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October 30, 2020

John P. Asiello,  
Chief Clerk and Legal Counsel to the Court  
Clerk's Office  
20 Eagle Street  
Albany, New York, 12207

Re: *Nemeth v. Brenntag North America, et al.*  
*APL-2020-00122*

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Dear Mr. Asiello:

This submission of Amici Curiae Colgate-Palmolive Company, Avon Products Inc., Johnson & Johnson and Johnson & Johnson Consumer Inc., and Shulton Inc., is made to this Court pursuant to Section 500.23 of the Rules of Practice of the Court of Appeals.

**Statement of Interest**

Amicus Curiae Colgate-Palmolive Company ("Colgate") manufactures and distributes household, health care, and personal care products to hundreds of

millions of consumers worldwide. Headquartered in New York City, Colgate has been named as a defendant (along with many others) by numerous plaintiffs who sued alleging that they developed mesothelioma from using consumer talc products. Avon Products, Inc. (“Avon”),<sup>1</sup> Johnson & Johnson and Johnson & Johnson Consumer Inc. (“J&J”),<sup>2</sup> and Shulton, Inc., (“Shulton”),<sup>3</sup> are similarly situated companies that have been sued for their consumer talc products, and join Colgate as Amicus Curiae in this matter.

Amici Curiae respectfully submit this brief to provide the Court with the perspective of non-traditional NYCAL defendants, who never manufactured or distributed asbestos-containing products. Amici Curiae instead produced safe, consumer-friendly, cosmetic talc products. Now, however, Colgate, Avon, J&J, and Shulton are being sued in a growing number of asbestos cases on the basis of “expert” opinions that fail to demonstrate with reliable science that their cosmetic talc is contaminated with asbestos, or that use of the talc exposes the user to dangerous, above-background levels of asbestos.

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<sup>1</sup> The undersigned has been authorized to sign on behalf of Avon as an Amicus in this case with counsel, Stephen Novakidis, Esq., as Of Counsel.

<sup>2</sup> The undersigned has been authorized to sign on behalf of J&J as an Amicus in this case with counsel, Thomas P. Kurland, Esq., as Of Counsel.

<sup>3</sup> Although Shulton was initially named as a defendant in this action, Shulton was dismissed prior to the trial of this matter and is not a party to this appeal. The undersigned has been authorized to sign on behalf of Shulton as an Amicus in this case with counsel, David E. Rutkowski, Esq., as Of Counsel.

Amici Curiae have no direct financial interest in the outcome of this case. But given the growing number of talc-related toxic tort cases throughout the country, particularly in New York, Amici Curiae urge the Court to reemphasize and apply to these talc/asbestos claims its teachings in *Parker v. Mobil Oil Corp.*, 7 N.Y.3d 434 (2006), that trial courts must faithfully fulfill their “gatekeeping” function to probe the underpinnings and reliability of scientific causation theories, such as those espoused by Dr. Moline, Nemeth’s expert here.

Unfortunately, the courts below failed in their responsibility to examine, and reject, the spurious causation theories touted by Dr. Moline, thereby undermining this Court’s repeated efforts, as exemplified in *Parker*, *Cornell v. 360 W. 51st St. Realty, LLC*, 22 N.Y.3d 762 (2014), *Sean R. v. BMW of North America, LLC*, 26 N.Y.3d 801 (2016), and *Matter of New York City Asbestos Litig. [Juni]*, 32 N.Y. 3d 1116 (2018), to ensure that expert opinions contain conclusions that are reliable and supported by scientifically sound data and methodologies. As Justice Friedman correctly admonished the First Department’s majority below, acceptance of such flawed causation theories opens the floodgates for experts to proffer speculative, *ipse dixit*, opinions built on a foundation of scientifically unsound quicksand.

## Introduction

Scientific evidence can be both unduly powerful and quite misleading because of the layperson's inability to evaluate its methods, results, reliability and relevance. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993). In *Parker*, this Court recognized the dangers of permitting speculative theories of disease causation to be placed before jurors behind a façade of "science," emphasizing the responsibility of trial courts to act as gatekeepers to ferret out, and exclude, "junk science," thereby ensuring that only scientific evidence with a proper foundation reaches a jury. This Court reaffirmed *Parker* in *Cornell, Sean R.*, and *Juni*.

Expert witness testimony – particularly in the toxic tort context – requires close judicial scrutiny for multiple reasons. First, fidelity to *Parker* and its progeny requires trial courts to ensure that they admit only scientific testimony or evidence that is both relevant and reliable. Second, the unique attributes of expert scientific witnesses grant them latitude unavailable to lay witnesses. Indeed, the judicial designation of "expert" status alone can disproportionately influence jurors. Third, the expert's impact on jurors is amplified further because they provide testimony on matters beyond the realm of the typical juror's knowledge and experience. Fourth, studies and scholars report "indications that cross-examination does little to affect jury appraisals of expert testimony." Christopher



B. Mueller, *Daubert Asks the Right Questions: Now Appellate Courts Should Help Find the Right Answers*, 33 Seton Hall L. Rev. 987, 993 (2003). Indeed, recent studies confirm the common assumption by jurors that, because the trial judge admitted the evidence, it must have passed at least a minimum level of reliability. See Jonathan J. Koehler, N.J. Schweitzer, Michael J. Saks & Dawn E. McQuiston, *Science, Technology, or the Expert Witness: What Influences Jurors' Judgments About Forensic Science Testimony?*, 22 Psychol. Pub. Pol'y & L. 401, 410-11 (2016); N.J. Schweitzer & Michael J. Saks, *The Gatekeeper Effect: The Impact of Judges' Admissibility Decisions on the Persuasiveness of Expert Testimony*, 15 Psychol. Pub. Pol'y & L. 1, 7 (2009).

Justice Friedman's dissent correctly emphasized that the majority erroneously departed from this Court's teachings, in essence predicting that this Court, in turn, would abandon the *Parker* line of precedents in favor of a looser approach to scientific expert evidence. But abandoning this Court's requirement that expert causation testimony must withstand the rigors of a searching inquiry to ensure it is based upon reliable data and proper scientific methodology, as the First Department wishes this Court to do, would effectively relieve plaintiffs of their burden to prove that they were exposed to sufficient levels of asbestos to cause their illness. The First Department ignored the "dose-response" evidence required by reputable science in favor of "net" opinions, thereby resurrecting the same sort

of “any exposure” theories that this Court previously rejected in *Parker* and its progeny. In so doing, the decision below leaves innocent manufacturers – who, at least until the First Department’s decision, were protected by the evidentiary safeguards against junk science established by *Parker* – vulnerable to undeserved liability due to that court’s, and the trial court’s, abdication of their vital “gatekeeper” responsibilities.

### **Argument**

#### **I. As the Evidentiary Gatekeeper, Trial Courts Must Distinguish Between Genuine Science and Junk Science, and Exclude the Latter**

As traditional asbestos litigation diminished, the plaintiffs’ bar began pursuing novel claims based on low dose exposure to common substances, including injuries based on alleged trace contaminants in consumer talc products. These alleged exposures bear no resemblance to the high-dose occupational exposures traditionally associated with career workers in construction insulation, shipyards, and the like, where the scientific consensus was that the levels of asbestos were of such magnitude that exposure and causation could be assumed. Instead, if they exist at all, asbestos exposures based on the use of cosmetic talc are below background levels of exposure in everyday life.

While there are many theories, reliable scientific evidence of actual harm caused by cosmetic talc use is nonexistent. Given these novelty of the theories, the lack of consensus among the scientific community, and the potential impact of

these claims on manufacturers that had nothing to do with “big asbestos,” courts must scrutinize the evidence closely and demand that plaintiffs carry their burden of proof on more than just hypotheses. Plaintiffs must come forward with scientific evidence to show the presence of a harmful substance in cosmetic products, the extent of exposure to that substance required to cause harm, and proof that the individual plaintiff was exposed to the requisite amount of the substance to cause her or his injury.

This Court established an objective and reasonable standard for admissibility of scientific expert testimony in *Parker*. The trial judge is not a turnstile, but the gatekeeper, who has the responsibility of rejecting unreliable evidence and opinions – irrespective of the qualifications of the expert who is espousing them (because even the most credentialed expert cannot turn a speculative theory into science by articulating an opinion). In *Parker*, defendants challenged the reliability of plaintiff’s expert’s methodology and procedures to establish specific causation, that is, whether there was reliable evidence to demonstrate that plaintiff was exposed to a sufficient amount of benzene to cause his AML. In affirming the preclusion of plaintiff’s expert, this Court cautioned that: “As with any other type of expert evidence, we recognize the danger in allowing unreliable or speculative information (or “junk science”) to go before the jury with the weight of an impressively credentialed expert behind it.” *Parker*, 7 N.Y.3d at 434.

