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James R. Dorsey, Clerk, U. S. Court

By Hazel E. Studdard DEPUTY

ODESSA J. SMITH

SHORTHAND COURT REPORTER

BEAUMONT, TEXAS

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLAUDE J. TOMPLAIT ‖

VS. ‖ CIVIL ACTION NO. 5402

COMBUSTION ENGINEERING, INC., ET AL ‖

* *

DEPOSITION AND ANSWERS of DR. THOMAS A. LOMBARDO, witness for defendant, taken on the 9th day of May, 1969, before me, Odessa J. Smith, Court Reporter and/or Notary Public in and for the County of Jefferson, in the State of Texas, at the office of the said Dr. Thomas A. Lombardo, in the Doctors Building, at Beaumont, Texas, beginning at 11:00 o'clock a.m., in accordance with the accompanying Notice. And the said DR. THOMAS A. LOMBARDO, the witness named in said Notice hereto annexed, personally appeared before me to depose in said suit pending in the United States District Court, for the Eastern District of Texas, Beaumont Division, wherein Claude J. Tomplait is plaintiff, and Combustion Engineering, Inc., et al are defendants; and that I was then and there attended by Ward Stephemson, counsel for plaintiff, and George A. Weller, counsel for defendants; the said DR. THOMAS A. LOMBARDO, being by me first carefully examined, cautioned and sworn to tell the truth, the whole truth and nothing but the truth, touching his knowledge of the matters and things in controversy in said cause, deposes and says as follows, to-wit:

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DR. THOMAS A. LOMBARDO, having been first duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. WELLER:

Q. What is your name, please?

A. Dr. Thomas A. Lombardo.

Q. Dr. Lombardo, is your license to practice -- do you have a license to practice medicine in the State of Texas?

A. Yes.

Q. Is your license recorded in the office of the County Clerk of Jefferson County?

A. Yes.

Q. Will you tell us where you took your pre-medical education and also your medical education?

A. I was graduated from the Southwestern Medical School of the University of Texas, after having had pre-medical education at the University of Texas in Austin. I then spent eighteen months at the University of Alabama, in the Department of Internal Medicine, doing teaching and research, and then had an internship at the Peter Bent Brigham Hospital in Boston, Massachusetts, and then I spent one year as a resident in internal medicine at Barnes Hospital at St. Louis, and then two years at the National Heart Institute at Bethesda, Maryland, and then spent one year at the University of Alabama as Assistant Professor of Medicine before entering private practice in

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Beaumont in 1957.

Q. All right, are you a member of any societies or special medical organizations?

A. Yes, I am a Certified Specialist in the field of Internal Medicine and in cardio-vascular diseases.

Q. What is cardio-vascular diseases?

A. Diseases of the heart and the blood vessels.

Q. Now how do you attain this certification, Doctor?

A. After completion of three years of specialized training in internal medicine an individual may take a minimum of one year in the field of heart disease, and there is an age requirement that the individual has to be, thirty, I believe it is, before he can be certified, and then an individual takes an examination, both an oral and a written, and if successfully completed he becomes a certified specialist in the field of cardio-vascular disease; prerequisite to that though, having been certified by the American Board of Internal Medicine.

Q. All right, so as the matter stands now, you are a Certified Specialist in Internal Medicine and also in cardiology?

A. Right.

Q. Now have you followed this specialty exclusively since you began your practice in Beaumont in 1957?

A. Yes.

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Q. Doctor, I assume in your specialty that you have a number of referrals from other physicians, do you not?

A. Yes.

Q. In the course of your practice in the year 1963 did you have occasion to examine Mr. C. J. Tomplait of Bridge City, Texas?

