UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LTL MANAGEMENT LLC, Plaintiff, v. DR. JACQUELINE MIRIAM MOLINE, Defendant.	Case 3:23-cv-02990-GC-DEA Hon. Georgette Castner, U.S.D.J. Return Date: June 2, 2025 **ORAL ARGUMENT REQUESTED**

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR RELIEF FROM A JUDGMENT

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Defendant, Dr. Jacqueline Miriam Moline ("Dr. Moline"), respectfully submits this memorandum of law and the supporting certification of Kevin H. Marino (the "Marino Cert.") in opposition to Pecos River Talc LLC's ("Pecos River")[1] motion for relief from a final judgment pursuant to Federal Rule of Civil Procedure 60(b).

PRELIMINARY STATEMENT

Pecos River is an affiliate of Johnson & Johnson ("J&J"), a company known for targeting scientists and researchers who report safety concerns with its products.[2] On May 31, 2023, Pecos River perpetuated J&J's longstanding intimidation strategy by filing a complaint against Dr. Moline based primarily on two scientific articles (the "Articles") she and her colleagues published in peer-reviewed medical journals. The Articles concluded that the use of talcum-based cosmetic products ("cosmetic

[1] This action was originally brought by LTL Management LLC, one of Pecos River's predecessors-in-interest. For ease of reference, this opposition will refer consistently to Pecos River in place of its corporate predecessors.

[2] *See generally* Alexander Zaitchik, The New Republic, *A Devastating New Exposé of Johnson & Johnson Indicts an Entire System*, May 12, 2025 (describing J&J's decades-long "'scorched-earth public relations campaign' on troublesome science," including but not limited to its use of "disinformation" to discredit damaging research), *available at* https://newrepublic.com/article/194726/johnson-and-johnson-investigation-crimes-health-care-system; Lisa Girion, Reuters, *Johnson & Johnson knew for decades that asbestos lurked in its Baby Powder*, Dec. 14, 2018 ("Johnson & Johnson developed a strategy in the 1970s to deal with a growing volume of research showing that talc miners had elevated rates of lung disease and cancer: Promote the positive, challenge the negative."), *available at* https://www.reuters.com/investigates/special-report/johnsonandjohnson-cancer/.

talc") could have exposed individuals to asbestos and caused them to develop mesothelioma. To reach this conclusion, Dr. Moline and her co-authors found that certain of the research subjects they studied had no "known exposure" to asbestos other than through their use of cosmetic talc. The crux of Pecos River's complaint (the "Complaint") was that this finding was "false" because those research subjects were in fact exposed to asbestos through other means ("alternative exposures") and the Articles therefore constituted trade libel, fraud, and a violation of the Lanham Act.

On September 8, 2023, Dr. Moline moved to dismiss the Complaint on the primary ground that it impermissibly targeted scientific opinions protected under the First Amendment. On June 28, 2024, the Court granted Dr. Moline's motion, holding that the statements it challenged were not actionable as a matter of law. The Court reached that holding after observing, in particular, that it is the essence of the scientific method to reach conclusions based on inferences drawn from data and that Dr. Moline's conclusions regarding known exposures to asbestos were the product of such a scientific method. Pecos River appealed that decision; its appeal is pending.

At the same time Pecos River was litigating this case, J&J subpoenaed Dr. Moline and her employer, Northwell Health Inc. ("Northwell"), for the identities of the Articles' research subjects, which Dr. Moline had anonymized in keeping with

her regulatory, professional, and ethical obligations. The Supreme Court of New York held that this anonymization was proper and that J&J was not entitled to this information, but the Appellate Division, First Department, reversed that ruling. J&J thereafter obtained the subjects' identities from Northwell in early April 2025.

Now, rather than proceed with its appeal, Pecos River has filed this motion under Federal Rule of Civil Procedure 60(b) to reopen this Court's final judgment based on its receipt of the research subjects' identities. Pecos River contends that, with this information, it can augment its Complaint with additional examples of research subjects' alternative exposures, thus proving that Dr. Moline's statements about known alternative exposures are false. Pecos River also argues that a recent decision by the Eastern District of Virginia in *LLT Mgmt. LLC v. Emory*, No. 24-cv-75, 2025 U.S. Dist. LEXIS 22754 (E.D. Va. Feb. 7, 2025), which found statements by other researchers regarding research subjects' alternative exposures to be actionable, qualifies as a change in the law that justifies reopening this Court's judgment.

Pecos River is wrong on both counts. A Rule 60(b) motion based on new evidence is only proper when that evidence is material and would probably have changed the outcome of the judgment. That is not this case here. As this Court correctly held, whether a statement in a scientific journal is actionable is a question of law. To resolve that question, the Court analyzed the Articles' content and Pecos

River's allegations, assuming the truth of those allegations and giving Pecos River the benefit of every reasonable inference to be drawn from them. The new evidence Pecos River cites would only add more detail to its reasons for disputing the conclusions Dr. Moline drew from her scientific research—conclusions that, as this Court found, the Articles framed as "tentative opinions" based on "'medication records and transcripts of deposition'" that "carried a risk of self-reporting and recall bias" and "'strongly suggest'" that "cases of mesothelioma once deemed 'spontaneous' could be explained through exposure to cosmetic talc." (Marino Cert. Ex. E, Op. at 27.) The proper place to dispute those tentative opinions is in a scientific journal; the proper place to dispute the Court's ruling that, under *Pacira Biosciences, Inc. v. American Society of Anesthesiologists, Inc.*, 63 F.4th 240 (3d Cir. 2023), and *ONY, Inc. v. Cornerstone Therapeutics, Inc.*, 720 F.3d 490 (2d Cir. 2013), they do not constitute trade libel, fraud or violations of the Lanham Act is on appeal to the Third Circuit. A Rule 60(b) motion to amend the Complaint is not the proper place to dispute either.

As this Court correctly found, Dr. Moline's expressly tentative opinions are not actionable regardless of Pecos River's contrary conclusions. And the Eastern District of Virginia's decision in *Emory*, beyond failing to refute this Court's sound reasoning in this case, cannot be squared with the Third Circuit's controlling decision in *Pacira* and the Second Circuit's decision in *ONY*, on which *Pacira* relied.

For these reasons, amplified below, Pecos River's motion should be denied.

