

Defense Counsel Move to Exclude Evidence in Multidistrict Welding Fumes Litigation

In the country's largest law suit over welding fumes, on June 17, 2004 counsel for defendants filed a motion with the U.S. District Court in Cleveland to exclude expert evidence seeking to link exposure to welding fumes to early onset of Parkinson's Disease. *In re Welding Rod Products Liability Litigation*, Case No. 1:03-CV-17000, MDL Docket No. 1535, U.S.D.C., N.D. Ohio. The motion argued that the court should exclude any such evidence because there are no current and scientifically reliable studies that associate exposure to welding fumes and Parkinson's Disease (the motion did not seek to exclude evidence that exposure to fumes may lead to manganism or Parkinsonism, however).

The case is multidistrict litigation in federal court involving upwards of 4,000 plaintiffs who claim injury from exposure to manganese in welding fumes. The defense motion stated the rule that litigants "must employ scientifically reliable expert testimony," and that the court, in its role as gatekeeper, "must screen proffered expertise to ensure that such evidence is both reliable and relevant" before it may be admitted at trial.

The motion cited a 1993 opinion from the U.S. Supreme Court in *Daubert v. Merrill Dow Pharmaceuticals, Inc.* that the plaintiffs must show that evidence is admissible by a preponderance of proof. Most courts have also required that a plaintiff show "general causation," *i.e.*, that welding fumes may in general cause Parkinson's Disease, before allowing an expert to testify that a particular plaintiff's onset of Parkinson's Disease was caused by exposure to welding fumes.

In this case, defendants argue that there are no current studies indicating a scientifically reliable causal relationship between exposure to welding fumes and Parkinson's Disease. They cite a number of scientific studies on Parkinson's Disease, and none of these yet shows a statistically significant association between exposure to fumes and the disease, the first step in proving causation. They state that the case must be tried on the current state of scientific evidence and not what might be proven at some unknown time in the future.

Defendants argued against allowing expert witnesses to draw conclusions about exposure to fumes causing or accelerating the onset of Parkinson's Disease without epidemiologic studies that support such conclusions. They also said that "case studies" in which an individual patient develops a disease after exposure to an agent are not sufficient to establish a causal link.

The motion noted that recent silicone breast implant litigation illustrates what might happen when a court allows in evidence without a scientifically reliable basis. In the 1980s a number of plaintiffs sued silicone breast implant manufacturers based on a variety of symptoms, and the Food and Drug Administration removed the implants from the market pending an epidemiological review. Before the review was completed, some

400,000 cases were filed, leading to a multi-billion settlement and one of the largest corporate bankruptcies in U.S. history. Then in 1994, the FDA concluded as a result of its study that implant recipients had no greater risk of disease than the general population, but the damage to the defendants had already been done. The defendants in the welding fumes case asked the court not to repeat this mistake.

The plaintiffs are now taking discovery and are required to file a response to the motion in October 2004. The court will hear oral arguments on the motion on February 1, 2005. If the court rules in favor of the defendants, the ruling will remove a significant portion of the plaintiffs' arguments from the case.