

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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ATTORNEYS FOR DEBTOR

In re:

LTL MANAGEMENT LLC,¹
Debtor.

Chapter 11
Case No.: 21-30589 (MBK)
Judge: Michael B. Kaplan

LTL MANAGEMENT LLC,
Plaintiff,

v.

DR. JACQUELINE MIRIAM MOLINE,
Defendant.

Adv. Proc. No. 22-____ (MBK)

COMPLAINT

¹ The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

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INTRODUCTION

1. This is an action to recover for the knowing and repeated disparagement of Johnson’s Baby Powder and Shower to Shower by Dr. Jacqueline Moline.

2. In 2019, Dr. Moline published an article claiming that 33 individuals who used talc powder and developed the asbestos-related cancer mesothelioma had no other potential exposures to asbestos—pointing the finger squarely at talc products such as Johnson’s Baby Powder. *See Exhibit A*, Moline, et. al., *Mesothelioma Associated With the Use of Cosmetic Talc* (2019) (the “Moline Article” or the “Article”).

3. Dr. Moline knew that claim was false when she made it, and that individuals she referenced in her Article had admitted to—and indeed had made claims seeking compensation for—exposure to other sources of asbestos, or recklessly disregarded substantial evidence to the contrary. Dr. Moline nonetheless reiterated her false claims to the media, in scientific literature, at public conferences, and to Congress, judges and juries. The misrepresentation has even infected this Court’s proceedings, where it has been cited in filings, including one as recently as yesterday.

4. Dr. Moline engaged in this widespread deception—not for any laudable public purpose—but for her own personal aggrandizement and gain. She received accolades, speaking opportunities, and acclaim for her self-proclaimed novel and disruptive study. And her disparaging statements provided a foundation for the mass tort asbestos plaintiffs’ bar’s baseless claims against LTL, and they richly compensated her with millions of dollars of fees to act as their “expert” and mouthpiece.

5. Dr. Moline’s deception was recently laid bare by a federal judge in the District Court for the Middle District of North Carolina who rejected the efforts of certain plaintiffs’ law firms for whom Dr. Moline works to keep the evidence of her deceit under seal. *See Exhibit B*,

Bell v. Am. Int'l Indus. et al., No. 1:17-CV-00111 (M.D.N.C. Sept. 13, 2022), ECF No. 398 at 4, 17, 22 (the “*Bell* Opinion”). The *Bell* Opinion excoriated Dr. Moline because of her “concealment” of information about occupational asbestos exposures of Betty Bell—a plaintiff in cosmetic talc litigation who was also confirmed to be one of the individuals included in Dr. Moline’s article. *Id.* at 16-18, 20. The court found that the inclusion of an individual with asbestos exposures apart from allegedly contaminated talc had “direct bearing on the study’s credibility” as it contradicted the entire foundation of the Article. The Court also expressed grave concern about the “groundbreaking nature” and “widespread influence” of the Moline Article “on the cosmetic talc litigation nationwide” given that this critical information had been shielded from public disclosure until the *Bell* Opinion was issued. *Id.*

6. As Dr. Moline intended, her disparaging statements have caused LTL significant and ongoing commercial, reputational, and financial harm. In fact, when LTL’s predecessor announced that it would stop selling talc-based Johnson’s Baby Powder in North America, it cited “declining” demand “due in large part to changes in consumer habits” that were “fueled by misinformation around the safety of the product and a constant barrage of litigation advertising.” The Moline Article is a central element of that misinformation.

7. With her malfeasance now unveiled, Dr. Moline should be held accountable for the egregious harm she has caused to LTL, and should be required to retract her Article and issue corrective disclosures. Further, the deliberate nature of Dr. Moline’s conduct demands a stringent award designed to deter such conduct, which has become a hallmark of the mass tort plaintiffs’ bar’s business model.

8. Indeed, this most recent revelation concerning Dr. Moline’s deceit is only further affirmation of a long-running and troubling trend of doctors leveraging their credentials to

fabricate false narratives and support “junk science” to bolster the mass tort plaintiffs’ bar’s claims.² These purported experts contrive baseless opinions, which plaintiffs’ lawyers then use to confuse juries, secure extreme verdicts, and in turn pay these same experts. And all the while, the firms and experts fight to conceal their duplicity behind protective orders and fight disclosure of key facts that would illuminate this deceit.

9. This cycle must end. The false narratives contrived by purported experts like Dr. Moline cause harm to the manufacturers whose products they target—and to those who are suffering from harm wrongly attributed to such products. Rather than addressing the actual cause of their harm, these individuals are led astray by contrived claims amplified by the law firms that purport to represent their interests. This is a grave wrong that must be righted.

PARTIES

10. LTL is a North Carolina limited liability company with its principal place of business in New Jersey.

11. LTL was created through a corporate restructuring (the “2021 Corporate Restructuring”) of the former Johnson & Johnson Consumer Inc. (“Old JJCI”) that was completed on October 12, 2021. As a result of the 2021 Corporate Restructuring, Old JJCI ceased to exist and LTL and Johnson & Johnson Consumer Inc., a New Jersey company (“New

² As just one example, earlier this month, the Southern District of Florida dismissed thousands of product liability claims advanced against pharmaceutical manufacturers, detailing the unfounded, unreliable and unscientific opinions that had been submitted by a roster of plaintiffs’ experts—including Dr. Anne McTiernan, who also partnered with Dr. Moline to fabricate a false narrative regarding the very talc products at issue here. *In re Zantac (Ranitidine)*, MDL No. 2924, Doc. No. 6120 (S.D. Fla. Dec. 6, 2022). The long history of manipulating science in asbestos litigation, and now talc litigation, is laid out in more detail in Section VI below. Sadly, the Moline Article is just the latest iteration that has come to light, but its impact—particularly as to LTL—has been substantial.

JJCI”), were formed. Old JJCI manufactured and sold Johnson’s Baby Powder and Shower to Shower.

12. As part of the 2021 Corporate Restructuring, LTL was allocated and became solely responsible for certain liabilities of Old JJCI, including liabilities arising from all claims (the “Talc Claims”) relating in any way to injury or damage sustained or incurred in the exposure to talc or talc-containing products (other than claims for which the exclusive remedy is provided under a workers’ compensation statute or similar laws). LTL also was allocated and received certain assets of Old JJCI. Consequently, LTL received all causes of action and privileges that relate to the assets and liabilities allocated to LTL in the Corporate Restructuring, including the claims asserted herein.³

13. On October 14, 2021, LTL commenced a Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of North Carolina. The bankruptcy case was transferred to this District on November 16, 2021. LTL continues to be in possession of its property and is managing its business, as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

14. Defendant Dr. Jacqueline Miriam Moline is an Occupational Medicine specialist and Professor of Occupational Medicine, Epidemiology and Prevention and Internal Medicine, and the Chairperson of the Department of Occupational Medicine, Epidemiology and Prevention at the Donald & Barbara Zucker School of Medicine at Hofstra/Northwell, as well as Director of the Northwell Health Queens World Trade Center Health Program, and Director of the New

³ In discussing events prior to the 2021 Corporate Restructuring concerning talcum powder products, Talc Claims, and talc litigation, “LTL” includes Old JJCI, LTL’s immediate corporate predecessor.

York State funded Occupational and Environmental Medicine of Long Island Clinical Center.

Upon information and belief, Dr. Moline is a citizen of New York.

15. Dr. Moline has been disclosed as a plaintiff's expert in over 200 cosmetic talc/mesothelioma cases against LTL. She has provided deposition testimony in 46 talc/mesothelioma cases against LTL, as well as trial testimony in 16 of those cases.

JURISDICTION

16. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1331, 1332 and 1334. The parties are citizens of different States and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest, costs and fees. Pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over Plaintiffs' claims under the Lanham Act. Pursuant to 28 U.S.C. §§ 157 and 1334, this Court has jurisdiction of the claims asserted herein because they relate to LTL's bankruptcy proceeding.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1409.

18. Venue is further predicated upon 28 U.S.C. § 1391, which provides for proper venue in any district in which a substantial part of the events giving rise to the claim occurred.

FACTS

I. Dr. Moline: Plaintiffs' Paid Expert Witness

19. Dr. Moline has made a career and small fortune testifying on behalf of the mass tort asbestos plaintiffs' bar. She has been testifying as a paid expert in asbestos litigation for over 20 years, always on behalf of plaintiffs. For playing that role, she is paid between approximately \$250,000 and \$300,000 per year (about 40% of her total income) and, in aggregate, has received over \$3 million.

20. In recent years, Dr. Moline's testimony mainly was in mesothelioma cases against LTL (and other manufacturers of talc powder products)—having been disclosed as a plaintiff's

expert in over 200 cases, provided deposition testimony in 46 cases, and testified in 16 separate trials against LTL.

21. Even before the recent controversy concerning the Article, Dr. Moline’s reliability has faced heavy criticism. Notably, multiple appellate courts have excluded her opinions or found them insufficient to establish that, as she posited, the asbestos in the talc products at issue caused mesothelioma.⁴

22. In *Lanzo*—a cosmetic talc case against LTL—the New Jersey Appellate Division “concluded that the trial court erred by allowing ... Moline to provide expert testimony that non-asbestiform minerals can cause mesothelioma.” *Lanzo v. Cyprus Amax Mins. Co.*, 467 N.J. Super. 476, 513 (N.J. App. Div. 2021).

23. In *Olson*—another cosmetic talc case against LTL—the New York Appellate Division reversed judgment entered in plaintiffs’ favor, concluding that Dr. Moline, as plaintiff’s medical causation expert, failed “to establish sufficient exposure to a substance to cause the claimed adverse health effect.” *Matter of New York City Asbestos Litig. (Olson)*, 207 A.D.3d 415, 416 (N.Y. 1st Dep’t 2022).

24. In *Nemeth*—a cosmetic talc case against another company—the New York Court of Appeals again concluded that Dr. Moline’s opinion was insufficient to establish causation.

The Court stated: “[T]he studies or scientific literature cited or relied upon by Dr. Moline” did

⁴ Dr. Moline’s opinions on the cause of mesothelioma also were rejected in cases involving other products. In *Juni*, Dr. Moline testified that asbestos allegedly in Ford Motor Company’s friction products caused the plaintiff’s mesothelioma. The New York Appellate Division found her opinion “insufficient” to, in fact, establish causation: “The evidence presented by plaintiff here was insufficient because it failed to establish that the decedent’s mesothelioma was a result of his exposure to a sufficient quantity of asbestos in friction products sold or distributed by defendant Ford Motor Company.” *In re New York City Asbestos Litig. (Juni)*, 148 A.D.3d 233, 236-37, 239 (N.Y. App. Div. 1st Dep’t 2017). The New York Court of Appeals affirmed. *Matter of N.Y.C. Asbestos Litig. (Juni)*, 32 N.Y.3d 1116, 1122 (2018).

not “provide the necessary support for her conclusion as to proximate causation.” *Nemeth v. Brenntag N. Am.*, 38 N.Y.3d 336, 345 (2022).

