

1 today and I have not done that as of today. If the
2 attorneys asked me to do that, I would seek to do it in
3 response to their question.

4 Q. All right. Let's go to (vii): "The causal
5 relationship or lack thereof between Mr. Khieu's disease and
6 resulting medical and psychological condition, and his
7 occupational exposures to Defendants' product(s) or other
8 solvents or chemicals which Mr. Khieu contends he
9 encountered in the workplace."

10 What's your testimony going to be about
11 that subject, please?

12 A. Well, my testimony is that Mr. Khieu's
13 occupational exposures to the Berryman products and
14 Rust-Oleum products did not play any causal role in his AML
15 and, therefore, any resulting medical and psychological
16 conditions that came about as a consequence of his AML also
17 have nothing to do with Rust-Oleum and Berryman products.

18 Q. And in reaching that conclusion, are you relying
19 on the information that Mr. Allen gave you about what
20 Mr. Spencer's testimony will be?

21 A. In part, yes.

22 Q. Well, without that, Mr. Spencer's testimony, are
23 you able to come to the same conclusion?

24 A. Without Mr. Spencer's testimony it is still my
25 opinion that Mr. Khieu working as a machinist was unlikely

1 to have had substantial benzene exposure from Berryman and
2 Rust-Oleum products.

3 Q. And what's that based on?

4 A. It's based on a large body of literature that
5 shows that people who handle various petroleum-derived
6 products are not at increased risk of AML. So there's --

7 Q. Did you provide that body of literature to us
8 prior to this deposition?

9 A. I have brought only the 30 articles that look at
10 benzene. I normally supply a bibliography that includes all
11 of that literature which I'm happy to supply. I didn't
12 realize we were going to talk about whether working as a
13 machinist and handling things like machining fluids was or
14 was not causally associated with AML.

15 Q. So if I understand you correctly, you showed up to
16 this deposition in your preparation in this case up to this
17 point with respect to (vii), you did not intend in your
18 direct testimony to deal with the studies that you've
19 mentioned that you did not bring with you or provide to us?

20 MS. SCATES: Objection; form.

21 MR. ALLEN: Objection; form.

22 A. Well, it was my understanding based on all the
23 materials I've read that the allegation in this case is that
24 Mr. Khieu's benzene exposure caused his AML, and my
25 anticipated testimony is focused on responding to that

1 allegation.

2 If the allegation changes, that it's
3 really not the benzene but it's the fact that he handled
4 various machining fluids and tapping oils and greases and
5 oils and petroleum distillates of various types and products
6 formulated from those materials, if that's -- if the
7 allegation changes, then I would --and I'm asked to respond
8 to that allegation, I'll responds to it.

9 MR. STEWART: I'll object to the
10 responsiveness.

11 BY MR. STEWART:

12 Q. When you came to this deposition, you came with
13 the understanding that on Direct Examination you would not
14 be going into the discussion of occupational exposure
15 literature as it related to machinists. True?

16 MR. ALLEN: Objection; form.

17 MS. SCATES: Objection; form.

18 A. I was under the impression that the allegation
19 here was about benzene, that that's what this case was
20 about, and that's what Dr. Gore's testimony was about in his
21 deposition. The allegation is that Mr. Khieu's benzene
22 exposure caused his AML. I've seen nothing in this case
23 that would change that allegation.

24 BY MR. STEWART:

25 Q. Plea answer my question.

1 A. If the allegation is different, and if you want to
2 change the allegation and claim that it's really being a
3 machinist, and if Mr. Allen asks me what's my response to
4 that, I would be happy to respond.

5 MR. STEWART: I'm going to object to the
6 responsiveness of that question.

7 BY MR. STEWART:

8 Q. Doctor, you're a very learned man, so am I, and
9 I'm asking you a really easy question. Here it is. When
10 you showed up to this deposition you did not have the
11 intention on Direct Examination to go into literature about
12 occupational exposure of machinists. True?

13 MR. ALLEN: Objection; form.

14 MS. SCATES: Objection; form.

15 A. No. To the extent that machinists are exposed to
16 benzene, I am fully capable of responding.

17 BY MR. STEWART:

18 Q. All right. So my follow-up question would be:
19 You did not come to this deposition prepared to discuss
20 articles about machinists and their occupational exposures
21 beyond the articles, the 30 articles that you brought with
22 you or cited; correct?

