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VIA E-MAIL

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Stacieann C. Yuhasz, PhD
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Re: Dr. Jacqueline Moline's Response to Pecos River Talc LLC's May 5, 2025 Demand
that the Journal of Occupational and Environmental Medicine Withdraw Her Article,
Mesothelioma Associated With the Use of Cosmetic Talc, 62(1):11-17 (Jan. 2020)

Dear Dr. Bandt-Rauf and Dr. Yuhasz:

We represent Dr. Jacqueline Moline, and write in response to Pecos River Talc's May 5, 2025 demand (the "Demand Letter") that the Journal of Occupational and Environmental Medicine (the "Journal") withdraw from publication Dr. Moline's January 2020 article, *Mesothelioma Associated With the Use of Cosmetic Talc*, 62(1):11-17 (the "Moline Article" or the "Article"). For the reasons set forth below, the Journal should decline to do so.

Pecos River Talc is the successor in interest to LTL Management LLC, an entity Johnson & Johnson created to hold and manage North American legal claims against it related to the Company's cosmetic talc products. The Demand Letter is only the latest act in J&J's relentless campaign to silence Dr. Moline and any other scientist willing to reveal, in scholarly articles and expert testimony, the causal connection between J&J's talc-based cosmetic products and the deadly cancer mesothelioma.¹ That effort was most sharply rejected in the attached opinion of the

¹ See Alexander Zaitchik, The New Republic, *A Devastating New Exposé of Johnson & Johnson Indicts an Entire System*, May 12, 2025 (describing Johnson & Johnson's decades-long "scorched-earth public relations campaign" on troublesome science), available at

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United States District Court for the District of New Jersey in *LTL Management LLC v. Moline*, Civil Action No. 23-02990 (GC) (JTQ). In that opinion—which the Demand Letter fails to even mention—the Honorable Georgette Castner, U.S.D.J., expressly rejected the animating premise of Pecos River Talc’s demand: that LTL’s characterizations of alternative asbestos exposures render the fundamental claims made in the Moline Article false. As the Court explained:

Here, the first category of Dr. Moline’s statements was made in “the peer-reviewed Journal of Occupational and Environmental Medicine.” The Article also provided readers with the methodology on which the statements were based, including the fact that (1) the cases were referred to Dr. Moline “for medico-legal evaluation as part of tort litigation”; (2) data “for all 33 patients were gathered from each individual’s medical records and sworn testimony (deposition transcripts)”; and (3) the tissue analyses were performed by author R.G., and that any other analyses done by other investigators “are not presented in this paper.” The authors also expressly noted the Article’s limitations, including the fact that the 33 individuals were plaintiffs in talc litigation; Dr. Moline and another author’s conflict of interest due to serving “as expert witnesses in . . . talc litigation for plaintiffs”; “[d]ata were obtained from medication records and transcripts of depositions, rather than structured, in-person interviews”; and their medico-legal analysis carried a risk of self-reporting and recall bias. Finally, the Article uses language framing its conclusions as tentative opinions, noting that the findings “strongly suggest” that cases of mesothelioma once deemed “spontaneous” could be explained through exposure to cosmetic talc. The Article emphasizes “the importance of collecting detailed exposure histories that incorporate these findings in patients presenting with mesothelioma,” and its overall conclusion is that clinicians “should elicit a history of talcum powder usage in all patients presenting with mesothelioma.”

All of these disclosures, together with the “analytical tone and tenor” of the Article, notify readers that Dr. Moline’s statements should be understood as scientific conclusions that are “tentative and subject to revision.” *Pacira*, 63 F.4th at 246 (citing *ONY*, 720 F.3d at 496); see *NXIVM Corp.*, 2007 WL 1876496, at *13 (finding that similar disclaimers in scholarly articles rendered specific factual assertions in the articles nonactionable for trade libel). The Article’s

<https://newrepublic.com/article/194726/johnson-and-johnson-investigation-crimes-health-care-system>.

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position that clinicians “should elicit a history of talcum powder usage” in mesothelioma patients further supports its “analytical tone and tenor.”

(Op. at 26-27 (internal citations omitted).)

Judge Castner’s thoughtful opinion explains precisely why the Moline Article was accepted for publication and should not be withdrawn. That opinion highlights that the Moline Article was based on Dr. Moline’s best professional judgment, and was published with express disclosures concerning the limitations on the data she reviewed. As the Article itself makes clear, it was not written as a legal document or for litigation purposes but rather for clinical purposes, to convey to physicians the importance of eliciting a history of talcum powder usage in all patients presenting with mesothelioma. (See Moline Article, at 16 (“This paper provides evidence that mesothelioma cases once considered idiopathic may be attributable to asbestos-contaminated cosmetic talcum powder usage and that the elicitation of a history of such usage is imperative to obtaining a full exposure history in all patients presenting with mesothelioma.”); *id.* at 11 (“Clinical Significance: This manuscript is the first to describe mesothelioma among talcum powder consumers. Our case study suggest that cosmetic talcum powder use may help explain the high prevalence of idiopathic mesothelioma cases, particularly among women, and stresses the need for improved exposure history elicitation among physicians.”).) Moreover, Dr. Moline and her colleagues worked assiduously to accurately present her data and conclusions and corrected the Article when appropriate. For example, when Dr. Moline discovered that one of the subjects was erroneously included in the Article, she requested that the Journal publish an erratum acknowledging the error. See Dr. Jacqueline Moline et al., 65(5) *Journal of Occupational and Environmental Medicine* (May 2023), *Mesothelioma Associated With the Use of Cosmetic Talc: Erratum*.

