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ORIGINAL

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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.

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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

BRODY & GEISER

Certified Shorthand Reporters

698 King Georges Road

Fords, New Jersey 08863

JOB # 801253 (201) 738-8555

1 letter that you received. Is that correct?

2 A Correct.

3 Q Is that an accurate photocopy of the  
4 letter?

5 A Yes.

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

8 A Yes.

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

11 Did you read the paper when you received  
12 it?

13 A Yes.

14 Q Was it of any significance to you?

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

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

21 A Yes.

22 Q What was his reaction to the paper?

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

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

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

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

11 A Yes.

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

14 MR. ENSLEIN: Sure.

15 MR. HANLY: Off the record.

16 (Discussion off record.)

17 BY MR. ENSLEIN:

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

20 A 10, December '53.

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

23 A That's right.

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

1 1953?

2 A That's right.

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

6 A Yes.

7 MR. HANLY: Referring to Exhibit 14?

8 MR. ENSLEIN: Yes.

9 Q Yes, that's Exhibit 14?

10 A Correct.

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

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

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

18 A He never told me why it occurred, no.

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

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

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

25 Q Did you have an understanding or did you

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

2 A I did.

3 Q What did you come to believe, sir?

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

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

12 (Read back).

13 MR. HANLY: Thank you.

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

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

20 Q Were you able to attend that hearing,  
21 Doctor?

22 A No.

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

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

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

25                   Whether this was related to another

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

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

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

25 Q Do you have your correspondence from your

1 days at New York University with you here today?

2 A I do.

3 Q Can you share that with us, please?

4 A Um-hum.

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

7 (Off the record.)

8 (Exhibit Smith 16 is marked for  
9 Identification.)

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

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

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

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

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

13 BY MR. ENSLEIN:

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

18 A Yes.

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

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

1 if you could? The first letter, Doctor?

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

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

8 A Invitation to join.

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

11 Could you identify the next document for  
12 us?

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

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

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

25 A This is simply a letter of appointment in 31,

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

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

6 A Right.

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

9 Could you identify the documents for us?

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

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

18 Q What does the letter concern?

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

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

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

25 A Yes.

1 Q In what way?

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

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

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

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

25 And he was telling me that he had been

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

4               Q       Do you remember what Dr. Lanza did?

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

7                       MR. ENSLEIN: This matter.

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

11              Q       What did you understand that to mean?

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

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

25                      It was the first real experience I suppose

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

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

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

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

14      A       Yes.

15              Q       Thank you, Doctor.

16                      Can you identify the next document for us,  
17      please?

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

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

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

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

3           A       Yes.

4           Q       What was his reaction?

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

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

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

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

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

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

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

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

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

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

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

6                   A       Yes, I did.

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

10                  A       I did.

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

13                  A       Yes, sir.

14                  Q       Where is it?

15                  A       Here (indicating).

16                  Q       It is clipped to the letter?

17                  A       Yes.

18                  Q       Could you identify your handwritten notes,  
19 sir?

20                  A       Yes.

21                  Q       What is it?

22                  A       Well, these are notes that I made on the date of  
23 24, August 1955.

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

1 fashion?

2 MR. HANLY: Objection to the form.

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

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

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

19 Q Did you anticipate using this information  
20 in the hearing?

21 A Yes.

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

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

1 Q Could you tell us what occurred?

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

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

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

9 MR. ENSLEIN: And I understand your  
10 objection.

11 MR. HANLY: I object to that.

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

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

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

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

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

1 could read through it.

2 A Read through it?

3 Q Yes.

4 A All right. My next question was,

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

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

13 QUESTION: Who are you thinking of  
14 there?

15 ANSWER: Well, Schepers and Ken  
16 Smith.

17 QUESTION: Had Schepers done any  
18 cancer research?

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

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

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

4 ANSWER: Yes, I certainly would.

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

8 ANSWER: Yes, it certainly is.

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

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

21 And that's the end of it.

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

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

1 Section, National Cancer Institute.

2 Q Is that letter of significance to you,  
3 Doctor?

4 A Yes.

5 Q Why?

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

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

10 A Here is a central paragraph.

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

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

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

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

1 representative."

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

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

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

11 A To Fairleigh Dickinson University.

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

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

18 Q Did you continue that work until your  
19 retirement?

20 A Yes.

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

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