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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

THOMAS RUBINO, Individually and as)
Successor-in-Interest to CARMINE RUBINO,)
JR., Decedent; DANIEL RUBINO; and DOES)
ONE through TEN, inclusive,)

Plaintiffs,

vs.

AC and S, INC., et al,

Defendants.

Case No.: CGC-08-274556

**DECLARATION OF JOHN TEMPLIN IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT BASF
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT AND/OR
ADJUDICATION**

I, John Templin, declare as follows:

1. I am a resident of the state of California. Except for matters which I have relied on and which have been made known to me for purposes of forming an opinion, all matters stated herein are of my own personal knowledge. The matters made known to me are of the type upon which professionals in my field reasonably rely in rendering such opinions as stated in this declaration. If asked, I could and would competently testify to the truth of each matter and opinion asserted within as well as to the further foundation for each such matter and opinion.

1 2. I have a bachelor's degree in biochemistry and a master's degree in industrial
2 hygiene, both awarded by the University of Pittsburgh in 1976 and 1980 respectively. My
3 graduate studies in industrial hygiene included but were not limited to full semester courses in
4 toxicology, epidemiology, biostatistics, aerosol physics, air pollution and occupational medicine.
5 I have been continuously certified in the comprehensive practice of industrial hygiene by the
6 American Board of Industrial Hygiene since 1985. I have been continually certified by the State
7 of California Division of Occupational Safety and Health as an asbestos consultant since 1992,
8 which was the first year it became available. I am a member of the American Industrial Hygiene
9 Association and have served as chair of its law committee. I have practiced extensively in the
10 field of industrial hygiene since 1980. By virtue of my education, training and experience, I
11 have become well acquainted with asbestos, the properties of asbestos, and the diseases caused
12 by asbestos, including mesothelioma.

13 3. My work experience spans academia, government and private industry. From
14 1980-1982, I was engaged as an industrial hygienist and project manager for the University of
15 Houston's OSHA "New Directions" program. From 1982-1986, I served as an associate
16 industrial hygienist for Cal/OSHA. My duties there consisted of performing workplace
17 evaluations to identify potential occupational health hazards, conduct employee training
18 programs, and assist employers in understanding and complying with Cal/OSHA. An essential
19 component of these duties was to gain a thorough understanding of the regulations in question,
20 including but not limited to analyzing and evaluating the enabling legislation (i.e. Senate or
21 Assembly bills); and the ensuing changes in the State codes affected thereby (e.g. Labor, Health
22 and Safety, etc.), as opposed to merely acquainting myself with the content of the Code of
23 Regulations.

24 4. From 1986-1987, I was the Director of Asbestos-Related Services and Chief
25 Industrial Hygienist for CTL Environmental Services, Inc. My responsibilities included program
26 development, e.g., operations and maintenance, respiratory protection, and employee training.
27 From 1987-2002, I was a Certified Industrial Hygienist, Principal Scientist and Corporate
28 Consultant at Law/Crandall. In 2002, I joined Materials Analytical Services (MAS), where I

1 apply my knowledge of asbestos-containing materials and industrial hygiene as Senior
2 Consultant.

3 5. During the years I have dealt with asbestos-related issues, I have performed
4 surveys, hazard assessments, project monitoring and reporting, and employee training with
5 regard to asbestos, and have prepared recommendations for control alternatives, removal
6 specifications and operations and maintenance programs for numerous clients, including Hines
7 Interests Limited Partnership, State of California, Universal Studios, Inc., Dodger Stadium, Shell
8 Oil Company, Santa Fe Realty, City of Burbank, and Bakersfield City Schools. I have also
9 devised procedures for performing spot removal of asbestos-containing fireproofing to be
10 utilized in conjunction with the installation of fire sprinkler systems in high rise buildings, as
11 mandated by Los Angeles City Ordinance.

12 6. I have presented over three hundred seminars to employers and employee groups,
13 trade, professional, labor organizations, and regulatory agency personnel covering a wide variety
14 of issues, including asbestos. I have specialized training from the University of Southern
15 California, Institute of Safety and Systems Management in sampling and evaluating airborne
16 asbestos dust.

