IN RE: BALTIMORE CITY ASBESTOS LITIGATION	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE CITY
* * * * * * *	*	* * * * *
JOAN F. DIXON, et al.,	*	April 13, 2010 Trial Group
Plaintiffs,	*	All Issues – Mesothelioma
v.	*	Consolidated Case No.: 24X08000410
BONDEX INTERNATIONAL, INC. et al	*	
Defendants.	*	
* * * * * * *	*	* * * *
CASE AFFECTED: JOAN F. DIXON	*	Case No.: 24X08000322
* * * * * * *	*	* * * *

PLAINTIFFS' MOTION TO EXCLUDE DEFENDANT FORD MOTOR COMPANY'S WITNESS MARK TAYLOR

Plaintiffs, by and through their undersigned counsel, hereby file a Motion to Exclude Defendant Ford Motor Company's Witness Mark Taylor. In support thereof, Plaintiffs state as follows:

I. SUMMARY OF ARGUMENT

Defendant Ford Motor Company listed Mark Taylor as a fact witness only on its fact witness list filed in the above-captioned matter on February 9, 2010 (Transaction ID: 29477074).[1] Ford Motor Company never tendered Mr. Taylor for deposition as a fact witness, despite multiple requests from Plaintiffs' counsel for dates for the depositions of all fact and

[1] The deadline for filing fact and expert witness lists for Defendants in this matter was February 8, 2010.

expert witnesses that Ford Motor Company intended to call at trial on November 3, 2009 (Transaction ID: 27863850); December 8, 2009 (Transaction ID: 28402572); January 12, 2010 (Transaction ID: 28967632); and February 8, 2010 (Transaction ID: 29442529). Indeed, it is Plaintiffs' experience that Ford will attempt to use Mr. Taylor to provide what amounts to expert testimony regarding Ford vehicles even though Mr. Taylor has affirmatively stated that he is not an expert witness. Ex. A at 28 (*Larry Williams, et al. v. Ford Motor Company*, Case No.: 09-L-537, Circuit Court for Madison County, IL, Dep. Mark Taylor, January 25, 2010).

In the *Dixon* case, Plaintiffs noted the deposition of the Corporate Designee of Ford Motor Company, which took place on March 22, 2010. Plaintiffs did not request Mr. Taylor's deposition specifically and he was not tendered as a fact witness in an individual capacity. It was not until Plaintiffs' counsel arrived in Michigan for the deposition that it became known that Ford was offering Mr. Taylor as the corporate designee.

As set forth below, Mr. Taylor's is simply a conduit for naked hearsay, flagrant violations of the best evidence rule and disguised expert testimony from a "witness" neither disclosed nor tendered as an expert. In short, Mr. Taylor is simply offered as a corporate shill to provide carefully scripted "party-line" talking points in contradiction to MARYLAND RULES 5-801, 5-701 and 5-702. Accordingly, Mark Taylor should not be permitted to testify at trial.

II. ARGUMENT

A. Mark Taylor Lacks Firsthand Knowledge to Testify As a Fact Witness at Trial.

It is well-settled that a witness may not testify to a matter unless there is evidence sufficient to support a finding that he has personal knowledge of the matter. *See Robinson v. State*, 348 Md. 104, 115-116 (1997). A trial court may exclude evidence from a witness who merely offers a summary – or his impressions – of knowledge possessed by others; the witness

must himself have adequate firsthand knowledge. *See Goren v. United States Fire Ins. Co.*, 113 Md.App. 674 (1997), *cert. denied*, 346 Md. 27 (1997). Although he verified Ford's discovery responses in this case, Mark Taylor has no firsthand or personal knowledge of the matters he testified to at deposition. Exhibit B. He lacks general knowledge of matters relevant to the case because his employment with Ford did not in any way involve the design of asbestos-containing products, especially brakes, or the discontinuance of the same. He lacks specific knowledge of the subjects for which he was disclosed. Mr. Taylor was never tendered for discovery deposition in this matter as a fact witness. Because Mr. Taylor lacks adequate firsthand knowledge, his testimony should be excluded.