25. These appellate courts’ determinations of the unscientific and unreliable nature of the testimony Dr. Moline has offered time and again in various courts against LTL and others affirms Dr. Moline’s proclivity to make knowingly false and disparaging statements published outside of court to the scientific community and general public.

II. Dr. Moline Has Repeatedly Published Disparaging Statements About Johnson’s Baby Powder and Shower to Shower in Multiple Forums

A. Dr. Moline Published an “Influential” and “Groundbreaking” Talc Article

26. Starting in October 2019, Dr. Moline repeatedly and widely published disparaging statements regarding talc powder products, including, in particular, Johnson’s Baby Powder and Shower to Shower.

27. Specifically, Dr. Moline repeatedly asserted that she had conducted the *first comprehensive* case study review of individuals whose *sole exposure to asbestos* was talc, and determined that the asbestos contamination in those talc products had caused their mesothelioma.

28. Dr. Moline concocted this “study”—along with another prominent plaintiffs’ expert witness in asbestos and talc cases (Ronald E. Gordon, Ph.D.)—after courts began routinely excluding Dr. Moline’s testimony regarding causation in other litigation cases, as discussed further below.

29. That scheme culminated in Dr. Moline and her co-authors’ publication of an article in the widely read Journal of Occupational and Environmental Medicine entitled *Mesothelioma Associated With the Use of Cosmetic Talc*. Ex. A, Moline Article. The Article became available online on October 10, 2019.

30. As lead author, Dr. Moline asserted that the Article presented “the first large case series to identify cosmetic talcum powder contaminated with asbestos as the cause of malignant mesothelioma in cosmetic talc users.” Ex. A, Moline Article at 14.

31. Dr. Moline “present[s] 33 cases of individuals with malignant mesothelioma who were exposed to commercial talcum powder products.” Ex. A, Moline Article at 11.

32. These 33 individuals are all plaintiffs in litigation where Dr. Moline serves as an expert witness on behalf of plaintiffs’ counsel. Ex. A, Moline Article at 11.

33. The Article identifies Johnson’s Baby Powder and Shower to Shower as the talc powders most commonly used by the individuals.⁵

34. Dr. Moline also buttressed the Article by citing to 2017 statistics from the website Statista. Ex. A, Moline Article at 11 n. 26. Statista’s 2017 statistics show that Johnson’s Baby Powder was the most commonly used brand of talc, accounting for approximately 52% of users. That website also shows that Shower to Shower was the second most popular brand, accounting for approximately 17% of users (for a total of just under 70%).

35. In the Article, Dr. Moline also relies on litigation testing that specifically names “Johnson & Johnson Baby Powder” and “Shower to Shower.” Ex. A, Moline Article at 14 n. 35.⁶

⁵ The Article asserts that the 33 individuals used 22 different brands of talc. Ex. A, Moline Article at 11, 15. Each brand is identified by a letter A through V. The Article contains “Appendix 3” for “type of talcum powder used,” and provides a publicly available link to the Appendix: <http://links.lww.com/JOM/A651>. Ex. A, Moline Article at 12. The Appendix is a key identifying which brand corresponds to each letter. It identifies Johnson’s Baby Powder as “D” and Shower to Shower as “I.” Ex. A, Moline Article at App’x 3. Of the 33 cases, 19 (over half) used Johnson’s Baby Powder (brand “D”). Ex. A, Moline Article at 15. Johnson’s Baby Powder was used by more individuals in the Article than any other brand. Ex. A, Moline Article at 15.

⁶ This testing was conducted by Dr. William Longo, another professional plaintiffs’ expert witness and a central figure in talc litigation. Dr. Longo suffers from a similar flaw to Dr. Moline, having falsely testified under oath at least 10 times—including in litigation against LTL—that before he was retained in talc cases, his laboratory had never tested cosmetic talc for

36. Notably, however, Dr. Moline *did not disclose* the names of the 33 individuals featured in the Article and has actively *attempted to conceal* the individuals' identities (as discussed further below).

37. The Article states multiple times that the subjects of the Article had *no other exposure to asbestos* apart from alleged exposure to asbestos from talcum powder:

- “Objective: To describe 33 cases of malignant mesothelioma among individuals with no known asbestos exposure other than cosmetic talcum powder.” Ex. A, Moline Article at 11.
- “Results: Asbestos of the type found in talcum powder was found in all six cases evaluated. Talcum powder usage was the only source of asbestos for all 33 cases.” Ex. A, Moline Article at 11.
- “For all 33 cases, other potential exposures to asbestos were considered, with no identified source apart from the talcum powder.” Ex. A, Moline Article at 11.
- “The table identifies talcum powder as the only asbestos exposure these patients have experienced. No individual identified any asbestos exposure apart from contaminated talcum powder from workplace or household exposures.” Ex. A, Moline Article at 14.
- “Like Wagner, we present 33 cases, predominantly of women, who had no known exposure to asbestos other than prolonged use of talcum powder.” Ex. A, Moline Article at 14.

38. Since publishing the Article, Dr. Moline has doubled down on this proposition, testifying that a potential alternative asbestos exposure would have excluded that individual from the Article's case series.

the presence of asbestos. In reality, he had tested cosmetic talc and not found any asbestos, calling the idea of asbestos contamination an “an urban legend.” That all changed when Dr. Longo was hired as a plaintiffs' expert in talc litigation. Suddenly, Dr. Longo began to find “trace” asbestos in virtually every sample of talc that he tested. His new tactic: *Call it asbestos even if it's not*. At this point, Dr. Longo will even call talc “asbestos” by using an unpublished and self-invented method of detection. Other scientists, including another plaintiff-side expert, have said that what Dr. Longo is calling “chrysotile asbestos” is really nothing more than talc. But juries, judges, and the American public are told time and again that Dr. Longo has found asbestos in talc, including in Johnson's Baby Powder.

39. Indeed, as a North Carolina federal court recently explained, the premise that all 33 cases did not have other potential exposures to asbestos apart from talcum powder was the “principal factual underpinning of the article.” Ex. B, *Bell* Opinion at 22.

40. Yet, facts have now come to light making clear that the statement that none of the 33 individuals had any other exposure to asbestos is simply not true, as described more fully in Part III below.

B. Dr. Moline Repeatedly Republished Her False and Disparaging Statements

41. Dr. Moline has repeated the false premise of the Article time and time again, in myriad settings and with large and varied audiences.

1. Time Magazine Article

42. Shortly after the Moline Article became available online, *Time* magazine published a story about the Article on October 15, 2019. **Exhibit C**, A New Study Suggests Tainted Talcum Powder Can Cause a Rare Cancer. Here’s How That Could Play Out in the Courtroom (Oct. 15, 2019).⁷

43. Dr. Moline is quoted in the story saying: “This is the first time that anyone has said, ‘Let me look at all these cases, put it all together and identify the ones where [talc] is the sole exposure.’”

44. She also said: “Everything points to cosmetic talc being the cause” of the Article’s subjects’ mesothelioma.

⁷ <https://time.com/5692129/talcum-powder-mesothelioma/>.

2. Romper.com Article

45. Dr. Moline similarly gave an interview for an article on Romper.com which was published on October 16, 2019. **Exhibit D**, Contaminated Baby Powders May Be Linked To Rare Cancer, New Study Suggests (Oct. 16, 2019).⁸

46. The subject of the Romper piece was the Moline Article: “In a case study of 33 patients, researchers found strong evidence that exposure to asbestos-contaminated talcum powder, such as that’s often used in baby powders, can result in malignant mesothelioma.”

47. That article quotes Dr. Moline:

- “All the folks in the study used cosmetic talc, usually for decades, and they all had mesothelioma with no other asbestos source.”
- “We couldn’t find any other source [of exposure] apart from the cosmetic talc.”

3. Asbestos.com Article

48. Dr. Moline’s *Time* magazine quotes were reproduced in an October 18, 2019 article on Asbestos.com, *Case Study Shows Asbestos in Talc Causes Mesothelioma*.

49. The Asbestos.com article emphasizes that: “‘Everything points to cosmetic talc being the cause,’ co-author Dr. Jacqueline Moline told Time Magazine. ‘This is the first time that anyone has said, ‘Let me look at all these cases, put it together and identify the ones where [talc] is the sole exposure.’” **Exhibit E**, Povtak T, Case Study Shows Asbestos in Talc Causes Mesothelioma (Jan. 5, 2021).⁹

50. Asbestos.com is sponsored by plaintiffs’ law firms concentrating in asbestos litigation.

⁸ <https://www.romper.com/p/contaminated-baby-powders-may-be-linked-to-rare-form-of-cancer-study-suggests-19221063>.

⁹ <https://www.asbestos.com/news/2019/10/18/talc-mesothelioma-case-study>.

4. Congressional Subcommittee Testimony

51. On December 10, 2019, Dr. Moline testified before a House Subcommittee on talc and talc litigation.

52. The day before, CNBC, Reuters, and Yahoo! Finance all covered the upcoming hearing.

53. In her written testimony, Dr. Moline stated: “[M]y colleagues and I reported on 33 individuals with no other identifiable source of exposure apart from cosmetic talc.” **Exhibit F**, Written Testimony of Jacqueline Moline at 2.¹⁰

54. She also repeated in her oral testimony: “This talc exposure was their only exposure to asbestos.” **Exhibit G**, Hearing Transcript at 8 (Dec. 10, 2019).¹¹

55. In her testimony, she discussed “Ms. D” (*i.e.* Ms. Bell discussed at length in Part III.B below). Dr. Moline testified that Ms. D “had worked in various industries, including textile and tobacco, and had no exposure to asbestos” there. *Id.* at 9.

56. The witnesses who testified and the Representatives speaking throughout the session referred many times to Johnson & Johnson brand talcum powder products.

57. Indeed, the subcommittee’s chairman began the hearing discussing the allegations of asbestos in “Johnson & Johnson’s talc-based baby powder.” *Id.* at 2.