17 7. As a consultant, I have advised hundreds of public and private building owners
18 (litigation and non-litigation) regarding asbestos on or at their properties. I have also consulted
19 with multiple asbestos product users and insurance companies regarding asbestos related issues.
20 I have provided expert testimony in numerous asbestos property damage and personal injury
21 cases in state court. My expert qualifications and training are set forth more fully in the attached
22 curriculum vitae, which is incorporated by reference and attached hereto as Exhibit A.

23 8. I have participated in demonstrations, reviewed experiments and data and
24 performed tests in which asbestos-containing materials and/or asbestos containing residue were
25 disturbed during routine work operations and activities which resulted in the potential for release
26 of significant concentrations of airborne asbestos-containing dust. Measurements were made of
27 either airborne and/or surface asbestos dust released during such operations. Such tests have
28 demonstrated that significant numbers of asbestos fibers are released when work operations and

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1 activities are undertaken with or around asbestos-containing materials. The release of asbestos
2 fibers into the environment results in elevated airborne asbestos concentrations for some time
3 and leads to the deposition of asbestos onto nearby surfaces. Such tests also indicate that
4 workers engaged in the normal use of these asbestos-containing products in most cases are
5 exposed to elevated concentrations of airborne asbestos. There is evidence that asbestos fibers in
6 "still" air can take days to settle, and even more if there is activity in the area that generates air
7 currents and/or which disturbs the dust.

8 9. I have reviewed the analyses of thousands of asbestos samples of all types
9 including bulk samples, micro-vacuum samples, and air samples. I am familiar with and can
10 explain the methodology employed in analyzing each type of sample.

11 10. Industrial hygienists are often called upon to evaluate toxic and/or hazardous
12 exposures (including asbestos) retrospectively. When accidents or other toxic exposures occur, it
13 is rarely possible to do scientific measurements contemporaneously; therefore, industrial
14 hygienists are often required to use their scientific knowledge and training and discuss exposure
15 circumstances with workers and employers to estimate the nature and extent of toxic exposure. I
16 have testified in this area as an expert witness on numerous occasions.

17 11. I have for many years worked closely with Dr. William E. Longo, the President of
18 MAS for numerous years. Dr. Longo received his Ph.D. in Material Science and Engineering at
19 the University of Florida in 1983, and has over 25 years experience using a variety of electron
20 microscopy methods to analyze all types of asbestos samples, which would include air, dust,
21 bulk, water and human lung tissue analysis. MAS, LLC (MAS), is an engineering consulting
22 firm that specializes in material characterization work, asbestos analysis, and the testing of
23 asbestos containing products.

24 12. The above evidence is the type of evidence often relied upon by industrial
25 hygienists, including myself, in evaluating working conditions at facilities, in determining the
26 nature and extent of exposure to asbestos and other workplace hazards, and for advising others,
27 including employers and physicians, on the circumstances and extent of exposure to workplace
28

1 substances and hazards. I am familiar with asbestos-caused diseases as they relate to the field of
2 Industrial Hygiene.

3 13. Documents reviewed in preparation of this declaration are listed throughout.
4 These include but are not limited to portions of the depositions of Thomas Rubino, Ken Tanaka,
5 James Turner, Charles Duggar, and Philip Price.

6 14. I have also read a number of documents which, according to Plaintiffs' counsel,
7 were produced to Plaintiffs' counsel by Defendant BASF. Such documents include but are not
8 limited to a number of memoranda and other materials from BASF's historical business record
9 archives, which are described in greater detail below and which generally demonstrate that from
10 the 1960s through the 1970s the company which made Bondo auto body filler, which was made
11 of approximately 50% talc (See Exhibit B to the Deposition of Abdul Razzak taken in *Kelly v.*
12 *AC&S* on October 11, 2002, attached hereto as Exhibit B), obtained all or virtually all of its talc
13 from Engelhard, a predecessor of BASF.

