

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

Case No. 04-16237 CA 42

JOSEPH MALLIA,

Plaintiff,

vs.

PNEUMO ABEX

Defendants.

Miami, Florida
December 9, 2005
9:00 o'clock a.m.

COPY

The above-styled cause came on for
Jury Trial, held before the Honorable RICHARD YALE
FEDER, Presiding Judge, at the Dade County
Courthouse, on the 9th day of December, 2005 at 9:00
o'clock a.m.

TESTIMON OF JOYCE GALE MALLIA,
DR. DAVID HAY GARABRANT & JOSEPH MALLIA (PART I)

Page 3

1 (Thereupon, after the evening recess, the
2 following proceedings were had:)

3 THE COURT: Are we ready?

4 MR. LIPMAN: I am waiting on a phone call.
5 It's important, related to this case.

6 THE COURT: Bring in the - sir?

7 MR. LIPMAN: Your Honor, we are ready to
8 proceed. We are going to call Mrs. Mallia as our
9 first witness.

10 THE COURT: All right. We are waiting for
11 the jury.

12 (Thereupon, the jurors entered the
13 courtroom, after which the following proceedings
14 were had:)

15 THE COURT: You may be seated, good morning.
16 I hope you had a pleasant vacation.

17 Call your first witness.

18 MR. LIPMAN: Our first witness this morning
19 is Mrs. Gale Mallia.

20 THE COURT: Ma'am, come up here.

21 Thereupon:

22 JOYCE GALE MALLIA,
23 was called as a witness on behalf of the Plaintiff,
24 and having been first duly sworn, testified upon her
25 oath as follows:

Page 2

1 APPEARANCES:

2
3 DAVID M. LIPMAN, P.A.
4 By DAVID M. LIPMAN, ESQUIRE
5 REBECCA SHULL, ESQUIRE
6 THE RUCKDESCHEL LAW FIRM, LLC
7 By JONATHAN RUCKDESCHEL, ESQUIRE
8 appearing on behalf of the Plaintiff

9 POWERS & FROST, LLP
10 By JAMES H. POWERS, ESQUIRE
11 WILCOX & SAVAGE, ESQUIRE
12 By BRUCE T. BISHOP, ESQ, ESQUIRE
13 HAWKINS & PARNELL, LLP
14 By EVELYN M. FLETCHER, ESQUIRE
15 appearing on behalf of the Defendant
16 Pneumo Abex

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1 DIRECT EXAMINATION

2 Q. (By Ms. Shull) Good morning.

3 A. Good morning.

4 Q. You have been briefly introduced to the
5 jury, but I would like you to introduce yourself,
6 please.

7 A. Joyce Gale Mallia. I go by Gale.

8 Q. Have you ever testified in court before,
9 Mrs. Mallia?

10 A. No.

11 Q. Are you a little nervous?

12 A. Yes.

13 Q. We will just take it nice and slow.

14 Somebody told me it's best just to pretend
15 we are talking in your living room.

16 We are going to start off with something
17 easy. I would like you to tell the jury how you met
18 your husband, Mr. Mallia.

19 A. I met him at a restaurant called Joe's
20 Pizzeria Italian Restaurant. It was in the shopping
21 center - next to the shopping center where my beauty
22 salon was. You want more?

23 Q. Please. Please continue.

24 A. I was having lunch there one day, and my
25 best friend at the time was the waitress, and I

Page 5 1 spotted him at a table and told her that he was cute. 2 And after I left, she was waiting on their 3 table, him and I believe he was with his cousin and 4 another co-worker. They asked who I was, and she 5 told him I was her best friend. And they said, tell 6 her to come back and we will buy her lunch. 7 And she said, the guy you thought was cute 8 wanted to buy you lunch. 9 And of course I came back and ate again, and 10 we have been together ever since. 11 Q. I guess it worked out well then? 12 A. Very much. 13 Q. What was it about your husband that first 14 drew you to him? 15 A. I thought he was adorable, and I still do, 16 and a great guy. 17 Q. That was a long time ago? 18 A. 14 years, October. This October was 14 19 years. 20 Q. Can you tell the jury about your 21 relationship with your husband now? 22 A. It's changed. 23 Q. Well, first let's talk about some easy 24 stuff. 25 A. Okay. I am sorry.	Page 7 1 Q. What kinds of things do you do together? 2 A. We love boating. He has two children from 3 his first marriage, Joseph and Sean, and we spend a 4 lot of time with them. 5 Q. Where do you go boating? 6 A. In the Keys, in the Florida Keys. We love 7 to go boating. The boys are into anything that has 8 to do with water, whether it's snorkeling, scuba 9 diving, swimming, lobster diving, wave boarding. 10 Q. The jury had an opportunity to meet the boys 11 briefly. Can you tell them their names? 12 A. Joseph Junior is - he just turned 17 on the 13 21st, and Sean will be 16 this month. 14 Q. What grades are Joseph and Sean in high 15 school? 16 A. Joseph's in eleventh, he will graduate next 17 year, and I think Sean's in tenth. 18 Q. Plans to go to college? 19 A. Oh, yes, absolutely. Joe paid for the 20 prepaid college scholarships, I think. 21 Q. Here in Florida? 22 A. Yes. So definitely they will go to college. 23 They are really into school. 24 Q. Does that make him proud? 25 A. Oh, yeah.
Page 6 1 Q. Hold on a second, excuse me. 2 A. All right. 3 MS. SHULL: Your Honor, may I? 4 THE COURT: Yes. 5 THE WITNESS: I am sorry. 6 MS. SHULL: Take your time. 7 THE WITNESS: (Witness crying). 8 (Thereupon, the following proceedings were 9 had out of the hearing of the jury:) 10 MR. POWERS: Your Honor, I didn't object to 11 the last question, and I'm not going to, but it 12 does raise a concern that Ms. Shull is going to 13 ask Mrs. Mallia about how Mr. Mallia's illness 14 affected her and her relationship with him. But 15 if she is not doing that, it's not a problem. 16 MS. SHULL: I have no intention of doing 17 that. I am very well aware Mrs. Mallia is not a 18 party. I am laying a foundation for her to talk 19 about her husband and what he is going to do. 20 THE COURT: Okay. 21 (Thereupon, the following proceedings were 22 had within the hearing of the jury:) 23 Q. (By Ms. Shull) Do you spend a lot of time 24 with your husband now, Mrs. Mallia? 25 A. A lot.	Page 8 1 Q. Do you like to spend time at home as a 2 family? 3 A. Yes, very much. During the week that's 4 pretty much what we do, you know. Joe loves a good 5 home-cooked meal and loves to barbeque and watch 6 movies. We don't really go out. 7 Q. Can you tell me a bit about the boys' 8 relationship with Mr. Mallia? 9 A. They are very close to their dad, very 10 close. There is not a day that goes by they don't 11 talk to him. And now Joseph drives, so they can come 12 over whenever they want, which is frequent. 13 Q. Are they into cars? 14 A. Oh, yes. 15 Q. Is that because of their dad? 16 A. Yes. 17 Q. Are you close with the boys? 18 A. Very much. I have known them since they 19 were two and three, so they are like my own. 20 Q. Did you say you consider them like your own? 21 A. Yes. 22 Q. The boys talk to Mr. Mallia to get advice 23 from him? 24 A. Yes. 25 Q. What kinds of things do they talk about?

Page 9 1 A. Everything. School, girls, cars, sports, 2 everything. They are very close to their dad. 3 Q. I'd like to shift gears and talk to you a 4 little bit about when you first realized that 5 something was wrong with Mr. Mallia. 6 Do you remember about when that was? 7 A. I believe it was February 2nd of last year, 8 which would have been 2004. That's when we received 9 the phone call of what he had. 10 Do you want to know about the hospital 11 before? 12 Q. I want to hear about a lot of it, but first 13 let's talk about how you first knew something was 14 wrong with Mr. Mallia. 15 A. Prior to that, it was before Christmas, I 16 would say between Thanksgiving and Christmas, he was 17 coughing a lot. And I suggested that he go to a 18 doctor, which Joe's never gone to doctors except like 19 once a year for a physical, never been sick before. 20 So he didn't really think much of it, 21 He was coughing, and I told him to call the 22 doctors. But when he called, it was like six weeks 23 before they could give him an appointment. So he 24 didn't take the appointment because he said by then 25 he would be better.	Page 11 1 know anything. They thought he had pneumonia. 2 Q. Did they find out it wasn't pneumonia? 3 A. Yes. 4 Q. How did that happen? 5 A. They stuck a needle in his side and drained 6 out fluid, and it came back highly suspicious. 7 Q. Were you there, Mrs. Mallia? 8 A. Oh, yes. I have been to every appointment, 9 slept in the hospital, and I never left him. We've 10 only been apart two nights in 14 years. 11 Q. Wow. Were you actually in the room when 12 Mr. Mallia's fluid was drained? 13 A. Not in the hospital room because that was 14 like a procedure done. Is that what you mean? They 15 don't do it right in your room. They take him down 16 to like the operating room. 17 Q. Was he scared before this happened? 18 A. He was very scared. 19 I believe they did that twice because the 20 fluid came back. 21 Q. Now, at some point during when all this was 22 going on, did you have difficulty getting information 23 about Mr. Mallia? 24 A. Yes, because at the time we weren't actually 25 married, so I wasn't considered immediate family, and
Page 10 1 Q. Had your husband ever been sick before? 2 A. Never. 3 Q. Ever been in a hospital before? 4 A. Not to my knowledge. 5 Q. So what happened? Did you wait the six 6 weeks? 7 A. Well, after Christmas he continued to have 8 this really dry cough, and he became very pale, and 9 he was weak and he was tired, and he said he was 10 having like shortness of breath. 11 I told him, after Christmas, I said, you are 12 going to the doctor's. I don't care if you have to 13 go sit there like an emergency and wait for them to 14 see you. Don't make an appointment, just go. 15 So after Christmas he went and they took a 16 chest film. 17 Q. What did they find? 18 A. His lungs - his lung was full of fluid. 19 Q. Take your time. 20 A. (Witness crying). 21 Actually, he went to his doctor. They sent 22 him downstairs for a chest film, and that's when they 23 admitted him to the hospital. 24 Q. At that point, did the boys know anything? 25 A. No, because at that point we didn't really	Page 12 1 they needed him to put down next of kin in case of an 2 emergency or, you know, something happened. And he 3 really didn't want his mom, you know, to know how bad 4 things were or if they were going to get bad. We 5 went to the courthouse and got married. 6 Q. Had you planned on getting married? 7 A. Oh, yes. This kind of just speeded it up a 8 little. 9 Q. You have told the jury you and Mr. Mallia 10 have been together for a long time. Why hadn't you 11 been married yet? 12 A. Well, when the boys were young, I really 13 didn't want to be like a stepmom, I wanted to be 14 their friend. And the years just flew by, and we got 15 engaged when I was 30, so I always joked around and 16 said I got engaged when I was 30 and would get 17 married when I was 40. 18 And it really wasn't an issue until Joe got 19 sick, and then we had to because of medical records, 20 and they wanted him to make out a will, and he wanted 21 to make sure that I would be okay if anything 22 happened, and he wanted me to be in charge of his 23 medical situation if need be. 24 Q. So at some point you found out that your 25 husband was not having an infection, that it was

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1 something else. Can you tell the jury about that,
 2 Mrs. Mallia?
 3 A. How we found out?
 4 Q. Please.
 5 A. He was in the hospital three times, and I
 6 think it was January, and - then he was able to go
 7 home. And they had done - after they drew the fluid,
 8 took the fluid out twice, then I believe they did the
 9 biopsy where they actually take a piece of tissue
 10 from his lung. And we went home and they said wait
 11 for a phone call.
 12 And we waited, and it was February 2nd,
 13 (Witness crying).
 14 Q. Take your time.
 15 A. Joe couldn't even answer the phone. And we
 16 knew, you know, what it was. It was the doctor
 17 calling.
 18 And I took the phone. Joe was sitting out
 19 on the patio.
 20 And the doctor told me who he was and said
 21 they got the results back because they actually send
 22 the biopsy, I guess, to another state or something.
 23 So it takes like a week. So we waited.
 24 And when I answered the phone, he said that
 25 Joe has been diagnosed with malignant mesothelioma.

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1 And I said, what's that?
 2 And he said, you need to make an appointment
 3 with an oncologist.
 4 And I said, what's that?
 5 And he said, a cancer specialist.
 6 Q. So at this point, was that all you and your
 7 husband knew about this disease?
 8 A. Yes.
 9 So I had to - I called I believe his primary
 10 doctor to get a referral to an oncologist.
 11 Q. At this point what do the boys know about
 12 what's going on with their dad?
 13 A. Not too much because, you know, Joe protects
 14 them. He doesn't want them to know, and he doesn't
 15 want it to interfere with their school. You know, he
 16 would never tell them how bad it was.
 17 And even his own mother to this day, you
 18 don't even say the C word around her. We don't
 19 discuss it. She is very much in denial.
 20 Q. Does she know - but she knows that her son
 21 has cancer, right?
 22 A. She knows that he has cancer, but in her
 23 eyes that's her baby, and she - you know - she wants
 24 to believe it's a mistake and it's just going to go
 25 away.

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1 Q. Do the boys know what's going on with their
 2 dad?
 3 A. Pretty much. I mean, we don't sit around
 4 and talk about it. Joe wants to try to live a normal
 5 life as much as possible, you know. He tries to do
 6 as much as he can with the boys. Sometimes he can't
 7 do stuff that he would like to do, but for the most
 8 part, you know, we try to live a normal life.
 9 Q. I understand.
 10 But part - what you just told me was your
 11 husband had to go see an oncologist?
 12 A. Right.
 13 Q. Can you tell the jury about that?
 14 A. I'm trying to think of - the first time was
 15 at Sylvester.
 16 Q. Is it hard to keep these dates together?
 17 A. So many doctors and hospitals.
 18 I believe the first one was at Sylvester. I
 19 could be wrong, I am a little --
 20 Q. It's okay. The dates aren't important. I
 21 just want to talk about what you found out from the
 22 doctors at Sylvester.
 23 A. When - first I believe we saw an oncologist.
 24 They confirmed that it was malignant mesothelioma,
 25 tumor of the pleura, which I had no idea what that

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1 was. And they recommended that we see a lung
 2 specialist, which I believe is the thoracic surgeon.
 3 And they wanted to remove Joe's lung.
 4 Q. Was it your understanding that this would
 5 cure his cancer?
 6 A. No.
 7 Q. Do you know why they wanted to remove his
 8 lung?
 9 A. Because of the tumor aligned his whole lung,
 10 and that it was restricting his breathing.
 11 But we wanted to get a second opinion, and
 12 at that time we went to - after several visits to
 13 Sylvester and different doctors and multiple tests
 14 and everything else, we decided to get a second
 15 opinion. And we went to Moffitt. We started going
 16 to Moffitt, H. Lee Moffitt in Tampa, Florida.
 17 Q. Before you go to Moffitt, can you tell the
 18 jury about how your husband was feeling? And I don't
 19 mean physically, I am talking about emotionally.
 20 A. It was terrible. I mean, just the
 21 anticipation and wondering and worrying and all these
 22 big words and these specialists and hospitals. You
 23 know, it just - I can't even explain to you what it's
 24 like. It's very scary. He was terrified. You know,
 25 it went from pneumonia to terminal cancer. We were

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1 confused. He was freaking out. He didn't know - we
 2 didn't know what to do, and everyone is telling us
 3 different things.
 4 Q. Did you finally find a treatment facility
 5 you were comfortable with?
 6 A. Yes.
 7 Q. And that's Moffitt?
 8 A. H. Lee Moffitt in Tampa, Florida.
 9 Also, I forgot, the one doctor at Sylvester
 10 said we could wait three months and see what happens.
 11 And another doctor said, let's just take your lung
 12 out. And we weren't comfortable with that, and it
 13 was very scary. So we were - recommended to get a
 14 second opinion, and that's what we did. We started
 15 at another hospital.
 16 Q. What did you learn at Moffitt about
 17 Mr. Mallia's condition?
 18 A. That there is no cure for it, and their lung
 19 doctor there said that there was --
 20 MR. POWERS: Excuse me, Your Honor, I have
 21 to object on the basis of hearsay.
 22 THE COURT: Sustained.
 23 Q. (By Ms. Shull) Let me rephrase,
 24 Mrs. Mallia. You go to Moffitt and get a second
 25 opinion. Did Moffitt suggest any type of treatment

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1 for Mr. Mallia's condition?
 2 A. The lung specialist, Dr. Robinson, he had
 3 seen Joe's records from the previous hospital. He
 4 said the only way he would take out Joe's lung was if
 5 he could - if he was guaranteed he could get all the
 6 cancer 100 percent.
 7 So we made - and this isn't on the first
 8 appointment, it's a few appointments later. We made
 9 arrangements to go there for eight days and prepare
 10 to take his lung out if the cancer had not spread to
 11 his lymph nodes. And the only way he would do that
 12 to prepare Joe for the surgery.
 13 And right before the surgery, while he was
 14 under, they cut him open and take a piece of his
 15 lymph nodes - or nymph node, and immediately have it
 16 biopsied at the hospital while - and while they were
 17 doing the test, if it was positive, they would not
 18 continue with the surgery to remove his lung.
 19 And he said, you will either wake up a few
 20 hours later with one lung or wake up an hour later.
 21 Q. Mrs. Mallia, what happened with the biopsy
 22 results?
 23 A. It was positive. (Witness crying).
 24 Q. When your husband found out that the biopsy
 25 results were positive, I want you to tell the jury

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1 about his emotional state.
 2 A. Well, when they found out - well, when he
 3 woke up -- first of all, the preparation for the
 4 surgery was unbelievable because they had to prep him
 5 as if they were going to remove his lung, so they had
 6 to completely shave him, give him an epidural in his
 7 spine.
 8 And, you know, I can't imagine because it's
 9 not me, but from what he - from what I gathered from
 10 the experience was the worst thing in the world was
 11 being put under not knowing if you are going to wake
 12 up in an hour or four hours.
 13 And like I said, we were prepared to stay
 14 there for eight days because the doctor said it was a
 15 major surgery, and for him to get his life in order
 16 prior to the surgery because you never know what the
 17 outcome was going to be if he did perform the
 18 surgery. And it was very emotional.
 19 And when he came to, he knew that they
 20 hadn't removed his lung, and that it wasn't good
 21 because then that meant his only chance would be to
 22 have chemo. And with chemo, they told him he had 13
 23 months, and without it, six to nine.
 24 (Witness crying).
 25 Q. Did your husband go through chemo?

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1 A. Yes.
 2 Q. Do you need a break?
 3 A. No.
 4 Q. When did he begin receiving chemotherapy
 5 treatments?
 6 A. Shortly after that. I think we went home
 7 once. And he may have gotten it before we even left
 8 because we had prepared to stay there for eight days.
 9 They started him on a real aggressive chemo
 10 because the tumor was so big, you know, it was like
 11 the whole lining of his lung. And they started him
 12 on a real aggressive chemo called cisplatin and
 13 Alimta. And he received that, I think four
 14 treatments of that, every three weeks.
 15 Q. How did he feel while he was receiving the
 16 cisplatin treatments?
 17 A. He felt like he was sitting around waiting
 18 to die.
 19 Q. Could he eat?
 20 A. Oh, no. He had lost a lot of weight. He
 21 was down to like 140 pounds. He would vomit all the
 22 time. He couldn't stand noise. His ears would ring.
 23 His feet went numb. He would have hiccups for days,
 24 everything, constipation, diarrhea - not diarrhea, I
 25 am sorry, constipation, vomiting. It was awful.

