

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION S.C. SUPREME COURT

Appellate Case No. 2019-000647
Unpublished Opinion No. 2019-UP-023
Submitted October 1, 2018 - Filed January 9, 2019

Nikolay Gul, Claimant.....Petitioner,

v.

Kohler Company,.....Respondent.

**APPENDIX
VOLUME III**

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Greg Feldman
1-31-13

CURRICULUM VITAE

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DATE OF BIRTH **REDACTED**, 1956

PLACE OF BIRTH Moscow, Russia



MARITAL STATUS

Married: Helen Eva Feldman
Children: David Feldman, 1985
Emily Feldman, 1989
Michelle Feldman, 1993

**EDUCATION:
MEDICAL SCHOOL**

Second Moscow Medical Institute
Moscow, Russia
1973-1979

Residency: Internal Medicine
Second Moscow Medical Institute
Moscow, Russia
1979-1981

Research Associate: Cardiology Department
Methodist Hospital
Houston, Texas 77030
1981-1985

Residency

Internal Medicine
Seton Hall University
St. Elizabeth Hospital
Elizabeth, New Jersey
1985-1988

Internal Medicine

Senior Medical Resident
Dartmouth-Hitchcock Medical Center
Hanover, New Hampshire
1988-1989

FELLOWSHIP

Pulmonary/Critical Care Medicine
Dartmouth-Hitchcock Medical Center
Hanover, New Hampshire
1989-1992

Laser and Interventional Bronchoscopy
Unitat de Laser
Hospital Duran Reynals
Barcelona, Spain
1992 Preceptorship

**BOARD
CERTIFICATION**

Triple Board Certified by the American Board
of Internal Medicine
1989 Internal Medicine, American Board of Internal
Medicine Certificate #128519

1994 Pulmonary Medicine, American Board of Internal
Medicine Certificate #128519
Recertified 2004

1995 Critical Care Medicine, American Board of Internal
Medicine Certificate #128519
Recertified 2005

2007 Certified Principal Investigator
Membership ID# 180228

LICENSURE

South Carolina 15836
DEA# BF 1193907

**PROFESSIONAL
EXPERIENCE**

Attending Pulmonologist/Intensivist
Spartanburg Regional Medical Center
Mary Black Memorial Hospital
Spartanburg, South Carolina
1992-Present

Partner, Pulmonologist-Lung and Chest Medical Associates
1992-2000

Consulting Pulmonologist
Upstate Carolina Medical Center
Gaffney, South Carolina
1998-Present

Consulting Pulmonologist
Wallace Thompson Hospital
2006- Present

Consulting Pulmonologist
Restorative Care (Spartanburg Regional Medical Center)
1992-Present

RESEARCH

Research Associate
Methodist Hospital
Baylor College of Medicine
Houston, Texas
1981-1985

Sub-Investigator, Spartanburg Pharmaceutical Research
Spartanburg, South Carolina
1994-1998

Principal Investigator/Sub-Investigator
Lung and Chest Medical Associates
Spartanburg, South Carolina
1996-2000

Principal Investigator, Upstate Lung and Critical Care
Spartanburg, South Carolina
2001-Present

Principal Investigator
S. Carolina Pharmaceutical Research
(Previously Upstate Lung and Critical Care)
Spartanburg, South Carolina
2004-Present

Sub-Investigator
Greenville Pharmaceutical Research
Greenville, South Carolina
04/06-Present

Sub-Investigator
Gaffney Pharmaceutical Research
Gaffney, South Carolina
04/05-Present

Sub-Investigator
Union Pharmaceutical Research
Union, South Carolina
12/05-Present

HOSPITAL AFFILIATIONS

Spartanburg Regional Medical Center
100 E. Wood Street
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1992-Present

Mary Black Memorial Hospital
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Spartanburg, South Carolina 29307
1992-Present

Upstate Carolina Medical Center
1530 N. Limestone Street
Gaffney, South Carolina 29340
1998-Present

**HOSPITAL
APPOINTMENTS**

Director, Interventional Bronchoscopy
Cancer Laser Committee
Laser Committee

LANGUAGES

English
Russian

**SOCIETY
APPOINTMENTS**

President, Carolina Thoracic Society

**MEMBERSHIPS IN
PROFESSIONAL AND
SCIENTIFIC SOCIETIES**

American Thoracic Society
European Respiratory Society

**SYMPOSIUM
DIRECTORSHIP**

Challenges in Lung Cancer and Thoracic Neoplasm's
March 26-28, 1999.

Program Chairman
Carolina Thoracic Society
Greenville, South Carolina
1999

**PUBLICATIONS/
PRESENTATIONS**

Feldman GJ, Parker HW
Visceral Larva Migrans Associated with the
Hypereosinophilic Syndrome and the Onset of Severe
Asthma. Ann Intern Med, May 15, 1992.
116(10) p838-40

Usual and Unusual Applications of Laser and
Tracheobronchial Stents. IV International Meeting
Respiratory Endoscopy; Barcelona, Spain 1995

Urgent Intraluminal Nd: Yag Laser and Brachytherapy
For Tracheobronchial Lung Cancer. IV International
Meeting Respiratory Endoscopy; Barcelona, Spain
1995

Interventional Endoscopy. Distinguished Lecturer Carolina
SGNA, 1996. Seven Consecutive Cases of Endobronchial
Management of Airway Obstruction. Invited Speaker
42nd Tri-State Consecutive Case Conference on Lung
Disease. Ponte-Vedra Beach, Florida. September 1997.

Insertion of High Cervical Esophageal Wallstents
Requiring Tracheal Stent Placement. *Journal of
Bronchology*. 5: 213-215; 1998

Stent Selection in Bronchoesophagology; Beyond the
Surface, 10th World Meeting of Bronchology, Budapest,
Hungary, 1998.

Laryngotracheal Sarcoidosis and Airway Obstruction.
Journal of Bronchology. 6: 104-105; 1999

Cancer and Airway Obstruction. First Upstate Carolina
Thoracic Society Symposium. Greenville, SC 1999.

A. Anzueto, G. Ferguson, G. Feldman, A. Seibert, K.
Chinsky, A. Emmett, F. Crater, K. Knobli, D. O'Dell, C.
Kalberg, UTHSCSA, San Antonio TX; Pulm. Res. Inst.,
Michigan, Livonia, MI; SC Pharm. Res., Spartanburg, SC,
Pulm. Assoc. of Mobile, Mobile, AL, Chest Dis. of NWPA,
Eric, PA, GSK, RTP, NC; A Randomized, Double-Blind
Trial Comparing the Effect of Fluticasone/Salmeterol
250/50 with Salmeterol on COPD Exacerbations; 2007
COPD Journal, Volume 6 (5)

E. Rand Sutherland, Shari Brazinsky, Gregory Feldman,
Joe McGinty, LaTanya Tomlinson and Kimberly Denis-
Mize; Bronchodilator maintenance treatment improves
pulmonary function and health related quality of life in
COPD patients. Current medical research and opinion
2009;25(3):653-61.

G. Feldman, T. Siler, N Prasad, S Piggott, R Owen, M
Higgins, and B Kramer. Poster Presentation. ERS, Vienna
Efficacy and safety of indacaterol 150µg once-daily in
COPD: A 12-week study; Poster Presentation. ERS, Vienna
2009

Antonio Anzueto, Gary T. Ferguson, Greg Feldman, Kenneth Chinsky, Allan Seibert, Amanda Emmett, Katharine Knobil, Dianne O'Dell, Christopher Kalberg and Glenn Carter. Effect of Fluticasone Propionate/Salmeterol (250/50) on COPD Exacerbations and Impact on Patient Outcomes; COPD 2009 6(5):320-9

Gregory Feldman¹, Thomas Siler², Niyati Prasad³, Damon Jack³, Simon Piggott³, Roger Owen³, Mark Higgins³, Benjamin Kramer^{4*} and the INLIGHT 1† study group
Efficacy and safety of indacaterol 150 µg once-daily in COPD: a double-blind, randomised, 12-week study
BMC Pulmonary Medicine 2010, 10:11

Nicola A. Hanania MD, FCCP; Gregory Feldman, MD; Wolfgang Zachgo, MD; Jae-Jong Shim, MD, PhD; Courtney Crim, MD, FCCP; Lisa Sanford, MSc; Sally Lettis, PhD, Frank Barnhart, DVM; Brett Haumann, MD
The Efficacy and Safety of the Novel Long-Acting β_2 Agonist Vilanterol in Patients with COPD. Poster Presentation, ATS, San Francisco, Ca, May 2011

M Decramer, F. Maltais, G. Feldman, J. Brooks, S. Harris, G. Crater. Dose-related efficacy of GSK573719, a new long-acting muscarinic receptor antagonist (LAMA) offering sustained 24-hour bronchodilation in COPD; Poster Presentation. 2011, ERS Amsterdam

Eric Bateman, Gregory Feldman, Sally Kilbride, Jean Brooks, Rashmi Mehta, Stephanie Harris, Claire Maden, Glenn Crater
Efficacy and safety of the long-acting muscarinic antagonist GSK233705 delivered once daily in patients with COPD. *Clin Resp Research J* 2012 6(4) :248-257

Feldman, G; Walker, R; Brooks, J; Mehta, R; and Crater, G. Safety and tolerability of the GSK573719/vilanterol combination in patients with COPD; *Chest* 2012;142(1):119-127

Gregory Feldman, Robert Walker, Jean Brooks, Rashmi Mehta, Glenn Crater: 28-day safety and tolerability of umecclidinium in combination with vilanterol in COPD: A randomized placebo-controlled trial

Review manuscript Improving the quality of life in patients with chronic obstructive pulmonary disease: focus on indacaterol: International Journal of COPD 2013;8 89-96
Feldman, G J

Fluticasone furoate/vilanterol (100/25;200/25 µg) improves lung function in COPD: A randomized trial: Fernando J. Martinezk, Joseph Boscia, Gregory Feldman, Catherine Scott-Wilson, Sally Kilbride, Leonardo Fabbri, Courtney Crim, Peter M. A. Caverley

AS03-adjuvanted versus non-adjuvanted inactivated trivalent influenza vaccine against seasonal influenza in elderly people: a phase 3 randomised trial; Prof Janet E McElhaney MD a, Prof Jiri Beran MD b *, Jeanne-Marie Devaster MD c *, Meral Esen MD d *, Prof Odile Launay MD e f g h *, Prof Geert Leroux-Roels MD i *, Guillermo M Ruiz-Palacios MD j *, Gerrit A van Essen MD k *, Adrian Caplanusi MD l †, Carine Claeys MD l †, Christelle Durand MSc e †, Prof Xavier Duval MD m n †, Mohamed El Idrissi MSc l †, Prof Ann R Falsey MD o †, Gregory Feldman MD p †, Prof Sharon E Frey MD q †, Florence Galtier MD r s †, Prof Shinn-Jang Hwang MD t u †, Bruce L Innis MD v †, Martina Kovac MD e †, Peter Kremsner MD d †, Prof Shelly McNeil MD w †, Andrzej Nowakowski PhD x y †, Prof Jan Hendrik Richardus PhD z †, Andrew Trofa MD v †, Dr Lidia Oostvogels MD

Brochodilation of umecclidinium, a new long acting muscarinic antagonist, in COPD patients; Decramer M, Maltais F, Feldman, G, Harris S, Mehta R, Crater G.

INFLUENZA SYMPTOMS AND IMPACT ON QUALITY OF LIFE IN ELDERLY ADULTS: EFFECT OF AS03-ADJUVANTED OR NON-ADJUVANTED INACTIVATED TRIVALENT SEASONAL INFLUENZA VACCINES; G A van Essen¹, J Beran², J-M Devaster³, C Durand³, X Duval⁴, M Escn⁵, A Falsey⁶, G Feldman⁷, P Gervais⁸, B L Innis⁹, M Kovac³, O Launay¹⁰, G Leroux-Roels¹¹, J E McElhaney¹², S McNeil¹³, M Oujaa³, J H Richardus¹⁴, G Ruiz-Palacios¹⁵, R H Osborne^{16,17} and L Oostvogels³

The combination of umecclidinium bromide and vilanterol in the management of chronic obstructive pulmonary disease: current evidence and future prospects. Ther Adv Respir Dis., September 3, 2013; Gregory J. Feldman and Anton Edin

A role of indacaterol in chronic obstructive pulmonary disease management: a turning point or crossroads? Gregory J. Feldman, Anton Edin; J Thorac Dis. 2013 August; 5(4): 378 -380.

Lung function efficacy of olodaterol QD delivered via Respimat® in COPD patients: Results from two 48-week studies

Oral Presentation by Gregory J. Feldman, MD
G. Ferguson, G. Feldman, P. Hofbauer, A. Hamilton, L. Allen, L. Korducki, P. Sachs (Livonia, Spartanburg, Ridgefield, Stamford, United States Of America; Weinheim, Germany; Burlington, Canada)
European Respiratory Congress, Barcelona 2013.

Scientific Program 2nd International Summit on Toxicology; Pharmaceutical Toxicology, Regulatory Toxicology and Analytical Toxicology.
Session Chair: Gregory Feldman, MD
Oct. 2013

Reactive airway dysfunction syndrome after inhalation of the acrylonitrile: Prespective of the pulmonologist.
Gregory Feldman, MD
Oct. 2013

**RESEARCH
EXPERIENCE:**

Sub-Investigator
RW Johnson Pharmaceutical Research.
Multicenter Non-Comparative Study to Evaluate the Safety and Efficacy of Levo-Floxacin in the Treatment of Community Acquired Pneumonia in Adults. (Phase 3)
Protocol M92-075. 1993-1994
Expected Enrollment: 20
Actual Enrollment: 68

Sub-Investigator

RW Johnson Pharmaceutical Research.

A Multicenter, Open-Label Study to Evaluate The Safety and Efficacy of Levofloxacin In the Treatment of Bacterial Infections.

Protocol LOFBIV-MULT-001. 1994-1995

Expected Enrollment: 20

Actual Enrollment: 46

Sub-Investigator

Parke Davis. Double-Blind, Prospective, Randomized,

Multicenter, Comparative Study of Clinafloxacin-Based

Regimen in the Treatment of Community Acquired Pneumonia.

Protocol 960-033. 1995-1998

Expected Enrollment: 20

Actual Enrollment: 70

Sub- Investigator

RW Johnson Pharmaceutical Research. A Noncomparative,

Multicenter Study to Evaluate the Safety and Efficacy of

Levofloxacin 500mg QD in the treatment of Community Acquired Pneumonia in Adults.

Protocol LOFBIV-PCAP-001. 1996-1998

Expected Enrollment: 20

Actual Enrollment: 156

Sub-Investigator

Parke Davis. Open-Label, Randomized, Comparative, Multicenter

Study of Clina-Floxacin vs. Cefazidime based Regimen in the

treatment of Nosocomial Pneumonia.

Protocol 960-012. 1995-1998

Expected Enrollment: 10-20

Actual Enrollment: 44

Sub-Investigator

RW Johnson Pharmaceutical Research.

Multicenter, Active Controlled, Randomized Study to Evaluate the

Safety and Efficacy of Oral Levofloxacin vs. Cefaclor in the

Treatment of Acute Bacterial Exacerbation of Chronic Bronchitis in Adults.

Protocol K90-070. 1993-1994

Expected Enrollment: 10

Actual Enrollment: 6

Sub-Investigator
 Bristol Myers Squibb. Double-Blind, Multicenter, Comparative
 Study of Cefprozil 250 mg bid vs. Cefuroxime Axetil 250 mg, bid
 in the Treatment of Bronchitis.
 Protocol A1414-153. 1995
 Expected Enrollment: 20
 Actual Enrollment: 25

Sub-Investigator
 Parke Davis. A Double-Blind, Randomized, Comparative,
 Multicenter Study of a 5 day Regimen of Cefdinir vs. a 10 day
 Regimen of Cefprozil in the Treatment AECB in Adult Patients.
 Protocol 983-060. 1996
 Expected Enrollment: 20
 Actual Enrollment: 32

Sub-Investigator
 Bristol-Myers Squibb. An Open Label, Multicenter, Non-
 Comparative study of Oral Gatifloxacin in the Treatment of
 AECB. Protocol A1420-004. 1997.
 Expected Enrollment: 20
 Actual Enrollment: 20

Sub-Investigator
 Dey labs. A 12-week, Randomized, Double-blind, Positive
 Control, Crossover Study of Albuterol, Ipratropium, and the
 combination, As an Inhalation Solution in Patients with COPD
 Protocol DL-024.1996.
 Expected Enrollment: 18
 Actual Enrollment: 77

Sub-Investigator
 Bristol-Myers Squibb. Randomized, Double-Blind, Multi-center,
 Phase II Comparison of Gatifloxacin to ClarithroMycin in the
 Treatment of Patients with Acute Maxillary Sinusitis. Protocol
 A1420-008. 1997-1998.
 Expected Enrollment: 15
 Actual Enrollment: 27

Sub-Investigator
 Bristol-Myers Squibb. Open Label, Multi-center, Non-
 Comparative Study of Gatifloxacin in Acute Bacterial Infections;
 Treatment to include patients with Acute Exacerbation of Chronic
 Bronchitis, Acute Sinusitis, Community Acquired Pneumonia.
 Protocol A1420-008. 2000-2001.
 Expected Enrollment: 6

Actual Enrollment: 12

Principal Investigator

Aventis Pharmaceuticals. Randomized, Double-Blind, Parallel-Group, Multicenter Study to Compare Clinical Health Outcomes of Telithromycin versus Azithromycin in Outpatients with Community-Acquired Lower Respiratory Tract Infections. Protocol HMR3647A/4019. 2004-2006.

Expected Enrollment: 20

Actual Enrollment: 54

Principal Investigator

GlaxoSmithKline

A Randomized, 24-week, Double-Blind, Placebo-group Study to Evaluate the Efficacy Safety and Tolerability of Ariflo (15mg BID) in Patients with Chronic Obstructive Pulmonary Disease (COPD)

Protocol CIL103657. 2004-2006.

Expected Enrollment: 6

Actual Enrollment: 50

Principal Investigator

GlaxoSmithKline

A Randomized, Double-Blind, Parallel Group, 52-Week Study to Compare the Effect of the Fluticasone Propionate/Salmeterol DISKUS™ Combination Product 250/50 mcg BID with Salmeterol DISKUS 50 mcg BID on the Annual Rate of Moderate/Severe Exacerbation in Subjects with Chronic Obstructive Pulmonary Disease (COPD). 2005-2007.

Expected Enrollment: 8

Actual Enrollment: 37

Principal Investigator

Merck

A Multicenter, Randomized, Double-Blind Study Comparing the Clinical Effects of Intravenous Montelukast With Placebo in Patients With Acute Asthma. 2005-2007.

Expected Enrollment: 4

Actual Enrollment: 21

Principal Investigator

AstraZeneca

A 12-month double-blind, double-dummy, randomized, multicenter study of ICS in combination with LABA compared to LABA and placebo in patients with COPD (12 Hour Visits). 2005-2007.

Expected Enrollment: 6
Actual Enrollment: 71

Principal Investigator
AstraZeneca
A 6-month double-blind, randomized, multi-center study of ICS compared to LABA, ICS, and placebo in COPD patients (12 Hour Visits with PK's). 2005-2007.
Expected Enrollment: 6
Actual Enrollment: 54

Principal Investigator
MGI Pharma
A Phase 3, Randomized, Double-Blind, Dose-Controlled Study to Assess the efficacy and Safety of Aquavan® (Fospropofol disodium) injection for minimal-to-moderate sedation in patients undergoing flexible bronchoscopy.
Protocol No.: 3000-0524
July 2006-April 2007
Expected Enrollment: 10
Actual Enrollment: 33

Principal Investigator
Oscient Pharmaceuticals
A Phase IV, Stratified, Randomized, Prospective, Unblinded, Active-Control Trial of Factive® Versus Biaxin XL® for the Treatment of Community Acquired Pneumonia and Versus Amoxicillin/clavulanate for the Treatment of Acute Bacterial Exacerbation of Chronic Bronchitis Protocol No.: OS-001
February 2005-January 2007
Expected Enrollment: 50
Actual Enrollment: 103

Principal Investigator
GlaxoSmithKline
Evaluation of Novel Endpoints in Subjects with Chronic Obstructive Pulmonary Disease (COPD) in a Randomized, Double-Blind, Placebo-Controlled Study of Treatment with Fluticasone Propionate/Salmeterol 500/50mcg combination (FSC 500/50) and its individual components Fluticasone/Propionate 500mcg (FP500) and Salmeterol 50mcg (SAL50) Protocol No.: SC0104925
June 2006-February 2007
Expected Enrollment: 6
Actual Enrollment: 16

Principal Investigator:
Epix Pharmaceuticals
A Randomized, Double-Blind, Placebo-Controlled study to
Evaluate the short-term efficacy and safety of PRX-08066 in
patients with pulmonary hypertension and obstructive Pulmonary
disease Protocol No.: PRX-CP-017
October 2006-June 2007
Expected Enrollment: 6
Actual Enrollment: 37

Principal Investigator
Boehringer Ingelheim
A Randomized, double-blind, double-dummy, placebo-controlled,
3 X 4 factorial design trial to evaluate telmisartan 20 and 80mg
tablets in combination with rampril 1.25, 10 and 20mg capsules
after 8 weeks of treatment in patients with Stage I or II
Hypertension with and APBM sub-study Protocol No.: 1236.1
November 2005-July 2007
Expected Enrollment: 3
Actual Enrollment: 19

Principal Investigator
UnitedBioSource Corp.
Prospective Study to Evaluate the Reliability and Validity of
EXACT Protocol No.: A2-4333
February 2007-September 2007
Expected Enrollment: 6
Actual Enrollment: 24

Principal Investigator
Astra Zeneca
A two-week, randomised, double-blind study assessing the Onset
of Effect Questionnaire (OEQ) administered daily versus weekly in
adult subjects (≥ 18 years of age) with mild to moderate asthma,
receiving SYMBICORT® pMDI 80/4.5µg x 2 actuations twice
daily or budesonide HFA pMDI 80 µg x 2 actuations twice daily
Protocol No.: D5896C00023
January 2007-November 2007
Expected Enrollment: 10
Actual Enrollment: 8

Principal Investigator
Dey LP
A Randomized, Open-Label, Two-Way Crossover Trial of
Formoterol Fumarate Inhalation Solution (20mcg) and Combivent
Inhalation Aerosol (Ipratropium Bromide 18 mcg/Albuterol Sulfate

103mcg) in the Treatment of Patients with Chronic Obstructive
Pulmonary Disease
Protocol No.: 201-081
April 2007-September 2007
Expected Enrollment: 7
Actual Enrollment: 15

Principal Investigator
Astra Zeneca LP
Cognitive Debriefing Interview Assessment of Breathlessness
Among Patients with Chronic Obstructive Pulmonary Disease
Protocol No.: A2-6047
September 2007-November 2007
Expected Enrollment: 6
Actual Enrollment: 6

Principal Investigator
GlaxoSmithKline
A Comparison of Fluticasone Furoate Nasal Spray versus Oral
Fexofenadine in the Treatment of Seasonal Allergic Rhinitis
Protocol No.: FFU109047
June 2007- November 2007
Expected Enrollment: 15
Actual Enrollment: 17

Sub-investigator
GlaxoSmithKline
Incidence of airway obstruction consistent with chronic obstructive
pulmonary disease (COPD) in subjects with a history of cigarette
smoking and symptoms of chronic bronchitis in a primary care
setting
Protocol No.: ADC109043
February 2007-October 2007
Expected Enrollment: 25
Actual Enrollment 20

Principal Investigator
Altana Pharma
BY 217/M2-124-"Effect of Roflumilast on Exacerbation Rate in
Patients with Chronic Obstructive Pulmonary Disease-52 Weeks,
Double,-blind Study with 500 mcg Roflumilast Once Daily versus
Placebo"
Protocol No.: BY217/M2-124
February 2006-February 2008
Expected Enrollment: 6
Actual Enrollment: 11

Principal Investigator
Novartis Pharmaceuticals
A Randomized, double-blind, placebo-controlled, parallel group,
multicenter, study to assess the safety and tolerability of 28 days
treatment with NVA237 (100 or 200 µg once a day) in patients
with moderate to severe Chronic Obstructive Pulmonary Disease
(COPD)
Protocol No. CNVA237A2206
April 2007-March 2008
Expected Enrollment: 13
Actual Enrollment: 22

Principal Investigator
Boehringer Ingelheim
A study to assess the responsiveness of the Cough and Sputum
Assessment Questionnaire (CASA-Q) in outpatients recovering
from mild/moderate exacerbations of COPD and/or chronic
bronchitis
Protocol No.: 1219.7
March 2008-May 2008
Expected Enrollment: 12
Actual Enrollment: 20

Principal Investigator
Replydine Inc.
A Prospective, Randomized, Double-Blind, Placebo-Controlled
Trial to Evaluate the Efficacy and Safety of Faropenem
Medoxomil 600mg PO, BID FOR 5 Days Versus Placebo Versus
Telithromycin In the Treatment of Acute Exacerbation of Chronic
Bronchitis
Protocol No.: REP-FAR-005
November 2005-August 2008
Expected Enrollment: 6
Actual Enrollment: 7

Principal Investigator
GlaxoSmithKline
A Randomized, Double-Blind, Double-Dummy, Parallel-Group,
Factorial Design Trial to Assess the Efficacy and Safety of up to
Six-Weeks Treatment with 20mg, 40mg, or 80mg QD Doses of
Carvedilol Controlled Release Formulation (COREG CR) or 10mg
20mg, or 40mg QD Doses of Lisinopril (Zestril) or a Combination
of One of the Doses of Each Medication
Protocol No.: CFD105453
Expected Enrollment: 8

Actual Enrollment: 24

Sub-Investigator

Novartis Pharmaceuticals (Formerly Chiron Inc.)

A Phase 3, Multicenter, Randomized, Placebo-Controlled, Double-blind, Three-Arm Study to Evaluate the Safety and Efficacy of Tifacogin (Recombinant Tissue Factor Pathway Inhibitor) Administration in Subjects with Severe Community-Acquired Pneumonia".

Protocol No.: TFP561A2308 (formerly TFP008) SRMC

December 2005-August 2008

Expected Enrollment: 10

Actual Enrollment: 28

Principal Investigator

Novartis Pharmaceutical (Formerly Chiron Inc.)

A Phase 3, Multicenter, Randomized, Placebo-Controlled, Double-blind, Three-Arm Study to Evaluate the Safety and Efficacy of Tifacogin (Recombinant Tissue Factor Pathway Inhibitor) Administration in Subjects with Severe Community-Acquired Pneumonia".

Protocol No.: TFP561A2308 (formerly TFP008) MBMH

February 2006-August 2008

Expected Enrollment: 10

Actual Enrollment: 8

Principal Investigator

Boehringer Ingelheim

A 24-week (+ 24 extension), randomized, placebo-controlled (only 1st 12-week period), double-blind, parallel-group, efficacy and safety comparison, of Tiotropium/Salmeterol (7.5µg/25µg) Inhalation Powder in the morning (PE capsule via tiotropium/salmeterol HandiHaler®), Tiotropium (18µg) Inhalation Powder in the morning (gelatine capsule via Spiriva® HandiHaler®), Salmeterol Inhalation (25µg) Powder in the morning and evening (PE capsule via tiotropium/salmeterol HandiHaler®) and Tiotropium.Salmeterol (7.5µg/25µg)n Inhalation Powder in the morning (PE capsule via tiotropium.salmeterol HandiHaler®) plus Salmeterol (25µg) Inhalation Powder in the evening (PE capsule via tiotropium/salmeterol HandiHaler®) in patients with COPD

Protocol No.: 1184.14

February 2008-December 2008 (Sponsor closed study)

Expected Enrollment: 6

Actual Enrollment: 15

Principal Investigator
GlaxoSmithKline
A Dose Finding Study of GW642444 versus Placebo in Patients
with COPD
Protocol No.: BC2111045
February 2008-November 2008
Expected Enrollment: 10
Actual Enrollment: 45

Principal Investigator
Novartis Pharmaceuticals
A 12-week treatment, multi-center, randomizes, double-blind,
placebo-controlled, parallel -group study to assess the efficacy and
safety indacaterol (150µg o.d.) in patients with chronic obstructive
pulmonary disease.
Protocol No.: CQAB146B2346
January 2008-October 2008
Expected Enrollment: 10
Actual Enrollment: 16

Principal Investigator
Boehringer Ingelheim
BIPI Protocol 1160.26: Randomized Evaluation of Long term
anticoagulant therapy (RE-LY) comparing the efficacy and safety
of two blinded doses of dabigtran etexilate with open label warfin
for the prevention of stroke and systemic embolism in patients with
n on-valvular atrial fibrillation: prospective, multi-centre, parallel-
group, non-inferiority trial (RE-LY STUDY)
Protocol: 1160.26
March 2006-September 2009
Open enrollment
Actual Enrollment: 9

Principal Investigator
Genetech Inc.
A phase IIIb multicenter, randomized, double-blind, placebo-
controlled study of Xolair® in subjects with moderate to severe
persistent asthma who are inadequately controlled with Advair
500/50 BID
Protocol No.: Q3662g
Expected Enrollment: 15
Actual Enrollment: 21

Principal Investigator
United BioSource Corp
Cognitive Debriefing Protocol for COPD Assessment Tool (CAT)

Protocol No.: A2-7304-CD
Expected Enrollment: 5
Actual Enrollment: 20

Principal Investigator
AstraZeneca

A 52-week, randomised, double-blind, parallel-group, multi-centre, Phase IIIB study comparing the long term safety of SYMBICORT® pMDI 160/4.5 µg x 2 actuations twice daily to budesonide IFA pMDI 160 µg x 2 actuations twice daily in adult and adolescent (≥ 12 years) African American subjects with asthma.

Protocol No.: D5896C00022
Open Enrollment:
Actual Enrollment: 9

Principal Investigator
AstraZeneca

A Phase IIIB, 12-Month, Double-blind, Double-dummy, Randomized, Parallel-group, Multicentre Exacerbation Study of SYMBICORT® pMDI 160/4.5µg x 2 Actuations Twice-daily and 80/4.5µg x 2 Actuations Twice-daily Compared to Formoterol TBH 4.5µg x 2 Inhalations Twice-daily in COPD Subjects

Protocol No.: D589CC00003
Expected Enrollment: 10
Actual Enrollment: 23

Principal Investigator
GlaxoSmithKline

Dose ranging study for GSK233705B delivered once daily in subjects with COPD (AC2110664)

Protocol No.: AC2110664
Expected Enrollment: 20
Actual Enrollment: 12

Principal Investigator
Dey Labs

A Randomized, Multiple-Dose, Double-Blind, Crossover Trial to Assess the Systemic Exposure of Fluticasone Propionate (FP)/Formoterol Fumarate (FF) Fixed-Dose Combination Compared to FP and FF Monocomponents, and a 7-Day Open-Label Extension in subjects with Chronic Obstructive Pulmonary Disease (COPD).

Protocol No.: 191-087
Expected Enrollment: 6
Actual Enrollment: 12

Principal Investigator
GlaxoSmithKline
A Multicenter, Randomized, Double-Blind, Placebo-Controlled,
Parallel Group, 4 -week Study to Evaluate the Safety, Tolerability,
Pharmacodynamics and Pharmacokinetics of Repeat Inhaled Doses
of the Combination for GSK233705 and GW642444 Administered
Once-Daily in Subjects with COPD
Protocol No.: DB1111581
Expected Enrollment: 10
Actual Enrollment: 13

Principal Investigator
Boehringer Ingelheim
A randomized, double-blind, placebo-controlled two-year trial to
examine the changes in Exercise Endurance and COPD Patients
Treated with Tiotropium (Spiriva® HandiHaler®) 18µg once daily
(EXACTT trial)
Protocol No.: 205.368
Open Enrollment
Actual Enrollment: 7

Principal Investigator
GlaxoSmithKline
A Randomized, Double-Blind, Double-Dummy, Parallel Group
12-Week Comparison of the Efficacy and Safety of Fluticasone
Propionate/Salmeterol Hydrofluoroalkane 134a Metered-Dose-
Inhaler 230/42 mcg twice-daily with Fluticasone
Propionate/Salmeterol DISKUS 250/50 mcg twice-daily in
Subjects with COPD
Protocol No.: ADC111117
Expected Enrollment: 20
Actual Enrollment: 22

Principal Investigator
Boehringer Ingelheim
A Randomised, Double-Blind, Parallel-Group Study to Assess the
Efficacy and Safety of 4 Weeks of Once Daily Treatment of 3
Doses of orally Inhaled B₂ 1744 CL, each in fixed dose
Combination with 5µg Tiotropium Bromide (Delivered by the
Respimat® Inhaler) Compared with 5 µg Tiotropium Bromide
Monoproduct (Delivered by the Respimat® Inhaler) in Patients
with COPD
Protocol No.: 1237.4
Expected Enrollment: 12
Actual Enrollment: 16

Principal Investigator
GlaxoSmithKline
A 52-week, Randomized, Double-Blind, Parallel-Group Study of
Fluticasone Propionate/Salmeterol DISKUS Combination Product
(FSC) 250/50 mcg BID and Fluticasone Propionate (FP) DISKUS
250 mcg BID in Treatment of Subjects with Asthma
Protocol No.: ADA109055
Expected Enrollment: 6
Actual Enrollment: 7

Principal Investigator
GlaxoSmithKline
An Evaluation of Lung Function and Symptoms in Patients with
Chronic Obstructive Pulmonary Disease (COPD) on Long-Acting
Bronchodilator Monotherapy
Protocol No.: ADC111891
Expected Enrollment: 25
Actual Enrollment: 26

Principal Investigator
United BioSource Corp
Prospective Study to Evaluate the Reliability and Validity of the
Shortness of Breath with Daily Activities Questionnaire
Protocol No.: A2-4398-003
Expected Enrollment: 12
Actual Enrollment: 28

Principal Investigator
Boehringer Ingelheim
ATROVENT® HFA open-label Actuation Indicator evaluation
and handling study in adults with chronic obstructive pulmonary
disease (COPD)
Protocol No.: 244.2507
Expected Enrollment: 20
Actual Enrollment: 20

Principal Investigator
Pfizer Inc.
Gastrointestinal (GI) Randomized event and safety open-label
NSAID study (GI reasons): A randomized, open-label, blinded-
endpoint, parallel-group trial of GI safety of celecoxib compared
with non-selective nonsteroidal anti-inflammatory drugs (NSAIDs)
in osteoarthritis patients
Protocol No.: A3191331
Expected Enrollment: 5

Actual Enrollment: 3

Principal Investigator

GlaxoSmithKline

A Randomized, Double-Blind, Parallel-Group, 24-Week Study to Evaluate the Efficacy and Safety of ADVAIR DISKUS (Fluticasone Propionate/Salmeterol Combination Product 250/50mcg Inhalation Powder) BID Plus Spiriva HandiHaler (Tiotropium Bromide Inhalation Powder 18mcg) QD Versus Spiriva QD Plus Placebo DISKUS BID in Subjects with Chronic Obstructive Pulmonary Disease (COPD)

Protocol No.: ADC111114

Expected Enrollment: 20

Actual Enrollment: 24

Principal Investigator

Novartis Pharmaceuticals

12 week treatment, multi-center, randomized, parallel group, double blind, double dummy study to assess the superiority of indacaterol (150µg o.d.) via a SDDPI in patients with moderate to severe COP, using salmeterol (50µg b.i.d.) as an active comparator delivered via a DISKUS inhaler

Protocol: CQAB146B 2349

Expected Enrollment: 5

Actual Enrollment: 20

Sub-Investigator

Cephaelon, Inc.

A Randomized, Double-Blind, Active Controlled Crossover Study to Evaluate the Efficacy and Safety of Fentanyl Buccal Tablets Compared With Immediate Release Oxycodone for the Management of Breakthrough Pain in Opioid Tolerant Patients with Chronic Pain, Followed by a 12 Week Open Label Extension to Evaluate the Impact of Fentanyl Buccal Tablets on Patients Outcomes.

Protocol: C25608/3056/BP/MN

Expected Enrollment: 10

Actual Enrollment: 1

Principal Investigator

Mpex Pharmaceuticals

A Phase 2, Multi-Center, Randomized, Double-Blind, Placebo-Controlled Study to Evaluate the Safety, Tolerability and Efficacy of MP-376 Inhalation Administered for 5 days every 28 days to prevent acute exacerbations in high risk COPD patients.

Protocol: MPEX 302

Expected Enrollment: Open
Actual Enrollment: 34

Principal Investigator
Forest Research Institute
Efficacy and safety of acclidinium bromide at three dose levels (200 µg twice daily, 400µg twice daily, 200 µg once daily) vs. placebo when administered to patients with moderate to severe chronic obstructive pulmonary disease (COPD)
Protocol: LAS-MD-33
Expected Enrollment: 8
Actual Enrollment: 13

Principal Investigator
GlaxoSmithKline
A Randomized, Double-Blind, Placebo-Controlled, 3-Way Cross-Over Study to Evaluate the Safety, Efficacy, and Pharmacokinetics of GSK573719 administered once- and twice-daily in Subjects with COPD
Protocol: GSK-AC4113073
Expected Enrollment: 30
Actual Enrollment: 36

Principal Investigator
GlaxoSmithKline
A Randomized, Double-Blind, Parallel-Group, 16-Week Study to Evaluate the Effect of Fluticasone Propionate/Salmeterol DISKUS 250/50 mcg BID and Placebo on Arterial Stiffness in Subjects with Chronic Obstructive Pulmonary Disease (COPD)
Protocol: GSK-ADC112355
Expected Enrollment: 20
Actual Enrollment: 20

Principal Investigator
GlaxoSmithKline
A randomized, double-blind, parallel-group, placebo-controlled study to evaluate the efficacy and safety of GSK573719 delivered once-daily over 28 days in subjects with COPD.
Protocol: AC4113589
Expected Enrollment: 30
Actual Enrollment: 36

Principal Investigator
GlaxoSmithKline
Validation of a New Shortness of Breath with Daily Activities
Questionnaire in patients with Chronic Obstructive Pulmonary
Disease
Protocol: ASQ112989
Expected Enrollment: 40
Actual Enrollment: 20

Principal Investigator
Boehringer Ingelheim
Randomised, double-blind, double-dummy, placebo-controlled, 4-
way cross-over study to determine the 24-hour FEV1-time profiles
of orally inhaled BI 1744 CL (5µg [2 actuations of 2.5µg] and
10µg [2 actuations of 5µg]) administered once daily with the
Respimat® Inhaler, and orally inhale Foradil® (12µg),
administered twice daily with the Acrolizer® Inhaler, after 6
weeks of treatment in patients with Chronic Obstructive
Pulmonary Disease (COPD)
Protocol: 1222.24
Expected Enrollment: Open
Actual Enrollment: 25

Principal Investigator
Schering Plough
A Randomized Placebo-Controlled Efficacy and Safety Study of 1-
Year Treatment Duration With High-and Medium Dose Inhaled
Mometasone Furoate/Formoterol Combination Formulation
Compared With Formoterol and High-Dose Inhaled Mometasone
Furoate Monotherapy in Subjects With Moderate to Severe COPD
Protocol: P04229
Expected Enrollment: 5
Actual Enrollment: 11

Principal Investigator
GlaxoSmithKline
A three-way incomplete block crossover study to investigate the
24-hour pulmonary function of three dosage strengths of
Fluticasone Furoate/GW62444 inhalation powder vs. placebo in
subjects with COPD
Protocol: HZC110946
Expected Enrollment: 12
Actual Enrollment: 12

Principal Investigator

AstraZeneca

A 12-week randomised, double-blind, placebo-controlled, parallel group, multinational, phase IIb dose range finding study to evaluate the efficacy and safety of AZD9668 administered orally at 3 dose levels to patients with Chronic Obstructive Pulmonary Disease (COPD) on treatment with tiotropium

Protocol: D0520C00012

Expected Enrollment: 5

Actual Enrollment: 5

Principal Investigator

Novartis Pharmaceutical

A randomized, double-blind, double-dummy, placebo-controlled, parallel-group study to assess the efficacy and safety of different doses of indacaterol in patients with moderate to severe chronic obstructive pulmonary disease using salmeterol as an active control

Protocol: CQAB149B2356

Expected Enrollment: 10

Actual Enrollment: 16

Principal Investigator

Novartis Pharmaceutical

A 12-week treatment, multi-center, randomized, double-blind, placebo-controlled, parallel-group study to assess the efficacy and safety of once daily indacaterol in patients with chronic obstructive pulmonary disease.

Protocol: CQAB149B2355

Expected Enrollment: 6

Actual Enrollment: 9

Principal Investigator

Forest Research Institute

Efficacy and Safety Study of Two Fixed-Dose Combinations of Aclidinium Bromide With Formoterol Fumarate Compared With Aclidinium Bromide, Formoterol Fumarate, and Placebo All Administered Twice Daily to Patients With Stable, Moderate to Severe Chronic Obstructive Pulmonary Disease (COPD)

Protocol: LAC-MD-27

Expected Enrollment: 6

Actual Enrollment: 11

Principal Investigator

GlaxoSmithKline

A 24-Week Study to Evaluate the Efficacy and Safety of Fluticasone Furoate (FF)/GW62444 Inhalation Powder and the

Individual Components Delivered Once Daily (AM) Via a Novel
Dry Powder Inhaler Compared with Placebo in Subjects with
Chronic Obstructive Pulmonary Disease (COPD)
Protocol: HZC112206
Expected Enrollment: 38
Actual Enrollment: 25

Principal Investigator
Forest Research Institute
A Long-term, Randomized, Double-Blind, Extension Study of the
Safety, Tolerability and Efficacy of Aclidinium Bromide at Two
Dose Levels When Administered to Patients with Moderate to
Severe Chronic Obstructive Pulmonary Disease
Protocol: LAS-MD-36
Expected Enrollment: Roll over from LAS-MD-33
Actual Enrollment: 7

EMPLOYER/INSURER/DEFENDANT.

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Ilona Kevorkian
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Deposition of Nikolay Gul

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EXHIBITS

(None Marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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ROA 837

Deposition of Nikolay Gul

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to all
5 applicable rules of the South Carolina Workers'
6 Compensation Commission;
7 2. That the deponent reserves the right to read and sign
8 the deposition transcript.

9 *****

10 ILONA KEVORKIAN, being duly sworn to interpret accurately
11 the testimony of NIKOLAY GUL; and
12 NIKOLAY GUL, being duly sworn to tell the truth, the whole
13 truth, and nothing but the truth of his own knowledge
14 concerning the matter herein, testified as follows:

15 *****

16 EXAMINATION BY MR. HORNER:

17 Q. Mr. Gul, my name is Bob Horner. I am here to take your
18 deposition today. I know that you have already been
19 deposed one time in the past and testified in a
20 hearing, and I don't intend to go through all of that
21 again, though I may touch on it for some further
22 clarification. If you need a break for any reason, let
23 me know.

24 A. Okay.

25 Q. But if we take a break, anything you say to your

1 attorney I'm allowed to ask you about.

2 A. I may need a break for only medication. That's it.

3 Q. And I don't think we're going to be here very long. By
4 way of background, what age did you come to the United
5 States?

6 A. In 2003. I was 28 years.

7 Q. What did you do to earn a living in Russia prior to
8 moving?

9 A. You mean where I was working?

10 Q. Yes.

11 A. I was working as a -- interpreter requests
12 clarification. I worked as a general laborer with the
13 telephone company like AT&T. That was my first job.

14 Q. Was that the job you had immediately prior to moving
15 here?

16 A. No.

17 Q. What was that job?

18 A. I was working somewhat like an electrician. I was
19 working for a big gas company. No, not gas, but it was
20 a company that produced heat, but it was not gas.

21 Q. Did either of those jobs require you to work around
22 acids?

23 A. No, there was not a chemical there.

24 Q. Did either of those jobs require you to work around
25 dust?

Deposition of Nikolay Gul

1 A. No.

2 Q. Were they indoor or outdoor jobs?

3 A. Inside job.

4 Q. At some point in your medical records there is
5 reference to the fact you were taking medications and
6 those medications were written in Russian. Do you
7 recall that?

8 A. You mean when first when I had blood pressure?

9 Q. Yes.

10 A. I took tablets similar to ibuprofen that you could buy
11 in any store here without a prescription, that you
12 would purchase anywhere like you would purchase in a
13 store similar to ibuprofen.

14 Q. Was the label on the pill written in Russian?

15 A. Yes, Russian.

16 Q. So I understand, that was for high blood pressure that
17 you were suffering from?

18 A. I didn't know I had high blood pressure till I spoke
19 with the doctor. I took them for headaches.

20 Q. Do you recall when you first started taking them?

21 A. I don't remember, but when I started getting sick.
22 Maybe around 2008. I didn't use them a lot. They
23 didn't help me.

24 Q. Where did you get them since the label was written in
25 Russian?

1 A. I don't remember. Either somebody from Atlanta brought
2 them for me or one of my friends gave them to me from
3 the Russian pharmacy. We don't have one here.

4 Q. Did he say Atlanta?

5 A. Yes. Interpreter clarified.

6 Q. It's my understanding that you first started having
7 breathing problems in 2007?

8 A. About.

9 Q. And the first lung doctor you ever saw for treatment
10 was Dr. Feldman?

11 A. Yes.

12 Q. From 2007 until 2009 you saw several physicians for
13 various problems?

14 A. Yes.

15 Q. Do you recall ever telling any of them that you were
16 having difficulty breathing?

17 A. Yes.

18 Q. Which doctors do you recall telling that to?

19 A. I don't remember, but it was the first doctor, my
20 family doctor. I believe his name was Dr. Nowatka. I
21 don't remember the name.

22 Q. Have you ever had another family doctor prior to Dr.
23 Nowatka?

24 A. No. I was not sick. I didn't need one.

25 Q. In 2004 when you started working at Kohler were you

Deposition of Nikolay Gul

- 1 married?
- 2 A. Yes.
- 3 Q. What was your wife's name?
- 4 A. Alla.
- 5 Q. Are you still married to Alla?
- 6 A. Yes.
- 7 Q. Do you have any children with Alla?
- 8 A. Absolutely.
- 9 Q. How many?
- 10 A. Right now ten.
- 11 Q. Is she the mother of all ten children?
- 12 A. Absolutely.
- 13 Q. Have you been married in the past?
- 14 A. Never.
- 15 Q. What is the age range? What's the youngest and oldest
- 16 of your children?
- 17 A. One and a half years the youngest, and 18 years the
- 18 oldest, just turned 18. Interpreter requests
- 19 clarification. Two months ago 18, just turned 18 two
- 20 months ago.
- 21 Q. In 2004 did your children have a doctor that you would
- 22 take them to if they got sick?
- 23 A. Yes, the children's family doctor.
- 24 Q. And who would that be?
- 25 A. Angela McGee. I don't remember the date. Maybe it was

1 in 2005, maybe 2004, about.

2 Q. That's fine. You previously testified that when you
3 first started working at Kohler you worked on the
4 number two cover machine.

5 A. Yes.

6 Q. Is that in an area called the big beam area?

7 A. Interpreter requests rephrasing. Big beam?

8 Q. I think it's like a generic term.

9 MR. DANTIN:

10 He will know what it means.

11 EXAMINATION RESUMED BY MR. HORNER:

12 A. I'm sorry. Interpreter requests that you repeat the
13 question.

14 Q. Was the number two cover machine in the area called the
15 big beam area?

16 A. Yes.

17 Q. Now, you then went to work on four small cover
18 machines?

19 A. Yes.

20 Q. Was that in the big beam area, too, or in a different
21 area?

22 A. It was located in a pressure cast department.

23 Q. In what department was cover machine number five
24 located?

25 A. In the same.

- 1 Q. And then in what department was the kitchen sink
2 located in?
- 3 A. Same area. They're neighbors.
- 4 Q. Was your supervisor the same throughout all four of
5 your jobs?
- 6 A. The supervisor was the same, but foreman changed.
- 7 Q. Who was the supervisor?
- 8 A. To the best of my recollection, Mike Donald.
- 9 Q. What was -- it's either Randy or Rodney Horn. What was
10 his job title?
- 11 A. He was a foreman. I think he was a foreman.
- 12 Q. At which of the four jobs was he your foreman?
- 13 A. Which position I was at?
- 14 Q. Yes.
- 15 A. I was a machine operator.
- 16 Q. You worked at four different stations while you were at
17 Kohler. Which one of the four stations was he your
18 foreman, or was he always your foreman?
- 19 A. Charlie entirely, but not Rodney on machine number
20 four. Not on the fifth or not on the four small ones.
- 21 Q. So Rodney would be number two and kitchen sink?
- 22 A. No. No, when I worked on the second machine I worked
23 overnight. There was a different foreman.
- 24 Q. Maybe I wrote it down wrong. Was Rodney on the four
25 machines and number five?

1 A. Yes.

2 Q. Okay. I wrote that down wrong.

3 MR. DANTIN:

4 I did, too.

5 EXAMINATION RESUMED BY MR. HORNER:

6 Q. You previously indicated that you had asked for a
7 respirator.

8 A. Yes.

9 Q. Was anyone else who did your same job wearing a
10 respirator at work?

11 A. I don't know. I didn't see it.

12 Q. And it's my understanding that the mask you bought was
13 not effective.

14 A. Possibly not.

15 Q. How many times do you recall wearing that mask at work?

16 A. It was a long time ago. I don't remember. Maybe
17 several times.

18 Q. And this is the mask you bought at Lowe's?

19 A. Yes.

20 Q. Do you remember at which of the four stations you were
21 working when you bought the mask?

22 A. Interpreter requests that you restate the question.

23 Q. You worked at four different machines. At which
24 machine were you working when you bought the mask?

25 A. Machine number five and the small machines.

1 Q. was there any ventilation around the small machines and
2 machine number five?

3 A. what do you mean ventilation?

4 Q. A hood fan.

5 A. I didn't see it. There were pipes hanging over. I
6 don't know what they were for.

7 Q. were there regular fans around to ventilate air?

8 A. Most laborers took their own fans.

9 Q. Did you take your own fan?

10 A. Sometimes I did; sometimes I didn't.

11 Q. And it's my understanding from your previous testimony
12 that you never had a conversation with Mike Tollison
13 regarding the fumes at the plant?

14 A. No, I didn't.

15 Q. You previously testified that you were afraid to go to
16 the medical department because you might get fired.

17 A. Yes.

18 Q. Do you know the names of anyone at the plant who got
19 fired for going to the medical department?

20 A. I don't know.

21 Q. would you get annual evaluations at Kohler?

22 A. Can you restate annual evaluation?

23 Q. Review.

24 A. I don't remember. No. They brought some kind of
25 safety papers, a foreman would bring and say, just sign

1 here, I'd sign, and I did.

2 Q. You don't recall them ever telling you that you were
3 doing a good job and that they liked having you around
4 and that they thought you were a good worker?

5 A. Yeah. Can I explain?

6 Q. Yeah.

7 A. Yeah, I worked there for five years and almost never I
8 was late nor did I have any points. I don't want to
9 brag, but I wanted to bring the point. I was really
10 hurt because of the way they treated me after this. I
11 was called into the office and they -- interpreter
12 requests clarification. I was acknowledged as one of
13 the best employees as far as the quality.

14 Q. Who acknowledged that?

15 A. Mike Donald.

16 Q. If you were afraid of getting fired by going to the
17 medical department, is there a reason you didn't go see
18 a doctor outside of the medical department about the
19 fumes?

20 A. I did. When I started feeling sick, that's when I
21 started going.

22 Q. Would that be Dr. Nowatka?

23 A. Yes.

24 Q. Did you tell Dr. Nowatka that you were working around
25 fumes that you thought were making you sick?

1 A. I don't remember. I did remember telling her I was --
2 I couldn't breathe, I had problem with breathing.

3 Q. Do you recall ever telling him that you thought it was
4 related to your job?

5 A. I don't remember right now. It was a long time ago.

6 Q. On the four machines, what product was made by those
7 machines?

8 A. Which product I did on the machine?

9 Q. Yeah, on the four small machines.

10 A. Cover for the toilet.

11 Q. And when you would use the acetic acid, would you spray
12 the mold or would you spray the cover when it came out
13 of the mold?

14 A. Interpreter requests clarification when you state spray
15 the mold or spray the cover.

16 Q. Spray the machine or spray the cover, the toilet lid.

17 A. On the form, on the mold of the machine.

18 Q. And would you have to spray the machine after every
19 batch of toilet lids was made?

20 A. Prior to cycle, prior to each cycle.

21 Q. And how long would each cycle last on the four small
22 machines?

23 A. For the production?

24 Q. Yes.

25 A. It depends. Anywhere from 13, sometimes 15, even 17 or

- 1 19 minutes, differently.
- 2 Q. And how many molds would you spray each cycle?
- 3 A. The same amount of forms there was in the machine.
- 4 Q. And what number is that, if you remember?
- 5 A. I don't understand the question.
- 6 Q. Is it just one mold that you sprayed that had multiple
- 7 parts?
- 8 A. Yes.
- 9 Q. You previously testified that it would take between one
- 10 and two minutes to spray the machine.
- 11 A. Yes, about.
- 12 Q. And the chemical you would spray on the mold would be
- 13 what came out of the blue barrel?
- 14 A. Drum, yes.
- 15 Q. And you would manually pump the acetic acid from the
- 16 drum into your sprayer?
- 17 A. Yes.
- 18 Q. And I understand there were two sizes of sprayer, small
- 19 and half-gallon?
- 20 A. Yes.
- 21 Q. The half-gallon sprayer, was it like a bug sprayer that
- 22 had a pump on top and a wand?
- 23 A. No. No, the half-gallon was the one that you fill it
- 24 up and you spray it.
- 25 Q. So did it have a trigger on it?

