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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

RICHARD BURLIN SISK JR. and
CALVENA DEA SISK,

Plaintiffs,

vs.

WEIR VALVES & CONTROLS USA INC.,
et al.,

Defendants.

Case No. RG20055456

Assigned for Trial To:
Hon. Winifred Smith - Dept. 21

**DEFENDANT KAISER GYPSUM
COMPANY, INC.'S OBJECTION TO
VIRTUAL/REMOTE TRIAL OR,
ALTERNATIVELY, TO ALLOW ALL NON-
DELIBERATION TRIAL PROCEEDINGS
TO BE RECORDED**

*[Filed concurrently with Declaration of Nicole
Brown Yuen and Exhibits; [Proposed] Order]
and Proof of Service]*

Trial: February 22, 2021
Dept: 21
Judge: Hon. Winifred Y. Smith
Complaint Filed: February 21, 2020

BY FAX

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1 Defendant KAISER GYPSUM COMPANY, INC. (hereinafter "Kaiser Gypsum") submits
2 the following objection to a virtual/remote trial or, in the alternative, to allow all non-deliberation
3 trial proceedings, including the jury, to be recorded.

4 **I. INTRODUCTION**

5 The events in recent virtual asbestos personal injury trials have demonstrated that virtual, or
6 even partial virtual, trial proceedings simply cannot replicate an in-person trial. It is impossible for
7 the Court to order and enforce sufficient safeguards to ensure that all parties receive a fair jury trial
8 when it is conducted on a remote platform, rather than in a courtroom and in the presence of the jury,
9 the Judge, the parties, the witnesses, and the evidence.

10 Indeed, counsel for Plaintiffs have most recently raised this issue in the Robert Runne case,
11 also pending in Alameda County Superior Court, has raised a serious complaint about Mr. Runne's
12 own deposition, which was conducted remotely via Zoom.¹ In fact, Plaintiffs believe that the
13 transcripts are so untrustworthy and contain so many "gross errors" that Mr. Runne has refused to
14 sign and approve the transcripts. *Plaintiffs requested that the entire ten volumes of Mr. Runne's*
15 *deposition transcripts be completely re-transcribed due to the court reporter's inability to*
16 *accurately and completely hear the testimony of the witness and counsel through a single internet*
17 *based connection.* In Runne, no final deposition transcripts have been signed or are available for the
18 parties use at trial even though Plaintiff's deposition began in October 2020 and ended in
19 December 2020.

20 Importantly, Plaintiffs' complaint is not with the court reporter, who has over twenty years'
21 experience working on asbestos-related actions. Instead, Plaintiffs complain that the remote
22 videoconferencing technology used for Mr. Runne's deposition cannot be trusted.² However, this is
23 the *same technology* that will be used in a virtual trial. And if a specially trained and experienced
24

25 ¹ See January 13, 2021 letter from Plaintiffs' counsel (Mr. John Langdoc) to all counsel of
26 record, advising of gross errors in the remote videoconferencing software used during the Zoom
27 deposition. (Declaration of Nicole Brown Yuen ("Yuen Decl."), attached hereto as Exhibit A).

28 ² Plaintiffs contend the only "reliable" record of the Plaintiff's testimony came from the
recording made by the videographer who was present in the room with the Plaintiff's counsel and
Plaintiff and it is from that recording that the transcripts were being re-transcribed in their entirety, a
process for which Plaintiffs' do not cite any rules or procedures permitting such a process.

1 court reporter could not accurately hear the questions and answers fully and completely, one cannot
2 reasonably believe that the jurors, witnesses, and counsel will fare better.

3 The Alameda Superior Court has made valiant efforts to get cases to trial notwithstanding the
4 world-wide COVID-19 pandemic. But the few virtual asbestos personal injury trials³ that have gone
5 forward illustrate the grave shortcomings and serious due process concerns inherent in a virtual or
6 hybrid trial.

7 As explained in more detail below, the recent *Wilgenbusch*, *Ocampo* and *Reyes* virtual trials
8 demonstrated the following problems that would not have occurred if the trials were held in-person:
9 (1) the parties were unable to ensure that the persons selected for jury service constituted “ a
10 representative cross-section of the population”; (2) a potential juror missed portions of the first day
11 of *voir dire* and then attended the remainder of that day’s jury selection while driving in her car; (3)
12 several potential jurors were mistakenly advised via e-mail that they had been excused, leading them
13 to conduct research which resulted in them being dismissed as potential jurors; (4) technical
14 difficulties arose including the inability to lodge objections for stretches of time, jurors were unable
15 to see demonstratives and/or counsel, there were numerous delays, and a juror lost internet
16 connectivity during opening statements; (5) the Court was unable fulfill its role of controlling the
17 proceedings, including juror conduct (jurors who appeared to be asleep, distracted, talking during the
18 proceedings, exercising, using other computers while having the Zoom meeting playing on another
19 device or a juror leaving the proceedings without permission); and (6) an expert witness read from
20 an undisclosed and unmarked document during direct examination.

21 These serious issues are likely to occur in this matter by virtue of the limitations presented by
22 a remote trial and will result in a violation of Defendants’ right to a fair trial decided by an impartial
23 and attentive jury. This Court has the authority to grant successive 15-day trial continuances for
24 good cause and should exercise its power to grant a continuance until the trial can be conducted
25

26
27 ³ *Ronald C. Wilgenbusch and Judith A. Wilgenbusch v. American Biltrite, Inc., et al.* (ACSC
28 No. RG19029791); *Ricardo Ocampo and Elvia Ocampo v. AAMCO Transmissions, Inc., et al.*
(ACSC No. RG19041182); and *Rosalino Reyes III and Gemma Reyes v. Johnson & Johnson, et al.*
(RG20052391).

1 safely in-person.

2 If the Court is not inclined to grant a continuance and requires the trial to proceed remotely
3 over Defendant's objections, Kaiser Gypsum respectfully requests that this Court allow all non-
4 deliberation proceedings be recorded, including, but not limited to, both an audio and visual
5 recording of the jurors. An audio and video recording of any remote or virtual trial is not the same
6 as an in-person trial, but it is important to help ensure an accurate record given the myriad of
7 technological difficulties and other irregularities, such as those encountered at remote depositions
8 and during Alameda County's first three virtual trials, as well as a Washington case, *Raymond Budd*
9 *v. Kaiser Gypsum Company, Inc.*, Superior Court of Washington for King County, No. 19-2-
10 14787-1 SEA. An electronic recording, in conjunction with remote court reporting as envisioned by
11 Emergency Rule 3, is in the interests of justice because it will help safeguard all parties' interests,
12 providing for a more full and fair accounting of the trial proceedings for the purposes of trial and
13 post-trial motions, as well as appellate review. Moreover, any concerns with respect to the privacy
14 of the jurors can be addressed by a tailored order, such as one to limit distribution of the recordings
15 to third parties not affiliated with the parties, the court (and any appellate court) in this case.

16 **II. FACTUAL BACKGROUND**

17 The concerns Defendants have raised with conducting trials virtually, rather than in-person,
18 are not merely theoretical possibilities. As shown below, the concerns are based on actual examples
19 from recent trials.

20 **A. The Jury Selection Process in Virtual Trials Have Been Fraught with Multiple**
21 **Instances of Inconsistent Guidelines, Technical Difficulties, and Jurors Failing to**
22 **Pay Attention.**

23 1. Inconsistent Guidelines Led to the Exclusion of Lead Trial Counsel from *Voir*
24 *Dire* in *Wilgenbusch*.

25 One of the first virtual trials held due to the COVID-19 pandemic was the *Wilgenbusch*
26 matter. At the pre-trial conference, the Court orally proposed certain jury selection and *voir dire*
27 procedures. (See Declaration of Edward R. Hugo ("Hugo Decl.") ¶2, at p. 2, attached to the Yuen
28 Decl. as **Exhibit B**.) As explained in detail in the declaration of the excluded counsel, Mr. Edward
Hugo, the issue of where and how *voir dire* would be conducted was addressed by the Court in

1 multiple hearings. At the final hearing on July 7, 2020 specifically devoted to “jury selection and
2 trial procedures,” the Court issued a final Order regarding “hard shipping” that states “at the “initial
3 meeting” of jurors, the Court would attend “via a remote BlueJeans application (with counsel also
4 attending remotely).” (See Hugo Decl. ¶4, at p. 2; and Exhibit A to the Hugo Decl.) The Court’s
5 July 7, final Order stated “[v]oir dire will be conducted via Zoom and in person.” (See Hugo Decl.,
6 ¶5, and Exhibit A to the Hugo Decl.)

7 In reliance on the Court’s July 7th Order, Mr. Hugo, lead trial counsel for defendant Fryer-
8 Knowles, Inc., a Washington Corporation (“FKWA”), e-mailed the Court and all parties, stating in
9 relevant part that he looked forward to appearing in person on July 15 for the first time in this case.
10 (See Exhibit B to Hugo Decl., ¶¶6-7). Since *Wilgenbusch* was assigned to Judge Seligman, over
11 FKWA’s objection, all hearings were conducted remotely. (See Hugo Decl., ¶6.) Attorneys were not
12 permitted to personally attend any of the hearings that Judge Seligman held in *Wilgenbusch*. (*Id.*)

13 On July 15, 2020, Mr. Hugo appeared at the Hayward Hall of Justice, wearing a mask (see
14 Exhibit C to Hugo Decl. ¶¶7, 10) and followed all health-related COVID-19 guidelines, to
15 participate as lead trial counsel, in *voir dire*. (See Hugo Decl., ¶7.) *But the Court refused to allow*
16 *him to enter the courtroom.* (*Id.*) Mr. Hugo was advised that “[t]he court anticipated that all counsel
17 would attend *voir dire* remotely. The courtroom is not set up for counsel. The Judge will be in
18 another room, alone, so he can speak unmasked.” (See Exhibit B to Hugo Decl. ¶7.)

19 As noted above, Mr. Hugo had previously emailed the Court and all counsel advising that he
20 intended to appear in person for *voir dire*. The Court did not state that there was any rule barring
21 Mr. Hugo from appearing in person. Instead, Mr. Hugo was advised that the Court had not
22 “anticipated” his attendance. The Court also did not explain why it could not accommodate just one
23 additional person wearing a mask, even though several jurors were able to attend in person. And
24 other than Mr. Hugo, the only individuals on the second floor of the courthouse were five “live”
25 prospective jurors and two apparent court attendants. (See Hugo Decl., ¶9.) According to Mr. Hugo,
26 the courthouse in total appeared to be a “ghost town” and the *Wilgenbusch* matter appeared to be the
27 only trial or other court proceeding taking place in the entire Hayward Hall of Justice. (*Id.*)

28 After waiting in the courthouse hall for over an hour and lodging objections to his exclusion

1 from the in-person *voir dire* proceedings of July 15, by email (the only means of communication
2 with the Court available to him), Mr. Hugo left the courthouse after he believed that “virtual *voir*
3 *dire*” had begun. (See Hugo Decl., ¶8.) At that point, there were no means available to Mr. Hugo,
4 the lead trial counsel for FKWA, to participate in *voir dire* on July 15, 2020. (*Id.*)

5 2. The remote *voir dire* process in *Wilgenbusch* was plagued with problems that
6 violated the Defendants’ right to a fair trial, including the inability of counsel
7 to lodge their objections and jurors failing to pay attention.

8 The exclusion of a defendant’s lead trial counsel from *voir dire* was not the only problem
9 experienced in *Wilgenbusch*. There were multiple times when the attorneys were put on mute by the
10 moderator and could not unmute themselves to object. (See Declaration of Tina M. Glezakos
11 (“Glezakos Decl.”) ¶7, Exhibit D to the Hugo Decl., ¶11, attached to the Yuen Decl. as **Exhibit B**.)
12 The attorneys had to e-mail the clerk multiple times requesting to be taken off mute. (See Glezakos
13 Decl., ¶7.) Counsel advised the Court via email that they had been muted and could not raise
14 objections. (*Id.*) The clerk responded that the attorneys should be able to unmute themselves;
15 however, the attorneys advised the clerk they could not and were missing opportunities to object.
16 (*Id.*) The same exchange repeated several times between counsel and the clerk over an
approximately 30 minute period during which time various attorneys were unable to object. (*Id.*)

17 The failure of jurors to pay attention was a serious concern in *Wilgenbusch* as numerous
18 jurors who were either not present for portions of *voir dire* or visibly distracted. For example,
19 during portions of *voir dire*, Juror 10451419 was laying in what appeared to be a bed, curled up, and
20 it is unclear if the juror was sleeping. (See Glezakos Decl., ¶5.) Also, Juror 103818273 was working
21 out on an elliptical machine and Juror 101366277 had a child who walked in and out of the room.
22 (See Glezakos Decl., ¶5.) Finally, multiple jurors appeared to be “multi-tasking”, using other
23 computers while having the *voir dire* proceeding playing on a separate device. (See Glezakos Decl.,
24 ¶6.)

25 3. The remote *voir dire* in *Reyes* was likewise problematic and several jurors
26 were mistakenly told they were excused.

27 The remote *voir dire* process in *Reyes* suffered from problems similar to those previously
28 encountered in *Wilgenbusch* and, again, the Defendants’ right to a fair trial was violated. The first

1 day of jury selection in *Reyes* was conducted via the BlueJeans videoconferencing platform. (See
2 Declaration of Bina Ghanaat (“Ghanaat Decl.”) ¶3.), attached to the Yuen Decl. as Exhibit C.) The
3 prospective jurors reported to the courthouse in person to receive instructions, listen to mini opening
4 statements, and fill out their questionnaires and other forms. (*Id.*) Yet, due to the limitations of the
5 BlueJeans platform, counsel was only able to see a random subset of the trial participants rather than
6 all participants. (*Id.*) Furthermore, one of the Defendant’s lead trial attorneys reported to the Court
7 and all counsel that he was unable to see both jury assembly rooms and, likewise, the Court was
8 unable to see him in the afternoon of October 7, 2020. (*Id.*; See also, Exhibit A to the Ghanaat Decl.)

9 After the prospective jurors submitted their questionnaires, the *Reyes* trial became a fully
10 virtual proceeding via Zoom, with all jurors participating remotely. When the remote trial began,
11 some jurors were unable or unwilling to pay attention or even stay in the virtual “jury box” during
12 *voir dire*. (See Ghanaat Decl., ¶4.) For example, prospective Juror No. 54 was observed “moving
13 around and doing things and not really sitting still in the virtual jury box.” (*Id.*) The next day the
14 same prospective Juror was forced to attend the trial in his car because there was a power outage and
15 it was the only place he had battery power. (*Id.*; See Exhibit B to the Ghanaat Decl.) Another
16 example of juror participation issues concerns a prospective juror who missed several hours of *voir*
17 *dire* and then attended the remainder of *voir dire* that day while driving in her car. (See Ghanaat
18 Decl., ¶5.)

19 Further problems were encountered in the *Reyes* trial on October 19, 2020, when the Court
20 advised that “four jurors who were challenged for cause received emails over [the judge’s] signature
21 saying they had been excused.” (See Ghanaat Decl., ¶7.) Two jurors who received the email had
22 conducted some research after they thought they had been excused. (*Id.*) As a result, the
23 prospective jurors – one of whom was “the gospel of [O’Reilly’s] defense” – were excused. (*Id.*)

24 4. In *Wilgenbusch*, the Defendants were unable to determine whether the jury
25 venire was comprised of a representative cross-selection of the community.

26 As noted above, there were numerous problems with the jury selection in *Wilgenbusch*.
27 Defendant FKWA attempted to determine whether the venire was appropriately comprised of a
28 representative cross-section of the community. FKWA issued a subpoena duces tecum to the

1 Alameda County Superior Court Jury Commissioner in order to obtain the following information: (a)
2 How many summonses were issued; (b) How many people reported to jury duty; (c) How many
3 people asked to be excused/deferred due to health concerns; (d) How many people failed to appear;
4 and (e) How many people who reported were turned away based on the medical screening? (See
5 Hugo Decl., ¶17; Exhibit J to the Hugo Decl.), attached to the Yuen Decl. as **Exhibit B.**) FKWA
6 was advised by the process server that they were unable to serve the subpoena because the building
7 was locked and closed to the public, and, therefore, the foregoing questions remain unanswered. (*Id.*
8 at ¶17; Exhibit K to the Hugo Decl.)

9 **B. Numerous Due Process Violations Occurred During the Virtual Trial in**
10 ***Wilgenbusch, Ocampo, Reyes, and Budd.***

11 1. Technical difficulties during the *Ocampo* trial.

12 Multiple technical issues caused disruptions during the *Ocampo* trial impacting both counsel
13 and the jurors. For example, “on July 27, 2020, [Defendant] Honeywell was unable to hear the
14 Court’s proceedings as the Livestream audio feed was not functioning. Despite several emails to the
15 Court, the Livestream issue was never resolved, and Honeywell was unable to listen to the July 27,
16 2020 proceedings in its entirety.” (See Exhibit G to the Hugo Decl. at p.2:5-8, attached to the Yuen
17 Decl. as Exhibit B.) The very next day, “the Livestream audio feed went in and out of connection
18 for several minutes throughout the proceedings”. (*Id.* at p.2:8-9.) The following day, “the Livestream
19 audio feed had no sound for the first fifteen minutes of the proceedings and was in and out of
20 connection between 9:00 a.m. to 10:00 a.m.” and “[t]hroughout the rest of the proceedings, there
21 were at least nine interruptions where Livestream did not work.” (*Id.* at 2:9-12.)

22 The jurors encountered numerous technical difficulties including the following:

- 23 • On July 27, 2020, during the Court’s reading of jury instructions, Juror No. 12 did
not have his camera on and had to switch to his personal computer;
- 24 • Juror No. 11 dropped off Zoom for a few minutes;
- 25 • Juror No. 5 lost his hot spot connection, causing a delay of thirty-two minutes and
26 required an additional fifteen minute break to allow him to get back onto Zoom
using his personal laptop.

27 (See Exhibit G to the Hugo Decl., at p.3:4-8.)

28 In addition, at various points during the trial, the jurors either could not see the parties’

1 Power Point presentations or could not see counsel. (*Id.* at p. 3:3-21.) These examples illustrate the
2 fact that technical difficulties arise during *all phases* of the remote trial.

3 2. Juror inattention was observed during the *Wilgenbusch* and *Ocampo* trials.

4 Defendant Metalclad Insulation LLC reported multiple instances of juror misconduct during
5 the *Wilgenbusch* trial. On September 3, 2020, during the presentation of evidence, Juror No. 14,
6 “place[d] her hand over her mouth and appear[ed] to have a conversation with someone between
7 approximately 11:42 and 11:50 AM.” (See Exhibit H to the Hugo Decl., attached to the Yuen Decl.
8 as **Exhibit B.**) Juror No. 14 continued this behavior “again at approximately 1:22 PM”. (*Id.*) This
9 was repeated during the testimony of multiple experts: on September 8, 2020, Juror No. 14 “put her
10 hand over her mouth and talk[ed] to someone eight times during the testimony of James Carpenter,
11 twice during the testimony of Stephen Mehal, and three times during the testimony of Charles Ay.”
12 (*Id.* at ¶4.)

13 Almost the identical type of juror inattention and misconduct were observed in the *Ocampo*
14 virtual trial. One of the Defendants noted that it “continues to notice a lack of attention among
15 certain jurors throughout the remote judicial proceedings.” (See Exhibit G to the Hugo Decl. at p.
16 2:19-20, attached to the Yuen Decl. as **Exhibit B.**) Specifically, “[o]n July 27, 2020, Juror Nos. 1, 8
17 and Alternate Juror No. 2 were all walking around during the Court’s jury instructions.” (*Id.* at p.
18 2:20-21.) In addition, “Juror No. 1 appeared to be on a cell phone as opposed to a laptop”; “Juror
19 No. 11 was reading from another screen and Juror No. 2 was occasionally looking at another
20 computer.” (*Id.* at p. 2:21-25.) On July 28, 2020, “Juror No. 2, Juror No. 10 and Juror No. 12 were
21 very clearly working during the proceedings.” (See Exhibit G to the Hugo Decl. at p. 2:25-26.)

22 During the *Wilgenbusch* trial, an alternate juror “was lying down throughout the
23 proceedings.” (See Exhibit G to the Hugo Decl. at p. 2:26-27.) This same juror “was again reclining
24 in bed” the next day. (*Id.* at pp. 2:27-3:1.) Another juror had “his head ... down for much of court
25 session and it appeared that he was working on something else.” (*Id.* at p. 3:1-2.)

26 3. Technical Problems Persisted in the *Reyes* Trial

27 On October 28, 2020, during a Defendant’s opening statement, a juror lost his internet
28 connection and it was unclear how much of the opening statement he missed, which forced counsel

1 to repeat a portion of his opening statement. (See Ghanaat Decl., ¶8; Exhibit E, attached to the Yuen
2 Decl. as **Exhibit C.**) Additionally, when Plaintiffs began their case in chief and called Dr. Smith to
3 the stand, an issue arose because Dr. Smith appeared to be reading from a document that had not
4 been provided to all counsel. (See Ghanaat Decl., ¶9; Exhibit F.) These issues could have easily
5 been avoided had this trial been conducted in person.

6 4. The *Budd* case illustrates the importance of recording proceedings in virtual
7 trials.

8 In *Budd*, a Washington case, a dispute arose concerning the trial testimony of David Weill,
9 M.D., a pulmonology expert for Kaiser Gypsum, who testified via Zoom. (See **Exhibit D** to Yuen
10 Decl.) The written transcript erroneously reflected that Dr. Weill had answered “yes” rather than
11 “no” to a crucial question:

12 Q: And, Doctor, has there been any epidemiological literature
13 published in the peer-reviewed literatures demonstrating an increased
14 risk of mesothelioma from exposure to Calidria?

15 A: Yes.

16 (*Id.* at p.2:3-6.)

17 This transcription error was not brought to Kaiser Gypsum’s attention until its counsel
18 received Plaintiff’s slideshow for closing argument and noticed that Dr. Weill’s answer was written
19 as “yes” instead of “no.” (*Id.* at p. 2:7-18.) The Court did not remember the testimony at issue and
20 permitted plaintiff’s counsel to proceed with its closing argument and quote from the incorrect
21 transcript. (*Id.*) The day after closing argument, Dr. Weill submitted a declaration attesting to the
22 fact that his answer was “no” and not “yes.” (*Id.* at p.4:16-21.)

23 The court reporter advised that he had an audio recording of the testimony at issue and he
24 provided it to the parties for review. (*Id.* at p.5:1-10.) Counsel for Kaiser Gypsum listened to the
25 recording and confirmed that Dr. Weill had said, “no” instead of “yes”. (*Id.*) Thereafter, Kaiser
26 Gypsum filed a motion asking the court to issue an order, “that the audio file is preserved,
27 forensically extracted to preserve meta-date, and marked as a part of the Court record.” (*Id.* at p.
28 1:15-20.) After briefing and oral argument, the court granted, in part, Kaiser Gypsum’s motion and

1 ordered the court reporter to preserve a copy of the audio backup recording at issue, "pending further
2 order by this court or by an appellate court." (See Yuen Decl. ¶5.)

3 The problems with Dr. Weill's Zoom testimony in the *Budd* trial is similar to Plaintiffs'
4 contention concerning typographical errors which occurred during Mr. Runne's Zoom deposition,
5 making his transcripts untrustworthy. Plaintiffs' counsel's letter dated January 13, 2021 states, in
6 pertinent part, as follows:

7
8 *Robert Runne has and will refuse to sign and approve the*
9 *transcript of his deposition in this case due to gross errors in*
10 *reporting. As we have discussed a few times informally, we*
11 *believe this was an unfortunate collateral effect of taking the*
12 *deposition through the remote videoconferencing software where*
13 *the court reporter, witness, and dozens of attorneys were essential*
14 *all in separate locations and the audio was filtered through a single*
15 *internet based connection. Fortunately [sic] the videographer*
16 *mic'd the witness and the audio internet feed. We have engaged*
17 *the same reporter to prepare a transcript using only the videotape*
18 *audio from the room with the witness at our cost [W]e reserve*
19 *the right to move to suppress the deposition*

20 (Exhibit A to Yuen Decl. (emphasis added).)

21 As Plaintiffs, themselves, have charged in a case currently in trial in Department 18,
22 transcription errors occurred when a witness testified via Zoom, indicative of the inherent limitations
23 of the technology. In this case, a court reporter with a lifetime of experience who has a "trained ear"
24 and is paid to specifically focus on each and every word uttered during the deposition was not able to
25 accurately hear or transcribe the proceedings via Zoom. As demonstrated by the examples provided
26 here, there are limits to the technology such as voices cutting out or the Zoom feed freezing, leaving
27 the participants unable to hear essential testimony that might address an issue that goes to the very
28 heart of the case such as causation. The danger is too great to proceed at trial where the judge,
witnesses, jurors, counsel and the court reporter are all appearing via remote videoconferencing.
Should the Court be inclined to proceed with a virtual trial, an audio backup recording is
indispensable to either correct the error or serve as the basis for post-trial motions or an appeal.
However, even the audio backup recording will not resolve the fundamental problems as
demonstrated by the number of errors and the months that have occurred between the time of Mr.
Runne's testimony at deposition and the preparation of the "Amended Transcripts." The parties do

1 not have weeks or months to “get it right”, the jury needs to be able to hear and understand the
2 proceedings as they occur.

3 **III. LEGAL ARGUMENT**

4 **A. The Trial Date Should Be Continued Until the Trial Can Be Safely Conducted in**
5 **Person.**

6 1. Civil litigants do not have a constitutional right to a speedy trial.

7 This is a civil case – an asbestos personal injury action. While *criminal* defendants in
8 California have a constitutional right to a speedy trial, that right does not extend to civil litigants.
9 (See Cal. Const., art. I, § 15; see also § 28, subd. (b)(9) [guaranteeing crime victims the right to a
10 speedy trial]; § 29 [guaranteeing the people of the State of California the right to a speedy trial in
11 criminal cases].) Plaintiffs in civil cases are entitled only to a “[t]rial by jury.” (*Id.*, § 16.) The
12 California Constitution could have provided for the same “speedy trial” rights for civil cases but it
13 did not. (*Howard Harvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486.)

14 It is well established that criminal cases of every kind are required by law to take precedence
15 over civil cases of every kind:

16 The welfare of the people of the State of California requires that all
17 proceedings in criminal cases shall be set for trial and heard and
18 determined at the earliest possible time... In accordance with this
19 policy, criminal cases shall be given precedence over, and set for
trial or heard without regard to the pendency of, any civil matters
or proceedings.

20 (Pen. Code, § 1050, subd. (a), italics added.)

21 “Any” civil matter or proceeding plainly includes this case and makes no exception for
22 preference cases.

23 The Chief Justice of California has repeatedly ordered that the rights of criminal defendants
24 to a trial within 60 days of arraignment must be extended due to the COVID-19 public health
25 emergency and the inability of California courts to safely conduct trials. (Pen. Code § 1382, subd.
26 (a)(2); Judicial Council of California, Statewide Emergency Order by Tani G. Cantil-Sakauye, Chief
27 Justice of California and Chair of the Judicial Counsel (April 29, 2020), available at
28 <https://tinyurl.com/yc38mxwj>.) The public health crisis created by COVID-19 resulted in the

1 suspension and continuation of all jury trials throughout California for 60 days. (Judicial Council of
2 California, Statewide Emergency Order by Tani G. Cantil-Sakauye, Chief Justice of California and
3 Chair of the Judicial Counsel (March 23, 2020 order), available at <https://tinyurl.com/v2edww2>.)
4 The Court of Appeals upheld those orders in a criminal case and upheld the challenged orders,
5 noting that “[h]ealth quarantines to prevent the spread of infectious disease have long been
6 recognized as good cause for continuing a trial date.” (*Stanley v. Superior Court* (2020) 50
7 Cal.App.5th 164, 169.) The state of California has deemed that criminal trials can be postponed due
8 to a public health crisis and it follows that civil cases, even those with a preferential trial date can
9 and must be postponed as well. If the Court believes that the available courtrooms in Alameda
10 County are too small to safely social distance jurors, parties, witnesses and court staff, the answer is
11 not to hold the trial virtually but to delay the trial until appropriate courtroom space is available or
12 the restrictions on social distancing are lifted. (Pen. Cod. § 1050, subd. (a).)

13 2. The Court has the authority to continue trial dates in preference cases.

14 California Rules of Court, Rule 3.1332(c) outlines the circumstances under which the Court
15 may exercise its authority to vacate or continue trial dates. In relevant part, the Rule provides:

16 Although continuances of trial are disfavored, each request for a
17 continuance must be considered on its own merits. The court may grant a
18 continuance only upon an affirmative showing of good cause requiring the
19 continuance.

19 The COVID-19 pandemic and the need for social distancing and safety precautions has
20 affected the way trials are currently proceeding and the ability for litigants and their counsel to
21 personally appear in court.

22 Rule 3.1332 (d) provides that in ruling on a motion for a continuance, “the court must
23 consider all the facts and circumstances that are relevant to the determination.” Among the factors
24 the court may consider are “the prejudice” to the parties, “the interests of justice,” and “the
25 availability of alternate means to address the problem that gave rise to the motion.” (CRC Rule
26 3.1332(d).) “Absent a lack of diligence or other abusive circumstances... a request for continuance
27 supporting a showing of good cause usually ought to be granted.” (*Hernandez v. Superior Court*
28 (2004) 115 Cal.App.4th 1242, 1247-1248.)

1 Code of Civil Procedure section 36 specifically authorizes the Court to grant trial
2 continuances even after granting a preferential trial date, "upon a showing of good cause stated in
3 the record." There is no limit to the number of fifteen day continuances, as long as the basis for the
4 continuance is not for physical disability. (Code Civ. Proc., § 36, subd. (f).)

5 The Court also has inherent discretion to relieve a party from an impossible or impractical
6 time limitation when in the interests of justice. (*Goodstein v. Superior Court* (1996) 42 Cal.App.4th
7 1635, 1638, 1645 [courts have inherent discretion, "in the interests of fairness and justice," to relieve
8 a party "from an impossible or impractical time limitation"; "the court must retain the inherent
9 power and authority to make an appropriate order to avoid injustice or unfairness"].) "There are
10 times when respect for the human condition dictates a compassionate response to a request for a
11 continuance. This is one of those times." (*Lerma v. County of Orange* (2004) 120 Cal.App.4th 709,
12 711.)

13 The COVID-19 pandemic presents the necessary good cause to postpone this trial rather than
14 to push forward with a virtual trial which, as we have seen in the *Wilgenbusch*, *Ocampo* and *Reyes*
15 trials presents significant issues depriving parties of their Due Process, statutory, and constitutional
16 rights. Despite the best efforts of the court, the limitations inherent in a virtual jury trial have
17 revealed the unfortunate reality that there is simply no effective means of protecting the rights of the
18 litigants.

19 Courthouses throughout California have continued civil jury trials as a result of COVID-19.
20 By no fault of the parties or the court, the current pandemic status has made it unreasonable to move
21 forward with an in-person trial. Importantly, *Plaintiffs have presented no evidence that Mr. Sisk's*
22 *current health status is such that a trial needs to be conducted immediately to avoid prejudicing his*
23 *rights*. Yet, as we have seen in recent asbestos virtual trials, there are significant issues which have
24 affected and will continue to affect parties participating in remote trials. The state Legislature,
25 Judicial Council and the Alameda Superior Court have provided no guidance on whether remote jury
26 trials are proper; the procedure for how they should be conducted; or whether a remote trial violates
27 Constitutional and statutory rights and therefore this trial should be continued until such time that the
28 trial can proceed in person.

1 3. Remote trials are not authorized by any statute, local rule or the Judicial
2 Council Emergency Order.

3 The Alameda Superior Court has issued many emergency local orders related to the
4 COVID-19 pandemic; however, they have yet to issue a single emergency local rule regarding
5 remote jury trials. The emergency local rules have addressed the procedures for remote hearings
6 (Emergency Local Rule (“ELR”) 1.8b), public access to court proceedings (ELR, 1.7a), procedures
7 for processing juror questionnaires during the pandemic (ELR, 1.10a), authorizing the use of remote
8 technology for interviews with conservatees pursuant to Judicial Council Emergency Rule 3(a)(1)
9 (ELR, 7.825), and rules for the composition of jury panels (ELR, 1.10). But there is not a single local
10 rule authorizing the use of a remote or virtual platform for conducting a civil jury trial.

11 The Judicial Council’s Emergency Rule 3 also does not authorize the courts to conduct
12 remote or virtual trials, remote *voir dire* or remote juror deliberations. The Judicial Council did
13 however provide examples of judicial proceedings that might properly occur remotely, which
14 “includes, but is not limited to, remote appearances; the electronic exchange and authentication of
15 documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote
16 reporting and electronic recording.” (Cal. Rules of Court, Appen. I: Emergency Rules Relating to
17 COVID-19, rule 3(a)(3).) Under *ejusdem generis* principal of statutory construction, if the drafter
18 “intends a general word to be used in its unrestricted sense, it does not also offer as examples
19 peculiar things or classes of things since those depictions would be surplusage.” (*People v. Giordano*
20 (2007) 42 Cal.4th 644, 660 citing *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116,
21 141.) The principle of construction *expressio unius est exclusion alterius*, provides that “the
22 enumeration of things to which a statute applies is presumed to exclude things not mentioned.”
23 (*Williams v. The Pep Boys Manny Moe & Jack of California* (2018) 27 Cal.App.5th 225, 239.) The
24 use of the phrase, “including, but not limited to” in the Emergency Rule 3, does not alter the analysis
25 that the statutes must be construed according to the principle of *ejusdem generis* and *expressio unius*
26 *est exclusion alterius*. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d
27 1379, 1290-91 (superseded by statute)).

28 ///

1 **B. Virtual Trials Will Result in Constitutional, Statutory, and Practical Problems**
2 **Depriving Defendant of a Fair Trial.**

3 The Legislature and the Judicial Counsel have not authorized nor have they set forth the
4 proper procedures for conducting remote trials.

5 1. A virtual trial raises concerns as to the jury venire.

6 Article 1, section 16 of the California Constitution states that a trial by jury is an “inviolate
7 right” and “shall be secured to all.” Similarly, the California Code of Civil Procedure section 361
8 guarantees the right to a trial by jury as “inviolate.” The Trial Jury Selection and Management Act,
9 contained within Code of Civil Procedure section 191, states that it is “...policy of the State of
10 California that all persons selected for jury service shall be selected at random from a source or
11 sources inclusive of a representative cross-section of the population of the area served by the Court.”
12 Furthermore, Code of Civil Procedure section 203(a) states that no eligible person shall be exempt
13 from service as a trial juror by reason of occupation, economic status, or any other characteristic
14 defined in Section 11135 of the Government Code. These mandates can be violated where jurors are
15 improperly disqualified during the hardship process on “grounds of competency, suitability, [or]
16 undue hardship.” (*People v. Wheeler* (1978) 22 Cal.3d 258, 273.) A virtual or hybrid procedure for
17 conducting juror hardships has the potential for violating these “inviolate” mandates.

18 The Court may not condition a juror’s participation on financial circumstances. “No eligible
19 person shall be exempt from service as a trial juror by reason of... economic status, ...or for any
20 other reason,” and “[n]o person shall be excused from service as a trial juror except as specified” by
21 statute – which allows excuses “only for undue hardship, upon themselves or the public, as defined
22 by the Judicial Council.” (Code Civ. Proc., § 204, subds. (a);(b).)

23 Prospective jurors should not be treated differently based upon their economic status. In
24 order for a juror to participate in a virtual or hybrid trial, they must have access to high speed
25 internet, a device with a camera, and a quiet private space to view and participate in the proceedings.
26 If potential jurors cannot serve on a virtual jury simply because they do not have access to the
27 necessary equipment, or lack the ability to use the technology to participate, it is certain that a large
28 portion of the potential jury pool, including low-income prospective jurors will be excluded and will

1 result in a jury which is not based on a representative cross-section of the community. Furthermore,
2 elderly jurors or jurors with pre-existing health conditions will undoubtedly refuse to participate in a
3 hybrid trial given their increase risk of developing COVID-19. Should the Court determine that
4 some jurors should be required to attend in person and others are allowed to attend remotely is not
5 appropriate, as all jurors must be treated equally, and must observe the evidence in the same manor.

6 Under our state Constitution, as well as the applicable Statutory provisions, Defendant is
7 entitled to a jury drawn from a representative cross-section of the community, and “[t]hat guarantee
8 mandates that pools from which juries are drawn must not systematically exclude distinctive groups
9 in the community.” (*People v. Anderson* (2001) 25 Cal.4th 542, 566.) It is unlikely that Defendant
10 will receive this guarantee should the trial proceed remotely.

11 2. A virtual trial raises concerns as to the *voir dire* process.

12 *Voir dire* is an essential element of every civil trial and both the court and counsel need to be
13 able to observe the verbal and non-verbal reactions of prospective jurors during questioning.

14 The Trial Jury Selection and Management Act was designed to protect the constitutional
15 right to the process of jury trials by placing the responsibility on “jury commissioners to manage all
16 jury systems in an efficient, equitable and cost-effective manner”. (Code Civ. Proc. § 191.) The trial
17 jury panel is “a group of prospective jurors assigned to a courtroom for the purpose of *voir dire*.”
18 (Code Civ. Proc., § 194, subd. (q). emphasis added.) The Act specifically provides that the jurors
19 will be present in the courtroom for *voir dire*. (*Id.*)

20 A virtual *voir dire* is inconsistent with the Code of Civil Procedure and creates practical
21 problems for selecting a representative jury as the Court and attorneys may be prevented from a clear
22 view of observing the juror’s facial expressions. (*See People v. Booker* (2011) 51 Cal.4th 141, 166-
23 167 [both the trial judge and counsel need “the opportunity to observe [a juror’s] demeanor” to
24 assess whether her answers to *voir dire* questions are “untruthful”].) Facial images on computer
25 screens are often small and the images can be delayed which will not allow the attorneys the same
26 perspective as looking at a juror in person. Should Defendant’s attorneys not be able to fully and
27 adequately view a juror’s facial expressions, body language and demeanor it would limit
28 Defendant’s ability to fully evaluate whether the juror is able to be fair and impartial.

1 3. A virtual trial raises concerns as to the jurors' ability to observe testimony and
2 evidence, as well as the ability for the court and parties to observe jurors and
3 their attentiveness during trial.

4 Jurors must see and hear the same evidence at the same time, and the Court is required to
5 ensure that all jurors are in an environment free from distractions while they hear the evidence. A
6 virtual trial eliminates the Court's ability to manage the proceedings and supervise the jurors and
7 instead places the burden on individual jurors to watch every moment of the trial without any
8 distractions that may normally occur in their homes such as a phone or doorbell ringing. If the Court
9 and the parties are physically separated from the jurors, there is no way for the Court or counsel to
10 know whether a juror has decided to watch television, check emails, listen to music, invite others
11 off-camera to watch the proceeding, or search the internet for information relevant to the case.

12 As demonstrated above, juror distraction is not a mere possibility. A lack of juror
13 attentiveness has thwarted other proceedings where remote procedure was implemented. For
14 example, jurors were lying in bed, possibly asleep, working out on an elliptical machine, taking care
15 of their children and pets, leaving the room for various reasons, and watching the videoconference
16 on one device while using a separate electronic device for other potentially improper purposes
17 during *voir dire* in the *Wilgenbusch* matter.⁴ (See Exhibit I to Hugo Decl. See also Amanda
18 Bronstad, *Mistrial Motion Says Jurors Worked Out, Checked Stove, During Virtual Voir Dire in*
19 *Asbestos Case*, LAW.COM, July 20, 2020;⁵ Debra Cassens Weiss, *Potential Jurors exercised,*
20 *curled up on bed during virtual voir dire, motion says in asbestos case*, ABA Journal, July 22,
21 2020.⁶

22 The impact that a remote proceeding has on juror attentiveness extends beyond *voir dire*. For
23 example, two days into the *Ocampo* trial, Defendant Honeywell filed a notice of "irregularities"
24 identifying examples where jurors were inattentive at trial. Jurors were walking around when the
25 Court issued jury instructions, working, and lying in bed during the trial. (See Exhibit G to Hugo

26 ⁴ The case settled before the motion was heard and decided.

27 ⁵ [https://www.law.com/2020/07/20/mistrial-motion-says-jurors-worked-out-checked-stove-](https://www.law.com/2020/07/20/mistrial-motion-says-jurors-worked-out-checked-stove-during-virtual-voir-dire-in-asbestos-case/)
28 [during-virtual-voir-dire-in-asbestos-case/;](https://www.law.com/2020/07/20/mistrial-motion-says-jurors-worked-out-checked-stove-during-virtual-voir-dire-in-asbestos-case/)

⁶ [https://www.abajournal.com/news/article/potential-jurors-exercised-curled-up-on-bed-](https://www.abajournal.com/news/article/potential-jurors-exercised-curled-up-on-bed-during-virtual-voir-dire-motion-says)
 [during-virtual-voir-dire-motion-says](https://www.abajournal.com/news/article/potential-jurors-exercised-curled-up-on-bed-during-virtual-voir-dire-motion-says)

1 Decl. See also, Dorothy Atkins, *Judge to Zoom Trial Asbestos Jury: 'Pay Attention, Please,'*
2 LAW360, Aug. 24, 2020.⁷ These stark warnings regarding the risks in a trial of this length and
3 magnitude can simply not be ignored.

4 Although the jurors might be visible on the videoconference during the course of trial, that
5 does not ensure they are actively engaged in the trial proceedings. There is no way of knowing
6 whether a juror is watching a movie, checking emails, listening to music, or researching issues in the
7 case during the course of trial. This concern is especially patent when considering that this trial will
8 involve complex medical, technical, toxicological, and epidemiological issues over a period of
9 weeks. At home and in a remote proceeding context, jurors are more apt to be distracted by a
10 myriad of sources and the court is less likely to notice any inattentiveness or inappropriate activities,
11 enabling jurors to ignore or misinterpret witness testimony and evidence—intentionally or
12 unintentionally—because they are not all physically in the courtroom and in each others' presence.
13 An inattentive, distracted, and preoccupied jury is not focused on the evidence and issues in the case,
14 thereby violating Kaiser's constitutional right to a fair jury trial because the factfinder is not
15 affording it a full and fair opportunity to be heard by operation of a remote trial proceeding itself.

16 Furthermore, the technology to conduct a virtual trial can be unreliable at times and issues
17 such as a dropped connection, video or audio freezes are frequent occurrences. The Court will have
18 no way of knowing if a juror loses their connection and misses a portion of the evidence. A juror
19 who is absent from an in-person trial is simply dismissed to avoid any question that the jurors who
20 decide the case heard all the same evidence. This rule cannot be adequately enforced during a
21 virtual trial.

22 4. **A virtual trial raises impacts witness presentation and prevents Kaiser**
23 **Gypsum from having a full and fair opportunity to be heard.**

24 Kaiser Gypsum objects to being forced to present its witnesses remotely. Remote witness
25 presentation is an inadequate substitute for live witness presentation before a live jury. As noted by
26 one court, "[c]learly, a jury trial conducted by videoconference is not the same as a trial where the
27

28 ⁷ <https://www.law360.com/articles/1303820/judge-to-zoom-trial-asbestos-jury-pay-attention-please-?copied=1>.

1 witnesses testify in the same room as the jury.” (*Thornton v. Snyder*, 428 F.3d 690, 697 (7th Cir.
2 2005).) It is not the same because tools to assess credibility and persuasiveness, such as “[t]he
3 immediacy of a living person is lost” with remote testimony as well as “the ability to observe
4 demeanor, central to the fact-finding process, may be lessened.” (*Id.* (citations omitted).) “This may
5 be particularly detrimental where it is a party to the case who is participating by video conferencing,
6 since personal impression may be a crucial factor in persuasion.” (*Id.* (citation omitted).)

7 Advances in technology, while useful, are not a direct analog for live in-person testimony.
8 “[E]ven with the benefits that technology provides, substitutes for live testimony are necessarily
9 imperfect....“it seems obvious that remote transmission is to be the exception and not the
10 rule,” (*Lopez v. NTI, LLC*, 748 F. Supp. 2d 471, 479 (D. Md. 2010); *see also United States v.*
11 *Lawrence*, 248 F.3d 300, 304 (4th Cir. 2001) (“...virtual reality is rarely a substitute for actual
12 presence even in an age of advancing technology, watching an event on the screen remains less than
13 the complete equivalent of actually attending it..”).)

14 The hinderance presented by remote witness presentation is further exacerbated by the
15 complexities that come with personal injury asbestos litigation. Chrysotile asbestos defendants, like
16 Kaiser, come into the courtroom at an inherent disadvantage due to the venire’s pre-existing
17 perceptions and knowledge surrounding the term “asbestos” in general. Kaiser Gypsum does not
18 dispute and agrees that some forms of asbestos (*e.g.* amphibole) are hazardous to human health;
19 however, there is a no observed adverse effect level (NOAEL) associated with chrysotile asbestos
20 fibers. The baseline knowledge that most jurors hold coming into the courtroom is applied to
21 asbestos generally and not a particular fiber type. Because of this, a chrysotile defendant must
22 deconstruct the venire’s perceptions regarding asbestos as an all-inclusive term by educating the
23 venire on what asbestos is, the differences between asbestos-fiber types, and why they, the jurors,
24 need to consider the evidence presented by both sides as opposed to preconceived conclusions
25 involving asbestos generally. While there is broad general agreement among plaintiff and defense
26 experts regarding the differences between fiber types and the relative hazards posed to human health
27 (with exception to whether chrysotile alone can cause mesothelioma and the NOAEL of chrysotile),
28 it falls on the defense to educate the venire and to create a level playing field because there is no

1 advantage to plaintiff to explain or acknowledge the differences between fiber types when taking a
2 chrysotile defendant to trial if the venire's perception is that all asbestos is equally hazardous even in
3 small amounts. That baseline benefits the plaintiff's case and in fact, plaintiffs try to set or
4 strengthen those perceptions.

