

09:21:15 1 Good.

09:21:16 2 All right. Counsel, are we ready to get started?

09:21:19 3 MR. LANIER: It will take me about 10 seconds
09:21:21 4 to get ready, your Honor. If I could hit a couple of
09:21:25 5 buttons.

09:21:26 6 THE COURT: Okay. Closing argument on behalf
09:21:31 7 of the plaintiff.

09:21:33 8 MR. LANIER: Thank you, may it please the
09:21:34 9 Court.

09:21:35 10 THE COURT: Yes, sir.

09:21:35 11 **PLAINTIFFS' CLOSING ARGUMENT**

09:21:36 12 MR. LANIER: May it please you, ladies and
09:21:36 13 gentlemen, and may it please you, clients.

09:21:40 14 Yesterday during the lunch hour I had a chance to
09:21:45 15 eat lunch with my clients, and I told them, I said: Look,
09:21:49 16 tomorrow's my last chance to talk to the jury, so I need to
09:21:52 17 know is there anything that you need me to tell them.

09:21:56 18 And they said: Yeah, we have not yet had a chance
09:22:02 19 to say thank you. But they want you to be thanked. They
09:22:05 20 know that this has not been easy, they know that this has
09:22:10 21 not been convenient, they know that this has been a
09:22:13 22 disruption.

09:22:15 23 They know that you've missed work, you've missed
09:22:19 24 family time, you've missed time with the people that you
09:22:23 25 want to spend your time with, you've given up evenings,

09:22:26 1 you've given up mornings, and they've been out there and
09:22:30 2 they've been watching.

09:22:32 3 They were amazed last night at 7 o'clock, because
09:22:37 4 they were still here, they were watching, they were amazed
09:22:40 5 that you guys were here. They said: Oh, my gosh, thank
09:22:43 6 you.

09:22:45 7 I want to thank you personally myself. This is
09:22:49 8 really, really tough as a lawyer to do. You get entrusted
09:22:56 9 with this years ago. You know you're fighting one of the
09:23:01 10 largest companies in the world. You know they've got
09:23:05 11 unlimited resources. They've got the best lawyers to choose
09:23:08 12 from, and you do the best you can.

09:23:16 13 You dig in for the fight and try to find the best
09:23:19 14 experts that you can to do the work to show the evidence.
09:23:24 15 You weed through millions of pages of documents, truly
09:23:30 16 millions of pages of documents, to try to find the evidence.

09:23:33 17 And then you get here, and I get here because of
09:23:36 18 an incredible team, not just Monica and Rachel and Eric, but
09:23:41 19 that whole front row. Two of my daughters on the next row,
09:23:46 20 Tom, Natalie, and so many others. My sweet wife. The world
09:23:51 21 gets involved in all of this.

09:23:55 22 And I'm the one who stands up here most of the
09:23:58 23 time, except when Monica and Rachel were, and does this.
09:24:02 24 And y'all probably have gotten sick of me. Some of you I
09:24:07 25 probably drive you nutso and crazy because I'm me and not

09:24:11 1 everybody likes me, but I sure hope that I didn't get in the
09:24:17 2 way of you getting this evidence, because what you're about
09:24:20 3 here, I cannot underscore the importance of it. I really
09:24:26 4 can't.

09:24:26 5 So if I got in the way, I apologize. But I can
09:24:31 6 tell you this. From working this case now for two years,
09:24:35 7 over two years, it's a weight and a pressure that's been on
09:24:44 8 my shoulders to represent these women, but today it's off.
09:24:51 9 I don't have it any more. Because I get to give it to you.

09:24:55 10 Now the weight and the pressure's on your
09:24:57 11 shoulders and you got to figure out what to do. You got to
09:25:01 12 figure out what's right. And so I hand up the baton and say
09:25:07 13 run, run well. And I want to give you the tools that it
09:25:11 14 takes to do that.

09:25:13 15 It's going to take nine votes. I can't count --
09:25:16 16 it's going to take nine votes. Nine votes is the head
09:25:26 17 count. And I hope I've got all 12 of you. If one of you
09:25:30 18 alternates who have been so kind and gracious make it onto
09:25:35 19 this jury, I hope I got one to four of you.

09:25:39 20 But if you get back there and you find that we
09:25:41 21 don't have the votes, I need you to fight for them. I need
09:25:46 22 you to go in there, and I need you to say: Wait a minute.
09:25:49 23 Here are the reasons why it's the right thing to do, and I
09:25:52 24 need you to do that, please.

09:25:53 25 So my job right now is to give you those tools.

09:25:56 1 I'm going to sum up the evidence. You've heard the
09:25:59 2 evidence. You guys know this case. You can argue the case
09:26:03 3 for me if the judge would allow it.

09:26:06 4 So what I decided to do is to start out by giving
09:26:09 5 you my opening. I've taken the slides that I did in opening
09:26:14 6 and I've put them in the closing because I want you to see
09:26:17 7 that what I promised you the case would be about, the case
09:26:20 8 was about.

09:26:22 9 So I'll go through it a lot quicker than I did in
09:26:25 10 opening, all right. Here it goes. I said this case is a
09:26:30 11 simple case, it's as simple as A, B, C. Asbestos that is
09:26:34 12 breathed causes cancer. And that's the truth.

09:26:37 13 And so we have Plaintiffs, and our Plaintiffs in
09:26:40 14 this case, they come from a lot of different places, but
09:26:44 15 they all have something in common. And I told you that.

09:26:47 16 So, Andrea Schwartz-Thomas you met in the
09:26:51 17 deposition. You were not able to meet her personally
09:26:53 18 because she is bedridden and she can't get out of bed, and
09:26:55 19 so she stays at home with her husband, Ken. Izzy is here
09:27:00 20 and Izzy is her son, and he's here on behalf of the family.
09:27:03 21 And, thank you, Izzy, for being here. But you got to hear
09:27:07 22 her for her deposition.

09:27:08 23 Annette Koman. Annette is here with her husband
09:27:11 24 Allan. There you are over there. And they're wonderful.
09:27:12 25 60-year-old women, a bus driver. An outstanding mom who's

09:27:19 1 got twin boys. The twins have been here. One of them's in
09:27:24 2 the military. She did the grandma book, if you remember
09:27:26 3 that. And it's been an honor to represent her.

09:27:29 4 It's been an honor to represent Cecelia Martinez.
09:27:30 5 She's here with her son, Frankie, right back there.
09:27:30 6 Frankie's on the side row. 52 years old. Way too young,
09:27:38 7 way too young to have this cancer.

09:27:40 8 But she's been here, and she's the one -- you'll
09:27:43 9 remember her for two reasons maybe. She makes the crosses
09:27:47 10 for the people who have cancer, and she supposedly makes
09:27:50 11 really good guacamole, but she has yet to let me taste it,
09:27:55 12 so I can't honestly tell you that for certain, but it's been
09:27:59 13 a joy to represent her and she's promised me some.

09:28:01 14 Donna Packard, bless her heart, died three or four
09:28:04 15 days right after her deposition. So you heard her
09:28:07 16 deposition and saw her and one of the lawyers here on the
09:28:10 17 front row. And her husband's been here the whole trial, the
09:28:12 18 Naval Commander, Robert's been back here. You'll remember
09:28:17 19 her deposition. It was very touching. She was in her bed.
09:28:19 20 She was the woman who had a love for books, had wonderful
09:28:24 21 stories, very witty. Already had chemo brain.

09:28:28 22 I don't know if you noticed it or not, but in her
09:28:30 23 deposition she talked about she was diagnosed in 1960 with
09:28:35 24 ovarian cancer, and then later changed it. She was 60 years
09:28:38 25 old when she was diagnosed. The words just didn't come out

09:28:41 1 right. So we have her, and you got a chance to meet her and
09:28:44 2 her husband, Robert.

09:28:47 3 Now, Eleita Walker. Eleita, of course, passed
09:28:50 4 away. Marvin was our last Plaintiffs' witness during the
09:28:54 5 Plaintiffs' week, and Marvin's been here. And what a
09:28:57 6 marvelous story. Eleita, 59 years old when she died in
09:29:02 7 their bed overnight. And he realized it as he's trying to
09:29:07 8 get her to talk about the vacation, and he's on the phone
09:29:10 9 with their son. Very touching story, very moving story.

09:29:15 10 You got to meet Janis Oxford. Janis is here with
09:29:18 11 her husband, Bill, back there somewhere. There you go,
09:29:22 12 Janis, nice smile. Janis is 64 years old. Got sets of
09:29:26 13 twins. Y'all remember her because of that incredible pickup
09:29:30 14 line her husband used. "Do you like apples?" That's a
09:29:34 15 winner. I think I'm gonna try that on me one time, I want
09:29:38 16 to see how that works. But she's the woman who does
09:29:41 17 crossword puzzles, and she's just a marvelous lady. And
09:29:45 18 it's been an honor to represent her.

09:29:49 19 Laine Goldman, the father of Lex and the husband
09:29:53 20 of Johanna Goldman. You got to meet Lex, he's in camp still
09:29:58 21 here because we don't think this is the place for an
09:30:01 22 eight-year-old boy to hear this stuff right now. There'll
09:30:03 23 be a day where he may watch this on TV. There may be a day
09:30:08 24 where he reads some of this that Jennifer's typed so
09:30:10 25 carefully into the record, but it's been an honor to

09:30:14 1 represent you.

09:30:14 2 His wife, 44 years old when she dies. She was the
09:30:17 3 artist who had those incredible things. Her son is the
09:30:21 4 artist who still does incredible work and got that from his
09:30:25 5 mom. It's been a joy and an honor to represent.

09:30:27 6 Krystal Kim. Krystal, wow, where you are? She's
09:30:30 7 got the best hair of all the plaintiffs and she celebrates
09:30:34 8 having it grown back in. So she's here. Ross is with her
09:30:38 9 today. Bryce is not with her today, but the sons have been
09:30:40 10 here. They're her heartbeat, and they've been here most of
09:30:45 11 the trial with their mom. And what a joy to represent
09:30:47 12 Krystal. She is a bundle of energy at 53 years old. Way
09:30:52 13 too young to have this disease, but it's been an honor.

09:30:56 14 Marcia Hillman is another one. Now Marcia has
09:31:00 15 passed away as well. Here you see a picture of her
09:31:03 16 granddaughter, but you'll recall that Tracee Baxter, one of
09:31:07 17 her daughters, took the stand. We didn't have time to put
09:31:09 18 both. Chelsey is here as well. Tracee and Chelsey are
09:31:11 19 sitting back over there. Thank you, girls -- ladies, excuse
09:31:15 20 me. Marcia, a grandmother, 62 when she passed away.

09:31:19 21 While we're on the Marcias. We've got Marcia
09:31:22 22 Owens. There you are, Marcia. And Maxine, your partner is
09:31:27 23 next to you there. Thank you, Maxine. You'll remember her.
09:31:32 24 She's a hiker. She's a canoer. A marvelous woman, and 53
09:31:37 25 years old. Way too young to have this disease.

09:31:40 1 Olga Salazar from Arizona. Olga, where you are?
09:31:44 2 There you are. Olga was the one that we used to introduce
09:31:49 3 chemo brain to y'all. She was an accountant who's unable to
09:31:52 4 do that at this point in her life. Her brain doesn't
09:31:55 5 remember things so well. She is the one who brought the
09:31:59 6 unused cornstarch to the deposition, but testified very
09:32:03 7 clearly, very clearly, that that was something that she
09:32:07 8 found and so she thought she was supposed to bring but
09:32:10 9 hadn't used, and she was a talcum powder user. And so we
09:32:14 10 had her as well, and it's been an honor.

09:32:17 11 Y'all also remember she's the one who's got the
09:32:20 12 two children who have difficulties. So she's been unable
09:32:22 13 and had to put one of them into a home for help because she
09:32:26 14 was unable to take care of her. And so we've got that.

09:32:29 15 Sheila Brooks. Sheila's here with Allen, her
09:32:33 16 fiancé. Thank you, guys, for being here. 56 years old.
09:32:35 17 You'll remember her. Monica put her on the stand. She's
09:32:39 18 the one with refrigerator magnets is the way you can
09:32:43 19 remember her.

09:32:43 20 Annie Groover-Maillard. Where's Martin? Martin
09:32:49 21 played in the church band and he sang in the church choir,
09:32:52 22 and they had a wonderful love story. She died, age 53.
09:32:58 23 What a pity. Way too young, way too young. But you'll have
09:33:03 24 a chance to look at that as well.

09:33:07 25 Karen Hawk. Karen and Mark are back there.

09:33:10 1 Karen's my survivor so far. We love that. Karen's the
09:33:14 2 inspiration for many of these ladies that are fighting now.
09:33:17 3 Her husband's Mark, the fellow she wasn't allowed to date,
09:33:20 4 wasn't allowed to marry. And once she married him she
09:33:24 5 didn't get her high school diploma because her parents
09:33:27 6 wouldn't pay it off that last semester. But later on when
09:33:30 7 she had kids, her husband worked extra jobs to pay the old
09:33:33 8 tuition so she got it. I hope you'll remember her as well.

09:33:36 9 Gail Ingham is back there. Gail is back there.
09:33:39 10 And Gail and Robert, her husband, she's the one who wrote
09:33:43 11 the book that we used and so many of the women have
09:33:46 12 gotten -- well, all of these women have gotten copies of.
09:33:49 13 She just hands them away like candy to anybody who gets
09:33:54 14 ovarian cancer because that's what she wrote it for, and
09:33:56 15 it's just been a marvelous thing. The lawyer in me still is
09:33:59 16 bothered that she didn't copyright that book. She said: I
09:34:03 17 don't want to keep people from making copies. So you've got
09:34:07 18 Gail as well.

09:34:10 19 Stephanie Martin. Stephanie is my -- I'm calling
09:34:11 20 her my modern artist. She painted the cardinal. She did
09:34:16 21 her own roadmap for you guys. She's out there with Ken, her
09:34:20 22 husband, and I think you got your children with you today?
09:34:23 23 Yeah. So anyway, you'll remember her as well. She's the
09:34:26 24 one who did themed chemo and would go theme out the chemo.

09:34:32 25 Toni Roberts. Toni is still deep into chemo.

09:34:36 1 She's come back for closing argument and has been here on
09:34:41 2 and off as her health would allowed her to. But, Toni, what
09:34:45 3 a joy to represent you. She's sitting over there with her
09:34:45 4 son and daughter-in-law, Zach, our hockey fella, and her
09:34:50 5 sister, Kim, and they've been here as well. So it's nice to
09:34:55 6 have them here and an honor to represent them.

09:34:58 7 Pam Scarpino. Pam is Ms. Hy-Vee is the way I know
09:35:00 8 her because she and everyone she's ever met worked at
09:35:04 9 Hy-Vee. But we're so thankful for her. You'll remember her
09:35:07 10 because of her daughter's fashion show, perhaps. I hope
09:35:10 11 that would help.

09:35:11 12 Sherise Sweat. Sherise, 48 years old, way too
09:35:16 13 young to have this. Where's Sherise? There you are. With
09:35:18 14 Greg, her husband. And he's not in the courtroom because
09:35:22 15 he's at the hotel with the kids right now. This is no place
09:35:25 16 for them to be. You'll recall her because of the ornaments
09:35:27 17 and she's now got her St. Louis ornament. She's also the
09:35:32 18 one who teaches Special Ed kids. Just a marvelous,
09:35:35 19 marvelous woman.

09:35:37 20 You got to meet Clora Webb through her son-in-law.
09:35:40 21 Clora passed away before we were able to get her deposition,
09:35:43 22 and her daughter was her representative, who also passed
09:35:47 23 away. So you met her through her son-in-law, who had some
09:35:51 24 marvelous things to say about his mother-in-law, including
09:35:52 25 she always smelled like baby powder, so that's good.

09:35:55 1 And Mitzi Zschiesche. I worked so hard on that
09:35:58 2 for closing argument. I have worked harder on that than
09:36:02 3 almost than anything else. Mitzi, 47 years old, way too
09:36:09 4 young to have this disease. Here with her partner, Hoppie.
09:36:12 5 And she works at the Texas equivalent of maybe Hy-Vee, it's
09:36:15 6 called Buc-ee's. But she's just a marvelous one. She made
09:36:18 7 my daughter Rachel a blanket, you might remember, like the
09:36:21 8 blanket she made for the other victims for ovarian cancer
09:36:24 9 and gave away.

09:36:25 10 And then last, but certainly not least, is the
09:36:27 11 woman who makes the cake and takes the cake, Carole
09:36:31 12 Williams. Carol, where are you back there? There you are.
09:36:35 13 And her husband, Talmadge, and her daughter and
09:36:38 14 granddaughter, I think, are here as well. She's our cake
09:36:40 15 baker.

09:36:41 16 And so those are the plaintiffs, and most of them
09:36:43 17 you got to see the chart. And what you learned from all of
09:36:46 18 these Plaintiffs is even though they come from all of these
09:36:48 19 different places, they all have something in common. They
09:36:51 20 all have ovarian cancer. They got it from Johnson &
09:36:54 21 Johnson's Baby Powder.

09:36:56 22 Now, I told you in opening that you're the
09:36:59 23 detectives in this trial. This is CSI St. Louis, in a
09:37:02 24 sense, and that your job is to show -- determine who's
09:37:07 25 responsible. The evidence says it's going to be Johnson &

09:37:09 1 Johnson. And then that responsible party needs to be
09:37:13 2 brought to justice.

09:37:15 3 As I told you in opening, it's an easy thing to
09:37:17 4 do. We've seen it on TV. You just follow the evidence.
09:37:20 5 You got to look for the motive. I think we showed you the
09:37:24 6 money -- motive was the money. You got to look at the
09:37:29 7 means. How did they go about doing this? They did it
09:37:30 8 through their talcum powder.

09:37:31 9 You examine the injuries. Look carefully at
09:37:35 10 bladder -- at ovarian cancer, and what it is that causes it.
09:37:37 11 And then look at their alibis and see whether or not their
09:37:39 12 finger pointing makes any sense at all or whether it just
09:37:42 13 comes right back to their own doorstep.

09:37:45 14 And I think this is what the evidence shows. I
09:37:46 15 started out by telling you they had the motive. This is not
09:37:49 16 the Johnson & Johnson of yesteryear. It was really nice of
09:37:54 17 Mr. Bicks to put up here heartwarming slides about how this
09:37:59 18 company got started by the Johnson brothers. This isn't the
09:38:03 19 Johnson brothers of 1875, or whenever that was.

09:38:06 20 This is a multi-billion dollar, multi-national
09:38:09 21 corporation traded on the stock exchange. This has nothing
09:38:12 22 to do with those fellas. It's bought every other kind of
09:38:15 23 industry it can within pharmaceuticals, but it still plays
09:38:19 24 on that name. And it stay plays on that idea, because it's
09:38:23 25 going to invoke warm feelings of emotional trust.

09:38:27 1 You see, that's why they called it Johnson's Baby
09:38:29 2 Powder. Their sacred cow. And I told you that that would
09:38:32 3 be the case, and I showed you Plaintiff's Exhibit 55, where
09:38:36 4 they made it clear, baby powder's such a sacred cow, we're
09:38:39 5 just going to leave it alone. That's what this was. This
09:38:42 6 was their sacred cow.

09:38:43 7 Another one said this is their golden egg.
09:38:47 8 Plaintiffs' Exhibit 2821. One of their PowerPoints where
09:38:49 9 they talked in their business planning about how this
09:38:53 10 \$450 million of this baby care, this company trust mark.
09:38:57 11 It's a trust mark because mothers will associate that
09:39:02 12 fragrance, and everybody will, with infancy.

09:39:06 13 Over 200 million baby bottoms powered with it, so
09:39:12 14 there's this trust built into it. And the company noted
09:39:15 15 that the trust that's given to that rolls over to
09:39:17 16 everything. They'll put that Johnson & Johnson label on
09:39:20 17 their hip implants because they want everyone to associate
09:39:24 18 with, oh, that's Johnson & Johnson. Not Big Pharma. But
09:39:28 19 Johnson & Johnson. The company we trust.

09:39:30 20 And that's what they did. They figured that this
09:39:33 21 gives an emotional connection, as they talked about.

09:39:36 22 Now, what this does is, I told you in the
09:39:39 23 beginning, they own the talc market in the United States
09:39:42 24 with Baby Powder and Shower to Shower. The evidence bore
09:39:45 25 that out. The evidence bore that out for years, for

09:39:48 1 decades, they even owned the mines. So they had that
09:39:52 2 economic motive not to shift to the safer cornstarch, but
09:39:56 3 they continue to make what they were making that was making
09:39:59 4 the most profit for them that they could. They also had the
09:40:02 5 means, and the means was the baby powder.

09:40:04 6 I told you in opening asbestos in a mineral.
09:40:06 7 There are several types. There are six different types.
09:40:10 8 You've learned this through the trial. Three of those sold
09:40:14 9 commercially. Kind of a fourth if you go to Finland,
09:40:17 10 anthophyllite is sold commercially, but the rest of those
09:40:21 11 are called accessory minerals. They're just minerals that
09:40:26 12 pollute other minerals and found around.

09:40:28 13 Asbestos is dangerous because it doesn't have
09:40:29 14 onion properties. By that, I mean, it doesn't smell. You
09:40:33 15 don't see it. You don't smell it. You don't sneeze. You
09:40:40 16 don't water your eyes. You don't know it's there.

09:40:43 17 And yet it is there and it's indestructible. And
09:40:47 18 where you found one fiber you're going to find a gazillion
09:40:51 19 fibers. Asbestos was in the talc mines. It was marbled in.
09:40:57 20 Some had more asbestos than others, just like some cuts of
09:41:00 21 meat have more fat than others, but they all had it there.

09:41:05 22 We also know and learned, as I told you, asbestos
09:41:07 23 at any level potentially causes cancer. There is no safe
09:41:11 24 level. As the U.S. Surgeon General pointed out, this is in
09:41:15 25 Plaintiffs' Exhibit 7766, there is no level of asbestos

09:41:21 1 exposure that is known to be safe. None. And so we have
09:41:25 2 that as well.

09:41:27 3 Now, I next told you in opening that Johnson &
09:41:29 4 Johnson rigged the tests. And they did. They would use the
09:41:34 5 tests that's for really fine things, but they wouldn't test
09:41:38 6 the whole bale of hay to find the needle in the haystack.
09:41:42 7 They just break off a little corner. Or, alternatively,
09:41:46 8 they would use the big scale where the needles would never
09:41:50 9 weigh, and those were their tests.

09:41:51 10 And if all that failed and they still happened to
09:41:55 11 find it they had RJ Lee, the dirty lab. And RJ Lee would
09:42:00 12 rig the tests by slanting it so it would all of a sudden
09:42:03 13 look like something different. That was Plaintiffs' Exhibit
09:42:06 14 Number 73, where the company is speaking and says RJ Lee has
09:42:13 15 a different approach to the whole thing.

09:42:15 16 They believe if you can find a hint of a
09:42:18 17 diffraction pattern from another mineral while you're
09:42:21 18 looking at the amphibole fiber, at the asbestos, then you
09:42:26 19 can call the fiber transitional and not truly amphibole.

09:42:32 20 The analyst told me when she finds a tremolite
09:42:35 21 fiber, that's asbestos. She will tilt the stage until she
09:42:40 22 can see a talc diffraction pattern come into view.

09:42:44 23 "I am very skeptical of this. There's a lot of
09:42:47 24 scatter of the electrons. You can sometimes get
09:42:50 25 interference in the diffraction patterns from adjacent

09:42:54 1 particles, especially a higher tilt. I spoke to someone in
09:42:57 2 the U.S. Government about this. They're skeptical about
09:43:01 3 it."

09:43:02 4 But it's the one they've been using. It's how
09:43:03 5 they get their business, even though they're a dirty lab.
09:43:05 6 They're the asbestos company's lab.

09:43:07 7 And so we talked about that. I told you that the
09:43:09 8 right tests are needed to find the needle in the haystack
09:43:12 9 and to show the asbestos, and that is true. Those right
09:43:16 10 tests are necessary.

09:43:17 11 I showed you from the company that was one of the
09:43:21 12 testing companies for Johnson & Johnson. When Johnson &
09:43:24 13 Johnson first asked the Colorado School of Mines to consider
09:43:28 14 testing their asbestos, the mines told them, in Plaintiffs'
09:43:31 15 Exhibit 1795, the purpose of this document is to report the
09:43:37 16 methods used. Do you see the past tense there for used?
09:43:42 17 This is already in use. This is what's being used at the
09:43:46 18 Colorado School of Mines Research Institute for detecting
09:43:49 19 chrysotile and asbestos kind or tremolite-actinolite
09:43:57 20 asbestos in samples predominantly composed of talc.

09:44:00 21 So this is what the mine uses. What is it? They
09:44:04 22 say the impurity level -- "as the impurity level becomes
09:44:08 23 very low, it's necessary to examine increasingly larger
09:44:11 24 amounts of the sample in order to detect the impurity. As a
09:44:14 25 result of the requirement to detect the proverbial needle in

09:44:19 1 a haystack, we've evolved a procedure which pre-concentrates
09:44:25 2 the impurities prior to examination."

