

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE TOMAR MASON, JUDGE PRESIDING

DEPARTMENT NUMBER 606

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PAUL EDGAR GORDON, JR. and	)	
MARGARET GORDON,	)	
	)	
Plaintiffs,	)	Case No. 274076
	)	Jury Trial
Vs.	)	Volume 3
	)	
FORD MOTOR COMPANY, et al.,	)	
	)	
Defendants.	)	
	)	

Reporter's Transcript of Proceedings

Friday, September 5, 2008

Afternoon Session

APPEARANCES OF COUNSEL:

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Reported by: Patty Lee Hubble, CSR #3058

1 AFTERNOON SESSION

1:40 p.m.

2 (The following proceedings were had in open court, out of
3 the presence of the jury.)

4 THE COURT: Calling back into session the matter of Gordon
5 v. Ford, Chrysler, and GM.

6 The Court notes the presence of all previously appearing
7 counsel.

8 As a reminder, I was going to turn to Ms. Mikacich to see if
9 she joins entirely in the position taken by Mr. Ostertag and/or
10 whether she wishes to supplement.

11 MS. MIKACICH: Yes, Your Honor. General Motors joins in the
12 motion as articulated by Mr. Ostertag and pursuant to our motion
13 in limine Number 19 on the same subject. Thank you.

14 THE COURT: Thank you very much.

15 And now, as I announced previously, I will turn to the
16 plaintiffs to address several of the issues about which the
17 Court had the most concern.

18 MS. CLANCY: Yes. First of all, Your Honor, it is necessary
19 to correct misimpressions about what Dr. Castleman is going to
20 testify about. He's not going to testify about fraud. He is
21 not going to testify about conspiracy. He's simply going to
22 testify about the state of the art, as he has always been
23 represented as testifying in this court by these plaintiffs.

24 This is in brief, the nutshell, the state of the art for
25 brake literature and the exposure of mechanics to asbestos.
26 Dr. Castleman was on the forefront of that exploration in the
27 early 1970s. And I'm giving you a tiny bit of a historical
28 perspective so it will make sense to you coming forward.

1 If you look at Exhibit 17 to plaintiffs' attached exhibits
2 to this hearing, it's an article entitled, "The Hazards of
3 Asbestos for Brake Mechanics," and a published article by Barry
4 Castleman in Public Health Reports.

5 THE COURT: I see 17.

6 MS. CLANCY: Yes. And in that article he was -- he had
7 personally investigated whether or not there were adequate
8 warnings to brake mechanics as to the hazards of asbestos in the
9 Baltimore and Washington areas, and in the end recommended that
10 the warnings were not only inadequate, but also this issue of
11 compressed air blowout, which Dr. Castleman individually
12 researched, was omnipresent, and it was extraordinarily
13 dangerous.

14 So it's important to point out the article to let the Court
15 know Dr. Castleman's involvement with the state of the art as it
16 relates to brake mechanics and the development of safety for
17 brake mechanics; and as well as the literature to protect brake
18 mechanics has begun since he first entered this field in the
19 earlier 1970s. He has, since the early 1970s, been asked to --
20 has been requested by Congress to testify to Congress as an
21 expert on the issue of asbestos. He has served as a consultant
22 to the Environmental Protection Agency and as a consultant to
23 the World Bank Organization. And so, moving forward into the
24 present day, he is highly versed in the area of what is the
25 state of the art for brake mechanics, specifically.

26 Here is how we get to the present day. And the important
27 part, again, staying on the subject of the state of the art as
28 of the year 2000, there had been -- it was accepted in the

1 literature, and by OSHA and by the EPA, that exposure to
2 asbestos from brakes causes mesothelioma. And the literature
3 was also full of references in epidemiological studies as to
4 exposure to chrysotile asbestos causes mesothelioma and exposure
5 to other types of asbestos causes mesothelioma.

6 Since the year 2000 there has been a documented effort by
7 General Motors, Ford and Chrysler to do exactly what
8 Mr. Ostertag said. They have hired different consultants such
9 as Dr. Paustenbach, Dr. Hessel and Dr. Teta, to do what is
10 called a metaanalysis; they have taken all the literature to
11 date and reanalyzed it and said that it is our opinion that when
12 we reanalyze the data, this shows that, in fact, there is not a
13 harm from exposure to asbestos.

14 The money that has been spent by these companies is --
15 ranges from 30 to \$35 million.

16 THE COURT: You claim this is in an effort to demonstrate
17 that there's no hazard from asbestos?

18 MS. CLANCY: Well, they have -- in brakes, in just brake
19 mechanics.

20 This has been well documented in not only the peer-reviewed
21 published literature, which I will give a couple of brief
22 examples, but also Dr. Castleman was invited by the U.S. Senate
23 to testify to them on this very subject.

24 I point these matters out just to show that the most basic
25 element -- this is, in essence, a Frye hearing to determine the
26 admissibility of evidence.

27 And what we are talking about is material that is generally
28 accepted in the scientific literature; that is, material that

1 Dr. Castleman has worked on and relied upon outside of the field
2 of litigation, and thus he is just coming to this Court to say,
3 in terms of state of the art, here is what is happening in the
4 brake literature.

5 We had a sea change as of the year 2000, where these
6 companies devoted a lot of resources to having their
7 consultants, scientists hired by them, reanalyze the data, to
8 question whether or not there was a risk. And then these
9 scientists hired by the companies, which Mr. Ostertag admitted,
10 published articles claiming -- stating their findings were that
11 there was indeed not a risk.

12 So, for example, the International Journal of Occupational
13 Environmental Health --

14 THE COURT: One of the consultants is Dr. Teta?

15 MS. CLANCY: One of the consultants is Dr. Teta, that they
16 have paid. And I believe she came out with another article this
17 spring.

18 THE COURT: I'm not sure -- can I read this on my screen?

19 MS. CLANCY: Let me give you a clear copy. I just wanted to
20 show you the journal it is coming from, a July/September 2007
21 publication from the International Journal of Occupational and
22 Environmental Health.

23 I have a copy that may be clearer.

24 The title of the article is "Asbestos Exposure Causes
25 Mesothelioma, But Not This Asbestos Exposure," by Laura Welch.
26 And, again, this is referring to the Chrysler, General Motors
27 and Ford, their experts' publication, saying that even though we
28 know asbestos exposure causes mesothelioma, our analysis of the

1 data shows brake mechanics are not at risk.

2 THE COURT: Is this a tabbed exhibit in your binder?

3 MS. CLANCY: This is not, but I can supplement it.

4 THE COURT: Do you have a copy of the article?

5 MS. CLANCY: Yes.

6 THE COURT: Do you have a courtesy copy for the Court?

7 MS. CLANCY: Yes, if I may approach.

8 THE COURT: You may.

9 MS. CLANCY: There are a couple of additional points about
10 the article. This is part of plaintiffs' offer of proof to show
11 that this is state of the art that is generally accepted in the
12 peer-reviewed literature.

13 If you look at the last page of the article, where I have
14 highlighted, Page 323, the middle paragraph:

15 "Since 2000, Ford, General Motors and Chrysler
16 have paid over \$30 million to hire consultants for
17 the purpose of generating the very papers they rely
18 on, and for testifying regarding these papers in
19 court."

20 Of great importance in this article, what we're looking at
21 is a Frye standard, whether or not this is a theory that has
22 been generally accepted. And if you look at who has signed on
23 to this article, which are the signatories at the back, you can
24 see Dr. Castleman, Barry Castleman, Kensington, Maryland, is
25 right there on the right-hand side. But, in addition, you've
26 got many, many preeminent experts in the field of health,
27 epidemiology, and science who have signed on to this article,
28 and thus showing that, the extent of support it has received in

1 the scientific community.

2 You have professors from the Mount Sinai School of Medicine.
3 You have professors from the School of Public Health and Health
4 Services at George Washington University.

5 Peter Infante, I-N-F-A-N-T-E, has signed on. He was
6 formerly head of standards at OSHA, to develop among other
7 things, the benzene standard.

8 You have Douglas Henderson from South Australia; you have
9 Dr. Dodson, an eminent pathologist. I could read the whole
10 list, but I would only be taking up the Court's time because
11 it's before the Court now. The point being from this article is
12 that this is a list of eminent experts, and this shows that this
13 is not a fly-by-night theory as to the amount of money that has
14 been spent by these companies.

15 THE COURT: What was the basis of the statement on Page 323
16 that Ford, General Motors and Chrysler have paid over
17 \$30 million to hire consultants for the purpose of generating
18 the papers referenced here?

19 MS. CLANCY: There's certain companies, one of them is
20 called Exponent, and one of them is called Chemrisk. Exponent,
21 Dr. Teta works for, as well as Dr. Paustenbach. And these car
22 manufacturers have paid money to these scientific companies to
23 say, "We want you to reanalyze the data for purposes of refuting
24 the proposition that brake mechanics get cancer upon working
25 with asbestos."

26 Dr. Paustenbach himself testified at a hearing in
27 Philadelphia, and I attached that as Exhibit 4 and marked the
28 relevant section, that starts on Page 59, starts on Page 59,

1 Line 8.

2 THE COURT: The exhibit?

3 MS. CLANCY: It's Exhibit 4.

4 THE COURT: Got it.

5 MS. CLANCY: Okay, 59, Line 8, Dr. Paustenbach is asked:

6 "Well, why don't you just tell me how much money
7 you and your staff have made from these motor
8 companies since they first hired you to help them in
9 their asbestos -- in their quest for the asbestos
10 science."

11 It was previously established that Dr. Paustenbach started
12 working with them shortly after the year 2000.

13 He moves on, he's ordered by the Court to answer. And the
14 answer is at Line 22:

15 "Well, I think what's been said before, it's been
16 at least 35 million in research over dozens and
17 dozens, I suppose several, I believe hundreds of
18 cases between the two firms over the last 70 years.

19 "Q. 35 million bucks?

20 "A. That's what's been reported."