5 But even something as fundamental as the objective difference between asbestos fiber types
6 requires expert testimony to explain, all the while facing resistance from Plaintiffs. The complexity
7 and nuances of the science only increase from there. A chrysotile defendant is at a clear
8 disadvantage when compared to the plaintiff. It is likely that no single mineral group has been
9 studied more than asbestos; thus, decades of research and thousands upon thousands of pages of
10 scientific literature are potentially in play at any given moment during expert witness presentation.
11 Plaintiffs bear the burden of proof and drives the evidence and analysis from the outset, requiring the
12 asbestos defendant to constantly adjust and anticipate where the science and argument are going.
13 Because of this undeniable aspect, asbestos defendants need to adjust on the fly and have the
14 thousands upon thousands of pages of scientific literature at the ready for cross examination.
15 Therefore, in a remote proceeding, the defendant is at a marked disadvantage because new
16 illustrative exhibits in the form of scientific studies must be introduced, may not be uploaded to an
17 exhibit server, and may not be prepared for electronic transmission. It can be difficult for a litigator,
18 let alone a lay juror, to track. In a remote proceeding the issues are exacerbated.

19 If Kaiser Gypsum is unable to prepare its defense due to complications created by the remote
20 proceeding, then this aspect of the remote trial violates its due process rights as it has not had a full
21 and fair opportunity to be heard and defend. Specifically, because much of the presentation involves
22 complex and technical subject matter, a remote proceeding will hinder Kaiser Gypsum's ability to
23 present a complicated cross-examination and defense in a clear and comprehensible manner to the
24 jury. (See, e.g., *Sims v. ANR Freight Sys., Inc.*, 77 F.3d 846, 849 (5th Cir. 1996) ("When the
25 manner of the presentation of information to a jury is judicially restricted to the extent that the
26 information becomes incomprehensible then the essence of the trial itself has been destroyed.").)

27 5. A jury cannot properly conduct jury deliberations in a virtual trial.

28 Jurors are required to deliberate together. The law requires that the Court "provide a

1 deliberation room or rooms for the use of jurors when they have retired for deliberation.” (Code Civ.
2 Proc. § 216, subd. (a).) Virtual deliberations violate this rule because there is no “room” in which all
3 the jurors will be present. Moreover, even if remote deliberation were possible, “[t]he deliberation
4 room shall be designated to minimize unwarranted intrusions by other persons in the court
5 facility[.]” (*Ibid.*) There is no way for the Court to guarantee that the remotely participating jurors
6 are protected from such intrusions. “An important element of trial by jury is the conduct of
7 deliberations in secret[.]” (*People v. Engelman* (2002) 28 Cal.4th 436, 442.) As the Court is aware
8 most schools are closed and children are attending remotely and many individuals are working from
9 home. There is no guarantee of secrecy in deliberations when a juror lives with family members or
10 roommates and the Court cannot control the jurors’ environment as it does in the courthouse. Any
11 number of unexpected intrusions are likely to occur during remote deliberations. There is no
12 control, and more importantly for the parties, no way for such misconduct to be reported or
13 remedied.

14 **IV. CONCLUSION**

15 Based on the foregoing, Defendant Kaiser Gypsum respectfully requests that the Court
16 continue the trial until it can be conducted safely in person. Alternatively, if the Court intends to
17 proceed with a virtual trial, Defendant requests that the Court permit the all non-deliberation trial
18 proceedings, including of the jurors themselves, be recorded by video to preserve the record for
19 proceedings during and post-trial, and/or on appeal, if necessary.

20 DATED: February 22, 2021

FOLEY & MANSFIELD, PLLP

21
22 By: 

23 Jennifer M. McCormick
24 Peter Langbord
25 Nicole B. Yuen
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FILED
ALAMEDA COUNTY

FEB 22 2021

CLERK OF THE SUPERIOR COURT

By 

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

RICHARD BURLIN SISK JR. and
CALVENA DEA SISK,

Plaintiffs,

vs.

WEIR VALVES & CONTROLS USA INC.,
et al.,

Defendants.

Case No. RG20055456

Assigned for Trial To:
Hon. Winifred Smith - Dept. 21

DECLARATION OF NICOLE BROWN
YUEN IN SUPPORT OF DEFENDANT
KAISER GYPSUM COMPANY, INC.'S
OBJECTION TO VIRTUAL/REMOTE
TRIAL OR, ALTERNATIVELY, TO
ALLOW ALL NON-DELIBERATION
TRIAL PROCEEDINGS TO BE
RECORDED

[Filed concurrently with Objection to
Virtual/Remote Trial; [Proposed] Order] and
Proof of Service]

Trial: February 22, 2021
Dept 21
Judge: Hon. Winifred Y. Smith
Complaint Filed: February 21, 2020

I, Nicole Brown Yuen, declare as follows:

I am an attorney duly admitted to practice in all of the courts of the State of California and I am a partner with Foley and Mansfield, PLLP, attorneys of record for Defendant Kaiser Gypsum Company, Inc. (hereinafter "Kaiser") herein. The facts set forth herein are of my own personal knowledge and, if sworn, I could and would competently testify thereto.

1. I submit this declaration in support of Kaiser's Trial Brief objection to the virtual trial

DECLARATION OF NICOLE BROWN YUEN IN SUPPORT OF DEFENDANT KAISER GYPSUM COMPANY,
INC.'S OBJECTION TO VIRTUAL/REMOTE TRIAL OR, ALTERNATIVELY, TO ALLOW ALL NON-
DELIBERATION TRIAL PROCEEDINGS TO BE RECORDED

FILED
FEB 22 2021
CLERK OF THE SUPERIOR COURT

1 or, in the alternative, request to record non-juror proceedings.

2 2. Attached hereto as **Exhibit A** is a true and correct copy of the January 13, 2021
3 correspondence from Plaintiffs' counsel, Mr. Langdoc, to all counsel of record in the *Robert and*
4 *Catherone Runne* matter, Alameda County Superior Court Case No. RG20061377, advising of gross
5 errors in the remote videoconferencing software used during the Zoom deposition.

6 3. Attached hereto as **Exhibit B** is a true and correct copy of the Declaration of Edward
7 R. Hugo and accompanying exhibits filed in the *Elsie McKay, et al. v. Asbestos Corporation*
8 *Limited, et al.* matter, RG17884467.

9 4. Attached hereto as **Exhibit C** is a true and correct copy of the Declaration of Bina
10 Ghanaat and accompanying exhibits filed in the *Elsie McKay, et al. v. Asbestos Corporation Limited,*
11 *et al. matter*, RG17884467.

12 5. Attached hereto as **Exhibit D** is a true and correct copy of Kaiser Gypsum Company,
13 Inc.'s Motion to Correct August 27, 2020 Verbatim Transcript of Proceedings filed on October 19,
14 2020 in *Budd v. Kaiser Gypsum, et al.*, Superior Court of Washington for King County case no. 19-
15 2-14878-1 SEA. After briefing and oral argument, the court granted Kaiser Gypsum's motion in
16 part, ordering the court reporter to preserve a copy of the audio backup recording pending further
17 order of the court.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct and that this declaration was executed on this 22nd day of February 2021, at
20 Moraga, California.


21
22 
23 _____
24 Nicole Brown Yuen
25
26
27
28

Exhibit A

**Richard and Calvena Sisk
ACSC RG20055456**

**DECLARATION OF NICOLE BROWN YUEN IN
SUPPORT OF DEFENDANT KAISER GYPSUM
COMPANY, INC.'S OBJECTION TO
VIRTUAL/REMOTE TRIAL OR, ALTERNATIVELY, TO
ALLOW ALL NON-DELIBERATION TRIAL
PROCEEDINGS TO BE RECORDED**



January 13, 2021

Via File&Serve

ALL COUNSEL OF RECORD

**Re: Robert Runne and Catherine Runne v. Amcord, Inc., et al.
Alameda County Superior Court Case No. RG20061377**

Dear Counsel:

Please take notice of the fact that Deponent Robert Runne has and will refuse to sign and approve the transcript of his deposition in this case due to gross errors in reporting. As we have discussed a few times informally, we believe this was an unfortunate collateral effect of taking the deposition through the remote videoconferencing software where the court reporter, witness, and dozens of attorneys were essentially all in separate locations and the audio was filtered through a single internet based connection. Fortunately the videographer mic'd the witness and the audio internet feed. We have engaged the same court reporter to prepare a transcript using only the videotape audio from the room with the witness at our cost.

While we reserve the right to move to suppress the deposition, we are confident we will be able to reach an informal resolution to this unfortunate COVID-era collateral issue. As soon as we have a copy of the updated transcripts we will serve on all parties and go from there.

Best,

/s/ John Langdoc

John Langdoc

JS:js

Exhibit B

**Richard and Calvena Sisk
ACSC RG20055456**

**DECLARATION OF NICOLE BROWN YUEN IN
SUPPORT OF DEFENDANT KAISER GYPSUM
COMPANY, INC.'S OBJECTION TO
VIRTUAL/REMOTE TRIAL OR, ALTERNATIVELY, TO
ALLOW ALL NON-DELIBERATION TRIAL
PROCEEDINGS TO BE RECORDED**

Edward R. Hugo [Bar No. 124839]
Heather S. Kirkpatrick [Bar No. 278647]
HUGO PARKER, LLP
240 Stockton Street, 8th Floor
San Francisco, CA 94108
Telephone: (415) 808-0300
Facsimile: (415) 808-0333
Email: service@HUGOPARKER.com

Attorneys for Defendant
SERRATO-MCDERMOTT INC. d/b/a
ALLIED AUTO STORES

SUPERIOR COURT – STATE OF CALIFORNIA
COUNTY OF ALAMEDA– UNLIMITED JURISDICTION

ELSE McKAY, as Successor-in-interest to and
as Wrongful Death Heir of ROY McKAY,
Deceased; and DAVID McKAY, DEBORAH
EVANS, CAROL LANGEVIN, SANDRA
McKAY RELOVA, TAMMY CAMERON, as
Wrongful Death Heirs of ROY McKAY,
Deceased,

Plaintiffs,

vs.

ASBESTOS CORPORATION LIMITED, et al.,

Defendants.

(ASBESTOS)
Case No. RG17884467

DECLARATION OF EDWARD R. HUGO IN
SUPPORT OF DEFENDANT SERRATO-
MCDERMOTT INC. d/b/a ALLIED AUTO
STORES' TRIAL BRIEF RE OBJECTION
TO VIRTUAL TRIAL, OR, IN THE
ALTERNATIVE, REQUEST TO RECORD
NON-JUROR TRIAL PROCEEDINGS

Date: January 25, 2021
Time: 9:30 a.m.
Dept.: 517
Judge: Hon. Stephen Pulido

Action Filed: December 1, 2017
Trial Date: January 25, 2021

1 I, Edward R. Hugo, hereby declare:

2 1. I am an attorney duly licensed to practice before the courts of the State of California.
3 I am the founding partner of Hugo Parker, LLP, counsel of record for defendant SERRATO-
4 MCDERMOTT INC. d/b/a ALLIED AUTO STORES ("Allied Auto"). I am also lead trial counsel
5 for my client, and I intend to and will conduct the *voir dire* in this matter as the Court allows. The
6 facts stated herein are true of my own personal knowledge. If called as a witness, I could and would
7 competently testify to the same.

8 2. I was counsel of record and lead trial counsel for defendant FRYER-KNOWLES,
9 INC., A WASHINGTON CORPORATION ("FKWA") in the matter of *Ronald C. Wilgenbusch*
10 *and Judith A. Wilgenbusch v. American Biltrite, Inc., et al.*, Alameda County Superior Court, Case
11 No. RG19029791. In *Wilgenbusch*, I remotely attended Pretrial Conferences on June 29, 2020 and
12 July 1, 2020, wherein the Court orally proposed certain jury selection and *voir dire* procedures.
13 Specifically, on June 29, 2020, the Court stated it intended to proceed with *voir dire* using the
14 videoconferencing platform Zoom, but on July 1, 2020, the Court noted that if Department 511 of
15 the Hayward Hall of Justice were available, then *voir dire* would proceed with the jurors physically
16 present in the courtroom, albeit wearing face masks.

17 3. FKWA promptly filed a trial brief the next day, July 2nd, and a supplemental brief on
18 July 6th, objecting to the Court's proposed jury selection and *voir dire* procedures.

19 4. On July 7th, after a hearing specifically devoted to "jury selection and trial
20 procedures," the Court issued a final Order with regard to "hard shipping" that states: at the "**initial**
21 **meeting**" of jurors, the Court would attend "via a remote BlueJeans application (with counsel also
22 attending remotely)" (emphasis added). I attended remotely by BlueJeans per the Court order.

23 5. With regard to actual *voir dire*, the Court's July 7th final Order states: "[v]oir dire
24 will be conducted via Zoom **and in person**" (emphasis added). Attached hereto as **Exhibit A** is a
25 true and correct copy of the Court's July 7, 2020 "Order After Hearing Re: Jury Selection and Trial
26 Procedures; Motion to Continue Trial" in the *Wilgenbusch* matter.

27 6. In reliance on the Court's July 7th Order, on July 14th I e-mailed the Court and all
28

1 parties, stating that I looked forward to appearing in person on July 15th for the first time in the
2 *Wilgenbusch* matter. Since the case was assigned to Judge Seligman, over my objection, all
3 hearings were conducted remotely. In other words, attorneys were not permitted to personally
4 attend any (not one) of the hearings that Judge Seligman held in *Wilgenbusch*.

5 7. The next morning, July 15, 2020, I appeared at the Hayward Hall of Justice, wearing
6 a mask and following all health-related Covid-19 guidelines, in order to participate, as lead counsel,
7 in *voir dire* in *Wilgenbusch*. But, the Court refused to allow me to enter the courtroom. I was
8 advised that “[t]he court **anticipated** that all counsel would attend *voir dire* remotely. The
9 courtroom is **not set up** for counsel. The Judge will be in another room, alone, **so he can speak**
10 **unmasked**” (emphasis added). Attached hereto as **Exhibit B** is a true and correct copy of this all-
11 party e-mail chain with the Court, beginning on July 14, 2020 at 8:42 p.m. and ending on July 15,
12 2020 at 9:53 a.m., wherein I advised the Court that I would be appearing in-person for *voir dire*,
13 was advised after my arrival at Court that “[t]he courtroom is not set up for counsel,” and my
14 objection to being excluded from attending *voir dire* in person on July 15, 2020.

15 8. After waiting in the court house hall for over an hour and lodging objections to my
16 exclusion from the in-person *voir dire* proceedings of July 15th by email, the only means of
17 communication with the Court available to me, I left the courthouse after I believed that “virtual
18 *voir dire*” had begun. Once *voir dire* began without me, there was no means available for me to
19 meaningfully participate. The Court never offered or provided me with a continuance or an
20 alternative place in the Hayward courthouse to participate in *voir dire*. As a result, I, as lead trial
21 counsel for my client, did not participate in any portion or phase of *voir dire* in *Wilgenbusch* on
22 July 15, 2020.

23 9. Other than myself, 5 apparently “live” prospective jurors who were ultimately
24 allowed into Dept 511 to participate in *voir dire* and 2 apparent court attendants, I observed no one
25 else on the second floor of the courthouse. The courthouse in total appeared to be a ghost town. The
26 sheriffs at first floor security immediately asked me if I was there for “the trial”, i.e., a singular
27 event, when I entered. And, I observed no activity that suggested that another trial or court
28

1 proceeding was underway in the entire courthouse.

2 10. Attached hereto as **Exhibit C** is a true and correct copy of a photograph of me,
3 wearing my mask, standing in front of the Hayward Hall of Justice on July 15, 2020 where I
4 appeared to participate in *voir dire*. It is a “selfie”: I took my own picture and I cut my own hair
5 (because barbershops are closed per the Governor’s orders). I appear alone, because there was no
6 one else in front of the courthouse. Most people are “sheltering in place.”

7 11. Attached hereto as **Exhibit D** is a true and correct copy of an all-party e-mail chain
8 with the Court in the *Wilgenbusch* matter, beginning on July 6, 2020 at 5:04 p.m. and ending on
9 July 15, 2020 at 10:43 a.m., noting numerous problems with the remote *voir dire* proceedings,
10 including defense counsel’s inability to lodge objections to *voir dire* on July 15th for at least half an
11 hour.

12 12. Attached hereto as **Exhibit E** is a true and correct copy of my previously filed
13 Declaration submitted in support of FKWA’s Trial Brief Regarding Objections to Court’s Proposed
14 Jury Selection and *Voir Dire* Procedures in the *Wilgenbusch* matter, wherein I advised the Court
15 that I am lead trial counsel for FKWA and that I would be conducting *voir dire* in this matter.

16 13. Attached hereto as **Exhibit F** is a true and correct copy of my previously filed
17 Declaration submitted in support of FKWA’s Reply Brief Regarding Objections to Court’s
18 Proposed Jury Selection and *Voir Dire* Procedures in the *Wilgenbusch* matter, wherein I again
19 advised the Court that I am lead trial counsel for FKWA and that I would be conducting *voir dire* in
20 this matter.

21 14. Attached hereto as **Exhibit G** is a true and correct copy of Honeywell International
22 Inc.’s “Notice of Irregularities at Remote Jury Trial from July 27-29, 2020,” filed in the matter of
23 *Ricardo Ocampo and Elvia Ocampo v. AAMCO Transmissions, Inc., et al.*, Alameda County
24 Superior Court, Case No. RG19041182.

25 15. Attached hereto as **Exhibit H** is a true and correct copy of the Declaration of Janelle
26 Y. Walton Regarding Juror Behavior filed in the matter of *Ronald C. Wilgenbusch and Judith A.*
27 *Wilgenbusch v. American Biltrite, Inc., et al.*, Alameda County Superior Court, Case No.

1 RG19029791.

2 16. Attached hereto as **Exhibit I** is a true and correct copy of the Court's August 19,
3 2020 Order Re: Motion for Mistrial in *Ronald C. Wilgenbusch and Judith A. Wilgenbusch v.*
4 *American Biltrite, Inc., et al.*, Alameda County Superior Court, Case No. RG19029791.

5 17. Attached hereto as **Exhibit J** is a true and correct copy of a subpoena duces tecum
6 my office issued to the Alameda County Superior Court Jury Commissioner in the matter of *Ronald*
7 *C. Wilgenbusch and Judith A. Wilgenbusch v. American Biltrite, Inc., et al.*, Alameda County
8 Superior Court, Case No. RG19029791. However, the process server advised that they were unable
9 to serve the subpoena because the building was locked and closed to the public. Attached hereto as
10 **Exhibit K** is a true and correct copy of a photo received from the process server indicating that the
11 building was closed.

12
13 I declare under penalty of perjury under that the foregoing is true and correct. Executed on
14 January 19, 2021, at Mill Valley, California.

15
16 /s/ Edward R. Hugo
EDWARD R. HUGO

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 07 2020

CLERK OF THE SUPERIOR COURT
By JHALISA CASTANEDA

Deputy

Wilgenbusch,

Plaintiff

vs.

American Biltrite,

Defendant

) Case No. RG19029791

) Order After Hearing Re: Jury Selection and

) Trial Procedures; Motion to Continue Trial

The court and parties face unprecedented challenges during this Covid-19 crisis.

Earlier rulings from the Judicial Council suspended trials, and indeed for a while this court was nearly completely closed down. But the trial suspension period has passed, and the court, an essential service, has the duty to render justice, consistent with applicable health directives. At the current time, this court prohibits any person from entering the courts absent proper "social distancing" and the use of a cloth mask. Only a few of the available courtrooms in Alameda County are large enough to hold a full jury and alternates consistent with social distancing, and as to those available for a civil trial, the maximum number of jurors or potential jurors is 18, spread around the courtroom.

To address the Covid-19 crisis, the Judicial Council, in Emergency Rule 3, has given courts broad powers to conduct judicial proceedings remotely, "notwithstanding any other law...." Remote proceedings include the use of video, audio and telephonic means...." Emergency Rule 3 (a)(3).

Not every stage of the proceedings requires the same procedures. For example, voir dire in person could require the presence of more potential jurors than can safely and practicably be accommodated in a courtroom without some use of remote technology. On

the other hand, if sufficient safeguards are utilized, trial with jurors present could be feasible.

Trial Procedures

The court accordingly plans to order the following procedures.

Jury Selection. Potential jurors will be summoned to the Jury Assembly Room (JAR) at the Rene C. Davidson courthouse. The JAR can only accommodate up to 50 potential jurors at a time so several sessions will be required to summon sufficient numbers of potential jurors. At this initial meeting, the court, via a remote BlueJeans application (with counsel also attending remotely), will give an initial orientation to the jury, including the reading of a statement of the case. One attorney for each party, in alphabetical order, may introduce themselves and co-counsel. The court will instruct the potential jurors regarding how to fill out a hardship request and jury questionnaire. In addition, the court will ask each potential juror to fill out a form requesting information regarding their technical ability to participate in voir dire with a Zoom.com application, and, if so, their email address. Jurors who have the technical ability to participate via Zoom will be sent a Zoom invitation with instructions and potential jurors who cannot access Zoom will be asked to appear at the court for voir dire, unless excused for hardship.

The court will rule on the written hardship requests. If a request needs clarification, the court may contact the potential juror. The written hardship requests will be provided to counsel and the court's determination will be made part of the record.

Voir dire will be conducted via Zoom and in person in the order of the random list, consistent with a "six pack" set up (18 in a group to start). After voir dire of the 18, the court and counsel will adjourn to a virtual meeting room where cause and peremptory

challenges will be addressed. When less than 12 jurors remain, the "box" will be refreshed and the new prospective jurors will be questioned. At the start of voir dire, the court will permit each party to make a brief non-argumentative "mini-opening" statement (1 minute maximum for each party; if multiple defendants, plaintiff may use up to 2 minutes)

Trial. Jurors will attend trial "live." (Although the court may consider individual requests to accommodate remote attendance if good cause is found). Counsel may appear "live" or remotely provided that no more than 1 person per party will be permitted in the main courtroom. All persons in the courtroom will observe social distancing and masking requirements. A second courtroom, linked by a remote application, will be available for additional counsel and personnel who will also be required to abide by social distancing and masking requirements. Absent an order from this court, no witness will testify live—all will be either pre-recorded or via remote appearance, avoiding the necessity of masking of the witness. Counsel may also avoid masking by participating remotely as desired. The court will issue a further order at a later time regarding the rules for remote testimony. The jury will deliberate together in a separate space that allows sufficient social distancing.

Objections

Defendants have raised various objections to proceeding with jury selection or trial either remotely or in person. Some of these objections are clearly premature or baseless, such as the objection that the jury will not be representative, or that jurors may be categorically excluded. The court will not categorically exclude any person who meets statutory criteria. As noted above, the court has the authority to conduct proceedings remotely. Nevertheless, some potential members of the jury may not have

the technical ability to attend remotely. In order to insure broad representativeness, the court will permit those individuals to attend voir dire in person. Safety considerations require masking of all individuals in the court, including prospective jurors in the courtroom. While this may not be optimal, defendants do not cite, and the court is unaware of, any authority that would prohibit such basic safety procedures for in-court attendance.

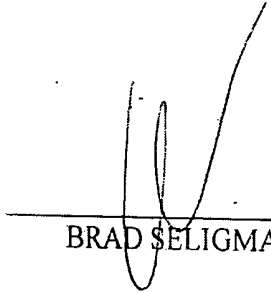
Nor is the court aware of any legal requirement that hardships communications be in person or "on the record." The court has indicated that it will make hardship forms available to counsel and the result of any hardship determination will be made a matter of record. The court reserves the right to communicate directly with a hardship claimer if it needs clarification of the claim.

Trial Continuance Request

Defendant Metalclad moves to continue the trial to an unspecified future date when the Covid-19 pandemic is over. In doing so, it fails to show good cause. As explained above, the court has authority to proceed with trial. Moreover, this is a preference case where the plaintiff is 85 years old and has mesothelioma. Because of the earlier closure and suspension of trials, plaintiff is already past the 120 day statutory mandate for preference and the additional 15 day continuance a court could grant for good cause. (CCP §369(f)) The motion to continue the trial is accordingly denied.

SO ORDERED

Dated: July 7, 2020



BRAD SELIGMAN, JUDGE

CLERK'S CERTIFICATE OF SERVICE

EXHIBIT B

From: "Edward R. Hugo" <ehugo@hugoparker.com>

Date: July 15, 2020 at 9:53:50 AM PDT

To: "Dept. 23, Superior Court" <dept23@alameda.courts.ca.gov>

Cc: Dean Agmata <DAgmata@mrhfmlaw.com>, Sarah Gilson <SGilson@mrhfmlaw.com>, "Abigail P. Adams" <AAdams@mgmlaw.com>, Jane Yee <jyee@hrmrlaw.com>, "Christina M. Glezakos" <cglezakos@hugoparker.com>, "Siu, Harmonie" <harmonie.siu@dentons.com>, "Corrine B. Sinclair" <csinclair@hugoparker.com>, Evangeline Conanan <EConanan@selmanlaw.com>, Faith Kelly <fkelly@hrmrlaw.com>, "Vega, Giovanni" <giovanni.vega@dentons.com>, "Heather S. Kirkpatrick" <hkirkpatrick@hugoparker.com>, "Huynh, Kathy M." <kathy.huynh@dentons.com>, Leanne Castleberry <lcastleberry@hrmrlaw.com>, Lorene Spinelli <lspinelli@hrmrlaw.com>, Melanie Proctor <MProctor@hrmrlaw.com>, "Jackson, Michelle C." <michelle.jackson@dentons.com>, "Sandgren, Michael E." <michael.sandgren@dentons.com>, Rhonda Woo <rwoo@hrmrlaw.com>, Shawn Ridley <sr Ridley@hrmrlaw.com>, "Heidarzadeh, Shayan" <shayan.heidarzadeh@dentons.com>, Sheila O'Gara <sheilagogara@aol.com>, "Shaeffer, John J." <jshaeffer@foxrothschild.com>, David Amell <DAmell@mrhfmlaw.com>, William Ruiz <wruiz@MRHFMLaw.com>

Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

The prospective jurors have been admitted to Dept 511. I have been excluded and am leaving. Please note my continuing objection.

Edward R. Hugo



240 Stockton Street, 8th Floor
San Francisco, CA 94108
T 415.808.0302
F 415.808.0333

HUGO PARKER, LLP ehugo@HUGOPARKER.com

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On Jul 15, 2020, at 9:09 AM, Edward R. Hugo <ehugo@hugoparker.com> wrote:

There are what appear to be prospective jurors in the hall and a clerk taking attendance. It is my position that the court has an obligation to allow counsel to attend trial proceedings in person.

Edward R. Hugo



240 Stockton Street, 8th Floor
San Francisco, CA 94108
T 415.808.0302

HUGO PARKER, LLP F 415.808.0333
ehugo@HUGOPARKER.com

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On Jul 15, 2020, at 9:00 AM, Dept. 23, Superior Court <dept23@alameda.courts.ca.gov> wrote:

Counsel,

The court is not set up for any counsel to attend in person.

Thank you,

Thalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Edward R. Hugo <ehugo@hugoparker.com>
Sent: Wednesday, July 15, 2020 8:48 AM
To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>

Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

I am here, in the hall outside Dept 511. No one indicated that attorneys could not attend until the below email. Obviously, I object to being excluded.

Edward R. Hugo



240 Stockton Street, 8th Floor

San Francisco, CA 94108

T 415.808.0302

F 415.808.0333

HUGO PARKER, LLP ehugo@HUGOPARKER.com

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On Jul 15, 2020, at 8:26 AM, Dept. 23, Superior Court <dept23@alameda.courts.ca.gov> wrote:

Counsel,

Per Judge Seligman: The court anticipated that all counsel would attend voir dire remotely. The courtroom is not set up for counsel. The Judge will be in another room, alone, so he can speak unmasked.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Edward R. Hugo <ehugo@hugoparker.com>

Sent: Tuesday, July 14, 2020 8:42 PM

To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>; Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; 'Abigail P. Adams' <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>

Cc: Christina M. Glezakos <cglezakos@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <FKELLY@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <LSPINELLI@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <SRIDLEY@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@MRHFMLaw.com>

Subject: RE: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Judge Seligman,

A month or so ago, Metalclad implored the Court to force plaintiffs to finalize their pleadings, motions, exhibits, designations, etc ... (ie, everything). Yesterday, Plaintiffs' counsel informed the Court, on the record, that they could not respond to Metalclad's motion re undisclosed witnesses because they were overwhelmed with trial preparation, etc... To date, they have not replied to Metalclad's motion. That failed response explicitly violated the Court's order. Nevertheless, somehow, at 4:11 pm today plaintiffs' counsel found the resources to file a non-responsive, unrequested, unauthorized sur-reply brief regarding my client's MIL re Charlie Ay, which, frankly, appears to state that plaintiff will perjure himself in our upcoming trial, which this Court has championed to make happen in the face of the Covid 19 pandemic. FKWA will not argue it's MILs tomorrow, but will avail itself with it's right to file a written response to plaintiffs' latest brief and argue the motion thereafter when the court is next available.

I look forward to seeing you tomorrow, in person, for the first time in this case.

Ed

EXHIBIT C

SUPERIOR COURT OF
COUNTY OF ALameda
HAYWARD BRANCH
244



EXHIBIT D

From: Sheilagogara <sheilagogara@aol.com>

Date: July 15, 2020 at 10:43:53 AM PDT

To: "dept23@alameda.courts.ca.gov" <dept23@alameda.courts.ca.gov>, "michael.sandgren@dentons.com" <michael.sandgren@dentons.com>, "Christina M. Glezakos" <cglezakos@hugoparker.com>, "Edward R. Hugo" <ehugo@hugoparker.com>
Cc: "DAgmata@mrhfmlaw.com" <DAgmata@mrhfmlaw.com>, "SGilson@mrhfmlaw.com" <SGilson@mrhfmlaw.com>, "AAdams@mgmlaw.com" <AAdams@mgmlaw.com>, "jyee@hrmrlaw.com" <jyee@hrmrlaw.com>, "harmonie.siu@dentons.com" <harmonie.siu@dentons.com>, "Corrine B. Sinclair" <csinclair@hugoparker.com>, "EConanan@selmanlaw.com" <EConanan@selmanlaw.com>, "fkelly@hrmrlaw.com" <fkelly@hrmrlaw.com>, "giovanni.vega@dentons.com" <giovanni.vega@dentons.com>, "Heather S. Kirkpatrick" <hkirkpatrick@hugoparker.com>, "kathy.huynh@dentons.com" <kathy.huynh@dentons.com>, "lcastleberry@hrmrlaw.com" <lcastleberry@hrmrlaw.com>, "lspinelli@hrmrlaw.com" <lspinelli@hrmrlaw.com>, "MProctor@hrmrlaw.com" <MProctor@hrmrlaw.com>, "michelle.jackson@dentons.com" <michelle.jackson@dentons.com>, "rwoo@hrmrlaw.com" <rwoo@hrmrlaw.com>, "sridley@hrmrlaw.com" <sridley@hrmrlaw.com>, "shayan.heidarzadeh@dentons.com" <shayan.heidarzadeh@dentons.com>, "jshaefter@foxrothschild.com" <jshaefter@foxrothschild.com>, "DArell@mrhfmlaw.com" <DArell@mrhfmlaw.com>, "wruiz@mrhfmlaw.com" <wruiz@mrhfmlaw.com>

Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

Reply-To: Sheilagogara <sheilagogara@aol.com>

People are leaving and going into other rooms. Can the court please address?

-----Original Message-----

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>

To: Sandgren, Michael E. <michael.sandgren@dentons.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; Edward R. Hugo <ehugo@hugoparker.com>

Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaefter@foxrothschild.com>; David Amell <DArell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>

Sent: Wed, Jul 15, 2020 10:33 am

Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

I have also sent several request to all counsel listed so that you may unmute yourselves.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>

Sent: Wednesday, July 15, 2020 10:31 AM

To: Sandgren, Michael E. <michael.sandgren@dentons.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; Edward R. Hugo <ehugo@hugoparker.com>

Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagoga@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>

Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

All participants have the ability to unmute themselves.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Sandgren, Michael E. <michael.sandgren@dentons.com>
Sent: Wednesday, July 15, 2020 10:30 AM
To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>; Christina M. Glezakos <cglezakos@hugoparker.com>; Edward R. Hugo <ehugo@hugoparker.com>
Cc: Dean Agmata <DAGmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>
Subject: RE: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Hi Again, we have objections to plaintiff exam but are still muted. Mike Sandgren



Michael E. Sandgren

Visit the **New Dynamic Hub**, available to our clients and communities as part of Dentons' commitment across 75+ countries, to address accelerating change resulting from the pandemic.

D +1 415 267 4130 | US Internal 34130
michael.sandgren@dentons.com
[Bio](#) | [Website](#)

Dentons US LLP

Rattagan Macchiavello Arocena > Jiménez de Aréchaga, Viana & Brause > Lee International > Kensington Swan > Bingham Greenebaum > Cohen & Grigsby > Sayarh & Menjra > Larrain Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zaini & Co. > Delany Law > Dinner Martin > For more information on the firms that have come together to form Dentons, go to dentons.com/legacyfirms

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From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Sent: Wednesday, July 15, 2020 10:15 AM
To: Christina M. Glezakos <cglezakos@hugoparker.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Edward R. Hugo <ehugo@hugoparker.com>

Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>

Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

[External Sender]

Please add a P or D next to your name so that I may assist you more quickly if needed. Some of you have done so already. It makes it much easier to identify you in the list of participants.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>

Sent: Wednesday, July 15, 2020 10:13 AM

To: Christina M. Glezakos <cglezakos@hugoparker.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Edward R. Hugo <ehugo@hugoparker.com>

Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz

<wruiz@mrhfmlaw.com>

Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

You should be able to.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Christina M. Glezakos <cglezakos@hugoparker.com>

Sent: Wednesday, July 15, 2020 10:12 AM

To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Edward R. Hugo <ehugo@hugoparker.com>

Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mqmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>

Subject: RE: [External] Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

We cannot unmute ourselves and need to be able to object

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>

Sent: Wednesday, July 15, 2020 10:12 AM

To: Sandgren, Michael E. <michael.sandgren@dentons.com>; Edward R. Hugo <ehugo@hugoparker.com>

Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mqmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry

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<MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Rhonda Woo
<rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan
<shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J.
<jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz
<wruiz@mrhfmlaw.com>

Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Yes. You should be able to unmute yourselves.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Sandgren, Michael E. <michael.sandgren@dentons.com>

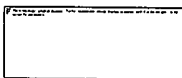
Sent: Wednesday, July 15, 2020 10:02 AM

To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>; Edward R. Hugo
<ehugo@hugoparker.com>

Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>

Subject: RE: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Dear Clerk, the attorneys have been muted and cannot raise objections. Can you please unmute the attorneys. Best regards, Mike Sandgren



Michael E. Sandgren

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from the pandemic.

D +1 415 267 4130 | US Internal 34130
michael.sandgren@dentons.com
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From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Sent: Wednesday, July 15, 2020 9:18 AM
To: Edward R. Hugo <ehugo@hugoparker.com>
Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>
Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

[External Sender]

Eaton do not need to be present.

Thank you,

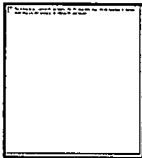
Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Edward R. Hugo <ehugo@hugoparker.com>
Sent: Wednesday, July 15, 2020 9:09 AM
To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Cc: Dean Agmata <DAgmata@mrhfmllaw.com>; Sarah Gilson <SGilson@mrhfmllaw.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sr Ridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmllaw.com>; William Ruiz <wruiz@mrhfmllaw.com>
Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

There are what appear to be prospective jurors in the hall and a clerk taking attendance. It is my position that the court has an obligation to allow counsel to attend trial proceedings in person.

Edward R. Hugo



240 Stockton Street, 8th Floor
San Francisco, CA 94108
T 415.808.0302
F 415.808.0333
ehugo@HUGOPARKER.com

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On Jul 15, 2020, at 9:00 AM, Dept. 23, Superior Court <dept23@alameda.courts.ca.gov> wrote:

Counsel,

The court is not set up for any counsel to attend in person.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman

Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Edward R. Hugo <ehugo@hugoparker.com>
Sent: Wednesday, July 15, 2020 8:48 AM
To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Cc: Dean Agmata <DAgmata@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Abigail P. Adams <AAAdams@mgmlaw.com>; Jane Yee <jyee@hrmrlaw.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <lspinelli@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <sridley@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>
Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

I am here, in the hall outside Dept 511. No one indicated that attorneys could not attend until the below email. Obviously, I object to being excluded.

Edward R. Hugo



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F 415.808.0333
ehugo@HUGOPARKER.com

HUGO PARKER, LLP

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On Jul 15, 2020, at 8:26 AM, Dept. 23, Superior Court <dept23@alameda.courts.ca.gov> wrote:

Counsel,

Per Judge Seligman: The court anticipated that all counsel would attend voir dire remotely. The courtroom is not set up for counsel. The Judge will be in another room, alone, so he can speak unmasked.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Edward R. Hugo <ehugo@hugoparker.com>
Sent: Tuesday, July 14, 2020 8:42 PM
To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>; Dean Agmata <DAgmata@mrhfmllaw.com>; Sarah Gilson <SGilson@mrhfmllaw.com>; 'Abigail P. Adams' <AAAdams@mqmlaw.com>; Jane Yee <jyee@hrmrlaw.com>
Cc: Christina M. Glezakos <cglezakos@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Faith Kelly <FKELLY@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <LSPINELLI@hrmrlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <SRIDLEY@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; David Amell <DAmell@mrhfmllaw.com>; William Ruiz <wruiz@MRHFMLlaw.com>
Subject: RE: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Judge Seligman,

A month or so ago, Metalclad implored the Court to force plaintiffs to finalize their pleadings, motions, exhibits, designations, etc ... (ie, everything). Yesterday, Plaintiffs' counsel informed the Court, on the record, that they could not respond to Metalclad's motion re undisclosed witnesses because they were overwhelmed with trial preparation, etc... To date, they have not replied to Metalclad's motion. That failed response explicitly violated the Court's order. Nevertheless, somehow, at 4:11 pm today plaintiffs' counsel found the resources to file a non-responsive, unrequested, unauthorized sur-reply brief regarding my client's MIL re Charlie Ay, which, frankly, appears to state that plaintiff will perjure himself in our upcoming trial, which this Court has championed to make happen in the face of the Covid 19 pandemic. FKWA will not argue it's MILs tomorrow, but will avail itself with it's right to file a written response to plaintiffs' latest brief and argue the motion thereafter when the court is next available.

I look forward to seeing you tomorrow, in person, for the first time in this case.

Ed

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Sent: Tuesday, July 14, 2020 4:51 PM
To: Dean Agmata <DAgmata@mrhfmLaw.com>; Sarah Gilson <SGilson@mrhfmLaw.com>; 'Abigail P. Adams' <AAdams@mgmLaw.com>; Jane Yee <jyee@hrmLaw.com>
Cc: Christina M. Glezakos <cglezakos@hugoparker.com>; Edward R. Hugo <ehugo@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Shaffer, D. Scott <SShaffer@foxrothschild.com>; MedicalParalegals (External) <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mgmLaw.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanLaw.com>; Evanthia Spanos <ESpanos@spanos-przetak.com>; Faith Kelly <FKELLY@hrmLaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Dodds, Janine A. <JDodds@foxrothschild.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmLaw.com>; Lorene Spinelli <LSPINELLI@hrmLaw.com>; Michelle Young <MYoung@mgmLaw.com>; Melanie Proctor <MProctor@hrmLaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmLaw.com>; Shawn Ridley <SRIDLEY@hrmLaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol>; David Amell <DAmell@mrhfmLaw.com>; William Ruiz <wruiz@MRHFMLaw.com>
Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Link for tomorrow's jury selection:

<https://zoom.us/j/5108916001?pwd=QmhvRGwwZUJxWIRuUG1TNS84RHJWUT09>

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Dean Agmata <DAgmata@mrhfmLaw.com>
Sent: Tuesday, July 14, 2020 3:19 PM
To: Sarah Gilson <SGilson@mrhfmLaw.com>; 'Abigail P. Adams' <AAdams@mgmLaw.com>; Jane Yee <jyee@hrmLaw.com>; Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
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<LSPINELLI@hmrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; Melanie Proctor <MProctor@hmrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hmrmlaw.com>; Shawn Ridley <SRIDLEY@hmrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shelly Tinkoff <stinkoff@selmanlaw.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; Whitehead, Henry L. <hwhitehead@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@MRHFmlaw.com>
Subject: RE: [External] Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

Notice of withdrawal of ABI PL designations served on ALLD.

From: Sarah Gilson

Sent: Tuesday, July 14, 2020 11:26 AM

To: 'Abigail P. Adams' <AAdams@mgmlaw.com>; Jane Yee <jyee@hmrmlaw.com>; Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>

Cc: Christina M. Glezakos <cglezakos@hugoparker.com>; Edward R. Hugo <ehugo@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Shaffer, D. Scott <SShaffer@foxrothschild.com>; MedicalParalegals (External) <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mgmlaw.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Evanthia Spanos <ESpanos@spanos-przetak.com>; Faith Kelly <FKELLY@hmrmlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Dodds, Janine A. <JDodds@foxrothschild.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hmrmlaw.com>; Lorene Spinelli <LSPINELLI@hmrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; Melanie Proctor <MProctor@hmrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hmrmlaw.com>; Shawn Ridley <SRIDLEY@hmrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shelly Tinkoff <stinkoff@selmanlaw.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; Whitehead, Henry L. <hwhitehead@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@MRHFmlaw.com>; Dean Agmata <DAgmata@mrhfmlaw.com>

Subject: RE: [External] Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

Good morning

As a result of the resolution with American Bilrite, the Court no longer has to rule upon the following:

Plaintiff's MIL to exclude opinion of Mr. Graham

The Page and Line Designations of Merrill Smith, Thomas Sciortino, and Robert Marcus.

Thank you

Sarah Gilson

From: Abigail P. Adams [mailto:AAdams@mgmlaw.com]

Sent: Tuesday, July 14, 2020 10:53 AM

To: Jane Yee <jyee@hmrmlaw.com>; Dept. 23, Superior Court

<dept23@alameda.courts.ca.gov>

Cc: Christina M. Glezakos <cglezakos@hugoparker.com>; Edward R. Hugo <ehugo@hugoparker.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Shaffer, D. Scott <SShaffer@foxrothschild.com>; MedicalParalegals (External) <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mgmlaw.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Evanthia Spanos <ESpanos@spanos-przetak.com>; Faith Kelly <FKELLY@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Dodds, Janine A. <JDodds@foxrothschild.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmrlaw.com>; Lorene Spinelli <LSPINELLI@hrmrlaw.com>; Michelle Young <MYoung@mgmlaw.com>; Melanie Proctor <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmrlaw.com>; Shawn Ridley <SRIDLEY@hrmrlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shelly Tinkoff <stinkoff@selmanlaw.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; Whitehead, Henry L. <hwhitehead@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@MRHFmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Dean Agmata <DAgmata@mrhfmlaw.com>
Subject: RE: [External] Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To all remaining parties and the Court:

American Bilrite Inc. has resolved the case with Plaintiffs' Counsel. Please remove myself, Brent Karren and Michelle Young from this email tree.

Thank you,
Abby Adams

<image001.png>

Abigail P. Adams | Partner
MG+M The Law Firm
201 Spear Street, 18th Floor, San Francisco, CA 94105
Phone: 415 527 2803 | Cell: 617 455 5705 | Fax: 415 512 6791
AAdams@mgmlaw.com | www.mgmlaw.com

Boston | Chicago | Hattiesburg | Irvine | Lake Charles | Los Angeles | Madison County/St. Louis
| Miami | New Orleans | New York | Providence | San Francisco | Walnut Creek | Wilmington

<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

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From: Jane Yee <jyee@hrmlaw.com>
Sent: Tuesday, July 14, 2020 10:16 AM
To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Cc: Christina M. Glezakos <cglezakos@hugoparker.com>; Edward R. Hugo <ehugo@hugoparker.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Shaffer, D. Scott <SShaffer@foxrothschild.com>; MedicalParalegals (External) <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mgmlaw.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Evanthia Spanos <ESpanos@spanos-przetak.com>; Faith Kelly <FKELLY@hrmlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Dodds, Janine A. <JDodds@foxrothschild.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmlaw.com>; Lorene Spinelli <LSPINELLI@hrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; Melanie Proctor <MProctor@hrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmlaw.com>; Shawn Ridley <SRIDLEY@hrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shelly Tinkoff <stinkoff@selmanlaw.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; Whitehead, Henry L. <hwhitehead@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Dean Agmata <DAgmata@mrhfmlaw.com>
Subject: Re: [External] Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Fred Boness will not be appearing live. Judge Seligman can defer review of the designations from Garrett-Takaki as agreed earlier.
Sent from my iPhone

On Jul 14, 2020, at 10:11 AM, Dept. 23, Superior Court <dept23@alameda.courts.ca.gov> wrote:

Counsel,

Per Judge Seligman: The court is reviewing deposition designations. Please confirm that Fred Boness is not appearing live and that I should go over the deposition objections or whether I should defer.

