 looked -- I looked -- I went ahead and had my
12 paralegal Robin pull the orders from those and
13 the petition for those, and then I started
14 calling some of my friends -- it didn't have the
15 numbers in it, which it shouldn't because
16 they're confidential settlements.

17 But -- so I called some of my friends from
18 the defense bar. I talked to Mr. McDonald.
19 He's in the room. Mott is here. You know, I
20 know that Daniel settled the case, for example.
21 And I'll just use him as an example, but Mott
22 didn't even know that it was an 80/20 split.

23 So if we're not able to come to the table
24 and say in good faith, "We agree with that," you
25 know, it's a consent order or you got to argue

1 said and done the plaintiffs had made some
2 allocations in light of the verdict, then I
3 think you'd be exactly right. That would be
4 something you couldn't be protected from and it
5 would be a double recovery and so forth.

6 But the -- at least the way I'm looking at
7 what the Court has said in Riley versus Ford,
8 this is not that situation. This is a situation
9 in which the plaintiffs made a decision on the
10 front end in the light of what -- how they
11 expected the case to go and what the tax
12 implications might be and any other economic
13 considerations, but they made a decision,
14 entered into settlements, signed settlement
15 agreements, had them approved, and now I'm being
16 asked to go back on those agreements in order to
17 benefit the defendant in terms -- beyond what
18 the agreed upon allocation of the previous funds
19 was.

20 MR. EARLY: Yes, sir.

21 THE COURT: That's what's giving me some
22 heartburn. I wonder whether I really can do
23 that.

24 MR. EARLY: Well --

25 THE COURT: So help me with your

1 for it, we certainly didn't know that. We don't
2 have a -- there's no chance for us to argue --

3 THE COURT: There's no -- there's no --
4 there's no right on your part to be in any way
5 involved in how the settlements are achieved
6 with people who may be working patriots on the
7 defense side, but not -- you're not involved in
8 the settlements that precede this at all.

9 And what happens is the plaintiffs make
10 allocations at that time and I don't think
11 there's any suggestion here that this is some
12 after the fact allocation on their part. They
13 made these allocations at the time these
14 settlements were entered into, as I understand
15 it. And I don't think you dispute that.

16 MR. EARLY: I don't dispute that at all
17 with one category, Your Honor. I was just
18 told -- and I forgot that Bill told me before --
19 that, you know, there's -- there's money left to
20 be received. So what's to keep them from just,
21 "Wait, wait, we're going to have a settlement.
22 We'll allocate this after the jury comes back."

23 I'm not saying they did that in this case,
24 but we're arguing for the record and presumably
25 somebody else might read this --

1 THE COURT: But if it's denied in this
2 case, I don't know how that argument makes any
3 particular difference.

4 MR. EARLY: Well, in this case there's
5 \$111,000 out there apparently that hasn't
6 been -- that hasn't been received yet.

7 THE COURT: It hadn't been received, but as
8 I understand it, the plaintiffs allocate how
9 they will apportion these proceeds when they
10 settle, and I'm taking them at their word that
11 that's what they do. And so that's my
12 understanding. If I'm wrong about that, we'll
13 get Mr. Hyland back up here to tell me
14 different.

15 MR. EARLY: I'm not disputing -- I'm
16 certainly taking them at their word for it too,
17 Your Honor. I just know that there's -- I'm
18 just painting a picture.

19 THE COURT: I think -- you know, I think
20 they made the decision early on to make an 80/20
21 trying to predict what a jury might do, and
22 sometimes you're stuck with that and sometimes
23 you're not. But I don't think this is -- the
24 fact that they have not received proceeds yet I
25 don't think is -- would change a thing with

1 allocations unless there is some indication that
2 they are somehow not made in good faith or made
3 after the fact.

4 And I don't think there's any assertion
5 that that is going to -- and therefore I will
6 approve the allocations as they have been
7 previously made by the plaintiff and apply --
8 and apply those same percentages -- or direct
9 those same percentages be applied and a judgment
10 be allocated as reflected by the 80 percent for
11 the survival and 20 percent -- I mean, 80 -- 80
12 percent for the -- don't let me get confused
13 now, Mr. Hyland.

14 MR. EARLY: They allocated 80 percent
15 wrongful death.

16 THE COURT: 80 percent for wrongful death
17 and 20 percent for survival. I -- I will reject
18 the request I reallocate the previous
19 settlement, and I will allocate all the moneys
20 received by way of verdict in this case as well
21 as for previous settlements in accord with the
22 plaintiffs' designation of 80 percent for
23 wrongful death and 20 percent for survival, and
24 that will include the matters encompassed by the
25 additur that I have granted.

1 respect to allocations when they design a
2 standard.

3 MR. EARLY: Yes, ma'am. That's all I have.

4 THE COURT: All right, sir.

5 MR. EARLY: Thank you.

6 And just for the record, Your Honor, that
7 exhibit -- that Court Exhibit 1 which is --

8 THE COURT: Court Exhibit number 1, right.

9 MR. EARLY: That does -- just for the
10 record that does include the numbers that were
11 to be received. So the number that -- that Bill
12 gave us at the previous hearing the 1.036, that
13 includes the amounts that had been received by
14 them and the numbers that will be received.

15 THE COURT: That's fine. That's fine.

16 MR. EARLY: Okay.

17 THE COURT: Thank you for that
18 clarification.

19 You may give that to the court reporter.

20 All right. My -- well, my decision is to
21 stay with the allocations as the plaintiffs have
22 made them, and I am guided and I think I'm
23 required by the direction of the Court in Riley
24 versus Ford Motor Company, a 2015 decision of
25 the South Carolina Supreme Court, to honor those

1 Now, Mr. Hyland, get a proposed order up to
2 that effect and share it with Mr. Early, and
3 that will enable me to bring an end to this case
4 and to direct the clerk of court to enter the
5 judgment.

6 I -- I might say I'm having some requests
7 of that in another case momentarily. So I will
8 let you know that when I have these posttrial
9 matters, whether they be posttrial for these
10 kind of motions or whether they are posttrial
11 because of sanctions that were made in the case
12 and haven't been completely ruled upon in terms
13 of amounts, I direct the clerk of court not to
14 enter the judgment to protect everybody so that
15 the door is not closed to any arguments that are
16 going to be made.

17 And that is what I have done here and that
18 is what I've done in some of the other cases
19 that I've tried.

20 MR. EARLY: Just so I'm clear, Your Honor,
21 the order that Greg's going to draft once I file
22 it, are you going to have a portion about
23 additur in that same order that you do about not
24 denying my motion for reallocation so --

25 THE COURT: That is correct.

MR. EARLY: -- if my client decides go up they can --

THE COURT: That's correct. Everything will be in that order. So you'll have one contribution order that encompasses both the rulings that were made in July and the ruling I make today.

MR. EARLY: Thank you, Your Honor.

THE COURT: All right. Very good.

MR. HYLAND: Just -- just to clarify because I need to figure out how much work we're doing here, are we talking about an entire order on posttrial -- all posttrial motions or am I just prepare --

THE COURT: Yes. We've argued everything extensively in that regard and I want a comprehensive order that ends the matter with the rulings on everything.

MR. HYLAND: Thank you, Your Honor.

MR. EARLY: And I think the only other motion we had was JNOV, and Fritz argued that. You denied our motion. So I think that the order encompasses the denial of the JNOV, the granting of the additur and the denial of my motion to reallocate?

clarification, Your Honor, I think we're on the same page, but Greg had mentioned at a break that he felt like the moneys they hadn't gotten yet didn't count towards the setoff, and I certainly disagree with that.

THE COURT: Oh, I -- I disagree with that completely.

MR. EARLY: Okay.

THE COURT: Everything you get is -- counts towards the setoff. All right. No question about that.

MR. EARLY: Okay. Thank you, Your Honor.

THE COURT: All right, sir.

(The hearing was concluded at 10:51 a.m.)

THE COURT: That's correct.

MR. EARLY: Then I'll have something to play with.

THE COURT: That's right. That's right. And, you know, I expect that some time will be taken to ensure these orders are in the proper format because you've got several transcripts to go through where I've made rulings at various points along the way about these matters.

So while I don't want this thing to string out indefinitely, you take -- Mr. Hyland, is two weeks enough for you to get a motion -- draft the order up to give to Mr. Early?

MR. HYLAND: Absolutely, Your Honor.

THE COURT: All right. And then if you'll take two weeks to look at it and respond to them, copy to me --

MR. EARLY: Yes, Your Honor.

THE COURT: -- and then we'll see if there's any need for you to make any further adjustments about the matter before we finally have an order that we -- that you may not love but that you agree is an accurate reflection of what I ruled.

MR. EARLY: Yes. And last point of

CERTIFICATE OF REPORTER

I, Yvonne R. Thurston-Bohannon, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on page 1 of this transcript; that all statements made on the record at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate and complete record of the proceeding to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal October 23, 2018, at Columbia, Richland County, South Carolina

Yvonne R. Thurston-Bohannon
Registered Merit
Reporter, CRR
My Commission expires
May 6, 2025



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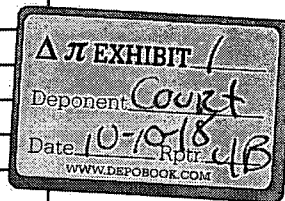
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	CURRENT			
	Survival COA	Wrongful Death		
Prior Settlements (20/80)	\$207,200.00	\$828,800.00		
Jury	\$600,000.00	\$100,000.00		
Judgment	\$392,800.00	\$0.00		
	REALLOCATION DENIED	ADDITUR GRANTED		
	Survival COA	Wrongful Death		
Prior Settlements (20/80)	\$207,200.00	\$828,800.00		
Jury	\$600,000.00	\$100,000.00		
Additur	400,000.00	\$0.00		
Judgment	\$792,800.00	\$0.00		
	REALLOCATION GRANTED	ADDITUR DENIED		
	Survival COA	Wrongful Death		
Prior Settlements (90/10)	\$932,400.00	\$103,600.00		
Jury	\$600,000.00	\$100,000.00		
Judgment	\$0.00	\$0.00		
	REALLOCATION GRANTED	ADDITUR GRANTED		
	Survival COA	Wrongful Death		
Prior Settlements (90/10)	\$932,400.00	\$103,600.00		
Jury	\$600,000.00	\$100,000.00		
Additur	\$400,000.00	\$0.00		
Judgment	\$67,600.00	\$0.00		
			\$1,036,000.00	
Prior Settlements (80/20)	\$828,800.00	\$207,200.00		
Prior Settlements (70/30)	\$725,200.00	\$310,800.00		
Prior Settlements (60/40)	\$621,600.00	\$414,400.00		
Prior Settlements (50/50)	\$518,000.00	\$518,000.00		
Prior Settlements (40/60)	\$414,400.00	\$621,600.00		
Prior Settlements (30/70)	\$310,800.00	\$725,200.00		
Prior Settlements (20/80)	\$207,200.00	\$828,800.00		
			Prior Settlement	Judgment
	JUDGMENT		(80/20)	\$171,200.00
			(70/30)	\$274,800.00
			(60/40)	\$378,400.00
			(50/50)	\$482,000.00
			(40/60)	\$585,600.00
			(30/70)	\$689,200.00



MFR claims**APG Claim Form** Lankford, Susan

Claim Form

Review

Injured Party ID	Claim Seq	No Claim	Status	Input Date	Value
196993	1		OPEN	06/22/2015	\$131,040.00

Section 1: Review of ClaimReview Type: ☒ Expedited Review ☐ Individual Review ☐ Paid USG/A.P. Green ClaimReview Sub Type: ☐ Secondary Exposure ☐ Foreign ☐ Exigent ☐ Extraordinary**Section 2: Injured Party Information**

Injured Party	Last Name	First Name	Middle Name	Suffix
Name:	STEWART	STEVEN	REDFEARN	

Social Security No:

Date of Birth:

Gender: ☒ Male ☐ Female

Date of Death:

Death Asbestos Related: ☒ Yes ☐ No

Address

Mailing Address:

City	State	Zip
	v	

Daytime Telephone:

Section 3: Law Firm / Attorney InformationPlaintiff Attorney: 

Section 4: Personal Representative

Personal Rep. Name:	Last Name	First Name	Middle Name	Suffix
	EDWARDS	STEPHEN	R	
Social Security No:				
Capacity:	PERSONAL REPRESENTATIVE			
Mailing Address:	Address			
	City	State	Zip	
Daytime Telephone:				

Official Representative Certification

Certificate of Official Capacity or other estate documentation must be enclosed if available.

If no Certificate of Official Capacity or other estate documentation is available per state law, attorney must provide official representative certification by signing below:

Attorney certifies that this claim is filed on behalf of the Official Representative acting for the Injured Party and that the Official Representative has official capacity to file this claim based on the operation of law.

Signature of Attorney: William M. Graham

Section 5: Asbestos Related Injury

Disease:	MESOTHELIOMA (LEVEL VII)	▼
Date of Diagnosis:	10/01/2012	

Please check this box if the injured party filed a claim against an APG Entity or any other defendant in the tort system prior to the Petition Date (February 12, 2002) and has available a report of a diagnosing physician engaged by the injured party or his or her law firm who conducted a physical examination of the holder as described in Section 5.7(a)(1)(A) of the TDP, or if the injured party has filed such medical evidence and/or diagnosis of the asbestos-related disease by a physician not engaged by the injured party or his or her law firm who conducted a physical examination with another asbestos personal injury settlement trust that requires such evidence, without regard to whether the claimant or the law firm engaged the diagnosing physician.

Such medical evidence must be provided to the Trust (except for Paid USG/A.P. Green Claims under Section 7).

Pre 2/12/2002 Physical Exam: ☐

Section 6: Asbestos Litigation and Claims History**1. Lawsuit Filed**Asbestos-related lawsuit filed: ☒ Yes ☐ No1a. APG Named as Defendant: ☐ Yes ☒ No

1b. Filing Date: 02/05/2013

1c. State: SC - SOU

1d. Court: YORK COUNTY COURT

1e. Case #: 2013-CP-46-00368

1f. Has the injured party ever received money from an APG Entity or its insurers regarding this suit?: ☐ Yes ☒ No
Amount: \$1g. Did the injured party sign a release releasing an APG Entity regarding this suit?: ☐ Yes ☒ No**2. Final Judgment**Judgment Entered ☐ Yes ☒ No

Judgment Parties:

3. Jurisdiction

Jurisdiction State: SC - SOU

- Jurisdiction:
- ☐ The state/jurisdiction in which the injured party was domiciled at the time of the diagnosis.
 - ☐ The state/jurisdiction in which the injured party was domiciled at the time of filing this claim form.
 - ☒ A state/jurisdiction in which the injured party was exposed to an asbestos-containing product for which an APG Entity has legal responsibility.

4. Settlement Claim

Has a claim on behalf of the injured party ever been submitted to APG pursuant to an administrative settlement agreement?

Settlement Claim Filed: ☐ Yes ☒ No Date of Submission:**5. Tolling Agreement**

Was the injured party or claimant a party to a tolling agreement with APG?

Tolling Agreement: ☐ Yes ☒ No

Begin Date:

End Date:

6. Pre-Petition Claim

☐ Yes ☒ No

Section 7: Paid USG/A.P. Green Claims**Section 8: Occupational Exposure to Asbestos Products****Part 1: Exposure****Exposure Records**Jobsite Type: Jobsite (Minimum 3 letters): City: State: Country: Industry: Occupation: Date From: Date To: APG Post 12/5/80 Exposure: ☒ Yes ☐ NoProducts: Exposure Description: **Description of Significant Occupation Exposure at this jobsite**

- ☐ Injured party handled raw asbestos fibers on a regular basis.
- ☐ Injured party fabricated asbestos-containing products so that the injured party in the fabrication process was exposed on a regular basis to raw asbestos fibers.
- ☐ Injured party altered, repaired, or otherwise worked with an asbestos-containing product such that the injured party was exposed on a regular basis to asbestos fibers.
- ☒ Injured party was employed in an industry and occupation such that the injured party worked on a regular basis in close proximity to workers engaged in one or more of the above three activities.

Part 9: Secondary Exposure

ROA 1713

W&G - Stewart 002334

Section 11: Employment / Earnings Information**Section 12: Dependents****Section 13: Certification**

If signed by the claimant, I (the claimant) have reviewed the information submitted on this claim form and all documents submitted in support of this claim. To the best of my knowledge, under penalty of perjury, the information submitted is accurate and complete.

If signed by the claimant's counsel, I (counsel to the claimant) certify that the information and materials with respect to this claim are being submitted pursuant to and subject to the provisions of Rule 11 of the Federal Rules of Civil Procedure.

Signature:

Relationship:

MFR
claims

Print

Leslie Controls Inc. Asbestos Trust Claim Form

Injured Party ID	Claim Sequence NBR	Claim Status	Claim Value	Input Date
38242	1	OPEN	\$100,000.00	6/22/2015

Injured Party

Part 1.4: Law Firm Plaintiff Attorney WILLIAM M. GRAHAM		Part 2 Diagnosed Disease Disease Claimed MESOTHELIOMA First Diagnosis 10/1/2012	
Part 1.1 Claim Type ☒ Leslie Powerhouse and Below-Deck Naval ☐ Leslie Construction and Maintenance Leslie Powerhouse and Below-Deck Naval Station Claim The Injured Party performed or was in the immediate vicinity of a worker who performed: ☒ Installation, maintenance or removal of Leslie valves ☐ Installation, maintenance or removal of other control equipment manufactured by Leslie identified as _____ ☐ regularly employed in a Leslie Powerhouse; identified as: _____ ☐ in a US shipyard working on naval vessel; identify shipyard(s) and/or vessel(s): _____ ☐ serving at an assigned Below-Deck Naval Station; identified as: _____ ☐ other (please specify): _____		☐ Filed pre 07/12/10 - Physical Exam Report	
Part 1.5 Review Type ☒ Expedited Review ☐ Individual Review			
Part 1.5(b) Review Sub Type ☐ Secondary Exposure ☐ Extraordinary Claim ☐ Exigent Health Claim ☐ Exigent Hardship Claim ☐ Foreign Claim			
Part 1.1: Injured Party First Name Middle Last Name Social Date of Birth STEVEN REDFEARN STEWART Foreign ID Gender: ☒ Male ☐ Female Is Injured Party Living? Yes ☐ No ☒ Date of Death 8/20/2013			
Part 1.2: Personal Rep; If Injured Party is Deceased First Name Middle Last Name STEPHEN R EDWARDS			
Part 3: Statute of Limitations Current Residence Lawsuit Filed State City County State SC York York SC Name of Court Date Filed York County Common Pleas 2/5/2013 Docket Number Tolling Agreement? Final Judgement? Receive Money? Leslie Release? ☐ Yes? ☒ No? ☐ Yes? ☒ No? ☐ Yes? ☒ No? ☐ Yes? ☒ No?			

Occupational Exposure

Job Sites

No jobsite can be found in the system.