1. Mark Taylor's General Lack of Firsthand Knowledge

Mr. Taylor has no personal knowledge of Ford prior to 1988 when he began at Ford Motor Company. Since 1995 his job has been as a non-lawyer member of Ford's office of general counsel. Exhibit A at 12-13, 16. He testified that "nearly 100 percent" of his working time is spent assisting the office of general counsel with interrogatories and discovery responses for litigation. *Id.* at 15-16. In this role, Mr. Taylor works on discovery issues and research "not only in asbestos cases but also product style cases" and has some responsibility for assigning legal cases to other engineers. *Id.* The nature of his responsibilities and the timing of his employment make it impossible for Mr. Taylor to have any firsthand knowledge or observation of the matters at hand, namely, Ford's use of asbestos-containing components such as automotive brakes, and later, its use of alternatives to asbestos. Instead he only offers a summary of information gained from access to a database of documents compiled by the office of general counsel or secondhand evidence, *i.e.*, hearsay.

a. Timeframe Makes Firsthand Knowledge Impossible for Mark Taylor

Mr. Taylor has only been employed by Ford since 1988.[2] He cannot testify about the content of asbestos-containing automotive friction parts that Ford put into vehicles for decades prior, nor can he testify about the decision to phase out those parts because he had no role in that decision. According to Ford, it began phasing out asbestos-containing brakes on assembled vehicles with the 1983 model year Ranger truck. Exhibit C (Def. Ans. to Interrog., No. 18 in *Larry Williams, et al. v. Ford Motor Company*, Case No.: 09-L-537, Circuit Court for Madison County, IL). Ford claims that within ten years after the Ranger, the only new vehicles assembled with asbestos-containing brakes were some limousines and the Mustang car. *Id.* Thus, Ford had to begin discussing the process of phasing out asbestos-containing brakes prior to 1982, when the Ranger would have been on the assembly line. The decision to substitute asbestos-containing friction parts overall would have been made back in the 1970s, because Ford began phasing out asbestos-containing clutches in 1978. *Id.*

Mark Taylor acknowledges that he has no firsthand knowledge of these matters. Exhibit A at 24, 27. Yet Mr. Taylor does not hesitate to testify about matters outside the scope and timeframe of his employment. At his deposition in the *Williams* case, he testified regarding the content and use of documents that predate his tenure with Ford by at least five years. Exhibit A at 34-37. He also admitted that he did not first view these documents until after he started working on litigation preparation at Ford:

> Q: Did you ever see this document prior to the time you were working for the – or assisting the office of general counsel?
>
> A: Not that I recall.

Exhibit A at 34; Exhibit A-2.

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[2] In the seven years before his current role assisting the office of general counsel, Mr. Taylor worked as an engineer in the tractor and chassis (light truck) divisions for four years, and then as an administrator for a review group. Exhibit A at 17.

Q: Do you know when the first time you saw this document was?

A: I really don't have a good – a specific date.

Q: Has it been since 2000?

A: Yes, it has.

Id. at 37; Exhibit A-3.

His knowledge of the latter document comes almost twenty years after its presumed creation. *Id.* Further, Ford counsel asked Mr. Taylor to testify as to warnings ostensibly placed on Ford products even though the time period at issue was eight years before he worked there in any capacity. *Id.* at 51. This is not a matter of refreshing his recollection; Mark Taylor never had any firsthand knowledge of the relevant documents and issues in this case and his testimony should be excluded.

b. Database of Documents = Summary of Knowledge for Mark Taylor

At trial, Mr. Taylor's "knowledge" would be derived from access to the same disk of 22,000 non-privileged documents that Ford routinely produces in response to discovery requests. Exhibit A at 37; Exhibit C. This disk was last updated over three years ago. Exhibit C, at No. 16. Mr. Taylor admitted that he has not even read all of these documents. Exhibit A at 38. Apparently he is not any more knowledgeable about the contents of these documents than any plaintiffs' counsel could be, if given enough time:

Q: If you are doing some work with the general counsel's office, what do you do – how do you review those documents if you think those would assist you in answering a question or issue that the office has?

A: There is a searchable index on that DVD that was provided to you, and I use a searchable index to look for specific terms or phrases to search that disk.

Id. at 38-39.

Mr. Taylor testified that as a fact witness, the role in which he was being deposed was to "assist the office of general counsel." Exhibit A at 12. Ford had a duty to produce someone with actual knowledge who could testify without reliance on a DVD. Mark Taylor is incompetent to testify as Ford's corporate representative and his testimony should be excluded.

2. Mark Taylor's Specific Lack of Firsthand Knowledge

a. Substitutions for Asbestos: Hearsay Testimony

Ford's fact witness disclosure for Mr. Taylor in the *Dixon* case specified the following as subjects upon which Mr. Taylor might testify:

> Mr. Taylor may be called to testify among other issues, regarding the design and operation of Ford vehicles, vehicle components, braking systems, replacement parts, vehicle servicing and the development of non-asbestos brake systems. Mr. Taylor may also be called to testify regarding the presence or absence of asbestos in automotive component parts.