Thank you,

Jhalisa Castaneda
Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>

Sent: Tuesday, July 14, 2020 9:47 AM

To: Christina M. Glezakos <cglezakos@hugoparker.com>; Edward R. Hugo <ehugo@hugoparker.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>

Cc: Shaffer, D. Scott <SShaffer@foxrothschild.com>; MedicalParalegals (External) <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mgmlaw.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Evanthia Spanos <ESpanos@spanos-przetak.com>; Faith Kelly <fkelly@hrmlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Dodds, Janine A. <JDodds@foxrothschild.com>; Jane Yee <jyee@hrmlaw.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hrmlaw.com>; Lorene Spinelli <lspinelli@hrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; Melanie Proctor <MProctor@hrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hrmlaw.com>; Shawn Ridley <sridley@hrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shelly Tinkoff <stinkoff@selmanlaw.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; Whitehead, Henry L. <hwhitehead@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Dean Agmata <DAgmata@mrhfmlaw.com>

Subject: Re: Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

No. Only names that appear on one of the Alpha List(s) are jurors.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Christina M. Glezakos <cglezakos@hugoparker.com>

Sent: Tuesday, July 14, 2020 9:41 AM

To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>; Edward R. Hugo <ehugo@hugoparker.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>

Cc: Shaffer, D. Scott <SShaffer@foxrothschild.com>; MedicalParalegals (External) <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mgmlaw.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Evanthia Spanos <ESpanos@spanos-przetak.com>; Faith Kelly <fkelly@hrmlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S.

Kirkpatrick <hkirkpatrick@hugoparker.com>; Dodds, Janine A. <JDodds@foxrothschild.com>; Jane Yee <jyee@hmrmlaw.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hmrmlaw.com>; Lorene Spinelli <lspinelli@hmrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; Melanie Proctor <MProctor@hmrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hmrmlaw.com>; Shawn Ridley <sridley@hmrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shelly Tinkoff <stinkoff@selmanlaw.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; Whitehead, Henry L. <hwhitehead@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Dean Agmata <DAgmata@mrhfmlaw.com>

Subject: RE: Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

Good morning – in reviewing the jury questionnaires, I am unable to locate Kristen Spaeth Frazier on the Alpha List for Panel A or Panel B. Her completed questionnaire is attached, which was received as part of Panel A.

Please clarify if Ms. Frazier will appear as a juror.

Thank you,
Tina Glezakos

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>

Sent: Friday, July 10, 2020 10:46 AM

To: Edward R. Hugo <ehugo@hugoparker.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>

Cc: Shaffer, D. Scott <SShaffer@foxrothschild.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; MedicalParalegals (External) <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mgmlaw.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Evangeline Conanan <EConanan@selmanlaw.com>; Evanthia Spanos <ESpanos@spanos-przetak.com>; Faith Kelly <fkelly@hmrmlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; Dodds, Janine A. <JDodds@foxrothschild.com>; Jane Yee <jyee@hmrmlaw.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; Leanne Castleberry <lcastleberry@hmrmlaw.com>; Lorene Spinelli <lspinelli@hmrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; Melanie Proctor <MProctor@hmrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; Rhonda Woo <rwoo@hmrmlaw.com>; Shawn Ridley <sridley@hmrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; Sheila O'Gara <sheilagogara@aol.com>; Shelly Tinkoff <stinkoff@selmanlaw.com>; Shaeffer, John J. <jshaeffer@foxrothschild.com>; Whitehead, Henry L. <hwhitehead@foxrothschild.com>; David Amell <DAmell@mrhfmlaw.com>; William Ruiz <wruiz@mrhfmlaw.com>; Sarah Gilson <SGilson@mrhfmlaw.com>; Dean Agmata <DAgmata@mrhfmlaw.com>

Subject: Re: Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

Good morning,

Please see the updated list attached for Panel A and Panel B.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Edward R. Hugo <ehugo@hugoparker.com>

Sent: Thursday, July 9, 2020 3:18 PM

To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>; Abigail P. Adams

<AAdams@mgmlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>

Cc: Shaffer, D. Scott <SShaffer@foxrothschild.com>; Christina M. Glezakos

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przetak.com>; Brent M. Karren <BKarren@mgmlaw.com>; Corrine B. Sinclair

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<jshaeffer@foxrothschild.com>; Whitehead, Henry L. <hwhitehead@foxrothschild.com>; David Amell

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<SGilson@mrhfmlaw.com>; Dean Agmata <DAgmata@mrhfmlaw.com>

Subject: Re: Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Sorry, and:

8. How many jurors will appear by video

9. How many jurors will appear in person.

Thanks again,

Ed

Edward R. Hugo

240 Stockton Street, 8th Floor

San Francisco, CA 94108

T 415.808.0302

F 415.808.0333

HUGO PARKER, LLP

ehugo@HUGOPARKER.com

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On Jul 9, 2020, at 2:27 PM, Edward R. Hugo <ehugo@hugoparker.com> wrote:

For each panel can you tell us:

1. How many summons were sent out
2. How many jurors reported for duty
3. How many no showed
4. How many were turned away for health reasons
5. How many hardships were granted
6. How many hardships were denied
7. How many jurors completed the questionnaire

Thanks,

Ed

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Sent: Thursday, July 9, 2020 2:14 PM
To: Abigail P. Adams <AAadams@mgmlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>; Edward R. Hugo <ehugo@hugoparker.com>
Cc: 'Shaffer, D. Scott' <SShaffer@foxrothschild.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; 'MedicalParalegals (External)' <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mgmlaw.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; 'Evangeline Conanan' <EConanan@selmanlaw.com>; 'Evanthia Spanos' <ESpanos@spanos-przetak.com>; 'Faith Kelly' <fkelly@hrmlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>; 'Dodds, Janine A.' <JDodds@foxrothschild.com>; 'Jane Yee' <jyee@hrmlaw.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; 'Leanne Castleberry' <lcastleberry@hrmlaw.com>; 'Lorene Spinelli' <lsinelli@hrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; 'Melanie Proctor' <MProctor@hrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; 'Rhonda Woo' <rwoo@hrmlaw.com>; 'Shawn Ridley' <sridley@hrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; 'Sheila O'Gara' <sheilaogara@aol.com>; 'Shelly Tinkoff' <stinkoff@selmanlaw.com>; 'Shaeffer, John J.' <jshaeffer@foxrothschild.com>; 'Whitehead, Henry L.' <hwhitehead@foxrothschild.com>; 'David Amell' <DAmell@mrhfmlaw.com>; 'William Ruiz' <wruiz@MRHFmlaw.com>; 'Sarah Gilson' <SGilson@mrhfmlaw.com>; 'Dean Agmata' <DAgmata@mrhfmlaw.com>
Subject: Re: Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Counsel,

Please note, 61 prospective jurors reported for the afternoon panel today. I will email the Alpha and Random list once received from jury services along with the updated lists that include which jurors have been excused for hardship.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Sent: Thursday, July 9, 2020 10:56 AM
To: Abigail P. Adams <AAdams@mgmlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>; ehugo@hugoparker.com <ehugo@hugoparker.com>
Cc: 'Shaffer, D. Scott' <SShaffer@foxrothschild.com>; 'Christina M. Glezakos' <cglezakos@hugoparker.com>; 'MedicalParalegals (External)' <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mgmlaw.com>; 'Corrine B. Sinclair' <csinclair@hugoparker.com>; 'Evangeline Conanan' <EConanan@selmanlaw.com>; 'Evanthia Spanos' <ESpanos@spanos-przetak.com>; 'Faith Kelly' <fkelly@hrmlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; 'Heather S. Kirkpatrick' <hkirkpatrick@hugoparker.com>; 'Dodds, Janine A.' <JDodds@foxrothschild.com>; 'Jane Yee' <jyee@hrmlaw.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; 'Leanne Castleberry' <lcastleberry@hrmlaw.com>; 'Lorene Spinelli' <lspinelli@hrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; 'Melanie Proctor' <MProctor@hrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; 'Rhonda Woo' <rwoo@hrmlaw.com>; 'Shawn Ridley' <sridley@hrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; 'Sheila O'Gara' <sheilagogara@aol.com>; 'Shelly Tinkoff' <stinkoff@selmanlaw.com>; 'Shaeffer, John J.' <jshaeffer@foxrothschild.com>; 'Whitehead, Henry L.' <hwhitehead@foxrothschild.com>; 'David Amell' <DAmell@mrhfmlaw.com>; 'William Ruiz' <wruiz@MRHFmlaw.com>; 'Sarah Gilson' <SGilson@mrhfmlaw.com>; 'Dean Agmata' <DAgmata@mrhfmlaw.com>
Subject: Re: Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

Please see the Random and Alpha List attached for this morning's jury panel.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Sent: Thursday, July 9, 2020 10:51 AM
To: Abigail P. Adams <AAdams@mqmlaw.com>; Siu, Harmonie <harmonie.siu@dentons.com>
Cc: 'Shaffer, D. Scott' <SShaffer@foxrothschild.com>; 'Christina M. Glezakos' <cglezakos@hugoparker.com>; 'MedicalParalegals (External)' <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mqmlaw.com>; 'Corrine B. Sinclair' <csinclair@hugoparker.com>; 'Evangeline Conanan' <EConanan@selmanlaw.com>; 'Evanthia Spanos' <ESpanos@spanos-przetak.com>; 'Faith Kelly' <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; 'Heather S. Kirkpatrick' <hkirkpatrick@hugoparker.com>; 'Dodds, Janine A.' <JDodds@foxrothschild.com>; 'Jane Yee' <jyee@hrmrlaw.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; 'Leanne Castleberry' <lcastleberry@hrmrlaw.com>; 'Lorene Spinelli' <lspinelli@hrmrlaw.com>; 'Michelle Young' <MYoung@mqmlaw.com>; 'Melanie Proctor' <MProctor@hrmrlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; 'Rhonda Woo' <rwoo@hrmrlaw.com>; 'Shawn Ridley' <sridley@hrmrlaw.com>; 'Heidarzadeh, Shayan' <shayan.heidarzadeh@dentons.com>; 'Sheila O'Gara' <sheilagogara@aol.com>; 'Shelly Tinkoff' <stinkoff@selmanlaw.com>; 'Shaeffer, John J.' <jshaeffer@foxrothschild.com>; 'Whitehead, Henry L.' <hwhitehead@foxrothschild.com>; 'David Amell' <DAmell@mrhfmlaw.com>; 'William Ruiz' <wruiz@MRHFmlaw.com>; 'Sarah Gilson' <SGilson@mrhfmlaw.com>; 'Dean Agmata' <DAgmata@mrhfmlaw.com>
Subject: Re: Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party Communication

Counsel,

Thank you for your suggestion. We will work to resolve that issue with jury services.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Abigail P. Adams <AAdams@mqmlaw.com>
Sent: Thursday, July 9, 2020 10:02 AM
To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>; Siu, Harmonie <harmonie.siu@dentons.com>
Cc: 'Shaffer, D. Scott' <SShaffer@foxrothschild.com>; 'Christina M. Glezakos' <cglezakos@hugoparker.com>; 'MedicalParalegals (External)' <MedicalParalegals@spanos-przetak.com>; Brent M. Karren <BKarren@mqmlaw.com>; 'Corrine B. Sinclair' <csinclair@hugoparker.com>; 'Evangeline Conanan' <EConanan@selmanlaw.com>; 'Evanthia Spanos' <ESpanos@spanos-przetak.com>; 'Faith Kelly' <fkelly@hrmrlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; 'Heather S. Kirkpatrick' <hkirkpatrick@hugoparker.com>; 'Dodds, Janine

A.' <JDodds@foxrothschild.com>; 'Jane Yee' <jyee@hmrmlaw.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; 'Leanne Castleberry' <lcastleberry@hmrmlaw.com>; 'Lorene Spinelli' <lspinelli@hmrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; 'Melanie Proctor' <MProctor@hmrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; 'Rhonda Woo' <rwoo@hmrmlaw.com>; 'Shawn Ridley' <sridley@hmrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; 'Sheila O'Gara' <sheilagoga@aol.com>; 'Shelly Tinkoff' <stinkoff@selmanlaw.com>; 'Shaeffer, John J.' <jshaeffer@foxrothschild.com>; 'Whitehead, Henry L.' <hwhitehead@foxrothschild.com>; 'David Amell' <DAmell@mrhfmllaw.com>; 'William Ruiz' <wruiz@MRHFmlaw.com>; 'Sarah Gilson' <SGilson@mrhfmllaw.com>; 'Dean Agmata' <DAgmata@mrhfmllaw.com>

Subject: RE: Wilgenbusch, Ronald & Judith v. American Bilrite Inc., et al. - RG19029791 - All Party Communication

Dear Department 23,

At this morning's session there was a very distinct echo over the BlueJeans connection. We noticed on the BlueJeans application that it appeared the jury room's microphone was on which we believe may have been the cause of the echo. To fix this, we suggest considering muting the microphone (but not the video) in the jury room until the oath is given (or if a juror has a question for the judge).

Thanks,
Abby Adams

Abigail P. Adams | Partner
MG+M The Law Firm
201 Spear Street, 18th Floor, San Francisco, CA 94105
Phone: 415 527 2803 | Cell: 617 455 5705 | Fax: 415 512 6791
AAdams@mgmlaw.com | www.mgmlaw.com

Boston | Chicago | Hattiesburg | Irvine | Lake Charles | Los Angeles | Madison County/St. Louis
| Miami | New Orleans | New York | Providence | San Francisco | Walnut Creek | Wilmington

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From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Sent: Monday, July 6, 2020 5:04 PM
To: Siu, Harmonie <harmonie.siu@dentons.com>
Cc: 'Shaffer, D. Scott' <SShaffer@foxrothschild.com>; 'Christina M. Glezakos' <cglezakos@hugoparker.com>; 'MedicalParalegals (External)' <MedicalParalegals@spanos-przetak.com>; Abigail P. Adams <AAdams@mgmlaw.com>; Brent M. Karren <BKarren@mgmlaw.com>; 'Corrine B. Sinclair' <csinclair@hugoparker.com>; 'Evangeline Conanan' <EConanan@selmanlaw.com>; 'Evanthia Spanos' <ESpanos@spanos-przetak.com>; 'Faith Kelly' <fkelly@hmrmlaw.com>; Vega, Giovanni <giovanni.vega@dentons.com>; 'Heather S. Kirkpatrick' <hkirkpatrick@hugoparker.com>; 'Dodds, Janine A.' <JDodds@foxrothschild.com>; 'Jane Yee' <jyee@hmrmlaw.com>; Huynh, Kathy M. <kathy.huynh@dentons.com>; 'Leanne Castleberry' <lcastleberry@hmrmlaw.com>; 'Lorene Spinelli' <lspinelli@hmrmlaw.com>; Michelle Young <MYoung@mgmlaw.com>; 'Melanie Proctor' <MProctor@hmrmlaw.com>; Jackson, Michelle C. <michelle.jackson@dentons.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; 'Rhonda Woo' <rwoo@hmrmlaw.com>; 'Shawn Ridley' <sridley@hmrmlaw.com>; Heidarzadeh, Shayan <shayan.heidarzadeh@dentons.com>; 'Sheila O'Gara'

<sheilagogara@aol.com>; 'Shelly Tinkoff' <stinkoff@selmanlaw.com>; 'Shaeffer, John J.'
<jshaeffer@foxrothschild.com>; 'Whitehead, Henry L.' <hwhitehead@foxrothschild.com>; 'David Amell'
<DArell@mrhfmlaw.com>; 'William Ruiz' <wruiz@MRHFmlaw.com>; 'Sarah Gilson'
<SGilson@mrhfmlaw.com>; 'Dean Agmata' <DAgmata@mrhfmlaw.com>
Subject: Re: Wilgenbusch, Ronald & Judith v. American Biltrite Inc., et al. - RG19029791 - All Party
Communication

Counsel,

Please see the Order attached.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

EXHIBIT E

Edward R. Hugo [Bar No. 124839]
Tina M. Glezakos [Bar No. 229928]
Heather S. Kirkpatrick [Bar No. 278647]
HUGO PARKER, LLP
240 Stockton Street, 8th Floor
San Francisco, CA 94108
Telephone: (415) 808-0300
Facsimile: (415) 808-0333
Email: service@HUGOPARKER.com

Attorneys for Defendant
FRYER-KNOWLES, INC., A WASHINGTON CORPORATION

SUPERIOR COURT - STATE OF CALIFORNIA
COUNTY OF ALAMEDA - UNLIMITED JURISDICTION

RONALD C. WILGENBUSCH and JUDITH
A. WILGENBUSCH,

Plaintiffs,

vs.

AMERICAN BILTRITE, INC., et al.,

Defendants.

(ASBESTOS)
Case No. RG19029791

DECLARATION OF EDWARD R. HUGO
IN SUPPORT OF DEFENDANT FRYER-
KNOWLES, INC., A WASHINGTON
CORPORATION'S TRIAL BRIEF.
REGARDING OBJECTIONS TO COURT'S
PROPOSED JURY SELECTION AND
VOIR DIRE PROCEDURES

Action Filed: August 2, 2019
Trial Date: June 29, 2020

I, Edward R. Hugo, hereby declare:

1. I am an attorney duly licensed to practice before the courts of the State of California. I am the founding partner of Hugo Parker, LLP, counsel of record for defendant FRYER-KNOWLES, INC., A WASHINGTON CORPORATION ("FKWA"). I am also lead trial counsel for my client and will conduct the voir dire in this matter. The facts stated herein are true of my own personal knowledge. If called as a witness, I could and would competently testify to the same.

2. I am a "Certified Civil Trial Specialist", accredited by the State Bar of California.

1 3. I am a "Board Certified Civil Trial Advocate", accredited by the National
2 Board of Trial Advocacy.

3 4. I am a "Board Certified Civil Practice Advocate", accredited by the
4 National Board of Trial Advocacy.

5 5. I have held the highest possible rating for both legal ability and ethical
6 standards, "AV Preeminent", from Martindale-Hubbell for the last 21 consecutive years.

7 6. I have been rated as a Northern California "Super Lawyer" for the last 15
8 consecutive years.

9 7. Since 1995, I have tried¹ 78 civil cases, over 70 of which were asbestos-
10 related.

11 8. I have lectured regarding asbestos-related litigation and trial techniques,
12 Nationally and Internationally including, but not limited to:

13 Nov., 2017 Defense Research Institute
14 Defense Lawyer Asbestos Symposium
15 Speaker, "The Experience from Recent Asbestos
 Trial Lawyers"
 Las Vegas, Nevada

16 Jan., 2016 American Conference Institute
17 20th National Advanced Forum on Asbestos Claims & Litigation
18 Speaker, "New International Issues Associated with Motions
 To Apply Foreign Law"
 Philadelphia, Pennsylvania

19 Sept., 2015 Perrin Conferences
20 Asbestos Litigation Conference: A National Overview & Outlook
21 Speaker, "Duty to Warn in Asbestos Litigation"
22 Defense Lawyer, "Mesothelioma Mock Trial Exercise: Voir Dire,
 Opening Arguments and Live Jury Deliberations"
 San Francisco, California

23 June, 2015 American Conference Institute
24 19th National Advanced Forum on Asbestos Claims & Litigation
 Speaker, "Take Home Exposures in Asbestos Cases"
 Chicago, Illinois

25
26
27
28 ¹ In this Declaration, I am defining a "Trial" as at least swearing a jury.

1	Jan., 2015	American Conference Institute
2		18 th National Advanced Forum on Asbestos Claims & Litigation
3		Speaker, "The Use of Asbestos by the United States Military
		Other Than the Navy"
		Philadelphia, Pennsylvania
4	Sept., 2014	Primerus Defense Institute
5		Professional Liability and Insurance Coverage and
6		Bad Faith Seminar
7		Speaker, Lessons to Learn From a Multi-Claim/Multi-Insurance
		Layer Catastrophe: Ramifications of SIRs and Joint Defense,
		Consent to Settlement and Information Sharing Clauses
		Chicago, Illinois
8	June, 2014	The Defense Asbestos Litigation Seminar
9		Speaker, "Win Your Lung Cancer Case Through Effective
		and Persuasive Voir Dire and Opening"
		Las Vegas, Nevada
10	June, 2013	American Conference Institute
11		14 th National Advanced Forum on Asbestos Claims & Litigation
12		Speaker, "Current Science and Claims Involving the
13		Presence of Asbestiform Minerals and Talcs
		Used in Product and Industrial Operations"
		Chicago, Illinois
14	Jan., 2013	American Conference Institute
15		13 th Annual Advance Forum on Asbestos Claims & Litigation
16		Speaker, "Spotlight on Premises Owners,
17		Contractors/Suppliers, and the Continued
		Expansion of Take Home Exposure Cases"
		Philadelphia, Pennsylvania
18	June, 2012	National Institute for Trial Advocacy
19		Instructor, Building Trial Skills: Western Program
		San Francisco, California
20	March 2012	Litigation Counsel of America
21		Institute of Trial Presentation
22		Renaissance Symposium V
		Speaker, "Cross-Examination: Clothesline By Timeline"
		Telluride, Colorado
23	Jan., 2012	American Conference Institute
24		12 th National Forum: Litigating and Managing Asbestos Claims
25		Speaker, "The Navy Cases: Bolstering Your Case From
		Discovery Through Trial"
		Philadelphia, Pennsylvania
26	Nov., 2011	DRI
27		Asbestos Medicine Seminar
		Speaker, "Wheel of Shares"
		Las Vegas, Nevada

1	Sept., 2011	Litigation Counsel of America
2		Institute of Trial Presentation
3		Renaissance Symposium III
4		Speaker, "You are a Professional Witness, correct?"
5		Arbor Vitae, Wisconsin
6	March, 2011	Perrin Conference
7		Cutting-Edge Issues in Asbestos Litigation
8		Speaker, "Litigation Migration: Understanding Strategies and
9		Docket Considerations in the Nation's Busiest & Emerging
10		Asbestos Dockets"
11		Beverly Hills, California
12	May, 2010	American Conference Institute
13		11 th National Forum: Litigating and Managing Asbestos Claims
14		Speaker, "Mastering the Strategy
15		Behind a "Causation" Defense"
16		Philadelphia, Pennsylvania
17	May, 2010	Litigation Counsel of America
18		2010 Spring Conference and Induction of Fellows
19		Speaker, "Anatomy of a Winning
20		Closing Argument"
21		Monterey, California
22	Aug., 2009	Litigation Counsel of America
23		Institute of Trial Presentation
24		Renaissance Symposium
25		Speaker, "Getting Back to Why"
26		Chicago, Illinois
27	June, 2009	American Conference Institute
28		10 th National Forum: Litigating and Managing Asbestos Claims
29		Speaker, "Shifting Liability Back to Plaintiffs"
30		Philadelphia, Pennsylvania
31	May, 2008	American Conference Institute
32		9 th National Forum: Litigating, Settling and Managing
33		The New Wave of Asbestos Claims
34		Co-Chair, Moderator,
35		Speaker, "Evolution of the State-of-the-Art Defense:
36		Manufacturers, Distributors and Plaintiffs' Employers" and
37		"Asbestos Settlements: Obtaining the Best Outcome
38		For Your Client"
39		Las Vegas, Nevada
40	Jan., 2008	C5
41		4 th International Asbestos Claims & Liabilities Conference
42		Speaker, "Best Practices for Managing and Settling
43		Asbestos Claims in the US and Europe"
44		London, England

1	June, 2007	American Conference Institute
2		8 th National Forum: Litigating, Settling and Managing
3		Asbestos Claims
4		Speaker, "Overcoming the Challenges to
5		Traditional Defenses by New Plaintiffs: Return of the
6		Navy Case"
7		Las Vegas, Nevada
8	Feb., 2007	C5
9		3 rd International Asbestos Claims & Liabilities Conference
10		Speaker, "The Practical Art of Settling Claims: Key
11		Tips and Techniques from the Trenches"
12		London, England
13	Oct., 2006	National Institute for Trial Advocacy
14		Instructor, Western Deposition Skills Program
15		University of San Francisco, School of Law
16		San Francisco, California
17	June, 2006	American Conference Institute
18		7 th National Forum: Litigating, Settling and Managing
19		Asbestos Claims
20		Chair and Speaker, "State of the Art/The New
21		Face of Claims"
22		Las Vegas, Nevada
23	June, 2006	Coalition for Litigation Justice
24		Speaker, "Informing the Jury about
25		Joint and Several Liability"
26		San Francisco, California
27	April, 2005	American Conference Institute
28		6 th National Forum: Litigating, Settling and Managing
29		Asbestos Claims
30		Speaker, "Evolving Causation Theories for Low-dose
31		Exposure Claims"
32		Chicago, Illinois
33	Oct., 2003	American Conference Institute
34		5 th National Forum on Asbestos Litigation
35		Speaker, "Win at Settlement"
36		New York, New York
37	March, 2003	American Conference Institute
38		4 th National Forum on Asbestos Litigation: The New Wave
39		Speaker, "Settlement in the Asbestos Arena"
40		San Francisco, California
41	Oct., 2002	American Conference Institute
42		3 rd National Forum on Asbestos Litigation: The Next Generation
43		Speaker, "Settlement Strategies for Peripheral Defendants"
44		New York, New York

1	April, 2002	American Conference Institute
2		Asbestos Litigation: The Next Generation
3		Speaker, "Settlement Strategies for Going Forward"
4		San Francisco, California
5	April, 2002	American Conference Institute
6		Medical Monitoring
7		Speaker, "Update on the Case-law: The Latest Nationwide Trends
8		and The Impact on Your Case"
9		New York, New York
10	Dec., 2001	Mealey Publications Asbestos 101 Conference
11		Speaker, "Trying an Asbestos Case Part 1: Pre-Trial Procedures"
12		Pasadena, California
13	Oct., 2001	National Institute for Trial Advocacy
14		Instructor, Western Deposition Program
15		San Francisco, California
16	Oct., 2001	American Conference Institute
17		Asbestos Litigation: The Next Generation
18		Speaker, "Settlement Strategies Going Forward"
19		New York, New York
20	June, 2001	National Institute for Trial Advocacy
21		Instructor, Western Regional Program
22		University of California at Berkeley, Boalt Hall
23	Oct., 1999	National Institute for Trial Advocacy
24		Instructor, Western Deposition Program
25		Golden Gate University School of Law
26	June, 1999	National Institute for Trial Advocacy
27		Instructor, Western Regional Program
28		University of California at Berkeley, Boalt Hall
29	Feb., 1999	American Bar Association, International Law Section
30		Speaker, International Legal Exchange Program (Russian Far East)
31		San Francisco, California
32	Oct., 1998	National Institute for Trial Advocacy
33		Instructor, Western Deposition Program
34		Golden Gate University School of Law
35	July, 1998	National Institute for Trial Advocacy
36		Instructor, National Program
37		University of Colorado, Boulder
38	June, 1998	National Institute for Trial Advocacy
39		Instructor, Western Regional Program
40		University of California at Berkeley, Boalt Hall
41	Nov., 1997	National Institute for Trial Advocacy
42		Instructor, Western Deposition Program
43		Golden Gate University School of Law

1	June, 1997	National Institute for Trial Advocacy
2		Instructor, Western Regional Program
		University of California at Berkeley, Boalt Hall
3	June, 1996	National Institute for Trial Advocacy
4		Instructor, Western Regional Program
		Golden Gate University School of Law
5	March, 1996	Queen's Bench
6		Lecturer, "The Art Of Taking Depositions For Use At Trial"
		San Francisco, California
7	Nov., 1995	National Institute for Trial Advocacy
8		Instructor, Western Deposition Program
		Golden Gate University School of Law
9	June, 1995	National Institute for Trial Advocacy
10		Instructor, Western Regional Program
		University of California at Berkeley, Boalt Hall
11	June, 1994	National Institute for Trial Advocacy
12		Instructor, Western Regional Program
		University of California at Berkeley, Boalt Hall
13	May, 1994	San Francisco Police Department
14		Instructor, Moot Court Program
		(taught police cadets how to testify in court)
15	Feb., 1994-97	The State Bar Of California
16		Mentor, Criminal Law
		General and Solo Practice Section
17	June, 1993	National Institute for Trial Advocacy
18		Instructor, Western Regional Program
		University of California at Berkeley, Boalt Hall
19	Spring, 1993	Hastings College of the Law
20		Instructor, Moot Court Program
21	Nov., 1992	Hastings College of the Law
		Judge, Moot Court Competition
22	Oct., 1991	California District Attorney's Association
23		Lecturer, "Cross Examination"
		New Prosecutor's College, San Rafael
24	June, 1991	National Institute for Trial Advocacy
25		Instructor, Western Regional Program
		University of California at Berkeley, Boalt Hall
26	March, 1991	Hastings College of Advocacy
27		Instructor, Advanced Advocacy Program
28		

1	Dec., 1990	Hastings College of Advocacy
2		Lecturer, "Trial Preparation"
3		Fundamentals of Advocacy Program
4	Aug., 1990	Hastings College of Advocacy
5		Instructor, Criminal Justice College
6	July, 1990	Hastings College of Advocacy
7		Instructor, Civil College: Personal Injury
8	March, 1990	Hastings College of Advocacy
9		Instructor, Litigation Advocacy Program
10	Oct., 1989	University of San Francisco, School of Law
11		Judge, Advocate of the Year Competition
12	Sept., 1989	S.F.D.A. Misdemeanor Trial Division
13		Instructor, Motions in Limine Seminar
14	Aug., 1989	S.F.D.A. Misdemeanor Trial Division
15		Lecturer, "Deuces: Do's and Don'ts"
16		(cross-examination of expert witnesses in
17		driving under the influence cases)
18	July, 1989	Hastings College of Advocacy
19		Instructor, Criminal Justice College

15 9. On July 1, 2020, I attended a hearing in this matter, remotely via Blue
16 Jeans, before Judge Brad Seligman. At that time Judge Seligman informed the parties
17 that he intended to try this matter in two courtrooms in Hayward and that voir dire
18 would be conducted in person with all prospective jurors and counsel wearing masks.

19 10. As a trial lawyer, I have selected over 100 juries in civil and criminal
20 matters in the State of California. As recognized by the Court of Appeal in People v
21 King (1987) 195 Cal.App3d 923:

22 ...observing potential jurors may reveal as much about them as counsel
23 may learn from listening to them. As if to underscore the importance of
24 the visual aspect of jury selection, the legal term used to describe this
25 process – voir dire – is itself a combination of two French verbs meaning
26 "to see" and "to say". The importance of observation extends to court
27 and counsel alike.

28 (Id. At 932.)

1
2 11. I can not intelligently select a jury when I can not see the faces of the
3 potential jurors.

4 12. I don't believe that a trial judge can competently rule on cause and
5 peremptory challenges when the judge can not see the faces of the potential jurors.
6

7 I declare under penalty of perjury under that the foregoing is true and correct.
8 Executed on July 2, 2020, at Mill Valley, California.

9 
10 EDWARD R. HUGO
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EXHIBIT F

Edward R. Hugo [Bar No. 124839]
Tina M. Glezakos [Bar No. 229928]
Heather S. Kirkpatrick [Bar No. 278647]
HUGO PARKER, LLP
240 Stockton Street, 8th Floor
San Francisco, CA 94108
Telephone: (415) 808-0300
Facsimile: (415) 808-0333
Email: service@HUGOPARKER.com

Attorneys for Defendant
FRYER-KNOWLES, INC., A WASHINGTON CORPORATION

SUPERIOR COURT - STATE OF CALIFORNIA
COUNTY OF ALAMEDA - UNLIMITED JURISDICTION

RONALD C. WILGENBUSCH and JUDITH
A. WILGENBUSCH,

Plaintiffs,

vs.

AMERICAN BILTRITE, INC., et al.,

Defendants.

(ASBESTOS)
Case No. RG19029791

DECLARATION OF EDWARD R. HUGO
IN SUPPORT OF DEFENDANT FRYER-
KNOWLES, INC., A WASHINGTON
CORPORATION'S REPLY BRIEF
REGARDING OBJECTIONS TO COURT'S
PROPOSED JURY SELECTION AND
VOIR DIRE PROCEDURES

Action Filed: August 2, 2019
Trial Date: June 29, 2020

I, Edward R. Hugo, hereby declare:

1. I am an attorney duly licensed to practice before the courts of the State of California. I am the founding partner of Hugo Parker, LLP, counsel of record for defendant FRYER-KNOWLES, INC., A WASHINGTON CORPORATION ("FKWA"). I am also lead trial counsel for my client and will conduct the voir dire in this matter. The facts stated herein are true of my own personal knowledge. If called as a witness, I could and would competently testify to the same.

2. Attached hereto as Exhibit 1 is a true and correct copy of Department 23 communication to all counsel denying my request to attend the July 7, 2020 hearing

1 regarding Proposed Jury Selection and Voir Dire Procedures. The stated reason is: "No
2 in person hearing at this time."

3 3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from
4 Columns Asbestos June, 2008: "Fairness Over Efficiency: Why We Overturned San
5 Francisco's Sua Sponte Asbestos Consolidation Program". The article includes the
6 following conclusions:

7 "The rush to judicial efficiency can have many unintended and
8 unfair consequences.

9 In the end, well-intentioned efforts to achieve judicial efficiency can
10 turn a court of law into a claims facility which only serves to invite
11 more new filings."

12 4. Attached hereto as Exhibit 3 is a true and correct copy of Decisionquest's
13 "2020 Juror Attitude Survey in the Age of the Coronavirus." The Survey includes the
14 following conclusions:

15 "Our research to date indicates that concern about COVID-19 will
16 significantly impact verdicts.

17 Respondents who expressed significant concern that they or a
18 loved one would contract COVID-19 responded more pro-plaintiff,
19 said they would award higher damages and the stronger the
20 punitive sentiments they expressed towards the defendant.

21 Life disruption is also related to damages: the more respondents
22 reported their lives had been disrupted, the higher the damages
23 they would award."

24 I declare under penalty of perjury under that the foregoing is true and correct.

25 Executed on July 6, 2020, at Mill Valley, California.

26
27
28

EDWARD R. HUGO

EXHIBIT 1

Ginger L. Williams

From: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Sent: Thursday, July 02, 2020 11:33 AM
To: Heather S. Kirkpatrick
Cc: Edward R. Hugo; Christina M. Glezakos; 'Brent Karren'; 'Jane Yee'; Corrine B. Sinclair; Sandgren, Michael E.; 'Rhonda Woo'; 'Abigail P. Adams'; 'Sheila O'Gara'; 'Shelly Tinkoff'; 'Sarah Gilson'; 'William Ruiz'; 'Shaeffer, John J.'; EConanan@selmanlaw.com; Dean Agmata
Subject: Re: Wilgenbusch, Ronald (RG19029791) - All Party Communication - Defendant Fryer-Knowles' Request to Appear in Person

Counsel,

No in person hearings at this time.

Thank you,

Jhalisa Castaneda

Courtroom Clerk to the Honorable Judge Seligman
Superior Court of California | Alameda County
1221 Oak Street
Oakland, California 94612
510-267-6939

From: Heather S. Kirkpatrick <hkirkpatrick@hugoparker.com>
Sent: Thursday, July 2, 2020 11:01 AM
To: Dept. 23, Superior Court <dept23@alameda.courts.ca.gov>
Cc: Edward R. Hugo <ehugo@hugoparker.com>; Christina M. Glezakos <cglezakos@hugoparker.com>; 'Brent Karren' <bkarren@mgmlaw.com>; 'Jane Yee' <jyee@hrmrlaw.com>; Corrine B. Sinclair <csinclair@hugoparker.com>; Sandgren, Michael E. <michael.sandgren@dentons.com>; 'Rhonda Woo' <rwoo@hrmrlaw.com>; 'Abigail P. Adams' <AAdams@mgmlaw.com>; 'Sheila O'Gara' <sheilagogara@aol.com>; 'Shelly Tinkoff' <stinkoff@selmanlaw.com>; 'Sarah Gilson' <SGilson@mrhfmlaw.com>; 'William Ruiz' <wruiz@MRHFmlaw.com>; 'Shaeffer, John J.' <jshaeffer@foxrothschild.com>; EConanan@selmanlaw.com <EConanan@selmanlaw.com>; Dean Agmata <DAgmata@mrhfmlaw.com>
Subject: Wilgenbusch, Ronald (RG19029791) - All Party Communication - Defendant Fryer-Knowles' Request to Appear in Person

Dear Department 23:

Fryer-Knowles, Inc., A Washington Corporation ("Fryer-Knowles") will be submitting to the Court and all parties additional briefing regarding the Court's proposed jury selection and voir dire procedures in anticipation of the hearing on Tuesday, July 7, 2020 at 10:30 a.m.

Trial counsel for Fryer-Knowles, Mr. Edward Hugo, requests to attend the hearing on July 7, 2020 in person in Department 23.

Please advise if this is acceptable with the Court.

Thank you,

Heather S. Kirkpatrick Senior Counsel



HUGO PARKER, LLP

240 Stockton Street, 8th Floor

San Francisco, CA 94108

T 415.808.0366

F 415.808.0333

hkirkpatrick@HUGOPARKER.com

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EXHIBIT 2

OVERVIEW

2020 Juror Attitude Survey in the Age of the Coronavirus

Will the psychological and economic effects of the global Coronavirus (COVID-19) pandemic impact juror decision making?

Prospective jurors, like all of us, have been impacted by COVID-19 in one way or another. As psychologists, we know generally about how people deal with crises, anxieties and threats of a significant nature. A profound universal experience is bound to have psychological repercussions after the crisis has passed and the worldview of those who will eventually serve as jurors will likely be different.

Through our research over the past 30+ years, we've seen how other social and economic crises have impacted jurors' evaluation of cases. For instance, we saw an uptick in hostility towards large corporate defendants after the Enron scandal. The economic crash of 2008-2009 was followed by a dramatic shift in pro plaintiff, high-award verdicts, both in our research and in reported verdicts.

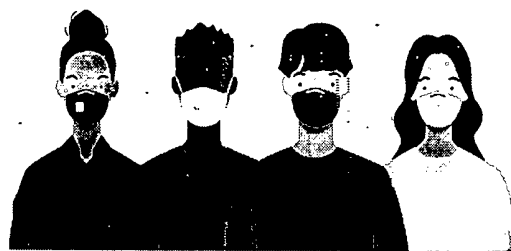
To understand the impact of the COVID-19 pandemic on juror decision making, in March 2020, we conducted the 2020 Juror Attitude Survey in the Age of the Coronavirus, surveying **896 jury-eligible residents of six major metropolitan areas**. Participants responded to a **90-item questionnaire**, composed largely of tested questions from past DecisionQuest research. In this manner, we were able to compare the attitudes of potential jurors in 2020 to those assessed in our past surveys to **detect any shifts in litigation-relevant attitudes** and possible regional differences.

Further, to gauge how reactions to the COVID-19 pandemic might impact juror decision making, we included three brief case summaries and asked respondents what they felt would be reasonable verdicts and damages in each. This is a well-established methodology, both in proprietary research like ours, and in the peer-reviewed, academic literature.

While this survey contains a broad set of nationwide data, we can conduct this same type of study in your venue with JuryLive® and CaseXplorer®.

Our research to date indicates that concern about COVID-19 will significantly impact verdicts.

- Respondents who expressed significant concern that they or a loved one would contract COVID-19 responded more pro-plaintiff, said they would award higher damages and the stronger the punitive sentiments they expressed towards the defendant.
- Life disruption is also related to damages: the more respondents reported their lives had been disrupted, the higher the damages they would award.

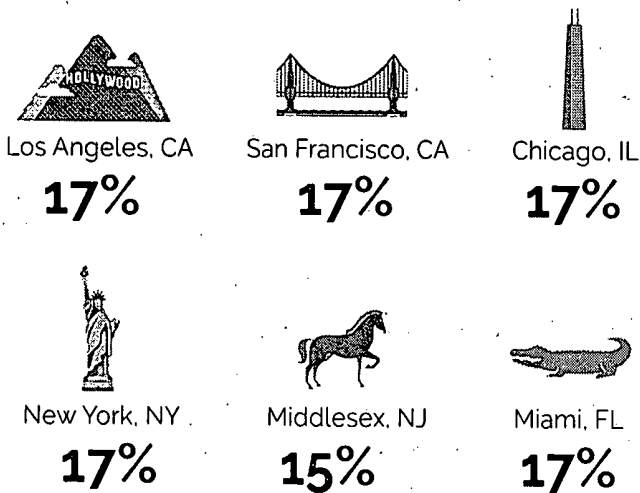


The data referenced in this article was collected in March 2020 as part of our 2020 Juror Attitude Survey in the Age of the Coronavirus. The statements, opinions and results listed in this document may change as the landscape caused by the pandemic evolves.

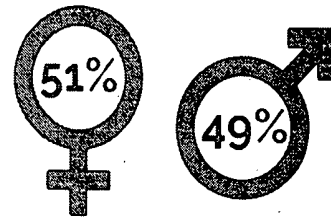
Demographics

Jury-eligible residents of six major metropolitan areas responded to our 90-question survey about their experiences and views related to the Novel Coronavirus (COVID-19), as well as other issues we typically ask in our juror surveys. Below are highlights of the participants' demographics.

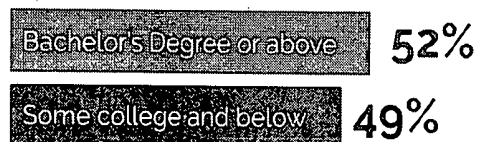
896 Jury-Eligible Residents Of:



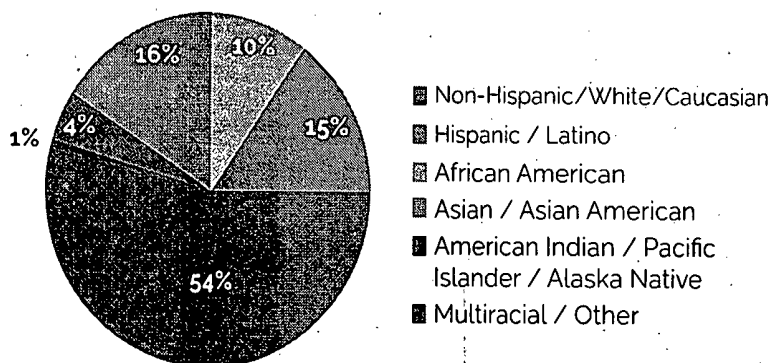
Gender Breakdown:



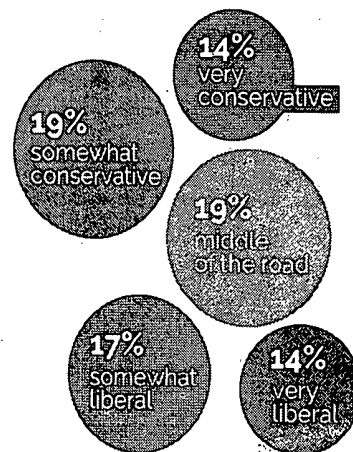
Education Breakdown:



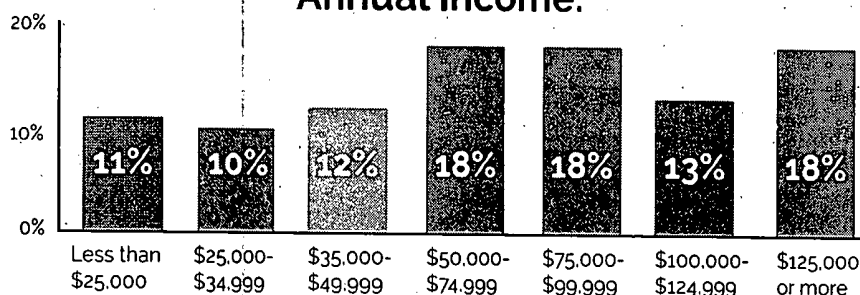
Ethnicity Self-Identification:



Political Leanings:



Annual Income:

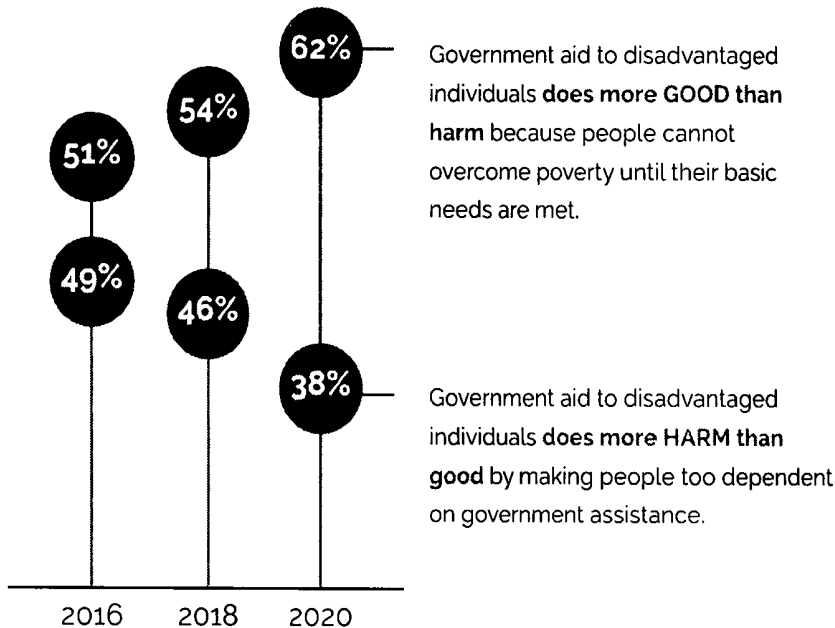


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Evolving View Points

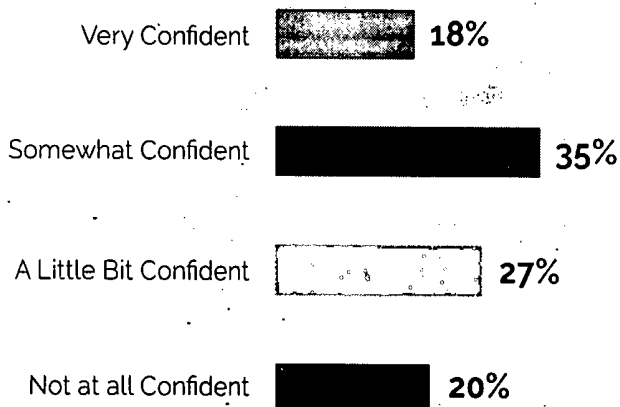
We have been collecting data on Americans' attitudes through survey-based research for over 30 years. In comparing this new survey data to our existing database, there is a shift in views about public policies that aid the disadvantaged.