Page 21 1 Q. At some point did he change the course - was 2 he able to change the course of his chemotherapy? 3 A. Well, they could only do I believe four 4 treatments of that because it is so aggressive. 5 They took him off of it and they put him on 6 just the Alimta, and that's kind of like a 7 maintenance compared to the real aggressive stuff, 8 just to keep the tumor from growing back. 9 And then eventually they had to take him off 10 that because they have to give your body a break. 11 The chemo not only kills the cancer cells, it kills 12 all your cells. 13 Q. Were the boys aware that their father was 14 getting chemotherapy? 15 A. Yes, but if you have never been through it, 16 you can't even imagine what it is like. 17 You know, I have heard people say so and so 18 got chemo and they say that's great, you go to the 19 doctor's, you get a treatment and you are all better, 20 but it's so more involved than that. 21 It's so hard to watch someone you love go 22 through it. You don't just get a little shot. You 23 sit there for hours in a recliner with, you know, 24 these IVs, and it takes like five hours because it 25 just drips and drips.	Page 23 1 in public or the restaurants, not that he would have. 2 But when you are undergoing chemo, you are 3 very susceptible to germs. And they said that if he 4 was to get sick, his body couldn't fight it off, and 5 he would probably get pneumonia and die. 6 Q. Is your husband receiving chemotherapy right 7 now, Mrs. Mallia? 8 A. No, right now he doesn't get chemo, but we 9 still have to go to the hospital to have his port 10 flushed and for CAT scans and blood work because the 11 tumor is not growing at this time, but if they do see 12 the slightest growth, then he will have to go back on 13 the chemo. So it's a constant thing. 14 Q. You go to Moffitt with him every time? 15 A. Oh, yes. 16 Q. Do you drive up there? 17 A. Yes. It's like four hours each way. 18 Q. Can you describe your husband's mood while 19 you are in the car driving to Moffitt? 20 MR. POWERS: Excuse me, I am sorry, I didn't 21 hear you. 22 MS. SHULL: I asked Mrs. Mallia - I will 23 repeat. 24 Q. (By Ms. Shull) Can you please describe 25 your husband's mood when you are driving together to
Page 22 1 And also he had to have a port put in his 2 chest because the chemo will collapse your veins 3 after a while. So they can't just keep giving it to 4 you in your arm. So they also did a procedure and 5 put a port in his chest, and then the chemo goes 6 directly into, like, the main artery, I believe. But 7 it still takes hours. It's not a little procedure. 8 And prior to that they have to do CAT scans 9 and blood work and - it's a lot more involved than 10 what people think. 11 So we would never tell the boys how bad it 12 actually was. And he always, you know, put on a 13 strong front for them. 14 Q. Why is that? 15 A. Because he loves them and he doesn't want 16 them to, you know, be sad. And, you know, he is 17 their father. He is their hero. He doesn't want to 18 look weak. 19 And when he was really bad, they never 20 really saw him when he was really sick because we 21 kind of hid it, and they would go to their uncle's 22 house on the weekends because he wouldn't let them 23 see him, plus, he was advised not to be around people 24 because he could be exposed to germs, so he couldn't 25 be around a lot of people. He couldn't really go out	Page 24 1 Moffitt? 2 A. Well, his mood - the anticipation of finding 3 out that the tumor is growing back or his blood work 4 is not good, it's hard. The four hours seems like an 5 eternity when you are driving to the hospital. 6 Right now he is actually doing pretty good, 7 but the doctor said it will - he will always have the 8 disease, the tumor always grows back, there is no 9 cure for it, and the only thing they can offer is to 10 give him the best quality of life that they can. 11 They will try to keep him comfortable, and hopefully 12 he won't have to go on the real aggressive chemo, but 13 eventually he will have to probably go on the Alimta. 14 We try to eat real healthy, and he takes 15 vitamins from a nutritionist, and I think that helps. 16 Q. Do you help him with that? 17 A. Oh, yes. 18 Q. When your husband gets in the car and drives 19 to Moffitt with you, does he think this is it? 20 A. I don't understand, this is it. 21 Q. When your husband gets in the car and drives 22 to Moffitt for his checkups, is he concerned that 23 this is it? 24 A. Well, you know, when you are faced with 25 something like this, you learn not to take life for

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1 granted. Every day is a gift and, you know - like
 2 recently he had a little cold, and he said, oh, my
 3 God, the tumor is growing back.
 4 You are constantly worried about it. You
 5 never, never forget about it. You never wake up in
 6 the morning and not think about it, you know. But
 7 Joe wants me to be strong for the boys. And like I
 8 said, we try not to talk about it a lot. We have a
 9 lot of family get-togethers. He doesn't want
 10 everyone to feel sorry for him and sit around and
 11 talk about it. It's not a talked-about discussion.
 12 I'm with him for every doctor's appointment.
 13 If someone says to Joe, how are you doing,
 14 he will say, I can't complain, because he's not going
 15 to sit there and complain. But I see it and I live
 16 it, and it's hard.
 17 MS. SHULL: Thank you, Mrs. Mallia. I have
 18 nothing further.
 19 CROSS EXAMINATION
 20 Q. (By Mr. Powers) I have a couple of
 21 questions, Mrs. Mallia. Good morning.
 22 I know you heard me introduce myself, but I
 23 don't think I introduced myself to you. I really
 24 have just, I think, one question for you.
 25 Did you tell us that as of today, as of now,

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1 Mr. Mallia's tumor is not growing?
 2 A. Correct.
 3 Q. That's what the doctors told you?
 4 A. It's not growing.
 5 Q. I wanted to make sure that's what the doctor
 6 told you, as opposed to what you --
 7 MS. SHULL: Objection, Your Honor, hearsay.
 8 THE COURT: Grounds.
 9 MS. SHULL: The attorney for Abex is asking
 10 Mrs. Mallia what the doctors told her.
 11 THE COURT: I understand, but she testified
 12 to that on direct. Overruled.
 13 Q. (By Mr. Powers) Miss Mallia, you believe
 14 that the tumor is not growing, and that's as of
 15 today, right?
 16 A. Correct.
 17 Q. That's based on what Mr. Mallia's doctors
 18 have told you and Mr. Mallia, right?
 19 A. Correct.
 20 Q. And that's a very, very recent bit of
 21 information that you and Mr. Mallia got, isn't it?
 22 A. Correct.
 23 Q. So as of today, the medical information that
 24 your doctors are giving you is that his tumor has not
 25 grown since the chemotherapy?

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1 A. Right.
 2 Q. Thank you, ma'am.
 3 A. Uh-huh.
 4 REDIRECT EXAMINATION
 5 Q. (By Ms. Shull) When did you learn the
 6 tumor is not growing?
 7 A. Most recently?
 8 Q. Yes.
 9 A. Yesterday.
 10 MS. SHULL: Thank you.
 11 THE COURT: Thank you, ma'am.
 12 MS. SHULL: We are all through. You can
 13 come down, Mrs. Mallia.
 14 MR. RUCKDESCHEL: Your Honor, the next thing
 15 that we would like to do, I think we can take
 16 perhaps a five-minute break and discuss some
 17 issues with the Court. Perhaps it would be time
 18 for an early morning break.
 19 (Thereupon, the jurors left the courtroom,
 20 after which the following proceedings were had:)
 21 THE COURT: What?
 22 MR. RUCKDESCHEL: Your Honor, we would like
 23 to address initially a couple of issues about
 24 Dr. Garabrant, who is the next anticipated
 25 witness because we shuffled the schedule.

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1 Counsel has been kind enough to provide me
 2 with a copy of a PowerPoint presentation that
 3 Dr. Garabrant apparently is going to give to the
 4 jury.
 5 The PowerPoint at the end - I have basically
 6 no objection to Dr. Garabrant giving the
 7 beginning of the PowerPoint presentation, which
 8 talks about how epidemiology works as a science.
 9 There are a couple of examples of studies that
 10 aren't pertinent to this case, and as long as
 11 it's made clear those aren't pertinent to the
 12 case, I have no problem with counsel using them
 13 as an example.
 14 If I may approach, Your Honor.
 15 At the end of the presentation, there begins
 16 to be discussion of studies that are allegedly
 17 pertinent to this case, including a slide that
 18 has the title to an article on which
 19 Mr. Garabrant was listed as one of the authors.
 20 That's the meta-analysis Your Honor has heard
 21 about.
 22 And the following page lists studies by
 23 others that were considered in the meta-analysis
 24 and combined, and then some charts that talk
 25 about what the results of those studies were.

Page 29 1 We object to the presentation of this 2 evidence as hearsay and as improper bolstering, 3 as the Court has articulated throughout this 4 case. 5 Dr. Garabrant's study, if I can refer to it 6 that way, it's commonly referred to as the 7 Goodman study or the meta-analysis. 8 Dr. Garabrant's study is hearsay. It's an 9 out-of-court statement they want to introduce for 10 the truth of the matter asserted. 11 More importantly, what a meta-analysis does 12 by definition is combine other studies in an 13 attempt to increase the power of them. 14 The underlying studies were not performed by 15 Dr. Garabrant, studies published like McDonald 16 and Teta and Agudo and, for example, the McDonald 17 study got information off of death certificates. 18 That's all hearsay, and the McDonald study is 19 hearsay. And when you combine all these studies 20 together, you have amalgamated the hearsay. 21 And the example that occurred to me in the 22 morning in the shower, where all the best 23 thinking takes place, was it's hearsay for me to 24 come in and put somebody on the stand in an 25 automobile case to say, I heard Jimmy say the	Page 31 1 they still agree with me, which is not all that 2 shocking. 3 There are other objections to the 4 presentation of this evidence that deal with the 5 substance of those studies if Your Honor is not 6 inclined to grant our motion to exclude it on 7 those grounds. And so I think it would be an 8 appropriate time for me to stop talking, see 9 where the Court will go. And if the Court will 10 keep the studies out, we need nothing further. 11 If you are going to let them in, we need to talk 12 about them individually. 13 MR. BISHOP: Dr. Garabrant is an 14 epidemiologist, board-certified in occupational 15 and preventative medicine, as well as he teaches 16 epidemiology at the University of Michigan. 17 He will tell the Court and jury that the 18 essence of epidemiology, you conduct a study, and 19 then you do additional studies. And the job of 20 the epidemiologist is to look at the entire 21 landscape to see whether the data is supportive 22 of a causal association or a positive association 23 between an occupation and disease or exposure and 24 disease or a negative association or no 25 association.
Page 30 1 light was green. And it's hearsay for me to put 2 somebody on the stand to say, I heard Jimmy and 3 Steve and Betty and Timmy and five other people 4 say the light was green. And it's hearsay for 5 them to say, I interviewed all the witnesses, and 6 they all said the light was green, even though 7 they don't identify the witnesses. 8 And that's exactly what the meta-analysis 9 does. It takes all inadmissible studies and 10 lumps them together and says, okay, okay, we 11 think that these studies, when you combine them, 12 all say the same thing. 13 Under Your Honor's rulings in this case and 14 under Florida law, that's improper and bolstering 15 of Dr. Garabrant's opinion. 16 I think clearly that the pages after where 17 there are charts of the different individual 18 studies listed by name and the results of those 19 studies are hearsay. 20 Dr. Garabrant can say, I considered 21 epidemiological studies, and I made my 22 determination, and my opinion is X, but he cannot 23 present this evidence to the jury because he 24 says, and all these people agree with me. 25 When we combine what all these people said,	Page 32 1 And he gives the example in the earlier 2 slides of breast cancer and smoking, which 3 obviously has nothing to do with this, as a 4 teaching example where you take the data from all 5 of the 20 studies, and there is a relative risk 6 calculated for each, and you see where it lines 7 up, and you make and draw conclusions about what 8 all the data shows. 9 What he has done, Your Honor, is 10 published - in the first slide, there is an 11 objection to simply the title of his article, 12 which is no more than what Plaintiff's counsel 13 did with one of their witnesses where he was 14 entitled to not show anything. 15 THE COURT: I don't have a problem with the 16 first page, I don't have a problem with the 17 second page, I don't have a problem with the 18 third page. 19 Starting with the fourth page, I do have a 20 problem, because he is now listing what the 21 results of all those tests were, and that's 22 hearsay. 23 He can give his opinion and say he checked 24 all these studies on the first whatever, three 25 pages or four pages, whatever, three pages, but

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1 not the 95 percent confidence ratio and the odds
2 ratio and number of controls, no, I will not
3 allow it.
4 MR. BISHOP: Your Honor, if I could show you
5 one additional slide.
6 THE COURT: Okay.
7 MR. RUCKDESCHEL: Your Honor, regarding the
8 charts, I believe that if Dr. Garabrant shows the
9 jury these charts, he is going to be saying all
10 these people agree with me.
11 THE COURT: No, he will not. He can say his
12 opinion. He has reviewed all these - his opinion
13 is as follows.
14 MR. RUCKDESCHEL: I understand.
15 MR. BISHOP: If I can have just a moment,
16 Your Honor.
17 THE COURT: Sure.
18 MR. RUCKDESCHEL: The next --
19 MR. BISHOP: Hold on a second.
20 MR. RUCKDESCHEL: We object.
21 MR. BISHOP: May I approach, Your Honor.
22 THE COURT: Sure.
23 MR. BISHOP: This, Your Honor, is a graph
24 from his work, his study, his meta-analysis,
25 where he has calculated the meta - the meta

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1 relative risk of vehicle mechanics and whether
2 there is a positive, negative, or no association
3 with mesothelioma.
4 That's his calculation. He's not reporting
5 on what somebody else interpreted, what somebody
6 else's opinion is. That's his calculation.
7 And he will tell the jury and the Court that
8 this is a well-accepted technique that
9 epidemiologists use, that he has used in this
10 case, and that's the subject of the paper he
11 wrote with these other gentlemen, and that's the
12 independent conclusion he drew.
13 MR. RUCKDESCHEL: The point Mr. Bishop has
14 just made is exactly the point I'm trying to
15 make. It's not his calculation. What he has
16 done is taken studies that other people did, and
17 he says, when I lump up all these studies
18 together and take all their conclusions that the
19 light was green, I concluded the light was green.
20 That's exactly what he is doing.
21 When I talked with Dr. Garabrant in his
22 deposition about how he selected the control
23 populations and this type of thing for the
24 underlying studies, he said, we didn't have any
25 involvement in that. They didn't.

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1 The McDonald study, again, it's based on
2 death. There is no evidence that these people
3 ever did a brake job. Their death certificate
4 said garage.
5 The Teta study is based on similar
6 information. These studies are based on hearsay.
7 They are lumping together lots of hearsay
8 statements, and then those authors conclude
9 something.
10 What Dr. Garabrant does and his co-authors
11 do in the meta-analysis, they take all that stuff
12 and lump it together and say, now, we have all
13 these statements we can't talk about
14 substantively. We want to say we can lump them
15 all together and come up with a number.
16 The number includes all these individually
17 inadmissible things, and they don't become
18 magically admissible if you lump them together,
19 and it's grossly misleading to the jury.
20 What it does, it leaves me with no choice
21 but to cross-examine him about the specific
22 studies, and then it opens it all up. And that's
23 not proper because he's not allowed to talk about
24 the McDonald study or the Agudo study and can't
25 talk about the Teta study and can't talk about

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1 any of those things.
2 And they can't wash it and say here is the
3 number I got when I added up all these other
4 numbers that I can't tell you about because it
5 leaves me in a position where I have no choice
6 but to go back and do it.
7 What's equally important, Your Honor, is
8 Mr. Bishop I think will not argue with me that
9 the testimony Dr. Garabrant is going to give is
10 that it is my conclusion that individuals who
11 fall within the job title vehicle mechanic are
12 not at a statistically increased risk for
13 developing mesothelioma.
14 Mr. Mallia doesn't have the job title
15 vehicle mechanic, a point that has been made
16 abundantly clear by the Defendants in this case.
17 None of these studies have any information
18 about the work practices of the individuals in
19 the study.
20 And I asked Dr. Garabrant about that in his
21 deposition. I said, do we know anything about
22 what these people did with brakes so that we
23 would know that their work practices were similar
24 to Mr. Mallia's, and thus, their exposure was
25 similar to Mr. Mallia's?

Page 37 1 And he said, no. We just presume that these 2 studies are big enough that they include people 3 like Mr. Mallia. 4 It's speculation. This may be a useful 5 study for public health purposes to look and try 6 to determine what groups of people are getting a 7 lot of mesothelioma, but it's not relevant and 8 it's misleading to the question of whether 9 Joe Mallia got mesothelioma from exposure to 10 asbestos or from working with brakes. 11 I asked Dr. Garabrant in deposition, I said, 12 Dr. Garabrant, if the question that we are trying 13 to answer is whether you can get mesothelioma 14 from exposure to asbestos that occurs when you 15 manipulate new friction materials by sanding, 16 grinding, filing, what's the study that we would 17 have to do? 18 And he says, you want me to design that 19 study? 20 And I said, yes. 21 He says, okay, here is what we do. We would 22 have to identify a group of people like 23 Mr. Mallia -- he didn't use the phrase like 24 Mr. Mallia, but I am inserting that in there -- 25 whose only known exposure to asbestos was to	Page 39 1 draw meaningful conclusions about Mr. Mallia, and 2 he is the perfect example because he is over here 3 in the construction stuff on Mr. Bishop's board. 4 That's where Joe Mallia shows up in an 5 epidemiological study because his job title in 6 many of his medical records is construction. And 7 that's why it doesn't work, and that's why it's 8 fundamentally misleading. 9 None of the data that Dr. Garabrant combined 10 has any basis in fact for application to 11 Mr. Mallia other than pure speculation. There is 12 no information in any these studies about how 13 much these individuals were exposed to, 14 how - about how long they did brake jobs, for the 15 number of brake jobs they did, for whether they 16 sanded it, whether they filed, whether they 17 ground. There is none of that. Whether they 18 blew out, whether they used respirators, whether 19 they used dust control like vacuums instead of 20 using the air, whether they cleaned up after 21 themselves. 22 There is no information that allows us to do 23 anything other than speculate as to whether those 24 people are substantially similar to Mr. Mallia. 25 So it's really no different than any other
Page 38 1 sanding, grinding, or filing brakes. Then you 2 would have to identify a group of people that 3 were exactly like Mr. Mallia but didn't have that 4 exposure, they didn't have any other exposure and 5 didn't sand and grind and file brakes, and follow 6 those groups for 40 years. And then you compare 7 how much mesothelioma in group one versus how 8 much mesothelioma in group two. Then we have 9 exposed in a substantially similar way to 10 unexposed. 11 And I said, well, Dr. Garabrant, has that 12 study been done? 13 And he says, I don't know of any. 14 And that's the point. You can use 15 epidemiology to point at individuals and make 16 determinations about specifically individuals if 17 you know you've got exposed and you know you have 18 unexposed. 19 The example we are all familiar with is 20 thalidomide. The women who took thalidomide 21 while pregnant had a higher instance of birth 22 defects. You either took thalidomide or you 23 didn't, and your child either has a birth defect 24 or it doesn't. 25 This type of epidemiology can't be used to	Page 40 1 time where we come in and try to use something as 2 an example in court. 3 Dr. Longo can't come in and talk about the 4 numbers in his studies because they don't measure 5 Joe Mallia's exposure, same with Dr. Weir, and 6 the same with an epidemiologist. 7 If you don't have studies that tell us about 8 Joe, you can't use studies where you are 9 speculating and say, well, this allows me to draw 10 conclusions about Mr. Mallia. 11 And this is - this is more than just a 12 cross-examination issue, Your Honor. This is 13 fundamentally misleading to the jury, it's 14 fundamentally misleading. If it comes in, it's 15 going to create this thing, this high drama, as 16 all of these heads when there is no factual basis 17 for the application. 18 And Dr. Garabrant was very candid in his 19 deposition. He said, we just presume that the 20 groups are big enough that they include a variety 21 of work practices. That doesn't help us in this 22 case. 23 MR. BISHOP: Your Honor, that's 24 cross-examination. He is going to tell Your 25 Honor and the jury that this is what