Significant Occupational Exposure (Check all that apply)

ROA 1715

W&G - Stewart 002481

- ☐ Handled raw asbestos fibers on a regular basis
- ☐ Fabricated asbestos-containing products so that the Injured Party in the fabrication process was exposed on a regular basis to raw asbestos fibers
- ☐ Altered, repaired or otherwise worked with an asbestos-containing products such that the Injured Party was exposed on a regular basis to asbestos fibers
- ☒ Was employed in an industry and occupation such that the Injured Party worked on a regular basis in close proximity to workers engaged in the activity of handling, fabricating, altering, or repairing asbestos-containing products

Injured Party's Exposure Through OEP

Relationship	From	To	Description of Exposure
First Name	Middle	Last Name	

Part 1: Certification Completed

☒ Yes? ☐ No?

Attorney certifies that this claim is filed on behalf of the Claimant Representative acting for the Injured Party and that the Claimant Representative has official capacity to file this claim based on the operation of law.

William M. Graham

Part 7: Certification Completed

This claim is certified by (check one and check capacity in which Certification is provided)

☒ Yes? ☐ No?

- ☐ Injured Party ☐ Official Representative ☒ Attorney
- ☐ On personal knowledge
- ☐ affidavit or sworn statement attached

I have reviewed the information submitted on this claim form and all documents submitted in support of this claim. To the best of my knowledge, under penalty of perjury, the information submitted is accurate and complete in all material respects.

Signature of the Injured Party, Attorney or Official Representative

William M. Graham

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ACandS Asbestos Settlement Trust

Claim Form

General Instructions for filing this Claim Form:

This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing, and/or the Trust may not be able to assign the claim a position in the FIFO processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☒ Expedited
- ☐ Individualized
- ☐ Extraordinary
- ☐ Secondary Exposure
- ☐ Unknown
- ☐ Foreign Claim

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable
- ☐ Exigent Hardship

Claim Type :

- ☒ Asbestos Claim
- ☐ Pre-Settlement Asbestos

Section 1: Injured Party Information				
Claim ID:	4602103		Law Firm's Matter Number for this Claim:	
Last Name	First Name		Middle Name	Suffix
Stewart	Steven		Redfearn	
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?
		Male	08/20/2013	Yes
Mailing Address (if not represented by counsel)				Daytime Telephone
City	State	Zip Code	Country	Email Address
			United States	

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name WALLACE & GRAHAM, PA		Filer ID 371	
Mailing Address 525 NORTH MAIN STREET			
City SALISBURY		State NC	Zip Code 28144
Attorney Last Name GRAHAM	Attorney First Name WILLIAM	Attorney Middle Name M	Suffix
Direct Telephone 704-633-5244	Facsimile 704-633-9434	Email Address BGRAHAM@WALLACEGRAHAM.COM	

Section 3: Asbestos Related Injury

Check the box next to the highest Disease Level the injured party is claiming.

- ☐ Asbestosis/Pleural Disease (Level I)
- ☐ Asbestosis/Pleural Disease (Level II)
- ☐ Severe Asbestosis (Level III)
- ☐ Other Cancer (Level IV)
- ☐ Lung Cancer 2 (Level V)
- ☐ Lung Cancer 1 (Level VI)
- ☐ Mesothelioma (Level VII)
- ☒ Unknown

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 4: Smoking History (Not Required for Expedited Review)

In the chart below, indicate each period during which the injured party smoked tobacco products and the average number of packs or cigars smoked per day.

Product	Start Date (mm/dd/yyyy)	Quit Date (mm/dd/yyyy)	Packs/Cigars Per Day

Section 5: Personal Representative (if injured party is deceased or incompetent)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number	Court
ACandS Named?			
Has injured party received settlement monies related to this lawsuit from ACandS or its insurers?			If "yes", Amount:
If no lawsuit has ever been filed against ACandS on behalf of the injured party, indicate in which state the claimant would have elected to file such suit:			
Was a tolling agreement for the injured party ever in effect with respect to claim(s) against ACandS ?			
If "yes", Date Tolling Agreement Began:			Date Tolling Agreement Ended:
Has an asbestos claim been filed on behalf of the injured party against ACandS pursuant to an administrative settlement agreement?			
If "yes", Disease Claimed:			Date Filed (mm/dd/yyyy)
If "yes", Amount:			

Section 7: Occupational Exposure to Asbestos Products

Provide the information below for each location at which claimant alleges exposure to asbestos occurred. Please include detail for all asbestos exposure which you think is sufficient to meet the criteria for the approval of the claim at the claimed disease level. List each site, industry and occupation combination separately. If the exposure site is on the approved ACandS site list (provided as Exhibit A), enter the site code in the space provided. Otherwise, provide the complete name and location of each individual site. Attach additional copies of this page if more space is required.

Exposure Site :			
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Occupation	ApprovedSiteID
Site of Exposure (facility, plant or site name)	City	State	Country
Industry in which exposure occurred (see Exhibit A for list of Industry Codes):			If Other, please specify:
Name of all ACandS Asbestos Settlement Trust products to which injured party was exposed			
Is Secondary Exposure?			
Description of Significant Occupational Exposure at this jobsite (check all that apply) ☐ Claimant handled raw asbestos fibers on a regular basis ☐ Claimant fabricated asbestos-containing products such that the Claimant in the fabrication process was exposed on a regular basis to asbestos fibers ☐ Claimant altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers ☐ Claimant was employed in an industry or occupation such that the claimant worked on a regular basis in close proximity to workers who did one or more of the above three activities			
Describe the circumstances of asbestos exposure (Max 1000 Characters)			

Section 8: Secondary Exposure (Not Applicable for Expedited Review)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP), complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?			
Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to ACandS Products through Occupationally Exposed Person:			

Section 9: Employment / Earnings information (Not Required for Expedited Review)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Current Employment Status (check all that apply)	
☐ Full-Time	
☐ Part-Time	
☐ Retired	
☐ N/A (Deceased)	
Disabled:	
☐ Partially Disabled	
☐ Fully Disabled	
☒ Unknown	
☐ Not Applicable	
Amount of Last Annual Wages	Date of Last Wage Received (mm/dd/yyyy)
\$0.00	

Section 10: Dependents (Not Required for Expedited Review)

List the injured party's spouse and any other dependents. Attach additional copies of this page if more space is required.

Dependent :			
Last Name	First Name	Middle Name	Suffix
Relationship to Injured party	Birth Date (mm/dd/yyyy)	Financially Dependent?	
State	Zip Code	Country	

A&I Trust

Claim Form

General Instructions for filing this Claim Form:

This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing, and/or the Trust may not be able to assign the claim a position in the FIFO processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☒ Expedited
☐ Secondary Exposure
☐ Foreign Claim

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable ☐ Exigent Hardship

Claim Type :

- ☒ Asbestos Claim

Section 1: Injured Party Information

Claim ID:	4602101	Law Firm's Matter Number for this Claim:			
Last Name	First Name		Middle Name	Suffix	
Stewart	Steven		Redfearn		
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?	
		Male	08/20/2013	Yes	
Mailing Address (if not represented by counsel)				Daytime Telephone	
City	State	Zip Code	Country	Email Address	
			United States		

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name		Filer ID	
WALLACE & GRAHAM, PA		371	
Mailing Address			
525 NORTH MAIN STREET			
City		State	Zip Code
SALISBURY		NC	28144
Attorney Last Name	Attorney First Name	Attorney Middle Name	Suffix
GRAHAM	WILLIAM	M	
Direct Telephone	Facsimile	Email Address	
704-633-5244	704-633-9434	BGRAHAM@WALLACEGRAHAM.CO M	

Section 3: Asbestos Related Injury

Check the box next to the highest Disease Level the injured party is claiming.

- ☐ Mesothelioma (Class I)
- ☐ Lung Cancer (Class II)
- ☐ Other Cancer (Level III)
- ☐ Asbestosis (Class IV)
- ☐ Pleural Disease (Class V)
- ☒ Unknown

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 5: Personal Representative (if injured party is deceased or incompetent)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number
Court		A&I Named?
Has injured party received settlement monies related to this lawsuit from A&I or its insurers?		If "yes", Amount:
If no lawsuit has ever been filed against A&I on behalf of the injured party, indicate in which state the claimant would have elected to file such suit:		

Section 7: Occupational Exposure to Asbestos Products

Provide the information below for each location at which claimant alleges exposure to asbestos occurred. Please include detail for all asbestos exposure which you think is sufficient to meet the criteria for the approval of the claim at the claimed disease level. List each site, industry and occupation combination separately. If the exposure site is on the approved A&I site list (provided as Exhibit A), enter the site code in the space provided. Otherwise, provide the complete name and location of each individual site. Attach additional copies of this page if more space is required.

Exposure Site :				
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Occupation	ApprovedSiteID	
Site of Exposure (facility, plant or site name)	City	State	Country	
Industry in which exposure occurred (see Exhibit A for list of Industry Codes):			If Other, please specify:	
Name of all A&I Trust products to which injured party was exposed				
Is Secondary Exposure?				
Describe the circumstances of asbestos exposure (Max 1000 Characters)				

Section 8: Secondary Exposure (Not Applicable for Expedited Review)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP), complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?			
Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to A&I Products through Occupationally Exposed Person:			

Combustion Engineering Trust

Claim Form

General Instructions for filing this Claim Form:

This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing, and/or the Trust may not be able to assign the claim a position in the FIFO processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☐ Expedited Review w/ Pre-Acceptance of offer
- ☒ Expedited Review w/o Pre-Acceptance of offer
- ☐ Individualized
- ☐ Extraordinary
- ☐ Unknown
- ☐ Foreign Claim

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable
- ☐ Exigent Hardship

Claim Type :

- ☒ Asbestos Claim

Section 1: Injured Party Information

Claim ID:	4602108	Law Firm's Matter Number for this Claim:			
Last Name	First Name		Middle Name	Suffix	
Stewart	Steven		Redfearn		
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?	
		Male	08/20/2013	Yes	
Mailing Address (if not represented by counsel)				Daytime Telephone	
City	State	Zip Code	Country	Email Address	
			United States		

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name		Filer ID	
WALLACE & GRAHAM, PA		371	
Mailing Address			
525 NORTH MAIN STREET			
City		State	Zip Code
SALISBURY		NC	28144
Attorney Last Name	Attorney First Name	Attorney Middle Name	Suffix
GRAHAM	WILLIAM	M	
Direct Telephone	Facsimile	Email Address	
704-633-5244	704-633-9434	BGRAHAM@WALLACEGRAHAM.CO M	

Section 3: Asbestos Related Injury

Check the box next to the highest Disease Level the injured party is claiming.

- ☐ Other Asbestos Disease (Level I)
- ☐ Asbestosis/Pleural Disease (Level II)
- ☐ Asbestosis/Pleural Disease (Level III)
- ☐ Severe Asbestosis (Level IV)
- ☐ Other Cancer (Level V)
- ☐ Lung Cancer 2 (Level VI)
- ☐ Lung Cancer 1 (Level VII)
- ☐ Mesothelioma (Level VIII)
- ☒ Unknown

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 4: Smoking History (Not Required for Expedited Review)

In the chart below, indicate each period during which the injured party smoked tobacco products and the average number of packs or cigars smoked per day.

Product	Start Date (mm/dd/yyyy)	Quit Date (mm/dd/yyyy)	Packs/Cigars Per Day

Section 5: Personal Representative (if injured party is deceased or incompetent)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number	Court
CE Named?			
Has injured party received settlement monies related to this lawsuit from CE or its insurers?			If "yes", Amount:
If no lawsuit has ever been filed against CE on behalf of the injured party, indicate in which state the claimant would have elected to file such suit:			
Reason for selecting above Claimant's Jurisdiction: ☐ State in which the claimant resided at the time of diagnosis ☐ State in which the claimant resides when this claim is filed with the Trust ☐ State in which the claimant experienced CE Exposure ☐ Unknown			
Was a tolling agreement for the injured party ever in effect with respect to claim(s) against CE ?			
If "yes", Date Tolling Agreement Began:			Date Tolling Agreement Ended:
Has an asbestos claim been filed on behalf of the injured party against CE pursuant to an administrative settlement agreement?			
If "yes", Disease Claimed:			Date Filed (mm/dd/yyyy)
If "yes", Amount:			

Section 7: Occupational Exposure to Asbestos Products

Provide the information below in order to satisfy the requirements Combustion Engineering Trust Exposure and Significant Occupation Exposure, as set forth in sections 5.6(b)(3) and 5.6(b)(2) of the TDP. For any exposure site where there was exposure to Combustion Engineering Trust Asbestos, describe the circumstances of that. Do not list multiple occupations or date ranges for each exposure site - if an injured party worked at the same site in two or more occupations, or during two or more periods, please complete a separate line. Please refer to the Filing Instructions for details on the Exposure Criteria for each Disease Level. Attach additional copies of this page if more space is required.

Exposure Site :			
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Occupation	ApprovedSiteID
Site of Exposure (facility, plant or site name)	City	State	Country
Industry in which exposure occurred (see Exhibit A for list of Industry Codes):			If Other, please specify:
Is Secondary Exposure?			
Description of Significant Occupational Exposure at this jobsite (check all that apply)			
☐ Claimant handled raw asbestos fibers on a regular basis			
☐ Claimant fabricated asbestos-containing products such that the Claimant in the fabrication process was exposed on a regular basis to asbestos fibers			
☐ Claimant altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers			
☐ Claimant was employed in an industry or occupation such that the claimant worked on a regular basis in close proximity to workers who did one or more of the above three activities			
Describe the general circumstances of all asbestos exposure for purposes of evaluating significant Occupational Exposure requirements:			

Section 7 (cont'd): Occupational Exposure to Asbestos Products

Extraordinary Claims

If the claimant is filing as an Extraordinary Claim, provide a clear and concise declaration as to how the claimant satisfies Section 5.4(a) of the TDP:

Section 8: Secondary Exposure (Not Applicable for Expedited Review)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP), complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?

Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to CE Products through Occupationally Exposed Person:			

Section 9: Employment / Earnings information (Not Required for Expedited Review)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Current Employment Status (check all that apply)

- ☐ Retired
- ☐ N/A (Deceased)
- ☐ Fully Disabled
- ☐ Full-time, outside the home
- ☐ Full-time, within the home
- ☐ Part-time, outside the home
- ☐ Part-time, within the home

Disabled:

- ☐ Partially Disabled
- ☐ Fully Disabled
- ☒ Unknown
- ☐ Not Applicable

Amount of Last Annual Wages

\$0.00

Date of Last Wage Received (mm/dd/yyyy)

Section 10: Dependents (Not Required for Expedited Review)

List the injured party's spouse and any other dependents. Attach additional copies of this page if more space is required.

Dependent :			
Last Name	First Name	Middle Name	Suffix
Relationship to Injured party	Birth Date (mm/dd/yyyy)	Financially Dependent?	
State	Zip Code	Country	

A-Best Asbestos Settlement Trust

Claim Form

General Instructions for filing this Claim Form:

This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing, and/or the Trust may not be able to assign the claim a position in the FIFO processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☒ Expedited
- ☐ Secondary Exposure
- ☐ Unknown
- ☐ Foreign Claim

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable

Claim Type :

- ☒ Asbestos Claim

Section 1: Injured Party Information

Claim ID:	4602102	Law Firm's Matter Number for this Claim:		
Last Name	First Name	Middle Name	Suffix	
Stewart	Steven	Redfearn		
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?
		Male	08/20/2013	Yes
Mailing Address (if not represented by counsel)				Daytime Telephone
City	State	Zip Code	Country	Email Address
			United States	

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name WALLACE & GRAHAM, PA		Filer ID 371	
Mailing Address 525 NORTH MAIN STREET			
City SALISBURY		State NC	Zip Code 28144
Attorney Last Name GRAHAM	Attorney First Name WILLIAM	Attorney Middle Name M	Suffix
Direct Telephone 704-633-5244	Facsimile 704-633-9434	Email Address BGRAHAM@WALLACEGRAHAM.CO M	

Section 3: Asbestos Related Injury

Check the box next to the highest Disease Level the injured party is claiming.

- ☐ Non-Malignancy
- ☐ Other Cancer
- ☐ Lung Cancer
- ☐ Malignant Mesothelioma
- ☒ Unknown

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 4: Smoking History (Not Required for Expedited Review)

In the chart below, indicate each period during which the injured party smoked tobacco products and the average number of packs or cigars smoked per day.

Product	Start Date (mm/dd/yyyy)	Quit Date (mm/dd/yyyy)	Packs/Cigars Per Day

Section 5: Personal Representative (if injured party is deceased or incompetent)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number
Court		A-Best Named?

Section 7: Occupational Exposure to Asbestos Products

Provide the information below for each location at which claimant alleges exposure to asbestos occurred. Please include detail for all asbestos exposure which you think is sufficient to meet the criteria for the approval of the claim at the claimed disease level. List each site, industry and occupation combination separately. If the exposure site is on the approved A-Best site list (provided as Exhibit A), enter the site code in the space provided. Otherwise, provide the complete name and location of each individual site. Attach additional copies of this page if more space is required.

Exposure Site :				
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Occupation		ApprovedSiteID
Site of Exposure (facility, plant or site name)		City	State	Country
Name of all A-Best Asbestos Settlement Trust products to which injured party was exposed				
Is Secondary Exposure?				
Describe the circumstances of asbestos exposure (Max 1000 Characters)				

Section 8: Secondary Exposure (Not Applicable for Expedited Review)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP); complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?			
Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to A-Best Products through Occupationally Exposed Person:			

Section 10: Dependents (Not Required for Expedited Review)

List the injured party's spouse and any other dependents. Attach additional copies of this page if more space is required.

Dependent :			
Last Name	First Name	Middle Name	Suffix
Relationship to Injured party	Birth Date (mm/dd/yyyy)	Financially Dependent?	
State	Zip Code	Country	

MFR claims**APG Claim Form** Lankford, Susan

Claim Form

Review

Injured Party ID	Claim Seq No	Claim Status	Input Date	Value
196993	1	OPEN	06/22/2015	\$131,040.00

Section 1: Review of ClaimReview Type: ☒ Expedited Review ☐ Individual Review ☐ Paid USG/A.P. Green ClaimReview Sub Type: ☐ Secondary Exposure ☐ Foreign ☐ Exigent ☐ Extraordinary**Section 2: Injured Party Information**

Injured Party Name:	Last Name	First Name	Middle Name	Suffix
	STEWART	STEVEN	REDFEARN	

Social Security No:

Date of Birth:

Gender: ☒ Male ☐ Female

Date of Death:

Death Asbestos Related: ☒ Yes ☐ No

Address:

Mailing Address:

City	State	Zip

Daytime Telephone:

Section 3: Law Firm / Attorney InformationPlaintiff Attorney: 

ROA 1756

W&G - Stewart 002331

Section 4: Personal Representative

Personal Rep. Name:	Last Name	First Name	Middle Name	Suffix
	EDWARDS	STEPHEN	R	
Social Security No:				
Capacity:	PERSONAL REPRESENTATIVE			
Mailing Address:	Address			
	City	State	Zip	
Daytime Telephone:				

Official Representative Certification

Certificate of Official Capacity or other estate documentation must be enclosed if available.

