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SUPREME COURT: ALL COUNTIES
WITHIN THE STATE OF NEW YORK

IN RE: NEW YORK CITY
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This Document Applies To:

SHELLY BERNARD
KAREN TEDRICK

VIDEOTAPED ORAL
EXAMINATION OF
JOSEPH SIMKO
VOLUME I

V I D E O T A P E D T R A N S C R I P T
of the deposition of JOSEPH SIMKO, called
for Oral Examination in the above entitled
action, said deposition being taken pursuant
to Rules governing Civil Practice in the
Courts of New York, by and before SERAFINA R.
ZINCKGRAF, CSR, RPR, a Certified Shorthand
Report, Registered Professional Reporter,
Notary Public, at the LAW OFFICES OF LEVY,
PHILLIPS & KONIGSBERG, L.L.P., 800 Third
Avenue, 11th floor, New York, New York 10022,
on December 2, 2010, commencing at 10:11 a.m.

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties hereto that filing,
sealing and certification of the within
Examination Before Trial be waived; that all
objections, except as to form, are reserved
to the time of trial.

IT IS FURTHER STIPULATED AND AGREED
that the transcript may be signed before any
Notary Public with the same force and effect
as if signed before a Clerk or Judge of the
Court.

IT IS FURTHER STIPULATED AND AGREED
that the within examination may be utilized
for all purposes as provided by the CPLR and
Part 221 of the Uniform Rules for the Conduct
of Depositions.

IT IS FURTHER STIPULATED AND AGREED
that all rights provided to all parties by
the CPLR shall not be deemed waived and the
appropriate sections of the CPLR shall be
controlling with respect thereto.

IT IS FURTHER STIPULATED AND AGREED
by and between the attorneys for the

APPEARANCES:

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ANNE SUD, ESQ.
Attorneys for the Defendant,
Colgate-Palmolive Company
and Joseph Simko

ALSO PRESENT:

MR. JOSH DISCHINGER

respective parties hereto that a copy of this
Examination shall be furnished, without
charge, to the attorney representing the
witness testifying herein.

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WITNESS DIRECT CROSS REDIRECT RECROSS
JOSEPH SIMKO
By Ms. Raphael

EXHIBITS

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1 Simko - direct
 2 than Cashmere Bouquet?
 3 MR. HORTON: Objection; asked
 4 and answered.
 5 A. I don't know.
 6 Q. Do you know if -- but you do
 7 know that Colgate was manufacturing Cashmere
 8 Bouquet at this time; is that right?
 9 A. Yes, oh, yes.
 10 Q. Do you know if where Cashmere
 11 Bouquet was manufactured at that time?
 12 MR. HORTON: Same objection.
 13 A. Well.
 14 MR. HORTON: You can answer.
 15 I'm sorry.
 16 A. At that time, I didn't know
 17 where the manufacturing site was, you know,
 18 at that time. I subsequently learned where
 19 they were. There was one in Jeffersonville,
 20 Indiana and Jersey City, New Jersey.
 21 Q. And did you learn that as part
 22 of your work at Colgate?
 23 A. As part of the talc
 24 investigation, I get background information.
 25 Q. Okay. I'm going back. We were

1 Simko - direct
 2 talking about letters or classes of letters
 3 that might be in your file. We talked about
 4 McCrone. Any other classes of letters that
 5 you might remember?
 6 A. No, no.
 7 MR. HORTON: Make sure -- let
 8 her finish.
 9 A. No.
 10 Q. Anything to or from the CTFA?
 11 A. There had to be some over the
 12 years but at that time, no.
 13 Q. Any letters to or from the FDA?
 14 A. I don't recall any from the FDA.
 15 Q. Then you said there were reports
 16 of work done by our crew to support the
 17 product development people. Do you remember
 18 any reports that might have been in your
 19 asbestos and talc file?
 20 A. No.
 21 Q. Do you remember that there were
 22 reports?
 23 A. I don't really remember that,
 24 no, no.
 25 Q. Did you keep any records of any

1 Simko - direct
 2 test; that is, were done on Cashmere
 3 Bouquet?
 4 A. I don't understand. I don't
 5 understand what you mean.
 6 Q. Did you keep any records of any
 7 tests that were done on Cashmere Bouquet for
 8 asbestos in talc?
 9 MR. HORTON: Object to form.
 10 You mean in the file?
 11 MS. RAPHAEL: Uh-huh, in the
 12 file.
 13 A. The file probably contained work
 14 requests from product development people and
 15 copies of that in the file. There was some
 16 of them. How complete, I don't...
 17 Q. Any result letters or result --
 18 A. Well, there would be --
 19 MR. HORTON: Let her finish.
 20 Q. -- in that file? Sorry.
 21 A. Well, copies of the service work
 22 request forms coming from people like
 23 Schebese or Schubert. When it's reported
 24 back to them, we always kept a file in the
 25 Analytical department to begin with, and I

1 Simko - direct
 2 probably had some of those in the file but,
 3 you know, it wasn't something that I was
 4 really looking out to do, no.
 5 Q. And how long did you keep that
 6 file?
 7 A. Until the day I retired. When I
 8 retired.
 9 Q. What did you do with it when you
 10 retired?
 11 A. Discarded it, destroyed it.
 12 Q. Did anybody ask you to keep that
 13 file?
 14 A. No, nobody asked me to keep the
 15 file, no.
 16 Q. Had you ever given copies of
 17 what was in that file to anybody at Colgate?
 18 A. Well, if it had any
 19 correspondence in it, then it would have
 20 been copies that I kept, correspondence that
 21 I sent out. So I would have to say yes.
 22 Yes, to that. For example, McCrone reports,
 23 they were addressed to me. They weren't
 24 CC'd to anybody. Did I make copies of them?
 25 Obviously I reported it to appropriate

