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RJC

King County Superior Court No. 07-2-10209-4

WASHINGTON STATE SUPREME COURT

Julie Anderson, individually and on behalf of Dalton Anderson, a minor, and
Darwin Anderson,

Appellant,

vs.

Akzo Nobel Coatings, Inc. and Keith Crockett,

Respondents

STATEMENT OF GROUNDS FOR DIRECT REVIEW

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 ORIGINAL

TABLE OF CONTENTS

| | | |
|------|---|---|
| I. | INTRODUCTION..... | 1 |
| II. | ISSUES PRESENTED FOR REVIEW..... | 2 |
| | #1. Whether a mother can be held comparatively at fault under RCW 4.22.070 for deciding to work and perform the essential functions of her job during pregnancy? | 2 |
| | #2. Whether the trial court properly applied the <i>Frye</i> test as intended by this Court in relation to the admissibility of expert testimony offered by the Anderson family pertaining to the cause of Dalton Anderson’s brain malformations? | 2 |
| | #3. Whether the trial court properly applied the <i>Frye</i> test as intended by this Court in relation to the admissibility of expert testimony offered by the Anderson family pertaining to the cause of Dalton Anderson’s brain malformations? | 2 |
| | #4. Whether the Washington Industrial Safety and Health Act requires employees to file complaints in accordance with RCW 4.16.160 prior to bringing a private cause of action for a retaliatory discharge? | 2 |
| III. | NATURE OF CASE..... | 2 |
| IV. | GROUND FOR REVIEW..... | 6 |
| | A. This matter is proper for review under RAP 4.2(a)(3) and (4) to clarify whether or not mothers can be held comparatively at fault under RCW 4.22.070 simply for working during pregnancy. | 6 |
| | B. Direct appellate review of this matter should be granted in order to clarify the rule of law in light of the conflict between the lower courts and the lack of clarity in relation to the application of the <i>Frye</i> test | |

for cases involving complex medical testimony in
Washington..... 7

C. The public policy related to the protection of
employees that reports workplace hazards is squarely
at issue and therefore direct review should be
granted..... 14

V. CONCLUSION..... 16

TABLE OF AUTHORITIES

CASES

| | |
|--|----|
| <i>Berry v. CSX Transportation</i> , 709 So. 2d 552 (1998)..... | 14 |
| <i>Bruns v. Paccar, Inc.</i> , 77 Wn. App. 201, 890 P.2d 469 (1995)..... | 9 |
| <i>Castro v. Stanwood School District No. 401</i> , 151 Wn.2d 221, 86 P.3d 1166 (2004) | 16 |
| <i>Christophersen v. Allied-Signal Corp.</i> , 902 F.2d 362, 366 (5 th Cir. 1990)..... | 14 |
| <i>Donaldson v. Central Illinois Public Service Co.</i> , 199 Ill.2d 63, 77-79, 262 Ill. Dec. 854, 767 N.E.2d 314 | 11 |
| <i>Grady v. Frito-Lay, Inc.</i> , 576 Pa. 546, 558-61, 839 A.2d 1038 (2003)..... | 11 |
| <i>Grant v. Boccia</i> , 133 Wn. App. 176, 137 P.3d 20 (2006)..... | 9 |
| <i>In re Commitment of Simons</i> , 213 Ill.2d 523, 290 Ill.Dec. 610, 821 N.E.2d 1184 (2004)..... | 11 |
| <i>Johnson v. Goodyear Tire & Rubber</i> , 790 F. Supp. 1516, 1521 (1992)..... | 7 |
| <i>Kees v. Wallenstein</i> , 973 F. Supp. 1191 (W.D. Wash. 1997) | 7 |
| <i>Marsh v. Valyou</i> , 917 So. 313 (2005) | 10 |
| <i>Marsh v. Valyou</i> , 977 So. 2d 543, 549 (Fla. 2007) | 10 |
| <i>Pasco Police Officers' Association v. City of Pasco</i> , 132 Wn.2d 450, 938 P.2d 827 (1997)..... | 16 |
| <i>Peerless Food Products, Inc. v. State</i> , 119 Wn.2d 584, 835 P.2d 1012 (1992)..... | 8 |
| <i>Ruff v. Department of Labor and Industries</i> , 107 Wn. App. 289, 28 P. 3d 1 (2001) | 12 |
| <i>State v. Baby</i> , 404 Md. 220, 946 A.2d 463 (2008)..... | 11 |

State v. Gore, 143 Wn.2d 288, 302, 21 P. 3d 262 (2001) 8
State v. Gregory, 158 Wn.2d 759, 829, 147 P.3d 1201 (2006)..... 8
Wilson v. The City of Monroe, 88 Wn. App. 113, 126, 943 P.2d 1137, review
denied, 134 Wn.2d 1028, 958 P.2d 318 (1997)..... 16

STATUTES

RCW 4.16.160 i, 2
RCW 4.22.070 i, 1, 2, 6, 7
RCW 49.17.160 1, 14, 16
RCW 49.60.030 6

RULES

RAP 2.3 1
RAP 4.2 passim

REGULATIONS

WAC 162-30-020 6

I. INTRODUCTION

The Anderson family filed suit against Akzo Nobel, a multi-billion dollar international paint making company, based upon negligence principles for the injuries suffered by Dalton, and based for unlawful employment actions for the retaliatory discharge against Ms. Anderson. At one point in the proceedings, Akzo Nobel argued that Ms. Anderson could be held comparatively at fault under RCW 4.22.070 for deciding to work, and perform the essential functions of her job, during pregnancy. The trial court agreed. Then later, the trial court dismissed Ms. Anderson's retaliatory discharge claim for procedural reasons related to the challenged and purported pre-filing requirements set forth under RCW 49.17.160. At the motion *in limine* stage, the trial court ruled that the specific expert testimony related to the causation of Dalton's brain damage, from organic solvent exposure, was not generally accepted within the medical community and therefore inadmissible under *Frye*. At the same time, the trial court ruled that Akzo Nobel's medical experts could offer medical opinions that the cause of Dalton's brain damage was "genetic" even though Akzo Nobel's experts had no supportive testing and could not cite any supportive medical literature. Because the trial court's ruling in relation to the Anderson family's experts on causation proved dispositive, the matter was dismissed.

At the time of ruling on the evidentiary *Frye* related issues during a hearing on August 12, 2008, the trial court *sua sponte* offered to certify the issues for immediate review pursuant to RAP 2.3(b)(4) which notes that "the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation." At the next hearing, Akzo Nobel offered briefing and a proposed order consistent with the trial court's *sua sponte* offer of certification under RAP 2.3(b)(4). For procedural reasons, in order to provide for a complete

review of the record including the rulings related to the retaliatory discharge, the Anderson family did not pursue an order of immediate certification of just the *Frye* related rulings. Of relevance, however, is the fact that the trial court believed that this matter meets the criterion for direct review set forth under RAP 2.3(b)(4). Because this matter meets the criterion for immediate review set forth under RAP 2.3(b)(4) as offered to be certified by the trial court, and the criterion for immediate review under RAP 4.2(a)(3) and (4), this matter of broad public import as to questions of law and policy should be accepted for immediate review by this Court.

II. ISSUES PRESENTED FOR REVIEW

#1. Whether a mother can be held comparatively at fault under RCW 4.22.070 for deciding to work and perform the essential functions of her job during pregnancy?

#2. Whether the trial court properly applied the *Frye* test as intended by this Court in relation to the admissibility of expert testimony offered by the Anderson family pertaining to the cause of Dalton Anderson's brain malformations?

#3. Whether the trial court properly applied the *Frye* test as intended by this Court in relation to the admissibility of expert testimony offered by Akzo Nobel on the medical premise of genetics based causation of Dalton Anderson brain malformations?

#4. Whether the Washington Industrial Safety and Health Act requires employees to file complaints in accordance with RCW 4.16.160 prior to bringing a private cause of action for a retaliatory discharge?

III. NATURE OF CASE

This case involves workplace safety issues and deviations on the part of Akzo Nobel which led to the brain damage which is suffered by eight (8) year old Dalton Anderson. Dalton's mother, Julie Anderson, was an employee of Akzo Nobel. Akzo Nobel is a multi-billion dollar

international company involved in the manufacture, distribution, and sale of automobile paints. The auto paints which are manufactured by Akzo Nobel include harmful chemicals known as organic solvents. Akzo Nobel's own safety records and MSDS sheets acknowledge the potential harm which these organic solvents can cause including serious damage to the brain and kidneys.

There is un-refuted evidence that Akzo Nobel failed to provide minimal safety precautions to employees such as Ms. Anderson. Akzo Nobel failed to provide proper respiratory protection. Akzo Nobel failed to provide proper protective gloves. Akzo Nobel failed to provide appropriate safety training. Akzo Nobel failed to institute proper safety policies. At the same time, it is undisputed that during some of the timeframe that Ms. Anderson was pregnant with Dalton, the ventilation system at the Akzo Nobel facility went unchecked and was inoperable.

Ms. Anderson began employment with Akzo Nobel on or about April 13, 1998. Shortly thereafter, Ms. Anderson was progressively put in positions with increased responsibility and pay. Ms. Anderson was continually noted as a quality employee and was placed in position of supervision over other employees. Encompassed within Ms. Anderson's responsibilities was involvement in paint mixing operations, and paint spill clean up when necessary, both of which she did routinely throughout the course of employment with Akzo Nobel and is documented in her employment records and the paint mixing logs.

Sometime around the end of 1998, Ms. Anderson was informed by her supervisor, Keith Crockett, she did not need to wear a respirator when mixing toxic paint because the air monitoring that was conducted by Akzo Nobel headquarters had purportedly determined that there was no health threat as long as the ventilation system was operational. Thereafter, Ms. Anderson mixed paint regularly without a respirator until learning that she was pregnant with

Dalton on or around May 31, 1999. Ms. Anderson then asked Mr. Crockett if it was safe to mix paint while she was pregnant, and Mr. Crockett told her that was fine, but that perhaps she should now wear a respirator. Ms. Anderson mixed paint routinely throughout the course of her pregnancy while always using the same respirator. Ms. Anderson's coworker, Laurinda Rowland, recalls that Ms. Anderson would mix paint several times a day.

On January 30, 2000, Ms. Anderson gave birth to her son, Dalton. As time passed, it became evident that Dalton suffered from medical abnormalities. Ms. Anderson suspected that Dalton's injuries might be caused by the *in utero* toxic paint exposure and even hired lawyers to help her investigate the possibility. The treating doctors repeatedly ruled out alternative causes of Dalton's malformations, but did not make any connection between the toxic exposures that occurred *in utero* at Akzo Nobel until March 24, 2004. To this day, the treating doctors cannot identify any other potential cause of Dalton's brain damage other than organic solvent exposure during Ms. Anderson's pregnancy.

Ms. Anderson's suspicions with respect to Dalton's malformations prompted her to complain about the substandard safety practices to WISHA in 2003. As a result, WISHA conducted inspections at the Pacific, Washington facility, noted several safety violations, and cited Akzo Nobel for poor safety practices. From the WISHA and 3M investigators, Ms. Anderson learned that Akzo Nobel's respirator program was all wrong, and that the process utilized for collecting air monitoring data was skewed in such a way that resulted in inaccurately low exposure results. Based upon testing that was conducted by Ms. Anderson in her capacity of HSE Coordinator, she learned that respirators were not only required while mixing paint, but that the respirators must be changed out after every 8 hours of usage, *i.e.* every day.

Almost a year later, the safety conditions at Akzo Nobel had not gotten better, and Ms.

Anderson complained again to WISHA in writing, on June 10, 2004, explaining that supervision had lied to safety inspectors about the conditions at the Pacific, Washington facility. The form that Ms. Anderson filled out that, upon her election, the complaint to WISHA would not remain anonymous. On or about June 29, 2004, the WISHA inspectors conducted a surprise inspection stemming from Ms. Anderson's formal complaint, and Akzo Nobel was again cited for an assortment of safety violations. The next day, on June 30, 2004, Ms. Anderson's supervisors decided, after over six years of very successful employment with repeated promotions, and without instilling any form of progressive discipline, to terminate her employment because she had purportedly taken \$40.00 worth of paint weeks earlier without permission.

Thereafter, on July 30, 2004, Ms. Anderson's supervisors explained to a WISHA investigator that one of the reasons that the safety standards were not met was because the HSE Coordinator, Ms. Anderson, was no longer with the company to provide training. On or about August 12, 2004, Ms. Anderson received a letter from a WISHA investigator indicating that at the Pacific, Washington facility, "*it was determined that air monitoring in the warehouse was not necessary as employee exposure to organic solvents was found to be well below WIHA (sic) permissible limits during a previous inspection at this location.*" Because Ms. Anderson had been the HSE Coordinator in charge of the air monitoring process, and because in 2003 she conducted proper air monitoring that determined WISHA's statements about exposure levels to be entirely inaccurate, she knew that the WISHA investigator had been duped by Akzo Nobel. In the eyes of Ms. Anderson, turning to WISHA at that point was a lost cause. Akzo Nobel had made Ms. Anderson out to be a liar, and there was very little that she could do.

IV. GROUNDS FOR REVIEW

- A. **This matter is proper for review under RAP 4.2(a)(3) and (4) to clarify whether or not mothers can be held comparatively at fault under RCW 4.22.070 simply for working during pregnancy.**

Akzo Nobel argued, and the trial court agreed, that Ms. Anderson could be held comparatively at fault for Dalton's injuries simply because she decided to work and perform the essential functions of her job during pregnancy. According to Akzo Nobel:

*...Ms. Anderson was repeatedly told by several witnesses not to mix paint while pregnant. And it is undisputed that there were warning labels on the cans of paint were mixed that contained warnings about pregnancy. So, if she really did mix paint while pregnant, not only did she ignore the admonitions of her supervisor and fellow employee, but she also ignored the warning label on every can of paint she mixed. Accordingly, she assumed the risk posed to her unborn child...*¹

In truth, at all times Ms. Anderson followed Akzo Nobel's faulty safety policies, and in support of this argument, Akzo Nobel failed to point out any specific act or evidence indicating that Ms. Anderson independently acted negligently in any way.² In Washington, the Anderson family believed that it is well established that it is against the law to prevent a woman from working or performing the essential functions of her job while pregnant. See RCW 49.60.030 (prohibiting discrimination in employment). In fact, pregnancy is afforded the same employment protections as any other disability. *Id.* Additionally, the "Human Rights Commission determined that practices which impair a woman's employment opportunities because of pregnancy are discriminatory." *Johnson v. Goodyear Tire & Rubber*, 790 F. Supp. 1516, 1521 (1992) (changing assignments that provide same wages/benefits but compromise job security unlawful), citing, WAC 162-30-020(1) (unlawful to "Impose different terms and conditions of employment on a woman.") A disabled employee has a right to maintain employment as long as he or she can

¹ Akzo Nobel Brief in Opposition to Plaintiffs' Summary Judgment Motion Re: Contributory Negligence, Page 8.

² Akzo Nobel tried to claim that Ms. Anderson failed to wear a respirator but had no testimony supporting this contention for the timeframe that she was pregnant with Dalton.

perform the essential functions of the position. *Kees v. Wallenstein*, 973 F. Supp. 1191 (W.D. Wash. 1997). But on this issue, the trial court disagreed and ruled that Ms. Anderson could be held at fault under RCW 4.22.070.

Akzo Nobel's attempt to employ the defense of pointing the finger at Ms. Anderson for simply showing up to work and doing the essential functions of her job runs counter to the express law and the anti-discrimination policies of the State of Washington. *Id.* Ms. Anderson has a right to work, and a right work while pregnant, *i.e.* disabled. *Id.* Any purported instruction on the part of Ms. Anderson's supervisor, Mr. Crockett, or the employees under her supervision, that she was purportedly not supposed to be mixing paint while pregnant is correspondingly unlawful and therefore, as a matter of law and social policy, cannot be used to support Akzo Nobel's contention. *Id.* Allowing Akzo Nobel to point the finger at Ms. Anderson for exercising a right which is protected by law is contrary to social policy and cannot be asserted as the legal cause of an injury. *Id.* Because a women's right to work during pregnancy is an issue of grave importance to all citizens of the State of Washington, pursuant to RAP 4.2(a)(3) and (4), this matter should be accepted for immediate review by this Court.³

B. Direct appellate review of this matter should be granted in order to clarify the rule of law in light of the conflict between the lower courts and the lack of clarity in relation to the application of the *Frye* test for cases involving complex medical testimony in Washington.

Pursuant to RAP 4.2(a)(3) and (4), the Anderson family moves this Court for acceptance of this matter to clarify the proper and intended application of the *Frye* test in the context of causation in a civil action involving complex medical testimony. *See e.g. Peerless Food Products, Inc. v. State*, 119 Wn.2d 584, 835 P.2d 1012 (1992) (court granted review under RAP 4.2(a)(3) and (4)). In relation to the application of *Frye*, this Court recently explained that the

“primary goal is to determine ‘whether the evidence offered is based on established scientific methodology.’” *State v. Gregory*, 158 Wn.2d 759, 829, 147 P.3d 1201 (2006), citing, *State v. Gore*, 143 Wn.2d 288, 302, 21 P. 3d 262 (2001). This Court further elaborated that “the scientific theory underlying the evidence and the technique and methodology used to implement it must be generally accepted in the scientific community for evidence to be admissible under *Frye*.” *Id.* It was also stated in *Gregory* that “[o]nce a methodology is accepted in the scientific community, the application of the science to a particular case is a matter of weight and admissibility under ER 702, which allows qualified expert witnesses to testify if scientific, technical, or other specialized knowledge will assist the trier of fact.” *Id.*

In contrast to this Court’s holding in *Gregory* that the “primary goal” under *Frye* is to determine whether the expert testimony is based upon generally accepted “methodology”, the trial court in this matter primarily followed the reasoning of an opinion out of Division III of the Court of Appeals, *Grant v. Boccia*, 133 Wn. App. 176, 137 P.3d 20 (2006), and placed the greatest emphasis upon the “causation opinion itself” instead of upon the underlying methodology which was relied upon by the Anderson family’s experts: “*Thus, for expert testimony to be admissible in Washington, the party offering such evidence must show that the causation opinion itself is accepted by a majority of the medical community.*”⁴ In so doing holding, the trial court did not fully acknowledge this Court’s dictate in *Gregory*, or precedent from Division I of the Court of Appeals such as *Bruns v. Paccar, Inc.*, 77 Wn. App. 201, 890 P.2d 469 (1995). In *Bruns*, Division I held that a “*Frye* inquiry addresses novel scientific methodology; it does not deal with medical opinion based upon established scientific technique.”

