

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Jean H. Toal, Circuit Court Judge

Appellate Case No. 2019-002126

Jerry Howard Crawford, individually and as Personal Representative of the Estate of Evelyn Kay Crawford, Respondent,

v.

Celanese Corporation; Aurora Pump Company; Carrier Corporation; CNA Holdings, LLC f/k/a Hoechst Celanese Corporation; Covil Corporation; Crane Co.; Daniel International Corporation f/k/a/ Daniel Construction Company, Inc.; Flowserve Corporation, individually and as successor-in-interest to Anchor/Darling Valve Company, and individually as successor-in-interest to Durco Pumps; Flowserve, US Inc.; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Constructors, International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; Ford Motor Company; Genuine Parts Company, d/b/a Rayloc (a/k/a NAPA); The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Grinnell, LLC f/k/a Grinnell Corp., f/k/a ITT Grinnell Corp.; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to Bendix Corporation; Ingersoll-Rand Company; John Crane, Inc.; Metropolitan Life Insurance Company, a wholly owned subsidiary of MetLife Inc.; National Automotive Parts Association (NAPA); Parker-Hannifin Corporation; Pneumo Abex, LLC, successor-in-interest to Abex Corporation; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and as successor-in-interest to Marley Cooling Towers, Co.; Standard Motor Products, Inc., sued as successor-in-interest to EIS Automotive; United States Fidelity & Guaranty Company; and The William Powell Company, Defendants,

Of which, Covil Corporation is the Appellant.

RECORD ON APPEAL

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1 called it biphasic type, because I found that there was
2 approximately ten percent of the tumor that was composed of
3 spindle cells and that's just a very, very minor difference.

4 I agree that predominantly it was epithelioid neoplasm
5 mesothelioma.

6 Q. This pathology report, who is it done by?

7 A. It's done by Dr. Alfred Campbell, who is a pathologist
8 at the Spartanburg Regional Health Care System.

9 Q. And this apology report, doctor, what does it indicate
10 to you?

11 A. Well, I believe that it is a correct report.

12 They observed that it was this type of a malignant
13 neoplasm, with which I agree.

14 They did certain types of immunostains that helped them
15 identify the type of tumor. And the results given by those
16 immunostains is indicative of this being mesothelioma and
17 not lung cancer, not cancer of the stomach or somewhere
18 else. This is mesothelioma.

19 Q. Okay. And, doctor, you looked at the slides yourself,
20 is that right?

21 A. I did. I was sent a stack of the original microscope
22 slides that I looked at with my own optical microscope in my
23 office and I confirmed their findings.

24 Q. And for Mr. Crawford, did you personally author a
25 report?

1 A. I did.

2 Q. Okay. Doctor, I'm approaching and I'm going to hand
3 you your report in this case.

4 A. Yes, sir.

5 MR. CHAPMAN: Your Honor.

6 BY MR. CHAPMAN:

7 Q. What are we looking at, doctor?

8 A. This is a copy of my surgical pathology report.

9 The entire report is 17 pages long. The first four
10 pages have to do with the tumor, and then the last 13 pages
11 are photographs of what the tumor looked like.

12 Q. And what was your conclusion, doctor?

13 A. My conclusion was malignant mesothelioma, biphasic
14 type.

15 Q. And in order to come to that conclusion, you said you
16 looked at stain slides. What does that mean?

17 A. Well, I looked at the original slides. I looked at the
18 original microscope slides, the very same ones that they
19 used at the Spartanburg Medical Center.

20 Q. All right. Doctor, I'm going to hand you what has been
21 pre-marked as Plaintiffs' Exhibit 807.1 through 807.7.

22 A. Yes, sir.

23 Q. What are we looking at here, doctor?

24 A. These are some representative photographs of what the
25 tumor cells looked like. It was a solid tumor. It formed

1 sheets of cells without obvious glands, papilla, or other
2 tertiary structures within it.

3 The cells were relatively large. They had a big
4 nucleus in their center. They had a prominent nucleolus in
5 the center of the nucleus. That's an organizing region
6 where RNA transcribes proteins that are used in cellular
7 proliferation. In other words, if you have a big nucleolus,
8 that means that you are probably a very active cell.

9 Q. Doctor, let me ask you, are these slides, are these a
10 fair and accurate representation of the slides that you
11 reviewed of Mr. Crawford?

12 A. Yes, sir, I photographed them myself and I tried to
13 make them representative of what the tumor looked like.

14 MR. CHAPMAN: Your Honor, I move to admit.

15 THE COURT: Mr. Wall?

16 MR. WALL: No, Your Honor. No objection.

17 THE COURT: No objection. Admitted.

18 (Whereupon, Plaintiffs' Exhibit No. 807.1 was
19 entered into the record as evidence).

20 (Whereupon, Plaintiffs' Exhibit No. 807.2 was
21 entered into the record as evidence).

22 (Whereupon, Plaintiffs' Exhibit No. 807.3 was
23 entered into the record as evidence).

24 (Whereupon, Plaintiffs' Exhibit No. 807.4 was
25 entered into the record as evidence).

1 (Whereupon, Plaintiffs' Exhibit No. 807.5 was
2 entered into the record as evidence).

3 (Whereupon, Plaintiffs' Exhibit No. 807.6 was
4 entered into the record as evidence).

5 (Whereupon, Plaintiffs' Exhibit No. 807.7 was
6 entered into the record as evidence)

7 MR. CHAPMAN: May I publish?

8 THE COURT: You may.

9 MR. CHAPMAN: Could you bring the lights down for
10 just a little bit, please?

11 BY MR. CHAPMAN:

12 Q. Okay. Is what's on the screen the same thing that's in
13 your hand, doctor?

14 A. Yes, it is.

15 This is from patient Crawford.

16 This is my surgical pathology consultation report on
17 this case.

18 And what I have here is an H&E slide at 20 X
19 magnification.

20 H&E, that means hematoxylin and eosin. That is the
21 routine stain that we put on every slide that comes out of
22 our histology, our slide-making laboratory section.

23 The nucleus of a cell is usually going to be darker
24 blue. The cytoplasm, light blue, or sometimes blue pink or
25 blue gray.

1 So these are solid sheets of cells without any
2 glandular structures, tubules, papillae, or any other
3 tertiary structure.

4 Next slide.

5 Q. For the record we are now looking at Exhibit 807.2.
6 What are we looking at here, doctor?

7 A. Here is an area in which the architecture becomes a
8 little bit more complex. You can start to see sort of a
9 swirling pattern in it.

10 There is also these small dark cells that represent
11 lymphocytes, a lymphocytic infiltrate in the tumor.

12 Lymphocytes are cells of the immune system and
13 sometimes tumors will have variable numbers of lymphocytes
14 in them and they represent a host response to the tumor.

15 The host, the patient, is trying to mount something of
16 an immunologic response to damp down the tumor,
17 unsuccessful, but, nonetheless, that's what the body is
18 trying to do.

19 Next slide.

20 Q. This is 807.3.

21 What are we looking at here, doctor?

22 A. This is part of the tumor where there is a spindle cell
23 component. Instead of just being coarsely clumped islands
24 or nests of epithelioid tumor cells, now we have spindle or
25 sarcomatoid tumor cells here.

1 Q. And what are we looking at here, doctor?

2 A. Again, a variant pattern in the tumor, the so-called
3 trabecular pattern, where the tumor cells start to line up
4 in parallel strands with collections of fibrous connective
5 tissue in between them.

6 This is kind of halfway between an epithelioid and a
7 sarcomatoid morphology. That doesn't really mean much as
8 far as the aggressiveness of the tumor. It just says that
9 sometimes part of the tumor looks different than another
10 part of the tumor.

11 Q. That was the next exhibit.

12 Now we are onto the next one.

13 A. So then we got into staining of the tumor cells with a
14 variety of immunologic stains.

15 Let me explain what an immunostain is.

16 Earlier I said with hematoxylin we can stain a cell red
17 or blue, but that's not enough these days to figure out what
18 a tumor is. What you have to do is you have to look at the
19 structural proteins that the tumor is made up of. In order
20 to do that you generate in an experimental animal an
21 antibody. You put some of that structural protein into the
22 animal. The animal has an immunologic response. The animal
23 starts to produce an antibody against that protein.

24 You then take the animal's spleen, which is where these
25 immune cells are. You put it into long-term culture and you

1 turn those cells into a factory that will produce more and
2 more of this very specific antibody against a very specific
3 structural protein. That then is called an immunostain.
4 That's done commercially at various drug companies
5 throughout the United States. These antibody reagents are
6 commercially available.

7 You buy a reagent against calretinen, an antibody
8 reagent against calretinen, and then you stain your tissue
9 to see if you get reactivity for the presence of calretinen.

10 Calretinen is a structural protein that is found in
11 most mesotheliomas, but very few lung cancers. So finding
12 it positive is helpful in discriminating mesothelioma from
13 lung cancer. And that's what we did.

14 And although the reproduction on this little elmo
15 machine is kind of poor, there are clumps and clusters of
16 positive staining tumor cells here and there within this. I
17 would estimate that a percentage of maybe 10, 15 percent of
18 the tumor cells were positive, up to moderately positive for
19 this particular immunostain.

20 Continue.

21 There are other immunostains that were done.

22 Q. This is the next exhibit.

23 A. This is called WT-1. This is a structural protein
24 that's present in the nucleus of mesothelial cells or
25 mesothelioma cells and you can see that that's even more

1 strongly positive in various clumps and clusters of these
2 tumor cells.

3 Again, this is an antigen, WT-1, that can be found in a
4 few other types of tumors, mostly pediatric tumors of the
5 kidney or soft tissues, but if the differential diagnosis is
6 between lung cancer and mesothelioma, this is a clear
7 pointer pointing to the diagnosis of mesothelioma.

8 Q. Next exhibit.

9 What we looking at here, doctor?

10 A. First of all, let me just say that we did additional
11 immunostains besides the two that we just illustrated. We
12 did a whole list, as a matter of fact. I think there was
13 like -- the list -- the list of special stains went from
14 here to here. That's six on this page and then about ten
15 more on this page, so about 16 different immunostains, to
16 develop a panel or a pattern. And the panel -- the results
17 of the panel pointed towards it being mesothelioma, not lung
18 cancer. It's not just two stains. It's about 16 different
19 stains, but for the sake of brevity we didn't try to show
20 all of them to you.

21 Now, what this, this is a cytology specimen. Remember,
22 I said earlier that when a person first presents with
23 malignant mesothelioma, usually they have a chest full of
24 fluid. That fluid contains numerous individual and small
25 clumps of tumor cells suspended within it.

1 All that fluid makes it difficult for a patient to
2 breath, because the fluid is displacing oxygen from the
3 lungs, displacing air from the lungs. The patient can't get
4 a full breath. His lung doesn't inflate all the way. It
5 only inflates a small way, and so the person becomes short
6 of breath.

7 You drain that flood off to make it easier for the
8 patient to breath. And then also once you have that fluid,
9 you send it to the laboratory so that they can do a
10 microscopic exam of that fluid to see if they can pick up
11 these small clumps and clusters of tumor cells.

12 And that's exactly what this is right here. There is
13 about maybe 10 or 15 cells in that particular cluster.
14 There weren't very many of these clusters and by themselves
15 they are not quite enough to say that this is definitely a
16 malignant tumor, but now in retrospect, because we had that
17 biopsy that I showed you a moment ago, it's clear that these
18 fragments were little fragments of tumor that were breaking
19 off and getting suspended in that pleural effusion.

20 Q. And the last exhibit here, doctor?

21 A. This goes back to the biopsy and this shows an
22 antibody, an immunostain called cytokeratin 5-6. This
23 refers to a particular molecular weight, cytokeratin, that
24 is very, very characteristic of malignant mesothelioma
25 cells. And, sure enough, these malignant mesothelioma cells

1 are pretty strongly positive with it. Not only the
2 epithelioid cells, which are those round or tuboidal cells,
3 but also the spindle cells that you can see pretty easily
4 along in here. So that's a little bit out of order, but it
5 confirms what I was saying about that panel of stains that
6 point towards mesothelioma, not towards lung cancer.

7 Q. And so just to follow up on all of this, doctor, your
8 review of these pathology and the staining, what are you
9 able to conclude from that?

10 A. From that I can conclude that this is definitely a
11 malignant mesothelioma. No question about it.

12 Q. Okay. Thank you.

13 MR. CHAPMAN: Can we get the lights back up?

14 BY MR. CHAPMAN:

15 Q. All right, doctor.

16 I want to talk next about how doctors like you
17 determine the cause of mesothelioma, okay?

18 A. Well, simply put, I refer to the Helsinki Criteria,
19 because they give a clear road map of the criteria that
20 should be used for that determination.

21 MR. CHAPMAN: Approaching the witness.

22 BY MR. CHAPMAN:

23 Q. Dr. Maddox, what did I just hand you?

24 A. You handed me a copy of the Helsinki Criteria. The
25 formal title of this is Consensus Report. Asbestos,

1 asbestosis, and cancer: The Helsinki Criteria for diagnosis
2 and attribution. Published in the Scandinavian Journal of
3 Workers Environmental Health, 1997.

4 MR. CHAPMAN: Your Honor, may I publish to the
5 jury?

6 THE COURT: Mr. Wall?

7 MR. WALL: No objection, Your Honor.

8 THE COURT: Without objection, you may publish.

9 MR. CHAPMAN: Thank you.

10 BY MR. CHAPMAN:

11 Q. Doctor, can you tell us about the importance of the
12 Helsinki Criteria?

13 A. Yes, sir.

14 This is the report of a conference that was attended by
15 19 participants from all over the world; from Australia, the
16 United States, from Finland, from several European
17 countries. All of these were countries that were not
18 producing asbestos exports.

19 This group included pathologists. It included
20 pulmonary medicine specialists. It included oncologists.
21 It also included other scientists who were not physicians
22 who were interested in research on asbestos-related disease.

23 And what they had between them was collectively they
24 had already published over a 1,000 papers on
25 asbestos-related disease.

1 So they held this conference to try to determine
2 general what you might call rules of the road for studying,
3 diagnosing, and attributing asbestos-related disease.

4 Q. All right. So I want to go through some of that with
5 you, doctor.

6 First up there it says consensus report. Can you tell
7 me about that?

8 A. Yes, sir. I tried to already explain that, that this
9 was a multi-disciplinary gathering of pathologists,
10 radiologists, physicians of various types. Epidemiologists,
11 toxicologists, industrial hygienists, and clinical and
12 laboratory sciences specializing in tissue fiber analysis.

13 Q. Okay.

14 And more specifically what I'm trying to get at is it
15 says diagnosis, and I think we all understand what diagnosis
16 means. What does it mean by attribute and attribution here?

17 A. Cause.

18 Q. All right.

19 And I think you said, doctor, that this group has
20 studied or published a 1,000 articles, looked at a 1,000
21 articles?

22 A. Prior to this conference they had published over a
23 1,000 articles.

24 Q. And, doctor, so do they evaluate how and when it is
25 appropriate to say that mesothelioma is attributable to

1 asbestos exposure?

2 A. Yes, sir, they did.

3 Q. Can you tell me about that?

4 A. Yes, sir.

5 They make several statements throughout the paper.

6 They make, first of all, a general statement in general
7 reliable work histories provide the most practical and
8 useful measure of occupational asbestos exposure.

9 And then they dig down a little deeper. In the next
10 slide they talk about some specific features of these
11 mesotheliomas. They state that all types of malignant
12 mesothelioma can be induced by asbestos with the amphiboles
13 showing greater carcinogenic potency than chrysotile. In
14 other words, on a fiber per fiber basis -- excuse me, on a
15 fiber per fiber basis, amosite fibers are stronger than
16 chrysotile fibers.

17 Q. And that's because amosite is considered an amphibole?

18 A. Yes, amosite is the amphibole that we are really
19 dealing with this in particular case.

20 Q. Okay. So let's look at the criteria. Can you explain
21 this to us?

22 A. Sure.

23 These are the types of things that as we dig deeper
24 into these criteria that would be accepted each by itself as
25 an indicator of asbestos attribution of malignant

1 mesothelioma.

2 Number one, if you have a sample of lung tissue that
3 you can look at under the microscope.

4 If you do an asbestos fiber count in that lung tissue
5 and there is an elevation in the amount of asbestos in that
6 lung tissue, then that would suffice for causation, for
7 attribution.

8 That's the type of the thing that I did for 15 years
9 when I had the electron microscope lab. I don't have that
10 any more.

11 The other problem is that we really didn't have any
12 lung tissue in the biopsy sample on Mr. Crawford to do that
13 type of analysis on, so we can't really consider that
14 particular one.

15 Q. So, doctor, if I'm understanding you correctly, is
16 occupational exposure history by itself sufficient to
17 attribute mesothelioma to asbestos?

18 A. Yes, it is. A history of asbestos exposure, including
19 brief or low dose exposures, as long as there is at least a
20 ten year latency period, that would be sufficient just by
21 itself, according to the Helsinki Criteria.

22 Q. Okay.

23 A. We don't have pleural plaques in this gentleman, but
24 like I said, that's not usually -- that's not always found
25 in malignant mesotheliomas.

1 We don't have asbestosis either, not in this particular
2 patient, but we do have a positive exposure history.

3 Q. Now, we have said the phrase occupational exposure
4 history a couple of times. Can you kind of explain what
5 that actually means, what all that entails?

6 A. Yes, sir.

7 There is several different situations of exposure.
8 There is occupational exposure. That's when you are working
9 with asbestos at arm's length. It's within maybe two, three
10 feet of your face. You are breathing it in directly from
11 the product, from the material that you are manipulating.

12 If you are -- for example, if you have got pipe
13 insulation, you are cutting it with a saw, that saw could be
14 kicking back dust right in front of your face.

15 If you are tearing stuff down, boiler insulation, pipe
16 insulation, then you are going to have it sort of swirling
17 up right in front of your face. That's occupational
18 exposure.

19 If you are working on gaskets and you are scraping it
20 off, or if you are using a power brush to scrape off that
21 gasket, that's kicking up dust and particles. Again, that
22 could be right in your face. That's direct occupational
23 exposure.

24 But what if that gentleman over there is the one doing
25 the work and I'm sitting over here doing my work, which is

1 something different? Then that's not direct occupational
2 exposure, but it's exposure within a few feet of where the
3 work is actively being done. So that would be indirect
4 occupational exposure, or you could say that's bystander
5 exposure.

6 Let's say that I have to deliver papers throughout the
7 job site and there were several people down there doing
8 insulation work or doing some sort of asbestos dust
9 generation and I have to walk back and forth through there
10 every half hour, then that would be indirect exposure,
11 secondary exposure.

12 What if I had to push a broom along the floor to sweep
13 stuff up at the end of the day? That would probably be
14 direct occupational exposure, because it's at arm's length,
15 even though the dust was originally generated by somebody
16 else. So there is that.

17 There is other types of secondhand exposure, including
18 take-home exposure. So you work all day and maybe you have
19 work clothes, special work clothes, maybe you don't. Maybe
20 you are just wearing street clothes and they get covered
21 with dust. You take them home and before you wash them they
22 have to be shaken out to get the dust out of the cuffs.
23 People still wears pants sometimes with cuffs, although that
24 was something in the past, but, you know, out of the pockets
25 get that dust out. Shake the clothes to get some of the

1 dust off before it goes into the washing machine. And, you
2 know, that's going to cause take-home exposure. That
3 exposure will be to the family member that's doing the
4 laundry, but also it can contaminate the entire house. It
5 can get into the rugs. It can get into the sofas. It can
6 get into the car where you drive back and forth to work. So
7 that's domestic exposure, a type of second-hand exposure.

8 Okay. What if you live downwind from an asbestos
9 factory? There is reports where there have been long-term
10 asbestos factories and they have tracked out where people
11 have lived, like the concentric circles on a bulls eye. You
12 can see an increase as people get closer to the factory of
13 the asbestos-related disease they are talking about. Might
14 be pleural plaques, might be pleural mesothelioma, whatever.
15 That would be a type of environmental exposure that would be
16 sufficient in some cases to cause malignant mesothelioma.

17 The rate of mesothelioma from that type of an
18 environmental exposure is not as high as the rate of
19 mesothelioma from a direct occupational exposure, certainly,
20 certainly not, but still there is no threshold. There is no
21 bottom limit that you have to exceed before you can get
22 mesothelioma. As long as you have got exposures that are
23 significantly above normal background environmental levels,
24 you will start to develop or acquire an increasing risk of
25 developing malignant mesothelioma.

1 MR. CHAPMAN: Your Honor, I'm about to switch to a
2 different topic here, so if you wanted to take a break, now
3 would be a good time to do that.

4 THE COURT: That would be good. All right.

5 Let's take a break at this time, members of the
6 jury. Be refreshed, and we are now at about 23 of, so why
7 don't we come back about ten of, or around that period of
8 time when --

9 Let the bailiff know, Madam Foreperson, when all
10 are refreshed and ready to go.

11 You may go to your jury room.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: Dr. Maddox, you may be at ease. Don't
15 discuss your testimony, as you know.

16 THE WITNESS: Yes, ma'am. Thank you.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened).

19 THE COURT: Y'all ready for the jury?

20 MS. MCVEY: Yes, ma'am.

21 THE COURT: Very good. Bring me the jury.

22 (The following takes place in the presence of the
23 jury panel)

24 THE COURT: All right. Now, before we proceed --
25 please keep your seats, but listen up. Before you

1 proceed --

2 Dr. Maddox, if you would have a seat for a minute.

3 Members of the jury, I'm advised by our bailiff
4 that several of you indicate that you are familiar with the
5 name of the pathologist at the Spartanburg hospital. And so
6 I would like first to ask all who are familiar with the -- I
7 think it's -- is it Dr. Nguyen?

8 THE WITNESS: Well, the pathologist was Al
9 Campbell.

10 THE COURT: Excuse me, Alfred Campbell, M.D..

11 All right. Each juror that is familiar with Dr.
12 Alfred Campbell, M.D., raise your hand and give me your
13 number.

14 Yes, ma'am.

15 JUROR NUMBER 117: 117.

16 THE COURT: 117.

17 JUROR NUMBER 117: I also am professionally
18 affiliated with Dr. Woolen.

19 THE COURT: Who?

20 JUROR NUMBER 117: Dr. Woolen.

21 THE COURT: Dr. Woolen?

22 JUROR NUMBER 117: Yes.

23 THE COURT: All right.

24 And anybody else that's familiar with any -- with
25 Dr. Campbell or others at Spartanburg General?

1 (No response).

2 THE COURT: All right. Would the fact that you
3 are familiar with Dr. Campbell and with Dr. Woolen in any
4 way interfere with your ability to render a fair and
5 impartial verdict in this matter?

6 JUROR NUMBER 117: No.

7 THE COURT: Very good.

8 Any other discussions by any of y'all?

9 MR. WALL: No, Your Honor.

10 MR. CHAPMAN: No.

11 THE COURT: Very good.

12 Thank you very much for disclosing that and we
13 will now proceed.

14 Mr. Chapman?

15 MR. CHAPMAN: Yes, Your Honor.

16 THE COURT: Very good.

17 BY MR. CHAPMAN:

18 Q. Dr. Maddox, when we left off -- and I think we are
19 nearing the end here, just got a little bit more to go.
20 When we left off we were talking about bystander exposure.
21 Can you briefly explain to the jury what bystander exposure
22 is?

23 A. It's a type of exposure where you are not actually
24 working directly with the product, or at least you are not
25 actually generating dust from the product, but you come in

1 contact with that dust, either simultaneously in a different
2 part of the room; or subsequently, in the case of, for
3 example, cleanup where you would be sweeping that dust up,
4 re-suspending it in the air, or sweeping up bits of scrap
5 that can be broken up and generate dust at that time. That
6 would be an example of secondary exposure.

7 Q. And, doctor, is the literature or the textbooks, are
8 there any discussions of workers working around
9 asbestos-containing insulators doing their job and those
10 bystanders contracting mesothelioma?

11 A. Yes, they are. The literature, including textbooks,
12 has examples of that.

13 Q. How well is that understood?

14 A. It's very well understood. I mean, that's -- it's not
15 what you are doing that causes the mesothelioma. It's the
16 asbestos that causes the mesothelioma, and whatever route
17 that you get it into your lungs, into your body, is -- I
18 mean, it's important, but it's the asbestos itself that's
19 even more important.

20 Q. So if there is an individual who is working around
21 insulators doing work an asbestos-containing insulation, is
22 that considered to be an occupational exposure?

23 A. Yes, an indirect occupational exposure, which overlaps
24 with a type of secondary exposure.

25 Q. And what about individuals, doctor, who is sweeping up

1 after work was done on asbestos-containing insulation? Is
2 that an occupational exposure?

3 A. Yes, I would consider that to be a type of direct
4 occupational exposure.

5 Q. And can you take just a second, doctor, and briefly
6 tell this jury about the levels of exposure a person may
7 receive from sweeping up asbestos-containing dust?

8 A. Well, I can.

9 You know, I'm sure that it's going to vary from time to
10 time, depending upon what you are sweeping up, what part of
11 the plant you are working in, how much dust there is in that
12 part of the plant.

13 However, let me just say that at the Newport News
14 shipyard I had an opportunity to do lung fiber counts on
15 some cleanup workers, you know, that would clean up the
16 scrap and the dust that was on the floor at the end of the
17 day, and those unfortunate workers had the highest levels of
18 fiber counts that I studied in my laboratory during those
19 days.

20 Like I say, it's going to vary from time to time, from
21 place to place. It's going to vary with how long you did
22 that type of work, obviously, but what I'm trying to say is
23 that exposure does have the potential of being very intense.

24 Q. Doctor, just so I understood and make sure the jury
25 understood, are you telling me that exposures from sweeping

1 up have some of the highest fiber counts that you saw?

2 A. In some of the -- they have some of the highest fiber
3 counts, lung burden fiber analysis that I studied in my
4 laboratory back when I was doing that type of examination.

5 Q. Okay, doctor.

6 A. You know, I would -- I would estimate that you would
7 probably be able to generate fiber count levels of at least
8 one fiber per CC air concentration, at least intermittently,
9 doing that type of work, depending upon the type of asbestos
10 content of the stuff that you are sweeping up off of the
11 floor.

12 Q. Okay. And that -- one fiber per CC, what's the
13 significance of that?

14 A. That's ten times higher than the current permissible
15 exposure limit.

16 Q. Is there a safe threshold to asbestos, doctor?

17 A. Well, not really. I mean, there is a normal background
18 environmental ambient air level, which is very low, but when
19 you significantly exceed that normal background
20 environmental level, then you are going to start to have a
21 gradual increase in your risk of developing malignant
22 mesothelioma.

23 It's not a threshold. It's not like a on-off switch.
24 It's like a reostat, like a gradual increase in the risk.

25 Q. Doctor, are there government agencies that say that

1 there is no safe levels of exposure to any type of asbestos?

2 A. Every government agency that has ever considered the
3 question of is there a threshold level or not has said there
4 is no threshold level.

5 The American Society of Epidemiology, which has
6 considered that in a physician paper a couple years ago,
7 there is no threshold.

8 Regulatory agencies, there is no threshold.

9 Even though there is a permissible exposure limit, at
10 the same time people have -- the congressional record had a
11 discussion of the PEL, in which it was clearly stated that
12 this is probably going to be sufficient to prevent any
13 future cases of asbestosis, but it's -- there is still going
14 to be cases of mesothelioma that come through, even under
15 the PEL, permissible exposure limit, that we are going to
16 put in place.

17 Q. Okay. Since we are on the topic, doctor, have you
18 heard of OSHA?

19 A. The Occupational Safety and Health Administration.

20 Q. What is OSHA?

21 A. It's a regulatory body of the U.S. Government, the aim
22 of which is to make the workplace safer for workers.

23 Q. Does OSHA say anything about asbestos?

24 A. Yes, sir, some of the first considerations that it had
25 when it was first created back in the 1970s was for creating

1 exposure limits having to do with asbestos exposure.

2 Q. Just to skip ahead here for time purposes, you talked
3 about ambient air levels, doctor, and background levels.

4 A. Yes, sir.

5 Q. Can you kind of briefly explain what that actually
6 means, what that is?

7 A. Okay. Well, the normal background ambient air level,
8 according to Rodley's textbook, third edition, on page 26,
9 is defined as an average concentration of 0.00005 fibers per
10 CC.

11 A CC is about the size of a sugar cube. So you don't
12 really have that fraction of a single fiber in a sugar cube.
13 What you have is a larger space. And if you do the math, it
14 works out to 0.00005 fibers per CC. That's the average
15 normal level.

16 The PEL, the permissible exposure limit, is 0.1 fiber
17 per CC. So that is approximately 2,000 times higher an
18 average background, according to the figures given in
19 Rodley's textbook.

20 Occupational levels -- well, it depends on the
21 occupation. It depends on what you are doing. If you're an
22 asbestos miners, or if you're doing tear-out on friable
23 insulation, you can achieve an exposure level of a 100
24 fibers per CC, which would be a 1,000 times higher than the
25 PEL, which would then be -- I'm not sure of the math here,

1 but I think that would be 5 million times higher than a
2 normal background environmental level, or at least if that's
3 not the precise number, it's somewhere in that range.

4 Q. Okay. So, doctor, you talked about a 100 fibers per CC
5 potential level. Let's scale it down to just one fiber per
6 cubic centimeter, okay?

7 A. Yes, sir.

8 Q. Have you done the math to try to figure out how many
9 fibers you might breath in an eight-hour day?

10 A. Yes, sir, I have prepared a slide that would show --
11 that would show what you would get in an eight-hour day.

12 I also attempted to compare that to what you would have
13 in a normal day just from normal background environmental
14 air.

15 So these are the calculations.

16 If you are working, you are going to be breathing
17 harder than if you were sleeping or just sitting in a chair.
18 So if you are sleeping, sitting in a chair, maybe only 10 or
19 12 breaths per minute, but if you are working doing some
20 sort of physical work, maybe 16 breaths per minute.

21 One breath has about 500 CC's of air. So 16 times 500
22 hundred would mean every minute you breath in about 8,000
23 fibers. This is at a level of one fiber per cubic
24 centimeter, which is about ten times higher than the PEL.

25 So continuing the math, you would eventually in an one

1 eight-hour working day at a continuous level of one fiber
2 per CC, you could breath in 3.8 million fibers in one
3 eight-hour working day.

4 Q. And, doctor, this is -- if I understand you correctly,
5 this is at a level of one fiber per CC?

6 A. Correct, which is ten times higher than the PEL, which
7 is 10,000 times higher than the normal background average
8 ambient air level.

9 Q. So 3.8 million, approximately, in a setting of one
10 fiber CC, are you telling me the exposures we are talking
11 about in this could be up to a 100 fibers per CC?

12 A. Well, intermittently that would be possible.

13 Q. Have you done this same math for background ambient
14 exposures?

15 A. I have.

16 Q. Can you tell us about this, please?

17 A. At a normal average level of 0.00005 fibers per CC, in
18 a 24 hour day you might breath in about 430 asbestos fibers.

19 So there is a big difference between 430 and what, did
20 we say, 3.8 million asbestos fibers.

21 Q. Okay, doctor.

22 I want to talk about Mr. Crawford specifically for a
23 minute.

24 A. Yes, sir.

25 Q. We did not ask you to read Mr. Crawford's deposition,

1 is that true?

2 A. Yes, sir, that's correct.

3 Q. You have not read it?

4 A. I have not read his deposition.

5 Q. Okay. We have talked about how the literature and
6 history with the kind of exposures that can cause
7 mesothelioma. Now I want to talk to you about the exposure
8 specific to Mr. Crawford.

9 I want to provide you, doctor, with a set of facts and
10 ask you some opinions about the facts that I give you. Can
11 I do that?

12 A. Yes, sir.

13 Q. Will you please assume for me, doctor, that Mr.
14 Crawford is a 72 year old man who worked at the Celanese
15 Spartanburg facility from 1970 to 1974.

16 I further want you to assume that in this time period
17 thermal systems insulation was being worked on and
18 installed.

19 I further want you to assume that the existing thermal
20 systems insulation and the newly installed thermal systems
21 insulation were asbestos containing and that fiber type was
22 amosite.

23 I further want you to assume that Mr. Crawford was
24 close enough to the dust from the thermal systems insulation
25 as a bystander, that he said he breathed the dust from the

1 thermal systems insulation.

2 Further, he said that he swept up work that was being
3 done on that thermal systems insulation.

4 And I further want you to assume, doctor, that this
5 work happened regularly throughout his time at Spartanburg
6 from 1970 to 1974, and that the sweeping occurred after
7 every shift.

8 I would lastly like you to assume for me that Mr.
9 Crawford was diagnosed with mesothelioma.

10 Do you have those facts in mind?

11 A. Yes, sir, I do.

12 Q. Based on the set of facts that I just described to you,
13 was that exposure a substantial contributing cause to the
14 development of his mesothelioma?

15 A. Yes, sir, it was, and I say that with medical
16 certainty.

17 Q. Do you have an opinion, doctor, as to whether or not
18 that mesothelioma will cause his death?

19 A. Yes, sir, unless there was some other extenuating
20 circumstance, he will surely die from this malignant
21 mesothelioma.

22 Q. Okay. I want to talk to you for just a moment about
23 the effects that mesothelioma will have on a person.

24 What kind of things does a person with mesothelioma
25 experience?

1 A. Well, it depends on what stage of the disease.

2 When the person first comes in to see the doctor, he
3 usually comes in because of shortness of breath, and that's
4 because of an accumulation of fluid inside the chest.

5 Sometimes the patient will have other symptoms at
6 presentation. There could be chest wall pain, if there is
7 early invasion of the chest wall by the tumor. Very
8 commonly there is anorexia or weight loss. Anorexia means a
9 loss of appetite because you're sick. You don't feel like
10 eating. And because you don't eat, you lose weight.

11 Now, as the disease progresses, the symptom pattern
12 changes somewhat.

13 At presentation they probably drain away the pleural
14 effusion, so for at least a little while it becomes easier
15 to breath, because you don't have that fluid there blocking
16 the air going in and out of the lung.

17 Q. Now, you said pleural effusion. I don't think we have
18 talked about that. Can you briefly describe what that is,
19 please?

20 A. Sure.

21 When a mesothelioma first develops you start to get the
22 accumulation of fluid in the chest, because that's one of
23 the things that these tumor cells do. They cause fluid to
24 be released from the soft tissues and the chest fills up
25 with fluid.

1 Now, other things can cause pleural effusions. You can
2 have a pleural effusion because you have pneumonia on one
3 side of your chest.

4 You can have a pleural effusion because you are going
5 into heart failure and fluid seeps out into the pleural
6 spaces. Usually, however, that will be on both sides. When
7 its just on one side, it's usually due to a more localized
8 cause, like tumor. It's not specific to mesothelioma
9 tumors. It could be due to lung cancer tumors or to
10 metastatic tumors, or other chest wall tumors even, but
11 approximately 90 percent of mesotheliomas at the time they
12 present, pleural mesotheliomas, at the time that they
13 present will have an accompanying pleural effusion.

14 Q. What, if anything, can doctors do about a patient who
15 has pleural effusion?

16 A. They can drain it away. They put a needle in between
17 the ribs, usually in the lateral or posterior lateral
18 portion of the chest, and either let gravity draw fluid, or
19 sometimes we will use a syringe to pull off fluid, and then
20 they study that fluid to see if they can see why the
21 effusion develops.

22 Sometimes you can see bacteria or pus from pneumonia
23 that's in that fluid and that says oh, this is reactive due
24 to -- it's an inflammatory thing. Or sometimes you will see
25 clumps and clusters of tumor cells. They saw those in this

1 case, but, you know, there weren't very many of them at that
2 time and they weren't sure whether they were actually tumor
3 or reactive, but later on when the biopsy was done it became
4 obvious.

5 Q. Now, you described doctors pulling off this pleural
6 effusion. Is this painful for the patient?

7 A. Usually it's somewhat painful. Sometimes there is
8 sharp stabbing pain and they use a local anesthetic to numb
9 up that area as best they can, but very often at the time
10 that they are pulling it off there is a sharp stabbing pain.
11 Sometimes there is something called a vasovagal reflex,
12 which is a reflex down the vagal nerve that slows the
13 beating of the heart and causes a temporary feeling of
14 nausea and sometimes you can pass out from it, but I did not
15 see in the medical records that our patient actually had
16 that, but it could happen.

17 Q. Let me ask you, doctor. If Mr. Crawford had this
18 procedure and there was one and a half or two liters of
19 fluid taken off, would that be unusual?

20 A. No, that's pretty much par for the course. In fact,
21 some people will undergo repeated thoracentesis, sometimes
22 three or four times, with a liter or a liter and a half of
23 fluid taken off each time. A liter is approximately the
24 size of a quart. So a gallon is 3.7 liters.

25 Q. Now, you -- I know -- I think we are talking about the

1 same thing, but you said thoracentesis. Is that the
2 procedure where the fluid is drawn off?

3 A. Yes, sir. Yes, sir, that is the Greek name, I guess,
4 for drawing off fluid from the chest.

5 Q. Okay.

6 A. If you draw it off from the abdomen, it's called
7 paracentesis.

8 Q. Now, doctor, I think you already said mesothelioma is
9 fatal?

10 A. Yes, sir, it is pretty much uniformly fatal. Either
11 the mesothelioma itself or one of the complications of it
12 will kill 99 percent of the people with malignant
13 mesothelioma.

14 Q. Okay. We will get to that in just a second, but let me
15 ask you, is chemotherapy a treatment?

16 A. Yes, chemotherapy is very useful and it will usually
17 extend the life of patients, as long as they are -- as long
18 as the tumor is sensitive to that type of chemotherapy.

19 It's generally used in most patients, unless they're
20 very elderly, or if they personally refuse to take
21 chemotherapy, or if they have such far advanced disease at
22 the time of presentation that it's not much use.

23 Q. And, doctor, can you -- hopefully none of us have had
24 to go through this, but can you briefly explain to the jury
25 what it's like to go through chemotherapy?

1 A. Well, it depends on the type of chemotherapy that you
2 get.

3 Now, let me start and get more intense.

4 If you start with single agent chemotherapy used just
5 for the purpose of palliation, you would generally be given
6 a dose every three weeks. The drug that would be used is
7 called Alimta. You can usually tolerate a single agent
8 chemotherapy with Alimta fairly well. It doesn't cause a
9 lot of toxicity. It doesn't cause a lot of nausea,
10 vomiting, gastrointestinal symptoms. It will produce a
11 gradually increasing state of fatigue or tiredness.

12 Okay. A second level of chemotherapy would be
13 combination chemotherapy with Alimta and Cisplatin; again,
14 given just about every three weeks. That will cause the
15 development of more nausea, possible vomiting, possible
16 diarrhea, depending upon the person's reaction to it.
17 That's because the addition of the Cisplatin causes injury
18 to cells in the gastrointestinal tract and that's where
19 those symptoms come from. The patient will also have
20 fatigue, tiredness, probably some loss of appetite as
21 another type of side effect to that level of chemotherapy.

22 There are certain types of drugs that can be added to
23 that. One is called Avastin, and what that drug does is it
24 helps to prevent the growth of new blood vessels into the
25 tumor tissue. In other words, it tries to deprive growing

1 tumor of a blood supply; therefore, aiding it to die.

2 There is other types of chemotherapy, the so-called
3 immune checkpoint inhibitors, things like PBL-1, which
4 sometimes is extremely effective with lung cancer even. I
5 believe that former President Jimmy Carter had a malignant
6 melanoma, which is a different type of tumor, in his brain
7 and it was PBL-1 sensitive. He was given that chemotherapy
8 and he had a complete response regression of that tumor.

9 I have seen just a handful of patient that have
10 received PBL-1 that have had at least partial remissions as
11 a result of the use of that drug. However, it's -- it's
12 pretty new. It's only in the last year or so that people
13 have been starting to use that. That type of chemotherapy
14 does not induce a lot of toxicity.

15 Q. So let's back up a second, doctor, and -- we know
16 mesothelioma is fatal?

17 A. Yes, sir.

18 Q. How do patients that have mesothelioma, what causes
19 them to actually pass away?

20 A. Well, it depends, and also the spectrum of symptoms
21 will change in the later stages of the disease.

22 Most mesotheliomas continue to proliferate, eventually
23 are no longer inhibited by chemotherapy of any sort. They
24 will invade local structures first. They may invade the
25 heart. They may go right through the pericardium and invade

1 the surface of the heart. If that happens, that can cause
2 an irregular heartbeat, a so-called cardiac arrhythmia, and
3 they can die from that. That can be the mechanism of death.
4 It's the tumor that's killing them, but it's the mechanism
5 that is used and it's cardiac arrhythmia.

6 Other times the tumor can invade the chest wall and the
7 lung. Lung invasions can cause another set of episodes of
8 shortness of breath, but this time it's not because the lung
9 is compressed. It's because the lung is invaded.

10 That invasion of the lung can also lead to pneumonia.
11 So the patient then can die of pneumonia or of sepsis, a
12 blood-borne infection due to the pneumonia that was caused
13 by the invasive tumor. That's also a tumor death.

14 Sometimes the mesothelioma terminally will metastasize
15 to other parts of the body. Sometimes it will metastasize
16 to the brain. The percentage of mesotheliomas with brain
17 metastasis at the time of original presentation is very low,
18 but by the time that you're in the terminal stages of the
19 disease it's much higher.

20 Other causes of death. Well, sometimes people can
21 become very depressed. Sometimes people are suffering so
22 much from the air hunger that's due to the shortness of
23 breath that they could commit suicide. It's that bad of a
24 disease.

25 MR. WALL: Objection, Your Honor. That's way

1 speculative.

2 THE COURT: What's that?

3 MR. WALL: He says they can commit suicide. I
4 said that's way speculative in this case.

5 THE COURT: All right. Overruled.

6 BY MR. CHAPMAN:

7 Q. Please continue, doctor.

8 A. Yes, sir.

9 What I'm trying to say is in the end stages whatever
10 the cause of death may be, it's going to be extremely
11 unpleasant.

12 Air hunger is usually very prominent. Air hunger is
13 when you are smothering. You're unable to catch a breath
14 because you don't have lung tissue sufficient to breath any
15 more. That's generally treated by morphine. Morphine
16 reduces air hunger, but then it also reduces the impulse to
17 breath, so it becomes in a downward spiral.

18 Q. Doctor, will Mr. Crawford have to incur future medical
19 expenses as a result of his mesothelioma?

20 A. I'm sure that he will and the medical expenses will
21 mount, depending upon his response to chemotherapy. The
22 longer he goes, the more imaging studies that he will need
23 to document the progression of his disease.

24 If he enters hospice care eventually, there will be
25 costs for that.

1 So they will continue to mount and the better that he
2 responds to treatment, the longer they will continue to
3 mount.

4 Q. Doctor, what's the life expectancy of Mr. Crawford?

5 A. Well, with a diagnosis at age 72, the actuarial tables
6 that you can look up, they are produced by the Department of
7 Social Security, shows that he would have an expectancy of
8 living to about 87 and a half years at age 72. About 13
9 years, or a little bit more than 13 years, but, you know,
10 that's an average.

11 There are some people that have other things wrong that
12 are serious that may shorten that. There are other people
13 that might not have things wrong that would be extended to
14 an even later age, so that would be if he did not have the
15 mesothelioma. With the mesothelioma his life expectancy is
16 significantly shortened.

17 On the average, and this is not specific to Mr.
18 Crawford, but on the average most people presenting with a
19 pleural mesothelioma of this cell type, their average
20 survival is about 14 months.

21 By two years, usually 90 percent of them have died of
22 the disease.

23 And then there will be a small tail to that survival
24 curve that goes out up to several years, if they happen to
25 be one of the people that is responsive to the type of

1 chemotherapy. If it's somebody that's had a good surgical
2 approach that removed the bulk of the tumor to start with,
3 if they presented early, if they are in otherwise pretty
4 good health without too many other things wrong to them,
5 there is a possibility of maybe having several years
6 survival, but the average is 14 months.

7 Q. Doctor, lastly, was Mr. Crawford's mesothelioma
8 preventable?

9 A. Probably so. I mean, it probably could have been
10 prevented by not having asbestos exposure in the first
11 place.

12 As I said before, studies have been done looking back
13 into the previous century to see how many mesotheliomas
14 there were at Harvard Medical School, at the Mayo Clinic,
15 they didn't find any.

16 Q. And it's your opinion, doctor, that Mr. Crawford's
17 mesothelioma was caused by asbestos?

18 A. Yes, sir, with medical certainty it was a result of his
19 cumulative asbestos exposure.

20 Q. Okay. Thank you, doctor.

21 MR. CHAPMAN: I pass the witness, Your Honor.

22 A. Thank you, sir.

23 THE COURT: Mr. Wall, cross-examination.

24 MR. WALL: Thank you, Your Honor.

25

1 CROSS EXAMINATION BY MR. WALL:

2 Q. Dr. Maddox, how are you doing today?

3 A. Very well, sir. Thank you very much.

4 Q. We met face to face the first time a little earlier?

5 A. Yes, sir, we exchanged greetings this morning when we
6 came into court.

7 Q. And I have been on the phone on several occasions
8 listening to you testify?

9 A. Yes, sir, I believe so.

10 Q. Okay.

11 A. Some of the depositions are given with -- some or -- on
12 occasion all of the people present by telephone rather than
13 in person.

14 Q. Okay. Now, you mentioned OSHA?

15 A. Yes, sir.

16 Q. Are you familiar with OSHA?

17 A. Yes, sir, OSHA was this regulatory commission that was
18 started by Richard Nixon during his first presidency period.

19 Q. When did it become the law -- it became the law in the
20 United States about 1970?

21 A. '70, '71, something like that.

22 Q. And isn't it true that OSHA says it's employer's duty
23 to provide a safe workplace for the employee?

24 A. Well, sir, I think that's probably correct. However, I
25 am not an industrial hygienist and I really don't feel that

1 I'm personally qualified to give testimony about the medical
2 legal aspects of OSHA.

3 Q. Are you aware that OSHA says it's employer's duty to
4 warn the employee of any hazards at the work site?

5 A. Well, sir, I think that's correct, but I really
6 couldn't quote that chapter and verse to you.

7 Q. All right.

8 Now, do you have in front of you your report?

9 A. Yes, sir, I have a copy here.

10 Q. Could you pull it out?

11 A. Yes, sir.

12 Q. Now, in the report there is a clinical history,
13 correct?

14 A. Yes, sir, that clinical history was provided to me by
15 the law firm. It is a concise preliminary type thing
16 subject to subsequent modification by exposure witnesses in
17 the case. I'm personally not an exposure witness.

18 Q. That's correct, but they sent this to you for purposes
19 of you making your diagnosis that Mr. Crawford has
20 mesothelioma, correct?

21 A. Well, sir, not so much the diagnosis of mesothelioma.
22 It's actually based on other criteria, but as far as the
23 attribution or causation, yes, sir, this would give --

24 Q. All right.

25 A. -- a basis for attribution.

1 Q. And because of the Helsinki Criteria, you had to get
2 items one, two, and three, which is fiber counts,
3 asbestosis, or pleural plaques, correct?

4 A. Well, yes, sir, that's right, because there wasn't any
5 lung tissue to study in this case. It was like pleural
6 tissue alone that was biopsied.

7 Q. And so as far of your diagnosis, you had to rely upon
8 the clinical history that was given to you?

9 A. Yes, sir, just like it says on the first page, that
10 that is the single most practical and reliable --

11 Q. Right.

12 A. -- aspect of basing attribution.

13 Q. Would you read into the record the information sent to
14 you by the plaintiffs' lawyers in this case for purposes of
15 helping you make your diagnosis?

16 A. Yes, sir. This will be a quotation.

17 Q. Yes, sir.

18 A. "For your reference. We are" --

19 MR. CHAPMAN: Your Honor, may I please an
20 objection on the record as to hearsay?

21 THE COURT: What's that?

22 MR. CHAPMAN: May I place an objection on the
23 record as to hearsay? This is Dr. Maddox's report and I
24 think Mr. --

25 THE COURT: Overruled. You introduced it and he

1 can use it.

2 MR. WALL: Thank you.

3 MR. CHAPMAN: Yes, ma'am.

4 A. Yes, sir. Here is what I received.

5 "For your reference, we are investigating Mr.
6 Crawford's work history and believe he was exposed to
7 asbestos at different times throughout his life. Mr.
8 Crawford worked at Celanese in Spartanburg, South Carolina,
9 for several years in the early 1970's. He worked in areas
10 containing insulated steam pipes. Mr. Crawford repeatedly
11 worked in close proximity to the removal, repair and
12 replacement of asbestos-containing insulation. This work
13 created visible dust. Later in his career for a few years
14 in the late 1970's he worked at Collins & Aikman in
15 Spartanburg, South Carolina. There were times that he
16 worked with and around insulated pipes. The work cleaning
17 asbestos from the pipes created visible dust.

18 "Additionally, for several years during the late to
19 mid-1960's Mr. Crawford spent most weekends and some
20 evenings at an auto repair shop that his brother-in-law
21 built behind his house. Mr. Crawford assisted with some of
22 the brake work performed there, but he mainly observed it
23 while standing two to three feet away. His brother-in-law
24 used compressed air to clean the brake drums he worked on,
25 which dispersed visible dust into the air."

1 BY MR. WALL:

2 Q. Thank you.

3 A. "While -- it continues.

4 "While we are not providing you with the case specific
5 testimony for Mr. Crawford at this time, please assume that
6 at the time of trial or deposition we will ask you
7 hypothetical questions regarding certain exposures and
8 whether or not such exposures would have been a substantial
9 contributing factor to Mr. Crawford's development of
10 asbestos-related disease."

11 Q. Thank you.

12 Then on page three of your report you listed your
13 opinions to a reasonable degree of medical certainty,
14 correct?

15 A. Yes, sir, correct.

16 Q. And you say based upon that exposure history that you
17 just read "the place of patient's cumulative asbestos
18 exposure caused the mesothelioma," correct?

19 A. Yes, sir, correct, his cumulative exposures to
20 asbestos.

21 Q. And cumulative exposure means every exposure?

22 A. Well, every significant exposure.

23 There are possible such things as trivial exposures,
24 but what was described today in my opinion was not a trivial
25 exposure. It was a relatively high dose exposure, so there

1 can be multiple components to a person's cumulative
2 exposure.

3 Q. And I want you to further assume that in addition to
4 working with the brother-in-law, that Mr. Crawford worked on
5 his own personal vehicles and changed brakes,
6 asbestos-containing brakes.

7 Based upon the information that you gave about brake
8 work and the additional information I gave to you about
9 brake work, do you have an opinion to a reasonable degree of
10 medical certainty whether his brake work was a substantial
11 contributing factor for his development of mesothelioma?

12 A. I'm going to have to start off by answering maybe. May
13 I explain that answer?

14 Q. Sure.

15 A. Okay. If you look at people that are career brake
16 mechanics, that perform multiple brake jobs every single day
17 and do that work for years, then you are going to find that
18 those individuals in some recent reports do have a
19 measurable increase in their risk of developing malignant
20 mesothelioma.

21 However, for the shade tree mechanic who may do his own
22 brake job, or his friends, or his family's brake job a few
23 times, there is probably some exposure and that may
24 constitute a minor contributory component of the overall
25 exposure, but you have to look at the amount. I mean, I

1 personally have done two brake jobs in my lifetime that I
2 can remember. I suppose that I probably had a little bit of
3 asbestos exposure during the time that I did that, but
4 relative to the occupational level exposures that he had
5 elsewhere, it's just not as much.

6 Q. I understand that, but it is an exposure, correct?

7 A. Depending upon the techniques that he used and the
8 things that I just mentioned a moment ago, there may be some
9 exposure there.

10 Q. And it is cumulative, correct?

11 A. Sir?

12 Q. It accumulates? It is cumulative exposure?

13 A. Well, yeah, I mean, the exposure doing that type of
14 work is additive to whatever other component exposures that
15 he would have had, including his occupational exposure.

16 Q. I want you to go back in your mind and remember the
17 hypothetical question that Mr. Chapman gave you.

18 A. Yes, sir.

19 Q. And I want to make a few additions to it.

20 I want you to assume that Mr. Crawford was exposed to
21 asbestos materials that was being removed by Daniel
22 Corporation at Celanese, and that materials that were
23 removed were placed there in the 1960s, and were sold and
24 manufactured by Johns Manville, Owens Corning, Unibestos
25 between 1970 -- the removal was between 1970 and 1974, on a

1 regular basis.

2 Do you have an opinion which you hold a reasonable
3 degree of medical certainty whether or not that exposure was
4 significant?

5 A. I would say that the asbestos that was involved in the
6 exposures that you just described was probably significant,
7 yes, sir.

8 Q. And would that exposure contribute to the development
9 of mesothelioma?

10 A. I would say that asbestos exposure probably would
11 contribute.

12 Now, as far as the legal responsibilities for that,
13 that aspect of the question I have to bounce back to you
14 because I'm not a legal expert.

15 Q. I understand.

16 Now I want you to assume again further that Mr.
17 Crawford was exposed to asbestos pipe insulation at Celanese
18 from 1970 to 1974, that was installed by Daniel Corporation
19 and manufactured and sold by Johns Manville, Owens Corning
20 and Arco from 1970 to 1974, on a daily basis. Was that
21 exposure significant, in your opinion?

22 A. In my opinion, the asbestos involved in those exposures
23 contributed to his cumulative dose which caused his tumor,
24 so that would be a yes.

25 Again, I have to bounce back the aspect that deals with

1 legal responsibility because I just don't know.

2 Q. And that's up to the jury?

3 A. Well yes, sir, certainly.

4 Q. Thank you.

5 MR. WALL: That's all I have.

6 A. Yes, sir. Thank you, sir.

7 MR. CHAPMAN: Nothing further, Your Honor.

8 We ask Dr. Maddox be excused.

9 THE COURT: Very good.

10 Yes. Dr. Maddox, thank you so much for your
11 testimony in this matter and you may be excused.

12 THE WITNESS: Yes, ma'am. Thank you very much.

13 THE COURT: Yes, sir.

14 All right, Ms. McVey?

15 MS. MCVEY: Your Honor, we would call Jerry
16 Crawford by video.

17 THE COURT: All right. The plaintiff, Jerry
18 Crawford, is called by video. You may proceed.

19 MS. MCVEY: Thank you, Your Honor.

20 (Whereupon, the videotape of Jerry Crawford was
21 played to the jury panel).

22 MS. MCVEY: That concludes Mr. Crawford's video.

23 THE COURT: All right.

24 Put the lights up, please.

25 All right, Ms. McVey.

1 MS. MCVEY: Your Honor, it's 12:30. I didn't know
2 if you wanted to break for lunch, or we can go forward with
3 more.

4 THE COURT: I think it's time to break for lunch.

5 Let's break for lunch now. It's 12:30. Let's be
6 back here at -- will 1:30 give us enough time, y'all? I'll
7 understand if you are not quite assembled, but let's at
8 least shoot for 1:30, and if it's a little later than that,
9 people needs to be back and refreshed before we start, but
10 we will make that a target. Thank you.

11 You may be dismissed from the jury room.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: All right, ladies and gentlemen,
15 anything before we break for lunch?

16 MR. BRANHAM: Judge --

17 MS. MCVEY: Go ahead.

18 MR. BRANHAM: -- we wanted to take up that issue
19 regarding corporate hearsay. I can do it after lunch or
20 right now, either way you would prefer.

21 THE COURT: How about let's take it up -- let's
22 try for about 1:15 or 1:20.

23 MR. BRANHAM: Perfect.

24 THE COURT: Okay. Very good.

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)

2 THE COURT: Okay. Ms. McVey?

3 MS. MCVEY: I'm going to --

4 THE COURT: Mr. Branham?

5 MR. BRANHAM: I hope you had a nice lunch, judge.

6 Judge, if Mr. Crawford had come into this
7 courtroom and attempted to say that one of his co-workers
8 told him that Covil was the insulator and working around him
9 and he was exposed to Covil insulation and he tried to say
10 that from the stand, that's 602, it's hearsay, it's not made
11 with personal knowledge. He can't say that from the stand.

12 And the same thing is true of Covil.

13 602, which is the rule of evidence in South
14 Carolina, says very, very clearly that a witness may not
15 testify to a matter unless the evidence is introduced
16 sufficient to support a finding that the witness has
17 personal knowledge of the matter. And personal knowledge is
18 defined in Blacks means that they personally perceived it.
19 And there is no exception under Rule 602, the hearsay rule,
20 for a corporate representative. It doesn't exists. It's
21 not there anyplace.

22 30(b)(6) witness is designed to allow the
23 plaintiffs to take a single deposition, rather than having
24 to take depositions seriatim of corporate witnesses to get
25 the answer. And this isn't just me saying that. This is

1 the Fifth Circuit Court of Appeals and any number of other
2 courts around the country.

3 And the central case here in 602 in South Carolina
4 is identical to -- not the South Carolina 602. The Federal
5 Rule of 602 and South Carolina Rule 602 are identical. And
6 what the Union Pump Centrifugal Technology case says from
7 the U.S. Fifth Circuit Court of Appeals in 2010, is that it
8 allows the corporate representative to testify and that
9 32(a) allows an adverse party to use that testimony at
10 trial. However --

11 So an adverse party, that's me, I can use the
12 testimony against them, because there is an exception to the
13 hearsay rule. That's admission by a party opponent. Okay.
14 On the other hand, they can't.

15 However, a corporate representative may not
16 testify to matters outside his own personal knowledge to the
17 extent that the information is hearsay not falling within
18 one of the exceptions. And they cite the Brazos River case,
19 which is the predecessor to the Union Pump case, which says
20 exactly the same thing as the Union Pump case.

21 Then there is cases all over the country that say
22 the exact same thing. And that's exactly what we have here.

23 Mr. Glenn first heard about Covil Corporation four
24 weeks ago. He has zero personal knowledge of anything that
25 Covil ever did, said, act upon. You heard Mr. Wall say in

1 his opening they have been defunct since 1991. He can't
2 know anything of his own personal knowledge.

3 So they have a corporate representative and I'm
4 entitled to take his deposition and those are admissions.
5 We all know that that's an exception to the hearsay rule.

6 On the other hand, he has no personal knowledge of
7 what Covil knew or did. The only thing he knows is what
8 he's read. That's a hearsay statement. Or what he's read
9 from Jim Palmer -- or Jim Covil or Palmer Covil. Those are
10 hearsay statements.

11 So if it's good for them, candidly, they can't
12 come in and put that up any more than Jerry Crawford could.
13 It's hearsay without exception, and that's just the simple
14 truth of it and it's against not just me, it's lots of
15 courts interpreting the exact same evidentiary rule that
16 South Carolina has here.

17 I will tell you that Judge Norton from the
18 District of South Carolina in a case called Morris, 2013
19 Westlaw 212587 from 2013 has cited the Brazos River case,
20 which is cited in the middle of middle of block post,
21 approvingly, albeit for a different issue.

22 THE COURT: All right.

23 Mr. Wall?

24 MR. WALL: Yes, Your Honor.

25 Your Honor, as you recall we -- not this witness,

1 but in Whitmire we tried to quash the deposition -- I mean
2 the trial subpoena notice that they served on our corporate
3 representative -- served on me for the corporate
4 representative, and we said you can't make them come more
5 than a 100 miles, blah, blah, blah, blah, blah, and we filed
6 a motion to quash that subpoena and the court denied that
7 subpoena -- yes, that subpoena, said that the corporate
8 witness can be required to come to trial. And because of
9 that we have brought our corporate witness here.

10 Your Honor, and since they have subpoenaed him
11 here, because he's more than a 100 miles from Charleston
12 where he lives, they have him. He's here. If they put him
13 up, they're at risk of anything he says.

14 In that same motion, we argued that they are
15 correct. The rules say you can use a 30(b)(6) deposition
16 for any purpose, but it doesn't say you can bring the
17 witness here. It's against the rules. So that's why we
18 filed the motion. We did not file it in this case, because
19 you turned us down in the other case.

20 Second, the rule says unless there is an exception
21 to the hearsay. And the things we would have this man
22 testify about are records regularly kept in the conduct of
23 the business, which is exception number six, and number 16,
24 which are ancient documents. The documents are more than 20
25 years old that he would be testifying about.

1 And, again, once they put him up, I think he is
2 open to examination by me.

3 MR. BRANHAM: Just briefly in response?

4 THE COURT: All right, sir.

5 MR. BRANHAM: We are complaining two different
6 issues. Covil is a party, just like Mr. Crawford is.
7 Parties can be subpoenaed, so that's that issue.

8 The issue of the business records and ancient
9 documents, those are exceptions to the hearsay rule for
10 those documents. In other words, if they want to take a
11 document and put it on the elmo and publish it as a business
12 record, by all means. Those documents are accepted from the
13 hearsay rule. That is very different than handing Mr. Glenn
14 a document and asking him about that document. Mr. Glenn
15 has no idea how that document was created. He has no idea
16 what the thought process was going on in the document.

17 The only thing that they can do is publish those
18 documents to the jury because those documents will transmit
19 whatever information is within them. It's when he begins to
20 get into "well, this is what it meant; this is why it was
21 written; this is what was going on," that you get into a
22 problem with the hearsay rule.

23 So we are conflating two different issues. I have
24 no problem with business records being published to the
25 jury, you know, or ancient documents being published to the

1 jury that otherwise would be an exception to the hearsay
2 rule, but that's very different than putting him on the
3 stand and asking him to parrot information about which he
4 has no personal knowledge. Under 602 he has to have
5 personal knowledge and there is no exception to the hearsay
6 rule for that, and that's what those cases say.

7 MR. WALL: We are not putting him up for any
8 knowledge that he has or he gleaned from.

9 We could publish the documents to the jury anyway
10 we want to and we prefer to have Mr. Glenn publish the
11 documents that this is what -- "this is what I found," or
12 "this is what I didn't find. I went through all the records
13 and couldn't find anything," and that's what he is going to
14 say. He's going to say "I went through all the records we
15 have." He says in his deposition, read his deposition, "I
16 went through all the documents I have. There is no document
17 of Celanese," and we have some documents of Celanese that
18 says Covil worked at Celanese. We have documents from
19 Dupont -- excuse me, from Daniel and there is no document
20 that says Daniel hired Covil on the project. That's what
21 Mr. Glenn is going to say. Basically those are the things
22 that he's going to say, "either I have it or I don't have
23 it, and this is what I have and this is -- I'm not going to
24 interpret them at all. These are the documents."

25 MR. BRANHAM: I have no objection to that at all.

1 If what he wants to say is "I looked --

2 MR. WALL: Right, that is all he can say.

3 MR. BRANHAM: But -- so here is the thing, right?

4 We are going to ask him when Covil first learned about
5 mesothelioma, which is in 1966 at the Selikoff conference.

6 That's admission by a party opponent, right? We know that's
7 been said and he's going to testify that that's true.

8 On the other hand, if Mr. Wall wanted to elicit
9 "well, Covil didn't really learn about mesothelioma, they
10 only learned about asbestosis," that's hearsay without
11 exception.

12 And so we are permitted, because his statements
13 are admissions by party opponent, which is an exception to
14 the hearsay rule, to elicit things that go beyond his
15 personal knowledge, whereas they are not, and that's the
16 issue here. And as long as I'm hearing that they are not
17 going to do that, then we don't have any argument.

18 MR. WALL: Your Honor, that's one of the reasons
19 that they are saying that he was not prepared, because they
20 wanted him to do all of this, "what does that document mean?

21 "I don't know, Palmer Covil never wrote it down."

22 That's why they made sanctions against us, because
23 he can't do that. He can't get into Palmer Covil's mind.
24 He cannot think about what Palmer Covil thought about 30, 40
25 years ago.

1 All he can say is "this is all I have. This is
2 what it is." That's all he's doing.

3 MR. BRANHAM: And if that's all he's doing, judge,
4 I'm fine with it. It's jusut if we get into that historical
5 knowledge and they are attempting to elicit what that means
6 from Mr. --

7 THE COURT: Okay. Y'all have said the same
8 thing --

9 MR. BRANHAM: Sorry.

10 THE COURT: -- several times.

11 MR. BRANHAM: Sorry.

12 THE COURT: I don't want to a hear it a fourth --

13 MR. WALL: Your Honor, to turn around, he should
14 not be allowed to ask Mr. Glenn "well, why don't you know
15 what this means? Why don't you know what they did? Why
16 don't you know what they didn't do? Why don't you know what
17 went on there?" All he can do is talk about the documents
18 themselves.

19 THE COURT: Mr. Wall, the rules put you in a
20 different position from Mr. Branham with respect to this
21 witness, in my view. He is a --

22 Covil is required to designate a corporate
23 representative and I have sanctioned Covil for their failure
24 to designate someone who could adequately respond to
25 reasonable questions about Covil, as well as sanction them

1 for spoliation of evidence.

2 What I don't want to do is open the door to Mr.
3 Glenn talking about things of which he has no knowledge.

4 I agree completely that the ruling that a 30(b)(6)
5 witness cannot be offered by someone in your position to
6 testify as to hearsay.

7 The 30(b)(6) is discovery. If in discovery they
8 find out things, they can be entered as admissions of a
9 party opponent, which is another exception to the hearsay
10 rule, but I want to be darn sure that -- you can, of course,
11 except to the ruling, but if you ask him questions there,
12 they are going to be strictly limited to asking him
13 questions about documents that you want admitted.

14 Documents -- he's going beyond his brief when you
15 ask him about documents he can't find. I don't know what
16 the reason is he can't find them. That is one of the things
17 that was the subject of a good deal of conversation in
18 connection for sanctions against Covil for not doing a
19 proper job of finding and maintaining these records. They
20 obviously were in existence at one time and that's going to
21 be testified to. So if --

22 You started out by saying all we want to do is
23 deal with the two exceptions to the hearsay rule we think
24 pertain to his testimony, which is records and ancient
25 documents. And if that's what you are asking him about, he

1 can proffer the records and the ancient documents you want
2 to put into evidence. In fact, you can put those in without
3 him. But if you want to put those in and you say "I want to
4 have him put them in," that's fine, but if you get into the
5 business of asking about things he can't find, he doesn't
6 have enough knowledge to know what happened to those things
7 and I'm not going to permit that testimony.

8 MR. WALL: Your Honor, I was going to ask him if
9 he looked at every record that he's aware of that --

10 THE COURT: Well, we already know that that's not
11 so. He was furnished with 25,000 pages of material and he
12 examined about a 100 pages of that material, according to
13 his 30(b)(6) deposition, and then he flipped through the
14 depositions of the two Covils and that's -- and Mr. Crawford
15 and that is it, from what I understand he said in his
16 30(b)(6). Am I wrong about that?

17 MR. WALL: You are close enough. I'm not going to
18 argue with it.

19 THE COURT: Well, that is why I'm not going to
20 permit him to say he could not find. He has no basis for
21 saying that, because he didn't even examine all the records
22 that were given to him by Covil.

23 MR. WALL: He word searched them and -- under
24 Celanese and under Daniel he word searched all the documents
25 and these are the only ones that showed up.

1 THE COURT: Well, that's not good enough for me.

2 What he is wanting to testify to is that he can't
3 find any records of Covil supplying these folks. There
4 might be many different ways that could be done, but he is
5 going to make a blanket statement about that without having
6 looked at all those documents and I'm not going to permit
7 it. So that's my ruling. And I know that you except it to
8 and I respect that.

9 Very good. Bring the jury in, please, sir.

10 MR. WALL: Your Honor, before we come back, at
11 this point I think I need to make a motion for a mistrial.

12 THE COURT: Denied.

13 MR. WALL: I understand that, but I just wanted to
14 put on the record that I'm making a motion for a mistrial
15 because of this ruling, cumulative on the other rulings
16 about the evidence.

17 THE COURT: All right, sir. You are protected and
18 it's denied.

19 MR. WALL: Thank you.

20 MR. BOGER: And, Your Honor, just to put a bug in
21 your ear, I still want to put something on the record about
22 one of the witnesses they are showing today. Perhaps --

23 THE COURT: Waters?

24 Yeah, I noticed more filings than a show dog can
25 jump over in the Waters case in Richland County. I'm not

1 going to try that case on the side here today.

2 MR. BOGER: We will give some for food for
3 thought, but if maybe if we take a break --

4 THE COURT: I haven't read any of it. I just got
5 the notification of electronic filings about like this.

6 MR. BOGER: But -- yes, ma'am. If we could maybe
7 at a break discuss what I would like to put something on the
8 record before they play this video or not in front of the
9 jury.

10 THE COURT: Well, wait a minute.

11 MS. MCVEY: We are going to play the video.

12 MR. BOGER: You are going to play it right now?

13 MS. MCVEY: We are going to play Harley Neelands,
14 who is really quick, and then we are going to play Mr.
15 Waters.

16 MR. BOGER: All right. Well, I need to say what I
17 need to say.

18 THE COURT: Well, I can't bring the jury in here
19 and then have that go on.

20 MS. MCVEY: I agree, Your Honor. I think we have
21 already argued it. You had a filing on it. You have ruled
22 on it. I think he's protected without making the argument.

23 THE COURT: This?

24 All right, two things.

25 Number one, they got something else they want to

1 put on the record, so we got to keep my jury back for a
2 minute.

3 The second thing is they don't need this TV until
4 tomorrow.

5 THE BAILIFF: Thank you.

6 THE COURT: So you are cool.

7 All right. Let's put this on the record.

8 Quickly, Mr. Boger.

9 You know, let me just say this. After a judge has
10 ruled, our rules say that only the judge invites further
11 comments, if that comment is needed, and I thought we had
12 our complete discussion of that. You submitted a brief.

13 The rules don't entitle you to submit a brief and
14 put additional material on the record, unless I invite it,
15 so I don't want this to be lengthy. I promised the jury I
16 wouldn't do this and here I am doing it. You were right
17 there. You could have insisted on that, but you didn't.

18 MR. BOGER: I apologize, Your Honor. I will be
19 brief. I appreciate the court's indulgence.

20 As you know, we have filed a motion and objected
21 to the presentation of Mr. Waters in this matter.

22 Mr. Waters filed his own case that was ongoing.

23 As the court is aware, just generally what we
24 suspect Mr. Waters' video is going to show and what he's
25 going to testify to, which we object to, Mr. Waters was a

1 Covil employee beginning in 1972. He's identified in his
2 deposition several different plants and locations around the
3 south that he worked in. There is no mention of Mr.
4 Crawford in his deposition or being a co-worker of Mr.
5 Crawford. And Mr. Waters identified that at some point he
6 worked at a Celanese plant in Greenville. There is no time
7 line of when he worked in the Celanese Greenville plant and
8 there was no mention of a Spartanburg plant that he worked
9 in.