Page 41 1 epidemiologists do every day. 2 If they had to do the kind of study that he 3 mentioned, they do studies every day of 4 occupations to draw reasonable inferences about 5 whether people that do certain kinds of work are 6 at increased risk of disease. That's all for 7 cross-examination. 8 I know he is not going to quote from these 9 studies, but to use those as examples, Your 10 Honor. There are 20 studies, and most of those 11 studies - and they are in peer-reviewed medical 12 and scientific journals, they have been subject 13 to peer review, and the epidemiologists drew 14 conclusions, and many of them they said 15 specifically there is no evidence of increased 16 risk for auto mechanics. 17 And he certainly is entitled, Your Honor, to 18 do that in this courtroom. He, in fact, did a 19 meta-analysis. 20 THE COURT: I am not denying he can make 21 that statement, as long as it's his opinion. 22 What we are talking about is this particular 23 exhibit, which seems to indicate he was reviewing 24 certain tests which are included in this list, 25 McDonald, Teta, whatever, and giving them a	Page 43 1 Mr. Bishop, you may proceed. 2 MR. BISHOP: Thank you, Your Honor. 3 Thereupon: 4 DR. DAVID HAY GARABRANT, 5 was called as a witness on behalf of the Defendant, 6 and having been first duly sworn, testified upon his 7 oath as follows: 8 THE COURT: You may proceed. 9 DIRECT EXAMINATION 10 Q. (By Mr. Bishop) Can you introduce yourself 11 to the Court and jury? 12 A. Yes, I am David Hay Garabrant. 13 Q. And what is your profession? 14 A. I am a physician, a medical doctor, and I am 15 a professor at the University of Michigan. 16 THE REPORTER: Can I ask to you spell your 17 name? 18 THE WITNESS: G-a-r-a-b-r-a-n-t. 19 Q. (By Mr. Bishop) And that's in Ann Arbor, 20 Michigan? 21 A. Yes, it is. 22 Q. A little warmer here than it is in Ann Arbor 23 today? 24 A. I don't know about today. Yesterday when I 25 got up, it was minus five.
Page 42 1 percentage rating, which is in effect telling 2 this jury what that study said. And that I won't 3 allow, so I won't allow this exhibit. The 4 others, yes, as I have indicated, okay. 5 THE REPORTER: Now can we take a break? 6 THE COURT: As long as the jury is out, we 7 will take a break. 8 MR. RUCKDESCHEL: Thank you, Your Honor. 9 (Thereupon, after a brief recess, the 10 following proceedings were had:) 11 THE COURT: All right, bring in the jury. 12 (Thereupon, the jurors entered the 13 courtroom, after which the following proceedings 14 were had:) 15 THE COURT: You may be seated. 16 Ladies and gentlemen of the jury, a little 17 explanation is necessary. I think I told you 18 before opening statement that one of the reasons 19 for an opening is things get jumbled, they don't 20 come in orderly and logically. 21 The Plaintiff has not rested had, not 22 finished their testimony. This is a witness for 23 the Defendant, but unfortunately, he has flown in 24 and we have to hear him when he is here. I 25 wanted you to understand this is out of turn.	Page 44 1 Q. Doctor, can you tell the jury or summarize 2 for the jury your educational background? 3 A. Yes. I did my college studies in chemical 4 engineering. I got a degree in chemical engineering, 5 and then I went to medical school. 6 I should say where I went. I went to Tufts 7 University, outside of Boston. Then I went to 8 medical school, also at Tufts University, got my 9 medical degree in 1976. 10 Then I trained in internal medicine for two 11 years in Washington, D.C. at Georgetown University 12 Hospital. 13 Then I went to public health school for two 14 years at Harvard in Boston, and while I was in public 15 health school, I completed a residency in 16 occupational medicine, and I received a master of 17 public health degree and a master of science in 18 physiology. 19 After finishing public health school, I then 20 did my final year of training in internal medicine at 21 Boston University Medical Center in Boston, and I 22 completed that in 1981. 23 Q. And what board certifications do you hold, 24 Doctor? 25 A. I am board certified in internal medicine

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1 and also in occupational medicine.

2 Q. After your post graduate training, can you

3 give the jury some idea of what you have done up

4 until the present date?

5 A. Yeah. When I finished my training in 1981,

6 I was invited to join the faculty of the medical

7 school at the University of Southern California in

8 Los Angeles, and the department I was in was the

9 department of preventive medicine.

10 The research in that department was focused

11 on cancer epidemiology, in other words, looking at

12 patterns of cancer in the populations and trying to

13 identify risk factors. My work while I was at USC

14 was looking at occupational causes of cancer.

15 I was at USC from 1981 to '88. I was given

16 tenure there, and in 1988 I was offered the position

17 as head of occupational medicine at the University of

18 Michigan. So I moved with my wife and children to

19 Ann Arbor, that was 17 years ago, and I am now

20 professor of occupational medicine, professor of

21 epidemiology, and associate professor of emergency

22 medicine at the University of Michigan.

23 Q. Doctor, can you tell the jury what

24 occupational medicine is?

25 A. Yeah. Occupational medicine is a discipline

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1 within the broader field of preventive medicine, and

2 the goals in occupational medicine are to prevent

3 occupational diseases and occupational injuries. And

4 we do that by trying to identify the things that

5 cause people to be made ill, by identifying those

6 risk factors, by measuring those risk factors, and by

7 trying to prevent people from being exposed or from

8 being made ill.

9 We also treat people, I treat people who

10 have occupational illnesses, so I have clinic, I see

11 patients in clinic who have been exposed to chemicals

12 and have been made ill or have been exposed to

13 chemicals and are concerned whether they are made ill

14 or will get ill in the future.

15 I do return-to-work evaluations. So if

16 someone, for example, has asthma and needs to know

17 whether it's safe to go back to a dusty environment,

18 someone has to say, no, that's not a safe

19 environment, or yes, that is a safe environment that

20 you can go back to work. That's the sort of thing I

21 do.

22 MR. RUCKDESCHEL: Your Honor, may we

23 approach briefly.

24 (Thereupon, the following proceedings were

25 had out of the hearing of the jury:)

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1 MR. RUCKDESCHEL: I have a concern about

2 where we are going, and I want to raise it now so

3 I'm not overly disruptive to Mr. Bishop.

4 Dr. Garabrant's report lists he has three

5 opinions, all of those opinions are specifically

6 regarding the epidemiology.

7 Now, Dr. Garabrant is also an occupational

8 medicine doctor as part of his qualifications. I

9 don't have an objection to Mr. Bishop inquiring

10 what he is qualified as, but I feel we are

11 starting to fray on how occupational medicine and

12 public health relate to this case, and that is

13 not what Dr. Garabrant was offered as an expert

14 to do, he was offered to talk about the increased

15 risk about the epidemiological studies.

16 So I object to that to the extent that

17 that's where we are headed.

18 MR. BISHOP: That's his background and

19 training. That's all I am going over.

20 MR. RUCKDESCHEL: As long as that is what we

21 are talking about. I am concerned that it fray.

22 (Thereupon, the following proceedings were

23 had within the hearing of the jury:)

24 Q. (By Mr. Bishop) Dr. Garabrant, in addition

25 to your academic positions at the University of

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1 Michigan, have you held other positions of

2 leadership?

3 A. I guess so. I have served on study sections

4 for the National Institutes of Health. The study

5 sections are the groups of scientists who review

6 grant proposals and score them for funding.

7 I am currently on the scientific advisory

8 panel for a nonprofit research foundation, the Mickey

9 Leland National Urban Air Toxics Research Center in

10 Houston. That's a congressionally mandated research

11 group that funds research into air pollution.

12 I have been on the editorial board of the

13 Journal of Occupational Medicine, and I have held a

14 number of positions, administrative positions at the

15 University of Michigan in addition. Those would be

16 examples.

17 Q. All right. In some of those administrative

18 positions, are you currently the director for the

19 Center for Risk Science and Communication?

20 A. I am.

21 Q. Now, you mentioned journals, and you

22 mentioned you served on an editorial board of a

23 peer-reviewed medical journal.

24 Have you also served as a reviewer for a

25 number of journals that relate to the field of

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1 epidemiology and occupational medicine?

2 A. Yes. I continue to do that. I have done

3 that for years.

4 Q. What have been your research interests at

5 the University of Michigan?

6 A. They have been principally occupational

7 cancer epidemiology, looking at patterns of cancer in

8 populations and trying to identify why people are at

9 increased risk for cancer, or in some instances, why

10 some people are at low risk for cancer.

11 For example, I worked on colon cancer for

12 20-some years. My colleagues and I identified that

13 exercise, physical activity puts people at reduced

14 risk of colon cancer, protects against colon cancer.

15 That observation we made 21 years ago has been

16 replicated over 50 times. It's widely accepted as

17 true.

18 I worked on pancreas cancer, trying to find

19 risk factors for pancreas cancer. We looked at a

20 study looking at pesticides, actually looking at

21 chemicals in pancreas cancer, we did that for a

22 chemical manufacturing company, and found a strong

23 association between DDT and risk of pancreas cancer.

24 And also two DDT-related pesticides and risk of

25 cancer. We recorded that in the Journal of National

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1 Cancer Institute.

2 Let's see, in addition to cancer, we have

3 done - my colleagues and I have done studies of

4 neurologic diseases in relation to chemicals,

5 particularly pesticides. We have a big study right

6 now looking at patterns of mortality, patterns of

7 death in men and women who work in the automobile

8 plants at the Ford Motor Company. That study is

9 being done with funding from the United Auto Workers

10 and Ford.

11 MR. RUCKDESCHEL: Object to the narrative.

12 THE COURT: I don't know how it could not be

13 narrative. The question is what organizations or

14 studies he has made. No. Overruled.

15 THE WITNESS: So that study looks mostly at

16 the cancer risks amongst people who work in

17 factories, making transmissions and doing metal

18 stamping where there is a lot of exposures of

19 mixes of oil, machine fluids, cutting oils, lots

20 of other chemicals, as well, welding fumes, et

21 cetera.

22 Principally looking to see whether those

23 exposures put people at increased risk of any

24 particular types of cancer. That study involves

25 almost 55,000 people.

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1 Q. (By Mr. Bishop) Dr. Garabrant, the

2 research you have told the jury about, have you

3 received funding from a variety of governmental

4 agencies, as well?

5 A. Yes, I received funding from the National

6 Cancer Institute, the National Institute for

7 Occupational Health - Safety and Health, NIOSH is the

8 acronym, the National Institute for Environmental

9 Health Sciences, private foundations, such as the

10 American Cancer Society, state agencies, state health

11 departments, et cetera.

12 Q. Where are you licensed to practice medicine,

13 Doctor?

14 A. I have an active license in Michigan right

15 now. I also hold licenses that are inactive in

16 Washington, D.C., Maryland, Massachusetts and

17 California, which are all the places that I have

18 lived while I was in earlier parts of my career.

19 Q. Dr. Garabrant, have you published in

20 peer-reviewed medical and scientific journals the

21 results of your research on epidemiology?

22 A. Yes, many times.

23 Q. Have you published textbooks, as well?

24 A. I have published chapters in textbooks, yes.

25 Q. Now, in addition to your research

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1 responsibilities, do you teach, as well?

2 A. In large part of my job is teaching. I

3 teach a number of courses.

4 This semester I am teaching risk assessment.

5 Next semester I will be teaching field methods in

6 epidemiology.

7 Let's see, this semester I co-taught

8 research methods in occupation environmental

9 epidemiology. Next semester I co-teach environmental

10 disease.

11 Q. Are you a member of a number of professional

12 societies?

13 A. Yes, I am.

14 Q. Many of those deal with the issue of

15 epidemiology?

16 A. They deal with both occupational medicine

17 and epidemiology, yes.

18 MR. BISHOP: Your Honor, may I approach?

19 THE COURT: You may.

20 Q. (By Mr. Bishop) Doctor, let me hand you

21 what appears to be a copy of your curriculum vitae.

22 Is that a current curriculum vitae that

23 summarizes your qualifications and experience?

24 A. Yes. It's a few months out of date, but

25 it's pretty much current.

Page 53 1 MR. BISHOP: Your Honor, we ask that be 2 marked for identification. 3 THE COURT: Let it be so marked. 4 THE CLERK: Thank you. 5 Q. (By Mr. Bishop) Among the research that 6 you have conducted, have you looked at whether 7 vehicle mechanics are at increased risk of 8 mesothelioma? 9 A. Yes, I have. 10 Q. Have you published on that? 11 A. Yes, I have. 12 MR. BISHOP: Your Honor, at this time we 13 would offer Dr. Garabrant as an expert in the 14 fields of occupational and preventive medicine 15 and epidemiology. 16 THE COURT: Mr. Ruckdeschel, do you wish to 17 inquire? 18 MR. RUCKDESCHER: No, Your Honor. 19 THE COURT: I will permit him to testify as 20 an expert in those areas. 21 MR. BISHOP: Thank you, Your Honor. 22 Q. (By Mr. Bishop) Doctor, how do folks like 23 yourself go about determining what a cause of cancer 24 is in humans? 25 A. There are a number of things that you have	Page 55 1 knowledge that some types of asbestos cause 2 mesothelioma and that some occupations put people at 3 increased risk for mesothelioma has come from 4 epidemiology, that's where it comes from. 5 Q. If we know that something is a carcinogen 6 and it increases the risk of cancer in certain 7 occupations, why do we have to go and bother and 8 study another occupations to see whether work in that 9 occupation carries a risk of developing disease as a 10 result of that exposure? 11 MR. RUCKDESCHER: Objection. 12 THE WITNESS: It's very straightforward. 13 MR. RUCKDESCHER: Objection. Can we 14 approach? 15 THE COURT: Yes. 16 (Thereupon, the following proceedings were 17 had out of the hearing of the jury:) 18 MR. RUCKDESCHER: This is exactly what we 19 got into yesterday with Dr. Weir, this concept of 20 increased risk versus risk. Dr. Garabrant was 21 asked the set-up question, increased risk. 22 Mr. Bishop asked whether we need to study because 23 of increased risk, not risk but increased risk. 24 And Your Honor made a ruling yesterday that 25 the witness has to right to say he has an opinion
Page 54 1 to do. Are you talking about doing research or 2 reviewing the literature and trying to reach 3 conclusions or both? 4 Q. Both. 5 A. Okay. Well, most of what I do is research. 6 So I design and conduct research studies to look at 7 people who handle chemicals and other factors, but my 8 work is focused on chemical exposures and cancer, to 9 see whether there is increased risk of cancer. 10 And so I look principally at what I will 11 call epidemiologic science, to try and identify risk 12 factors for cancer. And that's the focal point of 13 trying to figure out what causes cancer in humans. 14 It's the most important discipline. 15 Q. Now, let me give you an example, 16 Dr. Garabrant, and let's talk specifically about 17 asbestos and mesothelioma. 18 In your opinion, can asbestos cause 19 mesothelioma? 20 A. Some types of asbestos clearly cause 21 mesothelioma. 22 Q. In your opinion, has epidemiology 23 demonstrated that certain occupations are at 24 increased risk of mesothelioma? 25 A. There is no question about it. And that	Page 56 1 based on his study, what he has read, as to 2 whether there is a risk but not an increased 3 risk. 4 What Dr. Garabrant is going to talk about 5 now is mechanics are not, in his opinion, at an 6 increased risk for disease. 7 THE COURT: The only problem I have is Weir 8 was not an epidemiologist. 9 MR. BISHOP: Exactly. 10 THE COURT: This man is. Epidemiology deals 11 with whether or not there is an increased risk. 12 MR. RUCKDESCHER: I understand, but 13 increased risk of a job category that Mr. Mallia 14 is not in is not what this case is about. 15 MR. BISHOP: That's his argument. 16 THE COURT: Agree, that's your argument. 17 MR. RUCKDESCHER: Mr. Bishop argued 18 yesterday that epidemiology is a subset of 19 toxicology, and Your Honor then allowed Dr. Weir 20 to talk about epidemiology. And that's precisely 21 what the representations were to the Court. 22 Toxicology is bigger than epidemiology, and 23 he was allowed to testify. That was their 24 proffer. 25 So you can't now say this is different

Page 57 1 because he was a toxicologist and this guy's an 2 epidemiologist. They can't have their cake and 3 eat it, too, and that's what they did. Now they 4 want to have the same testimony from somebody 5 that they said is in the same field. And that's 6 different, and I object for the same reasons that 7 we did with Dr. Weir. 8 The question here isn't whether mechanics in 9 general are at increased risk, it's whether 10 people that do what Joe Mallia did can get this 11 disease, it's whether they can get this disease. 12 Joe Mallia has a zero or 100 percent chance 13 of getting mesothelioma. There is no comparison 14 group for him. The study has never been done, 15 and you can't talk about it. It's confusing to 16 the jury, and it doesn't lend any reasonable 17 inference to the jury. They are going to misuse 18 it because mechanics as a group haven't been 19 measured to have an increased risk against a 20 non - non-controlled population. They don't have 21 a controlled population that is not exposed. 22 Then the rate of the disease in the exposed but 23 unknown category is higher than or equal to the 24 rate of disease that Mr. Mallia isn't in. It's 25 nonsensical and it's going to confuse the jury.	Page 59 1 That's it. There is no facts to support it, just 2 a leap of faith. And it's useful for public 3 health, but not useful for this case. 4 MR. BISHOP: He is trying to hijack science, 5 that's what they are doing. He will testify 6 epidemiology is how they go about determining 7 cause of disease in human populations. 8 MR. RUCKDESCHEL: Populations, not 9 individuals. 10 MR. BISHOP: That's how he as an 11 occupational medical specialist in epidemiology 12 draws conclusions in individual cases. They can 13 argue about whether it's the right category or 14 not. 15 A vehicle mechanic will be doing that work 16 more often than someone who does that as well as 17 construction work. 18 He has published on the subject and has been 19 accepted in peer-reviewed and scientific 20 journals. If you want to look at the people 21 doing vehicle work -- 22 MR. RUCKDESCHEL: Not individuals, 23 populations. And I can read you the deposition. 24 MR. BISHOP: He can draw the conclusions he 25 draws from that, and it's perfectly appropriate
Page 58 1 It's fundamentally wrong. 2 THE COURT: What is Mr. Mallia's -- 3 MR. RUCKDESCHEL: If Mr. Mallia passed away 4 tomorrow and there was an epidemiological study 5 like the McDonald study, Mr. Mallia would be in 6 the pavement striping study and never had the job 7 title mechanic. That is what his occupation 8 would be listed on his death certificate. If you 9 look at his medical records, none of his medical 10 records ever said he was a mechanic. 11 He wants to look at studies of mechanics or 12 garage workers that say this. He's not one of 13 them. 14 MR. BISHOP: Your Honor, that's his 15 argument. 16 THE COURT: I think if you define what 17 mechanics are, which includes filing, grinding, 18 scraping, replacing brake lining, why wouldn't 19 that be? 20 MR. RUCKDESCHEL: Because Dr. Garabrant has 21 conceded it's speculation whether any of the 22 people in any of those studies have done it. 23 I will show you the testimony. He said, we 24 just presume that these job categories include a 25 variety of different work practices. We presume.	Page 60 1 for an expert. 2 MR. RUCKDESCHEL: Generically he can say, I 3 reviewed the epidemiology, and it's my opinion, 4 but he can't say the epidemiology has an 5 increased risk, because it's not relevant. 6 And I can hand the deposition to Your Honor, 7 and we can go through. Don't know whether they 8 filed, don't know whether they sanded, don't know 9 whether they did any of the things. So we just 10 presumed that they did. 11 MR. BISHOP: If we accepted his definition, 12 we would never have any epidemiological studies. 13 They do this every day. They look for 14 occupations and trades to see if they are at 15 increased risk. 16 He can argue on cross-examination whether 17 that category covers everything Mr. Mallia did or 18 not, that's cross-examination. He will say 19 whether this establishes an increased risk and 20 whether someone has an increased risk and whether 21 you can say that exposure was a cause or 22 contributing factor. 23 MR. RUCKDESCHEL: The work Dr. Garabrant 24 does is extremely valuable in our society. The 25 work they do is about populations, groups, not