Transaction ID: 29477074 at 51.

Mr. Taylor's testimony is based entirely on hearsay and must be excluded under MD. RULE 5-801. In his discovery deposition in the *Williams* case, Mr. Taylor identified six individuals – both current and former Ford employees, some who were hired in the 1960s – with whom he has discussed the use of asbestos in friction-containing products. Exhibit A at 19-21. However, when asked whether any of them "had responsibility or a role in the discussions Ford has had about substituting nonasbestos components" in brakes, he answered, "I don't know." *Id.* at 24. He confirmed that he has no actual or personal knowledge about this subject for which he was disclosed as a fact witness:

> Q: You have not had a role with Ford where that was part of your job responsibilities, to discuss or be part of a team or decide whether or not to substitute a nonasbestos component for an asbestos component in a friction system, have you?
>
> A: No.

Id. at 24.

Any testimony from Mark Taylor with respect to the subject of substitutions for asbestos-containing automotive frictions parts would be hearsay because it is derived from the statements of others and offered to prove the truth of the matters contained within. *See e.g., Parker v. State*, 156 Md.App. 252 (2004), *cert. denied*, 382 Md. 347 (2004). Hearsay is inadmissible unless it falls within a recognized exception. *Id.* There are no applicable exceptions to the hearsay rule available under the Maryland Rules of Evidence which apply to Mark Taylor's anticipated testimony. There is certainly no "corporate representative" exception to the hearsay rule. Mr. Taylor cannot testify to matters for which he otherwise would be prohibited by the rules of evidence simply because he has been designated by Ford as its corporate representative.[3]

According to Mr. Taylor, he consulted with six individuals who are still living. Exhibit A at 19-21. *Those* individuals may have firsthand knowledge and testimony relevant to asbestos substitutions – not Mark Taylor. Ford had no valid reason to disclose this subject for Mr. Taylor and he should not be permitted to serve as a conduit for hearsay at trial.

b. Content of Asbestos-Containing Brakes: Document Review Testimony

In the *Williams* case in Illinois, Plaintiffs specifically requested the deposition of the corporate designee of the person(s) most knowledgeable about the content of Ford's asbestos-containing brakes, including asbestos percentage and fiber type. Exhibit A-1.[4] Although he was produced in response to this request, Mr. Taylor would only cede that he is "a person that has

[3] This is all the more so when there are no records of these hearsay communications. If Mr. Taylor can speak to the persons with personal knowledge, then Ford has an obligation to produce those individuals in a timely fashion for discovery regarding the alleged conversations and the claimed facts they possess. Ford cannot tender Mr. Taylor to regurgitate the contents of these alleged conversations as fact.

[4] Ford produced Mark Taylor and Leonard Brown in response to this request in the *Williams* case. Mr. Brown also denied that he was the person most knowledgeable on these subject matters. Exhibit D at 11 (Dep. Leonard Brown, January 25, 2010 in *Williams*). He testified that he does not know who that would be, either. *Id.* at 13. Ford did not offer Mr. Brown for deposition in the *Dixon* case.

knowledge." Exhibit A, at 27. He admitted that the sole source of his knowledge would be from his role assisting the office of general counsel:

> Q: And would that knowledge come from not your work experience at Ford actually designing braking systems, but in doing your role as assisting the office of general counsel?
>
> A: Right. From the research I've done and the documents that I've reviewed, I could answer that question for you.

Id.

Mr. Taylor's research and document review do not constitute firsthand knowledge. He does not have any work experience with the design or contents of the braking system and should not be permitted to testify as a fact witness on this subject. *Id.* To the extent that Ford claims the information it seeks to admit is contained within documents, it must prove that information by seeking to introduce the documents (assuming it can lay an appropriate foundation for so doing). The rules of evidence do not allow Ford to offer up a mouthpiece to testify as to the contents of unidentified documents. *See* MD. RULES 5-1001 through 5-1008; *see e.g. Carter v.* State, 367 Md. 447 (2002).

In the *Dixon* case, Plaintiffs requested the deposition of the custodian of records and corporate designee of the person(s) most knowledgeable about the information sought in Plaintiffs' Case Specific Interrogatories filed in the *Dixon* case. (Transaction ID: 28742233). When questioned regarding the discovery responses which he verified in the *Dixon* case, Mr. Taylor responded as follows:

> Q While we were gone on the break your counsel provided me with supplemental -- Answers to the Plaintiffs' Case-Specific Interrogatories to Defendant Ford Motor Company. It's file stamped February 9, 2010. Have you seen this document before, sir?
> A I think I have, yes.
> Q Did you review this document to make sure that it was in fact correct?
> A These documents are put together by people from Ford Motor Company or at

> Ford Motor Company's direction and they are trustworthy individuals, so I did not peruse this nor is it in my job to go through and ensure that each and every attribute of this is correct. It's put together by lawyers and paralegals for litigation purposes.