21 That is just -- plaintiff had put that in there to show that
22 although the number 30 million may, in fact, be a conservative
23 estimate, when Dr. Paustenbach has testified himself that he
24 believes it's reported to be 35 million since the year 2001,
25 because that was seven years before 2008.

26 THE COURT: This is part of the deposition. And the Court
27 of Common Pleas, First Judicial District of Pennsylvania, Civil
28 Trial Division, jury trial, in which this was live testimony

1 adduced in a jury trial.

2 MR. OSTERTAG: It wasn't a jury trial. A Frye hearing, the
3 same kind of Frye hearing we asked for here. It wasn't a jury
4 trial.

5 THE COURT: F-R-Y-E, hearing?

6 MR. OSTERTAG: F-R-Y-E, yes.

7 And I would note, I don't want to interrupt, but she didn't
8 read the whole testimony by Dr. Paustenbach. He says --

9 THE COURT: Counsel, you know what, I do not want to
10 interrupt plaintiffs' argument.

11 MR. OSTERTAG: I'm sorry.

12 THE COURT: But I'm trying to establish what I'm looking at
13 so that the record will be clear what I'm looking at, and so the
14 Court has an understanding of what the Court is being asked to
15 examine.

16 So this is live testimony on February 14th, 2008, in
17 Philadelphia, Pennsylvania; correct?

18 MS. CLANCY: Yes, Your Honor.

19 THE COURT: I don't understand why the caption in this case
20 is Plaintiff v. Defendant as opposed to a caption.

21 MS. CLANCY: Well, you have to meet the court reporter in
22 that hearing.

23 But it was an in re hearing where the court -- the question
24 for the court in Philadelphia was this very question: Does
25 exposure to brakes cause mesothelioma?

26 And Dr. Paustenbach was asked to testify, and he was
27 asked -- on cross-examination, he was asked how much money since
28 the year 2001 have he and his company been paid by these

1 companies. The -- the same brake companies were there, Ford,
2 General Motors, and Chrysler.

3 THE COURT: Where is the witness identified in this exhibit?

4 MS. CLANCY: Afternoon cross-examination. I would be happy
5 to supplement the record with the beginning of the direct where
6 he gives his full credentials.

7 THE COURT: I see. That's why I can't find anything but
8 appearances by counsel.

9 We're going back to the testify of so-and-so at some point,
10 don't they say that?

11 MS. CLANCY: One would think.

12 THE COURT: Unlike a deposition in which the witness is
13 easily identifiable, this is a trial transcript in which -- I
14 just want to be sure I understand what I'm being asked to
15 review.

16 MS. CLANCY: Let me see. Right here. If you go on Page 9,
17 Mr. Lopez is doing the direct examination on behalf of the car
18 companies, says, "We're ready to go and will proceed with due
19 haste."

20 And the Court says, "Go ahead."

21 THE COURT: That doesn't tell me who this is.

22 MS. CLANCY: With the Court's permission, we will pick up
23 where we left off with Dr. Paustenbach.

24 "Dr. Paustenbach do you understand you are still
25 under oath?"

26 THE COURT: This is continued direct examination from a
27 morning session?

28 MS. CLANCY: Yes, exactly.

1 THE COURT: Okay. The testimony was offered by which party?

2 MS. CLANCY: It was offered by all three: Ford, General
3 Motors, and Chrysler. They were all three parties to the Frye
4 hearing.

5 THE COURT: Ford, General Motors, and Chrysler offered
6 Dr. Paustenbach's testimony on the issues that we're talking
7 about here?

8 MS. CLANCY: Yes, exactly.

9 THE COURT: Mr. Ostertag, I will ask you -- do I understand
10 that you all agree on that, that there was a hearing in
11 Philadelphia, that it was a Frye hearing, and that Ford,
12 Chrysler, and GM offered Dr. Paustenbach?

13 MR. OSTERTAG: Yes. It had nothing to do with this issue,
14 but I would agree there was a Frye hearing to assess the status
15 of the evidence on whether or not exposures from auto mechanic
16 work causes disease, the same hearing we asked for in this case.
17 Philadelphia conducted that hearing, Dr. Paustenbach testified.
18 It had nothing to do with this fraud conspiracy claim, but, yes,
19 that hearing went forward.

20 THE COURT: Ms. Clancy, please continue.

21 MS. CLANCY: Yes. The point of the Frye hearing reference
22 is to show that, one, Dr. Paustenbach says it's \$35 million,
23 which is even above what the peer-reviewed literature is saying.
24 So Mr. Ostertag's statement that the number that plaintiffs are
25 throwing out is -- I believe he said -- the word was -- it now
26 escapes me, but it is not frivolous, it is not frivolously
27 alleged -- oh, "spurious" was the word.

28 It is not spurious. It has been repeatedly published, and

1 it has been discussed by their experts and also published in
2 articles, where experts have reviewed the bills of Exponent, as
3 well as interrogatories propounded by these defendants, talking
4 about the amount of money that they spent on developing this
5 science since the year 2000.

6 Dr. Castleman himself was invited to testify to the Senate
7 on this very issue. And I have his testimony that he gave to
8 the Senate, behind Tab 14. The importance of this testimony is
9 that outside the field of litigation, Dr. Castleman was asked to
10 provide his expert opinion to the Senate on the issue of what is
11 happening with the state of the art in brake literature and how
12 have the car companies developed that literature according to
13 his expert opinion.

14 This goes to the issue of: Is this an area that is in his
15 field of expertise, that he is practicing, experienced and
16 trained on and, in fact, viewed by our government to be a
17 national expert in? And he is not only viewed by our government
18 to be a national expert in this issue, but he's invited to speak
19 on this issue before the United States Senate.

20 THE COURT: Let me ask you this question: Is Dr. Castleman
21 going to offer an opinion that Ford, GM and Chrysler engaged in
22 a conspiracy to perpetrate a fraud on the medical community, the
23 public, the courts, the plaintiff and everyone?

24 MS. CLANCY: No, he is not. He's going to simply say: Here
25 is what happened. Here was the state of the art up to 2001.
26 Here is the money that has been spent. Here are the articles
27 that have been published as a result of that money. The
28 conclusions to be drawn will be within the province of the jury,

1 and the weight and credibility will be in the province of the
2 jury.

3 The Supreme Court has said -- this issue is extremely
4 relevant. And why it has come up, it's extraordinarily
5 important to the plaintiffs' case, the United States Supreme
6 Court this summer in Exxon Shipping v. Baker, which I attached
7 as Exhibit 5, recognized the importance of questioning from
8 whence your funding comes.

9 And recall, Your Honor, the very first words that these
10 defendants uttered when they came before this Court were: "We
11 have now developed the science to show that exposure to asbestos
12 brakes does not cause mesothelioma. We have epidemiological
13 proof."

14 And if you look at Page 27 of the Supreme Court's decision
15 opinion --

16 THE COURT: Which is marked?

17 MS. CLANCY: Yes. Footnote 17.

18 THE COURT: This is the opinion of the U.S. Supreme Court?

19 MS. CLANCY: The opinion of the United States Supreme Court
20 in Exxon Shipping Co. v. Baker, et al., October Term, 2007,
21 decided June 25th, 2008.

22 And the footnote on Page 27, Footnote 17 talks about -- and
23 the issue here is what is the appropriate way to determine
24 punitive damages.

25 THE COURT: Is it Footnote 16?

26 MS. CLANCY: Footnote 17 is the relevant paragraph I would
27 like to start with. I did also mark 16.

28 THE COURT: I'm on 17.

1 MS. CLANCY: On Footnote 17:

2 "As the court is aware of a body of literature
3 running parallel to anecdotal reports examining the
4 predictability of punitive awards by conducting
5 numerous mock juries where different jurors are
6 confronted with the same hypothetical case."

7 Moving on to finish the quote, there is a series of string
8 cites, if you turn to the following page to the end of the
9 footnote:

10 "Because this research was funded in part by
11 Exxon, we decline to rely on it."

12 Again, this shows that one consideration must necessarily
13 be, you must necessarily, when looking at state of the art, and
14 state-of-the-art literature, you have to necessarily consider
15 the sources of the funding.

16 And this is something that Dr. Castleman does have an
17 expertise in, in terms of his analysis, education, background,
18 and his study of the facts with respect to these car companies,
19 in terms of analyzing where did the source of funding come from
20 for the science generated after the year 2001.

21 THE COURT: Excuse me, Counsel. What relevance does
22 defendants' investment in mock trials to advise them of what
23 jurors might find, what relevance does that have to this?

24 MS. CLANCY: A great question. The relevance is this: that
25 the Supreme Court looked at a series of studies and said, "Well,
26 one of our criteria to analyzing whether -- the weight that we
27 are to accord those studies is who funded the studies."

28 And I'm bringing this before this Court here to show this

1 Court that it's absolutely critical that one of the --

2 (Pause in the proceedings.)

3 MS. CLANCY: I'm sorry.

4 Those studies were about juries. I'm using it as an example
5 of how the United States Supreme Court says that, necessarily,
6 any inquiry into the validity and the weight to be accorded to a
7 series of studies or scientific evidence is who is funding the
8 studies at issue.

9 And the Ninth Circuit here in California has also stressed
10 the same point.

11 THE COURT: Counsel, I understand now that Dr. Castleman
12 will not offer an opinion that the defendants here have
13 conspired, acted in concert to perpetrate a fraud.

14 Is that right?

15 MS. CLANCY: That is absolutely right.

16 THE COURT: So if the Court were to grant that motion as
17 articulated, it would be moot in any case.

18 MS. CLANCY: That's right.

19 THE COURT: But you do indicate to the Court you will be
20 offering Dr. Castleman's testimony on historical review of not
21 only what the defendants in the industry did, which I indicateed
22 I would permit, but you're also going to ask to present his
23 evidence -- or you intend to present his testimony concerning
24 his review of the literature of the development of brake --
25 asbestos-containing brake literature based on the various things
26 that you described.