BACKGROUND

A. The Journal Articles At Issue.

1. The 2020 Article And Erratum.

In 2020, Dr. Moline and three co-authors published an article entitled *Mesothelioma Associated With the Use of Cosmetic Talc* (the "2020 Article") in the January 2020 edition of the Journal of Occupational and Environmental Medicine ("JOEM"), (*see* Marino Cert. Ex. A), a leading peer-reviewed publication in that field.[3] The 2020 Article reached the tentative conclusion that exposure to asbestos-contaminated talcum powders can cause mesothelioma and recommended that clinicians elicit a history of talcum-powder usage in all patients presenting with that disease. (*Id.* at 11.[4]) Specifically, the 2020 Article suggested that clinicians question patients presenting with mesothelioma about their use of talcum powder in order to more accurately and thoroughly document their exposure history to asbestos. (*Id.* at 11, 16.)

As relevant to this motion, Dr. Moline based her recommendation and

[3] *See* American College of Occupational and Environmental Medicine, Publications, *available at* https://acoem.org/Publications/Journal-of-Occupational-and-Environmental-Medicine.

[4] All page references are to the paginations assigned in the JOEM.

ultimate conclusion in part[5] on her finding that the 33 individuals she studied had no "known exposure" to asbestos other than through their use of cosmetic talc. (Marino Cert. Ex. A, at 11, 14.) Dr. Moline explained that this finding was based on her analysis of the subjects' medical records and sworn deposition testimony, augmented in some instances by sworn testimony of family members and in-person interviews. (*See id.* at 11-12.) Dr. Moline also expressly noted the study's limitations, including the limited data she reviewed, her conflicts of interest, and the risk that the subjects' testimony was influenced by the bias inherent in self-reporting their exposures. (*See id.* at 11, 16.)

After the 2020 Article was published, Dr. Moline discovered that one of the research subjects indeed had an alternative exposure. (*See* Marino Cert. Ex. B.) She drew that discovery to the JOEM's attention and, at her behest, the journal published an erratum acknowledging that this one individual should not have been included because he "was exposed to asbestos both from talcum powder and from asbestos contaminated cigarette filters." (*Id.*)

2. The 2023 Article.

In January 2023, Dr. Moline and two co-authors published an article entitled

[5] The Article drew from decades of prior research establishing "[t]he presence of asbestos in talc and talcum powder consumer products." (Marino Cert. Ex. A, at 11.) Dr. Moline's findings were also corroborated by tissue analysis performed by one of her co-authors, which confirmed the presence of asbestos particles commonly found in cosmetic talc in six of the research subjects. (*See id.*)

Exposure to cosmetic talc and mesothelioma (the "2023 Article") in the Journal of Occupational Medicine and Toxicology, a leading peer-reviewed journal aimed at clinicians and researchers.[6] (*See* Marino Cert. Ex. C.)

The 2023 Article studied 166 subjects who had a minimum of five years and a mean of 40.8 years of exposure to asbestos through cosmetic talc products. (Moline Cert. Ex. C, 2023 Article, at 2.) For 122 of those individuals, the article found that their only "known exposure" to asbestos was through their use of cosmetic talc. (*Id.* at 1, 3.) For the remaining 44, the article determined that these individuals could have been exposed to asbestos through both cosmetic talc and other sources, with the likelihood of these alternative exposures categorized as possible, likely, or definite according to descriptions set forth in other academic research. (*Id.* at 2; *see also id.* at 3-9 (Tables 1 & 2).)

The 2023 Article, like the 2020 Article, concluded that cosmetic talc could cause mesothelioma and recommended that clinicians elicit a comprehensive history of asbestos exposure, including cosmetic-talc exposure, when evaluating patients presenting with that disease. (Marino Cert. Ex. C, 2023 Article, at 1.) The 2023 Article also expressly disclosed its methods and limitations. (*Id.* at 2, 11.)

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[6] *See* Journal of Occupational Medicine and Toxicology, *available at* https://occup-med.biomedcentral.com. *See also* NIH, National Library of Medicine, *Occupational medicine and toxicology*, *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC1436007/.

B. The Allegations In Pecos River's Original Complaint.

Pecos River filed this lawsuit on May 31, 2023. (*See* Marino Cert. Ex. D, Cplt.) The crux of the Complaint was that statements made by Dr. Moline—in particular, her conclusion in the 2020 Article that the 33 research subjects she studied had no known alternative asbestos exposures—were false. (*Id.* ¶¶ 2-3, 26, 36, 38, 94.) The Complaint alleged that this statement was false because every single one of these research subjects in fact had alternative exposures. (*See id.* ¶¶ 2-3 (alleging that the "individuals [Dr. Moline] referenced in [the 2020] Article" either admitted to alternative exposures or that "substantial evidence" existed establishing such exposures); *id.* ¶¶ 85-87 (same); *see also id.* ¶ 39 ("facts have come to light making clear that Dr. Moline's statements that none of the 33 individuals had any other exposure to asbestos is simply not true").)

The Complaint proceeded to give five examples of individuals studied in the 2020 Article who allegedly had alternative exposures. (*See* Marino Cert. Ex. D, Cplt. ¶¶ 96-172.) More specifically, the Complaint alleged that the following individuals were exposed to asbestos based on the following evidence:

- ***Betty Bell***. The Complaint alleged that Ms. Bell had an alternative exposure through her employment based on statements Ms. Bell made in workers' compensation claims. (Marino Cert. Ex. D, Cplt. ¶¶ 101, 103.)

- ***Stephen Lanzo***. The Complaint alleged that Mr. Lanzo had an alternative exposure based on the presence of an asbestos pipe in his home and asbestos in his schools. (Marino Cert. Ex. D, Cplt. ¶¶ 141-

49.)

- ***Helen Kohr***. The Complaint alleged that Ms. Kohr had an alternative exposure because she smoked Kent cigarettes, which were known to contain asbestos. (Marino Cert. Ex. D, Cplt. ¶ 154-56.) Ms. Kohr was the subject of the erratum discussed above, in which Dr. Moline acknowledged that Ms. Kohr was erroneously included in the 2020 Article. (*Id.* ¶ 158; *see also* Marino Cert. Ex. B.)

- ***Doris Jackson***. The Complaint alleged that Ms. Jackson had an alternative exposure from ceiling pipes in the public school in which she taught. (Marino Cert. Ex. D, Cplt. ¶¶ 163-64.)

- ***Valerie Jo Dalis***. The Complaint alleged that Ms. Dalis had an alternative exposure because she filed and recovered money from an asbestos bankruptcy trust. (Marino Cert. Ex. D, Cplt. ¶ 169.)

Pecos River alleged that it was able to identify the first individual (Ms. Bell) with certainty because she was disclosed as one of the research subjects in *Bell v. American International Industries*, No. 17-cv-111 (M.D.N.C). (*See* Marino Cert. Ex. D, Cplt. ¶ 98.) It identified the remainder with a high degree of confidence by comparing signature characteristics of the research subjects as provided in the 2020 Article with matching data gleaned from various personal-injury cases. (*See id.* ¶¶ 132, 153, 162, 168.)