10 And there are two pieces of testimony that we
11 believe are irrelevant to this case and prejudicial.

12 In that one Mr. Waters alleges that Covil
13 employees committed theft of materials from a plant owned by
14 Duke Power, the McGuire plant, in the late seventies and
15 early eighties. Clearly Mr. Crawford did not work at that
16 plant. It was after what we have all agreed upon is the
17 period of exposure and we think that is highly prejudicial
18 more so than probative in this matter.

19 Additionally, Mr. Waters has testified that Covil
20 at one point was placing asbestos products in boxes that
21 were labeled asbestos free. The plaintiff designated
22 testimony as such, but did not include testimony from Mr.
23 Waters that essentially says that that occurred when he was
24 at the BASF plant in 1974 and 1975. There is no mention of
25 that occurring at the Celanese Spartanburg plant during the

1 time frame of relevant exposure to Mr. Crawford in this
2 case.

3 And, again, there is no testimony about any theft
4 occurring by Covil employees at the Spartanburg Celanese
5 plant.

6 And, again, nothing about Covil placing asbestos
7 products in asbestos-free boxes at the Spartanburg plant
8 from 1970 to 1974. That's -- it's irrelevant to this case,
9 Your Honor. Thank you.

10 THE COURT: All right. Anything further?

11 MS. MCVEY: Do you need to hear any argument?

12 THE COURT: I don't think so.

13 MS. MCVEY: Okay.

14 THE COURT: I have made the ruling that he will be
15 allowed to testify and the ruling stands.

16 All right. You may bring in the jury.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: Ladies and gentlemen of the jury, I'm
20 sorry I'm tardy. There are -- you can put that on me, but
21 we had to take up some matters that required some rulings
22 and they had to be done before I could bring you back, but
23 don't blame these very fine lawyers, but blame this judge,
24 if you want to blame somebody.

25 I hope you had a pleasant lunch and we will

1 continue now.

2 Ms. McVey?

3 MS. MCVEY: Your Honor, the plaintiffs calls
4 Harley Neelands by video.

5 THE COURT: Very good.

6 MS. MCVEY: If y'all can't hear, if you will just
7 wave. I can turn it up or down.

8 THE COURT: How are y'all hearing these things?
9 Are you good? All good.

10 (Whereupon, the Video Deposition of Harley
11 Neelands was played to the jury panel)

12 MS. MCVEY: Your Honor, we have got one more short
13 video.

14 THE COURT: Very good.

15 MS. MCVEY: We will call Dwaine Waters.

16 THE COURT: All right. Dwaine Waters was called.
17 All objections preserved.

18 MR. WALL: Thank you, Your Honor.

19 (Whereupon, the Videotaped Deposition of Dwaine
20 Waters was played to the jury panel)

21 MS. MCVEY: Your Honor, that concludes the video
22 depositions.

23 We have got Mr. Glenn, but I didn't know if you
24 want to take a break in between.

25 THE COURT: All right. Well, let's put the lights

1 back up.

2 Yeah, why don't we take our afternoon break.

3 We will take a break for the afternoon. It's
4 about 12 after. Why don't you just be back here at 25 after
5 and be sure everyone is refreshed and ready to go, Madam
6 Forelady.

7 JURY FOREPERSON: Okay.

8 THE COURT: Very good.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: All right. Anything further? If not,
12 be at ease.

13 MS. MCVEY: Thank you.

14 THE COURT: We will start back up about ten or
15 twelve minutes.

16 (Whereupon, proceedings were recessed)

17 (Whereupon, proceedings were reconvened)

18 THE COURT: Everybody ready?

19 MR. WALL: Your Honor?

20 THE COURT: Yes, sir.

21 MR. WALL: I would like to put -- I guess to state
22 my objection on the record.

23 THE COURT: All right. Yes, sir.

24 MR. WALL: I have no idea what the plaintiff is
25 going to do, but it's my position that they are limited to

1 the examination of Mr. Glenn to the matters that were
2 brought up in his 30(b)(6) deposition and they cannot go far
3 afield from that, because this is not just a -- this is not
4 a magistrate's court witness. This is a special 30(b)(6)
5 witness and they should not be allowed to go anywhere they
6 want. They need to be limited to the notice on the 30(b)(6)
7 witness.

8 THE COURT: Right.

9 I understand what you are saying, Mr. Wall.

10 I have taken the position in all of these trials
11 that 30(b)(6) witnesses are corporate witnesses. They are
12 the representative of the corporation. They may be
13 subpoenaed and they may be asked questions about anything.

14 30(b)(6) is a discovery tool. It does not limit
15 the role of the witness.

16 The limitations that I have placed on your use of
17 the witness proceed from the hearsay rule, its exceptions in
18 part being admissions of a party opponent. And because this
19 witness is a designee of the corporation as its corporate
20 representative, he is not only someone who had to respond to
21 the 30(b)(6)'s, but he's also present in this courtroom as
22 the voice of the corporation. And as the voice of the
23 corporation, his 30(b)(6)'s are admissible admissions of a
24 party opponent and his presence can be required by them to
25 answer questions that they propound to him about this

1 matter, if he knows, because he is a representative of the
2 corporation.

3 MR. WALL: But he's not required to know under
4 Rule 30(b)(6) everything in the world. He is only required
5 to know about those issues that were set forth in the
6 notice.

7 THE COURT: Well, the 30(b)(6) contains its own
8 requirements and responsibilities for a witness. I have
9 already visited that subject and found that he was not
10 responsibly prepared by Covil Corporation to be its
11 corporate representative and responsive to 30(b)(6) and
12 sanctions have been issued for that. That topic is beyond
13 us. It's over. I have ruled.

14 With respect to this matter, you are raising
15 something different. You are saying, for reasons I'm not
16 quite sure I understand, that he should be confined to those
17 matters he was asked about at his 30(b)(6) deposition.

18 What I'm saying to you is I view the matter
19 differently. I view the corporation as an entity that
20 speaks only through its representatives. Covil has chosen to
21 make this man the voice of the corporation. He's -- that
22 Covil has already been sanctioned because they didn't
23 prepare him well enough, but he is still the voice of the
24 corporation. He's the designated corporate representative
25 of Covil. And, in fact, the only other person I know of

1 that might have any knowledge sufficient to be the
2 corporation representative has refused to testify and that's
3 Mr. Jim Covil, because it's been represented that he's not
4 capable of testifying.

5 So the only individual that's been identified by
6 the corporation as its corporate witness representative is
7 this gentleman, Mr. Glenn, and I am not going to limit the
8 questions the plaintiff may ask him in that capacity.

9 I am limiting your questions because of the cases
10 under 30(b)(6) that say that you are so limited by the
11 hearsay rule and I place those limitations on you.

12 That's the ruling I have made. I think I have
13 done everything that I can do. I don't know what else.

14 MR. WALL: Under the rules the corporate
15 representative who is going to testify only has to do --
16 have knowledge that they tell us in advance they want him to
17 be knowledgeable about.

18 THE COURT: That is in his role as a 30(b)(6)
19 witness.

20 He is now here in his role as a corporate
21 representative and they have subpoenaed him in that capacity
22 and he just is a regular old normal witness in that capacity
23 and if he knows, he can say he knows. And if he doesn't
24 know, he says he doesn't know. That's different from the
25 requirement that you make available an individual that you

1 prepare to be -- to give discovery information about the
2 corporation.

3 MR. WALL: Your Honor, I don't want to get back
4 into it, but he's traveled more than a 100 miles, and so
5 he's only here as a corporate representative under 30(b)(6).

6 THE COURT: No, sir, he's here because he's a
7 subpoenaed witness.

8 And corporations who are subject to lawsuits in
9 the State of South Carolina cannot escape responsibility to
10 have their representative here by the 100 mile limitation.
11 They are able to be subpoenaed because they are defendants
12 in this lawsuit and you all have chosen to make him your
13 representative in that regard. Therefore, his attendance is
14 not constrained by the 100 mile limitation.

15 I'm still not sure how you are relating that to
16 30(b)(6), but I have ruled on that matter. I have ruled on
17 it about three times now and I believe your objection is in
18 the record and my ruling is in the record, so we are going
19 to go forward.

20 MR. WALL: All right, Your Honor.

21 And I -- just according to notice I have a feeling
22 they are going to go all over the world and there's things
23 that we have never talked about, things that he never
24 considered, and I know I can't do it in advance, but I'm
25 going to make another motion for a directed -- excuse me,

1 a --

2 THE COURT: Mistrial?

3 MR. WALL: Mistrial. Thank you, Your Honor. A
4 mistrial, if, in fact, they go too far.

5 THE COURT: Well, I don't want you -- I'm not
6 going to inhibit you from making a motion, but I don't want
7 to have us get into all that colloquy in front of the jury.

8 MR. WALL: That's what I'm saying, Your Honor.

9 THE COURT: All right. You have made your motion
10 for a mistrial. If you want to repeat that notation --

11 What I'm just trying to avoid is having the jury
12 sit through a whole bunch of objections and me have to send
13 them back out again and all that kind of thing.

14 MR. WALL: I don't know --

15 THE COURT: But I'm not constraining you. You are
16 going to do what you are going to do, I feel sure, so let's
17 go get at it and we will see how it goes.

18 MR. WALL: Yes, Your Honor.

19 THE COURT: All right. Bring the jury in, please,
20 sir.

21 Y'all had sent me a draft by e-mail, Ms. McVey, of
22 your jury charges. Do you also have a hard copy for me?

23 MR. BRANHAM: Yes, I can have one very shortly for
24 you, Your Honor.

25 THE COURT: Very good. Thank you.

1 (The following takes place in the presence of the
2 jury panel)

3 THE COURT: All right, ladies and gentlemen of the
4 jury, the plaintiffs' case continues.

5 Mr. Buha?

6 MR. BUHA: Mr. Glenn of the Covil Corporation.

7 THE COURT: All right. You are calling Covil
8 Corporation in the person of its corporate representative,
9 Mr. Robert Glenn, correct?

10 MR. BUHA: That's correct.

11 THE COURT: Mr. Glenn, if you will come around,
12 please, sir, and the clerk will administer the oath.

13 ROBERT GLENN, having been first duly sworn,
14 testified as follows:

15 THE WITNESS: I do.

16 DIRECT EXAMINATION BY MR. BUHA:

17 Q. Mr. Glenn, we met briefly. I'm Mark Buha and I
18 represent --

19 THE COURT: Mr. Buha, I'm going to ask you to
20 speak up a little bit, please, sir.

21 MR. BUHA: Absolutely.

22 BY MR. BUHA:

23 Q. Mr. Glenn, I'm Mark Buha and I represent the plaintiff.
24 Could you please state your name for the record?

25 A. Yes, it's Robert Glenn.

1 Q. And Mr. Glenn, where do you currently reside?

2 A. I live outside of Charleston, South Carolina, Johns
3 Island.

4 Q. Okay. And Mr. Glenn, you are the person that Covil
5 Corporation designated as its representative, correct?

6 A. That is correct.

7 Q. And the Covil Corporation selected you to speak on
8 behalf of the company in matters relevant to the Covil
9 Corporation in this case, correct?

10 A. That's correct.

11 Q. And you understand that today you are the voice of
12 Covil Corporation as it relates to the matters in this case,
13 correct?

14 A. Yes, sir.

15 Q. Okay. And in preparing to become the representative
16 for Covil Corporation you have learned that you are not the
17 first person to be its representative in an asbestos case,
18 correct?

19 A. That is correct.

20 Q. And first someone named Palmer Covil gave a deposition
21 in 1977 as the representative of Covil, correct?

22 A. I'm aware of that, yes, sir.

23 Q. And Palmer Covil was the founder of Covil Corporation,
24 right?

25 A. I'm aware of that, yes, sir.

1 Q. And he founded Covil in about 1947, 1948, right?

2 A. I have seen both of those dates, yes, sir.

3 Q. Okay. And he gave a deposition over about three days
4 in 1977, correct?

5 A. Yes, three volumes of his deposition.

6 Q. And by that time, in the 1970's, Covil employed several
7 hundred employees, is that right?

8 A. Yes.

9 Q. And Palmer Covil, he's no longer with us, is that
10 correct?

11 A. No, he passed away in 1984.

12 Q. Okay. And then someone named James Covil has given a
13 few depositions as a representative for Covil in asbestos
14 cases, is that correct?

15 A. He's given two that I have seen.

16 Q. And James Covil, he's the son of Mr. Palmer Covil,
17 correct?

18 A. That is correct.

19 Q. And James Covil began working full time for Covil
20 Corporation in about 1974, correct?

21 A. That is correct.

22 Q. And he continued to work there until about 1991,
23 correct?

24 A. That's correct.

25 Q. And you read the depositions of Mr. James Covil,

1 correct?

2 A. Yes, I did.

3 Q. And, of course, you read that he gave these depositions
4 as a representative of Covil Corporation in February and
5 March of this year, correct?

6 A. Yes, that's correct.

7 Q. And, of course, you understand that James Covil lives
8 in Greenville, South Carolina, correct?

9 A. That is my understanding.

10 Q. You have never worked for Covil Corporation at any
11 point in your life, correct?

12 A. I have never been an employee per say.

13 Q. Okay. And you were asked to be a representative for
14 Covil Corporation less than a month ago, correct?

15 A. Yes, about three weeks.

16 Q. And prior to that time, about three weeks ago, as you
17 said, you had never even heard of Covil Corporation, is that
18 correct?

19 A. That is correct.

20 Q. Okay. And you have never been in the thermal
21 insulation contracting business, is that correct?

22 A. I have not.

23 Q. Now, Mr. Glenn, you personally -- you are a certified
24 industrial hygienist, is that right?

25 A. That is correct, yes.

1 Q. And you are currently a principal at the Glenn
2 Consulting Group, right?

3 A. Yes, I am.

4 Q. And you are the only principal there?

5 A. That's correct.

6 Q. And that's operated since about 2010, is that right?

7 A. Yes.

8 Q. And among other things, you testify as an expert
9 witness in litigation, correct?

10 A. I do.

11 Q. And you spend about 20 to 25 percent of your time as a
12 consultant and expert in litigation, correct?

13 A. That's correct.

14 Q. And you have been testifying as an expert --

15 MR. WALL: Objection, Your Honor. This has
16 nothing to do with the corporate history of Covil
17 Corporation.

18 MR. BUHA: It goes to bias, Your Honor.

19 THE COURT: Overruled.

20 BY MR. BUHA:

21 Q. And you have testified as an expert witness by
22 companies defending themselves in litigation for about four
23 or five years now, right?

24 A. That's correct.

25 Q. And you have given about four depositions as an expert

1 witness by companies defending themselves in asbestos
2 litigation, is that right?

3 MR. WALL: Your Honor, could I have a continuing
4 objection?

5 THE COURT: Yes, sir. Continuing objection is
6 noted. Overruled.

7 A. I think there are two depositions in asbestos and the
8 other two are related to other agents.

9 BY MR. BUHA:

10 Q. Okay. Fair enough.

11 And you do that for free, or are you compensated for
12 your time?

13 A. I'm compensated.

14 Q. And I understand that for your time as a consultant as
15 an expert and an expert, you are compensated at a rate of
16 about \$415 per hour?

17 A. That is correct.

18 Q. And in 2002 you started working in D.C. for a law firm
19 called Crowell & Moring, is that correct?

20 A. That was actually in 2004.

21 Q. 2004.

22 Okay. And Crowell & Moring is an international law
23 firm, fair?

24 A. They are.

25 Q. And from about 2004 to 2010, you worked out of D.C. in

1 the litigation group of Crowell & Moring as an in-house
2 consulting scientist, correct?

3 A. Yes.

4 Q. And you read depositions, provided summaries, made
5 reports on different medical aspects of cases, things of
6 that nature, right?

7 A. That's correct.

8 Q. And Crowell & Moring has defendant companies in
9 asbestos litigation, right?

10 A. Yes.

11 Q. And you participated in that, among other things,
12 during your time while employed at this firm Crowell &
13 Moring, correct?

14 A. As a non-testifying expert, yes.

15 Q. And although it's not a substantial part of your time,
16 Crowell & Moring still engages you to do work to this day,
17 correct?

18 A. I haven't done anything for them lately.

19 Q. Okay.

20 A. We separated in 2015.

21 Q. I see.

22 And you are familiar with an entity called the National
23 Mining Association, correct?

24 A. Yes, I am.

25 Q. And the National Mining Association represents

1 corporations in the coal and metals industry in the United
2 States, fair?

3 A. That is correct.

4 Q. And you have served as a lobbyist for the National
5 Mining Association, correct?

6 A. No.

7 Q. Has that always been your testimony, sir?

8 A. I'm not a lobbyist.

9 Q. Okay.

10 A. I'm not a registered lobbyist.

11 Q. Okay. In what capacity have you served the National
12 Mining Association, sir?

13 A. I have provided opinions on public policy.

14 Q. Okay. It's always been your testimony that you are --
15 is that you are not a lobbyist for the National Mining
16 Association, is that correct?

17 A. I have never been registered as a lobbyist, and I don't
18 consider myself to be a lobbyist, and never have.

19 Q. Okay. And you worked for the National Mining
20 Association during a period when the Mine Safety and Health
21 Administration wanted to lower the permissible exposure
22 limit for coal mine dust, is that correct?

23 A. I was -- I was consulted to the National Mining
24 Association. I worked for Glenn Consulting Group.

25 Q. Okay. And you worked for them during this time when

1 the Mine Safety and Health Administration wanted to lower
2 the permissible exposure limit, correct?

3 A. Yes, I consulted at that time.

4 Q. And just so the jury understands, permissible exposure
5 limit is the legal limit for exposure to a chemical
6 substance or a physical agent that a regulatory body allows
7 a person to be exposed to in a workplace, correct?

8 A. Yes, that's pretty much the definition.

9 Q. And when the Mine Safety and Health Administration
10 wanted to lower the amount of coal dust someone could be
11 exposed to in the workplace, the coal mining companies or
12 the National Mining Association hired you as a consultant in
13 that, correct?

14 A. Yes, because of my experience in research on coal mine
15 dust.

16 Q. And you have testified on behalf of companies that sell
17 mineral dust in the public policy arenas, correct?

18 A. Industrial minerals.

19 Q. Industrial minerals?

20 A. Yes.

21 Q. Okay. And you have testified on behalf of companies
22 that might be affected by regulations concerning exposure to
23 industrial minerals in front of state legislative bodies, is
24 that right?

25 A. Yes, I have done that.

1 Q. And you have testified before the Missouri legislature
2 on proposed legislation related to silica dust, is that
3 right?

4 A. That is correct.

5 Q. And you have testified before the Maryland legislature,
6 correct?

7 A. Yes.

8 Q. And you also submitted comments to an entity called the
9 National Institute of Occupational Safety and Health,
10 correct?

11 A. The Maryland testimony was not related to any agency or
12 occupational agency. I was testifying on recreational
13 fishing.

14 Q. Okay. I understand.

15 A. I was on the executive board of the Coastal
16 Conservation Association of Maryland.

17 Q. Okay. My question following that was you have
18 submitted comments to the National Institute of Occupational
19 Safety and Health on behalf of the Coalition For Litigation
20 Justice, correct?

21 A. National Institute For Occupational Safety and Health
22 and I was formerly employed by them for ten years.

23 Q. Okay. But you submitted comments to that institution,
24 the National Institutional For Occupational Safety and
25 Health on behalf of the Coalition For Litigation Justice, is

1 that correct?

2 A. That's correct.

3 Q. And Crowell & Moring, the D.C. law firm that you worked
4 for for a number of years, formed that group, The Coalition
5 for Litigation Justice, is that correct?

6 A. They did.

7 Q. And without getting too much into the weeds here, your
8 comments were about how to define asbestos versus
9 nonasbestos in minerals, such as talc, is that correct?

10 A. No, it was actually in asbestos minerals, not talc
11 minerals in that specific case. It dealt with both, talc
12 and asbestos.

13 Q. Okay. It dealt with talc and asbestos?

14 A. Yes, and it also dealt with the health aspect.

15 Q. And you have been retained as an expert witness a
16 company called Pfizer, correct?

17 A. Yes, I have.

18 Q. And you were retained by Pfizer in asbestos litigation,
19 correct?

20 A. Talc potentially contaminated with asbestos.

21 Q. Now, Mr. Glenn, you gave a deposition in this case last
22 week, is that correct?

23 A. That is correct.

24 Q. And at that time you were aware that there have been
25 about 24,000 pages of documents that have been produced by

1 Covil in this case, is that correct?

2 A. Yes, I'm aware of that.

3 Q. And prior to that deposition, in your preparation as a
4 role -- for your role as a corporate representative, you
5 read about a 100 pages of those documents, is that correct?

6 A. That's probably right at that time. I searched more of
7 them since then.

8 Q. Okay. And to be sure, you also read some depositions
9 prior to your deposition last week, right?

10 A. Yes, I did.

11 Q. And you read the deposition of Palmer Covil that took
12 place in 1977?

13 A. I did.

14 Q. And you read the depositions of James Covil that took
15 place earlier this year, right?

16 A. Yes.

17 Q. Now, you or your consulting group has charged Covil for
18 your time in preparing and testifying as a representative
19 for Covil, is that correct?

20 A. Yes, we will be. We haven't yet.

21 Q. I see.

22 And you testified in your deposition last week that up
23 until that time, a week ago, you had spent about 40 or 50
24 hours preparing for your role as a representative, is that
25 right?

1 A. Yes.

2 Q. And you charged Covil, was that also at the rate of
3 \$415 per hour?

4 A. That is.

5 Q. And did you charge Covil for the drive up from the
6 Charleston area up to here?

7 A. My fee structure is I charge door to door.

8 Q. That's about a three hour drive, something like that?

9 A. Yes.

10 Q. And do you charge for your time in the courtroom today?

11 A. Yes.

12 Q. Okay. And that's also at the same rate of \$415 per
13 hour?

14 A. That is.

15 Q. Now, between your deposition last week and when you
16 came to the courtroom today have you done any additional
17 work to prepare to testify as a representative for Covil
18 Corporation?

19 A. Yes, I have had some limitations of the time that I
20 could spend, but I have spent time, more time, but there is
21 a limitation to it.

22 Q. And could you estimate for us how much time that you
23 have spent since your deposition last week?

24 A. It's probably 40 hours.

25 Q. 40 hours in the last week?

1 A. 40 to 45, yes.

2 Q. Okay. So it was at least 40 hours before your
3 deposition last week?

4 A. Yes.

5 Q. And then another 40 hours in the last week, correct?

6 A. Approximately.

7 Q. And then at least three hours for your drive from the
8 Charleston area up to here, correct?

9 A. Correct.

10 Q. And you are going to bill Covil Corporation \$415 per
11 hour for all of that?

12 A. Correct.

13 Q. And so we are looking at at least 83 hours in which you
14 are going to bill at \$415 per hour, is that right?

15 A. Yes.

16 Q. Now, I'm not the best mathematician, but that comes out
17 to a little bit over \$34,000, is that right?

18 A. Sounds about right. I don't have -- I'm not great at
19 mathematics in my head either, so --

20 Q. Okay. Now, I'm going to switch gears -- switch gears
21 real quick -- real quick and not talk so much about you, but
22 I'm going to start asking some questions about Covil.

23 A. Okay.

24 Q. Now, Covil formed some time around 1947 or 1948, like
25 we talked about, right?

1 A. Correct.

2 Q. And Covil shut down or ceased operating in about 1991,
3 correct?

4 A. Yes, sir.

5 Q. And I want to go over briefly what Covil did as a
6 business during that time. Do you understand that?

7 A. Yes.

8 Q. And Covil sometimes acted as a distributor to
9 industrial sites in which it would purchase materials
10 manufactured by others, hold it in stock, and then sell it
11 to an industrial site. Is that one of the things that Covil
12 did?

13 A. Yes, they did. They sold it to industrial insulators.

14 Q. Right.

15 And other times Covil acted more as a broker than a
16 distributor. It would arrange for a sale between a
17 manufacturer of a product and an industrial site and the
18 manufacturer would then sell it directly from its
19 manufacturing site to the industrial -- to the industrial
20 site, correct?

21 A. Yes, they would sometimes have it shipped from the
22 manufacturer to the site where the work was going to be
23 done.

24 Q. And for brokering that deal Covil would receive a
25 commission for that work, is that fair?

1 A. Yes, I expect so.

2 Q. And among other products that Covil would distribute
3 between about 1948 and 1991 was asbestos-containing thermal
4 insulation during at least some of those years, right?

5 A. They did supply that, yes.

6 Q. And although Covil never manufactured any thermal
7 insulation products, Covil has put its brand name Covelite
8 on products manufactured by others, is that right?

9 A. There are two, yes.

10 Q. Okay. And in addition to acting as a distributor or
11 selling products, Covil sometimes would act as a contractor
12 or a subcontractor in which it was hired to do the labor of
13 installing thermal insulation at an industrial site, is that
14 right?

15 A. Yes, they did.

16 Q. And in those cases Covil's employees were on a job site
17 installing thermal insulation, is that right?

18 A. Yes.

19 Q. And sometimes in addition to installing insulation at a
20 site, Covil had maintenance contracts at a facility, right?

21 A. Yes.

22 Q. And Covil had to maintain the insulation at a facility
23 and the maintenance contract would define how long Covil
24 would be there, is that fair?

25 A. Yes.

1 Q. And Covil agrees that the contract business in which it
2 would install or maintain insulation represented about 60
3 percent of Covil's business and the distributor aspect was
4 about 40 percent, is that a fair estimate?

5 A. Yeah, I understand that 60 percent and 40 percent of
6 the revenue stream.

7 Q. And I think we said this earlier, but in the 1970's --
8 by the 1970's Covil had a couple hundred employees, is that
9 right?

10 A. Yes, 250, or so.

11 Q. Okay. And Covil agrees that it was the second largest
12 insulation contractor in the southeast United States in the
13 1960's and 1970's, is that right?

14 A. Yes.

15 Q. And Covil would sometimes have multi-million dollar
16 insulation contracts, is that right?

17 A. They did some large contracts, yes.

18 Q. And we mentioned that Covil sold at some time
19 asbestos-containing thermal insulation products, right?

20 A. They did.

21 Q. And prior to about 1974, or so, Covil sold a number of
22 different brands of asbestos-containing thermal insulation
23 products, right?

24 A. They did.

25 Q. And Covil sold asbestos-containing insulation products

1 made by a company called Owens Corning, correct?

2 A. Yes, they did.

3 Q. And have you ever heard of a product called Kaylo?

4 A. Yes, I have.

5 Q. And Owens Corning made this product called Kaylo, is
6 that right?

7 A. That's right.

8 Q. And during certain years, at least until about 1972, or
9 1973, Kaylo was an asbestos-containing calcium silicate
10 insulation, correct?

11 A. Yes.

12 Q. And Covil sold asbestos-containing Kaylo during certain
13 years, is that right?

14 A. I'm sorry, repeat that one.

15 Q. Okay. Covil sold asbestos-containing Kaylo during
16 certain years, correct?

17 A. Yes, sir.

18 Q. And Covil didn't just sell asbestos-containing theraml
19 insulation products from Owens Corning. It also sold
20 asbestos-containing insulation products from Johns Manville,
21 correct?

22 A. Yes. Yes, they did.

23 Q. And have you ever heard of a product called
24 Thermobestos?

25 A. Yes.

1 Q. And the name itself, Thermobestos, it sort of indicates
2 it was an asbestos-containing product, is that fair?

3 A. It is. It does.

4 Q. Okay. And Covil agrees that sometime Thermobestos
5 contained asbestos, right?

6 A. I have not seen where -- what Thermobestos contains in
7 their records, and I'm not that familiar with the term. I
8 have heard the term.

9 Q. Okay. And Covil also sold asbestos-containing
10 insulation products made by Armstrong Cork, is that correct?

11 A. Yes.

12 Q. And when Covil acted as a contractor at contracting
13 sites, Covil sometimes used raw asbestos, right?

14 A. They did.

15 Q. And Covil used the raw asbestos to mix cement or mud?

16 A. The mud, yes.

17 Q. And employees would mix the raw asbestos fiber with
18 water to make a kind of a paste or a mud and then apply that
19 mixture to curves or joints in the pipes, correct?

20 A. Elbows, around valves, and things -- T's and things of
21 that nature, yes.

22 Q. Now, Covil agrees that from 1948 to 1973, not all of
23 the thermal insulation products that Covil sold were
24 asbestos containing, correct?

25 A. No, that's right. They handled fiberglass for one.

1 Q. Right.

2 Covil sold some insulation products that could insulate
3 pipe and other machinery that was asbestos free, correct?

4 A. Yes.

5 Q. And one of those examples would be fiberglass, right?

6 A. Yes.

7 Q. Okay. And I'm going to briefly switch gears here for a
8 moment.

9 Now, Covil had a warehouse and an office located in
10 Greenville, South Carolina, is that right?

11 A. They did.

12 Q. And to be sure, in the 1970's Covil had a number of
13 other branches, right?

14 A. Yes, they did. They had other offices.

15 Q. And those other branches also had warehouses, correct?

16 A. The Greensboro operation did. I believe the Wilson
17 did. I'm not sure about the Albany, but it probably did.
18 I'm not sure.

19 Q. Okay. And Covil eventually or also had a branch in
20 Columbia, South Carolina, correct?

21 A. They bought a small insulation company in Columbia,
22 yes, and they had an office there.

23 Q. Okay. And so Covil had branches and warehouses in
24 Albany, Georgia, correct?

25 A. Yes.

1 Q. Columbia, South Carolina --

2 A. Yes.

3 Q. -- correct?

4 Greensboro, North Carolina?

5 A. Yes.

6 Q. And I believe you said Wilson, North Carolina?

7 A. Yes, and Greenville, South Carolina.

8 Q. And the headquarters or kind of the main office,
9 though, in the 1970's, that was nearby here in Greenville,
10 correct?

11 A. Greenville, in the Berea Industrial Park.

12 Q. Okay. And a fire occurred at that warehouse in May of
13 1973, is that right?

14 A. It did.

15 Q. And the fire did not destroy all of the warehouse, but
16 part of the warehouse, is that right?

17 A. From what I have learned, it was a pretty drastic fire.
18 I have seen photographs from the Greenville News where they
19 described it as an atomic fireball. The pictures in the
20 newspaper, it's pretty devastating. So I don't know exactly
21 how much was destroyed, but it looked pretty bad from the
22 photos that I have seen.

23 Q. Okay. And at the Greenville, South Carolina
24 headquarters, at that warehouse, there was also a vault, is
25 that correct?

1 A. It -- it was described in Mr. Covil's deposition as a
2 vault. I think now that it was actually a safe.

3 Q. Okay. And now it has been Covil's position that all of
4 its sales invoices prior to May of 1973 were destroyed in
5 that fire, is that correct, sir?

6 A. All of their invoices, yes.

7 Q. I'm going to ask you some general questions about Covil
8 and a company that the jury has heard a little bit about.
9 It's called Daniel Construction. And I'm going to ask these
10 about Covil and Daniel generally and not with respect to the
11 Celanese plant in Spartanburg. Do you understand that?

12 A. Yes.

13 Q. Okay. Now, Covil --

14 A. I might say in preparing for today I thought we were
15 going to talk about Celanese Spartanburg, so I'm not -- I
16 have read something about their other operation with Daniel
17 but I'm not as familiar.

18 Q. Okay.

19 Now, Covil agrees that throughout the years Covil had
20 contracts as a subcontractor for Daniel Construction, is
21 that fair?

22 A. Yes, they did.

23 Q. And Covil agrees that Daniel Construction was one of
24 Covil's biggest customers, correct?

25 A. They were one of the largest, yes.

1 Q. And Covil agrees that this relationship with Daniel, in
2 which Covil did work with Daniel Construction, this
3 relationship began by at least the early 1960's, correct?

4 A. Yes.

5 Q. And Covil has agreed -- or Covil agrees that Daniel
6 Construction, the contractor, was present at the Spartanburg
7 Celanese plant, is that correct?

8 A. Daniel was at that plant, yes. They built the original
9 plant.

10 Q. Now, this plant that we have been calling Celanese in
11 Spartanburg, it also went by the name Hoechst Celanese,
12 correct?

13 A. It did.

14 Q. And so if somebody identifies it as Hoechst in
15 Spartanburg, they are talking about this plant Hoechst
16 Celanese in Spartanburg, correct?

17 A. I would expect so, yes.

18 Q. Now, Covil claims that Covil's pipe insulation started
19 going asbestos-free in about 1973 or 1974, is that right,
20 sir?

21 A. It's '72, '73, '74, that time frame, yes.

22 Q. Okay. And as I understand it, it's Covil's contention
23 that Covil received a letter from Owens Corning that Owens
24 Corning was going to stop manufacturing asbestos-containing
25 pipe insulation in November of 1972, is that correct?

1 A. Yes.

2 Q. And Covil agrees that that same letter that Covil got
3 from Owens Corning said that all of their inventory would be
4 depleted in another year, is that right?

5 A. I'm sorry, repeat that.

6 Q. Sure.

7 Covil agrees that over the next year all of Owens
8 Corning's inventory would be depleted over that period,
9 correct?

10 A. Yes, it -- yes, it would take a year to cycle out what
11 was in the warehouse.

12 Q. So if Owens Corning --

13 Well, I'll set this back for a moment.

14 Owens Corning was probably the biggest supplier of
15 insulation that Covil used and sold, is that correct?

16 A. Yes.

17 Q. And Owens Corning, that's the company that made that
18 stuff Kaylo, correct?

19 A. That's correct.

20 Q. And if Owens Corning stopped manufacturing this
21 asbestos-containing Kaylo insulation in November of 1972,
22 and it took a full year for them to get rid of their
23 inventory, that could mean they were selling
24 asbestos-containing Kaylo until about November of 1973, is
25 that right?

1 A. Up until that time, yes.

2 Q. Up until --

3 A. It could have been shorter. It could have been a
4 little longer.

5 Q. But it could have been up until November of 1973 that
6 Owens Corning was selling asbestos-containing thermal
7 insulation, correct?

8 A. That's not my understanding.

9 Q. What's your understanding, sir?

10 A. My understanding is they stopped manufacturing it and
11 that Covil's warehouse took a year for it to get their stock
12 out. I was not -- it was not my understanding that Owens
13 Corning continued to manufacture or sell asbestos in '73.

14 Q. All right. We will circle back on that.

15 So your understanding is that it would take Covil a
16 year for it to get rid of its inventory, is that correct?

17 A. That's correct.

18 Q. And that would take us to about November of 1973,
19 correct?

20 A. Yes.

21 Q. And the fire that occurred, that was only at
22 Greenville's branch, correct?

23 A. Yes. Yes.

24 Q. And Covil had warehouses in which they stocked
25 inventory of asbestos-containing material at places besides

1 Greenville, right?

2 A. None of them were as large as at Greenville warehouse,
3 I guess.

4 Q. Okay. And regarding the last date that Covil sold
5 asbestos-containing pipe insulation, in reviewing all the
6 documents that you have reviewed in preparation for your
7 role as a representative for Covil, are you aware of any
8 verbal or written communication to any of these other
9 branches that said hey, we are going to stop selling
10 asbestos at this particular date?

11 A. I did not find that in our records, no.

12 Q. And Covil has not found a written asbestos policy that
13 references the last date that they are going to sell an
14 asbestos-containing product, is that fair?

15 A. I have not seen that, not in the records.

16 Q. Now, we talked earlier about a product called
17 Thermobestos, right?

18 A. Yes.

19 Q. And Thermobestos, the name, it sounds like something
20 that might be asbestos-containing, correct?

21 A. Yeah. I'm not sure, but was that a Johns Manville
22 product?

23 Q. Yes, it is, sir.

24 A. Okay.

25 Q. Okay. And Covil agrees that Covil sold Thermobestos to

1 a Firestone plant in Wilson, North Carolina in 1974,
2 correct?

3 A. I'm not -- I haven't studied up on the Wilson
4 operation. I'm sorry. I thought this was going to be
5 Spartanburg Celanese.

6 Q. Now, I want to talk to you about the last date that
7 Covil was selling asbestos-containing thermal insulation.
8 You read the deposition of James Covil, correct?

9 A. Yes.

10 Q. And you read his deposition on March 27th of 2018, this
11 year, correct?

12 A. Yes, that was -- there were two; one in February and
13 one in March.

14 MR. BUHA: Your Honor, may I approach?

15 THE COURT: You may.

16 BY MR. BUHA:

17 Q. And you you said when you reviewed these depositions in
18 preparation for your role as a representative for Covil, you
19 also looked at the exhibits that were attached to those
20 deposition, correct?

21 A. I looked at many of them, yes.

22 Q. And you would agree this is a Covil invoice, correct?

23 A. Yes.

24 Q. And you can see Covil Insulation Company there on the
25 top left-hand corner, correct?

1 A. I do.

2 Q. Hold on. I got to figure out how to do this.

3 And you can see there, it says -- you can see a stamp
4 received February 9, 1974, correct?

5 A. Yes.

6 Q. And you can see a sale of 710 or 711 feet of
7 Thermobestos, is that correct?

8 A. Yes.

9 Q. And this is in 1974, right?

10 A. Yes. I cannot make out whose stamp it's received by,
11 but there is a received by stamp.

12 Q. Okay. And Covil agrees that it continued to sell
13 asbestos-containing products after OSHA was implemented,
14 correct?

15 A. The OSHA rule came out in '72, so they would have sold
16 some after that, yes.

17 Q. And Covil sold the product that was about
18 three-quarters of one percent asbestos that was called One
19 Shot or Covilite, correct?

20 A. Yes.

21 Q. And you read the deposition of Palmer Covil, correct?

22 A. Yes, sir.

23 Q. And that deposition took place in 1977?

24 A. Yes.

25 Q. And you, of course, saw that Palmer Covil stated that

1 Covil was continuing to sell that product in 1977, correct?

2 A. Yes, that was the three-quarter of one percent
3 asbestos, yes.

4 Q. And Covil also sold asbestos-containing cloth until the
5 time of that deposition in 1977, correct?

6 A. Yes. As I understand it they were using the cloth to
7 make thermal blankets in their fabricating shop in
8 Greensboro and the material that was fiberglass inside the
9 blankets, but the cloth was asbestos cloth.

10 Q. And Covil was continuing to sell that
11 asbestos-containing product until at least 1977, correct?

12 A. Yeah.

13 Palmer Covil, it was his understanding that that
14 material would not be released in manufacturing or using
15 that cloth, but --

16 Q. And you would agree, sir, that Covil never tested any
17 of its asbestos-containing products, true?

18 A. Yes, they never tested them.

19 Q. Okay. And so how did Covil know at that time that the
20 asbestos-containing blanket material wouldn't release any
21 asbestos dust, right? They didn't know that?

22 A. I could answer as an industrial hygienist.

23 Q. Okay. And I'm asking you Covil Corporation.

24 A. Okay.

25 Q. At that time given that it hadn't done any testing,

1 Covil wouldn't know whether that product released any
2 asbestos dust, correct?

3 A. They would not.

4 Q. Okay.

5 Now, today, in 2018, Covil understands --

6 Or Covil agrees that exposure to asbestos can cause
7 lung cancer, correct?

8 A. Today?

9 Q. Yes.

10 A. Yes, they do.

11 Q. And today Covil agrees that based on the science there
12 is a relationship between asbestos exposure and the disease
13 mesothelioma, correct?

14 A. Yes.

15 Q. And Covil agrees that asbestosis is also an
16 asbestos-related disease, correct?

17 A. That is correct, all three of those.

18 Q. And Covil agrees that asbestosis can be a fatal
19 disease, correct?

20 A. Yes.

21 Q. And Covil knew that ever since they found out about
22 asbestosis, correct?

23 A. About asbestosis, yes, and they knew in the sixties,
24 mid-sixties.

25 Q. Okay. And, sir, you understand that Mr. Palmer Covil,

1 he passed away in 1984, is that correct?

2 A. Correct.

3 Q. And it's true that he also died of an asbestos-related
4 disease, is that correct?

5 A. He did die of what could have been asbestos-related
6 disease. His son thought it was lung cancer. His attorney
7 thought it was mesothelioma.

8 Q. Okay. And he gave a -- I'm sorry, family members gave
9 a deposition in a case that he had regarding that
10 asbestos-related disease, is that correct?

11 A. I'm not sure of that.

12 Q. Okay. Now, we talked about how Covil started its
13 business in about 1947, 1948, right around there, right?

14 A. Yes.

15 Q. And Covil was a member of a few trade organizations,
16 correct?

17 A. Yes.

18 Q. And Covil was a member of those trade organizations
19 going back into at least the 1960's, correct?

20 A. Yes.

21 Q. Covil was a member of the Southeast Insulation
22 Contractorws Association?

23 A. That is correct.

24 Q. And, in fact, at one point Palmer Covil had been the
25 president and a board of director of that organization,

1 correct?

2 A. He served as a director and as president of that
3 organization.

4 Q. And that Covil was also a member of the National
5 Insulation Contractor Association, correct?

6 A. Yes, he was.

7 Q. Okay. And that's abbreviated NICA, correct?

8 A. That's my abbreviation for it.

9 Q. Okay. And Mr. Palmer Covil, he was the president of
10 Covil Corporation in the 1960's, correct?

11 A. Yes.

12 Q. And during that time, in the 1960's, Mr. Palmer Covil
13 went to conferences and conventions hosted by these trade
14 organizations, the insulation contracting industry, right?

15 A. Yes, he did.

16 Q. And Mr. Palmer Covil subscribed to the National
17 Insulation Contractors Association, the NICA's magazine?

18 A. Uh-huh.

19 Q. And that magazine was called NICA Outlook?

20 A. Yeah, the trade publication.

21 Q. And from reading the depositions, you saw that Mr.
22 Covil made it his practice to read those magazines, correct?

23 A. He did read them.

24 Q. Mr. Covil kind of knew and understood what was going on
25 generally in the industry in the 1960's, is that fair?

1 A. In the mid-sixties by then, yes.

2 Q. Now, Covil had an apprentice training program for its
3 employees that began in the 1950's, correct?

4 A. Yes.

5 Q. And Covil claims that it provided respirators to its
6 own employees in the fabrication shop since the 1950's,
7 correct?

8 A. Yes.

9 Q. And, as I understand it, a gentleman by the name of
10 Russell Johnson eventually took on as the leader of the
11 apprentice training program?

12 A. He was in charge of that and in charge of the field
13 operations.

14 Q. And I think we alluded to this, but I just want to be
15 clear for the jury. Covil learned that asbestosis can cause
16 asbstosis by about 1965, correct?

17 A. That's correct.

18 Q. Okay. And Covil agreed and understood -- Covil agrees
19 and Covil understood in 1965 that asbestosis can be a fatal
20 disease, right?

21 A. Yes.

22 Q. And Covil also heard from the asbestos insulation union
23 that they were starting to make noises about asbestos in
24 about the mid-1960's as well, correct?

25 A. Yes, he did. He had been a union member himself back

1 in his early career and he heard from some people in the
2 industry about concerns that the insulators -- association
3 of insulators and frost -- heat and frost insulators were
4 having.

5 Q. Okay. And Covil agrees that Mr. Palmer Covil, the
6 president of Covil Corporation, in the mid-1960's heard
7 about a gentleman by the name of Dr. Irving Selikoff, is
8 that correct?

9 A. Yes, Dr. Irving Selikoff, he did.

10 Q. And Mr. Palmer Covil heard him speak at a conference,
11 one of these industry conferences, in about 1966, correct?

12 A. Yes, he didn't -- he was unable to sit for the entire
13 presentation because he had to go to a board meeting, but he
14 did hear Dr. Selikoff at that meeting.

15 Q. And this was a meeting held by the National Insulation
16 Contractors Association, correct?

17 A. Yes.

18 Q. Now, Covil agrees that Dr. Selikoff is a reliable
19 source about asbestos hazards, correct?

20 A. It appears from what I have seen that Mr. Covil
21 certainly felt that way, yes, sir.

22 Q. And Covil --

23 Now, Covil started receiving warnings from other
24 companies at a certain point in time, correct?

25 A. Yes.

1 Q. And Covil first saw warning labels on
2 asbestos-containing products in about 1968, correct?

3 A. That's when the industry started putting labels on
4 voluntarily.

5 Q. Okay. And at Covil the first employee to file a claim
6 for asbestosis against Covil, that occurred in about 1972,
7 correct?

8 A. There was one in 1972, and one in 1975. Those were
9 worker compensation claims.

10 Q. And Covil agrees that in 1972, when OSHA was
11 implemented, that Covil had actual knowledge of the contents
12 of the OSHA regulations pertaining to asbestos at that time
13 in 1972, correct?

14 A. Yeah. Well, OSHA came about in 1971, April of '71, but
15 they published their first asbestos regulation in 1972,
16 June 7th.

17 Q. And, in fact, Mr. Palmer Covil ordered a federal
18 register when that was enacted, correct?

19 A. He did.

20 Q. And he read the contents of that?

21 A. I assume that he read the contents related to the
22 asbestos regulation, yes.

23 Q. And Covil agrees that OSHA is a reliable source on the
24 hazards of asbestos, fair?

25 A. Yes.

1 Q. Now, after OSHA was enacted in 1972, Covil put its own
2 employees under medical surveillance or x-ray analysis
3 programs, correct?

4 A. Yes, he did, and the North Carolina workers had been
5 under an x-ray program prior to that, because the State
6 required that people working in dusty trades in North
7 Carolina have annual x-rays to get a permit to work.

8 Q. And with Covil's own employees, after OSHA became
9 enacted in 1972, one of the things that Covil did was it
10 began mixing asbestos-containing cement in plastic bags,
11 correct?

12 A. They made several changes because of what was in the
13 regulation, and they also -- they had a more sophisticated,
14 more protective respirators. They started buying some
15 industrial vacuums to use for cleaning the worksite, and
16 they started putting some local exhaust ventilation on the
17 saws that they were sawing that asbestos with to reduce the
18 dust exposure.

19 Q. And Covil contends that it was Covil's position that
20 they started providing these respirators, well, more of them
21 after 1972, correct?

22 A. That's correct.

23 Q. And Covil's position that they started giving
24 respirators to its own employees when they were using a saw
25 since the 1950's, though, right?

1 A. Yes, power saws.

2 Q. Okay.

3 Now, sir, Covil agrees that a company that fails to
4 disclose hazards that they know about in their product to
5 its customers, that company should be held responsible,
6 right?

7 A. I did not see that in their documentation, you know, in
8 any of the records.

9 Mr. Palmer Covil in his deposition said it was his
10 opinion that it was up to the companies manufacturing the
11 products to pass that information downstream to the users
12 and he did not put warnings or modify what the companies
13 were sending out.

14 Q. Okay. And -- well, let me break that down, sir.

15 First we talked about a lot of things that Covil knew
16 about asbestos in the fifties and sixties and seventies, and
17 despite all this, Covil continued to sell
18 asbestos-containing insulation products until at least 1973,
19 correct?

20 A. Yes, and that's when industry generally started taking
21 asbestos out of products.

22 Q. And we saw that invoice there of them selling
23 Thermobestos in 1974, right?

24 A. Yes, and I don't know whether -- I'm not as familiar
25 with the Manville products, but I don't know whether they

1 had removed asbestos from Thermobestos by that time or not.

2 Q. Okay. And Covil continued to sell other
3 asbestos-containing products, like asbestos cloth that we
4 talked about, until at least 1977, true?

5 A. Yes, sir.

6 Q. And Covil never had a research department?

7 A. No, they did not. It was a small insulative company
8 and distributor. They did not have a department of the
9 research.

10 Q. Well, it was the second largest insulation contractor
11 in the southeast, as you said and told the jury earlier,
12 right?

13 A. It was small comparative to other organizations that at
14 that time were dealing with asbestos.

15 Q. Now, Covil never had a medical director?

16 A. No, they hired -- they had agreements with doctors in
17 the local areas to treat their people, take care of things
18 that might happen on the job, work-related job injuries or
19 any illness.

20 Q. Covil never hired someone to investigate the extent of
21 the hazards of exposure to asbestos at any time in which it
22 was selling asbestos-containing products, is that fair?

23 A. I'm sorry?

24 Q. Okay. Covil never hired any sort of doctor or
25 industrial hygienist to investigate the hazards of asbestos

1 for Covil during any point in time in which Covil was
2 selling asbestos-containing products, is that right?

3 A. They never hired industrial hygienists. I didn't find
4 anything related to dust exposures or asbestos fiber
5 exposures in their records.

6 Q. Okay. And Covil had multi-million dollar insulation
7 contracts in some instances, is that correct?

8 A. They did.

9 Q. Okay. Now, Covil agrees that supplying
10 asbestos-containing insulation in asbestos-free boxes, now
11 that would be a hazard, correct?

12 A. Yes, that -- yes, that would be.

13 Q. And if a box were labeled as asbestos free, Covil
14 agrees that a person coming towards that box would expect it
15 to be asbestos free, right?

16 A. Yes, it -- I found no records to indicate that they
17 were putting asbestos products in asbestos-free boxes,
18 though.

19 Q. And prior to your deposition last week you read about a
20 100 pages of the 24,000 pages of documents that had been
21 produced in this case, correct, sir?

22 A. In a word search in 24,000 since then.

23 Q. Okay. Now, Covil cannot say that post-OSHA, or after
24 1972, that every piece of asbestos insulation that Covil
25 sent had a warning on it, correct?

1 A. I'm sorry, after '72, there -- there was not yet a
2 requirement to distribute that information downstream. That
3 came in 1983.

4 Q. Okay. And so Covil agrees that in 1972 it was sending
5 out -- it would sell asbestos-containing insulation that
6 would not have a warning on it on some occasions, correct?

7 A. In '72?

8 Q. Yes.

9 A. Yes, it -- they sold it in boxes in the containers that
10 it came from the manufacturer, such as Owens Corning, Johns
11 Manville, 48 Insulation, any of the other manufacturers.

12 Q. And at no point in time in this time of selling
13 asbestos-containing products between 1948 and 1973, at no
14 point in time did Covil ever place a warning on its
15 asbestos-containing products that it sold, correct?

16 A. That's right, no legal requirement.

17 Q. Okay. And Covil agrees with me that it knew that
18 asbestos exposure can cause asbestosis by about about 1965,
19 correct?

20 A. Yes.

21 Q. And Covil knew that asbestosis is a fatal disease,
22 correct?

23 A. They did, yes.

24 Q. And the warnings that the manufacturers put on in
25 1968 --

1 A. Right.

2 Q. -- did any of those warnings say that inhaling asbestos
3 could cause death?

4 A. They started off very general description of "contains
5 asbestos. Do not breath. May be a health hazard." And
6 then they got more detail, more specific later.

7 Q. But Covil knew in 1965 that exposure to asbestos can
8 cause death, correct?

9 A. Yes.

10 Q. And at no point in time when Covil learned that in 1965
11 did Covil ever take it upon itself to place a warning on one
12 of those boxes of asbestos-containing insulation that it
13 sold, right?

14 A. They did not.

15 Q. And you said earlier that Covil had its own employees
16 wear respirators when it would use a power saw on insulation
17 products, right?

18 A. And later it became more mandatory to wear.

19 Q. But that started in 1950's. That's what you told the
20 jury a little while ago, right?

21 A. Yeah, they -- they had to wear it in the 1950's using
22 power saws.

23 Q. And between the 1950's and when Covil was continuing to
24 sell insulation, all the way through 1973, at least, Covil
25 never placed on any of those boxes of insulation that it

1 sold that people working with that stuff should wear a
2 respirator, fair?

3 A. They did not.

4 Q. And Covil has not seen any documentation that when
5 Covil was a job site and it was working with
6 asbestos-containing products that it warned others around
7 them about the hazards of asbestos, correct?

8 A. They did not.

9 Q. And so if I understand you correctly, it's Covil's
10 position that it did not have any responsibility to put
11 warnings on the insulation that it shipped to its customers,
12 is that right?

13 A. No legal requirement, yes, sir.

14 Q. And in Covil's view, it doesn't have a duty to pass on
15 the information that it knew to people downstream that were
16 using those asbestos-containing products that it was
17 selling, right?

18 A. That was Covil's position.

19 Q. And you gave a deposition a week ago, correct?

20 A. Just over a week ago.

21 Q. Now, you said that Covil had no obligation to do so
22 because it was a business decision that Covil made, is that
23 right?

24 A. Evidently that's what Mr. Covil based it on.

25 Q. Does Covil have a moral obligation to pass on the

1 information that it knows about the hazards of the products
2 that it sold to people that might use and work with this
3 product?

4 MR. WALL: Objection. No standard for morals in
5 this courtroom. It's either the law and I object.

6 THE COURT: All right. Overruled.

7 You may continue.

8 A. Do you want to ask that again, please?

9 BY MR. BUHA:

10 Q. Does Covil have a moral obligation to pass on the
11 information that it knew about the products that it sold to
12 the people that were using this product?

13 A. During what time period?

14 Q. During the time period which Covil sold
15 asbestos-containing products all the way up through at least
16 1973. During that period.

17 A. I don't know --

18 In my position as the corporate representative, I don't
19 know really what was in their minds and morally speaking
20 what they could have been thinking at that time. I can only
21 know what I would think.

22 MR. BUHA: That's all the questions that I have.

23 I think we actually need to put the exhibit that
24 we marked, that we talked about earlier, as entered into
25 Plaintiffs' Exhibit 825.1.

1 THE COURT: That's the invoice?

2 MR. BUHA: Yes.

3 THE COURT: All right. Objection?

4 MR. WALL: Yes, Your Honor.

5 THE COURT: All right.

6 MR. WALL: The objection is they are trying to
7 imply that included -- or Thermobestos included asbestos in
8 it and there is no testimony it was done.

9 THE COURT: All right. I'll overrule it on that
10 basis. The invoice says what it says.

11 MR. WALL: Yes, Your Honor.

12 THE COURT: And the witness has testified as he
13 has testified and the jury may evaluate it on that basis, so
14 it's admitted.

15 (Whereupon, Plaintiffs' Exhibit No. 825.1 was
16 entered into the record as evidence)

17 THE COURT: Mr. Wall?

18 MR. WALL: Your Honor, at this point I would like
19 to put a proffer for the record.

20 THE COURT: What's that, sir?

21 MR. WALL: A proffer.

22 THE COURT: Like to make a proffer?

23 MR. WALL: Proffer.

24 THE COURT: All right.

25 Ladies and gentlemen of the jury, please retire to

1 your jury room for a minute. We have got some matters I
2 have got to take up with him.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: All right.

6 All right. Mr. Wall desires to make a proffer
7 with regard to Mr. Glenn's testimony.

8 Mr. Glenn is testifying on direct and in person.
9 Mr. Glenn testified on his 30(b)(6) and the --

10 All right. I can't talk with y'all --

11 MS. MCVEY: I'm so sorry, Your Honor.

12 THE COURT: All right.

13 Glenn testified on his 30(b)(6). All right.

14 The plaintiff made its designations and defendant
15 did not timely make its objections to designations and it
16 did not timely make its own designations, and, therefore, my
17 ruling was that the defendant could not offer its
18 designations in the plaintiffs' case.

19 Now, we got a different situation now. The -- Mr.
20 Glenn is on the stand. He's been offered live by the
21 plaintiff, and I want to hear y'all now on the question of
22 whether it --

23 Mr. Wall is making an assumption that I have
24 prevented him from cross-examining Mr. Glenn.

25 MS. MCVEY: I don't know --

1 THE COURT: I have not made any ruling on that,
2 nor has the plaintiff asked me to make a ruling on that.

3 MS. MCVEY: That's not our position. We believe
4 that he --

5 THE COURT: I understand that, and so I guess I'm
6 a little confused, Mr. Wall, as to why you would make a
7 proffer, because this witness is on the stand and he is --
8 they have now put him in their case and you can
9 cross-examine him, if you want to.

10 MR. WALL: Because you told me I couldn't go into
11 the record, in view of the record, as to Covil and Celanese
12 and Daniel.

13 THE COURT: Ms. McVey?

14 MS. MCVEY: Your Honor, that was not our position.
15 The position was they could go into the records. He could
16 not just testify to hearsay statements.

17 THE COURT: That's correct.

18 All that I restricted you to -- and let's be clear
19 about this, Mr. Wall, because my -- this thing -- we bobbed
20 back and forth about this several times.

21 I made the ruling that you cannot ask him
22 questions that will require him to speak about hearsay.

23 You said "I don't want to do that. All I want to
24 do is ask him about records, ancient records and ancient
25 documents."

1 And the plaintiff said "we don't object to that."

2 So if what you are going to do is to ask him about
3 those records, then you may ask him without objection.

4 It was the question of your putting him up to ask
5 questions that would involve hearsay that is covered by the
6 rulings that have already been made.

7 MR. WALL: I'm not arguing with the court, but I
8 wanted to put it in my -- may I ask the court if I could put
9 him up and ask him whether --

10 THE COURT: What is it that you want to ask him,
11 Mr. Wall? We got -- we --

12 MR. WALL: Whether he checked on the Daniel or the
13 Covil records concerning Celanese and Daniel. Did he find
14 anything in those records that indicated that Covil did work
15 at Celanese during '70 to '74, or that Covil did any work
16 for Daniel from '70 to '74.

17 THE COURT: All right.

18 MS. MCVEY: I'm sorry, I apologize, one more time
19 could you tell me those last three things you said?

20 MR. WALL: Whether he checked on the records at
21 Covil. And in those records did he find anything that
22 established that Covil did work at Celanese, and did he find
23 anything from those records that says that Covil did work
24 for Daniel at Celanese.

25 MS. MCVEY: Your Honor, I think the fact that

1 whether he said he searched the records and didn't find
2 anything I think is fair game, or did find stuff, whatever
3 that is.

4 MR. WALL: Okay. You said earlier I couldn't.

5 THE COURT: Those questions you can ask.

6 It's asking further questions that calls for
7 hearsay or calls for him to talk about things that are in
8 the many thousands of pages he didn't look at that we would
9 have heartburn with, but if what you are directing his
10 attention to is some word search he made, you may ask him
11 about that.

12 MR. WALL: Thank you, Your Honor.

13 I read down -- I wrote down that I couldn't do
14 that, so that's why I just wanted to do a proffer.

15 THE COURT: Are we straight?

16 MS. MCVEY: I think we are good.

17 THE COURT: Very good.

18 Bring me the jury, please, sir.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: Thank you.

22 Mr. Wall on cross-examination.

23 MR. WALL: Thank you, Your Honor.

24 CROSS EXAMINATION BY MR. WALL:

25 Q. Mr. Glenn?

1 A. Yes, sir.

2 Q. As you know, I represent Covil.

3 A. Yes.

4 Q. In fact, I'm the person that hired you to act as
5 Covil's representative, correct?

6 A. That is correct, yes, sir.

7 Q. And did I ask you to go through the records of Covil
8 and find out certain things?

9 A. You did, yes, sir.

10 Q. And did I ask you to word search all 25,000 documents?

11 A. Yes, sir.

12 Q. Did you actually physically look at some of the written
13 pages?

14 A. Yes, I did word searches and I was looking at pages
15 that were responsive to the word search.

16 Q. Did you look at the documents involving Celanese
17 Spartanburg?

18 A. Yes, we pulled out all of the documents with the search
19 term Celanese broadly.

20 Q. All right.

21 A. All.

22 Q. In review of those documents did you find any documents
23 that said that Covil worked at Celanese from 1970 to 1974?

24 A. No, there were none.

25 Q. Did you do the same thing with Daniel Corporation?

1 A. I searched -- there was another term I searched Daniel.

2 Q. And have you physically looked at some of those
3 documents?

4 A. I did. It brought up a much larger stack.

5 Q. And in your review of those documents did you find any
6 documents which established that Covil did any work for
7 Daniel from 1970 to 1974?

8 A. Not in those documents, no, sir.

9 Q. Did you also review the deposition of the corporate
10 representative at Daniel, Mr. Buck?

11 A. I did.

12 Q. And did you look in there for any connection of Covil
13 with the project that Mr. Buck was discussing, which is the
14 Celanese plant?

15 A. I didn't have the exhibits to his deposition, but he
16 referred to a document that seemed to say that Covil was
17 listed possibly as a vendor, but not as a contract on the
18 site.

19 And I think there was a -- he may have mentioned that
20 there was a Southern Insulation Company that was on that
21 site.

22 Q. Did you see the portion of the deposition where Mr.
23 Buck said his review of that file only showed three
24 employees of Covil on site doing --

25 MR. BUHA: I object on the basis of hearsay, Your

1 Honor.

2 THE COURT: Sustained.

3 MR. WALL: Nothing further. Thank you.

4 THE COURT: All right. Anything further on
5 redirect?

6 MR. BUHA: Yes, just very briefly.

7 REDIRECT EXAMINATION BY MR. BUHA:

8 Q. You told the jury about an hour ago that it's Covil's
9 position that all of its sales invoices were burned and lost
10 in a fire in 1973, right?

11 A. Yes.

12 Q. All right.

13 MR. BUHA: That's all I got.

14 THE COURT: Anything further?

15 MR. WALL: Nothing from the defense, Your Honor.

16 THE COURT: Very good. Thank you, Mr. Glenn. You
17 may come down.

18 MR. WALL: May he be excused, Your Honor?

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: He may be excused.

21 You are released from your subpoena, Mr. Glenn.

22 THE WITNESS: Thank you.

23 THE COURT: Ms. McVey?

24 MS. MCVEY: Your Honor, at this time we would call
25 Machen Lee Carpenter by deposition.

1 THE COURT: Very good.

2 MS. MEVEY: Mr. Chapman is going to play Mr.
3 Carpenter.

4 THE COURT: All right. If you would come up here
5 and take the stand.

6 We are going to read portions of a deposition,
7 ladies and gentlemen of the jury, of a man, a Mr. Machen
8 Carpenter, and Mr. Chapman will be reading the answers and
9 Ms. McVey will be reading the questions in that deposition.

10 I don't think it's anything super lengthy, but
11 it's a piece of testimony that you may consider in the same
12 way as if Mr. Machen Carpenter was sitting here or appearing
13 before you in a video.

14 You may take the stand, Mr. Carpenter -- I mean
15 Mr. Chapman, please.

16 MR. CHAPMAN: I have a binder for you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. CHAPMAN: And you can follow along and Mr.
19 Carpenter's testimony is underlined.

20 THE COURT: Very good.

21 (Whereupon, the Deposition of Machen Lee Carpenter
22 was read to the jury panel).

23 MS. MCVEY: Your Honor, that concludes the
24 deposition testimony of Mr. Carpenter.

25 THE COURT: All right. Very good. You may come

1 down.

2 MR. CHAPMAN: Thank you, Your Honor.

3 THE COURT: Ms. Mcvey?

4 MS. MCVEY: We are at about five o'clock. I don't
5 know --

6 THE COURT: Where are you in this case?

7 MS. MCVEY: Can we approach for two seconds?

8 THE COURT: Yes.

9 (Whereupon, the lawyers approached the bench for
10 an off-the-record discussion)

11 THE COURT: Okay, ladies and gentlemen of the
12 jury, I was just trying to get a picture of where the
13 plaintiffs are and they are fairly close to closing their
14 case. They have got two videos together will take about
15 thirty minutes and then they have got some other short
16 depositions to read in of family members. They think the
17 whole thing, if they started all this tomorrow morning at
18 nine, could be finished by noon. We would have some motions
19 that have to be put on the record, as they always do after
20 plaintiff closes its case. Then we would start the defense
21 case, which is likely to be very short, which means we could
22 go to the jury tomorrow, or at least do our closing
23 arguments tomorrow, so my question to you is this. Do you
24 want to go now and come back tomorrow morning at nine and do
25 all of what I have described, or do you want to hear some of

1 the 30 minutes of video depositions before you leave today?

2 JURY FORELADY: Come back tomorrow.

3 THE COURT: All right. The jury prefers to begin
4 fresh tomorrow and that suits me fine.

5 Jury members, let's try to not have me
6 dilly-dallying around and not let us start at the promised
7 nine o'clock hour. I hope I can adhere to nine, so be here
8 a little before and we will try to start promptly at nine
9 o'clock.

10 Have a good evening. Remember, don't do any
11 research. Don't talk to anybody about the case and all
12 those other things that I have previously instructed you,
13 and do have a nice evening.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: Now, here is what we have got to do
17 and let's talk about how we want to make it happen.

18 We have got the jury charges. Ms. McVey has
19 transmitted and e-mailed the jury charges.

20 And, Ms. McVey, have you got a hard copy for me?

21 MR. CHAPMAN: We are stapling them right now, Your
22 Honor.

23 THE COURT: Very good.

24 And I'm sure that one of those would be given to
25 Ms. Wall and Mr. Boger.

1 MS. MCVEY: Yes, ma'am.

2 THE COURT: So my thinking would be that we might
3 come back here tomorrow morning a little early and get these
4 jury charges settled. Y'all are pretty familiar with them
5 and you have got yours and I have got what I have in the
6 Howe case and I'm sure all that is pretty well known to
7 everybody who practices asbestos litigation what I have been
8 charging before.

9 MS. MCVEY: And so just for your information and
10 for Mr. Wall, we took the Howe charges and tweaked them for
11 this case.

12 THE COURT: Yes.

13 MS. MCVEY: So they are pretty similar to what you
14 have --

15 THE COURT: Right.

16 MS. MCVEY: -- recently charged, with a few
17 differences.

18 THE COURT: Right.

19 MS. MCVEY: So --

20 THE COURT: And, of course, we would want to
21 also -- did you send me a form of the verdict?

22 MS. MCVEY: I think we sent a verdict form, yes.

23 THE COURT: Good. Which I'm sure is similar to
24 the verdict form in Howe. It was a one defendant case as
25 well --

1 MS. MCVEY: It is.

2 THE COURT: -- with three causes of action;
3 negligence, implied warranty, and strict liability, and I
4 presume those are the charges here.

5 MS. MCVEY: It's the same exact form. The damages
6 are different because Mr. Howe was deceased, so we have
7 got --

8 THE COURT: Correct.

9 MS. MCVEY: We have got Mr. Crawford's damages;
10 the estate of his wife's damages. I'll hand this up, as
11 well as the charge on a question on --

12 THE COURT: The question on punitive.

13 MS. MCVEY: Yes, just recklessness, right.

14 THE COURT: Just to explain this verdict form,
15 it's what I have been using before. It has the questions
16 about negligence, strict liability, and implied warranty.

17 Then it asks for actual damages for Jerry Crawford
18 and actual damages for Ms. Crawford's loss of consortium.

19 And then if any award is made pursuant to a
20 liability finding in any of the first three, then question
21 five needs to be answered. That is the predicate for
22 punitive damages, but that's all we say about it at this
23 time. If we had that, we would, of course, bifurcate and go
24 to that phase of the trial. So that's what we have got.

25 Yes, ma'am.

1 MS. MCVEY: So, two things. And we can be ready
2 to close tomorrow. And if we don't get it to tomorrow, we
3 can push it to Thursday morning --

4 THE COURT: Right.

5 MS. MCVEY: -- I suppose.

6 The one thing I do want to ask the court just
7 to -- in Mr. Wall's opening he talked about how Covil is no
8 longer in business, which I think is fine, but he also said
9 it doesn't have any assets.

10 MR. WALL: No, I did not. I didn't.

11 THE COURT: I didn't --

12 MR. WALL: I stayed away from no assets because
13 that was going to bring up insurance.

14 MS. MCVEY: Well, and that's my point. If we are
15 going to argue about --

16 MR. WALL: No.

17 MS. MCVEY: -- they are poor, they are defunct,
18 then I think it goes to ability to pay and we can talk about
19 insurance. So I just want to make sure --

20 MR. WALL: I was very -- I was very clear to
21 say -- no question of assets. We didn't talk about assets.

22 THE COURT: Very good. Well, let's just be sure
23 we stay away from that, unless you want to open the door.

24 MR WALL: No.

25 THE COURT: And I know you don't want to do that,

1 so let's just be careful about that.

2 MS. MCVEY: Okay.

3 MR. WALL: I got it written down from --

4 THE COURT: Sure. Sure.

5 MS. MCVEY: And I read it last night. I may have
6 just missed it. I thought that's what he said, so my --

7 THE COURT: Well, just check that again. If there
8 is some question about it, we can review that, but my
9 thinking would be this. Is --

10 MR. WALL: No business right here. Out of
11 business. No employees. No business. No owner.

12 THE COURT: All right. I would like to get
13 together about those charges sometime tomorrow and --

14 MS. MCVEY: Sure.

15 MR. WALL: -- we could do it at 8:30 tomorrow, or
16 we could do it on the lunch break.

17 MS. MCVEY: So is there going to be -- when we
18 rest, they are going to make the directed verdict motions.

19 When they rest we are going to have to move on
20 some of their affirmative defenses, assuming they are going
21 to pursue any affirmative defenses.

22 THE COURT: Right.

23 MS. MCVEY: We can talk baout that.

24 And then the jury charge we could do first thing
25 in the morning. I mean, depending on --

1 THE COURT: Okay. Then what we will plan to do is
2 this. Tentatively our idea would be to get the rest of the
3 case tried tomorrow and then stay afterwards, after I
4 dismiss the jury, and go over these jury charges. That will
5 give y'all plenty of chance to see exactly how the case has
6 developed, and then we go with the jury charges and we can
7 get those set so that I can finalize them and have Tyler or
8 one of y'all finalize them so that I can have my copy and
9 the jury's copy.

10 MS. MCVEY: So then that would mean we would close
11 Thursday morning.

12 THE COURT: We would close Thursday morning. Does
13 that sound reasonable?

14 MR. WALL: That's fine with me.

15 MS. MCVEY: Yeah, absolutely.

16 THE COURT: Okay. Very good. That's how we will
17 do.

18 MS. MCVEY: Thank you.

19 THE COURT: Tomorrow we may have, either tomorrow
20 or Thursday, new Judge McCloud with us. He's been training
21 with Judge Hayes and Judge Hayes' trial docket is finished
22 for the week and he may want to sit with me, so he may
23 preside with me. If you see somebody else in the black robe
24 up here, that's Tab and he's doing the new judge's training.