27 MS. CLANCY: Right. Exactly.

28 THE COURT: I will rule, right now: Motion to exclude

1 testimony by or an opinion by Dr. Castleman on fraud and
2 conspiracy is granted, but is moot because those opinions will
3 not be offered.

4 I have heard your offer on what he will testify about, and I
5 think I understand, it's very similar to your offer on his
6 review of research and documents concerning what the industry
7 was doing at certain times; and you also wish to offer his
8 review and -- his review of the literature of how the literature
9 has developed and the sources of the development of that
10 literature.

11 MS. CLANCY: Exactly, which is actually consistent with what
12 we were saying before: It's the scientific, medical, and
13 corporate literature as it's been in the past and as it's
14 developed to present day.

15 The offer stands the same. Defendants' twist on it that
16 we're adding some sort of fraud or conspiracy, as the Court has
17 recognized, is not what we're saying. It's a continual review
18 of the present time to the development of the literature, which
19 the Senate has, in fact, called on Dr. Castleman to testify to
20 them about this very issue.

21 And I'm sorry if I'm redundant about that. I think it's
22 important to point out that not anybody can just testify before
23 the Senate. And the Senate has to issue a formal invitation and
24 say, "We are calling on you as an expert because we request your
25 expertise in this area."

26 So this is something that has been Dr. Castleman's field of
27 study as well as interest -- professional, outside of
28 litigation, as you can see from the article stemming from 1975,

1 to his testimony before the Senate in 2007, is clearly something
2 he has expertise in and clearly something that is highly
3 relevant to the very issues at the heart of the case.

4 THE COURT: Just so that I can narrow this down to the
5 likely next level of arguments, should we get to a punitive
6 damages stage of this case, which the Court has not yet
7 determined, you would at that point probably at least be
8 indicating to the Court that the plaintiff wishes to argue that
9 this is a fraud or conspiracy, or not?

10 You're not even doing that? So it's not allegation; it's
11 not opinions; it's not even argument, not even if we get to
12 punitive damages?

13 MS. CLANCY: Correct.

14 THE COURT: Got it.

15 And there's one other question I have.

16 Oh, yes, defendants contend the \$30 million is a figure just
17 drawn from the air and it must represent general costs of
18 defense. That's what I understood they contended.

19 Is that what you contend?

20 MR. OSTERTAG: I didn't say it was drawn from the air. I
21 think it may have been stated in the General Motors
22 interrogatory response, but it's -- Dr. Paustenbach doesn't say
23 this.

24 It is fees paid for, yes, defense of the litigation. People
25 coming in here to testify to give opinions, just like he would.
26 And they have all said -- and if we get to this, if this comes
27 in, we will want to call all these witnesses to rebut all these
28 allegations.

1 THE COURT: Don't worry, Mr. Ostertag, I will make sure you
2 have plenty of time for that.

3 MR. OSTERTAG: Judge, this is a huge thing. But anyway,
4 they have all said no, we got paid a couple hundred thousand
5 dollars total to do these articles.

6 The rest of the money went to --

7 THE COURT: Okay. Mr. Ostertag, I had understood previously
8 that you contended that -- and were concerned that the
9 plaintiffs intended to introduce evidence that \$30 million was
10 spent on consulting fees of some kind. And you don't actually
11 controvert that because, of course, there's costs of defense; so
12 far, am I right?

13 MR. OSTERTAG: That's right.

14 THE COURT: All right. But -- actually, now I think I
15 understand that since the consulting fees related to expert
16 witnesses and the development of expert witnesses' opinions, it
17 doesn't sound like, right now, that you're contending -- that
18 must have contributed to the literature in some way; correct?

19 MR. OSTERTAG: Well, there are three or four articles that
20 did, yes.

21 THE COURT: So at least the three or four articles are a
22 subset of those defense costs?

23 MR. OSTERTAG: Very small subset, yes.

24 THE COURT: The \$30 million, if that is a correct figure,
25 also covers other defense costs?

26 MR. OSTERTAG: Absolutely.

27 THE COURT: Okay. So I'm just going to clarify this with
28 Ms. Clancy.

1 Ms. Clancy, is it the plaintiffs' intention specifically to
2 offer evidence of \$30 million being to develop literature, or is
3 that an intention of yours at all?

4 MS. CLANCY: I'm sorry, he was talking. I lost you on the
5 last clause, contention of what?

6 THE COURT: Do you intend to introduce the figure of
7 \$30 million or \$35 million?

8 MS. CLANCY: We intend to introduce the figure of
9 \$30 million because that's what is accepted in the
10 peer-reviewed, published literature. We intend to offer it for
11 this proposition, since the year 2001, that amount of money has
12 been spent by these car companies, both to develop a science
13 with respect to, as he said, at least three or four papers,
14 three or four papers, extraordinarily important to the defense
15 of their case, as well as to pay for consulting costs to their
16 experts, as well as to pay for these firms to -- you know,
17 invoices that show -- write articles to government agencies on
18 behalf of these brake companies.

19 THE COURT: So you intend to offer evidence that defendants
20 in this case have spent \$30 million on approximately four
21 articles and on other costs of defense since 19 -- since 2001.
22 Correct?

23 MS. CLANCY: Correct.

24 But not their attorney defense, not the cost of the
25 attorneys, but with respect to their paid consultants, which is
26 clearly something that if -- you know, is a matter that the jury
27 has -- should be allowed to hear. And if he wants to take it on
28 cross, disputing which goes to the articles and which goes to

1 just the paid consultants' salaries, that is certainly a purview
2 he can take on cross.

3 But we absolutely intend to offer that \$30 million has been
4 spent by the car companies since 2001.

5 THE COURT: How is this discerned? I see it in the paper,
6 the last exhibit you offered, which we will get around to
7 numbering soon, I guess it will be 18?

8 MS. CLANCY: 18.

9 THE COURT: 18 of the tabbed exhibits. Which, again, I will
10 go back to a proper marking of this exhibit later.

11 But on Page 323, which you referenced, there is a statement
12 that since 2004, General Motors and Chrysler have paid over
13 \$30 million to hire consultants for the purpose of generating
14 the papers they rely upon.

15 MS. CLANCY: Yes.

16 THE COURT: Is there some admission out there by Ford,
17 General Motors and Chrysler?

18 MS. CLANCY: Yes, if you look at the footnote, for
19 example --

20 THE COURT: Which footnote?

21 MS. CLANCY: The footnote to the statement, there's a little
22 cross.

23 THE COURT: I have admitted -- off the record.

24 We will take a break while this is copied for the defense.

25 (Discussion off the record.)

26 THE COURT: Back on the record.

27 Counselor for the defense have been provided with the tabbed
28 exhibits 1 through 17, but not the tabbed Exhibit 18, which is

1 being utilized by the Court now, which will be added to this
2 notebook.

3 We will take a brief recess for a copy to be made.

4 I understand counsel for the defense are willing to share it
5 for the purposes of completing these arguments.

6 With that, we're taking a brief recess.

7 (Recess was taken at 2:14 P.M.)

8 THE COURT: Back on the record on Gordon v. Ford, Chrysler,
9 General Motors.

10 The Court notes the appearance of previously appearing
11 counsel, and goes back to the argument concerning the 30 million
12 and the answer to the Court's question about whether there is an
13 admission by General Motors, Ford, and Chrysler, and the
14 response by plaintiff that it can be found or is referenced
15 on -- which page of Plaintiffs' 18?

16 MS. CLANCY: Page 323 of Exhibit 18, the footnote with a
17 cross, just a singular cross referencing Ford, General Motors
18 and Chrysler have admitted in litigation that since 2000, they
19 have paid over \$30 million to these experts. See Ford and
20 General Motors answers to interrogatories, U-N-D-E-N, v. General
21 Motors, Case Number 056311, Circuit Court for Hillsborough
22 County, Florida, and Chrysler IRS Form 1099s produced in
23 litigation.

24 THE COURT: Thank you, Counsel.

25 We had taken a recess so a copy could be provided to
26 defense, and that has been done; correct?

27 MR. OSTERTAG: Yes.

28 MS. MICHAL: We received one copy, Your Honor.

1 THE COURT: I appreciate your sharing that copy, and we will
2 make sure you get copies for all counsel at the conclusion of
3 this hearing.

4 That was the Court's last question.

5 Was there an admission?

6 MS. CLANCY: And I guess important, because if you look at
7 Exhibit 14, which is Dr. Castleman's testimony to the Senate,
8 his sworn testimony.

9 THE COURT: That's the Barry Castleman statement to the
10 Senate Health, Education, Labor, and Pensions Committee,
11 March 2007?

12 MS. CLANCY: Right.

13 On Page 5 of that testimony, the first full paragraph, it
14 says: General Motors, Ford, Daimler Chrysler have spent
15 23 million between 2001 and the spring of 2006.

16 Again, that's a shorter period being analyzed here, from
17 2001 to the start of 2006, and we can see that, therefore, the
18 number is smaller, 23 million.

19 And what Dr. Castleman did in order to derive that number
20 for purposes of his sworn testimony to the Senate, he examined
21 the Exponent and Chemrisk bills, the two scientific consulting
22 firms at issue, and their bills to Ford, General Motors, and
23 Chrysler.

24 THE COURT: What is plaintiffs' offer as to what the
25 business of Chemrisk and Exponent is?

26 MS. CLANCY: The business of Chemrisk and Exponent, as it
27 relates to these companies, is to generate scientific papers, to
28 do scientific research, and to provide testimony in litigation,

1 both in litigation and outside of litigation.

2 THE COURT: You have now answered additional questions of
3 the Court. The Court has already ruled, granting the motion to
4 exclude opinions and allegations of conspiracy and fraud, which
5 is moot because you will not offer it.

6 The Court is now considering the purpose for which you offer
7 Dr. Castleman's testimony, which is a review of the development
8 of the literature, including defense costs in development of
9 this literature.