1 A. Yeah, it was a button. And the small one I had to do
2 manually.

3 Q. When you would push the button on the large one where
4 would the acetic acid come from?

5 A. From the sprayer, from the bottle.

6 Q. But was the nozzle in close proximity to the button
7 that you would push?

8 A. It was in my hand. Yes, it was together.

9 Q. Now, on the number five machine, how long did the
10 manufacturing process last on the number five machine?

11 A. What do you mean by process?

12 Q. To create the product, the cycle.

13 A. The foreman was regulating the cycle, but it was
14 anywhere from 15 to 20, about.

15 Q. And would it take you between one and two minutes to
16 spray that machine, as well?

17 A. Yes.

18 Q. Now on the kitchen sink machine, were you required to
19 spray that machine at all?

20 A. No.

21 Q. But I understand your testimony was that you helped out
22 other employees in spraying their machine?

23 A. Yes.

24 Q. Which machine would you go help out on?

25 A. Number two.

1 Q. Is the number two machine normally operated by one
2 person or two people?

3 A. It depends. One to two, but mostly two.

4 Q. When you would help spray the number two machine were
5 you filling in for someone who was out?

6 A. The person I was supposed to be helping, I was
7 substituting for that person. He was doing another
8 position. And I would do that position, and then we
9 would switch.

10 Q. What position would he be doing?

11 A. On the same machine that two people would be working, I
12 would be removing the product and he would be washing
13 it. It depends. Sometimes we would replace each
14 other, but he would remove -- I would remove and he
15 would wash.

16 Q. And that's the number two?

17 A. Yes. That's why they would ask me to help out
18 frequently, because we really needed each other. He
19 would need me and I would need him.

20 Q. Were you able to help him out and still do your job on
21 the kitchen sink machine?

22 A. Yes, because this machine was experimental and we had a
23 lot of time.

24 Q. What was the cycle on the kitchen sink machine?

25 A. I don't remember. Maybe 30 minutes, about. I don't

1 remember.

2 Q. When you say it was experimental, does that mean it
3 wasn't always operational?

4 A. Always, but, from what I understand, it was a Italian
5 machine. They wanted to put several of them, but they
6 were experimenting.

7 Q. Were you the first person to ever work on the Italian
8 machine?

9 A. One of the few.

10 Q. When you worked on the Italian machine were you
11 instructed by your boss to help on number two or did
12 you volunteer to help on number two?

13 A. The foreman told me to go and help, and he also told
14 the other person to help him.

15 Q. Did the person on number two ever come and help you on
16 the Italian machine?

17 A. Yeah. They were very large. They had a big frame to
18 turn them over.

19 Q. So the number two employee would help you and you would
20 help the number two employee?

21 A. Yes.

22 Q. Who was your supervisor that instructed you to do that?

23 A. When I was already in kitchen sink, his name was Dale.
24 The foreman was Dale. I don't know who told him. He
25 never told me.

- 1 Q. After you were fired from Kohler did you seek
2 unemployment?
- 3 A. Yes.
- 4 Q. And did you have to appeal the initial decision?
- 5 A. Yes.
- 6 Q. And were you successful in getting unemployment?
- 7 A. Yes.
- 8 Q. How long did you get unemployment benefit?
- 9 A. As far as I remember, till September '11.
10 September of 2011?
- 11 A. 2011. September 2011.
- 12 Q. What have you done for income since September of 2011?
- 13 A. My wife was working.
- 14 Q. Does she still work?
- 15 A. She was working; not at this time.
- 16 Q. Where was she working in 2011?
- 17 A. She was cleaning.
- 18 Q. Was she cleaning for a company?
- 19 A. Yes.
- 20 Q. What was the name of the company?
- 21 A. I don't remember. She was working on second shift at
22 the hospital. I don't remember.
- 23 Q. He doesn't remember the name of the hospital?
- 24 A. No, I don't remember.
- 25 Q. When did she stop working?

- 1 A. I don't remember. Maybe before Christmas in 2011.
- 2 Q. What have you done for income since then?
- 3 A. I haven't been.
- 4 Q. How do you pay your bills?
- 5 A. I have government help with my mortgage, South Carolina
- 6 House Corporation. I don't remember the name exactly.
- 7 Q. Are you an American citizen?
- 8 A. No.
- 9 Q. Have you attempted to apply for some form of disability
- 10 through the government?
- 11 A. No. I just applied for workman's comp. I was hurt at
- 12 work.
- 13 Q. Do you maintain a bank account?
- 14 A. No. I had, but closed.
- 15 Q. Where was it?
- 16 A. Bank of America.
- 17 Q. When you were drawing unemployment were you applying
- 18 for work anywhere?
- 19 A. I tried to look. I was filling out.
- 20 Q. What kind of jobs would you fill out applications for?
- 21 A. I don't remember. So many. It was every position.
- 22 Q. Were you filling out applications for manufacturing
- 23 jobs?
- 24 A. Different ones.
- 25 Q. You can't give me the name of any place that you filled

1 out an application for?

2 A. I don't remember. Right now I can't remember.

3 Q. As we sit here today do you feel like you can work?

4 A. I don't think so.

5 Q. What prevents you from working?

6 A. My asthma.

7 Q. Can you be more specific with what it is about your
8 asthma that prevents you?

9 A. Weakness, pain in the chest, shortness of breath, and
10 dizziness.

11 Q. How often do you have these four symptoms?

12 A. Just like in a chronic stage of the disease.

13 Q. Do you have all four symptoms every day?

14 A. Yes.

15 Q. Do you have all four symptoms all day?

16 A. What do you mean all day?

17 Q. Does it come and go?

18 A. Some minutes easier, some minutes harder. Sometimes.
19 Depends.

20 Q. Is there a percentage of time, 50 percent, 70 percent,
21 that you have the symptoms?

22 A. I don't know. I never thought about it. It's often.
23 Very seldomly that I'm good.

24 Q. Seldom that he is good?

25 A. Yeah, I wouldn't feel good.

1 Q. Is there anything you do on a regular basis that brings
2 these symptoms on?

3 A. No. Well, like, for example, when I left the bus stop
4 as I was coming here my symptoms enhanced.

5 Q. What do you feel enhanced the symptoms?

6 A. Tightness in the chest, shortness of breath as I'm
7 doing any activity.

8 Q. So what activity was it that caused that increase?

9 A. Walking.

10 Q. Is there a certain distance you can walk before the
11 symptoms get worse?

12 A. No, I can't say, but sometimes I would be sleeping and
13 I would not feel well, and often.

14 Q. What medications do you currently take?

15 A. Advair, inhaler, Lisinopril, and Prednisone.

16 Q. How often do you take the Advair?

17 A. Twice a day.

18 Q. Is your sole source of that drug samples from Dr.
19 Feldman?

20 A. Yes.

21 Q. How often do you go and get the samples from him?

22 A. As soon as I finish I go.

23 Q. How many weeks' worth of samples does he give you?

24 A. He doesn't always have a lot of them. A week, two
25 weeks. Like I came yesterday, he gave me one, and I

1 have to go again in a week.

2 Q. How long have you been getting the samples from him?

3 A. From day one.

4 Q. Have you ever gone a period of time without taking the
5 Advair?

6 A. I don't remember. Maybe not. I'm always on a
7 medication. The doses were different. Sometimes he
8 would increase or decrease the doses.

9 Q. How often do you use the inhaler?

10 A. Three to five times a day, about.

11 Q. How long does one inhaler last?

12 A. Four or five hours.

13 Q. How long does each device last before it has to be
14 replaced?

15 A. If it's a big size, about a month. It will last a
16 month, when I got it free from Columbia.

17 Q. Where do you get the inhaler refills now?

18 A. I ask my doctor.

19 Q. Do you get a prescription or does he give you samples?

20 A. He gave me a prescription, but it's so expensive and I
21 don't have insurance, so he gave me free samples.

22 Q. And would this doctor be Dr. Feldman?

23 A. Yes.

24 Q. How often do you go to his office and get inhaler
25 samples?

- 1 A. I don't remember exactly. Maybe twice a month, three
2 weeks, depending upon how many packs he'll give me. It
3 depends on what he has on hand.
- 4 Q. Is the Lisinopril for your asthma?
- 5 A. No.
- 6 Q. What is it for?
- 7 A. High blood pressure.
- 8 Q. Where do you get that medication?
- 9 A. At the store.
- 10 Q. Through a prescription?
- 11 A. Yes.
- 12 Q. Where do you get that prescription filled?
- 13 A. Dr. Feldman, from the pharmacy.
- 14 Q. The name of the pharmacy?
- 15 A. Walmart, I think.
- 16 Q. And the Prednisone is for your asthma?
- 17 A. Yes.
- 18 Q. Since 2013 how many times have you had to take
19 Prednisone?
- 20 A. I only take it as instructed. When I come to a
21 doctor's appointment if I don't feel well the doctor
22 will give me packets and instruct me on how many to
23 take and for how long, the number of tablets and for
24 how long.
- 25 Q. When was the last time you took Prednisone?

1 A. I don't remember exactly. I went yesterday and they
2 didn't have it, so they gave me a -- the doctor didn't
3 have it, so he gave me a prescription to Walmart
4 because it's hard. It's difficult for me.

5 Q. What Walmart do you go to?

6 A. Boiling Springs Walmart.

7 Q. The Advair is a pill. Correct?

8 A. No.

9 Q. What is Advair?

10 A. It's a disk.

11 Q. How do you take it?

12 A. Interpreter requests clarification. I open it. I
13 exhale. I place it against my mouth. I inhale it
14 completely and let it go.

15 Q. And that's twice a day?

16 A. Yes.

17 Q. Have you taken any other medications in the last year
18 other than these four?

19 A. No, only what the doctor gives me.

20 Q. Dr. Feldman indicated he also runs research trials on
21 new drugs.

22 A. Yeah. Yeah, I remember he did. Yeah, I just
23 remembered he did IDs last year.

24 Q. On you?

25 A. Yeah, they gave me new medication, new ID, and they did

1 different tests.

2 Q. Was it just one time or was it several times?

3 A. I don't remember. Maybe even like as much as 20 times.

4 I don't remember. I had a series of appointments.

5 Q. And you volunteered for that?

6 A. No. He wanted to increase my -- he wanted to make my
7 health better.

8 Q. And the tests you took afterwards, were they breathing
9 type tests?

10 A. Yes.

11 Q. Were the tests in his office or at a different
12 location?

13 A. It's Pharmacy Research. It's beside his office. I
14 think it's South Carolina Pharmacy. I don't remember
15 for sure.

16 Q. Do you remember the number of weeks or months that
17 trial took place?

18 A. I had many appointments, a long time, maybe three
19 months, four. I don't remember exactly.

20 Q. Is that the only trial you remember being a part of?

21 A. Yes.

22 Q. Based on the records I have, you last saw Dr. Feldman's
23 office August 28?

24 A. No. I've been three weeks ago, four weeks.

25 Q. For a full examination?

1 A. No. It was hard for me -- interpreter requests
2 clarification. I didn't feel well. I called. My
3 doctor was not there, but there was another doctor.
4 And I've been there. I've been to the office, but it
5 was past -- it was just -- it was past October. It was
6 end of September. I don't remember.

7 Q. And I'm just asking because I don't have an office
8 note. That's all.

9 A. And I was there yesterday.

10 Q. And when I say at his office, I don't mean for refills
11 but for examination.

12 A. Okay.

13 Q. Does Dr. Feldman or his office continue to periodically
14 give you the breathing tests?

15 A. Yeah, when he needs to. I'm not a doctor. I don't
16 know when he needs them.

17 Q. It looks like you had one in August. Do you remember
18 that?

19 A. Yeah, I remember, but I don't -- I go so often I don't
20 remember.

21 Q. Are you ever told the results of those tests?

22 A. Yeah, sometimes they do. Like in August when they did
23 the test a woman -- I'm so used to them. I don't know.
24 A woman said something.

25 Q. So you don't remember what she told you about the

1 results?

2 A. I didn't talk to her, no. I don't have good English,
3 so I don't try to.

4 Q. When you go to see someone at Dr. Feldman's office
5 who's not Russian, do you take someone with you to
6 interpret?

7 A. No, they have Russian-speaking nurses there, and
8 they'll come in. Oh, one nurse there.

9 Q. Who is Melvin Medlock?

10 A. I don't know.

11 Q. Do you recall the last time you had to be hospitalized?

12 A. A couple of years ago.

13 Q. So you haven't been hospitalized in 2013?

14 A. No.

15 Q. Are your symptoms in 2013 better or worse than they
16 were in 2012?

17 A. I don't know. To me it's the same.

18 Q. What about in 2013 compared to 2011?

19 A. The same probably.

20 Q. And then what about now and 2010?

21 A. Maybe there's a little difference.

22 Q. Better or worse?

23 A. I can say it's worse.

24 Q. Do you feel like the medication helps you?

25 A. Yes.

1 Q. Is there one medication that you think helps more than
2 the other?

3 A. What I'm taking, that's what's helping me.

4 Q. Are you paying Dr. Feldman for his services?

5 A. I've never paid.

6 Q. Who is your children's current pediatrician?

7 A. Family doctor.

8 Q. Yeah. Who?

9 A. I gave you the name.

10 Q. It's the same one?

11 A. Yes.

12 Q. What was the name again?

13 A. Angela McGee.

14 Q. When is the last time you remember applying for a job?

15 A. I don't remember.

16 Q. Was it 2013?

17 A. No.

18 Q. Do you think it was 2012?

19 A. No. I don't remember. When I had unemployment, that's
20 when I was looking.

21 Q. Has Dr. Feldman told you or given you an impairment
22 rating, an impairment percentage?

23 A. No, I didn't talk to him about that.

24 Q. Have you ever talked to Dr. Feldman about whether you
25 can go back to work or not?

1 A. I don't remember.

2 Q. Have you ever talked to Dr. Feldman about whether your
3 asthma may get better or worse in the future?

4 A. Initially he told me, unfortunately, you have a chronic
5 stage, you have a chronic asthma and it's not going to
6 get any better.

7 Q. Are there certain smells that cause you to have an
8 asthma attack?

9 A. It depends. It varies.

10 Q. Are there any particular smells that you know of that
11 will give you an asthma attack?

12 A. Sometimes it will happen without any smells. The
13 temperature of the air, change of weather.

14 Q. I understand that. I was just wondering if you had
15 identified certain inhalants that trigger.

16 A. Sometimes it can happen out of the blue. Sometimes I
17 can be driving and then all of a sudden I have an
18 attack, and sometimes I could be sleeping.

19 Q. Do you recall the last time you have seen a
20 cardiologist?

21 A. I don't remember. It was a couple years ago.

22 Q. Other than Dr. Feldman have you currently seen any
23 doctor in 2013?

24 A. Prior to 2013?

25 Q. In 2013.

1 A. No. No, I don't think so.

2 Q. You previously saw Dr. Fogarty for an exam. Correct?

3 A. Yes.

4 Q. And your prior testimony said that exam was between two
5 and three hours.

6 A. Yes, in the office, yes.

7 Q. And then you saw Dr. Sahn in Charleston?

8 A. Yes.

9 Q. And how long was that exam?

10 A. With the physician?

11 Q. Right.

12 A. With Dr. Sahn?

13 Q. Yes.

14 A. Maybe 30 minutes.

15 Q. Were you examined by anybody else in Dr. Sahn's office
16 like a nurse?

17 A. No. Prior to the -- no, not in the office, but prior
18 to in different rooms.

19 Q. So to clarify, you were seen in a couple of different
20 rooms by people prior to seeing Dr. Sahn?

21 A. Yes.

22 Q. How long did the entire visit from beginning to end
23 last?

24 A. I don't remember. Maybe three to five hours. I don't
25 remember. I know we sat there for a long time waiting

1 for registration.

2 Q. Do you recall taking breathing tests at Dr. Fogarty's
3 office?

4 A. Yes.

5 Q. Were you aware that he thought you didn't give your
6 best effort?

7 A. I tried what I could. I tried. What he thought I
8 don't know.

9 Q. Did he indicate to you at that visit that he thought
10 you weren't giving your best effort?

11 A. I don't remember what he told me.

12 Q. Do you remember a breathing test in Dr. Sahn's office?

13 A. Yes.

14 Q. Do you recall Dr. Sahn's office thinking that you were
15 not giving your best effort?

16 A. I did what I could, but later -- I tried, but later I
17 thought that.

18 Q. Thought that they had thought that?

19 A. No. Then later that I read the records.

20 Q. So you have read Dr. Sahn's report?

21 A. Yes.

22 Q. Did you read Dr. Fogarty's report?

23 A. Some parts.

24 Q. Who would have interpreted those for you?

25 A. My son.

1 Q. The 18-year-old?

2 A. Yes.

3 Q. I think I'm almost done.

4 MR. DANTIN:

5 He's asking if he can go take his medicine.

6 MR. HORNER:

7 Yeah, that's fine.

8 (Off the Record; 11:39 -- 11:40 a.m.)

9 EXAMINATION RESUMED BY MR. HORNER:

10 Q. Aside from high blood pressure and asthma, do you
11 suffer from any other chronic problems today?

12 A. I don't know.

13 Q. Do you still have headaches frequently?

14 A. No. No. Dizzy when I have high blood pressure.

15 Q. When you worked at Kohler around the acid, did you have
16 any complaints or problems with your nose, your mouth,
17 or your eyes being irritated?

18 A. When I worked with the acid my eyes were really red,
19 and my body would itch. And if I had drops of acid I
20 had red spots that would itch.

21 Q. I know that you went to the medical department over a
22 big spill on your hand.

23 A. Yes.

24 Q. Did you ever go to the medical department for any of
25 the itching that you had?

1 A. No. I only -- I only went there when I had a big
2 swelling on my arm -- on my hand, excuse me, on my hand
3 and it was itching, and I only went on day number two.

4 Q. Did you ever go to a doctor about your eyes being
5 irritated?

6 A. No.

7 Q. And you don't recall any other irritation of your nose
8 or mouth?

9 A. Interpreter requests clarification. I had some mucous
10 that I had to spit, and it was very uncomfortable. It
11 was hard to breathe. And that was it.

12 Q. When do you remember the mucous becoming an issue?

13 A. About in 2008, 2009. It got worse and worse. And then
14 I had no choice but to go to the doctor, but if I could
15 I would continue to work.

16 Q. In 2007 when you felt like you were first getting
17 symptoms, was the mucous one of those symptoms?

18 A. Not just mucous. I had shortness of breath. I tried -
19 - and I tried to stick my face into a fan so I could
20 breathe.

21 Q. And that would be in 2007?

22 A. 2007, eight. 2008 for sure. I had it concretely in
23 2008.

24 Q. Can you be more specific as to whether it was early
25 2008 or late 2008?

Deposition of Nikolay Gul

1 A. I don't remember beginning, middle, end. It was not
2 once, but I don't remember honestly.

3 Q. I think that's all I have.

4 MR. DANTIN:

5 No questions.

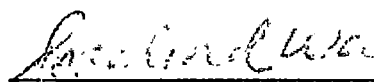
6 (There being no further questions, this deposition concluded
7 at 11:45 a.m.)
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CERTIFICATE OF REPORTER

I, Rosalind Poole Walters, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 35 pages represents a true and accurate transcript of the deposition of NIKOLAY GUL, which was taken by me on the 25th day of October, 2013.

That the witness was first duly sworn to tell the Truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.



Rosalind Poole Walters, CVR-M
Notary Public for S.C.

Commission expires: 12-18-2016

ORIGINAL

EMPLOYEE/CLAIMANT,

KOHLER COMPANY AND
BROADSPIRE,

EMPLOYER/INSURER/DEFENDANT.

DEPOSITION OF
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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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1 STIPULATIONS:

2 IT IS AGREED BY AND BETWEEN THE COUNSEL FOR THE PARTIES AS
3 FOLLOWS:

- 4 1. THAT THIS DEPOSITION IS BEING TAKEN PURSUANT TO ALL
5 APPLICABLE RULES OF THE SOUTH CAROLINA WORKERS'
6 COMPENSATION COMMISSION;
7 2. THAT THE DEPONENT WAIVES HIS RIGHT TO READ AND SIGN THE
8 DEPOSITION TRANSCRIPT.

9 *****

10 DR. CHARLES FOGARTY, BEING DULY SWORN TO TELL THE
11 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH OF HIS OWN
12 KNOWLEDGE CONCERNING THE MATTER HEREIN, TESTIFIED AS
13 FOLLOWS:

14 *****

15 EXAMINATION BY MR. HORNER:

16 Q. Dr. Fogarty, my name is Bob Horner. I'm an attorney.
17 I represent Kohler in this workers' Comp action filed
18 by Nikolay Gul. You saw Mr. Gul and prepared a report,
19 and we are here just to sort of clarify a couple of
20 things you had, and sort of get a better understanding
21 of what maybe some of the things you mentioned were.
22 When I'm done, Mr. Dantin has the opportunity to ask
23 you some questions, as well.

24 If I ask you a question that doesn't make sense,
25 just please ask me to repeat it. And if you need a

1 break for any reason, please let me know, we'll stop
2 the deposition. Hopefully, we won't be here too long.

3 If I could just get a little bit about your
4 background, how long you've been practicing medicine,
5 your specialty.

6 A. Let me give you a copy of my CV. But I've been
7 practicing here in Spartanburg since 1978.

8 Q. And is there an area of specialty that you practice in?

9 A. It's pulmonary disease.

10 Q. Okay.

11 Mr. Dantin:

12 And just for the record, being familiar with Dr.
13 Fogarty, we'd stipulate that he is an expert in the
14 area of pulmonary disease.

15 Mr. Horner:

16 All right.

17 Examination resumed by Mr. Horner:

18 Q. Do you recall how you had the occasion to see Mr. Gul
19 in this case?

20 A. Actually, what I have in the records -- I don't have
21 any clear recollection -- but I do know the plant
22 nurse, and I believe she gave a call, and asked our
23 office to see Mr. Gul.

24 Q. Okay. And were you explained at that time what the
25 issue potentially was with Mr. Gul, or what his

1 potential problem was?

2 A. That he might have occupational asthma.

3 Q. Okay. And at that time, what was your understanding of
4 what you were being asked to do with regard to him?

5 A. To evaluate him, to interview him, review associated
6 records, and make an assessment as to whether it was
7 more likely than not that his ailments were related to
8 occupational exposure to chemicals at work.

9 Q. And were you aware that the chemical in question was
10 acetic acid?

11 A. I might not have been aware of that before seeing him,
12 but I was aware of it when he came here.

13 Q. Okay.

14 A. Yeah.

15 Q. And he would have given you that information in
16 interviewing him or talking to him?

17 A. Yes. Frankly, I'm not sure if I had the outside
18 records prior to seeing him or not.

19 Q. Okay. You go --

20 A. I mean, so I would have been aware at, perhaps a few
21 minutes before seeing him.

22 Q. Okay.

23 A. And I don't -- I'm pretty sure that I didn't review
24 anything of substance before seeing him, like, the day
25 before.

1 Q. So in your report, when you talk about reviewing the
2 Mary Black record, Dr. Nwaka's (phonetic) records, Dr.
3 Hiremath records, some more, and Nwaka's (phonetic)
4 records, those would have been after your --

5 A. After --

6 Q. -- physical exam.

7 A. -- interview; after interview and examining him.

8 Q. Okay. Now, did those records, after reviewing them,
9 sort of change your opinion? In other words, when you
10 examined him, did you think he might have asthma, and
11 then you reviewed the records and concluded otherwise?
12 Or did they just simply support the conclusion that you
13 had generally reached, which was you didn't believe he
14 suffered from asthma?

15 A. Well, when I saw him initially, there was some
16 limitation due to language, although he appeared to
17 understand English well, he was Russian speaking, and
18 we did have the constraint of a translator.

19 But the key for a diagnosis of asthma is either a
20 history, which would consist of repeated ups and downs,
21 repeated periods that were worse and then better
22 related to some cause such as pollens, and occupational
23 exposures, whatever, so often, going back to childhood,
24 and improving when away from the exposure, or improving
25 with a bronchodilator medicine. So that's one way to

1 diagnose it.

2 The other way to diagnose asthma is to examine the
3 patient at a time when he's not doing well, and to
4 establish that with bronchodilator medicine the lung
5 function goes to normal.

6 So the difference between asthma and what we call
7 COPD or chronic lung disease is that COPD does not go
8 to normal, even though you're away from the exposure
9 which is usually cigarette smoke or some noxious
10 particle.

11 Q. So with that background, is that what you were looking
12 for to establish whether or not he has asthma,
13 essentially, what you've described for us as the
14 criteria to reach that diagnosis?

15 A. Yes, sir. The first step is to establish whether
16 there's any lung impairment at all. And then the
17 second step, if there is a clear evidence of a lung
18 impairment, is to establish what the cause is.

19 Q. And what would you use, or what did you use, to
20 determine whether there was any lung impairment at all?

21 A. Well, the gold standard would be a lung function test.
22 And supporting evidence would be the patient's physical
23 exam.

24 Q. And the lung function test, that would be spirometry
25 or --

1 A. Yes, sir.

2 Q. Pulmonary function testing? And you described that as
3 the gold standard. What do you mean by the gold
4 standard?

5 A. Well, it's objective -- objective test. And they've
6 been validated by the American and the European
7 Respiratory Thoracic Societies. So they are validated,
8 objective criteria.

9 Q. Okay. And what, specifically, if someone who has
10 asthma, what specifically are you looking for in the
11 lung function testing?

12 A. The first thing that you're looking for in the lung
13 function testing -- this is before we get to asthma,
14 this lung function testing, the most common type of
15 testing used is called spirometry, and it is dependent
16 on the person's making a vigorous effort. Just as
17 measuring height is dependent on someone standing
18 straight up, a valid measurement of height requires
19 that the subject stand on their bottom of their feet,
20 back to a surface, head straight up. If it appears
21 that they're stooped over, then you can't be sure that
22 you have a valid measurement of their height.

23 Along the same lines, if it appears that the
24 subject is not making a vigorous effort to take a deep
25 breath up to the top, and blow it all the way out to

1 the bottom, you cannot be sure that you have a valid
2 measurement.

3 Q. And with Mr. Gul, did you have some issues with his
4 effort on the testing?

5 A. Yes, sir. There are validated criteria which are based
6 on the fact that just as when you're standing as
7 straight up as you can, you can't stand any higher. So
8 if you ask someone to stand straight up and you take a
9 measurement, and you repeat that measurement two or
10 three times, you're going to get a measurement within a
11 very close range.

12 Now, if the person is standing stooped over, it is
13 very hard for a person to reproducibly stand stooped
14 over the same amount. So you can be standing stooped
15 over -- let's say that standing straight up, your
16 height is six inches one occasion, six and a half
17 inches -- I'm sorry. Your height is six feet, we'll
18 make it 72 inches. Standing straight up, your height
19 is 72 inches, and you repeat it and it's 72 and a half
20 inches. You repeat it another time and it's 71 and
21 three-quarter inches. Those are three measurements we
22 would say are very close.

23 And now, if the person's standing stooped over, it
24 would be -- and the first time they're coming in at
25 four feet, and then you had them walk away and come

1 back and stand stooped over again, it would be very
2 hard for that person to come in at four feet
3 repeatedly. They might come in at 48 inches one time,
4 they might come in at 44 inches the next time, they
5 might come in at 52 inches the next time.

6 So the ability of the ordinary person to reproduce
7 something that's effort dependent is best assessed when
8 they're giving a maximal attempt. So at maximal
9 attempt at height, you're standing as high as you can
10 stand. You're going to do that reproducibly. If
11 you're breathing in as high as you can up to the top,
12 you are going to do that reproducibly. If you're
13 blowing all the way out to the bottom, you're going to
14 do that reproducibly. In between times, it's just very
15 hard to reproduce it.

16 So if I say, I want you to go halfway up your
17 lungs, I might get -- let's say that your total lung
18 volume is six quarts, or six liters. And I say, I want
19 you to go halfway up. The average person might hit
20 three quarts one time, but the next time, it might be
21 two and a half quarts, the next time it might be three
22 and a half quarts.

23 So the ability subjectively to come in in between
24 is very poor. So what folks can do reproducibly, is
25 they reproducibly can go to the top, reproducibly they

1 can go to the bottom. In between, the average person
2 cannot come up with a consistent number.

3 So based on that approach, the American Thoracic
4 Society, European Respiratory Society, developed some
5 criteria which were validated. And it said that
6 basically, the test needs to have -- and I have a flow
7 sheet which I made copies of for both of y'all -- but
8 basically, they have a flow sheet which says you have
9 to perform the maneuver to your maximal best. And then
10 you look at the tracings to see if they are
11 reproducible. And those tracings are translatable into
12 numbers. And you're looking to see if the numbers are
13 basically on top of each other, within one or two
14 percent, or there is a criteria we call, since we use
15 the meters as our measuring system, it would say within
16 150 milliliters. So that's the first step, is to see
17 do you have a valid measurement.

18 Now, a person could be trying to stand as straight
19 as they can, but because they've got indigestion or
20 they're feeling poorly, they might not be able to stand
21 up straight. So there are many reasons why someone
22 might not be able to stand totally straight, and there
23 are many reasons why someone might not be able to go up
24 to the top. So all that we can say, though, is they
25 either did meet the criteria for going up to the top,

1 or they didn't.

2 Q. Okay.

3 A. Now, if you do not meet the criteria, you can give an
4 interpretation, but it's going to be limited, and it's
5 going to be worst case scenario. Whatever we've got
6 right now, it's possible that the patient would be able
7 to stand straighter, if we got him on a day when he
8 felt better, he would be able to go up to the top. So
9 what we have with Mr. Gul was that he was not able to
10 give reproducible efforts.

11 Q. And as a result -- now, you mention in your report that
12 you actually observed the expansion of his chest.

13 A. Right. The interesting thing with the breathing tests
14 are that it depends on you making a vigorous effort.
15 However, once you make a vigorous effort, there's very
16 little gain by making a heroic effort.

17 If I may demonstrate, and you may hear some of
18 this. If I go up to the top, you'll see my shoulders
19 go back, you'll see my chest go out, (demonstrating),
20 like this. You'll see me kind of straining, you'll see
21 my neck muscles straining to pull up the rib cage. And
22 then when I start to blow, you'll see a jerk,
23 (demonstrating). Now, that is -- and I've gone up to
24 the top. Now, once I do that, whether I do this
25 (demonstrating) or this (demonstrating), whether I do a

1 vigorous effort or a violent effort, there's very
2 little -- in defense of the test, if we ask someone to
3 do a violent test, that would be more a test of their
4 stamina and some other things. If we had someone to
5 stand violently tall, there'd be a limit to how limber.
6 But once they're standing as straight as they can,
7 there's not much more to gain by saying, stretch. Once
8 you're going to the top of your lungs and blasting, not
9 much more is gained.

10 Now, again, if I may demonstrate, I can take a
11 breath like this, and blast (demonstrating). But I've
12 not, clearly, I've not gone to the top. You've not
13 seen my shoulders go up, my chest go out. Now, if I'm
14 paralyzed -- I mean, there are a lot of reasons why I
15 might not -- but if I was paralyzed, I still would be
16 doing it consistent in doing whatever I could do.

17 So with Mr. Gul, because I was concerned about the
18 translation. On the one hand, I don't think I'd
19 reviewed it at the time, but I knew he worked at Kohler
20 and I know that they do breathing tests there. So I
21 went in, and I know that he's done breathing tests
22 before. On the other hand, you know, we may have a
23 language barrier. And the -- excuse me just a second
24 here.

25 (Off the record)

1 Witness continues:

2 A. Sorry about that.

3 Q. That's all right.

4 A. And of course, the respiratory therapist, the person
5 doing the testing, also knows that for a test to be
6 valid -- because we do testing for the Social Security
7 folks -- they came to me and said they weren't sure
8 they were -- if we were doing this properly. So that's
9 why I came in and observed.

10 Q. Okay. And did you observe that he was not inhaling to
11 what you felt would have been his maximum capability?

12 A. Right. For whatever reason, it took a lot of coaxing,
13 a lot of instruction. And on one occasion, we did get
14 a -- I'd have to check my notes, but I'm pretty sure on
15 one occasion we did get a really deep breath. And that
16 number was larger than the other numbers.

17 Q. Now, you also, in your --

18 A. Excuse me. But for a valid interpretation, we would
19 need three of those within a tight range.

20 Q. And did you ever get three of those with Mr. Gul?

21 A. No, sir.

22 Q. Okay. Now, you also indicated in your report that
23 there seemed to be some issue with his exhalation or
24 his blast.

25 A. Right. The two things, you have to go up to the top.

1 So again, I'm going to go up to the top (demonstrating,
2 like this. And I'm going to breathe out
3 (demonstrating). I'm going to breathe all the way out,
4 but I'm going to take my time doing it. So I'm going
5 to the top, and I'm going to the bottom. That's called
6 a slow vital capacity. Then there's a separate -- that
7 really does not measure -- that measures the total
8 amount of air in my lungs, but it doesn't measure
9 whether there's any narrowing of the breathing tubes,
10 which could be due to asthma, or it could be due to
11 other, mucus or other problems. So to see if there's
12 any narrowing of the breathing tubes, we want to get
13 the balloon all the way full, and we want to blast that
14 balloon, if you will, through the neck of the balloon.
15 And if the neck is narrowed, then we'll see that, if
16 they're blasting forcefully. Because the total may
17 stay the same, but the amount coming out in one second
18 will be down.

19 Q. You indicated that you eventually obtained some
20 spirometry from Kohler; is that correct?

21 A. Right. His pre-employment -- I don't know if it was
22 pre-employment --

23 Q. It was not. It was in 2006.

24 A. Yeah.

25 Q. But he had already worked there for about a year and a

1 half.

2 A. Right. But they had two tests three years apart.

3 Q. Yes, sir.

4 A. And again, I'm not there doing the tests. But what we
5 can say, that those values appeared to represent, in
6 terms of looking at the actual values and the tracing,
7 the curve appeared to represent a more typical and more
8 vigorous effort, where you go up to the top and you see
9 a really sharp slope in terms of that initial blast.

10 Q. And would that curve and those numbers indicate to you
11 that it looks like, at least while he was at Kohler, he
12 understood how to actually take the test, as far as
13 inhaling deeply and exhaling forcefully? Based upon
14 the fact that the Kohler test results are what they
15 are?

16 A. Well, for whatever reason, whether he understood it or
17 for whatever reason, he was able to give an effort with
18 a curve that would look more typical for a vigorous
19 effort.

20 Mr. Dantin:

21 May I represent, do we have the Kohler test results?

22 The witness:

23 That's a good question.

24 Mr. Horner:

25 That's one right there, actually.

1 The witness:

2 No that's not Kohler.

3 Mr. Horner:

4 No, this one right here. This Apple Mobile is one.

5 The witness:

6 Yeah. This is here.

7 Mr. Horner:

8 Do you not have --

9 Mr. Dantin:

10 I don't think I do.

11 Witness answers:

12 A. Now, this curve here (indicating), you have the -- so
13 this curve here (indicating), which is from the
14 standards, has a really sharp peak. This is not the
15 patient's, this is hypothetical. So what you're
16 looking for is a really sharp peak. You go up to the
17 top, and you've got that blast. So at Kohler, they're
18 not perfect, but we do go up to the top. They really
19 don't have a sharp peak, but on the other hand, it's
20 smooth, and we have a nice downslope. So this is what
21 we call the rate of -- how fast here it's coming out,
22 that's what we call the flow, and this is the volume.
23 So the bigger the balloon, the bigger the volume, the
24 faster the air should come out.

25 Mr. Dantin:

1 And just for the purpose of the record, what's the date
2 on that particular --

3 The witness:

4 The date on that is May --

5 Mr. Horner:

6 2006.

7 The witness:

8 -- 2006. And I think it's May 9, 2006.

9 Witness continues:

10 A. Now, at Kohler, again, to really give a valid
11 interpretation, I would need to have seen three
12 tracings from Kohler. But insofar as Kohler had one
13 tracing, that was from their standpoint, okay, it was
14 normal. But what we can say is that even this tracing
15 from Kohler, I don't want to say this represents the
16 patient's -- what we'd say is he gave one effort that
17 appeared satisfactory.

18 Q. Okay. And based upon the values that are generated by
19 the spirometry testing, does it appear that he has
20 normal lung functioning based upon that report?

21 A. Yes, sir.

22 Q. Okay.

23 A. Both the appearance of the curve and the numbers. Now,
24 the numbers are a construct, because we're taking a
25 hundred people the same height, the same age, the same

1 ethnicity, Western European, and we're saying with that
2 height and age, on average, here's what they would do.
3 And we would say that anywhere between 80 to 120
4 percent of that would be viewed as normal, in the
5 absence of a previous baseline.

6 So if we did not know how tall you were when you
7 were 20 years old, but you came in at 30 years and we
8 measured your height and you came in at six feet, we
9 would say that that's in a normal range. If you came
10 in at four feet, we would say something's going on.
11 Or, if you came in at seven and a half feet, we'd say
12 something is going on.

13 Q. But then, you also had the ability to look at his 2009
14 test from Kohler as well; is that correct?

15 A. Yes, sir.

16 Q. I don't know if you've got the curve or not.

17 A. I may just have numbers.

18 Q. You may just have the numbers.

19 A. Yeah. Yeah, I just have the numbers for the 2009.

20 Actually -- yeah. And actually, this was done by a
21 mobile -- it looks like a mobile outfit. But in any
22 case, the numbers are still similar to the previous
23 numbers. They're still within the normal range.

24 Q. What can you conclude about his lung function over the
25 three years from 2006 to 2009 by looking at these two

1 lung function studies?

2 A. Well, we can say that from a statistical standpoint,
3 that they're essentially no significant change.

4 Q. And if Mr. Gul had developed occupational asthma while
5 at Kohler and has been exposed to this acetic acid that
6 is alleged to have been the causative factor in his
7 occupational asthma, having been exposed to it for
8 three years, would you expect to see some change
9 between the '06 and the '09 spirometry?

10 A. It depends. With occupational asthma, the good news is
11 that when you are away from the exposure, the asthma's
12 gone. So you don't really have a lot of time, any
13 permanent or residual impairment. So if Mr. Gul had
14 been breathing the acetic acid on those days, then we
15 could say that there wasn't any impairment evident.
16 However, if he had been breathing any acetic acids for
17 several days beforehand, let's say that he'd been in a
18 different work area or something, hadn't been breathing
19 any acetic acid, certainly, I think with acetic acid,
20 we'd say a couple of days. If he hadn't had anything
21 within a couple of days, then, you know, we don't know.
22 So to be sure, we would want to know did he, was he in
23 his usual work area with the acetic acid and breathing
24 that the day of those tests.

25 Q. Given what you have just told us, which is that being

1 away from the irritant for several days may, in fact,
2 reduce any symptoms he may have or any problems with
3 his lungs or breathing problems he may have, would you
4 then, expect that when he stopped working around the
5 acetic acid at the end of July, that his symptoms from
6 that point forward wouldn't necessarily get worse, but
7 in fact, should get better?

8 A. Yes, sir.

9 Q. All right. And if we assume, for the purposes of this
10 question, that his symptoms, pulmonary symptoms got
11 worse over the next six months or a year when he's no
12 longer around acetic acid, what would that lead you to
13 conclude about his condition or what may be causing his
14 problems?

15 A. Well, it'd be more likely than not that it was
16 unrelated to the previous exposure.

17 Q. Okay. Now, you're aware that Dr. Feldman has treated
18 Mr. Gul; is that correct?

19 A. Right. I'm aware that he saw him on two occasions.

20 Q. Okay. And he has continued to treat him since then.
21 In taking his deposition, he indicated that it's more
22 than 50 or 60 percent of the people suffering from
23 asthma have normal spirometry. And so that spirometry
24 is not necessary in diagnosing someone with asthma,
25 which is why he discounted his own spirometry results.

1 And I guess what I'm trying to figure out is --
2 A. Well, there's no data to support that. Dr. Feldman
3 does clinical trials, and to have someone on a clinical
4 trial for asthma, you have to have spirometric
5 criteria. So, as we said, the gold standard for asthma
6 is that you have to have a poor test, which then
7 increases -- you have to have a poor test which is a
8 valid test with three valid maneuvers. And then it has
9 to go to normal. So Mr. Gul would not be eligible to
10 go on any of the clinical trials that Dr. Feldman does
11 with asthma.

12 Q. But if spirometry -- I mean, you mentioned it is the
13 gold standard. I mean, can you discount the abnormal
14 results or the normal testing that he got in concluding
15 that he doesn't have occupational asthma or does have
16 occupational asthma?

17 A. Well, you have to have two things. You would have to
18 have -- there are scenarios where spirometry is not
19 available. If spirometry is not available, and the
20 patient has breathed the offending agent and
21 demonstrably gets worse, has wheezes, symptoms that you
22 can hear, and then you give him Albuterol and then he
23 promptly improves, that would be another way to
24 diagnose asthma. But the key is that he would improve
25 rather promptly with the administration of quick acting

1 medicine such as Albuterol.

2 Q. And in my review of Dr. Feldman's records, he did not
3 do any post-bronchodilator. That would be the
4 Albuterol; right? A bronchodilator?

5 A. Yes, sir.

6 Q. He did not do any post-bronchodilator testing on his
7 initial visit. Is that something that would have been
8 standard --

9 A. Yes, sir.

10 Q. -- if you had a poor result --

11 A. Well --

12 Q. -- in a patient, or a less than average, normal?

13 A. To diagnose asthma from an evidence-based standpoint,
14 if you have spirometry, you have to demonstrate an
15 improvement after bronchodilator. There are folks that
16 have normal -- it's possible that Mr. Gul had asthma
17 when he had that value of 100 percent. If we had done
18 the Albuterol, he then would have gone from 100 percent
19 to 120 percent. If initially, he's blowing out four
20 liters, and we'll say that that's normal.

21 So there are athletes that have exercise asthma.
22 They come in saying they're short of breath. From my
23 standpoint, they're normal. Of course, I'm not used to
24 running a mile in four minutes. Their complaints, they
25 can't do a mile in four minutes, measure their

1 breathing, their breathing is fantastic. But when we
2 give them the Albuterol, it goes from fantastic to
3 super fantastic. It goes from four to four and a half.

4 So the other key is that whatever your breathing
5 is, if it's asthma, and you -- because the definition
6 of asthma is it's reversible disease. It reverses with
7 the bronchodilator. So if you give the bronchodilator,
8 then it's going to reverse. And everyone gets a little
9 improvement. So if you gave me a bronchodilator, I
10 might go up by five percent. It's a little like if you
11 tell me to really stand super, super, super high, I
12 might squeak a little bit more out, but I'm not going
13 to go up by five inches.

14 So that's why they say 12 percent. Two or three
15 percent improvement could be just luck of the draw,
16 normal variation. But to call it asthma, on any of the
17 clinical trials done -- so we're talking about
18 evidence-based diagnoses, in the United States or
19 Europe, or really anywhere in the world, you have to
20 have at least 12 percent improvement. Some bodies say
21 15 percent.

22 Q. In looking at the testing your office did, you did pre-
23 and post-testing.

24 A. Yes, sir.

25 Q. And the post testing, the numbers all actually went

1 down.

2 A. Yes, sir.

3 Q. What is the significance of the fact that post-
4 bronchodilator, his test numbers went down?

5 A. Well, two things. One is -- there are two
6 possibilities. One is that we were not getting
7 consistent effort. Or, if we were getting consistent
8 effort, there wasn't any response to the
9 bronchodilator, which is to say we don't have asthma.

10 Now, let me qualify. There are folks that will
11 tell you they worked in a textile mill or something,
12 and every Monday when they went to work, they wheezed.
13 And if you test them -- and they tell you that year
14 after year. Early on, during the first few years,
15 you'd test them, you'd get an improvement. After many,
16 many, many years, particularly when they're not
17 treated, you may not get that improvement. So we would
18 say, then, the asthma, then, has gone from reversible
19 to permanent. But that would be the result of many,
20 many years. And to my knowledge, it would be unlikely
21 that that would happen without the person being aware.

22 So the person would complain of symptoms every
23 time they're exposed, they would be aware of it. So
24 the other -- if Mr. Gul had been there for many, many
25 years, and every time he'd seen the doctor for whatever

1 other reason, had said, you know, when I go to work
2 every day I get wheezy and short of breath, and then
3 you test him at some point, then it's possible that he
4 would not get better. But under no circumstances
5 should he get worse.

6 Q. With a bronchodilator?

7 A. Right. I would say, it would be very rare for someone
8 to get worse after bronchodilator. So that would point
9 back to, for whatever reason, comprehension, effort,
10 that we just were not able to get a consistent effort.

11 Q. Did you see anything in your examination or in your
12 review of records of Mr. Gul that would lead you to
13 believe that he had non-reversible or permanent asthma,
14 as you have just described for us?

15 A. No, sir. Because on the one time he did give, to my
16 eye, a reasonable effort, the numbers were basically in
17 the normal range.

18 Q. If I can, you have mentioned several times this
19 wheezing. Can you explain to me from your standpoint
20 what you mean by wheezing, what you're looking for, how
21 is that determined? Because Dr. Feldman relied heavily
22 upon the wheezing aspect of his examination of Mr. Gul.

23 A. Wheezing is the noise that, if you are blasting the air
24 through a narrow airway -- and the key is that the
25 nurses, the doctors, if you have it, you're not going

1 to miss it.

2 So other doctors -- first of all, it would be
3 unusual to have wheezing without the patient aware. So
4 before you have wheezing, you would have more than a 20
5 percent fall in your function, usually. So if my
6 normal vital capacity, normal FEV1, the amount of air I
7 can blow out in one second, is four liters, four
8 quarts, it could go down 12 percent, and I might not
9 notice that. But I would pick it up with the
10 spirometry. I would give the Albuterol, and then it
11 would go back up 12 percent.

12 Now, if it was down 20 percent, then I might say,
13 hey, I'm short of breath. But it'd be unusual for
14 someone to have wheezing and not be saying to everybody
15 around him, I'm short of breath, I'm not right.

16 So on previous encounters, you would expect the
17 patient -- you would expect two things. One is the
18 patient saying, I'm not right, I can't breathe. And
19 then you'd expect the doctors to hear wheezes.

20 Q. How would the doctor hear the wheezes?

21 A. He would hear them with a stethoscope listening --
22 well, if they're bad, he could hear them without a
23 stethoscope. So as I demonstrated, when I breathed out
24 forcefully, I could actually make a wheeze that the
25 microphone and you gentlemen presumably heard without a

1 stethoscope. And I'll do it again. (Demonstrating).
2 It's that tail-end, high pitched. In that case, I'm
3 artificially making that wheeze come from my upper
4 windpipe. So you can have wheezing that can, if I was
5 trying to fake disability, I could create a wheeze. It
6 wouldn't show up on the spirometry. So even though I'm
7 wheezing, the reality is my spirometry is still normal.
8 So you can wheeze with normal spirometry. It depends
9 on where the wheezing is coming from.

10 But that aside, if the wheezing is coming from the
11 lower parts of the chest, rather than over the
12 windpipe, the patient would be -- he'd have a
13 complaint, particularly if it's due to asthma and it's
14 acute. If it's been going on for years, you get used
15 to it, you're always crummy. But that wouldn't be --
16 that would be against the asthma in the usual sense.
17 If you breathe something and it makes you worse, the
18 first thing is it shows up on the spirometry if it's
19 mild. If it's more than mild, you feel it and then we
20 hear wheezes.

21 Q. Now, when a doctor is -- you said you would hear it
22 with a stethoscope. Are you listening to the lungs
23 with a stethoscope?

24 A. You're listening over the chest wall, yes, sir.

25 Q. Okay. And when you see the phrase, like, clear to

1 auscultation --

2 A. That means no wheezes.

3 Q. That means no wheezes, oh. And looking at Dr.
4 Feldman's record from 9/25, which is the date he
5 performed the spirometry --

6 Mr. Dantin:

7 2009?

8 Mr. Horner:

9 2009, yeah.

10 Examination resumed by Mr. Horner:

11 Q. -- he indicates that Mr. Gul has wheezing; correct? I
12 think it's at the top, where he just sort of checks --

13 A. Yeah. Yes, sir. But he doesn't say where the wheezing
14 is coming from.

15 Q. Now, I'm going to show you --

16 A. Or, to put it, as I demonstrated, I don't have asthma,
17 but if a doctor listened to me over my upper chest, I
18 would have wheezes during that forceful maneuver. So
19 what we're looking for is to hear whether we have
20 wheezing during quite respiration, and if the wheezing
21 is over the lower chest or if it's over the windpipe.

22 Q. Now, when I compare your FEV1 to Dr. Feldman's, Dr.
23 Feldman's is a little over a liter less. So that would
24 be his capacity of his lung, would be --

25 A. A liter less.

1 Q. -- a liter less?

2 A. Yeah.

3 Q. And so if you're --

4 A. But if -- see, if we look at these tracings, you can't
5 do anything with them.

6 Q. Okay.

7 A. It's like -- and we've run into this in our practice.
8 You want to get -- you spent the time and effort, you
9 want to get paid, so you say the patient did
10 spirometry, but it's not acceptable for interpretation.

11 Q. Now, on 9/25, he saw Dr. Feldman, but on 9/25, he also
12 made a visit to his cardiologist.

13 A. Yes.

14 Q. Now, I've marked with an arrow a couple things on that
15 report. And the first one is sort of --

16 Mr. Dantin:

17 Can we identify that report?

18 Mr. Horner:

19 Yeah. It's --

20 The witness:

21 October 2nd --

22 Mr. Dantin:

23 No, that's the date it was printed.

24 Mr. Dantin:

25 May I see it?

1 Mr. Horner:

2 Yeah.

3 Mr. Horner:

4 I want to say it's in Dr. Nwaka's records, I thought.
5 Once you pulled them out.

6 Mr. Dantin:

7 Not in the ones she produced to me. Okay, let me take
8 a look at those.

9 Examination resumed by Mr. Horner:

10 Q. I've put an arrow on the first page and the second
11 page. And the first page appears to be sort of a
12 history from the patient.

13 A. Yes, sir.

14 Q. A subjective assessment. And he indicates there that
15 he had no complaints of wheezing; correct?

16 A. Yes. Cough, shortness of breath, dyspnea. Wheezing,
17 he denies, yeah.

18 Q. Okay. And then on the second page, where I've marked
19 that arrow, it looks like the cardiologist performs --

20 A. Right.

21 Q. -- some physical exam of him.

22 A. Right. And the cardiologist, of course, their
23 specialty is listening to the chest carefully. So
24 they're commenting about the heart, all this. But he's
25 also saying, lungs clear to auscultation. So the point

1 I was making before is that if Dr. Feldman heard a
2 wheeze, (demonstrating), we don't know where it came
3 from. But in my case, on the same day, five minutes
4 apart, Dr. Feldman would hear a wheeze over my neck, my
5 upper chest, coming from collapse of my trachea. The
6 cardiologist, listening to my lungs, my lower chest,
7 would hear not wheezes. So it is possible that both
8 could happen the same day. Which is to say that
9 wheezes are not diagnostic of asthma.

10 Q. All right. So if Dr. Feldman relied upon wheezing to
11 diagnose asthma, that would be inappropriate?

12 A. Well, I don't want to say that. We would say that it
13 does not meet the American Thoracic Society -- there
14 are standards for a -- you can make a diagnosis and be
15 correct, even though it's not based on -- you can skip
16 -- you can go from A to B skipping some steps along the
17 way. If we want to go from A to B following the steps
18 for the diagnosis, then the steps for the diagnosis
19 were not met. You'd have to have more than wheezing.
20 One can have wheezing not only from airway -- from the
21 trachea, airway collapse, you can have it from vocal
22 cord dysfunction, which is a very common problem. You
23 can have wheezing from heart failure, you can have
24 wheezing from pulmonary emboli.

25 So basically, in medical school, we're trained to

1 list the findings, which would be wheezes, and then to
2 go through the differential diagnosis of those wheezes.
3 The differential is what I just gave you. And then, if
4 the wheezes went away with the Albuterol, or decreased
5 with Albuterol, if the spirometry improved with the
6 Albuterol, then we would say that's probably not heart
7 failure, it's probably not vocal cord dysfunction,
8 probably not airway collapse, probably asthma.

