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ORIGINAL

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

THE PRUDENTIAL INSURANCE)	CIVIL ACTION NO.
COMPANY OF AMERICA,)	85-2179-6
Plaintiff)	VIDEO TAPE
vs)	DEPOSITION UNDER
TURNER and NEWALL, PLC.,)	ORAL EXAMINATION
et al.,)	OF
Defendants)	WILLIAM EDGAR SMITH, M.D.

UNITED STATES COURT

SOUTHERN DISTRICT OF NEW YORK

THE CHASE MANHATTAN BANK, N.A.,	
Plaintiff	87 Civ. 4436 (VLB)
-against-	
TURNER and NEWALL, PLC., and	
TURNER and NEWALL, LTD.,	
Defendants	

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letter that you received. Is that correct?

A Correct.

Q Is that an accurate photocopy of the letter?

A Yes.

Q Attached to that letter was the report of Dr. Knox and Dr. Doll. Correct?

A Yes.

Q What, if anything, did you do with that paper -- strike that.

Did you read the paper when you received it?

A Yes.

Q Was it of any significance to you?

A Yes. It seemed to be presenting the first really impressive evidence for an association between lung cancer and asbestosis, because it had, as I recall, age-adjusted studies.

Q Did you have occasion thereafter to share the Knox/Doll paper with Dr. Lanza?

A Yes.

Q What was his reaction to the paper?

A His reaction to this paper was very much the same as his reaction to when I gave him the letter that I had gotten from Dr. Knox back in December of '53. I

remember taking it in thinking that this was scientifically interesting information, and I remember Dr. Lanza became very red in the face, slammed his fist down on the table and said, "You know, you cancer investigators are troublemakers. You are trying to pin this whole cancer problem on industry."

And he was very -- I thought he was going to have a stroke. He was very indignant about it.

Q Is your letter of transmittal to Dr. Lanza what has been marked as Exhibit 15?

A Yes.

MR. HANLY: If I could just have a minute to see that, please?

MR. ENSLEIN: Sure.

MR. HANLY: Off the record.

(Discussion off record.)

BY MR. ENSLEIN:

Q So that the record is clear, Exhibit 15 is dated what, Doctor?

A 10, December '53.

Q And is this the transmittal letter for Dr. Knox's December 3, 1953 letter?

A That's right.

Q So you gave Dr. -- you initially gave Dr. Lanza the letter from Dr. Knox dated December 3,

1953?

A That's right.

Q And then you subsequently gave Dr. Lanza the later correspondence in '54 from Dr. Knox enclosing his report?

A Yes.

MR. HANLY: Referring to Exhibit 14?

MR. ENSLEIN: Yes.

Q Yes, that's Exhibit 14?

A Correct.

Q Thank you, Doctor. What subsequently occurred in your career, Doctor, at NYU after sharing this information with Dr. Lanza?

A I was told that my appointment there would not be renewed.

Q Did you have an understanding as to why that occurred, sir?

A He never told me why it occurred, no.

Q Did you form a belief as to why it occurred, that your position was terminated?

MR. HANLY: I object to the form and substance.

MR. ENSLEIN: All right. Let me rephrase it.

Q Did you have an understanding or did you

form a belief as to why your position was not renewed?

A I did.

Q What did you come to believe, sir?

A Well, Dr. Lanza had told me after this, and a number of times before, that cancer investigators had no idea of the problems that they were creating for compensation practice and for insurance companies by making claims or reporting data that would associate cancer with occupational exposures.

MR. HANLY: May I have that answer read back, please?

(Read back).

MR. HANLY: Thank you.

Q Doctor, if I could hand you what has been marked earlier in your deposition as Exhibit 7, your letter to Dr. Armstrong of June 12, 1956, what was the purpose of that letter, sir?

A This was to request a hearing at NYU, a hearing on the -- on my being fired.

Q Were you able to attend that hearing, Doctor?

A No.

Q Did you ever have occasion to discuss with Dr. Lanza what role, if any, he played in Dr. Vorwald leaving the employment of Saranac Lake laboratory?

A Dr. Lanza described that to me. I remember when he came back from a meeting at Saranac Laboratory he had been very -- let's see, there were several of us there. I believe that Dr. Nelson and also a Dr. Goldstein were present when Dr. Lanza came back, and he was telling us that Dr. Vorwald had been doing studies exposing animals to some beryllium compounds and he had gotten -- found some cancers of the lungs in some of these animals, and he was going to report that, and that in Dr. Lanza's opinion the Saranac Laboratory was not set up for cancer research, it was set up for a study of pneumoconiosis, and that he had seen to it that Dr. Vorwald would have his service there terminated and that he would -- he had applied for -- Vorwald had applied for grants of further studies of cancer effects of beryllium compounds, I believe, applied to the Damon Runyon Fund for that, and Lanza said he was on the board of that fund and he was going to see to it that Vorwald didn't get that grant also.

He told me he had personally gone to see the dean of a medical school in California where Vorwald had applied for a position or was being offered or being considered for a position, and was going to see to it that he didn't -- didn't get that position.

Whether this was related to another

problem in California that had to do with diatomaceous earth, I don't know. But I remember separately that Dr. Lanza told me that he had to handle a problem for -- that had come up in connection with diatomaceous earth exposures in California and that that -- and a Dr. Abrams, who was causing trouble for them out there and -- by wanting to study men exposed to diatomaceous earth dust, and Dr. Lanza had gone out there.

I don't know whether he had gone out there, but he told me that he had to do something about this and bring to the attention of this Dr. Abrams that the State Health Department, which was Abrams' organization, would need the agreement of industry to make this study, and that he was going to see to it that this effort would be contained, I think was the word that he used.

Now, he -- I have a letter from -- I have an article from Abrams which is published in the American Journal of Public Health that that problem has been -- that dragged along for twenty years as a result of which Abrams died, and that also I have a letter from someone at Metropolitan Life asking Dr. Lanza to do something about the trouble that Abrams was causing out there by wanting to get into this.

Q Do you have your correspondence from your

days at New York University with you here today?

A I do.

Q Can you share that with us, please?

A Um-hum.

MR. ENSLEIN: Perhaps we can go off the record while we gather these materials.

(Off the record.)

(Exhibit Smith 16 is marked for Identification.)

MR. HANLY: Mr. Enslein provided to me through Dr. Smith an opportunity to review a folder of approximately one inch in thickness which is marked as Exhibit 16.

I have had an opportunity to briefly look through this material. I think I spent about twenty minutes doing so. I believe there is a lot of material in there which might provide to T&N an opportunity to ask Dr. Smith a number of questions about the events in issue in this raised by Mr. Enslein in this deposition, and therefore at the conclusion of the proceedings here today my position is going to be that the deposition is not concluded and I reserve my right, upon review of that material in more detail, to reconvene a

deposition with Dr. Smith's consent to further examine him concerning this fairly voluminous exhibit.

MR. ENSLEIN: For the record, the materials in question were handed me only yesterday evening by Dr. Smith, and these are being produced by the doctor in response to subpoenas issued in both cases. I just wanted the record clear on that point.

I don't intend to ask the doctor questions about each of these documents, but only relatively few of them that are included.

BY MR. ENSLEIN:

Q Doctor, handing you what has been marked as Exhibit 16, does this folder contain your correspondence and other papers related to your tenure at NYU?

A Yes.

Q Doctor, I would like to ask you a few questions concerning a number of the documents contained therein.

As I hand you these letters would you please identify for the record the date of the letter and the various parties involved and the correspondence as we go, and then identify what the letter concerns,

if you could? The first letter, Doctor?

A This is a letter of March 22, 1949 to me from Dr. Lanza and it is saying that he will be pleased to become a "member of your group," which means the Cancer Prevention Committee.

Q This is a letter that Dr. Lanza wrote in response to your invitation?

A Invitation to join.

Q And I hand you what's been marked -- well, excuse me.

Could you identify the next document for us?

A This is a letter of January 23, 1950 to Dr. Lanza from me, and it says, "In view of clinical data associating certain cases of lung cancer with asbestosis, we would like to set up tests for carcinogenicity of asbestos materials for lung tissue utilizing the tissue transplant technique."

And then it asks whether it would be desirable to contact a manufacturer and request samples of asbestos, and whether I should do that or whether Dr. Lanza might care to do that.

Q The next document, could you identify that and tell us what it is?

A This is simply a letter of appointment in 31,

January 1950 appointing me as -- let's see -- on the staff of the Postgraduate Medical School of the academic year 1949-1950.

Q And that's signed by the vice-chancellor and secretary of New York University?

A Right.

Q I'm handing you the next documents which are clipped together in your file.

Could you identify the documents for us?

A Yes. This is a reprint from the American Journal of Public Health, Volume 44, May 1954, an article by Herbert K. Abrams. Title of the article is "Diatomaceous Earth Pneumoconiosis."

Attached to it is a photocopy of a letter of February 7, 1952 addressed to A.J. Lanza and signed by W.P. Shepard, the third vice-president, Metropolitan Life Insurance Company.

Q What does the letter concern?

A Well, this letter concerns -- let me read it a little bit. It says, "Dear Tony" --

MR. HANLY: Excuse me. I object to the form and the manner of proceeding.

Q Doctor, is this letter of significance to you in any way?

A Yes.

Q In what way?

A This letter has to do with the problem that Dr. Lanza had mentioned to me, a problem in connection with exposure of men to diatomaceous earth in a mine in California and the -- Dr. Abrams at that time was with this Bureau of Public Health, I believe it was. He was, I think, the senior officer in one of the departments of that bureau, and he had wanted to do studies of the health of men employed in mining this material.

Now, as Dr. Lanza had told me about this, he had been asked as indicated in this letter, he had been asked by the Metropolitan Life Insurance Company to do something about that, and I think the letter and the article probably would speak for themselves.

Q Briefly, do you know what, if anything, Dr. Lanza did with regard to that problem?

A Well, I remember him telling me about it because it's -- I felt he was giving me sort of a training for how industrial medical problems and compensation problems should be handled, the subtleties of the problems and the complexities of them, and that he was trying to protect the insurer from unjustified claims, and how he was going to go about this.

And he was telling me that he had been

successful in getting the problem resolved in a way that he felt was protecting the insurer from some studies that Dr. Abrams wanted to conduct.

Q Do you remember what Dr. Lanza did?

MR. HANLY: I'm sorry. With respect to what?

MR. ENSLEIN: This matter.

A As I remember him telling me about this matter, he was telling me that he had been able to -- as he put it, put the lid on Abrams.

Q What did you understand that to mean?

A I understood that to mean that he was -- had done, in some way, protected the Metropolitan Life Insurance Company against some action that this Dr. Abrams was attempting to undertake that would create possible problems for them.

And when Abrams sent me a copy of his paper that he wrote some years later about it, he was saying there, in summarizing the situation, as I recall he was saying that he felt that the study of methods for protecting men there had been delayed by some twenty years, and I remember this as something that struck me as the wrong way to be going about industrial hygiene things.

It was the first real experience I suppose

that I had in mind in feeling that well, I could understand the need for study of occupational problems so that there would not be unjustified claims, but on the other hand I felt that it was not right to be delaying investigations and obstructing investigations.

Q Doctor, handing you the next document, can you identify this for us?

A This is a note that I wrote to Dr. Lanza dated December 10, 1953, and it's saying that I just received the attached letter containing comment on lung cancer and asbestosis from John Knox.

Q Is that your original file copy for what was earlier marked as Exhibit 15?

A Yes.

Q Thank you, Doctor.

Can you identify the next document for us, please?

A This is a letter dated June 28, 1954 addressed to Professor A.J. Lanza and written by me.

Q What was your purpose in sending that letter to Dr. Lanza?

A My purpose was to ask for a board of review having to do with my -- the termination -- his telling me about the termination of my appointment at New York University.

Q Do you recall what Dr. Lanza's reaction was when he received your letter?

A Yes.

Q What was his reaction?

A Well, it must have been within a day or two after I handed him this letter that he called me and told me that I had no idea of the problems that would be created for industries and insurance companies by claims that cancers were related to occupational exposures, and that the people who were putting out so much along that line were troublemakers and were trying to pin the blame for the whole cancer problem on industry, and that if I persisted in asking for this hearing or submitted a letter like this to other people, he was going to sue me for libel and this would mean that he would take away my house and everything I had.

Q Next appears in your file are two sealed envelopes. What are these?

A Well, I was -- as I was certainly shaken up by his threat to sue me for everything I might have if I distributed this letter to others and went ahead with asking for a board review at the university, and this letter, which I had sent to Dr. Rhoads, the director at Memorial Cancer Center, I don't know that I had

actually mailed it because it doesn't have any stamps on it, but I guess I held it and didn't mail it and I left it here as evidence that I had not sent it out, so that if he did sue me I felt I might have some protection.

Now, here is a letter addressed to me from Marion Sulzberger, M.D. Dr. Sulzberger was the editor of a book that I contributed a chapter to, and I guess I had sent him a copy asking him to help me out at the university in this matter, and I probably asked him to return it because this letter is addressed to me from him. This envelope is addressed to me from him, and I haven't opened that.

Q Doctor, handing you the next document, could you identify those papers for us?

A This is a letter dated July 25, 1953 addressed to me from Arthur J. Vorwald, M.D., Saranac Lake, New York.

Q And is that letter of significance to you, sir?

A The significant thing to me is that he says, "Dear Bill: On July 14, my resignation as director of the Trudeau Foundation and Saranac Laboratory was forwarded to the president of the board of trustees. It distresses me to inform you of this."

The thing that impresses me about this letter is that he is saying that he obviously is unhappy about having to forward his resignation.

Q Did you subsequently have a discussion with Dr. Vorwald concerning his termination at Saranac?

A Yes, I did.

Q Did you have occasion at the time of that conversation to record or jot down notes concerning that conversation?

A I did.

Q And do you have that document with you, sir?

A Yes, sir.

Q Where is it?

A Here (indicating).

Q It is clipped to the letter?

A Yes.

Q Could you identify your handwritten notes, sir?

A Yes.

Q What is it?

A Well, these are notes that I made on the date of 24, August 1955.

Q Why did you find it necessary or decide to record your conversation with Dr. Vorwald in that

fashion?

MR. HANLY: Objection to the form.

MR. ENSLEIN: Strike my question. I will rephrase it.

Q Why did you record the conversation with Dr. Vorwald?

A I recorded it because I remembered what Dr. Lanza had told me about how he had stopped an investigation that Dr. Abrams wanted to make in California, that he had told me how he had stopped Dr. Vorwald's studies of cancer by inhalation, experiments with animals, how he had stopped Dr. Hueper's studies at the National Cancer Institute where they were having problems with occupational cancer, and then he had told me that my studies were going to be stopped and they were going to get rid of me, and I felt I wanted to get information about others other than myself who had met this fate.

Q Did you anticipate using this information in the hearing?

A Yes.

Q What took place during your conversation with Dr. Vorwald?

A Well, my notes tell me what I asked and what he answered.

Q Could you tell us what occurred?

MR. HANLY: Well, I'm going to object if Dr. Smith is going to read from the document.

If you want to ask him what his independent recollection is, that's fine, but the document speaks for itself.

Q I would like, if you could, Doctor, to read your notes, please.

MR. ENSLEIN: And I understand your objection.

MR. HANLY: I object to that.

Q Go ahead, sir. You may go ahead and read your notes.

A Well, the question that I asked was "What was the trouble at Saranac that you are having to leave?" And then it says, "Vorwald" --

"ANSWER: Tony (Lanza) did many things for his own aggrandizement and for the benefit of the industries he served rather than for the advancement of science."

Is that enough? There is a good deal more, but it's all here if anyone wants it.

Q If you could, sir, since your handwriting, unlike my own, is somewhat difficult to read, if you

could read through it.

A Read through it?

Q Yes.

A All right. My next question was,

"You mean that you feel that he placed his obligations to firms that had retained him as a consultant ahead of advancement of scientific knowledge?

ANSWER: Yes. And another thing I'd like to know is why he brought in foreigners.

QUESTION: Who are you thinking of there?

ANSWER: Well, Schepers and Ken Smith.

QUESTION: Had Schepers done any cancer research?

ANSWER: No. He hadn't done any research.

QUESTION: Well, you had developed a lot of experience in research, and particularly in making a fundamental contribution to cancer research. So had I. When a man has developed

experience and is replaced by an inexperienced man, wouldn't you say that sets back progress?

ANSWER: Yes, I certainly would.

QUESTION: Would that not be an advantage to interests that wished to impede progress?

ANSWER: Yes, it certainly is.

QUESTION: Do you feel that Dr. Lanza aided or impeded your efforts to develop your cancer studies?

ANSWER: Well, my efforts were certainly blocked and stopped, and my feeling is that Tony was in the background of this. But he is a very slippery fellow and it's awfully hard to pin things down definitely, but I know perfectly well that he got me out."

And that's the end of it.

Q Thank you, Doctor. Could you identify the next document for us?

A This is a letter dated August 24, 1955 to me from W.C. Hueper, M.D., Chief of Environmental Cancer

Section, National Cancer Institute.

Q Is that letter of significance to you, Doctor?

A Yes.

Q Why?

MR. HANLY: Please note my objection to the form of the question.

Q In what way is the letter significant to you, Doctor?

A Here is a central paragraph.

MR. HANLY: I'm going to object to the witness reading.

Q Could you paraphrase rather than reading the paragraph, Doctor?

Tell us what in that letter is of significance to you?

A The thing that is significant to me here is that Dr. Hueper, who was at that time chief of the environmental cancer section at the National Cancer Institute, says that his activities on environmental cancer were discontinued in 1951, "When I was requested to stop such activities. This event was brought about by a complaint, as I was officially told, and made to my superiors in Washington on behalf of the American Chromate Industry by Dr. Lanza as its medical

representative."

Q Did you have an understanding as to what, if anything, occurred with regard to Dr. Hueper's research at the institute at this point in time?

A Yes. His work on environmental cancer was, as he says, going to be discontinued. This means his work on the epidemiological aspect of it. He was able to continue some experimental studies, I believe.

Q Doctor, after you left New York University where did you go next?

A To Fairleigh Dickinson University.

Q And during your years 'at Fairleigh Dickinson what was -- what kind of work were you involved in?

A Well, half-time teaching of health and education and the rest of the time in research work, laboratory work.

Q Did you continue that work until your retirment?

A Yes.

MR. ENSLEIN: Thank you, Doctor. I have no further questions.

MR. HANLY: Doctor, I'm going to have a number of questions. I wonder if we could take a three or four-minute break, please.