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Castleman testimony as fact witness, Casaretto
(Broward Co. FL)

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P R O C E E D I N G S

THE COURT: You-all need to get chopping. There's not that -- I overruled most of the objections, which we -- I don't know if you gave those to me. I didn't get the PDF. At some point, we'll have to copy this.

MR. RUKAJ: Judge, you have rulings on it. We could just give it to our tech people to start applying them.

THE COURT: Okay. So maybe you can copy it for each other. I need it on the Court. But I just wrote right on the paper, so --

MR. RUKAJ: Okay.

THE COURT: I've got one of each. Two for each depo, and one is on the original designations and then one's on the counter. So if you have a question, let me know. As I said, very few of them were sustained.

MR. RUKAJ: Okay.

THE COURT: Okay.

(Thereupon, a recess was taken, after which the proceedings continued as follows:)

THE COURT: Is everybody ready to go in just a few moments?

1 Plaintiffs.

2 MS. PIERSON: Yes, Your Honor.

3 THE COURT: Okay. I got you the documents on
4 the depositions. Everybody's got those?

5 MS. QUINTANA: Yes, Your Honor. Thank you.

6 THE COURT: Are you copying from each other?
7 because that's effectively my ruling.

8 MR. RUKAJ: Judge, we're cutting the tape now
9 and I believe that -- rightly so, I think everybody
10 will need to review the final cut before we play it.

11 THE COURT: Okay.

12 MR. RUKAJ: But it shouldn't take that long.

13 THE COURT: So I just want to -- I gave it to
14 both sides collectively here, but I don't know if I
15 didn't keep it. You're good?

16 MR. RUKAJ: I gave them the original. We have
17 a scanned copy now.

18 THE COURT: First.

19 MR. RUKAJ: If you need the originals back,
20 let's --

21 THE COURT: I don't know. I do not need them
22 back and I'm going to be in the process when we --
23 unless I need to look at this along the way. I
24 guess I'll keep it today, but -- because you're
25 going to try and play them both today, I think;

1 right? Or at least --

2 MR. RUKAJ: That's ideal for us, Judge.

3 MS. PIERSON: Yes, Your Honor.

4 THE COURT: But then when I'm done with these
5 depositions, I'm going to give you all these binders back.
6 So I don't have to take custody of those for
7 perpetuity.

8 MR. RUKAJ: Understood. Thank you, Judge.

9 THE COURT: All right. I'll just be back in
10 five minutes and we'll continue. Thank you.

11 MS. QUINTANA: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (Thereupon, a recess was taken, after which the
14 proceedings continued as follows:)

15 THE COURT: You may be seated. Thank you.

16 All right. Vanessa, are you ready?

17 THE COURT REPORTER: Yes, Your Honor.

18 THE COURT: All right. So we're on the record
19 in the case of --

20 Vanessa, I don't know, have you been here yet
21 in this trial?

22 THE COURT REPORTER: No.

23 THE COURT: So we'll have everybody make their
24 appearances.

25 So we'll start with counsel for the plaintiff.

1 MR. UUSTAL: John Uustal on behalf of the
2 plaintiff.

3 MS. PIERSON: Cristina Pierson on behalf of the
4 plaintiff.

5 Good morning.

6 MS. PAPANTONIO: Sara Papantonio on behalf of
7 the plaintiff.

8 THE COURT: Good morning. Thank you.

9 And for defense.

10 MS. QUINTANA: Good morning, Your Honor. Kayla
11 Quintana on behalf of the Johnson & Johnson
12 defendants.

13 MR. BROWN: Good morning, Your Honor. Mike
14 Brown on behalf of the Johnson & Johnson defendants.

15 MR. RUKAJ: Good morning, Your Honor. Thomas
16 Rukaj on behalf of the Johnson & Johnson defendants.

17 THE COURT: All right. Thank you.

18 So is the plaintiff ready to continue?

19 MR. UUSTAL: Yeah. If you remember, we have
20 some documents we're going to move into evidence.

21 THE COURT: Yeah.

22 MR. UUSTAL: I think they're mostly without
23 objection, but there's a couple we have to argue.

24 THE COURT: Okay. All right.

25 MR. UUSTAL: So should I just say them one by

1 one?

2 MS. PIERSON: Yeah, you could go one by one.

3 THE COURT: Do you have an exhibit list or what
4 did they give you?

5 MS. PIERSON: Oh, yes, I'm sorry, Your Honor.
6 We have the printed exhibit list for the Court.

7 THE COURT: Okay.

8 MS. PIERSON: I apologize that it is so
9 lengthy.

10 THE COURT: Looks like a phonebook.

11 MS. PIERSON: Yeah. And we could do it
12 two-sided if you prefer, but I don't know if you
13 guys like two-sided.

14 THE COURT: No. I don't like two-sided,
15 actually. So thank you.

16 So one of you -- do you want to work from it?

17 THE CLERK: Thank you.

18 MR. UUSTAL: So if it's okay, I'll announce the
19 number and move it into evidence and -- without
20 more, and then if they agree -- until or if they
21 object, then we'll hear the objection.

22 THE COURT: Sure.

23 MR. UUSTAL: Okay. So the plaintiff moves into
24 evidence Plaintiff's Exhibit 453 for identification.

25 THE COURT: 4-5-3.

1 Are you going to, like, circle those?

2 THE CLERK: Yes. When they're ready to get --

3 THE COURT: Okay.

4 MR. UUSTAL: We have copies to be marked if
5 that's what the Court prefers.

6 THE COURT: Yeah. So if you have copies or --

7 MS. PAPANTONIO: I will go through this and
8 then I'll give you all of the copies at the end.

9 THE COURT: Yeah, so go through your -- yeah, I
10 agree with you. Just go through and do that, and
11 then we can catch up with the housekeeping on it
12 later.

13 MR. UUSTAL: Yes, sir.

14 MS. QUINTANA: Defense has no objection to
15 Plaintiff's Exhibit 453.

16 MR. UUSTAL: The plaintiff moves in Plaintiff's
17 Exhibit 434 for identification.

18 THE COURT: 4-3-4.

19 MR. UUSTAL: Yes, sir.

20 MS. QUINTANA: Defense has no objection to
21 Plaintiff's Exhibit 434.

22 MR. UUSTAL: 436 for identification, we move
23 into evidence.

24 MS. QUINTANA: No objection, Your Honor.

25 THE COURT: So what was the first one?

1 MS. PAPANTONIO: 453.

2 THE COURT: 453 is received in evidence without
3 objection.

4 434 is received without objection.

5 436 is received without objection.

6 (Plaintiff's Exhibit Number 453, Document, was
7 received in Evidence.)

8 (Plaintiff's Exhibit Number 434, Document, was
9 received in Evidence.)

10 (Plaintiff's Exhibit Number 436, Document, was
11 received in Evidence.)

12 MR. UUSTAL: The plaintiffs move in 619 for
13 identification.

14 MS. QUINTANA: Your Honor, defendants object to
15 this document. This is a transcript that
16 Dr. Castleman wrote from a call that he had with
17 Johnson & Johnson. Johnson & Johnson never saw this
18 document. There's no J&J Bates stamp. It was never
19 provided to Johnson & Johnson at the time.

20 I have no objection to Dr. Castleman testifying
21 about the call that he had with Mr. Semple, but I do
22 have an objection to the actual document coming in.

23 THE COURT: Okay. Can I see it.

24 MR. UUSTAL: Oh, yes, sir.

25 THE COURT: Okay. Your position, Mr. Uustal.

1 MR. UUSTAL: Well, first, it is an ancient
2 record. It is a business record of Dr. Castleman,
3 and we agree that this is not in J&J's files, but
4 other entities can have business records and --

5 THE COURT: What is his entity?

6 MR. UUSTAL: Well, you mean like his business?
7 We can ask him and lay the foundation for that. But
8 he was working at the time for --

9 THE COURT: So she's objecting. I'm not going
10 to rule on it at this moment. I'll allow you to lay
11 a predicate, and then we'll see where you are on
12 this.

13 MR. UUSTAL: Yes, sir.

14 THE COURT: I'm not going to just receive it
15 without further testimony.

16 MR. UUSTAL: Yes, Judge.

17 THE COURT: Unless it's not objected to, which
18 it says.

19 MR. UUSTAL: Plaintiff's 744 for
20 identification, we move into evidence.

21 MS. QUINTANA: No objection, Your Honor.

22 THE COURT: Plaintiff's 744 will be received
23 without objection.

24 (Plaintiff's Exhibit Number 744, Document, was
25 received in Evidence.)

1 MR. UUSTAL: Plaintiff's 934 for
2 identification, we move into evidence.

3 MS. QUINTANA: So, Judge, I have no objection
4 to this document coming into evidence. I do have an
5 objection to them using it with Dr. Castleman. I
6 don't know if you want to hear that now or if you
7 want to wait until he testifies.

8 THE COURT: I'll just wait until there's a
9 question and you object to it.

10 MS. QUINTANA: Okay.

11 THE COURT: You have no objection to receiving
12 it in evidence?

13 MS. QUINTANA: Correct.

14 THE COURT: And the number was 934?

15 MS. QUINTANA: Yes, Your Honor.

16 THE COURT: 934 is received into evidence
17 without objection.

18 (Plaintiff's Exhibit Number 934, Document, was
19 received in Evidence.)

20 MR. UUSTAL: The plaintiff moves 1033 for
21 identification into evidence.

22 MS. QUINTANA: No objection, Your Honor.

23 THE COURT: Plaintiff's 1033 is received in
24 evidence without objection.

25 (Plaintiff's Exhibit Number 1033, Document, was

1 received in Evidence.)

2 MR. UUSTAL: The plaintiff moves 1104 for
3 identification into evidence.

4 MS. QUINTANA: No objection, Your Honor.

5 THE COURT: Plaintiff's 1104 is received in
6 evidence without objection.

7 (Plaintiff's Exhibit Number 1104, Document, was
8 received in Evidence.)

9 MR. UUSTAL: Plaintiffs move 1683 for
10 identification into evidence.

11 MS. QUINTANA: No objection, Your Honor.

12 THE COURT: Plaintiff's 1683 is received into
13 evidence without objection.

14 (Plaintiff's Exhibit Number 1683, Document, was
15 received in Evidence.)

16 MR. UUSTAL: 1688 for ID, we would move into
17 evidence.

18 MS. QUINTANA: So, Judge, I don't have an
19 objection to the actual letter that was written by
20 Johnson & Johnson on Page 2. I would object to the
21 Castleman file -- like, document that's attached to
22 the front. I don't know what that is, but the
23 actual letter, I have no objection to.

24 THE COURT: Okay.

25 MR. UUSTAL: We'll pull the first page off.

1 THE COURT: Okay.

2 MS. QUINTANA: Yeah. Yeah.

3 THE COURT: So 1688 would be received as
4 agreed?

5 MS. QUINTANA: Yes.

6 (Plaintiff's Exhibit Number 1688, Document, was
7 received in Evidence.)

8 THE COURT: Can you wait where you are one
9 moment. I've got to take a phone call.

10 MS. QUINTANA: Of course, Your Honor.

11 (Thereupon, a recess was taken, after which the
12 following proceedings were had:)

13 THE COURT: You can all be seated.

14 I apologize to you.

15 All right. So where did we leave off?

16 MR. UUSTAL: We're almost done. We've got
17 three.

18 We moved in Plaintiff's 2561 for ID.

19 MS. QUINTANA: So, again, Your Honor, I have no
20 objection to this document coming into evidence. I
21 do have an objection to it being used with Dr.
22 Castleman.

23 THE COURT: Okay. 2561 is received in evidence
24 without objection and without prejudice to making
25 your objections, sort of in passing would help.

1 (Plaintiff's Exhibit Number 2561, Document, was
2 received in Evidence.)

3 MR. UUSTAL: 3409 for ID, we move into
4 evidence.

5 MS. QUINTANA: Your Honor, defendants do object
6 to 3409 as -- on grounds of hearsay, relevance,
7 90.403, bolstering, and improper opinion.

8 THE COURT: Okay.

9 MR. UUSTAL: We would --

10 THE COURT: Can I see it.

11 MR. UUSTAL: Oh, yes, sir.

12 We would be willing to offer it simply as
13 notice with the limiting instruction that the Court
14 desires that J&J has notice of these things, Judge,
15 rather than for truth of the matter asserted.

16 THE COURT: So this is a report of a hearing of
17 the Senate Committee and of Congress in 1973.

18 MR. UUSTAL: Right.

19 THE COURT: Okay.

20 MS. QUINTANA: Your Honor, there has been no
21 evidence presented that Johnson & Johnson had notice
22 of this hearing or was at this hearing or has any
23 notice of the contents within the Senate hearing
24 transcript.

25 THE COURT: Okay.

1 MR. UUSTAL: Judge, it might be useful, then,
2 to argue the last document before we rule on this,
3 because that is a document showing they did have
4 notice of this.

5 THE COURT: Okay. So I'll reserve on this for
6 now.

7 Go ahead.

8 MR. UUSTAL: Okay. The plaintiffs move 3414
9 for ID into evidence.

10 MS. QUINTANA: Your Honor, we do have an
11 objection as it coming in as substantive evidence.
12 We have no objection to this document coming in --
13 this document as to notice to Johnson & Johnson.
14 It's a third-party document that was in J&J's files.

15 MR. UUSTAL: We don't object to that being
16 limited for the use --

17 THE COURT: Okay. So I'll receive 3414 without
18 objection.

19 MS. QUINTANA: I do disagree, Your Honor, that
20 this article provides notice to Johnson & Johnson of
21 the contents of the Committee on Congress for the
22 United States Senate, this Senate hearing transcript
23 that Your Honor received, which was Plaintiff's
24 Exhibit 3409.

25 MR. UUSTAL: And just for clarity --

1 THE COURT: In all these years, nobody ever
2 asked a corporate rep about this report?

3 MR. UUSTAL: That's a good question. I don't
4 know. Whose is it?

5 THE COURT: And this?

6 MR. TISI: It was not -- you're talking about
7 J&J?

8 THE COURT: Well, I mean, you're used to us
9 contending that it's admissible.

10 MR. TISI: No, but we already --

11 THE COURT: At minimum, because it provides
12 notice. She's saying, well, they never had notice
13 of it. I'm just wondering if --

14 MR. TISI: Yeah, it was not.

15 THE COURT: -- no one ever asked the corporate
16 rep about it.

17 MR. TISI: It was not, Your Honor. But we did
18 argue this issue the other day when we were talking
19 about motions in limine on Dr. Castleman.

20 THE COURT: Uh-huh.

21 MR. TISI: He will testify that -- if you look
22 at the actual Washington Post article that was
23 circulated, it was all the scientists that they
24 believe was dealing with that at the company at the
25 time. And he referred to in the article and it

1 shows that they were not only aware of the hearing,
2 but they were aware of the talc aspect of the
3 hearing, because if you look on the second page of
4 the article, they underline the talc and asbestos
5 issue.

6 THE COURT: So this document, which is 3414,
7 came out of the J&J files?

8 MR. TISI: Correct.

9 MR. UUSTAL: Yes, sir.

10 THE COURT: Okay.

11 MR. UUSTAL: And those are J&J scientists whose
12 names are written on it, that it was distributed to.

13 THE COURT: That is right.

14 MR. TISI: And they happened to be the J&J
15 scientists that Dr. Castleman was speaking to in
16 this timeframe.

17 THE COURT: Okay.

18 MS. QUINTANA: And, Judge, I have the
19 transcript where Mr. Tisi said that he does not
20 intend to use this document with Dr. Castleman. We
21 said that at the hearing on the motion in limine.

22 Regardless -- so if you look, the date of this
23 article is February 24th, 1973. Dr. Castleman
24 testified on February 23rd, 1973. It wasn't
25 received in Johnson & Johnson's files until

1 March 2nd, 1973, and there's no indication that
2 after receiving this document, Johnson & Johnson
3 went and obtained the Senate hearing transcript,
4 which, back in the 1970s, would have been much more
5 difficult to do than it is now.

6 So there's just no evidence that Johnson &
7 Johnson had notice of the contents in the Senate
8 hearing transcript. I don't disagree that they had
9 notice of the contents in the Washington Post
10 article, which was found in our files, but it does
11 not suggest that Johnson & Johnson has notice of the
12 entire hearing transcript, which also includes
13 articles and books written by experts, which would
14 be separate hearsay on their own.

15 THE COURT: So I'm going to reserve on the
16 hearing report. I've got to look at that a little
17 closer.

18 MR. UUSTAL: Yes, sir.

19 THE COURT: So can I hang on to it for now?

20 MR. UUSTAL: Yes, sir. And then --

21 THE COURT: Give this --

22 MR. UUSTAL: But could I take -- yeah, then I
23 can give them all to the clerk, what we have.

24 THE COURT: Okay.

25 MR. TISI: To be clear, Your Honor, I just

1 would like maybe to put up a portion of the -- I do
2 intend to use that document. I don't remember the
3 context -- content -- context in which I said -- and
4 I don't have it here --

5 THE COURT: You intend to use the newspaper
6 article?

7 MR. TISI: I do intend to say -- no, I will
8 proffer what I intend to say.

9 Are these the scientists she was dealing
10 with -- with the Johnson & Johnson, are they listed
11 on the side? Some of them were. But if this is
12 referring to a hearing that you testified to at the
13 request of the United States Senate, yes -- yes, it
14 does.

15 I mean, it's basically -- I'm trying to
16 establish the predicate for the notice that
17 counsel's talking about. So I do intend to do that.

18 THE COURT: So the notice issue -- you know, I
19 guess it's at what level of generality do I need
20 to --

21 MR. TISI: Do they need it --

22 THE COURT: By "notice," I mean, do they know
23 there was a hearing?

24 MR. TISI: Well, do they know --

25 THE COURT: Do they know where or when it ended

1 up in the report? I mean, I --

2 MR. TISI: Well, I mean, it's -- Your Honor, I
3 mean, I think this is an important point. These
4 names -- and the reason why I have the easel out
5 here, I'm going to write these names down. These
6 names are people that the jury is going to hear
7 constantly throughout this trial.

8 THE COURT: No, no, I'm just struggling -- and
9 I get that. And I understand what you intend to do.
10 And that document is in evidence right now.

11 MR. TISI: Right.

12 THE COURT: But I'm just struggling with the
13 admissibility of this.

14 MR. TISI: Yeah, I'm not going to look at
15 the -- there is a small excerpt of what
16 Dr. Castleman testified to and what he communicated
17 to the world, candidly. I will provide that so it's
18 not the whole thing. And I'm happy to give you that
19 excerpt that we're actually going to use with him.

20 THE COURT: Do you want to show that to us
21 or --

22 MR. TISI: Yes.

23 THE COURT: It's direct now that I have the
24 whole thing. You can tell me what page it is.

25 MR. TISI: It's Pages --

1 MS. PAPANTONIO: So, yes, Your Honor, there's
2 no page numbers, but if you go to the top of the
3 document --

4 THE COURT: In the report?

5 MS. PAPANTONIO: Yes, sir.

6 Page 123 and 171 through 173.

7 THE COURT: So I've got 123, and then you said
8 171 through --

9 MR. TISI: -- 173.

10 THE COURT: Okay. I got it.

11 MR. TISI: And I have the sections that I was
12 going to ask him about, Your Honor. I'll highlight
13 it and I can show it to you, if that makes it easy.

14 THE COURT: Sure.

15 Show Ms. Quintana.

16 MS. QUINTANA: So are you talking about the
17 transcript from the hearing?

18 MR. TISI: Yes.

19 MS. QUINTANA: Are you on Page 123?

20 MR. TISI: Yeah. I'll show him.

21 THE COURT: Because when you say you're going
22 to show it to him, what do you intend to do with it?

23 MR. TISI: I'm just going to ask, "Well, is
24 this what -- was this what you communicated?"

25 MS. QUINTANA: And, Judge, I have a strenuous

1 objection to this, as Dr. Castleman is not an expert
2 in this case. He is a fact witness.

3 MR. TISI: Right.

4 MS. QUINTANA: And if Johnson & Johnson wasn't
5 present for this hearing, what he said at the
6 hearing and what he said to the public at large is
7 entirely irrelevant, especially due to his testimony
8 as a fact witness.

9 MR. TISI: Your Honor, as a fact witness, he
10 can testify to what he said, and I think that's
11 within the scope of your ruling. The article
12 establishes that they either knew about it or should
13 have known about it. They actually highlighted
14 sections dealing with talc and -- and lung disease.

15 So it's really -- you can -- there's a
16 sufficient foundation for allowing him to say what
17 they knew or should have known based upon what is in
18 that Washington Post article.

19 MS. QUINTANA: Judge, what Dr. Castleman thinks
20 that Johnson & Johnson knew or should have known at
21 the time is irrelevant to his testimony as a fact
22 witness.

23 MR. TISI: I'm not going to ask him what they
24 knew or should have known. I think the jury can
25 make that inference based upon listening to his

1 testimony, seeing the documents in the file, seeing
2 the information that Dr. Castleman -- the people who
3 he was communicating with over four years in the
4 company. There's enough evidence that the jury can
5 infer that.

6 You can certainly argue that they didn't know
7 and they didn't have evidence. But there's enough
8 evidence to get it in, in my opinion.

9 MS. QUINTANA: I disagree, Your Honor. I
10 don't --

11 THE COURT: So what is this? Is this his
12 testimony?

13 MR. TISI: This is his testimony. And he
14 talked about --

15 THE COURT: Well, I mean, I'm looking at it,
16 like, in the first one here.

17 MR. TISI: Yeah.

18 THE COURT: I mean, that seems to run afoul of
19 my ruling that there's no opinions.

20 MR. TISI: Okay.

21 THE COURT: I think. I mean, he's saying --

22 MR. TISI: Well, he's not offering --

23 THE COURT: -- you know, that a certain level
24 of exposures will subject people to increased
25 mortality from mesothelioma.

