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19 Attorneys for Defendant
20 **UNION PACIFIC RAILROAD COMPANY**

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **FOR THE COUNTY OF ALAMEDA**

23 **KAREN EMERSON, Individually and as**) **Case No. RG13698637**
24 **successor in interest to and Personal**)
25 **Representative of the Estate of Jeffrey**) **DEFENDANT UNION PACIFIC RAILROAD**
26 **EMERSON,**) **COMPANY'S REQUEST FOR LEAVE TO SERVE**
27) **ADDITIONAL MOTION IN LIMINE;**
28) **DECLARATION OF TRACY COWAN**

29 **Plaintiffs,**)

30 **v.**)

31 **UNION PACIFIC RAILROAD CO., et al.,**)

32 **Defendants**)

33 **Date:** September 4, 2015
34 **Time:** 10:30 A.M.
35 **Dept.:** 30

36 **FAC Filed:** March 26, 2014
37 **Trial Date:** September 14, 2015

1 PLEASE TAKE NOTICE that Pursuant to the Court's Case Management Order dated
2 December 5, 2014, Defendant Union Pacific Railroad Company ("Union Pacific") hereby requests
3 that the Court grant leave to serve an additional motion *in limine* for good cause shown.

4 Specifically, Union Pacific respectfully requests that the Court grant leave to serve the
5 following additional motion *in limine*, a true and accurate copy of which is attached hereto as
6 Exhibit A to the Declaration of Tracy Cowan:

- 7 1. Union Pacific's Motion *in Limine* No. 23 - Motion *in Limine*
8 Regarding Dr. Robert Nolan's Association with the International
9 Chrysotile Institute.

10 (*See Cowan Dec.; Ex. A.*)

11 This request is brought pursuant to the Court's Case Management Order dated December 5,
12 2014, and is based on this notice, the Declaration of Tracy J. Cowan ("Cowan Declaration") and
13 exhibits attached thereto, all papers and records on file in this action, all pleadings and documents
14 filed herein, and such further evidence and argument as may be permitted and presented to the
15 Court at the time of hearing on this matter. Union Pacific's motion will be heard on September 4,
16 2015, at 10:30 a.m., in Department 30 of the Superior Court of California, County of Alameda,
17 located at 201 Thirteenth Street, Second Floor, Oakland, California 94612 or as soon thereafter as
18 the same may be heard.

19 Dated: September 3, 2015

Hawkins Parnell Thackston & Young LLP

20
21 By: 

22 Todd N. Wade
23 Tracy J. Cowan
24 Joseph R. Connelly
25 Attorneys for Defendant,
26 UNION PACIFIC RAILROAD COMPANY
27
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1 **DECLARATION OF TRACY J. COWAN**

2 I, Tracy J. Cowan, declare as follows:

3 1. I am a member in good standing of the State Bars of Missouri, Illinois, and
4 Arkansas and was admitted *pro hac vice* in this matter on January 24, 2014.

5 2. I am a Partner at the law firm of Hawkins Parnell Thackston & Young LLP, one of
6 the attorneys of record for Defendant Union Pacific Railroad Company (“Union Pacific”) in the
7 above-captioned action.

8 3. I am also national counsel for Union Pacific for asbestos matters.

9 4. I am personally familiar with the facts set forth to competently testify to them if
10 required to do so.

11 5. I submit this declaration pursuant to the Court’s December 5, 2014 Case
12 Management Order in support of Defendant Union Pacific Railroad Company’s Request to Serve
13 Additional Defendant-Specific Motion *in Limine*. For good cause Union Pacific requests that the
14 Court hear one (1) additional motion *in limine* filed by Union Pacific.

15 6. Attached hereto as Exhibit A is a true and accurate copy of Union Pacific’s Motion
16 *in Limine* No. 23 - Motion *in Limine* Regarding Dr. Robert Nolan’s Association with the
17 International Chrysotile Institute because Dr. Robert Nolan was not deposed until August 26, 2015,
18 and the evidence Union Pacific seeks to exclude is irrelevant and any marginal probative value is
19 outweighed by its prejudicial impact. This Motion will reduce the volume of irrelevant evidence
20 presented and avoid unfair prejudice to Union Pacific.