9 Q. But we know Dr. Feldman, that he didn't actually
10 administer Albuterol to him and then re-run the test.

11 A. Right.

12 Mr. Dantin:

13 Object to leading.

14 Witness continues:

15 A. Well, we don't have any documentation of that.

16 Q. But a cardiologist is certainly qualified -- is a
17 cardiologist qualified, generally, to hear wheezing in
18 the lungs to determine whether or not --

19 A. Yes, sir.

20 Q. Okay.

21 A. And I would say that that the cardiologist probably
22 spends more time listening to the chest, speaking
23 locally. If you take the amount of time I spend
24 listening to the chest and compare that to the
25 cardiologist, the cardiologist, say, on average spends

1 at least the same amount of time, or possibly more.
2 Because they're trying to sort out more things, if you
3 will, in terms of all the heart tones. And if you
4 listen to hearts, you can't help but hear if there are
5 wheezes there, too.

6 Q. Now, it looks like Dr. Feldman actually diagnosed him
7 with asthma on the first day, or at least he sent this
8 interim report to Matthew Cannon, which is two days
9 before spirometry, indicating his assessment was
10 asthma, and that it was possibly occupational. And I
11 guess --

12 A. Well -- you can --

13 Q. -- as --

14 A. -- go ahead. I'm done answering.

15 Q. Well, then he comes back on the 25th and does an exam,
16 sort of a more comprehensive exam with spirometry. But
17 I guess, we know that on the 25th, he also sees his
18 cardiologist and doesn't tell his cardiologist that he
19 has asthma.

20 Mr. Dantin:

21 I'm going to object to the extent that's speculation.

22 Examination resumed by Mr. Horner:

23 Q. Let me rephrase, then. There's no record in the
24 cardiologist's file that Mr. Gul told him that he had
25 asthma. If you were going in for a heart

1 catheterization as a patient, is the existence of
2 asthma something that is potentially dangerous that
3 your cardiologist should be made aware of before you
4 undergo a heart catheterization?

5 A. Well, the cardiologists are increasingly tuned into the
6 interaction between the heart and the lungs. In fact,
7 some cardiologists actually do breathing tests in the
8 office. What we can say is that there are a lot of
9 times that I will make an educated guess, a kind of a
10 gunshot, I don't need to see you, I'll just look at the
11 picture and tell you what you've got. So we want to
12 distinguish between an educated guess and a diagnosis.
13 From the standpoint of taking an exam, a pulmonary
14 board exam, we did not have the information available
15 to make a diagnosis of asthma. Dr. Feldman did not
16 have the information available to make that.

17 Q. All right.

18 A. So what he has is an educated, an impression, a guess,
19 an opinion. But there's no scientific basis. If I'm
20 taking the exam, I can't make that diagnosis. I would
21 ask, if you're doing a little check-off, the next step,
22 now, what's the next step, you know, there'd be some
23 options. I'd have to get additional information to
24 make that diagnosis.

25 Q. Now, the issue in this case is occupational asthma.

1 And the substance that Mr. Gul worked around was acetic
2 acid. And by the time that Dr. Feldman saw him, he had
3 been away from acetic acid, had not worked in the plant
4 for almost two months, except for maybe four hours one
5 day in there, when he attempted to go back to work. If
6 Mr. Gul had asthma that actually was exacerbated or
7 came to light in the end of September or beyond, could
8 there be other causes for his asthma other than acetic
9 acid?

10 A. Oh, yes, sir.

11 Q. And what could some of those causes be, or what could
12 cause an exacerbation if he had an underlying asthma,
13 and it was related to acetic acid?

14 A. Well, you're talking about a very long list of
15 possibilities. Going to the acetic acid, the first
16 thing is that acetic acid is vinegar.

17 Q. Yes, sir.

18 A. And in my almost 40 years of treating patients, many of
19 whom use vinegar, both at home, and also, they had some
20 exposure at work, it would be very hard for enough
21 vinegar fumes to get into the lungs without irritating
22 the eyes or the nose. It's like you would have to be
23 breathing the vinegar through a tube connected to the
24 vinegar fumes with your nose plugged off and your eyes
25 covered with bandages. So I have -- I'm unaware of any

1 case reports in the literature where a subject had
2 asthma due to breathing acetic acid fumes without
3 associated irritation of the eyes and nose.

4 Q. Okay. Now --

5 A. The point being that your eyes and nose are bothering,
6 you, you say, whoa, I'm getting out of here.

7 Q. Right.

8 A. You'd have to be in pretty heavy-duty exposure.

9 Q. And OSHA has guidelines for the level of acetic acid.
10 Are you aware with, like, various OSHA guidelines?

11 A. Yes, sir.

12 Q. And like, after acetic acid, the OSHA guideline is ten
13 parts per million?

14 A. Yes, sir.

15 Q. What does -- and we'll argue about it in front of a
16 commissioner. But in 2012, Kohler went out there and
17 tested the acetic acid at Mr. Gul's job, and it came
18 back as being anywhere from one-tenth to one-one
19 hundredth of the OSHA standard.

20 A. Yes, sir.

21 Q. Based upon that information and -- what do you know
22 about the OSHA standard and what conclusion can you
23 draw from the OSHA standard and the fact that the
24 exposure in 2012 when it was measured was between one-
25 tenth to one-one hundredth of the OSHA standard?

1 Mr. Dantin:

2 Just before you answer, Doctor. I just want clear --
3 are you asking that as a hypothetical as if that was
4 the air quality at the time he was there?

5 Mr. Horner:

6 Yeah, with the stipulation that that's something you
7 dispute.

8 Mr. Dantin:

9 Exactly. Thank you.

10 Mr. Horner:

11 Yeah.

12 Witness answers:

13 A. Well, the OSHA standard is the standard for irritation
14 of the eyes and nose. It's not the standard for
15 asthma. So we're saying that long before you would
16 encounter any irritation of the lungs -- you would have
17 to have a higher concentration, what I'm getting at.
18 So the first thing is that with those -- maybe you
19 should rephrase your question.

20 Q. All right. You just said that the OSHA standard in
21 this case of ten parts per million would be what OSHA
22 has deemed the level at which irritation to the eyes
23 and --

24 A. Right.

25 Q. -- nose may occur?

1 A. Yes, sir.

2 Q. And when we were talking about someone developing
3 asthma as a result of the exposure, would the amount of
4 acetic acid, the part per million be higher than ten?

5 A. Well, it's getting filtered. In other words, if you're
6 getting ten parts per million hitting the nose and the
7 eyes, then it's got to get to your tongue, it's got to
8 get to the back of your throat. And the concentration
9 is going to go -- it's getting filtered by your system.
10 So you're going to end up with lower -- it would just
11 be very unlikely to get enough into your windpipe to
12 irritate your windpipe without irritating your eyes and
13 your nose first, unless you're by -- I don't know how
14 it could happen -- unless you just bypass them,
15 breathing with your mouth open, nose plugged, and eyes
16 bandaged.

17 Q. But generally, if you were looking for the --

18 A. Well, the other thing is that we would go by is anyone
19 -- in terms of occupational asthma, is anyone else in
20 the area complaining, anyone else having similar
21 symptoms. So again, you've asked a hypothetical
22 question. We don't know what the results were in 2004.
23 We could ask the company, did anyone else in the area
24 complain of irritation of the eyes or nose. Back then
25 or now. I think that's the best that I could do for

1 you hypothetically.

2 Q. And you cited the OSHA standards as being ten parts per
3 million with 15 parts per million being short-term
4 exposure. Are you aware in Mr. Gul's history of him
5 having a massive short-term exposure? Did he give you
6 a history of, for example, a leak going off that was --

7 A. No, sir.

8 Q. -- of high volume? Okay. And if Mr. Gul testified
9 that he used acetic acid for between one or two minutes
10 at a time, and 15 or 17 times a day over a 12-hour day.
11 So we're talking 34 minutes total exposure to acetic
12 acid spread out over a 12-hour shift. Would you
13 expect, in your experience, that that exposure would be
14 significant enough to cause occupational asthma?

15 A. My understanding of the OSHA limits -- of course,
16 they're evidenced-based on what happens to people
17 breathing those concentrations. So the way -- then
18 they have environmental chambers, and they come up with
19 a concentration. And then they have people sit there
20 for eight hours. And what can people tolerate for
21 eight hours without having to irritate their eyes or
22 their nose. Then we're saying that there's a
23 permissible level of ten or whatever. We're saying
24 that the people that were tested were exposed to that
25 level for eight hours, and didn't experience any

1 symptoms.

2 So the likelihood that a shorter exposure would
3 cause symptoms, again, particularly if it's not
4 irritating the eyes or the nose, would be -- it'd be
5 unlikely -- more likely than -- I'm doing a double
6 negative -- it'd be unlikely.

7 Q. Okay. And that would be your opinion to a
8 reasonable --

9 A. Yes, sir.

10 Q. -- degree of probability?

11 A. Yes, sir.

12 Q. All right. In your exam, you went through all the
13 records that had been given to you. What was your
14 purpose? What were you looking for and reviewing those
15 records that you had gathered from other physicians of
16 Mr. Gul?

17 A. At my end, even though the company -- I'm aware that
18 the company's asked me to examine the patient, I'm
19 also, however, first and foremost the patient's
20 advocate. And I've ended up on other cases, doing,
21 with the Plaintiff asking me to do an evaluation.

22 So I'm really looking for consistency to see is
23 there anything I can come up with that -- the patient
24 can be convinced that something is causing the problem.
25 Now, is there anything to support that patient's

1 conviction. So that's why I was going through the
2 records.

3 Q. And based upon your review of the records, did you find
4 anything to support his contention or belief that he
5 was suffering from asthma or occupational asthma?

6 A. No, sir.

7 Q. You took an x-ray of Mr. Gul, is that right, a chest x-
8 ray?

9 A. A chest film, yes, sir.

10 Q. And what is the point of taking a chest film? How is
11 that used in diagnosis?

12 A. The chest film is really useful for what it doesn't
13 show. So I mean, you could have a mass pressing
14 against the trachea, you could have a tumor, you could
15 have other things that might -- you can have an
16 enlarged heart. Other things could give you wheezing
17 and shortness of breath.

18 Q. So --

19 A. So we read the chest film is unremarkable.

20 Q. Okay. And in a person with severe asthma, will the
21 chest film, assuming there's no other conditions that
22 appear on the film, will the asthma go undetected on a
23 chest film if it's --

24 A. It could.

25 Q. -- severe?

1 A. It could.

2 Q. Now, what are rales and rhonchi? Am I pronouncing that
3 right?

4 A. Rales are -- rhonchi, there's a lot of -- short of
5 getting a device that actually measures the frequency,
6 rales or rales are kind of high-pitched, short,
7 staccato sounds. If you have a Velcro, you know, the
8 tape that you put two -- let's see, yeah, here we go.
9 So when I put this -- and again, if we put the
10 microphone up to this here, you can -- well, anyway,
11 you hear kind of a (demonstrating) -- kind of a high-
12 pitched -- I don't know if that's coming through. We
13 would call those rales. They're short, high-frequency.
14 And that would be associated with something going on in
15 the deeper parts of the lung. So, in what we call the
16 smaller, the air sacs, the very small airways,
17 generally, the air sacs. And they're kind of opening
18 and closing.

19 Q. And could that be associate with asthma, or is that
20 completely -- would that be a diagnosis of something
21 different?

22 A. That really would be irrelevant to the asthma.

23 Q. Okay. So on your exam, when you say no wheezing,
24 rales, or rhonchi, the important one to a diagnosis of
25 asthma is the wheezing?

1 A. Yes, sir.

2 Q. Now, in reviewing his records, and I didn't see it in
3 your review of the records, did you ever see where
4 prior to Mr. Gul being examined by Dr. Feldman, any
5 other physicians recording a wheezing by Mr. Gul?

6 A. No, sir.

7 Q. All right. And given that Mr. Gul stopped working on
8 July 20th, 2009, and saw Dr. Feldman on September 23rd,
9 2009, two months, three days later, would you expect,
10 in an occupational asthma case, that he would develop a
11 wheezing that had never been reported before once he
12 was actually away from the alleged irritant.

13 A. That scenario would not meet accepted standards of a
14 definition of occupational asthma.

15 Q. What are those standards?

16 A. Well, the standards are that you have a relationship to
17 the exposure in terms of the time framework, and that
18 the symptoms occur in proximity to exposure, and then
19 improve with removal of the exposure.

20 Q. And you testified earlier that that sort of being
21 introduced to and removed from the exposure can
22 actually show improvement and worsening simply over a
23 weekend, for example. Is that right?

24 A. Right. Well, particularly with chemical exposures, the
25 removal of the exposure, if it's an irritant and you

1 remove it, then within a short period of time, we would
2 expect the symptoms to improve, yes, sir.

3 Q. And certainly over two months, you would expect those
4 symptoms to improve; is that fair?

5 A. The example that we might relate to is cats. So if you
6 have asthma, and you are allergic to cats, or sensitive
7 to cats, as opposed to being sensitive to acetic acid,
8 and you go to someone's house with a cat, in short
9 order, you may feel short of breath. If you went to
10 someone's house with a cat, the very first thing we
11 would pick up would be that that breathing test would
12 get worse. Then, when they're, like, 20 percent worse,
13 you might be saying, hey, I'm short of breath. When
14 they're even worse, you would be hearing wheezes. A
15 day later, when you're away from the cats, we would
16 expect those things to have improved.

17 Q. Okay.

18 A. And certainly a week away, we would expect to be back
19 to normal.

20 Q. And that's part of the -- is that part of the criteria
21 used to determine whether or not someone is suffering
22 from occupational exposure or asthma?

23 A. Well, just asthma. We, early on, you said that you can
24 diagnose asthma without a breathing test. And while
25 that's not ideal, if you have a history of repeated

1 exposures followed by prompt worsening followed by
2 improvement with removal of the exposure, then that
3 would be supportive of asthma.

4 Q. Did you see any documentation by any of his physicians
5 that would create that causative type relationship
6 between his job and his alleged to be asthma?

7 A. No, sir.

8 Q. And would that be one thing you would have looked for
9 as you went through those records?

10 A. Yes, sir.

11 Q. Could Mr. Gul have -- I'll leave him out of it. Are
12 there other things, for example, allergies -- you
13 mentioned the cat. Could someone who has sort of an
14 underlying asthma condition have the exacerbations that
15 are created by his allergies? For example, to trees or
16 grass or pollen or --

17 A. Yes, sir.

18 Q. -- things of that nature? And so hypothetically, if
19 Mr. Gul had a sensitivity to cats, but went to see his
20 sister who had a cat, and this is a hypothetical --

21 A. Yeah.

22 Q. -- then that could exacerbate whatever underlying lung
23 problems he would have, and it would be completely
24 unrelated to his exposure to acetic acid?

25 A. Yes, sir.

1 Q. All right. Now, Dr. Feldman testified that when he
2 examined Mr. Gul on the 25th and did the spirometry,
3 that he was wheezing so poorly that he could not
4 actually perform the test, couldn't get three valid
5 attempts. What, as a pulmonologist, would be done in a
6 situation where perhaps your patient is having some
7 sort of acute episode that you can't perform the test?

8 A. Well, the standard of care is that you would treat
9 someone with a handheld -- that would be an emergency
10 situation. If someone is wheezing where you cannot
11 perform a test, that could be a life-threatening
12 scenario. And I have had people walk in, wheezing, and
13 -- I'm aware that you could die from something like
14 that. So the standard of care would be that you would
15 administer a bronchodilator, and it would probably be a
16 nebulizer as opposed to a puffer. And most offices,
17 internists, pulmonologists, have a nebulizer in the
18 office. They have the Albuterol. They also might have
19 epinephrine to give as an injection. And one, would
20 not discharge the patient from the office until they
21 had evidence, again, on the spirometry, that things
22 were better.

23 Q. And if a patient came in with some wheezing, but it
24 wasn't an acute episode that compromised the patient's
25 safety, but seemed to compromise the testing, is that

1 when you would give the Albuterol?

2 A. That'd be standard of care.

3 Q. Okay.

4 A. See, the point is that by the time you're wheezing,
5 okay, the wheezing, if it's coming from the voice box
6 or the trachea, is artifactual. So we've got to be
7 sure where the wheezing's coming from. But if the
8 wheezing is coming from the chest, by the time I hear
9 that wheezing, the lung function is down 50 percent, on
10 average. There is data to support that you will not
11 hear wheezes in the lungs until your breathing is down
12 by 50 percent.

13 Q. Okay.

14 A. So I would take, if I heard wheezing in the lungs, and
15 I was making a diagnosis of asthma, I would take it
16 very seriously and make -- I'd promptly give him some
17 Albuterol in the office and retest him to support the
18 diagnosis. Because we said it could be heart failure,
19 it could be other things.

20 Q. IN a situation where the pulmonary function testing
21 only produced one acceptable maneuver out of three,
22 what's the process, if you've tried it three times and
23 you only get one acceptable maneuver? What should you
24 do as a pulmonologist?

25 A. The American Thoracic Society says that you should

1 proceed with eight attempts total. Once you've done
2 eight attempts, then the patient may fatigue, just from
3 the effort of the attempts. So we would do eight
4 attempts. Then recognize the patient might be having a
5 bad asthma attack, we would give him the nebulizer
6 treatment, and 15 minutes later, repeat the process.

7 Q. If a patient has asthma and his asthma later gets under
8 control, would you expect his spirometry to still --
9 would it improve over time as his asthma remained under
10 control?

11 A. The hallmark of -- the difference between asthma and
12 what we call COPD is that early on, during the first
13 several years, the asthma improves essentially to
14 normal with either removal of the exposure, or, if
15 that's not feasible, with treatment. There's some
16 exposure that are just there all the time, and you
17 can't remove. And so that's where you expect the
18 treatment to help out.

19 Q. And those would be things like, for example, in the
20 spring, you can't do anything about the pollen.

21 A. Yes, sir.

22 Q. And you may not be able to do anything about a cat.

23 A. Right.

24 Q. Although, you could. So those would sort of be your --

25 A. Well, interestingly, once a cat's been in this room

1 here for a day or two, it could take up to six months
2 to get the cat dander out. It's very adhesive.

3 Q. So over a course of years, you would expect the,
4 because asthma's generally reversible, you would expect
5 the patient to return to a normal baseline; is that
6 correct?

7 A. Yes, sir.

8 Q. All right. Now, you concluded that Mr. Gul did not
9 have asthma; correct? Based on that --

10 A. He doesn't meet the --

11 Q. Criteria.

12 A. -- criteria, American Respiratory -- American Thoracic,
13 American College of Chest Physicians, European
14 Respiratory Society criteria for asthma.

15 Q. Okay. And did you see anything that would lead you to
16 believe that he had a lung condition that would be
17 related to acetic acid?

18 A. No, sir.

19 Q. And did you see anything about Mr. Gul's exam, your
20 examination of him and what you reviewed, that would
21 lead you to believe that he was permanently and totally
22 disabled?

23 A. No, sir.

24 Q. Generally speaking, people who suffer from asthma, are
25 they permanently and totally disabled?

1 A. No, sir. The whole point of medication is to get them
2 back to work.

3 Q. If the medication appears to be working and, for
4 example, a patient begins to produce normal spirometry,
5 would that be a patient that you would expect could
6 work?

7 A. Yes, sir.

8 Q. All right. What is it about asthma that would render
9 someone permanently and totally disabled?

10 A. Well, they do not -- frequency of attacks, so if every
11 time someone goes to work they get an attack. So if
12 they're out -- again, the social security disability
13 folks have criteria, like, would this patient be able
14 to work for a month without being absent, you know,
15 essentially every week. Would they need to interrupt
16 their work schedule to take breathing treatments,
17 etcetera. So in general, folks that have asthma with
18 medication, a majority of them are able to continue to
19 work.

20 Q. And if your asthma attack was brought on by a
21 particular exposure, is it possible that a patient of
22 yours just simply needs to change jobs to enter into a
23 job that doesn't have the same exposure?

24 A. Right. We would talk with the people at -- well, the
25 first thing is, if we thought it was a job exposure,

1 the -- I'm going back to brown lung days, but if there
2 was any hint that it was a job exposure, in general,
3 the patient would perceive that at the time. And the
4 plant would really be under current OSHA guidelines,
5 would be compelled to check out that job and to see if
6 there's a problem. Maybe the employee's doing
7 something they shouldn't be doing, maybe a co-worker's
8 doing something they shouldn't be doing, maybe there's
9 a problem with the ventilation system. So the first
10 possibility is that there's something transient going
11 on that needs to be corrected.

12 Then, assuming the plant corrects that, then the
13 employee could go back to the same old job. If there
14 is something that cannot be corrected and that employee
15 is sensitive to it, maybe go to a different job.
16 Generally, with occupational asthma, though, there's
17 several -- it's going to affect several people in the
18 area. So someone else would be complaining. And it
19 would be really incumbent on the company to correct the
20 process.

21 Q. But theoretically, if it's occupational asthma, and you
22 remove the patient from the exposure into a completely
23 different field of work, for example, then you would
24 not expect the asthma to be exacerbated if it was, in
25 fact, occupationally related?

1 A. Well, in the case of acetic acid, if the patient would
2 be advised don't use any vinegar at home. But assuming
3 that you're not savoring the vinegar aroma, and you are
4 not exposed to the work, then the -- and the acetic
5 went on -- the hallmark is that you would be able to
6 return to essentially normal function.

7 Q. Did you see any evidence that Mr. Gul perceived a
8 reaction to acetic acid while he was at work?

9 A. No, sir.

10 Q. And did you see in your review of what you were given,
11 any evidence that other people in the same department
12 or area doing the same job were having the same or
13 similar symptoms?

14 A. No, sir.

15 Q. Dr. Feldman indicated that he thought Mr. Gul would not
16 have a reaction to bronchodilators because of his
17 fibrosis of his bronchial tree.

18 A. Well, I'd want to know what evidence he had to base
19 that on. If we had a biopsy that showed fibrosis, if
20 we had a CT that showed fibrosis. And again, I don't
21 know if there's any evidence that inhalation of acetic
22 acid -- I don't know of any case reports where folks
23 have incurred fibrosis of the bronchial tree from
24 acetic acid without concomitant irritation of the eyes,
25 nose, and throat.

1 Q. would that be a conclusion you could reach the first,
2 the second time you ever see a patient and are giving
3 him spirometry for the very first time?

4 A. well, it'd be -- one can state anything about anything.
5 But whether it's based on evidence is another matter.

6 Q. well, Dr. Feldman saw him on 9/25/09, his second visit,
7 and did spirometry. And I asked him why he didn't
8 administer Albuterol. He indicated that it was because
9 he had fibrosis of the bronchial tree. But there may
10 not actually --

11 A. But he didn't have evidence at the time to make that
12 assessment.

13 Q. And that would be in the form of a CT scan or a biopsy
14 or something of that nature; is that right?

15 A. Yes, sir.

16 Q. I'm going to let Mr. Dantin ask you some questions, and
17 then I may have a couple in follow-up.

18 EXAMINATION BY MR. DANTIN:

19 Q. well, first of all, let me just say, any time we get
20 into a case like this where it's an exposure case and
21 involves these issues with asthma and everything else,
22 it's always an education for me. I don't know about
23 Bob, but I just find myself constantly amazed by
24 everything that we hear as we go along. And I
25 appreciate your time and patience with us. I mean, you

1 can tell, as lawyers, we're feeling our way through
2 this. And I'm sure some of these questions seem
3 simplistic to you.

4 We talked a lot about -- or, you have talked a lot
5 about today this idea of had the acetic acid at work
6 been the problem here, you would have expected Mr. Gul
7 to have some other obviously reaction to it, some
8 sensitivity to the eyes or the nose, something along
9 those lines; is that correct?

10 A. Yes, sir.

11 Q. All right. If I told you that sometime in 2007 or 2008
12 he actually tried to start wearing a mask while he used
13 the acetic acid and was told by the people at Kohler to
14 take it off, if he was using the mask because acetic
15 acid was bothering him, would that be the type of
16 contemporaneous reaction that you would expect?

17 A. The mask doesn't cover his eyes.

18 Q. Okay. What about his nose?

19 A. You know, I'd have to have more -- that would be
20 evidence -- we'd want to see the actual report.

21 Q. No, there's no report.

22 A. Oh. And so, this is coming from Mr. Gul or from the
23 employee? I'm trying to get the whole story here.

24 Q. Correct. The testimony has been that he tried to use a
25 mask because the acetic acid was bothering him, and was

1 told by Kohler to take the mask off.

2 A. Well, the big problem with the mask -- first of all, I
3 would question that. But the main --

4 Q. May I interrupt you? What do you mean by that?

5 A. Well, the -- I would want to know what type of --
6 basically, there are two types of masks out there, and
7 one of them has a one-way valve. And I don't think
8 it's -- those are relatively new to industry, they're
9 expensive.

10 Q. No, I can tell you --

11 A. So the regular mask -- a regular mask is hard to
12 breathe through. And the regular mask, after a few
13 minutes, gets saturated with moisture. You with me?
14 You breathe into the mask, but you've got to breathe
15 out through the mask.

16 Q. Well, I think I can actually help you. The mask he
17 went and purchased was like a paper mask.

18 A. Right. See, that would be a problem. Because the
19 paper mask actually concentrates, if, indeed, we were
20 having a problem with acetic acid, I would not want to
21 wear a paper mask. Because the acetic acid, we've got
22 this humidity on the inside. There's more humidity on
23 the inside of the mask than the outside. And that
24 could actually make the problem worse, so if --
25 basically, I'd want to see the incident report. But it

1 would make more sense just to take a break than it
2 would to wear the mask.

3 Q. Well, my question really isn't geared toward the
4 efficacy of the mask and whether it was appropriate to
5 use it. It's really an issue of temporal symptoms.
6 You see what I'm saying? In other words, he was having
7 a problem while using the acetic acid that he thought
8 was bad enough to try and take some step to prevent.
9 Now, whether it was the right step or not is not
10 material to the question. What I'm really interested
11 in is do you believe that's the type of temporal
12 reaction that you would be looking for?

13 A. I would -- I'd have to have more information. But it
14 certainly is, it's interesting information.

15 Q. You talked earlier about the fact that Mr. Gul seemed
16 to be able to comprehend English better than he could
17 actually speak it.

18 A. It's always tough when you're going through a
19 translator. And my opinion can be wrong, but just
20 judging by his -- and if someone looked quizzical, do
21 they appear to nod, do they appear to object. I
22 volunteer at a free clinic, and we have several other
23 non-English, we've actually got a couple of Russian
24 speaking patients there right now where we go with a
25 translator. And sometimes you feel that you're totally

1 dependent on a translator, sometimes I feel that some
2 of what I'm saying is getting through. Because you
3 have -- the point is the translator giving the correct
4 answer?

5 Q. Okay. Do you believe that it is more difficult to
6 obtain information from a patient when there is an
7 issue with language?

8 A. Yes, sir.

9 Q. Do you believe that it is possible when someone like
10 Mr. Gul, who has an issue with language, insofar as
11 English is concerned, anyway, that it is possible that
12 when he is trying to report symptoms, that perhaps it
13 does not get translated appropriately, or he doesn't
14 have the, I guess the necessary means to really
15 communicate what his problems are to an English
16 speaking physician?

17 A. It would be possible, yes, sir.

18 Q. Do you think that might account -- well, let me ask you
19 a hypothetical. Hypothetically, if Mr. Gul had issues
20 like shortness of breath, irritation of his nose, just
21 to pick a couple out, and he had has these for years,
22 is it possible that in going to see a physical for
23 another problem, okay, a chest problem or a knee
24 problem or he has the flu, is it possible that in
25 reporting symptoms, those could have either been

1 misreported or misinterpreted by virtue of the language
2 issue?

3 A. It's possible. I would say that once you have been to
4 -- speaking personally, one I have been to a doctor a
5 couple of times, there is some learning, some cues. So
6 I would say with repeated exposures to repeated
7 interviews, I would say that there might be some
8 improvement in -- we expect some improvement in -- I
9 expect some improvement in my ability to perceive and
10 respond to what's going on.

11 Q. When Dr. Nwaka (phonetic) was examining Mr. Gul, and to
12 my understanding, that's the only, I guess what we
13 would call repeated encounters that he had with a
14 doctor prior to seeing Dr. Feldman. And correct me if
15 I'm wrong, Bob, I think it was really only a handful of
16 visits, maybe three to five, something along those
17 lines. If, by the end of those visits, it's noted that
18 the patient was asking to go see a pulmonologist, does
19 that make it likely in your mind that perhaps the
20 patient was trying to convey that he had some problem
21 along those lines?

22 Mr. Horner:

23 Object to the form.

24 Witness answers:

25 A. What that says to me is that the -- there's a

1 disconnect. If the patient is sophisticated enough to
2 ask to see a lung doctor, there's a disconnect if he's
3 not sophisticated enough to say that I've got these
4 other symptoms.

5 Q. Unless, of course, there is a language issue.

6 A. Well, but if he's sophisticated enough language-wise to
7 get through that he wants to see a lung doctor --
8 language-wise, if he can understand, I can't speak for
9 Mr. Gul. But having spent a brief time in Germany,
10 language-wise, if I was sophisticated enough to say I
11 want to see a lung doctor, I would expect I'd be
12 sophisticated enough to say, I have some lung symptoms.

13 Q. Okay.

14 A. I have some shortness of breath.

15 Q. And again, just based on notes, and you reviewed the
16 notes from Dr. Nwaka (phonetic). You did not -- you
17 don't recall seeing where it was noted the fact,
18 shortness of breath or wheezing was reported; is that
19 correct?

20 A. I don't recall.

21 Q. Is it possible that it could have been reported and not
22 noted?

23 A. Well, anything's possible. What I know, or what -- we
24 all filter things. And you might mention something to
25 me that as far as having validity or context, I'm going

1 to try to know what has validity in the context of the
2 healthcare encounter.

3 Q. I guess what I'm saying, and I understand your point,
4 is that we're all limited by what we actually put down
5 on the paper; fair enough?

6 A. Yes, sir.

7 Q. Okay. Doctor, do you agree that shortness of breath,
8 wheezing, chest tightness, coughing, and sputum
9 production are all relevant symptoms of asthma?

10 A. Consistent with asthma, yes.

11 Q. Yes. Doctor, would you agree that the more of those
12 symptoms that you have over an extended period of time,
13 the more likely it is that you would have asthma?

14 A. No, sir. Because it could be due to pulmonary emboli,
15 congestive heart failure, and just a wide variety --
16 pulmonary fibrosis. Statistically, of 100 people that
17 I see over 30, asthma would be less likely than other
18 causes. Now, if it was a 20-year-old, a teenager,
19 asthma would be more likely.

20 Q. Okay. What's the difference between asthma and RADS?

21 A. RADS, it's basically kind of a loose term when we can't
22 -- RADS would be reactive airway disease, and we have
23 spirometry to show that we have deterioration and
24 reversibility, but we can really put our finger on
25 what's doing it.

1 Q. Are there any characteristics of RADS that differ in
2 any way from asthma? And I guess most specifically,
3 I'm wondering, can RADS be a more chronic or even
4 worsening type of condition?

5 A. RADS is simply reactive airways disease. You could
6 almost argue it's a subset of -- people that have
7 asthma, we're more likely to say that you have asthma
8 and this pollen is triggering it, or this Toluene
9 diisocyanate is triggering it or this brown lung is
10 triggering it. RADS, you're having symptoms, the
11 breathing tests are worse, they get better.

12 But it's really much more diffuse. Like, it might
13 be walking into a grocery store. I have several RADS
14 patients, and they can't really put their finger on
15 what's doing it, but every time they go into a grocery
16 store, they get symptoms, we get out their spirometer,
17 it's worse. They get out of the grocery store, it's
18 better.

19 I have a couple of folks that -- and again, the
20 hallmark is it goes to normal when they're not there.
21 But what we're saying is they have very -- they have
22 airways which react to something we really can't -- if
23 we could put our finger on it, we'd say what it is.

24 Q. Can you ever get to a point, by virtue of exposure --
25 let's just take, for example, let me ask you to assume

1 that in this case, long-term repeated exposure to
2 acetic acid had damaged Mr. Gul's lungs; okay? Is it
3 possible to get repeated exposure and damage enough to
4 a point where you are sensitized to numerous things?
5 Not just one thing, but you become so injured that your
6 RADs is basically got you to a point where almost any
7 type of irritant will begin to bother you?

8 A. Anything is possible. The hallmark would be normal
9 pulmonary function test in between. I have a large
10 number of patients with RADs, and there's been a couple
11 of them are nurses. One of them can't go near the --
12 we don't know what it is, but she just can't get near
13 anything that might have anesthesia type gas. But in
14 between times, she totally normal. Her breathing tests
15 are great, so she's just got to stay out of that area.

16 Q. So is it possible for someone to get to a point to get
17 bad enough to where a host of things cause them
18 exacerbations? Or is it always just one thing?

19 A. Well, basically, the hallmark is normal breathing test,
20 and then you have an exacerbation, breathing tests are
21 worse. So if he had -- I would say certain --

22 Q. I may not be asking a good question. What I'm trying
23 to understand is, it sounds like you're saying that
24 with RADs, there's going to be -- or occupational
25 asthma, it sounds like you're using them with similar

1 characteristics.

2 A. There's a lot of overlap.

3 Q. If there's going to be one particular thing that causes
4 a person to exacerbate; okay? Or to have symptoms.
5 And if they're not around that particular thing,
6 they're okay, like the nurse that you treat. My
7 question is can you ever get bad enough to where it's
8 not just one thing that causes you problems, but all
9 kinds of things, gasoline fumes, perfume, cologne.

10 A. We would call that multiple chemical sensitivity. And
11 again, the hallmark would be that the breathing is
12 normal, and then they're around those chemicals, the
13 breathing gets worse, and they're removed, the
14 breathing gets better. I would certainly accept
15 someone with those criteria.

16 Q. Okay. And as we were discussing earlier, if you have a
17 problem where it is more and more difficult to remove
18 the causative factors, then you have to rely much more
19 on treatment in order to keep your asthmatic condition
20 under control. Is that fair?

21 A. Well, the treatment again, with multiple chemical
22 sensitivities, the folks that I'm aware of, the
23 treatment is based on the demonstration that there's a
24 deterioration of lung function, you go on the
25 medication, the patient gets better. But we can do a

1 lot of things. The question is are they evidence-
2 based.

3 Q. Right.

4 A. So I mean, I don't want to put words in your mouth, but
5 it certainly has been possible for me to do the wrong
6 thing, to do inappropriate treatment which is, when I
7 get subsequent evidence, it's clear it's not
8 appropriate.

9 Q. Sure. If you're giving -- if someone has, what do you
10 call it, multiple --

11 A. Multiple chemical sensitivity.

12 Q. Multiple chemical sensitivity. If someone with
13 multiple chemical sensitivity is being treated, can
14 they be around the various chemicals that cause them
15 problems and be protected from them?

16 A. That's -- the hallmark is avoiding exposure.

17 Q. So --

18 A. In the case of this nurse, we're saying you can work in
19 this area.

20 Q. So the more things there are out there in the world
21 that a person is sensitized to, regardless of whether
22 they're on medication or not, it's going to be harder
23 for them to function.

24 A. Yes, sir.

25 Q. Okay. Can multiple -- I can't believe I -- say it

1 again for me, Doctor.

2 A. Multiple chemical sensitivity.

3 Q. I'm going to write it down now, so I don't have to ask
4 you again. Can multiple chemical sensitivity develop
5 from -- what does multiple chemical sensitivity develop
6 from?

7 A. I'm really not an expert. I wouldn't want to -- you're
8 in -- the whole area or RADS, multiple chemical
9 sensitivity is an area where, if we want to get into
10 evidence-based discussions, I'd say, without reviewing
11 the literature, I wouldn't want to make a specific
12 comment. It would almost be like Dr. Feldman saying
13 you've got asthma. It'd be an opinion, but it wouldn't
14 be evidence-based.

15 Q. So do you have an opinion as to what causes multiple
16 chemical sensitivity?

17 A. Well, it's the chemicals.

18 Q. Well, what --

19 A. Once the patient -- the patient may have, for all we
20 know, there may be some genetic -- why does one person
21 react to chemical fumes and another doesn't? Maybe
22 something has happened to their DNA, something's
23 changed the way their immune system responds. But
24 there again, that's speculative.

25 Q. Okay. Suffice it to say you're --

1 A. The real answer should be I don't have an opinion.

2 Q. Gotcha. I understand. We'll leave it at that. You
3 may have touched on this earlier, but I just want to
4 make sure I understand your answer. Can anything
5 prevent a full breath for spirometry besides lack of
6 effort?

7 A. Well, in terms of consistency, you could have a
8 previous surgery, you could have-- it gets back to full
9 breath -- there's -- we want to be careful about full
10 breath. I would define full breath as the deepest
11 breath you can take with the maximal effort. Now, the
12 deepest breath you can take may be only half of what
13 you could do last year, because someone's taken out
14 half your lung. So there are things that could keep
15 you from taking a theoretical full breath.

16 Q. Is there anything, aside from lack of effort, that
17 could account for inconsistent spirometric values?

18 A. Pain. If someone -- if someone has pleurisy.

19 Q. What is pleurisy, I'm sorry?

20 A. It's pain in the chest when you take a deep breath.

21 Q. Anything else besides that?

22 A. I'd say pretty much everything else, it'd still be
23 consistent. If you had fluid in your lungs, if you had
24 heart failure, you wouldn't be taking your maximal
25 ideal breath, but it'd still be consistent.

1 Q. And if someone had pleurisy --

2 A. Yes, sir.

3 Q. -- and had inconsistent spirometry, spirometric values
4 or results, could that person still possibly have
5 asthma?

6 A. Yes, sir, but again, it'd be obvious. They'd be
7 clutching their chest. They'd go to take a deep
8 breath, and they'd say, ouch. So...

9 Q. You mentioned earlier about Dr. Feldman being involved
10 in clinical trials. And I know you are, too; correct?

11 A. Yes, sir.

12 Q. And in order to -- and I also understand that in order
13 to be able to participate in those trials, you have to
14 meet certain spirometric criteria. Is there a
15 difference between the criteria involved in

16 participating in a clinical trial versus the criteria
17 involved in diagnosing or treating someone with asthma?

18 A. Basically, the criteria for going on a trial are the
19 criteria for diagnosing and treatment someone with
20 asthma.

21 Q. Okay.

22 A. It's mandated by the FDA.

23 Q. In order to participate in a clinical trial?

24 A. Yes, sir.

25 Q. What about, if you're just treating someone as a

1 patient?

2 A. There are a lot of folks that are treated for asthma in
3 the United States that don't have it. Or in, if you go
4 state to state, just to go Spartanburg. If you go
5 Spartanburg to Greenville, you'll see that there's a
6 big spread. So you have the problem that, you know,
7 what is opinion, what is art. I, personally, have
8 taken care of patients who have -- you, sir, could come
9 in with wheezing, you could be self-employed -- I'm
10 recreating something that just happened.

11 Q. Sure.

12 A. So you're self-employed, you come in with wheezing, I
13 say you have asthma, I give you an inhaler, I put
14 asthma in your chart, I give you an inhaler. You come
15 back two weeks later, your wheezing's gone, I tell you
16 to continue the inhaler, which costs 300 dollars a
17 month. A couple of years later, you see another
18 doctor, and you see him because your health insurance
19 is now costing 15,000 a year, and you're spending 6,000
20 a year on the inhaler. And the other doctor says, so
21 what's the evidence that you ever had asthma to start
22 with. And he says, if we take 100 people with
23 wheezing, 95 percent of them, it's a virus. And once
24 the virus is gone, the wheezing's gone. Let's stop
25 your medicine and let's see what happens. So you stop

1 your medicine, and -- and this has been well-described
2 in the literature. You have been misdiagnosed with
3 asthma, your insurance is, you paid 100,000 dollars
4 extra insurance and your inhalers, all because the
5 doctor was arrogant and overestimated his ability to
6 diagnose.

7 Now, as a patient, if you came in with a headache,
8 and I said, you've got high blood pressure, I'm going
9 to put you on some medicine, you'd be savvy enough to
10 say, well, why don't you check my pressure, doc, and be
11 sure? But the dilemma in the United States is that the
12 patients are not savvy enough to say, why don't you
13 check my breathing and be sure.

14 Q. Okay. So is it your view that any time somebody is
15 going to be treated for asthma, there should be a
16 pulmonary function test --

17 A. Well, there should be --

18 Q. -- that supports that?

19 A. Somewhere along the line. You know, maybe not the
20 first visit, but somewhere along the line, you need
21 pulmonary function test. Now, if it's a four-year-old
22 kid, he may not be capable of taking the test. So the
23 history is also important.

24 Q. Now, you haven't seen Mr. Gul for almost four years
25 now.

1 A. Yes, that's correct, sir.

2 Q. Suffice it to say that you're in no position to give
3 any opinion about what his current condition is.

4 A. Yes, sir, that's correct.

5 Mr. Dantin:

6 Can I get this marked?

7 (Court reporter marks document as
8 Plaintiff 's Exhibit Number 1)

9 Examination resumed by Mr. Dantin:

10 Q. Doctor, I'm going to show you what's been marked as
11 Plaintiff's Exhibit 1. And this is just a, it's a
12 summary of the medical treatment that Mr. Gul has had
13 from August forward, excluding his evaluation by you
14 and by another doctor, who just saw him for an
15 evaluation, a one-time evaluation. But I just want you
16 to take a look at this, if you would, for a moment.

17 A. Yes, sir.

18 Q. And obviously, this is not a detailed report, by any
19 stretch. But in looking at that, what does that say to
20 you, if anything?

21 A. Well, without knowing the doctor, it doesn't really say
22 anything. The USA Today this weekend had an article on
23 a doctor that has been curing patients of cancer for
24 years, but he's the only one doing it. He's been
25 curing them with -- the headline is snake oil. So the

1 doctor has seen patients multiple, multiple, multiple
2 times. So the key is going across -- the key with
3 science is, do we get the same result with different
4 people, different parts of the country, different
5 equipment. So I could be saying that someone is normal
6 -- I could be saying that someone is fat, with my
7 scale. Would someone else with a different scale get
8 the same result? Maybe something's wrong with my
9 scale. Maybe something's wrong with my spirometer.
10 Maybe, you know, something's wrong with my perception.

11 I saw the bronchoscopy report. There is an
12 article -- there is a book called Accountability. I'll
13 be happy to look up the author. His point was that at
14 Johns Hopkins, they had one doctor that did lots and
15 lots of colonoscopies, and they were all terrible.
16 Then when they announced that they were going to
17 videotape those colonoscopies, the records changed.
18 And it was like, one doctor was doing an exam in three
19 minutes, the others were taking 30. When they
20 announced that everyone was going to go on camera, then
21 the results changed.

22 So I think in reaching any conclusions about
23 anything I'm doing, the question is would other doctors
24 with other equipment, other parts of the country, get
25 the same result?

1 Q. Okay. Let me ask you to assume that everything on
2 Plaintiff's Exhibit 1 are actual, legitimate symptoms.
3 Okay, put aside speculation that it may be bad
4 equipment or a bad doctor, or a misguided loose cannon
5 doctor. What would these symptoms suggest to you about
6 this person's condition, if anything?

7 A. It would suggest the need for further evaluation. I'd
8 want to know what his echocardiogram shows, what his
9 heart shows. I'd want to know -- in our office, here,
10 every time someone comes in with shortness of breath,
11 we give spirometry, and we make sure that it's
12 acceptable spirometry, and if it's not, we say it's not
13 acceptable.

14 Q. What if I told you that Mr. Gul has been evaluated by a
15 cardiologist within the last year, and he has no
16 cardiac issues whatsoever? Does that change your
17 impression at all?

18 A. Well, I'd still want to know what the spirometry --
19 obviously, the patient has a lot of symptoms, according
20 to that record, and the patient feels terrible. The
21 thing that would be helpful is to know is there
22 objective data, is there spirometry that meets
23 repeatability, reproducibility criteria on every visit.
24 And that would support an asthma etiology. There are
25 still other etiologies. But I think the conclusion we

1 draw is the patient's having a lot of symptoms and
2 seeing the doctor a lot.

3 Q. what type of symptoms -- I mean, those symptoms, are
4 they suggestive of anything -- let me ask it this way:
5 would an asthmatic condition be part of the
6 differential diagnosis?

7 A. Yes, sir.

8 (Court reporter marks document as
9 Plaintiff's Exhibit Number 2)

10 Examination resumed by Mr. Dantin:

11 Q. Doctor, what I'm showing you now has been marked
12 Plaintiff's Exhibit 2. This is a PFT that was
13 performed by Dr. Feldman in August of this year. If
14 you would, just take a look at that.

15 A. These breathing tests are, again, without the tracings,
16 I can't comment.

17 Q. Okay, that's fair. Hold on just a second..

18 A. But the breathing test, the results are basically
19 normal.

20 Q. I'm sorry, I meant to include this. This will be part,
21 this is the same page. That's of the tracings. I
22 apologize.

23 A. These are great tracings. This is a normal spirometry.

24 Q. Okay.

25 A. The American Thoracic Society does not recognize the

1 FEF 75, or 25-75 as a valid...

2 Q. Okay. So --

3 A. So those aren't used for the diagnosis.

4 Q. Okay, explain what you mean?

5 A. Well, what we're saying is that this would be
6 interpreted as normal range. The FEV1 and the vital
7 capacity are normal range.

8 Q. Okay.

9 A. So the vital capacity is 92 percent, and the FEV1 is 88
10 percent. This would not be interpreted as asthma,
11 because it goes -- there's only an eight percent
12 increase in the FEV1. We said we'd require 12 percent.
13 So Wednesday say this is normal range. And this FEF
14 75, and the FEF 25-75, those are basically normal,
15 normal values. So those aren't used for diagnosing
16 purposes. They're not recognized by the American
17 Thoracic Society or the European Respiratory Society.

18 Q. Is there anything on this report to you that it's
19 indicative of obstructive airways disease?

20 A. No, sir. No, sir, I would report this as normal range.

21 Q. Okay.

22 A. On our reports, we usually don't list these, because
23 there's such spread in the -- the folks that developed
24 the FEF 75 and 25-75, there's kind of a move to take
25 those off of reports, simply because there's so much

1 variability.

2 Q. Okay. In terms of diagnosis, is there any advantage to
3 being able to assess a patient over a long period of
4 time, versus a one-time evaluation?

5 A. Oh, yes, sir.

6 Q. And what would that be?

7 A. The advantage would be that you could get multiple
8 objective measurements. So if we wanted to distinguish
9 -- I had a writer friend of mine say to me, Dr.
10 Fogarty, do you have 20 years of experience or one year
11 of experience 20 times. He was kind of hinting that
12 maybe I was making the same mistake over and over 20
13 times. But the advantage of serial observation is you
14 can do serial measurements.

15 Q. Okay. Now, earlier, you had discussed the acetic acid
16 as vinegar. And my wife is a vinegar-aholic, I'll tell
17 you that. We have vinegar in my house all the time.
18 On the bottle of vinegar we have at home, there is not
19 a giant warning label that says, caution, if inhaled,
20 get to fresh air immediately. So we're not talking
21 about the same substance that Mr. Gul was working with.
22 Do you appreciate that?

23 A. Yes, sir.

24 Q. Okay. Understanding that Mr. Gul had worked with
25 acetic acid for years, plural, on a daily basis, with

1 no protective clothing or no breathing protection, and
2 had no prior history of exposure to irritants on any
3 sort of consistent basis, there's no evidence of it
4 anywhere, does it make it more probable that the work
5 that he did with the acetic acid caused problems?

6 A. I don't know that I can form an -- I'm not sure I --
7 you're saying the more he was exposed, the more likely
8 to have a problem?

9 Q. Correct. Well, we can take that as a step towards my
10 larger question.

11 A. I don't know if there is necessarily a relationship.
12 Unless there is -- I would say it's possible. It gets
13 back to you're into the mechanism of causing the
14 problem.

15 Q. Okay. What I'm asking you to assume again, is that we
16 have a man who worked with acetic acid on a daily basis
17 for years; okay? Previous to doing that, he had no
18 breathing problems whatsoever, no history of it, no
19 symptoms, no nothing. Now, he has problems. You agree
20 with me that acetic acid is an irritant?

21 A. Yes, sir.

22 Q. My question to you is, based on that information, does
23 it then seem more probable that acetic acid was a cause
24 of his problems?

25 Mr. Horner:

1 Object to form.

2 Witness answers:

3 A. Usually, the example I gave you of the person with the
4 wheezing that was told he had asthma, in that person's
5 mind, for many years, his wheezing was due to asthma.
6 So in other words, the minute we get into what causes
7 perception, the minute somebody is told that they've
8 got asthma, then every time that they -- in this case,
9 this person was misdiagnosed with asthma, he had the
10 notion in his mind and thereafter until -- he had -- it
11 gets hard to change somebody's mind, as far as what's
12 causing it.

13 So what I would say is that the notion's in this
14 patient's mind as of a certain date that he's got
15 symptoms, and the notation's also planted that he's got
16 asthma. And I think that's about all that you can say.

17 Q. Well, I'm not so much talking about the question of
18 whether he has asthma. Let's make it hypothetical, and
19 say that this is a hypothetical person that has asthma,
20 okay, and we know they do. And it is also a person
21 who, for years, worked with acetic acid, and prior to
22 doing so, had no issues with asthma. My question is --
23 again, we agree that acetic acid is a known irritant.
24 Would it then be more probable or more likely that the
25 acetic acid would be the cause of the asthma?

- 1 A. I don't think there'd be -- the dilemma I have is in
2 having -- I've seen an awful lot of patients with a lot
3 of asthma, and a lot of very unpleasant jobs who've
4 continued work in unpleasant jobs. I just don't know
5 that I could make a correlation. Folks have asthma,
6 they -- but they're allergic to cats, and they continue
7 to work at a filling station. And they're -- I'm not
8 -- it's not been my experience that that really is
9 going to -- that there's a cross -- I think what you
10 can -- is there kind of a cross-reactivity. And it's
11 possible. I think it really depends on the genetics of
12 the individual.
- 13 Q. Doctor, if we assume that Mr. Gul has asthma now, and I
14 also ask you to assume that --
- 15 A. When you say asthma, you're saying that he has tests
16 that meet the ATS criteria?
- 17 Q. Sure. Let's say that.
- 18 A. Okay. If we say -- if we say that he has --
- 19 Q. Well, I'll tell you what. Let me --
- 20 A. -- meets the ATS criteria for asthma --
- 21 Q. That's fair. Let me change it up. Let's say he has
22 the symptoms that we discussed earlier, the wheezing,
23 all those --
- 24 A. Yes, sir.
- 25 Q. -- types of pulmonary symptoms. And he's on

1 medications that help him, in other words, that make it
2 easier for him to breathe and function. Is that
3 indicative of anything, in your mind?

4 A. Well, no, sir. Be the problem is, as I mentioned is
5 this other individual. And I see -- I work at the free
6 clinic. And most of the people I see that are on
7 medication for asthma, it's a serious problem that we
8 doctors are throwing a lot of this around, and it's not
9 really evidence-based. And the minute I say I'm giving
10 you something that's going to get you better, that's a
11 placebo effect. You're going to feel better. So we
12 have the whole -- it's the fact that they're on
13 medication. They're also on the notion from the doctor
14 that the medication is going to help them.

15 I don't want to shoot myself in the foot, but I'm
16 very discouraged that I, as a doctor, you know, may
17 have put a lot of people on a lot of medicine that
18 maybe they didn't need. If I just said, you're going
19 to feel better.

20 Q. If we bring this back to Mr. Gul, however, would you
21 agree that it would be difficult for you to comment as
22 to whether that is, in fact, what is happening, given
23 that you have not see Mr. Gul in nearly four years?

24 A. Yeah, I mean, I can't comment on Mr. Gul in general.
25 What I can comment on is the -- I'm blessed as a

1 consultant to have seen a lot of asthma patients. I've
2 worked closely with all the allergists in town. Most
3 of the asthma patients that I have seen, that have been
4 diagnosed with asthma, it's very hard -- I won't say
5 most. A lot of patients have been told by allergists,
6 by pulmonologist, by my colleagues, that they've got
7 asthma. But when you go looking, it's problematic. We
8 may be over-diagnosing -- in fact, there have been some
9 recent symposium that we may be over-diagnosing certain
10 conditions, such as asthma, and under-diagnosing other
11 conditions, such as COPD.

12 Q. But again, that's a commentary more on the state of
13 medicine as it relates to diagnosis than it is
14 particularly to Mr. Gul; fair enough?

15 A. Yeah. Yes, sir.

16 Q. Okay. Doctor, I don't think I have any further
17 questions.

18 EXAMINATION BY MR. HORNER:

19 Q. I just have one or two. The medical history you saw
20 that's been produced as Exhibit 1 of Mr. Gul, you
21 testified previously that occupational exposure has a
22 temporal connection to the actual irritant you're being
23 exposed to; correct?

24 A. Yes, sir.

25 Q. In Mr. Gul's case, assuming he worked from 2004 to July

1 of 2009 around acetic acid, would you expect to see
2 these type of complaints develop at some point in that
3 five-year period that are temporally related to his
4 employment and use of acetic acid?