The Complaint made similar allegations with respect to the 2023 Article. It expressly alleged that the 2023 Article was "based on the same false premise as the original Article," meaning that, according to Pecos River, Dr. Moline failed to "properly account for alternative exposures" for all 122 subjects whose only "'known exposure to asbestos was from cosmetic talc.'" (Marino Cert. Ex. D, Cplt.

¶¶ 176-77.)

The Complaint then exemplified how Pecos River determined that one of the subjects of the 2023 Article, Ricardo Rimondi, had an alternative asbestos exposure. More specifically, the Complaint alleged that (i) Mr. Rimondi lived near a facility that purchased asbestos cement machine products; (ii) one study found that living between 1,500 and 2,499 meters from that facility increased the chances of developing mesothelioma by 2,000 percent; and (iii) Mr. Rimondi lived or went to school within 1,580 to 2,270 meters from the facility. (Marino Cert. Ex. D, Cplt. ¶¶ 181-83.) Pecos River was also able to identify Mr. Rimondi with a high degree of confidence by comparing his characteristics as listed in the 2023 Article with the data it gleaned from Mr. Rimondi's lawsuit. (*Id.* ¶ 179.)

Finally, the Complaint alleged that Dr. Moline made no-alternative-asbestos-exposure statements in other forums, including privileged forums such as congressional proceedings and courts. (*See* Marino Cert. Ex. D, Cplt. ¶¶ 40-84.) Based on all these allegations, Pecos River asserted three causes of action against Dr. Moline, for trade libel, fraud, and violation of the Lanham Act. (*See id.* ¶¶ 228-255.)

C. This Court's Opinion Dismissing The Complaint.

On September 8, 2023, Dr. Moline moved to dismiss the Complaint on the primary basis that the core statement it challenged—that the subjects of the 2020

Article had no known exposure to asbestos other than through their use of cosmetic talc—was a nonactionable statement of scientific opinion under both the law of New Jersey (where Pecos River and its affiliates are headquartered) and New York (where Dr. Moline works and resides). (*See* Dr. Moline 9/8/23 Br. (ECF No. 28-1), at 9-15; Dr. Moline 9/29/23 Br. (ECF No. 30), at 2-6.) In that motion, Dr. Moline specifically emphasized that the concept of verifiability is applied differently in the scientific context, where research findings are theoretically capable of being disproven, and thus are generally protected so long as researchers do not fabricate data and disclose the methods and data they used. (*See* Dr. Moline 9/29/23 Br. (ECF No. 30), at 4.)

On June 18, 2024, the Court issued its opinion and order granting Dr. Moline's motion to dismiss in its entirety. As the outset, the Court observed that the question of whether the statements Pecos River challenged were actionable presented a threshold question of law and that, to resolve that question, the Court was required to assume the truth of Pecos River's allegations. (*See* Marino Cert. Ex. E, Op. at 8, 13.) The Court then set forth three principles that guided its analysis: (1) statements that could be construed as either an actionable statement of fact or opinion should be construed as an opinion to avoid chilling free speech; (2) statements made in the context of scholarly and academic debate are afforded greater protections because "academic freedom is 'a special concern of the First Amendment'"; and (3) scientific opinions are more appropriately characterized as matters of opinion—even if they

are technically verifiable—because the "'essence'" of the scientific method involves drawing conclusions from "'inferences about the nature of reality based on the results of experimentation and observation.'" (*Id.* at 10 (quoting *ONY*, 720 F.3d at 496, and *Pacira*, 63 F.4th at 246).)

The Court then applied those principles within the framework described in *Pacira*, 63 F.4th 240, which calls for an analysis of a statement's content, verifiability, and context to determine whether it is actionable. Examining first the content of statements concerning the subjects' known asbestos exposures, the Court noted that these statements, viewed in isolation, had a higher "fact content" than those that consist of mere rhetorical hyperbole. (Marino Cert. Ex. E, Op. at 17.) Nonetheless, the Court explained, viewing them in their overall context, alongside their scientific nature, demonstrated that the statements were more accurately characterized as tentative scientific conclusions protected by the First Amendment. (*Id.*)

The Court then analyzed the statements' verifiability, demonstrating why each of the specific examples cited by Pecos River of supposed alternative exposures failed to show that the statements were actionable. More specifically, the court explained why Pecos River's allegations were nothing more than criticisms that Dr. Moline drew the wrong inferences from the data she reviewed or failed to consider other variables, which was insufficient to state a claim:

> Having carefully reviewed the allegations, the Court finds that these other alleged sources of asbestos exposure identified by LTL do not render Dr. Moline's finding that the individuals had "no known asbestos exposure other than cosmetic talcum powder" a verifiably false statement of fact, as opposed to a nonactionable scientific conclusion. . . .
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> [T]he court [in *Bell*] recognized "that the mere existence of the unsuccessful workers' compensation claims d[id] not definitively establish that Mrs. Bell was in fact exposed to asbestos at the textile workplaces." *Id.* at 530. Critically, the court noted that "[i]f presented with Mrs. Bell's workers' compensation claims, Dr. Moline and other expert witnesses for cosmetic talc plaintiffs may be able to persuasively explain that [the claims] do not constitute known alternative exposures because the claims never amounted to more than unproven allegations." *Id.* at 532. Thus, the *Bell* opinion recognized that the term "known asbestos exposure other than cosmetic talcum powder" is not a matter of simple truth or falsity, but a scientific *inference* that Dr. Moline could conceivably draw *even when presented with Bell's workers' compensation claims*. Such reasoning demonstrates that Dr. Moline's statements about "known asbestos exposure" are not sufficiently "capable of . . . truth or falsity" to be actionable as a matter of law, but are more closely akin to inferences or conclusions drawn from her review of the data and subject to First Amendment protection. . . .

(Marino Cert. Ex. E, Op. at 19-21 (alterations and emphases in original).) After applying those observations to find the statements as they related to Ms. Bell inactionable, the Court reached the same conclusion for the four other examples of alternative exposures posited in the Complaint drawn from the 2020 Article. (*See id.* at 22-23.) The Court dispensed with Mr. Rimondi, the example Pecos River cited

from the 2023 Article, on the same basis. (*See id.* at 18 n.23 ("LTL's allegation that Dr. Moline failed to take into account the opinion of another doctor when describing this person's potential asbestos exposure as 'none' amounts to an argument that Dr. Moline failed to consider certain data, or to draw a 'correct' conclusion based on the data—allegations that are nonactionable.").)