³ It should be noted that at one point Akzo Nobel argued that smoking caused Dalton’s injuries but did not submit expert testimony in that respect.

Id. at 215. The *Bruns* Court gave essentially no weight to scrutinizing the specific scientific causation theory at issue. *Id.*

Additionally, in relying upon *Grant* which followed precedent from the Florida Court of Appeals, *Marsh v. Valyou*, 917 So. 313 (2005), the trial court failed to recognize that *Marsh* was overturned by the Florida Supreme Court. *See Marsh v. Valyou*, 977 So. 2d 543, 549 (Fla. 2007). This Court's holding in *Gregory* is consistent with a trend in the case law as noted by the Florida Supreme Court in *Marsh*. *Id.* In *Marsh*, as did this Court in *Gregory*, the Florida Supreme Court emphasized the methodology aspect of the *Frye* test as compared to challenges to the specific scientific theory at issue:

[U]nder *Frye*, the inquiry must focus only on the general acceptance of the scientific principles and methodologies upon which an expert relies in rendering his or her opinion. **Certainly the opinion of the testifying expert need not be generally accepted as well. Otherwise, the utility of expert testimony would be entirely erased, and "opinion" testimony would not be opinion at all--it would simply be the recitation of recognized scientific principles to the fact finder....** We reaffirm our dedication to the principle that once the *Frye* test is satisfied through proof of general acceptance of the basis of an opinion, the expert's opinions are to be evaluated by the finder of fact and are properly assessed as a matter of weight, not admissibility. *See also Castillo*, 854 So.2d at 1276 (holding that the district court erred in considering "not just the underlying science, but the application of the data generated from that science in reaching the expert's ultimate conclusion"); *Berry*, 709 So.2d at 567 ("[W]hen the expert's opinion is well-founded and based upon generally accepted scientific principles and methodology, it is not necessary that the expert's opinion be generally accepted as well.").

Trial courts must resist the temptation to usurp the jury's role in evaluating the credibility of experts and choosing between legitimate but conflicting scientific views. *See Castillo*, 854 So.2d at 1275 ("[I]t is important to emphasize that the weight to be given to stated scientific theories, and the resolution of legitimate but competing scientific views, are matters appropriately entrusted to the trier of fact.") (quoting *Berry*, 709 So.2d at 569 n. 14); *Rodriguez v. Feinstein*, 793 So.2d 1057, 1060 (Fla. 3d DCA 2001) (same). A challenge to the conclusions of *Marsh's* experts as to causation, rather than the methods used to reach those

⁴ Trial Court Orders Dated August 13, 2008 and September 26, 2008.

conclusions, is a proper issue for the trier of fact. See *U.S. Sugar*, 823 So.2d at 110; *Castillo*, 854 So.2d at 1270, 1272, 1276; *Rodriguez*, 793 So.2d at 1060 (recognizing that “to involve judges in an evaluation of the acceptability of an expert’s opinions and conclusions would convert judges into fact-finders” to an extent not contemplated by Florida’s *Frye* jurisprudence).

Marsh, 977 So. 2d at 549.

Other courts from around the country that use the *Frye* test are following the trend that emphasizes the methodology of the *Frye* test. See *In re Commitment of Simons*, 213 Ill.2d 523, 290 Ill.Dec. 610, 821 N.E.2d 1184 (2004) citing *Donaldson v. Central Illinois Public Service Co.*, 199 Ill.2d 63, 77-79, 262 Ill. Dec. 854, 767 N.E.2d 314 (“The *Frye* test applies only to “new” or “novel” scientific methodologies” and “generally speaking, a scientific methodology is considered “new” or “novel” if it is “original or striking” or ‘does not resembl[e] something formerly known or used.’”); *State v. Baby*, 404 Md. 220, 946 A.2d 463 (2008) (Stating that *Frye* hearing is needed if a “new scientific technique’s validity is in controversy in the relevant scientific community.”); *Grady v. Frito-Lay, Inc.*, 576 Pa. 546, 558-61, 839 A.2d 1038 (2003) (Proponent is not required to “prove that the scientific community has also generally accepted the expert’s conclusion” but that proponent must show that the methodology has been generally accepted).

It should be further noted that other more recent case law from Division I does not clarify the conflict between the Washington appellate courts. See *Ruff v. Department of Labor and Industries*, 107 Wn. App. 289, 28 P. 3d 1 (2001). In *Ruff*, Division I explained that the “*Frye* rule is concerned only with whether the expert’s underlying theories and methods are generally accepted. The result-the conclusion reached by the expert in the case at hand-is by definition fact-specific and need not be generally accepted in the scientific community.” *Id.* at 300. And while Division III enunciated a similar rule of law in *Grant*, the courts are divided as to the actual meaning, in application, of this *Frye* test related principle. In *Ruff* and *Bruns*, Division I focused primarily and/or exclusively on the methodology underlying the expert testimony,

whereas in *Grant*, Division III focused primarily and almost exclusively upon the specific scientific principle underlying the testimony.⁵

The approach taken by Division III in *Grant* is in conflict with the approach taken by Division I in *Bruns*. The proper application of the *Frye* test in relation to the weight to be given to the methodology versus the specific scientific causation theory remains an issue. This Court is best suited to clarify and/or enunciate the correct rule of law in relation to the application of the *Frye* test for cases involving complex expert medical testimony. Clarification will facilitate and promote justice and provide plaintiffs and defendants alike the opportunity to present their case. Permitting any further delay will cause irreparable harm not only to the Andersons, but to possibly countless other parties in courtrooms across the state.

In accordance with RAP 4.2(a)(3) and (4), given the conflict between the published decisions of record, and the importance of establishing a clear and predictable rule of law which can be followed by all of the courts in Washington for cases involving complex medical testimony, this matter should be accepted for immediate review.

1. The Anderson family's expert witnesses:

The experts for the Anderson family and Akzo Nobel agreed that organic solvent exposure causes fetal brain malformations. Experts for the Anderson family, Sohail Khattak, M.D., and Akzo Nobel, Gideon Koren, M.D., joined in a study which applied the accepted methodology for determining whether organic solvent exposure causes major fetal malformations: *e.g. Pregnancy Outcome Following Gestational Exposure to Organic Solvents (1999)*. The study was published in one of the most prestigious medical journals in the world, JAMA, and concluded that pregnant women exposed to organic solvents in the workplace

⁵ Recent published precedent indicates that Division II follows the methodology based analysis: "The core concern...is only whether the evidence being offered is based on established scientific methodology." *In re Detention of Taylor*, 132 Wn. App. 827, 836, 134 P.3d 254 (2006).

without proper protective gear are 13 times more likely to give birth to children with major malformations. Amongst malformations noted in the study a specific type of brain malformations, neuronal migration defects, were identified. According to Dalton's treating physicians, Dalton suffers from a neuronal migration defect.

Both Dr. Khattak and Dr. Koren applied the same methodology but reached different opinions about the cause of Dalton's brain malformations. Dr. Khattak opined that Dalton's condition, described as neuronal migration defect or encephalopathy, was caused by organic solvent exposure. It should be noted that Akzo Nobel's expert, Dr. Koren, disagreed but was not provided comprehensive exposure related information. Akzo Nobel argued that even though the JAMA study did prove that organic solvent exposure in the workplace does cause major malformations, the JAMA study did not prove, with statistical certainty, that Dr. Khattak's specific causation theory was generally accepted in the medical community.

In conflict with this Court's holding in *Gregory* and case law consistent with this Court's interpretation of the *Frye* test, the trial court relied upon the Division III application of the *Frye* test in *Grant*, and held that Dr. Khattak's specific causation opinion was not adequate for jury consideration. In so doing, the trial court discounted the methodology aspect of the *Frye* test. What's more, the trial court effectively invoked its own conclusions about the statistical strength and significance of the JAMA study and effectively usurped the Anderson family's right to trial by jury. On the issue of courts challenging the strength of medical studies, consistent with the premise that jury and not courts should weigh the evidence, other courts explained:

For the district court to seize on the putative flaws of studies favorable to plaintiff, and then to privilege certain studies favorable to the defendant, was impermissibly to place a thumb on defendant's side of the scale and to encroach on the jury's prerogative to weigh the relative merits and credibilities of competing studies ... Thus, to the extent that none of the studies is flawless or dispositive, their relative merits seems to us to be a classic question for the jury. Trial courts should not arrogate the jury's role in "evaluating the evidence and the credibility of expert witnesses" by "simply cho[osing] sides in [the] battle of the experts."

Christophersen v. Allied-Signal Corp., 902 F.2d 362, 366 (5th Cir. 1990). Additionally, the trial court failed to follow analogous precedent on the topic of organic solvent exposure from Florida appellate courts: *Berry v. CSX Transportation*, 709 So. 2d 552 (1998).

2. Akzo Nobel's expert witnesses:

Akzo Nobel retained experts willing to opine that Dalton's condition is "genetic" even though there is no supportive medical literature, and no supportive genetic testing. According to WASHINGTON PRACTICE § 702.38, only "The use of DNA testing for forensic purposes (as opposed for medical diagnosis) is generally accepted in the medical community." For the first time ever known in the State of Washington, the trial court in this matter ruled, on July 22, 2008, that Akzo Nobel's experts would be permitted to testify as to a medical diagnosis and causal connection based upon genetic testing even though that same genetic testing was inconclusive. Specifically, the trial court noted that the "*uncontradicted testimony was that the genetic tests available at the present time are only 10-20% effective at detecting chromosomal defects.*"⁶ In other words, the genetic testing, or methodology at issue, as to Akzo Nobel's experts is still novel and not supportive of the medical premise for which the trial court ruled that it could be offered.

3. Conclusion:

Clear precedent is needed from this Court to clear up any conflict between the separate divisions of the Court of Appeals and to provide clear guidance to litigants as to the proper application of the *Frye* test in Washington. Resolving this conflict will provide litigants a fair trial as clear guidelines can be established as to the admissibility of complex medical testimony under *Frye*. In accordance with RAP 4.2(a)(3) and (4), direct review of this matter should be granted.

⁶ Order dated September 26, 2008, Page 7.

C. The public policy related to the protection of employees that reports workplace hazards is squarely at issue and therefore direct review should be granted.

Pursuant to RAP 4.2(a)(4), the Anderson family moves the Court for acceptance of this appeal in order to determine whether the Washington Industrial Safety and Health Act ("WISHA" codified in part as RCW 49.17.160) provides sufficient protection to employees from retaliatory employers and therefore preempts the corresponding common law claims. Direct appeal to this Court in accordance with RAP 4.2(a)(4) is appropriate and in accordance with RCW 49.17.160 because workplace safety is of paramount importance to both employers and employees, and the corresponding protections which perpetuate the related policies are squarely at issue and remain unclear. *See e.g. Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d 450, 938 P.2d 827 (1997) (court granted review under RAP 4.2(a)(4) to resolve issue of whether the association committed an unfair labor practice and to resolve other collective bargaining issues); *see also Castro v. Stanwood School District No. 401*, 151 Wn.2d 221, 86 P.3d 1166 (2004) (court granted review under RAP 4.2(a)(4) to resolve issue of whether 60-day tolling provision of claims statute added 60 days to the statute of limitations period).

1. The trial court did not follow precedent:

Despite the clear mandate of *Wilson v. The City of Monroe*, 88 Wn. App. 113, 126, 943 P.2d 1137, review denied, 134 Wn.2d 1028, 958 P.2d 318 (1997), that RCW 49.17.060(2)⁷ is not

⁷ RCW 49.17.160(2): Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the director alleging such discrimination. Upon receipt of such complaint, the director shall cause such investigation to be made as he deems appropriate. If upon such investigation, the director determines that the provisions of this section have been violated, he shall bring an action in the superior court of the county wherein the violation is alleged to have occurred against the person or persons who is alleged to have violated the provisions of this section. If the director determines that the provisions of this section have not been violated, the employee may institute the action on his own behalf within thirty days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

the exclusive remedy for a person wrongfully discharged for reporting a violation to WISHA, the trial court barred Julie Anderson's wrongful discharge claim. The trial court refused to allow Julie Anderson to proceed against the Defendants "because Anderson chose to ignore this statutory remedy."

The *Wilson* opinion is binding precedent from Division I. The *Wilson* court held that RCW 49.17.060(2) did not intend to provide the exclusive remedy to a person who has been wrongfully discharged. 88 Wn. App. at 125. The court made this determination based on the language contained in the statute. *Id.* The statute uses the word "may" "in reference to the employee's initiation of the process of obtaining relief" and uses the word "shall" "regarding what must be done in response to the employee's complaint." *Id.* The reading of this statute, combined with the vital state interest that employees be given a right to sue for discharges in violation of public policy, resulted in the court permitting the plaintiff's case to move forward. *Id.* at 120, 125.

In the summary judgment order dated July 17, 2007, the trial court dismissed Ms. Anderson's retaliatory discharge claim noting that "*because Anderson chose to ignore this statutory remedy, she cannot now argue that public policy against wrongful discharge is threatened if her common law tort claim is not recognized.*" The trial court's order does not cite or mention controlling precedent such as *Wilson*. The Anderson family believes that *Wilson* is controlling authority, runs directly contrary to Akzo Nobel arguments, and was not cited and/or properly considered by the trial court.

This court has an opportunity to resolve this conflict and clarify this area of the law. Washington has a strong interest to protect employees who are subjected to hazardous work conditions. Washington employees who are suffering in these hazardous work environments and

who report WISHA violations should not be further punished by their employer. Employees need to feel free to report these violations and feel secure in their employment. If terminated, these employees need to know what methods of recourse are available to them.

2. Conclusion:

Because the law and policies related to the protection of employees in the workplace are implicated, and clear precedent is needed in relation to the requirements set forth under RCW 49.17.160, the Anderson family respectfully requests that this Court accept review of this matter pursuant to RAP 4.2(a)(3) and (4).

V. CONCLUSION

Direct review of these matters should be granted in accordance with RAP 4.2(a)(3) and (4) for the reasons set forth herein. The lower courts need clear guidance as to (1) whether a mother can be held at fault for working during pregnancy, (2) the proper application of the *Frye* test, and (3) clarification of the requirements set forth under RCW 49.17.160 are needed in order to perpetuate workplace safety. This motion should be granted.

RESPECTFULLY SUBMITTED this 16 day of October, 2008.

CONNELLY LAW OFFICES

By _____
John R. Connelly, Jr., WSBA #12183
Lincoln C. Beauregard, WSBA #32878
Attorneys for the Anderson family

82264-6

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2008 OCT 20 P 3:04

BY RONALD H. CARPENTER

King County Superior Court No. 07-2-10209-4

CLERK

bjh

WASHINGTON STATE SUPREME COURT

Julie Anderson, individually and on behalf of Dalton Anderson, a minor, and Darwin Anderson,

Appellant,

vs.

Akzo Nobel Coatings, Inc. and Keith Crockett,

Respondents

APPENDIX PURSUANT TO RAP 10.8(a)(8)

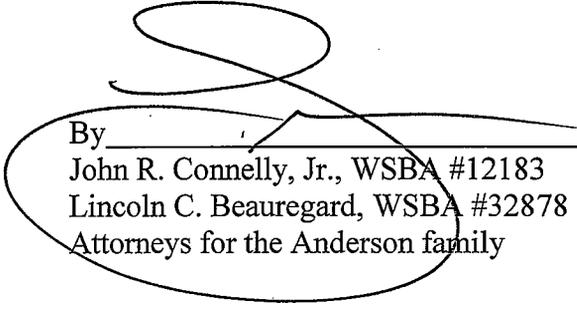
John R. Connelly, Jr, WSBA No. 12183
Lincoln C. Beauregard, WSBA No. 32878
CONNELLY LAW OFFICES
2301 N. 30th Street
Tacoma, Washington 98403
(253) 593-5100
Fax (253) 593-0380

 ORIGINAL

Pursuant to RAP 10.3(a)(8), selected supportive documents are attached as an appendix hereto. Those documents including the declarations of Julie Anderson, Richard Gleason, and Lincoln C. Beauregard.

RESPECTFULLY SUBMITTED this 16 day of October, 2008.

CONNELLY LAW OFFICES



By _____
John R. Connelly, Jr., WSBA #12183
Lincoln C. Beauregard, WSBA #32878
Attorneys for the Anderson family

RECEIVED
2007 JUL -2 PM 1:45
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

THE HONORABLE HARRY MCCARTHY

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JULIE ANDERSON, individually and on behalf
of the Estate of DALTON ANDERSON, and
DARWIN ANDERSON, individually,

NO. 07-2-10209-4 SEA

DECLARATION OF JULIE A.
ANDERSON

Plaintiffs,

v.

AKZO NOBEL COATINGS, INC., and KEITH
CROCKETT, a Washington resident,

Defendants.

