

In the Matter Of:

ROBERT AND LINDA WHALEN vs. JOHN CRANE, INC., et al.,

WHALEN TRIAL AM

October 29, 2014

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1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF ALAMEDA

3 BEFORE JUDGE VICTORIA S. KOLAKOWSKI

4 DEPARTMENT 520

5 ---oOo---

6 ROBERT WHALEN AND LINDA WHALEN,

7 Plaintiffs,

8 vs.

No. RG14711964

9 JOHN CRANE, INC., et al.,

10 Defendants.

11 _____/

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15 REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

16 AM PORTION

17 October 29, 2014

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19 Taken before Kimberly R. Hendershott

20 CSR No. 12552

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1 that the plaintiff disagrees. And so what I'm going to
 2 ask at this point do you want to speak to that briefly?
 3 MS. ALESIO: Yes, Your Honor. Four of
 4 plaintiffs' witnesses testified to exactly the
 5 following: That in Mr. Whalen's case, where somebody
 6 is diagnosed with the disease of mesothelioma, that you
 7 cannot go back and ferret out certain portions of the
 8 total dose and assign causation to some portions and
 9 disregard the causal contributions of others.
 10 They further testified that each exposure
 11 would have increased Mr. Whalen's risk of the disease.
 12 They further testified that the exposures from John
 13 Crane would have been significant in contributing to
 14 cause the disease in Mr. Whalen. And that was not from
 15 one witness. It was from a molecular and cell
 16 biologist. It was from an occupational medicine --
 17 occupational preventive medicine specialist. It was
 18 from a board certified pulmonologist and critical care
 19 specialist. It was from an epidemiology -- doctor in
 20 epidemiology who actually incidentally has the
 21 equivalent of an M.D. from New Zealand.
 22 So there is mountains of evidence to that
 23 effect, Your Honor, and defendant -- I'll submit on
 24 that.
 25 THE COURT: And I believe that John Crane

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1 P R O C E E D I N G S
 2 Wednesday, October 29, 2014 - 10:01 a.m.
 3 ---oOo---
 4 THE COURT: Let's go on the record, then. And
 5 let's talk very briefly about -- well, so to -- at this
 6 point, we have a verdict -- we have a verdict form, we
 7 have jury instructions that have been -- copies have
 8 been left on each of the chairs, and -- for the
 9 instructions.
 10 Just note for the record that one of the
 11 things that caused a little confusion was that jury
 12 instructions were unnumbered, which plaintiff had
 13 expected they'd be numbered, and so we've been
 14 adjusting -- she's been adjusting accordingly. That
 15 being Ms. Alesio on behalf of the plaintiffs.
 16 And so we have still, though, to talk about
 17 the motions for directed verdict. I have received in
 18 advance memorandums of points and authorities in
 19 support of motions for directed verdict on issues of
 20 negligence and proof of causation.
 21 Let's talk first about causation. The
 22 defendant John Crane believes that none of the
 23 plaintiffs' witnesses introduced evidence of -- that
 24 their products were a substantial factor in the
 25 development of Mr. Whalen's condition, and I assume

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1 disagrees.
 2 MR. NELDER: We do, Your Honor. I think in
 3 terms of the brief that we submitted, we identified the
 4 fact that plaintiffs' counsel did not -- except for
 5 Allan Smith -- provide their opinions to a reasonable
 6 degree of medical and/or scientific certainty.
 7 So under Hernandez and Rutherford, we don't
 8 believe that the appropriate standard in terms of
 9 identifying causations, substantial factor has been
 10 provided.
 11 And also, the evidence provided by all of the
 12 plaintiffs' experts, not one could identify any
 13 information concerning the intensity, duration,
 14 concentration, or proximity Mr. Whalen had to any
 15 potential asbestos exposure from a John Crane product.
 16 So once again, that is required under the Rutherford
 17 case.
 18 So based on those issues, we believe that they
 19 have not demonstrated what is necessary under
 20 Rutherford. And as a result, we request a directed
 21 verdict on all claims, whether it's negligence, strict
 22 liability, consumer expectation, and/or failure to
 23 warn.
 24 THE COURT: Okay. I'm going to deny your
 25 motion.

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1 So let's talk about negligence. Now, much of
 2 the arguments that were laid out in here, I think, were
 3 similar to some of the discussions we had yesterday
 4 with regard to the jury instructions, vis-à-vis
 5 instructions 411 to 413, which are discussed, and the
 6 body of it. I didn't know if -- did plaintiff wish to
 7 respond to this motion as well?
 8 MS. ALESIO: I'm sorry, Your Honor. Which
 9 motion?
 10 THE COURT: Oh, that's with regard to
 11 negligence. They also filed a brief about negligence.
 12 To knock out the negligence standalone claim.
 13 MS. ALESIO: And for all of the same reasons,
 14 Your Honor, I would simply incorporate my previous
 15 arguments with respect to why that fails. The
 16 testimony is clear. Every single one of the experts
 17 was asked if they had any doubt as to the, you know,
 18 questions that I framed to them with respect to
 19 causation, specifically in the areas of chrysotile, and
 20 they all said no. And the testimony speaks for itself.
 21 I think the record is abundantly clear on this point.
 22 And I would submit on that.
 23 THE COURT: Okay. I'm going to deny the
 24 motion, but I have to say that one of the things about
 25 these cases is, and I have to -- if I were going to be

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1 continuing to do them, I would try to figure out a
 2 better way to structure this from the beginning -- is
 3 that -- is keeping track of the different causes of
 4 action might be confusing for the jury, and -- because
 5 I think sometimes it's confusing for the attorneys.
 6 But that's not a reason to eliminate a cause
 7 of action simply because it -- I have not figured out
 8 how best to present it to the jury.
 9 And so that's going to be denied.
 10 Is there anything else we need to do before we
 11 bring the jury out?
 12 MS. ALESIO: Not from plaintiffs' perspective,
 13 Your Honor.
 14 MR. GRIFFIN: No, Your Honor.
 15 THE COURT: Okay. Let's bring the jury out.
 16 MR. GRIFFIN: Other than before, Your Honor,
 17 begins reading the instructions, we'll just formally
 18 rest.
 19 THE COURT: Yes.
 20 MR. GRIFFIN: Thank you.
 21 THE COURT: And we are going to have them out
 22 of here by 4:30 today, right?
 23 MS. ALESIO: I hope so.
 24 THE COURT: And not just because it's the
 25 seventh game of the World Series tonight starting at

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1 5:00 o'clock.
 2 MS. ALESIO: I have every interest in that as
 3 well, Your Honor. I told Darryl that we lost last
 4 night because it was my fault I wasn't in my place.
 5 THE COURT: Truthfully, that's not the
 6 consideration here, but nevertheless, I don't want
 7 folks distracted.
 8 (Whereupon, the jury having entered the
 9 courtroom, the following proceedings were
 10 held:)
 11 THE COURT: Okay. At this point, I'm going to
 12 turn again to John Crane, and you may proceed.
 13 MR. GRIFFIN: Yes, Your Honor. Thank you.
 14 At this time John Crane, Inc., rests its case.
 15 THE COURT: Okay. Now, you have in front of
 16 you copies of what -- most of what I'm about to say.
 17 The copies you have you will notice do not have any
 18 page numbers on them or any labels for the individual
 19 instructions. You may wish as I go through -- I'm
 20 going to read to you the instruction number, and you
 21 may wish to note that for yourself on there, because
 22 the attorneys may refer to it later in their closing
 23 arguments. The copies you were given do not have
 24 those.
 25 And these -- when I refer to a number, I'm

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1 referring to the Judicial Council of California's Civil
 2 Jury Instructions known as CACI, and I'm going to go
 3 through, and I will identify which ones those are.
 4 And so I'm going to start with CACI number
 5 5000. These are not exactly in order -- going to be in
 6 numerical order.
 7 Members of the jury, you have now heard all of
 8 the evidence. The attorneys will have one last chance
 9 to talk to you in closing argument. But before they
 10 do, it's my duty to instruct you on the law that
 11 applies to this case. You must follow these
 12 instructions as well as those that I previously gave
 13 you. You have a copy of my instructions with you when
 14 you go to the jury room to deliberate. You're each
 15 given one copy so that you have and you can make
 16 appropriate notations on.
 17 You must decide what the facts are. You must
 18 consider all the evidence and then decide what you
 19 think happened. You must decide the facts based on the
 20 evidence admitted in this trial. Do not allow anything
 21 that happens outside this courtroom to affect your
 22 decision. Do not talk about this case or the people
 23 involved in it with anyone, including family, and
 24 persons living in your household, friends and
 25 coworkers, spiritual leaders, advisors or therapists.

<p style="text-align: right;">Page 10</p> <p>1 Do not do any research on your own or as a 2 group. Do not use dictionaries or other reference 3 materials. These prohibitions on communication and 4 research extend to all forms of electronic 5 communication. Do not use any electronic devices, or 6 media such as cell phones, smartphone, PDA, computer, 7 tablet, device, Internet, any Internet service, any 8 text or instance message service, any Internet chat 9 room, blog, or website, including social networking 10 websites or online diaries, send or receive any 11 information to or from anyone about this case or your 12 experience as a juror until after you have been 13 discharged from your jury duty.</p> <p>14 Do not investigate the case or conduct any 15 experiments. Do not contact anyone to assist you, such 16 as a family accountant, doctor, or lawyer. Do not 17 visit or view the scene of any event involved in this 18 case. If you happen to pass the scene, do not stop or 19 investigate. All jurors must see and hear the same 20 evidence at the same time. You must not let bias, 21 sympathy, prejudice, or public opinion influence your 22 decision.</p> <p>23 If you violate any of these prohibitions on 24 communications and research, including prohibitions on 25 electronic communication and research, you may be held</p>	<p style="text-align: right;">Page 12</p> <p>1 instructions are typed. However, some handwritten or 2 typed written word may have been added or some words 3 may have been deleted. Do not consider why words have 4 been added or deleted. Please treat all the words the 5 same, no matter what their format. Simply accept the 6 instructions in its final form.</p> <p>7 Okay. The next one is 5001, Insurance.</p> <p>8 You must not consider whether any of the 9 parties in this case have insurance. The presence or 10 absence of insurance is totally irrelevant. You must 11 decide this case based only on the law and the 12 evidence.</p> <p>13 5002, which is evidence. You must decide what 14 the cases are -- the facts are in this case only from 15 the evidence you've seen or heard during the trial, 16 putting any exhibits that I admit into evidence. Sworn 17 testimony, documents, or anything else may be admitted 18 into evidence. You may not consider as evidence 19 anything that you saw or heard when the court was not 20 in session. Even something done or said by one of the 21 parties, attorneys, or witnesses.</p> <p>22 What the attorneys say during the trial is not 23 evidence. In their opening statements and closing 24 arguments, the attorneys talk to you about the law and 25 the evidence. What the lawyers say may help you</p>
<p style="text-align: right;">Page 11</p> <p>1 in contempt of court or face other sanctions. That 2 means that you may have to serve time in jail, pay a 3 fine, or face other punishment for that violation.</p> <p>4 I will now tell you the law that you must 5 follow to reach your verdict. You must follow the law 6 exactly as I give it to you even if you disagree with 7 it. If the attorneys say anything different about what 8 the law means, you must follow what I say.</p> <p>9 In reaching your verdict, do not guess what I 10 think your verdict should be from something I may have 11 said or done.</p> <p>12 Pay careful attention to all the instructions 13 that I give you. All the instructions are important, 14 because together they state the law that you will use 15 in the case. You must consider all the instructions 16 together.</p> <p>17 After you've decided what the facts are, you 18 may find that some instructions do not apply. In that 19 case, follow the instructions that do apply, and use 20 them to gather the facts to reach your verdict.</p> <p>21 If I repeat any ideas or rules of law during 22 my instructions, that does not mean that these ideas or 23 rules are more important than the others.</p> <p>24 In addition, the order which the instructions 25 are given does not make any difference. Most of the</p>	<p style="text-align: right;">Page 13</p> <p>1 understand the law and the evidence, but their 2 statements and agreements are not evidence.</p> <p>3 The attorneys questions are not evidence. 4 Only the witnesses answers are evidence. You should 5 not think that something is true just because an 6 attorney's question suggested it was true. However, 7 the attorneys for both sides have agreed that certain 8 facts are true. This agreement is called a 9 stipulation. No other proof is needed, and you must 10 accept those facts as true in this trial.</p> <p>11 Each side has the right to object to evidence 12 offered by the other side. If I sustain the objection 13 to a question, ignore the question, do not try to -- do 14 not guess as to why I sustained the objection. The 15 answer did not answer, do not guess what he or she 16 might have said. If the witness already answered, you 17 must ignore the answer.</p> <p>18 During the trial, I granted a motion to strike 19 testimony that you heard. You must totally disregard 20 that testimony. You must treat it as though it did not 21 exist.</p> <p>22 5003 is Witnesses.</p> <p>23 A witness is a person who has knowledge 24 related to the case -- to this case. You will have to 25 decide whether you believe each witness and how</p>

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1 important each witness's testimony is to the case. You
 2 may believe all, part, or none of a witness's
 3 testimony.
 4 In deciding whether to believe a witness's
 5 testimony, you may consider among other factors the
 6 following: How well did the witness see, hear, or
 7 otherwise sense what he or she described in court. How
 8 well did the witness remember and describe what
 9 happened.
 10 How did the witness look, act and speak while
 11 testifying. Did the witness have any reason to say
 12 something that was not true? For example, did the
 13 witness show any bias or prejudice or personal
 14 relationship with any of the parties involved in this
 15 case or have a personal stake in how this case is
 16 decided.
 17 What was the witness's attitude about --
 18 towards this case or about giving testimony? Sometimes
 19 a witness may say something that is not consistent with
 20 something else he or she has said. Sometimes different
 21 witnesses may give different versions of what happened.
 22 People often forget things or make mistakes in what
 23 they remember.
 24 Also, two people may see the same event but
 25 remember it differently. You may consider these

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1 differences but not do not decide the testimony is
 2 untrue just because it differs from other testimony.
 3 However, if you decide a witness deliberately
 4 testified untruthfully about something important, you
 5 may choose not to believe anything that witness said.
 6 On the other hand, if you think the witness
 7 testified untruthfully about some things but told the
 8 truth about others, you may accept the part that you
 9 think is true and ignore the rest.
 10 Do not make any decisions simply because there
 11 were more witnesses on one side than the other. If you
 12 believe it is true, then the testimony of a single
 13 witness is enough to prove a fact.
 14 You must not be biased in favor of or against
 15 any witness because of his or her disability, gender,
 16 race, religion, ethnicity, sexual orientation, age,
 17 national origin, or socioeconomic status.
 18 5005 is next. Multiple Parties.
 19 There are two plaintiffs in this trial. You
 20 should decide the case of each plaintiff separately as
 21 if it were a separate lawsuit. Each plaintiff is
 22 entitled to a separate consideration of his or her own
 23 claims.
 24 Those two parties being Mr. and Mrs. Whalen.
 25 Unless I tell you otherwise, all instructions

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1 apply to each plaintiff and defendant.
 2 Next one is 5006, which is a Nonperson Party.
 3 A corporation, John Crane, Incorporated, is a party in
 4 this lawsuit. John Crane Incorporated is entitled to
 5 the same fair and impartial treatment that you would
 6 give to an individual. You must decide this case with
 7 the same fairness that you would use if you were
 8 deciding the case between individuals.
 9 When I use words like "person" or "he" or
 10 "she" and these instructions refer to a party, those
 11 instructions also apply to John Crane, Incorporated.
 12 Now, I'm going to -- this is -- number 116,
 13 which I read to you earlier in the trial.
 14 I know that many of us are used to
 15 communicating and perhaps even learning by electronic
 16 communication and research. However, there are good
 17 reasons why you must not electronically communicate or
 18 do any research on anything having to do with this
 19 trial or the parties.
 20 In court, jurors must make important decisions
 21 that have consequences for the parties. Those
 22 decisions must be based only on the evidence you hear
 23 in the courtroom.
 24 The evidence that is presented in court can be
 25 tested. It can be shown to be right or wrong by either

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1 side. It can be questioned. And it can be
 2 contradicted by other evidence.
 3 What you might read or hear on your own could
 4 easily be wrong, out of date, or inapplicable to this
 5 case.
 6 The parties can only receive a fair trial if
 7 the facts and information on which you base your
 8 decisions are presented to you as a group, with each
 9 juror having the same opportunity to see, hear, and
 10 evaluate the evidence.
 11 Also, a trial is a public process that depends
 12 on disclosure in the courtroom of facts and evidence.
 13 Using information gathered in secret by one or more
 14 jurors undermines the public process and violates the
 15 rights of the parties.
 16 Okay. Next one is number 200. A party must
 17 persuade you, by the evidence presented in court, that
 18 what he or she is required to prove is more likely to
 19 be true than not true. This is referred to as "the
 20 burden of proof."
 21 After weighing all of the evidence, if you
 22 cannot decide that something is more likely to be true
 23 than not true, you must conclude that the party did not
 24 prove it. You should consider all the evidence, no
 25 matter which party produced the evidence.

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1 In criminal trials, the prosecution must prove
 2 that the defendant is guilty beyond a reasonable doubt.
 3 But in civil trials, such as this one, the party who is
 4 required to prove something need prove only that it is
 5 more likely to be true than not true.

6 202. This is about direct and indirect
 7 evidence. Evidence can come in many forms. It can be
 8 testimony about what someone saw or heard or smelled.
 9 It can be an exhibit admitted into evidence. It can be
 10 someone's opinion.

11 Direct evidence can prove a fact by itself.
 12 For example, if a witness testifies she saw a jet plane
 13 flying across the sky, that testimony is direct
 14 evidence that a plane flew across the sky.

15 Some evidence proves a fact indirectly. For
 16 example, a witness testifies that he saw only the white
 17 trail that jet planes often leave. This indirect
 18 evidence is sometimes referred to as "circumstantial
 19 evidence." In either instance, the witness's testimony
 20 is evidence that a jet plane flew across the sky.

21 As far as the law is concerned, it makes no
 22 difference whether evidence is direct or indirect. You
 23 may choose to believe or disbelieve either kind.

24 Whether it is direct or indirect, you should
 25 give every piece of evidence whatever weight you think

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1 it deserves.

2 203.

3 Now, you may consider the ability of each
 4 party to produce evidence -- provide evidence. If a
 5 party provided weaker evidence when it could have
 6 provided stronger evidence, you may distrust the weaker
 7 evidence.

8 Next is 205. If a party failed to explain or
 9 deny evidence against that party, when the party could
 10 have reasonably been expected to have done so based on
 11 what he, she, or it knew, you may consider that parties
 12 failure to explain or deny in evaluating that evidence.

13 It's up to you to decide the meaning and
 14 importance of the failure to explain or deny evidence
 15 against the party.

16 208.

17 During the trial, you received deposition
 18 testimony that was read from the deposition transcript
 19 and some that was shown by video. A deposition is the
 20 testimony of a person taken before the trial. A -- at
 21 a deposition the person is sworn to tell the truth and
 22 is questioned by the attorneys.

23 You must consider the deposition testimony
 24 that was presented to you in the same way you would
 25 consider testimony given in court.

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1 209. Before trial, each party was given --
 2 this is use of interrogatories. Before trial, each
 3 party was given the right to ask other parties to
 4 answer written questions. These questions are called
 5 interrogatories. The answers are also in writing and
 6 are given under oath. You must consider the questions
 7 and answers that were read to you the same as if the
 8 questions and answers had been given in court.

9 212.

10 This is about Statements of a Party Opponent.
 11 A party may offer into evidence any oral or written
 12 statement made by an opposing party outside the
 13 courtroom.

14 When you evaluate evidence such as
 15 a statement -- evidence of such a statement, you must
 16 consider these questions.

17 1. Do you believe the party actually made the
 18 statement? If you do not believe that the party made
 19 the statement, you may not consider the statement at
 20 all.

21 2. If you believe the statement was made, do
 22 you believe it was reported accurate?

23 You should view testimony about an oral
 24 statement made by a party outside the courtroom with
 25 caution.

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1 219. It's about expert witnesses.

2 During the trial you heard testimony from
 3 expert witnesses. The law allows an expert to state
 4 opinions about matters in his or her field of expertise
 5 even if he or she has not witnessed any of the events
 6 involved in the trial.

7 You do not have to accept an expert's opinion.
 8 As with any other witness, it is up to you to decide
 9 whether you believe the expert's testimony and choose
 10 to use it as a basis of your decision. You may believe
 11 all, part, or none of an expert's testimony. In
 12 deciding whether to believe an expert's testimony, you
 13 should consider:

14 A. The expert's training and experience;
 15 B. The facts the experts relied on; and
 16 C. The reasons for the expert's opinion.

17 Now, the next one is number 220. The law
 18 allows expert witnesses to be asked questions that are
 19 based on assumed facts. These are sometimes called
 20 hypothetical questions.

21 In determining the weight to give to the
 22 expert's opinion that is based on the assumed facts,
 23 you should consider whether the assumed facts are true.

24 221. About conflicting experts. If the
 25 expert witnesses disagreed with one another, you should

Page 22

1 weigh each opinion against the others. You should
 2 examine the reasons given for each opinion and the
 3 facts or other matters each witness relied on. You may
 4 also compare the experts' qualifications.
 5 Okay. Next we're going to go on to the, sort
 6 of the heart of the matter, the specific contentions
 7 here.
 8 Next one is number 400, negligence.
 9 Plaintiff Robert Whalen claims that he was
 10 harmed by John Crane, Incorporated's, negligence.
 11 To establish the claim, Robert Whalen must
 12 prove all of the following:
 13 1. That John Crane was negligent;
 14 2. That Robert Whalen was harmed; and.
 15 3. That John Crane Incorporated's negligence
 16 was a substantial factor in causing Robert Whalen's
 17 harm.
 18 Next, is 2 -- next is 401 which is about Basic
 19 Standard of Care.
 20 Negligence is the failure to use reasonable
 21 care to prevent harm to oneself or to others.
 22 A person can be negligent by acting or by
 23 failing to act. A person is negligent if he or she
 24 does something that a reasonably careful person would
 25 not do in the same situation or fails to do something

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1 that a reasonably careful person would do in the same
 2 situation.
 3 You must decide how a reasonably careful
 4 person would have acted in John Crane Incorporated's
 5 situation.
 6 The next one is 406.
 7 John Crane Incorporated claims the fault of
 8 employers and other manufactures of asbestos-containing
 9 products contributed to Robert Whalen's harm. To
 10 succeed on this claim, John Crane Incorporated must
 11 prove both of the following:
 12 1. The U.S. Navy and/or manufacturers of
 13 asbestos-containing thermal insulation, pumps, valves,
 14 steam traps, gaskets, packing, and turbines were
 15 negligent or otherwise at fault; and
 16 2. That the negligence are fault of the U.S.
 17 Navy and manufacturers of the asbestos-containing
 18 thermal insulation, pumps, valves, steam straps,
 19 gaskets, packing, and turbines was a substantial factor
 20 in causing Robert Whalen's harm.
 21 If you find the negligence or fault of more
 22 than one person, including John Crane Incorporated and
 23 the U.S. Navy and manufacturers of asbestos-containing
 24 thermal insulation, pumps, valves, steam traps,
 25 gaskets, packing, and turbines were substantial factors

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1 in causing Robert Whalen's harm, you must then decide
 2 how much responsibility each has by assigning
 3 percentages of responsibility to each person listed on
 4 the verdict form. The percentages must total 100
 5 percent.
 6 You will make a separate finding of Robert
 7 Whalen and Linda Whalen's total damages, if any. In
 8 determining an amount of damages, you should not
 9 consider any person's assigned with percentage of
 10 responsibility.
 11 Person can mean an individual or business
 12 entity.
 13 The next one is 431, about multiple causes.
 14 A person's negligence may combine with another
 15 factor to cause harm. If you find John Crane
 16 Incorporated's negligence was a substantial factor in
 17 causing Robert Whalen's harm, then John Crane
 18 Incorporated is responsible for the harm. John Crane
 19 Incorporated can not avoid responsibility just because
 20 some other person, condition, or event was also a
 21 substantial factor in causing Robert Whalen's harm.
 22 Okay. Next is 435, and this is about -- this
 23 is about causation. A substantial factor in causing
 24 harm is a factor that a reasonable person would
 25 consider to have contributed to the harm. It does not

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1 have to be the only cause of the harm.
 2 Robert Whalen may prove that exposure to
 3 asbestos from John Crane Incorporated product was a
 4 substantial factor causing his illness by showing
 5 through expert testimony that there is a reasonable
 6 medical probability that the exposure was a substantial
 7 factor contributed to his risk of developing cancer.
 8 Okay. Next is 1200. Robert Whalen claims
 9 that he was harmed by products distributed,
 10 manufactured, and sold by John Crane Incorporated that
 11 were defectively designed or did not include sufficient
 12 warning of potential safety hazards.
 13 Next is 1203.
 14 Robert Whalen claims the products design was
 15 defective because the product did not perform as safely
 16 as an ordinary customer would have expected it to
 17 perform. To establish this claim, Robert Whalen must
 18 prove all of the following:
 19 1. That John Crane Incorporated manufactured,
 20 distributed, and/or sold the product;
 21 2. That the product did not perform as safely
 22 as an ordinary consumer would have expected it to
 23 perform when used or misused in an intended or
 24 reasonably foreseeable way;
 25 3. That Robert Whalen was harmed; and.

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1 4. That the product's failure to perform
2 safely was a substantial factor in causing plaintiffs'
3 harm.
4 1205. This has to deal with failure to warn.
5 Robert Whalen claims that the product lacked sufficient
6 warning of potential risks. To establish this claim,
7 Robert Whalen must prove all the following:
8 1. That John Crane Incorporated manufactured,
9 distributed, and/or sold the product;
10 2. That the product had potential risks that
11 were known or knowable through the generally recognized
12 and prevailing best scientific and medical knowledge
13 available at the time of manufacturer, distribution, or
14 sale;
15 3. That the potential risks presented a
16 substantial danger when the product is used or misused
17 in an intended or reasonably foreseeable way;
18 4. That ordinary consumers would not have
19 recognize the potential risks;
20 5. That John Crane Incorporated failed to
21 adequately warn of the potential risks;
22 6. That Robert Whalen was harmed; and
23 7. That the lack of sufficient warnings was a
24 substantial factor in causing Robert Whalen's harm.
25 Next is 1207B.

