State of Ohio, )
) SS:
County of Lorain. )

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IN THE COURT OF COMMON PLEAS

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Gary Diederich, et al., )
)
Plaintiffs, )
)
vs. ) Case No. 98CV121726
)
Dennis Carson, M.D., et al., )
)
Defendants. )

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Deposition of Carl Culley, M.D., a witness herein, called by the plaintiffs for cross-examination, pursuant to the Ohio Rules of Civil Procedure, taken before Constance Versagi, Court Reporter and Notary Public in and for the State of Ohio, taken at the offices of Carl Culley, M.D., 16215 Madison Avenue, Lakewood, Ohio, on Monday, June 18, 2001, commencing at 4:20 p.m.

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OBJECTIONS



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APPEARANCES:

On behalf of the Plaintiffs:

Donna Taylor-Kolis Co., LPA
Donna Taylor-Kolis, Esq.
330 Standard Building
Cleveland, Ohio 44113

On behalf of the Defendants:

John Scott, Esq.
Reminger & Reminger
113 Saint Clair Building NE
Cleveland, Ohio 44114

and

Patrick J. Quallich, Esq.
Bonezzi, Switzer, Murphy & Polito
526 Superior Avenue - #1400
Cleveland, Ohio 44114

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CARL CULLEY, M.D.

of lawful age, being first duly sworn, as hereinafter certified, was examined and testified as follows:

CROSS-EXAMINATION

By Ms. Kolis:

Q Dr. Culley, before we begin your testimony, I'm going to make a few introductory remarks, okay?

I gather from some investigation that I've been able to do this is not the first case in which you've served as an expert witness, correct?

A Correct.

Q You understand my purpose here today is to explore the expert report that you have written; is that correct?

A Correct.

Q Could you, for the record, state your full name and your business address?

A Carl A. Culley, Junior, M.D, 16215 Madison Avenue, Lakewood, Ohio 44107.

Q Dr. Culley, sometime ago Mr. Scott gave me what I believe to be your CV. I don't know I have a complete copy, so hold on one second.

Is your CV one or two pages?

A Two.

Q This is terrible, I think I'm missing the second

page.

A Would you like for me to get another one?

Q Unfortunately the answer to that question is yes.

(Recess taken.)

By Ms. Kolis:

Q Dr. Culley, thank you very much for providing me with your CV. I want to go through a little bit in terms of your background.

Doctor, you are Board certified in what specialties?

A Internal medicine.

Q You obtained that Board certification in 1977?

A Correct.

Q Do you have an opinion, Doctor, in terms of your qualifications as an expert witness, that you are in fact able to assess the conduct of a family practitioner?

A Yes, as would be related to care of adults. As far as obstetrics or surgical procedures, that I would not feel competent with. With usual adult care, yes.

Q So that we're clear on the record, this is a case about the failure to make a diagnosis of a particular lung condition. You feel comfortable testifying on behalf of Dr. Carson, even though you

are not in the same specialty he is; is that a fair statement?

A Yes.

Q Doctor, how many times have you been asked to review medical/legal matters on behalf of physicians?

A Over the past 10 or 12 years I've probably done close to 100 cases. Some of those would be cases related to other insurance matters, automobile accidents and things like that. They wouldn't ail be malpractice cases.

Q Would you say that the majority of the time you've been asked to review records on behalf of physicians would be relative to medical malpractice claims?

A Yes.

Q How many times have you reviewed cases for patients in medical malpractice?

A On the plaintiff side of the case?

Q I call it the patient side, sure, the plaintiff's side of the case?

A About three times or so.

Q Wave you ever testified, either by way of deposition or in a court of law, on behalf of a patient?

A No.
Q How extensively have you worked with the law firm of Reminger & Reminger?
A I can't tell you the exact number of cases I've done for them. I've done a fair amount. I've probably done maybe 30 cases for them I would say.
Q The balance of the cases then that you reviewed on behalf of physicians, can you give me a general sense of what law firms you worked with?
A I'm not really very good at names. I've probably worked with at least a dozen firms altogether.
Q Fair enough. I take it you don't advertise your availability as an expert witness?
A Correct.
Q Doctor, have you been sued for medical negligence before?
A Yes.
Q My search of the docket may be inaccurate. As I read the court's docket, in none of those cases you were sued did you make a payment; is that correct?
A That's correct.
Q Fair enough. Multiple times you were sued?
A Three.
Q When, Doctor, were you contacted by Mr. Scott, if it was Mr. Scott that contacted you, to review this