58. And in his opening statement, he displayed images of Johnson’s Baby Powder:

¹⁰ <https://www.congress.gov/116/meeting/house/110311/witnesses/HHRG-116-GO05-Wstate-MolineJ-20191210.pdf>.

¹¹ <https://docs.house.gov/meetings/GO/GO05/20191210/110311/HHRG-116-GO05-Transcript-20191210.pdf>.



59. The congressional hearing was broadcast on C-SPAN, which also posted the hearing on YouTube.

60. The relevant Congressional Committee put out a press release listing among the “takeaways” from the hearing that “Dr. Jacqueline Moline testified that individuals who have *only* been exposed to asbestos through the use of talc-based Johnson & Johnson Baby Powder have developed mesothelioma.”¹²

61. The websites mesothelioma.com and mesothelioma.net—which are sponsored by plaintiffs’ law firms specializing in asbestos litigation—published articles covering the hearing.¹³ One story stated that “Dr. Moline “offered insights from 33 mesothelioma patients who were

¹² <https://oversight.house.gov/news/press-releases/oversight-subcommittee-held-second-hearing-on-the-public-health-risks-of>.

¹³ <https://www.mesothelioma.com/blog/congressional-hearing-examines-asbestos-detection-in-talc>; <https://mesothelioma.net/mesothelioma-news/congressional-hearings-regarding-asbestos-in-talc-features-mesothelioma-victims-testimony/>.

exposed to asbestos from talcum powder” and that “talcum powder was the only instance of asbestos exposure among all 33 patients in the study.”

5. 2020 ADAO “Conversation”

62. On May 13, 2020, Dr. Moline participated in an Asbestos Disease Awareness Organization event by Zoom called *ADAO Conversation with Dr. Jacqueline Moline & Robert Sussman Discuss Asbestos, Talc, Prevention, and Policy*.¹⁴

63. During that event, she said of the Article: “What we found in these individuals is that these 33 did not have any other known source of asbestos exposure that we could discern from the information that we were provided.”

64. She also said: “[R]eally the whole point of our paper” was “to say that mesothelioma can occur in individuals whose sole exposure is to cosmetic talc.”

6. Statement on EPA’s Risk Evaluation of Asbestos

65. On March 30, 2020, the EPA invited public input on its draft risk assessment of asbestos.

66. Dr. Moline submitted a comment, which was posted on the EPA’s website on May 31, 2020. **Exhibit H**, Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals Review of Risk Evaluation for Asbestos, Comment submitted by Jacqueline Moline (May 31, 2020).¹⁵

67. In her statement, she wrote: “[M]y colleagues and I reported on 33 individuals with mesothelioma with no other identifiable source of exposure apart from cosmetic talc.”

¹⁴ <https://www.youtube.com/watch?v=PUiFIYujjQ>.

¹⁵ <https://www.regulations.gov/docket/EPA-HQ-OPPT-2019-0501/comments?filter=moline>.

68. Dr. Moline’s statement was also made available on the Asbestos Disease Awareness Organization’s website.¹⁶

7. 2022 ADAO Asbestos Awareness and Prevention Conference

69. On September 17, 2022, Dr. Moline gave a presentation at the *2022 ADAO Asbestos Awareness and Prevention Conference*.¹⁷ That presentation was just four days *after* the federal district court in *Bell* (discussed in Section III) issued its opinion identifying alternative asbestos exposures beyond allegedly contaminated talc for one of the individuals in the Article.

70. She spoke during Session II: Medical Advancements: Diagnosing and Treating Mesothelioma and Other Asbestos-Related Diseases.

71. During her presentation, she spoke extensively about the Article.

72. Although the *Bell* Court had just identified alternative asbestos exposures for Ms. Bell (aka Ms. D from her congressional testimony), and castigated Dr. Moline for stating otherwise in her Article, Dr. Moline made no reference to that alternative asbestos exposure. Instead, Dr. Moline reiterated once again that, with respect to the individuals referenced in her Article, that “[w]e were unaware of any other asbestos exposure apart from talc.”

73. She also presented a slide regarding her Article stating: “Talcum powder as the only asbestos exposure”:

¹⁶ <https://www.asbestosdiseaseawareness.org/wp-content/uploads/2020/05/JACQUELINE-MOLINE-EPA-Statement.pdf>.

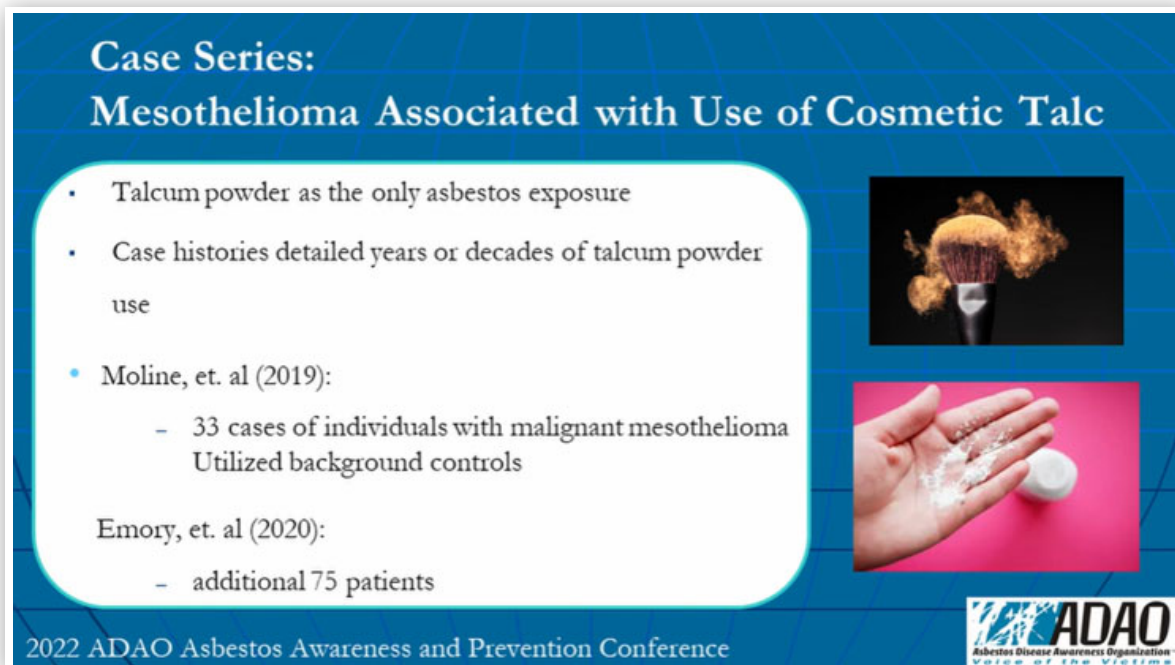
¹⁷ <https://www.youtube.com/watch?v=sqWAZNM9SCA&t=20s>.

Case Series:
Mesothelioma Associated with Use of Cosmetic Talc


- Talcum powder as the only asbestos exposure
- Case histories detailed years or decades of talcum powder use
- Moline, et. al (2019):
 - 33 cases of individuals with malignant mesothelioma Utilized background controls

Emory, et. al (2020):

- additional 75 patients



2022 ADAO Asbestos Awareness and Prevention Conference



8. Dr. Moline Northwell Health Web Bio

74. Dr. Moline has a web bio on Northwell Health’s website. **Exhibit I**, Jacqueline Moline, MD, MSc, Feinstein Institutes for Medical Research Northwell Health.¹⁸

75. Even after the central premise of the Article was exposed as false by the *Bell* Court, her web bio *to this day* reads: “Dr. Moline published the first case series, identifying cosmetic talc as the asbestos source leading in mesothelioma in 33 individuals.”

9. Dr. Moline and Other Plaintiffs’ Experts Cite the Article in Court

76. In addition to publicly and widely disseminating her false statements, Dr. Moline (and other plaintiffs’ experts) have routinely referenced the Article in numerous cosmetic talc trials across the country. Ex. B, *Bell* Opinion at 17-18.

¹⁸ <https://feinstein.northwell.edu/institutes-researchers/our-researchers/jacqueline-moline-md-msc>.

77. After the online publication of the Article, Dr. Moline was disclosed in 58 other cosmetic talc/mesothelioma cases against LTL alone, where she began to routinely rely on the Article as the centerpiece of her testimony.

78. In September 2021, a California state court ruled over LTL's objection that "Plaintiffs' experts can rely on the Article and state that they relied on it."

79. Dr. Moline then testified for the first time at an LTL talc trial (*Shawn Johnson*) about the Article.

80. That testimony included a statement that she "picked people [for the Article] who didn't have any other exposure other than cosmetic talc" to "the best of [her] knowledge."

81. But during cross examination, Dr. Moline refused to identify any of the subjects of the Article: "I will not disclose the name of the individuals in the paper."

82. Compounding this prejudice, another of plaintiff's experts (Dr. Allan Smith) testified that the Moline Article as a "main source of information that [he is] aware of today" and that he relies upon to testify that talcum powder causes mesothelioma.

83. Shortly thereafter, in another LTL talc trial (*Prudencio*), another California court permitted plaintiffs' experts to rely on the Moline Article and give a summary of it "consistent with the established rules of expert reliance."

84. And these two LTL trials were not the only cases where an expert has relied on the Moline Article. As the North Carolina federal court explained: "other expert witnesses have begun relying on the article for the basis of their opinions." Ex. B, *Bell* Opinion at 17-18.

85. In 63 other cases against LTL, a combined 20 other plaintiffs' experts relied on the Moline Article in either their deposition or court disclosures: Drs. Brody, Castleman, Cohen,

Compton, Dodson, Egilman, Emory, Finkelstein, Gordon, Haber, Horn, Kanarek, Kradin, Longo, Maddox, Madigan, Radecki, Rigler, Verschraegen, and Zhang.

86. Even here, in the LTL bankruptcy, the Article already has made an appearance. More specifically, when Mr. Satterley moved for relief from the preliminary injunction enforcing the bankruptcy stay on litigation, he submitted an expert affidavit which relied on the Moline Article. And as recently as December 15, 2022, Mr. Satterley submitted an update to this Court with an expert report from a different expert witness that also relied upon and cited to the Moline article.

III. Dr. Moline Knew Her Statements Were False or Recklessly Ignored Available Information Demonstrating Their Falsity When Made

87. When Dr. Moline published her statements in the public domain, to the scientific community, and in various courts across the country, she knew that the premise of her position—that she conducted a study of 33 mesothelioma patients whose sole exposure to asbestos was through talc powder—was false or recklessly ignored available information demonstrating its falsity.