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1 Defendant John Crane Incorporated claims that
2 the negligence or fault of the U.S. Navy and
3 manufacturers of asbestos-containing thermal
4 insulation, pumps, valves, steam traps, gaskets,
5 packing and turbines contributes to John -- to Robert
6 Whalen's harm. To succeed in this claim, John Crane
7 Incorporated must prove both of the following:
8 1. That the U.S. Navy and manufacturers of
9 asbestos-containing thermal insulations, pumps, valves,
10 steam traps, gaskets, packing and turbines were
11 negligent or otherwise at fault; and
12 2. That this negligence or fault was a
13 substantial factor in causing Robert Whalen's harm.
14 If you find negligence or fault of more than
15 one person, including John Crane, Incorporated, and
16 U.S. Navy and manufacturers of asbestos-containing
17 thermal insulation, pumps, valves, steam traps,
18 gaskets, packing, and turbines was a substantial factor
19 in causing Robert Whalen's harm, you must then decide
20 how much responsibility each has by assigning
21 percentages of responsibility of each person listed on
22 the verdict form. The percentages must total 100
23 percent.
24 You will make a separate finding of
25 plaintiff's total damages, if any. In determining an

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1 amount of damages, you should not consider any person's
2 assigned percentage of responsibility.
3 Person can mean an individual or a business
4 entity.
5 Okay. Next is 1220. Robert Whalen also
6 claims that he was harmed by John Crane, Incorporated's
7 negligence, and it should be held responsible for that
8 harm. To establish this claim, Robert Whalen must
9 prove all of the following:
10 1. That John Crane Incorporated designed,
11 manufactured, or sold the product;
12 2. That John Crane Incorporated was negligent
13 in designing, manufacturing, installing the product.
14 3. That Robert Whalen was harmed; and
15 4. That John Crane Incorporated's negligence
16 was a substantial factor in causing Robert Whalen's
17 harm.
18 Next is 1221. This is about negligence in the
19 design case like this, which is a designer,
20 manufacturer, supplier is negligent if it fails to use
21 the amount of care in designing, manufacturing,
22 inspecting, or supplying the product that is -- that a
23 reasonably careful designer, manufacturer, supplier
24 would use in similar circumstances to avoid exposing
25 others to a foreseeable risk of harm.

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1 In determining whether John Crane,
2 Incorporated, used reasonable care, you should balance
3 what John Crane Incorporated knew or should have known
4 about the likelihood and severity of potential harm
5 from the product against the burden of taking safety
6 measures to reduce or avoid the harm.
7 Next is 1222.
8 Robert Whalen claims that John Crane,
9 Incorporated, was negligent by not using reasonable
10 care to warn about its product's dangerous condition or
11 about facts that made the product likely to be
12 dangerous. To establish this claim, Robert Whalen must
13 prove all of the following:
14 1. That John Crane Incorporated manufactured
15 or sold the product.
16 2. That John Crane Incorporated knew or
17 reasonably should have known the product was dangerous
18 or was likely to be dangerous when used or misused in a
19 reasonably foreseeable manner;
20 3. That John Crane Incorporated knew or
21 reasonably should have known that users would not
22 realize the danger;
23 4. That John Crane Incorporated failed to
24 adequately warn of the danger.
25 5. That a reasonable manufacturer, seller

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1 under the same or similar circumstances would have
 2 warned of the danger;
 3 6. That Robert Whalen was harmed; and
 4 7. Than John Crane, Incorporated's, failure
 5 to warn was a substantial factor in causing Robert
 6 Whalen's harm.
 7 Okay. Number 3900. If you -- this is about
 8 damages.
 9 If you decide that Robert Whalen has proved
 10 its claim against John Crane, Incorporated, you also
 11 must decide how much money will reasonably compensate
 12 Robert and Linda Whalen for the harm. This
 13 compensation is called "damages."
 14 The amount of damages must include an award
 15 for each item of harm that was caused by John Crane
 16 Incorporated's wrongful conduct, even if the particular
 17 harm could not have been anticipated.
 18 Robert Whalen does not have to prove the exact
 19 amount of damages that will provide reasonable
 20 compensation for his harm. However, you must not
 21 speculate or guess in awarding damages.
 22 The following are the specific items of
 23 damages claimed by plaintiff.
 24 3902. The damages claimed by Robert and Linda
 25 Whalen for the harm caused by John Crane, Incorporated,

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1 fall into two categories called economic damages and
 2 noneconomic damages. You will be asked on the verdict
 3 form to state the two categories of damages separately.
 4 The parties have stipulated that plaintiffs
 5 economic damages are \$861,113.
 6 Next is 3500 -- 3905. 3905. The following
 7 are the specific items of noneconomic damages claimed
 8 by Robert Whalen, and actually go to the next page.
 9 3905A. 1. Past and future physical pain,
 10 mental suffering, and emotional distress.
 11 No fixed standard exists for deciding the
 12 amount of these noneconomic damages. You must use your
 13 judgement to decide a reasonable amount based on the
 14 evidence and your common sense.
 15 For future pain and suffering, determine the
 16 amount and current dollars paid at the time of judgment
 17 that will compensate Robert Whalen for future pain and
 18 suffering.
 19 Next is 3920. This relates to what we call
 20 loss of Consortium.
 21 Linda Whalen claims that she had been harmed
 22 by injury to her husband. If you decide that Linda
 23 Whalen has proved her case against John Crane,
 24 Incorporated, you also must decide how much money, if
 25 any, will reasonably compensate Linda Whalen for loss

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1 of her husband's companionship and services, including:
 2 1. care, assistance, protection, affection,
 3 society, and moral support; and two, the loss of the
 4 enjoyment of sexual relations.
 5 Linda Whalen may recover for harm she proves
 6 she has suffered to date and for harm she's reasonably
 7 certain to suffer in the future, which is up through
 8 Robert Whalen's anticipated date of death.
 9 For future harm, determine the amount in
 10 current dollars paid at the time of judgment that will
 11 compensate Linda Whalen for that harm.
 12 This amount of non-economic damages should not
 13 be further reduced to present cash value. No fixed
 14 standard exists for determining non-economic damages.
 15 You must use your judgment to decide a reasonable
 16 amount based on the evidence and your common sense.
 17 Do not include in your award any compensation
 18 to the following: One, the loss of financial support
 19 from Robert Whalen; and two, personal services such as
 20 nursing that Linda Whalen has provided or will provide
 21 to Robert Whalen.
 22 Okay. Next is 3924. You must not include in
 23 your award any damages to punish or make an example of
 24 John Crane, Incorporated. Such damages would be
 25 punitive damages and they cannot be a part of your

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1 verdict. You must award only the damages that fairly
 2 compensate plaintiffs for their loss.
 3 3925.
 4 The arguments of the attorneys are not
 5 evidence of damages. Your award must be based on your
 6 reasoned judgment applied to the testimony of the
 7 witnesses and the other evidence that had been admitted
 8 during trial.
 9 Okay. The remaining ones I'm going to hold
 10 off until the end, because they deal with how you
 11 deliberate. And I think it would be best to share
 12 those with you when we get to the point we're actually
 13 going to be deliberating.
 14 And so what we're going do now is, as I said
 15 before, each of the parties is going to be able to give
 16 their closing arguments to you regarding what the law
 17 and the facts are. And please consider that in light
 18 of the instructions I give you.
 19 So with that I'm going to ask the plaintiff if
 20 they would like to present their closing argument.
 21 MS. ALESIO: Thank you very much, Your Honor.
 22 I would.
 23 THE COURT: And you may move those -- we moved
 24 those boards here so they wouldn't obstruct my view of
 25 you when I was giving you these instructions. They

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1 will unfortunately be obstructing my view now to some
 2 extent. That's unavoidable.

3 MS. ALESIO: May it please the Court, Your
 4 Honor, court staff, Mr. Griffin, Mr. Nelder, Ms. Young,
 5 ladies and gentlemen of the jury, we are here finally
 6 at the end of the case. When you heard from plaintiffs
 7 at the beginning of the case, I believe voir dire, jury
 8 selection was the last time I had the opportunity to
 9 speak to you, we told you that we would have another
 10 opportunity to speak to you here again, at the very end
 11 of the case.

12 And what we get to do here at the end -- here
 13 at the -- here at the very end of the case, is talk to
 14 you not about what we think the evidence is going to
 15 show, and what we think it will mean when applied to
 16 the law, but what the evidence has shown, and the way
 17 that it should be applied to the law that the judge
 18 just gave you.

19 So I am going to be working through what's
 20 called a verdict form with you. It is the exact
 21 verdict form that you are going to be given when you
 22 walk into the jury room, and it's going to follow
 23 what's called kind of a logic tree. I'll put it up
 24 here, and you'll get to see it. Trust me, you're going
 25 to be spending some time with it when we're done here

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1 with our opening statements.

2 But that's the best way, frankly, that we know
 3 how to move through this. When we've talked to some
 4 jurors in the past at the end of these cases,
 5 occasionally jurors have expressed to us the feeling
 6 that we're invading the province of the jury by virtue
 7 of walking through the verdict form with you and
 8 walking through the jury instructions with you.

9 If you feel that way or you're gonna feel that
 10 way or get to some point in my closing, and you feel
 11 that way, I just have to apologize in advance.
 12 Frankly, we don't know a better way of doing this.

13 So that's the way that we're going to proceed
 14 here today. Same thing with respect to the evidence.
 15 I'm going to talk through some of the evidence; not all
 16 of the evidence. You all have been here for a month
 17 now.

18 Even if I had the capacity, and we had the
 19 time to stand here and recite every last piece of
 20 evidence that you all heard, you'd probably bring out
 21 the hook and throw me out of the courtroom if I tried
 22 to do so. So I'm going to be summarizing and showing
 23 you some of the pieces that I think are important with
 24 respect to the kinds of questions that you're going to
 25 be asked to decide in the jury room.

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1 That doesn't mean, though, folks, and this is
 2 a very important thing. If I don't mention a piece of
 3 evidence that you remember from the course of the
 4 trial, that you thought was important during the course
 5 of the trial, if I don't happen to mention it, it
 6 doesn't mean that it's not important.

7 Okay. Please, when you go into the jury room,
 8 use your recollections, use your notes, use all of the
 9 attention and time that you all have focused here in
 10 this courtroom. You guys have focused a lot. You've
 11 taken great notes. This is a great jury. I think both
 12 Mr. Griffin and Mr. Nelder would agree on that. You
 13 all were very, very attentive.

14 So we're going to trust you all that when you
 15 go into that jury room, if there's something that I
 16 don't say or if there's something that Mr. Griffin
 17 doesn't say, go to your notes, deliberate with your
 18 other fellow jurors. It's amazing what the brains of
 19 12 people are capable of remembering. And you all were
 20 very very attentive through the process.

21 I didn't say it at the beginning, but it
 22 should be very obvious. I want to thank you all on
 23 behalf of Ms. Young and the Whalens for being, as I
 24 just indicated, tremendously attentive, for being here
 25 with us now for over a month, for paying attention, for

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1 asking questions, for really moving through a lot of
 2 the pieces of this case. And all of that effort, I
 3 promise you, is going to be for a good purpose. When
 4 you get in there you're going to be able to look back
 5 on your notes and pay attention to what you heard in
 6 the evidence.

7 So when we got to the beginning -- when we got
 8 to the beginning. When we were at the beginning of the
 9 case, you were told that this was a simple but
 10 important case. Okay. And it's a simple case because
 11 a manufacturer is never needlessly allowed to endanger
 12 a consumer, period, under the law.

13 It's an important case, because Mr. Whalen
 14 unfortunately is dying much, much too young. He's 69.
 15 Much, much too young, from an entirely preventable,
 16 manmade illness called mesothelioma.

17 And it didn't have to be that way, folks. It
 18 didn't have to be that Mr. Whalen was going to contract
 19 this disease. It didn't have to be that the end game
 20 for him was going to be maybe another six months of
 21 life. The quality of which I'm not even going to begin
 22 to characterize here for you. You've heard the
 23 evidence.

24 And what's important about this case, ladies
 25 and gentlemen, is that what we told you we would prove,

<p style="text-align: right;">Page 38</p> <p>1 and what I believe we have proved, is that this case 2 was about a small percentage of an enormous loss. 3 And what we have proved to you through the 4 course of the evidence in this case, is that John Crane 5 was a participant in the total dose of asbestos that 6 contributed in Mr. Whalen to cause the disease response 7 that he ended up with in 2013. 8 They were a participant in the dose, and as a 9 participant in the dose, you are a participant in the 10 cause that led in Mr. Whalen to the disease response, 11 which is undisputed in this case, incidentally. Nobody 12 is going to get up here, none of the witnesses got up 13 here and said Mr. Whalen didn't have mesothelioma. 14 None of the witnesses got up here and said anything 15 other than that Mr. Whalen's risk of mesothelioma was a 16 hundred percent. 17 Why? Because he has the disease. This case 18 is not about, and I want to underline, not about, the 19 risk of disease in somebody who does not have a disease 20 response. Okay. 21 We are not talking about Mr. Whalen in a 22 situation where he didn't get mesothelioma. We're not 23 talking about what he might or might not have. Okay. 24 We're looking at this case from a perspective 25 of somebody who has the disease response looking back</p>	<p style="text-align: right;">Page 40</p> <p>1 What I want to talk to you about is the 2 evidence that plaintiffs presented in this case. Okay. 3 In plaintiffs' case, there is some advantage and 4 disadvantages that both sides have in these cases. We 5 have the advantage of going first in a lot of 6 situations, which sometimes you can call the advantage 7 of privacy. 8 The defendants often have the advantage of 9 what I would call recency. You've had the benefit and 10 probably freshest in your mind are some of the defense 11 experts. So I would ask you in going back and 12 examining your notes, do your best if you can, and I'm 13 going to try to bring you back to some of the 14 testimony. But do your best, if you have questions, if 15 you can't remember back to what Dr. Cohen said because 16 it was three and a half weeks ago. The other thing 17 that is your right as jurors is to ask for a read back 18 of any of the testimony. 19 And this is very useful sometimes. If when 20 you get to the jury room and you're going through your 21 notes, and you say, hang on, I've got this written 22 here, and another juror says, "I don't think that they 23 said that. I've got this written here." 24 One of the easiest and simplest ways of 25 resolving those kinds of conversations is just go ask</p>
<p style="text-align: right;">Page 39</p> <p>1 in time to determine what the causes of that disease 2 are. Okay. 3 That's the approach in this case. We're going 4 to be talking very specifically about the causation 5 language that the judge gave you under California law 6 when we moved through the verdict form. 7 But it's very important that you orient 8 yourselves with respect to what we're talking about 9 here. What we're talking about here is somebody who 10 has the disease response. Okay. So let's move through 11 a few issues. 12 You saw, ladies and gentlemen, throughout the 13 course of this case, you learned so much about asbestos 14 and the hazards and the science and the medicine, I am 15 not going to sit here and go through all the basics of 16 asbestos and all the different kinds and all the 17 science and all the medicine. Again, you'd bring out 18 the hook. We don't have enough time. You've got 19 plenty of good notes on that. 20 So I'm going to try and focus in on what I 21 think are the core issues here in this case. I'm going 22 to go ahead and assume that you all were paying 23 attention and that you got the basic foundation on all 24 of that. So we're going to go ahead and move beyond 25 those very basic elements.</p>	<p style="text-align: right;">Page 41</p> <p>1 the judge, we can read back the testimony, you can be 2 very clear on what was said. 3 If there is something you don't remember that 4 you think was important, that you kind of have in there 5 halfway, again, ask the judge, they'll read back the 6 testimony, and we'll clean it up. We want you all to 7 get this right. Both sides want you to get this right. 8 And that's why you have the ability to request a read 9 back. 10 Same thing with respect to any of the evidence 11 that was specifically admitted. There is going to be 12 evidence that actually gets to go back into the jury 13 room with you from both sides. You're going to be able 14 to look at that evidence. If you have any questions of 15 anything with respect to the law, the evidence, 16 et cetera, just like at every point in this process you 17 have had the ability to send a question, you can do the 18 same thing when you are deliberating. 19 If you run into a wall, there's a question, 20 and you all think it's important and you can't answer 21 it, you can always send a question out to the judge, 22 and she'll, as she has throughout the process, talk 23 with counsel, and we'll do our best to see what we can 24 do about answering it. Okay. 25 So that's going to be an important piece of</p>

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1 this process. The evidence that plaintiffs presented
 2 in this case came from a variety of sources. It came
 3 from the plaintiffs themselves. You saw the testimony
 4 of Mr. Whalen via video over several days. It was
 5 edited. What you saw I think we explained at the time
 6 was the combined, what are called designations, the
 7 combined testimony that both sides pulled out and
 8 wanted to present to you. Okay.

9 So that was the chunk of testimony that you
 10 saw there. You saw the testimony of Mrs. Whalen in
 11 this case. And I just -- I think it was clear in the
 12 video, but the reason that Mrs. Whalen who otherwise
 13 would have been here at trial to talk to you live,
 14 wasn't here because she had just gotten over having
 15 thyroid surgery, and she wasn't allowed to travel.

16 So that was clear in the video, but I wanted
 17 to make sure you all understand that that's why. So
 18 you heard from Mrs. Whalen, and the reason that
 19 testimony is going to be important is when we get to
 20 talking about Mrs. Whalen's damages, which by the way
 21 are also undisputed, that 's going to be the testimony
 22 you are going to make reference to. That testimony
 23 that you heard played by the video.

24 You also heard in this case from plaintiff's
 25 specialists. Okay. And just to remind everybody, you

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1 heard from Dr. Richard Cohen, he was one of our first
 2 witnesses. He was an occupational and preventive
 3 health doctor, board certified, an actual MD. Okay.
 4 And one of the main focuses of his testimony, and we'll
 5 move through this on the verdict form, had to do with
 6 his research going back through the decades as to what
 7 was known or knowable about the hazards of asbestos in
 8 scientific and medical literature.

9 And now that you've been instructed by the
 10 judge, hopefully it's a little clearer as to why in the
 11 heck we spent a long chunk of the testimony early in
 12 the case on that particular area. Because it's one of
 13 elements we have to prove.

14 One of the important things to understand
 15 about this case, ladies and gentlemen, is that
 16 especially in what are called strict products claim,
 17 and you'll see this is called out on the verdict form,
 18 what the defendant actually knew doesn't really matter.
 19 What matters, and what the law says is that if
 20 you are a product manufacturer, or seller, supplier, et
 21 cetera, and you are putting products out into the
 22 stream of commerce for the public to use, the law holds
 23 you responsible for what was known in the medical and
 24 scientific literature, period. You are responsible for
 25 that knowledge.

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1 Whether or not you got it, whether or not you
 2 paid attention to it, separate questions. And we're
 3 going to be talking about that when we start talking
 4 about negligence.

5 But for the products claims, it doesn't matter
 6 if they ever actually looked at any of that literature.
 7 What matters is that it existed, and they had access to
 8 it. And what matters under California law, basically,
 9 and this is just basic principles of consumer
 10 protection, is that California law holds a product
 11 manufacturer to account for what was in the literature
 12 when they were making their products. Okay.

13 And that's the standard that you're going to
 14 see sought under 1221, and I believe in 1223. We'll go
 15 through it specifically. That's why the judge was
 16 giving you those numbers, because it's just sort of
 17 pages of instructions, and they're kind of hard to sort
 18 through.

19 But that's in the jury instruction, and that's
 20 an important premise that I want to make sure is very
 21 clear.

22 When we get to discussing negligence, which
 23 refers to the conduct of a particular entity like John
 24 Crane, then it starts to matter what they knew and what
 25 they did about what they knew, and there's lots that

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1 we're going to talk about in that area. But for the
 2 products claim, it doesn't matter. What matters is
 3 what was available in the medical and scientific
 4 literature, and they, as the manufacturer of a product
 5 are responsible for that, period, full stop. That's
 6 what California law has to say.

7 So that's why we had Dr. Cohen come and talk
 8 to you. And we'll move through some of the pieces of
 9 his testimony. Again, if there's something from
 10 Dr. Cohen's testimony, it was long, we went through
 11 lots and lots of literature. You all sat here very
 12 attentively and took very good notes. I am not going
 13 to rehash every single one of those articles. Okay.
 14 You wouldn't let me, you wouldn't want me to. We're
 15 going to talk about some of them.

16 But if there's something that I don't mention
 17 again, check your notes, go back through, have the
 18 testimony read back, you can always have it read back.

19 The next witnesses that you heard from in
 20 plaintiffs' case, were Christopher DePasquale,
 21 certified industrial hygienist. Then you heard from
 22 Dr. Steven Compton, who is a Ph.D. in physics and a
 23 material scientist, a microscopist by training. We're
 24 going to move through some of the pieces of that
 25 testimony.

<p style="text-align: right;">Page 46</p> <p>1 The next witnesses you heard from plaintiff's 2 case, and this was a whole lot of information that 3 unfortunately kind of got compressed into a fairly 4 quick period of time. You heard from Dr. Arnold Brody, 5 cellular biologist, molecular biologist, world renowned 6 researcher, current researcher in the area of asbestos 7 and disease, and is still doing that work, is still 8 doing that work for the NIH, still being funded for 9 that specific work by the NIH.</p> <p>10 You heard from Dr. Barry Horn, who is a 11 pathologist, board certified critical care medicine 12 specialist, who is currently and has currently over in 13 Berkeley been treating patients with asbestos-related 14 disease, for decades now. We told you he has treated 15 thousands of patients with asbestos-related disease, 16 including mesothelioma.</p> <p>17 You also heard, I think the last specialist 18 you heard from and via video, which was not ideal, 19 unfortunately, but Dr. Smith had to travel to 20 Argentina, so we took it by video. From Dr. Smith, who 21 was the only epidemiologist you heard from in this 22 case. There was one, and it was Dr. Smith.</p> <p>23 And his particular area of specialty, ladies 24 and gentlemen, as he testified, is cancer epidemiology. 25 He has particularly done research in that area,</p>	<p style="text-align: right;">Page 48</p> <p>1 that Mr. Whalen was doing. Frankly, probably better 2 than anything we could have put on for you. So you've 3 got the benefit of that testimony as well.</p> <p>4 What you did not hear from John Crane, and 5 there's a jury instruction in here that's very 6 important, and it is this: That you have the ability 7 to consider whether or not a party could have produced 8 better evidence. Okay. That's something you get to 9 weigh in your deliberations.</p> <p>10 John Crane didn't call a single representative 11 from the company. They didn't bring anybody here to 12 testify, to say that when plaintiffs had presented in 13 their case, with respect to what John Crane did and 14 knew and didn't do, and in some case should have done 15 was wrong.</p> <p>16 That we had presented the story somehow 17 inaccurately, that yes, there was that piece of the 18 testimony that was read, but no, that's not really what 19 we meant at the time.</p> <p>20 They brought you no one to account for the 21 behavior of John Crane at issue in this case. They 22 gave you no documents to account for any of the 23 behavior of John Crane at issue in this case. Not a 24 single piece of evidence, ladies and gentlemen. 25 I sat through a month-long trial, and I waited</p>
<p style="text-align: right;">Page 47</p> <p>1 personally himself, not gone back and looked at other 2 literature and tried to put it together and present it 3 to juries.</p> <p>4 This is someone who actually does this work. 5 Day in and day out, up at Cal Berkeley just up the road 6 there. So you heard from Dr. Smith, and we're going to 7 go through some of specific criteria that an 8 epidemiologist actually uses when they're talking about 9 causation in cancer cases.</p> <p>10 You also heard in plaintiffs' case testimony 11 from a corporate representative of John Crane. You 12 also saw in plaintiffs' case documents with respect to 13 material data safety sheets, brochures, sales material 14 that John Crane was using all throughout the relevant 15 time period. Okay. That was all in plaintiffs' case.</p> <p>16 The defense case. The defense case consisted, 17 ladies and gentlemen, of four experts, two from Cardno 18 ChemRisk, an inhalation toxicologist, an industrial 19 hygienist, Dr. Crapo, who has some expertise in 20 pulmonary medicine, and Commander Delaney, whose 21 testimony we're going to talk about at some length. I 22 think actually that's important testimony that you 23 should consider, because it basically describes exactly 24 what Mr. Whalen said he was doing aboard those ships. 25 He gave you a perfect illustration of the kinds of work</p>	<p style="text-align: right;">Page 49</p> <p>1 throughout the defense case for a single -- single 2 piece of evidence, anything that would set the record 3 straight about what it was that John Crane did based 4 upon what it is that we found out during our case. And 5 there was nothing. Nothing.</p> <p>6 And the simple question I have to put to you 7 is, what could they have said? What would they have 8 said? All they could have done is come here and said, 9 well, yeah the testimony that was read is exactly what 10 happened. Yeah, you're right, we didn't put any 11 warnings on anything until 1983, even though we knew in 12 1970 that asbestos was a hazard.</p> <p>13 Yeah, you're right, we did label a product 14 that we never tested nontoxic. Yeah, you're right. 15 We're claiming here in court that it's not a hazard, 16 but when we were selling nonasbestos forms of the 17 product, we called them safer than the asbestos forms 18 of the product.</p> <p>19 Nobody came in here and told you that any of 20 that wasn't true. Nobody came in here and told you 21 that there were reasons for that that we don't 22 understand. That was just the evidence that you heard, 23 period. And it was left as it is.</p> <p>24 And that's an important consideration, ladies 25 and gentlemen, when you go into that jury room and you</p>

<p style="text-align: right;">Page 50</p> <p>1 consider the negligence and the conduct of John Crane 2 in this case.</p> <p>3 There was only one party that presented 4 evidence about John Crane's actual conduct, and it was 5 the plaintiffs.</p> <p>6 So let's move through certain pieces of the 7 verdict form here. We've got -- we've got some ground 8 to cover. Okay. All right. Ladies and gentlemen. 9 Let's -- I'll show you what this fancy piece of paper 10 is here that we are talking about. This is called -- 11 Oh, good point. Yes. Downside of all the 12 apparatuses here.</p> <p>13 THE COURT: Are we going to be taking a break? 14 MS. ALESIO: I'm sorry, Your Honor.</p> <p>15 THE COURT: Are we going to be taking a break 16 during this?</p> <p>17 MS. ALESIO: Yeah, that would be a great idea. 18 When would you like to do that, Your Honor.</p> <p>19 THE COURT: Well, I'm thinking it's 11:00 now. 20 MS. ALESIO: Sure, now is a fine time. I can 21 get the courtroom set up.</p> <p>22 THE COURT: Yeah, why don't we -- while you 23 get all that set up, why don't we take a ten-minute 24 break. 25 (Jury exiting courtroom.)</p>	<p style="text-align: right;">Page 52</p> <p>1 through that.</p> <p>2 But the first two claims, the first is called 3 the design defect claim. And you're going to use 4 what's called the consumer expectation test.</p> <p>5 The second one is a failure to warn -- strict 6 product failure to warn claim, and we're going to talk 7 about what that means in particular.</p> <p>8 And the third is negligence. Okay. And 9 there's lots of components to negligence. We've put it 10 in one question because basically the short version is: 11 However, as long as you determine that they're 12 negligent in one of ways under the law then they're 13 negligent, and we can move on. Talk about all those 14 meanings of negligence. There's a lot of these issues 15 in this case, but that's its own category, separate 16 category, third category.</p> <p>17 At the end of all of that, there are the 18 damages, numbers, allocations that we'll move through, 19 economic, noneconomic. And then at the very end of all 20 that is the apportionment of liability. This is what 21 we talked to you about at the very beginning where we 22 were saying that John Crane's apportion of the total 23 damages that John Crane is responsible for are a lot 24 closer to zero than they are to a hundred. But they're 25 not quite zero.</p>
<p style="text-align: right;">Page 51</p> <p>1 (Recess taken.) 2 (Whereupon, the jury having entered the 3 courtroom, the following proceedings were 4 had:)</p> <p>5 THE COURT: You may continue. 6 MS. ALESIO: Thank you, Your Honor.</p> <p>7 Okay. Ladies and gentlemen, this is a copy of 8 the exact verdict form that you're going to be getting 9 at the end of today when all the statements, opening -- 10 closing statements are -- are done.</p> <p>11 And it's set up -- I'm going to walk you 12 through the form, and then we'll move through it in 13 particular. It's set up into sort of three different 14 logic trees. Okay. And this pertains to the three 15 separate bases of liability, technical term. The three 16 separate bases of liability that the plaintiffs are 17 asserting in this case.</p> <p>18 The first two are what are called strict 19 product claim. And strict product claims, as I 20 indicated, we're not talking so much about the conduct, 21 about what the defendant knew or didn't know, et 22 cetera, et cetera. We're talking literally just about 23 the product. Okay. The focus is the product. The 24 product did or didn't do. Okay. And then the specific 25 legal tests that you're going to apply when we talk</p>	<p style="text-align: right;">Page 53</p> <p>1 When we were talking about that, that's 2 exactly the part of the verdict form that we were 3 talking about. You get to assign the percentage of the 4 total liability that you think John Crane is 5 responsible for, and you also get to assign what 6 percentage of the total liability, if John Crane you 7 feel has proved it, the Navy is responsible for, and 8 all other manufacturers are responsible for. And 9 that's the portion of the verdict form.</p> <p>10 I know some of you had questions about kind of 11 how that was going to work. That's the answer to the 12 question basically. It's that portion of the verdict 13 form that allows you to kind of parse out what portion 14 of the total you think John Crane is responsible for.</p> <p>15 So let's move through the first aspect of 16 plaintiffs' case, and this is the design defect, which 17 is determined as under the consumer expectation test. 18 The first question on the verdict form -- and I -- I 19 really wish -- it would make my life a heck of a lot 20 easier. I really wish all the questions were going to 21 be as easy as the first one we've got here.</p> <p>22 The first one that we have here on the verdict 23 form is: Did John Crane, Inc., manufacture, 24 distribute, or sell asbestos-containing products? 25 That's a preliminary question obviously. If they</p>

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1 didn't, then, you know, check no, and more or less the
 2 whole case goes out the window.