Exhibit E at 85:19-86:13 (Ford corporate designee deposition of Mark Taylor, March 22, 2010). It is clear from Mr. Taylor's deposition testimony that he has no personal knowledge as to whether the information contained within Ford Motor Company's Answers to Case Specific Interrogatories was correct. Indeed, the verification that Mr. Taylor executed for Ford's Answers to Plaintiffs' Master Interrogatories in the *Dixon* case states:

> Mark K. Taylor, being duly sworn, deposes and says that the deponent is an authorized agent of Ford Motor Company, and that the deponent verifies the foregoing Ford Motor Company's Answers to Plaintiffs' Master Interrogatories for and on behalf of Ford Motor Company and is duly authorized so to do; ***that the matters stated therein are not within the personal knowledge of the deponent***; that the facts stated therein have been assembled by authorized employees and counsel of Ford Motor Company, and the deponent is informed that the facts stated therein are true.

Exhibit B (Ford Motor Company's Verification of Answers to Plaintiffs' Master Interrogatories in *Dixon*) (emphasis added).

Given Mr. Taylor's complete lack of firsthand knowledge, it appears Ford actually tendered him under the guise of a "fact witness" or "corporate representative" for the illegitimate purpose of offering undisclosed expert testimony as discussed *infra*.

B. Mark Taylor is Not an Expert and Cannot Offer Expert Opinion Testimony at Trial.

1. <u>He is a Corporate Representative Fact Witness, NOT an Expert Witness</u>

Ford has tendered Mark Taylor as a fact witness only in the *Dixon* case. In his deposition in the present case, Mr. Taylor testified as follows:

> Q Do you have any particular expertise with respect to Fords brakes?
> A I have testified in the past on Ford brakes as an expert and in 30(b)(6) capacity.

***

Q As you're sit here today as Ford's representative, do you believe that the chrysotile asbestos contained in Ford's brake shoes up until 1980 was harmless?
MR. ZIC: Objection. Beyond the scope of the notice. No notice that that question was going to be asked, and that calls for an expert opinion.
A I don't know one way or the other.

Exhibit E at 7:7-10; 93:11-18.

This is in contrast to his testimony in the *Williams* case where Mr. Taylor unequivocally stated that he was a fact witness for Ford, and not an expert witness:

Q: **You are a fact witness for Ford, correct, and not an expert witness?**
A: That's correct. I'm not an expert.

Exhibit A at 28.

In *Dixon,* Mr. Taylor was disclosed as a "corporate witness" with no alleged area of expertise. Transaction ID: 29477074 at 51. In *Williams*, Mr. Taylor was also disclosed as a "corporate witness." Exhibit F at 44. Mr. Taylor was very clear that he was appearing as a corporate representative fact witness only:

Q: You are here as a corporate representative for Ford, is that correct?
A: That is correct.

Exhibit A at 9.

Q: You have had this role before, being Ford's corporate representative in asbestos matters, correct?
A: I have.

Id. at 11.

Q: What do you call your role where you're testifying today as a Ford representative?
A: I call it I assist the office of general counsel.

Id. at 12.

Q: When I hear your testimony today, I can rely on your words as the words of Ford Motor Company, correct?
A: As a person, I am speaking on behalf of the corporation.

Id. at 28.

On this basis alone, any attempted expert opinion testimony from Mark Taylor should be excluded. He was tendered as a corporate representative fact witness only, and his testimony should have been limited to the matters contained within his disclosure and the deposition notice, i.e., the scope of direct examination.

Not only did Mark Taylor deny he was an expert witness in the *Williams* case, but also he was never disclosed as such in either the *Dixon* or *Williams* cases. A party must properly identify the subject matter on which witnesses will testify, and for experts, their anticipated opinions. MD. RULE 2-402(f). If Ford had disclosed Mr. Taylor as an expert, it was required to identify: the subject matter on which Mr. Taylor would testify; his conclusions and opinions and the bases therefore; his qualifications; and any reports he prepared about the case. MD. RULE 2-402(f). Mark Taylor's disclosure concerning opinion testimony was non-existent. Accordingly, any attempted expert opinion testimony should be excluded. Mr. Taylor's opinions must be confined to those permissible by lay witnesses under Md. Rule 5-701, specifically to "those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue."