14 15. I have also reviewed a number of other documents produced by Bondo
15 Corporation's successor, NMBFil, in this case, which are represented as inventory documents
16 and which generally show that the transition from Engelhard as virtual sole supplier of talc to
17 Bondo to the eventual inclusion of talc from Vermont Talc (Vertal), occurred in approximately
18 1983. The timing of the appearance of the Vertal talc in these inventories corresponds generally
19 with the timing set forth in BASF's internal Engelhard documents which show Bondo's transition
20 from Engelhard at or near that time.

21 16. I also have reviewed a number of reports, tests, studies, and other analyses of talc
22 from Engelhard from the 1970s and early 1980s which are described in greater detail below and
23 which generally demonstrate that Engelhard's Emtal talc, from the early 1970s to the early
24 1980s, demonstrated asbestos fiber content.

25 17. Specifically, the Emtal talc documents I have reviewed included the following:

- 26 a) An August 18, 1972, Royal-Globe Insurance Companies report of a survey
27 done at the Eastern Magnesia talc mine on July 25, 1972 in which three of
28 the four samples tested positive for fibers, ranging from 0.9 fibers per cc

- 1 to 3.5 fibers per cc and included it was noted that certain results "would be
2 above the proposed new OSHA limit..." (See Exhibit C, attached hereto.)
- 3 b) A September 5, 1972, Johns Manville analysis of Engelhard/Eastern
4 Magnesia talc which showed that two out of six (33%) samples were
5 contaminated with tremolite asbestos at approximately 1%. The fibers
6 were from 5 to 20 microns in length, with an average length of 5-10
7 microns. (See Exhibit D, attached hereto.) Apparently, the backup
8 materials and photomicrographs from this study as well as many others
9 noted below were subsequently destroyed pursuant to a 1984 Engelhard
10 internal corporate "purge" memorandum, which is described in Dr.
11 Hemstock's deposition of May 5, 2012. (See March 7, 1984 memorandum
12 and portions of Deposition of Glen A Hemstock, collectively attached
13 hereto as Exhibit E, at pp. 32:21-33:2; pp. 33:19-34:11; p. 35:7-13; pp.
14 38:19-39:5; p. 44:9-15; pp. 65:1-67:4.)
- 15 c) A February 28, 1973, Engelhard technical service request with test results
16 and comments entitled "Emtal Mine Waste Rock-Asbestos-Form Particles
17 and Free Silica." The description of the problem and the work requested
18 was so that Engelhard could determine whether it was or was not
19 "exposing ... miners to asbestos-form particles... in quantities that are
20 deemed to be injurious..." Results showed that there were "asbestos
21 fibers counted" in all four of these samples tested. While the same four
22 samples also tested negative for asbestos on "X-Ray analysis," it should be
23 noted that the sensitivity of the X-ray analysis, particularly for lower
24 levels of asbestos, is lower than certain other techniques. (See Exhibit F,
25 attached hereto.)
- 26 d) A March 6, 1973 Engelhard inter-department memorandum which noted
27 that another third set of Johns Manville tests had been performed on
28 samples from the Engelhard mine. The underlying Johns Manville report,

1 by E. J. Bulava, which was originally attached to the March 6, 1973
2 memorandum is not attached, and thus appears to have been subject to the
3 same "purge" memo described by Dr. Hemstock in his deposition. The
4 memo shows that all six samples submitted were fibrous and that the
5 materials were "classified as asbestos or 'asbestiform' under the OSHA
6 definition ..." (See Exhibit G, attached hereto.)

7 e) A May 25, 1973, Johns Manville fourth report of samples sent to it by
8 Engelhard for analysis which showed that, in using phase contrast
9 microscopic inspection, four of the five samples were positive for asbestos
10 fibers. While one sample came out negative during the initial counting,
11 further scanning of the filter showed some fibers which were "three to four
12 microns in length." (See Exhibit H, attached hereto.) Again,
13 photomicrographs accompanied the report but are not attached and
14 apparently were subject to the "purge" memorandum described in Dr.
15 Hemstock's deposition. (See Exhibit E at pp. 124:7-126:12.)