3 But the short version here is that's not been
 4 disputed. John Crane agrees that they sold,
 5 manufactured asbestos-containing packing products.
 6 They agree that they sold asbestos-containing gasket
 7 products. It's not an issue. It was proved up in the
 8 testimony of their witnesses. I expect Mr. Griffin
 9 will stand up and just admit to it in closing. It's
 10 not going to be an issue, so you can check yes on that
 11 and move on to the next question.

12 You'll see here that there is a logic tree.
 13 So what it says basically is if you go through question
 14 number one, if for some reason -- and again, I can't
 15 think of a possible way based on the state of the
 16 evidence you could check no to question number one.
 17 But if for some reason you did, you would basically
 18 move on to the next component of the plaintiffs' case,
 19 which would be the failure to warn.

20 So that's what this instructs you to do here.
 21 Actually in this case, if you check number one, we all
 22 go home, which is why that's important.

23 But if you check no to number one and don't
 24 take this as an incentive to check no to number one so
 25 we all go home. Based upon the state of the evidence

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1 in this case, that's an obvious yes, saying yes. You
 2 proceed next to question number two.

3 Question number two is where we're going to
 4 spend a little bit more time because that's sort of the
 5 meat of the consumer expectation test. Okay. And
 6 question number two is: Did John Crane's products --
 7 and so that you're clear what we're talking about when
 8 we say that, no dispute about this, were they
 9 asbestos-containing packing and gasket materials. Did
 10 John Crane's products fail to perform as safely as an
 11 ordinary consumer would have expected? Okay. And the
 12 jury instructions that are going to help you out on
 13 that, ladies and gentlemen, although I have to be
 14 honest with you, they more or less just repeat what it
 15 says there. This is one of the areas where I don't
 16 think the jury instruction is terribly illuminating.
 17 It's just going to say what it says on the verdict
 18 form.

19 But the jury instruction for that particular
 20 area that you're going to want to look at, as the judge
 21 indicated, 1203. And if you were numbering by the
 22 1203, that's fantastic. If you weren't, I counted and
 23 by page number, it's on page 22. So you can follow
 24 along either way you'd like to.

25 Before we get to talking about this particular

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1 one, I want to just call your attention back to
 2 probably the most important jury instruction that you
 3 got is on page nine. It's the burden of proof. Okay.
 4 And the burden of proof explains to what level
 5 plaintiffs have to demonstrate each of these causes of
 6 action. Okay.

7 And the burden of proof in a civil case, as
 8 the judge indicated, were in the preponderance
 9 standard. Okay. And what the preponderance standard
 10 means in plain simple English is if you have the scales
 11 of justice just like this set evenly, if plaintiffs
 12 have produced evidence that tip the scale, just tip it
 13 into having you as jurors, 12 jurors think that it is
 14 more likely to be true than not to be true, then you
 15 would find in favor of the plaintiffs.

16 Okay. That's what the burden means in this
 17 case and that's an important distinction, because
 18 there's been a lot of conversations here in this
 19 courtroom. Okay. We don't have to prove anything
 20 beyond a reasonable doubt. Okay. We don't have to
 21 prove to you that there is a hundred percent scientific
 22 certainty on X point. I think in a lot of cases we
 23 can. Okay. I think in a lot of cases probably more
 24 than you would suspect after the last two and a half
 25 days, but there is a lot of scientific certainty in

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1 some of these areas, and I think we have proved that.
 2 But even if we -- we don't need to is the short
 3 version.

4 So the standard you're looking at for all of
 5 these things is that the plaintiff just tipped the
 6 scale. The scale just tipped, then that's the
 7 plaintiffs finding in our favor. Okay.

8 So as we're moving through talking about some
 9 of the evidence with respect to all of these claims,
 10 that's the standard that you're applying as we move
 11 through each of these. Okay. You can have a
 12 reasonable doubt and still find in favor of the
 13 plaintiffs in the this case. Okay. We do not have to
 14 remove all possible doubts or all possible questions
 15 from your mind. We just have to tip the scale. Okay.
 16 And that's what the civil burden of proof says in these
 17 cases, and there's a good reason for that, ladies and
 18 gentlemen.

19 The reason for that is in a civil case, you're
 20 not talking about putting anybody in jail. Okay.
 21 That's the very basic policy reason behind why in
 22 criminal cases we have that much higher burden of
 23 proof, because you're talking about somebody's liberty
 24 and their life. In the civil case, it's not that money
 25 is not important, but when you're talking about money,

<p style="text-align: right;">Page 58</p> <p>1 the law recognizes that that's not as important as 2 somebody's personal liberty, which is what you have in 3 criminal case. So just so you understand that's the 4 policy reason behind that burden, but that's the burden 5 that we're applying here in a civil case.</p> <p>6 Okay. Did John Crane's product fail to 7 perform as safely as an ordinary consumer expected? 8 That is basically the definition of a design defect. 9 Okay. So when you want to know what -- does a product 10 have a design defect, the way you evaluate that is: 11 Did the product fail to perform as safely as an 12 ordinary consumer would have expected.</p> <p>13 And so you understand what we're talking about 14 when we say "an ordinary consumer." The ordinary 15 consumer in this case is Robert Whalen. Okay. These 16 are the people who were the end users of the products. 17 That's the perspective of the ordinary consumer that 18 you are evaluating.</p> <p>19 So you're not talking about an ordinary 20 consumer who is as educated, for example, as 21 Mr. Henshaw or Mr. DePasquale. You're talking about 22 somebody like Mr. Delaney, somebody like Mr. Whalen. 23 The guys who are just taking the stuff out of the boxes 24 and putting it on, removing it from the equipment. 25 You're talking about what would that person have</p>	<p style="text-align: right;">Page 60</p> <p>1 And that's the evaluation you're going to do. 2 Now, we can also go into the specific state of 3 the evidence about what we understand to be the hazards 4 of the products at issue. And that's something that's 5 going to be an important part of your evaluation here 6 in this case. And in plaintiffs' case, I want to 7 address a few things that were tossed out in 8 Mr. Griffin's opening because this is important.</p> <p>9 You were told in Mr. Griffin's opening, John 10 Crane, packing, gasket products, encapsulated products, 11 during the course of the plaintiffs' case, you actually 12 had the benefit of looking at what those products 13 actually are under a microscope.</p> <p>14 And there are a lot of things, ladies and 15 gentlemen, but encapsulated is not a word that I would 16 use to describe a product that has hundreds of 17 thousands of free asbestos fibers on the surface, the 18 surface of the product itself that can liberate free 19 asbestos fibers simply as Dr. Compton demonstrated by 20 touching your fingertips.</p> <p>21 You don't have to cut, you don't have to saw, 22 you don't have to abrade, you don't have to scrape, you 23 don't have to power wire brush it if you really want to 24 go that far. All you have to do to release an asbestos 25 fiber from your so-called encapsulated product is touch</p>
<p style="text-align: right;">Page 59</p> <p>1 expected about the safety of the product that they were 2 handling.</p> <p>3 And the evidence in this case, ladies and 4 gentlemen, is pretty darn clear that nobody who was 5 working, not Robert Whalen, not Commander Delaney, not 6 anybody who was working with the products that 7 contained asbestos, would have reasonably expected that 8 it could have led to a fatal cancer 30 years down the 9 road. Okay. There was nothing about the product, not 10 a single thing about that product that could have given 11 them any indication that if they just did their job day 12 in and day out, using these products the way that they 13 were intended to be used, and you see that that's an 14 element. Again, I don't think it's disputed, but it's 15 an element.</p> <p>16 Using the products in the way that they were 17 intended to be used, that that could in them contribute 18 to cause the disease that Mr. Whalen ended up with 19 which is mesothelioma.</p> <p>20 So the question is from a perspective of 21 Robert Whalen, an ordinary consumer, did this product 22 perform as safely as he would have expected. The 23 answer to that, based on the state of the evidence, has 24 to be a resounding no. It has to be. Because look at 25 what ended up happening with respect to this product.</p>	<p style="text-align: right;">Page 61</p> <p>1 it.</p> <p>2 And that was the evidence that plaintiffs 3 brought to you in this case. And that was the state of 4 what happened with respect to Mr. Whalen when he was 5 performing all of the work that he performed over a 6 course, by the way, of 25 years.</p> <p>7 These are products, ladies and gentlemen. He 8 was a marine machinist. A machinist mate on the 9 Marianna G. Vallejo in the early part of his career in 10 1964. This is not somebody, as you saw in their 11 evidence, who only worked with one product, only at a 12 certain level, and only if you manipulate the numbers 13 to make it look a certain way, and you draw a chart 14 with a big red box over here, that's not who you're 15 talking about. You're talking about somebody who has 16 got mixed exposure history, who yeah, has exposures to 17 asbestos from insulation materials.</p> <p>18 Of course he has exposures to 19 asbestos-containing insulation materials. Has 20 exposures to gaskets and packings and pumps and valves 21 that don't have a thing to do with John Crane but also 22 contained asbestos. All of that is in evidence, ladies 23 and gentlemen.</p> <p>24 What he also has -- and, frankly, I didn't 25 hear any dispute about this in the testimony. His</p>

<p style="text-align: right;">Page 62</p> <p>1 clear identification of working with asbestos 2 containing John Crane products, and the answer with 3 respect to what he expected about the safety of those 4 products is about as clear as it can be. He never 5 expected that this would be the end result from working 6 with those products.</p> <p>7 Moving on to the next question, ladies and 8 gentlemen, is were John Crane's products used in a way 9 that was reasonably foreseeable to John Crane.</p> <p>10 Again, I think this is an easy one. I think 11 the state of the evidence on this. I don't even need 12 to rely on my witnesses for the state of the evidence 13 on this. I mean I could, but I don't need to.</p> <p>14 Mr. Henshaw came in here and told you that the kinds of 15 the ways that these products were used, fabricated, 16 sheet gaskets that come in a sheet, the point of the 17 sheet gasket is to cut it into the kind of gasket that 18 you can use.</p> <p>19 That the point of packing is for it to go in 20 valves and to be removed from valves and to be put back 21 into valves.</p> <p>22 What this really refers to under the law, 23 ladies and gentlemen, is basically if somebody had 24 decided that it was a good idea to start smoking 25 asbestos-containing packing, that would probably not be</p>	<p style="text-align: right;">Page 64</p> <p>1 So you're going to more or less have to decide 2 this one once. It's going to be the same analysis that 3 we decided, but you're going to see it repeated every 4 single time. And we're going to have to spend a little 5 bit of time talking about it.</p> <p>6 So the question asks you: Was the failure of 7 John Crane's products to perform as safely as an 8 ordinary consumer would have expected A -- and this is 9 an important word, A. Substantial factor in causing 10 harm to Robert Whalen.</p> <p>11 Okay. And I underline the word A, because 12 what's important about this -- and when you heard 13 plaintiffs' opening, this is what we told you. I want 14 to make sure we're telling you the same thing at the 15 end. We would prove to you that John Crane's design 16 defect, their negligence, their failure to warn, was a 17 cause. We are not obliged under the law in California 18 to prove that it was the cause.</p> <p>19 Okay. And the reason that is, ladies and 20 gentlemen, is because California law understands -- in 21 fact, the instruction is specifically for 22 asbestos-related cancer cases. California law is 23 recognizing the mainstream medicine and the mainstream 24 science in understanding that an asbestos-related 25 cancer cases, it is the total dose from a multiplicity</p>
<p style="text-align: right;">Page 63</p> <p>1 a foreseeable use. Okay.</p> <p>2 There's no evidence in this case of uses that 3 were not foreseeable that were not intended. In fact, 4 the defense witnesses, Commander Delaney came in here, 5 and I asked him specifically. I said is there anything 6 about the way that Mr. Whalen used these products based 7 upon your experience. He called out one particular 8 use, when he was in the naval training school, and he 9 talked about using a power wire grinder which didn't 10 even have to do with the John Crane product. But other 11 than that, he said no, everything Mr. Whalen did, same 12 exact way he would have done it, and you can look back 13 at that testimony, ladies and gentlemen.</p> <p>14 Commander Delaney, I think other than 15 Mr. Whalen, is probably the most qualified expert in 16 that area, and he told you this is the way these 17 products were supposed to be. So I think that's an 18 easy answer yes.</p> <p>19 And that takes us down to probably in some 20 ways what is going to be one of the biggest issues in 21 this case. And I am going to spend some time on this. 22 I beg your indulgence here. The reason I'm going to 23 spend some time on this is you're going to see this 24 question repeated for basically every single one of 25 them.</p>	<p style="text-align: right;">Page 65</p> <p>1 of point sources that contribute in these individuals 2 to cause the disease.</p> <p>3 Okay. So when we talk about cause and a 4 substantial factor in causing harm, what I'm wanting to 5 do is point you all to the jury instructions on this 6 point exactly, and there at page 20, and specifically 7 we're talking about 431 and 435.</p> <p>8 Okay. These are your instructions that give 9 you guidance on how to define cause. This is one area 10 where California actually in the jury instructions I 11 think are mostly helpful. Sometimes there's a lot of 12 words, and it gets more confusing than it needs to be. 13 But they're actually helpful here, because they want to 14 define this word in a particular way, and they want to 15 define it to encompass exactly what I just told you, to 16 embrace what is understood about the medicine in 17 science with respect to asbestos-related cancer cases.</p> <p>18 Now, let's look at that jury instruction. 19 Okay. The first one is very important because it's a 20 key fact in this case. And for whatever reason, we 21 ended up with two jury instructions on the same page. 22 But it actually works out because they're both sort of 23 complimentary.</p> <p>24 So the first jury instruction which is 431, 25 basically says this, okay. We're going to talk about</p>

<p style="text-align: right;">Page 66</p> <p>1 the specifics, but the short summary version is you 2 don't get to say that somebody else was negligent and 3 have that relieve who it was.</p> <p>4 Okay. This is a case where there are multiple 5 factors, the direction of this jury instruction is 6 actually called Multiple and Current Causes. Okay. A 7 person's negligence may combine another factor to cause 8 harm. Okay. That's exactly what we're talking about 9 here.</p> <p>10 If you find that John Crane's negligence was a 11 substantial factor in causing Robert Whalen's harm, 12 then John Crane, Inc., is responsible for the harm.</p> <p>13 John Crane, Inc., cannot avoid responsibility 14 just because some other person or condition or event 15 was also a substantial factor in causing Robert 16 Whalen's harm. Okay.</p> <p>17 In other words, if the Navy was a substantial 18 factor in contributing to cause Robert Whalen's harm. 19 If insulation manufactures were a substantial factor in 20 contributing to cause Robert Whalen's harm. If other 21 gasket and packing manufacturers, as it's contended by 22 the defendant in this case, were a substantial factor 23 in contributing to cause Robert Whalen's harm, 24 defendant does not get to say it's all of their fault, 25 but we get off the hook. California law recognizes</p>	<p style="text-align: right;">Page 68</p> <p>1 And then the stream goes past, maybe a small 2 set of farms, and the farms have some pesticides or 3 whatever, gets into the stream, starts to pollute the 4 stream. And it runs past a small town, and the town 5 has some waste and gets into the stream and starts to 6 pollute the stream.</p> <p>7 And eventually you get down maybe here where 8 there's one factory, and one factory has some waste and 9 it gets into the stream, and it starts to pollute the 10 stream. Another factory has some waste, and it gets 11 into the stream and starts to pollute it. And finally, 12 that third factory gets in, and what you have, your end 13 result, is a polluted stream. Okay.</p> <p>14 But as a causation analysis, what the law is 15 saying is that every single one of those factories, the 16 campers at the mouth of the stream, the farm that it 17 went by, the town, the factories, every one of those 18 point sources contributed in its own way to the 19 pollution that eventually resulted in this case, in 20 this example, a polluted stream.</p> <p>21 And I don't have the example here, but there's 22 another slide where the fish is dead, and I don't like 23 it. But the short version is this is the basic premise 24 of California causation life, and you guys get it.</p> <p>25 So when we're talking about -- where did my</p>
<p style="text-align: right;">Page 67</p> <p>1 this concept of multiple concurrent causation.</p> <p>2 Okay. And probably the simplest analogy for 3 the way you want to look at this -- and we'll talk a 4 little bit more about it in particular. I am an awful, 5 awful artist, and so I have to resort to pictures and 6 things, but one way of thinking about it, ladies and 7 gentlemen, and this is even when you resort to 8 pictures, this is pretty Lo-fi stuff. I apologize in 9 advance. But one way to think about concurrent 10 causation, in fact, a lot of the case law in this area 11 describes concurrent causation talks about it this way. 12 There can be multiple point sources that lead to an 13 eventual outcome.</p> <p>14 So by way of example, if you think about a 15 stream or a river that runs out of the mountains and 16 into a lake. Okay. You can see here this is kind of 17 an illustration, but there are a couple of different 18 factories next to the stream. In your mind's eye, why 19 don't you picture as it comes out of the mountains of a 20 few camp sites that are up north right at sort of the 21 mouth of the stream, it comes out of the mountains. 22 And those camp sites, for whatever reason, they're not 23 very contentious, and they have some garbage, and 24 trash, and whatever that gets into the stream and it 25 runs downstream.</p>	<p style="text-align: right;">Page 69</p> <p>1 jury instructions go? Thank you -- substantial 2 factors, a substantial factor in causing harm is again, 3 a factor that a reasonable person would consider to 4 have contributed to the harm. It did not have to be 5 the only cause of harm.</p> <p>6 And here's where we have to pay very close 7 attention to a few words in here, because if you don't, 8 you're going to miss something very important and 9 valuable in this case, potentially the most important 10 and valuable issue in this case.</p> <p>11 Robert Whalen did prove that exposure to 12 asbestos from John Crane's products was a substantial 13 factor causing his illness by showing through expert 14 testimony that there is a reasonable probability that 15 the exposure was a substantial factor contributing 16 to -- and this is the keyword folks, his risk, not the 17 risk in somebody else, the risk in him, of developing 18 cancer.</p> <p>19 Now, what's going to be important in this case 20 is I expect Mr. Griffin is going to get up here and try 21 and suggest to you that under the law in California, 22 substantial factor is somehow a quantity based notion. 23 That it must mean big, or a lot, or substantial in a 24 way that involves majority, main, most important, and 25 if he does so, ladies and gentlemen, look at the law.</p>

<p style="text-align: right;">Page 70</p> <p>1 The law doesn't use a single one of those terms. In 2 fact, the law in California specifically references and 3 doesn't want to make it a quantitative-based notion. 4 They give you a qualitative definition for a 5 reason. And that is that the California law recognizes 6 what is understood in medicine and science. And what 7 is understood in medicine and science has been proved 8 in this case, that somebody who gets an 9 asbestos-related disease, like Robert Whalen, his risk 10 is a hundred percent of that disease. His risk, not 11 the risk in some hypothetical person who doesn't have 12 the disease. 13 That, by the way, is all Dr. Madl and all 14 Mr. Henshaw and all Dr. Crapo wanted to talk to you 15 about. They wanted to talk to you about hypothetical 16 risk in people who don't have a disease. When you ask 17 each one of them, as I did, what is Mr. Whalen's risk 18 of disease, this is the answer you got. Or more 19 specifically, they didn't like answering the question, 20 until I pointed out that that was the answer. 21 That's actually probably more accurate to what 22 happened in this case. And that's what you have here. 23 Okay. 24 And in talking about what contributed to 25 increase Mr. Whalen's risk of the disease, from a</p>	<p style="text-align: right;">Page 72</p> <p>1 literature that there is consensus that chrysotile 2 asbestos causes disease. Specifically that it causes 3 the disease, mesothelioma. 4 If you want to talk about one of biggest red 5 herrings that was tossed out in the defense case, this 6 notion that chrysotile asbestos from John Crane's 7 products was somehow special and safe and didn't cause 8 asbestos disease like every other asbestos-containing 9 product that is known to man is one of the larger red 10 herrings that we can discuss. 11 And one of the reasons, ladies and gentlemen 12 that they have to pay people millions of dollars to 13 come in here with Power Points to try and convince you 14 that that is the case, is because it just isn't the 15 state of medicine and science. Okay. 16 The state of medicine and science is exactly 17 what Dr. Arnold Brody told you it is, which is that 18 there is consensus, and if you don't believe my 19 experts, ladies and gentlemen, if you get to a point 20 where you're saying, ah, they got one guy on this side 21 saying one thing, and another guy on this side saying 22 another thing, and they're both being paid by both 23 sides, and it's just kind of all muddled, I'm 24 sympathetic to that. That's where you get to actually 25 evaluate the qualifications, evaluate the areas of</p>
<p style="text-align: right;">Page 71</p> <p>1 causation standpoint, what you have to evaluate is the 2 testimony from Dr. Arnold Brody, from Dr. Allan Smith, 3 from Dr. Richard Cohen, from Dr. Barry Horn, with 4 respect to in somebody who has an asbestos-related 5 disease, it does not make a lick of medical or 6 scientific sense to go back in that person's total dose 7 exposure history and attempt to parse out portions of 8 the dose, and say, this portion of the dose 9 contributed, and this portion of the dose didn't 10 contribute. 11 This portion of the dose is 85 percent 12 responsible, and this portion of the dose is 2. That's 13 not the way it works, folks. That's not the way that 14 the science, that the biology obtains. Okay. 15 Dr. Arnold Brody is the only witness who came 16 and testified in this courtroom, who incidentally has 17 testified on behalf of John Crane in the past, and what 18 Dr. Brody told you is that he gave you the same 19 testimony, the same basic medicine and science and 20 biology with respect to the way that asbestos fibers 21 cause cancer, chrysotile asbestos fibers cause cancer, 22 in Mr. Whalen's case as he did when he testified on 23 behalf of John Crane. 24 And what he told you is this: That it is 25 fundamentally undisputed in the medical and scientific</p>	<p style="text-align: right;">Page 73</p> <p>1 expertise. 2 Listen to who was talking to you about 3 epidemiology, because it wasn't epidemiologists. Okay. 4 The epidemiologists were telling you exactly what I'm 5 telling you now, that it is the total dose of asbestos 6 from all point sources that contribute in an individual 7 to cause the genetic errors that over time, and it 8 takes a long time, this is what the latency process is. 9 Okay. 10 The reason it takes forever is because you're 11 having to have genetic error on genetic error on 12 genetic error on genetic error that eventually -- 13 eventually leads to a cancer. And that's what this is, 14 that's why we know that asbestos causes the cancer. 15 That's why, ladies and gentlemen, as I was 16 saying, if you have a problem with my experts, look at 17 every regulatory agency that literally talks about 18 this, every single one says the same thing. 19 And they all say, there is no safe dose. They 20 all say there is no minimum threshold of exposure that 21 is somehow magically not going to cause disease. 22 Every single regulatory agency, global body 23 that has looked at this, and the defense can try all 24 they want to suggest to you that really nobody has 25 thought about it since 1982, and that really all that</p>

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1 we're doing is using one model that's been repeated 72
 2 times.
 3 But the state of the record is, unfortunately,
 4 that that is not even remotely accurate. Not even
 5 remotely accurate. And the way you know that, ladies
 6 and gentlemen, is to look at the cross of Mr. Henshaw.
 7 The guy here who apparently worked for OSHA. Okay.
 8 Not apparently. He did work for OSHA. He definitely
 9 worked for OSHA.
 10 And the entire time that he was at OSHA, the
 11 preamble that he came here to convince you apparently
 12 didn't know what he was talking remained exactly the
 13 same way as it was before, was after, and is today.
 14 He tried to suggest to you that nobody
 15 bothered to update the research, and then, ladies and
 16 gentlemen, remember when he showed the page from 2014
 17 where it had all of the updated research with respect
 18 to why it was that OSHA was continuing to conclude that
 19 there was no safe dose, and that even low dose
 20 exposures would be extremely hazardous? Remember that
 21 testimony? If you don't, ask for a read back, because
 22 it's in there. Okay.
 23 That's the important piece with respect to
 24 substantial factor, a substantial factor, in
 25 contributing to cause Mr. Whalen's disease, ladies and

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1 gentlemen. And that's why -- I want to make sure
 2 you're clear on this, because we spent, oh, god, a
 3 long, long, long time, talking about these darn dose
 4 response curves. Okay. And what's wrong with the dose
 5 response curves?
 6 And if I use some of the data that I think
 7 works, and I make it look kind of like this, you're
 8 going to get a dose response curve that is somehow
 9 different and special than the one that is used and
 10 accepted and proved in the medicine and science. Okay.
 11 In order for them to be even possibly
 12 theoretically successful in this case, they have to
 13 sell you on this. Have to. Okay. They have to sell
 14 you that the dose response curve that all of the
 15 plaintiffs' experts came in here and talked about, that
 16 has been adopted and used and proven in medicine and
 17 science for going on yay now 30 years, just flat has it
 18 wrong.
 19 That nobody knows what they're talking about,
 20 that all the regulators have it wrong, that there's
 21 nothing to be said about IARC's updated research, and
 22 nobody is looking at medicine and science in any of
 23 these regulatory agencies, and that they simply got it
 24 wrong, folks, and that you should take the defendants
 25 and their paid experts' word on the fact that really

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1 what the dose response curve is that.
 2 Despite the fact that in order to get here,
 3 they have to ignore functionally all of the subsequent
 4 medicine and science that isn't convenient.
 5 So -- and this is an important point. It's
 6 not just the epidemiology. Although, frankly, if we
 7 want to make it all about epidemiology, I'm happy to go
 8 to that, because that's in plaintiffs' favor, too. Ut
 9 this is also a function of fundamental biology, and
 10 this is why Dr. Brody's testimony is so important, and
 11 this, folks, is why I was pressing the point referring
 12 to Dr. Paustenbach and genotoxins. Okay.
 13 It is not just the epidemiology that leads to
 14 this conclusion. There's a lot of it, and it's clear,
 15 and it leads to this conclusion. It is also the
 16 fundamental biology. And the fundamental biology is
 17 that when a toxin acts directly to interfere with the
 18 DNA, that that is one of the main reasons that you
 19 presume a low dose linear response curve.
 20 And the linear response curve means this,
 21 basically.
 22 In the linear response curve, each exposure
 23 contributes to increase the risk. Each exposure
 24 contributes to increase the risk. There is no
 25 exposure, short of background, and we're not talking

