STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 30, 2025)

JAMIE L. DAY AND JENNIFER L. BONITO, CO-EXECUTORS FOR THE ESTATE OF BONNIE J. BONITO	:	
Plaintiffs,	:	
v.	:	**C.A. No. PC-2018-5044**
UNION CARBIDE CORPORATION	:	
Defendant.	:	

DECISION

LICHT, J. This is the first asbestos case tried in Rhode Island in forty years. After a two-week trial, the jury returned a verdict in favor of Defendant Union Carbide Corporation (UCC) on all counts. Pursuant to Rule 59 of the Superior Court Rules of Civil Procedure, Plaintiffs Jamie L. Day and Jennifer L. Bonito (collectively, Plaintiffs) filed a motion for a new trial. UCC opposed Plaintiffs' new trial motion and also renewed its motion for judgment as a matter of law. For the reasons stated herein, the Court **DENIES** Plaintiffs' new trial motion and **DENIES** UCC's renewed motion for judgment as a matter of law.

I

Facts and Travel

A

Ms. Bonito's Exposure and Illness

In December 1966, Bonnie Bonito (Ms. Bonito) married her high school sweetheart James Bonito (Mr. Bonito).[1] (Bonnie Bonito Dep. Tr. 15:06-18:16, Aug. 27, 2018.)[2] Throughout the course of their marriage, Mr. Bonito worked for his own construction business that remodeled and constructed residential homes. *Id.* at 19:11-19, 22:13-23:12; (James Bonito Trial Tr. 75:10-76:4, 79:10-81:1, 86:12-87:4, 89:5-90:10, Nov. 7, 2024). In the course of his work, Mr. Bonito used various asbestos containing products, including joint compound. (Bonnie Bonito Dep. Tr. 24:14-30:08, Aug. 27, 2018); (James Bonito Trial Tr. 102:24-103:22, Nov. 7, 2024). While Ms. Bonito never manually worked on Mr. Bonito's job sites, Ms. Bonito routinely laundered Mr. Bonito's dust covered work clothes throughout their marriage without the use of any protective gear, resulting in Ms. Bonito breathing in the dust from his clothing. (Bonnie Bonito Dep. Tr. 19:20-22:09, 30:09-32:15, 33:18-37:10, Aug. 27, 2018); (Bonnie Bonito Dep. Tr. 247:08-249:02, 282:20-283:20, Sept. 7, 2018); (Bonnie Bonito Dep. Tr. 369:05-370:01, Sept. 10, 2018). Years later, in 2018, Ms. Bonito was diagnosed with peritoneal mesothelioma, (Bonnie Bonito Dep. Tr.

[1] Mr. Bonito and Ms. Bonito met in high school in Connecticut and continued to live in Connecticut throughout their marriage. (James Bonito Trial Tr. 61:13-62:5, Nov. 7, 2024) (Bonnie Bonito Dep. Tr. 16:01-11, 21:09-16, 62:03-04, Aug. 27, 2018).

[2] Not all the transcripts referenced throughout this Decision are official transcripts but rather the Court references both final transcripts and rough transcripts. For this reason, in the event of an appeal, the transcripts submitted to the Supreme Court may vary in pagination as compared to the transcripts referenced in this Decision.

42:20-43:04, Aug. 27, 2018), which tragically proved fatal. (Jamie Day Trial Tr. 14:15-15:18, Nov. 15, 2024.)

B

The Instant Litigation – Trial Testimony

Plaintiffs brought multiple causes of action[3] against UCC[4] in connection to the death of Ms. Bonito from malignant peritoneal mesothelioma as a result of her asbestos exposure. (Tenth Am. Compl. ¶¶ 1, 71-93.) The jury trial in this matter commenced on November 7, 2024. A summary of the trial testimony is provided below beginning with fact witnesses and then turning to each party's expert witnesses.

1

Plaintiffs' Fact Witness: James Bonito

Mr. Bonito was Ms. Bonito's husband for approximately twenty-three years and lived with Ms. Bonito up until five or six years prior to their divorce. (James Bonito Trial Tr. 63:22-64:3, 65:12-18, Nov. 7, 2024.) In his younger years he worked in carpentry, remodeling, and demolition for his father, which required him to perform the "dusty" and "dirty job" of spreading and sanding joint compound. *Id.* at 67:18-23, 71:8-75:9. Upon marrying Ms. Bonito around 1966, Mr. Bonito worked part time remodeling homes and also served as an inspector for Genovese Engineering where he inspected the installation of CertainTeed sewer pipe containing asbestos. *Id.* at 75:10-76:2, 109:21-111:6, 114:7-115:10. In his remodeling work, Mr. Bonito used joint compound, including when he and Ms. Bonito remodeled their Church Street home, which required Mr. Bonito

[3] The causes of action submitted to the jury were as follows: (1) strict liability, (2) negligence, (3) breach of the implied warranty of merchantability, and (4) breach of the implied warranty of fitness for a particular purpose.

[4] Plaintiffs sued forty-eight other defendants, but the claims against those defendants were all resolved prior to trial.

to sand joint compound in the presence of Ms. Bonito who would assist him in cleaning up the dust residue. *Id.* at 76:5-14, 79:10-81:1. Mr. Bonito also used joint compound when putting on an addition to the Church Street home during which time Mr. Bonito, Ms. Bonito, and their two daughters actively lived in the home. *Id.* at 86:12-87:4, 89:5-90:10. Mr. Bonito testified that he knew that the joint compound he used in the Church Street home was from Georgia-Pacific due to it being "the 800-pound gorilla" in the market, Georgia-Pacific's wholesale operation being located close to the Church Street home, and the joint compound being so "dirty." *Id.* at 81:23-83:13.

Mr. Bonito used various brands of joint compound,[5] including Georgia-Pacific's joint compound, on his other remodeling projects,[6] which required his clothes to be laundered on a daily basis by Ms. Bonito to get rid of the dust residue. *Id.* at 84:5-86:3, 127:3-128:1. From 1970 to 1977, Mr. Bonito used Georgia-Pacific's joint compound on every project that required it. *Id.* at 99:23-100:6, 105:12-106:1. While Mr. Bonito began hiring sub-contractors in the late 1970s to do sheetrock and taping work for him, he still was exposed to dust residue through cleaning up project sites. *Id.* at 101:2-102:23. Mr. Bonito acknowledged that he worked with various products beyond joint compound that contained asbestos in the 1960s and 1970s, including cement pipe, brake pads, boilers, clutches, air compressors, and floor titles. *Id.* at 102:24-103:22. However, Mr. Bonito had no knowledge that the asbestos contained therein was dangerous or carcinogenic but only knew that it made products more durable. *Id.* at 103:23-104:20. While Mr. Bonito testified

[5] Although Mr. Bonito was "sure" he worked with other joint compounds, he could not recall the names of those brands. (James Bonito Trial Tr. 116:17-21, Nov. 7, 2024.) However, Mr. Bonito later acknowledged that he worked with DAP joint compound, *id.* at 117:12-17, 123:9-124:1, and National Gypsum joint compound. *Id.* at 118:12-18, 125:9-126:6.

[6] Mr. Bonito had a remodeling business from the time he graduated high school, which was entitled "Bonito Construction." (James Bonito Trial Tr. 93:15-16, Nov. 7, 2024.) However, in or around the late 1970s, Bonito Construction began doing business as "Clover Ridge." *Id.* at 97:6-15.

that he did not read the warning labels on asbestos-containing joint compound, he does not recall ever seeing a label on Georgia-Pacific's joint compound that it could cause cancer, noting that if it had "[n]obody would touch it[.]" *Id.* at 104:21-105:11.

While the Court found Mr. Bonito to be forthright and direct, there were instances in which his memory was not precise as he was testifying about matters that occurred decades ago.

2

Plaintiffs' Fact Witness: Bonnie Bonito

Ms. Bonito[7] married Mr. Bonito after graduating high school in 1966 and remained married to Mr. Bonito until 1990. (Bonnie Bonito Dep. Tr. 15:06-18:16, Aug. 27, 2018.) Ms. Bonito testified that Mr. Bonito started his own remodeling and construction business in 1967 entitled Bonito Construction. *Id.* at 19:11-19. Mr. Bonito worked in this capacity all throughout their marriage, separation, and divorce. *Id.* at 23:04-12. Ms. Bonito described her involvement with Mr. Bonito's business as being that she worked in his office on a part-time basis, cleaned job sites occasionally, and visited job sites periodically. *Id.* at 23:13-24:10; (Bonnie Bonito Dep. Tr. 186:04-189:09, Aug. 30, 2018). In her office work for Mr. Bonito, Ms. Bonito became familiar with the products he worked with, including joint compound, but could not recall the specific brands Mr. Bonito purchased. (Bonnie Bonito Dep. Tr. 23:18-30:08, 85:04-10, Aug. 27, 2018.)

Ms. Bonito routinely did Mr. Bonito's laundry, including his dusty work clothes, several times per week from 1966 up until some point during their separation in approximately 1985 or 1986. *Id.* at 19:20-22:09, 30:09-32:15; (Bonnie Bonito Dep. Tr. 247:08-249:02, 282:20-283:20, Sept. 7, 2018). Ms. Bonito did not wear a mask or other protective gear while cleaning Mr.

[7] Ms. Bonito, the decedent in this case, testified vis-à-vis her video deposition testimony.

Bonito's work clothes and instead directly inhaled the dust from his clothes. (Bonnie Bonito Dep. Tr. 37:02-37:10, Aug. 27, 2018); (Bonnie Bonito Dep. Tr. 369:11-370:01, Sept. 10, 2018).

At the end of March 2018, Ms. Bonito began to feel exhausted, which led to her visiting her primary care physician.[8] (Bonnie Bonito Dep. Tr. 37:20-38:06, Aug. 27, 2018.) Ms. Bonito's physician informed Ms. Bonito that her bloodwork results were abnormal, requiring her to visit a hematologist/oncologist, who discovered that she had a tumor on her liver that would need to be surgically removed. *Id.* at 38:07-41:06. Shortly thereafter, on May 17, 2018, Ms. Bonito underwent surgery to remove the tumor, which resulted in removing not only the tumor itself but also her appendix, gallbladder, twelve inches of her colon, and a part of her liver. *Id.* at 41:10-41:17. Following her surgery, Ms. Bonito visited a pathologist who informed her that the biopsies from the surgery confirmed she had peritoneal mesothelioma, which would require treatment from Dr. Alexander, a specialist at Rutgers University in New Jersey. *Id.* at 42:20-43:13. Unfortunately, the chemotherapy treatments failed, Ms. Bonito's cancer spread, and her doctor could no longer treat her. *Id.* at 43:14-47:10; (Bonnie Bonito Dep. Tr. 108:13-15, Aug. 30, 2018).

The Court found Ms. Bonito to be a credible witness even though she was testifying while quite ill.

3

Plaintiffs' Fact Witness: Jennifer Bonito

Jennifer is the Bonitos' youngest daughter. (Jennifer Bonito Trial Tr. 17:14-18:10, Nov. 14, 2024.) Jennifer recalled Ms. Bonito being very outgoing and supportive of her family, including Jennifer and her two children, prior to falling ill with mesothelioma. *Id.* at 20:23-21:22.

[8] Prior to March 2018, Ms. Bonito had an active lifestyle in which she visited family, bowled weekly, played mahjong, and traveled. (Bonnie Bonito Dep. Tr. 49:13-50:06, Aug. 27, 2018.)

Jennifer first noticed something awry with Ms. Bonito due to her lack of energy, personality changes, and inability to be present at family events. *Id.* at 21:23-22:25. After rounds of abnormal blood tests and medical scans, doctors diagnosed Ms. Bonito with liver cancer and scheduled Ms. Bonito for surgery at Hartford Hospital to remove part of her liver. *Id.* at 23:1-24. While the surgery was more complex than initially anticipated, the surgery team reassured Jennifer that Ms. Bonito would improve in a few days. *Id.* at 23:24-24:11. However, Ms. Bonito's condition failed to get better resulting in a longer hospital stay. *Id.* at 24:19-25:14. At Ms. Bonito's oncology follow-up after the surgery, Ms. Bonito was told she had mesothelioma and was referred to a specialist in New York City. *Id.* at 26:4-28:14. Jennifer recalled that the New York City specialist was unable to treat Ms. Bonito and Ms. Bonito was eventually brought to a hospice center in Branford, Connecticut. *Id.* at 28:15-32:3.

4

Plaintiffs' Fact Witness: Jamie Day

Jamie is the eldest daughter of Ms. Bonito and Mr. Bonito. (Jamie Day Trial Tr. 1:22-2:15, Nov. 15, 2024.) Jamie testified that Ms. Bonito was supportive of her family, including Jamie and her two children, prior to falling ill with mesothelioma. *Id.* at 3:22-6:24. Jamie noted that both she and Ms. Bonito were initially optimistic that her surgery would go well and that the tumor would be swiftly removed. *Id.* at 7:23-8:24. However, Ms. Bonito's condition continued to deteriorate, resulting in Ms. Bonito needing to live with her and Jennifer at different points. *Id.* at 12:8-14:14. After fourteen days at a hospice facility, Ms. Bonito passed away. *Id.* at 15:16-18.