21 8. Union Pacific’s Motion *in Limine* is made in good faith and for good cause.

22 I declare under penalty of perjury that the foregoing is true and correct and this declaration
23 was executed this 3rd day of September 2015 at New York, New York.

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27 _____
Tracy J. Cowan

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PROOF OF SERVICE BY ELECTRONIC TRANSMISSION

Karen Emerson, et al., v. Union Pacific Railroad Co., et al.,
Alameda County Superior Court, Case No.: RG13698637

I, the undersigned, declare as follows:

I am employed in the City of Saint Louis, Missouri, and I am over the age of 18 years and not a party to the within action. My business address is 10 South Broadway, Suite 1300, Saint Louis, Missouri, 63102.

On the date executed below, I electronically served the documents(s) via Electronic Mail described as:

DEFENDANT UNION PACIFIC RAILROAD COMPANY’S REQUEST TO SERVE ADDITIONAL MOTION IN LIMINE AND DECLARATION OF TRACY J. COWAN

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **September 3, 2015**, at St. Louis, Missouri.



Katrina M. Sroka

EXHIBIT A

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11 Attorneys for Defendant
12 UNION PACIFIC RAILROAD COMPANY

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 KAREN EMERSON, Individually and as successor
16 in interest to and Personal Representative of the
Estate of Jeffrey EMERSON,

17 Plaintiff,

18 vs.

19 UNION PACIFIC RAILROAD COMPANY,
20 individually and as successor in interest, parent,
alter ego and equitable trustee of SOUTHERN
21 PACIFIC RAILROAD COMPANY; ALLIED
PACKING & SUPPLY, INC.; CBS
22 CORPORATION, a Delaware Corporation,
formerly known as VIACOM INC., successor by
23 merger to CBS CORPORATION, a Pennsylvania
Corporation, formerly known as WESTINGHOUSE
24 ELECTRIC CORPORATION; GEORGIA-
PACIFIC LLC; FIRST DOE through THREE
25 HUNDREDTH DOE, inclusive

26 Defendants.

Case No. RG13698637

**DEFENDANT UNION PACIFIC
RAILROAD COMPANY'S MOTION
IN LIMINE NO. 23 TO EXCLUDE
TESTIMONY REGARDING DR.
NOLAN'S ASSOCIATION WITH THE
INTERNATIONAL CHRYSOTILE
INSTITUTE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT; DECLARATION OF
TRACY J. COWAN**

Date: September 14, 2015
Time: 9:00 a.m.
Dept: 30

FAC Filed: March 26, 2014
Trial Date: September 14, 2015

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TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Union Pacific Railroad Company (“Union Pacific”) hereby moves this Court for an order *in limine* to prohibit Plaintiff and her counsel from introducing testimony or evidence regarding Dr. Nolan’s association with the International Chrysotile Institute or statements that Dr. Nolan is a “paid advocate” for the asbestos industry.

This motion is based on the memorandum of points and authorities filed concurrently herewith, the Declaration of Tracy J. Cowan, the papers and records on file in this action and on such oral and documentary evidence as may be presented at the hearing of this motion. Union Pacific’s motion will be heard on September 14, 2015, at 9:00 a.m., in Department 30 of the Superior Court of California, County of Alameda, located at 201 Thirteenth Street, Second Floor, Oakland, California 94612 or as soon thereafter as the same may be heard.

Dated: September 3, 2015

Hawkins Parnell Thackston & Young LLP



By: _____
TODD N. WADE, ESQ.
TRACY J. COWAN, ESQ.
JOSEPH R. CONNELLY III, ESQ.
Attorneys for Defendant

UNION PACIFIC RAILROAD COMPANY

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Union Pacific anticipates that Plaintiff will attempt to demonstrate bias in Dr. Nolan through
4 his association with the International Chrysotile Institute. Specifically, Union Pacific anticipates that
5 Plaintiff will make the suggestion that Dr. Nolan, who was invited by the Malaysian Deputy
6 Minister of Health to present his scientific views on asbestos, is a paid advocate of the chrysotile
7 industry opposing bans on asbestos in third-world countries. Dr. Nolan stated repeatedly that this is
8 a mischaracterization of his work. Such allegations are wholly immaterial to Plaintiff's allegations
9 in this case, are not relevant to the credibility of Dr. Nolan, and any probative value of Dr. Nolan's
10 association with International Chrysotile Institute is substantially outweighed by its prejudicial effect
11 that the jury will presume he is a paid advocate for an industry when he simply presented his
12 scientific findings to a foreign government.