16 f) An August 26, 1976, report about Dr. John Dement's (NIOSH)
17 examination of Vermont talc samples from a number of producers,
18 including Engelhard/Eastern Magnesia. Of the four samples from the
19 Engelhard mine, two tested positive for chrysotile asbestos fibers. (See
20 Exhibit I, attached hereto.)

21 g) For the years 1974-1975, there are apparently no tests or results in the
22 historical business records archives from BASF. According to Dr.
23 Hemstock, Engelhard's chemist, he would be surprised if there wasn't
24 testing done during this time and if such testing was done, any results
25 would have been subject to the 1984 purge memo. (See Exhibit E at pp.
26 126:15-127:1.)

27 h) A May 2, 1977 report by Mark Palenik, Research Microscopist for
28 McCrone, on a sample from Engelhard which contained approximately

1 20% fibrous antigorite (a member of the serpentine family of minerals, the
2 same mineral family to which chrysotile asbestos belongs), and that also
3 tested positive for chrysotile asbestos. (See Exhibit J, attached hereto.)

4 i) A May 18, 1977 report by Walter C. McCrone Associates, Inc., consulted
5 by Engelhard which shows that in all six samples evaluated there was
6 fibrous tremolite present. While the report calls out that it is using phase
7 contrast methods for identification and quantitation of asbestos, in my
8 opinion such methods would have included polarized light microscopy for
9 the purposes of fiber type identification. (See Exhibit K, attached hereto.)

10 j) A June 27, 1977, McCrone Associates report of yet another light
11 microscopy examination of talc samples submitted by Engelhard. Of the
12 two samples submitted, one showed fibrous actinolite, and showed that
13 "90% of the actinolite present is fibrous and can be classified as asbestos."
14 (See Exhibit L, attached hereto.)

15 k) A July 6, 1977, McCrone Associates study of Engelhard talc for Hallmark
16 Cards, which company was using Engelhard talc for its balloons.
17 Enclosed with that report was a laboratory analysis which showed
18 tremolite in the talc, some of which was "fibrous" according to the OSHA
19 and FDA definitions." (See Exhibit M, attached hereto.)

20 l) An August 18, 1977, inter-department memorandum entitled
21 "Mineralogical Evaluation of Waterbury and Johnson Talc" which showed
22 that actinolite/tremolite was detected in Emtal ore from the Engelhard
23 mine. (See Exhibit N, attached hereto.)

24 m) A Technical Service Request report dated February 1, 1979 which shows
25 that testing was made of Emtal talc by transmission electron microscopy,
26 among other methods, at Georgia Tech. A type of chrysotile was
27 identified by SAED, which utilizes a scanning electron microscope along
28

1 with diffraction methods, which together are capable of identifying both
2 fibers and fiber type. (See Exhibit O, attached hereto.)

3 n) An April 11, 1979, inter-department memorandum from Engelhard
4 contains an update of the "talc investigation" and which "concerns the
5 identification of contaminants in a number of talc production samples
6 using transmission electron microscopy." That report shows results from
7 the Georgia Institute of Technology from February 12 and February 16 of
8 that year. (See Exhibit P, attached hereto.)

9 o) An April 30, 1979, McCrone Associates, report which reveals that bulk
10 samples of Engelhard/Eastern Magnesia talc that were examined
11 "contained extremely high levels of chrysotile asbestos, probably in the
12 range of 0.10% to 1% of the sample." (See Exhibit Q, attached hereto.)

13 p) A May 22, 1979, inter-department memorandum which reports on the
14 results of tests performed by both Georgia Tech and McCrone Associates.
15 That report shows that multiple samples of Emtal 42 were submitted to
16 Georgia Tech for assay, including samples from an earlier production and
17 a later production. For the Emtal 42, the results were consistent in that
18 there were fibers present in every sample tested. Some samples showed
19 "high fiber counts." For the finer talc, some small fibers were found. (See
20 Exhibit R, attached hereto.)

