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**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
The Honorable Rex M. Burlison, Judge**

GAIL LUCILLE INGHAM, ET AL.,)
))
 Plaintiffs,))
))
 vs.) Cause No. 1522-CC10417-01
))
JOHNSON & JOHNSON, ET AL.,))
))
 Defendants.))

TRIAL TRANSCRIPT
Volume 5

June 6, 2018

**JENNIFER A. DUNN, RPR, CCR #485
OFFICIAL COURT REPORTER
CITY OF ST. LOUIS CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
jdunncourts@yahoo.com**

09:25:04 1 (Instruction Number 1 was read to the jury.)

09:34:10 2 THE COURT: Opening statement on behalf of
09:34:12 3 the plaintiffs, Mr. Lanier.

09:34:15 4 MR. LANIER: Thank you, your Honor.

09:34:15 5 THE COURT: Yes, sir.

09:34:15 6 **PLAINTIFFS' OPENING STATEMENT**

09:34:18 7 MR. LANIER: May it please the Court.

09:34:19 8 THE COURT: Yes, sir.

09:34:20 9 MR. LANIER: Counsel. Good morning, y'all.

09:34:24 10 Thank you for being here. Thank you for being willing to
09:34:27 11 serve on a jury. Thank you for making a difference. And
09:34:31 12 you do make a big difference. It's my honor to get to try
09:34:35 13 this case, and I am delighted to do so.

09:34:40 14 Now, we've got a packed house, but there are, in
09:34:43 15 addition to y'all and his Honor, some very important people
09:34:48 16 here I want to make sure you know. And I'm going to
09:34:51 17 introduce them to you in a moment, and they are the
09:34:55 18 plaintiffs and close family and friends for the plaintiffs.

09:34:57 19 The case is very different than what Mr. Bicks
09:34:59 20 tried to indicate yesterday. In Mr. Bicks' voir dire, he
09:35:04 21 told you some things that I hope you remember, because I
09:35:07 22 think the facts of this case are going to wind up being very
09:35:10 23 different than some of the things he said, and I've got
09:35:14 24 typed out what he said from the court reporter, and during
09:35:17 25 the trial I'll be able to show it to you.

09:35:20 1 This case boils down to something as simple as A,
09:35:24 2 B, C. This case is as simple as asbestos, when you breathe
09:35:28 3 it, or you put it inside of yourself in another way or
09:35:32 4 around yourself where it will be taken up in body parts and
09:35:36 5 cavities. Asbestos breathed or internalized becomes cancer.

09:35:41 6 And it's no more apparent than in this case.
09:35:44 7 That's the entire case. If I prove that asbestos is in that
09:35:49 8 baby powder, you're going to know why these women had
09:35:52 9 ovarian cancer, at least what a cause of the cancer was.

09:35:57 10 The big fight really is whether or not asbestos is
09:36:01 11 in the powder. And I think you're going to see quite
09:36:04 12 readily that it's in the baby powder, the Shower to Shower
09:36:09 13 powder, and the other things as well.

09:36:11 14 I've got out here my plaintiffs, and I want to
09:36:14 15 tell you about them. They come from all over the United
09:36:17 16 States.

09:36:18 17 I'm going to take this out if it continues to be
09:36:21 18 intermittent. Because that's just driving me crazy. Y'all
09:36:25 19 can hear me without it? Thank you. Excuse me, your Honor.
09:36:31 20 I don't mean to disrobe in Court. I promise it stops there.

09:36:45 21 Thank you, Judge. Ladies and gentlemen, I hope
09:36:47 22 you all can hear me out there as well. I'll speak up, I'm
09:36:52 23 not trying to shout at you. I'm just trying to make sure my
09:36:56 24 clients can hear what I've got to say to you this morning.

09:36:59 25 I'm here on behalf of my team, but before I

09:37:01 1 introduce my team, I want to introduce the plaintiffs.

09:37:04 2 So, Andrea Schwartz-Thomas is not here any more.

09:37:10 3 She was diagnosed in 2014 with stage IV ovarian cancer.

09:37:16 4 She's currently on very intense chemotherapy and has travel

09:37:20 5 restrictions. She's from Virginia. Her son Izzy is here.

09:37:25 6 Izzy a pizza guru in Nashville, Tennessee. If you ever get

09:37:30 7 there, go check out his pizza.

09:37:34 8 She's been on chemo for the past five years, which

09:37:38 9 is really kind of nice and a blessing. She had been told

09:37:43 10 she had two months to live, so her being on that is a good

09:37:47 11 thing.

09:37:49 12 I'll make it green, that will help. Thank you,

09:37:52 13 Judge.

09:37:53 14 So, anyway, Izzy is here, you'll meet them.

09:37:57 15 Annette Koman is the next one. Annette, can you

09:38:00 16 stand up? And your daughter Kimmy's here too. Kimmy, would

09:38:03 17 you stand up next to Annette? Thank you.

09:38:05 18 Annette was diagnosed in 2009 with stage IIIC.

09:38:10 19 She had a recurrence in 2016 of that ovarian cancer.

09:38:14 20 Interestingly enough, she was diagnosed the day her son

09:38:19 21 graduated out of boot camp. And thank you for being here.

09:38:23 22 So, Annette is here from Pennsylvania. We're

09:38:26 23 delighted to have her and her daughter Kimmy here.

09:38:29 24 Next, I want to introduce Cecelia Martinez.

09:38:33 25 Cecelia, there you are. You are here with your friend,

09:38:36 1 Brenda, Brenda Street is her friend and caregiver, and also
09:38:40 2 travels with her. Cecelia is from Arizona -- oops, let me
09:38:45 3 go backwards. Cecelia is from Arizona. I'm having trouble
09:38:47 4 going backwards. There we go. There she is.

09:38:50 5 Cecelia is from Arizona. She is still doing some
09:38:55 6 treatment at this point for the side effects from her
09:38:58 7 chemotherapy. But she is in remission. She was diagnosed
09:39:02 8 in 2011.

09:39:03 9 Her son, interestingly enough, is taking the law
09:39:06 10 school admissions test this Friday, so he's not here right
09:39:09 11 now. He's trying to get into law school to be one of us. I
09:39:12 12 guess he'll get more sense once he shows up.

09:39:16 13 I next want to introduce to you Donna Packard,
09:39:18 14 through her husband, Commander Robert Packard. Commander
09:39:24 15 Packard, 40 years in the Navy, and he is here on behalf of
09:39:28 16 his wife, Donna. Donna passed away last November. She
09:39:32 17 didn't get to live to see the court date, but we're glad
09:39:36 18 that Robert is here. They were married for 37 years, and
09:39:40 19 have been around for a long time.

09:39:41 20 You'll get to hear from Donna, his wife, the
09:39:45 21 deceased plaintiff, because she gave a deposition four days
09:39:50 22 before she passed away. And the depositions get played on
09:39:55 23 the video screen. And you'll get to hear it, and you'll get
09:39:59 24 to hear her testimony. She did that in this case, and so
09:40:02 25 we've got that as well.

09:40:04 1 Next I want to introduce to you Elaita Walker.
09:40:07 2 Elaita, would you stand up for us, please? No, she won't,
09:40:09 3 but Marvin will, her son. Elaita passed away -- or spouse,
09:40:15 4 excuse me. I got all messed up. Let me take these off.

09:40:19 5 Elaita passed away in December of last year, and
09:40:23 6 she was diagnosed in 2012 --

09:40:25 7 MR. WALKER: Correct.

09:40:25 8 MR. LANIER: -- as I recall. Was in
09:40:26 9 remission for 18 months, but then she had a recurrence that
09:40:29 10 happened in July of 2017, and it took her life in December.

09:40:34 11 Marvin works in the administrative end as a
09:40:37 12 corrections -- well, he's no longer a correctional officer.
09:40:41 13 He's an administrator in the correction office, but I've got
09:40:45 14 him herding all the plaintiffs together because he's got
09:40:47 15 that training. He's doing a good job. They don't get out
09:40:51 16 of line, Judge.

09:40:52 17 Next, I want to introduce to you Janice Oxford.
09:40:55 18 If I could have Janice stand up here. Janice, you're here
09:40:59 19 with your husband Bill. Bill, could you stand up with her?
09:41:03 20 Thank y'all. They are from North Dakota. They have six
09:41:08 21 children. They have two sets of twins; one set that are boy
09:41:09 22 twins, one set that are girl twins. And she was diagnosed
09:41:14 23 with stage I ovarian cancer back in 2012, and she's
09:41:18 24 currently in remission. Thank you very much.

09:41:22 25 Next I want to introduce Laine Goldman. Laine,

09:41:26 1 you're here on behalf of your now deceased wife, Johanna.
09:41:32 2 Johanna passed away 11 months ago, and she had ovarian
09:41:36 3 cancer. They've got an eight-year-old son named Lex, who is
09:41:40 4 at art camp. Johanna was an artist, and she's passed that
09:41:45 5 on to her son. And she was diagnosed in 2014. Thank you
09:41:48 6 for being here, Laine.

09:41:49 7 Next I want to introduce to you Krystal Kim.
09:41:53 8 Krystal? There you are there in the back. Thank you,
09:41:56 9 Krystal, for being here today. You've got Bryce with you;
09:42:00 10 is that right? Hello, Bryce. Glad that you are here.
09:42:03 11 That's her son Bryce, and we're thankful that y'all are
09:42:08 12 here.

09:42:09 13 Krystal was diagnosed in 2014. She went into
09:42:12 14 remission, and then had a recurrence in 2016. And
09:42:15 15 gratefully she's in remission right now as well, but she's a
09:42:21 16 favorite of many because she has a Boxer, that is an
09:42:26 17 adorable dog. So if you're a dog person, that's serious
09:42:31 18 stuff. Thank you very much, Krystal, and thank you for
09:42:34 19 being here.

09:42:34 20 I also want to introduce to you Tracey Baxter and
09:42:38 21 Chelsea Hillman. Would y'all stand up? These are the two
09:42:42 22 daughters of Marcia Hillman. Marsha passed away in December
09:42:47 23 of 2016. And so these are her daughters. They're here on
09:42:51 24 her behalf.

09:42:52 25 Chelsea, by the way -- Chelsea, wave. Chelsea

09:42:55 1 actually did a promotional photo shoot for Johnson & Johnson
09:43:00 2 as a baby for their baby powder. And we've got her here.
09:43:04 3 She's got two daughters that were granddaughters, ages three
09:43:08 4 and five, who she'll have to go home and take care of a good
09:43:13 5 bit, but they will be here a good bit as well. You'll see
09:43:18 6 them on and off as well. Thank you so much, ladies.

09:43:21 7 I also want to introduce to you Marcia Owens.
09:43:24 8 Marcia, are you here with your friend Maxine? Yes, your
09:43:29 9 significant other. Thank you guys for being here.

09:43:32 10 Marcia was diagnosed in June of 2013; is that
09:43:34 11 right? 18 rounds of chemo, and you've been in remission
09:43:38 12 since 2015, and continue to work at Coca-Cola, where you've
09:43:43 13 been for almost 20 years now, if I recall. Thank you so
09:43:47 14 much, and I appreciate you being here.

09:43:49 15 Next I want to introduce to you Olga Salazar.
09:43:51 16 Olga, where are you? Thank you. Olga was diagnosed in
09:43:58 17 2011, is still on a chemotherapy maintenance pill. And so
09:44:02 18 she's here. Olga, like several of our plaintiffs, and like
09:44:07 19 me, in fact, like at least one of you, has five children.
09:44:11 20 And so she's here and works with special needs kids. She's
09:44:17 21 got 10 grandkids, so she's outdistancing me there. Thank
09:44:22 22 you, Olga, very much.

09:44:24 23 Next I want to introduce to you Sheila Brooks from
09:44:27 24 California. Sheila is not -- there you go. The camera's
09:44:35 25 blocking. Thank you, thank you, thank you.

09:44:37 1 So we've got Sheila from California, with Allen.
09:44:40 2 And she was diagnosed, Sheila was diagnosed in 2014, but
09:44:46 3 it's also in remission at this point, if I've got that
09:44:49 4 right. Also five kids, 10 grandkids. Works with special
09:44:53 5 needs. Thank you so much.

09:44:58 6 Next I want to talk to you for a moment about
09:45:02 7 Annie Groover. Annie has passed away. She passed away in
09:45:08 8 May of 2016, but her husband Martin is here. Martin. Yes,
09:45:12 9 you are, right back there. Annie was diagnosed in 2010,
09:45:15 10 went into remission, had a recurrence in 2012. Was on chemo
09:45:20 11 for about four years, and then she passed away in 2016, in
09:45:25 12 May, I believe, if I'm correct.

09:45:28 13 Next I want to introduce to you Karen Hawk. Karen
09:45:33 14 is here with her husband Mark. She's diagnosed in 2003.
09:45:37 15 She is still in remission. They are having their 48th
09:45:41 16 anniversary this month. Five kids as well, 16 grandkids.
09:45:44 17 And when the trial is over, she'll tell us how she has
09:45:48 18 managed to stay married to him for 40 years.

09:45:55 19 Gail Ingham. Gail Ingham is -- where are you,
09:46:00 20 Gail? I can't see. There you are. I'm sorry. Gail is not
09:46:04 21 the tallest one of our plaintiffs. So you might have to
09:46:08 22 look, but she's right over there.

09:46:10 23 Gail was diagnosed in 1985. She's been in
09:46:13 24 remission for 33 years. So we've got a good span here for
09:46:17 25 you to get a good feel for this. Married also 48 years, if

09:46:22 1 I'm correct. And Gail is going to be especially important
09:46:27 2 for you to hear. She wrote a book on how to survive ovarian
09:46:30 3 cancer. And so that will be something that I think you'll
09:46:33 4 find interesting.

09:46:34 5 In addition to her, we've got Stephanie Martin
09:46:38 6 from South Carolina. Stephanie, is Ken with you? And Ken
09:46:41 7 is her husband. She was diagnosed in 2014 with stage I
09:46:46 8 cancer. They met, by the way, in sixth grade.

09:46:51 9 They've been married for 24 years. They've got
09:46:54 10 two kids. They've got a three-legged cat that was brought
09:46:58 11 in by their daughter. Their daughter only has four fingers,
09:47:03 12 and so she felt an affinity for the cat.

09:47:07 13 And what we'll do is these plaintiffs take the
09:47:08 14 stand, we got to get 22 plaintiffs on and off the stand in a
09:47:11 15 period of just a few days to make this trial fit inside our
09:47:15 16 schedule, but I'll make it a point with each of the
09:47:18 17 plaintiffs to give you something special that you can
09:47:20 18 remember them by so that each one will stand out in your
09:47:24 19 mind because each one, very special, you'll really enjoy
09:47:29 20 that.

09:47:30 21 Next I want to introduce to you on behalf of Toni
09:47:32 22 Roberts, her son Zach and her sister Kim. Thank y'all for
09:47:39 23 being here. Now, Toni we hope will be here next week, but
09:47:42 24 she's undergoing treatment right now and is in travel
09:47:46 25 restrictions, so she can't just come right now.

09:47:49 1 And so her kids are here to represent her. By the
09:47:52 2 way, Zach's a professional hockey referee right there. I
09:47:58 3 know a number of y'all are hockey fans here in St. Louis.
09:48:02 4 I'm from Houston, we don't even know what ice is. Thank you
09:48:06 5 very much, y'all.

09:48:07 6 I also want to introduce to you Pam Scarpino.
09:48:11 7 Thank you. It says Pam on the PowerPoint. She goes by Pam.
09:48:16 8 Diagnosed in 2007 with stage III ovarian cancer. And she's
09:48:21 9 going to have some of her family with her. She's got a
09:48:24 10 couple of daughters, Emily and Elizabeth, a sister Kathy
09:48:29 11 Fox, who will be coming up to trial some, so you'll see them
09:48:33 12 with her as well. Thank you, Pam, for being here.

09:48:35 13 Sherise Sweat. Where is Sherise? There you are,
09:48:38 14 Sherise. Diagnosed in 2009. She's from southern Georgia,
09:48:41 15 and her and her husband Greg have five-year-old twin girls
09:48:46 16 that they adopted. And he's at home with those. They don't
09:48:50 17 have five children, but they got five dogs. Pretty good.
09:48:54 18 All right. Thank you so much. You'll get to know Sherise
09:48:58 19 some, she'll be up there.

09:49:01 20 Also not here, but here in memory is Clora Webb.
09:49:06 21 Clora's passed away in 2014. Her daughter was her
09:49:09 22 representative of her estate, but her daughter passed away
09:49:13 23 last year. So, at this point it's her son-in-law who is the
09:49:17 24 representative of the estate. He works, and we're going to
09:49:20 25 try to make sure he's here so you at least know who is a

09:49:23 1 face behind the story that you'll hear. But you'll still
09:49:27 2 hear the evidence and the story.

09:49:28 3 Next I want to introduce to you Mitzi Zschesche.
09:49:33 4 Thank you so much for standing up. You've got Hoppy with
09:49:36 5 you, yes. And Mitzi was diagnosed in 2015 with stage IV.
09:49:41 6 It's now in remission. Her daughter, Mitzi's daughter, also
09:49:46 7 did a photo shoot for Johnson & Johnson's Baby Powder, and
09:49:49 8 you'll hear about that. Thank y'all for standing up.

09:49:53 9 Carole Williams is the next one I want to
09:49:56 10 introduce to you. Carole. Thank you. And that's Talmadge
09:49:58 11 with her, her husband. They've been married 45 minutes.
09:50:01 12 Talmadge, an Army man. I have to keep him and the Navy
09:50:06 13 commander a little bit apart, so we've got one between them.
09:50:10 14 But, no, we thank them and everyone for serving the country
09:50:14 15 in that way.

09:50:14 16 So you'll hear about her. She was diagnosed in
09:50:17 17 2011, and it's currently in remission. Thank y'all for
09:50:21 18 standing up.

09:50:22 19 And then last, but certainly not least, we've
09:50:24 20 got -- did I do Annette? I did you first.

09:50:30 21 All of these women, they have different names.
09:50:36 22 They come from different parts of the country. They come
09:50:39 23 from different educational backgrounds. They have got
09:50:45 24 different social lives. Different skin colors. Different
09:50:52 25 ethnic heritage.