Julie A. Anderson declares and states:

1. I began employment with Akzo Nobel on or about April 13, 1998. Shortly thereafter, I was put in the position of "Operations Assistant" that same year. In July of 1998, I was appointed by "default" as the Health, Safety, and Environmental (HSE) Coordinator for facility located in Pacific, Washington. I continued to receive advancement and performance awards with consistent raises within Akzo Nobel, and was promoted to the position of "Operations Supervisor" in September of 1999. In or around February of 2004, with

DECLARATION OF JULIE A. ANDERSON - 1 of 5

Law Offices of John R.
Connelly, Jr.
2301 N. 30th Street
Tacoma, Washington 98403



1 restructuring, my position title changed to that of "Office Supervisor" for the entire Pacific
2 Washington facility.

3 2. Throughout the course of my employment, I was continually noted as a quality
4 employee and was placed in position of supervision over other employees including Betty
5 Craig and Joyce Smith. Encompassed within my responsibilities was involvement in paint
6 mixing operations, and paint spill clean up when necessary, both of which I did routinely
7 through the course of employment with Akzo Nobel and is documented in my employment
8 records and the paint mixing logs.

9 3. Sometime around the end of 1998 or beginning of 1999, I was informed by my
10 supervisor, Keith Crockett, I did not need to wear a respirator when mixing toxic paint
11 because the air monitoring that was conducted by Akzo Nobel headquarters, *i.e.* Richard
12 Callewaert, had purportedly determined that there was no health threat. Thereafter, I mixed
13 paint regularly without a respirator until learning that I was pregnant with Dalton on or around
14 May 31, 1999^{OR EARLY JUNE 1999}. I asked Mr. Crockett if it was safe to mix paint while I was pregnant, and Mr.
15 Crockett told me that it was fine, but that perhaps I should now wear a respirator. I mixed
16 paint routinely throughout the course of my pregnancy while always using the same
17 respirator.
18
19

20 4. On January 30, 2000, I gave birth to my son, Dalton. As time passed, it
21 became evident that Dalton suffered from medical abnormalities. In 2003, I began suspecting
22 that Dalton's injuries might be caused by the *in utero* toxic paint exposure and hired lawyers
23 to help me investigate the possibility. The treating doctors repeatedly ruled out alternative
24 causes of Dalton's malformations, but did not make the connection between the toxic
25
26

DECLARATION OF JULIE A. ANDERSON - 2 of 5

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2301 N. 30th Street
Tacoma, Washington 98403

1 exposures that occurred *in utero* at Akzo Nobel until March 24, 2004. More specifically, in
2 March of 2003, Dr. Joseph A. Robinette did not confirm the connection (Exhibit A: "*would*
3 *require an opinion from someone with much more experience in the field*"), in September of
4 2003 Dr. Glenn C. Tripp did not confirm the connection (Exhibit B: "*I am not an expert in*
5 *such matters and could not make any credible comments*"), but then, after a visit in March of
6 2004, Dr. Chris B. Stefanelli did confirm the connection between Dalton's malformations and
7 paint exposure at Akzo Nobel (Exhibit C: "*Dalton...has had significant medical problem;*
8 *very likely as a result of significant exposure to organic solvents while in utero...*") in a chart
9 note which was courtesy copied to me.
10

11 5. Over the period from 2003, and beyond, I aggressively tried to find out if a
12 medical connection existed between Dalton's malformations and the safety violations that
13 were occurring at Akzo Nobel. It is my understanding that without having a competent
14 medical practitioner that can support this medical connection, we did not have a legal claim
15 against Akzo Nobel. After Dr. Robinette was unable to make this connection earlier that year,
16 and after I learned of the air monitoring results in the summer of 2003, I approached Dr.
17 Tripp, to include providing a copy of a JAMA article authored by a leading authority in the
18 field, Dr. Khattak, to see if a medical connection could be made. I was disappointed to learn
19 that though Dr. Tripp would not offer an opinion in that respect. Later, in March of 2004, Dr.
20 Stefanelli did make the connection.
21

22 6. My suspicions with respect to Dalton's malformations prompted me to
23 complain about the substandard safety practices to WISHA in 2003. As a result, WISHA
24 conducted inspections at the Pacific, Washington facility, noted several safety violations, and
25
26

DECLARATION OF JULIE A. ANDERSON - 3 of 5

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1 cited Akzo Nobel for poor safety practices. (Exhibit D) From the WISHA and 3M.
2 investigators, in my capacity as the HSE Coordinator, I learned that Akzo Nobel's respirator
3 program was all wrong, and that the process utilized for collecting air monitoring data was
4 skewed in such a way that resulted in inaccurately low exposure results. Based upon testing
5 that was prompted by me in my capacity as the HSE Coordinator, I learned that respirators
6 were not only required while mixing paint, but that the respirators must be changed out after
7 every 8 hours of usage, *i.e.* every day.
8

9 7. Almost a year later, the safety conditions at Akzo Nobel had not gotten better,
10 and I complained again to WISHA in writing, on June 10, 2004, to include explaining that
11 supervision had lied to safety inspectors about the conditions at the Pacific, Washington
12 facility. (Exhibit E) The supervision had also intentionally taken toxic leaking and open
13 containers from the warehouse as well as removing often used paint related toxic products
14 from the mixing room prior to the WISHA testing. The form that I filled out that, upon my
15 election, the complaint to WISHA would not remain anonymous. On or about June 29, 2004,
16 the WISHA inspectors conducted a surprise inspection stemming from my formal complaint,
17 and Akzo Nobel was again cited for an assortment of safety violations. (Exhibit F) The next
18 day, on June 30, 2004, my supervisors decided, after over six years of very successful
19 employment with repeated promotions, bonuses and awards, and without instilling any form
20 of progressive discipline (Exhibit G), to terminate my employment because I had purportedly
21 taken \$40.00 worth of paint weeks earlier without permission. (Exhibit H)
22
23

24 8. Thereafter, on July 30, 2004, my supervisors evidently explained to a WISHA
25 investigator that one of the reasons that the safety standards were not met was because the
26

DECLARATION OF JULIE A. ANDERSON - 4 of 5

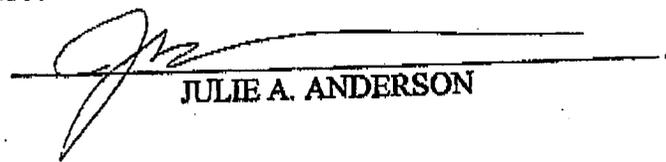
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Connelly, Jr.
2301 N. 30th Street
Tacoma, Washington 98403

1 HSE Coordinator, me, was no longer with the company to provide training. (Exhibit I) On or
 2 about August 12, 2004, I received a letter from a WISHA investigator indicating that at the
 3 Pacific, Washington facility, *"it was determined that air monitoring in the warehouse was not
 4 necessary as employee exposure to organic solvents was found to be well below WISHA (sic)
 5 permissible limits during a previous inspection at this location."*¹

6
 7 9. Because I had been the HSE Coordinator in charge of the air monitoring
 8 process, and because in 2003 I conducted proper air monitoring that determined WISHA's
 9 statements about exposure levels to be entirely inaccurate, I knew that the WISHA
 10 investigator had been duped by Akzo Nobel. At that point, turning to WISHA seemed like a
 11 lost cause. Akzo Nobel had made me out to be a liar, and there was very little that I could do.

12
 13
 14
 15 DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
 16 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

17
 18 Dated this 24 day of June, 2007.

19
 20 
 21 JULIE A. ANDERSON

22
 23
 24
 25
 26 ¹ Exhibit B to Declaration of William Walsh.

EXHIBIT A

GIFT Clinic

502 South M Street, #200
Tacoma WA 98405
R.Z. Mc Lees, M.D.

Joseph A. Robinette, M.D.

P.O. Box 8550
Tacoma WA 98418
Theresa L. Froelich, D.O.

March 5, 2003

ATTN: Kimberly C. Dodds
Law Office of R. Randall Harrison
610 South J Street
Tacoma, Washington 98405

RE: Julie Anderson

Dear Ms. Dodds:

I have reviewed your letter dated February 21, 2003 regarding Julie Anderson and Dalton Anderson, and will forward to you the requested information. As you stated, Julie's pregnancy was complicated in several ways, first being that she was noted at the initial confirmation of her pregnancy to have a marginal level of progesterone and we believe this to be a risk factor for potential early miscarriage. As a result, she was started on progesterone supplementation at that time. There was also in the early portion of the gestation a small area of subchorionic hemorrhage. However, this was minor and it is my impression that this was not a specific factor in terms of the long-term prognosis for the pregnancy. Progesterone support in Julie's pregnancy was also felt to be advisable given the fact that there was a prior history of miscarriage as well.

At a slightly later time the patient's pregnancy was complicated because of concerns over threatened pre-term labor, this on the basis of increased uterine activity and evidence on ultrasound surveillance of significant shortening in the length of her cervix, which is felt to be a marker for potential pre-term delivery. This necessitated the patient's period of bed rest and diminished activity that you alluded to in your letter.

Finally, of course, was the diagnosis during the mid portion of the patient's pregnancy of the problem with the multicystic kidney, which was then monitored through the remaining portion of the pregnancy.

Telephone: 253-475-5433

Facsimile: 253-473-6715

Kimberly C. Dodds
RE: Julie Anderson
March 5, 2003
Page 2

Specifically with regard to your question as to whether there could be any correlation between these complications in Julie's pregnancy and the threatened pre-term labor and the low progesterone, I can only answer that by saying that we see a significant percentage of pregnancies that are complicated by low progesterone and the need for pregnancy support, and also pregnancies that are associated with risk for pre-term delivery, and the latter can occur for a variety of different reasons. However, I am not aware of any case in my own personal experience, nor am I aware of any reported case, where there was a suggested association between initial low progesterones in a pregnancy, a threatened pre-term labor, and the diagnosis of multicystic kidney and /or congenital brain malformation. As a result, it would be my medical opinion that there is no likely causal relationship between a low progesterone, threatened pre-term labor, and the problem with the congenital brain and this type of kidney disease.

I would also suspect that the minor problem that the patient experienced early in the pregnancy with bleeding secondary to the slight placental separation would not have been a likely explanation for these later problems with the infant either. I say that based on the fact that we see pregnancies that are complicated by areas of placental separation and varying degrees of bleeding with some regularity and we have had no prior occurrence of this problem in infants at the time of subsequent delivery.

The knots in the umbilical cord are not an infrequent occurrence during pregnancies normally. It was somewhat unusual that in this particular case there were two knots in the umbilical cord, but again this is generally not believed to be a significant risk factor regarding the pregnancy unless there is associated evidence that the knot in the cord is in some fashion compromising blood flow in terms of exchange between the fetus and the placenta. I do not believe that this was ever suspected or documented on the basis of the multiple ultrasounds that were performed during Julie's pregnancy.

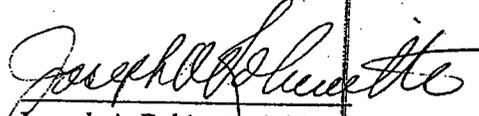
Regarding Julie's medical condition, as you stated in your letter she did have a hysterectomy performed in May 2000 and the indication for this procedure was a marked degree of uterine prolapse which started troubling the patient at and after her delivery. Uterine prolapse is one manifestation of a more generalized condition that we refer to as pelvic relaxation syndrome and it is recognized to be a fairly common occupational hazard, if you will, of childbirth. Varying degrees of relaxation probably occur in most women. In some instances it can become severe enough to necessitate the performing of a surgical procedure such as was the case with Julie.

Kimberly C. Dodds
RE: Julie Anderson
March 5, 2003
Page 3

Whether or not the potential toxin exposures that you are investigating had anything to do with making the patient more predisposed to this particular problem is something about which I have no specific information. I have no real expertise in the areas of toxicology or teratology, and so it would require an opinion from someone with much more experience in those fields to comment on that definitively. I think it is probably fair to say, however, that the exact manner in which potential toxins can impact negatively on one's health are not very well understood. Almost all the information that we do have has been gleaned from animal studies and whether they accurately predict what the impact will be on humans is still not entirely clear. Thus, the potential that in some fashion her chemical exposures would have predisposed her to other problems certainly exists, I just cannot comment as to how likely that might be.

I hope this letter addresses your questions satisfactorily.

Sincerely,



Joseph A. Robinette, M.D.

JAR/kbs

EXHIBIT B

Office Visit

Dalton D Anderson (MR# 511317)

Visit Summary

| Encounter Information | Date & Time | Provider | Department | Encounter# | Center |
|-----------------------|--------------------|---------------|--------------|------------|-------------|
| | 09/16/2003 3:30 PM | Glenn C Tripp | Mbch Tac Dbp | 12634489 | MBCH TACOMA |

Resident/Faculty Resident/Faculty

Reason for Visit Reason for Visit
Speciality Followup [345]

Diagnoses Visit Diagnoses
BRAIN ANOMALY NEC (NEURONAL MIGRATION DEFECT) [742.A]
CONGENITAL HEMIPLEGIA [343.1]
MICROCEPHALUS [742.1]
MIXED DEVELOPMENT DIS [315.5]

Documentation

| Vitals | Ht | Wt | HC |
|--------|----------------|--------------------|--------|
| | 3' 4" (1.016m) | 35 lbs (15.876 kg) | 47.5cm |

Tobacco use verified this encounter: No

Extended Vitals No data present for this filed form

Provider Notes DEVELOPMENTAL BEHAVIORAL PEDIATRICS

I saw Dalton today for a repeat evaluation of mixed developmental delays associated with documented heterotopic gray matter (neuronal migration defect), right hemiparesis, and microcephalus (<5%). Dalton was again referred by the PCP. Dalton was accompanied today by his parent.

Dalton is currently 3.8 years old. I last saw Dalton when he was 20 months old (10/15/01). The interval medical, developmental, behavioral, academic, and/or family history was reviewed. I also reviewed all relevant primary and sub-specialty medical records and interim developmental, behavioral and/or educational assessment data. I also reviewed recent speech, OT and PT progress reports from the CTV, GSH, Puyallup.

Dalton's mother remains very concerned that she was exposed to organic solvents at her job while pregnant with Dalton. She has tried to research the potential teratogenic effects of such exposure; she provided a copy of a JAMA article on this subject (March, 1999). I previously explained to both Dalton's parents and to their attorney that I am not an expert in such matters and could not make any credible comments on the relationship of this potential exposure and Dalton's neurologic deficits. I would imagine an expert in medical or industrial toxicology would be a better source of information. However, Dalton's does have documented neuronal migration defects, which can be associated with a number of disturbances to early embryonic development, including chromosomal defects. Further genetics studies do appear indicated to me.

Dalton appeared in stable health today. Interim ROS is negative for relevant acute or chronic health concerns. Growth parameters have remained stable during this interval; his HT and WT are consistently at the 59% isobar. His head

circumference is 47.5 cm (<5%); however, his OFC growth velocity has stayed remarkably parallel to the 5% isobar over time. General physical and neurological status appears unremarkable excluding residual mild right hemiparesis. Mental status examination remains appropriate. No extremes in temperament, mood, or behavior were noted today. Dalton continues to demonstrate delays in motor, communication, cognitive, and adaptive behavior domains.

Impression:

- BRAIN ANOMALY NEC (NEURONAL MIGRATION DEFECT) [742.4]
- CONGENITAL HEMIPLEGIA [343.1]
- MICROCEPHALUS [742.1]
- MIXED DEVELOPMENT DIS [315.5]

Recommendations:

1. Continued developmental and behavioral surveillance by the primary care provider.
2. Chromosome karyotype, Fragile X DNA analysis, and FISH for subtelomeric deletions. Justification: standard genetic tests in diagnostic evaluation of idiopathic DD, MR, and/or autism. Testing deferred pending PCP authorization.
3. I would also recommend Dalton be referred to a pediatric cardiologist for evaluation of possible subtle cardiac anomalies; this recommendation is based on the high frequency of cardiac defects associated with many chromosomal, syndromic, and teratogenic conditions. An echocardiogram may be indicated. PCP authorization is likely required.
4. Continue individual physical therapy services at CTU, GSH, Puyallup. Specific goals and objectives will be listed in separate therapy progress reports.
5. Continue individual occupational therapy services at CTU, GSH, Puyallup. Further evaluation and intervention for sensory processing problems appears warranted. Specific goals and objectives will be listed in separate therapy progress reports.
6. Continue individual speech therapy services at CTU, GSH, Puyallup. Specific goals and objectives will be listed in separate therapy progress reports.
7. Follow up evaluations with pediatric neurology, MBCH, as indicated.
8. Follow up appointment with me at the discretion of the parents and/or PCP.

Appointment Type: Specialty followup; face to face counseling >50% of appointment (Duration: >25 minutes).

Glenn C. Tripp, MD, FAAP
Diplomat,
American Board of Pediatrics
American Board of Developmental Behavioral Pediatrics

- Cc: 1. Primary care provider
2. Parents

Allergies as of 09/16/2003 (Not on File)

Disposition and Follow Up

Disposition and Follow Up Disposition
Return Visit PRN, at the discretion of the parents and/or PCP.

Level Of Service Level of Service
OFFICE/OUTPT VISIT,EST,LEVL IV [99214]

Encounter Status

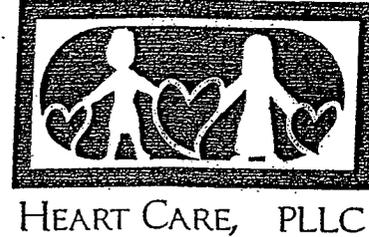
Electronically Closed By TRIPP MD, GLENN on 10/12/03 at 5:55 PM

EXHIBIT C

PUYALLUP CLINIC
March 24, 2004

Brian Schoos, M.D.
1706 S Meridian, Suite 120
Puyallup, WA 98371

Sent to
SH
5/20/04



ANDERSON, Dalton D.