If no Certificate of Official Capacity or other estate documentation is available per state law, attorney must provide official representative certification by signing below:

Attorney certifies that this claim is filed on behalf of the Official Representative acting for the Injured Party and that the Official Representative has official capacity to file this claim based on the operation of law.

Signature of Attorney: William M. Graham

Section 5: Asbestos Related Injury

Disease:	MESOTHELIOMA (LEVEL VII) ▼
Date of Diagnosis:	10/01/2012

Please check this box if the injured party filed a claim against an APG Entity or any other defendant in the tort system prior to the Petition Date (February 12, 2002) and has available a report of a diagnosing physician engaged by the injured party or his or her law firm who conducted a physical examination of the holder as described in Section 5.7(a)(1)(A) of the TDP, or if the injured party has filed such medical evidence and/or diagnosis of the asbestos-related disease by a physician not engaged by the injured party or his or her law firm who conducted a physical examination with another asbestos personal injury settlement trust that requires such evidence, without regard to whether the claimant or the law firm engaged the diagnosing physician.

Such medical evidence must be provided to the Trust (except for Paid USG/A.P. Green Claims under Section 7).

Pre 2/12/2002 Physical Exam: ☐

Section 6: Asbestos Litigation and Claims History**1. Lawsuit Filed**Asbestos-related lawsuit filed: ☒ Yes ☐ No1a. APG Named as Defendant: ☐ Yes ☒ No

1b. Filing Date: 02/05/2013

1c. State: SC - SOUTH CAROLINA

1d. Court: YORK COUNTY COURT

1e. Case #: 2013-CP-46-00368

1f. Has the injured party ever received money from an APG Entity or its insurers regarding this suit?: ☐ Yes ☒ No Amount: \$1g. Did the injured party sign a release releasing an APG Entity regarding this suit?: ☐ Yes ☒ No**2. Final Judgment**Judgment Entered ☐ Yes ☒ No

Judgment Parties:

3. Jurisdiction

Jurisdiction State: SC - SOUTH CAROLINA

- Jurisdiction:
- ☐ The state/jurisdiction in which the injured party was domiciled at the time of the diagnosis.
 - ☐ The state/jurisdiction in which the injured party was domiciled at the time of filing this claim form.
 - ☒ A state/jurisdiction in which the injured party was exposed to an asbestos-containing product for which an APG Entity has legal responsibility.

4. Settlement Claim

Has a claim on behalf of the injured party ever been submitted to APG pursuant to an administrative settlement agreement?

Settlement Claim Filed: ☐ Yes ☒ No

Date of Submission:

5. Tolling Agreement

Was the injured party or claimant a party to a tolling agreement with APG?

Tolling Agreement: ☐ Yes ☒ No

Begin Date:

End Date:

6. Pre-Petition Claim

☐ Yes ☒ No

Section 7: Paid USG/A.P. Green Claims**Section 8: Occupational Exposure to Asbestos Products****Part 1: Exposure****Exposure Records**

Jobsite Type: Other APG Exposure ▾

Jobsite (Minimum 3 letters): Bowater

City: Rock Hill

State: SC - SOU ▾

Country: ▾

Industry: Non-Asbestos Products Manufacturing ▾

Occupation: Operator

Date From: 11/05/1963

Date To: 12/31/2002

APG Post 12/5/80 Exposure: ☒ Yes ☐ No

Products: Refractory & Castable Products

Exposure Description: Claimant was a paper machine operator

Description of Significant Occupation Exposure at this jobsite

- ☐ Injured party handled raw asbestos fibers on a regular basis.
- ☐ Injured party fabricated asbestos-containing products so that the injured party in the fabrication process was exposed on a regular basis to raw asbestos fibers.
- ☐ Injured party altered, repaired, or otherwise worked with an asbestos-containing product such that the injured party was exposed on a regular basis to asbestos fibers.
- ☒ Injured party was employed in an industry and occupation such that the injured party worked on a regular basis in close proximity to workers engaged in one or more of the above three activities.

Part 9: Secondary Exposure

ROA 1759

W&G - Stewart 002334

Section 11: Employment / Earnings Information**Section 12: Dependents****Section 13: Certification**

If signed by the claimant, I (the claimant) have reviewed the information submitted on this claim form and all documents submitted in support of this claim. To the best of my knowledge, under penalty of perjury, the information submitted is accurate and complete.

If signed by the claimant's counsel, I (counsel to the claimant) certify that the information and materials with respect to this claim are being submitted pursuant to and subject to the provisions of Rule 11 of the Federal Rules of Civil Procedure.

Signature: William M. Graham

Relationship: Attorney

Claim Number: 10590930
Received Date: 6/22/2015

Armstrong World Industries, Inc.
ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM

Submit completed claims to:
AWI Asbestos Personal Injury Settlement Trust
P.O. Box 1079
Wilmington, DE 19899-1079

Instructions for the Claim Form

File your claim more efficiently. Submit and manage your claim electronically through the Armstrong World Industries, Inc. ("AWI") Personal Injury Settlement Trust's (the "Trust") website. Visit www.armstrongworldasbestostrust.com for more information.

Note: It is possible that claim data previously submitted to the Celotex Asbestos Settlement Trust, the Babcox & Wilcox Asbestos Settlement Trust and the USG Asbestos Settlement Trust can be used to expedite the preparation and review of claims for the Trust. Doing so will reduce the work necessary to file a claim and minimize the time it takes to review the claim. Please visit the Trust's website (www.armstrongworldasbestostrust.com) for information on how to make use of this data. Presumptive Significant Occupational Exposure Ratings and Presumptive Company Exposure Occupation Ratings are available on the Trust's website www.armstrongworldasbestostrust.com.

Otherwise, complete this claim form as thoroughly and accurately as possible. Please type or print neatly. Should there be insufficient space to list all relevant information, please attach additional sheets. In addition to filing this form, please ensure the following are enclosed:

- Death Certificate (if applicable)
- Certificate of Official Capacity or other estate documentation (if personal representative is filing form) if applicable per state law
- Medical records as required by the Trust Distribution Procedures and as requested in instructions
- Proof of AWI Exposure (i.e., qualifying exposure to AWI Products/Operations, as defined below and as set out in the instructions)
- Documentation of Economic Loss (if applicable - see Part 8 below)

Choice of Claim Process

Please choose the applicable claim process (**check only one**):

- ☒ Expedited Review ("ER") (not available for Level VI, Lung Cancer 2, or Foreign Claims)
☐ Individual Review ("IR")

Representation

If counsel represents claimant, please print or type the following information:

1. Attorney name: GRAHAM WILLIAM M.
(Last) (First) (MI)

2. Name of Law Firm: WALLACE & GRAHAM P.A.

3. Firm Address: 525 NORTH MAIN STREET, SALISBURY, NC, 28144

4. Attorney Phone: 7046335244 Fax: 7046339434 Email: _____

5. Paralegal or Contact Name: _____ dcw _____
(Last) (First) (MI)

6. Contact Phone: _____ Fax: _____ Email: _____

Claim Number: 10590930
Received Date: 6/22/2015

AWI ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM

Part 1: Injured Party Information

1. Name:	Stewart	Steven	R
	(Last)	(First)	(MI)
2. Social Security Number:			
3. Gender:	M	4. Date of Birth:	
			(mm/dd/yyyy)

5. Is injured party living? Yes _____ No ☒ X

6. If injured party is deceased, please complete the following: **(Death Certificate must be enclosed)**

6a. Date of Death: 08/20/2013
(mm/dd/yyyy)

6b. Was death asbestos-related? Yes ☒ X No _____

7. If injured party is living and not represented by counsel, please complete the following:

7a. Mailing address: _____
(street/PO Box)

(city/state/zip)

7b. Daytime Phone: _____

7c. Email Address: _____

8. If injured party is deceased or has a personal representative or heir other than, or in addition to, his/her attorney, please indicate the following for the representative. **(Certificate of Official Capacity or other estate documentation must be enclosed if applicable per state law.)**

8a. Name: _____
(Last) (First) (MI)

8b. Social Security Number: _____

8c. Mailing address: _____
(street/PO Box)

(city/state/zip)

8d. Daytime Phone: _____

8e. Email Address: _____

ROA 1762

W&G - Stewart 002337

8f. Relationship to injured party: _____
(spouse, child, etc.)

Claim Number: 10590930
Received Date: 6/22/2015

**AWI ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM**

Part 2: Diagnosed Asbestos-related Injuries

1. Place an X next to the highest level (most serious) asbestos-related Disease Category that has been diagnosed for the injured party and for which medical documentation is attached to this claim form. See instructions for a list of specific medical criteria and records that must be enclosed for each Disease Category. **(Check only the most serious)**

Level	Scheduled Disease
☐ VIII	Mesothelioma
☐ VII	Lung Cancer I
☐ VI	Lung Cancer 2 (Individual Review Only)
☐ V	Other Cancer (Please specify: _____)
☐ IV	Severe Asbestosis (ILO of 2/1 or greater, or Asbestosis determined by pathology plus (a) TLC less than 65% or (b) FVC less than 65% plus FEV1/FVC ratio greater than 65%)
☐ III	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease plus (a) TLC less than 80% or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%)
☐ II	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease)
☐ I	Other Asbestos Disease (Cash Payment Discount, not subject to the Payment Percentage)

2. Date of Diagnosis: _____ (mm/dd/yyyy)

The claims must meet the relevant medical criteria and be supported by appropriate medical documentation as defined in the Asbestos Personal Injury Trust Distribution Procedures. The presumptive medical criteria for the Disease Categories set forth above are included in the instructions.

- ☐ For claims filed against AWI or any other asbestos defendant in the tort system prior to the Petition Date (December 6, 2000), please check this box if you have a report of a diagnosing physician who conducted the physical exam of the claimant, or you have filed such a report with AWI or another defendant in the tort system or another asbestos-related personal injury settlement trust. (see Sections 5.7(a)(1)(a) and 5.7(a)(1)(c) of the TDP)

Claim Number: 10590930
Received Date: 6/22/2015

AWI ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM

Part 7: Smoking History

For each item, indicate whether the injured party has smoked. Please indicate the dates cigarettes or cigars were used, and the amount per day. Indicate fractional packs or fractional cigars as appropriate, e.g., three and one-half packs would be entered as 3.5. *This need only be completed for Lung Cancer 2 (LC2) and IR Levels I through IV only.*

1. Has the injured party ever **Smoked Cigarettes?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Packs per day: _____ (use decimal)

1. Has the injured party ever **Smoked Cigars?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Cigars per day: _____ (use decimal)

Claim Number: 10590930 Received Date: 6/22/2015

**AWI ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM**

Part 8: Employment Information for Economic Loss

This is to be completed for IR claims only.

1. Current Employment Status of the injured party:

- ☐ Full-time, outside the home
- ☐ Full-time, within the home
- ☐ Part-time, outside the home
- ☐ Part-time, within the home
- ☐ Retired
- ☐ Disabled
- ☐ Deceased

2. Amount of last annual wages: _____

3. Date of last wage received: _____
(mm/yyyy)

(Enter current date if currently earning work-related compensation.)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Claim Number: 10590930
Received Date: 6/22/2015

AWI ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM

Part 9: Signature Page

All claims must be signed by the claimant, or the person filing on his/her behalf (such as the personal representative or attorney).

If signed by the claimant or the personal representative, I (the claimant or personal representative) have reviewed the information submitted on this claim form and all documents submitted in support of this claim. To the best of my knowledge, under penalty of perjury, the information submitted is accurate and complete.

If signed by the claimant's counsel, I (counsel to the claimant or personal representative) certify that the information and materials with respect to this claim are being submitted pursuant to and subject to the provisions of Rule 11 of the Federal Rules of Civil Procedure.

Signature of claimant, personal representative, or claimant's counsel.

Please print the name and relationship to the claimant of the signatory above.

Date: ____ / ____ / ____
(Month) (Day) (Year)

Please review your submission to ensure it is complete and includes the following documents as applicable.

- ☐ Death Certificate (if applicable)
- ☐ Certificate of Official Capacity or other estate documentation (if personal representative is filing form) if applicable per state law.
- ☐ Medical Records as required by the Trust Distribution Procedures and as requested in the instructions
- ☐ Proof of AWI Exposure and Significant Occupational Exposure as required in the Trust Distribution Procedures and requested in the instructions, including affidavits from the injured party or others.
- ☐ Copy of the tolling agreement (if applicable in Part 5)
- ☐ Documentation of Economic Loss (if Part 8 is applicable)

If you are filing an IR claim and have additional information (see TDP section 5.3(b)(2)) you want the Trust to consider in evaluating your claim, please include these documents with the Claim Form.

ARTRA Asbestos Trust

Claim Form

General Instructions for filing this Claim Form:

This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing, and/or the Trust may not be able to assign the claim a position in the FIFO processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☒ Expedited
- ☐ Individualized
- ☐ Extraordinary
- ☐ Secondary Exposure
- ☐ Foreign Claim

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable
- ☐ Exigent Hardship

Claim Type :

- ☒ Asbestos Claim

Section 1: Injured Party Information

Claim ID:	4602104	Law Firm's Matter Number for this Claim:		
Last Name	First Name	Middle Name	Suffix	
Stewart	Steven	Redfearn		
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?
		Male	08/20/2013	Yes
Mailing Address (if not represented by counsel)				Daytime Telephone
City	State	Zip Code	Country	Email Address
			United States	

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name		Filer ID	
WALLACE & GRAHAM, PA		371	
Mailing Address			
525 NORTH MAIN STREET			
City		State	Zip Code
SALISBURY		NC	28144
Attorney Last Name	Attorney First Name	Attorney Middle Name	Suffix
GRAHAM	WILLIAM	M	
Direct Telephone	Facsimile	Email Address	
704-633-5244	704-633-9434	BGRAHAM@WALLACEGRAHAM.COM	

Section 3: Asbestos Related Injury

Check the box next to the highest Disease Level the injured party is claiming.

- ☐ Other Asbestos Disease (Level I)
- ☐ Asbestosis/Pleural Disease (Level II)
- ☐ Severe Asbestosis (Level III)
- ☐ Other Cancer (Level IV)
- ☐ Lung Cancer (Level V)
- ☐ Mesothelioma (Level VI)
- ☒ Unknown

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 4: Smoking History (Not Required for Expedited Review)

In the chart below, indicate each period during which the injured party smoked tobacco products and the average number of packs or cigars smoked per day.

Product	Start Date (mm/dd/yyyy)	Quit Date (mm/dd/yyyy)	Packs/Cigars Per Day

Section 5: Personal Representative (if injured party is deceased or incompetent)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number
Court		ARTRA Named?
Has injured party received settlement monies related to this lawsuit from ARTRA or its insurers?		If "yes", Amount:
If no lawsuit has ever been filed against ARTRA on behalf of the injured party, indicate in which state the claimant would have elected to file such suit:		
Is the claimant a holder of a Muralo Contract Claim as defined in Section 2.7 of the TDP?		

Section 7: Occupational Exposure to Asbestos Products

Provide the information below in order to satisfy the requirements ARTRA Asbestos Trust Exposure and Significant Occupation Exposure, as set forth in sections 5.6(b)(3) and 5.6(b)(2) of the TDP. For any exposure site where there was exposure to ARTRA Asbestos Trust Asbestos, describe the circumstances of that. Do not list multiple occupations or date ranges for each exposure site - if an injured party worked at the same site in two or more occupations, or during two or more periods, please complete a separate line. Please refer to the Filing Instructions for details on the Exposure Criteria for each Disease Level. Attach additional copies of this page if more space is required.

Exposure Site :				
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Occupation		ApprovedSiteID
Site of Exposure (facility, plant or site name)		City	State	Country
Industry in which exposure occurred (see Exhibit A for list of Industry Codes):			If Other, please specify:	
Name of all ARTRA Asbestos Trust products to which injured party was exposed				
Is Secondary Exposure?				
Description of Significant Occupational Exposure at this jobsite (check all that apply) ☐ Claimant handled raw asbestos fibers on a regular basis ☐ Claimant fabricated asbestos-containing products such that the Claimant in the fabrication process was exposed on a regular basis to asbestos fibers ☐ Claimant altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers ☐ Claimant was employed in an industry or occupation such that the claimant worked on a regular basis in close proximity to workers who did one or more of the above three activities				
Describe the circumstances of asbestos exposure (Max 1000 Characters) 				

Section 7 (cont'd): Occupational Exposure to Asbestos Products

Extraordinary Claims

If the claimant is filing as an Extraordinary Claim, provide a clear and concise declaration as to how the claimant satisfies Section 5.4(a) of the TDP:

Section 8: Secondary Exposure (Not Applicable for Expedited Review)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP), complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?			
Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to ARTRA Products through Occupationally Exposed Person:			

Section 9: Employment / Earnings information (Not Required for Expedited Review)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Current Employment Status (check all that apply)	
☐ Full-Time	
☐ Part-Time	
☐ Retired	
☐ N/A (Deceased)	
Amount of Last Annual Wages	Date of Last Wage Received (mm/dd/yyyy)
\$0.00	

Section 10: Dependents (Not Required for Expedited Review)

List the injured party's spouse and any other dependents. Attach additional copies of this page if more space is required.

Dependent :			
Last Name	First Name	Middle Name	Suffix
Relationship to Injured party	Birth Date (mm/dd/yyyy)	Financially Dependent?	
State	Zip Code	Country	

ASARCO Asbestos Personal Injury Settlement Trust

Claim Form

General Instructions for filing this Claim Form:

This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing, and/or the Trust may not be able to assign the claim a position in the FIFO processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☒ Expedited
- ☐ Individualized
- ☐ Extraordinary
- ☐ Secondary Exposure
- ☐ Unknown
- ☐ Foreign Claim
- ☐ Asbestos Premises Liability Claim

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable

Claim Type :

- ☒ Asbestos Claim

Section 1: Injured Party Information				
Claim ID:	4602105		Law Firm's Matter Number for this Claim:	
Last Name	First Name		Middle Name	Suffix
Stewart	Steven		Redfearn	
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?
		Male	08/20/2013	Yes
Mailing Address (if not represented by counsel)				Daytime Telephone
City	State	Zip Code	Country	Email Address
			United States	

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name WALLACE & GRAHAM, PA		Filer ID 371	
Mailing Address 525 NORTH MAIN STREET			
City SALISBURY		State NC	Zip Code 28144
Attorney Last Name GRAHAM	Attorney First Name WILLIAM	Attorney Middle Name M	Suffix
Direct Telephone 704-633-5244	Facsimile 704-633-9434	Email Address BGRAHAM@WALLACEGRAHAM.CO M	

Section 3: Asbestos Related Injury

Check the box next to the highest Disease Level the injured party is claiming.