21 q) A July 17, 1979, confidential Engelhard inter-department memorandum
22 which reported on the testing of three samples of Emtal, including Emtal
23 42 and which revealed that all the samples contained asbestos fibers
24 ranging in content from "trace" to "minor" to "many" to "abundant" with
25 some fibers longer than 5 microns. That report included a qualitative
26 analysis performed which classified fibers as being "many," "few," and
27 "no fibers present." That report also contains qualitative determination of
28 amounts on grid openings which were categorized as "trace," "minor,"

1 "many," and "abundant." Quantitative analysis showed asbestos in the
2 talc. Qualitative analysis included samples categorized as "many fibers"
3 and "abundant" fibers. (See Exhibit S, attached hereto.)

4 r) A January 2, 1981, McCrone Associates examination of talc samples
5 submitted by Engelhard using polarized light microscopy with dispersion
6 staining. The asbestos mineral tremolite-actinolite was detected in all
7 three of the samples. Asbestiform content by weight ranged from 0.5% to
8 1% in two of the samples and 1-2% in the third sample. (See Exhibit T,
9 attached hereto.)

10 18. I have also read portions of the deposition of Dr. Glen A. Hemstock taken in the
11 case of *Sampson v. 3M Company* on May 29, 2012.

12 a) In that deposition, Dr. Hemstock concedes that it is true that as of 1972,
13 both Royal-Globe and Johns Manville had found asbestos in Emtal talc.
14 (See Exhibit E at pp. 280:25-281:6.)

15 b) In the same deposition, Dr. Hemstock concedes that by 1977, three
16 separate laboratories had found asbestos in Emtal. (See Exhibit E at pp.
17 281:17-282:4.)

18 c) In 1979, Georgia Tech, McCrone, and Engelhard all found asbestos in
19 Emtal. This is conceded in Dr. Hemstock's deposition. (See Exhibit E at
20 p. 284:3-7.)

21 d) In the same deposition, Dr. Hemstock concedes that "four independent
22 scientists concluded that there was asbestos in Emtal." (See Exhibit E at
23 pp. 284:12-285:14.)

24 e) Therefore, Dr. Hemstock concludes that "as of May, 1979, there is no
25 doubt...at this point that there is asbestos being found in the talc from the
26 Emtal mine." (See Exhibit E at p. 285:22-286:20.)
27
28

- 1 f) In fact, in his deposition, Dr. Hemstock concludes that samples were
2 looked at for fifteen weeks straight and that they found fibers in every
3 sample. (See Exhibit E at p. 286:21-287:6.)
- 4 g) When asked about the accuracy of the statement "Emtal was an asbestos
5 free talc", Dr. Hemstock admits "on the face of it, it is not." (See Exhibit E
6 at p. 301:13-302:5.)
- 7 h) Dr. Hemstock also admitted that Engelhard's statement that "Emtal platy
8 talcs shipped from the Johnson, Vermont plant have been examined by the
9 most appropriate and sensitive mineralogical diagnostic methods
10 available, and it can be stated with confidence that no trace of the asbestos
11 minerals...can be detected..." is false. (See Exhibit E at p. 295:3-25.)

12 19. Based on the foregoing, I would disagree with anyone who expressed the opinion
13 that Emtal talc had a very limited history suggesting the presence of trace levels of asbestos. I
14 would further disagree with anyone who expressed the opinion that up until the late 1970s, after
15 many attempts to find asbestos, none had been reported. Similarly, I would disagree with the
16 opinion, if expressed, that to the extent that testing on Johnson talc detected asbestos in certain
17 samples, it was chrysotile in trace quantities.

18 20. I have also reviewed the Declaration of Carl Andrew Brodtkin, MD, MPH, which
19 is attached to my declaration as Exhibit U and to the Brokaw Dec. as Exhibit B. Dr. Brodtkin's
20 declaration, including his opinions and analysis, are among the materials which I have read,
21 relied upon, and/or considered in connection with my opinion in this case.