09:44:28 3 Lest there be any doubt, the objective is made
09:44:31 4 clear on the next page.

09:44:32 5 "To screen talc for the presence of chrysotile and
09:44:37 6 tremolite-actinolite asbestos minerals, based on past
09:44:41 7 experience with detecting and identifying minerals when
09:44:45 8 present at low levels, a concentration of the phases to be
09:44:48 9 detected was considered not optional, but essential, to the
09:44:54 10 success of any suggested procedure."

09:44:57 11 And after the Colorado School of Mines told this
09:45:00 12 to the company and told it to them in 1973, the company
09:45:08 13 said, well, we're going to hire you, but we don't want you
09:45:11 14 to do that test, we want you to use a different method. And
09:45:15 15 that's what the company did.

09:45:20 16 So, the company knew what needed to be done. Now,
09:45:23 17 we have Dr. Longo, a world-renowned expert in asbestos
09:45:29 18 testing for over 30 years, used by companies, as well as by
09:45:33 19 folks who have been hurt. Both sides go to him. He's
09:45:38 20 someone who's been sought out by every organization we can
09:45:41 21 think of, from the EPA, the FAA, MIT, Department of the
09:45:45 22 Treasury, NASA, BMW, Ford, Dow, National Institutes of
09:45:49 23 Health, CDC within the government, General Electric, IBM,
09:45:55 24 the U.S. Air Force. He has tested over 300 to 400,000
09:46:02 25 analyses over the last 30 years.

09:46:05 1 In two years he tested 100 times more talc than
09:46:11 2 Johnson & Johnson tested in 50 years. And he found it in
09:46:16 3 over half of the bottles he examined.

09:46:20 4 Now, they make a big deal he didn't find it in the
09:46:23 5 most recent one. Okay, fine, that's not our concern.

09:46:28 6 Although we'll see what happens next time around, but our
09:46:32 7 concern is the bottles that these ladies were using, and
09:46:37 8 that's where he found it.

09:46:39 9 Now, the right test finds the needle in the
09:46:41 10 haystack. There's no question about that at all. We saw it
09:46:46 11 from Alice Blount. Alice Blount used the same method. This
09:46:50 12 is the method that the FDA was considering, and you'll
09:46:53 13 recall from Plaintiffs' 6824, that the company found that
09:46:58 14 disturbing and pushed hard so that they could get other
09:47:04 15 claims in front of the FDA, another procedure in front of
09:47:06 16 the FDA before this, before the FDA adopted a concentration
09:47:11 17 procedure.

09:47:12 18 Because they knew that the concentration procedure
09:47:15 19 would open up problem areas with their asbestos in talc.
09:47:21 20 The company knew this back in 1976 and pushed to get away
09:47:24 21 from it. But there were still the Alice Blounts of the
09:47:27 22 world who did the testing.

09:47:28 23 Not just that, even Dr. Pooley, who the defendants
09:47:32 24 never called in this trial, I thought they might, but he
09:47:36 25 even said, I used the pre-concentration method and I find

09:47:41 1 asbestos, and so the company had him quit using that method.

09:47:45 2 The TV stations, the others. Johnson & Johnson
09:47:48 3 knew you had to concentrate it if you wanted to test it
09:47:53 4 adequately but they wouldn't. Still, you still have
09:47:57 5 evidence that their baby powder had asbestos in it.

09:47:59 6 The FDA found it. McCrone themselves found it.
09:48:04 7 You'll recall the McCrone levels. Here they were. It was
09:48:08 8 Plaintiffs' Exhibit 6. Table 1 shows the actual fiber
09:48:13 9 counts, some of them seem rather high.

09:48:16 10 One had 10, one had 9 amphiboles. And this was
09:48:19 11 the one where when we showed what they were and we showed
09:48:24 12 the mines that they came from. The company put up that
09:48:26 13 fella Hopkins to say maybe that was from Malaysia, because
09:48:31 14 HC always meant Hammondsville, but one time it meant
09:48:36 15 Malaysia. But on cross-examination he had to agree that
09:48:39 16 that was just for y'all's effect, that he knew it was, in
09:48:42 17 fact, where they got their cosmetic talc from.

09:48:45 18 So within the framework of that, Imerys, their
09:48:48 19 mining company, told them it's got it in there. The TV
09:48:51 20 station, KCRA, absolutely tested it. Found the
09:48:58 21 anthophyllite asbestos in it, inside the Johnson's Baby
09:48:59 22 Powder. This was done in 2004.

09:49:03 23 So, these are being found all over the place.
09:49:06 24 They were found by forensic analytical labs, they were found
09:49:11 25 by the mines, they were found by Battelle. Battelle, in

09:49:15 1 1958, found asbestos in it. Ernest Fullam, Pfizer, RJ Lee
09:49:21 2 even found it. The MSHA, Rutgers University, Bain
09:49:26 3 Environmental, Johnson & Johnson, Pooley found it. TNO, the
09:49:31 4 Dutch organization had them use it, Consumer Mine.

09:49:33 5 All of these people, all of these entities found
09:49:38 6 asbestos. And each time Johnson & Johnson would party out
09:49:42 7 in force everything they could. Whether it was a bogus
09:49:44 8 letter from Ian Stewart saying we haven't found it in 15
09:49:49 9 years, when they had, or whatever they needed it to be.

09:49:52 10 But Johnson's Baby Powder has asbestos. It's not
09:49:55 11 just the baby powder, it's in the mines.

09:49:57 12 "The 'clean mine' approach as of 1973, the 'clean
09:50:01 13 mine' approach for asbestos only is over. Concentrating
09:50:06 14 techniques will permit a good lab to identify asbestos."
09:50:11 15 This is a game over document for them. They shouldn't be
09:50:14 16 fighting this fight.

09:50:16 17 "A good appropriate concentrating technique will
09:50:22 18 permit a good lab to identify asbestos or tremolite." It
09:50:26 19 will. They knew this. This is Johnson & Johnson in 1973.

09:50:35 20 And if you look at the way this is mined, you're
09:50:38 21 not at all surprised. Juan, can you play the mine video?

09:50:42 22 You remember seeing this video. This is the video
09:50:46 23 of how the mining is done and can you imagine somewhere in
09:50:50 24 there is the asbestos, the tremolite, the actinolite. And
09:50:53 25 they say, oh, we would mine around that. If we saw that we

09:50:57 1 would. Come on. That's the way they mine. And then they
09:51:02 2 get their bulldozers in there to start scooping it up.

09:51:06 3 Thank you, Juan. If we go back to the PowerPoint.

09:51:10 4 So faced with all of this, what does the company
09:51:12 5 do? The company suppresses the truth. I took a selection
09:51:16 6 of the documents and I put it together, and I compared the
09:51:19 7 test results with the test report.

09:51:23 8 You'll have these documents back there. Tremolite
09:51:26 9 in baby powder. They call it a few isolated crystals, .2 to
09:51:30 10 .5 percent tremolite. They just deleted that sentence.
09:51:33 11 Chrysotile in cosmetic talc. They called it good, platy
09:51:37 12 talc instead. Chrysotile asbestos in Shower to Shower.
09:51:41 13 They actually report no trace of chrysotile. Asbestos in
09:51:46 14 Shower to Shower, they deleted that.

09:51:48 15 Fibrous talc in Hammondsville talc. They called
09:51:51 16 it a few organic fibers. Fibrous minerals, they delete
09:51:54 17 that. Chrysotile fiber in cosmetic talc. They say no
09:51:58 18 chrysotile asbestos was found. Anthophyllite fiber and
09:52:03 19 chrysotile fiber, they say no quantifiable amounts of
09:52:06 20 asbestiform minerals.

09:52:08 21 They'll do everything they can. They'll say if we
09:52:11 22 don't have at least five fibers found we call it zero. It's
09:52:16 23 outrageous the games and the tricks that they would go to.
09:52:19 24 But that's what they would do.

09:52:22 25 Now, they not only did that, they manipulated the

09:52:27 1 agencies. The FDA, they would tell them we're self-policing
09:52:29 2 when they weren't. They would tell them that we don't have
09:52:33 3 asbestos in our products and nobody's ever found it, when
09:52:36 4 they have, when all of their testing agencies have.

09:52:38 5 They manipulate the FDA and the people there.
09:52:41 6 They manipulate the NTP through their trade association, who
09:52:44 7 they're a major funder of, to get the trade association to
09:52:48 8 tell the NTP, don't list talc. The old talc had asbestos in
09:52:52 9 it. That's why it caused ovarian cancer. We got rid of the
09:52:55 10 asbestos. No, they didn't.

09:52:57 11 So they tried all of these things. They went to
09:53:00 12 NIOSH. Remember NIOSH is the one that was going to be doing
09:53:03 13 the test with Harvard? And so they go to NIOSH and Harvard,
09:53:06 14 and they say there's only one qualified domestic source for
09:53:10 15 J&J, and Johnson & Johnson gave explanations involving
09:53:14 16 unique plate structure, minimal quantities of undesirable
09:53:18 17 minerals, beneficiation expertise, et cetera.

09:53:23 18 "We attempted to, and, in fact, created a mystique
09:53:27 19 around our talc involvement through our operations and
09:53:30 20 factual knowledge." And NIOSH issues a report that actually
09:53:34 21 says there hasn't been asbestos found in Vermont talc mines
09:53:39 22 in history, when we know that's absolutely bogus.

09:53:43 23 Well, I told you the third element that you'll
09:53:45 24 look at is the actual damage that was done to the bodies.
09:53:48 25 You see, Johnson & Johnson targeted adult populations to be

09:53:53 1 using this product. Not simply baby populations. They
09:53:57 2 targeted teenagers, they targeted Hispanics, they targeted
09:54:03 3 African Americans, they targeted overweight women, and they
09:54:06 4 said this is the product that will make your life better.

09:54:09 5 And so while other companies that do business
09:54:12 6 better are out there putting a warning, I'm not sure it's an
09:54:15 7 adequate warning, but at least it says something.

09:54:16 8 "Frequent application of talcum powder in the
09:54:16 9 female genital area may increase the risk of ovarian cancer"
09:54:22 10 for Angel of Mine. Heaven forbid they try to compete
09:54:25 11 against Johnson & Johnson, because Johnson & Johnson's not
09:54:29 12 going to do that. What happens instead?

09:54:32 13 Well, Johnson & Johnson knows that most treating
09:54:35 14 doctors do not know the role of asbestos in ovarian cancer.
09:54:39 15 No doubt about that. We've seen that. You've seen that.
09:54:44 16 Everybody is aware of that at this point in time.

09:54:47 17 But that asbestos causes ovarian cancer. There's
09:54:50 18 no doubt about that at all. IARC has said it. The National
09:54:53 19 Cancer Institute has said it. The American Cancer Society
09:54:57 20 said it. The Lancet said it. The Cancer Treatment Centers
09:55:00 21 of America. The trade associations said it. Imerys said
09:55:04 22 it. Their expert they won't call into court says it.
09:55:07 23 Johnson & Johnson has even said it, but the plaintiffs are
09:55:11 24 supposedly not in that group.

09:55:14 25 Understand, understand, the plaintiffs' exposure

09:55:19 1 exceeded heavy occupational exposure. If heavy occupational
09:55:24 2 exposure is the key, and I don't think it is, and I'll show
09:55:27 3 you why, the plaintiffs exceeded that. Dr. Egilman made it
09:55:31 4 real clear. Dr. Egilman gave you the numbers. He did the
09:55:36 5 numbers for each of the plaintiffs.

09:55:37 6 And the only way they tried to fuss those numbers
09:55:39 7 was through Dana Hollins, who very clearly came in just to
09:55:43 8 muddy the waters. She was a hired gun. She had never done
09:55:49 9 this. She didn't know what she was talking about.

09:55:51 10 She was the junk science expert that they brought
09:55:55 11 in, the money for hire. She works for the company that has
09:56:00 12 charged millions and millions of dollars to pollute the
09:56:03 13 literature and to orchestrate this entire defense.

09:56:08 14 So instead of her, we actually brought a true
09:56:11 15 asbestos doctor for you. We brought Dr. Jackie Moline.
09:56:15 16 Dr. Jackie Moline is a -- yes, we had to bring her in by
09:56:20 17 video because of her accident, but we still brought her.
09:56:22 18 And Dr. Moline is truly an asbestos specialist. This is her
09:56:28 19 area.

09:56:28 20 Juan, can we go to the Elmo, please? Thank you.

09:56:31 21 This is her area. This is what she does. She is
09:56:35 22 focused on asbestos. She lectures the gyne oncologists
09:56:40 23 because they don't know about it at Harvard even. She's on
09:56:43 24 the TV shows. She is the lecturer. She is the government's
09:56:47 25 resource. This is her deal. We brought you a real asbestos

09:56:51 1 doctor to talk about this.

09:56:53 2 We not only put up IARC, which all of you know and
09:56:58 3 you've probably memorized by now, but we put up testimony to
09:57:05 4 go with it. We put up Dr. Felsher, who explained that it
09:57:09 5 actually works in several different ways. It not only
09:57:12 6 causes ovarian cancer, which is one of the questions the
09:57:15 7 judge asked you, but it also contributes to cause by pouring
09:57:23 8 gas on the fire and stopping the fire trucks.

09:57:27 9 You see, as he explained, and we saw in the
09:57:30 10 article that I used against Dr. Holcomb, 3D pictures in the
09:57:36 11 literature show the pink asbestos entering into the green
09:57:40 12 cell, with the blue nucleus, with the red DNA, and you can
09:57:44 13 see the asbestos getting into the DNA.

09:57:47 14 They got blowup pictures of the asbestos impaling
09:57:49 15 the DNA. And that's damaged. If it happens to the right
09:57:56 16 cell it's cancer. If it happens to another cell it destroys
09:58:01 17 the body's defenses. And Dr. Felsher explained all of that.

09:58:05 18 He did it, though, within the context of something
09:58:08 19 else. He did it within the context of latency. You don't
09:58:12 20 have the cancer immediately. He explained it. You got to
09:58:15 21 get a trillion cells. There are all these things that can
09:58:18 22 happen in the meantime.

09:58:19 23 He used latency and explained latency as -- let's
09:58:24 24 see here, oops, there we go. He used latency as to how many
09:58:29 25 males in St. Louis have beards. It doesn't do you any good

09:58:32 1 to test it at the elementary school, but maybe one or two
09:58:35 2 guys, I had this one guy in sixth grade we were amazed at,
09:58:40 3 but other than that, you're not really going to get it,
09:58:43 4 okay?

09:58:43 5 And then we put up a latency article, the latest
09:58:47 6 thing, "Advances in EPA Epidemiology," and it shows the
09:58:52 7 latency period for ovarian cancer is around 40 years, which
09:58:56 8 puts into perspective a lot of the studies that they're
09:58:58 9 using. The last thing in the world they would want is one
09:59:01 10 like that.

09:59:02 11 So what do they do? They also argue to you that
09:59:05 12 it's not just latency. They say, well, background. No,
09:59:09 13 background's not the cause. Krystal Kim's exposure,
09:59:12 14 99.99999999 percent is from J&J, compared to what she's got
09:59:20 15 in a lifetime of exposure to the environment.

09:59:25 16 I mean, think about it. If the asbestos around us
09:59:27 17 settles down, eventually maybe it takes one, two, three
09:59:30 18 hours, it's not just always in the air around us. Someone's
09:59:34 19 got to find it. I don't know that these roofing tiles have
09:59:37 20 it or not, but if they do and we throw a rock up there and
09:59:41 21 hit one we might disturb it and there might be some asbestos
09:59:45 22 in the air for the next couple of few hours. Don't hit it
09:59:48 23 with a rock, but that's not going to happen.

09:59:51 24 Now, we were concerned because, especially with
09:59:54 25 Mr. Bicks' opening, where he challenged us because he said

09:59:58 1 that we didn't have all of our women tested, it was in voir
10:00:00 2 dire when he was saying, you know, all of the women weren't
10:00:05 3 tested. We wanted to make it real clear, so we brought
10:00:08 4 Mr. Rigler, who did those slide tests. It's rare to find
10:00:13 5 asbestos in the tissue. And Dr. Felsher explained why.

10:00:15 6 You can't find that original cell that was
10:00:17 7 impaled. The fibers may have been taken out by the lymph
10:00:21 8 system after the damage. The fibers -- you just don't know
10:00:23 9 if you're ever going to find it.

10:00:25 10 Notice, they never brought a witness to say
10:00:27 11 otherwise, never. Because that's -- that's a gimme. That's
10:00:31 12 asbestos 101. You don't find -- you don't find the fibers
10:00:35 13 in mesothelioma. You just rarely ever find them. And yet
10:00:39 14 we have fibers that are found with talc. And we showed you
10:00:44 15 the picture even in Sheila Brooks' cancer tissue.

10:00:48 16 So what does that leave us with? That leaves us
10:00:51 17 with their alibis. And what do they with do with their
10:00:55 18 alibis? This is my opening slides. I said: Let's hear
10:00:59 19 what the company executives had to say. They never brought
10:01:02 20 one.

10:01:03 21 I wanted them to put the company executive on. I
10:01:06 22 wanted someone high up. I had to play the video of the
10:01:10 23 medical director because they wouldn't even bring her. That
10:01:13 24 was that Dr. Waldstreicher.

10:01:15 25 Where's the company? Where's someone who cares

10:01:19 1 about this? The world's watching. Where's the witness
10:01:23 2 who's going to stand up here?

10:01:25 3 Who was their company rep who spoke for the
10:01:29 4 company? A guy who hadn't worked there for 18 years, and
10:01:33 5 when he worked there he was a toxicologist. He wasn't an
10:01:36 6 executive.

10:01:37 7 They brought -- they brought a doctor who works
10:01:39 8 there, Dr. Nicholson. But she wasn't an executive and she
10:01:44 9 was not allowed to be the corporate rep. She couldn't speak
10:01:48 10 for the company, so I didn't have the benefit of asking her
10:01:51 11 the company questions. I had to ask of their paid witness
10:01:54 12 that just travels around the world representing J&J in
10:01:57 13 courtrooms.

10:01:58 14 And his knowledge comes from working for these
10:02:00 15 lawyers and the rest of their lawyers for the last 18 years.
10:02:04 16 And that's their executive? I wanted to ask someone about
10:02:07 17 the documents that show they've been working on their legal
10:02:10 18 defenses for 50 years. But I got nobody.

10:02:15 19 I wanted to ask someone about their shifting
10:02:19 20 stories. How they can tell the NTP asbestos causes ovarian
10:02:23 21 cancer and then come in here and say it doesn't? Although
10:02:26 22 even that was interesting. They bring you three doctors who
10:02:29 23 don't really know about anything other than treating women,
10:02:32 24 and I'm sure they do a great job treating women, and I'm
10:02:36 25 thankful for that. I've got 22 reasons to be thankful for

10:02:41 1 treating oncologists.

10:02:43 2 But I will say this. One of their doctors even
10:02:46 3 says, nah, asbestos does not cause ovarian cancer. IARC's
10:02:51 4 wrong, that was Dr. Huh. And then their other two doctors
10:02:56 5 say, well, it does, but only under these circumstances of
10:03:00 6 heavy occupational exposure. Don't know what that means,
10:03:03 7 don't know what the exposure was of these ladies, but that's
10:03:06 8 good enough for us to know that it's not there.

10:03:08 9 I wanted to hear that. I wanted someone to take
10:03:10 10 apart that testimony of Mr. Bicks in his opening where he
10:03:14 11 said the FDA never found asbestos in J&J talc. Yes, they
10:03:19 12 did. Yes, they did.

10:03:23 13 I'm bothered by this. I wanted someone to talk to
10:03:26 14 about the destructive testing. I wanted someone beyond --
10:03:30 15 and I did get some. I mean, the people they brought I at
10:03:35 16 least got to examine them on those four studies that don't
10:03:38 17 show a problem and show that those studies are ridiculous.

10:03:43 18 I got to show them that not only are those studies
10:03:47 19 ridiculous, but the meta-analysis that combines all of these
10:03:51 20 24 studies together most recently found an association
10:03:54 21 between just using it in the genital region, found an
10:03:58 22 association between talc and an increased risk of ovarian
10:04:03 23 cancer.

10:04:03 24 And that doesn't count the way my women used it
10:04:06 25 and how often they used it, all the way down to the hockey

10:04:11 1 boots, Zach, all the way down.

10:04:13 2 And they tried to say Dr. Saenz, one of their paid
10:04:17 3 experts, tried to say, hey, there's no evidence, no studies
10:04:21 4 support talc causing ovarian cancer. And I asked her about
10:04:24 5 not only that study I can't pronounce that I just showed
10:04:27 6 you, but all of these other studies as well. She had to say
10:04:30 7 well, yes, they do, but -- but I'm not going to change on
10:04:34 8 the position I'm being paid \$1200 an hour to say.

10:04:40 9 And then what else do they do? So we know that
10:04:44 10 Johnson & Johnson has to self-police with the FDA. Y'all
10:04:48 11 saw it. I'll bet Mr. Bicks will show part of it in his
10:04:52 12 closing where the FDA says, hey, we've tested these baby
10:04:56 13 powders and they look clean. That's one of his favorite
10:05:00 14 documents.

10:05:01 15 He'll just never show you the part where the FDA
10:05:02 16 says don't rely upon this and think all of them are clean
10:05:06 17 because we only tested four. And we know they had problems
10:05:10 18 with it before.

10:05:11 19 They self-police. They send the FDA -- they tell
10:05:15 20 the FDA over and over: We've never had a problem, we've
10:05:18 21 never had a problem. There's never been a finding of
10:05:20 22 asbestos in our product, even though that's not right.

10:05:22 23 They secretly work to distort the science. I
10:05:25 24 really wanted to take someone to task over that. They
10:05:28 25 wouldn't bring an executive in here for me to do it.

10:05:31 1 They adopted the name game where asbestos' name
10:05:34 2 gets changed to not asbestos. I talked to Dr. Moline about
10:05:38 3 this, and Dr. Moline said it doesn't matter. The body
10:05:41 4 doesn't say: What are you called? Whether it's a cleavage
10:05:44 5 fragment, whether it's a fiber, the American Chest Society,
10:05:48 6 lungs, thoracic. The body treats cleavage fragments just
10:05:52 7 like a fiber.

10:05:55 8 Would you play that testimony from Dr. Moline,
10:05:56 9 please?

10:05:57 10 (The following videotaped testimony by Dr.
10:05:57 11 Moline was provided to the jury on June 25, 2018 and is
10:05:57 12 contained in Volume 17A:)

10:05:57 13 A "Well, the body doesn't say, oh, cleavage fragment
12:27:31 14 won't cause a problem. It's not smart enough to do that.
12:27:33 15 And from a public health perspective and from a medical
12:27:37 16 perspective, a cleavage fragment in the shape of a fiber
12:27:41 17 acts like a fiber, and this isn't just my opinion, this is
12:27:45 18 the opinion of the American Thoracic Society, this is an
12:27:48 19 opinion of other physicians that say -- I believe the EPA
12:27:54 20 says that you look at what the structure is, not what the
12:28:02 21 geology terminology is.

12:28:04 22 And again, different specialties have different
12:28:06 23 terminology, but as a medical doctor, I look at what it can
12:28:10 24 do to the body. Not what it's named."

10:06:46 25 Thank you. As a medical doctor, I look at what it

10:06:49 1 can do to the body, not what it's named. What medical
10:06:53 2 doctor did they bring you that's an asbestos doctor? What
10:06:56 3 medical doctor did they bring you? They didn't. They
10:07:00 4 didn't bring you one.

10:07:03 5 They didn't -- they didn't bring one medical --
10:07:05 6 there's thousands of doctors who specialize in asbestos.
10:07:10 7 They didn't bring one. J&J tried the "asbestos only causes
10:07:19 8 ovarian cancer with heavy occupational exposure" line.
10:07:22 9 Again, I wouldn't be surprised if Mr. Bicks doesn't have a
10:07:25 10 slide like that in his closing.

10:07:28 11 Well, that's wrong. Dr. Moline says it's wrong.
10:07:33 12 Everybody else says it's wrong. If you look -- if you go
10:07:38 13 back to the slide I had with Dr. Saenz -- slide I had with
10:07:42 14 Saenz, does asbestos cause ovarian cancer? Dr. Saenz versus
10:07:47 15 the world. These folks say yes. She said no in her
10:07:52 16 deposition, realized that was going to be a tough sell, so
10:07:58 17 she came to court and said: Okay, I changed my mind, now
10:08:00 18 I'm going to say yes, but only if you're exposed enough.

10:08:04 19 I said: What's that? She said: Heavy
10:08:05 20 occupational exposure. I said: What's that? Well, I don't
10:08:06 21 know, I don't do asbestos work. And she doesn't know, but
10:08:09 22 she didn't do her homework either.