Page 61 1 individuals. 2 THE COURT: I understand. 3 MR. RUCKDESCHEL: They want to say you can 4 make generalizations about this group not 5 substantially similar to Mr. Mallia. 6 THE COURT: That's cross-examination. 7 MR. BISHOP: That's cross-examination, Your 8 Honor. 9 THE COURT: If they had a category mechanics 10 that he feels covers what you claim Mallia did, 11 why isn't that a category he can use? 12 MR. RUCKDESCHEL: Here is why, because it's 13 misleading to the jury. 14 MR. LIPMAN: Don't use your finger. 15 MR. RUCKDESCHEL: I'm not pointing at you, I 16 am pointing up. 17 Here is why, because Dr. Garabrant 18 acknowledges, and Mr. Bishop will acknowledge, 19 that none of these studies have any information 20 about what the individuals did and whether they 21 did the kinds of things that Mr. Mallia did, and 22 because there is no factual basis for it to say, 23 well, he can say, well, it's my opinion that this 24 is just misleading. It's misleading to the jury 25 because there is no measurement of exposure.	Page 63 1 for generalizing about that group, and 2 Mr. Mallia - there is no factual basis. It's no 3 different than a recreation. There is a 4 difference between what's useful in the courtroom 5 and what's useful in public health. 6 If we want to know, do we need to be 7 concerned as mechanics as a group getting a ton 8 of meso, then epidemiology is useful. If we want 9 to know about whether Joe Mallia got 10 mesothelioma -- 11 MR. BISHOP: That's his argument. 12 MR. RUCKDESCHEL: Dr. Garabrant will 13 admit -- 14 MR. BISHOP: They want -- 15 THE COURT: The jury will determine that 16 Joseph Mallia got ill from what he did with that 17 brake. 18 MR. RUCKDESCHEL: It's no different than my 19 saying Dr. Longo did 15 studies and found there 20 were 18 million fibers per cc in the samples of 21 my studies, because Dr. Longo's studies are not 22 numerically - you won't allow us to do that. 23 THE COURT: I said you weren't going to go 24 into that. I didn't deny it. 25 MR. BISHOP: That was his decision.
Page 62 1 THE COURT: Why would an epidemiologist ever 2 be able to determine a risk for a group if they 3 don't know what each individual in that group did 4 in that profession? 5 MR. RUCKDESCHEL: That's exactly what they 6 do. They just generalize for public health 7 purposes. 8 THE COURT: I understand, but that's within 9 their expertise. You have a right to point out 10 he doesn't know whether the people in this study 11 blew air into the tires or not, he doesn't know 12 whether they drilled a hole or not, but that's 13 cross. 14 MR. RUCKDESCHEL: That's the problem. 15 MR. BISHOP: That's cross. He wants to shut 16 off -- 17 THE COURT: If we take a group of doctors, 18 does he know what every one of those doctors did, 19 of course not. He is classifying them as 20 doctors. 21 MR. RUCKDESCHEL: That's right. 22 THE COURT: Why can't he classify them as 23 auto mechanics and presume they do all these 24 things? 25 MR. RUCKDESCHEL: There is no factual basis	Page 64 1 THE COURT: That was yours, not mine. 2 MR. RUCKDESCHEL: The same decision was made 3 with Dr. Weir. And the law is clearly there has 4 to be substantial similarity. That's the 5 problem, there is no substantial similarity. 6 THE COURT: He will testify his opinion. As 7 I understand what his deposition said, he 8 presumed auto mechanics includes all these things 9 that Joe Mallia did. It may not be a fair 10 presumption, but it's his presumption. 11 MR. RUCKDESCHEL: No, it's his speculation, 12 and that's what - you have no factual basis. 13 THE COURT: This jury can say if he is 14 speculating that, quote, auto mechanics includes 15 replacing brakes, working on clutches, drilling 16 into the wheel. 17 MR. RUCKDESCHEL: He is admitting. 18 MR. LIPMAN: Can we send the jury out? 19 Could you do that so we can discuss it, because 20 we have record evidence of what he knows and 21 doesn't know. 22 MR. RUCKDESCHEL: He has admitted there is 23 no factual basis for that presumption, that's the 24 problem. You can say I presume, but really it's 25 speculating, because there is no factual basis to

Page 65 1 support the presumption. 2 (Thereupon, the following proceedings were 3 had within the hearing of the jury:) 4 THE COURT: Step out a second. 5 (Thereupon, the jurors left the courtroom, 6 after which the following proceedings were had:) 7 THE COURT: Doctor, step outside. 8 (Thereupon, the witness left the courtroom, 9 after which the following proceedings were had:) 10 THE COURT: As I understand it, your 11 position, Mr. Ruckdeschel, is that this witness 12 has no idea, has no basis in fact for determining 13 what the class of auto mechanic, quote/unquote 14 does. 15 MR. RUCKDESCHER: Precisely. And I can read 16 you his testimony. 17 THE COURT: Go ahead. 18 MR. RUCKDESCHER: Doctor, do we know how the 19 mechanics in the McDonald study performed any 20 brake work that they may have performed? 21 Answer, we know they were garage workers. 22 Question, and to the extent that they 23 performed brake work, would you agree that we 24 don't have a videotape or other record that shows 25 how they did it?	Page 67 1 explicitly in the McDonald study. 2 Question, okay. We don't know whether they 3 used any dust control methods or wore a 4 respirator in the McDonald study, correct? 5 Answer, the McDonald study does not provide 6 information on that issue. 7 Question, and it provides no information 8 regarding the level of dust in the garages -- 9 And then I have to repeat the question 10 because they didn't get it. 11 Question, it doesn't provide any information 12 regarding the level of dust in the garages, where 13 these mechanics worked, correct? 14 Answer, there are no measurements of 15 exposure in the McDonald's study. There are 16 measurements of airborne exposures. 17 That must be a typo because there are not. 18 That must be a typo. 19 Question, and we don't know how often the 20 mechanics in the McDonald study may have 21 performed any brake work, correct? 22 Answer, the McDonald study does not provide 23 any information on that point. 24 We don't know how long the individuals in 25 the McDonald study worked as garage workers?
Page 66 1 Answer, that's correct. 2 Question, and there is no information in the 3 McDonald study about how they did it? 4 Answer, the McDonald study does not describe 5 how brake repair work was done. It simply 6 includes garage workers who were believed to do 7 brake work. 8 Question, and we don't know whether the 9 garage workers in the McDonald study opened the 10 boxes of brakes themselves? 11 Answer, the McDonald study does not say 12 anything in response to that issue. 13 Question, and we don't know whether the 14 mechanics in the McDonald study ground the 15 brakes, correct? 16 Answer, all we know is that they were garage 17 workers and that they were either cases or 18 controls. 19 Question, yeah. We don't know whether they 20 filed the edges of the brakes, whether they 21 sanded the surface of the brakes, or whether they 22 worked on cars or trucks, whether they did blow 23 out compressed air, or whether they cleaned up 24 after themselves, correct? 25 Answer, that is - that is not stated	Page 68 1 Answer, the McDonald study does not provide 2 information on that point. 3 It goes on. And then I said the Teta study. 4 And we don't know whether any of those 5 individuals performed brake work, they opened 6 boxes themselves, whether they ground the brakes, 7 whether they filed the edge or sanded the 8 surface, whether they were working on cars or 9 trucks, whether they swept up after themselves, 10 whether they used dust controls or wore a 11 respirator, what the dust level was, what the 12 frequency of any brake work was, what the 13 duration of their employment was, or whether they 14 did any other work potentially - that potentially 15 involved an exposure to asbestos, correct? We 16 don't know any of that information in the Teta 17 study? 18 And the answer from Dr. Garabrant: None of 19 that information is reported explicitly in the 20 publication. What we know is that these were 21 people who were auto repair and related service 22 workers, both cases and controls, and it is a 23 reasonable assumption that they did what is 24 typical in those occupations. 25 Now, the occupation that he has just

Page 69 1 discussed is automobile repair and related 2 services. Nobody knows what that means. 3 And I asked him, what is related services? 4 I would have to go back to the coding of the 5 Teta study. I do not recall it from memory. I 6 believe she used the Census Industry and 7 Occupation Coding, and I don't have that with me. 8 I believe she - the term I believe she used 9 was automobile mechanics and garage workers and 10 gas station attendants. 11 So this includes the guy that pump gas, all 12 right. And I would have to go back and review 13 it, all right. 14 So - and do you believe it included 15 individuals that were not performing mechanical 16 work such as gas station attendants? 17 And then more of the speculation. 18 Answer, it included gas station attendants, 19 but it is my understanding that in many instances 20 they do perform mechanical work. 21 Okay. But we don't know anything about how 22 often they may have done that? 23 This study does not give those details in 24 the publication. 25 And it's the same for all of the studies	Page 71 1 cells in a petri dish was the basis for allowing 2 their experts to conclude Mr. Mallia's 3 mesothelioma was asbestos-related. 4 This is the study of disease in human 5 populations. That's what allows people to 6 determine whether people are at increased risk 7 for cancer, and that allows them to determine if 8 they do develop cancer, the fact they develop 9 cancer was related to their working in that 10 occupation as opposed to the risk that all of us 11 have outside of working in that population. 12 This is the way epidemiologists go about 13 doing it. If we went to the extreme he contends, 14 which he can argue on cross examination, we would 15 never have epidemiological studies. It would be 16 impossible to put them together. 17 Here is a chart from Dr. Garabrant's 18 meta-analysis which was accepted obviously for 19 publication in a peer-reviewed scientific 20 journal, and you will see some of the studies he 21 has reviewed, you will see the exposure 22 information is not going to be the same for every 23 study. Sometimes they are characterized as 24 garage workers, other times they are specifically 25 characterized as brake wear, brake repair.
Page 70 1 that he is going to talk about. The information 2 isn't reported, it's an assumption that has no 3 basis in fact. It has no basis in fact, and so 4 we don't know whether they were exposed or not. 5 And so while in Dr. Garabrant's professional 6 life in public health, it may be useful 7 information, but in the courtroom, in the 8 courtroom it doesn't tell us anything about 9 Joe Mallia that's admissible in this case because 10 it's all based on the supposition that has no 11 fact behind it that the people in these groups 12 did the kinds of things that Joe Mallia did. 13 And that's the real danger of this. We 14 start talking about this with the jury, it's 15 going to get confusing, the issues are going to 16 get confused. It's misleading and it has no 17 basis in facts. It's no different than a work 18 practice simulation. 19 MR. BISHOP: Your Honor, I find it hard to 20 believe that he can argue that epidemiology, 21 which their own witness, Arnold Brody, said was 22 the way you determine the cause of disease in 23 human populations, is immaterial, when -- 24 MR. RUCKDESCHEL: That's not what he said. 25 MR. BISHOP: -- when a petri dish, growing	Page 72 1 He can go over that on cross-examination, 2 Your Honor, but it's clear what they do is they 3 classify people by an occupation that's close to 4 what those kinds of people do, and that's how 5 they classify people who make brake repair, they 6 classify them as motor vehicle mechanics. 7 In some of these studies, they went further 8 and classified them as the very people who do 9 brake repair. It's cross-examination, Your 10 Honor. 11 He is trying to cut off epidemiology, which 12 his own experts have said is the most important 13 thing in terms of determining the cause of 14 disease in human populations. 15 MR. RUCKDESCHEL: The Plaintiff's experts 16 absolutely have not. 17 THE COURT: I have heard enough. 18 What you are saying, in my opinion, goes to 19 the weight of his testimony, not his 20 admissibility. I am going to allow it. 21 Bring them back in. 22 THE REPORTER: Before we do that -- 23 THE COURT: You want a break? 24 THE REPORTER: Yes. 25 (Thereupon, after a brief recess, the

Page 73 1 following proceedings were had:) 2 (Thereupon, the witness entered the 3 courtroom, after which the following proceedings 4 were had:) 5 (Thereupon, the jurors entered the 6 courtroom, after which the following proceedings 7 were had:) 8 THE COURT: You may be seated. 9 You may proceed. 10 MR. BISHOP: Thank you, Your Honor. 11 Q. (By Mr. Bishop) Dr. Garabrant, when we 12 took a recess I was asking you about the fact that 13 you know there are elevated risks for mesothelioma in 14 certain trades and occupations. If you know that, 15 why would you need to study vehicle mechanics, for 16 example? 17 A. Because we know the risks vary, we know the 18 risks vary by type of asbestos. The evidence for 19 some types of asbestos that it causes mesothelioma is 20 very strong. And for chrysotile asbestos the 21 evidence is very controversial, not clear that it 22 causes it at all. 23 So the fact you see a risk in one occupation 24 doesn't mean you're going to see the risk in every 25 other occupation. Every chemical has some health	Page 75 1 human studies, and we do. 2 Q. What about in vitro research where they put 3 cells in a petri dish? 4 A. Similar answer, you can do experiments in 5 laboratories with cells or with parts of cells and 6 look for mechanisms. In other words, look for ways 7 in which chemicals affect the cells. 8 But that doesn't tell you what happens to 9 living human beings. You have to study living human 10 beings and the exposures that they have to know what 11 happens to living human beings. 12 Things you can see in a cell don't 13 necessarily translate to what happens to a person as 14 they go about their business in society. 15 Q. Let me focus for a moment specifically on 16 mesothelioma. Are all mesotheliomas related to 17 asbestos? 18 A. No. 19 Q. Is there a percentage of mesotheliomas that, 20 in your opinion, are unrelated to asbestos? 21 A. Yes, there is, and I think that is widely 22 agreed upon, that there is a percentage of 23 mesothelioma not due to asbestos and not due to any 24 identified cause. 25 Q. Is there a background rate, therefore, for
Page 74 1 risk associated with it, but the risk is related to 2 the dose, like - like pharmaceuticals, if you take 3 too much, adverse health effects occur. If you take 4 the right amount, for pharmaceuticals you get a 5 benefit, for chemicals we don't usually believe that. 6 The point is if you want to know whether 7 there is increased risk of disease from asbestos in a 8 certain occupation, you have to study that 9 occupation. You cannot assume that there is 10 increased risk without actually studying it. That's 11 not a fair assumption. 12 Q. Will animal studies, animal inhalation or 13 injection studies tell us whether vehicle mechanics 14 have an increased risk of mesothelioma from their 15 work? 16 A. No, animal studies tell you whether you can 17 cause cancer in animals with asbestos by some mode of 18 exposure. You can't extrapolate from rats or mice 19 and say that has to be true in humans. That's not a 20 reliable thing to do. 21 Most scientists are reluctant to take 22 results from mouse studies or rat studies and make 23 conclusions about humans based on those studies, 24 especially when there is evidence in humans to look 25 at. Why would you rely on a mouse study if you have	Page 76 1 mesothelioma unrelated to asbestos? 2 MR. RUCKDESCHEL: Objection. It's beyond 3 every scope of what was offered in his report and 4 in his deposition. It's not within the purview 5 of the opinions Dr. Garabrant has stated - going 6 to opine on at trial. 7 MR. BISHOP: It will exactly explain why you 8 have to look for increased risk. 9 THE COURT: Rephrase your question. I think 10 we're going a little far afield. 11 MR. BISHOP: All right. 12 Q. (By Mr. Bishop) If as you told the jury 13 there is a percentage of mesotheliomas unrelated to 14 asbestos, then how do you, there in your field of 15 epidemiology, determine whether mesothelioma is 16 related to asbestos? 17 A. The principle way we do that is to identify 18 people who have asbestos exposure and people who do 19 not have asbestos exposure, and to compare the rates 20 of mesothelioma in the two groups. 21 There is a background rate for mesothelioma. 22 MR. RUCKDESCHEL: Objection, move to strike. 23 Again, this is beyond the scope of his 24 opinions. 25 MR. BISHOP: It is not, Your Honor.

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1 MR. RUCKDESCHEL: It's not fair.
 2 THE COURT: Let me see his report.
 3 Let me hear the question again.
 4 (Thereupon, the court reporter read the
 5 previous question, after which the following
 6 proceedings were had:)
 7 THE COURT: Your objection is it was not
 8 included in his report?
 9 MR. RUCKDESCHEL: The objection is that the
 10 answer goes beyond the opinions that he has
 11 proffered in his report. And I would have asked
 12 him about these things in his deposition if I'd
 13 known he was going to talk about them.
 14 THE COURT: Sustained.
 15 Q. (By Mr. Bishop) Doctor, I want to explore
 16 with you epidemiology.
 17 Have you brought some slides with you today
 18 that you believe will help illustrate how
 19 epidemiology goes about determining the cause of
 20 disease in humans?
 21 A. Yes.
 22 MR. BISHOP: Your Honor, may he step down to
 23 show the slides?
 24 THE COURT: Of course.
 25 (Witness leaving the witness stand).