As for the last consideration in *Pacira*'s framework, the Court found that the context in which the challenged Article statements were published—*i.e.*, peer-reviewed journals, with robust disclosures about the studies' limitations and the authors' conflicts of interest—confirmed that those statements were inactionable scientific opinions. (*See* Marino Cert. Ex. E, Op. at 26-28.)

For these reasons, the Court found that all of the challenged statements, including those repeated in other media, were inactionable statements of opinion and that, as a result, the Complaint failed to state claims for trade libel, fraud, or a violation of the Lanham Act. (Marino Cert. Ex. E, Op. at 28-30.)

On July 23, 2024, Pecos River filed its notice of appeal. (*See* ECF No. 44.)

D. J&J's Efforts To Obtain The Research Subjects' Identities, Its Motion To Reopen This Court's Judgment And Stay Its Appeal, And Its Efforts To Have The JOEM Retract The 2020 Article.

While the parties were litigating the merits of Pecos River's claims in this action, J&J issued subpoenas to Dr. Moline and Northwell in New York that sought the identities of the Articles' research subjects.

On June 17, 2024, the Supreme Court of New York issued an order quashing J&J's subpoenas on the grounds that the subjects' identities were protected under federal regulations. *See Moline v. Johnson & Johnson*, No. No. 153220/2024, 2024 N.Y. Misc. LEXIS 4379, at *5-7 (Sup. Ct., N.Y. Cty., June 17, 2024). The Appellate Division, First Department reversed that decision, *see Matter of Johnson & Johnson v. Northwell Health Inc.*, 231 A.D.3d 481 (1st Dep't 2024), and J&J obtained the subjects' identities from Northwell after additional litigation with that entity. (*See* Declaration of Peter C. Harvey ("Harvey Decl.") Ex. 4.)

On April 29, 2025, Pecos River filed this motion for relief from the Court's judgment, arguing that the subjects' identities is new evidence that justifies its filing of an amended trade-libel claim limited to statements regarding the subjects' known asbestos exposures.[7] (Pecos River Br. ("Br.") at 1.)

First, Pecos River says it is now able to "confirm[]" the identities of the research subjects it already knew (*i.e.*, Ms. Bell, Ms. Kohr, Mr. Lanzo, Ms. Jackson, Ms. Dails, and Mr. Rimondi). (*Id.* at 1, 3, 13.)

Second, Pecos River claims it has been able to identify "many" or a "vast number" of additional instances of individuals with alternative exposures—eight

[7] Pecos River does not seek to revive its claims for fraud or violation of the Lanham Act or to replead its claims based on alleged misstatements regarding the research subjects' tissue analysis.

with respect to the 2020 Article and three with respect to the 2023 Article. (Br. at 4-5, 10-13.) Each of these additional supposed examples are based on the same type of conjectural criticisms Pecos River raised before—this time supported by blatant mischaracterizations of Dr. Moline's expert reports or testimony. For example, Pecos River ignores the passages in those reports explaining that Dr. Moline's conclusion that Carol Schoeniger and Edward Garcia had potential exposure to asbestos are speculative because there is no data to support them:

> Ms. Schoeniger had ***possible brief exposure*** to asbestos from joint compound that was applied and sanded in her home in the 1960s, although ***no specific data are available regarding this exposure***. (Harvey Decl. Ex. 6, at 18 (emphasis added).)
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> * * *
>
> Mr. Garcia had an exposure to asbestos from talcum powder for many years . . . . ***Mr. Garcia has no known other asbestos exposure***, although ***there is a question of whether he had bystander exposure to industrial talc used at Eastern Molding in a room adjacent to him***. This potential exposure, is the only other potential source for asbestos exposure, and apart from this, he has no other competing explanations (#4) for the development of his mesothelioma. (Harvey Decl. Ex. 9, at 17 (emphasis added).)

Each additional example Pecos River cites likewise involves speculative conclusions, often drawn from numerous unproven assumptions, flawed deductions, and/or lengthy inferential chains. Pecos River conjectures that Ms. Hanson had an alternative exposure because (i) her husband worked at a job where other people

were exposed to asbestos; (ii) her husband was exposed to asbestos at work; (iii) her husband brought his work clothes back home; and (iv) Ms. Hanson laundered her husband's work clothes. (Br. at 10-11.) Pecos River then misleadingly claims that Dr. Moline stated at a deposition that this fact pattern represented a "'potential exposure' to Ms. Hanson." (*Id.*) In fact, however, Dr. Moline testified at her deposition that she did not even believe that Ms. Hanson's husband was exposed to asbestos, let alone Ms. Hanson. (*See* Harvey Decl. Ex. 12, Tr. at 94:13-95:8 (stating that Mr. Hanson—not Ms. Hanson—could have had a potential exposure "if" he had said he worked closely with asbestos at work, but "my recollection is he did not feel he had exposure").)

The additional instances of supposed alternative exposures Pecos River cites follow this same pattern. In some instances, Pecos River submits no supporting data at all, citing only allegations in its proposed amended complaint.[8]

[8] *See* Br. at 11 (alleging that Mary Ann Caine had an alternative exposure based on an allegation in her complaint that she "may" have been exposed to asbestos from her husband's work and her inclusion of this potential exposure on the "initial fact sheet" her attorneys submitted in her case (citing Harvey Decl. Exs. 13-14)); *id.* (alleging that Kayla Martinez had an alternative exposure based on medical records stating that her father worked at a company with known asbestos exposure (citing Harvey Decl. Ex. 15)); *id.* (alleging that Barbara Arend had an alternative exposure based on medical records referring to the "possibility" of asbestos presence in the house where she grew up (citing Harvey Decl. Ex. 16)); *id.* (alleging that Blondia Clemons had an alternative exposure based on the fact that her father performed brake jobs at the family's home (citing Harvey Decl. Exs. 19 & 31)); *id.* at 12 (alleging that Irma Verdolotti had an alternative exposure based on her father having

As an additional ground for setting aside this Court's judgment, Pecos River also cites "new caselaw"—a recent decision from the Eastern District of Virginia—that reached a different result than this Court when analyzing similar statements made by other researchers. (*See* Br. at 6.) In so doing, Pecos River ignores that a non-binding decision is not a ground to reopen a judgment. Nor does it grapple with the numerous shortcomings in that decision discussed *infra*.

On April 29, 2025, Pecos River filed a motion to stay its appeal in the Third Circuit pending the Court's resolution of this motion. *See* Pecos River 4/29/25 Motion (ECF No. 29), *Pecos River Talc LLC v. Dr. Jacqueline Miriam Moline*, No. 24-2345 (3d Cir.). On May 5, 2025, Dr. Moline filed a response stating that she does not object to staying Pecos River's appeal pending a ruling from this Court. *See* Dr. Moline 5/5/25 Response (ECF No. 30), *Pecos River Talc LLC v. Dr. Jacqueline Miriam Moline*, No. 24-2345 (3d Cir.). That motion remains pending.