10:08:12 23 They used those studies of heavy occupational
10:08:15 24 exposure to make sure that they can powerfully enough detect
10:08:19 25 the asbestos present, but if you'll look at, for example,

10:08:22 1 the National Cancer Institute, our top cancer institute --
10:08:25 2 it's the government, in the United States of America. It's
10:08:30 3 not IARC, it's not the international cancer people, but it's
10:08:33 4 ours. It's the U.S. of A. It's a good organization,
10:08:37 5 everybody says it is.

10:08:38 6 Exhibit 9324. Look at how they read this and what
10:08:43 7 their research says. "Asbestos has been classified as a
10:08:47 8 known human carcinogen, a substance that causes cancer, by
10:08:52 9 the U.S. Department of Health and Human Services, by the
10:08:56 10 EPA, by IARC." It says by all three of them, not simply by
10:09:02 11 IARC. "According to IARC, there's sufficient evidence
10:09:07 12 asbestos causes mesothelioma and cancers of the lung, larynx
10:09:13 13 and ovary."

10:09:14 14 Notice they don't say only in situations with high
10:09:18 15 occupational exposure. I ask Mr. Bicks if he's found a
10:09:25 16 slide in there for IARC with heavy occupational exposure,
10:09:28 17 he'd take it out and put aside with our National Cancer
10:09:31 18 Institute and try to explain this language. Because he
10:09:35 19 can't do it.

10:09:36 20 It causes cancer of the ovary. And look at the
10:09:38 21 very next section. Who is at risk for asbestos-related
10:09:42 22 disease? They've just told us the diseases. It's meso,
10:09:47 23 it's lung cancer, it's larynx, throat cancer, and it's
10:09:54 24 ovarian cancer. Those are the diseases. Those are the
10:09:58 25 health hazards of asbestos exposure. Those are.

10:10:03 1 Now, who's at risk? Only those with heavy
10:10:06 2 occupational exposure? No. People who become ill from
10:10:11 3 asbestos are usually those who are exposed to it on a
10:10:16 4 regular basis. Most often in a job where they work directly
10:10:21 5 with the material, or through substantial environmental
10:10:27 6 contact. That's what our ladies have.

10:10:30 7 You work with it at a job they give you a mask.
10:10:35 8 They have all of these vacuum equipments to make sure that
10:10:38 9 the air is being sucked out and purified. They don't have
10:10:42 10 you in someplace where you're dusting your baby every hour
10:10:46 11 and a half or two hours when you're changing the diaper as
10:10:49 12 an infant. As they get a little older you don't have to do
10:10:53 13 it as often. They don't have it where you're shaking it on
10:10:58 14 yourself.

10:10:59 15 That's what it is. That's a ruse this idea that
10:11:03 16 only heavy occupational exposure. Their new experts to
10:11:08 17 asbestos have never done it before, didn't bother to read
10:11:10 18 it, but even if they had, if they looked at Dr. Egilman,
10:11:14 19 maybe one of the world's most experienced, experienced
10:11:22 20 people been doing this, so experienced that Peter Bicks
10:11:24 21 himself has hired him to do a massive report.

10:11:27 22 And Peter's response was, yes, but I didn't have
10:11:30 23 you testify, did I? Dr. Egilman said: No, of course you
10:11:35 24 didn't. You can hire him, but Dr. Egilman's not going to
10:11:39 25 change his testimony for you. He's going to tell you

10:11:41 1 exactly the way he sees it.

10:11:43 2 What did he say? All but one are above -- not
10:11:46 3 just heavy occupational exposure, but above the occupational
10:11:50 4 permission, what you're even allowed to be exposed to.

10:11:57 5 This is very clearly a horrendous situation and a
10:12:02 6 tragedy in the making. We know it. You saw the video
10:12:07 7 powdering of baby with the Tyndall lighting. It will be
10:12:12 8 hard to see with these lights on, but if we turn the lights
10:12:15 9 off, it takes them like five minutes to warm back up.

10:12:20 10 So, Juan, can you play the video of Dr. Longo
10:12:23 11 powdering the baby, please?

10:12:24 12 (Dr. Longo's powdering video was played.)

10:12:24 13 MR. LANIER: And you'll see it under normal
10:12:25 14 lighting and you'll see it under the Tyndall lighting that
10:12:26 15 shows the dust.

10:12:28 16 Now, not all of this dust is asbestos. We know
10:12:31 17 the percentage that is. And so when you see the dust don't
10:12:35 18 think, oh, my gosh, that's all asbestos? That would not be
10:12:38 19 fair. But it will give you the idea the asbestos is the
10:12:42 20 lighter stuff that tends to flow. You can see when you're
10:12:46 21 getting it out -- and as Dr. Moline said, you take the
10:12:50 22 lights off you may not realize it.

10:12:52 23 That's why we don't realize it when we're actually
10:12:55 24 doing it. But those dust clouds, Dr. Moline said the
10:13:00 25 asbestos will be in the air for hours afterwards.

10:13:05 1 So what do we have here? We have -- if we go
10:13:09 2 back -- thank you, Juan, PowerPoint.

10:13:11 3 Johnson & Johnson's real goal this whole time was
10:13:14 4 them figuring out that we have asbestos in it. It was
10:13:17 5 protecting their image, their sales, their golden egg, their
10:13:21 6 sacred cow.

10:13:22 7 1977 to '78, their objective, they're bold about
10:13:28 8 it, is to monitor and defend against attitudes and trends
10:13:32 9 which could impact adversely the safety image and the
10:13:37 10 marketability of cosmetic talcs. And they're going to
10:13:40 11 generate and they're going to provide necessary data to
10:13:43 12 support and reinforce safety.

10:13:47 13 Their objective ought to say, um, "warn." Figure
10:13:53 14 out -- although I think they already have figured out. And
10:13:59 15 that's why they're doing this the way they're doing it.

10:14:04 16 So they like to tell you, oh -- look what they'll
10:14:07 17 do. They'll say one thing when they know another. They'll
10:14:11 18 tell you there's no asbestos in the talc. Here was one of
10:14:16 19 the exhibits they used. This is one of Mr. Bicks' exhibit.

10:14:20 20 Is there asbestos in the product? Independent
10:14:22 21 labs say no. University research centers say no.
10:14:26 22 Government agencies, no. Johnson & Johnson, no. Talc
10:14:28 23 suppliers, no. I had to go back over it and fix it so it
10:14:31 24 tells the truth.

10:14:32 25 Independent labs. Well, not their garbage lab,

10:14:37 1 although even it says there's a problem. Sanchez even
10:14:39 2 admitted he had found it, but the other labs did. McCrone
10:14:42 3 certainly did. University and research centers. What about
10:14:45 4 Rutgers? What about the Colorado School of Mines? What
10:14:49 5 about Alice Blount? What about MAS? That's Longo's group.

10:14:55 6 The government agencies: MSHA, FDA, Lewin and
10:15:00 7 NYU. They said, no, no, no, we disapproved. They did not.
10:15:05 8 That was covering their tail.

10:15:07 9 Johnson & Johnson testing over and over finds it.
10:15:09 10 Talc suppliers over and over finds it. They just play the
10:15:12 11 name game, or now they've come up with a new one. I don't
10:15:15 12 know if you caught this or not, this was interesting. They
10:15:18 13 got a brand new one.

10:15:20 14 They went from opening, no asbestos, no asbestos
10:15:23 15 in talc mines, never have been, all of our mines are clean,
10:15:26 16 to now, okay, well, there may be asbestos, but that's
10:15:29 17 industrial talc, not cosmetic talc. Where did that come
10:15:35 18 from? They mix at the same place and they're just making
10:15:39 19 that up.

10:15:41 20 There wasn't any evidence. Oh, no, no, no, that
10:15:44 21 was industrial talc. Heavens, they don't even get their
10:15:48 22 test results for three years when they aren't paying
10:15:50 23 attention, even with the shoddy tests.

10:15:53 24 So what happened? What do we have here? Where do
10:15:56 25 we end up? They say one thing, they know another. And we

10:16:01 1 get it all over the place. They say -- or they know there's
10:16:05 2 asbestos. They tell everybody there's no asbestos.

10:16:08 3 We saw that one clear with Susan Nicholson, their
10:16:11 4 doctor. Remember her? She said to you there's never been
10:16:15 5 asbestos in our product, and then she said: There is no
10:16:18 6 evidence we've ever had asbestos in baby powder. I said:
10:16:21 7 Well, Sanchez said it, McCrone said it multiple times, Lewin
10:16:24 8 said it multiple times, Colorado School of Mines, Blount,
10:16:27 9 Hayward Labs, Dutch Consumer Point, not to mention the
10:16:32 10 cleavage fragment that everybody says are there. Will you
10:16:34 11 change your opinion? She said no. That's not evidence.

10:16:39 12 Okay. I said: Well, what are the advantages or
10:16:45 13 disadvantages of warning people about asbestos fibers?
10:16:48 14 Well, advantages, she said maybe we'll get sued. Some
10:16:55 15 people might care and some might not get sick.

10:16:59 16 But what are the disadvantages? Maybe we get sued
10:17:01 17 more, make it harder to defend this case. Maybe we wouldn't
10:17:05 18 sell as much. Might damage our reputation that's our sacred
10:17:10 19 cow, that's our golden egg, that's how people trust us.
10:17:13 20 We're the baby company. And maybe there's random
10:17:16 21 information that would be irrelevant. People wouldn't read
10:17:19 22 it.

10:17:19 23 There is no disadvantage except for money, so
10:17:22 24 that's the position of the company. That's the language of
10:17:25 25 the company. That's the only language of the company. And

10:17:31 1 I think we've seen that.

10:17:33 2 What else would they do? Well, we know there was
10:17:37 3 a safer alternative.

10:17:40 4 By the way, even on the website, we showed you
10:17:42 5 Plaintiffs' Exhibit 113. Johnson's talc products do not
10:17:46 6 contain asbestos. A frequent perception is that Johnson's
10:17:49 7 Baby Powder contains talc with asbestos. Since the '70s,
10:17:53 8 talc used has been required to be asbestos-free.

10:17:58 9 Johnson's Baby Powder contains only the highest
10:18:01 10 quality, purity, et cetera. They're still telling that to
10:18:04 11 people. We got to get the word out past their website.
10:18:08 12 Because that's not right.

10:18:10 13 So they say one thing. They say it's
10:18:13 14 asbestos-free, even though there's a memo we showed you we
10:18:18 15 can't always say it's asbestos-free. That's inside. That's
10:18:21 16 not outside.

10:18:22 17 You see, you're the first people seeing these
10:18:25 18 documents. Many of these documents have never been shown
10:18:27 19 before. Very first time right here St. Louis, Missouri.

10:18:33 20 They try to tell everybody we -- you know, no
10:18:37 21 asbestos. I told you they suppressed the truth. I showed
10:18:40 22 you that.

10:18:41 23 Oh, here's one. They brought witnesses -- I've
10:18:46 24 inserted this slide. This was not in opening. I never
10:18:49 25 dreamed this would happen. They brought witnesses that knew

10:18:51 1 absolutely nothing about asbestos. They were an empty slate
10:18:56 2 before the lawyers educated them. They didn't bring any
10:18:59 3 asbestos witnesses. They brought you witnesses that knew
10:19:02 4 absolutely nothing about it.

10:19:03 5 When we deposed Dr. Holcomb six weeks before, six
10:19:10 6 weeks ago he said, or eight weeks ago, it was right before
10:19:14 7 trial. He didn't know anything. He's been reading on it
10:19:17 8 the last six weeks while you've been learning it. I'm
10:19:19 9 convinced you know more than he did. He's just
10:19:22 10 self-educated over the last six weeks on what the lawyers
10:19:25 11 gave him.

10:19:27 12 They pick these blank slates so that they can
10:19:30 13 educate them with the story line they want to educate them
10:19:33 14 with. Johnson & Johnson, this is a company that approved a
10:19:37 15 policy of destroying samples, has the audacity to tell you
10:19:43 16 that their talc's been thoroughly tested, though we know
10:19:47 17 that that's not accurate.

10:19:48 18 The only people who tested it using the
10:19:50 19 concentration method, the only people who tested it, have
10:19:55 20 always found asbestos in it. And that's not the way the
10:20:00 21 company did things.

10:20:01 22 The company's attitude was test it once. If you
10:20:05 23 find asbestos -- if asbestos fibers are present above the
10:20:09 24 detection limit, above the five, if you find it in samples,
10:20:14 25 then do a second sample, check it the second time.

10:20:18 1 You know, a second sample. If the second one
10:20:21 2 fails to confirm the first, then we just say asbestos
10:20:26 3 detected not confirmed, but if the second confirms the
10:20:29 4 first, so now we got two of them confirming asbestos, send
10:20:33 5 it to RJ Lee, and what the dirty lab says will be recorded
10:20:37 6 as a formal, final result. RJ Lee, who's been working with
10:20:42 7 the talc industry and fighting these fights for decades.

10:20:49 8 Dr. Blount tested it off the shelf. Dr. Blount
10:20:53 9 wrote the lawyers, the company had the document. She's a
10:20:57 10 nice lady. She's like 80 years old and she's marvelous, and
10:21:01 11 I think sometimes she's not used to lawyers and she talks
10:21:04 12 soft, and Mr. Dubin confused her because he started talking
10:21:08 13 about another one of her test subjects with her exhibit "I,"
10:21:11 14 and then Dubin tried to -- Mr. Dubin tried to confuse the
10:21:17 15 two, but there was no confusion over what "I" was.

10:21:20 16 "I" was written down not only in the test that she
10:21:23 17 got published, it was written down by the company. The
10:21:27 18 company knew what "I" was. The company knew it was Windsor
10:21:31 19 J&J Baby Powder. This is the company's document from 1991.
10:21:38 20 They knew it. She wrote the company lawyers eight years
10:21:42 21 later and said y'all need to quit saying there's no asbestos
10:21:46 22 in there.

10:21:46 23 There's not just asbestos, compare it to the other
10:21:49 24 numbers. The worst one, in counts, the worst one was the
10:21:54 25 Johnson & Johnson Baby Powder. 10 times, 15 times worse

10:21:59 1 than the others.

10:22:01 2 So that's what you've got. And you've got it and
10:22:04 3 it's there.

10:22:05 4 So I told you in opening, I said: What do you got
10:22:08 5 to do? You got to follow the evidence. Don't let selective
10:22:13 6 evidence sway you. Don't let Mr. Bicks get up here and read
10:22:16 7 part of testimony or play part of a slide. You watch out.

10:22:20 8 The reason I use the Elmo is because when you do
10:22:23 9 those callout boxes, you cover up the other words. I
10:22:27 10 challenge Mr. Bicks to use the Elmo, put the documents up
10:22:30 11 here so that you can see the other words and he can't just
10:22:33 12 read it was a beautiful day and leave out until the tornado
10:22:37 13 hit. Dr. Egilman caught him doing that in the trial. We've
10:22:43 14 caught him as well.

10:22:44 15 So the responsible party needs to be brought to
10:22:46 16 justice. I think Johnson & Johnson's responsible. You're
10:22:49 17 the detectives in that trial. You walk down that staircase,
10:22:52 18 you see that poster: "Juries are the voice of our
10:22:54 19 communities." I'll change that and I'll tell you, right now
10:22:56 20 you are the voice of the world.

10:22:58 21 So how are you going to do your work? How are you
10:23:01 22 going to do your work? You got these jury instructions.
10:23:05 23 These jury instructions are the way you do it. And these
10:23:09 24 jury instructions, it looks thick and it took your Honor
10:23:15 25 like a day and a half to read it -- and I'm still feeling

10:23:21 1 guilty, I'll go on the record and apologize for getting him
10:23:25 2 sick. It never occurred to me when I'm handing him all
10:23:28 3 those documents to him and I'm hacking up over here that I
10:23:29 4 was getting all y'all contagious, and I apologize.

10:23:33 5 I just -- I had to be here. I couldn't hand this
10:23:36 6 over. I had to do this. I had to. Not that these folks
10:23:43 7 aren't great. They've done a great job, but this was my
10:23:46 8 responsibility.

10:23:47 9 So your responsibility. You've got this jury
10:23:49 10 charge, it's not hard. It's easy. Get a load of this.
10:23:53 11 This is easy. The judge has already read you the
10:23:56 12 instructions. You're each going to have your own copy. You
10:23:59 13 can read -- you can read through them at your leisure, as
10:24:02 14 long or short as you want to, as fast or as slow as you want
10:24:06 15 to.

10:24:06 16 There are a couple of things I want to tell you
10:24:08 17 about, and I promise you, answering this charge is one of
10:24:11 18 the easiest things you're going to do in this case. It's a
10:24:14 19 whole lot easier than staying awake while it's being read.

10:24:18 20 Instruction Number 5. The party who relies upon
10:24:22 21 any disputed fact has the burden to cause you to believe
10:24:25 22 that it's more likely true than not true. That's the burden
10:24:27 23 of proof. 51/49, more likely true than not true.

10:24:34 24 I've got that burden for a lot of this. I hope --
10:24:36 25 I hope you don't go back there and say, man, it was kind of

10:24:41 1 dicey, I'm not sure if there's asbestos in there or not. I
10:24:45 2 hope you're going to go back there and say that's a
10:24:48 3 no-brainer, that's like a slam dunk, that's an exclamation
10:24:53 4 mark. We're going to vote on it, we're vote on it fast and
10:24:58 5 let J&J know, bam, this is real. Pay attention.

10:25:02 6 But if someone's back there and you don't get your
10:25:05 7 nine votes and someone says, yeah, what about this? Remind
10:25:09 8 them, please, you can have 49 percent doubt and still vote
10:25:13 9 for us. That's our burden of proof.

10:25:15 10 Now, we've got a different burden of proof on
10:25:17 11 punitive damages for aggravating circumstances for something
10:25:21 12 to punish the company. I've got to show that by clear and
10:25:24 13 convincing evidence, but I think we've done that as well.

10:25:28 14 One of the other words that's a buzz word that's
10:25:30 15 used in a lot of these is negligence. Negligence just means
10:25:36 16 failure to use ordinary care. What a reasonably prudent
10:25:40 17 person would do. An ordinarily careful person would use.

10:25:44 18 And the best evidence of that is that Colorado
10:25:46 19 School of Mines that says this is what we're already using.
10:25:50 20 This is what -- this is the standard of care. This is the
10:25:53 21 way we test for talc because it's the only way that's going
10:25:57 22 to give you the result.

10:25:58 23 The company says, well, we'll pay you to test it,
10:26:00 24 but we don't want you to use your method, we want you to use
10:26:05 25 ours. The company fights to keep this method from the FDA

10:26:08 1 and others. And so you've got that as well.

10:26:12 2 You're going to have a lot of liability sheets and
10:26:14 3 a lot of them have different languages because they chart
10:26:18 4 the law in each state, but they're all going to be basically
10:26:21 5 the same. And they're going to ask some questions that --
10:26:23 6 and I pulled out Instruction Number 8, because that's one of
10:26:26 7 the first ones. It's Marvin Walker's. Marvin, you don't
10:26:30 8 mind me using you as an example? Thank you.

10:26:33 9 And this is one for Johnson & Johnson. You'll
10:26:35 10 also see them ask the same question for the other Johnson &
10:26:40 11 Johnson company, the consumer products. They've got like
10:26:44 12 250 some odd companies. And we think that the parent has
10:26:48 13 been doing this, the parent puts its name on it and its
10:26:52 14 signature on it, and it's the parent doing it, and the
10:26:54 15 parent selling it, and the parent marketing it, and the
10:26:56 16 parent is negligent, but we also think that the individual
10:26:59 17 company that they're doing it under is just as responsible.

10:27:03 18 So we've submitted questions both ways, but these
10:27:06 19 are just questions: Was it unreasonably dangerous? Yes,
10:27:09 20 there's no safe level. Absolutely is. Did it directly
10:27:15 21 contribute to cause? Absolutely. Absolutely.

10:27:19 22 It's gas on the fire. They don't have anybody who
10:27:23 23 disputes that really. I mean, even their final guy Holcomb
10:27:27 24 had to admit when I showed him the aneuploidy stuff. That's
10:27:31 25 why I dug into science. Y'all probably get like extra

10:27:34 1 credit for high school biology if you just send it back to
10:27:38 2 your school, because we showed this stuff. We showed you
10:27:40 3 it. We showed you how it jacks with the DNA.

10:27:44 4 And so you've got that as well, all to say that
10:27:48 5 you're going to find for the plaintiffs unless -- Johnson &
10:27:52 6 Johnson has two defenses. There are two things with some of
10:27:56 7 the plaintiffs that they argue.

10:27:58 8 One of them is like this Number 9. Is it --
10:28:02 9 Johnson & Johnson says if you think that there's no way they
10:28:05 10 could have known that this was going to be dangerous or
10:28:08 11 discovered it, then vote for them. I can't believe they
10:28:12 12 would ask for that to be submitted. I mean, there's no way
10:28:16 13 they could have reasonably discovered it. They knew it.
10:28:20 14 They knew it was dangerous. They've been members of the
10:28:24 15 asbestos clubs back through the '50s.

10:28:27 16 Asbestos has been known to be hazardous since the
10:28:31 17 late 1800's. It's been a cancer-causer since the '40s.
10:28:37 18 They've known no safe level since then.

10:28:39 19 The -- they could not have discovered their
10:28:42 20 product was dangerous? Oh, yes, they could have. They
10:28:46 21 already have. They were covering it up.

10:28:50 22 You'll find also the same thing for the other
10:28:55 23 Johnson & Johnson entity. You'll find it for both. And
10:28:58 24 then you're going to find -- with some of the cases you're
10:29:03 25 going to find what's called the statute of limitations

10:29:06 1 defense.

10:29:07 2 And this is one where -- let me give you an
10:29:10 3 example. Example is Number 34. This is one where your
10:29:16 4 verdict must be for Johnson & Johnson, both companies, if
10:29:21 5 you believe that with a few of these plaintiffs, they should
10:29:25 6 have known before these early dates that the talc was the
10:29:30 7 cause of their cancer. This is the way they've tried this
10:29:34 8 case.

10:29:34 9 It's the way in law school we make fun of dog bite
10:29:38 10 cases. It's the classic, I mean, you learn this in law
10:29:42 11 school year one. Dog bite cases. We make fun of those in
10:29:47 12 law school because here it is. It's when the defendant
10:29:50 13 stands up and says that wasn't my dog. Somebody gets bit by
10:29:53 14 a dog and they bring a lawsuit.

10:29:54 15 That wasn't my dog. And if it was, he didn't bite
10:29:57 16 you. And if he did, he didn't bite you very hard. And if
10:30:02 17 he did, then you provoked it. And if you didn't, then you
10:30:08 18 didn't sue in time, and if you did, then you're not hurt
10:30:13 19 very bad.

10:30:15 20 Where's the integrity? Where's the integrity?
10:30:18 21 You know, in one breath they're saying we didn't know,
10:30:22 22 please, please, vote for us because we didn't know it was
10:30:25 23 bad. And then in the next breath they're saying it's not
10:30:28 24 bad anyway. And then in the next breath they're saying, but
10:30:32 25 the plaintiffs should have known early on that it was the

10:30:35 1 cause. Don't be seduced by that approach, please.

10:30:42 2 And then last but not least, you've got the
10:30:44 3 damages. You know, the damages are tough. I say last but
10:30:55 4 not least, I need to talk to you about punitives in a minute
10:30:59 5 as well.

10:30:59 6 The damages are tough because I've got 22
10:31:05 7 plaintiffs. And I've struggled over how to do this. I've
10:31:11 8 really tried to struggle, or solve my struggle.

10:31:15 9 I've struggled because I can't -- I can't figure
10:31:20 10 out -- I mean, if I had just had one case the damages would
10:31:24 11 be easy. Everybody would say, you know, if you find for the
10:31:27 12 plaintiff this case is worth, I don't know, 50, 60,
10:31:29 13 \$70 million.

10:31:30 14 And you maybe say, that's a lot of money, but
10:31:32 15 other than that, okay, fine. Or you may say it's not enough
10:31:36 16 money, crank it up some. Just justice, whatever it is.

10:31:39 17 But for one case it's easy. But when there are
10:31:39 18 22, you start doing the math, you start thinking, holy
10:31:44 19 smoke, that adds up. Yes, it does. And if you need to cut
10:31:47 20 it back you cut it back, but before you do, I made you one
10:31:52 21 last roadmap. Sorry.

10:31:54 22 THE COURT: Five minutes, Counsel.

10:31:56 23 MR. LANIER: Thank you, Judge. Everyday
10:31:58 24 life. This is the "Damage Roadmap." Because here are my
10:32:02 25 plaintiffs, and they're going down everyday life. Just,

10:32:05 1 hey, what are you going to do today? I'm going to be in
10:32:09 2 court. Hopefully not that long, but maybe, the judge kept
10:32:12 3 us until seven last night.

10:32:14 4 You're going along in everyday life and then all
10:32:17 5 of sudden -- and in all that time, Johnson & Johnson, who
10:32:18 6 have known about asbestos in their powder the earliest I can
10:32:21 7 find, of course, they've destroyed a lot of records, but the
10:32:26 8 earliest I can find is 1958. They're telling the world buy
10:32:29 9 and use our baby powder, it's pure and baby safe.