1 MR. TISI: He didn't -- I'm not asking what his
2 current opinions are. The fact that they knew that
3 there was information in the public, that -- I'm
4 sorry. I'm standing too close.

5 THE COURT: No, you're all right.

6 MR. TISI: The information in the public at the
7 time, that there was -- that low-level exposure
8 might cause mesothelioma is noticed. I don't care
9 if there's a limiting instruction. He's going to
10 offer his opinion based upon what he knows now.

11 This is what he said in public, which J&J was
12 aware of.

13 The other things I was going to ask him about
14 -- there are two comments in here. One comment
15 is -- I'm sorry, I can't find the page.

16 One comment is one of the things that should be
17 done is stop use of talc containing even trace
18 amounts of asbestos where the product fibers can
19 become airborne. That's an important -- that was
20 something that was said at the time.

21 And the other thing that was said -- and this
22 came directly from Johnson -- you'll see that this
23 is reflected in the information gotten directly from
24 Johnson & Johnson. Before 1865, when Johnson &
25 Johnson began talc manufacture, babies were commonly

1 dusted with cornstarch. The safe substitute is
2 still available at one-fourth the cost of talc.

3 Out of the public, it's something that -- that
4 the company should have been aware of. And clearly,
5 it's reflected in the documents that they were
6 considering cornstarch at the time.

7 THE COURT: So if I admit it, are you
8 suggesting that you have no objection to a limiting
9 instruction?

10 MR. TISI: Of course not.

11 THE COURT: What should that say?

12 MR. TISI: That this was -- it's not being
13 offered as an opinion. It was offered as something
14 that J&J had notice of.

15 THE COURT: Okay.

16 MR. TISI: Or may have had notice of based upon
17 information that --

18 MS. QUINTANA: A couple of things, Judge,
19 that -- one of the things that should be done is to
20 stop the use of talc. Even trace amounts of
21 asbestos -- with a trace amount of asbestos can
22 become airborne.

23 I mean, that is point-blank an expert opinion.
24 His entire testimony at the Senate hearing was his
25 opinions at the time. I mean, had they wanted him

1 to testify to this, they should have made him a
2 state-of-the-art expert, which they did not.

3 As to the -- Page 173 where it talks about
4 Johnson & Johnson, this is part of his book,
5 "Asbestos and You," which he actually point-blank
6 testified in his deposition he never gave a copy to
7 Johnson & Johnson. So there's absolutely no
8 evidence that Johnson & Johnson knew about his book,
9 should have known about his book.

10 Again, the only thing that they knew or should
11 have known is -- would be what is -- what is
12 actually written in the article that they received
13 on March 2nd, 1973.

14 I disagree that Dr. Castleman can testify about
15 this article because it is an article, and he is not
16 an expert. He has no idea what Johnson & Johnson
17 knew or didn't know about this article on March 2nd,
18 1973. It wasn't him who sent it to them. It was
19 found in Johnson & Johnson's files. So, again,
20 anything he said at the Senate hearing is -- is
21 opinion testimony that's reserved for an expert, and
22 Your Honor has already ruled that Dr. Castleman
23 cannot testify as to his opinions. He should be
24 limited to testify as to the facts and his
25 conversations with Johnson & Johnson at the time.

1 MR. TISI: Your Honor, just I want to bring
2 this for a landing and make this clear.

3 I am not going to ask him what his opinion are
4 today based upon everything he knows and what he
5 is -- what he's saying today.

6 What is important is -- and one of the things
7 the jury is going to be called upon to decide is
8 whether or not what we say should have been done was
9 reasonable at the time. The fact that people were
10 out in public, was communicating with the -- you
11 know, the United States Senate, the information is
12 in the record in the United States Senate, clearly
13 available to -- to everybody. They knew about this
14 hearing. It's -- it's him not testifying to what
15 the state of the article was as an expert.

16 He's testifying to what he was saying at the
17 time.

18 THE COURT: Okay.

19 MR. TISI: And that's why this is not an expert
20 opinion.

21 THE COURT: Okay. So I'm just going to -- I'm
22 not receiving this report in at this point, and
23 you've now educated me on the looming evidentiary
24 issue that will come, and I'll just await your
25 questions and/or objections and I'll make rulings on

1 it.

2 If I do admit testimony from Dr. Castleman
3 that during a Senate hearing in 1973, he said X, Y,
4 or Z, and it falls on the side of, you know,
5 arguably being something that a lay witness would
6 not otherwise be saying in a credible way, I
7 would -- I'll allow it, but I will give an
8 instruction. But I want to hear the exact
9 questions.

10 MR. TISI: Thank you, Your Honor.

11 THE COURT: An instruction would basically say,
12 you know, that this testimony about what
13 Dr. Castleman said in 1973 is being offered and put
14 before you for the very limited purpose to determine
15 whether or not -- or what Johnson & Johnson knew or
16 should have known at the time.

17 MR. TISI: All right. I'm okay with that, Your
18 Honor.

19 THE COURT: And you're not to -- Dr. Castleman
20 has not been presented as to what's referred to as
21 an expert witness, and his opinions should not be
22 considered in that way at that point in time.

23 MS. QUINTANA: We would just object, Your
24 Honor.

25 THE COURT: How about the instruction?

1 Anything else?

2 MS. QUINTANA: I think I would object to the
3 instruction only because I object to the testimony.

4 THE COURT: Right. I understand.

5 But do you have any -- just with an
6 understanding that I'm preserving that. In my
7 opinion, I don't think you need to do anything else.

8 MS. QUINTANA: Okay.

9 THE COURT: I'm going to give some instruction,
10 if I allow it. If you want to be heard on the
11 language of it, you can just come sidebar; okay?

12 MS. QUINTANA: Understood, Your Honor.

13 MR. UUSTAL: I have the ones the Court has
14 admitted. I'd like to share with counsel and then
15 give to the clerk.

16 THE COURT: Okay.

17 MR. UUSTAL: May I hand them to the clerk?

18 THE COURT: Of course, yes. Thank you.
19 I think this is the plaintiff's opening.

20 MR. UUSTAL: Oh, yes.

21 THE COURT: I'll keep that, but I don't need
22 the binder. They just don't sit well -- sat well.

23 MR. UUSTAL: Yes, sir.

24 MR. TISI: Would you prefer things in this
25 Redweld if it makes it easier?

1 THE COURT: That's fine. You mean, like a --

2 MR. TISI: You know, like, one of those little
3 things that makes it easy for you to keep track of
4 it. I'd be happy to give it in a Redweld.

5 THE COURT: Like one of these?

6 MR. TISI: Yes.

7 THE COURT: Yeah, that's fine too. I'm going
8 to give you back as much as I can that you gave me
9 because I don't need it back here because it just
10 accumulates.

11 All right. What else? Everybody ready to go,
12 then?

13 MR. UUSTAL: Yes, sir.

14 THE COURT: Dr. Castleman, I presume, is close
15 at hand?

16 MR. UUSTAL: I believe he's on a bench outside.
17 I'll check.

18 MR. TISI: You want him here?

19 THE COURT: Well, I want to make sure he's
20 sitting right out there in case he doesn't walk
21 away.

22 MS. QUINTANA: I apologize, Your Honor. I have
23 one more thing to raise before Dr. Castleman comes
24 in. I had seen earlier on the desk there was
25 the 2009 bottle of Johnson's baby powder in a sealed

1 container.

2 At this time -- I don't see it there anymore,
3 but at this time, I would object to it being shown
4 to the jury at all today without a foundation having
5 been laid as to the admissibility of the bottle or
6 the authentication or foundation of the bottle.

7 MR. UUSTAL: We're not intending to use it
8 today. It's not the 2009 bottle.

9 MS. QUINTANA: Oh.

10 MR. UUSTAL: It's just a bottle.

11 MS. QUINTANA: Okay.

12 MR. UUSTAL: And we do -- it's just
13 demonstrative. I believe we will at some point, but
14 not today.

15 MS. QUINTANA: Okay. As long as it's not being
16 shown today, Judge --

17 THE COURT: The record will reflect Mr. Uustal
18 just took it out of the box. It was put away.

19 MS. QUINTANA: Understood, Your Honor. Thank
20 you.

21 MR. TISI: And, Your Honor, just for -- I
22 personally think it's easier for the jury to see on
23 the big screen. So we're going to pull the screen
24 down, if you don't mind, unless you prefer them not
25 to.

1 THE COURT: I'm not following you. I'm sorry.

2 MR. TISI: We're going to refer -- for
3 publication of exhibits, we're going to use the
4 screen that we used for openings yesterday.

5 THE COURT: Yes. Where is it? Oh, it's right
6 here.

7 MR. TISI: It's right here. Do you mind if our
8 tech person brings it in?

9 THE COURT: No, not at all. Absolutely.
10 And what we'll do, if you don't mind, if we
11 could -- see this monitor? Let's put that on that
12 table there because it blocks the view. I don't
13 know how tall Mr. Castleman is.

14 MR. TISI: Would you like me to have
15 Dr. Castleman come in and sit, or do you want me to
16 call him in, Judge? I don't know how you'd prefer
17 to do that.

18 THE COURT: No, you can bring him in and
19 sit down. You don't need comments. It's the first
20 one. Let's go to the -- pomp and circumstance, if
21 you will. So they understand how it works.

22 MR. RUKAJ: And, Judge, there is one thing we
23 just want to put on the record logistically about
24 some witnesses. I had a conversation with opposing
25 counsel this morning about the Dr. Moline issue.

1 And just so the Court is aware, the deposition
2 that was noticed for tomorrow will not be going
3 forward tomorrow.

4 THE COURT: Okay.

5 MR. RUKAJ: The parties have agreed there's no
6 need to serve an additional subpoena to secure the
7 witness at trial. And at this time, she has not
8 been withdrawn as a witness.

9 So this is all without prejudice to give the
10 plaintiffs and Dr. Moline --

11 THE COURT: Just giving me an update.

12 MR. RUKAJ: Exactly.

13 THE COURT: Thank you. I appreciate it.

14 MS. PIERSON: For the clerk, we just realized
15 that there's some pages that had misnumbered
16 exhibits on the back, so we're going to fix that and
17 give you a new exhibit list.

18 THE CLERK: Okay.

19 MS. PIERSON: We'll fix that over lunch and get
20 it back to you.

21 THE CLERK: And I also need 934.

22 MS. PIERSON: Okay.

23 MS. PAPANTONIO: Okay. I have that as
24 reserved.

25 MR. UUSTAL: I'm sorry. You said it comes in,

1 but you just didn't want to use it with this
2 witness.

3 MS. QUINTANA: Yes.

4 THE BAILIFF: Jury entering.

5 (The jury panel entered the courtroom, after
6 which the following proceedings were had:)

7 THE COURT: All right. You can all be seated
8 and welcome back, members of the jury.

9 All of the jurors are present. We thank you
10 again for your service.

11 We're ready to proceed. As I indicated to you
12 yesterday, the plaintiff will begin by presenting
13 evidence in the matter. And I'll turn to counsel
14 for the plaintiff to announce the plaintiff's first
15 witness.

16 MR. UUSTAL: Thank you, Your Honor. At this
17 time we would like to call Dr. Barry Castleman to
18 the stand.

19 He is seated.

20 THE COURT: Dr. Castleman has made his way to
21 the stand.

22 Good morning, sir. Would you raise your right
23 hand.

24 Do you solemnly swear or affirm the testimony
25 you're about to give is the truth, the whole truth,

1 and nothing but the truth?

2 THE WITNESS: Yes, Your Honor.

3 THEREUPON

4 DR. BARRY R. CASTLEMAN

5 was called as a witness and, having first been duly
6 sworn, testified as follows:

7 THE COURT: All right. You can have a seat.

8 And if -- kindly, you don't need to be right on
9 that microphone, but it will definitely help the
10 cause.

11 And would you tell us your full name, and spell
12 your last name.

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

15 THE COURT: Thank you.

16 You may inquire, Mr. Tisi.

17 MR. TISI: Thank you very much, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. TISI:

20 Q. Where do you live, Dr. Castleman?

21 A. I live in Maryland.

22 Q. Did you come down from Maryland to appear
23 before our jury in this case in the trial against
24 Johnson & Johnson?

25 A. Yes.

1 Q. And, briefly, tell us who you are, a little bit
2 about yourself, so that the jury understands who you
3 are.

4 A. I'm a public health worker. My field is toxic
5 substances control. I've been an independent
6 consultant. I've worked for numerous governmental
7 agencies and national organizations. I've also been
8 involved in litigation over asbestos.

9 Q. Okay. All right.

10 So just -- did we pay for you to come down
11 here? Did we pay your hourly rate to come down here?

12 A. Yes.

13 Q. Okay. Do you understand that you're here to
14 talk to our jury about things that happened in the early
15 1970s related to Johnson & Johnson, its talcum powder
16 products, and asbestos?

17 A. Yes.

18 Q. Okay. I'm going to limit my questions to you
19 specifically to what you saw and what you did related to
20 those three topics, asbestos, Johnson's talcum powder
21 products, and Johnson & Johnson in the time frame of
22 1971 until 1975.

23 Do you understand that?

24 A. I do.

25 Q. Okay. And during that time, did you

1 communicate with scientists and others at Johnson &
2 Johnson on those issues?

3 A. Yes.

4 Q. Okay. During that time frame, did Johnson &
5 Johnson scientists make representations to you about
6 asbestos and cosmetic talc?

7 A. They did.

8 Q. Okay. During that time, were you asked to
9 testify before the United States Senate on issues
10 relating to asbestos, including talc?

11 MS. QUINTANA: Objection. Outside the scope.
12 Hearsay. Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 BY MR. TISI:

16 Q. Okay. Now, I know it may seem a little
17 impolite, and I don't usually ask this question, but
18 would you tell us how old you are today, as you sit
19 here?

20 A. I'm 79.

21 Q. To give our jury a perspective of how long ago
22 this was, could you tell us how old you were between the
23 years of 1971 to 1975?

24 A. 24 to 28.

25 Q. Okay. And that was over half a century ago?

1 A. It was.

2 Q. Okay. Let's go back to that time frame.

3 Do you recall what you were doing
4 professionally during that time frame?

5 A. Well, in 1971, I was a graduate student at the
6 Johns Hopkins School of -- well, at the Johns Hopkins
7 Department of Environmental Engineering, and I was doing
8 a master's degree on air pollution control and related
9 scientific subjects, and I was writing my doctorate
10 thesis about the health effects of asbestos. And in the
11 course of this, I wrote to people at Johnson & Johnson
12 in July of 1971.

13 Q. We're going to talk about some of that
14 correspondence in a moment.

15 But just to be clear, you were interested in
16 the question of asbestos, and you contacted Johnson &
17 Johnson because of that; true?

18 MS. QUINTANA: Objection. Leading.

19 THE COURT: Rephrase.

20 MR. TISI: Yeah.

21 BY MR. TISI:

22 Q. Is the reason why you contacted Johnson &
23 Johnson because of the work you were studying at Johns
24 Hopkins?

25 A. Yes.

1 Q. Okay. And you mentioned July of 1971. Was
2 that the first time you recall speaking to Johnson -- or
3 communicating with Johnson & Johnson?

4 A. It is.

5 Q. Okay. You're our first witness to testify, and
6 I just want to orient our jury a little bit.

7 Briefly and for context, could you tell the
8 members of the jury what you understood at the time
9 about asbestos that caused you to call Johnson &
10 Johnson?

11 MS. QUINTANA: Objection. Outside the scope.
12 Relevance.

13 MR. TISI: It's just really just to orient the
14 jury, Your Honor.

15 THE COURT: Okay. Overruled at this point.
16 Let's see where it goes.

17 THE WITNESS: I had been reading the
18 literature --

19 MS. QUINTANA: Objection.

20 THE WITNESS: -- the historic literature about
21 the health effects of asbestos. And in the course
22 of that, I had come across the literature linking
23 asbestos and talc.

24 MS. QUINTANA: Objection, Your Honor. Move to
25 strike.

1 THE COURT: Overruled. Denied.

2 BY MR. TISI:

3 Q. Okay. Now, you mentioned in 1971, you wrote a
4 letter to Johnson & Johnson regarding Johnson's baby
5 powder. We have previously admitted Exhibit Number 434,
6 and we're going to put it on the screen. I believe --
7 do you need a paper copy, or you can look at it right on
8 the screen there?

9 A. Well, we'll see when the screen comes on.

10 Q. Okay.

11 THE COURT: There we go.

12 THE WITNESS: I think I can do all right with
13 the screen.

14 MR. TISI: Oh, I see it.

15 BY MR. TISI:

16 Q. Is this the letter you wrote to Johnson &
17 Johnson in your handwriting in July of 1971?

18 A. It is.

19 Q. Okay. And do you -- is this a letter you
20 personally wrote?

21 A. It is.

22 Q. Okay. And if you look at the topics from John
23 -- you listed your address as Johns Hopkins University
24 Department of Environmental Engineering.

25 Do you see that?

1 A. Yes.

2 Q. Is that where you were at the time?

3 A. It is.

4 Q. And you wrote a letter to Johnson & Johnson.

5 Can you read the first sentence for me, please?

6 A. "I am presently finishing a literature review
7 on the health effects of asbestos."

8 Q. And that's -- was that why you were calling
9 Johnson & Johnson at the time?

10 A. Yes.

11 Q. Okay. And did you consider -- when you were
12 communicating with them, did you consider that a
13 potential problem?

14 A. Yes.

15 MS. QUINTANA: Objection. Outside the scope.

16 THE COURT: Overruled.

17 BY MR. TISI:

18 Q. Please go to the second sentence.

19 Would you read that as well?

20 A. "In assessing the justification of current
21 calls for removal of asbestos from talcum powder, there
22 are several things I wish to know."

23 Q. Okay. I want to ask you that -- ask you a
24 question.

25 The predicate for your question was that there

1 were calls to remove asbestos from talcum powder at the
2 time in 1971.

3 What was your basis for saying that to Johnson
4 & Johnson at the time?

5 MS. QUINTANA: Objection. Outside the scope.

6 THE COURT: Overruled.

7 THE WITNESS: Well, this issue had been raised
8 by the leading medical authority on asbestos in the
9 United States, Dr. Irving Selikoff.

10 And there had even been an article in the New
11 York Times. I don't know about -- exactly about the
12 New York Times article's timing. But in any case, I
13 knew that there was concern publicly expressed about
14 asbestos contamination of talc.

15 MS. QUINTANA: Objection, Your Honor. Move to
16 strike. Outside the scope of his opinions.

17 THE COURT: Overruled.

18 BY MR. TISI:

19 Q. Number -- the first question that you wrote --
20 it's a little bit cut off here, but I think we can
21 figure it out.

22 Would you read for the members of the jury what
23 you said?

24 A. "How long have cosmetic talcs, in particular
25 Johnson's powder, been in widespread public use?" I

1 think is what that sentence says.

2 Q. Why were you interested in that?

3 A. Well, I wanted to know from a public health
4 point of view how far back this issue went in terms of
5 the public use of talcum powders.

6 Q. You wrote a second question.

7 Would you read for the members of the jury what
8 you wrote?

9 A. "What would be involved in terms of cost, plant
10 process changes, and removing the asbestos fibers from
11 talc, in which I believe it naturally occurs?"

12 Q. I'd like to pause here for a moment and ask
13 what -- what you meant by that.

14 A. Well, I was trained as a chemical engineer, and
15 I was interested in whether they had some kind of a -- a
16 process for assuring that any asbestos that was in their
17 talc was removed prior to its marketing to consumers.

18 Q. Okay. The next question in this -- this letter
19 says what?

20 A. "Do all talcum powders contain asbestos? And
21 among those which do, what is the range of tremolite
22 content?"

23 Q. Now, up until this point in this letter, you
24 were using the word "asbestos."

25 Here you're talking about tremolite. Would you

1 tell us, the members of the jury, were those
2 interchangeable? Why did you say that?

3 MS. QUINTANA: Objection. Outside the scope,
4 Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: Tremolite is a variety of
7 asbestos, and it was something I had seen in the
8 literature being associated with talcum powder.

9 BY MR. TISI:

10 Q. Okay. Did you --

11 A. I'm sorry. Being associated with talc that was
12 mined in New York State.

13 Q. Did you talk about -- when you wrote this in
14 this time frame, when you used the word "tremolite," did
15 you feel the need when you were communicating with
16 colleagues to say the word "tremolite asbestos"?

17 A. No.

18 Q. Why?

19 A. Well, there are six forms of asbestos --

20 MS. QUINTANA: Objection. Outside the scope,
21 Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: There were six forms of asbestos
24 that were commonly referred to, and people writing
25 about the mineralogy and the health effects of

1 asbestos, and tremolite was one of the six.

2 BY MR. TISI:

3 Q. Right. But did you feel like you had to say
4 tremolite versus tremolite asbestos versus tremolite
5 fibers versus asbestiform tremolite?

6 You know those forms; right? You've heard
7 those terms before?

8 A. I've heard those terms more recently. But back
9 in 1971, tremolite was -- to me meant a form of asbestos
10 and nothing else.

11 MS. QUINTANA: Objection. Move to strike based
12 on his response.

13 THE COURT: Overruled.

14 BY MR. TISI:

15 Q. Okay. Now, the last sentence that you say is
16 "Any information" -- or actually, why don't you read it
17 for the members of the jury.