Even before *Parker*, New York courts long recognized, and exercised, their role as gatekeepers, recognizing that, whether expert testimony is novel or not, a trial court always has the duty to assess its reliability and relevance before allowing it to reach a jury:

A Trial Judge's role as a gatekeeper of evidence is not a role created by *Daubert* and rejected by the Court of Appeals; it is an inherent power of all trial court Judges to keep unreliable evidence ("junk science") away from the trier of fact regardless of the qualifications of the expert. A well-credentialed expert does not make invalid science valid merely by espousing an opinion.

*Clemente v. Blumenberg*, 183 Misc. 2d 923, 932, 705 N.Y.S.2d 792, 799 (Sup. Ct., Richmond Cnty 1999); *see also Styles v. GMC*, 20 A.D.3d 338, 342, 799 N.Y.S.2d 38, 43 (1st Dep't 2005, JJ Catterson and Friedman concurring) (same); *Litwack v. Plaza Realty Investors*, 2004 NYLJ LEXIS 5146, \*22-23 (Sup. Ct., NY Cnty 2004) ("Before plaintiff's experts can testify as to his or her opinion before a jury, this court must exercise its role as gatekeeper and review the evidence to ascertain whether plaintiff's experts' opinions are scientifically or technically reliable and generally acceptable in the scientific community.").

Critically, the courts' gatekeeper role does not end after verifying that an expert is qualified and has followed scientifically accepted methodologies. Courts also must ensure that reliable and relevant data undergird any scientific expert opinion before it can reach the jury. As this Court explained in *Cornell*: "Even though the expert is using reliable principles and methods and is extrapolating

from reliable data, a court may exclude the expert's opinion if "there is simply too great an analytical gap between the data and the opinion proffered." 22 N.Y.3d at 780-781 (quoting *General Electric Co. v. Joiner*, 522 US 136, 146 (1997)). Thus, scientific experts may only testify when their opinions are based on data that correlates objectively to the plaintiff's situation – or their opinions are legally irrelevant.

As Justice Friedman noted in dissent, plaintiff's expert below could not rely on any epidemiological studies linking the use of cosmetic talc with mesothelioma, failed to offer a numerical definition of the amount of exposure to cosmetic talc would lead to injury, and could not provide even an estimate of the extent of Ms. Nemeth's exposure. Opinions like Dr. Moline's here, which are nothing more than *ipse dixit* untethered to any scientifically-reliable tests or studies, fall far short of a plaintiff's burden of proof as a matter of law. The trial court and the First Department failed as gatekeepers in allowing expert "scientific" testimony linking cosmetic talc to Ms. Nemeth's peritoneal mesothelioma when that connection was made "only by the *ipse dixit* of the expert." *Marsh v. Smyth*, 12 A.D.3d 307, 312, 785 N.Y.S.2d 440, 445 (1st Dep't 2004). They should be reversed.

## **II. When Courts Fail to Properly Guard the Gate, the Erroneous Admission of Expert Testimony Can and Does Produce Improper Outcomes, Divorced from Science, in Product Liability Suits**

The main thing jurors know about an expert witness is what the judge declares when she or he qualifies the expert, i.e., that the witness is in fact an “expert.” And while the jurors have their own experience to draw on when evaluating ordinary testimony, they have no comparable lens through which to view expert testimony. “The content of expert testimony is, by definition, outside the realm of an ordinary juror’s scope of knowledge. The basic calipers that jurors use to evaluate testimony — their own life experience — are of little value.” V. E. Schwartz & C. Silverman, *The Draining of Daubert and the Recidivism of Junk Science in Federal and State Courts*, 35 Hofstra L. Rev. 217, 220 (2006).

Without proper gatekeeping, the ultimate issue becomes whatever an expert says it is, with the jury left to choose as between experts who they will presume are authoritative. Research shows that jurors, unfamiliar with scientific and technical terms and processes, place far more weight on expert witnesses’ experience than on the reliability of their methodology. Koehler, et al., *Science, Technology, or the Expert Witness: What Influences Jurors’ Judgments About Forensic Science Testimony?* 22 Psychol. Pub. Pol’y & L. at 411.

When faithfully applied by the lower courts, this Court’s *Parker* line of precedent protects against junk science – and unscientific outcomes. To reach the

jury, scientific expert opinions on causation in toxic tort cases must “set forth (1) a plaintiff’s exposure to a toxin, (2) that the toxin is capable of causing the particular injuries plaintiff suffered (general causation) and (3) that the plaintiff was exposed to sufficient levels of the toxin to cause such injuries (specific causation).” *Sean R.*, 26 N.Y.3d at 808-809. And such opinions must be reliably grounded in science.

This case epitomizes the importance of holding plaintiffs with novel theories to their burden of proof. Here, the epidemiological evidence does not suggest (much less establish) a causal link between the use of cosmetic talc and peritoneal mesothelioma. Plaintiff also could not scientifically quantify how much asbestos was allegedly present in cosmetic talc, the extent of Ms. Nemeth’s exposure to asbestos in cosmetic talc, or whether her exposure was sufficient to cause injury. So plaintiff relied on an “expert” to try to fill this evidentiary gap with purported evidence of below-background levels of exposure (while failing to quantify those levels scientifically), hoping that, when presented by a doctor, it would create a general impression of culpability to the jury. Properly supported scientific evidence is critical to prevent this sleight of hand, forcing plaintiffs to deal in scientifically-supportable facts – not unproven and speculative hypotheses – about asbestos exposure and causation.



The majority below erroneously sanctioned the trial court's departure from *Parker* by allowing an expert to testify without laying the proper factual and scientific predicate for her opinions. In so doing, the First Department all but endorsed the use of *faux* science at trial – provided it is presented by a credentialed spokesperson on behalf of a sympathetic plaintiff. As Justice Friedman's dissent demonstrated, however, the majority affirmed even though the record was devoid of evidence of general or specific causation.

A. Requiring Reliable Proof of General Causation Is Necessary to Prevent the Pursuit of Scientifically Unprovable Claims

To prove general causation, *Parker* and *Cornell* require proof that asbestos “as contained within” the defendant's product can cause the alleged disease, here peritoneal (not pleural) mesothelioma. *Parker*, 7 N.Y.3d at 449-50 (“[Plaintiff] concentrates on the relationship between exposure to benzene and the risk of developing AML—an association that is not in dispute. Key to this litigation is the relationship, if any, between exposure to *gasoline* containing benzene as a component and AML.”) (original emphasis); *Cornell*, 22 N.Y.3d at 783 (“association” is not synonymous with “causation”). In other words, the issue in this case is not whether asbestos causes disease, but whether asbestos as an alleged trace contaminant in cosmetic talcum powder causes disease.

As this Court held in *Parker*, to establish general causation, plaintiff must present epidemiological evidence that a particular product causes a particular type

of injury.<sup>4</sup> 7 N.Y.3d at 449-50 (plaintiff's experts failed to establish causation because they were unable to identify a single epidemiological study finding increased risk of AML from exposure to gasoline). As Justice Friedman correctly argued in his dissent, Dr. Moline's opinion here lacked any reliable epidemiological support and, thus, was insufficient to establish causation. The jury's verdict for the plaintiff, and the First Department's majority's affirmance and disregard of the *Parker* standards for establishing foundational reliability, prove that leniency in gatekeeping leads to improper and unscientific outcomes because *there is not a single epidemiological study linking the use of cosmetic talc to mesothelioma – neither peritoneal nor pleural.*

In fact, while there are no studies supporting a causal link between cosmetic talc and mesothelioma of any type, there have been at least five separate epidemiological studies that found no correlation whatsoever between any sort of talc and mesothelioma. See Giovanni F. Rubino, et al., *Mortality Studies of Talc Miners and Millers*, J. Occup. Med. (1976); Giovanni F. Rubino, et al., *Mortality & Morbidity Among Talc Miners and Millers in Italy*, *Dusts and Disease* (1979); Gamble, J. et al., *An Epidemiological-Industrial Hygiene Study of Talc Workers*,

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<sup>4</sup> Epidemiology is “the study of disease patterns in human populations,” and “observe[s] the effect of exposure to a single factor upon the incidence of disease in two otherwise identical populations” in an effort to determine whether unusual patterns of disease are associated with environmental or biological risk factors. *Nonnon v. City of New York*, 88 A.D.3d 384, 394 (1st Dep’t 2011).

Ann. Occup. Hyg., Vol. 26, 841-859 (1982); Maurizio Coggiola, et al., *An Update of a Mortality Study of Talc Miners and Millers in Italy* (2003) at 64 (Table 1); Enrico Pira, et al., *Mortality of Talc Miners and Millers From Val Chisone, Northern Italy: An Updated Cohort Study*, 59 Am. J. Occup. Med. 659 (2017); Brent L. Finley, et al., *Cosmetic talc as a risk factor for pleural mesothelioma; a weight of evidence evaluation of the epidemiology*, Inhalation Toxicology (June 27, 2017). Notably, each of these studies focused on raw talc exposure by miners and millers – who would have had far greater exposure than an ordinary consumer of cosmetic talc.