10:32:32 10 And they're telling you and you're using it, and
10:32:34 11 your life's going fine and it's been going fine. You got
10:32:36 12 struggles. Everybody's got struggles in life, that's the
10:32:38 13 way life it is, but you're on that road in life when all of
10:32:43 14 a sudden you get told you've got cancer, and not just
10:32:47 15 cancer, you've got a cancer that kills 70 percent,
10:32:49 16 75 percent of the people who get it.

10:32:54 17 And you're reeling from that. And you got to
10:32:57 18 figure out how to tell your loved ones, and you divert from
10:33:00 19 the road of life into a damage swamp where there is no exit.
10:33:04 20 This is where you'll live the rest of your life. The rest
10:33:07 21 of your life you'll live in this swamp.

10:33:09 22 You tell your loved ones. You figure out how.
10:33:13 23 You have total life changes. You start changing your
10:33:16 24 schedule because you've got to put in tests and it is
10:33:19 25 critical, you do it fast. The cancer's eating inside your

10:33:23 1 body.

10:33:25 2 You're scheduling surgery. You're facing all of
10:33:27 3 the risks that come with surgery. You're looking at loss of
10:33:31 4 body parts when they take out your Fallopian tubes, your
10:33:34 5 ovaries, your uterus. You're looking at the fear that goes
10:33:37 6 with all of the surgery and all of the treatment and all of
10:33:39 7 the worry.

10:33:40 8 You got to get your house in order because you
10:33:42 9 don't know if you're a survivor and for how long. You've
10:33:45 10 got to figure out your future. You've got to figure out who
10:33:48 11 takes care of your children. You've got to deal with
10:33:52 12 chemotherapy, not just the hair loss, but the sickness, the
10:33:54 13 fatigue, the nausea, the diarrhea, the sleeplessness, the
10:33:57 14 ability to function normally, the work issues. How are you
10:34:00 15 going to handle that?

10:34:01 16 How are you going to handle the pressures of
10:34:03 17 losing your job or not being able to go to work? How about
10:34:06 18 those who have seizures? What about infections? Surgeries?
10:34:09 19 What about neuropathy with the pain in your extremities or
10:34:13 20 the loss of sensation for the rest of your life.

10:34:16 21 Your body is scarred. You lose the ability to
10:34:18 22 have intimacy, some for a long time, some permanently, some
10:34:24 23 for a shorter time. You have terror, you have pain. Some
10:34:27 24 get remission, only to have a reoccurrence. Or be worried
10:34:31 25 about reoccurrence.

10:34:32 1 Some have worries the cancer's spreading. Death
10:34:36 2 is the final destination for some in this swamp, and for
10:34:40 3 those that aren't, there's survivor's guilt. There's
10:34:43 4 medical monitoring, the expenses associated with that. The
10:34:46 5 early menopause without necessary hormone help. The fear
10:34:49 6 that comes with all of that.

10:34:51 7 The changes at home, the effect as you watch it
10:34:53 8 change your loved ones. As you watch your kid drop out of
10:34:57 9 college to try to take care of you. As you watch your son
10:35:00 10 give up a career to try to take care of you and be there for
10:35:04 11 you. And you get one trial, you get one trial out of all of
10:35:07 12 this.

10:35:07 13 This is the one for each of these people. If this
10:35:11 14 cancer resets up, they can't come back and ask for another
10:35:15 15 day in court. This is it. So when you get to that damage
10:35:19 16 figure, please, please, please, think through.

10:35:22 17 Here's what the form looks like. This is the
10:35:25 18 Marvin Walker form, and you'll get this back. This is the
10:35:28 19 only form the judge didn't read, but on the issues of who
10:35:32 20 wins, please, please, please, circle, check, put an X,
10:35:37 21 whatever you want to do, by the plaintiffs. Not Johnson &
10:35:39 22 Johnson. Don't let them get away with this behavior, please
10:35:44 23 don't.

10:35:45 24 Find in favor of the plaintiff every time you can.
10:35:47 25 When you get those other ones where they ask about questions

10:35:51 1 about damages, you state the amount, you write it in. Write
10:35:54 2 it in big letters. Let them read it without putting on
10:35:58 3 their glasses.

10:36:00 4 If you find in favor of Plaintiff Marvin Walker,
10:36:03 5 always find in favor of them. Then question: Is Johnson &
10:36:06 6 Johnson liable for aggravating circumstances? Write the
10:36:11 7 word "is." Don't let them get off. Write the word "is" for
10:36:15 8 those.

10:36:16 9 Make them face the idea of punishment damages.
10:36:19 10 Make them face the idea. It takes nine of you to find for
10:36:23 11 each of these, but make them face it. They violated every
10:36:26 12 one of the Ten Commandments of public health. Never brought
10:36:29 13 you a public health doctor because he would have or she
10:36:33 14 would have had to admit they violated every one.

10:36:36 15 Keep the asbestos out. If you can't keep it out,
10:36:38 16 warn. If you have information it might be there to warn.
10:36:40 17 Test your products thoroughly, don't put profits over
10:36:44 18 safety, stay current with literature. If you're going to
10:36:47 19 self-regulate do it right. Don't hide and suppress results
10:36:49 20 you don't like. Don't mislead the government and exercise
10:36:52 21 proper care. That's what they failed to do. And so that's
10:36:56 22 where we are.

10:36:57 23 And that's the charge. And I'm going to save 30
10:37:01 24 minutes back, but I cannot without saying thank you from the
10:37:05 25 bottom of my heart. I appreciate y'all, and, please, don't

10:37:08 1 let anything about me keep you from doing what's right for
10:37:13 2 these women.

10:37:14 3 Thank you, your Honor.

10:37:14 4 THE COURT: Thank you, Mr. Lanier. Mr.
10:37:16 5 Bicks, take a break?

10:37:17 6 MR. BICKS: Yeah, that's fine. I'm going to
10:37:19 7 use the podium if that's all right?

10:37:20 8 THE COURT: Very well. Ladies and gentlemen,
10:37:22 9 we're going to take a break before we hear closing argument
10:37:25 10 on behalf of the defendant. Let's take 15 minutes, if you
10:37:28 11 would be upstairs at this point.

10:37:32 12 Please do not discuss the case among yourselves or
10:37:34 13 with others. And we'll see you in about 15 minutes
10:37:38 14 upstairs. You are excused.

10:38:08 15 (Proceedings stood in temporary recess, after
10:38:08 16 which the following proceedings were had in open court:)

11:09:47 17 THE COURT: Thank you. Court will be back in
11:09:50 18 session, please be seated. All right.

11:10:03 19 Folks, ready to get started? Everybody ready?

11:10:07 20 All right. Closing argument on behalf of the
11:10:09 21 defendants. Mr. Bicks.

11:10:14 22 MR. BICKS: Just checking the technology
11:10:17 23 here, your Honor. Thank you. May it please the Court.

11:10:40 24 THE COURT: Yes, sir.

25

DEFENDANT'S CLOSING ARGUMENT

11:10:41 1
11:10:43 2 MR. BICKS: Good morning, ladies and
11:10:43 3 gentlemen.

11:10:44 4 You know me by now. My name is Peter Bicks.
11:10:47 5 There's an old trial lawyer saying that when the facts are
11:10:51 6 on your side, you pound the facts. When the law's on your
11:10:56 7 side, you pound the law. And when neither's on your side,
11:11:00 8 you pound the table. What you heard a lot in this trial and
11:11:07 9 over the last hour plus was a lot of pounding on the table.

11:11:14 10 I give Mr. Lanier credit, he's quite a showman.
11:11:18 11 And he's quite a storyteller, but some stories are just
11:11:23 12 fiction, and despite his efforts to entertain you, this is
11:11:29 13 not a show. This is not CSI. This is a really important
11:11:35 14 case, and you all as our jury will decide it on facts and
11:11:42 15 the law.

11:11:44 16 It's a fictitious story that's been spun by
11:11:49 17 Plaintiffs in this courtroom, and I told you in the opening
11:11:51 18 statement to suggest to you that Johnson & Johnson is out to
11:11:56 19 only make profit and to hurt people with a product that's
11:12:00 20 been on the market for over 120 years, products that people
11:12:04 21 at the company themselves use.

11:12:08 22 I told you the attack was going to go to the core
11:12:11 23 of the company, and I told you that I was going to be here
11:12:14 24 to defend them. And now I'm here to report to you on what
11:12:19 25 the evidence is in the case.

11:12:22 1 And make no mistake, this is a really hard trial
11:12:26 2 to sit through. We talked about it in voir dire. I talked
11:12:31 3 about it to each of you. To see these women and hear their
11:12:36 4 stories has been gut-wrenching for all of us. The
11:12:39 5 plaintiffs are not right now battling their cancer in this
11:12:45 6 courtroom. Here in the courtroom they have to prove to you
11:12:50 7 what caused their cancer.

11:12:53 8 As you heard in the beginning, the plaintiffs have
11:12:56 9 the burden of proof on that question. And sympathy aside,
11:13:01 10 the plaintiffs have not come anywhere close to meeting that
11:13:06 11 burden of proof, and it was their burden to meet.

11:13:08 12 They cannot do so because the evidence has shown
11:13:13 13 that Johnson & Johnson's Baby Powder does not contain
11:13:17 14 asbestos, and that Johnson & Johnson's Baby Powder did not
11:13:21 15 cause the ovarian cancer in this case.

11:13:25 16 On behalf of our clients, Johnson & Johnson, and
11:13:29 17 Morty and Lisa, I truly appreciate the attention that you
11:13:34 18 all have given to this. When we were here all day reading
11:13:37 19 through the instructions, I don't know how you did it. It
11:13:40 20 was incredible, but I want you to know on behalf of our
11:13:44 21 clients, we really appreciate it.

11:13:46 22 And because we know that you're going to go
11:13:50 23 through the evidence, what I'm going to do now is I'm going
11:13:53 24 to pull back the curtain, and I want you to see who's really
11:13:59 25 pulling the levers here. Because we know that if you do

11:14:02 1 that, you will see that the evidence will show that a
11:14:06 2 verdict for Johnson & Johnson is the right verdict in this
11:14:10 3 case.

11:14:12 4 I mentioned in the opening statement that just
11:14:15 5 because there are 22 Plaintiffs who have ovarian cancer,
11:14:18 6 that does not mean that Johnson's Baby Powder had anything
11:14:24 7 to do with it. There are many women in the world who have
11:14:29 8 ovarian cancer who never use talc. And there are millions
11:14:34 9 of women in the world who use talc and didn't get ovarian
11:14:37 10 cancer.

11:14:40 11 What I told you in my opening statement that there
11:14:42 12 were going to be two important points that were going to be
11:14:46 13 proved right off the bat. The first point is that what
11:14:51 14 prompted all these plaintiffs to get involved in this case
11:14:55 15 was lawyer advertisements. Here's testimony from
11:14:58 16 Ms. Salazar where we asked her.

11:15:02 17 "Where did you get understanding with respect to
11:15:04 18 the connection between talc and ovarian cancer?" And she
11:15:07 19 said it came from an advertisement that she saw on
11:15:10 20 television.

11:15:11 21 And they were lawyer advertisements. Lawyers are
11:15:15 22 many things, but I told you in my opening statement they're
11:15:19 23 not cancer doctors.

11:15:20 24 The second thing I said in my opening statement
11:15:23 25 was there was going to be no evidence of any doctors who

11:15:27 1 took care of these women who ever suggested to them that
11:15:32 2 talc, anything relating to talc, Johnson & Johnson's Baby
11:15:36 3 Powder, had anything to do with their ovarian cancer. And
11:15:41 4 that was proved by the evidence.

11:15:43 5 As each of these women came to the stand, we asked
11:15:46 6 them: Had you heard anything about this from anyone other
11:15:50 7 than a lawyer? And the answer was, no, it came from a
11:15:54 8 lawyer.

11:15:56 9 There's a reason that treating physicians who have
11:16:01 10 to tell people every day and answer the question why, why
11:16:06 11 did this happen -- there was a reason that the plaintiffs
11:16:10 12 didn't bring any of these doctors who have really lived with
11:16:15 13 ovarian cancer every day. Because the answer of doctors who
11:16:18 14 deal with people with ovarian cancer is that talc has no
11:16:22 15 role.

11:16:23 16 So we brought you Dr. Saenz, Dr. Huh and Dr.
11:16:27 17 Holcomb. Three people who spent their lives dealing with
11:16:33 18 this terrible disease, and they're the ones, not in the
11:16:36 19 courtroom, but in their office when a patient comes in, they
11:16:42 20 have to answer the question why. And they have to know what
11:16:46 21 the answer is.

11:16:47 22 And you heard all of their testimony, talcum
11:16:51 23 powder plays no role in ovarian cancer. The plaintiffs
11:16:55 24 brought no gynecological oncologist to this case. People
11:17:00 25 who deal with this every day.

11:17:03 1 One of the big issues in the case was what studies
11:17:08 2 should we be relying on. Mr. Lanier used doors, so I used
11:17:12 3 doors. One door is talcum powder and ovarian cancer.
11:17:16 4 Studies that actually deal with that. Studies that actually
11:17:19 5 look at this particular product, right, and try to determine
11:17:24 6 what the situation is.

11:17:26 7 The other door are studies of heavy occupational
11:17:30 8 exposure to asbestos. That's the door on the other side.
11:17:36 9 Our position in this case and the position of the doctors
11:17:41 10 was the right door to go through was the one that dealt with
11:17:45 11 this actual product and other talcum products. That was the
11:17:51 12 door that our experts took you through in the case.

11:17:55 13 Let's look at what the scientific evidence is for
11:17:58 14 people who used the product. And that will provide us with
11:18:03 15 information that will be helpful to answer the question.

11:18:06 16 So, I've got some curtains here because there's been a lot
11:18:11 17 of theater.

11:18:14 18 So what was one of the claims that was made by
11:18:17 19 Mr. Lanier to you? They rigged the tests, they rigged the
11:18:20 20 tests. I'll have an expert come in here and explain how
11:18:24 21 they did it. We're going to look behind that curtain. I've
11:18:28 22 got three boxes of positive findings that I'll be trying to
11:18:32 23 show you as we get time to do this. It goes on and on, FDA,
11:18:36 24 et cetera. These are supposed to be the boxes of all the
11:18:40 25 positive findings that showed asbestos in Johnson & Johnson

11:18:45 1 talc, and we'll talk about what was in those three boxes.

11:18:49 2 The other thing you may remember, it happened
11:18:52 3 quickly when Dr. Moline was on the video. I brought out a
11:18:56 4 website from Mr. Lanier that said on it that there's no
11:19:01 5 asbestos in modern day talc. And I cross-examined her about
11:19:05 6 it. And what did Mr. Lanier say? I don't even know if this
11:19:10 7 is on our website. I know a lot of people make duplicate
11:19:13 8 websites of ours, but, regardless, facts are facts, aren't
11:19:18 9 they? I'm going to come back to that.

11:19:22 10 And then behind the curtain was this argument that
11:19:27 11 through Dr. Longo and Dr. Egilman that there's actually
11:19:30 12 greater exposure to using baby powder than with people who
11:19:36 13 spend their lives working in factories with or around
11:19:41 14 asbestos every day. We'll talk about that.

11:19:46 15 The jury instruction. I prepared something to
11:19:49 16 help navigate us through. There are really two claims in
11:19:52 17 the case. Strict liability, which is this claim. And for
11:19:56 18 there to be strict liability, the plaintiffs must prove here
11:20:00 19 that talc products were unreasonably dangerous.

11:20:03 20 And the argument here is that's because, according
11:20:06 21 to the plaintiffs, there's asbestos, and we don't believe
11:20:09 22 that's true. That Johnson & Johnson did not give an
11:20:13 23 adequate warning, and that the talc products directly caused
11:20:15 24 or directly contributed to cause the plaintiffs' ovarian
11:20:19 25 cancer. They have to prove those two "and and" down at the

11:20:26 1 bottom.

11:20:27 2 On negligence, they must show that the talc
11:20:29 3 products contained asbestos, and they must prove that
11:20:33 4 Johnson & Johnson failed to use ordinary care. And again,
11:20:37 5 just like on strict liability, that the talc products
11:20:41 6 directly caused or directly contributed to cause the
11:20:44 7 plaintiffs' ovarian cancer. So that causation question
11:20:48 8 overlaps on both claims.

11:20:51 9 This is on the verdict sheet. If the plaintiffs
11:20:55 10 did not prove that the product contains asbestos and, by
11:20:59 11 that I mean -- bless you -- the products that the plaintiffs
11:21:03 12 actually used, then you, under strict liability, will enter
11:21:10 13 a verdict for Johnson & Johnson.

11:21:12 14 On negligence, the same thing. If they don't
11:21:15 15 prove that the product Plaintiffs used contained asbestos,
11:21:20 16 then the verdict director will be for Johnson & Johnson.

11:21:25 17 On causation, which is the next question, if they
11:21:29 18 don't prove that the product causes ovarian cancer for both
11:21:34 19 strict liability and negligence, then the verdict will be
11:21:36 20 for Johnson & Johnson.

11:21:40 21 And then here they, as to the particular
11:21:43 22 Plaintiffs, much show that the product caused the particular
11:21:47 23 Plaintiffs' ovarian cancer. And if they can't prove that,
11:21:52 24 which we don't believe they can, then the verdict director
11:21:54 25 in this case will be for Johnson & Johnson.

11:21:57 1 So here are the two key questions. Did Johnson &
11:22:02 2 Johnson's talcum powder products ovarian cancer, and did
11:22:09 3 Johnson & Johnson's talcum powder products directly cause or
11:22:12 4 directly contribute to cause each Plaintiff's ovarian
11:22:14 5 cancer? Those are really two big questions that we have to
11:22:19 6 talk about.

11:22:20 7 So let's focus on the first one. We brought the
11:22:24 8 three doctors that I talked about who all told you, gave the
11:22:29 9 opinion that Johnson & Johnson's talcum powder products do
11:22:32 10 not cause ovarian cancer.

11:22:35 11 We also brought Dr. Nicholson. Mr. Lanier
11:22:38 12 criticized us for bringing her. She's a senior doctor at
11:22:42 13 Johnson & Johnson. And I think I'm glad that we brought
11:22:47 14 her, and I'm glad that you had an opportunity to meet her.

11:22:50 15 All four of these doctors -- and she was a doctor,
11:22:52 16 remember, who spent years looking at literature. Someone
11:22:56 17 herself who uses the product. All four of these doctors
11:22:59 18 rely on the best evidence, the epidemiology studies of women
11:23:05 19 who use talcum powder products, and you heard that evidence.

11:23:09 20 Now, remember when Mr. Lanier tried to challenge
11:23:13 21 Dr. Holcomb, our last witness? He said I want to try to
11:23:17 22 change your mind and get you to be on my side of the case,
11:23:20 23 and he said he was going to show him information and try to
11:23:23 24 do it.

11:23:23 25 Well, you remember it didn't work because Dr.

11:23:27 1 Holcomb told Mr. Lanier you're not right, and he said in the
11:23:31 2 part that's highlighted here, "Did the use of Johnson &
11:23:34 3 Johnson's talcum powder products by the plaintiffs that he
11:23:38 4 looked at, directly cause or directly contribute to their
11:23:42 5 ovarian cancer?" And he said, no, I don't think so.

11:23:45 6 And, again, this is a doctor whose job it is to
11:23:49 7 look people in the eye, not in a courtroom, but when they
11:23:52 8 come and say why me, why did this happen? He's got to get
11:23:56 9 it right and he got it right.

11:23:58 10 Now, he was also honest with you all by saying
11:24:02 11 there's no perfect study when it comes from looking at this.
11:24:08 12 You can take one thing from one, criticize one, and one's
11:24:11 13 better than the other, and so forth. But she was
11:24:14 14 straightforward with you about it.

11:24:15 15 You have to look at the totality of the
11:24:18 16 information, and the totality of the information -- you
11:24:21 17 heard a lot about these studies. Remember, Johnson &
11:24:23 18 Johnson had nothing to do with these studies. These were
11:24:26 19 looking at tens of thousands of women who were using this
11:24:31 20 product, and other talc-based products, to see what
11:24:36 21 happened.

11:24:36 22 And if there was asbestos in this product as the
11:24:40 23 plaintiffs claim, 110 years of use, you would see it in
11:24:46 24 objective scientific data, which you don't.

11:24:50 25 What was interesting about this was the latency

11:24:52 1 story. Plaintiffs' numbers changed a lot on latency.

11:24:58 2 Dr. Moline, in an affidavit, said it was 10 years or more

11:25:01 3 latency period. Then it became 20 to 30 to 50, then 30 to

11:25:08 4 40, then 25, 25, 20 to 40. It was a pretty big spread there

11:25:15 5 on this question of latency.

11:25:17 6 And that's important because the plaintiffs have

11:25:19 7 to make sure that they get the latency right because if they

11:25:22 8 have a plaintiff who got ovarian cancer with 15 years after

11:25:27 9 using the product, then they wouldn't fit the latency

11:25:31 10 period, so they're always trying to shoehorn their

11:25:35 11 plaintiffs into the latency period, but those numbers moved

11:25:38 12 around a lot.

11:25:39 13 And you heard when Dr. Saenz was here and she

11:25:43 14 looked at those studies, the four key studies that the

11:25:48 15 latency actually was there for those studies, and she was

11:25:52 16 vigorously cross-examined about that and she talked about 32

11:25:58 17 years, and that's what was actually in those studies; the

11:26:01 18 Nurses' Health Study, 24 years; the Women's Health

11:26:04 19 Initiative, 32 years.

11:26:06 20 And these do not include talc used before the

11:26:12 21 period asked about and studied. And you heard from the

11:26:15 22 doctors saying common sense. If you asked one of these

11:26:18 23 people were you using talc today, chances are it's a habit.

11:26:21 24 Just like with the plaintiffs that people are using before.

11:26:24 25 And it was a criticism of these studies that it

11:26:27 1 was only looking at genital use, but you saw the plaintiff
11:26:30 2 video. Their theory is when you put it anywhere dust is
11:26:35 3 everywhere. And I can't imagine that people who are using
11:26:39 4 talcum powder hold their breath every time that they use it.
11:26:43 5 That's not common sense. So these are good studies.

11:26:46 6 And this Penninkilampi study, which Mr. Lanier
11:26:51 7 just talked a little bit about and Dr. Holcomb was asked
11:26:55 8 about, he pointed out that it was missing one of the key
11:27:00 9 dates, and, therefore, the information -- it missed
11:27:03 10 something. And that's why he found that study unreliable.

11:27:09 11 Now, Dr. Holcomb also gave us some context and
11:27:15 12 showed us relative risk for a whole bunch of different
11:27:18 13 things when it comes to ovarian cancer. Things like coffee,
11:27:24 14 smoking, even college-educated and BRCA. You see there was
11:27:28 15 20 to 60 giving you relative risk numbers, and all the way
11:27:32 16 down there to the right, all the way at the end is the talc.
11:27:35 17 But that kind of gave us context to put things in
11:27:38 18 perspective.

11:27:39 19 So what was the door that the plaintiffs' experts
11:27:43 20 went through? Our experts focused on the studies that dealt
11:27:47 21 with the product. They didn't want to go through that door.
11:27:50 22 They went through the door of the studies of heavy
11:27:53 23 occupational exposure.

11:27:56 24 So, we heard a lot about Dr. Moline. And don't
11:27:59 25 get me wrong, Dr. Moline has great credentials, and it's

11:28:04 1 absolutely fantastic what she did for 9/11. I'm from New
11:28:07 2 York, and that's a huge thing, people in New York and
11:28:11 3 everywhere in the world, and that's fantastic.

11:28:14 4 But this case isn't about 9/11. She's not a
11:28:20 5 gynecological oncologist. She's not an expert on ovarian
11:28:25 6 cancer, and she didn't publish on ovarian cancer. She does
11:28:28 7 know a fair amount of asbestos because she's testified a lot
11:28:32 8 for plaintiffs over the years, but one of the key issues in
11:28:34 9 this case, this is about ovarian cancer.

11:28:37 10 And remember when I cross-examined her, I put down
11:28:40 11 a list of all of the studies that she focused on that dealt
11:28:46 12 with occupational exposure, and I just asked her a simple
11:28:51 13 question. Do any of these studies look at the exposure to
11:28:55 14 Johnson & Johnson talc? And she says they do not. None of
11:28:58 15 the studies. None of them. That's the wrong door.

11:29:02 16 When we get to Dr. Felsher. He's not a
11:29:05 17 gynecological oncologist. He never lectured on ovarian
11:29:08 18 cancer. And he never taught a course on ovarian cancer.
11:29:13 19 Clearly, he's got some great research skills and a great
11:29:16 20 lab, but this is a case about ovarian cancer.

11:29:20 21 And you saw the folks we brought, some of the best
11:29:23 22 in the world, who have to answer the question to patients
11:29:27 23 every single day.

11:29:29 24 He was asked about that key Houghton study, and I
11:29:34 25 don't remember if you remember this, he said it didn't ring

11:29:37 1 a bell. Now, if he was really an expert in this area he
11:29:39 2 would know about this study, but it didn't ring a bell.