88. The truth is that Dr. Moline was intimately familiar with the case histories of the 33 individuals referenced in the Article from her role as a plaintiffs' expert in the underlying tort cases in which those individuals had asserted claims against LTL and others.

89. In other words, Dr. Moline knew full well that Ms. Bell, which the Article counts amongst the 33 individuals and whom she referenced repeatedly in various public statements inside and outside litigation, as well as others, had admitted to and claimed compensation for exposure to asbestos from other sources, or recklessly disregarded substantial evidence of alternative exposure.

A. Dr. Moline’s Intimate Knowledge of the True Asbestos Exposures of the 33 Individuals Referenced in the Article

90. To truly understand Dr. Moline’s familiarity with the 33 individuals covered in the Article, one must start with the very first cosmetic talc/mesothelioma case to go to trial involving Johnson’s Baby Powder—a case called *Herford*, in which Dr. Moline was one of plaintiffs’ key experts.

91. During the *Herford* trial, Dr. Moline testified: “There are about 41 cases of individuals that I’ve reviewed records of [or] have in some cases had the opportunity to evaluate.” Earlier, she had acknowledged in her deposition that all 41 of those cases involved people who came to her through litigation—in other words, each of them were plaintiffs in mesothelioma cases.

92. Dr. Moline was examined at trial about her record review and evaluation of the 41 cases. When asked “And would those evaluations include learning about their occupational and environmental history of exposures,” Dr. Moline responded: “Yes.”

93. On the Northwell website, Dr. Moline is quoted as saying that it is “important to take a comprehensive exposure history when evaluating patients presenting with cancers like mesothelioma.”¹⁹

94. Notably, the *Herford* court precluded Dr. Moline from testifying about her conclusions regarding the 41 individuals because she had evaluated them in “medicolegal matters” not in the “clinical context.”

¹⁹ <https://feinstein.northwell.edu/news/the-latest/talc-powder-exposure-linked-to-mesothelioma>

95. For the same reason, other courts thereafter repeatedly barred Dr. Moline from offering testimony on her litigation case review of these various plaintiffs.²⁰ And so, for a period, Dr. Moline was stymied.

96. But Dr. Moline ultimately pivoted. To circumvent these piling and adverse rulings, Dr. Moline published the Article to add a veneer of credibility to the other plaintiffs she wanted to testify about, and her claim that their sole source of asbestos exposure was talcum powder.

97. That veneer has been dispelled by recently uncovered evidence disclosed in the *Bell* decision that demonstrates, unequivocally, that Ms. Bell's exposure to asbestos reaches well beyond exposure to talc, as Dr. Moline knew full well.

B. The Record Now Shows that Individuals in the Article Claimed Exposures to Asbestos from Sources Other than Talc

98. In September 2022, the *Bell* court unveiled the “concerning” contradiction between (1) Dr. Moline's representations that her study was confined to individuals whose sole exposure to asbestos was talc, and (2) the evidence that she knew they had other exposures. Further scrutiny of the record indicates that this concerning contradiction extends beyond the individual who was the plaintiff in the *Bell* case.

1. Case #9

99. The falsity of the Moline Article was most recently revealed in the context of the *Bell* case.

²⁰ *Fong et al. v. Johnson & Johnson, et al.*, No. BC675449 (Super. Ct. Ca., L.A. Cnty.); *Hayes v. Colgate-Palmolive Co., et al.*, No. 16-CI-003503 (Jefferson Cir. Ct., Ky.); *Olson et al. v. Brenntag North America, Inc., et al.*, No. 190328/2017 (Supr. Ct. N.Y., N.Y. Cnty.); *Pipes v. Johnson & Johnson, et al.*, No. CJ-2017-3487 (Dist. Ct., Okla. Cnty., Okla.); *Lanzo v. Cyprus Amax Minerals Co., et al.*, No. MID-7385-16 AS (Super. Ct. N.J., Middlesex Cnty.); *Weirick v. Brenntag N. Am., Inc.*, No. BC656425 (Super. Ct. Ca., L.A. Cnty.).

100. There, another talc defendant, American International Industries (“AII”), was able to uncover critical evidence regarding Case #9 from the Moline Article: Betty Whitley Bell (a.k.a. “Ms. D”).

101. Ms. Bell worked most of her career as a hairdresser. She alleged using “Clubman” brand talc powder for over thirty years, beginning in the 1970s. She was diagnosed with mesothelioma in July 2015. Ex. B, *Bell* Opinion at 2.

102. Ms. Bell filed workers’ compensation claims with the North Carolina Industrial Commission in September 2015, asserting, under criminal penalty for false statements, that she was exposed to asbestos during prior employment with two textile employers—Hoechst Celanese Corporation and Pillowtex Corporation. Ms. Bell’s worker’s compensation claims were eventually dismissed without prejudice. Ex. B, *Bell* Opinion at 2.

103. Ms. Bell filed a lawsuit²¹ in February 2017, arguing that exposure to asbestos in Clubman talc powder—not from her prior employment with textile manufacturers—caused her mesothelioma: *Bell v. Am. Int’l Indus.*, No. 17-cv-111 (M.D.N.C.).²²

104. Ms. Bell’s workers’ compensation claims were discussed at her deposition and included on Dr. Moline’s list of materials reviewed in her 2016 expert report in Ms. Bell’s case. That means Dr. Moline *knew or recklessly ignored available information* at the time she wrote and published the Article. Indeed, the Article itself states: “Data gathered for all 33 patients were

²¹ Ms. Bell passed away in June 2017. The executor of her estate, Lloyd Bell, was substituted as Plaintiff in this action after Ms. Bell passed.

²² Attempting to hide or ignore asbestos trust claims is nothing new in cosmetic talc litigation. In one matter with LTL, the plaintiffs’ law firm Weitz & Luxenberg (a firm that has retained Dr. Moline 30 times in cosmetic talc cases against LTL) failed to turn over asbestos trust claims that they prepared themselves and were legally obligated to provide.

gathered from each individual’s medical records and sworn testimony (deposition transcripts) of individuals.” Ex. A, Moline Article at 11.

105. Because the facts of Ms. Bell’s case paralleled the description of Ms. D in Dr. Moline’s congressional testimony, defendant AII—who had purchased the Clubman brand in the late 1980s—suspected that Ms. Bell was one of the 33 anonymous individuals included in the Article. Ex. B, *Bell* Opinion at 4.

106. In a deposition for a different mesothelioma case, AII asked Dr. Moline for specific information about the 33 individuals from the Article. As she did in the LTL cases, Dr. Moline declined to answer, claiming confidentiality concerns. Ex. B, *Bell* Opinion at 4.

107. Instead, the plaintiff’s counsel advised AII that if it was determined to continue seeking information regarding the 33 individuals, it would have to subpoena Northwell Health (Dr. Moline’s employer). When AII did so, plaintiff’s counsel moved to quash the subpoena. Ex. B, *Bell* Opinion at 4-5.

108. But AII persisted. And after AII provided Northwell with a HIPAA authorization form signed by the plaintiff, Northwell produced a single five-page document. The document is a spreadsheet containing information on each of the 33 individuals studied in the Article. Importantly, the entire document is redacted except for the row headings and the column listing Ms. Bell’s information, which identified her as Case #9. Ex. B, *Bell* Opinion at 5:

Last Name	First Name	Date Dx	DOB	Case
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Bell	Betty Rose	7/20/2016	[REDACTED]	9
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

109. Upon learning that this document had been disclosed, plaintiff’s counsel filed an emergency motion for a protective order to preclude any inquiry into the identities of these individuals. The motion also sought the destruction of all copies of the Northwell document and requested that the document not be disseminated in Ms. Bell’s case or any other forum. Ex. B, *Bell* Opinion at 5.

110. The plaintiff’s counsel also reported AII’s counsel to the Department of Health & Human Services for supposedly violating Ms. Bell’s HIPAA rights. Counsel “requested” that Northwell claw back the document, threatened to also report Northwell’s *counsel* to HHS if he did not, and stated that she was “considering reporting [his] violation to the New York bar as this is a staggering breach.”

Please provide all correspondence with counsel for All and a copy of the HIPAA.

I have reported Mr. [REDACTED] to HHS for violating Ms. Bell's HIPAA rights. I again renew my request that you immediately claw back this production or I will have no choice but to report you as well.

We will be filing a motion for a protective order and sanctions against Mr. [REDACTED] in the Bell matter. I am also considering reporting your violation to the New York bar as this is a staggering breach. You had no right to produce any information regarding my client based on the misuse of a HIPAA authorization provided to you not by my client and without any notice to my client while a motion to quash was pending. I am just flabbergasted by your reckless conduct.

111. The plaintiff's counsel later conceded in court that *none* of the information in the document Northwell provided to AII is HIPAA protected and therefore no HIPAA-protected information was at risk of disclosure. Ex. B, *Bell* Opinion at 36. AII had in any event provided Northwell with a HIPAA authorization form signed by the plaintiff. Ex. B, *Bell* Opinion at 5.

112. In ruling on the plaintiff's motion for a protective order, the magistrate judge held that the Northwell document could be used in Ms. Bell's case, but that it, and the information therein confirming Ms. Bell was one of the 33 individuals the Article studied, was "confidential and limited solely to this case." The magistrate judge explicitly stated that this limited protective order could potentially be reconsidered as the case progressed. Ex. B, *Bell* Opinion at 6.

113. In response, Northwell filed a Motion to Intervene and Extend Protective Order and sought to prevent defense counsel from questioning Dr. Moline about any link between Ms. Bell and the Article. Ex. B, *Bell* Opinion at 6.

114. Before Northwell's motion was adjudicated, the plaintiff essentially withdrew Dr. Moline as an expert by not offering her deposition by the court-ordered deadline. Accordingly, in February 2021, the magistrate judge denied Northwell's intervention motion as procedurally moot and untimely, as well as substantively meritless. Ex. B, *Bell* Opinion at 6.

115. A few months later, AII filed a motion requesting that the court vacate the magistrate judge’s protective order so that the information that it had learned could be used in defending other cases. Ex. B, *Bell* Opinion at 6-8.

116. The *Bell* court did in fact vacate the earlier protective order—allowing the Northwell document to be used in other cases—and unsealed numerous items on the docket. Ex. B, *Bell* Opinion at 36-40.