The majority below went even further, endorsing Dr. Moline’s speculative conclusion that alleged asbestos in talc generally is capable of causing peritoneal mesothelioma based on isolated case studies and anecdotal reports. As this Court established in *Cornell*, however, such isolated case studies and reports are inadequate and insufficient to establish general causation, both scientifically and as a matter of law. *Cornell*, 22 N.Y.3d at 766. In *Cornell*, the plaintiff claimed that mold in her apartment caused her to suffer various physical and mental ailments. Plaintiff’s expert witness on general causation opined that “it is generally accepted within the relevant community of scientists . . . that exposure to mold causes human disease.” *Id.* at 781. In support, the expert cited (1) a variety of government reports from public health agencies that “issued guidelines and

recommended precautions to safeguard against the risk of harm from indoor mold exposure” and (2) various studies that purported to establish an “association” between mold exposure and plaintiff’s ailments. *Id.* at 782-83. This Court, however, rejected this testimony as legally insufficient to establish general causation, emphasizing that “studies that show an *association* between a damp and moldy indoor environment and [a plaintiff’s alleged injuries] do not establish that the relevant scientific community generally accepts that molds *cause* these adverse health effects.” *Id.* at 783 (emphasis in original). Thus, this Court held that the opinion of Cornell’s expert lacked the requisite adequate foundation and entered judgment as a matter of law in favor of the defendant.

The decision below cannot be reconciled with *Cornell*, or with any other intermediate appellate decision that faithfully adheres to the rule that the trial court must act as a gatekeeper to prevent the jury from hearing junk science. *See, e.g., Heckstall v. Pincus*, 19 A.D.3d 203, 205 (1st Dep’t 2005) (case reports not generally accepted in scientific community on questions of causation); *Ratner v McNeil-PPC, Inc.*, 91 AD3d 63, 933 NYS2d 323 (2d Dep’t 2011) (case studies did not show that toxin caused injuries, only hypothesized that injuries were related to toxin).<sup>5</sup> In sum, the trial court erred in allowing plaintiff to offer expert testimony

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<sup>5</sup> New York is not alone. *See, e.g., Allison v. McGhan Med. Corp.* 184 F.3d 1300, 1316 (11th Cir. 1999) (in product liability action, case reports “pale in comparison to population-based epidemiological studies”); *Meister v. Medical Engineering*

on general causation premised on unreliable and unscientific data. The First Department's affirmance is tantamount to an invitation to use junk science to prove general causation, and should be reversed.

B. Requiring Proof of Specific Causation Ensures that Liability Is Only Imposed on Truly Culpable Parties

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This Court has taught that, to prove specific causation, plaintiffs must establish that they were exposed to sufficient levels of a toxin to cause their illness. *Parker*, 7 N.Y.3d at 448. To do so, a plaintiff must first come forward with predicate scientific evidence of the level of exposure to a particular toxin required to cause the particular illness. Again, the plaintiff here tried to satisfy this prong of the causation test with junk science, and on this score, Justice Friedman's dissent hit the nail on the head:

This threshold showing – evidence of the level of exposure to respirable asbestos that would have been sufficient to have caused Mrs. Nemeth's peritoneal cancer – is entirely absent from the record of this case. The omission is evident from the majority's detailed opinion, which identifies nothing in the record offering even an approximation of the level of asbestos exposure (whether cumulative or otherwise) that would have been capable of causing peritoneal mesothelioma. To be sure, this is not due to any oversight on the part

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*Corp.*, 267 F.3d 1123, 1131 (D.C. Cir. 2001) (expert inappropriately relied on case reports to suggest a "connection between silica and scleroderma, even though he did not purport to find support for such a connection in the epidemiological studies, thus creating an analytical gap between the data and his opinion that is simply too great"); *Glasstetter v. Novartis Pharmaceuticals Corp.*, 252 F.3d 986, 989-90 (8th Cir. 2001) (case reports "make little attempt, to screen out alternative causes of a patient's condition. They frequently lack analysis and they often omit relevant facts about a patient's condition").

of the majority, since the same gap is evident in plaintiff's appellate briefs and in the written report by his medical expert on causation, Jacqueline Moline, M.D.

*Nemeth*, 183 A.D.3d at 237-238 (J. Friedman, dissenting).

While plaintiffs need not “pinpoint exposure with complete precision,” they must still shoulder the burden of proving, through “scientific expression,” the requisite levels of exposure to cause their alleged illness. *See Sean R.*, 26 N.Y.3d at 808-09 (quoting *Cornell*, 22 N.Y.3d at 784 for the proposition that “[this Court has] never ‘dispensed with a plaintiff’s burden to establish sufficient exposure to a substance to cause the claimed adverse health effect.’”). The reason for this requirement is clear – causation of illness is a question committed to science, and not to jury deliberation.

Indeed, as the dissent emphasizes, this Court has provided guidance as to the appropriate and reliable methods to ascertain, through “scientific expression” a plaintiff’s actual exposure to asbestos:

*Parker* suggested three methods by which an expert might attempt to establish causation where it is not possible to measure cumulative dose precisely — focusing on intensity of exposure rather than cumulative dose, mathematical modeling based on work history to estimate total exposure, and comparison to the exposure levels of subjects of other studies . . . provided that the expert made a specific comparison sufficient to show how the plaintiff’s exposure level related to those of the other subjects. In this case, plaintiff’s expert utilized none of these methods.

*Nemeth*, 183 A.D.3d at 243-244.

The dissent here is correct. Plaintiff's medical expert offered no scientific facts, but rather vague and abstract generic terms and qualifiers such as "brief or low level exposures of asbestos," "several orders of magnitude higher than the ambient" or "thousands of times the level permitted in schools." This Court repeatedly has found similar pronouncements by plaintiff's experts to be legally insufficient because they lack any valid scientific foundation. *See Parker*, 7 N.Y.3d at 449 (rejecting as insufficient a medical expert's report that the plaintiff was "frequently" exposed to excessive amounts of gasoline and had extensive exposures in both liquid and vapor form); *Cornell*, 22 NY3d at 784 (rejecting an expert opinion that, among other deficiencies, "made no effort to quantify (the plaintiff's) level of exposure" to a mixture of microbial contaminants that allegedly infested her apartment, and instead simply asserted that she was unquestionably exposed to unsanitary conditions).

Indeed, as the dissent noted, plaintiff's expert Dr. Moline admitted that she did not define by "any numeral value" what she believed would constitute a "significant" asbestos exposure and not a single a scientific literature on which she relied defined the level of exposure sufficient to cause peritoneal mesothelioma. *Nemeth*, 183 A.D.3d at 238-239. The trial court and the First Department may have been willing to overlook these gaping holes in plaintiff's evidence, perhaps out of some sense of sympathy (or on the basis that the exposure took place long



ago), but if *Parker* and its progeny teach us anything, it is that sympathy cannot be a substitute for science or proof.

Cosmetic talc defendants, including Colgate, Avon, J&J, and Shulton, have needed and been able to develop mathematical modeling through industrial hygienists to replicate a plaintiff's use of, and purported asbestos exposure from, cosmetic talc. These models have served to establish not only what levels of exposure are considered insufficient to cause disease or below background level, but also that a particular plaintiffs' exposure was below the threshold. *See Madar v. Colgate*, unpublished, Index No. 103806/2018 (N.Y. Ct., Herkiemer Cnty., J. Deleconte, July 23, 2019) and annexed hereto as *Exhibit B*.

If defendants can do it, then plaintiffs, who shoulder the burden of proof, should also be required to prepare scientifically sound models as a matter of fundamental fairness. Indeed, defendants have due process rights, and by putting its thumb on the evidentiary scale to favor plaintiff below, the First Department's affirmance does violence to the integrity of our adversary system.

### **III. Adherence to *Parker's* Principled Guidelines Promotes Legal and Procedural Certainty and Facilitates Appellate Review**

When a scientist claims to rely on a method practiced by most scientists, yet presents conclusions that are not shared by other scientists, a court should be leery that the method has not been faithfully applied. Similarly, courts should look

askance when a scientist presents conclusions based on those of most scientists, but then purports to apply them to different facts and circumstances.

Science and law employ different standards and serve different purposes. No matter how learned and knowledgeable they are in their own profession, judges and lawyers are not scientists. There is, accordingly, an inherent tension in fashioning rules for the admissibility of expert testimony. As the Supreme Court observed in *Daubert*, “there are important differences between the quest for truth in the courtroom and the quest for truth in the laboratory.” 509 U.S. at 596–97. Given the reality of deferential appellate review, a trial court’s faithful discharge of its gatekeeper role is critical to the integrity of the judicial process. And, with the reduced prospect of correction by the appellate courts in individual cases – especially given the highly-deferential “abuse of discretion” standard applied to evidentiary rulings – the need for trial courts to receive clear instructions of general application from this Court is even greater.