While the Court found both Jennifer and Jamie to be very credible, their testimony was relevant only to the issue of damages, not to UCC's liability.

5

Plaintiffs' Fact Witness: John L. Myers

John L. Myers (Mr. Myers)[9] is a corporate designee of UCC who testified via deposition. (Myers Trial Tr. 38:16-41:16, Nov. 14, 2024.) Mr. Myers testified that UCC began its asbestos mining and milling operations at the King City, California mine (King City Mine) in 1963, which led to the sale of its trademark Calidria asbestos. *Id.* at 43:9-15, 45:11-17. UCC shipped asbestos to customers in two forms, either open fiber asbestos or pelletized asbestos, the latter of which was marketed from 1963 to 1985. *Id.* at 47:8-11. UCC sold asbestos to various purchasers, including Georgia-Pacific. *Id.* at 48:5-11. Beginning in 1968, UCC placed warnings on its Calidria asbestos but did not mention the word "cancer" or "mesothelioma" on the label. *Id.* at 48:12-49:7. Mr. Myers noted that beginning in 1964 all UCC customers were given an Asbestos Toxicology Report. *Id.* at 49:8-21. While Mr. Myers initially categorized UCC's asbestos as being only five microns in length, he acknowledged that he previously testified that Calidria could be found in longer fiber lengths. *Id.* at 49:22-51:17.

[9] Mr. Myers began working for UCC in 1951 with its Atomic Energy Commission Operations in Tennessee and Kentucky where he remained until 1966. (Myers Trial Tr. 42:17-43:2, Nov. 14, 2024.) Mr. Myers began working with UCC's asbestos operations in 1966 as a research engineer testing Calidria asbestos. *Id.* at 43:6-44:11. Mr. Myers served as the technical superintendent of the King City Mine from 1967 to 1970, after which point, he became the marketing manager of UCC's Niagara facility where he remained until 1981. *Id.* at 46:5-16. Mr. Myers then transferred back to the King City Mine as the product and production manager from 1981 until the mine closed in 1985. *Id.* at 46:24-47:7.

6

Plaintiffs' Fact Witness: Charles William Lehnert

Charles William Lehnert (Mr. Lehnert)[10] is a former Georgia-Pacific employee who testified via deposition.[11] Beginning in 1965, Mr. Lehnert became employed by Georgia-Pacific's Gypsum Division as the Manager of Research and later became the Manager of Product Development & Technical Services, both of which required him to research products like joint compounds.[12] (Lehnert Dep. Tr. 15:21-17:09, Oct. 3, 2001.) While Georgia-Pacific's joint system products contained asbestos, Mr. Lehnert testified that non-asbestos products were developed in 1972 and all asbestos-containing joint system products were discontinued by May 4, 1977. *Id.* at 18:03-15. Georgia-Pacific's joint compounds contained asbestos from UCC, Johns Manville Corporation, and/or Phillip Carey, with the precise provider of the asbestos noted in the formula designation itself.[13] *Id.* at 26:12-27:05. UCC's SG-210 asbestos was used in Georgia-Pacific's joint compound from December 29, 1969 until May 4, 1977. *Id.* at 28:21-29:02. While Georgia-

[10] Mr. Lehnert has been a retired employee of Georgia-Pacific since 1990 but remained with Georgia-Pacific since his retirement as a consultant. (Lehnert Dep. Tr. 10:03-13, Oct. 3, 2001.) After graduating from Grove City College in 1950 with a bachelor's degree in chemical engineering, Mr. Lehnert formulated joint system compounds containing asbestos for Certain-Teed Products Corporation from 1951 until 1956. *Id.* at 11:16-13:13. From May 1956 until 1965, Mr. Lehnert worked for Bestwall Gypsum Company in developing asbestos-containing joint compound products, including Ready Mix joint compound. *Id.* at 13:20-15:20.

[11] Mr. Lehnert prepared for his deposition by reviewing the Georgia-Pacific formulas provided by Plaintiffs' counsel, as well as by examining several hundred other Georgia-Pacific joint compound formulas and other documents. (Lehnert Dep. Tr. 20:18-21:05, Oct. 3, 2001.)

[12] Mr. Lehnert testified that unlike regular joint compound, which was a dry compound in a bag, Ready Mix was mixed with water and provided to customers as a paste-like substance in a pail. (Lehnert Dep. Tr. 15:02-08, Oct. 3, 2001.)

[13] The following designations were provided for each of the asbestos carriers: 7RF-09 (Phillip Carey), 7RF-02 (Johns Manville Corporation), and SG-210 (UCC). (Lehnert Dep. Tr. 27:12-28:10, Oct. 3, 2001.)

Pacific had various plants[14] throughout the country, the Akron, New York plant supplied joint compounds to consumers in the northeastern portion of the United States. *Id.* at 29:14-18. Mr. Lehnert testified that the Akron plant manufactured Ready Mix joint compound containing UCC's asbestos between December 29, 1969 and May 4, 1977, with the exception of its asbestos-free formulas that were specifically advertised as asbestos-free.[15] *Id.* at 34:24-35:18, 53:07-19.

The testimony of Messrs. Myers and Lehnert seemed credible but because the testimony was by way of deposition, there was no opportunity to assess their demeanor or their voices or to otherwise observe their credibility.

7

UCC's Fact Witness: Claude Boileau

Claude Boileau (Mr. Boileau) is a retired tradesman specializing in drywall work, specifically as a taper[16] of drywall. (Boileau Dep. Tr. 15:02-17:01, May 10, 2024.) Mr. Boileau did drywall work on the side in the 1950s and 1960s and eventually opened his own drywall business sometime in the 1960s called Claude Boileau Drywall. *Id.* at 15:13-16:06, 17:06-21. Mr. Boileau's company did business in Connecticut until the 1980s on residential construction projects with the help of three to four employees. *Id.* at 18:04-22:02. Mr. Boileau recalled being utilized as a subcontractor for Mr. Bonito and Bonito Construction on residential new construction projects

[14] Georgia-Pacific's Acme, Texas plant supplied joint compounds for the southwestern portion of the United States. (Lehnert Dep. Tr. 29:07-13, Oct. 3, 2001.) The Chicago, Illinois plant provided joint compounds for the Midwest. *Id.* at 29:19-23. The Marietta, Georgia plant provided joint compound to the southeastern portion of the United States. *Id.* at 29:24-30:03. The Milford, Virginia plant provided joint compound for the east central part of the United States. *Id.* at 30:04-10.

[15] UCC's asbestos was also found in Ready Mix joint compounds produced at the Milford plant and the Marietta plant, except for the asbestos free joint compounds. (Lehnert Dep. Tr. 38:14-40:3; 57:22-58:02.)

[16] Mr. Boileau explained that a hanger of dry wall hangs the actual sheetrock, whereas a taper uses joint compound to tape the joints of the sheetrock. (Boileau Dep. Tr. 16:19-22, May 10, 2024.)

in the late 1970s and early 1980s.[17] *Id.* at 23:07-26:04, 72:20-73:13. Mr. Boileau did not personally observe Mr. Bonito performing any manual work on jobsites, such as drywall work, but rather only saw Mr. Bonito observing job sites. *Id.* at 29:19-30:18, 41:05-41:16, 58:17-62:01.

In terms of work materials, Mr. Boileau purchased drywall and joint compound in the 1970s and 1980s from Gypsum Specialists, Wallboard Distributors, and Home Depot but did not recall specifically purchasing Georgia-Pacific's products. *Id.* at 36:01-37:06, 51:22-52:05, 65:22-66:11. While Mr. Boileau did not recall there being asbestos-free drywall and joint compound for sale in the 1970s and 1980s, he could not tell the difference on job sites between what contained asbestos and what did not contain asbestos. *Id.* at 37:07-20. Mr. Boileau noted that sanded joint compound did not create that much dust and that he only needed a mask for a brief period while taping. *Id.*at 53:07-54:07. Mr. Boileau did not recall seeing any women working on job sites, any women visiting job sites, or Ms. Bonito specifically being present on job sites, although admittedly he did not know what she looked like. *Id.* at 46:13-50:01, 64:19-65:04, 70:17-71:09.

While Mr. Boileau seemed earnest, his testimony was too remote in time and too limited for his observations to have much probative value.

8

Plaintiffs' Expert Witness: Dr. Richard Kradin

Plaintiffs' first expert witness was Dr. Richard Kradin (Dr. Kradin), a licensed medical doctor with board certification in internal medicine, pulmonary medicine, and pathology.[18] (Kradin

[17] While Mr. Boileau could not recall all of the projects he worked on with Mr. Bonito due to the passage of time, Mr. Boileau recalled working on projects with Mr. Bonito in North Haven, Wallingford, Hamden, and Durham, including at the Pond Hill Road development and at Upper State Street. (Boileau Dep. Tr. 26:15-28:16, 55:04-57:16, 69:03-08, 71:16-22, May 10, 2024.)

[18] Dr. Kradin received his M.D. from Thomas Jefferson University in Philadelphia. (Kradin Trial Tr. 7:12-13, Nov. 8, 2024.) Dr Kradin completed his residency in internal medicine at the University of Pennsylvania and later completed his residencies in pathology and pulmonary

Trial Tr. 6:8-11, 15:23-16:16, Nov. 8, 2024.) Dr. Kradin's expert report was based on his own experiences and articles, as well as Ms. Bonito's pathology material, Ms. Bonito's medical records, and the sworn deposition testimony of Ms. Bonito and Mr. Bonito. *Id.* at 13:10-14:4, 15:10-22.

Dr. Kradin's testimony can be summarized as follows. In the 20th century, 95 percent of asbestos in the United States was chrysotile asbestos,[19] which was incorporated into various products, including Georgia-Pacific joint compound. *Id.* at 26:13-27:15. Asbestos becomes aerosolized when worked with, causing millions of asbestos fibers to project into the air and be inhaled; once inhaled, a vast majority of the asbestos fibers are expelled while a small amount deposits into the lungs and other parts of the body through the lymphatic system. *Id.* at 28:15-30:22. When in the lymphatic system, the asbestos fibers can settle in areas like the peritoneal surface where the fibers can persist and cause disease.[20] *Id.* at 30:13:22. Asbestos-related diseases

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medicine at Massachusetts General Hospital in Boston. *Id.* at 7:13-17. Dr. Kradin was an Associate Professor at Harvard Medical School for forty-three years, which involved teaching about asbestos causing diseases. *Id.* at 8:22-9:12. Dr. Kradin has published over 150 peer-reviewed publications of which twenty-five to thirty address asbestos diseases and/or mesothelioma. *Id.* at 10:13-22. Dr. Kradin treated about 3,000 cases of mesothelioma as a pathologist. *Id.* at 11:21-12:2. However, Dr. Kradin acknowledged that peritoneal mesothelioma was predominantly treated by gastroenterologists or surgeons and that his role was primarily as a consultant. *Id.* at 87:11-17. Dr. Kradin has been studying asbestos and its ability to cause mesothelioma for almost fifty years. *Id.* at 24:20-25.

[19] Prior to delving into Ms. Bonito's case, Dr. Kradin testified as to the science of mesothelioma and its link to asbestos. There are two major forms of asbestos: (i) chrysotile asbestos or white asbestos and (ii) amphibole asbestos, which primarily includes amosite or brown asbestos and crocidolite or blue asbestos. (Kradin Trial Tr. 25:4-17, Nov. 8, 2024.) Chrysotile asbestos has a curly appearance that becomes smaller and straighter when mined whereas amphibole has a needle-like appearance. *Id.* at 25:12-26:5. Chrysotile fibers have certain properties that allow it to break down following ingestion more so than do amphibole fibers. *Id.* at 89:5-13. Chrysotile can be removed from the lungs within days to weeks whereas amphiboles can remain in the lungs for decades. *Id.* at 89:22-90:11. Dr. Kradin acknowledged on cross-examination that amphiboles are more carcinogenic per fiber than chrysotile. *Id.* at 117:2-6.

[20] Dr. Kradin's expert opinion was that pure chrysotile can cause both peritoneal and pleural mesothelioma. (Kradin Trial Tr. 18:7-16, Nov. 8, 2024.) For perspective, 80-90 percent of mesothelioma cases in the United States are pleural mesothelioma (lung) while 10-20 percent are peritoneal mesothelioma (abdomen). *Id.* at 35:22-36:1.

were known as early as the 1920s with mesothelioma being specifically linked to asbestos exposure in the 1960s. *Id.* at 32:7-17. The tendency of an individual to develop mesothelioma depends on the latency period, i.e., the time that elapses between exposure to a toxic material and the resulting disease, which can range from thirty to forty years. *Id.* at 36:10-37:16, 41:12-43:7. The Environmental Protection Agency (EPA), the National Cancer Institute, the British Thoracic Society, and Dail and Hammer's Pulmonary Pathology book all stated that there was no safe level of exposure to asbestos. *Id.* at 44:14-46:12, 48:20-50:7. The Society of Epidemiology Joint Policy Committee and the World Health Organization also contended that pure chrysotile could be linked to asbestos-related diseases, including peritoneal mesothelioma. *Id.* at 61:6-62:18, 64:7-14. Asbestos-containing joint compound causes mesothelioma due to the asbestos in the joint compound being aerosolized and inhaled by individuals working with it. *Id.* at 70:15-23. Various scientific bodies, including the British Journal of Industrial Medicine and the Helsinki Conference, indicated during the time frame in which Mr. Bonito used asbestos-containing products that there was a para-occupational exposure risk, *id.* at 75:2-18, such as by laundering a spouse's asbestos-covered work clothes. *Id.* at 54:6-55:17.