13 **II. BACKGROUND**

14 Plaintiff Karen Emerson ("Plaintiff"), Individually and as successor in interest to and
15 Personal Representative of the Estate of Jeffrey Emerson ("Decedent"), brought this action under the
16 Federal Employers' Liability Act claiming that Decedent developed asbestos-related lung diseases as
17 a result of his alleged exposure to asbestos and/or asbestos-containing materials during the course of
18 his employment with Union Pacific's predecessor, Southern Pacific Transportation Company
19 ("Southern Pacific"). (*See* First Am. Compl.)

20 On August 26, 2015, Dr. Nolan was deposed. (*See* 8/26/15 Deposition of Dr. Robert Nolan,
21 attached to the Declaration of Tracy Cowan as **Exhibit A.**) During the deposition, counsel for
22 Plaintiff questioned Dr. Nolan regarding his association with the International Chrysotile Institute.
23 (*Ex. A*, at p. 160:11-170:10.) Specifically, Plaintiff intends to suggest that Dr. Nolan is an opponent
24 of bans on chrysotile asbestos in third-world countries. (*Id.*, at p. 160:11-13, 17-21, 161:3-4.) Dr.
25 Nolan's actual testimony is that he has been asked by the Malaysian Deputy Minister of Health to
26 provide his expertise as the Malaysian government investigates regulations regarding the safety of
27

1 the use of chrysotile asbestos. (*Id.*, at p. 163:2-18.) Specifically, he stated that the use of asbestos,
2 “is an open question and the Malaysians have not made up their mind.” (*Id.*, at p. 163:5-6.) Despite
3 Plaintiff’s counsel’s attempts to paint Dr. Nolan as a paid advocate on this issue, Dr. Nolan
4 specifically states that counsel for Plaintiff is mischaracterizing his participation. (*Id.*, at 168:9-20.)
5 Dr. Nolan’s costs of attending were paid for by the Chrysotile Institute, but Dr. Nolan is a scientist,
6 he was asked to present on a scientific issue, and he prepared a power point presentation. (*Id.*, at
7 162:11-21, 167:2-4, 167:11-168:1, 168:18-20.) He did not attend to convince the Malaysian
8 government to keep using asbestos and Dr. Nolan is not a paid advocate for chrysotile use. (*Id.*, at p.
9 163:7-18, 166:22-167:1.) In fact, he stated “I don’t say anything about chrysotile.” (*Id.*, at p.
10 168:15-17.)

11 Accordingly, Dr. Nolan is not an advocate for the “chrysotile industry” and any claims that
12 he is, or testimony regarding his association with the International Chrysotile Institute, will be
13 unduly prejudicial and misleading. Accordingly, any such testimony must be precluded.

14 **III. ARGUMENT**

15 **A. Testimony Regarding Dr. Nolan’s Association with the International Chrysotile** 16 **Institute or Claims he is a Paid Advocate for the “Chrysotile Industry” are Irrelevant to** 17 **Plaintiff’s Allegations in this Matter and Prejudicial.**

18 In California, only relevant evidence is admissible. (Cal. Evid. Code § 350.) Evidence is
19 relevant only if it tends to prove or disprove the intermediate or ultimate facts that are in dispute; it is
20 not relevant if such a tendency exists only by resort to inference or deductions that are speculative in
21 nature. (Cal. Evid. Code § 210.) Plaintiff, as the proponents of the evidence, have the burden of
22 showing (1) that the facts Plaintiff seek to prove are material to this case and (2) that the evidence is
23 probative of such material facts. (Cal. Evid. Code §§ 210, 350.)