matter?
A It's been quite a while ago. I can't give you the exact date. It would have been -- I wrote the report in November of '99, so it probably would have been a month or two before that date.
Q Do you have a correspondence file relative to this case?
A No.
Q Is there a reason you don't have a correspondence file?
A Not really. I don't find any reason to keep the letters. I'm usually sent a cover letter saying here is the information, please review it. I don't bother to keep it ordinarily.
Q When you were originally contacted, you may not have a recollection, you indicated this has been a year-and-a-half ago, did Mr. Scott generally tell you what the allegations in the case were?
A Yes. Ordinarily he would have given me a rough idea what the case was about. Then I would say that is either something I feel comfortable in reviewing or not.
Q Can you tell me today what materials you had in your possession, that you reviewed, prior to writing this report?

A Yes. They would be listed in the first paragraph of my letter, which would be the records of Drs. Carson, Leano, Aurora, and the hospital ER records, bronchoscopy report from 1997, Cleveland Clinic record, the deposition of Dr. Carson and two records from your expert, Dr. Brower.

Q That is the material you had in your possession before you wrote this first report, correct?

A Correct.

Q Have you authored any subsequent report or given additional opinions orally to Mr. Scott or since the time you wrote this report?

A No. I have reviewed some additional material, I did not write any additional report about it.

Q In addition to the interaction with Mr. Scott, have you met with or spoken with Attorney John Polito who also represents Dr. Carson?

A I don't remember doing so.

Q What additional materials have you reviewed since the date you authored the report?

A I reviewed the deposition of Dr. Brower, the deposition of Dr. McFadden, the deposition of Dr. Mehta. In that deposition was included some spirometry reports from 1992 and 1997, some pharmacy records regarding the patient. A note

from Dr. Panuto.

Q Doctor, in any of those depositions that you reviewed, did you make personal notes in that deposition regarding thoughts you might have had about testimony that was offered?

A I didn't write any notes in it. If I think something is of significance or possibly significant, I bend over the corner of the page.

Q I'm going to borrow the deposition in case we have to ask you what is important on a certain page. Not that we want to be here 20 hours, we will see what we can do.

Doctor, what will you be charging?

MR. SCOTT: Before you ask those questions.

Q That wasn't the thought, but what is your hourly rate for deposition testimony in these matters?

A $250 an hour.

Q in that case, we can stay here 20 hours, as long as you are not charging $1,000 an hour. I truly forgot to ask that.

Tell me about your internal medicine practice here.

A Well, I function as a primary care internist. I see virtually everything there is. We see

anyone -- I should say I see anyone from about the age of 14, all the way up through geriatric age. Probably about a half of my patients are geriatric age people.

Q Do you have any certificates in geriatric medicine, a subspecialty certificate?

A No.

Q I believe you have treated patients with asthma in your career?

A Yes.

Q I'm not asking for a specific number, do you have a percentage or number of patients in your population that actually have asthma, that you are actually treating?

A I can't give you a percentage. I'm sure that I see somebody with asthma weekly anyway.

Q In terms of literature, everybody's favorite question, I gather you know who Dr. McFadden is?

A I knew who he was because I read his deposition, I was not familiar prior to that.

Q You've not had any interaction with Dr. McFadden from University Hospitals?

A No.

Q Do you know Dr. Mehta at the Cleveland Clinic?

A I know him by name from working at the Cleveland

Clinic, I've never met him.

Q You've not referred patients that you are aware, to Dr. Mehta?

A I have had patients with Dr. Mehta.

Q Under what circumstances would you refer a patient to Dr. Mehta?

A Well, I would refer for a variety of reasons. Virtually any type of pulmonary complaint I didn't feel comfortable handling myself.

Most of the time when I did the referral back down to the main Cleveland Clinic, it would be done in a general way.

In other words, I would tell the referral coordinator find somebody in pulmonary medicine who had an appointment available. Most of the time I wouldn't specify a particular physician.

if a patient had seen that doctor previously, or if I felt that that patient needed that particular subspecialty, then I would specify a particular person.

Q Based upon -- do you have a professional opinion regarding Dr. Mehta's qualifications and skills?

A Well, I'm sure he's a very competent physician, he's been on the staff at the Clinic for some time, he's very well respected.

Q Before we get -- we have so many questions to get into, Doctor.

I didn't see anything in your report, that is why I'm asking the question, if this case should go to trial will you be offering opinions on Mr. Diederich's life expectancy?

A No.

Q Do you have any dispute with Dr. Mehta's testimony that Mr. Diederich will need a lung transplant at some point in his life?