25 MS. MCVEY: Okay.

1 THE COURT: So.

2 MS. MCVEY: That's would be great.

3 THE COURT: Other than that I don't know.

4 Anything else?

5 MS. MCVEY: I think we are in good shape.

6 And just for the record, I'm going to hand the
7 court reporter what was read from Mr. Carpenter's
8 deposition --

9 THE COURT: Very good.

10 MS. MCVEY: -- because that was part of the court
11 record as a court exhibit we will mark it.

12 THE COURT: Excellent. All right. Very good.

13 Have a good evening and we will see you tomorrow
14 morning.

15 MS. MCVEY: Thank you, judge.

16 THE COURT: I'll try to arrive here a little early
17 in case there's something.

18 MS. MCVEY: That sounds good.

19 And I know Mr. Wall and Mr. Boger will share with
20 me any jury charges they want to share with us.

21 MR. WALL: The only thing we were going to show is
22 the ones were the other case.

23 THE COURT: Very good.

24 (Whereupon, proceedings were adjourned to July 18,
25 2018)

1 STATE OF SOUTH CAROLINA)
 2) IN THE COURT OF COMMON PLEAS
 3 COUNTY OF SPARTANBURG)
 4
 5 JERRY HOWARD CRAWFORD)
 6 AND THE ESTATE OF)
 7 EVELYN KAY CRAWFORD,) TRANSCRIPT OF RECORD
 8) 2017-CP-42-04429
 9 PLAINTIFFS,)
 10) JULY 18, 2018
 11 -vs-) SPARTANBURG, SOUTH CAROLINA
 12)
 13 COVIL CORPORATION,)
 14)
 15) (VOLUME III)
 16 DEFENDANT.

17 B E F O R E:

18 THE HONORABLE JEAN HOEFER TOAL, JUDGE. ; and a jury.

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1 (PROCEEDINGS, JULY 18, 2018)

2 THE COURT: All right. Good morning, ladies and
3 gentlemen.

4 MS. MCVEY: Good morning.

5 MR. WALL: Good morning.

6 THE COURT: I have your charges, both plaintiff
7 and defense. I have looked at them and I am prepared to
8 discuss them when we have an appropriate break. I have got
9 your spoliation charge. I have got the form of the verdict,
10 so we are ready to go and hopefully we can do that on a
11 break.

12 MS. MCVEY: Your Honor, I think -- I think even
13 after the jury goes for the day we can argue that and be
14 good to go.

15 THE COURT: But let's -- I'm going to try to press
16 as hard as I can to see how far we get and where we are.

17 We have got motions at the end of the plaintiffs'
18 case and I will tell you I'm going to be paying some
19 attention to those, given what has and has not come in about
20 this case.

21 MS. MCVEY: Okay.

22 THE COURT: All right. So I want to move to get
23 as close as we can get to being ready to go to the jury as
24 possible.

25 MS. MCVEY: Are we still planning on closing

1 tomorrow? I think that was our plan, tomorrow morning.

2 THE COURT: I understand that, but I want to see
3 how far we get, because if we got a big chunk of time that
4 we can do it, then we may do it today.

5 MR. WALL: Your Honor, I didn't prepare for
6 closing argument because I thought it was pretty clear we
7 weren't going to argue until tomorrow morning.

8 THE COURT: Let's see how far we get, Mr. Wall.

9 MR. WALL: Yes, Your Honor, but I feel that the
10 decision was made yesterday were to charge --

11 THE COURT: I understand that, but, you know,
12 again, we will see how far we get.

13 MR. WALL: Okay.

14 THE COURT: You know, I'm not about to close down
15 court at twelve o'clock for the whole day. I can tell you
16 that. I don't think people need that long to prepare to go
17 to the jury on a case like this, but we will see how we go.
18 All right.

19 Now, tell me what we have got for the balance of
20 the day.

21 MS. MCVEY: Your Honor, this morning we plan to
22 call Mr. Boyer by video.

23 THE COURT: Uh-huh.

24 MS. MCVEY: That's relatively short.

25 We have got Mr. Buck by video. Again short.

1 We have got a small read-in of Mr. Buck, a
2 continuation of a different deposition.

3 And then we are going to call Ms. Giles and Ms.
4 Quinn, the daughters.

5 THE COURT: Yes.

6 MS. MCVEY: And then we will be prepared to rest.

7 THE COURT: All right. And then --

8 MS. MCVEY: And, I'm sorry, Your Honor, we have --
9 we want to publish some verified interrogatories about the
10 Thermobestos, which was brought up yesterday.

11 THE COURT: Yes.

12 MS. MCVEY: But that will take all of five
13 minutes.

14 THE COURT: All right.

15 So you anticipate that you will be -- your case
16 will be ready to rest before lunch?

17 MS. MCVEY: Yes.

18 THE COURT: All right. Then we have got to argue
19 motions for directed verdict, and those would be done right
20 after lunch. I would take a lunch break and we would be
21 prepared to argue those right after lunch.

22 MS. MCVEY: Right.

23 THE COURT: And, as I say, I'm not going to waste
24 a whole afternoon on this thing. If we are ready to go to
25 the jury, we are going to be ready to go to the jury.

1 MS. MCVEY: They are going to have a little bit of
2 evidence to put in their case and then we will have directed
3 verdicts on some of their affirmative defenses?

4 THE COURT: Right.

5 MS. MCVEY: And then --

6 THE COURT: And that would take up the balance of
7 the day, as you see it?

8 MS. MCVEY: It could.

9 And then we have to argue the jury charges, so
10 that -- that's really why I think both sides were thinking
11 by the time we get all that done today, it makes sense to
12 open -- I mean, I'm sorry, to close and charge the jury the
13 first thing in the morning.

14 THE COURT: All right.

15 Now, tell me something about the defense case, Mr.
16 Wall. What have you got by way of witnesses?

17 Mr. Boger?

18 MR. BOGER: Yes, Your Honor, we have -- we are
19 going to read in some designations of Palmer Covil.

20 THE COURT: Yes.

21 MR. BOGER: And we have counter-video for Mr.
22 Boyer and Mr. Buck.

23 THE COURT: All right.

24 MR. BOGER: And that would be it. It will not --
25 our case will be short.

1 THE COURT: Okay. And so your -- I mean, just
2 kind of -- I'm not holding you to anything, but I just want
3 to get some sense of it.

4 So we would be prepared to argue motions for
5 directed verdict at the close of defense case. We will have
6 arguments and motions for directed verdict at the close of
7 the plaintiffs' case, but we would be able to argue all of
8 the directed verdict motions that would be appropriate at
9 that point, at the close of your case, and that sounds like
10 that would -- your case would be ready to close and argue
11 those things about -- what, about three o'clock, or --

12 MR. BOGER: Yes, Your Honor, I would --

13 THE COURT: In that ballpark?

14 MR. BOGER: I would think so.

15 THE COURT: And then we would argue that directed
16 verdict motions. And then the only thing that would
17 stand -- and then we would deal with the charges. We would
18 have a charge conference.

19 MR. BOGER: Yes, Your Honor.

20 THE COURT: So that's kind of how you see the
21 balance of the afternoon going?

22 MR. BOGER: Yes, Your Honor.

23 THE COURT: Don't be frightened, Mr. Wall, then.
24 You will have some time to prepare this morning.

25 MR. WALL: I'm always frightened.

1 THE COURT: Well, don't worry about it.

2 Don't be frightened. I have been in your --

3 MR. WALL: I have been doing this too long to be
4 frightened.

5 THE COURT: Well, I understand. I did it for
6 many, many years before I got on the Supreme Court and most
7 of it spent just as you are spending it, in the courtroom, a
8 lot on the defense side and a lot on the plaintiffs' side.
9 We did everything, my little firm. Okay.

10 MS. MCVEY: Your Honor, one -- I don't know that
11 we are going to get to lunch with our case, so two points on
12 that. I think we will be through by eleven.

13 THE COURT: Uh-huh.

14 MS. MCVEY: So I know they need to make directed
15 verdicts. I don't know if they want to make a -- put a
16 footnote for their directed verdict motion, put on their
17 defense case, let the jury go for lunch and we could argue
18 directed verdicts on both cases so the jury is not waiting.
19 I just wanted to throw that out there for you.

20 THE COURT: I'll give some thought to that.

21 MS. MCVEY: Okay.

22 THE COURT: Let's just see how it goes.

23 MS. MCVEY: Works for me.

24 THE COURT: All right.

25 Everything said that needs to be said?

1 MR. BOGER: The only other thing, Your Honor, we
2 were going to object to the introduction of the reading of
3 the interrogatories.

4 THE COURT: All right.

5 MR. BOGER: And also the reading of the witness
6 from the Howe case.

7 THE COURT: How about put that on the record right
8 now so that we are ready to go.

9 MR. BOGER: That's what I was thinking, Your
10 Honor.

11 So the plaintiffs are introducing interrogatories
12 from Johns Manville about Thermobestos product and we would
13 object to that as untimely, Your Honor. This is something
14 that we were notified of this morning and I think it should
15 be excluded from the case.

16 THE COURT: All right. This is a timeliness
17 objection on your part, not an objection on any other basis,
18 correct?

19 MR. BOGER: Yes, Your Honor.

20 THE COURT: Okay. I would regard it as proper
21 reply testimony to something that was brought up yesterday
22 about -- by the corporate representative.

23 The corporate representative professed not to know
24 whether Thermobestos had asbestos in it. And, therefore,
25 they are claiming surprise and claiming that they have the

1 right to define Thermobestos, which is a product he admitted
2 was sold during the time we are talking about. So I'm going
3 to permit that over your objection. Your objection is fully
4 preserved, of course.

5 MR. BOGER: Thank you, Your Honor.

6 And then the second, they are proposing to
7 introduce testimony of Mr. Boyer, the Celanese 30(b)(6) rep
8 from the Howe case, and we would object on --

9 MR. WALL: Buck.

10 MR. BOGER: Buck. I'm sorry, start over.

11 They are proposing to introduce 30(b)(6) testimony
12 of Mr. Buck from the Howe case. Mr. Buck was also deposed
13 in this case. They have had plenty of opportunity to ask
14 him relevant questions about this case and we think the
15 testimony from another case is irrelevant, where we have
16 actual video and testimony from Mr. Buck in this case.

17 THE COURT: Was Covil in the other case?

18 MS. MCVEY: Yes, Your Honor.

19 MR. WALL: Well, it wasn't until -- pleadings were
20 struck, Your Honor.

21 THE COURT: In other words, the portion of the
22 rule that talks about your being able to yourself exercise
23 confrontation rights and examination rights would be
24 complied with in that case, given that present Covil is in
25 the case, am I right?

1 MS. MCVEY: Yes, ma'am.

2 THE COURT: Okay. All right.

3 Well, over your objections I will allow the
4 admission of these further statements by Mr. Buck.

5 MS. MCVEY: Thank you.

6 THE COURT: Anything that you want to put on the
7 record about it, Ms. McVey --

8 MS. MCVEY: No, ma'am.

9 THE COURT: -- about why you are doing it, why you
10 are not satisfied with what you got on this case by way of
11 30(b)(6)?

12 MS. MCVEY: Your Honor, in a lot of these cases we
13 try to streamline the depositions, knowing that we can use
14 prior depositions of corporate representatives. That's what
15 we did in this case. Covil was present at the Howe, Buck's
16 deposition. They had the opportunity to cross-examine him.
17 I think it's fair game.

18 THE COURT: Very good.

19 Well, my ruling stands. You are fully protected
20 by your objections, Mr. Boger, of course.

21 MR. BOGER: Thank you, Your Honor.

22 THE COURT: All right. Now, bring --

23 We are ready for the jury?

24 Bring us the jury.

25 (The following takes place in the presence of the

1 jury panel)

2 THE COURT: Good morning, ladies and gentlemen of
3 the jury. I hope you had a pleasant evening.

4 I blame myself for the loss of the National League
5 in the all star game because I was intrepid enough to stay
6 up for all of it.

7 A little outline of what you are looking at today.
8 The plaintiff has a few more things to show you by way of
9 short videos and publication of one deposition excerpt that
10 involved company folks or co-workers. Then the two children
11 of Mr. Crawford will testify and we should be finished with
12 the plaintiffs' case this morning.

13 All right. The rules of the road require that I
14 then hear certain motions by the parties about the case.
15 When those motions are heard and dealt with, then the
16 defendant will put up its case. The defendant advises, that
17 based on what they know now, their case would be rather
18 short and will probably conclude about mid-afternoon.

19 I then have the requirement to hear certain other
20 motions and to deal with the parties about the charges to
21 the jury.

22 As you know, you are the complete and sole judges
23 of the facts. I cannot be the judge of the facts, only you,
24 but I am the judge of the law. And in a case like this I
25 have to give you a rather lengthy charge. It's not

1 something I love to do. The rules of the road that govern
2 how we try cases require that I give you a rather lengthy
3 charge about the law and I always print it out and give it
4 to you for you to have in the jury room. Now, you don't
5 have to scrutinize it and try to be a lawyer, but I have it
6 in there in case something comes up in your deliberations
7 and you all want to take a look at it, you are going to have
8 it, but it takes a while for me to deal with the lawyers
9 about what is going to be in that charge and the wording of
10 it. I will do that for the balance of the afternoon, which
11 means that when the defendant rests, I will let you go for
12 the day, which would probably be about mid-afternoon.

13 We will come back together tomorrow morning. I
14 will give you the charge. The parties will make the closing
15 arguments to you and you will have the case and deliberate.

16 So that's kind of what is in the prospect for
17 today and for tomorrow and I think we are very much on
18 target to complete our work tomorrow, which means that
19 Friday is all yours.

20 So with that, Ms. McVey?

21 MR. CHAPMAN: Your Honor, we --

22 THE COURT: Mr. Chapman.

23 MR. CHAPMAN: Your Honor, we would like to publish
24 some interrogatories to the jury.

25 THE COURT: All right. Very well.

1 Are you simply going to read out the
2 interrogatories to the jury, Mr. Chapman?

3 MR. CHAPMAN: And I would like to place them on
4 the elmo, Your Honor.

5 THE COURT: Very good. You may do that.

6 There have been objections lodged. They are
7 noted. They are noted here in this record at this time and
8 preserved.

9 MR. WALL: Thank you, Your Honor.

10 THE COURT: Very good.

11 Mr. Chapman?

12 MR. CHAPMAN: Can everybody see that okay?

13 In the United States District Court for the
14 Southern District of West Virginia, at Parkersburg, in the
15 case of Robert W. Patterson.

16 Question number 7.

17 "Describe in detail --

18 MR. WALL: Your Honor, the date --

19 THE COURT: Yes, sir.

20 MR. WALL: The date of the interrogatory?

21 THE COURT: Yes, I think it would be --

22 Well, let me tell you what you are looking at.

23 There are interrogatories, which is one of the
24 tools that was used by both sides, to ask questions to the
25 other side before you hear this case and get certain factual

1 information from the other side about the case.

2 Now, in this instance one of the principals --

3 Whose deposition is this -- whose interrogatory is
4 this? Is this an interrogatory propounded to Covil?

5 MR. CHAPMAN: Johns Manville, Your Honor.

6 THE COURT: Johns Manville.

7 Johns Manville. You heard that name mentioned was
8 a supplier in this case of asbestos material.

9 This is an interrogatory to that corporate
10 organization in another case in which it was sued and it is
11 proposed to read into the record certain things that Johns
12 Manville said factually I guess about its product.

13 Mr. Chapman, when was this interrogatory
14 propounded or answered?

15 MR. CHAPMAN: Give me one second. It's on the
16 verification.

17 It was November 2nd of 1989.

18 THE COURT: All right. And the caption and the
19 party in the case?

20 MR. CHAPMAN: The chief party was Robert W.
21 Patterson.

22 THE COURT: And among the defendants was Johns
23 Manville? Johns Manville?

24 MR. CHAPMAN: Yes, Your Honor.

25 THE COURT: All right.

1 MR. WALL: Your Honor, Covil was not a party.

2 THE COURT: Covil was not a party to this matter.

3 This is about a supplier of Covil's.

4 All right. You may proceed.

5 MR. CHAPMAN: Thank you, Your Honor.

6 THE COURT: Mr. Chapman.

7 MR. CHAPMAN: Interrogatory number 7:

8 "Describe in detail any asbestos-containing
9 product and/or product line which was mined, milled,
10 manufactured, produced, processed, compounded, converted,
11 sold, marketed, supplied, franchised, distributed, and/or
12 otherwise placed in the stream of commerce by any of the
13 predecessor and/or affiliated business entities identified
14 in the preceding interrogatories."

15 "Answer: See attached Exhibit A for a list of
16 Manville asbestos-containing thermal insulation or shipyard
17 products, as well as certain information relating to those
18 products."

19 Here is Exhibit A.

20 "Manville asbestos-containing thermal insulation
21 or shipyard product.

22 "Product name: Silicated Thermobestos.

23 "Product type: Sheet block pipe covering.

24 "Fiber type: Chrysotile and/or amosite.

25 "Percent fiber by weight: 7.0 to 14.3.

1 "Date manufactured: 1966.

2 "Date discontinued: 1974.

3 "Date labeled: 1966."

4 Finally, Your Honor, verification page for
5 November 2nd, 1989.

6 THE COURT: Very good. Thank you, Mr. Chapman.

7 MR. CHAPMAN: Thank you.

8 THE COURT: All right. Ms. McVey, you may
9 proceed.

10 MS. MCVEY: Your Honor, at this time we call Mr.
11 Boyer by video.

12 THE COURT: Very good.

13 Mr. Boyer is called and all objections to Mr.
14 Boyer's testimony have been made, have been noted, and are
15 preserved.

16 MR. BOGER: Thank you, Your Honor.

17 (Whereupon, the Videotaped Deposition of Mr. Bruce
18 Boyer was played to the jury panel)

19 MS. MCVEY: Your Honor, that concludes the video
20 of Mr. Boyer.

21 THE COURT: Very good.

22 MS. MCVEY: Your Honor, we would really like to
23 move into evidence the three documents that Mr. Boyer
24 discussed in that video, and I showed Mr. Wall and I don't
25 believe there is an objection to those.

1 MR. WALL: No objection.

2 THE COURT: Without objection.

3 All right. Are you going to display them?

4 MS. MCVEY: Yes.

5 THE COURT: Very good.

6 MS. MCVEY: This is just the unmarked map of
7 Celanese that Mr. Boyer was describing.

8 THE COURT: All right.

9 MS. MCVEY: That's 822.2.

10 (Whereupon, Plaintiffs' Exhibit No. 822.2 was
11 entered into the record as evidence)

12 MS. MCVEY: This is the annotated survey that Mr.
13 Boyer marked showing 1, 2, 3, 4, and 5.

14 THE COURT: All right.

15 MS. MCVEY: That's marked as 822.1.

16 (Whereupon, Plaintiffs' Exhibit No. 822.1 was
17 entered into the record as evidence)

18 MS. MCVEY: Your Honor, I'm going to highlight on
19 this one, but I will put a clean exhibit in for evidence,
20 but here is batch: Poly, linear feet 17,353. Square feet
21 12,763. Showing asbestos, 60 percent asbestos.

22 And the conti poly we have 77,349 square feet.
23 24,130 --

24 THE COURT: It's linear feet on the first -- on
25 77,749 linear feet.

1 MS. MCVEY: Yes, ma'am.

2 THE COURT: And 24,130 square feet.

3 MS. MCVEY: Yes, ma'am, I'm sorry.

4 And 90 percent asbestos.

5 And that's marked as 822.3.

6 (Whereupon, Plaintiffs' Exhibit No. 822.3 was
7 entered into the record as evidence)

8 MS. MCVEY: Your Honor, at this time we would call
9 Don Buck by video.

10 THE COURT: Very good.

11 (Whereupon, the videotaped deposition of Don Buck
12 was played to the jury panel)

13 MS. MCVEY: Your Honor, at this time we would like
14 to move in two exhibits that Mr. Buck discussed; 822.15 and
15 822.16, and we don't need to publish those. I don't believe
16 there is an objection to these.

17 THE COURT: Admitted without objection.

18 (Whereupon, Plaintiffs' Exhibit No. 822.15 was
19 entered into the record as evidence).

20 (Whereupon, Plaintiffs' Exhibit No. 822.16 was
21 entered into the record as evidence)

22 MS. MCVEY: Your Honor, at this time we would like
23 to call Don Buck by deposition, read it.

24 THE COURT: Very good.

25 Bring the lights up, please.

1 Ladies and gentlemen of the jury, what will be
2 done now, Mr. Buck you have just seen on video, and there
3 are a few more things from his sworn testimony that will now
4 be read to you out of one of his depositions.

5 Am I correct, Ms. McVey?

6 MS. MCVEY: Yes, ma'am.

7 THE COURT: Will you be reading the deposition
8 answers, Mr. Chapman?

9 MR. CHAPMAN: Yes, Your Honor.

10 THE COURT: Very good. You may come and sit in
11 the witness chair.

12 MR. CHAPMAN: Thank you.

13 THE COURT: You may proceed, Ms. McVey.

14 MS. MCVEY: Thank you, Your Honor.

15 (Whereupon, the deposition of Don Buck was read to
16 the jury panel).

17 MS. MCVEY: That concludes the deposition.

18 THE COURT: Very good.

19 MS. MCVEY: Your Honor, there is a few exhibits
20 that we want to move in.

21 THE COURT: Very good.

22 MS. MCVEY: The exhibits that we want to move in
23 are the contracts discussed in Mr. Buck's deposition. Those
24 are bates marked 822.5, 822.6, 822.7, 822.8, 822.9, 822.10,
25 822.12, 822.13, 822.14. Those are all admitted I believe

1 without objection.

2 MR. WALL: Yes.

3 THE COURT: Without objection they will be
4 admitted.

5 (Whereupon, Plaintiffs' Exhibit No. 822.5 was
6 entered into the record as evidence).

7 (Whereupon, Plaintiffs' Exhibit No. 822.6 was
8 entered into the record as evidence).

9 (Whereupon, Plaintiffs' Exhibit No. 822.7 was
10 entered into the record as evidence).

11 (Whereupon, Plaintiffs' Exhibit No. 822.8 was
12 entered into the record as evidence).

13 (Whereupon, Plaintiffs' Exhibit No. 822.9 was
14 entered into the record as evidence).

15 (Whereupon, Plaintiffs' Exhibit No. 822.10 was
16 entered into the record as evidence).

17 (Whereupon, Plaintiffs' Exhibit No. 822.12 was
18 entered into the record as evidence).

19 (Whereupon, Plaintiffs' Exhibit No. 822.13 was
20 entered into the record as evidence).

21 (Whereupon, Plaintiffs' Exhibit No. 822.14 was
22 entered into the record as evidence)

23 MR. WALL: Let me see that one.

24 MS. MCVEY: I want to publish this one.

25 We are also moving in 822.4, and this is

1 subcontractors/vendors at Hoechst Celanese Spartanburg job
2 site, November 1971 through January 1975. And here we have
3 Covil Insulation.

4 That's it, Your Honor.

5 THE COURT: All right. The exhibits are admitted.

6 (Whereupon, Plaintiffs' Exhibit No. 822.4 was
7 entered into the record as evidence)

8 MS. MCVEY: Your Honor, we have two live witnesses
9 now, but it may be a good time to take a quick break, if
10 that suits.

11 THE COURT: How do you feel? Are you good, or do
12 we want a break?

13 JURY FOREPERSON: I think we are good.

14 THE COURT: They are good.

15 MS. MCVEY: They are good?

16 THE COURT: Yes.

17 MS. MCVEY: Your Honor, we call Patty Giles to the
18 stand.

19 THE COURT: Come around here to the witness stand
20 and the clerk will swear you.

21 PATTY GILES, having been first duly sworn,
22 testified as follows:

23 THE WITNESS: Yes.

24 THE COURT: Please be seated.

25

1 DIRECT EXAMINATION BY MS. MCVEY:

2 Q. Patty, could you introduce yourself to the jury?

3 A. Yes, I'm Patty Giles. I'm Jerry Crawford's oldest
4 daughter. I'm the oldest child, but I'm his daughter.

5 Q. Are you nervous?

6 A. A little bit.

7 Q. Okay. You never testified in front of a jury before?

8 A. Never.

9 Q. Are you married?

10 A. I am.

11 Q. And who is your husband?

12 A. Mark Giles.

13 Q. All right. And do you have kids?

14 A. Two. Two daughters.

15 Q. And how old are your girls?

16 A. My oldest one is 28. My youngest one is 26.

17 Q. Okay. And you have grand kids?

18 A. I do.

19 Q. How many?

20 A. Three. Three daughters -- three granddaughters.

21 Q. So two daughters and three granddaughters.

22 A. Right. We can't buy a boy.

23 Q. Okay. You can't buy a boy.

24 Where do you live, Patty?

25 A. We live in Gaffney, but kind of close to Cowpens.

1 Q. Okay.

2 A. It's actually Gaffney, but it's closer to Cowpens.

3 Q. And where did you grow up?

4 A. In Gaffney.

5 Q. And who are your parents?

6 A. Jerry and Evelyn Crawford.

7 Q. Can you see that?

8 A. That's my dad.

9 Q. Is that your dad? He's making a silly face?

10 A. Yeah, he was -- he didn't want me to take his picture,
11 but he said "wait here," and he just like made that face and
12 I took the picture.

13 Q. So you are the oldest daughter?

14 A. I am.

15 Q. All right. And then Tessa is the next?

16 A. Yeah, she's the middle child.

17 Q. She's the middle child. I'm a middle child.

18 And then you have a younger brother?

19 A. I do.

20 Q. And where does -- what's your brother's name?

21 A. Danny.

22 Q. And where does Danny live?

23 A. He live in Amarillo, Texas.

24 Q. Okay. So he's not close?

25 A. No.

1 Q. All right. But y'all are all still a close family?

2 A. We are very close.

3 Q. All right.

4 How long were your parents married?

5 A. They married the year before I was born. Well, I don't
6 want to say, because I got to tell you how old I am.

7 Hold on. They were married for like 48 years.

8 Q. Okay. And devoted to each other?

9 A. Uh-huh.

10 Q. Tell me -- I understand your dad liked to work in his
11 yard. He told us that in his deposition.

12 A. Yeah. Yeah, he -- well, my mom did too. She liked
13 to -- she had flower beds everywhere and she would be out
14 there messing with the flowers and he would be out there
15 raking leaves, or cutting the grass, or, you know, doing the
16 hedges.

17 Q. Yeah.

18 A. And that's just something they did, you know, together.
19 Pretty much every day during the summer they would be out
20 there doing something in the yard.

21 Q. So she took good care of her flower beds?

22 A. Uh-huh.

23 Q. And your dad took care of the grass?

24 A. Right.

25 Q. Got it.

1 Could your mom drive?

2 A. No.

3 Q. So how did she get around?

4 A. My dad.

5 Q. Yeah.

6 A. Yeah. My mom never learned how to drive.

7 Q. Never did?

8 A. Uh-uh.

9 Q. I want to talk a little bit about -- well, who is that?
10 Can you see it?

11 A. That's -- that's me. I'm a long time ago at the beach.

12 Q. Yeah. They liked to travel a little bit?

13 A. Yeah. Well, yeah, they -- they took some trip. They
14 were day trippers --

15 Q. Yeah.

16 A. -- more than beach trippers. Like they would go to the
17 beach and maybe to the mountains, but they were like big
18 fans of like on Sunday driving up to Chimney Rock, or
19 something like that, Lake Lure.

20 Q. Right.

21 A. They used to follow us in the car. They would get my
22 grandmother on Sundays and just drive around in circles for
23 no apparent reason, which I -- and they still do that up
24 until -- I mean, up until, you know, my momma passed away,
25 they would still like -- and I have no reason -- you know,

1 idea why he would get in the car and he would ride around.

2 I have never done that since I have been grown, but --

3 Q. But they liked to Sunday drive?

4 A. Uh-huh.

5 Q. Your dad likes the grand babies?

6 A. Oh, Lord, yes. He loves them. Loves them.

7 Q. Let me ask you a little bit about your dad. Is he a
8 hard worker?

9 A. Yes. Yes.

10 Q. And you told me a story about a car breaking down and
11 he still got to work. Can you tell the jury that story?

12 A. Yes. This is when he worked at Wise, potato chip
13 place, which is in Whitney, the Whitney area of Gaffney --
14 Spartanburg, and dad's car had broke down. He lived in
15 Gaffney and rather than miss work, he walked from Gaffney to
16 Whitney to work for like several days. And like the days we
17 were off, we didn't work, we would go get him and bring him
18 home as much as we could, but we couldn't always do it, you
19 know. And so -- I mean, he just walked, you know -- I mean,
20 it's a long way. It was like 16, 17, 18 miles.

21 Q. And he would walk it every day?

22 A. And it would seem like -- he would walk home and it
23 seemed like by the time he got home it was time to go back,
24 walk back. And so -- until he got his car fixed. I mean,
25 it was probably a week and a half, two weeks maybe.

1 Q. But he wasn't going to miss a day of work?

2 A. Uh-uh, he never missed work.

3 Q. I want to talk to you a little bit about your dad and
4 the cancer that he has. Can we do that for a minute?

5 A. Uh-huh.

6 Q. The jury heard your dad talk about it, but can you talk
7 about that first ER visit and what took him to the ER?

8 A. Well, he had been -- all that summer he had been like
9 getting more and more short of breath and finally he really
10 couldn't breath at all and he had went to the emergency room
11 and they did an x-ray on him and admitted him to ICU because
12 he had the fluid on his lung. And my mom called me and
13 said, you know, "they got your daddy in the hospital." Of
14 course, everybody rushed to the hospital. You know, that's
15 the way we are. We all rushed to the hospital.

16 They kept him ICU for a couple days and they drained
17 the fluid off. They really didn't know what was going on.
18 And after that they referred him to the lung doctor, lung
19 specialist.

20 Q. And so that first time in the hospital he had the fluid
21 drained off?

22 A. Uh-huh.

23 Q. Did he have to go back several more time to have more
24 fluid drained off?

25 A. After he got referred to the lung doctor, the lung

1 doctor did it I want to say once or twice in his office and
2 then twice he went to Regional and the lung doctor went
3 there and did it, because for some reason they -- when they
4 did it in the office they could take less out, but when they
5 did it in the emergency -- in the ER -- not the ER, but in
6 the place, the Regional, they could take more out for some
7 reasons.

8 Q. In Spartanburg?

9 A. Yeah, because it was so dangerous to take, because he
10 had so much they would take like two liters out at a time
11 sometimes, and that was kind of dangerous, so they would do
12 that at Regional.

13 Q. Okay.

14 A. But in his office they would only maybe take a half a
15 liter or something.

16 Q. Okay. So in order to get the vast majority of fluid
17 out, he would have to go to the hospital?

18 A. Right.

19 Q. And when he had that done, was that painful?

20 A. Uh-huh.

21 Q. Okay. And when would he know if he needed to go back
22 to the hospital to have fluid taken off?

23 A. Because -- I mean -- I mean, it was like -- it got to
24 be like every couple of weeks, I mean, or every three weeks,
25 but he couldn't -- he couldn't breath. He would like more

1 and more be out of breath and it would, you know, be tight,
2 like he said his chest was tight.

3 Q. And that's when y'all knew to go?

4 A. Yeah.

5 Q. And at some point your dad described getting a catheter
6 put in?

7 A. Yeah, because we were going so often to have the fluid
8 drained out, doctor -- we call him Dr. O, and I can't even
9 pronounce his name, but it's a really long name, the lung
10 doctor. He referred us to another doctor to have like a
11 catheter, which is like a tube going into, you know, his
12 lung and coming out, that where we could like hook it up to
13 the bags at home and drain it ourselves at home, like every
14 three days, where we wouldn't have to keep taking him back.

15 Q. And so were you helping him? Were you and your mom
16 helping him drain it?

17 A. I went over every three days and drained it, and, you
18 know, because you had to like put on sterile gloves, take
19 sterile dressing off and clean it, hook it up to the little
20 bag and make sure it was like in the right position where
21 the gravity kind of helped drain it. You know, you could
22 only drain it for a certain amount of time and you took it
23 off, re-sterilized everything and bandaged it and -- so I
24 did that.

25 Q. Okay. And when he went to have the catheter placed,

1 did they also do a biopsy?

2 A. They did. When doctor --

3 Actually the doctors they sent us to get the catheter
4 was Dr. Nguyen at Spartanburg Regional and he turned out to
5 be in the oncology department, but at that time they had
6 sent his biopsies off a couple of time with the fluid and
7 they kind of -- they explained like it was inconclusive.
8 They never said they were cancer.

9 When we went to see Dr. Nguyen and before -- you know,
10 to talk to him before -- you know, just a couple of days
11 before he put the thing in, he told us, he said "we are
12 going to do a biopsy too" and he kept -- he just kept
13 dropping the word cancer on me. Like during the
14 conversation he was just saying the word. And I kept trying
15 to like say the other stuff, maybe, you know, because I
16 didn't want to think my daddy had cancer, but he just kept
17 saying that.

18 And when I got home that evening I called my little
19 brother in Texas, because I was -- you know, I always tried
20 to keep him informed. And I said "Danny", I said "I really
21 think that -- I said "Danny, I really think that doctor
22 thinks he has cancer," I said, "because he just kept saying
23 that word." I mean, I felt like he was trying to get us
24 used to the word. I told him "I think he thinks that he has
25 cancer."

1 And -- so -- so a few days later we did -- they put
2 those things -- went -- put daddy into the hospital to put
3 the drain in. He was going to have to stay overnight
4 because they were going to do like teach us how to, you
5 know, clean it and everything, you know. And I guess -- I
6 didn't realize that's what they were going to do, but they
7 send the biopsy while the patient is in -- you know, in the
8 operating room, they go ahead and send it to be tested.

9 And we had been sitting there forever and it was taking
10 longer than we thought it was going to take and my mom is
11 just sitting there waiting for the doctor to come out and
12 she was like really hungry, so I said "mom, let's just run
13 down there and get you something to eat in the cafeteria."
14 So we just went down to the cafe down there downstairs at
15 Regional and we didn't know the doctor came out while we
16 were there.

17 Well, my sister came to the cafe to tell us and I just
18 knew. I saw her walking up the hall and I saw her walk in
19 and I saw her face. She got to the table and she just like
20 kind of grabbed us at the table like, you know, like she was
21 about to fall down. She couldn't hardly get it out and
22 she -- she said "daddy has got cancer."

23 And then my mom, my goodness, she went hysterical. I
24 mean, the tower cafe. I mean, she was just hysterical. And
25 so I tried to calm them down and get them out of there and

1 take them back to the surgery waiting room.

2 And then doctor -- you know, Dr. Nguyen came back out
3 and talked to us and it --

4 For a little bit before that and he was saying he was
5 going to come -- my daddy was still in recovery and asleep
6 and he was going to come back the next day and talk to dad.
7 And we were trying to decide, because we knew we were going
8 to be gone when daddy woke up and we were trying to decide
9 what we were going to tell daddy when he woke up, when we
10 were going to tell him, or, you know, wait until and let the
11 doctors tell him, because, you know, we didn't want to like
12 bust out crying and stuff and --

13 Q. In front of your dad?

14 A. Right, exactly.

15 And so we finally decided we would just play it by ear.
16 And I told them, I said --

17 We got in there and dad woke up, and, sure enough, he
18 was like -- the first thing he said, you know, "what did
19 they say?" And I just looked at him and I said "they just
20 found a little bit of cancer, daddy. Don't worry about it.
21 They are going to take care it," you know? And that's --
22 you know, that's all I could say, you know.

23 And he just -- he just kind of took it in stride and
24 said okay. You know, he didn't -- I guess he was trying to
25 be strong for us, you know, and --

1 Q. Right.

2 A. -- we were trying to be strong for him. So --

3 Q. So after that diagnosis and you found out it was
4 mesothelioma cancer?

5 A. That day they didn't tell us. That day they told us it
6 was cancer.

7 Q. Okay.

8 A. And they -- when we went back the next week for the
9 followup with Dr. Nguyen, that's when he told us that they
10 had sent off for, I guess, further tests to see what kind of
11 cancer it was and that's what it was.

12 Q. Okay. And shortly after he was diagnosed with
13 mesothelioma, did he start chemotherapy?

14 A. He did.

15 Q. And what is that right there?

16 A. Oh, that's at the Gibbs Cancer Center. They had
17 those -- those butterfly benches and one day my
18 granddaughter had went with us to Dr. Nguyen's, to the
19 appointment at Dr. Nguyen's office, and she loved those
20 butterflies, so she insisted that everybody take pictures on
21 those butterfly benches.

22 Q. So your dad is on the butterfly bench, but at the
23 cancer center?

24 A. Yes. And he put his wings out like he had -- like he
25 was -- put his arms out like he was flying.

1 Q. So your dad started chemotherapy?

2 A. He did.

3 Q. So he still had the catheter in, right?

4 A. Yes, he did.

5 Q. To keep the drainage out.

6 And then -- did he have to have a port plate?

7 A. He did, on the other side. We had to go -- Dr. Nguyen,
8 after he told us it was mesothelioma, he referred us to the
9 oncologist, Dr. Khomani.

10 And we went and talked to Dr. Khomani and he said -- he
11 said "I'm going to send you back to Dr. Nguyen." And, you
12 know, they were kind of -- they kind of like get together.
13 They have like some kind of cancer board where all the
14 doctors call and talk and he said "Dr. Nguyen put this port
15 in and, you know, we were going to discuss what we were
16 doing." So we went back and put the port in.

17 All that happened really fast, but we saw Dr. Khomani;
18 you know, a couple days later we went back to Nguyen, went
19 back in the hospital to put the port in, came back out,
20 maybe a day later, we'd went back, he had the chemo.

21 Q. And the port allowed the cancer nurse, the chemotherapy
22 nurse, to give him the chemotherapy?

23 A. Right.

24 Q. Right?

25 A. Right.

1 Q. Okay. And so how did your dad do as he was taking
2 chemotherapy? How did he react?

3 A. Well, it made him really, really bad sick. At first he
4 kind of okay.

5 The very first one they did was -- the way the nurse
6 explained it to us is it makes your immune system go down.
7 About a week after you take it is when your immune system
8 starts going down. And for a couple weeks your immune
9 system goes down and it starts going back up. It hasn't
10 responded to the chemo yet, and the very first one he did
11 was a week before Christmas. So they said, you know, he --
12 during that time when his immune system was down he had to
13 wear a mask whenever he was around people, which we tried to
14 keep him away from people, but we always, always, always did
15 holidays at my parents' house. So that Christmas my dad had
16 to wear a mask. So I told everybody, I said "we will all
17 wear masks and we will decorate them. We will put like
18 Christmas trees on them," you know, look -- you know, Santa
19 Clause, or just whatever, you know, so my dad --

20 Q. Everybody had a mask on at Christmas.

21 A. Everybody had a mask. We didn't all keep them on, but
22 the children did. The children loved them. But adults,
23 those are really hard to breath. You know, I don't know how
24 dad does it.

25 Q. So I understand your dad every three weeks would have

1 chemotherapy?

2 A. Every three weeks.

3 Q. And the idea was to try to reduce the size of the
4 tumor?

5 A. Uh-huh. Yeah, so that doctors -- possibly Dr. Nguyen
6 could do the surgery.

7 Q. And we'll get to the surgery in just a minute, but I
8 understand -- tell me -- I understand in February as your
9 dad was undergoing chemotherapy your mom got sick?

10 A. She did.

11 Q. And can you discuss a little bit how your mom was
12 caring for your dad that time period between his diagnosis
13 and when she got sick?

14 A. Yes.

15 My mom, it started out kind of like she had like a
16 little cough. Maybe at the beginning of February she had a
17 little cough and she went to the doctor and they said it was
18 bronchitis, but she kept coughing and she -- she really
19 didn't tell anybody how bad she was. I mean, she didn't
20 make a big deal out of it. And you haven't -- we knew that
21 she was sick and feeling bad, you know, coughing, or
22 whatever, but like you never think when you are trying to --
23 you got one parent that's dying. You know, you don't think
24 another parent is going to -- you know, going to die, when
25 you are trying to protect the first one. So -- but, anyway,

1 I feel like she didn't -- she was just so worried about my
2 dad that she was -- didn't want to like make -- you know,
3 make a big deal about how she felt, because she was like,
4 daddy -- my dad has cancer, what am I going to complain
5 about a cough?

6 But, anyway, her bronchitis got worse and finally daddy
7 just drug her, made her go to that urgent care in Gaffney
8 and they -- her heartbeat was beating really, really fast,
9 and her oxygen was really low, so they sent her by ambulance
10 to Regional, and this was on Valentine's Day. My dad called
11 me and I rushed up to the emergency room and I'm trying -- I
12 was just joking with her. I said "momma, leave it up to you
13 to go on Valentine's Day with a heart problem to the
14 emergency room."

15 They even put her in ICU and she was there until March
16 the 6th, and she was on and off the ventilator. They kept
17 trying to get her off and then she would -- her oxygen would
18 just get low again and they would have to put her on. She
19 had -- at this point she had done got pneumonia and she was
20 so bad off that, you know, they were doing all they could.
21 But, I mean --

22 Q. Patty, let me ask you. When she was on the ventilator,
23 could she communicate with you all?

24 A. Yeah, we had a white board.

25 Q. And what was she worried about?

1 A. She was worried about my daddy. She said "make your
2 daddy go home. Make your daddy eat. Make sure" -- the
3 whole time she was worried about my dad.

4 Q. Was she writing that the white board?

5 A. She was.

6 And a couple times she was able to talk, because they
7 did get her ventilator off. It would only stay off for like
8 maybe a day. We would go home, we went back and the
9 ventilator would be off, and then they would call us that
10 night "we had to put the ventilator back in," you know.

11 Q. And I know your mom died on March 6th?

12 A. She did.

13 Q. And how -- how did your dad -- was he still going
14 through chemotherapy while she was in the hospital?

15 A. He was.

16 Q. And did --

17 A. And we actually -- his chemo was at Gibbs in Gaffney
18 and we had it transferred to the Gibbs in Spartanburg so
19 that he could get it in the same -- while we were there with
20 mom.

21 Q. What happened on March 7th? Your mom died on March
22 6th. What happened on March 7th?

23 A. Where my mom was in the ICU, we had -- we always went
24 through the heart center to get to where she was at.

25 On March 7th, the day after my mom died, we went -- we

1 had to go to the funeral home to kind of make arrangements,
2 and then I was -- I left with my dad from the funeral home.
3 We had to go back to Gibbs to the heart center. That same
4 door where we always went in with my mom where we walked
5 down the night before after my mom died, because my dad had
6 to get a PET scan, and they couldn't -- they couldn't
7 postpone -- you know, he had to get it then. So I had to
8 take my dad back right to that place the next day after we
9 left the funeral home.

10 Q. That's the PET scan to see if the cancer had spread?

11 A. Uh-huh.

12 Q. After your mom died, I understand that your daughter
13 took over, moved in with your dad?

14 A. Well, actually when my dad -- my daughter lived in
15 Simpsonville. When my dad first got chemo -- started
16 getting chemo, my daughter decided to move in with my dad,
17 because, you know, dad was on the pain medicine and he was
18 throwing up and stuff and my mom couldn't drive. So it was
19 just to, you know, to be able to drive to places and run
20 errands. And she actually had got a job in Gaffney.

21 When momma got sick, she went on leave, because, you
22 know, because mom was in the hospital and all that stuff.
23 And than mom passed away, and like my sister and I -- like
24 all the family discussed it and we just decided it would be
25 better for Pamela to not go back to work and just stay and

1 take care of dad and like we help her out, you know, if she
2 needed any help. So that's what she did. She just didn't
3 go back to work and she lives full time with my dad now.
4 She like, you know, cleans, does the shopping, makes sure
5 his prescriptions were filled. Like the days when he takes
6 his pain medicine, she don't let him drive. So, you know,
7 if he needs to go anywhere, she will take him, or she will
8 go for him.

9 Q. Right.

10 So Pamela moved in to kind of take care.

11 And then did your dad ultimately undergo the surgery
12 that he wanted to do?

13 A. He finally did go.

14 Q. And who did that surgery?

15 A. Dr. Nguyen.

16 Q. And that was at Spartanburg Regional?

17 A. Uh-huh. He is my hero.

18 Q. He is?

19 A. Dr. Nguyen is great.

20 Q. And the surgery, did they remove the lining of your
21 dad's lung?

22 A. They removed -- they said 95 percent of the lining.
23 They just left the part that was near the heart.

24 Q. Okay. And the linings where the tumor was?

25 A. Uh-huh, yeah. He said it was pretty thick, because the

1 lining is supposed to be like really, really thin, like a
2 couple pieces of paper, and he said, you know, it was pretty
3 thick for -- the tumor had -- the tumor was pretty, I guess,
4 thick, you know, but it was -- it was like in different
5 places. It wasn't just like one tumor. It was like
6 different spots of his lung.

7 Q. Right.

8 And did they take out part of his right lung?

9 A. They did, like a part of the bottom lobe.

10 Q. Okay. And can you tell the jury a little bit about
11 what that recovery, what that surgery recovery was like for
12 your dad?

13 A. He was in the ICU for a while. They said he might be
14 in ICU for a month, and dad was actually out in probably a
15 week, because he was just so stubborn. He actually ended up
16 going back to the hospital. So he got home and ended up
17 back in the hospital. So he went home earlier than he
18 should have, but Dr. Nguyen had told us before we have --
19 even before like he even knew that he was going to do the
20 surgery, it was horrible, horrible surgery. He said like
21 one of the worst surgeries you can have, and he described it
22 like if you rode a motorcycle and had a wreck and went down
23 the road and got road rash just all over. And, you know,
24 how it would be like bigger and, you know, pieces of skin
25 off it. He said that's what the entire part of his lung

1 would be like.

2 And they basically like just had to like -- like they
3 do to open heart surgery, or something. They have to spread
4 you -- you know, crack you and spread your ribs to get to it
5 and he said it was a horrible, horrible surgery, and daddy
6 really had been in a lot of pain.

7 Q. And that is what I was going to ask you. So since the
8 surgery, has his pain -- is he still in pain?

9 A. Oh, yes.

10 Q. Is it worse?

11 A. Yes. We are hoping that it -- you know, that it for
12 nothing, but, yeah, it's worse.

13 Q. And what about his breathing? Is he having trouble
14 breathing?

15 A. Uh-huh, he is still having trouble breathing and he has
16 cough. He keeps a cough now for some reason.

17 Q. Is it hard for him to talk?

18 A. It is, and he gets really tired easy. Like since my
19 mom died we have been going to their house every since my
20 sister cooks every Sunday, Sunday dinner.

21 My dad, he wants us to be there all the time and he
22 will get so tired, he will have to go lay down and he will
23 just like beg us. He'll say "I'm just going to lay down for
24 an hour. Please don't leave. Please stay here until I get
25 up," you know. So, of course, we stay there.

1 Q. Everybody stays because he lets the grandchildren
2 torture him it looks like right there?

3 A. Yeah, I don't even know what she is doing. I don't
4 know --

5 Q. This is my favorite.

6 A. I don't know. He -- he does not tell those kids no.

7 Q. So I understand that your mom was the one that cooked
8 Sunday dinner every Sunday?

9 A. Yes.

10 Q. And everybody came?

11 A. Uh-huh.

12 Q. And now Tessa has taken over?

13 A. Yeah, Tessa cooks.

14 Q. Tessa cooks.

15 You don't cook?

16 A. No. I microwave.

17 Q. I hear you.

18 Your dad talked a little bit about in his deposition
19 how even though the doctor said 20 percent chance of
20 survival, that that really gave him hope?

21 A. Yeah, he said he was glad for the 20 percent, you know,
22 because the guy before him might not have had 20 percent,
23 you know.

24 Q. Okay. So even though he's in pain and he has trouble
25 breathing, he still has hope?

1 A. Yes.

2 Q. Thank you, Tessa.

3 A. Patty.

4 Q. I just called you Tessa. Thank you, Patty.

5 MS. MCVEY: I pass the witness, Your Honor.

6 THE COURT: All right.

7 Mr. Wall? Mr. Boger?

8 MR. BOGER: No questions, Your Honor.

9 THE COURT: Very good.

10 Thank you, ma'am, very much. You may come down.

11 Ms. McVey?

12 MS. MCVEY: Your Honor, we would call Tessa Quinn.

13 THE COURT: Ms. Tessa Quinn, if you would come
14 around, please, ma'am.

15 Ms. Quinn, please come on right up here and the
16 clerk will give you the oath.

17 TESSA QUINN, having been first duly sworn,
18 testified as follows:

19 THE WITNESS: I do.

20 DIRECT EXAMINATION BY MS. MCVEY:

21 Q. Hey Tessa.

22 A. Hi.

23 Q. How are you doing?

24 A. Good.

25 Q. Are you nervous?

1 A. Yes.

2 Q. All right. Never testified in front of a jury before?

3 A. No.

4 COURT REPORTER: You are going to have to speak
5 up, please.

6 THE COURT: Ms. Quinn?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: I know this is tough, but if you could
9 try to speak up little bit, for two reasons. Number one,
10 your jury has to hear you. And number two, I have to hear
11 you and the attorneys, so do the best that you can.

12 BY MS. MCVEY:

13 Q. I'm going to ask you some really easy questions. Are
14 you ready?

15 A. (Shaking head yes).

16 Q. Okay. So you are the middle child?

17 A. (Shaking head yes)

18 Q. Just like me.

19 And I understand you are the only one that can cook
20 Sunday dinner?

21 A. (Shaking head yes).

22 Q. And would you please tell the jury whether or not Patty
23 does the dishes after you cook?

24 A. She does.

25 Q. She does?

1 A. She does sometimes.

2 Q. All right, that's what I thought.

3 THE COURT: It's just like an older sister would
4 do. I'm the older sister. There is five and I always --

5 MS. MCVEY: You always do the dishes.

6 THE COURT: Yeah.

7 BY MS. MCVEY:

8 Q. I just have a couple of questions for you. I'm not
9 going to go through all of it, but you grew up in Gaffney?

10 A. Yes, ma'am.

11 Q. Okay. And how many kids do you have?

12 A. Three.

13 Q. And how many grand kids do you have?

14 A. One.

15 Q. Okay. You have a younger brother Danny?

16 A. Yes, ma'am.

17 Q. All right. I know that you, as you said, kind of took
18 over the family dinner so everybody could be together, is
19 that right?

20 A. Yes, ma'am.

21 Q. Is that important for your dad for y'all to be
22 together?

23 A. Oh, extremely.

24 Q. I just want to ask you one question about the time that
25 your mom was in the hospital and she -- right before she had

1 the last trache put in. Could you tell the jury what she
2 said to you?

3 A. Just -- I'm sorry. I was the only person in the room.
4 She looked at me and she said "Tessa, I'm scared."

5 I said "what are you scared of, mommy. Don't be
6 scared."

7 She said "I'm really sick." She said "I'm not scared
8 of going. I'm scared of going knowing your daddy is sick
9 and leaving him here by himself and knowing he needs me."

10 Q. Thank you.

11 MS. MCVEY: No more questions.

12 THE COURT: Do you have any questions?

13 MR. BOGER: No questions.

14 THE COURT: Thank you.

15 MS. MCVEY: Your Honor, just briefly, I would like
16 to move into evidence the photographs that were displayed to
17 the jury.

18 THE COURT: All right. Thank you, ma'am.

19 MS. MCVEY: That would be bates number 805.1,
20 805.2, 3, 4, 5, 6, 7, and 8.

21 THE COURT: Without objection?

22 MR. BOGER: No objection.

23 THE COURT: Very good.

24 Bring the lights up, please, sir.

25 (Whereupon, Plaintiffs' Exhibit No. 805.1 was

1 entered into the record as evidence).

2 (Whereupon, Plaintiffs' Exhibit No. 805.2 was
3 entered into the record as evidence).

4 (Whereupon, Plaintiffs' Exhibit No. 805.3 was
5 entered into the record as evidence).

6 (Whereupon, Plaintiffs' Exhibit No. 805.4 was
7 entered into the record as evidence).

8 (Whereupon, Plaintiffs' Exhibit No. 805.5 was
9 entered into the record as evidence).

10 (Whereupon, Plaintiffs' Exhibit No. 805.6 was
11 entered into the record as evidence).

12 (Whereupon, Plaintiffs' Exhibit No. 805.7 was
13 entered into the record as evidence).

14 (Whereupon, Plaintiffs' Exhibit No. 805.8 was
15 entered into the record as evidence)

16 THE COURT: Ms. McVey?

17 MS. MCVEY: The plaintiffs rest.

18 THE COURT: Very good.

19 All right. Ladies and gentlemen, I think we are
20 about on target with the eleven o'clock that I predicted a
21 little bit earlier.

22 The plaintiff has rested the plaintiffs' case and
23 that means that I will, as I explained to you, have some
24 things that I have to do, communicate with the lawyers
25 about, and then they need to go to lunch. So I am going to

1 let you go now and I would like you back --

2 Let's kind of interact here for a minute,
3 attorneys? How about -- is 1:30 enough time, do you think?

4 MS. MCVEY: Yes, ma'am.

5 THE COURT: Members of the jury, be back here at
6 1:30, if you would. Thank you.

7 You may go to your jury room.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: All right. Mr. Wall?

11 MR. WALL: Yes, Your Honor.

12 On behalf of Covil I would ask to move for a
13 directed verdict first on the issue of negligence.

14 Your Honor, in my opinion the evidence clearly
15 shows, one, that Covil was not present at the job site.

16 Two, that Covil did not install any insulation.
17 Daniel put the insulation in.

18 Three, there is no direct evidence that Daniel --
19 I mean that Covil sold any product to Daniel. And, as such,
20 there was no -- there was no sale.

21 There was -- the product, whatever was put in
22 there, was by done by specs, required by Celanese and
23 Daniel, and the plaintiff in this case did not work with any
24 product sold or installed by Covil, and, thus, Covil cannot
25 be negligent in this case.

1 I assume you want to do --

2 THE COURT: Yes, what we will do is for each of
3 your motions, your first motion is a motion for a directed
4 verdict on the first count, which is the negligence count,
5 and I will turn now to Ms. McVey.

6 MS. MCVEY: Your Honor, the evidence in this case
7 has been that Covil did it. They supplied the insulation.
8 That came from Harley Neelands.

9 Mr. Carpenter, Machen Lee Carpenter, said that
10 Covil and Daniel did these projects together. Covil said
11 that Daniel was its biggest customers.

12 Don Buck, Daniel said it was Covil and Daniel.

13 There is a record from 1971, a list of contractors
14 from 1971 to 1975, that showed that Covil was an insulating
15 contractor at Hoechst Celanese in Spartanburg.

16 MR. WALL: And prior to that, Your Honor, looking
17 at the document in evidence as -- as 822.4, and was
18 displayed, it's got the names of several companies.

19 And over on the other side of that it says
20 description work and across from Covil there is nothing.
21 And Mr. Buck said that means to him that Covil did not do
22 anything on the job site.

23 And if you go down to the bottom it says Southern
24 Insulation and it says AC installation.

25 And so I think any inference is, because we know

1 Daniel actually installed this asbestos, according to their
2 witness, Mr. Neelands, and the only question is did Covil
3 sell any information -- any asbestos, and there is no record
4 of any sale by Covil to Daniel for this project.

5 MS. MCVEY: Your Honor, two things just briefly,
6 if I could respond?

7 The first is that Harley Neelands said Covil
8 supplied the insulation.

9 MR. WALL: He didn't say that.

10 THE COURT: Well, let's not do it that way.

11 MR. WALL: Yes.

12 THE COURT: Let's have each person --

13 MR. WALL: I apologize, Your Honor.

14 MS. MCVEY: Harley Neelands said they supplied the
15 insulation, Covil did.

16 There is also spoliation charge that if Covil had
17 kept their records, as they should have, as they were
18 available to him, that it would show sales for that project.
19 That's the second thing.

20 The HVAC contractor -- I mean, I'm sorry, the
21 other insulation contractor that he talks about, the
22 evidence in this case was that they were just doing HVAC
23 work. They were not insulating the pipes. That was Covil's
24 job.

25 Your Honor, just in terms of -- and I don't know

1 if you want to get to exposure yet. That's part of the
2 negligence claim, but --

3 THE COURT: Why don't we just stick on negligence.

4 I will deny the -- I will deny the motion for a
5 summary -- the motion for a directed verdict by defendant
6 for a couple of reasons.

7 First of all, there is abundant evidence in the
8 record that Covil was the insulation subcontractor for
9 Celanese at the time frame that is in issue here, which is
10 '70 to '74, when it is claimed Mr. Crawford was exposed to
11 this product.

12 There is abundant evidence that Covil knew at the
13 time it performed its insulation work that asbestos was a
14 dangerous product which could cause, not only asbestosis,
15 but mesothelioma, if exposure was had to it.

16 There is abundant information to establish that
17 there were other products available during this time that
18 could have been used to insulate these very hot pipes other
19 than Kaylo and related asbestos-containing insulation
20 materials.

21 There's a good deal of evidence that this
22 asbestos-containing material was also used with a mud that
23 was used to apply the insulation to the pipes and that that
24 mud was mixed in a way that caused release of dust in the
25 atmosphere.

1 There is abundant testimony from Crawford and
2 others that they worked around the release of Kaylo dust
3 into the air as it was removed from pipes, as it was applied
4 to pipes.

5 And there is abundant evidence that Covil was
6 either a or the insulating contractor.

7 We don't have the invoices from this particular
8 period because it is claimed that Covil -- that these
9 materials were destroyed, but there is information from
10 Carpenter and others that this material was not destroyed by
11 the fire, because it was kept in the vault in the office
12 part of the Covil factory where it was protected by the
13 vault itself and by a firewall, but that material is no
14 longer available, and I have found that spoliation took
15 place with respect to that material. And, therefore, I have
16 read to the jury an instruction that Jerry Crawford was
17 exposed to asbestos insulation supplied and installed by
18 Covil Corporation at Celanese between 1970 and 1974.

19 In addition, one of the exhibits that has been
20 placed into evidence in this matter during the testimony of
21 Mr. Glenn, the corporate representative for Covil, is an
22 invoice from Covil Insulating Company dated 2-7-74 to
23 Firestone Tire & Rubber in Wilson, North Carolina, and it is
24 an example of invoices that Covil would send in connection
25 with the supply of Kaylo and Thermobestos on jobs in which

1 it was the insulating contractor. And this invoice form
2 that Covil uses shows the areas from where the job was
3 shipped, and it has six blocks, and the areas are
4 Greenville; Greensboro, North Carolina; Wilson, North
5 Carolina; Augusta, Georgia; and Albany, Georgia.

6 In this particular invoice that was sold to
7 Firestone Tire & Rubber in Wilson, North Carolina, in care
8 of Yeargin Construction Company, Wilson, North Carolina, the
9 invoice, which is dated 2-7-74, on a particular customer
10 purchase order number for a shipment dated 2-5-74, shows
11 shipped from and it says number one on here, and number one
12 is the Covil plant at Greenville, South Carolina, where the
13 fire in Berea Industrial where the plant was located
14 allegedly took place. This is a shipment after that time
15 from the location that we are talking about with an invoice
16 that had it -- and it is a shipment of Kaylo PC, \$1,460
17 worth, and Thermobestos, \$1,663 on this particular invoice,
18 and these two materials, the testimony has shown, are
19 asbestos-containing insulation materials.

20 If we had the Covil invoices from the period we
21 are talking about where Covil was the identified insulation
22 contractor for Daniel, those invoices would identify from
23 where the insulation was shipped, what kind of insulation
24 was shipped, and how it was shipped to the ultimate plant,
25 and the contractor to whom it was shipped care of. And that

1 evidence of plan and practice by Covil indicates to me that
2 had the information been preserved and not spoliated, it
3 would clearly show the shipments to Celanese, in care of
4 Daniel Construction Company; and it indicates that the plan
5 and practice of Covil was to itself supply this
6 asbestos-containing information on jobs in which it was the
7 insulating contractor.

8 So I think there is -- the evidence is, of course,
9 on this point viewed in the light most favorable to the
10 nonmoving party, and the nonmoving party is, of course, the
11 plaintiff in this matter, and I think there is plenty of
12 information in the record from which a jury could find that
13 Covil supplied the asbestos-containing material and sold it
14 for use on the job, and participated in the installation of
15 this material on the job, according to the testimony of
16 several of the co-workers, including Covil co-workers. So
17 that's my ruling on the negligence cause.

18 All right. Mr. Wall, you may proceed.

19 MR. WALL: Your Honor, Covil now moves for
20 directed verdict on the strict liability charges.

21 THE COURT: On what?

22 MR. WALL: Strict liability.

23 THE COURT: Strict liability.

24 MR. WALL: I will incorporate my comments from the
25 negligence count and only add again that there was no proof

1 of any sale of any product by Covil to either Celanese or to
2 Daniel. That, again, Daniel, by their own -- by their own
3 witness, upon its own witness, installed the insulation on
4 this project. And so, therefore, again, I believe that
5 there is no proof that we were negligent -- excuse me, or
6 strictly liable installing these products.

7 Again, this property was built by specification
8 and there is no evidence that the plaintiff ever worked with
9 any product by -- sold, or installed by Covil.

10 THE COURT: Ms. McVey?

11 MS. MCVEY: Your Honor, for all the reasons that
12 you articulated so well, his negligence claim would apply to
13 the strict liability claim. There is abundant evidence that
14 not only Covil either supplied or installed insulation at
15 the Celanese plant, that Daniel used them and their
16 insulation subcontractor, and that it is clear that Mr.
17 Crawford had significant causative exposure to asbestos
18 insulation, the Kaylo and other product described by the
19 witnesses in this case, and, therefore, they would be
20 strictly liable.

21 THE COURT: Very good.

22 All right. I will deny the motion for a directed
23 verdict on strict liability for the reasons stated
24 previously in the analysis of the negligence cause.

25 And, in addition, there is certainly information

1 from the deposition -- from the live testimony of the
2 corporate representative before us for Covil that verifies
3 the relationship between Daniel and Covil as Covil -- as
4 Daniel being its largest customer for the supply of
5 insulation and for subcontracting work on insulation during
6 the time we are talking about.

7 There is plenty of information from Covil workers,
8 as well as from Mr. Crawford's coworkers at Celanese, to
9 indicate that Daniel was involved in the contracting of new
10 work, as well as repetitive maintenance work, and that in
11 that connection it used materials supplied by its insulator.

12 And when you put those -- connect those dots,
13 there is more than a scintilla of evidence to suggest and
14 for the jury to find strict liability for the sale of these
15 asbestos-containing products by Covil, so I'll deny the
16 motion.

17 All right, Mr. Wall.

18 MR. WALL: Yes, Your Honor.

19 Covil now moves for a directed verdict on the
20 implied warranty claim, and I'll reincorporate all my
21 arguments for the negligence and the strict liability claim
22 in the warranty. And, again, add there was no proof of any
23 warranty, either implied or otherwise, by Covil as to any
24 product. There was no evidence of any product used by Covil
25 or sold by Covil or -- sold by Covil that Mr. Crawford

1 worked with.

2 Again, the Covil sales record that you are
3 referring to was post-'73, post-fire. It was not pre-fire.
4 And the arguments we have in this case are that documents
5 pre-fire are the ones that were destroyed, not post-fire.
6 And, again, we didn't search for that particular sales
7 invoice because it was not involved in this case in any form
8 or manner.

9 And, again, there is no evidence that the
10 plaintiff worked with the product and the property and was
11 built according to the specifications, so whatever we did
12 was required to by contract.

13 THE COURT: All right. Ms. McVey?

14 MS. MCVEY: Your Honor, I won't reincorporate all
15 our other arguments -- I mean I will reincorporate all our
16 other arguments about going through this again, but just in
17 terms of whether or not Mr. Crawford worked with their
18 defective product, it is undisputed that Mr. Crawford was
19 around insulation contractors installing, sawing, removing
20 insulation as a bystander.

21 It's undisputed that every day he swept that
22 asbestos insulation. That would make it direct exposure,
23 significant direct exposure as articulated by Dr. Brody and
24 Dr. Maddox.

25 And, in fact, there is no expert testimony on the

1 other side disputing the causation of his mesothelioma as a
2 result of his exposure to this insulation. It's actually
3 undisputed in this case.

4 THE COURT: All right.

5 I incorporate the analysis I have made in the
6 denial of directed verdict in the other two causes, but I
7 will say with respect to implied warranty, that implied
8 warranty does not depend on the exhibition to the jury of a
9 written contract.

10 Implied warranty is implied by the law, as I will
11 instruct the jury, and those who place into the stream of
12 commerce materials that are dangerous and provide no warning
13 have particular responsibilities based on strict liability,
14 but they also have responsibilities because they implied the
15 warrant, the fitness of the product for the purpose for
16 which it will be used. And here the evidence is abundant
17 this product was not fit for the purposes for which it was
18 used because of the severe danger involved in its
19 application and removal, to not only those who install it,
20 but those who are around it. Both the expert testimony and
21 the testimony of workers and the testimony of the corporate
22 representative is that these materials are dangerous and
23 that they can cause death and that they can cause severe
24 illness, and that they can cause mesothelioma. And based on
25 that, the implied warranty count is supported by more than a

1 scintilla of evidence sufficient that the jury would be
2 entitled to find that there was an implied warranty with
3 respect to the use of this material supplied by Covil and
4 that there was a breach of that warranty due to the supply,
5 the knowing supply, by Covil of material that it knew was
6 not fit for the purposes for which it was supplied because
7 of its dangerous propensity. And, therefore, I will deny
8 the motion for directed verdict on the issue of implied
9 warranty.

10 Does that complete your motions, Mr. Wall?

11 MR. WALL: No, Your Honor. I'm going to move for
12 a directed verdict on the question number five as to
13 punitive damages.

14 I will incorporate all my other arguments and add
15 in the standard of proof on punitive damages is clear and
16 convincing evidence. And I suggest to the court that there
17 is no evidence in this record of clear and convincing
18 evidence that Covil did anything willfully, wanton, or
19 reckless in this case. They complied with the request of
20 the owner, request of the contractor, and the only testimony
21 that they have that may go to that issue is Mr. Waters, and
22 Mr. Waters did not work at Celanese, did not work with Mr.
23 Crawford, and I would suggest to the court as such his
24 testimony is, one, irrelevant, and, two, does not meet the
25 standard anyway.

1 THE COURT: Very good.

2 Ms. McVey?

3 MS. MCVEY: Your Honor, I think in this case there
4 is more than almost any other I have been involved in in
5 terms of evidence of recklessness.

6 The first is that they never tested their product
7 to see if it was dangerous.

8 The second is even when they knew beyond any doubt
9 in 1965 that asbestos could not only hurt people, it could
10 kill people, they never warned about it. In fact, in the
11 fifties they gave their own employees respirators, but never
12 told anybody else who would be using their products about
13 the dangers of that. They didn't warn. They didn't test.

14 They also, the testimony is, in the seventies,
15 when everybody knew -- went asbestos-free, what they did is
16 they used asbestos-free boxes, but they wanted to get rid of
17 their asbestos supply, so they put asbestos-containing
18 insulation in asbestos-free boxes and shipped them out to
19 workers. And not only did they not know that they were
20 working with asbestos, they couldn't protect themselves.
21 That's recklessness.

22 THE COURT: All right.

23 I find that the directed verdict motion on
24 punitive damages should be denied. The standard is clear
25 and convincing.

1 And in addition to the evidence of recklessness,
2 willfulness, and wantonness that has been discussed by Ms.
3 McVey, an additional piece of evidence that is important, in
4 my view, is the evidence given by the corporate
5 representative himself who says that Mr. Palmer Covil, who
6 was the head of the company at that time, well knew the
7 dangers of asbestos, had attended conferences in which the
8 dangers of asbestos had been discussed with a high level
9 official with the national insulators trade group, its
10 president, as well as on its board of directors, and was
11 well aware of industry knowledge about the danger of
12 asbestos.

13 In addition to that, the corporate representative
14 testified under oath that despite Covil's knowledge of the
15 dangers of asbestos, that he allowed the use and continued
16 use of asbestos in the product his company sold as a
17 business decision. That indicates a very conscious decision
18 to distribute the material that he knew.

19 So there is evidence of recklessness and there is
20 evidence of willfulness and wantonness sufficient to
21 constitute more than a scintilla and more than a clear and
22 convincing standard.

23 The degree of the standard does not have to be
24 determined at this time. It's just simply the existence of
25 evidence, not the weight of it, but I will find on this

1 record that there is enough evidence from which a jury could
2 find by clear and convincing evidence that in this
3 particular case the Covil Corporation made a deliberate
4 decision and a reckless and wanton decision to distribute
5 this product.

6 All right. That's the rulings on the directed
7 verdict motions.

8 Now, does the plaintiff have directed verdict
9 motions?

10 MS. MCVEY: Your Honor, they have not finished
11 their evidence, obviously, but we can go ahead and argue our
12 directed verdict on a couple of issues, if that would suit
13 the court. I know they --

14 THE COURT: Well, I'm simply protecting you and
15 the record in this regard, because I believe that you would
16 want to make whatever motions you want to make of a directed
17 verdict status in order to be able to make any kind of
18 motions you would want to make at the close of the
19 defendant's case, and then at the close of the -- after we
20 receive a verdict.

21 MS. MCVEY: Your Honor, I don't think we have any
22 directed verdict motions at this time.

23 THE COURT: All right.

24 I will tell you that -- both sides that I will be
25 listening very carefully to defendant's case. I have not

1 had a case, and I have tried a bunch of these. Certainly
2 tried a number of cases when I was in the trial work and
3 heard a number of appeals in the long period of time I
4 served on the Supreme Court. I have not seen a case that
5 contained as strong a constellation of liability evidence as
6 I see in this case, and so I will be looking very carefully
7 of what my responsibilities should be in terms of whether to
8 direct a verdict on liability before this case is submitted
9 to the jury. I'm not saying I'm going to do it, but I
10 simply want to be fair to everyone and say that I am
11 concerned about this. It's not Mr. Wall's fault or he can
12 deal with only what he's given by the client to deal with,
13 but quite apart from the direction of finding that I made as
14 a response to the discovery violations of this defendant,
15 the evidence that's been presented in the case quite
16 separately from that is at this point almost un-controvered
17 evidence of liability. And so I'm concerned about that and
18 I just want to let you know that.

