IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK AND NEWPORT NEWS DIVISIONS

003-00A 2261

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IN RE: : CP-77-1
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ASBESTOS CASES - ALL CASES:

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Oral Deposition of DR. EDWIN DAVIS MERRILL, taken pursuant to notice at the law offices of Budd, Larner, Kent, Picillo & Rosenbaum, Suite 1050, 33 Washington Street, Newark, New Jersey, on Tuesday, May 22, 1979 at 10:00 a.m., E.D.S.T, before Suzanne McLaughlin White, Registered Professional Reporter, Notary Public in and for the Commonwealth of Pennsylvania, there being present:

- - -

APPEARANCES:

GREITZER AND LOCKS
BY: GENE LOCKS, ESQUIRE
Representing the Plaintiffs

DEPARTMENT OF JUSTICE
BY: JAN K. VON FLATERN, ESQUIRE
Representing the United States

BUDD, LARNER, KENT, GROSS, PICILLO & ROSENBAUM
BY: DAVID GROSS, ESQUIRE
Representing Johns-Manville

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I N D E X

WITNESS	D	C	RD	RC
Dr. Edwin Davis Merrill	3	-	--	--

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EXHIBITS

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Manville -- Was that June of '53?

A. Yes, June of '53.

Q. Dr. Du Bow was the chief of the Medical Department there; is that right?

A. Yes, he was the chief.

Q. And am I correct that you were the only other physician, aside from he, that was giving medical services at the facility?

A. That's correct, at that time, yes, sir.

Q. And am I correct that there was a staff there of several nurses, at least one, maybe more?

A. There was a staff of several nurses; four, perhaps five at times.

Q. And both you and Dr. Du Bow and the nurses were full time employees of Johns-Manville?

A. We were.

Q. And I assume that when you had an interview with Dr. Du Bow, am I correct that the interview took place at the medical building of Manville?

A. That's the way I recall it. It was in that medical department.

Q. You did observe some of the equipment that was there, such as the X-ray machine and certain of the other medical equipment that was there; is that right?

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A. Yes, I think I was shown the facility of the medical department.

Q. At the time that you were interviewed, did you observe whether or not there was any pulmonary function type equipment in the medical facility at Johns-Manville?

A. To the best of my recollection, at that time of my interview, there wasn't any equipment for testing pulmonary functions.

Q. When you commenced employment, was there any equipment in the medical facility for testing pulmonary function?

A. Again, to the best of my recollection, no.

Q. When is your recollection the first time, if at all, there was ever any medical equipment at the Johns-Manville facility for testing pulmonary function studies?

A. Pulmonary function, I can't remember the date now clearly, but it was at the time when the medical department was -- a new medical building had been construc and the medical department moved, from the quarters where it was when I was first employed, into the new building. I think at that time some pulmonary function testing equipment was purchased to be installed in that building.

Q. Can you put that in any date as to how long after you commenced employment that was; a year, two years, 10

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years?

A. I would say within three or four years after that commenced, probably.

Q. As part of the interviews with either Dr. Du Bow or Dr. Smith, you did become aware that one of your functions would be to interpret chest X-rays; is that right?

A. Yes, sir.

Q. As a result of ascertaining that information, did you do any independent study or research or brushing up of any type concering reading and interpreting X-ray films?

A. I don't remember whether I did or not.

Q. As a result of your interviews with either Dr. Du Bow or Dr. Smith, did you ascertain that one of the occupational diseases or illnesses to which you may have some obligation to treat or diagnose would be pneumoconiosi of some type or other?

A. I can't remember a specific time or instance when somebody told me that. I would just have every reason to believe that they did, but you asked me whether I can recall someone telling me on a certain day; I can't.

Q. Did you do any type of refreshing, brushing up on any medical literature procedures for diagnosing or

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treating pneumoconiosis prior to commencing employment but subsequent to your interviews?

A. I think I did do reading.

Q. Can you give me an indication of the nature of the items that you read?

A. No, I can't, but Dr. Du Bow had some -- was assemb a library of books in the medical department. These were available. There were one good source, one source of review, but to what extent I used those or other sources, I can't, now --

Q. Were the medical books in the library that Dr. Du Bow was accumulating available to you to review prior to your commencing employment with Johns-Manville?

A. Not that I remember, no.

Q. Can you give me an indication, once you commenced employment with Johns-Manville, what the nature and scope of the medical books, that were maintained in the dispensa were?

A. Well, there were texts there on a variety of subjects. Many of them did not relate to chest disease problems. There were books on orthopedics, orthopedic surgery, dermatology, neurology, and some on occupational medicine.