A. Yes, I examined him on February 22, 1963.

Q. All right, who was this examination at the request of?

A. Mr. Gordon Pate.

Q. All right, he is an attorney in Beaumont, I believe?

A. Yes.

Q. Did you take a history from Mr. Tomplait?

A. Yes.

Q. What history did he give you?

A. At that time he was forty-two years old, and he had indicated that he was well until he had begun to note faintness and palpitation while working as an insulator at the Firestone Plant in Orange, Texas. He also noted shortness of breath with inability to climb stairs without breathlessness. These compalints were gradual in onset and when he began to drop objects he consulted Dr. Greco who advised a chest X-ray, which was done at Orange Memorial Hospital. "Spots" were noted on the lung X-ray, and he was sent to Dr. Jones in Houston. An extensive study was done, including special studies. After

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three days he was informed that both lungs were in "bad shape" and no medical therapy was available. Also he was advised that he should not work around insulation materials and should stop smoking. In spite of this advice he had continued working regularly as an insulator and worked around fiberglass, magnesia and foam glass, also rockwool, rockcork, unabestos and mineral wool. His major complaints were chronic cough, especially when recumbent, shortness of breath, tingling and clubbing of the fingers. There had been no history of hemoptysis or recurrent bronchitis. He had, however, noted a continuous drip into the back of his throat.

Q. Doctor, where you quoted the word "spots", was that something he related to you?

A. Those were the patient's quotes.

Q. He was reporting what some other physician had told him, is that correct?

A. Wherever he got it, I don't know, but those are his quotes.

Q. This is not something that you interpreted but this is what he told you?

A. Yes.

Q. All right, now did you inquire into his smoking habits?

A. He had informed me that he had stopped smoking one month ago.

Q. All right, did you examine this patient?

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A. Yes, I did.

Q. Would you detail to us the type of examination that you gave him?

A. He had a complete physical examination, and do you want me to give all these findings or just give the positive findings?

Q. Well, Doctor, did you find anything generally wrong with his head --

A. All right, I will go down the line. The general examination revealed a well developed, thin white male. The skin showed no lesions. There were no lynph nodes. His head was oval, otherwise not remarkable, and the ears, nose and throat showed that he was edentulous, and his neck was easily movable, and the thyroid was not enlarged. There was forceful carotid pulses. The chest was symmetrical. No kyphosis or increase in A-P diameter. Examination of the lungs revealed that the breath sounds were easily transmitted over the entire lung fields, and the heart rate was 100 with no abnormal sounds, and the blood pressure was 130/80. No masses in the abdomen. The extremities were symmetrical. There was moderate clubbing of fingers and toes without cyanosis. The fluoroscopy revealed no cardiac enlargement and the heart border movements were active and the diaphragms were mobile. The neurological examination was not remarkable, and the electrocardiogram was within normal limits.

Q. All right, Doctor, let me ask you a couple of

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specific questions, what does his finding of breath sounds easily transmitted over entire lung fields mean to you as an internist and practitioner of internal medicine?

A. This would mean that air was effectively being moved in and out of his chest through his bronchial passages as well as through his lungs.

Q. When you referred to his extremities and noted there was a moderate clubbing of fingers and toes without cyanosis, what do you mean by the term cyanosis?

A. Cyanosis is commonly seen in combination with clubbing if there is an associated lack in oxygenination of the blood. In this instance clubbing was present but there was no clinical evidence to suggest that there was a marked impairment of oxygenination.

Q. Did you have X-rays taken of this man?

A. He was referred by me to Drs. Lowry, Gish & Sheldon, Doctors Building, Beaumont, Texas, for a chest X-ray, and Dr. James R. Gish read the films.

Q. All right, did you also see the films?

A. Yes.

Q. Did you agree with the findings of the radiologist?

A. Yes.

Q. Now in your practice do you read films, I mean X-ray films, that are related to your field?

A. Yes.

Q. Have you had training in that respect?

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A. Yes, as part of my training in internal medicine and in cardio-vascular disease there is a lot of education relative to interpretation of chest X-rays.

Q. Did you agree with the findings and interpretation of Dr. Gish?

A. Yes.

Q. In effect what did the X-rays show, Doctor?

A. The X-ray revealed a mild scoliosis of the dorsal spine with convexity to the right. No evidence of localized infiltrate or consolidation was present, and the peri-hilar markings showed accentuation which were particularly prominent into the bases, associated with some fibrosis in that area. It was Dr. Gish's opinion that these findings were considered most likely secondary to previous infection.