19 All right. Now, we dealt with our motions. It's
20 a quarter after eleven. We've got the defendant's case to
21 put up, and I take it y'all want to do your charges after
22 that?

23 MS. MCVEY: Yes, ma'am.

24 THE COURT: That's fine. That's fine. I just
25 want to be sure we are all on the same page.

1 MS. MCVEY: I think so, just make sure what
2 evidence they have came in.

3 THE COURT: I think that's fair to both sides. We
4 need to see exactly what the submission of evidence is going
5 to look like before we make a final decision.

6 If you have anything else you want me to look at,
7 y'all let me know, but otherwise I'm going to take an early
8 lunch, as I guess you will.

9 MS. MCVEY: Great.

10 THE COURT: And we told the jury to be back here
11 at 1:30, so we will look forward to the presentation of the
12 case. And after that we will go into the charges, but I'm
13 going to tell you, if I had to do it from scratch, I would
14 try this case and send it to the jury today, because we got
15 plenty of time to do that and I'm all about trying to get
16 the thing moving along, but I'm sympathetic to the fact that
17 I told you I would let you close tomorrow, so --

18 MS. MCVEY: I think we are just not as quite
19 organized as we would like to be for closing.

20 THE COURT: I understand that and I think lawyers
21 work mighty hard. They don't need to be surprised by a
22 judge who promises one thing and then reneges on it, so I'm
23 not going to do that, but hopefully we can move with
24 alacrity this afternoon on the tasks we can perform.

25 MS. MCVEY: Absolutely.

1 THE COURT: Very good.

2 All right. We will see you at 1:30.

3 MR. WALL: Thank you, Your Honor.

4 (Whereupon, proceedings were recessed).

5 (Whereupon, proceedings were reconvened)

6 THE COURT: All right. Ms. McVey?

7 MS. MCVEY: Just briefly.

8 I note they are going to play two videos and read
9 in Palmer Covil's deposition. They have told us that they
10 are not countering Harley Neelands, or not playing their
11 portion of Harley Neelands. I expect that we, depending on
12 what's played, we may have a 45 second rebuttal, but I
13 didn't want to mess you up with the jury. They would rest.
14 After they rest we may put up 45 seconds of video to play to
15 rebut some of the stuff that's coming in their testimony.

16 THE COURT: And then we would dismiss the jury?

17 MS. MCVEY: That's right.

18 THE COURT: Very good.

19 MS. MCVEY: But I don't want to waive my directed
20 verdict motion in between, if that makes any sense.

21 THE COURT: Yeah, it does.

22 MS. MCVEY: Okay.

23 THE COURT: You know, we can all proceed. If we
24 got any problem along those lines, that will be the way it
25 is.

1 MS. MCVEY: Okay.

2 THE COURT: All right. Bring me the jury.

3 (The following takes place in the presence of the
4 jury panel)

5 THE COURT: All right. Please be seated.

6 All right. The defendants will begin the
7 presentation of the defense case.

8 Mr. Wall or Mr. Boger.

9 MR. BOGER: Yes, Your Honor, the defendant calls
10 by deposition Mr. Palmer Covil.

11 THE COURT: All right.

12 MR. BOGER: We are going to read into the record.
13 Mr. Buha has agreed to assist with the reading.

14 THE COURT: Mr. Buha, if you would come to the
15 witness box, and I take it that you have the transcript with
16 you?

17 MR. BUHA: I do.

18 THE COURT: Very good.

19 All right, ladies and gentlemen of the jury,
20 portions of the deposition of Mr. Palmer Covil, who is the
21 founder and chief executive officer of Covil Corporation for
22 many years, is going to be read.

23 This particular deposition was begun on July the
24 14th, 1977.

25 And, Mr. Boger, you may proceed.

1 MR. BOGER: Thank you, Your Honor.

2 (Whereupon, the Deposition of Palmer Covil was
3 read to the jury panel)

4 MR. BOGER: This will conclude Mr. Covil.

5 THE COURT: All right. Thank you Mr. Buha.

6 Mr. Wall, call your next witness.

7 MR. WALL: Mr. Boger is doing it, Your Honor.

8 THE COURT: All right. Mr. Boger?

9 MR. BOGER: Your Honor, defense calls Bruce Boyer,
10 CNA Celanese by video.

11 (Whereupon, the videotape of Bruce Boyer was
12 played to the jury panel).

13 (Off the record).

14 (Back on the record)

15 MR. BOGER: Your Honor, I apologize. I'm having a
16 little technical difficulty here.

17 (Whereupon, the Videotape of Bruce Boyer was
18 continued to be played to the jury panel)

19 MR. BOGER: Your Honor, defense would like to call
20 Mr. Dan Buck of Daniel by video.

21 (Whereupon, the videotape of Dan Buck was played
22 to the jury panel)

23 MR. BOGER: No further witnesses, Your Honor.

24 THE COURT: All right.

25 Bring the lights up, please.

1 All right. Mr. Boger, does the defendants rest?

2 MR. BOGER: Yes, Your Honor, the defendants rest.

3 THE COURT: All right. Motions are noted, but I
4 understand you have a slight piece of reply evidence, Ms.
5 McVey, for the plaintiff?

6 MS. MCVEY: Yes, Your Honor, without waiving our
7 motions we discussed earlier, we have about a minute and
8 eleven seconds rebuttal witness; Harley Neelands by video.

9 THE COURT: All right. Harley Neelands by video.

10 (Whereupon, the videotape of Harley Neelands was
11 played to the jury panel)

12 MS. MCVEY: That concludes our rebuttal, Your
13 Honor.

14 THE COURT: All right. Rebuttal has been
15 concluded.

16 Anything further from either side?

17 MS. MCVEY: No, ma'am.

18 MR. BOGER: No, Your Honor.

19 Well, the motions.

20 THE COURT: Very good.

21 Ladies and gentlemen, you are going to be
22 dismissed now for the day. We will continue here with
23 necessary matters I have to take up with them and we will
24 prepare the charges to the jury and we will begin tomorrow
25 morning at nine o'clock with closing arguments to the jury,

1 which will be presented to you as soon as you are seated.
2 After that I will give you your charge and then you will
3 begin to deliberate this case.

4 Please have a pleasant afternoon and evening.

5 Don't discuss the case. Don't do any research on
6 social media. Don't post on social media or do any research
7 on the Internet. And other than that, please do have a
8 fruitful afternoon and evening and I'll see you at nine
9 o'clock tomorrow morning.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: All right. Be seated.

13 And Ms. McVey, are you prepared?

14 MS. MCVEY: I am.

15 THE COURT: Very good.

16 MS. MCVEY: Your Honor, we would like to make
17 directed verdict motions at this time.

18 As you know, directed verdicts should be granted
19 when the evidence as a whole is susceptible to only one
20 reasonable inference and there are no jury issue is created
21 and directed verdict is appropriate.

22 We would argue that there is no genuine issue of
23 material fact left in this case, other than the decision of
24 damages.

25 First, Your Honor, let me go over the testimony

1 with you that Covil was, in fact, the supplier of --
2 supplier and installer in certain circumstances of asbestos
3 insulation at the Celanese Spartanburg plant. There is a
4 lot of testimony to that.

5 First, there's Harley Neelands. He was working as
6 a Daniel employee at the Celanese Spartanburg plant. He
7 says Covil supplied the insulation that they put on. He
8 says he saw a Covil truck driving up to the Celanese plant
9 with a Covil logo on it supplying the insulation at Celanese
10 Spartanburg.

11 Mr. Carpenter, Machen Lee Carpenter, who, as you
12 know, was the warehouse manager. He was the vice president
13 of operations at certain times. He testified that Daniel
14 and Covil were like this, meaning very tight together.

15 And, Your Honor, before -- let me pause and I'm
16 meant to say this at the beginning. I would like you to
17 consider this directed verdict motion without any
18 consideration to either the spoliation charge or the
19 presumption that you gave. I think we are entitled to a
20 directed verdict without either of those things. I don't
21 want to waive our ability to get that, if we need it, but
22 for your purposes today I would like you to consider this
23 directed verdict motion without either the spoliation or the
24 presumption that was given.

25 We talked about Harley Neelands.

1 We talked about Mr. Carpenter saying that Daniel
2 and Covil worked together all the time.

3 Covil, Mr. Glenn, Covil's representative, says
4 that Daniel was Covil's biggest customer.

5 Mr. Buck and other depositions testified that
6 Covil and Daniel always did work together. In other words,
7 when Daniel was insulating something, they got their
8 insulation from Covil. Sometimes Covil did the insulation
9 themselves. Sometimes they just supplied the insulation.

10 Your Honor, the vendor list shows Covil on the
11 list at the facility between 1971 and 1975, and there is no
12 other insulation contractor on that vender list. There is
13 one, but it's clear they were only doing HVAC type
14 insulation.

15 That's the information we have that Covil was
16 there.

17 We don't have any information from Covil that they
18 weren't there. The only thing they are saying is "we don't
19 know because we don't have any documents." That's the only
20 thing. That's not enough. That's not enough for them. And
21 so when there is only one reasonable inference, you have to
22 believe that Covil was there.

23 So, one, Covil was there.

24 Two, the insulation that they provided was
25 asbestos-containing and we know that from Bruce Boyer. He

1 did a survey and he showed and the very buildings where Mr.
2 Crawford was working and that they were 15 miles of asbestos
3 insulation, 90 percent of which was asbestos-containing.

4 Harley Neelands testified when they were putting
5 all that insulation in, it was Kaylo. And we know from
6 Covil that the Kaylo that they were using was asbestos
7 containing. And we know from the Celanese specifications
8 that they called for the use of amosite asbestos insulation.

9 There is no other information, other than that
10 this was asbestos-containing insulation, in the very areas,
11 in the poly-1 and continuous poly building where Mr.
12 Crawford was working.

13 So we have that Covil was there.

14 We have that they were selling asbestos-containing
15 insulation.

16 So now we have is Covil liable on strict
17 liability, breach of warranty, and negligence?

18 And what we have to show, when there is no other
19 reasonable inference, is that the product they sold, the
20 asbestos was defective and unreasonably dangerous. Every
21 witness who has come in here has said that the
22 asbestos-containing insulation was defective and
23 unreasonably dangerous.

24 The product was essentially in essentially the
25 same condition as when it left the defendant's hands.

1 Clearly it was. It came in boxes and they put it on the
2 machines, as Covil knew they would, on the piping.

3 We have to show that the plaintiff was injured by
4 the product.

5 And other than a failure to warn, we have to show
6 that there was a feasible alternative design.

7 And, Your Honor, let me tell how we can do all
8 those things. Not only that we can do it, but that there is
9 no other reasonable inference other than we have.

10 So let me first discuss Mr. Crawford's exposure.

11 First, his direct exposure. There is testimony
12 that for every day that Mr. Crawford worked over those four
13 years, from 1970 to 1974, he was sweeping up work done by
14 the insulators and he was working around these insulated
15 pipes. He was cleaning up, including sweeping up
16 insulation.

17 Dr. Maddox came and testified that his exposure,
18 when he was sweeping up at peak times, could be as high as a
19 100 fibers per CC. That is a 1,000 times higher than the
20 PEL allowed of .1 fibers per CC. That's incredible
21 exposure. And that happened daily, multiple times a day,
22 over a four year period.

23 He also had bystander exposure. Mr. Crawford
24 testified that several times a day he would walk through the
25 continuous poly building where construction was going on to

1 either use the bathroom or go to the locker room. He saw
2 people doing insulation work, and that included installing
3 and cutting.

4 Harley Neelands testified that they would beat in
5 the chicken wire; that they were mixing mud and when you
6 mixed the powder into the water, it created dust in the air.
7 They were applying mud and smoothing out that mud. Mr.
8 Crawford testified he could see the dust when that was going
9 on. Harley Neelands described it as a very dusty process.
10 Dr. Maddox said that type of exposure is significant.

11 The only evidence in this case is that that direct
12 exposure, as well as the bystander exposure, were the
13 substantial contributing causes of Mr. Crawford's
14 mesothelioma. That's the only testimony. And, in fact,
15 there was no other testimony that any other exposure caused
16 Mr. Crawford's mesothelioma, only the asbestos insulation.
17 That came from Dr. Maddox and Dr. Brody. The defendants put
18 up no expert witness to contest that.

19 So, Your Honor, we would move for those reasons
20 and --

21 I'm sorry, we also need to talk about -- in terms
22 of a negligence case, we need to talk about Covil's
23 knowledge.

24 Covil knew, at least by 1965 or 1966, that
25 asbestos could kill workers. In 1965 or 1966 they knew that

1 asbestos could kill workers. They were getting that
2 information from the Selikoff conference. They were getting
3 that information from the union. They were getting that
4 information from magazines. And Mr. Palmer Covil testified
5 that he knew in 1965 that asbestos could kill people. And
6 yet they continued to sell asbestos through at least 1974,
7 if not later -- I'm sorry, they continued to sell asbestos
8 insulation until at least 1974. They sold other
9 asbestos-containing products for longer than that. They had
10 knowledge that asbestos was dangerous and they continued to
11 sell it.

12 Your Honor, we believe that we are entitled to a
13 directed verdict on strict liability, on implied warranty,
14 as well as negligence.

15 Finally, Your Honor, I'm not sure exactly what, if
16 any, affirmative defenses that Covil would be pursuing, but
17 as to their jury charges it looks like they are pursuing two
18 affirmative defenses. The first one is comparative
19 negligence. The second one is intervening cause.

20 First as to comparative negligence, there is not a
21 single piece of testimony this Mr. Crawford did anything
22 wrong, let alone anything wrong that contributed to his
23 mesothelioma. No factual testimony, no expert testimony, no
24 inference of that. We should be given directed verdict as a
25 matter of law on that.

1 And, finally, Your Honor, they move on intervening
2 cause. And I don't know exactly what they think the
3 intervening cause is, but my assumption is it would be
4 Daniel. Daniel was installing the pipes.

5 And the law in South Carolina talks about
6 intervening cause and it says "a chain of causation between
7 defendant's negligence and the injury may be broken by the
8 independent and intervening acts or omissions of another
9 over who the defendant has no control and where the actions
10 were not foreseeable."

11 In this case Daniel was using a Covil --
12 insulation supplied by Covil in using it exactly how Covil
13 knew it would be used. They were insulating pipes and
14 equipment with it, as Covil knew they would.

15 Therefore, Your Honor, we believe that the
16 intervening charge, we should be given directed verdict on
17 intervening cause as well.

18 THE COURT: All right.

19 MS. MCVEY: Thank you, Your Honor.

20 THE COURT: Thank you.

21 Mr. Wall or Mr. Boger?

22 MR. WALL: Yes, Your Honor.

23 First of all, the evidence is contested as to what
24 causes problems. And --

25 THE COURT: Mr. Boger, why don't you get up here

1 and help Mr. Wall find what he needs to find.

2 MR. Wall: He doesn't know what I'm looking for,
3 Your Honor.

4 THE COURT: Well, he will help you.

5 MR. WALL: I'm looking for a number of the
6 exhibits.

7 This is the February monthly report in '73.
8 Here it is.

9 THE COURT: All right. What exhibit are you on?

10 MR. WALL: I'm on Exhibit 822.15 and 822.4.

11 THE COURT: All right.

12 MR. WALL: These are entered in, without
13 objection, by the plaintiff.

14 THE COURT: All right.

15 MR. WALL: All right.

16 Also let me start by saying Dr. Maddox did testify
17 that the brakes that Mr. Crawford were exposed to was
18 sufficient contact with asbestos to be a proximate cause of
19 his mesothelioma, and he said that directly.

20 Two, Mr. Buck, a representative of Covil -- excuse
21 me, of Daniel, looked at all the records and he said point
22 blank Daniel installed all the asbestos-containing products,
23 all the pipe covering.

24 He also said Daniel purchased material directly
25 from the manufacturer, not from Covil. He said "I looked in

1 the files. The only mention of Covil is that they had three
2 people on the job at some point who were fireproofing the
3 surface of the steel."

4 Again, no testimony that Covil installed any
5 insulation or purchased any insulation.

6 Finally, Mr. Buck says, because Covil isn't listed
7 on Exhibit 822.4 of doing any work, Covil was not doing any
8 work at the plant.

9 And, lastly, the February report, which is a
10 monthly report done by Daniel, says on page -- exhibit bate
11 stamped Crawford 02 -- 012862, and the caption reads number
12 of employees on the payroll. Number of employees on the
13 Daniel payroll, and it lists under insulators 39 insulators
14 on the payroll of Daniel during this period of time.

15 Next, on page number 24, it lists the
16 subcontractors. There is a whole section that says
17 subcontractors. Covil is not listed as a subcontractor on
18 this job.

19 So clearly directed verdict is not appropriate.
20 In fact, it just supports my motion for a directed verdict.
21 Thank you, Your Honor.

22 THE COURT: All right. All right.

23 Hand up the materials that you referred to, if you
24 don't mind --

25 MR. WALL: Yes.

1 THE COURT: -- Mr. Wall.

2 I'll turn to you in a minute, Ms. McVey, but let
3 me just look at these for a second.

4 MS. MCVEY: Yes.

5 (Off the record).

6 (Back on the record).

7 THE COURT: All right. Ms. McVey.

8 MS. MCVEY: Your Honor, I'm looking at the '73
9 document that I think is the right one and the one I'm
10 looking at doesn't list the names of subcontractors.

11 THE COURT: That's true, it -- I am looking at
12 February 1973, 822.15, and it does contain on page --

13 MR. WALL: 14.

14 THE COURT: -- 14 for the February 1973
15 subcontractors, Southern Contractors, Gainwell Mechanical,
16 Stewart Ramseur, Freeman Mechanical, Thomasson Engineering.

17 MS. MCVEY: Okay. I just want to make sure I'm
18 looking at the right. I'm not, so that helps.

19 THE COURT: Okay. Which one are you looking at?

20 MS. MCVEY: I don't know if we even admitted this
21 one. It was a '73.

22 THE COURT: I got you.

23 MS. MCVEY: But --

24 THE COURT: This is a monthly report.

25 MS. MCVEY: Okay. Okay.

1 MR. WALL: And two pages later it says there were
2 that many insulators on the job at that time during that
3 same month.

4 MS. MCVEY: Are you ready for me?

5 THE COURT: Yes.

6 MS. MCVEY: Your Honor, so a monthly report means
7 he's got one month. The contract obviously started in 1970.

8 And the bigger issue is Harley Neelands, who was a
9 Daniel employee, talked about Daniel doing the insulating
10 using Covil insulation. They are the subcontractor. They
11 are a supplier of it and a broker of insulation and that is
12 undisputed.

13 Further, Your Honor, in terms of whether or not
14 there was any testimony about whether the brakes were a
15 substantial contributing cause, in fact, it's the exact
16 opposite. Dr. Maddox testified there was probably some
17 exposure and that may constitute a minor contributory
18 component. That does not meet the standard. The standard
19 is substantial contributing factor.

20 They have no evidence to say that the brake -- any
21 brake work Mr. Crawford did was a substantial contributing
22 factor. Therefore, we are only entitled to one reasonable
23 inference on that case.

24 THE COURT: All right.

25 MR. WALL: Your Honor, I say we now have put the

1 evidence the court has in front of it, which creates a
2 question of fact.

3 THE COURT: All right.

4 With regard to the directed verdict motions as to
5 whether there is a genuine issue of material fact, setting
6 aside spoliation and presumptions for a moment, in terms of
7 whether Covil was the or a supplier, at best, all right,
8 what defense argues, as I see it, is the negative inference
9 from the absence of information about Covil in the memory of
10 certain witnesses and in certain documents. I heard no
11 witness say Covil was not a supplier, and I heard no witness
12 say Covil never performed any insulation services.

13 What I did hear was "we've searched the records we
14 have and Covil's name does not appear," or, "Daniel did the
15 insulation work with its own forces." That's argument Mr.
16 Wall makes, but I see no testimony that says that Daniel was
17 the exclusive insulator, nor do I see any evidence that some
18 manufacturer was the exclusive supplier. In fact, to the
19 contrary, most of the evidence is that Covil was the
20 exclusive supplier, that Daniel was its largest customer.
21 There are any number of witnesses who testified that Covil
22 supplied asbestos-containing material to Celanese, to the
23 Hoechst Celanese plant, during this period of time. And
24 Daniel's own corporate representative, Harley Neelands,
25 confirms that, says that Daniel -- Covil was a supplier,

1 Daniel and Covil worked together, and Covil was an
2 installer.

3 Now, the vendor list. This vendor list, what it
4 does is this. It contains subcontractor vendors for '71
5 through '75, and that clearly means to me that everyone
6 listed on the left is a subcontractor and/or a vendor on the
7 Hoechst Spartanburg job site.

8 I noticed that there are some suppliers who are --
9 or some companies, because it lists company and description
10 of work, and it contains a number of listings about work in
11 floor painting, AC duct, roofing, lab equipment, prefab
12 building, exhaust ducts, AC ducts, AC ducts, concrete
13 curbing, install lockers and ship silos, sprinkler system,
14 building, compressor, breaker testing, painting,
15 fireproofing, cooling tower, erecting building, sheet metal,
16 AC ducts, roofing, roofing, steel insulation, and AC --
17 steel erection, AC insulation, air washers, AC ducts,
18 ceiling and chillers.

19 Well, we know from -- there is no dispute but what
20 in addition to AC insulation, there was a heavy use of
21 piping insulation throughout more than 15 miles of piping in
22 this plant, which is quite typical of all plants that carry
23 these high levels of heat, whether they are power plants, or
24 paper plants, or in this case fiber plants.

25 I noticed also that when it says description of

1 work, many of these companies you can't tell from the name
2 what that work would be. And in those cases their work is
3 specified, but I do not interpret this as some kind of use
4 of the name of Covil without Covil having any connection to
5 this project.

6 I conclude that Exhibit 822.5 puts Covil directly
7 in the picture as a subcontractor/vendor Hoechst Spartanburg
8 job site November '71 to November '75. And I find Mr.
9 Buck's testimony to the contrary not believable, in the
10 light of what everyone else has said about this. He bases
11 it -- he then kind of equivocates a little bit when he's
12 asked more questions about what this list means.

13 Now, with respect to whether the insulation that
14 was provided was asbestos, there is no real disagreement
15 about that. That was the standard during that time. There
16 is direct testimony that 90 percent of the insulation used
17 was asbestos and that the specs spec'd amosite, which is a
18 form of asbestos.

19 Now, with respect to the defective nature of the
20 material, the expert witnesses, and even the corporate
21 representative, including Mr. Palmer Covil himself, agree
22 that asbestos is unreasonably dangerous and that they
23 learned about that early on. So there is no question but
24 what it's defective and there is no question but that there
25 are other insulations that was nonasbestos containing that

1 could have been used and has been around for years and
2 ultimately were used.

3 There is no question but what Mr. Crawford has
4 been injured by this asbestos-containing product. There is
5 no disagreement that he's been diagnosed with mesothelioma
6 and the un-controverted evidence is that it's caused by
7 asbestos. And the evidence is very clear that that asbestos
8 was at least, in part, Covil's supplied asbestos, and that
9 there was an alternative design that could have been used in
10 those years that was not used.

11 In terms of his exposure, he was exposed daily to
12 many different kinds of areas of asbestos dust, both direct
13 exposure as he swept it up and indirect exposure as he
14 passed through various parts of the Celanese plant that
15 contained piping that was being actively worked on as he
16 passed through it; with mudding insulation, beating in
17 chicken wire and other activities around the piping and its
18 insulation, which discharged Kaylo and other forms of
19 asbestos surrounding the piping, and mudding, which
20 discharged raw asbestos as it was being mixed with fluids
21 and used as mudding to complete the insulation.

22 The doctors testified, both Dr. Brody and Dr.
23 Maddox, that this exposure was substantial and significant
24 and both testified that it would have caused his
25 mesothelioma.

1 With respect to comparative negligence, there is
2 not one piece of testimony of any negligence on Mr.
3 Crawford's part. There is no testimony or information that
4 he knew this material was dangerous and deliberately did not
5 protect himself. There is no testimony that Covil, or
6 anyone else, provided any protection. Mr. Palmer Covil
7 testified that it was a business decision to continue to
8 have asbestos in the product they sold, even though he knew
9 it was dangerous and could kill people.

10 In terms of intervening cause, I will charge the
11 jury, as you know, that the negligence does not have to be
12 the cause, but rather it can be a cause.

13 Intervening cause is a cause which is independent
14 and intervening of the negligent act and, in effect,
15 supercedes the effect of the negligent act with an
16 intervening cause and that the act was not foreseeable.
17 There is no testimony to support either of those
18 contentions, in my view.

19 I do not read Dr. Maddox's testimony on brake
20 exposure as saying this is an intervening cause, but while
21 at most it was a contributing cause to Mr. Crawford's
22 development of mesothelioma, which is not enough to
23 establish a defense of intervening cause.

24 With respect to the citation of Mr. Buck's
25 testimony that Daniel installed all asbestos-containing

1 products, I do not read all of what has been shown with Mr.
2 Buck to say that.

3 And I do not read Mr. Buck's testimony to say that
4 Daniel only purchased directly from a manufacturer. He did
5 not say that. He did cite some purchases he thought had
6 been made directly from manufacturers, but he does not say
7 that that was the exclusive means of Daniel getting the
8 asbestos insulation that was used to insulate the plant
9 where they had the contract and Covil had a subcontract. He
10 says that he only saw Covil work with three men fireproofing
11 structural steel, but many other witnesses testified to a
12 much larger work force by Covil and/or work force that
13 directly worked on insulation, including Covil employees
14 themselves.

15 I do not regard a one month example of a progress
16 report by Daniel as establishing exclusively that Daniel and
17 only Daniel insulated, nor do I regard the listing of work
18 force as a listing of Daniel's employees only. I think the
19 work force is composed of both Daniel's direct employees and
20 those subcontractors who were working on the job and that is
21 how the listing in that document reads. It reads work
22 force.

23 In short, there has been no testimony, expert or
24 direct factual testimony, that contravenes the testimony
25 that has been offered, even by the defendant, which

1 establishes that Covil knew at the time they sold
2 asbestos-containing materials that it could cause death,
3 that there were alternatives, and that, as Mr. Covil said,
4 they made a business decision to continue to sell
5 asbestos-containing materials. There is no contest to that
6 in anything that's been offered on behalf of the defendant.
7 And that alone, if not contested, would establish a strict
8 liability claim, as well as the implied warranty claim.

9 With respect to the negligence claim, again,
10 about -- Mr. Wall says that on the negligence claim the
11 un-controverted evidence is that Covil was not present on
12 the work site. I don't read anything in any witness who has
13 testified to exclude Covil's presence. Some don't know.
14 Some say the ones I saw were not doing any insulation.

15 Mr. Wall says that you have to direct a verdict on
16 there because the un-controverted evidence is that Daniel
17 put the insulation in. I don't think that's at all
18 un-controverted. I mean, I think the other, that the only
19 evidence we have got is that Daniel hired some
20 subcontractors to put the insulation in, but without regard
21 to who put the insulation in, the key factor in a
22 negligence, strict liability, and implied warranty to begin
23 with is that it is not successfully controverted in any
24 respect that Covil did not supply insulation materials to
25 this job. That has not been countered. The evidence that

1 has been offered that Covil was a supplier has not been
2 controverted. At best, it's either "we don't have any
3 records to show that. We did word searches and couldn't
4 find that," but there is plenty of direct evidence from
5 others that Covil, in fact, was a major player in insulating
6 in the time frame projected at the Celanese Spartanburg
7 plant.

8 MR. WALL: Your Honor, may --

9 THE COURT: Just a second. I'll certainly hear
10 from you. I just want to see if I have completed everything
11 I needed to place into the record.

12 And, again, it is not controverted that Crawford
13 experienced both bystander exposure and direct exposure.
14 About the best that could be said on the other side is we
15 "don't know or we don't have any knowledge," but he was an
16 employee who was in daily contact with this material from
17 those years and no one has disputed Mr. Crawford's testimony
18 in that regard.

19 So what I'm left with is this. I don't think
20 there is any genuine issue of material fact as to liability
21 on the three causes of action, nor do I think there is any
22 credible evidence to support comparative negligence or
23 intervening cause under our law, so I think I would be
24 justified in granting a directed verdict to the plaintiff on
25 all three causes of action and simply submitting this case

1 to the jury on liability.

2 And I also think that the two defenses, I should
3 grant a directed verdict on those, because they don't meet
4 the requirements of South Carolina law to even be asserted.

5 I will listen to anything that you got to say one
6 more time, Mr. Wall, before I make my ruling.

7 MR. WALL: Yes, Your Honor.

8 I was just going to point out again Mr. Buck
9 testified that they bought the insulation from the
10 manufacturers. He didn't say suppliers. He didn't say
11 anything else. He said "we bought it from the
12 manufacturers." I'm not going to argue with the court, but
13 that's what the record says.

14 THE COURT: All right.

15 All right. Well, I have really struggled with
16 this and I will direct a verdict with respect to your
17 affirmative defenses. I think that's beyond any
18 peradventurous doubt.

19 I -- the strict liability and implied warranty
20 causes deal with presence of law that are occasioned by the
21 sale of this product.

22 The negligence cause of action deals with the
23 knowledge that a purveyor the product has.

24 And, again, I am just -- if the only thing that
25 can be said is that one witness said "we bought from the

1 manufacturer," that is not a definitive enough statement,
2 given his other testimony, to exclude the purchase from
3 Covil as a subcontractor and just doesn't provide anything
4 definitive.

5 I ask you this, Mr. Wall. Other than Mr. Buck's
6 statement "we bought from the manufacturer," what else is
7 there in the record that excludes or even contests the
8 multitude of other testimony that Covil was the supplier?

9 MR. WALL: No one testified that Covil was the
10 supplier in this case.

11 THE COURT: Oh, yes, many people testified to
12 that.

13 MR. WALL: No, Your Honor.

14 Anyway, my opinion. I'm not going to argue with
15 the court.

16 There is -- the only testimony we have is Mr. Buck
17 looked at all the files on this case and said Covil was not
18 there.

19 THE COURT: Now, Mr. Covil -- Mr. Buck was looking
20 at whose files?

21 MR. WALL: Daniel's.

22 THE COURT: Uh-huh.

23 MR. WALL: He said here I went through 40 boxes
24 and, you know, reels of video -- not video -- film and could
25 find nothing about Covil anywhere near that project --

1 THE COURT: Uh-huh.

2 MR. WALL: -- except for three men. He did have
3 that reference. He did have for the record that three men
4 from Covil were there doing fireproofing. That's -- that's
5 the only document in the entire Daniel file on construction.

6 THE COURT: He's excluding from that that Daniel
7 Document 822.4 that contains the name of Covil.

8 MR. WALL: He said that means -- that means they
9 weren't there.

10 THE COURT: Yeah, I understand that.

11 MR. WALL: I know you disagree with him, but that
12 becomes a question of fact with the jury.

13 THE COURT: Uh-huh.

14 MS. MCVEY: Your Honor, just briefly in response
15 to that, two things. A Daniel employee is Harley Neelands.
16 A Daniel employee is Harley Neelands.

17 THE COURT: Who said they were there without a
18 doubt.

19 MS. MCVEY: Said not only were they there, they
20 were bringing in their big Covil truck.

21 Mr. Buck wasn't at the Celanese plant, the
22 Spartanburg Celanese plant. And whether or not he found it
23 in his records is a different beast than whether or not they
24 were there.

25 The un-controverted testimony that Harley

1 Neelands, who was there as a Daniel employee, saw Covil
2 there supplying insulation.

3 MR. WALL: Supplying something.

4 MS. MCVEY: No, supplying insulation. That's what
5 he said.

6 THE COURT: He does say that.

7 MS. MCVEY: All right, Your Honor. And this is --

8 In response to Mr. Buck, when he was talking about
9 buying from other manufacturers, he is talking about buying
10 asbestos-free insulation from other manufacturers, and
11 that's -- it's on page -- okay, I'm sorry, hold on.

12 MR. WALL: Page --

13 MS. MCVEY: Page 36.

14 Here, I can bring it up to you, if that would
15 helpful.

16 THE COURT: That would be helpful.

17 "Daniel. I know our client went asbestos free in
18 '73. '73 and '74.

19 "Okay. You are saying in those 40 boxes of
20 documents there are specifications for Spartanburg Celanese
21 post-'73 that show asbestos-free insulation?

22 "A. I didn't see any documents. Oh, yes I did.
23 I saw a specification document generated by Daniel engineers
24 that said our -- all of our insulation is asbestos free.

25 "And where were you getting that insulation from?

1 "The insulation manufacturers, whoever they were,
2 Johns Manville, Certanteed. I don't know who they bought
3 them from, okay?"

4 And that's the asbestos-free insulation I think
5 that's pretty clear we are talking about.

6 MS. MCVEY: And that was in '73 and '74.

7 THE COURT: Right.

8 All right.

9 I mean, most of the time what judges do is take
10 the easy road and say hey, hey, hey, we will let it go to
11 the jury.

12 This case is very different because it's very
13 clear that this case, and that Mr. Wall has been and client
14 has been very candid about this, this case is not being
15 controlled by Covil, the defendant. It's being controlled
16 by the insurance companies that ensure Covil and we are
17 going to have some discussions about them, who they are and
18 what needed to be disclosed about them in this case in just
19 a few minutes, but they have apparently directed the defense
20 of this case. And, therefore, Mr. Wall is really been
21 pretty hamstrung about what can be done. He's submitted
22 things from the records that have been disclosed in
23 discovery and the depositions that have been disclosed in
24 discovery and that's it. There has been no offering of any
25 expert witness. The only live witness that's been offered

1 is Mr. Glenn, who was asked a few questions in the
2 plaintiffs' case by defense and that's it. So there is no
3 real attempt to meet the issue of fact that are present in
4 this case about the manufacturer of this material, the
5 exposure of it, to it, its presence in Celanese, and this
6 thin reliance on one statement of many by Mr. Buck as the
7 foundation for the assertion that there was no Covil
8 insulation in this plant. I don't find that the statement
9 that was just read supports that. It is talking about
10 asbestos-free insulation and not the asbestos insulation
11 that we have been talking about. So I am in a dilemma.

12 I think my duty is to grant all of these directed
13 verdict motions and submit this matter to the jury on
14 liability, and that's what I'm pondering.

15 What I would like to do is take about a ten minute
16 break to ponder all that and then I'll come back and make my
17 ruling.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT: All right. As I indicated in my
21 discussion before we took the break, I am convinced that
22 there are no genuine issue of material fact, setting aside
23 spoliation and presumption. And put those things into the
24 picture, I think the picture is even stronger, but I wonder
25 if I do the plaintiff any real favors if I grant these

1 motions, because I would certainly have the opportunity at
2 the judgment non abstante veredicto stage to deal with this,
3 if in the unlikely event the jury did not return a verdict
4 of liability in this matter.

5 So taking that into consideration I have decided
6 that the best course of action is the least expensive to
7 both sides of this equation is to deny the directed verdict
8 motions for negligence, implied warranty, and strict
9 liability at this time, but I will grant the motions to
10 direct a verdict with respect to the affirmative defenses of
11 intervening act and comparative negligence. I find
12 absolutely no supporting evidence at all for the notion that
13 there is any negligence of Mr. Crawford which could be
14 compared against the negligence of the defendant.

15 And, likewise, find that there is absolutely no
16 evidence in the record of any independent intervening act of
17 another and that such an act is not foreseeable.

18 And, therefore, I will direct that those
19 affirmative defenses not be presented to the jury, nor will
20 they be asked to render a verdict on those motions, the
21 verdict having been directed for the plaintiff in regard to
22 those two defenses.

23 All right.

24 MR. WALL: Your Honor, for the record I need to
25 make my motions for a directed verdict.

1 THE COURT: Yes, you do, and you certainly are
2 permitted to do that, Mr. Wall.

3 MR. WALL: Your Honor, first of all I would renew
4 my motion for directed verdict as stating at the end of the
5 plaintiffs' case.

6 THE COURT: Certainly.

7 MR. WALL: And now I, as I said, have renewed
8 those, plus I add to -- I consider the record that we put in
9 in the defense case that all insulation was purchased from
10 the manufacturer, not from Covil; that all the insulation
11 was installed by Daniel, as their own witnesses say that,
12 that they did all the work, and Mr. Buck says that; and for
13 Celanese, they have no record of any work being done by
14 Covil. And then we now have the two documents discussing
15 over their directed verdict motion which clearly shows that
16 Daniel did all the construction themselves and they had all
17 the insulation on site.

18 So we would move for a directed verdict as to
19 negligence, as to strict liability, and as to implied
20 warranty, and also as to punitive damages.

21 THE COURT: All right, sir.

22 And Ms. McVey?

23 MS. MCVEY: I'm happy to respond to all of these
24 issues, although we just --

25 THE COURT: Well, I think your response to the

1 directed -- your response in the form of your own directed
2 verdict is an adequate coverage to the information.

3 And so I would simply say I deny the motions for
4 directed verdict and simply observe with respect to the
5 assertion that the uncontradicted evidence is that all
6 insulation was installed by Daniel. I don't think that is
7 the case at all. And even Daniel's own corporate
8 representative, Mr. Harley Neelands, says that Covil and
9 Daniel worked together; that Covil -- he was asked whether
10 Covil supplied insulation on the Celanese job in the time
11 frames we are talking about. He said yes. And he was asked
12 how he knew that and he said that he saw Covil trucks coming
13 and delivering the insulation to the Celanese plant. That's
14 from Daniel's representative.

15 MR. WALL: Your Honor, Mr. Neelands was not the
16 Daniel's representative. Mr. Buck was the Daniel's
17 representative.

18 MS. MCVEY: He was the Daniel employee.

19 THE COURT: He was the Daniel employee.

20 MR. WALL: Yes, employee.

21 THE COURT: That's -- even Buck and those are
22 corporate representatives, but they don't have to have
23 direct knowledge of things that -- this gentleman was a
24 worker bee in the Celanese plant and he had direct
25 observation of what was going on in there and said that

1 Covil and Daniel were very much involved with each other and
2 that Covil supplied the insulation, was a big supplier.

3 And in addition to that, the portion of Mr. Buck's
4 testimony that was read does not say that all insulation was
5 purchased from manufacturers. What it simply says is that
6 all asbestos-free insulation was purchased directly from
7 manufacturers. So neither of those two assertions in any
8 way would support the motion for a directed verdict by
9 defendant, and, in fact, supports the opposite.

10 These are also asserted as reasons why the
11 affirmative defenses should be considered, but I hear
12 nothing by way of any further argument contradicting what I
13 have said with respect to those defenses, which is, A, no
14 evidence that Mr. Crawford did anything negligent;

15 And, B, with respect to the intervening cause,
16 absolutely no evidence that the legal requirements of
17 intervening cause are met.

18 So on that basis I deny the motion for directed
19 verdict.

20 Now we are at the charges.

21 MS. MCVEY: Yes, ma'am.

22 THE COURT: Now, first of all, let's take up the
23 verdict form.

24 MR. WALL: No objection, Your Honor.

25 THE COURT: No objection. Therefore, what I would

1 like to do --

2 MR. WALL: I assume you are going to take off the
3 word proposed, plaintiffs' proposed.

4 THE COURT: She's put verdict form up where jury
5 charge is. Strike jury charge out. Strike plaintiffs'
6 proposed and --

7 MS. MCVEY: Yes, ma'am.

8 THE COURT: And verdict form will be as has been
9 proposed, and that's great.

10 MS MCVEY: Yes, ma'am.

11 THE COURT: All right. Now, put aside the
12 spoliation charge for a minute.

13 My approach to this will be to go down the
14 plaintiffs' jury charge, and here is my how, and then go to
15 defendants and go down yours by number to be sure that I
16 haven't missed anything or that there is some alternate
17 wording that is preferred. So that's how I'm going to do
18 it. If we can do it that way, is that satisfy?

19 MS. MCVEY: Yes, Your Honor.

20 And just briefly I know I e-mailed everybody this,
21 but plaintiffs' proposed charge I believe number 19?

22 THE COURT: Yes, the intervening -- the --

23 MS. MCVEY: Duty of premises.

24 THE COURT: Duty of premises. Neither -- the
25 defendants have not asked for that charge. It's certainly

1 not applicable here and so I have notes to strike it when we
2 come to it.

3 MS. MCVEY: That would be great.

4 THE COURT: All right. So we now start with
5 number 1, the role of the jury.

6 The only thing -- I may have a typo in here and
7 I'm going to give my copy to plaintiff. It's on page number
8 3. This thing is a little awkwardly worded, but it's that
9 first line. "Anything I may have said or done during the
10 trial" -- well, don't worry about it. Keep it as it is.

11 MS. MCVEY: Okay.

12 THE COURT: It's kind of awkwardly worded.

13 MS. MCVEY: I'm happy to change it if you want to
14 make it --

15 THE COURT: Page 5 is charge 2. Burden of proof.

16 I told you at the beginning to strike that. I
17 didn't give them an opening charge.

18 MS. MCVEY: So that's right.

19 THE COURT: I figured they had heard enough from
20 Mark Hayes about how things generally worked, so I did not
21 give them an opening charge.

22 MS. MCVEY: We started with the burden of proof in
23 a civil case.

24 THE COURT: All right. "The plaintiffs have the
25 burden of proving their case. And the burden of proof in a

1 civil case is," so that's how it started.

2 MS. MCVEY: Okay.

3 THE COURT: Y'all just stop me any time that you
4 got a problem.

5 Mr. Boger, stop me any time that you got a
6 problem.

7 MR. BOGER: Yes, Your Honor. Thank you.

8 THE COURT: All right.

9 Number 3 is the charge on evidence, general charge
10 on evidence.

11 Number 4, direct and circumstantial evidence.

12 And the only thing I would change is on page 7,
13 second paragraph, that starts by of example, put that it was
14 raining outside. That will parallel with what was said up
15 above.

16 MS. MCVEY: Say one more time. "By way of
17 example, if a witness testifies?"

18 THE COURT: "You could conclude that it was
19 raining."

20 MS. MCVEY: Okay.

21 THE COURT: Just put "outside," period.

22 MS. MCVEY: Okay.

23 THE COURT: Add the word "outside".

24 MS. MCVEY: I'm so sorry, I just don't understand.

25 THE COURT: All right. The paragraph that starts

1 "by way of example, if a witness testifies that a witness
2 saw it was raining." Do you see that paragraph?

3 MS. MCVEY: Uh-huh.

4 THE COURT: "That would be circumstantial evidence
5 from which you could conclude that it was raining outside."

6 They brought into the room the circumstantial
7 evidence of the outside raining by the water on their clocks
8 and all that kind of thing.

9 MS. MCVEY: Okay. May I ask what you have done?
10 I just don't understand what you are telling me to take out.
11 I'm sorry.

12 THE COURT: I'm not telling you to take out
13 anything. Add.

14 MS. MCVEY: Okay. I'm sorry. I think I'm tired.

15 THE COURT: Charge number 5, elements evaluating
16 the witness testimony. Elements evaluating witness
17 testimony.

18 MS. MCVEY: I'm fine with that.

19 THE COURT: Number 6, expert testimony.

20 Number 7, expert witness and causation.

21 Number 8, deposition testimony.

22 Number 9, taking notes.

23 Number 10, summary of plaintiffs' claims.

24 Now, let me say this. Here is what I would do to
25 parallel this thing. It says "the plaintiffs claims in this

1 case are based on three theories. The first is negligence,
2 which includes product liability negligence and premises
3 liability negligence."

4 MS. MCVEY: I'll take that out.

5 THE COURT: The second is -- I would take that
6 premises liability negligence. And, frankly, I would just
7 say the first theory is negligence.

8 MS. MCVEY: Uh-huh.

9 THE COURT: Strike that.

10 The second is strict liability.

11 Third is called breach of implied warranty.

12 MS. MCVEY: Agreed.

13 THE COURT: Plaintiff is not required to prove
14 all.

15 Now, what I would do is say charge number 11 is --
16 where have we got negligence?

17 We got strict liability and we got all kinds of
18 things about reasonable alternative design, dangerous
19 product and so forth and so on. Duty of product
20 manufacturer.

21 MS. MCVEY: It's on charge 17, on page 17.

22 THE COURT: Right. That's the third and final
23 theory. I would put that as the first theory.

24 MS. MCVEY: You would put that as first?

25 THE COURT: Uh-huh.

1 MS. MCVEY: Okay. So I'll put -- I'm just going
2 to put --

3 THE COURT: So that's charge number 11 is what I
4 would do.

5 MS. MCVEY: So make charge number 17 charge number
6 11.

7 THE COURT: Right, and then you re-number these
8 12.

9 And then where is implied warranty?

10 MS. MCVEY: It is -- hold on.

11 Charge 16, or what was formerly 16, on page 15.

12 THE COURT: I would take charge 16 and make it
13 charge 13, or charge -- yeah, charge 13. I'd put -- that's
14 implied breach of warranty.

15 MS. MCVEY: Okay. So charge 11 would be
16 negligence.

17 Charge 12 would be strict liability.

18 Charge 13 would be warranty.

19 THE COURT: Warranty, and that gives you your
20 three causes of action.

21 Then just re-number the rest of them sequentially
22 so that they -- because they are all products liability
23 discussions or strict liability discussions, this kind of
24 thing.

25 MS. MCVEY: Okay. Got it.

1 THE COURT: Okay?

2 MS. MCVEY: Okay.

3 THE COURT: So that -- then that becomes --

4 Charge 12 is strict liability.

5 Charge 11 is negligence, right?

6 MS. MCVEY: Uh-huh.

7 THE COURT: Charge 11, negligence.

8 12, strict liability.

9 13, which is now 16, is implied warranty of
10 merchantability.

11 MS. MCVEY: Yes.

12 THE COURT: And then --

13 MS. MCVEY: And you have got --

14 THE COURT: Charge 12 is 14.

15 MS. MCVEY: Alternative design?

16 THE COURT: Alternative design.

17 MS. MCVEY: Okay.

18 THE COURT: Charge 13 is charge 15.

19 MS. MCVEY: Okay.

20 THE COURT: Charge 14 is charge 16.

21 Charge 15 is charge 17.

22 Charge 16 we say is 13.

23 Then charge 17 is charge 11. That's negligence.

24 MS. MCVEY: Uh-huh.

25 THE COURT: And then you get to charge 18, which

1 is going to be charge 20?

2 MS. MCVEY: I think it goes back to 18, right?

3 THE COURT: Oh, it goes back to 18.

4 MS. MCVEY: Uh-huh.

5 THE COURT: It's okay now. Okay.

6 Charge 19 is out.

7 MS. MCVEY: Yup.

8 THE COURT: Charge 20, state of the art.

9 MS. MCVEY: Uh-huh.

10 THE WITNESS: Charge 21, design defects.

11 Charge 22, breach of duty.

12 Charge 23, causation.

13 Charge 24, there can be more than one cause.

14 Charge 25, actual damages.

15 Charge 26, actual damages, personal injury. Let's
16 look at that.

17 Charge 27, future.

18 Charge 28, loss of consortium, subject, of course,
19 to the defendant's contentions that loss of consortium is
20 not recoverable.

21 Charge 29, jury deliberations.

22 Charge 30, the verdict form.

23 Charge 31, retire to the jury room.

24 All right. Now, the defendant's request to
25 charge.

1 I think I have covered everything in number 1, the
2 introduction, Mr. Boger?

3 MR. BOGER: Yes, Your Honor.

4 THE COURT: You speaking for the defense?

5 MR. BOGER: Yes, Your Honor. Generally speaking
6 my attempt in formulating these was to reduce some of the --

7 THE COURT: Verbiage?

8 MR. BOGER: Verbiage, yes, ma'am, just to be frank
9 about it.

10 THE COURT: Well, no, and frankly if I were
11 starting from scratch, I like what you have done and I may
12 well in future case use it, but I haven't got enough time
13 right now to go back and see whether I have covered
14 everything.

15 It's so terrible to give these juries this long
16 charge like I have got it and you worked very hard at
17 streamlining it, which, as I say, is something that I am
18 going to study in the future. This is the product of lot of
19 back and forth from a lot of different lawyers being sure
20 that I have satisfied everybody, but the economy of language
21 is to be much admired about what you have given me.

22 MR. BOGER: Well, thank you, Your Honor. I --

23 THE COURT: But grab me if there is something that
24 you think I have left out as I go through your numbers.

25 MR. BOGER: And I'm trying to keep up, but

1 crossing everything out. Let's go through them. I don't
2 think -- I think this is --

3 THE COURT: Number 1, introduction.

4 MR. BOGER: Got that.

5 THE COURT: Number 2, the burden of proof.

6 MR. BOGER: That's in there.

7 THE COURT: Number 3, the evidence. Supported by
8 evidence can't be influenced by passion or prejudice. Got
9 that.

10 Number 4, direct and circumstantial.

11 MS. MCVEY: It's in there.

12 MR. BOGER: That's in there.

13 THE COURT: I, of course, go on to do what you do
14 in 6 and connect the dots and so forth and so on.

15 Direct evidence and circumstantial evidence, 5 and
16 6.

17 MR. BOGER: Those are covered.

18 THE COURT: Number 7, statements of counsel.

19 MR. BOGER: Is that --

20 THE COURT: I believe we have got that in there
21 that the statements are not evidence. They are just their
22 position or contention, and I have got that it applies to
23 opening, as well as closing.

24 MR. BOGER: Okay.

25 THE COURT: Number 8, objections, and I have got

1 in there that you don't hold it against them and it's their
2 means of keeping out improper evidence is what they are
3 supposed to do. And don't read any opinion into me. I
4 don't have an opinion.

5 Number 9, questions. That one is a little
6 different and I have got don't speculate, but the
7 insinuation -- what you are zeroing in on is the question,
8 not the answer, right?

9 MR. BOGER: Correct.

10 THE COURT: All right. I'm going to just flag
11 that to see if maybe I need to do anything with that.

12 Unanimity of verdict. We certainly got that.
13 Expert witness.

14 MR. BOGER: Got that.

15 THE COURT: Expert and causation.

16 MR. BOGER: Got that.

17 THE COURT: Conflict among the experts, which
18 really have no need in this case because we don't have a
19 conflicting group of experts.

20 Evidence limited for -- admitted for limited
21 purposes. We don't really have anything on those.

22 Products liability.

23 MS. MCVEY: I think we have got that.

24 THE COURT: I think we have got --

25 MR. BOGER: Yeah, I think all these -- the next

1 few are --

2 THE COURT: Negligence elements.

3 Negligence, duty of care. Going to read them out.

4 You grab me if you have any problem.

5 MR. BOGER: Okay.

6 THE COURT: 18, products liability.

7 19, actual exposure.

8 20, proximate cause.

9 21, failure to warn.

10 22, warning. It's not automatic, but does it

11 contain a warning.

12 23, this is some kind of an intervening -- this is

13 where the plaintiff admitted he knew the dangers of the

14 product. We don't have that here.

15 24, failure to warn.

16 Warning would have made a difference. I don't
17 think we got that here. The only un-controverted testimony
18 is I would quit the job.

19 Products liability, strict liability. Got that.

20 Unreasonable dangers, so forth.

21 Product liability, state of the art. Got that.

22 Product liability, design defects. Got that.

23 Product liability, strict liability to statutory

24 defense. No, I don't think we have got that.

25 Reasonable alternative design. There is no -- 29,

1 we do have that.

2 Number 30, intervening cause. We have got that.

3 Number 31, this is the industry standards in the
4 state of the art. We have got that.

5 Products liability. Had no reason to know about
6 the danger. I think we have got. It's covered under the
7 duty to warn.

8 Fault of others, 33.

9 MR. BOGER: Do we have that in the --

10 MS. MCVEY: I think that's in there.

11 THE COURT: I believe that's in there.

12 MS. MCVEY: Actually I don't think it is, but I
13 think they can --

14 THE COURT: What evidence are we talking about
15 that deals with his injury and others alleged fault? At
16 best what you say is we didn't supply it, but --

17 MR. BOGER: Well, and others says that Daniel
18 would have been on site installing.

19 THE COURT: I'm going to put a question mark by
20 that.

21 Plaintiffs' claims against others.

22 MS. MCVEY: That --

23 THE COURT: That's violative of Smith v. Tiffany,
24 so I'm not going to charge that.

25 Number 35, comparative negligence. I have struck

1 that.

2 MR. BOGER: They are out.

3 THE COURT: Number 36, comparative negligence, I
4 have struck that.

5 So let's go back to the ones that I have flagged.

6 MR. BOGER: I believe it was just two, is that
7 correct?

8 THE COURT: Yes. Number 9, the questions.

9 MS. MCVEY: Your Honor, I think that's covered in
10 the other charge.

11 THE COURT: Give me a spot.

12 MS. MCVEY: It is -- hold on --

13 Charge number 3, under evidence. You get about
14 halfway down that paragraph past the stipulation sheet.

15 "We have had excellent lawyers in this case and
16 they have zealously advocated for their client's position,
17 but they are not the witnesses, so what they say is not
18 evidence. If you remember something different than what a
19 lawyer said, your memory controls," etcetera, etcetera.

20 THE COURT: Yeah.

21 MS. MCVEY: Which is the same thing as -- I mean,
22 lawyers are only asking questions.

23 THE COURT: The first cousin of what we are
24 talking about.

25 Here is what I want you to do. Take that --

1 All right, number 9.

2 MS. MCVEY: Uh-huh.

3 THE COURT: And add it to the bottom of number 1,
4 which is the role of the jury. The very last of it says "as
5 to any question to which objection is sustained, you may not
6 speculate," and add to it, "you must never speculate to be
7 true an insinuation by a question." Just take that sentence
8 and add it to the bottom. It's on page four of your
9 proposed charge.

10 MS. MCVEY: Okay. You mean after, after being
11 questioned which an objection was sustained you must not
12 speculate?

13 THE COURT: Just add to that another little
14 paragraph that contains exactly what was said in number 9,
15 which is "you must never speculate to be true any
16 insinuation suggested by a question asked the witness and a
17 question is not evidence may be considered only as supplied
18 meaning to the answer."

19 MS. MCVEY: Okay.

20 THE COURT: Just put that down at the bottom of
21 that.

22 MS. MCVEY: Yes, ma'am.

23 THE COURT: So that included, Mr. Boger.

24 MR. BOGER: Thank you, Your Honor.

25 THE COURT: And then as to -- I thought I had

1 something in here about an empty chair.

2 Ms. McVey?

3 MS. MCVEY: Hold on, I'm sorry. Let me look. I
4 usually know this by heart, but --

5 THE COURT: Empty chair is not in there.

6 No, that's just my colloquial. I would never put
7 empty chair in there, but I thought I had something about
8 fault of others. And I think it's in that part where I say
9 it can be a cause or not the cause, or words to that effect.

10 MS. MCVEY: Here you go. It starts charge 24, on
11 page 26.

12 THE COURT: 26?

13 MS. MCVEY: Yes, ma'am. It's not exactly it, but
14 if you read through the next paragraph.

15 THE COURT: Yeah, charge 24, there can be more
16 than one cause --

17 MS. MCVEY: Uh-huh.

18 MR. BOGER: Which I think goes to the cause, but
19 maybe necessarily within a defendant's cause to assert that
20 other entities contributed to that injury or cause.

21 THE COURT: He said he is taking this from Machin
22 v. Carus Corporation.

23 Pull up Machin.

24 MS. MCVEY: That's a different -- I think it was
25 in a different charge than Machin.

1 THE COURT: I do too, but I'm just going to take a
2 look at it since that's where he's citing it for this. He's
3 citing the claim it's an empty chair case.

4 MS. MCVEY: Okay.

5 THE COURT: Although empty chair, we're really
6 talking about more -- this is comp case. An empty chair is
7 what we are talking about when we really are talking about
8 Smith v. Tiffany.

9 All right, you look up Machin v. Carus Corp, and
10 I'm going to look up Smith v. Tiffany.

11 That's what y'all need to be looking at. That's
12 what I'm trying to do.

13 I'm trying to look up Smith v. Tiffany and Machin
14 v. Carus.

15 Mr. Boger, tell your folks that when they do this,
16 this number 33 is an accurate recitation of the law that was
17 given to us in the following case: Smith v. Tiffany,
18 T-I-F-F-A-N-Y, 419 SC 548, 799 S.E. 2d at 479, 2017. It
19 could be more than one cause. All right.

20 All right, troops, turn to charge number 24.

21 MS. MCVEY: Do you want me to add it after 24?

22 THE COURT: Yeah.

23 MS. MCVEY: Okay.

24 THE COURT: Just put -- don't start it off with
25 under South Carolina law.

1 MS. MCVEY: Okay.

2 THE COURT: Just start it off "a defendant is
3 entitled to assert that other persons or entities, whether
4 or not parties to the case." Strike whether or not "parties
5 to the case."

6 MS. MCVEY: Okay.

7 THE COURT: "Other persons or entities contributed
8 to the alleged injury or damages and are liable for any or
9 all the damages. Matters of the others alleged fault in
10 causing plaintiffs' injuries" --

11 MS. MCVEY: Your Honor --

12 THE COURT: Strike the "matter of the others
13 alleged fault in causing has been raised by the defendant."

14 MS. MCVEY: What I strike --

15 THE COURT: Strike that.

16 MS. MCVEY: Hold on. I have got -- "so a
17 defendant is entitled to assert that other persons or
18 entities" --

19 THE COURT: "Contributed to the alleged injury or
20 damages and are liable for any or all the damages."

21 Hang on.

22 "And it is proper for you to consider the actions
23 of others in determining fault and causation."

24 MS. MCVEY: Your Honor, I was just reading Smith
25 v. Tiffany again, but I thought there was some burden of

1 proof for them to assert that. In other words, they come
2 forward with some evidence that others were at fault.

3 THE COURT: That's what Machin v. Carus says.

4 Now, let's see what Machin v. Carus says. Let's
5 see if they are going to get this. Machin v. Carus.

6 (Off the record).

7 (Back on the record)

8 THE COURT: The Carus charge speaks of it in terms
9 of employer versus other party and this defense has not
10 been -- or this contention has not been postured quite this
11 way. It's -- he doesn't contend that Mr. Crawford was an
12 employer of Daniel, which is who he says did all the
13 insulation work. He just contends it's somebody else's
14 fault.

15 MS. MCVEY: Right.

16 THE COURT: I don't think I could charge it just
17 like that. I think I'm going to stick with what I said,
18 which is that I am going to add to the bottom of 24 "there
19 can be more than one cause.

20 "A defendant is entitled to -- out of 33.
21 Striking the first under the South Carolina law and saying
22 "a defendant is entitled to assert that other persons or
23 entities contributed to the alleged injury or damages and
24 are liable for any or all of the damages" period -- or
25 comma, excuse me, "and it is proper for you to consider the

1 action of others in determining fault and causation,"
2 striking out "that the matter of others" and so forth.

3 MS. MCVEY: Okay.

4 THE COURT: Okay. That's how I'm going to charge
5 it, Mr. Boger.

6 MR. BOGER: I agree with that, Your Honor. Thank
7 you.

8 THE COURT: All right.

9 MS. MCVEY: And, Your Honor, we can move on, but I
10 may e-mail you later if I think Smith v. Tiffany adds
11 another little burden to that --

12 THE COURT: That's fine.

13 MS. MCVEY: -- but I can't find it now.

14 THE COURT: I'll be looking.

15 MS. MCVEY: Okay. But I'll add it as is --

16 THE COURT: Right.

17 Now, let's talk about spoliation.

18 MS. MCVEY: Yes, ma'am.

19 So we did two charges.

20 THE COURT: Let me see if I can put my hands on
21 them.

22 MS. MCVEY: I have got extras, if you need them.

23 THE COURT: Now we got spoliation. Two charges.

24 One, "spoliation is the loss or destruction of
25 evidence, and when it is established, the jury may draw the

1 inference that the evidence lost or destroyed," E-D, "was
2 unfavorable to the party responsible for its loss or
3 destruction." Kershaw v. U.S. Gypsum.

4 MS. MCVEY: That's probably our reference. I
5 don't think we need both of them.

6 THE COURT: And then another version of it is
7 "spoliation is the intentional destruction of evidence and
8 when it is established, the fact finder may draw the
9 inference that the evidence destroyed was unfavorable to the
10 party responsible for its destruction."

11 And you like the first one because it's got loss
12 in there.

13 MS. MCVEY: Right.

14 THE COURT: Okay. And it's a quote from Kershaw
15 County Board of Education against U.S. Gypsum.

16 MS. MCVEY: Which is a South Carolina case.

17 THE COURT: Right.

18 Mr. Boger?

19 MR. BOGER: I think I cited that case in one of
20 our response briefs, Your Honor.

21 THE COURT: Yes.

22 MR. BOGER: That is the law and I can't -- I don't
23 like it, but --

24 THE COURT: You don't love it, but you preserved
25 your position completely, because I ruled against you on

1 spoliation. You said there isn't any spoliation, and so
2 your position is protected and I'm simply going to regard
3 this as a reassertion of the matters that you have already
4 asserted by way of objection to my spoliation ruling, and
5 that Mr. Wall has asserted, and -- all right.

6 In that framework I'm going to say -- I'm going to
7 charge this one out of Kershaw County, which is the case you
8 cited.

9 MR. BOGER: Thank you, Your Honor.

10 THE COURT: Very good.

11 So just add that I guess at the end, or wherever
12 you think best.

13 MS. MCVEY: I'll probably put it in before
14 damages, if that suits?

15 THE COURT: Yes, just put it in wherever you think
16 it fits.

17 Now, we do have one other thing. Is there -- I'm
18 asking this. I'm not just suggesting I have to do it. Is
19 there any need to repeat the factual -- the directed factual
20 charge that I gave them?

21 MS. MCVEY: I don't think so, Your Honor.

22 THE COURT: Y'all are going to talk about it, so I
23 don't think I need to reiterate it, correct?

24 MS. MCVEY: I agree.

25 THE COURT: You agree, Mr. Boger?

1 MR. BOGER: I agree with that, yes, Your Honor.

2 THE COURT: All right.

3 Now, I had one other question.

4 All right. I want to talk to you for a minute
5 about trying to blue sky what would happen if some
6 unexpected happening.

7 I have read over what Mr. Wall said and he got
8 kind of close to the line, but he didn't say they were no
9 assets. Defunct is a mighty broad word that implies out of
10 existence, no longer in existence, so forth, but it isn't
11 quite the same thing as no assets.

12 MR. WALL: Right.

13 THE COURT: So I'm not going to tell them about
14 insurance on that basis, but I am concerned about whether
15 they are perceptive enough to take what was said by way of
16 they are no longer in existence and try to ask some kind of
17 question about well, who is going to pay for this. And
18 that's one aspect of it that concerns me, what am I to say
19 to them.

20 Now, then let's blue sky a little bit further than
21 that and speculate that the jury awards an actual damage
22 verdict, and in addition to that answers the question about
23 willful, reckless and wrongful conduct by -- in the
24 affirmative, that they say Covil was willful, reckless, and
25 wanton, and intentional in its conduct. That's the

1 platform, of course, for going forward on the punitive side.
2 And then they are going to want to know something about and
3 who is going to pay for this. So what are we to tell them?

4 MR. BRANHAM: May I address?

5 THE COURT: Mr. Branham.

6 MR. BRANHAM: How are you doing, judge?

7 THE COURT: I'm just fine.

8 MR. BRANHAM: I think that on the issue of, you
9 know, money in terms of actual damages compensation, we at
10 least have some information about their factual worth,
11 right? They can afford to pay a \$400 an hour expert to come
12 and sit here on the stand.

13 THE COURT: Yeah, y'all were very careful to ask a
14 lot of questions that you normally wouldn't drill down into
15 about the payment of experts and the expectations of the
16 experts to be paid in order to not invade Mr. Wall's
17 province of what he's being paid, but at the same time
18 suggest to them they got enough money to pay \$30,000 here
19 and \$70,000 there and so forth.

20 MR. BRANHAM: Right.

21 And so I think if Mr. Wall wants to talk about how
22 broke his client is --

23 MR. WALL: No, Your Honor, I'm not going to say a
24 word about that.

25 MR. BRANHAM: Well, but he did in opening now.

1 THE COURT: Yes, he did.

2 MR. BRANHAM: And he put it out there and so he's
3 either got some evidence of it and he's going to talk about
4 it in closing, or he's not.

5 THE COURT: He's not.

6 MR. BRANHAM: But I think we certainly have the
7 opportunity and right to put up what he said in opening and
8 say that he didn't prove that, right?

9 And I also think we have the ability to say they
10 can clearly afford a \$400 an hour expert.

11 THE COURT: Yeah, all those things can properly be
12 said. I don't think -- that's not what I'm talking about.

13 MR. BRANHAM: Okay. So, I mean, so I think that's
14 the first thing.

15 And if you get to punitive damages, and there is
16 no requirement that we put any net worth information in.

17 THE COURT: It's true.

18 MR. BRANHAM: And I think if they would attempt to
19 put anything about their inability to pay in, then we have a
20 different conversation about coverage and all the rest.

21 THE COURT: Sure, and I think Mr. Wall is too
22 smart to do that.

23 MR. BRANHAM: And so then the issue is, and I
24 think what we candidly would probably say is "you guys look
25 at what they did and you pick a number that makes sense and

1 let us worry about collecting it."

2 THE COURT: Well, I think that's probably the way
3 to handle it, and it's the first cousin of what Mr. Chapman
4 said in his opening statement, which was you don't need to
5 worry about the apportionment of responsibility. What you
6 need to worry about is what is a full recompense for the
7 injuries suffered, if you find that the injury was suffered
8 and that Covil was the cause of it. And so if it's
9 discussed in that framework, then I don't think we are
10 inviting the jury to ask these other speculations, because
11 I'm very sensitive to the notion that South Carolina does
12 not want juries to have anybody talk to them about
13 collateral source. The old cases say that and it's very
14 much underscored by this new contribution on tortfeasors
15 case, the case of Smith v. Tiffany and the comp case, Machin
16 v. Carus. So I just want to be sure we don't get the jury
17 in a posture where they are going to say that. And,
18 therefore, if they were to come off the wall and ask some
19 question like that, I would direct them that that's not
20 something that you need to consider. I would -- I have no
21 instructions about that, other than to tell you you can't
22 speculate about that and you find yourself with what you
23 have heard from the witness stand and from my law.

24 Is that --

25 MS. MCVEY: I think that's right.

1 And if they are asking about ability to pay in
2 particular, I think in response you can say you award
3 whatever it is you think the law says or whatever it is, and
4 whether or not they can pay is a different story. I just
5 want to make sure we are not --

6 THE COURT: Burdening them with something.

7 MS. MCVEY: Yeah.

8 THE COURT: Well, I think, frankly, that y'all is
9 going to make that clear in your argument and they will
10 understand that, but I just wanted to cover that with you.

11 Now, it would be a different situation if we have
12 some other proceeding here that some award was made and
13 there is some problem about collectability and then you
14 might have to investigate what apparently the North Carolina
15 courts are investigating, which is how much insurance they
16 actually have, but I don't feel the need to investigate
17 anything like that at the moment. So --

18 Okay. Are we all clear about that?

19 MS. MCVEY: Yes, ma'am.

20 THE COURT: Anything else you can think of that I
21 need to be doing for or with you?

22 MS. MCVEY: No.

23 The only thing, we corrected a verdict form. I
24 can go ahead and at least hand that up and I will e-mail the
25 corrected jury charges to everyone in a little bit.

1 THE COURT: Lovely.

2 And needless to say, Mr. Boger and Mr. Wall, if
3 you all have any heartburn about anything that's e-mailed to
4 you about the charges, why simply e-mail me about that.

5 I will try to get here about 8:15 tomorrow morning
6 just in case there is anything we need to talk about and we
7 can finalize on those charges so that we can seamlessly go
8 into the closing arguments.

9 Now let's talk about closing arguments for a
10 moment.

11 Ms. McVey, Mr. Chapman, what are you asking for in
12 time? I'm not saying I'm going to give it to you, but I
13 want to double check because I want to be able to hold you
14 to it.

15 MR. CHAPMAN: Your Honor, frankly I'm not entirely
16 sure yet. My closing is not totally written, but --

17 THE COURT: You got -- we are going to decide that
18 right now and your closing would be written to conform with
19 it.

20 MR. CHAPMAN: Your Honor, I think that the court
21 would allow me, I could max to be an hour and a half and
22 hopefully shorter than that.

23 THE COURT: Well, here is what I want you to do.
24 I want you to try for one hour in your opening arguments to
25 the jury, and then I want you to have in reserve fifteen or

1 twenty minutes, so if you need it in reply to the close.

2 Mr. Wall is going to be a man of economic words,
3 it would be my bet, and I'm not putting any limitations on
4 him because I don't think he would exceed an hour.

5 MR. WALL: No, not in closing.

6 THE COURT: Well, I think we have an
7 understanding.

8 This thing is more complicated when you have
9 multiple defendants. I just tried to talc case that ended
10 up in a hung jury and a very minor defendant took all of the
11 time of Johnson & Johnson.

12 MS. MCVEY: I have watched that.

13 THE COURT: I couldn't do anything about it
14 because the parties, they had agreed, but this attorney went
15 on and on and on and the poor -- the main defendants, J & J,
16 were just sitting there dying by the minute. So I think
17 it's simpler when we have got what we have got right here,
18 but sometimes economy of words is better, I will tell you,
19 Mr. Chapman.

20 MR. CHAPMAN: I understand, Your Honor.

21 THE COURT: All right. Very good.

22 Anything else?

23 MS. MCVEY: No, ma'am. Thank you.

24 THE COURT: All right. See you tomorrow morning.

25 (Whereupon, proceedings were adjourned to July 19,

1 2018)

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

4 JERRY HOWARD CRAWFORD)
5 AND THE ESTATE OF)
6 EVELYN KAY CRAWFORD,) TRANSCRIPT OF RECORD
7) 2017-CP-42-04429
8 PLAINTIFFS,)
9) JULY 19, 2018
10 -vs-) SPARTANBURG, SOUTH CAROLINA
11)
12 COVIL CORPORATION,)
13)
14) (VOLUME IV)
15 DEFENDANT.