Q. Aside from texts in the various areas of medical

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illnesses that you described, were there any texts in asbestos related disease, asbestosis or cancer, maintained by Dr. Du Bow in that library that he was accumulating?

A. I am trying to think of the names of some texts. I can't now identify the specific names or authors of texts on these subjects, but there were some texts there on chest disease, chest X-ray interpretation in general. Some journals were subscribed to and were available.

Q. You are saying that in addition to certain texts there were also some journals?

A. Yes.

Q. Can you tell me the name of any of the journals that were subscribed to?

A. The official publication of the Occupational Medical Association and, I think, the American Medical Association Journal, the Annals of Internal Medicine. I think the Archives of Occupational Medicine and Industria Health were there one time. There were probably others. I can't recall them all now.

Q. In response to your last answer, my question was really directed to the time that you commenced employment as opposed to between '53 and '69, but now I am asking you; can you give me an indication, at the time that you commenced employment, was there some type index or what I

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would call library 3 by 5 cards indicating the nature of the journals or texts that were maintained in the library there?

A. Not that I remember. I don't remember any.

Q. At any time.

A. Library index.

Q. At any time from '53 to '69, was there maintained, at the medical facility at Manville, any type of library records or bibliographic reference to the articles, journals, publications or texts that may have been maintai there?

A. I don't remember if there was an account of a reference file or index file or not.

Q. At some time you succeeded Dr. Du Bow as the chief medical officer of Johns-Manville; correct?

A. Yes.

Q. During that period of time, did you maintain or initiate any type of medical reference or catalogue or bibliographic references of the type of medical literature materials available in the facility?

A. As far as I recall, I didn't maintain any index of it. We certainly collected and kept articles and reprints and kept them on file and available, but I don't think we had a formal index, by subject or author.

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Q. Was the type of filing and cataloguing of materials file maintained as a personal physician's utilization as opposed to the entire medical facility?

A. Both.

Q. When you commenced employment at -- for Johns-Manville, did you bring with you any medical journals, publications or literature that you had acquired or develop over the course of your prior practice?

A. I don't believe so. I don't remember bringing anything.

Q. Now, you generally described your job duties and responsibilities as you understood them to be, or as you thought they were going to be; when you chose to commence employment, did your thoughts prove to be accurate? Is that the job duties and assignments that you did have when you started work?

A. Was the job actually as it was -- as it was proposed?

Q. Yes. As you had expected it to be.

A. Yes, generally it was.

Q. Was there any major differences or any substantial differences that you can think of; either additional responsibilities or lesser responsibilities than you had anticipated?

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A. I don't recall any major variations from what was expected, that I anticipated, what I had reasonably anticipated.

Q. You indicated that part of your general duties was to make chest X-ray interpretations and I think in your prior testimony you indicated that you or Dr. Du Bow interpreted those chest X-rays; is that right?

A. Yes, we did, yes.

Q. Is that, or was that part of your job duties and functions the entire period of time, from '53 to '69, that you were working for Johns-Manville, to interpret chest X-rays?

A. It was part of the duties to interpret chest X-rays.

Q. At any time between '53 and '69, were you, through standard operating procedure, to have someone other than you or Dr. Du Bow read and interpret chest X-rays films?

MR. GROSS: I object to the question, to the form. Standard operating procedure, was it their normal course of operation.

BY MR. LOCKS:

Q. Yeah, whatever you understood your job duties and responsibilities to be concerning the reading and interpreting of chest X-rays, was there any particular occasion

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or criteria, as you understood it, that either you or Dr. Du Bow had to have some other consultation for X-rays?

A. We did seek other consultation, but it wasn't spelled out, you know, when and under what circumstances we should do this. It was our own judgment.

Q. Was that procedure under your own judgment exercis or a part of your procedure for the entire period of time or was there a change anywhere along the line?

Do you understand what the purpose of my question is? I'll try to rephrase it.

A. I'm not sure I do.

Q. All right. When you came in '53, you had indicate that either you or Dr. Du Bow read chest X-rays and you indicated that either you or he or collectively may decide that you wanted to have some other consultation for certain reasons that you have not yet defined; is that right?

Now, was there any time between '53 and '69 that that procedure was changed such that you had to follow some other pattern before consultations were commenced?

A. Yes.

Q. Can you please tell me when it was changed and what the change was?

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A. The corporate medical director, Dr. Smith, asked us to establish meetings with him and with the members of the -- or with the chief of the safety department or compensation department, who was, at that time, I think chiefly Mr. Sheckler. I can't remember the timing when Mr. Stanton, who was the chief of the compensation department, when I first came there; when he retired Mr. Sheckler became the chief of the department, but, as I recall, Mr. Sheckler was involved in most of the meeting as they were subsequently established.