However, Dr. Kradin also acknowledged that other bodies, such as the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA), recognized permissible exposure limits (albeit low levels) to asbestos that were unlikely to lead to mesothelioma. *Id.* at 46:17-47:6. Although Dr. Kradin disagreed with such authorities when asked by Plaintiffs' counsel on redirect examination, *id.* at 149:25-150:9, Dr. Kradin acknowledged on cross-examination that certain authorities cut against his opinions. To start, several figures staunchly advocated during the relevant time period that chrysotile asbestos did not cause peritoneal mesothelioma, such as Alan Smith, *id.* at 125:14-126:10, Dr.

Hammar, *id.* at 143:16-144:5, and Dr. Henderson, *id.* at 146:13-25. Furthermore, Dr. Kradin acknowledged the opinions of Victor Roggli (Dr. Roggli) that peritoneal mesothelioma requires high exposure compared to pleural mesothelioma, peritoneal mesothelioma is not causally linked to chrysotile, and tremolite contamination largely dictates the carcinogenic properties of chrysotile dust. *Id.* at 132:20-139:1.

Ultimately, Dr. Kradin testified that it was his opinion to a reasonable degree of medical probability that Ms. Bonito's malignant peritoneal mesothelioma was caused by her habitual para-occupational exposure to asbestos through her laundering of Mr. Bonito's asbestos covered work clothes, as well as by her visiting Mr. Bonito at work and sweeping at his job sites. *Id.* at 23:20-24:19, 82:13-17. However, he had "no way of knowing" if Ms. Bonito would have contracted mesothelioma absent her exposure to UCC's asbestos given that she was exposed to many different forms of asbestos containing products.[21] *Id.* at 81:25-82:8. His assessment of Ms. Bonito was largely based on Mr. Bonito's deposition testimony. *Id.* at 92:13-93:5.

9

Plaintiffs' Expert Witness: Dr. Barry Castleman

Plaintiffs' second expert witness was Dr. Barry Castleman (Dr. Castleman), a public health worker specializing in toxic substance control, including carcinogenic chemicals like asbestos. (Castleman Trial Tr. 19:15-19, Nov. 12, 2024.) Dr. Castleman was offered by Plaintiffs as an expert witness in the field of public health as it pertains to asbestos, asbestos hazards, asbestos-related diseases, the history of asbestos control, and the history of corporate responses to industrial

[21] Dr. Kradin acknowledged that Mr. Bonito testified via deposition that he was exposed to various asbestos-containing products throughout his career, including brakes, clutches, floor tiles, pipes, boilers, compressors, gaskets, and electrical products, all of which Dr. Kradin found contributed to Ms. Bonito's mesothelioma and ultimate death. (Kradin Trial Tr. 93:22-102:14, Nov. 8, 2024.)

health hazards like asbestos.[22] *Id.* at 35:9-17. Dr. Castleman's expert report was based on publicly available information during the relevant period, which he obtained through medical journals, industrial hygiene journals, and government records, as well as internal industry documents from corporations, including UCC. *Id.* at 33:7-34:1.

Dr. Castleman's testimony can be summarized as follows. An 1898 English report first recognized that breathing asbestos caused lung disease and disability. *Id.* at 36:20-37:11. As of 1935, connections were being made between lung cancer and asbestos exposure, specifically to chrysotile asbestos. *Id.* at 41:22-42:15, 105:10-13. The Industrial Hygiene Foundation (IHF) was established in the mid-to-late 1930s as a place where businesses could have access to experts on industrial hygiene and occupational medicine by receiving monthly IHF journals. *Id.* at 42:16-43:15. Asbestos articles were included in the IHF journals and touched upon cancer risks and later mesothelioma risks. *Id.* at 42:16-43:3. UCC was a founding member of the IHF and remained a member from the 1930s onwards. *Id.* at 43:23-44:4. The carcinogenic effects of asbestos were further noted throughout the 1940s by various sources. *Id.* at 48:9-50:12. In 1952, an asbestos symposium was held in Saranac Lake where over 150 participants attended, including two doctors

[22] Dr. Castleman earned his bachelor's degree in chemical engineering from Johns Hopkins University in 1968. (Castleman Trial Tr. 21:15-19, Nov. 12, 2024.) Dr. Castleman received his master's degree from Johns Hopkins University in environmental engineering and air pollution control and based his master's thesis on the health effects of asbestos during the years 1970 and 1971. *Id.* at 21:19-25, 22:8-10. Thereafter, in 1985, Dr. Castleman received a Doctor of Science Degree from Johns Hopkins University's School of Hygiene and Public Health where he wrote his doctoral thesis about public health and the corporate history of asbestos. *Id.* at 21:25-22:7. Dr. Castleman has over fifty years of experience studying asbestos and other occupational and environmental health issues. *Id.* at 22:14-17. Since the early 1970s, Dr. Castleman has published various editions of a book entitled "Asbestos Medical and Legal Aspects," which analyzes the corporate response to asbestos. *Id.* at 25:25-26:25. Dr. Castleman has consulted on asbestos-related health issues around the world, including by serving as a consultant for the World Trade Organization, *id.* at 27:8-18, testifying before the Congress of the United States on asbestos and health issues, *id.* at 28:7-29:7, and testifying in criminal cases involving asbestos in Italy. *Id.* at 29:8-30:2.

from UCC, to learn about the dangers of asbestos. *Id.* at 51:8-16; (Castleman Trial Tr. 2:10-16, Nov. 13, 2024). By 1960 many figures held that asbestos caused serious disease, including Dr. Wagner, who linked asbestos to mesothelioma development by way of direct exposure, as well as simply by living near mining sites. (Castleman Trial Tr. 55:21-57:20, Nov. 12, 2024.) By the time UCC opened the King City Mine in 1963, UCC knew the lethality of asbestos, *id.* at 57:21-58:8, and knew that breathing asbestos could put the user's family at risk of developing mesothelioma. *Id.* at 105:23-106:20. In 1963, UCC's medical doctors sent a book to UCC's King City Mine entitled Pneumoconiosis, which highlighted the risk of lung scarring diseases, such as mesothelioma, from asbestos dust, even from short intermittent exposures, and explained how even household/neighborhood exposures can cause mesothelioma. *Id.* at 59:5-60:8. It was known during this timeframe that there was no safe exposure level to asbestos, *id.* at 61:9-63:7, 76:9-18, and that exposure risks extended not only to the users of the asbestos but also those with occupational exposures and those living near asbestos factories. *Id.* at 63:22-65:20. UCC's toxicology report dated May 8, 1969 misrepresented to customers what was known at the time about the carcinogenic and lethal effects of chrysotile asbestos. *Id.* at 82:7-84:4. UCC's Material Safety Data Sheets (MSDSs) from September 1972 only listed lung damage as an adverse effect of asbestos exposure without noting other pertinent risks, such as mesothelioma. *Id.* at 84:11-85:14. UCC also encouraged its salesforce to downplay the carcinogenic effects of asbestos when dealing with customers as of 1972. *Id.* at 89:3-91:3.

However, Dr. Castleman candidly conceded on cross-examination that certain authorities cut against his opinions. To start, the Department of Treasury's 1938 public health service studies reported that asbestos-related disease was unlikely to occur if the dust concentrations were under five million particles per cubic foot. (Castleman Trial Tr. 6:25-8:21, Nov. 13, 2024.) The United

States also continued to maintain asbestos as part of the country's strategic reserve in the case of national emergency as of 1953. *Id.* at 12:15-23. Further, Dr. Wagner noted during the relevant period that mesothelioma caused by commercial asbestos was attributable to crocidolite asbestos. *Id.* at 40:19-41:5. Dr. Wagner's book, which compiled speeches and articles presented at a 1964 asbestos conference of which UCC was a participant, also acknowledged that some authorities found no causal link between mesothelioma and chrysotile. *Id.* at 19:25-20:13. Dr. Gerrit Schepers, a doctor who spoke at the same conference, opined that asbestos may only be carcinogenic in overwhelming dosages and that a question existed as to whether chrysotile had carcinogenic effects. *Id.* at 20:14-24:21. Dr. Selikoff also opined that the connection between asbestos and mesothelioma was based on limited data as of the early 1960s and that low dosage exposures were not concretely linked to cancer. *Id.* at 36:20-39:1.

10

Plaintiffs' Expert Witness: Dr. Michael J. Ellenbecker

Plaintiffs' third expert witness was Dr. Michael J. Ellenbecker (Dr. Ellenbecker), an industrial hygienist versed in identifying and preventing hazards, such as asbestos, in workplaces. (Ellenbecker Trial Tr. 63:3-64:9, Nov. 13, 2024.) Dr. Ellenbecker was offered by Plaintiffs as an expert witness[23] in the field of industrial hygiene, particularly as it relates to asbestos properties,

[23] Dr. Ellenbecker earned his bachelor's degree in electrical engineering in 1967 from the University of Minnesota. (Ellenbecker Trial Tr. 66:1-7, Nov. 13, 2024.) After enlisting in the U.S. Air Force, Dr. Ellenbecker earned his master's degree in electrical engineering in 1969 from the University of Wisconsin. *Id.* at 66:9-19. Dr. Ellenbecker earned a master's degree in environmental health science from Harvard University's School of Public Health in 1976. *Id.* at 66:24-67:3. In 1979, Dr. Ellenbecker earned a doctorate degree in environmental health sciences at Harvard University's School of Public Health where he specialized in air pollution control and industrial hygiene. *Id.* at 67:4-9. Dr. Ellenbecker also published at least eighty peer-reviewed industrial hygiene pieces, some of which touched upon asbestos. *Id.* at 76:18-77:4. Dr. Ellenbecker became a certified industrial hygienist in 1982 and has remained current in renewing his certification ever since. *Id.* at 77:18-78:16. Dr. Ellenbecker taught industrial hygiene courses at

controls, and warnings.[24] *Id.* at 86:8-17. Dr. Ellenbecker based his report on the deposition testimony of Ms. Bonito, Mr. Bonito, and Claude Boileau, as well as his own education, training, and experiences. *Id.* at 100:22-101:10.

Dr. Ellenbecker's testimony can be summarized as follows. National regulation of asbestos began in 1969 when OSHA began regulating asbestos exposure, which eventually led to the first asbestos exposure limit in 1971. *Id.* at 95:12-23. Asbestos' lethality is, in part, attributable to its fibers' physical appearance, which as of 1900 were documented to be long, sharp, and jagged such that they could easily penetrate the respiratory system.[25] *Id.* at 102:16-104:1. Scientific literature during the relevant time period indicated that all types of asbestos fibers, including chrysotile, cause mesothelioma, including peritoneal mesothelioma. *Id.* at 109:8-110:3. OSHA, the EPA, and NIOSH treated all types of asbestos the same for regulatory and health purposes without any separate categorization for chrysotile or UCC's Calidria. *Id.* at 111:21-112:16, 115:22-116:9. From the late 1980s into the mid-1990s, OSHA took the position that mesothelioma, including peritoneal, could affect family members of individuals exposed to any variety of asbestos, including chrysotile. *Id.* at 160:20-162:15. In a 1970 internal UCC memorandum from UCC's medical department, UCC noted that internal testing of Calidria found it to be no more toxic than other kinds of chrysotile, indicating to Dr. Ellenbecker that UCC was aware of the then-known

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Harvard up until 1986, after which he began working at the University of Massachusetts Lowell where he remained until his retirement from teaching in 2014. *Id.* at 68:21-70:1. From 1990 until 2021, Dr. Ellenbecker was a member of the Toxic Use Reduction Institute. *Id.* at 70:15-71:7. Through his education, training, and experience, Dr. Ellenbecker obtained specialized knowledge as to asbestos, asbestos causing diseases, exposures to asbestos, risks of asbestos-related disease, and warnings related to hazardous exposures. *Id.* at 72:19-75:14.

[24] Dr. Ellenbecker was only permitted to testify as to the content of warnings, not to the design of warnings. (Ellenbecker Trial Tr. 86:14-17, Nov. 13, 2024.)