Q. All right, would you interpret these peri-hilar markings, what that means to a layman so the jury might understand?

A. This generally implies an increased scarring in the -- around the left bronchi but within the lung field itself, and generally associated with recurrent infection or inflammation.

Q. All, right, Doctor, based upon your physical examination and your interpretation of the X-rays, did you make a diagnosis of this man's condition at the time of your examination?

A. Yes. My impression was that the patient had

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chronic pulmonary insufficiency due to idiopathic pulmonary fibrosis.

Q. All right, now did you form any conclusion as to the cause of this pulmonary fibrosis?

A. No, sir, I did not.

Q. Based upon your examination, did you find that this man had asbestosis at the time of your examination?

A. No, I did not.

Q. Did you form an opinion that he did not have asbestosis at that time, based upon your examination?

A. I did not think that he had.

Q. All right.

A. I must say though that is a diagnosis that could not be unequivocally made on the basis of mere examination and interpretation of X-ray films.

Q. Doctor, as an internist and a specialist in cardiology, in your opinion can you make that diagnosis based solely upon the X-rays that were taken at that time?

A. Not to my knowledge.

Q. That is, you could not make an absolute diagnosis of asbestosis based solely upon the X-rays that were taken?

A. That's right.

Q. All right, could you make that diagnosis based solely on the history without any physical examination, plus the interpretation of the X-rays?

A. No.

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Q. Okay, is this a copy of the X-ray Report that was rendered to you, Doctor?

A. Yes.

Q. And you agree with the interpretation of the X-rays?

A. Yes, sir.

MR. WELLER: We tender this in connection with the doctor's testimony, and I believe that's all.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q. Now, Doctor, I am ward Stephenson. You mentioned X-ray finding of previous infection, would that have been compatible with pneumonia?

A. Yes.

Q. For your information, the patient had had pneumonia, and I think about the time these films that you viewed were taken.

A. In the past you mean or active pneumonia at that time?

Q. No, in the past.

A. Yes.

Q. Your specialty as I read on the door is cardiology?

A. Right.

Q. And cardiology does not encompass the field of lung disorders per se?

A. That's true.

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Q. Now are you familiar with Dr. Stanton P. Fisher of the Kelsey-Seebo Clinic in Houston?

A. No, sir, I am not.

Q. Mr. Weller, among others, had Mr. Tomplait examined by Dr. Fisher. I would like for you to look at Dr. Fisher's report, dated April 29, 1968.

MR. WELLER: Just a minute, I object to this form of question because it assumes a fact that is incorrect. I did not have this patient examined by Dr. Fisher.

Q. Do you note anything in this report of Dr. Fisher's other than his conclusion that might in any way differ from any of the testimony you have previously given?

MR. WELLER: Just a moment, I want to object to the examination of this Doctor with reference to the medical report of someone else that was made some five years later than his examination, and the report being based upon X-rays taken at a later date, and because this would not be material, and it is not a proper method of cross examining the Doctor, on something he hasn't been allowed to examine, that is, X-rays he hasn't been allowed to examine.

Q. All right, Doctor, this is getting to the very question that I was going to pose to you, and one of the reasons I brought Mr. Tomplait, if Dr. Stanton P. Fisher says the diagnosis of pulmonary fibrosis associated with asbestosis is unequivocal, and he says that in 1968, and if Dr. Jones says the same thing, based upon his previous examination of

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the patient, and I think I have forwarded to you the deposition of Dr. Irving J. Silicost concerning this patient, and would you agree that Dr. Silicost's diagnosis is also unequivocally that of asbestosis?

MR. WELLER: I object to that because Dr. Silicost's report is hearsay to us, and this doctor isn't being called upon to comment on the diagnosis made by somebody else under different conditions that he saw this man, and he may not want to.

