

1 STATE OF SOUTH CAROLINA  
2 IN THE COURT OF COMMON PLEAS  
3 COUNTY OF RICHLAND

4 ROBERT DEE WEIST, INDIVIDUALLY  
5 AND AS PERSONAL REPRESENTATIVE  
6 OF THE ESTATE OF KATHY LYNN WEIST,

7 Plaintiff,

8 vs. C.A. No.: 2020-CP-40-01597

9 THE KRAFT HEINZ COMPANY and  
10 METAL MASTERS, INC.,

11 Defendants.

12 TRIAL  
13 BEFORE THE HONORABLE  
14 CHIEF JUSTICE (RET.) JEAN TOAL  
15 DAY 1 - AFTERNOON SESSION

16 DATE TAKEN: Monday, September 20, 2021

17 TIME START: 1:21 p.m.

18 TIME END: 5:17 p.m.

19 LOCATION: Richland County Judicial Center  
20 1701 Main Street  
Columbia, South Carolina

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1                    ---  
 2                    **PROCEEDINGS**  
 3                    ---  
 4                    **THE COURT:** Please be seated. A little bit  
 5 of housekeeping before we begin, and this is for  
 6 you, Madam Court Reporter. I will re-form the  
 7 caption of this case to read as follows: This is,  
 8 of course, 2020-CP-40-01597. The plaintiff remains  
 9 the same, Robert Dee Weist, individually and as  
 10 personal representative for the estate of Kathy  
 11 Lynn Weist, plaintiff, against, The Kraft Heinz  
 12 Company, H-E-I-N-Z, and Metal Masters, Inc.,  
 13 defendants.  
 14                    **THE COURT REPORTER:** Yes, Your Honor.  
 15                    **THE COURT:** All right.  
 16                    **MR. FROST:** Good afternoon, Your Honor.  
 17                    **THE COURT:** Mr. Frost.  
 18                    **MR. FROST:** Scott Frost on behalf of the  
 19 plaintiffs. Your Honor, we have worked through a  
 20 lot of issues, so I can report to the Court that  
 21 the parties are doing as you would expect in  
 22 working through them. There are a couple  
 23 procedural issues that both sides have. The first  
 24 one is on bifurcation of the trial as to punitive  
 25 damages. The defendants, I believe, would move to

1 do that.  
 2                    **MR. SHEALY:** Your Honor, may it please the  
 3 **Court. Your Honor.**  
 4                    **THE COURT:** Yes. Mr. Shealy, I can save you  
 5 some trouble. We will bifurcate the trial. I  
 6 always do that in asbestos cases, and the way I do  
 7 it is that at the close -- in the verdict form that  
 8 I give the jury, it only has an actual damage  
 9 verdict or verdict for the defendant, as the case  
 10 may be for various causes, and then at the end it  
 11 has a question that asks whether the jury by clear  
 12 and convincing evidence, finds, if they found for  
 13 the plaintiff, that the conduct of defendants  
 14 was -- or any defendant was willful, reckless, or  
 15 wanton. All right.  
 16                    And I give them a charge in my charges that  
 17 defines willful -- I mean defines clear and  
 18 convincing evidence for that finding only.  
 19                    **MR. SHEALY:** Yes, Your Honor.  
 20                    **THE COURT:** So that's how I have been  
 21 bifurcating in the past. Sometimes I get a little  
 22 blowback from one side or another, but that has  
 23 been my practice. So I will grant your motion, but  
 24 I do it on the basis I just described.  
 25                    **Mr. Frost.**

1                    **MR. FROST:** Yes, Your Honor. That's  
 2 agreeable to the plaintiff.  
 3                    **THE COURT:** Very good.  
 4                    **MR. FROST:** Your Honor, the other issue is a  
 5 procedural issue. As the Court correctly  
 6 instructed us this morning, we have very limited  
 7 time in both sides' cases. We have some  
 8 depositions that the plaintiff intends to use in  
 9 its case in chief, and there are some calendar  
 10 designations that, as I understand it, the  
 11 defendants are going to play.  
 12                    We would ask that we'd be able to play our  
 13 plaintiff's designations in our case and they play  
 14 theirs in their case so that we keep the time  
 15 frame, you know, appropriate, because we -- I know  
 16 the Court didn't actually install a clock, but  
 17 there is a clock. And so we'd like to play our  
 18 portions in our case, and their portions in their  
 19 case, so that the timing, you know, is fair, to be  
 20 honest.  
 21                    **THE COURT:** Which depositions specifically  
 22 are we talking about?  
 23                    **MR. FROST:** There are two corporate  
 24 representative depositions. It's Wiseman and --  
 25 the plaintiff's deposition, Your Honor, we have

1 come to agreements on, and the Court is not going  
 2 to have to rule on anything. And we're just going  
 3 to play the entire plaintiff Kathy Weist's  
 4 deposition. So that one is --  
 5                    **THE COURT:** The entire? You're not going to  
 6 cut.  
 7                    **MR. FROST:** Not the entire. We cut it down.  
 8                    **THE COURT:** You cut it down some. But you  
 9 will have both designations in there?  
 10                    **MR. FROST:** Correct. We were able to work  
 11 through that.  
 12                    **MR. SHEALY:** The only issue with that  
 13 deposition that remains is what is, in essence, the  
 14 defendant's cross is in the -- what's -- what is  
 15 captioned as the discovery deposition. We would  
 16 ask to be able to play the cross immediately  
 17 following the plaintiff's presentation of what's,  
 18 in essence, the direct -- it's about 30 minutes --  
 19 and rather than having the cross be played in our  
 20 case in chief. We just think that comports with  
 21 Rule 106 of the Rules of Evidence and Rule 32A4 and  
 22 also just the normal way we try a case.  
 23                    **THE COURT:** Well, normally the way you'd try  
 24 a case would be that you would have the plaintiff's  
 25 direct, the defendant's cross, and then the

1 plaintiff's reply. All right. And it sounds like  
 2 this might vary that a little bit.  
 3 MR. COSCULLUELA: Well, I think that's what  
 4 plaintiff's counsel is suggesting. With the  
 5 defense -- I think Metal Masters -- and Kraft Foods  
 6 would be the plaintiff to the direct in their case  
 7 in chief and the cross-examination to be played two  
 8 or three days from now when the jury has forgotten  
 9 about the direct examination and the cross will be  
 10 out of context.  
 11 THE COURT: I understand. But there won't be  
 12 the opportunity -- if they play it in their case,  
 13 the last word the jury will hear is your  
 14 cross-examination of the plaintiff rather than  
 15 their redirect. So how are we going -- I imagine  
 16 that's what they've got heartburn about.  
 17 MR. COSCULLUELA: Your Honor, we've done  
 18 that -- I don't think that's the source of the  
 19 heartburn. The source of the heartburn of the  
 20 other side is that the cross-examination of Kathy  
 21 Weist, and they don't want that 20, 30 minutes in  
 22 length to have deducted from their clock.  
 23 With respect to some of the other witnesses,  
 24 what we've done is one side has designated a  
 25 direct, the other side designates the cross, and

11

1 really streamlined it down. And having to play a  
 2 couple hours extra of their designations in our  
 3 case creates difficulty for us in making sure that  
 4 we strictly comply with the Court's ruling, which I  
 5 fully intend to.  
 6 THE COURT: What about that, Alex? I mean, I  
 7 understand what -- they don't want you to eat up  
 8 all of their time with your cross-designations  
 9 cause.  
 10 MR. COSCULLUELA: Right. Well, Your Honor,  
 11 every good defense lawyer knows you're best off  
 12 getting your witness off the witness stand as soon  
 13 as possible.  
 14 But that being said, if the Court is inclined  
 15 to go this way, then what I would suggest is that  
 16 we keep a clock and for the cross-examinations, the  
 17 defense cross-examinations of plaintiff's witness  
 18 that are played in plaintiff's case in chiefs --  
 19 chief, you deduct the time from us. And what's  
 20 good -- what's sauce for the goose is sauce for the  
 21 gander. And when we call a witness by deposition  
 22 in the defense case in chief or the defense's case  
 23 in chief, the cross-examinations by plaintiff are  
 24 deducted from their time.  
 25 THE COURT: Well, I have had to do it -- to

1 then the party who calls the witness plays a  
 2 portion of the redirect. In fact, we've got two  
 3 witnesses, at least, that we've offered redirects  
 4 on.  
 5 THE COURT: So what are you going to do about  
 6 the corporate rep? We kind of jumped into this  
 7 plaintiff thing and started on corporate reps.  
 8 What's going to happen to corporate reps? You're  
 9 going to play some in his and some in yours?  
 10 MR. COSCULLUELA: No, Your Honor. The way  
 11 I've always done this is the direct examination  
 12 occurs and then the cross-examination occurs  
 13 immediately thereafter. If the plaintiffs want to  
 14 put on a corporate rep in their case in chief, they  
 15 need to keep the direct in such a manner --  
 16 THE COURT: I haven't done it that way  
 17 before. I've done -- for corporate reps, I let  
 18 you-all play what you want to play and then let --  
 19 I've done it a lot of different ways. I'll put it  
 20 that way.  
 21 MR. FROST: Your Honor, the real heartburn  
 22 is -- there's two things, and I think the Court is  
 23 right in the procedural part. The concern from our  
 24 side is really the timing. This case does have  
 25 more witnesses than last week's case, and we have

12

1 slice it to that fine of gravy, to be honest with  
 2 you. But my guess is that timing is part of it,  
 3 and having all your stuff in their case is another  
 4 part of it. So I think it's probably both things.  
 5 I am inclined to just say that, on both  
 6 sides, you play what you want to and the other side  
 7 plays what they want to and you play it in your  
 8 case. How difficult is that going to be with these  
 9 corporate reps? How many corporate reps are --  
 10 you-all have a corporate rep from both Heinz and  
 11 Metal Masters?  
 12 MR. COSCULLUELA: Yes, there's one from each  
 13 company.  
 14 THE COURT: And how are you planning to  
 15 handle that? Are you going to have them live, or  
 16 are you going to have them --  
 17 MR. COSCULLUELA: Your Honor, the way I've  
 18 always done it in the past -- and I know we're in  
 19 uncharted waters because of the time constraints,  
 20 but the way we've done it in the past is the  
 21 plaintiff -- what I said earlier: The plaintiff  
 22 calls the witness in their case in chief; the  
 23 cross-examination comes thereafter. It's just a  
 24 matter of the balance and the ying and yang of the  
 25 thing so the jury comes to learn what the actual

1 testimony is or what the crux of the witness's  
 2 deposition testimony is.  
 3 THE COURT: So what are you -- what you're  
 4 doing is loading their case with all the corporate  
 5 reps' testimony because you want both sides of that  
 6 in their case and their plaintiff and your stuff  
 7 all in their case.  
 8 MR. COSCULLUELA: Your Honor, what I was  
 9 going to suggest is with respect to the corporate  
 10 reps, we put them on live. I don't know why we put  
 11 on video if the corporate reps are here and  
 12 available to testimony live and in person in front  
 13 of the jury.  
 14 THE COURT: Which means that -- I mean,  
 15 they're going to have some things they're going to  
 16 put up about the corporate reps as well. Am I  
 17 right or wrong?  
 18 MR. FROST: Yes, Your Honor.  
 19 THE COURT: And I imagine they want to put  
 20 them up in their case in the discovery depositions,  
 21 and then you-all can do the best you can to explain  
 22 it away with your live testimony.  
 23 MR. FROST: Correct.  
 24 THE COURT: I think that's what they're  
 25 planning to do with the corporate reps. And the

15

1 testimony, right? I mean, this -- Ms. Weist is no  
 2 longer with us, correct?  
 3 MR. COSCULLUELA: Correct, Your Honor.  
 4 THE COURT: This is a deceased witness.  
 5 MR. COSCULLUELA: Correct.  
 6 THE COURT: We'll split it up. I'm going to  
 7 let them put in what they want to put in, and you  
 8 can put in what you want to put in.  
 9 MR. COSCULLUELA: And the part we put in will  
 10 come in in the defense case in chief?  
 11 THE COURT: That's correct.  
 12 MR. COSCULLUELA: Understood, Your Honor.  
 13 THE COURT: Now, on the corporate reps, you  
 14 know, I don't mind them putting in deposition or  
 15 whenever they want to put in the corporate reps in  
 16 their case, but you've got the perfect right to put  
 17 the corporate reps up live.  
 18 MR. COSCULLUELA: Of course.  
 19 THE COURT: So that's the way I would handle  
 20 it.  
 21 MR. COSCULLUELA: Understood, Your Honor.  
 22 THE COURT: All right. What else?  
 23 MR. FROST: Your Honor, the next issue is a  
 24 scope issue as to opening statements. You r Honor,  
 25 may I approach?

1 question is, if you're going to do that on the  
 2 corporate reps, then, you know, why not split it up  
 3 on the plaintiff as well.  
 4 MR. COSCULLUELA: Your Honor, respectfully, I  
 5 would request if you're inclined to make that  
 6 decision with respect to the corporate  
 7 representatives, it's imperative to the defense  
 8 that the jury hear the cross-examination of the  
 9 plaintiff during the plaintiff's case in chief.  
 10 THE COURT: What's so imperative about it?  
 11 MR. COSCULLUELA: So that the jury -- because  
 12 at the end of the day, when the jury goes home  
 13 and -- the members of the jury go home, they can  
 14 sort it out in their night -- they can sort it out  
 15 as they're falling asleep as to what they heard.  
 16 THE COURT: Well, I mean, they've got a  
 17 rebuttal. All right. If they've got time to put  
 18 it on.  
 19 MR. COSCULLUELA: Your Honor, that's -- what  
 20 you're doing is you're -- they do have a right to  
 21 rebuttal, and they can put that on in their  
 22 rebuttal case. But we still get to put our  
 23 cross-examination on during the plaintiff's case in  
 24 chief.  
 25 THE COURT: This is all deposition-type

16

1 THE COURT: Yes. These are the battle of the  
 2 PowerPoints?  
 3 MR. FROST: Your Honor, these are PowerPoint  
 4 slides, and both sides have agreed on basically  
 5 everything. The only question is, I believe, that  
 6 these slides raise the issue as to other defendants  
 7 in this case.  
 8 As the Court may remember from the MSJ  
 9 hearings, one of the long-term employees of  
 10 Mrs. Weist's father was Daniel Construction . And  
 11 the way these slides I think are structured is it's  
 12 going beyond the line as to what they should be  
 13 able to argue as to their defendant. And it raises  
 14 the issue of other defendants. They can argue till  
 15 the cows come home that her exposure at Louis Rich  
 16 was not a substantial contributing factor because  
 17 it was of small time, small duration; it wasn't  
 18 enough; it didn't happen; whatever they want to  
 19 argue as to their particular client. But in  
 20 regards to these slides, it raises not only in the  
 21 jury's mind, but as to everybody else's mind, as to  
 22 other defendants and other defendants that were in  
 23 this case. And so we object to that.  
 24 THE COURT: Which one are you talking about?  
 25 MR. FROST: Well, Your Honor, the last one.

1 It's the pie. It's got the percentage. Louis Rich  
 2 versus everywhere else.  
 3 MR. COSCULLUELA: No, that's not what it  
 4 says, Your Honor. It says exposure. It says  
 5 Kathy's exposure, and that's Mrs. Weist.  
 6 THE COURT: Kathy's risk. Husband is  
 7 insulator expressed in percentages. We're not --  
 8 what does insulation have to do with any of this?  
 9 MR. COSCULLUELA: What does insulation --  
 10 THE COURT: Yes, is insulation involved in  
 11 all the exposures, the take-home exposures?  
 12 MR. COSCULLUELA: Yes, from the father and  
 13 from the work at Louis Rich.  
 14 THE COURT: And this case is a case about the  
 15 exposure from her father or from her husband or  
 16 from both?  
 17 MR. FROST: It's from both, Your Honor.  
 18 MR. COSCULLUELA: It's from both.  
 19 MR. FROST: They for a period of time both  
 20 worked at Louis Rich; and there's a factual dispute  
 21 as to what the work was that they did, but it's not  
 22 a factual dispute that they were both present at  
 23 the Louis Rich worksite.  
 24 MR. COSCULLUELA: Your Honor, Mrs. Weist  
 25 didn't have any exposure through her father while

1 to concern yourself only with the people that are  
 2 in front of you, and you have to decide whether the  
 3 exposure from their products was a substantial  
 4 factor in the development of mesothelioma. And if  
 5 it was, fine. If it was not, then it was not. If  
 6 it were a substantial factor, then you will award  
 7 full damages for what the -- what the exposure  
 8 caused, and you leave it to the judge after the  
 9 jury finishes with this case to sort out the  
 10 contributions among joint tortfeasors.  
 11 The way you got this thing set up right now,  
 12 you want them to decide the contributions as a  
 13 factor in deciding about the exposure; and the  
 14 exposure, as I understand the way experts describe  
 15 it, is -- is a substantial factor test, Henderson  
 16 and my new favorite case in all the world, Judge.  
 17 MR. COSCULLUELA: Understood respectfully,  
 18 Your Honor. Substantial contribution to causation.  
 19 Substantial in relation to what?  
 20 THE COURT: Substantial in relation to the  
 21 contraction of the disease. It has to do with the  
 22 science of what causes mesothelioma. Some experts  
 23 say, oh, if it's not the bad asbestos, none of it  
 24 caused it. You-all -- if you've got insulators,  
 25 you're far away from that because you've got the

1 her father worked the Louis Rich plant. That work  
 2 took place on alternating weekends for about six  
 3 months. And she was no longer living with her  
 4 father, her mother; she was living with her  
 5 husband, Robert Weist. And all we seek to do is to  
 6 demonstrate that the risk of disease to Mrs. Weist  
 7 came less than 1 percent from the alleged exposures  
 8 at Louis Rich and that the overwhelming majority of  
 9 her risk, 99 percent or more, came from her father.  
 10 There's not a mention of the father's employer.  
 11 There's no party identified. It's just that the  
 12 overwhelming majority of her exposure, and in  
 13 consequence, her risk, came through the father.  
 14 THE COURT: That's -- that is not something  
 15 that we're going to be able to try here. What is  
 16 being tried here is one thing and one thing only:  
 17 Did exposure from Metal Masters or from Heinz --  
 18 was exposure from those two defendants a  
 19 substantial factor in developing mesothelioma? And  
 20 the fact that she had 90 percent exposure from  
 21 someplace else is not something we're trying here.  
 22 That violates Smith versus Tiffany big-time.  
 23 What we tell the jury -- or the way the jury  
 24 is charged is, in essence, this -- and I'll say it  
 25 exactly this way, but it amounts to this: You are

1 kind of asbestos that clearly causes mesothelioma.  
 2 You haven't got this I'm-hiding-behind-the-  
 3 chrysotile, have you?  
 4 MR. COSCULLUELA: This is not a friendly  
 5 fiber case. It is not a friendly fiber chrysotile,  
 6 Your Honor.  
 7 THE COURT: That's correct. And so you've  
 8 got the science and whatever it says about how much  
 9 exposure it takes to develop mesothelioma. Some  
 10 say it's each and every exposure is a contributing  
 11 factor and a substantial contributing factor, and  
 12 some say different. But you do not prove it by  
 13 saying -- and a little slice could cause it. And  
 14 you don't try to negate that testimony by talking  
 15 about all the other exposures from other insulating  
 16 places where you worked. That's not allowed, as I  
 17 understand it. And I've never tried a case where I  
 18 allowed that.  
 19 MR. COSCULLUELA: Understood, Your Honor.  
 20 Respectfully disagree, but I understand.  
 21 THE COURT: Okay. So all right -- yeah.  
 22 See, what you're doing is, this dose -- the '94,  
 23 this dose exposure, all this is aimed at saying  
 24 we're a little teeny factor in a bigger picture of  
 25 all this other bad exposure. I don't think you can

1 try it like that. So the pie and these structures  
2 are clearly out of the timeline. What do you say  
3 about the timeline?

4 MR. FROST: Your Honor, I still have the same  
5 objection to the timeline, because what it does is  
6 it implies that all these other exposures, not the  
7 one individual that we're supposed to focus in on,  
8 somehow contributed or they're more substantial  
9 than the exposure at Louis Rich. So it's the same  
10 issue.

11 MR. COSCULLUELA: Your Honor, what plaintiff  
12 counsel is suggesting is that the jury doesn't get  
13 to hear about the 20 years of exposure of household  
14 contacts with exposure that Mrs. Weist had as a  
15 toddler, a child, an adolescent, a teenager, until  
16 she married Robert Weist at the end of 1977.

17 MR. FROST: Your Honor, I think that's the  
18 law in South Carolina. The question before the  
19 jury is going to be, was the exposure at Louis Rich  
20 a substantial factor.

21 MR. COSCULLUELA: Your Honor, if I may, can I  
22 hand you one of plaintiff's answers to  
23 interrogatories?

24 THE COURT: Sure.

25 MR. COSCULLUELA: Actually, it's the

1 Exhibit A or Appendix A to plaintiff's  
2 interrogatories. In the asbestos world, it's  
3 called a work history sheet. But this is the  
4 portion -- this is the portion that is -- that  
5 demonstrates where the causative exposures came  
6 from.

7 The truth is, Mrs. Weist -- Mrs. Weist's  
8 diagnosis wouldn't occur for another 40 years, her  
9 diagnosis was fixed by the time she married  
10 Mr. Weist, and that's the defense.

11 THE COURT: Who says that?

12 MR. COSCULLUELA: Dr. Victor Roggli,  
13 Dr. Howard Cohen, the two defense experts.

14 MR. FROST: Your Honor, that flips  
15 substantial factor causation on its head, because  
16 the question is, is what did this particular  
17 defendant contribute to her case and was it  
18 substantial, their contribution. Not that every  
19 other individual, whatever -- the other exposures  
20 she had, whether those also contributed just  
21 because they might be more substantial. That is  
22 just not the law in the state of South Carolina.  
23 Because the issue that the jury has is very  
24 singular and focused as to whether, in this  
25 particular case, these particular exposures

1 contributed to her risk. Period. And anything  
2 else raises the issue as to what other defendants  
3 were around and things like that.

4 MR. COSCULLUELA: Your Honor, it's curious  
5 that you're hearing discussion and argument from a  
6 Texas and California lawyer and a Texas lawyer,  
7 Mississippi and Louisiana lawyer on this issue.  
8 But the fact is, South Carolina recognizes the  
9 empty chair defense, and that's all we're looking  
10 to prosecute during our case.

11 THE COURT: So the empty chair defense is not  
12 a comparative thing. Let's talk about empty chair  
13 for a moment. The empty chair defense is a very  
14 different thing. It says, hey, whatever happened  
15 to this person was totally caused by another cause,  
16 and no -- no matter what happened with this  
17 particular defendant that's here now, the other is  
18 the total cause of what happened. That's the empty  
19 chair.

