

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

RICHARD MAHONEY,

Plaintiff,

v. No.: 06-L-1119

A. W. CHESTERTON, INC.,
et al.,

Defendants.

VIDEOTAPED DISCOVERY DEPOSITION OF MARK WICK, M.D.,
Taken on Behalf of the Plaintiff

May 17, 2007

Reported by: Valarie L. Schmit May, RPR

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MADISON COUNTY, ILLINOIS

RICHARD MAHONEY,
Plaintiff,

v. No.: 06-L-1119

A. W. CHESTERTON, INC.,
et al.,

Defendants.

VIDEOTAPED DISCOVERY DEPOSITION OF MARK WICK,
M.D., produced, sworn and examined on behalf of the
Plaintiffs the 17th day of May, 2007, at the Omni
Hotel, 235 West Main Street, in the City of
Charlottesville, State of Virginia, before Valarie L.
S. May, RPR.

A P P E A R A N C E S

APPEARING TELEPHONICALLY: The Plaintiff was
represented by Jonathan Ruckdeschel, Esq., of the
Ruckdeschel Law Firm, LLC, 3645 Cragmoor Road, Elliott
City, Maryland 21024.

APPEARING TELEPHONICALLY: The Plaintiff was
represented by Nathan D. Mudd, Esq., of the law firm of
SimmonsCooper, LLC, 707 Berkshire Boulevard, East
Alton, Illinois 62024.

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EXHIBITS

Exhibit No. 1	Notice to take Discovery Depo	23
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Exhibit No. 5	Report, 4.27.07	23

(The original exhibits were retained by the court
reporter and attached to Mr. Ruckdeschel's transcript.)

APPEARING TELEPHONICALLY: The Defendant CITGO
Petroleum Corporation was represented by Rishi Agrawal,
Esq., of the law firm of Eimer, Stahl, Klevorn &
Solberg, 224 S. Michigan Avenue, Suite 1100, Chicago,
Illinois 60604.

APPEARING TELEPHONICALLY: The Defendants
Bucyrus International, Superior Boiler and Eastman
Kodak Company were represented by Rob Sanderson, Esq.,
of the law firm of Foley & Mansfield PLLP, 1001
Highlands Plaza Drive West, Suite 400, St. Louis,
Missouri 63110.

APPEARING TELEPHONICALLY: The Defendants Aurora
Pump Company, Kentile Floors, J.C. Whitney & Company,
SPX Cooling Technologies and Dezurik were represented
by Richard McLennan, Esq., of the law firm of Gunty &
McCarthy, 150 South Wacker Drive, Suite 1025, Chicago,
Illinois 60606.

The Defendant Marathon Petroleum Company, LLC,
was represented by Eric P. Hall, Esq., of the law firm
of HeplerBroom, 103 West Vandalia Street, Suite 300,
Edwardsville, Illinois 62025.

APPEARING TELEPHONICALLY: The Defendant Borg
Warner was represented by Don Ward, Esq., of the law
firm of Herzog Crebs LLP, 515 North 6th Street, Suite
2400, St. Louis, Missouri 63101.

APPEARING TELEPHONICALLY: The Defendants Phelps
Dodge Industries, Inc., Kohler Company, McKesson
Corporation, Mohawk Industries, Daimler-Chrysler
Company, LLC, and Parker-Hannifin Corporation were
represented by Jim Bentivoglio, Esq., of the law firm
of Heyl, Royster, Voelker & Allen, 103 West Vandalia,
Suite 100, Edwardsville, Illinois 62025.

APPEARING TELEPHONICALLY: The Defendant Sunoco
was represented by Giuseppe Giardina, Esq., of the law
firm of Husch & Eppenberger, 190 Carondelet Plaza,
Suite 600, St. Louis, Missouri 63105.

1 APPEARING TELEPHONICALLY: The Defendants
2 Gibson-Homans/Baltimore-Ennis Lands Company was
3 represented by Nicholas Lykins, Esq., of the law firm
4 of Johnson & Bell, 33 West Monroe Street, Suite 2700,
Chicago, Illinois 60603.