Q. You may answer the question.

A. Would you rephrase the question?

Q. Yes. Did you have an opportunity to read Dr. Silicost's deposition?

A. Yes.

Q. Did you observe from reading that that he also diagnosed this patient's condition unequivocally as asbestosis?

A. Yes.

Q. Now at this time I would like to submit Mr. Tomplait to you for any type or character of examination which you feel might be helpful to you in coming to a present conclusion as to his condition.

MR. WELLER: We are not asking for the Doctor to examine Mr. Tomplait. We are merely asking to take his deposition as to what he found at some prior date, and counsel has heretofore refused to permit this man to be examined by any other physician, and, therefore, the Doctor is not called upon to examine him at this late date, and probably, if I understood him correctly,

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he doesn't have the time anyway, but I am not agreeing that the Doctor examine him or requesting that the Doctor examine him at this time.

Q. And as I take it, you won't consent to an examination by Dr. Lombardo?

MR. WELLER: I have nothing to do with it. Dr. Lombardo is not my doctor. I have taken his deposition. If the plaintiff's attorney wants to make arrangements with Dr. Lombardo for an examination of this man, I have no objection to it.

Q. Dr. Lombardo is your witness, counsel, and do you object to your witness examining him?

MR. WELLER: I have already made my statement in the record.

Q. I take it then he does object, Doctor.

MR. WELLER: I think my statement speaks for itself. If you can make the arrangements with the Doctor for the examination, I have nothing to say about it.

Q. Doctor, you have familiarized yourself with the medical qualifications of Dr. Irving J. Silicost, have you not?

A. Yes.

Q. Do you know of any man within your knowledge specializing in the field of lung disorders caused by asbestosis among insulating workers that has qualifications equal or better than those of Dr. Silicost?

MR. WELLER: I object to that, asking this Doctor to comment on the qualifications of someone else. It certainly would be

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hearsay because apparently there is some material that you furnished the Doctor that is not in evidence. Therefore, it would not be proper for the Doctor to comment on the qualifications of some man who may testify in this case, unless he has personal knowledge of it.

Q. You may answer the question.

A. I am not aware offhand of anyone with any greater qualifications but I have made no investigation to see if such people are available. I would strongly suspect that there are, however.

Q. I sent you, so the record will be clear, a copy of Dr. Silicost's deposition, taken in this very case on March 4, 1968, and that's the deposition to which I have reference, is that correct?

A. Yes.

Q. Doctor, I want to ask if you have ever experienced or in your experience have you witnessed the death of a person suffering from asbestosis?

A. No.

Q. Have you witnessed the death of a person suffering from fibrosis and pulmonary insufficiency?

A. Yes.

Q. Will you describe whether or not this is a very painful and indeed a slow type of death?

A. Generally it is as a result of some superimposed infection or some associated illness.

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Q. Could we say absent side effects such as pneumonia, just the insufficiency of the lung itself would be a slow process from which the patient would eventually die of oxygen starvation?

A. Generally death is due to some superimposed illness like pneumonia.

Q. I am for my purpose excluding that for the moment.

A. Usually it is from disability rather than death.

Q. Would it be a rather torturous thing?

A. Uncomfortable but generally not associated with pain.

Q. Are you familiar enough with asbestosis to know what period of time normally -- let's assume that Mr. Tomplait has asbestosis, what in your experience or are you qualified to give an answer to this, would be the likely cause of his death?

A. A superimposed infection.

Q. Such as pneumonia?

A. Pneumonia.

Q. Is corpulmonale associated with asbestosis in many instances?

A. Any disease leaving scarring in the lung can lead to corpulmonale.

Q. This patient has extremely violent periods from

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time to time of inability to breathe on occasions causing him to faint, in your opinion could this be associated with lung inadequacy, this type of thing?

A. Yes.

Q. Is the disease of asbestosis irreversible?

A. Not to my -- it is irreversible.

Q. It is irreversible, so the jury might understand, if this patient has asbestosis can we say that there is not anything that can be done to cure it?

A. That's right.

Q. About the only thing, as I understand it, that can be done is to make him as comfortable as possible, and to remove him from anything that would likely cause an infection, is that correct?