18 THE COURT: It went down. There it goes.

19 THE WITNESS: "I close by saying any
20 information you can provide will be greatly
21 appreciated in making a fair appraisal of this
22 'problem.'"

23 BY MR. TISI:

24 Q. You used the word "problem," and you put it in
25 quotes.

1 Why did you put the "problem" in quotes,
2 Dr. Castleman?

3 A. Well, I wasn't -- I guess it was a polite way
4 of asking them and a scientific way of saying, I haven't
5 come to any definite conclusions about this matter.
6 That's why I'm asking you these questions.

7 So it might be a problem. It might not be a
8 problem. That's the sense of the quotes around the word
9 problem.

10 Q. Now, I'm going to show you a document, Exhibit
11 Number -- the next exhibit, which is entered into
12 evidence already, Exhibit Number 10 -- I'm sorry --
13 1033. And it's entitled "Asbestos Inquiry, Mr. Barry
14 Castleman."

15 Do you see it?

16 A. Yes.

17 Q. Okay. This has been entered into evidence, and
18 this is not a document -- is this a document you had in
19 your normal course of business or something you've seen
20 recently?

21 A. That's something that I saw for the first time
22 recently -- in recent years.

23 Q. Okay. The only thing I'm going to ask you
24 about this is, this is an internal Johnson & Johnson
25 document, and it describes you -- it says, and I'll read

1 it for you, "From the tone of this letter, it seems
2 clear that Mr. Castleman has scientific knowledge far
3 beyond the normal type of inquiry we have received from
4 the public. This inquiry appears to require a more
5 scientific response than we have been using in handling
6 consumer correspondence.

7 "Therefore, we believe this letter should be
8 handled by somebody in R&D."

9 Do you see that?

10 A. Yes. Down to the last sentence, which wasn't
11 blown up, but, yes, I recall that being in the letter --
12 in this document.

13 Q. I'm just going to ask you, just for members of
14 the jury, is that an accurate description of who you
15 were at the time?

16 Were you somebody who had scientific knowledge
17 beyond the normal type of inquiry that people generally
18 had?

19 MS. QUINTANA: Objection. Bolstering.

20 Improper opinion.

21 THE COURT: Overruled.

22 THE WITNESS: Yes.

23 BY MR. TISI:

24 Q. Okay. Did you receive a letter from Johnson &
25 Johnson in response to your inquiry?

1 A. I did.

2 Q. Okay. I'm going to show you that letter. It's
3 been entered into evidence. It's Exhibit Number 436.

4 Do you see that?

5 A. Yes.

6 Q. Okay. And it says -- is this a letter you
7 received in the normal course of communicating with
8 Johnson & Johnson?

9 A. Yes, it is.

10 Q. Okay. It's written by a gentleman by the name
11 of Thomas Shelley, Ph.D.

12 And the jury may see some of these names, so
13 I'm going to write them down.

14 MR. TISI: Just writing the name.

15 MS. QUINTANA: Okay.

16 BY MR. TISI:

17 Q. He's -- what did you understand Dr. Shelley --
18 who Dr. Shelley was?

19 A. He was the director of the Central Research
20 Laboratories of the corporation.

21 Q. Okay. And there were other people on this --
22 on this letter.

23 Do you see a Dr. Hildick-Smith?

24 A. Yes.

25 Q. Okay. Then, that was a CD, so I'm going to

1 write "Hildick." And that's a name that's going to come
2 up again in a minute.

3 And a Dr. Nashid.

4 Do you see that?

5 A. Yes.

6 Q. Did you have any understanding as to whether or
7 not these people on this letter -- or did you come to
8 learn the people on this letter were scientists at
9 Johnson & Johnson?

10 A. I would later come to learn that, yes.

11 Q. Okay. Would you read the -- number one in the
12 letter that you got back from Johnson & Johnson.

13 A. "The use of talc as a cosmetic extends far back
14 in historical time. More specifically, Johnson &
15 Johnson has marketed baby powder since 1895."

16 Q. And that was one -- was that one of the
17 questions you asked them in your original letter?

18 A. Yeah, it was.

19 Q. Okay. The second is where I want to spend a
20 little time, Doctor.

21 Would you read for the record what they told
22 you at that time, in August of 1971.

23 A. "We have no asbestos in our baby powder. To
24 prove this, we have had extensive analytical work
25 carried out by mineralogists at the Colorado School of

1 Mines, by McCrone Laboratories in Chicago, and by
2 Professor Fred Pooley at the University of Wales in
3 Cardiff. Professor Pooley is associated with one of the
4 teaching scientific groups studying the relationship of
5 asbestos and other inorganic particles to cancer."

6 Q. Now, they used the word "no asbestos."

7 Do you see that word?

8 A. Yes.

9 Q. "We have no asbestos in our baby powder."

10 What did you understand when they made that
11 representation to you, "no asbestos," to mean?

12 A. None. Zero.

13 Q. Nothing?

14 A. Nothing.

15 Q. Okay.

16 A. No asbestos at all.

17 Q. Okay. And they told you that the proof of this
18 was that they had these other labs that said that;
19 correct?

20 A. Yes.

21 Q. Did they ever share with you what those other
22 labs found?

23 A. No, they didn't.

24 MS. QUINTANA: Objection. Improper opinion.

25 Relevance. Outside the scope of his testimony as a

1 fact witness.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 BY MR. TISI:

5 Q. Did they ever share with you what that was?

6 A. No.

7 Q. Okay. Now, did you continue to communicate
8 with Johnson & Johnson after this -- receiving this
9 letter?

10 A. Yes.

11 Q. Okay. I'd like to show you what has been
12 admitted as Exhibit Number 1688. It's a letter from
13 March of 1972, and the judge has admitted this into
14 evidence.

15 Do you see that?

16 A. Yes.

17 Q. Okay. It starts out by saying "First, I must
18 apologize in the delay in responding to your inquiry
19 about Johnson's baby powder."

20 Having read this letter -- have you seen this
21 letter and looked at this letter before coming to court
22 today?

23 A. Yes.

24 Q. Okay. Having read this letter, you understand
25 that you wrote another letter to Johnson & Johnson,

1 which resulted in them writing you back?

2 A. Yes. And I think it must have been a postcard.

3 Q. Okay. And you made an inquiry, according to
4 this letter -- given the totality of this letter, do you
5 have an understanding or appreciation of generally what
6 that inquiry would have been?

7 A. Generally. But I don't know exactly what I
8 wrote on the -- on the postcard.

9 Q. What do you think -- based upon the response
10 you got, what do you think the inquiry would have been?
11 Would it have been a continuation of what you were
12 talking about with Dr. Shelley?

13 A. Yes.

14 MS. QUINTANA: Objection. Speculation.

15 THE COURT: Overruled.

16 THE WITNESS: Yes.

17 BY MR. TISI:

18 Q. Well, let me just ask you the question briefly.
19 What were you trying to do here in this other
20 letter?

21 A. Well, I was following up on the response I had
22 received and asking some more questions about the same
23 general subject.

24 Q. Were you continuing to have concern about the
25 safety of talc with respect to asbestos?

1 A. Yes.

2 Q. Okay. Now, it says to -- the next -- the next
3 paragraph, we'll blow it up. It says "To answer your
4 question" -- would you read the rest?

5 A. "Johnson & Johnson takes great care in the
6 formulation and production of all its products. In the
7 case of Johnson's baby powder, the talc comes from our
8 own mines, specifically selected for the quality of
9 their talc. This high-grade talc is processed through
10 repeated washings in order to free it of impurities.
11 Under careful analysis by independent experts, the
12 finished product has been shown to be free of asbestos."

13 Q. Okay. Now, this is from a Steven Sawchuk. So
14 I'm going to write his name down too.

15 This is the second letter where Johnson &
16 Johnson assured you that the mines were clean and there
17 was no baby powder and it had been proven.

18 Do you see that?

19 A. Yes.

20 Q. Okay. And when they said to you that the
21 product has been shown to be free of asbestos, what did
22 you take that to mean?

23 A. That it was totally free of asbestos. There
24 was no asbestos in it.

25 Q. Well, did you understand there could be some

1 asbestos but not enough? I mean, was there any
2 threshold that you interpreted that when you got that in
3 1972?

4 A. No.

5 MS. QUINTANA: Objection. Relevance.
6 Speculation. Improper opinion.

7 THE COURT: Overruled.

8 THE WITNESS: No.

9 BY MR. TISI:

10 Q. Okay. So just so the jury understands, when
11 they said the words "Our product has been shown to be
12 free of asbestos," your interpretation of that was what?

13 A. Completely free of asbestos.

14 Q. And with respect to the mines, what did you
15 understand their representation to you to be?

16 A. Well, that they had assured that this mine was
17 in a form -- a type of talc or a deposit of talc that
18 was free of asbestos.

19 Q. Okay. Now, in this letter, unlike the last
20 letter, they say "careful analysis by independent
21 experts." They mentioned Colorado School of Mines in
22 the prior letter, McCrone, and Dr. Pooley.

23 Did you have any understanding, based upon your
24 communications in 1972, what these, quote, independent
25 experts -- who they were?

1 A. I can only tell what the letter contained. I
2 couldn't really go any further in understanding whether
3 they were referring to any other independent experts or
4 the same ones that had been referred to in the first
5 letter that actually named several laboratories.

6 Q. At this time, when you were following up in
7 1972, did J&J offer to share with you, as somebody who
8 was interested, the testing results that they had gotten
9 from these independent experts?

10 A. No.

11 MS. QUINTANA: Objection. Relevance. Improper
12 opinion.

13 THE COURT: Overruled.

14 THE WITNESS: No.

15 BY MR. TISI:

16 Q. Okay. As somebody who was studying -- now, at
17 this time -- and pardon me.

18 You had actually gone to work -- at this time,
19 were you working or were you still a graduate student?

20 A. I had just started work a couple months --
21 right before the date of this letter as an air pollution
22 control official for the Baldwin County Health
23 Department.

24 Q. Okay. So you were working in public health at
25 the time?

1 A. Yes. This is my first employment in the field
2 of public health.

3 Q. Okay. As somebody at that time, if you had
4 been told something along the lines of an analysis by
5 independent experts had shown that Johnson & Johnson
6 talc had been shown to have some asbestos but not a lot,
7 would that have been different, in your mind?

8 MS. QUINTANA: Objection. Relevance. Improper
9 opinion. Outside the scope.

10 THE COURT: On that question, I'll overrule.
11 You can answer.

12 THE WITNESS: Yes, I would have been alarmed if
13 they said there was any asbestos in the talc.

14 BY MR. TISI:

15 Q. Okay. Would that be meaningfully different
16 for -- would that have been meaningfully different at
17 the time in 1972 --

18 A. Yes.

19 Q. -- to you?

20 A. I mean, asbestos was a cancer-causing
21 substance. Even a small amount of it would be a danger.

22 MS. QUINTANA: Objection. Move to strike, Your
23 Honor.

24 THE COURT: Overruled.

25 THE WITNESS: It would have been a danger

1 especially for people exposed at such an early age
2 as infants.

3 BY MR. TISI:

4 Q. I would like to show you Exhibit Number 1104,
5 which is a letter that you wrote, again, after getting
6 two letters of assurance from Johnson & Johnson. This
7 one is in August of 1972.

8 Is this your handwriting? This has been
9 previously admitted into evidence.

10 Is this your handwriting?

11 A. Yes.

12 Q. Okay. You start by saying, "I was" -- would
13 you read the first part of what you wrote here.

14 A. "When I was doing research on asbestos at Johns
15 Hopkins, I asked you some questions about Johnson's talc
16 and you sent a very informative reply. It is apparent
17 that Johnson's talc is free of asbestos."

18 Q. Now, when you -- are you referring to the two
19 other letters that you wrote to them and the two
20 responses you got from Johnson & Johnson?

21 A. Yes.

22 Q. Okay. Now, when you said it was apparent that
23 Johnson & Johnson's talc is free of asbestos, what did
24 you base that on?

25 A. On what they had told me.

1 Q. Okay. Did you believe them at the time?

2 MS. QUINTANA: Objection. Outside the scope of
3 his opinion. Relevance. And in violation of the
4 motion in limine.

5 THE COURT: I'm going to sustain that
6 objection.

7 MR. TISI: Okay.

8 BY MR. TISI:

9 Q. You go on to say -- the next sentence, it says
10 "What I am interested in knowing is whether talc per se
11 could enhance the likelihood of cancer development in
12 individuals who are occupationally exposed."

13 Do you see that?

14 A. Yes.

15 Q. Okay. And you brought up a study by Kleinfeld
16 that you brought to their attention.

17 Do you see that?

18 A. Yes.

19 Q. Okay. What was the purpose -- what was the
20 Kleinfeld study that you were bringing to the -- that
21 you were notifying them about at the time?

22 MS. QUINTANA: Objection. Outside the scope.
23 Improper opinion. Relevance.

24 THE COURT: Overruled.

25 THE WITNESS: Kleinfeld was reporting on New

1 York State talc miners that were the subject of
2 study by government officials, and Kleinfeld was a
3 government official for the State of New York.

4 And they found that there was an excess rate of
5 lung cancer -- four times the expected rate of lung
6 cancer in these talc miners compared to men in New
7 York State generally of the same age distribution.
8 And that there were also -- at least had one case
9 each of pleural and peritoneal mesothelioma found in
10 these miners who were exposed to a talc that was
11 described as a tremolitic talc.

12 BY MR. TISI:

13 Q. Again, that term "tremolite," were you raising
14 again a question about tremolite in talc?

15 A. Yes.

16 Q. Okay. Now, to be fair, the Kleinfeld, you
17 mentioned, had 30 percent -- that there was a 30 percent
18 asbestos; correct?

19 A. Of two types of asbestos, tremolite and
20 anthophyllite.

21 Q. Right.

22 MS. QUINTANA: Objection. Move to strike.

23 Outside the scope. Improper opinion.

24 THE COURT: Overruled.

25

1 BY MR. TISI:

2 Q. So would that have been different in terms of
3 the amount of asbestos, but the issue was still the
4 same?

5 A. I don't understand the question.

6 Q. I'm sorry. It was a bad question, and I
7 apologize.

8 If this was -- you mentioned here that there
9 was 30 percent asbestos in these talcs in the New York
10 mine.

11 A. Yes.

12 Q. Whatever the -- whatever the number was --
13 because you understand mines could have different
14 amounts; correct? You understood that at the time;
15 right?

16 A. Sure.

17 Q. Okay. Was the larger point you were raising is
18 relating to talc and asbestos and reraising that
19 question?

20 A. Well, I was concerned that talc itself could
21 cause cancer. And it wasn't clear from this report
22 whether talc played a role or whether it was just the
23 asbestos contaminants in this particular talc --

24 Q. Right.

25 A. -- that was causing these excess tests from

1 lung cancer and mesothelioma.

2 Q. Okay. The next thing is it says -- at the very
3 last paragraph, before your signature line, the first
4 sentence that you read there, would you tell us what you
5 said.

6 It beginning, "It would be" --

7 A. "It would be a great value to provide a
8 scientific basis for saying whether talc exposure
9 carries any excess risk of developing cancer.
10 Reports" --

11 Q. Don't go to the next sentence. Just that one
12 sentence.

13 Did you feel it was communicating to them that
14 there should be -- that there would be value in looking
15 at this question?

16 A. Yes.

17 Q. Okay. Next question -- next thing at the very
18 last part, you said, "Excess lung cancer among workers
19 with mixed talc asbestos exposure are a cause of concern
20 but provide no proof of hazard at this time in 1971."

21 A. No proof of hazard of talc specifically.

22 Q. Right.

23 Were you intending that sentence to mean that
24 if it had asbestos in it, it would not be a potential
25 hazard?

1 MS. QUINTANA: Objection. Improper opinion.

2 BY MR. TISI:

3 Q. What were you intending --

4 THE COURT: I'm going to sustain that.

5 MR. TISI: Yeah.

6 BY MR. TISI:

7 Q. Were you intending that to mean -- what were
8 you intending it to mean with respect to asbestos if it
9 was in the talc?

10 A. Well, what I was, I think, saying here is it
11 would be nice if we could do a study of a talc that
12 didn't have any asbestos in it to see if it was also
13 causing an excess cancer risk in the workers exposed to
14 it, follow it up for a sufficiently long period of time.

15 Q. Now, the next letter that you got is Exhibit
16 Number 1683, where J&J responds to you again in August
17 of 1972.

18 Do you see that?

19 A. Yes.

20 Q. Now, this has been admitted into evidence.

21 And it's -- and it's from a Dr. Shelley.
22 That's the same doctor who originally wrote to you --
23 that originally responded to your letter; is that right?

24 A. Yes, I think so.

25 Q. Okay. And, again, he is what? What does he

1 identify himself as?

2 A. Director of the Central Research Laboratories
3 at Johnson & Johnson.

4 Q. Okay. And he referred you to a
5 Dr. Hildick-Smith, who we saw as a cc in a prior letter.

6 Do you see that?

7 A. That's right.

8 Q. Right.

9 And did you get a letter from
10 Dr. Hildick-Smith?

11 A. I did.

12 Q. We're going to bring up Exhibit Number 744,
13 which is admitted into evidence, and we'll publish it
14 for the jury.

15 Is this a copy of the letter you got from
16 Johnson & Johnson in response to the letter that you
17 wrote?

18 A. Yes.

19 Q. Okay. And it's from Dr. Gavin Hildick-Smith?

20 A. Yes.

21 Q. Okay. And what is his title?

22 A. If you can show me the second page.

23 Q. The last -- yeah, the last page.

24 A. Director of clinical research at Johnson &
25 Johnson.

1 Q. And there are cc's to this letter. Dr. Shelley
2 and Dr. Nashid are also cc'd.

3 These are the people with whom you had been
4 communicating; right?

5 A. Yes.

6 Q. Okay. And the only part of this I'm going to
7 be asking you about is his response to the issue that
8 you raised about talc mines that may have asbestos in
9 them at the Kleinfeld study.

10 Do you see that?

11 A. Yes.

12 Q. Okay. Did he say that he understood that -- he
13 knew that there -- about the Kleinfeld study?

14 A. He does.

15 Q. Okay. Would you read for the jury what he said
16 he was aware of at the time.

17 A. I mean, he cites to publication by Kleinfeld
18 and even gives the journal by page and year in which the
19 article appeared in 1967.

20 "The publication that you mentioned in your
21 letter is familiar to us, and, as you know, reports on
22 the incidence of pulmonary cancer in miners working in
23 talc mines which contain tremolite and serpentine."

24 Q. Okay. And there's the term "tremolite" and
25 "serpentine" again.

1 They didn't communicate it to you, tremolite
2 fibers, tremolite asbestos, or any qualifying language.
3 Everybody knew that when they used the term "tremolite"
4 and used -- in this, everybody knew they were talking
5 about asbestos; is that true?

6 MS. QUINTANA: Objection. Relevance. Improper
7 opinion. Outside the scope.

8 THE COURT: Overruled.

9 THE WITNESS: That was my understanding, yes.
10 BY MR. TISI:

11 Q. Okay. And that was how people actually spoke
12 at the time? I mean --

13 A. Not --

14 Q. -- people who were talking about these
15 different compounds, they didn't say the only way it's
16 asbes- -- the only way it's tremolite asbestos is if you
17 use the word "asbestos" after the word "tremolite."

18 MS. QUINTANA: Objection. Relevance. Lacks
19 personal knowledge. Outside the scope.

20 THE COURT: Overruled.

21 THE WITNESS: No, people weren't going into
22 that kind of argument back then.

23 BY MR. TISI:

24 Q. Okay. 1973, you got a letter from Dr. Nashid,
25 and this is Exhibit 453, which is admitted into

1 evidence. We'll stay here for about 30 seconds.

2 Did you get a letter from Dr. Nashid?

3 A. Yes.

4 Q. Okay. And you had written a letter on

5 October 30th, 1973; correct?

6 A. That's what he says he was responding to, yes.

7 Q. And we don't have a copy of that letter, do we?

8 A. I don't, no.

9 Q. Okay. And he sent you some information on talc
10 safety for your review?

11 A. Yes.

12 Q. Okay. And so you got a letter from Dr. Nashid
13 to -- in addition to Dr. Hildick-Smith, Dr. Shelley, and
14 Dr. Sawchuk; correct?

15 A. Yes.

16 Q. And, then, if you would look at Exhibit
17 Number 619 -- and we're not going to -- we're not going
18 to publish this yet for the jury.

19 What is Exhibit Number 619?

20 THE COURT: Are you bringing it up?

21 MR. TISI: Oh, I'm sorry.

22 Are you able to show just the witness?

23 No.

24 Okay. Your Honor, may I approach the witness,
25 please.

1 THE COURT: You may.

2 MR. TISI: I apologize.

3 BY MR. TISI:

4 Q. Without talking about what it is at this point,
5 can you tell me what it represents. In other words,
6 don't talk about the document itself. Just tell me what
7 it is.

8 A. Well, it's a note that I may have had a
9 telephone call.

10 Q. And a telephone call with whom?

11 A. A telephone call with Bruce Semple of Johnson &
12 Johnson.

13 Q. Okay. And was this -- were these notes made
14 contemporaneous with your call with Dr. Semple?

15 A. Yes.

16 Q. Okay. Was this kept by you in the normal
17 course of your work as -- as a consultant and people --
18 the work that you were doing at the time?