Government Aid:

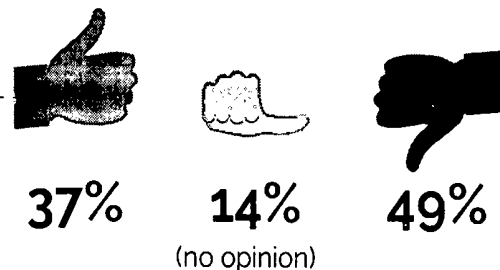


More Americans are now in favor of government programs to aid the disadvantaged today, during the pandemic, as compared to the past few years.

Confidence in the Government:



Do You Approve of President Donald Trump's Response to COVID-19?



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Attitudinal Impact as a Result of COVID-19

While there were very few demographic differences in how people are reacting to the crisis, and no significant differences in how people in the six venues responded to our cases scenarios, **concern about COVID-19 will significantly impact verdicts.**



ONLY 16%

of respondents had tested positive themselves, or had someone close to them test positive for COVID-19



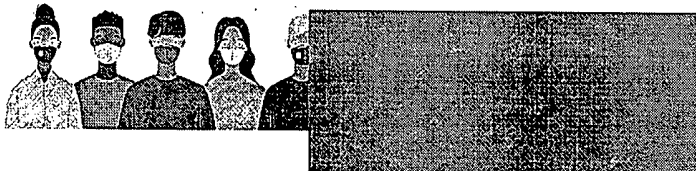
32%

of respondents had a spouse/significant other lose their job due to COVID-19

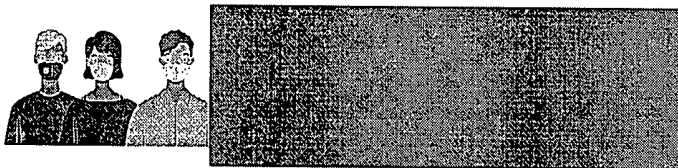
Concern of Infection:

Respondents who expressed significant concern that they or a loved one would contract COVID-19 responded more **pro-plaintiff**, said they would award **higher damages** and the stronger the **punitive sentiments** they expressed towards the defendant.

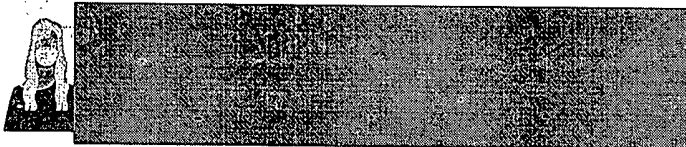
Very Concerned **51%**



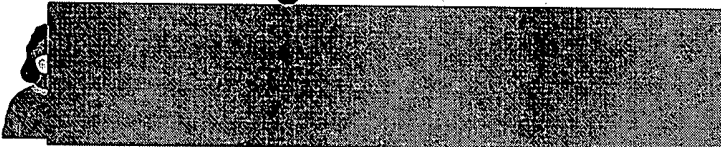
Somewhat Concerned **33%**



A Little Concerned **11%**

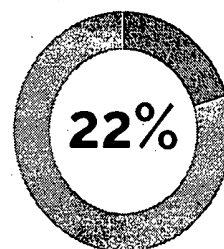


Not At All Concerned **5%**

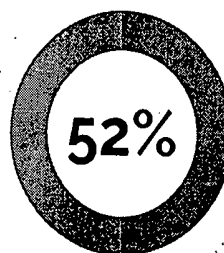


Reporting of the Seriousness of COVID-19:

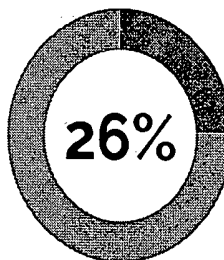
Generally Exaggerated



Generally Correct



Generally Underestimated

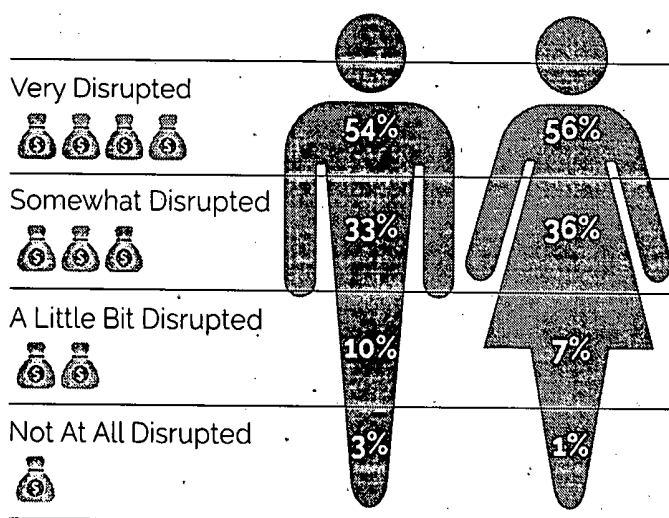


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Attitudinal Impact as a Result of COVID-19

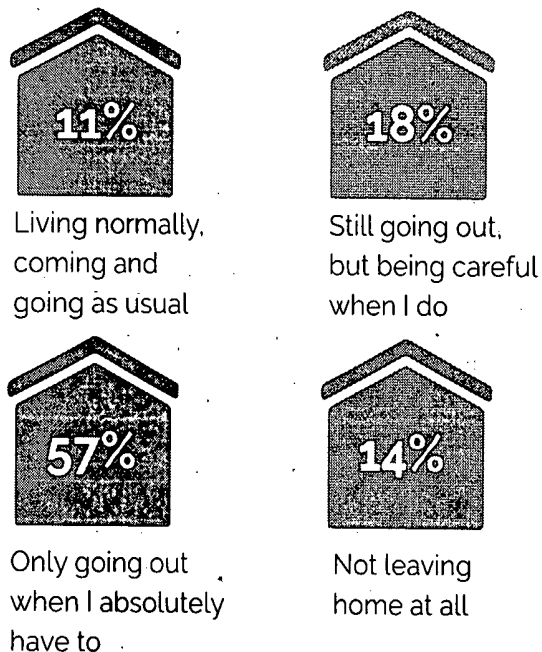
Life Disruption & Damages:

Life disruption is also related to damages: the more people reported their lives have been disrupted, the higher the damages they would award.



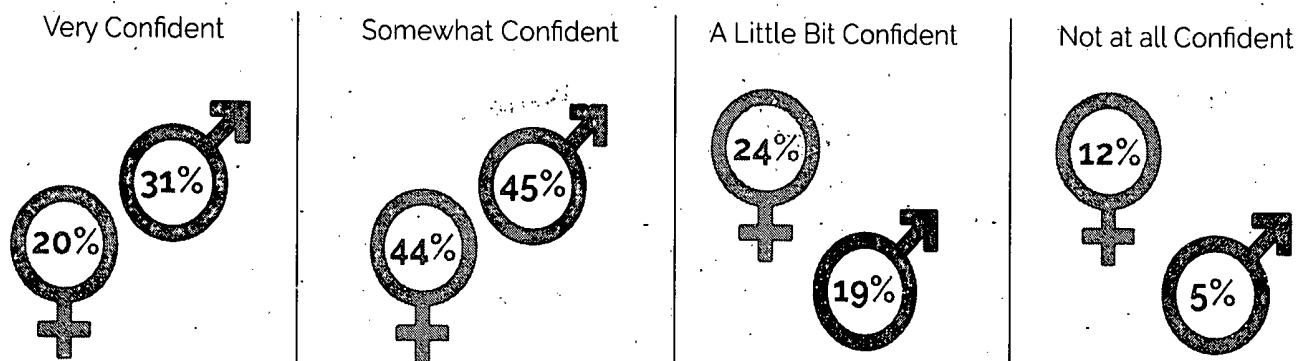
Stay-At-Home Warnings:

The following depicts participants' adherence to stay-at-home warnings.



Confidence and Control:

When asked, "How confident are you of your own ability to control how the Coronavirus pandemic will affect your own life?", here is how participants responded:



The data referenced in this article was collected in March 2020 as part of our 2020 Juror Attitude Survey in the Age of the Coronavirus. The statements, opinions and results listed in this document may change as the landscape caused by the pandemic evolves.

Conclusion

As psychologists, we know generally how people deal with crises, anxieties and threats of a significant nature. We are familiar with many personality strengths and potential weaknesses that may emerge under stress. We will continue to watch the unfolding psychology which might affect perceptions of the parties in a lawsuit, the witnesses they would want to hear from, themes that may be more persuasive and the ways that we can predict which type of jurors will react favorably and unfavorably to your case.

We will continue to monitor the landscape for how the COVID-19 pandemic affects juror attitudes and update the data accordingly. To receive future updates and to learn more about our findings and how they may impact your upcoming cases, email us at trialservices@uslegalsupport.com.



by DecisionQuest®

Discover How Potential Jurors Think and Feel About Your Case

This 2020 Juror Attitude Survey in the Age of the Coronavirus was conducted using our online jury research tool, CaseExplorer®. To conduct a similar study in your venue, specific to your case, our team of consultants, social scientists and behavioral experts work with you to build a detailed online survey. Using our pool of **3,000,000+ online surrogate jurors**, we poll a diverse set of surrogate jurors from your venue or nationwide. See how your case will play out and uncover unexpected hurdles - all online and at a price that makes sense for virtually every case.

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The data referenced in this article was collected in March 2020 as part of our 2020 Juror Attitude Survey in the Age of the Coronavirus. The statements, opinions and results listed in this document may change as the landscape caused by the pandemic evolves.

EXHIBIT 3

Asbestos

PAGE 4

Fairness over Efficiency: Why We Overturned San Francisco's *Sua Sponte* Asbestos Consolidation Program

A Commentary from James C. Parker and Edward R. Hugo

PAGE 6

The Latest Asbestos-Related Scientific And Medical Research

PAGE 10

Ohio Jury Awards \$8 Million in Case Against Elliott Turbomachinery

Raising the Bar in Asbestos Litigation

10

Jury Awards \$7.5 Million at
End of New Trial on Damages

11

Pa. Jury Awards \$7 Million
In Case Against
Premises Defendant

13

San Francisco Trial Judge
Vacates His Own
Consolidation Order

13

Appeals Court Halts
Retroactive Application of
Florida Asbestos, Silica Act

15

Judge Denies Motion for
New Trial in Fla.
\$24 Million Verdict

17

Appellate Court Reverses
Dismissal of Claims from
Spanish Foreign Nationals

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PERSPECTIVES

Fairness over Efficiency:

Why We Overturned San Francisco's *Sua Sponte* Asbestos Consolidation Program
by James C. Parker and Edward R. Hugo

4

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6

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Fairness over Efficiency: Why We Overturned San Francisco's *Sua Sponte* Asbestos Consolidation Program

**By James C. Parker and
Edward R. Hugo**
of Brydon Hugo & Parker
in San Francisco

Author Bios on Page 5.

In August 2007, the San Francisco Superior Court began to routinely consolidate groups of asbestos plaintiffs for trial. The consolidation order was based solely upon the identity of plaintiffs' counsel and the alleged disease and was made without any formal notice, motion, or consideration of evidence.

Consolidation is intended to promote judicial efficiency by uniting separate lawsuits that involve *common* questions of law or fact. (Code Civ. Proc., § 1048(a); see also *Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391, 1396.) Although it is a matter subject to the sound discretion of the court, the decision is to be made "in accordance with the spirit of the law and with a view to subserving, rather than defeating the ends of...justice." (*Slack v. Murray* (1959) 175 Cal. App. 2d 558, 565.)

The rush to judicial efficiency can have many unintended and unfair consequences. Consolidations have been found to increase plaintiffs' likelihood of receiving both compensatory and punitive damages. Defendants are faced with long trial estimates, the introduction of irrelevant, and often prejudicial, evidence and potentially dissimilar and even conflicting defenses. Plaintiffs' counsel gain tremendous efficiency in their ability to prosecute multiple cases with a single lawyer, recycled expert witnesses and an unstated "where there is smoke there is fire" theme. In the end, well-intentioned efforts to achieve judicial efficiency can turn a court of law into a claims facility which only serves to invite more new filings. Some states, including Mississippi,

Ohio, Michigan, Georgia, Kansas and Texas, have essentially banned consolidation of asbestos cases – and seen their case load drop.

In San Francisco, matters came to a head in the fall of 2007, when one trial judge found herself simultaneously assigned two completely different asbestos cases for trial – one a wrongful death mesothelioma and the other, a living kidney cancer. Rather than trail one case, she chose to consolidate both for trial before the same jury – even though the only connection between the two cases was that the plaintiffs were represented by the same law firm, and some of the defendants, including one of our clients, were in both cases.

We filed an emergency petition with the First District Court of Appeal. Although appellate courts rarely intervene in trials, and almost never over procedural matters, a shocked First District promptly halted the trial and unanimously overturned the consolidation order, finding it fundamentally unjust to force our client to defend itself against two such different claims in front of the same jury. In response to that ruling, plaintiff's counsel dismissed our client from the second case.

The First District relied on *Malcolm v. National Gypsum Co.* (2d Cir. 1993) 995 F.2d 346, in which the Second Circuit found that the following factors should be considered when consolidating asbestos cases:

- (1) Did the plaintiffs or decedents have a common worksite;
 - (2) Did they have similar occupations;
 - (3) Did they have similar times of exposure;
 - (4) What types of disease are involved;
 - (5) Are the injured workers living or deceased;
 - (6) What is the status of discovery in each case;
 - (7) Are the plaintiffs or decedents represented by the same counsel; and
 - (8) What type of cancer is alleged regarding each plaintiff or decedent.
- (*Malcolm v. National Gypsum Co.* (2nd Cir. 1993) 995 F.2d 346, 350-351.)

We would urge the Court to add two more factors to the *Malcolm* analysis:

- (9) "The type of asbestos-containing product to which the worker was exposed" (North Am. Refractory Co. v. Easter (Tex. App.-Corpus Christi 1999) 988 S.W.2d 904, 917; see also *In re Ethyl Corp.* (Tex. 1988) 975 S.W.2d 606, 616-617); and

- (10) Whether the law applicable to all plaintiffs is the same (*In re Welding Rod Fume Prods. Liab. Litig.* (MDL 1535) (N.D. Ohio), 2006 WL 2869548, *3 (slip copy)).

After our initial success, we next challenged San Francisco's entire program of *sua sponte* consolidations. After a series of hearings, the Superior Court overruled our objections, claiming that its large numbers of asbestos cases – the court is currently handling over 1,600 asbestos cases – made it infeasible to handle such cases one at a time. Indeed, the San Francisco bench handles 75 percent of California's asbestos filings — five times those of Los Angeles County, with a population ten times larger than the Bay Area.

We again petitioned the Court of Appeal, which signaled its dismay with the San Francisco trial courts by promptly ordering briefing. The day the briefing was due, the trial court held a hearing and stated that it would "cause unnecessary costs and delay" to require the plaintiffs

to "make a motion for consolidation under 1048(a), or otherwise undertaking a further analysis and groupings of the cases based on factors such as are listed in *Malcolm vs. National Gypsum Company.*"

Just one week later, in a highly unusual step, the trial court retained its own counsel to file an appellate brief to state it had changed its mind and would vacate all *sua sponte* consolidation orders. The trial court further agreed that future consolidations would proceed by formal motions, either pre-trial or at the time of assignment to a courtroom.

Sua sponte consolidations deprive defendants of their procedural and substantive rights to a fair hearing and trial, and will only lead to more filings. We are pleased that the San Francisco Superior Court halted its process of *sua sponte* consolidations, and we will continue to fight for our clients' right to a fair trial.

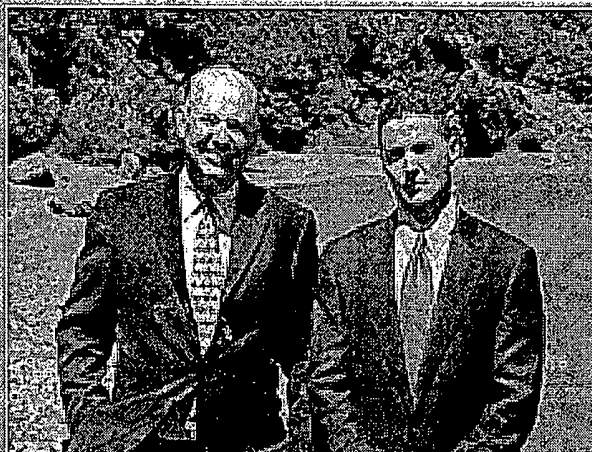
Editor's Note:

A news story on the developments referred to in this commentary appears in the Courtroom News section of this issue.

About the Authors

Edward R. Hugo is a principal member of Brydon Hugo & Parker. He specializes in products and premises liability, environmental litigation (including State, Federal, Traditional, CERCLA and Proposition 65 claims), asbestos, personal injury, wrongful death and property damage actions, construction law (including defect claims), and insurance coverage, bad faith, subrogation and defense. He is designated trial counsel for several corporations in defense of products liability, toxic tort claims and has successfully tried to verdict scores of asbestos personal injury and wrongful death lawsuits. Mr. Hugo presently serves as a Superior Court Judge pro tempore, a member of the Bench/Bar Settlement Program, and an advanced instructor for the National Institute of Trial Advocacy. He lectures in the areas of mass tort, environmental and products liability and trial and deposition skills. Mr. Hugo earned his J.D. degree from the University of California, Hastings College of the Law in 1986. He is admitted to the California, Colorado, and Hawaii bars.

James C. Parker is a principal member of Brydon Hugo & Parker. Mr. Parker graduated cum laude from Loyola School of Law in 1982. A seasoned litigator with 21 years of trial experience, his practice focuses on the defense of professional negligence actions (with particular focus on dental and medical malpractice), real estate and construction litigation, asbestos defense, products liability law and civil appeals. In his 21 years of practice, Mr. Parker has also had substantial experience in banking law and business litigation. Mr. Parker served as Editor of *Orange County Lawyer*, the official publication of the Orange County Bar Association. He has also published articles in *Orange County Magazine*, *The Oakland Tribune* and *Contra Costa County Lawyer*. Mr. Parker has served as Judge Pro Tem in Superior Court and for Small Claims disputes. He is an Arbitrator of Attorney-Client disputes and serves as a Bar Association of San Francisco Mediation/Settlement Judge. He is an active member of the American Bar Association, the Bar Association of San Francisco, and the Contra Costa, Los Angeles and Orange County Bar Associations.



James C. Parker (left) and Edward R. Hugo (right). Photo by Marc Hugo

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8 Attorneys for Defendant
HONEYWELL INTERNATIONAL INC., f/k/a
9 AlliedSignal Inc., Successor-In-Interest to
The Bendix Corporation

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**
13

14 RICARDO OCAMPO and ELVIA
OCAMPO,

15
16 Plaintiffs,

17 vs.

18 AAMCO TRANSMISSIONS, INC., et al.,
19 Defendants.

Case No. RG19041182

*[Assigned for All Purposes to the Honorable Jo-
Lynne Q. Lee in Department 18]*

20 **DEFENDANT HONEYWELL**
INTERNATIONAL INC.'S NOTICE OF
IRREGULARITIES AT REMOTE JURY
TRIAL FROM JULY 27-29, 2020

21 Complaint Filed: October 29, 2019
Trial Date: June 15, 2020

22 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

23 Defendant Honeywell International Inc. ("Honeywell") identifies a series of continued
24 irregularities and concerns with the remote jury trial held on July 27 to July 29, 2020, that it
25 respectfully wishes to raise with the Court. Significantly, Honeywell remains concerned with the
26 1) the inability to fully participate at trial via Livestream audio feed; 2) lack of attentiveness of
27
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jurors; and 3) technological difficulties associated with a remote Zoom jury trial, that are detailed further below.

A. Livestream

The Court previously indicated that Honeywell would have to participate through the Livestream audio feed in this trial. However, on July 27, 2020, Honeywell was unable to hear the Court's proceedings as the Livestream audio feed was not functioning. Despite several emails to the Court, the Livestream issue was never resolved, and Honeywell was unable to listen to the July 27, 2020 proceedings in its entirety. The following day, on July 28th, the Livestream audio feed went in and out of connection for several minutes throughout the proceedings. On July 29th, the Livestream audio feed had no sound for the first fifteen minutes of the proceedings and was in and out of connection between 9:00 a.m. to 10:00 a.m. Throughout the rest of the proceedings, there were at least nine interruptions where Livestream did not work.

As such, Honeywell continues to object to the use of Livestream as the method of participation in this jury trial. Notably, Honeywell does not have the ability to observe the jurors to determine whether they are paying attention to the remote jury trial proceedings. Moreover, it cannot observe juror facial cues, reactions and expressions that it would otherwise be able to observe normally in an in-person jury trial setting.

B. Attentiveness of Jurors Via Remote Jury Trial Platform

Honeywell continues to notice a lack of attention among certain jurors throughout the remote judicial proceedings. On July 27, 2020, Juror No. 1, Juror No. 8 and Alternate Juror No. 2 were all walking around during the Court's jury instructions. Also, Juror No. 1 appeared to be on a cell phone as opposed to a laptop based on the camera angle and the way she moved around appeared to confirm this. Juror No. 7 was working and emailing from another computer during the parties' opening statements. Juror No. 11 was reading from another screen and Juror No. 2 was occasionally looking at another computer. On July 28, 2020, Juror No. 2, Juror No. 10 and Juror No. 12 were very clearly working during the proceedings. Alternate Juror No. 2 was laying down throughout the proceedings. On July 29, 2020, Alternate Juror No. 2 was again reclining in bed

1 during the proceedings. It was unclear if Juror No. 10 was paying attention as his head was down
2 for much of court session and it appeared that he was working on something else.

3 **C. Technological Difficulties with Remote Jury Trial**

4 On July 27, 2020, during the Court's reading of jury instructions, Juror No. 12 did not have
5 his camera on and had to switch to his personal computer to appear on camera. Juror No. 11
6 dropped off Zoom for a few minutes. Juror No. 5 lost his hot spot connection, causing a delay of
7 thirty-two minutes and required an additional fifteen-minute break to allow him to get back onto
8 Zoom using his personal laptop. As a result of these delays, the Court had to re-read a portion of
9 the jury instruction to ensure that it was heard by all the jurors. In addition, during Plaintiffs'
10 opening statements, Alternate Juror No. 2 dropped off of Zoom, requiring Plaintiffs' counsel to re-
11 read a portion of his opening statement to the jury. On defense counsel's opening statement, one
12 juror could not see his Power Point presentation initially. On July 28, 2020, Juror No. 1 was
13 having difficulty getting online, causing her to be late for the proceedings. Alternate Juror No. 1
14 also had trouble getting online in the morning.

15 On July 29th, Juror No. 5 dropped off the Zoom screen during Plaintiffs' direct
16 examination of their expert, Stephen Paskal; as a result, proceedings were paused while
17 Department 18 attempted to contact that juror. The Court also noticed that one other juror "might
18 have technological issues." At the start of Honeywell's cross-examination, both Plaintiffs'
19 counsel and Mr. Paskal indicated that they were unable to see Honeywell counsel, Ricky Raven,
20 though Mr. Raven was visible to the jurors. At around 12:48 p.m., a juror dropped off and the
21 juror came back online again very quickly.

22 Dated: July 29, 2020

23 **ONGARO PC**

24 By: 

25 NILUFAR K. MAJD
26 Attorneys for Defendant
27 HONEYWELL INTERNATIONAL INC. f/k/a
28 AlliedSignal Inc., Successor-in-Interest to The
Bendix Corporation

1 **PROOF OF SERVICE**

2 I, Yroko M. Drevon, declare:

3 I am a citizen of the United States of America and am employed in the County of San
4 Francisco, State of California. I am over the age of 18 years and am not a party to the within
5 action. My business address is 1604 Union Street, San Francisco, California 94123. On July 29,
6 2020, I electronically served the following document via File & ServeXpress:

7 **DEFENDANT HONEYWELL INTERNATIONAL INC.'S NOTICE OF**
8 **IRREGULARITIES AT REMOTE JURY TRIAL FROM JULY 27-29, 2020**

9 I served this document on the recipients designated on the Transaction Receipt located on
10 the File & ServeXpress Website.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct and that this declaration was executed at Oakland, California.

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15 Date: July 29, 2020

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Yroko M. Drevon

EXHIBIT H

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Attorneys for Defendant
METALCLAD INSULATION LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

RONALD C. WILGENBUSCH and JUDITH
A. WILGENBUSCH,

Plaintiff(s),

v.

AMERICAN BILTRITE, INC., et al.,

Defendant(s).

CASE NO. RG19029791

**DECLARATION OF JANELLE Y.
WALTON REGARDING JUROR
BEHAVIOR**

Dept: 23
Judge: Hon. Brad Seligman

Complaint Filed: August 2, 2019
Trial Date: June 29, 2020

DECLARATION OF JANELLE Y. WALTON REGARDING JUROR BEHAVIOR

1 I, Janelle Y. Walton, declare:

2 1. I am a paralegal employed by Dentons US LLP, counsel of record for Defendant
3 Metalclad Insulation LLC in the above-captioned action. I have personal knowledge of the facts
4 contained in this declaration.

5 2. Since August 3, 2020, I have been signed into the Zoom conference set up for the
6 trial of the *Wilgenbusch* case so that I could monitor the jurors. I was signed into the Zoom
7 conference for the trial on September 3 and September 8, 2020. This declaration concerns the
8 behavior of Ms. Dycus, Juror No. 14 in this case.

9 3. I observed Ms. Dycus on September 3, 2020, during the presentation of evidence,
10 place her hand over her mouth and appear to have a conversation with someone between
11 approximately 11:42 and 11:50 AM. I observed her do this again at approximately 1:22 PM. All
12 jurors, including Ms. Dycus, are normally muted on Zoom so I could not hear anything Ms. Dycus
13 was saying while she appeared to be talking.

14 4. On September 8, 2020, I observed Ms. Dycus put her hand over her mouth and talk
15 to someone at the following approximate times and during the presentation of the following
16 witnesses' testimony:

- 17 a. James Carpenter: 9:30 AM, 9:38 AM, 9:40 AM, 9:43 AM, 9:57 AM, 9:59
18 AM, 10:05 AM, and 10:09 AM.
19 b. Stephen Mehal: 10:45 AM and 11:08 AM.
20 c. Charles Ay: 11:20 AM, 11:23 AM, and 11:24 AM.

21 5. I also observed Ms. Dycus remove her hand from covering her mouth and continue
22 talking at approximately 11:25 AM when Judge Seigman told the jurors they were dismissed for
23 the day. Again, because the jurors are generally muted on Zoom, I could not hear anything she
24 said.

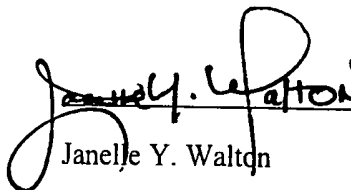
25 6. Based on my observations, Ms. Dycus tended to interlock her hands and attempt to
26 cover her mouth while talking. When she appeared to stop talking, she yawned and took sips of a
27 drink from a container.
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(415) 267-4000

1
2 7. Ms. Dycus generally uses earbud headphones with an inline microphone when
3 connected to Zoom, but I have no way of knowing whether her headphones are actually connected
4 to the device on which she is viewing the Zoom conference rather than to a cell phone or other
5 device.

6
7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed September 11, 2020.

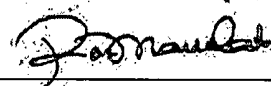
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12 Janelle Y. Walton
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PROOF OF SERVICE VIA FILE&SERVEXPRESS

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is One Market Plaza, Spear Tower, 24th Floor, San Francisco, California 94105.

On September 11, 2020, I electronically served the document(s) *via* FILE&SERVEXPRESS described as:

DECLARATION OF JANELLE Y. WALTON REGARDING JUROR BEHAVIOR
on the recipients designated on the Transaction Receipt located on the FILE&SERVEXPRESS website. I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and was executed on September 11, 2020, at Oakland, California.



Rose Manabat

105658075IV-1

EXHIBIT I

SUPERIOR COURT OF THE STATE OF CALIFORNIA

ENDORSED
FILED
ALAMEDA COUNTY

FOR THE COUNTY OF ALAMEDA

AUG 19 2020

CLERK OF THE SUPERIOR COURT
By JHALISA CASTANEDA
Deputy

Wilgenbusch,

Case No. RG19029791

Plaintiff

vs.

ORDER RE: MOTION FOR MISTRIAL

American Biltrite,

Defendant

Defendant Metalclad Insulation LLC moves for a mistrial because of an interaction between plaintiff and several jurors. The court took the allegations very seriously, and, as described below, promptly took steps to investigate the claims and subsequently admonished the jury and imposed new procedures to eliminate the possibility of any further interactions between the jury and a party or witness. Based on all the surrounding circumstances, however, the court does not find a substantial likelihood that the alleged misconduct influenced the vote of any juror or prejudiced defendant. Accordingly, the motion is denied.

In evaluating the claim of misconduct, the court must examine the surrounding circumstances. This case is the first "virtual trial" conducted in Alameda County, the result of pandemic conditions which have made live in court proceedings exceedingly problematic. In this case, all parties, jurors and witnesses participated in the trial via a "Zoom" audio-visual platform. The incident occurred during a "breakout" of counsel and the court during the cross-examination of plaintiff. An issue arose which required a side-bar. The lawyers, court reporter and the court and court clerk were transferred to a different zoom "room" for the side-bar. The jurors, and plaintiff, remained in the main

room. The court attendant also remained in the main room. After the side-bar, the lawyers and court returned to the main room and the trial proceeded.

After the completion of proceedings and the discharge of the jury for the day, defendant orally moved for a mistrial because of a report from its paralegal (who remained in the main room) of an interaction between several jurors and the plaintiff. The court asked for and received a written motion and declaration from the paralegal. Plaintiff filed an opposing brief.

On the next court day (the trial was in recess for a week while the court was on vacation), the court, having reviewed the papers, separately interviewed the two jurors identified by the paralegal. They confirmed that during the side-bar, one juror, who had a "virtual background" showing a courtroom behind him in his video feed, was asked by another juror whether he was in the courtroom. He explained that he was not and began showing the jurors various backgrounds. At this point, plaintiff asked the juror how he did that. Another juror asked the plaintiff what type of computer he had and then explained how to change background. Plaintiff then showed various backgrounds, none of which showed people but were pictures of locations such as of the San Francisco Bay. He showed one picture and asked the jurors if they could guess where it was, revealing it was in Spain. The plaintiff then said he had to get back to his own room before the judge came back. The entire interaction lasted a few minutes. The first juror estimated 3 minutes, the second estimated 5 minutes or more. The paralegal (Janelle Y. Walton) described the interaction as lasting "several minutes." The jurors' description of the incident was largely consistent with the paralegal's account.

The court admonished the jury that there should be no contact with any witness, party or even each other during the trial, and reread relevant portions of CACI 100. It

asked if any jury felt influenced by the interaction and whether all jurors could put aside the incident and not be influenced by it. All jurors indicated they had not been influenced by the incident and would put it entirely aside from consideration.

To avoid a repetition of any interaction between jurors and parties or witnesses in the future, the court has instructed the court clerk to place all jurors and witnesses in a zoom "waiting room" during any side-bar. In a waiting room, participants cannot see or talk to one another.

The interaction between the jurors and plaintiff was improper. The court notes that the communication did not touch on any issue in the case nor was it the result of plaintiff affirmatively seeking out jurors or attempting to influence them. The court does not find that plaintiff deliberately attempted to influence the jurors. His statement that he had to get back to his room, which defendant argues shows a consciousness of guilt, does not appear so to the court. In context, it appeared to be nothing more than the plaintiff indicating he should stop displaying the virtual background he had just learned to use.

There is no question that jurors and anyone else, including a plaintiff, discussing any subject connected to the case is juror misconduct. *People v. Jackson* (2016) 1 Cal. 5th 269, 332. It is not clear from the case law that a brief interaction between a party and jurors is always misconduct, but for purposes of this motion, the court will assume it is so. The court notes that CACI 100 instructs jurors to "not listen to anyone else talk about the case or the people involved in the case. You must avoid any contact with the parties, the lawyers, the witnesses, or anyone else who may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you cannot discuss it because you are a juror." Given the novel circumstances of a zoom trial, the lack of any discussion of the case, and the fact that plaintiff did not affirmatively seek out the jurors,

misconduct is not so obvious as to compel a conclusion of prejudice. Moreover, the fact that a contact was friendly or even resulted in laughter, does not make the conduct necessarily prejudicial if there is no showing that the conduct related to the trial. *People v Jackson, supra* at 334.

Even if a presumption of prejudice arises, the court finds that the presumption is rebutted by the surrounding circumstances. The conduct did not relate to the trial. It was a brief interaction. Nothing in the communications was inherently prejudicial. All jurors stated they were not influenced by the incident. The court was able to observe the demeanor of the jurors when they were questioned and admonished and concludes that bias did not exist.

As noted above, the court has changed its procedures to insure jurors and witnesses or parties do not remain in a zoom room when the court is not present.

The motion is denied.

Dated: August 19, 2020



BRAD SELIGMAN, JUDGE

CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was emailed to the individuals shown on at the bottom of this document.

Dated: 08/19/2020

Jhalisa Castaneda
Courtroom Clerk, Dept. 23

<p>MAUNE RAICHLÉ HARTLEY FRENCH & MUDD, LLC David L. Amell, Esq. David L. Rancilio, Esq. Marissa Y. Uchimura, Esq. 2000 Powell Street, Suite 400 Emeryville, CA 94608 damell@mrhfmllaw.com drancilio@mrhfmllaw.com muchimura@mrhfmllaw.com</p> <p><i>Attorneys for Plaintiff</i></p>	<p>MAUNE RAICHLÉ HARTLEY FRENCH & MUDD, LLC David L. Amell, Esq. David L. Rancilio, Esq. Marissa Y. Uchimura, Esq. 1900 Powell Street, Suite 200 Emeryville, CA 94608 damell@mrhfmllaw.com drancilio@mrhfmllaw.com muchimura@mrhfmllaw.com</p> <p><i>Attorneys for Plaintiff</i></p>
<p>Evanthia M. Spanos SPANOS PRZETAK A Professional Law Corporation 475 14th Street, Suite 550 Oakland, CA 94612 espanos@spanos-przetak.com</p> <p><i>Designated Defense Counsel</i></p>	<p>Lisa L. Oberg, Esq. Sheila G. O'Gara Michelle C. Jackson, Esq. Michael E. Sandgren Kathy M. Huynh DENTONS USA LLP One Market Plaza, Spear Tower, 24th Floor San Francisco, CA 94105 lisa.oberg@dentons.com michelle.jackson@dentons.com sheila.ogara@dentons.com michael.sandgren@dentons.com kathv.huynh@dentons.com</p> <p><i>Attorneys for Metalclad Insulation, LLC.</i></p>

EXHIBIT J

FOR CONAT 115507L

TELEPHONE: 1-800-451-4511 FAX: 1-800-451-4512

WIRTSCHAFTS-UNIVERSITÄT WIEN

ATTORNEY GENERAL

11/16/1964 - 12/11/1964

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PLAINTIFF PETITIONER: Daniel J. Ryan - Plaintiff-Petitioner vs. Defendant-Respondent

DEB DAN/1/1580/0001: AMERICAN ELITE INC., INC.

**CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and
Production of Documents, Electronically Stored Information, and Things at
Trial or Hearing and DECLARATION**

— 6 — JUNE 24

4-418-751

THE PEOPLE OF THE STATE OF CALIFORNIA, TO name, address, and telephone number of witness (if known).

[illegible]

1 YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below.
UNLESS your appearance is excused as indicated in box 3b below or you make an agreement with the person named in item 1 below.

[illegible]

1. 4. 1954 - 4. 1. 1955

2 IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS
UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS
BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR
EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE
RECORDS.

- YOU ARE

3. X Ordered to appear in person and to produce the records described in the declaration on page two of the attached declaration or affidavit. The personal attendance of the affiant or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1564(a), 1565 and 1566 will not be deemed sufficient compliance with this subpoena.

Not required to appear in person if you provide (1) the records described in the declaration on page two of the attached declaration or affidavit and (2) a completed declaration of destruction of records in compliance with Executive Order 16661, 16661-1, 16662, and 12711. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration in the declaration with the records. Seal the envelope. (2) Attach a copy of the affidavit to the envelope or write on the envelope the case name and number, your name, and the date, time, and place of destruction. (3) Place the first envelope in an outer envelope, seal it, and in it include the date, time, and place of the copying of the records in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this

4 IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

- Planned if fully controlling party or majority leader and the House

1 **Witness Fees** You are entitled to witness fees and mileage actually traveled to and from, as provided by law, if you request them at the time of service. You may request them before your deposition is taken, or later, from the person named in Item 3.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date Issued: 7 1 1991

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ORIGINAL SOURCE OF THE INFORMATION:

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1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 26

[illegible]

**CIVIL SUBPOENA (DUCE TECUM) for Personal Appearance and
Production of Documents, Electronically Stored Information, and Things in
Trial or Hearing and DECLARATION**

Solutions
to the
Problems

PLAINTIFF/PETITIONER: RICHARD D. VIGGIERE, JR. et al.

Case Number

DEFENDANT/RESPONDENT: AMERISAN EIRETTS, INC. et al.

Page 1 of 1

The production of the documents, electronically stored information, or other things sought by the subpoena on paper and/or electronically.

The attached affidavit or the following declaration:

DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS AT TRIAL OR HEARING (Code Civ. Proc., §§ 1995, 1997.5)

1. I, the undersigned, declare I am the: ☒ plaintiff; ☐ defendant; ☐ petitioner; ☐ respondent;
☐ attorney for (specify), ☐ other (specify):

in the above entitled action.

2. The witness has possession or control of the documents, electronically stored information, or other things listed below, and will produce them at the time and place specified in the Civil Subpoena for Personal Appearance and Production of Records at Trial or Hearing on page one of this form (specify the exact date, time, and place of production of electronically stored information, if determined, the form or forms in which each type of information is to be produced, and the specific):

Continued on Attachment 1.

3. Good cause exists for the production of the documents, electronically stored information, or other things described in paragraph 2 for the following reasons:

Continued on Attachment 1.

4. The documents, electronically stored information, or other things described in paragraph 2 are material to the case involved in this case for the following reasons:

Continued on Attachment 1.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 11/11/11

Signature: [Signature]

[Signature]

Request for Accommodations:

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreters are available at no cost to the public. If you need any of these services, please contact the court's clerk at (916) 222-1111. You may also contact the court's clerk at (916) 222-1111 for more information. For more information, please contact the court's clerk at (916) 222-1111. (CIVIL Code, § 34.5)



(Print or type name and address)

CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and DECLARATION.

PLAINTIFF/PETITIONER: RONALD C. WILLIAMS, SR., et al.	CASE NAME: 01140439
DEFENDANT/RESPONDENT: AVENTA INVESTMENTS, INC.	

PROOF OF SERVICE OF CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and DECLARATION

1. I served this Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing and Declaration by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness (not check one):

- (1) was offered to demand and paid Amount: \$ _____
- (2) _____ were not demanded or paid.

f. Fee for service: \$ _____

2. I received this subpoena for service on (date):

3. Person serving:

- a. ☐ Not a registered California process server.
- b. ☐ California sheriff or marshal.
- c. ☐ Registered California process server.
- d. ☐ Employee or independent contractor of a registered California process server.
- e. ☐ Exempt from registration under Business and Professions Code section 22350(b).
- f. ☐ Registered professional photocopier.
- g. ☐ Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, County of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

SIGNATURE

SIGNATURE

Edward R. Hugo [Bar No. 124839]
Tina M. Glezakos [Bar No. 229928]
Heather S. Kirkpatrick [Bar No. 278647]
Bina Ghanaat [Bar No. 264826]
HUGO PARKER, LLP
240 Stockton Street, 8th Floor
San Francisco, CA 94108
Telephone: (415) 808-0300
Facsimile: (415) 808-0333
Email: service@HUGOPARKER.com

Attorneys for Defendant
FRYER-KNOWLES, INC., A WASHINGTON CORPORATION

SUPERIOR COURT - STATE OF CALIFORNIA
COUNTY OF ALAMEDA - UNLIMITED JURISDICTION

RONALD C. WILGENBUSCH and JUDITH
A. WILGENBUSCH,

Plaintiffs,

vs.

AMERICAN BILTRITE, INC., et al.,

Defendants.

(ASBESTOS)
Case No. RG19029791

AFFIDAVIT OF EDWARD R. HUGO
SUPPORTING SUBPOENA DUCES
TECUM TO ALAMEDA COUNTY
SUPERIOR COURT JURY
COMMISSIONER

Judge: Hon Brad Seligman
Dept.: 23

Action Filed: August 2, 2019
Trial Date: June 29, 2020

I, Edward R. Hugo, hereby declare:

1. I am an attorney duly licensed to practice before the courts of the State of California. I am the founding partner of Hugo Parker, LLP, counsel of record for defendant FRYER-KNOWLES, INC., A WASHINGTON CORPORATION ("FKWA"). I am also lead trial counsel for my client.

2. At the June 29, 2020 pretrial conference in this matter, the Court stated the following with respect to proposed procedures for jury selection and voir dire:

a. Initial conversations with the jurors will occur via BlueJeans, connected to the jury assembly room

- 1 b. The Court will review the hardship forms prepared by the jury and "grant
2 them as appropriate"
- 3 c. If the Court has any questions the Court intends to "call up individual
4 jurors or e-mail them for clarification . . . to make a decision that doesn't
5 automatically exclude anyone who files a hardship request

6 3. Thereafter, the Court, through the Alameda County Jury Commissioner,
7 summoned and called several panels of prospective jurors to conduct "hardships", to
8 determine whether those prospective jurors' stated hardships justified their exclusion
9 for service on the jury panel in the above-referenced civil trial.

10 4. On July 9, 2020, I contacted the Court and clerk of Department 23 of the
11 Alameda County Superior Court requesting the following information:

- 12 a. How many juror summons were sent to prospective jurors?
- 13 b. How many prospective jurors reported for jury duty in response to the
14 summons?
- 15 c. How many prospective jurors failed to report for jury duty in response to
16 the summons?
- 17 d. How many prospective jurors were excused from jury service in this case
18 based on "health reasons", including fear of contracting COVID-19?
- 19 e. How many prospective jurors were excused from jury service in this case
20 due to any other form of "hardship"?
- 21 f. How many prospective jurors requested to be excused from jury service in
22 this case due to "hardship" but whose requests were denied?
- 23 g. How many prospective jurors completed the jury questionnaire in this
24 case?

25 5. As of this writing, I have not received any information or documents
26 responding to my inquiries of July 9, 2020.

27

28

1 6. I am informed and believe that the Alameda County Superior Court Jury
2 Commissioner is in possession of information and documents related to the questions
3 outlined above, including but not limited to:

4 a. The number of jury summons issued;

5 b. The number of prospective jurors who appeared in response to those
6 summons;

7 c. The number of prospective jurors who failed to appear in response to those
8 summons;

9 d. The number of prospective jurors who were excused from jury service in
10 this case based on "health concerns", including contracting COVID-19;

11 e. The number of prospective jurors who were excused from jury service in
12 this case based on any other "hardship";

13 f. The number of prospective jurors who requested to be excused from jury
14 service in this case due to "hardship" but whose requests were denied;

15 g. The number of prospective jurors who completed juror questionnaires in
16 this case;

17 h. Any and all documents related to prospective jurors' hardship requests;

18 i. Any evidence that the prospective jurors who reported for jury duty came
19 from a "cross-section of the community".