5 A. Yes. I still expect to see some eye and nasal
6 irritation as well.

7 Q. Correct.

8 A. So if you threw in eyes red, nose irritated, yes, sir.

9 Q. And based upon your experience as a pulmonologist,
10 assuming that Mr. Gul had been completely removed from
11 acetic acid by 9/21/09, would the list of visits and
12 symptoms that have been produced to you, when he's not
13 being exposed to acetic acid, lead you to believe that
14 it wasn't the acetic acid that was causing his
15 symptoms?

16 A. It would certainly increase the likelihood.

17 Q. Okay. You didn't see any chronic history of wheezing
18 and chest pain and chest tightness and phlegm or mucus
19 in the records that you reviewed of Mr. Gul that were
20 contemporaneous with his working at Kohler?

21 A. No, sir.

22 Q. All right. That's all.

23 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED
24 AT 1:23 P.M.)
25

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CERTIFICATE OF REPORTER

I, MARLA J. O'BRIEN, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING 83 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT
OF THE DEPOSITION OF CHARLES FOGARTY, MD, WHICH WAS TAKEN BY
ME ON THE 26TH DAY OF NOVEMBER, 2013.

THAT THE WITNESS WAS FIRST DULY SWORN TO TELL THE
TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH OF HIS OWN
KNOWLEDGE CONCERNING THIS MATTER.

THAT I AM NOT RELATED TO NOR THE EMPLOYEE OF ANY OF THE
PARTIES HERETO, NOR RELATED TO OR EMPLOYED BY ANY ATTORNEY
OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN
THE OUTCOME OF THIS ACTION.



MARLA J. O'BRIEN, CVR-M, ACR

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 8-12-2021

ROA 955

1081

Medical History for Nikolay Gul

Family Medical Center

8/25/09 shortness of breath: cough with mucous 3-4 times/day

Family Physicians of Boiling Springs - Dr. Matthew Cannon

9/21/09 breathing problems; shortness of breath has been ongoing for several months

Upstate Lung and Critical Care Specialists - Dr. Gregory Feldman

9/25/09 dyspnea (shortness of breath), wheezing, chest pain; PFT confirms asthma; diagnosis of occupational asthma (chronic, exacerbated)

10/2/09 dyspnea (shortness of breath)

10/12/09 dyspnea (short of breath), wheezing, chest pain

10/16/09 dyspnea (short of breath)

10/20/09 dyspnea (short of breath), chest tightness

12/11/09 dyspnea (short of breath), wheezing, chest pain

1/11/10 dyspnea (short of breath), wheezing, chest pain

3/12/10 dyspnea (short of breath), wheezing, chest pain w/ cough; "very wheezy"

3/19/10 dyspnea (short of breath), chest discomfort

4/9/10 dyspnea (short of breath)

5/3/10 dyspnea (short of breath)

6/15/10 dyspnea (short of breath), wheezing, cough

7/19/10 dyspnea (short of breath), wheezing, chest tightness, cough, sputum

7/26/10 dyspnea (short of breath), wheezing

8/23/10 dyspnea (short of breath), wheezing, chest pain, cough, sputum

9/29/10 dyspnea (short of breath), wheezing

10/11/10 dyspnea (short of breath), wheezing, chest pain, cough, sputum

10/14/10 dyspnea (short of breath), wheezing, chest pain

11/15/10 dyspnea (short of breath), wheezing, chest pain, cough, sputum

11/23/10 dyspnea (short of breath), wheezing, chest pain, cough, sputum



12/14/10	dyspnea (short of breath), wheezing, cough, sputum
1/24/11	dyspnea (short of breath), wheezing, cough
2/14/11	dyspnea (short of breath), chest pain and tightness, cough
3/22/11	dyspnea (short of breath), wheezing, chest pain, cough, sputum
3/25/11	dyspnea (short of breath), wheezing, chest pain
4/15/11	dyspnea (short of breath), cough, sputum
5/16/11	dyspnea (short of breath), cough
6/21/11	dyspnea (short of breath), wheezing (w/ heat), chest pain, cough, sputum
7/1/11	dyspnea (short of breath), wheezing, chest pain, cough, sputum
7/15/11	dyspnea (short of breath), wheezing, chest tightness, cough, sputum
9/6/11	dyspnea (short of breath), wheezing, chest pain, cough, sputum
10/6/11	dyspnea (short of breath), wheezing, cough, sputum
11/1/11	dyspnea (short of breath), wheezing, chest pain, cough, sputum
11/8/11	dyspnea (short of breath), wheezing, chest pain
12/5/11	<u>Problems:</u> Dyspnea (short of breath)
1/12/12	shortness of breath, cough, chest pains; wheezing (end expiratory wheeze) on exam
1/24/12	continuing to have some shortness of breath, wheezing, coughing; wheezing on exam
2/27/12	patient is coughing up yellow sputum, short of breath, wheezing, chest pains
4/10/12	complains of coughing up white sputum, cough, shortness of breath
	Rhonchi and wheezing noted is respiratory exam
9/19/12	pt is here for cough, shortness of breath, wheezing and pressure in chest
1/10/12	pt coughing up yellow sputum, SOB, and wheezing
2/11/13	pt complains of cough and congestion; respiratory: wheezing
3/27/13	pt is here with a cough, shortness of breath, and chest tightness
5/20/13	pt is having shortness of breath and coughing
8/9/13	complains of cough, short of breath, wheezing
8/28/13	pt complaining of cough-yellow sputum and chest tightness
10/4/13	pt is coughing up white sputum, SOB and wheezing

Spartanburg Regional Medical Center

5/5/10 Bronchoscopy: copious secretions in left lower lobe, left upper lobe, left main bronchus as well as right lower lobe.

Lavage done until all visible secretions were cleared

8/22/10 mild chest tightness; felt like an asthma attack

associated symptoms: cough

most likely asthmatic bronchitis

Clinical Impression: Acute Asthma Exacerbation

Primary Diagnosis: Asthma

Assessment: wheezing expiratory; wheezing inspiratory; rhonci; pt. reports "pressure in lungs" and "short of breath"

Discharge Instructions Received: ASTHMA, COUGH

7/1/11 **Breathing is difficult; coughing and congestion**

Review of Symptoms: increasing cough, congestion and wheeze.
[APA #6, at 101]

7/2/11 Bronchoscopy: inflamed mucosa

ROA 959

1085



Upstate Lung and Critical Care
151 Harold Fleming Ct.
Spartanburg, SC, 29303



Name: Gul, Nikolay ID: 29997 BSA: 2.04 Date: 08/28/2013
Tech: HORNE, CHASITY Height: 67.00 Age: 38 Room:
Doctor: FELDMAN, GREGORY Weight: 204.00 Sex: Male Race: Caucasian

Diagnosis:

Dyspnea: On hills and stairs

Cough: Productive

Wheeze: Constant

Tbco Prod: Never Smoked

Yrs Smk:

Pks/Day:

Yrs Quit:

Medications:

Pre Test Comments:

Post Test Comments: Good patient effort & cooperation. CHorne

	Pre-Bronch			Post-Bronch		
	Actual	Pred	%Pred	Actual	%Pred	%Chng
--- SPIROMETRY ---						
FVC (L)	4.47	4.83	92	4.56	94	+1
FEV1 (L)	3.43	3.88	88	3.72	95	+8
FEV1/FVC (%)	77	80	95	82	102	+6
FEF 25% (L/sec)	8.64	8.06	107	7.39	91	-14
FEF 75% (L/sec)	0.89	1.94	46	1.67	86	+87
FEF 25-75% (L/sec)	2.78	3.78	73	4.26	112	+33
FEF Max (L/sec)	10.02	9.54	105	7.70	80	-23
FIVC (L)	4.11			4.20		+2
PFF Max (L/sec)	5.43			4.61		-15

--- LUNG VOLUMES ---

TGV (L)	2.45	3.09	79
RV (Pleth) (L)	1.66	1.63	101
TLC (Pleth) (L)	5.54	6.32	87
RV/TLC (Pleth) (%)	30	26	115
Trapped Gas (L)			

--- DIFFUSION ---

DLCOunc (ml/min/mmHg)	38.43	28.30	135
DLCOcor (ml/min/mmHg)		28.30	
DL/VA (ml/min/mmHg/L)	5.84	4.48	130
VA (L)	6.58	6.32	104

--- AIRWAYS RESISTANCE ---

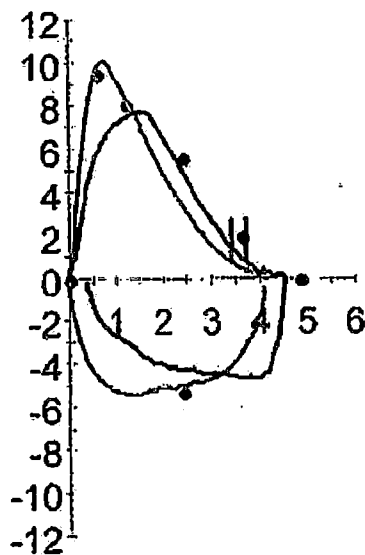
Raw (cmH2O/L/s)	2.07	1.45	143
Gaw (L/s/cmH2O)	0.48	1.03	46
sRaw (cmH2O*s)	5.74	< 4.76	
sGaw (l/cmH2O*s)	0.17	0.20	87

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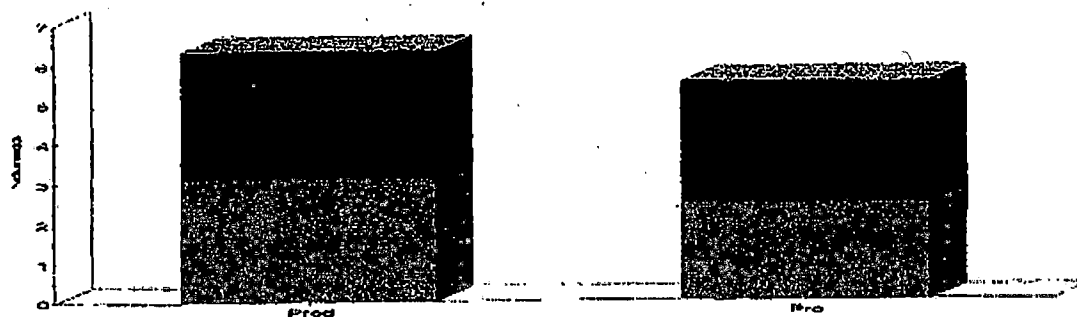
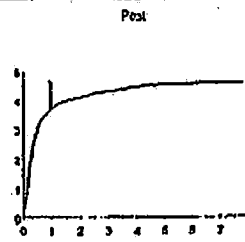
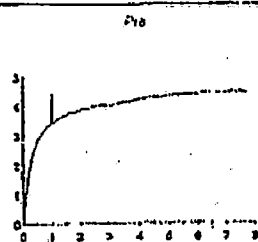
Handwritten:
OBSTRUCTIVE
AIRWAY DISEASE
NOTICE SMALL AIRWAY
GROW RESPONSE TO BRONCHODILATOR

Upstate Lung and Critical Care
151 Harold Fleming Ct.
Spartanburg, SC, 29303

Name: Gul, Nikolay	ID: 29997	BSA: 2.04	Date: 08/28/2013
Tech: HORNE, CHASITY	Height: 67.00	Age: 38	Room:
Doctor: FELDMAN, GREGORY.	Weight: 204.00	Sex: Male	Race: Caucasian



• Pred — Pre — Post



BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. #0912295

Nikolay Gul,

EMPLOYEE/CLAIMANT,

VERSUS

Kohler Company and Broadspire,

EMPLOYER/INSURER/DEFENDANT.

ORIGINAL

DEPOSITION OF
CHARLES CLAYTON

Pursuant to Notice of Deposition and/or agreement
in the above-entitled case, the deposition of CHARLES
CLAYTON was taken on the 1st day of April, 2014, commencing
at the hour of 10:11 a.m., in the offices of Harrison White
Smith and Coggins, Attorneys at Law, Spartanburg, South
Carolina.

REPORTED BY: ROSALIND POOLE WALTERS
CERTIFIED VERBATIM REPORTER-MASTER

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Deposition of Charles Clayton

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to all
5 applicable rules of the South Carolina Workers'
6 Compensation Commission;
7 2. That the deponent waives the right to read and sign the
8 deposition transcript.

9 *****

10 CHARLES CLAYTON, being duly sworn to tell the truth, the
11 whole truth, and nothing but the truth of his own knowledge
12 concerning the matter herein, testified as follows:

13 *****

14 EXAMINATION BY MR. DANTIN:

15 Q. Mr. Clayton, just state your name for the record.

16 A. My name is Charles Clayton.

17 Q. And we met just before the deposition. I'm Jeremy
18 Dantin. I represent Nikolay Gul in a workers'
19 compensation claim that he's filed. You were nice
20 enough to agree to allow me to call you Charlie, which
21 I probably will do whether you allowed me to or not
22 because I've been thinking about your name that way so
23 long anyway. Just a couple of ground rules before we
24 begin. As you're answering my questions, please be
25 sure that you give verbal responses; that is, give me

1 yeses and nos as opposed to uh-huh or uh-uh or head
2 shakes up head nods.

3 A. Yes.

4 Q. Just so that we can get a clean record. If I ask you a
5 question that you don't understand for any reason or if
6 it's confusing for any reason, please let me know.
7 That will happen, you know, as we're going through this
8 process. Interrupt me. Tell me you don't understand.
9 I'll be happy to rephrase it as often as you need so
10 that you can understand. I just want to make sure that
11 you understand the question so that we can rely on your
12 answer. Okay?

13 A. Yes.

14 Q. And the other thing I'll need you to do is just speak
15 up a little bit for me.

16 A. Okay.

17 Q. We've got these microphones set up here to assist the
18 court reporter so that we can make sure that we get
19 everything down. Okay?

20 A. Okay.

21 Q. Now, first of all, Charlie, tell me what it is you know
22 about this claim generally.

23 A. I don't really know a whole lot, I mean, just other
24 than I know he's claiming he's got some kind of a
25 respiratory problem, and outside of that, that's

1 basically all that I know about it.

2 Q. And by "he," you mean Nikolay Gul?

3 A. Nikolay Gul, correct.

4 Q. And where did you come by this information?

5 A. I'm not 100 percent sure when or how. I mean, I know I
6 got called that there was a case, and I'm going to -- I
7 mean, it's going to be a guess, but I'd say Mike
8 Donald. I'm not 100 percent sure of that, but I want
9 to say Mike Donald.

10 Q. And when were you first notified about this case?

11 A. That I can't answer because I'm not sure. I can give
12 you a ballpark, but it's probably been a couple of
13 years ago, guessing, somewhere in that neighborhood.

14 Q. Do you recall if Mike Donald or someone else from
15 Kohler asked you any particular questions about what
16 you know about this case or what you know about Nikolay
17 Gul in particular?

18 A. No. No, nothing, I mean, other than some of our
19 procedures and things like that. Other than that, no.

20 Q. And when you say some of your procedures, what are you
21 referencing?

22 A. Just about the acetic acid, you know, how we used it,
23 you know, at the time, and basically that's it. I
24 mean, I don't...

25 Q. So Mike Donald or someone else from Kohler when they

1 approached you about this matter were asking you to
2 discuss with them protocols, procedures that Kohler had
3 in place regarding the use of acetic acid during the
4 time Nikolay Gul worked there. Is that accurate?

5 A. Yes.

6 Q. Is there anything else they were talking to you about
7 specifically relative to this claim?

8 A. The only thing that we discussed that I can recall is
9 which machine he was on at certain times, you know, and
10 we didn't really have exact records saying he was here.
11 You know, we kind of -- in general we knew he was at
12 certain operations within the department, you know.
13 Other than that, that was pretty much it.

14 Q. All right. So aside, again, from the procedures and
15 protocols with the acetic acid and what machines he was
16 working on -- and by "he" I mean Nikolay Gul -- was
17 there anything else that you recall discussing with
18 Kohler regarding this matter?

19 A. I remember being asked did he ever complain about any
20 kind of problem with, you know, breathing or anything
21 or did he -- did he ask for a respirator, you know,
22 things in that nature. I was asked that, but outside
23 of that, that's pretty much it.

24 Q. Again, just again to recap, aside from the procedures
25 and protocols regarding the use of acetic acid,

1 questions about the particular machines or areas in
2 which Mr. Gul worked, and whether he made any
3 complaints or asked for a respirator, was there
4 anything else that was discussed with you or asked of
5 you regarding this matter?

6 A. Nothing that I can recall.

7 Q. Is there anything else that you know about Mr. Gul or
8 this claim I guess as it relates to his allegations of
9 exposure problems?

10 A. No, none that I know of.

11 Q. Okay. How long have you worked with Kohler?

12 A. Thirty years plus, a little over 30 years.

13 Q. And what different positions have you held with Kohler
14 over that time?

15 A. I was a caster for 14 years, and then I've been in
16 management since then.

17 Q. And what level of management have you been in? What is
18 your position?

19 A. Now I'm a -- I'm a casting foreman is my title.

20 Q. Foreman?

21 A. Foreman, yes.

22 Q. How long have you had that position?

23 A. Since May of '98.

24 Q. And as casting foreman what are your duties?

25 A. Production, safety, payroll, problems, troubleshooting,

1 you know, when we have problems, trying to correct
2 problems when we have problems. Just day-to-day, you
3 know, day-to-day operation. We pretty much -- our job
4 is probably 90 percent on the floor, you know, in the
5 area.

6 Q. How many people do you supervise?

7 A. Now? Let's see. This is a guess. I've probably got
8 about 12 now, 12 to 14.

9 Q. Has that number been steady over time or does it
10 fluctuate a great deal?

11 A. Probably when we were in our heyday, I guess you would
12 call it, when we were really high production we had a
13 few more than we have now.

14 Q. And what would that heyday, what time period would that
15 have covered?

16 A. Probably -- well, when I first went in supervision I
17 probably had about 18 guys, which would have been '98,
18 and we -- we've been up and down a little bit, but
19 that's -- you know, probably around -- I'm not sure
20 exactly what date, but when the economy really went
21 south, you know, we had some layoffs and got down
22 pretty low.

23 Q. Between 2004 and 2009, what would have been about the
24 average number of employees you would have been
25 supervising?

1 A. Probably 14, 16 guys.

2 Q. And while that number has been relatively steady in
3 terms of the number of employees that you supervise,
4 has there been turnover in that department? In other
5 words, is it the same group of people consistently that
6 you supervise or have people come and gone during that
7 period?

8 A. I would say steady.

9 Q. Pretty steady?

10 A. For the most part. I mean, I don't know what the
11 seniority rate would be, but it's -- I mean, it's high
12 seniority guys for the most part.

13 Q. Have you ever been injured while working at Kohler?

14 A. I had a back injury years ago when I was actually in
15 production.

16 Q. Do you know how long ago that would have been?

17 A. Twenty-eight years ago maybe.

18 Q. Was that something that was handled through workers'
19 comp?

20 A. I never had a -- I don't think I had actually a
21 workers' comp. I just -- I mean, I don't -- I think I
22 was on light duty for about a week or so.

23 Q. It wasn't a serious injury?

24 A. No. No.

25 Q. So you've never been involved in the work comp process

1 as an injured employee?

2 A. No, I don't think so.

3 Q. Do you have any particular role when injuries are
4 reported? Or let me put it this way. Let me back up.
5 When an employee that you supervise is injured, do they
6 report it to you?

7 A. Yes.

8 Q. Discuss your role in the work injury process.

9 A. When we have a -- we also do injury and near misses.
10 So we have a -- we have a document that we do. So when
11 -- and our guys are informed regularly if they have a
12 injury or a near miss, their first line is to come to
13 us. We do a incident report, and then the incident
14 report goes to upper management. We actually -- we do
15 it through e-mail. We got a group of guys that we send
16 it to, and then it's discussed. If it's -- if it's an
17 injury it's discussed within 24 hours providing it's
18 not on the weekend.

19 Q. Discussed with whom?

20 A. Upper management.

21 Q. Which would consist of?

22 A. That's staff. Like manager, Mike Tolleson.

23 Q. Mike Tolleson being the safety manager?

24 A. Yes. And different I guess you'd say supervisors or
25 engineers, I guess you would say some of them. So they

1 -- it's discussed to prevent it from happening again,
2 you know, corrective actions.

3 Q. Have you ever testified before?

4 A. When I first became a foreman I had to testify. Of
5 course, I really don't know why I did because I didn't
6 even know the case, but they called me anyway, you
7 know, but I did.

8 Q. Defense lawyers do that kind of stuff all the time. I
9 don't understand it either. Was that the only time --

10 A. Yes.

11 Q. -- that you've had to testify? And you actually
12 testified in court I assume?

13 A. Yes.

14 Q. And was that regarding a work comp matter?

15 A. Yes.

16 Q. Just for the record, Charlie, can you explain what it
17 is that Kohler does?

18 A. We take a slip, which is a mud, and we form it with
19 molds, which in some cases it's plasters, some cases we
20 use a machine. It's a mold. And what I -- with what I
21 work with it's what we call pressure casting, which we
22 force the water out of the -- out of the clay, so we
23 are actually able to repeat the cast over and over.
24 And bench cast is basically one to two times per day.
25 We take the part out, finish the edges, get all the

1 seams, make it smooth as possible, dry it. It goes to
2 spray, spray a glaze on it, load it into a kiln, and
3 out of the kiln it's inspected. It's either sold or
4 re-fired and passed to the customer.

5 Q. And just so we're clear, when we're saying "it," we're
6 talking about what in particular is Kohler making?

7 A. Well, we make tanks. We make lavatories and bowls, and
8 I'm not real sure what they do over in plastics, but
9 they make tubs and things over there, but I'm not 100
10 percent sure because I'm not on that side.

11 Q. Talk to me about the general layout of the facility in
12 Spartanburg.

13 A. Well, the cast shop is probably the biggest area. We
14 have -- I'm not sure how many bench casters they have
15 now, but I would -- I would take a swing at probably a
16 hundred, maybe a few more, and that's the bulk of the
17 area in the cast shop. Pressure cast, we -- let's see.
18 We have approximately about 12 to 13 machines in
19 pressure cast. And the cellular manufacturing has
20 eight machines. We currently have three one-fire kilns
21 running, and we have I think three re-fire kilns
22 running. And the cast shop makes it. It's processed
23 into the -- the spray and kiln is kind of together
24 because they spray and load it on a kiln pretty close.
25 And then the packing department's got its own

1 individual room, I guess you would say, and that's
2 where they box everything up.

3 Q. At the facility are the different departments --
4 different facilities are, of course, organized
5 different ways, and that can vary from industry to
6 industry and plant to plant even within a particular
7 company. Is the facility at Spartanburg housed in one
8 great big room and it's just like different areas
9 represent the different departments, or are the
10 departments actually divided into their own rooms or
11 spaces, for lack of a better word?

12 A. It's kind of a mix, actually. It's not a -- you know,
13 it's kind of like -- like packing, there's walls and
14 doors that separate packing. The cast shop is pretty
15 much a open area, but we do have two separate cast
16 shops with a wall in between both of those. And then
17 spray and the kilns, other than one kiln's in the cast
18 shop, but the majority is on -- in a separate wall
19 separating it, also.

20 Q. And when we talk about separating walls, are these
21 floor-to-ceiling walls?

22 A. Yes.

23 Q. How high are the ceilings?

24 A. I guess 25 feet maybe.

25 Q. Is there any special gear, attire, safety equipment

1 that is required to be used at Kohler by the employees
2 there?

3 A. Each department has different rules. Department-wide -
4 - I mean plant-wide is safety shoes. Some of the
5 departments wear ear plugs. Some departments wear dust
6 respirators. And far as fiberglass goes, there again,
7 I'm not familiar with over there.

8 Q. So safety shoes, ear plugs, and respirators are the
9 things that you're aware of in terms of safety gear or
10 equipment?

11 A. And glasses, safety glasses in some areas, not all.
12 It's just according. Like each department has their
13 own rules.

14 Q. All right. Who would need to wear respirators?

15 A. Respirators? Bench cast. Bench casters wear
16 respirators, because they're in -- they use a dust that
17 they dust the molds with, and they -- I think they wear
18 them at different -- they got different set times they
19 wear them, also.

20 Q. Anybody else use respirators?

21 A. Yes. Some -- some people do. Like actually I wear a
22 respirator from time to time. When we do some chemical
23 spraying I do.

24 Q. What type of chemical spraying are you talking about?

25 A. We use a phosphoric acid and Clorox to clean the molds

1 on a weekly and we wear a filtered respirator when we
2 do that procedure.

3 Q. Are there any other times when you or the other
4 employees that you supervise might use a respirator?

5 A. No.

6 Q. Is there protective or safety gear available upon
7 request?

8 A. If they ask. If they ask for a respirator, we would
9 provide them with a respirator, but in our setting
10 there's really no need for a respirator, a dust -- I
11 mean, we have readily available dust respirators, and
12 but there's just no need because there's no -- in our
13 area we work basically with wet clay, and so there's no
14 dust being stirred up. So we don't -- we don't wear
15 them.

16 Q. So are there two types of respirators? Dust
17 respirators and another type?

18 A. I wear a filtered respirator when we treat, which is
19 purchased for me personally. It's my personal one.

20 Q. Did you purchase it personally or did Kohler --

21 A. No, Kohler.

22 Q. -- purchase it for you?

23 A. Kohler bought it.

24 Q. And are those filtered masks like the one Kohler bought
25 for you available to other employees upon request?

1 A. If they ask.

2 Q. So all a Kohler employee would need to do is ask for a
3 filtered mask and Kohler will get it to them?

4 A. Yes. They have to go through the training. We have a
5 respirator fit test that they go through annually, and
6 you got a little questionnaire you fill out, and they
7 put the respirator on you, put the bag over your head
8 and spray some kind of a mist or something to see if
9 you can smell it or taste it, and that's annually.

10 Q. Do all employees go through that testing?

11 A. If you're in the system you do.

12 Q. What do you mean "in the system"?

13 A. If you're in -- once you're -- if you're in a area that
14 requires a respirator, then you have -- it's mandatory
15 you go through that once a year.

16 Q. Okay. Now, I understand that lung function tests are
17 performed on Kohler employees. Is that part of that
18 testing to see if you qualify for respirator use?

19 A. I'm not -- ask me -- I'm not sure. You're talking
20 about the test that comes in from the doctor, I'm
21 assuming?

22 Q. Well, I'll ask you. My understanding is that there is
23 some group that comes to the facility to do testing to
24 see how people's lungs are functioning. Is that
25 something you're familiar with?

- 1 A. Yes.
- 2 Q. Is that the testing that you're referencing when you
- 3 say they have to go through some testing to see if they
- 4 can wear a respirator?
- 5 A. No.
- 6 Q. Okay. What are you talking about?
- 7 A. The test that I'm talking about is done by either the
- 8 nurse or Mike does it. It's just like a fit test.
- 9 Q. Oh, okay.
- 10 A. It's like a fit test is what it is.
- 11 Q. Do you know who does the testing for the lung function
- 12 at Kohler? Do you know who comes and does that?
- 13 A. I mean, I -- I know they come, but I don't -- I'm not
- 14 aware of who they are.
- 15 Q. You're not really involved in --
- 16 A. No.
- 17 Q. -- coordinating that?
- 18 A. No. I mean, the only way I'd be coordinating that
- 19 would be getting the guys there.
- 20 Q. And, again, for that lung testing, is that something
- 21 that involves all employees or only certain employees?
- 22 A. I can't answer that. I'm not sure.
- 23 Q. I mean, I don't need lung testing here at my job. Why
- 24 do people at Kohler need to have their lungs tested?
- 25 A. It's because we work in a dust -- dusty area, and it's

1 just a test to see if your lungs are clear.

2 Q. And there are chemicals used there, as well?

3 A. No. I mean, the only -- I mean, the only -- I don't
4 think there's anything tested for chemicals as I'm
5 aware of.

6 Q. But you wear a mask when chemicals are used?

7 A. Yes.

8 Q. So sometimes it's a dusty environment and then it can
9 be an environment where chemicals are present, as well?

10 A. Ask me one more time.

11 Q. Sure. I'm just, again, trying to understand why Kohler
12 has to do lung testing on its employees, and you
13 mentioned dust, but I know that you also mentioned that
14 you wear a mask, a special mask, a filtered mask when
15 chemicals are being used. Correct?

16 A. Mm-hmm. Yes.

17 Q. So I was just saying in addition to dust, there are
18 times also when there are chemical irritants in the
19 environment. Is that accurate?

20 A. In my case, yes. I mean, I'm in -- when I'm spraying
21 acid, yes, I'm in a -- I'm in a chemical environment
22 when I'm spraying the acid, yes.

23 (Plaintiff's Exhibit 1 marked)

24 EXAMINATION RESUMED BY MR. DANTIN:

25 Q. What I'm showing you has been marked as Claimant's

1 Exhibit 1, and it is a lung test that was done on
2 Nikolay Gul in June of 2009. And what I'm curious
3 about is the part in the middle that reads, "cleared
4 for respirator use." Do you see that?

5 A. Mm-hmm.

6 Q. Do you know what that's referencing?

7 A. I do not.

8 Q. Does it appear that Mr. Gul was being tested to
9 determine whether he could use one of the respirators
10 you were just discussing a moment ago?

11 MR. HORNER:

12 Object to the form.

13 EXAMINATION RESUMED BY MR. DANTIN:

14 Q. You can answer.

15 A. I'm not -- I mean, I can't answer that, because I don't
16 know what the answer to that would be.

17 Q. Okay, that's fine. Did Nikolay Gul work in one of the
18 areas that would require him to go through respirator
19 testing?

20 A. As far as I know, he worked in pressure cast the whole
21 time he was there. So he wouldn't have been in the --
22 he wouldn't have been in the bench cast area that I'm -
23 - that I'm aware of. Now, he may have and I'm not
24 aware of it, but, to my knowledge, he didn't work in
25 the bench cast area.

1 Q. And your understanding is that only bench casters were
2 required to go through respirator testing once a year?

3 A. Anybody that's in the system that's required to wear a
4 respirator it's mandatory to go through the testing.

5 Q. That's what I'm trying to figure out, is who is in
6 particular in the system that's required to wear
7 respirators.

8 A. I guess it -- I mean, this is just my -- what I would
9 know. I would say if you're in an area that requires
10 respirators, which would be bench cast, then you would
11 have to be fitted. So you would be in the system
12 saying that you're in the system and you've got to wear
13 one X amount of times a day or whatever that is or when
14 you're doing each procedure. That's---

15 Q. And that's all I'm trying to get to.

16 A. Yeah.

17 Q. Is your understanding, and believe me, I understand
18 that you may not know all parts of this.

19 A. Right.

20 Q. But based on what your understanding is, it's the
21 people that work in bench casting that have to use
22 respirators. Is that accurate?

23 A. For the most part, I'd say yes.

24 Q. And there may be people in other areas that are
25 required to use respirators; you're just not certain

1 about it?

2 A. Correct.

3 Q. And you're not certain whether Nikolay Gul underwent
4 testing to see if he could use a respirator or not?

5 A. No, I do not know.

6 Q. Out of curiosity, do you know if any other employees
7 have ever made claims regarding having health issues
8 from exposure at Kohler?

9 A. I'm not aware of it.

10 Q. Nobody's made any to you?

11 A. No.

12 Q. Who would have that kind of information?

13 A. I would assume the nurse and maybe Mike Tolleson.

14 Q. All right. You were Nikolay Gul's foreman for a
15 period. Is that accurate?

16 A. Yes, for a little while.

17 Q. And do you know what period that would have covered?

18 A. Honestly, I don't know. I mean, it's been so long ago
19 and, you know, I'm not sure. I know he did work --
20 work for me for a while, but, you know, we -- with the
21 cutbacks we got to moving people around and, you know,
22 so I'm not real -- I'm not sure of the dates.

23 Q. Do you have a specific recollection of Mr. Gul?

24 A. Yes. I know him quite well.

25 Q. Okay. Tell me about him. What are your impressions of

1 Mr. Gul?

2 A. He was a good worker, very good, very dependable. He
3 got to having some -- a few issues there at the end
4 with his blood pressure. Outside of that, you know,
5 far as a good, good worker, dependable. I mean, I
6 don't -- I don't ever remember having any issues with
7 him as far as like tardies or absentees or anything,
8 you know, no kind of disciplinary action that I'm aware
9 of.

10 Q. And obviously you know he's Ukrainian.

11 A. Correct.

12 Q. And I know he doesn't communicate very well in English.
13 We've all experienced that with Mr. Gul, as well. Did
14 that present any particular challenges for him at
15 Kohler?

16 A. No, I don't think so. I think he done fairly well.

17 Q. I mean, despite that he remained employed with Kohler
18 for years.

19 A. Yes.

20 Q. Did you ever have any issues with Mr. Gul being
21 dishonest or untruthful with you, as far as you know?

22 A. Not -- no.

23 Q. And I know you mentioned earlier when we started that
24 at some point you were asked by someone at Kohler about
25 any particular complaints Mr. Gul may have made to you

1 and whether he had ever asked you for a respirator or a
2 mask or something like that. So I will ask you the
3 question. Do you recall Mr. Gul ever making any
4 particular complaints to you about any issues he was
5 having at work?

6 A. The only thing I can recall that he ever had complaints
7 to me was with his blood pressure.

8 Q. And tell me about that.

9 A. He was -- he was having trouble. He had gone -- best I
10 can remember, he had gone to the doctor, and he was
11 really having a hard time with his body adjusting to
12 the medication or something. He would break out in
13 sweats. We would send him to the nurse or have his
14 blood pressure checked, let him sit down a lot. You
15 know, we let him -- you know, we wasn't -- we wasn't
16 going to force him to work and fall out, you know. So
17 we -- we tried to work with him, you know, because he
18 was a good employee for us, and we let him, you know,
19 do the best we could for him to get through the
20 situation that he was in.

21 Q. Did you ever have a time where Mr. Gul asked you for a
22 protective mask?

23 A. No.

24 Q. Did he ever approach you about using a respirator?

25 A. No.

1 Q. Do you specifically recall that he did not do that or
2 is it that you don't recall whether he asked you?

3 A. I don't ever -- I never can remember him asking me for
4 a respirator.

5 Q. Could he have asked you for one and you don't recall
6 it?

7 A. I don't remember. I mean, I don't -- I don't never
8 remember him asking me for one. I mean, I can't -- I
9 can't say if I -- I mean, that's a hard question to
10 answer.

11 Q. Right, and it's been a while now.

12 A. Yes.

13 Q. And the reason why I'm asking you is because he recalls
14 asking you for one, and he actually has testified that
15 he used a mask for a while. Do you ever recall him
16 using some sort of paper mask?

17 A. I don't remember anybody in our department wearing
18 respirators, because respirators are very
19 uncomfortable. I mean, I used to wear them when I was
20 in bench casting, and they're hot, and they're very
21 uncomfortable, and I just -- and it would stand out
22 because our whole department doesn't do it, and I do
23 not remember him wearing a respirator.

24 Q. Do you ever recall him wearing a paper mask like you
25 see some of those folks with allergies using them when

1 they mow the lawn or something like that?

2 A. I do not recall him wearing one.

3 Q. And I assume are you familiar with the jobs that Mr.
4 Gul performed while he was at Kohler?

5 A. I am.

6 Q. My understanding is that he worked on cover machine
7 two, small machines, cover machine five, and then I
8 think the last four months he worked there he was on
9 the kitchen sink machines?

10 A. That's right.

11 Q. And what department is that in?

12 A. That's in the pressure cast department.

13 Q. That's all in pressure cast?

14 A. Yes.

15 Q. And in all those areas would he have been -- well, let
16 me ask you this. Have you ever been involved in doing
17 those particular jobs before you became a supervisor or
18 a foreman?

19 A. No.

20 Q. So you never actually performed the same jobs that Mr.
21 Gul performed?

22 A. No.

23 Q. Now, you do know that Mr. Gul used acetic acid in his
24 job?

25 A. Yes.

1 Q. And would he have used it in all those machines that we
2 just talked about?

3 A. All but the kitchen sink --

4 Q. All but the kitchen sink.

5 A. -- it could have been used.

6 Q. And did he use acetic acid every day in those jobs,
7 again, other than the kitchen?

8 A. Yes, with the exception of the kitchen sink, yes.

9 Q. And what precautions did Kohler take regarding the use
10 of acetic acid while Mr. Gul worked there?

11 A. We -- we offered -- well, we let them use rubber
12 gloves, because sometimes when they pumped it out of
13 the -- we had a thing they pumped it out of into a
14 bottle, and sometimes some guys would complain that it
15 would make their hands break out. So we had rubber
16 gloves that they used, but other than that, that's the
17 only protection that we had as far as acetic acid goes.

18 Q. Where was the acetic acid stored?

19 A. It was in a 55-gallon drum in the department.

20 Q. Where in the department?

21 A. At the end of one of the machines. I mean, it was just
22 sort of like a central location.

23 Q. Was it in a sealed drum?

24 A. Yes, I guess. Well, when you put the pump in, it was
25 sealed, yes.

1 Q. Could any employee access the acetic acid?

2 A. Yes.

3 Q. Were there any particular protocols as how the acetic
4 acid was to be handled?

5 A. Other than the rubber gloves, and we just used it as
6 needed. I mean, if the molds required the use of it to
7 -- we use it like a releasing agent sort of to get the
8 part out of the mold, and that was -- that was -- I
9 mean, that was it.

10 Q. So other than making rubber gloves available, there
11 weren't any particular protocols or procedures as to
12 how acetic acid was to be used by the employees. Is
13 that accurate?

14 A. We had a -- we do a -- we have like a job hazard book,
15 you know, that lists the hazards of all the --
16 everything in the department, and other than that we
17 did have -- we do a annual training for chemical
18 handling. You know, it doesn't specifically spell out
19 acetic acid, but we do a -- we do a annual of handling
20 chemical or chemical hazards, I guess you would say.

21 Q. Would acetic acid fall into that category?

22 A. I can't answer that. I would assume yes, but, I mean,
23 I'm not a chemist, so I couldn't really say.

24 Q. Well, tell me about that training. How does one handle
25 chemicals at Kohler?

1 A. Well, one thing is everything has to be labeled so we
2 know what we're handling, and it basically -- I mean,
3 it's just a little 10- or 15-minute thing, and they do
4 a check-off like a questionnaire at the end that they
5 understand what we've covered.

6 Q. And do you know what that procedure is for handling
7 chemicals? I mean, like how do y'all actually go about
8 doing it? What do the employees have to do with a
9 chemical when they're handling it?

10 A. Well, actually, in our department, I mean, when you say
11 -- when we say chemicals, I'm talking, I mean, we're
12 using slip. I mean, we would say slip's got to be
13 labeled or flint, which flint is something that we use
14 that stops it from -- I mean, we really don't have --
15 we don't have anything that's what you would say a
16 hazard. So we don't have to like go through any kind
17 of special training. You know, the only thing that we
18 have that I'm aware of is the phosphoric acid and
19 Clorox, and nobody in our department handles that with
20 the exception of the foreman, and we've got a couple of
21 guys that have been trained to do it. So nobody that
22 I'm aware of is in any kind of high risk chemical that
23 I'm aware of that would need specialized training.

24 Q. Is it safe to say then that Kohler does not consider
25 acetic acid to be harmful?

1 A. I can't answer---

2 MR. HORNER:

3 Object to the form.

4 EXAMINATION RESUMED BY MR. DANTIN:

5 A. I can't answer that. I don't know what Kohler would
6 say.

7 Q. Well, do you consider acetic acid to be harmful?

8 A. Do I? I don't. Personally I don't.

9 (Plaintiff's Exhibit 2 marked)

10 EXAMINATION RESUMED BY MR. DANTIN:

11 Q. Do you recognize what that is?

12 A. Yes.

13 Q. And what is this? This is Claimant's Exhibit 2. What
14 is Claimant's Exhibit 2?

15 A. It's like a description of a chemical.

16 Q. And can you tell what chemical it is?

17 A. Yes. It's the 20 percent acetic acid.

18 Q. You mentioned that all the chemicals, especially I
19 guess the harmful chemicals had to be labeled. Is that
20 the label that was on the acetic acid drum? Does that
21 look familiar to you?

22 A. I would say yes. I mean, I'm not -- I would say yes.

23 Q. Now, there's a warning on there that notes it's a
24 flammable liquid and vapor, causes burns to the eyes
25 and skin, vapors cause severe respiratory tract

1 irritation. You've also mentioned that rubber gloves
2 are available because if it gets spilled on someone's
3 hands it can cause some itching and irritation, I
4 suppose. And in looking at this now, do you feel like
5 acetic acid is a harmful chemical?

6 A. No.

7 Q. And why don't you?

8 A. Well, I've been working in pressure cast for so long,
9 and we've used it a lot, you know, and it's kind of
10 like one of those deals when you -- I mean, I look at --
11 -- I'm not saying that some of this can't happen, but
12 it's like you take a Tylenol, if you read all the side
13 effects you wouldn't take it, you know. So, you know,
14 you got to kind of weigh -- you kind of weigh out, I
15 mean, because when you go to the doctor and they tell
16 you if I give you this it's going to -- may cause this,
17 this, and this. So if you -- if you went by that, in
18 reality, you probably wouldn't ever take a pill or any
19 kind of treatment that a doctor offers. I mean, you
20 know, yes, there probably is, but what's the chances,
21 you know, of that happening. I mean, that's -- that's
22 kind of how I view it as my personal -- that's my
23 personal view.

24 Q. And, again, you don't actually do any of the spraying
25 of acetic acid. Correct?

1 A. I mean, I have a few times, but I don't do it like -- I
2 mean, I'm not in the process to where I do it like over
3 and over. You know, I'm not -- I'm not in a production
4 setting. So I have done it before, yes, I have.

5 Q. But it's not something that's really part of your
6 scope?

7 A. Correct.

8 Q. It also mentions here under the attention part kind of
9 in the middle there that when the drum is empty there's
10 still some precautions that have to be used because
11 there could be a vapor in that drum. That's why I was
12 asking earlier if it was sealed. Do you know if
13 there's any particular steps Kohler takes when y'all
14 are handling the drums once they're emptied of the
15 acetic acid?

16 A. At one time we had a spot outside the building, we took
17 them outside, and they would take them. We would --
18 like when we gathered several together. And I don't
19 know who picked them up, but somebody was getting them.
20 Once they were empty, we put a new one in, we took the
21 old one outside.

22 Q. Do you know why you would take it outside to a specific
23 area in particular?

24 A. I mean, I don't know. I mean, that's -- I mean, nobody
25 ever said this is why we do it. We just -- we did it.

1 I mean, we were told this is where to put them, and we
2 did. I mean, no I never had a reason why.

3 Q. Were other chemical drums or empty chemical drums taken
4 out to that area that you're aware of?

5 A. No.

6 Q. Acetic acid was the only one?

7 A. That I'm -- yes, that I'm aware of.

8 Q. Does Kohler have any protocols in place for employees
9 who may have a problem due to exposure to acetic acid?

10 A. Not -- none that I -- I mean, other than going to the
11 nurse. I mean, it would be the same procedure, I'm
12 assuming, that they would if they had, you know, a near
13 miss or a safety issue. They would report it to us and
14 we would do the report.

15 Q. And I only ask because on the label there's a section
16 over to the right called First Aid, and there was some
17 particular things that are recommended that would be
18 done in the event of particular contacts with the acid.
19 Your understanding is that there's no particular
20 protocols in place; you would just send them to the
21 nurse if they had a problem?

22 A. Yes.

23 Q. And, again, you understand Mr. Gul was not provided
24 with any breathing protection?

25 A. Yes.

1 Q. Do you know if he was given any other protection for
2 using the acetic acid other than perhaps rubber gloves?

3 A. None that I'm aware of.

4 Q. All right. Tell me about the particular area where Mr.
5 Gul would have been using the acetic acid. What was it
6 like?

7 A. Okay, he was on the two mold machines. Two mold
8 machines are -- they're in a line. There's three
9 machines in a line, and each machine has two molds with
10 six cavities, or three cavities in each mold. So you'd
11 have -- you'd be making six covers on each machine.
12 Those machines, there's a panel you start the machine.
13 It automatically sets itself up. It runs, opens up,
14 there's a button he presses, it goes in. There's a
15 table that goes in and takes the covers out. They come
16 out, he takes them off. And then that was basically
17 the way the two mold machines work. On the beam
18 machines, which would be the KS1 and the KS5 that he
19 runs, it's more of a -- it's like a long bank of molds
20 where they're on rollers. They hang from overhead, and
21 they actually have to go in and physically open the
22 molds on it. It doesn't -- it's not automatic. So
23 that would be the ones that, like I said, they would --
24 they would actually go in and take the covers out by
25 hand and open the molds by hand.

1 Q. And when they're going in and opening those molds, I
2 mean, is that an enclosed type area inside that mold
3 that they're going in to open?

4 A. I mean, it's got -- I mean, it's enough room so that
5 you can get a full body in and have room to get the
6 cover, and then plus the mold itself is open on front
7 and back and overhead. So it's just -- it's just
8 whatever the difference -- distance between the opening
9 is, which I'm guessing three to four foot between each
10 mold as they open.

11 Q. So there would be molds on either side of the person
12 doing the spraying. Is that accurate?

13 A. Basically, no, it would be front and back.

14 Q. Front and back, okay. And then nothing on the sides?

15 A. Nothing on the sides.

16 (Plaintiff's Exhibit 3 marked)

17 EXAMINATION RESUMED BY MR. DANTIN:

18 Q. I'm showing you what's been marked as Plaintiff's
19 Exhibit 3, and I'm going to grab a copy myself to look
20 at. On Plaintiff's Exhibit 3, the first pictures on
21 top, is that the molds that you're talking about where
22 it would be on front and back?

23 A. Yes.

24 Q. And that would be true in those top two pictures on
25 Plaintiff's Exhibit 3. Is that correct?

- 1 A. Yes.
- 2 Q. And then moving down to the next photos, the two in the
3 middle, what is that?
- 4 A. That is the two mold machine, the one I was telling you
5 about. If you'll notice, the side -- it's kind of hard
6 to see, but this is the center. This is like a center
7 plate, and what happens is the two molds open and the
8 covers hang on this. So once -- once it opens, this
9 table right here has a platform on it and it's set up
10 so that it rolls in. Well, actually, this -- this
11 rotates and this rolls in and comes up and the covers
12 come off on it, and then it rolls back out.
- 13 Q. So it looks like in the middle photo on the right that
14 the employee is walking into that mold. Is that
15 correct? Or that machine?
- 16 A. Yes.
- 17 Q. And if we move down to the bottom two photos, it looks
18 like is that employee standing sort of inside that
19 machine we're looking at spraying acetic acid?
- 20 A. Yes.
- 21 Q. And is that the environment in which Nikolay Gul would
22 have been using acetic acid?
- 23 A. Yes.
- 24 (Plaintiff's Exhibit 4 marked)
- 25 EXAMINATION RESUMED BY MR. DANTIN:

1 Q. I'm now showing you what's been marked as Claimant's
2 Exhibit 4, and really what I'm interested in here are
3 the middle two pictures. One is photo 3, a pump
4 sprayer, and photo 4 is an alternative sprayer?

5 A. Mm-hmm.

6 Q. Now, are these the types of sprayers that would be used
7 to spray the acetic acid that Nikolay Gul would have
8 been using?

9 A. Yes.

10 Q. And why are there two different ones used? What's the
11 difference?

12 A. We use -- we were using these because it makes it---

13 Q. When you say "these," you're talking about the larger
14 one?

15 A. The one on -- the one on the right.

16 Q. Okay.

17 A. We use these first because it kind of helped the guys
18 from having to squirt, squirt, squirt, squirt. You
19 know, this was more air.

20 Q. It put out a higher volume of acetic acid?

21 A. No, not a higher volume. It was just -- it was just
22 easier for the guys instead of sitting there -- instead
23 of sitting there, you know, you just pull the trigger
24 and it sprays.

25 Q. Oh, it sprayed continuously with one pull?

1 A. All right, if you have the -- it's just like a garden
2 sprayer. You know, you pull the trigger and it -- and
3 it sprays.

4 Q. That's what I'm saying. You could hold the trigger
5 down and it would --

6 A. Yes.

7 Q. -- be a continuous spray?

8 A. Yes.

9 Q. Gotcha.

10 A. And the other one is, you know, it's more like a Windex
11 type sprayer. So you'd have to pump --

12 Q. Pump it?

13 A. -- you know, when you need it. So we used this one for
14 a while, and then we went from this one to this one
15 because we kept having a lot of trouble out of these,
16 and it was just having to buy them, and so we went with
17 this one here at the end.

18 Q. And when the spray comes out, does it come out in a
19 straight jet or does it come out like a spray mist?

20 A. I'd say more like a medium, not like a -- it wouldn't
21 be like a big vapor. It would be sort of like in
22 between a -- it wouldn't be like a straight stream.
23 It's sort of like a medium spray is what I would say.

24 Q. Comparable to what we'd get if we had a Windex bottle?

25 A. Probably so.

- 1 Q. Now, do you know whether every person that would use
2 the acetic acid would use the same amount of acetic
3 acid when they would do their spraying work?
- 4 A. It wouldn't be -- it wouldn't be down to a science it
5 was an exact. You know, we train them to use as
6 needed. You know, it wouldn't be like that we're going
7 to go in there and use it, that we just coat the mold
8 every time. You know, if we had trouble with it
9 sticking, you know, we always -- we use sandpaper to
10 sand the mold, and we'd spray acetic acid on it.
- 11 Q. So, again, I just want to make sure I'm clear. Kohler
12 would have no way of knowing whether each employee uses
13 the same amount of acetic acid when they're doing the
14 spraying?
- 15 A. No, I don't see how.
- 16 Q. Would Kohler have any way to know whether every person
17 holds the bottle the same distance from their face or
18 body when they're spraying?
- 19 A. I don't -- no, I don't see how.
- 20 Q. Would Kohler have any way of knowing whether every
21 employee uses the same motions or patterns when
22 spraying the acetic acid?
- 23 A. There again, I don't see how you would, how you would.
- 24 Q. There's no way that you know of to measure for that
25 stuff. Is that fair to say?

1 A. I mean, the only way I know you'd be able to measure is
2 how much you purchase, you know. I mean, that's the
3 only way I would---

4 Q. But that would only tell you how much the plant is
5 using, not how much each individual employee would be
6 using.

7 A. Right.

8 Q. And I assume then Kohler doesn't have any records as to
9 how much acetic acid each employee used per day?

10 A. I can't answer that. I don't think so. I don't know
11 for sure.

12 Q. And you don't personally have any idea how much acetic
13 acid employees use per day?

14 A. I mean, I couldn't say whether they use ten ounces or
15 two gallons, I mean, no.

16 Q. And safe to say you don't have any idea how much acetic
17 acid Mr. Gul in particular used when he was working
18 there?

19 A. When you say that, I mean, I don't think -- I mean, I
20 can -- and this is -- I can't say that he would use two
21 gallons a day, but on the other side, I mean, I don't
22 think there would be a way he would use two gallons a
23 day, you know, because the process wouldn't allow it.
24 I mean, he couldn't spray -- you know, in the process
25 we basically would spray areas needed. You know, they

1 would pump or use the other one, spray, and move on,
2 you know, and -- and what I would say also is if you
3 took the time that it would take to spray a tremendous
4 amount, he wouldn't be able to meet the cycles that
5 Kohler Company required him to get at the end of the
6 day. So but it's saying like, well, he sprayed two
7 ounces or ten ounces, no, I can't tell you that.

8 Q. Right. The question was you don't know how much he
9 used per day? And by "he," I mean Mr. Gul.

10 A. Right. No, I don't know.

11 Q. Were you aware that there was an industrial hygiene
12 assessment done at Kohler in 2011? Do you even know
13 what that is?

14 A. I don't know exactly if -- I do know that there was
15 somebody come in and did a study, yes, I do know that,
16 but exactly what the title was, no, I don't.

17 Q. Were you involved in that --

18 A. I was.

19 Q. -- process at all?

20 A. I was.

21 Q. Tell me about your involvement with that process.

22 A. What we done that -- we done it on a -- on a night or
23 afternoon, and we sprayed -- I mean, we tried to spray
24 as much as we could basically get on a mold every -- we
25 ran the -- we ran the machines just basically as fast

- 1 as it would run. These machines have certain things
2 that they have to do, and, I mean, for instance, they
3 may be running 25 minutes per cycle. And so what we
4 done was we ran a cycle, and soon as it would come out
5 we would go in and just coat as much acetic acid on the
6 mold as we could get and start it back, and we did that
7 continuously, you know, in the time allowed.
- 8 Q. Now, it's my understanding Kohler didn't do any air
9 quality testing during any of the years Mr. Gul worked
10 there. Is that your understanding, or do you know?
- 11 A. I don't know.
- 12 Q. Who arranged for this study?
- 13 A. I don't know.
- 14 Q. Were you involved in the process of determining whether
15 a study should be done, picking the date, anything like
16 that?
- 17 A. No.
- 18 Q. Was your involvement in the study limited to just
19 overseeing the process while it was being done?
- 20 A. No. I actually did it.
- 21 Q. You actually did the spraying?
- 22 A. I did.
- 23 Q. And who else did spraying that day?
- 24 A. Chris Thomas and Dickie Goodman.
- 25 Q. Why were you doing spraying that day if it's not

1 something you normally do?