19 A. Yes.

20 MR. TISI: Your Honor, at this point, I would
21 like the offer this into evidence.

22 MS. QUINTANA: Objection as to hearsay, Your
23 Honor, and failure to lay a predicate.

24 THE COURT: Can I see it?

25 MR. TISI: I can give you my copy, Your Honor.

1 I apologize for the handwriting.

2 Your Honor, it's not only an ancient document,
3 but it is also a communication with an agent of the
4 defendant.

5 THE COURT: Okay. Give me just a second.

6 I'll overrule the objection. We'll receive 619
7 in evidence.

8 (Plaintiff's Exhibit Number 619, Document, was
9 received in Evidence.)

10 MR. TISI: I'm sorry. May I have my copy back?

11 THE COURT: Yes.

12 MR. TISI: Thank you.

13 Let's publish it --

14 May I publish it for the jury, Your Honor?

15 THE COURT: You may.

16 BY MR. TISI:

17 Q. The only thing I would ask -- first of all, you
18 know Dr. Semple worked with Johnson & Johnson.

19 Do you see that?

20 A. Yes.

21 Q. Okay. So we added his -- let's add his name to
22 the list of the people who were contacting you at the
23 time.

24 Bruce Semple.

25 Did you understand -- did you have an

1 understanding of who he was at the company?

2 A. Well, I understood that he was part of the
3 research group of scientists who worked for Johnson &
4 Johnson.

5 Q. So up until this time, from 1971 to 1975, you
6 were communicating -- would it be fair to say you were
7 communicating fairly regularly with scientists looking
8 at the question of -- of talc safety?

9 A. At Johnson & Johnson, yes.

10 Q. At Johnson & Johnson.

11 And Dr. Semple -- can you just read the last
12 sentence and tell us what Dr. Semple represent --
13 represented to you at the time?

14 A. "Semple thinks the relative innocuousness of
15 talc is because of platy morphology, that it easily
16 picked up -- that is easily picked up by the mucous
17 stream and little is retained in the lungs."

18 Q. Did he tell you anything about any testing that
19 had been done on the issue of asbestos at that time?

20 MS. QUINTANA: Objection. Relevance. Improper
21 opinion.

22 THE COURT: Overruled.

23 THE WITNESS: Not in this phone call, I don't
24 think.

25

1 BY MR. TISI:

2 Q. Okay. And you had been speaking to -- to all
3 of these people from 1971 to 1975.

4 One of the things you were interested in was
5 whether or not talc did or did not contain asbestos; is
6 that true?

7 A. Yes.

8 Q. All right. And all during this time frame, did
9 anybody ever tell you that the mines were not clean?
10 Did they tell you that?

11 A. No.

12 Q. Did they ever tell you that the mines -- that
13 they could not separate out asbestos tremolite from
14 talc?

15 MS. QUINTANA: Objection. Relevance. Improper
16 opinion.

17 THE COURT: Overruled.

18 THE WITNESS: They did not tell me that.

19 BY MR. TISI:

20 Q. Did they ever tell you that their laboratories
21 were finding what -- tremolite in the mines?

22 A. No.

23 Q. Doctor, I'm going to show you something that
24 has been marked into -- into evidence as Exhibit
25 Number 934.

1 MR. TISI: Judge, this is one of the
2 documents --

3 MS. QUINTANA: Judge, I'm objecting to it being
4 shown on the screen.

5 MR. TISI: It is something that has been
6 admitted into evidence, Your Honor. It has come in.

7 MS. QUINTANA: My objection is to it being used
8 with Dr. Castleman.

9 THE COURT: Is this one page? Can I see it?

10 MS. QUINTANA: No, this is -- can we come
11 sidebar, Judge?

12 (The following discussion was had at sidebar
13 out of the hearing of the jury panel.)

14 THE COURT: How long do you want to process?
15 I'm trying to regulate lunch about --

16 MS. QUINTANA: Less than an hour.

17 THE COURT: Okay.

18 MS. QUINTANA: My hope is about 30 minutes, but
19 I can't guarantee that. I need to look at some
20 things based on what came in.

21 THE COURT: So hopefully it might take us an
22 hour. Is everybody all right?

23 MS. QUINTANA: Yeah.

24 MR. TISI: Yeah, no problem.

25 THE COURT: You want in limine instructions on

1 what I just received there?

2 MS. QUINTANA: I do, Your Honor.

3 THE COURT: Okay. All right.

4 MR. TISI: Thank you.

5 MS. QUINTANA: Thank you.

6 (Sidebar concluded.)

7 THE COURT: We will take a short break.

8 Someone needs to use the restroom.

9 Ms. Jones, take the jury out.

10 Take your notebooks with you.

11 (The jury panel left the courtroom, after which
12 the following proceedings were had:)

13 THE COURT: Okay. The jury's out. The door's
14 closed. You may all be seated.

15 Do you need a break, Doctor?

16 You probably should step out.

17 THE WITNESS: You don't need me?

18 THE COURT: We don't need you for a bit, so
19 take about five minutes to use the restroom, etc.

20 THE WITNESS: Thank you.

21 THE COURT: May I see it?

22 MS. QUINTANA: Sure.

23 So, Judge, this is an internal Johnson &
24 Johnson document that they received from McCrone
25 Laboratories. It's something that Dr. Castleman

1 would not have seen or heard at the time from 1971
2 to 1975. I can anticipate Mr. Tisi's questions
3 based on what he asked in the deposition. He's
4 going to ask him, you know, about this document and
5 whether Johnson & Johnson ever showed this to him or
6 told him about it.

7 What Johnson & Johnson did not tell
8 Dr. Castleman during that time is entirely
9 irrelevant to his testimony as a fact witness. They
10 had no duty to tell him these things. They had --
11 you know, there's to concealment claim here.
12 There's no concealment claim against Dr. Castleman.
13 This is going to be pure expert opinion testimony,
14 and it's entirely irrelevant to his opinion as a
15 fact witness.

16 THE COURT: Okay. Before I hear from the
17 plaintiff, let me just read this, please.

18 MR. TISI: Well, all I've got to say, Judge, is
19 this letter -- this is already in evidence. I think
20 the jury -- I was only going to ask him to read a
21 document that is already in evidence. It makes
22 sense in the context of his testimony. I'm just
23 publishing the document. I'm not going to ask any
24 questions about it. I think it will be obvious why
25 I'm asking the question. But I think the jury's

1 going to be entitled to hear from this perfect
2 witness to read it to the jury.

3 THE COURT: All right.

4 MS. QUINTANA: Judge, if they want to make this
5 argument in closing, they're able to do that with
6 this document, but I don't think it's proper to put
7 it in through -- to put this testimony in through
8 Dr. Castleman, who they've identified only as a fact
9 witness, who did not know about this document during
10 the time that he was communicating with Johnson &
11 Johnson. And Johnson & Johnson had no -- you know,
12 no obligation to provide this to him.

13 MR. TISI: With this sole exception being, Your
14 Honor, this is one of the very specific laboratories
15 that I told him they got confirmation of that there
16 was no asbestos in talc.

17 This document, from the laboratory that they
18 told him that they got that information from, says
19 something completely different. And, again, I'm not
20 going to ask him any questions, other than to have
21 him read it and to identify this as one of the
22 laboratories who they made a representation to him
23 about.

24 They didn't have a -- whether they had a duty
25 or didn't have a duty, they did make a

1 representation about this lab.

2 MS. QUINTANA: If I could just add, Judge, then
3 it's disingenuous because there are thousands of
4 other McCrone documents and other testing documents
5 from Johnson & Johnson that are going to come in
6 throughout this trial that do show that their talc
7 was free of asbestos.

8 MR. TISI: Bring them in.

9 MS. QUINTANA: I mean, I don't want to do that
10 with Dr. Castleman. I had no intention to do that
11 today.

12 THE COURT: Okay. So the objection is
13 overruled. Really, at the end of the day, this is
14 boiling down to you want Dr. Castleman to read from
15 a document that's already in evidence.

16 MR. TISI: Correct.

17 THE COURT: And that's all you're going to do.

18 MR. TISI: That's all I'm going to do.

19 THE COURT: And I'm not going to conclude that
20 it's, you know, so far out of the zone of his
21 testimony that I shouldn't include that. So I'll
22 note your objections.

23 MR. TISI: And there is one other -- I'm going
24 to only do this with one other document, which is
25 the next document. And I'm sure it's the same --

1 it's the same issue. And it's really going to be
2 quick, and I'll be done with the direct.

3 MS. QUINTANA: My objections are the same.

4 THE COURT: So I'll consider those -- what's
5 the name of the document?

6 MR. TISI: We call it the Clean Mines Document.
7 But yes, you'll see it.

8 THE COURT: Clean Mines?

9 MS. QUINTANA: This one?

10 MR. TISI: Yes, correct.

11 THE COURT: All right. Does it have a number?

12 MR. TISI: It's Exhibit Number 2561, and it's
13 already been admitted in evidence. Again, this
14 deals directly with the issues that they discussed
15 with Dr. Castleman. So if you look at it --

16 THE COURT: Okay. So it's in evidence. It's
17 going to be -- it's proffered that you're going to
18 be using it in the same manner.

19 MR. TISI: Correct.

20 THE COURT: And I'm going to consider the
21 defense to raise the same objection.

22 MS. QUINTANA: Correct, Your Honor.

23 THE COURT: And I'll overrule the objection.

24 MR. TISI: Thank you very much, Your Honor.

25 MS. QUINTANA: That's fine. Thank you, Judge.

1 THE COURT: All right. Where are you in your
2 direct examination?

3 MR. TISI: I have this, and then I was
4 obviously going to deal with the question of the
5 congressional testimony, and then I'm done.

6 THE COURT: Okay. So quantify that for me,
7 please.

8 MR. TISI: Half hour -- 20 minutes, half hour.

9 THE COURT: Okay. So what we'll do then, I
10 guess, is just take a five-minute break. We'll let
11 whoever needs to use the restroom use the restroom.
12 Then we'll come back and we'll complete his direct.
13 If it goes a half an hour, I'll probably break for
14 lunch before --

15 MS. QUINTANA: Okay. That's perfect, Your
16 Honor.

17 MR. TISI: Sure. No problem. Thank you, Your
18 Honor.

19 THE COURT: Court's in recess until 11:50.

20 MS. QUINTANA: Okay.

21 THE COURT: Thanks.

22 (Thereupon, a recess was taken, after which the
23 proceedings continued as follows:)

24 THE COURT: You can all be seated.

25 All right. Are we ready to continue?

1 MR. TISI: Yes, Your Honor.

2 MS. QUINTANA: Your Honor, I have one more
3 objection I would just like to put on the record
4 after I review these letters.

5 THE COURT: Okay.

6 MS. QUINTANA: So the letter that Dr. Castleman
7 received from Johnson & Johnson regarding the
8 McCrone Laboratories was dated August 2nd, 1971.
9 That was the response.

10 The document that Mr. Tisi wants to ask him
11 about now, saying that, you know, Johnson & Johnson
12 didn't send this to you, is dated 1972. So it
13 was -- this document was received by Johnson &
14 Johnson after they wrote Dr. Castleman this letter.
15 And, again, they had no duty to, you know,
16 supplement their response to him.

17 Same with Plaintiff's Exhibit 2561, which is
18 the Windsor Minerals and Talc document. That
19 document is dated April 26th, 1973. The document in
20 which Johnson & Johnson represents to Dr. Castleman
21 that the talc comes from our own mines and talks
22 about the quality is March 7th, 1972.

23 So both of these documents come after the dates
24 that Johnson & Johnson had written to Dr. Castleman
25 on these topics.

1 MR. TISI: Your Honor, just to be clear, he was
2 communicating -- I think the record will show he was
3 communicating constantly with numerous scientists in
4 this whole timeframe. I'm simply going to ask him
5 to read a letter that's already in evidence.

6 THE COURT: So that's what I was going back to,
7 what you told me. That's what I thought you told
8 me.

9 So you're not going to ask -- you said -- the
10 transcript says "I'm not going to ask any questions
11 about it."

12 MR. TISI: I'm simply -- I will lay the
13 foundation. Is this one of the labs that they
14 talked about.

15 THE COURT: Yes.

16 MR. TISI: Is this in the timeframe between '71
17 and '75?

18 What does it say? It's already in evidence.

19 THE COURT: And I'll note your objection.
20 Based upon that proffer, I'll overrule the objection
21 and allow you to do that based on your
22 representation you're not going to be on it.

23 MR. TISI: I will not.

24 MS. QUINTANA: Thank you, Judge.

25 THE COURT: All right. We will have the jury.

1 THE BAILIFF: Yes, Judge.

2 THE COURT: And once she's getting the jury, I
3 think we have an issue from the jurors.

4 Tammy Castillo --

5 MR. TISI: I'm sorry?

6 THE COURT: Tammy Castillo is a juror. She's
7 Juror Number 6. And she told the court deputy that
8 she needs to go out of town next Friday. So I guess
9 she said she didn't think we were going to be in
10 session on Fridays, which to some degree is what she
11 was told, but the -- I think we told them on day one
12 it was going to be possible on the 3rd.

13 But I'm just letting you know that. I don't
14 want to get into a big discussion about it right
15 now. I think you said you wanted to call Dr. Lopes
16 that day.

17 MR. UUSTAL: Yes, sir.

18 THE COURT: We will need to address that with
19 the juror before the end of the day.

20 MR. UUSTAL: Okay.

21 MS. QUINTANA: Your Honor, I apologize. I do
22 have a motion to make at this time.

23 Your Honor, the defendants are moving for a
24 mistrial based on Dr. Castleman's testimony outside
25 the scope of his opinion -- or outside the scope of

1 a lay opinion fact witness. He's testified to
2 multiple things that only an expert can testify to.

3 So at this time, I'm moving for a mistrial.

4 THE COURT: Okay. That motion is denied.

5 MS. PIERSON: Your Honor, also, I think I had
6 mentioned there was some mislabeling of some of
7 the last of the exhibits on the exhibit list. And
8 we have a list for the clerk.

9 THE COURT: The clerk left. So if we could do
10 that when she gets back.

11 MS. PIERSON: Thank you, Your Honor.

12 (The jury panel entered the courtroom, after
13 which the following proceedings were had:)

14 THE COURT: All right. You can be seated, and
15 welcome back, members of the jury.

16 Dr. Castleman is continuing on the witness
17 stand. I'll remind him he's continuing under oath.

18 At this time, Mr. Tisi, you may continue with
19 your direct examination.

20 MR. TISI: Thank you. And I'll try -- because
21 everybody is wanting to get their lunch. I'm going
22 to try to speed it up for you.

23 BY MR. TISI:

24 Q. Doctor, I am going to hand you two documents.
25 The first document I'm going to hand you -- or I'm going

1 to bring up on the screen is Exhibit 934.

2 Now, this is not a document that you saw in
3 19 -- between 1971 and 1975; is that correct?

4 A. That's correct.

5 Q. All right. For the record, this is a document
6 from -- to Johnson & Johnson from Walter McCrone and
7 Associates.

8 Do you see that?

9 A. Yes.

10 Q. And the date is 1972.

11 Do you see that?

12 A. Yes.

13 Q. Is that in the time frame that you were having
14 this back-and-forth with scientists at Johnson &
15 Johnson?

16 A. Yes.

17 Q. Okay. And this is the laboratory -- I think in
18 the first letter you got from Johnson & Johnson, is this
19 one of the laboratories they specifically mentioned as
20 saying that the -- the talc was asbestos-free?

21 A. It was one of the laboratories Johnson &
22 Johnson's letter mentioned in that connection.

23 Q. Okay. All right.

24 And I'm going to ask you simply to read for the
25 members of the jury what this report says. I'm not

1 going to ask you to comment. I'm going to ask you to
2 read it because it's already in evidence; okay?

3 A. Yes.

4 Q. All right. If you go to page -- the second
5 page. In the summary, it says -- would you say what --
6 would you please read what the summary says.

7 A. "Two samples of Johnson & Johnson's baby
8 powder, Batch Number 108T and 109T, which correspond to
9 the samples examined by Professor Seymore C. Druenne of
10 New York University on behalf of the FDA have been
11 examined by x-ray defraction, light microscopy,
12 transmission electron microscopy, and electron
13 defraction to determine whether they contain any
14 asbestiform minerals.

15 "Both samples contain an insignificant amount
16 of tremolite, less than .5 percent. Neither sample
17 contains chrysotile."

18 Q. If you go to the next page, in the middle of
19 the page it says -- under light microscopy, there's a
20 sentence at the end of the paragraph.

21 Would you read it to the members of the jury.

22 A. "The total tremolite content of the two samples
23 would be approximately 0.5 percent for 108T, and 0.2 to
24 0.3 percent for 109T."

25 Q. And if you look at the last page, it is a

1 report from -- there's a note from Dr. Nashid.

2 Do you see that?

3 A. Yes.

4 Q. Okay. And can you read the last sentence of
5 that note from Johnson & Johnson?

6 A. "Levels are extremely low but occasionally can
7 be detected optically. This is not new."

8 Q. Doctor, I'm going to hand you another
9 document -- another document that has been admitted into
10 evidence. It's Exhibit Number 2561.

11 Do you see that?

12 A. Yes.

13 Q. Okay. Referring back to your testimony
14 about -- do you remember what they told you about their
15 mines and -- and that they were clean?

16 Do you remember that testimony?

17 A. Yes.

18 Q. And did they tell you that?

19 A. They said that their mines were free of
20 asbestos.

21 Q. Okay. I'm going to ask you to read -- this is
22 a memorandum -- an internal memorandum from Johnson &
23 Johnson.

24 If you would read for me -- read for the
25 members of the jury what they said on this document,

1 Point Number 1.

2 A. It says "It is our joint conclusion that we
3 should not rely on the clean mine approach as a
4 protective device for baby powder in the current" --
5 thanks -- "in the current asbestos or asbestiform
6 controversy.

7 "We believe this mine to be very clean.
8 However, we are also confident that fiber forming or
9 fiber-type minerals could be found. The usefulness of
10 the clean mine approach for asbestos only is over."

11 Q. All right. On the second page, there's a
12 Section B.

13 Do you see that?

14 A. Yes.

15 Q. Okay. Would you please read for the members of
16 the jury what J&J said internally in 1973 during the
17 time frame that they were communicating with you,
18 beginning with the phrase "Occasionally."

19 A. If you could blow that up, that will be easier
20 for me.

21 MR. TISI: It's right here. Do you see that?
22 At the very bottom of Section B.

23 THE WITNESS: Thanks. "Occasionally sub-trace
24 quantities of tremolite or actinolite are
25 identifiable (optical microscope) and these might be

1 classified as asbestos fiber."

2 BY MR. TISI:

3 Q. Lastly, on Page 3, would you -- there's a
4 Section C.

5 Would you please read for the members of the
6 jury what they were saying internally in 1973.

7 A. "Cornstarch is obviously another answer. The
8 product by its very nature does not contain fibers.
9 Furthermore, it is simulated by the body."

10 Q. Okay. Now, let's switch topics for a minute,
11 and I think I'll be done.

12 You mentioned before that you testified before
13 Congress in this time frame. Would you remember when
14 that was?

15 A. Yes. It was in February of 1973.

16 Q. Okay. Before I talk about that, I'm going to
17 show you a document, which we've had marked as 3414, and
18 it's a document that came from Johnson & Johnson's
19 files.

20 Do you see that at the bottom there's a Johnson
21 & Johnson Bates number? I'll represent to you that that
22 indicates it comes from their files.

23 A. Yes.

24 MS. QUINTANA: And, Your Honor, I'm going to
25 renew my objections on this as to outside the scope,

1 relevance, and improper opinion.

2 MR. TISI: This concerns --

3 THE COURT: The objection is to him asking
4 Dr. Castleman questions about this document that's
5 in evidence?

6 MS. QUINTANA: Correct, Your Honor.

7 THE COURT: Then I'll overrule that objection.

8 BY MR. TISI:

9 Q. On the left-hand side, it says "From the desk
10 of WHS Ashton."

11 Do you see that?

12 A. Yes.

13 Q. Okay. Now, it says to -- they're forwarding
14 this to a bunch of people, including Dr. Shelley,
15 Dr. Nashid, and those are people that you were
16 communicating with at this time; correct?

17 A. Yes.

18 Q. Those were the scientists that we saw letters
19 back-and-forth from; true?

20 A. Right.

21 Q. Okay. And what is the title of this article?

22 A. Asbestos Hazards Found Widespread.

23 Q. Okay. Now -- and the date is -- do you see it?

24 A. February 24th, 1973.

25 Q. Does this concern the hearing that you

1 testified to, Doctor?

2 A. Yes. I testified at a -- at a Senate hearing
3 the day before this appeared.

4 Q. Okay. And, in fact, your name is actually
5 mentioned here, is that true, on the right-hand side,
6 another witness?

7 A. Yes.

8 Q. An environmental engineer at the Baltimore
9 County Department.

10 Do you see that?

11 A. At the Baltimore County Health Department, yes.

12 Q. And if you go to the next page -- the next page
13 of that document --

14 A. This is another document.

15 MR. TISI: This is another document.

16 Okay. Yeah.

17 BY MR. TISI:

18 Q. The article continues, and there are hashmarks,
19 do you see that, to highlight those two paragraphs?

20 A. Yes, in the margins.

21 Q. And you can read it, but when you see that,
22 what does it say to you?

23 A. Well, it refers to the senator who was
24 conducting the hearing, Senator John V. Tunney from
25 California, "acting subcommittee chairman asked whether

1 his children should stop blowing up balloons, whose
2 powder inside signify the presence of asbestos fibers,
3 and should he quit using his aftershave talcum powder."