5 APPEARING TELEPHONICALLY: The Defendant T. H.
6 Agriculture & Nutrition, LLC, was represented by Peter
7 Maginot, Esq., of the law firm of Lathrop & Gage, 10
South Broadway, Suite 1300, St. Louis, Missouri 63102.

8 APPEARING TELEPHONICALLY: The Defendant S
9 American Standard, Inc., and Weyerhaeuser were
10 represented by Ashley Davis, Esq., of the law firm of
11 McGuireWoods, LLP, One James Center, 901 East Cary
12 Street, Richmond, Virginia 23219.

13 APPEARING TELEPHONICALLY: The Defendants
14 Clark-Reliance Corporation, Continental Teves, Inc.,
15 and Cooper Electric Supply Company were represented by
16 Timothy McGuire, Esq., of the law firm of Reeg &
17 Nowogrocki, LLC, 120 South Central Avenue, Suite 750,
18 St. Louis, Missouri 63105.

19 The Defendant Exxon Mobil Company was
20 represented by Bruce T. Bishop, Esq., of the law firm
21 of Willcox & Savage, One Commercial Place, #1800,
22 Norfolk, Virginia 23510.

23 The deposition was videotaped by Art Brown, in
24 association with Pohlman Reporting Company, 211 North
25 Broadway, Suite 2040, St. Louis, Missouri 63102.

1 THE VIDEOGRAPHER: This is the videotape
2 discovery deposition of Dr. Mark Wick. Today's date
3 is May 17, 2007, and the time is 6:42 p.m. This is
4 the case of Richard Mahoney versus A. W. Chesterton,
5 Inc., et al. The case number is 06-L-1119 in the
6 Madison County Circuit Court. My name is Art Brown.
7 I am the videographer representing Pohlman Reporting
8 Company located at 211 North Broadway Street, St.
9 Louis, Missouri. All counsel will be reflected on the
10 stenographer's record.

11 MARK WICK, M.D.,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION
14 BY MR. RUCKDESCHEL:

15 Q Good evening, Dr. Wick. Can you hear me
16 okay?

17 A Actually, your audio's a little bit funny.
18 It's a little garbley. So if you can speak up
19 consistently, that would be great.

20 Q Sure. Is this any better?

21 A A little bit, yes.

22 Q All right. I'll do my best. I have you
23 on a speaker because I'm here with my colleague. I

1 apologize for any problems. If you cannot hear me,
2 just let me know, and I'll repeat the question.

3 A Okay.

4 Q Great.

5 Doctor, can you tell me what documents you
6 brought with you tonight?

7 A Yes. I brought a copy of the notice, my
8 report of April 4, 2007, in this case, my invoice in
9 this case dated April 6 of 2007, and a copy of my
10 curriculum vitae.

11 Q Okay. Is there another report that you've
12 issued in this case?

13 A No.

14 Q Okay. Is there a supplemental report
15 dated April 27?

16 A Oh, yes. Yes, there is.

17 Q Do you have that with you?

18 A I don't have that with me. I'm sorry.

19 Q All right. That's fine.

20 MR. RUCKDESCHEL: What I'd like to do,
21 madam reporter, at an appropriate time, we'll mark --
22 and we don't need to do it now, but we'll mark the
23 notice as 1, the April 4 report as 2, the invoice as
24 Exhibit 3 and the curriculum vitae as Exhibit 4.
25 BY MR. RUCKDESCHEL:

1 Q Now, Doctor, how much is the invoice for?
2 A \$1600.

3 Q What does that reflect as a charge?

4 A It reflects review of the pathology
5 materials and the medical records. That's four hours'
6 worth of work.

7 Q Four hours at 400 an hour?

8 A Yes.

9 Q Is that your standard rate?

10 A Yes.

11 Q Is that what you charge for testifying in
12 court as well?

13 A No. Depositions and court testimony are a
14 different rate. Depositions are 500 an hour. Court
15 testimony is 4250 a day.