2 A. That I don't -- I was asked would I do it, and I came
3 in I think on a off -- on one of my off days and done
4 it.

5 Q. Suffice it to say Kohler understood when the folks
6 would be coming to do this study?

7 A. I mean, I don't know. I really don't know.

8 Q. You don't know if it was a surprise inspection or if it
9 was something that was scheduled?

10 A. I was just asked could I -- could I do it. I mean, I
11 don't -- that I can't answer. I don't know.

12 Q. How far in advance did they ask you if you could do it?

13 A. I don't---

14 Q. You don't remember?

15 A. I have no clue.

16 Q. Okay. That's all right. Have you ever seen the study?

17 A. Have I seen a study?

18 Q. Have you seen the study that was done, the report?

19 A. No, I have not.

20 Q. Are there any differences in the way hazardous
21 chemicals are handled now versus the way they would
22 have been handled from 2004 to 2009 when Mr. Gul worked
23 there?

24 A. No.

25 Q. Is there anything more you know about the handling of

1 acetic acid at Kohler that we haven't discussed?

2 A. No.

3 Q. Is there anything more that you know about this claim
4 that we haven't discussed?

5 A. No.

6 Q. One last thing. You mentioned when we started that
7 there were no records as to where employees were
8 working or what in particular they would have been
9 working on. Did I write that down accurately?

10 A. One more time?

11 Q. Okay. I wrote down that Kohler didn't have exact
12 records as to where particular employees were working
13 or what exactly they were working on, or are there
14 records kept of that?

15 A. Oh, I know what you're saying. What I -- what I was
16 saying was is -- is that we don't -- I don't have a
17 record of saying that he was -- I know what department
18 he was in, but I don't have a record per se that he was
19 running this machine or this machine. Yeah, we do have
20 records where -- what department he's in, but we don't
21 have saying, well, for this period he was running
22 covers, for this period he was running -- no, I don't
23 have -- I mean, Kohler may have something I'm not aware
24 of, but I personally do not.

25 Q. One other thing. When Mr. Gul was running the kitchen

1 sink, he testified that he would often help in other
2 areas and particularly would be doing work with acetic
3 acid spraying molds and stuff even while he was working
4 on the kitchen sink. Is that something that is
5 possible?

6 A. I can't answer that, because he was -- went on kitchen
7 sinks. He was on night shift, and, see, I'm -- I'm a
8 day shift. So I can't -- I can't answer that. I don't
9 know the answer to that.

10 Q. All right. No further questions.

11 EXAMINATION BY MR. HORNER:

12 Q. If Mr. Gul had asked you for a respirator due to being
13 exposed to acetic acid, was there a process that would
14 have then taken over as to that request?

15 A. Yes.

16 Q. And what would that process have been had he come
17 directly to you and said, I would like a respirator
18 because of the acetic acid?

19 A. If he came to me and said he needed a respirator, our
20 process would be to send him to Mike Tolleson, because
21 he would have to be fitted for a respirator and tested,
22 and that's -- I mean, that's company policy.

23 Q. And then there was some confusion about the once a year
24 test. Assume for the sake of my question Mr. Gul came
25 to Mike Tolleson and got a respirator and was using his

1 respirator in his job. Would he be subject to the once
2 a year testing from that point on because he had been
3 assigned a respirator?

4 A. He would be.

5 Q. And the once a year testing is to make sure that the
6 respirator still fits properly and that there don't
7 need to be any changes to it. Is that right?

8 A. From what I understand, that's correct.

9 Q. So when you do your job with the phosphoric acid and
10 the Clorox and you have a respirator to do that job,
11 owning that respirator or having it assigned to you is
12 the reason that you have to go get re-fitted or re-
13 tested once a year?

14 A. Right.

15 Q. Okay. I just wanted to make that clear.

16 MR. DANTIN:

17 No further questions.

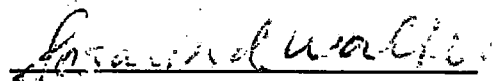
18 (There being no further questions, this deposition concluded
19 at 11:11 a.m.)
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Rosalind Poole Walters, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 46 pages represents a true and accurate transcript of the deposition of CHARLES CLAYTON, which was taken by me on the 1st day of April, 2014.

That the witness was first duly sworn to tell the Truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.



Rosalind Poole Walters, CVR-M

Notary Public for S.C.

Commission expires: 12-18-2016

ROA 1009

1135

Apple Mobile Medical, Inc.
A Subsidiary of The Ellwood City Hospital
510 Jamison Avenue
Ellwood City, PA 16117

Individual Pulmonary Function Results

07/16/09

Name **GUL, NIKOLAY I** Sex **Male**
SSN/ID **REDACTED** Race
Company **Kohler** Height **66.0**
Date of Birth **REDACTED** Age **34** Weight **181**

Current Screen Date 06/11/09

	Actual Results	Predicted Results	Percent of Predicted
FVC	4.52	4.35	103.81
FEV1	3.59	3.64	98.59
FEV1/FVC	79.42	84.29	94.22
PEFR	7.01	8.58	81.74
FEF2575	3.37	3.96	85.20
FEF25	0.00	7.91	0.00
FEF50	0.00	4.68	0.00
FEF75	0.00	1.93	0.00

Current Classification **Normal**

Respirator Opinion **CLEARED FOR RESPIRATOR USE**
Based on your respiratory evaluation, you have been cleared for respirator use with no limitations. This evaluation has met with the requirements set forth under 29 CFR 1910.134 for respirator clearance.

Examiner **Thomas Rose**

Comment **EVALUATE BLOOD PRESSURE**

Charles H. Zeigler, D.O., M.P.H.
Medical Provider Performing Evaluation



ROA 1010

1136

ROA 1011

1137



**WHITAKER
OIL COMPANY**
1557 Marietta Road NW
Atlanta, GA 30318
(404) 355-8220

**WHITAKER
VENTS AND CHEMICALS**
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Ocoee, FL 34761
(407) 656-0088

**WHITAKER
CHEMICALS, L.L.C.**
405 John Dodd Road
Spartanburg, SC 29303
(864) 578-6968

Net: 450#
LOT SP067849832
NET GALLONS:

☐ 55 ☐ 5 ☐ 1

Acetic Acid 20%



Corrosive/Flammable Material
UN2789

☐ **HEALTH**
☐ **FIRE**
☐ **REACTIVITY**

WARNING!
FLAMMABLE LIQUID & VAPOR.
CAUSES BURNS TO EYES AND SKIN.
VAPORS CAUSE SEVERE
RESPIRATORY TRACT IRRITATION.

FOR CHEMICAL ASSISTANCE
CALL CHEMTREC
800-424-9300

ATTENTION:
THIS CONTAINER HAZARDOUS
WHEN EMPTIED

Since empty container retains product residues (vapor or liquid), all labeled hazard precautions must be observed. Cutting, drilling, grinding or welding on containers might cause fire, explosion or release of harmful fumes.

WARNING!
FLAMMABLE LIQUID AND VAPOR
CAUSES BURNS TO SKIN AND EYES.
SEVERE RESPIRATORY TRACT IRRITATION.

ACETIC ACID 20%

Keep away from heat, sparks and open flames. Keep containers tightly closed. Store away from oxidizing agents in a cool, dry place with adequate explosion proof ventilation. Ground equipment to prevent accumulation of static charge. Bond or ground container if pouring or transferring material. Do not weld, heat, grind or drill on or near container, even if empty. Wash hands thoroughly with soap and water after use.

FIRST AID

EYE CONTACT: Flush with water for 15 minutes while holding eyelids open. GET MEDICAL ATTENTION.

SKIN CONTACT: Wash skin with soap and water. Do not reuse clothing until cleaned. If irritation occurs, Get Medical Attention.

INHALATION: Remove victim to fresh air and provide oxygen if breathing is difficult. Give artificial respiration if not breathing and Get Medical Attention.

SWALLOWING: DO NOT induce vomiting. Give 1-3 glasses of water or milk to dilute stomach contents. Keep affected person warm and at rest. Call a physician. Never give anything by mouth to an unconscious person.

FIRE SPILL LEAK

Use appropriate protective clothing.

FIRE: Use water fog, foam, dry chemical or CO₂.

SPILL: Eliminate all ignition sources. Shut off source of leak only if safe to do so. Dike and contain. Recover and reclaim large quantities. Collect small amounts with suitable absorbent and place in sealable container for disposal. Keep out of sewers and other public water systems.

ON:

LEAK

ROA 1013

1139



Industrial Hygiene Assessment
Kohler Co.
Project No. 0811-37
October 3, 2011



Photo 7- Big Beam operator #2, product removal.



Photo 7- Big Beam operator #2, product removal.

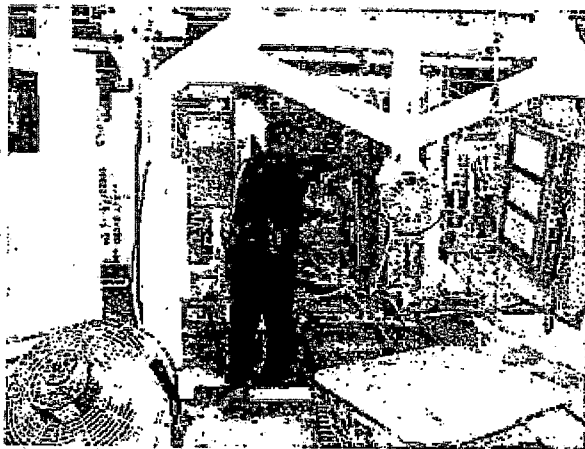


Photo 9- Two mold operator, acetic acid use.



Photo 10- Two mold operator, product removal platform.



Photo 11- Two mold operator, acetic acid use.

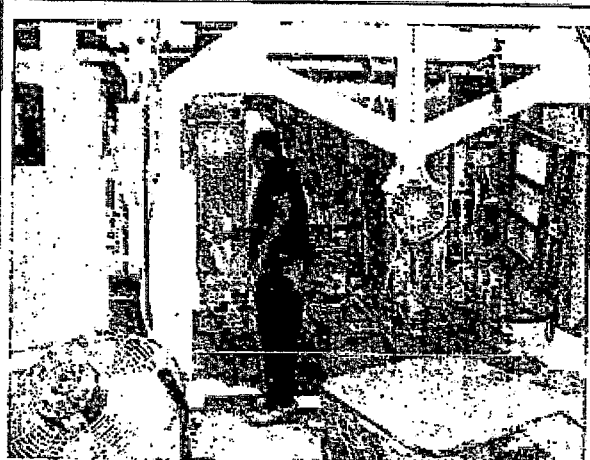


Photo 7- Two mold operator, acetic acid use.

ROA 1015

1141



Industrial Hygiene Assessment
Kohler Co.
Project No. 0811-37
October 3, 2011



Photo 1 - Big Beam machine



Photo 2 - Two mold machine.

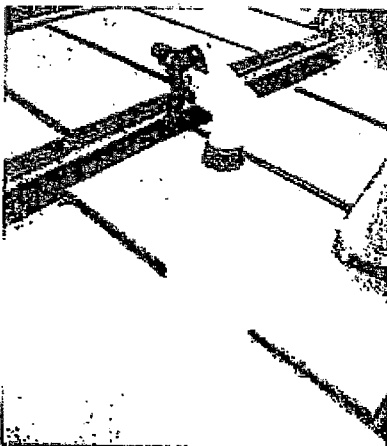


Photo 3 - Pump sprayer used during site visit.

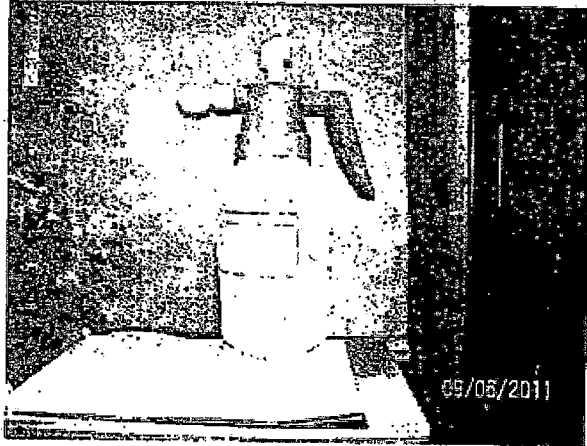


Photo 4 - Alternative sprayer not used during assessment.

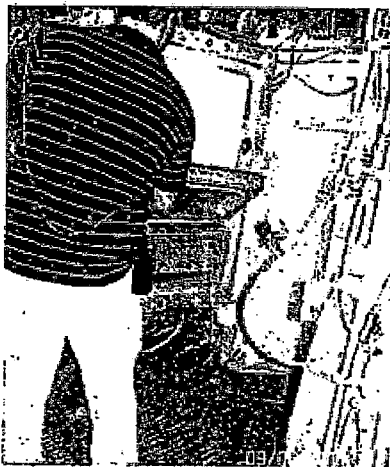


Photo 5 - Big Beam operator #1, product removal.



Photo 6 - Big Beam operator #2, acetic acid use.

ROA 1016

ORANGE 100

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APPEARANCES:

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(This Transcript May Contain Quoted Material. Such
Material Is Reproduced as Read or Quoted by the Speaker.)

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to all
5 applicable rules of the South Carolina Workers'
6 Compensation Commission;
7 2. That the deponent waives the right to read and sign the
8 deposition transcript.

9 *****

10 RODNEY HORNE, being duly sworn to tell the truth, the whole
11 truth, and nothing but the truth of his own knowledge
12 concerning the matter herein, testified as follows:

13 *****

14 EXAMINATION BY MR. DANTIN:

15 Q. Mr. Horne, go ahead and state your name for the record,
16 please.

17 A. Rodney Horne.

18 Q. All right. My name is Jeremy Dantin, and I represent
19 Nikolay Gul in the workers' compensation claim he's
20 filed. And you were nice enough to allow me to call
21 you Rodney when we met before the deposition. I
22 appreciate that. I'm here today to ask you some
23 questions to find out what you know about this matter
24 and some background things about Kohler, as well. As I
25 go through the deposition and you're giving me answers,

1 make sure that you give verbal responses; that is, give
2 me yeses and nos as opposed to uh-huh and uh-uh or head
3 shakes or head nods. That's just so we can make sure
4 we get a nice clean record. Also, if I ask you
5 anything that's confusing or you don't understand,
6 please ask me to repeat it or rephrase it, and I'll be
7 happy to do that as often as you need so that you can
8 understand it. I just want to make sure that you
9 understand the questions so we can rely on your answer.
10 Okay?

11 A. Yes, sir.

12 Q. Now, first of all, tell me what is it that you know
13 about this particular matter.

14 A. I just know that there was a issue with Nikolay with a,
15 how you say, suit with Kohler concerning his health. I
16 mean, I don't know a whole lot. That's basically all I
17 know.

18 Q. Do you know what it was about his health that seemed to
19 be the problem?

20 A. As in? I mean, you know.

21 Q. I'm just wanting to know what generally you know about
22 this. I mean, you're here today. Do you know why?

23 A. Yeah.

24 Q. Why?

25 A. Because he's claiming he has a issue with his health

1 concerning chemicals and all that we use.

2 Q. And do you have any understanding as to how his health
3 was affected by the chemicals?

4 A. No.

5 Q. Is there anything else you know about this matter, or
6 is it just that very basic understanding?

7 A. That's basically how -- what I -- how I understand it.

8 Q. Who have you spoken with about this at Kohler, or who
9 spoke with you about this?

10 A. The only person we ever spoke with would be the upper
11 management like with the safety coordinator and our
12 supervisor, Mike.

13 Q. And the safety coordinator is who?

14 A. Mike Tolleson.

15 Q. And who's the other supervisor you were speaking of?

16 A. Mike Donald.

17 Q. Okay. How long have you worked at Kohler?

18 A. I believe going on 21 years.

19 Q. Well, Charlie said there wasn't a lot of turnover at
20 Kohler. I'm beginning to believe it.

21 A. Well, actually, I believe it would be 23. I come in
22 '91. So that would be about 21, 23 years, something.

23 Q. What is your position at Kohler?

24 A. I'm a foreman in pressure cast area slash the cell
25 area, two different areas.

- 1 Q. How long have you been in that position?
- 2 A. I've been in the foreman position since '97.
- 3 Q. And as a foreman in the pressure cast area what do you
- 4 do?
- 5 A. We have, you know, set up mold schedule, production
- 6 changes, you know, do all the paperwork, you know,
- 7 reports, and make sure our guys are aware of anything
- 8 related to safety that's passed down from the
- 9 coordinator or, you know, anything that comes up with
- 10 safety alerts, we pass that along to everybody.
- 11 Q. Now, Charlie Clayton, as I understand it, has a similar
- 12 role. Do y'all work different shifts?
- 13 A. Opposite shifts.
- 14 Q. And which shift do you work?
- 15 A. We work first shift.
- 16 Q. Oh, y'all both work first shift?
- 17 A. Yes, sir.
- 18 Q. Okay, I got it. Do y'all work together as sort of co-
- 19 foremen? How does that work? Or do y'all have
- 20 different areas of responsibility?
- 21 A. No. See, we're on a 12-hour shift. So you work so
- 22 many days, you're off so many days. So when I'm
- 23 working he's off. When he's working I'm off.
- 24 Q. Gotcha. So y'all fill the same role, just at different
- 25 times?

- 1 A. Yes, sir.
- 2 Q. Have you ever been injured while working at Kohler?
- 3 A. Yeah.
- 4 Q. And when was that?
- 5 A. I'd say roughly 10 years ago, roughly.
- 6 Q. And what did you injure?
- 7 A. I twisted my ankle.
- 8 Q. Was it anything serious?
- 9 A. I mean, I rolled my ankle over. I didn't miss any
- 10 work. You know, I guess I was on light duty for
- 11 several days, but nothing major.
- 12 Q. Did you go through the work comp process at all with
- 13 that?
- 14 A. No, because it was just a couple days off heavy, off my
- 15 feet, back working, nothing major.
- 16 Q. Okay. And I understand from talking with Charlie that
- 17 when a worker that you supervise is injured they can
- 18 come to you to make that initial report. Is that
- 19 accurate?
- 20 A. Yes.
- 21 Q. And then at that point there is a process where it gets
- 22 moved along, which Charlie's already walked us through,
- 23 so I don't need to do that.
- 24 A. Right.
- 25 Q. Fair to say at that point you sort of pass it along and

1 you may be involved with some other decision-making or
2 troubleshooting down the road. Is that fair?

3 A. Yes.

4 Q. Talk to me about the particular special gear or safety
5 equipment or attire that may be required to be worn by
6 employees at Kohler.

7 A. I guess it would depend on what area you're talking
8 about.

9 Q. Well, tell me about the different areas and what they
10 use.

11 A. Well, the plant itself you're required safety shoes.
12 That's a major.

13 Q. Yeah. It's my understanding that safety shoes,
14 glasses, and ear plugs are worn in different areas?

15 A. Yes, sir. Yes, sir.

16 Q. And respirators are used in certain areas?

17 A. In certain areas.

18 Q. And which areas are those?

19 A. The cast shop wears them on certain times of the day
20 because of stuff that's floating, you know, where
21 they're using compressed air and they have particles
22 floating. Slip room, as soon as you enter the door you
23 got to have one on. I don't know anything about
24 fiberglass. So I don't know what to tell you there.
25 Far as I know, those are the only ones that actually

1 require a respirator at certain times or even if you're
2 in the department.

3 Q. Do you have a respirator?

4 A. Now, when you say respirator, there's different types.

5 Q. Okay. Fair enough. A filtered respirator? Charlie
6 testified a minute ago that he has a filtered
7 respirator that he uses from time to time. Do you have
8 one like that?

9 A. Yes.

10 Q. And when do you use your filtered respirator?

11 A. There are certain chemicals we use, and that's when we
12 have to use it. It depends on the chemicals, and
13 that's when we wear that filtered respirator.

14 Q. And tell me when do you specifically use that. What
15 chemicals are you dealing with at that time?

16 A. If we use phosphoric acid, muriatic acid, them's the
17 only two chemicals that we fool with that we will wear
18 them types of respirators along with other safety,
19 safety stuff.

20 Q. Such as what?

21 A. You got to have stuff over your arms and hands.

22 Q. And is it your understanding that employees at Kohler
23 can get particular safety equipment such as a
24 respirator or even a filtered respirator if they
25 request it?

1 A. If they request it, yes.

2 Q. Is there any particular process they have to go through
3 in order to get that equipment?

4 A. All they would have to do is like inform me that they
5 would like to have one. We would inform the safety
6 coordinator and set him up a date to be -- you know, we
7 can't just say here, here you go -- to be fitted and
8 tested, and he would be able to use one.

9 Q. When you say tested, what kind of testing do you have
10 to go through?

11 A. They have to do a fit test. They can't just say, here,
12 wear this. They have to adjust it and make sure.

13 Q. And I understand lung testing, lung function testing is
14 done for Kohler employees. Is that accurate?

15 A. Yeah.

16 Q. Do you know anything about who does the testing in
17 particular?

18 A. I don't actually. I'd say no. No, I don't. I just
19 know it's a outside group.

20 Q. And they actually come onsite to Kohler to do the
21 testing. Is that right?

22 A. Yes.

23 Q. And why do Kohler employees need to have their lungs
24 tested?

25 A. I would say because of the material and stuff being

1 used by Kohler.

2 Q. Do you know, do all employees get tested or is it just
3 particular employees?

4 A. Everyone.

5 Q. I asked this of Charlie, and I'm going to show you what
6 was marked as Claimant's Exhibit 1 and we'll have the
7 same designation for yours.

8 (Plaintiff's Exhibit 1 identified)

9 EXAMINATION RESUMED BY MR. DANTIN:

10 Q. This is actually a report of a lung test that was done
11 on Nikolay Gul back in June of 2009, and I'm not going
12 to ask you about the medical aspects of this. My
13 question is in the middle of the report there it says,
14 "cleared for respirator use." Do you know what that
15 means? Does that mean that Mr. Gul had -- well, what
16 does it mean to you, if anything?

17 A. You're talking about this right here?

18 Q. Yes, sir.

19 A. It would tell me if Mr. Gul or whoever requested a
20 respirator he could use one if he ever requested one.

21 Q. And do you know whether everybody that went through the
22 lung testing was being examined to see if they could
23 use a respirator?

24 A. I don't know what everybody else's results was.

25 Q. And I was just wondering do you know if everybody was

1 being evaluated to see if they could use a respirator
2 or was it just particular people. And you may not
3 know.

4 A. I don't know that.

5 Q. Okay, that's fair. Do you know if any other employees
6 have ever made claims regarding health issues resulting
7 from exposures at Kohler?

8 A. No.

9 Q. You don't know or none?

10 A. I don't know. I don't know of any.

11 Q. Okay, gotcha. Just to be clear, you were familiar with
12 Mr. Gul when he worked at Kohler?

13 A. Yes.

14 Q. Were you his foreman for a period?

15 A. For a period, yes.

16 Q. Do you remember specifically when that period would
17 have been? I know it's been a while. He worked there
18 from 2004 to 2009, if that helps at all.

19 A. I'm going to say around the '08 area.

20 Q. What was your impression of Mr. Gul?

21 A. I thought he was, you know, a fine fellow. I mean, you
22 could cut up with him or you could ask him to do
23 something and he would do it.

24 Q. Do you feel like he was a good employee?

25 A. I would say yes.

1 Q. Did you ever have any issues with him being dishonest
2 or untruthful to you?

3 A. No.

4 Q. And he's Ukrainian. You're aware of that.

5 A. Yes.

6 Q. Which I'm sure makes him stand out a little bit. He
7 doesn't communicate very well in English. Did that
8 cause any particular problems insofar as his employment
9 was concerned?

10 A. No.

11 Q. Do you recall Mr. Gul ever asking you for a protective
12 mask while he was working?

13 A. No.

14 Q. Do you recall Mr. Gul ever asking you for a respirator?

15 A. No.

16 Q. Could he have asked you for one and you just don't
17 recollect it, or are you certain that he never asked
18 you?

19 A. I would say he didn't ask me, no.

20 Q. Do you ever recall Mr. Gul wearing a paper type dust
21 mask while he was working?

22 A. I don't recall.

23 Q. Hypothetically if Mr. Gul had shown up wearing one of
24 those paper masks like you see folks wear when they're
25 cutting a lawn with an allergy, what would you have

1 done about it?

2 A. I would have questioned him on why he was wearing it,
3 and, you know, if he would have let into the respirator
4 and smells and chemicals, that's when we would have
5 went through the procedures of getting him checked
6 through the safety people.

7 Q. Would you want him to be wearing a paper mask like
8 that?

9 A. It depends on what he's doing.

10 Q. Is there something -- under what circumstance would you
11 not want him to be wearing a paper mask like that?

12 A. Now, wait a minute. Repeat that?

13 Q. Sure. Is there a particular time when you would not
14 want him to use a paper mask?

15 A. No. I mean, if he's around chemicals, a paper mask
16 wouldn't do no good.

17 Q. And just so you understand, I'm not trying to be cute
18 or hide anything from you. Mr. Gul testified that he
19 once purchased a paper mask for himself and wore it to
20 work and you asked him to take it off. Do you have any
21 recollection of that?

22 A. I do not.

23 Q. Are you familiar with the particular jobs that Mr. Gul
24 performed while he was there?

25 A. Yes.

1 Q. My understanding is that he worked on cover machine
2 two, small machines, cover machine five, and then spent
3 the last three to four months working on the kitchen
4 sink machine. Does that sound right to you?

5 A. That sounds pretty -- pretty correct.

6 Q. Would you have supervised him while he was working on
7 cover machine two, small machines, and cover machine
8 five?

9 A. Yes.

10 Q. Have you ever been directly involved in doing those
11 jobs that he was doing? In other words, before you
12 became foreman did you do what Mr. Gul did?

13 A. Certain ones I did.

14 Q. And which ones did you do?

15 A. I worked on the cover machine. Not exactly them same
16 machines, because them -- all these machines wasn't in
17 the plant when I was actually performing my job.

18 Q. Sure.

19 A. But similar machines on like the cover machine, yes, I
20 worked on it. We didn't have a tank machine, so no, I
21 didn't work on it.

22 Q. All right. You understand that Mr. Gul used acetic
23 acid, particularly when working on machine two, machine
24 five, and the small machines. Is that correct?

25 A. Yes.

1 Q. And he used acetic acid every day in those processes.
2 Is that accurate?

3 A. Yes.

4 Q. What precautions did Kohler take regarding the use of
5 acetic acid while Mr. Gul worked there?

6 A. Could you better -- I'm not really understanding what
7 you're saying.

8 Q. Sure. Were there any particular safety measures that
9 Kohler required of employees when they were handling
10 acetic acid?

11 A. They want you wearing like eyeglasses if you sprayed it
12 to keep anything from going in your eyes. Gloves were
13 provided, you know, in case you get a -- you know,
14 prevent any kind of irritation.

15 Q. Anything else that you can think of?

16 A. Not that I recall.

17 Q. And my understanding is that the acetic acid was
18 centrally stored in a large drum. Is that accurate?

19 A. Yes.

20 Q. And is it accurate that any employee could access the
21 acetic acid?

22 A. Yes.

23 Q. And were there any particular protocols or procedures
24 in place as to how the acetic acid was to be handled?

25 A. We had -- you wore safety glasses any time you were

1 spraying it to keep it from going in your eyes. When
2 you're filling up your containers, like I said, we
3 provided gloves there for you to wear. And we actually
4 had dust masks for people that just to, you know,
5 assume the smell was too much, but it wasn't -- you
6 know, it was only going to affect fumes, no -- it
7 wasn't going to keep them like from a fit respirator
8 would. But all that was provided and sat on a little
9 table beside of the barrel for anybody.

10 Q. And were there employees there that were handling the
11 acetic acid that would utilize those masks that were
12 available?

13 A. I'll say I don't know.

14 Q. But apparently Kohler thought that was something that
15 might be necessary to use, so they put it on the table
16 for the guys using acetic acid. Is that correct?

17 MR. HORNER:

18 Object to the form.

19 EXAMINATION RESUMED BY MR. DANTIN:

20 Q. Let me ask it this way. Do you know why Kohler made
21 masks available to the guys using acetic acid?

22 A. I'd say there was masks available because, see, you
23 provide stuff out in the open for them, because when
24 they're sweeping and all they're supposed to wear a
25 mask. Some people, you know, want them, you know,

1 might want one for the fumes, I mean, not to actually
2 say this is for that acid.

3 Q. Okay. Were there fumes in that area?

4 A. As in what?

5 Q. Well, I don't know. I'm asking you.

6 A. I mean, are you talking about acid or are you---

7 Q. Anything.

8 Q. From acetic acid or are you talking about the other
9 acid?

10 Q. Anything.

11 A. When you use acetic acid, yes, there was some because
12 it's high paged [ph] vinegar.

13 Q. I'm sorry?

14 A. It smells like vinegar.

15 Q. You could actually smell it when using it?

16 A. Yes.

17 Q. Would you have to be right on top of it using it in
18 order to smell it, or could you smell it, you know, if
19 you were standing 10, 12 feet away?

20 A. The smell would vary depending on how far you was from
21 it.

22 Q. Were there times when you could walk in that area and
23 think to yourself, oh, the guys must be spraying acetic
24 acid right now?

25 A. Yes.

1 Q. Because of the smell?

2 A. Right.

3 Q. Do you know if Kohler considered acetic acid to be a
4 harmful chemical?

5 A. No.

6 Q. You don't know or they did not?

7 A. I would say -- I would say no, that it wasn't a harmful
8 chemical.

9 Q. This was marked as Claimant's Exhibit 2 in Charlie
10 Clayton's deposition, and we'll have the same
11 designation for yours.

12 (Plaintiff's Exhibit 2 identified)

13 EXAMINATION RESUMED BY MR. DANTIN:

14 Q. Let me ask you, do you know what this is?

15 A. This is a warning label.

16 Q. In the middle portion kind of toward the top it's
17 labeled acetic acid 20 percent. Do you see that?

18 A. Yes.

19 Q. And I'll represent to you this is the warning label off
20 an acetic acid drum at Kohler. Did you ever note this
21 on one of the acetic acid drums? Did you ever see
22 that?

23 A. Yes.

24 Q. Did Kohler make you aware that there were some dangers
25 in using acetic acid?

- 1 A. Yeah.
- 2 Q. What did Kohler discuss with you in terms of dangers of
3 using acetic acid?
- 4 A. It was always determined that acetic acid could cause a
5 irritation to the skin.
- 6 Q. Did they ever tell you anything about vapors causing
7 severe respiratory tract irritation as it says on this
8 warning label?
- 9 A. This is -- what you're saying is not what the -- the
10 hazard thing we have that was only listed as it may
11 possibly irritation to the skin.
- 12 Q. What did you have exactly that said it would just
13 irritate the skin? What are you talking about? Is
14 there some particular book or sheet that says that that
15 Kohler gives you?
- 16 A. There's a warning label system put out that lists any
17 kind of -- anything you use is listed, and on that
18 label it determines what possibly is in the chemical
19 that could harm you.
- 20 Q. Is that something that Kohler provides?
- 21 A. Yes.
- 22 Q. And your understanding is that the only thing listed
23 for acetic acid is that it could irritate your skin?
- 24 A. Could you repeat that?
- 25 Q. My understanding was a second ago you said that you had

1 some sheet that was different from the label you're
2 looking at right now in Claimant's Exhibit 2 and that
3 what you had seen said that the only thing acetic acid
4 could do was irritate your skin. That was my
5 understanding of what you said. Is that accurate?

6 A. I actually can't say what all is on the label, because
7 I'm not going to say something's on it that's not on
8 it, you know.

9 Q. Let me ask you this. Is this the first time that
10 you've ever seen something that mentions acetic acid
11 possibly causing burns to eyes and skin or vapors that
12 could cause severe respiratory tract irritation?

13 A. I can't say if it's in these exact words, no.

14 Q. Were you aware before I gave you Claimant's Exhibit 2
15 that there was a warning that said acetic acid vapors
16 could cause severe respiratory tract irritation or
17 problems with your lungs?

18 A. I can't say that I know that without actually reading
19 this. I can't say that, no.

20 Q. And I'm just asking you if you were aware of it prior
21 to today.

22 A. I'd say I don't know.

23 Q. You don't know if you were aware of it?

24 A. I mean, I'll just say I don't know, because I've not
25 fooled with acetic acid for multi years, you know.

1 Q. But the people you supervise do. Right?

2 A. At the time, yes, I was aware of it, but I can't
3 honestly say that I'm aware of everything 10, 15 years
4 ago now. Yeah, I was aware of it then, but I can't say
5 yeah, I'm aware of it now because I'm not being around
6 it.

7 Q. So just so I'm clear, you're saying that you know you
8 were aware that it caused respiratory tract problems or
9 vapors could cause respiratory tract problems 10 years
10 ago, but you're not aware of it now?

11 A. No, that's not exactly how I'm saying this. When we
12 dealt with the acid I was more familiar with it than
13 what looking at this paper now and saying yes, this is
14 what I seen back then.

15 Q. Okay. Let me ask you this. Before you walked into
16 this room for your deposition if I asked you if you
17 knew whether acetic acid vapors could cause respiratory
18 tract irritation, what would your answer have been?

19 A. Now, when -- repeat that?

20 Q. Sure. Right before you walked in this room today if I
21 had asked you, acetic acid vapors, can they cause
22 severe respiratory tract irritation, what would your
23 answer have been?

24 A. I would say without seeing the label, no, I couldn't
25 answer that.

- 1 Q. You would have said I don't know?
- 2 A. Yeah, without seeing the label, yeah.
- 3 Q. And now if someone asked you after this deposition what
4 would your answer be?
- 5 A. Well, seeing the label, I'd say according to the label
6 we got to find out exactly what the hazards are before
7 we even fool with it. I would not let you fool with it
8 without finding out what the hazards is.
- 9 Q. Okay. Just out of curiosity, as a foreman, when you go
10 back to Kohler today are you going to talk to anybody
11 about this?
- 12 A. No.
- 13 Q. Why not?
- 14 A. Because what we're talking about is -- just say Joe
15 Blow on the street, it's none of their business, no.
- 16 Q. I'm sorry? I didn't understand.
- 17 A. You asked me would I talk to anybody about this.
- 18 Q. About the issues with vapors possibly causing severe
19 respiratory tract irritation.
- 20 A. Oh, I thought you were talking about the case.
- 21 Q. Oh, no, no, no.
- 22 A. If this was asked me a question and asked me to say go
23 get Billy Bob to get some acetic acid, I would say
24 unless Billy Bob knows about this acid he would not be
25 allowed to touch it.

- 1 Q. Okay. Is that the way it's done now at Kohler?
- 2 A. No, we'd never let anybody touch any -- anything unless
- 3 we know exactly what it was and what was in it.
- 4 Q. And I guess maybe I'm not -- I'm probably not asking a
- 5 good question. It's my fault. Bear with me.
- 6 Understanding now that the warning label notes that
- 7 acetic acid vapors can cause respiratory tract
- 8 irritation, do you plan on discussing this with your
- 9 supervisors at Kohler to say, you know, do we need to
- 10 do something else with regard to acetic acid in light
- 11 of this information I now have?
- 12 A. If it was brought in the department, yes.
- 13 Q. And why is that? Why would you discuss that?
- 14 A. Well, if you're not using it nobody would be aware of
- 15 what it is if it's not in your department, if it's not
- 16 even stored in your department.
- 17 Q. But it's used in your department. Correct?
- 18 A. No.
- 19 Q. It's not?
- 20 A. No.
- 21 Q. Did it used to be used in your department?
- 22 A. Yes.
- 23 Q. When was acetic acid stopped being used in your
- 24 department?
- 25 A. I can't give you a exact date because I would be

1 guessing.

2 Q. Would it have been after 2009?

3 A. Yes.

4 Q. Do you know why acetic acid is no longer used in your
5 department?

6 A. We just stopped using it. I mean.

7 Q. Do you know if acetic acid was used in 2011?

8 A. I would say yes.

9 Q. So it's pretty recently then, within the last two to
10 three years that acetic acid has stopped being used?

11 A. Yes.

12 Q. My understanding is that the acetic acid was utilized
13 in the process to sort of help unstick the molds. Is
14 that fair? Or you tell me. What was acetic acid used
15 for?

16 A. Like if you had bad spots on the mold, that would help
17 them what we call purge a piece off and not have any
18 defects. We would use acetic acid.

19 Q. Is there any chemical that you use presently to serve
20 that same purpose?

21 A. No.

22 Q. What's done now in the absence of the acetic acid
23 usage?

24 A. We don't use any kind of acid.

25 Q. Do you use any substance whatsoever?

- 1 A. As in?
- 2 Q. To do what it was that the acetic acid was doing, to
- 3 help purge.
- 4 A. No.
- 5 Q. And do you have any idea why nothing is used now?
- 6 A. Just we made changes to, you know, process, use
- 7 sandpaper, you know, stuff like that.
- 8 Q. And I guess what I'm wondering is do you know why that
- 9 change was made to the process.
- 10 A. I don't know.
- 11 Q. Do you know what happens when the drum of acetic acid
- 12 that's out there, when it is empty what happens to the
- 13 drums? What does Kohler do with it?
- 14 A. We would notify our supervisor, and we had a certain
- 15 area that we stored drums in for when they deliver more
- 16 they pick more up.
- 17 Q. Were you at all involved in the industrial hygiene
- 18 assessment that was conducted in October or September
- 19 of 2011?
- 20 A. No.
- 21 Q. You weren't involved in either the planning or the
- 22 execution of that assessment?
- 23 A. No.
- 24 Q. Have you ever sprayed the acetic acid in those molds
- 25 back when it was being used?

1 A. Yes.

2 Q. When you sprayed the acetic acid, could you smell it
3 more distinctly while you were actually using it than
4 you could when you weren't actually the one spraying
5 it? In other words, was the smell stronger while you
6 were the one actually spraying it?

7 A. If you used a lot, yeah.

8 Q. Is it safe to say that from employee to employee the
9 amount they use, the amount of acetic acid they use in
10 that process would differ? There's no set amount
11 that's used?

12 A. Yes.

13 Q. And there's no way to measure exactly how much acetic
14 acid an individual employee would use in a particular
15 shift, is there?

16 A. Repeat that?

17 Q. Sure. Maybe I can ask it differently. Does Kohler
18 keep track of how much acetic acid a particular
19 employee would use in a particular shift?

20 A. I'd say no.

21 Q. Is there anything more you know about the handling of
22 acetic acid at Kohler that we have not discussed?

23 A. I'd say no.

24 Q. No further questions.

25 EXAMINATION BY MR. HORNER:

1 Q. Let me just ask you one or two. At your time at Kohler
2 while the employees were using acetic acid in the
3 pressure cast department, did you have any employees
4 come to you complaining about severe respiratory tract
5 irritation?

6 A. No.

7 Q. And did you ever have any employees come to you about
8 acetic acid for having some sort of skin rash because
9 it got on their skin?

10 A. I'd say no.

11 Q. Did you ever have anybody come to you that said they
12 swallowed it?

13 A. Oh, no. No.

14 Q. Did you ever have anybody come to you and say they
15 sprayed it in their eyes?

16 A. No.

17 Q. So these are all things that may be hazards associated
18 with acetic acid based upon this label, but you didn't
19 have any firsthand dealing with any employees who had
20 done any of these things. Is that right?

21 A. I'd say no.

22 Q. No, you had no dealings with---

23 A. Dealings with any of that. Best of my memory, no.

24 Q. Okay. That's all I have.

25 (Off the Record; 12:00 -- 12:01 p.m.)

1 (Plaintiff's Exhibit 3 marked)

2 RE-EXAMINATION BY MR. DANTIN:

3 Q. What I'm showing you now is something that's been
4 marked as Claimant's Exhibit 3. Do you recognize what
5 that is?

6 A. This is a incident report.

7 Q. And what is the incident description down there? What
8 is this incident report relating to?

9 A. A itchy hand.

10 Q. From what?

11 A. He said he spilled some acetic acid.

12 Q. Up there at the top, who's the supervisor noted?

13 A. That says Horne.

14 Q. That's you?

15 A. Yes.

16 Q. So just so we're clear, this is an incident report
17 actually from Nikolay Gul dated October 23, 2007 where
18 he reported spilling acetic acid on his hand and later
19 started itching and had some redness with a rash.
20 Correct?

21 A. That's what it says, yeah.

22 Q. So is it fair to say then that there was an incident
23 similar to what is warned on this label that you were
24 shown in Claimant's Exhibit 2?

25 A. It would revolve around the skin contact part of the

1 hazard.

2 Q. No further questions.

3 RE-EXAMINATION BY MR. HORNER:

4 Q. Just one or two. This happened in 2007. Is that
5 right?

6 A. Yes, sir.

7 Q. Can you recall any other incidents aside from one in
8 2007? Does this refresh your recollection that Mr. Gul
9 had an issue with spilling some acetic acid?

10 A. With seeing this, yes. I mean, if I would've never
11 seen that, that would not have recollected in my mind
12 with being how long ago it's been.

13 Q. And you're not aware of it being a common everyday
14 problem among any employees when y'all used acetic
15 acid. Is that right?

16 A. No.

17 Q. That's all.

18 MR. DANTIN:

19 No further questions.

20 (There being no further questions, this deposition concluded
21 at 12:03 p.m.)
22
23
24
25

CERTIFICATE OF REPORTER

I, Rosalind Poole Walters, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 31 pages represents a true and accurate transcript of the deposition of RODNEY HORNE, which was taken by me on the 1st day of April, 2014.

That the witness was first duly sworn to tell the Truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rosalind Poole Walters
Rosalind Poole Walters, CVR-M
Notary Public for S.C.
Commission expires: 12-18-2016

ROA 1049

1175

Apple Mobile Medical, Inc.
A Subsidiary of The Ellwood City Hospital
510 Jamison Avenue
Ellwood City, PA 16117

Individual Pulmonary Function Results

07/16/09

Name **GIL NIKOLAY I** Sex **Male**
SSN/ID **REDACTED** Race
Company **Kohler** Height **66.0**
Date of Birth **REDACTED** 75 Age **34** Weight **181**

Current Screen Date 06/11/09

	Actual Results	Predicted Results	Percent of Predicted
FVC	4.52	4.35	103.81
FEV1	3.59	3.64	98.59
FEV1/FVC	79.42	84.29	94.22
PEFR	7.01	8.58	81.74
FEF2575	3.37	3.96	85.20
FEF25	0.00	7.91	0.00
FEF50	0.00	4.68	0.00
FEF75	0.00	1.93	0.00

Current Classification **Normal**

Respirator Opinion **CLEARED FOR RESPIRATOR USE**
Based on your respiratory evaluation, you have been cleared for respirator use with no limitations. This evaluation has met with the requirements set forth under 29 CFR 1910.134 for respirator clearance.

Examiner **Thomas Rose**

Comment **EVALUATE BLOOD PRESSURE**

Charles H. Zeigler, D.O., M.P.H.
Medical Provider Performing Evaluation



ROA 1050

1176

ROA 1051

1177



**WHITAKER
OIL COMPANY**
1557 Marietta Road NW
Atlanta, GA 30318
(404) 355-8220

**WHITAKER
VENTS AND CHEMICALS**
280 Enterprise Street
Ocoee, FL 34761
(407) 656-0088

**WHITAKER
CHEMICALS, L.L.C.**
405 John Dodd Road
Spartanburg, SC 29303
(864) 578-6968

Net: 450#
LOT SP067849832
NET GALLONS:

☐ 55
☐ 5
☐ 1

Acetic Acid 20%



Corrosive/Flammable Material
UN2789

☐ **HEALTH**
☐ **FIRE**
☐ **REACTIVITY**

WARNING!
FLAMMABLE LIQUID & VAPOR.
CAUSES BURNS TO EYES AND SKIN.
VAPORS CAUSE SEVERE
RESPIRATORY TRACT IRRITATION.

FOR CHEMICAL ASSISTANCE
CALL CHEMTREC
800-424-9300

ATTENTION:
THIS CONTAINER HAZARDOUS
WHEN EMPTIED

Since empty container retains product residues (vapor or liquid), all labeled hazard precautions must be observed. Cutting, drilling, grinding or welding on containers might cause fire, explosion or release of harmful fumes.

WARNING!
FLAMMABLE LIQUID AND VAPOR
CAUSES BURNS TO SKIN AND EYES.
SEVERE RESPIRATORY TRACT IRRITATION.

ACETIC ACID 20%

Keep away from heat, sparks and open flames. Keep containers tightly closed. Store away from oxidizing agents in a cool, dry place with adequate explosion proof ventilation. Ground equipment to prevent accumulation of static charge. Bond or ground container if pouring or transferring material. Do not weld, heat, grind or drill on or near container, even if empty. Wash hands thoroughly with soap and water after use.

FIRST AID

EYE CONTACT: Flush with water for 15 minutes while holding eyelids open.
GET MEDICAL ATTENTION.

SKIN CONTACT: Wash skin with soap and water. Do not reuse clothing until cleaned. If irritation occurs, Get Medical Attention.

INHALATION: Remove victim to fresh air and provide oxygen if breathing is difficult. Give artificial respiration if not breathing and Get Medical Attention.

SWALLOWING: DO NOT induce vomiting. Give 1-3 glasses of water or milk to dilute stomach contents. Keep affected person warm and at rest. Call a physician. Never give anything by mouth to an unconscious person.

FIRE SPILL LEAK

Use appropriate protective clothing.

FIRE: Use water fog, foam, dry chemical or CO₂.

SPILL Eliminate all ignition sources. Shut off source of leak only if safe to do so. Dike and contain. Recover and reclaim large quantities. Collect small amounts with suitable absorbent and place in sealable container for disposal. Keep out of sewers and other public water systems.

OK :

NEW

ROA 1053

1179

Spartanburg Incident Report

Incident No: 748

Date 10/23/2007 3:07:44 PM
Supervisor Home
Associate Clock Number 36069
Associate Name GUL, NIKOLAY I
Years Service 3
Department 3826
Job Title PRESSURE CAST OPERATOR
Hire Date 5/17/2004
Incident Date 10/23/2007
Incident Time 9:00
Incident Location Pressure Cast Machine #5
Incident Type Near Miss
Dollar Amount \$0.00
Medical Treatment Nurse
Individuals Involved Nikolay Gul
Incident Description Nikolay said when he was filling up his container with acetic acid that he had spilled some on his right hand and he went and washed them with soap and started working and later he started itching and his hand was a little red with a rash.
Action Plan wash hands after filling up container and ask for gloves if needed.

Tuesday, October 23, 2007

Page 1 of 1



BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. #0912295

Nikolay Gul,

EMPLOYEE/CLAIMANT,

VERSUS

Kohler Company and Broadspire,

EMPLOYER/INSURER/DEFENDANT.

ORIGINAL

DEPOSITION OF
MICHAEL S. DONALD

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of MICHAEL S. DONALD was taken on the 1st day of April, 2014, commencing at the hour of 12:14 p.m. in the offices of Harrison White Smith and Coggins, Attorneys at Law, Spartanburg, South Carolina.

REPORTED BY: ROSALIND POOLE WALTERS
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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to all
5 applicable rules of the South Carolina Workers'
6 Compensation Commission;
- 7 2. That the deponent waives the right to read and sign the
8 deposition transcript.

9 *****

10 MICHAEL S. DONALD, being duly sworn to tell the truth, the
11 whole truth, and nothing but the truth of his own knowledge
12 concerning the matter herein, testified as follows:

13 *****

14 EXAMINATION BY MR. DANTIN:

15 Q. Mike, you're soft-spoken, and you can see these
16 microphones laid out here.

17 A. Okay.

18 Q. We'll need you to speak up a little bit just so that
19 the court reporter can make sure that she has your
20 voice recorded.

21 A. Okay.

22 Q. But we're just here to ask you questions specifically
23 about the situation involving Mr. Gul. I'm Jeremy
24 Dantin.

25 A. Yes, sir.

- 1 Q. And I'm representing Mr. Gul in his workers'
2 compensation claim. As we go through the deposition
3 and you're giving me your answers, make sure that you
4 give me verbal response; that is, give me yeses and nos
5 as opposed to uh-huh and uh-uh or head shakes or head
6 nods. Again, that's just so we can be clear about what
7 your answers are. And as we move along if I ask you a
8 question that you don't understand or I ask a confusing
9 question, and that's likely to happen at some point --
- 10 A. Yeah.
- 11 Q. -- please interrupt me, let me know that you don't
12 understand, and I'll be happy to rephrase it --
- 13 A. Okay.
- 14 Q. -- as often as you need so that you can understand it.
15 I want to be sure that you understand my question so
16 that we can rely on your answer. Okay?
- 17 A. Yes.
- 18 Q. And I'm going to need you to speak up even a little bit
19 more. It's good when I'm taking depositions, because I
20 can't hear very well anyway. So if I can hear you
21 usually everybody can. Just give me your name for the
22 record.
- 23 A. Michael Donald.
- 24 Q. And Mike, tell me what you know about this claim.
- 25 A. I first heard about this claim from our human resource

1 director, Sid Duvall, and Nikolay had been out of work
2 for a while on and off over a period of time. He
3 returned to work with a -- cleared by his doctor, and
4 he came back to work I think it was one day, and then
5 the next day they called me to HR and they explained to
6 me that -- it may not -- it may not have been the next
7 day, but within a couple of days they called me up and
8 explained that he wouldn't be coming back, that he was
9 -- I don't know what his situation was, but he was --
10 wouldn't be coming back to work. At that point he
11 wasn't -- we would have to hire a new person. And then
12 I can't tell you exactly when I knew it was workers'
13 compensation, but it was somewhat not too long after
14 that.

15 Q. And what do you know about what it is Mr. Gul is
16 claiming relative to workers' compensation?

17 A. From what I understand from being associated with the
18 last trial, that he's claiming that he has asthma
19 related to work, and -- and that was from -- I never
20 was called at the last trial, but obviously we were
21 standing by if there was something that needed to be
22 clarified, and that was what I had heard.

23 Q. And just so we're clear, when you say "the last trial,"
24 this went to a hearing back in December of 2012 in
25 Columbia and you were present as a witness at that

1 hearing?

2 A. Yes, sir.

3 Q. And in that hearing Mr. Gul gave testimony. You
4 understand that?

5 A. Yes.

6 Q. And you were not called to dispute any of that
7 testimony that he provided. Is that correct?

8 A. No, sir.

9 Q. Have you ever had an opportunity to review what it is
10 that Mr. Gul testified to at that initial hearing?

11 A. No. I only heard what was discussed by the people who
12 were in the -- inside the courtroom.

13 Q. And did you actually hear Mr. Gul testify?

14 A. No, sir.

15 Q. Who else was present that day along with you from
16 Kohler?

17 A. Charlie.

18 Q. Charlie Clayton?

19 A. Yes, sir.

20 Q. It was just the two of you?

21 A. Yes, sir. Well, and Mike Tolleson.

22 Q. Mike Tolleson was also there?

23 A. Yes, sir.

24 Q. And none of you actually testified that day. Correct?

25 A. No, sir. I think Mike was in the courtroom.

1 Q. We can go off the record.

2 (Off the Record; 12:19 -- 12:19 p.m.)

3 EXAMINATION RESUMED BY MR. DANTIN:

4 Q. Is there anything else in particular that you know
5 relative to this claim or what brings us here today?

6 A. I only know what I -- what I was told from the meetings
7 that we have at work, and he may have had a deposition
8 and---

9 Q. "He" being?

10 A. Mr. Gul. And then the safety officer at the plant or
11 somebody may call and say, well, this is what was said.
12 And this is all---

13 Q. Do you recollect any of the specifics about what was
14 reviewed with you relative to what Mr. Gul may have
15 said?

16 A. I remember that---

17 MR. HORNER:

18 But not to him from his attorney.

19 MR. DANTIN:

20 No. Yeah. No, no, no. I'm talking about---

21 MR. HORNER:

22 Just from within the plant.

23 EXAMINATION RESUMED BY MR. DANTIN:

24 Q. When someone told you Mr. Gul said blank.

25 A. I was told that he had asked for a respirator and

1 didn't get one, and that was -- that question came up.

2 I'm just trying to think, because it's been---

3 Q. Sure. No, take your time.

4 A. It's been so long.

5 Q. I understand.

6 A. But I know it was said that he had asked one of the
7 foremen for a respirator and they told him he couldn't
8 have one or something like that. And he had said that
9 -- that he had put -- that he had put so much acid on
10 the mold and that he was using an inhaler as a
11 treatment because they had said he had it using an --
12 he was using an inhaler. Those are things that I --
13 you know, depending on how long you want me to sit
14 here, but those are most of the things that -- that I
15 know that he may have said in his trial or deposition.