- ☐ Nonmalignant Asbestos Disease (Level II)
- ☐ Nonmalignant Asbestos Disease (Level III)
- ☐ Severe Asbestosis (Level IV)
- ☐ Other Cancer (Level V)
- ☐ Lung Cancer 2 (Level VI)
- ☐ Lung Cancer 1 (Level VII)
- ☐ Mesothelioma (Level VIII)
- ☒ Unknown
- ☐ Other Asbestos Disease (Level I)

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 4: Smoking History (Not Required for Expedited Review)

In the chart below, indicate each period during which the injured party smoked tobacco products and the average number of packs or cigars smoked per day.

Product	Start Date (mm/dd/yyyy)	Quit Date (mm/dd/yyyy)	Packs/Cigars Per Day

Section 5: Personal Representative (if injured party is deceased or incompetent)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number	Court
ASARCO Named?			
Has injured party received settlement monies related to this lawsuit from ASARCO or its insurers?			If "yes", Amount:
If no lawsuit has ever been filed against ASARCO on behalf of the injured party, indicate in which state the claimant would have elected to file such suit:			
Was a tolling agreement for the injured party ever in effect with respect to claim(s) against ASARCO ?			
If "yes", Date Tolling Agreement Began:			Date Tolling Agreement Ended:
Has an asbestos claim been filed on behalf of the injured party against ASARCO pursuant to an administrative settlement agreement?			
If "yes", Disease Claimed:			Date Filed (mm/dd/yyyy)
If "yes", Amount:			

Section 7: Occupational Exposure to Asbestos Products

Exposure Site :			
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Occupation	ApprovedSiteID
Site of Exposure (facility, plant or site name)	City	State	Country
Industry in which exposure occurred (see Exhibit A for list of Industry Codes):		If Other, please specify:	
Name of all ASARCO Asbestos Personal Injury Settlement Trust products to which injured party was exposed			
Is Secondary Exposure?			
Describe the circumstances of asbestos exposure (Max 1000 Characters)			

Section 8: Secondary Exposure (Not Applicable for Expedited Review)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP), complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?

Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to ASARCO Products through Occupationally Exposed Person:			

Section 9: Employment / Earnings information (Not Required for Expedited Review)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Current Employment Status (check all that apply)

- ☐ Full-Time
- ☐ Part-Time
- ☐ Retired
- ☐ N/A (Deceased)

Amount of Last Annual Wages

\$0.00

Date of Last Wage Received (mm/dd/yyyy)

Section 10: Dependents (Not Required for Expedited Review)

List the injured party's spouse and any other dependents. Attach additional copies of this page if more space is required.

Dependent :			
Last Name	First Name	Middle Name	Suffix
Relationship to Injured party	Birth Date (mm/dd/yyyy)	Financially Dependent?	
State	Zip Code	Country	

Claim Number: 2569088
Received Date: 6/22/2015

**BABCOCK & WILCOX COMPANY
ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM**

Submit completed claims to:
Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust
P.O. Box 8890
Wilmington, DE 19899-1036

Instructions for the Claim Form

File your claim more efficiently. Submit and manage your claim electronically through the Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust's (the "Trust") website. Visit www.bwasbestostrust.com for more information.

Note: It is possible that claim data previously submitted to the Celotex Asbestos Settlement Trust can be used to expedite the preparation and review of claims for the Trust. Doing so will reduce the work necessary to file a claim and minimize the time it takes to review the claim. Please visit the Trust's website (www.bwasbestostrust.com) for information on how to make use of this data.

Otherwise, complete this claim form as thoroughly and accurately as possible. Please type or print neatly. Should there be insufficient space to list all relevant information, please attach additional sheets. In addition to filing this form, please ensure the following are enclosed:

- Death Certificate (if applicable)
- Certificate of Official Capacity or other estate documentation (if personal representative is filing form) if applicable per state law
- Medical records as required by the Trust Distribution Procedures and as requested in instructions
- Proof of Babcock & Wilcox Exposure as set out in the instructions
- Documentation of Economic Loss (if applicable - see Part 8 below)

Choice of Claim Process

Please choose the applicable claim process (**check only one**):

- ☒ Expedited Review ("ER") (not available for Level VI, Lung Cancer 2, or Foreign Claims)
☐ Individual Review ("IR")

Representation

If counsel represents claimant, please print or type the following information:

1. Attorney name: GRAHAM WILLIAM M.
(Last) (First) (MI)

2. Name of Law Firm: WALLACE & GRAHAM P.A.

3. Firm Address: 525 NORTH MAIN STREET, SALISBURY, NC, 28144

4. Attorney Phone: 7046335244 Fax: 7046339434 Email: _____

5. Paralegal or Contact Name: _____
(Last) (First) (MI)

6. Contact Phone: _____ Fax: _____ Email: _____

Claim Number: 2569088
Received Date: 6/22/2015

**BABCOCK & WILCOX COMPANY ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM**

Part 1: Injured Party Information

1. Name:	Stewart	Steven	R
()			
3. Gender:	M	4. Date of Birth:	(mm/dd/yyyy)

5. Is injured party living? Yes _____ No ☒ X

6. If injured party is deceased, please complete the following: **(Death Certificate must be enclosed)**

6a. Date of Death: 08/20/2013
(mm/dd/yyyy)

6b. Was death asbestos-related? Yes ☒ X No _____

7. If injured party is living and not represented by counsel, please complete the following:

7a. Mailing address: _____
(street/PO Box)

(city/state/zip)

7b. Daytime Phone: _____

7c. Email Address: _____

8. If injured party is deceased or has a personal representative or heir other than, or in addition to, his/her attorney, please indicate the following for the representative. **(Certificate of Official Capacity or other estate documentation must be enclosed if available.)**

8a. Name: _____
(Last) (First) (MI)

8b. Social Security Number: _____

8c. Mailing address: _____
(street/PO Box)

(city/state/zip)

8d. Daytime Phone: _____

8e. Email Address: _____

8f. Relationship to injured party: _____
(spouse, child, etc.)

Claim Number: 2569088
Received Date: 6/22/2015

**BABCOCK & WILCOX COMPANY ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM**

Part 2: Diagnosed Asbestos-related Injuries

1. Place an X next to the highest level (most serious) asbestos-related Disease Category that has been diagnosed for the injured party and for which medical documentation is attached to this claim form. See instructions for a list of specific medical criteria and records that must be enclosed for each Disease Category. **(Check only the most serious)**

Level Scheduled Disease	
☐	VIII Mesothelioma
☐	VII Lung Cancer I
☐	VI Lung Cancer 2 (Individual Review Only)
☐	V Other Cancer (Please specify: _____)
☐	IV Severe Asbestosis (ILO of 2/1 or greater, or Asbestosis determined by pathology plus (a) TLC less than 65% or (b) FVC less than 65% plus FEV1/FVC ratio greater than 65%)
☐	III Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease plus (a) TLC less than 80% or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%)
☐	II Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease)
☐	I Other Asbestos Disease (Cash Payment Discount, not subject to the Payment Percentage)

2. Date of Diagnosis: _____ (mm/dd/yyyy)

The claims must meet the relevant medical criteria and be supported by appropriate medical documentation as defined in the Asbestos Personal Injury Trust Distribution Procedures. The presumptive medical criteria for the Disease Categories set forth above are included in the instructions.

- ☐ For claims filed against B&W or any other asbestos defendant in the tort system prior to the Petition Date (February 22, 2000), please check this box if you have a report of a diagnosing physician who conducted the physical exam of the claimant, or you have filed such a report with B&W or another defendant in the tort system or another asbestos-related personal injury settlement trust. (see Sections 5.7(a)(1)(a) and 5.7(a)(1)(c) of the TDP.)

Claim Number: 2569088
Received Date: 6/22/2015

**BABCOCK & WILCOX COMPANY ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM**

Part 7: Smoking History

For each item, indicate whether the injured party has smoked. Please indicate the dates cigarettes or cigars were used, and the amount per day. Indicate fractional packs or fractional cigars as appropriate, *e.g.*, three and one-half packs would be entered as 3.5. **This is to be completed for Lung Cancer 2 (LC2) and IR levels I through IV only.**

1. Has the injured party ever **Smoked Cigarettes?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Packs per day: _____ (use decimal)

1. Has the injured party ever **Smoked Cigars?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Cigars per day: _____ (use decimal)

Claim Number: 2569088 Received Date: 6/22/2015

**BABCOCK & WILCOX COMPANY ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM**

Part 8: Employment Information for Economic Loss

This is to be completed for IR claims only.

1. Current Employment Status of the injured party:

- ☐ Full-time, outside the home
- ☐ Full-time, within the home
- ☐ Part-time, outside the home
- ☐ Part-time, within the home
- ☐ Retired
- ☐ Disabled
- ☐ Deceased

2. Amount of last annual wages: _____

3. Date of last wage received: _____
(mm/yyyy)

(Enter current date if currently earning work-related compensation.)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Claim Number: 2569088
Received Date: 6/22/2015

**BABCOCK & WILCOX COMPANY ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
PROOF OF CLAIM FORM**

Part 9: Signature Page

All claims must be signed by the claimant, or the person filing on his/her behalf (such as the personal representative or attorney).

If signed by the claimant or the personal representative: I (the claimant or personal representative) have reviewed the information submitted on this claim form and all of the documents submitted in support of this claim. To the best of my knowledge, under penalty of perjury, the information submitted is accurate and complete.

If signed by the claimant's counsel: Upon information and belief, I hereby certify, under penalty of perjury, that the information submitted is accurate and complete.

Signature of claimant, personal representative, or claimant's counsel.

Please print the name and relationship to the claimant of the signatory above.

Date: ____/____/____
(Month) (Day) (Year)

Please review your submission to ensure it is complete and includes the following documents as applicable.

- ☐ Death Certificate (if applicable)
- ☐ Certificate of Official Capacity or other estate documentation (if personal representative is filing form) if applicable per state law.
- ☐ Medical Records as required by the Trust Distribution Procedures and as requested in the instructions
- ☐ Proof of B&W Exposure and Significant Occupational Exposure as required in the Trust Distribution Procedures and requested in the instructions, including affidavits from the injured party or others.
- ☐ Documentation of Economic Loss (if Part 8 is applicable)

If you are filing an IR claim and have additional information (see TDP section 5.3(b)(2)) you want the Trust to consider in evaluating your claim, please include these documents with the Claim Form.

Burns and Roe Personal Injury Settlement Trust

Claim Form

General Instructions for filing this Claim Form:

This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing, and/or the Trust may not be able to assign the claim a position in the FIFO processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☒ Expedited
- ☐ Individualized
- ☐ Secondary Exposure
- ☐ Foreign Claim
- ☐ Unknown

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable
- ☐ Exigent Hardship

Claim Type :

- ☒ Asbestos Claim

Section 1: Injured Party Information

Claim ID:	4602107	Law Firm's Matter Number for this Claim:		
Last Name	First Name	Middle Name	Suffix	
Stewart	Steven	Redfearn		
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?
		Male	08/20/2013	Yes
Mailing Address (if not represented by counsel)				Daytime Telephone
City	State	Zip Code	Country	Email Address
			United States	

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name		Filer ID	
WALLACE & GRAHAM, PA		371	
Mailing Address			
525 NORTH MAIN STREET			
City		State	Zip Code
SALISBURY		NC	28144
Attorney Last Name	Attorney First Name	Attorney Middle Name	Suffix
GRAHAM	WILLIAM	M	
Direct Telephone	Facsimile	Email Address	
704-633-5244	704-633-9434	BGRAHAM@WALLACEGRAHAM.CO M	

Section 3: Asbestos Related Injury

Check the box next to the highest Disease Level the injured party is claiming.

- ☐ Other Asbestos Disease (Level I)
- ☐ Asbestosis/Pleural Disease (Level II)
- ☐ Asbestosis/Pleural Disease (Level III)
- ☐ Severe Asbestosis (Level IV)
- ☐ Other Cancer (Level V)
- ☐ Lung Cancer 2 (Level VI)
- ☐ Lung Cancer 1 (Level VII)
- ☐ Mesothelioma (Level VIII)
- ☒ Unknown

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 4: Smoking History (Not Required for Expedited Review)

In the chart below, indicate each period during which the injured party smoked tobacco products and the average number of packs or cigars smoked per day.

Product	Start Date (mm/dd/yyyy)	Quit Date (mm/dd/yyyy)	Packs/Cigars Per Day

Section 5: Personal Representative (if injured party is deceased or incompetent)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number	Court
Burns and Roe Named?			
Has injured party received settlement monies related to this lawsuit from Burns and Roe or its insurers?			If "yes", Amount:
If no lawsuit has ever been filed against Burns and Roe on behalf of the injured party, indicate in which state the claimant would have elected to file such suit:			
Was a tolling agreement for the injured party ever in effect with respect to claim(s) against Burns and Roe ?			
If "yes", Date Tolling Agreement Began:			Date Tolling Agreement Ended:
Has an asbestos claim been filed on behalf of the injured party against Burns and Roe pursuant to an administrative settlement agreement?			
If "yes", Disease Claimed:			Date Filed (mm/dd/yyyy)
If "yes", Amount:			

Section 7: Occupational Exposure to Asbestos Products

Provide the information below for each location at which claimant alleges exposure to asbestos occurred. Please include detail for all asbestos exposure which you think is sufficient to meet the Burns and Roe Exposure criteria as well as Significant Occupational Exposure criteria for the approval of the claim at the claimed Disease Level. List each site, industry and occupation combination separately. Provide the complete name and location of each individual site. Attach additional copies of this page if more space is required.

Exposure Site :			
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Occupation	ApprovedSiteID
Site of Exposure (facility, plant or site name)	City	State	Country
Industry in which exposure occurred (see Exhibit A for list of Industry Codes):			If Other, please specify:
Name of all Burns and Roe Personal Injury Settlement Trust products to which injured party was exposed			
Is Secondary Exposure?			
Description of Significant Occupational Exposure at this jobsite (check all that apply) ☐ Claimant handled raw asbestos fibers on a regular basis ☐ Claimant fabricated asbestos-containing products such that the Claimant in the fabrication process was exposed on a regular basis to asbestos fibers ☐ Claimant altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers ☐ Claimant was employed in an industry or occupation such that the claimant worked on a regular basis in close proximity to workers who did one or more of the above three activities			
Describe the circumstances of asbestos exposure (Max 1000 Characters)			

Section 7 (cont'd): Occupational Exposure to Asbestos Products

THIS QUESTION MUST BE ANSWERED:

If any of the injured party's exposure to asbestos was as a result of working in proximity to Burns & Roe contracting activity during any of the following periods, check all periods that apply. If the injured party does not recall working in proximity to Burns & Roe contracting activity, please check "N/A".

- ☐ January 1, 1956 thru December 31, 1969
- ☐ January 1, 1971 thru April 1, 1974
- ☐ N/A

Section 8: Secondary Exposure (Not Applicable for Expedited Review)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP), complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?			
Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to Burns and Roe Products through Occupationally Exposed Person:			

Section 9: Employment / Earnings Information (Not Required for Expedited Review)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Current Employment Status (check all that apply)

- ☐ Full-Time
- ☐ Part-Time
- ☐ Retired
- ☐ N/A (Deceased)

Disabled:

- ☐ Partially Disabled
- ☐ Fully Disabled
- ☒ Unknown
- ☐ Not Applicable

Amount of Last Annual Wages

\$0.00

Date of Last Wage Received (mm/dd/yyyy)

Section 10: Dependents (Not Required for Expedited Review)

List the injured party's spouse and any other dependents. Attach additional copies of this page if more space is required.

Dependent :			
Last Name	First Name	Middle Name	Suffix
Relationship to Injured party	Birth Date (mm/dd/yyyy)	Financially Dependent?	
State	Zip Code	Country	

Claim Detail

Claimant Information

Claimant ID: 1299374
SSN/Int ID: 248-70-3419
DOB: 8/27/1943

Claimant Name: Steven R. Stewart
Representative: Stephen R. Edwards
DOD: 8/20/2013

Claim Information

Trust: Thurston
Claim ID: 1950020
Parent ID:
FIFO:
Alleged Injury:

Claim Class:
SOE Qualified: No
Exposure Country:
Law Firm: Wallace and Graham
Attorney Name: William M. Graham
Phone Number: (704) 633-5244
Claim Status:
AWDEMOGRAPHIC
Claim Status Date: 6/22/2015
Original Received Date:
Received Date:
Registered Date: 6/22/2015
SOL Toll Date:

On Hold: No

EH Status:
HS Status:
Evaluation Country:
Law Firm Suspended: No

Offer Information

Offer Date:
Evaluated Injury:
Claim Value:
Adjusted Value:
Set-Off Amount:

Offer Expiration Date:
Claim Evaluation Type:
Claim Type:
Payment Plan:
Claim Quality Controlled:

Liquidated Value:
Payment Percentage:
Claim Payment:

Interest Paid:
Total Paid:

Settlement Information

Offer Acceptance Date:
Settlement Date:

Claim Number: 1387767
Received Date: 6/22/2015

Individualized Review Form

CELOTEX ASBESTOS SETTLEMENT TRUST

Submit completed claims to:
Celotex Asbestos Settlement Trust
P.O. Box 1036
Wilmington, DE 19899-1036

Instructions for the Individualized Review Claim Form

Complete this claim form as thoroughly and accurately as possible. Please type or print neatly.

Should there be insufficient space to list all relevant information, please attach additional sheets.

In addition to filing the forms that follow, please ensure the following are enclosed, if applicable:

- ☐ Death Certificate (if applicable)
- ☐ Certificate of Official Capacity (if personal representative is filing form)
- ☐ Medical Records as requested in instructions
- ☐ Proof of Celotex or Carey Canada product exposure as set out in the instructions

Representation

If Claimant is represented by counsel, please print or type the following information:

Attorney Name: WILLIAM M. GRAHAM

(Please print full name)

Paralegal or Contact Name: dcw

(Please print full name)

Name of Law Firm: WALLACE & GRAHAM P.A.

(Please print full name of firm)

Firm Address: 525 NORTH MAIN STREET

(Street/PO box number/suite number)

SALISBURY, NC, 28144

(City, State and Zip)

Attorney Phone: 7046335244

(Area Code & Number)

Fax: 7046339434

(Area Code & Number)

Contact Phone:

(Area Code & Number)

Fax:

(Area Code & Number)

Contact Email:

ROA 1809

W&G - Stewart 002384

INDIVIDUALIZED REVIEW Claim Form

Part 1: Injured Party Information

Firm File Number: _____	
Name:	Steven R Stewart (Please print FULL NAME)
Social Security #:	_____
Gender:	Male ☒ Female _____
Date of Birth:	_____ (Month)/(Day)/(Year)

I. Is injured party living? Yes _____ No ☒

II. If injured party is living and not represented by counsel, please complete the following:

Mailing address: _____
(Street/PO Box)

(City/State/Zip)

Daytime Phone: _____

III. If injured party is deceased: (*Death Certificate must be enclosed*)

Date of Death: 08/20/2013

Was death asbestos-related? Yes ☒ No _____

IV. If injured party is deceased or has a personal representative or heir other than, or in addition to, his/her attorney, please indicate the following information for the representative. (*Certificate of Official Capacity must be provided.*)

Name: _____ Social Security Number: _____

Mailing Address: _____

Daytime Phone: _____

Relationship to Injured Party: I am party's: _____
(Guardian, Administrator, Brother, etc.)