16 Q What does that work out to an hour? I'm
17 bad at math.

18 A You mean the court appearances?

19 Q Yeah.

20 A It's not an hourly rate. It's a daily
21 rate. So it's the same whether I'm in court for two
22 hours or six hours.

23 Q Okay. I got you.

24 Were there any drafts of the April 4
25 report?

Page 9 1 A No. 2 Q Were there any corrections made to it 3 after you first provided it to counsel? 4 A No. 5 Q Are your opinions in this case reflected 6 in your April 4, 2007, report as supplemented by the 7 April 27 report? 8 A Yes. 9 And, by the way, I have a copy now of the 10 April 27 report that defense counsel supplied. So we 11 have that here. 12 MR. RUCKDESCHEL: Okay. We'll mark that 13 as 5, madam reporter, at the end of the proceeding. 14 BY MR. RUCKDESCHEL: 15 Q Let me ask you the question again, then. 16 Are your opinions in this case reflected 17 in the April 4 and April 27 report? 18 A Yes 19 MR. HALL: Objection as to overbroad. 20 BY MR. RUCKDESCHEL: 21 Q And the answer to that, Dr. Wick? 22 A Well, my -- my opinions are generally 23 reflected there. I can't say that they're going to 24 cover each and every question that you ask me tonight. 25 But, basically, the -- my thinking on the case is	Page 11 1 Q Approximately how many times in the last 2 two years? 3 A I can't say with any certainty because I 4 don't keep those sorts of records, but I would say 5 it's been probably ten times or so in the last two 6 years. 7 Q Okay. In 2006, sir, can you approximate 8 for me how much money you made working as an expert 9 witness? 10 A Yes. I made \$100,000. And that's a 11 combination of both medical malpractice work and 12 asbestos litigation. And I don't keep track of the 13 proportions regarding either of those two sources of 14 income. 15 Q Okay. At whose request have you provided 16 medical malpractice testimony? And I mean plaintiff? 17 Defendant? Both? 18 A It's about equally split between 19 plaintiffs and defendants. 20 Q Okay. And in asbestos cases, have you 21 provided testimony at the request of attorneys 22 representing plaintiffs? 23 A In the last couple of years, no. 24 Q Okay. When was the last time that you did 25 so?
Page 10 1 outlined in those two documents, yes. 2 Q Are the materials that you reviewed 3 reflected in your reports of April 4 and April 27, 4 2007? 5 A Yes. 6 Q Have you reviewed any of Mr. Mahoney's 7 deposition testimony? 8 A No. 9 Q Have you been informed about the substance 10 of any of Mr. Mahoney's deposition testimony? 11 A No. 12 Q Have you reviewed the reports or testimony 13 of any other experts in this case? 14 A No. 15 Q Have you asked to review any of that 16 material? 17 A No. I never do. 18 Q Who has retained you in this case? 19 A Roberts-Perryman. 20 Q On behalf of what defendants? 21 A I don't know. That's something I usually 22 don't ask. 23 Q Have you worked for Roberts-Perryman 24 before? 25 A Yes.	Page 12 1 A Probably about ten years ago. 2 Q How many times have you done so in your 3 career? 4 A Again, I'm estimating, because that's not 5 the sort of thing that I keep track of, but I would 6 say maybe five or six times. 7 Q Okay. And can you estimate for me, 8 Dr. Wick, on an average basis how many asbestos cases 9 you would review in a typical year in the last ten 10 years? 11 A Well, again, it's not the sort of thing I 12 keep track of either, but I probably do now -- like 13 I've got a bunch of other things going on. I probably 14 do about five new cases each month. 15 Q Five -- I'm sorry. Was that a range you 16 provided? 17 A No. I say I probably do about five new 18 asbestos cases each month. 19 Q Five new asbestos cases. 20 A Yes. 21 Q Okay. I understand. 22 Now, has that number decreased in recent 23 years? 24 A Yes, because I've got other projects going 25 on. I'm presently editing two books, and I've got a