10 MS. CLANCY: Exactly.

11 And, Your Honor, it is -- it actually boils down to a very
12 simple issue. It's an expert who has devoted his life's work to
13 this issue, who has been called upon by our Congress to testify
14 about it, who has published about it in his own textbook, as
15 well as in his sworn testimony, who is relying on peer-reviewed
16 and published articles of other medical authorities in the
17 field.

18 And the issue is very simple: How did the medical and
19 scientific literature evolve with respect to the area of brake
20 mechanics?

21 And as the Court put it quite well, and what was the source
22 of some of the funding of that as it evolved? It is a
23 fact-based inquiry. It does not include inflammatory language,
24 as defense counsel would suggest.

25 One final point raised by Mr. Ostertag, he said he was not
26 designated to testify about this issue. I point out we offered
27 Dr. Castleman for deposition, but defendants did not take us up
28 on the offer and did not want to depose him.

1 Clearly in our -- we are required, obviously, under 2034 to
2 provide a general statement about what he will testify about.
3 The defendants attached that statement to the briefing, so they
4 already have a copy, but I would like to read into the record
5 that plaintiffs clearly designated Dr. Castleman to testify
6 about this very area:

7 "Dr. Castleman may testify regarding the
8 development of scientific knowledge concerning the
9 hazards of asbestos. He may testify about the
10 published literature and how it was available,
11 disseminated, and circulated to medical, private,
12 scientific, academic, and industrial concerns."

13 THE COURT: What have you quoted from?

14 MS. CLANCY: Plaintiffs' 2034 designation of Dr. Castleman.
15 That I can attach as Exhibit 19 to the record. It was also in
16 defendants' briefing to the record. If I may approach.

17 THE COURT: Defendants' 19 is marked -- Court now marks and
18 is considering plaintiffs' Exhibits 1 through 19; correct?

19 MS. CLANCY: Yes.

20 THE COURT: 1 through 19, these will be designated
21 Plaintiffs' Exhibits to oral argument regarding Dr. Castleman,
22 and they are so marked and considered by the Court during this
23 hearing.

24 I don't believe admission is necessary for this hearing.
25 Would you all agree to that?

26 MR. OSTERTAG: I would agree.

27 I frankly object to the materials dropped on us for the
28 first time today, but that's our objection.

1 MS. MIKACICH: And I join in that objection.

2 THE COURT: If you have not had sufficient time to respond
3 on these things, I will give you time. But I'm only ruling on
4 the motions before the Court right now.

5 These are not admitted. No one else is going to consider
6 them. So I hope you can reach a conclusion that you will have
7 enough time to respond today, but if you don't, I will certainly
8 give defendants more time.

9 So the Court now examines Plaintiffs' 19 tabbed exhibits to
10 the oral argument exhibit plaintiff has just described. You
11 were quoting from what page?

12 MS. CLANCY: It's marked with a red tab with pen and yellow
13 highlight.

14 THE COURT: Dr. Castleman has agreed to testify -- this is
15 in this case?

16 MS. CLANCY: Yes. The designation, that's actually the copy
17 attached to defendants' briefing in this case.

18 THE COURT: (Reading.)

19 "Testifying regarding development of scientific
20 knowledge concerning the hazards of asbestos, about
21 published literature and how it was available,
22 disseminated, and circulated to medical, private,
23 scientific, academic and industrial concerns, and
24 will testify regarding asbestos hazards available to
25 and reflected by corporate documents and depositions
26 to have been known by defendants in this action."

27 And it goes on.

28 The Court is not changing or altering any of its previous

1 rulings, but understands this further describes the offer and
2 previous revelation that Dr. Castleman will testify on these
3 issues; correct?

4 MS. CLANCY: Yes, Your Honor.

5 And, finally, just to put a bow on that issue, 2034 requires
6 us to make a general statement, not overly legalistic. I
7 attached numerous cases to this notebook with respect to that
8 very fact. If you can give a general broad statement that
9 encompasses it, that should be sufficient.

10 So we have clearly here, in an attempt to define what is
11 state of the art, we put in several sentences saying that it is
12 the development of the literature. It is who it is disseminated
13 to and how, and the means by which it is, all of which clearly
14 encompasses what I guess has now gotten redundant, he will talk
15 about state of the art, development of the medical, scientific,
16 and corporate literature from the 1800s up to present day.

17 So we're not -- nothing we are saying here is any different
18 than he has ever been offered to testify about in
19 Plaintiffs' 2034 designation. And there is not this
20 inflammatory language; we have agreed not to use the word
21 "fraud" or "conspiracy" in his testimony.

22 And it is, as a matter of a Frye issue, quite simple, that
23 Dr. Castleman has devoted his life's work to it. He has a
24 doctorate in public health. He has published five editions of a
25 textbook on this issue, a full chapter which is devoted solely
26 to the brake literature. He has testified before Congress on
27 this issue. He has reviewed the underlying bills related to how
28 some of the literature was developed. And he is also relying on

1 peer-reviewed literature, generally accepted, in this case, the
2 Laura Welch article, over 51 preeminent scientists in the field
3 of public health.

4 So the matter is actually one that, when viewed with what is
5 going to happen, is quite simple in terms of the Frye analysis.

6 THE COURT: I want to hear from the defendants because I
7 understand what is offered by the plaintiffs.

8 MR. OSTERTAG: I don't think it's a Frye issue, but it's
9 neither here nor there.

10 This whole thing started with counsel for the plaintiffs, in
11 opening statement, got up with three books, started waving them
12 around about we're going to show that the defendants promulgated
13 a fraud. You may not have used the word "fraud," but similar to
14 what happened in the tobacco litigation, about how phony science
15 was being generated.

16 And that is where all this started. And that set a thing
17 off in my head about: Wait a minute, if he's not disclosed on
18 that -- I have taken his deposition in the past. And there's a
19 Supreme Court case, Your Honor, on point here that says, in the
20 materials they submitted, Bonds v. Roy, 20 Cal.4th 140 --

21 THE COURT: Excuse me, is that a tabbed exhibit in
22 plaintiffs'?

23 MS. CLANCY: Yes, Your Honor, Tab 8.

24 THE COURT: Thank you.

25 MR. OSTERTAG: This case says even if there's a designation
26 on a witness, if it doesn't tell you the areas he's going to
27 testify on, then it can be insufficient, and the Supreme Court
28 sustained the trial court's exclusion of a witness on a

1 particular issue.

2 I have taken Dr. Castleman's deposition. I know what he's
3 going to say on state of the art and things like that. I didn't
4 take his deposition in this case because there wasn't any
5 indication that he would be talking about: We are going to show
6 what your clients did in the brake literature is analogous to
7 what happened in the tobacco litigation.

8 THE COURT: I haven't heard that offer from plaintiffs.

9 MR. OSTERTAG: That's what the opening statement was.

10 THE COURT: We're now on this motion.

11 MR. OSTERTAG: I know.

12 THE COURT: I granted the first portion of your motion. I
13 required that plaintiffs describe with detail what extra issue
14 Castleman's testimony would cover. And we're talking about the
15 historical development of the literature, not just about your
16 client, a historical development of all of the literature. And
17 that is what I'm now hearing you object to.

18 MR. OSTERTAG: I haven't heard them say, "We're sorry," in
19 opening statement, "We were mentioning tobacco, we're not going
20 to get into that."

21 Judge, I have to be careful because I've had to stand up and
22 object more times in this trial already than I had to in
23 probably five trials combined, because we get rulings on things;
24 or if we don't get rulings on things, I have to object. So the
25 first question is --

26 THE COURT: I understand that. But, really, I'm not
27 anticipating apology from the other side as part of this
28 hearing.

1 MR. OSTERTAG: No, no. The representation in opening
2 statement was, "You're going to hear how this is analogous to
3 the tobacco litigation." This is how it started it off. And we
4 still have not had a representation now, "No, no, that will not
5 be the representation of Dr. Castleman, we will not talk about
6 phony science in the tobacco litigation."

7 THE COURT: I just listened to a long recitation of the
8 proffer of what Dr. Castleman will testify about regarding the
9 literature. And there was not one word about a comparison to
10 the tobacco industry.

11 MR. OSTERTAG: If Your Honor is satisfied that is, by
12 failure to say that, that is out of the case, I'm happy to move
13 on to the next issue. But I want to be careful on this.

14 THE COURT: Clarifying: Ms. Clancy, do you intend
15 Dr. Castleman to offer an opinion or view comparing the
16 development of this literature to the development of the phony
17 science in the tobacco industry?

18 MS. CLANCY: No, Your Honor.

19 MR. OSTERTAG: Okay.

20 THE COURT: All right. The motion is granted but is moot.
21 That opinion and testimony, not to be offered.

22 MR. OSTERTAG: All right, then, moving on.

23 I still don't think the designation is sufficient. What it
24 says is he may testify regarding the development of scientific
25 knowledge concerning the hazards of asbestos. That doesn't talk
26 about this issue of, "I'm going to give expert opinion on the
27 millions of dollars you spent to develop science."

28 "May testify about the published literature and how it was

1 available, disseminated, circulated to medical, private,
2 scientific, academic, and industrial concerns." Nothing in
3 there, again, about those issues, about this so-called
4 \$30 million and about how you've pumped it into these
5 consultants to develop this science.

6 As an aside, Your Honor -- well, I will get to that in a
7 moment.

8 THE COURT: So you further object to this line of testimony
9 by Dr. Castleman on the grounds that it is not a plausible
10 portion of the designation?

11 MR. OSTERTAG: Right.

12 It's not in the 2034 deposition. I have taken his
13 deposition, he knows that, and I deposed him on all the issues
14 from Merewether up to the current. And if I had known there
15 would be some testimony by him on this issue, and if I could
16 have gleaned that from this expert witness designation, I would
17 have taken it. And, you know, this Bonds case, on page -- I
18 guess page 146, headnote two -- give you a second to get there.