MED REC#: 580659
DOB: 1/31/2000

Dear Dr. Schoos:

I had the pleasure of seeing your patient, Dalton Anderson, along with his parents in consultation on March 24, 2004. As you recall, Dalton is a 4-1/12-year-old male who has had significant medical problems very likely as a result of significant exposure to organic solvents while in utero. Dalton's mother was occupationally exposed during the duration of the pregnancy with Dalton. He has a clearly maldeveloped brain as well as a multicystic, dysplastic kidney. He has delayed fine motor, gross motor, and speech development. He is followed by Dr. Makari for neurologic issues and by Dr. Ghandi for the dysplastic kidney.

There have been no specific concerns regarding Dalton's cardiac status, but in light of the multiple congenital defects a screening evaluation is certainly warranted. Dalton is quite active and has no trouble keeping up with his peers. The cardiovascular review of systems is noncontributory.

MEDICATIONS: None.

ALLERGIES: None.

FAMILY HISTORY: The family history also is noncontributory. Dalton has three teenaged siblings, all of whom are healthy. There is no history of congenital heart disease in the family.

PHYSICAL EXAMINATION: Weight 17.7 kg (50-75%). Height 107 cm (75-90%). Pulse 90, respiratory rate 20. Blood pressure in the right upper extremity 92/60. In general, Dalton is a delightful, engaging young man. He does have a clear speech delay and, by observation, a motor delay as well. Auscultation of the lungs reveals clear aeration throughout. The chest is symmetric. The cardiovascular exam reveals normal activity in the precordium. The S₁ is normal. The S₂ is physiologically split. There is no S₃ or S₄. I do not appreciate a murmur, click, gallop, or rub. The pulses are 2+ in all four extremities. The abdomen is soft and nontender with no hepatomegaly. The extremities are warm and pink.

ECG: A 12-lead electrocardiogram shows normal sinus rhythm with a ventricular rate of 93 BPM. The axes, intervals, and durations are all normal. This is a normal study.

ECHOCARDIOGRAM: A complete echocardiogram shows normal atrial and abdominal situs. The segmental anatomy is normal. The heart chambers are all normal in size. There is good biventricular contractility. The valves all have a normal appearance. There is no intracardiac shunt. This also is a normal study.

DIAGNOSIS:

1. History of congenital abnormalities associated with in utero organic solvent exposure.
 - a. Normal cardiac evaluation including physical examination, electrocardiogram, and echocardiogram.

OFFICE: 253/396-4868 · TOLL FREE: 866/257-9583 · FAX: 253/396-4870
314 MARTIN LUTHER KING JR. WAY #303 · TACOMA, WA 98405
WWW.NORTHWESTCHILDRENSHEARTCARE.COM

ANDERSON, Dalton D.

March 24, 2004

Page Two

DISCUSSION: I discussed my normal findings with Dalton's parents; they seemed quite relieved. Of course no special precautions will be necessary and I have scheduled no further followup.

Thanks very much for the opportunity to participate in the care of this very nice family. Please call with any questions or concerns.

Sincerely,



Chris B. Stefanelli, M.D., F.A.A.P.
Pediatric Cardiology

CBS/cmt

cc: Julie A. Anderson

EXHIBIT D

Department of Labor & Industries
WISHA SERVICES DIVISION
315 5th Ave S, Suite 200
Seattle, WA 98104



Employer Certification of Abatement
(See Citation & Notice for Violation Description(s))

To:
AKZO NOBEL COATINGS INC
5555 SPALDING DR
NORCROSS, GA 30092

Inspection Number: 306339979
Inspection Date(s): 04/15/2003
Issuance Date: 09/02/2003
Optional Report #: S20234580
Reporting I.D.: 1055320
U.B.I. #: 600529805
CSHO: D0483

Inspection Site:
206 FRONTAGE ROAD N
Pacific, WA 98047

~~The above violation was corrected on 09/24/2003~~

Type of Violation: General -- Citation & Item: 01-003 -- WAC 296 Standard 062-07188
The hazard referenced in this violation was corrected on / / by taking the following action:

respirator training for seal check etc
completed with fit test on 6/5/03.

I certify that the above violation(s) have been corrected as documented and that the affected employees and their representatives have been informed of the abatement activities described in this certification. I certify that this information is accurate. I am aware that knowingly providing false information regarding WISHA requirements may result in Criminal penalties. (RCW 49.17.190(2))

Michael Lobrete
Employer Signature

9/9/03
Date

Michael Lobrete
Employer Name (Print)

Regional Mgr.
Title

503-572-5366
Phone

THIS AREA FOR STATE USE ONLY

Reviewer

Date

AK00033

Department of Labor & Industries
WISHA SERVICES DIVISION
315 5th Ave S, Suite 200
Seattle, WA 98104



Employer Certification of Abatement
(See Citation & Notice for Violation Description(s))

To:
AKZO NOBEL COATINGS INC
5555 SPALDING DR
NORCROSS, GA 30092

Inspection Number: 306339979
Inspection Date(s): 04/15/2003
Issuance Date: 09/02/2003
Optional Report #: S20234580
Reporting I.D.: 1055320
U.B.I. #: 600529805
CSHO: D0483

Inspection Site:
206 FRONTAGE ROAD N
Pacific, WA 98047

~~All violations must be abated no later than 09/20/2003~~

Type of Violation: General -- Citation & Item: 01-001 -- WAC 296 Standard 062-07160
The hazard referenced in this violation was corrected on / / by taking the following action:

Fit testing completed for all Branch employees
on 6/5/03 by 3m.

~~All violations must be abated no later than 09/20/2003~~

Type of Violation: General -- Citation & Item: 01-002 -- WAC 296 Standard 062-07131 04
The hazard referenced in this violation was corrected on / / by taking the following action:

Change out schedule completed by 3m monitoring
on mixing paint / and spills clean up as request

I certify that the above violation(s) have been corrected as documented and that the affected employees and their representatives have been informed of the abatement activities described in this certification. I certify that this information is accurate. I am aware that knowingly providing false information regarding WISHA requirements may result in Criminal penalties. (RCW 49.17.190(2))

Michael Lobate
Employer Signature

9/9/03
Date

Michael Lobate
Employer Name (Print)

Regional Mgr.
Title

503-572-5366
Phone

THIS AREA FOR STATE USE ONLY

Reviewer _____

Date _____

AK00034

Department of Labor & Industries
WISHA SERVICES DIVISION
315 5th Ave S, Suite 200
Seattle, WA 98104



Employer Certification of Abatement
(See Citation & Notice for Violation Description(s))

To:
AKZO NOBEL COATINGS INC
5555 SPALDING DR
NORCROSS, GA 30092

Inspection Number: 306339979
Inspection Date(s): 04/15/2003
Issuance Date: 09/02/2003
Optional Report #: S20234580
Reporting I.D.: 1055320
U.B.I. #: 600529805
CSHO: D0483

Inspection Site:
206 FRONTAGE ROAD N
Pacific, WA 98047

~~The citation is hereby withdrawn based on the date 09/02/2003~~

Type of Violation: General -- Citation & Item: 01-004 -- WAC 296 Standard 800-13020 01
The hazard referenced in this violation was corrected on / / by taking the following action:

Regional technical consultant will provide
Monthly safety meeting that are documented

I certify that the above violation(s) have been corrected as documented and that the affected employees and their representatives have been informed of the abatement activities described in this certification. I certify that this information is accurate. I am aware that knowingly providing false information regarding WISHA requirements may result in Criminal penalties. (RCW 49.17.190(2))

Michael Labrete
Employer Signature

9/9/03
Date

Michael Labrete
Employer Name (Print)

Regional Mgr.
Title

503-572-5366
Phone

THIS AREA FOR STATE USE ONLY

Reviewer

Date

AK00035

Anderson, J (Julie)

From: Nielsen, B (Bryan)
Sent: Tuesday, September 09, 2003 11:39 AM
To: Kraselsky, G (Ginny)
Cc: Anderson, J (Julie); LoPrete, M (Michael)
Subject: Washington L&I

Hi all -

I reference to:

Citation #1 - No annual fit testing -This was completed by the 3M company (Julie has documentation)
Citation #2 - No Change out schedule -Change out schedule out is now in place (Julie has documentation)
Citation #3 - No respirator training -This was completed by the 3M company (Julie has documentation)
Citation #4 - No safety committee in place -Because we have less that 11 employees at this location we have decided to have the Branch or Regional Manager incorporate a safety meeting with the sales meeting each month. someone should be appointed to document and file the training.

Mike & Julie please correct me on any errors.

Thanks,

Bryan

T.T. Virgil on 9/9 d'he said he isn't qualified to do Safety meetings, but he would contact Richard Lawrie (he is currently being trained for such).

9/9 - Virgil old back i sd safety meetings will begin soon, they are working on an agenda Richard Lawrie i himself

9/9/2003

AK00036

Department of Labor & Industries
WISHA SERVICES DIVISION
 PO Box 44604
 Olympia, WA 98504-4604



To:
 AKZO NOBEL COATINGS INC
 Attn: Joyce Leger-Woodard
 5555 SPALDING DR
 NORCROSS, GA 30092

Inspection Site:
 206 FRONTAGE ROAD N
 Pacific, WA 98047

Inspection Number: 306339979
Inspection Date(s): 04/15/2003-05/29/2003

Issuance Date: 09/02/2003
Optional Report #: S20234580
Reporting I.D.: 1055320
U.B.I.#: 600529805
CSHO: D0483

Citation and Notice of Assessment

A copy of this Citation & Notice of Assessment must be prominently posted immediately upon receipt at or near each place a violation occurred or at a location where employees normally receive posted information (RCW 49.17.120). It must remain posted until all violations cited therein are corrected, or for three (3) days, whichever period is longer.

SEE ATTACHED NOTICE OF RIGHTS AND DUTIES REGARDING THIS CITATION

Penalties are due within 15 days of receipt of this notification unless appealed.

Make check or money order payable to
 DEPARTMENT OF LABOR & INDUSTRIES
 Include Inspection Number on remittance.

**CERTIFICATION OF ABATEMENT IS REQUIRED FOR ALL VIOLATIONS
 NOT CORRECTED AT THE TIME OF INSPECTION**

NATURE OF ALLEGED VIOLATIONS OBSERVED DURING INSPECTION
 UNLESS OTHERWISE NOTED ALL CITATIONS ARE TO TITLE 296 WAC

Citation & Notice of Assessment

Page 1 of 5

WISHA-2 (Rev.01-99)

Employer Copy - White
 Copy - Grey

Region Copy - Pink

CSHO Copy - Green

IMIS Copy - Yellow

Appeals

AK00037

Department of Labor & Industries
WISHA SERVICES DIVISION
PO Box 44604
Olympia, WA 98504-4604

Inspection Number: 306339979
Inspection Dates: 04/15/2003-05/29/2003
Issuance Date: 09/02/2003
CSHO ID: D0483
Optional Inspection Nbr: S20234580



Citation and Notification of Penalty

Company Name: AKZO NOBEL COATINGS INC
Inspection Site: 206 FRONTAGE ROAD N, Pacific, WA 98047

Citation 1 Item 1 Type of Violation: **General**

296-62-07160

The employer did not make sure that employees using a negative or positive pressure tight-fitting facepiece respirator pass an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT) prior to the initial use of the respirator. Respirator fit-tests must be conducted annually thereafter.

✓ Done on @ 4/5/03

I had 3m come in & handle this

| | |
|--|------------|
| Date by which violation must be abated | 09/20/2003 |
| Proposed Penalty | \$ 0.00 |

Department of Labor & Industries
WISHA SERVICES DIVISION
PO Box 44604
Olympia, WA 98504-4604

Inspection Number: 306339979
Inspection Dates: 04/15/2003 - 05/29/2003
Issuance Date: 09/02/2003
CSHO ID: D0483
Optional Inspection Nbr: S20234580



Citation and Notification of Penalty

Company Name: AKZO NOBEL COATINGS INC
Inspection Site: 206 FRONTAGE ROAD N, Pacific, WA 98047

Citation 1 Item 2 Type of Violation: General

*I did this with the
Monitors by 3m.*

296-62-07131(4)

The employer failed to determine and implement a change out schedule for the organic vapor cartridges used in conjunction with the air-purifying respirators employees are required to wear when mixing paints and during spill clean up operations.

The change out schedule must be based on objective information or data that will make sure that canisters and cartridges are changed before the end of their service life. The basis for the canister and cartridge change schedule must be described in the written respiratory protection program.

Date By Which Violation Must Be Abated: 09/29/2003
Proposed Penalty: \$ 0.00

Citation 1 Item 3 Type of Violation: General

done on 6/5/03

296-62-07188

The employer did not ensure that respirator users were provided with training in how to check the seals on a respirator, the procedures for maintaining and cleaning the respirator, the respiratory hazards to which they are potentially exposed, and the general provisions of WAC 296-62 Part E, Respiratory Protection.

Date By Which Violation Must Be Abated: 09/20/2003
Proposed Penalty: \$ 0.00

Department of Labor & Industries
WISHA SERVICES DIVISION
PO Box 44604
Olympia, WA 98504-4604

Inspection Number: 306339979
Inspection Dates: 04/15/2003 - 05/29/2003
Issuance Date: 09/02/2003
CSHO ID: D0483
Optional Inspection Nbr: S20234580



Citation and Notification of Penalty

Company Name: AKZO NOBEL COATINGS INC
Inspection Site: 206 FRONTAGE ROAD N, Pacific, WA 98047

Citation 1 Item 4 Type of Violation: General *for Michael about one a month*

296-800-13020(1)

The employer did not establish and conduct a safety committee.

****Note:** In the alternative, employers with fewer than 11 employees at one location may choose to hold monthly safety meetings involving all staff instead of establishing a safety committee.

ATTENTION EMPLOYER, IF YOU HAVE ANY QUESTIONS OR ARE IN NEED OF CLARIFICATION IN REFERENCE TO THIS CITATION. PLEASE CALL THE COMPLIANCE SUPERVISOR AT (206) 515-2800.

Date By Which Violation Must be Abated: 09/16/2003
Proposed Penalty: \$ 0.00

Michael A. Silverstein
Assistant Director, WISHA SERVICES

Department of Labor & Industries
WISHA SERVICES DIVISION
PO Box 44604
Olympia, WA 98504-4604

Inspection Number: 306339979
Inspection Dates: 04/15/2003 - 05/29/2003
Issuance Date: 09/02/2003
CSHO ID: D0483
Optional Inspection Nbr: S20234580



Citation and Notification of Penalty

Company Name: AKZO NOBEL COATINGS INC
Inspection Site: 206 FRONTAGE ROAD N, Pacific, WA 98047

SUMMARY OF PROPOSED PENALTIES

Summary of Penalties for Inspection Number 306339979

| | | |
|---------------------------------|-------------|-------------|
| Citation 1, General | = \$ | 0.00 |
| TOTAL PROPOSED PENALTIES | = \$ | 0.00 |

AK00041

NOTICE OF RIGHTS AND DUTIES REGARDING THIS CITATION

Pursuant to the Washington Industrial Safety and Health Act (Chapter 49.17 RCW)

CITATION AND NOTICE OF ASSESSMENT - ABATEMENT - POSTING

The nature and location of a condition or conditions alleged to be in violation of Washington's safety and health standards are described on this citation with references to acceptable standards, rules, regulations and provisions of the Washington Industrial Safety and Health Act.

These conditions must be corrected on or before the date shown for each citation item (date to the right of "Date By Which Violation Must be Abated;"). (RCW 49.17.120).

The Act requires that a copy of the citation(s) be immediately and prominently posted at or near each place a violation referred to in the citation occurred (RCW 49.17.120). It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer (WAC 296-800-35016). A sufficient number of copies of the citation(s) should be prepared to permit posting in accordance with the requirements of the Act.

RIGHTS OF EMPLOYER

Appeal of Citation and Notice of Assessment

This CITATION & NOTICE OF ASSESSMENT shall be deemed to be a final order of the Department and not subject to review by any court or agency unless, within fifteen (15) working days from the receipt of this CITATION & NOTICE OF ASSESSMENT, the employer submits a Notice of Appeal. A Notice of Appeal should be mailed or otherwise delivered to the Assistant Director for WISHA Services Division at PO Box 44804, Olympia, Washington 98504-4604. The term "working day" means a calendar day except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050 (RCW 49.17.140 and 49.17.020(9)).

The employer may appeal any or all of the violation(s) cited, or any or all of the proposed penalties, or any combination of these.

A Notice of Appeal filed pursuant to RCW 49.17.140 should contain the following:

- (1) The name and address of the appealing party and representative, if any.
- (2) The place where the alleged violation occurred.
- (3) A statement identifying the citation (citation number and date of issuance).
- (4) The grounds upon which the appealing party considers the order, decision or citation to be unjust or unlawful.
- (5) A statement of facts in support of each of the grounds stated.
- (6) The relief sought, including the specific nature and extent.
- (7) A statement that the person signing the notice of appeal believes there are grounds to support it.

Extension of Abatement Date(s)

If the employer is making a good faith effort to abate the condition(s) in violation of the cited standard(s) but is unable to do so within the time period set for abatement, the employer may apply to the Department, before the abatement date, for an extension (RCW 49.17.140). See WAC 296-800-35056 through 296-800-35072 for rules relating to the extension of abatement dates. An appeal need not be filed to request extension of abatement dates.