On May 5, 2025, Pecos River submitted a letter to the Editor-in-Chief and

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worked as a steamfitter (citing Harvey Decl. Exs. 17-18)); *id.* at 12-13 (alleging, without submitting any evidence, that Rafaella Marisco asserted a "non-talc exposure" from working with molding compounds (citing the allegations in the proposed amended complaint)); *id.* at 13 (alleging, without submitting any evidence, that Santa Rea had an alternative exposure based on medical records purportedly indicating asbestos exposures from "dust from the 9/11 attacks and insulation" (citing the allegations in the proposed amended complaint); *id.* (alleging, without submitting any evidence, that Christina Lopez had an alternative exposure based on medical records purportedly stating that she had asbestos exposure "growing up in her home" (citing the allegations in the proposed amended complaint).)

Managing Editor of the JOEM demanding that the journal immediately retract Dr. Moline's 2020 Article based on the same flawed analysis it employs on this motion. (*See* Marino Cert. Ex. F.) Dr. Moline refuted that submission in a rebuttal she submitted on May 15, 2025, demonstrating how Pecos River distorted the data on which it relied and sought to draw unfounded, scientifically invalid conclusions. (*See* Marino Cert. Ex. G.) Rather than discredit the 2020 Article or bolster this motion, that letter demonstrated Pecos River's ability to challenge Dr. Moline's conclusions in academic forums while displaying its willingness to mischaracterize her research to further J&J's campaign of disinformation and intimidation. This opposition follows.

LEGAL ARGUMENT

I. PECOS RIVER MISSTATES THE STANDARD UNDER WHICH THE EXTRAORDINARY REMEDY OF RELIEF FROM A JUDGMENT IS AVAILABLE.

Pecos River suggests that this motion is governed by the liberal standard for motions to amend, under which new allegations should be accepted if they plausibly state a claim. (Br. at 15 (conflating the standards for relief from a judgment under Rule 60(b) and a motion to amend under Federal Rule of Civil Procedure 15).) Pecos River is mistaken.

Due to the "'overriding interest in the finality and repose of judgments,'" a motion brought under Federal Rule of Civil Procedure 60(b) is "'considered

extraordinary relief which should be granted only where extraordinary justifying circumstances are present.'" *Howmedica Osteonics Corp. v. Zimmer, Inc.*, No. 05-cv-897, 2009 U.S. Dist. LEXIS 82004, at *5-6 (D.N.J. Sept. 9, 2009) (quoting *Katz v. Twp. of Westfall*, 287 F. App'x 985, 988 (3d Cir. 2008)); *see also Auto. Fin. Corp. v. DZ Motors, LLC*, No. 16-cv-7955, 2021 U.S. Dist. LEXIS 203439, at *12 (D.N.J. Oct. 21, 2021) ("'Importantly, the movant in a Rule 60(b) motion carries a heavy burden, as Rule 60(b) motions are viewed as extraordinary relief which should be granted only where extraordinary justifying circumstances are present.'" (quoting *Kiburz v. Sec'y, United States Dep't of the Navy*, 446 F. App'x 434, 436 (3d Cir. 2011)).

The extraordinary circumstances are set forth in the six subdivisions of that rule. As relevant here, Rule 60(b)(2) allows a party to seek relief from a final judgment based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." To justify relief under this provision, the moving party must establish that the newly discovered evidence is material—as opposed to merely cumulative—and "'would probably have changed the outcome' of the proceedings." *Singh v. Droppa*, No. 20-cv-1317, 2025 U.S. Dist. LEXIS 40295, at *8 (D.N.J. Mar. 6, 2025) (quoting *Bohus v. Beloff*, 950 F.2d 919, 930 (3d Cir. 1991)). *See also Compass Tech. v. Tseng Lab.*, 71 F.3d 1125, 1130 (3d Cir. 1995) (explaining that the standard under Federal Rule

of Civil Procedure 60(b)(2) "requires that the new evidence (1) be material and not merely cumulative, (2) could not have been discovered before trial through the exercise of reasonable diligence and (3) would probably have changed the outcome of the trial"); *accord Serv. Experts LLC v. Baxter*, No. 21-cv-18281, 2023 U.S. Dist. LEXIS 84409, at *8 (D.N.J. May 15, 2023); *Bank of Am., N.A. v. Westheimer*, No. 12-cv-7080, 2015 U.S. Dist. LEXIS 125659, at *7 (D.N.J. Sept. 21, 2015).

Federal Rule of Civil Procedure 60(b)(6) is a catchall provision that permits relief from a judgment for the reasons specified in subdivisions (1)–(5) and any other reason that justifies relief. *See id.*; *Filippatos v. United States*, No. 23-cv-02033, 2024 U.S. Dist. LEXIS 123773, at *4 (D.N.J. July 15, 2024) ("[R]elief from a judgment under Rule 60(b)(6) 'is available only when Rules 60(b)(1) through (b)(5) are inapplicable.'" (quoting *Kemp v. United States*, 596 U.S. 528, 533 (2022)). Relief under this provision, like relief under Rule 60(b)(2), is considered "extraordinary" and is not available even if there is a controlling change in the law. *See Cox v. Horn*, 757 F.3d 113, 115 (3d Cir. 2014). Rather, a movant must demonstrate the existence of "extraordinary circumstances where, without such relief, an extreme and unexpected hardship would occur." *Id.* (cleaned up).

Neither provision permits relief from a judgment to "re-litigat[e] already decided issues." *Filippatos*, 2024 U.S. Dist. LEXIS 123773, at *4; *see also Reardon v. Hillman*, No. 18-cv-1296, 2019 U.S. Dist. LEXIS 2426, at *6 (D.N.J. Jan. 7, 2019)

("Neither Rule 60(b) motions nor motions to reconsider provide avenues for re-litigating already decided issues."), *aff'd* 773 F. App'x 658 (3d Cir. 2019). Similarly, a Rule 60(b) motion cannot be used "as a substitute for an appeal." *Morris v. Horn*, 187 F.3d 333, 341 (3d Cir. 1999) (cleaned up); *accord Role v. PSE&G*, No. 25-cv-0426, 2025 U.S. Dist. LEXIS 75224, at *3-4 (D.N.J. Apr. 21, 2025).