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1 Q. (By Mr. Bishop) Doctor, let me know when
 2 you're ready.
 3 A. I'm ready.
 4 Q. Doctor, what is epidemiology?
 5 A. Okay, it's the study of the distribution of
 6 disease and the causes of disease in human
 7 populations. And the word epidemiology comes from
 8 the word epidemic, so it's the study of epidemics,
 9 the pattern of disease in populations of people.
 10 Q. Does it go back a couple of hundred years?
 11 A. Yeah, that's about right. Its earliest
 12 roots were in dealing with the epidemics of cholera
 13 that used to sweep through London, and were
 14 recognized by a very astute physician as being due to
 15 contaminated water.
 16 So he looked at the patterns of disease in
 17 London and realized it correlated well with one of
 18 the water supplies and not with the other water
 19 supply, and he was able to stop an epidemic of
 20 cholera.
 21 Q. Dr. Garabrant, can you give the jury some
 22 more recent examples of how epidemiology helped us
 23 understand the cause of disease in humans?
 24 A. Oh, sure. There are many.
 25 The health effects of smoking, cancers from

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1 smoking, chronic obstructive pulmonary disease, much
 2 of that evidence has come from epidemiologic studies.
 3 The ability of ionizing radiation causing
 4 cancer to humans comes from epidemiology, comes from
 5 ongoing studies going back to 1945 that followed the
 6 survivors of the atomic bomb blasts in Japan. They
 7 have been followed since 1945 and clearly show an
 8 excess of cancer.
 9 The Polio vaccine was demonstrated to be
 10 effective and safe in a huge epidemiology study. It
 11 was reported in 1955, actually at the University of
 12 Michigan, one of the things my school was most proud
 13 of, the field trial showed that the Polio vaccine
 14 worked.
 15 It was an epidemiology study involving
 16 millions of chickens, and it was reported out --
 17 THE REPORTER: I'm sorry I'm having trouble
 18 hearing you.
 19 THE WITNESS: I said it was reported at the
 20 Rackham Graduate School at the University of
 21 Michigan showing that the vaccine worked.
 22 Right now we are worried, deeply worried
 23 about avian flu. There are epidemiologists all
 24 over the world watching the pattern of disease.
 25 And we know that there are a few people who have

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1 been infected with the avian flu in China and
 2 other parts of Asia.
 3 What we are watching for is the day that
 4 that flu can jump from person to person. Right
 5 now it's capable of going from birds to people.
 6 It's capable of spreading among the bird
 7 population, but it has not yet spread in person
 8 to person.
 9 When we see evidence that it can spread from
 10 person to person, then it has completed the
 11 crucial step that might allow it to become an
 12 epidemic. And epidemiologists are watching that
 13 all over China and Asia at the Centers for
 14 Disease Control in Atlanta.
 15 That's what they do. We are trying to gear
 16 up to be ready with vaccine if that occurs.
 17 Q. (By Mr. Bishop) Doctor, is there a method
 18 for doing this as an epidemiologist?
 19 A. There are methods, yes.
 20 Q. Do you have a slide that illustrates that?
 21 A. Yeah. Epidemiology is a branch of science,
 22 like all science it has a standard set of methods. I
 23 get some pleasure in showing this. My youngest child
 24 is in tenth grade, and in ninth grade science she
 25 learned the scientific method. I worked with her on

Page 81 1 it. 2 So epidemiology follows this like all 3 branches of science. Typically something gives a 4 scientist an idea, hey, I think that such and such 5 might be true. I think that this chemical might 6 cause this disease, okay. 7 That allows you to form a hypothesis. 8 That's just a statement of your idea. Once you have 9 a hypothesis you design a scientific study. How can 10 I evaluate whether that hypothesis is right or wrong? 11 So you design a study, you write a study protocol and 12 you collect data. 13 It's always important to have a control 14 group, particularly in epidemiology you always have a 15 study group and a control group. You collect your 16 data, you analyze your data. And then you interpret 17 what the analysis say and try to answer the question, 18 whether the data supports your hypothesis. 19 If it does, you find an association between 20 exposure and the disease. In other words, hey, the 21 chemical is associated with the disease. Then you 22 say, okay, my hypothesis was right. 23 If the data does not support the hypothesis, 24 you don't find any association. Then you say, gee, 25 it doesn't look like that chemical causes that	Page 83 1 A. Yes. Epidemiologists do two basic types of 2 studies. There are other variations but most 3 epidemiology is based on either cohort studies or 4 case control studies. 5 A cohort study is - follows this design. 6 You take a group of people who have some exposure in 7 common, and that group might include thousands of 8 people. 9 I mentioned my study in the auto industry, 10 55,000 people who worked in transmission plants. 11 And so you have a group of people who all 12 have some exposure, and then you can choose a 13 comparison group that doesn't have the exposure. Let 14 me do this with an example. 15 Suppose we wanted to know whether drinking 16 coffee causes pancreas cancer, that's a famous 17 example. The way we would do it is pick a group of 18 coffee drinkers and a group of people who never drank 19 coffee. 20 We then follow both groups for years. 21 Cohort studies we often follows groups for 10, 20, 22 30, 40 years. And as that time passes we would tally 23 up how many of them got pancreas cancer. We would do 24 that in the coffee drinkers and do that in the people 25 who never drank coffee.
Page 82 1 disease, my hypothesis was wrong. 2 You have to start over again, revise your 3 hypothesis, design a new study, go through the 4 process again. That's the scientific method. 5 Q. Why aren't case reports enough to do that? 6 A. Well, the trouble with case reports is that 7 they don't have a control group. There is no 8 comparison group, and they are not amendable to any 9 formal analysis of the data. They are nothing more 10 than a set of observations. 11 Gee, I've seen three cases of this disease 12 and they had this exposure, this genetic factor, they 13 eat this type of food, they all visited this area of 14 the country, but there is no formal analysis of the 15 data and they are not adequate to protest the 16 hypothesis. 17 Q. What's the importance of the control 18 population? 19 A. It allows you to measure whether there is an 20 association between exposure and disease. It is 21 different than what you would expect in the absence 22 of exposure. 23 Q. Now that we talked about the scientific 24 method, are there particular kinds of studies that 25 epidemiologists can do to get at these answers?	Page 84 1 And what we want to do is compare the two 2 groups, which group has the higher rate of disease. 3 If the rates are the same you say, hey, coffee 4 drinkers don't get more pancreas cancer than 5 non-coffee drinkers, there is no association. 6 Q. You might find the rates are greater or 7 lower or the same? 8 A. Right. And that's what this slide shows. 9 If the two groups have equal rates of disease, you 10 say coffee isn't associated with pancreas cancer. If 11 you have more rate of disease, you say the coffee 12 drinkers have more risk than the non-coffee drinkers. 13 If you saw that the coffee drinkers had less 14 disease than the non-coffee drinkers, you would say, 15 gee, they have a lower rate. That might suggest that 16 coffee protects against pancreas cancer. 17 Theoretically you can get any of these three 18 results. 19 Q. Do you compare the rates of cancer in the 20 exposed populations versus the unexposed in this 21 example? 22 A. That's exactly right. That's exactly right. 23 Now, that comparison is one of the key 24 elements of good science. 25 If you don't have the comparison group all

Page 85 1 you know is that among coffee drinkers, two out of 12 2 in this example, got the disease. 3 The question is, is that what you would 4 expect to see in non-coffee drinkers? Is that too 5 much, is that too little? We can't interpret it as 6 showing that coffee does or doesn't do anything, you 7 just have a rate among coffee drinkers. You need a 8 rate among non-coffee drinkers. 9 Q. If you found no association, what would you 10 expect to see? 11 A. Well, let's - so here is the calculation 12 that we do, this is standard in epidemiology. 13 We take the rate among the exposed, which in 14 this example is two out of 12, and divide that among 15 the rate of the non-exposed, which in their example 16 is 12 out of 12. If the time rates are equal then 17 the ratio is one. So when the ratio is one we call 18 that a rate ratio or a relative risk, the risk of one 19 group relative to the other when the ratio or 20 relative risk is one. It means the rates are the 21 same, there is no association. 22 No association at all, coffee drinking does 23 not increase your risk of pancreas cancer, if that's 24 what the data showed. 25 Q. If there were a positive association, what	Page 87 1 exercise actually does, so you would have to do 2 further research to figure that out. 3 Q. Now, you talked about cohort studies. 4 You mentioned there was a second kind of 5 epidemiological study you and epidemiologists use, 6 and I think you said it was the case control study? 7 A. Yes. 8 Q. Can you tell the jury what a case control 9 study is? 10 A. A case control study has a different design. 11 What you do is go out and locate a group of people 12 who have the disease, like pancreas cancer. So you 13 would have to work with the hospitals and work with 14 the physicians who diagnose and are treating pancreas 15 cancer. You might have to work with the tumor 16 registry to find cases of the disease, and you put 17 together maybe 100 or 200 cases of pancreas cancer. 18 Again, you have to have a comparison group, 19 and the comparison group are - in this instance are 20 people who don't have pancreas cancer. We call them 21 controls, that's why it's a case control study. 22 So we have pancreas cancer and people who don't have 23 pancreas cancer. 24 And then we ask both groups, did you - have 25 you been a coffee drinker. And let's say, for
Page 86 1 would it show? 2 A. Here is a different example. 3 In this example let's say eight of the 12 4 coffee drinkers got the disease, and two of the 12 5 non-coffee drinkers got the disease. So eight over 6 12 divided by two over 12, that's a four-fold 7 association. That's a positive association that says 8 coffee drinkers are at four times the risk of 9 pancreas cancer as non-coffee drinkers. That's a 10 positive association. 11 Q. Could you also find a negative association? 12 A. Sure. Let's say the data showed two out of 13 12 coffee drinkers got it, eight out of 12 non-coffee 14 drinkers got it. 15 Now the ratio is flipped. So instead of 16 four, it's .25 or one-quarter, that's a negative 17 association. 18 Q. And could you further test a hypothesis that 19 coffee drinking was protective? 20 A. Well, if this is what the data showed it 21 would suggest it was protective. I would go and try 22 to figure out why it was protective. Try to design 23 another study to say how could this be true, how 24 could it protect you against cancer? 25 Some things do protect against cancer, like	Page 88 1 example, among the people with pancreas cancer, four 2 of them said, yeah, I've been a coffee drinker. And 3 among the people who don't have pancreas cancer, two 4 of them said, yeah, I've been a coffee drinker. 5 Okay. What we do then is calculate the odds 6 of exposure in both groups. And if anybody - anybody 7 who has ever bet on a horse race or dog race knows 8 what odds are, it's the probability of winning over 9 the probability of losing, those are odds. 10 In this instance we say the number of people 11 who have the exposure divided by the number of people 12 who don't have the exposure among the cases, so four 13 over eight. 14 We do the same thing in the people who don't 15 have the disease, the controls. In this instance two 16 of them were coffee drinkers, ten were not. And then 17 we compare those odds in the two groups given this 18 comparison. 19 Q. And what do we call that comparison? 20 A. That's called an odds ratio, the ratio of 21 the odds. 22 So in this example we take the .5 over the 23 .2, and that gives us a two-and-a-half-fold risk. 24 What that says is that people with pancreas 25 cancer are two and a half times as likely to have

Page 89 1 drunk coffee as people without pancreas cancer. 2 That's a positive association. 3 And you can see you can end up with no 4 association if the two groups had equal habits, and 5 then the odds ratio would be one, no association. Or 6 if the people who were healthy drank more coffee than 7 the people with pancreas cancer, you could have an 8 odds ratio of less than one, which would suggest 9 maybe coffee protects against pancreas cancer. 10 Q. You used the term "relative risk" a moment 11 ago, can you describe what that is? 12 A. What the term relative risk is, it's sort of 13 the umbrella term for rate ratios and odds ratios. 14 It basically says compare the risk in two groups. 15 So in a cohort study we compare the rates in 16 the two groups, in a case control study we compare 17 the odds in the two groups. So you're measuring the 18 risk in one group compared to the risk in the other 19 group. 20 Q. How do we know whether it's a negative or 21 positive association looking at relative risk? 22 A. The good thing is that the - the 23 calculations are done in a manner such that when the 24 answer is 1.0, there is no association. So it 25 doesn't matter whether it's case control study or	Page 91 1 there was some subtle error. 2 I could give you an example of a subtle bias 3 that would give you a wrong answer. For example, 4 let's suppose that you - we're doing your case 5 control study of pancreas cancer and wanted to find 6 out if drinking coffee was a cause of pancreas 7 cancer. 8 You design a control cancer, and let's say 9 you're interested in whether obesity causes this 10 cancer. So you go for the cases for people who are 11 hospitalized, because pancreas cancer is a serious 12 disease, and you get their weight, and for the 13 controls that are healthy people. 14 And you say it sounds evenhanded on the 15 surface of it, but it's not because pancreas cancer 16 causes people to lose weight. So if you take their 17 weight out of the hospital charts, they're falsely 18 low. That's a bias, that's a systematic error. 19 If you don't realize that, what you end up 20 with is, gee, the pancreas cancer cases weigh less 21 than the controls. It looks like being thin is 22 associated with pancreas cancer. 23 That's a bias, that's a systematic error 24 that results in a wrong answer. So we always 25 evaluate epidemiology studies for systematic errors.
Page 90 1 cohort study, if the answer is one, there is no 2 association at all. 3 If it's above one, it's a positive 4 association, meaning the exposed people have a higher 5 rate of disease than the unexposed. If it's below 6 one, it's a negative association, meaning exposed 7 people have a lower rate of disease than the 8 unexposed people. 9 So 1.0 is the critical number for an 10 association versus a negative association, or I 11 should say a positive association versus a negative 12 or no association at all. 13 Q. Now, are all the positive associations 14 necessarily causal? 15 A. No. You can't say that. 16 Q. What are some of the things that you, as an 17 epidemiologist, have to look out for to determine 18 whether or not a positive association is a causal 19 association? 20 A. Well, there are a number of things to 21 evaluate, okay, and epidemiologists always worry 22 about bias, confounding and chance. 23 Okay, bias means that there has been some 24 systematic error in the study. It doesn't mean that 25 the investigator intentionally did it wrong, it means	Page 92 1 Confounding is another type of systematic 2 error, when there is some other factor that you 3 didn't control for. 4 So if you're looking at coffee drinking and 5 pancreas cancer, and let's say you find an 6 association but you don't deal with smoking. Well, 7 actually smoking and coffee drinking do correlate. 8 People who drink coffee tend to smoke more than 9 people who don't drink coffee, and causes pancreas 10 cancer. If you do not do that, you come up with the 11 wrong answer. 12 And the last one, in every study you have to 13 evaluate the role of chances. In other words, could 14 these findings have come about by chance alone when 15 there is really no association at all. And so we 16 always look to see whether the epidemiologist or 17 whether the scientist has evaluated the role of 18 chance. 19 Q. And do epidemiologists use statistical 20 methods to evaluate the role of chance? 21 A. Yes, those are the fundamental methods for 22 measuring the role of chance. 23 Q. Do you have a slide that illustrates that? 24 A. Yeah. There are two things that can be 25 done. One is to calculate -- the first one is

Page 93 1 values. We have all heard about confidence interval. 2 When you listen to the news and hear a story that a 3 Gallup Poll has evaluated how people think 4 President Bush is doing and 28 percent of them 5 approve of his handling of some issue, plus or minus 6 two percent, that's a confidence interval. 7 What they are saying, the data said 28 8 percent approve but the range, because of random 9 error, the range could be between 26 and 30, that's a 10 confidence error. 11 Epidemiologist calculate these. The 12 range - let's say you get a relative risk of 2.0. 13 You calculate a confidence level around it. And 14 that's the range of which the element of risk would 15 fall 95 percent of the time if you do the same study 16 over and over and over again, because it evaluates 17 the random error in doing a statistical sample. 18 What it means is the true relative risk. 19 The truth is likely to be close to what you measured 20 and unlikely to be -- it gets less and less and less 21 likely that the truth is out here or that the truth 22 is out here, and showing an example of confidence 23 interval. 24 Q. Do you as an epidemiologist, Dr. Garabrant, 25 like to see more than one study that shows a positive	Page 95 1 world set out to replicate that finding, with few 2 exceptions they couldn't. 3 Now there wasn't anything wrong with the 4 study that reported it, that's just the way the data 5 came out. Nobody criticized, gee, the data was 6 wrong, the data was phony, but other scientists 7 didn't find the same answer. 8 I still drink coffee. I don't believe 9 coffee causes pancreas cancer because the evidence 10 doesn't support it. Even though there is a positive 11 study, there is a lot of studies that say there is no 12 association there. So replication really matters. 13 Q. So how do you, you as an epidemiologist, go 14 about reviewing a series of studies to ultimately 15 determine whether there is, in fact, a causal 16 association? 17 A. Well, the first thing you do is you search 18 the scientific literature. And we can do that now on 19 line. You can do it on line. You can type in PubMed 20 and type in the keywords and find the studies. 21 You read them, look at the bibliography. 22 You get the studies they rely on and read them. You 23 try to assemble all the literature, all the 24 scientific literature that addresses that hypothesis 25 or that question.
Page 94 1 association before you draw conclusions regarding 2 causal associations? 3 A. Absolutely. 4 Q. And why is that? 5 A. One of the fundamental issues in science is 6 whether your findings can be replicated by other 7 scientists, all right. 8 If I do a study and I find a positive 9 association and I write it up and publish it in the 10 peer reviewed literature, what I'm doing is I'm 11 telling people here is how I did the work. Here are 12 my methods, here is how I got my answer. 13 The idea is that other people can go out and 14 repeat that study and see if they can get my answer. 15 That's really important. 16 The pancreas cancer and coffee issue is 17 actually a good example. There was a very famous 18 study published in the 1980s, a case control study of 19 pancreas cancer that reported that coffee drinking 20 was pretty strongly associated with pancreas cancer. 21 And it was published by the chairman of the 22 department of epidemiology at Harvard, a very 23 talented scientist. And got a lot of press coverage 24 because coffee drinking is pretty common, pancreas 25 cancer a bad disease. Epidemiologists all over the	Page 96 1 And then you abstract from those studies 2 what the relative risks and the confidence intervals 3 were. And you try to categorize case control studies 4 versus cohort studies, recent studies versus studies 5 done a long time ago, all sorts of ways of looking at 6 them. 7 And you try to sum them up. And the way you 8 sum them up is to try to take an average of what 9 those relative risks are. But it's a weighted 10 average because bigger studies get more weight, 11 little studies get less weight, and you try to do 12 that. 13 Q. Do you have a couple of examples of that? 14 A. Yeah, yeah. This is a study that looks at 15 whether cigarette smoking is associated with cancer 16 of the urinary tract. Urinary tract is the kidneys 17 and the bladder, okay. 18 So this is in the published literature. And 19 here is - here is what we typically do. 20 The little box represents the odds ratio. 21 In other words, the relative risk, and the bar around 22 it represents the confidence interval. 23 So in this analysis these scientists looked 24 at studies done in Europe. They have looked at 25 studies done in the United States. And what you see,

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1 they vary, they give different answers. They looked
2 at studies done back before 1980, studies done in the
3 '80s, studies done in the '90s, follow-up studies,
4 cohort studies, a synonym.

5 And as you look down the chart you see the
6 answers vary, but they are really centered pretty
7 nicely on one value, and that looks to me to be maybe
8 2.7. So what they say when you add them up is there
9 is about a 2.7-fold association between cigarette
10 smoking and cancer of the urinary tract.

11 Okay. And this vary - and this study is
12 very different. This one is significantly different
13 than all the others. But if you add them up using
14 any fair measure, you come up with about a 2.7-fold
15 association.

16 From that we conclude there is a positive
17 association, cigarette smoking is associated with
18 increased risk of urinary tract cancer.

19 Q. Do you have an example where the same method
20 was followed but a different conclusion is reached?

21 A. Yeah, this is a very important study, does
22 smoking cause breast cancer. Well, this is an
23 analysis of 53 --

24 MR. RUCKDESCHEL: Your Honor, may we
25 approach?

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1 THE COURT: Yes.
2 (Thereupon, the following proceedings were
3 had out of the hearing of the jury:)

4 MR. RUCKDESCHEL: Your Honor, I am concerned
5 that this is now the third smoking-related
6 example Dr. Garabrant is using. This is not a
7 case about smoking.

8 MR. BISHOP: He is giving examples, Your
9 Honor.

10 THE COURT: One at a time.

11 MR. RUCKDESCHEL: I'm concerned smoking,
12 smoking, smoking.

13 THE COURT: How many more have we got?

14 MR. BISHOP: This is an example of a
15 negative, they didn't find an association between
16 smoking and breast cancer.

17 MR. RUCKDESCHEL: I'm going to ask the jury
18 be instructed this case has nothing to do with
19 smoking.

20 MR. BISHOP: That's fine, Your Honor.

21 MR. LIPMAN: Can we come back a second? I
22 heard Your Honor say that's fine, I didn't hear
23 the resolution, I'm not sure.

24 THE COURT: I'm going to tell the jury.

25 MR. LIPMAN: That's the resolution.

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1 (Thereupon, the following proceedings were
2 had within the hearing of the jury:)

3 THE COURT: I just want to make sure you
4 understand this is not a case about smoking. The
5 doctor is simply using that as an example of how
6 epidemiology reaches a result and a conclusion,
7 okay.

8 Proceed.

9 MR. BISHOP: Thank you, Your Honor.

10 Q. (By Mr. Bishop) I think the question was,
11 do you have an example of how using this same method
12 of reviewing all the studies, an epidemiologist drew
13 the conclusion there was no association or causal
14 association?

15 A. Well, it was that there was no association.
16 So this is a study of 53 epidemiologic
17 studies that look at breast cancer and smoking. This
18 has been studied a lot of times. And it includes
19 over 58,000 women with breast cancer, 95,000 women
20 without breast cancer.

21 Here is what it found. Same style of graph.
22 Now you have a box that represents the relative risk,
23 and the bar around it is the confidence interval.

24 Now in this graph big boxes represent bigger
25 studies, so you also have some information - that's a

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1 little teeny study, that's a real big study.
2 As you go down, these two things are pretty
3 clear. They vary, right, and there is a central
4 value, almost exactly on 1.0.

5 Okay, so what this says is that in this huge
6 amount of scientific evidence, there is really no
7 association between cigarette smoking and breast
8 cancer.

9 That's a really important finding. Smoking
10 causes a lot of types of cancer, doesn't appear to
11 cause breast cancer. That's important to know.

12 Now, it's important to recognize that out of
13 these 53 studies this one's a significantly positive
14 association. And I say that because the confidence
15 interval doesn't overlap 1.0, so this one's
16 different.