09:50:54 1 But all of these women have something in common.
09:50:59 2 All of them used regularly and extensively Johnson & Johnson
09:51:04 3 Baby Powder and had to listen when a doctor said to them:
09:51:09 4 You've got cancer.

09:51:14 5 And not just any cancer. You've got ovarian
09:51:17 6 cancer. A cancer that has a mortality rate of almost
09:51:22 7 50 percent. And even if you go into remission, you always
09:51:27 8 have an increased risk of a reoccurrence.

09:51:32 9 Now, all of these women have had that, it's what
09:51:38 10 has taken the lives of a number of them, and what you've got
09:51:41 11 to do in your position in this case is figure out why.
09:51:47 12 You're the detectives in this trial. You've got to do some
09:51:51 13 detective work.

09:51:53 14 I thought it was interesting when Mr. Bicks asked
09:51:56 15 one of the potential jurors, Ms. Smith, about science
09:51:59 16 interests, she said I watch those shows, CSI, and a number
09:52:03 17 of you all murmured yeah, yeah, yeah. This is like CSI
09:52:08 18 St. Louis. This is your chance to do the show.

09:52:10 19 And I think while this isn't a criminal case
09:52:12 20 itself and we don't have a criminal burden of proof and
09:52:15 21 we're not alleging criminal wrongdoing, I still think you
09:52:19 22 can use this and understand, and the evidence will show that
09:52:24 23 Johnson & Johnson is responsible for this. And the
09:52:27 24 responsible party needs to be brought to justice.

09:52:29 25 And the way you do it as jurors is the same way

09:52:32 1 you do it if you were on the TV show. You're just going to
09:52:36 2 follow the evidence, and I think the evidence I'm going to
09:52:39 3 show you will fall into a couple of categories.

09:52:43 4 We're going to have evidence of what the motive
09:52:45 5 was. We're going to have evidence of what the means was,
09:52:49 6 we'll have evidence about the injury itself that we'll
09:52:53 7 examine, and then we'll have evidence about the defenses, or
09:52:56 8 the alibis that Johnson & Johnson's going to give you.

09:53:00 9 And that's where we are, and that's what the trial
09:53:03 10 will be about, and that's the case that I plan on putting in
09:53:06 11 front of you. So I want to start with the motive. Johnson
09:53:08 12 & Johnson had the motive. The motive was clear. The motive
09:53:11 13 was money.

09:53:12 14 Now, money itself is not a bad motive. We work
09:53:15 15 for money, we do things for money, but you've got to be
09:53:19 16 careful because the love of it can be the root of all evil.
09:53:25 17 It can be something that causes you to do things you
09:53:28 18 wouldn't do otherwise.

09:53:30 19 And this is not -- the Johnson & Johnson I'm
09:53:34 20 talking about in this trial is not the Johnson & Johnson of
09:53:36 21 yesteryear. It's not the Johnson & Johnson that started in
09:53:41 22 the 1800s with two fellows named Johnson & Johnson, who
09:53:45 23 figured out how to do civil car casts or something like
09:53:49 24 plaster or something like that.

09:53:51 25 No. Johnson & Johnson's a multibillion dollar,

09:53:54 1 multinational corporation, that's got pharmaceuticals under
09:53:58 2 Janssen's name. They've got transvaginal mesh and other
09:54:02 3 things under Ethicon's name --

09:54:04 4 MR. BICKS: Your Honor, I'm going to object
09:54:06 5 to this outside the in limine motions that were made. Going
09:54:09 6 into other products.

09:54:10 7 THE COURT: Overruled. Let's proceed.

09:54:13 8 MR. LANIER: They do hip replacements and
09:54:17 9 other orthopedic things through DePuy. They've got Animas
09:54:20 10 Corporation. They've got LifeScan. They've got McNeil.
09:54:24 11 They've got 57 different countries where they have
09:54:28 12 headquarters of over 250 different subsidiary companies.

09:54:33 13 Now, one thing that these companies all have in
09:54:36 14 common, Johnson & Johnson understands from them that the
09:54:40 15 sacred cow was their baby powder. Because this is what
09:54:45 16 people know them for. People know them for the baby powder.
09:54:48 17 I've got a large one here. People know them for the baby
09:54:52 18 powder.

09:54:53 19 And it's one that engenders an emotional
09:55:00 20 connection is what the company says because people think of
09:55:04 21 it and the smell alone makes you think when you were with
09:55:07 22 your mom or when you were a baby, or when you were taking
09:55:10 23 care of your baby.

09:55:11 24 And so the smell they recognize is a powerful
09:55:14 25 emotional connection. And when people think of Johnson &

09:55:17 1 Johnson they want you thinking of the products Mr. Bicks
09:55:20 2 talked about in his voir dire where he talked about baby
09:55:25 3 shampoo and Band-Aids and things like that. And they do
09:55:30 4 those things.

09:55:32 5 But that's not the big -- that's the sacred cow.
09:55:37 6 That makes everything else seem good. You see that Johnson
09:55:42 7 & Johnson on the label and you feel good about it. You feel
09:55:45 8 like this is a good thing, and the company plays on that.

09:55:50 9 What I'm telling you, by the way, is not lawyer
09:55:52 10 conjecture. I've got documents that back this stuff up.
09:55:56 11 I've got documents where the company calls it their sacred
09:55:59 12 cow. Where they talk about the trust relationship and how
09:56:03 13 important it is because it runs over to the rest of their
09:56:07 14 products.

09:56:09 15 See, J&J owned the talc market in the United
09:56:11 16 States. There wasn't anybody even close. They had it with
09:56:15 17 their baby powder. They had it with Shower to Shower. They
09:56:18 18 had it with other products. And it was a big part of their
09:56:22 19 business. They not only owned the baby powder market, they
09:56:25 20 even own the talc mines that were producing the talc for
09:56:30 21 years that went into this.

09:56:32 22 They ultimately sold those, I think you'll find it
09:56:36 23 interesting timing wise when they did that, but they owned
09:56:40 24 these talc mines and they were pursuing it. They certainly
09:56:44 25 had the motive to sell this Johnson & Johnson's Baby Powder

09:56:46 1 as best as they could.

09:56:48 2 They not only had the motive to cause the problems
09:56:50 3 that these ladies and their families have endured, but they
09:56:54 4 had the means. And that's because this baby powder had
09:56:57 5 asbestos in it.

09:56:58 6 Now, I want to talk to you for a minute about
09:57:00 7 asbestos. And I want you to understand what this is.
09:57:03 8 Asbestos is a mineral. It's -- it's like -- it's typically
09:57:11 9 found underground or in a mountainside. But it is a
09:57:15 10 mineral, and there are different types of asbestos.

09:57:20 11 One kind, I've got a setup here. One kind I've
09:57:26 12 put in yellow, that is called chrysotile. It's its own
09:57:31 13 little branch. It's what's used in 90 percent of the
09:57:36 14 products. It's what's found in the ambient atmosphere just
09:57:43 15 occasionally at such a small, small, small fragment of a
09:57:48 16 dose that it's not even funny.

09:57:51 17 But it will be brought up by the company. So
09:57:54 18 there's chrysotile asbestos. Some of it's been found in the
09:57:59 19 baby powder. Some of it's been found in the mines, but it's
09:58:03 20 not the main part, and it's not the part that you're going
09:58:05 21 to find more attention on.

09:58:08 22 There's also amosite and crocidolite. Those are
09:58:13 23 types of asbestos that were used in products. They were
09:58:15 24 sold commercially. They had mines where there was enough of
09:58:18 25 it where they could pull it out of the mines and use it in

09:58:23 1 products; insulation products, piping products, a number
09:58:27 2 of -- fiberboard products. A number of different products
09:58:32 3 used these types of asbestos.

09:58:34 4 Now, there's another set of asbestos called
09:58:39 5 anthophyllite. Let me digress for a moment. I'll tell you
09:58:45 6 that amosite, crocidolite, tremolite, all of those are a
09:58:51 7 kind of asbestos that's called -- I don't know if y'all can
09:58:55 8 see this or not, I hope you can, but I'll just write it down
09:58:59 9 here. Amphibole. So I put them in red to show they're
09:59:07 10 different than chrysotile.

09:59:08 11 Chrysotile is called a serpentine, it's kind of
09:59:12 12 curly. These amphibole are generally not as curly, they're
09:59:16 13 much more sharp needlelike. So those are the red ones.

09:59:21 14 Now, the things about those amphiboles, the thing
09:59:27 15 about the red asbestos is tremolite and actinolite and
09:59:35 16 anthophyllite are extremely rare, in a sense. They're
09:59:38 17 called accessory minerals.

09:59:39 18 There's one anthophyllite mine I think in Finland
09:59:43 19 where they put it in some chemical vat that you might use if
09:59:46 20 you work around chemical vats and they haven't taken it out.
09:59:49 21 But nothing that's ever been around any of the women in this
09:59:52 22 case.

09:59:53 23 But the tremolite and the actinolite, those are
09:59:56 24 called accessory minerals because they're found in places
10:00:01 25 where you find other minerals. They're found in talc mines.

10:00:07 1 Talc mines have tremolite, actinolite and anthophyllite in
10:00:18 2 them.

10:00:19 3 Now, asbestos, it doesn't really look like those
10:00:21 4 chunks where it's going to hurt you and me. Those chunks by
10:00:25 5 themselves if they were undisturbed wouldn't hurt us. We're
10:00:29 6 hurt by the asbestos that breaks off, it's so small you
10:00:32 7 can't see it.

10:00:34 8 Asbestos, when it hurts you, doesn't have what I
10:00:36 9 call onion properties. You do not smell it. There's no
10:00:42 10 smell to asbestos. You can't see it when it's going to be
10:00:48 11 the kind that hurts you. It's invisible to the naked eye.

10:00:54 12 You don't sneeze when it's around because it's so
10:00:57 13 small it bypasses all of the body's defense systems and goes
10:01:02 14 not just in through the nose, not just in through the
10:01:05 15 throat, not just into the lungs. It goes down into the
10:01:08 16 deepest part of the lungs.

10:01:11 17 Into the little alveolar sacs that look like
10:01:15 18 grapes if you put them under a microscope. Down in the very
10:01:18 19 bottom, those are the little sacs that the walls are so thin
10:01:22 20 where that asbestos goes in, that those sacs are the place
10:01:27 21 where carbon dioxide comes out of the blood and oxygen goes
10:01:32 22 into the blood.

10:01:33 23 It just passes through the wall of those little
10:01:36 24 sacs, and that's where the asbestos goes. And the body
10:01:38 25 can't get rid of it. It's indestructible. So it doesn't

10:01:42 1 make you sneeze, it doesn't make your eyes water, it doesn't
10:01:45 2 do anything. All it does is live forever.

10:01:49 3 I call it the cockroach of the mineral world. I
10:01:53 4 mean, I don't know if it's true, but you're on the Internet
10:01:56 5 that after a nuclear war everything will die except
10:02:01 6 cockroaches. I do know where you see one cockroach you
10:02:05 7 probably got a whole bunch more.

10:02:07 8 Both of those facts are true about asbestos. And
10:02:09 9 you'll hear from the experts if they find asbestos in the
10:02:12 10 baby powder, there are going to be millions of fibers in
10:02:15 11 that powder, if they find one. If they find one, there are
10:02:20 12 going to be millions.

10:02:22 13 And so asbestos is just something that can't --
10:02:26 14 your body can't destroy it. You don't get rid of it. It is
10:02:29 15 really, really bad. And this asbestos is marbled into the
10:02:35 16 talc mines.

10:02:36 17 I heard Mr. Bicks say there's not asbestos in the
10:02:39 18 talc mines. He's going to tell you that. I am dying to
10:02:42 19 show you the documents on this.

10:02:45 20 There are -- there's asbestos in the talc mines.
10:02:49 21 The asbestos, it depends on what the talc mine is as to how
10:02:54 22 much asbestos it's got in it. Some of it -- it's like meat
10:03:00 23 and fat marbled into meat, some of it's got more than
10:03:05 24 others, but nobody's going to stand up and say that steak,
10:03:07 25 it's fat-free, because it's in there.

10:03:11 1 And we also know that asbestos at any level can
10:03:14 2 potentially cause cancer. Don't get me wrong, the more
10:03:19 3 you're exposed to, the greater the chances. It's been
10:03:24 4 likened to Russian roulette, or taking a gun. Instead of
10:03:31 5 putting six bullets in, if you put one in there's less
10:03:35 6 likely a chance the gun will go off if you pull the trigger.
10:03:38 7 Put in two, you doubled your chance. Three, you tripled
10:03:42 8 your chance.

10:03:42 9 The more you're exposed to the greater the chance.
10:03:45 10 But asbestos at any level potentially causes cancer, and it
10:03:48 11 causes a number of different kinds of cancer. It causes
10:03:51 12 mesothelioma of the lungs. It causes mesothelioma of the
10:03:57 13 peritoneal area. There are those same -- those are cancers
10:04:00 14 of mesothelial cells. Those same cells are involved in the
10:04:07 15 ovarian and Fallopian tubes of a woman. And so asbestos
10:04:12 16 causes cancer that's ovarian cancer as well.

10:04:17 17 Now, Johnson & Johnson can get up here, and I
10:04:20 18 firmly expect Mr. Bicks to get up here and to tell you over
10:04:25 19 and over, and show you document after document, give you a
10:04:29 20 pretty PowerPoint that says, look, we've tested this every
10:04:35 21 which way to Sunday, we've got hundreds and hundreds of
10:04:39 22 tests, and it's never shown asbestos.

10:04:44 23 They rigged the tests. They rigged the tests.
10:04:50 24 Here's what they did. They took a bathroom scale and they
10:04:54 25 tried to weigh a needle on it. They're using a test that

10:05:00 1 will not detect the asbestos unless the asbestos is at a
10:05:04 2 certain level. Which it's not.

10:05:09 3 And occasionally they'll still find some asbestos
10:05:12 4 in there, but then they'll redefine it. They'll say that
10:05:16 5 may be asbestos, but that's not the kind of asbestos we
10:05:18 6 should be worried about. It's not long enough or it's not
10:05:22 7 short enough or it's not wide enough and it's too wide. And
10:05:26 8 they play word games. So they say we're not going to count
10:05:29 9 that.

10:05:30 10 Or then they'll say, well, we found a few fibers,
10:05:30 11 but we didn't find five. If we didn't find five we're not
10:05:33 12 going to count it. And then they'll play all sorts of word
10:05:37 13 games, and you just get the pretty test results from the
10:05:41 14 FDA, by and large, but I will dig into those with you, and I
10:05:46 15 will show you that they found asbestos.

10:05:48 16 Now, one set of tests they did was not a sensitive
10:05:52 17 enough scale. Then they say, wait, wait, wait. They did
10:05:55 18 one that's even so mega sensitive that it would pick up the
10:05:59 19 weight of a needle. Yes, but they rigged that test too.

10:06:03 20 What they did with that test is they examined such
10:06:08 21 a very small part of this bottle that the odds of finding
10:06:15 22 the asbestos in the bottle is next to nothing. There's a
10:06:20 23 way to test more of the bottle. You can take it and
10:06:22 24 concentrate it down and dilute it and put it in a
10:06:27 25 centrifuge, one of those things that spins those test tubes

10:06:31 1 around. And it's going to shoot the asbestos down to one
10:06:34 2 end, and then you can take that out and test it.

10:06:37 3 The company knew about that for 40 years, 50
10:06:40 4 years, since the early '70s, but they refuse to use that
10:06:43 5 test because, quote, that's too sensitive. It will show
10:06:47 6 asbestos.

10:06:50 7 We've used that test. And it's the -- you know, I
10:06:56 8 told you they used such a little bit. I asked one of the
10:07:00 9 witnesses who was working with these tests, I said, based
10:07:03 10 upon all the tests you've done in 40, 50 years, how long
10:07:07 11 would it take you for this -- this really small electron
10:07:12 12 microscope test, how long would it take you to test this
10:07:17 13 entire bottle based upon the pace you've been going so far?
10:07:20 14 Just one of these 1.5 ounce chiquita, small. 600,000 years
10:07:30 15 before they'll even test one full bottle at the rate they're
10:07:34 16 going.

10:07:34 17 So, yeah, they've got the test and he can put them
10:07:37 18 up here and he can talk about it. I got to tell you,
10:07:40 19 though, even still they occasionally find one. Even with
10:07:43 20 such a bizarrely skewed test -- rigged test, so you know
10:07:48 21 what they do for that? They rig it again.

10:07:52 22 They take it -- your Honor, this will be
10:07:54 23 Plaintiffs' Exhibit 73 for the record.

10:07:56 24 What they do is they take it -- Juan, can we go to
10:08:01 25 the ELMO please? Thank you.

10:08:02 1 They take it and they start tilting it so it
10:08:05 2 doesn't look like asbestos under the microscope. This is RJ
10:08:10 3 Lee. This is the company they pay all this money to to do
10:08:13 4 the testing. They have a different approach. They believe
10:08:15 5 if you can find a hint of a diffraction pattern from another
10:08:19 6 mineral then call it transitional and not amphibole.

10:08:24 7 In other words, if you can find even a hint that
10:08:26 8 there may be something else there, don't call it asbestos.
10:08:29 9 One of those amphibole asbestos.

10:08:32 10 Then said the analyst tells me when she finds a
10:08:36 11 tremolite fiber. Tremolite. One of the kinds of asbestos
10:08:40 12 that's found in the talc mines. When she finds a tremolite
10:08:44 13 fiber, she'll just tilt the stage. That's what's holding
10:08:48 14 the slide. She'll tilt it until she can see a talc
10:08:52 15 diffraction come into view. And then she'll just call it
10:08:58 16 talc.

10:08:58 17 They rigged the tests. They rigged the tests.
10:09:01 18 And I'll have an expert who will come in here and explain
10:09:05 19 how they did it.

10:09:06 20 You're looking for a needle in a haystack to start
10:09:09 21 out with, and you got to do the right tests to find the
10:09:12 22 needle in the haystack because it's the needles that are
10:09:16 23 going to kill you. And they didn't do the right test. I'll
10:09:18 24 show you how to do the right test.