Part 2: Diagnosed Asbestos-Related Injuries

Place an X next to all injuries below that have been or were diagnosed for the injured party **and** for which medical documentation is attached to this claim form. *See Instructions for listing of medical records that must be enclosed.*

☐ Other _____ (Specify)	Date of Diagnosis	_____ (Month) / (Day) / (Year)
☐ Bilateral Pleural Disease	Date of Diagnosis	_____ (Month) / (Day) / (Year)
☐ Non-disabling Bilateral Interstitial Lung Disease	Date of Diagnosis	_____ (Month) / (Day) / (Year)
☐ Disabling Bilateral Interstitial Lung Disease	Date of Diagnosis	_____ (Month) / (Day) / (Year)
Other Cancer:		
☐ Colo-rectal	Date of Diagnosis	_____ (Month) / (Day) / (Year)
☐ Laryngeal	Date of Diagnosis	_____ (Month) / (Day) / (Year)

☐ Esophageal	Date of Diagnosis	_____ (Month) / (Day) / (Year)
☐ Pharyngeal	Date of Diagnosis	_____ (Month) / (Day) / (Year)
☐ Lung Cancer (One)	Date of Diagnosis	_____ (Month) / (Day) / (Year)
☐ Lung Cancer (Two)	Date of Diagnosis	_____ (Month) / (Day) / (Year)
☐ Malignant Mesothelioma	Date of Diagnosis	_____ (Month) / (Day) / (Year)

Claims for all of the above injuries must include a diagnosis of the claimed disease by an internal medicine or pulmonary specialist or other specialist based on either a physical examination of the claimant by that doctor, a physical examination by another doctor whose physical examination and findings are reliable or a pathologist examination for a deceased claimant.

If reimbursement of medical expenses is being claimed, what was the total expenditure on diagnosis and treatment of asbestos-related diseases: \$0.00

INDIVIDUALIZED REVIEW Claim Form**Part 6: Smoking/Tobacco History**

For each item, indicate whether injured party has smoked or used the given product. If used, indicate the dates they were used, and the amount per day. Indicate fractional packs as appropriate, e.g. three and one-half packs would be entered as 3.5.

Has the injured party ever **Smoked Cigarettes?** Yes _____ No _____

Year stopped: _____ Packs per day: _____

Has the injured party ever **Smoked Cigars?** Yes _____ No _____

Year stopped: _____ Cigars per day: _____

INDIVIDUALIZED REVIEW Claim Form

Part 7: Asbestos Litigation

Firm Reference Number: _____

Has a lawsuit ever been filed on behalf of the injured party?

Yes _____ No _____

State in which the suit was originally filed: _____

Name of court in which suit was originally filed: _____

Date on which the suit was originally filed: _____
(Month/Year)

Has injured party received settlement money from Celotex or Carey Canada? Yes _____ No _____

Please provide the Aggregate Settlement Amount received from all asbestos defendants: _____

What is the current status of this suit? ☐ Pending ☐ Judgment
☐ Dismissed ☐ SettledIf this suit is pending, when is the trial currently scheduled? _____
(Month) / (Day) / (Year)

**Unless you wish to waive your right to have your claim allowed,
evaluated and paid by the Trust, you must notify the Trust when a trial date is established.**

If this suit has been dismissed or has received a judgment please provide the following information:

Date of Verdict Name of Defendant(s) Verdict Amount

(Month / Year)_____

INDIVIDUALIZED REVIEW Claim Form

Part 8: Workers' Compensation/Other Disability Claims

Has the injured party ever received disability benefits related to asbestos?

Yes _____ No _____

Name of organization granting benefits: _____

(FECA, WC, etc.)

Date benefits began: _____
(month) (year)

Monthly benefit stipend: _____

Name of company claim was filed against: _____

INDIVIDUALIZED REVIEW Claim Form

Part 9: Employment Information

Current Employment Status of the injured party:

- ☐ Full-time, outside the home
- ☐ Full-time, within the home
- ☐ Part-time, outside the home
- ☐ Part-time, within the home
- ☐ Retired
- ☐ Disabled
- ☐ Deceased

Amount of last annual wage: _____

Date of last wage received: _____
(month) (year)

**W-2 and first page of Form 1040 for last year of full employment
must be enclosed, if lost wages are being claimed.**

INDIVIDUALIZED REVIEW Claim Form

Part 10: Signature Page

All claims must be signed by the claimant, or the person filing on his/her behalf (such as the personal representative or attorney).

I have reviewed the information submitted on this claim form and all documents submitted in support of this claim. To the best of my knowledge under penalty of perjury, the information submitted is accurate and complete.

Signature of Claimant or Representative

Please print the name and relationship to the claimant of the signatory above.

Please review your submission to ensure it is complete.

- ☐ Death Certificate (if applicable)
- ☐ Certificate of Official Capacity (if personal representative is filing form)
- ☐ Medical Records as requested in the instructions
- ☐ Proof of Celotex or Carey Canada product exposure as set out in instructions

Congoleum Plan Trust

- Claim Form for Asbestos Personal Injury Claims -

General Instructions for filing this Claim Form:

This Claim Form for Asbestos Personal Injury Claims should be completed only by holders of Asbestos Personal Injury Claims seeking to liquidate their claim under the Expedited Review or Individual Review processes of the Congoleum Plan Trust (the "Trust"). See Section 6.2(a) and (b) of the Congoleum Plan Trust Distribution Procedures (the "TDP") for further information regarding the Expedited and Individual Review processes.[1] This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing and/or the Trust not being able to assign the claim a position in the first-in-first-out (FIFO) processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☒ Expedited
- ☐ Individualized
- ☐ Secondary Exposure
- ☐ Extraordinary
- ☐ Foreign Claim
- ☐ Unknown

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable
- ☐ Exigent Hardship

Section 1: Injured Party Information

Claim ID:	4602109	Law Firm's Matter Number for this Claim:		
Last Name	First Name	Middle Name	Suffix	
Stewart	Steven	Redfearn		
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?
		Male	08/20/2013	Yes
Mailing Address (if not represented by counsel)				Daytime Telephone
City	State	Zip Code	Country	Email Address
			United States	

[1] Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the TDP.

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name		Filer ID	
WALLACE & GRAHAM, PA		371	
Mailing Address			
525 NORTH MAIN STREET			
City		State	Zip Code
SALISBURY		NC	28144
Attorney Last Name	Attorney First Name	Attorney Middle Name	Suffix
GRAHAM	WILLIAM	M	
Direct Telephone	Facsimile	Email Address	
704-633-5244	704-633-9434	BGRAHAM@WALLACEGRAHAM.COM	

Section 3: Asbestos Related Injury

Check the box next to the highest Disease Level the injured party is claiming.

- ☐ Other Asbestos Disease (Level I)
- ☐ Asbestosis/Pleural Disease (Level II)
- ☐ Asbestosis/Pleural Disease (Level III)
- ☐ Severe Asbestosis (Level IV)
- ☐ Other Cancer (Level V)
- ☐ Lung Cancer 2 (Level VI)
- ☐ Lung Cancer 1 (Level VII)
- ☐ Mesothelioma (Level VIII)
- ☒ Unknown

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 4: Smoking History (required only for Individual Review Claims for Lung Cancer 1 (Level VII) and Lung Cancer 2 (Level VI))

In the chart below, indicate each period during which the injured party smoked tobacco products and the average number of packs or cigars smoked per day.

Product	Start Date (mm/dd/yyyy)	Quit Date (mm/dd/yyyy)	Packs/Cigars Per Day

Section 5: Personal Representative (if applicable)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number	Court
Congoleum named as defendant?			
Has injured party received settlement monies related to this lawsuit from Congoleum or its insurers?			If "yes", Amount:
Jurisdiction Selection If no lawsuit has ever been filed against Congoleum on behalf of the injured party, indicate the state elected as the Claimant's Jurisdiction:			
Jurisdiction elected is (please check one of the following): ☐ State in which the claimant resided at the time of diagnosis ☐ State in which the claimant resides when this claim is filed with the Trust ☐ A state in which the injured party experienced exposure to an asbestos-containing product manufactured, produced or distributed by Congoleum or to asbestos or asbestos-containing products in a Congoleum facility. ☐ Unknown			
Was the injured party or claimant a party to a tolling agreement with Congoleum?			
If "yes", Date Tolling Agreement Began:			Date Tolling Agreement Ended:
Has an asbestos claim been filed on behalf of the injured party against Congoleum pursuant to an administrative settlement agreement?			
If "yes", Disease Claimed:			Date Filed (mm/dd/yyyy)
If "yes", Amount:			

Section 7: Occupational Exposure to Asbestos Products

Provide information below for each location at which the injured party alleges exposure to an asbestos-containing product manufactured, produced or distributed by Congoleum, or to asbestos or asbestos-containing products in a Congoleum facility. If the duration of the injured party's Congoleum Exposure is not sufficient to meet the other exposure criteria (Significant Occupational Exposure or cumulative occupational exposure as required for the Disease Level in question), please provide information regarding other asbestos exposure to satisfy the applicable exposure criteria. List each site, industry, and occupation combination separately. Provide the complete name and location of each individual site. Attach additional copies of this page if more space is required.

Exposure Site :				
Start Date (mm/dd/yyyy)		End Date (mm/dd/yyyy)		Occupation
Site of Exposure (facility, plant or site name)			City	State
				Country
Industry in which exposure occurred (see Exhibit A for list of Industry Codes):				If Other, please specify:
Name of all Congoleum Plan Trust products to which injured party was exposed				
Is Secondary Exposure?				
Description of Significant Occupational Exposure at this jobsite (check all that apply) ☐ Claimant handled raw asbestos fibers on a regular basis ☐ Claimant fabricated asbestos-containing products such that the Claimant in the fabrication process was exposed on a regular basis to asbestos fibers ☐ Claimant altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers ☐ Claimant was employed in an industry or occupation such that the claimant worked on a regular basis in close proximity to workers who did one or more of the above three activities				
Describe the circumstances of asbestos exposure (Max 1000 Characters)				

ROA 1825

W&G - Stewart 002400

Section 8: Secondary Exposure (Not Applicable for Expedited Review)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP), complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?			
Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to Congoleum Products through Occupationally Exposed Person:			

Section 9: Employment / Earnings information (Not Required for Expedited Review)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Current Employment Status (check all that apply)

- ☐ Full-Time
- ☐ Part-Time
- ☐ Retired
- ☐ N/A (Deceased)

Disabled:

- ☐ Partially Disabled
- ☐ Fully Disabled
- ☒ Unknown
- ☐ Not Applicable

Amount of Last Annual Wages

\$0.00

Date of Last Wage Received (mm/dd/yyyy)

Section 10: Dependents (Not Required for Expedited Review)

List the injured party's spouse and any other dependents. Attach additional copies of this page if more space is required.

Dependent :			
Last Name	First Name	Middle Name	Suffix
Relationship to Injured party	Birth Date (mm/dd/yyyy)	Financially Dependent?	
State	Zip Code	Country	

[Print](#)

Trust: Eagle-Picher Industries Settlement Trust
Claim number: 638672
Submission Date: 06/22/2015 08:17:21 AM Central Daylight Time

Review Claim :**Part 1 - Injured Party Information**

Claim option: IRC

Injured Party Information :

Filing Firm: Wallace & Graham PA
Filing Attorney: Graham, William
First name: Steven
Mi: R
Last name: Stewart
Date of birth:
Country: UNITED STATES
SSN:
Gender: M
Deceased: Yes
Death asbestos related: Yes
Date of death: 08/20/2013

Representative Information :

Does the injured party have a personal representative other than, or in addition to, his/her attorney?: Yes
Claimant first name: Stephen
Claimant mi: R
Claimant last name: Edwards
Claimant relationship: Personal Representative
Claimant country: UNITED STATES

Part 2 - Dependents and Beneficiaries**Dependents & Beneficiaries:**

Has dependents: No

Part 3 - Diagnosed Asbestos Related Injuries**Alleged Diagnosis :**

Alleged injury code: MES
Alleged diagnosis date: 10/01/2012

Part 4 - Exposure**Occupational Exposure :**

Exposure Incident To Occupationally Exposed Person :

Part 5 - Smoking/Tobacco History**Smoking/Tobacco History :**

ROA 1829

W&G - Stewart 002404

Has the injured party ever smoked tobacco?: No

Part 6 - Asbestos Litigation/Jurisdiction

Asbestos Litigation/Jurisdiction :

Has an asbestos-related lawsuit ever been filed on behalf of the injured party? If no lawsuit is on file, jurisdiction is the State/Province the injured party is or was domiciled.: No
Lawsuit country: UNITED STATES
Lawsuit state: SC

Part 7 - Employment Information

Employment Information :

East-West Corporate Center
1771 W. Diehl Road, Suite 220
Naperville, IL 60563
<http://www.cpf-inc.com> (<http://www.cpf-inc.com>)

Claims Processing Facility, Inc.
e-File Version: 1.0

Toll free: 888 CPFEFILE (273-3345)
Local: 630-281-6600
Fax: 630-281-6800
Email: ehelp@cpf-inc.com (<mailto:ehelp@cpf-inc.com>)

Claim Number: 32185802
Received Date: 6/22/2015

**FEDERAL-MOGUL
ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Submit completed claims to:
T&N Subfund of the Federal-Mogul Asbestos Personal Injury Trust - Ferodo
P.O. Box 8401
Wilmington, DE 19899-8401

Instructions for the Claim Form

File your claim more efficiently. Submit and manage your claim electronically through the Federal-Mogul Asbestos Personal Injury Trust's (the "Trust") website. Visit www.federalmogulasbestostrust.com for more information.

Please complete this claim form as thoroughly and accurately as possible. Please type or print neatly. Should there be insufficient space to list all relevant information, please attach additional sheets. In addition to filing this form, please ensure the following are enclosed:

- Death Certificate (if applicable)
- Certificate of Official Capacity or other estate documentation (if personal representative is filing form) if applicable per state law
- Medical records as required by the Asbestos Personal Injury Trust Distribution Procedures ("TDP") and as requested in the instructions
- Proof of T&N Entity Exposure as set out in the instructions
- Documentation of Economic Loss (if applicable - see Part 8 below)

Filing Against a T&N Subfund Entity: Please check whether the specific claim exposure being alleged is against T&N, Flexitallic, or Ferodo. CHECK ONLY ONE BOX BELOW. Multiple Exposure Claims against the T&N Subfund must be filed separately. For example, if you have claims for both T&N and Ferodo exposure, you must submit one complete claim form for T&N exposure and a separate complete claim form for Ferodo exposure.

T&N Subfund:

- ☐ T&N Exposure
☐ Flexitallic Exposure
☒ Ferodo Exposure

Choice of Claim Process

Please choose the applicable claim process (check only one):

- ☒ Expedited Review ("ER") (not available for Level VI (Lung Cancer 2) Claims, Secondary Exposure Claims or Foreign Claims)
☐ Individual Review ("IR")

Claim Number: 32185802 Received Date: 6/22/2015

**FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Representation

If counsel represents claimant, please print or type the following information:

1. Attorney name:	GRAHAM	WILLIAM M.	
	(Last)	(First)	(MI)
2. Name of Law Firm:	WALLACE & GRAHAM P.A.		
3. Firm Address:	525 NORTH MAIN STREET, SALISBURY, NC, 28144		
4. Attorney Phone:	7046335244	Fax: 7046339434	Email:
5. Paralegal or Contact Name:		dew	
	(Last)	(First)	(MI)
6. Contact Phone:		Fax:	Email:

Claim Number: 32185802
Received Date: 6/22/2015

FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Part 1: Injured Party Information

1. Name:	Stewart	Steven	R
	(Last)	(First)	(MI)
2. Social Security Number:			
3. Gender:	M	4. Date of Birth:	
			dd/yyyy)

5. Is injured party living? Yes _____ No ☒ X

6. If injured party is deceased, please complete the following: **(Death Certificate must be enclosed)**

6a. Date of Death: 08/20/2013
(mm/dd/yyyy)

6b. Was death asbestos-related? Yes ☒ X No _____

7. If injured party is living and not represented by counsel, please complete the following:

7a. Mailing address: _____
(street/PO Box)

(city/state/zip)

7b. Daytime Phone: _____

7c. Email Address: _____

8. If injured party is deceased or has a personal representative or heir other than, or in addition to, his/her attorney, please indicate the following for the representative. **(Certificate of Official Capacity or other estate documentation must be enclosed if applicable.)**

8a. Name: _____
(Last) (First) (MI)

8b. Social Security Number, or Tax ID Number: _____

8c. Mailing Address: _____
(street/PO Box)

(city/state/zip)

8d. Daytime Phone: _____

8e. Email Address: _____

ROA 1833

W&G - Stewart 002408

8f. Relationship to injured party: _____
(spouse, child, etc.)

Claim Number: 32185802 Received Date: 6/22/2015

**FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Part 2: Diagnosed Asbestos-related Injuries

1. Place an X next to the highest level (most serious) asbestos-related Disease Category that has been diagnosed for the injured party and for which medical documentation is attached to this claim form. See instructions for a list of specific medical criteria and records that must be enclosed for each Disease Category. **(Check only the most serious)**

Level	Scheduled Disease
☐ VIII	Mesothelioma
☐ VII	Lung Cancer 1 (Primary lung cancer plus Bilateral Asbestos-Related Non-Malignant Disease)
☐ VI	Lung Cancer 2 (Primary lung cancer) (Individual Review Only)
☐ V	Other Cancer (Please specify: _____) (Primary cancer other than lung cancer plus Bilateral Asbestos-Related Non-Malignant Disease)
☐ IV	Severe Asbestosis (ILO of 2/1 or greater, or asbestosis determined by pathology plus (a) TLC less than 65% or (b) FVC less than 65% plus FEV1/FVC ratio greater than 65%)
☐ III	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease plus (a) TLC less than 80% or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%)
☐ II	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease)
☐ I	Other Asbestos Disease (Bilateral Asbestos-Related Non-Malignant Disease) (Cash Payment Discount, not subject to the Payment Percentage)

2. Date of Diagnosis: _____ (mm/dd/yyyy)

The claims must meet the relevant medical criteria and be supported by appropriate medical documentation as defined in the TDP. The presumptive medical criteria for the Disease Categories set forth above are included in the instructions.

- ☐ For claims filed against a T&N Entity or any other asbestos defendant in the tort system prior to the Petition Date, please check this box if you have filed a physical examination report with another asbestos-related personal injury settlement trust. (see sections 5.7(a)(1)(A) and 5.7(a)(1)(C) of the TDP)

Claim Number: 32185802
Received Date: 6/22/2015

FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Part 7: Smoking History

For each item, indicate whether the injured party has smoked. Please indicate the dates cigarettes or cigars were used, and the amount per day. Indicate fractional packs or fractional cigars as appropriate, *e.g.*, three and one-half packs would be entered as 3.5. *This is to be completed for Lung Cancer 2 (LC2) and IR levels I through IV only.*

1. Has the injured party ever **Smoked Cigarettes?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Packs per day: _____ (use decimal)

1. Has the injured party ever **Smoked Cigars?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Cigars per day: _____ (use decimal)

Claim Number: 32185802 Received Date: 6/22/2015

**FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Part 8: Employment Information for Economic Loss

This is to be completed for IR claims only.