20 MR. COSCULLUELA: That's what we're arguing,  
21 Your Honor.

22 THE COURT: I'm going to tell you one thing  
23 that I'm unhappy about. We had a big pretrial.  
24 Now I'm three minutes away from bringing this jury  
25 in. Why was this not explored with me when we had

1 a pretrial on September the 8th so I would have  
2 plenty of time to decide this thing instead of  
3 having it sprung on me at the last minute. You-all  
4 were there. We talked about a whole lot of things.  
5 You never talked about this.

6 MR. COSCULLUELA: Your Honor, I don't think  
7 any of us was aware this was an issue.

8 THE COURT: Oh, man. I tell you what, you  
9 didn't listen to my constant citing of Smith versus  
10 Tiffany and my discussion of inability to talk  
11 about defendants and so forth and so on, because  
12 that was talked about extensively.

13 MR. COSCULLUELA: I did hear that. And  
14 that's why those slides, the pie-chart slide, was  
15 modified in accordance with what you said. It used  
16 to say Daniel -- exposure through Daniel  
17 Construction.

18 THE COURT: Well, gosh, that gives me a lot  
19 of comfort.

20 MR. FROST: That proves my whole point, Your  
21 Honor. I mean, that's -- a horse by another name  
22 is still a horse.

23 THE COURT: I do not want to have this  
24 projected in this way to this jury on opening. I  
25 don't mind your talking about previewing what

1 Roggli and those are going to say, but I don't want  
2 it done in this comparative way. I want to see how  
3 the testimony develops. And frankly, I'm going to  
4 go back this evening and look again at  
5 South Carolina's authorities on the subject,  
6 including Jolly itself. Because I charged exactly  
7 what I'm telling you now in that case, and it was  
8 upheld, and we had all kinds of different exposures  
9 going on, as we generally do in all of these other  
10 cases I have.

11 MR. COSCULLUELA: Understood. And, Your  
12 Honor, I'm also mindful that Jolly cited very  
13 favorably, with a block quote, the Havner decision  
14 from Texas that I'm very familiar with, and so is  
15 Mr. Frost. The Havner decision is -- the Havner  
16 decision, for what it's worth, I think, is the next  
17 step in the evolution of asbestos law in the state  
18 of South Carolina. It's only because there was a  
19 heck of a lot more of it in Texas that we might --  
20 you know, we might --

21 THE COURT: You know, the evolution as it  
22 stands right now is on the issue we're talking  
23 about right now is Smith versus Tiffany.

24 MR. COSCULLUELA: Yes.

25 THE COURT: Machin versus Carus and Carus,

1 Inc., or Carus, Inc. versus Machin Corp, however  
2 that is, and Jolly. That's the latest and the  
3 greatest here.

4 MR. COSCULLUELA: Okay.

5 THE COURT: And I don't think it goes this  
6 far. But I'm not closing the door to this, and I  
7 don't want to interfere with a true empty chair  
8 defense. But please give me some wiggle room on  
9 this, as you present your opening arguments to the  
10 jury, so that I don't get foreclosed or have to  
11 interrupt you.

12 MR. COSCULLUELA: Your Honor, can I use --  
13 can I use the slide that's got the table  
14 information on it? I think it's Defense K,  
15 Exhibit 94.

16 THE COURT: No. That's the one that's got  
17 the comparative fiber count in it. Father's work,  
18 husband's work, millwright. Blah, blah, blah.  
19 That's -- I mean, that's the very thing that I'm  
20 saying -- that troubles me about the pie charts,  
21 any different from that.

22 MR. COSCULLUELA: So you're not -- I want to  
23 make sure I understand the Court's rulings before I  
24 sit down and you excuse me.

25 THE COURT: I don't want these charts to be

1 used. The answer doesn't persuade me too much  
2 because they truthfully answered what you asked.  
3 And I would have to see what was asked, but I would  
4 imagine what was asked is, tell me about all the  
5 exposures he ever had. So that doesn't answer the  
6 dilemma that I'm facing right now.

7 MR. COSCULLUELA: Okay.

8 THE COURT: I will go this far: I will allow  
9 you to use the timeline.

10 MR. COSCULLUELA: What about the -- what  
11 about the Kathy Weist --

12 THE COURT: If that doesn't satisfy you, then  
13 don't use any of them. Okay?

14 MR. COSCULLUELA: I'll use the timeline, Your  
15 Honor. Thank you.

16 THE COURT: And you know, I just -- use that  
17 to talk about, you know, how long she was at home  
18 and then when she got out, but I don't want a whole  
19 lot of discussion about empty chairs in this  
20 opening statement until I can figure out whether  
21 you've got a true empty chair going or whether  
22 you've got an attempt to discuss contributions of  
23 joint tortfeasors, which is not permitted.

24 And it doesn't have anything to do with  
25 Texas's law. They've got something -- very

1 different law about contribution than we do,  
2 completely different.

3 MR. COSCULLUELA: What about the slide --  
4 what about the slide with the Metal Masters's  
5 invoices?

6 MR. FROST: I didn't object to that.

7 MR. COSCULLUELA: Okay. What about the one  
8 that's entitled "Substantial Factor," Your Honor,  
9 where I read to the jury --

10 THE COURT: I haven't seen anything but these  
11 ones that Mr. Frost sent up to me.

12 MR. COSCULLUELA: Here you go, Your Honor.

13 THE COURT: But I'm not going through your  
14 whole presentation now.

15 Mr. Frost, do you object to this?

16 MR. FROST: Your Honor, I didn't object to --

17 THE COURT: He hasn't objected to it. The  
18 ones he's objected to are these, which I don't want  
19 you to use, including the timeline. If you've got  
20 other ones that you want to use about Metal Masters  
21 and so forth that he hasn't objected to, you can  
22 use them.

23 MR. FROST: I just want to be clear. The  
24 court is not allowing the interrogatory that the  
25 Court has a copy of in opening?

1 THE COURT: Yes. That's correct.  
 2 MR. FROST: Thank you, Your Honor.  
 3 And, Your Honor, I don't think there's any  
 4 other issues that we have to address before we  
 5 bring the jury in, from the plaintiff's  
 6 perspective.  
 7 THE COURT: Okay. How about from the  
 8 defense? Anything else?  
 9 MR. SHEALY: Nothing else from the defense.  
 10 THE COURT: At this time. Very good. Bring  
 11 me the jury.  
 12 Madam Bailiff.  
 13 I think the way we --  
 14 (Off-the-record discussion.)  
 15 ---  
 16 (The jury entered the courtroom at 1:52 p.m.)  
 17 ---  
 18 THE COURT: Do I have the jury?  
 19 THE BAILIFF: The jury is seated, Your Honor.  
 20 THE COURT: Very good. Ladies and gentlemen  
 21 of the jury, we are about to commence the trial.  
 22 I've put on the record that our two forepersons are  
 23 Selena Brown-Miller, and you're the one up front?  
 24 THE JURY FOREPERSON: Yes, ma'am.  
 25 THE COURT: And Rebecca Lyons, and you're in

1 the center. And I simply put you two forepersons  
 2 here where I can see them easily. But don't -- any  
 3 of you that need to be in touch with your  
 4 foreperson about any questions you've got or things  
 5 I need to know about, well, you just communicate  
 6 with them and it will come right to me, either sent  
 7 in from your jury rooms or, you know, hand it to  
 8 her in the note.  
 9 I allow jurors to take notes. So I'm just  
 10 saying that to you now. And the staff will supply  
 11 you with some little tablets and so forth to take  
 12 notes. I'll read you, if I can find it here  
 13 momentarily, my charge on note-taking.  
 14 But essentially it's this: Notes for  
 15 areas -- frankly, I take a lot of notes because it  
 16 keeps me awake and focused on what's going on. But  
 17 remember that they're for you and for you alone;  
 18 they're not a substitute for what you've heard and  
 19 what your colleagues have heard, but they're a good  
 20 way of kind of keeping up.  
 21 You will hear things that sound so technical  
 22 in this trial, mesothelioma and other things,  
 23 they'll be rolling off your tongue like you were  
 24 born in medical school after you've been in this  
 25 courtroom for a day. So don't be intimidated by

1 them. You will quickly get the feel for these  
 2 things. Yes, these asbestos cases -- and this is  
 3 one -- are technical. But good common sense, I  
 4 have found, from jurors who are bright as you all  
 5 are, can cut right through to understand this.  
 6 I, of course, give you the law in this case,  
 7 but you are the sole judges of the facts. You are  
 8 the sole judges of the credibility of the  
 9 witnesses. So you have a very central and very  
 10 important role in sorting through the testimony in  
 11 this case. And I will assure you, don't be  
 12 intimidated by it. You are up to the challenge. I  
 13 assure you of that.  
 14 So thank you very much. And ladies and  
 15 gentlemen, you may be seated, and we will now  
 16 proceed with opening arguments of counsel.  
 17 The plaintiff, Mr. Frost, will you give the  
 18 opening.  
 19 MR. FROST: Yes, Your Honor.  
 20 THE COURT: You are recognized, sir.  
 21 MR. FROST: Thank you, Your Honor. May it  
 22 please --  
 23 THE COURT: Oh, well, you have not been  
 24 sworn. Let's take care of that right now. Will  
 25 you stand and raise your right hands, and the clerk

1 will administer the oath.  
 2 (The jurors are sworn.)  
 3 THE CLERK: You may be seated.  
 4 THE COURT: Mr. Frost, you may proceed.  
 5 MR. FROST: Thank you, Your Honor. Your  
 6 Honor, may it please the Court, counsel.  
 7 And, Your Honor, may I remove my mask?  
 8 THE COURT: Yes. When the counsel is  
 9 speaking to you, ladies and gentlemen of the jury,  
 10 and when the witnesses are speaking to you, they  
 11 will remove their mask so you can hear them a  
 12 little bit better; but I think you are distanced at  
 13 a safe spot. If you have any concerns, please tell  
 14 me immediately.  
 15 You may proceed, Mr. Frost.  
 16 MR. FROST: Thank you, Your Honor. I  
 17 appreciate it.  
 18 What brings us to the courthouse in Columbia  
 19 today are the safety rules that protect us all from  
 20 cancer. These rules, like all safety rules,  
 21 protect us when jurors choose to enforce them.  
 22 Now, this case is about asbestos and  
 23 mesothelioma. According to the Center for Disease  
 24 Control, between the years of 1999 to 2015, there  
 25 have been a total of 45,221 malignant mesothelioma



1 deaths, and those have increased up until 2015,  
2 which is the last time that these particular  
3 numbers were kept.

4 And what we have seen is, as over time,  
5 something we thought was going away, malignant  
6 mesothelioma, is actually increasing. And one of  
7 the things that you're going to find out is why it  
8 is increasing is because what we have found is that  
9 with very, very low exposures to a toxin called  
10 asbestos, that you're going to learn a lot about,  
11 we're getting more cases.

12 And so what your job in this particular case  
13 is going to be: To put together the pieces. Now,  
14 this is going to be actually a very simple job, and  
15 this is a very simple case. You're going to hear  
16 all about asbestos. You're going to learn about  
17 what asbestos is. You're going to hear about how  
18 when you breathe asbestos, what happens to your  
19 body. You're going to find out what diseases  
20 asbestos causes, and you're also going to hear  
21 about cancer. And unfortunately, in this  
22 particular case, you're going to hear about the  
23 death of our client, Kathy Weist.

24 But it is going to be a simple case. And our  
25 job as the lawyers in presenting the case is to

1 keep it as simple as it can be in letting you  
2 understand and come to the right conclusions in  
3 this case.

4 Well, how do you do that? What are we going  
5 to present? Well, folks, there's three parts to  
6 this story. The first part to the story is going  
7 to be about what is asbestos, how asbestos gets in  
8 the body, what it does to you. The second part is  
9 going to be about what happened with these  
10 particular defendants -- hopefully that will stay.

11 (Laughter.)

12 THE COURT: Mr. Frost, you are going to have  
13 to bring that microphone to you a little bit  
14 because that helps the court reporter pick you up.

15 MR. FROST: Oh, okay. Thank you, Your Honor.

16 Does that work?

17 THE COURT REPORTER: Yes, sir.

18 MR. FROST: Just let me know. I try to  
19 project.

20 Where was I? Three parts to the story. What  
21 is asbestos? How is it asbestos? The second part  
22 to the story is going to be about what these  
23 particular defendants are in front of you, what  
24 they did. And then the third part to the story is  
25 going to be about the devastation that this disease

1 has caused to local folks.

2 So why are we here? Well, The Kraft Heinz  
3 Company is one of the defendants here that's  
4 represented by the good folks sitting over at that  
5 other table, and they brought in some really good  
6 lawyers. Great lawyers. You're going to hear from  
7 some of the best asbestos lawyers in this country  
8 in this case.

9 And they're sitting over there representing  
10 The Kraft Heinz Company. And what are they going  
11 to be defending against? Well, you're going to  
12 hear about Louis Rich, and Kraft Heinz now owns  
13 them. They're part of The Kraft Heinz Company.  
14 And you're going to hear about exposures out of the  
15 Louis Rich plant, and you're going to hear about  
16 how that occurred and when that occurred; and what  
17 you're going to hear is that Kathy's father worked  
18 out at that Louis Rich plant.

19 Now, he didn't work out there full-time all  
20 the time. Louis Rich is one of those turkey plants  
21 where it only -- you could only do maintenance  
22 activity, which is what he was doing out there, on  
23 weekends primarily because the plant is running a  
24 five-day work schedule, and you can't do any  
25 maintenance out there while the plant is working

1 because it's a USDA plant, and they don't want you  
2 generating dust and doing other stuff and get it  
3 into turkey. It makes sense. So they're going to  
4 be out there on the weekends doing work for a  
5 company called Metal Masters.

6 And you're going to wonder, well, how do we  
7 know, since Mr. Ford, who is Kathy's father, has  
8 passed away, well, how do we know he was actually  
9 out there? Well, folks, we know, first of all,  
10 because we're going to have testimony from  
11 witnesses, but we also have physical documents. We  
12 have employment applications where it shows that  
13 his work was out at Metal Masters.

14 And he was working as what we call a  
15 pipefitter. And a pipefitter does a lot of things,  
16 but mostly what they're going to be doing is  
17 working on pumps and valves and things; and in  
18 order to do that type of work, you have to remove  
19 what's called thermal insulation. And you'll hear  
20 about that.

21 You're also going to hear that at this time,  
22 when Kathy's father worked out at Louis Rich, he  
23 also took his son-in-law with him. And he took the  
24 son-in-law out there and he paid him, I think it  
25 was in cash, to go out there and work with him on

1 those weekends. And you might wonder, well, how do  
2 we know that he was out there too? Well, folks,  
3 we've got invoices and documents from Metal Masters  
4 where Metal Masters actually has Bob listed as one  
5 of the people that are working out there. So I  
6 don't think the issue is going to be whether they  
7 were out there or not, but I guess we'll see.

8 Now, what else are we going to be talking  
9 about in this case? Well, folks, these exposures  
10 happened, as you saw from that application, in  
11 1980. And dates are going to be important because  
12 1980, although it's a long, long time ago -- I'll  
13 wait while you get --

14 (Pads of paper are being passed to the  
15 jury.)

16 MR. FROST: Does everyone have a pad and  
17 pencil? Great.

18 And even though 1980 is a long, long time  
19 ago, some of us remember the '80s and the music of  
20 the '80s, and it was interesting.

21 But what you're going to find out, in this  
22 particular case is, by 1980, the dangers of  
23 asbestos are not only widely known, but there's  
24 federal regulations that tell you exactly how you  
25 have to work with it. And what you're going to

1 say, well, wait a minute; we know that today  
2 because of the internet age and all that stuff.  
3 No. Folks, you're going to have evidence in this  
4 case that in the 1900s there were organizations  
5 that were talking about, in order to protect  
6 families, you've got to make sure the workers don't  
7 take toxins home. You've got to make sure the  
8 workers are -- know that, listen, you can't take  
9 that stuff home. That dirty, dusty stuff can't go  
10 home. Because if it does, we could have the Kathy  
11 Weists of the world.

12 What are the other rules? Well, when a  
13 company does not keep a worker from doing that and  
14 somebody gets hurt, then the company is responsible  
15 for the harm. And that's just basic, simple -- our  
16 society has determined that when companies do harm,  
17 we bring them into civil court where you are right  
18 now. It's an important piece to how we, as  
19 Americans, regulate activity. You are here to  
20 regulate that activity and to enforce those rules  
21 as to make sure that this never happens again. It  
22 never should have happened in the first place, but  
23 you regulate that activity, and you do it right  
24 here.

25 And how do we know what The Kraft Heinz

1 find from the evidence in this case is, is that  
2 Kraft Heinz and Louis Rich and the Metal Masters,  
3 they had no written asbestos policies to deal with  
4 the asbestos that was in place there.

5 And you may say, well, how do we know there  
6 was asbestos in place? There are documents where,  
7 years later, they actually inspected the Louis Rich  
8 plant and they found asbestos chalked through it.  
9 None of it marked at that time.

10 So during the time when Kathy is being  
11 exposed through both her father and her husband,  
12 there's absolutely no indication that asbestos is  
13 in place out there. And this is in 1980, folks.

14 So when I say they skipped some important  
15 steps. Well, what are they? Well, folks, there  
16 are simple rules, simple rules about how you  
17 operate not only construction sites, but also how  
18 you operate plants, and then there's just common  
19 sense. So a lot of these rules that you're going  
20 to hear about are just common sense. And one of  
21 them is, you know, folks, when you hire somebody to  
22 work out at your plant, you make sure that when  
23 they leave the plant door, they don't take toxins  
24 home.

25 Now, these are very simple rules, and you may

1 Company knew? Well, we know -- folks, this is why  
2 1980 is so important. Because they will tell you  
3 that they knew in the 1940s asbestos was dangerous.  
4 40 years before any of this happened, they knew the  
5 stuff was dangerous; and not only did they know it,  
6 but they did nothing about it. No precautions at  
7 the Louis Rich plant prior to 1980, during 1980,  
8 and it wasn't until the end of the '80s that they  
9 actually did something.

10 And so what are you supposed to do when  
11 you're a contractor like Metal Masters? And Metal  
12 Masters, they have some really great local lawyers  
13 here; and I think some of the folks that represent  
14 Metal Masters, some of the corporate folks, are  
15 here, too.

16 Now, what are you supposed to do? Well,  
17 there's simple, basic rules. And you're going to  
18 hear that these rules about how you act on a  
19 workplace, what you do on a workplace, have been  
20 firmly established not only in this country, but in  
21 England and all over the world that is civilized as  
22 to how we handle workers and how we protect  
23 families. Because as I said before, it was known  
24 in the 1900s that you could take toxins home and  
25 get people sick. And you'll hear all about during

1 that time period.  
 2 And what are you supposed to do? Well,  
 3 you're supposed to research the dangers. Kind of  
 4 seems simple, right? You should go research and  
 5 find out, hey, we have people that are working with  
 6 asbestos; what's the dangers of it? If you go just  
 7 check the library -- folks, you know, a lot of  
 8 folks sometimes go, you know, well, we've got the  
 9 internet now, instantly we can get gratification;  
 10 we can find out things through Wikipedia. Well,  
 11 back in the day, you would go to a medical library,  
 12 and they had this thing called Index Medicus, and  
 13 basically it was Cliff Notes for anything you  
 14 wanted to know.

15 And then there were books, industrial hygiene  
 16 books, that talk about, hey, control the dust, make  
 17 sure asbestos is one of the dusts that you control  
 18 for. Here are certain levels that you may have.  
 19 Make sure you control those levels.

20 All of this was known. And by 1980, not only  
 21 was it known, folks, but it was the law. The law.  
 22 In 1972, OSHA was passed. And what does OSHA say  
 23 if you're doing spraying, demolition or removal?  
 24 That these are the rules you have to comply with.

25 What do you have to do? In 1972, if you're

1 that happen that do this, because these particles  
 2 of asbestos, they're very small; and not only are  
 3 they small, but as you would think, they're  
 4 microscopic, but they're also -- come from a rock  
 5 originally. And these microscopic particles, they  
 6 latch on to your clothes. So you could work with a  
 7 product -- and you're going to hear the testimony  
 8 that when these folks would come home, Kathy's  
 9 father and Bob, when they were working over at  
 10 Louis Rich, that they would come home and they  
 11 would have a lot of asbestos.

12 Now, at that time, Kathy was not living at  
 13 home, but her father and her father -- her husband  
 14 at the time -- well, her husband, until she  
 15 unfortunately passed, both drove in the same car.  
 16 Both brought it home.

17 And you will also hear about how during that  
 18 time, Kathy was doing all of the laundry. So not  
 19 only would she be exposed to her husband's clothes  
 20 and her father's clothes in the car where the  
 21 asbestos latches on, but when she would do her  
 22 husband's clothes, as she would shake it out, do  
 23 all those different things -- and you're going to  
 24 hear from her -- she was exposing herself yet  
 25 again. And you may think, well, wait a minute,

1 doing demolition of insulation with asbestos, not  
 2 only do you have to provide masks and respirators  
 3 to protect the workers, give them special  
 4 coveralls, Tyvek suits. You may have seen -- some  
 5 people call them spacesuits -- but also what are  
 6 you supposed to do? You're supposed to provide  
 7 them changing rooms, clothing lockers, laundering.  
 8 You never let that asbestos get out of your  
 9 worksite. Those clothes are bagged up in a bag  
 10 that says "asbestos" and "dangerous" and taken to a  
 11 special landfill. A special landfill. That's how  
 12 dangerous this stuff is.

13 So in 1972, that is the law. And while  
 14 you're reviewing this evidence, ask yourself, what  
 15 were they doing? What was Louis Rich doing in  
 16 1980? What was Metal Masters doing in 1980?

17 So that cuts us to the second part about  
 18 Kathy and how she breathed asbestos, and we talked  
 19 a little bit about that. We're going to go a  
 20 little bit in detail because a lot of times, folks,  
 21 sometimes people -- they don't understand how you  
 22 could be exposed to a toxin that you didn't work  
 23 with.

24 And it's well established in the medical and  
 25 scientific literature that there's simple things

1 folks, that doesn't seem like much.

2 The scientific literature is going to show  
 3 you and demonstrate that it doesn't take much  
 4 asbestos to cause this deadly disease. It's going  
 5 to be undisputed, I believe.

6 Well, you're going to hear a lot about what  
 7 Mr. Ford was doing out there. He was called  
 8 Bernard at Metal Masters. And you're going to  
 9 hear -- I believe some folks are going to question  
 10 what he was doing.