117. The court took great lengths to explain why the revelations uncovered in *Bell* should be made publicly available. The court began by observing the impact of the revelations on the Article’s credibility: “Ms. Bell’s employment history, as well as her belief that she may have been exposed to asbestos during her textile employment, undermines the weight of Dr. Moline’s finding that each of the ‘33 cases ... had no known exposure to asbestos other than prolonged use of talcum powder.” Ex. B, *Bell* Opinion at 16.²³

118. It went on: “The fact is that at least one study participant reported to a state agency that she did have another known asbestos exposure, at least one known to the study participant. Given the groundbreaking nature of the article and its express premise that all individuals studied had no known alternative asbestos exposures, the fact that one of the individuals claimed otherwise has direct bearing on the study’s credibility. This court expressed concern about this seeming contradiction before and does so again.” Ex. B, *Bell* Opinion at 17.

²³ It’s telling that one of the co-authors of the Moline Article is pathologist Dr. Ronald Gordon, an individual who has served as a plaintiff’s expert witness in asbestos and cosmetic talc litigation. Dr. Gordon was arrested in the early 1990s for conspiracy to commit bank fraud and money laundering, and he admitted to committing those crimes in the course of testifying as a cooperating witness against a co-defendant. Yet Dr. Gordon repeatedly provided false testimony concerning this incident, including falsely testifying that he had never been arrested; never falsified a document; and that he had only ever testified in court as an expert witness.

119. The court stated its “concern is magnified considering the influence the article has had on cosmetic talc litigation nationwide.” Ex. B, *Bell* Opinion at 17.

120. The court pointed to the fact that “Dr. Moline gave testimony discussing her article in a California state court cosmetic talc trial” and that “plaintiff’s counsel relied on Dr. Moline’s article in his closing argument to connect cosmetic talc exposure to asbestos.” Ex. B, *Bell* Opinion at 17.

121. Part of the court’s concern included that “other expert witnesses have begun relying on the article for the basis of their opinions.” And the court even noted that “[w]hen entering bankruptcy because of cosmetic talc liabilities, one prominent cosmetic talc seller [i.e., LTL] specifically discussed the article’s integral role in supporting the plaintiffs’ claims.” Ex. B, *Bell* Opinion at 18.

122. The court concluded: “In this case, a principal factual underpinning of the article is that in all thirty-three cases studied ‘no identified source apart from the talcum powder’ was identified. The absence of any specific information on the identities of the individuals studied precludes inquiry into the basis of the factual underpinning of no known exposure to asbestos other than talcum powder.” Ex. B, *Bell* Opinion at 22.

123. Lest there be any doubt about the brazenness of Dr. Moline’s knowing or reckless disregard for the truth, at a public conference on September 17, 2022—*just four days after* the *Bell* court issued its decision confirming Ms. Bell’s claims for compensation from other sources of asbestos exposure and Dr. Moline’s knowledge of the same—Dr. Moline *again* asserted that, with respect to the cases in her Article, she was “unaware of any asbestos exposure apart from talc.”

124. In other words, even now and despite the *Bell* order, Dr. Moline refuses to acknowledge that the foundational premise of the Article has been proven false.

125. What's more, although Ms. Bell's example was recently uncovered after extensive discovery efforts in North Carolina federal court, she is not the only individual in the Article with other asbestos exposures. The record demonstrates that additional individuals in the Article had alternative sources of asbestos exposures beyond alleged contamination in talc.

126. What LTL and others have now found is that (1) there are several cases in the Article that can be matched back to specific litigation plaintiffs with documented alternative asbestos exposures, and (2) these alternative asbestos exposures were known to Dr. Moline, but not disclosed in her Article.

127. Below are four additional examples where it appears that alternative sources of exposure were present and known to Dr. Moline at the time the Article was written:

2. Case #6

128. The falsity of the Moline Article is also evident given the information uncovered in the *Lanzo* case.

129. In 2016, Stephen Lanzo brought a claim against LTL alleging that he was exposed to asbestos through use of Johnson's Baby Powder.

130. Dr. Moline served as an expert witness in Mr. Lanzo's case against LTL—she served an expert report, sat for deposition, and testified at trial.

131. During the course of that case, alternative sources of asbestos exposure beyond alleged contamination in talc were identified. Additionally, evidence of the presence of commercial asbestos—not a type of “asbestos” allegedly present in Johnson's Baby Powder—was found in plaintiff's tissue.

132. Despite this, Dr. Moline included Mr. Lanzo in her Article as Case #6:

	Mr. Lanzo	Case #6
Gender	Male	Male
Year of Diagnosis	2016	2016
Age At Diagnosis	43	43
Mesothelioma Site	Pleural	Pleural
Talcum Powder Brand	Johnson’s Baby Powder	D (Johnson’s Baby Powder)
Estimated Years Of Use	40	40
Occupation	Finance	Finance
Other Details	<p>Moline Expert Report at 5, 14</p> <p>“developed chest pain after playing hockey in 2012”</p> <p>“Mr. Lanzo recalled using the talcum powder in the bathroom or his room, and that there would be powder on the floor.”</p> <p>“He applied the talcum powder to his torso, groin, legs and back, often twice a day after showering.”</p> <p>“He recalled getting mouthfuls of powder during the application.”</p>	<p>Moline Article at 13-14</p> <p>“developed chest pain after playing hockey in 2012”</p> <p>“Case 6 recalled using the powder in the bathroom and in his room, and that there would be powder on his floor.”</p> <p>“He applied the talcum powder directly to his torso, groin, legs, and back, often twice a day after showering.”</p> <p>“He recalled getting mouthfuls of powder during the application.”</p>


133. As further background, Dr. Moline states in her Article that “crocidolite” asbestos fibers “are encountered in cases of industrial and occupational exposure, *not cosmetic talcum powder.*” Ex. A, Moline Article at 14 (emphasis added).

134. Dr. Moline knowingly made false statements or recklessly ignored available information demonstrating their falsity when she stated in her Article that crocidolite asbestos was not found in the tissue of Case #6.

135. Specifically, she states that “tissue samples from six patients were analyzed” (including Case #6) and that “[a]mosite and *crocidolite*, asbestos fibers . . . *were not found* in any of these cases.” Ex. A, Moline Article at 14 (emphasis added).

136. But in fact, crocidolite asbestos was found in the tissue of that Case #6—Mr. Lanzo.

137. In the *Lanzo* case, *Plaintiff’s expert* Mr. Lee Poye analyzed Mr. Lanzo’s tissue and found crocidolite asbestos:

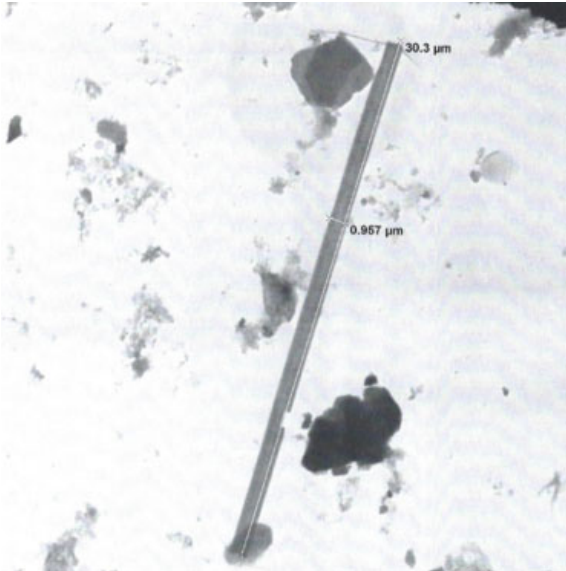



Asbestos by TEM - Gordon Grids Lanzo Case

LAB WORKSHEET

Customer: Joseph D. Satterley, Esq. Sample Number: Gordon Grids
 J3 Order #: JH1895372 Grids: 1A-1D

High Magnification Scan at 15,000X									
Grid	G.O. #	Non-Asbestos	Asbestos Tally	L x W (µm)	TYPE	Images			Comments
						EDS	Morphology	SAED	
1B	B4				Damaged				
	B5				Damaged				
	B6		NSD						
	B7		4	30 x 1.00	Crocidolite	Yes	14		RJLG Identified
	B8		NSD						




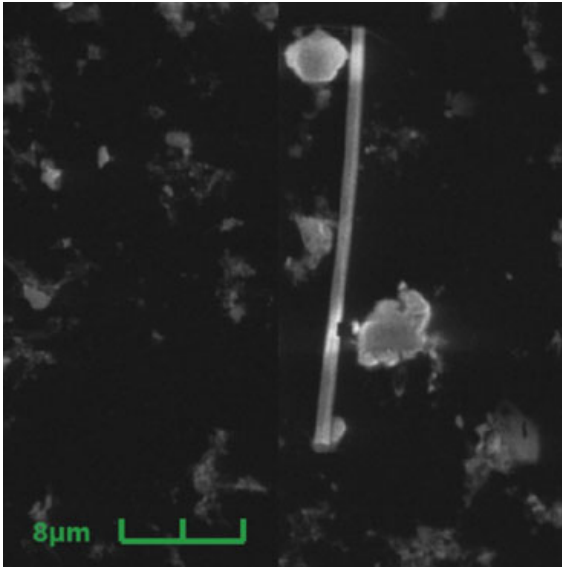


Lee Poye
Plaintiff’s Expert

138. Defense expert, Dr. Matthew Sanchez, also found crocidolite in Mr. Lanzo's tissue:

B5	Field 75% intact			NSD				
B6				NSD				
B7	1	27.5	0.5	Amphibole	F	NaMgSiFe ✓	✓	✓
B8				NSD				
B9				NSD				

Crocidolite



Matthew Sanchez
Defense Expert

139. The statement in the Moline Article that no crocidolite was found in the tissue for Case #6 is false.²⁴

140. Dr. Moline also stated in her Article that the exposure data she obtained included “known abatement of asbestos while the patient was in school, home renovations that might have

²⁴ Ignoring or concealing tissue analyses is also not a new tactic. In one case against LTL, plaintiffs' law firm Kazan, McClain, Satterley & Greenwood (another firm that has retained Dr. Moline as an expert witness in cases against LTL) hid its expert's tissue analysis because he found no asbestos. The firm never produced the expert's voluminous analysis even though it was required to be disclosed under both the relevant California rules of evidence and a case-specific deposition notice. And while the expert testified under oath that he did not know whether he ever tested the specific plaintiff's tissue, emails later leave no question that he did and knew that he did at the time of the false testimony.

used asbestos containing materials, and any other potential sources of asbestos exposure.” Ex. A, Moline Article at 11.