17 And that's actually the CASH study, that was
18 a very well-done study, but it gives a slightly
19 different answer than all the others.

20 What is not appropriate to do is rely on
21 that study and ignore the other 52. You can't do
22 that. You can't pick the one you like and say,
23 that's the truth and the other 52 are wrong. You
24 properly evaluate all the 53 and add them up in a
25 fair manner.

Page 101 1 When you do, the conclusion is there is no 2 association between smoking and breast cancer. 3 Okay, so that's what epidemiologists pretty 4 routinely do to try to evaluate many studies that 5 have all looked at the same question. It comes to 6 this issue of replication, do these findings 7 replicate? And the answer for smoking and breast 8 cancer is, yes, they do. 9 And these studies give answers that wiggle 10 around, one by a little bit, but they are pretty 11 compatible answers. 12 MR. RUCKDESCHEL: Your Honor, may we 13 approach again, please. 14 (Thereupon, the following proceedings were 15 had out of the hearing of the jury:) 16 MR. RUCKDESCHEL: We are going next - and 17 what I'm concerned about -- 18 THE COURT: We're probably going to lunch 19 next. 20 MR. RUCKDESCHEL: What Dr. Garabrant said, 21 you have to add them up and then you have to make 22 your evaluation. 23 Now, what Dr. Garabrant is going to do now, 24 in my study I looked at what all these other 25 people said and name them, and that's not	Page 103 1 MR. RUCKDESCHEL: But he can't say my 2 meta-analysis showed no increased risk because 3 that's the number. 4 MR. BISHOP: He can certainly testify to his 5 opinion based on the review in the study is X. 6 MR. RUCKDESCHEL: No. 7 THE COURT: He can't give his opinion. 8 MR. RUCKDESCHEL: He can't say my opinion 9 based on all the things I reviewed is X? 10 THE COURT: That's what I said. 11 MR. RUCKDESCHEL: What they want to do is 12 say your opinion based on your study that X - and 13 that's not what everybody's been allowed to do. 14 You can only say it's my opinion, based on 15 all of the things I have reviewed, that there is 16 no increased risk. Otherwise he is bootstrapping 17 in all of the things he did. 18 And he said I combined seven studies here or 19 11 studies there, he's saying there are seven 20 people that agreed with me or 11 people that 21 agreed with me. 22 THE COURT: That he is not going to do. 23 MR. BISHOP: Say how many studies he 24 reviewed and what his conclusions were after 25 reviewing them, that's absolutely appropriate.
Page 102 1 allowable under the Court's rulings. 2 He's going to bootstrap these people in. 3 And it's okay for him to say we have considered 4 studies, but it's not okay for him to say we 5 considered this study and this study and that 6 study, because that is exactly what Your Honor 7 has prevented everybody else in this case from 8 doing. 9 Dr. Brody was not allowed to talk about the 10 particular studies he relied upon, Dr. Egilman 11 wasn't, Dr. Mark wasn't. 12 THE COURT: Why isn't that true? 13 MR. BISHOP: Your Honor, I think he 14 identified the - a witness can identify the 15 studies. 16 THE COURT: I prevented the other witnesses 17 from doing just that. I ought to be consistent. 18 I think he can testify that he did this empirical 19 study of 42 or whatever the number is, without 20 naming McDonald or Teta or whatever the others 21 are. 22 MR. RUCKDESCHEL: He's not going to talk 23 about the numerical result of his meta-analysis. 24 THE COURT: In other words, what his results 25 are.	Page 104 1 MR. RUCKDESCHEL: We were not allowed to, we 2 were not allowed to say I looked at 72 studies. 3 THE COURT: I don't recall somebody asking 4 me if you can do that. All I said was they 5 couldn't mention the names of the studies or what 6 they said. I never said you couldn't say they 7 looked at six-month's worth of studies. 8 MR. RUCKDESCHEL: As long as he's not 9 testifying about the result of the study. 10 THE COURT: No, he can say I looked at these 11 studies and my opinion is blank. 12 MR. RUCKDESCHEL: Not my study showed or my 13 study proved. 14 THE COURT: Okay, we're going to break for 15 lunch. 16 (Thereupon, the following proceedings were 17 had within the hearing of the jury:) 18 THE COURT: We are going is to take a break 19 for lunch. 20 1:30. 21 (Thereupon, the jurors left the courtroom, 22 after which the following proceedings were had:) 23 MR. LIPMAN: Your Honor, before the jury 24 leaves. It's too late. 25 THE COURT: What?

Page 105 1 MR. LIPMAN: I would like to discuss 2 scheduling without the witness in the courtroom. 3 THE COURT: No problem. 4 MR. LIPMAN: In terms of scheduling, we have 5 a sense of how long -- 6 THE COURT: How long is the doctor going to 7 be? 8 MR. LIPMAN: How much longer the direct will 9 be? 10 MR. BISHOP: 15, 20 minutes. 11 THE COURT: Which means a half an hour. 12 MR. LIPMAN: Right, 1:30, 2:00. I just want 13 to make something really - I don't think it will 14 occur. 15 THE COURT: Okay. 16 MR. LIPMAN: I don't think it will occur. I 17 want to put it up here to think about though. 18 We have accommodated scheduling of very 19 important, busy experts, two of them. Two of 20 them. They are busy, we accommodated them. 21 Your Honor accommodated them. I don't want 22 to be in a situation where my client testifies on 23 direct, and cross-examination is on the longer 24 side and spills into Monday. That would be 25 really unfair.	Page 107 1 Q. Just prior to the break, I believe you were 2 giving the jury an example of reviewing published 3 epidemiological studies where the review indicated 4 there was not an association? 5 A. Yes. 6 Q. I want to turn to vehicle mechanics and 7 mesothelioma. Have you reviewed the peer-reviewed 8 scientific literature to be able to identify 9 epidemiological studies pertaining to motor vehicle 10 mechanics and mesothelioma? 11 A. Yes, I have. 12 Q. Without naming any kind of studies, what 13 kind of studies, whether they were case-control or 14 cohort? 15 A. Well, they were both, they were case-control 16 studies and cohort studies, and what are commonly 17 referred to as registry studies, which are like 18 cohort studies. They come from large cancer 19 registries that maintain surveillance over an entire 20 population, but they are like big cohort studies. 21 Q. If we could turn to the next-to-the-last 22 slide we are going to display for the jury. 23 Is this a paper that you coauthored, 24 published in the peer-reviewed medical and scientific 25 literature of your review of these case-control
Page 106 1 THE COURT: Well, then, two choices. Number 2 one, assuming he's through by 2:00, how long will 3 your cross be? 4 MR. LIPMAN: We will discuss it at lunch and 5 have an answer for you after lunch, so then we 6 will have a sense of that. 7 THE COURT: Because it would seem to me, 8 depending upon how long - one choice would be to 9 simply permit direct and do cross on Monday, or 10 go home even earlier and not have either direct 11 or cross today. 12 MR. LIPMAN: I'm raising it for discussion. 13 THE COURT: See you at 1:30. 14 (Thereupon, the Court adjourned for the 15 luncheon recess.) 16 (Thereupon, after the luncheon recess, the 17 following proceedings were had:) 18 (Thereupon, the jurors entered the 19 courtroom, after which the following proceedings 20 were had:) 21 THE COURT: You may be seated. 22 You may proceed, Mr. Bishop. 23 MR. BISHOP: Thank you, Your Honor. 24 Q. (By Mr. Bishop) Good afternoon, Doctor. 25 A. Good afternoon.	Page 108 1 studies, cohort studies, and registry studies? 2 A. Yes, it is. 3 Q. If you can resume the stand, that will be 4 the last slide that we show. 5 Doctor, upon reviewing all of the available 6 studies you reviewed in the world's scientific and 7 world's published literature on mechanics and 8 mesothelioma, can you arrive at any opinions that you 9 can express, within a reasonable degree of scientific 10 certainty and medical certainty, whether motor 11 vehicle mechanics are at any elevated risk as a 12 result of their work? 13 MR. RUCKDESCHEL: Objection. 14 THE COURT: Overruled. 15 Q. (By Mr. Bishop) Without referencing any 16 particular study, what was your bottom-line 17 conclusion? 18 A. The - my review indicated that there were 17 19 studies - 20 MR. RUCKDESCHEL: Objection. 21 THE COURT: No, listen to the question. 22 THE WITNESS: I am sorry? 23 THE COURT: Repeat your question. 24 Q. (By Mr. Bishop) Without reference to any 25 of the studies, I need to ask you what your

Page 109 1 bottom-line conclusion was. After reviewing the 2 studies, what conclusion specifically did you reach 3 whether there was any increased risk in your 4 scientific judgment, among motor vehicle mechanics, 5 an increased risk of mesothelioma? 6 A. My conclusion was that there is no evidence 7 of an increased risk of mesothelioma among motor 8 vehicle mechanics and brake repair workers. 9 Q. Now, were you asked in this case to review 10 materials, depositions, discovery pertaining to 11 Mr. Mallia and his work? 12 A. Yes. 13 Q. And were you asked to arrive at a conclusion 14 which you can express with a reasonable degree of 15 medical certainty whether his work as a vehicle 16 mechanic placed him at any increased risk for 17 developing mesothelioma? 18 MR. RUCKDESCHEL: Objection. 19 THE COURT: Basis. 20 MR. RUCKDESCHEL: This is the issue we 21 discussed with Dr. Weir yesterday. 22 May we approach? 23 THE COURT: I am sorry? 24 MR. RUCKDESCHEL: May we approach? 25 THE COURT: Sure.	Page 111 1 any risk of mesothelioma from what he did as seen 2 in the deposition. 3 MR. BISHOP: I would state in the studies 4 that he reviewed, some of them were categorized 5 as garage mechanics and others specifically 6 categorized as brake workers, so it did include 7 that. 8 THE COURT: I understand, but that's not 9 what his answer in the deposition was. No. 10 (Thereupon, the following proceedings were 11 had within the hearing of the jury:) 12 MR. BISHOP: May I proceed, Your Honor? 13 THE COURT: Yes. 14 Q. (By Mr. Bishop) Dr. Garabrant, can you 15 tell the jury briefly what kind of material did you 16 review in connection with your review of Mr. Mallia's 17 case? 18 A. Yes, I can. I reviewed depositions, I 19 reviewed medical records - no, wait, I didn't review 20 medical records, I apologize. 21 I reviewed Defendant's Request for 22 Production and Plaintiff's Answers to Defendant's Set 23 of Interrogatories, Social Security Administration 24 earning records, union records from the International 25 Union of Operating Engineers, some exposure sheets.
Page 110 1 (Thereupon, the following proceedings were 2 had out of the hearing of the jury:) 3 MR. RUCKDESCHEL: Your Honor, this is the 4 increased compared to who question. 5 MR. BISHOP: You ruled on that. You said 6 that was the subject of cross. You specifically 7 ruled on that. 8 THE COURT: I don't think I did, but go 9 ahead. 10 MR. RUCKDESCHEL: Do you have an opinion 11 that you have a risk, that's one thing. An 12 increased risk necessarily is comparing him to 13 other people who Dr. Garabrant has no information 14 about, who there is no basis are different or 15 unexpressed. And, in fact, the testimony in this 16 case is uncontested that most of the people who 17 don't think they were exposed were. And so 18 comparing Mr. Mallia to other unspecified people 19 is not germane to the case. 20 THE COURT: I think he has a right to an 21 opinion that he had no risk, but increased risk, 22 from what I hear, that he didn't know what these 23 other people in the study did. 24 I think if you just take out the word 25 increased risk and ask him an opinion, was he at	Page 112 1 That was basically it. 2 Q. Based upon your review of those materials 3 and your review of the literature, as well as your 4 training and experience as a cancer epidemiologist 5 for over 20 years, did you reach an opinion that you 6 can express, within a reasonable degree of medical 7 certainty, whether Mr. Mallia's work in repairing 8 brakes either caused or contributed to in any way the 9 development of his mesothelioma? 10 A. I did reach an opinion. 11 Q. And what is that opinion? 12 A. That his work doing brake repair and vehicle 13 repair did not cause or contribute to his 14 mesothelioma in any way. 15 MR. BISHOP: Your Honor, if I can just have 16 a second. 17 THE COURT: Yes. 18 MR. BISHOP: Thank you. 19 THE COURT: You may inquire. 20 CROSS EXAMINATION 21 Q. (By Mr. Ruckdeschel) Good afternoon, 22 Dr. Garabrant. 23 A. Good afternoon, Mr. Ruckdeschel. 24 Q. Prior to today, you and I had never met, 25 correct?

Page 113 1 A. That's correct. 2 Q. We had spoken on the telephone in a 3 deposition in this case, do you recall that? 4 A. I do. 5 Q. Doctor, you are being paid \$625 an hour 6 right now, correct? 7 A. No. 8 Q. How much are you being paid? 9 A. For court testimony I charge by the half 10 day, and it is \$2250 for a half day or 4500 for a 11 full day. 12 Q. 4500 for a full day. What does that work 13 out to per hour if it's an eight-hour day? 14 A. Eight into 45 is about 500 - I'm not quick 15 enough. 560. 16 Q. Okay. And when you are not testifying, you 17 get \$525 a day? 18 A. An hour, not per day. 19 Q. I am sorry, an hour, thank you. 20 Now, this paper, Mesothelioma and Lung 21 Cancer Among Motor Vehicle Mechanics, a 22 Meta-analysis, that was paid for by Ford, Chrysler 23 and General Motors, correct? 24 A. It is my understanding that Ford, Chrysler 25 and General Motors paid the authors who were an	Page 115 1 Trucks. I don't remember NAPA. That could be my 2 lack of memory. 3 Q. They also go by Genuine Parts. 4 A. Oh, I didn't know that, yes. 5 Q. All right. And you have testified for 6 companies that manufactured and sold welding rods in 7 personal injury cases where individuals are claiming 8 welding rod disease from manganese and other things 9 in welding rods, correct? 10 A. In cases where people have claimed 11 Parkinson's disease, yes. 12 Q. And you have testified for pharmaceutical 13 companies in lawsuits? 14 A. To the best of my knowledge, once. 15 Q. In the past four years through at least the 16 time of your deposition in this case, you had 17 testified at least 43 times in depositions, correct? 18 A. I don't know exactly, but that would be 19 approximately right, I think. 20 Q. If that's the number you gave in your 21 deposition -- 22 A. Then that would be correct. 23 Q. All right. Now, epidemiology studies 24 groups, correct? 25 A. Studies populations, yes.
Page 114 1 exponent. They did not pay me. I did not receive 2 any compensation for that. 3 Q. The paper states it was financed by Ford, 4 Chrysler and General Motors, correct? 5 A. I believe that's true. 6 Q. Now, you have worked for companies or have 7 testified for companies that manufactured brakes 8 other than Abex, correct? 9 A. Yes, I have. 10 Q. For Abex. For General Motors? 11 A. I don't know whether General Motors 12 manufactures brakes or not. 13 Q. You have testified for General Motors in 14 brake cases? 15 A. Yes, I have. 16 Q. And for Ford and Chrysler? 17 A. Yes, I have. 18 Q. And you have worked for NAPA and Mack Trucks 19 and Bendix in brake cases, too? 20 A. I'm not - I don't know whether I worked for 21 all of them. I may have. 22 Q. You worked for NAPA and Mack Trucks and 23 Bendix in this case, didn't you, before working for 24 Abex? 25 A. I know I was retained on behalf of Mack	Page 116 1 Q. And did you compare populations, for 2 example, you talked with the jury about comparing 3 exposed versus unexposed earlier? 4 A. Yes. 5 Q. Now, when you do a study like that, it's 6 important that the exposed people actually be 7 exposed, would you agree? 8 A. Yes. 9 Q. And it's important that the unexposed people 10 actually be unexposed? 11 A. That's correct. 12 Q. Now, for an individual like Joe Mallia, am I 13 correct you either have a zero or a 100 percent 14 chance of getting mesothelioma? 15 A. Each of us will die of something, and our 16 chance of getting whatever it is we die of will be 17 100 percent when we die. 18 Q. And Mr. Mallia is going to die of 19 mesothelioma? 20 A. I believe that is highly likely. 21 Q. And Mr. Mallia has mesothelioma, correct? 22 A. I believe so. 23 Q. Now, you talked with Mr. Bishop about 24 various studies of different types of people, and I'd 25 like to ask you whether you are aware of studies that

Page 117 1 show, for example, that electricians are at an 2 increased risk of mesothelioma? 3 A. I would have to look. I don't recall 4 offhand without looking. I believe there are some 5 studies that have shown that. I don't know whether 6 there is a replicated pattern for that just from 7 memory. 8 Q. Let's assume that that's the case, Doctor. 9 If that is the case, for any particular 10 electrician, is it the job title electrician or is it 11 the asbestos that gives them the mesothelioma? 12 A. Well, it would be the exposures. In that 13 instance, one would think about amphibole asbestos. 14 So it's typically not the job title, it's typically 15 the chemical, if that chemical causes that cancer. 16 Q. Asbestos acts the same on a plumber or an 17 electrician or a mechanic or anybody else, having a 18 different job title doesn't change how asbestos works 19 in the body, does it? 20 A. Well, when you state it that way, it mixes 21 some different issues together, one of which is that 22 there are different types of asbestos -- 23 Q. Doctor -- 24 A. Some carry risk and some don't for 25 mesothelioma.	Page 119 1 impeachment. He can ask a question. Now, if 2 there is a basis, he can go back to the 3 deposition, but I don't believe this is proper. 4 MR. RUCKDESCHEL: I am just asking if he 5 remembers the question. 6 THE COURT: That's not the appropriate 7 question. If you are going to ask a witness 8 whether he remembers something in the deposition, 9 refer him to page and line and read the question 10 and the answer. 11 Q. (By Mr. Ruckdeschel) Doctor, let me read 12 you your question and answer and see if you recall 13 giving this answer. 14 MR. BISHOP: Can you give me the page and 15 line? 16 MR. RUCKDESCHEL: Absolutely. It's on page 17 69, and starts at Line 8, I am sorry. 18 THE WITNESS: May I get my copy? 19 MR. RUCKDESCHEL: Of course. I have a copy 20 of it here for you, Doctor. 21 THE WITNESS: Thank you. 22 Q. (By Mr. Ruckdeschel) If you look at page 23 69, beginning at Line 10, Doctor. 24 And this is your response: Are you asking 25 me to design an epidemiologic study that would test
Page 118 1 Q. Doctor, the question is does a particular 2 fiber of asbestos act differently in a person's body 3 if that person is an electrician or a plumber or a 4 mechanic? I don't care what kind of fiber it is, you 5 pick whatever kind you want. 6 Does it make any difference what their job 7 title is how that asbestos works in your body? 8 A. The fiber doesn't know what the job title 9 is. 10 Q. All right, thank you. 11 In Mr. Mallia's deposition, I asked you a 12 hypothetical question. Do you recall that question? 13 A. I don't offhand, I am sorry. 14 Q. Okay. You talked with Mr. Bishop about the 15 scientific method and testing hypotheses earlier 16 today, do you recall that? 17 A. Yes. 18 Q. In your deposition, I asked you if you were 19 going to design an epidemiological study to test the 20 hypothesis whether individuals like Mr. Mallia who 21 ground brakes, who filed brakes, who sanded brakes 22 were at risk for mesothelioma, how would you design 23 that study? And you responded to that question. 24 Do you remember my asking that question? 25 MR. BISHOP: I apologize. This is improper	Page 120 1 the hypothesis that sanding, filing and/or grinding 2 new friction materials causes mesothelioma? 3 Question, yes. 4 Answer, well, I could do that for you. That 5 would take some thought. 6 Question, okay. How would you do it? 7 Answer, I'm not sure it's feasible to do so. 8 I would want to identify a cohort of people 9 whose only exposure to asbestos was from sanding, 10 filing or grinding new friction materials; I would 11 want to follow that cohort over a sufficient period 12 of time, probably a minimum of 40 years; and I would 13 want to calculate the incidence rate of mesothelioma 14 in that group; and then I would want to compare it to 15 a referent population that did not sand, grind - I am 16 sorry, sand, file or grind friction products but who 17 were otherwise just like the exposed population. 18 Do you remember giving that answer? 19 A. I do. 20 Q. So let me ask you, Doctor, is the study to 21 test that hypothesis, does it involve those four 22 steps, the study you designed in your deposition? 23 A. I am sorry, I'm - would you ask me again? 24 Q. Sure. The study you designed in your 25 deposition had four steps, correct?