[25] Dr. Ellenbecker refuted UCC's counsel's categorization of chrysotile as being curly in nature, noting that when looked at with more focus the fibers are just as straight and long as other varieties of asbestos. (Ellenbecker Trial Tr. 105:22-109:5, 114:8-115:3, Nov. 13, 2024.)

risks of its asbestos. *Id.* at 134:4-137:7. EPA testing done in 2008 at the Clear Creek Management area, which houses three mines, including the King City Mine, indicated that (i) the asbestos found on site was both short fiber and long fiber and (ii) contained amounts of chrysotile and amphiboles. *Id.* at 141:2-147:22. As to content warnings, industrial hygiene considerations favor labeling joint compound products containing asbestos with a warning that puts consumers on notice of its carcinogenic properties. *Id.* at 159:13-160:12. In sum, Ms. Bonito's exposure to Calidria was dangerous from an industrial hygiene perspective and heightened Ms. Bonito's risk for mesothelioma development. *Id.* at 167:4-171:22.

On cross-examination, however, Dr. Ellenbecker was presented with various authorities that conflicted with his opinion. The EPA in a Customer Production Safety Commission (CPSC) Report published in 1986 noted that chrysotile produced pleural mesothelioma but was not as important to the development of peritoneal tumors. (Ellenbecker Trial Tr. 61:25-62:23, Nov. 14, 2024.) The EPA in 1989 also recognized that peritoneal mesotheliomas were largely associated with crocidolite exposure due to its high potency. *Id.* at 63:12-64:14. The EPA noted in 1989 that asbestos fibers less than five microns in length may be innocuous in causing carcinogenic mutations. *Id.* at 64:23-65:12. A publication in the Federal Register in 1986 by the Department of Labor and OSHA noted that exposure to crocidolite and amosite has different carcinogenic effects than does chrysotile for purposes of mesothelioma development. *Id.* at 66:1-23. A 1986 publication by the Chronic Hazard Advisory Panel to OSHA noted that peritoneal mesothelioma was most commonly seen with amosite exposure, less seen with crocidolite exposure, and rarely seen with chrysotile exposure. *Id.* at 67:2-24. A 1989 World Health Organization document stated that peritoneal mesothelioma could be produced by crocidolite and amosite but not likely by chrysotile. *Id.* at 68:16-70:3. A publication by the British Health and Safety Commission noted

that chrysotile does not cause peritoneal mesothelioma. *Id.* at 73:4-74:2. Turning to the EPA testing done at the Clear Creek Management site in 2008, the EPA's testing covered various mining sites, not just the King City Mine, meaning Dr. Ellenbecker could not affirmatively say whether the air samples collected containing long fiber chrysotile and amphibole asbestos were taken within fifty miles of the King City Mine. *Id.* at 74:19-79:5. Rather, Dr. Millette noted that no amphibole fibers were found in samples of UCC's chrysotile and Dr. Longo stated that UCC's asbestos was purely chrysotile with no traces of tremolite.[26] *Id.* at 79:22-83:4. Despite it being imperative from an industrial hygiene perspective to consider the warning itself and to whom it is communicated, Dr. Ellenbecker never examined the interactions between UCC and its customer Georgia-Pacific. *Id.* at 84:13-23. Even so, a copy of UCC's 1969 Toxicology Report provided to customers, such as Georgia-Pacific, expressly noted that asbestos exposure could cause lung disease, mesothelioma was linked to asbestos exposure, tumors could develop from even slight asbestos exposures decades later, and control of asbestos dust was necessary. *Id.* at 85:22-92:11.

11

UCC's Expert Witness: Dr. James Crapo

UCC's expert witness was Dr. James Crapo (Dr. Crapo), a medical doctor specializing in pulmonary medicine. (Crapo Trial Tr. 5:6-11, Nov. 18, 2024.) Dr. Crapo was offered by UCC as an expert witness[27] in pulmonary medicine, asbestos-related diseases, causation of asbestos-related

[26] Dr. Ellenbecker acknowledged that both Dr. Millette and Dr. Longo were authoritative and reliable. (Ellenbecker Trial Tr. 80:4-6, 81:7-9, Nov. 14, 2024.)

[27] Dr. Crapo earned his bachelor's degree in chemistry at Brigham & Young University in Utah. (Crapo Trial Tr. 6:21-24, Nov. 18, 2024.) Dr. Crapo received his M.D. in 1967 from the University of Rochester in New York. *Id.* at 6:24-7:1. Thereafter, Dr. Crapo completed an internship in California in internal medicine at the Harvard General Hospital, which was part of the UCLA system. *Id.* at 7:2-6. Dr. Crapo then became a staff associate at the National Institute of Health's branch called the National Institute of Environmental Health Sciences. *Id.* at 7:6-11. Dr. Crapo completed a fellowship in pulmonary disease and a residency in medicine in 1976 at Duke

diseases, and animal dust inhalation studies as they relate to asbestos' ability to cause disease. *Id.* at 15:21-16:11. Dr. Crapo's expert report was based on his review of Ms. Bonito's medical records, the testimony of Ms. Bonito and Mr. Bonito, expert witness reports, industrial hygiene reports, Social Security records, and other scientific authorities. *Id.* at 71:1-9.

As an overview, Dr. Crapo's primary opinion was that peritoneal mesothelioma can be caused by amphibole forms of asbestos but not by chrysotile asbestos due to the respiratory system's ability to filter low dose exposures to pollutants. *Id.* at 16:20-17:4. Dr. Crapo also opined that UCC's Calidria was a unique form of chrysotile due to its short form fibers, which could not penetrate the areas of the lungs that cause disease. *Id.* at 17:6-9.

Dr. Crapo's actual testimony can be summarized as follows. Unlike amosite asbestos fibers, which can remain in the lungs for decades and reach the peritoneal due to their long fibers' durability in the body, and crocidolite asbestos fibers, which are even more toxic than amosite in terms of causing mesothelioma, *id.* at 23:22-25:4, chrysotile's short fibers do not have the durability to be inhaled, moved, and situated in the peritoneum for decades as needed to create mesothelioma. *Id.* at 40:13-23. Fiber length is a "major piece" of the causation of Ms. Bonito's

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University, after which point, he joined Duke's faculty for three years. *Id.* at 7:11-18. In 1979, Dr. Crapo began his twenty-five-year position at Duke University as Chief of Pulmonary and Critical Care, which involved his treatment of mesothelioma and asbestos-related diseases. *Id.* at 7:18-21, 8:2-14. Dr. Crapo became a professor of medicine and a professor of pathology at Duke University where he also ran the lung disease program at the schools' medical center. *Id.* at 7:21-23. Beginning in 1996, Dr. Crapo was made chairman of the Department of Medicine at the National Jewish Hospital in Denver, Colorado while also serving as Vice Dean at the University of Colorado. *Id.* at 8:15-25. While Dr. Crapo resigned as chairman after ten years, he remained a Professor of Medicine at the National Jewish Hospital at the University of Colorado. *Id.* at 8:23-9:3. Dr. Crapo focused on asbestos in the early 1980s after becoming involved in the National Institute of Health's animal study of asbestos that compared Calidria with Canadian chrysotile to see if carcinogenic properties were different in short versus long fiber asbestos *Id.* at 11:9-12:13. Dr. Crapo has published over five hundred articles and contributed to various textbooks, some of which dealt with asbestos. *Id.* at 14:3-15:4.

mesothelioma as highlighted by the Agency for Toxic Substances and Disease Registry's (ATSDR) 2002 symposium, which determined that fibers shorter than five microns are unlikely to cause cancer in humans. *Id.* at 28:1-20. Dr. Crapo's involvement with the National Health Institute's National Institute of Environmental Health Sciences allowed him to learn that Calidria[28] is a unique form of chrysotile in that its seemingly thick, long fiber appearance is actually bundles of small fibers stuck together. *Id.* at 48:6-49:24. Due to the thickness of the bundled small fibers, this 1980s study revealed that Calidria cannot penetrate the lungs to enter the body but rather is extracted through the nose and leaves the body. *Id.* at 50:2-18, 58:4-6. The 1980s study examined 344 lab rats by exposing the rats to three different types of environments—a controlled environment with no asbestos, a controlled environment with Calidria, and a controlled environment with Canadian chrysotile[29]—and observed how the rats were effected for their lifetime, approximately two years.[30] *Id.* at 52:2-53:9. The results of this study showed that the rats exposed to Canadian chrysotile for twelve months had extensive lung scarring indicative of asbestosis or inflammatory lung disease whereas the rats exposed to high doses of Calidria for twelve months had normal pulmonary scans with no signs of asbestosis or inflammation,[31]

[28] Dr. Crapo also noted the unique properties of UCC's Calidria due to it being 90 percent pure chrysotile asbestos with the remaining 10 percent being rock that is cleaned out prior to sale. (Crapo Trial Tr. 42:7-44:13, Nov. 18, 2024.)

[29] The rats were exposed to ten milligrams per cubic meter, which is the equivalent of about five thousand fibers per cc, which was a high dosage intended to maximize the possibility of creating cancer. (Crapo Trial Tr. 53:1-21, Nov. 18, 2024.) The rats' dosage was a more significant exposure than that to which one who was washing the asbestos-ridden clothes of another would be exposed. *Id.* at 54:4-18.

[30] Dr. Crapo testified that this study was publicly available for over forty years. (Crapo Trial Tr. 73:16-74:8, Nov. 18, 2024.)

[31] None of the test animals developed mesothelioma or other cancers with the exception of a spontaneous Leukemia that occurred in some animals. (Crapo Trial Tr. 57:14-25, Nov. 18, 2024.)

meaning their scans were indistinguishable from the scans of the rats in the controlled environment with no asbestos. *Id.* at 56:4-21.

Dr. Crapo also discussed a study he did of miners who worked at the King City Mine where Calidria was mined. Notably, all one hundred miners Dr. Crapo examined had normal X-rays with no evidence or history of mesothelioma; those living in the counties surrounding the King City Mine also had no mesothelioma links.[32] *Id.* at 58:14-59:11. Other studies also revealed that exposure to chrysotile is not itself causative of mesothelioma, including a study of gas mask factory workers and of South African miners. *Id.* at 68:1-69:9. As for chrysotile miners in Quebec, research showed that no peritoneal mesotheliomas were linked to chrysotile exposure even in high dosages, with peritoneal mesothelioma only being linked to amosite and crocidolite. *Id.* at 69:14-70:24. Given these figures, Dr. Crapo opined that Ms. Bonito's peritoneal mesothelioma is more attributable to her laundering Mr. Bonito's asbestos covered clothes, which he wore while inspecting workers cutting crocidolite laced cement pipe for over a year and half. *Id.* at 71:10-72:5.

Although Plaintiffs' counsel presented Dr. Crapo with various authorities on cross-examination that found that mesothelioma, even peritoneal mesothelioma, could be caused by any level of chrysotile exposure, Dr. Crapo discredited the veracity of these sources by noting that the subjects were exposed to other types of asbestos like crocidolite, *id.* at 88:5-89:16, the authorities were not supported by literature, *id.* at 93:16-94:22, 132:16-133:3, he plainly disagreed with the position, *id.* at 130:21-131:11, the exposure was extremely high, *id.* at 164:25-166:15, and the exposure involved other carcinogenic materials with similar properties as crocidolite. *Id.* at 155:13-156:24, 163:3-164:24. Dr. Crapo also reiterated at various points that he did not dispute

[32] Dr. Crapo does not claim this to be an epidemiological study or to have statistical value. (Crapo Trial Tr. 147:18-148:13, Nov. 18, 2024.)

that chrysotile could cause mesothelioma in high dosages, but rather did not believe it could do so in low doses, *id.* at 121:19-122:6, 127:12-17, hence why he only is retained in cases where low-dosage chrysotile exposures are at issue. *Id.* at 123:21-124:1, 172:10-22.

The Court found all four experts to be credible in that they each acknowledged contrary opinions but explained why their opinions were ultimately correct. The trial was truly a battle of experts.

C

Jury Verdict

After a multi-week trial, the jury rendered a verdict in favor of UCC on all counts. The jury's returned verdict[33] form read as follows:

> "1. Did Plaintiffs prove, by a preponderance of the evidence, that Defendant is strictly liable for the harm caused by Defendant's asbestos and/or asbestos-containing products under either a failure to warn theory or a design defect theory?
>
> "Yes _____ No __**X**__
>
> "2. Did Plaintiffs prove, by a preponderance of the evidence, that Defendant either negligently designed Calidria or failed to warn of Calidria's reasonably foreseeable and knowable dangers?
>
> "Yes _____ No __**X**__
>
> "3. Did Plaintiffs prove, by a preponderance of the evidence, that Defendant's Calidria was defective and that it was in a defective condition at the time it left the hands of Union Carbide Corporation?
>
> "Yes _____ No __**X**__
>
> "4. Did plaintiffs prove, by a preponderance of the evidence, that (a) Union Carbide had reason to know the particular purpose for which Georgia-Pacific would use Calidria; (b) Georgia-Pacific relied on Union Carbide Corporation's skill and judgment in

[33] The jury verdict was returned by six jurors, one of which was an alternate replacing an original juror who had to be dismissed for personal reasons.