A That would be beyond my realm of expertise.

Q We only have to talk about things you will talk about. Those are not things you will be testifying to, correct?

A Correct.

Q On the second page of your CV, I don't believe I've ever seen before, that is my fault for not paying attention, you listed Lakewood PHO; what is Lakewood PHO?

A Lakewood PHO is a group of physicians from the staff at Lakewood Hospital who joined together with the hospital for insurance contracting purposes.

Q It says that you are a present member of a risk pool committee. What does a risk pool committee do?

A A general committee that supervises the risk contract, meaning a cap tight type contract run through the organization.
Q You have privileges at what hospitals?
A Lakewood and Cleveland Clinic.
Q You have reached an opinion in this matter, Doctor, as I read your report, that Dr. Carson did in fact not deviate from the standard of care in the management of Gary Diederich; did I state that fairly?
A Yes.
Q You indicated just moments ago you see people with asthma about once a week, if I'm not misstating that, right?
A Weekly, but more than I may have, more than one person in the course of a week or day.
Q What in your practice, based upon standard principles of internal medicine, do you do to arrive at a firm diagnosis of asthma in a patient?
A Well, that varies from patient to patient obviously.

In general, asthma can be diagnosed for the most part on a clinical basis. If people have fairly typical symptoms, they respond to the treatment, they may not need any other special

test. If they are not as typical, they may need additional studies. Depends on the circumstance.

Q That was a pretty good general answer, so I'll try to force you to be specific. Let's deal with clinical findings. What are the clinical findings that you expect to see in a person who is a typical asthma patient?

A Typical asthma patient, wheezing is the cardinal symptom. Usually it occurs with a certain pattern which could vary from person to person. Some people may have it only sporadically, related to exposure to certain things. Other people may have more chronic symptoms, depending on their disease.

You can have other symptoms as well. Cough is a very common symptom with asthma. Usually accompanied by other allergic symptoms as well. People frequently do complain about a runny nose and sinus problems, sore throat, that type of irritation as well.

Q Before we get -- let me go backwards. I did lose my train of thought.

In terms of textbooks, have you had the opportunity to review any textbook material regarding the diagnosis and treatment of asthma?

A I did not review it for this particular case.

Q At some point in your career I would assume you availed yourself to textbooks to get a handle on what asthma is all about; is that a fair statement?
A Yes. Periodically I'll look at something. Actually for asthma most of the information that I use to update myself would come from something like a continuing education course, or something like that, rather than sitting down and reading a chapter out of a textbook.
Q Do you have an opinion as to the authoritativeness of Harrison's on internal medicine, specifically the chapter on asthma?
A It's certainly a well-respected source of information about asthma. The question always come up about defining authoritative. As we could agree we didn't mean we could take it word-for-word, apply it to every case without exception, I would agree.
Q I guess I'm asking you if you understand from Dr. McFadden's testimony he is the textbook chapter author for asthma in Harrison's?
A Yes.
Q You've not taken it upon yourself to review the material contained in that chapter?
A No.

Q As we sit her today, you wouldn't be able to point out something specifically that Dr. McFadden had written about?
A That's right.
Q Have you at any time in your career made use of Fishman's on pulmonary medicine?
A I don't think so.
Q So going back to my question in terms of asthma, you said the primary clinical feature would be wheezing; is that correct?
A For most common cases.
Q Because the way you gave the answer I don't know that I understood it correctly. Are you familiar with the concept there are a triad of symptoms that usually would be at the beginning of suspecting clinically someone has asthma?
A I can't say I've ever heard anybody put it in that specific terminology.
Q Would you agree or disagree shortness *of* breath, cough and wheezing, are usually found in conjunction with each other in persons who have asthma?
A Those are the most common symptoms, yes. That doesn't mean they are all found together at the same time, or any time in any individual person.

Q How much time did you spend reviewing Gary Diederich's medical records?
A I can't tell you exactly. Probably spent about six hours reviewing the initial records, and I've probably spent another three or four reviewing the other things I got since then.
Q Do you highlight records as you go through, how do you keep a handle on what is actually in the charts?
A I would bend over the corner of the page if it were something I thought were significant. I never write on the record or underline.
Q That is your set of records that would have bent over pages in it?
A Yes.
Q Can I have those too? You might need them to answer some questions, we will see.

Doctor, was Gary Diederich's presentation typical for asthma when Dr. Carson first saw him?
A Well, it wasn't typical in the sense he wasn't having gross wheezing at the time of the examination, as I recall of the first examination.
Q I pretty much know these records by heart, you can go back and look at the documents here if you need to. On the first exam was there any wheezing?