11 But here's what we have, folks. We have some  
 12 invoices -- now, there's a whole stack of invoices,  
 13 because in the legal process, you're allowed to ask  
 14 questions and say, "Listen, provide me all the  
 15 evidence you have." And so we asked and said,  
 16 please provide us, Metal Masters, all the documents  
 17 you have, and they provided us some.

18 And you're going to have some invoices, and  
 19 these are some of the invoices. And you're going  
 20 to see that these invoices talk about doing pipe  
 21 work and other type of pipefitter work.

22 And you're going to hear that what  
 23 pipefitters do is they basically take different  
 24 pieces of valves and pumps and move them, because  
 25 this whole system here, you're going to hear about

1 how it's made of pipes. And you're going to see  
2 there's piping everywhere. Because if you think  
3 about it, it's a turkey processing plant; and at  
4 the turkey processing plant, you have to have  
5 things that are really hot. There's things that  
6 are cold. But there's a lot of really hot things  
7 because you've got to -- honestly, I don't even  
8 understand it. It's kind of like when you have a  
9 soup and you've got to get it really hot so that it  
10 breaks down everything. That's really what it is.  
11 It's like a soup. You've got to break all this  
12 stuff down because they want that turkey to break  
13 down so they then can use it in all the other  
14 products.

15 So there's hot systems and cold systems, but  
16 what a pipefitter does is when those systems --  
17 they have valves and they have pumps because in  
18 order -- whenever you have a system, you have to  
19 have a pump. A pump is something that takes water  
20 or liquid or whatever the item is and pumps through  
21 it. And in order to do that, it needs a pump to do  
22 it. Because if you think, you've just got a bunch  
23 of lines running through.

24 So what he would have to do is he would do  
25 some of that work, and when you do that work, these

1 and his father was doing out there. And I'll tell  
2 you, you know, folks, I guess that's why we have  
3 juries. Because you'll get to decide whether they  
4 were working with asbestos or not.

5 But what happened in this case is, throughout  
6 this process you're going to hear from Metal  
7 Masters, they don't think they ever did any  
8 insulation work. Even though they're all  
9 pipefitters and millwrights, that's what those  
10 folks do, they relied only on pipes. And so they  
11 dispute whether there was insulation.

12 And so in that process, we've been looking  
13 for a lot of different folks, trying to figure out,  
14 okay, well, we've got physical evidence; we've got  
15 the fact that there's invoices out there; we've got  
16 employment applications; we've got asbestos being  
17 in place, all these things in writing; but, you  
18 know, how do we know Bob was really out there?  
19 Well, we know he's out there because we've got an  
20 invoice.

21 But how do we know what the work was? Well,  
22 fortunately, folks, the defendants, they found  
23 someone for us. And his name is Mr. Bryan  
24 Burroughs. And you know, he's the  
25 ex-brother-in-law, and he was originally a defense

1 pumps and these piping systems are insulated. And  
2 for many, many years -- and you will have documents  
3 that prove it at the Louis Rich plant -- there was  
4 asbestos thermal insulation. And there's documents  
5 that show us that there were pumps and valves and  
6 things that had to be worked on, and there's no way  
7 folks could ever work on those without removing  
8 insulation. It's just impossible.

9 And so you're going to hear about that work,  
10 and you're also going to hear that there's a lot  
11 more. I've only shown you a few. Because Metal  
12 Masters, they are a company that what they do is  
13 they sell themselves out to go to different  
14 jobsites, quite a few jobsites in the state of  
15 South Carolina and other states, where they come  
16 and they do pipe work.

17 And that's why they're called Metal Masters,  
18 because they put themselves out there as masters of  
19 metal. And part of what they're doing is they're  
20 installing metal throughout these, with pipes, and  
21 then you have to have these pumps and valves and  
22 other things put in between them. And you're going  
23 to hear about that.

24 And folks, I think you're going to hear a  
25 dispute as to what exactly was the work that Bob

1 witness, and he's going to testify that he  
2 remembers being out there during some of those time  
3 periods. He wasn't out there all the time because  
4 he was doing work, I think, for Duke Energy or some  
5 other contractor. But he remembers going out  
6 there, doing that same work, thermal insulation,  
7 asbestos out there just like our client's dad.

8 So I don't think that's going to be much of a  
9 dispute, but I guess we'll see, folks.

10 But not only do we have documents, but we  
11 have witnesses that talk about it. And why is all  
12 that important? Well, you're going to hear from  
13 one of the preeminent scientists on asbestos. His  
14 name is Dr. James Millette, and Dr. Millette is one  
15 of the people who's actually done extensive testing  
16 on gaskets and packing and other types of materials  
17 that millwrights work with, and he's also tested  
18 people's clothing.

19 Now, not only has he tested people's  
20 clothing, but he actually tested one of the flags  
21 from the Pentagon from 9/11. He is the world's  
22 preeminent expert on testing of asbestos on  
23 clothing, and he will tell you that he has done  
24 extensive testing that shows that when you have  
25 asbestos on your clothing and you shake it out or

1 you do those types of things I showed you before,  
2 it gets in the air, and it reexposes you.

3 And so he's also written extensively in  
4 textbooks. He's considered one of the preeminent  
5 experts, so much that when you take a test on  
6 asbestos given by the EPA, because he used to work  
7 for NIOSH and some other folks, he actually wrote  
8 the test.

9 So he's going to testify about that, those  
10 types of exposures. He's going to talk to you  
11 about how small asbestos is and what asbestos  
12 really is.

13 And he's going to relate these numbers to  
14 what we call background numbers. And this is going  
15 to be important, folks, because the only issue that  
16 you have to resolve in this case is whether the  
17 exposure to asbestos out at the Louis Rich facility  
18 that Metal Masters sent Bob and Kathy's father to  
19 was a substantial contributing factor to her  
20 disease. That's the only issue that you have to  
21 decide.

22 And so you're going to hear some science, and  
23 the science is going to be that there's this thing  
24 called a background level; and you're going to hear  
25 everybody say, no, you know, if something is at a

1 background level, it can't cause disease; it  
2 doesn't contribute.

3 Why is that important? Because what  
4 Dr. Millette is going to do is he's going to be  
5 able to show you what those levels are when you're  
6 working with somebody with these clothes.

7 And so you're going to hear about pipes -- I  
8 talked a little bit about it, but that's what pipes  
9 look like when they're in place. And those things,  
10 those circular things to the left, those are  
11 valves. Okay. And valves, they're encrusted with  
12 asbestos. Now, they have fiberglass. And part of  
13 what Kathy's father's job was, is when they went  
14 and did this work, he would have to, in order to  
15 work on it, take off the asbestos. And, thank  
16 goodness, what they put back on was the fiberglass.  
17 And you're going to hear about that work. You're  
18 going to hear why that's important. And you can  
19 see for yourself that there's no way to do that  
20 type of work without disturbing that insulation.  
21 Physically impossible.

22 And so you're going to hear about the studies  
23 by Dr. Millette, the different levels that have  
24 been shown. And then what you have to do is  
25 compare those to that background level, and if

1 they're above that background level, folks, the  
2 science says -- real science -- that that means it  
3 contributed to her disease, and that exposure at  
4 Louis Rich contributed to her disease.

5 And so what was known? Well, folks, you  
6 know, when you work on a jobsite, there are certain  
7 things that you accept as a worker. You accept  
8 them for yourself. You say, you know what, if I'm  
9 reckless with my ladder, if I'm reckless with my  
10 torch, if I'm reckless with how I'm working with  
11 certain things, I might bang myself in the head; I  
12 might drop a piece of wood on myself.

13 But, folks, what was not in the bargain here  
14 was bringing all that stuff home to your daughter  
15 and having her die 62 years later.

16 And so when you're dealing with risks, that's  
17 where it's important to understand exactly why  
18 we're here. And the why of why we're here, folks,  
19 is because there was a decision made to not inform.  
20 1972, OSHA says if you're doing this type of work,  
21 you've got to protect the workers and you protect  
22 the family. Washrooms, laundry. Take all that  
23 stuff that's contaminated, put it in a  
24 special -- you can't just take it to the dump;  
25 you've got to bury it like uranium.

1 What's the science going to show, folks?  
2 Well, one of the things that you're going to see is  
3 exactly what happens in the body when you breathe  
4 asbestos. And so what we have for you is an  
5 animation that will show you exactly what's going  
6 on in the body.

7 And the medical doctors are going to talk to  
8 you. And our first witness, Dr. Alleyne, is going  
9 to talk about this. But you have different types  
10 of asbestos; and all asbestos is known to be  
11 dangerous, but when you have that cocktail of both  
12 of them, it's really dangerous. And so when you're  
13 breathing it in and you're a worker or you're  
14 taking Dad's clothes and you're shaking them out or  
15 your husband's clothes, shaking it out, it gets  
16 into your lungs and it gets into the lymphatic  
17 system.

18 And think about it, folks. See all the  
19 asbestos, kind of little, everywhere in the air,  
20 and it doesn't look like it's much. It doesn't  
21 take much to do it. Once it gets into the  
22 lymphatics or gets into your airways, it then is  
23 going to go all the way as deep as it can, because  
24 they're small microscopic particles. And then it's  
25 going to lodge itself into our lungs, and once it's

1 lodged in there, then it's -- the body wants to get  
2 rid of it. Because the body knows, first of all,  
3 this stuff is stronger than metal and it wants to  
4 get rid of it because it knows it's bad for it. So  
5 your body then tries to send it out through the  
6 lymphatic system.

7 And as it does that, you will see that  
8 there's this thing called the pleura of the lungs.  
9 It's a very thin lining. Some people call it like  
10 Saran Wrap. And this lymphatic system takes that  
11 asbestos and it deposits it in that pleura; and the  
12 pleura, as you will hear, is one of the -- is the  
13 area where this cancer begins.

14 Now, before that, you have cellular injury.  
15 What is cellular injury? Well, first of all, you  
16 have a normal cell. And normal cells, as you may  
17 remember, they divide. That's called mitosis. And  
18 so what you're seeing is normal cells, and that's  
19 the way a normal cell will divide. It happens in  
20 our bodies each and every day. That's the way God  
21 designed us.

22 And so that's what normal cell division will  
23 look like. And you see how it takes a little bit  
24 of time, but it's dividing and dividing and  
25 dividing.

1 Now, with asbestos, once it gets in there,  
2 decades pass; and when it's in there, it causes  
3 abnormal cell division. And so what you're seeing  
4 right there are the chromosomes and how the  
5 asbestos actually interacts with the chromosomes,  
6 and it directly injures the DNA. Doesn't matter  
7 what type, but it injures that DNA.

8 And what does it cause? Abnormal cell  
9 division. And that abnormal cell division  
10 interferes with how your chromosomes are and the  
11 separation resulting in an unequal number of  
12 chromosomes in the cells.

13 What does that basically mean? Well, instead  
14 of having normal cell division, you've got abnormal  
15 cell division. And what's the problem with that?  
16 Well, as decades go, cancer forms.

17 And that's what you're seeing right there.  
18 The cancer forming, getting larger. And the  
19 problem with this cancer is, this cancer is located  
20 in your lungs, that little thin lining, and the  
21 cancer is growing right in your lungs; and as it  
22 grows in your lungs, you no longer can breathe, and  
23 your death is caused by lack of breath.

24 Now, that's the science of how asbestos gets  
25 in your body. It doesn't matter if you're a worker

1 working with it or if you're a housemaker at home.  
2 If it gets into the air and you breathe it, then it  
3 can cause that damage.

4 All right. And you're going to hear that  
5 each significant exposure contributes to  
6 mesothelioma. Why? Because one of the issues in  
7 this case is going to be, well, how much asbestos  
8 exposure at the Louis Rich plant where he was  
9 working for Metal Masters contributed to this  
10 particular mesothelioma?

11 And so what's the science? And you're going  
12 to hear a lot of science; but, folks, I tell you,  
13 we will make this easy for you, because there are  
14 certain scientific principles that every single  
15 expert in this case will have to agree with. And  
16 one of them is, is that if you have that thermal  
17 insulation, just one single day of exposure can be  
18 significant. One single day.

19 You may ask yourself, well, how do we know  
20 that? Well, folks, we know it because there's been  
21 a lot of studies done. This is the U.S. Department  
22 of Health, Education, and Welfare. And this is  
23 interesting, folks, because this is 1976 that this  
24 was done. 1976. This is four years before Kathy's  
25 father and Bob ever hit Metal Masters. Four years.

1 One-day occupational exposure to pipe  
2 covering can cause mesothelioma.

3 You're going to hear a lot about different  
4 articles and things, and this is "Mesothelioma:  
5 Cases associated with nonoccupational and low-dose  
6 exposures."

7 Nonoccupational is what we call family  
8 exposure. That's the scientific term. They call  
9 it nonoccupational. But it's basically exposure to  
10 families.

11 Now, you may say, well, wait a minute; how  
12 many folks have gotten sick from this? Well, as I  
13 told you, the numbers keep going up. Because even  
14 though we knew everything about how to protect  
15 folks, it just didn't -- wasn't done. In this  
16 particular case, we know for sure it wasn't done  
17 because there were no policies.

18 And what do they show? Well, first of all,  
19 they show that there is no known safe level of  
20 exposure to asbestos. And how do they know that,  
21 folks? What they have done is they've looked and  
22 they've explored thousands of people because  
23 asbestos -- unfortunately, there were a lot of  
24 folks exposed to it, and so they have a lot of  
25 studies, strong, good science. And they have that

1 low-level exposures can cause what they call peak  
2 exposures and can be very high for short periods of  
3 time.

4 What does that mean? Well, if you just think  
5 about it, if you have asbestos-laden clothing,  
6 that's work gear, and you take it and you've got to  
7 shake it out and then you're going to put it in the  
8 laundry -- because think about it, folks. You're  
9 not going to put in the laundry a bunch of dusty  
10 clothes. I mean, think about it. If you put all  
11 that really dusty clothes, then they're just going  
12 to get more grimy when you wash them. So what  
13 you're going to do is make sure you get all as much  
14 of the dust off as you can and then throw it into  
15 the washer. And you're going to hear Kathy talk  
16 about that.

17 And you're going to see a lot of studies.  
18 And you'll see, folks, that people can get this  
19 disease for very short periods of time, including  
20 just doing one little job. One little plaster job.  
21 And you're going to hear that there's folks that  
22 didn't have anything, but just had a matter of  
23 hours. Think about it. Not just days. A matter  
24 of hours of exposure to asbestos that got this  
25 disease.

1 particular case, there really was no excuse in the  
2 1980s to have folks working with their thermal  
3 insulation, not having it tagged and marked so that  
4 they wouldn't work with it, and making sure, if  
5 you've got it out there, you have policies. And  
6 it's going to be undisputed, folks, that it was out  
7 there, and they had no policies. Undisputed.

8 So then what's the last part? Well, that's  
9 responsibility. And as I said earlier, you know,  
10 our system is designed so that we bring our  
11 disputes to the courthouse. That's our system. If  
12 you have two parties that have a dispute, then you  
13 bring it to the courthouse and you let the  
14 community decide what's right. You let the  
15 community decide what was proper.

16 And so in this case, the community is you.  
17 And you are charged with that duty and will be  
18 charged by the Court to enforce those safety rules  
19 and those community standards. And part of that  
20 then becomes, well, how do we enforce that?  
21 Because, folks, this is not a criminal case. I  
22 can't send anybody to jail. And I'm not saying you  
23 should. But how do you do that? Well,  
24 responsibility under our system is, unfortunately,  
25 a dollar amount. That's how you hold people

1 And we're going to show you a lot of  
2 different things. I'll go through this quickly,  
3 but this one day, matter of hours, all kinds of  
4 hard, credible science that shows this. Worked  
5 with asbestos only one day. His lungs continued to  
6 be exposed.

7 And you're going to hear about different  
8 studies, 16 hours. You're going to hear about a  
9 few days to over 40 years. That's what the real  
10 science is going to show in this case, and I don't  
11 think their experts are really going to dispute it.  
12 There may be disputes over other things.

13 There's not going to be a dispute because the  
14 United States Government has said that asbestos --  
15 there's no safe level. And you're going to hear  
16 that durations of exposure as few as a few days can  
17 cause this disease. And they cite you to all the  
18 different articles that say that. So hours to days  
19 causes disease, and when you're talking about  
20 thermal insulation, it's not even close, folks.

21 And so you will see that these -- that these  
22 studies not only will help you with that question  
23 and issue, which is whether the exposure out at  
24 Louis Rich was a substantial contributing factor,  
25 but they're going to show you that, in this

1 responsible in our system. And that's the way the  
2 system works.

3 Would we like to bring Kathy back?  
4 Absolutely. Would her family give any amount of  
5 money to get her back? Absolutely. But your job  
6 is to enforce the rules, hold people responsible,  
7 and put an accurate value on what's been lost.

8 And you're going to say, well, how do we do  
9 that? Well, you fix what you fix, you help what  
10 you can help with, and you make up for what cannot  
11 be fixed or helped.

12 Well, how do I fix and help and make up?  
13 Well, folks, one of the things you're going to have  
14 to evaluate is -- and it's unfortunate, and it  
15 honestly doesn't make me feel comfortable when we  
16 have to do it. We're going to have to present to  
17 you and we're going to try to do it as quickly and  
18 as efficiently as possible what happened to Kathy.

19 As you can imagine, when you have a cancer  
20 that's growing in your lungs, it's not fun. But in  
21 order for me to do my job, I have to present you  
22 with some facts that I really don't want to. And  
23 I'm going to ask that when I do that, that Bob and  
24 the family not be here. Because you're going to  
25 have to see that because your job is to evaluate

1 what was lost and put a value on it, because that's  
 2 how we hold people responsible in our system.  
 3 So how are you going to do that? Well,  
 4 you're going to look at the medicines. You're  
 5 going to see the treatment. You're going to see  
 6 the pain. And you're going to have to kind of  
 7 gauge that. One way to do that is to look at how  
 8 bad it was, how long, how interfering.  
 9 Folks, you're going to hear that this  
 10 particular disease is not only incurable, one of  
 11 the few cancers we can't cure -- it's very  
 12 unfortunate -- most people that get it die within 6  
 13 months to 18 months. And during that entire time  
 14 period, once they're diagnosed, they know that  
 15 they're going to die. This is not a disease that  
 16 when you go to the doctor they say, you know what,  
 17 we've got all these great treatments and we're  
 18 going to cure you. This is an incurable cancer.  
 19 Are there things you can do to try to prolong  
 20 your life? Absolutely. And did Kathy try those  
 21 and try to find out what those things were?  
 22 Absolutely, she did, because she wanted to live  
 23 longer. And she did all those things, and we'll  
 24 have to show you a little bit about that.  
 25 But what I would suggest is that you look at

1 those are the intangible things.  
 2 So when we talk about harms and losses, the  
 3 money losses are small, but those intangibles are  
 4 huge. They are big. And that's how we hold people  
 5 responsible.  
 6 And so, folks, that's what your role is.  
 7 Your role in this case is to listen to the  
 8 evidence, listen to the science, listen to what has  
 9 been taken from the family, and to us, and render a  
 10 fair and just verdict.  
 11 We look forward to presenting this case on  
 12 behalf of the family, and we look forward to the  
 13 end of this case when we come back to you and talk  
 14 about how you do that. Thank you.  
 15 THE COURT: Thank you, Mr. Frost. And now,  
 16 ladies and gentlemen of the jury, you will hear  
 17 from the defense.  
 18 MR. COSCULLUELA: Your Honor, may it please  
 19 the Court.  
 20 THE COURT: Mr. Cosculluela.  
 21 MR. COSCULLUELA: 26 to 33 days. 26 to 33  
 22 days. Bob Weist, Kathy's husband, the widower, the  
 23 claimant in this case, spent 26 to 33 workdays at  
 24 the Louis Rich plant in Newberry, South Carolina.  
 25 I'd like to present a timeline for you to

1 what she was like before and then what she was like  
 2 after. And we'll present some things. We'll talk  
 3 to you a little bit about Kathy and what she really  
 4 loved in this world. She loved Christmas.  
 5 Christmas was her thing. I'm sure all of you know  
 6 somebody -- maybe some of you -- that Christmas is  
 7 it. And you'll hear about her son and their  
 8 relationship, and you will see what the cancer did  
 9 to her.  
 10 And you're going to see and hear about the  
 11 bond between Kathy, her son, and her husband, and  
 12 you're going to see the destruction that this  
 13 disease has caused.  
 14 And folks, we do that because we must, not  
 15 because we want to. We need you to understand what  
 16 they've lost and what her friends have lost and  
 17 what the community has lost. You're going to hear  
 18 a lot of things about Kathy, and I could go on for  
 19 the rest of the day about her.  
 20 But in order to hold people responsible and  
 21 to put the value, we have to do that. And so when  
 22 you're listening to that evidence, think about what  
 23 has been lost, what would Kathy be doing, what  
 24 would Bob and Kathy be doing, how would she be  
 25 helping Chris, her son, raise his family. And

1 consider.  
 2 Mr. Rosen, would you put up Slide 2.  
 3 Folks, the timeline in this case is as  
 4 follows: Kathy was born October 26th, 1957. She  
 5 resided with her parents, as most of us do, until  
 6 she married Bob Weist on December 31, 1977, about  
 7 20 years and two months.  
 8 In the summer of '79, about a year and a half  
 9 after they were married, Bob and Kathy moved back  
 10 because they left the state of South Carolina and  
 11 they moved to Missouri soon after their marriage,  
 12 October -- I'm sorry -- December 31st, 1977.  
 13 They moved to Missouri. They came back to the  
 14 state in the summer of 1977 -- I'm sorry -- of  
 15 1979. Probably June or July.  
 16 On October 16th, the young couple -- they  
 17 had just had their son, Chris -- their only child.  
 18 They had just had their son, Chris, in Missouri;  
 19 and Kathy's sister -- Kathy's sister, Terry -- had  
 20 had a child of her own here in South Carolina.  
 21 Kathy longed to be back in South Carolina with her  
 22 family.  
 23 After Christopher was born, they moved back.  
 24 Summer of 1979, October 16 of '79, the Weists  
 25 bought a house -- not a house. I'm sorry. The



1 Weists bought a lot, a little more than an acre, in  
2 Laurens, South Carolina, at 948 Brookwood Circle.

3 All these little time stamps I'm giving you  
4 are important, and they're important because they  
5 dictate how long Bob Weist, in fact, worked for  
6 Metal Masters at the Louis Rich plant, 26 to 33  
7 days.

8 The young family moves in the house -- I'm  
9 sorry. The young family works with their  
10 contractor to build the house. First house for the  
11 young family. They moved into the house in the  
12 summer of 1980, about a year after they got back to  
13 South Carolina. During that year, they lived with  
14 Kathy's parents. No one remembers where Kathy's  
15 father was working at the time during that one-year  
16 period.