1. Current Employment Status of the injured party:

- ☐ Full-time, outside the home
- ☐ Full-time, within the home
- ☐ Part-time, outside the home
- ☐ Part-time, within the home
- ☐ Retired
- ☐ Disabled
- ☐ Deceased

2. Amount of last annual wages: _____

3. Date of last wage received: _____
(mm/yyyy)

(Enter current date if currently earning work-related compensation.)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Claim Number: 32185802
Received Date: 6/22/2015

**FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Part 9: Signature Page

All claims must be signed by the claimant, or by the person filing on his/her behalf (such as the personal representative or attorney).

If signed by the claimant or the personal representative, I (the claimant or personal representative) have reviewed the information submitted on this claim form and all documents submitted in support of this claim. Upon information and belief, I hereby certify, under penalty of perjury, that the information submitted is accurate.

If signed by the claimant's counsel, upon information and belief, I hereby certify, under penalty of perjury, that the information submitted is accurate.

Signature of claimant, personal representative, or claimant's counsel.

Please print the name and relationship to the claimant of the signatory above.

Date: ____ / ____ / ____
(Month) (Day) (Year)

Please review your submission to ensure that it is complete and includes the following documents as applicable.

- ☐ Death Certificate (if applicable)
- ☐ Certificate of Official Capacity or other estate documentation (if personal representative is filing form) if applicable per state law
- ☐ Medical Records as required by the TDP and as requested in the instructions
- ☐ Proof of T&N Entity Exposure and Significant Occupational Exposure as required in the TDP and requested in the instructions, including affidavits from the injured party or others.
- ☐ Copy of the tolling agreement (if Part 5 is applicable)
- ☐ Documentation of Economic Loss (if Part 8 is applicable)

If you are filing an IR claim and have additional information (see TDP section 5.3(a)(2)) you want the Trust to consider in evaluating your claim, please include these documents with the Claim Form.

Claim Number: 12603209
Received Date: 6/22/2015

Owens Corning/Fibreboard
ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Submit completed claims to:
Owens Corning/Fibreboard Asbestos Personal Injury Trust
P.O. Box 1072
Wilmington, DE 19899-1072

Instructions for the Claim Form

File your claim more efficiently. Submit and manage your claim electronically through the Owens Corning/Fibreboard ("OCFB") Asbestos Personal Injury Trust's (the "Trust") website. Visit www.ocfbasbestostrust.com for more information.

Note: It is possible that claim data previously submitted to the Celotex Asbestos Settlement Trust, the Babcock & Wilcox Asbestos Settlement Trust, the USG Asbestos Settlement Trust, and the Armstrong World Industries Asbestos Settlement Trust can be used to expedite the preparation and review of claims for the Trust. Doing so will reduce the work necessary to file a claim and minimize the time it takes to review the claim. Please visit the Trust's website (www.ocfbasbestostrust.com) for information on how to make use of this data. Presumptive Significant Occupational Exposure Occupation Ratings are available on the Trust's website www.ocfbasbestostrust.com.

Otherwise, complete this claim form as thoroughly and accurately as possible. Please type or print neatly. Should there be insufficient space to list all relevant information, please attach additional sheets. In addition to filing this form, please ensure the following are enclosed:

- Death Certificate (if applicable)
- Certificate of Official Capacity or other estate documentation (if personal representative is filing form) if applicable per state law
- Medical records as required by the Trust Distribution Procedures and as requested in the instructions
- Proof of Owens Corning and/or Fibreboard Exposure and Significant Occupational Exposure (SOE) as required in the Trust Distribution Procedures and as requested in the instructions, including relevant affidavits from the injured party or others
- Documentation of Economic Loss (if applicable - see Part 8 below)
- Copy of any relevant tolling agreement (if applicable in Part 5)
- Completed Form W-9 if completing a release that does not include W-9 language (if applicable)

Choice of Claim Process

Please choose the applicable claim process (check only one):

☒

Expedited Review ("ER") (not available for Level VI, Lung Cancer 2, or Foreign Claims)

☐

Individual Review ("IR")

Claim Number: 12603209 Received Date: 6/22/2015

**OCFB ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Representation

If counsel represents claimant, please print or type the following information:

1. Attorney name:	GRAHAM	WILLIAM M.	
	(Last)	(First)	(MI)
2. Name of Law Firm:	WALLACE & GRAHAM P.A.		
3. Firm Address:	525 NORTH MAIN STREET, SALISBURY, NC, 28144		
4. Attorney Phone:	7046335244	Fax: 7046339434	Email:
5. Paralegal or Contact Name:		dcw	
	(Last)	(First)	(MI)
6. Contact Phone:		Fax:	Email:

Claim Number: 12603209
Received Date: 6/22/2015

OCFB ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Part 1: Injured Party Information

1. Name:	Stewart	Steven	R
	(Last)	(First)	(MI)
2. Social Security Number:			
3. Gender:	M	4. Date of Birth:	
			(mm/dd/yyyy)

5. Is injured party living? Yes _____ No ☒ X

6. If injured party is deceased, please complete the following: **(Death Certificate must be enclosed)**

6a. Date of Death: 08/20/2013
(mm/dd/yyyy)

6b. Was death asbestos-related? Yes ☒ X No _____

7. If injured party is living and not represented by counsel, please complete the following:

7a. Mailing address: _____
(street/PO Box)

(city/state/zip)

7b. Daytime Phone: _____

7c. Email Address: _____

8. If injured party is deceased or has a personal representative or heir other than, or in addition to, his/her attorney, please indicate the following for the representative. **(Certificate of Official Capacity or other estate documentation must be enclosed if applicable per state law.)**

8a. Name: _____
(Last) (First) (MI)

8b. Social Security Number, or Tax ID Number: _____

8c. Mailing address: _____
(street/PO Box)

(city/state/zip)

8d. Daytime Phone: _____

8e. Email Address: _____

8f. Relationship to injured party: _____
(spouse, child, etc.)

Claim Number: 12603209
Received Date: 6/22/2015

OCFB ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Part 2: Diagnosed Asbestos-related Injuries

1. Place an X next to the highest level (most serious) asbestos-related Disease Category that has been diagnosed for the injured party and for which medical documentation is attached to this claim form. See instructions for a list of specific medical criteria and records that must be enclosed for each Disease Category. **(Check only the most serious)**

Level	Scheduled Disease
☐ VIII	Mesothelioma
☐ VII	Lung Cancer 1
☐ VI	Lung Cancer 2 (Individual Review Only)
☐ V	Other Cancer (Please specify: _____)
☐ IV	Severe Asbestosis (ILO of 2/1 or greater, or Asbestosis determined by pathology plus (a) TLC less than 65% or (b) FVC less than 65% plus FEV1/FVC ratio greater than 65%)
☐ III	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease plus (a) TLC less than 80% or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%)
☐ II	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease)
☐ I	Other Asbestos Disease (Cash Payment Discount, not subject to the Payment Percentage)

2. Date of Diagnosis: _____ (mm/dd/yyyy)

The claims must meet the relevant medical criteria and be supported by appropriate medical documentation as defined in the Asbestos Personal Injury Trust Distribution Procedures. The presumptive medical criteria for the Disease Categories set forth above are included in the instructions.

- ☐ For claims filed against OCFB or any other asbestos defendant in the tort system prior to the Petition Date (October 5, 2000), please check this box if you have a report of a diagnosing physician who conducted the physical exam of the claimant, or if you have filed such a report with OCFB or another defendant in the tort system or another asbestos-related personal injury settlement trust. (See Sections 5.7(a)(1)(A) and 5.7(a)(1)(C) of the TDP.)

Claim Number: 12603209
Received Date: 6/22/2015

OCFB ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Part 7: Smoking History

For each item, indicate whether the injured party has smoked. Please indicate the dates cigarettes or cigars were used, and the amount per day. Indicate fractional packs or fractional cigars as appropriate, e.g., three and one-half packs would be entered as 3.5. *This need only be completed for IR claims alleging disease Levels II through VII.*

1. Has the injured party ever **Smoked Cigarettes?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Packs per day: _____ (use decimal)

1. Has the injured party ever **Smoked Cigars?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Cigars per day: _____ (use decimal)

Claim Number: 12603209 Received Date: 6/22/2015

**OCFB ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Part 8: Employment Information for Economic Loss*This is to be completed for IR claims only.*

1. Current Employment Status of the injured party:

- ☐ Full-time, outside the home
- ☐ Full-time, within the home
- ☐ Part-time, outside the home
- ☐ Part-time, within the home
- ☐ Retired
- ☐ Disabled
- ☐ Deceased

2. Amount of last annual wages: _____

3. Date of last wage received: _____
(mm/yyyy)

(Enter current date if currently earning work-related compensation.)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Claim Number: 12603209
Received Date: 6/22/2015

OCFB ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Part 9: Signature Page

All claims must be signed by the claimant, or by the person filing on his/her behalf (such as the personal representative or attorney).

If signed by the claimant or the personal representative: I (the claimant or personal representative) have reviewed the information submitted on this claim form and all of the documents submitted in support of this claim. To the best of my knowledge, under penalty of perjury, the information submitted is accurate and complete.

If signed by the claimant's counsel: Upon information and belief, I hereby certify, under penalty of perjury, that the information submitted is accurate and complete.

Signature of claimant, personal representative, or claimant's counsel.

Please print the name and relationship to the claimant of the signatory above.

Date: ____/____/____
(Month) (Day) (Year)

Please review your submission to ensure that it is complete and includes the following documents as applicable.

- ☐ Death Certificate (if applicable)
- ☐ Certificate of Official Capacity or other estate documentation (if personal representative is filing the Claim Form) if applicable per state law
- ☐ Medical Records as required by the Trust Distribution Procedures and as requested in the instructions
- ☐ Proof of Owens Corning and/or Fibreboard Exposure and Significant Occupational Exposure (SOE) as required in the Trust Distribution Procedures and as requested in the instructions, including relevant affidavits from the injured party or others
- ☐ Copy of any relevant tolling agreement (if Part 5 is applicable)
- ☐ Documentation of Economic Loss (if Part 8 is applicable)
- ☐ Completed Form W-9 if completing a release that does not include W-9 language (if applicable)

If you are filing an IR claim and have additional information (see TDP section 5.3(b)(2)) that you want the Trust to consider in evaluating your claim, please include these documents with the Claim Form.

Claim Number: 31438592
Received Date: 6/22/2015

**FEDERAL-MOGUL
ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Submit completed claims to:
T&N Subfund of the Federal-Mogul Asbestos Personal Injury Trust - Flexitallic
P.O. Box 8401
Wilmington, DE 19899-8401

Instructions for the Claim Form

File your claim more efficiently. Submit and manage your claim electronically through the Federal-Mogul Asbestos Personal Injury Trust's (the "Trust") website. Visit www.federalmogulashbestostrust.com for more information.

Please complete this claim form as thoroughly and accurately as possible. Please type or print neatly. Should there be insufficient space to list all relevant information, please attach additional sheets. In addition to filing this form, please ensure the following are enclosed:

- Death Certificate (if applicable)
- Certificate of Official Capacity or other estate documentation (if personal representative is filing form) if applicable per state law
- Medical records as required by the Asbestos Personal Injury Trust Distribution Procedures ("TDP") and as requested in the instructions
- Proof of T&N Entity Exposure as set out in the instructions
- Documentation of Economic Loss (if applicable - see Part 8 below)

Filing Against a T&N Subfund Entity: Please check whether the specific claim exposure being alleged is against T&N, Flexitallic, or Ferodo. CHECK ONLY ONE BOX BELOW. Multiple Exposure Claims against the T&N Subfund must be filed separately. For example, if you have claims for both T&N and Ferodo exposure, you must submit one complete claim form for T&N exposure and a separate complete claim form for Ferodo exposure.

T&N Subfund:

- ☐ T&N Exposure
☒ Flexitallic Exposure
☐ Ferodo Exposure

Choice of Claim Process

Please choose the applicable claim process (check only one):

- ☒ Expedited Review ("ER") (not available for Level VI (Lung Cancer 2) Claims, Secondary Exposure Claims or Foreign Claims)
☐ Individual Review ("IR")

Claim Number: 31438592 Received Date: 6/22/2015

**FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM****Representation**

If counsel represents claimant, please print or type the following information:

1. Attorney name:	GRAHAM	WILLIAM M.	
	(Last)	(First)	(MI)
2. Name of Law Firm:	WALLACE & GRAHAM P.A.		
3. Firm Address:	525 NORTH MAIN STREET, SALISBURY, NC, 28144		
4. Attorney Phone:	7046335244	Fax: 7046339434	Email:
5. Paralegal or Contact Name:		dcw	
	(Last)	(First)	(MI)
6. Contact Phone:		Fax:	Email:

Claim Number: 31438592
Received Date: 6/22/2015

FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Part 1: Injured Party Information

1. Name:	Stewart	Steven	R
	(Last)	(First)	(MI)
2. Social Security Number:			
3. Gender:	M	4. Date of Birth:	
			(mm/dd/yyyy)

5. Is injured party living? Yes _____ No ☒ X

6. If injured party is deceased, please complete the following: **(Death Certificate must be enclosed)**

6a. Date of Death: 08/20/2013
(mm/dd/yyyy)

6b. Was death asbestos-related? Yes ☒ X No _____

7. If injured party is living and not represented by counsel, please complete the following:

7a. Mailing address: _____
(street/PO Box)

(city/state/zip)

7b. Daytime Phone: _____

7c. Email Address: _____

8. If injured party is deceased or has a personal representative or heir other than, or in addition to, his/her attorney, please indicate the following for the representative. **(Certificate of Official Capacity or other estate documentation must be enclosed if applicable.)**

8a. Name: _____
(Last) (First) (MI)

8b. Social Security Number, or Tax ID Number: _____

8c. Mailing Address: _____
(street/PO Box)

(city/state/zip)

8d. Daytime Phone: _____

8e. Email Address: _____

ROA 1849

W&G - Stewart 002424

8f. Relationship to injured party: _____
(spouse, child, etc.)

Claim Number: 31438592 Received Date: 6/22/2015

**FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Part 2: Diagnosed Asbestos-related Injuries

1. Place an X next to the highest level (most serious) asbestos-related Disease Category that has been diagnosed for the injured party and for which medical documentation is attached to this claim form. See instructions for a list of specific medical criteria and records that must be enclosed for each Disease Category. **(Check only the most serious)**

Level	Scheduled Disease
☐ VIII	Mesothelioma
☐ VII	Lung Cancer I (Primary lung cancer plus Bilateral Asbestos-Related Non-Malignant Disease)
☐ VI	Lung Cancer 2 (Primary lung cancer) (Individual Review Only)
☐ V	Other Cancer (Please specify: _____) (Primary cancer other than lung cancer plus Bilateral Asbestos-Related Non-Malignant Disease)
☐ IV	Severe Asbestosis (ILO of 2/1 or greater, or asbestosis determined by pathology plus (a) TLC less than 65% or (b) FVC less than 65% plus FEV1/FVC ratio greater than 65%)
☐ III	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease plus (a) TLC less than 80% or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%)
☐ II	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease)
☐ I	Other Asbestos Disease (Bilateral Asbestos-Related Non-Malignant Disease) (Cash Payment Discount, not subject to the Payment Percentage)

2. Date of Diagnosis: _____ (mm/dd/yyyy)

The claims must meet the relevant medical criteria and be supported by appropriate medical documentation as defined in the TDP. The presumptive medical criteria for the Disease Categories set forth above are included in the instructions.

- ☐ For claims filed against a T&N Entity or any other asbestos defendant in the tort system prior to the Petition Date, please check this box if you have filed a physical examination report with another asbestos-related personal injury settlement trust. (see sections 5.7(a)(1)(A) and 5.7(a)(1)(C) of the TDP)

Claim Number: 31438592
Received Date: 6/22/2015

FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Part 7: Smoking History

For each item, indicate whether the injured party has smoked. Please indicate the dates cigarettes or cigars were used, and the amount per day. Indicate fractional packs or fractional cigars as appropriate, *e.g.*, three and one-half packs would be entered as 3.5. *This is to be completed for Lung Cancer 2 (LC2) and IR levels I through IV only.*

1. Has the injured party ever **Smoked Cigarettes?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Packs per day: _____ (use decimal)

1. Has the injured party ever **Smoked Cigars?** Yes _____ No _____

1a. From: _____ To: _____
(mm/yyyy) (mm/yyyy)

1b. Cigars per day: _____ (use decimal)

Claim Number: 31438592 Received Date: 6/22/2015

**FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM**

Part 8: Employment Information for Economic Loss

This is to be completed for IR claims only.

1. Current Employment Status of the injured party:

- ☐ Full-time, outside the home
- ☐ Full-time, within the home
- ☐ Part-time, outside the home
- ☐ Part-time, within the home
- ☐ Retired
- ☐ Disabled
- ☐ Deceased

2. Amount of last annual wages: _____

3. Date of last wage received: _____
(mm/yyyy)

(Enter current date if currently earning work-related compensation.)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Claim Number: 31438592
Received Date: 6/22/2015

FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST
PROOF OF CLAIM FORM

Part 9: Signature Page

All claims must be signed by the claimant, or by the person filing on his/her behalf (such as the personal representative or attorney).

If signed by the claimant or the personal representative, I (the claimant or personal representative) have reviewed the information submitted on this claim form and all documents submitted in support of this claim. Upon information and belief, I hereby certify, under penalty of perjury, that the information submitted is accurate.

If signed by the claimant's counsel, upon information and belief, I hereby certify, under penalty of perjury, that the information submitted is accurate.

Signature of claimant, personal representative, or claimant's counsel.

Please print the name and relationship to the claimant of the signatory above.

Date: ____ / ____ / ____
(Month) (Day) (Year)

Please review your submission to ensure that it is complete and includes the following documents as applicable.

- ☐ Death Certificate (if applicable)
- ☐ Certificate of Official Capacity or other estate documentation (if personal representative is filing form) if applicable per state law
- ☐ Medical Records as required by the TDP and as requested in the instructions
- ☐ Proof of T&N Entity Exposure and Significant Occupational Exposure as required in the TDP and requested in the instructions, including affidavits from the injured party or others.
- ☐ Copy of the tolling agreement (if Part 5 is applicable)
- ☐ Documentation of Economic Loss (if Part 8 is applicable)

If you are filing an IR claim and have additional information (see TDP section 5.3(a)(2)) you want the Trust to consider in evaluating your claim, please include these documents with the Claim Form.