Pecos River cannot elude these controlling principles by conjoining its Rule 60(b) motion with a motion to amend under Federal Rule of Civil Procedure 15; its motion to amend will only be topical if it establishes its entitlement to relief under Rule 60(b)(2) or Rule 60(b)(6). *See Fletcher-Harlee Corp. v. Pote Concrete Contrs., Inc.*, 482 F.3d 247, 252 (3d Cir. 2007) ("After judgment dismissing the complaint is entered, a party may seek to amend the complaint (and thereby disturb the judgment) ***only*** through Federal Rules of Civil Procedure 59(e) and 60(b)." (emphasis added)); *CBD & Sons, Ltd. v. Setteducati*, No. 18-cv-4276, 2020 U.S. Dist. LEXIS 201207, at *15 (D.N.J. Sept. 28, 2020) ("If the Court decides that relief from judgment is not appropriate under Rule 60, it need not reach the factors governing amendment under Rule 15.").[9] Because Pecos River cannot establish that relief is appropriate under

[9] *See also Atkinson v. Middlesex County*, No. 09-cv-4863, 2014 U.S. Dist. LEXIS 82798, at *6 (D.N.J. June 18, 2014) ("Plaintiff could not move to reopen the matter pursuant to the liberal standard of Rule 15 because Rule 60 governs the reopening of cases, and that Rule only allows a party to seek relief from a final judgment under a limited set of circumstances."); *Suddreth v. Mercedes-Benz USA, LLC*, No. 10-cv-05130, 2012 U.S. Dist. LEXIS 199599, at *8 (D.N.J. July 31, 2012) (explaining that

Rule 60(b), its motion to amend should be rejected out of hand.

II. PECOS RIVER FAILS TO ESTABLISH THAT THE RESEARCH SUBJECTS' IDENTITIES QUALIFY AS NEW EVIDENCE WARRANTING RELIEF UNDER RULE 60(B)(2).

A. The Research Subjects' Identities Are Not Material Information That Would Have Changed The Result Of This Court's Opinion Dismissing The Complaint.

Pecos River argues that, under Rule 60(b)(2),[10] the research subjects' identities constitute newly discovered evidence that justifies the extraordinary relief of reopening this Court's final judgment. (Br. at 17-27.) Pecos River is mistaken.

Pecos River admits that the identities it obtained at best either "confirm[]" its prior identification of research subjects or provide additional examples of alleged instances in which research subjects had alternative exposures. (Br. at 20-21.) But the Complaint already alleged that all 33 individuals in the 2020 Article and all 122 individuals in the 2023 Article who were listed as having no known alternative exposures in fact had alternative exposures. (*See* Marino Cert. Ex. D, Cplt. ¶¶ 2-3, 39, 85-87, 176-77.) The Complaint further identified six specific research subjects who allegedly had alternative asbestos exposures. (*See id.* ¶¶ 97-189.)

This Court expressly assumed the truth of all these allegations and

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a court presented with a motion to amend after final judgment "must review the motion based on the standard applicable to the relevant Rule, i.e. Rule 59 or Rule 60, as appropriate, and not simply the liberal standards of Rule 15.").

[10] As Rule 60(b)(2) is the only provision specific to newly discovered evidence, it is the only one applicable to this branch of Pecos River's motion.

methodically analyzed each example of an alleged alternative exposure to explain why they failed to demonstrate that the challenged statements are actionable. (*See* Marino Cert. Ex. E, Op. at 8, 13-24.) The new evidence Pecos River cites is therefore irrelevant, as it simply seeks to add new details to bolster allegations the Court has already found deficient as a matter of law. *See LeJon-Twin El v. Marino*, No. 16-cv-2292, 2017 U.S. Dist. LEXIS 124064, at *9 (D.N.J. Aug. 7, 2017) (finding additional evidence "irrelevant" and thus insufficient to justify reopening under Rule 60(b)(2) where, as here, the court had previously "accepted the facts alleged in the complaint as true and drew all reasonable inferences in favor of the plaintiff" when granting a motion to dismiss).[11]

That Pecos River's proposed new allegations are irrelevant is further confirmed by the fact that the question of whether the statements in the Articles are

[11] *See also id.* ("Additional evidence supporting allegations that [the court] already assumed to be true would have no impact at all" on the court's prior conclusion that the complaint failed to state a claim); *Giroux v. Fannie Mae*, 810 F.3d 103, 107 (1st Cir. 2016) ("[E]vidence corroborating [prior] allegations does not warrant relief under Rule 60(b)(2)."); *Desarrolladora Farallon S. De R.L. De C.V. v. Cargill, Inc.*, No. 15-cv-0532, 2016 U.S. Dist. LEXIS 57708, at *13 (S.D.N.Y. Apr. 29, 2016) (rejecting Rule 60(b)(2) motion to reopen judgment dismissing complaint where the court had "already taken all allegations in the Complaint as true for purposes of deciding that motion."); *Walsh v. Hagee*, 10 F. Supp. 3d 15, 19 (D.D.C. 2013) ("Here, Walsh argues that his allegations have been confirmed by Edward Snowden. However, information that merely confirms Walsh's assertions is not new information for the purposes of Rule 60(b)(2)."). *See generally Compass Tech.*, 71 F.3d at 1130 (explaining that new evidence for purposes of a Rule 60(b)(2) motion must be "material and not merely cumulative").

actionable presents "'a threshold question of law'" that must be determined based on their language and context. (Marino Cert. Ex. E, Op. at 13 (quoting *Pacira*, 63 F.4th at 245).) The Articles' contents and context are static; the "new" evidence Pecos River cites does not change what they say or whether they are actionable. Indeed, the Court did not even need to analyze Pecos River's allegations to examine the challenged statements' verifiability. The Court only did so to illustrate why any attempt by Pecos River or any other litigant to disprove the Articles' statements about "known exposures" would be an attack on scientific opinions—that is, because they would entail questioning the inferences drawn from data and the use of certain variables. (*Id.* at 11-12, 18-24.) The allegations were a useful but not necessary prop for that analysis.

This case therefore bears no resemblance to *In re Stage Presence, Inc.*, No. 12-10525, 2016 Bankr. LEXIS 2377 (Bankr. S.D.N.Y. June 24, 2016), the only case on which Pecos River relies to justify its Rule 60(b)(2) motion. (*See* Br. at 15.) In *Stage Presence*, plaintiffs obtained evidence that bank documents had been falsified and that bank accounts and a guaranty in fact never existed, thereby demonstrating that the defendants defrauded them about certain entities' intent and financial ability to fulfill contractual commitments. *Id.* at *8-9, 16. This new evidence would have made plaintiffs' pleadings "substantially different" than those originally filed, a change that "plainly would have led to a different result" on a prior motion to

dismiss. *Id.* at *16-17. The opposite is true here, where the new evidence Pecos River cites simply "confirms" prior allegations or adds additional details within their scope.