19 THE COURT: Let me see if I can get to that.

20 MR. OSTERTAG: Tab 8, Page 5, if you look at the upper right
21 hand --

22 THE COURT: Bonds v. Roy; correct?

23 MR. OSTERTAG: That's correct.

24 THE COURT: Thank you. Tab 8 of the exhibits to plaintiffs'
25 oral argument which has been marked and is being considered by
26 the Court.

27 What line?

28 MR. OSTERTAG: It's headnote two.

1 THE COURT: Yes.

2 MR. OSTERTAG: It says:

3 "Indeed, the very purpose of the expert witness
4 discovery statute is to give fair notice of what an
5 expert will say at trial. This allows the parties to
6 assess whether to take the expert's deposition."

7 So the fact we didn't take his deposition is not relevant on
8 whether there is a 2034 -- a proper 2034 designation. I didn't
9 take it because I know what he will say on the general issues.
10 I didn't see anything --

11 THE COURT: Mr. Ostertag, so far the only thing I'm hearing
12 you say you are taken by surprise about is the \$30 million
13 figure.

14 MR. OSTERTAG: No. No. The \$30 million figure, whatever
15 work he has done on that, whatever he has reviewed on that, and
16 whatever opinions he's going to say about what these papers are,
17 published by the consultants, what he has done to investigate
18 them, what opinions he's got about them, all those kinds of
19 things.

20 It's not here. And I didn't take his deposition, so I think
21 this is pretty clear in this case, Roy v. Bonds says in a
22 similar situation, they excluded an expert witness from giving
23 an opinion, not all opinions, but an opinion that wasn't
24 properly disclosed in the designation. So that's point
25 Number 1.

26 THE COURT: You have a point related to his
27 qualifications --

28 MR. OSTERTAG: Yeah, I don't.

1 THE COURT: -- or designation?

2 MR. OSTERTAG: The other issue is -- I'm sorry, Your Honor.

3 THE COURT: I just want to know if we're moving to an
4 entirely different complaint, because as I said, I think it's
5 sometimes handy for the Court to rule on a subsection of
6 issues --

7 MR. OSTERTAG: I think there's no 2034 proper designation.
8 I would have taken the man's deposition if I had seen it.

9 And let me say this, I have seen designations much more
10 detailed, where they give you a description about what the
11 witness is going to say with regard to my clients. And this one
12 doesn't say it. It's a generic designation that they submitted
13 in re complex asbestos litigation, to cover all defendants and
14 all cases.

15 THE COURT: You know, looking at Plaintiffs' 18, by Laura
16 Welch, GM's counsel present has conceded that defendants are
17 aware of, wouldn't you think that this expert would testify
18 about an article that he signed on to? Wouldn't that be
19 plausibly within the 2034?

20 MR. OSTERTAG: If so, they should have put it in there. I
21 don't think so.

22 THE COURT: They should put in Tabs 1 through 18 --

23 MR. OSTERTAG: No, something that says this witness will
24 testify about the monies paid by consultants for these
25 defendants, what that meant, how that has affected the science,
26 all the issues that he will give opinions on or purports to want
27 to give opinions on.

28 THE COURT: Thank you.

1 On that issue I will now turn to GM's counsel to ask whether
2 you are submitting or wish to supplement the issue.

3 MS. MIKACICH: We join.

4 So the record is perfectly clear, we object to any offer of
5 the Laura Welch article for various reasons, which Mr. Ostertag
6 is probably going to articulate for the Court, so I will hold
7 off on that.

8 THE COURT: I'm not ruling now on the admissibility of these
9 documents. I'm not being asked to. I understand the position
10 of GM. The Court is prepared to rule.

11 This portion of the objection by defendants to the testimony
12 of Castleman is denied. I have granted the motion to exclude
13 Castleman's comparison of this literature development to the
14 tobacco industry or to tobacco industry's phony science finding;
15 it would be moot and not offered.

16 The objection on the grounds that the 2034 designation,
17 Plaintiffs' 19 to these argument exhibits, the objection that it
18 is not plausibly within this designation, the Court rejects.
19 The objection is overruled on that ground.

20 Now, I think you have another argument.

21 MR. OSTERTAG: I do, and I agree it's better to move step by
22 step like this.

23 THE COURT: Thank you.

24 MR. OSTERTAG: I do object to him being, or really anyone
25 being an expert who can get up on the witness stand and say
26 these defendants spent \$30 million doing this, for some of the
27 reasons we mentioned this morning, about if those facts are
28 true, and they're facts. They're not alleged to come in to show

1 notice or something like that. They are supposedly very --
2 according to them -- very important facts that this jury should
3 hear. Then they need to prove those up through admissible
4 evidence.

5 THE COURT: I asked about this earlier, Mr. Ostertag, and my
6 then understanding was defendants concede that \$30 million or
7 perhaps more has been spent -- has been spent in defending
8 these -- these types of issues. You conceded that just a little
9 while ago now. You're saying he can't testify about it, but you
10 agree that -- I mean, I'm not sure if you're going to ask me to
11 let the jury hear about all of the different expenses and all of
12 the different claims and so on. But so far, you have told this
13 Court that you agree that there's been \$30 million of defense
14 costs related to issues like these. And, you know, it's
15 legitimate for the defendants to develop costs to defend their
16 clients.

17 MR. OSTERTAG: What I'm saying, that can come through our
18 witnesses. They know the facts. If somebody from Exponent,
19 Dr. Teta gets up there and testifies she knows the facts about
20 that, she can say that.

21 But Dr. Castleman, these are facts that he knows from
22 hearsay methods.

23 And I would point out that this Welch article, this Laura
24 Welch article, I guess Exhibit 18, this was a legal brief filed
25 in a Michigan case that was then published in a journal which is
26 a plaintiffs' advocacy journal. It's a legal brief. And this
27 footnote that counsel pointed you to, the text of the article
28 says:

1 "Since 2004, Ford, General Motors and Chrysler
2 have paid over 30 million to hire consultants for the
3 purposes of generating the very papers they rely
4 upon."

5 That's the text. This is an advocacy piece. And the
6 footnote says:

7 "They have admitted in litigation they paid
8 \$30 million to these experts."

9 They paid 30 million. If that's the admission, they paid
10 30 million in defense costs and in retaining consultants, not
11 \$30 million to generate science, to develop science. That's
12 what we're talking about. There's no factual basis for that.

13 THE COURT: The statement in Plaintiffs' 18 is not about
14 generating phony literature. The testimony is:

15 "Since 2000, Ford, General Motors and Chrysler
16 have paid over \$30 million to hire consultants for
17 the purpose of generating the very papers they rely
18 upon and for testifying regarding those papers in
19 court. Ford, General Motors and Chrysler have
20 admitted in litigation that since 2000, they have
21 paid over \$30 million to these experts."

22 MR. OSTERTAG: Here is the other problem.

23 THE COURT: I think you are not correctly articulating the
24 way this piece of information is going to be utilized or is
25 intended by the plaintiff.

26 MR. OSTERTAG: Here is the other 352 issue.

27 THE COURT: Okay.

28 MR. OSTERTAG: The claim is you spent \$30 million to develop

1 these papers; and to develop what counsel said here, we stood up
2 and said we developed a defense. We never said that. We never
3 said that we have come in and developed some kind of scientific
4 defense. The literature has always been out there, for 20, 30
5 years. But the 352 issue is --

6 THE COURT: You can't do a meta-analysis until there are a
7 lot of studies out there to do a meta-analysis upon.

8 MR. OSTERTAG: Counsel started the argument by saying by the
9 year 2000, it was universally accepted that brakes cause
10 mesothelioma.

11 If we want to take five minutes, I have a half a dozen
12 peer-reviewed literature epidemiological studies before the year
13 2000 that say, "We don't see a risk in developing mesothelioma
14 among car mechanics." So that statement is flat-out wrong.

15 But here is the 352 issue: He comes in and is allowed to
16 give this testimony, then I have to bring Dr. Paustenbach,
17 Dr. Hessel, Dr. Garabrant, all these folks whose reputations
18 have been impugned and who have been told -- the jury has been
19 told these have all been paid \$30 million by these companies to
20 write these papers and come to these conclusions, it's all
21 bought-and-paid-for science. That's what the whole point of
22 this presentation is.

23 And I don't have an objection to cross-examining witnesses
24 and saying, "You were paid a lot of money," and Mr. Langdoc to
25 get up in closing argument and for him to argue, "Ladies and
26 gentlemen, this is bought-and-paid-for science."

27 I have an objection to that. That's fair game.

28 THE COURT: It's basically to the amount of the costs.

1 MR. OSTERTAG: No, it's having it come through this witness
2 who will -- it's because now -- if you put a witness on to say:
3 These are the facts, they spend 30 million, it was for all these
4 papers, this is phony science, that will be the implication.
5 Even if they don't use the words "conspiracy" and "fraud," that
6 will be the implication.

7 I should get the opportunity to call the folks who wrote the
8 papers to say it's untrue. First of all, the companies didn't
9 pay us to write these. We came up with the ideas, and then we
10 went out and sought funding in the same ways that researchers
11 from government go out and find funding. Private researchers
12 do, too. They will say: We never once showed our articles to
13 these clients before they were published. They had no input on
14 them.

15 THE COURT: So I asked you whether your objection under 352
16 relates to the amount of the costs, the \$30 million figure. And
17 you said no.

18 MR. OSTERTAG: No.

19 THE COURT: What you're saying -- I now understand
20 defendants object under 352 to Dr. Castleman testifying that his
21 view of the literature demonstrated that there were costs of
22 consultants in literature that was paid for by the defendants.

23 How does he avoid saying that?

24 MR. OSTERTAG: It's not the purview of an expert witness,
25 first of all.

26 THE COURT: So long as Dr. Castleman talks about the
27 development of the literature -- which I already ruled is
28 permissible -- but doesn't say who paid for it, but only says

1 that it was -- who generated it, that solves your 352 objection.

2 MR. OSTERTAG: It might.

3 I want to say this, too. I don't have an objection to
4 people getting on the witness stand and saying these studies are
5 wrong. Of course I don't have an objection to that. That's
6 fair game. They can put a witness on the witness stand and say
7 the meta-analysis that was done by Exponent, here is the
8 problems with it, here is why that is not good science. We're
9 not objecting to that.