24 In light of the above-noted principles regarding relevancy, the California Supreme Court has
25 held that a case may not be tried and determined based on the facts of other cases, rather it must be
26 tried and determined based on the facts of the case before the court alone. In particular, the Court
27 approved of the following ruling by the trial court:

1 I want to caution the jury that the only and the sole issue to be determined by the
2 jury in this case is their determination of, first, liability, if any, of the defendant;
3 and, secondly, what damages should be awarded these plaintiffs as based solely
4 and exclusively upon the evidence here without any reference to what happens in
some other case, because in some other case the evidence may be entirely
different than it is in this case.

5 (*Menchaca v. Helms Bakeries, Inc.*, (1968) 68 Cal. 2d 535, 545.)

6 Even if the evidence has some minimal probative value, this probative value is substantially
7 outweighed by the fact that the admission of such evidence would (1) necessitate undue consumption
8 of time, (2) cause undue prejudice, (3) confuse the issues and (4) mislead the jury. (Cal. Evid. Code
9 § 352.) (A trial court has discretion to exclude evidence if its probative value is substantially
10 outweighed by the probability that the evidence will (1) necessitate undue consumption of time, (2)
11 cause undue prejudice, (3) confuse the issues or (4) mislead the jury.)

12 Specifically, regarding cross-examination of witnesses, witness may not be cross-examined
13 for purpose of impeachment on irrelevant and immaterial matters. (*People v. Griffin* (App. 1931)
14 118 Cal.App. 18; *People v. Thornton* (2007) 41 Cal.4th 391.) Furthermore, Evidence attacking a
15 witness's credibility by showing his bias, interest, or other motive to lie may be excluded if its
16 probative value is substantially outweighed by its prejudicial effect. (*Piscitelli v. Salesian Soc.*
17 (2008) 166 Cal.App.4th 1, 7.)

18 In the present matter, Dr. Nolan's association with the International Chrysotile Institute are
19 wholly irrelevant to Plaintiff's allegations in this matter, and are not relevant to Dr. Nolan's
20 credibility as a witness. As described above, despite Plaintiff's counsel's attempts to paint Dr. Nolan
21 as a paid advocate for the "chrysotile industry" seeking to oppose bans on asbestos in third world
22 countries, Plaintiff is mischaracterizing his participation Malaysia's investigation into asbestos
23 regulations. (Ex. A, at 168:9-20.) Dr. Nolan has been asked by the Malaysian Deputy Minister of
24 Health to provide his expertise as the Malaysian government investigates regulations regarding the
25 safety of the use of chrysotile asbestos. (*Id.*, at p. 163:2-18.) Specifically, he stated that the use of
26 asbestos, "is an open question and the Malaysians have not made up their mind." (*Id.*, at p. 163:5-6.)
27 Dr. Nolan's costs of attending were paid for by the Chrysotile Institute, but Dr. Nolan is a scientist,

1 he was asked to present on a scientific issue, and he prepared a power point presentation. (*Id.*, at
2 162:11-21, 167:2-4, 167:11-168:1, 168:18-20.) He did not attend to convince the Malaysian
3 government to keep using asbestos and Dr. Nolan is not a paid advocate for chrysotile use. (*Id.*, at p.
4 163:7-18, 166:22-167:1.) In fact, he stated “I don’t say anything about chrysotile.” (*Id.*, at p.
5 168:15-17.) Thus, any probative value of Dr. Nolan’s association with International Chrysotile
6 Institute is substantially outweighed by its prejudicial effect that the jury will presume he is a paid
7 advocate for an industry when he simply presented his scientific findings to a foreign government.
8 (*Piscitelli*, 166 Cal.App.4th at 8.) Accordingly, any such testimony must be precluded.

9 **B. Dr. Nolan cannot be a conduit for inadmissible hearsay.**

10 Generally, Evidence Code section 801 allows expert witnesses to state on direct examination
11 the matters on which they relied, regardless of admissibility, in forming their opinions. While
12 section 801 gives expert witnesses “considerable leeway as to the material on which they may rely,
13 the rules governing actual communication to the jury of any hearsay matter reasonably relied on by
14 an expert are more restrictive” because an expert witness may not “relate the out-of-court statements
15 of another as independent proof of the fact.” (*Korsak*, 2 Cal.App.4th at 1524-1525; *see also*
16 *Continental Airlines, Inc. v. McDonnell Douglas Corp.* (1989) 216 Cal.App.3d 388, 415, and
17 *Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 788-789.)