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1 about background exposures in this case. No exposure
 2 short of background that would not contribute to
 3 increase the risk in Mr. Whalen with respect to the
 4 disease that he got. Okay.
 5 And the reason for that is because of the way
 6 that the body responds to asbestos when it gets to the
 7 target cells, which are the mesothelial cells. And
 8 that, ladies and gentlemen is something I proved
 9 through the defense witnesses. Okay.
 10 They weren't on the same page about this.
 11 They got a little flustered, in fact, when we crossed
 12 them on it. But you've got the basic principle with
 13 respect to genotoxicity being one of the key reasons
 14 you're going to call something a linear dose response
 15 curve at low doses.
 16 That came from Dr. Madl, came from
 17 Dr. Henshaw, and came more specifically from a book
 18 that was co-authored by their boss, who said that. And
 19 then you got from Dr. Brody and Dr. Crapo, although
 20 again, he didn't want to get all the way there, that
 21 asbestos acts directly as a genotoxin. And if you
 22 don't want to take Dr. Brody's word for it, the
 23 International Agency on Research on Cancer in 2012
 24 confirmed that.
 25 And they confirmed that as to all fiber types,

<p style="text-align: right;">Page 78</p> <p>1 not amosite, not crocidolite, all fiber types of 2 asbestos is directly genotoxic, directly impacts the 3 DNA at the nuclear level of the cells.</p> <p>4 And that's the other main reason in addition 5 to the epidemiology that the molecular and biologic 6 levels have demonstrated to you that this is the way 7 the dose response works. As a fundamental matter of 8 medicine and science.</p> <p>9 And I would ask that you go, if you have any 10 doubts about this, take a look at Dr. Smith's 11 testimony, take a look at Dr. Brody's testimony. Take 12 a look at Dr. Horn's testimony.</p> <p>13 And the reason I say Dr. Horn is because 14 Dr. Horn is the person who is actually doing this on a 15 daily basis. He's the one who is actually looking at 16 people and treating them with these diseases. Not 17 somebody who's just paid to come into courtrooms and 18 talk about them. That's what Dr. Horn does day in and 19 day out, treat people with this disease.</p> <p>20 And this is his conclusion, based on the 21 medicine and science. Based upon the practical 22 application of the medicine and science. So in that 23 area -- oh, incidentally, Dr. Cohen, occupational 24 health specialist, came and testified and told you the 25 exact same thing.</p>	<p style="text-align: right;">Page 80</p> <p>1 mesothelioma present in cases where there were 2 exposures of only a day or two. Okay. Exposures of, 3 in some cases not have mesothelioma present and 4 exposures where people have had hundreds of fiber years 5 of exposures, thousands of fiber years of exposures.</p> <p>6 And that -- the simple explanation for that, 7 it's not a very simple explanation, but there is a one 8 or two word answer is individual susceptibility.</p> <p>9 And individual susceptibility is a concept 10 that was established with Dr. Merewether in 1930. 11 That's not a new idea, folks.</p> <p>12 It's been well accepted in the medical and 13 scientific literature since 1930 that different 14 individuals have different susceptibilities, and that 15 what we know about mesothelioma, in particular, is that 16 it's an extremely low dose that can trigger a response.</p> <p>17 Reported in the literature when Dr. Wagner was 18 doing his work, going all the way back, talking about 19 how so low, that some of the exposures that they were 20 seeing were take-home exposures, and people shaking out 21 their husband's laundry. Okay.</p> <p>22 Those are the kinds of exposures that they 23 were finding in the earliest cases of mesothelioma. 24 Okay. And that's what we mean when we say individual 25 susceptibility.</p>
<p style="text-align: right;">Page 79</p> <p>1 Based upon his review of the entire body of 2 the literature, not some cherry picked study, the 3 entire body of the literature stretching back to 1898. 4 Okay.</p> <p>5 And again, one of the fundamental reasons for 6 this, one of the reasons that it's so impossible to 7 determine a safe dose, and that no one has been able to 8 determine a safe dose is because of the biological 9 concept as we talked about of individual 10 susceptibility. Okay.</p> <p>11 And that kind of got lost, I think, and lost 12 in some of the defense case. The reason it's a 13 challenge, you can't find a safe dose or -- oh, no 14 effect, which is basically made up -- you won't find it 15 anywhere in any regulatory language. Whole cloth, 16 Dr. Madl, it's an interesting theory, it's nowhere in 17 anything that's actually been applied.</p> <p>18 The no effect level is because of the 19 different biologies, the different individual 20 susceptibilities of people who were exposed. You heard 21 that asbestos related -- not asbestos related -- all 22 mesothelioma patients are asbestos related, but 23 mesothelioma is an extremely rare cancer.</p> <p>24 And you heard from the publications through 25 the testimony of Mr. Henshaw that you can have</p>	<p style="text-align: right;">Page 81</p> <p>1 Dr. Madl, I asked her, particularly, with 2 respect to the workers that she was using in her 3 simulation studies, the same question applies to 4 Mr. Whalen. Did she know the dose that in that 5 particular individual would cause a disease response. 6 And she couldn't answer the question.</p> <p>7 Nobody could answer that question.</p> <p>8 Because it's an individual susceptibility 9 question. And that is the precise reason why no safe 10 dose has been established. Okay.</p> <p>11 That's the particular reason with respect 12 to -- among others, but one of the major reasons in 13 fundamental biology that we can't say that it's 14 perfectly okay to expose somebody to gaskets and 15 packing, even if it's just gaskets and packing in an 16 air ventilated room with HEPA filters wearing space 17 suits. Okay. We can't say that it's okay. We can't 18 say that that's safe.</p> <p>19 Dr. Crapo, you'll remember him yesterday. The 20 last question I asked him, because one of the pitches 21 that he was trying to put here is that asbestos 22 gaskets, non-asbestos gaskets, it's all the same.</p> <p>23 The last question I asked, did he tell you it 24 was harmless? Did you notice what he said? He 25 wouldn't go there, ladies and gentlemen. He hated that</p>

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1 he couldn't go there. He hated it. But he couldn't go
 2 there. As a medical professional, he could not testify
 3 to you that exposures from asbestos-containing gaskets
 4 could be harmless. He wouldn't do it. That's the
 5 defense witness. Okay.
 6 And he can't do it, ladies and gentlemen,
 7 because regardless of all the things that I can sit
 8 here and tell you about Dr. Crapo, he did take a
 9 different kind of oath, and he understands that
 10 asbestos even if that form presents a substantial risk
 11 of harm. Okay.
 12 So we're going to move through the jury
 13 verdict form at this point, ladies and gentlemen. But
 14 I think you will evaluate based upon the evidence in
 15 this case that with respect to Mr. Whalen's exposures,
 16 that we have demonstrated in every possible way, in
 17 every possible field of medicine that has looked at
 18 this in any depth, literally every single one, biology,
 19 epidemiology, pulmonology, name one, we've done it from
 20 every possible angle, pathology.
 21 In fact, when we talked about -- and this was
 22 a conversation that got a little weedy, but when we
 23 were talking about exposures being proved by looking at
 24 the actual tissue of individuals who had died from
 25 mesothelioma and the kinds of fibers that you found in

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1 the tissues of those individuals, all right. That's
 2 called pathology, and that's part of how we understand
 3 that asbestos can in all forms, all fibers in all sizes
 4 causes malignant mesothelioma. Okay.
 5 I am confident, ladies and gentlemen that we
 6 have proved this aspect of the case, and therefore I
 7 think it is a resounding yes, when you get to the
 8 verdict form on question number 4 -- I lost my pen.
 9 We've already got yes here, we've got yes
 10 here, and this is a resounding yes. And that brings
 11 you to strict products liability.
 12 Answer to the next question. You guys are
 13 seeing the logic tree here. Strict products
 14 liability -- Judge, we're five minutes to lunch. This
 15 is a whole other beast.
 16 THE COURT: You think this is a good time to
 17 break?
 18 MS. ALESIO: I would say so.
 19 THE COURT: Okay. Let's take our break now,
 20 and we'll come back at 1:30. We're still on tract to
 21 finish up with closing today?
 22 MS. ALESIO: Yes, Your Honor. It's going to
 23 move faster.
 24 (Jury exiting courtroom.)
 25 THE COURT: Do we need to do anything on the


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1 record?
 2 MS. ALESIO: No from plaintiffs, Your Honor.
 3 THE COURT: Okay. Do we need to do anything
 4 off the record? Off the record.
 5 (Whereupon the proceedings concluded at 11:55
 6 a.m.)
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Aiken Welch Court Reporters Trial (Whalen) 10/29/2014

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REPORTER'S CERTIFICATE

1
 2
 3 I, KIMBERLY R. HENDERSHOTT, do hereby certify:
 4 That said proceedings were taken before me at
 5 said time and place, and were taken down in shorthand
 6 by me, a Certified Shorthand Reporter of the State of
 7 California, and were thereafter transcribed into
 8 typewriting, and that the foregoing transcript
 9 constitutes a full, true, and correct report of said
 10 proceedings which took place;
 11 IN WITNESS WHEREOF, I have hereunder
 12 subscribed my hand this 7th day of November, 2014.
 13
 14
 15

 16 KIMBERLY R. HENDERSHOTT, RPR, CSR NO. 12552
 17
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Aiken Welch Court Reporters Trial (Whalen) 10/29/2014

In the Matter Of:

ROBERT and LINDA WHALEN vs. JOHN CRANE, INC., et al.,

WHALEN TRIAL PM

October 29, 2014

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF ALAMEDA

3 BEFORE THE HONORABLE VICTORIA S. KOLAKOWSKI, JUDGE

4 DEPARTMENT 520

5 ---oOo---

6
7 ROBERT WHALEN and LINDA WHALEN,

8 Plaintiffs,

CASE NO. RG14-711964

9 vs.

10 JOHN CRANE, INC., et al.,

11 Defendants.

12 _____/
13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 WEDNESDAY, OCTOBER 29, 2014

16 P.M. SESSION

17
18 TAKEN BEFORE: CAROL HARABURDA, RPR, CSR No. 8052
19 Registered Professional Reporter
20 Court Certified Realtime Reporter
21 Job No. 33403
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1 WEDNESDAY, OCTOBER 29, 2014 - 1:30 P.M.

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3

4 P R O C E E D I N G S

5 (Jury present and seated in jury box.)

6 THE COURT: You may continue.

7 MS. ALESIO: Thank you, Your Honor.

8 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFFS - RESUMED

9 MS. ALESIO: Good afternoon, ladies and

10 gentlemen. We will take up where we left off. I have

11 promised counsel that we are going to try -- promised you

12 that we will try to get this all in today, and so I will

13 try to pick up the pace a little bit without burning the

14 court reporter's fingers down. I'm going to try and move

15 through this a little bit more quickly.

16 We concluded talking about substantial factors,

17 including talking about how California law specifically

18 refers to it as a qualitative notion instead of a

19 quantitative notion, and California law does not say that

20 it has to be the factor, that it has to be major, that it

21 has to be only -- any of those terms that counsel is going

22 to invite you to think of it as.

23 When you get into the jury room, my strong

24 request and suggestion is if you hear another juror say it

25 has to be the major, the only, the most, it has to be

Page 3

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1 numeric, that you tell them to look at the jury

2 instruction again. That is 431 and 435. It has to be a

3 substantial factor that contributes to cause the disease

4 response in Mr. Whalen that contributes to increase the

5 risk of disease in him, in Mr. Whalen.

6 The testimony from a variety of plaintiffs'

7 witnesses in this case was that the exposures at issue in

8 this case, each exposure increased Mr. Whalen's risk of

9 disease, and that each exposure, therefore, based upon

10 medicine and science is, by definition, a substantial

11 factor. You can't pull out any part of that dose and

12 still have the response.

13 I asked the defense experts, because I wanted to

14 know and I wanted you to know, if they had any article,

15 anything they could point you to that suggests that there

16 is another way of thinking about it, to suggest that you

17 could do what they were suggesting and apply this

18 theoretical risk in a person who doesn't have a disease to

19 assign causation and validly conclude that there is some

20 causation in some places and no causation in other places,

21 and to a man not a woman, they told you they couldn't do

22 that. If there are any questions about that, ask for

23 readback of the testimony.

24 We will move back onto the strict products

25 liability, the second component of plaintiffs' claim.

Page 6

1 Again, you are focused on product, and this is a -- there
 2 is a lot packed into this sentence, but it says: Did John
 3 Crane's products -- again, gaskets and packing -- have
 4 potential risks that were known or knowable through the
 5 generally recognized and prevailing best scientific and
 6 medical knowledge available -- and this is important -- at
 7 the time of manufacture, distribution or sale.

8 So the exposures to Mr. -- that Mr. Whalen has
 9 started in 1964. That is the starting point. Here is the
 10 simple truth of the evidence, ladies and gentlemen, there
 11 are lots of complexities in this case, but you'll see the
 12 simple truths emerge out of great complexity.

13 Now, one of the simple truths in this case,
 14 ladies and gentlemen, is that the documents that the
 15 defendants tried to rely very heavily on, and I think in
 16 some ways were moderately successful with, start in 1971.

17 The start date at issue here is 1964. Again,
 18 1964, so the question is: What was available in the
 19 medical and scientific literature prior to 1964?

20 We answered that question with our witnesses,
 21 with Dr. Richard Cohen, and we answered that question in
 22 some detail when they brought Mr. Henshaw up here, and you
 23 will remember that Mr. Henshaw showed a PowerPoint, and
 24 the PowerPoint kind of astounded me personally, because he
 25 went from 1930 to 1960 as though in 30 years there had

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1 been no published literature with respect to the hazards
 2 of asbestos.

3 We walked through, and I am going to show them --
 4 I'm not going to walk through them. We're not going to
 5 read them for the 850th time -- that we walked through, in
 6 1931, the Engineering Magazine of Safety by Dr. Wilson,
 7 this is -- and you can probably say it with me now -- a
 8 line wherein it says: We do know, however, that breathing
 9 dust in the following conditions is seriously harmful
 10 asbestos in every operation in which it is used.

11 I asked Mr. Henshaw if he could explain to me,
 12 did they really mean every operation. There was no way
 13 that he could explain his way around that. In fact, he
 14 never seen this article before, ladies and gentlemen.

15 They brought you here somebody who is supposed to
 16 be an expert in the state of the art who happened to leave
 17 out a fairly important article from 1931.

18 Moving forward through the literature, I think
 19 they agreed with me that Dr. Merewether was, as a crude
 20 way of putting it, kind of a big deal with respect to
 21 asbestos and the hazards associated with, but they don't
 22 really want to talk about Dr. Merewether's work from 1932.

23 The reason, frankly, that this is important with
 24 respect to John Crane, and we made the point I think
 25 briefly in cross-examination, but I will underline it for

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1 you here. It's not often -- it's not always the case that
 2 we have the benefit of the company that was actually
 3 manufacturing products in England. You have the benefit
 4 of that in this case.

5 John Crane actually in England manufacturing
 6 asbestos-containing products at the time these
 7 publications are coming in.

8 So with respect to what Dr. Merewether says, and
 9 you all have seen this a few dozen times, in 1932, when he
 10 is talking about asbestosis and this paragraph again, you
 11 all have seen it. I'm going to show it for you here
 12 again, mostly because I was kind of astounded by the fact
 13 that Mr. Henshaw seemed to think that it didn't say what
 14 it says.

15 What it says is with respect to industries and
 16 processes in which asbestosis occurs; that is, the
 17 scarring response that every expert that came and
 18 testified, defense and plaintiff agreed, you would need a
 19 substantially, substantially higher dose of asbestos to
 20 induce than you would need for mesothelioma. Okay.
 21 Everybody agreed on that point.

22 Even needing a substantially higher dose to
 23 induce it, Dr. Merewether here is specifically talking
 24 about processes of repairing or insulating mattresses
 25 composed wholly or partly of asbestos, and the sign

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1 grinding and turning in the dry state of articles composed
 2 wholly or partly of asbestos, such as carburetors and
 3 clutch linings, electric conductors, packing and glandings
 4 (phonetic). This is in 1932.

5 The testimony from the defense experts was
 6 basically that nobody talked about gaskets and packing
 7 until the late '70s. Well, you are looking at it, and
 8 it's 1932, ladies and gentlemen. Nobody came in here and
 9 told you that Dr. Merewether was anything other than the
 10 preeminent, early expert in this field. Nobody came in
 11 here and told you anything that would contradict the very
 12 simple premises that he laid out, that the basis of the
 13 exact same causation analysis that I am talking to you
 14 about here today, which is that asbestos-related diseases
 15 with long latency, whole-dose-response-related disease is
 16 dependent on an individual's susceptibility. That is from
 17 the 1930s, ladies and gentlemen. All those premises are
 18 laid out in the medical and science literature, that it is
 19 understood at that point in time that you've got a product
 20 that you are exposing somebody to and you are not going to
 21 see a disease response for decades. Decades. They
 22 understand that in 1930s, and Dr. Merewether in 1932
 23 specifically calls out packing and gaskets.

24 Moving forward through the literature, ladies and
 25 gentlemen. We spent a lot of time talking about the

<p style="text-align: right;">Page 10</p> <p>1 Bonsib study. I will not show it to you. We will not go 2 through it again. You heard the cross-examinations. You 3 heard the evidence. The point of this study, and I think 4 you should be clear on, is that there were industries who 5 were clear on the hazard at this point in time.</p> <p>6 There were industries who were taking notice, 7 doing exactly what John Crane could have and should have 8 done, and saying there is a lot of stuff being published 9 about this substance called asbestos, and we as a 10 concerned corporate citizen are looking into this and we 11 want to know how to best protect the workers, and that is 12 an example in 1937.</p> <p>13 1937, we are so early in history. My client is 14 not even born yet, and we are talking about these kinds of 15 things. Okay.</p> <p>16 Moving forward through the literature we come 17 to -- we come to a lot of things, but one of the things 18 that we come to, in particular with respect to John Crane, 19 is kind of important, is Illinois, their home state, 20 starts regulating asbestos in the '30s and the '50s. 21 Dr. Cohen testified to that. Mr. Henshaw agreed to it, 22 and this is specifically with regard to Workers' 23 Compensation claims, Illinois is listing asbestos-related 24 diseases as part and parcel of Worker Compensation claims 25 in the '50s, in the 1950s.</p>	<p style="text-align: right;">Page 12</p> <p>1 areas of publications, not that you really needed for 2 somebody to tell you that when the guy is the head of the 3 NIH and the National Cancer Institutes in the '50s, but in 4 case you needed it. Everybody agreed on that point.</p> <p>5 Dr. Huper, again, specifically -- you've seen it. 6 I'm not going to put it up for the 400th time -- 7 specifically calls out the trade, pump packing mechanics, 8 pump packing mechanics, in particular, as being at risk 9 for asbestos-related disease. John Crane at that time is 10 selling pump packing. That is what they are doing. They 11 are selling asbestos-containing pump packing, and the 12 scientific and medical literature is very clear in calling 13 out -- not that I think, frankly, folks, that I need to 14 prove that the scientific and medical literature 15 specifically calls out the hazard specifically as to John 16 Crane, because as every witness has come in here and told 17 you, you have to control the dust to control the disease. 18 But since they made this a premise of their case, that 19 nobody was talking about it and it is so darn easy to 20 refute that premise, let's do it.</p> <p>21 There were four, five, six, seven publications 22 and major scientific and medical peer-reviewed journals 23 that were available in circulation prior to 1964 that 24 specifically call out the hazards associated with packing 25 and gaskets -- specifically.</p>
<p style="text-align: right;">Page 11</p> <p>1 We get to an article that I want to show you, in 2 particular, if I can find it again. Something about this 3 article is worrying me this whole trial, but we showed it 4 with Mr. Henshaw and it is the entry from 1956, I believe, 5 from the Association of Industrial -- sorry -- Association 6 of Industrial Hygienists, and of which Mr. Henshaw was a 7 past president. Dr. Madl was a member of and Mr. 8 DePasquale was a member of, and a variety of folks that 9 have come to testify here were members and spoke highly 10 of.</p> <p>11 This is a publication prior to the 1960s, before 12 Mr. Whalen ever touches a packing gasket product that 13 specifically calls out asbestos as a hazard. Do you 14 remember? Specifically calls out that 95 percent of what 15 was being commercially used at that time was chrysotile 16 asbestos and specifically calls out the uses of asbestos, 17 including, again, gaskets and packing and this is in the 18 1950s.</p> <p>19 That brings us to the work of Dr. Huper who was 20 the chief carcinogenic studies, National Cancer Institutes 21 of Health, and he is publishing -- the first publication 22 is 1950, his second publication is 1958. He publishes a 23 third publication in 1961. Every witness that testified 24 in this case told you that the work of Dr. Huper is 25 seminal, well respected in the field, one of the major</p>	<p style="text-align: right;">Page 13</p> <p>1 Any doubt about that? Take a look at the 2 testimony of Dr. Richard Cohen, take a look at the cross 3 of Mr. Henshaw. It will confirm exactly what I said. I 4 will not reiterate the literature for the 400th time.</p> <p>5 The answer to that question is, did John Crane's 6 products have potential risks that were known or knowable 7 to the generally recognized and prevailing best scientific 8 and medical knowledge available at the time of 9 manufacture, distribution and sale? The answer is yes.</p> <p>10 You will recall that I asked Dr. Cohen: Up to 11 this point in time, Dr. Cohen, is there another story 12 being told in the literature? Is there somebody out there 13 saying it's totally fine to use asbestos, create the dust 14 you want to create, nobody is really going to be harmed by 15 it. There is a level at which nobody is going to get any 16 kind of disease. And you will remember what Dr. Cohen 17 said, no, that is not what is being published in the 18 literature. It's not what's being published.</p> <p>19 Even if we move into the '70s, and you look at 20 Harries and Dr. Selikoff, if you look specifically at 21 Dr. Selikoff, look at what he is saying about low-dose 22 exposures. Look at what he is saying about low-dose 23 exposures. They are saying that you see -- and his 24 language is trivial, trivial exposures. He is not an 25 industrial hygienist. You are going to have to take him</p>

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1 at his word, but trivial means trivial. Even at trivial
 2 exposures there still is seen increased risk of this
 3 disease, mesothelioma.
 4 So, sure, they want to point to a chart in the
 5 back of the book and disregard 85 percent of what this
 6 man's lifework was about. They are entitled to do that,
 7 ladies and gentlemen, but you are entitled to evaluate the
 8 body of the literature and put it in context, and that is
 9 what I'd ask you to do when they talk to you about those
 10 experts.
 11 Moreover, look at the actual dates at issue,
 12 which is prior to 1964, and to be frank, they don't have a
 13 lot there to help support this notion that nobody was
 14 talking about gaskets and packing then, so with respect to
 15 question No. 5, the answer is yes.
 16 We move on to question No. 6, did the potential
 17 risks present a substantial danger to users of the
 18 products. Did the potential risks present a substantial
 19 danger to users of the products. The answer to that
 20 question, ladies and gentlemen, is found in the testimony
 21 of Mr. DePasquale, Dr. Brody, Dr. Smith, Mr. Compton --
 22 excuse me -- Dr. Compton, and the potential risks with
 23 respect to these products is enumerated: asbestosis, lung
 24 cancer, mesothelioma. Pretty high in the category of
 25 potential risks. Nothing gets much more serious. We are

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1 talking about two -- at least one disease is invariably
 2 fatal, one disease that is very often fatal, and another
 3 disease that's a scarring, permanent response that Dr.
 4 Merewether pointed out in the '30s could lead to
 5 mesothelioma. So, three different ways that this product,
 6 in a sufficient dose, can kill you.
 7 When you are talking about a substantial danger,
 8 I want you to consider the facts of this case, and the
 9 facts of this case are as follows: We have somebody who
 10 is a perfect example of a mixed exposure -- cohorts is the
 11 wrong word, but somebody who has had mixed exposures
 12 throughout their career. You are not talking about
 13 somebody who was a career insulator who worked with a
 14 gasket one time.
 15 That is not the situation you have here as much
 16 as I think somebody would like to construe it that way.
 17 We are talking about somebody who had incidental exposure
 18 to insulation, and I'm not saying incidental exposure
 19 means not important exposure. It was very important
 20 exposure, but this is not his career. He is not a career
 21 insulator. He's working around insulation on ships.
 22 Their own experts told you that insulation would have been
 23 painted with three coats, and, according to them,
 24 encapsulated, loose and/or, in my opinion, gaskets and
 25 packing are encapsulated in insulation that's been painted

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1 four times and is encapsulated.
 2 So, with respect to that, ladies and gentlemen,
 3 at least what we are trying to say to you is there has to
 4 be some kind of internal consistency when you are
 5 evaluating a hazard. I think insulation is a hazard. I
 6 think asbestos in gaskets and packing is a hazard. I
 7 think asbestos in fabric is a hazard. Asbestos is a
 8 hazard. It doesn't matter what shape, form, et cetera
 9 that you put it in, and that has been the testimony in
 10 this case.
 11 One of the clear, clearest I thought and, in my
 12 opinion, the most demonstrative illustrations of the
 13 reasons that we know that asbestos is, in all forms, a
 14 hazard even if you, quote, encapsulated it, is when you
 15 actually take a look at the products itself under
 16 magnification.
 17 This is what we talked about, ladies and
 18 gentlemen. We saw this with Dr. Compton. This is
 19 pressing a finger, pressing a finger to the product, not
 20 using it dry, not using it in a pump, not pulling it out
 21 of material after it has been under steam pressure, which
 22 is its intended use. This is simply touching it, and you
 23 are generating three viable asbestos fibers available for
 24 release. When you are talking about something presenting
 25 a substantial danger, the question of danger with respect

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1 to asbestos as defined by everybody who came and testified
 2 in this case, is: Can it generate respirable fibers, and
 3 the answer to that question is yes. And you generate
 4 respirable fibers, contributing to the dose, it
 5 contributes to the disease. In somebody like Mr. Whalen,
 6 we know what the end result of that was.
 7 Moving on with ordinary consumers who failed to
 8 recognize the potential risks. This is, again, I think a
 9 fairly easy one, ladies and gentlemen, because you are
 10 talking about -- this comes from the area of the law where
 11 basically if you jump out of an airplane, you might know
 12 that that's a fairly high-risk activity. As an ordinary
 13 consumer you would probably appreciate that sky diving has
 14 certain risks in it.
 15 The question with respect to these asbestos
 16 products and the testimony that is important on this point
 17 is the testimony that you can't tell visually as an
 18 individual. You can't distinguish a product that contains
 19 asbestos from a product that doesn't. What is important
 20 about this is it's basically saying, to a certain extent,
 21 if there is something that's such an obvious hazard, the
 22 law doesn't necessarily say that a manufacturer always has
 23 to. When you are talking about asbestos you have heard
 24 the hazard is invisible. The hazard has no acute
 25 reactions. In fact, Dr. Crapo's testimony about his