10:09:20 25 I'm going to show you through an expert, he'll be

10:09:21 1 our second witness. Our first witness is a woman named
10:09:26 2 Alice Blount, Dr. Blount from over in Illinois. She now
10:09:31 3 lives in Vermont. An elderly lady who used to test Johnson
10:09:35 4 & Johnson's Baby Powder.

10:09:37 5 She tested it and wrote a paper on it explaining
10:09:40 6 the right method that you need to use if you really want to
10:09:43 7 find the asbestos. She did this in 1990-'91.

10:09:49 8 And, you know, Mr. Bicks told y'all, used the
10:09:54 9 illustration about baseball and the Cubs and the Cards. I
10:10:00 10 don't want to offend any Cards fans because y'all have like
10:10:04 11 tons of world pennants, but Houston won our first and only
10:10:08 12 one in the history of our city last year. So I'm sensitive
10:10:13 13 on this issue, but I will tell you this: He was saying you
10:10:16 14 need neutrals.

10:10:18 15 We're going to see how neutral his neutrals are.
10:10:22 16 But one of them was Dr. Alice Blount. She's got no dog in
10:10:27 17 the hunt. And you're going to hear her deposition, she's
10:10:30 18 not able to travel here, it's the first thing, I'm going to
10:10:33 19 play it after lunch today if the judge will let me. And
10:10:37 20 it's not a live witness, don't go to sleep, it's only about
10:10:40 21 an hour, hour and a half long.

10:10:42 22 And as soon as she's done, I'm going to put on Dr.
10:10:45 23 Longo. Dr. Longo is a world-renowned expert in asbestos
10:10:48 24 testing for over 30 years. You might be saying, well, you
10:10:51 25 know, he's what Mr. Bicks called the plaintiffs' expert.

10:10:56 1 Well, he's our expert in this case, but he's been
10:10:59 2 against me before too. I've brought him stuff before and
10:11:02 3 said what do you think. And he said, no, there's no
10:11:05 4 asbestos in this. He has no trouble doing that because he
10:11:09 5 doesn't just do it for me.

10:11:10 6 He's worked with or been affiliated with and done
10:11:12 7 work for or consulted with and been a part of the
10:11:16 8 Environmental Protection Agency for the U.S. The FAA,
10:11:20 9 Massachusetts Institute of Technology, MIT. The Department
10:11:25 10 of the Treasury, NASA, BMW, Ford, Dow Chemical, National
10:11:31 11 Institutes of Health. The United States Center for Disease
10:11:33 12 Control out of the Department of Health and Human Services.

10:11:38 13 He's done work for Intel, he's done work for GE.
10:11:41 14 He's done work for IBM. He's done work for the U.S. Air
10:11:44 15 Force. This gentleman has tested over 300 to 400,000 pieces
10:11:51 16 of analysis over the last 30 years for asbestos. He's got a
10:11:57 17 million-dollar electron microscope.

10:12:00 18 And he has, in two years that we've been trying to
10:12:04 19 get him as many samples as we can, we've got them off eBay,
10:12:09 20 we've got older ones. We've got them out of the Johnson &
10:12:12 21 Johnson museum where they've kept them. We're gotten them
10:12:16 22 out of some of our ladies' homes. He's gotten some from all
10:12:22 23 these different places.

10:12:23 24 And in two years he's tested over a hundred times
10:12:26 25 more Johnson & Johnson talcum powder than Johnson & Johnson

10:12:30 1 has in 50 years if you're looking at volume.

10:12:36 2 Now, they don't like his tests. And they say, oh,
10:12:40 3 well, somebody got that bottle out of their attic, maybe
10:12:44 4 they, you know, snuck in the asbestos or something like
10:12:47 5 that. Because Dr. Longo found asbestos in over half the
10:12:51 6 bottles he examined. Didn't find it in all. Found it in
10:12:56 7 over half.

10:12:59 8 And then as I told you, if you use the right
10:13:02 9 method, you'll hear this deposition of a consultant for
10:13:06 10 Johnson & Johnson. At least they're lawyers. Because Alice
10:13:10 11 Blount wrote a letter to the Johnson & Johnson lawyers back
10:13:13 12 in the 1990s, saying quit telling everybody your baby powder
10:13:19 13 doesn't have asbestos in it. I've tested it and it does.

10:13:24 14 She published on it. And you'll hear the
10:13:28 15 deposition. You'll hear the lawyer ask a lot of questions
10:13:31 16 that I think were confusing to her. But there's no question
10:13:35 17 she found it. And she even said after that, after her
10:13:40 18 published paper, as she was basically through with Rutgers,
10:13:45 19 she would periodically still pull some off the shelf, take
10:13:49 20 it home and test it just to see. Not anything she kept the
10:13:52 21 data on it or anything like that, but she still says, yeah,
10:13:56 22 I was always able to find it. It's in there each time. So
10:13:59 23 you will hear from her.

10:14:01 24 You will even hear from the expert for the
10:14:03 25 company, that's been the company man for almost 50 years,

10:14:07 1 Dr. Pooley, from Wales, over in England, Great Britain.

10:14:12 2 He's testified by deposition, and he wants to tell
10:14:16 3 you -- he gives a good company line that there's never been
10:14:19 4 anything. But if you look at his documents, his documents
10:14:23 5 even show that he's found it in the mines. It's just a
10:14:28 6 question of doing the right test.

10:14:29 7 He told the company the right test to do, and the
10:14:31 8 company said, no, we're not going to do that. We're not
10:14:34 9 going to concentrate it before we test it. We want to just
10:14:37 10 test little bits.

10:14:39 11 See, Johnson & Johnson knew if you wanted to test
10:14:40 12 it right, you needed to take a good chunk and concentrate it
10:14:44 13 down so that you're testing the concentrated form, otherwise
10:14:48 14 you'll never get through the bottle. You never test enough
10:14:51 15 to know.

10:14:52 16 But we know that you can -- you can reduce a
10:14:57 17 gallon of orange juice down to a can. You can really reduce
10:15:01 18 this down and you can look for the asbestos.

10:15:04 19 And so when I tell you Johnson's Baby Powder has
10:15:08 20 asbestos in it, it's not just me. It's in the powder and
10:15:10 21 it's in the mines, and you get that from me. You get it
10:15:14 22 from Dr. Pooley at Cardiff University. He'll say, no, it's
10:15:18 23 not; no, it's not; no, it's not; 30,000 times, but once I
10:15:22 24 finally put the record in front of him, the record speaks as
10:15:25 25 to what he found.

10:15:26 1 You'll see it from -- this is from another outfit,
10:15:31 2 it is a Dutch outfit, that looked at it, and I'll give you
10:15:36 3 this more in a moment, but a Dutch Health Group, a Dutch
10:15:40 4 government looked at it and they found it as well.

10:15:43 5 It's not only them. The FDA has found asbestos in
10:15:47 6 it, regardless of what Mr. Bicks told you in opening. Not
10:15:52 7 only has the FDA done it, but their own research lab,
10:15:56 8 McCrone Research Institute, has found asbestos in the baby
10:16:01 9 powder and in the products from the mines, the talc.

10:16:04 10 The mining company, Imerys, found it. There was a
10:16:09 11 TV station in Sacramento, California, that sent some off to
10:16:13 12 one of the national testing labs, Forensic Analytical Labs.
10:16:18 13 They found the asbestos in the baby powder.

10:16:21 14 Not only that, but the Colorado School of Mines,
10:16:24 15 another school that's hired by this company to test their
10:16:28 16 product, they found it.

10:16:30 17 Now, Mr. Bicks will put up here all these things
10:16:32 18 that say no asbestos, no asbestos. That's because they
10:16:35 19 start playing word games. They change what they call
10:16:39 20 asbestos. Or they change the rules. We're not going to
10:16:42 21 count it as asbestos if there's less than five fibers that
10:16:46 22 we saw. So they just change the rules so they can tell
10:16:50 23 everybody it doesn't have asbestos in it.

10:16:51 24 You can go back to Battelle. Battelle, we got his
10:16:54 25 studies. You can go to Ernest Fullerman, his studies. You

10:16:57 1 can go -- even Pfizer did a study that found it. RJ Lee,
10:17:01 2 Sanchez, one of their experts that's going to come in here,
10:17:04 3 he'll have to confess under oath, even with all of their
10:17:09 4 games, with all of the definitions and everything else, yes,
10:17:12 5 he's seen asbestos fibers in their product.

10:17:17 6 You're going to get it from the MSHA. You're
10:17:21 7 going to get it from Alice Blount at Rutgers University.
10:17:23 8 You're going to get it from Bain Enviromental. You're even
10:17:29 9 going to see it in some Johnson & Johnson documents. They
10:17:32 10 had it. You will see it, and I look forward to showing it
10:17:35 11 to you.

10:17:37 12 See, give you an idea of what I'm talking about
10:17:41 13 here. This is just a smattering. I don't have a lot of
10:17:44 14 time, so I've got to do this fairly quickly. But if we can
10:17:47 15 go to the ELMO, please, Juan. This is a summary of what
10:17:50 16 we're looking at.

10:17:52 17 See, the test results will show tremolite in baby
10:17:56 18 powder, and then they'll write up a report that doesn't say
10:17:59 19 that. Tremolite being in asbestos. The report will just
10:18:01 20 say a few isolated crystals. They'll have a test result
10:18:05 21 that shows .2 to .5 percent tremolite. They'll just delete
10:18:09 22 that from the report.

10:18:10 23 They'll show chrysotile in cosmetic talc, and
10:18:14 24 they'll call it good platy instead. They've got chrysotile
10:18:19 25 asbestos in Shower to Shower, and they'll say that there's

10:18:22 1 no trace of chrysotile. They've got asbestos in Shower to
10:18:24 2 Shower, they'll delete that. Fibrous talc shards in
10:18:28 3 Hammondsville talc, that's a mine that they owned for
10:18:31 4 awhile, that's a mine where they got their asbestos, or
10:18:34 5 their talc with asbestos from.

10:18:35 6 And they'll just say there were a few organic
10:18:38 7 fibers. They'll have fibrous minerals that were found.
10:18:42 8 They'll delete it because asbestos is a fiber. That's a
10:18:44 9 buzz word for asbestos.

10:18:46 10 Cosmetic fiber in cosmetic talc and they'll say --
10:18:49 11 or chrysotile fiber in cosmetic talc, the report will say no
10:18:54 12 chrysotile was found. Anthophyllite and chrysotile fibers
10:18:55 13 found, they'll say no quantifiable amounts of asbestiform
10:19:02 14 materials. They play these games.

10:19:04 15 So Mr. Bicks can show you great reports over and
10:19:06 16 over. Because the other reports, like Exhibit Number 93,
10:19:11 17 your Honor, which I'm displaying now, that comes to the
10:19:14 18 Johnson & Johnson research center that has the examination
10:19:17 19 of the baby powder, they say don't use this report.
10:19:21 20 Replaced by another version.

10:19:25 21 And they'll milk down the words and all the rest.
10:19:29 22 This is one which shows the presence of tremolite content,
10:19:36 23 this is a Johnson & Johnson document. The total tremolite
10:19:39 24 content of the two samples, .5 percent for one sample, .2 to
10:19:45 25 .3 percent for another. That's asbestos. That tremolite

10:19:49 1 asbestos.

10:19:55 2 They found it. They looked and they found it.

10:19:58 3 These are fibers, asbestos fibers. See, they want to say,

10:20:03 4 well, tremolite's not always asbestos fibers. Sometimes

10:20:06 5 tremolite's not. These are fibers. These are fibers. This

10:20:10 6 is asbestos fibers. This isn't jade jewelry or something

10:20:15 7 like that.

10:20:16 8 It's not just in that report Exhibit Number 93.

10:20:19 9 We've got it in others. The Dutch Consumer Group. Your

10:20:23 10 Honor, this is Plaintiffs' Exhibit 6163. Johnson & Johnson

10:20:27 11 goes crazy because during the month of August, the Dutch

10:20:30 12 Consumer Organization informed us. They determined asbestos

10:20:35 13 in Johnson's Baby Powder. According to their first test it

10:20:39 14 was 1.59 percent. They tested another sample and it was

10:20:43 15 .3 percent. We asked them, don't tell anybody about this

10:20:48 16 unless we agree.

10:20:51 17 They didn't accept our arguments against their

10:20:54 18 method of testing. Because Johnson & Johnson's got this

10:20:57 19 elaborate scheme, if this doesn't work or they find it here

10:21:00 20 then we look there. And if it's not there then we're done.

10:21:03 21 We say there's none. But if it's there too then we'll look

10:21:06 22 here. And they call this being overly careful. They'll

10:21:09 23 say, oh, we do more than the minimum required.

10:21:12 24 No. That's a trick. What they do is if the test

10:21:18 25 shows it, they'll do more to try to find a test that won't

10:21:22 1 show it, and once they get a negative result, they shut it
10:21:26 2 all down and say, okay, now we've proven there's no asbestos
10:21:31 3 here.

10:21:31 4 I've got three boxes of positive findings that
10:21:34 5 I'll be trying to show as we got time to do so. It goes on
10:21:39 6 and on and on. FDA, et cetera.

10:21:43 7 So, let's go back to the PowerPoint, please, Juan.

10:21:47 8 Where does that leave us? It leaves us with
10:21:50 9 asbestos in the baby powder. It leaves us with asbestos in
10:21:53 10 the mines. Asbestos in the mills. And it leaves us with a
10:21:59 11 company that doesn't tell the truth. They suppress the
10:22:01 12 scientific truth.

10:22:04 13 I'm glad that we've got a full range of people on
10:22:07 14 this jury. Because common sense is going to dictate the
10:22:10 15 day. But there is some good science in here that you'll
10:22:14 16 enjoy looking at. There's some real good science.

10:22:17 17 You see, what the company did is the company
10:22:22 18 manipulated the science in more ways that I can count right
10:22:25 19 now. Oh, from changing what they call it, what they measure
10:22:30 20 it by and playing the word games and all this kind of stuff
10:22:34 21 to one gentleman, Dr. Langer, was going to present a paper
10:22:38 22 in England, showing that he tested Johnson & Johnson Baby
10:22:42 23 Powder and it had asbestos in it.

10:22:45 24 Johnson & Johnson stopped him from producing the
10:22:49 25 paper. They had their man on the spot, Dr. Pooley, pull the

10:22:54 1 papers, get him cancelled off of it and pull the papers out
10:22:58 2 of the packet so no one would have it.

10:23:00 3 There's a mine in Italy that publishes an Italian
10:23:05 4 publication. This is a mine that supplies their baby
10:23:09 5 powder. And the publication says we've got asbestos in talc
10:23:12 6 mines. And the company sends two of their big dogs over to
10:23:17 7 Italy to get in front of that company and say please stop
10:23:22 8 this English translation from going out until we can work on
10:23:26 9 it. And take out the asbestos section. We don't want that
10:23:30 10 in English. We're telling everybody it doesn't have
10:23:33 11 asbestos in it.

10:23:34 12 If you want to see how they manipulated the
10:23:37 13 agencies, it's going to be real interesting for you to see.
10:23:39 14 We've got some of the inside documents. I thought it was
10:23:42 15 interesting when Mr. Bicks said have you ever taken a
10:23:46 16 document and seen a sentence out of context in a document.

10:23:49 17 I'm not going to take sentences out of context.
10:23:52 18 You hold it against me if I do. I want to show you the
10:23:55 19 documents because the documents reveal the truth.

10:23:57 20 These aren't just, oh, I mean, here's -- so
10:24:01 21 there's a group, there's Johnson & Johnson and some other
10:24:04 22 companies that have formed this club, it's the Cosmetic Talc
10:24:09 23 Fragrance Association. It's got the mines and all the rest.

10:24:14 24 Well, the government has the National Toxicology
10:24:16 25 Program. That's a list of products that are seen by the

10:24:22 1 government as being carcinogenic, causing cancer. Okay. So
10:24:27 2 the government's got that program.

10:24:29 3 And the National Toxicology said, okay, we're
10:24:32 4 going to have to list talc as causing ovarian cancer. So
10:24:39 5 Johnson & Johnson and their friends in the CTFA, this club
10:24:43 6 I'm calling it, they all get together and say how can we
10:24:48 7 stop this? We don't want them to list talc as a cancer
10:24:51 8 causer for ovarian cancer.

10:24:54 9 What can we do? And they come up with an
10:24:57 10 argument. Here's their argument. They tell the Federal
10:25:00 11 Government's agency that all those studies that show talc
10:25:04 12 causes ovarian cancer, they're no good. Those studies were
10:25:09 13 back when we had asbestos in our talc. And it's the
10:25:13 14 asbestos that was causing the ovarian cancer.

10:25:16 15 This is what they tell the Federal Government.
10:25:18 16 They say we took that asbestos out in the '70s. So it's not
10:25:22 17 a problem any more. That was the asbestos.

10:25:26 18 See, Johnson & Johnson, during this very time
10:25:30 19 period, is working with the various asbestos companies.
10:25:33 20 That are hiding the mesothelioma. They're a member of the
10:25:38 21 worst asbestos organization there was in the 1950s. The
10:25:41 22 Industrial Hygiene Foundation.

10:25:42 23 The Board of Directors for Johnson & Johnson at
10:25:45 24 various times have served in various roles for the asbestos
10:25:49 25 companies that are well known.

10:25:51 1 I'm going to get through all of this evidence with
10:25:53 2 you as best as we can. I'll bring the best experts that I
10:25:58 3 can to show you this. You'll see the motive, you'll see the
10:26:01 4 means, and then we'll get to that third area, the injury.

10:26:05 5 You see these women were targeted. Johnson &
10:26:10 6 Johnson targeted women for this product. Not simply to use
10:26:14 7 on babies. But to use themselves. They targeted non-baby
10:26:21 8 use. They targeted use by any number of different groups.

10:26:29 9 Overweight. African Americans. Hispanics.
10:26:34 10 Teenagers.

10:26:35 11 Let's go to the ELMO, please, Juan.