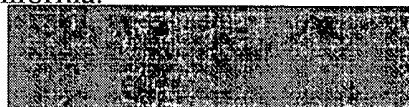
20 j. Any evidence that any prospective jurors who reported for jury duty that
21 came from a "cross-section of the community" were not excluded from
22 service due to medical screenings administered by Alameda County.

23 7. Good cause exists for the production of these documents and any related
24 information to ensure FKWA receives a fair trial as required by the California
25 Constitution and Code of Civil Procedure. The Trial Jury Selection and Management
26 Act, contained within Code of Civil Procedure Section 191, states that it is the "... policy
27 of the State of California that all persons selected for jury service shall be selected at
28 random from the population of the areas served by the Court" and that "... all qualified

1 persons have an equal opportunity, in accordance with this chapter, to be considered for
2 jury service in this state." All litigants have a "state constitutional right to a trial by jury
3 drawn from a representative cross-section of the community." (*Unzueta v. Akopyan*
4 (2019) 42 Cal.App.5th 199, 211; see also Code Civ. Proc. §197(a).)

5 8. These documents and accompanying information are material to this
6 matter to ensure that FKWA receives a fair trial. As previously stated, the California
7 Constitution and Code of Civil Procedure require that all litigants receive a fair trial,
8 including a fair and impartial jury drawn from a representative cross-section of the
9 community. The information held by the Jury Commissioner of Alameda County and
10 the documents related thereto, described above, are necessary and material to ensure
11 that the jury pool in this case is an adequate representation of the cross-section of the
12 community in which the Superior Court of Alameda County serves. Without this
13 information, FKWA has no assurances that its Constitutional rights to a fair trial have
14 not been impinged as a result of a diminished jury pool resultant from the current
15 COVID-19 pandemic.

16 I declare under penalty of perjury under that the foregoing is true and correct.
17 Executed on July 16, 2020, at San Francisco, California.

18 

19 EDWARD R. HUGO
20
21
22
23
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25
26
27
28

4 PROOF OF SERVICE

5 I am a resident of the State of California, over the age of 18 years, and not a
6 party to the within action. My electronic notification address is
7 service@HUGOPARKER.com and my business address is 240 Stockton Street, 8th
8 Floor, San Francisco, California 94108. On the date below, I served the following:

9 AFFIDAVIT OF EDWARD R. HUGO SUPPORTING SUBPOENA DUCES TECUM
10 TO ALAMEDA COUNTY SUPERIOR COURT JURY COMMISSIONER

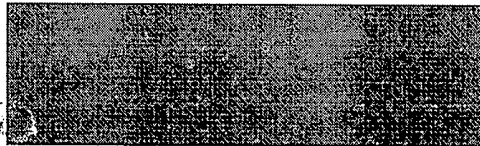
11 CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND
12 PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION,
13 AND THINGS AT TRIAL OR HEARING AND DECLARATION

14 on the following:

15 ALL COUNSEL OF RECORD
16 (via File & ServeXpress Electronic
17 Service List)

18 (X) BY ELECTRONIC TRANSMISSION: Pursuant to CCP 1010.6 and
19 CRC 2.251, or pursuant to the Stipulation and Order Authorizing
20 Electronic Service, or by an agreement of the parties. I electronically e-
21 served through File & ServeXpress and caused the document(s) to be
22 sent to the person(s) at the email addresses designated on the
23 Transaction Receipt located on the File & ServeXpress website. To the
24 best of my knowledge, at the time of the transmission, the
25 transmission was reported as complete and without error.

26 I declare under penalty of perjury under the laws of the State of California
27 that the above is true and correct. Executed on July 16, 2020 at San Francisco,
28 California.



Ginger Williams

EXHIBIT K

SUBPOENA DUCES TECUM TO ALAMEDA
COUNTY SUPERIOR COURT JURY
COMMISSIONER

Date: 7/17/2020

Time: 11:24 AM

Address Attempted: 2233 Shoreline Dr, , Alameda,
CA 945016227

Unable to serve. Building is locked and closed for
the public. No one around. Signs on door. Picture
taken.

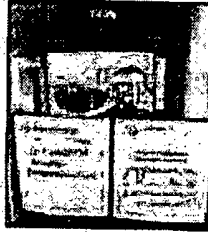


Exhibit C

Robert and Catherine Runne

ACSC RG20061377

**DECLARATION OF JENNIFER M. MCCORMICK IN
SUPPORT OF DEFENDANTS KAISER GYPSUM COMPANY,
INC.'S AND HANSON PERMANENTE CEMENT, INC. F/K/A
KAISER CEMENT CORPORATION'S OBJECTION TO
VIRTUAL/REMOTE TRIAL OR, ALTERNATIVELY, TO
ALLOW ALL NON-DELIBERATION TRIAL PROCEEDINGS
TO BE RECORDED**

Edward R. Hugo [Bar No. 124839]
Heather S. Kirkpatrick [Bar No. 278647]
HUGO PARKER, LLP
240 Stockton Street, 8th Floor
San Francisco, CA 94108
Telephone: (415) 808-0300
Facsimile: (415) 808-0333
Email: service@HUGOPARKER.com

Attorneys for Defendant
SERRATO-MCDERMOTT INC. d/b/a
ALLIED AUTO STORES

SUPERIOR COURT – STATE OF CALIFORNIA
COUNTY OF ALAMEDA– UNLIMITED JURISDICTION

ELSE McKAY, as Successor-in-interest to and
as Wrongful Death Heir of ROY McKAY,
Deceased; and DAVID McKAY, DEBORAH
EVANS, CAROL LANGEVIN, SANDRA
McKAY RELOVA, TAMMY CAMERON, as
Wrongful Death Heirs of ROY McKAY,
Deceased,

Plaintiffs,

vs.

ASBESTOS CORPORATION LIMITED, et al.,

Defendants.

(ASBESTOS)
Case No. RG17884467

DECLARATION OF BINA GHANAAT IN
SUPPORT OF DEFENDANT SERRATO-
MCDERMOTT INC. d/b/a ALLIED AUTO
STORES' TRIAL BRIEF RE OBJECTION
TO VIRTUAL TRIAL, OR, IN THE
ALTERNATIVE, REQUEST TO RECORD
NON-JUROR TRIAL PROCEEDINGS

Date: January 25, 2021
Time: 9:30 a.m.
Dept.: 517
Judge: Hon. Stephen Pulido

Action Filed: December 1, 2017
Trial Date: January 25, 2021

I, Bina Ghanaat, hereby declare:

1. I am an attorney duly licensed to practice before the courts of the State of California.
I am Senior Counsel with Hugo Parker, LLP, counsel of record for defendant SERRATO-
MCDERMOTT INC. d/b/a ALLIED AUTO STORES ("Allied Auto"). The facts stated herein are
true of my own personal knowledge. If called as a witness, I could and would competently testify to
the same.

2. I was counsel of record and co-counsel at trial for defendant O'REILLY AUTO

1 ENTERPRISES, LLC f/k/a CSK AUTO, INC. ("O'Reilly") in the matter of *Rosalino Reyes III and*
2 *Gemma Reyes v. Johnson & Johnson, et al.*, Alameda County Superior Court, Case No.
3 RG20052391 ("*Reyes*").

4 3. I appeared for the first day of jury selection in *Reyes* on October 7, 2020 via the
5 BlueJeans videoconferencing platform. The prospective jurors reported to the courthouse in person
6 to receive instructions, listen to mini opening statements, and fill out their questionnaires and other
7 forms. However, given the limitations of the BlueJeans platform, I only saw a random subset of the
8 trial participants rather than *all* participants. Furthermore, Mr. Hugo, lead trial counsel for O'Reilly,
9 reported to the Court and all counsel that he was unable to see both jury assembly rooms and the
10 Court was unable to see him the afternoon of October 7, 2020. Instead, Mr. Hugo saw the Court
11 Clerk and some of the other attorneys. Attached hereto as **Exhibit A** is a true and correct copy of his
12 e-mail to the Court reporting the same.

13 4. After the prospective jurors submitted their questionnaires, the *Reyes* trial became a
14 fully virtual proceeding via Zoom, with jurors also participating remotely. Troublingly, once the trial
15 went fully remote, some jurors were unable to pay attention or even stay in the virtual "jury box"
16 during *voir dire*. For instance, on October 14, 2020, as the Court observed, Prospective Juror No. 54
17 "seemed to be moving around and doing things and not really sitting still in the virtual jury box."
18 The prospective juror explained that the reason was that he was taking "delivery of a Peloton." The
19 next day, October 15, 2020, Prospective Juror No. 54 was forced to attend the trial in his car because
20 there was a power outage in Montclair and the only place he had battery power was in his car.
21 Attached hereto as **Exhibit B** is a true and correct copy of relevant excerpts from the Reporter's
22 Transcript of Trial (October 15, 2020), at pp. 998:12-1000:2, with jurors' names redacted.

23 5. To cite another example regarding juror absence, due to confusion regarding
24 whether she needed to continue to report to the courthouse, one prospective juror missed several
25 hours of *voir dire* and then attended the remainder of *voir dire* on that day while driving in her car.
26 Attached hereto as **Exhibit D** is a true and correct copy of relevant excerpts from the Reporter's
27 Transcript of Trial (October 27, 2020), at pp. 2731:15-2733:25, with jurors' names redacted.

6. Throughout *voir dire*, at various times, I noted that some prospective jurors were absent for stretches of time, and I was unable to see the faces of some of the jurors due to their camera angle. In addition, at one point a prospective juror reported to the Court that another juror was listening to a loud news broadcast.

7. On Monday, October 19, 2020, the Court advised that “I thought that the motions for cause were denied. But, nevertheless, the four jurors who were challenged for cause received emails over my signature saying they had been excused.” Unfortunately, two of the jurors, after thinking they had been excused, conducted some research. As a result, the prospective jurors—one of whom was “the gospel of [O’Reilly’s] defense”—were excused. Attached hereto as **Exhibit C** is a true and correct copy of relevant excerpts from the Reporter’s Transcript of Trial (October 19, 2020), at pp. 1288:12-1337:21.

8. On October 28, 2020, during a co-defendant's opening statement, a juror lost internet connectivity and it was unclear how much of the opening statement he missed, which forced co-defendant's counsel to repeat a portion of his opening statement. Attached hereto as **Exhibit E** is a true and correct copy of relevant excerpts from the Reporter's Transcript of Trial (October 28, 2020), at pp. 3004:9-3011:6, 3012:19-3024:17, with jurors' names redacted.

9. On October 29, 2020, when Plaintiffs began their case in chief and called Dr. Smith to the stand, an issue arose because Dr. Smith appeared to be reading from a document that had not been provided to all counsel. Attached hereto as **Exhibit F** is a true and correct copy of relevant excerpts from the Reporter's Transcript of Trial (October 29, 2020), at pp. 3212:19-3215:12, 3225:14-3231:10, with jurors' names redacted.

I declare under penalty of perjury under that the foregoing is true and correct. Executed on
January 19, 2021 at Lafayette, California.

/s/ Bina Ghanaat
BINA GHANAAT

EXHIBIT A

From: Edward R. Hugo
Sent: Wednesday, October 07, 2020 2:59 PM
To: Joseph D. Satterley; Kaus, Judge Stephen, Superior Court
Cc: Justin Bosl; khynes@kslaw.com; geoffrey.wyatt@skadden.com; Denyse F. Clancy; dept19@alameda.courts.ca.gov; jromano@kslaw.com; lprzetak@spanos-przetak.com; Alex G. Taheri; sko@btlaw.com; Corrine B. Sinclair; mdubin@kslaw.com; allison.brown@skadden.com; kevin.rising@btlaw.com; nnouredini@btlaw.com; early.langley@outlook.com; Bina Ghanaat; dwilliams@alameda.courts.ca.gov
Subject: RE: Hardships

Judge Kaus,

For all 3 sessions, I would like to know:

- 1 how many summons were issued?
- 2 how many people contacted the jury commissioner and asked to be deferred or excused and how many of those requests were granted and denied?
- 3 how many people simply failed to show up in response to the summons?
- 4 was medical monitoring/ testing in place at either or both of the courts? If so, how many people were turned away?
- 5 who refused to wear a mask this afternoon and what happened to that person?
- 6 the first group was reported to include 51 people from 75 summons. How many people reported in groups 2 and 3 out of how many respective summons?
- 7 has the court done anything to insure that a representative cross section of the community has been called for service in this case?
- 8 is there any evidence that a representative cross section of the community actually showed up for service in this case?

Please note that I was unable to see both of the jury assembly rooms this afternoon and the court was unable to see me. I was able to see the court clerk and some of the attorneys. BlueJeans does not work.

Thanks,

Ed

From: Joseph D. Satterley <JSatterley@kazanlaw.com>
Sent: Wednesday, October 7, 2020 2:47 PM
To: Kaus, Judge Stephen, Superior Court <skaus@alameda.courts.ca.gov>
Cc: Justin Bosl <jbosl@kazanlaw.com>; khynes@kslaw.com; geoffrey.wyatt@skadden.com; Denyse F. Clancy <DClancy@kazanlaw.com>; Edward R. Hugo <ehugo@hugoparker.com>; dept19@alameda.courts.ca.gov; jromano@kslaw.com; lprzetak@spanos-przetak.com; Alex G. Taheri <ataheri@hugoparker.com>; sko@btlaw.com; Corrine B. Sinclair <csinclair@hugoparker.com>; mdubin@kslaw.com; allison.brown@skadden.com; kevin.rising@btlaw.com; nnouredini@btlaw.com; early.langley@outlook.com; Bina Ghanaat <bghanaat@hugoparker.com>; dwilliams@alameda.courts.ca.gov
Subject: Re: Hardships

Your Honor,

Is it possible to learn how many jurors appeared this afternoon in Oakland and Dublin?

Also, do we know how many jurors asked for computers or hotspots this morning?

EXHIBIT B

974

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF ALAMEDA
3 BEFORE THE HONORABLE STEPHEN KAUS
4 DEPARTMENT 19
5 VIA ZOOM TELEVIDEO CONFERENCE

6 ---000---

7 ROSALINO D. REYES and
8 GEMMA M. REYES,

9 Plaintiffs,

No. RG20052391

10 vs.

11 JOHNSON & JOHNSON, et
12 al.,

13 Defendants.

14 _____ /

15 REPORTER'S TRANSCRIPT OF TRIAL

16 (Jury Voir Dire)

17 Thursday, October 15, 2020

18 Full Session

19

20

21

Taken before EARLY K. LANGLEY, B.A., RMR, RSA
22 CSR No. 3537

23

24

25 VOLUME IX

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15 sii/pae/et Longs Drug Stores CA, Inc.; Longs Drugs
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21 Inc.; O'Reilly Auto Enterprises, LLC sii/pae/et Grand
22 Auto Supply; O'Reilly Auto Enterprises, LLC sii/pae/et
23 Kragen Auto Parts; O'Reilly Auto Enterprises, LLC
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2 SESSIONS

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6 (Morning Session)

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7 (Afternoon Session)

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2 PROCEEDINGS

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4 Thursday, October 15, 2020 - 8:40 A.M.

5 (Morning Session)

6 (The following proceedings were held in the
7 virtual breakout room with counsel only outside the
8 presence of the jury.)

9 THE COURT: Let's go on the record and say what
10 the issue is. I think probably everyone is entitled to
11 have a record of this.

12 So we're on the record. We'll identify
13 ourselves in a moment. We're ahead of starting the
14 trial.

15 Mr. Satterley has objected to two jury
16 consultants who he has identified as being in the room
17 with the jurors.

18 I asked Ms. Mendola and Ms. Amponsah to place
19 them in here, and Mr. -- and one of them is here,
20 Ms. Fillichio. Mr. Mehliis is not.

21 Was he there, Ms. Mendola?

22 MR. SATTERLEY: It's a she, I believe.

23 And, Your Honor, Mr. Hugo said that in a trial
24 when we're all present in the courtroom, typically the
25 trial consultants stay back in the jury room when the

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1 MR. SATTERLEY: It's not black. I never said
2 "black box," "you're creating a black box." It was
3 just a box.
4 MR. DUBIN: Okay. Whatever.
5 THE COURT: I thought you said "black box," but
6 I could certainly be wrong.
7 MR. SATTERLEY: Mr. Dubin said --
8 MR. DUBIN: What color would you like the box?
9 MR. SATTERLEY: It could be any box, brown box,
10 blue box.
11 MR. DUBIN: Okay. Again, I don't think that's
12 objectionable in the least. I am able to comment on
13 how he would like to think about the issue of bias and
14 fairness and prejudice and I think it's not the analogy
15 that I would use. And I believe if he picks that, I
16 can comment on it.
17 THE COURT: There was a tone that made it seem
18 like Mr. Satterley was being silly. And I'm
19 just saying what I heard.
20 MR. DUBIN: If the box fits.
21 THE COURT: I don't think it's good to get into
22 a whole fight about that in front of the jury. I just
23 think this is going to be way in the rear view mirror
24 by the time we get into a trial.
25 So, from my point of view, the problem is that

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1 there are too many parties and this is going to take
2 forever. So I am going to ask Mr. Satterley, when you
3 go through further jurors, if you could be briefer.
4 You don't have to go through every question on every
5 juror, I think. I haven't looked over the
6 questionnaires and I'm not telling you how to do your
7 business and I don't like putting time limits, but that
8 took a long time.
9 And everyone else, I don't know if the three
10 retailers are all going to do voir dire, but, I'd
11 appreciate it, and I think it would help, if you
12 wouldn't duplicate each other, because you do really --
13 the talc retailers really do have the same interest in
14 this proceeding.
15 MR. SATTERLEY: And, Your Honor, I will be more
16 efficient. I did want to say that one of the things
17 that made the -- my questions go longer, there was a
18 couple of jurors that talked a lot, like Mr. Kumar, he
19 talked a lot. And I was just trying to be polite and
20 just respect -- and not be disrespectful by, you know,
21 cutting him off or anything like that, so...
22 MR. HUGO: You didn't cut him off because you
23 kept asking him questions for 40 minutes. I don't
24 think he was volunteering information, Joe. Could be
25 wrong, but we had a lot of people watching.

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1 MR. SATTERLEY: Mr. Hugo -- I don't want to
2 debate Mr. Hugo about this, Your Honor.
3 But I hear what Your Honor is saying, and I
4 certainly agree with it.
5 THE COURT: Okay. We have some strong
6 personalities here, so I don't think everyone is going
7 to be able to keep all that in check. But to the
8 extent we can remember that these are jurors who aren't
9 really familiar with what we're doing and maybe aren't
10 used to hearing quite the sort of strong broth that
11 attorneys give them, I think that would be good. But
12 I'm confident we'll be all right.
13 Does that sound like a judge?
14 Anything else we need to talk about?
15 MR. SATTERLEY: I don't believe so, Your Honor.
16 THE COURT: Okay. So Amani is checking in the
17 jury, and then we will be ready to go.
18 (Off the record.)
19 (The following proceedings were held in the
20 virtual breakout room with counsel only outside the
21 presence of the jury.)
22 THE COURT: Let's just go on the record now.
23 We've had a discussion about one of the jurors,
24 who is apparently in his car, and Mr. Hugo has asked
25 that he come into our room and then I ask him and make

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1 a determination if there is a problem.
2 So wait. What's happening? We're leaving the
3 breakout room. That's not what we wanted.
4 THE CLERK: No?
5 THE COURT: We wanted him to come in here.
6 (Prospective Juror No. 54 entered the
7 counsel-only breakout room.)
8 THE COURT: [REDACTED], you're muted. I can't
9 hear you because you're muted.
10 PROSPECTIVE JUROR NO. 54: Okay. Can you hear
11 me now?
12 THE COURT: I can hear you now. How are you?
13 As I've told the -- I think I mentioned yesterday, we
14 know each other. You're in your car, which has caused
15 some --
16 PROSPECTIVE JUROR NO. 54: Yes.
17 THE COURT: -- concern. And yesterday you
18 seemed to be moving around and doing things and not
19 really sitting still in the virtual jury box, so --
20 PROSPECTIVE JUROR NO. 54: Okay. I can explain
21 that to you, if you like.
22 THE COURT: Sure.
23 PROSPECTIVE JUROR NO. 54: Yesterday, I took
24 delivery of a Peloton, and it was planned months in
25 advance. I'm sorry about that. I carried my iPad with

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1 me, and there was a brief moment that I wasn't
2 listening. It was during the Kumar's testimony.
3 Otherwise, I was there.

4 The reason I'm in my car now is because there
5 is a power outage here. The only place I have any
6 battery power is in my car, and that's the only place I
7 have any, you know, telecommunications. So I'm okay
8 for the moment.

9 THE COURT: Okay. I appreciate that. That
10 explains it.

11 And Ms. Mendola, why don't we go back into
12 session.

13 Thank you, [REDACTED].

14 PROSPECTIVE JUROR NO. 54: Is that a problem?

15 THE COURT: It's not a problem, but somebody
16 had noticed and asked me to inquire. I think that's a
17 good answer. Hopefully, the power outage isn't going
18 to knock out this whole proceeding, but --

19 PROSPECTIVE JUROR NO. 54: Yeah. There may be
20 others. All of Montclair is out.

21 THE COURT: I appreciate your making the
22 effort. Thank you. Have fun on your Peloton.

23 PROSPECTIVE JUROR NO. 54: Yeah.

24 THE COURT: Okay.

25 MR. HUGO: Do we have everybody else from

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1 Montclair with us? Do we have missing people today?

2 THE COURT: Let's find out.

3 (The following proceedings were held in the
4 virtual main room in the presence of the jury.)

5 THE COURT: All right. Good morning, ladies
6 and gentlemen. I'm sorry. I was unable to unmute
7 myself. I see Ms. Langley is recording the
8 proceedings.

9 This is Day 2 of jury selection, and the same
10 18 people are still being questioned, and we are up to
11 Mr. Dubin to resume.

12 MR. DUBIN: I don't know whether the jurors
13 have already been reordered or not or whether I'm still
14 having the problem. Do you know whether they have --
15 are they reordered on other people's screens or just --

16 MS. WHITE: Not on mine, Mr. Dubin.

17 MR. DUBIN: Does anyone have them in correct
18 order or all 18 on the screen?

19 MR. HUGO: No. I've got seven.

20 MS. GHANAAT: I do not have them in exact order
21 despite updating the Zoom application last night.

22 THE COURT: I think that's correct. Could it
23 be that the numeral sign in front of the number is
24 preventing them from being lined up, because they're
25 not in order on the screen, and it hasn't been forced.

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1 Right now, I don't see it that way.

2 So let's hang on a second while we try to get
3 the zoom screen organized.

4 MR. DUBIN: Thank you, Your Honor.

5 Can you mute me for a minute.

6 THE COURT: Thank you.

7 MR. DUBIN: Your Honor, through playing some
8 juror bingo and moving their faces around, we, at least
9 on our end, have temporarily been able to get people
10 together on the screen. I don't know if the other
11 parties have or whether I should just proceed.

12 THE COURT: I don't. Let me --

13 MR. HUGO: Judge, this is Edward Hugo. I
14 wanted to indicate, I have eight jurors with me on my
15 screen. Ms. Ghanaat has a different display with 18
16 random people, no offense to those people, just 18 not
17 in the box. And Mr. Taheri has yet another view.

18 THE COURT: All right. I'm going to --

19 UNIDENTIFIED VOICE: If the 18 try and unmute,
20 that may put them in order of --

21 THE COURT: How about now?

22 MR. HUGO: Now I've got you in the middle with
23 me and the Clerk and now only six jurors and Mr. Dubin.

24 MR. BOSL: Whatever just happened, Your Honor,
25 did reorganize them correctly on my screen.

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1 MS. GHANAAT: It is correct for me as well now.
2 Thank you.

3 THE COURT: Mr. Dubin, how about you?

4 MR. DUBIN: I think I'm fine right now.

5 THE COURT: Why don't we -- thank you,
6 Ms. Mendola.

7 So I apologize, ladies and gentlemen. There
8 are some glitches. We worked overnight trying to work
9 on this. The problem was that you're supposed to be
10 able, by putting numbers in front of people, to have
11 them be in order, and then we're supposed to be able
12 to, from the person who's running the Zoom conference,
13 force that view on everybody who's participating. Some
14 people may be using different devices other than
15 computers, which causes a bit of a problem. But now I
16 think we're set to go.

17 So Mr. Dubin.

18 MR. DUBIN: Hello, everybody. Good morning.
19 Sorry for the technical glitches. Obviously, we're
20 doing this because the trial is important and want to
21 try to make sure that everyone can do this as safely as
22 possible, and we're sorry when there are glitches like
23 this. Everyone is doing their best to try to bring
24 this to you in as expedient and efficient a manner as
25 possible.

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1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF ALAMEDA)

4

5 I, EARLY K. LANGLEY, do hereby certify:

6 That foregoing proceedings were held in the
7 above-entitled action at the time via Zoom and via Zoom
8 audio at the place therein specified;

9 That said proceedings were taken before me via
10 Zoom and via Zoom audio at said time, and was taken
11 down in shorthand by me, a Certified Shorthand Reporter
12 of the State of California, and was thereafter
13 transcribed into typewriting, and that the foregoing
14 transcript constitutes a full, true and correct report
15 of said proceedings that took place;

16 IN WITNESS WHEREOF, I have hereunder subscribed my
17 hand on October 15, 2020.

18

19

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25

EARLY K. LANGLEY, CSR No. 3537
State of California

EXHIBIT C

1282

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF ALAMEDA
3 BEFORE THE HONORABLE STEPHEN KAUS
4 DEPARTMENT 19
5 VIA ZOOM TELEVIDEO CONFERENCE

6 ---000---

7 ROSALINO D. REYES and
8 GEMMA M. REYES,

9 Plaintiffs,

No. RG20052391

10 vs.

11 JOHNSON & JOHNSON, et
12 al.,

13 Defendants.

14 _____/

15 REPORTER'S TRANSCRIPT OF TRIAL

16 (Jury Voir Dire and Motions)

17 Monday, October 19, 2020

18 Full Session

19

20

21

22 Taken before EARLY K. LANGLEY, B.A., RMR, RSA
23 CSR No. 3537

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25

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1 APPEARANCES OF COUNSEL ON THE RECORD VIA ZOOM TELEVIDEO
2 CONFERENCE:

1 INDEX - VOLUME XI - (Pages 1282-1529)

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3 DATE PAGE

4 October 19, 2020

6 (Morning Session) 1286

7 (Afternoon Session) 1410

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1 --o0o--

2 PROCEEDINGS

3 --o0o--

4 Monday, October 19, 2020 - 8:49 a.m.

5 (Morning Session)

6 (The following proceedings were held in the
7 virtual breakout room with counsel only outside the
8 presence of the jury.)

9 THE COURT: On the record in Reyes v. Johnson &
10 Johnson, would counsel please -- we're here in an
11 attorney breakout room outside the presence of the
12 jury. Would counsel please identify themselves.

13 MR. SATTERLEY: Good morning, Your Honor. Joe
14 Satterley for the plaintiffs.

15 MR. BOSL: Justin Bosl for the plaintiffs.

16 MS. BROWN: Good morning, Your Honor. - Alli
17 Brown, Morty Dubin, and Kevin Hynes for Johnson &
18 Johnson.

19 MR. RISING: Good morning, Your Honor. Kevin
20 Rising for Safeway, Longs, and Lucky.

21 MS. KO: Good morning, Your Honor. Sandra Ko
22 on behalf of Longs, Safeway, and Lucky.

23 MS. WHITE: Good morning. Meredith White on
24 behalf of Lucky as well as Safeway and Longs.

25 THE COURT: Well, I don't see Mr. Hugo here.

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1 MS. GHANAAT: Good morning, Your Honor. Bina
2 Ghanaat and Alex Taheri for O'Reilly.
3 And Mr. Hugo was with us in the prior room. It
4 appears he has not joined us in the breakout room yet.
5 THE COURT: All right. Let me check on that.
6 Mr. Hugo has been invited in the breakout room,
7 but he has not accepted it, I am told.
8 MS. GHANAAT: I will advise him to accept it.
9 One moment, please.
10 Mr. Hugo has advised that he has accepted the
11 invitation but his system seems to be frozen. It just
12 says "joining counsel," but he hasn't been transferred
13 to this room.
14 THE COURT: He apparently is frozen,
15 says "joining counsel."
16 Could you ask Mr. Hugo to log out of Zoom and
17 to log back in, please.
18 MS. GHANAAT: Yes. Will do.
19 THE COURT: Thank you.
20 MS. GHANAAT: Mr. Hugo will be dialing back in.
21 THE COURT: All right. Thank you very much.
22 MR. HUGO: Did you know that Zoom had buffering
23 squares? It was not a buffering wheel. Buffering
24 squares.
25 My jury consultant is not in. Can you have the

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1 clerk let Susan Fillichio in?
2 THE COURT: Can you Susan Fillichio in? She's
3 a jury consultant. Thank you.
4 There she is.
5 All right. I would like to say on the record
6 this is stressful.
7 So, Mr. Hugo, if you would identify yourself
8 for the record. We were up to you.
9 MR. HUGO: Edward Hugo for O'Reilly. And if
10 they have not already introduced themselves, Bina
11 Ghanaat and Alex Taheri for O'Reilly.
12 THE COURT: All right. So addressing the jury
13 issue, I thought I had communicated that the motions
14 for cause were denied. But, nevertheless, the four
15 jurors who were challenged for cause received emails
16 over my signature saying they had been excused.
17 I came in on Saturday about noon and saw a
18 message from [REDACTED] and realized what had
19 happened. I immediately sent emails to the four jurors
20 indicating that there had been an error.
21 [REDACTED] responded that he would tell his
22 employer he would be here.
23 [REDACTED] responded that he would be here.
24 [REDACTED] responded she would be here but
25 disclosed that she had "done some research" -- and

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1 those were the exact words -- when she thought she was
2 no longer on the jury.
3 And we have not heard from [REDACTED].
4 And that's where we are. Actually, Ms. Mendola
5 was going to call [REDACTED], so let me ask her whether
6 she received any answer.
7 And [REDACTED] is here.
8 So my proposal -- and then I'll hear from
9 everybody -- is that we take [REDACTED] into a
10 breakout room and ask her what research she did and
11 that we ask -- I'll apologize, I think, in front of the
12 whole jury; there is no problem saying that notices
13 went out erroneously -- and just ask [REDACTED],
14 [REDACTED] and [REDACTED] if they had done any research
15 or done anything that was prohibited to jurors when
16 they thought they were no longer on the jury. And if
17 they answer "yes," I'll talk to them separately also.
18 MR. SATTERLEY: Are you ready for positions
19 from the parties?
20 THE COURT: Yes.
21 MR. SATTERLEY: So, Your Honor, the plaintiffs
22 reluctantly request all four of them be excused
23 permanently because even though it was a clerical
24 oversight, once they've been excused, technically,
25 they've been excused and we don't know what, if

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1 anything, any of them has done to research the case.
2 But I just think out of fairness -- we have
3 plenty of jurors that we can ask questions to and get a
4 fair jury from everyone else. But I think the
5 appropriate thing to do under the circumstances is to
6 let all four of them go and we just move ahead with the
7 other jurors.
8 Alternatively, if Your Honor is not inclined to
9 let all four of them go, I think all four of them need
10 to be individually brought to a breakout room so that
11 we can explore the same level of inquiry with regards
12 to what their reaction was to being released, what
13 their plans were as far as did they do any research. I
14 think that's -- at the very least, we need do that
15 individually, and it shouldn't be only for one of the
16 jurors.
17 MS. BROWN: From our point of view, the plan
18 that the Court proposes is the right one. These jurors
19 have already been questioned at length. They were all
20 the subject of cause challenges. Your Honor heard
21 about -- the multiple questions that were asked by both
22 sides of these jurors, and so additional questioning on
23 issues unrelated to potential research does not seem
24 appropriate.
25 But, certainly, as [REDACTED] has indicated

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1 that she did, when she thought she was off the jury, do
2 some research, we agree we should ask her about that.
3 She has, in a sense, unknowingly violated the Court's
4 orders, if she were still a juror, and certainly,
5 that's something we believe we should probe.

6 Asking the other three if they have done the
7 same seems appropriate as well, and if they indicate
8 they have, then similarly speaking to them in a
9 breakout room would be appropriate.

10 So we would oppose any effort to excuse all of
11 these jurors.

12 We have had, you know, technical glitches in
13 the past. I believe [REDACTED] was informed that he was
14 off the jury, and then we corrected that, and we,
15 managed to march on.

16 And we think, given the circumstances here,
17 that -- everyone has come back -- we should proceed by
18 starting with individual questioning of [REDACTED]
19 and, as Your Honor suggests, asking all three of the
20 others if they have done any research as well.

21 THE COURT: All right. Do any of the
22 defendants -- well, let's hear from the retailers and
23 then from O'Reilly.

24 MS. WHITE: The retailers concur with the
25 Court's proposal and the additional suggestion by

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1 Ms. Brown.

2 THE COURT: Mr. Hugo?

3 MR. HUGO: I agree with Ms. Brown's comments
4 but want to make sure that we go back, because O'Reilly
5 is in somewhat of a unique spot yet again.

6 I did not join in the challenges for cause by
7 J&J. In fact, as Mr. Satterley pointed out, I was the
8 one who, in his words, rehabilitated [REDACTED]. And
9 if necessary, after talking to her, I can explain why,
10 although I'm not -- you know, this is a bad position
11 for me to be in, to have to try to explain to the Court
12 why I made a strategic decision in this regard.

13 But as it is obvious that I rehabilitated her,
14 that I didn't join in the challenge for cause, and I
15 want her on the jury. It's unfortunate that I have to
16 say that in this trial because normally we don't
17 disclose something like that.

18 So with regard to her in particular and because
19 you said she did some research, I'm in a position
20 that's completely different than everybody else.

21 I'm happy to make a record of that after we
22 talk to each of them and I believe that we have to do
23 just about what happened with regards to being released
24 and whether they did anything about it, not how they
25 felt about it or their, you know, internal feelings or

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1 anything like that.

2 And then once we talk to all four, we can come
3 back and discuss what should be done.

4 THE COURT: So you feel with Mr. Satterley that
5 we need to take each of the four into a breakout room
6 rather than simply ask them in front of the other
7 jurors?

8 MR. HUGO: Yes.

9 MR. SATTERLEY: Your Honor, if I can just
10 respond?

11 Obviously, I agree with Mr. Hugo, but exploring
12 what they did or how they -- you know, when they
13 received the email, if they did anything beyond
14 research is important because they might have
15 expressed, you know, great relief; they might have
16 rescheduled things; they might have done things. And
17 it's very, very brief question on that. We're not
18 going to explore anything beyond that.

19 And, you know, we believe that excusing
20 [REDACTED] is unfair to the plaintiff because it would
21 be potentially a free challenge for Johnson & Johnson
22 and the retailer defendants, now that Mr. Hugo tells me
23 that he wants her on the jury.

24 So we just think it would be unfair.

25 Finally, Ms. Fillichio doesn't have a "D"

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1 beside her name, and maybe she should just add that in
2 there. She joined us late.

3 Ms. FILLICHIO: Mr. Satterley, my apologies. I
4 will do so.

5 THE COURT: All right. So what I'm going to do
6 is, I'm going to follow a modified version of
7 Mr. Satterley's Plan B.

8 And we can take each one into a breakout room,
9 and I will ask them if they did any research, and I'll
10 ask them if they did anything else they were not
11 supposed to do as jurors, and I will ask them if this
12 incident had any effect -- will have any effect on
13 their ability to serve as a juror and leave it at that.
14 not ask them about their feelings and probe, because I
15 really wouldn't know how far to go on that.

16 MR. SATTERLEY: So Your Honor will be handling
17 all of that, and none of the parties will ask any
18 questions?

19 THE COURT: I think that's right.

20 You know, I've generally in this sort of thing
21 asked questions and then asked the parties if they had
22 any follow-up questions. And usually, they don't. But
23 I think I should do that given the way this occurred.

24 MR. SATTERLEY: Yes, Your Honor.

25 THE COURT: All right. So over the weekend, I

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1 was trying to reconstruct our discussion of the genetic
2 motion. I think we agreed that the genetic issue would
3 not be brought up, and I wasn't sure if I actually
4 needed to make a ruling on anything at this point.

5 Do I?

6 MR. SATTERLEY: We believe you should grant the
7 motion and genetics is out of the case so that it's
8 clear for all parties.

9 MS. BROWN: And, Your Honor, to the extent
10 you're going to do a formal order, we understood you
11 would also grant our motion that plaintiffs will not
12 argue that Mr. Reyes was genetically susceptible.

13 As we understood the discussion -- and perhaps
14 it doesn't need an order -- everybody is in agreement
15 they will not argue a genetic mutation. But certainly,
16 if you are going to grant plaintiffs' motion, we would
17 submit that ours should be granted as well.

18 MR. SATTERLEY: And reserve on the issue of
19 jury instruction. I think that's what Your Honor's --

20 THE COURT: Right.

21 MR. SATTERLEY: -- indication was.

22 THE COURT: All right. So assuming that none
23 of the four are disqualified, we'd move the remaining
24 members of the front row, which would be [REDACTED] to
25 Box 1, [REDACTED] to Box 2, [REDACTED] to Box 6, and

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1 [REDACTED] to Box 7, and we would need six new people in
2 the front row. And if any of the other four are
3 excused, those would also need be filled from the
4 random list.

5 All right. Anything else?

6 MR. HUGO: We are going to have to address
7 challenges, peremptory challenges. I believe it's
8 pretty clear at this point that there are three sides
9 to this triangle, there are not two sides, and there
10 has to be some equitable division of the challenges,
11 because we, the three sides, are not aligned.

12 There is a plaintiffs' side, and their theory
13 is that asbestos -- that's me -- and talc -- that's J&J
14 and the retailers of talc -- all caused the injury.
15 The talc defendants say it's not them, and O'Reilly
16 says it is not from O'Reilly's asbestos.

17 So I'm good with all three sides each having
18 eight or all three sides each having six. Those would
19 be two ways of doing it. I'm sure plaintiffs want all
20 of them and us to have none, but at some point, we need
21 to address this before we start exercising challenges.

22 MR. SATTERLEY: Well, Your Honor, this is --
23 number one, this is untimely at the beginning of the
24 trial. It was already established each side would get
25 eight. And we discussed -- Your Honor discussed on the

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1 record whether you were going to give O'Reilly one or
2 two or the retailers one each. We already discussed
3 the fact that J&J is paying for all the retailers.

4 There's indemnification agreements, you know,
5 so there's no -- there's a hundred percent alignment
6 between J&J and the retailers, a hundred percent. But
7 yet the retailers all have individual attorneys. So
8 there's four attorneys, even though J&J is paying for
9 everything.

10 So I would a hundred percent object to the
11 defendants getting anything more than eight and the
12 plaintiffs get eight. That was already established.
13 And so this is untimely halfway through jury selection
14 to try to suggest that -- that O'Reilly should get more
15 peremptory strikes.

16 THE COURT: Last time I researched this there
17 was really no law on it. I can read the statute again.
18 I think it says that the Court will distribute them
19 equitably. I think there are two sides. But I do
20 think that Mr. Hugo is somewhat separately situated.

21 MR. DUBIN: Your Honor, I think what the rule
22 says is that the challenges shall be divided among the
23 parties as equally as possible.

24 I know that Mr. Satterley, since we're, you
25 know, the primary defendant here, I would imagine given

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1 the years at issue, would be more than happy to depart
2 from that rule. And it sounds like Mr. Hugo, even
3 though none of his expert witnesses say that talc
4 caused the disease, now is aligning himself with
5 plaintiffs.

6 We have jurors, in his view, that are adverse
7 to the talc defendants. I mean, not surprisingly I
8 guess he's happy if those jurors are prejudiced against
9 talc.

10 But I don't think that there is a basis to
11 depart from the rule. Even if you want to assume that
12 we are in some respects aligned, I'm sure Safeway
13 doesn't want to be in the news for, you know, having
14 some responsibility for this cancer, and that applies
15 to Longs and to Lucky. They all have their independent
16 interest in being found not liable in this case, and
17 you can't simply sweep them all together.

18 Mr. Satterley has elected to sue all these
19 people and they all deserve strikes.

20 MR. SATTERLEY: Well, under the law, Your
21 Honor, in every asbestos case I've ever tried in
22 California for the last ten years, no matter how many
23 defendants were there, the defendants collectively got
24 the same amount of strikes as the plaintiff.

25 It's -- and no judge in no jurisdiction in

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1 L.A., San Francisco, Alameda County, has ever deviated
 2 from that and given defendants more strikes than the
 3 plaintiff. Never, ever, ever.

4 Secondly, this is untimely for them to now
 5 suggest, in the middle of jury selection after we've
 6 already questioned jurors for two days, to now say they
 7 want more strikes.

8 They don't -- there's no -- there's two sides.
 9 They have the same theories of defenses. Both
 10 defendants say this is a spontaneous or idiopathic
 11 mesothelioma not caused from asbestos. They have
 12 experts that say the same thing on that.

13 So they can try to say they're different in
 14 some respects, but every case with multiple defendants
 15 have -- in asbestos cases have a little bit of
 16 differences, but that doesn't mean they're adverse to
 17 one another. They didn't file counterclaims. They
 18 didn't file claims against each other. They haven't
 19 conducted discovery against each other. They're
 20 actively working together on this.

21 And besides, Mr. Hugo is saying he likes one
 22 juror. So what? I mean, they have the right to meet
 23 and confer amongst themselves. They have two trial
 24 consultants participating. I assume they are meeting
 25 and conferring among themselves. But there is

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1 absolutely no reason, whatsoever, to give defendants
 2 additional jury challenges.

3 THE COURT: All right. Well, I --

4 MR. HUGO: Judge, if I can address this some
 5 more.

6 THE COURT: Well --

7 MR. HUGO: And I think I need to because --

8 MR. SATTERLEY: I have one more point.

9 MR. HUGO: -- to have a record.

10 MR. SATTERLEY: I have one more --

11 MR. HUGO: Let me continue.

12 MR. SATTERLEY: -- Well, I got cut off. I got --
 13 I have one more point to make and you're using the
 14 judge stopping me to your advantage. If I can make my
 15 final point, just one sentence.

16 THE COURT: Go ahead.

17 MR. SATTERLEY: If Your Honor is thinking at
 18 all to give additional challenges, which I don't think
 19 you should in the middle of jury selection, the
 20 plaintiffs should get an equal number of challenges
 21 also.

22 But all that's going to do is require the
 23 process to be stretched out even longer, and we don't
 24 want that to happen given Mr. Reyes's medical
 25 situation.

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1 THE COURT: All right. We're doing exactly
 2 what I didn't want to do, which is somehow cutting into
 3 the jury time here.

4 But, Mr. Hugo, why don't you make your
 5 statement for the record.

6 MR. HUGO: Thank you.

7 THE COURT: Please.

8 MR. HUGO: Judge, so we'll go back to
 9 [REDACTED], who is are Prospective Juror Number 9. In
 10 answer to Question 20, which is, "Do you have an
 11 opinion about whether exposure to asbestos is
 12 dangerous," she responds, "Yes. Prolonged exposure
 13 known to cause health effects - cancer."

14 I can read you the other 17 from the box if you
 15 would like. None of them come close to saying anything
 16 like that.

17 It is a fact that, at times, brakes and
 18 clutches had asbestos in them. And there is no
 19 prolonged exposure -- that's my argument -- in this
 20 case to Mr. Reyes from brakes and clutches. There is
 21 sporadic low-dose chrysotile exposure.

22 J&J's position is there is no asbestos in their
 23 talc. Period, end of story. Done.

24 My position is not the same as that. It's --
 25 there was asbestos, for certain reasons, in items like

1302

1 clutches and brakes over time. So the duration of
 2 exposure is basically the ballpark of my defense.
 3 Dose, frequency, duration, intensity. And I have a
 4 juror who is directly on point with this, fair and
 5 impartial, rehabilitated, and J&J had challenged her
 6 for cause. That is directly against my client's
 7 interests 100 percent.

8 So we are not on the same side regardless of
 9 anything Mr. Satterley has in his vast experience
 10 trying cases. He hasn't given you any authority that
 11 says anybody raised this in the past or that there was
 12 a rule that says you can't do it.

13 In fact, I believe, like you said, you can
 14 distribute them equitably based on the positions of the
 15 parties, not counting the number of lawyers, not
 16 specifically counting the number of parties, but
 17 looking at the issues in the case.

18 She, [REDACTED], is the gospel of my defense.
 19 And when you look at the other people who I don't like,
 20 and I don't need to go through all the names on the
 21 prospective jury here, nobody has got a statement
 22 that's so good for me. And that's the person that
 23 Johnson & Johnson is going to kick off of my jury.

24 So we are not going to use challenges together.
 25 And, in fact, if they get her off, there's no extra

1303

1 bonus for me. I've lost my best juror out of the 18.

2 THE COURT: Okay.

3 MR. HUGO: So we need to have some equitable
4 distribution of challenges.

5 And final point. I'm in this case in this
6 position because of plaintiffs. They put this
7 together. It's not a coincidence that we're all
8 together. It's their orchestration. And the Court has
9 said numerous times that there's too many parties in
10 this case and we're going too fast and it's all coming
11 to fruition. There are too many parties in this case
12 and we are going too fast and that's why we're in this
13 position right now.