> selecting Calidria; and (c) Calidria was unfit for the particular purpose for which Georgia-Pacific would use it?
>
> "Yes _____ No __**X**__
>
> "Please make sure you answer "yes" or "no" to questions 1, 2, 3, and 4. If you answered "yes" to one or more of questions 1, 2, 3, and/or 4, please proceed to question 5.
>
> "Otherwise, please have the foreperson sign and date this verdict form and call the sheriff to report that you have reached a verdict."

D

Post-Trial Motions

Plaintiffs filed a motion for a new trial on various grounds, including that the verdict was contrary to the fair preponderance of the evidence, the verdict failed to respond to the merits and administer substantial justice between the parties, and errors in the jury charge prejudiced Plaintiffs. (Pls.' Mot. New Trial (Pls.' Mot.) 1); (Pls.' Mem. in Supp. of Mot. New Trial (Pls.' Mem.) 1). UCC fervently objected to Plaintiffs' motion for new trial, arguing that reasonable minds could have found in UCC's favor on Plaintiffs' claims, UCC's counsel's comments during trial did not unfairly prejudice Plaintiffs, and the jury instructions properly reflected the applicable law. (Def.'s Obj. to Pls.' Mot. New Trial (Def.'s Obj.) 1-5.) However, even if Plaintiffs had demonstrated some issue warranting a new trial, UCC argued that such error was harmless as the record prevented a finding against UCC on the issue of causation, and UCC would have been entitled to judgment as a matter of law. *Id.* at 5.

II

Standard of Review

A

Applicable Standard

As a preliminary matter, UCC renews its arguments that the Court should only review Plaintiffs' motion for new trial under Rule 60 of the Superior Court Rules of Civil Procedure[34] because the new trial motion filed on December 2, 2024 failed to satisfy the particularity requirement set forth in Rule 7(b)(1) of the Superior Court Rules of Civil Procedure and the memorandum of law in support of the motion for new trial was not filed until after the ten day deadline under Rule 59(b) elapsed. (Def.'s Obj. to Pls.' Mot. New Trial (Def.'s Obj.) 6-7.)

This Court previously denied UCC's motion to dismiss the motion for new trial on January 8, 2025, finding that Plaintiffs' December 2, 2024 motion properly listed the grounds for new trial as required by Rule 59.[35] The Court stands by its previous ruling and need not consider the motion under Rule 60. As such, Plaintiffs' new trial motion shall proceed pursuant to Rule 59.

[34] "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) [m]istake, inadvertence, surprise, or excusable neglect; (2) [n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) [f]raud, misrepresentation, or other misconduct of an adverse party; (4) [t]he judgment is void; (5) [t]he judgment has been satisfied, released, or discharged, or a prior judgment upon which the judgment is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) [a]ny other reason justifying relief from the operation of the judgment." Super. R. Civ. P. 60(b).

[35] This was a bench decision given via Zoom.

B

Rule 59(a) Motion for New Trial

After a trial by jury, "[a] new trial may be granted to all or any of the parties and on all or part of the issues for error of law occurring at the trial or for any of the reasons for which new trials have heretofore been granted in the courts of this state." Super. R. Civ. P. 59(a). The Rhode Island Supreme Court has stated that, "when ruling on a motion for a new trial, the trial justice functions as a 'seventh juror[.]'" *Salvatore v. Palangio*, 247 A.3d 1250, 1263 (R.I. 2021) (quoting *Yi Gu v. Rhode Island Public Transit Authority*, 38 A.3d 1093, 1101 (R.I. 2012)). In this role, the trial justice "'exercises independent judgment on the credibility of witnesses and on the weight of the evidence.'" *State v. DiCarlo*, 987 A.2d 867, 870 (R.I. 2010) (quoting *State v. Banach*, 648 A.2d 1363, 1367 (R.I. 1994)). The trial justice is permitted, at his or her discretion, to admit evidence by drawing proper inferences. *Barbato v. Epstein*, 97 R.I. 191, 193, 196 A.2d 836, 837 (1964).

In acting as a "superjuror," "[t]he trial justice must carry out at least a three-step analytical process[.]" *Bonn v. Pepin*, 11 A.3d 76, 78 (R.I. 2011); *see DiCarlo*, 987 A.2d at 870.

> "First, the trial justice must consider the evidence in light of the charge to the jury, a charge that is presumably correct and fair to the defendant. . . . Next, the trial justice should form his or her own opinion of the evidence. . . . In doing so, [t]he trial justice must . . . weigh the credibility of the witnesses and [the] other evidence and choose which conflicting testimony and evidence to accept and which to reject. . . . Finally, the trial justice must determine by an individual assessment of the evidence and in light of the charge to the jury, whether the justice would have reached a different result from that of the jury." *State v. Salvatore*, 763 A.2d 985, 991 (R.I. 2001) (internal quotations and citations omitted).

Upon a determination that "'the evidence is evenly balanced or is such that reasonable minds, in considering that same evidence, could come to different conclusions, then the trial justice

should allow the verdict to stand[,]'" even if the trial justice entertains some doubt as to its correctness. *Graff v. Motta*, 748 A.2d 249, 255 (R.I. 2000) (quoting *Morrocco v. Piccardi*, 713 A.2d 250, 253 (R.I. 1998)) (per curiam). However, if after making an independent review of the evidence, "'the trial justice finds that the jury's verdict is against the fair preponderance of the evidence'" and fails to do substantial justice, the verdict must be set aside. *Reccko v. Criss Cadillac Co.*, 610 A.2d 542, 545 (R.I. 1992) (quoting *Sarkisian v. New Paper, Inc.*, 512 A.2d 831, 836 (R.I. 1986)). Even though the trial justice "need not perform an exhaustive analysis of the evidence, he or she should refer with some specificity to the facts which prompted him or her to make the decision so that the reviewing court can determine whether error was committed." *Reccko*, 610 A.2d at 545 (citing *Zarrella v. Robinson*, 460 A.2d 415, 418 (R.I. 1983)).

III

Analysis

Plaintiffs' motion for new trial sets forth three separate arguments. Each argument will be addressed in turn below.

A

Reconciling the Jury's Verdict with the Record of Evidence

Plaintiffs contend that a review of the record supports a plaintiffs' verdict on at least one of their four claims since there was uncontroverted evidence that UCC sold Calidria asbestos that was incorporated into Georgia-Pacific Ready-Mix joint tape compound used by Mr. Bonito to which Ms. Bonito was exposed to by way of laundering his clothes. (Pls.' Mem. 13-21.) Specifically, Plaintiffs contend that the uncontroverted evidence establishes that UCC knew of the carcinogenic risks of asbestos during Ms. Bonito's exposure period but failed to warn or downplayed the risks of its asbestos, increasing customers' mesothelioma risks. *Id.* at 14-18.

Plaintiffs argue that the evidence is also uncontroverted that Ms. Bonito was exposed to UCC's Calidria as Mr. Bonito testified that he regularly used Georgia-Pacific's joint compound throughout his marriage to Ms. Bonito. *Id.* at 19-20. In light of this uncontroverted evidence and the uncontroverted evidence of Plaintiffs' experts that asbestos is inherently unsafe and can cause mesothelioma in even low-level exposures, Plaintiffs argue there was ample evidence to find that Ms. Bonito's exposure to Calidria was a substantial factor in her developing mesothelioma. *Id.* at 20-21. However, UCC argues that the verdict comports with the record of evidence in that a reasonable jury could conclude that Calidria does not cause disease and that Ms. Bonito was not exposed to UCC's Calidria at all. (Def.'s Obj. 9.) Particularly, UCC argues that Dr. Crapo's testimony supports a finding that Calidria is a unique kind of asbestos that is not carcinogenic, and that Plaintiffs' experts' testimony acknowledged that various scientific authorities question the carcinogenic effects of short fiber chrysotile. *Id.* at 10-17. Even if a warning were necessary, UCC contends that the jury could find that the warning it provided on its Calidria was sufficient as it cautioned users not to inhale the asbestos dust and notified users that breathing the dust could be harmful. *Id.* at 16.

After reviewing the evidence and testimony provided at trial, the Court finds that there is sufficient evidence such that reasonable minds in considering the evidence could come to different conclusions. All four theories of liability advanced by Plaintiffs required the jury to find that Calidria was dangerous, defective, or unfit in some way. Specifically, verdict form question 1, i.e., the product liability claim, required the jury to consider whether UCC's Calidria was *defectively designed and unreasonably dangerous* when put to a reasonably anticipated use. *See* Jury Instructions at 18-22. Similarly, verdict form question 2, i.e., the negligence claim, required the jury to consider whether UCC knew or had reason to know that Calidria was *defective in design*

or UCC failed to inspect/test Calidria prior to sale. *Id.* at 22-27. Verdict question 3, i.e., the breach of the implied warranty of merchantability claim, required the jury to consider whether Calidria was *free of defects* that would make it *unreasonably dangerous* for normal use. *Id.* at 29-30. Lastly, verdict question 4, i.e., the breach of the implied warranty of fitness for a particular purpose claim, required the jury to consider whether Calidria was *fit for the particular purpose* for which the buyer sought the product from the seller. *Id.* at 31. While Plaintiffs urged the jury to find differently, there was sufficient evidence to support a finding by the jury that Calidria was not dangerous, defective, or unfit for its intended purpose. As such, the jury's verdict had ample support without even delving into issues of causation and Ms. Bonito's actual exposure.

Dr. Crapo, UCC's expert witness qualified to provide expert opinion on pulmonary medicine, asbestos-related diseases, causation of asbestos-related diseases, and animal dust inhalation studies as they relate to asbestos' ability to cause disease, testified in depth as to the specific properties of Calidria that rendered it non-carcinogenic in low dosages to humans. (Crapo Trial Tr. 5:6-172:22, Nov. 18, 2024.) Dr. Crapo explained that chrysotile asbestos' short fibers are not durable enough to enter a human's respiratory system and remain there for the requisite period to cause peritoneal mesothelioma. *Id.* at 40:13-23. Dr. Crapo also noted that UCC's Calidria had unique properties as Calidria was 90 percent pure chrysotile compared to other chrysotile varieties like Canadian chrysotile, which are almost wholly rock materials with small amounts of chrysotile sprinkled therein. *Id.* at 42:7-44:13. Dr. Crapo echoed the opinions of various scientific authorities, such as the ATSDR, that shorter asbestos fibers are unlikely to cause cancer in humans as support for his position on Calidria. *Id.* at 28:1-20. Dr. Crapo also spoke in depth about how his ten-year long research study with the National Health Institute's National Institute of Environmental Health Sciences, which confirmed that Calidria is a unique form of chrysotile in

that its seemingly thick, long fiber appearance is actually bundles of small fibers incapable of penetrating the lungs to cause carcinogenic effects. *Id.* at 48:6-50:18, 58:4-6. The National Health Institute's case study also found no lung scarring, asbestosis, inflammatory lung disease, or mesothelioma in rats exposed to high dosages of Calidria for long periods of time, which Dr. Crapo further points to as support that Calidria is a unique form of asbestos that is not generally carcinogenic. *Id.* at 52:2-53:9, 56:4-21. Dr. Crapo also explained how his examination of miners at the King City Mine where Calidria was mined revealed that the miners had normal X-rays with no evidence or history of mesothelioma. *Id.* at 58:14-59:11. Dr. Crapo spoke about various research studies that found peritoneal mesothelioma to not be linked to chrysotile exposure even in high dosages but rather to be linked to amosite and crocidolite. *Id.* at 69:14-70:24. Dr. Crapo also distinguished the studies presented by Plaintiffs' counsel that contradicted his position that Calidria is not carcinogenic and does not cause peritoneal mesothelioma. *Id.* at 88:5-89:16, 93:16-94:22, 130:21-133:3, 155:13-156:24, 164:25-166:15. Notably, Dr. Crapo openly acknowledged that chrysotile could cause mesothelioma in high dosages but could not do so in low exposures such as the case at bar. *Id.* at 121:19-127:17, 172:10-22. As such, Dr. Crapo's testimony provided evidence to support the jury's finding that Calidria was not dangerous, defective, or unfit for its intended purpose, warranting the jury answering "no" on jury verdict form questions one through four.

Looking beyond Dr. Crapo's testimony, the cross-examination of Plaintiffs' experts provided additional grounds upon which the jury could find that chrysotile, including Calidria, was not carcinogenic such that it posed a danger to humans.

To start, Dr. Kradin acknowledged on cross-examination that NIOSH and OSHA recognized permissible exposure limits (albeit low levels) to asbestos that were unlikely to lead to

mesothelioma. (Kradin Trial Tr. 46:17-47:6, Nov. 8, 2024.) Dr. Kradin also acknowledged that there were competing voices in the scientific community, such as Alan Smith, Dr. Hammar, and Dr. Henderson, who found that chrysotile asbestos did not create a risk of peritoneal mesothelioma. *Id.* at 125:14-126:10, 143:16-144:5, 146:13-25. Dr. Kradin also acknowledged that figures like Dr. Roggli opined that peritoneal mesothelioma required high exposure levels compared to pleural mesothelioma and that peritoneal mesothelioma is not causally linked to chrysotile itself but rather to tremolite contamination in chrysotile. *Id.* at 132:20-139:1.