141. But she testified at Mr. Lanzo’s trial in 2018 (before her Article was published) that 60 linear feet of exposed asbestos pipe was removed from Mr. Lanzo’s basement. She had reviewed the asbestos record of abatement.

142. Dr. Moline also testified that she understood that the basement was a family room with a TV and couches, and that Mr. Lanzo spent time in the basement.

143. Case #6 is one of the cases Dr. Moline discusses in detail in her Article. Yet she does not mention the asbestos pipe in the basement as a potential source of exposure. She instead says that other potential exposures to asbestos were considered, with no identified source apart from the talcum powder.

144. Mr. Lanzo also had potential exposures from his schools.

145. In his elementary school, damage to the asbestos pipe insulation was found in multiple locations, including hallways, classrooms, the lunchroom, and the boys’ locker room.

146. In the school he attended from grades 1-4, the school district found what amounted to 64 bags of friable asbestos-containing material which would have been present while he attended (and removed after he left).

147. In the school he attended for grade 5, large amounts of friable asbestos were found and removed from the boys’ bathroom and classrooms in the years after his attendance.

148. In his middle school, abatement records show that asbestos-containing material was removed from classrooms after Mr. Lanzo was a student at the school. At one point, 67 bags of friable waste was removed from the school. All this asbestos would have been present when Mr. Lanzo was there.

149. In his high school, hundreds of bags of friable asbestos were removed. The school district removed 200 square-feet of friable asbestos from the ground-floor lobby from 1989-1992—meaning some of the asbestos was removed during Mr. Lanzo’s junior and senior year.

150. Dr. Moline stated in her article that she considered “known abatement of asbestos while the patient was in school.” Ex. A, Moline Article at 11. But she did not mention any of the abatement in Mr. Lanzo’s schools in her Article.

3. Case #17

151. Plaintiff Helen Kohr filed a claim against other cosmetic talc defendants alleging that she was exposed to asbestos in their products.

152. Dr. Moline appeared as an expert in Ms. Kohr’s case.

153. Upon information and belief, Case #17 is a likely match for Ms. Kohr:

	Ms. Kohr	Case #17
Gender	Female	Female
Year of Diagnosis	2015	2015
Age At Diagnosis	80	81
Mesothelioma Site	Pleural Epithelial	Pleural Epithelial
Talcum Powder Brand	Cashmere Bouquet, Coty Airspun, Helena Rubinstein	Cashmere Bouquet, Coty Airspun, Helena Rubinstein
Estimated Years Of Use	40	40
Occupation	Office Worker	Office Worker

154. Dr. Moline’s *own expert report* in Ms. Kohr’s case from 2017 (well before her Article was published) stated that Ms. Kohr was exposed to asbestos-containing cigarettes known as Kent cigarettes.

155. Dr. Moline’s report stated: “Ms. Kohr was *exposed to asbestos from Kent Micronite cigarettes*, which she smoked from 1952-1956 when crocidolite asbestos was used in the filters” (emphasis added).

Powder and in more recent fiber release studies of samples of these products. The bulk analysis and fiber release studies done recently by Fitzgerald and others from ore taken from the same source mines as those used in the manufacture of the Cashmere Bouquet and Coty products showed significant amounts of chrysotile, anthophyllite, and tremolite asbestos. Ms. Kohr was exposed to asbestos from Kent Micronite cigarettes, which she smoked from 1952-1956 when crocidolite asbestos was used in the filters. Studies have shown that each filter contained 10 milligrams of crocidolite asbestos and that millions of fibers of asbestos were released into the lungs during smoking. Dr. Steven Compton has personally evaluated Kent Micronite cigarettes and noted crocidolite asbestos fibers present in the Micronite filter. Longo et al tested Kent cigarettes (Cancer Research 1995) and noted crocidolite fibers in both the filters and in the cigarette smoke itself.

156. She even stated the Kent cigarettes were a cause of the plaintiff's mesothelioma:

a. "Her exposures to asbestos-contaminated face powder and asbestos-contaminated body powder *and to Kent cigarettes* were the cause of her mesothelioma" (emphasis added).

b. "Ms. Kohr had malignant mesothelioma of the pleura as a result of her *exposure to asbestos from Kent cigarettes* and cosmetic talc" (emphasis added).

157. But, in her Article, Dr. Moline represented that Case #17 had no exposures to asbestos other than talcum powder. If Case #17 is Ms. Kohr, Dr. Moline's statement that there were no other asbestos exposures for Case #17 is knowingly false.²⁵

4. Case #3

158. Plaintiff Doris Jackson filed a claim against other cosmetic talc defendants alleging that she was exposed to asbestos in their products.

159. Dr. Moline appeared as an expert in Ms. Jackson's case.

²⁵ Although this particular case did not involve claims against LTL, it serves as a stark example of Dr. Moline's willingness to make statements regarding the lack of exposures that she knew were false.

160. Upon information and belief, Case #3 is a likely match for Doris Jackson.

	Ms. Jackson	Case #3
Gender	Female	Female
Year of Diagnosis	2014	2014
Age At Diagnosis	84	84
Mesothelioma Site	Pleural Biphasic	Pleural Biphasic
Talcum Powder Brand	Cashmere Bouquet	Cashmere Bouquet
Estimated Years Of Use	70	70
Occupation	Elementary School Teacher	Elementary School Teacher
Tissue Digestion	Yes	Yes
Asbestos Type in Digestion	Tremolite	Tremolite
Site Found	Lung, Lymph Node	Lung, Lymph Node
Concentration	0; 9,409	0; 9,409
Other Details	<p>Moline Expert Report at 3-4</p> <p>“developed shortness of breath with exertion in September 2014, along with a cough and chest tightness. . .”</p> <p>“a chest x-ray showed a very large left pleural effusion.”</p>	<p>Moline Article at 12</p> <p>“In September 2014, Case 3 . . . developed shortness of breath, a cough, and chest tightness.”</p> <p>“A chest x-ray in November 2014 showed a large left pleural effusion”</p>

161. A medical record history form from Ms. Jackson’s examination with Dr. Robert Cameron included a handwritten statement that she had been exposed to “[c]eiling pipes with degrading insulation” during her more than 30-year career as a public school teacher.

162. Dr. Moline noted the evidence of alternative exposure in her expert report for the *Jackson* case:

Dr. Robert Cameron, a thoracic surgeon, saw Ms. Jackson on February 4, 2015. In her intake form, she noted that she was exposed for over thirty years to ceiling pipes with degrading insulation while working as a teacher in the DC Public Schools. An MRI of the

163. But, in her Article, Dr. Moline represented that Case #3 had no exposures to asbestos other than talcum powder. If Case #3 is Ms. Jackson, Dr. Moline’s statement that there were no other asbestos exposures for Case #3 at least recklessly disregards available information.

5. Case #4

164. Plaintiff Valerie Jo Dalis filed a claim against other cosmetic talc defendants alleging that she was exposed to asbestos in their products.

165. Dr. Moline appeared as an expert in Ms. Dalis’s case.

166. Upon information and belief, Case #4 is a likely match for Ms. Dalis.

	Ms. Dalis	Case #4
Gender	Female	Female
Year of Diagnosis	2014	2014
Age At Diagnosis	66	66
Mesothelioma Site	Peritoneal Epithelial	Peritoneal Epithelial
Talcum Powder Brand	Cashmere Bouquet, Mennen	Cashmere Bouquet, Mennen
Estimated Years Of Use	30	30
Occupation	Hairdresser	Hairdresser
Tissue Digestion	Yes	Yes
Asbestos Type in Digestion Site Found	Chrysotile	Chrysotile
Concentration	920	920
Other Comments	<p>Moline Expert Report at 10</p> <p>“Ms. Dalis had additional exposure to talcum powder when working as a licensed cosmetologist”</p> <p>“She shook the powder onto the necks and wiped the powder off with a brush or blow dryer.”</p> <p>“She described wearing gloves on a regular basis to apply color, and she had to blow the powder into the gloves.”</p>	<p>Moline Article at 13</p> <p>“Case 4 had additional exposure to talcum powder in the 1960s while working as a licensed cosmetologist”</p> <p>“She shook the talcum powder onto the client’s neck, and would wipe off the excess with a brush or blow dryer.”</p> <p>She also used talcum powder inside the gloves that she donned prior to applying hair color.”</p>

167. Before Ms. Dalis filed her complaint against another cosmetic talc defendant, she submitted an asbestos bankruptcy trust claim for \$450,000 and collected over \$28,000 from the Manville Personal Injury Settlement Trust.

168. The Moline Article states: “Talcum powder exposure histories were reviewed based on sworn testimony by patients and in some cases, family members with first-hand knowledge of the use of talcum powder, such as parents who recalled using talcum powder while diapering the patient.” Ex. A, Moline Article at 12.

169. The bankruptcy submissions were discussed at Ms. Dalis’s deposition and her husband’s deposition.

170. But again, in her Article, Dr. Moline represented that Case #4 had no exposures to asbestos other than talcum powder. If Case #4 is Ms. Dalis, Dr. Moline’s statement that there were no other asbestos exposures for Case #4 is false.

IV. Dr. Moline and Plaintiffs’ Counsel Concealed the Falsity of Her Statements

171. During the time Dr. Moline has been repeating this falsehood that none of the individuals in her Article had alternative exposures to asbestos, she, her employer, and plaintiffs’ counsel resisted efforts by others to obtain information about her cases which would uncover the Article’s false premise.

172. On 10 separate occasions, Dr. Moline refused to testify at her deposition in cases against LTL regarding the identities of the individuals in her Article. For example:

- **November 2019:** “I will not comment on any further cases that might or might not be included in the paper.”
- **February 2020:** “I will not name names in this deposition. That is correct.”
- **June 2020:** “I am not willing to discuss any names of any of the individuals in the paper of any of the 33.”

- **January 2021:** “I decline to disclose the identi[t]ies or facts apart from what is described in the paper, and my feelings on this have not changed or my position on that has not changed.”

173. In one instance, Dr. Moline bizarrely testified at her deposition that she could not identify “Ms. D” from her congressional testimony (i.e., Ms. Bell) because Ms. D was “based on an amalgam of different folks.”

174. But when asked, “So is Ms. D one person?” Dr. Moline responded, “In essence, yes.”

175. She then refused to identify Ms. D: “Ms. D does have a real name. I will not disclose it because it was from one of the individuals in my paper.”

176. She would not even answer the basic question: “Were there any documents that you saw that alleged exposure to asbestos other than from talc?”