14 So there has to be some legal and equitable
15 distribution of peremptory challenges.

16 THE COURT: Okay. So we're not going to go so
17 fast and I'm going to rule on it right now. There are
18 various approaches. One would be to give O'Reilly two
19 or three of the eight. The other would be the one that
20 was advocated that there be eight extra challenges.
21 I'm not really inclined to do that, just to be honest.

22 And I understand -- I was going to suggest that
23 we start out exercising challenges together and see
24 where there are disagreements, but I hear your point,
25 Mr. Hugo.

1304

1 But let's talk to the jurors. [REDACTED] may
2 have a problem anyway, which is unfortunate, but I
3 think that's what we need to do first.

4 So, Ms. Mendola, are you on the line here?

5 All right. Let me -- let's go off the record
6 in here and I'm going to stick my head out and find out
7 what's going on.

8 (Off the record.)

9 THE COURT: All right. So we're going to go in
10 the main room. I'll explain what's going on, and then
11 we'll go back in the breakout room.

12 Apparently, [REDACTED] is having some
13 technical issues, so -- otherwise, I would have taken
14 her first. But if she's not here, I won't.

15 All right, Ms. Mendola.

16 (The following proceedings were held in the
17 virtual main room in the presence of the jury.)

18 THE COURT: Can you hear me? Could you raise
19 your hand if you can hear me. Okay.

20 So we made a mistake on Friday and sent some
21 notices to jurors that they were excused when they
22 weren't. I've rectified that as best I could on
23 Saturday when I realized that had happened. But we
24 need to speak to each of those jurors one at a time in
25 the breakout room.

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1 There are then some other jurors who have been
2 excused. We will call some names from the group that
3 has not yet been in the jury box, put them in the jury
4 box and resume questioning.

5 So we'll be as quick as we can. This is
6 unfortunate. I take responsibility. I apologize, but
7 this is something we have to do.

8 So, Ms. Mendola, if we could talk to
9 Ms. Lisberg in the breakout room, I would appreciate
10 it.

11 And, [REDACTED], if you see a button to click
12 to go into a breakout room, if you would do that.

13 Thank you.

14 (The following proceedings were held in the
15 virtual breakout room with counsel and individual
16 prospective jurors as indicated outside the presence of
17 the jury.)

18 (Prospective Juror [REDACTED] enters virtual
19 breakout room.)

20 THE COURT: Okay. I think we're all here.

21 [REDACTED], good morning.

22 PROSPECTIVE JUROR NO. 9: Good morning.

23 THE COURT: So, I apologize. I don't know what
24 happened. I'm happy that you responded on Saturday
25 because that's what tipped me off that there --

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1 PROSPECTIVE JUROR NO. 9: Yeah.

2 THE COURT: So we are in a breakout room with
3 the attorneys and [REDACTED].

4 And let me just ask you: You responded that
5 you had done some research --

6 PROSPECTIVE JUROR NO. 9: Yes.

7 THE COURT: -- when you were not on the jury.
8 Could you tell us what that consisted of?

9 PROSPECTIVE JUROR NO. 9: I think the only
10 thing I really looked up was the American Cancer
11 Society. I just Google searched. I think I started
12 with "talcum powder," and that was the first thing that
13 came up. So I looked at the American Cancer Society
14 page on talcum powder and asbestos.

15 THE COURT: And did you learn anything that's
16 going to affect your ability to sit as a juror on this
17 case?

18 PROSPECTIVE JUROR NO. 9: I don't believe so.
19 It depends on -- I think both pages were just general
20 overviews of the two kind of stating, like, what talcum
21 powder, it had been linked but there are no, you know,
22 studies that have been made that are official yet.

23 THE COURT: Did it cause you to think
24 differently about talcum powder than you did before? I
25 mean, would it make you --

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1 PROSPECTIVE JUROR NO. 9: It might -- it might
 2 make it harder for me to -- given what's been done,
 3 what kind of testing has been done, and then now
 4 knowing that there have been full studies, lab studies
 5 and all that that haven't been able to find a link to
 6 certain types of cancer, it might make that harder to
 7 use just the testing that's been done for the case and,
 8 you know, think that that's proved a link more so than
 9 actual studies have found, if that makes sense. I
 10 don't think I'm describing that very well.

11 THE COURT: All right. So each side is going
 12 to have experts, and they're going to talk to you about
 13 work that they've done and others have done to --
 14 talking about talcum powder now -- to determine if
 15 there is any link, obviously, various other aspects; is
 16 there potentially asbestos in it that can cause
 17 peritoneal mesothelioma.

18 So are you saying that you think that you have
 19 information now that would make it difficult for you to
 20 listen to those studies that are presented in court
 21 over time, and reach a verdict based on what you hear
 22 in court?

23 PROSPECTIVE JUROR NO. 9: Personally, yes, just
 24 because knowing that there's been studies done outside
 25 of this trial that have not been able to reach a

1308

1 conclusion means, to me, that there's not much evidence
 2 there.

3 THE COURT: Okay. Did you do any research or
 4 anything about brakes?

5 PROSPECTIVE JUROR NO. 9: I don't think so.

6 THE COURT: All right. Did you do anything
 7 else you wouldn't have done if you were you on the
 8 jury?

9 PROSPECTIVE JUROR NO. 9: No.

10 THE COURT: Do counsel have any questions?

11 MR. SATTERLEY: A couple of follow-ups. May I?

12 THE COURT: Sure.

13 MR. SATTERLEY: You mentioned that you, I
 14 guess, went to the American Cancer Society and read
 15 about talcum powder and asbestos, and I think the
 16 Court's focus has been on the studies on talcum powder.

17 What did you read about asbestos?

18 PROSPECTIVE JUROR NO. 9: So there was a link
 19 to asbestos in the talcum powder page because that was
 20 one of the reasons why they had mentioned that talcum
 21 powder is linked to cancer is because it may be
 22 contaminated with asbestos.

23 And so the asbestos page was their general page
 24 for asbestos as far as the two different types, any
 25 sort of laws or anything that had gone into place about

1309

1 asbestos, the general kind of history of it, and then
 2 its link to mesothelioma.

3 MR. SATTERLEY: And did you -- did you do any
 4 further research, read any of the actual studies that
 5 were cited therein?

6 PROSPECTIVE JUROR NO. 9: No.

7 MR. SATTERLEY: And did they -- your research
 8 in American Cancer Society website, did it actually
 9 have discussion about whether there was asbestos in
 10 talcum powder?

11 PROSPECTIVE JUROR NO. 9: I believe the page
 12 just mentioned that it could be and that there were --
 13 I think there were laws put in place for the cosmetic
 14 industry saying that they had to prove that everything
 15 was free of asbestos, all the talcum powder products
 16 were free of asbestos.

17 MR. SATTERLEY: And the studies that you -- the
 18 lab studies that you read about, do you know when they
 19 were done or who did them or the name of the study or
 20 anything like that?

21 PROSPECTIVE JUROR NO. 9: No. I didn't go that
 22 far.

23 MR. SATTERLEY: But you said it would be -- it
 24 would personally be harder for you to believe the case
 25 because of what you read about these studies; is that

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1 fair?

2 PROSPECTIVE JUROR NO. 9: Yes, just because
 3 there have been long-term lab studies done that were
 4 not able to find conclusive connections.

5 MR. SATTERLEY: Is it fair to say at this point
 6 you have -- the information you've got over the weekend
 7 when you thought you were excused has made you sort of
 8 come to a certain opinion about the lack of scientific
 9 studies?

10 PROSPECTIVE JUROR NO. 9: Yes.

11 MR. SATTERLEY: And that's something you told
 12 the Court just a few minutes ago it would be hard for
 13 you to overcome; correct?

14 PROSPECTIVE JUROR NO. 9: Yes.

15 MR. SATTERLEY: Thank you. We appreciate your
 16 time. Thank you so much.

17 THE COURT: Any other questions?

18 MR. HUGO: Yes. Hi, [REDACTED].

19 PROSPECTIVE JUROR NO. 9: Hi, good morning.

20 MR. HUGO: So I'm Ed Hugo again out here in the
 21 computer world. I had the chance to talk to you
 22 before, and I understand exactly all the stuff you
 23 said. The big question here at the end of the day is,
 24 if you're chosen to sit as a juror, you need to put
 25 aside anything that you have learned about talc and

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1 asbestos and peritoneal mesothelioma and start with a
2 fresh slate.

3 So I understand you read things and thought
4 about it. The question is, can you put that aside now
5 and listen to the evidence in this case, and you're
6 going to hear a lot, and base your decision solely on
7 the evidence in this case?

8 PROSPECTIVE JUROR NO. 9: Yes. So I think I
9 can do that. It will require effort, obviously, but I
10 think I can do that and just -- if I keep that in mind
11 during any sort of decision making, keeping, you know,
12 what the laws are on one side and then what the
13 evidence is on one side. I think I can do that.

14 My just worry now is will I be able to get that
15 out of my head, that there are long-term studies out
16 there outside of the case. I don't know.

17 MR. HUGO: You'll hear all about the studies.

18 PROSPECTIVE JUROR NO. 9: Okay.

19 MR. HUGO: So you've never served on a jury
20 before; correct? That's a double negative.

21 It's true you've never served on a jury before;
22 right.

23 PROSPECTIVE JUROR NO. 9: Yeah. So I never --
24 this is my first jury service.

25 MR. HUGO: We kind of talked about that in

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1 terms of what the burden of proof is and who is going
2 to be putting on evidence and that kind of stuff in the
3 beginning of your examination last week.

4 Remember that?

5 PROSPECTIVE JUROR NO. 9: Yeah, yeah.

6 MR. HUGO: So this is the same drill, but you
7 just have more information. You come into the
8 courtroom -- and Mr. Satterley says the evidence goes
9 in a box. So you listen to all the evidence; you see
10 things that are going to be presented; you hear
11 witnesses; and at the end of the day, you make your
12 decision based on the evidence that's elicited in
13 court; and you'll even have the opportunity to ask
14 questions of the witnesses after the attorneys through
15 the judge.

16 So if you have a question about something that
17 the witness said, you can even give the question to the
18 judge, who will ask it, if it's appropriate.

19 With that understanding of the process, can you
20 be fair and impartial?

21 PROSPECTIVE JUROR NO. 9: Yeah, I think so.

22 MR. HUGO: Great. Thank you very much.

23 THE COURT: Anything else?

24 MS. BROWN: No follow-up, Judge.

25 Thanks, [REDACTED], for coming back.

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1 THE COURT: Thank you very much. I'm sorry
2 that I put you in this position.

3 So Ms. Mendola, if we could move [REDACTED]
4 back to the main room and have one of the other jurors
5 come into this room, one of the other four.

6 THE CLERK: [REDACTED], can you please push
7 the button on the box that says "leave room."

8 PROSPECTIVE JUROR NO. 9: Yes.

9 THE COURT: Thank you.

10 (Prospective Juror [REDACTED] exits virtual
11 breakout room.)

12 THE CLERK: [REDACTED] is coming in. He's
13 Number 26 on the random list.

14 THE COURT: He would be Juror Number 1. He was
15 the first alternate.

16 (Prospective Juror [REDACTED] enters virtual
17 breakout room.)

18 THE COURT: [REDACTED], how are you? Can't
19 hear you, you're muted.

20 PROSPECTIVE JUROR NO. 1: Good morning,
21 everyone.

22 THE COURT: Good morning.

23 So I apologize that you received the wrong
24 email on Friday. And what I need to ask you is
25 whether, when you thought you weren't a juror, you did

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1 anything that jurors are not supposed to do, such as do
2 research or talk to people about the case or anything
3 like that?

4 PROSPECTIVE JUROR NO. 1: No, other than
5 letting my direct line manager know that I would be
6 back reporting to full Zoom duty on Monday.

7 THE COURT: You can blame me here.

8 Is there anything else in terms of your mindset
9 or the attitude toward the case or anything that we
10 should know about that was caused by your believing you
11 were not on the jury for a period of time?

12 PROSPECTIVE JUROR NO. 1: No. I thought -- I
13 thought some of my -- you know, my responses to the
14 questions, you know, might have forced a little bit of
15 bias on one side or the other, primarily on the Johnson
16 & Johnson side, just because of me being a former
17 shareholder, Johnson & Johnson being a client of the
18 company I work for, that type of thing, but that was
19 it.

20 THE COURT: Let's leave that up to them.

21 Is there anything -- all the lawyers.

22 Is there anything about your answers that you
23 think was inaccurate or incomplete?

24 PROSPECTIVE JUROR NO. 1: No.

25 THE COURT: Okay. Are there any questions from

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1 any of the attorneys?

2 MR. SATTERLEY: Yes. I just want to follow up
3 on your -- you just mentioned bias. I didn't
4 understand, when you were talking about your potential
5 bias, was that for Johnson & Johnson or against Johnson
6 & Johnson?

7 PROSPECTIVE JUROR NO. 1: For Johnson &
8 Johnson.

9 MS. BROWN: I think we were just talking about
10 research, as I understood the questions here.

11 THE COURT: [REDACTED], I think what you meant
12 to say was that Johnson & Johnson might have reacted
13 adversely to your answers last week. Is that what you
14 were saying?

15 PROSPECTIVE JUROR NO. 1: Yes.

16 THE COURT: You weren't saying that you had
17 developed a bias?

18 PROSPECTIVE JUROR NO. 1: That's correct.

19 THE COURT: That's what I heard.

20 MR. SATTERLEY: I'm just confused, Your Honor.
21 Can I just explore that?

22 THE COURT: Briefly.

23 MR. SATTERLEY: When you said "bias" a few
24 minutes ago, I thought you said with you being a former
25 stockholder and having close business relationship with

1316

1 Johnson & Johnson, you thought Johnson & Johnson is
2 biased against you or you're biased in favor of Johnson
3 & Johnson or something else?

4 PROSPECTIVE JUROR NO. 1: The way I had
5 interpreted that, when I got the note on Friday night
6 or Saturday, I forget which day it was, I thought some
7 of my responses to the questions might have essentially
8 swayed me from not being a juror rather than me being
9 impartial. That's all.

10 MR. SATTERLEY: Is that because you thought --
11 you thought somebody thought you were biased, or you
12 thought yourself was biased?

13 PROSPECTIVE JUROR NO. 1: I thought there might
14 have been an interpretation that I might have been
15 swaying toward Johnson & Johnson because of my
16 interaction with them, whether personally or
17 professionally.

18 MR. SATTERLEY: All right. Thank you.

19 THE COURT: This was entirely my mistake in not
20 communicating properly which notice should go to which
21 juror. It has nothing to do with the parties at all.

22 PROSPECTIVE JUROR NO. 1: Okay.

23 THE COURT: I do apologize.

24 PROSPECTIVE JUROR NO. 1: No problem.

25 THE COURT: Any further questions?

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1 MS. BROWN: Just one, Your Honor.

2 Hi, [REDACTED]. I'm Alli Brown for J&J. How
3 are you?

4 PROSPECTIVE JUROR NO. 1: Good.

5 MS. BROWN: Just to go back to sort of what
6 happened -- and sorry for the mixup -- it sounds like
7 nothing that took place in between getting the email
8 that you were off and getting the email that it was a
9 mistake -- nothing took place that would have changed
10 your ability to keep an open mind in this case; is that
11 fair?

12 PROSPECTIVE JUROR NO. 1: That's fair, yeah.

13 MS. BROWN: And even though you were thinking
14 about, "Oh, what are the reasons I might have gotten
15 this email," nothing has changed in your mind in terms
16 of the parties both starting on equal -- equal feet; is
17 that fair?

18 PROSPECTIVE JUROR NO. 1: That's fair.

19 MS. BROWN: Okay. Thanks so much for your
20 time. Appreciate it.

21 PROSPECTIVE JUROR NO. 1: You're welcome.

22 THE COURT: Anybody else?

23 [REDACTED], thank you. We are now going to
24 return you to the main room and have one of the other
25 jurors come in here. We're being as quick as we can.

1318

1 Thank you.

2 PROSPECTIVE JUROR NO. 1: Okay. Thank you.
3 (Prospective Juror [REDACTED] exits virtual
4 breakout room.)

5 THE CLERK: Okay. Next, we'll be bringing in
6 [REDACTED]. He's Number 12 on the random list, and
7 he's Number 5 seated.

8 (Prospective Juror [REDACTED] enters virtual
9 breakout room.)

10 THE COURT: [REDACTED], how are you?

11 PROSPECTIVE JUROR NO. 5: I'm good. How are
12 you doing?

13 THE COURT: I'm fine.

14 Let me start by apologizing that you received
15 the wrong notice on Friday. That was my
16 miscommunication, and I'm sorry.

17 What I wanted to ask you -- I think you're
18 muted now.

19 What I wanted to ask you was whether -- when
20 you thought you weren't a juror, whether you did
21 anything that would have been inappropriate for jurors,
22 like research or talk to people or anything like that.

23 PROSPECTIVE JUROR NO. 5: No, I did not do
24 anything. I actually didn't find out until about
25 Sunday, when I actually checked my emails, so...

1319

1 THE COURT: Okay. And is there anything about
2 this that changes your ability to judge the evidence
3 fairly for all sides?

4 PROSPECTIVE JUROR NO. 5: Nothing at all.

5 THE COURT: Okay.

6 Any questions, Counsel?

7 MR. SATTERLEY: No, Your Honor.

8 MS. BROWN: No, Your Honor.

9 THE COURT: Okay. [REDACTED], thank you very
10 much. You are still on the jury.

11 So, Amani, if we could then have [REDACTED]?

12 THE CLERK: Okay.

13 [REDACTED], can you please press the button at
14 the bottom that says "leave room."

15 THE COURT: Thank you.

16 (Prospective Juror [REDACTED] exits virtual
17 breakout room.)

18 THE CLERK: [REDACTED] is coming in. He's
19 Number 25 on the random list, and Number 12 seated.

20 (Prospective Juror [REDACTED] enters virtual
21 breakout room.)

22 THE COURT: [REDACTED], how are you?

23 PROSPECTIVE JUROR NO. 12: I'm well. Thank
24 you, how are you.

25 THE COURT: I'm fine. I'm embarrassed at what

1320

1 happened on Friday, and I apologize that you received
2 the wrong notice. I was kind of mortified when I came
3 in on Saturday and realized what had happened.

4 But I just have to ask you a couple of
5 questions. When you thought you weren't a juror, did
6 you do any research, talk to anybody, or do anything
7 that would be inappropriate for a juror under the
8 instructions?

9 PROSPECTIVE JUROR NO. 12: I did some research
10 on meso- -- on metho- -- on lawsuits of this type. I
11 can't think of the name at the moment.

12 THE COURT: Okay. On mesothelioma?

13 PROSPECTIVE JUROR NO. 12: Yes, that's correct.

14 THE COURT: Okay. And could you describe your
15 research a little more fully?

16 PROSPECTIVE JUROR NO. 12: I found two websites
17 about the lawsuits, and they were fairly high level in
18 detail.

19 They explained some of the understood causes of
20 mesothelioma, and they explained some of the broad
21 framework of lawsuit trust funds and other things like
22 that about the kind of long-term litigation that, I
23 guess, is resulting from exposure and things like that.

24 THE COURT: And does that influence your
25 ability to judge this case fairly to both sides -- all

1321

1 sides?

2 PROSPECTIVE JUROR NO. 12: It made me more
3 aware of -- understanding better how the -- how the
4 lawsuits' damages trust funds were structured.
5 It made me concerned about -- and revisiting
6 some of my thoughts on the different kinds of damages
7 that were addressed in the questioning earlier.
8 Specifically wondering about what the law says about
9 how those -- like, what appropriate amounts are, how
10 they are to be assigned, and what our role in the jury
11 will be on those terms.

12 I'm afraid that if there aren't clear -- clear
13 guidelines for how to determine that, that I would be
14 not -- I guess I would have a tendency towards
15 skepticism for some different types of damages in a way
16 that I wasn't thinking before.

17 If there's not clear instructions on what is
18 appropriate and what is going to work according to the
19 law, then I would be worried that I would tend towards
20 lower amounts than -- than otherwise.

21 THE COURT: Okay. And after you've heard weeks
22 of testimony and have received instructions and
23 arguments from the lawyers about what the damages
24 should be, do you think that what you read is going to
25 influence your decision-making?

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1 PROSPECTIVE JUROR NO. 12: That's hard to say.
2 I want to rise to the challenge and say, "I don't think
3 so." and having -- having examined my feelings and
4 thoughts, I'm not aware of specific biases that I think
5 would affect that. So I want to say "yes," but I
6 can't -- I have less confidence than I did earlier is
7 what I'm saying.

8 You heard my testimony about logic and other
9 stuff like that. I think -- so I'm not sure how to
10 answer. I'm sorry.

11 THE COURT: Okay. So let me ask, do any of the
12 attorneys have any questions?

13 MR. SATTERLEY: Yes, Your Honor.

14 Good morning. This is Joe Satterley. Can you
15 hear me okay?

16 PROSPECTIVE JUROR NO. 12: Yes, I can. Good
17 morning.

18 MR. SATTERLEY: So it's fair to say you have
19 additional information that you would not have
20 otherwise if you would not have been excused?

21 PROSPECTIVE JUROR NO. 12: Yes, that's correct.

22 MR. SATTERLEY: And I take it you would not
23 have done that research if you were not excused?

24 PROSPECTIVE JUROR NO. 12: Correct.

25 MR. SATTERLEY: And you're now skeptical about

1323

1 some elements of the case based upon some of the
 2 information you've read on these websites; correct?
 3 PROSPECTIVE JUROR NO. 12: Correct. I did
 4 not have -- I did not have any information about the
 5 sort of damages that were being sought before, and I
 6 was going to wait to hear from, you know, the Court
 7 about what those were and what those meant, and I have
 8 more information about those things now.

9 MR. SATTERLEY: And your skepticism of the
 10 damages that you have as a result of your research, you
 11 said, I think, that means lower amounts now as opposed
 12 to what you read over the weekend; correct?

13 PROSPECTIVE JUROR NO. 12: Correct, yes.

14 MR. SATTERLEY: And you said you researched
 15 mesothelioma lawsuits of this type and you went to a
 16 couple different websites. Do you recall the websites'
 17 names or what came up?

18 PROSPECTIVE JUROR NO. 12: I do not
 19 specifically recall. They were general information.

20 MR. SATTERLEY: And did you -- and information
 21 on trust funds, what did you learn about trust funds?

22 PROSPECTIVE JUROR NO. 12: That some -- some
 23 corporations had set aside funds for -- for paying
 24 damages for mesothelioma -- mesothelioma lawsuits as a
 25 result of -- I'm not sure. It was either -- either --

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1 I'm not exactly sure why. I don't recall.

2 MR. SATTERLEY: And you said you researched and
 3 read about the causes of mesothelioma. What did you
 4 are read about the causes of mesothelioma?

5 PROSPECTIVE JUROR NO. 12: About asbestos
 6 exposure through inhalation and ingestion and the way
 7 that presents over a very long period of time in
 8 certain individuals as the fibers of the asbestos that
 9 were ingested make their way to linings of organs and
 10 things like that.

11 MR. SATTERLEY: And I take it prior to your
 12 research on the weekend after you were discharged, all
 13 the information you gathered and read -- I take it you
 14 hadn't read that in the past and researched that in the
 15 past; correct?

16 PROSPECTIVE JUROR NO. 12: Correct, yes. I
 17 didn't know anything about mesothelioma.

18 MR. SATTERLEY: So this is all new information
 19 you got after you were discharged from this case;
 20 correct?

21 PROSPECTIVE JUROR NO. 12: That is correct,
 22 yes.

23 MR. SATTERLEY: And is it fair to say -- you
 24 mentioned about -- your comments earlier, about logic
 25 and so forth.

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1 The fact that you now read additional
 2 information and you're -- now skepticism towards lower
 3 damages, is it fair to say that the plaintiffs start
 4 off a little bit behind in that regard?

5 PROSPECTIVE JUROR NO. 12: I suppose it is,
 6 yes.

7 MR. SATTERLEY: And based upon the research
 8 that -- because you're discharged, would it be fair
 9 that you couldn't -- we're not on the same equal
 10 playing field right now, correct, on damages?

11 PROSPECTIVE JUROR NO. 12: Correct, yes.

12 MR. SATTERLEY: Thank you. Those are all the
 13 questions I have. I appreciate your time, sir.

14 THE COURT: Any other questions?

15 MS. BROWN: Yes, Your Honor.

16 Hi, [REDACTED]. I'm Alli Brown for J&J. How
 17 are you?

18 PROSPECTIVE JUROR NO. 12: Hello. Good
 19 morning.

20 MS. BROWN: Morning. Sorry about the
 21 confusion. Thanks for answering some more questions
 22 right now.

23 As I understand it, from the research you did
 24 over the weekend, it brought some questions to your
 25 mind about damages. Is that fair?

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1 PROSPECTIVE JUROR NO. 12: Yes.

2 MS. BROWN: And as I understood what you were
 3 just explaining to us, you had some questions kind of
 4 about what damages would or would not be appropriate in
 5 a lawsuit like this. Is that fair?

6 PROSPECTIVE JUROR NO. 12: Yes. Would you like
 7 me to explain my reasoning?

8 MS. BROWN: Sure.

9 PROSPECTIVE JUROR NO. 12: What I was thinking
 10 about was -- so from what we heard from last week, I
 11 was -- I did not have much information or knowledge or
 12 reasoning about some of the different kinds of damages
 13 beyond the pain and suffering, specifically, the
 14 spousal ones, loss of love and affection and things
 15 like that.

16 And not knowing what those meant or what the
 17 impact would be, I was prepared to wait until those
 18 were explained in the court.

19 Now, having --

20 But at the same time last week, hearing some of
 21 the other jurors' concerns about how to assess and
 22 measure and quantify things that are not easily
 23 measured like that, I myself was wondering, "Well, how
 24 would I -- how would I determine -- like, how would I
 25 understand what would be appropriate" and expecting

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1 that I would receive instructions about that.
 2 But having heard -- having read about the trust
 3 funds and combining that with my -- with the
 4 understanding of some of the different kinds of
 5 damages, my concern was that I would be biased against
 6 the plaintiff because I would be thinking something
 7 along the lines of "The trust funds have -- have a lot
 8 of money, but it's also a limited amount of money for
 9 cases where there's a contested resource, an
 10 opportunity to increase what you can get from that
 11 resource based on not -- I guess what I understood to
 12 be not well-defined things, like suffering and loss of
 13 affection and things like that."

14 It made me -- made me concerned about fairly
 15 assessing what the -- what the plaintiff's suffering
 16 was and being able to assess a monetary value to that
 17 in the context of what I would understand my own --
 18 what my own response would be to competing for a
 19 limited resource and trying to -- trying to make the
 20 most of my situation.

21 And so that made me feel that that would not be
 22 fair.

23 MS. BROWN: Got it.

24 Okay. And what if, though, in this particular
 25 case in this lawsuit the judge instructed you, under

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1 the law, on when damages are appropriate and when,
 2 under the law they are merited, do you think, even
 3 though you've done this research and you would be
 4 willing to follow the judge's instructions in this case
 5 about when, in this setting, separate and apart from
 6 what you looked at, in this setting where damages are
 7 appropriate under the law?

8 PROSPECTIVE JUROR NO. 12: Yes. It would be my
 9 job to follow those instructions. And if the
 10 instructions and the law is clear and provides
 11 guidelines that would enable me to make those
 12 decisions, then I feel like I could do that, yes.

13 MS. BROWN: And so even though you did a little
 14 bit of research over the weekend and saw about
 15 compensation in another context, you feel comfortable,
 16 in your ability in this context, in a lawsuit, to
 17 follow the Court's instructions about what the law is
 18 on when to award damages, if at all, is that fair?

19 PROSPECTIVE JUROR NO. 12: Well, I believe so.
 20 Not knowing what those instructions are, it's hard to
 21 say at this juncture, right?

22 MS. BROWN: Fair enough. You don't have them
 23 yet.

24 But as you understand the process, which is
 25 that when we get to the end of the case the judge will

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1 instruct you on the law, is there anything about what
 2 happened this weekend that makes you feel uncertain
 3 that you could follow those instructions? Or do you
 4 continue to feel that, in this case, you could listen
 5 to the instructions of the Court and carry out the
 6 instructions from the Court?

7 PROSPECTIVE JUROR NO. 12: I don't know how my
 8 research will affect my ability to do that and I'm
 9 concerned that it will -- it will make it difficult for
 10 me to -- what am I trying to say? I'm concerned it
 11 will not be fair to the plaintiffs having -- having had
 12 those thoughts and considered those things and done
 13 that research.

14 I don't -- I don't know how that will affect my
 15 ability to follow the instructions because I don't know
 16 that they are, but I'm concerned that it will. And I
 17 don't know how to -- I don't know how to convince
 18 myself that it won't.

19 MS. BROWN: One last question, [REDACTED].

20 PROSPECTIVE JUROR NO. 12: Uh-huh.

21 MS. BROWN: If you get to a point in this case
 22 where your research conflicts with the instructions
 23 from the Court, do you feel like you could put aside
 24 what you found on the Internet and just follow what the
 25 Court says?

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1 PROSPECTIVE JUROR NO. 12: Yes. For factual
 2 matters, yes, I can.

3 MS. BROWN: And what about for matters on the
 4 law? If the Court is going to instruct you on what the
 5 law is --

6 PROSPECTIVE JUROR NO. 12: Yes, on the law.

7 MS. BROWN: -- could you follow that?

8 PROSPECTIVE JUROR NO. 12: Uh-huh.

9 MS. BROWN: Okay. And so even though you have
 10 this background knowledge, you feel comfortable that if
 11 that knowledge conflicted with instructions from the
 12 Court, you have the ability to follow the instructions
 13 from the Court?

14 PROSPECTIVE JUROR NO. 12: Yes.

15 MS. BROWN: Okay. Thanks very much. I
 16 appreciate it.

17 PROSPECTIVE JUROR NO. 12: Okay.

18 THE COURT: Anything else?

19 Okay. [REDACTED], thank you very much.

20 So, Amani, if you could return [REDACTED] to
 21 the main room. Let me talk to the attorneys for a
 22 second and then we'll get going.

23 So you'll probably see a button at the bottom
 24 of your screen to exit.

25 Thank you, [REDACTED].

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1 (Prospective Juror [REDACTED] exits virtual
2 breakout room.)

3 THE COURT: Okay. We really don't have time
4 for argument right now. Do you want me to decide or
5 should we proceed with questioning the six jurors that
6 we know are going to be put in the front row?

7 MR. SATTERLEY: Well, Your Honor, I think I
8 need to make a record that the two jurors that did
9 research and aimed at, you know, thoughts and
10 skepticism about damages, they need to go. There's no
11 reason to keep them on. They did research. In any
12 trial where a juror did any research like that, they
13 would be let go.

14 Both jurors expressed developing additional
15 opinions and thought processes and skepticisms and then
16 prejudiced -- severely, severely prejudiced the
17 plaintiff.

18 And so I would move that the two that didn't
19 read anything or do any research, [REDACTED] and
20 [REDACTED] stay, and the two that did research and found
21 out additional information be relieved from their
22 service and then we bring additional jurors in. That's
23 the only fair thing to do.

24 If they did this during the course of trial,
25 that would obviously be in -- contrary to the Court's

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1 instruction and considered to be juror misconduct.
2 Here it obviously wasn't misconduct because the Court
3 advised them that they're no longer needed and so they
4 did this additional research, developed additional
5 opinions, and those opinions, they both admitted, are
6 prejudicial to the plaintiff.

7 THE COURT: Okay.

8 MS. BROWN: And, Your Honor, if I could be
9 heard. As it relates to [REDACTED], I mean, the
10 ultimate question, as the Court knows, is can you put
11 what you read aside and follow the instruction of the
12 Court and decide this case based on the evidence.

13 And as to [REDACTED], he certainly -- he
14 acknowledged the research, he acknowledged his
15 struggle, but when it came down to the critical
16 question of whether if those things were in conflict he
17 would follow Your Honor's instructions, he said three
18 times he would.

19 And so, Your Honor, we would oppose a cause
20 challenge for [REDACTED] who specifically and
21 unequivocally made clear he will follow the Court's
22 instructions even if they conflict with the research he
23 did this weekend.

24 MR. DUBIN: And, Your Honor, I would point out,
25 for example, for [REDACTED] --

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1 MR. SATTERLEY: There's a one lawyer per -- I
2 mean, now two Johnson & Johnson lawyers are arguing the
3 same point? I object to --

4 THE COURT: I do think you need to decide who's
5 going to argue various points.

6 MS. BROWN: As to Mr. -- the point Mr. Dubin
7 was going to make had to do with his questioning of
8 Mr. Tran, Your Honor.

9 THE COURT: Yes.

10 MS. BROWN: And [REDACTED] said that he had
11 preexisting ideas about damages from research he did
12 outside of the Court.

13 And the Court heard argument on that and found
14 if he says he can put those aside, that is good enough.

15 I mean, basically, everyone we talked to has
16 preexisting feelings and preexisting life experiences.
17 The crux of the discussion here is can they put them
18 aside.

19 [REDACTED] said he had ideas. Those ideas were
20 prejudicial to us, but he said he'd put them aside.
21 And the same must be true for [REDACTED] who made clear
22 he'd put them aside.

23 THE COURT: All right. Any other views?

24 MR. HUGO: And I'll address with [REDACTED],
25 she did not take a deep dive into multiple websites.

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1 She went to the American Cancer Society and the only
2 thing that she learned was there were some studies that
3 were equivocal. That was the extent of what she
4 learned. And I took her the through step by step how
5 the trial works and she unequivocally, 100 percent,
6 said she could put aside what she read.

7 So whether she saw it yesterday or last week
8 before she was released, she's given the same answer
9 before trial starts, before the presentation of
10 evidence, she can put aside her life experiences, her
11 knowledge on the subject, and be 100 percent fair and
12 impartial. There's no basis to remove her.

13 THE COURT: All right.

14 MR. SATTERLEY: Your Honor, if I can respond.
15 First, with regards to [REDACTED], she said that she
16 researched some unknown studies. And Mr. Hugo said,
17 "You're going to hear all about that study in the
18 course of this trial," which is not true. Because I
19 believe the study that's probably on that website is
20 ovarian cancer, an ovarian cancer study. But I can't
21 overcome what study she was reading all about and how
22 it would make it harder for her, harder for the
23 plaintiff to prove their case.

24 So, we're starting off behind with [REDACTED]
25 now because she went out and read some unknown study

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1 that says there's not an association between talc and
2 cancer. We can't unring that bell.

3 With regard to [REDACTED], he said repeatedly,
4 not -- that he doesn't know how this will affect -- how
5 this research will affect his view, other than it
6 will -- he said, he is concerned he will not be fair to
7 the plaintiff having done this research. He said that
8 in response to Johnson & Johnson's question.

9 So both of these jurors should be released for
10 cause. Not because they did anything wrong, because
11 they didn't, but because they did research and they
12 found additional information and they have developed
13 opinions adverse to the plaintiffs.

14 And [REDACTED] particularly said that we're not
15 on an even playing field right now because of the
16 research he had done. And he specifically relates to
17 the skepticism of damages and he would be tempted to
18 lower his damages because some unknown information he
19 read about trust funds, asbestos trust funds.

20 That's incredibly unfair and there's no
21 instruction that Your Honor is going to give
22 regarding -- what's the correct amount of damages.
23 There's no instruction that the Court is going to give
24 about disregarding the trust fund information.

25 And we have two jurors, unfortunately, that

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1 have received information that would make it very, very
2 difficult for the plaintiffs to overcome.

3 MR. HUGO: I have a response with regard to
4 Ms. Lisberg. Mr. Satterley just said it's an unknown
5 study, he doesn't know what it is, but he thinks it's
6 ovarian cancer. Guess what? He should have asked. He
7 had the opportunity to ask. So --

8 MR. SATTERLEY: I did --

9 MR. HUGO: -- if he's concerned about the study
10 and whether it concerned ovarian cancer, he should have
11 asked "Did the study concern ovarian cancer?" But he
12 whiffed on that completely and now he's making up
13 something to try to get her off.

14 She 100 percent said --

15 MR. SATTERLEY: I'm not making --

16 MR. HUGO: -- she could be fair and impartial.
17 He has no evidence to the contrary, whatsoever.

18 MR. SATTERLEY: But, Your Honor, what Mr. Hugo
19 said -- I'm not whiffing on anything. What Mr. Hugo
20 told this jury is whatever study she read is going to
21 be -- I wrote it down. "You're going to hear all about
22 that study," which is not true. We have no idea what
23 study it is.

24 If I would start injecting ovarian cancer at
25 this point when Your Honor hasn't ruled on ovarian

1337

1 cancer as coming in or coming out, all the defendants
2 would have thrown a fit.

3 But what I do know is there is information on
4 the American Cancer Society website about the ovarian
5 cancer studies being equivocal.

6 So, I think these two jurors, Your Honor, need
7 to go. We have plenty of other jurors.

8 THE COURT: All right. I'm going to ask -- I'm
9 going to grant the cause challenges for these two
10 jurors.

11 So let's go back into the main room.

12 MR. HUGO: I'll have a motion with regard to
13 that which I'll take up later.

14 THE COURT: Okay.

15 (The following proceedings were held in the
16 virtual main room in the presence of the jury.)

17 THE COURT: Okay. Welcome back, ladies and
18 gentlemen. I'm sorry that that took a while. I'm
19 going to thank and excuse [REDACTED] and [REDACTED].

20 I appreciate your service. This was my fault.
21 I think it's too much of an unknown.

22 So I'm going to now ask that the Clerk call
23 eight names, the first two of whom will go into the
24 jury box in Seats 9 and 12. And then the next six will
25 be Jurors 13 through 18.

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1 MS. BROWN: And, Your Honor, this is Alli
2 Brown. We're going to have a motion to make based on
3 that ruling, which we're happy to do at a break when we
4 go into the breakout room. But I didn't want to leave
5 it unaddressed.

6 THE COURT: That's fine.

7 MS. BROWN: Thank you.

8 THE CLERK: Okay. So [REDACTED] is Seat
9 Number 9.

10 Luella Noles --

11 THE COURT: I'm sorry. I thought [REDACTED]
12 went to Seat Number 7.

13 MR. HUGO: You put him in 7.

14 THE CLERK: Okay. [REDACTED] in 9.

15 [REDACTED] in 12.

16 [REDACTED], 13.

17 [REDACTED], 14.

18 [REDACTED], 15.

19 [REDACTED], 16.

20 [REDACTED] -- I will spell out the last name.

21 [REDACTED]

22 PROSPECTIVE JUROR NO. 17: Yeah, that's
23 correct.

24 THE CLERK: Thank you.

25 [REDACTED]

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1 Court on the plaintiffs' motion to exclude the Safeway
2 records, and we would request that we get that in
3 before opening.

4 THE COURT: All right. So I'll read the
5 Safeway record motion tonight. And I think -- well,
6 we'll know tomorrow. I'm just not sure whether I have
7 a calendar. I'm looking here at my Outlook calendar,
8 and I don't see any matters on tomorrow afternoon until
9 4:30. So maybe we could argue them between 3:00 and
10 4:30.

11 I feel confident that we are not going to pick
12 12 jurors and five alternates and get through
13 Mr. Satterley's opening by 1:30 tomorrow afternoon.

14 We all agree on that, don't we?

15 MR. SATTERLEY: Yes, Your Honor. I still have
16 some left on Wednesday, if I start tomorrow.

17 THE COURT: All right. So why don't we call it
18 there for today. And I'll see you tomorrow morning at
19 9:00. I have a feeling we're going to spend all day
20 tomorrow picking the jury and part of Wednesday at
21 least. We haven't got to any peremptories yet.

22 So why doesn't everybody work and see if you
23 can agree on the cause challenges, maybe give a little
24 take a little so that we don't spend the whole time
25 arguing about the cause challenges tomorrow morning

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1 when we could be picking a jury?

2 MR. SATTERLEY: Is it appropriate, Your Honor,
3 instead of calling in at 9:00, should we call in at
4 8:45 like we did today in case there are logistical
5 issues?

6 THE COURT: Sure.

7 MR. SATTERLEY: Thank you, Your Honor.

8 THE COURT: You know, if you want to say 8:30
9 or are you going to -- I want you to have the maximum
10 time to confer with each other. I'm happy to be here
11 anytime you're all ready to get going.

12 MR. SATTERLEY: You know, I think 8:45,
13 15 minutes will be sufficient unless defense counsel
14 wants to talk about anything else.

15 MS. BROWN: That's fine.

16 THE COURT: 8:45. I'll see you tomorrow
17 morning.

18 MR. SATTERLEY: Thank you. Have a good
19 evening.

20 THE COURT: Have a good evening. Thank you.

21
22 (Whereupon, the proceedings
23 were concluded at 4:41 p.m.)
24
25

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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF ALAMEDA)
4

5 I, EARLY K. LANGLEY, do hereby certify:

6 That foregoing proceedings were held in the
7 above-entitled action at the time via Zoom and via Zoom
8 audio at the place therein specified;

9 That said proceedings were taken before me via
10 Zoom and via Zoom audio at said time, and was taken
11 down in shorthand by me, a Certified Shorthand Reporter
12 of the State of California, and was thereafter
13 transcribed into typewriting, and that the foregoing
14 transcript constitutes a full, true and correct report
15 of said proceedings that took place;

16 IN WITNESS WHEREOF, I have hereunder subscribed my
17 hand on October 19, 2020.
18
19
20
21
22

EARLY K. LANGLEY, CSR No. 3537
State of California

EXHIBIT D

2625

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF ALAMEDA
3 BEFORE THE HONORABLE STEPHEN KAUS
4 DEPARTMENT 19
5 VIA ZOOM TELEVIDEO CONFERENCE

6 ---000---

7 ROSALINO D. REYES and
8 GEMMA M. REYES,

9 Plaintiffs,

No. RG20052391

10 vs.

11 JOHNSON & JOHNSON, et
12 al.,

13 Defendants.

14 _____/

15 REPORTER'S TRANSCRIPT OF TRIAL

16 (Jury Voir Dire; Judge's Instructions; Opening
17 Statement by Mr. Satterley)

18 Tuesday, October 27, 2020

19 Full Session

20

21

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23 Taken before EARLY K. LANGLEY, B.A., RMR, RSA
24 CSR No. 3537

25

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27 VOLUME XVII.

28 PAGES 2625-2891

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1 APPEARANCES OF COUNSEL ON THE RECORD VIA ZOOM TELEVIDEO
2 CONFERENCE:

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4 For the Plaintiffs:

2 SESSIONS

5 JOSEPH D. SATTERLEY

3 DATE

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6 DENYSE CLANCY

4 October 27, 2020

7 JUSTIN BOSL

5

8 Kazan, McClain, Satterley & Greenwood

6 (Morning Session)

2629

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7 Judge's Instructions to the Jury

2743

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8 Opening Statement by Mr. Satterley

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10 (Afternoon Session)

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3 Johnson & Johnson Consumer, Inc.; Johnson & Johnson
4 International:

1 --o0o--

2 P R O C E E D I N G S

3 --o0o--

4 Tuesday, October 27, 2020 - 8:05 a.m.

5 (Morning Session)

6 (The following proceedings were held in the

7 virtual main room with counsel only outside the

8 presence of the jury.)

9 THE COURT: On the record.

10 Do we think we have to identify everybody all

11 the time? It's the same people. I don't think so.

12 The same attorneys who have been here previously,

13 including Ms. Clancy, are here today.

14 Mr. Satterley, you wanted to say something?

15 MR. SATTERLEY: I just wanted to say, Your

16 Honor, that defendants request to excuse Daniel Aronen,

17 Juror Number 123. We have no objection to removing

18 Daniel Aronen, A-r-o-n-e-n, Juror Number 123, based

19 upon him filling out the form that he cannot follow the

20 Court's instructions on his lack of self-control.

21 THE COURT: And he was asleep.

22 MR. SATTERLEY: I didn't -- I didn't witness

23 that, so that's not my reason, but Your Honor told me

24 that.

25 THE COURT: Okay. And so, then, Ms. Mendola

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1 selection.

2 THE COURT: I'll allow this question, but then
3 I think we should get away from specifics.

4 MR. HUGO: It was my last peanut question.

5 THE COURT: Excellent. How fortuitous.

6 MR. HUGO: My question is, do you think that
7 there should be a warning from somebody selling peanuts
8 that somebody might be allergic to peanuts?

9 PROSPECTIVE JUROR NO. 18: Because there is a
10 lot of evidence out there now that peanuts can cause a
11 reaction do some people, it's possible that some
12 companies are labeling that now. I haven't seen it. I
13 know that Southwest stopped serving peanuts, and you
14 know, like I said, we just don't consume them because
15 of our grandson's reaction to it.

16 But should they? I think it would be a
17 responsible thing, if that's the company's values, that
18 they want to do that. It just makes them intuitive as
19 to what's going on, that -- and they recognize that
20 some people may have an allergy reaction towards
21 peanuts.

22 MR. HUGO: Thank you. Appreciate your time
23 this morning.

24 PROSPECTIVE JUROR NO. 18: You're welcome.

25 THE COURT: Okay. Why don't the attorneys go

2731

1 in a breakout room.

2 I'm going to give the jurors a 15-minute break.
3 Let's come back at about 10:29.

4 So thank you. Remember, don't do any research.
5 Don't talk about the case. Don't come to any
6 conclusions until you've heard all the evidence. See
7 you then.