17 The house is finished. The house is finished  
18 in the summer of 1980, June or July. The couple is  
19 struggling, as all couples do with newborn  
20 children. Christopher was about a year of age at  
21 the time.

22 Bob is hardworking and industrious. I think  
23 he's a draftsman by training, but I think by  
24 avocation he is a mechanical engineer. He's  
25 hard-working. He's ambitious. He wanted to

1 provide for his family as any father would, as any  
2 parent would. He's got a job during the week at an  
3 engineering firm, but his father-in-law calls on  
4 him and says, "Hey, I know money is tight; you guys  
5 are just starting out; you've got a new house and a  
6 new baby. Why don't you come work for me; I'm  
7 working for Metal Masters; and we can work weekends  
8 at the Newberry plant, the Louis Rich Newberry  
9 plant."

10 This work probably starts in June or July of  
11 1980, and the work progresses. According to Bob,  
12 Mr. Weist, he worked every other weekend or so for  
13 a period of about six months, six or seven months.  
14 We'll do the math later, but the six or seven  
15 months of work, working every other weekend or so,  
16 plus he took five days of vacation time that he had  
17 his regular -- at his regular job. Today it's  
18 called PTO. Back then they used to call it paid  
19 time off.

20 He takes his five days of PTO, doesn't spend  
21 it with his family because he wants to get the  
22 family ahead. He wants to help out his family and  
23 advance them and provide them the best life that he  
24 can.

25 So when a lot of us would have taken

1 vacation, Bob Weist spends another five days at the  
2 Louis Rich plant. He's working there for his  
3 father-in-law. Together they're working for Metal  
4 Masters. The father-in-law is billing Metal  
5 Masters for the work, receiving a check from Metal  
6 Masters, and then giving out cash to Bob.

7 And I'm not suggesting that there's anything  
8 wrong with being paid in cash. I'm only telling  
9 you this because it makes it hard to document the  
10 facts when there's no evidence of the payments.  
11 There's no canceled checks. There's no payroll  
12 stubs.

13 Bob Weist, the widower, was getting paid cash  
14 by his father-in-law, the father-in-law who died  
15 last -- I'm sorry -- died in 2011, I believe. He's  
16 no longer here.

17 But there's no records to document it. I'm  
18 not suggesting Bob didn't work at the plant. I  
19 know he did.

20 But for a period of 26 to 33 days, Bob Weist  
21 worked at The Kraft Louis Rich plant for his  
22 father-in-law through Metal Masters and performed  
23 work there. There is going to be some dispute as  
24 to the work that was performed.

25 Now, this week -- this work, every other

1 weekend or so, plus five days of PTO, paid time off  
2 from his regular job, Bob described it as irregular  
3 work. It wasn't consistent weekends. It was when  
4 the work was needed, when the help was needed at  
5 the plant.

6 Kathy, Kathy, the decedent in this case,  
7 Kathy Weist, Mrs. Weist, she remembered that her  
8 husband and her father -- that their work at the  
9 Louis Rich plant -- and I wrote this down; I wanted  
10 to quote it -- it couldn't have been more than six  
11 or seven months.

12 They move into the house at 948 Brookwood  
13 Circle. They move into the house at 948 Brookwood  
14 Circle in the summer of 1980. June, July, August,  
15 September, October, November, December. If they  
16 moved in in June, seven months would get them to  
17 December. If they moved in in July -- I'm sorry --  
18 if he went to work there in July, it would be six  
19 months to the end of the year.

20 We know -- we know they were no longer  
21 working at the Louis Rich plant at all by the end  
22 of 1980. Well, how do we know that? Well, because  
23 Kathy's father -- Mr. Frost shared with you a page  
24 from his employment records, and he indicated that  
25 the work that he had performed, the last employment

1 he had, before he was applying for the new job in  
2 February of 1981, ended in 1980. It was the metal  
3 worker -- it was the Metal Masters work, and it  
4 ended in 1980.

5 So we've got six or seven months of Bob  
6 working irregular weekends, alternating weekends,  
7 every other weekend, as needed, plus the five days  
8 of PTO. And when we do the math, we're going to  
9 come to what I mentioned at the start, and it's 26  
10 to 33 days.

11 Apart from Kathy's horrific diagnosis and her  
12 death, tragic, obviously, disruptive and  
13 destructive to her family, as anyone's death would  
14 be, everything else that you guys are going to  
15 consider during this case occurred literally  
16 decades ago: Forty years ago or more.

17 My name is Alex Cosculluela. I'm a lawyer  
18 from Houston, Texas. Mr. Frost and I go back a  
19 long time. He's a Texas lawyer himself. Kirby  
20 Shealy, the fellow with the blue and -- blue and  
21 red tie with the black mask, he's my law partner.  
22 He lives here in Columbia. And Angela, the young  
23 lady in the wine-colored shirt, will be kind of my  
24 right hand and make sure that I stay in line.  
25 We're defending the case together with Metal

1 359. That's almost one invoice a day for every day  
2 of the year. 365 days in the year. 359 invoices  
3 they sent to us.

4 Mr. Rosen, would you go to the next slide.

5 Not one. Not one. None of the Metal Masters  
6 invoices shows the removal of old pipe insulation  
7 that Bob Weist claims. None. None of Metal  
8 Masters' invoices shows the fiberglass re-insulation  
9 that he told me at deposition, when I had an  
10 opportunity to ask him questions under oath  
11 earlier, that he told me he performed. Because  
12 you'll see, what Bob Weist told me he did at the  
13 Louis Rich plant -- again, this is 40 years ago --  
14 I'm not being critical of him -- but what he said  
15 is that about up to 90 percent of his time was  
16 spent on overhead lines, taking off old insulation,  
17 and replacing it with fiberglass.

18 I wasn't there. None of us, in fact, was  
19 there. I'm not suggesting he expressed a falsehood  
20 or said something that was not truthful. Instead,  
21 I point to the timeline, 26 to 33 days of work, and  
22 359 Metal Masters invoices that don't really appear  
23 to support 90 percent of 26 to 33 days or workdays  
24 of removing old insulation from overhead pipes and  
25 replacing it with fiberglass.

1 Masters. Metal Masters is represented by Tom Pope;  
2 and in a few minutes when I wrap up, because I want  
3 to be brief, you'll hear from -- you'll hear from  
4 Mr. Pope.

5 Mr. Rosen, would you turn to Slide Number 3.

6 Mr. Frost spoke to you about these invoices  
7 from Metal Masters. He pointed out one in  
8 particular. He'll point out a couple others during  
9 the trial. The one he pointed out to you, of  
10 course, is the one that has Bob's name on it. Bob  
11 Weist performed drafting work because he was a  
12 trained draftsman, a mechanical engineer by  
13 avocation.

14 Metal Masters learned that he could do this  
15 drafting work and had him do some drafting work and  
16 then charged Kraft for it. And one of the invoices  
17 has Bob Weist's name on it. You're going to see  
18 other invoices from Metal Masters as well.

19 The Metal Masters invoices number 359. There  
20 are 359 invoices from Metal Masters from January of  
21 1980 through December of 1980. During that year,  
22 they printed and sent to us for payment -- the  
23 people at Louis Rich -- 359 invoices. There's a  
24 couple -- there's two or three others that are  
25 duplicates, but the number of original invoices is

1 What's more, you will hear, at the Louis Rich  
2 plant, while Metal Masters was a metal  
3 fabrication -- while Metal Masters was a metal  
4 fabrication and millwright contractor, it was also  
5 an insulation contractor. Rickard Insulation,  
6 R-I-C -- R-I-C-K-A-R-D. There's been a lot of  
7 dispute about the name because this happened  
8 40 years ago. It's been called Reichert, Richard.  
9 But it was Rickard Insulation.

10 And one of the nagging questions that has  
11 been left with me is, after I spoke with Mr. Weist  
12 at his deposition is, why would -- why would  
13 someone go to Metal Masters -- why would somebody  
14 hire Metal Masters to remove old insulation when  
15 there's already a plant insulation contractor on  
16 the job? Because, like you, we have to look at  
17 this kind of forensically. We have to look back in  
18 time, in this case, 40 years ago.

19 Mr. Pope teases me about it all the time  
20 because he doesn't know how we're able to do this,  
21 investigate things that happened 40 years ago.  
22 Well, like everyone else, we do the best we can and  
23 we take the facts as we find them.

24 But there's no -- there's no satisfactory  
25 explanation, at least to me, why Metal Masters

1 would be giving out insulation work when it's  
2 removing old insulation and replacing it with new  
3 insulation -- that's insulation work -- why Metal  
4 Masters would be performing that kind of work in  
5 the first instance, particularly when Rickard  
6 Insulation was there.

7 You're going to hear from Mr. Weist. He's  
8 going to acknowledge, "I didn't work for Rickard.  
9 We weren't subcontracting through them. I worked  
10 through -- I worked with my father-in-law, and I  
11 guess he was subcontracting through Metal Masters."

12 He didn't know all the details. Because it  
13 didn't matter to him. All -- you know, all he  
14 wanted was to help his family get ahead and pay  
15 down their debt, help pay off the house. Like I  
16 said, what every good parent would be doing.  
17 Making -- making a way for his family.

18 You're going to see other invoices from Metal  
19 Masters. Mr. Weist told us he did one day of  
20 drafting work. And remarkably, there's one invoice  
21 where it shows he did drafting work for Metal  
22 Masters. Great. Those are two pieces of  
23 information that I can -- that I can bookend. I  
24 can acknowledge those as facts.

25 But what you're going to hear from Metal

1 The evidence will have to demonstrate that  
2 exposure was an -- open quote, a substantial factor  
3 in bringing about the disease or injury, a  
4 substantial factor in bringing about the disease or  
5 injury.

6 One more thing, The Kraft Heinz Company,  
7 Kraft and Metal Masters don't get to call their  
8 witnesses until the plaintiff's testimony -- or  
9 until the plaintiff's evidence is finished, and the  
10 lawyers call it the case in chief. When the  
11 plaintiff, Mr. Weist's lawyers, close or rest their  
12 case in chief, that's when we get to put on our  
13 case. What I ask is that you avoid temptation to  
14 make up your mind until you've heard our evidence.

15 On behalf of The Kraft Heinz Company, Kirby  
16 Shealy, Angela, and myself, I want to thank you for  
17 your time, but more importantly, for your attention  
18 during trial. Thank you.

19 THE COURT: Mr. Pope.

20 MR. POPE: May it please the Court. It  
21 pleases me greatly to be able to take this mask  
22 off. I thank you for that. I wish I could allow  
23 the jurors to do that.

24 THE COURT REPORTER: I'm sorry. Please speak  
25 up.

1 Masters is that Bob Weist was the only person they  
2 had, the only person who's ever worked for them,  
3 that would be capable of doing drafting work.

4 But there's three -- at least three more  
5 days -- at least three more days of charges from  
6 Metal Masters to Louis Rich for drafting work, and  
7 they're documented invoices that show exactly when  
8 the work was done. Those other ones don't show Bob  
9 Weist's name on them. But you're going to hear  
10 from Metal Masters he's the only person we knew who  
11 could do that work.

12 Mr. Rosen, would you put up Slide 5, please.

13 It's the Judge's role at the end of evidence,  
14 at the end of the introduction of evidence before  
15 the jury, to instruct the jury on South Carolina  
16 law, but that's not what I'm doing. I'm  
17 anticipating that as we approach the end of  
18 evidence, the lawyers and the Court will determine  
19 the South Carolina law on which you're going to be  
20 instructed, and I anticipate -- I anticipate the  
21 law of the state of South Carolina on which you're  
22 going to be instructed by Judge Toal will be to  
23 hold the Newberry plant -- to hold Louis Rich  
24 liable for Kathy Weist's death and the damage to  
25 her family.

1 THE COURT: Please speak up for the court  
2 reporter, Mr. Pope. Mr. Pope, he has to do that  
3 because she's got to keep the record. And I'm  
4 explaining just for the jury's benefit, but with  
5 these screens that we have to put up during these  
6 evil Corona times, it makes it a little harder for  
7 her to hear.

8 You may proceed.

9 MR. POPE: I'll speak up. Ladies and  
10 gentlemen, my name is Tom Pope, P-O-P-E. I'm a  
11 lawyer in Newberry. I'm 70 years old. I've been  
12 practicing law for 40-something years, 45, 46  
13 years. I'm proud to be here today on behalf --  
14 this week on behalf of my friend Wayne McCullough,  
15 who's the owner of Metal Masters.

16 Despite the little bit of exaggeration by  
17 Mr. Frost on his opening statement about Metal  
18 Masters, Metal Masters is basically -- it started  
19 as a welding shop. Wayne McCullough graduated from  
20 high school. He worked in a cotton mill. He  
21 learned -- had the good sense to go to trade school  
22 and learn something about welding and being a  
23 machinist. He is good at it.

24 He decided he wanted to pursue his dream in  
25 1973; he started a business. Two employees. And

1 the bookkeeper. His daddy helped him. And the  
2 business was good because Wayne worked hard. And  
3 he got a contract sometime in the late '70s with  
4 Louis Rich -- we call it Louis Rich. It's  
5 The Kraft plant. It's the food plant, the turkey  
6 processing plant.

7 And Wayne -- Wayne had been successful, but  
8 he's always been successful because he worked hard  
9 and he cared about people.

10 The business of Metal Masters is metal.  
11 Bending metal, shaping metal, cutting metal. He's  
12 got laser cutters out there in his plant. He's got  
13 whatever you want to call it. He doesn't make  
14 asbestos. He doesn't sell asbestos. He doesn't  
15 use asbestos. He has nobody on his staff that is  
16 an insulator.

17 In 2020, the reason this -- we heard about  
18 this 40-years-ago thing, which is just a fact,  
19 because -- I'm not blaming anybody. It's 40 years.  
20 That's the nature of -- as I've learned is someone  
21 exposed to it 50 years later, it may manifest  
22 itself.

23 But in 2020, the lawsuit was brought here,  
24 and that is why the 40 years is rather important  
25 because Wayne McCullough is saying, "I can't

1 remember what I was doing 40 years ago."

2 So he looked for his records and he found his  
3 records. His project manager found the records.  
4 I'm not going to read them or tell you what's in  
5 them or anything because it doesn't matter at this  
6 point.

7 That's the records from 1980. 300 -- over  
8 300 of them. Those are the records for invoices  
9 that Metal Masters sent to Louis Rich for work they  
10 performed as a subcontractor at the plant.

11 And when you do look at these invoices later  
12 in the case, when you start receiving evidence and  
13 such, you will notice that those invoices do not  
14 have the word "asbestos" in them anywhere. These  
15 asbestos -- these invoices are for services and  
16 also parts. You will not see that there are any  
17 services for removing any insulation.

18 You will hear the testimony, of course, as  
19 alluded to already from Mr. Cosculluela that  
20 Louis Rich has -- has insulation contractors  
21 on-site at the plant to do work, and has had three  
22 of them over the years. They had Rickard  
23 Insulation and then they had Eric Insulation and  
24 then later they had Russell Warren Insulation. So  
25 there's somebody that does that work. It's not

1 Metal Masters, but they do it.

2 Now -- so Mr. McCullough was able to find  
3 that big stack of invoices. And again, like I  
4 said, those are just the invoices to Louis Rich  
5 from Metal Masters for work they did.

6 Now, why are these invoices important?  
7 Because -- and if you remember the timeline that  
8 Mr. Cosculluela put up, Bob Weist worked for Metal  
9 Masters from the summer of 1980 until December of  
10 1980. Six months. But he didn't work during the  
11 week. He said one week he took paid leave from his  
12 job as an engineer and came. But it was on random  
13 weekends. And we think it was more than two  
14 weekends a month for six months. Mr. Weist said it  
15 was more like two. So if you just assume that --  
16 make that assumption that he was working two  
17 weekends a month. And he said he's working  
18 half-time or two-thirds time or something removing  
19 insulation. We have no record of that. We have no  
20 memory of that.

21 But if he was doing it, assume he was doing  
22 it. You will still see that whatever that was, if  
23 it was, was not a substantial factor in his wife's  
24 ultimate demise, the mesothelioma she got.

25 Now, in this case, you will be considering

1 different kinds of evidence. You will, of course,  
2 have testimony. And of course what we are saying  
3 right now is not evidence. What Mr. Frost has said  
4 is not evidence. What Mr. Cosculluela said is not  
5 evidence. Now, these are big-city lawyers. I'm  
6 from Newberry. I am certainly not giving you  
7 evidence. But I am going to tell you things that I  
8 think resonate in a commonsense way. You're going  
9 to have fact witnesses. You're going to have  
10 documents like those invoices. You're going to  
11 have expert witnesses.

12 Now if a document is crystal-clear, that's  
13 kind of strong, because you know what they say,  
14 Carl Sandburg said that the best evidence is a  
15 written paper. The best witness is a written  
16 paper.

17 But that's not the only evidence you will  
18 have, what's in writing. You are also going to  
19 have laypersons. And you have to consider when a  
20 lay witness testifies, what do they really remember  
21 from 40 years ago? They're not lying, as I said,  
22 but do they really remember things perfectly  
23 40 years ago? So that's where you get into a gray  
24 area. You've got a clear writing; that's one  
25 thing. And you've got frail memories, perhaps,

1 nothing -- nothing -- no lies going on, just bad  
 2 memories; you've got to consider that.  
 3 And then you've got experts who are paid to  
 4 be here. You can disregard everything any expert  
 5 says. You can disregard everything all the experts  
 6 say. Unless it resonates with your common sense.  
 7 And we have the utmost trust in the fact that  
 8 these -- well, you're 15, not 12, but 12 to 15 good  
 9 people from Richland County have the common sense  
 10 to sort this out. And I think you do.  
 11 There are three things of utmost importance  
 12 for our citizens. One is voting. Two is jury  
 13 service, which you're doing right now, and I  
 14 applaud you for it because some people try to get  
 15 out of it. And three is military service. And I'm  
 16 proud to be a Vietnam veteran, 1969 and '70 in the  
 17 Marine -- in the River Marine forces of the Mekong  
 18 Delta, and I'm proud my son was a Marine, and I'm  
 19 proud my daddy served in World War II. I don't  
 20 apologize for that.  
 21 So you have to consider another thing that  
 22 hasn't been mentioned. Mr. Frost has the burden of  
 23 proof. He's got to prove the things that happened  
 24 40 years ago. You have to use your common sense to  
 25 evaluate the proof he offers. And you have to

1 suit papers.  
 2 Now, I don't -- I know only about asbestos  
 3 what I've learned in the last six months. So I do  
 4 know what I've heard, which it is that it is a  
 5 natural substance. It's -- it's in a mineral,  
 6 whatever, a rock or something. It's mined. It's  
 7 mined in Canada and the U.S. and Russia and other  
 8 places. It was used -- it was popular in the early  
 9 part of the century and in the middle part of the  
 10 century, the 19th century. It was very popular  
 11 because of its heat-retardant features, and it is  
 12 and was placed in all sorts of appliances. Tile,  
 13 floor tiles, walls sometimes, rubber. I mean, just  
 14 apparently thousands of them. Witnesses will talk  
 15 about that later.  
 16 And apparently the nature of asbestos is, if  
 17 it's in a solid form, it's not dangerous. I mean,  
 18 it's okay. But if you start chipping away at it  
 19 and creating the little flakes, the fibers that are  
 20 so microscopically in the air, then it becomes a  
 21 potential danger.  
 22 And you're going to hear from the experts who  
 23 quantify the danger. And so we're looking at 33  
 24 days in 1980, at which -- four of which Mr. Weist  
 25 was doing drafting work.

1 hopefully -- and I'm sure you will -- listen to all  
 2 of the evidence very carefully and not make snap  
 3 decisions until you've heard every witness testify.  
 4 Now, the case will probably take -- I'm sure  
 5 it will take a week, but we are under the strict  
 6 instructions from the presiding judge, Justice  
 7 Toal, and we're going to follow those instructions  
 8 and we will not keep you here longer than Friday  
 9 for sure, and hopefully maybe even Thursday.  
 10 Now, there are a couple other things I want  
 11 to touch on. You know they say a good deed never  
 12 goes unpunished. In 1980, Bernard Ford, who's a  
 13 good guy -- he was a good guy; he's deceased -- he  
 14 approached Wayne McCullough and asked him for work,  
 15 if he had any work. Wayne offered him some weekend  
 16 work for him and his crew, his brother-in-law, his  
 17 son-in-law, whatever.  
 18 And so Wayne was doing him a favor. He felt  
 19 like he was. It's his friend Bernard. They traded  
 20 tools together and whatnot. They -- and he thought  
 21 that he was doing him a favor by giving him some  
 22 work.  
 23 Never did he dream that there would be an  
 24 allegation or the prospect of a suit arising from  
 25 that work until 40 years later when he gets the

1 And Mr. Weist, by the way, is a good  
 2 businessman in his own right. He's a prominent  
 3 engineer with JH Global, a multinational company  
 4 that sells these electric cars all over the world.  
 5 And a good person. And he's had a loss. There's  
 6 no question that Kathy Weist -- and you'll see her  
 7 video of her deposition in a little while -- is  
 8 just a wonderful woman. But that has nothing to do  
 9 with whether or not her husband's actions over a  
 10 period of 30 days or 38 days or whatever it was in  
 11 1980 could have caused her to contract  
 12 mesothelioma.  
 13 The scientists will have to help you with  
 14 that. You will have to listen carefully and apply  
 15 your common sense as to whether you understand what  
 16 they're saying and you can follow that.  
 17 But at the end of the day, ladies and  
 18 gentlemen, I would simply say, Metal Masters is a  
 19 millwright contractor. They are not an insulation  
 20 contractor. They don't sell asbestos. The 1980  
 21 invoices do not support the claim that's being  
 22 made. The timeline does not support the claim  
 23 that's being made.  
 24 And I say that not to disparage Mr. Weist in  
 25 any way. He's a fine man. But this is a court of

1 law. America is a nation based on rule of law. We  
2 don't base it strictly on sympathy, no matter how  
3 much we want to. We have to base it on whether the  
4 case has been proved. And we submit to you that at  
5 the end of the day, when all the evidence is in and  
6 you've heard from these experts -- I'll have  
7 something to say about these experts in my  
8 clothing -- in my closing, I'll have something to  
9 say about them -- but you will have to apply your  
10 common sense to do the right thing so at the end of  
11 this week, you will walk out of this courthouse  
12 with your head high because you will not have  
13 punished Metal Masters for 30 days of work that  
14 they had no way of knowing was going to result in  
15 this.