1 Simko - direct
 2 A. Yeah.
 3 Q. Was there ever any literature
 4 about asbestos?
 5 MR. HORTON: Object to form.
 6 A. I don't recall
 7 Q. Or asbestos in talc?
 8 A. I can't say there weren't but I
 9 don't recall.
 10 Q. After your meeting with
 11 Johnson & Johnson, did you review any
 12 literature, medical articles or anything
 13 about asbestos in talc?
 14 A. Gee, I don't remember that. I
 15 can't remember what I did after that. I
 16 just can't.
 17 MS. RAPHAEL: There's five
 18 minutes left so let's just take a
 19 break.
 20 (Recess occurred.)
 21 Q. Do you know when Richard Turse
 22 started doing XRD in your department?
 23 A. In the late 70s.
 24 Q. And did someone take over for
 25 him doing XRD ever?

1 Simko - direct
 2 Q. -- in relation to asbestos in
 3 talc, if they were part of the procedures
 4 you were talking about?
 5 A. They had to be part of the
 6 procedures. Did I know any specific items?
 7 No.
 8 Q. Did you ever speak with anybody
 9 else outside of Colgate about asbestos in
 10 talc?
 11 MR. HORTON: Object to form.
 12 Q. Other than who we spoke about
 13 already today?
 14 MR. HORTON: Object to form;
 15 overboard.
 16 A. I can't recall any. I can't
 17 recall.
 18 Q. Any other government agencies?
 19 A. No, no.
 20 Q. Did you ever -- Did Colgate ever
 21 share test -- Colgate's testing of talc with
 22 the CTFA?
 23 MR. HORTON: Object to form;
 24 foundation.
 25 A. I don't recall that we did.

1 Simko - direct
 2 MR. HORTON: Objection; lacks
 3 foundation.
 4 A. No, Briscese came back and did
 5 some, but no one else.
 6 Q. That was it?
 7 A. Yes.
 8 Q. Until you left?
 9 A. That's correct.
 10 Q. And did there come a time when
 11 Susan Williams started doing microscopy?
 12 MR. HORTON: Objection;
 13 foundation.
 14 A. Yes.
 15 Q. And did she do microscopy on
 16 talc?
 17 A. I don't know what she did in
 18 microscopy.
 19 Q. But the microscopy on talc was
 20 part of the procedures that you were talking
 21 about, right?
 22 A. Yes.
 23 Q. So do you know anything about
 24 what the microscopy lab did --
 25 MR. HORTON: Object to form.

1 Simko - direct
 2 Q. Did Colgate ever share Colgate's
 3 testing of talc with the FDA?
 4 MR. HORTON: Same objection.
 5 A. Not to my knowledge.
 6 Q. Was the Analytical department
 7 divided into sections?
 8 A. Yes, it was.
 9 Q. What were the sections in the
 10 Analytical department?
 11 A. There was one devoted to
 12 competitive product analysis. There was a
 13 wet chemistry section. There was a
 14 separation section, which is where
 15 chromatography was. There was an
 16 instrumental section where I was.
 17 Q. That's where you worked?
 18 A. Yes.
 19 Q. You were the section head of
 20 instrumental?
 21 A. Mainly instrumental, yes.
 22 Q. Were you ever in any of the
 23 other sections?
 24 A. No.
 25 Q. Was the Analytical department,

1 Simko - direct
 2 A. Yes.
 3 MS. RAPHAEL: I think I'm out of
 4 time; kind of hear a bell.
 5 MR. HORTON: It was a good time
 6 rather than starting something new.
 7 MS. RAPHAEL: Thank you, very
 8 much
 9 (Deposition concluded at 4:54
 10 p m.)
 11
 12
 13
 14
 15

16 _____
 17 JOSEPH SIMKO

18 Subscribed and sworn to
 19 before me on this ____ day
 20 of _____, 2011.
 21
 22

23 _____
 24 NOTARY PUBLIC
 25

1
 2 C E R T I F I C A T E

3 I, SERAFINA R. ZINCKGRAF, a
 4 Certified Shorthand Reporter, Registered
 5 Professional Reporter and Notary Public of
 6 the State of New Jersey do hereby certify
 7 that prior to the commencement of the
 8 examination the witness was duly sworn by me
 9 to testify the truth, the whole truth and
 10 nothing but the truth.

11 I DO FURTHER CERTIFY that the
 12 foregoing is a true and accurate transcript
 13 of the testimony as taken stenographically by
 14 and before me at the time, place and on the
 15 date hereinbefore set forth, to the best of
 16 my ability.

17 I DO FURTHER CERTIFY that I am
 18 neither a relative nor employee nor attorney
 19 nor counsel of any of the parties to the
 20 action; and that I am neither a relative nor
 21 employee of such attorney or counsel; and
 22 that I am not financially interested in the
 23 action.
 24

25 SERAFINA R. ZINCKGRAF, CSR, RPR
 License No. XI01637



EXHIBIT 12