23 Doctor, is that correct?

24 A. I'm thinking about my response.

25 I've seen nothing in this case that

1 would suggest that there was any allegation regarding
2 Berryman and Rust-Oleum that Mr. Khieu's AML was caused by
3 any factor other than his benzene exposure. It is alleged,
4 as I understand it, that he was exposed to Berryman B-12
5 which has a number of components in it including some
6 petroleum-derived solvents, and exposed to Rust-Oleum paint
7 thinner which also has a number of components, but is
8 largely a mineral spirits-derived product.

9 And, so, my focus has been on whether
10 that class of materials, essentially the ingredients in
11 those products, causes AML. And I have brought the
12 literature that is responsive to that issue.

13 Now, depending on where your questions
14 go, additional literature is relevant to other questions
15 that you might ask.

16 So, based on what I was asked to do for
17 today, I have brought all the responsive literature. But if
18 you want to go into areas beyond that, then I reserve the
19 right to provide the scientific literature that provides a
20 foundation for my opinions.

21 BY MR. STEWART:

22 Q. You keep talking about me, Doctor. This is about
23 you and what you're going to talk about on Direct.

24 MS. SCATES: Object to side bar.

25 MR. ALLEN: Object to side bar.

1 MS. SCATES: Objection; form.

2 BY MR. STEWART:

3 Q. I really want to know: Why do you keep talking
4 about me?

5 MR. ALLEN: Objection; form.

6 MS. SCATES: Objection; form.

7 A. Well, on Direct I believe I've been asked to
8 address whether Mr. Khieu's exposure to Berryman and
9 Rust-Oleum products caused his AML, and my answer is it did
10 not, and the literature that supports that I have brought
11 with me today.

12 BY MR. STEWART:

13 Q. All right. Now we're getting somewhere. I've
14 been asking you what you're going to testify about on
15 Direct. And in connection with what you're going to testify
16 about on Direct, you did not provide any literature about
17 you talking about occupational exposures of machinists to
18 materials other than the articles that you have provided for
19 this deposition; correct?

20 A. That's correct.

21 Q. Okay. So, have you now on -- we were on (vii), I
22 think. Have you told me the essence of what your direct
23 testimony will be on the subject of (vii)?

24 A. Yes.

25 Q. All right. Let's go to (viii): "The causal

1 relationship or lack thereof between AML and alleged
2 occupational exposures to Defendants' products or other
3 solvents and chemicals which Mr. Khieu contends he
4 encountered in the workplace."

5 What will be the substance of your
6 direct testimony in this regard, Doctor?

7 A. That there is no causal relationship between AML
8 and any of the products or other solvents or chemicals which
9 Mr. Khieu contends he was exposed in the workplace.

10 Q. And what's your support for that?

11 A. That there's no scientific literature that
12 supports a causal association.

13 Q. What articles in your 30 set forth that
14 proposition?

15 A. Well, the issue is not what's in the 30, it's that
16 there is no support for that proposition, and I'm fully
17 prepared to respond to anything that your experts claim if
18 you want to bring in someone who claims that other solvents
19 or chemicals or products other than benzene caused
20 Mr. Khieu's AML.

21 Q. I asked you about what you're going to do on
22 direct. You're back to me again, and I'm asking what you
23 have come prepared to testify about today when it says
24 Defendants' anticipate Dr. Garabrant's testimony will
25 include, I'm asking what you're going to do on direct on

1 this subject.

2 MR. ALLEN: Objection; form.

3 MS. SCATES: Objection; form. Object to
4 side bar.

5 A. At the moment, since I'm not aware that any of
6 your experts have cited any evidence that products such as
7 mineral spirits or VM&P Naphtha or petroleum distillates or
8 chlorinated paraffins or sulfur compounds or any of the
9 ingredients in any of the products at issue cause AML, I
10 have not assembled any literature in response to those
11 allegations that have not been made. But if your experts
12 make those allegations, I will respond to them.

13 And, so, I think that remains to be
14 seen. As I understand it right now, Dr. Gore has made no
15 such allegation other than benzene, but if he does, I'll
16 respond, and if I'm asked on Direct what my response is,
17 I'll give it.

18 BY MR. STEWART:

19 Q. So you're prepared for whatever happens; right?

20 A. Well, I will be if it has to do with the causes of
21 AML and which chemicals are known to cause it and under what
22 circumstances, of course I will.

23 Q. All right. Have you told me everything you're
24 going to testify about under category (viii) on direct?

25 A. I believe so.

1 Q. (Ix): "The evidence and scientific literature
2 that relates to the dose that humans may be at an increased
3 risk, if any, of contracting AML or Mr. Khieu's disease from
4 exposure to Defendants' products."