16 Thank you.

17 THE COURT: Thank you, Mr. Pope. Ladies and  
18 gentlemen, I would normally wait until 3:30 to take  
19 our first break, but we're going to go right into  
20 the plaintiff's case, so I'll give you your  
21 afternoon break now and then we'll be able to start  
22 in without a break to have the plaintiff begin to  
23 present their case.

24 So please be back here about 20 minutes of  
25 4:00. You may go to your jury rooms.

1 you just tell us. We'll make sure that you have  
2 something that makes you comfortable. In fact ,  
3 I've got my own upstairs under my table. If you  
4 need it, tell me and I'll get it down here to you.  
5 So let us know what we can do to make this service  
6 as easy for you as we can.

7 Mr. Frost, you may begin the plaintiff's  
8 case, sir.

9 MR. FROST: Thank you, Your Honor.  
10 Plaintiffs call Dr. Alleyne.

11 THE COURT: Doctor, if you'll come around and  
12 be sworn, please, sir.

13 (The witness was sworn.)

14 THE CLERK: Please have a seat.

15 THE COURT: Thank you, Doctor. If you'll  
16 just take a seat up there on the witness stand, and  
17 you may unmask while you are testifying so that the  
18 jury might hear you. I believe you are at a safe  
19 distance from them.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Thank you, sir.

22 ---

23 ---

24 ---

25 ---

1 ---

2 (The jury exited the courtroom at 3:16 p.m.)

3 ---

4 THE COURT: Court will be at ease.

5 ---

6 (A recess transpired.)

7 ---

8 THE COURT: Please be seated.

9 (Off-the-record discussion.)

10 THE COURT REPORTER: Good afternoon.

11 THE COURT: Bring in the jury.

12 ---

13 (The jury entered the courtroom at 3:36 p.m.)

14 ---

15 THE BAILIFF: All jurors are seated, Your  
16 Honor.

17 THE COURT: Excellent. Ladies and gentlemen

18 of the jury, we will now proceed with the  
19 plaintiff's case. Needless to say, at any time  
20 you're feeling just a little bit restless or  
21 anything, it's okay even as the trial progresses to  
22 get up and stretch, if that's what you want to do.  
23 I'm real short, and sometimes I need a footstool to  
24 keep my legs from dangling in some of these chairs,  
25 so if any of you-all have those kind of troubles,

1 ---

2 WILLIAM F. ALLEYNE II, M.D., being first  
3 duly sworn, testified as follows:

4 ---

5 VOIR DIRE EXAMINATION

6 ---

7 BY MR. FROST:

8 Q Good afternoon, Dr. Alleyne. Could you please  
9 introduce yourself to the jury.

10 A My name is Dr. William F. Alleyne II. I'm a  
11 pulmonologist/intensivist.

12 Q And Dr. Alleyne, what is your role in this  
13 particular case concerning Kathy Weist?

14 A I was asked to review the medical records of  
15 the decedent and give my opinions based on the facts  
16 of the case as documented in the medical records.

17 Q And Dr. Alleyne, what makes you the right  
18 person to talk to the jury and to teach us about  
19 asbestos, asbestos diseases, and what actually  
20 happened with Ms. Weist?

21 A I'm a practicing pulmonologist/intensivist,  
22 meaning I take care of patients with breathing  
23 problems, lung problems, as well as in the intensive  
24 care unit, although I don't go there much -- at least  
25 not on a day-to-day basis. I've also been on the

1 faculty of four different medical schools, including  
2 most recently affiliate assistant professor of  
3 medicine at USC Medical School right around the  
4 corner.

5 Q And Dr. Alleyne, could you briefly tell us  
6 what is your medical background. Where were you  
7 trained, those things?

8 A I did my undergrad at Harvard College.  
9 Following that, I attended New York University School  
10 of Medicine. Following that, I completed an internal  
11 medicine residency at Harlem Hospital Center in  
12 New York City.

13 I then paid the government back for medical  
14 school scholarship by running a clinic at Rikers  
15 Island prison for three years. After that, I  
16 completed a pulmonology and critical care fellowship  
17 at Montefiore/Albert Einstein in New York City.

18 Following that, I took a job as director of  
19 the medical intensive care unit at Beth Israel North,  
20 a hospital in New York City. I was recruited to help  
21 start the hospitalist program at Carolinas Medical  
22 Center Atrium in 1995. And I then joined my current  
23 practice, Carolina Pulmonology Physicians based in  
24 Rock Hill, SC, in 1999. I've been seeing full-time  
25 pulmonary patients basically since 1989.

1 Q And I think when you started you said you went  
2 to Harvard?

3 A I did.

4 Q How did you make it from Harvard all the way  
5 down here?

6 A Well, my grandfather is from a little town  
7 outside of Orangeburg called North, so this is a  
8 homecoming for me. And once I had children, I  
9 decided that I did not want to raise them in New York  
10 City.

11 Q Now, Doctor, what has been your practical  
12 hands-on experience with asbestos disease and  
13 asbestos disease victims?

14 A I see approximately 30 to 35 patients daily ;  
15 and of those, I would imagine of those approximately  
16 150 patients per week, I probably see 20 to 25  
17 asbestosis cases per week.

18 Q And Doctor, can you tell us briefly, what is  
19 asbestos? And we're going to show the jury an  
20 animation. You were here earlier when we were giving  
21 opening statements; is that correct?

22 A That is correct.

23 Q Okay. And did you see the animation that I  
24 showed the jury and tried --

25 A I did.

1 Q -- kind of help them out with?

2 A I did.

3 Q Is that something that you've reviewed and  
4 looked at, and is that something that would help you  
5 in explaining to the jury what asbestos is and what  
6 it does to the body?

7 A Yes, it would be helpful.

8 Q Let's go back for just one second. Can you  
9 just generally tell us what asbestos is and what  
10 diseases does it generally cause? And then we'll  
11 have you show the animation to go through for  
12 mesothelioma. Does that make sense?

13 A Yes. Asbestos is a material that is used as  
14 an insulator, meaning that if you have something very  
15 hot to touch and you put asbestos around it,  
16 presumably someone could touch it and not get burned.  
17 When asbestos is in the form that is not being  
18 disturbed -- most of us went to school with asbestos  
19 on the pipes and things of that nature -- it doesn't  
20 represent a clear and present danger.

21 However, once that asbestos is manipulated,  
22 meaning it is drilled, it is broken up, it is sawed,  
23 it is shaped or in any way manipulated so that there  
24 are asbestos fibers in the air, that becomes a  
25 potential problem, because if someone inhales those

1 fibers, they get into the lung and bad things happen.

2 These bad things can include everything from  
3 scarring, which we call asbestosis, to fluid around  
4 the lung, which in some cases is benign asbestos  
5 pleural effusion, not to be confused with the case  
6 we're dealing with today, mesothelioma, a deadly  
7 cancer. It can cause run-of-the-mill lung cancer.  
8 And again, you can also see some spots on people's  
9 x-rays, and specifically around the lining of their  
10 lung, that we call plaques. Calcified plaques can  
11 occur.

12 So asbestos, inhalation of asbestos fibers,  
13 can cause multiple diseases in the lung.

14 Q And how long has medical science been dealing  
15 with asbestos and these asbestos diseases?

16 A Well, the original reports came from the  
17 1800s, with asbestos and asbestos-related disease.  
18 With respect to mesothelioma, the first literature  
19 reports directly connecting asbestos inhalation of  
20 the fibers to mesothelioma were published in 1960.

21 Q And Doctor, in regards to mesothelioma, we're  
22 going to show the animation that we discussed just a  
23 few minutes ago, and if you could be so kind as to  
24 explain to the jury exactly what we're seeing. Is  
25 that okay?

1 A Yes, sir.  
 2 Q And if there's a section where you need us to  
 3 pause, we can pause it. But if you could just  
 4 explain it as we go along, we would appreciate that.  
 5 A Sure.  
 6 Q Thank you, sir.  
 7 All right. So we have -- it says amphibole  
 8 and chrysotile. Could you just generally explain  
 9 what we're seeing?  
 10 A When asbestos is manipulated or broken up,  
 11 there are two broad categories of fibers. One are  
 12 the straight fibers, so to speak, the amphiboles, and  
 13 one are curved fibers, so-called chrysotile. Both  
 14 fibers can cause disease in humans. The straight  
 15 fibers are the more problematic, the more dangerous.  
 16 Q And we see the lymphatic system. Can you  
 17 explain how that plays into this.  
 18 A So when -- as human beings, we must breathe  
 19 all the time. Breathing provides oxygen, which is  
 20 fuel or gasoline for the body. So when we are  
 21 breathing, we are providing oxygen into our body so  
 22 that we can -- our tissues can function normally. We  
 23 also get rid of carbon dioxide.  
 24 When there are asbestos fibers in the air we  
 25 breathe, those asbestos fibers get access into our

1 Q And Doctor, I'm going to put the animation  
 2 back up. So the individual, when they breathe  
 3 asbestos, do they generally know whether they're  
 4 breathing tons and tons of asbestos?  
 5 A They may not. Sometimes the dust is visible  
 6 in the air; sometimes it is not. As long as there  
 7 are fibers in the air -- well, asbestos fibers in the  
 8 air and someone is breathing, they are getting  
 9 exposure to those fibers.  
 10 Q Whether they can see them or not?  
 11 A Whether they can see them or not.  
 12 Q And what's going on here?  
 13 A The asbestos fibers are entering into the  
 14 windpipes. The windpipes subdivide and go to all  
 15 areas of the lung. The lungs are like two balloons  
 16 filled with a variety of what I call bubble paper  
 17 that we call alveoli, and when those fibers get into  
 18 the lining of the bubbles, if you will, as we see  
 19 here, these sort of tubes that you see are  
 20 representative of the lymphatic system that has fluid  
 21 and defensive cells that is drawing from all over the  
 22 body but also goes all over the body.  
 23 Those asbestos fibers then affect the  
 24 defensive cells, and that causes the problems within  
 25 the lung and, in this case, in the lining of the

1 lungs, where our defensive cells -- and the lymphatic  
 2 system in many ways works as a defense mechanism.  
 3 Those fibers get access to our defensive cells in the  
 4 lymphatic system. The lymphatic system goes  
 5 throughout the body, and many of these fibers can  
 6 then be deposited into the lining of the lung, what  
 7 we call the pleura.  
 8 The pleura is basically when you put ribs on  
 9 the grill and you've got the meaty part down and  
 10 you've got the sort of curved part of it. You can  
 11 peel that skin off; that's the pleura.  
 12 So when the fibers stick into the pleura, that  
 13 can cause an irritation or an inflammatory reaction.  
 14 And many of these defensive cells that have chemicals  
 15 and other things that are designed to kill invaders,  
 16 those cells get burst open by the needles, if you  
 17 will, the straight fibers in particular. And those  
 18 chemicals spill into the environment of the lung and  
 19 the lining of the lung.  
 20 And in addition, the fibers can affect some of  
 21 the genes, the DNA, in the cells in the lung that  
 22 cause there to be abnormal cell division and also  
 23 unchecked cell division, and as cells multiply  
 24 unchecked, we can start to see cancers. And that's  
 25 one of the ways that asbestos causes cancer.

1 lung. And that's what we can see in the case of  
 2 Mrs. Weist that has mesothelioma.  
 3 Q And then so what we're seeing right now is  
 4 inside the lymphatic system?  
 5 A Yes, sir.  
 6 Q And then how does that create injury?  
 7 A Because the fibers can disrupt the normal way  
 8 that cells divide. Cells divide and multiply in our  
 9 body all the time, but cells are also programmed to  
 10 die after a certain time. So with the asbestos  
 11 fibers, what happens is, it disrupts the normal cell  
 12 division because it can -- the asbestos fibers can  
 13 alter the DNA, the blueprint, if you will, for the  
 14 cells.  
 15 And that blueprint tells us -- or tells the  
 16 cells exactly what to do, whether to divide, whether  
 17 to die, how many cells, how many times you divide,  
 18 what kinds of proteins you produce, what kind of  
 19 proteins you can respond to.  
 20 And when these genes or these chromosomes are  
 21 disrupted by -- in this case, asbestos fibers, the  
 22 normal control of the cell is lost, and that is what  
 23 leads to the unchecked growth because of the fact  
 24 that this asbestos fiber has now sort of gummed up  
 25 the works, and instead of getting two identical cells



1 after cell division, you get one that looks similar  
2 to what it started with and one that is abnormal.  
3 And the abnormal cells we believe, if left unchecked,  
4 can become cancer and, in this case, mesothelioma.

5 And the representation here is you see -- you  
6 see this uncontrolled cell growth. And as the video  
7 will progress, we see what initially starts as  
8 unchecked cell growth, and that becomes, or can  
9 become, a cancer. That cancer can then encase the  
10 lung, causing a great deal of pain and great deal of  
11 difficulty breathing.

12 Q And that white material, that's the cancer  
13 spreading that we're seeing, Doctor?

14 A Yes, sir.

15 Q Now, Doctor, you mentioned that you have the  
16 pleura. Could you explain what exactly is the  
17 pleura, what is its purpose around your lung, and  
18 what's the effect that you have this white cancer  
19 invading that area?

20 A So the pleura lines the lung and serves as a  
21 lubricant. Remember, it sits between the ribs and  
22 the lung. Every time you breathe, your lungs and  
23 your rib need to slide past each other. So the  
24 pleura presents a way for that to occur with minimal,  
25 if any, friction.

1 of sliding across smoothly and causing no pain, it  
2 can not only be very painful, but as the progress --  
3 as the -- as the process continues, now the lung is  
4 encased by a thick rind, almost like you can peel an  
5 orange of tissue, and it's hard to get a breath in;  
6 and therefore, patients now, in addition to having  
7 pain, have difficulty breathing, with shortness of  
8 breath that can be so debilitating. Even getting  
9 around the house can be somewhat difficult for them.

10 Q And as that progresses, can you tell us what  
11 is going to be the treatment options for someone as  
12 they progress down this road.

13 A The treatment options for mesothelioma are  
14 very limited. Most of these patients will expire  
15 within 6 to 12 months from the original diagnosis.  
16 Some people expire as long as a year and a half, but  
17 that tends to be rare.

18 Typically we offer patients who are seen early  
19 the option of potential surgery, which they would  
20 remove the entire lining of the lung, sometimes lift  
21 the lung, depending on how extensive it is. And we  
22 also offer patients chemotherapy.

23 And again, neither of these options are very  
24 good. Most people do, in fact, succumb to their  
25 illness within about 6 to 12 months.

1 And, in addition, the pleura also helps to  
2 drain extra fluid from the lung tissue, and of  
3 course, it also has some lymph node tissue in it to  
4 help in the defenses against any foreign invaders,  
5 whether that's bacteria -- bacteria or viruses and,  
6 in this case, fibers.

7 Q And that pleura area, what is the effect on  
8 the human being when the pleura is inflamed or the  
9 cancer is starting to grow bigger?

10 A So the first manifestation may be pain.  
11 Right? Normally you have a lung with some  
12 lubrication and the pleura is sliding -- and the  
13 pleura is between the lung and the rib so that  
14 anytime you take a deep breath, it inflates your  
15 lung; you can slide across those ribs and not have  
16 any pain. Well, when you get something that  
17 shouldn't be there, in this case, fluid and  
18 ultimately cancer, you can start to have some pain or  
19 discomfort, particularly when you take a deep breath.  
20 Patients describe it as I feel like I'm getting  
21 stabbed every time I take a breath.

22 In addition, the lungs are designed to expand  
23 as you take a breath in and then, as you exhale, they  
24 deflate. Well, what happens, when the pleura gets  
25 inflamed is it can stick to those lungs and, instead

1 Q And Doctor, as we sit here today, do we have a  
2 cure for this disease, mesothelioma?

3 A We do not.

4 Q And Doctor, what causes mesothelioma in the  
5 United States?

6 A Asbestos exposure, particularly inhalation of  
7 asbestos fibers.

8 Q Now, as a clinician, you were talking earlier  
9 that you see -- how many folks a day?

10 A About 35 patients a day.

11 Q As a clinician, when you're trying to make a  
12 diagnosis of an individual with an asbestos-related  
13 disease, what are you doing?

14 A Typically what I will do is evaluate those  
15 patients for, number 1, what kind of job they did.  
16 Most patients get exposed to asbestos in their  
17 workplace, if they have asbestos exposure.

18 However, one of the other things we also do is  
19 ask what kind of work your spouse did or what kind of  
20 work your parents did. And that also gives us the  
21 ability to determine who had what we call secondhand  
22 asbestos exposure; maybe they didn't work with it  
23 directly, but they either contacted these asbestos  
24 fibers by living with that person or perhaps washing  
25 their dirty work clothes.

1 But somehow, if we see -- if we see a  
2 mesothelioma, the next question is, where were you  
3 exposed to asbestos? And how were you exposed to  
4 asbestos?

5 Q And Doctor, do all of the patients know where  
6 they possibly might have been exposed?

7 A No. In many cases, when we see a patient and  
8 tell them you have asbestos-related lung disease and ,  
9 god forbid, mesothelioma, many of them are shocked  
10 because they didn't work with asbestos and they don't  
11 understand how they could get this asbestos-related  
12 cancer.

13 Q And this asbestos-related cancer,  
14 mesothelioma, you mentioned that if you ask them that  
15 question, the how were you exposed to asbestos , and  
16 they say, well, I'm not really sure, that you then  
17 would probe further to see what the father or their  
18 husband may have done; is that --

19 A Or their wives, a spouse. Someone has  
20 introduced asbestos into their environment, so if  
21 they didn't work with it directly -- and many times  
22 we can pick that up, whether they were electricians  
23 or welders or insulators or millwrights or  
24 plumbers -- there are certain professions,  
25 specifically trades that are highly correlated with

1 were going through college or high school, then you  
2 can sort of tease out where they may have been  
3 exposed.

4 Q And Doctor, if someone's just working a summer  
5 job and they may have been exposed to asbestos, what  
6 does science tell us about that mesothelioma?

7 A There's no safe level of asbestos exposure.  
8 If it is not disturbed, then it's not going to be a  
9 problem. But anytime you disturb it, meaning sawing  
10 it, drilling it, manipulating it, fabricating it,  
11 mixing the mud, anytime you do anything that results  
12 in asbestos fibers in the air, that's when we get  
13 into trouble, because that's how the asbestos fibers  
14 get access into your body and cause the bad effects  
15 such as cancer and mesothelioma.

16 Q And Doctor, when you say no safe level of  
17 exposure to asbestos in regards to mesothelioma, is  
18 that just your opinion or have scientists actually  
19 studied this?

20 A No. This has been studied, and it's in the  
21 literature. There's no safe exposure level of  
22 asbestos fibers, and of course, even brief exposures  
23 can cause mesothelioma.

24 THE COURT: Let me stop you there, Mr. Frost.  
25 Ladies and gentlemen of the jury, Dr. Alleyne is an

1 asbestos exposure, just by what they do every day.

2 But if the patient doesn't know or has not  
3 participated in any of that, then we ask them about  
4 things like, did you ever work a summer job in, say,  
5 a textile mill or a paper mill? You know, did you  
6 ever live with someone who did certain types of work?

7 Because there's clearly a -- an asbestos  
8 inhalation -- there is an inhalation of asbestos  
9 fibers that has caused this; the only question in my  
10 mind is where did you get it. And therefore, I ask  
11 these types of questions when people don't have an  
12 obvious answer as to why they have asbestos -- why  
13 they have an asbestos-related cancer.

14 Q And why would you ask about summer jobs?

15 A Because sometimes it may have been something  
16 they did either in high school or college, and it  
17 wasn't their main job. And it may not be something  
18 that happened in recent memory. There is a -- what  
19 we call a latency period, anywhere from 20 to 50  
20 years, classically. But certainly it can occur a  
21 little earlier, depending on the amount that you're  
22 exposed to. And many of these patients don't really  
23 recall anything that they did, but then when you ask  
24 them about, say, summer jobs, where people may have  
25 worked in the textile mill or something while they

1 expert witness; and expert witnesses are witnesses  
2 who, if I qualify them, by reason of their  
3 training, education, and experience, they are the  
4 only witnesses you will hear who can actually  
5 express an opinion in the areas in which they're  
6 qualified to express an opinion.

7 Dr. Alleyne has laid out his background, his  
8 education, his training, and his experience and is  
9 now going into the opinion part of his testimony.  
10 So before he does that, I want to be sure he's  
11 qualified as an expert.

12 You are offering him as an expert in what,  
13 Mr. Frost?

14 MR. FROST: Your Honor, I'm offering  
15 Dr. Alleyne as an expert in asbestos-related  
16 disease, the diagnosis of asbestos-related disease,  
17 and also the care of mesothelioma patients.

18 THE COURT: Very good. Any objection from  
19 the defense?

20 MR. COSCULLUELA: Yes, Your Honor.  
21 Dr. Alleyne is a pulmonologist, as he introduced  
22 himself to the jury. He specializes in treating  
23 COPD, chronic obstructive pulmonary disease, and  
24 asbestosis patients, according to his website. He  
25 does not specialize in mesothelioma. And, as I

1 recall from our last meeting, he sees about two or  
2 three mesotheliomas a year, all of whom get  
3 referred to other physicians that actually  
4 specialize in asbestos medicine and oncology,  
5 thoracic surgery and radiation oncology.

6 THE COURT: All right, sir. And so are you  
7 objecting to his being certified?

8 MR. COSCULLUELA: Yes, Your Honor.

9 THE COURT: The objection is overruled. The  
10 doctor has, by means of his training, education,  
11 and experience, given you plenty of factual  
12 background within his experience to be able to  
13 express opinions on mesothelioma, quite a rare  
14 cancer.

15 And so I'll overrule the objection and  
16 qualify the doctor in the specialties you have  
17 elucidated, Mr. Frost.

18 MR. FROST: Thank you, Your Honor. And I  
19 apologize, Your Honor.

20 THE COURT: Very good. You may continue,  
21 sir.

22 MR. FROST: Thank you, Your Honor.

23 ---

24 ---

25 ---

1 that in the past you were exposed to asbestos, much  
2 like a tattoo.

3 We also see what we call rounded atelectasis,  
4 which is a finding where the pleura literally twists  
5 on itself. Now when you look at the x-ray or the  
6 CT scan, it looks like it could be a mass. So one of  
7 the things we have to worry about, is this cancer or  
8 not? And there's ways we can do that, whether we do  
9 a biopsy, which is usually not required; whether we  
10 do a PET scan, which is a special scan that lights up  
11 in cases of active inflammation, such as infections  
12 or cancer; and whether we have the opportunity to  
13 look at old films from years ago and see that these  
14 things have not changed, in which case we know  
15 they're not a cancer. All right?