A. Yes.

Q. Do you know, for example, what length of time is required from the inhalation of asbestos dust to the average time that the disease of asbestosis manifests itself in a patient?

A. No, I don't.

Q. Do you know whether or not small quantities of asbestos dust inhaled by a patient or large quantities would be required to cause the disease of asbestosis?

A. No, I don't.

Q. Have you in any of the medical literature that you received ever been advised or know of any studies or work or notification to you in your profession of a

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company known as Fiber Board Paper Products of any system that you might use to recommend to your patients who are engaged in the asbestos or insulating field on any safe or good way to use the product and not expose themselves to the inhalation of this dust?

A. Yes.

Q. You have had such notification?

A. Well, not necessarily notification to me directly but I have been aware of the printed material regarding this.

Q. All right, but my question was probably a lengthy one and confusing. I had reference to Mr. Weller's client, Fiber Board Paper Products, have you ever had any correspondence from them, or ever read anything they have ever done towards preventing the inhalation of asbestos dust?

A. No, I haven't.

Q. I believe that's all, Doctor, thank you.

REDIRECT EXAMINATION

BY MR. WELLER:

Q. Doctor, I have a couple of questions. You were asked about another medical report, I want you to read this. I have tendered to you a report of X-rays and medical report of Dr. W. V. Leary, dated April 4, 1963 and November 13, 1962, addressed to the Industrial Accident Board, and an X-ray report in 1962, have you examined those?

MR. STEPHENSON: I am going to object to all the questions having to do with Dr. Leary, any X-rays or any reports by him. He has never had a deposition taken of him. This would

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be improper to question on the basis of a letter and should not form a basis of any questioning of this Doctor, and it was in connection with another case and had nothing to do with this case, and is not in the proper form to be used in the questioning by Mr. Weller of Dr. Lombardo.

Q. Let me finish the question, Doctor, did your diagnosis differ in any respect from Dr. Leary's diagnosis?

A. No, it did not.

MR. STEPHENSON: The same objection to all this questioning.

Q. And yours was substantially the same diagnosis that has been made by Dr. Leary, was it not, which was filed with the Industrial Accident Board?

A. Yes.

MR. STEPHENSON: Can I have my same objection, George, without restating it?

Q. Sure. Doctor, do you agree with the statement that fibrosis of the lungs can be caused by sarcoidosis?

A. Yes, sarcoidosis.

Q. The Hammond-Rick disease can cause an interstitial diffused fibrosis?

A. Yes.

Q. And infection can sometimes end as a diffused interstitial fibrosis?

A. Yes.

Q. And bronchitis can be caused by a diffused interstitial fibrosis?

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A. Yes.

Q. And other dust can cause that, can it not?

A. Yes.

Q. Okay, I believe that's all.

RECROSS EXAMINATION.

BY MR. STEPHENSON:

Q. Doctor, if someone came to you with a lung disability would you attempt to treat the patient yourself or would you refer them?

A. A person with primary lung disease?

Q. Yes, sir, with primary lung disease.

A. I don't make a point of treating people with chronic pulmonary or acute pulmonary disease unless they have an associated underlying heart disease.

Q. That's all.

MR. WELLER: That's all.

CLOSE OF THE DEPOSITION.

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THE STATE OF TEXAS

COUNTY OF JEFFERSON

I, Odessa J. Smith, a Notary Public in and for Jefferson County, Texas, do hereby certify that the facts stated by me in the caption to the foregoing deposition are true; that the foregoing deposition of DR. THOMAS A. LOMBARDO, the witness, was, at the time named, taken down correctly in shorthand by me, both the questions propounded by the attorneys and the answers given by the witness, in accordance with the Notice hereto annexed, and afterwards transcribed correctly on the typewriter, all to the best of my skill and ability, and the foregoing is a true and correct transcript of the testimony given by the witness at said time; said witness being by me first carefully examined, cautioned and sworn to tell the truth, the whole truth and nothing but the truth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 9th day of May, 1969.

ODESSA J. SMITH, NOTARY PUBLIC
IN AND FOR JEFFERSONCOUNTY, TEXAS.

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