4 Q. Okay. You mentioned Dr. Selikoff before. What
5 does this article say Dr. Selikoff replied?

6 A. "Yes, it does mean that, Dr. Selikoff replied.
7 Emphasizing that the ill's from asbestos don't show up
8 for 20 to 30 years. Anything that has asbestos in it,
9 keep it away from your kids."

10 Q. Okay. So, now, you testified this -- does this
11 article -- what does this article suggest the day after
12 the hearing that the company understood about your --
13 that -- about a hearing that happened the day before?

14 MS. QUINTANA: Objection. Relevance. Improper
15 opinion. Outside the scope. Lack of personal
16 knowledge. Speculation.

17 THE COURT: I'm going to sustain the objection.
18 BY MR. TISI:

19 Q. Okay. Doctor, did you, in fact, address and
20 communicate in that hearing information that you made
21 public about asbestos in Johnson's baby powder?

22 MS. QUINTANA: Objection. Improper opinion.
23 Hearsay. And outside the scope.

24 THE COURT: Overruled.

25 THE WITNESS: In the hearing, there was a

1 report that I had written that was submitted and
2 made part of the -- the hearing record and the
3 committee print, which included our report called
4 "Asbestos and You," and there it was mentioned
5 that --

6 MS. QUINTANA: Your Honor, I'm going to object
7 to him talking about "Asbestos and You."

8 MR. TISI: It's in the --

9 MS. QUINTANA: On the grounds of hearsay.

10 MR. TISI: It's in the Senate hearing, Your
11 Honor.

12 MS. QUINTANA: Which is not in evidence, Your
13 Honor.

14 THE COURT: No, I understand.

15 At this point, I'm going to overrule your
16 objection. I'm going to find that he can testify
17 about that.

18 MR. TISI: Thank you, Your Honor.

19 THE COURT: So if you're going to bring it --
20 if you're seeking to introduce the document.

21 BY MR. TISI:

22 Q. Doctor, I'm going to refer you to Page 173.

23 Can you bring up Exhibit -- I forget where this
24 exhibit was --

25 THE COURT: No, I'm not receiving that into

1 evidence. That needs to be taken down, please.

2 MR. TISI: Yeah, I apologize. I didn't --

3 THE COURT: I understand.

4 BY MR. TISI:

5 Q. What did you tell the members of the community
6 and the Senate at that time?

7 A. As to talc, I said that people should use
8 cornstarch instead of talc powders.

9 Q. And this would have been in 1973 when you were
10 talking to Johnson & Johnson; true?

11 A. Yes.

12 Q. Did you say anything about -- did you
13 communicate anything about whether or not even trace
14 amounts of asbestos was safe?

15 MS. QUINTANA: Objection. Hearsay. Relevance.
16 Improper opinion. Outside the scope of Your Honor's
17 order.

18 THE COURT: Overruled.

19 THE WITNESS: Yes. I -- I said that even trace
20 amounts of asbestos would -- would render the
21 product hazardous.

22 BY MR. TISI:

23 Q. Okay. And did you say anything about whether
24 or not products that could be airborne present a
25 problem?

1 A. Well, if there was any possibility of asbestos
2 released from the talc products, that they shouldn't be
3 used. That was the sense of what I -- what I wrote.

4 Q. I also -- before I sit down, I asked you early
5 on whether we paid for you to come down here -- we paid
6 your normally hourly rate to give your fact testimony
7 here.

8 Would you tell the members of the jury what
9 you've been paid.

10 A. The hourly rate is \$400.

11 MR. TISI: Okay. Thank you very much. I don't
12 have any other questions at this time.

13 THE COURT: All right. Members of the jury,
14 before we begin the cross-examination of the
15 defense, we're going to break for lunch.

16 I will -- can you maybe come sidebar,
17 Ms. Quintana, please.

18 MS. QUINTANA: Yes, Your Honor.

19 THE COURT: Let me just get an update. You can
20 pass those notebooks in. I'm going to collect
21 those. Thank you.

22 (The following discussion was had at sidebar
23 out of the hearing of the jury panel.)

24 THE COURT: How long do you think cross is
25 going to be? because I'm trying to regulate lunch

1 without limiting you in any way.

2 MS. QUINTANA: Less than an hour.

3 THE COURT: Okay.

4 MS. QUINTANA: And I hope it's about
5 30 minutes, but I can't guarantee that.

6 THE COURT: Uh-huh.

7 MS. QUINTANA: I need to look at some things
8 based on what came in.

9 THE COURT: So I'm going to break for an hour.
10 Is everybody all right with that?

11 MR. TISI: Yeah, no problem.

12 MS. QUINTANA: Yeah.

13 THE COURT: Secondly, do you want a limiting
14 instruction on what I just received there?

15 MS. QUINTANA: I do, Your Honor.

16 THE COURT: Okay. All right. Thank you.

17 MS. QUINTANA: Thank you.

18 (The following proceedings were had in the
19 presence of the jury panel.)

20 THE COURT: Members of the jury, before I send
21 you to lunch, let me just give you an instruction,
22 as I may do from time to time throughout the trial,
23 as to evidence that's been presented before the
24 jury.

25 You just heard testimony from Dr. Castleman

1 about what he says he said in a U.S. Senate hearing
2 in the 1970s.

3 The Court received that evidence for the
4 purpose of the notice. And you're not to consider
5 it. Dr. Castleman has not been brought to court
6 today as an expert witness able to give opinions
7 about these matters. He was brought and his
8 testimony presented by the plaintiff simply as a
9 fact witness about what he said that day, and you're
10 to consider that only in that way.

11 Anything else from the plaintiff?

12 MR. TISI: No, Your Honor. Thank you very
13 much.

14 THE COURT: From the defense?

15 MS. QUINTANA: Not at this time, Your Honor.

16 THE COURT: All right. Have a nice lunch. I
17 will see you at 1:10, please.

18 (The jury left the courtroom, after which the
19 following proceedings were had:)

20 THE COURT: Okay. You can be seated.

21 Dr. Castleman, you're excused. We'll see you
22 back in an hour. He's on cross-examination now, so
23 it would seem that he should not be talking to
24 anyone unless there's --

25 MR. TISI: I will not, other than just to tell

1 him where the food is.

2 THE COURT: Of course. Great.

3 All right. Doctor, we'll see you in an hour;
4 okay?

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Thank you.

7 Anything else from the plaintiff?

8 MR. TISI: No, Your Honor.

9 THE COURT: The defense?

10 MS. QUINTANA: No, Your Honor.

11 THE COURT: Okay. Thank you very much.
12 Court's in recess till 1:10.

13 (Thereupon, a lunch recess was taken, after
14 which the proceedings continued as follows:)

15 THE COURT: You can be seated, thank you.

16 We're back on the record.

17 The parties are present.

18 Is the plaintiff ready to proceed?

19 MR. TISI: Yes, Your Honor.

20 THE COURT: Defense ready to proceed?

21 MS. QUINTANA: Yes, Your Honor. I have two
22 things that I would like to do before the jury comes
23 back in, Your Honor.

24 THE COURT: Okay.

25 MS. QUINTANA: The first is I would like to

1 preadmit one exhibit. It is Plaintiff's
2 Exhibit 452. It is a letter from Dr. Castleman to
3 Johnson & Johnson on October 30th, 1973.

4 THE COURT: Okay.

5 MR. TISI: We have no objection, Your Honor.

6 THE COURT: All right. So that's 452. You
7 just want to leave it as Plaintiff's 452? Is
8 that --

9 MR. TISI: That's fine, Judge.

10 MR. UUSTAL: Yeah, because otherwise it
11 would -- we would object if the defense starts
12 moving in exhibits. But since that's our exhibit,
13 we don't care.

14 THE COURT: You'll agree to it?

15 MR. UUSTAL: Yeah.

16 THE COURT: All right.

17 MR. UUSTAL: Because it's a plaintiffs exhibit.

18 THE COURT: Okay. All right.

19 MS. QUINTANA: The other thing, Your Honor, is
20 that we looked at the realtime over lunch and we
21 would ask that Your Honor would expand the limiting
22 instruction to Dr. Castleman's testimony in general,
23 not just to the Congressional hearing, given that he
24 has given quite a few -- what I interpret as expert
25 opinion. So we would just ask that --

1 THE COURT: Write out exactly what you want me
2 to say.

3 MR. TISI: Your Honor, we would object to that.

4 THE COURT: Well, let's see exactly what she
5 wants to say.

6 MR. TISI: Okay. But I was really careful in
7 saying "what you meant at the time, what you said at
8 the time." I wasn't asking what his opinions are
9 now. They're very different.

10 THE COURT: I understand. But I'm --

11 MS. QUINTANA: I just have to find it in the
12 realtime, Your Honor. It was your exact limiting
13 instruction. Just that it's not limited to his
14 testimony at the Congressional hearing. It's his
15 testimony as a whole that he's not an expert.

16 THE COURT: Go ahead.

17 MR. TISI: Your Honor, I just feel like that --
18 doing that would tip the balance. You know, it's
19 almost like an admonishment as opposed to an
20 instruction. When you do something twice, it taints
21 the testimony when you do it that way.

22 THE COURT: Okay. Well, I'm going to -- if the
23 defense wants a specific instruction, you can
24 propose it. But if I deny it, we'll make a record
25 of that.

1 I do -- I don't have the language in front of
2 me on the realtime, but I do believe I said that
3 he's been called here as a fact witness.

4 MR. TISI: Correct.

5 THE COURT: Not as an expert witness.

6 MR. TISI: Thank you.

7 THE COURT: And I understand the defense point,
8 but I'm not so sure I need to put anything else.
9 But I'm happy to consider any specific language that
10 you want me to instruct the jury on; okay?

11 MS. QUINTANA: Understood, Your Honor.

12 THE COURT: Why don't you get going on the
13 cross and then we can --

14 MS. QUINTANA: Okay. Yeah, that's perfect.

15 THE COURT: -- do that in the next recess if
16 that's okay.

17 MS. QUINTANA: Okay.

18 THE COURT: So with that, are you ready?

19 MS. QUINTANA: I am, Your Honor.

20 THE COURT: And so we'll have the jury, please.
21 Doctor, you're ready; right?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Okay. Thank you.

24 MS. QUINTANA: I'm just going to flip this so
25 that it's clean, if that's okay with you.

1 MR. TISI: Of course. Of course.

2 THE COURT: And we need to talk to that juror.
3 I don't know. Have you had any discussion about
4 that? I don't know what sort of flexibility you
5 have.

6 MR. UUSTAL: That's a very difficult one. We
7 would at least like to find out, you know, what
8 exactly she's asking for.

9 THE COURT: Well, she did the -- and I'm going
10 to do that. But she told the deputy that I think
11 she's leaving Thursday night for an out-of-town work
12 trip or something, but we'll follow up at the next
13 break; okay?

14 So I'll talk to her about it privately.

15 (The jury panel entered the courtroom, after
16 which the following proceedings were had:)

17 THE COURT: Okay. You can all be seated.

18 And welcome back, members of the jury.

19 We're ready to continue. All the jurors are
20 present. Dr. Castleman is continuing on the stand
21 under oath.

22 The plaintiff's counsel, Mr. Tisi, completed
23 his direct examination, so now I'll turn to defense
24 counsel, Ms. Quintana, for cross-examination.

25 You may proceed when you're ready.

1 MS. QUINTANA: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. QUINTANA:

4 Q. Good afternoon, Dr. Castleman.

5 A. Good afternoon.

6 Q. We have not met before. My name is Kayla
7 Quintana. It's nice to meet you.

8 A. All right.

9 Q. Now, you testified on direct examination about
10 several letters that you exchanged between yourself and
11 Johnson & Johnson in the 1970s; correct?

12 A. Right.

13 Q. I want to talk a little bit about what you were
14 doing at the time that you wrote those letters.

15 You graduated college in 1968; is that correct?

16 A. Yes.

17 Q. And so at the time that you wrote your first
18 letter to Johnson & Johnson in 1971, you were in grad
19 school?

20 A. That's right.

21 Q. Okay. And at that time, you had a degree in
22 engineering; is that correct?

23 A. Right.

24 Q. So I want to look through some of those
25 letters. I know we looked through them earlier and the

1 jury has already seen them.

2 MS. QUINTANA: Lawton, can you pull up Tab 1.

3 BY MS. QUINTANA:

4 Q. Now, this was admitted as Plaintiff's Exhibit
5 434.

6 This is the first letter that you wrote to
7 Johnson & Johnson, dated July 25th, 1971; is that
8 correct?

9 A. Yes.

10 Q. Okay. And this is handwritten; is that right?

11 A. Yes.

12 Q. It looks like you wrote the letter on
13 July 25th, 1971, and then it was received by Johnson &
14 Johnson on July 27th; is that correct?

15 A. Yes.

16 Q. And at the time that you wrote this letter, you
17 were a graduate student at Johns Hopkins University in
18 Baltimore, Maryland?

19 A. Yes.

20 Q. You wrote to Johnson & Johnson in part because
21 you were curious about talc in asbestos; right?

22 A. Yes.

23 Q. And you believed that Johnson & Johnson was
24 knowledgeable regarding talc?

25 A. Yes.

1 Q. Okay. In this letter, in July of 1971, you
2 asked Johnson & Johnson about the potential
3 contamination of asbestos in talcum powder; right?

4 A. Yes.

5 Q. Now, let's look at another document. This is
6 going to be --

7 MS. QUINTANA: Tab 3, Lawton?

8 BY MS. QUINTANA:

9 Q. This has been already introduced as Plaintiff's
10 Exhibit 1033.

11 This is a Johnson & Johnson internal memo,
12 dated July 28th, 1971.

13 Do you see that?

14 A. Yes.

15 Q. Now, to be fair, this memo was not sent to you;
16 correct?

17 A. Correct.

18 Q. This was Johnson & Johnson talking internally
19 amongst themselves?

20 A. Yes.

21 Q. Now, in this memo, Johnson & Johnson is
22 discussing your letter that they had just received a few
23 days earlier; right?

24 A. Right.

25 Q. And Mr. Tyrell acknowledges that you seemed to

1 have scientific knowledge far beyond the normal type of
2 inquiry that they receive from the public.

3 A. That's what it says.

4 Q. So then he escalated the letter to Johnson &
5 Johnson's R&D department to provide you with a more
6 scientific response; correct?

7 A. Yes.

8 Q. R&D stands for research and development, to
9 your knowledge; is that right?

10 A. Yes.

11 Q. So three days after Johnson & Johnson received
12 your letter, they internally escalate the letter to
13 their R&D department so that you would be provided with
14 a scientific response; true?

15 A. Yes.

16 Q. A few days later, Johnson & Johnson sent you a
17 response; is that correct?

18 A. Yes.

19 MS. QUINTANA: Lawton, can we pull up Tab
20 Number 4. This is Plaintiff's Exhibit 436.

21 BY MS. QUINTANA:

22 Q. Do you see what's on the screen, Dr. Castleman?

23 A. Yes.

24 Q. So let's take a look at Johnson & Johnson's
25 response to you.

1 It's dated August 2nd, 1971; right?

2 A. Yes.

3 Q. So this was only a few days after you wrote to
4 them originally; correct?

5 MR. TISI: I'm sorry. What exhibit are we
6 looking at?

7 MS. QUINTANA: It's Plaintiff's 436.

8 MR. TISI: I'm sorry. Thank you.

9 MS. QUINTANA: Yeah, no problem.

10 BY MS. QUINTANA:

11 Q. This letter was written by Thomas H. Shelley,
12 Ph.D.; correct?

13 A. Yes.

14 Q. And he was the director of Central Research
15 Laboratories at the time?

16 A. Yes.

17 Q. So as requested in the internal memorandum that
18 we looked at, Johnson & Johnson had a specialist from
19 their research and development department provide you
20 with a more scientific response; correct?

21 A. Yes.

22 Q. In this response, Dr. Shelley responded to your
23 questions regarding potential asbestos contamination in
24 Johnson's baby powder; true?

25 A. Yes.

1 Q. And let's take a look at what Dr. Shelley said.
2 Dr. Shelley tells you that there is no asbestos
3 in Johnson's baby powder; right?

4 A. Right.

5 Q. And to support this statement, he cites some
6 work performed by scientists at the Colorado School of
7 Mines?

8 A. Yes.

9 Q. At McCrone Laboratories?

10 A. Yes.

11 Q. And Professor Fred Pooley at the University of
12 Wales; correct?

13 A. Yes.

14 Q. So a little over a week after Johnson & Johnson
15 received your letter, they responded by answering your
16 questions and providing scientific support for their
17 responses; correct?

18 A. Yes.

19 Q. Now, following this letter, at some point
20 again, during that time period, you write to Johnson &
21 Johnson; right?

22 A. Right.

23 Q. And I don't believe that we have a copy of that
24 correspondence; is that true?

25 A. I don't. And I haven't seen it in -- produced

1 in the litigation either.

2 Q. Okay. So you don't know exactly what you would
3 have said; right?

4 A. I don't know exactly what I wrote to them
5 either.

6 Q. And you believe -- I think you testified on
7 direct examination that it was like a postcard?

8 A. Evidently, from the response to -- to the
9 second communication, it appears that it was a postcard.

10 Q. Okay. So let's look at that response.

11 MS. QUINTANA: Lawton, this is going to be
12 Tab 6.

13 BY MS. QUINTANA:

14 Q. And this is Plaintiff's Exhibit 1688.
15 So this letter is written on March 7th, 1972.
16 Do you see that?

17 A. Yes.

18 Q. And it's written by Steven Sawchuk, M.D., who
19 was an associate director of clinical research.

20 A. That's what it says.

21 Q. And to your understanding, M.D. stands for
22 medical doctor; correct?

23 A. Yes.

24 Q. Dr. Sawchuk first apologizes for the delay in
25 responding to your inquiry; right?

1 A. Yes.

2 Q. And then explains that your card was lost in
3 interoffice transit, but they recovered it shortly
4 before his response to you; right?

5 A. Right.

6 Q. He then tells you that for Johnson's baby
7 powder, the talc comes from Johnson & Johnson's own
8 mines; right?

9 A. Yes.

10 Q. Which he says were specifically selected for
11 the quality of their talc?

12 A. That's what he wrote.

13 Q. Dr. Sawchuk then explains to you the method
14 used by Johnson & Johnson to wash its talc to ensure it
15 is pure; correct?

16 A. He makes reference to that, yes.

17 Q. And he informs you that under careful analysis
18 by independent experts, the finished product has been
19 shown to be free of asbestos.

20 Did I read that correctly?

21 A. Yes. That's what he wrote.

22 Q. And, now, this was in March of 1972; right?

23 A. Right.

24 Q. A few months later, you write your third letter
25 to Johnson & Johnson; right?

1 A. Yes, I think so.

2 Q. And, sorry, I can pull it up for you,
3 Dr. Castleman.

4 MS. QUINTANA: It's Tab 7, Lawton. And it's
5 Plaintiff's Exhibit 1104.

6 BY MS. QUINTANA:

7 Q. So you write to Dr. Shelley again; correct?

8 A. Yes.

9 Q. Now, let's look at your letter. This is dated
10 August 3rd, 1972?

11 A. Yes.

12 Q. You tell Dr. Shelley, "When I was doing
13 research on asbestos at Johns Hopkins, I asked you some
14 questions about Johnson's talc and you sent a very
15 informative reply."

16 Do you see that?

17 A. Yes.

18 Q. At this point in 1972, you agree that Johnson &
19 Johnson's reply to your letters was informative?

20 A. Well, I -- I believed them, and I was accepting
21 what they had told me.

22 Q. You go on to say, "It is apparent that
23 Johnson's talc is free of asbestos"; right?

24 A. That's what I wrote.

25 Q. You then inquire about individuals who are

1 occupationally exposed to talc, such as the miners and
2 millers of talc; right?

3 A. Yes.

4 Q. And you tell Dr. Shelley that you need research
5 of at least 100 men who have had occupational exposure
6 to talc which commenced at least 20 years ago?

7 A. That's what I wrote, yes.

8 MS. QUINTANA: Lawton, can we pull up Tab 8.

9 This is Plaintiff's Exhibit 1683.

10 BY MS. QUINTANA:

11 Q. So a week later, on August 10th, 1972, Johnson
12 & Johnson responds to your letter; correct?

13 A. Yes.

14 Q. They did not ignore you at the time; is that
15 right?

16 A. Right.

17 Q. Dr. Shelley here was responding to your inquiry
18 regarding the talc miners; right?

19 A. He was responding to my August 3rd letter.

20 Q. Right.

21 Which was regarding talc miners; right?

22 A. Yes.

23 Q. And so he informs you that Dr. Hildick-Smith is
24 on vacation but will write to you shortly upon his
25 return; right?

1 A. That's what he said.

2 Q. And he did this, he said, because the
3 information you requested was largely medical in nature;
4 right?

5 A. That's what he wrote.

6 Q. And that's why they were having
7 Dr. Hildick-Smith respond to you; correct?

8 A. That's what he said.

9 Q. So then, about a month later, on
10 September 19th, 1972, you received another letter from
11 Johnson & Johnson. And this is Plaintiff's Exhibit 744.

12 MS. QUINTANA: Lawton, it's Tab 9.

13 BY MS. QUINTANA:

14 Q. Do you see that, Dr. Castleman?

15 A. September 19, 1972, is the date of the letter
16 that I was sent.

17 Q. And this letter was sent by Gavin
18 Hildick-Smith, M.D., the director of clinical research
19 at Johnson & Johnson at the time; correct?

20 A. Yes.

21 Q. Okay. So Dr. Hildick-Smith begins by thanking
22 you for bringing to Johnson & Johnson's attention your
23 concern about the possibility that talc by itself may be
24 a carcinogen; right?