11:29:43 3 The match, the gas and the fire truck. We heard
11:29:48 4 so much about those images. But that doesn't have anything
11:29:51 5 to do with the way talc works. No doctor would say that.

11:29:56 6 In fact, the National Cancer Institute that
11:29:59 7 Mr. Lanier talked about, it says right on it that the weight
11:30:03 8 of evidence does not support an association between
11:30:08 9 perineally talc exposure and an increased risk of ovarian
11:30:12 10 cancer. This is one of the leading cancer institutes in
11:30:15 11 America that says this.

11:30:18 12 So, do Johnson & Johnson's talcum powder products
11:30:22 13 cause ovarian cancer? The answer is no. And did they
11:30:26 14 directly cause or directly contribute to cause it in this
11:30:30 15 case? The answer is no.

11:30:33 16 So, on the burden of proof, important concept,
11:30:37 17 folks. The law does not place the burden of proof on
11:30:41 18 Johnson & Johnson to prove what did cause Plaintiffs'
11:30:46 19 ovarian cancers. Plaintiffs must prove to you that Johnson
11:30:49 20 & Johnson's talcum powder directly caused or directly
11:30:53 21 contributed to cause Plaintiffs' ovarian cancer. It's their
11:30:59 22 burden. Not our burden.

11:31:01 23 Dr. Felsher is Plaintiffs' only witness on this
11:31:05 24 key point. Because I'm going to focus a fair amount on him.
11:31:10 25 It was probably challenging because there were witnesses

11:31:13 1 coming in and out exactly what they were speaking about. He
11:31:17 2 was the one who talked to this particular question. It
11:31:21 3 wasn't Dr. Moline, because Mr. Lanier himself asked her: We
11:31:27 4 have not asked you to determine whether or not ovarian
11:31:31 5 cancer in our plaintiff was caused by asbestos, that's not
11:31:36 6 what we've asked you to do, fair? And she said: That's
11:31:41 7 correct.

11:31:42 8 So what were Dr. Felsher's assumptions? The first
11:31:45 9 one is that Johnson & Johnson powder has asbestos in it, and
11:31:48 10 the second one was relying on the exposure numbers of
11:31:53 11 Dr. David Egilman, which we're going to talk about. If any
11:31:56 12 of these assumptions falls, their whole specific causation
11:32:01 13 house of cards comes down.

11:32:03 14 What is an assumption? A thing that is accepted
11:32:06 15 as true or is certain to happen without proof. They have
11:32:15 16 the burden of proof on this point. They have the burden of
11:32:18 17 proof to prove asbestos in talc and in bottles that the
11:32:24 18 plaintiffs used. And they have not met that burden. And
11:32:29 19 they also have to prove the exposure numbers of Dr. Egilman
11:32:34 20 and they haven't proved that either.

11:32:38 21 So, what I'm going to submit is that the evidence
11:32:41 22 has shown that Dr. Felsher's opinion's based on bad science.
11:32:48 23 So let's talk about the question: Does Johnson & Johnson's
11:32:51 24 powder have asbestos in it?

11:32:54 25 Mr. Lanier told you in the opening that they

11:32:56 1 rigged the tests, they rigged the tests, and he was going to
11:32:59 2 have an expert, an expert who was going to come in here and
11:33:05 3 tell you that they rigged the tests. That was supposed to
11:33:09 4 be Dr. Longo. He was supposed to tell you that the tests
11:33:13 5 were rigged.

11:33:13 6 We asked him: Are you saying they're rigged? I'm
11:33:17 7 not the one calling the rigged system. This was his
11:33:20 8 testimony.

11:33:22 9 And, in fact, there's a reason that he couldn't
11:33:24 10 say the tests were rigged, because, remember, he got asked a
11:33:29 11 lot about his report in the Scotts case. The Scotts case
11:33:31 12 was one of the few times where he was testifying for a
11:33:34 13 defendant, and he was testifying in that case that Scotts,
11:33:37 14 who was using McCrone, used the industry standard, and this
11:33:43 15 was from his report.

11:33:45 16 These early test techniques, XRD and optical
11:33:48 17 microscopy, were the industry standard for asbestos analysis
11:33:53 18 at the time. The industry standard their expert says right
11:33:59 19 here. And Johnson & Johnson, as we know and the evidence
11:34:03 20 showed, went beyond the industry standard.

11:34:07 21 That XRD and the microscopy Johnson & Johnson did,
11:34:10 22 and then it used the TEM testing. And we presented a lot of
11:34:18 23 evidence about that to you all.

11:34:21 24 But the question here: Was Johnson & Johnson
11:34:23 25 reasonable? Did they do a good job? And we surpassed the

11:34:28 1 industry standard. And it's in our documents that were
11:34:30 2 written at the time. This one I looked at with Dr. Hopkins,
11:34:34 3 it's Defendant's Exhibit 7147.

11:34:37 4 And Mr. Lanier questioned my use of PowerPoints.
11:34:40 5 It's to get through material quickly, you all have exhibits
11:34:44 6 and all of these things have exhibit numbers on them so you
11:34:47 7 can see the whole exhibit. But here -- it says here that
11:34:50 8 Johnson & Johnson continued to surpass the industry testing
11:34:55 9 as reflected in the testing methods.

11:34:58 10 And that method, it wasn't the Johnson & Johnson
11:35:02 11 method. It was McCrone's method that Johnson & Johnson
11:35:05 12 used. And this was their method. It was published. And
11:35:09 13 that's what Johnson & Johnson was using.

11:35:12 14 Here it is in published paper, and I've
11:35:15 15 highlighted the name James Millette. You heard his name a
11:35:21 16 little bit during the trial at different points, but the
11:35:24 17 opportunity now is to kind of connect some of the dots to
11:35:27 18 see why we were pointing out certain things.

11:35:30 19 This is in a paper in 1990, that says that the
11:35:33 20 techniques that we were using, the McCrone method, are
11:35:36 21 currently the best analytical tools for the determination of
11:35:41 22 fine asbestos minerals and talc.

11:35:44 23 So how can somebody come in front of you and pound
11:35:47 24 a table and say we rigged tests, we rigged tests, when
11:35:51 25 they're following the industry standards? That's not fair,

11:35:54 1 and that's not what the evidence has shown.

11:35:58 2 We asked Dr. Longo about Dr. Millette, and he said
11:36:02 3 he is a great scientist. Millette was one of the people at
11:36:06 4 McCrone. And Millette and Longo were on papers together.
11:36:11 5 Remember, Mr. Dubin brought out papers and said you've
11:36:15 6 published all of these articles with Jim Millette? And Dr.
11:36:18 7 Longo says, that's right, he's a great scientist.

11:36:22 8 And we asked Dr. Longo: Have you criticized the
11:36:27 9 McCrone method? Have you published an article saying this
11:36:30 10 is terrible? People are going to be exposed to a bunch of
11:36:34 11 asbestos? And he said: No, I haven't done that.

11:36:37 12 And now this concentration method which you've
11:36:41 13 heard a lot about. Ladies and gentlemen, the concentration
11:36:45 14 method is not the only proper method. Concentration method
11:36:50 15 was, among other things, published by Dr. Blount in 1991,
11:36:55 16 and for everybody to see.

11:36:58 17 The EPA, FDA, NIOSH, no government agency has
11:37:03 18 adopted the concentration method. And Dr. Hopkins told you
11:37:08 19 that, but it's not the only proper way to do things as
11:37:13 20 evident by Dr. Longo, who when he was working for Scotts
11:37:16 21 says that you can use the methods that Johnson & Johnson was
11:37:19 22 using.

11:37:20 23 This whole thing about the concentration method,
11:37:23 24 which is important, remember, is that there are multiple
11:37:28 25 different kinds of asbestos and the concentration method

11:37:31 1 missed two of the types of asbestos, it missed chrysotile
11:37:36 2 and it missed anthophyllite. So from a perspective of
11:37:41 3 somebody who's trying to test for asbestos, it builds in an
11:37:45 4 inefficiency because you have to return multiple different
11:37:48 5 types of tests, and so the type of testing that Johnson &
11:37:51 6 Johnson was doing, maybe it was more efficient, but
11:37:56 7 efficient does not mean it's unsafe because, as a matter of
11:37:59 8 fact, you may remember that the methods that Dr. Sanchez
11:38:04 9 used found the same things that Dr. Longo found.

11:38:09 10 It's just that the evidence shows that it wasn't
11:38:12 11 asbestos. So these are great methods and they're state of
11:38:17 12 the art, and it's only in litigation that people come in to
11:38:22 13 challenge what outside of litigation has been recognized as
11:38:25 14 really good ways to do things.

11:38:27 15 We talk about the composite sampling because the
11:38:30 16 argument always was, well, Johnson & Johnson didn't test
11:38:33 17 enough. And remember with -- and didn't test often and
11:38:37 18 didn't do it the right way. Remember with Dr. Hopkins, I
11:38:41 19 had him here on the stand and we walked through that
11:38:45 20 composite sample, taking samples every hour off the
11:38:49 21 manufacturing line, every shift, every day, every week,
11:38:52 22 every month, every year, year after year after year. And
11:38:57 23 having them tested.

11:38:59 24 And that was the composite sampling that Johnson &
11:39:01 25 Johnson was doing. And it was interesting because you

11:39:05 1 remember Dr. Madigan, the plaintiffs' expert. He looked at
11:39:10 2 Dr. Longo's bottles; 30, 31, 32, that range, and he was in a
11:39:15 3 position to say I can look at 31, 32, 33 bottles, and I can
11:39:21 4 then extrapolate to hundreds of millions of people who used
11:39:29 5 Johnson & Johnson's Baby Powder.

11:39:31 6 So, if sampling is unbiased, a small sample can be
11:39:36 7 representative. And our sampling was unbiased and it was
11:39:41 8 representative. But we get to what Dr. Longo did. There
11:39:45 9 was some bias there. But this whole sampling thing was a
11:39:50 10 little bit of a sideshow when you see all the testing that
11:39:53 11 we did.

11:39:54 12 So what did the testing show? You heard a lot of
11:39:58 13 evidence about the results of all the testing. Mr. Lanier
11:40:01 14 said I've got three boxes of positive findings that I'm
11:40:05 15 going to show you. He goes on and on, the FDA.

11:40:09 16 Well, we start with the mines that you all have
11:40:13 17 seen this before. California. Mr. Lanier made a big thing
11:40:17 18 about California, but California doesn't have anything to do
11:40:20 19 with this case. Because the first exposure is in the mid
11:40:24 20 1950s, and California was used for a short time in World War
11:40:30 21 II, but these are the mines you all saw and we presented
11:40:34 22 evidence on what the testing showed about asbestos from
11:40:37 23 those mines.

11:40:38 24 We started in Italy, and we started with Dr.
11:40:41 25 Pooley. And his report, this is Defendant's 8085 and

11:40:45 1 Exhibit 7038. And he went back and looked at samples to
11:40:51 2 1949, and he found that there was no asbestos in those
11:40:55 3 samples. Not asbestiform. He found some tremolite, but it
11:41:00 4 was not asbestiform.

11:41:01 5 And you all have seen evidence in this case, by
11:41:04 6 just seeing a document that says the word "tremolite" does
11:41:08 7 not mean it's asbestos. Very important thing. And in the
11:41:11 8 opening statement I said that the plaintiffs were going to
11:41:14 9 do. They were going to look at a document and say there's
11:41:17 10 tremolite, but that means it's asbestos.

11:41:20 11 But all the experts tell you that just because you
11:41:23 12 see the word "tremolite," that doesn't mean it's asbestos.
11:41:26 13 And this was testing that went back to 1949 by Dr. Pooley.

11:41:32 14 This information, when it came to claim that
11:41:36 15 things were secret, Johnson & Johnson gave this information
11:41:39 16 to the FDA. And remember, I showed you the back and forth
11:41:44 17 with McCrone where McCrone said that Johnson & Johnson --
11:41:47 18 can we give over our results? And Johnson & Johnson said,
11:41:50 19 yes, you can give test results to the FDA.

11:41:54 20 Clearly, if Johnson & Johnson was worried about
11:41:57 21 McCrone's test results, it wouldn't be saying turn them over
11:42:01 22 to the FDA, but Professor Pooley's report was given to the
11:42:06 23 FDA. It was no secret that there was tremolite in isolated
11:42:10 24 areas in certain talc deposits, but tremolite does not mean
11:42:14 25 there's asbestos.

11:42:18 1 To Johnson & Johnson's state of mind, there were
11:42:20 2 claims made by Mr. Lanier, oh, Johnson & Johnson knew that
11:42:23 3 it had asbestos in its talc, but that's not really fair.
11:42:26 4 Because here's a memo from 1972, where Johnson & Johnson's
11:42:31 5 saying we're puzzled about what we're hearing because our
11:42:35 6 testing has indicated that there is no asbestos. Somebody
11:42:39 7 wouldn't be puzzled if they thought there was asbestos and
11:42:43 8 was trying to hide it. You wouldn't say that.

11:42:47 9 We went through history in the case and looked at
11:42:50 10 the 1970s, and, in particular, the FDA testing. This
11:42:54 11 intensive research project that started when there was media
11:42:59 12 attention where a couple scientists thought they had found
11:43:03 13 asbestos, including Johnson & Johnson's talc. It turned out
11:43:06 14 to be wrong.

11:43:08 15 Here was Walter McCrone evidence we presented to
11:43:11 16 you in The Asbestos Particle Atlas, where he says that work
11:43:17 17 from the 1970s was grossly wrong. This was the scientist
11:43:21 18 that even Dr. Longo said was one of the best scientists in
11:43:25 19 the world, and this is what was published about what had
11:43:29 20 happened in the 1970s, the FDA, when Plaintiffs' Counsel
11:43:36 21 talked about that.

11:43:37 22 We went through that during the trial and we
11:43:39 23 focused on the final FDA results that looked at Johnson &
11:43:42 24 Johnson's products. There were some discussions early on
11:43:46 25 when people were looking at test methods and saying we think

11:43:50 1 there was asbestos, but then they kept testing and working
11:43:53 2 on the methods, and the FDA ultimately concluded that they
11:43:57 3 did not detect asbestos in Johnson & Johnson's talc. This
11:44:01 4 is in 1976.

11:44:04 5 Do you remember when Dr. Moline was here, she told
11:44:07 6 us how great Mount Sinai was. Great asbestos researchers in
11:44:11 7 the world. Dr. Selikoff got the Nobel Prize in public
11:44:17 8 health. They looked at Johnson & Johnson's talc. And this
11:44:20 9 was in a published paper, the Rolle, Langer, Selikoff paper
11:44:27 10 that I talked about with Dr. Moline and Dr. Hopkins, and
11:44:31 11 they looked at Johnson & Johnson's samples, and they didn't
11:44:33 12 see asbestos in the talc.

11:44:35 13 These are some of the best scientists we have in
11:44:40 14 some of the best research institutes. It was published in
11:44:43 15 The New York Times that Johnson & Johnson's talc did not
11:44:46 16 have asbestos in it.

11:44:47 17 Based on those scientific studies and then the
11:44:50 18 leading hospital, Mount Sinai, the president of the hospital
11:44:56 19 issued a press release saying that the most commonly used
11:45:00 20 baby talc has been consistently free of asbestos. And it's
11:45:04 21 the opinion of Mount Sinai's Department of Pediatrics that
11:45:08 22 baby talc is a useful and safe product.

11:45:12 23 So what do the plaintiffs say? Well, Johnson &
11:45:14 24 Johnson met with them before this. Johnson & Johnson was
11:45:17 25 upset. They were upset. Because incorrect information was

11:45:22 1 being sent out that was later clarified and corrected. You
11:45:27 2 saw the memo, it was an amicable meeting where Johnson &
11:45:34 3 Johnson met and a press release is issued, it's based on
11:45:37 4 scientific studies that said there was no asbestos in the
11:45:40 5 talc. And this is going back to the 1970s.

11:45:46 6 In Vermont, Dr. Pooley also went there and he
11:45:51 7 tested the Vermont talc. Chrysotile was there and the
11:45:55 8 amphibole minerals, they were not asbestiform in character.
11:45:59 9 This is what Dr. Pooley published. And this is an important
11:46:05 10 document.

11:46:05 11 This is McCrone's memo, it's Exhibit 7216. And it
11:46:12 12 summarizes 15 years of research that they did on the Vermont
11:46:17 13 talc supply. And this is what they said. They've
11:46:21 14 continuously monitored it and it's free of asbestos. And
11:46:25 15 that's based on over 15 years of closely examining the
11:46:29 16 product.

11:46:30 17 These are the best labs in the country that are
11:46:34 18 doing this. 15 years. And so we asked Dr. Longo when he
11:46:39 19 was working with Scotts were they entitled to rely on the
11:46:43 20 best lab in the country but Johnson & Johnson is not
11:46:46 21 entitled to rely on them? He said: I never said that.
11:46:50 22 Johnson & Johnson got the best people involved, and it was
11:46:54 23 completely a good idea to rely on what they were doing.

11:46:58 24 And this is important, because this is, again,
11:47:01 25 this memo -- and it says that they were continuously

11:47:05 1 monitoring it. And the person who's copied on this is Jim
11:47:10 2 Millette. Jim Millette was the one who published the
11:47:14 3 McCrone method, and he was the one who's published all the
11:47:18 4 work with Dr. Longo, Plaintiffs' expert.

11:47:20 5 He was at McCrone running that lab where all this
11:47:23 6 testing was done. And when you look at all the reports that
11:47:30 7 Johnson & Johnson got, this was all that information that I
11:47:33 8 presented in with Dr. Hopkins. It all -- the manager of the
11:47:39 9 lab was Jim Millette.

11:47:40 10 This is the one where they say is using a rigged
11:47:44 11 system. The evidence just doesn't support it, nor does
11:47:47 12 common sense, one of the best microscopists running the lab
11:47:53 13 doing tests for Johnson & Johnson.

11:47:54 14 So what did Dr. Longo say? I was disillusioned
11:47:55 15 with McCrone once he got hired in this case, and he focused
11:48:01 16 on this document that Plaintiffs talked about in his
11:48:04 17 opening, where a report had been revised, to take out
11:48:08 18 percentages that had been in the first copy of the report,
11:48:11 19 and I walked you through this with Dr. Hopkins.

11:48:15 20 And what was not pointed out by Plaintiffs was
11:48:18 21 that the person who wrote the report changed it because he
11:48:24 22 said after looking at several fresh samples on the light
11:48:28 23 microscope, we have not been able to substantiate the
11:48:32 24 tremolite levels we originally reported.

11:48:35 25 He went back, checked fresh samples, and if you go

11:48:39 1 back, those tiny percentages that he had there, he could not
11:48:43 2 back them up. But what was given to the FDA was a document
11:48:48 3 that talked about tremolite crystals and -- but that's not
11:48:54 4 even saying that there was asbestos.

11:48:56 5 So this major smoking gun had a completely
11:49:00 6 legitimate explanation by the person who did the work. He
11:49:03 7 went back and he looked at fresh samples. So, what I told
11:49:10 8 you in the opening about things to watch for, these are the
11:49:13 9 things that I told you about.

11:49:15 10 The tremolite versus tremolite asbestos. Attorney
11:49:18 11 questions versus witness answers. And litigation evidence
11:49:22 12 versus real world evidence. What happened out in the real
11:49:26 13 word by people who had to get the answers right.

11:49:30 14 And one of the other things, the connection
11:49:33 15 between test results and body powders. Remember, we talked
11:49:38 16 to Dr. Hopkins about that one finding, that there was
11:49:41 17 asbestos in the HC sample. And then we went through
11:49:43 18 documents where it was clear for a short period of time, HC
11:49:47 19 actually meant industrial talc, where they were mixing from
11:49:50 20 a different location in Vermont. One time they find that.

11:49:57 21 And then that then becomes, oh, my God, not even
11:50:01 22 in an ore sample, not even in a production sample, but it
11:50:05 23 wasn't even talking about talc that was used in baby powder.

11:50:09 24 So we talked about NIOSH and Harvard in 1979, who
11:50:14 25 looked at Vermont and tested it. They looked at samples

11:50:19 1 using all the right techniques, and they said there was no
11:50:22 2 asbestos in these samples. 1979.

11:50:26 3 So what did Plaintiffs say? They put up a
11:50:29 4 document of some meeting with people at NIOSH where somebody
11:50:32 5 at Johnson & Johnson says we've talked to them, and they
11:50:35 6 were impressed and it was a mystique that was created.

11:50:40 7 Ladies and gentlemen, they tested the talc. They
11:50:42 8 used all the methods. There's no indication here that they
11:50:46 9 did it wrong or somebody changed their method. It doesn't
11:50:49 10 even make common sense that NIOSH and Harvard and these
11:50:54 11 scientists who were testing the talc are going to somehow do
11:50:56 12 it wrong. This is evidence from 1979.

11:51:01 13 And then there was a claim, oh, we destroyed
11:51:04 14 documents. And then I had to get up with Dr. Hopkins and
11:51:07 15 say look at all these Windsor Minerals testing results that
11:51:12 16 we've provided. We went through all those Windsor Mineral
11:51:16 17 test results for him.

11:51:17 18 And are we saying we have every single test result
11:51:21 19 from 40, 50 years ago? No. Nobody would have that. But
11:51:25 20 there were Windsor Minerals test results that were in
11:51:28 21 evidence in this case that you all will see.

11:51:32 22 And then China, the third topic. The FDA tested
11:51:38 23 China talc. They tested Johnson's Baby Powder. They tested
11:51:44 24 Shower to Shower. And they looked at the actual supplier,
11:51:48 25 Rio Tinto, which was the source for the talc. And they

11:51:53 1 found in this report that there was no asbestos in that
11:51:56 2 talc.

11:51:58 3 And so what we've heard a lot of the trial is the
11:52:02 4 results were limited by the fact that only four talc
11:52:06 5 suppliers submitted samples and by the number of products
11:52:10 6 tested. That may be true, but the ore that they looked at,
11:52:15 7 that was the deposit that Johnson & Johnson was getting the
11:52:17 8 talc from. And the samples that they looked at, that was
11:52:21 9 Johnson & Johnson's talc.

11:52:25 10 This doesn't say it's limited in the sense that we
11:52:27 11 didn't look at other people, but they looked at Johnson &
11:52:31 12 Johnson and the ore deposit that Johnson & Johnson got its
11:52:35 13 talc from.

11:52:36 14 2009. This was a two-year study. And the person,
11:52:40 15 if you read this document, it's Defendant's 7462. They went
11:52:45 16 and got samples off the shelf when they did this FDA study.
11:52:49 17 And so this was of China.

11:52:51 18 You heard from Dr. Sanchez. He visited all the
11:52:55 19 mines, went to China. And this is important because he said
11:53:01 20 that there's no amphibole in the talc in China. Never seen
11:53:08 21 amphibole in the talc in China, which is very important in
11:53:11 22 this case.

11:53:12 23 Because from 2003, Johnson & Johnson has been
11:53:15 24 using talc in China. And remember that Dr. Longo said that,
11:53:23 25 look, RJ Lee, are they an independent laboratory? Do you

11:53:27 1 remember that back and forth? No, they're not. That's what
11:53:30 2 he said.

11:53:31 3 And then Mr. Dubin went and asked him, but McCrone
11:53:35 4 and RJ Lee, are you saying they're independent or not? I
11:53:41 5 believe I said they were all independent. So RJ Lee's been
11:53:46 6 criticized, yes, Johnson & Johnson did an audit and at one
11:53:50 7 point they needed to clean up one of their labs, but RJ
11:53:53 8 Lee -- you saw Dr. Sanchez. He's an experienced, serious
11:53:59 9 person. And according to this, they're independent. And,
11:54:03 10 in fact, Dr. Longo never relied on the work of RJ Lee.

11:54:08 11 So, every single Johnson & Johnson sample that Dr.
11:54:11 12 Longo tested that came off the shelf found no asbestos
11:54:16 13 fibers. That's China. So you have the FDA looking at
11:54:21 14 China. You've got Dr. Longo taking stuff off the shelf and
11:54:27 15 finding no asbestos in China. And he said that.

11:54:31 16 And then Mr. Lanier's website, this type of talc
11:54:37 17 is not used in modern consumer products. It is important to
11:54:42 18 distinguish between talc that contains asbestos and talc
11:54:46 19 that is asbestos-free.

11:54:48 20 And it said right here, this type of talc, meaning
11:54:52 21 talc with asbestos, is not used in modern consumer products.
11:54:56 22 This was on his website. But the whole case has been
11:55:02 23 suggesting that there is asbestos in the talc. And we knew
11:55:06 24 from the trial that the American Cancer Society said the
11:55:10 25 same thing.

11:55:11 1 And so what was the explanation? I haven't seen
11:55:14 2 our website either. I don't know if it's our website. It
11:55:17 3 says right on it. I know a lot of people make duplicate
11:55:22 4 websites, but, regardless, facts are facts. The facts are
11:55:25 5 the facts.

11:55:26 6 The FDA tested. Dr. Longo testing off the shelf.
11:55:30 7 And Dr. Sanchez, the American Cancer Society. Those are the
11:55:34 8 facts.