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1 A. Okay, yes.

2 Q. And the first step is identify a group that

3 has its only exposure to asbestos from grinding,

4 filing or sanding brakes, right?

5 A. Yes.

6 Q. Okay. And the second question, the second

7 step is to follow that cohort for at least 40 years,

8 right?

9 A. Well, I said for a sufficient period of

10 time.

11 Q. Okay.

12 A. Probably a minimum of 40 years.

13 Q. All right. So I will put sufficient time,

14 and then I will do a little wiggle here because it's

15 approximate.

16 40 years, is that fair?

17 A. Yes.

18 Q. And then you want to calculate the rate of

19 mesothelioma in that group, right?

20 A. Yes.

21 Q. All right. And then the final step is to

22 compare that group and the rate of mesothelioma to

23 the rate of mesothelioma in an identical population

24 that didn't sand, grind or file brakes; is that

25 correct?

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1 A. Pretty close. The way I said it, would

2 compare it to a referent population that did not

3 sand, file or grind friction products who were

4 otherwise just like the exposed population.

5 Q. Okay. So you want them to be the same

6 except for they didn't sand, grind or file?

7 A. Except for sanding, grinding, filing brakes,

8 that's correct.

9 Q. I will put same but no sand, grind or file.

10 Those are the four steps, right?

11 A. Yes.

12 Q. You would agree that study has never been

13 done, correct?

14 A. Mr. Ruckdeschel, that exact study, which is

15 an ideal --

16 Q. Doctor --

17 A. Can I finish?

18 Q. The study has never been done, correct?

19 A. That exact study has never been done.

20 MR. RUCKDESCHER: Thank you. Nothing

21 further.

22 THE COURT: Redirect.

23 MR. BISHOP: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25 Q. (By Mr. Bishop) Two items, Dr. Garabrant.

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1 The study that you published, your

2 participation in that study, was that funded by

3 General Motors, Ford or Chrysler?

4 A. I was not paid by anyone for my work on that

5 study. I did it because I thought it was good

6 science to participate in that.

7 Q. Do we have to do this cohort study and

8 follow them for 40 years in order to determine in

9 your opinion, with a reasonable degree of medical

10 certainty, whether Mr. Mallia had any measurable risk

11 of mesothelioma from working with brakes as a vehicle

12 mechanic over and above what he would have had in the

13 absence of any such work?

14 MR. RUCKDESCHER: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: No, you don't have to do that

17 exact study. That's an ideal study that I said

18 in my answer may not even be feasible to do.

19 May I continue with my answer?

20 THE COURT: I don't know. It's up to the

21 lawyers.

22 MR. RUCKDESCHER: I object to a volunteered

23 narrative, Your Honor.

24 THE COURT: Ask your next question.

25 Q. (By Mr. Bishop) Dr. Garabrant, as an

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1 epidemiologist practicing for over 20 years, can you

2 tell the jury whether you believe you had sufficient

3 information, based upon your training, experience and

4 your review of the epidemiological literature, to

5 reach a conclusion whether Mr. Mallia's mesothelioma

6 was caused or contributed by his work as a vehicle

7 mechanic working with brakes?

8 A. Yes, I do have a very good basis for that

9 conclusion. The studies that have been done are

10 well-done studies.

11 MR. RUCKDESCHER: Objection.

12 THE COURT: Overruled.

13 MR. BISHOP: Thank you, Doctor.

14 THE COURT: Thank you, sir, you are excused.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Let's take a five-minute break

17 while we get all of this out of here.

18 (Thereupon, the jurors left the courtroom,

19 after which the following proceedings were had:)

20 (Thereupon, after an off-the-record

21 discussion, the following proceedings were had:)

22 THE COURT: I want charges Monday morning.

23 MR. LIPMAN: Would the Court reconsider,

24 then, the idea, just an idea, I'm not rearguing,

25 an idea, would the Court consider allowing

Page 125 1 direct, allowing that portion of cross to 5:00, 2 and then resuming? 3 THE COURT: That was the one thing you 4 didn't want. You didn't want to break it up. 5 MR. LIPMAN: I said that, but -- 6 THE COURT: That's not fair to the defense. 7 They will have all of the direct to take home and 8 sleep on over the weekend and only a portion of 9 the cross. No, I don't like severing that. 10 I will do this, I will let you have a half 11 hour of direct just to get the jury to see 12 Mr. Mallia and get his name and a couple of live 13 interesting things out, and then we will break. 14 I'll do that. 15 MR. LIPMAN: Okay. 16 THE COURT: Is that not too objectionable to 17 the defense? 18 MR. POWERS: I was going to say I'm not 19 crazy about it, but I won't object to it, Your 20 Honor. 21 MR. LIPMAN: Okay. 22 THE COURT: We are going to take a recess 23 for ten minutes. 24 MR. BISHOP: I wanted the Court's 25 permission, before I do it, I would like to mark	Page 127 1 Mr. Joseph Mallia. 2 THE COURT: Come up here, sir. 3 Thereupon: 4 JOSEPH MALLIA, 5 was called as a witness on his own behalf, and having 6 been first duly sworn, testified upon his oath as 7 follows: 8 THE COURT: I want you to understand that 9 you are going to have an abbreviated session 10 today, so you are not going to hear all of his 11 testimony, you are only going to hear a 12 beginning, and then we will break for the day. 13 You may proceed. 14 DIRECT EXAMINATION 15 Q. (By Mr. Lipman) Only in the formality of a 16 court, I suppose, in room 6-2, where we all know each 17 other, would I ask you to state your name and spell 18 your last name. 19 A. Joseph Mallia, M-a-l-l-i-a. 20 Q. And Mr. Mallia, I have a half an hour. I'd 21 like to start with you've been here during the 22 opening, during the whole session, other than when 23 Mrs. Mallia testified? 24 A. Correct. 25 Q. I want to show you some graphics that were
Page 126 1 for identification the -- 2 THE COURT: The exhibits I didn't allow. 3 MR. BISHOP: Right, and I will just proffer. 4 THE COURT: Are we ready? 5 MR. RUCKDESCHEL: No, I'm not. I need the 6 tech guy here. 7 MR. LIPMAN: Let's just start, and the tech 8 guy will sneak up here, I will bet. Let's just 9 start. 10 THE COURT: Gus, get me the jury. 11 MR. POWERS: I gathered from our schedule we 12 are going to just stop at 3:00. 13 THE COURT: So you can make your flight. 14 MR. POWERS: Thank you. 15 (Thereupon, the jurors entered the 16 courtroom, after which the following proceedings 17 were had:) 18 THE COURT: Mr. Ruckdeschel, that's not in 19 evidence, turn it around. 20 MR. RUCKDESCHEL: Oh. 21 THE COURT: You may be seated. 22 You may proceed. 23 MR. LIPMAN: Yes, Your Honor. 24 Your Honor, with the Court's permission, we 25 call our final witness for today, my client,	Page 128 1 shown in the opening session and shown by Abex's 2 counsel to several or at least one expert. 3 Mr. Mallia, do you recall during the opening 4 session that this graphic was displayed to the jury, 5 and then during one of the witness examinations, and 6 the matter of a medical record indicating exposure to 7 asbestos 20 years while doing demolition of buildings 8 was read to the jury and was discussed? 9 A. Yes. 10 Q. All right. Starting - this is Doctor - the 11 physician from Sylvester Cancer Clinic. You heard 12 him testify, Dr. Tang? 13 A. Yes. 14 Q. Do you know anything about any discussion 15 that you recall with Dr. Tang about as - exposure to 16 asbestos 20 years while doing demolition of 17 buildings? 18 A. Yes. 19 Q. Tell us what you recall. 20 A. I got asked - well first, can I go back a 21 little bit and talk about the emergency room? 22 I was asked, when they told me about there 23 is something going on, everything looks suspicious 24 with the fluid and all of that, they asked me if I 25 was exposed to asbestos.

Page 129 1 My first answer was no because I didn't know 2 anything about working with asbestos. My type of 3 work, I worked on brakes, I worked on trucks, I 4 worked on cars. I was a supervisor for a while and 5 ran some equipment, and I didn't know anything about 6 asbestos. 7 That was brought up because when you think 8 about construction, you think about buildings. So we 9 worked at - one of the main jobs was the mall we 10 talked about, and the other one was the school. 11 Q. Now, when you say we, the jury has met your 12 brother. 13 A. Yeah. And, I mean, the company, too, 14 basically the company. 15 Q. What's the name of the company? 16 A. Imburgia Construction. 17 Q. Tell the jury what you recall from the 18 demolition incident that you were referring to with 19 Dr. Tang. 20 A. Well, at first - the first thing I thought 21 of is that when you are going through all of this, I 22 was scared. I didn't know what was going on. I 23 heard I had this illness. The first thing that came 24 to my mind was asbestos in a building or in the 25 ceilings, because you hear of asbestos like in	Page 131 1 here to Florida? 2 A. When we first moved down in '78? 3 Q. Yes. 4 A. My father brought some dump trucks down and 5 went in partners with my cousin. We started out 6 asphalt paving and driveways. That was basically it. 7 We had some dump trucks. We bought a few more dump 8 trucks from Mack, we bought a lowboy and bought a 9 service truck. 10 At that time we didn't have a mechanic. I 11 was the only one that was really mechanically 12 inclined. And so I started - I volunteered, and we 13 had no choice and I started working on the equipment 14 because I had a lot of experience with vehicles since 15 I was really young, took shop mechanics in school, 16 hung out with a lot of guys that took cars apart and 17 put them back together. It was like a hobby with me. 18 Q. Did you ever get a license or certificate or 19 any training? 20 A. No. I took shop mechanics when I was in 21 high school. 22 Q. How old were you when you first started your 23 interest in cars and trucks or such? 24 A. 14. 25 Q. The jury heard a little bit about life in
Page 130 1 ceilings or walls or something like that. So that 2 along with all my work, that's what I considered was, 3 you know, asbestos. 4 Q. And you heard your brother describe that 5 project. Do you have any memory of the demolition 6 project that happened 20 years earlier? 7 A. Now when I look back, we talked about it, we 8 started checking into everything. The mall, they 9 were doing demolition work inside. We were working 10 outside site work, site work, stuff like that. 11 So I was never really involved in the building. 12 The school, we did research on that and 13 found out the school had the abatement. My cousin 14 couldn't even get a permit to let us go in and start 15 doing the site work. 16 Both jobs, if I wasn't in the shop, I would 17 deliver equipment, drop equipment off, go back to the 18 shop. If they needed fuel, they would call me on the 19 radio, I would run out there. So it wasn't like I 20 was there continuously. 21 Q. Your brother explained about the business, 22 so we heard the testimony, but does that square with 23 how you understand the business in your experience? 24 A. Yeah, I mean. 25 Q. What was the work of Imburgia when you got	Page 132 1 New York. Did you do that - were you employed? Did 2 you do that as a hobby? What did you do before you 3 came to Florida? 4 A. Before I came to Florida, I worked at a Hess 5 gas station where I pumped gas. There was no 6 mechanics involved. And after that I worked for 7 Pizza Kitchen for a little while, but I really wasn't 8 into that. 9 Q. Do you know when, if you can, put a time 10 when you did your first mechanical brake work or 11 other kind of work? 12 A. 13, 14. I was working on cars before I 13 could even drive. We were on a couple of acres, so I 14 would actually work on the cars, and me and my 15 brother would drive them around the backyard. We 16 opened right into an apple orchard, so we could drive 17 all the way around but weren't on the road. 18 Q. All right. 19 Now, you are down here in Florida, we have 20 heard, about 1978. I think your brother came a year 21 after you? 22 A. Yeah, about a year after. 23 Q. And what kinds of equipment were you 24 personally working on with your family in the family 25 business in those early years?

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1 A. We had a couple of Chevy dump trucks,
 2 single-axle dump trucks, we had a couple of
 3 single-axle Ford dump trucks, we had a lowboy
 4 trailer, we had a Mack Truck, a fuel truck, we had a
 5 couple of C-10 pickup trucks, which were a lighter
 6 duty pickup, and a Ford F-150, Ford F-250.

7 Q. What kind of work did you do on those
 8 vehicles for Imburgia?

9 A. Everything, from a radiator hose to radiator
 10 to transmission, brakes, light engine work.

11 If something blew up or a piston went bad or
 12 something like that, we would bring it to a machine
 13 shop. Tune-ups, oil changes, stuff of that nature.

14 Q. Where did you buy the equipment when you did
 15 the mechanical work at Imburgia?

16 A. Most of the time, NAPA.

17 Q. Why was that?

18 A. They were real close. You would walk almost
 19 right across the street. So it would be real easy to
 20 pick up the parts and have them delivered.

21 Q. Did you do that?

22 A. Did I pick the parts up?

23 Q. Yes.

24 A. Yeah, or we had them delivered.

25 Q. What kind of parts did you buy at NAPA?

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1 A. Everything, hoses, spark plugs, oil,
 2 brakes, hydraulic fluid. NAPA had a big line of
 3 everything. Still does.

4 Q. In the early years, did anyone else do that
 5 work other than Joseph Mallia?

6 A. No. I was the only one that did it.

7 Q. Did you work hard?

8 A. Real hard, sometimes seven days a week.

9 Q. Were you in the field, as well?

10 A. Very little. If I wasn't doing mechanical
 11 work in the shop, the only time I would not be doing
 12 mechanical work, if they called me and I had to move
 13 a piece of equipment, or go service to fuel the
 14 equipment, because I drove the fuel truck. If I was
 15 in the shop and they needed fuel, I would jump in the
 16 truck, fill up the fuel, and then come back to the
 17 shop.

18 Q. Would there be times when NAPA didn't have
 19 what you needed, and you went elsewhere?

20 A. Yeah. Sometimes we would go to either the
 21 Chevy dealer or Ford dealer, which was right down the
 22 street, too.

23 Q. Why would that be?

24 A. If NAPA didn't have it, or we had to get
 25 something out right away or fixed the next day, say

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1 something came in at that was broke, and we had to
 2 get the part right away and couldn't wait to be
 3 fixed, we would go to the dealer and try to get it if
 4 they had it.

5 Q. Mr. Mallia, we have some brakes right here
 6 that you recently purchased?

7 A. Yes.

8 Q. Non-asbestos?

9 A. Non-asbestos.

10 Q. No asbestos. Did you buy these?

11 A. Yes.

12 Q. Did you buy those to show the jury what a
 13 brake is?

14 A. Yes.

15 Q. Where did you buy these materials?

16 A. Let's see which ones we have in here.
 17 These ones are from - these ones are from
 18 Mack.

19 Q. Okay.

20 A. And these ones are from the NAPA dealer.

21 Q. Is there a NAPA logo on the box, on my side
 22 of the box?

23 A. Yeah.

24 Q. Show the jury, if you can, what those
 25 different brakes are and how they relate, realizing

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1 they are not asbestos, how do they compare? Are they
 2 similar to the kinds of brakes you worked with on the
 3 vehicles in the early years at Imburgia?

4 A. Yes. I purchased these from a NAPA dealer.
 5 These are from a 1972 C-60 Chevy dump truck. That's
 6 what we had, we had two of those, and we had a couple
 7 of Ford F-700s. This is the size of the brake, one
 8 of the brakes, I worked with on some of the trucks.

9 Q. How many of those size brakes would there be
 10 on the trucks; the C-60?

11 A. C-60, yeah.

12 Q. How many brakes like that that you have in
 13 your hands would there be in a truck?

14 A. This is one rear set, so you would have had
 15 four in the back and two sets in the front.

16 Q. All right. Anything else in the box?

17 A. No, that's it.

18 Q. Could you show the jury, realizing again,
 19 these are non-asbestos, what the brakes looked like
 20 back when you worked at Imburgia? Same appearance?

21 A. The color was different. The asbestos
 22 brakes, I mean, were a lot more tanner, more of a
 23 brown color. These are like a grayish black.

24 Q. And the metal backing to what you have in
 25 your hand --

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1 A. Right.

2 Q. -- what is that called? What do you know

3 about that?

4 A. This is the mounting bracket. This goes up

5 against the wheel, the backing plate, and this mounts

6 the brake to the inside of the housing.

7 Q. Monday I'm going to get into more of that

8 with you. But the holes, if you can still show the

9 jury, there are holes --

10 A. Yeah. What it is, there are pins that come

11 through the backside of the - backside of the wheel

12 housing, and they actually hold it in place.

13 Sometimes the holes could be holes to the spring from

14 one side to the other side, adjusters, wheel

15 cylinders. If we had a little graph or something, I

16 could --

17 Q. We will do that Monday. Kind of just do a

18 big picture today.

19 A. I am doing a big picture, basically, with

20 the holes are for pins and springs, and hold

21 different stuff in place.

22 Q. Show the jury how you do a brake job on

23 Monday. I want to wait on that.

24 A. Yes.

25 Q. Are there any other brakes in this

Page 138

1 particular box?

2 A. No.

3 Q. Now, there is another box here called

4 Bendix.

5 A. Uh-huh.

6 Q. And it says relined brake shoes. I think

7 the jury has been introduced to the idea some brakes

8 are relined.

9 A. Right.

10 Q. What does that mean?

11 Q. Most of the time, if you go to the

12 dealership, it's brand new manufactured brakes. Most

13 of the brakes we got from NAPA and they sell are

14 relined brakes.

15 They take this piece, take this off, the

16 shoe off, okay, and you heard they went through the

17 cleaning process and all that, and when you get it

18 back, they either rivet it back on or adhere it back

19 on or glue it back on. It's a relined brake. The

20 whole thing isn't new, just the shoe.

21 Q. They save the back end?

22 A. They save the back end, yeah.

23 Q. Can you show the jury the Bendix box and the

24 brakes inside it?

25 A. Yeah.

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1 Q. And could you show the jury those brakes?

2 A. (Indicating).

3 Q. What would those be used for?

4 A. I don't know, a go-cart. I don't know what

5 they are used for.

6 Q. Did you see Abex's counsel during opening

7 session show the jury a brake?

8 A. Yes.

9 Q. All right.

10 MR. LIPMAN: Counsel, do you have that in

11 the courtroom, the brake you showed the jury?

12 MR. BISHOP: I am sure if you asked me

13 earlier, I would have been able to look for it.

14 MR. LIPMAN: Could you?

15 Q. (By Mr. Lipman) You saw counsel show the

16 jury a brake when we began in the opening session, I

17 think that was Wednesday of last week.

18 A. You see these ones, you see how these are

19 glued?

20 Q. Yes.

21 A. That's the difference.

22 Q. While he's finding his set, what do you

23 mean, glued versus riveted?

24 A. There are two ways to mounting them. This

25 one is riveted on to make it stay on there, and this

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1 is glued on. They have some special glue that

2 adheres.

3 Q. All right.

4 A. These are two different styles.

5 MR. LIPMAN: While counsel is finding the

6 brake he showed the jury in opening, if you can,

7 can you bring that Monday for us?

8 MR. BISHOP: We will look for it.

9 MR. LIPMAN: Thank you.

10 Q. (By Mr. Lipman) Was it similar to the size

11 of the brake in the Bendix box that counsel for Abex

12 showed the jury?

13 A. It was small. I know that. I don't know if

14 it was the same one or not. I know it was small.

15 Q. Would you have an idea what a small brake

16 like that would be used for?