25 A. Yes.

1 Q. And he explains that because Johnson & Johnson
2 markets talc, it had a real concern; right?

3 A. Yes.

4 Q. So he tells you that the company has been
5 monitoring on a continuing basis the world literature on
6 the biological activity of talc; right?

7 A. That's what he said.

8 Q. He states that "They are primarily interested
9 in determining whether the cosmetic use of talc can
10 cause any harmful effects"; right?

11 A. That's what he wrote.

12 Q. And he tells you at the time that the company
13 had no real reason to believe that talc alone will
14 induce neoplastic changes; right?

15 A. That's what he wrote.

16 Q. Dr. Hildick-Smith then provides you with some
17 points that support Johnson & Johnson's position that
18 pure talc is not a carcinogen; correct?

19 A. He -- he wrote that, yes.

20 Q. And he provides you with, I believe, four
21 bullet points; is that right?

22 You can only see two on the screen, but there
23 are four total.

24 MS. QUINTANA: Lawton, if you'll scroll down to
25 the other two.

1 THE WITNESS: Yes, there are four.

2 BY MS. QUINTANA:

3 Q. At that time, Dr. Hildick-Smith also addressed
4 your request for the records of 100 men who were
5 occupationally exposed to asbestos; correct?

6 A. No, I wasn't asking for the records. I was
7 making a suggestion about the kind of study that I
8 thought would be needed.

9 Q. Right. And he responded to that; right?

10 A. Yes.

11 Q. So he explains to you that it might not be
12 feasible to pull those records together; true?

13 A. I'm looking for the part that you're referring
14 to.

15 Q. In the context of the entire paragraph, what
16 he's saying is that that might not be feasible, but then
17 he gives you some other alternatives; right?

18 A. Well, he talks about it being pertinent but
19 time-consuming to gather that kind of information.

20 Q. Right. And so he tells you that because it was
21 time-consuming, Johnson & Johnson instead was currently
22 following an extensive epidemiological survey of the
23 cause of death in a large group of industrial workers
24 exposed to talc; right?

25 A. That's what he -- that's what he wrote.

1 Q. And he writes to you that this is being done
2 with a view to determine whether they differ from other
3 appropriate populations; right?

4 A. That's what he said.

5 Q. He says, "In addition to that, Johnson &
6 Johnson was attempting to obtain data on the cause of
7 death in talc miners"; right?

8 A. Yes.

9 Q. And, again, that they were doing that to
10 determine if the cause of death differs from other
11 populations; right?

12 A. That's what he said.

13 Q. Dr. Hildick-Smith then concludes this letter by
14 telling you, "Thank you for your interest in writing to
15 Johnson & Johnson" and that he looked forward to
16 supplying you with pertinent published data as they
17 become available; right?

18 A. That's what he wrote.

19 Q. So I believe we determined that this was your
20 fourth letter to Johnson & Johnson.

21 Does that sound right?

22 A. Third or fourth, yes.

23 Q. So a year later, you write to Johnson & Johnson
24 again.

25 MS. QUINTANA: Lawton, can you pull up Tab 10.

1 BY MS. QUINTANA:

2 Q. And this has just recently just been introduced
3 as Plaintiff's 452.

4 Do you see that?

5 A. Yes.

6 Q. So this is a letter dated October 30th, 1973,
7 that you write to Dr. Nashid, Ph.D., the director of
8 science and information for Johnson & Johnson; right?

9 A. Yes.

10 Q. And you tell the doctor that you "read with
11 interest a copy of his informative booklet called 'Talc
12 Safety, a Literature Review'"; right?

13 A. Yes.

14 Q. Which you said was submitted to the FDA in
15 March, and you would be grateful if he would send you a
16 copy; right?

17 A. That's what I wrote.

18 Q. Now, you see that this document was received by
19 Johnson & Johnson on November 2nd, 1973.

20 Do you see that?

21 A. Yes.

22 MS. QUINTANA: Lawton, can we pull up Tab 27.

23 BY MS. QUINTANA:

24 Q. This is Plaintiff's Exhibit 453.

25 So less than two weeks later, Dr. Nashid writes

1 back to you; right?

2 A. Yes.

3 Q. This was on November 13th, 1973?

4 A. Yes.

5 Q. He thanks you for your letter and -- and sends
6 you a copy of the talc safety literature review;
7 correct?

8 A. Yes.

9 Q. Now, at some point in 1975, you write a sixth
10 letter to Johnson & Johnson; is that right?

11 A. Again, if you can show me the letter.

12 Q. So I don't have a copy of the letter, but this
13 is in response -- or prior to your phone call with
14 Dr. Bruce Semple.

15 Do you remember that?

16 A. I think my note about Semple, which I have in
17 front of me, makes reference to another letter, but let
18 me just see.

19 Q. Okay.

20 A. Yes. I had apparently written something to
21 Dr. Hildick-Smith, which we don't seem to have a copy
22 of.

23 MS. QUINTANA: Lawton, can you pull up Tab 11,
24 which is the call transcript that Dr. Castleman was
25 just reviewing. It's Plaintiff's Exhibit 619.

1 BY MS. QUINTANA:

2 Q. This is what you were just reviewing; right,
3 Doctor?

4 A. That's what I was just looking at just now,
5 yes.

6 Q. Okay. And this was your last conversation with
7 Johnson & Johnson during that '71 to 1975 time period;
8 right?

9 A. I believe so, yes.

10 Q. So this was a phone call that took place
11 between you and Dr. Bruce Semple?

12 A. Right, yes.

13 Q. And according to your letter -- I'll strike
14 that.

15 Dr. Semple called you in response to the letter
16 that you wrote to Dr. Hildick-Smith; right?

17 A. That's what is recorded here, yes.

18 Q. And this was a phone call; correct?

19 A. The note that I made was of a phone call, yes.
20 I even wrote down his phone number.

21 Q. So during this call, Dr. Semple told you about
22 current studies on the effects of talc; right?

23 A. Yes.

24 Q. And informed you of several reports that would
25 be issued regarding the current effects of talc; right?

1 A. Yes.

2 Q. Which included studies on miners and millers;
3 is that true?

4 A. Yes.

5 Q. Among other studies that were going on at the
6 time?

7 A. Well, I don't know about others -- yes, there's
8 some mention about other studies down below.

9 Q. And to your knowledge, you did not write to
10 Johnson & Johnson again in the 1970s after this phone
11 call; right?

12 A. Right.

13 Q. So to recap those letters, Dr. Castleman, we
14 just looked at several letters between you and Johnson &
15 Johnson in the 1970s; right?

16 A. Yes.

17 Q. You would agree that every single time that you
18 wrote to Johnson & Johnson back then, they responded to
19 you; true?

20 A. That appears to be the case, yes.

21 Q. And not just any employee responded; right?

22 A. Right. These were people who had some degree
23 of knowledge and sophistication in the areas that I was
24 inquiring about.

25 Q. Right. So you received responses from

1 Dr. Shelley, who was the director of Central Research
2 Laboratories?

3 A. Yes.

4 Q. Dr. Steven Sawchuk, the associate director of
5 clinical research?

6 A. Yes.

7 Q. And from Dr. Hildick-Smith, who was the
8 director of clinical research; right?

9 A. Yes.

10 Q. You would agree that during the time that you
11 were writing to Johnson & Johnson, they provided you
12 with timely responses to your letters; right?

13 A. The responses were timely, yes.

14 Q. Now, you testified on direct just a little bit
15 about what you have done for the past 40-or-so years;
16 right?

17 A. Yes.

18 MR. TISI: Objection, Your Honor. May I
19 approach?

20 THE COURT: Sure.

21 MS. QUINTANA: I'm not going any further than
22 that. That's it. Okay.

23 BY MS. QUINTANA:

24 Q. Isn't it true, Doctor, that your largest source
25 of income when you were in graduate school at the time

1 that you were writing to Johnson & Johnson was working
2 for plaintiffs lawyers?

3 MR. TISI: Objection, Your Honor.

4 THE COURT: What's your legal objection?

5 MR. TISI: My legal objection is he's here as a
6 fact witness, and they asked about -- I don't think
7 he had any -- I'll withdraw it.

8 You can answer it.

9 THE WITNESS: The answer's no. I wasn't
10 receiving money from plaintiffs lawyers before 1975
11 or before 1976.

12 BY MS. QUINTANA:

13 Q. Dr. Castleman, do you recall giving a
14 deposition in May of 2016?

15 A. No. I get deposed a lot. I don't recall every
16 deposition.

17 Q. Okay. If I showed you a copy, would that help?

18 A. Well, it probably would.

19 MS. QUINTANA: Okay. Give me one second, Your
20 Honor.

21 THE COURT: Yes, ma'am.

22 MS. QUINTANA: Would Your Honor like a copy?

23 THE COURT: Sure.

24 MS. QUINTANA: It's just, like, one page and
25 line.

1 THE COURT: Thank you.

2 MS. QUINTANA: If Court and counsel would turn
3 to the deposition at Page 155, lines 17 through 22.

4 THE COURT: 1-5-5?

5 MS. QUINTANA: 1-5-5.

6 THE COURT: Okay. Thank you.

7 The line was -- what's your line?

8 MS. QUINTANA: Lines 17 through 22.

9 THE COURT: Okay. Thank you.

10 BY MS. QUINTANA:

11 Q. So, Doctor, you were asked, "And you partly
12 funded your education with money you were making doing
13 work on the plaintiffs' side; correct?"

14 MR. TISI: Objection. Objection, Your Honor --
15 go ahead.

16 THE COURT: Overruled.

17 BY MS. QUINTANA:

18 Q. And you say, "Well, it was most -- I mean, I
19 made income from other sources, but that was the largest
20 source of income during the time I was in graduate
21 school."

22 Did I read that correctly?

23 A. I was talking about my doctoral studies, not my
24 master's studies.

25 Q. Okay.

1 A. The doctorate studies were in the 1980s.

2 Q. Understood.

3 You mentioned on direct a publication by
4 Kleinfeld; correct?

5 A. I did.

6 Q. And that was something that you had written to
7 Johnson & Johnson about?

8 A. Right.

9 Q. That publication dealt with talc miners and
10 millers at the New York Gouverneur line; right?

11 A. Yes, in New York State.

12 Q. And you are aware that that mine was for
13 industrial talc; correct?

14 A. I'm not sure that they limited their sales to
15 anybody that didn't want to buy. I've certainly come
16 across their talc being used to make various types of
17 tiles and other products, but I don't know that it was
18 limited to industrial talc. I said I've never seen --
19 I've never heard of any -- any records of all the
20 customers for the talc that came from those mines.

21 Q. Understood.

22 But either way, that entire study was about the
23 New York Gouverneur line; right?

24 A. It was about the people who work as miners in
25 those mines.

1 MS. QUINTANA: Your Honor, Court's indulgence
2 for one second?

3 THE COURT: Sure.

4 MS. QUINTANA: Thank you.

5 BY MS. QUINTANA:

6 Q. Dr. Castleman, the last question I have for
7 you, you mentioned on direct a book that you wrote
8 called "Asbestos and You"; right?

9 A. It was a report, yeah. We sold it as a booklet
10 for the Center for Science in the Public Interest, and
11 it was also entered into the record at the Senate
12 hearing.

13 Q. And during the time that you were corresponding
14 with Johnson & Johnson in the 1970s, you never sent them
15 a copy of that; correct?

16 A. I'm pretty sure I didn't.

17 MS. QUINTANA: Thank you, Your Honor. No
18 further questions.

19 THE COURT: All right. Redirect examination?

20 MR. TISI: Yes, Your Honor. Just very briefly.

21 (The following discussion was had at sidebar
22 out of the hearing of the jury panel.)

23 MR. TISI: Yeah. I don't want to run afoul of
24 your rulings, but it seems to me that questions were
25 asked of the witness that would suggest that they

1 were being forthcoming with -- with the witness.

2 I --

3 THE COURT: I don't understand "they were being
4 forthcoming."

5 MR. TISI: Forthcoming, they timely responded.
6 They gave him all the information he wanted. All
7 that kind of stuff. And it seems to me --

8 THE COURT: Johnson & Johnson was doing that in
9 the 1970s?

10 MR. TISI: In the 1970s.

11 THE COURT: Okay.

12 MR. TISI: And when I asked him, for example,
13 the clean mine's document and the other document, I
14 never asked him the question, do you think it's --
15 they were being -- they were being honest with you,
16 or maybe a different word might apply. I think
17 counsel's opened the door for me to ask that
18 question now.

19 THE COURT: Okay.

20 MR. TISI: I don't want to run -- I don't want
21 to run afoul because --

22 THE COURT: I respect that.

23 MS. QUINTANA: I disagree, Judge. I was
24 reading directly from the documents. I made sure
25 not to stay anything -- the only question I asked

1 him is whether he thought it was informative, which
2 was in a letter that he wrote, and whether Johnson &
3 Johnson responded timely.

4 And that is it. That's as far as I went.

5 THE COURT: Okay. The proffer of Mr. Tisi on
6 behalf of plaintiff seems to be that you want to
7 elicit an opinion from Dr. Castleman regarding
8 whether he believes they were transparent with him
9 in corresponding.

10 MR. TISI: Correct.

11 THE COURT: I'm going to sustain that objection
12 by the defense.

13 Anything else?

14 MR. TISI: No.

15 MS. QUINTANA: Thank you.

16 REDIRECT EXAMINATION

17 BY MR. TISI:

18 Q. Dr. Castleman, just one or two questions before
19 I -- before I sit down.

20 You were asked questions, and I just want to
21 clarify.

22 Long after you were -- you were dealing with
23 Johnson & Johnson, you have done work as a consultant
24 for attorneys; correct?

25 A. Yes.

1 Q. Okay. You weren't doing any of that at the
2 time you were speaking to Johnson & Johnson, were you?

3 A. No.

4 MR. TISI: Okay. No further questions.

5 THE COURT: Is Dr. Castleman excused?

6 MR. TISI: Unless there's any redirect or any

7 --

8 MS. QUINTANA: No recross, Your Honor.

9 THE COURT: All right. Dr. Castleman, have a
10 good day.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: How will the plaintiff proceed
13 next?

14 MR. TISI: We want to read some admissions,
15 Your Honor.

16 THE COURT: Okay. Are you ready to do that
17 right now?

18 MR. UUSTAL: Yes, sir.

19 THE COURT: Are you going to play another
20 witness at some point?

21 MR. UUSTAL: Yeah. After this, we have a
22 witness by video.

23 MR. TISI: The only thing is the time -- given
24 the timestamp, Your Honor.

25 THE COURT: Well, if you need some logistical

1 time to set up, I would excuse the jury for a
2 moment --

3 MR. UUSTAL: Okay. That might be --

4 THE COURT: -- if you want to do that.

5 MR. UUSTAL: That would be great.

6 THE COURT: Okay. All right. So we'll do
7 that.

8 I'm going to ask the jury to step out except
9 for Ms. Castillo. Can you just remain seated for a
10 moment? I want to just chat with you about a
11 scheduling matter.

12 No, you can have a seat right there. Not just
13 with me, with all of us. Thank you so much for
14 your service.

15 MS. QUINTANA: Your Honor, do you mind if I
16 come around just so I can see her?

17 THE COURT: No, not at all. Absolutely.
18 Wherever you want.

19 So the court deputy told me that you have some
20 scheduling issue that you wanted to bring to our
21 attention.

22 THE JUROR: Yeah. I have a work trip that is
23 from next Wednesday to Friday. Because I thought we
24 were going to be off the whole week, and I didn't
25 have to come in on Friday. I didn't mention it for

1 that reason.

2 THE COURT: Okay. What time do you get back on
3 Friday?

4 THE JUROR: Like 6:00 p.m.

5 THE COURT: So that's -- is there any
6 flexibility in your travel or -- because I know I --
7 in your defense, I know I said that a number of
8 times, but I remember saying try to keep that
9 October 3rd open.

10 THE JUROR: Oh, yeah. I don't recall.

11 Yeah, I guess. I would just -- I can come back
12 either --

13 THE COURT: How far away are you going?

14 THE JUROR: To Texas.

15 THE COURT: Okay. What do you do for a living
16 again?

17 THE JUROR: Me? I work in accounting.

18 THE COURT: Okay. So what's the nature of
19 the --

20 THE JUROR: It's like annual conference we
21 have --

22 THE COURT: Like an educational conference
23 or --

24 THE JUROR: -- in headquarters.

25 THE COURT: Or like a retreat of a --

1 THE JUROR: It's a company -- company
2 conference. So I guess I could reschedule and just
3 come back Thursday night or Wednesday morning before
4 we start.

5 THE COURT: Yeah. You're going to be where, in
6 Dallas?

7 THE JUROR: Yeah.

8 THE COURT: You're going to fly in and out of
9 Dallas?

10 THE JUROR: Uh-huh.

11 THE COURT: Okay. So they have lots of flights
12 from Dallas.

13 THE JUROR: Yeah, there should be.

14 THE COURT: Okay. Well, let me just talk to
15 the lawyers more about it. We just heard about
16 this, and we wanted to kind of get the contours of
17 it with you.

18 THE JUROR: Okay.

19 THE COURT: And I'll give you some more
20 direction in a bit; okay?

21 THE JUROR: Okay. Thank you.

22 THE COURT: We're going to send you back with
23 the other jurors. Ms. Adams is going to come around
24 and open the door for you. Thank you so much.

25 THE JUROR: Sure.

1 THE COURT: She will be right there.

2 Okay. I mean, I've got to make some decision
3 on that, I guess. I mean, I guess I don't have to
4 make it this moment, but we're going to call the
5 jurors if we have to change gears.

6 But what is everybody's position on that? Do
7 you need more time to sort that out?

8 MR. UUSTAL: Yeah. So the situation we're in
9 is Dr. Lopes' wife is expecting a baby. The due
10 date is actually Monday.

11 THE COURT: Monday the --

12 MR. UUSTAL: The 6th.

13 THE COURT: Okay.

14 MR. UUSTAL: So it's actually -- the 3rd is
15 closer than I would like to call it because he has
16 said that he is not going to come testify once the
17 baby's born.

18 So I tried everything I could to do it earlier
19 than the 3rd, but it was the only thing we could do.

20 So I would like to ask the juror to come back
21 Thursday night.

22 THE COURT: Okay.

23 MS. QUINTANA: Your Honor, we agreed to have
24 Dr. Lopes testify on October 3rd, so I'm fine with
25 that.

1 THE COURT: Okay. How long do we think
2 Dr. Lopes' testimony would be?

3 MR. UUSTAL: I would say that I would aim for
4 an hour, but probably certainly within 90 minutes
5 for direct.

6 THE COURT: Who's crossing Dr. Lopes?

7 MS. QUINTANA: I am, Your Honor.

8 THE COURT: And I'm not going to limit you.
9 Any ballpark ideas, is an hour cross, hour and a
10 half cross --

11 MS. QUINTANA: Yeah. An hour, hour and a half,
12 Your Honor. I can't guarantee that.

13 THE COURT: And I'm not looking for a
14 guarantee. I use that term "ballpark estimate."

15 Okay. We'll talk to her more at the end of the
16 day.

17 MR. UUSTAL: Okay.

18 THE COURT: I mean, I could -- I don't know if
19 there's much difference in her life, really, in
20 coming back Thursday night or Friday morning. It's
21 probably better for us if she tries to come Thursday
22 night and has a backup Friday morning if necessary.
23 So that's probably what we'll ask her to do.

24 MR. UUSTAL: Yeah. I think she did offer to
25 do --

1 THE COURT: She did.

2 All right. So I'm just going to gather facts.
3 We gathered them. Both sides agreed. We will still
4 try to target the testimony of Dr. Lopes on Friday,
5 October 3rd, and we'll ask her to kindly make an
6 accommodation in that regard.

7 MS. PIERSON: Your Honor, there is also in the
8 deposition designations -- there's some objections
9 regarding some missing exhibits on it. So that's
10 the next thing we're going to do. So do you want to
11 do that now before we move to the next --

12 THE COURT: Sure. Is this Koberna?

13 MS. PIERSON: Yes. And Karen, my colleague
14 here, is going to be handling that.

15 THE COURT: So how long did it come out to be?

16 MR. STEPHENSON: So that's the issue. I think
17 after we discuss exhibits and get those
18 preadmitted -- I know that we're going to finish
19 either video that is ready to play today.

20 THE COURT: McKeegan, is that his name?
21 McKeegan? What was the other guy's name?

22 MR. STEPHENSON: Koberna.

23 THE COURT: Koberna and?

24 MR. STEPHENSON: Koberna and McKeegan.

25 THE COURT: McKeegan seems to be shorter than

1 Koberna.

2 MR. STEPHENSON: Yeah, it is for sure. I just
3 think that we would have to get it started in a
4 couple minutes for it to be done. I don't think
5 we're going to -- I don't think that we would finish
6 either video.

7 We would prefer to -- if the Court is -- is
8 willing to do so, we would prefer to start Koberna.
9 And we would have to stop and finish, you know,
10 30 minutes the next time we appear.

11 MR. UUSTAL: But that's okay -- I mean, from
12 our side.

13 THE COURT: Okay. As I said, I have to
14 leave -- I have to kind of be in my car by, like,
15 3:05. I just got a text from the doctor's office
16 saying if I'm late, they're going to cancel on me.