16 We've been talking today about mesothelioma,  
17 which is a specific cancer of the lining of the lung  
18 that people get having been exposed to asbestos  
19 fibers. We also see run-of-the-mill lung cancer that  
20 is not mesothelioma but is lung cancer, and asbestos  
21 fiber exposure is a risk factor for lung cancer  
22 whether you smoke or not. So we see some of those  
23 patients.

24 And of course, we also see patients with  
25 what's called benign asbestos pleural effusion, or

1 ---

2 DIRECT EXAMINATION

3 ---

4 BY MR. FROST:

5 Q Now, Dr. Alleyne, we were talking about  
6 mesothelioma, asbestos-related diseases, and I just  
7 want to make sure that we're clear about what -- your  
8 clinical evaluations and how you go about clinical  
9 evaluations.

10 So could you explain how many asbestos-related  
11 diseases and the different types that you see as a  
12 clinician.

13 A So there are several asbestos-related  
14 illnesses, one of which is called asbestosis or lung  
15 scarring or related to inhalation of asbestos fibers.  
16 And I see these patients quite often; again,  
17 somewhere in the area of five to six a day, about 25  
18 asbestosis cases per week.

19 Now, in addition to that, asbestos patients  
20 can get fairly benign illness, meaning that it's not  
21 cancer; it doesn't become cancer; and it doesn't even  
22 really bother them, what we call pleural plaques.  
23 These are like tattoos. These are calcium spots on  
24 the lining of the lung. They don't become cancer.  
25 They don't become mesothelioma. They're indicative

1 BAPE. And these patients are sent to me a lot of  
2 times from their primary care physician because they  
3 have fluid around their lung and people want to know  
4 what's going on: Is it infection? Is it heart  
5 failure, et cetera.

6 And sometimes people can also get an abnormal  
7 x-ray where they just have spots on their lung, what  
8 we call nodules, and people get referred to me by  
9 their primary care physician to evaluate someone  
10 with, quote-unquote, an abnormal x-ray, whether  
11 they've been exposed to asbestos or not.

12 And then, of course, I do a detailed history  
13 and physical, where I examine the patient; I ask them  
14 about every job they've ever held; if they're  
15 married, what kind of work does their spouse do. I  
16 ask about summer jobs. I ask about what their  
17 parents did. So trying to find out any types of  
18 exposures.

19 And of course, when I examine people, it's  
20 not -- I'm not only asking about asbestos. Right? I  
21 ask, have you worked at a cotton mill? Have you ever  
22 been exposed to dust or chemicals at work? Do you  
23 have any animals at home? So there's a lot of  
24 different things I'll ask.

25 And then, of course, I examine the patient,

1 order whatever tests I need. And in the case of  
2 someone with fluid, typically we will try to remove  
3 some of that fluid and then send it for tests, look  
4 at it under the microscope with or without the  
5 pathologist and then make a diagnosis and a treatment  
6 plan based on what those tests show.

7 Q And so, Doctor, with all of that experience  
8 with lung diseases, are you familiar with  
9 mesotheliomas and how to diagnose mesotheliomas?

10 A Yes.

11 Q And have you been called on in the past to  
12 diagnose mesotheliomas?

13 A Yes, I have.

14 Q And how often -- well, how prevalent is  
15 mesothelioma?

16 A It's a rare type of cancer. Only about 3,000  
17 cases in the United States every year. And again, I  
18 probably see on the order of two or three a year.

19 Now, these may be patients who are being  
20 diagnosed for the first time; there may be patients  
21 who have been diagnosed previously and they refer  
22 them to me; or it may be someone who has a concern  
23 that they could have mesothelioma because they used  
24 to work with asbestos and they get told they have  
25 fluid. And so not only do we do that, but we try to

1 get them to the appropriate specialists so that they  
2 can get the care they need for whatever time they  
3 have left on earth.

4 Q And is part of that process you looking at  
5 pathology reports and doing what's called a  
6 differential diagnosis?

7 A Yes. We do a differential diagnosis. And  
8 certainly when I make that diagnosis, I will  
9 typically go and talk about it and look at the slides  
10 with the pathologist and say, okay, what are we  
11 seeing here? And I have questions about that. And  
12 could it be something else.

13 Q Now, Doctor, we've asked you to look at the  
14 medical records of Kathy Weist. Is that something  
15 that you have done?

16 A Yes.

17 Q And Doctor, we previously marked as  
18 Plaintiff's Exhibit Weist 1, Plaintiff's Exhibit  
19 Weist 3, Plaintiff's Exhibit Weist 5, various  
20 medical -- and Plaintiff's Exhibit Weist 6, various  
21 medical records, and then Plaintiff's Exhibit Weist  
22 24.

23 You and I have gone through these documents,  
24 correct?

25 A Yes.

1 Q And are these the treatment records of  
2 Ms. Weist?

3 A Yes, they are.

4 MR. FROST: Your Honor, we would offer  
5 Plaintiff's Exhibit Number 1, Number 3, Number 5,  
6 Number 6, and Number 24.

7 MR. COSCULLUELA: No objection, Your Honor.

8 THE COURT: All right. The exhibits are  
9 admitted.

10 And Doctor, I have one question for you  
11 before you continue.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: As you begin to express your  
14 opinions, will these be expressed to a reasonable  
15 degree of medical certainty?

16 THE WITNESS: Yes, Your Honor, they will.

17 THE COURT: Very good.

18 You may continue.

19 MR. FROST: Thank you, Your Honor.

20 BY MR. FROST:

21 Q Now, Doctor, when you reviewed these records  
22 of Kathy Weist, were you able, based on your  
23 training, background, and experience, to come, within  
24 a reasonable degree of scientific and medical  
25 probability, to a diagnosis?

1 A Yes.

2 Q And what was the diagnosis that you came to  
3 based upon your review of the records and your  
4 training, background, and experience?

5 A Based on my review of the records and to  
6 within a reasonable degree of medical certainty, the  
7 patient, Mrs. Kathy Weist, had mesothelioma as a  
8 result of inhalation of asbestos fibers.

9 Q And Doctor, within a reasonable degree of  
10 medical and scientific probability, what did  
11 Ms. Weist die from?

12 A Her death certificate lists the cause of death  
13 as a pulmonology embolism, a blood clot. However,  
14 that blood clot resulted after she went up for  
15 surgery to Boston. While in the hospital, she  
16 unfortunately fell and broke her pelvis, her hip  
17 bone; and we know that having underlying cancer,  
18 particularly having some type of hip fracture, puts  
19 one at risk for a blood clot. And although the  
20 official cause of death was a blood clot, the death  
21 certificate also lists, as I recall, mesothelioma,  
22 which was the underlying cause of her death.

23 Q And can you explain what the difference is?  
24 Is -- why it's called underlying versus the cause?

25 A Right. So at the end of the day, when someone

1 passes, they typically will pass because their heart  
2 stops. And in the case of Mrs. Weist, it was because  
3 she had a large blood clot in her lung, what we call  
4 a pulmonology embolism.

5 Well, the reason she had that blood clot is  
6 because people with cancer have a predisposition --  
7 it's easy for them to get blood clots. And in the  
8 case of Mrs. Weist, she had the recent hip fracture,  
9 which also puts her at risk for the blood clot.

10 But the underlying condition, the reason she  
11 went to the hospital in the first place, the reason  
12 she went to Boston to have surgery, which  
13 unfortunately was not able to be done, was because of  
14 the mesothelioma. The underlying cancer was the  
15 cause of her death.

16 Q And Doctor, so it's like sometimes when folks  
17 who have cancer, they go to the hospital and maybe  
18 they get an infection and the infection causes their  
19 final death, but they're there in the hospital  
20 because they had mesothelioma or lung cancer. Is  
21 that similar?

22 A Yes.

23 Q Now, Doctor, in regards to the diagnosis, did  
24 you also look at the course of treatment of Ms. Weist  
25 and exactly kind of how that diagnosis came about and

1 what her medical treatment was until her untimely  
2 death?

3 A I did.

4 Q And could you generally summarize for us, and  
5 then we'll look at some of the medical records?

6 A So Ms. Weist was having some difficulty with  
7 pain, and she went to her primary care doctor, who  
8 was able to diagnose the mesothelioma.

9 So once the mesothelioma was diagnosed, then  
10 the question was, are we sure? And some of those  
11 slides were sent to the Mayo Clinic, a very large  
12 medical center that is world-renowned for their  
13 expertise, located in Rochester, Minnesota. So the  
14 people at Mayo Clinic confirmed the diagnosis. Of  
15 course it was made right here in South Carolina.

16 And then the decision was made to try to treat  
17 her with surgery. So she was sent up to Harvard .  
18 Brigham and Women's Hospital is one of the Harvard  
19 hospitals in Boston. And she met with a Dr. Bueno, I  
20 believe, a surgeon. And the plan was to evaluate her  
21 and do surgery to try to save her life.

22 Well, when they did the evaluation, they felt  
23 that she was appropriate for surgery. However, as  
24 happens sometimes, when they actually took her to the  
25 operating room and opened her chest up, they realized

1 that the disease had progressed further than they had  
2 anticipated, and so, therefore, she was not  
3 appropriate to do surgery.

4 So then what they did was they closed her  
5 chest up and they sent her to the floor, intending to  
6 discharge her; and unfortunately, she got up out of  
7 her bed and she fell and sustained this hip fracture  
8 or this pelvic fracture.

9 So she was then in a situation that they  
10 weren't going to do surgery; they were up in Boston.  
11 So an arrangement was made to fly her back to  
12 South Carolina. Well, while flying back, she  
13 developed some significant shortness of breath that  
14 eventually turned out, once they evaluated her at the  
15 hospital, to be a blood clot. And so they then  
16 admitted her to the hospital to get blood thinners to  
17 address the blood clot; and it became clear that she  
18 was not going to do well, and so they stabilized her  
19 the best they could and they discharged her home with  
20 home health and, ultimately, hospice.

21 Q And going back to her trip to Harvard, she was  
22 going up there to try to get a surgery, and actually,  
23 they opened her up and tried to do it?

24 A That's correct.

25 Q Now, can you describe what that surgery --

1 that -- I guess I hate to say failed, but that she  
2 wasn't able to get, could you describe what that  
3 surgery consists of?

4 A So the intention of cancer surgery as a rule  
5 is to remove the cancer and eliminate the problem.  
6 The issue with mesothelioma, remember, is that it  
7 involves the lining of the lung. So this is a very  
8 large surgery. Not only do they have to remove the  
9 lining of the lung, but sometimes they have to remove  
10 that entire lung. So as you might imagine, this is  
11 not something that you want done at just any place.  
12 You want people who do this all the time.

13 And so that's why she went to Harvard because  
14 this is one of the places that does this type of  
15 surgery on a fairly regular basis, and therefore, she  
16 went there to have surgery in an effort to save her  
17 life. Unfortunately, that was not to be the case.

18 Q And the surgery, is it short? Long?

19 A It's a long and very detailed type of surgery.  
20 Again, not all surgeons do this, and typically when  
21 we make referrals, we make referrals to places that  
22 do this type of surgery fairly often so that they  
23 have the best experience and ability to do the  
24 procedure. You don't want someone who's done one  
25 maybe once every five years; you want someone who

1 does two or three of these type of surgeries a month,  
 2 if you will.  
 3 Q And how many hospitals do this type of surgery  
 4 that often in this country?  
 5 A I would imagine no more than a half-dozen,  
 6 maybe a dozen.  
 7 Q And is that one reasons why she had to go all  
 8 the way up to Harvard?  
 9 A Yes.  
 10 Q And are the Harvard surgeons -- do they  
 11 have -- are they considered to be some of the most  
 12 top-flight surgeons on this surgery?  
 13 A Yes.  
 14 Q Now, I want to talk to you a little bit -- and  
 15 we'll go ahead and look at some of the medical  
 16 records that we've admitted. I'm going to have to  
 17 try to zoom up, Doctor.  
 18 A I'm reaching for my glasses as we speak.  
 19 Q I know. So this is from -- these are notes  
 20 from the thoracic surgery. Can you --  
 21 A Yes. I've got it.  
 22 Q Okay. Great.  
 23 MR. FROST: Can everyone else see? Okay.  
 24 Great. I was hoping everybody would. Fancy an  
 25 iPad.

1 years old when she was up there at Brigham &  
 2 Williams -- Women's?  
 3 A Correct.  
 4 Q Is that correct?  
 5 A Correct.  
 6 Q Now, the other thing these records indicate is  
 7 that one of the diseases that you were talking about  
 8 earlier, pleural plaques, that they saw some evidence  
 9 of that. Is that correct?  
 10 A Yes.  
 11 Q Can you explain to us the significance of the  
 12 fact that, at this hospital, they notated that there  
 13 was evidence of pleural plaques?  
 14 A So pleural plaques are like a tattoo. Again,  
 15 they have calcium spots on the lining of the lung.  
 16 They don't become cancer. They don't grow. And  
 17 typically they're something that we notice as doctors  
 18 looking at an x-ray that the patient doesn't notice.  
 19 They're not required for a diagnosis of  
 20 asbestosis; they're not required for a diagnosis of  
 21 mesothelioma; but if you see pleural plaques, you  
 22 think that this person has, more likely than not, had  
 23 significant asbestos exposure in the past and inhaled  
 24 those fibers.  
 25 Q Now, can people have pleural plaques and not

1 BY MR. COSCULLUELA:  
 2 Q All right. So this is when she was up at --  
 3 A Brigham and Women's.  
 4 Q Brigham and Williams.  
 5 THE COURT: It's Brigham and Women's --  
 6 MR. FROST: Women's. I'm sorry.  
 7 THE WITNESS: Yes. Brigham and Women's.  
 8 THE COURT: -- Hospital in Boston.  
 9 MR. FROST: Yes. I apologize, Your Honor. I  
 10 just got a little nervous with my technology. All  
 11 right.  
 12 BY MR. FROST:  
 13 Q And one of the things that they have is they  
 14 show the symptoms that she had, and I think you  
 15 talked a little bit about one of the classical signs  
 16 of mesothelioma is the shortness of breath.  
 17 Why is that a classical symptom of a  
 18 mesothelioma?  
 19 A Because your lungs, again, are like balloons,  
 20 and anything that restricts those balloons from  
 21 inflating and deflating can cause shortness of  
 22 breath. In the case of mesothelioma, there's fluid  
 23 and thickening of the lining of the lung so it cannot  
 24 expand as easily as it normally should.  
 25 Q And the record indicates that Kathy was 62

1 get mesothelioma?  
 2 A Yes.  
 3 Q And why is that that someone could have  
 4 pleural plaques, the tattoo of asbestos, and some  
 5 folks get mesothelioma, some folks don't?  
 6 A And again, this is part of the mystery of  
 7 asbestosis and asbestos-related diseases. Pleural  
 8 plaques, when you look at people who have been  
 9 exposed to asbestos, are fairly common, but not all  
 10 patients with asbestosis get pleural plaques; not all  
 11 patients with pleural plaques get mesothelioma.  
 12 So it's true, true, and not necessarily  
 13 related.  
 14 Q And Doctor, do they also, when they're  
 15 evaluating folks, take medical histories to see if  
 16 they have had any underlying medical conditions to  
 17 evaluate how they not only treat it but also to make  
 18 sure that they have the right diagnosis?  
 19 A Yes. So typically we'll ask about other risk  
 20 factors for cancer as a whole, classically tobacco  
 21 use and alcohol use, and have you been exposed to any  
 22 other chemicals, benzene and things of that nature.  
 23 But that's what we do with every patient every  
 24 time regardless of whether you have mesothelioma or  
 25 not. We want to know, do you have other risk factors

1 for cancer.  
 2 Q And why is that important to know if folks  
 3 like Kathy have other risk factors, you know, things  
 4 like whether they consumed alcohol, nicotine, or --  
 5 it says "any other substance." I'm assuming that's  
 6 like drugs?  
 7 A Presumably, yes.  
 8 Q Okay.  
 9 A So again, we want a complete history and  
 10 physical, and part of the history is any exposures to  
 11 things that could adversely impact your health. We  
 12 typically will also ask about things like diet and  
 13 exercise, because cigarette smoking, although it  
 14 causes several types of cancer, does not cause  
 15 mesothelioma.  
 16 Mesothelioma is a cancer as a result of  
 17 asbestos fiber inhalation.  
 18 Q And that's not even an issue in this case  
 19 because we know Kathy never smoked?  
 20 A Correct.  
 21 Q Now, did you look through her records, and did  
 22 you see that she suffered from any major health  
 23 problems that would have shortened her life?  
 24 A I did not.  
 25 Q You did not see any or you didn't look?

1 A Haldol.  
 2 Q Haldol. What is Hal- --  
 3 A Haldol is a drug that we give people to help  
 4 calm them down. One of the things that happens when  
 5 you're in the hospital in general is that you get  
 6 disoriented, and you can get confused. And in  
 7 addition, the medicines we give for pain can make you  
 8 disoriented and confused.  
 9 So sometimes we have to give you medications  
 10 on top of that to help calm you down if you are  
 11 hallucinating, seeing bugs crawling on the wall, or  
 12 you're talking to people who aren't in the room. We  
 13 know these types of things happen, and so we try to  
 14 reassure the patient verbally, but many times we need  
 15 to give them some drugs to just calm them down.  
 16 Q And is that something that they had to do with  
 17 Kathy because she was having some hallucinations?  
 18 A That is correct.  
 19 Q Now, you mentioned morphine. Can you tell us  
 20 generally what was the progression of morphine in  
 21 regards to her -- her treatment.  
 22 A So we give morphine to help alleviate pain.  
 23 It is a strong narcotic, and it is indicated  
 24 particularly in cancer patients who have pain. We're  
 25 not, at this point, worried about her being addicted.

1 A No. I looked at her entire medical record,  
 2 and I did not see any factors that would adversely  
 3 affect her health.  
 4 Q And Doctor, in regards to some of these other  
 5 records, this is from where she was up at Harvard,  
 6 but did you also look at the records of when she came  
 7 back to South Carolina and she was not able to get  
 8 the treatment from the surgery?  
 9 A I did.  
 10 Q Could you summarize for us generally what  
 11 those records show as to what Kathy Weist went  
 12 through after her unsuccessful surgery.  
 13 A Well, as you mentioned, in addition to the  
 14 fact that it makes -- mesothelioma makes it difficult  
 15 to breathe, it can also be very painful. So they  
 16 were giving her morphine to help her with her pain.  
 17 Morphine can also help alleviate, to a certain  
 18 extent, people's shortness of breath.  
 19 Of course she fell and sustained the hip  
 20 fracture, which was very painful to her, and  
 21 ultimately the blood clot, which was certainly  
 22 life-threatening to her and, in fact, was the final  
 23 cause of her demise.  
 24 Q Now, Doctor, the records indicate that I guess  
 25 Hal- --

1 We want to provide comfort and dignity for her. And  
 2 of course, in addition to the mesothelioma causing  
 3 pain, she also at this point has a hip fracture that  
 4 the surgeons felt that trying to fix would put her at  
 5 risk so that they were concerned whether or not she  
 6 could survive that type of operation.  
 7 So she's got pain there, and because of the  
 8 pain and the difficulty moving, she's started to  
 9 develop what we call pressure sores, because if your  
 10 body is in the same position for any length of time,  
 11 you can get damage to the skin. And of course, most  
 12 people just get up and shift their weight or move it;  
 13 but a lot of times when that's difficult to do or  
 14 it's painful to do, you just don't shift as much, and  
 15 that puts you at risk of getting what are commonly  
 16 referred to as bed sores or what we call pressure  
 17 sores.  
 18 Q And Doctor, when she got back, I think you  
 19 mentioned earlier that eventually she was put on  
 20 hospice care?  
 21 A That is correct.  
 22 Q What is the role of hospice care in regards to  
 23 mesothelioma patients?  
 24 A So hospice, in general, is designed for  
 25 end-of-life care, and at this point, the patient, the

1 physicians, the family understands that the patient  
2 is not going to survive the illness in question. And  
3 so what hospice does is they come in and they try to  
4 help, number one, the patient, but also the family,  
5 because death is a difficult transition for most of  
6 us, and it's difficult for our family members; and so  
7 what hospice tries to do is help everybody to smooth  
8 their transition -- the patient, the family, the  
9 doctor -- and also providing comfort that it's  
10 acceptable at the end of life to take strong  
11 medicines. People are concerned that they're going  
12 to get hooked, and we assure them that that's not the  
13 case; we're just making you comfortable for your  
14 transition.

15 Q And Doctor, these are some of the records, and  
16 I'm not going to go in too much detail with these  
17 records because they're in evidence, and the jury, if  
18 they need to look at them, surely can.

19 But can you generally describe what was  
20 reported in the records as to what's going on with  
21 the family when they're having to deal with Kathy's  
22 impending death?

23 A So this lady was diagnosed with mesothelioma  
24 in January, and by her own statement, she was a  
25 fighter. She wanted to live. And so they go to

1 Boston with the hopes that the doctors there will be  
2 able to give her the right surgery and she'll be able  
3 to be cured and continue to live.

4 Well, that plan was not able to be  
5 successfully executed, and so now the family and the  
6 patient are in a position of, hey, we have hope;  
7 we're going to fight this thing to, hey, this is not  
8 going to turn out well; you are going to pass as a  
9 result of this illness; and now we, as the doctors,  
10 have to put the family in the best position with  
11 hospice to help them make the transition from, we  
12 were hoping that she got better to now we know she's  
13 going to pass and let her -- let us all come to grips  
14 with that.

15 It is very difficult, as you might imagine.  
16 And to help with their transition, we have hospice,  
17 not only just for medicine and not only just for the  
18 patient, but also to help the family and help  
19 everyone to understand that it's okay to talk about  
20 death and dying; it's okay to be upset and cry about  
21 it, because it's a very difficult process.

22 But rather than have everybody sort of  
23 standing around the bedside and not saying what we're  
24 all thinking, hospice is designed to help facilitate  
25 those discussions and help ease their transition.

1 Q And Doctor, based on your review of these  
2 records, was that part of the process that the Weist  
3 family had to go through?

4 A Yes.

5 Q Now, Doctor, in regards to -- we talked  
6 originally about exposure to asbestos, and I need to  
7 ask you some legal questions. Okay?

8 A Okay.

9 Q Doctor, I want you to assume that Bob Weist  
10 worked at the Louis Rich plant for about six to seven  
11 months for one week and alternating weekends; and at  
12 the plant, he worked with and around thermal  
13 insulation; he took his clothing home; that Kathy  
14 washed that clothing and she was exposed to asbestos  
15 from that clothing that was in that insulation and  
16 other asbestos materials.