18 Similar to the plaintiff in *Korsak*, Plaintiff may use Dr. Nolan to parrot the inadmissible
19 hearsay contents of documents regarding Dr. Nolan’s association with the International Chrysotile
20 Institute. To the extent Plaintiff attempts to introduce documents or statements regarding this issue,
21 Plaintiff cannot, in the guise of cross-examining Union Pacific’s expert, relate the out-of-court
22 statements regarding the factual details of any such inadmissible, hearsay-laden documents.

23 **IV. CONCLUSION**

24 For the reasons above, the Court should prohibit Plaintiff and her counsel from introducing
25 testimony or evidence regarding Dr. Nolan’s association with the International Chrysotile Institute or
26 statements that Dr. Nolan is a “paid advocate” for the asbestos industry.

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Dated: September 3, 2015

HAWKINS PARNELL THACKSTON & YOUNG LLP

By:



Todd N. Wade
Joseph R. Connelly III
Attorneys for Defendant,
UNION PACIFIC RAILROAD COMPANY

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DECLARATION OF TRACY J. COWAN

I, Tracy J. Cowan, declare as follows:

1. I am a member in good standing of the State Bars of Missouri, Illinois, and Arkansas and was admitted *pro hac vice* in this matter on January 24, 2014.

2. I am a Partner at the law firm of Hawkins Parnell Thackston & Young LLP, one of the attorneys of record for Defendant Union Pacific Railroad Company (“Union Pacific”) in the above-captioned action.

3. I am also national counsel for Union Pacific for asbestos matters.

4. I am personally familiar with the facts set forth to competently testify to them if required to do so.

5. This declaration is submitted in support of Defendant’s Motion in *Limine* to Exclude Testimony Regarding Dr. Robert Nolan’s Association with the International Chrysotile Institute.

6. The specific relief requested is to prohibit Plaintiff and her counsel from introducing testimony or evidence regarding Dr. Nolan’s association with the International Chrysotile Institute or statements that Dr. Nolan is a “paid advocate” for the asbestos industry.

7. Union Pacific will suffer prejudice if this Motion in *Limine* is not granted because the evidence sought for exclusion is not relevant, lack foundation and are unduly prejudicial to Union Pacific.

8. Attached hereto as Exhibit A is a true and accurate copy of the relevant portions of the 8/26/2015 Deposition of Dr. Robert Nolan.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed this 1st day of September 2015 at St. Louis, Missouri.



Tracy J. Cowan

EXHIBIT A

1 -----
2 REALTIME AND INTERACTIVE REALTIME TRANSCRIPT
3 ROUGH DRAFT DISCLAIMER
4 -----

5 IMPORTANT NOTICE:
6 AGREEMENT OF PARTIES
7 -----

8 we, the party working with realtime and rough
9 draft transcripts, understand that if we
10 choose to use the realtime rough draft screen
11 or the printout, that we are doing so with the
12 understanding that the rough draft is an
13 uncertified copy.

14 we further agree not to share, give, copy,
15 scan, fax or in any way distribute this
16 realtime rough draft in any form (written or
17 computerized) to any party. However, our own
18 experts, co-counsel and staff may have limited
19 internal use of same with the understanding
20 that we agree to destroy our realtime rough
21 draft and/or any computerized form, if any,
22 and replace it with the final transcript upon
23 its completion.

24 Case: EMERSON v. ALLIED, et al
25 Witness: ROBERT PATRICK NOLAN
Date: AUGUST 26, 2015

REPORTER'S NOTE:
Since this proceeding has been realtimed and
is in rough draft form, please be aware that
there may be a discrepancy regarding page and
line number when comparing the realtime
screen, the rough draft, rough draft disk and
the final transcript.

Also, please be aware that the realtime screen
and the uncertified rough draft transcript may
contain untranslated steno, reporter's note in
double parentheses, misspelled proper names,
incorrect or missing Q/A symbols or
punctuation and/or nonsensical English word
combinations. All such entries will be
correct on the final, certified transcript.

Court Reporter's Name: DAVID LEVY, CSR, RPR, CLR
Firm Name: DAVID FELDMAN WORLDWIDE

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2 Been duly sworn by the Notary Public, was.