16 Q. Okay. How long have you worked with Kohler?

17 A. It would be around 28 years.

18 Q. And what is your position with Kohler?

19 A. At present I'm a staff analyst.

20 Q. And when did you become a staff analyst?

21 A. Probably around 2011, 2010, somewhere in that time
22 frame.

23 Q. Prior to becoming a staff analyst what was your
24 position?

25 A. I was a supervisor.

1 Q. Were you a supervisor in a particular department?

2 A. Yes, sir. I had two departments. One was cellular
3 manufacturing and one was called pressure casting.

4 Q. Did you say cellular manufacturing?

5 A. Yes, sir.

6 Q. How long were you in that position?

7 A. The first one or the second one?

8 Q. The supervisor position.

9 A. Since 2000.

10 Q. Let me ask you, in your current position what are your
11 duties or responsibilities as a staff analyst?

12 A. As a staff analyst I may be assigned to analyze
13 equipment, processes, equipment for the process. I
14 analyze financial as far as capital versus, I mean,
15 associates that we would need to run the job. I do
16 some design. Mostly it's more along the lines of
17 helping engineers understand better how to improve the
18 process and to make the overall plant better.

19 Q. As a supervisor what were your duties and
20 responsibilities?

21 A. I overseen production, quality, scheduling, safety, the
22 main -- you know, the core metrics of supervision. A
23 supervisor is connected to all aspects of the work.

24 Q. As a supervisor were you in an office?

25 A. Sometimes. My daily time between the office and the

1 floor changes based on what's the current status of the
2 plan. And if we're implementing a new project it may
3 go way up, and then when we're designing or planning a
4 new one it may go down for a while. And then it just -
5 - it probably averages out somewhere 50/50 if you
6 averaged the whole year, maybe a little bit more.

7 Q. Sure. When you were a supervisor from 2000 to around
8 2010 or '11, about how many people did you supervise?

9 A. Probably the workforce was in the 60 to 70, and I had
10 nine to ten people on salary.

11 Q. Mike, have you ever had an injury while working at
12 Kohler?

13 A. One. Once. Once I cut my knee and had to have a
14 couple of stitches.

15 Q. Let me ask it this way. Anything that you would
16 consider to be a major injury?

17 A. No, sir.

18 Q. Anything that ever involved you needing to file a work
19 comp claim?

20 A. No, sir.

21 Q. As a supervisor, what role do you play in the process
22 when a worker reports an injury?

23 A. When you ask that question I want to make a little
24 clarification.

25 Q. Sure.

- 1 A. There's a procedure where if a worker reports a injury,
2 normally they report it to their foreman. The foreman
3 goes through a process where there's first things that
4 happen. We determine what the current need is right
5 then and start doing a step-by-step. That's normally
6 how it happens. If I'm walking by and somebody says,
7 Hey, Mike. I need to talk to you for a minute, then --
8 it's an open -- obviously the workers can approach me.
9 And then normally then I sit down, I would sit down
10 with the team and we would start developing a plan.
- 11 Q. Is there any type of investigation process that is
12 involved when an injury is reported?
- 13 A. Yes.
- 14 Q. Tell me about that.
- 15 A. When an injury takes place we make a document and we
16 state the time, the date, the individual, was it one or
17 more individuals, how long. I said date and time. But
18 then we ask the associate to make a statement of what
19 happened. Then that gets documented, and then the
20 foreman documents what happened, what the corrective
21 action would be. Then that gets routed. Then it would
22 be routed to me. At the same time it would go to the
23 safety officer, to my supervisor and his supervisor or
24 her supervisor, and it continuously goes until it's
25 resolved.

1 Q. Is part of the investigative process at times geared
2 towards understanding why someone was injured or how it
3 is that they were injured?

4 A. Yes.

5 Q. And is that done in order that Kohler may be able to
6 take some corrective actions?

7 A. It's done to try to make sure that it doesn't happen
8 again.

9 Q. Whether that be advising the employee that they did
10 something wrong or whether there may be some issue with
11 the process itself that could be improved?

12 A. Yes. And I want to clarify that this process happens
13 if it's an injury or not an injury.

14 Q. If it's a near miss?

15 A. If it's a near miss, yeah. It can be even if it's a
16 pinch or a scratch. Those things could turn into
17 infection. So we need to know what the problem was and
18 how to fix it.

19 Q. Mike, have you ever testified before?

20 A. I've once been to a deposition, but my testimony was
21 accepted, I guess.

22 Q. Was that relative to a work comp claim?

23 A. Yes, sir.

24 Q. Do you know how many years ago that would have been?

25 A. Last year or year before last.

1 Q. What type of case was that?

2 A. It was a case involving a manager at the plant who was
3 injured.

4 Q. And how was he injured?

5 A. He was injured by a strain in his back.

6 Q. Is there any person or department at Kohler that is
7 primarily responsible for handling injuries or injury
8 reports?

9 A. There's the step-by-step process that I've described to
10 you earlier ultimately lands with our safety officer,
11 and then if -- if it's an OSHA recordable accident,
12 then it also gets distributed to every plant to ensure
13 that there's not that situation there, as well.

14 Q. Prior to the time that you became a supervisor what
15 types of things did you do at Kohler as an employee?

16 A. My first years were I was a caster, and after caster I
17 went to the lab, and from the lab I went to project
18 management. From there I went to foreman, and from
19 there I went to the supervisor, and now I'm where I'm
20 at now.

21 Q. Mike, I've been talking with Charlie and then Rodney
22 about the types of safety gear or protective equipment
23 that is used by employees at Kohler, and the things
24 that we've discussed have been I understand that all
25 employees have to have safety shoes?

- 1 A. Yes, sir.
- 2 Q. There are some employees that use goggles?
- 3 A. Yes.
- 4 Q. Or eye protection?
- 5 A. Yes, sir.
- 6 Q. Some use gloves?
- 7 A. Mm-hmm.
- 8 Q. And some use respirators?
- 9 A. Yes, sir.
- 10 Q. Is there any other type of protective -- and I know
- 11 there are a couple different types of respirators that
- 12 are utilized at Kohler. Is that correct?
- 13 A. Yes.
- 14 Q. Are there any other types of protective gear or
- 15 equipment available to employees at Kohler?
- 16 A. Yes, sir. It would depend on the department you're in.
- 17 For example, when I was in the lab we had cryogenic
- 18 vests, because we poured liquid nitrogen from one
- 19 container to the other. So obviously you have to have
- 20 more on. So it depends. If you look at the whole
- 21 plant, every process, and you put it all on the table,
- 22 you would see a variety of gear that people use.
- 23 Q. Let's take it down to the pressure cast area. And this
- 24 would have been an area that you supervised. Correct?
- 25 A. Yes.

1 Q. What types of protective gear or safety equipment would
2 different employees in pressure casting be using?

3 A. When you say employees, do you mean hourly workers or
4 do you mean salaried workers?

5 Q. All.

6 A. All workers?

7 Q. Any, yeah.

8 A. We have gloves, glasses. We have half-face vapor
9 respirators. We have paper respirators. We have -- we
10 have a -- like a -- you know, like a vest like you'd
11 see at the grocery stores.

12 Q. An apron?

13 A. Yeah, a apron. Sleeves. Those are...

14 Q. And can any employee request any particular type of
15 safety gear at Kohler?

16 A. Yes.

17 Q. And when they make that request does Kohler try to
18 provide that particular gear to them?

19 A. Yes..

20 Q. Does it matter let's say that someone worked -- well,
21 let me ask you this. Who are the guys that use
22 respirators the most often?

23 A. It would be the ones that -- well, when you say
24 respirators---

25 Q. Either kind.

1 A. Either kind? I just want to make -- I want to get us
2 on the same -- on the same thing.

3 Q. Sure.

4 A. The paper respirator is for dust, and we use that when
5 we're -- you know, if we're -- if we're asked to clean
6 up dust or sweep the floor or whatever. So it varies
7 when you see people with these on. But outside of that
8 the biggest use of the respirator is when we do our
9 preventative maintenance, and which is normally every
10 Thursday and Friday.

11 Q. And what's involved with that?

12 A. We stop the machine and we send in people to clean the
13 molds, and these people who clean the molds, they've
14 been through the training program for the respirator
15 that's required for that task so that they would in
16 general, you know, if you summed up the time over the
17 year, they would probably be in it the most.

18 Q. So even if someone not involved in that preventative
19 maintenance would request a filtered or half-face
20 respirator, would they be able to get one?

21 A. Absolutely.

22 Q. And it wouldn't matter where they worked or what part
23 of the process they worked in?

24 A. (Witness shakes head). And when I -- and when I say
25 absolutely, I mean that it's a -- it's a go from that

1 point on until they get to the next step, which is to
2 be training program where questionnaires and things
3 that are required. When they get to that step if they
4 can't get into one, then we have to stop and understand
5 what the next step is. For example, some people, if
6 they're claustrophobic, if you put one on they may have
7 a problem. There's -- there's a form and a list of
8 things that do you have this, do you have this, you
9 know, kind of thing. But we've never said that no, you
10 can't go. We made that clear.

11 Q. Now, I understand lung function tests are performed at
12 Kohler on employees. Is that correct?

13 A. Yes.

14 Q. And it's my understanding that all Kohler employees
15 undergo that kind of testing?

16 A. No, sir.

17 Q. Okay. Who at Kohler undergoes that kind of testing?

18 A. That's not my area of expertise, but I think it's --
19 for example, the office people wouldn't go. Most of
20 the administrative staff, certain other places in the
21 plant, but normally the casters go, and that's from my
22 -- from my end I receive a list that says this is your
23 department, you go at a certain time, and we schedule
24 to send the associates.

25 Q. The guys that you supervised between 2000 and 2010 or

1 2011, would those employees be tested?

2 A. I think so, yeah.

3 Q. And do you know why that testing was done at Kohler?

4 A. Yeah, I think it's to understand the -- the impact of
5 the lungs for -- if the -- if the doctor sees
6 something, then they would report that to the -- to the
7 nurse. As a supervisor we don't have access to medical
8 records of the associates. It's that we send them and
9 they're monitoring our lungs.

10 Q. Why is there a need to monitor the lungs of employees
11 at Kohler?

12 A. It's never -- I've never asked that question to my boss
13 or his or her boss, but I think it's monitoring for
14 silicosis and things of such that nature.

15 Q. Do you have any particular knowledge as to like who
16 does the testing and how it's done or anything like
17 that?

18 A. Just from when I go.

19 Q. Suffice it to say, I mean, it's an outside --

20 A. Oh, yeah.

21 Q. -- group, and they come onsite and do the testing?

22 A. They bring a vehicle and like a unit, yeah.

23 Q. Gotcha. Do you know if people who are being considered
24 for respirator use or who have requested respirator use
25 would have to undergo lung testing in order to be

1 cleared for that?

2 A. There's a -- when somebody -- when there's a need for a
3 full face or a full half-face, there's a procedure
4 where these people go to the safety officer and there's
5 things that they do. I can't remember, but if that's --
6 -- if lung capacity is one of them, but I know it's the
7 questions and how to put it on and make sure they
8 understand how to seal it, how to change the filters.
9 They spray a mist to make sure that it is sealed so
10 they know that they've put it on correctly. But
11 anything like what's being done with the medical, we're
12 not -- that's not discussed with somebody at my level.

13 Q. This was marked as Plaintiff's Exhibit 1 in the
14 previous two depositions, and it will be for yours, as
15 well.

16 (Plaintiff's Exhibit 1 identified)

17 EXAMINATION RESUMED BY MR. DANTIN:

18 Q. And I understand that, you know, you're not a doctor
19 and that you're not privy to the medical records, but
20 this I will represent to you is a pulmonary function
21 test result that was done on Nikolay Gul back in June
22 of 2009. And I'm not really interested in the results
23 per se. What I am interested in is this notation in
24 the middle that says, "cleared for respirator use."
25 Having seen that, do you have any understanding as to

1 what that means?

2 A. Nobody's ever explained to me what that means. I would
3 interpret it a certain way, but it's not -- it's not --
4 I've never seen that, that form before.

5 Q. You've never seen this form of any employee before?

6 A. No, sir.

7 Q. Is it accurate to say you don't know in Mr. Gul's case
8 if he was undergoing this testing to determine whether
9 he could have a respirator?

10 A. If he would have went out to the mobile, he would have
11 went with every single person that was in -- in that
12 shop. We all go together. There's a two- or three-day
13 period. Even -- even if I'm on vacation, they would
14 schedule me to go to wherever to have one, get one
15 done. It has -- us going out there, there's no picking
16 and choosing who goes. We all go.

17 Q. Right. Is it fair to say that you don't know whether
18 particular employees may be being evaluated with regard
19 to whether they can use a respirator or not?

20 A. Not -- not from this, yeah.

21 Q. Do you know if any other employees have made claims
22 regarding health issues resulting from exposure at
23 Kohler?

24 A. Could you ask me that again?

25 Q. Sure. This claim with Mr. Gul is a claim regarding

1 exposure. Okay? And my question is, are you aware of
2 any other types of claims that also involve exposure to
3 something at Kohler causing injury?

4 A. I remember maybe 15 years ago there may have been a
5 silicosis claim.

6 Q. Anything else that you can recall?

7 A. No, sir.

8 Q. Now, Mr. Gul worked at Kohler from 2004 to 2009. Did
9 you know Mr. Gul?

10 A. Yes, sir.

11 Q. And were you his supervisor?

12 A. Yes, and maybe at the tail end I had another layer of
13 supervision under me. So it might have been multiple
14 layers, but most of the time, yes.

15 Q. And my understanding is that during the period from
16 2004 to 2009 he worked on cover machine two, small
17 machines, cover machine number five the majority of the
18 time he was there, and would that all have been in
19 pressure cast?

20 A. From the time he was there, it was the machines except
21 for in his last years he was on another process.

22 Q. And my understanding, the last four months he was there
23 he was on the kitchen sink machine.

24 A. It was in the end that -- I think it was more than four
25 months, but it was -- it was in the end.

1 Q. But those other machines, the cover machine five, the
2 small machines, the cover machine two, was that all in
3 the pressure cast area?

4 A. Yes, sir.

5 Q. So, again, that was one of the areas you supervised.
6 Correct?

7 A. Yes, sir.

8 Q. Do you have any opinions as to Mr. Gul?

9 A. The whole time he worked there I can only remember one,
10 he had one conflict with another associate, and other
11 than that he was -- he came in to work, and -- and
12 there wasn't any issue with his quality, productivity,
13 and -- and I didn't become to know him personally, but
14 I can -- I can only remember one time when there was a
15 conflict, and it was resolved quickly.

16 Q. To the best of your recollection and knowledge, would
17 you consider Mr. Gul to be a good worker?

18 A. Yes.

19 Q. Were you aware of any issues with Mr. Gul ever being
20 dishonest or untruthful while he was employed with
21 Kohler?

22 A. No, sir.

23 Q. All right. Regarding Mr. Gul and his work at Kohler,
24 you understand that Mr. Gul used acetic acid in his
25 job?

- 1 A. (Witness nods head).
- 2 Q. Is that a yes?
- 3 A. Yes. Yes.
- 4 Q. And is it your understanding that he used acetic acid
- 5 in his job on a daily basis?
- 6 A. Yes.
- 7 Q. Talk to me about what precautions Kohler took with
- 8 regard to the use of acetic acid while Mr. Gul worked
- 9 there.
- 10 A. I guess the first -- the first precautions would be
- 11 that he would have been covered in our -- we have a
- 12 procedure where we go over the hazards in the area,
- 13 meaning if you walk into a machine, this -- this system
- 14 is there to protect you. If you go into this wet area,
- 15 just for an example, the floor could be wet, so we -- I
- 16 guess the first thing is the associates are made aware
- 17 that there are chemicals in the area, and -- and then
- 18 we assign the appropriate PPE --
- 19 Q. Which is?
- 20 A. -- based on that. For this -- for this---
- 21 Q. Well, PPE stands for?
- 22 A. Personal protective equipment.
- 23 Q. Okay.
- 24 A. So the PPE for acetic acid was gloves, glasses, and
- 25 then they would have to have the safety shoes on, which

1 is a default for that, that particular process.

2 Q. Were there any particular protocols in place as to how
3 acetic acid was to be handled by employees?

4 A. Could you say that one more time?

5 Q. Sure. Were there any particular procedures or
6 protocols in place with regard to how the employees
7 actually handled the acetic acid?

8 A. As a far -- well, I guess to try to explain to you,
9 once -- once the associate has their safety equipment
10 on, then the departmental specialists or the foremen,
11 they show them how to spray it and where to spray it
12 onto the molds.

13 Q. Is that done the first time they use the sprayer or is
14 it done every time they use the sprayer?

15 A. It's normally done when they're first training.

16 Q. After that it's pretty much up to the employee?

17 A. They could -- I guess if they pump too many or they
18 turn the nozzle a different way, but it's not
19 controlled to that. I mean, it's not down to that
20 particular level.

21 Q. So what you're saying is different employees could be
22 using different amounts of acetic acid as they do their
23 job?

24 A. It would be if -- if the process specialist says I want
25 you to spray some across here and across here and let

1 me show you how to do it and he shows them, there could
2 be a slight variation on how they do it between one
3 person and another, but not a big dramatic difference.
4 It shouldn't be that way.

5 Q. And some of those variations might be attributed to how
6 the nozzle on the sprayer is set?

7 A. Could be, yes.

8 Q. Could be the size sprayer that they're using?

9 A. Yes.

10 Q. Could be the number of pumps that they use. Correct?

11 A. Yes.

12 Q. Could be how much time they had at that particular
13 point in the process?

14 A. I don't think that the time would have driven them to
15 put it on. I think it's -- this is the area and this
16 is what we want to cover, and we just do it, and I
17 don't think if the -- if the machine was down for 15 or
18 20 extra minutes that somebody would go in there and
19 put more or less on. It should be a fairly repeatable
20 process.

21 Q. Are there times when the process is moving faster than
22 others?

23 A. If it moves faster, it's only normally because we added
24 more manpower to the machine.

25 Q. All right. So other than gloves and glasses there

1 weren't really any other particular precautions that
2 Kohler took with regard to the handling of acetic acid
3 by the employees?

4 A. We had a -- the drum, it had an approved dispenser. It
5 sat in a OSHA containment system. So the associate
6 would just walk up, get their need, and then go to
7 their machine.

8 Q. So there was a particular type of container required
9 for the storage of acetic acid?

10 A. Normally for -- for any kind of acid you would have a
11 system in case somebody hit it with a fork truck or if
12 it -- this is a system that's laid down, it's strapped
13 down, and, therefore, if something did happen, it's
14 kind of like a dual containment system where it
15 wouldn't go all over the department and cause an issue
16 that would have to be...

17 Q. You don't want something like acetic acid spilling out
18 all over the department.

19 A. Well, it would be any -- we wouldn't want anything
20 spilling out on the department for various reasons.
21 People slip, trip. So it's -- and we have wax that we
22 use for another process, but it's in the same drum.
23 It's in the same containment system, and it's like --
24 it's just like Johnson's paste wax, but it's for
25 another area, but those are things you might see when

1 you walk inside a facility, and it's common to have a
2 containment system.

3 Q. And the acetic acid is accessible by any Kohler
4 employee; it's not only accessible to certain people?

5 A. It's accessible to the people in the department that
6 are using it, meaning they wouldn't be allowed to come
7 up from any other area and get it and take it to
8 another area without it being through an approval.

9 Q. And do you know why that is?

10 A. It's just -- that's just basic operations. If it --
11 for example, when we -- when we take it out of the
12 container that it's in, it has to be in a container
13 that has the label on it. So if I take it and I put it
14 in this lady's cup, we have to have a label on it that
15 says this is what it is. You can't drink it. You
16 can't -- that this is not for consumption, you know.
17 But if you take -- if somebody just came up and they
18 put some in a five-gallon bucket and went away, we
19 wouldn't know if it was water or if it was, what it
20 was. So generally there's a protocol not to take
21 something from one area to the other.

22 Q. Does Kohler consider acetic acid harmful?

23 MR. HORNER:

24 Object to the form, but you can answer.

25 EXAMINATION RESUMED BY MR. DANTIN:

1 A. I'm just trying to think. I mean, I don't know exactly
2 how to answer that question.

3 Q. Let me put it this way. My understanding in talking
4 with Rodney is that there is a list that is compiled by
5 Kohler of harmful chemicals. Do you know whether
6 acetic acid would be on that list?

7 A. I don't know of any certain list that they're talking
8 about. There's a threshold of exposure allowed for
9 acetic acid, and -- and that's what I understand about
10 that there's no -- that I've never seen a list that
11 says here are these things you're talking about in each
12 department, there's a list of what chemicals are there
13 and whether they're -- what level they have. It's all
14 there in that -- in that...

15 Q. Is acetic acid something that Kohler expects to be
16 handled with some care?

17 A. I think that they want us to handle everything with
18 care. There's no -- there's no separation between
19 safety on those points. We treat everything seriously.

20 Q. So there's no difference between -- well, let's go off
21 the record for a second.

22 (Off the Record; 1:02 -- 1:02 p.m.)

23 EXAMINATION RESUMED BY MR. DANTIN:

24 Q. Just so I'm clear, I just want to make sure, there are
25 some distinctions in the way certain chemicals are

1 handled at Kohler versus other substances say like
2 water. Fair to say?

3 A. Yes.

4 Q. And I guess what I'm wondering is what level of caution
5 is utilized with regard to acetic acid and the handling
6 of acetic acid at Kohler.

7 A. I think I've explained that, but we -- we take caution
8 when it's stored. We take the -- we assign these
9 things so it -- glasses so it doesn't get in your eyes.
10 Those are -- those are the cautions.

11 Q. All right. And just so I'm clear, Mr. Gul and the
12 people that did the same type of job that he performed
13 were not provided any breathing protection when they
14 were handling acetic acid. Is that correct?

15 A. Could you repeat that?

16 Q. Sure. Mr. Gul and the people who did the same job or
17 jobs that he was doing were not provided breathing
18 protection when they were handling the acetic acid?

19 A. Only if they had asked for it for a particular purpose.

20 Q. Okay. But that was not something that they were
21 provided as a standard measure?

22 A. Correct.

23 Q. And they didn't have the aprons that might be utilized
24 in other parts of the plant either when handling acetic
25 acid. Is that correct?

1 A. Right.

2 Q. Tell me about the area where the acetic acid is being
3 used. And I mean, you know, in terms of its size,
4 ventilation, things like that.

5 A. Well, it's a big department, obviously. The square
6 footage of it, you know, it's -- it's huge, many
7 thousands of square feet. But high ceilings. It has a
8 -- it has air conditioning, heating, you know, just a
9 standard big building. There's no -- there's no --
10 when you go in the door it's like -- I was trying to
11 give you an example, but it's like a big huge
12 warehouse. There's only the brick of the exterior of
13 the building. In between -- there's nothing in between
14 except from when you go from one section of the
15 building over into another section of the building.

16 Q. Now, the process in particular when they're spraying
17 molds, that is not in just a wide-open area. They're
18 going and spraying a particular area. Correct? Let me
19 do this.

20 A. You have a picture there.

21 Q. This was marked as Plaintiff's Exhibit 3 previously,
22 and we're going to mark it as 2 to yours.

23 (Plaintiff's Exhibit 2 identified)

24 EXAMINATION RESUMED BY MR. DANTIN:

25 Q. What I'm showing you now has been marked as Plaintiff's

1 Exhibit 2. What I was maybe trying to get us down to
2 is in the pictures that are on top, the two top
3 pictures, my understanding is that that is depicting
4 somebody spraying molds, and that's spraying between
5 two molds. Is that accurate?

6 A. Yes, sir. I can see the bottle in the last -- in the
7 bottom one, but are these the ones from the survey?

8 Q. Correct.

9 A. Yeah.

10 Q. And in the middle two, and that would be photos 9 and
11 10, it looks like the person's kind of entering into a
12 little almost cage-looking area. Can you describe what
13 that is?

14 A. Yeah. This is -- this is a -- the post of the machine,
15 and then there's a platform in the center. So the
16 machine in this case is in the open position. When
17 it's running, it's -- this part and this part come
18 together.

19 Q. Gotcha.

20 A. And the gap here is where the molds are is open. Now
21 the molds are here.

22 Q. And the employee would have to go into that area in
23 order to spray the molds. Is that correct?

24 A. Yes, sir.

25 Q. What does the acetic acid smell like?

1 A. It sells like, exactly like vinegar.

2 Q. When you're around that area when the acetic acid is
3 being used can you smell it?

4 A. You probably wouldn't if you're just -- if you were
5 just walking through the department. After it was
6 applied if you went in and got yourself really close to
7 the mold, you would probably smell it strong.

8 Q. So you could only smell it if you got right up next to
9 the mold?

10 A. That's what I remember from, you know, if they called
11 me out. Say they say, Mike, I need you to come and
12 look at this particular problem. I never really
13 noticed it that much unless I was -- I was really right
14 there, you know, and that's normally right...

15 Q. Do you ever recall being out there while they were
16 actually doing the spraying?

17 A. I've seen them spray before.

18 Q. Could you smell it while they were spraying?

19 A. Mm-mm.

20 Q. Is that a no?

21 A. No.

22 Q. Just so I'm clear, I've covered this with the other
23 guys, there are no records at Kohler that indicate how
24 much acetic acid a particular employee used during a
25 particular shift. Is that correct?

1 A. There's -- when -- in early 2011 I had -- I'm not sure
2 which machine this is, but I had a -- I did a small
3 two-day test just to see without the employee knowing,
4 and that's the only time I really know -- I know what
5 they've been shown to do, but I had the foreman look
6 one time just to see if -- and that's the only record I
7 have.

8 Q. Suffice it to say there are no records from 2004 to
9 2009 of which you're aware that would show how much
10 acetic acid a particular employee used during a
11 particular shift?

12 A. No, sir.

13 Q. All right. You brought up the industrial hygiene
14 assessment that was performed in 2011. What
15 involvement did you have with that process?

16 A. At that time Mr. Tolleson had called me to ask me how
17 to re-create this process, and I suggested to him -- he
18 said, Well, we want to do this test, and what can you
19 provide me? And I said, These are the people I suggest
20 that you get with. And that's the department engineer,
21 that's the process specialist, foreman. These are all
22 people that are -- have the very most intricate detail
23 about the process and how to re-create it. At that
24 time we were out. We had come to the finish point.

25 Q. And just for the record, you were looking at Claimant's

- 1 Exhibit 2 and indicating that -- let's go at the top
2 row there. Who is that in the top left?
- 3 A. That's Dickie Goodman.
- 4 Q. And what is his job?
- 5 A. He's a senior staff engineer.
- 6 Q. And the photo next to him to the right?
- 7 A. That's Chris Thomas. He's a pressure cast process
8 specialist.
- 9 Q. And underneath in the middle, those two pictures,
10 that's of the same person, I assume?
- 11 A. That's Charlie. You talked to him first.
- 12 Q. And is that Charlie below in the bottom two pictures,
13 as well?
- 14 A. Mm-hmm.
- 15 Q. Is that a yes?
- 16 A. Yes.
- 17 Q. Are any of these guys people that hold the same
18 position that Nikolay Gul held?
- 19 A. No.
- 20 Q. Are any of these guys people who would normally be the
21 ones spraying molds on a day-to-day basis?
- 22 A. They would be the ones that show them where to spray
23 the molds.
- 24 Q. None of the guys involved in this assessment are guys
25 that spray molds on a day-to-day basis?

1 A. They're not production.

2 Q. Why wouldn't you want any of the guys that actually do
3 the work on a day-to-day basis to be involved in the
4 assessment?

5 A. I didn't do the assessment. He asked -- Mike asked me,
6 you know, what people he could have and when he could
7 have the machines, and I said it would be best to do it
8 now, and he set it up. He -- it was planned and there
9 was a independent company to come and monitor. And
10 that's all -- that was my involvement in this.

11 Q. It was an independent company hired by Kohler?

12 A. Yes.

13 Q. And you all understood when they would be coming?

14 A. Yes. You would have to know, obviously.

15 Q. Right.

16 A. I think it's the same company that do the dust
17 monitoring for dust.

18 Q. Is it correct that Kohler didn't do any air quality
19 testing on a regular basis?

20 A. For vapors. I don't -- I'm not aware of any ongoing
21 for the dust.

22 Q. And Kohler didn't do one of these assessments in 2009.
23 Is that correct, that you're aware of?

24 A. No, sir.

25 Q. Didn't do one in 2010 that you're aware of?

1 A. No, sir.

2 Q. They did it in 2011, in October 2011 or, actually, I
3 think it was September when they were actually onsite.
4 Is that correct?

5 A. May have been. I wasn't there.

6 Q. Do you know why this was done in late 2011?

7 A. At the -- at this time -- at this time there wasn't
8 acid being used anymore. Acetic acid was -- had been
9 eliminated.

10 Q. How long had acetic acid been eliminated from the
11 process by the time the testing was done?

12 A. It was ramped down over time because we bought -- we
13 had purchased new machines, and a lot of that
14 production with the new machines, that process didn't
15 require it. It was coming down probably by early
16 January. I think it was probably over with at that
17 point.

18 Q. By January of 2011?

19 A. Somewhere January, February.

20 Q. Do you know when the process of ramping down the use of
21 acetic acid began?

22 A. I'll say a lot of the products had started to leave
23 like middle of '08, '09.

24 Q. So by the time this assessment was done it had been
25 nine or ten months since any acetic acid had been used

1 in this area at all. Is that correct?

2 A. Maybe. It depends on when the last date was.

3 Q. Around there?

4 A. Yeah, maybe six, seven months, eight months. I don't
5 know.

6 Q. Mike, what do the results of this test mean to you
7 insofar as what level of acetic acid may have been in
8 this area back in 2007, 2008, or 2009?

9 A. The result, if I remember correctly -- and this has
10 been a long time ago, but I think I asked Mike when the
11 report come back in that the exposure was like one-
12 tenth of what OSHA would allow.

13 Q. What does it tell you about what the levels would have
14 been back in 2007 or 2008 or 2009?

15 A. I think in this case, and this may be something more
16 for Mike to answer, but he had -- he had asked them to
17 spray more than what they would have expected the
18 employees to spray when they were performing this test.
19 And by that case I would say that the employee would
20 have had less exposure on a daily basis.

21 Q. Even though at the time the test was done acetic acid
22 hadn't been used in this area for seven plus months?

23 A. I think it wouldn't be any difference.

24 Q. Did you ever have an opportunity to look at the survey
25 report?

1 A. No, sir.

2 Q. In the survey report there's a section called Survey
3 Limitations, and it says the results are based on the
4 conditions encountered at the time of the assessment.
5 What does that mean to you?

6 A. It means that the conditions of the -- to me what that
7 means is this was the process and these were the
8 conditions, which I would hope would be identified in
9 the report, and the test was set up to simulate the
10 steps that the casters would make, but to err towards
11 applying more so that there wouldn't be any doubt that--
12 --

13 Q. But, again, it's hard to know that with any certainty
14 since Kohler didn't keep records of how much was
15 actually utilized by particular employees. Correct?

16 MR. HORNER:

17 Object to the form.

18 EXAMINATION RESUMED BY MR. DANTIN:

19 A. Well, what I can only say is that these -- these were
20 the processes that Nikolay -- these were the
21 environments that he worked in, and this test was set
22 up to re-create that same environment, and the
23 baseline, I don't have a baseline other than this is
24 what was performed and this is what is permissible.

25 Q. I guess my question is, when you say baseline what

1 you're saying is there was no baseline to compare it
2 to. Is that what you mean?

3 A. Historically there wasn't a historic baseline, but
4 there's a comparative to what's allowed.

5 Q. What do you mean by that?

6 A. Well, if I'm understanding right, there's a -- there's
7 a limit for how many parts per million.

8 Q. No. I meant in terms of there's nothing to compare it
9 to with regard to how much was being sprayed by the
10 actual employees that were involved in this process
11 versus what was done on the day this industrial hygiene
12 assessment was done.

13 A. Well, these -- these guys are following this -- on this
14 night they were employees.

15 Q. Well, I understand, but they were not employees that
16 typically did this work.

17 A. Right. They were -- they were -- they were simulating
18 the employees for a shift.

19 Q. And Kohler, were there still any employees left at
20 Kohler that actually did that kind of work when acetic
21 acid was used?

22 A. Yes.

23 Q. But y'all didn't use them.

24 A. Right.

25 Q. And the only thing I'm getting to -- and maybe this is

1 self-evident and I'm beating a dead horse, but, again,
2 there was no data to compare between what was being
3 used back at the time acetic acid was in the process --
4 I'm talking about back in 2007 or '08 or '09.

5 A. Right.

6 Q. Because there was no records kept as to how much acetic
7 acid a particular employee used during a particular
8 shift. Correct?

9 A. Right.

10 Q. Okay. So after this assessment was done there was
11 really no action that needed to be taken one way or the
12 other by Kohler because acetic acid wasn't even
13 involved in the process anymore. Correct?

14 A. Exactly.

15 Q. Is there anything more you can tell me about the use of
16 acetic acid in the process at Kohler back during the
17 period it was used that we haven't already discussed?

18 A. That's, you know, 13 years of history, 11 years of
19 history. You know, it's...

20 Q. How about this? Is there anything else you can tell me
21 about the use of acetic acid at Kohler that would seem
22 important to you relevant to this matter?

23 A. Maybe if I thought about it for a hour, but we went
24 over -- this is -- these are the best guys I know to --
25 they're the most serious as far if -- if they were

1 instructed to do this test, there's no doubt in my mind
2 that they performed this test correctly and that their
3 -- their goal was the same, and there's a report, and
4 we went over how we handle it, how the casters used it.

5 Q. And you suggested these particular guys, if I
6 understand you correctly, because you had no doubt that
7 they would do it exactly the way they were instructed
8 to do it. Correct?

9 A. These are -- if you design a test and you say to these
10 particular guys here was the process we had in 2006,
11 you know it, you lived it, we want to generate that
12 process tonight, then there wouldn't -- there wouldn't
13 be anywhere else I would go. These would be the people
14 that I would say there would be no error in
15 communication or to do the test, and they -- if some
16 problem come up and you had to redo the test, these are
17 guys with a lot of experience, and if they were asked
18 to re-create that process and the outcome is know what
19 the limit was when the -- when the associate was doing
20 that same thing, then that's -- they wouldn't -- I have
21 no doubt that the number would be an accurate number of
22 what it really was during that time.

23 Q. Okay. No further questions.

24 EXAMINATION BY MR. HORNER:

25 Q. Mike, let me ask you a couple questions just to clarify

1 one or two things for me. Assume for me this piece of
2 paper, which I'm going to mark as Defendant's Exhibit
3 1.

4 (Defendant's Exhibit 1 marked)

5 EXAMINATION RESUMED BY MR. HORNER:

6 Q. This is in reference to what you sort of did with the
7 court reporter's laptop. You kind of motioned during
8 your deposition. So assume for me that Defendant's
9 Exhibit 1 is a toilet tank lid. That's one of the
10 products that Mr. Gul would have made. Correct?

11 A. Mm-hmm.

12 Q. Is that a yes?

13 A. Yes.

14 Q. And you referenced on the back of the laptop that when
15 spraying acetic acid it might be -- I'm going to put
16 some X's along the top right corner coming down, that
17 that might be the only area of this mold that needed
18 acetic acid. Correct?

19 A. Correct.

20 Q. And that in a normal situation based upon the way the
21 acetic acid helped release the lid from the mold, would
22 the lid be sprayed in its entirety from left to right,
23 from bottom to top?

24 A. No, sir.

25 Q. Because it's my understanding that in most situations

1 you would only have a particular corner or a particular
2 spot that was sticking and that is where the acetic
3 acid would be needed. Right?

4 A. Yes.

5 Q. And then once the acetic acid is sprayed, the mold or
6 the process starts. Correct?

7 A. (Witness nods head).

8 Q. And the clay that's injected into the mold or whatever
9 sort of mixes with the acetic acid. Correct?

10 A. Yes.

11 Q. So there's not this acetic acid floating around in the
12 air for a long period of time because it's typically
13 limited in its location and then the mold is injected
14 with the clay.

15 MR. DANTIN:

16 I'm going to object to form.

17 EXAMINATION RESUMED BY MR. HORNER:

18 Q. Is that---

19 A. Yes.

20 Q. Is my understanding correct of how that process would
21 work?

22 A. Yes.

23 Q. Now, on the night this test was done, are you aware of
24 whether or not they just sprayed various corners, or
25 are you aware of whether for the sake of testing they

1 sprayed the entire lid to get the maximum amount of
2 acetic acid possible?

3 A. As I understand it, they did it this way.

4 Q. By "this way," you mean they sprayed the entire lid?
5 You're motioning the long lines --

6 A. Yes.

7 Q. -- I've done across the page. Correct?

8 A. Correct.

9 Q. So if in a typical situation a 2-by-2 corner was
10 sprayed, it's your understanding during the industrial
11 test the 18-by-12 entire lid was sprayed?

12 A. Correct.

13 Q. And so is that your reason for believing that this test
14 is valid, because more acetic acid was used during the
15 testing that was set up than was typical at Kohler on
16 these lids?

17 MR. DANTIN:

18 Object to the form.

19 EXAMINATION RESUMED BY MR. HORNER:

20 A. That's what I understood, correct.

21 Q. Okay. That's all I've got.

22 RE-EXAMINATION BY MR. DANTIN:

23 Q. How did you come by this understanding as to how this
24 was done?

25 A. When -- after the testing I asked Charlie how the

1 testing went, and he said -- he explained to me that
2 they sprayed more and---

3 Q. Let me stop you, interrupt you real quick. When he
4 said sprayed more, how much did he say he sprayed
5 specifically?

6 A. He said they sprayed -- he said -- and I -- it's hard
7 to quote him because it's been so long ago, but he said
8 we sprayed so much that if -- if he would have -- or if
9 anybody would have sprayed any longer, I mean, you
10 would -- it's like painting a door. After you've
11 painted it 15 times, what reason would there be to stay
12 there and keep -- continue to keep putting it on there?
13 There was no more to be covered. There was no doubt or
14 any uncertainty that---

15 Q. Mike, did he describe to you specifically which areas
16 they sprayed?

17 A. He -- the words that he said was more or less what I
18 just said, that we -- and I can't remember it, but it
19 was -- my understanding was that it was just like a
20 full spray almost like.

21 Q. Well, you're using a lot of words --

22 A. Yeah.

23 Q. -- such as almost and like.

24 A. Charlie's testimony should be the exact amount, and I
25 wasn't there, but from what I understand, it was like

1 it was either -- my understanding was that it was just
2 excessive to what would be normally.

3 Q. And let's take it down to what you know. You were not
4 there. Correct?

5 A. Correct.

6 Q. You have no idea how much was actually sprayed on
7 there, do you?

8 A. I wasn't there. So I just have to---

9 Q. I mean, you personally don't know how much was sprayed
10 on there, do you?

11 A. Mm-mm.

12 Q. Correct?

13 A. Right.

14 Q. So what's in Defendant's Exhibit 1 you have no first-
15 hand knowledge about whatsoever in terms --

16 A. I wasn't standing there---

17 Q. -- in terms of the industrial hygiene test?

18 A. I didn't witness that, yeah.

19 Q. Okay. One other question. Why isn't acetic acid used
20 in the process any longer?

21 A. We -- there was an issue with mold design in the -- or
22 historically, and in it was like '07 or '08 we put in
23 all new technology where the interaction between the
24 mold and the design and the clay it released without
25 the need for it. So, therefore, there went a lot of

1 product that went to another area, which was the other
2 area that didn't require it, which was the other area
3 that I had. We transferred some of that technology
4 back into our existing process, and over time and
5 continuous improvement we were able to eliminate it.

6 Q. All right. No further questions.

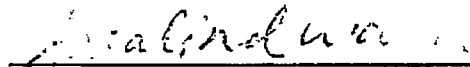
7 (There being no further questions, this deposition concluded
8 at 1:34 p.m.)
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CERTIFICATE OF REPORTER

I, Rosalind Poole Walters, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 48 pages represents a true and accurate transcript of the deposition of MICHAEL S. DONALD, which was taken by me on the 1st day of April, 2014.

That the witness was first duly sworn to tell the Truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.



Rosalind Poole Walters, CVR-M

Notary Public for S.C.

Commission expires: 12-18-2016

ROA 1104

1230

Apple Mobile Medical, Inc.
A Subsidiary of The Ellwood City Hospital
510 Jamison Avenue
Ellwood City, PA 16117

Individual Pulmonary Function Results

07/16/09

Name **GUL, NIKOLAY I**
SSN/ID **REDACTED**
Company **Kohler**
Date of Birth **REDACTED** /75 Age 34

Sex **Male**
Race
Height **66.0**
Weight **181**

Current Screen Date 06/11/09

	Actual Results	Predicted Results	Percent of Predicted
FVC	4.52	4.35	103.81
FEV1	3.59	3.64	98.59
FEV1/FVC	79.42	84.29	94.22
PEFR	7.01	8.58	81.74
FEF2575	3.37	3.96	85.20
FEF25	0.00	7.91	0.00
FEF50	0.00	4.68	0.00
FEF75	0.00	1.93	0.00

Current Classification **Normal**

Respirator Opinion **CLEARED FOR RESPIRATOR USE**
Based on your respiratory evaluation, you have been cleared for respirator use with no limitations. This evaluation has met with the requirements set forth under 29 CFR 1910.134 for respirator clearance.

Examiner **Thomas Rose**

Comment **EVALUATE BLOOD PRESSURE**

Charles H. Zeigler, D.O., M.P.H.
Medical Provider Performing Evaluation



ROA 1105

1231

ROA 1106

1232



Industrial Hygiene Assessment
Kohler Co.
Project No. 0811-37
October 3, 2011



Photo 7- Big Beam operator #2, product removal.



Photo 7- Big Beam operator #2, product removal.

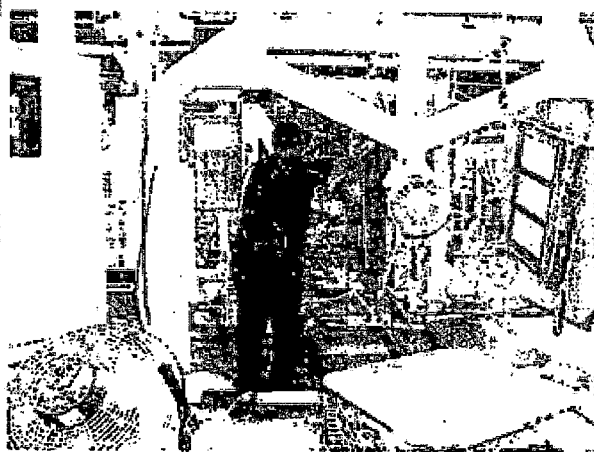


Photo 9 -Two mold operator, acetic acid use.



Photo 10 -Two mold operator, product removal platform.



Photo 11 -Two mold operator, acetic acid use.



Photo 7- Two mold operator, acetic acid use.

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DEPOSITION OF
MICHAEL G. TOLLESON

REPORTED BY: ROSALIND POOLE WALTERS
CERTIFIED VERBATIM REPORTER-MASTER

ROA 1110

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(This Transcript May Contain Quoted Material. Such
Material Is Reproduced as Read or Quoted by the Speaker.)

1 STIPULATIONS;

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to all
5 applicable rules of the South Carolina Workers'
6 Compensation Commission;
- 7 2. That the deponent waives the right to read and sign the
8 deposition transcript.

9 *****

10 MICHAEL G. TOLLESON, being duly sworn to tell the truth, the
11 whole truth, and nothing but the truth of his own knowledge
12 concerning the matter herein, testified as follows:

13 *****

14 EXAMINATION BY MR. DANTIN:

15 Q. State your name for the record, please.

16 A. It's Michael Gary Tolleson.

17 Q. And do you go by Mike typically?

18 A. I do.

19 Q. And do you want me to call you Mr. Tolleson or Mike?

20 A. I prefer you call me Mike, yes.

21 Q. Okay, I appreciate that. Mike, we're just here to ask
22 you some questions relative to the matter concerning
23 Nikolay Gul. I'm Jeremy Dantin. I represent him in
24 his workers' comp claim, and I think you and I have met
25 before.

1 A. Yes, sir.

2 Q. I assume you've been deposed before?

3 A. Yes, sir.

4 Q. Well, just to review, make sure that you give verbal
5 responses to my questions, and if for any reason you
6 don't understand something I've asked or I've asked a
7 confusing question, just let me know and I'll be happy
8 to rephrase it so that you can understand it. okay?

9 A. Yes, sir.

10 Q. All right. Now, first of all, just describe for me
11 what it is you know about this claim involving Mr. Gul.

12 A. What do I know about it?

13 Q. Mm-hmm.

14 A. Could you rephrase that, I guess?

15 Q. Yeah. I'm just looking for what your understanding of
16 this controversy is.

17 A. I know he is claiming an illness.

18 Q. Do you know what the illness is?

19 A. I know there was multiple body parts at the beginning,
20 and now I don't know if it's changed. So I just know
21 that it was an illness case and it dealt with acetic
22 acid.

23 Q. Is there anything else in particular you know about it
24 in terms of specifics, or is it just---

25 A. I mean, I was at your -- the first hearing, but I don't

1 recall anything. I think we brought Mike and Charlie
2 as witnesses. They weren't put on the stand. So we
3 didn't really go into any details that I recall. So...

4 Q. You were there at the first hearing and you were in the
5 courtroom while testimony was being given?

6 A. Correct.

7 Q. And you were able to hear at least through an
8 interpreter everything that was said by Mr. Gul.
9 Correct?

10 A. You say hear, but yes, I was there to---

11 Q. Were you listening during that time?

12 A. Right. Whether I was listening or not, that was a
13 whole different ball game. So...

14 Q. So you may not have been listening?

15 A. Right. It's not my role to report to Kohler Company.
16 So that -- you know, I'm just a representative from a
17 safety standpoint if something comes up safety
18 oriented, yes.

19 Q. Okay. How long have you worked with Kohler?

20 A. Eighteen years.

21 Q. And what is your position at Kohler?

22 A. My position is senior safety project specialist, I
23 think.

24 Q. And how long have you been in that position?

25 A. Since 2002, roughly. May have been '01. I didn't come

1 in as that. I was a trainer.

2 Q. How long were you a trainer?

3 A. From '96 the either 2001 or 2002. I don't know exactly
4 which year it was.

5 Q. And as senior safety project specialist, is there
6 something I can call you short of that?

7 A. Sure. Just safety specialist would be fine.

8 Q. Safety specialist?

9 A. Yes, that is fine. I'm not -- I'm not a guy of titles.
10 So I'm probably just called the safety guy at work.

11 Q. Okay. As a safety specialist what are your job duties?

12 A. There are multiple tasks. I mean, I deal with OSHA. I
13 deal with DHEC at times. So it's -- I deal with
14 employees. I deal with supervision. I'm basically the
15 guy on everybody's side. So that is my role. So...

16 Q. Are you the one that is in charge of putting particular
17 safety processes into action?

18 A. Sure. We have a system, Kohler management system, and
19 it's my top priority to make that happen. We were the
20 first Kohler facility to achieve tier four, which was
21 the max that any facility can achieve, and it's based
22 on four concepts. It's based on fundamentals,
23 foundation, associate participation, and culture.

24 Q. What is tier four?

25 A. That is the max. We have a tier one status that you

1 can achieve, a tier two status that you can achieve,
2 and it's based on those terms that I just said.

3 Q. Status relative to what?

4 A. To building a foundation for safety. That would be
5 tier one. Tier two would be fundamentals, that you put
6 fundamentals in place such as following all the OSHA
7 guidelines, rules, DHEC, those kind of things. And
8 then tier three would be active participations where
9 you have safety teams, employees are engaged. And then
10 tier four is the culture, where the culture is changed,
11 meaning that associates come to you for problems, you
12 don't go to them. We take action on situations that
13 come up. It doesn't matter what kind of actions. It's
14 mandatory that we have an action in place for anything
15 that comes up.

16 Q. So as you explained that, I gather that the tier system
17 is relative to safety issues?

18 A. Only safety, yes, sir.

19 Q. And whose tier system is this?

20 A. This is the corporate tier system.

21 Q. Kohler's tier system?

22 A. Yes, but other companies have similar. It's just --
23 I'm not going to say it's a can, because each company
24 has their own different type of system that they try to
25 put guidelines in and make sure that they follow.

1 Q. Okay. What role do you typically play in the process
2 of handling a reported work injury to Kohler?

3 A. I am probably the second stage, meaning that we are
4 required to report everything, meaning associates.
5 That's part of their active participation. We do that
6 on an annual basis. We go over reporting with them.
7 We use January as that month, which we did it again
8 this month or this past year in January. And then I
9 get a report, and then I follow up with investigation
10 with the associate, the supervision, and then if it is
11 an injury or illness, meaning that it's going onto the
12 OSHA log or whatever, there's a 24-hour period that we
13 have an investigation meeting where everything is
14 brought up, corrective action's put in place, and, you
15 know, we hold people accountable at that point.
16 Sometimes it's process. Sometimes it's people. So,
17 you know, we're both -- we do corrective action on both
18 ends, process and people. So yes.

19 Q. Well, let me see if I can work through this more
20 efficiently. So far today obviously I've spoken with
21 three other people at Kohler, all at the supervisory
22 level, and one of the things I've discussed with them
23 is the types of safety equipment or gear that is
24 available to Kohler employees. As I understand it,
25 those things would include, well, you have to wear

1 safety shoes, goggles are available, aprons are
2 available in certain parts of the plant, gloves or
3 sleeves are available for certain employees, and then
4 there are paper masks and filtered respirators for
5 certain employees. Is there any other types of -- did
6 I say goggles? I can't remember.

7 A. You did, yes.

8 Q. All right. Is there any other type safety gear or
9 safety equipment that is available generally for Kohler
10 employees?

11 A. I'm going to answer your question, but I want to say
12 this first. We're a union facility. So it is
13 documented in our union contract that we must supply
14 anything and everything that a person would desire. So
15 yes. There's sleeves, which are the Kevlar cut
16 sleeves. There's chaps that you would wear with
17 chainsaws or whatever for cut protection. There's
18 aprons. There's hearing protection. There's chemical
19 gloves. There's leather gloves. There's driving
20 gloves. There's -- it's the whole realm. I mean, I'm
21 sure that if it's requested we -- there's wrist
22 supports. There's knee supports. Anything that you
23 would wish, it would happen. But it would have to come
24 through a request if you weren't in an area that it's
25 required. So yes.

1 Q. And just so I'm clear, regardless of where you work in
2 Kohler, you could make a request for any particular
3 piece of safety equipment and you would not be denied
4 that request?

5 A. That is correct.

6 Q. Unless there was an issue with fitting or some other
7 medical or other ancillary issue that would preclude
8 you from using that particular---

9 A. That would be correct. OSHA has a lot of guidelines
10 that we have to follow. Fit testing would be one.
11 Facial hair would fall into place there. Can't be in
12 the sealing area. You know, so protection, you know,
13 you can't wear radio headphones. You know, you can
14 wear them, but that would be a great example where you
15 have to show us that you have a filtered radio
16 headphone meaning that you're only getting 80 decibels.
17 So, you know, there's lots of OSHA guidelines that we
18 have to follow being above any threshold, yes.

19 Q. All right. And I understand lung function tests are
20 performed on Kohler employees. Correct?

21 A. Today, probably not. And I say that just because we
22 are in a hiring mode, and I don't think we're doing
23 that far as a requirement today. Now, two years and
24 beyond, yes, we had a -- we had a -- what's it called?
25 New employee orientation where you had to come into the

1 job and you were given a -- I should know that term,
2 which would be a physical, and those things were
3 performed. But today's hiring, I don't think that that
4 is a requirement at this point.

5 Q. And I'm not talking as part of hiring.

6 A. Oh, okay.

7 Q. I'm talking annually.

8 A. A lung function? That would be chest x-rays. We do
9 chest x-rays every three years on people who qualify in
10 certain areas. That would -- they are -- they are
11 monitored every three years.

12 Q. And do you know what lung function testing is or
13 pulmonary function testing?

14 A. I mean, I'm sure I can get my way around it, but I'm
15 not a medical person. So...

16 Q. This has been marked as Claimant's Exhibit 1, and it
17 will be so for your deposition, as well.

18 (Plaintiff's Exhibit 1 identified)

19 EXAMINATION RESUMED BY MR. DANTIN:

20 Q. This is just an example of something that I found in
21 Mr. Gul's personnel file, and it was something that was
22 conducted through Kohler regarding lung function or
23 pulmonary function testing.

24 A. And this is probably the medical group that is hired by
25 us every three years. That group changes. That's a

1 corporate initiative. They tell us who they're going
2 to use, and they bring a truck down. So that would be
3 what that was.