RIGHTS OF EMPLOYEES OR REPRESENTATIVES OF EMPLOYEES

An employee or representative of employees may file a Notice of Appeal of the time(s) stated in the citation for the abatement of the alleged violation(s) (RCW 49.17.140). To do so, a Notice of Appeal must be sent to the Office of the Assistant Director for WISHA Services Division, Department of Labor & Industries, PO Box 44804, Olympia, Washington 98504-4604, within 15 working days from receipt of the notice. See the Rights of Employer Section above for the appropriate contents of such Notice of Appeal.

No person shall discharge or discriminate against any employee because such employee has exercised rights guaranteed him/her by the Act.

REASSUMPTION OF JURISDICTION

Upon receipt of a Notice of Appeal, the Department may reassume jurisdiction over all or any part of the subject matter of the appeal. Should jurisdiction over the matter be reassumed, the Department will issue to all affected parties a Notice of Reassumption and Informal Conference. Following a redetermination of the matter, a Corrective Notice of Redetermination will be issued (RCW 49.17.140). Such Corrective Notice shall be issued within 30 working days from the Department's receipt of the appeal notice.

ORDER FINAL IF NOT APPEALED

If a Notice of Appeal is not filed within the 15 working day period, the citation(s) and penalty assessment(s) shall be deemed final and not subject to review by any court or agency (RCW 49.17.140).

Payment of all penalties shown is to be made by check or money order payable to the order of "Department of Labor and Industries." Payment of penalties should be remitted to the WISHA Services Division Management Services/Accounting, PO Box 44835, Olympia, Washington 98504-4635. Interest of 1% per month will be charged on past due accounts per RCW 43.17.240. If the Citation is appealed, interest will not accrue until a final order has been issued.

RCW 49.17.160 states: "Civil penalties imposed under this chapter shall be paid to the Director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150."

ABATEMENT

Alleged violations that are not appealed shall be corrected within the abatement period specified in the citation. Written verification of correction must be submitted to the Department and must be posted with the Citation and Notice for at least 3 working days (WAC 296-800-35016). Failure to correct alleged violations within the abatement period may result in a further proposed assessment of penalties (RCW 49.17.140).

A follow up inspection may be made for the purpose of ascertaining that the employer has posted the citation(s) as required by the Act AND has corrected the alleged violations.

Inspection Activity Data

You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation, but not sooner than 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact the Assistant Director for WISHA Services Division at P.O. Box 44804, Olympia, Washington 98504-4604.

Department of Labor & Industries
WISHA SERVICES DIVISION
315 5th Ave S, Suite 200
Seattle, WA 98104



Employer Certification of Abatement
(See Citation & Notice for Violation Description(s))

To:
AKZO NOBEL COATINGS INC
5555 SPALDING DR
NORCROSS, GA 30092

Inspection Number: 306339979
Inspection Date(s): 04/15/2003
Issuance Date: 09/02/2003
Optional Report #: S20234580
Reporting I.D.: 1055320
U.B.I. #: 600529805
CSHO: D0483

Inspection Site:
206 FRONTAGE ROAD N
Pacific, WA 98047

EMPLOYER CERTIFICATION OF ABATEMENT
INSTRUCTION SHEET

ALL VIOLATIONS MUST BE CORRECTED ON OR BEFORE THE DATES INDICATED

Complete and submit the attached Certification of Abatement documents(s) to the Labor and Industries office listed above. Separate notices are provided for each abatement due date. Certification of Abatement notices must be submitted to the Department within ten (10) calendar days following the established correction due date(s).

NOTE: In addition to the certification of abatement requirement described above, all "willful" or "repeat" violations require additional documentation demonstrating that abatement is complete. This documentation must also be submitted for any serious violation when specifically required by the citation. Documentation meeting this requirement may include, but is not limited to, evidence of the purchase or repair of equipment, photographs, or other written records. All required documentation must be submitted to the Department with completed copies of the Certification of Abatement Notices(s). (WAC 296-800-35044)

FAILURE TO RETURN COMPLETED NOTICE WILL RESULT IN FOLLOW-UP ACTION.

FAILURE TO CORRECT THESE VIOLATIONS MAY RESULT IN SUBSTANTIAL ADDITIONAL PENALTIES.

PROVIDING FALSE INFORMATION MAY RESULT IN CRIMINAL PENALTIES.

INSTRUCTIONS FOR POSTING

Upon receipt, a copy of the Citation and Notice must be immediately and prominently posted at or near each place a violation referred to in the citation occurred (RCW 49.17.120). It must remain posted until all violations cited are corrected, or for three working days, whichever period is longer (WAC 296-800-35016).

Additionally, copies of all abatement documents or a summary of all documents submitted to the Department of Labor & Industries must be posted near the place where the violation occurred. All documents shall remain posted for at least three working days following submission to the Department of Labor & Industries and shall not be altered, defaced, or covered by other material. (WAC 296-800-35042 through 296-800-35052).

If you have any questions, please contact the office listed above.

AK00043



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

NOTICE TO EMPLOYERS

RIGHTS OF EMPLOYER — Appeal of Citation and Notice

The Department of Labor and Industries, WISHA Services Division, would like to advise you of your rights to appeal. The enclosed CITATION & NOTICE OF ASSESSMENT shall be deemed to be a final order of the Department and not subject to review by any court or agency unless, within fifteen (15) working days of receipt of this CITATION & NOTICE OF ASSESSMENT, the employer submits a Notice of Appeal. The term "working day" means a calendar day except Saturdays, Sundays, and all legal holidays.

A Notice of Appeal should be mailed or otherwise delivered to the Assistant Director for Industrial Safety & Health, ATTN: Appeals Desk, P O Box 44604, Olympia, WA 98504-4604. You may FAX your appeal to (360) 902-5581. Should you have further questions, call the appeals desk at (360) 902-5486.

The employer may appeal any or all of the violations(s) cited or the proposed penalties or any combination of these. An extension of abatement dates may be requested from your regional office.

A Notice of Appeal filed pursuant to RCW 49.17.140 should contain the following:

- (1) Name, address and phone number of individual to receive hearing notice and correspondence related to appeal.
- (2) Inspection number.
- (3) A brief statement of reason(s) for appeal.
- (4) A statement that the person signing the notice of appeal has read it and to the best of their knowledge, information and belief there is good ground to support it. A notice of appeal may be signed by the party or by their authorized representative.

You may wish to send your appeal by certified mail (optional) to verify postmark date should the need arise.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 1280
DESTINATION TEL # 17706628620
DESTINATION ID
ST. TIME 09/09 15:49
TIME USE 01'58
PAGES SENT 5
RESULT OK

SEP. 9. 2003 12:36PM

SENT BY AKZO NOBEL COATINGS

NO. 750 P. 1

Akzo Nobel Coatings, Inc.
Car Refinishes
5555 Spalding Dr.
Norcross, GA 30092
Phone: 770-798-8194
Fax: 770-662-8620



Fax

*To: Ginny
Julie / Mike
From*

From: Ginny Kraselsky
Pages: 2 (including cover page)
Date: 9-9-03
Re: **CC:**

Urgent For Review Please Comment Please Reply Please Recycle

• **Comments:**

*Please call me
to discuss.*

AK00045

*Thanks,
Contact Bryan in
Ginny*

Akzo Nobel Coatings, Inc.
Car Refinishes
5555 Spalding Dr.
Norcross, GA 30092
Phone: 770-798-8194
Fax: 770-662-8620



Fax

TO Ginny
Julie / Mike
From

From: Ginny Kraselsky

Fax: 253-735-1666

Pages: 12 (including cover page)

Phone:

Date: 9-9-03

Re:

CC:

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle

• **Comments:**

Please call me
to discuss.

Thanks,
Contact Bryan in Vegas if you need to
Ginny

This message, including attachments, is confidential and may be privileged. If you are not an intended recipient, please notify the sender then delete and destroy the original message and all copies. You should not copy, forward and/or disclose this message, in whole or in part, without permission of the sender.

AK00046

EXHIBIT E



ALLEGED SAFETY OR HEALTH HAZARDS

| | | | |
|---|---------|---------------------|-------------|
| MOD | Date | 1. Complaint Number | |
| | 6/10/04 | | |
| 2. Employer Name Akzo Nobel Coatings Inc. | | | |
| 3. Site Location - Street | | City | State ZIP+4 |
| 206 Frontage Rd. N A2 | | Pacific | wa |
| 4. Mailing Address (if different) Street | | City | State ZIP+4 |
| | | | |
| 5. Management Official | | 6. Telephone Number | |
| Rory Taylor, Michael Loprete, Jerry Reeves, Spencer Math- | | 253-735-1234 | |

7. Type of Business
Manufacturing, mixing, storing and distribution of car paint and paint related products.

8. Hazard Description. Describe briefly the hazard(s) which you believe exist. Include the approximate number of employees exposed to or threatened by each hazard:

No Hazardous Materials training. I have specifically asked for HSE training from my managers, their managers and my human resources department on more than 25 documented occasions (will supply documentation upon request). I stated in those requests that we were in UNSAFE CONDITIONS and that our health and safety are at risk. All employees deliver, mix paint, reduce products, clean up spills and handle hazardous materials. All without any training. I was informed by several managers that Akzo Headquarters in Atlanta, Georgia was very aware that several of their branches were not compliant. Wisha came in and told us in June of 2003 that we had to have safety meetings monthly. We had 2. The person that ran the meeting started by telling us he'd had no HSE training either. When Wisha came in last year, I witnessed my manager at the time (Bryan Nielsen) lie regarding the training and the quantity of mixes done per month. I asked him about it and he replied "oh well". Wisha never followed through with a report as promised. We received a few citations notices that were abated, but never checked. We have 9 full time employees plus several floating temp workers that drive for us and mix paint and work in the warehouse. Only 3 of those people have received respirator fitting or anything although we have requested that for all employees. We also do not have proper protective equipment for all the stuff. Hazards are not made clear to us. We do not know what these chemicals can do or even which ones we have here. We've started 3 new product lines within Akzo and have not received any clarification. Numerous spills and leaks in the warehouse. There is no ventilation out there. Shipments come in with leaky/smashed hardeners, clears, toners, primers, etc. We also have open containers of stuff out there. Several of us get dizzy, nauseous, headaches daily. Leaky containers are put inside other plastic containers with no labeling. Cans have no labeling. Several non Akzo products are in our warehouse that doesn't have msds for. A temp driver, Caroline from Westaff had to go to the Emergency Room on 6/9 because she was sick from the fumes. We have no permit for occupancy that anyone can find. The managers don't want to have the fire marshall in until they can get things cleaned up. They are not even sure if we're ok to have haz mat. here.

9. Hazard Location. Specify the particular building or work site and the work shifts where the alleged violation exists:

**Our warehouse on 206 Frontage Rd. N. "A2"
Pacific, Wa 98047**

Please help us to have a safe working environment!!!

10. Has this condition been brought to the attention of: (Mark "X" in all that apply)

Employer Other Government Agency (specify)

11. Please indicate your desire:

Do not reveal my name to the Employer. My name may be revealed to the Employer

12. The Undersigned: (Mark "X" in one box)

Employee Federal Safety and Health Committee Employer
 Representative of Employees Other (specify)

believes that a violation of an Occupational Safety or Health standard exists which is a job safety or health hazard of the establishment named on this form.

13. Complainant Name (type or print)

Julie Anderson

14. Telephone Number

360-897-9808

15. Address - Street

23616 - 154th St. E

City

Orting

State

WA

ZIP+4

98360

16. Signature:

17. Date

10/11/04

18. If you are an authorized representative of employees affected by this complaint, please state the name of the organization that you represent and your title.

Organization Name:

Your Title:

OFFICIAL USE ONLY

19. Renortine ID

20. Previous Activity?

Yes No
If yes, Enter Type: Number:

21. Optional Complaint Number

Identification

22. Establishment Name Change?

23. Site Address Change?

24. Account ID

25. City Code

26. County code

Receipt Information

27. Received by:

28. Send WISHA-7? Yes No

29. Date

30. Time AM PM

31. Supervisor(s) assigned
a. b.

Industry & Ownership

32. Primary SIC

33. Ownership (Mark "X" in one box)

a. Private Sector b. Local Government c. State Government d. Federal Agency Code

Complaint Evaluation

34. Evaluated by:

36. Is this a valid complaint?

Yes No

37. Formality

Formal Non-formal

38. Migrant Farmworker Camp

35. Subject and Severity

Discrimination

Imminent Danger

Serious

General

Safety

Health

Complaint Action

39. Send Letter:

- a. No Inspection - for invalid complaints
- Too vague or unsubstantiated
- Recent inspection or objective evidence (Date of inspection): _____
- Not in WISHA's jurisdiction
- b. No inspection - for Non-formal complaint
- No imminent danger or no standard
- No direct relation to S&H
- Not enough information to evaluate

- c. WISHA-7 for Signature with Letter
- Complete or Partial
- d. Complaint Notification to Employer
- Complainant Notified Explanation of 11(c)
- e. Complainant Notification with Letter d
- Name Not Revealed Explanation of 11(c)
- f. Acknowledgement to Complainant (Optional)
- g. Other (specify) _____

40. Date Letter Sent:

41. Date Response Due (For letters c or d):

42. Inspection Planned?

Yes No If Yes, Priority:

If No,

Reason:

43. Transfer to (Name):

44. Transfer Date:

45. Transfer to (Category):

- a. Federal OSHA / Reporting ID _____
- b. State OSH / Reporting ID _____

- c. Other Federal Agency/Code
- d. State/Local Government
- e. Other

46. Optional Information

| Type | ID | Value | Type | ID | Value |
|------|----|-------|------|----|-------------------|
| S | 1 | | | | 47. Total Entries |

Close Complaint

48. Close Complaint

49. Comments:



ALLEGED SAFETY OR HEALTH HAZARDS

FOR THE GENERAL PUBLIC:

This form is provided for the assistance of any complainant and is not intended to constitute the exclusive means by which a complaint may be registered with the Department of Labor & Industries.

WAC 296-350-450 Complaints by employees or their representatives. (1) Any employee or representative of employees who in good faith believes that a violation of any safety or health standard or an imminent danger exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation or danger to any office or officer of the division of industrial safety and health of the department. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by an officer of the division no later than at the time of inspection, if any, except that upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department of Labor and Industries.

(2) If upon receipt of such notification it is determined that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation or danger exists, an inspection shall be made as soon as practicable, to determine if such alleged violation or danger exists. Inspections under this section may extend beyond the matters referred to in the complaint.

NOTE: 'RCW 49.17.160, protects employees or representatives filing safety and/or health complaints, against discriminatory actions by an employer.'

INSTRUCTIONS:

Complete items 2 through 18 as accurately and completely as possible. Describe each hazard you think exists in as much detail as you can. If the hazards described in your complaint are not all in the same area, please identify where each hazard can be found at the worksite. If there is any particular evidence that supports your suspicion that a hazard exists (for instance, a recent accident or physical symptoms of employees at your site) include the information in your description. If you need more space than is provided on the form, continue on any other sheet of paper.

After you have completed the form, return it to your local WISHA office.

Region 1

729 100th St SE
Everett WA 98208-3727

Region 2

315 5th Ave S Ste 200
Seattle WA 98104-2607

Region 3

950 Broadway Ste 200
Tacoma WA 98402-4405

Region 4

PO Box 44651
Olympia WA 98504-4651
(360) 902-5566

Located at:
7273 Linderson Way SW
in Tumwater

Region 5

15 W Yakima Ave Ste 100
Yakima WA 98902-3480
(509) 454-3700

Region 6

901 N Monroe Ste 100
Spokane WA 99201-2149
(509) 324-2591

EXHIBIT F



Washington Department of Labor and Industries

315 5th Avenue South, Ste. 200, Seattle, WA 98104

June 30, 2004

Rory Taylor
Akzo Nobel Coatings
206 Frontage Road N
Pacific, WA 98047

Mr. Taylor:

As discussed with you yesterday during the inspection debriefing, there are several written health and safety programs and records that I need to review as part of the on-going inspection with Akzo Nobel. Following this list of requested documents is an itemized list of violations discovered during the inspection and employee interviews, which will need to be corrected.

- Safety meeting attendance records for December 2003 through June 2004.
- Records of chemical hazard communication training for Pat and Glory.
- Employee medical evaluation results for Pat and Glory.
- Personal protective equipment training records for all employees.
- Chemical hazard communication program.

Violative conditions:

1. Employees required to wear respirators were not been fit-tested prior to use.
2. The latex gloves that employees are currently required to wear when mixing solvent-based paints and during clean up of spills do not provide adequate hand protection against chemical exposure. Nitrile, butyl rubber, and/or neoprene gloves will provide adequate protection against dermal exposure to chemicals such as toluene, xylene, methyl ethyl ketone, methyl isoamyl ketone, and various diisocyanates found in the hardeners, toners and autobase components employees handle during mixing and in the various products that may be contacted during clean up of spills and damaged shipments.
3. New employees must receive training on the required personal protective equipment (ppe) before beginning work in operations where ppe must be worn. Pat and Glory have not been trained in ppe.
4. Employees required to wear respirators receive training in respiratory protection before use. Pat and Glory have not received respiratory protection training.
5. Employees must receive chemical hazard communication training on the chemicals found in their work place and specifically on those that they handle and use. Neither Pat nor

AK00092

Glory has received chemical hazard communication training that covered hazards of solvents, lead and diisocyanates.

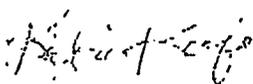
6. Employees who handle lead containing paint during paint mixing must be trained in lead awareness. Several of the yellow toners contain lead. None of the employees have received this training and two were not aware that U-Tech toners that contain lead were in the mixing room.