Page 13 1 lot of other responsibilities. 2 Q When did that decrease begin? 3 A Oh, I'd say about two years ago is when a 4 lot of the projects ramped up. 5 Q Okay. Prior to that time, can you give me 6 a monthly average for new asbestos cases that you were 7 looking at in a typical year? 8 A In a year, probably about 100 to 120 a 9 year. 10 Q Thank you, Doctor. 11 Doctor, do you agree that Mr. Mahoney has 12 malignant pleural mesothelioma? 13 A Yes. 14 Q Do you agree that that disease is almost 15 certainly going to be the cause of his death? 16 A Well, I don't know what his current status 17 is right now, but absent other activity from other 18 diseases that he has, yes, mesothelioma is almost a 19 uniformly fatal disease. 20 Q Have you ever met Mr. Mahoney? 21 A No. 22 Q Doctor, looking at your April 4, 2007, 23 report on the first page. 24 A Okay. I have it. 25 Q Okay. The last --	Page 15 1 Q And the same for that material; no lung 2 tissue and no pleural tissue uninvolved with tumor? 3 A That's correct. 4 Q Okay. In the next paragraph of your 5 report, Doctor, there's a sentence that states, quote, 6 With regard to the causation of this patient's pleural 7 tumor, it has been contended that the lesion arose as 8 a consequence of putative exposure to asbestos, close 9 quote. 10 Do you see that sentence? 11 A Yes. 12 Q Are you asserting that Mr. Mahoney is 13 being untruthful in any way in his testimony? 14 A I'm -- no. I'm asserting that Mr. Mahoney 15 can't say what his asbestos exposure was. 16 Q What is the basis for your statement in 17 that regard? 18 A Well, no one can. 19 Q Why? 20 A Because asbestos exposure is an objective 21 piece of data, not a verbal piece of data. And 22 Mr. Mahoney, nor anybody else, can say at this point 23 what his objective quantitative asbestos exposure is. 24 Q What quantity of asbestos exposure is 25 necessary for you, Dr. Wick, to attribute a malignant
Page 14 1 A You're kind of coming in and out on the 2 audio. 3 Q All right. Thank you for letting me know. 4 And I will -- again, I'm having a phone difficulty, 5 but we'll do our best. 6 There is a paragraph that says, "My 7 microscopic examination..." Do you see that 8 paragraph? 9 A Yes. 10 Q All right. Am I correct that all of the 11 materials you saw -- pathological materials you saw in 12 connection with your April 4, 2007, report was tumor? 13 A Yes. 14 Q Okay. And so you had no lung tissue to 15 determine whether there was pathological evidence of 16 asbestosis? 17 A That's right. 18 Q And you had no nontumor pleural tissue 19 from which to determine whether there was pathological 20 evidence of pleural plaques? 21 A Yes, that's right. 22 Q With regard to the materials you were 23 provided in connection with your April 27 report, am I 24 correct that that material was all tumor as well? 25 A Yes.	Page 16 1 pleural mesothelioma to exposure to asbestos? 2 A A quantity in lung tissue that is 3 sufficient either to cause radiographic markers of 4 above background exposure, to wit, pleural plaques or 5 pleural calcifications, or even better, in a digestion 6 study of lung tissue, a quantity that is clearly -- 7 clearly in excess of that of an age- and sex-matched 8 control population. 9 Q Dr. Wick, I want to ask you a hypothetical 10 question. Here's my hypothetical question: An 11 individual named Mr. Smith worked at a Johns-Manville 12 factory making amosite-containing asbestos thermal 13 insulation. 14 Okay. That's the first part. Are you 15 with me? 16 A Yes. 17 Q All right. Contemporary competently 18 performed self-level measurements measure consistently 19 dust levels of 10 fibers per cc of air on a 20 time-weighted average basis in that factory. 21 That's the next part. Do you have that? 22 A Yes. 23 Q Okay. Mr. Smith works in that factory for 24 40 years, eight hours a day, at 10 fibers per cc of 25 amosite asbestos.