Clearly delineating the standards for admissibility of scientific expert evidence – as this Court did in *Parker*, *Cornell*, *Sean R.* and *Juni* – allows litigants to prepare and present their case properly. It also provides appellate courts a concrete and objective framework to review the trial court’s rulings under the abuse-of-discretion standard to ensure that the evidence remains faithful to scientific methods and data.

Indeed, Justice Friedman's dissent closely scrutinized Dr. Moline's causation opinions against each of the *Parker* standards, and identified and articulated their numerous, fatal shortcomings. The First Department's departure from this Court's precedent, and the majority's decision to subordinate science to sympathy, all but forecloses appellate review of decisions based on junk science. It also means defendants who – like *Amici Curiae* – did not manufacture asbestos products will never have a fair opportunity to defend themselves, much less prevail, provided plaintiffs can find an expert with an impressive résumé willing to offer a net opinion. Allowing the decision to stand risks opening the floodgates to frivolous litigation, and exposes innocent cosmetic manufacturers to liability based on gut feeling, not proof.

### **Conclusion**

Experts, particularly those offering scientific testimony, hold great power and influence – to either assist jurors or dupe them. When properly guided, courts can ensure that only reliable causation testimony reaches the jury, and thus avoid scientifically unsound verdicts like the one below. This Court should reverse the First Department's decision and reaffirm its holdings in *Parker*, *Cornell*, *Sean R.* and *Juni*, reassuring all litigants that they are on a level playing field, and preventing future unjust verdicts based on junk science.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby affirm under Rule 500.11 (m) of the Rules of Practice that the total number of words in this letter brief, in accordance with the word-count feature of the word-processing program used to prepare this letter brief, is 4,828 and, therefore, in compliance with the limitations set forth under Rule 500.11(m).

Dated: New York, New York  
October 30, 2020



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Jacob C. Cohn

## **RULE OF PRACTICE 500.1(f) DISCLOSURE STATEMENT**

Pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals, Counsel for Colgate-Palmolive Company states that:

1. Colgate-Palmolive Company is a nongovernmental corporate entity.
2. No publicly held corporation owns 10% or more of Colgate-Palmolive Company's stock.
3. Colgate-Palmolive Company does not have a parent company.
4. Colgate-Palmolive Company's subsidiaries are as follows:

<b>Name of Company</b>	<b>Jurisdiction of Organization</b>
887357 Ontario Inc.	Canada
Cleaning Dimensions, Inc.	Delaware
COLGALIVE S.A.	Dominican Republic
Colgate (BVI) Limited	British Virgin Islands
Colgate (Guangzhou) Company Limited	China
Colgate (U.K.) Limited	United Kingdom
Colgate Business Services of the Americas, S.C.	Mexico
Colgate Flavors and Fragrances, Inc.	Delaware
Colgate Global Business Services Private Limited	India
Colgate Holdings	United Kingdom
Colgate Oral Pharmaceuticals, Inc.	Delaware
Colgate Palmolive Ghana Limited	Ghana
Colgate Palmolive Holding S.Com.P.A.	Spain
Colgate Palmolive Nouvelle Calédonie Sarl	New Calédonia
Colgate Palmolive Tanzania Limited	Tanzania
Colgate Sanxiao Company Limited	China
Colgate Tolaram Pte. Ltd.	Singapore
Colgate Venture Company, Inc.	Delaware



Colgate, Inc.	Delaware
Colgate-Palmolive (America), Inc.	Delaware
Colgate-Palmolive (Asia) Pte, Ltd	Singapore
Colgate-Palmolive (Blantyre) Limited	Malawi
Colgate-Palmolive (Brunei) Sdn Bhn	Brunei
Colgate-Palmolive (Central America) Inc. y Compañia Limitada	Guatemala
Colgate-Palmolive (Central America), Inc.	Delaware
Colgate-Palmolive (Centro America) S.A.	Guatemala
Colgate-Palmolive (China) Co. Ltd	China
Colgate-Palmolive (Costa Rica), S.A.	Costa Rica
Colgate-Palmolive (Dominica), Inc.	Delaware
Colgate-Palmolive (Dominican Republic), Inc.	Delaware
Colgate-Palmolive (East Africa) Limited	Kenya
Colgate-Palmolive (Eastern) Pte. Ltd.	Singapore
Colgate-Palmolive (Egypt) S.A.E.	Delaware/Egypt
Colgate-Palmolive (Far East) Sdn Bhd	Malaysia
Colgate-Palmolive (Fiji) Pte Limited	Fiji
Colgate-Palmolive (Gabon), S.A.	Gabon
Colgate-Palmolive (Gulf States) Ltd.	British Virgin Islands
Colgate-Palmolive (Guyana) Ltd.	Guyana
Colgate-Palmolive (H.K.) Limited	Hong Kong
Colgate-Palmolive (Hellas) S.A. I.C.	Greece
Colgate-Palmolive (Hong Kong) Holding Limited	Hong Kong
Colgate-Palmolive (India) Limited	India
Colgate-Palmolive (Kazakhstan), L.L.P.	Kazakhstan
Colgate-Palmolive (Latvia) Ltd.	Latvia
Colgate-Palmolive (Malaysia) Sdn Bhd	Malaysia
Colgate-Palmolive (Middle East Exports) Ltd.	British Virgin Islands
Colgate-Palmolive (Myanmar) Limited	Myanmar
Colgate-Palmolive (New York), Inc.	Delaware
Colgate-Palmolive (Poland) Sp. z o.o.	Poland

Colgate-Palmolive (Proprietary) Limited	South Africa
Colgate-Palmolive (Research & Development), Inc.	Delaware
Colgate-Palmolive (Romania) SRL	Romania
Colgate-Palmolive (Thailand) Limited	Thailand
Colgate-Palmolive (Uganda) Limited	Uganda
Colgate-Palmolive (UK) Limited	United Kingdom
Colgate-Palmolive (Vietnam) Ltd.	Vietnam
Colgate-Palmolive (Zambia) Inc.	Delaware
Colgate-Palmolive (Zimbabwe), Inc.	Delaware
Colgate-Palmolive A.B.	Sweden
Colgate-Palmolive A/S	Denmark
Colgate-Palmolive Adria Ltd.	Slovenia
Colgate-Palmolive Arabia Ltd.	Saudi Arabia
Colgate-Palmolive Argentina S.A.	Argentina
Colgate-Palmolive Asia Pacific Limited	Hong Kong
Colgate-Palmolive Asia Pacific Treasury Services Limited	Hong Kong
Colgate-Palmolive Belgium S.A.	Belgium
Colgate-Palmolive Bolivia, Ltda.	Bolivia
Colgate-Palmolive Cameroun S.A.	Cameroon
Colgate-Palmolive Canada, Inc.	Canada
Colgate-Palmolive Caricom Service Co., Inc.	Puerto Rico
Colgate-Palmolive Central European Management Inc.	Delaware
Colgate-Palmolive Èeská republika spol. s r.o.	Czech Republic
Colgate-Palmolive Chile S.A.	Chile
Colgate-Palmolive Cia.	Delaware
Colgate-Palmolive Comercial Ltda.	Brazil
Colgate-Palmolive Commercial (Hellas) SP LLC	Greece
Colgate-Palmolive Commerciale S.A.S.	France
Colgate-Palmolive Commericale S.r.l.	Italy
Colgate-Palmolive Compania Anonima	Venezuela

Colgate-Palmolive Company GmbH	Switzerland
Colgate-Palmolive Company, Distr. LLC	Puerto Rico
Colgate-Palmolive Cote d'Ivoire, S.A.	Ivory Coast
Colgate-Palmolive Cyprus Limited	Cyprus
Colgate-Palmolive de Paraguay Sociedad Anonima	Paraguay
Colgate-Palmolive de Puerto Rico, Inc.	Delaware
Colgate-Palmolive del Ecuador, S.A.I.C.	Ecuador
Colgate-Palmolive del Peru (Delaware) Inc.	Delaware
Colgate-Palmolive Development Corp.	Delaware
Colgate-Palmolive East West Africa Region (Pty) Ltd	South Africa
Colgate-Palmolive Enterprises, Inc.	Delaware
Colgate-Palmolive Espana, S.A.	Spain
Colgate-Palmolive Europe (Holdings) Sarl	Switzerland
Colgate-Palmolive Europe Sarl	Switzerland
Colgate-Palmolive Finance (UK) plc	United Kingdom
Colgate-Palmolive Global Trading Company	Delaware
Colgate-Palmolive Holding Argentina S.A.	Argentina
Colgate-Palmolive Holding Inc.	Delaware
Colgate-Palmolive Hungary Kft, Limited Liability Company	Hungary
Colgate-Palmolive IHQ Services (Thailand) Limited	Thailand
Colgate-Palmolive Inc.	Delaware
Colgate-Palmolive Inc. S.A.	Uruguay
Colgate-Palmolive Industrial Ltda.	Brazil
Colgate-Palmolive Industriel S.A.S.	France
Colgate-Palmolive International Holding LLC	Delaware
Colgate-Palmolive International LLC	Delaware
Colgate-Palmolive Investment Co., Inc.	Delaware
Colgate-Palmolive Investments (BVI) Ltd.	British Virgin Islands
Colgate-Palmolive Investments (PNG) Ltd.	Papua New Guinea
Colgate-Palmolive Investments, (UK) Limited	United Kingdom
Colgate-Palmolive Investments, Inc.	Delaware