10:26:39 12 Here's Plaintiffs' Exhibit 8214, your Honor. This
10:26:43 13 is the media recommendation. Let's see if we can. For
10:26:49 14 2010. Baby powder. Here's their program overview. Target
10:26:56 15 overweight women living in hot climates during the key
10:27:01 16 summer season. So they're going to print their ads in
10:27:05 17 Weight Watcher magazine. They're going to focus on
10:27:08 18 overweight women living in hot climates, a/k/a, plus-sized
10:27:14 19 Southerners. Because they hold a high school diploma. They
10:27:18 20 live in cities, and they have friends with similar body
10:27:21 21 types.

10:27:22 22 They didn't only target overweight women. They
10:27:26 23 targeted teenagers. These are ads put out in the 1970s, or
10:27:32 24 this is information put out about their ads in the 1970s,
10:27:35 25 about your baby market. And they talk about their history

10:27:38 1 of success with adult advertising. And how the sales of a
10:27:42 2 major competitor has gone since 1965, but how Johnson's
10:27:48 3 sales have skyrocketed. How have they done it?

10:27:52 4 Well, now they're working on teenagers. Look at
10:27:55 5 how important they are. There are 13 million teenager
10:27:58 6 girls, and the number's going to increase dramatically.
10:28:01 7 They spend 7 billion a year. 23 percent cosmetic stuff.
10:28:06 8 They're receptive to baby powder. 75 percent of them use a
10:28:11 9 body powder. 50 percent exposed to our advertising will buy
10:28:15 10 Johnson's Baby Powder.

10:28:16 11 So they're going to advertise in Teen, Co-Ed,
10:28:20 12 Seventeen, Ingenué. They're going to give out over two
10:28:25 13 million and a half free samples. They're going to have
10:28:29 14 these ads that tell girls you start being sexy when you stop
10:28:33 15 trying.

10:28:35 16 If a boy's interested in you, it should be because
10:28:39 17 you're you, not because you wear musky perfume or makeup or
10:28:44 18 anything that makes you something you're not. Johnson's
10:28:45 19 Baby Powder won't make you something you're not. It won't
10:28:49 20 make you smell like a siren. Some trying, just try it.

10:28:55 21 Wasn't just that. Evidently teenage girls, when
10:28:59 22 they're coming naked out of the river from bathing, are
10:29:01 23 supposed to know if you'd rather be fresh and natural,
10:29:04 24 you're our baby. You're one of the natural people. What
10:29:08 25 you put on your body has to be fresh and pure? When they

10:29:12 1 know it's got asbestos in it?

10:29:19 2 They target Hispanics. They target black people.

10:29:24 3 Show you Plaintiffs' Exhibit 43. Johnson's Baby Powder has
10:29:29 4 a high usage rate among African Americans, 52 percent, and
10:29:34 5 Hispanics. This brand can increase volume in 1993 by
10:29:39 6 targeting these groups. They find the groups that they
10:29:42 7 think they can best sell this to and they go to work on
10:29:46 8 those groups and they figure out how to do it. And that's
10:29:47 9 what they've done.

10:29:49 10 So within the framework of that, we've got this
10:29:51 11 case. Now, some companies actually put warnings on their
10:29:57 12 bottle. You go to Angel of Mine. Angel of Mine's got a
10:30:01 13 warning on the back. This product contains talcum powder,
10:30:05 14 it's intended for external use only. Frequent application
10:30:08 15 of talcum powder in the female genital area may increase the
10:30:11 16 risk of ovarian cancer. Johnson & Johnson didn't want to
10:30:14 17 put that down there.

10:30:16 18 Now, the doctors themselves, the treating doctors,
10:30:19 19 most treating doctors don't know the role of asbestos in
10:30:22 20 ovarian cancer. Most treating doctors don't. But there's
10:30:26 21 no question that asbestos causes ovarian cancer. It's been
10:30:30 22 determined by the International Agency Research on Cancer,
10:30:34 23 that's the World Health Organization. They are the global
10:30:37 24 authority because, as Johnson & Johnson put it, it's really
10:30:41 25 hard to influence them. It's really hard to, they don't

10:30:45 1 really take lobbying money and stuff.

10:30:48 2 The National Cancer Institute in the U.S.A., says
10:30:53 3 asbestos causes ovarian cancer. The American Cancer Society
10:30:57 4 says it. It gets written up in the medical publications
10:31:01 5 like The Lancet. You see it in the various places like
10:31:04 6 Cancer Treatment Centers of America. Even their trade
10:31:07 7 association, the Cosmetic, Toiletry, and Fragrance
10:31:08 8 Association, that club I was talking about. They said it.
10:31:16 9 And they're key members of the mines.

10:31:21 10 Johnson & Johnson hired an expert in their talcum
10:31:26 11 powder litigation before they understood that they were
10:31:29 12 looking at the asbestos. Guy's from the University of Utah,
10:31:34 13 his name is Dr. Weed. He produces a report. He says I
10:31:38 14 don't think talcum powder causes ovarian cancer.

10:31:40 15 He said what causes it is asbestos. Because he
10:31:44 16 just didn't think asbestos was in their product. They will
10:31:47 17 not bring him to court, I suspect. But you've got even
10:31:53 18 Johnson & Johnson saying it. Everybody knows it.

10:31:57 19 Now, I've got an expert that I'm going to bring in
10:31:59 20 here who's going to talk about it. Her name's Dr. Jackie
10:32:03 21 Moline. I grabbed this picture when she was on CNN talking
10:32:07 22 about cancers associated with the World Trade Center. She's
10:32:10 23 not an ovarian specialist. You've got to have cancer
10:32:14 24 specialists who deal with causal studies, who deal with
10:32:17 25 those types of issues to get into this.

10:32:19 1 This is too general for the normal treating
10:32:21 2 OB-GYNs or oncologists. But she'll testify to it. Now, I
10:32:29 3 got to warn you, I don't know how I get her here. Right now
10:32:32 4 she is not able to travel, so we may have to bring her in
10:32:35 5 later during the defendant's case, I may try to bring her in
10:32:38 6 by satellite or something like that, if we can work that
10:32:41 7 out.

10:32:41 8 But she was recently walking down the street in
10:32:44 9 Chelsea, New York, when a cabby T-boned a car, and that car
10:32:49 10 pinned her -- I mean, that's her pinned up against a wall of
10:32:53 11 a delicatessen, laying on the hood of a car while they try
10:32:57 12 to get it away from her. So I've got her coming. And
10:33:01 13 she'll explain to you some of the mechanics.

10:33:04 14 I've got a fellow named Dr. Felsher from Stanford
10:33:08 15 University, who you're going to want to shake his hand, the
10:33:12 16 judge won't let you until the trial is over maybe, but this
10:33:15 17 man will cure some form of cancer in his lifetime. He is an
10:33:20 18 amazing, amazing man, and he is all over this stuff.

10:33:24 19 And both he and Dr. Moline will explain that
10:33:26 20 asbestos cancer takes time to develop. They call latency.
10:33:30 21 You don't breathe it in and then get the cancer tomorrow.
10:33:34 22 It takes decades to affect those mesothelial cells like
10:33:40 23 mesothelioma; 20, 30, 40 years after you're exposed is when
10:33:45 24 the cancer comes in.

10:33:47 25 Now, the company says, well, it's background.

10:33:50 1 Background's the cause. No, here's -- Krystal Kim, there
10:33:56 2 you are, back there. Stand up so they can see you. Krystal
10:33:58 3 Kim.

10:33:59 4 We did -- had our experts look at this. Thank
10:34:02 5 you, Krystal.

10:34:03 6 That line right there is how much background
10:34:07 7 asbestos she's been exposed to. Just in the air. Mr. Bicks
10:34:13 8 said everybody's exposed to it. Everybody's exposed to it.
10:34:17 9 Her lifetime exposure is the 66,000 fibers.

10:34:23 10 Her exposure based upon her uses of Johnson's Baby
10:34:25 11 Powder, 67,300,000,525 fibers. Background asbestos. That's
10:34:40 12 not going to be reasonable.

10:34:42 13 Now, Mr. Bicks said wouldn't you expect the
10:34:44 14 plaintiffs to show you asbestos in every tissue? No.
10:34:47 15 That's not the way it works, it's rare to find asbestos in
10:34:50 16 the tissue.

10:34:52 17 We've had Dr. Rigler look at it, he'll testify.
10:34:56 18 And he's been able to look at, I don't know, 10 or 12
10:34:59 19 slides, and he's found it in a remarkable number. But the
10:35:03 20 way asbestos works is our expert will teach you, it
10:35:08 21 causes -- it's the cause of cancer in three ways.

10:35:11 22 Number one. It's like a match. It will actually
10:35:15 23 cause the cancer to start. It can alter the DNA. The
10:35:20 24 asbestos fibers are so small they will impale DNA inside a
10:35:27 25 cell. And so it can cause it in that sense as starting it.

10:35:32 1 An initiator is the cancer word.

10:35:34 2 Or it can be what they call a promoter. It can
10:35:38 3 make the cancer grow faster. It's pouring gasoline on a
10:35:42 4 fire. And in that way causes the ovarian problems, the
10:35:47 5 cancer problems.

10:35:48 6 And then the third way is it stops the body's
10:35:53 7 defense mechanisms. The fire truck doesn't arrive. So when
10:35:56 8 the body is developing cancer cells, it not only can cause
10:36:00 9 it to develop the cancer cells, it can feed the cancer
10:36:03 10 cells, but it can also stop the body's defenses from
10:36:06 11 attacking the cancer cells.

10:36:07 12 So you're not always going to find asbestos in
10:36:10 13 those tissues. And for Mr. Bicks to suggest otherwise to
10:36:13 14 you to get you to pre-decide this case is not right and not
10:36:17 15 fair.

10:36:18 16 Some of these women don't even have their slides.
10:36:21 17 Some of them do. I mean, Sheila Brooks. Here's Sheila
10:36:24 18 Brooks' slide from part of her cancer tissue. You can see
10:36:28 19 the asbestos fiber surrounded by talc. Sometimes it's just
10:36:34 20 right there. But not always.

10:36:40 21 I've got 10 to 15 minutes, depending upon how his
10:36:44 22 Honor read the clock. I'm going to go to my last subject
10:36:48 23 area. Their alibis don't hold up. Their defenses don't
10:36:52 24 hold up. I want to hear what the company executives have to
10:36:55 25 say.

10:36:56 1 I want a Johnson & Johnson -- I can't make them
10:37:00 2 show up, we can't force them to go to trial. But I want
10:37:05 3 them to bring one in, and if they will, I'll put them on the
10:37:08 4 stand in my case in chief, him or her, and I'll
10:37:11 5 cross-examine them. I've already taken the deposition of
10:37:13 6 their chief medical officer.

10:37:16 7 I beg her to come in. If she doesn't I'll have to
10:37:20 8 play the deposition, but I want an executive to look at
10:37:23 9 these documents and look you in the eye and testify about
10:37:25 10 them. I just can't force that.

10:37:29 11 I can show you documents that show Johnson &
10:37:31 12 Johnson's been working on their legal defenses for 50 years.
10:37:36 13 Their lawyers have been all over this. They've been trying
10:37:39 14 to get this figured out for a long, long time.

10:37:42 15 And as a result, they've worked on it so long
10:37:46 16 they've got shifting stories. They'll tell the government
10:37:49 17 in one breath, asbestos causes ovarian cancer, and then
10:37:51 18 they'll flip flop and they'll tell the jury, no, asbestos
10:37:55 19 doesn't cause ovarian cancer.

10:38:00 20 Well, you know, the truth's the truth the truth,
10:38:04 21 it's not supposed to change. Trust and truth. That was
10:38:09 22 dead right.

10:38:11 23 I want you to listen carefully to Mr. Bicks. When
10:38:14 24 he gets up, I don't have a chance, he can get up and argue
10:38:18 25 about everything I've said. When he gets up, I don't have a

10:38:23 1 chance to argue about what he said. So you listen
10:38:25 2 carefully, I'm going to be making notes. And I'm going to
10:38:29 3 come back during this trial, and I'm going to make sure that
10:38:32 4 the truth is out.

10:38:34 5 This idea the FDA never found asbestos in J&J
10:38:37 6 talc. He said that yesterday. Have you read the file? And
10:38:44 7 Mr. Armstrong said, but Mr. Bicks, I don't think the FDA
10:38:47 8 really tests much. Mr. Bicks, oh, they did this. No, they
10:38:51 9 really didn't much. They get outside agencies to do it.

10:38:54 10 And the reference that Mr. Bicks is talking about
10:38:57 11 is a reference that's got a footnote at the bottom that says
10:39:00 12 don't extrapolate these results to all of the products
10:39:03 13 because we didn't have enough to test.

10:39:08 14 But I'll show you other places where the FDA has
10:39:11 15 said, yes, we found asbestos in the talc. So you got to
10:39:15 16 listen real carefully. Mr. Bicks says there's never been a
10:39:18 17 problem in over a hundred years. I'm sitting there
10:39:20 18 thinking, well, where did you get that from?

10:39:24 19 Your Honor, it's Plaintiffs' Exhibit Number 10.
10:39:28 20 This is a document from Johnson & Johnson. Todd True. I
10:39:34 21 like that name. Because, oops, let's see if we can get it
10:39:39 22 to show up. There we go. Todd True, he's with the consumer
10:39:49 23 products part of Johnson & Johnson in the U.S. And he's on
10:39:52 24 this e-mail chain talking about it, and here's what he says.

10:39:57 25 Basically I'm thinking it would be in the brand's

10:40:00 1 best interest to develop a strategy to move out of the baby
10:40:03 2 aisle for our talc product. Either create a direct adult
10:40:08 3 proposition or just replace it with corn starch. Corn
10:40:11 4 starch works just as good. It holds the fragrance. In
10:40:16 5 fact, some studies of theirs show it works better.

10:40:20 6 But when they first started looking at using corn
10:40:24 7 starch they owned a talc mine. They didn't own a corn farm.
10:40:28 8 And, furthermore, they did the math. The corn starch costs
10:40:32 9 40 percent more than the talc. So they either have to
10:40:36 10 charge more or their profit margin goes down.

10:40:40 11 So, yeah, they'll put corn starch out there for
10:40:43 12 the women who are concerned. Most people don't know the
10:40:48 13 difference. And they keep selling their talc.

10:40:52 14 He says this would align with our charter of doing
10:40:55 15 the best for the baby to take it out. I understand this is
10:40:58 16 a \$70 million business in the U.S. alone, unsupported. So
10:41:03 17 any changes are risky, but given a number of other
10:41:07 18 ingredient issues we're facing, this is an easy fix. I know
10:41:10 19 it's going to be controversial. We'll just have to work
10:41:14 20 hard to justify the cost implications.

10:41:17 21 Mr. Bicks, there hasn't been a problem in over a
10:41:20 22 hundred years. Yes, Todd True, the reality that talc is
10:41:25 23 unsafe for use on or around baby is disturbing. I don't
10:41:30 24 mind selling talc, but we can't continue to call it a baby
10:41:35 25 powder and keep it in the baby aisle.

10:41:39 1 If you're going to continue to sell it, tell the
10:41:41 2 truth about it. Put a warning on it. Let people make a
10:41:44 3 decision whether or not they want to take that risk and they
10:41:47 4 want to do that.

10:41:48 5 So, I mean, they've been working on this for
10:41:50 6 years.

10:41:50 7 Your Honor, Plaintiffs' Exhibit 7414. It's a
10:41:54 8 letter from their mine company to their lawyers at Johnson &
10:41:56 9 Johnson. This is the mine company, Luzenac, that's mining
10:41:59 10 the product in 1994. They're talking about how they destroy
10:42:03 11 their samples after two years so that nobody can come back
10:42:06 12 and test them.

10:42:10 13 They've been working at this for a long time.
10:42:13 14 They do other things. They go in and they have, you know,
10:42:20 15 when the government was looking at listing talc as a cancer
10:42:24 16 causer, what the company did is the company joined with
10:42:27 17 their mine company and each of them wrote half of a check to
10:42:31 18 these doctors in Pennsylvania to publish a study, but they
10:42:36 19 didn't just go to the doctor and say, hey, here's some money
10:42:41 20 would you publish a study?

10:42:42 21 Instead, they went through a law firm so nobody
10:42:45 22 would know J&J and the mine company were behind this study.
10:42:49 23 They hid the money so that they could pretend that the study
10:42:53 24 was independent. And you'll see it. I've got the e-mails.

10:42:57 25 I'm running out of time. I want to show it to

10:43:01 1 you. What the heck, we're already here. Maximize the
10:43:04 2 effectiveness of our use of the attorney work product
10:43:07 3 privilege for their work. I'll send them a law firm check
10:43:10 4 in that amount to be reimbursed to us by Luzenac and Johnson
10:43:15 5 & Johnson in whatever proportions you choose. I think the
10:43:18 6 evidence will show they split it half and half.

10:43:23 7 Meanwhile, they're writing everybody, the New
10:43:24 8 England Journal of Medicine, telling them there's no
10:43:27 9 asbestos in here. They're telling juries there's no
10:43:30 10 asbestos in here. They're telling the judge, there's no
10:43:34 11 asbestos in here.

10:43:35 12 You see, what they were doing is they were trying
10:43:38 13 to protect their market. Let me go back to the PowerPoint
10:43:41 14 for a moment.

10:43:43 15 99 percent of the time, the FDA just requires you
10:43:46 16 to self-police. You've got to go into the FDA and you've
10:43:49 17 got to say I got to tell you this, we got asbestos in our
10:43:54 18 product. That's kind of like -- how many people go to the
10:43:57 19 law and say, you know, this morning I sped through a school
10:44:04 20 zone. There wasn't anybody there to give me a ticket, but I
10:44:07 21 want to self-report, and I'd like you to write me a ticket.
10:44:11 22 It didn't happen that often.

10:44:14 23 And then they're doing all this backroom stuff to
10:44:17 24 secretly distort the science. Where they're getting all
10:44:21 25 these articles written that they can use, and their real

10:44:25 1 goal behind all this was protecting their image and their
10:44:29 2 sales. Their goal's not to figure out do we have asbestos
10:44:33 3 in here that's going to kill people.

10:44:35 4 Do we have mamas sprinkling it on their babies
10:44:38 5 where their babies are going to have ovarian cancer in 30,
10:44:41 6 40 years, or their mamas from sprinkling it on the babies,
10:44:45 7 or from sprinkling it on themselves.