22 21. I have reviewed portions of the depositions of former Bondo employees, Charles
23 Duggar and Phillip Price. Mr. Duggar was a Bondo employee from 1966 until 1983 and one of
24 his job duties was to order the talc that Bondo used for its body filler. He testified that
25 "[Engelhard] was the only place [Bondo] ever bought any talc. And that's who [Bondo] always
26 ordered it from." (See portions of the Deposition of Charles Duggar, taken on May 11, 2004, in
27 *Mills v. American Optical Corporation, et al.*, attached hereto as Exhibit V, at p. 9:3-9; 10:4-6; p.
28 15:12-18; p. 18:9-21; p. 39:3-5.) Mr. Price started at Bondo in 1960 and in 1968 he became a

1 mixer and his job duties included ordering the raw materials used in auto body fillers. According
2 to Mr. Price, at least as of the late 1960s, "there was only one supplier which was Eastern
3 Magnesium talc company." (See portions of the Deposition of Phillip Price taken on July 1, 2004
4 in *Mills v. American Optical Corporation, et al*, attached hereto as Exhibit W, at p. 7:17-25; p. 8:
5 11-15; p. 9:8-22.)

6 22. Additional documents that I have reviewed concerning Bondo's talc supply
7 include the following:

- 8 a) A letter dated June 22, 1978 to Mr. Charles Carter of Engelhard noted that
9 "[Engelhard] continue[s] to sell Bondo 100% of their requirements"; (See
10 Exhibit X, attached hereto.)
- 11 b) An October 13, 1978 Customer's Report from three Engelhard salesman
12 reported that according to Dynatron/Bondo president, Quinn Machamer,
13 Bondo has a dual source for its glass bubble materials but does not have a
14 dual source for its talc. (See Exhibit Y, attached hereto.)
- 15 c) A Customer's Report from Engelhard salesmen regarding a May 1, 1979
16 visit with Dynatron/Bondo president, Quinn Machamer, noted that Quinn
17 is "willing to continue with [Engelhard] on 100% share of business if
18 [Engelhard] will meet [Vertal's] competitive offer; (See Exhibit Z,
19 attached hereto.)
- 20 d) A November 6, 1979 Inter-Department Memorandum from an Engelhard
21 salesman titled "New England 42 Talc Accounts" sets forth that at Bondo,
22 Engelhard's ("EMC") position is "100%."; (See Exhibit AA, attached
23 hereto.)
- 24 e) In an August 19, 1980 Salesman Call Report, an Engelhard salesman
25 reported that "Engelhard talc is the only talc that [Dynatron Bondo] use[s],
26 they don't buy a pound of Vermont talc or anybody else's." (See Exhibit
27 BB, attached hereto.)
- 28 f) In a Customer's Report dated December 18, 1981, an Engelhard salesmen
set out the contract terms that Engelhard proposed and Bondo agreed to

1 and affirmed that "with this contract in place, [Engelhard] will hold the
2 volume and [its] 100% supply position..." (See Exhibit CC, attached
3 hereto.)

- 4 g) In a December 13, 1982 Customer's Report regarding contract
5 negotiations with Bondo personnel Scott Thurman and Abdul Razzak,
6 Engelhard salesman J.J. Morris reported that Mr. Thurman represented
7 that if Engelhard agrees to certain pricing proposals, he "will continue
8 supporting [Engelhard's] position as the sole talc supplier to Dynatron"
9 and "indicated his desire to abide by contract contents, which stipulate a
10 100% supply situation." (See Exhibit DD, attached hereto.)
- 11 h) In a Customer's Report dated March 25, 1983, Engelhard salesman J.J.
12 Morris reported that Engelhard's request for a price increase in the 1983
13 contract with Bondo "would place [Engelhard's] 100% supply situation in
14 jeopardy" given the competitive offer Bondo was receiving from Vertal.
15 (See Exhibit EE, attached hereto.)
- 16 i) A June 22, 1983 Customer's Report, authored by Engelhard salesmen
17 reveals that during a meeting on June 15, 1983, [Bondo president Quinn
18 Machamer] "indicated his long standing desire to remain with Engelhard"
19 but that "due to Vertal's continued pricing activity over the past years,
20 [Mr. Machamer] felt ethically bound to include [Vertal] as suppliers."
(See Exhibit FF, attached hereto.)