Apparently recognizing this, Pecos River seeks to add two allegations that it contends are qualitatively different than those it previously alleged. First, it cites its new allegation that Dr. Moline "'fabricated the data presented in her Article.'" (Br. at 24 (quoting Harvey Decl. Exs. 1 & 2, ¶ 101[12]).) But as Pecos River admits, this allegation is not based on any new data. Pecos River does not cite, for example, any instance of Dr. Moline falsifying deposition transcripts. Rather, Pecos River admits that this is simply its own conclusion drawn from the supposedly "extensive" examples of alternative exposures addressed above. (Br. at 24; *see also id.* at 23 (admitting that Pecos River has no evidence of Dr. Moline "forg[ing] a fake deposition transcript or medical record").)

But an unsupported conclusion is by definition not "new evidence" for purposes of Rule 60(b)(2). Nor could it alter this Court's analysis on a motion to dismiss, as conclusory allegations are "'not entitled to an assumption of truth.'" *Academy Hill, Inc. v. City of Lambertville*, No. 20-1618, 2022 U.S. App. LEXIS 9720, at *9 (3d Cir. Apr. 12, 2022) (quoting *Great Western Mining & Mineral Co.*

[12] Pecos River incorrectly cites paragraph 26 of its proposed amended complaint.

v. Fox Rothschild LLP, 615 F.3d 159, 177 (3d Cir. 2010)). *See also Magi v. Rich*, No. 20-cv-8881, 2023 U.S. Dist. LEXIS 229082, at *7 (D.N.J. Dec. 26, 2023) (explaining that a court "is not 'compelled to accept unsupported conclusions and unwarranted inferences'" when evaluating the sufficiency of a complaint (quoting *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007)).

Indeed, the suggestion that Dr. Moline and her multiple co-authors would jeopardize their careers and reputations by fabricating research data, deceiving both Northwell and medical journals in the process—an allegation Pecos River makes with no evidence—is absurd. Pecos River's inclusion of such a "preposterous allegation[] in the Proposed Amended Complaint only serves to underscore the weakness" of its position. *Balthazar v. Atl. City Med. Ctr.*, 279 F. Supp. 2d 574, 591 (D.N.J. 2003).

Second, Pecos River cites its proposed new allegation that Dr. Moline's "'stated purpose for her Article'"—that is, alerting physicians to the importance of eliciting cosmetic-talc usage when evaluating mesothelioma patients—"'is not true but rather a pretext.'" (Br. at 19 (quoting Harvey Decl. Ex. 1-2 ¶ 310[13]).) That is nothing more than a self-serving conclusion derived from the same examples of alternative exposures. It is not new evidence and its outlandish conspiracy theory—

[13] Pecos River incorrectly cites paragraph 281 of its proposed amended complaint.

that Dr. Moline and her colleagues intended to deceive medical journals and trick physicians who are treating mesothelioma patients—is an implausible conclusion that is not entitled to be "treat[ed] as true." (Br. at 19.) Nor does Dr. Moline's intent in publishing the Articles impact how readers understood them. *See Pacira*, 63 F.4th at 249 (finding statements in a journal to be nonactionable where "the journal's readers were provided the basis for the statements, have the expertise to assess their merits based on the disclosed data and methodology, and thus are equipped to evaluate the opinions the authors reached."); *see also id.* at 248 n.18 ("[S]tatements directed at readers who are capable of performing an independent evaluation of the facts upon which an opinion is based support the conclusion that the opinion is nonactionable").

Because Pecos River's motion is not based on any materially new evidence, it should be denied.

B. Pecos River's Request That The Court Reconsider Its Decision Is Improper And Meritless.

With only cumulative and irrelevant evidence to support its motion, what Pecos River is really asking this Court to do is reconsider its prior decision through the lens of its new evidence. (Br. at 7; *see also id.* at 17-27 (asking this Court to reevaluate the content, verifiability, and context of the challenged statements).)

The Court should decline to do so. It has thoroughly analyzed how a litigant might seek to disprove the conclusions reached in the Articles, and why that process

of argumentation and refutation is part and parcel of the scientific process. The point Pecos River seems intent on missing is that the Court's ruling was not based on whether someone could theoretically prove these scientific conclusions false. As the Court observed, "'[m]ost conclusions contained in a scientific journal article are, in principle, capable of verification or refutation by means of objective proof.'" (Marino Cert. Ex. E, Op. at 10 (quoting *Pacira*, 63 F.4th at 246).) The thrust of the Court's opinion is that the very process for disproving these conclusions entails a type of analysis unique to scientific debate. (*See id.* ("'[I]t is the essence of the scientific method that the conclusions of empirical research are tentative and subject to revision, because they represent inferences about the nature of reality based on the results of experimentation and observation.'" (quoting *Pacira*, 63 F.4th at 246).) Pecos River's thinly veiled request that this Court reconsider this rationale is not a proper basis for a Rule 60(b) motion. *See Filippatos*, 2024 U.S. Dist. LEXIS 123773, at *4 ("Rule 60(b) motions do not provide avenues for re-litigating already decided issues."); *accord Reardon v. Hillman*, No. 18-cv-1296, 2019 U.S. Dist. LEXIS 2426, at *6 (D.N.J. Jan. 7, 2019).

Moreover, the Court was absolutely right to dismiss the Complaint. As the Court explained, the Article's statements are not actionable because Pecos River disputes them based on impermissible second-guessing of the inferences Dr. Moline drew from data or criticism of her failure to consider certain data. (*See* Marino Cert.

Ex. E, Op. at 10, 18-24.) Pecos River's new examples of supposed alternative exposures only serves to confirm this because they consist of additional attempts to criticize Dr. Moline's conclusion for failing to draw the speculative inferences Pecos River would prefer or by failing to consider inferences that could be drawn from other data. They are also based on gross misrepresentations of Dr. Moline's expert reports and testimony, which confirm her conclusion that the subjects at issue had no known alternative exposures. (*See* Harvey Decl. Ex. 6, at 18 (noting a "possible brief [alternative] exposure" but that "no specific data [was] available regarding this exposure"); *id.* Ex. 9, at 17 ("Mr. Garcia has no known other asbestos exposure"); *id.* Ex. Harvey Decl. Ex. 12, Tr. at 94:13-95:8 (rejecting the assumption that a subject's husband was exposed to asbestos at work).)

To avoid this insurmountable problem, Pecos River repeatedly and falsely represents that the challenged statements consist of representations that the subjects she studied had "no exposure" to asbestos other than through their use of cosmetic talc. (Br. at 12; *accord id.* at 6.) They do no such thing. Rather, as this Court repeatedly observed, the statements conclude that certain research subjects had no "'***known*** exposure'"[14] to alternative sources asbestos. (Marino Cert. Ex. E, Op. at

[14] Indeed, the Articles could not have made blanket representations negating any possible alternative exposure because their conclusions were expressly based on the limited dataset they described.