10 What I'm objecting to is to put, under the guise of an
11 expert witness, all these sorts of facts: Well, here is the
12 \$30 million they spent, they funded these articles, all of a
13 sudden these articles are printed, you know. And either the
14 conclusion or the implication is, it's just all phony
15 bought-and-paid-for science.

16 THE COURT: If there's only four studies and \$30 million
17 representing the literature developed by the three defendants in
18 this case, doesn't that imply a huge amount of literature was
19 developed by somebody else?

20 MR. OSTERTAG: No. The 30 million, it was costs paid for,
21 all the defense costs in all the cases they had expert witnesses
22 working on, not -- those articles, it turns out it's a few
23 hundred thousand dollars funded for the three or four articles,
24 something in that ballpark. I don't have the exact numbers, but
25 something in that ballpark.

26 And the rest of the money was spent, you know, as retained
27 experts in the tens of thousands of cases -- I don't know how
28 many Exponent and Chemrisk has been retained on, but these auto

1 companies have tens of thousands of cases nationwide.

2 THE COURT: Okay. So \$30 million represents the costs of
3 defense, but not attorneys' fees, as I understand it --

4 MR. OSTERTAG: That's correct.

5 THE COURT: -- in defense case preparation, defending cases
6 throughout the United States. But only a fraction of that,
7 maybe 100- to \$300,000, represents the costs of the -- costs
8 paid by defendants to the experts who wrote the four studies
9 that you're arguing about?

10 MR. OSTERTAG: Maybe four, five hundred grand. I don't know
11 the number, it's low. But the point is -- yes, that's true.
12 And these witnesses would say, you know, we came up with the
13 ideas, we came up with the protocol. We went to find funding.
14 They gave us the money. Everyone did it. We never showed them
15 the articles until it was said and done, and we printed it and
16 published it. They had no input on it.

17 THE COURT: Who is the "they"?

18 MR. OSTERTAG: The authors, the researchers that wrote the
19 papers. They will say the auto companies had zero input, we
20 wouldn't allow it. That's the scientific method. We're not
21 going to allow the auto companies to have input on this. That
22 would be bogus science, they wouldn't allow it.

23 And if the witness gets up on the witness stand and makes
24 those implications, I will call these folks to say, did you --
25 were you a tool or a pawn for the auto companies? Did you just
26 write what they wanted you to write? You're not an independent
27 scientist who did legitimate scientific research published in a
28 peer-reviewed literature?

1 And that's what this will lead to. This is my 352 argument.
2 We're not even through the plaintiffs' examination, and we're
3 already in the third week in this trial, and it will create a
4 whole trial within a trial.

5 THE COURT: I think I understand this part of your objection
6 under 352, to the statement of the costs and the fact that costs
7 were incurred by defendants being testified to by Dr. Castleman.

8 GM's position?

9 MS. MIKACICH: Your Honor, I join in Mr. Ostertag's remarks,
10 and I would urge the Court to look at the support for that
11 number, in the Welch article footnote, very clearly says that
12 that number derives from a set of interrogatory responses from a
13 case called Uden v. General Motors in Hillsborough County,
14 Florida. You know, those interrogatory responses are not before
15 this Court -- and I suspect that Dr. Castleman might even
16 testify that he's never seen them. This article is an editorial
17 piece, it's not the sort of thing that an expert can rely on,
18 and it's an improper basis for the opinion.

19 THE COURT: All right. The Court reaches a tentative
20 conclusion that this portion of the objection should be
21 sustained under 352.

22 And I am explaining this, so if you have anything further to
23 add, you can add it. But the Court would make this ruling that
24 the probative value of Dr. Castleman's testimony as to the
25 \$30 million, whether it is costs of all development or whether
26 there is a lesser cost for these studies, that the probative
27 value of that and the probative value of Dr. Castleman's
28 testimony that defendants paid for some of the literature

1 studies developed, the probative value is outweighed by the
2 misleading issues, confusion, and time consumption.

3 And the Court would limit its ruling to just what the Court
4 said. In other words, Dr. Castleman will still be permitted to
5 testify about his review of the literature and the development
6 of the literature; and that would include his sources of the
7 development of all the literature, but not the costs associated
8 therewith, which I do think would be quite confusing and hard
9 for a jury to evaluate.

10 MR. LANGDOC: We're both taking an opportunity to respond to
11 this.

12 First, this is not a new motion. The Court had ruled on the
13 subsets of the three things that were laid out, and now we have
14 come back, and the Court has been asked to undo part of it.

15 The only way by which we can prove what has been shown in
16 both the 9th Circuit and U.S. Supreme Court is a highly relevant
17 issue, how much money has been spent and by whom, on different
18 individual studies, is through Dr. Castleman.

19 We can't just put the interrogatories on the screen. We
20 can't say we're the ones who did the research. Dr. Castleman
21 has done the research, and has testified at Congress about the
22 research on the things that -- via the things that Ms. Clancy
23 has described in the generally accepted scientific literature.

24 Second, because Dr. Castleman was the only person who can
25 lay that foundation for how we know how much money has been
26 spent, it goes directly to the bias and not to -- and let me
27 tell you --

28 THE COURT: Whose bias?

1 MR. LANGDOC: The bias of Exponent and Chemrisk and the
2 scientists, to say, "I was only paid \$10,000 for this article,
3 and granted, I made the other 29 million from the same people,
4 just the \$10,000 is all it took for this article," is
5 disingenuous.

6 It's the same issue we dealt with with Dr. Robb, our first
7 expert:

8 "Have you made over a million dollars testifying
9 for plaintiffs?

10 "Yes."

11 It goes to bias and credibility, and it goes to bias and
12 credibility of the organizations, of the individuals within the
13 organizations, and of the published papers. There have been
14 \$30 million that has been paid by someone to push this science.
15 Now, whether or not X thousand is for this and X thousand is for
16 that is a different issue.

17 This is why the very same paper and the same numbers have
18 been admitted in the last two trials I have been in, in San
19 Francisco, in non-automobile cases, what has the asbestos
20 industry spent to spend this literature.

21 THE COURT: You know, it opens up a real can of worms,
22 because then why isn't it fair, then, for the defendants to
23 attempt to introduce evidence of how much plaintiffs have gained
24 by the literature they have promulgated or by the cases they
25 have pursued?

26 MR. LANGDOC: I think they're allowed to do that. Here is
27 an example.

28 THE COURT: You mean you would not object to the

1 introduction of evidence, if it could be adduced, to the amount
2 of plaintiffs' judgments that have been acquired, based on the
3 \$30 million costs or the cases brought involving GM, Ford and
4 Chrysler?

5 MR. LANGDOC: No. Clearly I misunderstood the Court.

6 Take, for example, the MAS studies. It is important and
7 relevant to the jury who paid for them. Did a plaintiffs' law
8 firm involved in asbestos litigation pay X thousand dollars for
9 it? Mr. Hatfield, Dr. Longo -- we all agreed we can
10 cross-examine the witnesses on it.

11 The only problem is when the answer is, "I don't know, all I
12 know is what I have been paid," the one person who has
13 testified -- and maybe we need an offer of proof from
14 Dr. Castleman.

15 THE COURT: All right. Dr. Castleman, would you come up
16 here and raise your right hand to be sworn.

17 Dr. Barry Castleman is being called as part of a 402 hearing
18 by the Court in this case.

19 BARRY CASTLEMAN,

20 called as a witness for the Plaintiffs, having been duly sworn,
21 testified as follows:

22 THE CLERK: State and spell your name for the record.

23 THE WITNESS: My name is Barry Castleman, C-A-S-T-L-E-M-A-N.

24 EXAMINATION

25 THE COURT: Q. Dr. Castleman, the Court has ruled that you
26 may testify about a variety of issues, including your research
27 and review of the historical development of the literature
28 concerning asbestos dangers in brakes.

1 In the course of that review and research, can you estimate
2 the number of documents or studies on which you have relied?

3 A. I tried -- as to brakes only or asbestos more generally?

4 Q. I think that your area of expertise here is limited, yes, to
5 analysis of public health issues regarding asbestos. Yes, I'm
6 sorry, so it would be a more generalized offer of expertise on
7 the general asbestos issues.

8 So, okay. So how many articles have you reviewed on
9 asbestos issues, articles or studies?

10 A. I really -- it's a little hard to say.

11 I have tried to examine everything I could find that was
12 published in the world medical literature, in trade magazines,
13 engineering publications, popular magazines and newspapers,
14 insurance industry literature, safety publication, anything you
15 can name that might have talked about the hazards of asbestos
16 that appeared in the public domain, law journals included,
17 before around 1965. I tried to find just about everything I
18 could. And I looked at over, probably over a thousand
19 publications, maybe 2,000, I really don't know, a lot of things
20 in which asbestos gets named, at least peripherally.

21 Q. In the entire area of asbestos research that you have done?

22 A. That's just up to 1965.

23 I want to briefly try to bring that up to date. Since that
24 time, I started to get involved in the arena of regulation in
25 1970 and 1971, when I wrote my master's thesis about the health
26 effects of asbestos. And since that time I have been
27 continuously involved in rule-making, examining EPA, OSHA, the
28 Food and Drug Administration; I testified at Congressional

1 hearings, starting in 1973, about community exposure to
2 asbestos.

3 Q. Now, you're talking about your testimony and your activism
4 and your additional work, but I'm asking you about your review
5 of the literature. Did you stop reviewing the literature in
6 1965? I assume the answer is no.

7 A. Not at all.

8 Q. Do you believe that your review of the literature to today's
9 date has been, as far as you know, every existing study and
10 piece of literature on asbestos in general?

11 A. No, it's impossible. At this point, there's too much of it.
12 And, besides, I don't need, from a public health point of view,
13 I don't need to know about some of the fine details that
14 pathologists might be arguing about as to the different stains
15 that are used to identify different types of tumors. From a
16 public health point of view, it's not important for me to
17 acquaint myself with that kind of information.