17 A. I don't know.

18 Q. Would you use that on dump trucks, pickup

19 trucks, some of the equipment you used at Imburgia?

20 A. No.

21 Q. Would you use that on cars?

22 A. Maybe some type of foreign car or a real

23 small, small car.

24 Q. Let me ask you this, at NAPA, did you - when

25 you went in to buy brakes, do you remember the brand

Page 141

1 name of any of the brakes? I am at Imburgia at the
 2 same period of time, the early years, when you were
 3 doing the work?
 4 A. Bendix, Abex and NAPA. Those are the three
 5 names of brakes that NAPA carried.
 6 Q. How did you know those brands in relation to
 7 what you bought at NAPA?
 8 A. Usually when I went to NAPA and ordered
 9 something, that is what I would get. That's what
 10 they would give me.
 11 Q. NAPA said NAPA?
 12 A. Yeah.
 13 Q. And NAPA on the NAPA box?
 14 A. Yes.
 15 Q. And Bendix said Bendix?
 16 A. Yes.
 17 Q. Did you know that Abex manufactured the
 18 Bendix brake before this trial?
 19 A. No.
 20 MR. POWERS: Excuse me, Your Honor, I
 21 object, foundation, and I think it misstates what
 22 the evidence is.
 23 THE COURT: Sustained.
 24 Q. (By Mr. Lipman) Let me show you, do you
 25 have the - you have been sitting in trial,

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1 Mr. Mallia. Let me ask you if you are
 2 familiar - they have something else on - ask you
 3 about this, and we will get back to Bendix in a
 4 minute. If you can come around with me.
 5 A. (Witness leaving witness stand).
 6 Q. Are you familiar with the photograph that's
 7 enlarged and on the screen?
 8 A. Yes.
 9 Q. And tell the jury what that is and where
 10 this fits in to what you just said.
 11 A. Okay. So you see it's got a NAPA label with
 12 an American Brakeblok which is Abex in it. Now, they
 13 are the same team and they are with NAPA.
 14 Q. Do you recall the NAPA logo when you bought
 15 your NAPA brand?
 16 A. Yes.
 17 Q. Do you recall American Brakeblok?
 18 A. Yes.
 19 Q. Do you recall Abex?
 20 A. Yes.
 21 Q. Do you recall Bendix?
 22 A. Yes.
 23 Q. Okay. And were these the types of
 24 containers that you saw that - the boxes of the
 25 brakes that you bought at NAPA?

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1 A. Yeah. I remember seeing the names. I
 2 remember - the colors, you know, I mean, it was so
 3 far back. The names I remember. If you asked me the
 4 color of the box, I couldn't tell you. But yes.
 5 MR. LIPMAN: All right. Do we have a
 6 photograph printed of this - of this - what we
 7 are seeing now, do we have a photograph here?
 8 MR. RUCKDESCHEL: Not here.
 9 Q. (By Mr. Lipman) I will do that Monday with
 10 you. I will mark it and we will do that Monday.
 11 You personally went to NAPA and bought NAPA?
 12 A. Yes.
 13 Q. Abex?
 14 A. Yes.
 15 Q. Bendix?
 16 A. Yes.
 17 Q. Did you have them delivered?
 18 A. Sometimes picked up, sometimes delivered.
 19 If a delivery was going to take a while, we would go
 20 pick it up.
 21 Q. Ever see any indication on the boxes that
 22 indicated that the materials contained, the materials
 23 in the boxes, the brakes contained asbestos?
 24 A. No.
 25 Q. Anything about cancer?

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1 A. No.
 2 Q. Anything about a respirator?
 3 A. No.
 4 Q. Anything about mesothelioma?
 5 A. No.
 6 Q. Anything about danger caused by breathing
 7 dust?
 8 A. No.
 9 Q. Any skull and crossbones?
 10 A. No.
 11 Q. I want to talk to you about some of the
 12 trucks.
 13 MR. LIPMAN: Can we put the trucks from the
 14 question in 122.
 15 Q. (By Mr. Lipman) You sat here and you saw
 16 the Bendix - excuse me, the Abex answers to some
 17 questions, we called them interrogatories?
 18 A. Yes.
 19 Q. And they referenced they were manufacturing
 20 brakes for Chevy or Chevrolet Model 10 and Model 20
 21 models?
 22 A. C-10 and C-20s.
 23 Q. What's a C-10 and what's a C-20?
 24 A. A C-10 is a half-ton pickup truck. It just
 25 means the weight of it. A C-20 is 3/4-ton, and you

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1 got the C-30 is a one-ton.

2 Q. Do you recall, I published this to the jury,

3 and the gist of it was that Bendix manufactured for

4 Chevrolet Motors Corporation, Chevy 1/2-ton trucks,

5 the C-10 model, 100 percent from August '57 to July

6 '70, 50 percent from August '70 to June '75?

7 A. Uh-huh.

8 Q. Now, did you know that those brakes that you

9 used or bought for the Chevy 1/2-ton trucks were

10 manufactured by Abex?

11 MR. POWERS: Excuse me, Your Honor, I

12 object. That totally misstates what this

13 evidence says.

14 MR. LIPMAN: Exactly what it says, Your

15 Honor.

16 THE COURT: I don't know what it says. Can

17 somebody show me?

18 MR. POWERS: May we have a side bar to take

19 this up?

20 Can we take this off?

21 MR. LIPMAN: It's in evidence, Your Honor.

22 MR. POWERS: He read from our answers to

23 interrogatories. I have an objection to it.

24 (Thereupon, the following proceedings were

25 had out of the hearing of the jury:)

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1 THE COURT: What's your objection?

2 MR. POWERS: The objection is if you look at

3 it, Judge, the Chevy C-10 which he just asked him

4 about, the dates that it says that we supplied

5 the brakes are not the dates that he worked down

6 in Florida for Imburgia Construction Company. So

7 the way he asked the question, it totally

8 misstates the evidence, which is what that is.

9 MR. LIPMAN: We have had evidence already

10 about the shelf-life of these brakes. Dr. Longo

11 testified to that, Dr. Weir testified to that.

12 MR. POWERS: That wasn't the question.

13 THE COURT: What was the question?

14 MR. LIPMAN: The question was, was he aware

15 of the fact that when he worked on Chevy 10 Model

16 half-ton trucks, that the brakes he was using for

17 those trucks were Chevy - the brakes he used for

18 those trucks were manufactured by Abex?

19 MR. POWERS: They were not manufactured by

20 Abex during the time he worked on Chevy trucks.

21 THE COURT: When did he work for Imburgia?

22 THE REPORTER: One at a time.

23 MR. LIPMAN: We had testimony about the

24 shelf-life of these materials from two experts,

25 and we also have a Chevy 20 model that's

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1 exactly --

2 THE COURT: That's not your question.

3 MR. LIPMAN: I will rephrase.

4 THE COURT: Okay.

5 (Thereupon, the following proceedings were

6 had within the hearing of the jury:)

7 Q. (By Mr. Lipman) Mr. Mallia, do you know

8 from your work doing mechanical work back in 1978

9 that the material - that the brakes you were buying

10 from NAPA had a long shelf-life, that they were

11 stored, had been manufactured and stored at the

12 distribution place in NAPA for a period of time?

13 THE COURT: Lay a foundation how he would

14 know.

15 Q. (By Mr. Lipman) Do you have any knowledge

16 as to the shelf-life of the brakes you were

17 purchasing?

18 A. No.

19 Q. Let me ask you this, did you work on

20 Chevrolet 20 Models?

21 A. Yes.

22 Q. Did you work on Chevrolet 20 Models - what

23 is that?

24 A. The 20, it's a 3/4-ton pickup truck, your

25 average Chevy 3/4-ton pickup truck.

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1 Q. Did you work on those kinds of pickup

2 trucks?

3 A. Yes.

4 Q. Did you work on those kinds of pickup trucks

5 between 1978 and 1980?

6 A. Yes.

7 Q. Did you go to the NAPA dealer to buy

8 brakes --

9 A. Yes.

10 Q. -- for those 20 ton - 20 model?

11 A. C-20 models, yes.

12 Q. What does that all mean?

13 A. That just different sizes. A C-10 is

14 lighter duty, 1/2 ton, a C-20 is a little heavier

15 duty, the springs.

16 Q. Did you buy it at NAPA?

17 A. Yes.

18 Q. Were you aware at the time that 100 percent

19 of those brakes at NAPA for that model is

20 manufactured by Abex?

21 A. No.

22 MR. POWERS: Excuse me, Your Honor, I have

23 to object. That's not what that evidence says.

24 I guess I can clear it up on cross, but I do want

25 to lodge an objection.

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1 Q. (By Mr. Lipman) Now I am going to ask you
2 a couple of final questions before we --
3 A. Can I go back up?
4 Q. Yes, please.
5 A. (Witness regaining witness stand).
6 MR. POWERS: Are you finished with this
7 particular exhibit?
8 MR. LIPMAN: For this moment I am, sir.
9 MR. POWERS: Thank you, sir.
10 THE COURT: Take it off the display.
11 Q. (By Mr. Lipman) Just a couple of final
12 questions to get everybody out at 3:00.
13 Would there be - when you worked with a
14 brake like the truck brake that we are talking
15 about --
16 A. Uh-huh.
17 Q. -- that you purchased from NAPA --
18 A. Yes.
19 Q. -- back in '78, the early years --
20 A. Yes.
21 Q. -- would you file the edges of those brakes?
22 A. Yes.
23 Q. Why?
24 A. So the drum would slide over the shoes
25 easier.

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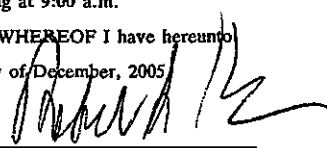
1 Q. Okay.
2 A. And - and I wanted to make a point
3 about - we talked about the sanding. We could talk
4 about the sanding later, we can talk about it now,
5 because there is a reason why I wanted to talk about
6 the sanding, because I did a lot of sanding, and
7 there was a reason why I did it.
8 The video we looked at - remember the video
9 we seen here in the courtroom?
10 Q. Yes, sir.
11 A. Showed the guy messing around with his hands
12 dirty.
13 My hands. You have to imagine taking
14 something apart, holding these shoes, putting them
15 back together. Everything that's on here is on here
16 (indicating).
17 Q. Right.
18 A. I had a couple of experiences with the dirt,
19 grease, grime stuff coming back on these. Get a
20 glazing on, then when you use them, they get hot.
21 Get a glazing on them. And ever since I started
22 sanding the face of them to remove the stuff that
23 came off my hand back onto these, okay, I never had a
24 problem after that.
25 Q. All right.

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1 A. But that's one of the reasons why I used to
2 sand them. It's more than filing, i did a lot of
3 sanding, too.
4 Q. What would you sand with?
5 A. Emory cloth, sandpaper.
6 Q. What would you file the edges with?
7 A. A metal file.
8 Q. Does that create dust?
9 A. Yes.
10 Q. Did you breathe the dust?
11 A. Yes, yes.
12 Q. Did the dust get over your work station?
13 A. Yes.
14 Q. Did you put the brakes in an vice when
15 you --
16 A. Yes, everyone - when I filed them, they were
17 in a vice. After I installed them back on the car is
18 when I sanded them. This way it was all assembled,
19 put back together, and that's when I cleaned them.
20 Q. Do you have any idea how many times you did
21 that, Mr. Mallia, since you have been a kid?
22 A. No idea.
23 Q. All right. Any idea at all?
24 A. A lot of times. It - to pinpoint it, no.
25 Q. When you did brake jobs, would you always

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1 have to file and would you always have to sand?
2 A. Yes. It was rule of thumb, usually whenever
3 you put them on, especially with the bigger brakes,
4 you are talking about a big heavy drum. So to sit
5 there and fight with that thing and try to get it on,
6 it was a lot easier to spend a little time filing it,
7 sanding it. This way it would slide on easier.
8 Q. How would you clean up the dust after you
9 did a brake job after you filed or after you sanded?
10 A. Usually with an air hose or just a push
11 broom.
12 Q. Did you have that at Imburgia?
13 A. Yes.
14 Q. Did that create dust?
15 A. Yes.
16 Q. Did you breathe that dust?
17 A. Yes.
18 Q. Did you sweep up the - clean the area when
19 you were done after you used the air hose?
20 A. I used to sweep a lot because a lot of the
21 stuff I used to do, we talked about I used to buy my
22 own vehicles and refurbish them and stuff. I used to
23 do body work, and I used to do a lot of painting, and
24 I used Imburgia's equipment. I painted office
25 equipment and painted his dump trucks. So one of the

Page 153 1 most important things when you are painting obviously 2 is not to have a lot of dust in the air because it 3 comes in and lands back on the paint. So when I 4 cleaned up, I used to clean it really good just 5 because of the case of spray painting. 6 MR. LIPMAN: Your Honor, this is 3:00. 7 THE COURT: Yes. 8 MR. LIPMAN: My commitment. Thank you. 9 THE COURT: Have a nice weekend. See you on 10 Monday at 9:00. Still don't talk about this. 11 (Thereupon, the jurors left the courtroom, 12 after which the following proceedings were had:) 13 JUROR NO. 7: Can I ask you a question? 14 THE COURT: Sure. 15 (Thereupon, after an off-the-record 16 discussion between the Court and juror number 17 seven, the following proceedings were had:) 18 THE COURT: The juror wanted to know whether 19 we would go through Friday, and I said no, I 20 don't think so. 21 MR. LIPMAN: You assured the juror we would 22 not go through Friday? 23 THE COURT: Yes. 24 MR. LIPMAN: I think that's fairly certain. 25 THE COURT: All right, Court's in recess.	Page 155 1 witness identify something that was used by 2 counsel that hasn't been marked and we don't know 3 what it was? 4 MR. LIPMAN: I would like whatever the 5 demonstration was - I would like the brakes - 6 THE COURT: How do we know -- 7 MR. LIPMAN: I would like to hand it to 8 Mr. Mallia and ask him what it was used for. 9 THE COURT: Somebody should have asked 10 counsel before we started. 11 MR. LIPMAN: I did not mean to be 12 inappropriate. 13 THE COURT: But you should have objected 14 then, not now. It's a little bit late. 15 We are in recess until Monday. 16 (Thereupon, the Court adjourned for the 17 weekend recess:)
Page 154 1 MR. BISHOP: I am going to object on the 2 record to Mr. Lipman in the middle of his 3 examination directing a request to me to go look 4 for a demonstrative exhibit I used in the 5 opening. 6 I sat here and waited for ten minutes while 7 he got ready to do his direct examination. There 8 is no need to do that in front of the jury. I 9 consider that a cheap theatrical trick, and I 10 object. 11 MR. LIPMAN: If that were true, he would 12 have objected then, and he didn't. To show that 13 jury a go-cart brake, and now it disappeared. 14 If they demonstrate materials to the jury, I 15 have a right to take what they demonstrate and 16 ask my client what it is. 17 THE COURT: Was it marked in evidence or for 18 identification? 19 THE CLERK: No. 20 MR. LIPMAN: I have no idea what he did with 21 it. He certainly showed it to the jury for an 22 extended period of time, him suggesting that 23 was - in fact, stating that was the type of 24 material that Mr. Mallia worked with. 25 THE COURT: Are we now going to have this	Page 156 1 CERTIFICATE 2 STATE OF FLORIDA) 3) SS: 4 COUNTY OF DADE) 5 6 I, ROBERT S. KLUPF, Court Reporter, do hereby 7 certify that I was authorized to and did report in 8 shorthand the proceedings taken before the Honorable 9 Richard Yale Feder, Circuit Court Judge, at the time 10 and place aforesaid; and that the foregoing pages are 11 a true and correct transcription of my stenographic 12 notes of the proceedings taken at the Dade County 13 Courthouse, Miami, Florida, on the 9th day of 14 December, 2005, commencing at 9:00 a.m. 15 IN WITNESS WHEREOF I have hereunto 16 affixed my hand this 9th day of December, 2005 17  18 ROBERT S. KLUPF, RPR 19 20 21 22 23 24 25

\$	5	aligned 16/9 Alinta 20/13, 21/6, 24/13 allegedly 28/16 allow 33/3, 42/3, 63/22, 72/20, 80/11, 126/2 allowable 102/1 allowed 35/23, 56/19, 56/23, 102/9, 103/13, 104/1, 104/2 allowing 71/1, 124/25, 125/1 allows 39/22, 40/9, 71/5, 71/7, 81/7, 82/19 amalgamated 29/20 amendable 82/8 American 51/10, 142/12, 142/17 amount 74/4, 100/6 amphibole 117/13 analysis 81/17, 82/9, 82/14, 96/23, 97/23 analyze 81/16 Angeles 45/8 animal 74/12, 74/16 animals 74/17 Ann 43/19, 43/22, 45/19 answer 13/15, 37/13, 65/21, 66/1, 66/4, 66/11, 66/16, 66/25, 67/5, 67/14, 67/22, 68/1, 68/18, 69/18, 75/4, 77/10, 81/17, 89/24, 90/1, 91/3, 91/24, 92/11, 94/12, 94/14, 95/7, 100/19, 101/7, 106/5, 111/9, 119/10, 119/12, 119/13, 120/4, 120/7, 120/18, 123/18, 123/19, 129/1 answered 13/24 answers 82/25, 97/1, 97/6, 101/9, 101/11, 111/22, 144/16, 145/22 anticipated 27/24 anticipation 16/21, 24/2 apologize 111/20, 118/25 appearance 136/20 APPEARANCES 2/1 apple 132/16 application 39/10, 40/17 appointment 9/23, 9/24, 10/14, 11/8, 14/2, 18/8, 25/12 appointments 18/8 approach 28/14, 33/21, 46/23, 52/18, 55/14, 97/25, 101/13, 109/22, 109/24 appropriate 31/8, 59/25, 100/20, 103/25, 119/6 approve 93/5, 93/8 approximate 121/15 Arbor 43/19, 43/22, 45/19 area 82/13, 152/18 areas 53/20 argue 36/8, 59/13, 60/16, 70/20, 71/14 argued 56/17 argument 56/15, 56/16, 58/15, 63/11 arm 22/4 Arnold 70/21 arrangements 18/9 arrive 108/8, 109/13 artery 22/6 article 28/18, 32/11 articulated 29/3 asbestos 37/10, 37/14, 37/25, 54/17, 54/18, 54/20, 55/1, 68/15, 73/18, 73/19, 73/20, 74/7, 74/17, 75/17, 75/20, 75/23, 76/1, 76/14, 76/16, 76/18, 76/19, 117/11, 117/13, 117/16, 117/18, 117/22, 118/2, 118/7, 120/9, 121/3, 128/7, 128/16, 128/25, 129/2, 129/6, 129/24, 129/25, 130/3, 135/10, 136/1, 136/21, 143/23 asbestos-related 71/3 Asia 80/2, 80/13 asphalt 131/6 assemble 95/23 assembled 151/18 asserted 29/10 assessment 52/4 associate 45/21 associated 74/1, 81/21, 84/10, 91/22, 94/20, 96/15, 97/17 association 31/22, 31/24, 31/25, 34/2, 49/23, 81/19, 81/24, 82/20, 84/5, 85/9, 85/21, 85/22, 85/25, 86/7, 86/10, 86/11, 86/17, 89/2, 89/4, 89/5, 89/21, 89/24, 90/2, 90/4, 90/6, 90/10, 90/11, 90/12, 90/18, 90/19, 92/6, 92/15, 94/1, 94/9, 95/12, 95/16, 97/9, 97/15, 97/17, 98/15, 99/13, 99/14, 99/15, 100/7, 100/14, 101/2, 107/4 associations 90/13, 94/2 assumption 68/23, 70/2, 74/11 assured 153/21 asthma 46/16 astute 78/14 ate 5/9 Atlanta 80/14 atomic 79/6 attempt 29/13 attendants 69/10, 69/16, 69/18
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