<p style="text-align: right;">Page 18</p> <p>1 one-hour exposure to rats after 30 days is illustrative of 2 that point.</p> <p>3 Asbestos doesn't have an acute immediate reaction 4 the way you would have if somebody had spilled ammonia, 5 and you would know that it's something toxic and you would 6 smell it. Nothing with respect to asbestos. Asbestos is 7 not going to be -- in hazardous quantities, you are not 8 going to be able to see it unless you use that Tyndall 9 lighting that would show it with respect to Dr. Compton's 10 testimony. This is an invisible hazard. Somebody, even a 11 trained pipefitter, will indicate to you that it is not 12 possible to tell the difference between asbestos and 13 nonasbestos gaskets. They have no way of knowing that 14 they are working with a hazard unless somebody warns them 15 about the hazard.</p> <p>16 That is the very simple principle at the heart of 17 this next question, and that, ladies and gentlemen, is 18 question No. 7, and the answer is yes. Did John Crane -- 19 this is sort of one question. Did they fail to adequately 20 warn of the potential risks? That is fairly easy to 21 answer, because they didn't include any warning at all 22 until 1983.</p> <p>23 The simple answers to simple questions category, 24 the simple truths category, did they fail to adequately 25 warning, well, yes, because they didn't provide any</p>	<p style="text-align: right;">Page 20</p> <p>1 about substantial factor. It's the same evidence, and the 2 law applies here as it did before. The instructions of 3 431 and 435, no defense to say that other people didn't 4 warn and that was also a substantial factor. I agree. It 5 was. Although that is defendant's burden to prove, I tend 6 to agree with them on that one, ladies and gentlemen. It 7 is internally consistent, and comports with the science 8 and medicine, as we understand it, and it doesn't make a 9 lick of sense to me when you can point your finger at 10 another gasket manufacturer or pump manufacturer that says 11 you are not responsible -- and say that they're 12 responsible and say that you are not also responsible as a 13 participant in the dose.</p> <p>14 So was it a substantial factor for all the 15 reasons, including the definitions that we have been 16 through? The answer is yes.</p> <p>17 Then we move on to negligence. Negligence. Was 18 John Crane negligent in designing, manufacturing and 19 supplying, inspecting or failing to warn with respect to 20 their products? Again, gaskets and packing.</p> <p>21 Negligence, the definition you will find is at 22 400 and 401. This kind of got jammed in after the 200 23 series in your instructions. If you are numbering your 24 instructions, this is on page 18.</p> <p>25 401 is really kind of the main definition here.</p>
<p style="text-align: right;">Page 19</p> <p>1 warning until 1983. Even when they provide a warning in 2 1983, which is 20 years into Mr. Whalen's working life. 3 Okay. Twenty years in they throw a warning on the 4 exterior of the packages -- and, incidentally, what you 5 are going to find, and we will talk about this in a little 6 bit more detail, is that the warning doesn't say a thing 7 about cancer, not a thing. It says avoid creating dust.</p> <p>8 What's curious about that is they release a 9 material data safety sheet in 1981 acknowledging the 10 cancer risk, but when they slap a warning on the products 11 in 1983, they manage to leave out the potential risks. 12 That's kind of an important fact.</p> <p>13 Imagine the effect of a warning that says: 14 Warning: Invisible death. Cancer risk. Okay. That is 15 pretty darn strong language. That makes pretty darn clear 16 what the hazards are associated with, and that is the kind 17 of warning that really should have been on these products.</p> <p>18 It wasn't on these products, and when they warned 19 they stayed away from the language that really would have 20 hurt their sales, which is talking about cancer risks 21 associated with the product.</p> <p>22 Moving on, since the question is yes, here we are 23 back again. I told you that this same concept of 24 substantial factor was going to repeat and here it 25 repeats. I am not going to restate all of our discussions</p>	<p style="text-align: right;">Page 21</p> <p>1 Negligence is the failure to use reasonable care to 2 prevent harm to oneself or to others. A person can be 3 negligent by acting or failing to act -- they are 4 technical terms -- act or omission. With respect to John 5 Crane, they've got a bunch of negligent acts and a few 6 major omissions, and I will talk you through each one of 7 those.</p> <p>8 A person is negligent if he or she does something 9 that a reasonably careful person would not do in the same 10 situation and fails to do something or fails -- this is 11 its omission portion -- that a reasonably careful person 12 would do in the same situation.</p> <p>13 You, ladies and gentlemen, must decide how a 14 reasonably careful person would have acted in John Crane's 15 situation.</p> <p>16 Now, I want to move through a couple of examples 17 of things that I think fall into the broad heading of acts 18 and omissions that were negligence on John Crane's part in 19 this case.</p> <p>20 The first one, folks, is potentially the most 21 obvious. Okay. The omissions. The omissions in a 22 category of negligence. This is the testimony of George 23 McKillop, and I will be showing you some pieces of this 24 because we had to do this via read-in. It is the most 25 terminally boring way to introduce evidence. I know you</p>

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1 all were paying attention, but there is a lot that gets
 2 flushed through there. It's hard to stay awake, not that
 3 I don't think you did, but it's just hard. It's boring
 4 testimony when you read it in.

5 This comes from the testimony of Mr. McKillop.
 6 It is also true that Crane Packing did not do any research
 7 prior to 1970 to determine whether asbestos posed any
 8 health hazards. He answers -- he kind of waffles -- it
 9 depends on what kind of research you are talking about,
 10 period. And then you get the honest answer, which is:
 11 No, they didn't. Okay. Omission.

12 You are a manufacturer manufacturing a product.
 13 The law holds you accountable for the research with
 14 respect to the products. You are not allowed to sell a
 15 product that contains toxic components without first
 16 investigating whether or not those components can cause
 17 harm to human beings. And here, ladies and gentlemen,
 18 they are just flat-out telling you they didn't bother to
 19 do it. It doesn't get much clearer than this.

20 Prior to 1970, to your knowledge, did Crane
 21 Packing ever say to a medical health professional: Our
 22 product is made up of the following things, one of which
 23 is asbestos.

24 Does that pose any health hazards?
 25 Answer: I wouldn't be aware of that.

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1 Question: You never heard of anything like that?
 2 Answer: No.

3 Omission. Negligent omission No. 1.
 4 Negligent omission No. 2, again from Mr.
 5 McKillop's testimony: Did John Crane ever perform any
 6 tests in the field, let's say at a customer's facility to
 7 see if there was a fiber release from any of its
 8 asbestos-containing products?

9 Answer: No, we didn't. We never tested product
 10 in the field.

11 We never tested product in the field. Ladies and
 12 gentlemen, this is an asbestos-containing product. They
 13 are bringing raw asbestos into their plant. They are
 14 selling this as their main product to the Navy, and they
 15 are not bothering to test it in the field to see if there
 16 was asbestos fiber release.

17 This is one of the main reasons, folks, that they
 18 have to bring consultants in here and charge as much as
 19 they do to talk to you about asbestos-containing fiber
 20 release for studies that they did 40 years after the fact,
 21 because these guys never actually bothered to do any
 22 testing at the time they were actually selling it, when
 23 their feet were in the fire and people were actually being
 24 exposed to it.

25 That is the time in this case that counts, ladies

Page 24

1 and gentlemen, because that is the time in this case that
 2 my client was exposed.

3 Moving forward. Mr. McKillop, from the time that
 4 you got there to the time that you left, 1951 through
 5 1995 -- he says '95 -- Question: '95, did John Crane, to
 6 your knowledge, ever test a single one of its products to
 7 determine if it released asbestos fibers, asbestos fibers
 8 into the environment?

9 And he says no, but there is an explanation for
 10 that. We can go through all the testimony if you want.

11 It doesn't really ever seem to have an
 12 explanation for that. I guess he didn't ask counsel about
 13 what it is.

14 During the period from 1951 to the time that you
 15 left, to your knowledge, did John Crane ever consult with
 16 anybody in the medical field to determine if there was any
 17 health hazard from its product?

18 Answer: Not that I'm aware of.

19 Negligent omission. You don't get to sell a
 20 hazardous product without researching the product before
 21 you put it on the market. Once it is out there, ladies
 22 and gentlemen, it's too late to protect folks. That is
 23 the basic principle of California products law, that you
 24 have to protect consumers. You have to do it before you
 25 sell the product. You have got to look at the hazards

Page 25

1 associated with your product before you start making
 2 money.

3 Let's talk about some of the negligent acts with
 4 respect to John Crane. Let's start with one of the easy
 5 ones. He is talking here about the material data safety
 6 sheets. You heard about this from Mr. Henshaw.

7 This is actually used by customers. This is
 8 something that you gave customers. I don't know how to
 9 characterize it. If they asked for it, it was given to
 10 them. They had to ask for it to get it.

11 Answer: Yes, this is the thing that warns people
 12 about the hazards associated with the product.

13 So the premise of this, and it's a little strange
 14 to me, is that you would have to know there was a hazard
 15 associated with the product in order to ask them about the
 16 material that would have told you that there was a hazard
 17 associated with the product.

18 That's not the way this works, folks. It doesn't
 19 work that you can say it's on the consumers to figure out
 20 that there is a hazard and then come to us as the
 21 manufacturers and say, hey, we think there is a hazard.
 22 Do you guys have any documentation anywhere that might
 23 actually tell us about that.

24 It's on the manufacturer. It's the
 25 manufacturer's responsibility to warn about the hazards

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1 associated with their products. They knew about the
 2 hazards associated, and still here they are making people
 3 come to them and specifically ask for it before they
 4 bothered to give it to anybody.

5 Wait, it gets worse, folks, because what we have
 6 here -- I don't even think I need to characterize this.

7 Mr. McKillop, did any of your John Crane catalogs
 8 or bulletins before 1972 -- you used -- contain the words
 9 "safe" or "nontoxic" when talking about
 10 asbestos-containing products?

11 Yes, it did.

12 I really got nothing. I've got nothing. It's as
 13 simple as it gets. They are not testing the product.
 14 It's one thing, it's one thing to not test and to not
 15 warn. It's got to be a completely other thing to not
 16 test, not warn and then affirmatively represent that your
 17 product is safe. If that is not negligence, the word has
 18 no meaning.

19 Was John Crane negligent in designing,
 20 manufacturing, supplying, inspecting or failing to warn of
 21 their products? Yes.

22 Here we are back -- was John Crane's negligence a
 23 substantial factor in causing harm to Robert Whalen?

24 Well, yes. Why do we know that? Because the
 25 time period we are talking at issue here, as I indicated

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1 to you earlier, we are square on Bob Whalen, who was in
 2 these submarines working with these materials where there
 3 is no warnings being provided. We are dead center in the
 4 middle of his work career, ten to 15 years in the middle
 5 of his work career when John Crane admits -- they admitted
 6 they know in the '70s about the hazard of asbestos. They
 7 don't put warnings on anything until the 1983 time period,
 8 13-year gap, folks, between when they know and when they
 9 warn, and right in the middle of that is Bob Whalen and
 10 all of his exposures. John Crane gaskets and John Crane
 11 packing materials.

12 Was it a substantial factor in causing harm to
 13 Robert Whalen? The answer is yes.

14 We are going to move now into an area, folks, I
 15 don't want to spend a lot of time characterizing it,
 16 because it was probably some of the hardest testimony to
 17 hear. We have to cover kind of a quick, brief point,
 18 which is -- we talked at the beginning. You are going to
 19 be asked to assess percentages of liability as to John
 20 Crane, basically the U.S. Navy to the extent that you
 21 think they are responsible, and All Others, and here we
 22 have defined All Others.

23 Each of those percentages of liability is going
 24 to be a part of the assessment that I will leave to the
 25 jury in its infinite wisdom to come up with respect to

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1 what you believe the evidence has shown about Mr. Whalen's
 2 work with and around John Crane packing products, John
 3 Crane gasket products, and et cetera.

4 So what is important about understanding this,
 5 though, is that assuming 100 percent represents the total
 6 fault of plaintiffs' harm, so when we are talking about
 7 damages we are talking about -- unfortunately, what
 8 damages mean in civil cases is money. When we are talking
 9 about damages, the way you calculate damages is you
 10 calculate the total. You take into account the total the
 11 damages at issue for Mr. Whalen in this case, economic and
 12 noneconomic, and then you are going to determine the
 13 percentage and after your verdict is rendered the judge
 14 goes back and basically applies the percentages that you
 15 determine based on a variety of other factors.

16 When we get to talking about damages, the way
 17 that the jury does its damage analysis is you actually
 18 evaluate the total damages. Damages as to Robert Whalen,
 19 period, and Mrs. Whalen, in total, and then you assign the
 20 percentage and the judge does all the math kind of thing.
 21 Just so you know, that is what we are talking about when
 22 we get to damages.

23 In this case, one of the ways that the parties
 24 endeavored to make your life a little bit easier, ladies
 25 and gentlemen, is that we stipulated to what are called

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1 the economic damages. The economic damages, we talked
 2 about it when it was introduced, but, basically, economic
 3 damages are things like medical bills, lost wages,
 4 et cetera, et cetera.

5 It is the damages that are easiest to quantify.
 6 I don't know if I can find the page on it. What is nice
 7 about this is that you don't have to go through the whole
 8 process of trying to crunch all the numbers yourself. We
 9 have saved -- I know it doesn't feel like it, but we saved
 10 a fair amount of time in this trial by not having to call
 11 experts to argue about what that number means.

12 With respect to the noneconomic damages, you also
 13 see it in the jury instruction and that is 3902. I will
 14 write it up here for you. That is on page 29. You will
 15 see there in the instruction that the judge gave you is
 16 the parties have stipulated that the economic damages in
 17 this case, that number up there, it's 86,113 and no cents.
 18 Okay. That is one of the easy questions. There are not a
 19 ton of easy questions, but that is one of them.

20 When you come to noneconomic damages, folks, the
 21 jury instructions that you will want to take a look at is
 22 3905. That is at page 31. Noneconomic damages refer to
 23 past and future, and it separates each of these.

24 Physical pain, mental suffering, emotional
 25 distress. No fixed standard exists for deciding the

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1 amount of these damages. You have to use your judgment to
 2 decide a reasonable amount based upon the evidence and
 3 your common sense. I am not going to give you numbers for
 4 this. There are some attorneys that will do that. I
 5 personally don't think it's appropriate. I'm going to
 6 trust that you all heard the evidence. I'm going to trust
 7 that you all heard, and I know you did because I was here
 8 with you and I watched some of you see this testimony.
 9 The testimony with respect to Mr. Whalen and his disease,
 10 and what it has been like and what he is going through and
 11 what he is going to go through.

12 I trust that you heard the testimony of Dr. Horn
 13 who described what the end stages of this disease look
 14 like. I trust that you heard the testimony of Mrs.
 15 Whalen. That is really all I'm going to say about the
 16 nature of that, folks. If you have any questions about
 17 it, if you have any concerns about it, if you have any
 18 doubt as to the severity of what he is experiencing,
 19 review that testimony. I expect that most of you don't
 20 need to.

21 With respect to the nature of this loss, because
 22 this loss is hard to quantify, because it really is a
 23 priceless loss does not mean that it is a valueless loss.
 24 What I mean by that, and I'm going to tell you right now I
 25 am purposefully going to pick an extreme example. I know

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1 it's an extreme example.

2 I don't think this is the right amount of money
 3 at issue in this case, but I need to pick an example and
 4 use one.

5 There is a stealth bomber that crashed in Guam
 6 about five years ago now. Stealth bombers cost the United
 7 States government \$1.2 billion every time they build one.
 8 There were two pilots in that stealth bomber that ejected
 9 safely. Nobody was hurt when it crashed. Nobody cared
 10 about the \$1.2 billion that that stealth bomber cost,
 11 because all that mattered in that case was that the two
 12 pilots safely ejected from the plane.

13 When the plane crashed in San Francisco, SFO, two
 14 years ago now I guess, and missed the runway and came up
 15 short, did you hear anywhere in the news reporting,
 16 anywhere in the coverage anybody talking about how much
 17 the plane cost? There was no reporting, folks, and that
 18 is because intuitively we understand that the value of
 19 these damages are lived. These are valuable damages that
 20 human life truly, truly, truly does not have a price.

21 The unfortunate task that you have as jurors in
 22 this case is trying to come up with some measure, some way
 23 of quantifying that damage. These are lived damages.
 24 These are real damages. These are damages that the
 25 Whalens are experiencing every minute of every day, ladies

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1 and gentlemen, and it's a tremendous task that's going to
 2 be on your shoulders with respect to discussing this.

3 What I would ask of you is not to be stymied by
 4 the weight of having to come up with a decision on that,
 5 because they are real. They are concrete. They are lived
 6 and they are experienced.

7 Unfortunately, because you can't take away Mr.
 8 Whalen's mesothelioma, because you can't restore to Mrs.
 9 Whalen her husband in his full and healthy state, the only
 10 tool you have as jurors in a civil case is money to
 11 balance the scales. That is what we are asking you to do
 12 in this case.

13 Ladies and gentlemen, thank you so much for your
 14 time and attention. Thank you so much for being here, and
 15 I will ask you to give the same kind of attention to Mr.
 16 Griffin as he talks to you. Although you probably will
 17 not want to hear from me again, you will have the
 18 opportunity to hear from me again before this case is
 19 submitted. Thank you very much.

20 THE COURT: Do you need a break to set up?
 21 MS. ALESIO: I can get all my stuff out of here.
 22 THE COURT: Okay.
 23 MR. GRIFFIN: Five minutes.
 24 THE COURT: Let's do a five-minute break so that
 25 we can get all set up and then go and stretch. If

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1 somebody needs to use the restroom, you can, but don't
 2 wander too far.

3 (Short recess.)
 4 (Jury present and seated in the jury box.)

5 THE COURT: Are we ready to proceed?
 6 MR. GRIFFIN: Yes, Your Honor, thank you.

7 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

8 MR. GRIFFIN: May it please the Court, good
 9 afternoon, Your Honor, counsel, staff, members of the
 10 jury, I'm going to have to reintroduce myself.

11 My name is Dan Griffin, and on behalf of Mr.
 12 Nelder and all the other attorneys who have represented
 13 John Crane, we really and truly want to thank you.

14 I also want, on behalf of John Crane, thank you
 15 very much for your time. You have been following the case
 16 very closely and what we're doing today, and they wanted
 17 me to ask you and thank you for your time away from your
 18 families and your jobs. We truly, truly thank you for
 19 that.

20 The State of California gives me exactly one
 21 opportunity to do what I'm doing right now. I have one
 22 chance to take all of the testimony that you have heard,
 23 summarize it and draw reasonable conclusions in this case.

24 Now, Ms. Alesio will have another opportunity to
 25 come up and speak to you. I won't. So if you promise me

<p style="text-align: right;">Page 34</p> <p>1 to pay attention and just stay with me, I will move 2 through, I think, some of the evidence that you have 3 heard, but then I'm done. Now, I will have to sit back 4 down and almost no matter what is said after that, I have 5 to sit there simply like you have been doing for so many 6 weeks now. This is all I have. This is my only chance to 7 do it.</p> <p>8 At the beginning of the case I told you there 9 were four reasons that you could find in favor of John 10 Crane. I am going to come at this case from an entirely 11 different angle. Instead of walking through the verdict 12 form and trying to push the law into the case, I'm going 13 to use the exact same four reasons I told you at the 14 beginning of the case, except now they are not just 15 reasons why you can find in favor of John Crane, they are 16 actually going to answer questions on your verdict form. 17 So some of these reasons are going to answer multiple 18 questions, but I'm still going to go through these four 19 reasons.</p> <p>20 This is going to look very familiar. The case 21 has been consistent. The facts are what we thought they 22 were going to be many months ago. At the beginning of the 23 case we thought we knew what the evidence was going to be, 24 and now today, at the end of the case, we can show with 25 you -- and share all the evidence that has come into this</p>	<p style="text-align: right;">Page 36</p> <p>1 will see is that every single cause of action that the 2 plaintiff owns has the same last kind of issue, which is: 3 Well, then, did it cause -- was it a substantial 4 contributing factor for Mr. Whalen's injury. That same 5 question is repeated over and over in your verdict form. 6 It's questions 4, 9 and 11, and as the evidence was 7 presented, issues Nos. 2 and 3 will answer those 8 questions.</p> <p>9 Finally, No. 4, that is going to answer questions 10 Nos. 5 and 10 or your verdict form. They deal with 11 warning, and they deal with what was known or knowable at 12 the time. I'm going to say it again and then I will move 13 into what the evidence showed.</p> <p>14 No. 1 is going to answer question No. 15, the 15 allocation question.</p> <p>16 Issues Nos. 2 and 3 are going to answer those 17 cause questions Nos. 4, 9 and 11.</p> <p>18 And issue No. 4 is going to answer the questions 19 Nos. 5 and 10.</p> <p>20 The law is very -- it may not be clear, but it's 21 written as clearly as it can be. If you look at that 22 instruction, No. 431, Ms. Alesio walked through some of 23 these with you. You will recall some of the words were 24 underlined to emphasize specific issues in that 25 instruction. She wanted you to pay attention to a</p>
<p style="text-align: right;">Page 35</p> <p>1 case. I will tell you why these four reasons actually 2 were borne out by the evidence and how they actually 3 answer your questions.</p> <p>4 I think it's kind of a practical way to look at 5 what you already know and use it to answer your questions 6 on your verdict form, because what you are going to find, 7 I think, is when you get into the deliberation room there 8 might be some disagreements about what the evidence was.</p> <p>9 These are your four tools that some of you will 10 need to answer the questions.</p> <p>11 I'm going to tell you right now you are going to 12 have to answer your question and the questions on the 13 verdict form in order. That is just the way it is. But 14 because I'm taking kind of a factual, practical approach 15 to this, No. 1 really deals with the last question on your 16 verdict form. All right. So everything I talk about for 17 question No. 1 is going to answer No. 15 on your verdict 18 form. It's not in order, but that is the way the evidence 19 was presented. That is the way your notes are going to be 20 organized, so instead of trying to explain these causes of 21 action and how they apply, I'm giving you the facts and 22 how you can use them in the causes of action. I hope that 23 works.</p> <p>24 Issues Nos. 2 and 3 are going to answer questions 25 Nos. 4, 9 and 11 on your verdict form, because what you</p>	<p style="text-align: right;">Page 37</p> <p>1 substantial contributing factor, and the letter A that we 2 only need to be A. What I want you to pay attention to is 3 at the very beginning of instruction 431, the second 4 sentence of that instruction that the Court gave you has a 5 big if. That is a question that you have to answer.</p> <p>6 There is a big if at the beginning of that 7 sentence. While it may be true that the law recognizes a 8 contributing cause and a contributing factor, you first 9 have to answer that if question. You have to decide if 10 John Crane was a substantially contributing factor. That 11 is what the law is in the case.</p> <p>12 At the very end of this instruction there is the 13 word that you have heard many, many times and it was 14 discussed many, many times in the closing statement: 15 Risk.</p> <p>16 Now, look at the law. The law does not say 17 anywhere in this packet that Mr. Whalen was at 100 percent 18 risk. That is argued. What the law is is addressing this 19 issue of risk. Look at the instruction. That word is 20 risk, an unqualified word. It does not say cause, it says 21 risk. It does not say 100 percent risk, it says risk. I 22 want to make it abundantly clear, because that is 23 important. You are going to be looking at this 24 instruction many times, I think, in the deliberation room, 25 and I want to make sure that you knew that.</p>

<p style="text-align: right;">Page 38</p> <p>1 The first reason I think that you can check no 2 for John Crane on this verdict form is that Mr. Whalen's 3 injury I think was caused by his intense amphibole 4 exposure. This was stressed much more in plaintiffs' 5 opening statement than it was today. Every witness, and I 6 do mean every witness, Mr. Whalen, Dr. Cohen, Mr. 7 DePasquale Dr. Compton, Dr. Horn, Dr. Brody, Dr. Smith, 8 Dr. Madl, Mr. Delaney, Mr. Henshaw and Dr. Crapo, that is 9 almost every single witness, if it's not every single 10 witness, discussed this very factor. They all 11 acknowledged that he was exposed to asbestos. Mr. 12 Whalen's own testimony talked about that. Every witness 13 said that that exposure would have been a cause of his 14 injury, so that is as uncontradicted as you can get. 15 I will tell you right now, when I am through here 16 I'm going to ask you to allocate some fault to both the 17 Navy and to some of the others as they are referred to on 18 your verdict form, and we will talk about that more. This 19 is why, because that is truly uncontradicted testimony. 20 So what were the products? I understand this is 21 review, but what were these products? They were thermal 22 insulation products. They came in three different forms; 23 pipe covering, block and cement. 24 This photograph right here came out of a paper 25 that one of the plaintiffs' witnesses relied on. You</p>	<p style="text-align: right;">Page 40</p> <p>1 makes them dangerous. That's what makes the exposure 2 levels so very high as they were in Mr. Whalen's case. 3 The verdict form lists these products generally 4 as thermal insulation products. We did that so we didn't 5 have to burden you with every single name that you heard. 6 You have to, on question No. 15, allocate fault to these 7 different companies, and the way you will do it in this 8 case is to allocate it to -- it's called insulation 9 companies on your verdict form. But you remember the 10 names of the companies. I probably don't have to remind 11 you of the names. 12 Johns-Manville, how many times can we hear that. 13 Owens-Corning Fiberglass. 14 Pittsburgh Coring, and there was a product that 15 was manufactured by Pittsburgh Corning, Unibestos, so we 16 have names. We put them on your verdict form as more of a 17 general category of products, thermal insulation products, 18 but it's the same thing and they are on your verdict form, 19 Question No. 15. 20 So we know, because they are friable, that they 21 release high levels of fibers. This is published in the 22 literature many, many times. Every witness talked about 23 high levels of exposure. There were citations to the 24 Harries papers and the Devonport dockyard in England, how 25 high these levels would be.</p>
<p style="text-align: right;">Page 39</p> <p>1 remember that these are gentlemen actually using 2 asbestos-containing cement at the very shipyard that Mr. 3 Whalen worked at, the Bremerton shipyard in Puget Sound. 4 You remember that. Those products were certainly at the 5 job sites of Mr. Whalen. We wanted to show you what those 6 products were. Some of them were hiding right here, the 7 half-round. This was marked as an exhibit. This is John 8 Crane's Exhibit 20147. I showed every witness I could 9 this half-round. This is one of the three forms of that 10 product. The important thing that we learned is that 11 products like this in block contained amosite. That is 12 the amphibole or amosite exposure that Mr. Whalen had. 13 We also found out that they can be very dusty. 14 These are various photos, again from the paper that 15 Hollands published. These were photos from the Naval 16 shipyard of gentlemen working with various 17 asbestos-containing insulation products. You are very 18 familiar with the fact that these thermal insulation 19 products were friable, and this word got bandied about 20 quite a bit. 21 What does friability mean, and what does 22 encapsulated mean. The EPA has a very clear definition. 23 If you take it and you grind it into dust with your hand 24 pressure, that's friable. These products are friable 25 products. That's what makes them dusty. That's what</p>	<p style="text-align: right;">Page 41</p> <p>1 Dr. Horn cited this in his testimony. Mr. 2 DePasquale actually listed these tables in his report in 3 this very case, so they found them authoritative, they 4 found them reliable, and they used them to demonstrate to 5 you what they thought Mr. Whalen's exposure to insulation 6 was. 7 Now, you heard a lot of testimony. I want to 8 direct you to specific portions of the testimony. I did 9 not include every single quote from every single piece of 10 testimony that you heard. That would be impossible. What 11 I tried to do is emphasize some of the testimony. 12 One of the many things that Ms. Alesio mentioned 13 was that we have to look at the time Mr. Whalen was 14 exposed. I agree. She mentioned that it would be 1964, 15 which would be this time when he was in boot camp. We are 16 going to go through what his exposures were in boot camp, 17 but one of the things we know he did right off the bat was 18 he had to sweep up barracks. He had to sweep up dust and 19 debris, and he said how often did he do it. He said he 20 would do it daily. And would that have been for the 21 entire weeks of your boot camp stay? He said probably 22 pretty close, yeah. 23 This is from the testimony that you heard of Mr. 24 Whalen. He said that he was in boot camp for about three 25 months. That is about 84 days he said he would do this on</p>