A Right at the time of the examination on 3-16-93, so we're more specific about the note, he did not have wheezing at the time he was being examined in the office.

Q Isn't wheezing a fairly constant issue in a person who has asthma that is not yet controlled?

A Not necessarily. As I said, we were talking about the more typical general case with the things we were discussing earlier. There are some people who only have a cough with asthma, and it's intermittent. In many cases you may not actually hear any wheezing right at the time you are listening to the person in the office.

Q Dr. Culley, to the best of your recollection, certainly you can go through the records, do whatever you need to do, on how many occasions from 1993 to 1997 did Dr. Carson find wheezing on physical examination?

A As I remember, there were two occasions that he noted that he was wheezing while he was examining the patient.

Q Would you agree with the following statement: The diagnosis of asthma is established by demonstrating reversible airway obstruction?

A If you are going to be doing specific pulmonary

function studies in a patient, I would agree with that diagnosis. As we mentioned earlier, some people who have more typical symptoms don't really need necessarily to be tested.

Q That will be a point of contention and dispute. I don't expect you to roll over and agree with me. The simple statement *is* that the diagnosis of asthma is established by demonstrating reversible airway obstruction is one which you immediately have to agree with me; do you agree with that?

A I would agree with a qualifications which is it's reversible if treated appropriately. If the patient takes the medication the way he's supposed to.

Patients who are not controlled don't necessarily show a reversible disease when they are doing the spirometry.

Q Doesn't that point to the importance of then continual periodic examination by spirometry or otherwise to demonstrate whether or not there is a reversible component?

A It all depends on presentation. You're not obligated to do spirometry to make a diagnosis of asthma. You go essentially by clinical circumstances in most cases.

Q Doctor, isn't it fair to state in this case, this physician, with the clinical circumstances, had the wrong diagnosis for approximately four-and-a-half to five years?

A Well, I think this patient did have reversible airway disease. I think that is fairly clear when you look at the clinical records. While he had fibrocystic disease demonstrated by later testing, that doesn't rule out the fact he had reversible airway problems along with that. I think it's quite plain that his symptoms were intermittent, therefore reversible.

Q Are you aware that Dr. Mehta testified Mr. Diederich did not at any time have asthma?

MR. SCOTT: Objection.

A I remember reading that in Dr. Mehta's record. I don't think Dr. Mehta had all of these notes from the various people who were treating him. He didn't review the same material that I did. I think if he had looked at this other material, that he would probably agree there is an element of reversibility there.

Q Are you indicating, so I'm clear, at some point from 1993 to 1997, Dr. Carson rendered treatment that made Mr. Diederich's asthma quiescent? I

don't think that is what you are telling me, you think he had asthma, still has asthma?

A He has a reversible component to his disease. It's obvious when you look through the record that he would be better at certain times, worse at other times.

It's related in the record that he would go to work for instance, he would be more symptomatic. It's related to in the record he would have more problems with the coughing when he would do activities such as try to play basketball for instance. There is an element of reversibility in his disease. It's not a constant symptom, where he's exactly the same without other exposures. It's obvious in fact just the opposite is this case.

Q So we're clear, your testimony at trial if you are asked a direct question, is that you don't need to do lung function testing of any sort to confirm the diagnosis of asthma?

A It depends on the circumstances. Certain cases, it's certainly appropriate to do the testing. Other cases you don't necessarily have to do additional testing.

Q In this case there was some lung function testing

done, wasn't there, in 1992?
A Yes.
Q You have a copy of that report, do you not?
A Yes, I do.
Q Would you agree with me that the report findings from that examination by Dr. Aurora are not necessarily consistent with asthma?
A I would agree with that. That is a totally worthless spirometry report.
Q Why do you think it's worthless?
A The results don't make any sense. If you look at the post bronchodilator report, his function actually gets worse. The reason is that he's coughing with the inhaler. You can't really use that as a dependable function test.
Q So let's frame this. I don't have Dr. Leano's records, do you have Dr. Leano's records?
A I believe I do, yes.
Q I might actually get a set. Dr. Leano, is it your understanding he was a family practice physician of Mr. Diederich, just prior to Dr. Carson?
A Correct.
Q He's managing this patient for some respiratory symptoms, he decides his patient needs to go for some lung function tests, correct?

A Correct.
Q You have no objection to his decision to do that at that time in 1992, correct?
A Correct.
Q By your own testimony, you're in agreement that the results of that particular test didn't yield fruit, actual information, because Mr. Diederich was coughing through the exam?
A That is my interpretation of that test. To put that in perspective, of course the patient was seen by a pulmonary physician. It was that pulmonary physician's position he had an asthmatic component depleting the results of the spirometry. The information available that Dr. Carson had was he had been evaluated by a pulmonary physician, the diagnosis was asthma.

Now I can look at the spirometry, tell you I don't think it's reliable. The way it was reported to Dr. Carson is the patient had asthma.

Q Let's take a look first of all at Dr. Aurora's consult report, if you can locate it, so you know I'm not misreading it. I would never do that, sometimes it happens.
A I have at least part of it.
Q Do you have both pages?

A I have the first page.
Q The first page I have is really short. I thank you for allowing me to see Mr. Diederich. I will be happy to see him again, in case he continues to have symptoms. I can show it to you, so you know there is nothing substantive on that page.
A I don't have that page.
Q I'll show it to you so you feel comfortable I'm not leaving anything out.

As I read this, going down to the second paragraph, it says the differential diagnosis at this point includes the possibility of an underlying bronchial asthma, or nonspecific bronchitis related to the exposure to smoke at work; do you see that?
A Yes.
Q Is there something in this report that you can read to me that gives you the impression that he did anything other than arrive at the preliminary differential diagnosis?
A Well, I think it is quite plain he treated him as though he had asthma. As he mentions here at the bottom of the page, he wanted to see him back in a few weeks, to assess his response to that treatment.

Q Correct. The question I'm asking you is isn't it clear to you he didn't come to a firm diagnosis of asthma based upon his first visit and his review of the best results available?

A It says a possibility of asthma or bronchitis.

Q That is my point. He didn't make a firm diagnosis of asthma based upon that first one-time visit, correct?

A Correct. He also doesn't diagnose hypersensitivity lung disease either.

Q Correct. Part of that is the testing results were not helpful, they were inconsistent or didn't make sense in the context this man presented, correct?

A I don't really know what Dr. Aurora's thinking was at that time. You have to ask him that question.

Q Indeed he indicated he wanted to see the patient back. He's writing this to Dr. Leano?

A Yes

Q On the other hand, if it is purely related to nonspecific irritation from whatever he is exposed to at work, this regimen may not be successful either; do you see where he wrote that?

A Yes.

Q Doctor, are you making the assumption that Dr. Carson, when he took over this case, in fact

would have had access to this report to read?
A My understanding is he took over Dr. Leano's practice, he had access to the records.
Q Asking you a question, reminding you, you are under oath, if you took on this patient, you had this report, it doesn't have to be you, generic sense, doesn't a doctor have an obligation when he takes on a new patient, to first of all read the material in the file to understand the patient's background and history?
A Well, not to get too technical about it, some patients will arrive in your office with 200 pages worth of records. Am I obligated to read 200 pages worth of records, no. One reads the pertinent parts of the record.
Q You do have an obligation to read the pertinent parts of the record, correct?
A One should look at whatever seems pertinent.
Q Dr. Aurora's report would probably be the most pertinent information since the patient told Dr. Carson at the first visit he had been diagnosed with asthma by Dr. Aurora. You can look back in the record, I think that is how it went.
A Yes, my recollection is that the patient stated that he had been diagnosed having asthma by the

pulmonary doctor.
Q So, this would have been a very pertinent report and/or record to look at at the time of first examination or shortly thereafter by the doctor; would you agree with that?
A Yes. I'm assuming he had that report. Maybe I'm mistaken in that. Had he had the report, yes.
Q You take on this patient, you are the new doctor, you came into the practice, you go over this consult report, it says I would like to see the patient back in three to four weeks. Wouldn't you, Doctor, then ask the patient, by the way, did you go back to Dr. Aurora, I don't have a second consult report?
A That would depend on the circumstances. For instance, if the patient had responded to the treatment, then again, just like doing the spirometry, you don't have to ship them back to the pulmonary doctor again. It depends on the circumstances.
Q At the first visit do you get the impression, either from the office notes or from Dr. Carson's very own testimony, that Mr. Diederich had responded to this treatment?
A It was Dr. Carson's opinion he had improved to some

degree with that treatment. I believe that is what he says in his deposition.

Q Well, the patient came in, let's look at the first note on 3-16-93. it says coughing spells. That is handwritten above i believe probably the nurses, do you see where it says that, just above where the typed note is?

A Right.

Q The patient is here today with complaint of cough and upset stomach. Upset stomach is related to the coughing to a certain extent, as well as mild burning pain. Patient diagnosed with asthma. He doesn't think it is asthma because he gets cough usually before running, jogging, before playing basketball. Usually first thing in the morning patient brings up small amount of slightly yellowish sputum. At this point stay with me if you can, he gives him a prescription, says will have him continue with his Beclovent inhaler as a change from the Proventil inhaler. He's changing the prescription, isn't he?

A Yes.

Q Would a doctor change the prescription in this context if he felt the asthma, we will put that word in quotes, was under control?

A Well, he's talking about intermittent symptoms. Notice how it's stated in here. The patient actually is primarily complaining about upset stomach. He's stating that he gets the coughing, it says usually just before running, jogging or playing basketball, first thing in the morning. At other times he's not having too much trouble. By definition that is reversible disease. He's not constantly having a problem. It's only certain circumstances that he has the problem.

Q Were you done with that answer?

A He's being treated with these medications. What he's looking at, he's saying he's still having a cough under certain circumstances, so I'm going to change his medicine, see if we can improve that.

Q Let me ask you a question. How familiar are you with hard metal disease?

A Well, it's a rare problem that is amply demonstrated in the records that have already been produced previously. The people who made the diagnosis, follow him for this, have only seen a few cases themselves. It's a rare problem.

Q My question is this, I'm trying to see what your familiarity is. I will ask you a question, you tell me whether you can or can't answer it.

Would you have expected Mr. Diederich to have coughing spells every day due to his hard metal disease?

A I think if it's primarily the hard metal disease, without a reversible component, that his coughing would have been relatively constant, yes.

Q That is your opinion to a reasonable degree of medical probability?

A Yes.

Q Once again, going back to the scenario of the obligation of the family physician; you are a primary care physician, right?

A Right.

Q People who are Boarded in family medicine can serve in that capacity, as well as people Boarded in internal medicine, correct?

A Correct.

Q What is the physician's obligation, if you believe there is one, under the standard of care, when you learn that a patient is being affected by fumes at work? Do you have an obligation under any guidelines that you are aware of to determine what components are in those fumes or the smoke?

A Meaning the physician himself?

Q Yes.

A Well, not to be too general about it, it depends on the circumstances. For instance, most work environments the patient already is familiar with toxic materials in the area because there are strict standards from the government how those things are regulated.

Ordinarily the physician does not need to do a specific search for types of things, it's already known to the employer and to the patient.

As far as more nonspecific symptoms, if people are just irritated by dust in general, or heat, or humidity probably, or something like that, it doesn't require doing a lot of investigation.

Q I appreciate that answer. Let me try to ask a better question. Under these circumstances, based upon the preliminary report from Dr. Aurora to Dr. Leano in the fall of 1992, would you agree with me it was manifestly clear that his primary problem in terms of not being able to breathe and coughing occurred when he was exposed to smoke at work? You can go back and look.

A Yes, that is very typical of reversible airway disease.

Q That is not my question. My question is his presenting symptoms were onset of coughing and

difficulty breathing when he was exposed to smoke at work?
A Yes.
Q Have you read Mr. Diederich's deposition?
A I don't think so.
Q Is there any evidence in the chart or by Dr. Carson's deposition that Dr. Carson ever at any time asked what Mr. Diederich -- what products he worked with?
A I'm not specifically familiar with that.
Q Did you agree with me he had an obligation to ask the patient if the patient was aware of what the components of the smoke were at work?
A Not necessarily.
Q You don't think so? You don't think the physician should attempt to have the patient find out what the environmental components are of smoke exposure in a welding environment?
A Well, most of the time it will be the same. Welding is welding for the most part.
Again, especially in the context of this kind of case, from a physician's prospective for an asthma situation especially, it doesn't matter what is in the smoke. If you are irritated by the smoke, you're irritated by the smoke.

Q Doctor, do you have any reason to believe that Mr. Diederich actually knew what the material was he was welding, that it had cobalt and tungsten in it?

A I know he brought testing materials when he did see Dr. Mehta at the Clinic, whether he knew that prior to that, I don't know.

Q If the deposition testimony revealed he did not know the constituent parts, back to my question, you honestly don't believe a physician given this set of factors should inquire of a patient to find out what materials he's being exposed to at work?

MR. SCOTT: Doctor, answer the question.

A Again for intermittent symptoms like this, if you are irritated by smoke, you are irritated by smoke. I guess what we're having a problem with is getting to the concept of a pneumoconiosis where someone is having a problem related to a specific exposure, versus general irritation.

In this particular case, in fact in cases of pneumoconiosis in general, you don't go to work, have symptoms, and then not have symptoms otherwise. It's a very slowly progressive disease, that causes relatively constant symptoms given

certain levels of exertion or whatever.

You don't go to work, start having wheezing or coughing because you just got a big blast of whatever toxic material is in the air. it's a reversible airway problem related to irritation in general.

Q So you believe that Dr. Carson under the circumstances of this case and information available to him, had no obligation to take a detailed occupational history?

MR. SCOTT: I object. The doctor answered that now three times.

A He knows the patient is a welder, he knows he's irritated by smoke at work. That is basically all you need to know.

Q Once again, back to our original scenario in Dr. Aurora's letter. Dr. Aurora tells Dr. Leano, I'm paraphrasing because I don't have my glasses on, he advised, I also advised him to wear some protective mask when he's doing the welding; you saw that, correct?

A Right.

Q First of all, what kind of mask would Mr. Diederich had to have worn that would have prevented him from further damage from cobalt and/or tungsten; do you

know?
A That is something that is supposed to be again regulated by OSHA, the employers are the ones responsible for providing the appropriate protective equipment.
Q I'm asking you if you, as a physician, know what kind of mask he would have had to have worn?
A I don't know the specific type of mask, no.
Q You are unaware because you had not read Mr. Diederich's deposition, that Mr. Diederich testified he went to the company nurse and asked for a mask, were you aware of that?
A No.
Q He was told allegedly, this is deposition testimony, by that company nurse, because he was asthmatic he should not be wearing a mask. You were aware of that I gather?
A That's true.
Q I'm getting to the punch line, working my way backwards.

You blame Mr. Diederich primarily for his own current condition?

MR. SCOTT: Objection.

MR. QUALLICH: Objection.

Q Let's read your expert report. You have a copy of

it, don't you?
A Yes.
Q Second page, third paragraph, I'm going to read it. I also believe that this patient is in large measure responsible for his own disease. I'm stating that correctly?
A Yes.
Q He clearly knew his work environment aggravated his symptoms; have I read that correctly?
A Yes.
Q Do you suspect that Dr. Carson was aware that the work environment aggravated Mr. Diederich's symptoms?
A Yes.
Q Then you write, he was advised by Dr. Aurora in 1992 to wear a mask at work, he did not comply; because that was your understanding, correct?
A Yes.
Q Now that I have told you, can you assume for the sake of your opinions in this case Mr. Diederich indeed did ask for the mask, the employer didn't provide one, does that make Mr. Diederich responsible for his own disease?
A Well, let me qualify what we said. You asked me, in fact the way you stated it was, the patient was

primarily responsible for his own disease. That is not true.

The thing that is primarily responsible for the disease is his exposure at work. However, after he developed symptoms he knows that they are aggravated by his work conditions, then he does have a responsibility to take some measure of protecting himself.

I certainly sympathize with him if he went to the nurse, was given incorrect information. But the truth of the matter is, he worked in an environment for many years, he knows that it was aggravating him, I believe that he has a responsibility to take some additional measures to change that, whether it be wearing a mask or getting a different job, whatever it would involve. If you are going some place, you are becoming symptomatic, you don't keep doing it over and over and over. You get something done about it.

Q You don't feel his going to Dr. Carson when he felt unwell demonstrated that he was responsible for himself?

A Yes, but of course as the report shows, there are periods of time for a year or so he doesn't come

into the office. That is also a factor involved in his responsibility for this situation.

Would you agree with me that if Dr. Carson had read the referral letter from the pulmonologist, that he should have inquired of his own patient whether or not the patient was wearing a mask?

I don't know that he did that or not.

Do you have any evidence he has any discussion with the patient about are you wearing a mask at work, yes, no, if not why not?

There are lots of things you talk about that don't show up in the record. We're talking several years here. People don't always document everything they talk about in the record.

Right. Doctors do document important recommendations, clinical findings, don't they?

Again, most of the time. Not always word-for-word.

You don't see anything in the four corners of all of Dr. Carson's records that indicate he inquired of patient the whether he was wearing a mask at work, he is not encouraging him to go back to the company, talk to them again, you didn't see that anywhere, do you?

I don't remember seeing that, no.

Do you recall his deposition testimony regarding

work environment?
A Dr. Carson's?
Q Yes, correct. I'm sorry, I should have said who.
A I would have to look at that again.
Q So sitting here today, you don't know the answer to the question whether he actually had the conversation with the client, his patient, just forgot to document it in the chart?
A I don't specifically remember that coming up in the deposition. I would have to look at it again.
Q You said he was not taking his inhalers or antibiotics as prescribed, this would definitely make it difficult to know if he had symptoms due to noncompliance or a different disease, you wrote that, correct?
A Right.
Q Doctor, at what point after a physician makes a clinical diagnosis of asthma should they begin to rethink that perhaps they've made the wrong diagnosis if there is no improvement in symptoms?
A That is a totally variable thing. It depends with each patient.
Q This patient, as you search the record, did there come a point in time that you can indicate to me you think that Dr. Carson should have considered

that there might have been a different disease process going on?

A He did consider that. In fact, he was treated for bronchitis, pneumonia, sinusitis in the records several of the visits he made during the period of time for those types of conditions.

Q I gather your opinion is that once again retesting him, with spirometry or otherwise, was not necessary?

A Well, again given these circumstances, when you look at the whole case put together, this patient rarely came into the office. The presumption usually is the person is not symptomatic if they are not coming back for additional therapy. There wasn't anything as it would present to Dr. Carson as he's sitting in the office to make him think it was a situation that was that much out of control.

Q Doctor, back in 1993 to let's say '96 we will leave the first part of '97 out of it, the standard of care in terms of treating asthma at that time was not daily preventative medication; would you agree with that?

A I'm not sure I know.

Q We're all going at 6:10 in the evening. The prescription that Mr. Diederich was given was if

you have an attack, use an inhaler, correct?
A He was told for instance he was going to continue the Beclovent inhaler on a regular basis. He was going to use the Proventil on a regular basis.
Q What did you interpret on a regular basis to mean?
A It says right here, Beclovent as on face sheet, I have to look and see what it was, Proventil two puffs q.i.d., that means two puffs four times a day.
Q If he wasn't coming in except when he got very sick, what does that say to you?
A He wasn't that bad in between the visits.
Q Doctor, have you seen the chest films in this case?
A Not the actual films, no
Q Just the report; is that correct?
A Correct.
Q Do you, in your practice, read chest films?
A No.
Q So you strictly rely on the radiologist; is that right?
A Yes, once in a while I'll look at the films in the hospital. Most of the time I rely on the report.
Q I think that you indicated that once you corrected me, you were correct to correct me, that the primary cause of Mr. Diederich's illness was his

exposure to cobalt and tungsten at work, correct?
A Correct.
Q Doctor, did you have an opinion you will be offering one way or another what effect would have been had on Mr. Diederich's health had he been removed from the work environment in 1993?
A Well, I can only comment on that in a very general way.
Q Sure.
A I don't know how involved you would like me to get in the answer.

First of all, the fact he was already symptomatic at the time he saw Dr. Carson implies -- let me qualify that. Knowing retrospectively he had lung disease from hard metal exposure, the fact he was symptomatic at the time when he first saw Dr. Carson, means he already had a fair amount of lung damage. We can't quantitate that because the spirometry, as mentioned earlier, is not very accurate. He did have lung damage to begin with. Regardless of what else would have happened from that point in time, the man would have been left with some chronic lung disease.

Q I guess what I'm asking, beating the dead horse, are you going to attempt to offer an opinion what

percentage of his lung capacity had already been reduced at the time when Dr. Carson first started seeing the patient?

A I'm not going to tell you a specific percentage. As I just said, I'm going to say that he had damage beginning with before he was ever treated by Dr. Carson.

Q I don't think anybody disagrees with you. You don't have a number, you are not going to have a number; is that correct?

A Correct.

MS. KOLIS: I don't have any further questions.

MR. SCOTT: You may read or as you know you may waive the reading. Do you have a preference?

THE WITNESS: When is the trial?

MR. SCOTT: October. I certainly would have the deposition prior to trial.

THE WITNESS: I'll waive the reading.

(Deposition concluded at 6:15 p.m.)

(Signature waived.)

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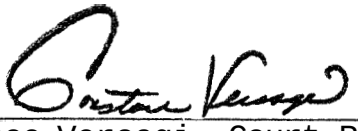
State of Ohio, )
) SS: CERTIFICATE
County of Cuyahoga. )

I, Constance Versagi, Court Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, Carl Culley, **M.D.**, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy/computer in the presence of said witness, afterward transcribed, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel, or attorney of either party, or otherwise interested in the event *of* this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 25th day of June, 2001.



Constance Versagi, Court Reporter and
Notary Public in and for the State of Ohio.
My Commission expires January 4, 2003.