6, 14, 17, 18, 20, 22 (emphasis added).) And even Dr. Moline's use of the term "potential exposure," which Pecos River repeatedly cites out of context, (*see* Br. at 4, 8, 10, 11, 12, 17, 21, 22), defies simple categorization. As the 2023 Article explained, whether a subject could be characterized as having either a "known" or "potential" exposure is a question that entails nuance and scientific judgment, as it turns on a probabilistic assessment of whether the certainty of such an exposure was "none," "possible," "likely," or "definite" based on criteria set forth in the academic literature. (*See* Marino Cert. Ex. C, 2023 Article at 2 & n.10 (applying these categories "following the descriptions" set forth in Gramond C, Rolland P, Lacourt A, et al. *Choice of rating method for assessing occupational asbestos exposure: Study for compensation purposes in France*, Am. J. Ind. Med. 2012;55(5):440–9).) Stated simply, the question of whether individuals were exposed to asbestos decades ago—particularly when data about their exposures is scant or entirely absent—requires judgments by qualified professionals, which is why plaintiffs in personal-injury cases often hire experts to establish such exposures.[15]

[15] *See, e.g.*, *In re Asbestos Prods. Liab. Litig.*, 714 F. Supp. 2d 535, 545 (E.D. Pa. 2010) (accepting expert testimony from "an expert industrial hygienist who will testify as to Ms. Larson's potential exposure to asbestos while working with joint compound as alleged" and explaining that the expert "applied an accepted methodology to information garnered from Ms. Larson's medical records, deposition testimony and answers to discovery requests, and reached conclusions that reliably flow from the available data and methodology"); *Matter of New York City Asbestos Litig.*, 224 A.D.3d 597, 598 (1st Dep't 2024) (holding that a plaintiff

Moreover, the new examples Pecos River cites do not establish the existence of alternative exposures. Each example is based on speculative and unscientific inferences made by Pecos River's lawyers, not an expert qualified to determine the existence of alternative exposures. (*See* Br. at 10-11.) Often Pecos River's examples depend on multiple unverified assumptions, such as its claim that Ms. Hanson had an alternative exposure because her husband might have worked close enough to asbestos, might have brought his work clothes home, and that Ms. Hanson might have laundered those clothes at home. (*See id*.) And for three of the examples, Pecos River submits no supporting data whatsoever, relying instead on allegations in its proposed amended complaint. (*See id.* at 12-13 (citing allegations in the proposed amended complaint to posit alternative exposures for Ms. Marisco, Ms. Rea, and Ms. Lopez).)

Finally, Pecos River argues that the new data it cites demonstrates that its claims should be debated and resolved in a courtroom rather than academic journals. (Br. at 23.) The parties' lived experience is to the contrary. Shortly after it filed this motion, Pecos River sent the JOEM Editorial Board a letter demanding retraction of the 2020 Article. (*See* Marino Cert. Ex. F.) Dr. Moline has responded to that letter, highlighting its completely unfounded allegations and unscientific conclusions. (*See*

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set forth sufficient evidence of asbestos exposure based on testimony from an industrial hygienist, epidemiologist, and surgeon).

id. Ex. G.) But the fact that Pecos River had the ability and willingness to submit such a letter proves that any legitimate criticism it has about the Articles can and should "play[] out in the pages of peer-reviewed journals," where "the scientific public sits as the jury." *ONY*, 720 F.3d at 497. As part of that process, Pecos River should commission its own "qualified experts" to write competing articles, *id.*, not file lawsuits based on lawyers' unscientific characterization and curation of data.

III. THE *EMORY* DECISION PROVIDES NO BASIS TO REOPEN THIS COURT'S FINAL JUDGMENT.

Pecos River alternatively suggests that the decision in *Emory* entitles it to relief under Rule 60(b)(2) or 60(b)(6). Again, Pecos River is mistaken.

This branch of Pecos River's motion fails at the threshold because "new law does not qualify as 'newly discovered evidence'" for purposes of Rule 60(b)(2). *Sheehan v. Warden Allenwood FCI*, 849 F. App'x 336, 337 n.1 (3d Cir. 2021) (citing *Bohus*, 950 F.2d at 930). Nor does this non-binding decision qualify as an "extraordinary circumstance" that could justify relief under Rule 60(b)(6). *See Holland v. Holt*, 409 F. App'x 494, 497 (3d Cir. 2010) (noting that intervening developments in the law "'by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)'" and, moreover, noting that a non-binding decision "plainly is not an extraordinary circumstance warranting relief from the final judgment." (quoting *Reform Party v. Allegheny County Dep't of Elections*, 174 F.3d 305, 311 (3d Cir. 1999)).

Nor could *Emory* survive scrutiny under Third Circuit law; it is based on the simplistic assumption that because a factfinder could theoretically determine whether research subjects had "non-talc asbestos exposures," any statement about their exposures was both verifiable and had a sufficiently high factual content to be actionable. 2025 U.S. Dist. LEXIS 22754, at *30-31.

As both *Pacira* and *ONY* make clear, that is not how verifiability or content are analyzed in the context of scientific articles. If it were, all scientific conclusions could be considered verifiable and researchers would be subject to sweeping lawsuits. *See Pacira*, 63 F.4th at 246 (explaining that "'[m]ost conclusions contained in a scientific journal article are, in principle, capable of verification or refutation by means of objective proof'" because "'it is the very premise of the scientific enterprise that it engages with empirically verifiable facts about the universe.'" (quoting *ONY*, 720 F.3d at 496)). Various types of data and inferences, which this Court thoroughly analyzed, are needed to determine the existence of alternative asbestos exposures. *Emory*'s superficial analysis failed to engage with such data and inferences.

As for the "context" factor, the *Emory* court did not examine or identify the types of robust disclosures, limitations on data, and qualifying language found in the Articles. Rather, the court simply concluded that the defendants' statements were not protected because they appeared in a scientific journal. *See* 2025 U.S. Dist.

LEXIS 22754, at *32-33. That conclusion has no persuasive value in the situation here, where the Court extensively catalogued the express limitations, conflicts of interest, tentative language, and clinical purposes described in the Articles. (*See* Marino Cert. Ex. E, Op. at 26-28.)

Thus, the *Emory* decision provides no basis to reopen this Court's judgment.

CONCLUSION

For the foregoing reasons, Pecos River's motion should be denied.

Chatham, New Jersey
Dated: May 19, 2025

Respectfully submitted,

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