8 (The following proceedings were held in the
9 virtual breakout room with counsel outside the presence
10 of the jury.)

11 THE COURT: So one of the jurors asked for a
12 break. That's why I declared a longer break than I
13 otherwise might have.

14 Can we reach -- so going on the record.

15 Can we reach any agreement on two of these
16 three jurors?

17 MR. HUGO: I've got a cause challenge for
18 Ms. Leon.

19 THE COURT: Because what?

20 MR. HUGO: Because she missed basically three
21 hours of voir dire. So it's my position, and I believe
22 that there is law on this, although it's -- we're in an
23 interesting world right now.

24 All of the jurors, or potential jurors, have to
25 be present and participate in voir dire. Even if

2732

1 they're not in the first 18, you know, they need to be
2 in the courtroom. They can't leave for a day and then
3 come back. And they can't leave for basically three
4 hours and then jump back in and participate in the
5 process.

6 Because the whole point is they're supposed to
7 be listening not only to the attorneys, but to the
8 other prospective jurors, so they can decide whether or
9 not this case is right for them. And they should have
10 heard all the questions and answers given before.

11 I'm not saying it's her fault that she wasn't
12 there. But the fact that she didn't get the Zoom link
13 and had to drive to Court meant that, what she said,
14 she didn't get there until 11:30, so she missed two and
15 a half hours, and then she spent 40 minutes on the
16 phone while driving. So I'm pretty sure she's paying
17 more attention to driving than to Zoom. So she
18 basically missed an entire day of voir dire.

19 I believe she's disqualified from sitting on
20 this jury just as she would be if she didn't show up
21 for that period of time for an entire day. She
22 wouldn't be allowed back in.

23 THE COURT: But for the record, you didn't ask
24 any questions that day, as I recall; correct?

25 MR. HUGO: You're taxing my memory on that one.

2733

1 I don't know whether I did or not.

2 THE COURT: Mr. Satterley started and then
3 Mr. Dubin was not finished, as I recall, at the end of
4 that first day.

5 MR. HUGO: That may be right, but that wasn't
6 my point. It wasn't whether she was listening to me,
7 it's whether she's listening to everybody, with all of
8 the other jurors assembled. That's the point.

9 The way we've done this, and I think we're
10 going to continue to do it in future trials if we do it
11 by Zoom is, everybody has to be present the first day.
12 We just don't take 18 out of the hundred and have them
13 present, and then bring in another 18 the second day
14 when they might be called to start listening, and then
15 bring in another 18 the third. Everybody has to be
16 present, and she wasn't, clearly. There's no issue
17 about that.

18 THE COURT: So the other -- before we hear -- I
19 mean, I feel she was present for quite a bit of voir
20 dire. And it's hard to imagine anything that occurred
21 the first day that she didn't hear.

22 Having said that, she also indicates that she
23 just got laid off, and I am just wondering if possibly
24 we can agree on [REDACTED] and [REDACTED] as the last
25 two alternates.

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1 happened there, whether they got all of Mr. Satterley's
2 opening or not.

3 MR. HUGO: Well, if they missed that, it should
4 be okay.

5 THE COURT: I figured that would be your view.

6 MR. BOSL: They just want to keep the coverup
7 rolling, Your Honor, keep the coverup going.

8 THE COURT: He may have to do another take.

9 MR. HUGO: No. No. No.

10 THE COURT: The podcast, if it doesn't record,
11 you got to do it over; right?

12 All right. Thank you, everybody.

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14 (Whereupon, the proceedings
15 were concluded at 4:42 p.m.)

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1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF ALAMEDA)

4

5 I, EARLY K. LANGLEY, do hereby certify:

6 That foregoing proceedings were held in the
7 above-entitled action at the time via Zoom and via Zoom
8 audio at the place therein specified;

9 That said proceedings were taken before me via
10 Zoom and via Zoom audio at said time, and was taken
11 down in shorthand by me, a Certified Shorthand Reporter
12 of the State of California, and was thereafter
13 transcribed into typewriting, and that the foregoing
14 transcript constitutes a full, true and correct report
15 of said proceedings that took place;

16 IN WITNESS WHEREOF, I have hereunder subscribed my
17 hand on October 27, 2020.

18

19

20

21

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25

EARLY K. LANGLEY, CSR No. 3537
State of California

EXHIBIT E

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
BEFORE THE HONORABLE STEPHEN KAUS
DEPARTMENT 19
VIA ZOOM TELEVIDEO CONFERENCE

---000---

ROSALINO D. REYES and
GEMMA M. REYES,

Plaintiffs,

No. RG20052391

vs.

JOHNSON & JOHNSON, et
al.,

Defendants.
_____ /REPORTER'S TRANSCRIPT OF TRIAL

(Opening Statements by Mr. Satterley;
Ms. Brown; Mr. Dubin; Ms. Ko)

Wednesday, October 28, 2020

Full Session

Taken before EARLY K. LANGLEY, B.A., RMR, RSA
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1 --o0o--
2 PROCEEDINGS
3 --o0o--
4 Wednesday, October 28, 2020 - 8:59 a.m.
5 (Morning Session)
6 (The following proceedings were held in the
7 virtual main room in the presence of the jury.)
8 THE COURT: All right. Good morning, ladies
9 and gentlemen.
10 So the reason we sent out a new link -- and I
11 should have told you this yesterday -- is because
12 everybody who was here before had access to the old
13 link and now this is a new exclusive link for those who
14 are actually doing the trial. So I'm glad everybody is
15 here.
16 Don't share the link with anybody, because
17 there's public access on the website but not to get
18 into the actual Zoom meeting. So if you know someone
19 who wants to hear the trial, they can go to the Alameda
20 County Superior Court website, and there's -- with a
21 little bit of navigation, you can find a link and
22 listen to it, but they shouldn't be in the actual Zoom
23 meeting.
24 All right. Mr. Satterley, back to you.
25 MR. SATTERLEY: Thank you. Good morning, Your

3001

1 plaintiffs' lawyer who is actually paying her in that
2 case, where she reaches down and all of a sudden pops
3 out with a bottle of Johnson & Johnson in her purse and
4 goes, "Ah-hah, this is the real Sample I," because
5 that's what it was called in the paper. And you'll see
6 how weird it is if you watch that, what's going on.

7 And there's no confusion about it. I asked
8 her, "Wait a second. So, this is Sample I. When did
9 you buy it?"

10 She said, "Well, I know I bought it right
11 before I -- I left, you know, Vermont -- Vermont --
12 Vermont."

13 "And when was that?"

14 She said, "About 1996."

15 There could be no clearer answer that clearly
16 that was not what was Sample I in the 1991 paper.

17 And you'll also hear from our experts -- you
18 know, if you really wanted to get to the bottom of
19 this, what's in that bottle that she has, the best way
20 to do it would be to test that bottle.

21 And our expert was ready to test that bottle
22 and was not permitted to.

23 You'll also hear from Dr. Blount that when
24 she's asked about this, "What is Sample I? What is
25 Sample I?" She wasn't focused on this issue when she

3002

1 was originally doing her paper. She was focused on
2 testing them.

3 And you'll hear her say this, "Unfortunately, I
4 didn't make a good enough record and I think some of
5 them got a little mixed up."

6 And that's the person who they're going to come
7 in and say she found asbestos in the product.

8 And one of the things that you have to
9 recognize is that this -- they may claim, "Well, she
10 used a better method. That's why she could find it,
11 nobody else could." That's not correct. She doesn't
12 even say this is better at finding things than anybody
13 else.

14 And that's significant because, again, this is
15 another -- there are certain defining documents, I
16 think, in the case, that you're going to see so many
17 documents that there are some that you're going to
18 really need to focus on. And one of them for the
19 Korean talc say that the United States Geological
20 Society, United States Department of the Interior.

21 Here, you again have a study that involves a
22 government agency of the exact talc that is being
23 alleged to contain asbestos, it is alleged to have
24 caused Mr. Reyes's mesothelioma.

25 This study was done by the National Institute

3003

1 of Occupational Safety and Health in conjunction with
2 the Harvard School of Public Health. So even if you
3 credit Dr. Blount, and you say she thinks there's
4 asbestos there, there are other studies you should
5 consider and this is one of them.

6 So this study has a very interesting history.
7 And what you'll see is that the title of it is,
8 "Occupational Exposures to Non-Asbestiform Talc in
9 Vermont."

10 So what's going on here? In 1979, again, a
11 long time ago -- this is a published piece of work.
12 And NIOSH and Harvard decided to go out and study
13 various talc mines in Vermont. And so they went to
14 these mines, they took air samples, they took product
15 samples and they analyzed --

16 THE CLERK: Your Honor?

17 MR. DUBIN: Sorry?

18 THE CLERK: I apologize. Your Honor?

19 THE COURT: We are about at the point to take a
20 break, but I think that was -- actually, you know,
21 Mr. Green points out that Juror Number 5 is missing.
22 So why don't we take our break now.

23 I'm sorry you're in the middle of this, but I
24 think we should be sure everyone is assembled here.

25 MR. DUBIN: That's --

3004

1 THE COURT: Okay. So let's take a 15-minute
2 break come back at 12:20 and Mr. Dubin will resume.

3 Could we put the attorneys in a breakout room,
4 please.

5 (The following proceedings were held in the
6 virtual breakout room with counsel outside the presence
7 of the jury.)

8 THE COURT: Let's go on the record.

9 Okay. So Mr. Green reported that one of the
10 jurors was not present, so I thought we should stop.

11 THE CLERK: Your Honor, I actually called
12 [REDACTED] When Mr. Green told me that he was not
13 online, I called him and he said that his Internet is
14 completely down.

15 THE COURT: All right. We also got a message
16 from [REDACTED], Number 16, that she was having some --
17 she was online every time we checked, but she said she
18 was having some connectivity issues.

19 MR. DUBIN: How long did [REDACTED] not have
20 connectivity?

21 THE CLERK: Mr. Green feels like it was right
22 before we went to break.

23 MR. DUBIN: Your Honor, I'm going to have to --
24 we're going to have to ask that juror be excused if
25 they missed portions of my opening. I don't know what

3005

1 else to do. I can't repeat myself and I can't be
2 prejudiced by not knowing what he's heard and hasn't
3 heard.

4 MR. SATTERLEY: Well, we would object to that,
5 Your Honor. We need to get him back and then we can
6 bring him to the breakout room and find out if he just
7 missed a minute or two or less. We can -- Mr. Dubin
8 can restate the portion that the juror got
9 disconnected.

10 So I would object to excusing [REDACTED].

11 I do have a couple issues that -- regarding the
12 closing argument.

13 THE COURT: Let's stick on this one for a
14 second. So I'm wondering if there are some kind of --
15 I think we should ask the jurors if any of them have
16 connectivity problems and somehow get hotspots to them
17 if that's an issue.

18 MR. DUBIN: Well, Your Honor, I guess that's
19 fine, but I don't think it cures what's already
20 happened.

21 THE COURT: I understand. So we need to talk
22 to [REDACTED] and find out what he missed.

23 I mean, you were talking about Alice Blount.
24 If he heard the start of Alice Blount, I think you
25 could repeat that part.

3006

1 MR. DUBIN: Well, not if he missed other parts.
2 (Reporter clarification.)

3 MR. DUBIN: Not if he missed other parts.
4 Saying, "Did you hear any of Alice Blount" doesn't
5 matter if he was missing for ten minutes earlier.

6 MR. SATTERLEY: We can find that out.

7 THE COURT: We have to ask him.

8 MR. SATTERLEY: We can find that out.

9 THE COURT: We have to ask him.

10 MR. DUBIN: I know that, Your Honor. Just the
11 way the question was phrased, "Did you hear the
12 beginning of Alice Blount?" I understand that that--
13 there has to be more inquiry than that.

14 THE COURT: Okay.

15 MR. BOSL: I mean, Your Honor, I think there
16 has to be a certain element of grace here. If every
17 time a juror falls off, and it takes us a minute or two
18 to notice that, we're going to immediately excuse the
19 juror rather than try to cure the error --

20 THE COURT: I'm not -- I agree with that, but
21 we have to talk to the juror. And I'm not going to
22 make a decision without knowing what he missed. That's
23 kind of a fact that we're dealing with here.

24 MR. SATTERLEY: Your Honor, so I think after
25 the break we should try to see if [REDACTED] is back

3007

1 and bring him back in the room and Your Honor can
2 inquire as to how much he -- how much he missed.

3 THE COURT: Do we need to have him in a
4 breakout room? Is there some reason we can't do that
5 in front of the rest of the jury?

6 MR. SATTERLEY: That's fine with the plaintiff.
7 That's fine. There's no reason --

8 THE COURT: It might educate everybody to let
9 us know if they need a hotspot.

10 MR. SATTERLEY: Yep. And we provide everybody
11 with a hotspot.

12 I do have two issues I wanted to briefly raise
13 to Your Honor. And I'm not asking any relief other
14 than just to raise it and request it not occur again.

15 THE COURT: Okay.

16 MR. SATTERLEY: The first is Mr. Dubin said,
17 "We've all heard stories about blah, blah, blah." And
18 that's injecting in some stories out there that I can't
19 cross-examine or -- and inviting them to think about
20 some story that they heard somewhere.

21 I have a request that no counsel do that ever
22 again.

23 And then Ms. Brown said, "As we've all used
24 baby powder -- or many of you used baby powder in the
25 past." Once again that's injecting in the Golden Rule,

3008

1 a violation of the Golden Rule.

2 I'm not asking for any relief, other than don't
3 do that again.

4 THE COURT: All right. That seems right to me.
5 Sort of the opposite, the converse of reptile tactics.

6 MR. SATTERLEY: Exactly.

7 MS. BROWN: I don't think that's correct.
8 Judge. I didn't say, "We've all used baby powder" --
9 (Reporter clarification.)

10 MS. BROWN: I don't think that's correct.
11 Judge. I didn't say, "We've all used baby powder." I
12 referred to what jurors had told us in jury selection.

13 THE COURT: Right.

14 MS. BROWN: Who are familiar with the product.

15 MR. SATTERLEY: And we've repeatedly told them
16 not -- to put that -- everything to the side. And then
17 counsel is now reminding them of what we asked them to
18 put to the side.

19 I'm not complaining in the sense that I'm
20 asking for a mistrial or anything like that. All I'm
21 saying is I request the Court to instruct all counsel
22 not to do the reverse Golden Rule -- do the Golden Rule
23 and not to tell people, "We've all heard stories about
24 blah, blah, blah," because I don't know what -- I can't
25 cross-examine anybody about what stories they've heard.

3009

1 MR. DUBIN: I don't even know what exactly he
2 said that he's objecting to. I guess, I can look back.
3 But I'm not going to say the words, "We've all heard
4 stories, blah, blah, blah," I'll tell you that.

5 THE COURT: All right. Luckily, I don't have
6 to rule. We should confine ourselves to the evidence
7 and, you know, logical consideration of the evidence
8 that's going to be in the trial.

9 MS. WHITE: When we -- Your Honor, if we're
10 going to question [REDACTED], did [REDACTED] also
11 report that she had trouble hearing? I think we should
12 ask her as well.

13 THE COURT: She did.

14 MR. SATTERLEY: Thank you, Your Honor. Should
15 we take our break so --

16 THE COURT: All right. Let's take a break.

17 MR. DUBIN: I guess my question, Your Honor, if
18 we're not going to do it in the breakout, let's assume
19 he says something like, oh, I guess -- and we'll just
20 deal with it later? We're not going to do anything
21 about it right now, I guess, or --

22 THE COURT: All right. Let's do a breakout at
23 12:20.

24 MR. DUBIN: I'm willing to just continue. I
25 just don't want to, like -- you know, whatever you want

3010

1 me to do.

2 THE COURT: I think that what we should do
3 is to -- the question is whether we have to stop for
4 the day because somebody doesn't have a good
5 connection. So I think we've got to do it at 12:20,
6 and let's talk to them briefly and see what the
7 situation is, and if there's something that can be done
8 immediately to remedy the situation, do it, and if not,
9 we just have to deal with it at the end of the day.

10 MR. DUBIN: Okay.

11 THE COURT: I hope we don't lose two jurors.

12 THE CLERK: Your Honor, I am also trying --

13 MR. DUBIN: Let me point out a problem. If CVN
14 is recording and we're asking jurors in open court,
15 they will -- they may be in speaker view.

16 THE COURT: All right. Good point.

17 Ms. Mendola wanted to tell me something.

18 So go ahead, please.

19 THE CLERK: I'm in the process of trying to get
20 a hold of [REDACTED], and I'm not able to get ahold
21 of him by phone anymore.

22 THE COURT: Is he here on the --

23 THE CLERK: No. I'm trying to get ahold of him
24 on his --

25 THE COURT: No. I understand. Is he present

3011

1 otherwise now? No.

2 THE CLERK: No.

3 THE COURT: Well, we'll deal with that when we
4 come back at 12:20.

5 Let's take a break till 12:20, please.

6 (Recess taken.)

7 /

8 /

9 /

3012

1 (Afternoon Session)

2 (The following proceedings were held in the
3 virtual breakout room with counsel outside the presence
4 of the jury.)

5 THE COURT: We can go on the record.

6 I know Mr. Hugo had something he wanted to say.

7 Did you want to put something on the record,
8 Mr. Hugo, before we have [REDACTED] come in and find
9 out what the situation is?

10 MR. HUGO: We can do that and then discuss it.

11 THE COURT: Okay. So if [REDACTED] is here,
12 let's have him come in.

13 MR. SATTERLEY: Mr. Hugo, could you put a D
14 beside your name.

15 THE CLERK: Just a minute, Your Honor.

16 THE COURT: Thank you.

17 (Juror No. 5 enters virtual breakout room.)

18 THE CLERK: He's in, Your Honor.

19 THE COURT: All right. [REDACTED], welcome.

20 JUROR NO. 5: Hi.

21 THE COURT: I just want to talk to you briefly
22 and see what happened and how much you missed because,
23 obviously, a juror has to hear basically the whole
24 trial.

25 Do you think your problem is remedied? Do you

3013

1 think it's going to be ongoing, or do you have any
2 idea?

3 JUROR NO. 5: I believe it's remedied, but I
4 can't be a hundred percent sure.

5 THE COURT: Okay. Now, you were -- Mr. Dubin
6 was making his opening statement. When you cut out, do
7 you remember what he was talking about?

8 JUROR NO. 5: Not exactly. It all kind of
9 blends.

10 THE COURT: Did you hear about Ms. Blount and
11 her studies of talc?

12 JUROR NO. 5: I believe so, yeah.

13 THE COURT: Okay. Do you have some idea what
14 time it was? You don't know how much longer we went.
15 We stopped as soon as we noticed you were missing. Do
16 you have any idea what time it was when you lost
17 contact?

18 JUROR NO. 5: It was -- I don't know what time
19 exactly. About 12:05, 12:06.

20 THE COURT: Okay. So, thank you.

21 I'm going to ask, Ms. Mendola, that you return
22 [REDACTED] to the main room, and I think we need to
23 talk to [REDACTED].

24 THE CLERK: [REDACTED], at the end of your
25 screen, if you could go ahead and say leave room.

3014

1 (Juror No. 5 exits virtual breakout room.)

2 MR. DUBIN: Your Honor, do you know what time
3 we stopped at the break?

4 THE COURT: I do.

5 MR. DUBIN: Was it 12:04?

6 THE COURT: It was pretty much around then.

7 MR. DUBIN: Right. So I guess I just don't
8 understand the timeline.

9 THE COURT: I don't see how to pin it down any
10 better. He knew you were talking about Dr. Blount.
11 That was at the very end.

12 MR. DUBIN: I guess the question would have
13 been, "How long were you down?" Which you didn't -- we
14 didn't know.

15 MR. SATTERLEY: He couldn't possibly know on
16 the -- I think what he was doing was looking at his
17 phone to see what he -- tried to call or somebody tried
18 to call him or something. He said 12:05, which makes
19 sense, because if he got cut off at 12:04, it was a
20 minute or less.

21 MR. DUBIN: But I guess it would have been a
22 natural question, I think, to say, "About how long were
23 you down?" So if he could say, "I was down for a
24 minute," "I was down for five minutes." I just wanted
25 to know how long he was down for.

3015

1 MS. WHITE: I can just represent to the Court
2 that at 12:02, Ms. Ko and I messaged saying where is
3 Mr. -- Juror Number 5. So it was at least 12:02. I'm
4 just putting that on the record.

5 THE COURT: I'm going to just look at the
6 transcript here for a second.

7 THE REPORTER: Your Honor, can we go off the
8 record while I can tell you the time.

9 (Off the record.)

10 MS. WHITE: Is there any process, Your Honor,
11 that would alert Mr. Green when someone leaves the
12 meeting?

13 THE COURT: He's looking at the screen, and he
14 noticed he wasn't there. He didn't see him go poof and
15 disappear, but he noticed he wasn't there, and that's
16 when he intervened. It seems to me it was at about the
17 point that Mr. Green noticed pretty much right away.

18 MR. DUBIN: I guess I at least would like to
19 know, like, how long the juror feels like he was off,
20 right.

21 THE COURT: I don't really understand, because
22 he reconnected at some point during the break. So I'm
23 not sure what that would tell us.

24 MR. DUBIN: What do you mean -- we need to
25 know -- I mean, did he hear me talking about the -- you

3016

1 know, the Boundy study? Did he hear me talking
2 about -- I can't know, and I cannot be confident at
3 this point what that juror heard or did not hear,
4 particularly when we're relying on a time estimate from
5 him of 12:04, which seems to be wrong, even based on
6 what we observed at 12:02.

7 So I literally can't be confident of what that
8 juror did or did not hear me say. I'm not trying to
9 be -- you know me. I'm not trying to be a pain. I
10 feel like I've raised every single issue about this. I
11 am concerned whether the juror missed something, and I
12 don't know what it is.

13 He should be excused on that circumstance.

14 THE COURT: All right. I think you're asking
15 for something that's not going to be helpful.

16 Do you want me to ask him more about what you
17 said? Do you want to start Dr. Blount over again?
18 What do you want to do?

19 At noon, you had already basically gone through
20 Dr. Blount, because I was paying attention, and I
21 wanted to stop at noon. So by noon, you were
22 substantially through Dr. Blount, and then shortly
23 after noon, you moved on to the other study.

24 MR. DUBIN: Is it clear that that's when he
25 disconnected? I mean, all we know is he's gone at

3017

1 12:02. When was the last time anybody saw him?

2 THE COURT: All right.

3 MR. BOSL: Your Honor, I did see him somewhere
 4 in the 11:50s. I've been scrolling through, probably
 5 not as carefully as Mr. Green, but carefully enough.
 6 During the 11:50s, I had seen all jurors there. I
 7 counted them.

8 And he did tell you that he heard the start of,
 9 at least, Dr. Blount, and so we know that he couldn't
 10 have missed more than a few minutes.

11 THE COURT: So I'm going to explain to the jury
 12 what happened, and why don't you start with Dr. Blount
 13 again. He said he heard about Dr. Blount. I don't
 14 have any other solution. That's overinclusive.

15 MR. DUBIN: Your Honor, I don't -- we are
 16 making -- we will be making a motion about this. I
 17 understand Your Honor is trying to keep going under a
 18 difficult circumstance. I think we've passed the pale.
 19 We'll make a motion about it.

20 But I understand what Your Honor is telling me
 21 to do, and I'll go back and try to remember what I
 22 said. But I think you should not have a juror on this
 23 jury panel who has had a different experience, seen
 24 different evidence -- or different argument than the
 25 other jurors.

3018

1 MR. SATTERLEY: Your Honor, Mr. Dubin has
 2 realtime. If he needs to, he can simply read what he
 3 already said. I mean, that's the solution if he thinks
 4 that the juror needs to hear the exact words he used
 5 again. He's got the slides. He's showing the slides.
 6 So, there's no -- there's no reason why he can't say
 7 that again.

8 I think, obviously, it's prejudicial because
 9 he's going to say the same thing twice to the other
 10 jurors. But I think that's the most reasonable
 11 solution under the circumstances.

12 MR. DUBIN: Can I ask, during the course of
 13 this, for him to shake his head whether he heard
 14 something or not, and I'll move on?

15 THE COURT: Do you want me to talk to him some
 16 more, and I'll ask him what he heard?

17 MR. DUBIN: I'm not doing this in front of the
 18 jury in my opening statement. I'll ask, "Did you hear
 19 this, did you hear that, do you have connectivity
 20 problems, did you hear when I told you that the
 21 government found" -- I'll do my best but --

22 THE COURT: All right. The problem is, we
 23 don't want him to be on camera.

24 MR. DUBIN: Okay.

25 MR. BOSL: I don't think it's appropriate.

3019

1 Your Honor, for counsel to cross-examine a juror about
 2 what he heard or what he didn't hear.

3 THE COURT: Let's have him -- let's have --

4 MR. DUBIN: Okay. I'll do whatever you want.

5 THE COURT: Let's do our best.

6 MR. DUBIN: I will do my best.

7 MR. HUGO: Two points. I have my hand up.

8 Call on me.

9 THE COURT: Mr. Hugo, go ahead.

10 MR. HUGO: Thank you.

11 One, did we find out what [REDACTED] situation
 12 is?

13 THE COURT: We haven't. I'm thinking we should
 14 do that at the end at this point. We're not going to
 15 get her a hotspot in ten minutes.

16 MR. HUGO: Well, we don't know what she's
 17 missed or not.

18 THE COURT: I will ask her -- I'll ask her at
 19 the end of the day.

20 MR. HUGO: All right. And I'll remind,
 21 respectfully, the Court it's CACI Number 100 that
 22 states, "It is important that all jurors see and hear
 23 the same evidence at the same time."

24 THE COURT: All right.

25 MR. HUGO: So it appears that that is not being

3020

1 followed in this case.

2 MR. SATTERLEY: Well, good thing that Your
 3 Honor already told them opening statements is not
 4 evidence. So that doesn't apply. But this can be
 5 remedied as we proposed already.

6 MS. WHITE: Your Honor --

7 MR. DUBIN: Okay. Well, I guess we should get
 8 going. If we need to, we can argue that later, I
 9 suppose, but --

10 (Reporter clarification.)

11 MR. DUBIN: I was just saying let's get going.

12 MS. WHITE: The retailers just would like to
 13 make a record. Can we just make a record so that we
 14 have it --

15 THE COURT: Yes.

16 MS. WHITE: -- that we join in the objection to
 17 keeping this juror? We believe that the law in
 18 California requires that all jurors hear and observe
 19 all the proceedings from equal vantage points. We have
 20 no evidence that that has happened. We believe it has
 21 not happened based on what the jurors have told us, and
 22 we would ask that the juror be excused.

23 THE COURT: Okay.

24 MR. HUGO: O'Reilly joins.

25 MR. DUBIN: Obviously, we join.

3021

1 THE COURT: At this point -- that this point,
 2 that is denied.
 3 So let's go back into the -- into the room.
 4 I'm going to explain to the jurors what the situation
 5 is.
 6 MR. DUBIN: Okay.
 7 MR. HUGO: And then are we going to break early
 8 to get [REDACTED] in?
 9 THE COURT: Well, let's break at 1:30 and then
 10 talk to [REDACTED].
 11 MR. DUBIN: Okay.
 12 MR. SATTERLEY: And, Your Honor, if we need to
 13 get the -- originally, we talked about getting hotspots
 14 and Chromebooks for everybody, and if --
 15 THE COURT: I'm going to ask -- I'm going to
 16 ask that people let us know right now.
 17 THE CLERK: Okay. Your Honor, I'm going to go
 18 ahead and open up the breakout --
 19 THE COURT: Please.
 20 THE CLERK: -- breakout room.
 21 THE COURT: Thank you.
 22 THE CLERK: Everyone else, go ahead and close.
 23 (The following proceedings were held in the
 24 virtual main room in the presence of the jury.)
 25 THE COURT: All right. All right. Ladies and

3022

1 gentlemen, we had a little problem, that [REDACTED]
 2 got disconnected.
 3 Is he here?
 4 [REDACTED], are you here?
 5 JUROR NO. 5: Yes.
 6 THE CLERK: Yes, he is, Your Honor.
 7 THE COURT: Okay. So you got disconnected.
 8 And so what we're going to do right now is ask
 9 Mr. Dubin to go back a little bit and repeat some of
 10 what he said before about Dr. Blount.
 11 And then at the end of the day, I'm going to
 12 ask if any of you need a hotspot or a Chromebook in
 13 order to participate in the trial. I assume that
 14 everybody had adequate connectivity.
 15 I believe [REDACTED] may have an issue, but
 16 let's deal with that at the end of the day. Actually,
 17 let's go till 1:25, and then we'll ask CVN to stop
 18 recording, and we'll deal with that issue.
 19 So I apologize. Hopefully, everybody can stay
 20 connected here for the next hour or so.
 21 Mr. Dubin.
 22 MS. KO: Your Honor, I hate to interrupt, but I
 23 don't see Juror Number 9.
 24 THE COURT: Okay. [REDACTED].
 25 THE CLERK: Your Honor, Mr. Green is checking

3023

1 right now.
 2 THE COURT: Okay.
 3 MR. SATTERLEY: Does it not -- with the
 4 screen-sharing, I can't see. Is it possible,
 5 Mr. Dubin?
 6 THE COURT: Yeah, we are looking right now.
 7 MR. SATTERLEY: Okay.
 8 THE COURT: I'll wait till [REDACTED] is here
 9 before we start.
 10 MR. HUGO: I don't see Number 9 either.
 11 THE COURT: Right. I think he's not here,
 12 but --
 13 THE CLERK: That is correct, Your Honor -- we
 14 do not --
 15 THE COURT: Okay. We're going to have to wait.
 16 (Reporter clarification.)
 17 THE COURT: She said, "We don't see Juror
 18 No. 9."
 19 THE CLERK: Let me try to make a phone call to
 20 him. Just a minute.
 21 THE COURT: Okay.
 22 Okay. [REDACTED] is rebooting and will be
 23 with us in a minute.
 24 THE CLERK: Your Honor, he's back on.
 25 THE COURT: Okay. Great.

3024

1 [REDACTED], welcome back.
 2 Okay. So I'm going to ask Mr. Dubin to resume
 3 his opening statement.
 4 And at the end of this morning's session, I'm
 5 going to ask if anybody believes that they need either
 6 a Chromebook or a hotspot in order to be sure they can
 7 participate, because everybody has to hear the whole
 8 trial. So this is a problem.
 9 But, Mr. Dubin, if you could resume your
 10 opening statement.
 11 MR. DUBIN: I will.
 12 So as His Honor indicated, because of some
 13 connectivity issues, I'm going to start my entire
 14 opening statement over again. No. Just kidding. But
 15 I am going to have to recap for a second a little bit,
 16 okay, and see if I can get some basic messages of
 17 what -- what I was talking about.
 18 The first thing that I think -- you know,
 19 hopefully, everybody heard a bit about what we think
 20 the plaintiffs' experts are doing here to sort of
 21 create an impression of asbestos when it's not there,
 22 but, you know, the mere fact that you see "asbestos" in
 23 a document doesn't mean it was a valid finding. It
 24 doesn't mean that there was asbestos there. So I have
 25 been trying to talk a little bit about what plaintiffs'

3073

1 and relied upon. And so starting as early as
2 potentially tomorrow and Monday with Dr. Horn, we need
3 to know whether or not Your Honor is going to keep out
4 publish medical literature that's been published in
5 peer-reviewed journals.

6 THE COURT: All right. So we're talking about
7 Moline and Kradin?

8 MR. SATTERLEY: Yes, Your Honor.

9 THE COURT: The point there was that they claim
10 confidentiality over the identity of the subjects and
11 couldn't be --

12 MR. SATTERLEY: Right. It would be a violation
13 of HIPAA for them to --

14 MR. HUGO: No, it wouldn't.

15 MR. SATTERLEY: -- to give the names and
16 everything.

17 MR. BOSL: Can I suggest? There's been
18 additional briefing on this. And I would suggest it
19 would be important that the Court read that before we
20 have prolonged argument.

21 THE COURT: I will find it. I will find it.
22 Could somebody just let me know the titles of
23 the briefs that have been filed since the binders were
24 assembled so that I can make sure I've read -- if it's
25 more than one, I can be sure I've read them all.

3074

1 MR. BOSL: I don't have that at my fingertips,
2 but we will get something and send over.

3 THE COURT: I don't need it immediately, but at
4 some point.

5 MR. HUGO: I'm sure Mr. Bosl and I are going to
6 join on this one. I have to eat something before I
7 fall down, even though I'm sitting in my chair.

8 THE COURT: What's the matter with you people?

9 MR. HUGO: Hopkins and Blount, I don't need to
10 deal with tomorrow. Bina and Alex can handle. I have
11 a flight that I need to take to Portland for a hearing
12 on Friday tomorrow. So that's not going to work. I've
13 got to eat something. I'm really serious.

14 THE COURT: That's fine. I'm just suggesting
15 that if you're going to fly, you should use their
16 connectivity and be the first person to argue a motion
17 from an airplane. But if you don't want to do that,
18 that's okay.

19 All right. Tomorrow at 9:00 -- let's come in
20 at quarter of 9:00 so --

21 MR. SATTERLEY: So, for Ms. Clancy's benefit,
22 because Ms. Clancy was involved in all motion issues,
23 3:00 to 4:30 tomorrow?

24 THE COURT: Yes. I have a meeting at 4:30.

25 MR. SATTERLEY: Yes, Your Honor. Thank you.

3075

1 THE COURT: All right. Thank you. See you.
2 Have a good evening.

3 MR. SATTERLEY: Bye bye, now.

4 THE COURT: Bye.

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(Whereupon, the proceedings
were concluded at 1:46 p.m.)

3076

1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF ALAMEDA)

4

5 I, EARLY K. LANGLEY, do hereby certify:

6 That foregoing proceedings were held in the
7 above-entitled action at the time via Zoom and via Zoom
8 audio at the place therein specified;

9 That said proceedings were taken before me via
10 Zoom and via Zoom audio at said time, and was taken
11 down in shorthand by me, a Certified Shorthand Reporter
12 of the State of California, and was thereafter
13 transcribed into typewriting, and that the foregoing
14 transcript constitutes a full, true and correct report
15 of said proceedings that took place;

16 IN WITNESS WHEREOF, I have hereunder subscribed my
17 hand on October 28, 2020.

18

19

20

21

22

23

24

25

EARLY K. LANGLEY, CSR No. 3537
State of California

EXHIBIT F

3077

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF ALAMEDA
3 BEFORE THE HONORABLE STEPHEN KAUS
4 DEPARTMENT 19
5 VIA ZOOM TELEVIDEO CONFERENCE

6 ---000---

7 ROSALINO D. REYES and
8 GEMMA M. REYES,

9 Plaintiffs,

No. RG20052391

10 vs.

11 JOHNSON & JOHNSON, et
12 al.,

13 Defendants.

14 _____ /

15 REPORTER'S TRANSCRIPT OF TRIAL

16 (Opening Statements by Ms. Ko, Ms. White, Mr. Hugo;
17 Allan Smith, M.D., Ph.D.)

18 Thursday, October 29, 2020

19 Full Session

20 Taken before EARLY K. LANGLEY, B.A., RMR, RSA

21 CSR No. 3537

22 and

23 KIMBERLY R. HENDERSHOTT, RPR, CRR

24 CSR No. 12552

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1 A. No.

2 Q. And why is that?

3 A. Well, there is no evidence for it, the cases
4 that arise without asbestosis, without pleural plaques.
5 And in any case, they are different conditions. The
6 asbestosis is in the lungs, and the pleura is the
7 lining of the lung.

8 And if asbestos fibers get to the peritoneum
9 doesn't mean to say they have to have caused one of
10 those lung conditions in order to cause disease inside
11 the abdomen.

12 Q. Now, Doctor, I'm going to shift gears a little
13 bit and ask you some additional questions as it relates
14 to Mr. Reyes particularly.

15 I want you to assume that Mr. Reyes was born in
16 1966 and that his mother used Johnson's Baby Powder on
17 him for diapering and to absorb moisture when he was an
18 infant.

19 Once he was out of diapers, his mother and
20 nanny continued to apply Johnson's Baby Powder to him
21 as a boy one or more times a day.

22 And when he began to bathe himself, he
23 continued to use Johnson's Baby Powder multiple times a
24 day, often more than once a day after showering and
25 whenever it was humid.

3211

1 During this time from 1966 until he moved to
2 the U.S. in 1982, I want you to assume that the talc
3 was sourced from South Korea and contained asbestos.

4 Let me pause there.

5 First of all, is that information that I'm
6 asking you in this hypothetical consistent with the
7 information that you've reviewed in preparing to
8 testify in this case?

9 A. Yes, it is.

10 Q. In your opinion, was that --

11 MR. BOSL: I'm sorry.

12 MS. BROWN: Your Honor, I have an objection to
13 that line of questioning based on lack of foundation.

14 MR. BOSL: I disagree, Your Honor.

15 MS. BROWN: Your Honor, he hasn't established
16 that this witness has reviewed any of that information.

17 MR. BOSL: Actually, I did, Your Honor, in
18 qualifications.

19 MS. BROWN: Your Honor, he just asked him about
20 talc from Korea.

21 THE COURT: So I have to assume -- well, why.
22 don't you ask the witness if he's aware of these facts
23 or -- or, actually, I'm assuming that, in good faith,
24 this is going to be evidence in the case and,
25 therefore, it's appropriate for the witness to answer

3212

1 this hypothetical question.

2 So overruled.

3 MR. BOSL: That's correct.

4 BY MR. BOSL:

5 Q. First of all, Dr. Smith, in your opinion, does
6 that exposure that I've described from 1966 to 1982 --
7 did that exposure -- was that a substantial factor in
8 increasing Mr. Reyes's risk of developing mesothelioma?

9 A. Yes. My understanding is that the talcum
10 powder did contain asbestos, or some of it. And others
11 will testify about that. But that's my understanding,
12 based upon reading and the literature. I'm not expert
13 on it, but nevertheless, my opinions are based on that
14 understanding.

15 So that would mean that he would have inhaled
16 intermittently asbestos from his birth, '66, and I
17 think you said up to 19 --

18 Q. I'm taking little pieces.

19 MR. HUGO: Excuse me. I have an objection now.

20 It seems like the witness is reading something.
21 He looked down. Does he have notes or something in
22 front of him? He's looking again.

23 THE WITNESS: I was sent this hypothetical.
24 Your Honor, to check it out.

25 MR. HUGO: He's not supposed to have anything

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1 in front of him. He's shouldn't be reading anything
2 whatsoever.

3 MR. BOSL: I disagree, Your Honor. I'm sorry.
4 An expert is allowed to have his file in front of him
5 in order to review, Your Honor.

6 MR. HUGO: He's not allowed to look at anything
7 without permission of the Court. Anything at all.

8 THE COURT: I think the protocol was to not
9 have any documents. So why don't we proceed that way
10 for the next six minutes, and then we can deal with it.

11 MS. BROWN: Your Honor, if I could, I would
12 like to establish -- was it Mr. Bosl who provided the
13 document that Dr. Smith has, and if so, could we please
14 mark it as a court exhibit, and could it be provided to
15 all counsel, please.

16 THE COURT: Let's deal with that after the jury
17 has been excused.

18 MR. HUGO: But we don't know what he's looking
19 at. This has not been shown to counsel.

20 THE COURT: I'm asking you to turn it over and
21 not look at it and just follow Mr. Bosl's question at
22 this point.

23 THE WITNESS: Sure.

24 MS. BROWN: And, Your Honor, I understand we
25 want to move along and we'll deal with this in a little

3214

1 bit, but I just want to put my request on the record.
 2 If there are other documents, I'd have the same request
 3 as it relates to those, please.

4 MS. KO: We join in that request, Your Honor.

5 THE COURT: All right. So actually, we have a
 6 hard cutoff at 1:30, so we'll take this up at 3:00
 7 outside the presence of the jury.

8 MS. BROWN: Thank you, Your Honor.

9 THE COURT: Mr. Bosl.

10 MR. BOSL: Thank you.

11 BY MR. BOSL:

12 Q. Dr. Smith, just so that we're clear, what I
 13 sent you is the question I'm asking you right now, this
 14 hypothetical; is that correct?

15 A. Yes.

16 Q. And you gave a deposition in this case, didn't
 17 you?

18 A. Yes, I did.

19 Q. And the defense counsel in this case were able
 20 to ask you questions about what you had reviewed as it
 21 relates to Mr. Reyes's exposure and what your opinions
 22 were as it related to that; correct?

23 A. Yes.

24 MR. HUGO: I object to this. He's implying
 25 that this hypothetical was sent to Dr. Smith prior to

3215

1 his deposition. We don't have that -- we don't have
 2 that information because we don't see it.

3 MR. BOSL: Your Honor, these speaking
 4 objections are completely inappropriate.

5 MR. HUGO: I'd like Mr. Bosl to establish when
 6 this document was sent to the witness. Apparently, it
 7 was today.

8 THE COURT: I don't think he's implying
 9 anything. He's asking self-contained questions and
 10 answers.

11 So overruled.

12 Please proceed.

13 MR. BOSL: Thank you.

14 BY MR. BOSL:

15 Q. Dr. Smith, did you have an opportunity in that
 16 deposition to explain your opinions as to the exposures
 17 that Mr. Reyes had based on your review of depositions,
 18 Dr. Horn's report, and interrogatory answers?

19 A. Yes.

20 Q. Is anything that I'm saying in this
 21 hypothetical in any way different from what you had
 22 reviewed and the opinions you expressed in your
 23 deposition?

24 A. No.

25 Q. Thank you.

3216

1 To be clear, Doctor, I was asking about that
 2 period from 1966 to 1982. Were the exposures that
 3 Mr. Reyes had, based on the hypothetical I gave you, a
 4 substantial factor in increasing his risk of developing
 5 mesothelioma?

6 A. Yes. My understanding is that he did inhale
 7 asbestos, and it did cause his mesothelioma, and all
 8 parts of the dose that increased the risk and caused
 9 the cancer are, in my opinion, substantial factors.

10 Q. Now, moving forward, Dr. Smith, in 1982, he
 11 moved to the United States. I want you to assume that
 12 he moved to the United States and continued to use
 13 Johnson's Baby Powder at least twice a day for his
 14 entire adult life up until approximately 2018.

15 I want you to assume that every time he used
 16 Johnson's Baby Powder, he could see dust in the air.

17 And I want you to also assume that his other
 18 family members regularly used Johnson's Baby Powder in
 19 his presence while he was growing up, and that when he
 20 married his wife, Gemma Reyes, in 1997, she used
 21 Johnson's Baby Powder in his presence each day until
 22 around 2018.

23 I want you to assume that from 1982 until 2004,
 24 the talc was sourced from Vermont, and that from 2004
 25 until approximately 2018, the talc was sourced from

3217

1 China.

2 Do you have an opinion as to whether the
 3 exposures that he had from both the -- from the baby
 4 powder during those years sourced both from Vermont and
 5 China were a substantial factor in increasing his risk
 6 of developing mesothelioma?

7 A. Yes. If they contained asbestos, they would
 8 all add to the dose that increased the risk and caused
 9 the cancer and, therefore, are substantial factors.

10 Q. Now, Doctor, I want you to also assume that
 11 starting in the early 1980s, Mr. Reyes worked on cars
 12 as a hobby and performed multiple brake replacements
 13 over the following years, and that many of those brakes
 14 contained asbestos.

15 Assume that he would remove the dust of the old
 16 brakes using a dry rag or brush, and that sometimes
 17 when he installed and replaced drum brake shoes, he
 18 would sand the surface of the shoe.

19 Given those assumptions, do you have an opinion
 20 as to the cause of Mr. Reyes's mesothelioma? I'm
 21 sorry. Let me strike that.

22 Do you have an opinion as to whether the
 23 exposure from the asbestos-containing brakes were a
 24 substantial factor in increasing his risk of developing
 25 mesothelioma?

3222

1 then look at those with no known exposure to asbestos
2 in the studies, then you tend to find increased risks,
3 around fourfold, fivefold, in mechanics who work on
4 brakes, which is exactly what you would expect. By the
5 way, the comparison with the general population of 80
6 to 90 percent of mesotheliomas in the general
7 population are caused by asbestos, then a group that
8 has a rate similar to that is going to have around
9 about a fourfold, fivefold increased risk. So that's
10 the way it turns out.

11 THE COURT: It's 1:30. And so I just wanted to
12 mention to the jury, we do have CVN recording the
13 speakers, and when you speak and ask a question, they
14 may inadvertently get you on the tape. And they've
15 agreed to blur out anybody, should that happen.

16 But I think the best thing to do is to submit
17 questions through the chat to Mr. Green who will pass
18 them on to me, or right at the very end, if someone has
19 a question, raise your hand, and I'll ask them to stop
20 recording.

21 So I think we're okay.

22 Ladies and gentlemen, that is the end of the
23 week. Thank you very much for paying attention. I'm
24 happy that we got to the evidence, and there will be
25 more next week.

3223

1 And remember over this three days, don't do any
2 research; don't talk to anybody about the case; don't
3 reach any conclusions. You've heard just part of one
4 witness.