<p style="text-align: right;">Page 42</p> <p>1 a daily basis. That is one of the places that he was 2 exposed to insulation at a very early period in his 3 career, his naval career. I think really where the damage 4 was done was in these shipyards.</p> <p>5 Throughout the case -- I have tried to keep track 6 of, I think, some of the highlights of the testimony. 7 This was one of them, the Puget Sound Naval Shipyard. He 8 said he was there for about 18 to 24 months, so for nearly 9 two years he was at Bremerton, Washington at a shipyard.</p> <p>10 But he went through many shipyards. He went 11 through the Mare Island Naval Shipyard. He went through 12 the Newport News Naval Shipyard, and he went through 13 overhauls, and during overhauls we learned that he was 14 exposed to various kinds of thermal insulation products, 15 and one of them was blocks.</p> <p>16 Block is just like this product except for it's 17 made in the form of a block, and it's used to insulate the 18 outside of things like turbines, which he testified that 19 he was around at work.</p> <p>20 And some of the testimony was here: Did you ever 21 see ladders working with any type of block insulation? 22 Yes.</p> <p>23 Where would that block insulation be used? Oh, 24 on flat surface.</p> <p>25 Would you see ladders cutting the block sometimes?</p>	<p style="text-align: right;">Page 44</p> <p>1 I want to point out one other thing, because the 2 Navy is on your verdict form. You have to know the Navy 3 is the one who was directing this work. The Navy decided 4 it was time for an overhaul. The Navy picked the 5 products. The Navy told them what to do with what tools 6 and how to do it and when to do it.</p> <p>7 He talked about how to actually apply the 8 products. He said he would just apply a straight piece of 9 half-round. This is from Mr. Whalen's own testimony.</p> <p>10 It would have to be cut to shape or to fit a 11 curve? Yes, he said.</p> <p>12 That would involve a lot of sawing, is it true? 13 Yes.</p> <p>14 It would create a lot of dust, is that right? 15 Yes.</p> <p>16 You were present when that happened? Yes.</p> <p>17 The sawing of any type of pipe, half-round 18 insulation or block pipe insulation is an extremely dusty 19 process, wasn't it? He said: Sometimes, yes.</p> <p>20 You were present a lot when that occurred, is 21 that true? Yeah.</p> <p>22 That is Mr. Whalen's testimony. He further 23 testified about being around application of pieces of 24 half-round. He said yes.</p> <p>25 And they finally talked about the cement process</p>
<p style="text-align: right;">Page 43</p> <p>1 Yeah.</p> <p>2 Would they be using saws? Yeah.</p> <p>3 This is Mr. Whalen's testimony that you heard in 4 this case. He testified that he did it on multiple -- he 5 was around that type of work on multiple vessels. One of 6 them was the Stimson.</p> <p>7 He testified that he saw ladders taking it off 8 and putting it on.</p> <p>9 The insulation that the ladders were removing 10 from the Stimson, where was it? And he said it was 11 everywhere; on steam pipes, machinery, everywhere.</p> <p>12 It was a complete rip-out and complete 13 reinstallation. Keep in mind, we talked about what an 14 overhaul is and he was present during these overhauls.</p> <p>15 Remember the testimony of Dr. Horn. Dr. Horn was 16 the pulmonologist who came, and he is the one who did the 17 work with the Mare Island Shipyard workers. He said 18 something very, I think, interesting and very telling 19 about Mr. Whalen's exposure.</p> <p>20 In his report, and he testified to you, he 21 considered Mr. Whalen essentially a shipyard worker. Do 22 you remember that testimony? He said basically Mr. Whalen 23 was a shipyard worker when he went through these 24 overhauls. This is the type of work that he was around 25 throughout his Naval career.</p>	<p style="text-align: right;">Page 45</p> <p>1 that he had to go through. The cement photo was those two 2 guys dumping a bag of cement. That was the last step in 3 this process. Keep in mind, when ladders had to remove 4 this all of it came off together. He was tearing off 5 cement -- and I will even grant you, if there was paint, 6 they were tearing off paint. They were tearing off 7 cement. They were tearing off cloth. They were tearing 8 off pipe covering. Extremely dusty, hundreds of fibers 9 per cubic centimeter exposure to amosite-containing 10 insulation, so that was the process described in detail.</p> <p>11 He also said that he did the work himself. So 12 while he was around ladders, the nickname of insulator 13 trades, he was actually doing the work himself. He said 14 -- he was asked: Did you personally do that type of work 15 yourself? He said yes.</p> <p>16 Did you see others do so? Yes.</p> <p>17 This is, I think, helpful, because it's kind of a 18 summary of all his testimony. He was onboard the Vallejo, 19 the Grant and the Stimson, and we know that all of them 20 went through major overhauls. They were long.</p> <p>21 And he was asked at this deposition: All right. 22 Can you recall any instance where one of your submarines 23 underwent an overhaul and you didn't see ladders working? 24 And he said no.</p> <p>25 The implication obviously is if he was on the sub</p>

<p style="text-align: right;">Page 46</p> <p>1 and he was in a shipyard undergoing an overhaul, he saw 2 ladders working.</p> <p>3 I mentioned Unibestos. Mr. Whalen recalled this 4 particular product, Unibestos. I think it's important and 5 I will tell you why. Unibestos was not your average 6 insulation product. Some of the witnesses were familiar 7 with it. Mr. DePasquale was. Obviously, Mr. Whalen was. 8 Unibestos was a very special type of product. 9 Again, it's called out on your verdict form as insulation, 10 but it's different. It was different, because it 11 contained a lot of amosite. Mr. DePasquale didn't want to 12 bicker with me, but he thought it was something like 60 or 13 80 percent amosite. That is a lot.</p> <p>14 You have heard this concept of mixed exposure, 15 and there was testimony about Johns-Manville products 16 being at least some portion of, you remember, magnesium; 17 that is not asbestos. Unibestos was. Unibestos was 18 virtually all amosite-containing insulation.</p> <p>19 Now, why did the Navy do that? Some of the 20 points that you heard in the testimony were quick, so I 21 want to just remind you that this was said. One of the 22 reasons the Navy used amosite was that it was lighter on 23 ships. If you are in the shipbuilding business, like the 24 U.S. Navy was, you don't want to waste a whole lot of 25 weight with product and things like insulation. You want</p>	<p style="text-align: right;">Page 48</p> <p>1 individual came to you and reported to you his only known 2 exposure to asbestos was from thermal insulation products, 3 including Unibestos and Owens-Corning Fiberglass, you, as 4 a medical doctor, would have no problem attributing his 5 injury to that exposure alone, true? And he said: 6 Correct.</p> <p>7 Those are questions No. 15. When you are 8 allocating fault, you have to look at the insulation 9 products and the Navy, the ones who ordered it, the ones 10 who supplied it, the ones who told Mr. Whalen essentially 11 to put it on the ships.</p> <p>12 Now, we know that Dr. Horn also wrote a 13 publication in 1979. We asked him about that briefly. He 14 was asked to basically look at people in the shipyards and 15 say, Does it matter if the worker is actually doing the 16 work if they are just near someone doing the work? 17 The first thing he was told to assume when he did 18 that study was to assume that the exposure levels in those 19 compartments were about 50 fibers per cc. Think about how 20 high that level is now that you know what you know. That 21 is extremely dusty. How dusty? If this room were filled 22 with 50 fibers per cc of dust, what would it look like? I 23 asked Dr. Horn: You saw testimonials from workers who 24 said, and remember this, they thought it looked like there 25 was a blizzard in the room. That is how dusty those</p>
<p style="text-align: right;">Page 47</p> <p>1 to save as much weight as possible, and they did that by 2 using products like Unibestos.</p> <p>3 He also remembered this company, Owens Illinois 4 insulation, or they call it Owens-Corning insulation; 5 again, in the shipyards talking about a shipyard exposure. 6 No doubt he was exposed to insulation.</p> <p>7 Now we got to the causation questions. Okay. 8 You are asking yourself, so what. So he was exposed to 9 insulation, who cares. Their witnesses and all witnesses 10 said those products caused mesothelioma at an incredibly 11 high rate. We know what they are. We know that he was 12 around them. We know they contained amosite, and we know 13 that virtually every witness agreed that those products 14 cause mesothelioma.</p> <p>15 Dr. Cohen said -- he was asked: Okay. So 16 someone who is in close proximity to an insulator would 17 have been exposed to high concentrations of asbestos dust 18 and they would be vulnerable for disease, right? True, he 19 says.</p> <p>20 He was asked: That would be someone like Mr. 21 Whalen who was present when insulation activity took place 22 onboard submarines, either during construction or the 23 overhaul of those vessels? And his answer was: 24 Correct.</p> <p>25 Dr. Horn, I asked him this question: If an</p>	<p style="text-align: right;">Page 49</p> <p>1 insulation products were. These guys were working in the 2 shipyard just in a component, and he said -- Dr. Horn, the 3 plaintiffs' witness said they couldn't see from one side 4 to the other. That is how dusty it was. Visibly dusty. 5 No Tyndall lighting necessary. This is just pure 6 dust-in-the-room, so-dusty-they-can't-see-one-another 7 dusty. That is dusty. That is Dr. Horn's testimony.</p> <p>8 What is important about that paper that he wrote 9 is his conclusion, which was: It didn't matter if you 10 were the person doing the work or if you were someone like 11 Mr. Whalen in the shipyards who was watching the work, you 12 were both at the same level of risk. That is how 13 dangerous the shipyards were. Those shipyards were 14 controlled by the United States Navy.</p> <p>15 What else had insulation on it? We've talked 16 about steam pipes. We talked about cement. We've talked 17 about lagging. Equipment had insulation on it, too.</p> <p>18 Now, this is kind of a unique thing. It deals 19 with manufacturers of different products. You heard this 20 phrase used, and it had to be explained, because Mr. 21 Whalen used it so many times, I think, without explanation 22 that we ultimately just had to ask somebody to tell you 23 what it meant.</p> <p>24 OEMs. What were OEMs. Seems insignificant. 25 It's very significant now, because they are on your</p>

<p style="text-align: right;">Page 50</p> <p>1 verdict form. So OEMs are these other equipment 2 manufacturers. It stood for original equipment 3 manufacturers. They are listed on your verdict form as 4 Others. It's a pretty broad topic, but the others, there 5 were many of them. The others included people that sold 6 pumps, valves, gaskets, packing, turbines, steam traps, 7 all these equipment manufacturers. They are on your 8 verdict form because those manufacturers, OEMs, supplied 9 their own gaskets and packing with their products. 10 Recall Mr. Whalen's testimony. He said there 11 were times he actually knew he was working on a piece of 12 equipment for the very first time. Remember he said he 13 would come up and a valve would have either new paint or 14 no wrench marks. It looked brand-new to him. So to him 15 that was a pump that just got shipped from Warren or 16 Goulds or any of the other OEMs that are on your verdict 17 form. 18 Now, why do you care? You care because John 19 Crane is in this case as a replacement gasket and packing 20 company. Okay. 21 The testimony in the case was that any gasket and 22 packing that Mr. Whalen worked with from John Crane was 23 used as a replacement, not as an OEM. That is a separate 24 product, separate gasket and packing product supplied by 25 those manufacturers.</p>	<p style="text-align: right;">Page 52</p> <p>1 of half-round insulation. 2 Now, there is a -- I hope that you have seen this 3 in this case. There is a lot of what was going on then 4 versus what's going on now. What did John Crane say? 5 What did they say? You heard that back and forth. 6 We have some information, too, that was provided 7 to us by Mr. Whalen. It was an asbestos surveillance 8 survey that the Navy did. 9 Now, this was done in '86. This is back before 10 any diagnosis, back before any lawsuit, back before any 11 lawyers were involved. He is asked: Without influence, 12 what exposed you to asbestos? This is his surveillance 13 survey that the Navy provided him. Obviously the Navy, if 14 they're providing a surveillance survey, is considering if 15 they have an issue with asbestos exposure. He signs it 16 and he puts his rank. That he is a master chief. He puts 17 his name, rank and says that he believes he was around 18 ladders. He asked if he recalled being around any other 19 type of activity and he checked no. That is back in 1986. 20 That is in evidence as defense Exhibit No. 20182. If you 21 want to look at it, that is in evidence. 22 You know, you can't -- you can't address every 23 single thing that the plaintiff says, but some things you 24 can't leave unaddressed. It sounded to me that she said 25 his insulation exposure was incidental. I don't think</p>
<p style="text-align: right;">Page 51</p> <p>1 The other important thing with the OEMs and the 2 other equipment manufacturers is that they were covered in 3 insulation, insulation that we have talked about. So not 4 only were there insulation manufacturers on your verdict 5 form in the Navy, but these others are on your verdict 6 form because they actually said to put the insulation on 7 their equipment. 8 So, as a general matter, to access any piece of 9 equipment that is connected by a flange, for example, a 10 pump or a valve or a steam trap, oftentimes the insulation 11 would have to be pared back to get access to that 12 equipment, is that right? True, Mr. Whalen said. 13 Is this something you saw regularly throughout 14 your Navy -- career in the Navy, is that right? And he 15 said yes. 16 If the equipment is hot it had insulation on it. 17 He knew it was original equipment, because there was no 18 marks on it, and that is not John Crane. So that is a 19 different line on your verdict form. Keeping in mind, if 20 you were where I am, we are still talking about question 21 No. 15. 22 This was a photo that was provided to us by the 23 plaintiff. This is Mr. Whalen in a compartment. He 24 thought he was on the Grant in this photo. Again, it goes 25 without saying, obviously, he has his arm there on a piece</p>	<p style="text-align: right;">Page 53</p> <p>1 that is what the evidence showed. 2 Certainly Mr. Whalen didn't think it was 3 incidental back in 1986. None of their witnesses thought 4 it was incidental. He was exposed to a large amount of 5 insulation. This photo is 20180-A. It's in evidence if 6 you want to look at it. It's a defense exhibit. 7 Dr. Horn said he was a shipyard worker. Those 8 were his words. We didn't ask him that question. He 9 volunteered that to us. What we know about shipyard 10 workers, because of their exposures, is that they are at a 11 much higher risk for developing mesothelioma just by their 12 nature, just by their employment, to the tune of four to 13 80 times more likely to get mesothelioma from working in a 14 shipyard. 15 This is the epidemiology on the subject. They 16 have looked at large groups of people that worked in the 17 shipyard, and what they concluded were there is a range of 18 either four up to 80 times more likely to get 19 mesothelioma. So the issue is what was going on in the 20 shipyards. What put these workers at this extremely high 21 risk? 22 You heard testimony and it seems pretty basic, 23 and I'm going to put my high-tech blocker in front of the 24 thing there just for a minute, because I want to just talk 25 to you for a minute.</p>

<p style="text-align: right;">Page 54</p> <p>1 Mr. Henshaw came, director of OSHA, and there 2 were some questions that we really needed to ask him about 3 whose responsibility it is to protect the workplace. We 4 thought that was very important, because one of you asked 5 a question about that earlier in the case, and that's an 6 indication to us that some of you are thinking about some 7 things and they need to be addressed. It seems pretty 8 basic.</p> <p>9 We all have employers. Some of us are employers. 10 Employers control the workers. Employers control the job 11 site. Mr. Whalen's employer, throughout this entire case, 12 all the facts that you have heard, seems obvious now, but 13 his employer was the United States Navy. It seems strange 14 to call the Navy just an employer, because it's such an 15 entity to us, but it was his boss.</p> <p>16 Now think about a boss. A boss typically tells 17 you some basic parameters about what to do at work, tells 18 you what your job is. You get hired and he tells you when 19 to come to work, go home, breaks, things like that.</p> <p>20 The Judge is our boss here. She tells us when to 21 go to lunch and when to come back, when to submit your 22 questions.</p> <p>23 Now, think about the most controlling boss you 24 could ever imagine and multiply that by the biggest number 25 you can imagine, and you are getting up close to what the</p>	<p style="text-align: right;">Page 56</p> <p>1 respirators, OSHA can control those guys because they work 2 for a private -- they were private workers in a shipyard. 3 What OSHA couldn't do was get on the boat and control 4 sailors, so it's a very thin line, but it's important in 5 this case because OSHA couldn't control the government 6 employees. They could control the workers in the 7 shipyards. The guys with Shop 56 written on their hats, 8 that is who they have control over. They didn't have 9 control over guys like Mr. Whalen.</p> <p>10 We know that if you worked in a shipyard you were 11 at a huge risk, so what did Mr. Whalen think about when he 12 was asked questions about the Navy? Clear as clear can 13 be.</p> <p>14 Did anyone during your career ever warn you about 15 potential hazards of working with any of the products that 16 you worked with? No.</p> <p>17 Think about what the Navy was specifying. I 18 showed you that lagging schedule. It's in evidence. Mr. 19 Delaney talked about it. It's Defense Exhibit 20287. 20 It's a lagging schedule that specifies the percentage down 21 to, you know, the lowest integer that you can come up with 22 and the inches. How hot is that pipe, how thick does the 23 insulation have to be. They didn't mince words.</p> <p>24 They had mil specs, what they call mil specs or 25 the QPL, you remember that, for everything -- and I mean</p>
<p style="text-align: right;">Page 55</p> <p>1 United States Navy would be. I can't make this up. It's 2 so readily known that the Navy is so controlling that they 3 have an expression for it; that there is a right way, a 4 wrong way and there's a Navy way.</p> <p>5 It was his employer. They told him what to wear, 6 how to wear it -- to the inch. They told him when to come 7 to work, where to sleep, when to sleep, when to get up. 8 They put him on vessels for months at a time. This was 9 his job.</p> <p>10 The important thing to you all is that the Navy 11 controlled those shipyards. You asked a question about 12 whether OSHA had control of it. Well, OSHA didn't exist 13 until about 19 -- we can call it December of '71. So 14 think about from 1964 to 1971 the damage that Mr. Whalen 15 had to him from a lack of control on those job sites.</p> <p>16 That was the Navy's responsibility to hang 17 warnings, and the thing is, we know what the Navy was 18 thinking about asbestos. They had surveillance programs. 19 They know they had issues with insulation in those 20 shipyards, and he remained exposed even after OSHA came 21 into place.</p> <p>22 Remember what Mr. Henshaw said about the control 23 jurisdiction lines. OSHA could control guys like the Shop 24 56 ladders. OSHA could come in and control private 25 workers. They could say -- remember the photos, the</p>	<p style="text-align: right;">Page 57</p> <p>1 everything, down to dental floss, toilet paper. If it was 2 on a U.S. ship or a boat, it had a mil spec. And it's the 3 same with asbestos-containing products. Thermal 4 insulation products were on there, gaskets were on there, 5 packings were on there. The Navy ordered this stuff, then 6 they put it on the ships. They specified it and they put 7 it on.</p> <p>8 While he was at Mare Island he was in the 9 presence -- did he ever see the presence of insulators, 10 and we've talked about did he ever see any type of 11 warnings there. Not that I recall.</p> <p>12 Did you receive any information at all from 13 anybody in the Navy about the topic of asbestos? 14 Not that I recall.</p> <p>15 Did you ever receive any warnings about the 16 possible health hazards from the Navy from working with or 17 around asbestos products? 18 Not that I recall.</p> <p>19 Did the Navy ever instruct you to use respiratory 20 protection when working with or around asbestos products? 21 No.</p> <p>22 So we know he was exposed to asbestos in the 23 shipyards. We know that the Navy never warned him. We 24 know that the Navy was his employer. 25 Dr. Horn, who studied those shipyard workers,</p>

<p style="text-align: right;">Page 58</p> <p>1 filled in the rest of the puzzle. Because he knew back 2 from '79 what ought to have been done, in his opinion, in 3 those yards. I asked him: And you understand that up 4 until the 1970s there were no safeguards used in 5 shipyards, including no respirators used in shipyards? 6 He said: Correct. 7 No wetting down methods were used in the Naval 8 shipyards? Correct. 9 No warning of asbestos hazards occurred in the 10 Naval shipyards? 11 Correct. 12 There were no separation of workers performing 13 different work practices in the U.S. Navy shipyard, true? 14 Correct. 15 And you agree -- and here is the part that you 16 can really hold the Navy responsible for. This is it. 17 And you agree that into the 1940s there was literature 18 available directly to the U.S. Navy that you would have -- 19 that would have allowed them to take precautions, some of 20 which we just discussed regarding asbestos, right? 21 Correct. 22 That is all question No. 15. That is -- because 23 you have to answer -- this is a little bit confusing and a 24 lot of things in law are. Because you have to answer a 25 question in order, I am actually going to tell you now, I</p>	<p style="text-align: right;">Page 60</p> <p>1 2006 in the peer-reviewed publications, 2007, and 2 they all said what has been said for 30 years. This 3 orange cover is the IARC cover. It's cited by the 4 International Agency for Research and Cancer from Lyon, 5 France. Her work is published, Dr. Madl's. For 2006, 6 2007 she performed and evaluated exposures for gasket and 7 packing work many, many times and over 30 years of 8 research. This is not something that was just discovered 9 recently. Her work basically confirmed what has been 10 written in the publications for decades. That those 11 levels, there is a consensus, to use her words, that 12 levels of exposure from gaskets and packing are low, so 13 low, below any sort of regulatory levels and causation 14 levels. We will talk more about that in a minute. 15 Peer-reviewed publication cited many, many times. 16 You know, this is another thing that we said that 17 I just can't -- not address. Experts are not inexpensive. 18 They are experts for a reason. They have years and years 19 of education, and they demand a very high price because of 20 their expertise. There are not many people that are 21 walking around publishing on these very narrow topics. 22 I told you at the beginning of the case. I held 23 my hands up like this (indicating). I said that the 24 issues in dispute are really about that narrow. I think 25 you heard a lot of testimony, things over here that we</p>
<p style="text-align: right;">Page 59</p> <p>1 don't think on your verdict form you ever get to question 2 No. 15, but this is the way the evidence came in. I want 3 you to be armed with this. Remember all this testimony 4 about the U.S. Navy and thermal insulation if you get to 5 question No. 15. 6 Now I will take a big step over the chasm and 7 talk about causation. We have been talking so far about 8 allocation. Are you with me? Now, we're going to talk 9 about causation. These are questions that deal with 10 causation. They're Nos. 4, 9 and 11. I will tell you 11 now, on your verdict form these causation questions 4, 9 12 and 11, I'm not going to put the verdict -- your verdict 13 form up here and show you what I would do. I'm asking you 14 to do what the evidence says. 15 The evidence supports a finding of checking no to 16 questions 4, 9 and 11, and I'm not just going to say that 17 because I think it's helpful for me. I am going to show 18 you the evidence as to why you can do that. 19 There are two reasons. It was reasons Nos. 2 and 20 3. These are reasons you can check no to those questions. 21 They are all causation issues. 22 The first was that the products that John 23 Crane -- at issue in this case were too low to contribute 24 to any asbestos-related disease. This was published 25 multiple times.</p>	<p style="text-align: right;">Page 61</p> <p>1 don't dispute. But when you have experts in the field 2 that can talk about an avenue of information that narrow, 3 you need to bring them. You need to bring them, because 4 there are not people walking around every day that have 5 published multiple times in the peer-reviewed literature 6 on these kind of very narrow issues. I would guess that 7 not many of you have read any peer-reviewed publications 8 about asbestos-containing gaskets and packing. 9 Now, you have seen probably all of them. If you 10 like, these are all available for publication. I don't 11 know if you can get them on Amazon, but they are out 12 there. 13 In 2014, we basically have a consensus now. In 14 2014, there is all the data, as well as John Crane 15 specific products, and it's the same conclusions. For the 16 last 30 years this data shows clearly that gaskets and 17 packing exposures are below this line. I told you that 18 was how narrow the issues were. 19 How can I say that so confidently? The exposure 20 studies, which included some of the plaintiffs' witnesses 21 materials, Jim Millette's work was included in this 22 publication here. 23 In 2007, she included -- these are plaintiffs' -- 24 generally plaintiff's witnesses. She included their work. 25 They brought a witness to you in this case that didn't do</p>

<p style="text-align: right;">Page 62</p> <p>1 any primary research that he testified to. We did. We 2 actually brought people that did primary research and 3 showed you the results for you to judge. You judge it for 4 yourself.</p> <p>5 The data, which is important, because that is 6 what you have to hang your verdict on is the evidence. 7 The evidence and the data showed that long-term averages, 8 that's eight-hour time-weighted averages, average .02. 9 The current regulatory level is .1. Short-term or peak 10 exposures below 30 minutes -- you have heard that many, 11 many times were average .2. The current excursion level 12 is 1.</p> <p>13 That is current. That is today. Those exposures 14 were published by Dr. Madl and others. You heard about 15 Fred Boelter and others, Carl Mangold, all demonstrated 16 they are below those levels.</p> <p>17 Why does that matter? I mean, in terms of 18 causation, why do you care about that? There was just a 19 brief, passing reference to this. I think you know -- you 20 guys are almost professional jurors by now -- it's never 21 the things that are said. It's always the things that are 22 not said, so pay attention to what is either passed on or 23 glossed over, like that "if" at the beginning of this. 24 That was a little bit of a gloss, very big if in that jury 25 instruction.</p>	<p style="text-align: right;">Page 64</p> <p>1 from a very famous author, William Nickelson, who's at Mt. 2 Sinai. He basically did this analysis and OSHA adopted 3 it. He started doing this research in 1983 and it was 4 published in 1986 by the government, and it became what is 5 called now the OSHA risk assessment. Back then it was the 6 Nickelson risk assessment. It's this linear line. It's 7 just a line that goes straight down to zero.</p> <p>8 Now, the evidence in the epidemiology show that 9 that is actually the line of data. You have a regulatory 10 model. Then when you actually look at the levels you come 11 up with a different curve, so I wanted to tell you what 12 that came from. How did we ever get there? How did we 13 get to this known safe level; this word, this phrase no 14 safe level.</p> <p>15 They have talked about the groups that were 16 studied, very high exposed groups. These were 17 epidemiologic groups. They call them cohorts, but they 18 are just groups of people that had similar exposures.</p> <p>19 They looked at rates of disease in those groups. 20 They all had very high levels. Cumulative lifetime 21 exposures of 51.1 fiber per cc, the level that Dr. Horn 22 was asked to assume as a background in shipyards. This 23 group was -- the author was Finklestein, and those 24 cumulative exposures were 112 fibers per cc, very, very 25 high levels. Again, mixed exposures. These were people</p>
<p style="text-align: right;">Page 63</p> <p>1 These levels, these are the ambient exposure 2 levels that are in the published literature. They were 3 much higher back in the '70s, we heard. These are today's 4 numbers for 2001 to 2008. The average across the United 5 States is .001. There's a range. You heard about the 6 ATSDR. There is a big range, but those levels don't cause 7 or contribute to mesothelioma. No witness testified that 8 they do. So you heard many, many times that there is no 9 threshold to disease, that there is no known safe level of 10 disease. That cannot be true. That cannot be true. We 11 know that there are levels of exposure that have no 12 increased risk. We know it.</p> <p>13 We know that meso is an incredibly rare tumor. 14 Mesothelioma is an incredibly rare disease. There is not 15 an epidemic of it across the United States nor very -- in 16 retrospect -- high levels of asbestos in the ambient air.</p> <p>17 This was talked about many times. This is the 18 regulatory model, and what you basically saw in this case 19 was a lot of change between epidemiology and regulation. 20 I will get into that a little bit more. This is a 21 regulatory model. Every time you heard the no-effect 22 level -- you know, we live in an age today where you -- we 23 don't really just look at everything out in space. We 24 really get into the weeds as to where these things come 25 from, and we did our best to try to show you that. It was</p>	<p style="text-align: right;">Page 65</p> <p>1 exposed to amphiboles and chrysotile.</p> <p>2 A name that you have heard many times, this is 3 Irving Selikoff's group in 1979 and Peto in 1982, really 4 high levels, 375 fibers per cc, so extremely, extremely 5 high exposures to mixed fiber asbestos.</p> <p>6 Textile manufacturers, again -- and this is one 7 of the highest -- 600 fibers per cc years, so really, 8 really high levels of exposure.</p> <p>9 Importantly, and I hope I do my best to make this 10 as clear as possible. It has nothing to do with gaskets 11 and packing. These are hugely exposed populations; 12 miners, textile workers, people working in factories that 13 are manufacturing asbestos-containing products. They are 14 high -- you might just know this by common sense. They 15 are high because of large amounts of raw asbestos fiber 16 used, just free -- it's called free fiber in this case. 17 Just floats in the air similar to what an insulation 18 product might do if you just come at it with a hacksaw. 19 Much, much different than a gasket and packing. The 20 product that was made with all sorts of different, you 21 know, binders, rubber, rosins, different types of rubbers 22 that were used in these products. It's very different.</p> <p>23 One of the things you heard in this case from 24 Commander Delaney was why the Navy used asbestos in these 25 products at all. I will take a minute to remind you of</p>

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1 that, because his testimony was very interesting. It was
 2 very compelling, but he really unpassed (phonetic) why the
 3 Navy required these gaskets and packing products to be
 4 used that contained asbestos.