5 What is going to be your testimony on
6 direct in this regard?

7 A. I think we already covered that today, that
8 benzene exposures in excess of 40 parts per million-years
9 that occur within 15 years of diagnosis are associated with
10 significantly increased risk of AML. Other than that, there
11 are not other chemicals to which Mr. Khieu was exposed that
12 are known to cause AML under any circumstances.

13 Q. Anything else --

14 A. No.

15 Q. -- on that topic?

16 A. Nothing.

17 Q. And then (x): "The question of medical causation
18 in this case."

19 What will your direct testimony be in
20 that regard?

21 A. That Mr. Khieu was not adequately exposed to
22 benzene or any other agent adequately to form a reliable
23 conclusion that benzene or any other agent in his workplace
24 caused his AML.

25 Q. And what's your support for that statement?

1 A. My support for that is my understanding of the
2 chemicals to which he claimed exposure; my understanding of
3 Mr. Spencer's estimates of Mr. Khieu's benzene exposure and
4 his cumulative benzene exposure over his working lifetime;
5 and the fact that Mr. Khieu is not in the category of
6 exposure to benzene or any other agent that would make him
7 like or make him comparable to the people who were at
8 increased risk in the published epidemiology studies. In
9 other words, there is no correspondence between Mr. Khieu's
10 exposure and the epidemiologic literature that shows
11 increased risk of AML related to benzene.

12 Q. Are you referring to literature that is beyond the
13 30 articles that you provided?

14 A. No, I'm referring to the 30 articles.

15 Q. Anything else on that topic?

16 A. No.

17 Q. And then the last one is: "The precepts of the
18 medical specialty of occupational medicine generally and how
19 they apply to this case."

20 What's your Direct testimony going to be
21 in that regard?

22 A. Essentially that Mr. Khieu had a job that is
23 fairly common. There are many people who do metal machining
24 work in the United States, and it's a job with which I have
25 some familiarity as an occupational medicine physician.

1 I've seen machinists at work in numerous settings and have
2 some familiarity with the types of materials they handle,
3 the exposure pathways, and what is appropriate concern as a
4 physician for the health and safety of people who do metal
5 machining tasks.

6 Q. And what's that mean?

7 MR. ALLEN: Objection; form.

8 A. Your question is too vague. I don't understand
9 it. Could you rephrase it.

10 BY MR. STEWART:

11 Q. You just set out what you're going to say
12 generally, but I want to know how that all applies to
13 Mr. Khieu.

14 A. Mr. Khieu was a machinist. He operated
15 numerically controlled machines and computerized numerically
16 controlled machines to do a variety of machining operations.
17 He used materials that are fairly commonly used in those
18 occupations. And the characteristics of the places where he
19 worked seemed to be in my opinion reasonably similar to the
20 machining operations I've seen. So, I have some familiarity
21 with that and I have some understanding for what the hazards
22 are that are associated with those jobs as a practicing
23 occupational medicine physician.

24 BY MR. STEWART:

25 Q. Are you going to come and tell this jury that

1 Mr. Khieu could not have been exposed to a sufficient amount
2 of benzene to cause AML in his occupation?

3 A. Well, I intend to rely on Mr. Spencer's estimates,
4 and my opinion is that Mr. Spencer's estimates are such that
5 the benzene exposure that Mr. Khieu had as a consequence of
6 his work with Rust-Oleum and Berryman products was not
7 adequate to have put him at increased risk of AML.

8 Q. But you need Mr. Spencer's estimates to do that?

9 A. My opinions are based principally on Mr. Spencer's
10 estimates, and somewhat less on my own understanding of
11 machining operations and the use of various petroleum-
12 derived products in metal machining.

13 Q. In the absence of Mr. Spencer's estimates would
14 you be able to opine that Mr. Khieu could not have had
15 sufficient benzene exposure to contract AML?

16 A. It would be my opinion that given the materials
17 that Mr. Khieu handled and the way in which he handled them
18 that it would be implausible that he had adequate exposure
19 to benzene to have caused his AML.

20 Q. Right. So what you're saying is you really don't
21 even need what Mr. Spencer's estimate of exposure was, you
22 come at this thing believing that he probably couldn't have
23 had benzene exposure to get AML; right?

24 MR. ALLEN: Objection; form.

25 MS. SCATES: Objection; form.

1 A. That is not correct. I do rely on Mr. Spencer's
2 estimates. Mr. Spencer's estimates are also consistent with
3 my own knowledge and experience in a large number of factory
4 settings where metal machining was done and some familiarity
5 with the literature regarding the use of those materials.

6 And, so, yes, I rely on Mr. Spencer's
7 measurements but I also rely on my own experience and my own
8 broad understanding of the literature on AML to say that
9 Mr. Khieu's work tasks and occupational exposures are not
10 the type that are known or have ever been reported to cause
11 AML.