10:44:48 8 Here's Plaintiffs' Exhibit Number 80. Johnson &
10:44:50 9 Johnson Special Talc Study. They're going to do a special
10:44:55 10 study. What's the objective? Is it to figure out if we've
10:44:58 11 got a problem?

10:44:58 12 No. It's to monitor and defend against
10:45:01 13 consumerists, against science, against regulatory attitudes
10:45:07 14 and trends that could adversely impact the safety image and
10:45:12 15 the marketability. So we've got to generate and provide the
10:45:16 16 necessary data to support and reinforce safety of our baby
10:45:20 17 powder. And they do that.

10:45:23 18 Now, this is, of course, at a time where they
10:45:25 19 tested their baby powder on the second page and they find
10:45:29 20 asbestos. Johnson's Baby Powder, .08. They find it. These
10:45:40 21 results are well below the current two fibers per cc
10:45:45 22 permitted for asbestos. They just say it's not that bad.

10:45:52 23 Hey, let's not quibble about who killed who. And
10:46:01 24 I could keep going, but I'm running out of time. I just
10:46:05 25 will tell you this. Johnson & Johnson will say one thing

10:46:07 1 now and they'll say one thing later. They'll say, egads,
10:46:10 2 there's asbestos and then they'll tell everybody there's no
10:46:14 3 asbestos. And all of this time there was a safer
10:46:16 4 alternative. It just didn't make as much money for them.

10:46:20 5 So, they'll tell you it's asbestos-free, when
10:46:22 6 their documents I'll show you later say we can't always tell
10:46:25 7 you it's asbestos-free. I'll show you the documents of them
10:46:28 8 suppressing the truth. I'll show you how they approved the
10:46:32 9 policy of destroying the samples after two years.

10:46:36 10 I'll show you that we didn't know is not a
10:46:38 11 legitimate excuse. If you do the right test you'll know.
10:46:42 12 You do the right test, you do it often, and you report it
10:46:45 13 honestly.

10:46:47 14 Then they also may try this excuse. Oh, asbestos
10:46:50 15 doesn't travel. These women have just breathed it. Oh, it
10:46:52 16 travels. It travels.

10:46:54 17 It will go in through lung into the linings,
10:46:57 18 that's how it causes the mesothelioma. The mesothelial
10:47:00 19 cells are outside the lungs. They're not in the lungs. Or
10:47:04 20 they're outside of the abdominal cavity. It travels.

10:47:09 21 There's a study that was done where they took
10:47:12 22 stillborn children. These are children, stillborn babies.
10:47:16 23 Never had a breath. They were born dead. Okay. You got
10:47:20 24 me? Born dead.

10:47:22 25 And they did a biopsy on the children and

10:47:25 1 discovered --

10:47:26 2 MR. BICKS: Your Honor, this was again
10:47:27 3 subject to in limine. I'm going to object.

10:47:30 4 MR. LANIER: Your Honor, I won this one.

10:47:32 5 THE COURT: Overruled. Let's proceed.

10:47:34 6 MR. LANIER: They did these biopsies. And
10:47:36 7 what they were able to determine is that these babies from
10:47:39 8 the womb had asbestos in them because it had migrated from
10:47:45 9 their moms all the way across the placenta into the unborn
10:47:49 10 child.

10:47:49 11 So the asbestos travels. That alibi isn't going
10:47:53 12 to work either, and we'll prove that to you.

10:47:56 13 So you're going to follow the evidence, I hope
10:47:58 14 bring the responsible party to justice. It will have a
10:48:01 15 loud, it will -- I hope you do this. It's very important
10:48:06 16 because the evidence shows Johnson & Johnson's responsible.
10:48:09 17 And so if you're the detectives, that's how you'll get
10:48:12 18 there.

10:48:12 19 Thank you very much. Thank you, your Honor, for
10:48:15 20 the time.

10:48:15 21 THE COURT: Thank you, Mr. Lanier. Mr.
10:48:16 22 Bicks, can we take a break before we hear from your opening?

10:48:21 23 MR. BICKS: Yeah, that's fine.

10:48:23 24 THE COURT: Okay. All right. Ladies and
10:48:24 25 gentlemen, we're going to take a 15-minute break. If you

10:48:27 1 would be upstairs at about five after 11, subject to the
10:48:31 2 call -- everyone be seated in the courtroom. If you'd be
10:48:39 3 upstairs at about five after, subject to the call of the
10:48:43 4 sheriff.

10:48:45 5 Remember what we talked about since last Thursday.
10:48:49 6 Or some of you last Friday for the remaining.

10:48:52 7 Until the case is given to you to decide, you must
10:48:55 8 not discuss this case among yourselves, with others, or
10:48:58 9 permit anyone to discuss it within your hearing. You should
10:49:02 10 not form or express any opinion about the case until it is
10:49:05 11 finally given to you to decide.

10:49:08 12 Please do not do any research or investigation on
10:49:11 13 your own about any of the parties or any of the issues. Do
10:49:15 14 not communicate with others about this case by any means.
10:49:18 15 Do not read, view, or listen to any newspaper, radio,
10:49:22 16 electronic communication from the Internet or television
10:49:25 17 report of the trial.

10:49:27 18 Once again, if during the break you inadvertently
10:49:29 19 find yourself in a situation where someone wants to talk to
10:49:34 20 you about this case or wants to give you information about
10:49:38 21 this case, please remove yourself from that situation and
10:49:43 22 report that contact to the sheriff.

10:49:46 23 Thank you for your work. We'll see you in about
10:49:48 24 15 minutes. You are excused.

25

10:50:30 1 (The following proceedings were had in open
10:50:30 2 court, outside the presence and hearing of the jury:)

10:50:31 3 THE COURT: Thank you. You may be seated.
10:50:33 4 Counsel, do we need anything on the record while Jennifer's
10:50:36 5 here?

10:50:37 6 MR. LANIER: Not for Plaintiff.

10:50:38 7 MR. BICKS: Yes, your Honor. In light of my
10:50:39 8 objections, I will go back and check the transcript, but the
10:50:45 9 rulings that the Court made on the reference to other
10:50:48 10 products, in particular, any reference to transvaginal mesh,
10:50:53 11 Mr. Lanier expressly violated I believe what we had agreed
10:50:57 12 to.

10:50:58 13 The comments there about dead babies, expressly
10:51:02 14 said when we discussed that with the Court that he was not
10:51:05 15 going to make those comments.

10:51:07 16 It was inappropriate, it was over the top, it was
10:51:09 17 prejudicial. And on the grounds of that, I would ask that
10:51:12 18 there be declared a mistrial. And I will go back and check
10:51:16 19 the record.

10:51:18 20 MR. LANIER: Response is twofold to both of
10:51:20 21 them. Number one. On the other products issue, I did not
10:51:23 22 go into the fact that any of those products had caused any
10:51:26 23 damage or disease, but I made it real clear on the record,
10:51:29 24 and Mr. Bicks and I had a clear understanding he wouldn't
10:51:32 25 get into all the good products and I wouldn't get into all

10:51:35 1 of the bad products.

10:51:36 2 Mr. Bicks stood up here and violated his own voir
10:51:41 3 dire when he talked about baby shampoo, Band-Aids, that's
10:51:46 4 what Johnson & Johnson is. And I said if you go into those
10:51:49 5 products, I'm going to go into all the other stuff Johnson &
10:51:52 6 Johnson has done as well.

10:51:54 7 So I didn't violate his and my understanding. I
10:51:56 8 didn't violate the motion in limines. I didn't talk about
10:51:58 9 the fact that there are lawsuits about any of that. I
10:52:00 10 didn't talk about the metal-on-metal hip recall. I didn't
10:52:03 11 talk about any of that kind of stuff at all.

10:52:05 12 I talked about the very different companies and
10:52:07 13 the different kinds of products so the jury would not be
10:52:10 14 left with that misunderstanding. That's his point one.

10:52:13 15 His point two. I believe that I was very clear
10:52:16 16 that I would not be arguing that the asbestos or baby powder
10:52:19 17 or anything killed any of the infants. I'm not harping upon
10:52:23 18 the stillborn infants. What I'm going to argue is that the
10:52:27 19 asbestos clearly travels, and that's the clearest show. And
10:52:31 20 I thought I was entitled to do that.

10:52:33 21 I don't think I harped upon or even intimated that
10:52:37 22 asbestos had killed these babies. I don't see where that
10:52:42 23 came in at all.

10:52:44 24 THE COURT: Mr. Bicks, the -- does your
10:52:47 25 client intend to make reference to other products that it

10:52:52 1 has marketed or others market that have talc in it?

10:52:57 2 MR. BICKS: No, your Honor.

10:52:59 3 THE COURT: So you're not going to say that
10:53:01 4 talc is in coating on drugs or talc is in other products?

10:53:10 5 MR. BICKS: Not that our client's marketing,
10:53:12 6 your Honor.

10:53:13 7 THE COURT: Okay. So that's not --

10:53:17 8 MR. BICKS: Talc's in all these products, but
10:53:20 9 I'm not saying we're out marketing other talc products. And
10:53:24 10 the issue wasn't that I was going -- the issue was, was I
10:53:26 11 going to talk about other Johnson & Johnson Consumer
10:53:29 12 products and things of that nature. And if he had intended
10:53:33 13 to go into things that were expressly said that he wasn't,
10:53:36 14 he should have approached your Honor and we should have
10:53:39 15 discussed it.

10:53:40 16 I'm going back to the transcript of our hearing on
10:53:43 17 this whole stillborn babies, and I said --

10:53:47 18 THE COURT: We're not talking about stillborn
10:53:48 19 right now. I'm talking about it's -- from what I
10:53:52 20 understand, it is normal course to present all of the
10:53:57 21 products that talc can be found in.

10:54:00 22 MR. BICKS: And I said I'm going to say that.

10:54:02 23 THE COURT: All right. So as to the study
10:54:07 24 that was referenced on the stillborn, is that study that you
10:54:12 25 intend to present through an expert?

10:54:14 1 MR. LANIER: Absolutely, your Honor.

10:54:15 2 THE COURT: A peer-reviewed study?

10:54:17 3 MR. LANIER: Yes, your Honor. And it's

10:54:19 4 already been subject to multiple depositions. And it's not

10:54:24 5 a surprise, everybody knows it's out there. It's the

10:54:27 6 cleanest argument that asbestos transmigrates, that it moves

10:54:32 7 in the body.

10:54:33 8 THE COURT: And, Mr. Bicks, does your client

10:54:37 9 intend to present evidence that counters whether or not

10:54:39 10 there is a transmigration?

10:54:44 11 MR. BICKS: I don't believe we had intended

10:54:45 12 to address that issue, your Honor. And I'm just -- so we're

10:54:49 13 clear on the record, I'm reading from the transcript we had

10:54:52 14 before this. And the question was, I said: That won't be

10:54:57 15 mentioned in the opening. That was the stillborn baby

10:55:00 16 issue. Your Honor said: What? Stillborn babies?

10:55:04 17 Mr. Lanier: I'm not doing it in opening.

10:55:09 18 MR. LANIER: That's my mistake, your Honor,

10:55:10 19 in terms of saying that to the Court, and I apologize. I

10:55:13 20 still think if you look at the entire argument, you didn't

10:55:16 21 rule against it at that point in time, and I didn't violate

10:55:19 22 the motion in limine on that.

10:55:21 23 And I clearly said that I wasn't planning on

10:55:25 24 getting into it, and I got into it because I did the opening

10:55:28 25 last night and I guess I didn't realize that. So I

10:55:31 1 apologize to the Court.

10:55:33 2 But I will say that I think we're entitled to get
10:55:35 3 into it. I just was -- didn't plan on doing it in opening
10:55:40 4 at that point in time, but within the framework, we still
10:55:44 5 made the argument to you, and I think that that is
10:55:47 6 absolutely entitled to get into.

10:55:51 7 And as for the other issue, the motion in limine
10:55:53 8 was clearly about defects in the products. I didn't point
10:55:56 9 out any defects in any of the products. I just mentioned
10:55:59 10 that they do a whole lot more than Band-Aids and baby
10:56:03 11 shampoo that was talked about in voir dire.

10:56:06 12 THE COURT: The Court's going to deny the
10:56:08 13 motion for a mistrial. Anything further?

10:56:10 14 MR. BICKS: Nothing, your Honor.

10:56:11 15 THE COURT: All right. The Court will be in
10:56:13 16 temporary recess.

10:56:14 17 (Proceedings stood in temporary recess, after
10:56:14 18 which the following proceedings were had in open court:)

11:14:28 19 THE COURT: Thank you, everyone. Court will
11:18:50 20 be back in session, please be seated.

11:18:57 21 Opening statement on behalf of Johnson & Johnson,
11:18:59 22 Mr. Bicks.

11:19:01 23 MR. BICKS: Thank you, your Honor.

11:19:01 24 THE COURT: Yes, sir.

25

DEFENDANT'S OPENING STATEMENT

11:19:03 1
11:19:04 2 MR. BICKS: Good afternoon, ladies and
11:19:05 3 gentlemen. Good afternoon.

11:19:07 4 You know me, my name's Peter Bicks. And I want to
11:19:11 5 thank you. On behalf of my team, Morty Dubin, Lisa Simpson,
11:19:19 6 and most importantly on behalf of the men and women of
11:19:22 7 Johnson & Johnson.

11:19:23 8 For the next hour, probably a little bit more, I
11:19:28 9 am their voice. And what you heard over the last hour and
11:19:34 10 15 minutes was an attack that went to the core of the people
11:19:38 11 at Johnson & Johnson.

11:19:41 12 Plaintiffs' Counsel told you that the people at
11:19:44 13 Johnson & Johnson knowingly put asbestos in their product,
11:19:51 14 didn't care about women, didn't care about babies, and that
11:19:59 15 it wasn't just a matter of if, it was a matter of when
11:20:07 16 somebody would get ovarian cancer.

11:20:10 17 I told you in voir dire that the plaintiff would
11:20:13 18 come out here with scare tactics. They'd talk about
11:20:17 19 asbestos. Now I heard talk about fire, the fire department.
11:20:25 20 And cancer, cancer, cancer.

11:20:31 21 Ladies and gentlemen, what you heard and what was
11:20:34 22 told to you about the evidence is not true. As a matter of
11:20:41 23 fact, it is false. When you hear the evidence in this case,
11:20:48 24 you will see that.

11:20:50 25 And what was told to you over the last hour and 15

11:20:55 1 minutes about fire was like shouting fire in a crowded
11:21:00 2 theater. To get people to run. And to not get people to
11:21:07 3 think.

11:21:08 4 What I'm going to talk about -- actually I'm not
11:21:12 5 going to scream. I'm going to talk about evidence. And I'm
11:21:16 6 going to tell you when it comes to fire, what you heard over
11:21:22 7 the last hour and a half, was somebody blowing smoke.

11:21:30 8 So I'm going to talk to you about the evidence.
11:21:34 9 It's going to be no matches here. No gasoline, as
11:21:40 10 Plaintiffs' Counsel told you. And there's going to be no
11:21:45 11 cause. No cause in this case. The evidence will show that
11:21:52 12 Johnson & Johnson's product did not cause any Plaintiffs'
11:21:58 13 cancer in this case.

11:22:02 14 I want to start with something that Judge Burlison
11:22:06 15 read to you in his instructions. He said after the opening
11:22:12 16 statements, and remember what Plaintiffs said to you, it's
11:22:15 17 not evidence, it was an opening statement. The plaintiff
11:22:19 18 will introduce evidence. The defendants may then introduce
11:22:26 19 evidence. And those reasons are important because the
11:22:31 20 plaintiff has the burden of proof in this case.

11:22:35 21 They must prove to you that not only was there
11:22:40 22 asbestos in a mine that Johnson & Johnson used, but it
11:22:45 23 somehow made its way into a bottle of baby powder, and that
11:22:49 24 bottle of baby powder was a bottle that a plaintiff used,
11:22:53 25 and that whatever was in there, in whatever baby bottle

11:23:01 1 there was, somehow made it to a point in somebody's body
11:23:05 2 where it caused their disease. That's a lot of steps that
11:23:11 3 Plaintiffs' Counsel didn't talk about.

11:23:15 4 The burden of proof is on the plaintiff to prove
11:23:19 5 that. We don't have to prove anything. But we will. We
11:23:26 6 will. We will bring witnesses here, and we will present a
11:23:33 7 case that will show everything that you just heard was
11:23:39 8 false.

11:23:41 9 Now, let me start and talk to you about these
11:23:44 10 plaintiffs. You were shown pictures of them. And
11:23:52 11 absolutely they were individuals, they are all different.
11:23:55 12 And let me say to each and every one of you who was
11:23:59 13 introduced, on my behalf, on behalf of my team, and on
11:24:05 14 behalf of the men and women at Johnson & Johnson, we are
11:24:10 15 very, very sorry about what has happened to you.

11:24:15 16 Cancer is a terrible thing. And I told you during
11:24:18 17 the voir dire process that this has touched almost
11:24:24 18 everybody's life. I told you that it had touched my life.
11:24:29 19 And I know each and every one of you when we talked during
11:24:33 20 the voir dire that it probably touched your life, and that's
11:24:37 21 why we talked about it.

11:24:40 22 But what's important in this case as we talked
11:24:43 23 about and as the judge said, is that we've got to set
11:24:48 24 sympathy aside. And we've got to begin together the journey
11:24:54 25 to discover the scientific truth. And that's the journey

11:24:59 1 that I'm going to speak about.

11:25:02 2 Plaintiffs' Counsel has said that the only thing
11:25:05 3 that matters is that the plaintiffs used talc and that they
11:25:12 4 got ovarian cancer. There are a bunch of steps that are
11:25:18 5 missing because that's not how cancer works. Millions of
11:25:25 6 women who used baby powder have not gotten cancer. And most
11:25:30 7 who have ovarian cancer did not use baby powder.

11:25:36 8 We're not going to tell you here exactly what
11:25:41 9 caused the cancer in each of these individuals. That's
11:25:45 10 impossible to know through science, and it's not our burden
11:25:50 11 of proof.