Moreover, were Ford to have designated Mr. Taylor as an expert witness, since he has no percipient knowledge, all of his communications with Ford's counsel would become discoverable. Ford has neither designated nor offered Mr. Taylor as an expert.

2. He Cannot Opine as to Appropriate Automotive Work or Others' Testimony

Where a witness is not an expert, he is a lay witness and may opine on matters as to which he or she has first-hand knowledge. *See Goren v. United States Fire Ins. Co.*, 113

Md.App. 674 (1997), *cert. denied*, 346 Md. 27 (1997). At his deposition in the *Williams* case, Mr. Taylor opined at length about the testimony of other witnesses, even where their testimony did not relate to his disclosed knowledge as Ford's corporate representative. In his stated capacity as Ford's corporate representative fact witness – and as a non-expert – Mr. Taylor cannot testify as to his opinion of the appropriate manner of performing automotive work, let alone critique others' testimony about how they personally repaired automobiles. Mr. Taylor's testimony is inadmissible as improper opinion because his testimony must be confined to statements of fact of which he has personal knowledge. *Id.* at 686. Yet despite multiple objections to form and scope, Ford counsel asked Mr. Taylor a series of questions about his opinion of the testimony given by plaintiff Larry Williams and another witness in the case:

> Q: **Is there any testimony** of theirs as it relates to the means and methods that they used in doing auto work that **that you take issue with** based on your experience?
>
> Q: In regards to Mr. Williams and Mr. Monroe's description of where they did this work and the amount of time that it took them to do the work, **do you take issue with that testimony**?

Exhibit A at 44-46. It is anticipated that Ford will attempt to engage in the same or similar questioning at the trial of the *Dixon* case.

It is clear that this was an attempt to elicit expert testimony about automotive mechanical work, and in particular, brake replacement work. Mr. Taylor then gave a running opinion about inappropriate brake drum removal techniques, the propriety of sanding brake components, the length of time a brake shoe might be sanded, the need for post-repair brake adjustment, and the number of hours required to perform a brake job versus the number of brake jobs one might perform in a day. *Id.* at 44-47. More particularly, he presented this opinion in the context of Mr. Williams' and Mr. Monroe's testimony, and made such statements as:

A: . . . These are all inappropriate things that you would do. It's not necessary, and I've never heard of anyone actually doing these types of techniques . . .

Id. at 45

A: I do take issue with [their testimony].

Id. at 46.

A: What I'm talking about with Mr. Williams and Mr. Monroe is that the procedures as they outlined in their sworn testimony are probably not the – a method which you could accomplish the goal of changing brakes."

Id. 49.

In *Williams*, the trial court in ruling on Plaintiffs' Motion to Exclude the Testimony of Mark Taylor concluded that Ford had to lay a proper foundation of Mr. Taylor's personal knowledge through his employment with Ford Motor Company, which began in 1988, and not prior to that time. Exhibit G at 52:24-61:18. Ultimately, Ford Motor Company declined to call Mr. Taylor to testify at trial.

This type of opinion testimony is clearly the domain of experts, and not that of a corporate representative fact witness. There is no "corporate designee" exception to the hearsay rule under MD. RULE 5-803. Ford cannot be permitted to circumvent the Maryland Rules of Evidence, and Mr. Taylor should not be allowed to testify on any opinions as an undisclosed expert or to matters beyond the scope of his personal knowledge.

III. CONCLUSION

Mark Taylor's testimony should be excluded. He has no foundation for any of his testimony or purported knowledge. He has testified that he is not an expert witness and yet he attempts to provide undisclosed opinion testimony. Defendants have four expert witnesses in this case, Brent Finley, Ph.D., Richard P. Garrison, Ph.D., CIH, CSP, Mary Beth Beasley, M.D. and Herman Gibb, Ph.D. Mr. Taylor adds nothing to this roster of witnesses other than improper

opinion testimony. Mark Taylor's testimony should be excluded completely because Ford has tried to use an unqualified fact witness to present undisclosed expert testimony.

WHEREFORE, Plaintiffs respectfully request that this Court exclude the testimony of Defendant Ford Motor Company's witness Mark Taylor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April, 2010, a copy of Plaintiffs' Motion to Exclude the Testimony of Defendant Ford Motor Company's Witness Mark Taylor was filed and served upon all counsel of record via Lexis File & Serve.

/s/ Dawn O'Croinin
Dawn O'Croinin