Dr. Castleman acknowledged that Dr. Wagner's published book on the 1964 asbestos conference of which UCC was a participant noted that some authorities found no causal link between mesothelioma and chrysotile exposure. (Castleman Trial Tr. 19:25-20:13, Nov. 13, 2024.) Dr. Castleman also acknowledged that Dr. Schepers, a doctor who spoke at the same 1964 conference, opined that asbestos may only be carcinogenic in overwhelming dosages and that it was questionable whether chrysotile was carcinogenic. *Id.* at 20:14-24:21. Dr. Castleman also noted that Dr. Selikoff's 1978 book categorized the state of medical knowledge in the early 1960s as being that the connection between asbestos and mesothelioma was based on limited data and that low dosage exposures were not concretely linked to cancer. *Id.* at 36:20-39:1.

Furthermore, on cross-examination, Dr. Ellenbecker acknowledged the following: (a) that the EPA in a 1986 CPSC Report noted that chrysotile produced pleural mesothelioma but was not as important to the development of peritoneal tumors, (Ellenbecker Trial Tr. 61:25-62:23, Nov. 14, 2024); (b) that the EPA in 1989 recognized that peritoneal mesothelioma was largely associated with crocidolite exposure due to its high potency, whereas it questioned whether asbestos fibers less than five microns in length could cause carcinogenic mutations, *id.* at 63:12-65:12; (c) that various authorities, including the Department of Labor, OSHA, the Chronic Hazard Advisory

Panel to OSHA, and the World Health Organization noted throughout the 1980s that chrysotile was not likely linked to peritoneal mesothelioma but that exposure to crocidolite and amosite was linked to the disease, *id.* at 66:1-74:2; and (d) that EPA testing in 2008 did not actually collect air samples collected within fifty miles of the King City Mine and that tests on the King City Mine by Dr. Millette and Dr. Longo revealed that no amphibole fibers or traces of tremolite were found in Calidria. *Id.* at 74:19-83:4. Based on the foregoing, there was sufficient evidence adduced on cross-examination of Plaintiffs' three expert witnesses to support the jury's finding that Calidria was not dangerous, defective, or unfit for its intended purpose, warranting the jury answering "no" on jury verdict form questions one through four.

The Court acknowledges that there was sufficient evidence presented by Plaintiffs to support a different verdict. However, because the evidence in this case is balanced such as to support the jury's verdict, the Court **DENIES** the motion for new trial on this ground.[36] *See Kazarian v. New London County Mutual Insurance Company*, 331 A.3d 984, 991 (R.I. 2025) ("If, after conducting this analysis, the trial justice concludes that the evidence is evenly balanced or that reasonable minds could differ on the verdict, she or he should not disturb the jury's decision.") (internal quotation omitted).

B

Improper Remarks During Trial

Plaintiffs argue that a new trial should be granted due to UCC's counsel's repetitive, improper remarks, many of which defied pretrial motions. (Pls.' Mem. 4-10.) For the reasons

[36] While UCC argues that the jury's verdict could have also been based on their disbelief that Mr. Bonito actually used Georgia-Pacific Ready Mix or that Georgia-Pacific's Ready Mix actually contained Calidria, the Court need not address these ancillary arguments as the witness testimony in this case supports the basic assumption that Calidria is not dangerous or carcinogenic such as to cause peritoneal mesothelioma.

outlined below, the Court finds that many of the complained of remarks were waived by Plaintiffs due to lack of contemporaneous objection. Furthermore, the Court does not find the properly objected to remarks to be so prejudicial or problematic such as to warrant granting a new trial. *See Anderson v. Botelho*, 787 A.2d 468, 471-72 (R.I. 2001).

1

Sophisticated User Defense

Plaintiffs contend that UCC's counsel defied this Court's ruling on Plaintiffs' motion *in limine* number two, which barred UCC from avoiding liability with respect to Plaintiffs' warning claim by pointing the finger at Georgia-Pacific vis-à-vis the sophisticated user defense.[37] (Pls.' Mem. 4-5.) Plaintiffs argue that UCC's counsel's commentary did influence the jury as evidenced by the jury's question seeking clarification as to who the customer was, as well as the jury's question as to who had the responsibility for the final marketed product. *Id.* at 5-6. For its part, UCC argues that Plaintiffs' lack of objection during trial prevents them from basing their new trial motion on such statements. (Def.'s Obj. 26-31.) However, Plaintiffs urge that contemporaneous objections were not required as the pretrial motions *in limine* negated the need to contemporaneously object as stated in *State v. Andujar*, 899 A.2d 1209 (R.I. 2006).[38] (Pls.' Reply 11-13.) Moreover, because UCC's repetitive misconduct poisoned the jury against Plaintiffs to

[37] "Under the sophisticated user defense, there is no duty to warn an end user of a product's latent characteristics or dangers when the user knows or reasonably should know of those dangers. . . As a corollary of the open and obvious doctrine, the sophisticated user defense applies where the user appreciates the danger to the same extent as a warning would provide." *Mellor v. Arnold Lumber Co.*, No. PC-2017-5107, 2022 WL 2900924, at *11 (R.I. Super. June 15, 2022) (internal quotations omitted). The defense is a "highly fact-specific" inquiry. *Id.* at *12.

[38] An "unequivocally definitive" ruling on a motion *in limine* can be sufficient to preserve an evidentiary issue for review even if a proper objection is not noted on the record. *See State v. Andujar*, 899 A.2d 1209, 1222 (R.I. 2006). A motion *in limine* ruling is deemed to be "unequivocally definitive" where the trial justice clearly indicates a certain finality as to his decision. *See id.*

such an extent that a cautionary instruction could not cure it, a new trial is warranted irrespective of there being no contemporaneous objection.[39] *Id.* at 14-16.

"To effectively preserve an issue for appeal, a litigant's objection at trial has to be timely and appropriate." *State v. Brown*, 9 A.3d 1240, 1245 (R.I. 2010). To properly preserve an objection to alleged misconduct in the presence of a jury, "counsel must, by objecting to such conduct and by making some proper motion, give the trial justice an opportunity to correct and mitigate the potential prejudice by a proper cautionary instruction." *Baker v. Women & Infants Hospital of Rhode Island*, 268 A.3d 1165, 1168 n.4 (R.I. 2022) (internal quotation omitted). The Rhode Island Supreme Court has held that arguments not made during trial "cannot belatedly be asserted during the motion for a new trial" pursuant to the raise or waive[40] rule. *State v. Albanese*, 970 A.2d 1215, 1222 (R.I. 2009).

"A motion *in limine* is inherently conditional," meaning that in certain circumstances testimony or evidence elicited at trial can open the door irrespective of a motion in limine ruling. *State v. Carvalho*, 892 A.2d 140, 146 (R.I. 2006). The Court was initially presented with

[39] The Court finds Plaintiffs' reference to *Demara v. Rhode Island Co.*, 42 R.I. 215, 107 A. 89 (1919) to be unavailing given the factual differences between that case and the case at bar. In *Demara*, while the complained of remarks were not contemporaneously objected to, the court still considered argument on the complained of language due to the line of questioning happening within minutes of direct examination closing and counsel moving to pass the case immediately after direct examination concluded and the jury left the courtroom. *Demara*, 42 R.I. 215, 107 A. at 90-91. However, in the present case, many of the complained of remarks were not objected to contemporaneously or soon after the jury left the room but instead were only raised after all evidence was submitted at trial. The Court also finds Plaintiffs' reference to *State v. Costa*, 111 R.I. 602, 306 A.2d 36 (1973) to be unpersuasive given that the Supreme Court specifically noted that its leniency in considering the unobjected to question was due to the matter being a close call in a criminal case involving the reasonable doubt standard. *Costa*, 111 R.I. at 611, 306 A.2d at 40-41.

[40] For context, "the 'raise-or-waive' rule precludes a litigant from arguing an issue on appeal that has not been articulated at trial." *Cappuccilli v. Carcieri*, 174 A.3d 722, 733 (R.I. 2017) (internal quotation omitted).

approximately forty-four motions *in limine*.[41] At the outset of the hearing on the motions, the Court stated the law it was following and incorporated it into every decision. (Trial Tr. 7:24-10:21, Oct. 28, 2024.) In particular, the Court said:

> "[W]hatever [I] decide in the next couple of days to preserve your rights, you have to offer it at the trial, and I will rule at that time. However, if I make a ruling, I do not want the offer to be made anything other than at sidebar. So at the appropriate time, you can put an offer of proof on the record where you just simply incorporate whatever arguments you make in the next couple of days, which will be incorporated into the record and I will incorporate whatever I decide or I could change my mind. It's been known to happen. I don't want to give you false hope." (Trial Tr. 10:2-13, Oct. 28, 2024.)

As Plaintiffs mention in their memorandum, the Court granted Plaintiffs' motion *in limine* number two, which precluded UCC from introducing the sophisticated user defense due to such a defense being untimely asserted and the learned intermediary defense due to the Rhode Island Supreme Court not yet recognizing it. (Trial Tr. 111:11-112:5, Oct. 28, 2024.) Nonetheless, beginning with opening arguments, UCC's counsel commented that UCC "sold [Calidria] in 50-pound bags to sophisticated manufacturers," "[sold] [Calidria] to Georgia-Pacific," and "warned at the time of what [UCC] knew." (Trial Tr. 51:20-25, Nov. 7, 2024.) UCC also commented during opening argument that "Georgia-Pacific knew all about asbestos because they were in business long before they bought from [UCC]" and that Plaintiffs were seeking to "make [UCC] responsible for something [Georgia Pacific] did." *Id.* at 52:17-24. UCC's counsel further commented on Georgia-Pacific in their closing argument by stating that "[UCC's] customers are people like Georgia-Pacific" not "a guy off the street[.]" (Trial Tr. 50:6-10, Nov. 19, 2024.) UCC's counsel

[41] Not all motions *in limine* were heard and decided upon, as a number of the motions were agreed to by the parties and others were rendered moot by former defendant Graybar Co., Inc. settling with Plaintiffs half-way through the motions *in limine* hearing.

also noted that UCC serviced Georgia-Pacific as a customer, warned Georgia-Pacific with what it then knew, and lacked the ability to control what Georgia-Pacific "put on their cans." *Id.* at 52:1-9. The Court finds that these statements by UCC's counsel blatantly ran afoul of motion *in limine* number two in that they insinuated that UCC's responsibility to Ms. Bonito ended at warning Georgia-Pacific despite being expressly told by the Court prior to trial that the learned intermediary defense is not recognized in Rhode Island and the sophisticated user defense was not timely asserted. (Trial Tr. 112:4-113:9, Oct. 28, 2024.) However, not once did Plaintiffs' counsel object to these comments despite the Court's clear admonition at the outset of the motions *in limine* hearing that all rulings were conditional. Had Plaintiffs' counsel properly objected, the Court would have heard counsel at sidebar and, if it adhered to its initial ruling, would have warned UCC's counsel to avoid such statements and, if requested, given the jury a clarifying instruction. Nevertheless, because Plaintiffs failed to abide by the Court's pretrial warning and failed to timely object, Plaintiffs waived argument on motion *in limine* number two.

Even assuming *arguendo* that Plaintiffs were not required to object during trial to UCC's references to Georgia-Pacific, the Court is not persuaded that the jury was influenced by the improper remarks such that a new trial is warranted. As Plaintiffs point out, the jury's questions asked for the definition of "customer," whether Mr. Bonito was the customer, and who was responsible for final marketing on the joint compound. (Pls.' Mem. Ex. D – Jury Question.) However, in attributing this line of questioning solely to UCC referencing its warnings to Georgia-Pacific, Plaintiffs neglect to acknowledge that they themselves highlighted key issues in the case that could have led to the jury asking these questions. Plaintiffs' counsel first created confusion as to who the "customer" was in their opening when they stated that "[UCC] told *their customers* the same thing that they will tell [the jury] in this courtroom today, that somehow, some way their

chrysotile doesn't cause disease" and that "[UCC] tried to tell *their customers* [this] so [UCC] could keep selling asbestos." (Trial Tr. 22:22-23:6, Nov. 7, 2024) (emphasis added). Notably, Plaintiffs did not provide reference to who exactly the "customer" was they were referring to, leaving the jury confused on this point. Plaintiffs also muddied the waters in their closing as to who was responsible for marketing the carcinogenic effects of asbestos by stating that "Mr. Bonito . . . didn't know [joint compound] could cause mesothelioma . . . because Union Carbide didn't tell Georgia-Pacific any of that" and that "[UCC] never told Georgia-Pacific that [asbestos] could cause cancer, that it could cause mesothelioma, [or] that it could go home to loved ones and give them a fatal disease." (Trial Tr. 98:22-99:2, 100:12-14, Nov. 19, 2024.) This line of questioning also created confusion in that the jury could be conflicted as to which company the warning should have come from. As such, rather than the jury questions being a clear indicator that UCC's violation of motion *in limine* number two improperly influenced the jury, the jury questions could be interpreted to relate to key factual issues in the case that Plaintiffs themselves addressed both in their opening and closing.