11:25:52 12 We are going to tell you one thing that the
11:25:56 13 evidence will show. It wasn't Johnson & Johnson's product
11:26:02 14 that had any role here.

11:26:05 15 We also know two very, very other important
11:26:10 16 things, ladies and gentlemen. Each of these plaintiffs had
11:26:16 17 a doctor who took care of them. There will be no evidence
11:26:26 18 from the plaintiff that any doctor who took care of them
11:26:32 19 outside of the courtroom told them that the use of baby
11:26:38 20 powder had anything to do with their ovarian cancer.

11:26:44 21 And some of these doctors were asked that
11:26:47 22 question. And you will hear evidence about what they said.
11:26:53 23 These were the doctors outside of the courtroom who were
11:26:57 24 responsible for caring for these plaintiffs.

11:27:01 25 The second thing that you will hear in the

11:27:04 1 evidence is that the people who told them about talc and
11:27:12 2 ovarian cancer were lawyers' advertisements. Each and every
11:27:20 3 plaintiff will tell you that they heard about talc and
11:27:26 4 ovarian cancer from lawyers' advertisements, not from
11:27:33 5 doctors.

11:27:35 6 And I will tell you, ladies and gentlemen, that
11:27:38 7 lawyers may think they're a lot of things, but they're not
11:27:42 8 cancer doctors. We will present evidence from cancer
11:27:49 9 doctors.

11:27:51 10 I've got three of them up here. When it's our
11:27:54 11 turn, and that will be probably three weeks from now, three
11:28:00 12 long weeks. I have to sit over there, and I have to watch,
11:28:04 13 and I have to hear things that I know are not true.

11:28:09 14 When it's our turn, we will bring three cancer
11:28:14 15 doctors here. They're called gynecological oncologists,
11:28:25 16 cancer doctors, whose specialty is ovarian cancer.

11:28:28 17 Dr. Cheryl Saenz, from California. Eric Holcomb
11:28:33 18 in the middle from New York. Warner Huh from Alabama.
11:28:40 19 Together, 70 years of experience dealing with people in real
11:28:46 20 life, not in a courtroom, in real life. And every one of
11:28:51 21 these doctors gets asked the question when they treated
11:28:56 22 their hundreds of patients with ovarian cancer. Why me?
11:29:03 23 How did this happen?

11:29:06 24 And they answer that question for their patients.
11:29:10 25 They've taken a look at all of the medical records of the

11:29:13 1 plaintiffs, and they will tell you as cancer doctors, not as
11:29:20 2 people who come into a courtroom getting paid millions of
11:29:23 3 dollars to testify, they will tell you that talcum powder
11:29:29 4 played no role in the ovarian cancer of these patients.

11:29:36 5 And they will base this on scientific truth. You
11:29:42 6 will hear in this case about very important studies. And
11:29:47 7 I've listened over here for an hour and 15 minutes, and I
11:29:54 8 said to myself, when will Plaintiffs tell you about these
11:29:57 9 studies? Not a peep. Not a peep.

11:30:03 10 There have been studies for the last 20 years on
11:30:08 11 this exact question. Does this talcum powder product have
11:30:14 12 any role in ovarian cancer? 181,000 women have been
11:30:21 13 studied.

11:30:22 14 Ladies and gentlemen, that's more women that are
11:30:26 15 in St. Louis. More 20 years, women have been studied to see
11:30:33 16 what the science is. About whether or not talc has any role
11:30:40 17 in ovarian cancer. And you will hear about these studies,
11:30:43 18 and the evidence will be that these studies show that there
11:30:49 19 is no role, whatever is in the baby powder, and we will
11:30:54 20 present evidence there's not asbestos, but this product has
11:30:59 21 been studied and this is what the evidence has shown.

11:31:03 22 I'm going to talk really about three things. That
11:31:07 23 Johnson & Johnson acted responsibly in selling its products.
11:31:12 24 That decades of testing confirm that Johnson & Johnson
11:31:16 25 products do not contain asbestos. And that talcum powder

11:31:20 1 use does not cause ovarian cancer. Those are the three
11:31:25 2 things I'm going to talk about.

11:31:28 3 But let me first tell you a little bit about
11:31:30 4 Johnson & Johnson. Because they were attacked. The
11:31:36 5 evidence will show that they acted responsibly.

11:31:41 6 Where did the company start? 1886. Three
11:31:46 7 brothers; Edward, Robert, and James, came to Brunswick, New
11:31:52 8 Jersey. And you can see in the background the building that
11:31:56 9 they started. That's where the company is located today.
11:32:02 10 1886 they started.

11:32:04 11 One of the first products that they sold was
11:32:09 12 Johnson & Johnson's Baby Powder. And I have up here you can
11:32:13 13 see on this old piece of brown paper, the Johnson & Johnson
11:32:20 14 signature. That's the signature of the founders of this
11:32:23 15 company.

11:32:26 16 And you heard motive. It was about money. This
11:32:33 17 is about money. False. Johnson & Johnson's Baby Powder,
11:32:40 18 the evidence will show, is actually not a real money-maker
11:32:49 19 for the company. In a given year in this state, the
11:32:53 20 revenues are about \$300,000.

11:32:55 21 But make no bones about that, this is an important
11:32:59 22 product. And it's an important product because the
11:33:04 23 signature of the founders are on every bottle. And they
11:33:10 24 know that this is about trust. This is about the trust of
11:33:18 25 Johnson & Johnson. Because they know that the people who

11:33:24 1 use this product are mothers and babies, and these are
11:33:32 2 Johnson & Johnson's customers. So this is about trust.

11:33:39 3 And Plaintiffs' Counsel said he wants to hear from
11:33:45 4 people from Johnson & Johnson. You will when we present our
11:33:51 5 case. And we'll bring two witnesses for you to hear.

11:33:55 6 Dr. Susan Nicholson and Dr. John Hopkins. Dr. Nicholson is
11:34:01 7 a medical doctor. She is very important when it comes to
11:34:07 8 women's health. It is one of the key people at the company
11:34:11 9 about making sure that baby products are safe. So safe that
11:34:18 10 she uses them herself.

11:34:23 11 Dr. John Hopkins worked at Johnson & Johnson for
11:34:27 12 more than 20 years. He's over in England now. He is a
11:34:34 13 toxicologist. Three kids, eight grandchildren. His family
11:34:41 14 uses Johnson & Johnson's Baby Powder.

11:34:45 15 Now, I want to stop right there and make sure that
11:34:49 16 what I just said is clear. Because there were accusations
11:34:54 17 made about motive, about knowledge, hiding things. These
11:35:02 18 are the people who know the information. And they use the
11:35:07 19 product themselves and with their families.

11:35:11 20 Common sense is something that I'm going to be
11:35:15 21 talking about a lot here. That will be the best evidence
11:35:20 22 that the product is safe.

11:35:24 23 So what will the evidence show? That decades of
11:35:28 24 testing confirm that Johnson & Johnson's talc does not
11:35:32 25 contain asbestos.

11:35:36 1 These are some of the institutions, laboratories,
11:35:41 2 and universities where scientists have looked at Johnson &
11:35:47 3 Johnson's Baby Powder.

11:35:50 4 Plaintiffs' Counsel talked about there was rigging
11:35:53 5 going on. There must have been some good rigging if all of
11:35:58 6 these institutions, labs and universities who did
11:36:03 7 independent testing, all concluded that there was no
11:36:08 8 asbestos in Johnson & Johnson's Baby Powder. And these
11:36:13 9 weren't just isolated tests. We're talking about 50 years
11:36:17 10 of testing of Johnson & Johnson's products.

11:36:22 11 The FDA, in charge of the safety of consumer
11:36:26 12 products; NIOSH, you'll hear about NIOSH; the National
11:36:31 13 Institute of Occupational Safety and Health, responsible for
11:36:37 14 worker safety; Illinois EPA. The Geological Society of the
11:36:42 15 United States. And all of these laboratories have looked at
11:36:48 16 the same question that Plaintiffs are talking about here.

11:36:53 17 Scientists from those universities. MIT, a fella
11:36:58 18 named Mr. Burger. Princeton University, Gordon Brown. All
11:37:04 19 of these individuals, some of the top scientists,
11:37:08 20 independent, looked at this question.

11:37:12 21 And you will hear evidence from all of them.
11:37:15 22 Harvard School of Public Health, Mount Sinai Hospital in New
11:37:21 23 York, known in asbestos as one of the most important
11:37:24 24 hospitals studying asbestos.

11:37:28 25 All of these institutions, not hired in a lawsuit,

11:37:33 1 but before anyone even thought through lawyer advertising of
11:37:38 2 a lawsuit, did their testing. And it was their job to do it
11:37:44 3 right. And they did.

11:37:48 4 So what is talc? You saw the things up there of
11:37:55 5 the marbled meat. It may have been kind of cute, but has
11:37:59 6 nothing to do with what talc is. Talc is not asbestos.

11:38:07 7 Talc is soft and platy. You put it in your hands and you
11:38:12 8 can break it. It's one of the softest minerals there is.

11:38:18 9 You look under a microscope. You see talc on one
11:38:21 10 side, asbestos on the other. You can see the plates of the
11:38:25 11 talc, which is what makes it smooth on your skin.

11:38:29 12 When you see asbestos, you can see the fibers.
11:38:33 13 Hard, long. If those get on your skin, they're prickly,
11:38:40 14 they don't do what the talc does. And Johnson & Johnson
11:38:45 15 doesn't want asbestos in its talc. And that's why it
11:38:49 16 tested, that's why it hired the best scientists, and that's
11:38:55 17 why it was so careful to make sure that there wasn't.

11:38:59 18 There was statements made by the plaintiffs that
11:39:03 19 there's no such thing as talc that doesn't have asbestos in
11:39:06 20 it. Back to the meat picture. That's just false. And you
11:39:12 21 don't need to hear me say it, listen to what the American
11:39:16 22 Cancer Society says.

11:39:19 23 All talcum products used in homes in the United
11:39:22 24 States have been asbestos-free since the 1970s. On their
11:39:27 25 website today. And Johnson & Johnson's talc has been

11:39:31 1 asbestos-free from the beginning. FDA. Large deposits of
11:39:38 2 high purity asbestos-free talc do exist. That's what the
11:39:44 3 FDA says. Not a lawyer, but the FDA.

11:39:50 4 And I've even got better evidence for you. The
11:39:53 5 first witness who the Plaintiffs are going to call. Listen
11:39:59 6 carefully for this. Alice Blount, who the plaintiffs spoke
11:40:03 7 about. We asked her this: If the experts for the
11:40:08 8 plaintiffs come in here and say there's no such thing as
11:40:12 9 asbestos-free talc; is that true?

11:40:17 10 "ANSWER: No."

11:40:19 11 For an hour and a half, you saw the meat with the
11:40:23 12 marble on it acting like there's no such thing as talc
11:40:27 13 without asbestos. Their only witness is going to disprove
11:40:31 14 what was just said to you. First witness in the case.
11:40:37 15 Please listen carefully for this. It will be when my
11:40:40 16 colleague, Mr. Dubin, is asking questions. You'll recognize
11:40:44 17 that.

11:40:46 18 There are two types of talc, which is very
11:40:49 19 important. There's industrial grade talc, which at certain
11:40:56 20 times Johnson & Johnson mined. Not anywhere near as pure as
11:41:00 21 cosmetic talc.

11:41:02 22 Cosmetic talc, very, very small part of the market
11:41:08 23 and has to meet very high purity standards. But it's very
11:41:13 24 important to keep these differences in mind. Because when
11:41:17 25 you look at a document that says, ooh, I found an asbestos

11:41:21 1 fiber, it won't be from cosmetic grade talc that's used in
11:41:29 2 baby powder.

11:41:32 3 Be careful, because there's some tricks going on
11:41:35 4 here, and I'm going to talk about them as I proceed.

11:41:38 5 Talc is in every day products. Talc, you heard me
11:41:44 6 say it in voir dire, it's used going back to Egyptian times.
11:41:51 7 It's in olive oil, soap, sunblock, gum. When you open up a
11:41:57 8 wrapper and you feel that kind of powdery stuff, there's
11:42:01 9 powder on it.

11:42:03 10 There are baby powder products on the market
11:42:05 11 today. They've been on the market for hundreds of years.
11:42:11 12 And wouldn't common sense say to you that if there's
11:42:14 13 asbestos in all talc, how come people haven't said that if
11:42:21 14 it's been used for centuries and centuries, and now suddenly
11:42:26 15 the lawyer advertising, all the talc has asbestos in it and
11:42:37 16 causes ovarian cancer.

11:42:38 17 Some of the actual ovarian cancer drugs that these
11:42:42 18 plaintiffs used have talc in them. How could it be that
11:42:49 19 doctors are prescribing a medication to somebody with
11:42:56 20 ovarian cancer and putting talc in it when we're now told
11:43:02 21 that that causes the ovarian cancer?

11:43:05 22 We didn't check common sense outside of the
11:43:09 23 courtroom when we came here to hear this case. Thousands of
11:43:14 24 products have talc in them. Today. Decades ago.

11:43:23 25 So, let me give you a little bit of an overview, a

11:43:27 1 little bit of history here that I hope will help you see the
11:43:31 2 evidence.

11:43:32 3 Johnson & Johnson mined talc from three sources.
11:43:38 4 Originally Italy, in a mine that was first used in the
11:43:43 5 1900s. Then in Vermont, and then in China. So as you hear
11:43:49 6 the evidence, it's important to keep time frame in mind.
11:43:54 7 Because we're talking about three different deposits.

11:43:57 8 But what's common to all of these deposits is that
11:44:01 9 Johnson & Johnson, before it went anywhere to get talc, was
11:44:06 10 careful. And there are deposits that Johnson & Johnson
11:44:11 11 looked at but didn't mine from because it wasn't pure enough
11:44:14 12 for them.

11:44:16 13 So what's going to be the evidence? A little bit
11:44:20 14 about mining, because this is going to be important. There
11:44:22 15 are different steps. You select a mine, you then take the
11:44:28 16 talc out. You process it at a mill. You wash and float it.
11:44:36 17 Johnson & Johnson had a 32-step process for making talc
11:44:42 18 pure, 32 steps in manufacturing. And then it's bottled.

11:44:49 19 Ladies and gentlemen, the evidence will be that
11:44:52 20 Johnson & Johnson tested at every step of that process.
11:44:58 21 Every single step. So let's start from step one. Selecting
11:45:03 22 a mine.

11:45:06 23 Val Chisone, Italy is where Johnson & Johnson
11:45:11 24 first started getting talc from. And you'll see evidence,
11:45:15 25 this in a 2017 article, that talc that was mined and

11:45:19 1 processed there is free from asbestos. Not my words, this
11:45:26 2 appears in a scientific publication written by a number of
11:45:32 3 people with expertise in the field.

11:45:36 4 And when these articles get published, they have
11:45:39 5 to be reviewed by peers to make sure that they're good
11:45:43 6 science. Their words, not mine.

11:45:48 7 Dr. Fred Pooley, Plaintiffs referred to him. He
11:45:54 8 is a world-renowned geologist. He's from Cardiff
11:45:58 9 University, Cardiff is over in Wales. Very famous
11:46:02 10 university here for studying dust diseases. You'll see him
11:46:07 11 cited by the World Health Organization as one of the leading
11:46:13 12 experts on deposits.

11:46:16 13 He's a mining engineer and a miner himself. He
11:46:19 14 grew up as a miner and he's been to these deposits.
11:46:24 15 Consultant to the World Health Organization, NIOSH, the EPA,
11:46:29 16 and something called the British Medical Research Council.
11:46:34 17 They're the top dogs in England, and they look to him.

11:46:38 18 He visited both Italy and Vermont himself. And he
11:46:43 19 pulled hundreds of samples to determine whether or not there
11:46:46 20 was asbestos there. And he looked at samples going back to
11:46:50 21 1949. And he issued reports. Here's one of them.

11:46:58 22 Looking at the Italian mine samples, he says no
11:47:04 23 chrysotile was found. And you're going to learn about the
11:47:07 24 differences in asbestos. Don't feel right now that have you
11:47:11 25 to know all of it, you'll get some science about this. And

11:47:15 1 I know this is new and it may be hard. But you'll see that
11:47:20 2 there are difference kinds of asbestos. One is chrysotile.

11:47:26 3 Dr. Pooley says here that no chrysotile was found
11:47:30 4 at the mine or in the samples. Some tremolite was located,
11:47:34 5 but it was not asbestiform in character and has not been
11:47:39 6 detected in five zero talc. Five zero talc is the Italian
11:47:45 7 talc. Five zeros. You may see that in some of the
11:47:48 8 documents. That's the Italian talc, that's what they called
11:47:52 9 it.

11:47:52 10 He said it has not been detected in the talc
11:47:57 11 imported into Great Britain for the past year, nor in
11:48:02 12 shipments dating back to 1949. 1949 he looked.

11:48:07 13 So you see this word "asbestiform." That's
11:48:16 14 asbestos, asbestiform. You will see that word a lot. It's
11:48:23 15 very important to know in this case that when -- there's
11:48:30 16 asbestiform version of something and a non-asbestiform
11:48:34 17 version.

11:48:35 18 And I'm showing you a picture here of tremolite.
11:48:39 19 You see the mineral on one side. That is non-asbestiform.
11:48:45 20 And you see the asbestiform version of tremolite on the
11:48:51 21 other side. Most everything in the earth is the mineral
11:48:56 22 non-asbestiform tremolite.

11:48:59 23 It's in many places in the earth's crust. It is
11:49:04 24 very rare to see the asbestiform version of tremolite. And
11:49:10 25 you will hear evidence that if you break up that tremolite

11:49:14 1 mineral, that doesn't give asbestiform tremolite. That does
11:49:21 2 not give you asbestos.

11:49:23 3 And you'll hear that from the experts, and that's
11:49:26 4 exactly what Dr. Pooley said. I saw in small parts when I
11:49:31 5 took samples, not where they actually do the mining, but in
11:49:36 6 outskirt areas. I did see small amounts of non-asbestiform
11:49:40 7 tremolite. But that's not asbestos. And that's what the
11:49:45 8 evidence will be.