Colgate-Palmolive Israel Ltd.	Israel
Colgate-Palmolive Italia, S.r.l.	Italy
Colgate-Palmolive JSC	Russia
Colgate-Palmolive Lanka (Private) Limited	Sri Lanka
Colgate-Palmolive Latin America Inc.	Delaware
Colgate-Palmolive Limited	New Zealand
Colgate-Palmolive Manufacturing (Poland) Sp. z o.o.	Poland
Colgate-Palmolive Marketing Sdn Bhd	Malaysia
Colgate-Palmolive Maroc, S.A.	Morocco
Colgate-Palmolive Mocambique Limitada	Mozambique
Colgate-Palmolive Nederland B.V.	Netherlands
Colgate-Palmolive NJ, Inc.	New Jersey
Colgate-Palmolive Norge A/S	Norway
Colgate-Palmolive Participacoes e Investimentos Imobiliarios, Lda.	Portugal
Colgate-Palmolive Peru S.A.	Peru
Colgate-Palmolive Philippines, Inc.	Philippines
Colgate-Palmolive Pty Ltd	Australia
Colgate-Palmolive Retirement Trustee Limited	New Zealand
Colgate-Palmolive S.p.A.	Italy
Colgate-Palmolive Senegal S.A.	Senegal
Colgate-Palmolive Services (Hellas) LLC	Greece
Colgate-Palmolive Services (Poland) Sp. z o.o.	Poland
Colgate-Palmolive Services CEW GmbH	Germany
Colgate-Palmolive Services, S.A.	France
Colgate-Palmolive Slovensko, s.r.o.	Slovakia
Colgate-Palmolive Support Services	Ireland
Colgate-Palmolive Temizlik Urunleri Sanayi ve Ticart S.A.	Turkey
Colgate-Palmolive Transnational Inc.	Delaware
Colgate-Palmolive Ukraine LLC	Ukraine
Colgate-Palmolive Unipessoal, Lda	Portugal

Colgate-Palmolive, S.A. de C.V.	Mexico
Colpal CBS, S de R. L. de C. V.	Mexico
Consumer Viewpoint Center, Inc.	New Jersey
Cotelle S.A.	France
CP GABA GmbH	Germany
CP International Holding C.V.	Netherlands
CP West East Investment Limited	Nigeria
Dimac Development Corp.	Delaware
Dominica Coconut Products Limited	Dominica
EKIB, Inc.	Delaware
ELM Company Limited	Bermuda
Elta MD Holdings, Inc.	Delaware
Elta MD, Inc.	Texas
Filorga Americas Inc.	Delaware
Filorga Asia Limited	Hong Kong
Filorga Benelux SA	Belgium
Filorga Cosmetiques Polska	Poland
Filorga Mexico Cosmetic, S.A. de C.V.	Mexico
Filorga Middle East DMCC	United Arab Emirates
Filorga Portugal, Unipessoal, Lda.	Portugal
Filorga RU, Limited Liability Company	Russia
FZG Holdings Limited	Hong Kong
GABA Europe Holding GmbH	Switzerland
GABA International Holding LLC	Delaware
GABA Schweiz AG	Switzerland
GABA Therwil GmbH	Switzerland
Gamma Development Co., Ltd.	Thailand
Global Trading and Supply LLC	Delaware
Hamol, Ltd.	Delaware
Hawley & Hazel (BVI) Company Ltd.	British Virgin Islands
Hello Products LLC	Delaware
Hill's Funding Company	Delaware

Hill's Pet Nutrition (NZ) Limited	New Zealand
Hill's Pet Nutrition (Thailand) Co., Ltd.	Thailand
Hill's Pet Nutrition Asia Limited	Hong Kong
Hill's Pet Nutrition B.V.	Netherlands
Hill's Pet Nutrition Canada Inc.	Canada
Hill's Pet Nutrition de Mexico, S.A. de C.V.	Mexico
Hill's Pet Nutrition de Puerto Rico, Inc.	Puerto Rico
Hill's Pet Nutrition Denmark ApS	Denmark
Hill's Pet Nutrition Espana, S.L.	Spain
Hill's Pet Nutrition GmbH	Germany
Hill's Pet Nutrition Holding B.V.	Netherlands
Hill's Pet Nutrition Indiana, Inc.	Delaware
Hill's Pet Nutrition Italia, S.r.l.	Italy
Hill's Pet Nutrition Korea Ltd.	Korea
Hill's Pet Nutrition Ltd.	U.K.
Hill's Pet Nutrition Manufacturing, B.V.	Netherlands
Hill's Pet Nutrition Manufacturing, s.r.o	Czech Republic
Hill's Pet Nutrition Norway AS	Norway
Hill's Pet Nutrition OOO	Russia
Hill's Pet Nutrition Pty. Limited	Australia
Hill's Pet Nutrition s.r.o.	Czech Republic
Hill's Pet Nutrition Sales, Inc.	Delaware
Hill's Pet Nutrition SNC	France
Hill's Pet Nutrition South Africa Proprietary Limited	South Africa
Hill's Pet Nutrition Sweden AB	Sweden
Hill's Pet Nutrition Switzerland GmbH	Switzerland
Hill's Pet Nutrition Taiwan, Ltd	Taiwan
Hill's Pet Nutrition Trading (GZ) Co., Ltd	China
Hill's Pet Nutrition, Inc.	Delaware
Hill's Pet Nutrition, S.p.A.	Italy
Hill's Pet Products (Benelux) S.A.	Belgium
Hill's Pet Products, Inc.	Delaware

Hill's Veterinary Companies of America, Inc.	Delaware
Hill's-Colgate (Japan) Ltd.	Japan
Hopro Liquidating Corp.	Ohio
Hygiene Systemes et Services SA	Tunisia
IES Enterprises, Inc.	Massachusetts
Inmobiliaria Colpal, S. de R.L. de C.V.	Mexico
Inmobiliaria Hills, S.A. de C.V.	Mexico
Innovacion Creativa, S.A. de C.V.	Mexico
Kolynos Corporation	Delaware
Laboratoires Filorga Cosmetiques Espana S.L.U.	Spain
Laboratoires Filorga Cosmetiques Italia S.R.L.	Italy
Laboratoires Filorga Cosmétiques S.A.	France
Lournay Sales, Inc.	Delaware
Mennen de Chile, Ltd.	Delaware
Mennen de Nicargua, S.A.	Delaware
Mennen Interamerica, Ltd.	Delaware
Mennen Limited	Delaware
Mennen South Africa, Ltd.	Delaware
Mission Hills Property Corporation	Delaware
Mission Hills, S.A. de C.V.	Mexico
Norwood International, Incorporated	Delaware
Olive Music Publishing Corporation	Delaware
P.T. Colgate Palmolive Indonesia	Indonesia
Paramount Research, Inc.	Delaware
Penny, LLC	Delaware
Pet Chemicals Inc.	Florida
Physicians Care Alliance, LLC	Arizona
Productos Halogenados Copalven, C.A.	Venezuela
Purity Holding Company	Delaware
Purity Music Publishing Corporation	Delaware
Refresh Company Limited	Dominica
Samuel Taylor Holdings B.V.	Netherlands



Sanxiao Company Limited	Hong Kong
Services Development Co., Ltd.	Thailand
Societe Generale de Negoce et de Services (GENESE) S.A.	Tunisia
The GDN - The Global Distributive Network SAS	France
The Lournay Company, Inc.	Delaware
The MPDP - The Medical and Pharmaceutic Distributive Platform SAS	France
The Murphy-Phoenix Company	Ohio
Tom's of Maine Holdings, Inc.	Delaware
Tom's of Maine, Inc.	Maine
Veterinary Companies of America, Inc.	Delaware
Vipont Pharmaceutical, Inc.	Delaware
XEB Inc.	New Jersey

## **RULE OF PRACTICE 500.1(f) DISCLOSURE STATEMENT**

Pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals, Counsel for Avon Products, Inc. states that:

1. Avon Products, Inc. is a nongovernmental corporate entity.
2. Avon Products, Inc.'s parent company is Natura & Co., which is publicly traded on the New York Stock Exchange.
3. Avon Products, Inc.'s subsidiaries are as follows:

<b>Name of Company</b>	<b>Jurisdiction of Organization</b>
Avon Cosmetics Albania Sh.p.k.	Albania
Cosmeticos Avon Sociedad Anonima Comercial E Industrial	Argentina
Avon Products Pty. Limited	Australia
Arlington Limited	Bermuda
Avon Holdings Ltd.	Bermuda
Avon International (Bermuda) Ltd.	Bermuda
Stratford Insurance Company, Ltd.	Bermuda
Compañia De Productos Para La Mujer AP Ltda.	Bolivia
Avon Cosmetics BiH d.o.o. Sarajevo	Bosnia & Herzegovina
Avon Cosméticos Ltda.	Brazil
Avon Industrial Ltda.	Brazil
Avon AIO Sdn Bhd	Brunei Darussalam
Avon Cosmetics Bulgaria EOOD	Bulgaria
AIH Holdings Company	Cayman Islands
Avon Colombia Holdings I	Cayman Islands
Avon Colombia Holdings II	Cayman Islands
Avon CV Holdings Company	Cayman Islands
Avon Egypt Holdings I	Cayman Islands
Avon Egypt Holdings II	Cayman Islands
Avon Egypt Holdings III	Cayman Islands
Avon International Capital Company	Cayman Islands
Avon International Holdings Company	Cayman Islands
Cosmeticos Avon S.A.	Chile

Avon Beauty & Cosmetics Research and Development (Shanghai) Co. Ltd.	China
Avon Healthcare Products Manufacturing (Guangzhou) Limited	China
Avon Management (Shanghai) Company Limited	China
Avon Manufacturing (Guangzhou) Ltd.	China
Avon Products (China) Co. Ltd.	China
Avon Colombia S.A.S.	Colombia
Avon Kosmetika d.o.o. Zagreb	Croatia
Avon Cosmetics, spol. s r.o.	Czech Republic
AIO Asia Holdings, Inc.	Delaware
Avon (Windsor) Limited	Delaware
Avon Aliada LLC	Delaware
Avon Capital Corporation	Delaware
Avon Component Manufacturing, Inc.	Delaware
Avon Cosmetics DE, Inc.	Delaware
Avon Holdings LLC	Delaware
Avon International Operations, Inc.	Delaware
Avon NA Holdings LLC	Delaware
Avon NA IP LLC	Delaware
Avon Pacific, Inc.	Delaware
Avon-Lomalinda, Inc.	Delaware
Manila Manufacturing Company	Delaware
Retirement Inns of America, Inc.	Delaware
Silpada Designs LLC	Delaware
Surrey Leasing, Ltd.	Delaware
Viva Panama Holdings LLC	Delaware
Productos Avon S.A.S.	Dominican Republic
Productos Avon Ecuador S.A.	Ecuador
Avon Cosmetics Egypt, S.A.E	Egypt
Productos Avon, S.A.	El Salvador
Avon Beauty Limited	England and Wales
Avon Cosmetics Limited	England and Wales
Avon European Financial Services Limited	England and Wales
Avon European Holdings Limited	England and Wales
Avon Products Holding Limited	England and Wales
Avon UK Holdings Limited	England and Wales
Silpada Designs UK Ltd	England and Wales

Avon Eesti OÜ	Estonia
Avon Cosmetics Finland Oy	Finland
Avon Cosmetics Georgia LLC	Georgia
Avon Cosmetics GmbH	Germany
Avon Cosmetics (Greece) MEPE	Greece
Avon Export Limitada	Guatemala
Productos Avon de Guatemala, S.A.	Guatemala
Productos Avon, S.A. de C.V.	Honduras
Avon Cosmetics (FEBO) Limited	Hong Kong
Avon Cosmetics Hungary Kozmetikai Cikk Kereskedelmi Kft.	Hungary
Avon Holdings Vagyonkezeslo Kft	Hungary
Avon Beauty Products India Pvt. Ltd.	India
Avon Cosmetics s.r.l. a Socio Unico	Italy
LLP Avon Cosmetics (Kazakhstan) Limited	Kazakhstan
Avon Cosmetics LLC	Kyrgyzstan
Avon Cosmetics SIA	Latvia
Avon Cosmetics UAB	Lithuania
Avon Luxembourg Holdings S.À.R.L.	Luxembourg
Avon Cosmetics DOOEL - Skopje	Macedonia
Avon Cosmetics (Malaysia) Sdn Bhd	Malaysia
Maximin Corporation Sdn Bhd	Malaysia
Avon Asia Holdings Company	Mauritius
Avon Cosmetics Manufacturing, S. de R.L. de C.V.	Mexico
Avon Cosmetics, S. de R.L. de C.V.	Mexico
Avonova, S. de R.L. de C.V.	Mexico
MI Holdings, Inc.	Missouri
Avon Cosmetics (Moldova) S.R.L.	Moldova
Avon Cosmetics Montenegro d.o.o. Podgorica	Montenegro
Avon Beauty Products, SARL	Morocco
AI Netherlands Holdings Company C.V.	Netherlands
Avon International (NL) C.V.	Netherlands
Avon Netherlands Holdings B.V.	Netherlands
Avon Netherlands Holdings II B.V.	Netherlands
Viva Netherlands Holdings B.V.	Netherlands
Avon Americas, Ltd.	New York
Avon Overseas Capital Corporation	New York
California Perfume Company, Inc.	New York
Surrey Products, Inc.	New York

Avon Cosmetics Ltd.	New Zealand
Productos Avon de Nicaragua, S.A.	Nicaragua
Productos Avon, S.A.	Panama
Viva Panama S de R.L.	Panama
Productos Avon S.A.	Peru
Avon Cosmetics, Inc.	Philippines
Avon Products Mfg., Inc.	Philippines
Beautifont Products, Inc.	Philippines
Mirabella Realty Corporation	Philippines
Avon Cosmetics Polska Spółka z.o.o.	Poland
Avon EMEA Finance Service Centre Spółka z o.o.	Poland
Avon Distribution Polska Sp. z.o.o.	Poland
Avon Operations Polska Sp. z o.o.	Poland
Avon Cosmetics, Lda.	Portugal
Avon Cosmetics (Romania) S.R.L.	Romania
Avon Beauty Products Company, LLC(ABPC) (Russia)	Russian Federation
Avon Beauty (Arabia) LLC	Saudi Arabia
Avon Cosmetics SCG d.o.o. Beograd	Serbia
Avon AIO Pte. Ltd.	Singapore
Avon Cosmetics, spol. s r.o.	Slovakia
Avon Kozmetika podjetje za kozmetiko in trgovino d.o.o., Ljubljana	Slovenia
Avon Justine (Pty) Ltd	South Africa
Avon Cosmetics S.A.	Spain
Beauty Products Holding S.L.	Spain
Beauty Products Latin America Holdings S. L.	Spain
Viva Cosmetics Holding GmbH	Switzerland
Avon Cosmetics (Taiwan) Ltd.	Taiwan
Avon Kozmetik Urunleri Sanayi ve Ticaret Anonim Sirketi	Turkey
Avon Cosmetics Ukraine	Ukraine
Cosmetics Avon De Uruguay S.A.	Uruguay
Avon Cosmetics de Venezuela C.A.	Venezuela

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to 22 NYCRR 500.1(f) *Amicus Curiae* Johnson & Johnson Consumer Inc. provides the following disclosure statement:

*Amicus Curiae* Johnson & Johnson Consumer Inc. is a wholly-owned subsidiary of Janssen Pharmaceuticals, Inc., which in turn is a wholly-owned subsidiary of DePuy Synthes, Inc., which in turn is a wholly-owned subsidiary of Johnson & Johnson International Corporation, which in turn is a wholly owned subsidiary of Johnson & Johnson. Johnson & Johnson is a publicly-traded corporation with no corporate parents.

The following entities are subsidiaries or affiliates of *Amicus Curiae* Johnson & Johnson Consumer Inc.:

Apsis  
Asia Pacific Holdings, LLC  
Backsvalan 6 Handelsbolag  
Johnson & Johnson (Mozambique), Limitada  
Johnson & Johnson Consumer, Inc. (Dominican Republic Branch)  
Johnson & Johnson de Colombia S.A.  
Johnson & Johnson del Peru S.A.  
Johnson & Johnson Limitada  
Johnson & Johnson Taiwan Ltd.  
Johnson & Johnson Urban Renewal Associates  
McNeil AB  
McNeil Consumer Pharmaceuticals Co.  
McNEIL MMP, LLC  
McNeil Nutritionals, LLC  
Neutrogena Studios, a division of Johnson & Johnson Consumer Inc.  
Serhum S.A. de C.V.  
TriStrata, Incorporated

Vogue International LLC  
Zarbee's, Inc.