17 MS. QUINTANA: Well, then I think, Your
18 Honor --

19 THE COURT: No offense to this doctor.

20 MS. QUINTANA: Well, and I think one of the
21 jurors also had a flight at 5:00 o'clock.

22 THE COURT: He does, yes. So we need to be
23 kind of probably, you know, be wrapping up
24 evidentiary proceedings by like 2:50.

25 MR. STEPHENSON: Yeah. And so, Judge, I --

1 candidly, I think we have some -- and we all
2 appreciate Your Honor getting those rulings out to
3 provide to us this morning.

4 THE COURT: Yeah, I have some comments on that
5 too when we're done --

6 MR. STEPHENSON: Understood, Judge.

7 THE COURT: -- on the process.

8 MR. STEPHENSON: I do think we'll need a few
9 minutes because Toby's been working diligently to
10 get the cuts.

11 THE COURT: Have they seen it yet?

12 MR. RUKAJ: I haven't had a chance to review
13 the whole video. I've reviewed the clip report. It
14 so far appears to be accurate.

15 MR. STEPHENSON: Unless they need to see the
16 entirety of the video, I think they can track while
17 we're playing it to make sure everything is
18 appropriate. I probably need five minutes to
19 discuss the exhibits and then, you know, we'll be
20 ready to roll.

21 THE COURT: Okay. Then do you want to do that
22 right now?

23 MR. STEPHENSON: If we could, Judge.

24 THE COURT: All right. Let me find my comments
25 that I made on here.

1 Yeah, so I don't know how many more of these
2 there are. I think you told me there's a lot; is
3 that true?

4 MR. UUSTAL: Yes, sir.

5 THE COURT: Yeah. And, you know, it's kind of
6 like a double-edged sword, if that's the right term.
7 I mean, this print is so small on these things and I
8 have to read all of this.

9 MR. UUSTAL: Well, it's not --

10 THE COURT: So I don't know if there's any way
11 to get the bigger pages. And, you know, not a
12 problem. It's just with bigger pages, I get more
13 binders; right? So, I mean -- but I am really
14 getting to the point, if I have to read a lot of
15 these -- it wasn't that big of a deal in my younger
16 years, but it's really hard to read.

17 MR. STEPHENSON: Yeah, Judge, I understand, and
18 we will certainly give you the full transcripts from
19 here on out.

20 I would just, you know, say that the next video
21 that we plan to play after these two witnesses is
22 going to be Hawkins, and we had an hour and
23 20 minutes of designations on day one. The defense
24 had about 20 or 30 minutes of counters; right?

25 Then what happens is you have day two. They

1 designated four hours and 20 minutes, I think. And
2 it's not just a continuation of depo day one. It's
3 Dr. Hawkins, please state your full name -- it is a
4 full-blown --

5 THE COURT: Well, I'm going to read it. And
6 you've all made that argument and I understand. I
7 didn't really see that there was a substantial
8 disconnect in the two that I dealt with yesterday.

9 MR. STEPHENSON: Yeah, those are different. I
10 would agree.

11 THE COURT: Yeah. So to the extent the
12 plaintiff was asking that to be shuttled to the
13 defense side, I just didn't think that that was
14 appropriate with these Koberna and -- what's his
15 name?

16 MR. STEPHENSON: McKeegan.

17 THE COURT: McKeegan.

18 But I'll certainly consider your position when
19 I go through it on the next one. But I'll have to
20 read through it at some point, one way or the other.

21 MR. STEPHENSON: In all candor, Judge, we do
22 have more binders that we're ready to present to
23 you. I just --

24 THE COURT: And I'll take those. I want to get
25 going. I mean, I don't want -- I'd like to try not

1 to do these at the last second.

2 MR. RUKAJ: Well, I just want to give the Court
3 some comfort. We've actually had some discussion
4 about the next two depositions, which are much more
5 lengthy than the other two.

6 THE COURT: As you can see, I overruled about
7 98 percent of the objections to this.

8 MR. RUKAJ: With the clarity of your
9 objections, we've --

10 THE COURT: Yes.

11 MR. RUKAJ: For Hawkins specifically, I think
12 we had five objections based off of a prior cut that
13 was ruled on another case. I think we're close to
14 agreement, and with the understanding of your
15 rulings now, we can go to the Mann one.

16 And I've already told opposing counsel I think,
17 given your rulings, some of our objections on Mann
18 are likely going to be overruled and we're not going
19 to ask you to rule on those again. I've told them
20 we can go back and come to agreement now that we
21 have guidance for them.

22 THE COURT: So if you have an agreement, that's
23 fine.

24 MR. RUKAJ: Yeah.

25 THE COURT: And we can do those in open court,

1 in all honesty, if there's something that's real
2 narrow.

3 MR. RUKAJ: For one of the --

4 THE COURT: If you can show it to me, I'll make
5 a --

6 MR. RUKAJ: The big Hopkins one, I think we got
7 down to five objections across the entire thing.

8 THE COURT: Okay.

9 MR. RUKAJ: But we might even have more
10 agreement after your ruling thus far. So we'd like
11 to hope to not make you rule on every single page
12 and line in this case.

13 THE COURT: Okay. I appreciate that sentiment.

14 MR. RUKAJ: Yeah.

15 THE COURT: The other thing is there was some
16 inconsistency with the objection code, that one side
17 was using kind of such different labeling. I
18 figured it out.

19 MR. RUKAJ: I think we're moving away from
20 objection codes now --

21 THE COURT: Okay.

22 MR. RUKAJ: -- on these bigger ones and it's
23 just going to be full words.

24 THE COURT: Okay. Good. That's fine. No
25 problem.

1 MR. RUKAJ: Just so there's less ambiguity.

2 And to the extent we have agreement and there's
3 residual objections, we'll leave those in full
4 terms.

5 THE COURT: It really hasn't come into play,
6 but it has in the past two. The eye issue that I
7 raised, the dark green and the black are just so
8 close to each other. To the extent there's going to
9 be a need to distinguish the two, again --

10 MR. STEPHENSON: Yeah.

11 THE COURT: -- maybe some different colors
12 could be used.

13 MR. STEPHENSON: Understood, Judge.

14 And my last thing that I would say is just
15 while I certainly am working very well with my
16 colleague on the other side, if we're not able to
17 reach agreement, we're not going to be in front of
18 you, Judge -- in front of Your Honor again until
19 next Friday. My only fear is that if we don't go
20 ahead and give you some binders today --

21 THE COURT: No, I'll take them today.

22 MR. STEPHENSON: All right. Fair enough. And
23 we will continue to work.

24 THE COURT: And I'm going to be here doing
25 special sets all next week. So if parties need

1 access to the Court, you just let us know and we'll
2 try to permit that. I have time to do it.

3 MR. STEPHENSON: Thank you, Judge.

4 THE COURT: Okay.

5 MR. STEPHENSON: And so we're prepared and
6 ready to play and introduce these exhibits right
7 now. But I will defer to counsel if they need more
8 time to take a look.

9 THE COURT: Okay.

10 MR. RUKAJ: Give me two minutes.

11 THE COURT: Okay.

12 MR. RUKAJ: A lot of these, I think, are
13 objections that have already been --

14 THE COURT: Let's just take five minutes and
15 everybody can -- including the court reporter, can
16 have a break for a few minutes and we'll come back
17 and we'll finish up.

18 Thank you so much.

19 MR. RUKAJ: Thank you.

20 THE COURT: Court's in recess.

21 MR. STEPHENSON: Thank you, Your Honor.

22 (Thereupon, a recess was taken, after which the
23 following proceedings were had:)

24 THE COURT: Are you ready?

25 MR. UUSTAL: Do you guys have objection?

1 THE COURT: We're on the record. The parties
2 are present.

3 MR. RUKAJ: We're pretty close to an agreement,
4 Judge.

5 THE COURT: Okay.

6 MR. RUKAJ: In light of your rulings, we only
7 have objections to four documents, and they all kind
8 of fall in one bucket --

9 THE COURT: Okay.

10 MR. RUKAJ: -- or three of them in one bucket
11 and one in another.

12 THE COURT: All right.

13 MR. RUKAJ: First is the baby camp video. I
14 wasn't sure if Your Honor had a chance to watch that
15 video.

16 THE COURT: I haven't watched it, no.

17 MR. RUKAJ: Okay. So we would maintain our
18 objection to the baby camp video.

19 THE COURT: Do you want to show it to me?

20 MR. RUKAJ: We have a flash drive here we can
21 hand Your Honor. There's two aspects of this baby
22 camp video. There's the video itself and then
23 there's a PowerPoint presentation that goes with it.

24 In our designations, we maintained objections
25 to this testimony coming in, largely because this is

1 a negligence and strict liability case. This baby
2 camp stuff wasn't even advertising. It's not
3 something that was raised --

4 THE COURT: Show me the video. How long is it?

5 MR. RUKAJ: It's about a few minutes long. I
6 mean, it depends -- it's a training video for
7 internal salespeople at J&J.

8 THE COURT: What's your objection?

9 MR. RUKAJ: Our objection is it's irrelevant.
10 It's unduly prejudicial. It doesn't --

11 THE COURT: The 401, 403 objection.

12 MR. RUKAJ: It also contains hearsay within
13 hearsay.

14 THE COURT: Okay.

15 MR. STEPHENSON: May I respond, Judge.

16 THE COURT: Yeah, but I can't rule on it unless
17 I look at it.

18 MR. STEPHENSON: Well, understood.

19 THE COURT: I know that.

20 MR. STEPHENSON: But just to give you a little
21 context, you did review the transcript --

22 THE COURT: I did.

23 MR. STEPHENSON: -- where the video is
24 discussed in detail.

25 THE COURT: I know. I understand.

1 MR. STEPHENSON: There's five videos on here,
2 Judge. Commercials. I need to figure out what's
3 shown as the baby camp.

4 THE COURT: Okay. And you gave me this flash
5 drive. It was on here?

6 MR. RUKAJ: Yeah. I believe the flash drive
7 that was binder-clipped to the binder had all of the
8 videos.

9 THE COURT: Okay. Let's see what's on here.
10 What's the number?

11 MR. STEPHENSON: Baby Camp 1.

12 THE COURT: I got PF1, PF2?

13 MR. RUKAJ: There's five on there, Judge. I'm
14 sorry.

15 THE COURT: Is that it?

16 MR. RUKAJ: That's not it.

17 THE COURT: Huh?

18 MR. RUKAJ: That's not it.

19 THE COURT: That's not it? Okay. All right.

20 MR. RUKAJ: I think it's P5-2.

21 THE COURT: This one says "P5-2-4."

22 MR. RUKAJ: I think that's it, Judge.

23 THE COURT: When I opened it, there was -- hold
24 on a second.

25 MR. RUKAJ: Probably be able to tell me you

1 didn't notice it.

2 THE COURT: Yeah, 2-4.

3 MR. RUKAJ: No, that's not it. It will be an
4 old man.

5 THE COURT: Oh, hold on.

6 Say that again, now.

7 MR. RUKAJ: It should just be P5-2. That's how
8 it's marked.

9 THE COURT: Okay. Hold on a second.

10 I got it. I have a P5-1, a P5-2-4, which is
11 the one I just opened. And then I've got PF3, PF4,
12 PF9.

13 MR. RUKAJ: Okay.

14 MR. STEPHENSON: May I give you this, Judge.

15 THE COURT: Yeah.

16 MR. STEPHENSON: P5-2.

17 THE COURT: Okay. So it's got exhibit numbers
18 here. This one says -- what's the number?

19 MR. RUKAJ: It should be P5-2.

20 THE COURT: No, they're not --

21 MS. QUINTANA: 3059.

22 MR. RUKAJ: 3059.

23 THE COURT: 3059.

24 It's the same one.

25 MR. RUKAJ: Can you try Exhibit 414.

1 THE COURT: Say that again.

2 MR. RUKAJ: Exhibit 414. That's just a
3 PowerPoint.

4 THE COURT: I don't have a 414 on this drive
5 here. What else --

6 MR. STEPHENSON: Can you just try to open --
7 there should be an old man --

8 THE COURT: Here.

9 MR. STEPHENSON: I'm sorry, Judge.

10 THE COURT: No, that's all right. You don't
11 have to apologize.

12 (Video played.)

13 MR. RUKAJ: That's the one.

14 The objection with that video, Your Honor,
15 there's close to a 100-page PowerPoint presentation
16 that includes exact dollar figures and profits,
17 percentage of net income, and issues like that which
18 you've already ruled on to exclude.

19 So really my objection falls into two buckets.
20 There's that video in front of you. We believe that
21 this nonadvertising document about the cornerstone,
22 golden egg --

23 THE COURT: Who's this guy?

24 MR. RUKAJ: What?

25 THE COURT: Who was the guy? Is he this --

1 MR. RUKAJ: He was a training officer at
2 Johnson & Johnson at one point, yeah.

3 MR. TISI: Actually, I think he was the -- he's
4 a really high ranking -- if I'm not mistaken, he may
5 have been the president of the company.

6 THE COURT: This is -- okay.

7 MR. TISI: He's -- I mean, honestly, Your
8 Honor, this goes hand-in-hand --

9 THE COURT: I'm not excluding that video. But
10 I may exclude part of it.

11 MR. TISI: Okay.

12 THE COURT: And that was the ruling I made, I
13 think, in the depos yesterday, that I did sustain
14 the objections when they were talking about revenues
15 and size. Because I made a pretrial ruling, I
16 thought, on that.

17 MR. RUKAJ: Yeah. So golden egg, revenues --

18 THE COURT: No, I'm not -- golden egg is coming
19 in.

20 MR. RUKAJ: Very well.

21 THE COURT: But \$23 billion in revenue, that is
22 what I think I sustained in the objection and in the
23 testimony.

24 MR. RUKAJ: Yes.

25 THE COURT: And I would sustain it as to that

1 video. The rest of it, you know, the golden egg --
2 you know, that's a -- all of that, I allowed in.

3 MR. RUKAJ: Very well.

4 THE COURT: The specific financials of Johnson
5 & Johnson, I think I previously excluded and I will
6 do that again.

7 MR. RUKAJ: And that's the rest of my
8 objections to the four documents I had.

9 There's a PowerPoint associated with that video
10 that has a litany of financial documents. And then
11 there's other documents talking about sales figures
12 and targeted advertising and success in profits that
13 we have issues with as well.

14 THE COURT: Is it all on this drive?

15 MR. RUKAJ: I think these are documents that we
16 can make.

17 THE COURT: Oh, okay.

18 MR. STEPHENSON: I'm trying to be respectful to
19 let counsel finish, but I need to speak to all of
20 these things.

21 THE COURT: Okay.

22 MR. STEPHENSON: So, Judge, your rulings were
23 your rulings. When we did the designations, there
24 are portions of these PowerPoints that are not
25 played in the designation, and I understand what

1 your rulings are. You know, we would object to that
2 not coming in, but I understand your rulings and we
3 just would preserve that objection.

4 THE COURT: Okay. I haven't seen the
5 documents.

6 MR. STEPHENSON: Yeah, well, I will just
7 stipulate that to the extent that the exhibits that
8 go in with Koberna that are not played in the
9 designations -- to the extent those reference sales
10 and financial figures, I would agree that, based on
11 your rulings, those have to come out and be redacted
12 without prejudice if somehow they become relevant
13 later on.

14 THE COURT: Okay. All right.
15 So that would be the ruling, then.
16 And are you ready to --

17 MR. STEPHENSON: So if I may consult.

18 THE COURT: Of course.

19 MR. RUKAJ: Yeah, just to make sure that the
20 video play is in line with your ruling, we have to
21 check the video play --

22 THE COURT: Yeah, that's going to have to get
23 redacted.

24 MR. RUKAJ: Right. That's exactly what he just
25 wants to do real quick. Specifically, the

1 documents, I don't believe there's a lot of
2 testimony going through the issues we have. We just
3 didn't want them wholesale admitted into evidence.

4 But right now we just have to check the baby
5 camp video specifically to make sure that portion
6 isn't in there before we bring the jury in.

7 THE COURT: Okay.

8 MR. RUKAJ: Does that work?

9 THE COURT: Yeah, it works. I mean, whatever
10 you -- but, you know, we're kind of getting tight on
11 time here.

12 MR. RUKAJ: We'll move expediently. It's one
13 we have --

14 THE COURT: No, you're moving very expediently.
15 You want to start this?

16 MR. RUKAJ: Yeah.

17 MR. TISI: I'm concerned, Your Honor --

18 THE COURT: All right. I'm sorry, Mr. Tisi.

19 MS. PIERSON: Your Honor, we're going to start
20 it. We're going to start it. We're going to do so.
21 It's traditionally English --

22 THE COURT: Again, I'm stopping the evidence at
23 2:50. And it's 2:25, and you need some time to type
24 this up. So that's why I'm just being practical.

25 MR. RUKAJ: So if you guys want to just --

1 MR. UUSTAL: That's fine.

2 MR. RUKAJ: -- prepare the videos to be played
3 next time and walk through the rest of the exhibits
4 we talked about to make use of this time. Because
5 it is 2:20.

6 Whatever -- I don't want to jam -- it's your
7 case. I know you have to decide what to do about
8 it. But I need to use --

9 THE COURT: He was going to do some requests
10 for admissions.

11 MR. STEPHENSON: Let's do the admissions.

12 MR. UUSTAL: Let's do the requests for
13 admissions.

14 All right. So we do have a couple requests for
15 admissions, but it's only going to take a minute or
16 two.

17 Could we just wait two minutes to see if we
18 could get this done.

19 THE COURT: No problem. I'm not in a rush.

20 MR. UUSTAL: Thank you, Your Honor.

21 MR. RUKAJ: Do you have the cut video? Let me
22 just check it right now and that will kind of
23 resolve that.

24 (Video played.)

25 MR. RUKAJ: Thank you very much, Charlie. I

1 appreciate that.

2 And he says the second clip. Is there an
3 earlier part of the clip played?

4 MR. BURGESS: That's it.

5 MR. RUKAJ: Oh, okay. All right. Then I think
6 that resolves the issue, Your Honor.

7 THE COURT: Problem solved?

8 MR. UUSTAL: Yeah, so I would suggest we start
9 the video. We stop whenever the Court wants.

10 THE COURT: No problem. That's fine.

11 MR. UUSTAL: Okay. Thank you, Your Honor.

12 THE COURT: Do you want to do the request
13 first, the admissions?

14 MR. UUSTAL: No, that's fine. We'll do it next
15 week.

16 THE COURT: Okay. All right.

17 So let's get the jury in, please.

18 THE CLERK: Yes, Judge.

19 MR. STEPHENSON: Do we want to introduce the
20 exhibits? Or do we need to do that formally?

21 THE COURT: Yeah, you'll need to do it formally
22 at some point. You want to do it with the jury or
23 you want to do it now?

24 MR. STEPHENSON: Yeah.

25 THE COURT: These are not objected to; right?

1 MR. RUKAJ: Four of them are. Subject to Your
2 Honor's ruling that they need to be redacted, we've
3 removed all financial --

4 THE COURT: So we're just not going to put them
5 before the jury.

6 MR. RUKAJ: Yeah.

7 THE COURT: So what are they being marked as?

8 MS. PIERSON: They're already in the clips, I
9 believe.

10 Aren't they in the clips, Cameron?

11 MR. TISI: Some of it is not.

12 MS. PIERSON: Oh, it's in the documents?

13 MR. TISI: Yeah, it's in --

14 MR. STEPHENSON: All of the documents are in
15 the clips. Just not the entirety of the documents.

16 MS. PIERSON: Right.

17 MR. TISI: We'll redact the document. That's
18 fine.

19 THE COURT: So we'll start playing it and then
20 you can redact those and you can put that in next
21 week. Because we're not going to finish the video.

22 MR. STEPHENSON: Understood.

23 THE COURT: And you want your flash drive back,
24 understandably.

25 MR. STEPHENSON: Yeah, it's this little guy.

1 THE COURT: Yeah, let me pull that thing here
2 so I don't break it. Per protocol, I think I have
3 to eject, cruise, or something.

4 MR. STEPHENSON: Don't mind me. I usually just
5 yank it and it busts.

6 THE COURT: I usually do it too, but it's
7 yours. I didn't want to participate in the damage
8 of the property.

9 And, frankly, whoever gave me -- somebody else
10 gave me a flash drive. Who gave me mine?

11 MR. RUKAJ: It wasn't me. Did you guys --

12 THE COURT: The binders came from the
13 plaintiffs, my depo binders?

14 MS. PIERSON: Yes. Yes.

15 THE COURT: So I have a flash drive. Do you
16 want me to keep it with the binders and give it back
17 to you when I'm done or --

18 MR. STEPHENSON: Yes, Your Honor. That's fine.

19 THE COURT: Okay. No problem.

20 Are you going to have any other evidence on
21 Friday the 3rd?

22 MR. UUSTAL: So the situation we're in is
23 there's a lot of videos. I think we should; right?
24 We should use that space if everyone's here.

25 THE COURT: Yeah, that's why I'm asking,

1 because everybody's here and I've got a full day.

2 MR. UUSTAL: Yeah. Then we will.

3 THE COURT: Okay. So I may have them come back
4 a little earlier.

5 MR. UUSTAL: Yeah.

6 THE COURT: Does that work for everybody?
7 Maybe 9:30.

8 MR. UUSTAL: Yes, sir. Thank you.

9 (The jury entered the courtroom, after which
10 the following proceedings were had:)

11 THE COURT: Okay. You can all be seated.
12 Welcome back, members of the jury.

13 We're ready to continue.

14 As I told you, that we're going to break at no
15 later than 3:00 o'clock. We're probably going to do
16 some more evidence here for about 20, 25 more
17 minutes and break and then kind of talk a little
18 housekeeping at the end and then we'll be through
19 the day.