Judge Castner’s opinion further reveals Pecos River’s allegations for precisely what they are—claims and self-serving characterizations made by lawyers, not objective findings made by a qualified expert with scientific validity. For example, Pecos River cites the District Court’s decision in *Bell v. American International Industries*, No. 1:17-cv-00111 (M.D.N.C.), to suggest that the Article’s statement about Betty Bell’s exposure was false, but omits Judge Castner’s explanation as to how that decision is entirely consistent with Dr. Moline’s findings:

[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,

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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. *Pacira*, 63 F.4th at 247.

(Op. at 21 (emphasis in original).)

Moreover, in the Demand Letter, Pecos River states that approximately one-third of the individuals in the Moline Article had alternate exposures, and lists those "exposures." Yet the Demand Letter does not provide actual information about the exposures. For example, the Demand Letter states that Kayla Martinez had asbestos exposure because there is a note in a medical record stating that her father worked "at a company with known asbestos exposure." Dr. Moline could easily demonstrate, however, that the facts are different than Pecos River implies. Ms. Martinez's father worked at a boot manufacturing facility until 1989, when Ms. Martinez was born. He then worked for the City of Greenville. Ms. Martinez's mother stated that there was no dust on his clothes and that she was unaware of any asbestos exposure suffered by her husband. A defense expert, Dr. G. Diette, conceded that it was "not possible to determine para-occupational exposure" and that the mesothelioma was spontaneous. He did not mention any known asbestos exposure identified in the family.

A second example is Irma Verdolotti, whose father was apparently a steamfitter in the 1920s. With respect to steamfitters who work with asbestos, family exposure is possible if they wore their asbestos-laden clothes home. In this instance, the Demand Letter states that Ms. Verdolotti had asbestos exposure from her father's work. But as Dr. Moline could readily show, Ms. Verdolotti's father in fact wore overalls at work and left them there. His work clothes were not laundered at home. Ms. Verdolotti's sister was a secretary with no described asbestos exposure. There was no information in the sworn testimony related to household asbestos exposure. Using a family member's occupation as "proof" of exposure without information related to take-home exposure is not scientifically valid.

A third example illustrates how specious Pecos River's claims are. Ms. Doris Jackson, a schoolteacher, worked in a variety of school buildings. Pecos River's lawyers state that she had asbestos exposure from pipes in the school despite having no knowledge about her actual location or specific information related to her alleged exposure. As Dr. Moline could show, however, J&J's expert in that case, Dr. A. Feingold, clearly stated that the "mesothelioma arose spontaneously and was not caused by occupational or household exposure to commercial or non-commercial amphibole asbestos." Pecos River's lawyer's claim that Ms. Jackson was exposed to asbestos from pipes in her school is just that—a lawyer's claim with no scientific basis whatsoever. Indeed, J&J's own expert stated that Ms. Jackson did not have alternate exposure to asbestos.

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The Demand Letter is also notable for what it does not say. While manufacturing reasons to disagree with the Article’s findings as to 13 of the 33 studied cases, it says nothing about the remaining 20 subjects. The letter also ignores that, in six instances, Dr. Moline’s findings were supported by tissue studies performed by her colleague and co-author, Dr. Ronald E. Gordon. (*See* Moline Article, at 11 (“In light of these gaps in the existing literature, we present 33 cases of individuals with malignant mesothelioma who were exposed to commercial talcum powder products. Of those cases, we present six in detail, where the individuals had no other known exposure to asbestos and for whom tissue studies show the presence of asbestos commonly found in talcum powder (such as tremolite, and/or anthophyllite).”).

These inaccuracies and omissions, along with Judge Castner’s thoughtful opinion, demonstrate that, if J&J had legitimate criticisms about the validity of the conclusions reached in the Moline Article, the proper response would not have been to sue Dr. Moline or to demand that her articles be withdrawn. Rather, as the court explained in *ONY, Inc. v. Cornerstone Therapeutics, Inc.*, 720 F.3d 490 (2d Cir. 2013), the proper course would have been for J&J to commission its own research by qualified experts to substantiate its criticisms:

[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. Importantly, those conclusions are presented in publications directed to the relevant scientific community, ideally in peer-reviewed academic journals that warrant that research approved for publication demonstrates at least some degree of basic scientific competence. These conclusions are then available to other scientists who may respond by attempting to replicate the described experiments, conducting their own experiments, or analyzing or refuting the soundness of the experimental design or the validity of the inferences drawn from the results. In a sufficiently novel area of research, propositions of empirical “fact” advanced in the literature may be highly controversial and subject to rigorous debate by qualified experts. Needless to say, courts are ill-equipped to undertake to referee such controversies. Instead, the trial of ideas plays out in the pages of peer-reviewed journals, and the scientific public sits as the jury.

Id. at 496-97.

In short, there is no basis to retract the Moline Article since its premise—that exposure to cosmetic talc can cause mesothelioma, a premise documented by other scientists for decades—is valid and informs the literature about the importance of including cosmetic talc as a source of asbestos exposure when taking a mesothelioma patient’s comprehensive exposure history.

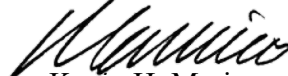
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Given Dr. Moline’s ultimate conclusion—that clinicians “should elicit a history of talcum powder usage in all patients presenting with mesothelioma”—withdrawing her article would do a significant disservice to the Journal’s dedicated readership. One can readily understand why J&J, by whatever name, would demand that the Moline Article be withdrawn: to thwart potentially valid claims against the company. There is no reason, however, for an independent scientific journal to honor that demand.

Thank you for your consideration of this letter. I will make myself available to discuss this matter at your convenience.

Very truly yours,



Kevin H. Marino

cc: Dr. Jacqueline Moline
Kristen Fournier, Esq.