3 Examined and testified as follows:

4 BY MR. SATTERLEY:

5 Q. Please state your full name, sir.

6 A. Robert Patrick Nolan.

7 Q. Is it my understanding that you are a medical
8 doctor?

9 A. No.

10 Q. But you do have a doctorate in something, right?

11 A. I have a Ph.D. in chemistry.

12 Q. And when did you get that Ph.D. in chemistry?

13 A. I got it in the City University of New York in
14 1986.

15 Q. Have you gone to any medical schools in the
16 past?

17 A. You mean attended medical school?

18 Q. Yes, sir.

19 A. I've never attended medical school.

20 Q. Are you an electron microscopist?

21 A. Electron microscopy is a tool that I use.

22 Q. And when did you first start using that tool?

23 A. As an undergraduate in Rutgers in probably 1977,
24 I had a course in electron microscopy.

25 Q. It's my understanding you have been hired to

1 testify in the Emerson case, is that accurate?

2 A. I was asked to do the lung content analysis in
3 the Emerson case, and I assume, if they ask me to
4 testify, I will testify.

3 you've got to get it finished by the end of the month?

4 A. I may get a little wiggle room if there's an
5 extra day or two. I don't know the exact things, you
6 know, what their criteria is, but I was asked to
7 complete it by the end of August.

8 Q. And this Malaysia, does the Malaysia work have
9 to do with chrysotile in Malaysia?

10 A. Yes.

11 Q. You've been one of the proponents for the
12 continued use of chrysotile in third world countries,
13 correct?

14 A. I didn't say Third world countries. I think
15 other countries can use it, too. I'm not in the
16 business of characterizing countries.

17 Q. Well, whatever countries, whether First world,
18 Second world or where my wife is from in the Third
19 world, wherever, however people characterize it, you're
20 for the continued use of cite oat tile asbestos around
21 the world.

22 A. I believe in --

23 Q. Including Malaysia.

24 A. Correct.

25 Q. And you've actually gone to Malaysia in the

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1 past?

2 A. Yes.

3 Q. And have you gone to other countries to advocate
4 the continued use of chrysotile?

5 A. I don't consider myself and advocate.

- 6 Q. Well, you testified before Congress on behalf of
7 certain entities, correct?
- 8 A. I have testified before Congress. But I just --
- 9 Q. I mean, the National Stone Association sent you
10 to testify before Congress in 2007, do you remember
11 that?
- 12 A. I don't know whether I was actually working with
13 the National Stone Association. They might have --
- 14 Q. You don't?
- 15 A. I don't recall getting any fees from them.
- 16 Q. You don't recall working for them in the past?
- 17 A. Uh -- I don't know whether I ever got a fee from
18 them for anything.
- 19 Q. Really? And --
- 20 A. You're talking about eight years ago.
- 21 Q. -- this past --
- 22 A. I know the people --
- 23 Q. -- this past -- this past year, did you go to
24 Malaysia in the past year with regard to chrysotile
25 asbestos?

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- 1 A. Yes.
- 2 Q. And did you make a presentation?
- 3 A. Yes.
- 4 Q. Make a PowerPoint, did a PowerPoint
5 presentation?
- 6 A. Yes.
- 7 Q. And that was for the continued use of asbestos,
8 right?

- 9 A. It was a workshop on the future use of asbestos
10 in Malaysia and I was one of the speakers.
- 11 Q. Who paid for your travel expenses to Malaysia?
- 12 A. The Chrysotile Institute of Canada.
- 13 Q. And who was your point of contact with the
14 Chrysotile Institute in Canada?
- 15 A. Bob Pigg.
- 16 Q. Bobby Joe Pigg?
- 17 A. Yes.
- 18 Q. And did they -- did they pay your, all your
19 travel, your hotel, your meals for this trip to Malaysia
20 in February?
- 21 A. Yes.
- 22 Q. And did anybody from Chrysotile Institute
23 accompany you?
- 24 A. No.
- 25 Q. You went by yourself?