Accordingly, the new trial motion is **DENIED** on this ground.

2

References to Prior Defendants, Georgia-Pacific's Absence, and UCC's Ability to Pay Verdict

Plaintiffs argue that UCC improperly referred to Plaintiffs suing other defendants, Georgia-Pacific's absence in the case, and Plaintiffs' ability to pay a verdict in violation of Plaintiffs' omnibus motion *in limine* numbers thirteen, twenty-six, and twenty-seven. (Pls.' Mem. 6-8) (Pls.' Reply 12-13). However, UCC argues that such objections were waived for lack of objection and, even if not waived, the statements did not run afoul of any portion of Plaintiffs' omnibus motion *in limine*. (Def.'s Obj. 31-35.)

By Plaintiffs' counsel's admission, Plaintiffs' omnibus motion *in limine* number thirteen sought to prohibit mention or reference to the fact that Plaintiffs could have pursued an unnamed party in lieu of UCC. (Trial Tr. 24:12-25:9, Oct. 28, 2024.) However, the Court did not make an express ruling on this motion *in limine* but rather noted that the complaint to be given to the jury named all former defendants. *Id.* at 24:20-21. In response, UCC noted that it did not see an issue with number thirteen provided that it did not prohibit UCC from demonstrating the liability of other parties.[42] *Id.* at 25:11-15. As previously mentioned, the Court made clear in this case that a motion *in limine* ruling does not obviate the need to make a contemporaneous objection. Because the record is clear that Plaintiffs did not object to any of the complained of comments referencing the prior defendants, the Court finds that Plaintiffs waived argument on UCC's counsel's comments that there were sixty-five other companies sued, (Trial Tr. 38:18-19, Nov. 7, 2024), that there were fifty defendants sued, *id.* at 54:17-19, that Certain Teed was sued, *id.* at 48:10-12, and that there were fifty people sued pursuant to the complaint.[43] *Id.* at 126:11-127:2, 127:13-14. It is also worth noting that Plaintiffs mentioned in their opening argument that Mr. Bonito worked with various asbestos-containing products beyond Georgia-Pacific joint compound. (Trial Tr. 31:1-32:13, Nov. 7, 2024.) Given that the jury was on notice by Plaintiffs themselves that other asbestos products were in the mix, merely mentioning that other parties were sued does not seem to be out of left field but rather provides relevant background information.

As for omnibus motion *in limine* number twenty-six, Plaintiffs categorized the motion as prohibiting mention of a non-party's declaration of bankruptcy, a non-party's receivership status, or the repercussions of a verdict causing insolvency or bankruptcy. (Trial Tr. 38:16-39:3, Oct. 28,

[42] The motion *in limine* transcript seems to have the wrong word listed — it says, "potential court fees" when it should say "potential parties." (Trial Tr. 25:13-14, Oct. 28, 2024.)

2024.) Similarly, Plaintiffs categorized omnibus motion *in limine* number twenty-seven as prohibiting references to UCC's financial ability to pay a verdict or judgment and to how a verdict or judgment could impact UCC's ability to pay other claims. *Id.* at 39:7-11. Despite Plaintiffs' contention, simply noting that Georgia-Pacific was "not here," (Trial Tr. 52:22, Nov. 7, 2024), neither implicates issues of bankruptcy, receivership, or a defendant's ability to pay the judgment nor references the repercussions of a defendant paying the judgment. As such, the Court fails to see how omnibus motions *in limine* numbers twenty-six and twenty-seven were violated by this comment. Similarly, UCC's counsel's fleeting statement that "this is not about who's able to pay a verdict," *id.* at 38:21-22, does not implicate issues of bankruptcy or receivership, nor does it attempt to trigger the emotions of the jury by emphasizing UCC's ability to pay a judgment or by addressing how a judgment would adversely affect its business. However, even if such rulings were violated, as discussed for the learned intermediary defense, the Court's instruction at the motions *in limine* hearing made clear that all rulings were conditional, making contemporaneous objections a necessity. Therefore, Plaintiffs' failure to timely object prevents Plaintiffs from basing its new trial motion on such comments now.

Because Plaintiffs' omnibus motion *in limine* numbers thirteen, twenty-six, and twenty-seven were not violated by the complained of statements and Plaintiffs failed to contemporaneously object to such statements, these statements were not an improper appeal to the prejudice and passions of the jury such as to support a new trial motion. *See Baker*, 268 A.3d at 1169.[44] Therefore, the new trial motion is **DENIED** on these grounds.

[44] "Determining whether counsel's argument to the jury warrants granting a new trial involves a three-step analysis: (1) whether counsel's comments were improper and an attempt[ ] to appeal solely to the prejudice and passion in the minds of the jurors; (2) whether the jury was influenced by the improper remarks; and (3) whether, if the jury was so influenced, the improper references

3

Reference to Motley Rice and/or its Experts' Work in Other Cases

Plaintiffs argue that UCC's counsel repeatedly made improper statements in contravention of Plaintiffs' omnibus motion *in limine* numbers twenty, twenty-one, and thirty-two by alluding to the amount of money Plaintiffs' counsel's law firm has made in their other cases and insinuating that the law firm and its experts travel around the country putting on a show. (Pls.' Mem. 8-9) (Pls.' Reply 14-16). However, UCC contends that argument has been waived due to lack of objection, and, even if not waived, such comments were directly in reference to Plaintiffs' experts, whose bias may validly be called into question. (Def.'s Obj. 36-39.)

As categorized by Plaintiffs' counsel during the motion in limine hearing, omnibus motion *in limine* numbers twenty and twenty-one barred mentioning the assets of Plaintiffs' counsel's law firm, as well as the size and financial position of Plaintiffs' counsel's law firm. (Trial Tr. 34:10-17, Oct. 28, 2024.) Similarly, omnibus motion *in limine* number thirty-two barred mentioning that Plaintiffs' counsel's law firm handled other specific types of cases, such as tobacco, medical devices, and pharmaceuticals, which directly or indirectly affected the cost of goods. *Id.* at 41:19-42:2. The Court has trouble reconciling how the comments complained of by Plaintiffs run afoul of any of these motions *in limine*. Rather, as UCC argued in its objection, the complained of statements seem to raise the potential for bias in Plaintiffs' experts, whose testimony underpins much of Plaintiffs' case, due to such experts making substantial sums of money from being used for decades by Motley Rice in cases all throughout the country. (Trial Tr. 37:21-38:9, Nov. 7, 2024) (Trial Tr. 47:5-8, 56:3-57:4, Nov. 19, 2024). For example, UCC's counsel's comments that "these people who make millions and millions of dollars" was made during the portion of closing

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were dissipated by [a] curative instruction[.]" *Baker v. Women & Infants Hospital of Rhode Island*, 268 A.3d 1165, 1169 (R.I. 2022) (internal quotations omitted).

arguments referencing UCC's cross-examination of Dr. Ellenbecker. (Trial Tr. 52:17-53:18, Nov. 19, 2024.) This comment and the others complained of by Plaintiffs have evidentiary support as Plaintiffs' experts openly acknowledged their heavy involvement with Motley Rice throughout the years and the financial benefits they received from such work. (Kradin Trial Tr. 6:18-25, Nov. 8, 2024) (Castleman Trial Tr. 34:2-14, 107:23–109:5, Nov. 12, 2024) (Ellenbecker Trial Tr. 111:14-112:5, Nov. 14, 2024). While Plaintiffs urge that this commentary could have insinuated to the jury that Motley Rice has deep pockets capable of paying such hefty expert fees, this argument is a stretch to say the least, especially considering Plaintiffs' counsel made similar statements when cross-examining Dr. Crapo. (Crapo Trial Tr. 116:11-122:16, Nov. 18, 2024.) For this reason, the Court does not find that these statements violated any motions *in limine*.

Because omnibus motions *in limine* numbers twenty, twenty-one, and thirty-two were not violated by the complained of statements and Plaintiffs failed to contemporaneously object to such statements, these statements were not an improper appeal to the prejudice and passions of the jury such as to support a new trial motion. *See Baker*, 268 A.3d at 1169. Therefore, the new trial motion is **DENIED** on these grounds.

4

Inadmissible Evidence

Plaintiffs argue that UCC's counsel made improper reference to various pieces of inadmissible evidence throughout the trial, including a slide that stated CertainTeed pipe was 24 percent crocidolite, a slide that contained Mr. Bonito's deposition testimony, a comment by UCC's counsel that Mr. Bonito only identified Georgia-Pacific due to being shown a picture of its bucket during his deposition, and a reference by UCC's counsel to a prior inconsistent statement of Mr. Bonito during Dr. Kradin's direct examination. (Pls.' Mem. 9-10.) As to the latter two evidentiary references, UCC contends that argument on such matters is waived due to Plaintiffs not

contemporaneously objecting. (Def.'s Obj. 40-41.) As to the first two evidentiary references, UCC argues that the Court properly handled Plaintiffs' objections by sustaining them. *Id.* at 39-40. UCC contends that a curative instruction was not necessary as Plaintiffs did not move for it when making their respective objections. *Id.*

To start, the Court agrees with UCC that Plaintiffs waived argument as to the references to Mr. Bonito's ability to identify Georgia-Pacific and Mr. Bonito's prior inconsistent statement as there was neither an unequivocally definitive motion *in limine* ruling that covered such evidence nor a contemporaneous objection to the evidence. However, as UCC acknowledges in its objection, a contemporaneous objection was made to UCC's counsel's presentation of a slide in its closing argument that listed CertainTeed cement pipe as containing 24 percent crocidolite, making this issue adequately preserved for purposes of Plaintiffs' new trial motion. (Trial Tr. 61:10-62:1, Nov. 19, 2024.) Plaintiffs also contemporaneously took issue with Plaintiffs' counsel's presentation of Mr. Bonito's deposition transcript during opening arguments, which the Court promptly ordered counsel to take down from the screen. (Trial Tr. 48:15-49:1, Nov. 7, 2024.) However, at neither point in time did Plaintiffs ask the Court to take any additional actions. As the Rhode Island Supreme Court has previously acknowledged, a party cannot take issue after the fact with the trial justice not providing additional relief, such as a curative instruction or mistrial, where the party only makes an objection that is sustained by the court. *See State v. Tapia*, 673 A.2d 54, 55 (R.I. 1996). Because the Court sustained Plaintiffs' objections by ordering that such material be taken down from the jury's view and Plaintiffs' counsel neither prompted the Court to provide a curative instruction nor order a mistrial, the Court provided Plaintiffs with all the relief then requested. Plaintiffs cannot now in their motion for new trial contend that additional relief

should have been given for which they never even asked. *See Michalopoulos v. C&D Restaurant, Inc.*, 847 A.2d 294, 301 (R.I. 2004).

Because Plaintiffs failed to object to certain inadmissible evidence and were provided the full relief requested as to other inadmissible evidence, the presentation of such evidence was not an improper appeal to the prejudice and passions of the jury such as to support a new trial motion. *See Baker*, 268 A.3d at 1169. As such, the new trial motion is **DENIED** on this ground.

C

Errors in Jury Instructions

Plaintiffs take issue with two erroneous jury instructions-the instruction regarding the MSDSs and the instruction regarding a subsequent modification–both of which were inapplicable and only confused the jury as evidenced by their questions to the Court. (Pls.' Mem. 22-25.) For the reasons stated below, the Court finds that neither jury instruction provides grounds for granting a new trial.

1

Jury Instruction 19: Alteration and/or Modification of the Product

Plaintiffs argue that no evidence or argument in the case supported providing jury instruction number nineteen, which reiterates the product liability protection afforded to manufacturers and sellers under G.L. 1956 § 9-1-32 for a product subsequently altered or manufactured. (Pls.' Mem. 22-23.) Plaintiffs contend that the incorporation of UCC's Calidria into a product by Georgia-Pacific, someone who UCC specifically marketed to, simply cannot be considered a subsequent alteration within the definition laid out in § 9-1-32 because it was a foreseeable and entirely intended "modification." *Id.* at 24. Considering UCC's repeated message that it was Georgia-Pacific's duty to warn, Plaintiffs argue that this instruction was not harmless

error as it allowed the jury to specifically and improperly contemplate the role of Georgia-Pacific as shown by the jury's question about the supply chain and who in the chain was responsible for the final product. *Id.*; (Pls.' Reply 17-18). However, UCC contends that § 9-1-32 applies in various situations, including a failure to warn, which constitutes a subsequent alteration or modification under the statute. (Def.'s Obj. 43-44.) Moreover, UCC points out that it asked the Court on two occasions to instruct the jury on the full language from § 9-1-32(a)(2), but that Plaintiffs asked the Court to only charge the jury with the narrow part of § 9-1-32(a)(2) dealing with intent, which led the Court to simply omit the entirety of § 9-1-32(a)(2). *Id.* at 44-45. Even if the subsequent alteration or modification was inapplicable to the facts of this case, UCC argues that the instruction is harmless as it was a non-specific, single line of the jury instructions that neither party addressed in closing arguments. *Id.* at 46-47.