5 Big valves that would have high-pressure steam in
 6 them, you know that if a gasket failed it could fill a
 7 room with steam and be very dangerous, obviously,
 8 especially if it's on a submarine. If there was a leak,
 9 steam leak onboard a vessel, that would be a catastrophe.
 10 It really would. I mean, it would just be -- it would
 11 fill the boat with high-pressure steam, and you would have
 12 a real catastrophe.

13 The Navy required the use of asbestos-containing
 14 gaskets and packing in order to withstand that type of
 15 high-pressure steam. They had different types of gaskets,
 16 spiral-wound gaskets, fiber gaskets, pre-cut gaskets,
 17 sheet gaskets, but they all needed to meet these mil
 18 specs, the military specifications, and one of them was to
 19 withstand the high heat, so they used asbestos in those
 20 products.

21 Mr. Whalen testified to using many different
 22 brands of these products. On your verdict form, they are
 23 on the -- there is -- obviously John Crane is on the
 24 verdict form, but there are others and there are numerous
 25 others.

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1 He said many times that he remembered using
 2 products numerous times, that there were numerous
 3 manufacturers. I couldn't pass on the opportunity. It
 4 was Mr. Whalen's words. He said it so many times I
 5 thought it would be helpful to remember when we are
 6 talking about others, they are numerous.

7 Now, we listed them by category, and when I said
 8 category I meant gaskets and packing and pumps, valves,
 9 steam traps, turbines. There are numerous.

10 They are on your verdict form as others. They
 11 only have one line, so think about that. Plaintiff said
 12 in opening statement John Crane is closer to zero. I
 13 agree. The others take up one line and the Navy is there
 14 for a reason, has its entire own line. I will ask you to
 15 hold them responsible and put them in their position
 16 regarding fault. I will get to that. That is near the
 17 end.

18 What is effect of dose? Remember, we are talking
 19 about the cause questions on your verdict form. The
 20 product is used inside of another piece of equipment. It
 21 was I think undisputed that if a product like gaskets and
 22 packing was actually in use, it would be totally encased
 23 in metal, and then in this circumstance in this case it
 24 would be covered with insulation. Mr. Whalen talked about
 25 this, as well. I told you I would come back to this. I

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1 will try to be true to my word here.

2 I asked him to give me a sign to go back, so the
 3 closing statement of the plaintiff said that you have to
 4 look at when Mr. Whalen was exposed. I agree, but this is
 5 1964. Let me take you through his testimony about 1964.
 6 Let's go back to the actual words that were said.

7 At any time during boot camp, did you personally
 8 handle or did you see anybody else handle gaskets or
 9 packing material?

10 No.

11 That is his testimony about gaskets and packing
 12 early on, but it continues.

13 Do you recall any work with gasket material at
 14 machinist mate A school? So MMA school. He said no.

15 Do you recall any work with packing material at
 16 machinist mate A school? No.

17 One of the things that affects the dose or your
 18 ability to be exposed to a product is really if you were
 19 exposed to it at all, and, if you were, when. That is
 20 important. Sometimes you only get one question and answer
 21 about something, so I need to kind of bring it back to
 22 your attention and I hope that you remember that.

23 Another thing that affects your dose is how far
 24 away you would be from somebody working with a product
 25 hands-on. There was this theory -- again, did any aspect

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1 of your training at nuclear power school in Maryland
 2 subject you to any exposure to gasket or packing material?

3 No.

4 Now, we are into his Naval career. There's no
 5 gasket and packing testimony. You will recall what he was
 6 doing early on in his career, thermal insulation cleanup.
 7 Rank has its privileges. Commander Delaney told you about
 8 this.

9 What was your title aboard the Stimson?

10 It was a machinery division leading chief, and
 11 then I was an engineering department leading chief, master
 12 chief, whatever you want to call it.

13 And what role did you -- in that role, did you
 14 still perform hands-on work?

15 Yes.

16 Did you supervise others?

17 Yes.

18 Okay. So if you just stopped there you would
 19 think, well, he might be doing some hands-on work. He
 20 might be doing some supervision, but they went on and
 21 asked him at his deposition:

22 Did you supervise others?

23 Yes.

24 What percentage of your work was hands-on versus
 25 supervision?

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1 98 and two.
 2 Which was the 98?
 3 The supervision.
 4 Your ability to be exposed to a product, we
 5 learned, is dictated in part by how far you are from
 6 somebody working with the product. So if 98 percent of
 7 your time is spent watching somebody working with a gasket
 8 and packing product or even an insulation product, it's
 9 going to be lower than it is if you did the hands-on work.
 10 But remember Dr. Horn's testimony? His findings
 11 in 1979 for insulation said it didn't matter if you were
 12 the guy doing the work or the guy next to the guy doing
 13 the work. You guys were at the same risk. That was his
 14 findings.
 15 Another thing that we learned about exposures
 16 were whether or not you were removing or installing.
 17 Remember the removal numbers were always higher than
 18 installation numbers, because the products are new when
 19 being installed.
 20 Mr. DePasquale said for the first -- I asked him
 21 for the first ten months of his assignment on the Vallejo,
 22 the ship was being built, true?
 23 He said: That's correct.
 24 So remember that. The Mariano Vallejo was
 25 actually being built and being used for the very first

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1 time. That is important for two reasons. One is every
 2 gasket and packing that was going on that ship was new,
 3 but the problem is there were ladders insulating thermal
 4 insulation systems on that boat.
 5 I asked him: Would you agree with me that if the
 6 ship was being built there wouldn't be an opportunity or
 7 much opportunity for the removal of used ceiling products
 8 like John Crane packing products?
 9 I would agree with that statement, yes.
 10 That is the plaintiffs' witness.
 11 However, during the construction of the Navy
 12 vessel they would still be installing new block, pipe,
 13 pipe covering and cement?
 14 And he said: True, yes.
 15 The principles are not the same for gaskets and
 16 packing and insulation. If you cut a new insulation
 17 product, it's going to be just as friable as if you're
 18 cutting an old one. Not the same for gaskets and packing.
 19 Now, this is a very quick point that was made in
 20 the testimony that I think was probably the most important
 21 small point. Not everything is important, but this is
 22 interesting. You heard very little testimony about this.
 23 Mechanical seals, I am wondering if you guys
 24 remember this testimony or not. A mechanical seal was
 25 something that was used in a pump. The testimony in the

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1 case was if you had a mechanical seal you did not, I
 2 repeat, did not use packing.
 3 So a mechanical seal replaced asbestos packing,
 4 so that would affect your ability to be exposed to a
 5 product. What am I talking about? Mr. Whalen testified
 6 about 1970 or the '70s that they started -- the Navy
 7 started using mechanical seals instead of packing. We
 8 know that mechanical seals would not incorporate any
 9 asbestos-containing packing whatsoever. It's an
 10 interesting point. It was a quick point that was made.
 11 It's something I think you have to consider, because by
 12 1970 you essentially stopped considering
 13 asbestos-containing packing products because the Navy had
 14 replaced them with mechanical seals, pieces of metal.
 15 Let me go slow and let me summarize some of the
 16 things that we've talked about here. Insulation versus
 17 gaskets and packing.
 18 Insulation, we've demonstrated, contained
 19 amosite. Gaskets and packing contained chrysotile.
 20 Insulation products were friable. Gaskets and packing
 21 were non-friable products, meaning they could not be
 22 crushed to dust using hand pressure.
 23 Insulation was not encapsulated. It could just
 24 be bumped. If you just rubbed up against it, it would
 25 come off on your clothes. Incidentally, that is why the

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1 Navy had to paint it, and Commander Delaney said even
 2 though these pipes were covered, they did still degrade
 3 onboard ship from people bumping into them; gaskets and
 4 packing, encapsulated products.
 5 Insulation, we've showed you had a very high
 6 fiber release versus low fiber release. Insulation being
 7 used on the outside of pieces of equipment like pumps,
 8 valves and turbines, including pipes. Gaskets and packing
 9 are used on the inside of pieces of equipment. And
 10 importantly, huge amounts of data about insulators getting
 11 mesothelioma. No study from gasket and packing exposures
 12 getting these -- individuals using those products being
 13 diagnosed with mesothelioma.
 14 I told you reasons Nos. 2 and 3 were going to be
 15 the causation questions. That was reason No. 2, that it
 16 was an extremely low or no exposure. You now have the
 17 power to couple that with the fact that it was a
 18 chrysotile product. There was no dispute that extremely
 19 high levels of asbestos exposure can injure individuals.
 20 The dispute was low levels of exposure.
 21 How were they different? This is review. This
 22 is the brown asbestos versus the white asbestos. They are
 23 chemically different. They stay in the body longer.
 24 There is a fancy word for this, bio-persistent. Basically
 25 it means it stays in your lungs longer. It clears to the

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1 pleura and remains in the pleura.
 2 Plaintiffs' witnesses agree. I asked Mr.
 3 DePasquale if he agreed, if he was aware of the literature
 4 indicating that amphibole asbestos is much more potent
 5 than chrysotile in the development of mesothelioma. It's
 6 my understanding, he said, that amphibole asbestos is more
 7 potent in the development of mesothelioma, yes. That is
 8 the plaintiffs' industrial hygienist, Mr. DePasquale.
 9 These were the high groups. Low chrysotile
 10 exposure. Low -- very hot -- strike that -- high
 11 chrysotile exposure. Very high chrysotile exposures here,
 12 hundreds of fibers per cc years. Very low numbers of
 13 people getting disease. This is the model that OSHA
 14 adopted. These are further data points, the Canadian men.
 15 These were miners, extremely high. That is 1,000 fibers
 16 per cubic centimeter year.
 17 This is the evidence. This is it. If you take
 18 these numbers out -- and I will get to the slides, as
 19 well. Think of how many you have to multiply these
 20 numbers up to the thousands to get there. You have to
 21 work with these products literally for thousands of years
 22 to get up to that type of exposure. Thousands of fiber
 23 per cc years. It's obviously not realistic. You are not
 24 ever going to get to that exposure that these miners had.
 25 You will never get there.

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1 There was further data to chrysotile Canadian
 2 women groups. This is our ambient air. This is now
 3 comparing that regulatory model with what we actually
 4 know. I told you regulation is protective. This is the
 5 data. It follows the exact same curve that we showed you
 6 earlier in the case. There are levels of disease, and
 7 they come in as soon as you start getting up here, so
 8 that's the data.
 9 This is reason No. 4. These deal with questions
 10 Nos. 5 and 10. This is what is known or knowable in the
 11 field, so these are what was being published on this topic
 12 at the time. Sometimes, again, in the heat of battle we
 13 gloss over things, but you can't leave those uncorrected.
 14 I think what I heard was John Crane never tested
 15 its products, and you were shown Mr. McKillop' testimony.
 16 That is not true. The testimony is in 1980, John Crane
 17 retained Dr. Madison to test its gasket and packing
 18 products. That is the evidence in the case. So when you
 19 hear things that are just the opposite of what the
 20 evidence was and you weren't shown that, so it's not what
 21 you are shown, it's what you were not shown, that's the
 22 evidence in the case.
 23 In 1980, Dr. Madison was hired by John Crane to
 24 test its products. What we know is the results of the
 25 test are the same results that have gone back for 30

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1 years. That why it's called a consensus.
 2 MS. ALESIO: Your Honor, objection. Move to
 3 strike. There is no evidence in the case with respect to
 4 what Counsel is talking about.
 5 MR. GRIFFIN: It's in Dr. Madl's testimony.
 6 MS. ALESIO: She didn't give any. One situation
 7 where Counsel indicated, and he didn't get very far that
 8 had to do --
 9 MR. GRIFFIN: It's in Mr. McKillop's testimony
 10 and Dr. Madl's testimony. We can have it read back.
 11 MS. ALESIO: No, it is not.
 12 THE COURT: You will have an opportunity for
 13 rebuttal and you can argue that then.
 14 MS. ALESIO: The arguments of Counsel are not
 15 evidence.
 16 THE COURT: That has already been stated, but I
 17 will restate that the statement -- that the arguments of
 18 counsel are not evidence one way or the other.
 19 Why don't we continue.
 20 MR. GRIFFIN: The last issue is what is known or
 21 knowable and the verdict form says "in the field." So
 22 what we are going to talk about, what is the best
 23 scientific knowledge at the time.
 24 One of the things you heard is -- many of the
 25 things you heard, Mr. Whalen was in the Navy. That's no

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1 news. 1964 would be the time frame that you start. That
 2 goes through August of 1985, so August 1st of 1985. What
 3 you do is you stand in August of 1985 and look back at
 4 what was known or knowable back to 1964 when Mr. Whalen
 5 was working with gaskets and packing. You don't look at
 6 the 2014 knowledge. The law is you look at what was known
 7 or knowable back then.
 8 Your Honor, I don't -- we may need to take a
 9 break, but I don't want to cut off any rebuttal time.
 10 THE COURT: Are you done now?
 11 MR. GRIFFIN: No.
 12 THE COURT: How much longer do you need -- have?
 13 MR. GRIFFIN: Timewise, probably less than a
 14 half-hour.
 15 THE COURT: Let's take a break now. Let's come
 16 back at 25 till, that is seven minutes.
 17 Let's go off the record.
 18 (Short recess.)
 19 (Jury present and seated in jury box.)
 20 THE COURT: When you're ready.
 21 MR. GRIFFIN: Thank you, Your Honor.
 22 One of the critical elements that you will have
 23 to decide as a jury is what was known or knowable, and
 24 it's involving the product, the products at issue. So
 25 we've talked a lot about asbestos generally, but really

<p style="text-align: right;">Page 78</p> <p>1 the inquiry for you as to John Crane is going to be about 2 gaskets and packing, and what should have been known about 3 gaskets and packing looking back from 1985.</p> <p>4 So by way of some context, we know and we learned 5 through the evidence that there had always been some 6 regulation, and there is today, about asbestos. Just like 7 the state of the art or the literature, it evolved as 8 well.</p> <p>9 Started way back here in California in the 1930s, 10 and it evolved to pre-OSHA standards, and then it dropped 11 dramatically to our first standards at OSHA. And the 12 important thing to remember is that when John Crane 13 stopped selling asbestos-containing gaskets and packing, 14 the OSHA standards were 2.0 fibers per cc. That is what 15 the United States government allowed for an eight-hour 16 working day for someone to work with asbestos-containing 17 products.</p> <p>18 Today we have asbestos standards. We have our 19 PEL, which you've learned and heard many, many times, is 20 .1. You've also heard about AHERA, which was in 1986 as a 21 clearance standard for buildings and schools of .01 fibers 22 per cc for asbestos. There are levels today, as there 23 were back in 1985, the government permitted for exposure 24 to asbestos.</p> <p>25 Those were the standards then, and just like the</p>	<p style="text-align: right;">Page 80</p> <p>1 issue back before 1985.</p> <p>2 The individual literature that you heard about in 3 this case was Dr. Harries, an authority that was cited by 4 both sides. This is 1968, so now we are four years into 5 Mr. Whalen's service. In England they are looking in 6 shipyards and looking at the products that he is working 7 with, graphite packing, gaskets, and they come away in 8 1968 saying that they are not a dusty product. Keep in 9 mind what P.G. Harries was concerned about in the 10 shipyards: Dust. Just like Dr. Horn was concerned about 11 dust in 1979. They were in shipyards worried about dust.</p> <p>12 And when he was asked to classify the different 13 products in shipyards, he put dust in the nondusty 14 section. The products at issue for John Crane: Gaskets 15 and packing. That is in the scientific literature, a 16 world renowned researcher, P.G. Harries, the surgeon 17 commander of the Royal Navy.</p> <p>18 1970, Dr. Selikoff, I think both sides agree, the 19 preeminent expert starts discussing in publications -- 20 this is a very famous one in 1970, that asbestos fibers, 21 he says it's fortunate -- and this is in 1970 -- that the 22 greatest part has been in products in which the asbestos 23 is locked in. He's discussing products that have been 24 encapsulated -- he doesn't use the word "encapsulated," 25 but we know from what's discussed in the literature that</p>
<p style="text-align: right;">Page 79</p> <p>1 standards, the literature evolved. The early literature 2 was about case reports, so individual people presenting 3 with asbestos disease, dealing with raw asbestos.</p> <p>4 As we advance we get into some of the literature 5 that you've heard about in this case. Merewether and 6 Price, these were textile workers. Sir Richard Doll, 7 Wagner, were miners, so hugely exposed groups.</p> <p>8 Then it's not until you get into the '60s, the 9 Navy and others started looking at thermal insulation 10 exposure. Dr. Selikoff, world renowned scientist, starts 11 to take the data that he has heard and starts to look at 12 whether or not there is actually a risk with working with 13 products, so not just mining asbestos out of the ground, 14 but now they are thinking, is there an issue with these 15 products.</p> <p>16 The first product they look at is insulation. 17 Dr. Selikoff looks at this group and he starts seeing huge 18 amounts of -- huge in relative terms of mesothelioma from 19 people working with insulation.</p> <p>20 You fast forward into 1978, in the Navy based on 21 some studies based on some samples, performs a huge study 22 in the Bremerton Naval Shipyard, the same place that Mr. 23 Whalen worked. It continues into the '90s and today.</p> <p>24 There is a study that was published this year 25 looking at these issues, so clearly it was not a resolved</p>	<p style="text-align: right;">Page 81</p> <p>1 the locking in of fibers was the purpose of things like 2 graphite and rubber. The goal was to lock in the fibers 3 so the products would work when they were exposed to 4 extremely high pressure and extremely high heat.</p> <p>5 1971, P.G. Harries publishes specifically about 6 gaskets and packing.</p> <p>7 Now we are about seven years into Mr. Whalen's 8 service. They are publishing about the propensities for 9 gaskets about packing to be dangerous, and this is what 10 was being written. One of the inquiries that you're 11 given, the Judge gave you the law, is what is -- these are 12 the words -- generally accepted in the medical and 13 scientific community at the time.</p> <p>14 So think about what is generally accepted here. 15 Now, we have gone a couple years. In 1971 specific 16 mentions to asbestos gaskets and packing and not being a 17 health hazard.</p> <p>18 Move forward one year and the federal government 19 publishes its standard regarding labeling. They 20 specifically exempt products that have a binder in them, 21 so that's a product like a gasket or packing. If you are 22 looking at whether or not there ought to have been a 23 warning, that's an issue that you have to decide in this 24 case. This is what the federal government mandated on 25 warning.</p>

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1 If you move forward, now we are 13 years into Mr.
 2 Whalen's service. A document circulated in the state of
 3 California where one of the shipyards was discussing the
 4 use of asbestos products and warnings and whether or not
 5 the employers who use -- keep in mind, this is
 6 employers -- whether or not the employers have to even
 7 report gasket and packing exposures from asbestos. The
 8 answer is no. They are saying please report if you are
 9 using asbestos, except there is a handful of things you
 10 don't have to report, things like gaskets, packing and
 11 they include floor tiles, things like that.

12 Now, this is moving forward, now we are 14 years
 13 into Mr. Whalen's service. The first publication about
 14 gaskets in shipyards. Many, many samples were collected.
 15 This was cited to you many times by the experts in this
 16 case. Their take-aways are that the exposures were below
 17 the government standards.

18 Now, think about what the government standards
 19 were back in 1978. They were much -- even higher than in
 20 1985, so we are talking 5 fibers per cc. I told you in
 21 '85 it's 2 fibers per cc.

22 You have to look at what was known at the time.
 23 Here is the important part about the products. Please
 24 remember it's about the products. I am not talking about
 25 miners. I am not talking about textile workers. It's --

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1 the law tells you it has to be a product that you are
 2 looking at.

3 Finally, you probably know this by now, this is
 4 again reprinted, P.G. Harries table reprinted in the book.
 5 Now, the law tells you it has to be the best available
 6 scientific and medical knowledge. Dr. Selikoff was the
 7 preeminent researcher at the time. No one disputed that
 8 whatsoever.

9 The other things that the law recognizes is what
 10 is -- to use the legal phrase -- generally accepted. That
 11 is what the law in California is. By 1978 this had been
 12 known for ten years. You are talking a decade of
 13 publications that use this exact phrase, no health hazard
 14 from high temperature jointing and packings used in
 15 shipyards.

16 This is the question about warnings and knowledge
 17 on your verdict form. I can show you in a minute about
 18 your verdict form and discuss it, but these are the
 19 reasons you can check no, no to those questions. I am
 20 asking you to check no for substantial contributing factor
 21 and for warnings, check no. That's what I want to make
 22 clear. That's what I'm asking you to do, because that's
 23 what I think the evidence showed in this case.

24 One of the things, probably your best asset in
 25 the deliberation room is going to be your common sense.

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1 One of the things that you heard from many witnesses is
 2 what is the relative exposures? This is common sense.

3 The law in California uses this phrase
 4 "reasonable person." What a reasonable person, that is
 5 you. Substantial contributing factor is what a reasonable
 6 person would consider a substantial contributing factor.
 7 That is basically what it is.

8 We spent days, a week and a half, really, really
 9 carefully selecting jurors. You were there and you know
 10 how it went, but you came out on top and you came out on
 11 top for a reason, because, in part, because you could be
 12 fair and because you had some common sense.

13 We know that ambient exposures don't cause
 14 mesothelioma. We know that worker groups that work with
 15 insulation have huge rates of mesothelioma comparatively.
 16 That just means the number isn't really big, but because
 17 the numbers of mesothelioma are so low, the numbers are
 18 big in proportion.

19 Look at how low it is. I will advance so you can
 20 read it. It turns out if you use this -- this is fiber
 21 per cc year standard, so in a working lifetime how do
 22 these numbers compare? These were all tables that you
 23 were shown in the evidence in this case. I didn't make
 24 these tables. These were evidence in this case.

25 Comparing worker groups, mining residents, the

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1 current PEL, ambient exposure, gasket and packing,
 2 bystander gasket and packing, worker groups, extremely
 3 high levels of exposure. These were the residents that
 4 you heard, people that lived near mines had very high
 5 exposures. The current PEL, if you take that out today,
 6 that .1, if you take it out for 45 years, this is what you
 7 have at the end of 45 years, 4.5.

8 Then you have the ambient exposures. Let's try
 9 that again. You have the ambient exposures. You have --
 10 the range was .005 to .23. And you get to gaskets and
 11 packing are even lower. Remember, when you're talking
 12 about gaskets and packing, you know the difference between
 13 someone who worked hands-on with a product versus somebody
 14 that was just what they call a bystander. That's common
 15 sense. If you were standing next to somebody that had an
 16 exposure, your exposure would be less. We learned in
 17 testimony that depending on how far away you were from
 18 somebody who worked with a gasket and packing product,
 19 that number would be even lower. So if you were ten feet
 20 away, six feet away, that number would be reduced even
 21 more.

22 You advance it. This is a very similar slide.
 23 We're just giving you the ratio. It's 1/238th of the
 24 total exposure an insulator would have.