16 B E F O R E:

17 THE HONORABLE JEAN HOEFER TOAL, JUDGE. ; and a jury.

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2 (Videotaped Deposition of Jerry Crawford marked as
3 Court Exhibit No. 2 for identification)

4 (Videotaped Deposition of Harley Neelands was
5 marked as Court's Exhibit No. 3 for identification)

6 (Videotaped Deposition of Dwaine Waters was marked
7 as Court's Exhibit No. 4 for identification)

8 (Deposition of Dwaine Waters was marked as Court's
9 Exhibit No. 5 for identification)

10 (Deposition of Machen Carpenter was marked as
11 Court's Exhibit No. 6 for identification)

12 (Videotaped Deposition of Bruce Boyer was marked
13 as Court's Exhibit No. 7 for identification)

14 (Videotaped Deposition of Don Buck was marked as
15 Court's Exhibit No. 8 for identification)

16 (Deposition of Don Buck was marked as Court's
17 Exhibit No. 9 for identification)

18 (Deposition of Palmer Covil was marked as Court's
19 Exhibit No. 10 for identification)

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21 Exhibit No. 11 for identification)

22 (CD of Bruce Boyer, Don Buck and Harley Neelands
23 was marked as Court's Exhibit No. 12 for identification)

24 (Deposition of Harley Neelands was marked as
25 Court's Exhibit No. 13 for identification)

1 MS. MCVEY: I talked with Mr. Boger this morning
2 and do not have any additions to what we had last night.

3 THE COURT: Good.

4 MS. MCVEY: I think I incorporated all the changes
5 that you wanted?

6 THE COURT: Yes, I looked at what you submitted
7 last night. It looks complete to me and accurate of what
8 we've added and so forth.

9 MS. MCVEY: Do you want an extra copy to give to
10 the jury?

11 THE COURT: I want an extra copy to give to the
12 jury and I want an extra copy that Judge McLeod may --

13 MS. MCVEY: Okay.

14 THE COURT: -- examine while I'm reading it to the
15 jury.

16 MS. MCVEY: I'm going to hand you up two extras.
17 Are you okay on the verdict form?

18 THE COURT: The verdict form is fine and I hope we
19 have copies of it for the jury, as well as for -- as well as
20 for everybody else. I will want -- you know, I reach the
21 part of the charge where I discuss the verdict form. Of
22 course, I will be handing it up and showing it to them --

23 MS. MCVEY: Okay.

24 THE COURT: -- showing them how it works.

25 MS. MCVEY: I think we have got an extra copy. If

1 not, we will print it out.

2 THE COURT: Now, the only other thing that I have
3 done just out of a super abundance of caution, and I don't
4 know that it will be needed, but I will have some material,
5 if the second phase of the trial becomes necessary,
6 concerning what would have to be charged to them.

7 MS. MCVEY: That's a great point.

8 THE COURT: And so -- but I have simply
9 accumulated it and I'm not going to get into it, because we
10 may never need to use it, but I'm just letting y'all know
11 that I do have some material that's, you know, Gamble
12 charges and whatnot that could be used, if we reach that.

13 MS. MCVEY: Okay. Great.

14 And we will also have some.

15 THE COURT: Now here is the plan. They will come
16 and we will go right into -- I will introduce Judge McLeod
17 we will go right into the opening statements.

18 When the -- when both sides opening statements are
19 completed, I will let the jury go to their jury room and be
20 refreshed. Then I'll bring them out and charge them.

21 We have already taken orders for their lunch from
22 a delicatessen, so it's cold food, so it will -- it will be
23 here at noon.

24 MS. MCVEY: Okay.

25 THE COURT: But if it's a little after that before

1 they commence deliberations, that's fine. It will be
2 available for them.

3 MS. MCVEY: Okay.

4 THE COURT: And then they will start their
5 deliberations and we will see where -- but my target is to
6 place them in their jury room for their lunch and their
7 deliberations around mid day, but no restrictions. I'm sure
8 y'all --

9 MR. WALL: I think it would be earlier than that.

10 THE COURT: It might be earlier than that. And if
11 they begin to deliberate before their lunch arrives, they
12 can do that. That's not a problem. They have other things
13 they can have to refresh themselves in there, so I think
14 they will be fine.

15 (Off the record).

16 (Back on the record)

17 THE COURT: All right. We all ready to go?

18 MS. MCVEY: Yes, ma'am.

19 THE COURT: Let's be sure Mr. Wall is comfortable
20 and then we will get started.

21 MR. WALL: I'm always comfortable.

22 THE COURT: Good.

23 All right. Bring me the jury.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: Good morning, ladies and gentlemen of
2 the jury. I'm pleased to have us now be able to approach
3 the final presentations to you before you begin to
4 deliberate.

5 Before I do that, let me introduce W.J. McLeod,
6 IV. Tad McLeod is a new judge, and we have a training
7 program in South Carolina that has our newest judges, before
8 they begin their active service, train with more experienced
9 judges, and it is my pleasure to have Judge McLeod on the
10 bench with me this morning to observe the final phases of
11 this trial. He was here in the jury box earlier this week
12 to see the opening of the trial. He's now been sitting with
13 other judges this week on other cases and learning how all
14 different kinds of cases occur, but this is an unusual case,
15 as you know, and one that involves complexities that are
16 sometimes not present in the average jury trial. So this is
17 going to be a good experience for him to see the closing
18 arguments to you, to see the charge to the jury, and to
19 follow your deliberations until you complete deliberations.

20 So with that, I will now turn to plaintiffs'
21 counsel.

22 You will be hearing your -- to kind of outline
23 this morning is you will hear the opening arguments by the
24 plaintiffs' counsel. Then you will hear the arguments,
25 closing argument of defense counsel, and then you will hear

1 a reply from the plaintiffs, if they reserve sufficient time
2 to do that.

3 When the arguments are complete I'll send you to
4 your jury room to be refreshed and then you will come back
5 out and I will give you the charge on the law to the jury.

6 And then when I send you back to the jury room, I
7 will send you with all the exhibits, of course, and with
8 these charges, so you will have them. I don't say you have
9 to have them, you have to read them, you have to become a
10 law student, or anything of that nature, but if there come
11 up issues that you don't feel like you need to send a
12 question out to me, but you want to refresh yourself on what
13 was said, you will have that in your jury room with you.

14 At the time that you go back to -- at the time
15 that you retire after you hear the charges to the jury, we
16 will have lunch ready for you at that time. You may be back
17 there before lunch comes, in which case you can begin your
18 deliberations and then if you will let me know if you have
19 questions. The bailiffs, of course, is your life line for
20 anything that you need from us and we will proceed from
21 there. So that's kind of the outline of what we are looking
22 at as this day begins. Thank you very much.

23 I have been a lawyer for almost 50 years and I
24 have been a judge for 30 of those years and I have did a lot
25 of work as a trial lawyer and I have seen a lot of trials in

1 my time. I haven't seen any jury that would exceed your
2 attentiveness.

3 I told you when we began that we begin these
4 trials, you are kind of like a deer in the headlights. I
5 am, because this is not material that you hear every day,
6 even for somebody who tries a lot of these types of cases,
7 and all that terminology the first day that you listen to
8 it, you are kind of like reeling from it. Maybe even get a
9 little sleepy, but as time progresses I can see on your face
10 the kind of attention that you have paid and the kind of
11 more comfortable feeling that you have about your ability to
12 embrace this material and there is a good reason for that.
13 Our jury system and our system of justice in this country is
14 founded on the concept of justice delivered by a jury of
15 your peers, regular ordinary citizens who use their common
16 sense and law as the judge explains it and try to reach a
17 verdict that is objective and fair, and I am very, very
18 confident in your ability to do that, so I thank you to
19 begin for the kind of attention that you have paid, and now
20 the closing arguments.

21 Plaintiffs, you may begin.

22 MR. CHAPMAN: Thank you, Your Honor.

23 Good morning, ladies and gentlemen.

24 It's an intense few days. It's crazy for me to
25 believe that it was just a few days ago that I had stood up

1 here and told you everything that you were going to hear in
2 this case.

3 I promised you that you were going to hear that
4 Covil knew it, they did it, and they hid it. I think I have
5 kept that promise.

6 This is the most open and shut case I have ever
7 seen in my life.

8 You have seen a lot of evidence, a lot of
9 documents, a lot testimony. I think the one thing that
10 those things have made clear, and I say this without
11 hesitation, Covil is a terrible company. Covil did terrible
12 things.

13 There is an old proverb I think is significant
14 here. "When a person dies, worlds are destroyed." I think
15 what that means to you is that when Mr. Crawford dies, which
16 he will, worlds are going to be destroyed. This affects not
17 only Mr. Crawford, this affects his wife. This affects his
18 kids, his grand kids, the grand kids he's never going to get
19 to meet, and this didn't have to happen. It should not have
20 happened.

21 What the evidence has made clear, ladies and
22 gentlemen, is that Covil did not value human life. They
23 didn't care about it in 1950. They didn't care about life
24 in 1965, 1970, 1974. And what's clear is that Covil doesn't
25 care about human life today. That's why you're here.

1 That's the question we have to answer because they refused
2 to do it.

3 I want to take a second and go through some of the
4 undisputed facts that we have in this case. It is
5 undisputed that Jerry Crawford worked at Celanese
6 Spartanburg from 1970 to 1974. It is undisputed that he was
7 exposed to asbestos-containing pipe insulation. He has
8 mesothelioma and he is going to die. No one told you any
9 different than that. And importantly, ladies and gentlemen,
10 he didn't do anything wrong. Not a single soul sat here and
11 told you Mr. Crawford did anything wrong. That is
12 undisputed.

13 This is the disputed facts. I told you at the
14 very beginning we have a fundamental disagreement about the
15 value of human life.

16 MR. WALL: Your Honor, I object. The issue is not
17 the value of human life. It's the damages to its survivors,
18 and I object.

19 THE COURT: Overruled. I consider it fair
20 argument on the matters that are submitted.

21 MR. CHAPMAN: Thank you, Your Honor.

22 THE COURT: You may continue, Mr. Chapman.

23 MR. CHAPMAN: The fundamental disagreement we have
24 is the value of human life. Beyond that what you have to
25 decide is were Covil's actions willful, wanton, and

1 reckless. That's what we are going to get into.

2 Here is what the evidence shows. The evidence
3 shows that Covil supplied asbestos-containing insulation to
4 the Celanese Spartanburg facility. The evidence shows Covil
5 did that when they knew their products would kill people.
6 The evidence shows that not only did they know it, not only
7 did they do it, but they hid the information. They hid it
8 from people like Jerry Crawford. There is direct evidence
9 documents and testimony that shows every single one of those
10 and it is un-controverted.

11 They knew it. They knew it. Covil knew asbestos
12 could kill. You heard by deposition from Palmer Covil, the
13 founder of Covil Insulation. He admitted to you by his
14 deposition he knew asbestos could kill. He attended the
15 Selikoff conference. You heard about Dr. Selikoff; knew all
16 about mesothelioma; knew all about the link between asbestos
17 and mesothelioma and he told people like Palmer Covil.
18 Palmer Covil knew that.

19 You also heard that Palmer Covil said the union
20 was making noise about this kind of stuff. You know what
21 that means? It means his employees were concerned about it.
22 You know what he did? Nothing. Nothing.

23 The only thing that they did do was they made
24 their employees wear respirators going back into the 1950's,
25 right? They knew their employees should be protected from

1 this. They had that knowledge and they didn't pass that
2 along to Mr. Crawford, protecting themselves, and I think
3 that's the overall theme of this case. Covil is protecting
4 themselves.

5 I want to read you -- this is exact testimony from
6 Mr. Palmer Covil.

7 "Q. Well, it would be safe to say that by 1968
8 you were aware of asbestosis?

9 "We were aware of it. Yes, sir.

10 "I believe you indicated in 1965 or 1966 you
11 became aware of it?

12 "Yes, sir."

13 Direct admission. He knew it.

14 Not only Palmer Covil, you heard Mr. Glenn,
15 Covil's representative. He took the stand and he told you:

16 "Q. Covil knew in 1965 asbestos can cause death?
17 Yes."

18 Covil knew in 1965 asbestos can cause death. They
19 knew it.

20 "And today Covil agrees that based on the science
21 there is a relationship between asbestos exposure and the
22 disease mesothelioma?

23 "Yes. Yes." No hesitation.

24 Covil knew asbestos caused asbestosis. They knew
25 it causes mesothelioma, the exact disease Mr. Crawford has.

1 They knew these diseases were fatal. What did they do about
2 it? What did they do about it? Nothing. Not a thing. Not
3 a thing.

4 "At no point in time, when Covil learned that in
5 1965, did Covil take it upon itself to place a warning on
6 one of the boxes of asbestos-containing insulation that it
7 sold, right?

8 "That's correct."

9 Covil didn't do that. Covil had the information.
10 They knew it could kill. They knew it could cause the exact
11 disease that Mr. Crawford has. They didn't even put a label
12 on the box.

13 They knew it and they did it. They did it anyway.

14 I think what this evidence has made clear that
15 Covil was at Celanese. Covil Insulation was at the Celanese
16 plant, and I think we get there through a number of ways.

17 The first way is that the judge instructed you
18 that this was presumed. All right.

19 The second is that Covil -- let me back up.

20 Covil's entire argument in this case is that they
21 weren't there. Covil wasn't there. "Couldn't be us."

22 The only evidence that they gave you to support
23 any of that is a bunch of people saying "I don't know. I
24 don't know. I looked through documents, didn't see them, so
25 I don't know." By the way, the documents that they looked

1 through, after the fire in 1973.

2 They asked Daniel, "did you look through the
3 documents?

4 "Well, I looked through some of them.

5 "You didn't see them in there?

6 "Oh, I guess they weren't there."

7 Celanese, "did you look through the documents?

8 "I didn't look through every one.

9 "Well, I guess they are not there."

10 Covil does not know.

11 You know who does know? Harley Neelands. Harley
12 Neelands. He was there. He's an eyewitness, physically at
13 the plant at the same time. He knew it was Covil. He saw
14 it. You heard his testimony. In fact, let's look at it.

15 (Whereupon, a portion of a videotape of Harley
16 Neelands was played to the jury panel)

17 MR. CHAPMAN: He saw the truck. He saw the truck.
18 The truck said Covil on it. That's his testimony. That
19 means he saw Covil Insulation bringing in
20 asbestos-containing pipe covering literally by the
21 truckload. Covil doesn't know. I agree they don't know.
22 He does. He does.

23 More than that, the documents show it. You saw
24 this. This was a document. It's a Daniel document. It
25 lists the vendors and subcontractors at Hoechst Spartanburg,

1 '71 through '75. Look who is on there. Covil Insulation.
2 Right there. This is a Daniel document. It's in black and
3 white.

4 Another concept here is Daniel equals Covil. You
5 heard throughout the testimony, ladies and gentlemen, that
6 Daniel equals Covil. Specifically Mr. Machen Carpenter. He
7 said Daniel and Covil were like this. If Daniel did the
8 job, Covil did the insulation. That's what he said and they
9 have put on no evidence to the contrary. Zero. If Daniel
10 did the job, Covil did the insulation, and it's undisputed
11 Daniel did this job. Covil did this insulation. That's
12 what the evidence shows.

13 In fact, Mr. Buck -- I'm sorry, Mr. Glenn agrees.
14 This was his testimony and Covil agrees that Daniel
15 Construction was one of Covil's biggest customers. "They
16 were one of our largest. Yes."

17 Mr. Buck said the same thing.

18 MR. WALL: Your Honor --

19 MR. CHAPMAN: The Daniel's rep.

20 MR. WALL: I object. That is not certified
21 testimony. I don't think it should be showed to the jury.

22 THE COURT: Overruled. My own memory
23 substantiates that this is the testimony.

24 MR. WALL: I'm not arguing that, but to actually
25 be showing the transcript and it's not a certified

1 transcript.

2 THE COURT: I don't think demonstrative evidence
3 in connection with argument requires showing the certified
4 copy, so I overrule.

5 MR. CHAPMAN: That's what Mr. Glenn said. Their
6 rep, that's what he said.

7 Mr. Buck. What did Mr. Buck say?

8 "Did Daniel do business with Covil?

9 "Yes. They were our insulation subcontractor.

10 "Do you know when?

11 "At all different times."

12 You heard this from Covil and now you heard this
13 from Daniel. You heard this from Mr. Machen Carpenter. You
14 have seen it in the documents. Covil was there. Come on,
15 Covil was there. Daniel equals Covil.

16 Every time Covil stands up here and says Daniel,
17 Daniel, Daniel, what they are really saying is Covil, Covil,
18 Covil. That's what the evidence supports.

19 And what they sold was asbestos insulation.
20 That's just proven.

21 The judge instructed you on this too and Covil
22 admitted it to you. Mr. Glenn admitted this to you.

23 "Q. And among other products that Covil would
24 distribute between 1948 and 1991 was asbestos-containing
25 thermal insulation during at least some of those years,

1 right?

2 "They did supply them, yes." Yes.

3 More than that, ladies and gentlemen, you don't
4 just need the testimony, we have got the documents.
5 Celanese document. This shows what the material was in
6 their plants. The poly house where Mr. Crawford worked.
7 The continuous poly house where Mr. Crawford worked.
8 17,000 -- 77,000 square feet of asbestos-containing
9 insulation.

10 Now, I don't know, ladies and gentlemen, if you
11 have done the math on that. That's over 15 miles of
12 asbestos-containing insulation in the very buildings where
13 Mr. Crawford was working. 15 miles of asbestos-containing
14 insulation supplied by Covil, that they knew was going to be
15 worked on, that they knew had to be cut.

16 They knew it. They did it. And they tried to
17 cover it up. They hid it.

18 They knew it would kill. They did it anyway and
19 then they covered this up for decades. We are talking about
20 stuff that happened in, what, 1950's, 1965. We are here in
21 2018 talking about it. Why is that? Because they covered
22 this up for decades. They protected themselves.

23 The documents. Exhibit A of this is their
24 documents. They destroyed their own documents.

25 You heard about the fire in 1973. It wiped out

1 all the documents. Coincidentally, at the exact same time
2 they say they went asbestos free. Is that a coincidence? I
3 don't know. I don't know, but the evidence shows Mr. Machen
4 Carpenter, "fire didn't destroy the documents." That's what
5 he said. The documents were saved by a firewall. They were
6 in a vault. They didn't burn. And they are gone, all
7 right. Not because of a fire. Because Covil threw them
8 away. Covil literally threw them away.

9 Not only that, not only did they try to cover that
10 up, they didn't warn them. They didn't warn a soul. Covil
11 admitted to you they didn't put any warnings on these
12 products. They admitted to you they didn't even test their
13 products that they were selling to see if they were
14 dangerous. Why? Why didn't they warn? They didn't legally
15 have to. They didn't legally have to. I think what the
16 judge is going to tell you, ladies and gentlemen, is that's
17 wrong. That's wrong. They did have to and they didn't.

18 Even if you assume for a second they didn't
19 legally have to, fine, let's just assume that. I told you
20 you were going to hear this and we asked him on the stand
21 "sir, ethically, morally, why wouldn't you tell people your
22 products were going to kill them?

23 "It was not a requirement to distribute
24 information. Business decision. Business decision."

25 You know what that means? That means that Covil

1 Corporation had this information. They sat in the board
2 room, or a conference room, or whatever, and talked about
3 it. They weighed the pros and the cons and they made a
4 conscious choice not to tell people their products were
5 going to kill them. Business decision.

6 Do you know what that also means? You know what
7 they were worried about? Not worried about Mr. Crawford.
8 They were worried about their bottom line. They were
9 worried that if people knew that their products were
10 dangerous, they would stop using them. It meant they would
11 stop buying them. Means less money in their pocket.

12 You heard Mr. Crawford tell you that if he knew he
13 was working with deadly asbestos, he would have found
14 another job. That's exactly what Covil was afraid of.
15 That's exactly why they didn't warn them. That's exactly
16 the business decision that they made. And who was here to
17 tell us about it?

18 I want to talk about Robert Glenn for a second.

19 Robert Glenn is the voice of Covil. He is the
20 person that they picked to be the person most knowledgeable,
21 to come and talk to you on behalf of Covil as the mouthpiece
22 of Covil. The problem with that, never heard of Covil.
23 Until three weeks ago he had literally never heard the name
24 of Covil.

25 More than that, he's an expert for defendants like

1 Covil in asbestos litigation. He has spent his career
2 lobbying to change laws that would affect asbestos and
3 affect people like Jerry Crawford. That's the guy that they
4 picked? That's the guy that represents Covil? You know
5 what? Maybe that makes sense. Maybe that represents what
6 Covil is. The more I think about it, the more sense it
7 makes to me. Maybe that's just the Covil way.

8 Speaking of that, at the very beginning of this
9 case Covil promised you a lot of things. They promised you
10 the evidence would show you that Daniel didn't buy
11 insulation from Covil. That's what they said. That's
12 wrong.

13 They promised they would show you the whole place
14 burned down, documents included. That's wrong. Robert
15 Glenn reviewed all the records and found nothing.

16 I want to take a second and talk about this. I
17 mean, that's wrong, right, but I want to talk about this.
18 Mr. Glenn said that he reviewed 25,000 documents. Now, they
19 claim that that's all the documents that they have from 1973
20 until the nineties? I don't know. But he says he reviewed
21 them. When we asked him, we drilled down on this, "did you
22 actually review them?

23 "No. I looked at about a 100 of them." A 100 out
24 of 25,000 to learn everything I needed to know to talk to
25 you about Covil. He didn't review the documents.

1 All of their insulation was asbestos free by '73.
2 Wrong. Wrong. You saw this in a couple of ways. One, we
3 showed you the document where they were supplying
4 asbestos-containing pipe covering to a different plant in
5 1974. Mr. Glenn took the stand and told you they were
6 selling these products until '77. Which one is true? The
7 documents? The sworn testimony?

8 Now, in this case we brought three causes of
9 action I want to talk to you about. I mentioned negligence
10 at the very beginning of this case. There is also a cause
11 for strict liability and for implied warranty, and I want to
12 go through each one of those and what they mean.

13 Strict liability. This means liability without
14 fault. It does not matter for strict liability if Covil was
15 negligent or not. Okay? Here are the elements of strict
16 liability, and you are going to see this when you go back to
17 deliberate. The products were in a defective condition.
18 Literally -- and I'm not exaggerating. Literally every
19 person that took the stand by deposition, or physically, or
20 video, told you that Covil's products were defective; told
21 you that Covil's products had deadly asbestos in them when
22 they shipped them from the plant, from Covil's warehouse.

23 The products was in the same condition when it
24 left Covil. No argument there. Pipe insulation. Took it
25 from the warehouse, shipped it to Spartanburg, put it on the

1 pipe. No evidence to the contrary to that.

2 And then the plaintiff was injured. I think we
3 know that. I think we know Jerry is going to die.

4 We have met all of those. We have met all of
5 those.

6 Implied warranty. This is not necessarily common
7 sense and so I want to take just a second. Every sale of a
8 product, every sale of a product comes with an implied
9 warranty that the goods, in this case the pipe insulation,
10 are fit for sale and they are free of significant defects.
11 Contract or not, that comes with every product that's sold.

12 The elements of that. Basically the same as
13 strict liability. Basically the same. We have met those
14 for all the reasons I just told you. The product has
15 defects. It has asbestos. Asbestos was the defect.

16 There is this concept alternative design, okay.
17 That means that they had to have an alternative design,
18 something else they could have used.

19 Mr. Glenn told you that they sold fiberglass the
20 same time they were selling asbestos. Fiberglass is
21 asbestos free. They didn't sell that. They chose to sell
22 the asbestos. That was a conscious choice that they made to
23 deal with when they had something else they could have done.

24 And then negligence. Another word for negligence
25 is carelessness. Was Covil careless here? The answer is a

1 resounding yes.

2 There are several elements and I want to take you
3 through each one. They are not complicated. Duty, breach,
4 causation, proximate cause, and damages. Okay.

5 First duty. You owe a duty to a person when there
6 is a known risk of harm. Known risk of harm. I mean,
7 that's abundantly clear. Covil knew it. They had the duty.

8 You breach that duty when you don't do anything
9 about it. Covil failed to warn. They hid that information.
10 That's a breach.

11 Causation.

12 Oh, breach, I'm sorry. There it is. I thought it
13 was changing.

14 Causation. Did their products cause Mr.
15 Crawford's disease? You heard Dr. John Maddox, pathologist,
16 doctor. He told you they did. He told you Covil's
17 products, the pipe insulation, caused Mr. Crawford's
18 mesothelioma. There is no testimony whatsoever to refute
19 that. That is undisputed.

20 Proximate cause. Proximate cause means that the
21 exposure that Mr. Crawford received was of such frequency,
22 regularity, and duration that it was a substantial factor in
23 bringing about the disease. Dr. Maddox told you this
24 exactly, and there is no evidence to refute anything Dr.
25 Maddox said.

1 Jerry was around it every day. He swept it up
2 every day. You heard the levels of exposure that a person
3 receives when they are sweeping that up. For four years he
4 did that. No one disputes this. No one disputes this.

5 And then damages. Was Mr. Crawford injured? Yes.
6 Yes.

7 We have met all the elements of negligence, ladies
8 and gentlemen. It's clear.

9 I want to be clear. We are not required to prove
10 all of these. We only need to prove one. I think we have,
11 but we only need to prove one.

12 And there is something else I want to talk about
13 that's not really intuitive. That's the standard of proof,
14 all right? Now, we are all used to thinking about courts
15 and thinking about courts of law and watching shows like Law
16 and Order, right? In a criminal context the standard of
17 proof is beyond a reasonable doubt. That's a high burden.
18 That's not what we are dealing with here. The burden that
19 we have, it's my burden, and the burden that we have in this
20 case is more likely than not. That's it. Is it more likely
21 than not that Covil knew asbestos could kill you? Is it
22 more likely than not that Covil supplied asbestos-containing
23 insulation to Spartanburg? Is it more likely than not that
24 Mr. Crawford was exposed, that they hid this information,
25 that they destroyed their documents? Of course it is. Of

1 course it is.

2 Covil's money. Now, Covil's lawyer stood up here
3 in opening and told you Covil is defunct, they have no
4 earnings. And my concern is maybe you are thinking, "well,
5 even if we find for you, how are you going to collect?"
6 Don't worry about that. Your job is to find whether or not
7 Covil is responsible for Mr. Crawford's disease. If you
8 find that, and if you give us a number, let me worry about
9 collecting. That's not something that you need to worry
10 about.

11 Now, the verdict form --

12 Jason, can we switch?

13 I want to show you this, because this is what's
14 going to go back with you when you decide. This is what
15 it's going to look like.

16 You are going to have some questions to answer,
17 some boxes to pick.

18 "We, the jury, find that Covil Corporation was
19 negligent and its negligence was the proximate cause of
20 Jerry Crawford's injury and damages."

21 Yes. The evidence is overwhelming.

22 Strict liability. Yes. The evidence is
23 overwhelming.

24 Implied warranty. Yes, the evidence is
25 overwhelming.

1 This is what you are going to see.

2 What's the result of all this? What's the result?

3 The result is Mr. Crawford's cancer. The result is his
4 family's loss. The result is he's missing out on
5 Christmases and Thanksgiving and family dinners. He doesn't
6 get to make angels, butterflies with his granddaughter. He
7 doesn't get to see his grand kids grow up. He doesn't get
8 to make those memories. He doesn't get to meet future
9 grandchildren. That's the result of this. That's the real
10 result of this. And in the face of all of this, the face of
11 all this is hope. Mr. Crawford told you he received the
12 news he had a 20 percent chance to live. That's
13 devastating. That's devastating. What did he say? He's
14 grateful. He had a shot. It wasn't a good one, but he had
15 a shot. Now we know that mesothelioma is fatal and it's
16 going to take his life, but he was grateful for the shot,
17 and so this is what we're left with, the value of a human
18 life. How do we determine that? How do we even start that?

19 Money is such a terrible exchange for life. If
20 Patty and Tessa could stand up here right now and ask you
21 for anything in the world, they would ask you for their dad
22 back, for their mom. They would ask you for their family,
23 for the memories that they can't make, that they are losing,
24 but they can't ask you that, and that's not something you
25 can give them. So this is all we have.

1 More than that, it's clear Covil doesn't care
2 about Mr. Crawford's life. Covil doesn't care about the
3 memories they are going to lose, about the grand kids he's
4 never going to meet. They care about money. That's what
5 they value. They made a business decision. Fine.

6 If that's where they want to go, let's make a
7 business decision. That's what they care about, let's talk
8 about money. If we are going to do that, how do we even
9 start? I have got some suggestions for you. They are just
10 suggestions. This is all going to be on you, but I don't
11 know if you guys are football fans. Dabbo Sweeney, Will
12 Muschamp, they make almost seven million, three million
13 dollars a year. I'm not saying that's right or that's
14 wrong, but society says those are values, they are okay for
15 someone to coach a game. We are talking about a life. We
16 are talking about a life that was taken away here in a board
17 room by a business decision so that Covil could make more
18 money. So here is my suggestion, and it's only that. It is
19 undisputed, ladies and gentlemen, that Mr. Crawford's
20 medical damages are just under \$568,000. Now, I submit to
21 you, ladies and gentlemen, that's the amount of money that
22 his life was worth to him the last year. That's how much
23 money he spent trying to stay alive for one year.

24 You heard Dr. Maddox tell you that if it were not
25 for his mesothelioma, he should live for another 13 years.

1 I think we give him that. I think we give him that. I
2 think that's what he values his life at.

3 Then there is Mrs. Crawford. You heard that
4 literally with her last breath she was worried about Jerry.
5 As she was dying and she couldn't speak, she was scared.
6 Not because she was going to die, but because she was
7 leaving Jerry alone to deal with this by himself and she
8 couldn't even die in peace. What's that worth? How do you
9 put a number on that? I don't know. I don't know. You are
10 going to have to decide that. I don't know what you do with
11 that.

12 And then I think you give them medical bills.

13 And what that comes to is about \$8,000,000, plus
14 whatever you decide for Mrs. Crawford, if anything. I don't
15 know how we get at this number. I think this is one way of
16 doing it. If we have to put a number on it, I think this is
17 one way of doing it.

18 There is one thing we haven't talked about and
19 that's how Covil was reckless. We all remember the
20 testimony from Dwaine Waters, how impactful, how significant
21 that was. Mr. Waters told you that Covil put asbestos
22 insulation in boxes labeled asbestos free. Let me say that
23 again. Covil put asbestos-containing insulation in boxes
24 labeled asbestos free. Do you understand how dangerous that
25 is? Even if you knew about the hazards of asbestos, you

1 wouldn't know to take precautions because what you think you
2 are working with is asbestos free. Not only did they know
3 it, they did it, they covered it up, but they actively
4 represented that their product was not what it was, that
5 their product was safe. Why would they do this? Because
6 they had to get rid of it. No one wanted it any more and
7 they had a warehouse full of it, so they had to sneak it
8 out. They had to sneak it out. They did it in these boxes.

9 Mr. Waters noticed this. You heard him say this.
10 He said "whoa, whoa, whoa, this is asbestos. Hold on." He
11 went and told his supervisor, "do you know this is asbestos?
12 It says asbestos free right there." What did Covil tell him
13 to do? Covil told him to keep quiet. He said "yes, I know,
14 but they don't, so don't tell them." I don't even know what
15 to say about that. That's got to be the most reckless thing
16 a company could ever do.

17 Chase, can you switch for a second?

18 And it's because of that you are going to see on
19 the verdict form number five, was Covil's conduct willful,
20 wanton or reckless? A resounding yes. Resounding yes.

21 Switch back, please.

22 Willful, wanton, reckless conduct. Reckless
23 conduct.

24 They took, ladies and gentlemen, what the
25 Crawfords value most in this world. They took their family.

1 They took their memories. That's all they want.

2 Take what they truly value. What's clear is they
3 don't value life. They value money. Take that. Make them
4 take responsibility for their choices. This did not have to
5 happen.

6 Thank you so much for your time and for your
7 attention.

8 Your Honor, I reserve any remaining time for
9 rebuttal.

10 Thank you.

11 THE COURT: All right. Thank you, Mr. Chapman.

12 And now we will hear from Mr. Wall for the
13 defendant.

14 MR. WALL: I'm getting there.

15 THE COURT: Is that -- is that up for Mr. Wall?

16 MR. WALL: Yes. No, no, that's --

17 THE COURT: All right. Take that down, please.

18 MS. MCVEY: He wants to use the elmo.

19 MR. WALL: I just want to use your elmo. That's
20 all.

21 THE COURT: Yeah, exactly, but you don't want
22 the other material up.

23 MR. WALL: No, I don't.

24 THE COURT: You are certainly entitled to that.

25 You may proceed, Mr. Wall.

1 MR. WALL: Thank you, Your Honor.

2 Good morning. We have met. I'm Mark Wall.

3 Covil Corporation, which lost its corporate
4 charter in 1993, and went out of business in 1991 --

5 MR. CHAPMAN: Your Honor, objection. There is no
6 evidence of this in the record.

7 MR. WALL: It's all over the record, Your Honor.

8 THE COURT: Just one moment.

9 Approach, counsel, please.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 THE COURT: All right.

13 Ladies and gentlemen of the jury, Mr. Wall will
14 withdraw the statement as to when -- as to whether and when
15 Covil lost its corporate charter.

16 You may proceed, Mr. Wall.

17 MR. WALL: Yes, Your Honor.

18 But it did go out of business in 1991.

19 Covil is here before you today because it truly
20 believes that it did not, did not, sell asbestos insulation
21 to the contractor at Celanese and Daniel -- I mean to Daniel
22 who built the Spartanburg plant, or either that to Celanese,
23 because it's Celanese who actually paid for any -- according
24 to the testimony, any asbestos they bought, it was bought
25 through Daniel and was installed by Daniel.

1 We realize at the beginning of the trial Judge
2 Toal gave you an instruction that was based upon a jury --
3 discovery dispute, and that instruction was that Covil
4 was -- that Crawford was exposed to asbestos material at the
5 Celanese site, but that instruction did not set forth any
6 particular date of exposure. It does not set forth the
7 location of exposure, except Celanese, and never set forth
8 the amount of exposure. Those issues are still up to you.

9 Also there is still the issue of whether or not
10 any exposure by Covil, if any, was the proximate cause of
11 Mr. Crawford's mesothelioma and eventual death, and he will,
12 in fact, die. We don't dispute that.

13 The judge will charge you that plaintiffs' lawyers
14 have the burden of proof in this case. They have to prove
15 everything. Covil doesn't have to prove anything. Covil
16 can stand up and say "we weren't there, we didn't do it,
17 it's up to them to prove." However, I suggests to you we
18 did prove several things, and we will get into that later.

19 And as this claim of hiding it up, Mr. Covil, in
20 1977, you know how long ago that was, Mr. Covil in 1977 said
21 "yes, I went to Selikoff. Yes, I knew. Yes, I am not
22 hiding it from you." He said it under oath. Then in '77,
23 and then here again in 2018. And that's not hiding. He
24 said "I'm not manufacturing these products. Someone else is
25 manufacturing the products. I'm just buying the products

1 from the manufacturer."

2 In my opinion, it's the manufacturer's
3 responsibility to put on any warnings and the Federal
4 Government agreed. OSHA came out in the seventies with
5 regulations saying you, the manufacturer, needed to put
6 warnings on these boxes. It didn't say you need to put
7 warnings on the actual pipe covering. It says you need to
8 put warnings on the boxes.

9 Now, this trial was a lot shorter than I thought
10 it was going to be and in the greatest scheme of things was
11 only a three-day trial, which is very short for an asbestos
12 case. But even though it's short, I think there are a lot
13 of complications in this case.

14 Let's turn to some of the fact witnesses in this
15 case.

16 Mr. Waters and Mr. Carpenter had nothing to do
17 with any construction at Celanese. They had nothing to do
18 with the ultimate facts in this case. They had nothing to
19 do with anything that you need to consider in awarding
20 damages or a defense verdict for Mr. Covil.

21 Mr. Waters is suing Covil. Mr. Waters is suing --

22 MS. MCVEY: Your Honor --

23 MR. CHAPMAN: Your Honor.

24 MR. WALL: You asked him. He was asked.

25 MR. CHAPMAN: Judge --

1 THE COURT: One moment.

2 MR. WALL: I'm sorry.

3 THE COURT: One moment. One moment. One moment.
4 Come to the side, please.

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 THE COURT: Ladies and gentlemen of the jury, Mr.
8 Wall withdraws his statements that Mr. Waters is suing
9 Covil. There is no evidence about that placed before you
10 and you are to disregard that statement. Thank you.

11 MR. WALL: Sorry, Your Honor.

12 THE COURT: That's all right.

13 MR. WALL: I think it's up to you. You have read
14 or heard the deposition of Mr. Carpenter that he is the
15 disgruntled employee, former employee of Covil. He denied
16 when Mr. Covil said occurred that a huge fire that burned
17 most of the records. The records were not in a vault
18 because there was no vault.

19 You heard Mr. Glenn say he looked at the pictures
20 from the newspaper and read the accounts in the newspaper
21 and it was a huge fire, destroyed everything. And for today
22 it did, according to the newspaper, \$700,000 worth of damage
23 to Covil's plant.

24 I suggests to you that their testimony is
25 irrelevant for you to decide the appropriate issues in this

1 case; that is, whether or not Covil was a supplier or a
2 subcontractor or an applicator of asbestos-containing
3 products at Celanese. That is the issue before you. No
4 other issue.

5 Now, it was Mr. Neely (sic). Mr. Neely (sic) was
6 an interesting person. Mr. Neely (sic) proved our case. He
7 said "I worked for Daniel at Celanese for six to eight
8 months and I installed, along with Daniel employees, the
9 asbestos pipe covering at Celanese." He made it clear that
10 Daniel's own employees put on the asbestos materials at
11 Celanese. His only point was that he did not believe his
12 employer when his employer said we did not supply materials
13 for either Daniel or Celanese, but he did prove the point
14 that Daniel installed the asbestos materials at Celanese.

15 Now, let's look at some of the real issues in the
16 case. The judge will tell you that I have a duty as the
17 attorney for Covil to question every amount of proof that
18 the plaintiffs try and put into evidence. That's my job,
19 and I'm going to do it from the reverse.

20 When Mr. Chapman was up talking about issues, he
21 always put damages as the last issue. And generally
22 speaking that's how lawyers deal with it, but I'm going to
23 talk about damages first.

24 I suggests to you that you do not need to get to
25 damages. You don't need to discuss damages and don't have

1 to discuss it until you actually conclude that Covil put
2 product on this work site or installed product on this work
3 site and that that product was the proximate cause of Mr.
4 Crawford's death.

5 Now, in talking about damages, the law does not
6 place a value and the law does not want people trying to
7 place a value on human life. That is not the measure of
8 damages. The judge will give you the measure of damages.
9 You cannot put value on human life. So the law says, and
10 the judge will charge you, say to the jury if you award
11 damages, you look at the survivors and you put a value on
12 their injuries, their damages, their issues. You do not put
13 a value on human life.

14 Also they talked about punitive damages. Again, I
15 suggests to you, as shown by the verdict form, you don't get
16 to the issue of punitive damages until last and that's based
17 upon a different standard of proof. That standard is clear
18 and convincing. That means you have to be so sure that what
19 they allege Covil did was so reckless, willful and wanton
20 that you have no doubt about it in your mind. I suggests to
21 you there will be a doubt about it in your mind, because we
22 did not produce the material there. We did not sell the
23 material there, and Mr. Covil did not hide anything. He, in
24 1977, told you for the first time he was ever asked exactly
25 what he knew and what he did.

1 I would suggest to you also that it was not Covil,
2 regardless what it is in this case, that made any decision
3 about putting asbestos in the Celanese plant in Spartanburg.
4 It had nothing to do with that. It was a supplier. The
5 decision to put asbestos pipe covering at Celanese was a
6 choice made by Celanese and Daniel, not by Covil. If Covil
7 supplied something to Celanese, it was off a purchase order
8 from Celanese or a purchase order from Daniel. They, Covil,
9 only did what it was asked to do. The specs were made by
10 Daniel and changed or modified or used by Daniel, not by
11 Covil.

12 Let's look at the other witnesses in the case.

13 Covil does not contend that Mr. Crawford does not
14 have mesothelioma. He does, and we agree he unfortunately
15 is going to die. However, as usual, this case is not quite
16 that simple. What we have -- so we are not worried about
17 Dr. Brody.

18 Dr. Maddox, he came you up and again confirmed
19 that it was mesothelioma and we agree with him. The
20 question with Dr. Maddox is what was the cause of the
21 mesothelioma.

22 Now, Mr. Maddox, Dr. Maddox, wrote a report.
23 There it is. And he said -- and I had him read it, because
24 he didn't read it the first time, that he received a letter
25 from the plaintiffs' lawyers who told him what the exposure

1 was that the plaintiffs were alleging in this case. He
2 wrote the letter. And the letter said that the 1970s he
3 worked at Celanese for about four years.

4 The first time through Dr. Maddox did not mention
5 brake work, but the lawyer sent that same letter that said
6 for about ten years, first was four years, he spent most
7 weekends and evenings at an auto shop of his brother-in-law
8 and he testified was three feet of where he was working that
9 he blew out dust off the brakes and that he was exposed to
10 asbestos while working on the brakes. And that was for a
11 ten year period, from '60 to '70, when he moved away.

12 Dr. Maddox then -- this was his form, "with a
13 reasonable degree of medical certainty, based on the
14 exposure history, the patient's cumulative asbestos exposure
15 caused his lethal malignant pleural mesothelioma." That
16 means all, the total amount, of the exposure to asbestos was
17 the total cause of his mesothelioma. Thus, the brakes were
18 considered by Dr. Maddox as being a contributing cumulative
19 cause of his mesothelioma.

20 One of the things that Dr. Maddox said, which I
21 was somewhat surprised at, because it wasn't in his report,
22 was that he was familiar with OSHA and he actually had on
23 the big screen up there the word OSHA and he discussed about
24 it. Well, Dr. Maddox had to agree the OSHA regulations
25 require the employer - Daniel - and the site place -

1 Celanese - to provide a safe working condition for the
2 employees. It doesn't put that burden on Covil, whether
3 Covil was there or not. We say they were not there, but a
4 burden of a safe workplace is Celanese and Daniel, not
5 Covil.

6 Now, the records reflect that there was no
7 evidence of any sale of any product by Covil to Daniel or
8 Celanese. There is just no evidence of that fact. They are
9 trying to get you to -- direct evidence. They are saying
10 well, this person said this, this person said that. Covil,
11 granted, had a fire in '73, it has its documents after that
12 date and Mr. Glenn looked through those documents. Granted
13 they are only a 100 pages, but he said there is no mention
14 in here of any sale of any product of Covil's to Daniel or
15 Celanese.

16 Mr. Boyer, the representative of Celanese, said
17 that he went through all the records of Celanese. He could
18 find no sale of any product to Celanese. He went through
19 the records. He did a word search, because there were
20 20,000 documents and you can't sit there and go through
21 them. He did a word search of those documents. Covil was
22 not mentioned in those documents. He could not find any
23 reference to Covil selling anything to them.

24 Then he further said, however, the best
25 information is the information from Mr. Buck, because Mr.

1 Buck was there. Mr. Buck did the work, or his company did
2 the work. Mr. Buck has 40 boxes of documents of Daniel
3 concerning the work at Celanese.

4 Mr. Buck again testified that he, in fact, went
5 through all the 40 boxes, looked at them. As a result of
6 that he was able to state for certainty Covil was not on the
7 job doing insulation application. He said "in all those
8 documents, I saw a couple of documents that showed that
9 Covil at one point," and he wasn't even sure of the point,
10 "had three employees of Covil on site doing fireproofing on
11 the structural steel." That was it. He said it twice.
12 "That's all I ever saw of Covil in those 40 boxes."

13 Mr. Buck also said that Daniel purchased the
14 materials, asbestos materials, directly from the
15 manufacturer, not from Covil.

16 And, finally, Mr. Buck said that this was the self
17 job of insulation. He said that Daniel put all of the
18 asbestos on the premises, pipe insulation on the premises,
19 through its own employees. And there are several things to
20 look at in that regard.

21 First, we have a document -- let me get the
22 official ones.

23 This would be in your room. It's Exhibit 822.4.
24 Mr. Buck, whose document this is, this is a Daniel document,
25 says "we just list all our usual subcontractors and vendors

1 on this left column. And if they did work up there, we then
2 put description of work." This is for the entire period
3 from November '71 through '74 -- '75. Mr. Buck says this
4 again proves that Covil was neither a subcontractor nor a
5 vendor at Celanese during the period of '71 through '74 --
6 '75. Covil may be listed, but performed no services at that
7 location.

8 Also we have Exhibit 822.15. 822.15 comes out of
9 a document or a series of documents known as 822.16. This
10 is a series of monthly reports that Covil did every single
11 month during the years they worked at Daniel -- excuse me,
12 at Celanese, and they put that. You can look through these
13 in the jury room. There are -- it's only 1973, but they
14 testified the same thing every month for the entire job.
15 And when you look through this document, on page 17, the
16 number on the bottom, but the prior page is 16, and later
17 they have numbers again, it says "number of men on payroll."
18 Not subcontractors. "Number of men on the Daniel payroll,"
19 and it shows that there were 39 insulators on the Daniel
20 payroll on the job site in 1973, putting insulation into the
21 Celanese plant. And you can go down this list. There were
22 a total of 466 employees of Daniel on the site doing all the
23 necessary work.

24 And on page 14 of all these reports, including the
25 one I'm showing you, there is a listing of subcontractors.

1 It lists all the subcontractors on site for that period of
2 time. Nowhere in any of these reports is Covil listed as
3 its subcontractor.

4 So, again, this again proves that Daniel did all
5 the insulation at Celanese and that Daniel purchased it --
6 used it and purchased it at the insistence of Celanese, and
7 it was, as they said, in 1970 it was the standard way of
8 construction. Covil had nothing to do with that decision.
9 That decision was made by Celanese and by Daniel.

10 I submit to you that it's clear that Covil did not
11 supply asbestos pipe covering to the Celanese Spartanburg
12 site. It was supplied by Covil and/or Daniel -- excuse me,
13 Celanese and/or Daniel. Covil did not supply the pipe
14 covering. It was supplied by Daniel, who purchased it from
15 the manufacturers and it came in the manufacturer's box. It
16 didn't come in a Covil box. It came in a manufacturer's
17 box.

18 Finally, Covil did not apply any pipe covering at
19 Celanese.

20 As I said to you in opening statement, we were
21 going to put those facts into evidence for you to consider
22 and rule on, and that is that a period from 1974 -- 1970 to
23 1974 Covil did not supply any products that were used in the
24 Celanese plant. And my opening statement said "I'm going to
25 tell you those things and at the end of time I'm going to

1 ask you to bring back a verdict for the defendant, a verdict
2 for Covil." Thank you very much.

3 THE COURT: All right. Mr. Chapman, plaintiffs'
4 reply.

5 MR. CHAPMAN: Yes, Your Honor.

6 Ladies and gentlemen, Mr. Wall just proved my
7 whole case. I'm going to tell you how.

8 All I heard him say over and over and over was
9 Daniel, Daniel, Daniel, Daniel, Daniel. What that means is
10 Covil, Covil, Covil, Covil, Covil.

11 It's been a while but do y'all remember the old
12 Wizard of Oz scarecrow; "he went that way." That's what
13 Covil is saying. "It wasn't me. It was them. It was them.
14 It was them. It was them." They will not take
15 responsibility.

16 Daniel was installing the insulation. Where did
17 they get it from? Covil. Covil supplied the insulation.

18 Mr. Wall talked to you about the location of
19 exposure. We don't know where that was. Mr. Crawford told
20 you poly 1, poly 2. That's poly, continuous poly. Those
21 are the buildings that he worked. That's Celanese documents
22 that I showed you lists it out. That's poly, continuous
23 poly. 15 miles of insulation. 15 miles in the exact
24 location where he worked.

25 You know, Mr. Wall throughout that contradicted

1 himself a few times. I tried to write down every time that
2 he did. I couldn't, but he said proximate cause was an
3 issue, and then he said "you know what? We don't dispute
4 proximate cause." They don't dispute proximate cause.
5 There is no evidence that they do and that's what he said.

6 He also said they're not hiding it. Are you
7 kidding me? What evidence are they listening to? What
8 trial have they been at, because all the evidence that I
9 have heard, all the evidence that's been put before you is
10 that they did, and all they keep saying over and over and
11 over is Covil wasn't there. There is no evidence of that.

12 What's this? This is evidence of that. You are
13 going to be able to go through this, if you want. You can
14 take it back with you.

15 And, in fact, ladies and gentlemen, what they keep
16 ignoring over and over, and I don't know why they do it,
17 they keep ignoring this, because it's not good for them.

18 (Whereupon, a partial of the videotape of Harley
19 Neelands was played to the jury panel)

20 MR. CHAPMAN: He saw the trucks. Direct
21 eyewitness testimony. He saw the trucks bringing it in.
22 Covil has not mentioned this to you once. They keep
23 ignoring it and so I'm going to keep showing it to you,
24 because it's direct evidence Covil was there.

25 More than that, here is the document. Right --

1 here is the documents. Subcontractors and vendors, '71
2 through '75. We asked Mr. Buck about this, the Daniel's
3 rep, and asked him "does that mean Covil was there?"

4 "Yeah. Yeah." And then he hesitates and he says
5 "well, I don't know. Maybe not."

6 And I said "well, sir -- I asked him this. You
7 heard this. "You told me a few minutes ago that you found
8 documents Covil was there."

9 His response was "oh, yeah, that's right."

10 Covil likes to pick and choose the testimony that
11 they want to present to you, but when you look at the whole
12 picture it's clear. It's clear.

13 Covil wants you to believe that under OSHA they
14 did not have a responsibility to warn, that the manufacturer
15 did. Well, that's true, the manufacturer did, but what OSHA
16 also says is federal law says a supplier, a supplier of
17 asbestos insulation, Covil, has a duty to warn. That's what
18 the law actually says. Again, they pick and choose what
19 they want you to hear, but when you look at the whole thing
20 there is no doubt.

21 In fact, ladies and gentlemen, Judge Toal, she's
22 going to instruct you in this case. She's going to give you
23 your charge and she's going to tell you under South Carolina
24 law a supplier has a duty here. That's the law. I know Mr.
25 Wall wishes it weren't, but that's what it is.

1 I'm trying to stay professional here. Mr. Wall
2 said something that really has me angry. He said Mr.
3 Crawford had nothing to do with the plant at Celanese
4 Spartanburg, nothing to do with that insulation, nothing to
5 do with the installation. What in the world is he talking
6 about? Nothing to do with it? He's dying from it. He was
7 exposed to it, 15 miles of it. I don't know what he's
8 talking about. The evidence of that is overwhelming.

9 Mr. Wall also told you there was no vault. Covil
10 records burned up, there was no vault. Mr. Glenn, their
11 representative, Covil, sat right here and told you there
12 was. So, again, contradicting us, I don't know where he's
13 going with this. He is saying one thing, but the evidence
14 says another.

15 And I want to be perfectly clear about something,
16 ladies and gentlemen.

17 If we could switch back to the elmo, please.

18 There was literally, literally, zero evidence for
19 you to consider that Daniel or that Celanese knew a darn
20 thing about the hazards of asbestos. They didn't know.
21 There is no testimony, no evidence that they did. You know
22 who did know? Covil. Covil knew. I showed you this at the
23 beginning. You got a known hazard, you got to warn if you
24 are a supplier. Covil is a supplier, all right?

25 And we talked about the employer. Apply it to a

1 contractor. The supplier has to warn the employer or the
2 contractor because they didn't know. They didn't know.
3 Once they know, then, yeah, it's up to them to control and
4 then it's up to Mr. Crawford to follow, but none of that
5 happened. None of that could have happened because they
6 didn't warn. They had the knowledge. They didn't pass it
7 on. That's what the evidence shows you. That's what's
8 clear.

9 Mr. Wall wants you to believe all these people -
10 Mr. Glenn, Mr. Buck, Mr. Boyer - they looked through all
11 these documents. One, that's not true. They all told you
12 that's not true. They did that and they didn't find
13 anything; therefore, Covil is not there. Frankly, ladies
14 and gentlemen, I think that's a misrepresentation of the
15 facts. I think that's what that is. You heard it. You
16 know it. They didn't look at it. And the records that we
17 do have, the Daniel's record, the Celanese record, the
18 eyewitness testimony shows they were there. All they have
19 is "I don't know." That's it. We know. We have the
20 evidence. We have the documents.

21 They want you to believe that Daniel didn't buy
22 their insulation from Covil, they bought it straight from
23 the manufacturers. Again, they want to pick and choose.
24 Daniel -- Daniel says that in their deposition, but they are
25 talking about asbestos-free insulation. That's what they

1 bought from the manufacturers. Their asbestos insulation
2 they bought from Covil. Why? They were like this. That
3 relationship was strong. They were their supplier. They
4 didn't buy from any manufacturer.

5 At the end Mr. Wall wants you to believe -- he
6 showed you a Document, one of these. There are dozens of
7 insulators there from Daniel doing the work. Thank you for
8 saying that. Yes, there are dozens of insulators doing the
9 work. What with? Covil Insulation. He said it was Daniel.
10 Yes, it was Daniel. And because it was Daniel it was Covil.
11 And because of the eyewitness testimony we know it was
12 Covil.

13 This is a red herring. This is a textbook
14 definition of a red herring. He wants you to believe that
15 Mr. Crawford was around some automotive work, and he was.
16 He was. That this was the cause of his mesothelioma. Mr.
17 Wall stood there and asked Dr. Maddox that very question.
18 Dr. Maddox didn't say that was a significant cause. Dr.
19 Maddox said the insulation was. They didn't call any
20 experts. They didn't put on any evidence to refute what Dr.
21 Maddox said. Don't be fooled by this. They have nothing,
22 so they are grasping at straws. Don't follow the red
23 herring.

24 This is our burden of proof for recklessness.
25 This is what the judge is going to read to you. "Clear and

1 convincing is something more than simply the greater weight
2 of the evidence. It's something less than beyond a
3 reasonable doubt. It is proof that leaves you firmly
4 convinced. Clear and convincing proof establishes in your
5 mind not only that a fact is probable, but that it's highly
6 probable." That's the standard.

7 Are you firmly convinced Covil was reckless?
8 Covil's actions were willful, that they were wanton. That's
9 what the evidence makes clear. That's what everything makes
10 clear.

11 Mr. Wall wants to parse words, so I put them in
12 front of you. That's what you are going to see. That's
13 what the evidence proves. That's what you are going to
14 decide.

15 This is about Mr. Crawford. I don't want to make
16 this about Covil. This is about his loss. This is why we
17 are here.

18 They say you can't put a value on human life
19 because they don't want you to do that. They spent their
20 whole history burying their head in the sand. And because
21 of that I'm here asking you to put a value on a life.
22 That's what the evidence is.

23 Thank you for your time. Thank you for your
24 consideration and your attentiveness. Thank you.

25 THE COURT: All right, ladies and gentlemen of the

1 jury, you have heard the closing arguments. Now what I will
2 ask you to do is go to your jury room and be refreshed. We
3 will take a 15 minute break and I'll ask you to be back here
4 at five minutes of eleven.

5 Let me simply repeat again you say gosh, what's
6 going to happen to the alternate. You are still right on
7 the case. We will not deal with any composition of the jury
8 until all my charges are complete and I send you back to
9 begin to deliberate, and even then we will have the
10 alternates in another location, but available to us, because
11 we won't dismiss the alternates until the case is completely
12 decided to verdict. So that's what we are about now. We
13 are going to take our morning break. Be refreshed. I'll
14 bring you back in and then I will give you my charge and we
15 will go from there. Thank you very much.

16 You may retire to the jury room.

17 (The following takes place outside the presence of
18 the jury panel)

19 MR. WALL: Your Honor, may I apologize on the
20 record? I did not mean to over speak about Covil losing its
21 charter. I have been involved in this case only for 30 days
22 and I'm getting throwed with all of this information. I
23 thought that was well known by everybody. And as you know,
24 the next trial up is Mr. Waters trial, so I assumed
25 everybody knew that he has a lawsuit pending. I apologize

1 speaking out of turn.

2 THE COURT: Well -- all right. The apology is
3 accepted, and --

4 MS. MCVEY: Your --

5 THE COURT: But wait a minute. Just one moment.

6 MR. WALL: I know you are going to instruct.

7 THE COURT: Ms. McVey, I'll give you a chance to
8 respond, but let me just say this. Your apology is
9 accepted. I will certainly instruct the jury to disregard,
10 as I have when it was mentioned.

11 Ms. McVey, anything else from you at this time?

12 MS. MCVEY: I -- I do. I have some serious
13 heartburn about it for two reasons.

14 THE COURT: Yes, ma'am.

15 MS. MCVEY: One, we had a very long conversation
16 about defunct, ability to pay, all that kind of stuff.

17 MR. WALL: Not ability to pay.

18 MS. MCVEY: Mr. Wall, can I please finish?

19 MR. WALL: Certainly.

20 MS. MCVEY: We had that conversation yesterday and
21 the day before about that and he knew it and he violated
22 that rule, in my view. I think that opens a wide door and
23 we can talk about maybe how to handle that.

24 The other thing that is clearly a violation is
25 that Waters is suing Covil, so he's unreliable? That's

1 outrageous that he said that. It's a clear violation of
2 your ruling on a motion in limine. It's prejudicial. I
3 watched the jurors write it down, Your Honor.

4 THE COURT: All right. It is a violation. It's a
5 serious violation. All right. I granted a motion in limine
6 to prevent witnesses from being questioned about other
7 litigation for exactly that reason, so that no bias would
8 creep in. I will contemplate what you said. I don't know
9 what more I will be asked to do about that, so you will have
10 to contemplate that yourself on the break and let me know if
11 there is anything further you are requesting of the court.

12 MS. MCVEY: Yes, ma'am.

13 THE COURT: At this time I understand your
14 argument. I agree that both arguments were not proper.
15 Those matters were not in front of the jury, should not have
16 been placed in front of the jury, are potentially
17 prejudicial.

18 I have given a slight curative by way of direction
19 that the matters are withdrawn and should be disregarded,
20 but I will -- we will have our break and then we will see
21 what else needs to be discussed before I charge the jury, or
22 at any other time. So all positions are protected at this
23 point and we will address this matter when we come off the
24 break.

25 MS. MCVEY: Yes, ma'am.

1 THE COURT: Very good.

2 MS. MCVEY: Thank you.

3 (Whereupon, proceedings were recessed).

4 (Whereupon, proceedings were reconvened)

5 THE COURT: All right, ladies and gentlemen, what
6 issues do we have here before we bring our jury in?

7 MS. MCVEY: I have some significant issues, Your
8 Honor.

9 THE COURT: All right, ma'am.

10 MS. MCVEY: Two things. We talked about it
11 briefly before our break, but Mr. Wall violated two orders,
12 as I understand them.

13 The first is this idea that Covil is defunct,
14 Covil lost its charter. Your Honor, after opening I brought
15 this very issue up to you. We talked about it in open
16 court, not once but twice, because the only reason he's
17 doing it, he knows it, is to say Covil can't pay anything,
18 and he said he wasn't going to do it and he did it.

19 We want a charge that says, you know what, Covil
20 can pay. How they do it is not up to you, but Covil can
21 pay. That's the first thing.

22 The second issue, Your Honor, is this idea that
23 you can't believe Mr. Waters because Mr. Waters is suing
24 Covil. That's a clear violation of your order, your motion
25 in limine. It's not in front of this jury. It's

1 outrageously prejudicial, because I saw them writing it
2 down, so we want a charge saying Mr. Waters is not suing
3 Covil. I'm not even sure if that all cures the prejudice,
4 but I think the least that can be done as a result of clear
5 violation of court orders.

6 THE COURT: All right. Mr. Wall?

7 MR. WALL: Your Honor, I did not go over on the
8 first part. I did not go over what you said I could not do.
9 I did not say we had no assets. I just said we're out of
10 business and they lost its charter. I didn't say anything
11 other than those two words and then moved forward, because I
12 was not going to get -- that's no different than I said in
13 opening statement and the judge -- you said that was not
14 crossing the line in opening statement.

15 And, again, on the second point all I can do is
16 apologize. We never had the -- we never had the motion in
17 limine conference in this case. Now, there may be a
18 standing order. If there is, I'm not aware of it. Again,
19 all I can do is say I apologize. If you said at some point
20 you cannot mention a lawsuit brought by a plaintiff when he
21 is saying my people are liars, you know, I'm saying why
22 can't I? And, again, I'm not aware of any order that you
23 said on an issue, so I have nothing else I can say.

24 THE COURT: Okay. Let me just ask a couple of
25 questions here, Mr. Wall.

1 MR. WALL: Yes.

2 THE COURT: On the first matter, Covil lost its
3 charter, I said -- we have had this conversation several
4 times, because what concerns me even about defunct was that
5 it carried with it the suggestion that Covil could not pay.
6 And so, of course, we talked about that and whether Covil
7 could pay, whether they could respond to punitive damages,
8 what insurance there is, and so forth, and I declined to do
9 anything. I did say I thought it was close, but I did not
10 do anything then.

11 You said something that's not in evidence, which
12 is that Covil lost its charter. What other reason could
13 there be than ability to pay to talk about defunct and no
14 longer in business and even compounding then lost its
15 charter? Why are you mentioning that to the jury, except to
16 plant in their mind the seed that Covil can't pay?

17 MR. WALL: I -- in my opinion I stayed completely
18 away from the issue of can't pay, didn't go anywhere close.

19 THE COURT: Why -- why would you -- why would
20 you --

21 MR. WALL: Because those are the facts and the
22 jury should know the facts.

23 THE COURT: Why -- there is a lot of facts the
24 jury can't know. Why would they have to know or why should
25 they know that Covil lost its charter?

1 MR. WALL: I don't -- again, maybe I'm getting
2 slow, but I don't see any difference between out of business
3 in '91 and losing its charter in '93.

4 THE COURT: Well, frankly, I was concerned about
5 out of business in '91, because, again, it's not probative
6 of anything in this case.

7 MR. WALL: Except everybody put that into
8 evidence.

9 THE COURT: Huh?

10 MR. WALL: Everyone put that fact into evidence.

11 THE COURT: Well, after your opening statement and
12 my refusing to strike it or find anything wrong with it,
13 they put in information. Just like you have put in
14 information, although you objected to a particular line of
15 inquiry. Your rights are protected and their rights too, in
16 my view. I am very concerned about planting the seed that
17 they can't pay.

18 So let's turn to the second thing. Why would you
19 bring up Mr. Waters suing Covil except to suggest that he's
20 biased?

21 MR. WALL: Yes, sir, that's why I did it.

22 THE COURT: That's why you did it, of course, and
23 there are two things that are problematic about it, and one
24 is that it wasn't into evidence.

25 And number two, we had an extensive hearing on

1 motions in limine and I began those hearings by indicating
2 that the overlapping issues would be applicable to the
3 Crawford case as well, and one of the issues we did discuss
4 in a motion -- and I believe it was one of plaintiffs'
5 motions in limine, but it may have even been something
6 similar raised by one of the defendants, not Covil, because
7 I don't think y'all offered anything by way of motions in
8 limine, but the motion in limine by the plaintiffs asked
9 that I rule that there would be no introduction of
10 information about other lawsuits involving witnesses, and I
11 ruled that -- as I have many times before, that that's not
12 pertinent in these proceedings. And the reason they asked
13 for that is many times -- and you and I don't have to tell
14 someone as experienced in asbestos litigation as yourself
15 this, just for the record, many, many times, as with the
16 case here, conditions at a particular occupational exposure
17 case, conditions at the place of work will be discussed in
18 detail by co-workers, and many of those co-workers will be
19 claimants. You mentioned that the jury could see that these
20 people are on breathing apparatuses. They could see that a
21 couple of them were on breathing apparatus completely.
22 Maybe Mr. Waters, I think he was at the second part, that
23 certainly the people have COPD, they have a lot of things
24 that require breathing apparatuses, but there was absolutely
25 no suggestion made that his situation was related to a claim

1 and that is prejudicial, because it suggests that his
2 testimony is not believable, and I have been trying to --
3 that's why I took a little extra time talking to my brain
4 trust here to try to figure out what I could say to the jury
5 that would take the sting out of that.

6 One thing, Ms. McVey, that I'm not willing to do
7 is to instruct them that Mr. Waters does not have a lawsuit,
8 because that's instructing them as to something that is not
9 so, but I certainly am willing to instruct them in detail
10 about, number one, that that is not before them, and number
11 two, it's not properly something that could ever be
12 considered, that his status for truth telling cannot in any
13 way be impinged by suggesting information, one, that's not
14 in the record, and number two, that would be used to imply
15 that he cannot be truthful about what he says. So I would
16 more talk about his truth telling than I would that he
17 hadn't brought a lawsuit, and I will be willing to give a
18 curative instruction along those lines.

19 MS. MCVEY: And I appreciate that, Your Honor. I
20 really do think the only way to cure this is telling him
21 he's not suing it, because he's -- what -- that is so crazy
22 that he did that.

23 THE COURT: It's very egregious.

24 MS. MCVEY: It's what we have -- we didn't tell
25 anybody he has mesothelioma, which we could have done,

1 because that would be unduly prejudicial to them, right?

2 THE COURT: Exactly.

3 MS. MCVEY: So what they did is something that I'm
4 not sure it can be cured.

5 THE COURT: He was a Covil worker --

6 MS. MCVEY: Yes.

7 THE COURT: -- who has mesothelioma.

8 MS. MCVEY: Yes.

9 THE COURT: And you could have harped on that to
10 indicate that they should be sympathetic with someone who
11 also -- and that they should presume that Covil did it,
12 because they did it to that guy. You didn't do that, and
13 that's why it's very egregious for him to pull the leaf the
14 other way and try to suggest he's not telling the truth
15 because he has a claim. I agree with all of that. I think
16 it's an egregious violation. I am prepared to try to cure
17 it with a curative instruction. I know what you don't want
18 to do is move for a mistrial --

19 MS. MCVEY: No.

20 THE COURT: -- because you tried a good case, and,
21 you know, that's where we are.

22 MS. MCVEY: What about --

23 THE COURT: But I tell you that if you move for a
24 mistrial, I would deny it on the basis that I can cure this
25 matter. So you can protect your interests as you see fit

1 and I'm not trying to suggest it one way or another, but
2 what I am saying -- and I can understand that you think that
3 just further rewards Covil for doing something that's very,
4 very wrong to even make such a motion, but I will say -- I
5 will say on the record now that I do not think that very
6 egregious error that was made is so egregious as to
7 undermine the fundamental fairness of the trial, given the
8 instruction that I will give the jury. And if you want to,
9 you know, preserve your position by saying it does undermine
10 it, then you may do that.

11 MS. MCVEY: Okay.

12 THE COURT: Now, let's go back to the lost
13 charter.

14 I am inclined to instruct the jury that the lost
15 charter, again not proper, was withdrawn, may not be
16 considered by the jury, and that the jury can assume that
17 Covil can pay and that collectability is not within their --
18 if I do that, I'm telling them two different things.

19 MS. MCVEY: I would like you to leave out
20 collectability. I would just like you to tell them that
21 they can pay.

22 THE COURT: All right.

23 Mr. Wall, let's go back.

24 What do you think they should be told?

25 MR. WALL: Well, my position is nothing. I

1 withdrew it and I don't see any difference between defunct,
2 out of business, and loss of charter. They are all the same
3 thing. The law in South Carolina when you don't file your
4 tax returns and things such as that, estate, they pull your
5 charter.

6 THE COURT: Right.

7 MR. WALL: And so I don't see any difference.

8 MS. MCVEY: Your Honor?

9 THE COURT: I understand. What I'm being done is
10 being hung by the ruling I didn't make to begin with. And I
11 will say that given what has occurred now I regret the
12 initial ruling. I should have indicated to the jury that
13 that was not proper argument and should be disregarded by
14 the jury, because it could not be there for any other reason
15 than to suggest that Covil cannot respond to damages that
16 are awarded, and I don't want them to have that in their kin
17 whatsoever. So I am frankly inclined to say disregard that
18 and that it is -- that none of this argument affects
19 collectability of this matter and that they are not to be
20 concerned about that, and I think that's all I'm going to
21 say.

22 I know you would want more and your position is
23 preserved on that, but I believe the thing to do is do it as
24 I have suggested.

25 Now, that may change if we end up in a punitive

1 stage of this matter, because although you don't have to
2 introduce evidence of net worth a sin that's been committed
3 here, that I think would have more impact on the punitive
4 damage than it does on the liability.

5 I think with respect to liability and actual
6 damages I can tell that collectability is not to be
7 considered by them; that putting in this material is not
8 appropriate, and leave it at that.

9 And I think I can tell them on Mr. Waters that his
10 truth-telling ability and his credibility cannot in any way
11 be affected by the attempt to put in information that's not
12 in the record and would not be appropriate to be considered
13 by them worded.

14 So that's how I'm going to handle it. Mr. Wall
15 thinks I ought not to say anything. Ms. McVey thinks I
16 should say that Covil can pay and that Mr. Waters is
17 presumed not to have sued Covil, but I have chosen to do it
18 in the way I have explained it to you.

19 MS. MCVEY: Yes, ma'am. Thank you.

20 THE COURT: And I will do that.

21 And my question is where to do that.

22 MS. MCVEY: I would like to do it at the very
23 beginning.

24 THE COURT: All right. I'll do it at the
25 beginning.

1 I'm going to begin here with these two issues and
2 then I will go forward with the rest of the charge.

3 All right. Anything further?

4 MS. MCVEY: No, ma'am.

5 MR. WALL: Nothing further, Your Honor.

6 THE COURT: Bring in the jury.

7 (The following takes place in the presence of the
8 jury panel).

9 (Whereupon, at 11:18 a.m. the jury panel was given
10 jury instructions by the court)

11 THE COURT: Ladies and gentlemen of the jury, it
12 now becomes my duty to charge you on the law, but before I
13 charge you on the law, as a result of some things that
14 occurred in arguments made to you, I am going to make two
15 other charges to you.