177. She then refused to answer any questions regarding Ms. Bell’s case.

178. A defendant moved to compel Dr. Moline’s testimony identifying the individuals in her article. Dr. Moline, her employer (Northwell Health), and the plaintiff all opposed the motion.

179. As noted, Ms. Bell’s example was only recently uncovered after extensive discovery efforts in North Carolina federal court.

V. Dr. Moline Was Motivated by Fame and Fortune

180. Dr. Moline disparaged Johnson’s Baby Powder and Shower to Shower for her own professional aggrandizement and financial gain.

181. The Article in part represented an attempt to gain publicity and enhance her own stature within the scientific community.

182. In the Article, Dr. Moline attempts to explicitly align herself with one of the two most preeminent scientists in the asbestos space: Dr. J. Christopher Wagner. As the Article

describes, Dr. Wagner published a famous and groundbreaking article in 1960 concerning 33 mesothelioma cases, which was the first epidemiology study linking asbestos exposure with the development of mesothelioma. Ex. A, Moline Article at 11. Not coincidentally, Dr. Moline chose 33 cases for *her study*, and was quick to make the connection: “Like Wagner, we present 33 cases. . . .” Ex. A, Moline Article at 11.

183. Dr. Moline also tirelessly promoted herself by using the Article, discussing it publicly at speaking engagements, before Congress, and to the media, as discussed above.

184. Her employer, Northwell Health, also used the Article to promote Dr. Moline. It ran a prominent story concerning the Article on its website, saying: “For the first time, Jacqueline Moline, MD, MSc, professor in the Institute of Health Innovations and Outcomes Research at The Feinstein Institutes for Medical Research, and her colleagues have identified household talcum powder contaminated with asbestos as the root cause of malignant mesothelioma in 33 long-term users, as published in the *Journal of Occupational and Environmental Medicine*.”²⁶

185. The web story repeated the false premise of the Article: “The patients had no other known exposure to asbestos, and in the six detailed, the tissue analysis revealed the presence of asbestos commonly found in talc and not that found in other commercial products, such as automobile brakes or home insulation materials. It was determined that the 27 other individuals in the study were also linked to contaminated talcum powder, as they had no additional exposure to asbestos.”

²⁶ <https://feinstein.northwell.edu/news/the-latest/talc-powder-exposure-linked-to-mesothelioma>

186. Beyond just the recognition the Article brought Dr. Moline, the asbestos plaintiffs' bar pays Dr. Moline hundreds of thousands of dollars a year to serve as an expert witness to help them win jury verdicts. This litigation work represents nearly half her income.

187. Those verdicts then help fund plaintiffs' law firms, who typically receive a large percentage of the verdict amount (often in the millions of dollars). That money is then used, in part, to hire Dr. Moline for the next case.

188. To keep this cycle in motion and the money flowing, Dr. Moline has every incentive to try to help the plaintiffs' bar as much as possible, both by trying to sway public opinion and by manufacturing support for what she is saying in court.

189. To be clear, Dr. Moline did not publish the Article or make the challenged public statements to advance academic or scientific discourse. Nor did she do so with the intent to advance the interests of any particular talc plaintiff. Rather, Dr. Moline acted to further her own interest, gain fame, and gain fortune for herself.

190. By helping the plaintiffs' lawyers, she ultimately was helping herself.

VI. Dr. Moline's Statements Perpetuated a Decades-Long Fraud in Asbestos Litigation

191. The circumstances surrounding the Moline Article, including her knowing or reckless misrepresentations and subsequent efforts to conceal pertinent facts, may at first blush appear difficult to believe. But, sadly, Dr. Moline's actions fit a pattern of fraud both in the cosmetic talc litigation specifically and asbestos litigation writ-large.

192. One of the most egregious problems—central to the asbestos plaintiffs' bar's business model—is submitting claims against multiple defendants, without disclosing to each successive defendant the prior assertions predicated on alternative uses. Then the sheer volume of claims is used to coerce portfolio settlements that don't reflect the merits of each individual claim.

193. The *Garlock* proceedings are a famous example of fraud by hiding alternative exposures.

194. A North Carolina bankruptcy court found evidence of “wide-ranging, systematic, and well-concealed fraud designed to suppress evidence and inflate settlement values for mesothelioma claims.” *Garlock Sealing Techs., LLC v. Shein*, No. 3:13-cv-137, 2015 WL 5155362, at *2 (W.D.N.C. Sept. 2, 2015) (citing *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 85 (Bankr. W.D.N.C. 2014)).

195. More specifically, the *Garlock* court found that evidence of exposure to large, now-bankrupt asbestos manufacturing companies “disappeared” as a result of “the effort by some plaintiffs and their lawyers to withhold evidence of exposure to other asbestos products and to delay filing claims against bankrupt defendants’ asbestos trusts until after obtaining recoveries” in the tort system. *In re: Garlock*, 504 B.R. at 84. The court found that these “demonstrable misrepresentation(s)” were “sufficiently widespread” in the asbestos tort system “to have a significant impact” on settlement practices and results. *Id.* at 85.

196. Notably, the day before the bankruptcy court issued that holding, *Garlock* sued five plaintiffs’ firms for the litigation conduct discussed by the court under the Racketeer Influenced and Corrupt Organizations Act, better known as RICO.²⁷ Upon information and belief, those lawsuits were instrumental in and resolved in connection with the final plan of reorganization in the *Garlock* case.

²⁷ See *Garlock Sealing Techs., LLC v. Simon Greenstone Panatier Bartlett, P.C.*, No. 3:14-cv-116 (W.D.N.C.); *Garlock Sealing Techs., LLC v. Belluck & Fox, LLP*, No. 3:14-cv-118 (W.D.N.C.); *Garlock Sealing Techs., LLC v. Waters & Kraus.*, No. 3:14-cv-130 (W.D.N.C.) (Stanley-Iola, LLP also named a defendant); and *Garlock Sealing Techs., LLC v. Shein Law Center, Ltd.*, No. 3:14-cv-137 (W.D.N.C.).

197. One of the firms sued was Simon Greenstone Panatier Bartlett, P.C, a firm that has paid Dr. Moline to testify 20 times in one three-year span. And it is the very same firm that sought to keep her data sealed and hidden in the *Bell* matter.

198. Since *Garlock*, other recent bankruptcy proceedings have uncovered further examples of fraud.

199. ***Bestwall Bankruptcy***. In a particularly damning twist, it appears that Dr. Moline is not the only plaintiff-expert-turned-author whose litigation-influencing misstatements are coming to light in bankruptcy courts right now. The North Carolina debtor Bestwall is faced with a conundrum much like the Moline Article, which it is presently conducting discovery on while the asbestos plaintiffs' bar fights tooth and nail to keep relevant information hidden.²⁸ Similar to Dr. Moline, Plaintiffs' expert James Dahlgren published a 2012 article claiming to identify three cases of mesothelioma in which the only known exposure to asbestos was from joint compound manufactured by Old Georgia Pacific (predecessor to Bestwall). Although the company settled all three of the cases covered in the article, it now has uncovered that these individuals submitted claims to various asbestos trusts claiming exposure to other sources of asbestos after the cases were settled.

200. ***Imerys Bankruptcy***. Fraud has even been uncovered in a recent cosmetic talc bankruptcy filed by the talc supplier for Johnson's Baby Powder. In the Imerys bankruptcy pending in New Jersey, one plaintiffs' lawyer recently was forced to concede under oath that he took a list of individuals diagnosed with ovarian cancer or mesothelioma and asserted claims against the debtor without even assessing whether the claimant ever used Johnson's Baby

²⁸ *In re Bestwall LLC*, No. 17-BK-31795 (LTB) (W.D.N.C. Bankr.).

Powder. What's more, in some instances, the claimant previously alleged and recovered on a theory that his/her disease was exclusively attributable to another company's products.

VII. LTL Was Gravely Harmed by Dr. Moline's False Statements

201. Dr. Moline's disparagement of Johnson's Baby Powder and Shower to Shower talc products for her own aggrandizement harmed LTL.

202. As discussed above, Dr. Moline repeated her false statement multiple times over the years, ensuring they would reach the public, particularly through the press such as *Time Magazine*.

203. Her Article became available online on October 10, 2019. In October 2019, the call center handling the Consumer business of Johnson & Johnson saw a significant increase in contacts.

204. The sales volume and profits from Johnson's Baby Powder declined in 2019 and again in 2020. And an ever-increasing percentage of Johnson's Baby Powder sales was the corn starch-based version compared to the talc-based version. Dr. Moline's statements and the resulting publicity were a substantial cause of this sales decline.

205. LTL announced in May 2020 its discontinuation of talc-based Johnson's Baby Powder in the United States and Canada. As the press release at the time explained: "Demand for talc-based Johnson's Baby Powder in North America ha[d] been declining due in large part to changes in consumer habits and fueled by misinformation around the safety of the product and a constant barrage of litigation advertising." The Moline Article is a central element of that misinformation.

206. LTL also incurred substantial costs as a direct result of Dr. Moline's false statements. Among other costs, LTL spent millions of dollars in fees paid to attorneys, expert witnesses, and other professionals to investigate, respond to, defend against, and otherwise

counteract Dr. Moline's false statements. That included deposing Dr. Moline multiple times regarding her Article.

207. Indeed, Dr. Moline's false statements have forced LTL to file this lawsuit to correct the record.

CAUSES OF ACTION

Count I: Injurious Falsehood / Product Disparagement

208. LTL hereby incorporates each preceding paragraph as though fully set forth herein.

209. Dr. Moline has made statements that contain false and untrue assertions of fact, including the false statements referenced above, which include, but are not limited to (emphasis added):

- a. Multiple factual assertions in the Article, including:
 - i. "Talcum powder usage *was the only source of asbestos for all 33 cases.*"
 - ii. "*For all 33 cases*, other potential exposures to asbestos were considered, with *no identified source apart from the talcum powder.*"
 - iii. "[W]e present 33 cases, predominantly of women, who had *no known exposure to asbestos* other than prolonged use of talcum powder."
 - iv. "Amosite and crocidolite, asbestos fibers ... *were not found in any*" of the six subjects whose tissue samples were tested.
- b. Dr. Moline's statement to *Time* Magazine, published on October 15, 2019, that "[t]his is the first time that anyone has said, 'Let me look at all these cases, put it all together and identify the ones where *[talc] is the sole exposure.*'"

c. Dr. Moline's statements to Romper.com, published on October 16, 2019, that "[a]ll the folks in the study used cosmetic talc, usually for decades, and they ***all had mesothelioma with no other asbestos source***" and "[w]e couldn't find ***any other source*** apart from the cosmetic talc."

d. Dr. Moline's statement in her written Congressional testimony that "my colleagues and I reported on 33 individuals with ***no other identifiable source of exposure*** apart from cosmetic talc," and her assertion that "Ms. D" had "no known exposure to asbestos" in her work in the textile industry.

e. Dr. Moline's statement in her oral Congressional testimony that she and her colleagues "reported on 33 individuals ***whose only source of asbestos exposure was cosmetic talc.***"

f. Dr. Moline's statement at a May 13, 2020, event organized by the Asbestos Disease Awareness Organization that "[w]hat we found in these individuals is that ***these 33 did not have any other known source of asbestos exposure*** that we could discern from the information that we were provided."

g. Dr. Moline's comment to EPA, posted on its website on June 1, 2020, that "[m]y colleagues and I reported on 33 individuals with mesothelioma with no other identifiable source of exposure apart from cosmetic talc."

h. Dr. Moline's statement, in discussing the article at a September 17, 2022, *ADAO Asbestos Awareness and Prevention Conference*, that "[w]e were unaware of any asbestos exposure apart from talc." A slide describing the Article falsely stated: "Talcum powder as the only asbestos exposure."