11:49:47 9 You will see that there are different kinds of
11:49:50 10 asbestos, which is important, because people who know this
11:49:54 11 when they go inspect mines, you can see it. Look at the
11:49:59 12 different colors, ladies and gentlemen. Amosite brown,
11:50:02 13 mostly from Africa.

11:50:06 14 These are from all different parts of the world.
11:50:09 15 And when mineralogists go to look at a deposit, they can see
11:50:14 16 this. It's most often visible to the naked eye. Talc is
11:50:21 17 over there to the right. You can see the talc is not
11:50:25 18 asbestos.

11:50:27 19 Dr. Sanchez will be a witness who when it's our
11:50:30 20 turn we will present. Ph.D. geologist. You can see two
11:50:36 21 photos of him. He's been to these deposits. He visited
11:50:43 22 Italy and he studied the geology. And you'll hear from him
11:50:48 23 when it's our turn.

11:50:49 24 He took samples of the Italian talc ore in the
11:50:55 25 surrounding area and he looked at historical testing data.

11:50:58 1 And what did he find? No asbestos. He's a geologist. And
11:51:07 2 be very, very on your toes when you hear about the expertise
11:51:11 3 on the plaintiffs' side. Will they bring into the court for
11:51:14 4 you somebody who is a geologist and who's actually gone to
11:51:21 5 these deposits?

11:51:28 6 Vermont. This you will see in evidence from NIOSH
11:51:37 7 and the Harvard School of Public Health in 1979. These are
11:51:42 8 their words, not the lawyers' words. That geologic studies
11:51:50 9 going back to the early 1900s have shown that the Vermont
11:51:55 10 talc deposits contain no asbestos.

11:52:00 11 And the reason this came about is because the
11:52:02 12 Harvard School of Public Health and NIOSH wanted to study
11:52:08 13 the talc workers in Vermont, and they wanted to see if talc
11:52:16 14 without asbestos or without quartz had health effects.

11:52:23 15 And so they specifically picked this area because
11:52:27 16 there was no asbestos. And they say it goes back to the
11:52:32 17 early 1900s. Their words, not mine.

11:52:38 18 Dr. Pooley went to Vermont as well. And he took
11:52:44 19 samples. As you can see here, there were amphibole
11:52:50 20 minerals, not asbestos, but a mineral in discrete location,
11:52:55 21 but it wasn't throughout the talc, and they were not
11:52:59 22 asbestiform in character. This is what Dr. Pooley wrote
11:53:03 23 back in 1972 before litigation. But to do good science.

11:53:13 24 The McCrone Group. Walter and Lucy McCrone.
11:53:18 25 Unfortunately, they are both deceased. They are the

11:53:22 1 pioneers in what you will learn about in this case,
11:53:27 2 microscopy. They were the best. And when Johnson & Johnson
11:53:33 3 wanted to hear and make sure that there wasn't asbestos,
11:53:38 4 they went to the best.

11:53:43 5 An interesting thing about Walter McCrone, you see
11:53:46 6 up there judgment day for the Shroud of Turin. When there
11:53:51 7 was a debate among historians about whether or not Jesus
11:53:56 8 Christ had been buried in a certain shroud, they called a
11:54:01 9 bunch of experts to try to see if it was real.

11:54:04 10 One of the people they called was Walter McCrone.
11:54:08 11 One of the leading microscopists in the world. He wrote the
11:54:13 12 book. And he's the person who Johnson & Johnson looked to.

11:54:18 13 Five years of studying that he did of the talc
11:54:23 14 deposit in Vermont, the source that Johnson & Johnson was
11:54:28 15 using. After a study that had been done, you'll see
11:54:34 16 internal documents from Johnson & Johnson. We can say with
11:54:38 17 greater than 99.9 percent certainty that the ores and
11:54:45 18 materials produced from the ore at Windsor Mineral are free
11:54:50 19 from asbestos or asbestiform materials.

11:54:54 20 In 1987, you'll see from McCrone what I call a
11:55:01 21 15-year lookback. Reporting to a customer who said I wonder
11:55:06 22 if there's asbestos in that deposit. These were not done
11:55:11 23 for litigation. These reports were done before anyone
11:55:16 24 started advertising. These reports were done to tell people
11:55:21 25 the scientific truth.

11:55:23 1 So, in this document, which is a very important
11:55:26 2 piece of evidence, the folks at McCrone write and say: We
11:55:31 3 have been continuously monitoring composite samples at
11:55:38 4 Windsor using transmission microscopy, TEM, you'll hear a
11:55:44 5 lot about in this case. And they say it's the most
11:55:47 6 sensitive technique for fine asbestos fibers.

11:55:52 7 So when I heard the plaintiffs say something got
11:55:55 8 rigged, I don't know what he was talking about. Because the
11:56:00 9 best scientists in the United States, if not the world on
11:56:05 10 this topic, not people who get hired to come into court and
11:56:11 11 get paid to give litigation opinions, but people whose job
11:56:15 12 it is and life it is to get the answer right, says here
11:56:21 13 after 15 years of studying the Vermont deposit, that the
11:56:27 14 Windsor product is free of asbestos. Windsor is Windsor,
11:56:32 15 Vermont.

11:56:34 16 Johnson & Johnson, in about 1965, bought the
11:56:37 17 company called Windsor Mineral and they own this deposit in
11:56:44 18 Windsor, Vermont. They did two years of due diligence
11:56:48 19 before they bought it, and now you see a 15-year report here
11:56:53 20 of a company that continuously monitored using the most
11:56:57 21 sensitive techniques, and they say it is free of asbestos.

11:57:03 22 They talk about something here called composite
11:57:06 23 samples, which I think is important, because the suggestion
11:57:11 24 was, oh, nobody really tested a lot. When we go inside a
11:57:18 25 mill in my five-step process and we look at how talc is

11:57:23 1 processed and tested, you'll see that talc kind of comes off
11:57:28 2 of a conveyer belt, and on that conveyer belt they create
11:57:34 3 samples for testing, and at the bottom would be the sample.

11:57:38 4 How do they do it? Every single hour off of that
11:57:44 5 conveyer belt they take an amount of the talc. Every hour,
11:57:52 6 every shift, every working day, they do this.

11:58:00 7 And you look at a calendar and you see that this
11:58:09 8 was done every day, every shift, every working hour. And
11:58:23 9 you will see that there were over a hundred thousand
11:58:29 10 different samples taken.

11:58:34 11 And it wasn't just one month. It was every month
11:58:39 12 for years. On top of that there was quarterly sampling done
11:58:46 13 by Johnson & Johnson itself. They would get quarterly
11:58:51 14 composites and it would send them off to McCrone. So you
11:58:56 15 had every month and every quarter. And this was for all of
11:59:03 16 these years that this was done. Every month, every quarter,
11:59:11 17 there was no asbestos found.

11:59:18 18 And it wasn't just McCrone who did this. I talked
11:59:23 19 to you about NIOSH and Harvard. They also went and did
11:59:28 20 sampling, and you can see here that they say that they did
11:59:33 21 something called microscope analysis, transmission electron
11:59:38 22 microscopy, and x-ray diffraction with step scanning, and
11:59:44 23 there were no asbestos in any of those samples.

11:59:49 24 How did they do this? You're going to learn in
11:59:53 25 this case about testing. Three different ways of testing

11:59:57 1 asbestos. X-ray diffraction. It allows you to see
12:00:04 2 chemistry. It allows you to see the chemical makeup, which
12:00:07 3 is very important.

12:00:09 4 Polarized light microscopy. Use light to look at
12:00:16 5 what I would call context to make sure you don't have a
12:00:20 6 forest and trees problem.

12:00:23 7 The TEM technology allows you to zoom in 20 to
12:00:28 8 30,000 times to look at something up close. Johnson &
12:00:33 9 Johnson used all of those techniques to test for asbestos.

12:00:40 10 And it actually even went beyond that because it
12:00:43 11 did audits that you will see where it not only used those
12:00:48 12 three techniques which you will learn about, but it even
12:00:52 13 went beyond and used something called differential thermal
12:00:57 14 analysis. And you will learn about that in this case.

12:01:00 15 The evidence will show that to come in here and
12:01:05 16 tell you that what they did was rigged was false. That
12:01:08 17 Johnson & Johnson always went above and beyond what anybody
12:01:15 18 ever did when it came to testing for talc.

12:01:21 19 You will see evidence that Johnson & Johnson owned
12:01:30 20 Windsor Minerals in Vermont and it sold it in 1989. 1989.
12:01:37 21 And down the road a company called Luzenac and then Imerys
12:01:41 22 became the owner and the supplier.

12:01:45 23 They provided to Johnson & Johnson certifications,
12:01:48 24 over a thousand. That the talc was tested didn't contain
12:01:57 25 asbestos. Stack of documents here of tests that you'll see

12:02:02 1 in this case. That will be the evidence that was done time
12:02:07 2 and time again of this deposit.

12:02:16 3 Guangxi, China, was the third deposit. This
12:02:21 4 deposit was also tested. It was tested by the FDA in 2009
12:02:28 5 and 2010. A one-year study where the FDA went and actually
12:02:34 6 took asbestos bottles -- talc bottles off the shelf in
12:02:40 7 Washington. And they tested Johnson & Johnson Baby Powder
12:02:46 8 bottles using extremely sensitive methods that you'll hear
12:02:52 9 about, and they detected no asbestos in those bottles.

12:03:01 10 Plaintiffs' Counsel talked about Dr. Longo, who's
12:03:05 11 one of their experts. You'll learn about expert witnesses.
12:03:10 12 He got about 30 bottles or so, most of them were off of eBay
12:03:16 13 and given to him by lawyers. But he actually went and got
12:03:21 14 off the shelves sealed products that are on the market. And
12:03:27 15 he found no asbestos in the products that he tested off the
12:03:32 16 shelf.

12:03:35 17 So what is Plaintiffs' case going to be based on?
12:03:41 18 The first thing it's going to be based on, something that I
12:03:45 19 call a false alarm. Because in 1971, there was front page
12:03:51 20 news about whether or not there was asbestos in talc. A
12:03:57 21 scientist at Mount Sinai Hospital named Dr. Arthur Langer
12:04:02 22 thought he saw asbestos in talc.

12:04:07 23 And an individual was running for mayor in New
12:04:11 24 York named Kretchmer, got some headlines. This was all over
12:04:15 25 the papers. That there could be asbestos in talc.

12:04:21 1 So what did Johnson & Johnson do? All of their
12:04:26 2 information was that there was no asbestos in any of their
12:04:30 3 talc. And this was of great concern to them. They turned
12:04:36 4 to the best experts available.

12:04:39 5 Cardiff University, I mentioned, over in Wales.
12:04:42 6 McCrone, I told you about. Colorado School of Mines, an
12:04:47 7 actual school in Colorado that teaches mineralogy, the
12:04:52 8 people who want to get into that.

12:04:55 9 I won't pronounce -- my Italian is not good, it's
12:04:59 10 really nonexistent, so I won't even say the Di Torino
12:05:02 11 University at the bottom, but I do know it's the best in
12:05:08 12 Italy, and looked very carefully at Val Chisone. Dartmouth,
12:05:14 13 RR Reynolds, one of the best geologists in the country, they
12:05:20 14 reached out to. MIT, Mr. Burger; Princeton, Gordon Brown.

12:05:29 15 These scientists all looked at whether or not
12:05:31 16 there was asbestos. They all said there was no asbestos in
12:05:36 17 the talc using the best test methods available. This is
12:05:42 18 back in the 1970s that this issue came up. This is not new,
12:05:46 19 ladies and gentlemen. This was already done and talked
12:05:50 20 about and decided in the 1970s.

12:05:54 21 The FDA got involved after the front page articles
12:05:58 22 hit the media, and they said we got to look at this. They
12:06:03 23 did a four-year investigation. In their words, intensive.
12:06:09 24 Testing was done. Johnson & Johnson turned over test
12:06:13 25 results to them. Four-year intensive investigation.

12:06:19 1 At the end, the FDA and Mount Sinai Hospital,
12:06:24 2 which is where Dr. Langer was from, they all concluded that
12:06:29 3 there was no asbestos in any of the talc. And it was front
12:06:35 4 page news. Hundred U.S. newspapers carried a corrected
12:06:42 5 story that looked at all of this and said we were wrong in
12:06:46 6 1971. We've looked at this. And there's no asbestos in
12:06:52 7 Johnson & Johnson's talc.

12:06:54 8 1976. This was out there. Scientific studies
12:07:02 9 have been out there talking about talc and ovarian cancer
12:07:07 10 going back to the 1980s. So when the plaintiff said to you
12:07:12 11 there was a secret, it wasn't a very well kept secret,
12:07:19 12 ladies and gentlemen.

12:07:20 13 Because scientists have been looking at this
12:07:22 14 question going back to the 1970s. And they actually take
12:07:27 15 the product and they test it. And they look at the people
12:07:32 16 who use it and see if they're getting sick because products
12:07:37 17 like this that have been on the market for over a hundred
12:07:40 18 years, if there was a problem, common sense tells you that
12:07:45 19 you would know. And the scientific studies will show that
12:07:51 20 there is no problem. And it's not just one study. It's a
12:07:55 21 lot.

12:07:57 22 So what are the plaintiffs going to do? Well,
12:08:01 23 this is an advertisement for one of their experts, Dr.
12:08:04 24 Longo. Goes back away. He's been doing this for a long
12:08:11 25 time. A long time such that he'll probably tell you that

12:08:17 1 he's made \$30 million coming into court being hired by
12:08:24 2 Plaintiffs to try to convince people that there's asbestos
12:08:30 3 in talc.

12:08:32 4 But let's ask him when he's here. The FDA or
12:08:40 5 NIOSH, when they wanted to know the answer, or Mount Sinai
12:08:43 6 Hospital, did they bring him in? What he does is testify
12:08:53 7 thousands of times in courtrooms, as this ad shows you, to
12:08:58 8 get ready for the toughest meeting of his life, when he
12:09:04 9 comes into a courtroom. That's the toughest meeting for
12:09:09 10 him.

12:09:11 11 The scientists that I showed you, the McCrone, the
12:09:16 12 geologists, the folks at NIOSH, the folks at FDA. Their job
12:09:21 13 was to get this right. Not to come into a courtroom and get
12:09:27 14 paid \$30 million. And you will see the evidence will be
12:09:31 15 that he's got a big business going. It's not just him.
12:09:35 16 He's got a lot of people who work for him to come in and try
12:09:40 17 to convince juries that there's asbestos in talc. Talking
12:09:45 18 about rigging testing.

12:09:49 19 Let me show you what Johnson & Johnson does.
12:09:51 20 Those are the tests that it does. What will the plaintiffs'
12:09:57 21 experts do? They're only going to do one of the test
12:10:02 22 methods. So somehow our client is being criticized for
12:10:09 23 going above and beyond. You will be the judges of who is
12:10:17 24 doing the rigging.

12:10:21 25 What the plaintiffs will do is now suddenly

12:10:24 1 everything asbestos, even if it's not. So they'll take a
12:10:30 2 TEM test and look at something, but they won't look at
12:10:36 3 actually what's happening around it.

12:10:41 4 We will look at the whole picture. And we've been
12:10:46 5 looking at the whole picture going back to the early 1970s,
12:10:51 6 if not beyond. Doing all of the tests. Giving all of the
12:10:54 7 context. And you all will be judged of is it best to go
12:11:00 8 above and beyond and do all tests, or is it best to do one.

12:11:08 9 Plaintiffs talked a lot about Alice Blount. Well,
12:11:13 10 you're going to hear a lot about a paper she wrote in 1990
12:11:16 11 to 1991. There's no mention in that paper of whose product
12:11:22 12 is being tested. It doesn't say the brand. She says she
12:11:32 13 tested Johnson & Johnson products. But she doesn't have any
12:11:36 14 data for you to see or for us to see.

12:11:43 15 At her deposition, which you'll hear about, she
12:11:46 16 came with a bottle of baby powder. We wanted to test it to
12:11:53 17 see what was there. She wouldn't allow us to test it.

12:12:00 18 So you'll hear a stipulation, and the judge will
12:12:05 19 tell you that when the parties agree to something, you can
12:12:09 20 take it to the bank. So we wanted to know if you're going
12:12:13 21 to come into a court and say that you see asbestos, you got
12:12:16 22 anything to back it up? Can we please see it because we'd
12:12:22 23 like to see if it's truthful.

12:12:24 24 So you'll see here that the parties have agreed
12:12:28 25 that after this deposition happened, we asked for the data.

12:12:33 1 Can we please have it? And she didn't maintain any
12:12:38 2 documents or data for you to see or for us to see.

12:12:46 3 Johnson & Johnson authorized McCrone to give all
12:12:51 4 of its testing to the FDA. And McCrone did a lot of
12:12:56 5 testing. You'll see this evidence where McCrone said to
12:13:01 6 Johnson & Johnson going back to the '70s, can we give all of
12:13:05 7 your testing data to the FDA? There was a claim here about
12:13:09 8 secret. Not wanting to turn things over.

12:13:12 9 Johnson & Johnson wrote to McCrone and said:
12:13:14 10 You're granted permission to turn over our test results on
12:13:19 11 our samples. Johnson & Johnson had nothing to hide. It
12:13:24 12 actually gave permission to share all of its test results.

12:13:29 13 The FDA, in 1986, evaluating the test results and
12:13:35 14 all of the information, says that there's no need to require
12:13:40 15 a warning label on cosmetic talc. This is from the FDA.
12:13:47 16 This isn't from Johnson & Johnson. In 1986.

12:13:50 17 Citizens have the right to go to the FDA and say
12:13:54 18 we think a warning label should be put on this product. And
12:13:58 19 the FDA says there is no need to require a warning label.
12:14:02 20 That's the FDA's job to decide if a warning label should be
12:14:07 21 on the product.

12:14:08 22 In 2014, you will see evidence from the FDA that
12:14:14 23 when used as intended, talc presents no health risks to the
12:14:18 24 consumer. A request had been made for a warning label. And
12:14:24 25 the FDA said that that was denied because there's no health

12:14:31 1 risk. This is the words of the FDA. Not Johnson & Johnson.