21 23. I have also reviewed inventory documents produced by Bondo in this case. These
22 documents include year-end inventory analyses for each of Bondo's U.S. locations in the early
23 1980s. (See Exhibit GG, attached hereto.) The first year that Vertal talc shows up in the
24 inventory is 1983.

25 24. Based on my review of the depositions of Bondo employees Charles Duggar and
26 Phillip Price, the BASF documents set forth above, and the Bondo inventory documents, it is my
27 opinion that Bondo's predominant, if not sole, supplier of talc up until 1983 was Engelhard.
28

1 25. I have reviewed the relevant portions of the depositions of percipient witnesses
2 Tom Rubino, James Turner, Ken Tanaka and Doug Didrikson.

- 3 a) Tom Rubino testified that the Bondo that his father used came in a
4 container that said "Bondo" and he saw his father performing work with
5 Bondo auto body filler from approximately 1961 or 1962 through 1972.
6 Each time his father did this work he would have to apply as many as six
7 coats of the Bondo body filler on each location on the vehicle and each
8 time he applied a coat, he would sand it down. (See portions of Deposition
9 of Tom Rubino, Vol. II, taken May 21, 2009, attached hereto as Exhibit
10 HH, at pp. 183:6-184:10; p. 186:12-19; p.187:1-11; pp.193:8-195:11.)
- 11 b) James Turner worked at Walker Brothers with Mr. Rubino from 1955
12 through 1977. He testified that Bondo auto body filler, which came in
13 containers said the word "Bondo" on them, was the only body fill product
14 that was used at Walker Brothers. He saw Mr. Rubino use the Bondo body
15 filler in the 1950s and 1960s, and each time he used it, he would apply the
16 Bondo with a spatula, smooth it, let it dry, and then sand it. If it was not
17 smooth enough, multiple coats were applied and it was sanded after each
18 application. (See portions of Deposition of James Turner, taken March 14,
19 2012, attached hereto as Exhibit II, at pp. 31:24-32:7; pp. 32:13-33:11; p.
20 33:15-19; p. 34:7-19; pp. 35:14-36:4; p. 43:7-10; p. 38:2-7; p. 105:1-4.)
- 21 c) Ken Tanaka worked at Walker Brothers with Mr. Rubino from 1956 until
22 approximately 1984. He testified that each time they used auto body filler
23 they had to use multiple coats and would sand it after each coat was
24 applied. When the body fill was sanded it created dust in their workspace
25 which he and Mr. Rubino cleaned up with brooms and an air hose. Mr.
26 Tanaka testified that this occurred on a regular basis throughout the time
27 that they worked at Walker Brothers. (See relevant portions of the
28 Deposition of Ken Tanaka, taken September 23, 2010, attached hereto as

1 Exhibit JJ, at pp. 21:24-22:4; p. 22:17-25; pp. 24:18-25:4; pp. 38:22-
2 39:14; p. 62:17-24; pp. 63:11-64:4.)

3 d) Doug Didriksen also worked with Mr. Rubino at Walker Brothers the
4 entire time that Mr. Rubino was employed there. Mr. Didriksen confirmed
5 that each time Mr. Rubino applied Bondo, it would be filed down with a
6 body file or a grinding wheel. (See portions of the Deposition of Doug
7 Didrikson, taken June 7, 2011, attached hereto as Exhibit KK, at pp.
8 12:22-13:3; p. 15:14-16; p. 45:9-25.)

9 26. Based on the foregoing, my conclusion is that Mr. Rubino was exposed to dust
10 from the sanding of Bondo auto body fillers on a regular basis as a part of his job, without
11 adequate respiratory protection, and that for most if not all of the relevant years up to 1986, the
12 Bondo would have been Bondo which contained on average 50% Emtal talc. (See Exhibit B.)