G-I Holdings Inc. Asbestos Personal Injury Settlement Trust

Claim Form

General Instructions for filing this Claim Form:

This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing, and/or the Trust may not be able to assign the claim a position in the FIFO processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☒ Expedited
- ☐ Individualized
- ☐ Extraordinary
- ☐ Secondary Exposure
- ☐ Unknown
- ☐ Foreign Claim

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable

Claim Type :

- ☒ Asbestos Claim

Section 1: Injured Party Information				
Claim ID:	4602110		Law Firm's Matter Number for this Claim:	
Last Name	First Name		Middle Name	Suffix
Stewart	Steven		Redfearn	
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?
		Male	06/20/2013	Yes
Mailing Address (if not represented by counsel)				Daytime Telephone
City	State	Zip Code	Country	Email Address
			United States	

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name		Filer ID	
WALLACE & GRAHAM, PA		371	
Mailing Address			
525 NORTH MAIN STREET			
City		State	Zip Code
SALISBURY		NC	28144
Attorney Last Name	Attorney First Name	Attorney Middle Name	Suffix
GRAHAM	WILLIAM	M	
Direct Telephone	Facsimile	Email Address	
704-633-5244	704-633-9434	BGRAHAM@WALLACEGRAHAM.COM	

Section 3: Asbestos Related Injury

Check the box next to the highest Disease Level the injured party is claiming.

- ☐ Other Asbestos Disease (Level I)
- ☐ Asbestosis/Pleural Disease (Level II)
- ☐ Asbestosis/Pleural Disease (Level III)
- ☐ Severe Asbestosis (Level IV)
- ☐ Other Cancer (Level V)
- ☐ Lung Cancer 2 (Level VI)
- ☐ Lung Cancer 1 (Level VII)
- ☐ Mesothelioma (Level VIII)
- ☒ Unknown

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 4: Smoking History (Not Required for Expedited Review)

In the chart below, indicate each period during which the injured party smoked tobacco products and the average number of packs or cigars smoked per day.

Product	Start Date (mm/dd/yyyy)	Quit Date (mm/dd/yyyy)	Packs/Cigars Per Day

Section 5: Personal Representative (if injured party is deceased or incompetent)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number	Court
G-I Named?			
Has injured party received settlement monies related to this lawsuit from G-I or its insurers?			If "yes", Amount:
If no lawsuit has ever been filed against G-I on behalf of the injured party, indicate in which state the claimant would have elected to file such suit:			
Was a tolling agreement for the injured party ever in effect with respect to claim(s) against G-I ?			
If "yes", Date Tolling Agreement Began:			Date Tolling Agreement Ended:
Has an asbestos claim been filed on behalf of the injured party against G-I pursuant to an administrative settlement agreement?			
If "yes", Disease Claimed:			Date Filed (mm/dd/yyyy)
If "yes", Amount:			

Section 7: Occupational Exposure to Asbestos Products

Provide information below for each location at which the injured party alleges exposure to any products or materials containing asbestos that were manufactured, sold, supplied, produced, specified, selected, distributed or in any way marketed by G-I, for which G-I has legal responsibility. If the duration of the injured party's G-I Exposure is not sufficient to meet the other exposure criteria (Significant Occupational Exposure or cumulative occupational exposure as required for the Disease Level in question), please provide information regarding other asbestos exposure to satisfy the applicable exposure criteria. List each site, industry, and occupation combination separately. Provide the complete name and location of each individual site. Attach additional copies of this page if more space is required.

Exposure Site :				
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Occupation	ApprovedSiteID	
Site of Exposure (facility, plant or site name)		City	State	Country
Industry in which exposure occurred (see Exhibit A for list of Industry Codes):			If Other, please specify:	
Name of all G-I Holdings Inc. Asbestos Personal Injury Settlement Trust products to which injured party was exposed				
Is Secondary Exposure?				
Description of Significant Occupational Exposure at this jobsite (check all that apply)				
☐ Claimant handled raw asbestos fibers on a regular basis				
☐ Claimant fabricated asbestos-containing products such that the Claimant in the fabrication process was exposed on a regular basis to asbestos fibers				
☐ Claimant altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers				
☐ Claimant was employed in an industry or occupation such that the claimant worked on a regular basis in close proximity to workers who did one or more of the above three activities				
Describe the circumstances of asbestos exposure (Max 1000 Characters)				

Section 8: Secondary Exposure (Not Applicable for Expedited Review)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP), complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?

Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to G-I Products through Occupationally Exposed Person:			

Section 9: Employment / Earnings information (Not Required for Expedited Review)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Current Employment Status (check all that apply)	
☐ Full-Time	
☐ Part-Time	
☐ Retired	
☐ N/A (Deceased)	
Amount of Last Annual Wages	Date of Last Wage Received (mm/dd/yyyy)
\$0.00	

Section 10: Dependents (Not Required for Expedited Review)

List the injured party's spouse and any other dependents. Attach additional copies of this page if more space is required.

Dependent :			
Last Name	First Name	Middle Name	Suffix
Relationship to Injured party	Birth Date (mm/dd/yyyy)	Financially Dependent?	
State	Zip Code	Country	

Claim Number: 4251991
Received Date: 6/22/2015

**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011**

Submit completed claims to:
DII Asbestos PI Trust
P.O. Box 393
Wilmington, DE 19899-1036

All documents submitted to the DII Asbestos Trust must be in English, including but not limited to the Claim Form, medical records and exposure documents. If any documents have been translated from another language to meet this requirement, the original documents together with the translated English version must be provided to the Trust. All translations must be from a certified translator. The Trust requires a full translation of the documents and will not accept documents that have only been partially translated.

File your claim more efficiently. Submit and manage your claim electronically through the DII Industries, LLC Asbestos PI Trust (the "Trust") website. Visit www.diiasbestostrust.org for more information.

References in this Claim Form to the "TDP" shall refer to the DII Industries, LLC Asbestos PI Trust's Trust Distribution Procedures, as amended from time to time. The current version of the TDP can be reviewed at www.diiasbestostrust.org.

Otherwise, complete this claim form as thoroughly and accurately as possible. Please type or print neatly. Should there be insufficient space to list all relevant information, please attach additional sheets. In addition to filing this form, please ensure the following are enclosed:

- Death Certificate (if applicable)
- Prior Release or Settlement (if applicable)
- If Injured Party is deceased, a Certificate of Official Capacity, Affidavit of Personal Representative, other estate documentation, or signed claim form (Part 10)
- Medical Records as required by the TDP
- Proof of asbestos exposure as required by the TDP
- Tolling Agreement referred to in Part 5.4 (if applicable)
- Supporting Documentation for Economic Loss (if applicable)

Choice of claims process

Please choose the applicable claim process (check only one):

- ☒ Expedited Review ("ER") (Complete Parts 1-5 and 10) (not available for Disease Level VI)
☐ Individual Review ("IR") (Complete Parts 1-10)

Please identify the applicable entity that you are claiming against (check one or both):

- ☒ Halliburton (HAL)
☐ Harbison-Walker (HW)

An Indirect Claim is:

"a Claim or Demand that (a) is based upon a right of contribution, reimbursement, subrogation, indemnity (whether arising by contract or by operation of law) or virile share (as those terms are defined by the non-bankruptcy law of any relevant jurisdiction), or similar Claims or Demands, whether or not such Claim or Demand is reduced to judgment, liquidated, un-liquidated, fixed, contingent, matured, un-matured, disputed, undisputed, legal, equitable, secured, or unsecured, whether or not the facts or legal bases therefore are known or unknown, and regardless of whether in the nature of, or sounding in, contract, tort, warranty, guarantee, contribution, joint and several liability, subrogation, reimbursement, indemnity, statutory right, conspiracy, conducting a fraudulent defense, or any other theory of law, equity, or admiralty and (b) asserts liability or responsibility, directly or indirectly, arising out of, attributable to, or resulting from, an Asbestos PI Trust Claim"

A claim filed by the surviving spouse, heirs or representatives of the estate is not an indirect claim.

Is this an Indirect Claim? Yes _____ No X

If you answered "yes," please complete this form and the Trust's Indirect Claims Proof of Claim Form, which is available at www.diiasbestostrust.org.

A "Foreign Claim" is an Asbestos PI Trust Claim with respect to which the claimant's exposure to an asbestos-containing product for which any Halliburton Entity or Harbison-Walker Entity has legal responsibility occurred outside of the United States and its Territories and Possessions, and outside of the Provinces and Territories of Canada.

Is this a Foreign Claim? Yes _____ No X

Representation

If counsel represents either the Injured Party or the person with legal authority to file this claim on behalf of the Injured Party and/or the Injured Party's estate, please print or type the following information:

1. Attorney name:	<u>GRAHAM</u> (Last)	<u>WILLIAM M.</u> (First)	<u></u> (MI)
2. Name of Law Firm:	<u>WALLACE & GRAHAM P.A.</u>		
3. Firm Address:	<u>525 NORTH MAIN STREET, SALISBURY, NC, 28144</u>		
4. Attorney Phone:	<u>7046335244</u>	Fax: <u>7046339434</u>	Email: <u></u>
5. Paralegal or Contact Name:	<u></u> (Last)	<u>dcw</u> (First)	<u></u> (MI)
6. Contact Phone:	<u></u>	Fax: <u></u>	Email: <u></u>

**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011**

Part 1: Injured Party Information

[illegible]

1.5 Is Injured Party living? Yes _____ No X

1.6 If Injured Party is living and not represented by counsel, please complete the following:

1.6.a Mailing Address: _____
(street/PO Box)

(city/state/zip)

1.6.b Daytime Phone: _____

1.6.c Email Address: _____

1.7 If Injured Party is deceased, please complete the following: (Death Certificate must be enclosed)

1.7.a Date of Death: _____
(mm/dd/yyyy)

1.7.b Was death asbestos-related? Yes _____ No _____

1.8 If the Injured Party is deceased, please indicate the following for the person filing the claim on behalf of the Injured Party and/or Injured Party's estate. (Note: Certificate of Official Capacity, Personal Representative Affidavit, other estate documentation, or the signed claim form (Part 10) must be enclosed. The Personal Representative Affidavit is available on the website).

1.8.a Name: _____
(Last) (First) (MI)

1.8.b Social Security Number: _____

1.8.c Mailing address: _____
 _____ (street/PO Box)
 _____,
 _____ (city/state/zip)

1.8.d Daytime Phone: _____

1.8.e Email Address: _____

1.8.f Relationship to Injured Party: _____
(spouse, child, etc.)

Claim Number: 4251991 Received Date: 6/22/2015

DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011

Part 2: Diagnosed Asbestos-Related Injuries

2.1 Place an X next to the highest (most serious) asbestos-related Disease Level that has been diagnosed for the Injured Party and for which medical documentation is attached to this claim form. See TDP for a listing of the specific medical criteria and records that must be enclosed for each Disease Level. **(Check only the most serious)**

Level	Scheduled Disease
☒ VIII	Mesothelioma
☐ VII	Lung Cancer I
☐ VI	Lung Cancer 2 (Individual Review Only)
☐ V	Other Cancer ☐ Colo-rectal ☐ Laryngeal ☐ Esophageal ☐ Pharyngeal ☐ Stomach ☐ Other: _____ (Individual Review Only)
☐ IV	Severe Asbestosis (ILO of 2/1 or greater, or asbestosis determined by pathology plus (a) TLC less than 65% or (b) FVC less than 65% plus FEV1/FVC ratio greater than 65%)
☐ III	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease plus (a) TLC less than 80% or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%)
☐ II	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease)
☐ I	Other Asbestos Disease

2.2 Date of Diagnosis: 10/01/2012
 (mm/dd/yyyy)

2.3 Has the Injured Party been diagnosed with a Scheduled Disease other than the diagnosis identified in part 2.2? This request excludes medical or legal evaluations by purely consulting experts that are protected by a privilege under applicable state law that has not been waived.

Yes _____ No X

If the answer is "Yes," please provide a copy of the report that makes the diagnosis, even if it was made by an excluded doctor. A list of excluded doctors is available on the Trust's website.

The claims must meet the relevant medical criteria and be supported by appropriate medical documentation as defined in the TDP. The presumptive medical criteria for the Disease Categories set forth above are included in the TDP.

☒ For claims filed against a Halliburton or Harbison-Walker entity, or any other asbestos defendant in the tort system prior to the DII Petition Date (December 16, 2003), please check this box if you have filed a physical examination report with another asbestos-related personal injury settlement trust or have available such a report by an examining physician engaged by the claimant or his or her law firm.

Claim Number: 4251991
Received Date: 6/22/2015

**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011**

Part 7: Smoking History - To be completed for IR Lung Cancer 1 and Lung Cancer 2 claims only.

For each item, indicate whether the Injured Party has smoked. Please indicate the dates cigarettes or cigars were used, and the amount per day. Indicate fractional packs or fractional cigars as appropriate, e.g., three and one-half packs would be entered as 3.5.

7.1 Has the Injured Party ever **Smoked Cigarettes**? Yes _____ No _____

7.1.a From: _____ To: _____
(mm/yyyy) (mm/yyyy)

7.1.b Packs per day: _____ (use decimal)

7.2 Has the Injured Party ever **Smoked Cigars**? Yes _____ No _____

7.2.a From: _____ To: _____
(mm/yyyy) (mm/yyyy)

7.2.b Cigars per day: _____ (use decimal)

Part 8: Economic Loss - To be completed for IR claims only.

Economic Loss may include lost wages, loss of earning capacity, loss of household services, loss of pension and social security benefits and medical expenses directly attributable to the claimed asbestos-related disease. Documentation to support the claimed losses must include third-party evidence of death or a disability directly related to an asbestos-related disease and an analysis and documentation of the resulting Economic Losses. **(If economic losses are being claimed, you must enclose an economic report or other relevant supporting documentation to support the loss).**

Total Economic Losses: _____

Claim Number: 4251991 Received Date: 6/22/2015

**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011**

Part 9: Extraordinary Claims

For the definition of what constitutes an Extraordinary Claim, refer to Section 5.4(a)(1) of the TDP or to the Instructions. The Injured Party can meet the requirements for an Extraordinary Claim by completing *either* Part 9.1 or 9.2.

9.1 Did the Injured Party's exposure occur primarily as the result of working at a manufacturing facility of one or more of the Halliburton Entities or Harbison-Walker Entities during the period the entities were engaged in manufacturing asbestos-containing materials?

Yes _____ No _____

If Yes, Social Security records or other independent third party evidence substantiating the Injured Party's employment at one or more of the sites is required.

9.2 Was at least 75% of the Injured Party's total asbestos exposure from Company Exposure?

Yes _____ No _____

If Yes, Social Security records or other independent third-party evidence substantiating the Injured Party's percentage of Company Exposure is required, and the Injured Party or personal representative must complete the certification which can be found on the Trust's website.

9.3 Indicate the true and correct percentage of the Injured Party's exposure to asbestos-containing products for which the entity is legally responsible immediately to the right of the entity's name.

HALLIBURTON CLAIMS

Mid-Valley, Inc.:	<u>0.00 %</u>
DII Industries, LLC (f/k/a Dresser Industries, Inc.):	<u>0.00 %</u>
Kellogg, Brown & Root, Inc.:	<u>0.00 %</u>
Worthington:	<u>0.00 %</u>
Other:	<u>0.00 %</u>

Insert Code (see Exhibit D at www.diiasbestostrust.org)

HARBISON-WALKER CLAIMS

Harbison-Walker Refractories Company:	<u>0.00 %</u>
Other:	<u>0.00 %</u>

Insert Code (see Exhibit D at www.diiasbestostrust.org)

Claim Number: 4251991
Received Date: 6/22/2015

**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011**

Part 10: Signature Page and Certification

All claims must be signed by the Injured Party or the person with legal authority to file a claim on behalf of the Injured Party and/or the Injured Party's estate.

10.1 Sign here if you are the Injured Party or the person with authority to file the claim:

I have reviewed the information submitted in connection with this claim and all documents submitted in support of this claim. To the best of my knowledge under penalty of perjury, all documentation and information submitted now and in the future, including any supplemental documentation or information, changes or corrections are accurate and complete. I further certify that I am authorized by law to file this claim on behalf of the Injured Party, the Injured Party's heirs, representatives, successors, assigns, and estate.

Signature of Injured Party or person with authority

Please print the name and relationship to the Injured Party of the signatory above

Executed on the _____ day of _____, 20__

10.2 Sign here if you are the attorney:

By signing below, the attorney certifies that the information and materials with respect to this claim, submitted now or in the future, including any supplemental documentation or information, changes and corrections are and will be submitted pursuant to and subject to the provisions of Rule 11 of the Federal Rules of Civil Procedure. In addition, by signing below, the Attorney certifies and warrants that if this claim is filed on behalf of the Injured Party and/or the Injured Party's estate, the person filing the claim is authorized by law to file this claim on behalf of the Injured Party, the Injured Party's heirs, representatives, successors, assigns and estate.

Signature of Attorney for Injured Party or personal representative

Name of Firm

Executed on the _____ day of _____, 20__

10.3 Please review your submission to ensure it is complete and includes the following documents as applicable.

- ☐ Death Certificate (if applicable)
- ☐ Prior Release or Settlement (if applicable)
- ☐ If Injured Party is deceased, a Certificate of Official Capacity, Affidavit of Personal Representative, other estate documentation, or signed claim form (Part 10)
- ☐ Medical Records as required by the TDP and as requested in the Instructions
- ☐ Proof of asbestos exposure as required by the TDP and as requested in the Instructions
- ☐ Tolling Agreement referred to in Part 5.4 (if applicable)
- ☐ Supporting Documentation for Economic Loss (if applicable)

Claim Number: 5234155
Received Date: 6/22/2015

**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011**

Submit completed claims to:
DII Asbestos PI Trust
P.O. Box 393
Wilmington, DE 19899-1036

All documents submitted to the DII Asbestos Trust must be in English, including but not limited to the Claim Form, medical records and exposure documents. If any documents have been translated from another language to meet this requirement, the original documents together with the translated English version must be provided to the Trust. All translations must be from a certified translator. The Trust requires a full translation of the documents and will not accept documents that have only been partially translated.

File your claim more efficiently. Submit and manage your claim electronically through the DII Industries, LLC Asbestos PI Trust (the "Trust") website. Visit www.diiasbestostrust.org for more information.

References in this Claim Form to the "TDP" shall refer to the DII Industries, LLC Asbestos PI Trust's Trust Distribution Procedures, as amended from time to time. The current version of the TDP can be reviewed at www.diiasbestostrust.org.