Dr. Smith asked us to schedule meetings with him periodically to review chest X-rays where we thought -- where we probably had perceived some abnormalit and to meet with him and Dr. Du Bow and myself and him and some representative of the safety department to establ a concensus as to the probable diagnosis of what we were seeing in the chest X-ray prior to making any formal repor and putting in the record any written or formal report of our impression, after reading the chest X-ray.

So, this represented a change. In fact, now I would say I would have to guess somewhat at this. This took place around 19 -- when we began to do this -- around 1955 or '56.

Q. Am I correct that that change in procedure occurre

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subsequent to Mr. Stanton no longer having the safety function, but when Mr. Sheckler had the safety function?

A. I think in all likelihood that's correct, because my memory now of the meetings which took place was general Mr. Sheckler or maybe Mr. Hermerda, who were present rather than Mr. Stanton. For that reason, I don't have a clear recollection of Mr. Stanton being at those meetings

Q. How was the information communicated to you for the change in procedure concerning the manner in which you were to read or interpret X-rays?

A. This was,as I recall it was through -- It was verbally through personal meetings at Manville.

Q. Between Dr. Smith?

A. Dr. Smith, Du Bow and myself, Mr. Sheckler and possibly some other members of the safety department.

Q. Prior to the change or procedure, what was the procedure followed by you or Dr. Du Bow in interpreting chest X-rays which may have been abnormal?

A. Part of the procedure, of course, was to make a statement, an interpretation of the X-ray film which probably was dictated at the time of the reading and subsequently transcribed, a medical record, part of the record which was designated for X-ray readings. And, as I remember it, we also, as part of the procedure,

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reported to the safety department any suspected or definit indications of a pneumoconiosis at the time, and this was, as best I can recall, from the very time I first started to work there, this procedure was used. So, our responsibility, one of our responsibilities, was to notify the management of the company through the safety departmen that this -- that we had seen something we suspected to be a definite, at least from a radiological and X-ray standpoint, characteristic of pneumoconiosis or we saw some findings or changes which were considered possibl precursors of -- precursory findings of pneumoconiosis or maybe suspect or maybe to establish some more frequent or stricter schedule of examination of the individual concerned and this -- We had used this system right along and this was done.

There was a cliche used, we called it a no dust restriction. It was our practice, at that time, before Dr. Smith asked for some change in the procedure, when we saw something we thought would be an indication for an employee not to be employed in a dusty environment or to continue working around it, to make this statement, which was an indication through management, through the safety department, that we, in our opinion, saw some indication of something which would indicate some caution

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some reason to make some change in the employee's working status and so that had been the procedure right along.

Dr. Smith was asking for -- subsequently for a change insofar as he was asking that we now, when we saw something that we thought was significant or possibly significant to hold that aside, those X-rays aside hold them aside for a subsequent meeting, at which time the case would be discussed, some decisions made about the nature of the X-ray findings and concensus about diagnosis or probable diagnosis and the safety department would then be made aware of this and this, as I remember, this concept was that the safety department would check into the man's -- the employee's, not necessarily a man, it might have been a woman -- the employee's current working conditions to try to determine whether they were working in an area that would be considered all right or not all right, from the standpoint of dust exposure. And, if it was determined that the employee was then working in a job where there was not a dust exposure, there would be no indication to change or recommend a change in the job.

If, on the other hand, the safety department's investigation established that an employee was working in a job where there was a definite dust exposure

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or possible dust exposure, then the procedure would be to advise the building or department manager or superintendent of the situation and that they had a problem in a certain job operation and with the view to try to correct the condition, improve it or, if that could not be done, to then remove the employee from the job, or try to remove the employee and place the employee in another job.

Q. Now, Doctor, when you indicated that upon coming to a possible conclusion that there was an abnormality, either you or Dr. Du Bow made a report of some type. Am I correct that that report would be in the individual's medical file?

A. It would be in the individual's medical file.

Q. Now, you have indicated, prior to approximately '55 or so when the procedure changed, when Dr. Smith told you the procedure, the new procedure that you talked about, prior to that, you had indicated, I think, in your answer that you had the cliche no dust restrictions and you would inform the safety office.

My question is the manner in which you informed the safety office. Was it a written procedure that you followed?

A. Yes, it was a written procedure.

Q. Was the -- What was the written document that you

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