11:55:35 9 And then we went through with Dr. Hopkins all the
11:55:39 10 layers of testing that Johnson & Johnson did. Starting from
11:55:43 11 processing of the mill on the bottom, all of those entities,
11:55:47 12 washing and floating and the bottling.

11:55:51 13 Why would a company go through all that effort if
11:55:53 14 the tests were rigged? That doesn't make common sense.
11:55:58 15 These are the best outside labs that were brought in to test
11:56:01 16 that talc over year after year after year after year.

11:56:06 17 And we presented all of that evidence to you
11:56:09 18 through Dr. Hopkins, and you heard about it from Dr. Sanchez
11:56:13 19 as well, and you see over here all different testing methods
11:56:17 20 that were going on here. Multiple different types of tests
11:56:22 21 going above and beyond the standards, and that's what
11:56:24 22 Johnson & Johnson did.

11:56:28 23 So, Dr. Nicholson, you remember, this whole
11:56:33 24 question of warnings. She was very upfront. She said if we
11:56:37 25 thought there was a problem with our talc and that there was

11:56:41 1 a shot of asbestos, we wouldn't be selling the product.

11:56:46 2 That's what she said. And I think that's a fair thing.

11:56:50 3 But remember the question of a warning label has
11:56:53 4 been addressed by the FDA. The FDA in 1986 was --

11:56:59 5 MR. LANIER: Your Honor, I'm going to object
11:57:00 6 to him stating what the law is on the FDA and what the FDA
11:57:04 7 has insist -- he's suggesting that the FDA has ruled on this
11:57:09 8 warning and that's improper.

11:57:11 9 THE COURT: Ladies and gentlemen, you'll be
11:57:12 10 guided by the evidence as you recall it. Objection's
11:57:15 11 overruled.

11:57:17 12 MR. BICKS: Yeah. D7214, ladies and
11:57:20 13 gentlemen, it's in evidence. You'll see here that the FDA
11:57:23 14 says the agency concludes that there's no need to require a
11:57:27 15 warning label on cosmetic talc. That was stated in 1986 by
11:57:31 16 the FDA.

11:57:33 17 And the FDA also said in 2014, this is Defendant's
11:57:37 18 Exhibit 7456, that the FDA did not find the data submitted
11:57:44 19 as presenting conclusive evidence of a causal association
11:57:48 20 between talc use in the perineal area and ovarian cancer.

11:57:52 21 So this is the information that Johnson & Johnson
11:57:54 22 is getting from the FDA, two different times.

11:57:59 23 So let's talk about Plaintiffs' testing experts.
11:58:02 24 You heard about Dr. Longo. He's made \$30 million, his
11:58:08 25 company, from Plaintiffs' lawyers, that was true.

11:58:10 1 90/95 percent of his time he's testifying for Plaintiffs'
11:58:16 2 lawyers. He's never tested cosmetic talc when he wasn't
11:58:19 3 being paid to do it by Plaintiffs' lawyers.

11:58:23 4 And compare that to all the evidence we've
11:58:26 5 presented from NIOSH, from McCrone. They weren't doing that
11:58:29 6 for a lawsuit. They were doing it because it was their job.
11:58:33 7 Week after week, month after month. All of those testing
11:58:37 8 entities. It wasn't coming into court and trying to
11:58:40 9 convince somebody of anything.

11:58:42 10 The science for hire. Dr. Longo, his bottle test,
11:58:47 11 the videos that you saw, the below the waist. They're all
11:58:51 12 paid for by Plaintiffs' lawyers for use in the courtroom to
11:58:54 13 convince people of things.

11:58:55 14 And you'll remember this in the case, it maybe
11:58:59 15 didn't seem like that big of a thing, but this question of
11:59:02 16 the detection limits and the analytical sensitivity of all
11:59:09 17 these tests really was a big deal. Were we using the best
11:59:13 18 methods and were we being sensitive enough of what was going
11:59:17 19 on?

11:59:17 20 And you'll remember this, that Dr. Longo had
11:59:19 21 turned over a report where all of that information had been
11:59:23 22 blocked out because he didn't want people to see the
11:59:25 23 detection limits and the analytical sensitivities. And we
11:59:28 24 had to take the cursor up and show that it had been whited
11:59:32 25 out so you could see what was missing. And that was

11:59:36 1 important information to know, and we had to bring it out
11:59:39 2 but I don't think that was right.

11:59:40 3 So science for hire. Who's really playing the
11:59:44 4 name games in the courtroom? We sit over here and we
11:59:48 5 hear -- we're being charged we're playing name games, we're
11:59:50 6 doing this. We're not playing name games. The plaintiffs
11:59:53 7 are playing the name games, ladies and gentlemen.

11:59:56 8 What is Dr. Longo actually finding and how does he
12:00:00 9 call asbestos even if it isn't? How can it be that all of
12:00:04 10 these independent labs, agencies, governments, McCrone, test
12:00:08 11 Johnson & Johnson's product and they're saying we don't see
12:00:12 12 asbestos, but now when you're in a litigation setting,
12:00:15 13 somebody is now suddenly saying, ah, I got hired, I looked
12:00:19 14 at 31 bottles, and I see asbestos in half of them. It's
12:00:22 15 because he's playing the name game.

12:00:24 16 We walked through the difference here between
12:00:27 17 tremolite and non-asbestiform mineral and tremolite, the
12:00:31 18 asbestiform. And we weren't making up definitions. Those
12:00:36 19 definitions are in the regulations. IARC, who Plaintiffs'
12:00:41 20 Counsel has said is the institution to look to. We heard a
12:00:47 21 lot about IARC.

12:00:48 22 IARC is the one that has the definition that says
12:00:52 23 when asbestiform constitute asbestos, and when they're not
12:00:58 24 asbestiform they're referred to as mineral fragments or
12:01:02 25 cleavage fragments.

12:01:02 1 And remember on your verdict sheet, ladies and
12:01:04 2 gentlemen, it says you've got to find asbestos in the
12:01:08 3 product. That's what this case is about. They're talking
12:01:12 4 here, and this is IARC. They're saying there's asbestos and
12:01:17 5 there's mineral fragments and cleavage fragments. This
12:01:21 6 isn't Johnson & Johnson's definition. This is coming from
12:01:24 7 IARC. And it's not just IARC, it's others.

12:01:28 8 So what does Dr. Longo do? He's going to try to
12:01:31 9 call something asbestos even if it's not. So what does he
12:01:35 10 do? He flashes lights and other things like this, and then
12:01:40 11 what he does is, I'm only going to look at one thing under
12:01:45 12 TEM, but I'm going to ignore everything that is around it.
12:01:49 13 So I'm going to try to take one thing out of context and
12:01:53 14 then say it's asbestos, and that's what he did.

12:01:56 15 It's also significant here to know that even if
12:01:59 16 you come up with one elongated particle, this says it can be
12:02:05 17 elongated without being asbestiform. I know these
12:02:09 18 definitions may be tricky, but they're so important because
12:02:13 19 this is what all the regulations say and this is when you're
12:02:17 20 following things and testing you pay attention to.

12:02:21 21 Again, you see here when asbestiform they're
12:02:25 22 asbestos and when not asbestiform they're referred to as
12:02:28 23 mineral fragments and cleavage fragments. So, IARC says
12:02:33 24 mineral fragments or cleavage fragments. Dr. Longo calls
12:02:38 25 asbestos to support this lawsuit. And that's what's going

12:02:42 1 on here. They're playing the name games, not us.

12:02:47 2 And so what happened? Remember Ms. Kim's bottle,
12:02:51 3 Mr. Dubin went through this with Dr. Longo. There was a
12:02:55 4 bundle that you looked at under a TEM and, you know, it's --
12:03:02 5 it looks like tremolite, but it was too wide, right, to be
12:03:08 6 asbestos. Right? So it couldn't be a fiber. So he said,
12:03:13 7 well, it's a bundle. It's a bunch of things put together
12:03:16 8 because he knew he had a problem in terms of the definition
12:03:20 9 of what asbestos is.

12:03:21 10 But then Dr. Sanchez pointed out how careful you
12:03:27 11 have to be when you're kind of doing these things, and he
12:03:29 12 brought in, do you remember, the SEM microscope, and showed
12:03:34 13 this thing of kind of the duck, when you see the shadow, the
12:03:38 14 TEM testing, and then when you actually look at it the right
12:03:41 15 way with a SEM, you can actually see what's going on.

12:03:47 16 And so he did that. And when you use the SEM, you
12:03:50 17 can see right there. It wasn't asbestos by definition. It
12:03:54 18 was a cleavage fragment. And that's what the science showed
12:03:58 19 and that was the evidence that we presented.

12:04:00 20 So, then the question is, well, what -- what are
12:04:04 21 people saying about this? You heard Mr. Lanier talk about
12:04:07 22 well, Dr. Moline, what does she say about this tremolite?
12:04:12 23 And we go back here to the FDA, that they said that these
12:04:18 24 massive form of tremolites should not be considered as
12:04:22 25 asbestos.

12:04:23 1 This is from the FDA. From meeting with the FDA.
12:04:27 2 And it wasn't just the FDA, this is an important document,
12:04:31 3 ladies and gentlemen. This came up with Dr. Rosner, and
12:04:35 4 this was from the U.S. Consumer Product Safety Commission
12:04:38 5 from 1988, where there was a question with clay sand, you
12:04:43 6 may remember, and was there tremolite in clay sand, and was
12:04:47 7 it dangerous.

12:04:48 8 What the U.S. Consumer Product Safety Commission
12:04:52 9 says is, nor is there data demonstrating that
12:04:54 10 non-asbestiform tremolite, trace amounts of which have been
12:04:58 11 found in play sand, causes cancer in humans. If anything,
12:05:02 12 some studies, including a recent one, which is still
12:05:06 13 underway in Edinburgh, Scotland, point in the opposite
12:05:11 14 direction.

12:05:11 15 So they're saying here, at least the U.S. Consumer
12:05:13 16 Products Safety Commission, that non-asbestiform tremolite
12:05:19 17 is of no danger. And they even go farther -- and I told you
12:05:24 18 in my opening statement that there was going to be a lot of
12:05:27 19 fear going on here, right? A lot of taking baby powder,
12:05:30 20 putting it up a container, making it seem like, oh, my God,
12:05:36 21 what's in it?

12:05:37 22 When we all know you can go right down to a store
12:05:42 23 and buy it. This shouting fire in a crowded theater is
12:05:46 24 exactly what the U.S. Consumer Product Safety Commission
12:05:49 25 talked about in 1988, to try to scare. And that's what's

12:05:54 1 been going on here.

12:05:55 2 The EPA Region 9 letter. Mr. Lanier read that
12:05:59 3 probably four or five times to witnesses. There are 10
12:06:02 4 regions to the EPA, and this was a letter from 2006 on the
12:06:06 5 tremolite question. But the EPA definition of 2018, which
12:06:11 6 was 12 years later, says that asbestos means the asbestiform
12:06:16 7 varieties of tremolite. It's got to be asbestiform
12:06:22 8 tremolite. And this is what the EPA said. This isn't what
12:06:27 9 Johnson & Johnson says.

12:06:28 10 So all of the definitions, MSHA, it must be
12:06:32 11 asbestiform to be asbestos. That's in all the definitions.
12:06:38 12 U.S. Department of Labor, Mine Safety and Health
12:06:40 13 Administration. They say that. OSHA.

12:06:45 14 Asbestos includes chrysotile, amosite,
12:06:49 15 crocidolite, and tremolite asbestos. Important definitions.
12:06:54 16 Johnson & Johnson's not playing the name game. Plaintiffs
12:06:58 17 are playing a name game.

12:07:00 18 And so what about Dr. Blount? You heard her by
12:07:05 19 video. You'll be the best judges of her credibility. She
12:07:10 20 had been paid by Mr. Lanier to testify. And that wasn't
12:07:15 21 disputed. And she showed up at her deposition, we debated a
12:07:20 22 lot in this case, what was that "Sample I."

12:07:24 23 You heard Dr. Nicholson. Lab no bucks, so you can
12:07:28 24 really figure it out. Dr. Blount came to her deposition and
12:07:32 25 she said this is where I got "Sample I" from. It was a

12:07:36 1 bottle she brought. And her paper was dated in 1991, and
12:07:41 2 the bottle that she brought was from 1996. She said that.
12:07:48 3 How could that be the "Sample I" in the 1991 paper? It was
12:07:53 4 five years after. And we went a lot about -- we got the
12:07:58 5 bottle, we wanted to test it.

12:08:00 6 But the evidence in the case was she requested
12:08:04 7 that the bottle be returned and we couldn't test it.
12:08:07 8 Because we feel if we tested it, like all the other stuff,
12:08:11 9 that there wouldn't be asbestos in it, but she wanted the
12:08:15 10 samples back and didn't want them tested, so we don't have
12:08:18 11 that.

12:08:19 12 And then she said, like a scientist, I love
12:08:22 13 samples, I keep all this stuff. And do you still have
12:08:26 14 samples? You know, she loves this stuff, but she didn't
12:08:29 15 have any of the samples from the 1991 paper so we could
12:08:34 16 really see what was there.

12:08:35 17 And remember, that's their burden of proof. It's
12:08:37 18 not our burden of proof. So that was the whole thing with
12:08:41 19 Dr. Blount.

12:08:42 20 And so here are the three boxes. I've got three
12:08:46 21 boxes of positive findings that I'll be trying to show you
12:08:52 22 as we got time. It goes on and on and on. We showed you
12:08:56 23 all the testing that was done outside of litigation from all
12:08:59 24 these institutions, and there were mounds of testing, ladies
12:09:03 25 and gentlemen. It was kind of tedious when I went through

12:09:06 1 it with Dr. Hopkins.

12:09:07 2 We tried to make it interesting, but it's so
12:09:11 3 important because that's what the results are. It wasn't
12:09:13 4 just one test, it was test on top of test on top of test.

12:09:17 5 And so what did I see from Mr. Lanier? He talks
12:09:21 6 about the Blount "Sample I." He talks about that document
12:09:25 7 that I mentioned where there was confusion over the
12:09:28 8 industrial talc. He slapped down in front of Mr. Hopkins a
12:09:33 9 Whitaker, Clark, Daniels document that talked about
12:09:36 10 tremolite, but not asbestos in Italy.

12:09:40 11 I didn't see -- and he talked about MAS, Dr.
12:09:46 12 Longo, he's a plaintiff that's been hired in the lawsuit,
12:09:49 13 but I don't think I saw the three boxes of testing
12:09:51 14 documents. You all will have all the evidence, but I saw
12:09:55 15 all of this, which is what we've presented to you in the
12:09:58 16 case.

12:10:01 17 And so with all this independent testing, there's
12:10:06 18 some massive conspiracy going on by Johnson & Johnson to
12:10:12 19 expose babies to asbestos? Does that make common sense when
12:10:16 20 Johnson & Johnson is doing all this testing? That people
12:10:19 21 like Dr. Hopkins and Dr. Nicholson are using the product
12:10:24 22 themselves? That doesn't make any sense.

12:10:27 23 So, this was Dr. Felsher's first assumption. That
12:10:32 24 Johnson & Johnson's powder has asbestos in it and they
12:10:36 25 didn't prove it. So now where are they? Pillar one is out,

12:10:40 1 but then they've got the exposure numbers of Dr. Egilman.
12:10:45 2 And this was the person who told you that using baby powder
12:10:48 3 is the equivalent of working in factories where they're
12:10:53 4 making asbestos products.

12:10:56 5 Well, he showed you this test of these gargantuan
12:10:58 6 numbers, and we kind of went through it with him, and I put
12:11:05 7 up a common sense chart, which is we've heard this thing,
12:11:09 8 "finding asbestos in a product is like a needle in a
12:11:12 9 haystack." It's so little, it's so hard to find it.

12:11:17 10 But, according to Dr. Egilman, these Plaintiffs
12:11:21 11 have massive exposures to asbestos from talc. Those things
12:11:26 12 don't seem to square with one another.

12:11:30 13 So what did he do? He relied on Gordon/Millette's
12:11:32 14 data. He misinterpreted a study from Dement, and he used
12:11:40 15 improper constants. So let me walk through those with you.

12:11:44 16 The Gordon paper was not about asbestos, it was
12:11:46 17 about a product called "Cashmere Bouquet," and the
12:11:50 18 concentration there was 18 million fibers per gram. It was
12:11:54 19 higher than Dr. Longo's highest concentration of Johnson &
12:11:58 20 Johnson bottle, but it wasn't even a Johnson & Johnson
12:12:01 21 product. And then he took that data and he applied it to
12:12:05 22 all Plaintiffs at all times for personal use. Regardless if
12:12:10 23 there was any variation.

12:12:13 24 What's really important -- and this is where I
12:12:14 25 come back to Jim Millette. Jim Millette was on that paper,

12:12:19 1 the scientist, who did all the testing of Johnson &
12:12:22 2 Johnson's talc in that lab. He was on the paper that they
12:12:27 3 use for that assumption.

12:12:31 4 He was the one who was involved in all the McCrone
12:12:36 5 work that concluded that there was no asbestos in Johnson &
12:12:41 6 Johnson's talc. So they're relying on an assumption from
12:12:45 7 somebody, from some early paper, when the evidence is that
12:12:50 8 when it came to Johnson & Johnson's product there was no
12:12:54 9 asbestos in the talc. That's not right.

12:12:58 10 And then the Dement paper. They pulled -- Dr.
12:13:02 11 Egilman pulled figures from that, but I asked him about
12:13:05 12 this. This wasn't a test that looked at asbestos fibers.
12:13:09 13 There was no identification that the fibers found in these
12:13:13 14 powders and in the test, it says it right there.

12:13:18 15 And I asked Dr. Egilman about it. What were the
12:13:22 16 limitations that they acknowledged? He said they couldn't
12:13:27 17 tell what kind of fiber it was from the study. So he was
12:13:30 18 taking data from a study that didn't even test for asbestos
12:13:34 19 fibers.

12:13:35 20 And then remember John Dement? So the left is the
12:13:37 21 '72 paper. But John Dement, in 1979, was the one who did
12:13:45 22 some of the testing on the paper from NIOSH and Harvard,
12:13:50 23 that said there's no asbestos in the Johnson & Johnson
12:13:56 24 samples that were tested.

12:13:59 25 So they're using data out of context and ignoring

12:14:02 1 that these authors both concluded that there was asbestos in
12:14:08 2 Johnson & Johnson's talc. And then they apply it to all of
12:14:12 3 the plaintiffs at all times. This time for diapering.

12:14:17 4 But that's not right. They're using a product
12:14:20 5 that wasn't Johnson & Johnson. And they're using an author
12:14:24 6 who found no asbestos in the product. Same thing with
12:14:28 7 Dement. Down below.

12:14:31 8 And then the "below the waist" simulation. You
12:14:34 9 saw the film, Mr. Lanier showed it. This is another -- this
12:14:39 10 is something from the 1950s. They take a highest
12:14:43 11 concentration bottle, 15 and change fibers per gram, huge
12:14:49 12 numbers, and they claim this is like Cashmere Bouquet.

12:14:54 13 But Dr. Sanchez explained that -- looked at that
12:14:57 14 sample and it had diatomaceous earth in it. Remember that?
12:15:01 15 And then I asked Dr. Hopkins about it. Diatomaceous earth
12:15:04 16 was used in medicated powder. It wasn't even used in
12:15:08 17 Johnson's Baby Powder.

12:15:10 18 So there had to be something going on there from
12:15:12 19 that bottle 60, 70 years ago. But it had stuff in it that
12:15:19 20 wasn't even in Johnson & Johnson's talc. The stuff was
12:15:23 21 purchased off of eBay, ladies and gentlemen.

12:15:26 22 And then what would happen was Dr. Longo was using
12:15:29 23 these hugely high concentration methods, the highest, but if
12:15:34 24 you go down and look at even the low or the medium, you're
12:15:39 25 down to tiny, tiny numbers, probably in that background

12:15:45 1 range that we talked about. So that's just kind of like
12:15:49 2 cherrypicking. Garbage in, bargain out. Using the highest
12:15:54 3 numbers to jack up exposure in a way that's not scientific.
12:15:57 4 And it's applied to everybody for all personal use for all
12:16:01 5 time. And it's directly contradicted by the FDA itself.

12:16:07 6 This is the FDA from 1986, who said that they
12:16:11 7 looked at talc and they say even when asbestos was present,
12:16:16 8 the levels were so low that no health hazard existed, and
12:16:20 9 they say our scientists recently reviewed data from these
12:16:25 10 surveillance activities and concluded that the risk from a
12:16:29 11 worst case estimate of exposure to asbestos from cosmetic
12:16:33 12 talc would be less than the risk from environmental
12:16:36 13 background levels of exposure to asbestos. Over a lifetime.
12:16:43 14 Risk less than a risk from background.

12:16:47 15 And Johnson & Johnson's talc has been tested to be
12:16:50 16 free of asbestos. And so this is what the FDA said.

12:16:55 17 So Dr. Felsher's opinion is based on bad science.
12:17:00 18 He assumes asbestos when all the evidence that we've
12:17:04 19 presented disprove that. And then he relies on Dr.
12:17:08 20 Egilman's numbers, and when those pillars come down, his
12:17:11 21 opinions come down as well.

12:17:14 22 So, do Johnson & Johnson's talcum powder products
12:17:18 23 cause ovarian cancer? No. And did Johnson & Johnson's
12:17:22 24 talcum powder products directly cause or directly contribute
12:17:25 25 to cause each Plaintiff's ovarian cancer? The answer is no.

12:17:32 1 So, let's talk about CSI. This is what Mr. Lanier
12:17:35 2 said. Let's actually be CSI for a minute. What do we not
12:17:41 3 know, right? And the plaintiff had opportunities to bring
12:17:45 4 evidence to you. So let's say what did they have the
12:17:48 5 opportunity to bring that they didn't bring?

12:17:52 6 Dr. Holcomb told you that when it comes to ovarian
12:17:55 7 cancer, it's common for patients who develop ovarian cancer
12:18:00 8 to have no risk factors. And he says yes. He says that's
12:18:04 9 the majority of patients. We just don't know. I wish we
12:18:08 10 did. We all wish we did.

12:18:10 11 But we got to acknowledge the scientific truth
12:18:13 12 that we just don't know. And it's the plaintiffs' burden to
12:18:19 13 show that something is the cause, and he says often the
12:18:23 14 cause is unknown.

12:18:25 15 But there were certain things that the plaintiffs
12:18:27 16 had the ability to bring to you. Genes, tissue and bottles.
12:18:33 17 On genes, you all heard a lot about gene testimony and how
12:18:38 18 we're learning more about genes every single day. That we
12:18:42 19 only used to test for two or three, 10, 15, 20 years ago,
12:18:46 20 now they're looking at 34. It changes every day, there are
12:18:49 21 more genes. We don't even have any idea of the full extent
12:18:53 22 of the role of the genes.

12:18:56 23 So, and this is what Dr. Holcomb told us that
12:19:02 24 we're discovering more every day and that how most doctors
12:19:04 25 today suggest that screening be done to see what kind of

12:19:08 1 genetic makeup folks have.

12:19:11 2 But, remember Dr. Felsher, he talked about
12:19:16 3 Stanford, world-recognized genetic counseling center. But
12:19:20 4 he didn't even tell the plaintiffs they should get further
12:19:24 5 genetic testing. And he said -- he was not even giving them
12:19:27 6 medical advice, he was meeting with them for litigation
12:19:31 7 purposes.

12:19:32 8 So we were criticized saying, oh, we didn't have
12:19:36 9 doctors examine the plaintiffs, and we didn't tell them to
12:19:39 10 do stuff. This was the guy on the plaintiffs' side who met
12:19:43 11 with them. And he claimed to talk to them and examine them,
12:19:47 12 I guess, in some fashion, but it was for litigation
12:19:51 13 purposes. And he didn't tell them to do that.

12:19:54 14 When you look at the plaintiffs and who doesn't
12:19:57 15 have the testing? Plaintiffs with no genetic testing:
12:20:00 16 Brooks -- Ms. Brooks, Ingham, Owens, Oxford, Salazar.
12:20:05 17 Plaintiffs without the full panel testing, that's the list
12:20:09 18 of the plaintiffs there. And Plaintiffs with outdated panel
12:20:15 19 testing, those are four there.

12:20:16 20 And we fully get these are personal choices that
12:20:19 21 people make and people can make whatever decisions they
12:20:23 22 want, that's up to them, but this is a lawsuit where our
12:20:26 23 client is being accused of really serious things, and this
12:20:29 24 is information that could be brought for you all to see and
12:20:33 25 we don't have that.

12:20:35 1 And that's the burden of proof that's on the
12:20:37 2 plaintiff. It's not on us. So, the tissue -- this was
12:20:42 3 important. Remember, Mr. Lanier said I said in the opening
12:20:47 4 statement that there was tissue that could have been tested
12:20:51 5 of the plaintiffs, and Mr. Lanier said, oh, for Mr. Bicks to
12:20:55 6 suggest otherwise to you is to get you to pre-decide this
12:20:59 7 case, it's not right and not fair.