As I stated yesterday, those violations regarding respirator fit testing and training are repeat violations from the previous inspection conducted in April of 2003.

Please send the requested records and program to the above address, attention Katie Keefe, by July 22, 2004.

I appreciate your cooperation and assistance with this inspection. If you have any questions regarding this request please feel free to call me at (206) 515-2868.

Sincerely,



Katie Keefe
Industrial Hygiene Compliance Officer, WISHA
Dept. Labor and Industries

AK00093



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

315 5TH AVENUE SOUTH, SUITE 200
SEATTLE WA 98104

FAX TELEPHONE NUMBER (206) 515-2892

FAX TRANSMITTAL COVER SHEET

DATE: 6/30/04 TOTAL NO. OF PAGES INCLUDING COVER SHEET

TO: Rory Taylor 3

FAX NO. 253 7351666 RECEIVER TELEPHONE EXTENSION # _____

FROM Katie Keefe SENDER TELEPHONE NUMBER _____

MESSAGE _____

AK00094

Safety meeting records

Respirator fit-test records

Respiratory Protection Program

~~Hazard assessment for PPE~~

[Employee air exposure monitoring
- clean up operations]

Hazard communication training

~~Safety meeting records~~

EE medical eval for Pat & Glory

PPE training for Pat & Glory

Safety / New ee orientation trg

1 August 2-6th

AK00096

Safety meeting records

Respirator fit-test records

Respiratory Protection Program

~~Hazard assessment for PPE~~

[Employee air exposure monitoring]
- clean up operations

Hazard communication training

~~Safety meeting records~~

EE medical eval for Pat & Glory

PPE training for Pat & Glory

Safety / New ee orientation trng

EXHIBIT G

Direct response to Termination on 7/1/04
from Julie Anderson

This is a direct response to the employee corrective action notice read to me on the phone 7/1/04. The paperwork states that I was a no show, but the reason I wasn't at work for that day or the previous day was, as I told you, because I felt we were working in unsafe conditions and that was verified by the visit from WISHA on June 29th which was, as you know, initiated by a report from me. I have discussed these conditions with Jerry Reeves, Ginny Kraselsky, Rory Taylor, Michael Loprete, Gary McNiel, John Cato, Virgil Wilson, Richard Lawrie (all of which are either managers, human resources or in charge of HSE) and others and nothing was ever done to correct them.

According to the corrective action notice, I had take paint on June 25th. The paint was taken from the facility on June 10, not the 25th. When you approached me about it, after I had clocked out for the day, I thought for a moment because you said "did you take paint out of here last week?" My pause was in the fact that it hadn't been the previous week, but prior to that. The answer was yes because I believed your point was that paint was taken out of there, it didn't seem to make any difference at that time what the actual date had been. It also states on the corrective action notice that I "made up a receipt". I had written the L-10 (as is done for every order) the same day that I mixed the paint and got the hardener for it. On that day, I had told Sunny that is what I was doing and to remind me to pay for the hardener. She agreed. The money was stapled to the L-10 on Monday the 21st, after my BBQ when I was given the money. I did not invoice it because I wanted Sunny to know that it was handled and to not worry about it. I also waited because I didn't know if we'd need the hardener and I would bring it back. If you'll also look at the invoices/L-10's from past employee purchases, you'll see that this is also a common practice. I didn't think any further about it until you said something. Then, I was doing inventory all week and it was when we counted the Hardener that I gave the paperwork to Sunny to run so the inventory would be correct. (Please see count sheets and it is written in there that I had). You did not ask me to show you the paperwork at that time, you asked if I had it and I said yes, it was right next to my computer. You said "very well" and that was that. The reason I wanted to go was because it was after 5 and Akzo was no longer paying me. It didn't seem like an urgent matter since when you were asking me the questions, you were upstairs and leaning over the railing while I was standing right in front of the front door the entire time. If I was "stealing" this, why would I make it so clear to Sunny that I was taking it out of the facility??

On June 29th I discussed with you that I couldn't take all the stuff that was going on. I said I was upset that I was forced to use the time clock when other employees in my same position could work from home and hand write in their hours. In addition, other non-exempt employees were not made to use it. I also told you that I had proven the previous accusation that I wasn't working a full 40 hours was also proven to be incorrect. I also told you in that conversation that I wanted equal treatment and didn't understand why I wasn't receiving it. It has felt as if I was being "set up" by another employee. What I said about the box was... I thought about it all night and the only thing I could figure that anyone could have though about me taking anything the previous week was that I had got off work at 3, grabbed a box from the warehouse went to the back of my

AK00925

truck and put some clothes into the box, went back into the warehouse and taped it. I told you the stuff was what I sold on eBay (I also have the receipt from the post office if you'd like to see that too). It wasn't for my son. While I was crying because I was so upset from the unfair treatment was that I couldn't stand working here anymore and that I didn't have a choice. I couldn't leave Akzo's employment because me son was disabled (NOT SICK) and we needed medical insurance.

In addition, here are several instances in which people and/or employees were allowed to take paint out of the mixing room without paperwork.

Eric from Fife had been allowed to go through the mix room and take toners for his home shop. *Not employee*

Several painters are given paint for their own vehicles from the mixing room. *Not employees*

Virgil Wilson (Tech guy and my previous Manager) had been allowed to take mixed paint at n/c and no invoice from the mixing room. I believe this paint was for his brother's car. He did however pay for the inventoried items that he purchased Hardeners etc.

Rory Taylor (Branch Manager) had taken mixed paint from the mixing room for his own personal vehicle with no paperwork. He took the other products hardeners, clears, etc. as a demo or giveaway and they painted it at Canyon Falls AB so he could sell the truck for more money.

Spencer Mathis (Tech consultant) has on several occasions taken mixed paint from the mixing room for his wife's quad and his brother's vehicle. He did however pay for inventoried items to go with that. He also had a running L-10 that he waited to pay for until he had all the items he needed for the complete job and he would have returned any he didn't need. He waited approx 2 weeks to pay for all items.

Bruce Forness (Account Representative) had Alpine collision paint his yellow old style car. He got the paint at n/c and paid for the hardeners, etc.

Bryan Nielsen (Branch Manager) took paint from the mixing room with no documentation for repairs on his Porsche. He also took primer and stuff that I had to follow up with after he transferred to make sure he paid for.

There are also multiple times that paint is given without any paperwork at all.

These are just a few examples from our warehouse only. I've spoken with other branches and this is how they do it as well. If you ask other branches, you'll see that it's done the same.

Jerry Reeves had already told both Sunny and I that we were in charge of the facility and that whatever needed to be handled, as long as we both agreed, would be handled by Sunny and me. That is why I talked to Sunny regarding the paint and hardener and not to Jerry. I had also witnessed my previous managers do the same in regards to the mixed paint so it seemed to me that this was an acceptable thing to do.

AK00926

EXHIBIT H



EMPLOYEE CORRECTIVE ACTION NOTICE

EMPLOYEE: Julie Anderson

Date: June 30, 2004

LOCATION: Seattle, Wa

MANAGER/SUPV: Jerry Reeves

TYPE: Verbal Warning Written Warning Final Written Warning

OTHER: Termination

CAUSE: The following must immediately be corrected: (Bullet items below)

- Unauthorized use of company property, theft.

If the above items are not correct, this will lead to other disciplinary action up to and including termination.

SPECIFIC SUPPORTING DETAILS: Identify the details for the items listed above.

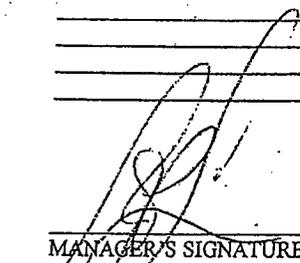
It was reported to me on June 25, 2004 that you took paint from the branch without a managers authorization. When I approached you about this incident on June 28, 2004 and asked if you had taken paint out of the facility for personal use, you thought for a moment and said, "Yes, everybody does it". "I paid for the hardener and the paint is free". "I will show you the paperwork where I paid for the product". I then asked you what the paint was used for. You replied "For my brother-in-law's Jet Ski". I asked for the paperwork on the hardener and you said that you had to leave. Tuesday June 29, 2004, you went on to tell me " If you really want to know what was in the box, it was items that I purchased on e-bay for my sick child". I said that yesterday you told me that you took paint and you did not respond to that comment. To this point, you have not produced any documentation or proof of payment for the product that was taken. At approx. 11:00am, you made up a receipt for paint and stapled \$40.00 to the hand written order form and put it on Sonya's desk to be processed. I have given you the opportunity to explain what happended and you have not given me a consitant, truthful answer and you have not told me what manager did approve for you to take paint.

This is a clear violation of company policy per our employee handbook and will not be tolerated.

EXPECTED IMPROVEMENTS: What steps are necessary to correct the items listed above?

As a result of this violation to company policy, your employment with Akzo Nobel Coatings will be terminated effective July 1, 2004.

EMPLOYEE'S COMMENTS: _____



MANAGER'S SIGNATURE DATE

*Employee was a no show for work.
ACTION TAKEN BY TELEPHONE
7-1-04*

EMPLOYEE'S SIGNATURE DATE

(Employee's signature indicates that the terms of corrective action have been discussed, NOT that the employee necessarily agrees with the Manager's/Supervisor's evaluation.)

Forward all signed copies to Human Resources immediately. February 2004

AK00881

EXHIBIT I

Akzo Nobel Coatings Inc.

To: Katie Keefe

Fax: 206-515-2879

From: Rory Taylor

Date: 7/30/04

Re: Safety Concerns

Pages:

CC:

Urgent

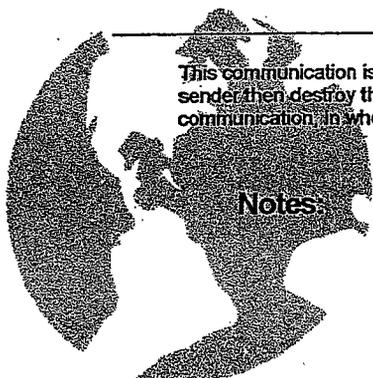
For Review

Please Comment

Please Reply

Please Recycle

This communication is confidential and may be privileged. If you are not an intended recipient, please notify the sender then destroy the original communication and all copies. You should not copy, distribute and/or disclose this communication, in whole or in part, without permission of the sender.



Notes:

SIKKENS

LESONAL

U-TECH

253-735-1666 FAX
253-735-1234 PHONE

AK00005



To: Katie Keefe
From: Rory Taylor
Date: 7/25/2004
Subject: Safety Concerns
Copies to: Jerry Reeves, Michael LoPrete

Katie,

In response to your visit on June 30th here are the results of our internal finding regarding the safety concerns that were discussed. Below I have outlined each condition in which was a concern in your letter dated June 30th.

1. Employees were fit tested on June 5th 2003 by Larry Williams of the 3M company. However Pat O'Brien and Glory Pool who are our newest employees had not been fit tested. They were fit tested on July 26th 2004.
2. Chemical resistant gloves have replaced the previous latex gloves as you have recommended.
3. Pat, glory, and Sunny have received one on one PPE training administered by me since your visit. All PPE has been re- issued and follow up training will take place on the week of August 23rd.
4. Pat and Glory did not receive respiratory training when they started as new employees. As a result we have had 3M provide training as well as fit tests for Glory and Pat. This was done on July 26th.
5. Akzo Nobel will provide chemical hazard training to all employees in the Seattle market in the week of August 23rd. The reason for the delay is the only supervisor that was trained to administer this training was Julie Anderson. Julie is no longer with the company so we will have an external employee provide the training. We will also have multiple employees trained at the same time to administer Chemical Hazard training on a monthly basis.
6. Lead training will be included in chemical hazard training the week of August 23rd.

AK00006



I have also included all previous documents that I have found for safety training. Akzo Nobel takes safety extremely seriously and we were disappointed to find that our company standards were not being met in Seattle. As you requested I have the company's respiratory protection program, as well as hazardous chemical training program on site at our facility. This program is thousands of pages in length and could not be faxed to your attention. However, I have ordered a second manual for your review and would be more than happy to go over the copy we have here on location at your convenience.

Pat and Glory are our newest employees and we are concerned that their training was not performed by their Supervisor as the company requires. We have and, will continue to address all safety and chemical concerns with the utmost urgency. We appreciate your assistance and look forward to your return to our facility.

Regards,

A handwritten signature in black ink, appearing to read "Rory Taylor", is written over the typed name.

Rory Taylor

AK00007

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RECEIVED
08 JUL 10 PM 12:58
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

THE HONORABLE SUAZANNE BARNETT

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JULIE ANDERSON, individually and on behalf
of the Estate of DALTON ANDERSON, and
DARWIN ANDERSON, individually,

Plaintiffs,

v.

AKZO NOBEL COATINGS, INC., and KEITH
CROCKETT, a Washington resident,

Defendants.

NO. 07-2-10209-4 SEA

**DECLARATION OF RICHARD
GLEASON**

Richard Gleason declares and states:

1. I am over the age of eighteen and competent to testify to the matters herein.
2. I have been a certified industrial hygienist for approximately 22 years (CV attached) and have been asked to offer opinions in relation to this case. In formulating my opinions, I have reviewed assorted documents including Akzo Nobel records, deposition transcripts, written statements, and I also conferred directly with Julie Anderson. Based upon my review, I have formulated a number of opinions in relation to the Akzo Nobel safety practices as relate to Julie Anderson and this lawsuit.

DECLARATION OF RICHARD GLEASON -1 of 8

 **COPY**

Law Offices of John R.
Connelly, Jr.
2301 N. 30th Street
Tacoma, Washington 98403
(253) 593-5100 - FAX (253) 593-0380

Ex.
2

1 3. It is my opinion that Akzo Nobel failed to act reasonably and provide proper
2 respiratory protection to Ms. Anderson and the other employees at the Pacific, Washington
3 paint distribution and mixing facility. During the relevant timeframe, Akzo Nobel did not
4 maintain a proper respirator change out schedule as was required by law and by way of a
5 reasonable course of conduct for protecting employees. From the information that I have
6 reviewed, it is my understanding that employees were trained to change out respirators and/or
7 cartridges when they smelled vapors in accordance with Akzo Nobel policy. Mr. Callewaert
8 testified as follows:
9

10 Q. What was the Akzo Nobel respirator change out policy
11 in 1998 for the Car Refinishes Department?

12 A. It was immediately when you – when the solvent breaks
13 through the charcoal, you replace your respirator or the filters
14 on your respirator, depending upon what kind of respirator you
15 had.
16

17 Q. How about in 1999?

18 A. Same.¹

19 This is not an adequate safety practice because the purpose of the respiratory protective
20 equipment is to actually prevent employees from ever reaching the point of experiencing
21 exposure in the first place. As of the time that vapors are detectable to the sense of smell, that
22 employee is being exposed to toxins then, and beforehand.
23
24
25

26 ¹ Page 34 lines 22 to 25 – page 35 lines 1 to 4.

1 4. It is my opinion that Akzo Nobel improperly conducted air monitoring in the
2 paint mixing room in the 1998 and 1999 timeframe. From the information that I reviewed, it
3 is my understanding that Akzo Nobel, by and through Richard Callewaert, conducted air
4 monitoring by using what appeared to be "area monitoring" (leaving an air monitor on the
5 wall) in the paint mixing facility instead of "personal monitoring" (putting an air monitor on
6 the employee) in relation to paint mixing operations. Mr. Callewaert testified that he believed
7 that the same results would be achieved either way:
8

9 Q. Well, do you think that the detected exposure levels
10 would be greater if an employee wore an air monitor versus just
11 posting it on the wall?

12 A. No. I believe that the – that the results would be quite
13 similar.²

14
15 To obtain a relevant sample for determining the level of toxic exposure to an employee
16 engaged in a workplace operation such as paint mixing, the proper safety protocol requires
17 "personal monitoring" in order to approximate the true exposure to employees engaged in the
18 corresponding activities. The reason being is that it is necessary to obtain a sample of the
19 highest exposure levels. Mr. Callewaert did not recognize this in relation to paint mixing:
20

21 Q. So, the primary source of organic vapor, then, is from
22 the open can of paint being mixed; correct?

23 A. The open can of paint being mixed.³
24

25
26

² Page 96 lines 17 o 21.

³ Page 104 lines 11 to 13.

1 5. Based upon the improperly conducted "area monitoring" which was completed
2 in 1998, it is my understanding that Mr. Callewaert sent a memo to the Pacific, Washington
3 facility indicating that respiratory equipment was not even required while mixing paint:

4 Q. Are you aware of what the policy was for wearing
5 respirators at the Seattle facility in 1998?

6 A. I'm aware of what I advised them. If they did something
7 different over there, I have no knowledge of it.

8 Q. And how about 1999?

9 A. I was not coordinated on any change in procedure.

10 Q. And what did you advise Mr. Crockett?

11 A. I advised Mr. Crockett that, in fact, the test results are
12 minimal, well below the OSHA standard, and under current
13 conditions, respirators were not required.⁴

14
15
16 From that timeframe forward, Ms. Anderson did not regularly wear a respirator until the
17 approximate timeframe that she became pregnant with Dalton, on or around May 21, 1999.
18 Ms. Anderson reports having asked her supervisor at the time, Keith Crockett, whether or not,
19 in light of the pregnancy, she should wear a respirator. According to Ms. Anderson, Mr.
20 Crockett said that she should. Thereafter, Ms. Anderson reports wearing a respirator each and
21 every time that she engaged in paint mixing operations. It is my understanding that this was
22 from about the first week of June, after the Memorial Day weekend, forward.
23
24
25

26

⁴ Page 71 lines 13 to 23

1 6. It is my opinion that the lack of a proper respirator change out schedule, and
2 the lack of the corresponding proper training caused Ms. Anderson's respiratory protection
3 equipment to break down and allow her to be exposed to dangerous toxic chemicals during
4 the timeframe that she was pregnant with Dalton. In formulating my opinion, I reviewed
5 information indicating the frequency with which paint was mixed at the Pacific, Washington
6 facility as corresponds with the amount of paint that Ms. Anderson reportedly mixed/handled.
7 It should be noted that the differing sources of information suggest that Ms. Anderson mixed
8 between approximately 33% (one-third) to 66% (two-third) of the paint mixes during the early
9 stages of her pregnancy. In performing all of my calculations/evaluations, I presume the
10 minimum level of exposure in contrast to the facts presented.