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- 1 A. Correct.
- 2 Q. Now, in Malaysia, government, public health
3 authorities have called for a ban on asbestos, right?
- 4 A. My understanding, and I met, I guess, in May
5 with the deputy minister, and that is an open question
6 and the Malaysians have not made up their mind.
- 7 Q. Certain officials of the Malaysian Government,
8 some of the health authorities, called upon, for a ban
9 on asbestos. And that's the reason why you're going
10 over there. You're going over there to tell your
11 viewpoint with the Chrysotile Institute, your view on

- 12 the ban on asbestos, right?
- 13 A. The -- the -- I think you're mischaracterizing
- 14 things in the sense that it is still an open question
- 15 and the Deputy Minister for Health told me in May that
- 16 they had not made up their minds and they want to see
- 17 what people have to say. And I'm one of the people they
- 18 wanted to listen to.
- 19 Q. Do you know what the APCO worldwide is?
- 20 A. It's a public relations firm.
- 21 Q. And where are they based?
- 22 A. I don't know. They are all over the place.
- 23 They have offices in many places.
- 24 Q. And the -- do they work -- have they been
- 25 working to stop the ban on asbestos in Malaysia?

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- 1 A. I don't know the extent of their work in
- 2 Malaysia.
- 3 Q. Have you worked with APCO?
- 4 A. I've attended meetings with -- I've attended
- 5 meetings with --
- 6 Q. I apologize. You said you attended meetings
- 7 with them?
- 8 A. Yes.
- 9 Q. And where were those meetings?
- 10 A. I think they were at the meeting in Malaysia. I
- 11 think they have been at meetings in the Philippines.
- 12 And they may have an office in Singapore.
- 13 Q. Are they a part of or working for the
- 14 International Chrysotile Association?

21 available.

22 Q. Do you use that as a basis to advocate for the
23 continued use of asbestos around the world?

24 A. I object to "advocate." I'm not advocating.
25 I'm just giving people advice. They make their own

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1 decisions.

2 Q. I'm sorry, in February you gave a PowerPoint
3 presentation in Malaysia, correct?

4 A. Yes, it's on my CV, I think.

5 Q. And part of the reason why you did a PowerPoint
6 presentation was to hopefully get the Malaysian
7 government to go along with the chrysotile institute's
8 position about the continued use of chrysotile, correct?

9 A. I'm in favor of the continued use of chrysotile
10 as a controlled use.

11 Q. And the reason why you went to Malaysia was to
12 advocator -- well, let me not use the word advocate, to
13 try to convince the Malaysian government to allow
14 chrysotile asbestos to keep being used and not ban that
15 asbestos, right?

16 A. I made a presentation and what I said is in the
17 presentation. I mean, I don't think I said you should
18 continue using asbestos. But I may be wrong. I'd have
19 to look at my PowerPoint.

20 Q. That was the purpose, though, to go there to try
21 to convince these individuals that are making the
22 decision about asbestos that asbestos can continue to be
23 used safely, right?

24 MR. JOHNSON: I object to the form.
25 A. I went to present my views on asbestos, which

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1 are in the PowerPoint.
2 Q. And the purpose of that, you were working for
3 the Chrysotile Institute, Bobby Joe pick, right?
4 MR. JOHNSON: Object to the form.
5 Q. The if you were purpose of that is to advocate
6 for the crier site tile Institute the continued use of
7 asbestos, true?
8 MR. JOHNSON: Object to the form.
9 A. I think the way you're characterizing it is not
10 correct. I've known Bob Pigg for over thirty years.
11 I've worked with him most of my professional life. And
12 the same thing with, I made a presentation in Kiev and
13 one of the people from the WHO came over to me and said,
14 "You made the whole presentation and you never mentioned
15 the word 'chrysotile' once." So I'm an advocate for the
16 chrysotile industry and I don't say anything about
17 chrysotile.
18 I just provide scientific information to people.
19 Some of it may be helpful, some of it may not be
20 helpful. But I'm not in favor of a ban of asbestos.
21 And I'm not in favor --
22 Q. Go ahead.
23 A. -- that's my position. It's not --
24 Q. When you work for the Chrysotile Institute, what
25 is your hourly rate? What do they pay you?