Dated: New York, New York  
October 30, 2020

Respectfully submitted,

**PATTERSON BELKNAP WEBB & TYLER LLP**

By:  \_\_\_\_\_

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New York, New York 10036  
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E: tkurland@pbwt.com

*Attorneys for Amicus Curiae Johnson & Johnson,  
and Johnson & Johnson Consumer Inc.*

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to 22 NYCRR 500.1(f) *Amicus Curiae* Johnson & Johnson provides the following disclosure statement:

*Amicus Curiae* Johnson & Johnson is a publicly-traded corporation with no corporate parents.

As reported in *Amicus Curiae* Johnson & Johnson's 2020 SEC 10-K filing, the following are its domestic subsidiaries or affiliates:

Acclarent, Inc.  
Actelion Pharmaceuticals US, Inc.  
Albany Street LLC  
ALZA Corporation  
Alza Land Management, Inc.  
AMO Development, LLC  
AMO Manufacturing USA, LLC  
AMO Nominee Holdings, LLC  
AMO Sales and Service, Inc.  
AMO Spain Holdings, LLC  
AMO U.K. Holdings, LLC  
AMO US Holdings, Inc.  
AMO USA Sales Holdings, Inc.  
AMO USA, LLC  
Animas Diabetes Care, LLC  
Animas LLC  
Animas Technologies LLC  
AorTx, Inc.  
Aragon Pharmaceuticals, Inc.  
Asia Pacific Holdings, LLC  
Atrionix, Inc.  
AUB Holdings LLC  
Auris Health, Inc.  
BeneVir BioPharm, Inc.  
BioMedical Enterprises, Inc.



Biosense Webster, Inc.  
Calibra Medical LLC  
Centocor Biologics, LLC  
Centocor Research & Development, Inc.  
Ci:Labo USA, Inc.  
Codman & Shurtleff, Inc.  
Coherex Medical, Inc.  
Company Store.com, Inc.  
Cordis International Corporation  
CoTherix Inc.  
CSATS, Inc.  
DePuy Mitek, LLC  
DePuy Orthopaedics, Inc.  
DePuy Products, Inc.  
DePuy Spine, LLC  
DePuy Synthes Institute, LLC  
DePuy Synthes Products, Inc.  
DePuy Synthes Sales, Inc.  
DePuy Synthes, Inc.  
Dutch Holding LLC  
ECL7, LLC  
Ethicon Endo-Surgery, Inc.  
Ethicon Endo-Surgery, LLC  
Ethicon LLC  
Ethicon US, LLC  
Ethicon, Inc.  
Farallon Merger Sub, Inc.  
Hansen Medical International, Inc.  
Hansen Medical, Inc.  
Heartport, Inc.  
I.D. Acquisition Corp.  
Innovative Surgical Solutions, LLC  
Janssen BioPharma, Inc.  
Janssen Biotech, Inc.  
Janssen Diagnostics, LLC  
Janssen Global Services, LLC  
Janssen Oncology, Inc.  
Janssen Ortho LLC  
Janssen Pharmaceuticals, Inc.  
Janssen Products, LP

Janssen Research & Development, LLC  
Janssen Scientific Affairs, LLC  
Janssen Supply Group, LLC  
Janssen-Cilag Holdings, Inc.  
Janssen-Cilag Manufacturing, LLC  
Jevco Holding, Inc.  
JJHC, LLC  
JJVC, Inc.  
JNJ International Investment LLC  
Johnson & Johnson (Middle East) Inc.  
Johnson & Johnson Consumer Inc.  
Johnson & Johnson Enterprise Innovation Inc.  
Johnson & Johnson Finance Corporation  
Johnson & Johnson Gateway, LLC  
Johnson & Johnson Health and Wellness Solutions, Inc.  
Johnson & Johnson Health Care Systems Inc.  
Johnson & Johnson Innovation - JJDC, Inc.  
Johnson & Johnson Innovation LLC  
Johnson & Johnson International  
Johnson & Johnson Japan Inc.  
Johnson & Johnson Medical Devices & Diagnostics Group - Latin America,  
L.L.C.  
Johnson & Johnson S.E., Inc.  
Johnson & Johnson Services, Inc.  
Johnson & Johnson Surgical Vision, Inc.  
Johnson & Johnson Urban Renewal Associates  
Johnson & Johnson Vision Care, Inc.  
JOM Pharmaceutical Services, Inc.  
LifeScan LLC  
LifeScan Products, LLC  
McNeil Consumer Pharmaceuticals Co.  
McNeil Healthcare LLC  
McNeil LA LLC  
McNEIL MMP, LLC  
McNeil Nutritionals, LLC  
Medical Device Business Services, Inc.  
Medical Devices & Diagnostics Global Services, LLC  
Medical Devices International LLC  
MegaDyne Medical Products, Inc.  
Mentor Biopharmaceuticals, Inc.

Mentor International Sales Corporation, FSC  
Mentor Partnership Holding Company I, LLC  
Mentor Texas GP LLC  
Mentor Texas L.P.  
Mentor Worldwide LLC  
Micrus Endovascular LLC  
Middlesex Assurance Company Limited  
NeoStrata Company, Inc.  
Netherlands Holding Company  
Neuravi Inc.  
NeuWave Medical, Inc.  
Novira Therapeutics, Inc.  
NVC, Inc.  
Obtech Medical, Inc.  
OMJ Pharmaceuticals, Inc.  
Omrix Biopharmaceuticals, Inc.  
Ortho Biologics LLC  
Ortho Biotech Holding LLC  
Ortho-McNeil Pharmaceutical, LLC  
Patriot Pharmaceuticals, LLC  
Peninsula Pharmaceuticals, LLC  
Percivia LLC  
Princeton Laboratories, Inc.  
Pulsar Vascular, Inc.  
Regency Urban Renewal Associates  
Rutan Realty LLC  
Scios LLC  
Sightbox, Inc.  
SterilMed, Inc.  
Synthes USA Products, LLC  
Synthes USA, LLC  
Synthes, Inc.  
TARIS Biomedical LLC  
TearScience, Inc.  
The Anspach Effort, LLC  
The Vision Care Institute, LLC  
Tibotec, LLC  
Torax Medical, Inc.  
TriStrata, Incorporated  
Vistakon Pharmaceuticals, LLC

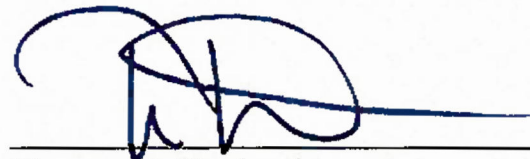
Vogue International LLC  
Vogue International Trading, Inc.  
WH4110 Development Company, L.L.C.  
Zarbee's, Inc.

Dated: New York, New York  
October 30, 2020

Respectfully submitted,

PATTERSON BELKNAP WEBB & TYLER LLP

By: \_\_\_\_\_

A handwritten signature in blue ink, appearing to be 'TK', written over a horizontal line.

Thomas P. Kurland

1133 Avenue of the Americas  
New York, New York 10036

T: 212-336-2000

F: 212-336-2222

E: tkurland@pbwt.com

*Attorneys for Amicus Curiae Johnson & Johnson,  
and Johnson & Johnson Consumer Inc.*

**DISCLOSURE STATEMENT PURSUANT TO SECTION 500.1(F)  
OF THE RULES OF THE COURT OF APPEALS**

Pursuant to Rule § 500.1(f) of the Rules of Practice of the Court of Appeals, Shulton, Inc. as a joinder to the amicus curiae brief filed by Colgate-Palmolive Company, discloses that:

1. Shulton, Inc. is a non-governmental corporate entity.
2. Shulton, Inc. does not have subsidiaries.
3. Shulton, Inc. is a wholly owned subsidiary of The Procter and Gamble Company, an Ohio corporation.
4. The Procter and Gamble Company is a publicly traded corporation and it owns 10% or more of Shulton, Inc.

# **EXHIBIT B**

**\*Please note, the marking of this exhibit as "Exhibit B" is to ensure it is consistent with its marking for the underlying moving papers requesting leave to submit this letter brief. The letter brief was marked as "Exhibit A" to said motion.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF HERKIMER

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IN RE: FIFTH JUDICIAL DISTRICT  
ASBESTOS LITIGATION  
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MARSHA MADAR AND LAWRENCE MADAR, JR.,

Plaintiffs,

-against-

COLGATE-PALMOLIVE COMPANY., et al.,

Defendants.  
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COPY OF FILING  
Index # 2018-103806

FILED

08/29/2019 11:40 AM

Honorable Sylvia M Rowan  
HERKIMER COUNTY  
CLERK'S OFFICE

Index No.: 103806/2018

Hon. Scott J. DelConte

**ORDER**

COLGATE-PALMOLIVE COMPANY, by and through its attorneys, Gordon Rees Scully Mansukhani LLP, having moved this Court for an Order granting summary judgment, pursuant to C.P.L.R. § 3212, dismissing the complaint and all cross claims insofar as asserted against it in the above-entitled action, and the plaintiffs having opposed the motion, and oral argument having been held on July 22, 2019, it is hereby:

ORDERED, that COLGATE-PALMOLIVE COMPANY's motion for summary judgment is granted for the reasons set forth on the record on July 22, 2019, as set forth in the attached transcript of the Bench Decision.