13 27. I am unaware of any airborne asbestos sampling during sanding of Bondo or other
14 auto body fillers, but I have seen evidence that such testing was done on asbestos-contaminated
15 talc containing auto body products. In particular, Du Pont "Preparakote" automotive refinishing
16 primer did contain some trace amounts of asbestos as a naturally-occurring contaminant of that
17 talc. (See Du Pont's Supplemental Responses to Standard Interrogatories Pursuant to General
18 Order 129, attached hereto as Exhibit LL.) Du Pont testing of the sanding operations on the
19 Preparakote showed significant airborne asbestos concentrations ranging from 1.6-3.2 fibers per
20 cc of air. (See April 4, 1973 report, attached hereto as Exhibit MM.) While the OSHA
21 Permissible Exposure Limit (PEL) for asbestos was much higher at that time than presently, even
22 then the OSHA asbestos PEL would have been exceeded for work in excess of five hours.

23 28. The above airborne asbestos sampling during sanding of auto body products
24 containing contaminated talc, when compared to ambient levels of asbestos in the general
25 environment, is very high. Ambient levels of asbestos in the general environment currently
26 range from 10^{-8} to 10^{-4} fibers per cc of air (U.S. Department of Health and Human Services,
27 Public Health Service, Agency for Toxic Substances and Disease Registry: Toxicological
28 Profile for Asbestos, pp. 158-169, September 2001). A reasonable average figure circa the late

1 1960s to the early 1970s is 0.00005 fibers per cc of air (or 5×10^{-5}) (Air of 48 U.S. cities,
2 Nicholson, 1971). The airborne fiber concentrations delineated in Paragraph 27 above exceed
3 this ambient level by a factor of roughly 50,000.

4 29. Based on my review of all of the above, as well as my experience, education,
5 training, background, and research, as well as the information made known to me in this case as
6 set forth above, it is my opinion that Mr. Rubino, as a regular part of his job, and on a regular
7 basis, experienced asbestos exposure from Bondo automobile body filler in the 1960s and 1970s.
8 This asbestos exposure occurred when the product was sanded and swept, which generated dust
9 which he was exposed to without respiratory protection. To the extent that he has been identified
10 in some witness testimony as wearing a paper mask on occasion, that mask was, from an
11 industrial hygiene perspective, insufficient to protect him.

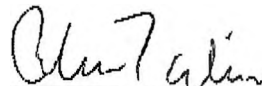
12 30. It is further my opinion that the asbestos in the Bondo product came from talc
13 which was supplied by Engelhard/Eastern Magnesia and that such talc repeatedly over the years
14 contained asbestos and/or asbestos fiber in a significant number of the tests performed, and that
15 sanding performed on similar automotive body products which contained contaminated talc have
16 demonstrated asbestos airborne concentrations as high as 3 fibers per cc. This exposure, when
17 compared to ambient background exposure, is far higher, up to thousands to hundreds of
18 thousands times greater, than the exposure suffered by individuals who would not have been
19 exposed to asbestos in an occupational setting. Therefore, this is a significant and meaningful
20 series of exposures from an industrial hygiene perspective.

21 31. OSHA exposure limits and industrial hygiene threshold limit values ("TLV's")
22 for asbestos exposure levels are not supposed to be used as fine lines for levels of exposure that
23 are considered to be healthy or unhealthy. Similarly, those limits are not supposed to be
24 considered as fine lines or criteria for how much exposure is or is not capable of elevating one's
25 risk for asbestos disease. Indeed, even under today's more stringent OSHA exposure limits,
26 OSHA notes in the preamble to the current standard that there still remains a risk that three
27 persons per one thousand will develop a malignant disease as a result of their exposure at this
28 concentration. Any attempt to use OSHA or other threshold limit values as fine lines between

1 safe and dangerous are misplaced and not supported by the standards, generally-accepted
2 industrial hygiene practice or the consensus of opinion in the scientific and regulatory
3 communities.

4 32. Disruption of fibers and fiber bundles through mechanical methods such as
5 sanding can increase one's exposure to asbestos beyond that experienced in other scenarios.
6 Therefore, it is my opinion that, while it is helpful to consider the air studies which were
7 performed at the mine, those studies would have been of exposure levels from a completely
8 different process than Mr. Rubino engaged in when he sanded the product and would not
9 necessarily reflect the true levels of exposure suffered by him.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct and that this Declaration was executed on this 27th day of June,
12 2012, at Seal Beach, California.

13
14 
15 JOHN TEMPLIN