25 Finally, if you compare it just using the data

<p style="text-align: right;">Page 86</p> <p>1 that you have in this case, which is Harries data, it's 2 1/3000th of the exposure. It's a very, very low amount. 3 Ms. Alesio argued to you that the law does not 4 consider things that are quantitative or qualitative. I 5 mean, you are the reasonable person. You have to decide 6 whether or not 1/3000th of an exposure is a substantial 7 contributing factor. I think the evidence has been 8 abundantly clear, the answer is no. 9 You heard analogies, all different types of 10 analogies. Buckets in an ocean. You saw the stream on 11 her closing argument, the various streams contributing to 12 a fish's exposure. The point is the law says you have to 13 be able to show that one of them is a cause, at least. 14 That's the "if" of that jury instruction. That is why 15 John Crane is here defending itself, because John Crane 16 was not a substantial contributing factor. The evidence 17 has clearly shown that. 18 It's not each and every fiber of asbestos that 19 contributes to disease. You have to get a very, very high 20 exposure before you see disease. I am asking you to check 21 no to the substantial contributing factor question. 22 Question No. 15, when you get to the very end of 23 your verdict form, when you see it you will know what I'm 24 talking about. If you check no, as I have asked you to 25 do -- remember, I said the way it's broken out is that</p>	<p style="text-align: right;">Page 88</p> <p>1 including, and then it lists all the different 2 manufacturers. They list them. I told you what the 3 others were. They were numerous. You heard the names. 4 If you forgot the names, you can always ask to have all of 5 them read back. You heard, I don't know, three days worth 6 of video testimony. You know who they are. 7 Because the thermal insulation products are and 8 were a well-known cause of mesothelioma; they were dusty, 9 they were dangerous, they were regulated by the EPA, they 10 were banned, I am asking you to, if you get to question 11 No. 15, to put down for others because insulation is in 12 there, to put down 40, four zero, percent for total for 13 All others. I want to be as transparent as possible. I'm 14 asking you to do that, because on your verdict form 15 insulation is in that list. 16 Because the Navy bought the products, bought the 17 tools, paid Mr. Whalen, put him on ships, put him in 18 harm's way when they knew decades before that those 19 products were dangerous, exposed him, not stopped well 20 before OSHA, exposed him after OSHA. 21 You heard about asbestos products being used well 22 past Mr. Whalen's service in the Navy. There were 23 asbestos products all over the ships -- all over the 24 shipyards. I'm asking you to put down for his employer 60 25 percent, six zero, percent.</p>
<p style="text-align: right;">Page 87</p> <p>1 there is legal claims? That is the way it's organized 2 here. I tried to use the facts to show you how legal 3 claims are worked out here. At the end of each legal 4 claim it asks you if that legal claim was satisfied by it 5 being a cause of Mr. Whalen's injury. That's -- every 6 question ends that way. I'm asking you in questions Nos. 7 4 and 9 that -- any questions that asks for substantial 8 factor, that the answer is no for the reasons that we have 9 been discussing. 10 If you have ignored everything I have said, if 11 you think that the plaintiffs' case is compelling, if you 12 think that the evidence isn't what I have demonstrated it 13 to be, I have an obligation as a counsel to my client to 14 instruct you about the remainder of this verdict form. 15 One of the things that you will have to do if you 16 as a group decide to check yes, which I'm asking you not 17 to do -- I hope that is clear. I am asking you to check 18 no. If you check yes, you get to question No. 15, which 19 is the allocation question. 20 I think given the evidence there were two things 21 that were clear. There were a bunch of others and there 22 are -- there is the U.S. Navy. That is in question No. 23 15. It looks like this. I will not fill it out, but I 24 just want you to have an idea of what I'm talking about. 25 It says to John Crane, Inc. to U.S. Navy, to All Others</p>	<p style="text-align: right;">Page 89</p> <p>1 I did today what I told you I was going to do at 2 the beginning of the case. Mr. Purcell told you at the 3 beginning of the case he thought John Crane was closer to 4 zero than a hundred. I think it's zero. I think it's 5 zero for every reason that I came up and cross-examined 6 every witness, for every reason that we brought the 7 experts that we brought to this case. If I were to say 8 anything other than zero, it would be utterly inconsistent 9 with what I think the evidence was. 10 You were picked for a reason, you group. We need 11 reasonable people to look at the evidence and decide for 12 yourselves whether or not John Crane, that exposure was a 13 substantial contributing factor of Mr. Whalen's injury. 14 I told you the issues were that narrow. I am 15 asking you to check no to that question, and I thank you 16 very much for your time and for your patience. 17 THE COURT: Okay. Now, there is going to be an 18 opportunity for some rebuttal by the plaintiff. 19 MS. ALESIO: Thank you, Your Honor. 20 THE COURT: After which I will give you some 21 brief instructions and then you will be able to 22 deliberate. 23 FURTHER CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFFS 24 MS. ALESIO: After today I won't have to haul 25 this back in front of you. It's 4:00. There is a lot</p>

<p style="text-align: right;">Page 90</p> <p>1 that I want to say to you right now. I'm going to 2 exercise better judgment and say instead that I will keep 3 it brief and I will focus on a few particular points. 4 I trust that you all listened to everything that 5 everybody said, and I trust that you all listened to the 6 evidence. 7 What is nice actually at this point in the case, 8 and I don't often get to speak for Mr. Griffin, but this 9 is one situation where I think I can, is we actually feel 10 the weight of this case on our shoulders and putting it on 11 yours. I'm happy to give up that weight. 12 What I want to be clear about, ladies and 13 gentlemen, and I was trying to be clear in the course of 14 my closing, is that a truthful statement is consistent 15 with itself and consistent with the other pieces of 16 evidence and other statements that you heard in this case. 17 The simple fact with respect to this case and the 18 truth of this case is that John Crane doesn't get to have 19 it like this. They can't assert to you that it's the 20 chrysotile asbestos and the amphibole asbestos and the 21 insulation that causes disease and harm, but that somehow 22 the chrysotile asbestos in the gaskets and packing, a 23 miracle happened, and they don't cause disease and harm. 24 The fundamental principles of biology obtained from both 25 products. It is that simple, ladies and gentlemen.</p>	<p style="text-align: right;">Page 92</p> <p>1 work history and say that that is the only cause, the main 2 cause. That simply isn't the state of the evidence before 3 you. 4 It is like gaskets and packing, like any pipe 5 wrap, like any other asbestos-containing products that you 6 heard during the course of the evidence, turbines, pumps, 7 et cetera. It is a cause of his disease, a cause that 8 contributed with other causes that led in him to the 9 disease response. 10 And as much as I would like to say that there is 11 anything possibly redeeming about this notion that you 12 complied with an asbestosis standard, and, therefore, you 13 are not responsible for the mesothelioma that my client 14 now has, there is no redeeming or even a scintilla of 15 possible value in that assertion. If that is where they 16 want to set the goal post, let's set the goal post right 17 there. If the standard is an asbestosis standard and OSHA 18 standard that was set to prevent asbestosis and 19 specifically called out the fact that it would not be 20 protected as against mesothelioma, and that is the 21 standard they want to claim they complied with, okay by 22 me, folks. We can use that standard. 23 Because if you look at the actual literature -- 24 and not once you've run it through Dr. Madl's I'm going to 25 take a 30-minute exposure, divide it over eight hours and</p>
<p style="text-align: right;">Page 91</p> <p>1 This is a basic, simple premise. Yes, in order 2 to do harm asbestos must be released into respirable 3 forms. Yes, if I haven't said it, if we haven't written 4 it up here, if I haven't asked it of every single expert, 5 there was total admissions in this case, folks. No big 6 mystery there. I'm sure you haven't heard anything that 7 will catch you on the edge of your seats. There were 8 exposures to insulation in this case. Okay. The majority 9 of the exposures to insulation in this case by the 10 testimony of their witnesses would have been 11 chrysotile-containing insulation components. 12 The other point that we need to make when we are 13 talking about this, and I, like Mr. Griffin, agree, 14 certain things get lost. Did you notice in the testimony 15 of Mr. Delaney and Mr. Henshaw where both of them said by 16 naval specification insulation was being removed? 17 Asbestos-containing insulation was being removed with 18 respect to what was going on in ships after 1979. 19 Testimony from Mr. Delaney and Mr. Henshaw confirmed it. 20 Go back and take a look at that. I agree, 21 exposures to insulation, sure, in the early portion of Mr. 22 Whalen's naval career, no problem. We agree. It's part 23 of the total dose. That is how he got to where he is 24 today, but that is a completely different thing, ladies 25 and gentlemen, from saying that you can go back in his</p>	<p style="text-align: right;">Page 93</p> <p>1 then divide it over 45 years, when you actually look at 2 the literature that she was referring to: McKinnery and 3 Moore, Glutton and Longo, all of it. You saw -- oh, 4 Bremerton, the Bremerton study that everybody loves to 5 talk about, where they conclude that the levels were below 6 occupational limits at the time. 7 Folks, take a look, ask for readback of Dr. 8 Henshaw's testimony. You actually got to see those 9 studies, and you actually got to see where in those 10 studies they specifically said a variety of activities 11 were way above regulatory levels at the time. It's in the 12 paper itself. Just take a look at it. It's not that 13 hard. I don't think we have to argue this point. It's in 14 the published literature. 15 McKinnery and Moore, same thing, above the OSHA 16 PELs. So if that is the standard, let's embrace that 17 standard, folks, because the published literature says 18 that even at the goal post that they want to use, they 19 were above those goal posts. They weren't even the right 20 goal post, but if that is the one they want to use, they 21 are way the heck above it. It's a goal post for a 22 completely different game. Unfortunately, the game that 23 Mr. Whalen is playing is one where he ended up with 24 mesothelioma not, hypothetically, an increased risk of 25 asbestosis. Okay.</p>

<p style="text-align: right;">Page 94</p> <p>1 That is part of the difficulty that we have with 2 respect to this case. I have a lot of respect for Mr. 3 Griffin. I think he's done a great job representing his 4 client here today. And what I'm about to say is not a 5 reflection on him, but it is, in fact, a reflection on the 6 state on the way these cases get presented to juries. 7 That is, this is part and parcel of the strategy 8 that is designed to artificially create doubt where there 9 is none, to artificially see the literature with published 10 studies that they pay for, that GM and Chrysler paid for 11 in order to try and create this notion that there is some 12 kind of controversy where, truly, ladies and gentlemen, 13 none exists, and it hasn't existed for going on 20 to 30 14 years with respect to issues in this case. This is doubt 15 science. This is the worst of the worst with respect to 16 what you can do in the literature. 17 I invite you to look at Dr. Madl's studies. I 18 think she is a smart, intelligent and very bright woman, 19 but she came in this court and she testified to you that 20 the numbers that she was providing were averaged in with 21 products that did not contain asbestos. 22 She tried to present to you fiber release numbers 23 as authentic numbers representative of what a product 24 would do under real life conditions, when what she had 25 done was take nonasbestos products, measure fiber release</p>	<p style="text-align: right;">Page 96</p> <p>1 Whalen's case. Not a one of them testified to that, not 2 one. Every single one of the plaintiffs' experts told you 3 the opposite. 4 Now, this concept of substantial I want to 5 explain. I do want you to look at the law, folks. I want 6 you to look at the law very carefully and very closely, 7 and the reason I want you to look at the law, because 8 there are some things that are always substantial. 9 Always. 10 In somebody who gets the disease response 11 mesothelioma, asbestos exposure, every asbestos exposure 12 is one of them. 13 We can think of a few examples, folks. You can't 14 say in somebody who gets mesothelioma, he was just a 15 little bit of asbestos and it doesn't matter. You can't 16 do that. Okay. An easy example? It's funny or it's not, 17 but it would be like saying it's just a little bit of 18 infidelity, no big deal. It would be like saying in 19 somebody who gets a DUI for drinking, well, it was just a 20 little bit of drinking. You can't evaluate it that way. 21 This is a disease response, and the biology in medicine is 22 going to tell you that it's like a glass filling up with 23 water. It's a glass, every drop contributes, every drop 24 contributes, and then eventually at some point the glass 25 is going to overflow; and, unfortunately, in Mr. Whalen's</p>
<p style="text-align: right;">Page 95</p> <p>1 from those products with asbestos products and then 2 averaged the two numbers together to present you with a 3 point zero, zero, zero, whatever the heck number it was. 4 That, ladies and gentlemen, is not honest, 5 authentic, credible science. It's not. That is what you 6 have to do in order to arrive at the conclusions that they 7 are asking you to arrive at here today. 8 The truth in this case is simple. It is simple. 9 It is this: That asbestos carries the highest possible 10 risk, the highest death disease, period. I can't 11 articulate to you that this is the worst possible disease. 12 I can't. I'm not going to try. That is the risk that is 13 inherent in these products, ladies and gentlemen. 14 The law holds them accountable for their 15 contribution, no more. No more. I don't think their 16 contribution is in the 50 percent or 60 percent or 70 17 percent range. I don't think that is what the evidence 18 has shown, but I do think that the evidence has shown 19 clearly that it is humanly impossible, scientifically and 20 medically impossible to go back in this gentleman's dose 21 and parse out pieces of it and say you can assign the 22 causation over here and not assign the causation over 23 there. Their experts tried to do a lot to persuade you, 24 but none of their experts could tell you that it was 25 scientifically or medically feasible to do that in Mr.</p>	<p style="text-align: right;">Page 97</p> <p>1 case we know that happened. You can't go back and say 2 that the glass would have overflowed if you didn't have 3 each of the component parts, because that is what we have 4 here and that is what the medicine and science is telling 5 you, and that is what the law means when it says 6 substantial factor. That is what the law means when it 7 says substantial factor. Read it. Look at it closely. 8 It's an important decision. It's the most 9 important decision in this case, folks. It is as simple 10 as saying that if there -- I don't know what the weather 11 report is for tomorrow, but I will go ahead and suspect 12 that there is not anybody predicting very likely chance of 13 rain. You get here tomorrow and you are opening your 14 umbrella and it's raining outside, it doesn't really 15 matter if somebody predicted today that there was a high 16 chance of rain one way or another. It doesn't matter at 17 that point. Unfortunately, in Mr. Whalen's case it's 18 raining. He got the disease. It doesn't matter at the 19 point -- the hypothetical person, the risk was 20 hypothetically relatively low. What we know in Mr. 21 Whalen's case is that it all contributed in him to 22 increase his risk of disease that produced the end result 23 in him. 24 That is the evidence in this case, and you can't 25 go back, much as John Crane would invite you to and might</p>

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1 like you to and say that the asbestos over here
 2 contributed and the asbestos over here didn't. There was
 3 simply, frankly, folks, no evidence, no credible evidence
 4 from anybody anywhere that there is such a thing as a dose
 5 that is too low to contribute in somebody who has the
 6 disease. There is no evidence on that point. Go back and
 7 take a look at it. It's not there, folks. It's not.
 8 So what I would have to say, ladies and
 9 gentlemen, is this case now is in your hands. You have to
 10 apply the same standards in looking at this case, all
 11 aspects of this case as we talked about with respect to
 12 the products claimed, with respect to the negligence
 13 claims, and you have to apply the same principles to the
 14 products that Mr. Griffin wants to lay responsibility at
 15 the feet at, as we do, to Mr. Griffin's clients' products.
 16 That is what you have to do.
 17 There is a consistency. In fact, there is really
 18 only one side that is presenting you a consistent
 19 perspective on this and that is the plaintiffs. That is
 20 consistent, because it happens, by the way, to just be the
 21 truth in the medicine and science.
 22 There is a reason that we can be consistent and
 23 it's because this position is true. It's a nice luxury
 24 that we have.
 25 With working through the evidence in this case,

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1 which is what you are going to do after the judge
 2 instructs -- probably not today. You will get to go home
 3 and watch the game. When you work through the evidence in
 4 this case, I will ask you, ladies and gentlemen, to do a
 5 couple of things.
 6 First thing, talk to each other about how you
 7 feel about the case. Why you feel the way you do. What
 8 it is that you remember. Talk to each other.
 9 The next thing you have to do, and we told you
 10 this, and you know it, is to apply the law of the State of
 11 California. Apply the law of the State of California,
 12 answer the questions on the verdict form, apply the facts
 13 as you heard them to the law as it is given to you.
 14 The charge that I want to give to you, ladies and
 15 gentlemen, is that justice really only comes to one
 16 individual at one time and under very certain
 17 circumstances when you, ladies and gentlemen, are in the
 18 fortunate, truly fortunate position to be able to do that
 19 tomorrow, the next day on behalf of the evidence that you
 20 have seen in this case and on behalf of my clients.
 21 Again, I want to thank you very much for your
 22 time and it's on you guys now. Thank you.
 23 THE COURT: Could you move the easel --
 24 MS. ALESIO: Sorry, Judge.
 25 THE COURT: -- so I can look at them. Actually,

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1 I will instruct them now. There is only a few more
 2 instructions that I need to give. Let's do all of that
 3 and get you all set up and prepared as we go over.
 4 FURTHER CLOSING JURY INSTRUCTIONS
 5 THE COURT: I do want to just remind you that it
 6 was said earlier that nothing that the attorneys say is
 7 evidence. If anything that the attorneys say is different
 8 than what I tell you or what is in -- written down here,
 9 you follow what I say is the law, not what they tell you.
 10 What I'm going to tell you is the law, so to the extent
 11 that there is any disagreement, go with the evidence and
 12 go in terms of facts and go with my statement of the
 13 law.
 14 But when you go into the jury room, the first
 15 thing you should do is choose a presiding juror. It's
 16 often called a foreperson. The presiding juror should see
 17 to it that your discussions are orderly and everyone has a
 18 fair chance to be heard. It's your duty to talk with one
 19 another in the jury room and consider the views of all the
 20 jurors.
 21 Each of you must decide the case for yourself,
 22 but only after you consider the evidence with the other
 23 members of the jury.
 24 Feel free to change your mind if you are
 25 convinced that your position should be different. You

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1 should all try to agree, but do not give up your honest
 2 belief just because you think the others think
 3 differently.
 4 Please do not state your opinions too strongly at
 5 the beginning of your deliberations or immediately
 6 announce how you plan to vote.
 7 Remain open to discussion. Keep an open mind so
 8 that you and your fellow jurors can easily hear ideas
 9 about the case.
 10 You should use your common sense and experience
 11 in deciding whether testimony is true and accurate.
 12 However, during your deliberations, do not make any
 13 statements or provide any information to other jurors
 14 based upon any special training or unique personal
 15 experiences that you may have had related to matters
 16 involved in this case.
 17 What you may know or learn through your training
 18 and experience is not part of the evidence received in
 19 this case.
 20 Sometimes jurors disagree or have questions about
 21 the evidence or about what the witnesses said in their
 22 testimony. If that happens, you may ask that testimony be
 23 read back to you.
 24 Also, jurors may need further explanation about
 25 the laws that apply to the case. If this happens during

<p style="text-align: right;">Page 102</p> <p>1 your discussions, write down your questions and give them 2 to the clerk -- or, actually, give them -- give them to 3 the court attendant who will give them to the clerk who 4 will give them to me.</p> <p>5 I will talk with each attorney before I answer so 6 it may take some time. You should continue your 7 deliberations while you wait for my answer. I will do my 8 best to answer them.</p> <p>9 When you write me a note, do not tell me how you 10 voted on an issue until I ask for this information in open 11 court.</p> <p>12 I said I will try to answer -- there may be some 13 things I just can't give you additional information, and 14 the answer may very well be: Look at what's written here.</p> <p>15 At least nine jurors must agree on a verdict. 16 That is unlike in criminal where it needs to be unanimous. 17 You need nine jurors to agree on a verdict.</p> <p>18 When you finish filling out the form, your 19 presiding juror must write the date and sign at the bottom 20 and notify the clerk that you are ready to present your 21 verdict in the courtroom.</p> <p>22 Your decision must be based on your personal 23 evaluation of the evidence presented in the case. Each of 24 you may be asked in open court how you voted on each 25 question.</p>	<p style="text-align: right;">Page 104</p> <p>1 testimony you would like to have read and the name of the 2 attorney or attorneys asking the questions when the 3 testimony was given. Also, if there is anything else that 4 you remember that can help us pin down exactly what you're 5 looking for, that is helpful.</p> <p>6 The court reporter is not permitted to talk with 7 you when he or she is reading the testimony you have 8 requested. While the court reporter is reading the 9 testimony, you may not deliberate or discuss the case.</p> <p>10 You may not ask the court reporter to read 11 testimony that was not specifically mentioned in the 12 written request. If your notes differ from the testimony, 13 you must accept the court reporter's record as accurate.</p> <p>14 I am going to give you a verdict form with 15 questions that you must answer. I have already instructed 16 you on the law that you are to use in answering these 17 questions. You must follow my instructions and the form 18 carefully. You must consider each question separately.</p> <p>19 Although you may discuss the evidence and the 20 issues to be cited in any order, you must answer the 21 questions on the verdict form in the order they appear. 22 After you answer the questions, the form tells you what to 23 do next. Some, for example, may tell you, based upon your 24 answer, to go to a different question.</p> <p>25 All 12 of you must deliberate on an answer to</p>
<p style="text-align: right;">Page 103</p> <p>1 While I know that you would not do this, I am 2 required to advise you that you must not base your 3 decision on chance, such as the flip of a coin.</p> <p>4 If you decide to award damages, you may not agree 5 in advance to simply add up the amounts from each juror 6 and write them in without further deliberations and make 7 the average your verdict.</p> <p>8 You may take breaks, but do not discuss this case 9 with anyone, including each other until all of you are 10 back in the jury room.</p> <p>11 If you have taken notes during the trial, you may 12 take your notebooks with you into the jury room. You may 13 use your notes only to help you remember what happened 14 during the trial. Your independent recollection of the 15 evidence should govern your verdict.</p> <p>16 You should not allow yourself to be influenced by 17 the notes of other jurors if those notes differ from what 18 you remember. At the end of the trial your notes will be 19 collected and destroyed.</p> <p>20 Now, you may request in writing the trial 21 testimony be read to you. I will have the court reporter 22 read the testimony to you. You may request that all or 23 part of a witness's testimony be read. Your request 24 should be as specific as possible. It will be helpful if 25 you can state the name of the witness, the subject of the</p>	<p style="text-align: right;">Page 105</p> <p>1 each question. At least nine of you must agree on an 2 answer before all of you can move on to the next question. 3 However, the same nine or more people do not have to agree 4 on each answer.</p> <p>5 When you have finished filling out the form, the 6 presiding juror must write the date and sign at the bottom 7 of the last page and notify the clerk through the court 8 attendant that you are ready to present your verdict in 9 the courtroom.</p> <p>10 Now, two of your fellow jurors have been excused, 11 and alternate jurors have been selected to join the jury 12 in their place. Do not consider this substitution for any 13 purpose. Alternate jurors must participate in the 14 deliberation that led to any verdict. The parties have a 15 right to a verdict reached only after full participation 16 of the jurors whose votes determine that verdict. This 17 normally gets read when -- if something were to happen, 18 for example, during the deliberation tomorrow. Understand 19 that if something were to happen and we need to bring 20 another juror in, you would have to start deliberations 21 over again. It happens on some rare occasions, and so if 22 that were to happen, you must start your deliberations 23 again from the beginning. You must set aside and 24 disregard all past deliberations and begin your 25 deliberations all over again. Each of you must disregard</p>

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1 earlier deliberations and decide the case as if those
 2 earlier deliberations had not taken place.

3 I will tell you the instructions for the
 4 alternate jurors, which is that the jury is now going to
 5 be soon deliberating, but you are still alternate jurors.
 6 You are bound by the early instructions about
 7 your conduct. Until the jury is discharged, do not talk
 8 about the case or any of the people or any subject
 9 involved in the lawsuit, not even with your family or
 10 friends, not even with each other. Do not have any
 11 contact with the deliberating jurors.

12 Do not decide how you would vote if you were
 13 deliberating. Do not form or express an opinion about the
 14 issues in the case unless you are substituted in for one
 15 of the deliberating jurors.

16 You are still alternates. There is still a
 17 possibility that something unfortunate could happen that
 18 might make you have to come in.

19 Now, as I indicated before, I need you guys to be
 20 sort of on standby, which means we need to be able to have
 21 a phone number where we can reach you, the alternates, so
 22 that you can come in and please be someplace where you can
 23 be here within an hour or so, that we don't -- nothing
 24 will be able to happen if we need to have one of you
 25 substitute in until you are available.

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1 What we will do, though, is at the end, when the
 2 matter has been resolved, we will contact you to tell you
 3 you are no longer needed to hang around on standby, and,
 4 also, we will inform you about what the jurors decided in
 5 your absence.

6 Because, as I have said before, you have been
 7 through all this, you at least deserve to know the
 8 outcome. You are still potential jurors in this case and
 9 so you just need to act accordingly.

10 At this point what we are going to do is we're
 11 going to discharge you to go back and deliberate, and you
 12 are not going to be meeting with us anymore. Now, as I
 13 said earlier, when you give a question I will have to talk
 14 to the attorneys. The attorneys won't be sitting in the
 15 room with me, so it may take some time for us to get them
 16 to be here with you and so just continue to deliberate.

17 So with that -- now we need to swear the bailiff.
 18 (Court attendant sworn to take charge of the
 19 jury.)

20 THE COURT: One or two other things I wanted to
 21 say to be clear. One is do not, at any point, indicate to
 22 me or to the court attendant or anyone else where you
 23 stand in terms of numbers unless I specifically ask you
 24 to. So even if I ask you how you are doing or something
 25 like that, do not tell me where you are in terms of the

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1 votes on any particular issue until I tell you so.
 2 Now, as I have indicated before, although we are
 3 dark in here normally for trial on Fridays, you can
 4 continue to deliberate on a Friday. In terms of time for
 5 deliberation you can come in tomorrow. We have been
 6 coming in like 9:30 or so, but if you wanted to start
 7 deliberating earlier you can do that. I don't know, you
 8 may want to decide that for yourselves when you want to be
 9 available for that.

10 Lunch will be provided for you while you are
 11 deliberating. Once the -- even if you render a verdict,
 12 you will still get your lunch. I don't want you thinking,
 13 oh, well, let's wait until after lunch to come back with a
 14 verdict if that should happen at some point. Once it has
 15 been ordered, they are making the food and you will get
 16 it.

17 So -- but -- any questions? If you have any
 18 doubts or hesitancy about this, please just write it out.
 19 Do not ask questions verbally to Mr. Davis. Fill it out
 20 no matter what it is; all written out so that we can have
 21 that and so I can discuss it with the attorneys.

22 Those forms will be given to you along with a
 23 copy of the verdict form, so with that you may go and
 24 begin your deliberations.

25 I suspect that you will go in and say when you

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1 are meeting tomorrow and coming back, but at least we got
 2 through -- we're done with this today.

3 JUROR NO. 8: What time do you open the doors?
 4 THE COURT: What time would they open the doors
 5 in the morning?
 6 THE COURT ATTENDANT: Depends on what time they
 7 want to come in.
 8 THE COURT: You can come in -- if you guys want
 9 to come in earlier, you can --
 10 What is too early?
 11 THE CLERK: We can open at 8:30.
 12 THE COURT: If you wanted to start as early as
 13 8:30, you could. It's up to you guys. You just need to
 14 inform Mr. Davis, because he will be running this. We
 15 will not be interacting with you except on your request or
 16 by notification that you have rendered a verdict.

17 JUROR NO. 2: One other question. May we take
 18 this (indicating) with us to the jury room?
 19 THE COURT: Yes, you may. Now, the only question
 20 is, you leave all that -- now, in terms of the alternates,
 21 leave those here. We will hold them for you. Don't --
 22 should you be called in, you will be provided with your
 23 notebooks.

24 THE CLERK: Yes.
 25 THE COURT: Okay. If I don't see you, because

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1 two of you I may not be seeing again, thank you so very
 2 much. I hope that this has been a positive experience for
 3 you. Certainly it has been a positive experience for
 4 those of us here with the Court working with all of you so
 5 far.

6 With that I'm going to -- is there anything else
 7 that you guys need to know? Okay.

8 (Jury exits courtroom to begin deliberations.)

9 THE COURT: The alternates we should probably
 10 just double check to make sure that we have the best
 11 contact for you, so if you can just wait for a minute, the
 12 clerk may want to talk to you.

13 (Discussion off the record.)

14 THE COURT: Anything we need to put on the record
 15 at this point?

16 MS. ALESIO: Do we need to put anything?

17 Not from the plaintiffs, Your Honor.

18 MR. NELDER: No.

19 (Proceedings adjourned at approximately 4:35
 20 p.m.)

21 ---oOo---

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 23
 24
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1 REPORTER'S CERTIFICATION

2 ---oOo---

3

4 I, CAROL HARABURDA, do hereby certify that I am a
 5 certified shorthand reporter of the State of California
 6 and duly appointed shorthand reporter.

7 That the foregoing pages are a full, true, and
 8 correct transcript of my shorthand notes taken in the
 9 above-mentioned matter.

10 IN WITNESS WHEREOF, I have hereunto subscribed my
 11 name this 3rd day of NOVEMBER 2014.

12

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16 _____
 CAROL HARABURDA, RPR, CSR NO. 8052
 Certified Shorthand Reporter
 Court Certified Realtime Reporter
 State of California

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