17 Would those exposures be a substantial  
18 contributing factor to her mesothelioma?

19 A Yes.

20 Q And why?

21 A Because we know that there's no safe level of  
22 exposure to asbestos fibers. We also know that  
23 patients such as Mrs. Weist unfortunately are not  
24 unusual, where classically the wife, but also other  
25 family members, who may have been exposed to the

1 dirty work clothes as their only source of asbestos  
2 exposure, can, in fact, develop asbestosis and, in  
3 this case, mesothelioma.

4 Q And Doctor, we've asked you to come down here  
5 and take you away from your practice. I can't  
6 remember. How far away are you?

7 A I'm in Rock Hill, South Carolina.

8 Q Rock Hill. And since you're not able to serve  
9 patients, are you going to charge us for what you're  
10 going -- what you taught us today?

11 A Yes, sir.

12 Q And how much are you going to charge us for  
13 that?

14 A My fee is \$5,000 per day.

15 Q And Doctor, in regards to litigation, do you  
16 generally testify in litigation? Are you called upon  
17 to teach juries the same as you have here?

18 A Yes.

19 Q And who do you generally testify for?

20 A I will testify for whoever calls me, or at the  
21 very least, I'll give my opinion. Sometimes they  
22 want me to testify; sometimes they don't. And if it  
23 is a plaintiff, so be it. If it's a defendant, so be  
24 it. I review the case; I give the requesting  
25 attorneys my opinion; and they take it from there.



1 MR. FROST: And Doctor, I appreciate your  
2 time teaching us about mesothelioma and Ms. Weist's  
3 diagnosis. Thank you, sir.  
4 THE WITNESS: Thank you.  
5 THE COURT: Cross-examination?  
6 MR. COSCULLUELA: Yes, Your Honor.  
7 THE COURT: Yes, sir.  
8 MR. COSCULLUELA: May it please the Court.  
9 Dr. Alleyne, it's good to see you again.  
10 THE WITNESS: Good to see you, sir.  
11 MR. COSCULLUELA: Your Honor, may I take off  
12 the mask, please?  
13 THE COURT: Certainly. Certainly. I  
14 absolutely want you to.  
15 MR. COSCULLUELA: I'm getting lightheaded.  
16 ---  
17 CROSS-EXAMINATION  
18 ---  
19 BY MR. COSCULLUELA:  
20 Q Dr. Alleyne, this is, in fact, the first time  
21 you have ever testified in a courtroom in a  
22 mesothelioma case. Right?  
23 A To my knowledge, yes.  
24 Q Okay. You've testified with respect to other  
25 pulmonary diseases, correct?

1 cancer, is it?  
2 A No, sir.  
3 Q Asbestosis doesn't have the ability to invade  
4 surrounding tissue?  
5 A That is correct.  
6 Q It doesn't have the ability to have the  
7 uncontrolled cell growth that mesothelioma does ?  
8 A That is correct.  
9 Q And it doesn't metastasize to other parts of  
10 the body?  
11 A That is correct.  
12 Q If you are looking at a chest x-ray, you can  
13 see little ditzels, little markings, on the chest  
14 x-ray, when someone has a history of asbestosis?  
15 A That is correct.  
16 Q All right. And they have a lot of exposure to  
17 get the disease, asbestosis?  
18 A When you say they have a lot of exposure, I'm  
19 not quite sure your definition of "a lot," but  
20 suffice it to say they have exposure to asbestos  
21 fibers that they inhaled, which results in lung  
22 scarring, which we call asbestosis.  
23 Q Okay. But to see that lung scarring on the  
24 chest x-ray or the CT scan, the subject, that is, the  
25 patient in the case of one of your patients, has

1 A Yes.  
2 Q But this is the first mesothelioma case?  
3 A Yes.  
4 Q All right. Let's do a little more detail, a  
5 little more dive, on the difference between  
6 asbestosis and the difference between mesothelioma.  
7 Okay?  
8 A Yes, sir.  
9 Q Okay. Can you agree with me that asbestosis  
10 is the result of inhaling asbestos fibers; the  
11 asbestos fibers become trapped in the small airways  
12 near the alveoli; and that your body's response to a  
13 foreign body inside that part of your body, just like  
14 it would be to a splinter in your fingertip, would be  
15 to dispatch lymph, something to try to get it out of  
16 the body?  
17 A To dispatch defensive cells; yes.  
18 Q Yeah. Okay. And that's why, when we get a  
19 splinter on our fingertip, it kind of bubbles over  
20 with a little liquid, right?  
21 A That's correct.  
22 Q And that liquid is lymph?  
23 A It can be lymph. It can also be other  
24 liquids.  
25 Q Okay. Fair enough. Asbestosis is not a

1 inhaled a lot of asbestos?  
2 A They have inhaled some asbestos fibers.  
3 Again, Counselor, I'm not sure your definition of "a  
4 lot," but I will say that they have inhaled fibers.  
5 Q All right. Now, mesothelioma, unlike  
6 asbestosis -- although both diseases are the result  
7 of asbestos exposure, mesothelioma is a cancer?  
8 A Mesothelioma is a cancer; yes, sir.  
9 Q And it's a cancer like the kind of lung cancer  
10 that people get from smoking cigarettes, except this  
11 one is on the lining outside of the lung?  
12 A I disagree 100 percent.  
13 Q Okay. Tell me why.  
14 A Cigarette smoking is not a risk factor for  
15 mesothelioma, and although on -- under the  
16 microscope, the mesothelioma does look and appear  
17 like a common type of lung cancer that we call  
18 adenocarcinoma, it is, in fact, a different type of  
19 cancer.  
20 Q Oh, I agree, and sir, maybe I misspoke. All  
21 I'm suggesting is that mesothelioma is -- while it's  
22 not lung cancer -- because the mesothelial cells are  
23 outside of the lung, right?  
24 A That is correct.  
25 Q Although mesothelioma is not lung cancer, it

1 is a cancer like lung cancer is, like the cancer that  
 2 people get from cigarettes?  
 3 A It is a cancer. It is not associated with  
 4 cigarette smoking, though.  
 5 Q Yes, sir. You've made the point. You've made  
 6 the point. And Kathy didn't even smoke. Mrs. Weist  
 7 didn't smoke.  
 8 A She did not.  
 9 Q That is not an issue here.  
 10 Since joining -- since joining Carolina  
 11 Pulmonology Physicians, P.A. in 1999 -- that is, the  
 12 last 22 years -- within the field of general  
 13 pulmonary medicine, you have specialized -- and I put  
 14 specialized in quotes -- you have specialized in the  
 15 diagnosis and treatment of COPD, which is an acronym  
 16 or abbreviation for chronic obstructive pulmonary  
 17 disease, and asbestosis. Correct?  
 18 A I disagree with that characterization because  
 19 my practice is not limited to COPD and asbestosis.  
 20 Q Okay. Do you have a website?  
 21 A I do.  
 22 MR. COSCULLUELA: Okay. Mr. Rosen, would you  
 23 put up Kraft Heinz Company Exhibit 96. Your Honor,  
 24 this is a page -- this is a page from Dr. Alleyne's  
 25 website.

1 to your question, I guess for lack of a better term,  
 2 is not so much that it's not true, but you seem to  
 3 imply that that's all I do.  
 4 Q No, sir. I'm just suggesting that's what you  
 5 specialize in.  
 6 A And on that particular page of the website;  
 7 yes.  
 8 Q Well, that is the page of the website entitled  
 9 Lung Disorders.  
 10 A But there are other pages that talk about  
 11 other lung disorders that you're not mentioning.  
 12 Q Fair enough. Asthma?  
 13 A Asthma.  
 14 Q What else? Sleep apnea?  
 15 A Sleep apnea. I would have to see the website  
 16 in front of me, but I believe we may have also  
 17 mentioned sarcoidosis. The point is that we don't  
 18 limit ourselves to those two illnesses. Those are  
 19 very common illnesses that laypeople would know  
 20 about.  
 21 Q Okay. Let me ask it this way. Maybe this  
 22 will be a way to close out the issue. Anywhere on  
 23 your website, on your clinic's website, does it  
 24 indicate that you specialize in the treatment of  
 25 mesothelioma?

1 MR. FROST: No objection, Your Honor.  
 2 MR. COSCULLUELA: No objection? Okay.  
 3 Mr. Rosen, could you enlarge that area?  
 4 BY MR. COSCULLUELA:  
 5 Q Sir, I'm going to read it aloud, and I'd just  
 6 like you to follow along with me: "We specialize" --  
 7 and this is we, Carolina Pulmonology Physicians,  
 8 P.A. -- "We specialize in the treatment of COPD and  
 9 asbestosis. Carolina Pulmonology Physicians of  
 10 Rock Hill, South Carolina specializes in the  
 11 treatment of two chronic pulmonary diseases that  
 12 affect many people in our area: COPD and  
 13 asbestosis."  
 14 Did I read that fairly?  
 15 A You did.  
 16 Q Okay. And you and I talked about this before?  
 17 A Yes, we did.  
 18 Q I understand that you have a general pulmonary  
 19 practice, but in fact, your website emphasizes under  
 20 the section entitled "Lung Disorders" that you  
 21 specialize in the treatment of COPD and asbestosis.  
 22 Right?  
 23 A It also talks about asthma and sleep apnea and  
 24 several other illnesses that you did not show. The  
 25 website actually has several pages. So my objection

1 A It does not.  
 2 Q Okay. Doctor, when you -- as you indicated,  
 3 two or three times annually will have a mesothelioma  
 4 patient come into the office?  
 5 A Yes.  
 6 Q Correct me if I'm wrong: The patient is  
 7 usually referred to you -- as a pulmonary chest  
 8 physician, the patient is referred to you usually by  
 9 the family physician or a general practitioner  
 10 because the patient is experiencing shortness of  
 11 breath; and in response to that shortness of breath,  
 12 the family doctor or general practitioner exposed an  
 13 x-ray and saw something that was troublesome?  
 14 A Many times that is the case; correct.  
 15 Q Okay. Once the patient comes in to see you,  
 16 Doctor, what you do is you'll get another chest x-ray  
 17 because you want the latest -- the latest chest  
 18 imaging so you know what the patient's current  
 19 condition is -- or a CT scan?  
 20 A Usually the latter.  
 21 Q Usually the latter. Fair enough. Now, can  
 22 the jury understand that a CT scan is just a more  
 23 sophisticated x-ray that is very specific and very  
 24 sensitive?  
 25 A I would agree with that statement; yes.

1 Q Okay. The mesothelioma patient will present  
2 many times with -- when -- by the time they get to  
3 you, they'll present with a pleural effusion, an  
4 accumulation of fluid with -- inside the pleural  
5 space, that is, with -- inside the two layers of  
6 pleura that make up the pleura?

7 A Fluid between the ribs and the lung, yes.

8 Q And you and I might have even talked about  
9 this in your deposition. I was -- you hear when  
10 people have a visceral reaction to something, and a  
11 visceral reaction to something is when it's a very  
12 heartfelt, you know, very deeply felt issue. And  
13 that's the way I keep the visceral pleura  
14 distinguished from the parietal pleura.

15 The visceral pleura is the lining on the  
16 outside of the lung.

17 A Correct.

18 Q And the parietal pleura is the lining on the  
19 inside of the chest wall.

20 A Correct.

21 Q And in between those two Saran-Wrap-like  
22 layers of tissue, which you really described well  
23 with the skin on the ribs. Inside those two layers  
24 of tissue, the visceral and parietal pleura, there is  
25 a -- there's a space that's full of a lubricating --

1 a lubricating product, a lubricating secretion from  
2 the mesothelial cells?

3 A Pleural fluid.

4 Q Pleural fluid. Exactly right. And that  
5 pleural fluid, with the action of your diaphragm and  
6 you breathe -- that pleural fluid allows the visceral  
7 and parietal pleura to rub back against each other so  
8 that your lung -- if you didn't have it, your lungs  
9 would be rubbing across the inside of your ribcage,  
10 and your lungs would get blistered and damaged .

11 A That's certainly possible, yes.

12 Q Okay. So what happens in a mesothelioma --  
13 and you'll see this on the CT scan -- is that there  
14 will be an accumulation of that pleural fluid, a  
15 pleural effusion, inside the pleura on the left or  
16 the right, depending on where the disease is?

17 A Right. We see fluid, but we don't know that  
18 it is a mesothelioma until we do other tests.

19 Q Correct. But the mesothelioma -- but when you  
20 see that and you confirm -- well, let me take it a  
21 step backward.

22 When you diagnose a mesothelioma , it usually  
23 has a pleural fluid at the origin?

24 A That is correct.

25 Q So now you've taken the CT scan or you've had

1 the CT scan taken. The pleural fluid, the  
2 accumulation of pleural fluid, is evident in the form  
3 of a pleural effusion.

4 What comes next is that effusion is going to  
5 be drained?

6 A Correct.

7 Q Okay. And that effusion is going to be  
8 drained for a couple of reasons, but the primary  
9 reason is so that the patient doesn't have that  
10 pressure from the fluid, which can't go anywhere,  
11 keeping them from breathing?

12 A We actually do two things. We want to give  
13 them what's called a therapeutic effect, removing the  
14 fluid. It's not supposed to be there. Typically  
15 makes you short of breath. May cause some pain.

16 And we also want to do a diagnosis. So it's  
17 both a diagnostic and therapeutic procedure to remove  
18 that fluid and then send some of the fluid for  
19 testing to see what it's composed of and also to look  
20 at it under the microscope and see are there any  
21 cells, are there any evidence of infection,  
22 et cetera.

23 Q Okay. And the doctor to whom you send the  
24 pleural fluid or the doctor to whom -- the surgeon  
25 that secures the pleural fluid sends it to is called

1 a pathologist?

2 A That is correct.

3 Q And pathologists are the types of doctors that  
4 do autopsies?

5 A They do autopsies among other things, yes .

6 Q Among other things. Pathologists are the  
7 doctors who really don't see the patient, but they  
8 probably know the patient in more detail than anybody  
9 else because they see the patient on the cellular  
10 level?

11 A That is correct.

12 Q Okay. And what the pathologist does is he'll  
13 look at that cytology or that pleural fluid that's  
14 been extracted to make way for the action of the  
15 diaphragm and the lungs; he'll look at it -- he or  
16 she will look at it under a microscope and determine,  
17 what's going on here; is there something that we can  
18 glean; is there something that this teaches us about  
19 the disease or whatever is causing the patient  
20 trouble?

21 A That is correct.

22 Q All right. Now, at some point a determination  
23 will be made whether there's enough evidence in that  
24 pleural fluid to diagnose mesothelioma or you have to  
25 go back in and get a surgical biopsy tissue so that

1 the pathologist again can look at those cells under a  
2 microscope?  
3 A That is correct.  
4 Q All right. You are not a pathologist, and  
5 you've never been one?  
6 A That is correct.  
7 Q All right. You're not a thoracic surgeon who  
8 goes and pulls that biopsy tissue out of the patient  
9 for examination by the pathologist?  
10 A That -- that is correct.  
11 Q Okay. I understand you may be in there with  
12 them sometimes because, as a pulmonary physician,  
13 you're really in charge of that patient's well-being  
14 at least from the patient perspective, until they can  
15 get a cure or a treatment?  
16 A And we also used to do those personally, but  
17 we don't do them anymore. That's what I was trying  
18 to --  
19 Q Got it.  
20 A Under oath. Don't want to go back to jail.  
21 Q Yeah. Well, Doctor, you've just opened up  
22 another can of worms.  
23 Okay. So now the biopsy tissue -- the  
24 thoracic surgeon has pulled the biopsy tissue sample ,  
25 has delivered it to the pathologist.

1 A Hers was felt to be biphasic.  
2 Q Okay. Biphasic mesothelioma. All right. And  
3 those usually experience a rapid decline?  
4 A They do.  
5 Q Okay. Before -- before Kathy succumbed to the  
6 mesothelioma, she went to Brigham and Women's to  
7 determine whether she was a surgical candidate.  
8 Dr. Bueno at Women's -- at Women and Brigham.  
9 A Brigham and Women. You can say Brigham and  
10 Women.  
11 MR. COSCULLUELA: I'm sorry, Your Honor.  
12 BY MR. COSCULLUELA:  
13 Q -- had her come back to South Carolina for a  
14 combination of chemotherapy and radiation therapy to  
15 see if they could reduce the size of the tumor to  
16 make the surgery -- to improve her chances of a good  
17 result or a better result?  
18 A Correct.  
19 Q All right. Did the chemotherapy or  
20 radiotherapy have any beneficial effect?  
21 A It did not appear to. At least it did not  
22 have the desired effect.  
23 Q It didn't have the desired effect. Kathy --  
24 Mrs. Weist and her husband Robert traveled back up to  
25 Boston, and that's when the surgeons, Dr. Bueno and

1 The pathologist looks at the biopsy tissue  
2 under a microscope and says, hmm, we have -- we have  
3 a bad situation here; there's about 3200  
4 mesotheliomas a year, and this looks like it's one of  
5 them?  
6 A That is correct.  
7 Q All right. In fact, that's exactly what  
8 happened in Kathy Weist's case, the procedure I've  
9 outlined for you, isn't it?  
10 A That is correct. I don't know that she saw a  
11 pulmonologist. I think her primary care doc was the  
12 one who ordered the thoracentesis; but your point is  
13 taken that fluid was seen, it was then removed, and  
14 the diagnosis of mesothelioma was made.  
15 That's correct.  
16 Q Exactly. Thank you, Doctor. And it was only  
17 after that that Mrs. Weist -- that Robert and  
18 Mrs. Weist went to --  
19 A Brigham and Women's.  
20 Q -- Brigham and Women's to have -- to make a  
21 determination whether there might be a surgical cure  
22 for Kathy's mesothelioma?  
23 A That is correct.  
24 Q All right. Now, was Kathy's a sarcomatoid or  
25 biphasic or epithelioid mesothelioma?

1 whoever else might have been attending, opened her up  
2 and realized, this is -- we can't --  
3 A Too far along.  
4 Q Too far along. Good. And in fact, it was  
5 only a month or two -- a month or six weeks that --  
6 A She expired.  
7 Q -- it took for Kathy to succumb.  
8 This is an extremely aggressive cancer?  
9 A Yes, it is.  
10 Q In your practice, for those two or three  
11 mesotheliomas that you might see in a year, once the  
12 mesothelioma is diagnosed, do you tend to see the  
13 patient again or does the patient end up getting  
14 referred to other doctors -- oncologists, radiation  
15 oncologists, cancer doctors -- in which case they  
16 only come back to see you if those specialists  
17 failed?  
18 A I would say a combination of both. If the  
19 patient is my patient, typically I will say, look,  
20 I'm sending you to the oncologist or the surgeon or  
21 whoever, and I'm here to answer questions or provide  
22 whatever supportive care I can. So I will see the  
23 patient in follow-up many times. That may be the  
24 end-of-life care that they need.  
25 Q End-of-life care.

1 A Because the oncologists have done what they  
2 can; the surgeons have done what they can; and you  
3 know, for whatever reason, the patient doesn't want  
4 the hospice. To take care of them, I'm happy to take  
5 care of them.  
6 Q You're going to do what's required to -- as an  
7 advocate for the patient?  
8 A To diagnose often, to cure sometimes, but to  
9 comfort always.  
10 Q Well said. Well said. Now, Doctor, you have  
11 published in the peer-reviewed journal *Chest*, which  
12 is the peer-reviewed journal-- the publication of --  
13 pulmonologists like you?  
14 A That's correct.  
15 Q And you've published on COPD?  
16 A I have.  
17 Q You've published on asthma?  
18 A I have.  
19 Q You've never published on mesothelioma?  
20 A I have not.  
21 Q Yes, sir. You have spoken at medical  
22 conferences on the subjects of COPD and asthma, but  
23 you've never presented on the subject of  
24 mesothelioma?  
25 A That is correct.

1 it's your practice to personally review the chest  
2 imaging -- that is, the chest x-rays and the CT  
3 scans -- that the treating physicians ordered?  
4 A Either the treating physician or that I order.  
5 But yes, I do look at the films.  
6 Q Okay. In your everyday practice?  
7 A I do.  
8 Q You didn't do it here?  
9 A I did not.  
10 Q All right. Understood. Now, in your regular  
11 practice at Carolina Pulmonology Physicians, P.A.,  
12 where you see actual patients, pulmonary patients,  
13 not the situation that has you here today, when  
14 there's surgical pathology to be examined, you're in  
15 there with the pathologist looking over his or her  
16 shoulder, aren't you?  
17 A I am.  
18 Q And that's that patient advocacy that you and  
19 I talked about the last time we met?  
20 A That is correct.  
21 Q Okay. But you didn't do that here?  
22 A No, sir.  
23 Q Did you even -- did you look at the pathology  
24 slides under a microscope for Mrs. Kathy Weist's  
25 case?