Page 17 1 You with me so far? 2 A Yes. 3 Q Okay. Now, the fourth part is Mr. Smith 4 develops a malignant pleural mesothelioma. 5 Do you understand the fifth part of the 6 hypothetical? 7 A Yes, I do. 8 Q All right. Mr. Smith does not have 9 radiological evidence of plaques, asbestosis, and 10 there is no tissue available for a digestion or to 11 pathologically confirm plaque or asbestosis. 12 That's the sixth part. Do you understand? 13 A Yes, I do. 14 Q Okay. Is Mr. Smith's mesothelioma caused 15 by his exposure to asbestos in the Johns-Manville 16 factory? 17 MR. HALL: Objection as an incomplete 18 hypothetical. 19 A Well, in that hypothetical, you have a 20 number of assumptions that would have to be made in 21 order to say yes. And scientists and physicians do 22 not or at least should not make assumptions. 23 So the answer to your question would be 24 that there is -- there would be, in your hypothetical, 25 no objective support for the contention that the	Page 19 1 A Well, I don't use the word "authoritative" 2 because I know what it means -- I'm enough of an 3 amateur lawyer to know what it means in the eyes of 4 the law. He's certainly a well-respected, scholarly 5 individual. But "authoritative" is a word I don't 6 use. 7 Q Okay. Are you aware that Dr. Roggli 8 confirmed the diagnosis of malignant mesothelioma in 9 this case? 10 A Well, so did I. So I guess we agree on 11 that point. 12 Q Okay. Do you have any knowledge as to 13 whether Dr. Roggli considers Mr. Mahoney's tumor to be 14 asbestos related? 15 A No, I have no knowledge of what he thinks 16 about that. 17 Q I want you to assume hypothetically that 18 Dr. Roggli believes that Mr. Mahoney has an 19 asbestos-related mesothelioma. 20 Is it fair to say you disagree with him if 21 that is the case? 22 MR. HALL: Objection. Assumes facts not 23 in evidence. 24 A Well, you're asking me to assume something 25 that you're not able to show me or have me read, but
Page 18 1 mesothelioma was caused by asbestosis. It would be a 2 very similar scenario to that pertaining to 3 Mr. Mahoney's case. 4 BY MR. RUCKDESCHEL: 5 Q Yes, it would. 6 Now, Doctor, on page 3 of your report, 7 there is a paragraph where you cite to Dr. Victor 8 Roggli's book from 1992. Do you see that paragraph? 9 A The paragraph beginning "Plaques"? Or 10 where -- where are you, on page 3 or page 4 or where? 11 Q Page 3 there's a paragraph that starts, 12 "These data agree well with the epidemiology..." 13 A Okay. I see it. I see it. 14 Q Okay. Am I correct that you are there 15 citing Dr. Victor Roggli's book titled Asbestos 16 Associated Disease. 17 A Yes, I'm citing Roggli, Greenberg and 18 Pratt. 19 Q All right. And that's the volume -- the 20 first edition of that book, correct? 21 A Yes. The same statement is present in the 22 second edition. 23 Q You agree that Dr. Roggli is a 24 well-respected and authoritative figure with respect 25 to the diagnosis of asbestos-related diseases?	Page 20 1 if he or anybody else feels that this tumor is 2 definitively related to asbestos, I'd have to say, 3 yes, I disagree. 4 BY MR. RUCKDESCHEL: 5 Q Okay. Have you reviewed any of the 6 radiological films in this case? 7 A No. I've reviewed all of the reports on 8 the films from the hospital radiologist but not the 9 films themselves. 10 Q Did any of the reports that you reviewed 11 reflect evidence of pleural plaques? 12 A No. 13 Q I'm sorry. What was that answer, sir? 14 A No, they did not. 15 Q Okay. I'd like you to turn back to the 16 first page of your report, Doctor. 17 A Okay. 18 Q The last complete sentence on the first 19 page states, quote, Objective scientific criteria are 20 necessary for attribution of a mesothelioma to 21 asbestos exposure because those criteria are the only 22 ones that are scientifically verifiable, close quote. 23 Do you see that sentence? 24 A Yes. 25 Q Can you tell me which, if any, of the