5 So I will see you at 9:00 on Monday morning.

6 So let me ask CVN to stop recording.

7 And I see Mr. Hitchcock has a question.

8 All right. They've stopped.

9 Yes, sir. You're on mute, though.

10 JUROR NO. 5: Will we have any chance to speak
11 directly to the witnesses, or will we only be able to
12 hear the questions asked by the plaintiffs and the
13 defendants?

14 THE COURT: If you have a question, please
15 submit it in writing. And my usual procedure is I then
16 pass it on to the attorneys, and then they know what
17 the jury is interested in, and they can ask that
18 question. If somehow that doesn't work out, I may ask
19 the question.

20 JUROR NO. 5: Thank you, Your Honor.

21 THE COURT: But that's the procedure.

22 MR. HUGO: Judge, will you order Dr. Smith back
23 Monday morning at 9:00 a.m., please.

24 THE COURT: Is that the plan, Mr. Bosl?

25 MR. BOSL: I believe that's the plan, yes.

3224

1 THE WITNESS: I will be here.

2 THE COURT: All right. You're ordered back. I
3 will see you then.

4 All right. Mr. Shetty, yes?

5 JUROR NO. 3: We turn in notes at the end of
6 the court case; right? Not --

7 THE COURT: Yes. Notes -- normally here, we
8 keep them in the jury box and you go home without them,
9 but you are home, so that's the way it will be.

10 All right. See you Monday morning. Have a
11 good weekend. Thank you very much. Bye-bye.

12 And counsel, I will see you back at 3:00

13 because Ms. Langley needs to leave now.

14 MS. BROWN: Thanks, Your Honor.

15 (Break taken.)

16 (The following proceedings were reported by
17 Kimberly R. Hendershott, CSR #12552:)

18 THE COURT: Why don't we go on the record and
19 identify everyone for Ms. Hendershott.

20 MR. SATTERLEY: Good afternoon, Your Honor.

21 Joe Satterley for the plaintiffs.

22 MS. CLANCY: Good afternoon, Your Honor.

23 Denyse Clancy for the plaintiffs. Justin Bosl is also
24 here, but he's on mute.

25 THE COURT: Okay. So Johnson & Johnson.

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1 MS. BROWN: Yes. Hi, Your Honor. Alli Brown,
2 Morton Dubin, Kevin Hynes, and Geoff Wyatt for Johnson
3 & Johnson.

4 MR. RISING: Good afternoon, Your Honor, Kevin
5 Rising for Safeway, Longs, and Lucky.

6 MS. KO: Good afternoon, Your Honor. Sandra Ko
7 on behalf of Longs, Safeway, and Lucky.

8 MS. WHITE: Good afternoon, Your Honor.

9 Meredith White on behalf of Lucky's, Longs, and
10 Safeway.

11 MR. HUGO: Edward Hugo and Bina Ghanaat for
12 O'Reilly.

13 THE COURT: Okay. I guess that's it.

14 So left over from this morning, it is true that
15 if witnesses are going to have documents, they need to
16 be exchanged -- the protocol says 48 hours in advance.
17 That may be a little difficult with regard to experts'
18 files or last-minute things.

19 But attorneys ought to have them. And,
20 ideally, I suppose -- I mean, lay witnesses, there's no
21 reason for them to have any documents, I would think.
22 Experts, whatever they have, ought to be exchanged.

23 I'm trying to remember. In terms of files, you
24 have to -- in California state court, you have to turn
25 over documents on which an expert relied in discovery?

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1 MR. BOSL: Sure. And he did produce his files
 2 in deposition.
 3 THE COURT: All right.
 4 MR. SATTERLEY: Or at least a list of reliance
 5 materials.
 6 MS. BROWN: I actually don't have reliance
 7 materials. Can you resend me that?
 8 MR. BOSL: I don't know what you mean. There
 9 is no requirement that you list out all of the articles
 10 that you rely on and produce them prior to.
 11 MS. BROWN: Mr. Satterley just said that he
 12 produced the list of materials.
 13 MR. BOSL: No. He was saying in general. He
 14 wasn't referring to Dr. Smith specifically.
 15 MR. SATTERLEY: That's correct.
 16 THE COURT: Let me try to reframe this. If
 17 there is -- if there are documents that an expert has
 18 often referred to as their file on which they relied in
 19 coming to an opinion.
 20 So that would be, for example, his notes of Mr.
 21 Reyes' medical situation, probably not all the articles
 22 he's read over 40 years, right. Those are exchanged in
 23 expert discovery, I believe, and a report, if there is
 24 one. So that should have been exchanged.
 25 MR. BOSL: That occurred in this case.

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1 THE COURT: Okay.
 2 MS. BROWN: And, Your Honor, could we just get
 3 the communication from Mr. Bosl to the witness
 4 attaching whatever correspondence he had in front of
 5 him today, please.
 6 MR. BOSL: I'm not going to agree that we go
 7 into open-ended discovery, and they would certainly be
 8 entitled to cross-examine Dr. Smith. There's
 9 nothing -- first of all, I didn't anticipate that
 10 Dr. Smith would have anything in front of him during
 11 his testimony.
 12 But there is nothing wrong with discussing or
 13 communicating in this case the hypothetical that I'm
 14 going to ask him. And that's not part of -- there's no
 15 need or right for defendants to start engaging in
 16 discovery now about that sort of a thing. They can
 17 cross-examine him.
 18 MS. BROWN: I completely disagree, Your Honor.
 19 Mr. Bosl is 100 percent right. There is nothing wrong
 20 with it. But if you're going to do it, you have to
 21 hand it over, because that's fair.
 22 And this witness sat on the stand today and
 23 read from correspondence and questions that Mr. Bosl
 24 has provided to him that were not provided to us.
 25 We have an agreement with counsel 48 hours in

3228

1 advance, that we'll exchange documents. I E-mailed
 2 Mr. Satterley and Mr. Bosl asking for it. They said he
 3 would have nothing; no PowerPoint, nothing. It turns
 4 out he does.
 5 Mr. Bosl is right. That's their prerogative.
 6 That's fine. But fair is fair, and that needs to be
 7 produced to us so we can ask questions about it.
 8 THE COURT: So what I think is that any
 9 documents that he had in front of him -- so am I
 10 mistaken? I believe he was testifying in front of the
 11 Kazan offices.
 12 MR. BOSL: No, he was at his home.
 13 THE COURT: All right. His home looks a lot
 14 like your offices.
 15 Any document that he had in front of him ought
 16 to be turned over. And all witnesses should be -- I
 17 mean, you -- I assume you've been served with the
 18 procedures.
 19 MR. BOSL: Yes.
 20 THE COURT: All right. I mean you have them,
 21 because I was looking -- I don't think I E-mailed them
 22 out, but they were filed, and I think the clerk sent
 23 them out.
 24 So all witnesses ought to be informed of that,
 25 and in this case, since he had something in front of

3229

1 him, it should be shared with counsel. I don't think
 2 you need to share all your communications with the
 3 witness.
 4 MR. BOSL: So to be --
 5 MS. SUMNER: I agree, Your Honor --
 6 THE COURT: Not privileged, but I don't know
 7 that they're discoverable.
 8 MR. BOSL: So I want to -- I want to be clear
 9 about one thing, Your Honor. The order about exchange
 10 48 hours before testimony refers to exhibits and
 11 demonstratives being used. Information between counsel
 12 and experts, I agree it's not privileged, and they can
 13 ask about it, they can cross about it.
 14 But the 48-hour order --
 15 THE COURT: You're right.
 16 MR. BOSL: -- as I always understood it, is not
 17 something like this. It's exhibits and demonstratives.
 18 THE COURT: So you're right. I just -- I read
 19 it quickly while he was testifying. Witnesses may not
 20 have any notes or documents with them at the time of
 21 their own appearance other than the trial exhibits
 22 exchanged by the parties or notes or documents that
 23 have been shown to opposing counsel at least 24 hours
 24 in advance of the witness's testimony.
 25 So it would be -- we can change that, but if he

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1 had notes or documents, I guess, it should have been
2 exchanged 24 hours in advance.

3 I believe this is a good-faith situation, so I
4 think if you furnish now, they haven't cross-examined
5 yet, so I think no harm in that.

6 MS. BROWN: Yeah, that's fine. I mean,
7 we're -- we understand, that's fine. Can we get --
8 just get the correspondence sending those questions
9 too, please.

10 THE COURT: If you have some authority for
11 that, I'll order it. But I don't think so.

12 MS. BROWN: Okay. We'll submit something.
13 Okay. I understand.

14 THE COURT: Okay.

15 MR. BOSL: And I guess I should add, Your
16 Honor, I do expect our experts will likely have
17 their -- just to put everybody on notice, our experts
18 will likely have their files with them when they're
19 testifying in case they're asked to refer to their
20 files or in case they have to, as is appropriate,
21 refresh their recollection.
22 I've -- every expert I've ever put on the
23 stand, I think, has brought his file to the Court, his
24 notes from the case with him when he or she goes up and
25 testifies.

3231

1 THE COURT: Right. And these have been
2 exchanged.

3 MR. BOSL: Right. So just putting everybody on
4 notice.

5 MS. BROWN: That's fine. Mr. Bosl --

6 MR. HUGO: The difference is, though, they can
7 have -- they can have material, but if they're reading
8 it or looking at something, we're entitled to know it.
9 That's -- okay.

10 THE COURT: Okay.

11 MS. SUMNER: Thank you.

12 THE COURT: So we've accomplished one thing --
13 I have Ms. Clancy's E-mail, and I've added to
14 that Joint Motion Number 3 to at least identify for me
15 which pleadings I should read. I mean, that's -- it
16 seems to me that Mr. Satterley brought up that asbestos
17 translocates similarly for ovarian cancer as it does
18 for peritoneal cancer. And then we kind of went off to
19 the races and arguments. And I thought people were
20 going to brief it. Maybe you have, but I want to be
21 sure that I'm aware of all the briefs and don't miss
22 one.

23 MS. CLANCY: Your Honor, the supplement to
24 Number 3 is being filed tomorrow morning.

25 THE COURT: All right. So I can't rule on

3232

1 that.

2 Okay. Anything else before we get into the
3 four points that Ms. Clancy put in her E-mail or any
4 other things we should discuss?

5 All right. I don't think we're going to get
6 very far on timing this afternoon, but...

7 MS. CLANCY: I know. It was an ambitious,
8 E-mail, Your Honor.

9 THE COURT: All right. Well, so let's start
10 with Alice Blount.

11 I find her deposition sort of obnoxious and
12 confusing, but it does seem to me that she's saying
13 that she did some testing and then Mr. Dubin
14 establishes -- you know, as far as I can tell, that she
15 bought the talc in 1996, that she tested in 1991.

16 But the very first part where she -- first of
17 all, is it a video or reading the transcript?

18 MR. SATTERLEY: Video, Your Honor.

19 THE COURT: All right. So the part about the
20 red and the blue and all that actually makes sense when
21 you see the video?

22 MR. SATTERLEY: Yes.

23 THE COURT: Because it does not in the
24 transcript, if you're just reading it.

25 Okay. So other than -- so I've read your

3233

1 overall objections that I'm going to allow it, and I'll
2 go over the page and line. Certainly, Mr. Dubin's
3 cross-examination gets included.

4 MR. WYATT: So, Your Honor, could I just focus
5 on one aspect of the general objections that relate to,
6 I think, actually, just a few lines of testimony,
7 but --

8 THE COURT: If you want to highlight any
9 particular thing, feel free.

10 MR. WYATT: Sure. Sure. So there were two
11 general objections that Your Honor just averted to.
12 One was about the sort of the-fact witness testimony,
13 and then there was an objection to the expert type
14 testimony that's part of the deposition as well.

15 And it's really just that expert type. I
16 understand Your Honor's assessment of the rest of it.
17 But there's just a couple spots in the deposition where
18 we think the testimony really crosses the line from
19 fact testimony about here's what I did for my 1991
20 article and into the realm of, you know, here's what I
21 think about talc generally.

22 And so one of those spots is on page -- and I
23 don't know if the Court has the transcript ready, but
24 it's Page 42.

25 THE COURT: Hold on. Let me just get it. It's

3290

1 with Your Honor?

2 MR. HYNES: Joe, we have the availability --
3 tech training for a platform that we will have to use
4 with Dr. Smith on Monday. That can start at 1:00. We
5 can probably be done with that at maybe 1:30, 1:45.
6 Maybe we try to do this at 2:00 o'clock tomorrow.

7 MR. SATTERLEY: Yeah, 2:00 is fine with me.

8 THE COURT: 2:00 to 4:30?

9 MR. SATTERLEY: That's fine with me, Your
10 Honor.

11 THE COURT: All right. Let's do that. Okay.

12 MR. BOSL: Your Honor, before we break for
13 today I should say -- because you were saying --
14 mentioning her again. I think I speak on behalf of all
15 counsel. Thank you, Ms. Mendola, for all her efforts
16 in the last few weeks and continuing. She didn't sign
17 up for this, and she's doing an excellent job.

18 THE COURT: She is. Both the clerks who have
19 been helping us out. Amani also, but Ms. --

20 MR. BOSL: Absolutely.

21 THE COURT: But Ms. Mendola is going above and
22 beyond, because she's maintaining my other matters in a
23 situation where the clerk supervisor tells me that
24 there's no one available to handle them. And I'm not
25 quite sure therefore what's supposed to happen, but

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1 she's gone above and beyond, and it is terrific.

2 So I'll see you all tomorrow at 2:00 o'clock.

3 MS. CLANCY: Thank you, Your Honor. See you
4 tomorrow at 2:00 o'clock.

5 MR. SATTERLEY: Thank you for being patient
6 with us arguing so much.

7 THE COURT: Well, I am concerned that the jury
8 will think you're arguing quite a bit, but that's your
9 problem.

10 MR. SATTERLEY: We do need to address speaking
11 objections that occurred today. We will need to
12 address that.

13 THE COURT: Let's talk about that tomorrow.
14 I'm not quite sure what the solution is, but I guess we
15 have to use breakout rooms.

16 All right. See you tomorrow.

17 ATTORNEY PANEL: Thank you, Your Honor.

18 (Whereupon the proceedings adjourned at 4:30
19 p.m.)
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REPORTER'S CERTIFICATE

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I, KIMBERLY R. HENDERSHOTT, a Certified
Shorthand Reporter, State of California, do hereby
certify that the foregoing transcript was taken before
me at said time and place and constitutes a full true
and correct report of the proceedings that took place;

IN WITNESS WHEREOF, I have hereunder subscribed
my hand this 29th day of October, 2020.

KIMBERLY R. HENDERSHOTT, RPR, CRR
CSR NO. 12552

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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF ALANEDA)
4

5 I, EARLY K. LANGLEY, do hereby certify:

6 That foregoing proceedings were held in the
7 above-entitled action at the time via Zoom and Zoom
8 audio at the place therein specified;

9 That said proceedings were taken before me via
10 Zoom and Zoom audio at said time, and was taken down in
11 shorthand by me, a Certified Shorthand Reporter of the
12 State of California, and was thereafter transcribed
13 into typewriting, and that the foregoing transcript
14 constitutes a full, true and correct report of said
15 proceedings that took place;

16 IN WITNESS WHEREOF, I have hereunder subscribed my
17 hand on October 29, 2020.
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EARLY K. LANGLEY, CSR No. 3537
State of California

Exhibit D

Robert and Catherine Runne

ACSC RG20061377

**DECLARATION OF JENNIFER M. MCCORMICK IN
SUPPORT OF DEFENDANTS KAISER GYPSUM COMPANY,
INC.'S AND HANSON PERMANENTE CEMENT, INC. F/K/A
KAISER CEMENT CORPORATION'S OBJECTION TO
VIRTUAL/REMOTE TRIAL OR, ALTERNATIVELY, TO
ALLOW ALL NON-DELIBERATION TRIAL PROCEEDINGS
- TO BE RECORDED**

The Honorable John R. Ruhl
Trial Date: August 10, 2020
Hearing Date: October 30, 2020

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RAYMOND BUDD, an individual,

Plaintiff,

v.

KAISER GYPSUM COMPANY, INC.

Defendant.

NO. 19-2-14878-1 SEA

**DEFENDANT KAISER GYPSUM
COMPANY, INC.'S MOTION TO
CORRECT AUGUST 27, 2020
VERBATIM TRANSCRIPT OF
PROCEEDINGS**

ORAL ARGUMENT REQUESTED

I. INTRODUCTION AND RELIEF REQUESTED

Kaiser Gypsum Company, Inc. ("Kaiser Gypsum") hereby requests that the Court correct an inaccurate portion of the verbatim transcript of proceedings and the official record in this case pursuant to the inherent authority of the Court and RCW 2.32.250. The following exchange between Kaiser Gypsum's counsel David Shaw and Kaiser Gypsum's expert witness, David Weill, M.D. was inaccurately recorded on the morning of August 27, 2020:

Q. And, Doctor, has there been any epidemiological literature published in the peer-reviewed literature demonstrating an increased risk of mesothelioma from exposure to Calidria?

DEFENDANT KAISER GYPSUM COMPANY, INC.'S MOTION TO
CORRECT AUGUST 27, 2020 VERBATIM TRANSCRIPT OF
PROCEEDINGS - 1

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1 A. Yes.¹

2 Kaiser Gypsum respectfully requests that the Court enter an order that corrects the “yes” response
3 to a “no” response:
4

5 Q. And, Doctor, has there been any epidemiological literature published in the peer-
6 reviewed literature demonstrating an increased risk of mesothelioma from exposure to
Calidria?

7 A. No.

8 II. FACTS

9 A. Background.

10 Plaintiff’s action against Kaiser Gypsum involved claims that Raymond Budd was
11 exposed to asbestos stemming from Kaiser Gypsum joint compound in the 1960s and early
12 1970s. Plaintiff pursued two distinct claims: 1) failure to warn under negligence theory; and 2)
13 failure to warn under strict products liability.² Each theory requires plaintiff prove that the
14 claimed exposure constituted a substantial factor in the development of plaintiff’s mesothelioma.
15 *Marvoudis v. Pittsburgh Corning Corp.*, 86 Wn. App. 22, 32, 935 P.2d 684 (1997). Both
16 Plaintiff’s and Kaiser’s respective expert witnesses testified that causation is established by
17 toxicological evidence; and epidemiological evidence.³

18 At trial, plaintiff claimed and argued that exposure to the asbestos component in Kaiser
19 Gypsum joint compound products, chrysotile asbestos, was a substantial factor in the
20 development of Mr. Budd’s mesothelioma. Plaintiff presented evidence that Kaiser’s joint
21 compound products contained chrysotile asbestos in the 1960s, and that one of the suppliers of
22 asbestos to Kaiser was Union Carbide Company, a dismissed defendant in the case.⁴ Plaintiff’s

23 ¹ Verbatim Transcript of Proceedings dated 8/27/2020 A.M. at 1819:8-12. (emphasis added to inaccurate portion).

24 ² Dkt. #493, Neutral Statement of Case.

25 ³ 8/25/2020 A.M. Proceedings at 1446:22-1447:21; and 08/27/2020 A.M. Proceedings at 1781:21-1782:12.

⁴ 8/18/2020 A.M. Proceedings at 735:25-736:2; and 8/18/2020 P.M. Proceedings at 784:8-785:11.

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1 claims implicated a specific short-fiber chrysotile asbestos product mined and sold by Union
2 Carbide Company called "Calidria."

3 **B. Dr. Weill's Report.**

4 Kaiser Gypsum countered with a defense that its products, assuming Mr. Budd was
5 exposed to them, did not constitute a substantial factor in the development of mesothelioma.
6 Kaiser Gypsum's experts testified that scientific evidence does not support the conclusion that
7 the chrysotile form of asbestos causes mesothelioma in humans at exposure levels that Mr. Budd
8 claimed he encountered. Kaiser Gypsum retained David Weill, M.D., a pulmonologist. He
9 produced a report in this case and was deposed before trial. In his report, Dr. Weill clearly states
10 "pure chrysotile fibers⁵ are not a proven cause of human mesothelioma."⁶ He further states in
11 situations where tremolite or other fiber contamination exists requires "hundreds of fiber years"
12 of exposure before an increased risk of mesothelioma is realized.⁷ He ultimately concludes:

13
14 In conclusion, the asbestos in drywall products was primarily short, Grade
15 7 chrysotile. This type of chrysotile is not biopersistent in the lung. The
16 cumulative exposure levels seen in drywall workers or non-occupationally
17 exposed home renovators are below levels that would be associated with
18 excess risk of an asbestos related disease. There have been no epidemiologic
19 studies of dry wall installers that demonstrated excess risk of mesothelioma
20 due to joint compound exposure.⁸

21
22 As discussed in further detail earlier in this report, Mr. Budd alleges that he
23 worked with asbestos-containing products/materials. Scientific evidence
24 and information I have reviewed over my career indicates that any asbestos
25 exposure Mr. Budd may have had while working with products associated
with your client would have been to chrysotile asbestos only with the
cumulative exposure being insignificant.

23 ⁵ Calidria is a pure chrysotile fiber.

24 ⁶ See Exhibit 1 to Dec. of Hermesen David Weill, M.D.'s January 13, 2020 Report at p. 22-23. See also p. 39 ("For
pure chrysotile fibers there is simply no epidemiological study reporting an increased relative risk.")

25 ⁷ *Id.* at p. 23.

⁸ *Id.* at p. 60.

1 As detailed in this report, many studies have demonstrated that low dose
2 exposure to chrysotile does not significantly increase the risk of
3 mesothelioma (see reference list attached). Accordingly and after carefully
4 taking all of the information discussed within this report into consideration,
5 it is my opinion that any exposure to chrysotile asbestos Mr. Budd may have
6 had associated with your client's products did not elevate his risk for
7 developing mesothelioma or contribute to its development.⁹

8 Dr. Weill's report also specifically discussed short fiber chrysotile asbestos products, such as
9 Calidria. Dr. Weill is clear that there is no epidemiological evidence linking chrysotile asbestos,
10 and short-fiber chrysotile asbestos like Calidria, to mesothelioma:

11 Also, in this century, sophisticated epidemiological analysis has developed
12 models to assess the relative mesothelioma-causing potential of various
13 fiber types and sizes. **The evidence firmly establishes that short
14 structures less than 5 microns in width are not potent for causing
15 mesothelioma. (Berman 2008b).** This is important when considering
16 arguments sometimes made that short fiber chrysotile can "translocate" to
17 the pleura.

18 ...
19 Thus, arguments relying on the presence of short chrysotile fibers do not
20 demonstrate chrysotile causation.¹⁰

21 Further, Dr. Weill's report cites to an animal study (Muhle 1987) that found no
22 mesothelioma from exposure to Calidria.¹¹ Thus, Dr. Weill's report clearly demonstrates his
23 held opinion that there is no epidemiological evidence linking pure chrysotile asbestos or short-
24 fiber chrysotile asbestos to mesothelioma. Calidria falls under both categorizations.

25 C. Plaintiff's Settlement with UCC.

⁹ *Id.* at p. 61.

¹⁰ *Id.* at p. 39 (emphasis added).

¹¹ *Id.* at p. 44-45, fn. 15.

1 Plaintiff's counsel was well aware of Dr. Weill's and Kaiser Gypsum's position on
2 Calidria asbestos as evidenced by the *de minimis* settlement with UCC. If the causative effect
3 of Calidria and mesothelioma was a "live issue" at trial, why would plaintiff settle with the very
4 entity that produced the component product for pennies on the dollar? The miniscule settlement
5 is proof that Plaintiff appreciated UCC's defense articulated in Dr. Weill's report (which is also
6 Kaiser Gypsum's defense) that there is no causative link between exposure to Calidria asbestos
7 and mesothelioma. Plaintiff takes the position that the settlement with UCC was reasonable.¹²
8 This position contradicts any assertion that Dr. Weill could have possibly answered "yes" to the
9 disputed question. Plaintiff cannot have it both ways; if the settlement with UCC was reasonable,
10 then Dr. Weill's answer was "no" and Plaintiff's counsel knew it was "no."

11
12 **D. Plaintiff Moves In Limine to Exclude Literature that Supports Dr. Weill's**
13 **Position on Calidria Prior to His Testimony.**

14 Plaintiff's Motion in Limine to Prohibit Reference to and Reliance Upon Speculative and
15 Unreliable Studies asked the Court to exclude opinions and reliance regarding "speculative and
16 unreliable" asbestos fiber studies.¹³ The Motion was specific and included a request to exclude
17 reference and reliance to the Berman 2008b study, **the study Dr. Weill cited in his report in**
18 **support of his position that there is no epidemiological evidence supporting an inference**
19 **that short-fiber chrysotile asbestos, like Calidria, causes mesothelioma.**¹⁴ Why would
20 plaintiff move in limine to prohibit reliance on the Berman 2008b study if he were not aware of
21 Dr. Weill's position on the lack of epidemiological literature supporting a causative link between
22 short fiber chrysotile asbestos and mesothelioma? The motion was filed because Plaintiff's

23
24 ¹² See Dkts. #751, 752, 802, 803, 806, 807, 823 and 824.

25 ¹³ See Dkt. #451 and 452.

¹⁴ See Dkt. 451 at 1:17 and fn 10 supra.

1 counsel was well aware of Dr. Weill's position and that his answer was going to be and was "no"
2 to the question at issue at trial.

3
4 **E. Events of August 27, 2020.**

5 On August 27, 2020, Kaiser Gypsum called Dr. Weill. Dr. Weill testified via Zoom
6 application which transmitted video and audio from his location in New Orleans, LA, in
7 proximity to where Hurricane Laura made landfall to the west earlier that morning. In fact, the
8 outer bands of the hurricane were battering New Orleans at the time of Dr. Weill's trial
9 testimony, yet rather than delay the trial, Kaiser Gypsum and Dr. Weill proceeded with the
10 testimony. Remote testimony is not the same as in court-room testimony, and there were
11 complications with Dr. Weill's audio transmission in the temporary court room that made it
12 difficult for the court reporter to record the testimony throughout the morning.¹⁵ Following the
13 morning break, Dr. Weill testified via cell phone audio while the Zoom video transmission was
14 displayed. There were still issues with the audio transmission in the courtroom despite switching
15 to a phoneline.¹⁶

16 It is undisputed that Dr. Weill testified that there is no scientific evidence linking low
17 dose chrysotile asbestos exposure to mesothelioma.¹⁷

18 At issue is the following portion of the verbatim transcript of proceedings which reflects
19 the exchange that specifically concerned whether epidemiological literature indicated an
20 increased risk of developing mesothelioma from exposure to Calidria asbestos fibers; again, a
21 key component to Kaiser Gypsum's defense in this case:

22
23
24 ¹⁵ 08/27/2020 A.M. Proceedings Transcript at 1796:19-24; 1798:19-23; and 1811:13-1812:2.

25 ¹⁶ *Id.* at 1818:6-13; and 1832:2-15.

¹⁷ *Id.* at 1784:19-1785:17.

1 Q. And, Doctor, has there been any epidemiological literature published in the peer-
2 reviewed literature demonstrating an increased risk of mesothelioma from exposure to
Calidria?

3 A. Yes.¹⁸

4 Dr. Weill's answer to the above question was not "yes," it was "no." The verbatim
5 transcript of proceedings is incorrect on this key exchange that directly impacts Kaiser Gypsum's
6 causation defense. At the time the testimony was elicited, Kaiser's counsel heard the answer as
7 "no."¹⁹ A "yes" response to the above question would nullify all of Dr. Weill's earlier testimony
8 that day, large portions of his report in this case, and Kaiser Gypsum's defenses; therefore it
9 would have been imperative for Mr. Shaw to correct Dr. Weill if he somehow made a mistake.
10 But he did not make a mistake, the answer was "no" just as Mr. Shaw heard it at the time.

11
12 **F. Events of September 1, 2020.**

13 On September 1, 2020 the parties proceeded to closing arguments. Plaintiff's counsel
14 provided his power point presentation closing slides minutes prior to closing argument.²⁰ Upon
15 review of the same, Kaiser's counsel noticed slide 77 contained an incorrect statement that the
16 parties did not dispute that Calidria chrysotile asbestos causes mesothelioma, a key point of
17 contention in the case as shown above.²¹ Kaiser's counsel reviewed the August 27, 2020 trial
18 transcript prior to closing argument and discovered that the transcript was inaccurate.²² Mr.
19 Shaw objected and brought the issue to the Court's attention during a sidebar before Plaintiff's
20 closing argument.²³ The sidebar itself was not captured on the record at the time it was conducted
21

22 ¹⁸ *Id.* at 1819:8-12. (emphasis added to the inaccurate portion of the transcript.)

23 ¹⁹ Dkt. #764, Declaration of Shaw.

24 ²⁰ 9/1/2020 Proceedings at 2198:5-2199:11; 2203:20-23.

25 ²¹ Dkt. #716 at p. 78; portions of Plaintiff's closing slides.

²² 9/1/2020 Proceedings at 2251:5-2252:12.

²³ *Id.* at 2207:14-17.

1 and was later memorialized following the plaintiff's initial closing argument.²⁴ Kaiser informed
2 the Court during the sidebar that the verbatim transcript of proceedings was incorrect, that Dr.
3 Weill had answered the question "no," and the verbatim transcript of proceedings recorded the
4 answer as "yes."²⁵ Plaintiff's counsel indicated during the sidebar that they heard Dr. Weill say
5 "yes" to the question.²⁶ The Court did not recall the particular exchange and overruled Kaiser's
6 objection to proceeding to closing argument in light of the inaccuracy.²⁷

7 Plaintiff's counsel referenced the portion of the verbatim transcript of proceedings at
8 issue in closing argument, arguing that "[i]t's undisputed that Calidria causes mesothelioma," an
9 incorrect statement in light of Dr. Weill's report and testimony in the case.²⁸ Kaiser Gypsum
10 then proceeded to close its case adapting to the error in the transcript that was brought up by
11 plaintiff in his initial closing. Plaintiff's counsel reiterated the disputed portion of the transcript
12 in rebuttal argument and showed a slide that included an image of the inaccurate transcript itself
13 in closing argument.²⁹

14 **G. Events Following Trial.**

15
16 On the evening of September 2, 2020, the parties received an email from the court
17 reporter who took the testimony during the morning session of August 27, 2020 and indicated
18 that he had an audio recording of the proceedings.³⁰ He invited the parties to listen to the
19 recording the following day, an invitation that Kaiser Gypsum accepted. Both counsel for Kaiser
20 Gypsum listened to the recorded portion at issue in the presence of the Court Reporter from the

21
22 ²⁴ *Id.* at 2251:5-2252:12.

23 ²⁵ *Id.*

24 ²⁶ As did her co-counsel Mr. Madeksho.

25 ²⁷ *Id.* at 2253:14-2254:7.

²⁸ *Id.* at 2242:20-2243:3.

²⁹ *Id.* at 2296:13-24, and Dkt. #716 at p. 113; portions of Plaintiff's closing slides.

³⁰ See Ex. 2 to Hermsen-Dec., September 2, 2020 email from Mr. Moll.

1 Court Reporter's laptop. Both confirm that the audio reflects Dr. Weill's answer was indeed
2 "no."³¹ Both Mr. Shaw and Mr. Hermesen reviewed the disputed response as well as other
3 responses where "yes" or "no" was used by Dr. Weill in response to other questions. A
4 comparison of the disputed response to other known "yes" or "no" responses establishes that
5 the disputed answer is in fact "no" and the transcript is incorrect.

6 On September 2, 2020, Kaiser Gypsum filed a declaration of Dr. Weill in which
7 he³² certifies that his answer was "no." Further, he has consistently held and provided – and
8 continues to hold and provide to this day – opinions and testimony consistent with a "no," just
9 as they were contained in his report and during his testimony at trial. He provided support in his
10 declaration that he has held opinions that there is no epidemiological evidence linking exposure
11 to Calidria to mesothelioma prior to this case; just as he testified at trial in this case. Attached
12 are several examples of testimony consistent with his declaration that demonstrates he responded
13 "no" to the question posed to him at trial.³³

14 The parties both filed motions that sought to preserve evidence.³⁴ Plaintiff's were
15 initially eager to obtain the audio recording, but that eagerness disappeared after plaintiff's
16 counsel listened to the recording. Ms. Caggiano claims, in the declaration she submitted in
17 opposition to Kaiser Gypsum's Motion to Preserve Evidence, that when she listened to the audio
18 recording she heard Dr. Weill respond "yeah," not "yes" to the question.³⁵ The August 27, 2020
19 morning transcript contains thirty examples where a "yeah" response (as opposed to a "yes"
20 response) is recorded.³⁶ While Kaiser does not believe that Ms. Caggiano's revised belief in Dr.

21 ³¹ See Dkt. #764, Shaw Dec. and Dkt. #765, Hermesen Dec.

22 ³² See Dkt. #723 September 2, 2020 Declaration of Dr. Weill.

23 ³³ See Exs. 3, 4, 5 and 6, historical depositions of. Dr. Weill.

24 ³⁴ See Dkts. #725, 726, 763, 764, and 765.

25 ³⁵ See Dkt. #790.

³⁶ See August 27, 2020 A.M. Transcript at 1782:15, 1783:25, 1790:13, 1791:24, 1792:20, 1796:16, 25, 1802:6, 16,
1806:8, 23, 1807:19, 1808:9, 1809:3, 1810:6, 1814:1, 1819:21, 1821:23, 1828:4, 14, 1832:9, 1833:6, 1836:18,
1841:6, 1843:15, 1852:15, 25, and 1854:7.

1 Weill's response is supported by the audio file, that revised claim that the answer was "yeah"
2 unequivocally supports the fact that the transcription is not accurate because if it were a "yeah"
3 response, the Court Reporter should have recorded it as such, just as he did on thirty other
4 occasions that morning.

5 The Court granted Kaiser Gypsum's Motion in part and ordered that the Court Reporter
6 retain the audio file. The Court denied Kaiser Gypsum's Motion in part and did not permit Kaiser
7 Gypsum to extract and copy the audio file for future use, such as this motion.

8 III. ISSUE

9 Pursuant to the inherent authority of the trial court and RCW 2.32.250, whether the
10 evidence Kaiser Gypsum refers to in this motion rebuts the presumption that the verbatim
11 transcript of proceedings concerning a key question and answer is correct; and whether the
12 transcript should be corrected to reflect that Dr. Weill responded "no" to the disputed question.

13 IV. EVIDENCE RELIED UPON

14 Kaiser Gypsum relies upon the Declaration of Tyler J. Hermesen and the exhibits attached
15 thereto, the audio file of the August 27, 2020 A.M. trial proceedings in the Court Reporter's
16 possession, and the pleadings on file herein.

17 V. ARGUMENT

18 1. The Court has Inherent Authority to Manage All Aspects of Trial.

19 The trial Court is much more than an officiating neutral. The trial court has the inherent
20 authority to preside over the trial and make decisions consistent with the statutes and rule of law
21 in order to ensure that justice is properly afforded to the parties:

22
23 It is a well recognized rule, however, that a trial judge presiding at a jury
24 trial is not restricted to the function of a mere umpire in a contest between
25 opposing parties. **He is charged by law and conscience with the
fundamental duty of seeing that truth is established and justice done,**

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1 **under the statutes and rules of law. His control of the situation should**
2 **be manifest and complete at all times.** It is the duty of the trial judge to
3 see that neither side is over-reached by unfair trial tactics. All matters
relating to the orderly conduct of a trial, which are not regulated by a statute
or a rule, are within the sound discretion of the trial judge.³⁷

4 In this instance, it is entirely within the bounds of the trial court to determine whether the
5 verbatim transcript of proceedings that recorded the trial is accurate. Not only does the trial
6 court have a fundamental duty to ensure that "truth is established and justice is done," a statute
7 exists that compels the court to consider a party's evidence that rebuts the verity of the verbatim
8 transcript of proceedings.

10 **2. RCW 2.32.250 Allows a Party to Rebut the Verity of the Verbatim**
11 **Transcript of Proceedings.**

12 RCW 2.32.250 states, in part, that a certified report of a court reporter at a trial or hearing
13 is "accorded verity" but veracity is not absolute and insulated from further review and analysis.
14 The plain language of RCW 2.32.250 establishes a presumption of accuracy, a presumption that
Kaiser Gypsum is entitled to rebut:

16 The report of the official reporter employed by the court or other certified
17 court reporter, or authorized transcriptionist, when transcribed and certified
18 as being a correct transcript of the stenographic notes or electronically
19 recorded testimony, or other oral proceedings had in the matter, **shall be**
prima facie a correct statement of such testimony or other oral
proceedings had....³⁸

20 The key portion of the statute is the inclusion of the term of art "prima facie." The statute's use
21 of the term of art "prima facie" establishes that the statute creates a presumption that the verbatim
22 transcript of proceedings is correct subject to rebuttal and change upon an evidentiary showing.
23 (See Black's Law Dictionary, Ninth Edition at p. 1310; prima facie: "at first sight; on first

24 ³⁷ *Talley v. Fournier*, 3 Wn.App. 808, 819, 479 P.2d 96 (1970). (emphasis added).

25 ³⁸ RCW 2.32.250 (emphasis added)

1 appearance **but subject to further evidence or information;** “sufficient to establish a fact or
2 raise a presumption **unless disproved or rebutted.**” (emphasis added)). Thus, RCW 2.32.250
3 creates a rebuttable presumption that the verbatim transcript is correct; not an absolute indication
4 of verity that is unable to be rebutted. Coupling the plain language of the statute with the inherent
5 authority of the trial court, the court should find that the August 27, 2020 transcript is not accurate
6 as Kaiser Gypsum’s evidence to rebut the presumption of correctness is overwhelming.

7 **3. The Transcript Must Be Corrected.**

8 Engaging in this analysis and correcting the transcript is vital to future proceedings in
9 this case. The verdict is over \$13,000,000.00, far from a trivial award. The inaccurate response
10 was central to Kaiser Gypsum’s defenses in this case, and a correct verbatim transcript of
11 proceedings is imperative for future review on a Motion for New Trial pursuant to CR 59 and on
12 potential future appeals. As shown above, Plaintiff’s counsel was aware of Dr. Weill’s position
13 on Calidria before trial (as evidenced by the UCC settlement, the content of Dr. Weill’s report,
14 and plaintiff’s motion in limine that attacked Dr. Weill’s reliance on literature that concerned
15 short-fiber chrysotile asbestos like Calidria) and was notified by Kaiser Gypsum that the
16 transcript was inaccurate before closing argument. Plaintiff’s counsel nonetheless chose to focus
17 on the inaccurate portion of the transcript, arguing that it was “undisputed” that Calidria causes
18 mesothelioma when Kaiser Gypsum disputed that assertion all along and decided to show an
19 image of the inaccurate transcript itself in closing argument. This argument was not based on
20 evidence, was misleading, and entirely prejudicial to Kaiser Gypsum as it substantiated as
21 “undisputed” an essential element of plaintiff’s claim: causation between Kaiser Gypsum’s joint
22 compound products and mesothelioma. The tactic constitutes misconduct; misconduct that
23 Kaiser Gypsum intends to show was irrevocable and materially altered the outcome of this case.

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1 Misconduct of this kind in closing argument requires a new trial under CR 59; thus it is
2 imperative that the Court correct the transcript in advance of this review.

3 Second, on appellate review, the composition of the record includes transcripts of oral
4 proceedings, for example, a verbatim transcript of proceedings in this case. RAP 9.1(a) and (b)
5 and RAP 9.2. This not only affects the trial itself, but also the record of review on Kaiser
6 Gypsum's upcoming Motion for New Trial. It is imperative that the Court of Appeals is provided
7 an accurate recording of the trial proceedings for use in the appellate review process.

8
9 **4. The Court Must Review the Audio File, Including Portions that Encompass**
10 **Other Yes or No Responses, and a Copy of the Audio File Should Be Placed**
11 **in the Record for this Purpose.**

12 Perhaps the most important piece of evidence for the purposes of this inquiry is the audio
13 recording of the August 27, 2020 morning trial proceedings. Not only does the audio recording
14 cover the disputed response, it contains recordings of Dr. Weill's "yes" and "no" responses to
15 other questions that can be compared to the disputed response. Kaiser Gypsum's counsel made
16 the comparison and the answer is clearly "no." Kaiser Gypsum implores the Court to exercise
17 its inherent authority and listen to the audio file in the Court Reporter's possession and also
18 conduct the same review and listen to the disputed response as well as other examples of "yes,"
19 "yeah," and "no" responses by Dr. Weill.

20 Kaiser Gypsum would make a copy of the audio file an exhibit to this motion, but it is
21 unable to do so as it has not been able to obtain a copy of the file. If this Court engages in the
22 vital review of the audio file itself in conjunction with this motion, it must be marked as an
23 exhibit in the court file for potential further review on appeal as it would constitute an exhibit as
24 part of the record on Kaiser Gypsum's Motion to Correct. See RAP 9.1(a).

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1 **5. The Evidence Overwhelmingly Establishes that the Transcript is Inaccurate**
2 **and Must be Corrected.**

3 The evidence provided in support of this motion overwhelmingly rebuts the presumption
4 of accuracy afforded to the verbatim transcript of proceedings. The evidence establishes that Dr.
5 Weill's response was "no:"

- 6 1. Historical transcripts establish that Dr. Weill has consistently answered similar questions
7 relating to Calidria consistent with a "no" response;
- 8 2. A "no" response is consistent with his report in this case;
- 9 3. Plaintiff's *de minimus* settlement with UCC is consistent with a "no" response and also
10 indicates plaintiff's counsel was well aware of this position;
- 11 4. Plaintiff's Motion in Limine that sought to preclude reliance on literature that supports a
12 "no" response and additionally indicates plaintiff's counsel's appreciation of this
13 position;
- 14 5. A "no" response is consistent with his prior testimony on August 27, 2020;
- 15 6. A "yes" response is entirely inconsistent with Kaiser Gypsum's defense in this case;
- 16 7. Kaiser Gypsum's counsel heard a "no" response at the time the answer was given;
- 17 8. Dr. Weill has filed a declaration under the penalty of perjury that his response was "no;"
- 18 9. Kaiser Gypsum's counsel reviewed the audio file of the response and compared it to other
19 known "yes" and "no" responses and the response is clearly "no;"
- 20 10. Plaintiff's counsel Ms. Caggiano declared that she did not hear a "yes" response, but
21 rather a "yeah" response upon review of the audio file;
- 22 11. Plaintiff withdrew his motion to preserve evidence after actually listening to the audio
23 file; and
- 24 12. The audio file of the disputed response shows that the answer was "no."

25
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1 Accordingly, pursuant to RCW 2.32.250 and the inherent power of the trial Court, Dr. Weill's
2 response must be corrected from "yes" to "no."

3
4 **VI. CONCLUSION**

5 A proposed order is attached herewith.

6
7 DATED this 19th day of October, 2020.

8
9 I certify that the foregoing document
10 contains 4084 words consistent with the
11 local rules.

s/Tyler J. Hermesen

Tyler J. Hermesen, WSBA #43665

Dave A. Shaw, WSBA #8788

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KAISER GYPSUM COMPANY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF ALAMEDA**

RICHARD BURLIN SISK JR. and
CALVENA DEA SISK,

Plaintiffs,

vs.

WEIR VALVES & CONTROLS USA INC.,
et al.,

Defendants.

Case No. RG20055456

*Assigned for Trial To:
Hon. Winifred Smith - Dept. 21*

**[PROPOSED] ORDER GRANTING
DEFENDANT KAISER GYPSUM
COMPANY, INC.'S OBJECTION TO
VIRTUAL/REMOTE TRIAL OR,
ALTERNATIVELY, TO ALLOW ALL NON-
DELIBERATION TRIAL PROCEEDINGS
TO BE RECORDED**

*[Filed concurrently with Objection to
Virtual/Remote Trial; Declaration of Nicole
Brown Yuen and Exhibits; and Proof of Service]*

Trial: February 22, 2021
Dept 21
Judge: Hon. Winifred Y. Smith
Complaint Filed: February 21, 2020

On _____, Defendant KAISER GYPSUM COMPANY, INC.'S
(hereinafter "Kaiser") Objection To Virtual/Remote Trial Or, Alternatively, To Allow All Non-
Deliberation Trial Proceedings To Be Recorded came regularly for hearing in Department 21 of the
Alameda County Superior Court, the Honorable Winifred Y. Smith presiding.

Having considered Defendant's Trial Brief and oral argument, and after full consideration of
the evidence, the Court orders as follows:

**[PROPOSED] ORDER GRANTING DEFENDANT KAISER GYPSUM COMPANY, INC.'S OBJECTION TO
VIRTUAL/REMOTE TRIAL OR, ALTERNATIVELY, TO ALLOW ALL NON-DELIBERATION TRIAL
PROCEEDINGS TO BE RECORDED**

BY FAX

1 **IT IS HEREBY ORDERED** that, good cause appearing, Defendants' Objection is
2 SUSTAINED.

3 **IT IS FURTHER ORDERED** that Trial currently set for February 22, 2021 shall be
4 continued to _____, so that the trial can be conducted safely in person.

5 Alternatively,

6 **IT IS HEREBY ORDERED** that the Court permit the recording of all non-deliberation trial
7 proceedings, including audio and visual recordings of jurors, in any manner reasonably available,
8 and that any such recordings may be used in connection with any trial court or appellate
9 proceedings, if necessary.

10 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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12 Date: February __, 2021

13 Honorable Winifred Y. Smith
14 Judge of the Superior Court
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