12:21:01 8 Some of these women don't even have their slides.
12:21:04 9 Some of them do. It wasn't some of these women don't even
12:21:08 10 have their slides. It was one person. It was Gail Ingham
12:21:12 11 who didn't have the slide. It wasn't -- suggested to you
12:21:16 12 there were all these people who didn't have the slides?
12:21:18 13 There was one person, and it was Gail Ingham.

12:21:22 14 And so here are the folks who all have the tissue
12:21:26 15 who has not been tested for you all. It's one, two, three,
12:21:30 16 four, five, six, seven, eight, nine, 10, 11 plaintiffs. And
12:21:35 17 remember Ms. Zschiesche, her testing was started and there
12:21:39 18 was no indication of asbestos in the tissue.

12:21:41 19 But this is the plaintiffs' burden and they have
12:21:45 20 this tissue to test to see what was there for you and for us
12:21:48 21 to check. But it wasn't done.

12:21:51 22 And then the testing that Dr. Rigler did.
12:21:54 23 Remember we asked did you use control groups? And he said:
12:21:58 24 I didn't use control groups, even though he had in prior
12:22:03 25 tests. So we couldn't even compare what things he did see

12:22:08 1 to see how they may compare to the fact that asbestos is
12:22:12 2 pretty much everywhere.

12:22:14 3 Remember, I asked this from Dr. Moline, do you
12:22:18 4 agree we're all exposed to asbestos during our lifetime?
12:22:23 5 She says yes. Do you agree that all of us will inhale
12:22:27 6 millions of asbestos fibers? Yes.

12:22:29 7 And will you agree that regardless of whether we
12:22:31 8 have occupational exposure we'll have all asbestos fibers in
12:22:35 9 our lungs? And she says yes. And that includes chrysotile
12:22:38 10 and tremolite. We're all exposed to it, and that becomes
12:22:42 11 very important when it comes to testing.

12:22:44 12 Johanna Goldman. There was no asbestos detected
12:22:47 13 in her tissue. And the claim from the plaintiffs is these
12:22:52 14 people are exposed to billions of fibers. But the testing,
12:22:57 15 for example, of Johanna Goldman, showed no asbestos that was
12:23:01 16 detected. Same thing as to Carole Williams. No asbestos
12:23:06 17 was detected. Even though the claim is that these are
12:23:09 18 people who are exposed at occupational levels of asbestos.
12:23:15 19 Nothing detected.

12:23:16 20 And then what about the bottles? There were
12:23:19 21 bottles that were tested. That were available but were not
12:23:22 22 tested. Brooks, Goldman, Koman, Schwartz-Thomas. We asked
12:23:28 23 all of the plaintiffs do you have talc they were using, and
12:23:31 24 that wasn't tested to see what the results were.

12:23:35 25 So, there are question marks about why all these

12:23:39 1 tests weren't done when the plaintiffs have the burden of
12:23:42 2 proof to come in here and present evidence to you. So what
12:23:45 3 do we know? We know that Dr. Saenz, Huh and Holcomb, the
12:23:54 4 people whose job it is to know the answer, look at the
12:23:58 5 medical records, familiar with all the literature, and know
12:24:03 6 about genetic issues, and they all say that talc had no
12:24:08 7 role.

12:24:08 8 And they also say that if you take baby powder off
12:24:13 9 the table and say these people never would have used it,
12:24:16 10 things would be exactly the same. And then there were the
12:24:20 11 plaintiffs with the positive genetic tests: Packard,
12:24:24 12 Schwartz-Thomas, Walker, Martin, Martinez. And those are
12:24:29 13 the types of things, particularly on the BRCA1 ones, which
12:24:32 14 really increase your risk in this area.

12:24:36 15 You saw Johanna Goldman's family history. You saw
12:24:41 16 Ms. Martin's family history. You saw Ms. Schwartz-Thomas'
12:24:47 17 family history. You saw Ms. Hawk's family history. You saw
12:24:54 18 Eleita Walker's family history.

12:24:59 19 And this is really important talking about
12:25:02 20 fingerprints, which was a term that Mr. Lanier just used.
12:25:06 21 Not one of these people has any indication of what you would
12:25:10 22 typically see if you're exposed to a lot of asbestos. What
12:25:13 23 I would call a fingerprint.

12:25:16 24 And you learn a lot in the case about asbestos
12:25:19 25 diseases, asbestosis being one in particular, which is in

12:25:24 1 the lungs and pleural plaques, thicken, kind of a
12:25:30 2 calcification, white stuff, that if you're exposed to a
12:25:34 3 bunch of asbestos.

12:25:35 4 You saw, I think it was Dr. Felsher who used this
12:25:37 5 image of asbestos is like splinters. It was kind of a
12:25:41 6 graphic image, but if these Plaintiffs, if it were really
12:25:45 7 true that there was asbestos in this talc and they were
12:25:48 8 exposed to a lot of it, like work -- like a workplace, there
12:25:53 9 is no indication, no fingerprints of anything that's
12:25:58 10 typically associated with asbestos disease in any of these
12:26:02 11 folks. And I think that's really important.

12:26:06 12 So what did Dr. Felsher admit? These are key
12:26:12 13 admissions. Remember, he was relying -- and he had to
12:26:17 14 assume that there was powder -- asbestos in Johnson's Baby
12:26:21 15 Powder and those exposure numbers of Dr. Egilman. Either
12:26:25 16 those pillars were shaking. Their one witness who come in
12:26:31 17 here to tell you that use of this was a contributing factor
12:26:35 18 or a cause. It falls.

12:26:39 19 He ignored the facts. And you remember when the
12:26:42 20 gyne-oncs came in here, those doctors, how he missed a bunch
12:26:48 21 of stuff in the medical records. He doesn't deal with
12:26:51 22 ovarian cancer patients on a day-to-day basis. I'm not
12:26:55 23 saying he's not a great researcher, I hope he does cure
12:26:59 24 cancer, but this is really about ovarian cancer and these
12:27:01 25 people and this case.

12:27:03 1 You heard this thing about a differential
12:27:05 2 diagnosis, right? And that's really important in a case
12:27:08 3 like this where somebody has to look at something and they
12:27:13 4 have to rule it out, okay, that's what that means. You look
12:27:16 5 at a bunch of factors and you say I can see one, two, three,
12:27:21 6 four, five, and I can say that has nothing to do with this,
12:27:24 7 and that's a really important thing.

12:27:26 8 You must rule out alternative causes. And he was
12:27:31 9 asked by Mr. Dubin. You understand with a differential
12:27:37 10 diagnosis you must rule out alternative causes? And he said
12:27:40 11 yes. But the question then, did Johnson & Johnson's talc
12:27:47 12 products directly cause or directly contribute? We put that
12:27:53 13 to him, and this requires that the plaintiff show that they
12:27:58 14 would not have developed ovarian cancer but for their use of
12:28:03 15 Johnson & Johnson's talc products.

12:28:05 16 This is really important, ladies and gentlemen.
12:28:08 17 You have to say to yourself if these people never used
12:28:13 18 Johnson & Johnson's Baby Powder would things be different?
12:28:16 19 That's the question. That's what this but for thing means.

12:28:20 20 And Mr. Lanier used this cliff analogy. And he
12:28:26 21 acknowledges he needs to prove this, that Johnson & Johnson
12:28:31 22 kind of pushed these people over the cliff. And if you took
12:28:34 23 the Johnson & Johnson away that things would have been
12:28:39 24 different.

12:28:41 25 But Dr. Felsher admitted that he couldn't do that.

12:28:46 1 And we brought three people who answered this question for
12:28:50 2 you. All three of these people who were asked would each
12:28:54 3 Plaintiffs' ovarian cancer have occurred even if they did
12:28:58 4 not use Johnson & Johnson's talcum powder?

12:29:03 5 Dr. Saenz said yes. Dr. Huh said yes. And Dr.
12:29:06 6 Holcomb said yes. Three witnesses all said that. Dr.
12:29:11 7 Felsher, I don't know. And it's the plaintiffs' burden of
12:29:17 8 proof on this issue. He did not know.

12:29:21 9 And so these were the questions, very important,
12:29:23 10 from Mr. Dubin. Is it your testimony that but for
12:29:29 11 Ms. Ingham's use of talcum powder she would not have
12:29:32 12 developed ovarian cancer? His answer was no.

12:29:35 13 Ms. Goldman. So you're unable to opine that but
12:29:40 14 for Ms. Goldman's use of talc she would not have developed
12:29:44 15 ovarian cancer? You can't say that. I can't answer that
12:29:48 16 question one way or the other.

12:29:50 17 Same as to Ms. Packard. I can't answer whether or
12:29:53 18 not she would not have gotten ovarian cancer. They can't
12:29:59 19 answer that question. And that's a really important
12:30:02 20 question.

12:30:03 21 And then Mr. Dubin took it to all of the
12:30:07 22 plaintiffs. Can you tell me as to everybody else, but for
12:30:12 23 their talc use, they would not have developed ovarian
12:30:14 24 cancer? I don't think that's necessarily anything
12:30:19 25 specifically different than the other Plaintiffs where he

12:30:22 1 couldn't say it. He couldn't answer that question.

12:30:25 2 So let me talk then -- and that's critical, ladies
12:30:28 3 and gentlemen. Because, remember, I said one thing that's
12:30:30 4 in all those claims, they have to show cause. They have to
12:30:34 5 show if you took this away life would be different for these
12:30:37 6 folks. And they can't.

12:30:40 7 We brought three people here who said that's not
12:30:43 8 true. And they brought somebody who said I can't really
12:30:46 9 answer that question.

12:30:49 10 They're accusing our client and the people at
12:30:52 11 Johnson & Johnson of some really incredibly bad things that
12:30:56 12 we are people who act maliciously with disregard for
12:30:59 13 people's health. And are asking that you consider punitive
12:31:04 14 damages against our client.

12:31:08 15 It's a different burden of proof. It requires
12:31:12 16 clear and convincing evidence. And you've got to find that
12:31:16 17 people like Susan Nicholson and John Hopkins, who you saw
12:31:21 18 10, 15 feet away for hours, that they operate with a
12:31:26 19 complete indifference or conscious disregard for the safety
12:31:29 20 of others.

12:31:31 21 You've got to look those people in the eye and say
12:31:34 22 you're a doctor, Dr. Nicholson, you know, in charge with a
12:31:40 23 big role of safety at Johnson & Johnson, you look at all of
12:31:44 24 the literature, you make decisions that you think are right,
12:31:48 25 you use the product yourself, like Dr. Hopkins and people in

12:31:52 1 his family, and they're operating with an indifference or
12:31:55 2 disregard for other people's safety. That's not fair.

12:32:00 3 This thing about motive means injury, alibi. It
12:32:04 4 makes for good theater, but it's not really what goes on in
12:32:08 5 the real world. You're the detectives, according to
12:32:11 6 Mr. Lanier, and you heard the testimony of Dr. Nicholson.
12:32:15 7 That she commits her life to helping others. That's what
12:32:20 8 she does.

12:32:20 9 She takes an oath as a physician. This is a lady
12:32:23 10 who's trained as a doctor. She takes it seriously, and you
12:32:27 11 saw her and you were able to judge her. You heard when
12:32:31 12 Mr. Lanier asked her about her mother and that her mother
12:32:35 13 had ovarian cancer. He knew about that before he asked
12:32:38 14 that. He asked her about that on that stand.

12:32:43 15 And if you want to know about somebody who's going
12:32:48 16 to take this more seriously than anybody, you think it would
12:32:52 17 be somebody like Dr. Susan Nicholson. And you all got to
12:32:56 18 see her. She was acting in complete good faith in trying to
12:33:01 19 make good decisions based on science.

12:33:03 20 And you saw Dr. Hopkins. He believes the product
12:33:07 21 is safe and he uses it. Just like tens of millions of
12:33:12 22 Americans and people around the world.

12:33:15 23 The personal use. I thought that was just common
12:33:17 24 sense evidence that I'm glad you all got to hear. Why would
12:33:22 25 these people who have access to all this stuff -- Mr. Lanier

12:33:25 1 says the first time anybody's seen it -- how can it be with
12:33:30 2 all that information they're using the product? Even on
12:33:33 3 their children? It's because it's safe. It's common sense.

12:33:38 4 And all of the testing that we showed, all of this
12:33:42 5 information that was out there. Maybe you can nit-pick
12:33:46 6 with, oh, somebody did this or they don't have a record, but
12:33:51 7 this is layers and layers and layers of testing over decades
12:33:54 8 that Johnson & Johnson was doing.

12:33:56 9 And this really shows a responsible company that's
12:34:01 10 trying to get things right. So there's no evidence here of
12:34:04 11 malicious conduct by Johnson & Johnson.

12:34:07 12 So what's really happened here? There's been a
12:34:11 13 lot of show; hay, fire trucks, orange juice, meat, scales,
12:34:19 14 cheese, ducks, monkeys, Powerball, carrots, dolls. It's
12:34:29 15 been good entertainment, and maybe at certain points of a
12:34:34 16 tough case some entertainment is good, but this is a really
12:34:39 17 serious case. There is a lot on the line here for our
12:34:44 18 client.

12:34:47 19 We are really accused of really bad things. One
12:34:51 20 of the oldest companies, not only one of the oldest, but a
12:34:54 21 company over 100 years old. So I want to talk about really
12:35:00 22 what the case is ultimately about.

12:35:05 23 And I have a sign up here, you know, symbol of
12:35:10 24 justice. And you all have been incredible. This will be my
12:35:15 25 last opportunity to talk to you. And I asked you -- do you

12:35:22 1 remember during the voir dire process, because I knew we all
12:35:26 2 have dealt with cancer in our lives and we know how
12:35:29 3 emotional it is. And I have all the sympathy and respect
12:35:34 4 for these people in this room.

12:35:36 5 And I kept saying to you all the most important
12:35:39 6 thing to us was to have folks like you who could set that
12:35:44 7 sympathy aside and look at the evidence and look at the
12:35:51 8 facts because this is our system of justice.

12:35:54 9 When you all come in here we stand. When you're
12:35:58 10 all out in the hallway we don't talk to you because this is
12:36:02 11 really one of the bedrocks of our system. And it doesn't
12:36:07 12 make any difference whatever your race, whether you're rich
12:36:13 13 or poor, or whether you're a corporation.

12:36:17 14 Everybody is equal under the eyes of the law. And
12:36:21 15 Johnson & Johnson's a corporation, but it's a corporation of
12:36:25 16 people. And you met some of them. You met Dr. Nicholson.
12:36:30 17 You met Dr. Hopkins. And you'll be the judge of what kind
12:36:35 18 of people they are.

12:36:38 19 But this is really important to focus on the facts
12:36:42 20 and the evidence because every day in this courtroom I feel
12:36:47 21 like there's an amount of pressure because you know that
12:36:51 22 Plaintiffs are here, Mr. Lanier is always acknowledging
12:36:55 23 them, having them stand up. And it's so hard to set that
12:37:00 24 aside and say, yes, this is terrible, but because something
12:37:05 25 terrible happened it doesn't mean that Johnson & Johnson had

12:37:10 1 anything to do with it.

12:37:12 2 So, I just would, first of all, again, thank you
12:37:15 3 on behalf of my team and our client, but just ask you to
12:37:21 4 just focus on the facts and the evidence. I've tried
12:37:26 5 everything possible to walk through things without pounding
12:37:29 6 on the table, but just to walk through the evidence and the
12:37:33 7 facts to get to the truth.

12:37:37 8 We're grateful for everything you've done. We
12:37:40 9 turn this case over to you to decide it. And it's so
12:37:45 10 important to our client how this comes out for them.
12:37:53 11 They're Johnson & Johnson.

12:37:54 12 And this product, we've gone back and forth, and
12:38:00 13 the economics of it. Johnson & Johnson's a big company.
12:38:03 14 We're not hiding from that. It's a really successful
12:38:07 15 company. And this is a very, very small part of this
12:38:12 16 company.

12:38:12 17 That doesn't mean it's not important. I told you
12:38:14 18 it was important. I told you in my opening statement the
12:38:18 19 bottle has the signature of the founder on it, and it's one
12:38:23 20 of the oldest things in America that this company's had.

12:38:27 21 So, I don't think the plaintiff has met their
12:38:31 22 burden of proof. I don't think they've shown you that there
12:38:34 23 is asbestos in our talc. If there was asbestos in this talc
12:38:39 24 for a product that had been on the market for 120 years,
12:38:43 25 wouldn't you expect to really see a serious problem? Not

12:38:48 1 something that's now jimmied up through lawyers'
12:38:51 2 advertisements? And with doctors who don't come into the
12:38:55 3 courtroom who actually treat the people who are involved?

12:39:00 4 Common sense says something's going on here. And
12:39:03 5 it's not really science. It's not really truth. It's an
12:39:10 6 attempt to take sympathy or pressure, to try to have a big
12:39:17 7 payday and go after deep pocket. And that's just not right
12:39:23 8 to do things like that. It's not right. And it's not fair.
12:39:29 9 And that's why we're here defending the reputation of
12:39:34 10 Johnson & Johnson.

12:39:34 11 So, remember, when I sit down -- Mr. Lanier's
12:39:40 12 good. He's going to come up, he's going to be slamming
12:39:45 13 those folders around, he's going to be circling everything I
12:39:48 14 did. Mr. Bicks didn't tell you this, Mr. Bicks didn't tell
12:39:52 15 you that.

12:39:52 16 Please, just look at the evidence. A lot of
12:39:54 17 evidence came in. Those testing documents, the McCrone
12:39:58 18 reports, the FDA reports. Statement from Mount Sinai that
12:40:03 19 the product is safe. The testing documents this big. And
12:40:07 20 you all got to see it.

12:40:09 21 But just please keep your eye on the ball. Keep
12:40:12 22 your eye on the evidence and not what lawyers say, because
12:40:16 23 one of the things the judge said is lawyers' arguments
12:40:20 24 aren't evidence, and we saw a lot of that with Mr. Lanier.
12:40:23 25 Great lawyer.

12:40:25 1 But he'd be winding up with all these questions
12:40:27 2 with our witnesses, oh, we're saying there was concerted
12:40:31 3 action. There's no claim here for concerted action. Oh,
12:40:35 4 we're going to show you that you doctored up that study. He
12:40:41 5 didn't bring out that evidence. But when he suggests it, it
12:40:45 6 makes you think there's something there.

12:40:48 7 But there isn't anything there. I told you in my
12:40:53 8 opening statement that this was a false alarm. Just like in
12:40:58 9 the '70s when people thought there was asbestos in talc.
12:41:01 10 They spent four years looking at it, and they concluded
12:41:05 11 there wasn't.

12:41:06 12 His website says there isn't. And I know he'll
12:41:10 13 say, oh, that's my website, I don't know what it is. But
12:41:13 14 it's on his website. It's what the American Cancer Society
12:41:16 15 says. It's what the truth is.

12:41:22 16 So thank you very much. We've had fun. You all
12:41:25 17 have been great. And I'm not from here, I told you that.
12:41:29 18 We've always felt at home and we really appreciate that.
12:41:34 19 All of us do.

12:41:35 20 You all have been working hard, we've been working
12:41:39 21 hard, and it's a nice place to be. We thank the Court for
12:41:43 22 all the hospitality. We really thank you.

12:41:46 23 I know this is tough, but I can't tell you how
12:41:48 24 much respect we have for this process, so we're in your
12:41:53 25 hands. And I appreciate you taking the time. I know it's

12:41:57 1 quarter to one. Thank you.

12:41:59 2 THE COURT: All right. Thank you, Mr. Bicks.

12:42:18 3 Folks, we've got about 29 more minutes. You want to stand

12:42:22 4 and stretch while we're switching out the IT stuff here?

12:42:26 5 (Brief pause in the proceedings.)

12:43:36 6 THE COURT: All right. Folks, are we ready

12:43:38 7 to get started? All right.

12:43:42 8 Mr. Lanier, you have 29 minutes left in your

12:43:45 9 allocation.

12:43:46 10 MR. LANIER: Thank you, Judge.

12:43:47 11 THE COURT: Yes, sir.

12:43:47 12 **PLAINTIFFS' FINAL ARGUMENT**

12:43:48 13 MR. LANIER: May it please the Court. Ladies

12:43:49 14 and gentlemen.

12:43:51 15 Kind of hard for me to figure out where to start.

12:43:56 16 I've been accused of pounding the table because I don't have

12:43:59 17 the facts. I think we've got the facts. I've been accused

12:44:04 18 of not pounding, or maybe pounding the law, because we've

12:44:09 19 got the law. I didn't follow that.

12:44:11 20 I've been accused of trying to make this

12:44:14 21 interesting and trying to make it memorable. I've been

12:44:18 22 accused of -- I'm not sure if he was accusing me or the

12:44:21 23 plaintiffs, or both of us, of being money grabbers and

12:44:24 24 creating hysteria where there shouldn't be any, and picking

12:44:28 25 on poor little Johnson & Johnson.

12:44:31 1 So I've decided what I'm going to do is I'm going
12:44:34 2 to try and reduce this down to what I see are the three
12:44:37 3 issues in this case. Was asbestos in the talc? Yes, and it
12:44:43 4 still is. Don't believe the RJ Lee people. It still is.
12:44:49 5 Don't use it. Please. Nobody use it. Especially you
12:44:53 6 ladies. Use the cornstarch. It smells just as good and it
12:45:00 7 works just as well.

12:45:02 8 Did it cause or contribute to the cancer? You
12:45:06 9 look at what the judge says. The judge does not say but
12:45:10 10 for --

12:45:11 11 MR. BICKS: Objection, your Honor.

12:45:12 12 MR. LANIER: -- that's made up.

12:45:12 13 THE COURT: Yes, sir.

12:45:13 14 MR. BICKS: Objection on the -- may I
12:45:14 15 approach on this?

12:45:15 16 MR. LANIER: Mark my time, please, Judge.

12:45:15 17 THE COURT: I'm trying to mark that right
12:45:15 18 now.

12:45:16 19 (Counsel approached the bench, and the
12:45:16 20 following proceedings were had:)

12:47:12 21 MR. LANIER: Give a few extra seconds for the
12:47:12 22 flow and the interruption.

12:47:13 23 MR. BUSH: Your Honor, Mr. Lanier just said
12:47:14 24 but for cause was made up and it's not the instruction,
12:47:15 25 saying it's made up. And he's saying outright it's not the

12:47:16 1 law when he's saying it's made up. Misstatements of law
12:47:17 2 have to be -- I want to get the language correct, your
12:47:19 3 Honor. They have to be promptly corrected.

12:47:20 4 THE COURT: What is the law in Missouri then,
12:47:20 5 Mr. Bush? Do you think the law in Missouri is but for?

12:47:22 6 MR. BUSH: Your Honor, according to Callahan
12:47:22 7 v. Cardinal Glennon 863 S.W. 2d 852, the law is but for
12:47:24 8 causes in all cases except those involving two independent
12:47:25 9 torts, which we don't have here.

12:47:26 10 The Court has an obligation to correct
12:47:27 11 misstatements of law and so we make an objection to the
12:47:28 12 statement that it is a made-up -- but for cause is made up.

12:47:30 13 MR. HOLLAND: Your Honor, we agree Callahan's
12:47:31 14 the law. We agree you probably instructed on it, which is
12:47:32 15 directly cause or directly contributing to cause, just like
12:47:33 16 is in the MAI book. What you've given is exactly right and
12:47:35 17 what he said is precisely wrong and should be pointed out in
12:47:36 18 argument, your Honor.

12:47:37 19 THE COURT: Anything further?

12:47:37 20 MR. HOLLAND: No.

12:47:37 21 THE COURT: What's your requested relief?

12:47:38 22 MR. BUSH: Your Honor, I would ask that Mr.
12:47:39 23 Bicks' objection be sustained and that the jury be told
12:47:40 24 instructed to disregard the statement regarding but for
12:47:41 25 cause being made up.

12:47:42 1 THE COURT: Objection is denied and your
12:47:42 2 request for instruction to the jury is denied.

12:47:44 3 MR. BUSH: Thank you, your Honor.
12:47:44 4 (The proceedings returned to open court.)

12:47:44 5 THE COURT: Mr. Lanier.

12:47:45 6 MR. LANIER: Read it carefully. But for,
12:47:45 7 you're only going to find that in Mr. Bicks' PowerPoint.
12:47:47 8 That's not what the judge tells you. It's real clear, did
12:47:48 9 it cause or contribute to the cancer.

12:47:49 10 And actually Dr. Felsher's about the only honest
12:47:50 11 doctor you've heard. He gave you the honest testimony on
12:47:51 12 that. It wasn't just bought testimony that answers it their
12:47:52 13 way.

12:47:52 14 And then the third question is: What are the
12:47:53 15 damages in this case? Are they the real damages and what
12:47:55 16 are the punitive damages, if any are going to be assessed,
12:47:56 17 whether or not it's proper to assess them.

12:47:57 18 Mr. Bicks did not argue the real damages. I think
12:47:58 19 he agrees with me on what the value is of cases like this.
12:48:01 20 We just disagree on whether or not the case has it.