12:14:38 2 So, what will the evidence show on talc and
12:14:42 3 whether it causes or doesn't ovarian cancer? The evidence
12:14:47 4 will be that it does not. And I want to come back to these
12:14:51 5 studies that I mentioned in the beginning, because they are
12:14:54 6 such important evidence, and the plaintiffs didn't even
12:14:58 7 mention them to you.

12:15:00 8 Because there was a suggestion that Johnson &
12:15:02 9 Johnson was influencing people. Ladies and gentlemen, these
12:15:06 10 studies of over 180,000 people were sponsored by the
12:15:12 11 National Cancer Institute in Washington, D.C. And the
12:15:18 12 institutions that did these studies were Harvard Medical
12:15:21 13 School and Brigham and Women's Hospital, which is the
12:15:26 14 hospital that's connected to the Harvard Medical School.

12:15:32 15 And in all of these studies, 181,860 women were
12:15:39 16 looked at. And these were the women, the evidence will
12:15:42 17 show, who used the products that are at issue in this case.
12:15:49 18 181,000 people. And these published studies say that
12:15:54 19 there's no risk.

12:15:57 20 So what about asbestos and ovarian cancer? You'll
12:16:01 21 see this from IARC -- because I want to talk to you about
12:16:05 22 focusing on the right studies. You'll see this from IARC,
12:16:12 23 which is part of something called the World Health
12:16:13 24 Organization.

12:16:15 25 And they say here that a causal association

12:16:19 1 between exposure to asbestos and cancer of the ovary was
12:16:24 2 clearly established. But they talk about heavy occupational
12:16:29 3 exposure to asbestos. Heavy occupational exposure. People
12:16:35 4 who work in factories.

12:16:38 5 In fact, some of these studies go back to World
12:16:41 6 War II, where women were working putting gas masks together
12:16:46 7 and around crocidolite asbestos. Very important.
12:16:52 8 Crocidolite, the most harmful of any kind of asbestos. And
12:16:59 9 these were people around asbestos every single day, and it
12:17:03 10 was crocidolite asbestos.

12:17:05 11 Johnson & Johnson's Baby Powder doesn't contain
12:17:08 12 asbestos. And Johnson & Johnson's Baby Powder is not heavy
12:17:13 13 occupational exposure. That's what this is about. It's not
12:17:20 14 the right studies that the plaintiffs are going to talk to
12:17:23 15 you about.

12:17:24 16 And, in fact, people have now come out and have
12:17:28 17 said IARC maybe have jumped the gun, even on these
12:17:32 18 occupational studies. This is from a study that just --
12:17:36 19 2011, saying that IARC was premature in what they said was
12:17:42 20 not even wholly supported by the evidence.

12:17:47 21 This is very important, ladies and gentlemen.
12:17:50 22 When we were doing voir dire, you remember mention of
12:17:55 23 mesothelioma. There are certain diseases that are typically
12:18:01 24 tied to asbestos. Asbestosis, as the name would suggest,
12:18:07 25 mesothelioma is almost always only asbestos. And something

12:18:12 1 called pleural plaques, which is a thickening in the lungs,
12:18:17 2 kind of a calcification, if you will.

12:18:23 3 Not one of these plaintiffs has any of these
12:18:25 4 typical asbestos diseases. Not one. And if you would say
12:18:32 5 to yourself common sense, if somebody's exposed to a lot of
12:18:37 6 asbestos, maybe you would see some of the hallmarks of
12:18:40 7 diseases that are typically associated with it.

12:18:44 8 Well, we did ask one of the treaters of one of the
12:18:49 9 plaintiffs here on this question of does talc cause ovarian
12:18:55 10 cancer. And this is testimony you'll hear by way of a
12:19:00 11 deposition from somebody named Dr. Roush. He was the
12:19:04 12 treating doctor of a plaintiff, Krystal Kim, and the
12:19:08 13 plaintiffs reached out to him before he was going to go
12:19:11 14 under oath, and they asked him, tell me what you recall in
12:19:15 15 terms of the preliminary questions you were asked.

12:19:19 16 And these were questions from the lawyer before
12:19:23 17 this gentleman, this doctor, was going to testify. She --
12:19:26 18 the plaintiffs' lawyer, asked me would I let my wife and
12:19:31 19 daughter use talcum powder? And I said yes.

12:19:34 20 MR. LANIER: Judge, I am going to object to
12:19:36 21 anything outside of the motions in limine, for the record.

12:19:39 22 MR. BICKS: This is testimony, your Honor.

12:19:40 23 THE COURT: Overruled. We'll proceed.

12:19:43 24 MR. BICKS: This is from one of the doctors
12:19:44 25 who took care of one of the plaintiffs. One of the doctors

12:19:49 1 responsible for answering the question of is this safe when
12:19:53 2 people ask? And this is what the doctor for one of the
12:19:57 3 plaintiffs said in this case.

12:20:00 4 So what did cause Plaintiffs' ovarian cancer?
12:20:04 5 That's what we're all going to be wondering about. This is
12:20:09 6 from the Stanford website where one of the experts that
12:20:13 7 Plaintiffs' Counsel told you about, the one who's going to
12:20:18 8 cure cancer, I hope he does, I bet we all do.

12:20:22 9 But on their website, they say something that is
12:20:24 10 the scientific truth. We don't know for certain what causes
12:20:28 11 ovarian cancer. We do know about risk factors. And
12:20:32 12 remember, ladies and gentlemen, burden of proof. The
12:20:35 13 plaintiff has to show you that what we did caused it. But
12:20:40 14 the very own website of their expert says we don't know for
12:20:45 15 certain. And we don't know for certain, but we do know
12:20:49 16 something about risk factors.

12:20:52 17 And what are those risk factors? The key ones are
12:20:58 18 genetic. You may have heard of something BRCA. Breast
12:21:07 19 cancer is what that stands for, one and two. It's a gene
12:21:13 20 that some people have that increases your chances of getting
12:21:17 21 ovarian cancer.

12:21:18 22 Some of the plaintiffs have that gene. Personal
12:21:22 23 history and family history of cancer are really important
12:21:27 24 here. There are other risk factors as well, but those
12:21:31 25 genetic ones and the family history are really important.

12:21:36 1 And on those websites to the right of some of the
12:21:39 2 leading experts, nobody says that talc is the cause of
12:21:46 3 ovarian cancer. Or even a risk factor. It's these other
12:21:51 4 things.

12:21:55 5 There are 28 genes. You'll learn about genetics
12:21:58 6 here that people now look at that are tied to ovarian
12:22:04 7 cancer. And probably by the time we finish this trial,
12:22:08 8 there will be more discoveries of more genes. We're
12:22:16 9 learning more about genes every single day and these genes
12:22:20 10 are tied to ovarian cancer.

12:22:25 11 And you can test for these genes with a prick and
12:22:29 12 a little bit of a blood sample. And you will see in this
12:22:33 13 case, ladies and gentlemen, that most of these plaintiffs
12:22:40 14 have not been tested for all of these genes. And I can
12:22:44 15 understand why. I can understand why. But we are in a
12:22:49 16 court, and if those tests were done of everyone we would
12:22:54 17 have information, we have it as to some, but not as to all.

12:23:01 18 And so this is what you will hear about the family
12:23:04 19 histories of these plaintiffs. Not one of these plaintiffs,
12:23:07 20 unfortunately, has avoided history of cancer. And you will
12:23:16 21 hear evidence about family history of these cancers that are
12:23:21 22 unfortunately within the history of our plaintiffs in this
12:23:25 23 case.

12:23:27 24 And you will see that this history is what the
12:23:29 25 doctors who do this day in and day out will tell you are the

12:23:34 1 real risk factors.

12:23:37 2 You will hear -- I talked to you about tissue
12:23:40 3 testing, somebody named Dr. Rigler. Plaintiffs referred to
12:23:45 4 this. 22 plaintiffs. He didn't test 14 of them to look
12:23:51 5 inside the tissue. And he could have done it. But he
12:23:56 6 didn't do it.

12:23:58 7 What the evidence will be here as to four of the
12:24:01 8 plaintiffs, there was no asbestos even in the ovaries. One
12:24:07 9 of the plaintiffs had crocidolite. And remember I mentioned
12:24:10 10 that. And if you listen very carefully to what Plaintiffs'
12:24:15 11 Counsel told you, crocidolite isn't even in any talc
12:24:24 12 deposit, even under that marble with the meat that he put up
12:24:29 13 under his theory.

12:24:31 14 Someone was found to have crocidolite, and we'll
12:24:34 15 talk to you about the other three when we present our
12:24:37 16 evidence. But I have a question mark there. About what was
12:24:43 17 actually found.

12:24:45 18 Fourteen of the plaintiffs aren't even tested, yet
12:24:48 19 we're in court here being accused of hiding information from
12:24:52 20 you.

12:24:55 21 Asbestos is everywhere. And this is important to
12:24:58 22 remember. That just because somebody sees asbestos
12:25:01 23 somewhere, it is in the atmosphere, and their experts will
12:25:07 24 say to you that everybody, you, me, everyone has asbestos in
12:25:14 25 their tissue, because of what is in the atmosphere.

12:25:18 1 I don't think there will be any dispute about
12:25:21 2 that. And this comes back to burden of proof. Because if
12:25:25 3 that's true, and it is, that asbestos is everywhere, how
12:25:28 4 could somebody possibly say that it has something to do with
12:25:31 5 Johnson & Johnson? When the evidence will be that we don't
12:25:35 6 even have asbestos in our talc?

12:25:37 7 It's in homes, it's in roofs, it's in bathrooms,
12:25:41 8 it's in kitchens, it's in living areas. In so many
12:25:45 9 different kinds of products. Everybody has been exposed to
12:25:49 10 it.

12:25:50 11 So what to watch for from the plaintiffs.
12:25:53 12 Tremolite versus tremolite asbestos. They're going to
12:25:59 13 say -- and see the word "tremolite" and say, uh, gotcha.
12:26:06 14 But tremolite is not asbestos. It's a mineral.

12:26:12 15 Attorney questions versus witness answers. Judge
12:26:17 16 Burlison told you that attorneys' statements are not
12:26:21 17 evidence. Listen very carefully when there are questions
12:26:25 18 asked. Are the questions asked to somebody, tell me what
12:26:28 19 happened, or isn't it a fact that after you found asbestos
12:26:32 20 and then you hid it and didn't tell somebody, that you
12:26:35 21 weren't being truthful, isn't that true?

12:26:37 22 That's attorney testimony. And listen very
12:26:41 23 carefully for that. That's not evidence when you hear that.
12:26:45 24 And you'll see a lot of that.

12:26:47 25 Litigation evidence versus real world evidence. I

12:26:54 1 listened very carefully to what the judge said, and he said
12:26:57 2 in his instructions when you look at something, consider if
12:27:00 3 they're tied to a party or if there's somebody who's got no
12:27:05 4 skin in the game. And when you listen to the evidence that
12:27:08 5 we present and you compare it to what the plaintiffs are
12:27:11 6 presenting, you'll see that they're presenting litigation
12:27:16 7 evidence and not real world evidence.

12:27:21 8 And then finally, the connection between test
12:27:24 9 results and body powders. Johnson & Johnson was looking at
12:27:29 10 multiple different talc deposits over time. Some that it
12:27:34 11 didn't go to, including in California. Some over in Europe
12:27:39 12 that it didn't use. And when you see test results, you have
12:27:42 13 to be very, very careful that somebody isn't taking
12:27:45 14 something out of context.

12:27:47 15 Are they talking about the deposits that are used
12:27:49 16 for cosmetic talc? Or are they trying to misdirect and use
12:27:54 17 the scare tactic? Very careful when this comes up.

12:28:00 18 You're going to hear about a product called
12:28:04 19 Shimmer that was bottled in Union, Missouri, for a few
12:28:08 20 years. A Shower to Shower product that had a little bit of
12:28:11 21 glitter in it. It was not successful.

12:28:16 22 As the plaintiffs told you, 17 plaintiffs in this
12:28:19 23 case are not even from Missouri. Five are. The plaintiffs
12:28:24 24 had to fill out fact sheets, ladies and gentlemen, and tell
12:28:28 25 us what products that they used so we could investigate.

12:28:36 1 And so the question was: Have you ever used
12:28:39 2 Johnson's Baby Powder. They had to say what was it, what
12:28:43 3 did it look like. White plastic bottle. Shower to Shower
12:28:46 4 came in three different colors. But not -- Shimmer had a
12:28:52 5 gold top. Wasn't one of these.

12:28:56 6 Here's testimony from one of the plaintiffs. I
12:29:01 7 met with an attorney, I thought about it last night, I
12:29:08 8 dreamed after my meeting in my whimsical ways that I saw
12:29:13 9 something that was gold. So then fact sheets, not one
12:29:22 10 plaintiff came here and said they ever used the Shimmer
12:29:27 11 product. Not one.

12:29:30 12 And then now fact sheets are getting changed. I
12:29:38 13 used a cream-colored bottle with a gold knob after I had
12:29:44 14 meetings. And it wasn't just one person, which could be
12:29:49 15 understandable, because memories are off. But 12 plaintiffs
12:29:58 16 now change all the fact sheets that were submitted in the
12:30:04 17 case, and now 12 plaintiffs are saying that they used a
12:30:09 18 product with a gold top that was made in this state for a
12:30:15 19 few years.

12:30:17 20 You, ladies and gentlemen, will have to evaluate
12:30:20 21 that. One plaintiff came to the deposition -- we wanted to
12:30:26 22 see what products did you use, please bring it with you.
12:30:31 23 One came to the deposition and said is this the product that
12:30:35 24 you used since you were born?

12:30:38 25 "ANSWER: Yes."

12:30:40 1 Would you mind holding it and reading to the
12:30:43 2 front of the label, if you can see through the bag, that is.
12:30:47 3 Johnson's Baby Powder. Pure corn starch. Corn starch
12:30:51 4 doesn't even have talc in it, ladies and gentlemen. And
12:30:56 5 this is what the plaintiff brought to her deposition.

12:31:00 6 Memories can be off, no question about that. But
12:31:06 7 this is what the evidence that came out during our
12:31:10 8 depositions.

12:31:13 9 So, at the end, the question is, is there asbestos
12:31:19 10 in Johnson & Johnson's products? We believe and have always
12:31:25 11 believed that there isn't. Independent laboratories said
12:31:29 12 there's no asbestos. Universities and research centers said
12:31:33 13 there's no asbestos. Government agencies, no asbestos.
12:31:39 14 Johnson & Johnson's testing, no asbestos. The talc
12:31:46 15 suppliers, certificates, no asbestos.

12:31:51 16 Who's going to say there's asbestos? The false
12:31:54 17 alarm. The plaintiffs' litigation experts are going to come
12:31:58 18 in here and say that.

12:32:03 19 There's been a claim here that somehow what we
12:32:05 20 were told and what we said was different from what we
12:32:09 21 believed. That, ladies and gentlemen, is not true.

12:32:13 22 We go inside and we look at what the people at
12:32:16 23 Johnson & Johnson believe. It's that their powders are safe
12:32:21 24 for use for babies and adults. That's why Dr. Nicholson
12:32:28 25 uses it. That's why Dr. John Hopkins uses it, their

12:32:32 1 families. And that's common sense.

12:32:37 2 So the evidence will show in the end that
12:32:39 3 Plaintiffs cannot meet their burden that Johnson & Johnson
12:32:43 4 products did not cause any cancer in this case.

12:32:46 5 So let me say thank you. I always am the one
12:32:49 6 who's getting near the lunch hour, and I hate to do that,
12:32:52 7 but this is so important. So let me say one final comment
12:32:57 8 about thank yous.

12:33:01 9 And it goes beyond thanking you for your time here
12:33:04 10 and taking you away from your lives. Which we are hugely
12:33:10 11 thankful for. It's thanking you for the commitment you made
12:33:19 12 when you raised your right hand and swore to listen to the
12:33:24 13 evidence and follow the law.

12:33:29 14 Because during the voir dire process, I told you
12:33:33 15 that this was going to be an emotional case. And I told you
12:33:37 16 that that's something that we were worried about. Because
12:33:41 17 we all feel sympathy for these Plaintiffs, not one of us
12:33:47 18 doesn't. But we have to set it aside. And I want to thank
12:33:53 19 you for your commitment to do that.

12:33:57 20 And then one final thing. We go second. You're
12:34:04 21 not going to hear from us for three weeks. Please, keep an
12:34:11 22 open mind. Remember, you just heard from me over this last
12:34:17 23 hour and 20 minutes a bunch of stuff that you didn't hear
12:34:22 24 when the plaintiffs' counsel got up.

12:34:24 25 So, please, keep an open mind and wait until you

12:34:29 1 hear, as Judge Burlison asked, and said all of the evidence.
12:34:35 2 I thank each and every one of you. I know this is going to
12:34:40 3 be tough. But it's real important.

12:34:44 4 And on behalf of Johnson & Johnson, we are
12:34:48 5 grateful for what you're doing. Thank you very much.

12:34:54 6 THE COURT: Thank you, Mr. Bicks. All right.

12:34:58 7 Ladies and gentlemen, we're going to have our lunch break
12:35:02 8 here. It's about 20 minutes till one. If you could be
12:35:06 9 upstairs at 10 minutes to two. Gives you about an hour and
12:35:11 10 10 minutes for lunch. So let's call it 10 minutes to two.

12:35:15 11 Once again, let me remind you of what we
12:35:19 12 discussed. While you're on your lunch break, do not discuss
12:35:23 13 the case among yourselves, with others, or permit anyone to
12:35:26 14 discuss it within your hearing.

12:35:28 15 Do not communicate with others about the case. Do
12:35:30 16 not do any research or investigation on your own. And,
12:35:35 17 also, if you find yourself in a situation where information
12:35:40 18 is trying to come your way, please remove yourself from that
12:35:44 19 information and report it to the sheriff.

12:35:46 20 Okay. Thanks for your work. We'll see you in
12:35:49 21 about an hour and 10 minutes upstairs. You are excused.

12:36:30 22 (The following proceedings were had in open
12:36:30 23 court, outside the presence and hearing of the jury:)

12:36:31 24 THE COURT: All right. You may be seated.
12:36:34 25 So, Mr. Lanier, this afternoon we have.