16 First deals with the discussions by Mr. Wall in
17 opening statement about the status of Covil Corporation,
18 defunct, not in business, things of that nature, and Mr.
19 Wall's mention to you in the closing argument that Covil had
20 lost its charter.

21 The first thing is those matters are not before
22 you, not properly before you.

23 The next thing is that those matters should not
24 affect your consideration of Covil's status in this case.

25 The third thing is you should not have any concern

1 about collectability of the verdict you render, if, in fact,
2 you render an actual damage or any other kind of damage
3 verdict in this case. That's not your concern. That's not
4 your burden. Your concern and your duties is to render a
5 verdict as you see fit based on the facts that only you can
6 find and the law as I give it to you. So that is the first
7 charge I want to give you on what has occurred in arguments.

8 The second charge that I want you to give you
9 concerns the mention in argument, in closing argument by Mr.
10 Wall, that Mr. Dwaine Waters, a Covil employee who testified
11 by videotaped deposition in the case, is suing Covil. That
12 was a very improper remark, for which Mr. Wall has
13 apologized. That is not pertinent in any way to Mr. Waters
14 testimony. It cannot be used by you to evaluate his
15 credibility, and so you should put that out of your mind
16 completely and evaluate Mr. Waters testimony as you heard it
17 and as you received it.

18 Now, having discussed those two matters with you,
19 I'm going to charge you on the law that applies to the case
20 and the law that applies to the facts in this case, and it
21 is your duty to find the facts from the evidence. And to
22 those facts you must apply the law as I give it to you and
23 you must decide this case based on the evidence and the law.
24 You should not be concerned with what the law should be, but
25 what it is. And you must not be influenced in this case by

1 personal likes or dislikes or by any undue sympathy or
2 prejudice. And that means you must decide this case solely
3 on the evidence before you according to the law. And you
4 will remember that you took an oath to do just that when we
5 began this trial.

6 So follow my instructions. You must follow all of
7 them and not just single out some and ignore the others,
8 because they are all equally important. Please don't read
9 into these instructions or into anything that I might have
10 said or done during this trial any indication as to what I
11 think the facts are or what I think your verdict ought to
12 be, because under our system of justice you, the jury, are
13 the sole and exclusive judges of the facts and I'm not going
14 to intrude on your constitutionally-guaranteed
15 responsibility to determine and right to determine the
16 facts, just as I know you are not going to intrude on my
17 responsibility under the Constitution to charge you as to
18 what the law is.

19 Now, ladies and gentlemen, how do you decide what
20 the facts are? You do this by evaluating or weighing the
21 evidence you have heard during this trial. Now, there is no
22 way for you to weigh the evidence in the literal sense. I'm
23 not going to send you back with a set of scales and ask you
24 to conduct experiments. That's not what I'm talking about.
25 You weigh and evaluate the evidence simply by using your own

1 good common sense and your sense of logic and your lifetime
2 experiences. And when you bring those things to bear on
3 this evidence that you have heard during this case, you will
4 be able to determine the true facts of this case. And once
5 you do that, you will be able to take the law as I'm about
6 to give it to you, apply it to those facts and you will be
7 able to reach a decision and a verdict in this case.

8 In deciding the facts of the case, of course, you
9 should not be swayed by bias or prejudice or favor as to any
10 party. Our system of justice does not permit jurors to be
11 governed by prejudice or sympathy or public opinion.

12 This case should be considered and decided by you
13 as an action between persons or entities of equal standing
14 in the community and equal worth, holding the same or
15 similar stations in life. A corporation is entitled to this
16 same fair trial at your hand as a private individual. All
17 persons, including corporations, stand equal before the law
18 and are to be dealt with as equals in a court of justice.

19 You must not consider as evidence any statement of
20 counsel made during the trial. Statements of counsel do not
21 constitute evidence. Rather counsel is articulating the
22 position and contentions of his or her client, and this rule
23 applies to the opening statements, as well as the closing
24 statement.

25 Attorneys are officers of the court and they have

1 the absolute right and duty to bring matters to the
2 attention of the court by way of objection. Do not
3 inferentially or otherwise become upset or disturbed by what
4 counsel says because of an objection. Our trial procedure
5 includes the objection process as a means of controlling
6 evidence, letting in proper evidence, keeping out improper
7 evidence, and counsel, by objecting, are simply performing
8 their role in the trial of the case.

9 Now, once the court makes a ruling on an objection
10 the jury is bound by that ruling. If the objection has been
11 sustained, the question is improper. If the objection is
12 overruled, the question is proper. In that regard a jury
13 must not under circumstances derive any inference from any
14 ruling made by the court on objections as to any opinion the
15 court may have about the case. The judge does not have an
16 opinion on the evidence and is not entitled to an opinion
17 under the law. The judge is performing her role in the
18 trial of the case.

19 As to any question as to which objection was
20 sustained, you may not speculate as to what the answer might
21 have been or as to any reason for the objection. You must
22 never speculate to be true any insinuation by the question
23 that is asked to a witness. A question is not evidence. It
24 can only be considered as it supplies meaning to the answer
25 that is given and that is evidence.

1 Now, burden of proof. The plaintiffs have the
2 burden of proof in this case, and the burden of proof in a
3 civil case is by the greater weight of the evidence, and
4 that means that the plaintiff, in order to obtain a verdict,
5 must produce evidence, which considered in the light of all
6 the facts, leads you to believe that what the plaintiff is
7 claiming is more likely true than not true, and the better
8 way to visualize that is perhaps by envisioning that set of
9 scales. And if you were to put the plaintiff and
10 defendant's evidence on opposite sides of the scales, the
11 plaintiff would have to tip that scale ever so slightly in
12 its favor, even by the most minute portion. And if it
13 tipped the scale by even that minute portion, then the
14 plaintiff would be entitled to a verdict, because then the
15 greater weight of the evidence would be on the plaintiffs'
16 side. However, if, after your review of the evidence, the
17 scales remain evenly balanced, then there is not a greater
18 weight of evidence on either side and, therefore, defendant
19 is the winner and the verdict would be a verdict for the
20 defendant. So you must mentally weigh this evidence, place
21 it on the scale and see which side evidence has greater
22 weight in your mind.

23 Now, some of you are certainly familiar with the
24 burden of proof in a criminal case. In a criminal case
25 before the State can convict someone of a crime they must

1 prove each element of that crime beyond a reasonable doubt,
2 which is one of the highest burdens of proof the law knows.
3 That burden has no place in this case. This is a civil case
4 and the standard of proof that you must use and the yard
5 stick you must apply in this civil case is the greater
6 weight of the evidence, and that's the sole standard of
7 proof in this case as to the plaintiffs' claim for actual
8 damages.

9 Evidence.

10 As I told you, you must decide what the facts are
11 from the evidence. The evidence consists of sworn witness
12 statements from the podium, sworn statements played for you,
13 sworn statement read to you and exhibits. And we have also
14 had something called stipulations or instructions by me in
15 this case, and a stipulation is simply an agreement by the
16 parties that certain facts exists without the necessity of
17 further proof and you must take the stipulation as
18 conclusive evidence of fact. So the only things that you
19 can use in determining what the facts are are witness
20 statements, exhibits, stipulations, and nothing else. We
21 have excellent lawyers in this case and they have zealously
22 advocated for their client's position, but remember, they
23 are not witnesses, so what they say is not evidence. If you
24 remember something differently yourself, your memory
25 controls rather than what the lawyers may have said the

1 evidence is, because you are the finders of the facts. It's
2 very important for you to listen, because, as I said at the
3 outset, they are trying to help you understand the evidence,
4 but keep in mind that what the lawyers say is not evidence.

5 Direct and circumstantial evidence.

6 Now, ladies and gentlemen, in any type of case
7 there are distinct types of evidence, so what I'm discussing
8 now is direct and circumstantial evidence. Direct evidence
9 is the statement of a witness who claims to have an actual
10 direct knowledge of a fact, such as an eyewitness. It's
11 evidence that, if believed, immediately establishes the
12 fact.

13 Another type of evidence is circumstantial
14 evidence, and I'm sure that you have heard that term.
15 Circumstantial evidence is indirect evidence. Put another
16 way, circumstantial evidence is proof of a chain of facts
17 and circumstances from which you could find that another
18 fact exists, even though it hasn't been proven to you
19 directly. In modern parlance, the young people call this
20 connecting the dots. And the law makes no distinction
21 between the weight or value to be given direct or
22 circumstantial evidence. You may consider both kind of
23 evidence in this case.

24 Let me give you an example of circumstantial
25 evidence. If a witness testified that the witness saw it

1 was raining outside, that would be direct evidence that it
2 is raining outside, or was raining outside at a particular
3 time. But if a witness testified that the witness saw
4 someone enter a room wearing a raincoat covered with drops
5 of water and carrying a wet umbrella, that would be
6 circumstantial evidence from which you could conclude that
7 it was raining outside.

8 Where circumstantial evidence is relied upon, it's
9 incumbent upon the party presenting the evidence to show the
10 existence of such circumstances as would justify the
11 inference that a particular event occurred and not leave the
12 question to speculation or conjecture. If the circumstances
13 are proved to your satisfaction, you may infer a fact from
14 those circumstances, but the circumstances must lead to the
15 conclusion with reasonable certainty. If the circumstances
16 are not proven to your satisfaction, then you should not
17 infer the fact.

18 Evaluating a witness' testimony.

19 Now, ladies and gentlemen, you must consider all
20 the evidence in deciding what the facts are. And if there
21 has been evidence that's been stricken from the record or
22 evidence I have told you to disregard, then that material is
23 no longer a part of the record or the evidence in this case
24 and you can't consider it in your deliberations. But you
25 must, as judges of the facts, determine the credibility of

1 all the evidence. As I told you in the beginning, for every
2 witness who testifies and every exhibit that's admitted, you
3 will have to determine whether those things are worthy of
4 belief. And how do you do that? In the case of a witness
5 that testifies, I can give you some general guidelines.

6 First of all, you may consider whether the witness
7 has some interest in the outcome of this case, whether they
8 have some bias or prejudice toward someone or some issue in
9 the case, whether they have something to gain by their
10 testimony. Second, you must consider what opportunity the
11 witness had to observe the things that they were here to
12 tell you about. And, third, you may consider how the
13 witness' evidence or testimony stacks up against the other
14 evidence in the case. Is it consistent or inconsistent?
15 Fourth, you may consider the witness' demeanor on the stand.
16 Was the witness hesitant or forthright in their testimony?
17 Fifth, you may certainly use what you use in your day-to-day
18 life to determine whether someone is telling you the truth,
19 because you didn't surrender your common sense when you
20 walked into this courtroom at the beginning of this week.

21 I will also tell you this. You may believe
22 everything a witness says, or you may believe nothing a
23 witness said. You may believe parts of a witness' testimony
24 and disbelieve other parts. You may believe one witness
25 over the many, or you may believe the many over the one, but

1 you certainly don't decide this matter of credibility simply
2 by counting up the witnesses on one side or another, because
3 your sole object, ladies and gentlemen, is to determine the
4 truth in this case and it doesn't matter to you whether that
5 truth comes from a witness for the plaintiff or defendant.
6 It's all evidence for you to evaluate.

7 Expert testimony.

8 I have told you that -- you have heard expert
9 testimony from people who have been qualified as experts,
10 because by reason of their education, training and
11 experience they have achieved some expertise in a particular
12 field. And they can, therefore, state their opinions on the
13 matter in their field and they may state the reasons for
14 those opinions, but expert testimony, as I told you when we
15 qualified the first expert, must be judged by you, just as
16 any other testimony in this important respect, and that is
17 that you, the jury, are the sole judge of the credibility of
18 a witness. So you may believe a witness' testimony and
19 accept it. You may reject it. You may give it whatever
20 weight you think it deserves.

21 Now, expert witnesses and causation.

22 When someone relies on expert testimony to show a
23 causal connection between an injury and the subsequent
24 condition, the testimony must meet the most probably rule.
25 It is not sufficient that the condition in question was

1 possibly, you might could have, or might have resulted from
2 the injury. The expert must go further and testify that
3 taking into consideration all the facts it is his or her
4 professional opinion that the result in question most
5 probably came from the cause alleged.

6 Deposition testimony.

7 You have also heard testimony presented through
8 depositions. I just want to remind you that that deposition
9 testimony is entitled to the same weight and consideration
10 as if that witness sat in this witness stand and testified
11 direct to you in that regard.

12 Taking notes.

13 Some of you have been taking notes in the trial
14 and I gave you an instruction on that to begin with. I just
15 want to remind you that the notes are for your own personal
16 use and certainly don't overcome another's independent
17 recollection and are not to be used in place of your memory,
18 even if you didn't write it down.

19 Summary of the plaintiffs' claims.

20 Now, this is a claim for damages stemming from a
21 personal injury that has been alleged and I want to go over
22 with you various claims that are being made in this case.
23 The plaintiff, Jerry Crawford, is seeking to recover damages
24 for personal injury arising out of his alleged exposure to
25 asbestos from the defendant's product, and the estate of

1 Evelyn Crawford is seeking to recover for the loss of
2 consortium occasioned by her husband's alleged exposure to
3 asbestos from defendant's product. The mere fact an injury
4 occurred or an accident happened, standing alone, does not
5 permit you to draw any conclusion or inference that such
6 injury or accident has been caused by anyone's negligence or
7 fault.

8 The plaintiffs' claims in this case are based on
9 three theories. The first theory is negligence. The second
10 is strict liability, and the third is called breach of
11 implied warranty. The plaintiffs are not required to prove
12 all of those three theories. Proof of a claim under any of
13 these theories would enable the plaintiff to be entitled to
14 a verdict, but the plaintiff must meet their burden of proof
15 as to at least one of these theories in order to recover.
16 If you find they have not on any of those theories, then
17 defendant would be entitled to a verdict.

18 Negligence.

19 The first theory of the plaintiffs is one of
20 negligence. The focus under negligence is on the conduct of
21 defendant. In order to prevail under this claim the
22 plaintiff must prove by the greater weight of the evidence
23 that the defendant failed to exercise due care in some
24 respect. If you were having a hard time with the phrase
25 negligence, you can substitute the word careless, because it

1 means the same thing. It means that a failure to act as a
2 reasonably prudent person would do under the same or similar
3 circumstances, or doing something that a reasonable person
4 would not do under same or similar circumstances. So
5 failure to act or doing something a reasonable person would
6 not do.

7 But you must first determine if the defendant owed
8 the plaintiffs a duty of care. A defendant will owe a
9 plaintiff a duty of care when the defendant knows of the
10 risks of harm. This may be met by showing the defendant was
11 aware of the danger and failed to take reasonable steps to
12 correct it. Where a product is actually designed and
13 manufactured by another company, the seller assumes the duty
14 of the manufacturer and labeled and sells the product as its
15 own. A manufacturer is held to the skill of an expert in
16 the field and is charged with an expert's knowledge of
17 materials and processes used in the industry. A
18 manufacturer has the duty to stay aware of current
19 standards, current scientific knowledge in the industry.
20 And, therefore, since the seller assumes the duties of the
21 manufacturer, a seller is held to the skill of an expert in
22 the field as well and has a duty to stay aware of the
23 current standards and scientific knowledge in its industry.

24 Now, although evidence of industry standards may
25 be considered as evidence of the standard of care, an

1 industry can't set its own unreasonable standards. An
2 entire industry may lag behind in the adoption of new and
3 available products or safety features and the failure to use
4 due care, even if no one in the industry uses due care, does
5 not excuse negligence. It is for you to decide whether the
6 standard of care was proper, considering what a reasonable
7 person would have done in similar circumstances.

8 Now, strict liability.

9 The second theory I want to go over with you is
10 strict liability. Plaintiffs' claims are that defendant
11 should be held strictly liable for plaintiffs' injuries.
12 Strict liability means liability without fault. Under the
13 law the theory of strict liability says that even if a
14 defendant used due care, the defendant may still be
15 responsible for the plaintiffs' injury. In other words, it
16 does not matter whether the defendant was negligent or not
17 negligent. If the products were defective and unreasonably
18 dangerous when they left the defendant's hand, the defendant
19 is liable, even if all reasonable care was used in making
20 and selling the product. And even if plaintiff did not buy
21 the product from defendant or enter into any contract with
22 the defendant, because the plaintiffs do not have to show
23 negligence under the theory of strict liability. The
24 plaintiffs must only prove the products was defective and
25 unreasonably dangerous when it was placed in the stream of

1 commerce.

2 Your focus should be on the product itself and not
3 the conduct of the defendant. The defect must exist at the
4 time it leaves the defendant's control when liability is
5 sought to be imposed. The existence of a defect is crucial,
6 because a manufacturer is not an insurer against all risks
7 or injuries associated with the product. In a products
8 liability case against a manufacturer the plaintiffs had the
9 burden of proving that the product in question was defective
10 at the time when the defendant had possession or control of
11 it, when the product was delivered or purchased. There is
12 no duty on the manufacturer to furnish a product that will
13 not wear out. A party who sells a product in a defective
14 condition unreasonably dangerous is subject to liability for
15 physical harm caused to the user if the manufacturer is
16 engaged in the business of producing or selling a product
17 and if it's expected to reach and reaches the consumer
18 without substantial change in its condition.

19 To recover under strict liability, plaintiffs must
20 prove three things by the greater weight of the evidence.
21 One, the product was in a defective condition, unreasonably
22 dangerous to the plaintiff. Two, at the time of the injury
23 the product was essentially in the same condition as when it
24 left the defendant's hands. And three, the plaintiffs were
25 injured by the product.

1 Reasonable alternative design.

2 In a products liability case, whether for
3 negligence or strict liability under design defect, the
4 plaintiff must prove the existence of a reasonable
5 alternative design. If plaintiff does not show that the
6 defendant could have designed the product in an alternative
7 manner that would have eliminated the defect, the plaintiff
8 cannot recover for a claim for design defect.

9 In this state we balance the utility of the risk
10 inherent in the design of a product with the magnitude of
11 the risk to determine the reasonableness of the
12 manufacturer's actions in designing the product. This
13 balancing act is also relevant to the determination that the
14 product as designed is unreasonably dangerous in its failure
15 to conform to the ordinary user's expectations in the
16 overall balance of risk and utility of the product.

17 Strict liability.

18 Now, to prove a defective design defect, to prove
19 a defective condition, the plaintiff must first prove that
20 the defendant sold the product and at the time of sale it
21 was unreasonably dangerous to the user. A defect does not
22 have to be a manufacturing error. With a design defect
23 there is nothing wrong with the manufacturing process and
24 the product is made according to its design. However, there
25 is a flaw in the product design. The plaintiffs must prove

1 that the product as designed was in a defective condition,
2 unreasonably dangerous. The test is not whether the product
3 could be made safer, but whether its design was unreasonably
4 dangerous.

5 Failure to warn, strict liability.

6 The product may have also be defective if the
7 defendant failed to warn or failed to provide adequate
8 instructions to the user. A product is not defective for
9 failure to warn of the obvious. A seller is not required to
10 warn with respect to products when the danger or potential
11 danger is generally known or recognized. A product cannot
12 be deemed either defective or unreasonably dangerous if the
13 danger associated with the product is one users generally
14 recognize.

15 A product may, by reason of its nature and use, be
16 unreasonably dangerous unless proper instructions and
17 warnings are supplied for its intended use. In those cases
18 the seller or manufacturer must give an appropriate warning
19 of any dangerous condition likely to be encountered. And
20 the warning must be one that would cause a reasonable person
21 to use caution proportionate to the potential danger.

22 In deciding whether the warning was adequate you
23 should consider the likelihood of an accident taking place
24 and the seriousness of the consequence. There is a
25 particular need for sufficient warnings when there is a

1 representation that the product in question is not
2 dangerous. A product may be found defective if the product
3 is unreasonably dangerous in the hands of a user without a
4 suitable warning. A manufacturer or seller is not required
5 to warn about defects in a product unless the manufacturer
6 knew or should have known about the danger when the product
7 was sold. Where a warning is given, the defendant may
8 reasonably assume it will be read and followed. A product
9 that bears a warning that makes the product safe for use if
10 followed is not defective or unreasonably dangerous.

11 A manufacturer has no duty to warn -- to notify
12 previous purchasers of its products about later developed
13 safety devices or to retrofit those products if the products
14 were non-defective under the standards existing at the time
15 of manufacture or sale.

16 Strict liability, defective and unreasonably
17 dangerous products.

18 If you find it is probable that a user would be
19 injured by the product and the injury was not reasonably
20 perceivable by the user, the product is defective. You
21 cannot find the product defective if it was only possible
22 that such injury would occur. In deciding whether a product
23 is unreasonably dangerous and defective you should consider
24 the dangers that would reasonably be anticipated by a
25 typical user of a product of this kind. Then you should

1 decide whether the particular product involved in this case
2 had a tendency for causing danger beyond that that an
3 ordinary user with common knowledge of the product's
4 characteristics would anticipate. You should also consider
5 whether the dangers associated with the use of the product
6 outweigh the usefulness of the product, the costs involved
7 for adding safety, the likelihood of serious injury, and the
8 obviousness of the danger.

9 Now, many products cannot be made completely safe
10 for their use. If the products are useful and desirable and
11 properly prepared and manufactured, packaged and accompanied
12 with adequate warnings and instructions, they cannot be said
13 to be defective. The fact that a product can be made safer
14 alone does not make that product unreasonably dangerous. In
15 order for the defendant to be held responsible, the product
16 must have been in a condition not contemplated by the
17 ultimate user, which would have been unreasonably dangerous
18 to the user when the product was used in a foreseeable
19 manner, including any use of the product at the time it left
20 defendant's hands.

21 Implied breach of warranty.

22 The next thing I want to talk to you about is
23 plaintiffs' claim for implied warranty of merchantability.
24 In order to recover under this theory, the plaintiffs must
25 prove by the greater weight of the evidence the same factors

1 I have explained to you for strict liability; that the
2 defendant manufactured or sold a product at the time of sale
3 was defective, unreasonably dangerous to the user, that the
4 product was expected to and did reach the ultimate user
5 without substantial change in condition in which the
6 defendant sold it, and that the plaintiffs' injuries were
7 proximately caused by the defective product.

8 A warranty is a pledge by the seller that the
9 product is as represented to be. An implied warranty is one
10 that the law presumes to have been made by every seller of
11 goods, whether it was actually stated by the seller or not.
12 The sale of a product always carries with it the implied
13 warranty that that product is fit for the original purpose
14 for which the product is normally used. And this is called
15 an implied warranty of merchantability. This warranty is
16 based on a buyer's reasonable expectation that goods
17 purchased from a merchant who sells goods of that kind will
18 be free of significant defect and will perform in the way
19 that goods of that kind ought to perform.

20 In deciding whether a product is safe for its
21 intended use, the person who makes the warranty must foresee
22 the conditions under which that product will be used and is
23 presumed to know about the normal environment the product
24 will be used in and the reasonably foreseeable risks that
25 accompanies such use. A warranty that goods should be

1 merchantable is implied under the contract of their sale if
2 a seller is a merchant with respect to goods of that kind.
3 To be merchantable, goods must at least pass without
4 objection in trade or in the contract description. In order
5 to recover for a breach of implied warranty of
6 merchantability the plaintiff must prove that the merchant
7 who sold the goods, the goods were not merchantable at the
8 time of the sale and the injuries were proximately caused by
9 that defective nature of the goods.

10 Now, duty of manufacturers and sellers.

11 A manufacturer owes a duty of care in the
12 manufacture of its product proportionate to the dangers
13 involved in the product's use. A manufacturer of a product
14 may under a plan or design that makes it dangerous to the
15 user for which it is made, owe a duty to use reasonable care
16 in adopting a safe plan or design to those users you would
17 expect to use the product. A seller owes a duty to conduct
18 adequate tests and inspections of its product to discover
19 latent defects or defects that aren't visible or apparent on
20 a reasonable inspection.

21 So if a seller had a reason to know that a product
22 was likely to be dangerous or defective, a seller owes the
23 duty to exercise and use reasonable care in inspecting and
24 testing that product before selling it. If a reasonable
25 inspection or test would disclose a defect, the manufacturer

1 who incorporates a defective component part into its
2 finished product and places the product in the stream of
3 commerce is liable for the injuries caused by the defects in
4 that component part.

5 Now, a defendant cannot, however, be liable for an
6 alleged defective product it didn't design, recommend,
7 specify, require, manufacture, sell, or place in the stream
8 of commerce. In deciding whether a defendant had a duty to
9 test the product, you should consider the defendant's
10 ability to conduct the test at the time the product was
11 sold.

12 A seller of a defective product has a duty to warn
13 users of the product and any dangers created by its product
14 with which the manufacturer should be or is aware at the
15 time the product was sold. A supplier of a product who knew
16 or should have known the product might be dangerous during
17 its perceivable use and had reason to believe that the
18 ultimate user would not appreciate the danger has a duty to
19 clearly and understandably warn that ultimate user of the
20 danger.

21 A seller is only required to warn about dangers
22 that are unreasonable or which are dangerous beyond the
23 expectation or general knowledge of an ordinary person who
24 uses the product with the ordinary common knowledge about
25 the product's characteristics. In other words, there is a

1 duty to warn not when scientific certainty is established,
2 but when a reasonable person would want to be informed of
3 the risks. In deciding whether the directions or
4 instructions or warranties are adequate, you should consider
5 their location, language and size.

6 Now, state of the art.

7 Something you must consider in assessing a
8 defendant's product and conduct is the state of the art at
9 the time the products left the defendant's hand. The issue
10 of due care as well as the breach of any warranty must be
11 assessed in the light of circumstances existing at the time
12 of sale. In order for plaintiffs to prove their case in a
13 products liability action they must show the products were
14 in a defective condition at the time they left the hands of
15 the particular seller. The product must be measured against
16 the standards existing at that time of sale. State of the
17 art includes all the reasonably available scientific
18 knowledge on the subject at the given time. This includes
19 scientific, medical, engineering, or other knowledge that
20 may be available. State of the art includes the element of
21 time, what is known, when this knowledge was available. If
22 a product was non-defective under the standards existing at
23 the time of manufacture, the manufacturer does not have a
24 post-sale duty to warn. You should return a verdict in
25 favor of the plaintiffs only if considering the state of the

1 art existing at the time that the defendant's products were
2 sold in a defective condition.

3 Products liability, design defects and negligence.

4 In an action based on negligence the plaintiff
5 must prove the product as designed was in a defective
6 condition unreasonably dangerous to the user when it left
7 the control of the defendant and the defect caused his
8 injuries. In addition, liability for negligence requires
9 proof that the manufacturer breached its duty to exercise
10 reasonable care to adopt a safe design. This burden may be
11 met by showing that the manufacturer was aware of the danger
12 and failed to take reasonable steps to correct it.

13 A manufacturer of a product made under a plan or
14 design which makes it dangerous for the uses for which it is
15 manufactured is subject to liability to others whom he
16 should expect to use that product or be endangered by its
17 probable use for physical harm caused by his failure to
18 exercise reasonable care in adopting a safe plan or design.

19 Breach of duty.

20 I have talked to you about the product
21 manufacturer's duty of care. If you find that the defendant
22 owed a duty to the plaintiffs, owed the plaintiffs a duty of
23 care, the next thing the plaintiffs must prove by the
24 greater weight of the evidence is that the defendant
25 breached that duty by a negligent act or omission. In

1 deciding whether the defendant breached the duty of care you
2 should decide whether or not the defendant has followed the
3 normal customary practices and procedures in the industry in
4 the light of the defendant's expertise and ability to see
5 and appreciate the problem and its cause. If the defendant
6 failed to exercise reasonable care in fulfilling any of its
7 duties, the defendant would be responsible for the injuries
8 to any person the defendant should expect to use its
9 product, assuming those injuries have been proximately
10 caused by that breach.

11 Causation.

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

20 In a negligence claim, the plaintiffs must prove
21 by the greater weight of the evidence that the defendant's
22 negligence proximately caused the injury to plaintiff and
23 that the damages suffered were proximately caused by the
24 defendant's breach of its duty of due care. Proximate cause
25 is conduct that produces a natural chain of events that in

1 the end brings about injury. It's a direct cause of the
2 injury.

3 To prove defendant's negligence proximately caused
4 the plaintiffs' injury, the plaintiffs must first proof
5 something called causation in fact, and that is proven by
6 showing defendant's negligence was a substantial factor in
7 causing the injury. Plaintiffs must also prove something
8 called legal cause, and that is proven by showing the injury
9 was foreseeable and that means that the injury occurred as a
10 natural and probable consequence of defendant's negligence.
11 The plaintiffs must prove that some injury from defendant's
12 negligence was foreseeable, but they don't have to prove
13 that the particular injury that did occur was foreseeable.
14 However, a defendant can't be held responsible for something
15 it could not expect to happen.

16 There can be more than one cause.

17 Proximate cause does not mean the only cause. The
18 defendant's actions can be a proximate case of the
19 plaintiffs' injury if defendant's conduct was at least one
20 of the direct causes of the plaintiffs' injuries. Now,
21 where two or more causes combine to produce an injury a
22 defendant is not relieved of liability for negligence,
23 because it is responsible for only one of the causes. It is
24 sufficient that its negligence is a proximate cause without
25 which the injury would not have resulted to a greater

1 extent. Consequently, if the defendant's negligence is a
2 proximate cause of the injury to another, the fact that the
3 negligence of a third party occurred or concurred with its
4 own negligence to produce the harm does not relieve the
5 defendant of liability. In such cases, each wrongdoer is in
6 breach of the duty of care over the plaintiffs and because
7 the negligence of each concurred to produce the injury, they
8 can all be liable.

9 Fault of others.

10 A defendant is entitled to assert that other
11 persons or entities contributed to the alleged injury or
12 damage and are liable for any or all the damage, and it is
13 proper for you to consider the action of others in
14 determining fault and causation.

15 Spoliation of evidence.

16 Spoliation is the loss or destruction of evidence
17 and when it is established, the jury may draw the inference
18 that the evidence lost or destroyed was unfavorable to the
19 party responsible for its loss or destruction.

20 Actual damages.

21 If you find the plaintiffs have met their burden
22 of proving at least one of these theories, that is strict
23 liability, implied warranty of merchantability, or
24 negligence by the greater weight of the evidence, and if
25 their damages were proximately caused by defendant's conduct

1 or products, then you would move on to assess any damages,
2 and that is how much money the defendant should be required
3 to pay. Actual damages are designed to compensate the party
4 for their loss and to make that party as nearly whole as
5 money could do, or to put them in the same position as they
6 were before the incident or accident occurred.

7 Personal injury actual damages.

8 Actual damages would include all the actual losses
9 and expenses that the plaintiffs have suffered because of
10 defendant's actions. Actual damages include several areas
11 recognized by the law. In personal injury actions, the
12 plaintiffs may recover for the necessary and reasonable
13 expenses caused by the injury, such as amounts necessarily
14 incurred for medical treatment. A person who suffers
15 personal injuries because of the misconduct of another is
16 entitled to recover the reasonable value of medical care and
17 expenses incurred for the treatment of the injuries to the
18 time of trial, as well as those reasonably certain to be
19 incurred in the future. Accordingly, a plaintiff may
20 recover amounts incurred for past and future medical care,
21 hospital, physician and nursing care, medicines, and other
22 out-of-pocket and anticipated expenses, such as vocational,
23 physical, or other rehabilitation. Pain and suffering is
24 also recognized as an element of damage properly to be
25 considered under the law. Pain and suffering compensates

1 the plaintiff for physical discomfort and emotional response
2 to the sensation of pain caused by the injury. There is no
3 definite standard I can give you to determine the amount of
4 damages. You, the jury, will have to use your calm and
5 reasonable judgment to determine the damages in light of
6 your own experiences and in light of the testimony and
7 evidence presented in this case.

8 Another form of damages is loss of enjoyment of
9 life. This compensates for the limitations on the ability
10 to participate in and derive pleasure from normal activities
11 of daily life. Another category is mental suffering, which
12 is compensation for shock, fright, anxiety, emotional
13 upsets. Mental anguish is more than mere disappointment or
14 anger or worry or embarrassment or resentment. Although it
15 may include all of those things, it also includes mental
16 sensation of pain resulting from the painful emotion, such
17 as grief, wounded pride, shame, disparagement and
18 humiliation. It may be composed of fright, nervousness,
19 grief, anxiety and worry about an ordeal. Damages for loss
20 of enjoyment of life compensate for the limitation on the
21 injured person's ability to participate in and derive
22 pleasure from the normal activities of daily life or for the
23 individual's inability to pursue his talents, recreational
24 interests, hobbies, or avocations.

25 Plaintiffs may also recover for amounts of past

1 medical care, including hospital, physicians, nursing care
2 costs, medicine, other out-of-pocket expenses, such as
3 vocational, physical, or other rehabilitation.

4 Actual damages for the future.

5 Now, in determining the amount of compensation for
6 someone personally injured by another's misconduct it's
7 proper to consider past, present, and future aspects of the
8 injury. The injured party may recover those future damages
9 that are reasonably certain to result. The principle under
10 the underlying compensation is that only one action can be
11 brought and only one recovery had, so it may be, depending
12 on your view of the evidence, proper to include the estimate
13 of future damages, future medical expenses, pain and
14 suffering that will with reasonable certainty result. The
15 plaintiff is never entitled to recover speculative damages.
16 The damages -- that is damages are just guesswork. The
17 plaintiff has the burden of proving the existence and the
18 causation and the amount of damages, which he doesn't have
19 to prove to a mathematical certainty. Instead, the
20 plaintiffs must present evidence that is sufficient to allow
21 you to make a reasonable approximation of the damages and
22 that is the plaintiff must prove the damages to a reasonable
23 degree of certainty. And any future damages you may award
24 must be reasonably calculated to result from the alleged
25 injury or damage sustained and they must be reduced to their

1 present cash value. I will charge you that in this case Mr.
2 Crawford is a 73 year old male with a life expectancy,
3 according to the South Carolina Code, of 11.39 years. This
4 is a factor you may consider, along with other factors and
5 circumstances that may bear on his health and longevity,
6 including his occupation and habits and health.

7 Now, loss of consortium damages.

8 The plaintiff, Evelyn Kay Crawford, has passed
9 away. However, her estate claims on her behalf loss of
10 consortium because of injuries received by her husband Jerry
11 Howard Crawford. The companionship for society of a spouse
12 is not an article of commerce that can be weighed or
13 measured or brought in or sold. No expert is competent to
14 testify to their value and there is no way we can determine
15 the market price, of course. The consideration upon which
16 this is based is not monetary, but the estate of Evelyn Kay
17 Crawford is entitled to compensation and money for her loss.
18 Loss of consortium includes the afforded services provided
19 by the spouse, their love, companionship, affection,
20 society, sexual relations, comfort, support, solace,
21 guidance. The estate of Evelyn Kay Crawford is entitled to
22 recover the value of those services of her spouse which were
23 lost, including the loss of her spouse, the society and
24 companionship in her home and for any expenses of the care
25 and treatment of her spouse and any medical expenses

1 reasonably incurred.

2 Jury deliberations.

3 Now, I am through with my instruction on the law
4 and I just want to give you some final instructions on your
5 deliberations. Before we do that, I want to remind you that
6 you were chosen in this case not to be partisans or
7 advocates for either the Crawfords or for Covil Corporation.
8 You were chosen because all of them believed that you could
9 be fair and reasonable, that you could be a juror who
10 decides this case without any bias or prejudice or
11 partisanship. So you are the judges of the facts and your
12 sole interest is to determine the true facts of the evidence
13 in this case and the law I just gave you and apply it to
14 those facts, which you will ultimately do to be able to
15 reach a verdict.

16 You should know that the record is now closed.
17 There are not going to be any more witnesses. There's not
18 going to be any more exhibits. So if something was referred
19 to during this trial, such as a document, or whatever it
20 might have been and you don't have it back there in the
21 exhibits I'm going to give you when you go back to your jury
22 room, then I can't give it to you. So keep in mind that the
23 record is closed. You have to make a decision based on the
24 exhibits that you have and your memory of the evidence. A
25 jury, if you look up that word in the dictionary, it would

1 be defined as a company of people sworn to render a true
2 verdict, and that is what you have been called upon to do,
3 determine the true facts of this case. And, ladies and
4 gentlemen, you each have a vote in this case and your vote
5 is exactly that. It is your vote and no one else's. Don't
6 be afraid to change your mind if the discussion that you are
7 going to have persuades you that you should, because that's
8 what deliberations are all about. Don't surrender an
9 honestly and conscientiously held belief simply to get this
10 case over with or reach a unanimous verdict, because these
11 parties have waited a long time and this is their day in
12 court. I know that you recognize the importance of this and
13 we appreciate the seriousness and respect you have given
14 everyone involved in this case and your patience.

15 Now, the verdict form.

16 I'm going to give this verdict form to your
17 foreperson. Under the Constitution of this state a jury
18 verdict must be unanimous. You must all agree, each and
19 every one of you, on the verdict. Unanimity is mandated.
20 Every single juror must agree on the jury verdict. There
21 can't be any split or divided vote in any form or fashion,
22 such as 11 to 1, or 10 to 2, or 9 to 3. Every single juror
23 must agree on the verdict. And when the foreperson signs
24 her name to this verdict as the foreperson, this assures
25 that that verdict has been unanimously reached by all of

1 you.

2 Question one on this verdict form asks you about
3 claims against Covil Corporation, asks you whether you find
4 defendant Covil Corporation was negligent and if its
5 negligence was the proximate cause of Jerry Crawford's
6 injury and damages.

7 Question two on this form asks if Covil
8 Corporation is strictly liable for selling products that
9 were the proximate cause of Jerry Crawford's injury or
10 damages.

11 And, again, just as with one, you have a yes and a
12 no, so that's how you fill it out.

13 And then question three asks if the defendant
14 Covil Corporation breached an implied warranty in selling
15 its products and if its breach was the proximate cause of
16 Jerry Crawford's injury or damage.

17 Now, if you answer yes to questions one, two,
18 and/or three, you must then answer question four.

19 And question four asks you to set forth the amount
20 of damages for Jerry Crawford's personal injury and the
21 amount of damages for Ms. Crawford's loss of consortium, if
22 you decide that has been proved by the greater weight of the
23 evidence.

24 Personal injury damages for Jerry Crawford
25 includes such things as medical, surgical and hospital

1 bills, conscious pain and suffering, mental distress, if it
2 has been proved by the greater weight of the evidence.

3 Loss of consortium damages are the damages Mrs.
4 Evelyn Kay Crawford suffered due to the injury of Jerry
5 Howard Crawford.

6 Finally, the fifth question on this verdict form
7 simply asks whether you find Covil Corporation's conduct to
8 be willful, wanton, or reckless by clear and convincing
9 evidence.

10 Now, on that question the evidence must clearly
11 and convincingly establish that the defendant was actually
12 reckless, or willful and wanton, meaning there was a
13 conscious failure to exercise due care or conscious
14 indifference to the rights and safety of others, or a
15 reckless disregard of the rights and safety of other.

16 Clear and convincing is something more than simply
17 greater weight of the evidence and it's something less than
18 beyond a reasonable doubt. Clear and convincing proof is
19 proof that leaves you firmly convinced. Clear and
20 convincing proof establishes in your mind not only that a
21 fact is probable, but that it is highly probable.

22 Now, the only time that you answer that fifth
23 question is if you actually awarded some actual damages
24 under question four.

25 So that's the verdict form.

1 Now, ladies and gentlemen, I thank you more than I
2 could tell for your attention, this very faithful attention
3 to me. Please don't start deliberating about the case until
4 you receive the exhibits and that would be your signal that
5 you can begin to talk about the case. Right now, believe
6 this or not, as long as I have been talking I may have left
7 something out. And if I do, I'm sure the lawyers will quick
8 to point it out. So if you will go back to the jury room
9 and when you get the exhibits and the jury form and the
10 charge form, that will be your signal to begin.

11 Now, at this point I will have you go to your jury
12 room. And when the exhibits come back, the bailiff will
13 take you two alternates to another location, but you will
14 remain with us until a verdict has been reached.

15 All right. You may now retire to your jury room.

16 (Whereupon, at 12:13 p.m., the jury panel went to
17 the jury room, awaiting instructions to begin deliberations)

18 THE COURT: All right. Ladies and gentlemen,
19 before I ask you to tell me whether there are any
20 corrections or exceptions, I am going to make one. If you
21 will turn to page 24 on the jury charge. This is actual
22 damages personal injury, and it's right down at the bottom
23 of the page where it says "another form of damages is the
24 loss of enjoyment of life. This compensates for," and it
25 says "the decedents," and I am going to say "the plaintiffs"

1 and strike out that.

2 MR. WALL: We did that the other day too.

3 THE COURT: What's that?

4 MR. WALL: I thought you did that -- caught that
5 the other day.

6 THE COURT: I did that and caught it when I
7 verbally charged them, but I am looking at the one that I'm
8 going to send back to them and I am going to strike out
9 "decedent" and put "plaintiff".

10 MS. MCVEY: Yes, ma'am. We can print a clean
11 copy.

12 THE COURT: All right. If you can print a clean
13 copy, I think that would be well. That would be even better
14 than me scribbling on this, but that is page 24. It is the
15 last line and it's "the decedents", and if you could put
16 "the plaintiffs".

17 Now, any other -- before you go. Hold the phone.
18 Let's be sure we are all on the same page.

19 Are there other considerations?

20 MS. MCVEY: Your Honor, no other -- no problem
21 with what you read to the jury. Our only objection, which
22 was already made, was that we wished you had given different
23 instructions about the closing argument that Mr. Wall made.

24 THE COURT: Of course.

25 MS. MCVEY: I think we have preserved that

1 already.

2 THE COURT: Yes, you have.

3 Mr. Wall? Mr. Boger?

4 MR. BOGER: No corrections or objections from the
5 defense.

6 THE COURT: Excellent.

7 Well, if you will go and thank you, sir, very much
8 and make those changes.

9 I want both sides, and I am guessing that good
10 lawyers as y'all are, you probably have already done this,
11 but just be sure to check the exhibits and be sure that they
12 are properly in the status that you have got them and I'm
13 just going to hang here for a minute until the exhibits can
14 go back and then we will retire as well.

15 Now, one thing that I want you all to do as we
16 retire is to give some cell phone contact information to
17 Maribell, so that if we have any reason by reason of a
18 question or a verdict, or anything in between, to ask you to
19 come back, we can get you pretty quickly.

20 MS. MCVEY: Yes, ma'am.

21 (Off the record)

22 (Back on the record)

23 THE COURT: Okay. What this means is the jury
24 charge, the jury form, and -- the verdict form, the jury
25 charge and the exhibits are ready to go.

1 Now, ladies and gentlemen, I'm sending the
2 exhibits back. The alternates are being taken away and the
3 jury will begin to deliberate at 12:20.

4 MS. MCVEY: Yes, ma'am. Thank you.

5 MR. WALL: Thank you, Your Honor.

6 MR. BOGER: Thank you, Your Honor.

7 (Whereupon, at 12:20 p.m., the jury panel was
8 instructed to begin deliberations)

9 MR. BOGER: Your Honor, we filed a motion for
10 reconsideration on Monday regarding your order on the
11 sanctions for discovery abuse and the instruction to the
12 jury. We don't need to argue it or anything. I'll just
13 request that you rule on it.

14 THE COURT: Is this the attempt to get a written
15 ruling from me?

16 MR. WALL: No, Your Honor. We are relying on what
17 you dictated. We had to file under 59(e) regardless.

18 THE COURT: Oh, yes, certainly. Absolutely.

19 MR. BOGER: It's just as a reminder.

20 THE COURT: Certainly. Certainly. Yes. No
21 problems there. No problems there.

22 MR. WALL: We would acknowledge --

23 THE COURT: And I would rule on it promptly.

24 MR. WALL: Thank you, Your Honor.

25 THE COURT: I know y'all are just covering your

1 skirt and going to get it in an appealable posture. I
2 figured that.

3 MR. WALL: Yes, Your Honor.

4 MR. BOGER: Yes.

5 THE COURT: Okay.

6 (Whereupon, proceedings were recessed, pending the
7 verdict of the jury panel).

8 (Whereupon, at 1:53 p.m., proceedings were
9 reconvened)

10 THE COURT: Ladies and gentlemen, we have a
11 verdict. I have no idea what it is. We are bringing in our
12 alternates and seating them in the back. Please do not
13 approach them or discuss the case. They will be here and
14 remain here, depending on when they are needed, if they are
15 needed, so please be seated.

16 MS. MCVEY: Your Honor, I don't think we need to
17 wait for the other court reporter. I think we can go
18 forward.

19 THE COURT: That's kind of what I think too. So
20 if you all are comfortable with that, then I will bring the
21 jury in.

22 MS. MCVEY: Yes, ma'am.

23 THE COURT: Very good. Very good. Have a seat
24 and just give me one second here, Ben.

25 (Off the record).

1 (Back on the record).

2 THE COURT: Maribell, the jury has a verdict, I'm
3 advised. Of course, I know nothing about what it is, but --
4 all right.

5 Where is Ben?

6 THE BAILIFF: I have got the evidence here.

7 THE COURT: Very good.

8 You may bring in the jury.

9 (Whereupon, at 1:55 p.m., the jury panel returned
10 to open court to report its verdict)

11 THE COURT: Ladies and gentlemen of the jury, I
12 understand that you have a verdict. Am I correct?

13 JURY FOREPERSON: Yes.

14 THE COURT: Madam Forelady, if you will give the
15 verdict to Mr. James.

16 Very good.

17 Madam Clerk, you may read the verdict.

18 THE CLERK: In the State of South Carolina, in the
19 Court of Common Pleas for the Seventh Judicial Court, County
20 of Spartanburg, Civil Action No. 2017-CP-42-04429, in the
21 matter of Jerry Howard Crawford and the Estate of Evelyn Kay
22 Crawford, plaintiffs, versus Covil Corporation, defendant.

23 "Negligence. We, the jury, find that Covil
24 Corporation was negligent and its negligence was a proximate
25 cause of Jerry Crawford's injury and damages?

1 "No.

2 "Strict liability. We, the jury, find Covil
3 Corporation is strictly liable for selling products that
4 were a proximate cause of Jerry Crawford's injury and
5 damages?

6 "No.

7 "Implied warranty. We, the jury, find Covil
8 Corporation breached the implied warranty in selling this
9 product and its breach was a proximate cause of Jerry
10 Crawford's injury and damages?

11 "No."

12 Signed by the foreperson on July 19th, 2018.

13 THE COURT: Thank you, Madam Clerk.

14 All right. Plaintiff, do you wish to poll the
15 jury?

16 MS. MCVEY: Yes, Your Honor.

17 THE COURT: Very good.

18 All right. Maribell, you may poll the jury.

19 THE CLERK: Ladies and gentlemen of the jury, I'm
20 about to ask you a question and that question being is this
21 your verdict and still your verdict. As I call your name
22 and juror number, please answer by saying yes or no.

23 Juror number 34, Sarah M. Burdick?

24 JUROR NUMBER 34: Yes.

25 THE COURT: Juror number 92, Stacy A. Gillen?

1 JUROR NUMBER 92: Yes.

2 THE COURT: Juror number 118, Michael S. Hayes?

3 JUROR NUMBER 118: Yes.

4 THE COURT: Juror number 100, Tammy R. Graham?

5 JUROR NUMBER 100: Yes.

6 THE COURT: Juror number 132, Zachary R. Hunter?

7 JUROR NUMBER 132: Yes.

8 THE COURT: Juror number 202, Hannah Napoli?

9 JUROR NUMBER 202: Yes.

10 THE COURT: Juror number 32, Christina Buckner?

11 JUROR NUMBER 32: Yes.

12 THE COURT: Juror number 55, Anthony T. Cox?

13 JUROR NUMBER 55: Yes.

14 THE COURT: Juror number 117, Johanna Harvey?

15 JUROR NUMBER 117: Yes.

16 THE COURT: Juror number 232, Geneva D. Robinson?

17 JUROR NUMBER 232: Yes.

18 THE COURT: Juror number 108, Sandra K. Grizzle?

19 JUROR NUMBER 108: Yes.

20 THE COURT: And juror number 62, Casey L.

21 McKinney?

22 JUROR NUMBER 62: Yes.

23 THE CLERK: The jury has been polled.

24 THE COURT: Very good.

25 Ladies and gentlemen of the jury and alternates,

1 that completes your service in this matter. Again, I very
2 much appreciate your service. The clerk will give you other
3 instructions. I think -- am I right?

4 THE CLERK: They can go. If they need a jury
5 verification for work, they may go into the office and see
6 Carrie Shaw and she will give you a form.

7 THE COURT: Very good.

8 Again, I appreciate very much your service. It's
9 a complicated case, and you are now discharged and you got
10 the solace of nothing that it would be sometime before you
11 will be called again for jury service, having served on this
12 jury, so you may go to your jury room.

13 (Whereupon, at 2:00 p.m., the jury panel was
14 discharged)

15 THE COURT: All right. All right, Maribell, this
16 is the verdict form.

17 Ms. McVey?

18 MS. MCVEY: Your Honor, we obviously will have
19 post-trial motions. We would like to make a motion for
20 JNOV, as well as other grounds, and we would like at least
21 ten days to brief that and file it.

22 MR. WALL: No objection.

23 THE COURT: Very good.

24 And, of course, I have no flexibility about the
25 initial making of the motions. That has to be done within

1 ten days, as you know, but the fuller briefing of that and
2 then a schedule for an actual hearing on that can be
3 mutually arrived at. So what needs to be done is to go on
4 and file something within the parameters of the rule's time
5 period and then we will go from there.

6 MS. MCVEY: Yes, ma'am.

7 THE COURT: Very good.

8 MS. MCVEY: Your Honor, I did want to say when the
9 jury was still here, but if they are willing, we might like
10 to speak with them, if they are able to do that.

11 THE COURT: I should have told them they can, but
12 it's not required.

13 MS. MCVEY: Sure.

14 THE COURT: But you may tell them, if you approach
15 them, that they can, but it's not required.

16 MS. MCVEY: Okay.

17 MR. WALL: Thank you, Your Honor.

18 THE COURT: Very good. All right.
19 Thank you very much and good luck.

20 MS. MCVEY: Thank you.

21 MR. WALL: Thank you, Your Honor.

22 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for Spartanburg County, South Carolina, on the dates of July 16, 2018; July 17th, 2018; July 18, 2018; and July 19, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 22, 2018

Michael R. Watts

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Circuit Court Reporter

Page 1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS COUNTY OF SPARTANBURG JERRY HOWARD CRAWFORD, Individually and as Personal Representative of the Estate of EVELYN KAY CRAWFORD, Plaintiffs, vs. C/A NO. 2017-CP-42-04429 AURORA PUMP COMPANY, et al., Defendants. H E A R I N G BEFORE THE HONORABLE JEAN TOAL DATE: October 10, 2018 TIME: 2:00 p.m. LOCATION: Richland County Courthouse 1701 Main Street Courtroom 3-B Columbia, South Carolina REPORTED BY: YVONNE R. THURSTON-BOHANNON Registered Merit Reporter, Certified Realtime Reporter COMPUSCRIPTS, INC. A South Carolina Corporation Court Reporters & Legal Videographers www.compuscriptsinc.com 1.888.988.0086 Charleston Columbia Greenville 864.735.0684 803.988.0086 843.640.5383	Page 3 1 PROCEEDINGS 2 THE COURT: All right. Ms. McVey, I guess 3 we are at Crawford? 4 MS. McVEY: Yes, ma'am. 5 THE COURT: All right. You may proceed. 6 MS. McVEY: Good afternoon, Your Honor. 7 THE COURT: Good afternoon. And my 8 apologies to all for being a little bit delayed. 9 MS. McVEY: No worries. 10 For the record I'm Theile McVey and I 11 represent the Crawford family in this lawsuit. 12 Your Honor, this is our -- the plaintiffs' 13 motion for JNOV and new trial pursuant to 14 Rule 50 and 59(e) or for a new trial pursuant to 15 the Thirteenth Juror Doctrine. 16 Why are we asking you for those things? As 17 you know, we're sitting through this trial 18 hearing all the evidence. The evidence 19 presented to the jury supported only one 20 conclusion, and that is that the insulation 21 supplied by Covil caused Mr. Crawford's 22 mesothelioma. The evidence of Covil's liability 23 was overwhelming, and Covil failed to introduce 24 any evidence to conflict with the elements of 25 plaintiffs' -- plaintiffs' claims.
Page 2 1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR THE PLAINTIFF 3 JERRY HOWARD CRAWFORD, Individually and 4 as Personal Representative of the 5 Estate of EVELYN KAY CRAWFORD: 6 KASSEL McVEY 7 BY: THEILE B. McVEY 8 Post Office Box 1476 (29202) 9 1330 Laurel Street 10 Columbia, South Carolina 29202 11 (803) 256-4242 12 (803) 256-1952 - FAX 13 tmcvey@kassellaw.com 14 ATTORNEYS FOR THE DEFENDANT 15 COVIL CORPORATION: 16 WALL, TEMPLETON & HALDRUP, PA 17 BY: THOMAS B. BOGER 18 Post Office Box 1200 (29402) 19 145 King Street, Suite 300 20 Charleston, South Carolina 29401 21 (843) 329-9500 22 (843) 329-9501 - FAX 23 tommy.boger@walltempleton.com 24 (INDEX AT REAR OF TRANSCRIPT) 25	Page 4 1 If you will permit me briefly, let me give 2 you just a little bit of background of this case 3 so we can all get refamiliarized. 4 The evidence at trial that was undisputed 5 was that Mr. Crawford was exposed to a 6 substantial amount of asbestos insulation cut or 7 disturbed at the Spartanburg Celanese plant from 8 1970 to 1974. Mr. Crawford, as you'll recall, 9 worked at three different locations within the 10 Celanese Spartanburg plant. He worked in the 11 poly building, the continuous line building, and 12 the warehouse. 13 Daniel installed the insulation on the new 14 lines in this area. And while the insulation 15 was being cut and installed, Mr. Crawford was 16 close enough to see dust, and that was the 17 testimony. Harvey Neelands who was a coworker 18 confirmed that it was extremely dusty work. So 19 Mr. Crawford was exposed by others disturbing 20 the insulation and installing it and cutting it. 21 He was also exposed because he testified 22 that several times a day he was sweeping up the 23 work after the insulation with the contractors. 24 So he had bystander liability watching folks 25 install it, and he had direct by cleaning up the

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1 asbestos insulation. And you will recall, Your 2 Honor, that all of the experts in this case 3 testified that that was a substantial 4 contributing factor, overwhelming exposure. 5 Your Honor, the standard for JNOV in this 6 case is that you have to view the evidence and 7 all reasonable inferences in the light most 8 favorable to the nonmoving party, and that 9 requires you of course to determine sufficiency 10 of evidence. And you have to look at the 11 evidence to determine if the evidence yields 12 more than one reasonable inference. Not rock 13 solid, but more than one reasonable inference. 14 If no reasonable jury could have reached the 15 challenged verdict, the Court must grant the 16 JNOV. 17 So let me go over the evidence that was 18 presented, if you'll let me. 19 Covil submitted no evidence to dispute any 20 of the plaintiffs' negligence claims. One, that 21 the defendant Covil had a duty of care to 22 Mr. Crawford and that they breached that duty. 23 It was undisputed in this case that Covil knew 24 of the risk of harm of using asbestos insulation 25 and failed to take reasonable steps to warn or	1 Harvey Neelamds confirmed that that work, the 2 work that Mr. Crawford could see, created 3 substantial dust. And, again, Mr. Crawford 4 swept up that insulation dust often several 5 times a day. 6 It was undisputed that this exposure at the 7 Celanese plant for the asbestos insulation was 8 the proximate cause, substantial contributing 9 factor of Mr. Crawford's injury. Covil offered 10 no evidence to the contrary. 11 The big issue in this case was, Did Covil 12 supply the insulation to this project? So what 13 was the evidence that was presented? Again, 14 Harvey Neelamds, he was doing the asbestos 15 insulation work at the Spartanburg Celanese 16 plant during the relevant time period and was an 17 employee of Daniel. And what Mr. Neelamds 18 testified to is that he was working for Daniel, 19 but Covil was the supplier to Daniel of this 20 insulation. 21 How do you know that? Well, for one he saw 22 the Covil truck, called it the box truck with 23 Covil's name on it back up to the Spartanburg 24 plant where he got the insulation from. He saw 25 them delivering. And Covil admitted and several
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1 prevent the harm. 2 How do we know that? The evidence in this 3 case that was undisputed was that by 1965, five 4 years before Mr. Crawford was exposed to 5 insulation supplied by Covil, that Covil knew 6 that asbestos exposure could cause a fatal 7 disease, and they received that information from 8 numerous sources, from trade organizations, from 9 unions that Mr. Covil was president of, and the 10 Selikoff conference of course. 11 Despite that knowledge, Covil -- this is 12 the testimony. Covil made a business 13 decision -- business decision to never warn end 14 users like Mr. Crawford. And there was some 15 testimony that Covil decided to protect their 16 own employees in the warehouse by asking them to 17 wear respirators, implementing dust control 18 measures, but they constantly chose not to warn 19 others. And Covil introduced no evidence to the 20 contrary of that. 21 It was undisputed that the defendant's 22 breach was the proximate cause of the 23 plaintiff's injuries. As we went over, he 24 worked in close proximity to the asbestos 25 insulation crew, the Daniel employees, and	1 other witnesses confirmed that Covil 2 consistently supplied insulation for Daniel. 3 Now, Covil did dispute that they supplied 4 this insulation to the Celanese plant. And the 5 way they're disputing it is saying, "You know 6 what, we have no records. We looked. We have 7 no records. We couldn't have done it." 8 Well, that's disingenuous because you will 9 recall that Covil's perspective was, you know, 10 "In 1973 we had a big fire. We wouldn't have 11 had any documents anyway." 12 But there was more testimony. There was 13 testimony by a Covil employee called Machen 14 Carpenter that you'll remember, and he said, "It 15 wasn't the fire that destroyed them; they must 16 have been destroyed later." They were destroyed 17 later because the documents were behind a 18 firewall and Covil destroyed them not because of 19 the fire but for some other reason. 20 Covil wouldn't have had any documents that 21 would exceed that. So the absence of sales 22 records in no way constitutes affirmative 23 evidence that no sales occurred, especially when 24 such records are incomplete and eyewitness 25 testimony establishes such sales.

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1 Covil's own corporate representative -- 2 you'll remember this, Your Honor. There was a 3 vendor list for the Celanese plant and it had 4 all the different vendors on there, and it had 5 listed Covil as a vendor. And Covil's own 6 corporate representative Mr. Glenn recognized 7 the document listing Covil as a vendor to the 8 Spartanburg Celanese plant, that they were there 9 during the relevant time period. 10 Now, the other thing that Covil says is 11 that Celanese Spartanburg didn't have any 12 records showing them there, and you recall 13 Celanese -- the Celanese plants were sold by the 14 '70s and they didn't maintain any individual 15 records. They failed to produce their records, 16 and they didn't show Covil there. Well, Daniel 17 records do show Covil there, not doing the work 18 that Mr. Neelands describes but doing work at 19 the Celanese plant. 20 It's undisputed that Daniel was doing this 21 insulation there. Harvey Neelands, the guy who 22 was working for Daniel that was actually there, 23 says that Covil was the one. That has truly not 24 been disputed. 25 That's the negligence claim. The strict	1 evidence and it's -- only one reasonable 2 inference can be inferred. 3 Your Honor, plaintiffs should get a new 4 trial because of the prejudicial misconduct of 5 Covil's counsel. We talked about this at length 6 during the trial, but you have the broad 7 inherent authority to grant a new trial for any 8 prejudicial errors committed during the trial as 9 a matter of fundamental fairness, and it's abuse 10 of discretion standard. 11 Your Honor, this case demands a new trial 12 even if not JNOV. The statements as far as 13 Covil's counsel during arguments were improper, 14 irrevocable, prejudicial. And we can talk about 15 what those were in a moment. 16 They first started -- well, let me back up. 17 You remember that we had the Whitmire and 18 the Crawford motions hearings the Friday -- or 19 Wednesday before trial. We heard motions in 20 limine at that time, and the Court's rulings 21 were clear that you can't talk about other 22 lawsuits involving the plaintiff or the 23 defendant, and the reason for that is the 24 prejudice. 25 So we couldn't talk about Covil being sued
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1 liability claim is much the same factually. Of 2 course 15-73-10 says, "One who sells any product 3 in a defective condition, unreasonably dangerous 4 to the user or consumer is subject to liability 5 for physical harm caused to the ultimate user or 6 consumer." 7 The evidence in this case was overwhelming 8 that Covil's products were defective and 9 unreasonably dangerous. Covil insulation did 10 that. And they knew that by '65 it could be 11 deadly, yet Covil continued to sell asbestos 12 products until 1977. There was evidence they 13 sold asbestos insulation until 1975. 14 There was testimony that Covil insulation 15 was in substantially the same condition when it 16 was sold as when Mr. Crawford was exposed and 17 the exposure to asbestos insulation caused his 18 mesothelioma. 19 There is also evidence that Crawford -- 20 that Covil put in asbestos-free boxes asbestos 21 insulation. You heard that from several places. 22 I would say -- I'm happy to do the breach 23 of warranty, but it's the same factors as strict 24 liability and negligence. We believe that Covil 25 offered no evidence to dispute plaintiffs'	1 by Dwaine Waters. We couldn't tell the jury 2 that Mr. Waters was a Covil employee with the 3 Covil products and was suffering from 4 mesothelioma. Those were the rulings. 5 We also talked about the ability to pay not 6 coming in at this stage. And that was clear. 7 Covil in their opening statements made a lot of 8 objectionable statements. They said, "Covil is 9 defunct, out of business. It was an out of 10 business corporation with no employees, no 11 business and no earnings." That's what they 12 said. 13 And you remember after that opening 14 statement, we all raised concerns about that 15 because what they were alluding to is, "No 16 matter how bad we are, we can't pay for a 17 verdict." And you instructed Mr. Wall not to go 18 near that again. We had multiple conversations 19 about it on and off the record that is clear on 20 the record. 21 And talk about what crossed the line again 22 during different -- examinations of different 23 witnesses. But during closing despite being 24 ordered not to, he said that Covil was no longer 25 in business, had lost their charter. A direct

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1 violation of your order and essentially telling 2 the jury they can't pay. Now, the only reason 3 to do that was to insinuate to a jury that they 4 couldn't pay. But it was -- we objected. You 5 took us up to sidebar and you agreed with us and 6 you instructed the jury to disregard it. 7 The very next thing that Mr. Wall comes out 8 to do is saying, "Covil is no longer in 9 business," but then it gets worse because then 10 what Mr. Wall did is he says, "Mr. Waters is 11 suing Covil. You can't believe that Mr. Waters 12 is suing Covil." We objected. 13 That statement alone, Your Honor, entitles 14 plaintiffs to a new trial. You saw it. I saw 15 it. The jury immediately started writing that 16 down. That was extraordinarily problematic. 17 Regarding a motion in limine order, it was not 18 even in evidence in this case. Of course it 19 wouldn't be. We did not mention that Mr. Waters 20 had meso. And as I argued with you during the 21 trial, I didn't believe -- and you gave a 22 curative instruction. I didn't believe that was 23 enough, and so we believe that in and of itself 24 entitles us to a new trial. 25 And, finally, Your Honor, even if you	1 or I can sit down and let you deal with the 2 Thirteenth Juror and JNOV issues. 3 THE COURT: No, I -- go right ahead. 4 MS. McVEY: Okay. 5 THE COURT: Let's talk about the damages as 6 well. 7 MS. McVEY: Your Honor, the damages in this 8 case were really uncontested. Mr. Crawford had 9 a half million dollars in past medical bills. 10 He had had fluid drained from his lungs at least 11 four times initially and then every two weeks. 12 And the fluid kept coming back, and you remember 13 his daughter Patty testified that a catheter was 14 placed to drain the fluid. 15 He underwent major surgery. He underwent 16 chemotherapy through a port put in place and 17 made him terribly sick. You have heard about 18 his tremendous pain and suffering. And you 19 remember he testified via his video deposition 20 and he said -- I remember it because he kind of 21 smiled and he said, "I'm happy that I have a 20 22 percent chance of survival. At least that means 23 there's a shot." 24 His pain was evident by the testimony of 25 his two daughters, chest wall pain, fluid in the
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1 believe that we're not entitled to a JNOV, 2 meaning you institute a verdict for the 3 plaintiff and award damages, we believe that we 4 are entitled to a new trial under the Thirteenth 5 Juror Doctrine. Under the Thirteenth Juror 6 Doctrine the trial judge may grant a new trial 7 absolute when he finds the evidence does not 8 justify the verdict. 9 Your Honor, it's clear in this case and we 10 discussed it during directed verdict, and you 11 said on the record you were ready to grant 12 directed verdict but didn't want to do us any 13 harm. This case if any case is entitled to a 14 new trial under the Thirteenth Juror Doctrine, 15 and essentially what that will mean is that you 16 would hang the jury and it would mean the 17 plaintiffs would get a new trial under the facts 18 and the circumstances; one, because all the 19 evidence clearly shows that Covil was a supplier 20 of this insulation and that it caused 21 Mr. Crawford mesothelioma, and, two, because the 22 prejudicial comments for -- from Covil's counsel 23 could not be repaired. 24 I'm happy to talk about the damages that 25 Mr. Crawford suffered, if you want to hear that,	1 lungs. Dr. Maddox testified that will only 2 increase, that he will go through something 3 called air hunger that feels like he is 4 smothering. He won't be able to catch his 5 breath. He will be treated with morphine that 6 will reduce the impulse to breathe. He will 7 lose over ten years of his life from this 8 disease. 9 Your Honor, Mr. Crawford's wife passed away 10 during the pendency of this lawsuit, and you 11 heard testimony from Patty Giles, the daughter, 12 that his parent -- her parents were married for 13 48 years. They were devoted to each other. 14 They worked in their yard together and that 15 Jerry drove Evelyn around everywhere because 16 Evelyn never learned how to drive. 17 You heard testimony that Mr. Crawford was 18 such a hard worker that even when his car broke 19 down he would walk nine miles to work and back 20 to do a day's work. 21 Evelyn, you heard testimony, stopped caring 22 for herself when she was trying to take care of 23 Mr. Crawford, and she let a cough get really bad 24 and as a result she passed away, and 25 Mr. Crawford -- Mr. and Mrs. Crawford's daughter

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1 talked about the last thing Mr. -- Mrs. Crawford 2 said. And what she said is, "I'm scared. I'm 3 scared not because I'm dying, but I'm scared to 4 leave Jerry Crawford alone while he is suffering 5 from mesothelioma." 6 The damages were significant. We asked for 7 at trial \$8,000,000 for both the -- to be 8 divided between the loss of consortium claim and 9 Mr. Crawford's damages. 10 THE COURT: All right. 11 MR. BOGER: Good afternoon, Your Honor. 12 Tommy Boger on behalf Covil Corporation. 13 In responding to plaintiffs' counsel, I 14 want to start on the posture of some of the 15 filings that have occurred in this matter 16 subject to trial. When -- we received a copy of 17 plaintiffs' motion for JNOV for a new trial 18 within the ten days that are afforded a party 19 subsequent to the verdict, and in that motion 20 which set forth everything that Ms. McVey stated 21 here today, they reserved their right to 22 supplement that subsequent -- after receiving 23 the trial transcript. I think it was a point on 24 that. 25 Our -- our position on that is that the	1 supplemental memorandums later. I mean, I think 2 they have -- we have daily copies of the tran -- 3 trial transcript that could have been used -- 4 THE COURT: I'm trying to figure out 5 whether you're saying there are new things that 6 apply -- new grounds or -- is that -- 7 MR. BOGER: I'm sorry, Your Honor, no. 8 There -- there are not -- the grounds are the 9 same. It's a supplemental memo, you know -- 10 I -- 11 THE COURT: Just deciding a different 12 authority and so forth. 13 MR. BOGER: Exactly. Expanded on 14 everything that they have -- they have already 15 confined to their -- to their memo. 16 THE COURT: All right. 17 MR. BOGER: I don't -- I don't think that 18 the memo regarding the verdict that they 19 obtained in North Carolina is -- is relevant 20 to -- to this matter, but, you know, I'm sure 21 we'll disagree on that point. 22 In response I guess I could have submitted 23 that every defense verdict that's going to 24 change in South Carolina as being what should be 25 considered by the Court as well. I just -- I'm
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1 supplemental memo is -- should not be considered 2 by the Court, and I -- I think they've done 3 enough to argue their points in the original 4 motion. 5 Additionally, we would object to the filing 6 of the supplemental supplemental memo this week 7 fostering that the -- a trial in North 8 Carolina -- a verdict in North Carolina that was 9 reached last week should be considered by the 10 Court in this case that was decided in 11 Spartanburg. 12 On -- on that I'm going to address their 13 motion -- 14 THE COURT: What -- for what reason do you 15 say that the supplemental memos should not be 16 considered by the Court? 17 MR. BOGER: Well, I think it's untimely, 18 Your Honor. You know, you've got ten days 19 and -- and -- in their filing that. 20 THE COURT: You've got ten days to make the 21 motion. Is there any limitation on 22 supplementing? 23 MR. BOGER: I -- I wasn't aware if there 24 was a -- maybe I'm in the wrong, but there's an 25 order that -- order issued allowing for	1 saying I don't know -- that's -- we didn't do 2 that. 3 THE COURT: What did you submit? 4 MR. BOGER: We -- we submitted two 5 memorandums, one in response to the initial 6 motion and one in response to a supplemental 7 memorandum. Do you not have a copy of those -- 8 those memorandums, Your Honor? 9 THE COURT: I think I've got the first. I 10 don't know about the second. 11 MR. BOGER: And that's fine. Essentially 12 it is a repeat in response to what they filed. 13 We did not go into details, the citation of 14 everything that happened at the trial. 15 THE COURT: How did -- we can get them. 16 This is an electronic county, so we -- 17 MR. BOGER: Our -- our points are made on 18 the record, Your Honor. That original memo 19 takes -- takes care of it. 20 THE COURT: Okay. 21 MR. BOGER: In -- in addressing their 22 motion for a new trial, what our position is on 23 that -- and I'm going to address that first and 24 then go to the JNOV and Thirteenth Juror -- is 25 that we don't believe that motion for a new