Dated: August 1, 2019

  
\_\_\_\_\_  
Hon. Scott J. DelConte, J.S.C.

ENTER:

STATE OF NEW YORK

FIFTH JUDICIAL DISTRICT

SUPREME COURT

COUNTY OF ONEIDA

\*\*\*\*\*

MARSHA MADAR and LAWRENCE MADAR, JR.,

Plaintiffs,

- against -

84 LUMBER COMPANY, ET AL.,

Defendants.

\*\*\*\*\*

Index No.: 103806-2018

RJI No.: 21-18-013

**Bench Decision re Colgate-Palmolive**

Oneida County Courthouse

Rome, New York 13440

July 22, 2019

**HELD BEFORE:**

THE HONORABLE SCOTT J. DEL CONTE  
SUPREME COURT JUSTICE

**APPEARANCES:**

JASON HODRINSKY, ESQ.  
Attorney for Plaintiffs

ERIK C. DI MARCO, ESQ.  
Attorney for Defendant Colgate-Palmolive

ANN MARIE DUFFY, ESQ.  
Attorney for Defendant Avon Products, Inc.

Reported By:

Therese B. Plante, CSR, RPR  
Senior Court Reporter



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THE COURT: We are back on the record in the Marsha Madar and Lawrence Madar, Jr. vs. 84 Lumber Company, Colgate-Palmolive and Avon Products, Inc.

We just heard oral argument on behalf of Colgate-Palmolive with respect to its motion for summary judgement as well as oral argument in connection with Avon's motion for summary judgement.

I want to say first, Counselors, thank you very much for your appearances and argument here today and your very thorough briefs. And I'm prepared to issue my decisions with respect to both motions.

First, with respect to Colgate-Palmolive's motion for summary judgement, the Plaintiff in this lawsuit, Marsha Madar, was diagnosed with peritoneal mesothelioma in 2017. She then brought this action claiming exposure to fibrous asbestos from several products over her lifetime, including a talcum powder marketed as Cashmere Bouquet which was manufactured and distributed by Defendant Colgate-Palmolive for a hundred years.

During the times relevant for this lawsuit, Cashmere-Bouquet was produced from talc mined in Italy, Montana and North Carolina. By her own testimony, Ms. Madar's use of Colgate-Palmolive's Cashmere Bouquet powder was limited to, at the very most, two containers

1 that she shared with her mother and sister in the early  
2 1970s. There is no dispute as to this critical fact.

3 Ms. Madar's action against Colgate-Palmolive  
4 rests entirely on her alleged exposure to fibrous  
5 asbestos in the early 1970s as a result of her shared use  
6 of just two bottles of Cashmere Bouquet talcum powder.

7 Ms. Madar did, however, use hundreds upon  
8 hundreds of other containers of talcum powder over the  
9 course of her lifetime as well as other potentially  
10 asbestos-containing products manufactured by other  
11 defendants in this action.

12 Defendant Colgate-Palmolive has moved for  
13 summary judgement on three grounds. Specifically:  
14 (1) That the talc in its Cashmere Bouquet did not contain  
15 asbestos; (2) that there is no general causation here as  
16 a matter of law because, even assuming that the talc in  
17 its Cashmere Bouquet did contain trace amounts of fibrous  
18 asbestos, that asbestos was not capable of causing  
19 mesothelioma; and (3) that there is no specific causation  
20 here as a matter of law because, even if the talc in its  
21 Cashmere Bouquet did contain fibrous asbestos and was  
22 capable of causing mesothelioma, Ms. Madar was not  
23 exposed to sufficient levels of asbestos from Cashmere  
24 Bouquet to have caused her mesothelioma.

25 The Court does not need to reach the first or

1 second grounds of Defendant Colgate-Palmolive's motion  
2 for summary judgement for the reasons I will discuss  
3 shortly.

4 It should be noted, however, there are numerous  
5 cases across New York and other jurisdictions in which  
6 summary judgement was denied on those grounds because, in  
7 other cases, Courts determined that the plaintiffs  
8 submitted sufficient expert and historical evidence to  
9 create a question of fact that Cashmere Bouquet contained  
10 detectable amounts of asbestos and asbestiform fibers or  
11 that factual questions were raised whether exposure to  
12 certain talcum powders is capable of causing peritoneal  
13 mesothelioma.

14 It is the third ground for summary judgement,  
15 the absence of specific causation, that is the core  
16 argument and dispositive issue raised by  
17 Colgate-Palmolive in this action.

18 As the First Department explained in *Juni*, 148  
19 AD3d 203, quote, "The fact that asbestos, or chrysotile,  
20 has been linked to mesothelioma is not enough for a  
21 determination of liability against a particular  
22 defendant. A causation expert must still establish that  
23 the plaintiff was exposed to sufficient levels of toxin  
24 from the defendant's products to have caused that  
25 disease," end quote.

1 Ms. Madar's asbestos exposure and a comparison of  
2 her exposures to subjects in published studies,  
3 concluding that, quote, "There is no evidence that  
4 she was exposed to levels of asbestos associated with  
5 a statistically-significant increased risk of  
6 asbestos-related disease, including peritoneal  
7 mesothelioma," end quote.

8 Ms. Sahmel further opined that, assuming all  
9 reasonable inferences in favor of the Plaintiff here,  
10 Ms. Madar's exposure to asbestos from her extremely  
11 limited use of Cashmere Bouquet would have been below  
12 ambient background exposure.

13 This is significant, as the Plaintiffs' expert  
14 testified during a deposition that exposure to ambient  
15 background levels of asbestos does not present an  
16 increased risk for development of mesothelioma.

17 To put it simply, Ms. Sahmel opined very  
18 directly and emphatically that even assuming the, quote,  
19 "worst case," scenario, as Defendant's counsel described  
20 it, Ms. Madar's exposure to just two bottles of Cashmere  
21 Bouquet would not be sufficient to have contributed to  
22 the causation of mesothelioma.

23 With this evidence, the Defendant has  
24 established a prima facie entitlement to the judgment as  
25 a matter of law.

1           The burden then shifts to the Plaintiff to  
2           raise a triable question of fact. The Plaintiff here has  
3           failed to do so. The Court is cognizant of the  
4           statements from The Centers for Disease Control and  
5           Prevention and the Environmental Protection Agency that  
6           there is no threshold below which there is no risk to  
7           from exposure to asbestos, given that asbestos fibers  
8           remain in the body.

9           However, as a legal matter, the Plaintiff is  
10          still required to prove specific causation as it relates  
11          to her admitted exposure to only two bottles of  
12          Colgate-Palmolive's talcum powder in the early 1970s.

13          While the Plaintiff has submitted some expert  
14          evidence that there may have been friable asbestos powder  
15          in the raw talc used to manufacture Cashmere Bouquet, the  
16          Plaintiff has submitted no proof, expert or otherwise, to  
17          contradict the sworn statements of Defendant's expert  
18          that Ms. Madar's exposure to any fibrous asbestos as a  
19          result of her use of Cashmere-Bouquet, even assuming the  
20          worst-case scenario, was not sufficient to have  
21          contributed to the causation for mesothelioma.

22          Accordingly, the Plaintiff has failed to raise  
23          a triable question of fact. Defendant  
24          Colgate-Palmolive's motion for summary judgement is,  
25          therefore, granted. Specifically, the motion is granted

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on the ground that the defendant has established as a matter of law that there was no specific causation as it relates to Plaintiff's use of the Defendant's product here, Cashmere Bouquet talcum powder.

The remaining issues raised by the Defendant in its motion, including the argument relative to punitive damages and the failure to state a cause of action, were not reached by the Court.

Defendant's counsel is directed to submit a proposed Order in Word format, copies to the Plaintiffs' counsel and attaching a transcript of this bench decision by August 8th, 2019. And that should be emailed to my chambers' email: DelConte-Chambers@nycourts.gov.

(Whereupon, the proceedings were concluded.)

C E R T I F I C A T I O N

The foregoing is a true and accurate transcript of my stenographic notes in the above-entitled matter.

Dated: July 23, 2019.

Therese Plante, Sr. Court Reporter  
Signature/Title