210. Dr. Moline published the false statements alleged herein to others, including through electronic and hard-copy publication of the Article, written and oral testimony to Congress, at least one national magazine, and multiple conferences. Dr. Moline's false statements were read and otherwise received by the public at large, consumers and manufacturers of cosmetic talc products, Congressional and government officials, scientists, and attorneys and expert witnesses involved in talcum powder litigation, among others.

211. Dr. Moline's false, influential, and groundbreaking Article has been republished by numerous sources, including multiple plaintiffs' firms and advocacy groups soliciting talc-related personal injury claims relied upon by plaintiffs' multiple expert witnesses in talc litigation; and considered by judges and juries throughout the country adjudicating cosmetic talc claims.

212. Dr. Moline intended and/or reasonably anticipated that the publication of her false statements would disparage the safety of the Johnson's Baby Powder and Shower to Shower products and harm LTL's interests. Dr. Moline's false statements did disparage the safety of those products.

213. Dr. Moline acted with actual malice because her false statements were made with the knowledge that they were false and/or with reckless disregard as to their truth or falsity. Moreover, as described herein, Dr. Moline has repeatedly sought to conceal evidence betraying the falsity of her statements and demonstrating that her statements were made with knowledge that they were false and/or with reckless disregard as to their truth or falsity. Dr. Moline's acts of concealment include statements reaffirming the false statements in the Article and refusing to disclose the identity of the 33 subjects of the Article or answer questions about the information she reviewed prior to the Article's publication.

214. Dr. Moline acted without any privilege, authorization, or immunity in making her false statements. The statements alleged herein are not protected statements of scientific opinion but, rather, economically-motivated, false, and inaccurate statements concerning the data underlying her Article.

215. Dr. Moline's false statements were made of and concerning LTL's products. Dr. Moline's false statements impugned the safety of all cosmetic talc products, including Johnson's Baby Powder and Shower to Shower. Johnson's Baby Powder and Shower to Shower products were well-recognized, the leading brands among a discrete and limited number of cosmetic talc products in the market. The Article identifies Johnson's Baby Powder (product "D") and Shower to Shower (product "I") as two of the 22 brands of cosmetic talc allegedly used by the Article's 33 subjects. According to the Article, 19 of the 33 subjects allegedly used Johnson's Baby Powder—more than any other brand.

216. Dr. Moline's false statements were published contemporaneously with statements referring to Johnson's Baby Powder, including through Congressional testimony, advocacy events, plaintiff attorney websites, and various media outlets. For example, the subcommittee chairman began the hearing featuring Dr. Moline's Congressional testimony by referencing allegations of asbestos in "Johnson and Johnson's talc-based baby powder" and by displaying images of Johnson's Baby Powder.

217. Anyone reading, hearing, or otherwise receiving Dr. Moline's false statements would have associated those statements with the Johnson's Baby Powder and Shower to Shower products. Indeed, on repeated occasions, Johnson & Johnson and LTL were asked to comment on Dr. Moline's Article and false statements, thereby demonstrating that readers of the statements in fact associated them with LTL's products.

218. After the online publication of the Article, Dr. Moline has been disclosed in 58 cosmetic talc/mesothelioma cases against LTL. Dr. Moline routinely relies on her Article in these cases. Moreover, in 63 cosmetic talc/mesothelioma cases against LTL, a combined 20 other plaintiff experts have relied on the Article in either their deposition or court disclosures.

219. As a direct and proximate cause of Dr. Moline's false statements, LTL has suffered, and continues to suffer, actual and special damages, including, without limitation, lost profits on the sale of Johnson's Baby Powder and Shower to Shower caused by the widespread dissemination of the Article; increased fees to defend (including substantial fees paid to attorneys, expert witnesses, and other professionals to investigate, respond to, and defend against Dr. Moline's assertions) and resolve Talc Claims; and other expenses incurred to counteract and prevent Dr. Moline's false statements from causing further harm (including the costs of this litigation).

220. Dr. Moline knew or reasonably should have anticipated that her false statements and subsequent acts of concealment would cause the aforementioned actual and special damages to LTL.

Count II: Fraud

221. LTL hereby incorporates each preceding paragraph as though fully set forth herein.

222. As alleged herein, Dr. Moline has made statements that contain false and untrue assertions of fact.

223. Dr. Moline's false statements were made with the knowledge that they were false and/or with reckless disregard as to their truth or falsity. Moreover, as described herein, Dr. Moline has repeatedly sought to conceal evidence undermining the falsity of her statements and

demonstrating the statements were made with knowledge that they were false and/or with reckless disregard as to their truth or falsity.

224. Dr. Moline acted without any privilege, authorization, or immunity when she published her false statements. The statements alleged herein are not protected statements of scientific opinion but, rather, economically-motivated, false, and inaccurate statements concerning the data underlying her Article.

225. Dr. Moline made the false statements alleged herein intending that they be relied upon by others, including by the public at large, consumers and manufacturers of cosmetic talc products, Congressional and government officials, scientists, and attorneys and expert witnesses involved in talcum powder litigation, all of whom did reasonably and justifiably rely on Dr. Moline's false statements.

226. Dr. Moline omitted from her publications of and references to the Article that her statements regarding the lack of alternative exposures were false and that she knew they were false. In view of her affirmative representations, Dr. Moline had a duty to fully disclose such facts. She instead actively concealed and thwarted LTL's efforts to discover the truth. As a result, LTL did not know and could not have known of Dr. Moline's fraud until the *Bell* Opinion recently laid bare her knowledge and collaboration to conceal the falsity. LTL therefore made its business decisions and defense of Talc Claims, including but not limited to LTL's investigation of claims, approaches to settling such claims, retention of experts, and trial strategies—in reasonable and justifiable reliance on her fraudulent partial disclosures.

227. As a direct and proximate cause of Dr. Moline's false statements, LTL has suffered, and continues to suffer, actual and special damages, including, without limitation, lost profits on the sale of Johnson's Baby Powder caused by the widespread dissemination of the

Article; increased fees to defend (including substantial fees paid to attorneys, expert witnesses, and other professionals to investigate, respond to, and defend against Dr. Moline's assertions) and resolve Talc Claims; and other expenses incurred to counteract and prevent Dr. Moline's false statements from causing further harm (including the costs of this litigation).

Count III: Violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a)

228. LTL hereby incorporates each preceding paragraph as though fully set forth herein.

229. In connection with Johnson's Baby Powder and Shower to Shower and the services of Dr. Moline, both of which are offered in interstate commerce, Dr. Moline has made material false and misleading descriptions or representations of fact, as set forth above. The statements disparage and misrepresent the nature, characteristics, and qualities of Johnson's Baby Powder and Shower to Shower.

230. In connection with Johnson's Baby Powder and Shower to Shower and the services of Dr. Moline, both of which are offered in interstate commerce, Dr. Moline has made material false and misleading omissions of fact, as set forth above, under circumstances where she had a duty to speak. The omissions disparage and misrepresent the nature, characteristics, and qualities of Johnson's Baby Powder and Shower to Shower.

231. Dr. Moline's statements and omissions are literally false, expressly and/or by necessary implication. In the alternative, Dr. Moline's statements have actually deceived, or have the tendency to deceive, a substantial portion of the intended audience.

232. Dr. Moline's statements and omissions concerned matters that are material to purchasing decisions and to other commercial decisions, including but not limited to the safety of Johnson's Baby Powder and Shower to Shower.

233. Dr. Moline's statements and omissions were made in commercial advertising, and therefore violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Dr. Moline made the statements and omissions with a commercial motive: namely, to promote services as a testifying expert witness by making those services more desirable, gaining additional clients, and reaping additional compensation. Dr. Moline's statements and omissions were widely circulated to the public nationwide as part of an organized effort to target a class or category of customers or potential customers.

234. Although *mens rea* is not required to establish a Lanham Act violation, Dr. Moline made these statements and omissions knowingly and willfully. In the alternative, Dr. Moline made them with willful blindness and/or reckless disregard as to their truth or falsity.

235. As a direct and proximate result of the deception caused by Dr. Moline's statements and omissions, LTL has suffered, and will continue to suffer, loss of sales and customers, irreparable harm to its commercial reputation and goodwill, and other compensable damages. In addition, Dr. Moline's statements and omissions resulted in the unjust enrichment of Dr. Moline and/or her collaborators at LTL's expense.

PRAYER FOR RELIEF

WHEREFORE, LTL respectfully requests judgment or relief against Dr. Moline as follows:

- 1) Awarding special, compensatory, and punitive money damages to LTL against Dr. Moline for injurious falsehood and product infringement;
- 2) Awarding money damages (including punitive damages) to LTL against Dr. Moline for fraud;
- 3) Awarding money damages to LTL against Dr. Moline for her violations of the Lanham Act;

- 4) Enjoining Dr. Moline from continuing to make false statements of the type alleged herein;
- 5) Enjoining Dr. Moline to answer questions regarding her Article that she has to date refused to answer;
- 6) Enjoining Dr. Moline to retract and/or issue a correction of her Article;
- 7) Enjoining Dr. Moline to produce unsealed records identifying the individuals in the Article;
- 8) Awarding LTL the costs of this action, including attorneys' fees, together with pre- and post-judgment interest; and
- 9) Awarding LTL such other relief as the Court deems just and proper.

Dated: December 16, 2022

Respectfully submitted,

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