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1 trial is properly before the Court. We have 2 cited State versus Pendleton in our -- our memo 3 as the plaintiff had an opportunity at trial to 4 move for a mistrial. It did not do so. I'm 5 sure the Court remembers that exchange. 6 And so what it appears now is that they're 7 moving for a mistrial as part of their JNOV 8 motion after the fact and -- and they decided -- 9 a moment at the trial that they weren't going to 10 move for a mistrial and then now "We're asking 11 for the Court essentially to rule that there was 12 a mistrial and that we -- we're entitled to a 13 new trial because of statements that were made 14 by counsel being prejudicial." 15 THE COURT: If you'll help me remember this 16 because I may be misremembering, and you can 17 correct me if I am. 18 I -- I recall a time when we argued about 19 what to do about the mention of being defunct 20 and out of business and so forth which Mr. Wall 21 did in the closing argument, and those were 22 clearly outside of the bounds of what I directed 23 and Mr. Wall apologized for that, and I then was 24 faced with what to do about it. And I -- I 25 thought that mistrial was one of the options	1 it -- you got do it at that moment, not after 2 you received the verdict. You know, good reason 3 for that. 4 Now, I don't disagree that they've got an 5 opportunity for a new trial under the Thirteenth 6 Juror, or if that was -- perhaps the -- under 7 Rule 50, what we want to do in terms of issuing 8 their JNOV motion, which I'll get to, I don't 9 think there's that -- I don't think there's 10 grounds for that. But solely on, "We want a new 11 trial," absolutely. I think they missed that 12 shot is my point, Your Honor. 13 In going -- and just to lay this out for 14 the record, we don't believe the -- the 15 statements were prejudicial, and, in fact, the 16 plaintiff had every opportunity in the trial to 17 convince the jury that Covil was liable for -- 18 for the injuries to Mr. Crawford, and they -- 19 they've outlined and counsel just argued it. 20 You know, they've said the evidence is 21 overwhelming, uncontroverted, undisputed that -- 22 that Covil did all these things and was liable 23 for that. 24 The issue on the lost charter, I think -- I 25 don't -- we still disagree on that goes towards
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1 presented to me at that time. 2 MR. BOGER: And -- and they did not move 3 for mistrial. You said -- you asked 4 point-blank, "Are you moving for a mistrial?" 5 And counsel said, "No, we're -- we're" -- 6 they thought for a second and looked at me and 7 said, "No, we're not moving for a mistrial." 8 THE COURT: Okay. 9 MR. BOGER: And the other part of that 10 going back to the prejudicial thing was is that 11 there was -- you also issued a curative 12 instruction to the jury and Mr. Wall withdrew 13 those -- those comments. 14 THE COURT: Right. 15 MR. BOGER: And so our position is is that 16 there -- that whatever prejudice, if any -- 17 which we don't believe there was any. Anyway 18 I'll get to that, but at that point that was 19 cured, and if it wasn't, then that was the 20 opportunity for them to move for a mistrial. 21 And they did not do that, and so, you know, the 22 question is are they able to now essentially 23 move for a mistrial as part of this JNOV, and I 24 don't think that's proper. And that's based on 25 that State versus Pendleton case. You got to do	1 ability to pay. You know, it -- 2 THE COURT: Well, what possible other 3 reasons would there have been to talk about 4 that? I had not allowed any evidence to the 5 jury about the loss of a charter. I had not 6 allowed any evidence to -- in front of the jury 7 that they were, quote/unquote, defunct, and when 8 it was said one time, I directly instructed the 9 jury that that was something that they needed to 10 disabuse themselves of because it wasn't proper. 11 MR. BOGER: In -- in closing -- 12 THE COURT: And -- and so what possible 13 reasons would there have been to justify talking 14 about the lost charter? 15 MR. BOGER: Well, it's -- Your Honor, it's 16 a relevant fact in the case because -- 17 THE COURT: It is a relevant fact under 18 what issue? Ability to pay, right? 19 MR. BOGER: On the ability to -- to defend 20 the -- 21 THE COURT: The ability to pay and the 22 ability to defend are both out of the same 23 cloth, but that -- neither of those things are 24 pertinent for liability. 25 MR. BOGER: It is when --

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1 THE COURT: Your -- your ability to pay has 2 nothing to do with whether you are liable. 3 MR. BOGER: It is when the -- when the 4 testimony and -- and evidence that they put up 5 was centered on Covil was a bad actor, bad 6 actor, bad actor. That was a -- 7 THE COURT: Mr. Boger, I don't understand 8 this argument at all. What does their bad 9 faith -- what relevance to the fact that they 10 are now out of business does this have to their 11 bad conduct when they were in business? 12 MR. BOGER: Not from that perspective. 13 What -- what I'm saying is -- 14 THE COURT: Under what perspective is it 15 you deem that tells -- tells me why it would 16 ever be proper to introduce information that 17 they were out of business, lost their charter or 18 anything like that? What issue -- 19 MR. BOGER: They -- they -- 20 THE COURT: -- in this trial -- 21 MR. BOGER: -- they raised it -- they 22 raised it with our 30(b)(6) witness in -- in his 23 ability to -- to adequately testify as a 24 30(b)(6) witness -- 25 THE COURT: How did they --	1 the jury has to decide is impacted by 2 information about being defunct or having a lost 3 charter. 4 MR. BOGER: It has to go to the credibility 5 of the -- of the company. 6 THE COURT: I don't understand that 7 argument one bit. I -- I think in plain English 8 the only thing it could possibly go to is the 9 ability to pay. And I have in pretrial, on 10 motions in limine at the request of the defense, 11 as well as the plaintiff said there won't be any 12 discussion of ability to pay unless we go to a 13 punitive damages phase of the trial, just as I 14 also ruled that you could not -- aimed the 15 request of the defense that you could not go 16 into other lawsuits of any kind, and yet your 17 lead counsel did both of those things in this 18 case. 19 And I want to understand what possible 20 reason can be given in the light of my rulings 21 and what the jury is going to ask to determine 22 in the case for -- for raising those two issues. 23 MR. BOGER: And, again, I -- my response to 24 your question is I think it goes to the 25 credibility of our company which was on trial
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1 MR. BOGER: -- so -- 2 THE COURT: -- how did they raise that with 3 your 30(b)(6) witness? 4 MR. BOGER: They cross-examined him on the 5 fact that he was not a -- not a Covil employee, 6 that, you know, he did not work for Covil back 7 in a time frame, and that he was essentially 8 having -- the only thing he had done is review 9 documents -- 10 THE COURT: Well, what does the lost 11 charter have to do with that? That simply goes 12 to his credibility and his knowledge. It has 13 nothing to do with whether the company -- about 14 whether the company is still in business. In 15 fact, that's a question that's often asked of 16 the company's rep, testing rep -- the company 17 rep's knowledge about the pertinent period of 18 time. That doesn't have anything to do with 19 whether they've lost their charter or not. 20 Tell me one more time in plain English what 21 the loss of a charter has to do with any issue 22 the jury was going to have to decide. 23 MR. BOGER: Again, Your Honor, I -- 24 THE COURT: I don't want generalities. I 25 want you to tell me specifically what issue that	1 the entire week. 2 THE COURT: Well, how does their lost 3 charter go to their credibility? Credibility is 4 a truth-telling issue. How does whether you 5 lost your charter or not lost your charter 6 impact your credibility? 7 MR. BOGER: Because we don't have 8 representatives of the company that were engaged 9 in -- 10 THE COURT: Mr. Boger, Mr. Boger, that 11 makes no sense. 12 MR. BOGER: Okay. I -- nonetheless, there 13 was a jury instruction given at -- at the time 14 and the statement was wrong at the time that we 15 don't believe prejudiced their ability for a 16 fair trial. 17 THE COURT: Well, here -- here was the big 18 issue as I saw it in this case and the only real 19 dispute in this case. It was product 20 identification. It was whether or not Covil 21 products were used at Celanese when Mr. Crawford 22 worked there. 23 The -- it was proved without any dispute on 24 your part that Covil products manufactured and 25 sold at the time he was working at Celanese had

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1 asbestos in them. It was undisputed that by 2 1965 Covil knew that products having asbestos 3 could cause disease. It was undisputed that 4 Covil had given some protection to its own 5 workers from the danger of inhaling asbestos 6 products from about 1965 forward. 7 So in terms of what it knew about the 8 product, that was established. It was 9 established that they gave no warnings. The 10 only issue was, Were Covil products used at 11 Celanese? You offered no proof about any of 12 this, and they offered two witnesses who 13 established without any dispute from opposing 14 information by you that during the time he 15 worked Cel -- that Crawford worked at Celanese, 16 Covil had delivered products in their box on a 17 trailer to Celanese and all Covil sold was 18 insulation. That was their product. And that 19 insulation was at the time it was brought there 20 asbestos-containing in whole or in part. 21 Now, what did you all present that in any 22 way gives at least a scintilla of evidence to 23 dispute that? 24 MR. BOGER: Well, I think it's more than a 25 scintilla, Your Honor, and I'll --	1 could say is he had no record of the sales, 2 right? 3 MR. BOGER: Yes. And that's just -- 4 that's -- 5 THE COURT: That's one. 6 MR. BOGER: I got a couple more. 7 Additionally, we -- our -- our case was -- 8 largely relied on the Celanese 30(b)(6) witness 9 and the Daniel 30(b)(6) witness who -- who both 10 confirmed that they have gone through all of 11 their records. The 30 -- Celanese 30(b)(6) 12 witness said they have no record of Covil being 13 on site or selling them any products in the 14 relevant time frame. 15 The Daniel 30(b)(6) witness said, "No, we 16 did the installation job." 17 There was records that were presented as 18 exhibits by the plaintiff that went to the jury 19 that showed monthly lists of the number of 20 Daniel employees that were on site installing 21 insulation at the project in 1972 to '73. 22 There was the Daniel 30(b)(6) witness that 23 said the only evidence that they had that Covil 24 was at the Celanese plant was that there were 25 three employees that installed a fire retardant
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1 THE COURT: What did you present? 2 MR. BOGER: What did we present? First of 3 all, our 30(b)(6) witness testified that he had 4 gone through the records and there weren't any 5 evidence of any sales to the Celanese plant -- 6 THE COURT: All right. 7 MR. BOGER: -- and as you point out, our 8 defense was very simple and it was a rifle shot. 9 They -- 10 THE COURT: They said there was no evidence 11 of sale and -- 12 MR. BOGER: No -- 13 THE COURT: -- and why did he say that? He 14 said, "Because all the records had been burned." 15 Wasn't that his testimony? 16 MR. BOGER: And what he had gone through 17 that -- of the records that weren't burned, that 18 was the other piece of it. There's -- and it's 19 in the trial record. There's 25,000 pages of 20 records that we do have that didn't evidence any 21 sales to the Celanese plant or for Daniel during 22 that time period -- 23 THE COURT: So all -- so he couldn't say 24 whether or not a sale had been made to a 25 supplier or a subcontractor of Celanese; all he	1 material on some structural steel stairs and 2 that they had searched the records and have not 3 had any results for the sales that Covil made to 4 Daniel as Daniel admitted they installed the 5 insulation. That all was presented -- 6 THE COURT: All right. 7 MR. BOGER: -- at trial. 8 THE COURT: So, again, this is just like 9 the -- the Covil plant. "We find no records of 10 sales," right? 11 MR. BOGER: That and -- 12 THE COURT: There's nothing -- there's 13 nothing any more positive than that. They 14 simply said, "We don't have any sales records," 15 right? 16 MR. BOGER: The Daniel 30(b)(6) witness 17 said that they were -- that they did the 18 installation of the asbestos, that they did the 19 job. 20 THE COURT: Yes. 21 MR. BOGER: Well, hey -- 22 THE COURT: But they -- they said, "We -- 23 we have no records about the ins -- who supplied 24 the insulation." 25 MR. BOGER: And the inference would have

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1 been that Daniel being a large company -- 2 THE COURT: They did the insulation job, 3 but they don't have any records of who supplied 4 the insulation, right? That's the most they 5 could say. 6 MR. BOGER: And that's -- put in the 7 opposite way, it's also -- 8 THE COURT: Well, they had to get the 9 insulation from somewhere, and their response 10 was, "We don't have any records about who 11 supplied the insulation," correct? 12 MR. BOGER: There's no evidence that the -- 13 Covil supplied the insulation to Daniel. 14 THE COURT: All right. So then what we've 15 got left after we get through the 30(b)(6)s of 16 your company, Celanese and Daniel, is some 17 insulation was used when Daniel did insulating 18 work in the plant. Two, many employees who said 19 there are miles and miles and miles of piping in 20 there that's insulated. So insulation clearly 21 was used at that plant. 22 These three companies said, "We don't have 23 any record of who's the insulation supplier," 24 but there were two witnesses offered by the 25 plaintiff who said, "We saw Covil products and	1 think that a reasonable juror could take the 2 testimony of those 30(b)(6) witnesses who are 3 sitting here today looking at records from 50 4 years ago that are showing no evidence of sales 5 from Covil to Celanese or to Daniel for that 6 plant versus a gentleman that has gone off from 7 his memory 40 years ago that says, "I think I 8 saw a Covil truck at the plant." 9 There was -- 10 THE COURT: But there -- the other thing 11 that was, you know, said was they don't know who 12 supplied it. They know insulation was used. It 13 was used extensively in the Celanese operation. 14 They have miles and miles of piping that 15 transmits very high temperature from materials, 16 and they insulated those pipes. 17 MR. BOGER: And Daniel did the work and 18 Daniel had other sources that it got insulation 19 from, including manufacturers. 20 THE COURT: That's what I'm trying to ask 21 you is, What was there in the evidence about any 22 other supplier that supplied insulation during 23 this time? Did y'all put up anything about 24 that? 25 MR. BOGER: No, it -- we --
Page 34	Page 36
1 we saw boxes labelled Covil asbestos-free that 2 actually contained asbestos-containing 3 insulation." 4 MR. BOGER: And -- 5 THE COURT: That -- that's the sum and 6 substance of what we have as evidence in this 7 case on who supplied it, correct? 8 MR. BOGER: The only thing -- 9 THE COURT: We don't know from -- 10 MR. BOGER: They have one -- 11 THE COURT: -- company -- 12 MR. BOGER: They have one fact witness -- 13 THE COURT: And -- 14 MR. BOGER: -- that said, "I worked with 15 insulation and I think it came from -- from 16 Covil." 17 THE COURT: And, "I saw the Covil trucks 18 there"? 19 MR. BOGER: Right. 20 THE COURT: All right. Well, then what 21 you've got, Mr. Boger, simply and solely is 22 there is at least some evidence that Covil 23 supplied, and from the other side there's no 24 information about who supplied it, right? 25 MR. BOGER: I disagree, Your Honor. I	1 THE COURT: Did the plaintiffs put up any 2 information about the names of other suppliers 3 of insulation? 4 MR. BOGER: Not to my recollection. 5 THE COURT: So then all you've got by way 6 of who sub -- we know that there was plenty of 7 insulation used at that plant. We know that. I 8 don't think either of you would dispute that. 9 But we have from your side no information about 10 the name of any supplier and from their side 11 some information about Covil. That's undisputed 12 evidence, is it not? 13 MR. BOGER: Not when at least three 14 witnesses testified that they don't have any 15 records showing any sales from Covil to Daniel 16 or Celanese -- 17 THE COURT: Right. 18 MR. BOGER: -- or the plant in that 19 particular time frame. 20 THE COURT: Right. 21 MR. BOGER: The -- so in my mind -- 22 THE COURT: "We have" -- so "We have no 23 records" is some evidence of who supplied the 24 insulation? 25 MR. BOGER: It's evident that Covil did not

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1 supply the insulation. If there -- if there are 2 documents out there showing sales receipts, 3 whatever it was that Daniel had -- 4 THE COURT: My trouble with that, 5 Mr. Boger, is there was nothing put in about any 6 sales receipts from anybody that supplied 7 insulation, yet we know that there was a lot of 8 insulation in this plant. 9 MR. BOGER: I understand. And, you know, 10 my focus is on Covil, and so I've got -- 11 THE COURT: I understand. 12 MR. BOGER: -- three witnesses that say, 13 "Covil -- we don't have receipts of sales from 14 Covil." 15 THE COURT: All right. 16 MR. BOGER: And so if -- Daniel wasn't on 17 trial that day, and perhaps in hindsight I'd go 18 back and ask Daniel to give me all their sales 19 receipts for -- for that period of time, but 20 when their witness says on a video deposition 21 that "I went through all of our 40 boxes of 22 records and didn't find anything, no sales 23 receipts" -- or, excuse me. 24 It wasn't that he couldn't find anything. 25 That's another crucial fact here. He found	1 your side. You're weighing some evidence on 2 your side -- 3 MR. BOGER: I'm weighing -- I'm weighing 4 testimony. 5 THE COURT: And -- and -- well, that's not 6 the same thing as weighing evidence. 7 MR. BOGER: I'm weighing testimony. I 8 guess, Your Honor, what I come to is that is it 9 not reasonable for a juror sitting in that seat 10 to conclude that these witnesses for -- for 11 Daniel and Celanese are more believable than 12 Mr. Neelands is, and that's what it comes down 13 to. 14 THE COURT: Okay. 15 MR. BOGER: And that -- that standard is a 16 fair preponderance, and -- and I don't think 17 they meet it. 18 And -- and to -- to go back and cover a 19 couple more things from the -- because there's 20 two motions. There's JNOV and there's the 21 Thirteenth Juror, and the Thirteenth Juror 22 standard is a more rigorous standard. And so 23 my -- my position is that it is not contrary to 24 the fair preponderance of the evidence and that 25 what the evidence shows is that a reasonable
Page 38	Page 40
1 evidence that we were there -- that we were 2 there installing a fire retardant on some steel 3 stairs. So it wasn't that "I didn't find 4 anything." It was that "I found this, but I 5 didn't find -- I found something on fire 6 retardant. I didn't find anything on asbestos." 7 And that -- and these were multiple 8 witnesses and they're credible people, 9 professional 30(b)(6) witnesses for these 10 companies that, again, went back and looked at 11 documents from 40 years ago and couldn't find 12 anything versus a gentleman who was not a 13 distributor, was not involved in purchasing 14 insulation. He was an insulation worker that 15 says, "I think Covil supplied the insulation. I 16 think I saw a truck." 17 You know, I -- it -- from the way the 18 standard goes I think that's way -- way beyond 19 more than one reasonable inference, and I think 20 the JNOV -- that should be denied. And I also 21 think from the Thirteenth Juror standard, you 22 know, it's not contrary to the fair 23 preponderance of the evidence. I mean, we're -- 24 we're weighing this evidence right now. 25 THE COURT: You don't have any evidence on	1 person could fairly come to the conclusion that 2 Covil didn't supply the insulation to the 3 Celanese plant from 1970 to 1974. 4 And if you meet that, then certainly the 5 evidence is susceptible to more than one 6 reasonable inference. It -- in my mind it is 7 without -- I keep hearing "overwhelming, clear, 8 uncontroverted," and it's not taking into 9 account the -- what we've presented. And 10 I'll -- I'll allow Ms. -- 11 THE COURT: Thank you, sir. 12 MR. BOGER: -- McVey respond to that. 13 THE COURT: Ms. McVey. 14 MS. McVEY: Your Honor, if I could just 15 briefly address his -- what he's describing as 16 evidence from Celanese and Daniel. 17 First, as to the Covil records or lack 18 thereof, they acknowledge anything pre-'70 -- 19 '73 and backwards was destroyed. But I would 20 also argue to you that Mr. Glenn, their 30(b)(6) 21 representative or their corporate representative 22 who testified at trial, didn't review the 24,000 23 pages of documents. He reviewed a hundred of 24 those pages. That was his testimony. He didn't 25 even review all hundred.

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1 Let's talk a little bit about the dangerous 2 relationship with Daniel and Covil. Our whole 3 case has been not that Covil was doing the 4 insulation at Celanese. No one argued that. 5 Everybody knew that Daniel was the insulation 6 contractor at Celanese. In fact, Harvey 7 Neelands was an insulator for Daniel at the 8 Celanese plant. That's why his testimony is so 9 important. He was doing the work and getting 10 the information. 11 But it's not just that Harvey Neelands 12 who's a Daniel employee at this plant at the 13 right time sees Covil dropping off this 14 insulation, it's that Covil and Daniel had a 15 really close relationship. Right? So what you 16 heard is that Covil agreed that Daniel was its 17 largest customer, that Daniel agreed that it did 18 business with Covil as an insulation supplier 19 and sometimes as an insulation contractor, that 20 the relationship with Daniel began in the early 21 1960s. 22 Machen Carpenter testified that Daniel and 23 Covil were like this (indicating), meaning they 24 were as close as they could be. And Mr. Waters 25 testified that if Daniel had the maintenance	1 THE COURT: What -- remind me of what 2 was -- we had a big dust up before this case 3 started, and the -- as a result of some of the 4 things that Covil did and did not do, I ordered 5 that a stipulation be read to the jury. What 6 was that stipulation? 7 MR. BOGER: Your Honor, I was going to 8 point that out as well, because what Ms. McVey 9 says that they -- there wasn't a dispute that 10 Daniel installed the insulation, but the 11 instruction that was given to the jury was that 12 Covil insulation supplied and installed 13 insulation at the Celanese plant from 1970 to 14 1974. 15 And we sit here and -- and argue the 16 sanction because of the records dispute of Covil 17 that, you know, obviously we didn't agree with 18 that instruction and that we supplied or 19 installed those products, but that was something 20 that they fought for on that day and got, and so 21 now we're saying, "No. Daniel installed the 22 products." We don't dispute that. You know, I 23 don't -- 24 THE COURT: I don't want to -- you are 25 confused about her argument. She is -- quite to
Page 42	Page 44
1 contract, Covil either supplied the insulation 2 or did the insulation work. And it's undisputed 3 that Daniel had that maintenance contract at 4 Celanese Spartanburg from 1970 to 1974. 5 Crawford and Neelands identified Daniel as 6 the insulation subcontractor. The issue is who 7 supplied it. 8 Celanese admitted the insulation out 9 there -- everybody agrees Daniel was there doing 10 insulation work. Harvey Neelands says, "We got 11 it from there." 12 Covil doesn't have documents because they 13 destroyed them. 14 Celanese Spartanburg doesn't have records 15 specific to this plant. They're not there 16 anymore. So it's not like by looking at their 17 records they could find records like that. 18 Daniel didn't find records of who was the 19 insulator for this -- or insulation supplier for 20 this contract, whether it was Star Davis or 21 Covil or anybody else. They were just given 22 records. I will tell you that's an absence of 23 evidence. The only evidence in this case was 24 that Covil was the insulation supplier. 25 I'm happy to answer any other questions.	1 the contrary. She is saying that Daniel was 2 a -- was a contractor at Celanese and that one 3 of the things it did was to install insulation 4 and that Covil was its main -- that Covil was 5 one of its main insulation suppliers. That's 6 what she's saying. That only reinforces the 7 stipulation that was read to the jury that Covil 8 supplied insulation to Celanese at the 9 appropriate times. 10 MR. BOGER: But the instruction was that we 11 supplied and installed. 12 MS. McVEY: I can't remember. I don't have 13 it sitting in front of me. I haven't argued 14 that either on -- I didn't argue it at the 15 directed verdict stage, Your Honor, that you 16 should take into account the stipulations. I 17 didn't argue it today, and so I can't remember 18 off the top of my head what it said. I -- my 19 recollection is of what it said was that Covil 20 was the -- the installer, but I'm not disputing 21 what Mr. Boger is saying if he's got it sitting 22 in front of him. 23 But for purposes of today I'm not even 24 arguing that presumption, but you're right. 25 There was a presumption read at the beginning of

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1 the case saying that Covil was the supplier of 2 insulation for the Spartanburg Celanese plant 3 and that was a discovery -- major dust off that 4 we had prior to about records and insurance and 5 30(b)(6) witnesses and that kind of stuff. 6 THE COURT: Anything further? 7 MS. McVEY: He -- one other thing. He 8 mentioned that Daniel also got insulation from 9 manufacturers. He just said that, and that's a 10 big point of contention. What the testimony was 11 is that Daniel bought asbestos-free insulation 12 from manufacturers, and we went through the 13 whole documentary thing. So I want to make sure 14 that is clear. They were not buying, at least 15 according to the testimony, asbestos insulation 16 from the manufacturers, only from suppliers like 17 Covil. 18 MR. BOGER: Your Honor, I don't have 19 anything more. Just to show you, I don't think 20 I said in my remarks earlier, but of course we 21 think that these -- these motions should be 22 denied and that the verdict should hold on 23 behalf of the defendant. 24 THE COURT: All right. 25 MR. BOGER: Thank you.	1 Thirteenth Juror to say nay and hang the jury, 2 and then the case must be retried. Now, that's 3 the atmosphere legally that I think we're 4 dealing with. 5 I am still second-guessing myself 6 tremendously in this case with respect to some 7 of what was done in the trial of the case by 8 defense that I did not strike the pleadings of 9 defense and render a verdict of liability 10 submitting to the jury only the question of 11 damages, but like a lot of trial judges, I 12 thought I'd let the jury take me out of the 13 hole. But here we stand now with a verdict that 14 I do not think can stand, and the question is 15 what is to be done about it. 16 The defendant's so-called evidence is we 17 have no evidence. It's not an evidence to the 18 contrary. "Our suppliers were all other people. 19 Covil did not supply this job." No witness for 20 Covil said that. What the witnesses said is, 21 "We have no records of sales," or, "We have a 22 record with regard to a particular application 23 but not anything else." 24 The plaintiffs' evidence was not robust, 25 but it was the only direct evidence that there
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1 THE COURT: Although Mr. Boger argued that 2 the standard for the Thirteenth Juror is a 3 higher standard than the standard for the 4 granting of a judgment non obstante veredicto, I 5 don't agree with that. I think that the JNOV 6 has the highest standard, which is that all 7 inferences are in favor of the nonmoving party, 8 and in that act of failure even a scintilla of 9 evidence supporting the position of the 10 nonmoving party is enough to stave off the 11 granting of a -- of the opposite side's motion, 12 in this case, a motion for judgment of JNOV. 13 With respect to the Thirteenth Juror, it is 14 a balancing act by the judge to decide whether 15 or not the verdict is contrary to the clear 16 preponderance of the evidence, and in that 17 regard, unlike the JNOV where the judge does not 18 weigh evidence but look at whether there is the 19 existence of evidence, in the Thirteenth Juror 20 the judge weighs the evidence and -- and in the 21 end the judge weighs the evidence and concludes 22 that the verdict that was rendered is not -- is 23 contrary to the clear preponderance of the 24 evidence. The judge does not then issue a 25 verdict herself. The judge simply acts as the	1 was about who supplied. And there's evidence 2 from a worker from Daniel who was on the job for 3 a considerable period of time when Mr. Crawford 4 was there and was an insulator and recalls 5 seeing Covil trucks come to the plant and 6 from -- also evidence from another worker that 7 there were boxes -- Covil boxes that were 8 labelled asbestos-free, but that he and his 9 coworker discovered that the asbestos material 10 contained in those boxes was actually 11 asbestos-containing Covil products and that they 12 concluded that there was leftover asbestos 13 product that they were needing to go on and sell 14 before they could start transferring over to the 15 new program where you sold asbestos-free 16 insulation. 17 That is the sum and substance of the 18 information as I best recall it about Covil's 19 connection. But there is evidence that Covil's 20 lack of records is not completely explained by 21 the fire because there is another employee who 22 says that the records were not burned -- the 23 records of sales and the other pertinent records 24 were not burned in the Covil fire of 1973 25 because they were stored in vaults and they were

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1 stored behind a firewall and that the records 2 were still -- still in existence after the fire. 3 There's also some information that other clients 4 other than Covil plant in Spartanburg that 5 burned in nearby access in North Carolina and 6 other places to this -- to Celanese supplied 7 Celanese with material. 8 So that -- those are the things that 9 trouble me greatly about this matter and the 10 fact -- I don't say that the plaintiffs' 11 evidence is robust on this point, but the 12 evidence from -- from Celanese and Daniels is 13 not at all dispositive and the evidence from 14 Covil is nothing but a positive nature, only 15 that they had no records. So that is the 16 dilemma I face. 17 In addition to that, the Covil 18 representative, Mr. Glenn reviewed a miniscule 19 portion of the records of Covil that are still 20 in existence and available, less than a hundred 21 pages is my recollection, out of thousands and 22 thousands of pages of material that are 23 available, and that was by his own admission. 24 So his disclaimer -- or information about the 25 sales is based on a very small microfiber of	1 make is going to result in a striking of the 2 pleadings of the defendant and the imposition of 3 liability as a sanction for repeated failure to 4 obey the orders of the Court. I think that 5 would have been justified in this case, but I 6 did not do that. 7 So I think the only reasonable choice I 8 have is to exercise my authority to hang the 9 jury and grant the motion to -- per the outline 10 of directives in Folkings versus Hunt and any 11 other number of cases, but that's kind of the 12 leading case on the Thirteenth Juror. I am 13 going to grant the motion to act as the 14 thirteenth juror, hang the jury and direct that 15 the case be retried. 16 Now, is there anything else to come before 17 me by way of any issues of sanction or 18 otherwise? I think we resolved those in the way 19 that we did by the directives that went to the 20 jury. 21 MS. McVEY: I agree, Your Honor. 22 THE COURT: I would caution all of you that 23 what this means is that the case will be retried 24 just as if the jury had hung and been unable to 25 reach a verdict. I think the verdict that was
Page 50	Page 52
1 materials in the Covil file, and that is also 2 something that is very worrisome to me. 3 The atmosphere at this trial was a repeated 4 violation of the orders that I had given 5 pretrial about what could be said and what could 6 not be said, and the most egregious was the 7 continued attempt to inject into this trial 8 Covil's lack of ability to pay. I do not think 9 that the information about being a defunct 10 corporation and the information about being out 11 of business was pertinent to any issue before 12 the jury. 13 The issue had only -- the issue -- the jury 14 had before it no issue impacted by ability to 15 pay. They only had before it issues regarding 16 Covil's -- the question of Covil's supply of its 17 materials and the question of what those 18 materials -- what impact those materials had on 19 the health of the plaintiff. So the continued 20 mention of those issues was a very prejudicial 21 thing for the trial of this case in my -- in my 22 view. 23 I hate to have this thing repeat itself, 24 and if I have to try it again, I can tell you 25 that any variance from the pretrial orders I	1 reached was contrary to the clear preponderance 2 of the evidence. I frankly think the evidence 3 is sufficient to have justified my granting a 4 judgment non obstante veredicto, but I choose to 5 not go that route because of any possible 6 inference that the evidence might have that -- 7 of an affirmative nature with respect to whether 8 Covil ever supplied any materials to Celanese. 9 So that -- that's the ruling, and I caution 10 you all that this is a retrial based on the case 11 that's already been presented. The rulings that 12 I have made with respect to stipulations that 13 will go before -- the stipulation that would go 14 before the jury, as well as my other rulings 15 about motions in limine, my other determinations 16 about sanctions that were previously rendered 17 against this defendant stand. They are -- they 18 don't go away. 19 My general approach to retrial is that I do 20 not reopen discovery or expect to have the 21 matters revisited that have already been 22 decided. But we can take that up at a later 23 time when we decide when to reschedule this 24 case, but that is -- that's what I would do. 25 Ms. McVey, what I would like you to do is

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1 prepare an order to that effect, send it to 2 Mr. Boger and Mr. Wall and let them respond to 3 me with whatever requests they may have, and 4 then I will decide what to do. 5 MS. McVEY: Yes, ma'am. Thank you. 6 MR. BOGER: And, Your Honor, just to be 7 clear, you are denying the JNOV motion and the 8 new trial motion but granting the Thirteenth 9 Juror motion? 10 THE COURT: That's correct. 11 MS. McVEY: Thank you, Your Honor. 12 (The hearing was concluded at 3:01 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24 25	1 I N D E X 2 3 Page 4 ARGUMENT BY: 5 MS. McVEY 3 6 MR. BOGER 17 7 MS. McVEY 40 8 MR. BOGER 45 9 10 RULING BY THE COURT 46 11 12 CERTIFICATE OF REPORTER 54 13 14 E X H I B I T S 15 (None marked.) 16 17 18 19 20 21 22 23 24 25
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1 CERTIFICATE OF REPORTER 2 I, Yvonne R. Thurston-Bohannon, Registered 3 Merit Reporter, Certified Realtime Reporter, and Notary 4 Public for the State of South Carolina at Large, do 5 hereby certify: 6 7 That the foregoing transcript was taken 8 before me on the date and at the time and location 9 stated on page 1 of this transcript; that all statements 10 made on the record at the time of the proceeding were 11 recorded stenographically by me and were thereafter 12 transcribed; that the foregoing proceeding as typed is a 13 true, accurate and complete record of the proceeding to 14 the best of my ability. 15 I further certify that I am neither related 16 to nor counsel for any party to the cause pending or 17 interested in the events thereof. 18 Witness my hand, I have hereunto affixed my 19 official seal October 23, 2018, at Columbia, Richland 20 County, South Carolina. 21 22 23 24 25 Yvonne R. Thurston-Bohannon Registered Merit Reporter, CRR My Commission expires May 6, 2025 	

State of South Carolina) In the Court of Common Pleas
County of York) Sixteenth Judicial Circuit
2015-CP-46-02155

Roxanne Falls, Individually)
and as Personal)
Representative of the)
Estate of Charlotte Gaye)
Smith,)

Plaintiffs,)

vs.)

CBS Corporation, et al.)

Defendants.)

In re Receivership of Covil)
Corporation by and through)
its Receiver, Peter D.)
Protopapas.)

July 11, 2019

Columbia, South Carolina

B e f o r e:

The Honorable Jean H. Toal, Judge

A p p e a r a n c e s:

Jescelyn Spitz, Esquire
Mark Hardee, Esquire
Jon Robinson, Esquire
Brady Edwards, Esquire
Nancy Patterson, Esquire
Paul Zevnik, Esquire
Trey Branham, Esquire
G. Murrell Smith, Jr., Esquire
Warren Powell, Esquire
Chelsea Clark, Esquire

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Gregory J. May, Esquire
Will Quick, Esquire
Brooks Pierce, Esquire
James P. Ruggeri, Esquire
Eric Gollogly, Esquire
Kevin A. Hall, Esquire
Wesley P. Sawyer, Esquire
Ilya Kosten, Esquire
William P. Davis, Esquire
Mariel D. Norton, Esquire
Theile McVey, Esquire

Bonnie H. Kelly, CVR
Circuit Court Reporter

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1 (On the record at 2:00 p.m.)

2 THE COURT: All right. We ready to proceed?

3 (No audible response.)

4 THE COURT: All right.

5 MS. SPITZ: Your Honor, I believe we're waiting on
6 two more of our co-counsels to arrive. I know they're
7 walking over --

8 THE COURT: All Right. Well, I see all of y'all
9 here. All right. Now, I understand the latest and the
10 greatest from the United States District Court is that the
11 whatever you want to call it attempt to remove the status
12 conference has been in vain. And --

13 MS. SPITZ: Yes, Your Honor.

14 THE COURT: -- is back here. So ...

15 MR. UNKNOWN: Correct.

16 (Brief pause.)

17 MS. SPITZ: We're prepared to move forward now,
18 Judge.

19 THE COURT: All right. Do we have anybody present
20 here for Covil or for insurance companies or -- I saw
21 Warren Powell back in the back.

22 MR. POWELL: Your Honor, I'm here.

23 THE COURT: Hey, Warren. How you doing?

24 MR. POWELL: Good -- good afternoon. I am here for
25 --

1 THE COURT: USF&G?

2 MR. POWELL: You -- you're living in the old days. I
3 haven't had a USF&G case since the Reagan Administration.
4 That was the first time.

5 THE COURT: Yes.

6 MR. POWELL: I'm here representing Wall, Templeton.

7 THE COURT: Very good. Excellent

8 MR. DWORJANYN: May it please the Court, Your Honor?
9 I'm Peter Dworjanyyn with Collins and Lacy. I'm
10 representing Zurich American Insurance Company.

11 THE COURT: All right. Now, anybody else?

12 MR. CALAMARI: Your Honor, I'm Bob Calamari at Nelson
13 Mullins and I'm here with Greg May of Nelson Mullins and
14 our -- a representative from TIG Insurance Company. We're
15 the -- one of the excess carriers for Covil.

16 THE COURT: Okay. Why don't y'all just -- y'all come
17 right down here. That doesn't mean you have to say
18 anything. I just want to get everybody down here so I can
19 protect --

20 MR. QUICK: Yes, ma'am.

21 THE COURT: -- whatever needs to be protected.

22 MR. QUICK: Okay. Good afternoon, Your Honor. Will
23 Quick with Brooks Pierce out of Raleigh, North Carolina,
24 but a member of the South Carolina Bar, here for Hartford
25 Accident -- Accident Indemnity Company and First State

1 Insurance Company. My colleague, Joe Ruggeri.

2 MR. RUGGERI: Jim Ruggeri --

3 MR. QUICK: Jim. Sorry.

4 THE COURT: Good. Come right on down.

5 MR. SAWYER: Your Honor, Wesley Sawyer from Murphy
6 and Grantland. I represent Sentry.

7 THE COURT: Very good. Now, here's what I would
8 suggest -- all right -- to all of y'all. Court reporter
9 needs to know who everybody is, and it would be helpful if
10 you -- if you have cards on you, if you could put down the
11 company you represent and just give them to the court
12 reporter that would be helpful.

13 And if you decide you have anything you want to say
14 at any point during the proceedings, just say your name
15 and say the entity you represent.

16 Anybody else that hasn't announced themselves to me?

17 MR. KOSTEN: Yes, Your Honor. My name is Ilya
18 Kosten. I'm Sentry Insurance Company's counsel for Covil.

19 THE COURT: Great. Welcome.

20 MR KOSTEN: Thank you, Your Honor.

21 THE COURT: Now, how 'bout that gentleman that wrote
22 me the letter telling me that my hearing was cancelled.
23 Is he here?

24 MR. DWORJANYN: I'm sorry, Your Honor?

25 THE COURT: I said, how 'bout the gentleman, Eric

1 Gollogly or --

2 MULTIPLE COUNSEL: Ezra.

3 THE COURT: Yeah. Is he here?

4 (No audible response.)

5 THE COURT: Who does he represent?

6 MR. POWELL: USF&G.

7 THE COURT: Oh, okay. Well, Warren, I take it that
8 you represent USF&G anyway. So ...

9 MR. POWELL: No.

10 THE COURT: No? You just represent Wall and
11 Templeton?

12 MR. POWELL: That's right.

13 THE COURT: Well, is anybody here for USF&G?

14 MR. POWELL: I'm not aware of it.

15 MR. UNKNOWN: Your Honor, local counsel is ---

16 THE COURT: Huh?

17 MS. SMITH: Your Honor, their local counsel I don't
18 believe is here, but they're local counsel is Will Davis
19 and Mariel Norton of Baker, Ravenel and Bender.

20 THE COURT: Is it still 799-9091? Give Mr Davis a
21 call.

22 (Brief pause as the Court confers with law clerk.)

23 THE COURT: All right. First of all, let me begin by
24 saying that this hearing is being conducted, first and
25 foremost, for the purposes of understanding the status of

1 Covil and its receiver in connection with asbestos
2 litigation and to understand what all is pending by way of
3 litigation involving Covil or its receiver and where that
4 litigation is pending.

5 The Receiver has certain requests that have been
6 filed and we will take those up, but let me let you
7 understand to begin with that anyone who makes an
8 appearance here, other than the Receiver itself and his
9 counsel, is completely protected in terms of any
10 contention you may make that this Court does not have
11 jurisdiction to consider any of the requests of the
12 Receiver.

13 I'm going to listen to arguments about the Court's
14 authority to do what the Receivers would like for me to do
15 and any contingents that you may wish to make, whether
16 they're made on behalf of Wall and Templeton or on behalf
17 of the various insurance companies that may have an
18 interest in these proceedings, let me put on the record
19 now that there's no waiver of your contention that the
20 Court has no jurisdiction to deal with these matters by
21 any appearance you may make or any argument you may make
22 or any information you may give the Court about the status
23 of these matters.

24 I just simply -- to manage this asbestos docket and
25 to manage some of the things that are pending, I need some

1 information that I don't now have and that would be
2 without regard to request the Receiver is making for
3 action or activity by the Court.

4 I don't think there's any question but what I've got
5 the authority to gather together parties that may have an
6 interest in matters involving Covil to status this matter.
7 And so I'm not -- I'm not concerned about my authority to
8 do that.

9 What authority I may have beyond that remaing to be
10 seen as we conduct these proceedings. And so I -- I am
11 going to begin by calling upon Covil and letting Mr.
12 Smith, or whoever else will go first, begin these
13 proceedings. But let me simply emphasize that it's been
14 done without prejudice to any -- any entities contention
15 that the Court does not have jurisdiction to pass any
16 orders which may affect you.

17 Now, before I call upon Mr. Smith, if there's
18 anything else that you would like to briefly add to what I
19 have said, you may do it.

20 MR. POWELL: Your Honor, may I walk over to hand the
21 cards?

22 THE COURT: Of course.

23 (Brief pause.)

24 THE COURT: All right. The things I have on the
25 status conference are the authority of the Court to have

1 jurisdiction over the Receiver and background and I
2 understand that Attorney Murrell Smith will make that
3 presentation.

4 Then the status of Covil litigation. Then the
5 accounting of Covil's insurance coverage. Then a rule to
6 show cause against Wall, Templeton. Than a rule to show
7 cause against the carriers. Then the ability of the
8 carriers to sue the Receiver.

9 Now, again, I'm not telling you I'm going to be able
10 to hear all of these things because it may well depend on
11 what the ambit of my authority is, but I am going to
12 begin, Mr. Smith, with you.

13 MS. SMITH: Judge, may it please the Court?

14 THE COURT: Yes, sir.

15 MR. SMITH: We -- we kinda altered, a little bit the
16 presentations, if that's okay with the Court.

17 THE COURT: Sure.

18 MR. SMITH: And so ---

19 THE COURT: It's perfect.

20 MR. SMITH: I -- I think what we are going to do is
21 Mr. Robinson's going to take that part, but we were going
22 to let Jes kinda open -- give an opening and introduce
23 that. Then we'll move toward ---

24 THE COURT: Very good. Well, then attorney Jescelyn
25 --Jescelyn Spitz will introduce this hearing and talk about

1 the status of Covil litigation. Ms. Spitz?

2 MS. SPITZ: May it please the Court, Your Honor?
3 Jescelyn Spitz here on behalf of the Receiver, Peter
4 Protopapas. As the Court is aware, Mr. Protopapas is out
5 of the country currently and we're here present for him
6 today.

7 I did want to begin today by introducing the
8 Receiver's counsel to the Court. I believe you're
9 familiar with some of the counsel. Of course, Mr. Jon
10 Robinson, Mr. Murrell Smith. Here on the end we have Mr.
11 Paul Zevnik, Nancy Patterson, Brady Edwards, and Mark
12 Hardee.

13 Yesterday we did file a couple of notices and motions
14 for *pro hac vice* for out of state counsel.

15 THE COURT: If you'll hand those up at the
16 appropriate time or you can hand them up right now, I'll
17 sign ---

18 MS. SPITZ: Yes, Your Honor.

19 THE COURT: --- them and you can be done with that.

20 MS. SPITZ: And Your Honor, I apologize, I do not
21 have an order with it. I just have the motions present,
22 but I will get those to you very shortly.

23 THE COURT: I'm just going to hold this here and you
24 just pass the orders up when you have them available and
25 I'll sign them.

1 MS. SPITZ: Yes, Your Honor, thank you.

2 You're correct in regards to the agenda that you've
3 already stated. There's a couple of tweeks to that, and I
4 think we're set to have Mr. Robinson begin.

5 THE COURT: All *pro hacs* are granted and I'll
6 officially sign those at the appropriate time, but you may
7 proceed, Mr. Robinson.

8 MS. SPITZ: Thank you.

9 MR. ROBINSON: Thank you, Judge. Jon Robinson with
10 Smith, Robinson, Holler, Dubose, and Morgan here on behalf
11 of Covil.

12 Judge, you alluded to this very early in the morning
13 so I'll address it first. A flurry of filings took place
14 over the last 24 hours, some of which I don't know if
15 you've seen. We -- or I -- I -- I see that you were
16 copied on a number of them. An order actually was issued
17 today during this hearing, at 10:26, by Judge Howe.

18 Judge Howe, as you may know, has before her a motion
19 to enjoin your status conference, and Judge Howe issued a
20 test -- text order denying the motion to enjoin the status
21 conference and reserving the right to take up the other
22 matters that were part of that.

23 I don't know if the Court has it. I have a copy I'll
24 be happy to hand to you.

25 THE COURT: Thank you. I would appreciate that.

1 (Mr. Robinson hands a document to the Court.)

2 THE COURT: Thank you.

3 MR. ROBINSON: Judge, I'm going to begin by just
4 giving a brief overview of Covil and this Court's
5 involvement in Covil and really just Covil's litigation
6 history in -- in -- in South Carolina and what has led to
7 where we are today.

8 Covil is a South Carolina corporation that was
9 incorporated in 1954. They were an installer and
10 manufacturer of thermal insulation which at times
11 contained asbestos. Covil ceased operations in 1991 and
12 dissolved in 1993, and from 1991 up until your appointment
13 of the Receiver for Covil on November 2, 2018, Covil
14 operated in litigation through it's carriers Zurich,
15 Traveler, USF&G, Sentry, and others. It was represented
16 over the last 30 years, Covil, by a Dan White. He
17 represented Covil up until 2018.

18 In 2018, Covil hired -- or -- well, I won't say Covil
19 hired, Mark Wall began representing Covil on around April
20 of 2018. Just prior to his representation the *Howe and*
21 *Smith* case, which is -- was before Your Honor, the answers
22 were stricken in that case. That case has gone on appeal
23 and there is a resolution to that appeal being negotiated,
24 as I understand it, but it is still on appeal at this
25 time.

1 Wall, Templeton began representing Covil in April of
2 2018. As this Court knows, *Hill* and *Taylor* were two suits
3 that were filed against a number of defendants, one of
4 which was Covil. *Hill* and *Taylor* went into default.
5 There was a default that Covil had not filed answers.
6 This Court dealt with that default.

7 In fact, this Court issued an order holding that the
8 Covil entity has apparently been nothing more than a
9 facade behind which the insurers stand and direct the
10 actions of its lawyers since 1993. In that case, the
11 carrier and/or Wall, operating with the -- apparently on
12 behalf of Covil, decided not to answer some lawsuits that
13 were filed against Covil.

14 That decision, of course, as we know, resulted in
15 defaults against Covil, one of which, the *Hill* case, was a
16 case in which there was a complete defense, a Worker's
17 Comp defense. As a result of those defaults, however, the
18 carriers for Covil -- the carriers ended up having to pay
19 three million dollars each on *Hill* and *Taylor*.

20 The question -- one of the questions we'll be
21 addressing today is in situations like this, the three
22 million that's paid on each, where is the money coming
23 from? Is it being exhausted from the policies? Is it
24 being paid extra contractually? It is obviously money --
25 especially as to *Hill*, money that was paid that would not

1 otherwise have been paid but for the controlling insurance
2 carriers and their co-conspirator, Wall, Templeton, not
3 providing an answer in that case.

4 In 2016, before this Court's involvement, there was a
5 case filed by Dean Omar in the Middle District of North
6 Carolina, which is the *Finch* case. The Court probably has
7 seen some filings referenced in -- in the filings --

8 THE COURT: That case was filed when?

9 MR. ROBINSON: In 2016. In that case, prior to the
10 judgement which was -- found --- there's a judgement in
11 the amount of 32,000,700 plus 5,000,633 in pre-judgement
12 interest in the *Finch* case. That judgement came and was
13 finalized on May 1, 2019, where Judge Eagles, in the
14 Middle District, affirmed the final judgement of
15 30,333,285 plus interest, along with 5,229,000 post --
16 post-judgement interest to accrue at 2.66 percent.

17 In that case, in the information that's been exposed
18 by the Receiver at this point, shows that Travelers and
19 Zurich refused a policy limit demand prior to that
20 judgement being entered.

21 There was a policy limit demand made of them by the
22 Plaintiffs in that case. So they are -- they've now
23 subjected to Covil to a 30-million-plus final judgement in
24 the Middle District of North Carolina. That case is on
25 appeal; however, it would appear -- I think the arguments

1 looks like are limited to the failure to preserve
2 objections on the record.

3 Incidentally, Zurich, on May 22, 2019, filed a motion
4 to deposit what they allege are limits of \$250,000 for
5 that judgement. Zurich's motion, of course, would be the
6 subject of also our bad faith action against Zurich, but
7 that's not before the Court today.

8 On November 2, 2018, this Court issued an order
9 appointing Peter Protopapas as the Receiver. On March 1,
10 2019, this Court clarified the order at the request of the
11 Receiver clarifying that its powers were to include an
12 entitlement to all critical related documents from persons
13 who claim to be Covil's attorney -- Wall, Templeton
14 namely. and -- and -- and -- and -- and others, anyone
15 who claimed to be their attorney-- and to exercise any and
16 all actions necessary regarding coverage for or against
17 the insurers.

18 Four days after this Court appointed Mr. Protopapas
19 as the Receiver, the -- in the Federal -- in -- in the
20 Middle District of North Carolina, the carriers filed a
21 declaratory judgement action also in front of Judge
22 Eagles. And this leads us to the four -- now five, if you
23 conclude -- include the faith action that was filed
24 yesterday -- five actions that are pending that relate to
25 the declaratory judgement.

1 In -- four days after the appointment in November,
2 2018, the carriers filed, as I said, a declaratory
3 judgement action against Covil in the North Carolina
4 District Court.

5 THE COURT: What are they asking be declared in that?

6 MR. ROBINSON: Your Honor, among many things, they
7 are asking for a declaration as to the interpretation of
8 policies that -- and -- and -- and -- and exposures and
9 coverages under those policies relating to claims against
10 Covil and the policies that are held by the carriers.

11 THE COURT: And this is an action against Covil?

12 MR. ROBINSON: Against Covil, that's correct.

13 THE COURT: All right. And has the Receiver been
14 substituted for Covil?

15 MR. ROBINSON: I believe the --

16 MS. SPITZ: No, Your Honor. The Receiver is not
17 named in that action.

18 THE COURT: Well ---

19 MS. SPITZ: That's actually an issue that's pending
20 before Judge Eagles presently.

21 THE COURT: Well, I mean, has -- has a motion been
22 made to add the Receiver or substitute the Receiver?

23 MS. SPITZ: No, Your Honor. We do have --

24 MR. RUGGERI: Your Honor, if I may, the motion was
25 made and denied.

1 THE COURT: What's that?

2 MR. RUGGERI: Judge Eagles denied the motion. Judge
3 Eagles did not -- did not permit the substitution and
4 require the naming of Mr. Protopapas as a party. Covil is
5 named through the Receiver and that's all Judge Eagles
6 ruled.

7 THE COURT: So let me get -- you -- that doesn't
8 quite make sense to me.

9 MS. SPITZ: Your Honor --

10 MR. RUGGERI: Had -- has ---

11 THE COURT: If Covil is named per the Receiver --
12 that's what I was asking is whether Covil had been -- all
13 right -- whether the Receiver is now there in a
14 representative capacity as I believe the Receiver would
15 probably have to be anywhere Covil is sued because it's
16 now representative -- receiver. And what you're telling
17 me is that the District Court refused to --

18 MR. RUGGERI: Would the Court like to see a copy of -
19 --

20 THE COURT: Yes.

21 MR. RUGGERI: --- the order that was entered, Your
22 Honor?

23 THE COURT: I would.

24 MR. RUGGERI: Yes.

25 MS. SPITZ: Your Honor, I believe I misspoke. Most

1 recently, when Judge Eagles issued an order to show cause
2 in that action, she did change the caption of the action
3 which now includes the Receiver.

4 THE COURT: Okay.

5 MR. ROBINSON: And -- and Judge, to that point, in
6 the first -- again, I said we have five actions. In the
7 first action in North Carolina, Judge Eagles, this week,
8 issued an order to show cause why the North Carolina
9 declaratory judgement action should not be transferred to
10 South Carolina to case No. 2 that I'm getting ready to
11 talk about.

12 THE COURT: All right.

13 MR. ROBINSON: That issue -- that order came out this
14 week. There were a number of motions pending and in that
15 order Judge Eagles had in the order a motion -- a rule to
16 show cause why the -- or the North Carolina pending action
17 should not be transferred to the South Carolina Court.

18 THE COURT: And what did she do about that?

19 MR. ROBINSON: That order just came out this week and
20 there's a briefing scheduled on it among other issues that
21 were before the Court.

22 THE COURT: So she's -- she's issued a rule --

23 MR. ROBINSON: To show cause why the North --

24 THE COURT: Okay.

25 MR. ROBINSON: -- Carolina case should not be

1 transferred ---

2 THE COURT: Should not be transferred to South
3 Carolina. That's pending in front of her.

4 MR. ROBINSON: That is pending in front -- and -- and
5 I believe No. 4 of her order that came out in the filings
6 this week.

7 MR. RUGGERI: And Your Honor, you have the order that
8 addresses that issue as well.

9 THE COURT: That --

10 MR. RUGGERI: It addresses both issues.

11 THE COURT: -- that's in this order?

12 MR. RUGGERI: Yes, ma'am.

13 THE COURT: Thanks, very much. And you're?

14 MR. RUGGERI: I -- I'm James Ruggeri, Your Honor.

15 THE COURT: From Sentry?

16 MR. RUGGERI: From Washington, D.C., on behalf of The
17 Hartford.

18 THE COURT: The Hartford. Great. Thank you, very
19 much.

20 All right. You may continue.

21 MR. ROBINSON: So, Your Honor, that's actually No. 1,
22 declaratory action No. 1 that's in the Middle District of
23 North Carolina. It happens to be the same court and judge
24 where the *Finch* verdict was -- was awarded against Covil.

25 Action No. 2, Your Honor -- well, shortly after your

1 appointment of the Receiver and about a week or two after
2 the -- again, Zurich filed the declaratory judgement
3 action four days after you appointed Mr. Protopapas
4 receiver and they filed it in North Carolina.

5 Mr. Protopapas, as the receiver, filed a declaratory
6 judgement action in Spartanburg County. It was removed
7 Federal court and is pending before Judge Hendricks --
8 Howe, Judge Howe -- or Hendricks, I guess, Judge
9 Hendricks. And that case --

10 THE COURT: It -- it's Bruce Howe Hendricks.

11 MR. ROBINSON: That's right.

12 THE COURT: That's what her name is.

13 MR. ROBINSON: Bruce --

14 THE COURT: Right.

15 MR. ROBINSON: Bruce Howe Hendrix. That case is
16 pending in the -- now Federal court. There was a motion
17 to remand that case. It was ---

18 THE COURT: And that was denied.

19 MR. ROBINSON: That one was denied.

20 THE COURT: So it's still pending in front of Judge
21 Hendricks.

22 MR. ROBINSON: That's correct, Your Honor. That is
23 also the case in which the ---

24 THE COURT: And that's Protopapas against the
25 insurance carriers.

1 MR. ROBINSON: That's correct. And that is also the
2 case in which the carriers, last week, late last week,
3 moved to enjoin you from having a status conference --

4 THE COURT: Right.

5 MR. ROBINSON: -- in the cases that we're about --
6 we're here today.

7 THE COURT: Right.

8 MR. ROBINSON: The order I handed you today was in --
9 Judge -- Judge Hendricks did expedite the briefing. Judge
10 Hendricks did not rule on the issue yesterday afternoon as
11 to whether you could have a hearing; however, Ezra
12 Gollogly, who you've mentioned today, attempted to remove
13 this hearing to Federal court, and as the Court has
14 already pointed out, that -- the -- the -- there's nothing
15 removed. They attempted to remove this hearing to the
16 Federal court --

17 THE COURT: Right, and that was denied.

18 MR. ROBINSON: That's right. And -- and that --
19 incidentally, while we're on that, in that email that was
20 sent out to you yesterday informing you that your order --
21 your status conference was stayed, it indicated that the
22 hearing had been already -- or I mean, I'm sorry, that the
23 removal had already taken place. We do have the filed
24 copy and -- and Mr. Smith will be going over this. That
25 -- that removal was filed this morning during the status

1 conference.

2 THE COURT: Uh-huh.

3 MR. ROBINSON: There is a affidavit of technical
4 difficulty in Richland County alleging that somehow they
5 weren't able to file it. In York County, it was filed
6 this morning around 10 or so.

7 So then we take you to the third case. This would be
8 declaratory judgement action No. 3. This is a case where
9 the Receiver had -- has filed a lawsuit against Wall,
10 Templeton and the carriers on the basis, among many, of
11 the alter ego theory that pretty much comes from your
12 order, Judge; that the carrier and attorneys were
13 operating through the alter ego of -- of Covil for a
14 period of time.

15 And then there is, included in that cause of action,
16 a malpractice claim against Wall, Templeton, in which Mr.
17 Hardee is the attorney of record on that. He is the only
18 attorney who's, incidentally, on the malpractice claim.
19 But he is the attorney of record for the Covil for the
20 malpractice claim, and that case is pending in front of
21 Judge Hendricks. It was -- it was removed from Richland
22 County, it is pending in front of Judge Hendricks.

23 A motion to remand has been filed, and I believe it
24 has now been fully briefed by all parties and is -- and
25 that is currently in front of Judge Hendricks.

1 So the case by the Receiver against Wall, Templeton,
2 under the alter ego theory, and the carriers, which also
3 includes a declaratory judgement action as to the
4 policies, is in front of Judge Hendricks with a motion to
5 remand pending.

6 And then finally, Judge -- well, not finally.
7 Actually, case No. 4, after the *Finch* verdict was
8 finalized by the Federal judge in North Carolina, the
9 plaintiffs in the *Finch* case came to Richland County and
10 recorded the judgement and attempted to execute on that
11 judgement and filed suit in Richland County for -- against
12 the carriers and against Covil and that also had a
13 declaratory judgement action.

14 Just by way of -- a little bit of background on that
15 case, the carriers had refused to bond that judgement, and
16 as I indicated, one of the carriers offered to post, I
17 think, \$250,000 which they claim is their limits.

18 And so the *Finch* case -- the plaintiffs in the *Finch*
19 have filed a suit in Richland County which was just,
20 again, removed by the carriers and is currently in the
21 process -- I think there's already been a motion to
22 remand, but it's being briefed as -- that -- that --
23 that's fairly recently.

24 THE COURT: And is that one also in the aegis of
25 Judge Hendricks?

1 MS. SPITZ: Yes, Your Honor.

2 MR. ROBINSON: Yes, Your Honor.

3 MR. BRANHAM: Your Honor, Trey Branham. I represent
4 the Finch's.

5 THE COURT: Right.

6 MR. BRANHAM: And so that motion to remand has been
7 briefed by us. The response to that motion to remand is
8 due on July 22, if I -- if I'm correct.

9 THE COURT REPORTER: Tell me your name again, sir.
10 I'm sorry.

11 MR. BRANHAM: I'm sorry. Trey Branham, B-r-a-n-h-a-
12 m.

13 MR. ROBINSON: And Judge, finally, in the fifth
14 action, if we can call it that, was the purported action
15 that was filed yesterday by USF&G, who has now -- filed,
16 in Richland County -- entered an appearance in Richland
17 County, in the *Hill/Taylor* -- the -- the five cases that
18 are the captions of today's case. That was the attempt by
19 USF&G, through their attorneys, to remove this status
20 conference to Federal court.

21 I'm not aware, and as of our lunch break, I do not
22 see on Pacer that the Federal court has accepted that or
23 assigned it any number.

24 THE COURT: Well, does it have a number in Richland
25 County? That's what I was first trying to ascertain. The

1 -- Mr. --

2 MR. ROBINSON: Ezra?

3 THE COURT: Golloughly or whatever. He referred to
4 it as "In Re Protopapas," but there isn't anything that
5 I'm aware of that is -- I'm not hearing anything called
6 "In Re Protopapas." I'm conducting a status conference on
7 all matters pertaining to Covil.

8 MR. ROBINSON: And -- and --

9 THE COURT: And so I -- I'm not aware that it has any
10 kind of a number. I don't know what kind of a number it
11 has in Federal court, but they're not removing a pending
12 case from Richland 'cause there is no pending case.

13 MR. ROBINSON: So Your Honor, what they have done is
14 they have filed in Richland County and in York County. In
15 the cases that are pending before this Court, the *Hill* ---

16 THE COURT: *Hill* and *Taylor* cases?

17 MR. ROBINSON: Right. They have filed, in that case,
18 their appearance. So they -- I guess, that in essence,
19 and that's a good question, Court -- Judge, I don't know
20 if they're attempting to remove ---

21 THE COURT: Well, if they're filing an appearance as
22 an intervenor or --

23 MR. ROBINSON: It's a very -- it's a -- I've never --
24 it's a special appearance without submitting to
25 jurisdiction for the purpose of getting a number to go

1 into Federal court.

2 (Courtroom laughter.)

3 MR. ROBINSON: I mean, that's what it is. So -- so
4 -- we're not -- you know, Judge, the four cases -- or the
5 five cases that are on the caption for the notice of this
6 status conference are also on this notice of removal.

7 THE COURT: Uh-huh.

8 MR. ROBINSON: So, you know, I don't know if they're
9 attempting to remove the -- the *Hill* and *Taylor* case to
10 Federal court. It -- it -- you know, it -- it's unclear,
11 and I don't know that the Federal court has accepted ---

12 THE COURT: Okay.

13 MR. ROBINSON: --- the filing yet.

14 THE COURT: Well, but at the present time -- I'm like
15 you, I looked on Pacer, too. I can't see where the
16 Federal court's have got anything on this.

17 So at the present time, the status is these cases
18 have not been removed 'cause they aren't removed until
19 they are properly filed in Federal court. So my thinking
20 would be that the *Hill* and *Taylor* cases are not removed.

21 MR. ROBINSON: Well -- and Judge, of course, as we
22 all know, the removal statute is only permitted by the
23 defendants; and USF&G, unless they've made themselves a
24 defendant, would ---

25 THE COURT: Would not have standing.

1 MR. ROBINSON: --- not have standing to remove the
2 case.

3 THE COURT: They're not a defendant in *Hill* and
4 *Taylor*.

5 MR. ROBINSON: That's correct.

6 THE COURT: Covil is.

7 MR. ROBINSON: Correct. That is correct.

8 MS. MCVEY: And I'm sorry to interrupt, Theile McVey.
9 T-h-e-i-l-e, McVey, M-c-V-e-y.

10 The other concern is not just *Hill* and *Taylor*, but
11 it's also *Howell* and *Smith* which are cases that are set
12 for trial in September. And that is a giant concern
13 because they appear to be just removing an order, but
14 they've attached my whole case.

15 MR. ROBINSON: And Judge, I know that you said
16 earlier you were not able to open the -- or open the
17 notice of removal?

18 THE COURT: I was not.

19 MR. ROBINSON: Do you -- we have a copy of the notice
20 of removal.

21 THE COURT: That would be helpful.

22 MR. ROBINSON: Well, we now have a filed copy of the
23 notice of removal.

24 (Brief pause.)

25 MR. ROBINSON: Judge, this is a --

1 (Brief pause.)

2 MR. ROBINSON: Judge, I can hand you this for now. I
3 think we have some other copies, but this is a copy of the
4 notice of removal that was filed this morning, at 10:12,
5 in York County.

6 THE COURT: All right.

7 (Mr. Robinson hands a document to the Court.)

8 MR. ROBINSON: And ---

9 THE COURT: This is a -- this is a document that
10 purports to be in *Roxanne Falls against CBS, Timothy Howe*
11 *against Air Liquid*, and *Charles Hopper and Rebecca Hopper*
12 *against Air Liquid*.

13 MR. ROBINSON: Yes.

14 THE COURT: And *Hill* and *Taylor*. So let me just get
15 straight for a minute. *Hill* and -- *Falls* is in where,
16 Spartanburg or York?

17 MS. MCVEY: York County. We call it the ---

18 THE COURT: York.

19 MS. MCVEY: --- *Smith* case, but the -- the Plaintiff
20 has substituted ---

21 THE COURT: Yeah. That's right. *Falls* was the PR
22 for *Smith*.

23 MS. MCVEY: Yes, ma'am.

24 THE COURT: All right. Then *Howe* is in York, right?

25 MS. MCVEY: Right.

1 THE COURT: *Hopper* is --

2 MS. MCVEY: Richland.

3 THE COURT: -- here.

4 MS. MCVEY: And it's set for trial in November, Your
5 Honor.

6 THE COURT: Right. And *Hill* is here and it's a
7 default.

8 MS. MCVEY: And -- and *Hill* and *Taylor* have both been
9 settled by the carriers for Covil, but the Receiver's
10 still in place, obviously, for other issues. But ---

11 THE COURT: But they're -- well -- and who settled
12 them?

13 (No response.)

14 THE COURT: The carriers?

15 MR. ZEVNIK: Your Honor, Paul Zevnik for the
16 Receiver.

17 THE COURT: Yes.

18 MS. ZEVNIK: Morgan, Lewis & Bockius, and thank you
19 for granting my *pro hac* motion this morning.

20 We don't know who paid what and that's one of the
21 reasons that we requested this status conference. The
22 Receiver does not have an accounting of who paid what for
23 what basis, whether it was under the operations coverage
24 part ---

25 THE COURT: Well, let me -- let me then stop you

1 because I know somebody that will know.

2 Ms. McVey, who settled the *Hill* and *Taylor* cases?

3 MS. MCVEY: I'm going to turn to Mr. Branham

4 THE COURT: Mr. Branham?

5 MR. BRANHAM: Your Honor, we had a mediation. There
6 were carriers present at the mediation. We did not
7 resolve it at the mediation. We resolved it subsequently.
8 The agreement -- the -- the -- the discussions were all --
9 always with the carriers. Didn't have any discussions
10 with anyone from Covil, and then that -- that agreement is
11 what resolved it and ---

12 THE COURT: And are those signed agreements?

13 MR. BROWN: Yes, Your Honor.

14 THE COURT: And who signed on behalf of Covil?

15 MR. BROWN: Don't know the answer.

16 MR. HARDEE: The -- the Receiver.

17 THE COURT: The Receiver?

18 MR. HARDEE: Yes, ma'am.

19 THE COURT: Okay.

20 THE COURT REPORTER: Excuse me. Mr....?

21 THE COURT: What was --

22 MR. HARDEE: Mark Hardee, H-a-r-d-e-e. I'm sorry.

23 THE COURT: So they were settled and the Covil --
24 signed off on them, right, through the Receiver.

25 MR. HARDEE: That's correct.

1 THE COURT: Who were the carriers?

2 MS. SPITZ: Your Honor, the carriers that paid were
3 Zurich, Sentry, and Travelers.

4 The point we were making is that we don't know how
5 those payments were allocated ---

6 THE COURT: I ---

7 MS. SPITZ: --- that the carriers were ---

8 THE COURT: I don't care about that. I'm just trying
9 to -- and I don't care about anything about the details of
10 that settlement. They're private unless the -- the
11 parties choose to reveal them, but I -- I don't reveal
12 them when I have anything to do with allocation issues.
13 And I wouldn't have anything to do with this because these
14 two were not tried. They were settled prior to trial. So
15 that's all I need is that there were carriers that are
16 involved in this whole thing who were involved in that and
17 they settled.

18 MS. SPITZ: Yes, Your Honor, and -- and just so the
19 Court is aware, the actual amounts of the settlement are
20 at issue. We have received the agreement with the
21 plaintiffs to discuss the amount. Our particular issue is
22 how those amounts are affecting Covil's policies. Are ---

23 THE COURT: Well, that's not ---

24 MS. SPITZ: --- those extra contractual?

25 THE COURT: Yeah. But that's not in front of me

1 right now. So I -- I don't need to go there at the
2 moment.

3 MS. SPITZ: Yes, Your Honor. Thank you.

4 THE COURT: Okay. I just was wanting to know which
5 carriers were involved. Now -- and the reason I wanted to
6 know is that USF&G -- who is not a carrier in those cases,
7 correct?

8 MS. SPITZ: Travelers is USF&G.

9 THE COURT: Oh, that's right. Okay. Well, then
10 Travelers settles this thing and then they also remove it
11 to Federal court?

12 MR. ROBINSON: That --

13 MS. SPITZ: Yes, Your Honor.

14 MR. ROBINSON: That's correct, Your Honor. And --
15 and -- and --

16 THE COURT: Is somebody here for Travelers?

17 UNKNOWN MALE: They said they weren't coming.

18 (The Court confers with law clerk.)

19 MR. ROBINSON: And -- and -- and Judge, as it relates
20 to the *Hill* and *Taylor* case, while they are settled, I --
21 I heard you -- I think I heard you say I don't have -- it
22 may not have anything to do with them after it's settled.
23 There are post-settlement motions that -- that we have.
24 Mr. Smith will be addressing one of those regarding the -
25 --

1 THE COURT: Well, I know. But I can't do that and
2 get the status of them at the same time.

3 (The Court and Mr. Robinson speak simultaneously.)

4 MR. ROBINSON: Right. I understand.

5 THE COURT: I'm saying --

6 MR. ROBINSON: But I just -- I'm just pointing that
7 out.

8 THE COURT: -- I'm not going ther right now.

9 MR. ROBINSON: Right. I just point that out now.
10 You're -- we're going to be hearing about some of that
11 later on --

12 THE COURT: Okay.

13 MR. ROBINSON: -- from Mr. Smith.

14 THE COURT: All right.

15 MR. ROBINSON: Also since I handed you the York
16 County filing, I've been handed the Richland County
17 filing. I'll hand -- be happy to hand it to the Court.
18 This is --

19 THE COURT: Good.

20 MR. ROBINSON: -- a notice of removal in Richland.

21 THE COURT: Has -- has this been filed?

22 MR. ROBINSON: It has a stamp on it that you can see.
23 There was -- there's an affidavit of technical
24 difficulties or something. But it -- it does have caption
25 on it and it does have Ms. McBride's stamp on the front of

1 it. So it does appear it was filed this morning.