4 Q. And why is it that Kohler employees had to undergo that
5 kind of testing?

6 A. For dust purposes really, meaning silicosis is our big
7 concern.

8 Q. That would be the only reason for that testing?

9 A. Correct.

10 Q. And it's an outside company that Kohler contracts?

11 A. It's contracted, yes, it is.

12 Q. And they perform the testing onsite. Correct?

13 A. Yes. Ever since I've been there, yes.

14 Q. And is it everyone in the facility that's tested or is
15 it just people in particular areas?

16 A. Only people in particular areas, because we have
17 several operations there. So it's only a selected
18 group.

19 Q. And who is the person that does the selecting? Who
20 determines which groups to test?

21 A. I would think corporate. I'm not sure on that. That
22 would go through our medical department. Again, I'm
23 safety. I'm not medical. So that -- that would go
24 through our medical department.

25 Q. You wouldn't be involved in that process?

1 A. I was not. I would only be involved in the scheduling,
2 making sure that everybody got out to the truck. That
3 would probably be my major role in that, but that would
4 be our medical person, and they would get the results.
5 I would not see this document. This would not be
6 anything that I would -- I would have them sign off on,
7 see, or whatever.

8 Q. Okay. Would a person that needed or could possibly
9 need a respirator need to undergo the type of lung
10 testing that is represented there in Claimant's Exhibit
11 1?

12 A. Could you rephrase that question, because it's---

13 Q. I can try.

14 A. It is a -- to me it's a two-phase thing from that.

15 Q. Right. If I'm an employee at Kohler back in 2006.

16 A. Sure.

17 Q. Okay? And I said I wanted a respirator, would I have
18 to undergo any type of lung test in order to determine
19 whether I was cleared to use it?

20 A. The answer to your question is no, because you're
21 coming to us saying that you need one. If you go into
22 the area, that would be a mandatory thing; you would
23 have to basically have one, yes.

24 Q. On this particular testing, Claimant's Exhibit 1, in
25 the middle of the page there, there's a notation that

1 says, "cleared for respirator use." Do you have any
2 idea what that would be indicating or why that would be
3 on that particular report?

4 A. Again, this would come from that company who done the
5 reading. So I'm sure it was probably a technician or
6 something that would say, hey, you know, like a
7 silicosis case, we have had a silicosis case, and those
8 recommendations when the doctor sees those people and
9 they're diagnosed with chronic or silicosis, it's
10 mandatory you'll see that, that they want them in a
11 dust mask because something has been seen, I assume.
12 So that has nothing to do with our company. That is --
13 that's a request from whomever, I guess. And, again, I
14 don't deal with this. So that's -- that would be my
15 terminology of that. It's just a request.

16 Q. Okay. Aside from silicosis exposure, are you aware of
17 any other claims of exposure that have been made by
18 kohler employees in your time as safety manager?

19 A. There is none other than that.

20 Q. Other than Mr. Gul and---

21 A. No. Well, this is our first acetic acid, yes.

22 Q. And no other exposure --

23 A. Just silicosis.

24 Q. -- other than silicosis?

25 A. Right.

1 Q. Are you familiar at all with Mr. Gul?

2 A. Like I said, I'm not a process guy. I'm not out there
3 with them all the time, and the only time that I really
4 get involved with associates is they come to me for a
5 situation or I'm involved with an accident
6 investigation, a near miss, maybe a process change,
7 definitely, you know, working with chemicals. We do a
8 monthly meeting there. We, you know...

9 Q. Tell me about the monthly meeting.

10 A. It's different topics every month, but hazardous
11 communication is one that we do annually because it's
12 required by OSHA, and we -- we make sure that we follow
13 all the guidelines there that are set by the government
14 for us to do. And that is performed either by an
15 hourly associate through a document that's provided to
16 us with a quiz card and information card. We encourage
17 our hourly associates to hold the meeting. If not,
18 it's the requirement of the line managers to make that
19 happen, yes.

20 Q. Okay. And is it everyone that has to participate in
21 these types of monthly meetings or just those that deal
22 with hazardous materials?

23 A. It's everybody, the whole facility.

24 Q. So there's nothing -- well, let me ask it this way. Is
25 there anything in particular that those who are

1 actually using and interacting with the hazardous
2 materials, is there anything beyond that that they are
3 required to do in terms of training or information?

4 A. You know, again, it goes back to your job, and, you
5 know, we call them job hazard analysis, and I'm sure
6 that they're in every department, and it breaks down
7 hazards from machine guarding to chemical use to
8 whatever. So they're readily available and people have
9 to be trained on them. So I would assume that at some
10 point every associate that comes into Kohler Company
11 are trained to the job hazard analysis that are -- that
12 are available by the departments. So...

13 Q. Mr. Gul worked at Kohler from 2004 to 2009. Do you
14 ever recall having any personal interaction with him
15 during that period?

16 A. I want to say that he was a fork truck operator. Don't
17 hold me to that. But in those jobs I know that there's
18 a lot of pressure cast machine operators who had
19 powered vehicle, and I think he had powered vehicle.
20 So I would have done that training for him as well as a
21 fit test, and I did not do a fit test for him. He was
22 never brought to me to do that. Anything that is OSHA
23 driven I'm going to do the training from lock-out tag-
24 out to confined space to blood-borne pathogens. It's
25 my role to make sure that every associate is covered

1 and we're following the guidelines, yes.

2 Q. I guess my question is, is there any particular
3 recollection you have of interacting with him
4 personally during the time he was employed there?

5 A. I'm sure I said hey to him a million times, but no.

6 Q. Nothing in particular?

7 A. No. No. It's not that I ignored him.

8 Q. And I'm only asking just to know --

9 A. Right.

10 Q. -- if you had any general impressions about him, et
11 cetera.

12 A. Sure.

13 Q. Safe to say you didn't have enough contact with him to
14 form those types of impressions?

15 A. I did not.

16 Q. Okay. Tell me what you know about the use of acetic
17 acid at Kohler or at the time that Kohler actually used
18 acetic acid what is your understanding about how it was
19 used in the process, et cetera.

20 A. Well, I got a wider knowledge once we did a IE exam.
21 We brought in an independent person once this case
22 became knowledge to us just to make sure that we were
23 following the guidelines, and that was really my first
24 experience with it. So...

25 Q. So prior to the industrial hygiene assessment that was

1 done in 2011, did you have any knowledge about how
2 acetic acid was used at Kohler?

3 A. Sure. I think we started out with a 5 percent water
4 ratio -- or acetic acid to water ratio, and we went up
5 to a 20. And I think this was where it was at when Mr.
6 Gul developed that. MSDS's are part of what I have to
7 keep up with. So I have to make sure that we're
8 following guidelines there. And project reviews, those
9 kind of things.

10 Q. Prior to the industrial hygiene assessment in 2011,
11 were you aware of how the acetic acid was utilized?

12 A. I was. It's mold conditioning.

13 Q. I'm sorry?

14 A. Mold conditioning, a release.

15 Q. And how were they using, the employees, that is, using
16 the acetic acid to do mold release?

17 A. It was through a spray application.

18 Q. Did you ever go out and observe them doing this --

19 A. I did, yes.

20 Q. -- during that period?

21 A. Yeah. I'm out in the plant a lot. I mean, not that --
22 you know, I just want to make sure that -- you know, we
23 have a right to refuse document there, as well, and
24 that's my message to people. Our goal is zero
25 injuries, illnesses every year, and, you know, it's --

1 that's my job.

2 Q. Okay. Can you discuss with me what precautions Kohler
3 took with regard to the use of acetic acid while Mr.
4 Gul would have been employed with Kohler? So that
5 would have been during the period 2004 to 2009.

6 A. I think at that time they had three, and there could be
7 another. Clorox probably would be a fourth. But it
8 was muriatic. It was -- what's that term? And it was
9 acetic, and then Clorox. We brought in Van Waters, who
10 supplied us the material, and they did a training
11 period with all pressure cast and talked about that.
12 Muriatic acid was the only one that they identified to
13 need full protection. And when I say full protection,
14 that was gloves, sleeves, apron, and a filtered vapor
15 mask. And acetic, the guy, David Farmer was his name,
16 was strictly asked the questions about acetic, and he
17 said beware of skin irritations is probably the number-
18 one thing there. So the MSDS's again were reviewed at
19 this time with those guys, and then processes were put
20 in place for handling. And that was pretty much
21 something that I put together for that group to bring
22 them in to talk about what's going on with the
23 materials.

24 Q. Do you remember what specific processes were put in
25 place with regard to the handling of acetic acid?

1 A. I don't recall, but I do know how it was done. It came
2 in a 55-gallon drum, and it was a pump system out of
3 the top of that barrel. It was explained to the
4 workers, and they were putting it in a spray container,
5 and I think the spray container has changed maybe once
6 or twice. Don't hold me to that. I know that we are
7 to a little plastic spray bottle now that you would
8 have at home for watering plants or whatever.

9 Q. Now, is it your understanding that acetic acid is still
10 used at Kohler?

11 A. It is not. To my knowledge, I don't -- I think we have
12 some there, but it's not being used in the process.
13 You know, I think there are one or two barrels that are
14 put away that are still there, but it's not being used
15 in the process today, and it wasn't on -- I think his
16 last position, which was the kitchen sink, we were
17 trying to even get away from that at that point.

18 Q. All right. My understanding was that Kohler didn't do
19 any air quality testing during any of the years Mr. Gul
20 worked there. Is that your understanding, as well?

21 A. When you say air quality testing, what would you be
22 talking about?

23 Q. Testing any chemical elements or --

24 A. Dust?

25 Q. -- other irritants in the environment.

1 A. That would be a false -- that's not a true statement.
2 We did dust. I know for a fact that dust was done,
3 meaning silica.

4 Q. Anything regarding chemicals similar to what was done
5 in the industrial hygiene assessment in 2011?

6 A. Pretty much not at our facility, but that would be done
7 through corporate. Every process that we put in place
8 we have corporate IH people, meaning industrial
9 hygiene, and they review the process and tell us if we
10 need to take further steps.

11 Q. Here's where I get this from.

12 A. Okay.

13 Q. Kohler was ordered by a Commissioner to produce any air
14 quality testing that had been done during the period
15 Mr. Gul worked there, and it was represented to us and
16 to the Commission that there were no such tests done
17 during that period.

18 A. Meaning air sample?

19 Q. Correct.

20 A. I don't -- now, acetic sampling, no, I agree with that,
21 but I just don't believe the air sampling, because I
22 know that I'm involved with that with the corporate
23 people, but acetic, you are correct. Dust, I don't
24 think that that's -- I mean, he was there from what
25 time?

- 1 Q. 2004 to 2009.
- 2 A. That would be a false statement.
- 3 Q. There would have been testing for dust, not for --
- 4 A. Yeah, not acetic.
- 5 Q. -- other chemical vapors?
- 6 A. No. No chemical vapors, because there was no risk that
- 7 put us on the alert for that, right.
- 8 Q. Now, Kohler knew about the issue with Mr. Gul back in
- 9 2009. At least Kohler acknowledged that a claim was
- 10 being made about exposure to acetic acid as early as
- 11 August 20, 2009 even by virtue of submissions to the
- 12 insurance company. Now, Kohler didn't do any air
- 13 quality testing in 2009 after learning about that
- 14 issue?
- 15 A. We did not.
- 16 Q. Didn't do any air quality testing in 2010?
- 17 A. We did not.
- 18 Q. And didn't do any air quality testing until September
- 19 or October of 2011. Correct?
- 20 A. That's correct.
- 21 Q. And by that time acetic acid wasn't even being used in
- 22 the process anymore. Correct?
- 23 A. I think that it -- I mean, I don't know. Let me just--
- 24 -
- 25 Q. Mike Donald---

1 A. Let me just say I don't know.

2 Q. Yeah. Mike Donald testified just a minute ago that the
3 acetic acid -- he thought the acetic acid had been
4 phased out by January of 2011 and that it had been
5 tapered down since probably 2008 or 2009.

6 A. I'm not going to say it was completely gone, because
7 I'm not a process guy, but we did put it back for this
8 and we did mock a full-blown work night for this
9 process.

10 Q. Here's my question. Why did Kohler wait until 2011 to
11 do this testing?

12 A. Because there was -- like I said, when you look at the
13 MSDS, it does say that you could recommend this, this,
14 and this, but it was not mandatory. The permissible
15 exposure limit was not above, you know, that came from
16 our corporate. So there was -- there was no illnesses
17 reported to us. I think there was a near miss.

18 Q. Let me rephrase.

19 A. There was a near miss.

20 Q. I asked you a bad question. After Kohler found out
21 about the claim Mr. Gul was making, why did Kohler wait
22 until 2011? And understanding that everybody certainly
23 was aware by August 20, 2009, why wait until September
24 or October of 2011 to do this testing?

25 A. Number one, I guess we would -- we're concerned to make

1 sure that we weren't going to over-expose, whether it
2 was going out or coming in. We would want to make sure
3 that we weren't, you know, putting people at harm from
4 that standpoint. So that's why we did what we did.

5 Q. No, no, no. I can appreciate that, but why wait two
6 years?

7 A. Because that was really our first knowledge of any type
8 of problem with acetic acid. You know, we did have a
9 skin rash, I think, that was brought up.

10 Q. But the claim was made and Kohler acknowledged that the
11 claim was made in August 20, 2009. So it wasn't 2011
12 when Kohler found out.

13 A. But his -- I guess he was claiming other things, too,
14 like heart. He was claiming lungs. He was claiming
15 liver. He was claiming lots of different organs from
16 that standpoint. So, and then he had his own pre-
17 existing condition which was blood pressure problems
18 that were there. So---

19 Q. Is it your understanding that Kohler didn't know that
20 he was talking about an exposure problem to acetic acid
21 until 2011?

22 MR. HORNER:

23 Object to the form.

24 EXAMINATION RESUMED BY MR. DANTIN:

25 Q. To your knowledge, is that your understanding?

1 A. No.

2 Q. Okay, so my question again is do you know why it
3 wasn't until 2011 that this testing was done.

4 A. I don't.

5 Q. Who decided to do the testing?

6 A. I'm trying to think, because I don't want to misspeak
7 here. I think it came from corporate. We reported the
8 situation, and, again, they wanted us to do monitoring
9 of that process after the fact.

10 Q. Do you know who reported the situation to corporate?

11 A. It would have went through our process, I mean, we've
12 got if there is an illness or injury. And, again, this
13 is sort of a breakaway, too. If it's not recorded as a
14 OSHA, it would have stayed in-house. If it was an OSHA
15 injury, then it has to be reported to our corporate
16 group. So that would be the plant manager would had to
17 have done -- after an investigation would have had to
18 have done a report and got it to our corporate group in
19 a 48-hour period. And, again, we're proactive, you
20 know, to making sure that we are doing things the way
21 that they should be done.

22 Q. As the safety guy --

23 A. Yes.

24 Q. -- does it bother you that this type of testing, this
25 industrial hygiene assessment, wasn't done until two

1 years later?

2 A. It doesn't, because everybody's got their standard.
3 It's not -- now, the illness itself, you know, could be
4 a concern, but, you know, there's lots of things in our
5 facility if you read labels you're going to have
6 questions on. Examples would be in our plastics
7 division where we have ladies, they get pregnant. It
8 says that, you know, lots of things say, hey, you don't
9 need to do that. So we try to take them out as quick
10 as possible just based on their label. So, you know,
11 we try to make sure that I guess everybody understands
12 a risk, and at that point this was not a risk that was
13 unacceptable to us, meaning handling acetic acid.

14 Q. But you had a claim that said someone had a problem or
15 injury due to handling acetic acid. Correct?

16 A. It was the first one in Kohler Company.

17 Q. Okay. Do you typically ignore the first time a claim
18 is made?

19 A. We don't ignore anything. I mean, we may not take an
20 action immediately, but we don't ignore anything.

21 Q. Why wouldn't you take an action immediately if
22 someone's alleging that they were injured at Kohler?

23 A. We took an in-house one immediately. You know, I think
24 even with his near miss we supplied gloves for the
25 chemical, and I would -- I would hope and I do trust my

1 guys that if he came to us for a respirator it would
2 have done -- it would have gotten done, too. So, you
3 know, so we do take immediate action on everything.

4 Q. But you---

5 A. And, like I said, we have a refuse to work situation.
6 If somebody feels like that they're being put in any
7 situation that is harmful to them, they have the proper
8 refuse to work right there with them, and it will be
9 evaluated, it will be investigated, and if it's
10 something that's serious, it will not be done until we
11 get the proper things in place.

12 Q. I'm really more focused on the issue of the air quality
13 testing, and what I can't figure is, I mean, it sounds
14 like Kohler is very proactive and that you are a very
15 proactive safety specialist. It just seems curious
16 that an industrial hygiene assessment like this
17 wouldn't have been done sooner, and I guess as the
18 safety specialist is that something you would like to
19 see done --

20 A. No.

21 Q. -- earlier in this process?

22 A. No.

23 Q. Why not?

24 A. Just because there's going to be risks that you have no
25 matter what you do. I mean, there's acceptable risk in

1 our plant that people would say why do you do that,
2 and, again, that's why we've put into place what we've
3 put into place. If you feel like that it is a hazard
4 to you, it is your responsibility to refuse to work.
5 Everybody -- you know, I'm not out on the floor. I
6 don't know every job, but, you know, I mingle with
7 everybody, but it doesn't mean I know everything that
8 you're dealing with. So as a safety director and as a
9 safety person and as line managers, that is our go-to,
10 and that's part of why we got the award that we did,
11 because our people challenge us to make those things
12 happen. You know, they don't just assume. They
13 challenge.

14 Q. Well, what about the challenge that would involve a
15 person filing a work comp claim saying that acetic acid
16 exposure had caused them problems and a doctor had told
17 them that they couldn't work because of it?

18 MR. HORNER:

19 Object to the form.

20 EXAMINATION RESUMED BY MR. DANTIN:

21 Q. You can answer.

22 A. Repeat, I guess.

23 Q. Sure. It sounded like you were saying that Kohler
24 would take action when somebody would come to them and
25 tell them that there was a problem, something like

1 that, and I guess what I'm asking is don't you agree or
2 do you agree that somebody filing a work comp claim is
3 telling Kohler that there's a problem.

4 A. And I don't mean to be smart here, but Jeremy, you've
5 had several of our claims. You know our biggest thing
6 is lifting. We're not going to get rid of lifting.
7 You can either do a two-man lift or you can choose to
8 work unsafe. If you choose to work unsafe, you can get
9 hurt. And I feel like this is what happened. The guy
10 chose to -- if he had a problem, he chose to work
11 unsafe without notifying us, period.

12 Q. Okay. Tell me the ways in which he was working
13 unsafely.

14 A. Number one, he said he had a problem and he didn't
15 inform. Number two, he said that he got I think
16 there's denial of a respirator. I never saw him. He
17 never -- I saw him. I was interacting with him out in
18 the plant. I was there. He knew me. It's his job,
19 it's his responsibility to refuse to do it, period.

20 Q. Would it have been safer for him to use a respirator,
21 in your opinion?

22 A. No.

23 Q. Well, then how was he working unsafely?

24 A. Because he said he needed a respirator. You know, if a
25 person's working in fiberglass -- and you know our

1 process and I'm not going deny it with you. If they're
2 working in fiberglass and they get these little sores
3 in their nose and in their mouth because of fiberglass,
4 it's a nuisance. You've got an option. We will supply
5 it. But when we give it to you, it's going to be
6 required at that point. So we expect you to follow the
7 guidelines that we have put in place for you to work
8 what you deem safe or to protect you from any elements
9 happening, period. That is -- that is our process.

10 Q. And moving beyond the issue of him notifying you that
11 there was a problem while he was working, once Kohler
12 knew about it in August of 2009, what would you like to
13 have seen done at that point?

14 MR. HORNER:

15 Object to the form.

16 EXAMINATION RESUMED BY MR. DANTIN:

17 Q. You can answer.

18 A. I would say that we probably did it. We got rid of
19 what maybe somebody deemed an issue.

20 Q. Which was what? Got rid of it; what do you mean?

21 A. We got rid of the problem.

22 Q. How so?

23 A. I assume -- you've already asked us -- that we got rid
24 of the -- got rid of it.

25 Q. Got rid of acetic acid?

1 A. Yes. And, again, being a proactive company, you know,
2 I've got multiple examples of things that we got rid of
3 and we brought back for whatever reason, meaning
4 production reasons, and then it came back. Acetone
5 would be another one right today. We got rid of it; we
6 brought it back just last month. So, you know, when it
7 comes to process and making dirt work, it's -- you
8 know, you're going to take risks. You know, just like
9 lifting, we encourage our people to lift two-man 50
10 pounds or more. You've got a choice. If we catch you,
11 we're going to write you up. If you don't do it, you
12 get hurt, you're going to get a corrective action.
13 You've seen it with our people. So it's just things
14 that we're trying to do to put in place to make people
15 understand we want to help, but we need to know that
16 we've got help in situations.

17 Q. Do you know who it was that actually arranged for this
18 industrial hygiene assessment to be done in 2011?

19 A. It would have been our corporate group, and I want to
20 say Eric Ostby. He is our -- don't hold me to this
21 title. He is our industrial hygiene supervisor. So I
22 think he did a lot of study of people in the area, and
23 this person or group came out to be the most top-notch.

24 Q. And what was your involvement with coordinating or---

25 A. I coordinated. We met, and then I was there the night

1 of.

2 Q. Tell me when you were first contacted about the
3 industrial hygiene assessment. When would that have
4 been?

5 A. Rephrase that.

6 Q. Sure. The industrial hygiene assessment, it looks like
7 they may have been onsite in September. The report is
8 dated October 2011. At what point were you first
9 notified that corporate wanted to have an industrial
10 hygiene assessment performed?

11 A. Once they were picked I got a phone call from this
12 person to get schedules and times.

13 Q. From a person at Apex?

14 A. Yes. A lady. I don't even recall the name it's been
15 so long, but it was a lady.

16 Q. Do you know when you would have received that call?

17 A. Shortly after they made a choice.

18 Q. I mean, like months?

19 A. No. I mean, I'm sure I could look at something, maybe
20 an e-mail that I have later on. I don't even know.
21 No, sir, I don't. I don't know the exact date. Again,
22 this is an old claim. So...

23 Q. And once you were contacted by Apex, then you were
24 involved in actually trying to get it scheduled so that
25 they could come in and do testing?

1 A. Right.

2 Q. And how did you go about doing that?

3 A. Well, I worked with the guys that you -- maybe not
4 Rodney, but Charlie, I think, was involved. Mike was
5 involved. Chris Thomas was involved and one other guy.
6 You've got a picture. Mike could probably tell you.
7 Might have been Dickie Goodman or Randall Case. I
8 think it was Dickie. I'm not sure on that. But
9 basically went to them and said, hey, this individual
10 has these dates available, what works for you guys.

11 Q. And did you all discuss how you would go about staging
12 this for Apex?

13 A. We were going to run it like his job, and I think
14 that's why Mike and them chose the night shift, because
15 they were only running one shift on the night shift.
16 So that gave us available time, and so we ran a full
17 eight-hour shift.

18 Q. Did you all discuss who would be involved in actually
19 performing the spraying?

20 A. When you say "you all," I would say that Mike Donald
21 and myself did it. I mean, Chris is a specialist in
22 that department, and Dickie at that time was a
23 specialist in that department. Now he's a -- he's a
24 supervisor of that department, but at that time he was
25 an engineer specialist at that time. So yes, me and

1 Mike Donald for sure.

2 Q. Now, is it your understanding that this report doesn't
3 tell us anything about what the air was like in this
4 area at Kohler back in 2004 to 2009?

5 A. What do you mean the air was like? I mean, it's the
6 same process. Nothing changed. The machines didn't
7 move. The machines were still located in the same --
8 so ceilings are still the same. The heating and
9 cooling unit are still the same. Everything was the
10 same thing.

11 Q. Except that---

12 A. Except that---

13 Q. Except acetic acid wasn't being used in the process
14 anymore.

15 A. And I don't know that for sure that it wasn't being
16 used. It had been reduced. Let's just say that. I'm
17 not going to -- I'm not going to agree to that because
18 I don't know and I don't know a yes/no, but it was
19 being reduced, because he did run a machine that was
20 not using any.

21 Q. Do you have any understanding as to what the
22 limitations are to a survey like this in terms of how
23 the information is viable?

24 A. After reading it I understand it, yes.

25 Q. Tell me what your understanding is.

1 A. It was very, very, very low, meaning that his exposure
2 was way below the limit of exposure.

3 Q. What I'm talking about when I say survey limitations,
4 there's actually a section entitled that on the report.
5 It says results are based on the conditions encountered
6 at the time of the assessment. What does that mean to
7 you?

8 A. That she basically is saying that she came in and
9 performed what we had asked her to perform under
10 whatever conditions.

11 Q. And those conditions are ones that Kohler arranged?

12 A. No. Those would be the conditions that Nikolay Gul was
13 exposed to.

14 Q. Yeah, but I mean Kohler arranged it for that night.
15 Correct?

16 A. For her to come in that night.

17 Q. And Kohler picked the people that would be involved,
18 picked the shift on which it would be done, and
19 basically arranged a process that actually may not have
20 been being performed at that time at Kohler.

21 A. No, it was being done at that time.

22 Q. They were using acetic acid at that time?

23 A. I'm not going to say that they were using the amount,
24 but -- and, again---

25 Q. You're just not sure?

1 A. That's what I mean.

2 Q. Were you actually -- and I can't remember what you
3 said. Were you actually present at the time they did
4 the testing?

5 A. I was.

6 Q. Tell me about what you remember observing at that
7 testing.

8 A. Well, the lady that came in, she basically showed up I
9 want to say 30 minutes prior to when we discussed. She
10 went through what she was going to do. She asked us
11 questions about the application, the operation. We
12 showed her. She talked to the guys that performed and
13 asked them questions about what was going to go on and
14 that she would be taking photos and asking them
15 questions at certain points and times. I just
16 basically was there to make sure that we did it for the
17 entire duration of the shift. I didn't leave the area,
18 nor did she.

19 Q. No further questions.

20 EXAMINATION BY MR. HORNER:

21 Q. I've got a couple questions for you. Let's look at
22 Plaintiff's Exhibit 1. You were asked about this
23 language that says cleared for respirator use, based
24 upon your respiratory evaluation you've been cleared
25 for respirator use with no limitations. Is it your

1 understanding that this opinion or comment that appears
2 on Exhibit 1 is something that's put there by Apple
3 Mobile Medical?

4 A. Yes, sir.

5 Q. Are you aware of at any time between '04 and '09
6 Nikolay Gul asking of anybody at Kohler if he could
7 have a respirator due to his use of acetic acid?

8 A. No.

9 Q. If it had been relayed to -- let me ask you this. Are
10 the foremen and/or the supervisor trained to send any
11 requests for safety equipment to you or your office?

12 A. Yes.

13 Q. And you testified that because you're a union facility,
14 if in fact a request is made, you essentially can't
15 turn them down? Is that right?

16 A. No.

17 Q. And at any time are you aware of Nikolay Gul contacting
18 either of his foremen or the supervisor about a
19 respirator?

20 A. No.

21 Q. Do you do respirator fit tests for people?

22 A. I do perform it.

23 Q. Is it a rare or unique thing?

24 A. When you say rear or unique, it's not for me and it's
25 not for the people that are in it because they are in

1 an annual environment at that point. We do three --
2 it's threefold. We bring them up, we do a survey, and
3 then we do a fit test. And then after those things are
4 done they fall into the annual fit test every year.

5 Q. And is it something Kohler discourages its employees --

6 A. Oh, no.

7 Q. -- from reporting or does Kohler discourage you from
8 providing respirators to anyone who asks?

9 A. No. It's just like I mentioned earlier. If people
10 come for nuisance purposes, we supply, period.

11 Q. And are you aware of any other employee before or after
12 Mr. Gul who came to you who worked in the pressure cast
13 department who used acetic acid who came to you for a
14 respirator because he felt like he was having breathing
15 problems or was being adversely affected by the acetic
16 acid?

17 A. No, sir.

18 Q. If, for example, let's say hypothetically 10 employees
19 who use acetic acid out of 14 come to you for
20 respirators and say they're having respiratory
21 problems, would that have indicated to you a bigger
22 problem with acetic acid?

23 A. It sure would, and we would have probably put everybody
24 in it at that point.

25 Q. And might you at that time have done some sort of

1 industrial hygiene study to see what in fact the levels
2 were?

3 A. That would be correct.

4 Q. But in 2011, at the time this industrial hygiene study
5 was done, to your knowledge, was Mr. Gul the only
6 employee who had ever complained about respiratory
7 problems related to acetic acid?

8 A. To my knowledge, yes.

9 Q. And to your knowledge, had you fit anyone with a
10 respirator in the acetic acid area where Mr. Gul worked
11 due to any sort of breathing problems?

12 A. Again, not for acetic acid. It would go back to
13 silicosis, because the areas are open. There's no
14 walls.

15 Q. And are you aware that Kohler in this litigation has
16 taken the position that Mr. Gul's respiratory problems
17 were not caused by acetic acid?

18 A. I am.

19 Q. And could that be one reason that this industrial
20 hygiene test was done, to back up Kohler's position
21 that the levels were not sufficient to cause Mr. Gul
22 some harm?

23 MR. DANTIN:

24 Object to the form.

25 EXAMINATION RESUMED BY MR. HORNER:

1 A. Correct.

2 Q. And in fact, by 2011 Mr. Gul was no longer working
3 there, was he?

4 A. Correct.

5 Q. And so there would be no need to evaluate the area
6 where the acetic acid was if no other employee was
7 complaining about any respiratory problems in that
8 department?

9 A. That's correct.

10 (Defendant's Exhibit 1 identified)

11 EXAMINATION RESUMED BY MR. HORNER:

12 Q. Now, you said you were there that night, and I have
13 drawn a very crude exhibit for Mike Donald's
14 deposition, and what this exhibit was supposed to
15 represent is the X's represent -- well, Exhibit 1
16 represents basically like a toilet lid.

17 A. Okay.

18 Q. Something that would come out of the mold.

19 A. Okay.

20 Q. And the X's were to represent an area where perhaps the
21 lid was sticking and you would spray acetic acid.

22 A. Exactly.

23 Q. Now, I asked Mike Donald, and he turns out wasn't there
24 that night but had heard from other people as to the
25 process. I drew lines across it representing the night

1 of the industrial hygiene study and the application of
2 the acetic acid to the mold. Now, based upon your
3 being present the night of the industrial hygiene
4 study, was acetic acid applied across the entire mold
5 during this testing?

6 A. It was, and it was on two different machines. He ran a
7 beam machine, which is multiple molds, and he ran a
8 two-mold machine. And the guys went to this one, to
9 that one, to this one, to that one, and every time that
10 they opened a set of molds they sprayed the entire
11 mold.

12 Q. And it's my understanding that their determining factor
13 for how much acetic acid to spray was in fact Mr. Gul's
14 testimony where he testified that he sprayed each
15 machine for between one and two minutes. Correct?

16 A. That is correct.

17 Q. During those one or two minutes on the night of the
18 study, based upon your observations, were the molds
19 being saturated by the acetic acid?

20 A. Completely, yes.

21 Q. And so when you were running the test were you trying
22 to re-create Mr. Gul's testimony where he said he would
23 apply it for one to two minutes each time?

24 A. We were trying to do the max, and that was what we
25 said. He used a number of bottles. We tried to use

1 the number of bottles plus the time factor that he
2 used.

3 Q. And is it your belief today that Mr. Gul's medical
4 condition is not caused by acetic acid?

5 A. Yes.

6 MR. DANTIN:

7 Object to the form.

8 EXAMINATION RESUMED BY MR. HORNER:

9 Q. And, again, after Mr. Gul had left Kohler did any other
10 employee upon hearing about Mr. Gul or not come to you
11 and say I need a respirator, acetic acid is making me
12 sick?

13 A. Have not.

14 Q. That's all I have.

15 RE-EXAMINATION BY MR. DANTIN:

16 Q. But you didn't do any of the spraying and weren't
17 involved directly in the testing. Correct?

18 A. I watched.

19 Q. You watched.

20 A. The operators did it. They stepped inside the machine,
21 sprayed it. She took photos of every operation that
22 Mr. Gul would have done in a day's operation.

23 Q. Do you know whether there was any records as to how
24 much acetic acid particular employees would have used
25 per shift?

1 A. He said three -- I'm thinking three to eight bottles.
2 So the bottles that were being used at the end of his
3 time was a 32-ounce bottle. So no, sir.

4 Q. Is it your understanding that Mr. Gul did this for just
5 one day or that he used the acetic acid daily?

6 A. It was daily.

7 Q. This was just one day, this hygiene report. Correct?

8 A. Correct.

9 Q. No further questions.

10 (There being no further questions, this deposition concluded
11 at 2:41 p.m.)
12
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25

CERTIFICATE OF REPORTER

I, Rosalind Poole Walters, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 44 pages represents a true and accurate transcript of the deposition of MICHAEL G. TOLLESON, which was taken by me on the 1st day of April, 2014.

That the witness was first duly sworn to tell the Truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rosalind Walters

Rosalind Poole Walters, CVR-M

Notary Public for S.C.

Commission expires: 12-18-2016

ROA 1155

1281

Apple Mobile Medical, Inc.
A Subsidiary of The Ellwood City Hospital
510 Jamison Avenue
Ellwood City, PA 16117

Individual Pulmonary Function Results

07/16/09

Name **GUL, NIKOLAY I** Sex **Male**
SSN/ID **REDACTED** Race
Company **Kohler** Height **66.0**
Date of Birth **REDACTED** Age **34** Weight **181**

Current Screen Date **06/11/09**

	Actual Results	Predicted Results	Percent of Predicted
FVC	4.52	4.35	103.81
FEV1	3.59	3.64	98.59
FEV1/FVC	79.42	84.29	94.22
PEFR	7.01	8.58	81.74
FEF2575	3.37	3.96	85.20
FEF25	0.00	7.91	0.00
FEF50	0.00	4.68	0.00
FEF75	0.00	1.93	0.00

Current Classification **Normal**

Respirator Opinion **CLEARED FOR RESPIRATOR USE**
Based on your respiratory evaluation, you have been cleared for respirator use with no limitations. This evaluation has met with the requirements set forth under 29 CFR 1910.134 for respirator clearance.

Examiner **Thomas Rosa**

Comment **EVALUATE BLOOD PRESSURE**

Charles H. Zeigler, D.O., M.P.H.
Medical Provider Performing Evaluation

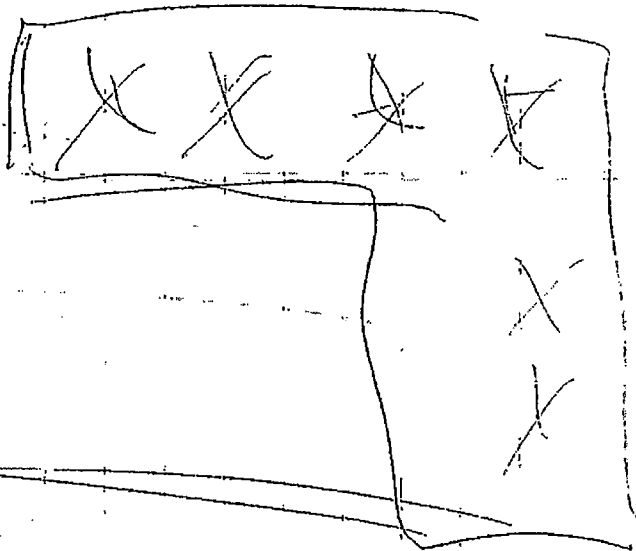


ROA 1156

1282

ROA 1157

1283



DEFENDANT'S
EXHIBIT
1
TOLLESON

ROA 1158
1284

Dm
Dec

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0912295

EMPLOYEE/CLAIMANT: NIKOLAY GUL
EMPLOYER: KOHLER COMPANY
INSURER: KOHLER COMPANY

ORIGINAL

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 5TH DAY OF
DECEMBER, 2012, COMMENCING AT THE HOUR OF 9:17 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE DERRICK L. WILLIAMS,
ATTENDED BY COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

RECEIVED
JAN 23 2013
S.C. WORKERS' COMP. COMM.
OFFICE OF COMMR WILLIAMS

APPEARANCES

JEREMY A. DANTIN, ESQUIRE, OF THE FIRM
HARRIS WHITE SMITH & COGGINS, P.C. LAW FIRM
178 WEST MAIN STREET
SPARTANBURG, SOUTH CAROLINA 29306

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

RUSSELL T. INFINGER, ESQUIRE, OF THE FIRM
NEXSEN PRUET, P.A.
55 EAST CAMPERDOWN WAY, SUITE 400
GREENVILLE, SOUTH CAROLINA 29601

ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING:

MIKE TOLLISON, KOHLER COMPANY
ELENA GLINYANY, RUSSIAN INTERPRETER

RECEIVED

JAN 23 2013

S.C. WORKERS COMP. COMM.
Andrea Pope Roche
Commissioner

I N D E X

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * * *

6 THE INTERPRETER WAS SWORN TO GIVE A TRUE,
7 ACCURATE, AND IMPARTIAL INTERPRETATION TO THE BEST
8 OF HER ABILITY.

9 ELENA GLINYANY

10 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH,
11 THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH
12 CONCERNING THE MATTER HEREIN:

13 NIKOLAY GUL

14 BY COMMISSIONER WILLIAMS:

15 TODAY'S DATE IS DECEMBER 5TH, 2012. THIS IS
16 THE WORKERS' COMPENSATION CASE OF MR. NIKOLAY GUL
17 VERSUS KOHLER COMPANY SELF INSURED. W.C.C. FILE
18 NUMBER 0912295. ATTORNEY JEREMY DANTIN FOR THE
19 CLAIMANT. ATTORNEY RUSTY INFINGER FOR THE EMPLOYER
20 AND CARRIER. DATE OF ACCIDENT ALLEGED IS AUGUST
21 20TH OF 2009. HEARING IS SET ON THE FORMS 50 AND
22 51. I HAVE AN AVERAGE WEEKLY WAGE OF \$719.70.
23 CORRESPONDING COMP RATE OF \$479.82. I HAVE APA
24 SUBMISSIONS FROM THE PARTIES. DO I HAVE ANY
25 OBJECTIONS TO JURISDICTION, VENUE, OR THE APA

1 SUBMISSIONS? MR. DANTIN.

2 BY MR. DANTIN:

3 NONE, YOUR HONOR.

4 BY COMMISSIONER WILLIAMS:

5 ALL RIGHT. MR. INFINGER.

6 BY MR. INFINGER:

7 NO, SIR.

8 BY COMMISSIONER WILLIAMS:

9 THEN THE COMMISSION FILE IS PART OF THE RECORD
10 WITH THE EXCEPTION OF ANY SELF SERVING DECLARATIONS
11 OR ANY UNSTIPULATED MEDICAL REPORTS. DENIED CLAIM.
12 CLAIMANT WILL ALLEGE HE HAS INJURED HIS LUNGS, HIS
13 HEART, AND HIS LIVER, PRIMARILY HIS LUNGS IN THIS
14 CASE. HE'LL SEEK A FINDING THAT THIS IS A
15 COMPENSABLE INJURY BY ACCIDENT, AND HE WOULD SEEK
16 FURTHER MEDICAL TREATMENT. SEEKING TEMPORARY TOTAL
17 AS WELL?

18 BY MR. DANTIN:

19 CORRECT. FROM SEPTEMBER 18TH, 2011 AND
20 CONTINUING.

21 BY MR. INFINGER:

22 OKAY.

23 BY MR. DANTIN:

24 AND TO CLARIFY, WE'RE ONLY CLAIMING THE LUNGS.

25 BY COMMISSIONER WILLIAMS:

1 ONLY THE LUNGS. OKAY. FAIR ENOUGH. THE
2 EMPLOYER/CARRIER DENIES THIS CLAIM IN FULL. THEY DO
3 NOT BELIEVE THE CLAIMANT CAN MEET HIS BURDEN OF
4 PROVING A COMPENSABLE INJURY BY ACCIDENT OR A
5 COMPENSABLE OCCUPATIONAL DISEASE INJURY IN THIS
6 CASE, AND THAT ALL BENEFITS SHOULD BE DENIED IN THIS
7 CASE. THAT BEING STATED, DO THE PARTIES WISH TO
8 STATE ANYTHING ELSE? MR. DANTIN.

9 BY MR. DANTIN:

10 I DON'T BELIEVE SO, YOUR HONOR.

11 BY COMMISSIONER WILLIAMS:

12 ALL RIGHT. MR. INFINGER.

13 BY MR. INFINGER:

14 NOTHING --- I JUST WANT TO MAKE SURE THAT WHEN
15 WE WERE HERE BEFORE THAT WE HAVE ALREADY OUR APAs
16 AND MEDICAL REPORTS.

17 BY COMMISSIONER WILLIAMS:

18 YES, I HAVE EVERY -- I HAVE BOTH PARTIES APA
19 SUBMISSIONS. I HAVE JUST FOR THE RECORD THIS WAS AN
20 OCTOBER 3RD, 2011, LETTER ON THE APEX PROJECT.

21 BY MR. INFINGER:

22 CORRECT.

23 BY COMMISSIONER WILLIAMS:

24 AND I HAVE A BIO SHEET ON -- WELL, NOT A BIO
25 SHEET -- I HAVE A MEDICAL SUMMARY FROM THE CLAIMANT

1 AS WELL.

2 BY MR. DANTIN:

3 AND, COMMISSIONER, JUST FOR THE RECORD TO
4 CLARIFY, I HAD OBJECTED TO THE OCTOBER 3RD, 2011
5 REPORT BUT MY UNDERSTANDING IS THAT IT'S COMING IN.

6 BY COMMISSIONER WILLIAMS:

7 RIGHT. THAT'S RIGHT. THAT'S CORRECT.

8 BY MR. INFINGER:

9 AND -- AND, COMMISSIONER, TO MAKE THIS MOVE
10 ALONG, MR. DANTIN HAS GIVEN A BIOLOGICAL ---

11 BY COMMISSIONER WILLIAMS:

12 I THINK I HAVE THAT.

13 BY MR. INFINGER:

14 --- REPORT AND WE HAVE -- THAT'S NOT
15 OBJECTIONABLE.

16 BY COMMISSIONER WILLIAMS:

17 OKAY. FAIR ENOUGH.

18 BY MR. INFINGER:

19 WE DO UNDERSTAND THAT THE MEDICAL SUMMARY IS
20 NOT EVIDENCE THAT'S ---

21 BY COMMISSIONER WILLIAMS:

22 YEAH.

23 BY MR. INFINGER:

24 --- A PART OF HIS PRE-HEARING ---

25 BY COMMISSIONER WILLIAMS:

1 YEAH, THAT'S RIGHT JUST TO HELP ME ---

2 BY MR. INFINGER:

3 GOOD.

4 BY COMMISSIONER WILLIAMS:

5 --- BUT IT'S NOT EVIDENCE. ALL RIGHT. THE
6 CLAIMANT'S BEEN SWORN IN. MR. DANTIN, WHENEVER
7 YOU'RE READY.

8 BY MR. DANTIN:

9 THANK YOU VERY MUCH, COMMISSIONER.

10 BY COMMISSIONER WILLIAMS:

11 SIT OR STAND, WHATEVER.

12 BY MR. DANTIN:

13 OKAY.

14 DIRECT EXAMINATION BY MR. DANTIN:

15 Q. MR. GUL, EXPLAIN TO THE COMMISSIONER WHERE YOU'RE
16 FROM ORIGINALLY.

17 A. UKRAINE.

18 Q. OKAY. AND WHEN DID YOU COME TO AMERICA?

19 A. 2003.

20 Q. WHEN DID YOU BEGIN WORKING WITH KOHLER?

21 A. 2004.

22 Q. WHEN DID YOU LAST WORK AT KOHLER?

23 A. TWENTY-FIFTH OF AUGUST, 2009.

24 Q. AND WHAT DID YOU DO WHILE YOU WORKED AT KOHLER?

25 A. MACHINIST OPERATOR.

1 Q. AND MY UNDERSTANDING IS THAT YOU WORKED ON SOME
2 DIFFERENT MACHINES WHILE YOU WERE THERE; IS THAT
3 CORRECT?

4 A. YES.

5 Q. AND SO THE COMMISSIONER UNDERSTANDS THAT YOU HAVE
6 TESTIFIED ABOUT THIS ALREADY IN YOUR DEPOSITION BUT
7 IS IT ACCURATE THAT THE LAST FOUR MONTHS YOU WORKED
8 AT KOHLER YOU WORKED ON THE KITCHEN SINK MACHINE?

9 A. YES.

10 Q. OKAY. AND WHILE WORKING ON THE KITCHEN SINK
11 MACHINE, DID YOU USE ACETIC ACID?

12 A. I DID NOT. I USE IT ON THIS MACHINE, BUT I USE THIS
13 ON THE OTHER MACHINE THAT I WAS HELPING WITH.

14 Q. NOW, FOR OVER A YEAR PRIOR TO THAT, I HAVE THAT YOU
15 WORKED ON COVER MACHINE NUMBER FIVE; IS THAT
16 CORRECT?

17 A. YES.

18 Q. AND DID YOU USE ACETIC ACID WITH THAT JOB?

19 A. YES.

20 Q. AND FOR ABOUT A YEAR AND A HALF PRIOR TO THAT, I
21 HAVE THAT YOU WORKED ON SMALL MACHINES?

22 A. YES.

23 Q. AND DID YOU USE ACETIC ACID IN THAT PROCESS?

24 A. YES.

25 Q. AND FOR ABOUT A YEAR AND A HALF PRIOR TO THAT, YOU

- 1 WORKED ON COVER MACHINE TWO?
- 2 A. YES.
- 3 Q. AND DID YOU USE ACETIC ACID IN THAT PROCESS?
- 4 A. YES.
- 5 Q. WHY DID YOU STOP WORKING AT KOHLER?
- 6 A. BECAUSE OF MY HEALTH. I STARTED TO HAVE BREATHING
- 7 PROBLEMS.
- 8 Q. PRIOR TO WORKING WITH KOHLER, HAD YOU EVER WORKED OR
- 9 LIVED IN A PLACE THAT EXPOSED YOU TO A LOT OF DUST
- 10 OR CHEMICALS?
- 11 A. NO.
- 12 Q. PRIOR TO WORKING WITH KOHLER, HAD YOU EVER BEEN
- 13 DIAGNOSED WITH ASTHMA?
- 14 A. NO.
- 15 Q. PRIOR TO WORKING WITH KOHLER, HAD YOU EVER
- 16 EXPERIENCED FOR ANY SIGNIFICANT PERIOD SHORTNESS OF
- 17 BREATH?
- 18 A. NO.
- 19 Q. WHEEZING?
- 20 A. NO.
- 21 Q. CHEST TIGHTNESS?
- 22 A. NO.
- 23 Q. COUGHING?
- 24 A. NO.
- 25 Q. SPUTUM PRODUCTION?

- 1 A. NO.
- 2 Q. DO YOU HAVE A HISTORY OF ASTHMA IN YOUR FAMILY?
- 3 A. NOBODY HAS.
- 4 Q. ARE YOU A SMOKER?
- 5 A. NEVER.
- 6 Q. HAVE YOU EVER BEEN A SMOKER?
- 7 A. NEVER. NO. I'M SORRY. FOR CLARIFICATION, THE
- 8 ANSWER WAS NO.
- 9 Q. HAVE YOU HAD ANYONE WHO SMOKES LIVING IN YOUR HOUSE
- 10 IN THE LAST FIVE YEARS?
- 11 A. NO.
- 12 Q. HAVE YOU EVER LIVED WITH SOMEONE WHO SMOKES?
- 13 A. NO.
- 14 Q. YOU HAVE HAD PROBLEMS WITH HIGH BLOOD PRESSURE,
- 15 CORRECT?
- 16 A. YES.
- 17 Q. HOW LONG HAVE YOU HAD PROBLEMS WITH HIGH BLOOD
- 18 PRESSURE?
- 19 A. AROUND FIVE YEARS.
- 20 Q. AND HAVE YOU EVER BEEN PRESCRIBED ANY MEDICATIONS
- 21 FOR YOUR HIGH BLOOD PRESSURE?
- 22 A. YES.
- 23 Q. DID THE MEDICATION YOU WERE GIVEN FOR YOUR HIGH
- 24 BLOOD PRESSURE HELP WITH YOUR SHORTNESS OF BREATH?
- 25 A. NO.

1 Q. DID IT HELP WITH YOUR WHEEZING?
2 A. NO.
3 Q. CHEST PAINS?
4 A. NO. EXCUSE ME.
5 Q. WHEN DID YOU BEGIN TO NOTICE THE HEALTH PROBLEMS
6 THAT BRING US HERE TODAY?
7 A. 2008.
8 Q. WAS THERE ANY PARTICULAR MOMENT THAT YOU NOTICED IT,
9 OR WAS IT SOMETHING THAT CAME ON GRADUALLY?
10 A. HOW DO YOU -- HOW DO YOU UNDERSTAND THAT?
11 Q. IS IT SOMETHING THAT HAPPENED ALL AT ONCE, OR DID IT
12 BUILD AND GET WORSE?
13 A. IT -- IT GRADUALLY BECAME WORSE.
14 Q. OKAY. AND WHAT PROBLEMS WERE YOU ACTUALLY HAVING
15 AT THAT TIME?
16 A. SHORTNESS OF BREATH. I WAS SPITTING THINGS OUT AND
17 TIGHTNESS IN THE CHEST.
18 Q. DID YOU DISCUSS THIS PROBLEM WITH ANYONE AT WORK?
19 A. YES.
20 Q. AND WITH WHO DID YOU DISCUSS THIS PROBLEM?
21 A. WITH FOREMAN.
22 Q. OKAY. AND DO YOU REMEMBER THE FOREMAN'S NAME?
23 A. CHARLIE CLAYTON AND RODNEY HORN.
24 Q. DID YOU DISCUSS -- DID YOU HAVE DISCUSSIONS WITH
25 THEM ABOUT THIS SEPARATELY?

1 A. YES.

2 Q. DO YOU RECALL SPECIFICALLY WHEN YOU HAD THESE

3 DISCUSSIONS, THE EXACT DATE?

4 A. I CANNOT FOR SURE TO SAY. I DON'T REMEMBER.

5 Q. WAS -- WOULD THIS HAVE BEEN IN 2008?

6 A. AFTER 2008. AFTER.

7 Q. OKAY. DO YOU RECALL WHAT CONVERSATIONS YOU HAD WITH

8 RODNEY HORN AND CHARLIE CLAYTON?

9 A. YES.

10 Q. EXPLAIN WHAT DISCUSSIONS YOU HAD.

11 A. FIRST I WAS DISCUSSING THAT I AM EXPERIENCING

12 SHORTNESS OF BREATH WORKING THIS MACHINE SO I WAS

13 ASKING FOR MASK.

14 Q. ASKING FOR A MASK?

15 A. YES, PROTECTION.

16 Q. AND DID THEY SUPPLY YOU WITH A MASK?

17 A. NO.

18 Q. DID YOU TRY TO DO SOMETHING ABOUT THIS YOURSELF?

19 A. YES.

20 Q. AND WHAT DID YOU DO?

21 A. I HAD BOUGHT MYSELF A DUST MASK.

22 Q. A DUST MASK?

23 A. YEAH, A DUST MASK. YES.

24 Q. AND JUST SO THE COMMISSIONER KNOWS WHAT YOUR SAYING

25 IS THAT LIKE A PAPER MASK THAT YOU WEAR OVER YOUR

- 1 MOUTH AND NOSE?
- 2 A. YES.
- 3 Q. DID THAT MASK HELP?
- 4 A. NO.
- 5 Q. HOW LONG DID YOU USE A MASK?
- 6 A. SEVERAL SHIFTS.
- 7 Q. OKAY. AND WHY DID YOU STOP USING THE MASK?
- 8 A. RODNEY HORN TOLD ME TO TAKE IT OFF AND THROW IT
- 9 AWAY.
- 10 Q. DID YOU TEND TO BELIEVE THERE WAS SOMETHING
- 11 PARTICULAR AT WORK THAT WAS BOTHERING YOU?
- 12 A. YES.
- 13 Q. AND WHAT WAS THAT?
- 14 A. ACID.
- 15 Q. I'M SHOWING YOU WHAT'S BEEN MARKED AS CLAIMANT'S
- 16 EXHIBIT ONE. ARE YOU FAMILIAR WITH THIS?
- 17 A. YES.
- 18 Q. THIS IS A M.S.D.S. SHEET FOR ACETIC ACID, CORRECT?
- 19 A. YES.
- 20 Q. AND IS THIS SOMETHING THAT YOU ACTUALLY OBTAINED?
- 21 A. YES.
- 22 Q. AND WHERE DID YOU GET IT?
- 23 A. THERE'S A BIG -- THERE'S A BIG CANISTER FROM THOSE
- 24 CANISTERS WOULD POUR THE ACID IN THE LITTLE
- 25 CANISTERS BOTTLES, SPRAY BOTTLES, AND -- AND I GOT

1 IT FROM THE BIG CANISTER.

2 Q. AT KOHLER?

3 A. RIGHT THERE BY THE MACHINES.

4 BY MR. DANTIN:

5 COMMISSIONER, WE'D SUBMIT CLAIMANT'S EXHIBIT
6 ONE INTO EVIDENCE.

7 BY COMMISSIONER WILLIAMS:

8 ALL RIGHT. ANY OBJECTION?

9 BY MR. INFINGER:

10 I DON'T HAVE OBJECTION TO IT BEING SUBMITTED,
11 BUT IT'S -- IT'S -- I BELIEVE IT'S THE LABEL. I
12 THINK HIS TESTIMONY IS IT'S THE LABEL OFF OF THE
13 DRUM.

