

CONFIDENTIAL ATTORNEY WORK PRODUCT

Deposition Summary
of
Paul C. Swift, M.D.
Taken October 10, 2003
Edith Johnson v. Acme Corporation
Case No. 02-CV-012345

Appearances

For the Plaintiff:

Baylor & West, LLP
By: Jason B. Baylor, Esq.

For the Defendant:

Jensen, Percich & Marshall
By: Barbara M. Blair, Esq.

Exhibits

- 1 Dr. Swift' Report on a chest x-ray of Ms. Johnson dated July 23, 1998
 - Marked: Page 3
 - Identified: Page 19
 - Examination begins: Page 18

- 2 Dr. Swift' "B" Read Report relating to Exhibit 1
 - Marked: Page 3
 - Identified: Page 19
 - Examination begins: Page 19

Page: Line

Testimony

EXAMINATION BY MR. BAYLOR

3:18 4:7 **Name and profession**
The deponent states his name as Paul Swift. He has been a medical doctor for about 25 years.

4:8 4:24 **Medical education**
Dr. Swift attended Northwestern University from 1968 to 1972 and gained a Bachelor of Arts degree in chemistry. He then went to medical school at Ohio State University School of Medicine in

Columbus, Ohio from 1972 to 1975. He came to the Boston area and did an internship and residency in medicine from 1975 through 1978 at what was then called Boston Metropolitan General Hospital, affiliated with the Metropolitan School of Medicine. He then went back to the Chicago area and did a fellowship in pulmonary diseases at the University of Illinois at Chicago from 1978 to 1980.

License and Board certification

4:25 5:21 Dr. Swift is licensed to practice medicine in the State of Massachusetts. Asked to explain “Board certification”, he describes it as a training and testing program set up by the Board in various medical fields. Dr. Swift is Board certified in the fields of internal medicine, pulmonary disease and sleep medicine.

Certification dates

5:22 6:14 Dr. Swift describes “internal medicine” as “basically the diagnosis and treatment of adult medical problems.” He was Board certified in internal medicine in 1978. “Pulmonary medicine” is “basically the diagnosis and treatment of lung disorders; most commonly bronchitis, emphysema, asthma, infections of the lung, pneumonia, cancers of the lung and occupational lung disorders.” He was Board certified in pulmonology in 1980.

Privileges and affiliations

6:15 7:6 Dr. Swift has privileges at Lakeview Hospital and Fairfax Hospital in the Boston area, and also at St. John’s Hospital. He sees patients on a regular basis as a lung specialist. He is affiliated with the Boston Chest Physicians group of lung specialists. Other physicians refer patients with lung problems to him.

“B” reading of chest x-rays

7:7 9:1 Dr. Swift has held a so-called “B” Reader certification from the Federal government since 1992. This is a training and testing program that certifies physicians on their ability to review chest x-rays, specifically on individuals exposed to occupational dust. Recertification is required every four years, and he had recertified twice. A “B” Read involves firstly identifying the quality of the x-ray. Then you evaluate markings on the x-ray that involve the lung tissue itself; and then markings on the x-ray that involve the lining of the lungs. You then report on and quantify any other abnormalities; specifically, you look for small opacities that are consistent with a pneumoconiosis (a lung condition related to an occupation).

Membership of professional societies

9:2 9:7 Dr. Swift is a Member of the American Thoracic Society, the American College of Chest Medicine and the American Academy of Sleep Medicine.

Published articles

9:8 9:14 Dr. Swift has published articles relating to medicine, including articles dealing specifically with the lungs.

Lung conditions evaluated and treated

9:15 10:6 Dr. Swift commonly evaluates and treats people with bronchitis, emphysema, asthma and infections of the lung such as pneumonias and lung cancers. He is also involved in the study of the regulation of breathing, which is why he has an interest in sleep medicine. There is also a group of conditions that are related to occupations, because in certain occupations one inhales fumes or dusts that can damage the lungs.

Interest in exposure to industrial dust, especially asbestos

10:7 11:11 Dr. Swift has been asked to consult as an expert in cases involving individuals who state they have been exposed to asbestos. His interest in this area was initiated during his training in Chicago when he did research in the department of environmental medicine at the University of Illinois. When he came to practice medicine in the Boston area, he had occasion to see a number of individuals exposed to various dusts and fumes in the workplace. This further stimulated his interest and he attended some symposiums and courses specifically related to occupational lung disorders; and some specifically related to asbestos dust exposure. Because of his interest he was asked to see more patients and also to lecture in this area.