2 (Mr. Robinson hands a document to the Court.)

3 THE COURT: All right.

4 MR. ROBINSON: So Your Honor, those are the -- one,
5 two, three, four plus this mystery case that might be in
6 Federal court.

7 THE COURT: Which is this removal --

8 MR. ROBINSON: Which is this removal action.

9 THE COURT: -- action. All right.

10 MR. ROBINSON: That -- that is the landscape leading
11 up to our motion. Ms. Spitz is going to talk a little bit
12 about the cases that are currently pending and scheduled
13 for trial; but before she does that, I want to just touch
14 on the Court's jurisdiction relating to today's hearing if
15 I may.

16 THE COURT: Well, I don't know if you need to because
17 at the present time, I'm not enjoined from conducting this
18 hearing; and therefore, I am going to conduct and anything
19 else that we need to have discussed, Mr. Smith is going to
20 discuss as I understand it. Am I right about that?

21 MR. ROBINSON: He's going to be discussing some of
22 it. I -- I'd just point out that we filed with the Court
23 a memorandum regarding jurisdiction that we filed with you
24 and -- and sent you a copy of the memorandum regarding
25 jurisdiction.

1 And Your Honor, of course, it is our position that
2 you have exclusive jurisdiction over the Receiver. You
3 are the receiver Court and your appointment of the
4 Receiver pre-dated any of the five declaratory judgement
5 actions that I just mentioned.

6 And so we believe the law is very clear that in going
7 back to the Supreme Court in 1900, which was noted in our
8 memorandum, that one -- you obtained jurisdiction over all
9 of the property that the Receiver had at that point. And
10 the Receiver in this case today is requesting that you do
11 -- or that you conduct a status conference on five -- four
12 items -- and fifth and sixth items, which would be the
13 rule to show cause against the carriers and the rule to
14 show cause against Wall, Templeton.

15 THE COURT: Wall, Templeton.

16 MR. ROBINSON: Right. And as it relates to the first
17 four items, the agenda notes who's going to be talking
18 about each item.

19 The first item, of course, is the fact that the
20 Receiver's attempting to fulfill his duty to apprise this
21 receivership Court of what his assets are, and of course,
22 his assets are the policies. So in fulfilling his duty to
23 this Court, he is attempting to tell the Court what his
24 assets are and the carriers have made it impossible for
25 him to provide that information. And we hope that an

1 opportunity will arise for the carriers to tell this
2 receiver Court the answers to his questions regarding what
3 those assets are.

4 He has the policies, but it is the -- and he is the
5 insured incidentally, and it is the carriers who insure
6 him who have the information about how much -- how much
7 does he have to pay on cases that are pending, how much
8 has been paid prior to his appointment, who made the
9 decisions regarding that payment, and how those payments
10 were allocated.

11 There's been a lot of talk about whether you have
12 jurisdiction right now as to a declaratory judgement on
13 what the coverages are, and there's a lot of flurry about
14 that. But your response to that is consistent with our
15 request to you.

16 We want a status. The Receiver needs to know what he
17 has to move forward in this -- in this litigation. We're
18 asking the carriers to tell us and ask this Court to -- to
19 ask them how much is there, how much is left on these
20 policies; and who made the decisions to settle these cases
21 prior to the receivership and what policies, if any, have
22 been exhausted and how were they exhausted and what were
23 they and -- and what were they exhausted from?

24 The *Hill* and *Taylor* case are very relevant. If they
25 take the position that \$3,000,000 has been exhausted out

1 of a policy, the Receiver just needs to know what does
2 that leave me? If -- if you're taking the 3,000,000 from
3 my policy, what does it leave me?

4 There is a separate declaratory judgement action. We
5 believe that it will be remanded to this Court. It's
6 under advisement. We believe there's a cause of action
7 from the alter eager -- alter ego theory, based on your
8 un-appealed order, that the carriers and the attorney were
9 acting as Covil. That's a order -- that's an -- that's an
10 un-appealed order. That -- that didn't go up. It's an
11 order of the Court never appealed.

12 And so I think what we're going to move to now is --
13 I think we'll move to Mr. Zevnik to talk about the
14 policies. He's going -- and -- and Ms. Patterson.
15 They're going to talk about the coverage, which goes to
16 our point of requesting accounting so that our receiver,
17 Mr. Protopapas, knows what his assets are.

18 THE COURT: All right. Mr. Robinson, I've got two
19 questions just --

20 MR. ROBINSON: Yes, sir (sic).

21 THE COURT: -- before we go further. First is, I'm
22 going back to the -- the point in time when Mr. White and
23 his firm were no longer counsel and Wall and Templeton
24 were substituted for them and that took place when?

25 MR. ROBINSON: So Judge, Wall, Templeton began

1 representing Covil on or around April, 2018 --

2 THE COURT: All right.

3 MR. ROBINSON: Based on the information that they
4 provided us -- provided to the Receiver thus far.

5 THE COURT: And when did I strike Covil's pleadings?

6 MR. ROBINSON: So you struck the pleadings in *Howe*
7 and *Smith* --

8 (Brief pause.)

9 MR. ROBINSON: -- March of 2018 and you held defaults
10 in *Hill* and *Taylor* in November.

11 And since the Court -- since you brought up this time
12 line, in November of 2018, you issued -- there was --
13 there was a motion in front of you to -- for relief from
14 default. And at that time, Wall, Templeton was taking the
15 position -- and the Court cites it in it's order to deny
16 the default -- Wall, Templeton took the position that they
17 were not representing Covil in November of 2018.

18 Now, I will represent to this Court that information
19 had been -- since provided to the carrier that Wall,
20 Templeton -- what -- they produced bills showing that they
21 were doing work on behalf of Covil in Wall -- in *Hill* and
22 *Taylor* prior, to November, 2018.

23 THE COURT: Some of that was presented at the
24 hearings I had. So I'm -- I'm aware that.

25 MR. ROBINSON: Well, it -- they -- they represented

1 to the Court they were not representing ---

2 THE COURT: They did do that. And at that same time,
3 there were certain email chains that were presented to the
4 Court --

5 MR. ROBINSON: Right

6 THE COURT: -- where they go back and forth on the
7 subject of what -- why they weren't answering because the
8 way all that got started, Ms. McVey inquired of them ---

9 MR. ROBINSON: Asked them to answer.

10 THE COURT: --- telling them your -- your answers are
11 overdue, when can I expect your answer? She was not going
12 to call time on them. And they wouldn't respond to that.
13 And they're then -- we then got some internal
14 correspondence indicating that that was a conscious
15 decision that was made on their part.

16 And then they took the position, well, they weren't
17 really representing Covil. I -- I -- I recall all that.
18 And the -- the -- and then in November I put them in
19 default, correct?

20 MR. ROBINSON: Correct, Your Honor. There was a --
21 there -- there was a motion -- there was a motion to -- on
22 -- on March 20, 2019, there was a motion to set aside
23 default and that motion was denied in November, at which
24 time you appointed the Receiver.

25 THE COURT: That's right. Okay. All right. I got

1 it now. All right.

2 MR. ROBINSON: And actually, before Mr. Zelnik (sic)
3 comes up, I think Ms. Spitz wanted to just provide a brief
4 re-cap on the cases that were pending and getting ready to
5 come up --

6 THE COURT: All right.

7 MR. ROBINSON: -- within the next few months.

8 THE COURT: All right. Ms. Jescelyn Smith -- Spence
9 -- Spitz?

10 MS. SPITZ: Spitz, Your Honor, S-p-i-t-z.

11 THE COURT: I got it.

12 MS. SPITZ: Your Honor, and just briefly because I
13 know it's already been mentioned this morning, there are a
14 number of underlying asbestos cases going forward against
15 Covil which Your Honor is very familiar with. Those
16 include the *Smith* and *Howe* cases potentially in September,
17 assuming they come down from the Court of Appeals, and
18 also the *Hopper* case in November.

19 Your Honor, at present, Covil is unable to do
20 anything about these cases. Our hands are tied because we
21 need an accounting of the insurance coverage. The
22 carriers are taking various positions in regards to the
23 duty to defend and the duty to indemnify, and I have a
24 couple of examples of that, Your Honor.

25 First, USF&G, or Travelers, is claiming they owe no

1 further indemnity to Covil; however, they are continuing
2 to -- to provide, quote, "their share of defense costs."

3 Sentry is taking more of a case-by-case approach. So
4 in regards to the *Howe* case that's coming up, Sentry is
5 not participating in the defense of Covil nor are they
6 agreeing to indemnify Covil. There are other cases Sentry
7 has stated they will provide a defense, but of course,
8 that's in their reservation of rights.

9 Zurich, we're not real sure what their position is,
10 to be honest, Your Honor. We'd like to know what that is.
11 As Mr. Robinson mentioned this morning, we know their
12 position related to *Finch* at least, and that's they claim
13 their limits are \$250,000.

14 In regards to First State, or Hartford, they have
15 declined to defend or indemnify Covil and they haven't
16 paid anything in regards to a Covil case.

17 And lastly, Ranger, or TIG, who I believe has a
18 representative here today, they are not participating in
19 the defense; but my understanding is they will consider
20 claims with proof of exhaustion of the primary coverage in
21 front of them.

22 Your Honor, at this time the Receiver is very
23 concerned that we could end up in another *Finch* scenario,
24 you know, with a verdict over \$30,000,000. We'd like the
25 ability to be able to do something with these cases that

1 are supposedly approaching towards trial. So that ---

2 THE COURT: Go back to the *Finch* case for a moment.
3 What was -- did -- tell me again what happened with *Finch*.
4 Was it defended?

5 MS. SPITZ: Your Honor, that case was defended by
6 Wall, Templeton. In particular, William Silverman tried
7 that case. I believe Mark Wall attended the trial, but it
8 was handled by Mr. Silverman.

9 That case is currently on appeal; however, as was
10 mentioned earlier, the judgement was entered by the North
11 Carolina Middle District Court for an amount in excess of
12 \$30,000,000 and the interest continues to ---

13 THE COURT: And this was tried by a jury?

14 MS. SPITZ: Yes, Your Honor. And we do have some
15 questions ---

16 THE COURT: Any other -- any other Defendants?

17 MS. SPITZ: No, Your Honor.

18 THE COURT: All right.

19 MS. SPITZ: And we do have some questions about how
20 *Finch* was handled. We believe there's evidence that shows
21 there were opportunities to settle, and of course, those
22 demands or negotiations were not conveyed to an
23 independent Covil in order to be involved in that decision
24 making process.

25 THE COURT: But all that's why it's firmly in the

1 hands of North Carolina -- Middle District of North
2 Carolina and the Fourth Circuit. It's on appeal, right?

3 MS. SPITZ: Yes, Your Honor. And there is the other
4 case involving the Finch's that was brought in South
5 Carolina State Court, which has been removed to the
6 District Court, in which the Finch's also make allegations
7 under the alter ego theory involving the carriers and
8 Wall, Templeton.

9 Your Honor, we'd like to move forward with explaining
10 some of the coverage issues to the Court just to inform
11 Your Honor what's going on. We have Mr. Zevnik here
12 prepared to do that.

13 We'd also like to get an accounting from the
14 insurance carriers. Like I said, I believe there is one
15 representative present at least. I don't know if there's
16 any other representative present in which could answer
17 questions about that, but we would like the opportunity to
18 ask those questions as well.

19 THE COURT: Well, all that depends on whether or not
20 I have jurisdiction to do all of this. And as I
21 understand it, Mr. Smith is going to cover that, right?

22 MS. SPITZ: Yes, Your Honor.

23 THE COURT: Very good.

24 MR. ZEVNIK: Thank you, Your Honor. Paul Zevink from
25 Morgan, Lewis. That's Z-e-v-n-i-k. Thank you again for

1 granting my *pro hac*.

2 What I'd like to do, Your Honor -- and I'm very
3 conscious of staying within the parameters of this status
4 conference --

5 THE COURT: Mr. Zevnik --

6 MR. ZEVRNIK: -- is -- is to talk ---

7 THE COURT: -- now, are you going to start on the
8 accounting of Covil's insurance coverage?

9 MR. ZEVRNIK: Yes, I am, Your Honor. And --

10 THE COURT: Well, we're not going to hear about
11 whether -- whether I've got authority over the indemnity.

12 MS. SPITZ: Your Honor, we'll go ahead and address
13 that issue.

14 THE COURT: Y'all going to leave Mr. Smith like a
15 potted plant?

16 (Courtroom laughter and several attorneys speak
17 simultaneously.)

18 MR. ROBINSON: Judge, a moment ago I in -- indicated
19 about jurisdiction and you -- you had said that you had
20 jurisdiction to move forward with the status conference.
21 I -- I misinterpreted that -- that you -- that you -- you
22 were stating a general jurisdiction ---

23 (The Court and Mr. Robinson speak simultaneously.)

24 THE COURT: But -- well, you ---

25 MR. ROBINSON: --- as to everything ---

1 THE COURT: --- you talking about a status
2 conference. What ---

3 MR. ROBINSON: I understand that.

4 THE COURT: -- what this is all geared towards is
5 asking me to do something about these insure -- these
6 carriers so that you can move forward in the trial of
7 these cases, mainly to have these carriers disclose what
8 their coverages are and you're asking me to do that today;
9 are you not?

10 MR. ROBINSON: That's correct, Your Honor. And so --

11 THE COURT: So all I'm saying is, as a predicate to
12 that, are you going to give me some projection about my
13 authority to do that?

14 MR. ROBINSON: Yes, Your Honor. So as I indicated,
15 we filed a memorandum regarding your jurisdiction. The
16 carriers, nor any other party, has filed with this Court
17 anything regarding your jurisdiction.

18 THE COURT: I agree with that.

19 MR. ROBINSON: However --

20 THE COURT: I got memorandums of you discussing
21 jurisdiction. None of these carriers ever appealed the
22 appointment of a receiver. The receivership is in
23 existence. I modified the order once, you filed something
24 that indicates your contingency about the Court's
25 authority to direct the insurers to disclose and your

1 authority to direct -- and my authority to direct Wall and
2 Templeton to disclose to its client, Covil, it's filings.

3 MR. ROBINSON: That's correct, Your Honor.

4 THE COURT: And I have not received anything from
5 anybody, other than y'all, on that subject as I understand
6 it.

7 MR. ROBINSON: That's correct, Your Honor.

8 THE COURT: Now, however, there -- here's no question
9 about the jurisdiction of a -- of a circuit court judge
10 that appoints a receiver to receive reports and direct the
11 activities of the Receiver and to direct the activities of
12 those who hold assets for the entity in receivership. I
13 -- I -- I don't have any trouble about all that.

14 What I want to understand is what you contend is my
15 jurisdiction in the light of the fact that lawsuits,
16 several of which are brought by you against the carrier
17 seeking this very same information, are now pending in the
18 North Carolina Middle District Court and in the United
19 States District Court in the district of South Carolina.

20 And those lawsuits ask also -- they -- they make some
21 contentions with regard to wrongdoing, but the -- as a
22 predicate to all that, they ask for disclosure,
23 information about coverage and assets and this kind of
24 thing. What authority do I have in the light of those
25 matters not having been sent back to me, and in one case,

1 realigned and retained by the U.S. District Court?

2 MR. ROBINSON: So, Judge, as you correctly pointed
3 out, you are the receiver Court and you have jurisdiction
4 over the property the rest -- the -- the policies. That
5 is the -- that is the property of the Receiver and you
6 have exclusive jurisdiction over it. State and Federal
7 law confirm that the appointing Court, the Federal Court
8 appointing it and -- and -- and who obtains jurisdiction
9 over the property keeps it, and so the property is yours.

10 As it relates to your jurisdiction and the carriers,
11 we have -- we are the only, as I indicated, party who has
12 filed a brief. We also sent to the Court our response to
13 the motion to enjoin you from having your status
14 conference, our response that was sent to Judge Hendricks.
15 That ---

16 THE COURT: Yes, I have all that.

17 MR. ROBINSON: --- that response also addresses your
18 jurisdiction over the property and your ability to act on
19 that property.

20 I'll go -- start with a very simple jurisdictional
21 question that we can address what your jurisdiction is to
22 inquire of the carriers.

23 THE COURT: Exactly. That's the ---

24 MR. ROBINSON: This caption ---

25 THE COURT: -- the -- that's the main thing that

1 you're asking for today. You're not even asking for me to
2 assume control of the assets and direct the assets in any
3 particular way. You are simply asking for me to direct
4 that the carriers disclose the amount.

5 Let's put aside the Federal litigation for a moment.
6 What authority do I have otherwise to direct those
7 carriers with respect to Covil?

8 MR. ROBINSON: Your Honor, you ordered, pursuant to
9 the Rules of ADR, South Carolina Rules of ADR, you ordered
10 the carriers to attend the mediation in *Hill* and *Taylor*.
11 And ---

12 THE COURT: Right. No question about that.

13 MR. ROBINSON: And you have the authority, under our
14 rules, to order them to do that, the carry -- to attend
15 that mediation.

16 The carriers did attend the mediation pursuant to
17 your order and pursuant to the ADR Rules. The carriers
18 insure a South Carolina system, and as part of that, they
19 submitted themselves to being required to send a
20 representative to the mediation which they did.

21 Pursuant to your order of mediation, the carriers
22 entered into a mediation agreement. Subsequent to -- and
23 in that mediation agreement -- Mr. Smith is going to touch
24 base on this 'cause it's going to the rule to show cause
25 and I'm only going to talk about it as -- in the context

1 of jurisdiction.

2 Pursuant to that mediation agreement and pursuant to
3 the ADR rule, the carriers agree and are required, under
4 your order and under the ADR Rule and their agreement, not
5 to disclose information protected by privilege of
6 mediation, confidential, privileged mediation material.

7 The day before -- and -- and -- and as Mr. -- Mr.
8 Branham has already indicated -- or Mr. Grady Edwards has
9 already indicated, not all of the cases settled. In fact,
10 *Hill* and *Taylor* did not settle at mediation and the
11 negotiations continued for a period of time.

12 On April 18, the Receiver, through his attorney,
13 emailed the carriers with a big headline, "Privileged
14 Communication of Mediation, Absolute Privilege." Emailed
15 the carriers with a list of topics that they were
16 discussing, including the *Hill* and *Taylor* mediation,
17 things that they were discussing for the purpose of
18 mediation in an email. It was clearly marked, the
19 carriers did not respond, "We don't think this is
20 protected."

21 The next day, the very next day, *Hill* and *Taylor*
22 settled. The day after that communication *Hill* and *Taylor*
23 settled.

24 Subsequently and after the action had -- our Wall,
25 Templeton action had been removed to Federal court, the

1 carriers emailed counsel for the Receiver requesting
2 permission to file what they termed as a "privileged
3 mediation communication" with the Court. Counsel for the
4 Receiver responded, "You do not have permission to file
5 it. You do not have permission to file it." They filed
6 it, the -- that day or the very next day.

7 You have jurisdiction over all the carriers who
8 attended that mediation. They've all signed the mediation
9 agreement and you have the jurisdiction to bring them in
10 here to discuss with them the policies as it relates to
11 those -- specifically those -- the *Hill* and *Taylor* -- and
12 -- and again, they paid money. We're -- we're -- they --
13 they have submitted themselves to your jurisdiction by
14 virtue of their violation of your order, the rules, and
15 mediation agreement.

16 That's a simple way to get to jurisdiction outside of
17 them -- as to the *Hill* and *Taylor* case and the other cases
18 in which you ordered mediation.

19 MS. MCVEY: And you ---

20 MR. ROBINSON: You can require the carriers to
21 provide information.

22 MS. MCVEY: And Your Honor, just briefly, as a
23 general asbestos judge, the plaintiffs in any underlying
24 asbestos case are entitled to know the insurance coverage
25 for each case. And in fact, one of the reasons that you

1 struck their answer, Covil's answer in *Howe* and *Smith* is
2 because they refused to provide that information to us.
3 We have it in -- in discovery as well as in our 30(b)(6)
4 notices.

5 So beyond just the authority of the Receiver, I think
6 they have to provide it in any underlying case as well.
7 And you have jurisdiction, obviously, over the asbestos
8 docket.

9 MR. ROBINSON: And under the ADR Rules, Your Honor,
10 they're required to come with full authority. And by
11 definition ---

12 THE COURT: And they'd have ---

13 MR. ROBINSON: --- they have to determine what that
14 --

15 THE COURT: Authority is.

16 MR. ROBINSON: --- authority is, which they won't
17 tell anybody.

18 So you have an order related to that. We have a
19 motion -- a post-trial motion regarding their violation of
20 your order. And so as -- as it relates to questioning
21 them, you certainly would have the authority and the
22 jurisdiction to question them arising out of that order
23 which they attended the mediation pursuant to your order,
24 they signed the mediation agreement. We have a copy of
25 the signed mediation agreement. In fact, I think it may

1 have been -- if it hasn't been filed with the Court, we
2 have a copy of it.

3 And then there's the communication after that
4 requesting permission. They -- they knew it was
5 privileged 'cause they asked if they -- can -- do we have
6 permission to disclose this and we said "no."

7 And they -- they filed it, incidentally, in their
8 motion to dismiss the Federal court case. I may have mis-
9 spoke, but it was in regards to their motion to remove it.
10 It's in their motion to dismiss the Federal court case
11 involving Wall, Templeton.

12 That's a straight path to -- to doing what we ask you
13 to do here today.

14 THE COURT: All right.

15 MR. ROBINSON: There's a crooked path I'm happy to
16 talk about as well and that -- and that relates more to
17 our memo, and it arises from your jurisdiction relating to
18 your -- your jurisdiction over the policies.

19 In going back -- and again, I think we've cited the
20 Supreme Court, in 1900, established that the receiver
21 Court has exclusive jurisdiction over the -- the policies.
22 We take the position that the only way for the Receiver to
23 act on those policies is to have an accounting of what
24 they are.

25 And so we're asking you, in a status conference, to

1 ask them what -- what -- what -- what does Mr. Protopapas
2 have available next month in the trial that's coming up?
3 There will be court-ordered mediation, presumably, in all
4 of those cases, so this issue is going to continue to
5 arise and they're going to have to send a representative
6 to these mediation's and so this is a recurring issue.
7 You -- there may be another order from you ordering them
8 to mediate if they refuse to do so.

9 So you certainly have the ability, as the receiver
10 Court, to determine the amounts available on the policy,
11 how much has been exhausted, who authorized the exhaustion
12 of those policies.

13 As it relates to *Hill* and *Taylor*, you -- you
14 certainly have the ability to question them about their
15 actions in the *Hill* and *Taylor* settlement.

16 THE COURT: All right.

17 MS. SPITZ: Your Honor, I would just submit to this
18 Court that when Your Honor appointed Mr. Protopapas as
19 receiver, at that point in time this Court took into
20 custody the insurance policies. So this Court is actually
21 --

22 THE COURT: Actually a custodial ---

23 MS. SPITZ: Yes, Your Honor. So this Court is
24 actually the first Court to even exercise jurisdiction in
25 regards to the insurance policies.

1 MR. ROBINSON: Any other questions regarding the
2 jurisdiction, Your Honor?

3 THE COURT: I think I've got a handle on what you're
4 talking about there, and I guess I'm going to hear now
5 from Mr. Zevnik with respect to the insurance coverage.

6 MS. SPITZ: Yes, Your Honor. Thank you.

7 THE COURT: All right. Mr. Zevnik?

8 MR. ZEVNIK: Yes, Your Honor. Thank you so much and
9 may it please the Court. What I'd like to do is -- is
10 explain the type of information that is so essential for
11 us, meaning the representatives of the Receiver and this
12 Court in order to move forward with these cases. This is
13 a more complicated matter than simply saying, "Well, what
14 are the limits?" This is an important distinction here.

15 Covil was principally an installer of asbestos
16 containing and non-asbestos containing materials. But it
17 was an installer. It conducted operations on site at
18 various locations, and claimants have alleged that during
19 the time that Covil was there installing products, or
20 disturbing asbestos containing materials, they were
21 exposed to those materials and they got mesothelioma and
22 other diseases because of that. That is the basic -- we
23 heard about that in -- in cases earlier this morning.
24 That's a typical situation.

25 When an installer is involved in the disturbance or

1 installation of materials and somebody who is there at
2 that time is exposed to asbestos, that is an operations
3 claim, not a products or a completed operations claim.
4 And that is a huge distinction and it's an important and
5 critical distinction in this Court for every claimant who
6 has a claim against Covil and for every insurance company
7 that issued policies to Covil because for an operations
8 coverage part, there is no limit to the amount of
9 coverage. The limits are expressed solely on a per
10 occurrence basis with no aggregate limit and that is the
11 nub of what is going on here.

12 Covil has operations coverage from 1964 until 1985,
13 and the operations limits is 46.9 million dollars per
14 occurrence, each and every occurrence with no limit to the
15 number of occurrences.

16 Now, South Carolina law has not decided the issue of
17 asbestos coverage for operations claims, and South
18 Carolina law has not decided the issue of what constitutes
19 an occurrence for purposes of these policies. Is it each
20 claimant? Is it the job site? Those are issues that are
21 going to be critical in any determination of what these
22 limits are and available for each and every case.

23 There is no South Carolina law on this issue. There
24 is a Fourth Circuit decision, *Wallace and Gale* -- 385 F
25 3rd 820 -- and that is why every time that there's

1 anything that goes on in South Carolina, the insurance
2 companies are desperate to remove the case to a Federal
3 court.

4 But Your Honor, I think that the issue for our
5 purposes is terribly important. We need to know how these
6 insurance companies have treated claims in the past,
7 whether they are operations or treated as products and
8 completed operations claims where there is an aggregate
9 limit of liability and that's a huge difference.

10 For this separate coverage part, the separate
11 products hazard, it relates not to the installation
12 issues, but the sale of products and completed operations
13 being after an installation is complete and someone claims
14 exposure. There is an aggregate limit of liability, at
15 least for the policies where we have the actual paper.
16 There's a lot of missing evidence, a lot of missing paper
17 here. And there is an aggregate limit, but Your Honor --

18 THE COURT: And what is that?

19 MR. ZEVNIK: -- here's the issue. Before the
20 Receiver was appointed, between 1991 and November 2 of
21 2018, the insurance companies -- on their own, no
22 consultation and no supervision and no outside counsel, no
23 outside advice -- determined whether or not a claim was an
24 operations claim or a products and completed operations
25 claim.

1 Covil and the Receiver had never seen any of the
2 records relating to those determinations, they had no idea
3 whether those determinations were correct, and my
4 suspicion is that without any supervision or instruction
5 from this Court or any other person acting on behalf of
6 Covil, that the insurance companies, because it served
7 their purposes, allocated all those losses to the
8 aggregated products and completed operations limits.

9 I think that's the case, but I don't know. We don't
10 know, the Receiver doesn't know. That's the sort of
11 information that we're hamstrung in proceeding with cases
12 that are pending before this and other Courts in South
13 Carolina because we have no idea what was done in the past
14 before the Receiver was involved, whether that was
15 correct, whether it should be challenged, etcetera.
16 That's a very important issue here Your Honor.

17 And it's something that, frankly, I have been working
18 with the Receiver now since November. I have never seen a
19 loss run from any insurance company for Covil. I have
20 never seen any analysis or any discussion of any
21 allocation of loss to any limit of liability prior to the
22 appointment of the Receiver.

23 And in fact, I've never seen one after the
24 appointment of the Receiver in my -- in our engagement,
25 with one exception for one case and one insurer, and that

1 was TIG. We do know that. We consulted with them. They
2 paid a certain amount towards one settlement and we agreed
3 that that would not be held against them in any future
4 proceedings, that they would get credit for it.

5 But other than that, the Receiver has absolutely no
6 clue as to whether an amount was paid in -- in excess of
7 the limits, which is an important thing for us to know;
8 whether an amount was paid for the operations limits,
9 which is important for us to know, because again, that's
10 unlimited coverage and that's critical for how these cases
11 are handled now and in the future.

12 As -- as I said, there's -- there are several issues
13 that are not decided under South Carolina law. One is, is
14 operations coverage part issue, the other is how many
15 occurrences there are, whether it's the operations at the
16 job site, etcetera.

17 There's also the issue of how a policy is triggered
18 for coverage in South Carolina. That has not been
19 resolved by a case in South Carolina.

20 These are all issues that make it very important for
21 us to know how did the insurance companies treat those
22 claims prior to the involvement of the Receiver and, in
23 fact, how did the insurance companies treat those claims
24 for trigger of coverage purposes after the Receiver was
25 appointed? We don't know those questions either.

1 And that's why we've asked this Court for an
2 accounting, ot so that we can interfere with other
3 litigation, wherever that may be, but more importantly so
4 that we can know how we can operate on a daily basis and
5 satisfy this Court, satisfy our responsibilities, and try
6 to deal, as counsel has said before, with the cases that
7 are pending in this Court and the demands that are made.

8 I'd like to address two issues quick which goes back
9 to the jurisdiction discussion that we had before. And
10 again, this is important as well.

11 For *Hill* and *Taylor* we don't know where the
12 \$3,000,000 apiece was, quote, "tagged" or allocated to
13 limits.

14 THE COURT: We know the companies, but we don't know
15 anything more than that, right?

16 MR. ZEVNIK: That -- that is correct, Your Honor. We
17 do know that these insurers and these policies were --
18 were involved in -- were involved in the decisions or
19 informed about the defaults in *Hill* and *Taylor*, and -- and
20 we know that they were involved in some fashion in the
21 mediation process.

22 And -- and Your Honor, that is terribly important
23 because after the settlements in *Hill* and *Taylor*, USF&G,
24 which is not here today -- or Travelers -- declared
25 unilaterally that its policies were exhausted and it will

1 not participate in any further settlements or
2 contributions towards any further claims.

3 I believe that Travelers continues to, quote,
4 "participate in the defense," but I believe, at least it's
5 my understanding from the correspondence that we have
6 received, that as a result of the settlements that were
7 made in *Hill* and *Taylor*, USF&G or Travelers has
8 unilaterally declared that it has no further obligation
9 for any pending or future Covil suit.

10 Now, there was discussion earlier today about why
11 that is material. It certainly is material in light of
12 the proceeding that Your Honor has already conducted where
13 defaults were entered, even though in one case there was a
14 complete defense under the Worker's Comp part.

15 That's something we'd like to inquire into, meaning,
16 how did the insurers allocate that loss or the payments
17 that were made? It's relevant to the ongoing proceedings.

18 I don't want to get into the substantive discussions
19 of -- of coverage issues that may be before the Courts,
20 but Your Honor, that in a nutshell is the type of
21 information that the Receiver is looking for.

22 And again, it's not the simple question of, "Oh, yes.
23 What do you contend are the limits?" It's a far more
24 important inquiry into how those cases were treated when
25 Covil was basically the alter ego of the controlling

1 insurance.

2 THE COURT: Well, when you say that, we got two --
3 two cases where there's a very specific question. Each of
4 the cases was settled for \$3,000,000. That's *Hill* and
5 *Taylor*.

6 MR. ZEVNIK: Right.

7 THE COURT: In each case the insurance companies were
8 Zurich, Sentry, and Travelers/USF&G, right?

9 MR. ZEVNIK: Yes.

10 THE COURT: All right. And specifically, what you
11 want to know is ...

12 MR. ZEVNIK: Who paid -- who paid what among the
13 insurers, number one. Number two, was any amount used to
14 impair or exhaust a limit of liability. Number three, if
15 an amount was in excess of what you contend were already
16 exhausted limits, how much was that? And on what basis,
17 that's number four, did you agree to settle and -- for an
18 amount in excess of the policy limits or outside of the
19 policy limits, if those are ---

20 THE COURT: I mean --

21 MR. ZEVNIK: --- in fact, the limits ---

22 THE COURT: -- that -- those are such meandering
23 questions.

24 First of all, what you want to know is what they have
25 available by way of unlimited coverage or coverage against

1 which other settlements have been allocated and therefore
2 a limit exists or not. And if they have exhausted their
3 limits, are they still paying? And if so, how does that
4 work and out of what corner does that come; is that right?

5 MR. ZEVNIK: Yes, Your Honor. And how they treat the
6 claims and what basis they had for trying to treat the
7 claim as a products completed operations claim when, in
8 fact, it was not.

9 THE COURT: All right. Okay.

10 MR. ZEVNIK: I think that -- Your Honor, that,
11 without getting into the substance of the coverage issues,
12 those are the questions and those are the proceedings that
13 the Receiver would like to start down that path in terms
14 of trying to be able to handle the cases that are pending
15 before this Court from a coverage perspective.

16 THE COURT: All right. Now, where do you want to go
17 from there? Mr. Hardee?

18 MR. HARDEE: I -- I think I'm next, Your Honor.

19 THE COURT: You're -- where are you going? You going
20 to -- rule --

21 MR. HARDEE: Your Honor --

22 THE COURT: -- rule to show cause against Wall and
23 Templeton?

24 MR. HARDEE: Yes, ma'am. And it -- it goes back to
25 your order clarifying the Receiver's responsibilities and

1 --

2 THE COURT: Let me -- let me stop you for a minute
3 here and make sure that you cover an issue I'm about to
4 project to you. You know, for a long time the Receiver
5 has been sending me messages, "We need to have some kind
6 of status conference or we need to talk about where we're
7 going because the carrier's not cooperating with us," and
8 so forth.

9 And my response has always been, "I've got to have
10 some kind of pleading in front of me that asks for things
11 rather than just kind of a communication." You know, we
12 want you to help us out kinda thing. That's what this
13 proceeding is all about, trying to clarify what all I need
14 to be about in exercising some responsibility over the
15 Receiver's activity.

16 MR. HARDEE: Sure.

17 THE COURT: All right. You are now going to pursue a
18 rule to show cause against Wall and Templeton. The
19 contention is being made by your opponents, to the extent
20 they have said anything about this -- it hasn't been by
21 conventional means, but mostly through what can be
22 inferred from their filings in other courts -- is that
23 this rule to show cause is not ripe for my consideration
24 because it's just been filed and that they ought to have
25 some period of time -- and generally in rules, that's

1 either set by the Court or can be inferred from the Court
2 rules regarding motions and other things. But they want
3 some time to respond or they take the position that I
4 can't issue a rule to show cause about these matters
5 because they're all -- all the coverage issues and limits
6 issues are already in Federal court pursuant to the four
7 or five pieces of litigation we've just talked about.

8 MR. HARDEE: Yes, ma'am.

9 THE COURT: So kinda help me.

10 MR. HARDEE: I will.

11 THE COURT: Set the tempo a little bit in that regard
12 before we go into Wall and Templeton.

13 MR. HARDEE: Here's where I believe we are
14 procedurally. We have requested that the Court issue a
15 rule to show cause. I do not believe that there -- there
16 has been one issued yet. So we're not ---

17 (The Court and Mr. Hardee speak simultaneously.)

18 THE COURT: That is correct. And that ---

19 MR. HARDEE: --- there's usually an order ---

20 THE COURT: --- that's what we're here to talk about,
21 how to do that ---

22 MR. HARDEE: So I'm here to convince you that -- that
23 you should issue one and that we should go forward and
24 exactly why I think that one is necessary at this time.

25 And of course, as far as the jurisdiction goes, I'm

1 saying that they violated an order of the Court, your
2 order, both appointing the Receiver and then the second
3 order clarifying that order of receiver.

4 THE COURT: All right. Well, with regard Wall and
5 Templeton first then ---

6 MR. HARDEE: Yes.

7 THE COURT: --- because that's the first rule you're
8 asking for -- and in Wall and Templeton, it's a rule to
9 show cause requiring that Wall and Templeton show cause as
10 to why they should not be required to give you all of the
11 -- you, Covil, their client, all of their records relating
12 to their representation of you, right?

13 MR. HARDEE: Why they should and why they haven't
14 done it before now. We've been prejudiced by it. There's
15 been lots ---

16 (Mr. Hardee and the Court speak simultaneously.)

17 THE COURT: And ---

18 MR. HARDEE: --- of filings that ---

19 THE COURT: --- I -- I get that. Now, you contend
20 that they -- do you contend that they were required by my
21 modified order to give you information and that they have
22 disobeyed that order?

23 MR. HARDEE: Both. I think they were required under
24 the original order, but that's why you clarified it and --
25 -

1 THE COURT: But we clarified the order and you
2 contend that under the -- the modified or supplementary
3 order of -- I guess it was April of this year --

4 MR. HARDEE: It was -- I think that's right. No, it
5 was March 4.

6 THE COURT: March 4. That under that March order,
7 you contend that Wall and Templeton was required to give
8 its client all of the records with respect to its
9 representation, which was a representation that was about
10 six or seven months old at that time. They had taken over
11 in November or -- well, no --

12 MR. HARDEE: That was in April.

13 THE COURT: -- last April. About April.

14 MR. HARDEE: They took over April. I think he put in
15 his affidavit he was hired to represent Covil in all South
16 Carolina cases.

17 THE COURT: All South Carolina cases in April of
18 2018, right?

19 MR. HARDEE: And -- and I would like to -- 'cause you
20 said something. We found -- just found just a couple of
21 days ago because they have produced some documents.

22 First he took the position, as you know, he -- he
23 told Ms. McVey that he had not been retained to represent
24 Covil -- you know, Covil, in the *Hill* and *Taylor* case,
25 which then later we found out wasn't true because they

1 were and the insurance company came out and said that
2 wasn't the truth, that they were.

3 Everybody at that hearing, where we thought we had
4 the truth, said they found out about it on or about
5 October 8, where they found out about the cases, we've got
6 billing -- just got billing from Wall and Templeton where
7 they're billing on the *Hill* case -- the one that there's a
8 legal malpractice action on -- in September, mid-
9 September, that they were actively working on the file.
10 Mr. Wall, billing insurance companies.

11 (Mr. Hardee and the Court speak simultaneously.)

12 THE COURT: This is April -- I mean, September of --

13 MR. HARDEE: September. I think the 17th --

14 THE COURT: -- of 2018?

15 MR. HARDEE: That's exactly right.

16 THE COURT: And ---

17 MR. HARDEE: September --

18 THE COURT: --- that was at the same time that they
19 were contending that they did not -- when -- when McVey
20 asked, "Where's your answer," they were contending, "We
21 don't represent ---

22 MR. HARDEE: And actually ---

23 THE COURT: --- Covil.

24 MR. HARDEE: --- when -- when he -- what --he told
25 her that, that was in late October or --

1 THE COURT: That's correct.

2 MR. HARDEE: Yes.

3 THE COURT: That is correct. That's ---

4 MR. HARDEE: And ---

5 THE COURT: --- after September when this billing
6 takes place.

7 MR. HARDEE: And insurance companies then came and
8 said, "We didn't even know about these cases until ..."
9 they said, " ... October 8," when in fact, they're billing
10 insurance companies for work they did on it in September.

11 So they knew about the cases even before they told
12 you in that hearing they didn't know. We know that for a
13 fact.

14 That's why we're here. We don't trust them. We
15 don't trust them and we found in a lot of documents as of
16 this spring, March of this year, 2019, Wall and Taylor
17 contacts the insurance company, Zurich, Travelers, and
18 Sentry, and he tells them they found this computer tape
19 and I have a picture of it. It's something you see --
20 something like an old movie, where it's like -- looks like
21 a reel-to-reel cassette. They actually put a copy of it.

22 They're asking the insurance company -- this is like,
23 in March of -- of this year -- the order clarifying the
24 Receiver's duty -- what they should do with the tape,
25 where it came from. They found a place in Dallas, or

1 Texas somewhere, that could -- that could see what's on
2 the tape. I'm sure everybody's interested. I'm sure the
3 Plaintiffs are interested what's on this tape, these
4 historical documents of Covil. You know who was not on
5 that chain? Peter Protopapas, the receiver. They didn't
6 ask him, they didn't say anything.

7 On July 3 ---

8 THE COURT: And this tape is a tape of historical
9 documents of Covil?

10 MR. HARDEE: We -- we believe. We haven't gotten --
11 we haven't gotten -- we are just now in the process of
12 getting possession of it. We ---

13 THE COURT: That -- that -- that is -- the existence
14 of those records has been the subject of litigation before
15 me for at least a year and was in part the reason for the
16 striking of their pleadings --

17 MR. HARDEE: Yes.

18 THE COURT: -- of Covil's pleadings, a matter that I
19 guess was on appeal and then ultimately settled?

20 MR. HARDEE: I mean, it could be nothing on it or it
21 could be a bombshell on it. We don't know.

22 But what I want to know is why wasn't Wall and
23 Templeton letting their client know 'cause it's -- it's
24 Covil's documents. So it's -- Peter Protopapas is in
25 control of that document, correct? Under your order,

1 that's his -- those are his documents. Those are --
2 that's his tape. They're not even copying him on it.

3 On July 3, we got something from Mr. Powell's office,
4 who's representing Wall and Templeton in a legal
5 malpractice action that I brought on behalf of Covil, and
6 for the first time they say, "Hey, there's a copy of this
7 tape. Do you want it? What do you want to do with it?"
8 And they're taking the position that the insurance
9 companies were hemming and hawing about whether or not
10 they wanted to pay to get the tapes transcribed.

11 Your Honor, Wall and Templeton actually talked to the
12 people in Texas who transcribe them, and I think insurance
13 companies are trying to scrape up \$500, which is what they
14 said they could transcribe the tape for. That's what they
15 said the delay was.

16 Why Peter Protopapas wasn't told that then -- now --
17 now, I know about it now and we're going to get it now,
18 but why did it take so long? Why weren't we told -- we
19 could have had the documents transcribed had -- had we
20 known -- had Covil known and the Receiver known.

21 We've been asking for these documents since November
22 12. Peter wrote Wall and Templeton, Mark Wall, on
23 November 12, 2018, right after you appointed us, and you
24 know what response he got? Nothing.

25 December 17, same thing. He writes both Dan White

1 and Mark Wall. He then writes them again on the 18. He
2 then writes them again on the 20, on the 19. No response.
3 No response. All this is in December. He writes them
4 again in January. February, February 7, February 11,
5 February 19, after their clarification notice. We keep
6 asking and asking them.

7 Now, here's what I don't want to get -- here's -- I
8 don't know if I'm not communicating myself well or if
9 they're just acting like this is a ruse. I have filed a
10 legal malpractice action. I have sent discovery to them.
11 They're acting like my request for the documents is like a
12 discovery issue under my legal malpractice action.

13 I'm not here today for a legal malpractice action.
14 Your court order has nothing to do with the legal
15 malpractice action. I want a hold of those documents. I
16 don't care about the -- the legal malpractice discovery is
17 going along fine. I'm not mad at -- at Warren Powell's
18 office. They're -- they're -- they're getting me
19 discovery in that case in a normal basis.

20 Wall and Taylor have known about this -- I mean,
21 Wall, Templeton has known about this a lot longer than --
22 than Warren Powell has. Warren Powell's -- I'm not
23 complaining about. He -- he's -- he's operating as
24 defense lawyer do in a legal malpractice action.

25 I'm here today on the -- on the actions that Peter

1 Protopapas, you know, has under him where you've ordered
2 in those cases that the documents be produced. It has
3 nothing to do with my requests in my legal malpractice
4 action.

5 Another thing that bothers me ---

6 THE COURT: Now, let -- let me stop you there. Where
7 is your legal malpractice action pending at the moment, in
8 Federal court, right?

9 MR. HARDEE: Believe it or not, even though a South
10 Carolina corporation is suing a ---

11 THE COURT: South Carolina ---

12 MR. HARDEE: -- South Carolina law firm ---

13 THE COURT: --- law firm --

14 MR. HARDEE: -- they --

15 THE COURT: They have tried to remove it.

16 MR. HARDEE: They removed it saying that it was a
17 fraudulent, made up cause of action.

18 THE COURT: I see.

19 MR. HARDEE: Or a default.

20 THE COURT: Right.

21 MR. HARDEE: And you've heard Mr. Zevnik tell -- who
22 our damages are. It -- it matters where -- I mean, money
23 was paid by the insurance companies, but it matters where
24 it was paid, how it was paid. We're claiming more damage
25 because of that, and we're claiming that actually, should

1 -- no one should have been paid because it shouldn't have
2 -- it possibly was a Worker's Comp claim.

3 THE COURT: With respect to the removed action, no
4 discovery has taken place yet on that action, is it?

5 MR. HARDEE: Well, yes and no. I -- and -- and --
6 and to his credit, I -- I gave Mr. Powell an extension to
7 answer if he agreed to give me the documents 'cause I -- I
8 told him we've been asking for these documents since
9 November, we need the documents, we need the documents.
10 He agreed. Even though it got removed, he honored that
11 agreement and he was still trying to produce documents to
12 me.

13 THE COURT: Well, I -- I saw some of the email
14 correspondence, and it -- it's voluminous material that
15 he's making the best attempt he possibly can to deal with.
16 And you don't disagree ---

17 MR. HARDEE: I ---

18 THE COURT: --- with that.

19 MR. HARDEE: I do not. I -- I -- I don't -- again,
20 he hasn't had this since November. He hasn't. But what I
21 want to know, and I -- I -- I'm just wondering is, did his
22 -- has his client not been doing that since November or at
23 least since March when you ordered them to give
24 everything?

25 I mean, I'm not mad at Mr. Powell at all. He's -- he

1 is -- I would not be here on a motion to compel on a legal
2 malpractice action. We're -- we're -- we're discovering
3 things fine. I -- I have no problems with Mr. Powell.
4 Taylor -- Wall Taylor is a different matter.

5 Now, I do have one issue with Mr. Powell, though, but
6 he's correct. He -- when -- when I asked for them, he
7 said, "Okay. I'm going to give these, but Travelers ..."
8 once again, Ezra Agooly (phonetic) or whatever, that ---

9 THE COURT: He's here now, by the way.

10 MR. HARDEE: Oh.

11 THE COURT: Mr. Davis or Mr. Gollogly, how 'bout
12 identify yourself. Mr. Davis?

13 MR. DAVIS: Yes, ma'am.

14 THE COURT: Identify yourself for the court reporter,
15 please.

16 MR. DAVIS: William P. Davis.

17 THE COURT: All right.

18 MR. DAVIS: Baker, Ravenel and Bender.

19 THE COURT: And Belser (sic), Ravenel and Bender.
20 And you are here representing Travelers/USF&G, correct?

21 MR. DAVIS: Yes, ma'am.

22 THE COURT: With all reservation of rights. Y'all
23 weren't here for that entire thing, but please understand,
24 by answering these questions, you are reserving all of
25 your rights. You are completely protected.

1 And --

2 MR. DAVIS: Yes, ma'am.

3 THE COURT: --- sir, would you identify yourself.

4 MR. GOLLOGLY: Yes, Your Honor. Ezra Gollogly, of
5 Kramon & Graham, from Baltimore.

6 THE COURT REPORTER: And you'll have to spell that.

7 MR. GOLLOGLY: G-o -- sorry. E-z-r-a is my first
8 name, Ezra. And second name is Gollogly, G-o-l-l-o-g-l-y.

9 THE COURT: All right. And you are similarly --
10 you're from Baltimore?

11 MR. GOLLOGLY: Yes, I am.

12 THE COURT: And you're similarly representing USF&G
13 and Travelers, right?

14 MR. GOLLOGLY: Yes.

15 THE COURT: Very good. Thank you. You may be
16 seated.

17 So they -- they are here.

18 MR. HARDEE: Okay.

19 THE COURT: And I've been calling you "Eric" the
20 whole time. That's incorrect, it's Ezra. And I'm going
21 to -- I'm going to try to be as good as I can about
22 pronouncing your last name, but say it very slowly for me
23 one more time.

24 MR. GOLLOGLY: Gollogly.

25 THE COURT: Gollogly?

1 MR. GOLLOGLY: Gollogly.

2 THE COURT: Okay. Very good. Thank you, sir.

3 MR. GOLLOGLY: Thank you, Your Honor.

4 MR. HARDEE: So we're -- Mr. Powell is prepared to
5 produce these documents, and again, as -- as quickly --
6 and I respect him. He's moving -- I have no problem with
7 that. But he writes me and he says, "Well, I found where
8 Travelers had earlier filed saying that they might have
9 some kind of joint representation and privilege."

10 Now, of course, you understand that the privilege
11 would be between Covil and the carriers and third parties.
12 In other words, there's no privilege between the --
13 carriers can't give things to Covil. I mean, that --
14 that's to third parties.

15 So they write and say, you know, "We want to make
16 sure that's done."

17 So Mr. Powell tells me, "Well, I found this." He
18 copies the carriers. He says, "I'm going to let you look
19 at these." Travelers writes and says, "No, no. Don't --
20 don't -- don't give him these documents right now. We're
21 still trying to figure out privileges and all this kind of
22 stuff."

23 Again, this has nothing to do with the legal
24 malpractice action. They know -- Travelers knows about
25 this order. This man knows very well about this order.

1 He knows it requires Covil to produce them, but he's
2 telling Wall and Templeton's lawyers, "Do not produce
3 them."

4 And Mr. Powell, understandably, is confused. So he
5 says, "All right, insurance companies, I'll put it in the
6 conference room and y'all can come look at them first and
7 then make a privilege log," and then, of course, I
8 objected.

9 And I -- and I sent the order again to Mr. Powell and
10 said, "I'm not asking from a discovery request. There is
11 no privilege. You've already had -- this order says you
12 have to give us the files, and I don't want the insurance
13 companies looking at Covil's files before you produce them
14 to Covil." And he -- he said, "All right. You're right.
15 I'm not going to do that," and we've been getting
16 documents the last week or so.

17 We don't think we've gotten all of them. There are
18 some -- there's discrepancies. The tape thing bothers me.
19 There is some -- a new client matter sheets from the North
20 Carolina Wall, Templeton Firm we got, but we didn't get
21 any from the Charleston firm which we'd want to ask about.

22 There are some reports of the insurance company where
23 -- like, mediation reports, where all the boiler plate
24 stuff is answered, but it says Mark Wall -- the answer of
25 the important questions -- how much you think it's worth,

1 strategy, stuff like that -- under separate cover. We
2 haven't -- we never received separate cover. We never
3 received any information.

4 So I -- again, we need a rule to show cause because I
5 need somebody from Wall and Templeton to explain this
6 stuff.

7 THE COURT: All right.

8 MR. HARDEE: Because I don't --

9 THE COURT: And so what you're asking for is -- with
10 respect to Wall, Templeton is that I issue a rule to show
11 cause requiring that, first of all, your lawyer, Wall,
12 Templeton who was Covil's lawyer, that your lawyer give
13 you anything your lawyer has in his files related to Covil
14 and the business he represented that -- and the legal
15 matters that -- in which he represented Covil in South
16 Carolina or North Carolina, right?

17 MR. HARDEE: Yes, ma'am. And -- and -- and to say,
18 under oath, that -- 'cause if he says he gives us
19 everything, he says he gives us everything, but I'd like
20 to question him about some of the questions I have.

21 THE COURT: Well, first thing would be to have a
22 hearing on whether a rule to show cause -- making them
23 show cause as to why they should not divulge the -- to
24 their client the -- the entire file.

25 MR. HARDEE: Correct.

1 THE COURT: And we're not going to put Mr. Powell in
2 the middle --

3 MR. HARDEE: No.

4 THE COURT: -- nor are we going to put any lawyer
5 that represents the insurance companies in the middle of
6 that. This -- that will have to be decided on the basis
7 of what you, as a client, are entitled to --

8 MR. HARDEE: Yes, ma'am.

9 THE COURT: -- and what you, as a receiver, are
10 entitled to, pursuant to my authority over the Receiver
11 and its marshalling of assets, right?

12 MR. HARDEE: That's correct. Yes, ma'am.

13 THE COURT: Okay. And when you have received things
14 from Mr. Powell, how do you regard that disclosure? Do
15 you regard it as disclosure to you pursuant to discovery
16 in a lawsuit, a malpractice lawsuit, or do you regard it
17 disclosure to you pursuant to your request as a client?

18 MR. HARDEE: Well, both because I do think that it
19 satisfies the legal malpractice. But I've made it very
20 clear to him several times, a lot recently, that my
21 request goes way beyond what I'll need is -- I'm -- I'm
22 representing Covil regarding the ---

23 THE COURT: In these other actions, and you want to
24 see what Wall and Templeton has in its files that may
25 related to Covil's old records ---

1 MR. HARDEE: Right.

2 THE COURT: --- it may relate to -- to its
3 representation of Covil in these various matters and so
4 forth. This is quite aside from anything related to
5 insurance coverage and the rest of it. This is what is in
6 your lawyer's files --

7 MR. HARDEE: Yes, ma'am.

8 THE COURT: -- of about a year's worth of
9 representation with respect to Covil.

10 MR. HARDEE: Right. Like, what were they told and
11 who were their contacts at Covil? Who were they -- things
12 like that.

13 THE COURT: Yeah.

14 MR. HARDEE: We want to know they -- they were
15 dealing with the insurance ---

16 THE COURT: Okay. Now, that's one piece of it, and I
17 assume Mr. Robinson's going to tell me about the carriers.
18 I think I understand what your position is ---

19 MR. HARDEE: Yes, ma'am.

20 THE COURT: --- with respect to the lawyers.

21 MR. HARDEE: Can I clarify one thing that's driving
22 me crazy 'cause it's just a clarification regarding a
23 description of my legal malpractice case? It -- we're not
24 claiming that Wall and Templeton was the alter ego of
25 Covil. We're claiming they're the agents of the insurance

1 companies ---

2 THE COURT: Of insurance company ---

3 MR. HARDEE: --- who are the alter ego.

4 THE COURT: And -- and the insurance company was the
5 alter ego --

6 MR. HARDEE: The alter ego and that Wall ---

7 THE COURT: Right.

8 MR. HARDEE: --- and Templeton were --

9 THE COURT: And the insurance company is somehow --
10 tried to interpose into this thing ---

11 MR. HARDEE: Yes, ma'am.

12 THE COURT: --- the concept is it has some control
13 over the attorney/client disclosures because of its
14 position as a carrier And I'm going to ask somebody to
15 try to tell me how that works because I don't understand
16 that at all.

17 MR. HARDEE: They -- they did ---

18 THE COURT: The insurance company is the fiduciary
19 for the client just as the lawyer is the fiduciary for the
20 client. But the insurance company has no -- they pay the
21 -- the -- the attorney's bills at -- to represent and they
22 probably have some kind of clause in there insuring
23 agreements that allow it to pick the attorney.

24 But the attorney is not the attorney for the
25 insurance company. The attorney is the attorney for the

1 client that is involved in the lawsuit, pursuant to the
2 insurance it purchased.

3 MR. HARDEE: I ---

4 THE COURT: And that -- that -- that's basically what
5 you are contending, right?

6 MR. HARDEE: One hundred percent ---

7 THE COURT: All right.

8 MR. HARDEE: --- is that they kind of ---

9 THE COURT: And obviously, in a rule to show cause
10 hearing that would involve both Wall and Templeton and the
11 carriers, we could completely ventilate -- whether there
12 is some sort of privilege. I'm not -- I -- I'm certainly
13 not going to rule on that today, but that would be a forum
14 in which to ventilate things.

15 MR. HARDEE: You are correct. If -- we are claiming
16 the insurance carriers are interfering with the court
17 order by getting ---

18 THE COURT: Disobeying it and interfering with it.

19 MR. HARDEE: They -- they ---

20 THE COURT: Right.

21 MR. HARDEE: -- sure did.

22 THE COURT: I think I -- I understand your position.

23 MR. HARDEE: Yes, ma'am. Thank you.

24 THE COURT: All right, Mr. Smith.

25 MR. SMITH: Thank you, Judge. I'm finally getting to

1 come argue ---

2 MR. POWELL: Excuse me, Your Honor ---

3 MR. SMITH: --- on a motion ---

4 MR. POWELL: --- will I be able to be heard after --

5 THE COURT: Oh, yes. Mr. Powell, if you prefer to be
6 heard right now, of course you can.

7 MR. POWELL: It might be useful if -- if I could
8 respond.

9 THE COURT: Yeah. I'm not -- I'm not going to do
10 anything before you get a chance to be heard.

11 MR. POWELL: Okay. All right. Your Honor, I think
12 it needs to be aired a little bit about where we stand
13 here. Now, I did file yesterday afternoon a statement
14 about where we had -- what we had produced. Let me say,
15 though, in -- in terms of the allegation that the carriers
16 interfered in any way with our production is -- is a
17 tempest in a teapot.

18 We -- what I did is I found -- going through the
19 records, trying to respond, looking for ---

20 THE COURT: This is going through Wall and
21 Templeton's records?

22 MR. POWELL: That's right.

23 THE COURT: Uh-huh.

24 MR. POWELL: That's right. And -- and I found a
25 letter from -- from Sentry's lawyer that -- asserting a

1 common interest doctrine right in the documents and
2 reminding us -- and citing the *Ford* case, that -- that the
3 privilege cannot be weighed by one of the parties to the
4 common interest doctrine.

5 So I was looking for less litigation in all this, and
6 so what I did was I put them on notice, I see your letter,
7 if -- if my -- I want to hear from you if anybody objects
8 to my going forward. And I did get a letter back,
9 communicated with the Receiver's lawyers after -- late in
10 that week, that was the -- that was the week of June the
11 17.

12 Now, understand, I was late coming into this 'cause
13 it was an objection to my representing the -- to try to
14 disqualify me, and that was unresolved until late in May.

15 So -- and I think that was just -- just confusion.
16 Mr. Protopapas said that he had called me about hiring me
17 at a previous time, and I have absolutely no memory of it.
18 But anyway, that's what he said. And I think we got it
19 resolved. They withdrew the conflict issue, and so I came
20 in, in late May representing Wall, Templeton.

21 So late into the week I wrote a letter. In fact, may
22 I approach, Your Honor?

23 THE COURT: Of course.

24 MR. POWELL: A email, I should say.

25 (Mr. Powell hands a document to the Court.)

1 THE COURT: Thank you.

2 MR. POWELL: And just by way of -- of setting this
3 up, the first matter is the May 20 email, first -- under
4 tab No. 1 that you've got there --

5 THE COURT: Yeah.

6 MR. POWELL: -- is the -- is the email where the
7 conflict is withdrawn.

8 THE COURT: Right.

9 MR. POWELL: So I'm in the case. And then the -- tab
10 No. 2 is a email from me to Mr. Hardee, May 31, 2019, when
11 we're talking about the extension of time.

12 And under item 3 there, it says (as read): "You will
13 find the Covin -- Covil file at Wall, Templeton and
14 Haldrup as the file's encompassing the *Taylor* and *Hill*
15 cases, including all correspondence from Covil's insurance
16 companies."

17 Okay. So that's when we went to work and we agreed I
18 was going to produce that on the 17 of June, just as it
19 says there.

20 So we proceed and go to work trying to do that. And
21 in that process, I find that letter I just mentioned to
22 you or that -- yeah, I believe it was a letter and --
23 concerning their -- their interest and -- and -- but --
24 but when -- when Mark and I made that agreement that I
25 wanted to live up to, it was before the case was removed.

1 Well, neither of us had any idea it was going to be
2 removed at that time, so there just wasn't any way to
3 predict it.

4 So on -- on tab 3 there in front of you, I write Mr.
5 Hardee and copy the other lawyers involved and I said -- I
6 said (as read): "I understand that we're now in Federal
7 court and any -- any discovery's premature until after
8 26(f) conference is -- is held. Still, I feel obligated
9 to abide by my agreement as it was part of an arrangement
10 to receive an extension and time to answer and otherwise
11 plead."

12 And then I go on to explain that I received this --
13 this -- come across Wes Sawyer's December 20, '18 letter
14 asserting their interest. I've invited the carriers to --
15 to look it over.

16 Well, that really didn't go anywhere. I mean, it --
17 the -- I wrote them and I did get a letter back, "No. We
18 -- we have interests to protect." But nobody came to --
19 to review or move -- or remove anything, and the stuff was
20 in my office and remains there now until we started
21 producing it.

22 So on the -- on the 19, two days later, I write --
23 you see that -- my email to Mr. -- to Ms. Spitz and Mr.
24 Hardee, where I point out (as read): "I want to move
25 forward in getting these documents to you and to --

1 exclusive of any ..." -- as soon -- I didn't know yet how
2 this privilege thing was going to work out, but I want to
3 start getting them to you aside from that.

4 And then I -- I mention -- you'll notice down at the
5 bottom of that paragraph, I suggested last Friday, asking
6 proposed use of the following search terms to accomplish
7 this search and I list some search terms, the most
8 relevant ones we could think of at the time.

9 And -- and so I -- I asked if the Receiver desired
10 any additional search terms, but had not heard anything.
11 That was on the 19, five days had gone by.

12 So next the -- on the 20, the next day, and if you --
13 if you go over to tab 8 in this, you'll see -- tab 8 on
14 the 20, at the bottom the page or rather in the middle of
15 the page --

16 THE COURT: I see it.

17 MR. POWELL: -- where I say (as read): "Jescelyn, I
18 will follow up on this, but can you let me know if you
19 folks wish to add any proposed search terms -- add to the
20 proposed search terms."

21 Well, I hadn't looked when I wrote that, that was at
22 10:18 a.m. and I had not looked. She had sent me, at
23 10:13, five minutes before that on that same day, a
24 proposed whopper of a -- in tab 6 is the proposed search
25 terms and they're a -- they're a remarkably long list of

1 names and they even have phone numbers there that they
2 want us to -- want to search.

3 And in addition to that, they want to have the
4 secretaries in my client's office and the paralegals --
5 their -- their cell phones looked at and their ipads
6 looked at, and -- and -- and I thought that was a bit
7 much.

8 And I wrote them back and -- and told them that. And
9 said, "Look, we're -- we're going to -- we're going to go
10 along and try to get this to y'all. Going through this
11 ..." -- and also she says at the -- at the bottom of -- if
12 you look at tab 7 at the bottom of that page --

13 THE COURT: Let me -- Mr. -- Mr. Powell --

14 MR. POWELL: Yes, ma'am?

15 THE COURT: -- what are you searching?

16 MR. POWELL: I am -- the -- the documents I gave you

17 ---

18 THE COURT: No, no. I -- I -- I get this. I'm
19 looking at the protocol they proposed to you. It's got
20 all these terms and you've got a very few amount of terms.

21 MR. POWELL: Right. And --

22 THE COURT: Against what database are you --

23 MR. POWELL: What -- what we were searching at this
24 time, what -- is what Mr. Hardee requested. He wanted to
25 see the *Taylor* and *Hill* related matter.

1 THE COURT: All right. So what are you searching?

2 Wall ---

3 MR. POWELL: We're searching ---

4 THE COURT: Are their records all digitized and
5 you're searching ---

6 MR. POWELL: This time -- this time -- for this
7 occasion, I thought the most important thing that they
8 wanted was emails, so that's what we were searching.

9 THE COURT: Emails in the --

10 MR. POWELL: *Taylor* and *Hill* files. Com --
11 communications with lawyers, communications with the
12 insurance companies, all manner of communications related
13 to the *Taylor* and --

14 THE COURT: Okay. And the reason you were doing that
15 is because he's got a database of all his emails, and you
16 are trying to cull out of them -- you're -- you're trying
17 to avoid disclosing Wall and Templeton materials that
18 don't have anything to do with this.

19 MR. POWELL: Correct. That's right.

20 THE COURT: Okay.

21 MR. POWELL: And -- but ---

22 THE COURT: Just want the record to be clear ---

23 MR. POWELL: --- beyond that, the reason I'm trying
24 to do it, directly to answer your question, is I said I
25 would. Okay?

1 And so -- so the -- and what -- and what we were --
2 and there's a email going back to Mark who agreed that
3 this would be the universe of our initial search. That's
4 what he wanted quickly.

5 THE COURT: Yeah.

6 MR. POWELL: I'm -- I'm trying to comply with that.
7 So time goes on, and -- and if you'll notice -- let me see
8 here now. Let me get this. Yes. Turn to -- turn to tab
9 7.

10 THE COURT: Yes.

11 MR. POWELL: And in tab 7, I write everybody. I
12 write Mr. Hardee, I write all of the lawyers for the
13 insurance companies, and -- and among other things, I tell
14 them (as read): "I have decided that -- absent some TRO
15 secured by one of the carriers, to go ahead and commence
16 production on Monday of the documents I have. That is --
17 in parenthesis -- the *Hill* and *Taylor* related documents."
18 And -- and -- and I'll just represent to you that at that
19 time, that meant to us the emails, okay?

20 So -- so then that was in -- in -- and so on -- on
21 June the 20, I get a -- I get a couple of emails from --
22 from Jescelyn, Ms. Spitz, and we communicate about that
23 and then the -- and -- with a very broad brush of what
24 they wanted, which was at variance from what I understood
25 from -- from Mr. Hardee of -- limited to the *Taylor* and --

1 and the *Hill* matters, and -- and showing them the emails
2 we had with each other.

3 Now, the very next day, though, on June the 21, I get
4 an email from Mr. Protopapas at 4:34 p.m.

5 THE COURT: That's tab 9.

6 MR. POWELL: That's tab 9. And -- and despite the --
7 the email from the day before of a very broad brush, he
8 sends me -- wanting these five things, okay? See (as
9 read): "Based on your new understanding, please provide
10 ..." and he lists five -- five elements there.

11 And then down at the bottom he says (as read):
12 "Please do not do a document dump where you provided the
13 publicly filed documents. I have access to those." Well,
14 that -- that kinda narrows it some because, you know,
15 these publicly filed documents are in the server.

16 THE COURT: Yeah.

17 MR. POWELL: So how the hell -- you know -- excuse
18 me.

19 (Courtroom laughter.)

20 THE COURT: Yes, sir.

21 MR. POWELL: So -- so you know --

22 THE COURT: I get it.

23 MR. POWELL: So I'm -- I'm dealing with a moving
24 target when the day before it's a broad and then -- and
25 then Peter's the next day, the very next day writes me and

1 says, "No. These things."

2 Now, I want represent to the Court that what we had
3 done -- oh, before I forget it, the tape he's talking
4 about, we were -- we emailed them and said, "Come get it."
5 and I think that's what they want.

6 MS. CLARK: We have it here to interplead with the
7 receiver Court if --

8 MR. POWELL: Yeah.

9 MS. CLARK: -- you desire.

10 MR. POWELL: Yeah. If Mark wants to take possession
11 of it, he's welcome to it.

12 THE COURT: Good.

13 MR. HARDEE: July 3.

14 (Several attorneys speak simultaneously.)

15 MS. CLARK: Yes. That's what he's saying ---

16 MR. HARDEE: Yeah. But it's dated before 4 of July.

17 MS. CLARK: --- he emailed --

18 MR. HARDEE: That's a week ago.

19 THE COURT REPORTER: Please talk one at a time.

20 MR. POWELL: Well, that's right. But it's been a
21 week. I mean, if it's critical that -- you know, I -- you
22 -- you'd thought it would be the next day. But I'm going
23 to give this to the -- the Court.

24 (Mr. Powell hands a VCR tape to the Court.)

25 THE COURT: Thank you. Just a second.

1 (To the court reporter) Mark this in the Covil
2 proceedings. This is a tape that has dates on it in 1990
3 through 1991 and says (as read): "Final back up
4 10/18/91."

5 And I'm handing it to the court reporter for her to
6 mark it as Court's Exhibit No. 1.

7 (Marked Court's Exhibit No. 1, final back up tape
8 10/18/91.)

9 MS. MCVEY: Your Honor --

10 THE COURT: Now, don't get excited and start trying
11 to figure out what we're going to do about this tape yet.

12 MS. MCVEY: I've been looking for those documents a
13 long time.

14 THE COURT: I know, but you just --

15 MS. MCVEY: Okay.

16 THE COURT: -- that -- this is right here on my desk
17 at the moment.

18 MR. POWELL: Your Honor, may I approach?

19 THE COURT: You may.

20 MR. POWELL: Your Honor, this is what we emailed
21 yesterday afternoon. This is the hard copy of it, and you
22 may not have seen the email, but it went to all counsel.

23 And this is an explanation of what we've produced up
24 to now. And let me just say this, by way of explanation,
25 much of this is -- took place before I got involved. But

1 when the November and February letters came through, it's
2 my understanding that Wall, Templeton was unclear about
3 who the client was. They were very nervous about how to
4 deal with those -- with the communications and what to do.

5 That -- and the carriers were there claiming a common
6 interest. And so they were somewhat in the same position
7 I was in. I mean, who -- who -- who knows what some
8 subsequent -- some other judge or -- or anyone would say
9 about turning it over. That was cleared up in March at
10 the March hearing. After that -- wasn't there, but
11 knowing Your Honor I have no doubt that it was made very
12 clear that -- who the client was.

13 Now, after the hearing -- however, after the hearing,
14 the Receiver did not renew that request again, did not
15 follow up on that February letter that they sent, and it
16 -- it is -- it is rather vague -- it in -- in essence is a
17 "send me the file." You know, the day is over when you
18 can pick up a file and just send it.

19 THE COURT: That -- that's right.

20 MR. POWELL: And I mean, that can't be done.

21 So -- but they -- they -- they didn't follow up, but
22 the -- what they wanted was access to the Covil corporate
23 file which was in -- wasn't in my client's hands. That
24 was in Dan White's office.

25 THE COURT: Uh-huh.

1 MR. POWELL: Okay. So the record's in Danny White's
2 office, they were given full access to that. My
3 understanding it was -- it was a lot of stuff, I mean, it
4 was, you know, up there and did my client know he had
5 those.

6 At -- at the same time, the Receiver was seeking to
7 have Wall, Templeton removed as counsel. Wall, Templeton
8 was directed to transfer the file to Ellis and Winters,
9 new counsel, which they were in the process of doing when
10 they were sued. When they were sued, ended up on my desk.

11 And so there was this confusion until late May, and
12 so I'm trying to defend my client now. They weren't
13 trying to hide anything, still not trying to hide anything
14 and then -- and I think this will illustrate better my
15 point.

16 We you go down the list here, this hand-up dated
17 today, and we list the important factors. And I want to
18 flip through what has been produced. Now, on July the 24,
19 it was only -- I was one week late, two long weekends
20 going through these documents, but we produced 1300 page
21 of emails and we started marching those out. Now, I
22 believe those were directed to the *Taylor* file -- I mean,
23 the *Taylor* case. Delivered -- delivered those
24 electronically, and -- which is Bates Number 3 in the --
25 in the -- in the attachments to it and they've had access