18 Q. Of the literature that you have reviewed, what percentage of
19 that literature is literature which you have identified the
20 source of the production, like the government? A defendant in
21 an asbestos action? A plaintiff, a plaintiffs' firm, et cetera?

22 What percentage of the literature reviewed by you have you
23 been able to identify as being promulgated or produced or paid
24 for by some entity?

25 A. I'm not sure I understand your question, but I will try.

26 Q. Don't you know, basically a hundred percent of the
27 literature you reviewed, wouldn't you say it's fair that you
28 pretty much know who created it, each of the sources?

1 A. At the time I get the literature, I know who I got it from
2 or where I saw it. And usually, but not always, I know or have
3 some idea of whether it was paid for by some financially
4 interested party, although the disclosure of these things in
5 published articles is a relatively recent development. This
6 wasn't something that was typically done in publication of
7 scientific articles more than 10 or 15 years ago.

8 Q. When you say that you have become aware of whether studies
9 or other things you researched were paid for by financially
10 interested parties, do you mean by that to say you know how much
11 was paid for, or just that it was paid for by financially
12 interested parties?

13 A. It varies, it depends on the specific case. In some cases,
14 we actually have fairly detailed information that has emerged in
15 legal discovery, which is about the only way you find out things
16 like how much people got paid.

17 Q. Sometimes you know what was paid, and sometimes you only
18 know that it was paid for?

19 A. That's right.

20 Typically in the articles published by Exponent authors,
21 they would not always, but usually, disclose they had received
22 contributions for the research from General Motors, Ford, and
23 Chrysler, but there would never be any disclosure beyond that in
24 terms of quantitative description of what they received and how
25 much they were paid.

26 Q. If you were to characterize the principal producers or --
27 the principal requesters of the types of studies of research you
28 have done, about how many categories would that be?

1 A. Requesters?

2 Q. Like, for example, would government be one of the requesters
3 of studies of information and things you have reviewed?

4 A. Right. Basically I think what you're asking for, how do
5 these things get initiated?

6 Q. No, I'm asking how many categories are there, like
7 governments ask for this; right?

8 A. Well, governments do the studies, usually, or they
9 commission the studies. Sometimes they will give a grant to
10 somebody to do a study.

11 Q. But you haven't relied on -- you haven't relied solely on
12 government-requested or paid-for research; correct?

13 A. No.

14 Q. Okay. What is another source of literature that you have
15 relied on in terms of a category?

16 A. Studies published by independent scientists of all kinds.
17 Might be a pathologist publishing a report of a case. It might
18 be somebody that got a grant of some kind to do an epidemiology
19 study. Usually they require a lot of money, so you have to get
20 funding from somebody, and they're often government grants.

21 Q. What is another category of the source of these studies? I
22 mean, you contend some are produced by defendants in the
23 industry, such as the defendants in this case; correct?

24 A. Right. Not so many.

25 Q. Some?

26 A. But some.

27 Q. What is another category of the source of these studies?

28 A. I guess you could say plaintiffs' lawyers also, because of

1 their need for information, plaintiffs' lawyers have even
2 commissioned whole epidemiology studies to identify things like
3 neighborhood lead poisoning from a smelter. Or studies like
4 Hatfield has done, simple studies where you are doing some
5 simulation of exposure, and you have a laboratory that is hired
6 to measure what kinds of exposure you get from different
7 products, about which there is nothing published or almost
8 nothing published in terms of asbestos exposure one gets from
9 the ordinary use of a product. That's another type.

10 Q. Is there any other major category you can think of? It
11 seems to me that would pretty much cover the range.

12 A. That's pretty much. Independent scientists obviously cover
13 an enormously broad range of people, but I'm using the term to
14 mean people who are not hired by anybody to do it, people who,
15 because of their own interests in the subject and expertise,
16 take it upon themselves to try to add to the body of scientific
17 information; people who weren't approached by anybody or hired
18 by anybody to do the work.

19 Q. Independent scientists, by that do you mean those not hired
20 by anyone but also some who have received grant funding for the
21 work?

22 A. If it's government money, that's usually pretty clean. If
23 they get grant funding from other sources, you might ask a few
24 more questions.

25 Q. What is the significance you place on amounts paid in
26 grants, or by any producers of this evidence or research?

27 A. Well, sounds like an awful lot of money to me, to basically
28 do reanalyses of stuff that other people have published. But

1 it's also just the idea that this was something that was
2 initiated -- I mean, the scientists have testified about -- the
3 Exponent people have testified that this was something they were
4 approached to do by lawyers involved with the defendant
5 companies.

6 Q. That's the \$30 million of studies that you claim were
7 produced by defendants in the industry; correct?

8 A. Right. And I don't have any knowledge, in terms of
9 quantitative knowledge, about how much of the \$30 million was
10 paid for the studies. But I know without the studies, these
11 people were worthless as experts because most of them hadn't
12 published anything about asbestos before they started doing
13 this.

14 Q. How much has the government spent on this type of research?

15 A. I don't know what the government -- the government hasn't
16 really spent much of anything on this. I mean, the government
17 got some information back in 1975 from Dr. Selikoff about the
18 high levels of exposure you can get from grinding asbestos
19 brakes and beveling and blowout of the brakes.

20 Q. You said a major category -- excuse me, Doctor, but you said
21 a major category of the funders or requesters for this
22 information were governments, and that sometimes they produced
23 grants to fund scientists and research.

24 A. For science, generally.

25 Q. So now you seem to be indicating that government doesn't
26 spend money on this type of research, and is that true?

27 Are you saying that they don't usually request it
28 independently, but they might create grants that would fund

1 independent scientists?

2 A. We're going back and forth about what kind of science we're
3 talking about. Science in general, the government supports a
4 lot of, but science on brake hazards, the government hasn't
5 supported.

6 Q. So far we have only been talking about asbestos in general.

7 A. Oh, okay.

8 Q. You asked me if you wanted me to discuss this in general,
9 and I said yes. I'm trying to get a comparison between the
10 major categories, whether you think there's a huge percentage --
11 how you would compare the funding spent by these various
12 sources: plaintiffs' counsel, defendants' counsel, independent
13 scientists, and government.

14 And that is in asbestos in general there.

15 Then I'm going to ask you the same question as it relates to
16 asbestos-containing -- asbestos brake materials. And I think --
17 so that is what I want you to compare.

18 A. Okay.

19 Q. Do you need a few moments to talk about it? We can take a
20 little break.

21 A. No, let's go ahead, now that I understand what you were
22 asking me about. I wasn't clear.

23 Q. Asbestos, in general, how much do you think the government
24 has spent on that research?

25 A. I don't really know, quantitatively. But most of the money
26 was spent back in the days when Selikoff was active in his
27 earlier years, probably in the 1970s, and 1980s to a lesser
28 extent, I would think. Selikoff and his laboratory did a great

1 deal of research on asbestos, and it would probably be in those
2 years, say, from 19 -- the early '70s to the late '80s.

3 Q. Do you will think it was more or less than \$30 million?

4 A. Over that entire period of time?

5 Q. Yes.

6 A. Probably less, but maybe, maybe approaching that sum.

7 Q. Do you think it was more or less than \$500,000?

8 A. It was more than \$500,000.

9 Q. In terms of the amount spent to acquire independent
10 scientists, whether grant-supported or not hired by anyone, what
11 do you believe is the costs associated with the production of
12 all of the research of that nature in the asbestos literature?

13 A. I don't know. I really feel like I couldn't give you
14 anything of value in trying to answer that.

15 Q. Would you say it's more or less than \$30 million?

16 A. I'm sorry, can I hear the question again?

17 Q. Do you think it's more or less than \$30 million?

18 A. I mean the question before that.

19 Q. How much costs do you associate with independent scientists
20 in research?

21 A. On asbestos?

22 Q. We're talking about all asbestos.

23 A. Since the beginning, since, say, 1970?

24 Q. That's what we're talking about, yes.

25 A. I just don't know. I mean it's -- you know, people pop up
26 with different things.

27 Q. I asked you, the second question was, do you think it's more
28 or less than \$30 million?

1 A. Probably less. But again, I published a lot of things, it
2 hasn't cost anybody millions of dollars. It hasn't cost anybody
3 thousands of dollars. I did it of my own initiative, at my own
4 expense, and that's the way scientists often do it.

5 Q. Don't you associate costs with that? You had expenses?

6 A. Yeah, but they weren't real big expenses, and I just bore
7 them myself.

8 Q. In terms of the independent scientists that I have
9 described, do you believe that costs associated with their work
10 was more or less than \$500,000?

11 A. It was probably more than that. If you're going over, say,
12 the last 30 or more years of independent publications on
13 asbestos and disease, but you're probably talking about over a
14 thousand publication.

15 Q. Now I'm talking about defendants in the industry; this is
16 overall in the asbestos industry. What costs do you associate
17 with the development of research by defendants in the overall
18 industry, not just this?

19 A. It's really hard to say. I mean, Johns Manville was
20 spending a lot of money to publish studies in the '70s in
21 relation to -- in relation to legislation -- I'm sorry, to
22 regulation, OSHA regulations. And so asbestos companies were
23 supporting research that --

24 Q. Was it more or less than \$30 million?

25 A. I'm sure it was less. But again, that was in the '70s, and
26 a million dollars meant a lot more then.

27 Q. Was it more or less than \$500,000?

28 A. It was probably more than 500,000.

1 Q. How much are you aware of that plaintiffs' counsel or
2 plaintiffs' firms have spent on production of research, overall,
3 in the asbestos industry?

4 A. I really don't have any figures at all on that.

5 Q. Do you think that's more than 30 million or less?

6 A. Less.

7 Q. Think it's more or less than \$500,000?

8 A. If you go through the entire history of asbestos litigation,
9 for the last -- what's it been -- 30 years or more, plaintiffs'
10 lawyers may have spent 500,000. I don't know, I doubt it. But
11 they may have spent that much hiring people like Hatfield to do
12 simulated exposure studies and things like that. They do
13 smaller bits, I think. They might add up to that. Again, I've
14 never seen the billing on these things.