Otherwise, complete this claim form as thoroughly and accurately as possible. Please type or print neatly. Should there be insufficient space to list all relevant information, please attach additional sheets. In addition to filing this form, please ensure the following are enclosed:

- Death Certificate (if applicable)
- Prior Release or Settlement (if applicable)
- If Injured Party is deceased, a Certificate of Official Capacity, Affidavit of Personal Representative, other estate documentation, or signed claim form (Part 10)
- Medical Records as required by the TDP
- Proof of asbestos exposure as required by the TDP
- Tolling Agreement referred to in Part 5.4 (if applicable)
- Supporting Documentation for Economic Loss (if applicable)

Choice of claims process

Please choose the applicable claim process (check only one):

- ☒ Expedited Review ("ER") (Complete Parts 1-5 and 10) (not available for Disease Level VI)
☐ Individual Review ("IR") (Complete Parts 1-10)

Please identify the applicable entity that you are claiming against (check one or both):

- ☐ Halliburton (HAL)
☒ Harbison-Walker (HW)

An Indirect Claim is:

"a Claim or Demand that (a) is based upon a right of contribution, reimbursement, subrogation, indemnity (whether arising by contract or by operation of law) or virile share (as those terms are defined by the non-bankruptcy law of any relevant jurisdiction), or similar Claims or Demands, whether or not such Claim or Demand is reduced to judgment, liquidated, un-liquidated, fixed, contingent, matured, un-matured, disputed, undisputed, legal, equitable, secured, or unsecured, whether or not the facts or legal bases therefore are known or unknown, and regardless of whether in the nature of, or sounding in, contract, tort, warranty, guarantee, contribution, joint and several liability, subrogation, reimbursement, indemnity, statutory right, conspiracy, conducting a fraudulent defense, or any other theory of law, equity, or admiralty and (b) asserts liability or responsibility, directly or indirectly, arising out of, attributable to, or resulting from, an Asbestos PI Trust Claim"

A claim filed by the surviving spouse, heirs or representatives of the estate is not an indirect claim.

Is this an Indirect Claim? Yes _____ No X

If you answered "yes," please complete this form and the Trust's Indirect Claims Proof of Claim Form, which is available at www.diiasbestostrust.org.

A "Foreign Claim" is an Asbestos PI Trust Claim with respect to which the claimant's exposure to an asbestos-containing product for which any Halliburton Entity or Harbison-Walker Entity has legal responsibility occurred outside of the United States and its Territories and Possessions, and outside of the Provinces and Territories of Canada.

Is this a Foreign Claim? Yes _____ No X

Representation

If counsel represents either the Injured Party or the person with legal authority to file this claim on behalf of the Injured Party and/or the Injured Party's estate, please print or type the following information:

1. Attorney name:	<u>GRAHAM</u> (Last)	<u>WILLIAM M.</u> (First)	<u></u> (MI)
2. Name of Law Firm:	<u>WALLACE & GRAHAM P.A.</u>		
3. Firm Address:	<u>525 NORTH MAIN STREET, SALISBURY, NC, 28144</u>		
4. Attorney Phone:	<u>7046335244</u>	Fax: <u>7046339434</u>	Email: <u></u>
5. Paralegal or Contact Name:	<u></u> (Last)	<u>dcw</u> (First)	<u></u> (MI)
6. Contact Phone:	<u></u>	Fax: <u></u>	Email: <u></u>

Claim Number: 5234155
Received Date: 6/22/2015

**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011**

Part 1: Injured Party Information

1.1 Name:	Stewart	Steven	R
	(Last)	(First)	(MI)
1.2 Social Security Number:			
1.3 Gender:	Male ☒	Female ☐	1.4 Date of Birth:
			(mm/dd/yyyy)

1.5 Is Injured Party living? Yes ☐ No ☒

1.6 If Injured Party is living and not represented by counsel, please complete the following:

1.6.a Mailing Address: _____
(street/PO Box)

(city/state/zip)

1.6.b Daytime Phone: _____

1.6.c Email Address: _____

1.7 If Injured Party is deceased, please complete the following: **(Death Certificate must be enclosed)**

1.7.a Date of Death: _____
(mm/dd/yyyy)

1.7.b Was death asbestos-related? Yes ☐ No ☐

1.8 If the Injured Party is deceased, please indicate the following for the person filing the claim on behalf of the Injured Party and/or Injured Party's estate. **(Note: Certificate of Official Capacity, Personal Representative Affidavit, other estate documentation, or the signed claim form (Part 10) must be enclosed. The Personal Representative Affidavit is available on the website).**

1.8.a Name: _____
(Last) (First) (MI)

1.8.b Social Security Number: _____

1.8.c Mailing address: _____
(street/PO Box)

(city/state/zip)

1.8.d Daytime Phone: _____

ROA 1876

W&G - Stewart 002451

1.8.e Email Address: _____

1.8.f Relationship to Injured Party: _____
(spouse, child, etc.)

Claim Number: 5234155 Received Date: 6/22/2015

DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011

Part 2: Diagnosed Asbestos-Related Injuries

2.1 Place an X next to the highest (most serious) asbestos-related Disease Level that has been diagnosed for the Injured Party and for which medical documentation is attached to this claim form. See TDP for a listing of the specific medical criteria and records that must be enclosed for each Disease Level. **(Check only the most serious)**

Level	Scheduled Disease
☒ VIII	Mesothelioma
☐ VII	Lung Cancer 1
☐ VI	Lung Cancer 2 (Individual Review Only)
☐ V	Other Cancer ☐ Colo-rectal ☐ Laryngeal ☐ Esophageal ☐ Pharyngeal ☐ Stomach ☐ Other: _____ (Individual Review Only)
☐ IV	Severe Asbestosis (ILO of 2/1 or greater, or asbestosis determined by pathology plus (a) TLC less than 65% or (b) FVC less than 65% plus FEV1/FVC ratio greater than 65%)
☐ III	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease plus (a) TLC less than 80% or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%)
☐ II	Asbestosis/Pleural Disease (Bilateral Asbestos-Related Non-Malignant Disease)
☐ I	Other Asbestos Disease

2.2 Date of Diagnosis: 10/01/2012
 (mm/dd/yyyy)

2.3 Has the Injured Party been diagnosed with a Scheduled Disease other than the diagnosis identified in part 2.2? This request excludes medical or legal evaluations by purely consulting experts that are protected by a privilege under applicable state law that has not been waived.

Yes _____ No X

If the answer is "Yes," please provide a copy of the report that makes the diagnosis, even if it was made by an excluded doctor. A list of excluded doctors is available on the Trust's website.

The claims must meet the relevant medical criteria and be supported by appropriate medical documentation as defined in the TDP. The presumptive medical criteria for the Disease Categories set forth above are included in the TDP.

☒ For claims filed against a Halliburton or Harbison-Walker entity, or any other asbestos defendant in the tort system prior to the DII Petition Date (December 16, 2003), please check this box if you have filed a physical examination report with another asbestos-related personal injury settlement trust or have available such a report by an examining physician engaged by the claimant or his or her law firm.

Claim Number: 5234155
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**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
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Part 7: Smoking History - To be completed for IR Lung Cancer 1 and Lung Cancer 2 claims only.

For each item, indicate whether the Injured Party has smoked. Please indicate the dates cigarettes or cigars were used, and the amount per day. Indicate fractional packs or fractional cigars as appropriate, e.g., three and one-half packs would be entered as 3.5.

7.1 Has the Injured Party ever **Smoked Cigarettes**? Yes _____ No _____

7.1.a From: _____ To: _____
(mm/yyyy) (mm/yyyy)

7.1.b Packs per day: _____ (use decimal)

7.2 Has the Injured Party ever **Smoked Cigars**? Yes _____ No _____

7.2.a From: _____ To: _____
(mm/yyyy) (mm/yyyy)

7.2.b Cigars per day: _____ (use decimal)

Part 8: Economic Loss - To be completed for IR claims only.

Economic Loss may include lost wages, loss of earning capacity, loss of household services, loss of pension and social security benefits and medical expenses directly attributable to the claimed asbestos-related disease. Documentation to support the claimed losses must include third-party evidence of death or a disability directly related to an asbestos-related disease and an analysis and documentation of the resulting Economic Losses. **(If economic losses are being claimed, you must enclose an economic report or other relevant supporting documentation to support the loss).**

Total Economic Losses: _____

Claim Number: 5234155 Received Date: 6/22/2015

**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011**

Part 9: Extraordinary Claims

For the definition of what constitutes an Extraordinary Claim, refer to Section 5.4(a)(1) of the TDP or to the Instructions. The Injured Party can meet the requirements for an Extraordinary Claim by completing *either* Part 9.1 or 9.2.

9.1 Did the Injured Party's exposure occur primarily as the result of working at a manufacturing facility of one or more of the Halliburton Entities or Harbison-Walker Entities during the period the entities were engaged in manufacturing asbestos-containing materials?

Yes _____ No _____

If Yes, Social Security records or other independent third party evidence substantiating the Injured Party's employment at one or more of the sites is required.

9.2 Was at least 75% of the Injured Party's total asbestos exposure from Company Exposure?

Yes _____ No _____

If Yes, Social Security records or other independent third-party evidence substantiating the Injured Party's percentage of Company Exposure is required, and the Injured Party or personal representative must complete the certification which can be found on the Trust's website.

9.3 Indicate the true and correct percentage of the Injured Party's exposure to asbestos-containing products for which the entity is legally responsible immediately to the right of the entity's name.

HALLIBURTON CLAIMS

Mid-Valley, Inc.:	<u>0.00 %</u>
DII Industries, LLC (f/k/a Dresser Industries, Inc.):	<u>0.00 %</u>
Kellogg, Brown & Root, Inc.:	<u>0.00 %</u>
Worthington:	<u>0.00 %</u>
Other:	<u>0.00 %</u>

Insert Code (see Exhibit D at www.diiasbestostrust.org)

HARBISON-WALKER CLAIMS

Harbison-Walker Refractories Company:	<u>0.00 %</u>
Other:	<u>0.00 %</u>

Insert Code (see Exhibit D at www.diiasbestostrust.org)

Claim Number: 5234155
Received Date: 6/22/2015

**DII INDUSTRIES, LLC ASBESTOS PI TRUST
PROOF OF CLAIM FORM
UPDATED 2011**

Part 10: Signature Page and Certification

All claims must be signed by the Injured Party or the person with legal authority to file a claim on behalf of the Injured Party and/or the Injured Party's estate.

10.1 Sign here if you are the Injured Party or the person with authority to file the claim:

I have reviewed the information submitted in connection with this claim and all documents submitted in support of this claim. To the best of my knowledge under penalty of perjury, all documentation and information submitted now and in the future, including any supplemental documentation or information, changes or corrections are accurate and complete. I further certify that I am authorized by law to file this claim on behalf of the Injured Party, the Injured Party's heirs, representatives, successors, assigns, and estate.

Signature of Injured Party or person with authority

Please print the name and relationship to the Injured Party of the signatory above

Executed on the _____ day of _____, 20__

10.2 Sign here if you are the attorney:

By signing below, the attorney certifies that the information and materials with respect to this claim, submitted now or in the future, including any supplemental documentation or information, changes and corrections are and will be submitted pursuant to and subject to the provisions of Rule 11 of the Federal Rules of Civil Procedure. In addition, by signing below, the Attorney certifies and warrants that if this claim is filed on behalf of the Injured Party and/or the Injured Party's estate, the person filing the claim is authorized by law to file this claim on behalf of the Injured Party, the Injured Party's heirs, representatives, successors, assigns and estate.

Signature of Attorney for Injured Party or personal representative

Name of Firm

Executed on the _____ day of _____, 20__

10.3 Please review your submission to ensure it is complete and includes the following documents as applicable.

- ☐ Death Certificate (if applicable)
- ☐ Prior Release or Settlement (if applicable)
- ☐ If Injured Party is deceased, a Certificate of Official Capacity, Affidavit of Personal Representative, other estate documentation, or signed claim form (Part 10)
- ☐ Medical Records as required by the TDP and as requested in the Instructions
- ☐ Proof of asbestos exposure as required by the TDP and as requested in the Instructions
- ☐ Tolling Agreement referred to in Part 5.4 (if applicable)
- ☐ Supporting Documentation for Economic Loss (if applicable)

H. K. Porter Asbestos Trust

Claim Form

General Instructions for filing this Claim Form:

This claim form must be completed as thoroughly as possible to ensure prompt resolution of claims; submitting an incomplete form may result in delays in processing, and/or the Trust may not be able to assign the claim a position in the FIFO processing queue. Please type or print neatly within the spaces provided. If additional space is required to provide all relevant information, please attach additional copies of the relevant section of this form.

Check the box next to the Type of Review that best suits the injured party's situation :

- ☒ Expedited
☐ Non-Expedited
☐ Unknown
☐ Foreign Claim

Check the appropriate box to elect Exigent treatment :

- ☒ Not Applicable ☐ Exigent Health

Claim Type :

- ☒ Asbestos Claim

Section 1: Injured Party Information

Claim ID:	4602111	Law Firm's Matter Number for this Claim:			
Last Name	First Name		Middle Name	Suffix	
Stewart	Steven		Redfearn		
Tax Identification Number	Date of Birth	Gender	Date of Death	Was death asbestos related?	
		Male	08/20/2013	Yes	
Mailing Address (if not represented by counsel)				Daytime Telephone	
City	State	Zip Code	Country	Email Address	
			United States		

Section 2: Law Firm / Attorney Information

If the injured party is represented by counsel, please provide the following information:

Law Firm Name		Filer ID	
WALLACE & GRAHAM, PA		371	
Mailing Address			
525 NORTH MAIN STREET			
City		State	Zip Code
SALISBURY		NC	28144
Attorney Last Name	Attorney First Name	Attorney Middle Name	Suffix
GRAHAM	WILLIAM	M	
Direct Telephone	Facsimile	Email Address	
704-633-5244	704-633-9434	BGRAHAM@WALLACEGRAHAM.CO M	

Section 3: Asbestos Related Injury

Check the box next to the injury claimed for the injured party, and for which medical documentation is available.

The claim must be supported by appropriate medical documentation as delineated in the H K Porter Medical Criteria, including the earliest available with a qualifying diagnosis of the claimed disease.

- ☐ Malignant Mesothelioma
- ☐ Lung Cancer
- ☐ Other Cancer
- ☐ Non-Malignancy
- ☒ Unknown

Diagnosis Date (mm/dd/yyyy)	If Other Cancer (Level V), please specify malignancy:

Section 4: Smoking History (Not Required for Expedited Review)

In the chart below, indicate each period during which the injured party smoked tobacco products and the average number of packs or cigars smoked per day.

Product	Start Date (mm/dd/yyyy)	Quit Date (mm/dd/yyyy)	Packs/Cigars Per Day

Section 5: Personal Representative (if injured party is deceased or incompetent)

Personal Representative :			
Last Name	First Name	Middle Name	Suffix
Tax Identification Number	Capacity of Personal Representative (i.e. Administrator, Executor, Guardian, etc.)		
Mailing Address (if not represented by counsel)			Daytime Telephone
City	State	Zip Code	Country

Section 6: Asbestos Litigation and Claims History

If an asbestos-related lawsuit has ever been filed on behalf of the injured party, provide the following information:

File Date (mm/dd/yyyy)	State	Docket Number
Court		
Has injured party received settlement monies prior to 1998 from the ACF, H. K. Porter or its insurers?	If "yes", include a copy of the release and enter the amount received:	
For statutes of limitations, enter U.S. state where the injured party incurred exposure to H. K. Porter asbestos		
Does injured party claim asbestos exposure through H.K. Porter products ?		
Did H.K. Porter fail to inform injured party of risk of exposure ?		

Section 8: Occupational Exposure to Asbestos Products

Provide the information below in order to satisfy the requirements H. K. Porter Asbestos Trust Exposure and Significant Occupation Exposure, as set forth in sections 5.6(b)(3) and 5.6(b)(2) of the TDP. For any exposure site where there was exposure to H. K. Porter Asbestos Trust Asbestos, describe the circumstances of that. Do not list multiple occupations or date ranges for each exposure site - if an injured party worked at the same site in two or more occupations, or during two or more periods, please complete a separate line. Please refer to the Filing Instructions for details on the Exposure Criteria for each Disease Level. Attach additional copies of this page if more space is required.

Exposure Site :				
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Occupation	ApprovedSiteID	
Site of Exposure (i.e. Plant or Site Name)	City	State	Country	
Employer at the Plant or Site				
Products				
Product Manufacturer				
Describe how and why H.K. Porter asbestos products were used at this site:				
Describe how injured party was exposed to H.K. Porter product(s):				
Claimant's description of job duties:				
Identify nature of exposure:				

Section 7: Exposure from an Occupationally Exposed Person (OEP)

If the injured party's asbestos exposure was due in whole or in part to exposure to an Occupationally Exposed Person (OEP), complete Section 7 with the exposure information for the occupationally exposed person, and provide the information below:

Is the claimant alleging an asbestos-related disease for the injured party resulting in whole or in part from another persons occupational exposure, such as a family member (spouse, father, sister, etc.)?

Last Name	First Name	Middle Name	Suffix
Start Date (mm/dd/yyyy)	End Date (mm/dd/yyyy)	Relationship to Occupationally Exposed Person	Tax Identification Number of Occupationally Exposed Person
Description of how injured party was exposed to HK Porter Products through Occupationally Exposed Person:			

Section 9: Employment / Earnings information (Not Required for Expedited Review)

If economic losses are being claimed, you must enclose an economic report, IRS Form W-2, the first page of IRS Form 1040, or other relevant supporting documentation.

Current Employment Status (check all that apply) ☐ Retired ☐ N/A (Deceased) ☐ Full-time, outside the home ☐ Full-time, within the home ☐ Part-time, outside the home ☐ Part-time, within the home	
Disabled: ☐ Partially Disabled ☐ Fully Disabled ☒ Unknown ☐ Not Applicable	
Amount of Last Annual Wages \$0.00	Date of Last Wage Received (mm/dd/yyyy)

Section 10: Dependents (Not Required for Expedited Review)

List the injured party's spouse and any other dependents. Attach additional copies of this page if more space is required.

Dependent :			
Last Name	First Name	Middle Name	Suffix
Relationship to Injured party	Birth Date (mm/dd/yyyy)	Financially Dependent?	
State	Zip Code	Country	

Claim Detail

Claimant Information

Claimant ID: 1299374
SSN/Int ID: 248-70-3419
DOB: 8/27/1943

Claimant Name: Steven R. Stewart
Representative: Stephen R. Edwards
DOD: 8/20/2013

Claim Information

Trust: Manville
Claim ID: 1950018
Parent ID:
FIFO:
Alleged Injury:

Claim Class:
SOE Qualified: No
Exposure Country:
Law Firm: Wallace and Graham
Attorney Name: William M. Graham
Phone Number: (704) 633-5244
Claim Status:
AWDEMOGRAPHIC
Claim Status Date: 6/22/2015
Original Received Date:
Received Date:
Registered Date: 6/22/2015

On Hold: No

EH Status:
HS Status:
Evaluation Country:
Law Firm Suspended: No

Offer Information

Offer Date:
Evaluated Injury:
Claim Value:
Adjusted Value:
Set-Off Amount:

Offer Expiration Date:
Claim Evaluation Type:
Claim Type:
Payment Plan:
Claim Quality Controlled:

Liquidated Value:
Payment Percentage:
Claim Payment:

Interest Paid:
Total Paid:

Settlement Information

Offer Acceptance Date:
Settlement Date: