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IN RE: PERSONAL INJURY	:	IN THE
	:	
AND WRONGFUL DEATH	:	CIRCUIT COURT
	:	
ASBESTOS CASES	:	FOR
	:	
	:	BALTIMORE CITY
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ABATE, et al.,	:	CONSOLIDATED
	:	
Plaintiffs,	:	FILE NO. 93076701
	:	
vs.	:	
	:	
Acands, INC., et al.,	:	
	:	
Defendants.	:	July 13, 1994
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FILED

JUL 15 1994

CIRCUIT COURT FOR
BALTIMORE CITY

MOTION OF PITTSBURGH CORNING CORPORATION
FOR ISSUANCE OF A LETTER ROGATORY

Pursuant to Rule 2-510 and the New York CPLR 3102(e), Pittsburgh Corning Corporation moves this Honorable Court for issuance of a letter rogatory to the appropriate judicial authority in New York County in the State of New York, requesting that process or subpoena issue requiring The Keeper of the Records of New York University Medical Center, 550 First Avenue, New York, New York, to appear and produce for inspection and copying the documents or other tangible things described on Exhibit "A" attached hereto.

As grounds for this motion, Pittsburgh Corning Corporation states that there exists relevant, discoverable documents in the possession, custody, or control of the New York University ("NYU") Institute of Environmental Medicine, Anthony J. Lanza Research Laboratories of University Valley ("Lanza Research Laboratories"), Long Meadow Road, Sterling Forest, Tuxedo, New York.

On June 30, 1994, Pittsburgh Corning Corporation counsel searched the NYU Medical Center Archives (distinct from the "Lanza Research Laboratories" Archives) located at 550 First Avenue, New York, New York. The recently obtained NYU Archive documents, when construed in the context of documents previously produced by Johns-Manville Corporation and others, cast considerable doubt on, and in some instances, directly rebut certain statements of fact made to the jury by Metropolitan Life Insurance Company ("Metropolitan Life") counsel. The NYU Archive documents, including correspondence among and between the NYU Chancellor, the Director of the Lanza Research Laboratories and Dr. Irving J. Selikoff (Mt. Sinai School of Medicine), refer to

documentary material, such as for example a "Lanza file" located at the Lanza Research Laboratories in Tuxedo, New York.¹

Dr. Lanza, in December 1948, while employed by both Metropolitan Life Insurance Company and NYU, authored a letter to Dr. Arthur Vorwald of Saranac Laboratory (copy attached to Dr. Selikoff's February 4, 1988 letter to Arthur Upton, (Tab B). In

¹Dr. Lanza maintained his affiliation with Metropolitan Life from 1947 to December 31, 1948, and for several years after that via direct correspondence and communication with Metropolitan Life and its insureds, notably Johns-Manville Corporation. On May 13, 1964, the NYU Institute of Industrial Medicine held a ceremony at Tuxedo, New York, when it dedicated the newly completed "Anthony J. Lanza Research Laboratories." At the ceremony, Churchill Rodgers, general counsel of Metropolitan Life Insurance Company, paid tribute to Dr. Lanza. Nearly twenty years earlier, on June 3, 1947, at a luncheon held at the Harvard Club, New York, medical directors of fifty national companies assembled to hear the formal appointment of Dr. Anthony Lanza as Director of the newly created NYU-Bellevue Institute of Industrial Medicine. Mr. James Madden, Vice President of Metropolitan Life Insurance Company, was publicly acknowledged at the June 3, 1947 ceremony. Dr. Currier McEwen, then Dean of the College of Medicine expressed his "gratitude to Mr. Frederick Ecker, Chairman of the Board of the Metropolitan Life Insurance Company, for making it possible for Dr. Lanza to assume this work with our faculty on terms, I might add, which are extremely generous to the College of Medicine." See transcript of "Luncheon, Announcement of the Institute of Industrial & Social Medicine of the NYU-Bellevue Medical Center and the Appointment of Dr. Lanza," June 3, 1947, Harvard Club, N.Y., N.Y., attached at Tab A. Metropolitan Life Insurance Company lawyers questioned whether or not Dr. Lanza was operating on behalf of Metropolitan Life in 1948, when Dr. Lanza, on behalf of asbestos company insureds of Metropolitan Life, instructed Dr. Vorwald to remove cancer references from the Saranac Studies. See the 1947 transcript (Tab A), however, where Dr. Lanza describes the "combination" of NYU-Bellevue and Metropolitan Life Insurance Company:

I must also bear witness to my appreciation of a combination of circumstances which, on the part of the officials of New York University as well as of Metropolitan Life have made it possible for me to enter this combination for the advancement of a phase of the medical profession to which I have been devoted for some thirty odd years, namely, industrial medicine." Id. at 11.

Dr. Lanza's actions, including his December, 1948 letter to Saranac, occurred during this "combination" of Metropolitan Life and NYU.

that letter, Dr. Lanza, who then was on the Board of Directors of Saranac, notified Dr. Vorwald that "... all references to cancer or tumours should be omitted..." from the Saranac report on results of experimental asbestos studies. The sponsoring asbestos companies, including Johns-Manville, Raybestos Manhattan and others, maintained the right to approve the content of any transcript generated by Saranac prior to publication. Attached at Tab C is a copy of Vendiver Brown's November 20, 1936 letter to Dr. Gardner at Saranac confirming this understanding. After Dr. Gardner's unexpected death in 1946, his Outline was discovered on his desk, some three years after submission of a nearly identical outline to Johns-Manville. This outline included data suggesting an excessive (81%) incidence of "malignant" tumours in mice exposed to asbestos. This incidence of lung cancer, Gardner noted, was over 16 times the average for mice inhaling other dusts.

During this same time, Johns-Manville was beginning to experience labor problems at its Quebec mines and manufacturing facilities. Johns-Manville executives, on July 22, 1947, worked out a "plan whereby Dr. Lanza would complete the work that Dr. Gardner had started...." See Tab D, confidential letter from Fisher to Woodard. By June 1, 1948, J.P. Woodard of Johns-Manville noted a "real ferment under way in Quebec on the subject

of industrial health." He noted that the Quebec "Government itself has made some statements and taken certain steps that might well get the mining industry in general, and ourselves in particular, into real difficulties." See copy of Woodard June 1, 1948 letter to Dr. Vorwald at Saranac, with "blind cc" to Dr. Lanza, Tab E. It was against this historical backdrop that Dr. Lanza and Johns-Manville deleted cancer references from the Saranac report.

As further grounds for issuance of a letter rogatory to NYU, Pittsburgh Corning presents the Court with the following examples of (1) statements made by Metropolitan Life counsel on June 22, 1994; (2) documents obtained at NYU Archives on June 30, 1994; (3) the relevance of the newly discovered NYU documents in context of previously discovered documents; and (4) the resulting justification for issuance of a letter rogatory compelling production of documents at the NYU Lanza Research Laboratories, Tuxedo, New York.

A. Dr. Lanza's Suppression of Saranac Lake Asbestos/Cancer Studies

1. Metropolitan Life Opening Statement Remark:

"... [T]his was an invalid experiment, and everybody at the time who heard about it said so." (Tr. p. 1612). "Now, all of the people at the time who saw this research said it was flawed, bad science, shouldn't be published. They all said, to use Gardner's words, 'It didn't mean anything.'" (Tr. pp. 1617-1618).

2. Relevant NYU Archive Documents Obtained June 30, 1994:

- Letter, Dr. Irving J. Selikoff to Dr. Arthur C. Upton (Director, NYU Institute of Industrial Environmental Medicine), February 4, 1988, with enclosures (Tab B).
- Letter, Dr. William E. Smith to Dr. George Armstrong (Director, NYU Institute of Industrial Medicine), June 12, 1956 (Tab F).
- Handwritten letter, March 3, 1988, Dr. Norton Nelson to Dr. Irving Selikoff, re: Analysis of Lanza's suppression of cancer field studies (Tab G).
- Letter February 9, 1990 from Dr. Upton to Dr. Brademas, NYU, re: "Lanza Controversy." (Tab H).

3. Relevance of Documents in Light of Previously Discovered Documents:

Dr. Selikoff's February 4, 1988 letter to Arthur Upton confirms that Dr. Selikoff was contemporaneously aware of Dr. Gardner's asbestos/cancer data. According to Dr. Selikoff, "[U]nhappily, Vorwald's material [the 1951 published report] did not include the carcinogenesis observations." Selikoff further discusses Dr. Gardner's 1946 Monograph, noting that background data on lung cancer was never published. Dr. Selikoff selected only two letters to forward to Dr. Upton: (1) Dr. Lanza's 1948 letter instructing Saranac to remove cancer references from the Saranac study, and (2) excerpts from Dr. Gardner's outline pertaining to asbestos cancer.

Dr. Kenneth Lynch, noted pathologist from the Medical College of South Carolina, reviewed the Saranac data at Dr. Lanza's request after Dr. Gardner's death and urged Saranac to publish the Monograph in unedited form. His June 30, 1947 letter is attached at Tab I.² Dr. Lynch reiterated his

²Dr. Lynch wrote to Dr. Lanza on June 30, 1947:

"On the other hand to submit the manuscript for publication practically as he has it written, with an explanation would be to properly represent him. He undoubtedly meant to add to the manuscript but it is worthy as it stands."

views in a July 23, 1947 letter (Tab J) to Dr. Lanza again urging publication of Dr. Gardner's experimental report "as it stands." Again, he notified Lanza that the outline "is really a summary of Gardner's observations and is valuable and publishable as it stands."

Of course, Dr. Lanza and Manville executives were acutely aware of the explosive effect of Dr. Gardner's cancer data on the increasingly volatile labor situation at Manville's asbestos mine in Quebec. After reviewing Dr. Gardner's cancer data, Johns-Manville lawyers, on March 21, 1947 pronounced the Gardner data to be "dynamite." (Letter attached Tab K).

Given Dr. Selikoff's, Dr. Lynch's, and even Johns-Manville's observations, therefore, it can hardly be said, as Metropolitan Life lawyers have said in open court, that "all of the people at the time who saw this research said it was flawed, bad science, shouldn't be published." Nor can it be said, as Metropolitan Life lawyers have said, that "this was an invalid experiment, and everybody at the time who heard about it said so." Moreover, Dr. William Smith's June 12, 1956 letter³ (Tab F) includes the contemporaneous observations that "... in 1952, the director of a well-known scientific institution [Saranac] announced his important discovery that an industrial dust [asbestos] brought about cancer in the lungs of animals inhaling it. Within a year, Professor Lanza stated to me that he had utilized his position on the board at that institution [Saranac] to force this man's resignation...." Dr. Lanza suppressed Saranac animal data not once, but twice.

As for Metropolitan Life's related claim that Dr. Gardner was not planning to publish his animal and human data on asbestos lung cancer, Dr. Lanza attended a meeting at Johns-

³Dr. Smith's June 12, 1956 letter has been reviewed and was previously produced. This copy was found in NYU's files, indicating recent review and scrutiny. See Dr. Upton's letter, Tab H, where Dr. Upton, apparently after an investigation into the "Lanza controversy" alludes to "protecting NYU from adverse publicity," and recommends changing the name of the building at NYU's research center from "Lanza" to "Nelson." Curiously, however, and notwithstanding his recommendation that Lanza's name be removed from the Institute's research center, he adds that the "charges against Lanza were not justified."

Manville Headquarters on January 31, 1947 where he described Gardner's intent with respect to publication of the data:

"Report by Dr. Lanza:

Dr. Lanza reported that during his recent visit at Saranac, he had access to all the memoranda and notes left by Dr. Gardner.... Evidently Dr. Gardner had planned to issue a comprehensive article on Asbestos: its effect on animals, the effect on human beings; as well as related research problems...."

Johns-Manville Confidential Memorandum re: January 31, 1947 Meeting among Johns-Manville executives and Dr. A.J. Lanza, Metropolitan Life Insurance Co., p. 1, Copy attached at Tab L. Thus both Drs. Lynch and Lanza believed that Gardner had intended to publish the 1946 data.

4. Basis and Grounds for Issuance of Letter Rogatory to NYU

Taken together, the Selikoff, Nelson, Upton, and Smith letters confirm that NYU has recently conducted, and may still be conducting, its own investigation into Dr. Lanza's historical role in suppressing knowledge of asbestos cancer, particularly Dr. Lanza's activities on behalf of asbestos companies in 1948. It is also plainly apparent that NYU has compiled a "Lanza File," which given NYU's role as Dr. Lanza's nominal employer from 1947 to 1954, gives NYU unique access to original, previously undiscovered documents. These documents should be produced.

B. Whether or Not Dr. Lanza's 1948 Suppression of the Saranac Lake Asbestos Cancer Studies Delayed Public Awareness of Asbestos Carcinogenicity.

1. Metropolitan Life Opening Statement Remark:

"And that [1949 Journal of the American Medical Association ("JAMA")] article pretty much laid to rest the question of whether people exposed to asbestos were at risk of developing lung cancer." (Tr. p. 1610).

2. Relevant NYU Archive Document Obtained June 30, 1964:

- Attached at Tab M is a copy of the cover, frontispiece, table of contents and relevant excerpts from a book

entitled, The Pneumoconiosis (Grune & Stratton, 1963), edited by Dr. A. J. Lanza. The first edition of this book, found in NYU's medical library on June 30, 1994, carries Dr. Lanza's original inscription, "To the Medical Center (NYU) Library with the Compliments of A.J. Lanza." Dr. Lanza selected Dr. Kenneth Smith, medical director for Johns-Manville Corporation, to author chapters in Dr. Lanza's 1963 book, including chapters on "Asbestosis," (Chapter 2, p. 13), and "Diatomaceous Earth Pneumoconiosis," (Chapter 3, p. 26).

3. Relevance of Document in Light of Previously Discovered Documents.

While Dr. Lanza's book has been available to the general public in libraries for the past thirty (30) years, the NYU copy, still on the NYU library shelf, carrying as it does Dr. Lanza's own handwriting, points up the misinformation published in 1963. Notwithstanding Metropolitan Life lawyers' statements that the issue of lung cancer/asbestos was pretty much "laid to rest" in 1949, Dr. Lanza's 1963 book informs its readers that "It is entirely possible that the asbestos fibre may be a carcinogen or co-carcinogen. However, the true relationship will remain obscure until responsible reporters can evaluate the relationship between agent and disease and not just job title and disease." Dr. Lanza's book goes on to inform its readers, via Dr. Kenneth Smith's chapter (Johns-Manville's Medical Director), that among [50,000] physical examinations and chest x-ray films reviewed of Johns-Manville workers, "there were no more cases of pulmonary malignancy than among the general population." Both Dr. Lanza and Dr. Smith knew this to be a preposterous statement, given both published and unpublished data, as well as Saranac's 1949 evaluation of malignancies among asbestos miners.⁴

⁴Dr. Lanza sat on the Saranac Board of Directors while the Saranac Laboratory evaluated actual lung tissue of asbestos miners stricken with asbestos lung cancer. These specimens were examined by Dr. Schepers, who personally reported the issue to Dr. Lanza in New York in 1949. See Schepers testimony in Speake v. Johns Manville Corp., et al., Superior Ct., Cal., Vol. II.

Whatever the case, Dr. Lanza himself, in his 1963 book, seems, ironically, to disagree with Metropolitan Life lawyer's 1994 remarks to the jury that, by 1949, the question of asbestos lung cancer was "pretty much laid to rest." Dr. Lanza and Dr. Smith still question the asbestos/cancer issue in 1963.³

4. Basis and Grounds for Issuance of Letter Rogatory to NYU:

Dr. Lanza assembled the chapters to The Pneumoconiosis while he was Director Emeritus and Professor Emeritus, Institute of Industrial Medicine, New York University. Indeed, Dr. Kenneth Smith (Medical Director, Johns-Manville Corp.) testified that he began his work in 1949 preparing material for the book.⁴ Although Dr. Lanza died in 1964, his papers, correspondence, galley proofs, etc., may have been transferred from the NYU Institute's New York City facilities to the new "Lanza Laboratories" in Tuxedo, New York. Moreover, the NYU Administration and certain medical faculty members have conducted an investigation into the "Lanza Controversy," which investigation may already have included an accumulation, review, and analysis of certain

³Dr. Paul Gross, research pathologist with the Industrial Hygiene Foundation, also penned a few chapters in Lanza's 1963 The Pneumoconiosis. Lanza's book misleads readers further in a brief discussion of asbestos cancer (p. 52). Dr. Gross notes the "sporadic reports of primary lung cancer associated with asbestosis" in the U.S., contrasting the U.S. experience with the British reports (Doll et al., 1955 "Mortality From Lung Cancer in Asbestos Workers") of a positive correlation between asbestos exposure and cancer. He cites Dr. William Smith's earlier published 1952 paper for the proposition that "there appears to be no evidence that a hazard continues to exist..." in Great Britain. He also cites the so-called Braun-Truan report for the proposition that there exists no excess lung cancer mortality for asbestos miners. See the published version of this paper, "An Epidemiological Study of Lung Cancer in Asbestos Miners," A.M.A. Arch. Indust. Health 17:634-653 (1958). The unpublished Braun-Truan report was significantly edited prior to its 1955 publication, just as Dr. Gardner's report was edited in 1948, to remove positive asbestos cancer references. Drs. Braun, Truan, Gross, and Lanza all were affiliated with the Industrial Hygiene Foundation ("IHF").

⁴See deposition of Dr. Kenneth W. Smith, DeRocco v. Forty-Eight Insulation, Inc., et al., Allegheny County, Pa., January 13, 1976, p. 12.

statements published in Dr. Lanza's The Pneumoconiosis. The letter rogatory should issue to compel NYU to release this material.

C. Whether Dr. William Smith's Testimony, and Dr. Lanza's Tenure at Metropolitan Life After December 31, 1948 Has Anything to Do With Metropolitan Life.

1. Metropolitan Life Opening Statement Remark:

Referring to Dr. William Smith's anticipated testimony, counsel said, "It has absolutely nothing to do about Metropolitan Life." (Tr. p. 1621). Further, the jury was told, "This case is not about a policy of insurance issued to the plaintiffs, to the defendants, or anybody else. This case is not about insurance at all."⁷ (Tr. p. 1594).

2. Relevant NYU Archive Documents Obtained June 30, 1994:

- Copy of Congressional Hearings, dated 1958, with designation "Smith v. Lanza" on cover page. (Tab N).
- June 12, 1956 Letter From Dr. William Smith to Dr. Armstrong, forwarded to NYU by Dr. Castleman (Tab F).
- Transcript of Luncheon Ceremony re: Lanza Appointment, NYU Institute of Industrial Medicine. (Tab A).
- May 15, 1987 letter, Dr. Harriet Hardy to Dr. Castleman (Tab O).

3. Relevance of Documents in Light of Previously Discovered Documents.

Aside from Dr. Lanza's own characterization of the Metropolitan Life/NYU relationship as a "combination," see footnote 1, p. 3, supra, the evidence is uncontroverted that

⁷Dr. Kenneth Smith (Johns-Manville Medical Director) testified in DeRocco, supra, that "Metropolitan Life carried our [Johns-Manville's] general insurance, and I believe in those years it was occupational and non-occupational insurance in this country. Metropolitan Life sponsored surveys in various areas, especially mine workers in Quebec asbestos mines. DeRocco, p. 14.

Dr. Lanza continued his relationship with Metropolitan Life and Johns-Manville after his so called retirement in 1948. For example, Attached at Tab P is a copy of a letter dated February 7, 1952 from Dr. William D. Shepard, M.D., on Metropolitan Life Insurance Company letterhead to Dr. Lanza at NYU. In this letter, which came in the wake of strikes at Johns-Manville's Lompoc, California, facilities, Dr. Shepard discusses the plan to "keep Dr. Abrams in line." Dr. Abrams had been investigating lung fibrosis caused by the inhalation of diatomaceous earth at Manville's Lompoc facility. Moreover, Mr. E.A. Lew, Associate Actuary, Metropolitan Life Insurance Company, was intimately involved with and was on the Board of Directors of the "Cancer Prevention Committee," a group which met periodically at NYU's Department of Industrial Medicine in the 1940s and 1950s. Also on the Board were Dr. Lanza, Dr. Smith, Dr. Nelson, and Dr. Schepers. Thus, even the documentary material at hand directly contradicts the notion that Metropolitan Life had nothing to do with Dr. Lanza, NYU, or Johns-Manville, after 1948.

Dr. Harriet Hardy, a renowned industrial physician, wrote in 1988 that she "shivered to think what the good Lord did with Lanza and Vorwald." (Tab O). This letter was found in NYU's archives, forwarded to NYU by Dr. Castleman. Dr. Smith's letter (Tab F), speaks for itself. Interestingly, the Congressional Hearing transcript contains marginalia, indicating that, at some point, it has been reviewed by NYU officials. (Tab N).

CONCLUSION

The recently obtained documents cast serious doubt on claims made by Metropolitan Life counsel in opening statements, especially when construed in the light of previously produced documents. NYU alone has unique access to Dr. Lanza's, and for that matter, Dr. Smith's original papers.

The documents in the possession, custody or control of New York University Medical Center are necessary for Pittsburgh

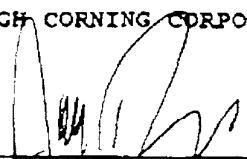
Corning Corporation to conduct the trial of the above-referenced case. Metropolitan Life counsel "opened the door" on several issues, recounted above, which in the interest of justice, entitles Pittsburgh Corning to examine NYU's original files. New York University Medical Center is not subject to service of subpoena in the State of Maryland and its appearance can be compelled only by process issued in response to a letter rogatory directed to the appropriate judicial authority in New York County, State of New York.

A copy of the proposed letter rogatory is attached hereto.

Respectfully submitted,

PITTSBURGH CORNING CORPORATION

Dated: July 13, 1994

By: 

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