20 That works for your flight schedule; right?

21 THE JUROR: Correct.

22 THE COURT: Okay. Great. Thank you.

23 So the plaintiff is presenting evidence, and
24 I'll turn to counsel for the plaintiff to announce
25 how you will proceed next.

1 MR. UUSTAL: The plaintiff is going to call by
2 videotaped deposition Frederick Koberna.

3 THE COURT: Koberna, K-O-B-E-R-N-A; correct?

4 MR. UUSTAL: Yes, sir.

5 THE COURT: Okay. And, members of the jury,
6 let me just give you an instruction.

7 So the sworn testimony of Mr. Koberna, given
8 previously before this trial, will now be presented.
9 You are to consider and to weigh this testimony as
10 you would any other evidence in the case.

11 And with that, Counsel, you may publish.

12 MR. UUSTAL: Thank you.

13 (A video clip was played and transcribed by the
14 court reporter to the best of her ability as
15 follows:)

16 BY MR. UUSTAL:

17 Q. Will you -- or, rather, state your full name.

18 A. Yes. It's Frederick William Koberna, Jr.

19 Q. And you understand that you have been
20 designated by Johnson & Johnson to answer questions we
21 have on these marketing and advertising topics with the
22 exception, I believe, of Topic 12; correct?

23 A. That is correct.

24 Q. Okay. And you understand, then, that your
25 answers today bind --

1 MR. RUKAJ: Your Honor, can I object and may we
2 approach.

3 THE COURT: Hold on.

4 MR. RUKAJ: May we approach.

5 THE COURT: Yeah, of course.

6 (The following discussion was had at sidebar
7 out of the hearing of the jury panel.)

8 MR. RUKAJ: Your Honor, we just have an issue.

9 THE COURT: Why don't you, whoever's going to
10 talk to me, come in here.

11 MR. RUKAJ: I just have the issue with the
12 pleading from another lawsuit being shown in full to
13 the jury. There's a different case than this one at
14 issue that was just shown to the jury. And I
15 thought it would just be a fleeting reference to a
16 specific line, but the entire thing was up there.

17 So I would just ask if we show pleadings from
18 other litigation, that we limit it to the subject
19 matter of what he's being asked and not include the
20 names of other lawsuits given Your Honor's ruling.

21 MR. STEPHENSON: Your Honor, this is the issue,
22 is that we made the clips based on Your Honor's
23 rulings. If this is going to happen over and over
24 again -- the only way this can be avoided is if they
25 watch the clip. So maybe they need time to watch

1 the full clip.

2 THE COURT: Okay. And I don't disagree with
3 that last point.

4 MR. TISI: And, Judge, he was a 30(b)(6)
5 witness. He testified for the company on those
6 issues.

7 THE COURT: No, I get it. I understand.

8 MR. TISI: He should be able to -- I mean,
9 nobody -- candidly, nobody is going to look at the
10 title of this pleading. It just --

11 THE COURT: It was just the title of the case
12 that he was testifying in.

13 MR. TISI: It was the MBL. It was the MBL.

14 THE COURT: It was the MBL?

15 MR. TISI: Yeah.

16 THE COURT: So what do you want me to do?

17 MR. RUKAJ: I don't know how many pleadings
18 they intend to show. My understanding from the
19 testimony, it would just be the subjects and what he
20 was prepared to talk about. If there's a quick fix
21 we can do, that's great. But I just got the --

22 THE COURT: Does this happen a lot?

23 MR. STEPHENSON: No.

24 MR. TISI: Before you do that, it should have
25 been cut.

1 MR. RUKAJ: I told you we could cut it down. I
2 just don't --

3 THE COURT: Oh.

4 MR. RUKAJ: Listen, it's not normally about
5 other lawsuits. It's a 60,000-plaintiff party
6 lawsuit you're on.

7 MR. TISI: It doesn't say that.

8 THE COURT: No.

9 MR. TISI: This isn't even in the exhibit list.

10 THE COURT REPORTER: I'm sorry.

11 MR. RUKAJ: Frankly, we can use that --

12 THE COURT: Why don't you-all talk for a moment
13 here, because the reporter -- the reporter can't
14 hear you-all.

15 MR. RUKAJ: That's just our position, Your
16 Honor. It's just referencing other lawsuits. It's
17 a multidistrict litigation. We can -- frankly,
18 based on Your Honor's ruling, it shouldn't be -- I
19 understand if he's going to be talking about the
20 topics that he's prepared to in this --

21 THE COURT: You should have brought it up to me
22 five minutes ago.

23 MR. RUKAJ: I didn't see the video. I haven't
24 had a chance to watch the video.

25 THE COURT: That's why I said you should watch

1 the video.

2 MR. RUKAJ: I would be happy to. I just don't
3 think I would --

4 THE COURT: I -- your suggestion. We're just
5 going to regroup. So we will come back on another
6 day and publish it.

7 Do you want to bring these to Mr. Uustal about
8 scheduling it for the moment?

9 Is there something else you want to do?
10 Mr. Stephenson suggested that maybe they need to
11 watch this to avoid us being a jack-in-the-box
12 during the sidebar on these issue. And he needs to
13 watch the video.

14 So is there anything else you want to do?
15 Otherwise, I'm content with making sure this guy
16 gets his plane. We can talk housekeeping amongst
17 ourselves.

18 MR. UUSTAL: What's the objection?

19 THE COURT: I made an in limine ruling so that
20 there's no reference to any other lawsuits. I just
21 held up, I guess, the pleadings.

22 But I'm not going to -- I'm not going to make a
23 ruling on it yet because it's going to come up
24 again, apparently, and, one, he hasn't seen the
25 whole thing. So I'm going to let him watch that.

1 For 15 minutes of time, it's not worth -- the juice
2 isn't worth the squeeze, as the old saying goes.

3 MR. UUSTAL: Yeah, we will read the request for
4 admissions.

5 THE COURT: Okay. Are you ready to do those?

6 MR. UUSTAL: Yeah, I'm ready to do that. I
7 just think -- whatever the Court wants to do.

8 THE COURT: Okay. All right. I appreciate it.

9 (Sidebar concluded.)

10 THE COURT: All right. Members of the jury, we
11 began playing this video. The Court needs to make
12 an additional ruling on that. So for that reason, I
13 need more time to do this. Both sides are ready to
14 proceed. I want to look at it a little more.

15 So at this point, that's what I'm going to do.
16 We're going to put that out for the time being. We
17 weren't going to get much of it done anyway. We
18 weren't going to finish it, so I made a decision on
19 my own to push this off to one of the next sessions.

20 So, Mr. Uustal, how are you going to proceed
21 next?

22 MR. UUSTAL: We are going to read some requests
23 for admissions that we had asked the defendant to
24 admit.

25 THE COURT: Okay. So I'm going to give them an

1 instruction on that as well.

2 All right. Members of the jury, the answers to
3 what are called requests for admissions will now be
4 read to you, and these are written questions that
5 are propounded in the course of what's called
6 discovery before the trial from one party to
7 another. They're answered under oath. And you're
8 to consider and weigh the questions and answers as
9 you would any other evidence in the case.

10 MR. UUSTAL: You're reading the request for
11 admissions?

12 THE COURT: Right.

13 MR. UUSTAL: Oh, okay. I didn't hear the
14 beginning. I thought it was interrogatories.

15 THE COURT: Well, it's a similar-type
16 instruction, but I think I said RFAs, but --

17 MR. RUKAJ: Okay. Could we just see a copy
18 before it's read to the Court?

19 THE COURT: Didn't you --

20 MR. BROWN: Just go.

21 MR. UUSTAL: Thank you.

22 THE COURT: Okay. Go ahead.

23 MR. UUSTAL: Thank you, Your Honor.

24 Request Number 5, "Admit that neither Johnson &
25 Johnson nor Johnson & Johnson Consumer, Inc., ever

1 sought FDA review or approval for Johnson's baby
2 powder or Shower to Shower contained talc prior to
3 2019."

4 Response from the defendants. "Defendants
5 admit that as cosmetic products, talc-containing
6 Johnson's baby powder and Shower to Shower did not
7 undergo FDA review for approval before they were
8 sold to the United States. Except as expressly
9 admitted herein, defendant denies this request."

10 Request Number 6, "Admit that at all times that
11 Johnson & Johnson and Johnson & Johnson Consumer,
12 Inc., marketed or sold Johnson's baby powder or
13 Shower to Shower, either Johnson & Johnson or
14 Johnson & Johnson Consumer, Inc., chose the
15 ingredients.

16 "Defendant admits that one or more of the J&J
17 companies was responsible for the design and
18 formulation of talc-containing Johnson's baby powder
19 sold in the United States from approximately 1894
20 until the product's discontinuation.

21 "Defendant further admits that all times from
22 Shower to Shower's inception until" -- sorry --
23 "2012, one or more of the J&J companies had
24 responsibility for the design and formulation of
25 Shower to Shower distributed in the United States.

1 Except as expressly admitted herein, defendant
2 denies this request."

3 And I'll read one more right now.

4 Request Number 7, "Admit that neither Johnson &
5 Johnson nor Johnson & Johnson Consumer, Inc., ever
6 sought FDA approval for any ingredient in any
7 formulation of Johnson's baby powder or Shower to
8 Shower containing talc."

9 Response. "Defendant admits that as cosmetic
10 products, talc-containing Johnson's baby powder and
11 Shower to Shower did not undergo FDA review or
12 approval before they were sold in the United States.
13 Except as expressly admitted herein, defendant
14 denies this request."

15 Thank you, Your Honor.

16 THE COURT: All right, thank you.

17 And I stand corrected.

18 The pattern that I should have read to you, and
19 I'll read as follows, members of the jury, where a
20 party has admitted certain facts in this process,
21 you must accept these facts as true.

22 All right.

23 MR. UUSTAL: Thank you, Your Honor.

24 THE COURT: Anything else you want to do today?

25 MR. UUSTAL: No, sir.

1 THE COURT: All right. Anything else from the
2 defense?

3 MS. QUINTANA: Not at this time, Your Honor.

4 THE COURT: All right. Can you pass in your
5 notebooks? We're going to be done for the day.
6 Mr. Sandler's got that plane to catch here pretty
7 soon.

8 I hope you have a safe trip.

9 THE JUROR: Thank you, Your Honor.

10 THE COURT: And hope everything goes well.

11 So, Ms. Castillo, we're going to ask that --
12 can you modify that like we discussed?

13 THE JUROR: Yes, okay.

14 THE COURT: We're very appreciative of that.
15 We really need next Friday.

16 THE JUROR: Okay. That's fine.

17 THE COURT: We have some witness issues and
18 etc., so we'll ask you to do that.

19 Members of the jury, remember, we're not here
20 tomorrow. So don't come in tomorrow. We don't need
21 you Monday, Tuesday, Wednesday or Thursday. We need
22 you back on Friday, October the 3rd, and I'm going
23 to ask you to come back -- I think I mentioned to
24 you originally, I wasn't supposed to be in town, so
25 I don't have any of the other hearings that I have

1 every day. So we're going to ask you to come in
2 just a little earlier, so we can get a fuller day,
3 at 9:30 a.m.

4 Does that work for everybody?

5 THE JURORS: Yes.

6 THE COURT: All right. So I remind you not to
7 discuss the case amongst yourselves or with anyone
8 else, not to conduct any of your own investigation
9 or research about any of the issues in the case or
10 the people and the parties involved in the case.

11 I'll ask you to come back where you reported
12 each day at 9:30 a.m., next Friday, October the 3rd.

13 Are there any scheduling questions from the
14 jurors?

15 THE JURORS: No.

16 THE COURT: Okay. Thank you again for your
17 service, ladies and gentlemen.

18 Ms. Jones will see you at the back door.

19 Have a good afternoon.

20 THE JURORS: Thank you.

21 (The jury panel left the courtroom, after which
22 the following proceedings were had:)

23 THE COURT: Okay. You can be seated.

24 What else do we need to discuss today?

25 MS. QUINTANA: Judge, can I just ask to see a

1 copy now? I just want to write down -- I couldn't
2 find it, what he was reading from while he was
3 reading it.

4 THE COURT: Sure.

5 MS. QUINTANA: I just need to -- I just need to
6 see, like, the filing stamp. I just couldn't find
7 it while you were reading it.

8 MR. UUSTAL: The requests for admissions?

9 MS. QUINTANA: Yeah.

10 MR. UUSTAL: Okay. And if I could read just a
11 list of plaintiff's exhibits that there's no
12 objection to. It would take about 30 seconds to
13 read those.

14 THE COURT: Whatever you need.

15 MR. UUSTAL: Okay.

16 THE COURT: Let's wait until we get -- you're
17 ready to go?

18 Okay. Go ahead.

19 MR. UUSTAL: Plaintiff's Exhibit 35.

20 MR. RUKAJ: No objection.

21 THE COURT: So I'll receive 35 into evidence
22 without objection.

23 (Plaintiff's Exhibit Number 45, Document, was
24 received in Evidence.)

25 MR. UUSTAL: 41.

1 MR. RUKAJ: No objection.

2 THE COURT: 41 will be received into evidence
3 without objection.

4 (Plaintiff's Exhibit Number 41, Document, was
5 received in Evidence.)

6 MR. UUSTAL: 231.

7 MR. RUKAJ: No objection.

8 THE COURT: 231 is received into evidence
9 without objection.

10 (Plaintiff's Exhibit Number 231, Document, was
11 received in Evidence.)

12 MR. UUSTAL: 285.

13 MR. RUKAJ: No objection.

14 Just for the record, these are plaintiff
15 exhibits.

16 THE COURT: Plaintiff's 285 is received into
17 evidence without objection.

18 (Plaintiff's Exhibit Number 285, Document, was
19 received in Evidence.)

20 MR. UUSTAL: 434.

21 MR. RUKAJ: That's already in.

22 MR. UUSTAL: Oh, that's why they're checked.
23 Okay. Thank you.

24 585.

25 MR. RUKAJ: Yes. No objection.

1 THE COURT: Plaintiff's 585 is received in
2 evidence without objection.

3 (Plaintiff's Exhibit Number 585, Document, was
4 received in Evidence.)

5 MR. UUSTAL: 1179.

6 MR. RUKAJ: No objection.

7 THE COURT: Plaintiff's 1179 is received in
8 evidence without objection.

9 (Plaintiff's Exhibit Number 1179, Document, was
10 received in Evidence.)

11 MR. UUSTAL: 1202.

12 MR. RUKAJ: No objection.

13 THE COURT: Plaintiff's 1202 is received in
14 evidence without objection.

15 (Plaintiff's Exhibit Number 1202, Document, was
16 received in Evidence.)

17 MR. UUSTAL: 1679.

18 MR. RUKAJ: I think you skipped one.

19 1357.

20 MR. UUSTAL: 1357. Thank you.

21 MS. PAPANTONIO: 1422 as well.

22 MR. RUKAJ: So going in numerical order, I
23 think the next one on the list is Plaintiff's
24 Exhibit 1357.

25 Defendants have no objection.

1 THE COURT: Plaintiff's 1357 will be received
2 without objection.

3 (Plaintiff's Exhibit Number 1357, Document, was
4 received in Evidence.)

5 MR. UUSTAL: Okay. And then 1422.

6 MR. RUKAJ: Likewise, no objection.

7 THE COURT: Plaintiff's 1422 is received
8 without objection.

9 (Plaintiff's Exhibit Number 1422, Document, was
10 received in Evidence.)

11 MR. UUSTAL: 1679.

12 MR. RUKAJ: No objection.

13 THE COURT: Plaintiff's 1679 is received
14 without objection.

15 (Plaintiff's Exhibit Number 1679, Document, was
16 received in Evidence.)

17 MR. UUSTAL: 2574.

18 MR. RUKAJ: I think we skipped one.

19 Plaintiff's Exhibit 2561. They indicated their
20 intent to admit --

21 MS. QUINTANA: That's already in.

22 MR. RUKAJ: Oh, it's already in. Apologies.

23 So the 2574, we have no objection
24 to Plaintiff's Exhibit 2574.

25 THE COURT: Plaintiff's 2574 is received

1 without objection.

2 (Plaintiff's Exhibit Number 2574, Document, was
3 received in Evidence.)

4 MR. UUSTAL: 2613.

5 MR. RUKAJ: No objection.

6 THE COURT: Plaintiff's 2613 is received
7 without objection.

8 (Plaintiff's Exhibit Number 2613, Document, was
9 received in Evidence.)

10 MR. UUSTAL: 2619.

11 MR. RUKAJ: No objection.

12 THE COURT: Plaintiff's 2619 is received
13 without objection.

14 (Plaintiff's Exhibit Number 2619, Document, was
15 received in Evidence.)

16 MR. UUSTAL: 2661.

17 MR. RUKAJ: No objection.

18 THE WITNESS: Plaintiff's 2661 is received
19 without objection.

20 (Plaintiff's Exhibit Number 2661, Document, was
21 received in Evidence.)

22 MR. UUSTAL: 2878.

23 MR. RUKAJ: No objection.

24 THE COURT: Plaintiff's 2878 is received
25 without objection.

1 (Plaintiff's Exhibit Number 2878, Document, was
2 received in Evidence.)

3 MR. UUSTAL: 3041.

4 MR. RUKAJ: This one we have an objection to.
5 It's the one, I think.

6 MR. UUSTAL: 3359.

7 MR. RUKAJ: No objection.

8 THE COURT: What's the number?

9 MR. UUSTAL: 3359.

10 THE COURT: Okay. Plaintiff's 3359 is received
11 without objection.

12 (Plaintiff's Exhibit Number 3359, Document, was
13 received in Evidence.)

14 MR. UUSTAL: 3409.

15 MS. PAPANTONIO: 3429.

16 MS. QUINTANA: Judge, that was the whole
17 entirety of the congressional hearing that I had
18 objected to.

19 MR. UUSTAL: Okay. Then maybe the last one,
20 3429.

21 MS. PAPANTONIO: Yeah.

22 MR. RUKAJ: No objection.

23 THE COURT: 3429 is received without objection.

24 (Plaintiff's Exhibit Number 3429, Document, was
25 received in Evidence.)

1 MS. PAPANTONIO: Your Honor, may I approach?

2 THE COURT: Sure. Thank you so much.

3 Is that it?

4 MR. UUSTAL: Yes, sir.

5 THE COURT: So I still have this 3409, and
6 you're still moving that into evidence?

7 MR. UUSTAL: We will, but we'll probably --
8 we'll probably do that after some more testimony.

9 THE COURT: I'm going to give it back to you,
10 if you don't mind.

11 MR. UUSTAL: Thank you.

12 THE COURT: Thank you. And --

13 MR. TISI: Just to be clear, 3041, you're
14 reserving on or --

15 MR. RUKAJ: What's the exhibit number? I'm
16 sorry.

17 MS. PIERSON: 3041.

18 MR. TISI: Your objection to this document -- I
19 thought we had an agreement that any document in J&J
20 is a business record.

21 MR. RUKAJ: Is this the PowerPoint?

22 MR. TISI: This is the PowerPoint.

23 MR. RUKAJ: So I just have to verify.

24 MS. PAPANTONIO: There's a couple objections
25 that we just have to talk about. So we'll talk

1 about it.

2 MR. TISI: Okay. I just thought this was one
3 that --

4 MR. UUSTAL: Okay. That's all we have for the
5 plaintiffs, Your Honor.

6 THE COURT: Okay. What else do we need to
7 discuss today?

8 MR. UUSTAL: I think that's it, Your Honor.

9 MR. BROWN: Nothing from us, Judge.

10 THE COURT: All right. Thank you, Counsel, on
11 both sides, for your efforts this week. I will see
12 you, I guess, on Friday morning, October the 3rd, at
13 9:30.

14 MR. BROWN: Yes, Your Honor.

15 THE COURT: Maybe the lawyers ought to be here
16 at 9:00 that day in case there's issues or
17 something.

18 MS. PIERSON: Absolutely, Your Honor.
19 Unfortunately, Dr. Casaretto will not be able to be
20 here on Friday. He has a conference he's speaking
21 at, and he cannot get out.

22 THE COURT: Okay. All right.

23 MS. PIERSON: But Mrs. Casaretto will be here.

24 THE COURT: Okay. See you, then, on the
25 following Monday.

1 MS. QUINTANA: Is Dr. Booth your only live
2 witness on Friday? Okay.

3 MS. PIERSON: I believe so. But if not, we'll
4 tell whenever the -- 3:00 o'clock the day before if
5 there's anyone else that we still plan to play --

6 MS. QUINTANA: Okay.

7 MS. PIERSON: But if there's another live
8 witness, we will let you know by the day end.

9 MS. QUINTANA: Sounds good. Thank you.

10 THE COURT: Okay. As I said, if -- we'll be
11 here all next week if you need us, except on
12 Thursday. We won't be in session on Thursday. The
13 courthouse will be closed for the religious holiday,
14 but we'll be here Monday through Wednesday.

15 The Court's in recess. Have a good day.

16 MR. UUSTAL: Thank you, Judge.

17 MS. QUINTANA: Have a good weekend.

18 MR. TISI: Thank you, Judge.

19 I think we got you in your car.

20 THE COURT: I'm going to get there, yeah.

21 (Thereupon, the trial is in recess at 2:43
22 p.m.)
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

I, VANESSA OBAS, RPR, Notary Public, State of
Florida, I was authorized to and did stenographically
report the foregoing proceedings; and that the
transcript, pages 5 through 175, is a true and accurate
record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, or
employee, or attorney, or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

Dated this 25th day of September, 2025.



VANESSA OBAS, RPR

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