Jury instruction number nineteen read as follows:

> "If a product has been altered and/or modified since the time it was manufactured [or sold] and the subsequent alteration and/or modification was a substantial cause in bringing about the injury to the plaintiff, then the manufacturer and/or seller will not be liable to the plaintiff for the injuries resulting from the subsequent modification and/or alteration of its product."

This language mirrored the then-in-effect version of § 9-1-32(b).[45] Then-in-effect § 9-1-32(a)(2) defined a "[s]ubsequent alteration or modification" as "an alteration or modification of a product made subsequent to the manufacture or sale by the manufacturer or seller which altered, modified, or changed the purpose, use, function, design, or manner of use of the product from that originally designed, tested, or intended by the manufacturer, or the purpose, use, function, design, or manner

[45] "No manufacturer or seller of a product shall be liable for product liability damages where a substantial cause of the injury, death, or damage was a subsequent alteration or modification." G.L. 1956 § 9-1-32(b).

of use or intended use for which the product was originally designed, tested, or manufactured." While both Plaintiffs and UCC asked for different portions of § 9-1-32(a)(2) to be added to jury instruction number nineteen, the Court did not allow any clarifying language to be added. (Trial Tr. 24:16-29:7, 41:23-43:25, Nov. 19, 2024.)

After reviewing the record of evidence offered at trial, the Court agrees with Plaintiffs that the facts of this case did not indicate that UCC's Calidria was modified or altered as defined under § 9-1-32(a)(2). Rather, the facts indicate that Calidria was merely combined with other materials to create Georgia-Pacific joint compound. For this reason, jury instruction number nineteen appears to have been erroneously provided.

Given that jury instruction number nineteen was erroneous, the Court now must discern whether such error was harmless or constitutes reversible error. "It is well-established that when reviewing jury instructions, we do so holistically, and not in a piecemeal fashion." *Contois v. Town of West Warwick*, 865 A.2d 1019, 1028 (R.I. 2004). "[W]e shall not exaggerate out of context a single word or phrase or sentence in an instruction; rather, the challenged portion will be examined in the context of the entire instruction." *Id.* (internal quotation omitted). In *Contois*, the Supreme Court found that a non-specific two sentence instruction on intervening cause, though improper and inapplicable to the facts of the case, did not constitute reversible error. *Id.* The Supreme Court emphasized that the short, erroneous instruction was harmless when viewed in the context of the charge as a whole and was not so far removed from the facts of the case to constitute reversible error. *Id.* at 1027-28.

Just as the erroneous jury instruction in *Contois* was deemed harmless due to it being a brief, non-specific instruction in comparison to the entire jury charge, the Court finds jury instruction number nineteen to be harmless error also. The jury in this case was given over thirty

pages of jury instructions of which jury instruction number nineteen only comprised one sentence. The Court is not inclined to attribute the entirety of the jury's verdict to their reading of this one isolated portion of the jury instruction, especially considering that neither party addressed this point in their closing arguments. While Plaintiffs attribute the jury's question on responsibility for the final product to jury instruction number nineteen, the Court is not similarly convinced. Rather, the jury's question could easily be attributed to Plaintiffs' counsel's presentation of issues in the case. For instance, in their closing, Plaintiffs' counsel opined that "Mr. Bonito . . . didn't know [joint compound] could cause mesothelioma . . . because Union Carbide didn't tell Georgia-Pacific any of that" and that "[UCC] never told Georgia-Pacific that [asbestos] could cause cancer, that it could cause mesothelioma, [or] that it could go home to loved ones and give them a fatal disease." (Trial Tr. 98:22-99:2, 100:12-14, Nov. 19, 2024.) These statements could easily be responsible for raising questions in the minds of the jury as to which company the warning should have come from irrespective of jury instruction number nineteen. In other words, rather than the jury question being a clear indicator that jury instruction number nineteen led the jury to draw improper conclusions, the jury question merely addressed a key factual issue that Plaintiffs themselves raised.

Although the Court finds jury instruction number nineteen to have been erroneously provided, the Court finds such error to be harmless. As such, the new trial motion is **DENIED** on this ground.

2

Jury Instruction Number 8: Consideration of the Material Safety Data Sheet

Plaintiffs contend that jury instruction number eight erroneously instructed the jury to consider UCC's MSDSs only for notice and knowledge and not for the truth of the matter asserted.

(Pls.' Mem. 24-25.) Plaintiffs lean on Rule 801(d)(2) of the Rhode Island Rules of Evidence[46] for support, which provides that statements of a party opponent are not hearsay. *Id.* However, UCC argues that Plaintiffs waived their present objection by failing to object when the Court first instructed the jury about the limited purpose for which the MSDSs could be used and at several points thereafter. (Def.'s Obj. 47-48.) Even if Plaintiffs properly objected, UCC contends that the MSDS instruction was proper because the Court had discretion to limit the evidentiary admission of the MSDSs, especially in light of such statements being required by federal regulation rather than being drafted by UCC's own accord. *Id.* at 48-51.

During the motions *in limine* hearing held on November 7, 2024, Plaintiffs' counsel first indicated to the Court their intention to use a 1984 MSDS from UCC to which UCC promptly objected based on hearsay and unfair prejudice. (UCC's Ex. B, Trial Tr. 17:2-20:7, Nov. 7, 2024.) While the Court initially only noted the MSDS's potential relevance, *id.* at 20:8-10, the Court later expressly overruled UCC's objection and allowed the MSDS to be admitted as evidence. (Trial Tr. 1:5-13, Nov. 8, 2024.) Importantly, however, the Court noted that the MSDS's admission was subject to a qualifying instruction: the MSDS could only be considered in determining whether UCC knew or should have known of the contents of the document and could not be considered for

[46] Rule 801(d)(2) of the Rhode Island Rules of Evidence describes a statement by a party opponent as follows:

> "The statement is offered against a party and is (A) the party's own statement, in either the party's individual or a representative capacity or (B) a statement of which the party has manifested his or her adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the party's agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." R.I. R. Evid. 801(d)(2).

the truth of the matter asserted. *Id.* at 1:13-2:5. At the time this qualifying instruction was made, Plaintiffs' counsel took no objection with the limited instruction that the Court provided. *Id.* at 2:6-7. Later in the trial, Plaintiffs offered additional UCC's MSDSs. (Trial Tr. 15:1-14, Nov. 12, 2024.) Despite both the Court and Plaintiffs' counsel acknowledging that the prior limiting instruction would apply to the admission of these MSDSs, Plaintiffs' counsel failed to make any sort of objection. *Id.* Nonetheless, prior to the case being submitted to the jury, Plaintiffs' counsel raised an objection to jury instruction number eight, which mirrored the Court's MSDS limiting instruction provided to the jury during the first days of trial. (Trial Tr. 3:25-4:25, Nov. 19, 2024.) Given that the Court had already provided a limiting instruction on this matter, the Court overruled Plaintiffs' objection and kept the MSDS instruction to match the information given to the jury earlier in the trial.

Typically, "a litigant's objection at trial has to be timely and appropriate." *Brown,* 9 A.3d at 1245. The Court is faced with an interesting situation in that while Plaintiffs failed to timely object when the limiting instruction was initially provided to the jury on November 8 and November 12, 2024, Plaintiffs did timely object to the jury instruction encapsulating this limiting instruction during the hearing on November 19, 2024. In this way, the timeliness of Plaintiffs' objection is unclear. However, even assuming *arguendo* that Plaintiffs timely and appropriately objected, the Court finds jury instruction number eight to be proper. First, as UCC points out, other courts have found that party opponent statements do not include statements that a party is required by law to make. *See Washington Metropolitan Area Transit Authority v. One Parcel of Land in Prince George's County,* 342 F. Supp. 2d 378, 382 (D. Md. 2004). Considering that UCC was required to publish the MSDSs pursuant to federal law and OSHA regulations, *see* 29 C.F.R. § 1910.1200(f)(1)(ii) (1984); OSHA, Memorandum from John B. Miles, Jr. (Jan. 31, 1986),

https://www.osha.gov/laws-regs/standardinterpretations/1986-01-31 (last visited Apr. 25, 2025), it is doubtful whether a MSDS can even be categorized as a party opponent statement. However, even if the MSDSs qualified under Rule 801(d)(2) as a party opponent statement, the Court was well within its right to limit the admissibility of such evidence under Rule 403. *See State v. Momplaisir*, 815 A.2d 65, 72-73 (R.I. 2003) ("Notwithstanding that this evidence may fall within a recognized exception to the hearsay rule and may otherwise be relevant, its admissibility is nonetheless addressed to the sound discretion of the trial justice and may be excluded if its introduction will lead to speculation and confusion of the issues."). Given that UCC was required by law to make the MSDSs even if it did not personally agree with the content of the message, the Court was well within its right to limit the use of the MSDS to only show UCC's knowledge or notice of the dangers of asbestos at that point in time.

Accordingly, the Court does not find any error with jury instruction number eight to warrant a new trial. Therefore, the motion for new trial is **DENIED** on this ground.

D

Rule 50 Judgment as a Matter of Law

In its objection, UCC provides in-depth briefing as to why, in its opinion, it would be entitled to judgment as a matter of law pursuant to Rule 50 of the Superior Court Rules of Civil Procedure. (Def.'s Obj. 55-86.) Rule 50 governs motions for judgment as a matter of law. It provides in pertinent part:

> "If during a trial by jury a party has been fully heard on an issue and there is *no legally sufficient evidentiary basis* for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue." Super. R. Civ. P. 50(a)(1) (emphasis added).

"Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any [other] reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion." Super. R. Civ. P. 50(b). This renewed motion for judgment as a matter of law must be filed and served no later than ten days after entry of judgment and may be joined with a Rule 59 motion for a new trial. *Id.* When addressing a renewed motion for judgment as a matter of law, "[t]he trial justice . . . must examine 'the evidence in the light most favorable to the nonmoving party, without weighing the evidence or evaluating the credibility of witnesses, and draw[] from the record all reasonable inferences that support the position of the nonmoving party.'" *Lemont v. Estate of Ventura*, 157 A.3d 31, 36 (R.I. 2017) (quoting *Roy v. State*, 139 A.3d 480, 488 (R.I. 2016)). If, after such review, "there are factual issues upon which reasonable people may have differing conclusions[,]" the motion for judgment as a matter of law must be denied. *Broadley v. State*, 939 A.2d 1016, 1020 (R.I. 2008).

"However, if the only reasonable conclusion that can be drawn from the evidence is that the plaintiff is not entitled to recover, then the motion must be granted." *Kenney Manufacturing Co. v. Starkweather & Shepley, Inc.*, 643 A.2d 203, 206 (R.I. 1994) (citing *Hulton v. Phaneuf*, 85 R.I. 406, 410, 132 A.2d 85, 88 (1957)). Thus, "a trial justice should enter judgment as a matter of law 'when the evidence permits only one legitimate conclusion in regard to the outcome.'" *Lemont*, 157 A.3d at 36 (quoting *Roy*, 139 A.3d at 488). In other words, for a defendant to prevail on its motion, the court must find that no reasonable jury could have found for plaintiff based on the evidence presented. *See McLaughlin v. Moura*, 754 A.2d 95, 98 (R.I. 2000).

While the Court has denied Plaintiffs' motion for a new trial, as this Court's summary of the trial testimony demonstrates, the evidence in this case was sufficient to support a Plaintiffs'

verdict if the jury so found. Plaintiffs' experts explained in great detail the scientific authorities and studies that supported their position that all types of asbestos, including chrysotile varieties like Calidria, are dangerous and carcinogenic to humans such that it could be attributed as a substantial cause of Ms. Bonito's peritoneal mesothelioma. While the testimony of Dr. Crapo and the cross-examination of Plaintiffs' experts support a contrary conclusion that chrysotile asbestos, especially the unique composition of Calidria, was not dangerous or carcinogenic when evaluating risks for peritoneal mesothelioma and the jury undoubtedly concurred, that does not mean that there was not sufficient evidence to support a different conclusion. For this reason, the Court **DENIES** the renewed motion for judgment as a matter of law.

IV

Conclusion

The Court **DENIES** Plaintiffs Jamie L. Day and Jennifer L. Bonito's motion for new trial and **DENIES** Defendant Union Carbide Corporation's renewed motion for judgment as a matter of law. Counsel shall confer and present the Court with an order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Jamie L. Day and Jennifer L. Bonito, Co-Executors for the Estate of Bonnie J. Bonito v. Union Carbide Corp.**
CASE NO:	**PC-2018-5044**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**April 30, 2025**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Vincent L. Green, IV, Esq.; Ashley J. Hornstein, Esq.; Nathan Finch, Esq.; Kate Menard, Esq.**
For Defendant:	**Monica R. Nelson, Esq.; Nicole L. Andrescavage, Esq.; Elliot Davis, Esq.; Timothy McGowan, Esq.; Eric Cook, Esq.**