12:48:05 21 So here's the way I've tried to put this together.
12:48:10 22 I want to ask the question first, who's truly playing slight
12:48:15 23 of hand here? Who is it that is playing slight of hand?
12:48:22 24 I've been accused of it.

12:48:24 25 I've tried very, very carefully to say things with

12:48:29 1 precision. I don't think you've seen anybody standing up
12:48:32 2 here saying here's what Mr. Lanier said. But here's the
12:48:35 3 reality. But we've caught Mr. Bicks over and over and over
12:48:40 4 not saying what reality is and telling you something when
12:48:45 5 the evidence is something else.

12:48:46 6 So when he talks about litigation versus the real
12:48:50 7 world. I wonder if -- that I've only got litigation
12:48:54 8 witnesses, which is stunning to me. I wonder if he's
12:48:58 9 remembering his jukebox witness that everyone in the world
12:49:02 10 calls a jukebox witness. I wonder if he's remembering that
12:49:05 11 he's called that -- Sanchez is called that because you just
12:49:08 12 put your money in it and he'll sing any song you want him to
12:49:13 13 sing.

12:49:13 14 When he talks about the National Cancer Institute
12:49:15 15 that says that talc isn't related to -- to the asbestos
12:49:20 16 issue and -- no, to the ovarian cancer issue. I wonder if
12:49:26 17 he's reminded and if it bothers his conscience at all that
12:49:29 18 he fails to tell you what we pointed out, and that is that
12:49:33 19 that comment is not the National Cancer Institute, it was a
12:49:36 20 committee that was commenting on something and the National
12:49:39 21 Cancer Institute specifically said this isn't us.

12:49:42 22 I wonder if when he says were the tests rigged,
12:49:46 23 and that's one his issue. That Longo explained, I don't
12:49:51 24 know if you want to call it rigged, but the bottom line is
12:49:54 25 the tests are designed not to find the asbestos. Rigged is

12:49:59 1 my word, I confess. But the scales, Longo explained it, not
12:50:04 2 me.

12:50:04 3 That Johnson & Johnson surpassed industry
12:50:07 4 standards. Who's playing slight of hand when he says that?
12:50:11 5 They didn't surpass industry standard. The Colorado School
12:50:14 6 of Mines specifically said if you want to find the asbestos
12:50:19 7 you got to do the concentration. If you don't want to find
12:50:22 8 the asbestos, don't do the concentration. What did they
12:50:26 9 choose? Don't do the concentration.

12:50:30 10 Maybe you can say, yeah, but that's what other
12:50:32 11 industry was doing. I don't know if they were or not, but I
12:50:35 12 did see the evidence. That Pooley wanted to do
12:50:38 13 concentration. That J&J didn't. That Blount did, and also
12:50:43 14 that J&J actually set the industry standard. They're the
12:50:49 15 major producer of this stuff. This is their industry.

12:50:54 16 They set the standard. They're the ones who said
12:50:57 17 let's hurry up and get this through to the FDA before they
12:51:01 18 wake up and do the concentration method. Who's playing
12:51:04 19 slight of hand when he says Dr. Felsher's ideas are wrong?

12:51:09 20 Science is science. Dr. Felsher is the only
12:51:11 21 doctor who was able to explain how all of these different
12:51:15 22 genetic things work. Not only how all of the different
12:51:20 23 genetic things work, but he explained how all of those would
12:51:24 24 be affected by asbestos, every one of the genetics.

12:51:27 25 He didn't need to retest them for genetic reasons.

12:51:30 1 It wouldn't make any difference in this testimony to him,
12:51:33 2 but to their doctors it would have. Their doctors didn't
12:51:38 3 even want to see them. They didn't even want to see these
12:51:40 4 people before they said you're faking it, you're just in
12:51:44 5 this for a big payday. Before Mr. Bicks comes in and says
12:51:48 6 that to these people, he could have at least had his doctor
12:51:52 7 see them, or doctors.

12:51:54 8 The concentration. He said that concentration
12:51:57 9 method, Blount published it and the FDA never adopted it.
12:52:01 10 J&J knew 20 years before Blount published it. The Colorado
12:52:07 11 School of Mines used it. It wasn't only in the literature,
12:52:11 12 as Mr. Bicks said.

12:52:13 13 It's something J&J specifically squashed. They
12:52:17 14 kept the FDA from finding out about it, from using it, when
12:52:21 15 the FDA knew about it, that it was thinking about it, and
12:52:24 16 they pushed the other alternatives.

12:52:27 17 And then he said, oh, but McCrone for 15 years
12:52:31 18 said in a document for 15 years they hadn't found any
12:52:35 19 asbestos. Documents don't lie. Well, they don't lie. And
12:52:39 20 the documents show that McCrone did, in fact, find high
12:52:43 21 levels of asbestos.

12:52:45 22 We've got it, November 1975. Oops. Was the
12:52:51 23 comment with the witness because they found it. Just
12:52:54 24 because some guy at McCrone writes a letter to the FDA that
12:52:58 25 the company wants, all that's doing is telling you what the

12:53:01 1 company wants. And McCrone's people will be quick to write
12:53:08 2 for them.

12:53:09 3 They challenged -- who's doing slight of hand?
12:53:12 4 They challenged Dr. Moline's qualifications because she's
12:53:17 5 not a gyno oncologist. No. She's an asbestos doctor that
12:53:21 6 Harvard -- Harvard brings to lecture their gyno oncologists.
12:53:27 7 I would suggest that the gyno oncologists in this case would
12:53:30 8 be better served if they'd read her testimony, maybe even
12:53:34 9 have her come lecture at their place.

12:53:37 10 Mr. Bicks wants evidence. I can't get any more
12:53:40 11 evidence than his own company saying in 1973 the "clean
12:53:45 12 mine" approach for asbestos is over in the mines. And yet
12:53:48 13 Mr. Bicks comes in here and tells you over and over our
12:53:52 14 mines are clean.

12:53:55 15 I think people can read the evidence and see that
12:54:00 16 it's possible that they're going to use appropriate
12:54:05 17 concentrating techniques. Who says they're appropriate?
12:54:09 18 Johnson & Johnson in 1973 says they're appropriate and
12:54:13 19 they'll permit a good lab to identify asbestos or tremolite
12:54:17 20 in a talc sample.

12:54:19 21 Don't say, well, that's not tremolite or that's
12:54:21 22 not asbestos. Yes. It will permit a good lab to find it.
12:54:29 23 They've known since 1973 that it was over. That the "clean
12:54:34 24 mine" didn't work, and yet they're selling you that package.
12:54:39 25 How on earth they sell you something that they have known

12:54:42 1 for 45 years? It's over.

12:54:47 2 And Mr. Bicks says I'm pounding the table? No.

12:54:52 3 That's the fact. Did he mention that document to you? In

12:54:57 4 all that he said for an hour and 45 minutes, did he tell you

12:55:01 5 anything about that document? Has he said anything about it

12:55:04 6 the whole trial? No. Zero. Zip.

12:55:09 7 Has he said anything the whole trial about the

12:55:12 8 Colorado School of Mines saying it's the only way you're

12:55:14 9 going to find a needle in a haystack? No. Zero. Zip. And

12:55:21 10 he's got the audacity to come up with, I mean, somebody did

12:55:25 11 some snazzy work, I was impressed with the Elmo, I was, I

12:55:29 12 mean, with the PowerPoint, but I never said go in this door

12:55:33 13 go in that door. I said go in both doors.

12:55:37 14 I think y'all look at all the evidence. The

12:55:40 15 studies about talc and ovarian cancer. He's got four that

12:55:43 16 say maybe, they don't know, they haven't run a long enough

12:55:46 17 latency period. They don't have a good enough control

12:55:50 18 group, and they're not positive, they don't reach

12:55:52 19 statistical significance. But I showed you 13 that say yes.

12:55:59 20 I think you ought to look at those. But you also

12:56:02 21 need to look at these and not ignore them, which they want

12:56:06 22 to do. They see these as two options. I see them as two

12:56:11 23 sides of the coin. And you need both sides. You ought to

12:56:15 24 be doing both.

12:56:17 25 Mr. Bicks, don't close the door on the evidence.

12:56:19 1 Leave it open. Let them look at both. Let them consider
12:56:24 2 both. Don't tell them just to look at the four studies that
12:56:30 3 had inadequate latency. Tell them to look at all of them.

12:56:34 4 That's the beauty of the meta-analysis, that
12:56:38 5 Penni -- whatever the name is, that used the meta-analysis,
12:56:41 6 that put all of the studies together. That all fit within
12:56:46 7 the same latency framework so they could go together.

12:56:50 8 So what do we get here? We get Ms. Cooper's
12:56:54 9 drawing of Johnson & Johnson's rotating finger. This is the
12:56:57 10 same as the dog bite trial. You know, well, there's
12:57:03 11 asbestos found in this sample. Oh, that must be lab
12:57:06 12 contamination. We use a dirty lab. Yeah, but that was
12:57:09 13 McCrone. Well, maybe they're dirty too.

12:57:11 14 Well, by trace, they found trace, they meant zero,
12:57:14 15 so that's zero. If it's not 5 fibers, we're going to call
12:57:18 16 it zero. Or if it is 5 fibers, we're going to say that must
12:57:22 17 be industrial talc instead of the other. Or we're going to
12:57:27 18 say it's not asbestiform and use the geologic word instead
12:57:31 19 of the medical word, or we're going to say, well, they said
12:57:35 20 it was asbestos, they don't know what asbestos means.

12:57:37 21 Or we're going to say the lawyers tampered with
12:57:39 22 the bottles. Like we could figure out how to find a couple
12:57:44 23 of fibers of tremolite and -- I know even know where you'd
12:57:50 24 find that, and wedge them down in there. That's absurd.

12:57:54 25 And I promise you if we were going to tamper, if

12:57:59 1 we're that dishonest that we'd put our bar card on the table
12:58:03 2 and say disbar me because I have done something. I mean,
12:58:07 3 you'd get disbarred over that in a heartbeat. If there are
12:58:11 4 lawyers who are doing that kind of a stunt, I hope they'd at
12:58:15 5 least be smart enough to put in asbestos that no one's ever
12:58:19 6 going to dispute. And put it into every stinking bottle and
12:58:23 7 not only half of them.

12:58:25 8 Well, maybe it was tested wrong. Yeah, it must be
12:58:30 9 an incorrect finding. There's no integrity there. And,
12:58:34 10 yes, he can -- he can argue, well, yeah, but Mr. Lanier
12:58:38 11 still, look the latency issue, that was fuzzy. No, it's
12:58:41 12 never been fuzzy.

12:58:43 13 Latency's a bell curve. And so you got the whole
12:58:47 14 range of that bell curve, and that's what the testimony has
12:58:50 15 been through each witness. And we know that the meat of the
12:58:53 16 bell curve is at that 40 years.

12:58:56 17 Johnson & Johnson's word games. Here's the one
12:58:59 18 that came to me while they were playing them today. Okay.
12:59:01 19 This is clearly my drawing and not Monica's or Rachel's.
12:59:07 20 That's not a dog, it's a Chihuahua. Okay, well a
12:59:12 21 Chihuahua's a dog. That's not asbestos, it's tremolite or
12:59:18 22 cleavage fragment.

12:59:21 23 It's a name game. The body doesn't know the
12:59:23 24 difference. You can play the geology name game, but when
12:59:29 25 you look at it a under a microscope, as we did get from

12:59:32 1 Plaintiffs' Exhibit 8495, that's what a fiber looks like
12:59:36 2 according to the National Institute of Standards for
12:59:39 3 Tremolite.

12:59:40 4 I showed one of those to their paid jukebox
12:59:45 5 Sanchez out of the book. I just didn't tell him where I got
12:59:49 6 it from. I said: Won't you agree that's a fiber? No, I
12:59:52 7 can't agree, that's not a fiber. Well, it's in the book.
12:59:56 8 Oh.

12:59:57 9 J&J's talc. Look at it. From Longo's tests, from
13:00:01 10 Rigler's test. That's tremolite. Same thing. Tremolite.
13:00:07 11 For Clara Webb. I mean, you can see it over and over and
13:00:10 12 over. The anthophyllite needles, over and over and over.
13:00:17 13 Over and over and over.

13:00:21 14 That's evidence, Mr. Bicks. That's evidence.

13:00:25 15 Tell you what I don't have evidence is on Johnson
13:00:28 16 & Johnson destroying the tests. He says Johnson & Johnson
13:00:31 17 tested a lot. Yeah, and they destroyed the samples. They
13:00:36 18 destroyed them. I'd like to -- he's upset Alice Blount
13:00:41 19 didn't keep her 1991 sample.

13:00:43 20 I'm upset they destroyed countless samples,
13:00:48 21 innumerable samples. They got none. They got none for 40
13:00:54 22 years of their testing they destroyed them all, and they
13:00:58 23 knew they were in litigation issues. Alice Blount wasn't
13:01:01 24 getting sued over her test. She's 80 years old. She'd
13:01:07 25 clean out her house when she moves. That's when she said

13:01:12 1 she lost it is when she moved and retired up in Vermont.

13:01:16 2 And then they lost and wouldn't -- or wouldn't
13:01:18 3 give you 30 percent of the results, not the samples,
13:01:23 4 destroyed all the samples, but the actual results. I didn't
13:01:28 5 do my three boxes, I got through about half a box before I
13:01:33 6 ran out of time, but I gave you plenty of highlights.

13:01:36 7 And then they use RJ Lee as the lab of last
13:01:39 8 resort. And he says, well, we told the FDA our results.
13:01:43 9 No. They never told the FDA. They told the FDA there had
13:01:48 10 never been asbestos. Yeah, you say, well, the Blount -- the
13:01:50 11 FDA could have read Blount. Blount said, it said "Sample
13:01:55 12 I." Blount gave them the code, not the FDA. They never
13:02:00 13 gave the FDA the code. The FDA did not know that Blount was
13:02:03 14 talking about Johnson & Johnson Baby Powder.

13:02:06 15 The FDA didn't have these documents that we've
13:02:09 16 shown you. I'm serious. You are the first people in the
13:02:12 17 world to see these documents. These are documents that can
13:02:16 18 now be made public because of this trial. But before this
13:02:20 19 trial we're not even allowed to share them with others.
13:02:25 20 Until they come into evidence in this trial.

13:02:30 21 Slight of hand --

13:02:31 22 MR. BICKS: Judge.

13:02:35 23 THE COURT: Let's proceed.

13:02:37 24 MR. LANIER: Is there anything other than,
13:02:38 25 Judge?

13:02:38 1 MR. BICKS: I was going to say the argument
13:02:40 2 has to be tethered to some reasonable interpretation of the
13:02:44 3 evidence.

13:02:45 4 THE COURT: Overruled. Let's proceed.

13:02:46 5 MR. LANIER: More slight of hand. Chinese
13:02:49 6 talc is good. No, it's not. Don't use it.

13:02:52 7 The people they had test it were RJ Lee, who their
13:02:56 8 own company they work with said it's too unqualified and
13:03:00 9 unsophisticated to do it. That serious science calls them a
13:03:05 10 whore.

13:03:10 11 The Lanier website. Really? I looked. I don't
13:03:16 12 see it on our website. I looked at the web address. I
13:03:19 13 don't see it on my website address, but I'll tell you this.
13:03:22 14 I'm going to tell you right now, I'm going to make it
13:03:25 15 public, go to the bank on it. Do not get your medical or
13:03:28 16 science advice off my website or anyone else's. Get it from
13:03:34 17 science sources. Not lawyers.

13:03:39 18 And if someone in my law firm had put that up
13:03:42 19 there improperly, shame on them, but it's not on there. I
13:03:45 20 went and looked.

13:03:47 21 FDA and others. No one's ever seen these
13:03:52 22 documents. That FDA document he's talking about that said
13:03:54 23 it doesn't need a warning label, said without evidence of
13:03:57 24 such, dot dot dot, no warning.

13:04:01 25 When this trial's over, I plan on sending a bunch

13:04:04 1 of this evidence to the FDA, and I'm really excited for them
13:04:07 2 to get it. I want to send your verdict with it too.

13:04:11 3 Doctor and science, Longo and science for hire.
13:04:15 4 You know, they made this big deal out of that white box. Of
13:04:18 5 course, we caught their people doing pretty dingy stuff, but
13:04:23 6 that's okay, destroying samples, ooh, but you take the white
13:04:26 7 box away nothing changes.

13:04:29 8 And Dr. Longo hadn't tested for them, but he said
13:04:32 9 he would. All they had to do was send it to them.

13:04:36 10 Asbestos or asbestiform. Dr. Moline, the FDA, the
13:04:42 11 American Thoracic Society, says none of that matters to the
13:04:46 12 human body. You see, what makes it asbestiform, I don't
13:04:50 13 know if you were tracking with this says, is it a 3-to-1
13:04:54 14 ratio? In other words, is it three times longer than it is
13:04:59 15 wide. If it's 2.99-to-1, they're going to say it's not
13:05:05 16 asbestiform.

13:05:06 17 Now, some places use 5-to-1 instead of 3-to-1. So
13:05:12 18 what's asbestos in one place is not in another.

13:05:14 19 The company likes 20-to-1. It all depends upon
13:05:21 20 who you're talking to and which method.

13:05:25 21 Next, the plaintiffs had to hear about this from
13:05:29 22 TV ads. To me that's one of the most compelling parts about
13:05:35 23 this case. The company should be telling people. People
13:05:38 24 shouldn't have to hear it off TV ads. If it takes TV ads,
13:05:42 25 then okay. But it shouldn't. It shouldn't.

13:05:48 1 The TV ads shouldn't have to drown out their
13:05:51 2 website where they keep saying no, no, no, and giving the
13:05:55 3 Nicholson line. Where they stick their head in the sand and
13:06:00 4 they says things like, oh, use -- the hand shadows, the SEM.
13:06:05 5 McCrone said don't do that. Mr. Bicks won't talk about
13:06:08 6 that.

13:06:08 7 They use the geology terms, not the medical terms.
13:06:12 8 They don't tell you about Dr. Blount's "Sample I." They
13:06:18 9 don't tell you about Johnson & Johnson won't agree to show
13:06:22 10 the testing documents. And I have to fight time wise for
13:06:26 11 each one I get into evidence.

13:06:31 12 You know, I look at all of this and it -- it
13:06:36 13 frustrates me as a lawyer. I don't know how to do this time
13:06:39 14 wise. Because I feel like -- this is what I feel like I'm
13:06:42 15 up against. I'm up against Mr. Bicks saying, let me say it
13:06:46 16 again and again and again and again, but saying it over and
13:06:50 17 over and over doesn't make it right. It just doesn't. It
13:06:56 18 doesn't make it right.

13:06:57 19 You know, yes, people inside the company. You had
13:07:00 20 two people inside the company that said they used this
13:07:04 21 talcum powder. They hadn't seen most of these documents.
13:07:08 22 They don't even know it.

13:07:11 23 I'm not saying you've got to say Dr. Nicholson is
13:07:14 24 a malicious woman. I'm not saying you have to say John
13:07:19 25 Hopkins is a malicious guy. I'm telling you, though, those

13:07:22 1 people back in the '70s in those documents knew it. A ton
13:07:26 2 of people know it.

13:07:27 3 Someone, and I wish we could ask the executives
13:07:30 4 who. Someone has made decisions in this matter and we don't
13:07:38 5 get them. And, yes, Mr. Bicks, I have the clients and my
13:07:44 6 patients and my friends stand up every time I get a chance
13:07:47 7 so y'all know who they are and you remember this is about
13:07:51 8 real people.

13:07:51 9 Mr. Bicks doesn't have his corporate
13:07:53 10 representative stand up because they don't show up to stand
13:07:57 11 up.

13:08:03 12 You know, I look at this and I ask myself, why do
13:08:06 13 you think punitive damages need to be assessed? Well, I'll
13:08:10 14 tell you, it's not hard to figure out because there is
13:08:14 15 punitive conduct.

13:08:15 16 I asked their final doctor, their cleanup hitter,
13:08:20 17 Dr. Holcomb. I said: Let's be real clear. Do you approve
13:08:24 18 or disapprove of putting asbestos in baby product?
13:08:27 19 Disapprove. He didn't pars with me. He didn't say, well,
13:08:30 20 it depends on what you call. He didn't say, well, it
13:08:32 21 depends on how much it is. He just said you don't do it.
13:08:34 22 You don't use dirty labs to test products.

13:08:38 23 Mr. Bicks said, well, that was just one time.
13:08:39 24 Uh-huh. They audited them one time. Haven't been back to
13:08:43 25 do it again. Had never done it before.

13:08:47 1 Destroying evidence of product safety or lack of
13:08:51 2 safety. Which they've been doing. Doesn't approve.

13:08:56 3 Science for hire where they have a right to
13:08:59 4 control the end product, like that Huncharek and Muscat
13:09:01 5 paper, which they don't want to talk about. Where they have
13:09:05 6 a right to look at it before it's published and approve and
13:09:09 7 signoff.

13:09:09 8 Failing to disclose conflicts in the journals like
13:09:12 9 Dana Hollins, their industrial hygienist woman. Marketing
13:09:18 10 products with asbestos as purest protection. He disapproves
13:09:23 11 of all these things. And yet that's the behavior of the
13:09:29 12 company.

13:09:30 13 He doesn't know it because they hand-selected
13:09:34 14 somebody. They didn't show him the documents. They didn't
13:09:38 15 show him. Oh, they showed Todd True. Todd True figured it
13:09:42 16 out and talked about how they make 70 million bucks a year
13:09:45 17 in the U.S. alone unsupported, and he wants to get rid of
13:09:50 18 it, but they won't.

13:09:52 19 So what do we have? This is what we're back down
13:09:55 20 to. We're back down to the damages. And I understand that
13:10:03 21 putting this up and walking through this brought some
13:10:07 22 emotion to my plaintiffs, I'm sorry I have to do it again,
13:10:10 23 but I want to make sure everybody's real clear that this is
13:10:14 24 the one time -- this is the one time you assess for these
13:10:16 25 people.

13:10:18 1 And I hope, I hope, I hope -- I don't want
13:10:23 2 sympathy. They don't want sympathy, they've got a lot of
13:10:27 3 sympathy. They don't want pity. And I don't want you to
13:10:31 4 give them pity.

13:10:33 5 They want justice. And not a penny more, but not
13:10:38 6 a penny less. That's what this is about.

13:10:43 7 And I don't know that I can fathom what they've
13:10:47 8 been through. Because I haven't been through it. I don't
13:10:50 9 know about the -- you know my mom is still alive. My dad
13:11:01 10 passed away 14 and a half years ago, and not a day goes by I
13:11:05 11 don't think about him. And I don't know how many more days
13:11:08 12 I've got with my mom, and I hope and pray it's a long time.

13:11:15 13 But I'll tell you this. No one should be facing
13:11:22 14 these issues. No one. And for this company to make an
13:11:27 15 insinuation that this is about money tells me one thing, it
13:11:36 16 is for them. Because it's the only reason they won't put a
13:11:41 17 warning on this product. It is the only reason.

13:11:47 18 It is the only reason they won't at least put what
13:11:50 19 my protein bar puts on that "may contain a trace." It is
13:11:55 20 the only reason, I'm trying not to pound the table, but I
13:12:00 21 want to pound the table. There's no other reason, there's
13:12:04 22 no other reason they won't pull this off the market, there's
13:12:10 23 none.

13:12:11 24 Talcum powder works no better than cornstarch.
13:12:16 25 Their documents say it. Their studies say it. The profit

13:12:20 1 margin just isn't as high. Get the same fragrance. Get the
13:12:26 2 same benefit. Get the same effect. There is no reason
13:12:30 3 except money.

13:12:32 4 So Mr. Bicks is half right when he says this case
13:12:35 5 is about money. But it's not about money because these
13:12:41 6 women have just gone out there and said, oh, gee, give me
13:12:45 7 that, I'd love to go through this. I'd love -- I promise
13:12:49 8 you it's not been fun. I promise you it's not been fun.
13:12:53 9 Yeah, it's about money. It's about money.

13:13:02 10 Please, please, please. Your voice is not the
13:13:06 11 voice of the community, it's the voice of the world. We
13:13:09 12 need to talk about this and this needs to be not just in
13:13:13 13 lawyer ads. This needs to be on the front page and people
13:13:16 14 need to understand that you don't -- you don't jack with
13:13:22 15 people's lives like this.

13:13:26 16 It's not fair to people who do business right. We
13:13:32 17 got a bunch of great companies. I represent a bunch of
13:13:35 18 companies. It's just not right.

13:13:37 19 Thank you, your Honor.

13:13:38 20 THE COURT: All right. Thank you,
13:13:39 21 Mr. Lanier. Ladies and gentlemen of the jury, it's now time
13:13:45 22 for you to return to your jury room, select a foreperson,
13:13:50 23 deliberate, and arrive at your verdicts.

13:13:53 24 Madam Clerk, would you please swear the sheriff?

13:13:56 25 (Deputy Hubbard was duly sworn by the deputy