Consultation practice

11:12 12:21 Dr. Swift has been asked by companies to evaluate their workers, and by unions and attorneys to examine their clients. He gets referrals from other doctors who know of his work. He sets the same standards irrespective of who refers the patient. He is paid for such consultations. In Mrs. Johnson's case he is being paid \$750 an hour.

The dangers of asbestos

12:22 15:8 Dr. Swift gives a lengthy description of the dangers of asbestos. It is a danger to humans because of certain physical characteristics of the fiber. When the fiber becomes dislodged from the main insulation product, it becomes aerosolized in the air. The particle size is around 5 microns: smaller particles are inhaled and then exhaled; larger

particles deposit in the nose; but the 5 micron size of friable asbestos is such that it is inhaled into the lung, where it remains. Further, the asbestos particle is needle-like, so it penetrates into the lung and causes damage. Friable asbestos dust in the air cannot be seen by the human eye. It is not necessary to work with asbestos to be affected by it; it is often in the air because of its use as an insulation material.

Asbestos causes malignant and non-malignant conditions

15:9 16:19

The non-malignant conditions associated with asbestos are:

- Asbestosis – scarring of the lung tissue itself
- Asbestos-associated pleural fibrosis – fibrosis (scarring) in the pleura (the lining of the lungs)
- Pleural effusion – effusion (fluid) between the lung and the chest wall
- Industrial bronchitis – inflammation in the airways of the lung

The malignant conditions associated with asbestos are:

- Lung cancer – cancer of the lung itself
- Mesothelioma – cancer of the lining of the lung

The latency period

16:20 17:22

“Latency” is the period during which a disease is developing. The lung responds quickly to a virus or bacteria, when the latency period is maybe 7 to 14 days. With occupational lung disorders the latency period is typically several years; and with asbestos it is 15 to 20 years.

Prognosis of asbestosis

17:23 18:17

Asbestosis is a permanent condition. It is potentially progressive; and potentially fatal. There is “not really” any treatment for it.

Exhibits 1 and 2: Identification

18:18 21:8

Dr. Swift identifies Exhibit 1 as his report on a chest x-ray of Ms. Johnson dated July 23, 1998 and Exhibit 2 as his “B” Read Report associated with Exhibit 1. [The deponent places an x-ray photograph on the view box.] Dr. Swift knows that this is a chest x-ray of Ms. Johnson because it has her name on it.

“B” Reader diagnosis of asbestosis in Ms. Johnson

21:9 23:25

Dr. Swift describes the “B” Reader standard procedure he adopted when he examined Ms. Johnson’s x-ray dated July 23, 1998. First he assesses the x-ray quality as good, acceptable, poor or unreadable. This one was good. He then looks for irregular opacities. [He demonstrates on the x-ray small irregular opacities in the lower portion of both lungs.] Next he compares the patient’s x-ray to his set of

standard films to identify the standard which most nearly matches the patient. There are three categories of increasing concentrations, 1 through 3, and Ms. Johnson corresponds to category 1/1. He next makes an assessment as to whether there are abnormalities on the pleural surface or the lining of the lung consistent with occupational lung disorders. In Ms. Johnson's case, he did not find any. He then looks for other abnormalities, and in Ms. Johnson's case he found none. His conclusion, based on the 1/1 opacities he has demonstrated, is that Ms. Johnson is suffering from asbestosis.

Ms. Johnson's asbestosis was caused by working at Acme

24:1 26:24

Dr. Swift is asked to assume that:

- Ms. Johnson worked for General Rubber, now part of the Acme Corporation, from 1946 to 1978, primarily as a coiler and tannage clerk
- Ms. Johnson was exposed to various asbestos-containing products including, but not limited to, asbestos insulation and asbestos pipe covering.
- The areas Ms. Johnson worked in at Acme Corporation were dusty and dirty
- Ms. Johnson was in an environment where there was friable and airborne asbestos
- Ms. Johnson breathed in that asbestos

With these assumptions in mind, Dr. Swift can state, within a reasonable degree of medical probability and certainty, that Ms. Johnson is suffering from asbestosis brought on by exposure to asbestos dust in the course of her employment at Acme

EXAMINATION BY MS. BLAIR

Dr. Swift's experience and rates as an expert and "B" Reader

26:25 31:16

Dr. Swift has given deposition in more than 10 but less than 50 asbestosis cases on behalf of the law firm of Baylor & West. He has been doing similar work for other parties since the mid-1980s. He repeats that he currently charges \$750 an hour. He has done more than 100 "B" Reads on behalf of Baylor & West. He believes he has done over 100 examinations on behalf of Baylor & West. He did not undertake an examination in this particular case. The charge for a "B" Read, whoever it is for, is \$45. The total charge for reading the x-ray and the report is \$60. The charge for a physical examination is usually around \$90, plus of course the \$60 charge for the "B" Read and Report.