12 BY MR. STEWART:

13 Q. And what literature are you relying on for that
14 statement, sir?

15 A. I've never seen that in the literature, so, you
16 know, you're asking me for literature that proves the null
17 hypothesis. I'm not aware of literature that has shown that
18 machinists are at increased risk of AML. If I was asked
19 that, if you would ask me if machinists are at increased
20 risk of AML I would answer it and I would provide literature
21 such that it existed.

22 Q. So, what you're saying is the question has not
23 been asked or answered in the medical literature to date;
24 correct?

25 MR. ALLEN: Objection; form.

1 MS. SCATES: Objection; form.

2 A. I'm saying I'm not aware of any allegations that
3 machinists are at increased risk of AML as a scientific
4 question in the literature.

5 BY MR. STEWART:

6 Q. You're not aware of a paper that takes up that
7 issue one way or the other; right?

8 A. Actually, I'm aware of a substantial body of
9 literature that's looked at the mortality experience of
10 people who work in metal machining operations and in
11 industries in which metal machining is commonly done, and I
12 do not believe there's any clear evidence or consistent
13 evidence of increased risk of AML.

14 Q. Did you provide that literature in your 30
15 documents that you provided?

16 A. No, but I could probably provide that by memory if
17 you wanted me to.

18 Q. I really don't. I want you to stick to what you
19 provided and were going to testify to on Direct. The
20 purpose of this deposition is to find out what that is and
21 if you provided me adequate materials to get to the bottom
22 of what that is.

23 So, if I understand you correctly, that
24 material that you're now referencing was not included in the
25 materials you provided prior to this deposition; correct?

1 MR. ALLEN: Objection to the form;
2 object to the side bar.

3 MS. SCATES: Join.

4 A. Well, it was not included because there was no
5 allegation I was aware of that claimed Mr. Khieu got AML
6 because he was a machinist independent of his exposure to
7 products that contain small amounts of benzene.

8 BY MR. STEWART:

9 Q. And, so I understand you: Your understanding of
10 (xi), "The precepts of the medical specialty of occupational
11 medicine generally and how they apply to this case," for
12 your purposes on Direct, you were not planning on going into
13 mortality issues as they relate to machinists. True?

14 A. That's correct.

15 MR. STEWART: Jeff, let's break for
16 five minutes. Let me check my notes to see if there is
17 anything else I want to cover, but I think I'm almost done.

18 MR. ALLEN: All right. You bet.

19 (A short recess was taken)

20 MR. STEWART: We're back on the record.

21 BY MR. STEWART:

22 Q. Doctor, we've now been through the designations
23 that Berryman provided on you and I've tried to go through
24 the topics (iii) through (xi) with respect to topics (iii)
25 through (xi). Is there anything that has come to mind for

1 you that you believe that you will be testifying to on
2 Direct Examination in this case that we haven't already
3 covered?

4 A. I don't believe so.

5 Q. All right.

6 MR. STEWART: And with that I'll pass
7 the witness at this time.

8 MR. ALLEN: Anybody on the phone got any
9 questions?

10 MR. POULS: I'll reserve mine until
11 trial.

12 MS. WEINER: The same.

13 MS. SCATES: This is Nancy Scates.
14 We'll reserving our questions as well.

15 MR. ALLEN: Jeff Allen. Berryman will
16 reserve our questions for trial.

17 MR. STEWART: Okay. Thank you, Al.

18 (The Deposition concluded at 3:58 p.m.)

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I have reviewed the above transcript and
have listed corrections, if any, on the attached errata
sheet,

this _____ day of _____, 20____.

SIGNATURE OF THE WITNESS

SUBSCRIBED AND SWORN to before me this _____ day of
_____, 20____.

NOTARY PUBLIC

My Commission expires: _____.

CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF OAKLAND)

I, Cynthia Ann Chyla, Certified

Shorthand Reporter, a Notary Public in and for the above

county and state, do hereby certify that the above

deposition was taken before me at the time and place

hereinbefore set forth; that the witness was by me first

duly sworn to testify to the truth, and nothing but the

truth, that the foregoing questions asked and answers made

by the witness were duly recorded by me stenographically and

reduced to computer transcription; that this is a true, full

and correct transcript of my stenographic notes so taken;

and that I am not related to, nor of counsel to either party

nor interested in the event of this cause.

Mr. Stewart was on the record questioning the witness for

three hours and 35 minutes.



Cynthia A. Chyla

Cynthia Ann Chyla, CSR-0092

Notary Public,

Oakland County, Michigan

My Commission expires: 05-12-2011