1 Q Mrs. Weist didn't seek you out for diagnosis,  
2 care, or treatment of her mesothelioma?  
3 A No, she did not.  
4 Q Mrs. Weist didn't seek you out for a second  
5 opinion?  
6 A No, she did not.  
7 Q Once she had that diagnosis from her treating  
8 physicians?  
9 A That is correct.  
10 Q Okay. And you've never spoken with  
11 Mrs. Weist?  
12 A I have not.  
13 Q All right. None of Mrs. Weist's treating  
14 physicians contacted you to get involved in her case ?  
15 A No.  
16 Q All right. Now, in your customary practice --  
17 in your customary practice of pulmonary medicine at  
18 Carolina Pulmonology Physicians, P .A. -- and P.A. is  
19 Professional Association?  
20 A That is correct.  
21 Q All right. At Carolina Pulmonology  
22 Physicians, P.A., where you see actual patients as  
23 opposed to these types of situations where you're  
24 hired to provide courtroom testimony or opinion  
25 testimony based on review of the medical records,

1 A I did not.  
2 Q All right. I told the jury -- I told the jury  
3 in opening statement that Bob Weist spent 23 -- I'm  
4 sorry -- 26 to 33 days at the Louis Rich plant in  
5 Newberry, South Carolina.  
6 Were you here for that, by chance?  
7 A I was.  
8 Q Okay. But you told me -- at deposition, you  
9 characterized Kathy's exposure to asbestos as  
10 extensive and lifelong.  
11 Do you remember that?  
12 A I do.  
13 Q Okay. We talked about this as well. Doctor,  
14 asbestos-related diseases are characterized -- well,  
15 asbestos-related diseases have a dose-response  
16 character, correct?  
17 A As a general statement, yes.  
18 Q Okay. And the dose-response characteristic of  
19 asbestos-related disease means the greater the dose,  
20 the greater the risk of disease?  
21 A That is correct.  
22 Q All right. The dose-response characteristic  
23 means also the greatest exposure confers the greatest  
24 risk of disease?  
25 MR. FROST: Your Honor, I'm going to have to

1 object to this whole line.  
 2 THE COURT: I can't hear you, sir.  
 3 MR. FROST: I'm sorry, Your Honor. I have to  
 4 object --  
 5 THE COURT: You're going to have to unmask.  
 6 If you've got an objection --  
 7 MR. FROST: Your Honor, I apologize. I did  
 8 not want to have to object at this late hour. But  
 9 this is all irrelevant to the issues in this case.  
 10 THE COURT: It's on cross-examination. I'll  
 11 permit it. Overruled.  
 12 MR. COSCULLUELA: Thank you, Your Honor.  
 13 THE COURT: However, don't trespass my  
 14 pretrial ruling, sir.  
 15 MR. COSCULLUELA: I understand, Your Honor.  
 16 I understand, Your Honor.  
 17 BY MR. COSCULLUELA:  
 18 Q Dr. Alleyne, let me ask that one again: The  
 19 dose-response characteristic of asbestos-related  
 20 disease means the greatest exposure confers the  
 21 greatest risk of disease?  
 22 A That is correct.  
 23 Q Okay. The analogue of that rule is that the  
 24 dose-response characteristic of asbestos-related  
 25 disease means the lowest exposure confers the lowest

1 felt to be significant enough to cause mesothelioma.  
 2 Q Understood. But those asbestos fibers in the  
 3 ambient atmosphere even in South Carolina contribute  
 4 to a patient's cumulative dose, right?  
 5 A Do they accumulate -- do they contribute to  
 6 the cumulative -- let me answer it this way.  
 7 Q Yes, sir.  
 8 A If they contribute to the cumulative dose --  
 9 and again, I'm not necessarily agreeing with that --  
 10 it is not felt to be a contributing factor to the  
 11 development of mesothelioma.  
 12 Q It's not a sufficient enough factor to  
 13 contribute to mesothelioma?  
 14 A I don't know that I've ever seen anyone or  
 15 I've seen things reported in the literature where  
 16 someone in the South Carolina area was exposed to --  
 17 quote/unquote -- asbestos in the ambient atmosphere  
 18 and developed asbestos-related lung disease.  
 19 Q Okay. All right. Just a couple more  
 20 questions, Doctor. As a corollary, again, to the  
 21 dose-response characteristic of asbestos-related  
 22 disease, do you agree, exposures experienced earlier  
 23 in life confer greater risk than identical exposures  
 24 experienced later in life?  
 25 A As a general rule, I would agree with that

1 risk of disease?  
 2 A That, I would have to disagree with, because  
 3 there's no safe level of asbestos exposure or  
 4 asbestos fiber exposure, and we know that even brief  
 5 exposures can result in mesothelioma. So I can't say  
 6 that just because of the risk -- excuse me -- just  
 7 because the exposure was less, the risk was less.  
 8 This lady had mesothelioma, so --  
 9 Q Oh, sure.  
 10 A You know, at some point she got exposed to  
 11 sufficient asbestos fibers to cause mesothelioma.  
 12 Q I understand the point you're making. I will  
 13 challenge you on one, though. You said that there is  
 14 no safe level of exposure, right?  
 15 A That is correct.  
 16 Q But isn't each and every one of us exposed to  
 17 asbestos in the ambient atmosphere?  
 18 A So when we talk about asbestos exposure, we  
 19 talk about exposure to asbestos fibers. So any  
 20 asbestos exposure in the atmosphere, at least in this  
 21 particular area, would be minimal. Without getting  
 22 into the weeds -- and I know there's time  
 23 constraints -- there are other areas of the world  
 24 that's not necessarily true. But certainly in  
 25 South Carolina the ambient asbestos exposure is not

1 statement; yes.  
 2 Q All right. You were furnished with  
 3 Mrs. Weist's death certificate among the other  
 4 records that you reviewed?  
 5 A That is correct.  
 6 Q All right. Specified the date of birth -- I'm  
 7 filling in the timelines. Specified her date of  
 8 birth was October 26, '57?  
 9 A Correct.  
 10 Q She died July 27th -- I'm sorry -- July 17,  
 11 2020?  
 12 A Correct.  
 13 Q She was 62 years of age?  
 14 A Correct.  
 15 Q All right. Mr. Frost reviewed with you  
 16 Mrs. Weist's medical records, including those from  
 17 Prisma -- well, the plaintiff's counsel, the Weist  
 18 family lawyer, shared with you the entirety of her  
 19 medical records?  
 20 A That is correct.  
 21 Q All right. I want to spend just a couple  
 22 minutes on three distinct reports.  
 23 In advance of that, though, did you review  
 24 Mrs. Weist's medical records to determine the history  
 25 of exposure to asbestos that she reported to her

1 doctors and the medical personnel attending to her  
2 care?  
3 **MR. FROST: Your Honor, objection.**  
4 **THE COURT: Mr. Cosculluela, I want you to be**  
5 **careful not to go beyond what we have discussed.**  
6 **MR. COSCULLUELA: Understood, Your Honor .**  
7 **THE COURT: All right, sir. Well, you're**  
8 **getting close, so -- all right. I'm either going**  
9 **to sustain the objection, just tell you to stop it**  
10 **there, or advise you that I do not want you to**  
11 **violate what we have talked about.**  
12 **And this would not be the witness, in any**  
13 **event, to do that with.**  
14 **MR. COSCULLUELA: Your Honor, maybe I can**  
15 **short-circuit it with a couple more questions.**  
16 **THE COURT: I think that might be good.**  
17 **MR. COSCULLUELA: Okay.**  
18 **BY MR. COSCULLUELA:**  
19 **Q Dr. Alleyne, in reviewing Mrs. Weist's medical**  
20 **records, did you learn that Mrs. Weist's husband,**  
21 **Robert Weist, went to her examinations with her?**  
22 **A Yes.**  
23 **Q Okay. Did Mrs. Weist ever report that she**  
24 **experienced exposure to take-home asbestos from her**  
25 **father's work at the Louis Rich plant?**

1 **Q Do the medical records evidence Mr. Weist, who**  
2 **was in attendance with his wife --**  
3 **THE COURT: Now we're not going to get into**  
4 **what he said, I'm sure. The medical records are**  
5 **not the way to do that.**  
6 **MR. COSCULLUELA: Understand, Your Honor.**  
7 **I'll move on.**  
8 **BY MR. COSCULLUELA:**  
9 **Q Doctor, you haven't calculated a dose for**  
10 **Mrs. Weist's exposure, have you?**  
11 **A I have not.**  
12 **Q As a pulmonary -- as a pulmonologist -- I guess**  
13 **not a pulmonary physician. As a pulmonologist, do**  
14 **you have any training in quantifying someone's dose**  
15 **of exposure?**  
16 **A I do not.**  
17 **MR. COSCULLUELA: Okay. Doctor, thank you**  
18 **very much for your time. I appreciate it.**  
19 **THE WITNESS: Thank you. Your Honor, may I**  
20 **make one minor correction? I can do it off the**  
21 **record if you'd like.**  
22 **THE COURT: Well, with respect, why don't you**  
23 **let Mr. Frost ask you to do that. He's going to**  
24 **redirect you -- or may, so --**  
25 **THE WITNESS: It wasn't necessarily something**

1 **A She stated that she would wash his dirty work**  
2 **clothes and that she also would search his pockets**  
3 **for treats he would leave for her.**  
4 **Q Doctor, I'm going to stop you now. I think**  
5 **now you're referring to Mrs. Weist's father when she**  
6 **was a child.**  
7 **A Yes.**  
8 **Q My question is more specific.**  
9 **THE COURT: That's just the trouble that I'm**  
10 **anticipating. Mr. Cosculluela, we can have a**  
11 **conference about this or not, but please stay**  
12 **within the boundaries that I've asked you to stay**  
13 **within.**  
14 **MR. COSCULLUELA: Your Honor, respectfully, I**  
15 **did. The witness volunteered something that wasn't**  
16 **responsive to the question that I asked him.**  
17 **THE COURT: No, sir, I don't think he did.**  
18 **All right. But move on.**  
19 **MR. COSCULLUELA: Yes, Your Honor.**  
20 **BY MR. COSCULLUELA:**  
21 **Q Doctor, did Mrs. Weist report that she**  
22 **experienced take-home asbestos from the work of her**  
23 **husband?**  
24 **A I do not recall her making that statement**  
25 **directly; no.**

1 **he asked about. I made a statement that I -- but I**  
2 **can --**  
3 **THE COURT: Why don't you wait for him.**  
4 **That's the better way to do it.**  
5 **MR. COSCULLUELA: Thank you, Your Honor.**  
6 **THE WITNESS: No problem.**  
7 **THE COURT: Mr. Frost.**  
8 **MR. FROST: Your Honor, I think Mr. Pope**  
9 **might have a question. Maybe not.**  
10 **THE COURT: Mr. Pope.**  
11 **MR. POPE: Your Honor, I have a hypothetical**  
12 **question, but I don't want to ask it.**  
13 **THE COURT: Let me see what it is first.**  
14 **MR. POPE: Okay. I can write it down. I've**  
15 **written it down.**  
16 **(Mr. Pope hands the Court a piece of paper.)**  
17 **THE COURT: Mr. Pope, I will not allow you to**  
18 **ask this witness that question. If you'd like to**  
19 **put it in the record after -- before we conclude**  
20 **the proceedings today, I'd be happy to let you do**  
21 **that.**  
22 **MR. POPE: Thank you, Your Honor.**  
23 **MR. COSCULLUELA: Your Honor, I was going to**  
24 **ask the same thing. Might we be able to make**  
25 **proffers outside the presence of the jury?**

1 THE COURT: Yes, of course.  
 2 MR. POPE: I don't have anything. Thank you,  
 3 Dr. Alleyne.  
 4 THE WITNESS: Thank you, sir.  
 5 THE COURT: Thank you, Mr. Pope.  
 6 Mr. Frost, I know it's going to be brief.  
 7 MR. FROST: It is, Your Honor.  
 8 ---  
 9 REDIRECT EXAMINATION  
 10 ---  
 11 BY MR. FROST:  
 12 Q Doctor, did you need to correct something ?  
 13 A I did. I made probably an inartful joke, "I  
 14 did not want to go back to jail," which is true.  
 15 I've never been in jail. I've never been arrested or  
 16 convicted. I used to run a clinic in prison to pay  
 17 the government back. I just wanted to clear that up.  
 18 Afterwards I said, "Oh, that didn't sound  
 19 good." I'm sorry.  
 20 THE COURT: We gotcha. We gotcha.  
 21 MR. FROST: Doctor, I thought when you were  
 22 at Rikers Island you were actually there.  
 23 BY MR. FROST:  
 24 Q Just two quick questions, Doctor: You were  
 25 asked questions about whether you looked at radiology

1 as to when we can expect to adjourn every day. I  
 2 can't promise it's going to be to the max every  
 3 day, but I'm going to try to keep it on track like  
 4 this.  
 5 If you can be in your jury rooms and ready to  
 6 proceed at 9:30, it would be helpful, and we'll get  
 7 right to it.  
 8 Don't talk about the case with anybody  
 9 outside. Do not do any research on the internet on  
 10 or anything like that. But do have a very pleasant  
 11 evening. I'll see you tomorrow morning. You may  
 12 go to your jury rooms.  
 13 ---  
 14 ---  
 15 (The jury exited the courtroom at 5:13 p.m.)  
 16 ---  
 17 THE COURT: All right. Before we close  
 18 court, Dr. Alleyne?  
 19 THE WITNESS: Yes, ma'am.  
 20 THE COURT: We thank you very, very much for  
 21 your testimony today and for the information you  
 22 have provided to us. Good luck, and you are  
 23 dismissed.  
 24 THE WITNESS: Thank you, Your Honor.  
 25 THE COURT: Thank you, sir.

1 and pathology and all that stuff. Was there anything  
 2 that you, as a clinician, needed to review that you  
 3 didn't in this case?  
 4 A No, sir.  
 5 Q And is there anybody who has -- you've seen  
 6 any reports from any medical doctor at any of the  
 7 places that she went to that disputed that this woman  
 8 had an asbestos-related mesothelioma?  
 9 A No, sir.  
 10 Q And Doctor, if -- as you were asked about the  
 11 20 days at Louis Rich, if it was as little as 20  
 12 days, would those 20 days of work that her father and  
 13 her husband would have done at Louis Rich -- if that  
 14 asbestos made its way home, would that be a  
 15 substantial contributing factor to her meso?  
 16 A Yes.  
 17 MR. FROST: Thank you, Doctor.  
 18 THE COURT: Very good.  
 19 MR. COSCULLUELA: Nothing further, Your  
 20 Honor. Thank you.  
 21 THE COURT: What's that?  
 22 MR. COSCULLUELA: Nothing further.  
 23 THE COURT: Very good. Excellent. Ladies  
 24 and gentlemen, we will stop our trial now -- all  
 25 right -- and stay within the guardrails I've put up

1 (The witness exits the witness stand.)  
 2 MR. COSCULLUELA: Your Honor, can we do the  
 3 proffers with Dr. Alleyne?  
 4 THE COURT: I'm not going to have you ask him  
 5 some questions on a proffer. You can -- what do  
 6 you mean? You're going to ask him a bunch of  
 7 questions on a proffer? No, I'm not going to allow  
 8 that. If you want to set forth what it is you  
 9 wanted to question him about, that's fine. But  
 10 I -- I don't see any sense in spending another half  
 11 an hour to an hour talking -- asking further  
 12 questions to him.  
 13 That proffer very easily can be done by  
 14 simply outlining the questions you wanted to ask.  
 15 MR. COSCULLUELA: Fair enough. But the Court  
 16 of Appeals doesn't have the answer from the  
 17 witness.  
 18 THE COURT: No, they don't, you know, and all  
 19 you've really got to do is say what you -- the  
 20 lines you wanted to pursue. It doesn't really  
 21 matter what his answers will be one way or another.  
 22 MR. COSCULLUELA: Fair enough. Thank you,  
 23 Your Honor. I'm not --  
 24 THE COURT: I'm not being hostile, either,  
 25 but I just don't think that's necessary.



1 MR. COSCULLUELA: It's different from  
2 jurisdiction to jurisdiction.  
3 THE COURT: Yes. Here, a proffer can very  
4 easily -- your position is going to be completely  
5 preserved. We know that what you want to do is go  
6 back to the beginning and say this is [inaudible]  
7 because of all of the other exposures. I  
8 understand that position on your part, and I'm  
9 going to be studying, as I have been all afternoon,  
10 Jolly and some other cases, Smith versus Tiffany,  
11 to try to see what I do think about this.  
12 And you can either put those proffers on the  
13 record now or if you-all would like to reduce them  
14 to writing, I would be delighted to put them in the  
15 record tomorrow.  
16 Same is true of you, Mr. Pope. If you would  
17 like to reduce the question that you wanted to ask  
18 to a more legible form or if you want to put -- if  
19 you want me to simply read it in the record, we can  
20 do that. However you prefer.  
21 MR. POPE: I can read it.  
22 THE COURT: All right. Mr. Pope will give a  
23 proffer.  
24 MR. POPE: The hypothetical question was,  
25 assume hypothetically that an asbestos worker came

1 THE COURT: And so far, I don't see how you  
2 can do that. But -- and that is why I'm not  
3 allowing you to ask Dr. Alleyne that question.  
4 The other defect with that question is it  
5 assumes facts that are not in evidence at this  
6 time, and a hypothetical question has got to be  
7 based on things that are in evidence.  
8 There may come a time that you will be able  
9 to put a predicate into evidence that includes the  
10 facts you have assumed. But at the moment, that  
11 question has got two problems with it: Number 1,  
12 those facts are not in evidence; and number 2, I  
13 don't know at this moment how I would rule if you  
14 attempted to put those facts in evidence.  
15 So I'm holding that open. I'm going to do  
16 some very intense looking myself tonight as will my  
17 law clerk.  
18 MR. POPE: Your Honor, would it help you if  
19 we gave you copies of Dr. Roggli's -- either his  
20 reports, which are three or four pages long, or in  
21 his deposition, just to show you what -- not to  
22 say --  
23 THE COURT: It will be helpful because I've  
24 got to see whether I'm going to let Dr. Roggli  
25 testify to that in court. So it would be very

1 home with asbestos dust on his clothing  
2 continuously for 20 years, 1957 to 1977, and  
3 exposed a female family member who hugged him daily  
4 and washed his clothes. Would that asbestos  
5 exposure to the family member be a substantial  
6 factor in her developing mesothelioma?  
7 And this is based on, Your Honor, the  
8 question -- and I agree with Your Honor, it doesn't  
9 matter what Dr. Alleyne said, if he agreed,  
10 disagreed, it didn't matter, because we have a  
11 doctor who is going to say that that exposure,  
12 which is in the record from Daniel, was a  
13 substantial factor.  
14 THE COURT: Yeah. I mean, I'm not going  
15 to -- and I'm going to have to decide whether I'm  
16 going to allow you to put that into evidence, and  
17 the only way I can see I would be able to do it  
18 would be as a complete defense. An empty chair is  
19 a complete defense.  
20 MR. POPE: Uh-huh.  
21 THE COURT: It means that I don't care how  
22 much exposure somebody else got. This is all by  
23 itself the reason she got mesothelioma and not from  
24 any other cause.  
25 MR. POPE: Correct.

1 helpful for me to see that beforehand.  
2 But it would also be helpful for me see what  
3 the factual predicate is for that, because  
4 Dr. Roggli is not a factual witness; he is an  
5 expert witness. And a hypothetical question cannot  
6 be simply assumed. It's got to be a hypothetical  
7 question, in this arena, has got to be based on  
8 facts that are in evidence. And so far, nothing  
9 about Kathy Weist's situation, back to childhood,  
10 is in evidence.  
11 MR. POPE: Just for your edification, we will  
12 forward it to you either right here in the  
13 courtroom and amend it or email it to you and  
14 counsel.  
15 What the basis -- not that they would agree  
16 with the opinion, but the basis for our contention  
17 is that the exposure that they've alleged from 1957  
18 to '77 through Daniel was a substantial factor in  
19 the mesothelioma, and that's what Dr. Roggli is  
20 going to say.  
21 THE COURT: The test is not -- with the empty  
22 chair is not "a" substantial factor.  
23 MR. POPE: "The."  
24 THE COURT: "A" substantial factor is the  
25 test they have to show to prove that the exposure

1 they're talking about was "a" substantial factor.  
 2 But the empty chair, it has to be "the"  
 3 substantial factor that supersedes any other  
 4 substantial factor that is out there. I don't know  
 5 that the expertise -- certainly I've never heard it  
 6 in an asbestos case before that a long-term  
 7 exposure can completely supersede a short-term  
 8 exposure.  
 9 You-all are going to have to give me some  
 10 information I don't have about that.  
 11 MR. POPE: Right.  
 12 THE COURT: So that all remains to be seen.  
 13 There's got to be a factual predicate which cannot  
 14 be established through Roggli. It has to be  
 15 established through some other factual thing, and  
 16 then there has to be some science that goes with it  
 17 that allows the empty chair to come in and  
 18 completely supersede the contention that exposure  
 19 by the two defendants that are left in the case is  
 20 a substantial factor, which is all that Henderson  
 21 and Lowman require. And of course the Jolly case  
 22 also elucidates that a little bit by saying, you  
 23 know, tort law in the familiar sense that you and I  
 24 tried cases for years, there's a but -for situation.  
 25 But in the case of this particular arena of

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1 because it will be on the record and in court. But  
 2 what I would suggest you do is just write it up.  
 3 MR. COSCULLUELA: Okay.  
 4 THE COURT: And let's put it in that way, and  
 5 you can tailor and make it as beautiful as you  
 6 would like.  
 7 MR. COSCULLUELA: Can I use my trial exhibits  
 8 in support for it? You know, the ones you won't  
 9 let me admit into evidence.  
 10 THE COURT: Of course. Of course.  
 11 MR. FROST: Your Honor, what time would you  
 12 like the lawyers in the morning. We do have some  
 13 page lines.  
 14 THE COURT: You have some page lines. How  
 15 many? Are you talking about a whole bunch?  
 16 Because I want you-all to agree about it and not  
 17 trouble me unless it's absolutely and positively  
 18 necessary.  
 19 MR. FROST: And I hear you, Your Honor, and  
 20 the parties really have worked together. There's  
 21 one particular --  
 22 THE COURT: The court reporter -- this  
 23 doesn't need to be on the record.  
 24 (The hearing adjourned at 5:17 p.m.)  
 25

1 asbestos cases, the substantial factor test is  
 2 used. And it's not "the"; it's "a."  
 3 So I hope I'm making myself clear about where  
 4 I'm coming from in my arena, the courts. We're  
 5 going to allow you to put on the record, proffer ,  
 6 anything you want to. It's just not necessary to  
 7 examine a witness that's not really going to be  
 8 familiar with what you're talking about. And maybe  
 9 you're going to have to talk with Roggli, if I  
 10 don't let him in.  
 11 But I won't restrict you at all, Alex. I  
 12 just want to make that clear to you. I believe in  
 13 allowing lawyers to preserve the record. I spent  
 14 many years as an appellate judge. I know how  
 15 important that is. And please understand me. You  
 16 will be allowed to fully get all of that on the  
 17 record.  
 18 MR. COSCULLUELA: I don't doubt that in the  
 19 least, Your Honor.  
 20 THE COURT: All right.  
 21 MR. COSCULLUELA: Okay.  
 22 THE COURT: Very good.  
 23 MR. COSCULLUELA: Do you want to remain while  
 24 I do my proffer?  
 25 THE COURT: All of us will have to remain

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## 1 CERTIFICATE OF REPORTER

2  
 3 I, Cherie J. Anderson, Registered Merit  
 4 Reporter, Registered Professional Reporter, Certified  
 5 Realtime Reporter, and Notary Public for the State of  
 6 South Carolina at Large, do hereby certify:  
 7 That the foregoing hearing was taken before  
 8 me on the date and at the time and location stated on  
 9 page 1 of this transcript; that the witnesses were  
 10 duly sworn to testify to the truth, the whole truth,  
 11 and nothing but the truth; that the testimony of the  
 12 witnesses and all objections made at the time of the  
 13 examination were recorded stenographically by me and  
 14 were thereafter transcribed; that the foregoing  
 15 hearing as typed is a true, accurate, and complete  
 16 record of the testimony of the witnesses, the  
 17 statements of counsel, and of all objections made at  
 18 the time of the hearing to the best of my ability.  
 19 I further certify that I am neither related  
 20 to nor counsel for any party to the cause pending or  
 21 interested in the events thereof.  
 22 Witness my hand, I have hereunto affixed my  
 23 official seal on this 20th day of September 2021, at  
 24 Charleston, Charleston County, South Carolina.  
 25

Cherie J. Anderson, RMR, CRR  
 My Commission expires  
 April 30th, 2023

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