12 7. Given the tempo and frequency of exposure to chemicals while mixing paints
13 and cleaning the spills, etc., it is my calculation/evaluation that the respiratory equipment
14 upon which Ms. Anderson relied deteriorated to the point of non-protection thereby causing
15 exposure within perhaps even the first or second week of usage, and most certainly by the
16 fourth, fifth, or sixth as reflected in the attached exhibit. To illustrate, exposure level testing
17 which was conducted in July of 2003 in order to establish a change out schedule (using
18 "personal monitoring") established extremely dangerous levels of toxic exposure after less
19 than a shift of paint mixing and cleaning spills.

20 8. My calculations/evaluations in relation to the break down of Ms. Anderson's
21 respiratory equipment are premised upon the presumption that the ventilation system at the
22 Pacific, Washington facility *was* operational which we now know was not the case. Mr.
23
24
25

26
DECLARATION OF RICHARD GLEASON - 5 of 8

**Law Offices of John R.
Connelly, Jr.**
2301 N. 30th Street
Tacoma, Washington 98403
(253) 593-5100 - FAX (253) 593-0380

1 Callewaert admitted to having recognized, in July of 1999 during an audit, that the ventilation
2 was not operational:

3 Q. And what are you documenting when you said -- checked
4 the box, "No," by, "Ventilation Operational/Not Blocked"?

5 A. Apparently at this point in time during the audit, the
6 ventilation was not turned on.

7 Q. And what does that mean, exactly?

8 A. It means that there's no air flow, no air movement through
9 that room.

10 Q. Okay. Does it mean the ventilation system was not
11 operational?

12 A. It means that the ventilation system was not operational at
13 the time I was -- I did the audit.

14 Q. And when was that, sir?

15 A. July 14th, 1999.

16 Q. And did you personally conduct the audit?

17 A. Yes.

18 Q. Do you have any idea for how long the ventilation system
19 was inoperational prior to the date of your audit?

20 A. I don't recall.

21 Q. Was it fixed?

1 A. Speculation, yes, but I was not personally there to observe it
2 being fixed.

3 Q. And you chuckled a little bit. Why was that?

4 A. Well, I mean that's -- the question is, "Was it fixed?" I'm
5 assuming that it was fixed. I was not personally there to
6 observe it being fixed.
7

8 Q. What's the significance of the ventilation system in the
9 paint mixing room?

10 A. To extract vapors.

11 Q. So, when you conducted the audit in July of 1999, the
12 ventilation system wasn't extracting vapors?

13 MR. WALSH: Foundation.
14

15 A. I'm saying, yeah, that's possible, because the ventilation
16 system was not working.⁵

17 9. While it is difficult to calculate the precise consequence of the broken
18 ventilation system as relates to exposure levels, it is clear that the lack of ventilation in the
19 paint mixing room would have drastically increased the exposure levels to employees
20 conducting paint mixing operations, etc. Moreover, even if the air monitoring results which
21 were conducted in September of 1998 which indicated low exposure levels were properly
22 representative of exposure levels in that timeframe, during the timeframe that Ms. Anderson
23 was pregnant the ventilation system *was not* operational and so the air monitoring results from
24
25

26 ⁵ Pages 130-1.

1 that time period, and others, would not be representative of the exposure levels experienced
2 by Ms. Anderson while she was carrying Dalton. This would also hold true in relation to the
3 subsequent air monitoring which was conducted during the WISHA inspection in the
4 springtime of 2003.

5
6 10. It is my opinion that Akzo Nobel failed to act reasonably by not hiring a
7 properly trained industrial hygienist to provide for the safety of the employees. In fact, Mr.
8 Callewaert, the head of safety for this multi-billion dollar company, did not know what an
9 industrial hygienist does for a living:

10 Q. What does an industry hygienist do?

11 A. I don't know. I'm not going to speculate on someone
12 else's job. I mean their full job, you know. If I were to call up
13 a company and said that I needed to do specific monitoring at a
14 specific location, that company would send out an IH or CIH,
15 whichever was available to do the monitoring. But what their
16 full job is, I have no idea.⁶

17
18
19 DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
20 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

21
22 Dated this 24th day of April, 2008. *12:25 PM*

Richard Gleason

23
24 RICHARD GLEASON

25
26 ⁶ Page 21 line 1 - page 22 lines 1 to 7.

CURRICULUM VITAE

Richard Gleason, MS, CIH, CSP

8240 19th NE, Seattle, WA 98115 (206) 856-6660 Fax (206) 524-6646
ricgleason@aol.com

EDUCATION

- 1980 University of Washington
Master of Science in Public Health (MSPH)
Industrial Hygiene and Safety
- 1978 Montana Tech
Bachelor of Science (BS)
Occupational Safety and Health

PROFESSIONAL ORGANIZATIONS AND CERTIFICATIONS

- CSP** Certified Safety Professional, #8405, 1987, renewed to present
CIH Certified Industrial Hygienist, #3395, ID#1520 1986, renewed to present
- 2002 **Construction Site Safety Master Instructor**, National Center for Construction Education and Research. March 9, 2002
- 1995,99
2002, 2005 **Instructor Certification** to teach **OSHA Construction Safety and Health Specialist** 30 hour course and the **OSHA General Industry 501** Course U.S. Dept. Of Labor, OSHA Training Institute, Till 2009
- 1995,99, 2005 **Instructor Certification**, University of Washington, OSHA Training Center to teach **Machine Guarding, Electrical Safety, Scaffold Safety and Confined Space Entry Classes** for U.S. Dept. Of Labor, OSHA Training Institute. Renewed to Present
- 2000-Present Board Member, Volunteer, Evergreen Safety Council. Construction Safety and Health and Safety Technician Program Advisor.
- 1992 **EPA Emergency Response** to Hazardous Materials Incidents 40-hour Certification. Office of Emergency Response
- 1992 **Hazardous Materials Technician**, 24- Hr Emergency Spill Response
- 1992 **NIOSH 582**, Sampling & Evaluating Airborne Asbestos Dust
- 1992 **Trenching and Excavation Competent Person Safety Training**
- 1991 Certification, **Hazardous Waste Site Supervisory Training**
- 1990 Certification, WA State **Commercial Drivers License** for Placarded Hazardous Materials and Tank Vehicles, Renewed 1992, 1994, 1996, 2000, 2002 HAZMAT Endorsement
- 1988 Certification, 40-hour Health and Safety at **Hazardous Waste Sites**, Renewed yearly to present

- 1985 Certification, State of Washington, **Asbestos Abatement Worker** (#0760), Renewed in 1986, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98,
- 1983 Certification, Washington State Safety in **Flagging** and **Forklift Safety**
- 1980 Professional Member, American Society of Safety Engineers (**ASSE**), Renewed to Present (CSP). Member # 2742350
- 1979 Member, American Conference of Governmental Industrial Hygienists (**ACGIH**), #1091, Renewed to Present
- 1978 Member, American Industrial Hygiene Association, **AIHA**, Pacific NW Section, Renewed to Present (CIH) #130504
- 1978 **Industrial First Aid and CPR Training**, Renewed in 1980, 83, 86, 89, 91, 92, 94, 96, 99, 01, 03, 05

HONORS

- 2005 **Distinguished Industrial Hygiene Award**, Pacific Northwest Section, American Industrial Hygiene Association. October, 2005.
- 2000 **Construction Safety Trainer of the Year Award**, Puget Sound Construction Safety Summit Association,. November, 2000.
- 1999 **Industrial Hygiene and Safety Lecturer Award**, University of Washington, Department of Environmental Health, Student Nomination Award. June, 1999.
- 1994 **Safety Professional of the Year**, May, 1994, Puget Sound Chapter, American Society of Safety Engineers
- 1991 Labor and Industries, **Set the Pace Award** for Safety and Health, Seattle, WA.
- 1987 Labor and Industries **WISHA Award**, "We Inspire Safety and Health Achievement Award", Seattle, WA.
- 1981 US Department of Labor **Meritorious Achievement Award**
"In recognition of your significant contribution to the public health and welfare during the emergency precipitated by the violent eruption of Mount St. Helens on May 18, 1980."

PROFESSIONAL EXPERIENCE

- Sept. 96-Present **Lecturer, University of Washington (95% Appointment)**
School of Public Health, Department of Environmental Health
Teaching in the Master's Program in Industrial Hygiene and Safety
ENVH 554, 560, 562 Graduate Classes
Instructing UW OSHA Training Center courses
OSHA 226, 500, 501, 510, 521 4 day classes
- June, 91-2005 **Senior Industrial Hygiene and Safety Consultant**
Prezant Associates, Inc.
1730 Minor Ave, Suite 900
Seattle, WA 98101

Providing on-site construction safety services. Providing training for OSHA and WISHA regulations to contractors and industry. Provides industrial hygiene and safety field services, fire protection and environmental consulting, air monitoring and program development. Writes Health & Safety Plans for hazardous material abatement projects. Has been on-site industrial hygienist in removal projects at Superfund sites in the Puget Sound area and taught custom courses on safety and health, emergency spill response, hazardous waste site safety, asbestos removal procedures, confined spaces, and respiratory protection to clients throughout the U.S.

1986- 1991

Safety Engineering Consulting Supervisor

Department of Labor and Industries,
Division of Industrial Safety and Health
300 West Harrison, Seattle, WA 98119

Supervised a consulting group of industrial hygienists and safety representatives. Provided safety and hygiene on-site consulting to employers as well as training in the more difficult requests. Provided assistance in fall protection, ladders safety, scaffolds, noise, ventilation, chemicals, respirators, confined spaces, machine guarding, electrical safety, trenching and excavation, hazardous materials, emergency spill response, etc. Complete safety and hygiene surveys were completed in over 750 worksites.

1981-1986

Compliance Safety and Health Officer

Department of Labor and Industries, Safety and Health
300 West Harrison, Seattle, WA 98119

Performed Industrial Hygiene surveys for Labor and Industries under the WISHA Act for over 500 worksites. Activities included hazardous waste sites, asbestos removal jobs, indoor air complaints, respiratory protection, confined spaces and right-to-know programs. Complete surveys were made to determine compliance with State Safety rules.

1978- 1981

Compliance Safety and Health Officer

US Department of Labor
Occupational Safety and Health Administration (OSHA) Seattle, WA

Performed industrial hygiene and safety surveys of Federal Agencies. Provided technical hygiene support to hygienists in Region X of OSHA (WA, OR, ID, AK) Calibrated IH equipment, air sampling, on-site technical assistance, etc. 6/78-9/78: Safety Compliance officer in Billings, Montana OSHA Area Office.

1978-1981

Commercial Fisherman. Washington, Alaska

Fishing seasonally for salmon, halibut, shrimp, crab.

TEACHING ACTIVITIES

Courses Mr. Gleason is certified/approved/qualified to teach and has instructed:

Mr. Gleason is the Class Coordinator/Instructor/ Curriculum Development for:

OSHA 226: Permit Required Confined Space

OSHA 500: OSHA Authorized Outreach Program Trainer in Construction Safety

OSHA 510: OSHA Introduction to Construction Safety

OSHA 521: OSHA Guide to Industrial Hygiene

Additional Classes Mr. Gleason is certified or qualified to instruct:
First Aid and CPR Instructor, National Safety Council, American Heart Association
Environmental Field Service Technician, North Seattle Community College Instructor
OSHA Construction Safety and Health Specialist (30 and 10 hour class Instructor Certification)
OSHA/WISHA Health and Safety at Hazardous Waste Sites (40 and 80 hours)
OSHA/WISHA Hazardous Waste Site Refresher and Supervisor Class (8 hours)
WISHA Certified Asbestos Worker and Supervisor Class (30 hours) + Refresher (7 hours)
OSHA/WISHA 24 hour Emergency Response Training:
 Emergency Response Awareness (4 hours)
 Emergency Response Operations (8 hours)
 Hazardous Material Technician (24 hours+)
 Hazardous Material Operations (24 hours +)
 Incident Commander (40 hours+)
Marine Spill Response Classes (24 hours)
Chemical Hazard Communication, Worker Right to Know, MSDS Awareness (2-8 hours)
Basic Industrial Hygiene Class - (8-40 hours)
General Industry Supervisor Safety and Health (32 hours)
DOT HM-181 and 126F Hazardous Material Training (8 hours)
Lead Awareness and Inspector Training (16 hours)
Accident Prevention Programs (8 hours)
Occupational Respiratory Protection (8 hours)
Confined Space Entry Requirements (8-16 hours) Entrant, Attendant, Supervisor Instructor
Fall Protection Safety (8 hours)
Ladder and Scaffold Safety (8 hours)
Machine Guarding (8 hours)
Lockout / Tagout, Electrical Safety (8 hours)
Forklift / Powered Industrial Truck Safety (4-8 hours)
Trenching and Excavation (4-8 hours)
Ergonomics and Back Injury Prevention (4-8 hours)
Indoor Air Quality, Sick Building Syndrome Assessment (2-8 hours)

PUBLICATIONS, PAPERS, AND SURVEYS

"Safety and Health Of Commercial Fishermen in the North Pacific" (122 pages)
Master's Thesis, University of Washington, MSPH, 1980.

"How Fishermen Die, A Report on the Hazards of Fishing", *Alaska Fishermen's Journal*,
Four Part Series, April, May, June, & July, 1981. Vol. 4, No.'s 4-7.

"How Hazardous is Harvesting the Sea?" *Proceedings of the Marine Safety Council*,
June, 1982. Vol. 39, No. 6. and *Professional Safety*, November, 1983, Vol. 28, No. 11.

"Accidents Will Happen!" *Alaska Seas and Coasts*, November, 1982. Vol. 10, No. 1.

PRESENTATIONS

October 26, 2006. Speaker, Northwest Occupational Health Conference, PNS-AIHA Annual Meeting, The Overwarning of America: Safety Warning Labels. Wenatchee, WA.

September 27, 2006. School to Work Guest Speaker, Teen Safety in Washington State. Governor's Safety and Health Conference Presentation, Spokane, WA.

September 27, 2006. Accident and Injury Costs for Small Businesses. Governor's Safety and Health Conference Presentation, Spokane, WA.

- June 13, 2006. Preventing Third Party Liability in Occupational Safety and Health: A Continuing Effective Safety and Health Program. American Society of Safety Engineers Meeting, Seattle, WA.
- June 12, 2006. Internet Safety and Health Resources. Effective Training Techniques. Western Regional Universities Consortium (WRUC). Trainer's Exchange, 2006. Seattle WA Meeting.
- May 25, 2006. What Would a VPP Level Industrial Hygiene Program Look Like?. Region X Voluntary Protection Program Annual Conference Meeting, Spokane, WA.
- May 10, 2006. The Impact of the Stute Decision on Workers Compensation Recovery, Third Party Liability and Occupational Safety and Health in Washington. Presented at the Labor and Industries Internal Staff Safety Symposium, Ocean Shores, WA.
- May 10, 2006. Construction Safety and Health Responsibilities of General Contractors in WA State. WISHA Annual Meeting, Ocean Shores, Department of Labor and Industries Presentation.
- January 17, 2006. Keynote Speaker, Avista Utilities Annual Safety Conference, Spokane, WA. Effective Safety and Health Committees in the Electrical Power Generation Industry.
- January 2, 2006. Keynote Speaker, Tri State Construction Annual Employee Training Day. Construction Safety Accidents in Washington: 2005. Lessons Learned
- December 12, 2005. Taking Safety Home. Puget Sound Safety Summit. Seattle, WA.
- September 29, 2005. Mold in Schools and Commercial Buildings. Washington Governor's Safety Conference, Tacoma, WA. Panel Presenter and Moderator.
- September 28, 2005. Teen Safety on the Job: Rights and Responsibilities. Washington Governor's Safety and Health Conference, Tacoma, WA. Presentation.
- August 11, 2005. Keynote Speaker to 100 members of the Washington State University (WSU) Safety Committee's Annual Meeting. "Reaching for Excellence in Safety and Health".
- May 24, 2005. Presented at the National American Industrial Hygiene Annual Meeting in Anaheim, CA. The topic was Safety and Health Third Party Liability on Construction Sites: Preventing Accidents and Minimizing costs.
- April 29, 2005. University of Oregon, Eugene, OR. Labor Education and Research Center. Workplace Health and Safety in the Global Economy, Speaker.
- March 2, 2005. Presentation at the Oregon Governor's Safety and Health Conference at the CIH/CSP Study Group Presentation. Covered Respiratory Hazards and Respiratory Protection.
- December 2, 2004. Keynote Speaker, Western Pulp and Paper Workers Safety and Health Conference, Portland Oregon. Safety Hazards in the Pulp and Paper Industry.
- November 18, 2004. Valley Medical Center. Occupational Health Services. Seminar Presentation, Washington State Injury and Illness Summary.
- November 2, 2004. Construction Management Association of America, Pacific Northwest Chapter, Safety Concerns for Construction Managers.

October 14, 2004. Pacific Northwest Section, American Industrial Hygiene Association Conference, Portland, OR. Safety Warnings: Are They Effective.