Page 21 1 medical references cited in your report state that 2 proposition? 3 A That proposition doesn't need any support. 4 It's a -- it's a de facto statement. 5 Q Can you tell me any authority that you 6 have cited, Dr. Wick, that reaches the conclusion that 7 an individual with a known occupational history of 8 exposure to asbestos could develop a malignant pleural 9 mesothelioma has an idiopathic mesothelioma? 10 MR. HALL: Objection. Vague. 11 A Well, yes, I can -- I can point you to a 12 couple of the citations here in the report, yes, one 13 of which is Dr. Roggli's. 14 BY MR. RUCKDESCHEL: 15 Q Okay. 16 A Basically, if you look at point number 6, 17 beginning on page 4 of the report, and you read 18 through that point, you'll see that on the beginning 19 of page 5, first paragraph, in the paragraph beginning 20 "In over half of the patients with mesotheliomas," et 21 cetera, et cetera, you'll see that a little over 22 one-quarter of the cases did not show an elevated 23 tissue asbestos body content. And he furthermore says 24 that the patients in his study showed a bimodal 25 asbestos body count distribution, one of the	Page 23 1 CROSS-EXAMINATION 2 BY MR. HALL: 3 Q Dr. Wick, do you believe Mr. Mahoney had 4 any other medical conditions that would have worked to 5 reduce his life expectancy in any way, absent his 6 diagnosis of mesothelioma? 7 A Yes. 8 Q What were those? 9 A He had coronary artery disease 10 necessitating a coronary stent placement, so it was 11 clearly a symptomatic disease. That is potentially 12 life-threatening. And he had a colonic adenocarcinoma 13 necessitating chemotherapy, so that, likewise, is a 14 disease that could threaten his life. 15 MR. HALL: Those are all the questions I 16 have. 17 MR. RUCKDESCHEL: I've got nothing 18 further. Thanks very much. 19 THE VIDEOGRAPHER: We are off the record 20 at approximately 7:03 p.m. 21 22 (Exhibit Nos. 1-5 were marked.) 23 24 (The deposition concluded at 7:03 p.m.) 25
Page 22 1 populations having an equal number of asbestos bodies 2 to the control population. 3 All of the patients in his study group 4 came from alleged occupational sources. 5 Q Doctor, is it your contention that 6 Dr. Roggli's book states that you cannot rely upon -- 7 Dr. Wick, is it your position that 8 Dr. Roggli's book stands for the proposition that you 9 cannot attribute a mesothelioma to occupational 10 exposure to asbestos based solely on the patient's 11 history? 12 A Well, that paragraph I just read you is in 13 his book, and I think it's -- it's -- it says what it 14 says. So that's my interpretation of that paragraph. 15 Yes. I'd have to answer yes to your 16 question, based on that paragraph. 17 MR. RUCKDESCHEL: Okay. Thank you very 18 much, Doctor. Those are all the questions I have. 19 Anyone else have any questions for 20 Dr. Wick? 21 MR. HALL: This is Eric Hall here on -- at 22 the site. I just have one question for Dr. Wick. 23 24 25	Page 24 1 And further this deponent saith not. 2 3 (Reading and signature were waived.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

I, Valarie L. Schmit May, RPR, Notary Public in and for the Commonwealth of Virginia at large, and whose commission expires June 30, 2008, do certify that the aforementioned appeared before me, was sworn by me, and was thereupon examined by counsel; and that the foregoing is a true, correct, and full transcript of the testimony adduced.

I further certify that I am neither related to nor associated with any counsel or party to this proceeding, nor otherwise interested in the event thereof.

Given under my hand and notarial seal at Richmond, Virginia, this 18th day of May 2007.

Valarie L. Schmit May, RPR - Notary Public
Commonwealth of Virginia at Large

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