14 BY COMMISSIONER WILLIAMS:

15 OKAY. FAIR ENOUGH. ALL RIGHT. CLAIMANT'S
16 EXHIBIT NUMBER ONE.

17 (COURT REPORTER MARKS M.S.D.S. SHEET CLAIMANT'S EXHIBIT
18 NUMBER ONE, RETAINED IN COMMISSION FILE.)

19 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

20 Q. WHAT DID YOU USE ACETIC ACID FOR IN YOUR JOB?

21 A. TO MY UNDERSTANDING TO HAVE GOOD QUALITY SO WE'LL
22 HAVE LESS WASTE.

23 Q. OKAY. BUT SPECIFICALLY WHAT DID YOU DO WITH THE
24 ACETIC ACID?

25 A. BEFORE MACHINE STARTS, I -- I SUPPOSED TO SPRAY.

1 MOLDS WITH THIS ACID.

2 Q. AND WOULD YOU USE THE ACETIC ACID TO SPRAY MOLDS ON
3 ALL THE DIFFERENT MACHINES THAT YOU WORKED ON?

4 A. YES.

5 Q. IN AN AVERAGE SHIFT, HOW MANY TIMES WOULD YOU
6 ACTUALLY USE ACETIC ACID?

7 A. AROUND 15 TIMES. MAYBE MORE.

8 Q. AND IS THIS SOMETHING YOU WOULD DO EVERY DAY?

9 A. YES.

10 Q. AND HOW DID YOU ACTUALLY USE THE ACETIC ACID. HOW
11 DID YOU SPRAY IT?

12 A. WITH SPRAY BOTTLE AND I HAD TO SPRAY MOLD TOTALLY.

13 Q. AND ABOUT HOW LONG WOULD YOU SPRAY THE MOLD FOR WHEN
14 YOU WOULD SPRAY A MOLD?

15 A. JUST ONE MOLD OR THE WHOLE THE MACHINE?

16 Q. HOW ABOUT BOTH?

17 A. TO SPRAY TOTAL MACHINE, IT'S ONE MINUTE AND A HALF,
18 TWO MINUTES TO SPRAY THE WHOLE MACHINE.

19 Q. OKAY. AND TO SPRAY A MOLD?

20 A. DIFFERENT MACHINES DIFFERENT -- DIFFERENT MOLDS.
21 TEN, FIFTEEN SECONDS PER MOLD. I REALLY DID NOT
22 COUNT EACH TIME.

23 Q. OKAY. AND MY UNDERSTANDING IS THAT THEY WERE
24 ACTUALLY DIFFERENT SIZE SPRAY BOTTLES THAT YOU WOULD
25 USE?

1 A. YES, TWO SIZES WERE THERE.

2 Q. OKAY. ONE WAS BIGGER THAN THE OTHER?

3 A. YES.

4 Q. ABOUT HOW MANY OF THE SMALL BOTTLES WOULD YOU GO
5 THROUGH IN AN AVERAGE DAY IF YOU WERE USING THE
6 SMALL BOTTLES?

7 A. FOR THE SHIFT, I WILL USE TEN OR MORE.

8 Q. OKAY. AND IF YOU ARE USING A LARGE BOTTLE, ABOUT
9 HOW MANY OF THOSE WOULD YOU GO THROUGH IN A SHIFT?

10 A. FIVE, MAYBE.

11 Q. AND YOU DIDN'T HAVE A RESPIRATOR OR OTHER BREATHING
12 PROTECTION?

13 A. NO.

14 Q. DID YOU HAVE ANY PROTECTIVE CLOTHING?

15 A. NO.

16 Q. AND YOU ONCE SPILLED THIS ACETIC ACID ON YOUR HAND,
17 CORRECT?

18 A. YES.

19 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
20 CLAIMANT'S EXHIBIT TWO. THIS IS SOMETHING THAT I
21 WAS PROVIDED FROM YOUR PERSONNEL FILE AT KOHLER.
22 IT'S FROM THEIR MEDICAL DEPARTMENT, AND IT NOTES A
23 DATE OF OCTOBER 23RD, 2007, WITH AN ACETIC ACID
24 BOTTLE LEAKED ON YOUR HAND?

25 A. YES.

1 Q. IS THAT THE INCIDENT THAT YOU'RE TALKING ABOUT?

2 A. YES.

3 Q. OKAY. AND JUST EXPLAIN WHAT HAPPENED WHEN THE
4 ACETIC ACID LEAKED ON YOUR HAND?

5 A. WHEN IT GOT SPILLED, MY HAND GOT SWELLED UP. IT WAS
6 ITCHING REAL BAD. THE SKIN WAS COMING OFF, AND I
7 WAS TRYING TO SCRATCH. IT FELT LIKE I'M UNCOME
8 (SIC) -- SKIN COME OFF.

9 Q. BY THE TIME AUGUST 2009 ARRIVED, HOW WERE YOU
10 FEELING?

11 A. BAD. WORSE.

12 Q. AND TELL ME WHAT WAS WORSE?

13 A. I STARTED TO -- I STARTED TO BREATHE WORSE, SHORTNESS
14 OF BREATH, CHEST TIGHTNESS, DIZZINESS, COUGH.

15 Q. WOULD YOUR SYMPTOMS CHANGE WHEN YOU WERE AT WORK?

16 A. WHAT, HOW TO UNDERSTAND?

17 Q. WOULD YOU FEEL DIFFERENTLY WHEN YOU WERE AT WORK?

18 A. I DON'T UNDERSTAND THE QUESTION.

19 Q. DID YOU NOTICE ANY DIFFERENCE IN THE WAY YOU FELT
20 WHEN YOU WERE AT WORK VERSUS WHEN YOU WERE NOT AT
21 WORK?

22 A. WELL, YES.

23 Q. OKAY. EXPLAIN THE DIFFERENCE.

24 A. AT WORK, I WILL FEEL MYSELF WORSE.

25 Q. WHEN YOU STARTED HAVING YOUR PROBLEMS YOU WENT TO

1 SEE A DR. NOWATKA, CORRECT?

2 A. YES.

3 Q. AND WHY DID YOU GO TO DR. NOWATKA SPECIFICALLY?

4 A. TO GET TREATMENT.

5 Q. OKAY. DID ANYBODY IN PARTICULAR RECOMMEND DR.

6 NOWATKA?

7 A. YES, MY FOREMAN IN THE OFFICE.

8 Q. AT KOHLER?

9 A. YES.

10 Q. AFTER GOING TO DR. NOWATKA INITIALLY, WHAT WAS YOUR
11 UNDERSTANDING AS TO YOUR HEALTH PROBLEM?

12 A. DOCTOR SAID THAT I HAVE ---

13 BY MR. INFINGER:

14 OBJECTION TO WHAT THE DOCTOR SAID,
15 COMMISSIONER. YOU HAVE THE MEDICAL RECORDS.

16 BY MR. DANTIN:

17 I'M JUST ASKING FOR HIS UNDERSTANDING.

18 BY COMMISSIONER WILLIAMS:

19 ALL RIGHT. SUSTAINED.

20 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

21 Q. WHAT WAS YOUR UNDERSTANDING ---

22 BY COMMISSIONER WILLIAMS:

23 YEAH, HE CAN TELL ME WHAT HIS UNDERSTANDING IS.

24 HE CAN'T TELL ME WHAT THE DOCTOR SAID.

25 BY THE WITNESS:

1 A. WHICH DOCTOR?

2 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

3 Q. DR. NOWATKA.

4 A. HE -- DOCTOR REFERRED ME TO SEE CARDIOLOGIST SAYING
5 I HAVE HEART CONDITION.

6 Q. OKAY. SO AFTER SEEING DR. NOWATKA, WAS IT YOUR
7 UNDERSTANDING THAT YOU MIGHT HAVE A HEART CONDITION?

8 A. YES, BUT I DIDN'T BELIEVE THAT.

9 Q. OKAY. DID ---

10 A. BUT I WAS LISTENING TO WHAT THE DOCTOR WAS SAYING.

11 Q. DID DR. NOWATKA PRESCRIBE MEDICINE FOR THAT PROBLEM?

12 A. YES.

13 Q. FOR A HEART PROBLEM?

14 A. YES.

15 Q. AND DID THAT MEDICATION HELP YOUR SYMPTOMS AT ALL?

16 A. IT WASN'T JUST ONE MEDICINE. HE PRESCRIBED MANY
17 MEDICINES. NOTHING HELPED.

18 Q. OKAY. YOU WERE REFERRED FOR TESTS ON YOUR HEART IN
19 2009; DO YOU RECALL THAT?

20 A. YES.

21 Q. YOU ACTUALLY SAW A DOCTOR IN GREENVILLE, SOUTH
22 CAROLINA, DR. CHAPMAN; IS THAT CORRECT?

23 A. YES.

24 Q. AND AFTER SEEING DR. CHAPMAN TO HAVE TESTS ON YOUR
25 HEART, WHAT WAS YOUR UNDERSTANDING AS TO WHETHER YOU

1 HAD A HEART PROBLEM?

2 A. HE TOLD ME THAT YOUR HEART ---

3 Q. NOT -- JUST WHAT WAS YOUR UNDERSTANDING AS TO
4 WHETHER YOU HAD A HEART CONDITION?

5 A. NO.

6 Q. YOUR UNDERSTANDING WAS YOU DIDN'T HAVE ONE?

7 A. ONE MORE TIME.

8 Q. YES. WAS IT YOUR UNDERSTANDING AFTER SEEING DR.
9 CHAPMAN THAT YOU DID NOT HAVE A HEART PROBLEM?

10 A. NO.

11 Q. JUST SO WE CAN CLARIFY, YOU DID NOT THINK YOU HAD A
12 HEART PROBLEM; IS THAT CORRECT?

13 A. YES.

14 Q. OKAY. AFTER SEEING DR. NOWATKA FOR A PERIOD, YOU
15 ENDED UP SEEING ANOTHER DOCTOR, A FAMILY DOCTOR, DR.
16 CANNON, CORRECT?

17 A. YES.

18 Q. AND DR. CANNON REFERRED YOU OVER TO A PULMONOLOGIST,
19 DR. FELDMAN?

20 A. YES.

21 Q. AND I HAVE THAT YOU FIRST SAW DR. FELDMAN LATE IN
22 SEPTEMBER 2009; IS THAT CORRECT?

23 A. YES.

24 Q. AND AFTER SEEING DR. FELDMAN, WHAT WAS YOUR
25 UNDERSTANDING OF YOUR PROBLEM?

- 1 A. ACID.
- 2 Q. AND DID HE PRESCRIBE MEDICATIONS FOR ASTHMA?
- 3 A. YES.
- 4 Q. AND WHAT MEDICATIONS DID HE PRESCRIBE?
- 5 A. ADVAIR AND INHALER.
- 6 Q. AND DO YOU CONTINUE TO TAKE THESE MEDICATIONS?
- 7 A. YES.
- 8 Q. AND DO THESE MEDICATIONS HELP WITH YOUR PROBLEMS?
- 9 A. YES.
- 10 Q. EVEN WHILE TREATING WITH DR. FELDMAN, THERE HAVE
- 11 BEEN A FEW OCCASIONS WHERE YOU HAD TO GO TO THE
- 12 HOSPITAL, CORRECT?
- 13 A. YES.
- 14 Q. AND WAS DR. FELDMAN THE ONE THAT ADMITTED YOU TO THE
- 15 HOSPITAL?
- 16 A. YES.
- 17 Q. AND YOU'VE ACTUALLY UNDERGONE TWO BRONCHOSCOPIES IN
- 18 THE LAST COUPLE OF YEARS, CORRECT?
- 19 A. YES.
- 20 Q. DO YOU CONTINUE TO TREAT WITH DR. FELDMAN CURRENTLY?
- 21 A. YES.
- 22 Q. I COUNTED OVER 40 VISITS WITH DR. FELDMAN SINCE
- 23 2009; DOES THAT SOUND ABOUT RIGHT TO YOU?
- 24 A. YES.
- 25 Q. YOU SAW DR. FOGARTY JUST ONE TIME, CORRECT?

1 A. YES.

2 Q. HOW LONG WERE YOU THERE WITH HIM?

3 A. AROUND TWO HOURS.

4 Q. WERE YOU TAKING YOUR ASTHMA MEDICATION AT THE TIME

5 YOU SAW HIM?

6 A. YES.

7 Q. DID YOU TRY YOUR BEST ON THE TEST THAT HE GAVE YOU?

8 A. YES.

9 Q. NOW, THE REPORT MENTIONS THAT YOU HAD TROUBLE

10 BLOWING OUT HARD FOR THE TESTING; DO YOU KNOW WHY

11 THAT WAS?

12 A. I WAS TRYING TO DO BEST, AND I DID WHAT I COULD.

13 Q. YOU SAW ANOTHER DOCTOR, DR. SAHN, CORRECT?

14 A. YES.

15 Q. AND YOU SAW HIM JUST ONE TIME AS WELL?

16 A. YES.

17 Q. AND HOW MUCH TIME DID YOU SPEND WITH DR. SAHN?

18 A. AROUND 30, 40 MINUTES.

19 Q. WERE YOU TAKING ASTHMA MEDICATION AT THE TIME?

20 A. YES.

21 Q. DID YOU TRY YOUR BEST ON ALL THE TESTS HE GAVE YOU?

22 A. YES.

23 Q. DR. SAHN'S REPORT ALSO MENTIONS THAT YOU HAVE

24 TROUBLE BLOWING OUT HARD FOR THE TESTING; DO YOU

25 KNOW WHY THAT WAS?

1 A. I TRIED. I COULD NOT DO BETTER.

2 Q. HAVE YOU EVER SEEN DR. FOGARTY OR DR. SAHN AGAIN?

3 A. NO.

4 Q. HAVE YOU EVER RETURNED TO WORK?

5 A. WHAT DO YOU MEAN?

6 Q. HAVE YOU GONE BACK TO WORK SINCE LEAVING KOHLER?

7 A. YOU ASK ME IF I COULD GO BACK OR ---

8 Q. HAVE YOU ACTUALLY GONE BACK TO WORK?

9 A. NO.

10 Q. YOU APPLIED FOR UNEMPLOYMENT AFTER YOU LEFT WORK,
11 CORRECT?

12 A. YES.

13 Q. AND YOU ACTUALLY PREVAILED AND GOT YOUR
14 UNEMPLOYMENT; IS THAT CORRECT?

15 A. YES.

16 Q. AND WHEN DID YOUR UNEMPLOYMENT END; DO YOU RECALL?

17 A. SEPTEMBER 2011, I THINK 17TH MAYBE. I'M NOT SURE.

18 Q. WHAT I'M SHOWING YOU IS SOMETHING THAT'S BEEN
19 STAMPED AND MARKED AS CLAIMANT'S EXHIBIT THREE, AND
20 IT'S FROM THE SOUTH CAROLINA UNEMPLOYMENT AND
21 WORKFORCE DIVISION. IT APPEARS TO NOTE THAT YOUR
22 LAST UNEMPLOYMENT CHECK WAS THROUGH SEPTEMBER 18,
23 2011; DOES THAT SOUND RIGHT?

24 A. YES.

25 BY MR. DANTIN:

1 OKAY. COMMISSIONER, WE MOVE CLAIMANT'S EXHIBIT
2 THREE INTO EVIDENCE.

3 BY MR. INFINGER:

4 NO OBJECTION.

5 BY COMMISSIONER WILLIAMS:

6 ANY OBJECTION? OKAY.

7 BY MR. DANTIN:

8 AND -- AND I DON'T KNOW FOR THE RECORD IF I
9 ACTUALLY MOVED EXHIBIT TWO INTO EVIDENCE, BUT I'D DO
10 THAT AS WELL.

11 BY COMMISSIONER WILLIAMS:

12 OKAY. OKAY. YEAH, I HAVE ONE. AND THEN MARK
13 TWO. ANY OBJECTION TO NUMBER TWO?

14 BY MR. DANTIN:

15 DID I -- DID I HAND YOU THE PRE-MARKED COPY?

16 BY COMMISSIONER WILLIAMS:

17 OKAY.

18 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

19 Q. DOES DR. FELDMAN CONTINUED TO HOLD YOU OUT OF WORK
20 SINCE SEPTEMBER 18TH, 2011?

21 A. YES.

22 Q. WOULD YOU LIKE TO RETURN TO WORK?

23 A. I -- I HOPE I COULD.

24 Q. WHAT PROBLEMS DO YOU HAVE PRESENTLY THAT PREVENT YOU
25 FROM WORKING?

1 A. WHICH ONES?

2 Q. WHAT PROBLEMS DO YOU HAVE THAT YOU BELIEVE PREVENT
3 YOU FROM WORKING?

4 A. BREATHING, RESPIRATORY, DIZZINESS, ASTHMA.

5 Q. DO ANY OF THESE SYMPTOMS GET WORSE WITH ACTIVITY?

6 A. YES, WITH ANY ACTIVITY EVEN THE SMALL GETTING WORSE.

7 BY COMMISSIONER WILLIAMS:

8 EXCUSE ME.

9 DIRECT EXAMINATION RESUMED BY MR. DANTIN:

10 Q. I'M SORRY. SAY THAT AGAIN?

11 A. YES, WITH ANY ACTIVITY EVEN SMALL IT GETS WORSE.

12 BY MR. DANTIN:

13 I HAVE NO FURTHER QUESTIONS.

14 BY COMMISSIONER WILLIAMS:

15 ALL RIGHT. MR. INFINGER.

16 BY MR. INFINGER:

17 THANK YOU, COMMISSIONER.

18 CROSS EXAMINATION BY MR. INFINGER:

19 Q. MR. GUL, JUST A COUPLE OF FOLLOW UP QUESTIONS. SO
20 THE LAST ACTUAL JOB YOU HAD WITH KOHLER BEFORE YOU
21 LEFT THERE AND I SEE I THINK YOU LEFT THERE YOU SAID
22 IN AUGUST ON AUGUST 25TH OF 2009. THAT WAS THE
23 KITCHEN SINK MACHINE?

24 A. YES.

25 Q. AND I THINK IN YOUR DEPOSITION YOU CALLED IT THE

1 ITALIAN MACHINE OR NEW MACHINE, SOMETHING LIKE THAT?

2 A. YES.

3 Q. OKAY. AND THEN YOU WOULD AGREE WITH ME -- YOU SAID
4 IT WAS FOUR MONTHS PRIOR TO YOUR LAST DAY THERE.

5 YOU WOULD AGREE WITH ME THAT WHILE YOU WERE WORKING
6 ON THE KITCHEN SINK MACHINE, THAT PROCESS DID NOT
7 REQUIRE YOU TO USE ANY ACETIC ACID SOLUTION IN
8 EXHIBIT ONE?

9 A. YES.

10 Q. OKAY. THE -- THE BOTTLE THAT YOU SAY YOU USED TO
11 SPRAY YOUR -- THE MOLDS FOR THE MACHINE, IT WAS A
12 SPRAYER LIKE A LITTLE HAND-HELD SPRAYER LIKE YOU
13 WOULD USE TO MIST YOUR PLANTS WITH, RIGHT?

14 A. YES.

15 Q. OKAY. AND THAT WAS -- AGAIN IT WAS THAT SOLUTION
16 THAT YOU WERE USING WITH THAT SPRAYER, THAT MISTER,
17 IN THIS EXHIBIT NUMBER ONE WE'RE TALKING ABOUT HERE
18 TODAY?

19 A. YES.

20 Q. OKAY. AND JUST TO MAKE SURE AS FAR AS THIS NUMBER
21 ONE IS CONCERNED IN YOUR DEPOSITION, YOU GAVE THIS
22 TO ME, AND I THINK YOU SAID YOU JUST GOT THIS OFF OF
23 THE CONTAINER THAT WAS THERE AT THE PLANT?

24 A. IT WAS THE CANISTER THERE.

25 Q. YEAH, SO IT SAYS ACETIC ACID 20 PERCENT. THAT IS

1 THE -- THAT'S THE THING IF YOU WILL THAT YOU CLAIM
2 ARE NOW CAUSING YOU THE PROBLEMS YOU HAVE DISCUSSED
3 HERE TODAY?

4 A. YES.

5 Q. OKAY. YOU SAID TO YOUR LAWYER EARLIER THAT YOU FELT
6 -- YOU FELT WORSE WHEN YOU WERE AT WORK THAN WHEN
7 YOU WERE AWAY FROM WORK. SINCE YOU'VE BEEN FROM
8 WORK SINCE 2009, IS IT YOUR TESTIMONY YOU'RE FEELING
9 BETTER NOW?

10 A. I FEEL MYSELF A LITTLE BIT BETTER, BUT I'M NOT
11 HEALTHY..

12 Q. JUST A POINT OF CLARIFICATION, DR. NOWATKA, THAT'S
13 YOUR FAMILY DOCTOR, CORRECT?

14 A. USED TO BE.

15 Q. OKAY.

16 BY MR. INFINGER:

17 JUST A SECOND, COMMISSIONER.

18 BY COMMISSIONER WILLIAMS:

19 OKAY.

20 BY MR. INFINGER:

21 I DON'T THINK I HAVE ANY OTHER QUESTIONS.

22 BY COMMISSIONER WILLIAMS:

23 OKAY. ANY RE-DIRECT?

24 BY MR. DANTIN:

25 YES, COMMISSIONER.

RE-DIRECT EXAMINATION BY MR. DANTIN:

Q. AGAIN YOU WORKED THAT KITCHEN SINK MACHINE JOB FOR JUST THE LAST FOUR MONTHS YOU WERE THERE; IS THAT CORRECT?

A. YES.

Q. AND YOU EXPLAINED THAT THAT PARTICULAR JOB DIDN'T REQUIRE THE USE OF ACETIC ACID, CORRECT?

A. YES.

Q. BUT DURING THAT LAST FOUR-MONTH PERIOD WHILE YOU WERE WORKING AT KOHLER, DID YOU EVER USE ACETIC ACID?

A. YES.

Q. AND WHEN DID YOU USE ACETIC ACID DURING THAT LAST FOUR-MONTH PERIOD?

A. GIVE -- I SPEND TWO HOURS THE TIME I ALSO WORKING THE KITCHEN SINKS.

Q. I'M SORRY. SAY THAT AGAIN?

BY THE INTERPRETER:

MR. GUL, HE'S ASKING FOR EXPLANATION -- FOR EXPLANATION WHEN HE HAS USED THIS. CAN HE EXPLAIN?

BY MR. DANTIN:

YES.

THE WITNESS RESUMES ANSWER:

A. I WORKED ON THE KITCHEN SINK MACHINES, AND IT MAKES SOME PIECES, AND I WAS SUPPOSED TO BUILD THEM --

1 MAKE THEM A LOT. AND I HAD LOTS OF FREE TIME, AND -
2 - AND FOREMAN PUT ME ALSO TO HELP ON ANOTHER
3 MACHINE. SO HE WILL NOT HAVE TO CALL TWO PERSONS TO
4 DO OVERTIME, HE ASKED ME TO PERFORM IT. IT'S A
5 COUNTER MACHINE WHERE -- WHERE YOU HAD TO USE ACID.
6 I SHARED THE WORK WITH SOMEBODY ELSE; I DID HALF OF
7 IT AS WELL.

8 RE-DIRECT EXAMINATION RESUMED BY MR. DANTIN:

9 Q. IS THIS SOMETHING THAT YOU WOULD DO FREQUENTLY
10 DURING THAT LAST FOUR-MONTH PERIOD?

11 A. ALMOST -- VERY OFTEN. VERY OFTEN.

12 Q. WOULD YOU DO IT EVERY DAY?

13 A. ALMOST. YES.

14 BY MR. DANTIN:

15 NO FURTHER QUESTIONS.

16 BY COMMISSIONER WILLIAMS:

17 ALL RIGHT. ANYTHING ELSE?

18 RE-CROSS EXAMINATION BY MR. INFINGER:

19 Q. SO YOU SAID WHEN YOU WERE DOING YOUR REGULAR JOB
20 WITH THESE OTHER MACHINES, YOU WERE -- YOU WERE
21 USING THE -- THE SPRAY BOTTLE ABOUT I THINK YOU SAID
22 18 TIMES?

23 A. I SAID 15 AND MORE.

24 Q. OKAY. FIFTEEN TO -- I THINK YOU SAID 15 TO 18
25 THOUGH, CORRECT?

1 A. I SAID 15 AND MORE.

2 Q. FIFTEEN TO -- TO WHAT?

3 A. SEVENTEEN, EIGHTEEN.

4 Q. OKAY. AND WHEN YOU WERE ON THE SINK MACHINE, THE
5 SINK MACHINE WAS YOUR PRIMARY JOB?

6 A. YES.

7 Q. SO HOW MANY TIMES WERE YOU USING THE SPRAY MISTER
8 WHENEVER THE SINK MACHINE WAS YOUR MAJOR JOB?

9 A. IF THERE IS TWO OF US BEEN WORKING, IT'S WHATEVER IN
10 THE CYCLE OF WORK HAD TO COME OUT WITH TWO OF US
11 WORKING THEN IF I WOULD COME IN PULL OUT MY MACHINE
12 AND START TO WORK ON THE COUNTER MACHINE. IT'S --
13 IT'S SOMETIMES HAPPEN EVERY DAY..

14 Q. SO YOU CAN'T GIVE A NUMBER LIKE YOU CAN FOR THE
15 OTHER PROCESS YOU WERE TALKING ABOUT?

16 A. I REALLY CANNOT SAY FOR SURE.

17 BY MR. INFINGER:

18 OKAY. THAT'S ALL.

19 BY MR. DANTIN:

20 NOTHING FURTHER.

21 BY COMMISSIONER WILLIAMS:

22 STEP DOWN, SIR.

23 BY MR. INFINGER:

24 COMMISSIONER, IF YOU CAN YOU GIVE ME JUST A
25 MOMENT.

1 BY MR. DANTIN:

2 THAT'S MY ONLY WITNESS.

3 BY COMMISSIONER WILLIAMS:

4 OKAY.

5 BY MR. INFINGER:

6 IF I CAN SPEAK TO MY CLIENT FOR JUST A SECOND
7 BEFORE WE START.

8 BY COMMISSIONER WILLIAMS:

9 SURE.

10 (OFF THE RECORD)

11 BY COMMISSIONER WILLIAMS:

12 RUSTY, YOU CAN CALL YOUR ---

13 BY MR. INFINGER:

14 COMMISSIONER, WE'RE GOING TO REST ON THE
15 REPORTS WE SUBMITTED, THE MEDICAL REPORTS AND THE
16 APA REPORT.

17 BY COMMISSIONER WILLIAMS:

18 FAIR ENOUGH. ANYTHING ELSE FROM THE CLAIMANT?

19 BY MR. DANTIN:

20 NO, YOUR HONOR.

21 BY COMMISSIONER WILLIAMS:

22 ALL RIGHT. THAT BEING THE CASE, THAT WILL
23 CONCLUDE THIS HEARING.

24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
25 CONCLUDED AT THE HOUR OF 10:05 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0912295

EMPLOYEE/CLAIMANT: NIKOLAY GUL

EMPLOYER: KOHLER COMPANY

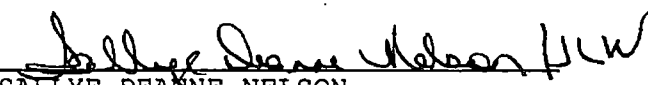
INSURER: KOHLER COMPANY

I, SALLYE DEANNE NELSON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 32 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF NIKOLAY GUL TAKEN ON THE 5TH DAY OF DECEMBER, 2012.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 7TH DAY OF JANUARY, 2013.


SALLYE DEANNE NELSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-08-2022

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 0912295

Nikolay Gul,)
Employee,)
v.)
Kohler Company,)
Self-Insured)
Employer,)
-----)

(COPY)

FULL COMMISSION PANEL HEARING

Tuesday, June 18, 2013
12:00 p.m. - 12:22 p.m.

The Full Commission Panel Hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 18th day of June, 2013 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina.

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ROA 1192

APPEARANCES:

COMMISSION PANEL:

Susan Barden, Chair
Aisha Taylor
Gene McCaskill

Jeremy A. Dantin, Esquire
Harrison, White, Smith & Coggins, P.C.
178 West Main Street
Spartanburg, South Carolina 29306
Attorney for the Claimant

Grady L. Beard, IV, Esquire
Sowell, Gray, Stepp & Lafitte, LLC
1310 Gadsden Street
Columbia, South Carolina 29201
Attorney for the Defendant

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EXHIBITS

(There were no exhibits marked during this hearing.)

1 COURT REPORTER: Today is June 18th, 2013. This is
2 South Carolina Workers' Compensation Case
3 Number 0912295. This is the case of Nikolay
4 Gul, Claimant, versus Kohler Company,
5 Self-Insured Employer. The Appellant is the
6 Defendant, represented by Grady L. Beard. The
7 Respondent represented by Jeremy A. Dantin.

8 MR. BEARD: May it please the Commission. This is a
9 case that I have inherited as a defense
10 attorney in working on the appeal. I represent
11 Kohler Company. This is a -- what appears to
12 be pled as an occupational disease case.
13 However, when you look at the order of
14 Commissioner Williams, it's not actually
15 drafted as an occupational disease case, and
16 hence, error number one that I think requires
17 some sort of a remand, which obviously will
18 require a new hearing, because the Commissioner
19 is no longer a Commissioner. The first thing
20 I would note is the date of the order. The
21 date of the order, as I understand it, and it
22 was served, either the day after Commissioner
23 Williams was actually still a Commissioner or
24 the day he was last a Workers' Comp.
25 Commissioner. I don't know the answer to that,

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ROA 1194

1 and we would have to ask for judicial notice,
2 because if it's the day after, then the order
3 is invalid on its face. It was served on
4 January 28th of this year.

5 **COMMISSIONER BARDEN:** The 25th or the 28th?

6 **MR. BEARD:** The 28th is the date of the service of
7 the order. The accepted service on the back
8 page says January 28th. That would have been
9 essentially, I guess, his last day as a
10 Workers' Comp. Commissioner or thereabouts?

11 **COMMISSIONER TAYLOR:** The 31st.

12 **MR. BEARD:** The 31st. Okay. Well, it was the last
13 couple of days he was a Commissioner.

14 **COMMISSIONER BARDEN:** The front of it says the 25th.

15 **MR. BEARD:** Well, the accepted service I have on the
16 stamp says January 28th from Renee Smith. The
17 order again -- the case is argued essentially
18 as an occupational disease case. They're
19 arguing that due to acetic acid asthma, work
20 related asthma is the condition. Nowhere --
21 there's not the first finding, none, zero of
22 any of the elements of an occupational disease
23 in this order, not one single word in a finding
24 or conclusion. There is a conclusion that says
25 "The Claimant has met the burden of proving

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ROA 1195

1 occupational asthma", no basis, no elements,
2 but the Supreme Court has said this Commission
3 must identify every single element in a finding
4 and must state the evidence that they relied
5 upon to make that element, because as you know,
6 if one element is missing, you lose an
7 occupational disease case. That's what this
8 is, is an occupation disease case. Now, the
9 other things that I need for you to look at --
10 and I've got ten minutes, so I'm never going to
11 be able to say all the things I need to say.
12 The order itself is interesting, because it
13 starts off with -- again, this gentleman has
14 not worked at Kohler by the time of this order
15 -- or by the time of the hearing at the end of
16 2012, he had not worked for Kohler since August
17 of 2009. The order says "I'm awarding
18 temporary total disability benefits from
19 September 18th of 2011 until the date of the
20 hearing, and I find MMI on the date of the
21 hearing". Okay. Well, there's a problem.
22 What happened from 2009 until 2011 when he
23 didn't work? Well, here is the answer. He got
24 Unemployment. Well, if you've got Unemployment
25 for two years after you were injured supposedly

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ROA 1196

1 on the job, you're representing for two years
2 to the Employment Security Commission at the
3 time or DW, "I am ready, willing and able to
4 work". Well, why, all of a sudden, when
5 Unemployment stops -- which is what happened.
6 His Unemployment ended after he got excessive
7 Unemployment, because you can get Unemployment
8 past the normal time. What in the world kept
9 him from working then? Why was he all of a
10 sudden no longer ready, willing and able to
11 work? There's nothing in these records that
12 say that "I'm keeping him out of work from
13 September of '11 until December of '12. Then
14 there's a finding that says that MMI --
15 December -- I think it's December 5th of
16 2012 -- right, the date of the hearing. Well,
17 there's only one doctor who has ever even
18 addressed the issue of MMI. That was their
19 expert, Dr. Feldman. Dr. Feldman, in a
20 questionnaire sent to him by Mr. Dantin, said
21 that "MMI was reached on May 3rd of 2012".
22 That's the only evidence in the record, only
23 evidence in the record of maximum medical
24 improvement. Well, okay, you can't just then
25 make a finding as a Commissioner that, "Well,

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ROA 1197

1 today is the date of the hearing. I'm going to
2 make a finding of today as MMI." Now,
3 Commissioner Williams used to always make this
4 finding that said "MMI is under the discretion
5 of the Commission". Well, no it's not.
6 There's no discretion. And he always made that
7 finding, and we used to argue about it, because
8 that was the way we would get to the credit
9 argument and who would get credit and when you
10 got credit, but that's not the law. The law
11 says that MMI is when the medical doctor says
12 MMI. The expert that Commissioner Williams
13 apparently relied on, Dr. Feldman, the only one
14 who has addressed MMI said "May 3rd of 2012",
15 and that was a questionnaire again submitted by
16 Mr. Dantin. Now, Mr. Dantin, in his brief that
17 you will have, says Dr. Feldman later gave him
18 65 percent to both lungs based on a Form 14-B.
19 I will give you \$100.00, every one of you, if
20 there's anything on the a Form 14-B that says
21 65 percent to both lungs. There's a document
22 that they got from this doctor that says 65
23 percent. That's all it says. It doesn't say
24 to what. It doesn't say to who. It doesn't
25 say to anything. It's not probative. It

1 doesn't mean anything. And on that document,
2 which if he could have -- if he had wanted to
3 change MMI -- he didn't even address MMI,
4 didn't even ask for the question. So, the only
5 evidence, the only evidence in this record of
6 MMI, if you believe there was, in fact, an
7 injury, is the same doctor that the
8 Commissioner said "By the slightest weight, I'm
9 giving him the benefit as opposed to other
10 doctors in this case", and there's where the
11 problem lies. You have a gentleman, Russian
12 decent, speaks very little English, who is
13 claiming an occupational disease. He hired Mr.
14 Dantin on December 111 of 2009. There's a
15 letter of representation in your file. Less
16 than two weeks later, he is sent for the first
17 time to a pulmonary doctor, Dr. Feldman. Now,
18 I know Dr. Feldman's reputation in the upstate,
19 and amongst defense lawyers, it's not that
20 good. It's just not that good. So,
21 Dr. Feldman, we found out -- and you can look
22 on his website. I think that's what they did
23 to tell you he's board certified and all these
24 things, because there's nothing in the evidence
25 and the record that says he's board certified

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ROA 1199

1 in anything, but if you go look at his website,
2 he was trained in Russia. Well, that's
3 interesting. A Russian gentleman goes to see
4 a Russian pulmonary doctor, who the very first
5 time he sees him on September 23rd of 2009 says
6 "Assessment ..." -- nothing else, "Assessment:
7 Asthma, may be occupational, may be RADS", has
8 question marks. No testing whatsoever done on
9 September 23rd, and he's already been out of
10 work for a month, has not been exposed to any
11 work related acetic acid, which is what they're
12 claiming as the problem. He goes back on the
13 25th and has his Pulmonary Function Test done
14 four times. One of the four was legitimate,
15 according to the Pulmonary Function Testing
16 done, which means you must throw it all out.
17 That's the standard. If only one is there, the
18 standard says you throw it all out.
19 Dr. Fogarty pointed out that standard in his
20 IME that said, "Well, these are invalid",
21 because it says on their face that three of the
22 ones were faked or did not meet the standard.
23 So, Dr. Fogarty gives an opinion diametrically,
24 180 degrees of Dr. Feldman and says, "This is
25 not occupational disease. This is not asthma."

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ROA 1200

1 And he goes through all the reasons, and he is
2 very very good at going through the reasons.
3 So, the case goes on. They're still fighting.
4 Kohler and Mr. Gul are still fighting about the
5 case, and they were getting to a hearing, Form
6 50 withdrawn in front of you, Commissioner
7 Barden. They withdrew their 50. They come in
8 front of another hearing and do a Consent Order
9 to do a tie-breaker. I mean, the Consent
10 Orders says the parties says, "One doctor says
11 X, one doctor says Y, let's do a tie-breaker",
12 and who did they go to -- without a doubt, I
13 don't think any Commissioner can ever deny that
14 one of, if not the best pulmonary specialist in
15 South Carolina, who teaches every other
16 pulmonary specialist how to be a pulmonary
17 specialist, is Dr. Sahn at the Medical
18 University of South Carolina. That's where
19 they sent him to. Dr. Sahn says, "This is not
20 asthma". He thought it was probably more
21 cardiac related. Later, the cardiologist says
22 "It's not cardiac related". And somehow
23 Commissioner Williams decided that because the
24 cardiologist said it wasn't cardiac related, it
25 had to be -- that meant Dr. Sahn was completely

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ROA 1201

1 wrong, even though the Commissioner signs an
2 order that the parties agree that this is going
3 to be basically the tie-breaker. So, you've
4 got at this point three pulmonary doctors. Two
5 of them say, not any kind of asthma, one of
6 them says occupational asthma. Oh, by the way,
7 we're now, what, four years from this accident.
8 He presumably hasn't been around acetic acid in
9 four years, but he got worse in 2011. Well,
10 how can that possibly be? Shouldn't there be
11 a report somewhere that says why he's getting
12 worse when he's not exposed to anything?
13 There's not a piece of evidence. Only
14 Dr. Feldman who, when the order is drafted --
15 and again, I always -- it bothers me when
16 orders get a little aggressive and they take
17 things that the Commissioner doesn't say. In
18 this case, Mr. Dantin puts in the order that
19 the "Commissioner took judicial notice of the
20 AMA Guides, Sixth Edition, and what it says
21 about asthma". Well, go read the
22 Commissioner's notes. He didn't say that. You
23 can't put in an order judicial notice that
24 hasn't come from the judge that I'm taking
25 judicial notice, and again, the timing of this

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ROA 1202

1 order, and it's clear, it was handed to the
2 Commissioner on his way out of the Workers'
3 Comp. Commission. It isn't proper. You can't
4 put that in an order unless the Commissioner
5 tells you to. It's kind of like the credibility
6 rule. Y'all tell us, "Do not address
7 credibility unless we tell you to address
8 credibility, and be specific". That's not what
9 was done here. Commissioner Williams also in
10 his note said -- and it's pretty important
11 that, again, I give the slightest edge to the
12 claimant because this Dr. Feldman was closer in
13 time than the other doctors to treating him".
14 That's what he said. And he noted that
15 Dr. Sahn has a fantastic reputation in South
16 Carolina, and he was having a hard time not
17 going with him, but he went through the
18 cardiology issue. It doesn't really show up in
19 the order. And he said all that. He said,
20 "This is what I'm finding. It doesn't really
21 show up in order like that." Instead, we get
22 a cardiology report cherry-picked, we get
23 Dr. Feldman's reports cherry-picked, and we get
24 the other two reports that I believe are
25 substantial evidence or the greater weight of

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ROA 1203

1 the evidence essentially ignored in the
2 findings. Thank you.

3 MR. DANTIN: Thank you, Commissioners. As Grady
4 pointed out, he wasn't actually involved in
5 this case until it came to appeal, so he
6 doesn't have any real background or history in
7 this other than during post-mortem where I
8 don't think the body was actually ever cut open
9 for him. You know, insofar as this whole
10 tie-breaker issue is concerned, there's not an
11 agreement that whatever Dr. Sahn says is going
12 to be what the ruling is. I mean, I think the
13 Commission is aware of that. Whatever a doctor
14 gets by way of information, you know, it tends
15 to be garbage in and garbage out. I think
16 that's something that you've all been familiar
17 with. In this case, you have to understand --
18 and Mr. Grady wasn't handling the case at the
19 time, but when he was sent to MUSC for
20 evaluation, do you know what Dr. Sahn was
21 provided by way of evidence, nothing. Not a
22 single record is referenced in his evaluation.
23 By the time Mr. Gul had gotten to Dr. Sahn, he
24 had been treating for asthma with Dr. Fogarty
25 for over two-and-a-half years. He had already

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ROA 1204

1 been hospitalized twice and been to the
2 emergency room another time. Not one of those
3 records was shared with Dr. Sahn, not one. The
4 only thing that Dr. Sahn was provided was an
5 Industrial Hygiene Assessment, which
6 incidentally, was commissioned by Kohler. They
7 set it up. They scheduled it. They knew when
8 he was coming. They had ample opportunity to
9 do whatever they needed to do to make sure that
10 building was ready, and the report says, "This
11 is only valid for the date that we do the
12 testing", testing which was done over two years
13 after Mr. Gul stopped working there. There's
14 nothing about that report that's probative in
15 any way as to what the air quality was while
16 Mr. Gul was actually working at Kohler. Not
17 only that, when we came to a hearing the first
18 time, the Commissioner had to order Kohler to
19 produce to us testing for the air quality
20 actually relevant to the relevant time period,
21 sent Kohler back to go check with the home
22 office and everything. They came back to us
23 and said, "We don't have any testing from that
24 time period. All we have is this stuff from
25 much later. Please rely on that. But that's

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ROA 1205

1 the only thing Dr. Sahn was provided. What
2 Dr. Sahn did say, which Mr. Beard referenced --
3 I'm sorry. I called you "Mr. Grady" earlier.
4 What Mr. Beard referenced was -- I'm sorry. I
5 lost my train of thought because I couldn't
6 remember Grady's name. When we were talking
7 about Dr. Sahn, what he did say was "There is
8 a cardiac issue here that is the cause of all
9 these symptoms", several times in the report,
10 and he recommended that this guy undergo a
11 cardiac evaluation. Well, actually, in the
12 report, he mentioned that there's a -- that he
13 recently had undergone a cardiac evaluation in
14 Spartanburg, and that's incorrect. He had not
15 had any cardiac evaluation since 2009, and
16 those prior evaluations said that there was no
17 cardiac issue. Even Dr. Fogarty noted that in
18 his report, no cardiac problems. So, since
19 Dr. Sahn said he needed a cardiac evaluation,
20 he got one from a cardiologist, and that
21 cardiologist said, "There's no cardiac problem
22 here". In fact, he went further and said "His
23 symptoms seem to be pleuritic in nature" and
24 noted that the medications he's getting for his
25 asthma seem to be helping him, whereas these

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ROA 1206

1 other medications weren't, the ones that he got
2 for his cardiac problem. I mean, just common
3 sense tells you that this isn't cardiac related
4 like Dr. Sahn thought it was.. So, I mean,
5 there's no real reason to credit Dr. Sahn with
6 any particular import in this case, because he
7 just didn't have the information that you would
8 need to make an appropriate opinion in this
9 instance. Not only that, all this stuff about
10 Dr. Feldman being Russian and all, that's not
11 evidence, either. I mean, that was stuff that
12 was put in the report. You know, that's just
13 narrative -- that really doesn't have any
14 bearing on this. Dr. Feldman treated this man
15 for over three years, saw him in excess of 40
16 times. The guy was hospitalized three
17 difficult times, and it's not like he just went
18 in for fake stuff. He got bronchoscopies on
19 two occasions, that when you look at the
20 reports, they had to suction out his lungs, and
21 after they did, he improved. I mean, there's
22 stuff there. He was seen another time, went to
23 the ER and was evaluated where they also noted
24 asthma exacerbation. On the other hand, we've
25 got Dr. Fogarty who saw him once. We've got

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ROA 1207

1 Dr. Sahn who saw him once. Collectively, they
2 saw him for less than three hours. It was over
3 40 times over here and less than three hours
4 over there. I mean, the case that I briefed to
5 you which is another Kohler case, this is --
6 and that was a Silica exposure case. I mean,
7 that's the Corbin case. Even there, they were
8 talking about, Dr. Applebaum who is a
9 pulmonologist. In that case, they had seen the
10 claimant for a year-and-a-half, and they noted
11 -- her opinion as a pulmonologist was entitled
12 to much greater weight because she had treated
13 the claimant there for a much longer period
14 than the other doctors there comparatively
15 speaking. There's not even a comparison
16 between the amount of treatment that
17 Dr. Applebaum provided in Corbin and what
18 Dr. Feldman provided in this case. And one of
19 the things I would ask you to look at is, in
20 the handout I gave you under the medical
21 evidence part, you'll see on the front there,
22 I put the symptoms of asthma in red, and all
23 you have to do is just flip through there, and
24 I put down every time that symptom was noted in
25 a medical record. I put it in red, too. It

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ROA 1208

1 looks like the page is bleeding, there's so
2 much red on there over the years, and this is
3 not just a small sample. This is years of
4 sampling, where those symptoms came up again
5 and again and again. And you know,
6 incidentally, insofar as judicial notice is
7 concerned, we're talking about the AMA Guides.
8 I mean, you know, not only are the AMA Guides
9 a reliable source, and under Rule 201, it says,
10 you know, "Capable of accurate determination by
11 the sources who's accuracy cannot be reasonably
12 questioned". I mean, the AMA Guides are
13 actually required if you're going to give an
14 opinion on a 14-B. I mean, is not only a
15 reliable source. It's a required source in
16 Workers' Compensation. I would submit that any
17 time a Commissioner wants to take judicial
18 notice of something in AMA Guides, that's
19 perfectly appropriate, but not only that, in
20 this instance, we're talking about the AMA
21 Guides noting that wheezing, shortness of
22 breath, chest tightness, coughing and spewing
23 production are the symptoms of asthma. Well,
24 it's in evidence, Dr. Feldman, APA Number 4,
25 Page 35, he talked about the recurrent symptoms

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ROA 1209

1 of asthma, "wheezing, shortness of breath,
2 chest tightness, cough". It's the same thing.
3 The evidence is there. Now, regarding the
4 issue of when TTD should have started or
5 shouldn't have stopped or whatever and the
6 stuff about when he reached MMI, none of that
7 has been briefed by the defendants. It's not
8 raised as an allegation of error. That's the
9 first time I've heard this is when we walk in
10 here today. They've waived their right to
11 argue that. I think that's a moot point. The
12 issue about the 14-B, 65 percent, was it to
13 lungs or not, it's really irrelevant to this
14 hearing today, because this wasn't -- there was
15 no permanency ruling in this hearing before
16 Commissioner Williams. This was a
17 compensability hearing, not a permanency
18 hearing. So, he didn't rely on 14-B or the
19 rating in the 14-B. I think what we're looking
20 at here is an instance where, really, you have
21 a lot of undisputed evidence. In this case,
22 you should know that Kohler brought to the
23 hearing four or five witnesses which they've
24 listed on their 58. Mr. Gul got up and took
25 the stand and gave a lot of testimony about his

1 history not having any prior exposure to
2 irritants, not having a family history of
3 asthma. He talked about the things he did at
4 work, the level of exposure he had, having it
5 almost daily, even in the last six months where
6 he wasn't working on a machine that directly
7 used it, he was helping out daily on the
8 machines that did use the acetic acid, never
9 wore protective clothing. In 2008, he went to
10 his foreman -- one of them was here, by the way
11 -- went to his foreman and told them, "This
12 stuff is irritating me", asked for a protective
13 mask, didn't get one, bought one himself.
14 Kohler told him to take it off, told him not to
15 use it. All that evidence, all that testimony
16 was given at the hearing, not one person from
17 Kohler took the stand to dispute what he said,
18 not one. They were here. They weren't called.
19 So, all that evidence is without dispute.
20 We've got a guy who worked at Kohler for about
21 five years. He used acetic acid nearly every
22 day. Acetic acid is a known irritant. Right
23 there on the label, it says in big bold
24 letters, "respiratory irritant". It's right
25 there. It even gives instructions on what to

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ROA 1211

1 do if you inhale this stuff. He used that
2 stuff every day for five years. He developed
3 asthma. He was diagnosed by a treating
4 pulmonologist who treated him then and still
5 treats him, incidentally, for years for asthma,
6 with asthma medications, that he testified
7 helped his condition, again, undisputed,
8 incidentally. We've got a treating doctor who
9 treats him all this time, never deposed. They
10 never went and talked to Dr. Feldman. All
11 they're asking you to do is just second guess
12 him. Thank you.

13 **MR. BEARD:** We're not asking you to second guess
14 him. We're asking you to do what's right -- he
15 didn't address any of the issue about the law.
16 The law binds this commission on occupational
17 disease. Again, I beg you to go read the
18 order. There's not a single finding with
19 regards to a single element of occupational
20 disease. In fact, the first finding in the
21 conclusion says it's under 42-11-60. This is
22 not a 42-11-60 case. This is 42-11-10 case at
23 best, if it's anything. The caselaw says that
24 you're required under Mohasco Corporation
25 Dixiana Mill Division versus Rising and under

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ROA 1212

1 the Fox versus Newberry County Memorial
2 Hospital Case that the Commission must make a
3 specific Finding of Fact as to every single
4 element, six or seven elements listed under
5 42-11-10 as to what it takes to be an
6 occupational disease. None of them are done in
7 this case. The issue with regards to Dr. Sahn,
8 there's an allegation that Dr. Sahn was given
9 no evidence. Well, there's no evidence of
10 that. Mr. Dantin represented the claimant and
11 in conjunction with Rusty Infinger, they
12 entered a Consent Order to send this gentleman
13 to Dr. Sahn. Well, if Sahn didn't get the
14 records from Mr. Dantin, that's Mr. Dantin's
15 fault. I don't know what Mr. Dantin sent to
16 Sahn, nobody does, because wait a minute, he
17 didn't depose Dr. Sahn, either. He didn't
18 depose Dr. Fogarty, either, like he wants to
19 argue to you that we didn't depose Dr. Feldman.
20 Well, we knew what Dr. Feldman was going to
21 say, just like, I think, most of y'all knew
22 what Dr. Feldman was going to say. They make
23 the point of Dr. Feldman is his treating
24 doctor, and he saw him more, and that's true,
25 but the reason he did that is because they sat

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ROA 1213

1 on the case and let him treat with somebody
2 that wasn't authorized, and he saw him 40
3 times, and then they say he got no money. He
4 kept diagnosing him with a condition that got
5 him paid 40 times. Dr. Sahn was paid by the
6 agreement of the two parties. Dr. Fogarty saw
7 him one time, because they're in control.
8 Until we get to a hearing, the claimant is in
9 control of a denied Workers' Comp. Claim,
10 because we can't force him to go anywhere other
11 than to these IMEs, and then we have to come in
12 here, and hopefully, they'll come to you and
13 ask for permission to do all those things, but
14 they didn't do that here. They didn't come to
15 a hearing for three plus years in a denied
16 Workers' Comp. Claim. Explain that. The last
17 thing -- and again, it is brief. It is -- or
18 it's mentioned in the grounds for review to
19 this Commission. The grounds for review talk
20 about MMI and talk about the TTD. They're both
21 identified as a grounds for review. You don't
22 lose your rights in a Workers' Comp. proceeding
23 because you don't brief every single issue.
24 This is not the Court of Appeals. This is a
25 fact finding commission. This commission can

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ROA 1214

1 go back in and do what it's supposed to do, can
2 read it, and we did raise it as a grounds for
3 review, so it is properly before you, and I
4 have argued it to you. That's all that is
5 required, because otherwise, this wouldn't be a
6 brief. It would be a book. The last thing I
7 would say is that Dr. Sahn is known by this
8 Commission and was agreed to by the parties,
9 and Commissioner Williams even notes it in his
10 order that he is a doctor of character, that
11 you should accept his opinion, and he was the
12 tie-breaker opinion.

13 **MR. DANTIN:** One quick point. Dr. Sahn wasn't
14 agreed to. It was agreed that he would be sent
15 to another doctor that they were selecting, not
16 agreed to use Dr. Sahn.

17 **MR. BEARD:** Just read the order.

18 **COMMISSIONER BARDEN:** Thank you. That concludes
19 this proceeding.

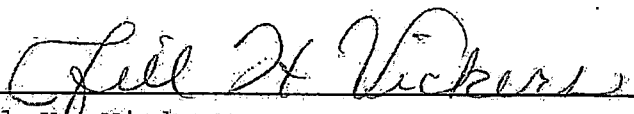
20 (Whereupon, the Full Commission Panel Hearing
21 concluded at 12:22 o'clock p.m.)
22
23
24
25

CERTIFICATE

This is to certify that the within hearing consisting of twenty-four (24) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 12, 2013.


Jill H. Vickers
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: July 5, 2016