Records relating to Ms. Johnson

31:17 34:2 Dr. Swift does not think what is termed his “file” on Ms. Johnson contains anything beyond the exhibits. He believes copies were supplied for production purposes and that the originals are either “here” or remain in his Westlake office.

Only the quality of the x-ray is relevant

34:3 36:20 Dr. Swift does not know where Ms. Johnson’s x-ray was done. He knows nothing about who took the x-ray, or what the technician’s credentials were. The only pertinent issue is the quality of the x-ray, which in this case was good. The equipment used is also not pertinent. Issues of calibration and maintenance of the equipment and storage of the x-ray are also irrelevant – all that matters is that the resultant x-ray is of good quality. He does not recall where he was when he read the x-ray.

Examination and medical history of Ms. Johnson

36:21 38:7 Dr. Swift has some past medical records relating to Ms. Johnson. They include reference to St. Elizabeth Hospital but he does not have the actual records from St. Elizabeth Hospital. He does not recall whether he reviewed any earlier x-rays of Ms. Johnson. He did not personally examine Ms. Johnson; nor did he personally take any medical history or work history – in both respects he relied on Dr. Blake’s evaluation [move to strike as non-responsive].

No specific knowledge of the extent of Ms. Johnson’s exposure

38:8 39:14 Dr. Swift does not know where General Rubber is located. He has seen no blueprints of the facility. He has information that Ms. Johnson was exposed to asbestos dust; he does not have any information about where she was physically located during such exposure. He did not interview Ms. Johnson and has no specifics regarding any levels, duration, intensity or parts per million of any asbestos to which she might have been exposed.

The effects of exposure are cumulative so any exposure is injurious

39:15 42:25 Dr. Swift did not take Ms. Johnson’s work history and does not know whether she may have been exposed to asbestos elsewhere. He concedes that the general public is exposed to asbestos to a certain extent; but such exposure is not sufficient to lead to asbestosis (unless of course there is a concentration of asbestos in a person’s home). He agrees that exposure to asbestos-containing products may not lead to disease; but that any significant exposure is cumulative in its effect and therefore all exposure is regarded as injurious. In this respect, casual exposure outside the workplace is not considered significant. A

significant exposure would be, for example, working around insulation products that contain asbestos dust which is not contained.

Signs that were not present

43:1 43:14 Dr. Swift confirms that in the chest x-ray dated July 23, 1998 he did not observe:

- Any pleural abnormalities
- Any pleural thickening
- Any effusions in the lungs
- Any tumors

Other possible cause of irregular opacities

43:15 45:3 Dr. Swift confirms that asbestosis is not the only possible cause of irregular opacities on an x-ray. However, in ascribing other causes, you would look for other abnormalities in the lungs. In this case there were no other abnormalities.

Examination for the Bureau of Workman's Compensation

45:4 46:17 Over the years, Dr. Swift's office has done numerous examinations for the Bureau of Workman's Compensation. The most recent was within the last six months. He understands that when doing such examinations, the request comes from the Bureau but he is doing the examination for the patient. He does not understand what is meant by the representation that this is an "independent examination."

Dr. Swift relied on history taken by other doctors

46:18 47:13 Dr. Swift repeats that he did not take an occupational history from Ms. Johnson. He relied on the occupational history that was obtained by Dr. Kelley and the history obtained by Dr. Richards [move to strike as non-responsive].

1998 findings should be replicated in more recent x-rays

47:14 47:20 Dr. Swift would expect the specific findings he noted in 1998 to be similarly observable in more recent x-rays.

Medical license suspended at some time

47:21 48:8 Dr. Swift answers "Yes" to "Has your medical license ever been suspended" [no further questioning on this issue].

FURTHER EXAMINATION BY MR. BAYLOR

Charges are the same for all clients

48:9 49:1 It is of no concern to Dr. Swift who commissions a “B” Read. The charge is the same for the Bureau of Worker’s Compensation as for any other client.

Histories are not needed for a “B” Read

49:2 49:11 Dr. Swift confirms that a full medical history is unnecessary for a “B” Read. All you need for a “B” Read is a good x-ray. An occupational history is also unnecessary.

Other signs are not necessary for a diagnosis of asbestosis

49:12 49:25 Dr. Swift confirms that he found no pleural thickening, no effusions, no plaques and no tumors. These are not always seen with asbestosis; and none is necessary for a diagnosis of asbestosis.

FURTHER EXAMINATION BY MS. BLAIR

50:1 50:14 Dr. Swift agrees it is necessary to have a medical history and occupational history in order to make a causal relationship statement.

DEPOSITION CONCLUDED