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- 1 A. I don't have an hourly rate.
- 2 Q. How do you get compensated, you work for free?
- 3 A. No. I -- I have to check.
- 4 Q. Pardon?
- 5 A. I think I charge them by the day.
- 6 Q. And what is your daily rate?
- 7 A. I don't know what the latest is, but it could be
- 8 a thousand, twelve hundred, something like that.
- 9 Q. A thousand to twelve hundred to day is all you
- 10 charge the Chrysotile Institute?
- 11 A. Yes.
- 12 Q. But you're charging Mrs. Emerson in this case
- 13 \$350 an hour to find out what you're going to say in her
- 14 case?
- 15 MR. JOHNSON: Object to the form.
- 16 A. That's correct. Giving a seminar in -- giving a
- 17 seminar is a lot less aggravation than giving a
- 18 deposition, and I also --
- 19 Q. You -- you -- go ahead, I'm sorry.
- 20 A. And I also feel that, I don't know what
- 21 Dr. Abraham is charging these days, or someone else.
- 22 But I usually charge rates similar to what the experts
- 23 that you retain are being paid.
- 24 Q. But you would agree that you're charging
- 25 Mrs. Emerson for her time taking your deposition a much

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2 Institute?

3 A. I think you got that reversed.

4 MR. JOHNSON: I object to form.

5 A. I think you meant to say I'm charging her more
6 than I'm charging the Chrysotile Institute.

7 Q. I'm sorry, you're charging her more, much more
8 than the cite sew tight institute.

9 MR. JOHNSON: Object to form.

10 A. Correct.

11 MR. SATTERLEY: I'm going to go to court now so
12 queer going to stop the deposition now and I'll
13 meet-and-confer with the lawyer for if railroad to
14 reconvene. I've got a lot more questions to ask you
15 about your science and about your opinions and things of
16 that nature. So we'll meet-and-confer regarding when we
17 can reconvene. It's now, it's 2:44 here, which is 5:44
18 there, correct?

19 MR. JOHNSON: Correct, and I also note for the
20 record that I haven't looked at them, but I've been told
21 that there's checks that add up to five hours' worth of
22 payment here. It's not something I would normally bring
23 up, but that would tell me that you thought you could
24 get it done in five hours, given the way that I was
25 forced to make sure that I had enough checks to pay for

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1 Dr. Ellenburg's testimony before I could even start the
2 deposition, so I just want the record to reflect that
3 apparently you thought you could get it done in five
4 hours, and you've taken five hours.

5 MR. SATTERLEY: Well, that's a false and
6 incorrect assumption. You guys started at 1 o'clock and
7 five hours would be one to six. And I think that -- so
8 your assumption is wrong.

9 Second, I would say that unlike what we have
10 done by disclosing written, signed reports, this
11 witness, for whatever reason, did not disclose any
12 opinions at all and so I'm going from square one in
13 trying to figure out what has occurred with regards to
14 his involvement in this case.

15 So with that being said, let's do this: Let's
16 mark as the last two exhibits the Dr. Dodson report that
17 you've got there, as the next exhibit, and then the
18 Dr. Abraham reports as the following exhibit. And that
19 concludes all the papers that you have on this case,
20 correct?

21 THE WITNESS: Yes.

22 MR. SATTERLEY: Okay. Let's meet-and-confer,
23 Mr. Johnson on when we can reconvene, okay?

24 MR. JOHNSON: Be happy to, but I will also note,
25 obviously the record will speak for itself, that you

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1 didn't start from square one on this deposition, but I'm
2 happy to meet-and-confer with you to get another date.

3 MR. SATTERLEY: Thank you, safe travels.

4 Dr. Nolan, sorry I've got to run. I've just got to be
5 in court in a few minutes, okay?

6 THE WITNESS: Go ahead. Enjoy yourself.

7 MR. SATTERLEY: Thank you.

8 MR. JOHNSON: We're off the record.
9 MR. SATTERLEY: And I and expedited copy of this
10 transcript as soon as possible. A rough draft would be
11 nice as well.
12 EXH (^ ^ Exhibit (^ ^) ^ ^ ,
13 ^ ^ Description, marked for identification,
14 as of this date.)
15 EXH (^ ^ Exhibit (^ ^) ^ ^ ,
16 ^ ^ Description, marked for identification,
17 as of this date.)
18 (Time noted: 5:48 p.m.)
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