15 Q. Just for the friction industry, what we're talking about in
16 this case, asbestos-containing brakes and clutches and gaskets,
17 the friction industry, that's a subset of what you have been
18 talking about; correct?

19 A. Okay. I understand you.

20 Q. And as a subset of the larger research costs by government,
21 do you have an idea of what has been spent by government on
22 research related to brakes?

23 A. I have an idea, but mostly would probably be the studies
24 published by the Selikoff Group in 1976 and 1977, possibly
25 including the data they first disclosed with NIOSH in 1975, when
26 NIOSH put out a current intelligence bulletin. Probably there
27 was some federal money supporting that. Wouldn't have been a
28 whole lot of money, probably \$50,000, \$100,000 would have been

1 all they got for that work. I don't know.

2 Again, I don't write grant proposals, I don't usually deal
3 with these things, but it wouldn't have been a whole lot of
4 money, I don't think. We're only talking about three or four
5 studies.

6 Q. Independent scientists, related to asbestos brakes and the
7 issue that is relevant here, do you have an idea of the costs of
8 that research?

9 A. No, not really. I mean, it's very spotty because, you know,
10 the studies that -- and nobody has really looked at what happens
11 to brake mechanics as a population, to look at -- to find a
12 thousand people, like the people that worked at the dealerships
13 of all these companies, that would be a great study group. But
14 nobody has ever gone to the trouble to get that information and
15 follow up people who did regular brake servicing, starting 30
16 years ago, and find out -- looked at a thousand people like that
17 and looked at their mortality experience. Those kinds of
18 studies haven't been done.

19 Q. You're still talking about independent science; right?

20 A. Independent scientists can't get those kinds of records
21 without some assistance and financing.

22 Q. In terms of plaintiffs' counsel or plaintiffs' firms related
23 to asbestos brakes, funding research related to that portion of
24 the industry, do you have a view of how much has been spent?
25 You don't have a view on that on the overall, did you?

26 A. No. I mean, with respect to brakes, it would be -- as far
27 as I could tell, it would be simulated tests. But I don't think
28 they do that, because with very rare exceptions -- you know,

1 there was one case in California where I think they wanted to
2 analyze an automatic transmission band to prove it had a certain
3 type of asbestos in it, in an old Chrysler vehicle.

4 But mostly, in the case of brakes, the data is out there.
5 There's a lot of stuff that been published on the exposures you
6 can get from grinding and beveling and doing the things that
7 people do with brake linings. So plaintiffs' lawyers would have
8 less of a reason to hire somebody to do additional laboratory
9 simulations. It wouldn't add anything of significance to
10 anything that is already available in the case of brake linings.
11 So I wouldn't think plaintiffs' lawyers would have spent a lot
12 of money. Plaintiffs' lawyers, as I know, don't hire people to
13 write articles that get published in scientific journal.

14 Q. It is your view 30 million has been spent by the defendants
15 in this action, GM, Chrysler, and Ford, but you don't know how
16 much of that was actually the development of the studies; you
17 don't have a view on the comparison between the costs of the
18 studies and the overall costs of defense, but you have a view
19 they spent \$30 million?

20 A. Right.

21 THE COURT: I'm taking a ten-minute break, and then we will
22 continue this hearing.

23 (Recess was taken at 3:29 P.M.)

24 (The proceedings resumed at 3:49 P.M.)

25 THE COURT: Back on the record in the matter of Gordon,
26 Ford, GM and Chrysler.

27 The Court has reached a tentative conclusion on this motion.
28 Dr. Castleman is on the stand on a 402, and ordinarily I would

1 allow counsel to inquire, but I do not think there are any
2 answers that might be adduced of Dr. Castleman that would change
3 the Court's tentative conclusion.

4 I had already announced a tentative conclusion, a tentative
5 ruling to disallow Dr. Castleman's testimony under 352 regarding
6 the costs of the production of these studies, the 30 million
7 dollars or subset, and Dr. Castleman's testimony that defendants
8 paid for the studies.

9 I already tentatively concluded and ruled that his testimony
10 regarding the historical development of the literature and who
11 developed each portion of it would be permitted.

12 Following that, plaintiffs wanted to offer further points,
13 and during the course of that, Mr. Langdoc suggested that
14 Dr. Castleman be offered. The Court accepted that and has taken
15 his testimony.

16 Now, I know you all can come up with additional things to
17 point out to the Court all afternoon, but the Court -- the Court
18 is prepared now to affirm its tentative ruling on this issue.
19 Dr. Castleman has demonstrated to the Court that although he
20 knows that \$30 million was spent by the three defendants in this
21 case on the studies that have been described in Plaintiffs' 18,
22 he's unclear on how much of that \$30 million was the cost of the
23 studies versus the overall costs or development of evidence in
24 defense of various cases.

25 He has affirmed that he does not know and cannot compare
26 conclusively the costs associated with the funding of studies
27 and research by -- in the overall asbestos industry by
28 governments, by independent scientists, whether funding

1 themselves or by grant funding, by defendants overall in the
2 industry, or by plaintiffs overall in the industry.

3 As to the subset of asbestos brake studies, he can estimate
4 that governments primarily on the Selikoff studies might have
5 spent as much as 50- to \$100,000 on the Selikoff studies. He
6 has no view on independent scientists -- he has a view, I
7 already articulated on the three defendants in this case. He
8 has no view on the plaintiffs' -- he has some sort of round
9 estimates.

10 Under 352 of the Evidence Code the Court finds that
11 Dr. Castleman's testimony regarding the costs of these defense
12 studies or this defense effort has probative value that is
13 greatly outweighed by confusion, prejudice, and misleading
14 nature of the testimony and especially by time consumption.
15 Enormous amounts of time have been consumed here for Castleman
16 to testify merely on the costs that defense has incurred in
17 producing the studies that have been described in
18 Plaintiffs' 18. This would open up the door to an enormous
19 amount of testimony regarding the costs of other funded research
20 in the overall asbestos industry and in the specific area of
21 asbestos brakes. That time consumption is not merited.

22 Also, the value of this evidence to the jurors is very
23 small. Dr. Castleman may testify as to his research and
24 conclusions about who funded which kinds of studies. He's going
25 to be permitted to refer to studies that's he relied on. He's
26 going to be able to talk about the historical development of the
27 literature in the asbestos field and in the brake industry. He
28 will be permitted to testify that different types of developed

1 literature were paid for by different sources, and this will be
2 subject to cross-examination.

3 The Court will not permit him to testify on the \$30 million
4 issue, it being ruled impermissible under 352.

5 All right. I would like to conclude this hearing.

6 MR. OSTERTAG: Submitted.

7 THE COURT: Submitted?

8 MR. LANGDOC: Yes, Your Honor. And we do very much
9 appreciate the Court's time and consideration on this.

10 One clarification --

11 THE COURT: Very interesting issue. Thank you.

12 MR. LANGDOC: -- one clarification. I think we had all
13 agreed that these issues could be addressed in cross-examination
14 of the witnesses who are involved somehow in this, and is-- the
15 Court is not precluding plaintiffs' counsel via this ruling from
16 being able to cross-examine those individuals, you know, that
17 are involved on this or relying on the defense side in the
18 cross-examination of: Isn't it true that this amount of money
19 has been spent on this?

20 Is my understanding correct on this?

21 MR. OSTERTAG: I have no --

22 THE COURT: Just a moment.

23 The motion was only to Castleman testimony, but I have to
24 tell you that I placed some weight on the objection and
25 observation made by Ms. Mikacich that Page 323 of Plaintiffs' 18
26 contains a footnoted reference to admissions by Ford, General
27 Motors and Chrysler which has questionable value to the Court
28 and to the jury in this case. The fact that these three defense

1 admitted in litigation and made these admissions in Hillsborough
2 County, Florida, and apparently nowhere else, causes the Court
3 to be concerned also under 352 analysis about that testimony.
4 But right now I only ruled about Castleman's testimony about
5 this.

6 Now, I suppose, Mr. Ostertag, you are going to tell me you
7 want to adduce this evidence, then I will hear a whole other
8 round. Why don't we wait until you reach that conclusion. Why
9 don't we wait until we get past the plaintiffs' case?

10 MR. OSTERTAG: I think we're done on what we made the motion
11 on today, Your Honor.

12 THE COURT: The Court affirms the ruling just articulated.

13 And Dr. Castleman, thank you very much for making yourself
14 available during this hearing. I appreciated the fact that you
15 have been here, and I appreciate the importance of your
16 research.

17 THE WITNESS: Thank you, Your Honor.

18 (Witness excused.)

19 THE COURT: I think there's nothing else for us to take up
20 until Monday.

21 MR. OSTERTAG: I think you're right, Judge.

22 THE COURT: We're in recess.

23 (Whereupon, proceedings adjourned at 3:56 P.M.)
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1 CERTIFICATE OF REPORTERS

2 State of California)
3 County San Francisco)
4

5 We, Denise L. Doucette and Patty Lee Hubble, Official
6 Reporters for the Superior Court of the State of California,
7 City and County of San Francisco, do hereby certify:

8 That we were present at the time of the above proceedings;

9 That we took down in machine shorthand notes all
10 proceedings had and testimony given;

11 That we thereafter transcribed said shorthand notes with
12 the aid of a computer;

13 That the above and foregoing is a full, true, and correct
14 transcription of said shorthand notes, and a full, true and
15 correct transcript of all proceedings had and testimony taken;

16 That we are not parties to the action or related to a party
17 or counsel;

18 That we have no financial or other interest in the outcome
19 of the action.
20
21

22 Dated: September 5, 2008
23
24
25

26 _____
Denise Doucette, CSR No. 5963

27 _____
28 Patty Lee Hubble, CSR No. 3058