September 30, 2004. Governor's Safety and Health Conference, Spokane, WA. Seminar Speaker. Lead, Asbestos, Silica and Mold.

February 11, 2004. Course Director and individual speaker. Improving your Safety Training Programs. University of Washington, Department of Environmental and Occupational Health Sciences. Educational Resources Center, 1 day course.

December 4 and 5, 2003. Guest Speaker, 2 day seminars, Western Pulp and Paper Workers Safety and Health Conference, Portland Oregon. Safety and Health Resources and Silica, Lead Asbestos Hazards

November 11, 2003. Pacific Northwest Chapter, Academy of Hazardous Material Managers. CHMM Study Review Guest Speaker. Chemistry and Air Monitoring. Seattle, WA. Assisted the Local Section in Planning and Teaching.

September 23, 2003. Greater Seattle Vicinity Construction Safety Council. Annual Fall Meeting. Resources for Safety and Health Professionals. Laborers Training Center, Kingston, WA.

September 17, 2003. Governor's Industrial Safety and Health Conference, Seattle, WA. Safety and Health Myths: Preventing Injuries on the job.

April 16, 2003. Utility Contractors Association of Washington (UCAW), a member of the National Utility Contractors Association. Annual Safety Banquet Keynote Speech, "Safety Outside the Box". Seattle Doubletree

January 16, 2003. Plumbers and Pipefitters Joint Apprenticeship Program, Local 32/ Mechanical Contractors of America. 4 hour Presentation to Apprentices, Occupational Health Issues in Construction. Renton, Wa.

October 15, 2002. Safety and Health Accident Trends: Past, Current and Future. American Society of Safety Engineers, Monthly Dinner Meeting, Swedish Club, Seattle, Wa.

June 26, 2002. Construction Safety and Health Accidents in Washington State. Associated Builders and Contractors Annual Meeting, Seatac Marriott, Seattle, Wa.

May 29, 2002. Industrial Hygiene in Construction. Seattle Vicinity Construction Safety Council, Annual Awards Banquet Keynote Speaker, Swedish Club, Seattle, Wa.

April 3, 2002. Construction Safety Update, Conference speaker and Course Director, 8 hour University of Washington, Department of Environmental Health course.

December 5, 2001. American Wood Products and Pulp and Paper Workers Conference, Portland, Oregon. Emergency Preparedness and Respiratory Protection.

November 29, 2001. American College of Occupational and Environmental Medicine, State of the Art Conference, Seattle, Wa. Safety and Health of Commercial Fisherman.

October 12, 2001. Pacific Northwest Section, American Industrial Hygiene Association, Northwest Occupational Health Conference, Seaside, Or. Liability in Safety and Health.

February 1, 2001. Construction Safety Liability, Conference Speaker and Coordinator, University of Washington, Educational Resource Center. Seattle, Wa.

October 24, 2000. Washington Governor's Safety and Health Conference, Maritime Panel, Tacoma, Wa. Labor and Management Cooperating for Health and Safety. Keynote Speaker.

October 4, 2000. Washington Governor's Safety and Health Conference, Spokane, Wa. Construction Panel, "Industrial Hygiene Problems and Solutions in Construction."

October 30, 1999. Washington Governor's Safety and Health Conference, Seattle, Wa. Presentation, Toolkit Options for Workplace Hazard Recognition. Accident Prevention Panel.

September 30, 1999. State of Washington, Department of Labor and Industries, WISHA, Annual Conference for Inspectors/Consultants. Lockout-Tagout in Washington.

October 30, 1998. Washington Governor's Safety and Health Conference, Spokane, Wa. Preventing Silica Exposure in Industry.

EXPERT WITNESS ASSISTANCE

Alex Salas v. Hi-Tech Erectors. Superior Court, King County No. 04-2-36411 SEA. Represented the **Plaintiff** in a construction site accident for Robert Kornfeld, Attorney at Law, 801 Kirkland Ave., Kirkland, WA. 98033. Mr. Salas was injured in a fall from a scaffold built by Hi-Tech Erectors on a construction site in Seattle. Case settled at trial April, 2006.

Carlos Lopez v Centex Homes. Superior Court, King County No. 04-2-10439-4SEA. Represented the **Defendant** Centex Homes in a construction site accident for Arthur Leritz, Gardner, Bond, Trabolski, St. Louis and Clement, PLLC, 2200 Sixth Ave, Seattle, WA 98121. Mr. Lopez was injured in a fall from a scaffold built by the plaintiff on a construction site. Case settled at trial April, 2006.

Wilson v Sterling Elevator et al. Superior Court, King Co. No. 04-2-03173-7 SEA. Represented the **Defendant**, Sterling Elevator for Lawrence and Versnell, 601 Union St. Suite 3030, Seattle, WA 98101. The plaintiff tripped at night on a home inclined stairway chairlift that had been installed by the defendant. The lift manufacturer and home's owner were also a party to the lawsuit. Deposed August 18, 2005. Case settled out of court Nov 2005..

Miller v Wasser Hi Tech Coatings and Miles Sand and Gravel. Superior Court, King Co. No. 04-2-31995-1KNT. Represented the **Defendant** Miles Sand and Gravel, the building owner in a lower tiered subcontractor worker fall while a tenant was remodeling the building. Represented Ken Roessler, Forsberg and Umlauf, 900 4th Ave, Seattle, WA 98164. Deposed on August 9, 2005. Case settled out of court September 15, 2005.

Ron Carlson, Deceased v United Airlines. Board of Industrial Appeals Testimony, Docket Number 04 13457. Represented the **Plaintiff** for the State of WA, Department of Labor and Industries, Steve Camilleri, Assistant Attorney General. This case involved a mesothelioma widows Pension Benefit. April 13, 2005.

Spencer v Sonny Scaffolds, Inc. Superior Court, King County, No. 03-2-17116-6SEA. Represented the **Plaintiff** for attorney Eugene Bolin, 3316 Fuhrman Ave E, Suite 250, Seattle, WA 98101. The case involved a scaffold collapse on July 21, 2000. Case settled at trial January 22, 2005.

Carmichael and Mandelin v Turner and Clark Design Group et al. Superior Court, King County, No. 03-2-29782-8-SEA. Represented the **Plaintiffs** for Attorney Jim Rogers, Rogers and Fleck, 705 Second Ave, Seattle, WA 98104. This case involves a September 16, 2002

accident involving two workers in a demolition project who lost their legs in a wall collapse. Case settled out of court October, 2004.

Harold Pettersen v Harley Marine Services et al. US District Court, Western District, Seattle. Case No. CV03-1161L. Represented the **Defendant** involving exposure to diesel exhaust, carbon monoxide, and particulate. The defense attorney was Tom Waller, Bauer Moynihan and Johnson. 2101 4th Ave. Suite 2400., Seattle, WA. 98121. Testified at trial June 24, 2004. Case settled at Trial June 27, 2004.

Jonah Karch v King County. Superior Court, King County, WA. No. 0202004282-1 KNT. This case involves a fall at the Renton Transfer station on Jan. 10, 1997 by Mr. Karch into the pit. Representing the **Plaintiff** for Attorney M.L. Daniel, 3511 SW Alaska, Seattle, WA. 98126. Case settled at trial March 25, 2004.

Estate of Joel Crisp v. Pace, Swank, C&R Plumbing et al. Superior Court, Spokane County, WA. No. 02-2-02184-5. This case involves a fatal accident at the University of Idaho involving an unguarded fan. Representing the **Plaintiff** for Attorney Richard Eymann, Eymann, Allison, Fennessy, Hunter & Jones, 2208 W. 2nd Ave, Spokane, WA 99204. Deposed January 27, 2004. Case settled at trial December 2, 2004.

McKenzie v. State of Washington. Superior Court, Island County, No. 00-2-00229-1. This case involves a slip on a Washington State ferry by the plaintiff Douglas McKenzie. Representing the **Plaintiff** in a case involving Steve Fury of Fury Bailey, 710 10th Ave. E, Seattle, WA 98102. Provided a declaration on the case on September, 2003. No deposition or trial to date.

Breckenridge v Georgia Pacific and Diamond B Constructors. This case involves a crane hoist injury in Bellingham, WA. Representing the **Defendant**. US District Court Western District Seattle Cause No. CV02-1043L. Contacted on April 1, 2003 by Lane Powell Spears Lubersky Law Firm. No deposition or trial date set to date.

Justin Johnson vs. Sea Storm. This case involves a fall from a ladder on a fishing vessel Sea Storm on February 8, 2001. Representing the **Plaintiff** Justin Johnson for Fury Bailey Trial Lawyers. Contacted October, 2002. Visited the Sea Storm at Ballard Oil on November 7, 2002. Report Issued December 16, 2002. Deposed Dec. 19, 2002 by LeGross, Buchanon and Paul-L233-0001. Case settled at trial Jan. 7, 2003.

Meyers vs. Burger King. Alleged injury to the unborn child of a pregnant worker of Burger King, in Lacey, WA in 1994. The child now has cerebral palsy. Representing the **Defendant** for Northcraft and Bigby, 720 Olive Way, Suite 1905, Seattle, Wa. 98101. King. CO. Cause No. 98-2-06491-4. Contacted October, 2002. Visited the site in Lacey on 10/23/02 and 11/20/02. Case settled out of court November, 2003.

Bennett vs. Caterpillar. Superior Court, State of Washington, Case Nu. 01-2-11761-1SEA, Testifying for the **Plaintiff** in a case involving a fall from using heavy equipment. Representing the law firm of Longfelder, Tinker and Kidman, 101 Stewart St. Seattle, Wa. 98101. Contacted August, 2002. Deposed November, 2003. Case Settled out of court January, 2003.

Rowden v Western Towboat. Superior Court, Kitsap County, Case Number 01-2-00029-4. Assisting the **Plaintiff** Richard Rowden in a case involving a fall through plastic sheeting while painting the interior of a vessel. Representing the law firm of Fury Bailey, 710 10th Ave. E, Seattle, WA. 98102. Contacted January 2002. Deposed May, 2002. Case settled out of court Aug. 2002.

Smeaton vs. Peter Pan Seafoods and the City of Dillingham, Alaska. Superior Court, State of Alaska, 3rd Judicial District of Dillingham, Case No. 3DI-99-132 Civil.

Testifying for the **defendant** in a case involving a 20 pound ammonia release on July 12, 1998 from a cold storage facility. Representing the law firm of Sandberg, Wuestenfeld, and Corey, 701 W. 8th St, Anchorage, AK. Contacted 8/2001. Deposed 11/2001. Case settled at trial Feb. 21, 2002

Kinsel vs Hart Crowser. Superior Court, State of Alaska, 3rd Judicial District of Anchorage, Case 3AN-99-10959 CI. Testifying for the **defendant** in a lawsuit involving a chemical exposure to a driller at a Fairbanks Fort Wainwright fuel cleanup site in June, 1998.

Representing the general Contractor, Hart Crowser. Representing the law firm of Eide and Miller, 425 "G" Street, Anchorage, AK. Contacted 08/00. Deposed 2001. Case settled at trial on April, 2001.

Antone Fettig vs. Polygon

Clark County, Vancouver, Wa. Case # 97-2-04627-0. Testifying for the **defense** for the General Contractor Polygon Construction. An 18 foot balloon wall collapsed while employees for two subcontractor companies (J.T. Nolan and Fozz Contracting) attempted to raise it on September 30, 1996. Representing the defendant for Mark Scheer of the law firm Lane Powell, Spears, Lubersky, 1420 Fifth Ave., Suite 4100, Seattle, Wa. 98101 Contacted 7/99. Deposed July 1999. Case settled at trial August, 1999.

Doph vs. Sellen Construction Company

King Co., No. 96-2-30262-7. Testifying for the **defendants** in a lawsuit filed as the result of a fall from a scaffold form on a Microsoft West Construction Project in June, 1995. The Plaintiff worked for Ceco Steel Erection and Sellen Construction was the General Contractor. Mr. Doph sustained injury to his heels and legs. Attorney Frederick Meyers, Mills, Meyers, Swartling. 1000 Second Ave, 30th Floor, Seattle, Wa. 98104. Contacted May, 1998. Deposed June 1998. Case settled out of court July, 1998.

Baker vs. General Plastics

Pierce County No. 91-2-12466-9. Testifying for six **plaintiffs** in a lawsuit involving chemical exposure on the job. Representing John Hogland, P.S. Counselor at Law, PO Box 7887, Olympia, Wa. 98507. Contacted March, 1998. Deposed May, 1998. Case Settled out of Court August, 1998.

Hofstrand vs. Eagle Hardware and Garden, Inc.

King County, No. 96-2-22903-2 SEA. Testifying for the **defense**, Eagle Hardware. The plaintiff, Hofstrand, fell 20 feet from a scissor lift while painting the inside of a new Eagle store. His employer was Fawcett Painting. Representing Attorney Richard Martins of Johnston, Martens, Christie and Andrews, 7400 Colombia Center, 701 5th Ave., Seattle, Wa. 98104. Contacted Nov, 1997. Deposed 1/98. Case settled 3/98.

Schimank vs. Icicle Seafoods

US District Court, Alaska Case A92-044, Civil. Representing the **plaintiff** in a suit involving exposure to ammonia and inhalation injuries from a refrigeration leak on board a vessel. Representing Attorney Richard Illgen for Preston, Gates and Ellis, 420 L Street, Suite 400, Anchorage, Ak 99501. Contacted March, 1994. Deposed July 29, 1994. Case settled out of court Nov. 1994.

Huff vs. WNG and Gastech

King County Superior Court Case No. 92-2-25069-1. Representing the **plaintiff** in a suit involving a confined space accident in an electrical utility vault involving a natural gas leak and subsequent explosion. Contacted Jan. 1994. Deposed 3/14/94. Representing David Balint of DeFunis and Balint, 2003 Sixth Ave., Seattle, Wa. 98121. Case settled out of court April 26, 1994.

Case File Notes / Rick Gleason / Anderson v Azko Nobel

April 24, 2008

Lincoln Buoregard
Attorney at Law
Law Offices of John Connelly
2301 N 30th St
Tacoma, WA.98403
(253) 593-5100

Re: Anderson v Azko Nobel
Pierce County Case No. 06-2-11986-5
King Country Case No. 07-2-10209-4 SEA

At your request a review was made of safety issues in the above mentioned case. I was first retained by the law offices of John Connelly to assist in the case on March 12, 2008. I was originally contacted in March, 2007.

-The case involves an exposure to a worker and her unborn baby at Azko Nobel. In Pacific, Washington.

Documents reviewed

Declaration of Julia A. Anderson, Plaintiff's Mother, Jan. 8, 2007
Declaration of Julia A. Anderson, Plaintiff's Mother, December 22, 2006
Declaration of Lincoln Buoregard, Plaintiff Attorney, August 26, 2007
Declaration of Laurinda Rowland, Co-Worker, Azko Nobel, May 31, 2007
Deposition of Richard Callewaert, Safety Coordinator, Akzo Nobel, April 26, 2007
(16 Exhibits of Mr. Callewaert's Deposition)
Deposition of Keith Crockett, Branch Manager, Azko Nobel, Pacific, WA. March 27, 2007
Declaration of Darrell Sparks, Regional Sales Manager, Azko Nobel, Jan. 2, 2007
Declaration of Betty Craig, Co-worker, Azko Nobel, Jan. 25, 2007
Declaration of Joyce Smith, Warehouse Assistant, Delivery Driver, Azko Nobel, Jan 25, 2007
Labor and Industries, DOSH WISHA Inspection report, Ins No. 306339979
2 Photographs of the paint Mix room

Case History

Julie Anderson worked for Azko Nobel in their "Seattle" branch, located at 206 N. Frontage Road in Pacific, WA. She worked at the facility during the time she was pregnant from May 1999- Jan. 2000. A time frame can be constructed from Exhibit I:

April 13, 1998: Date Julie Anderson Hired by Azko Nobel

May 19, 1998: Azko Nobel Memo regarding training of new employees prior to exposure.

July 7, 8 1998 "respirator training" by Rick Callewaert, Azko Nobel.

July 7, 1998 Exam Question: Respirators changed when “when vapors are noticed through the filters.

July 17, 1998 Approximate date of where respirators were issued.

Respirators used sporadically between July 17th, 1998 and May 21, 1999, according to phone conversation with Julie Anderson April 22, 2008—she estimates a few times during that period, probably two or so-a few hours. She does not know if the bag was properly sealed after she opened it since it had not been specifically discussed at the course.

Scenario 1: May, 1999. **Breakthrough time:** If the cartridges had been stored with the bag slightly open in the paint mix room with the organic vapor cartridges exposed to atmospheric concentrations of airborne organic vapors, *the cartridges would have already been saturated prior to conception.*

May 21, 1999: Approximate Date of conception.

Scenario 2 June 4, 1999. **Possible Breakthrough** Assuming two hours using the respirator July 17, 1998-May 21, 1999, Perfect Storage, 15 minutes per mix, Julie Anderson Mixing 100% of the time, based on 480 Minute Cartridge Change out time. Approximately 2 weeks from conception.

Scenario 3 June 18, 1999 Possible Breakthrough if minimal previous respirator use and 15 minutes per mix, Julie Anderson Mixing 50% of the time, based on 480 Minute Cartridge Change out time. Approximately 4 weeks from conception

Scenario 4 July 1, 1999. Possible breakthrough if minimal previous respirator use and 15 minutes per mix, Julie Anderson Mixing 33% of the time, based on 480 Minute Cartridge Change out time. Approximately 5 ½ weeks from conception.

May 25, 1999-November 30, 1999: Approximately 63 days of paint mixing while pregnant with Dalton

Dec. 3, 1999; Out on Medical Leave

Jan. 31, 2000: Birth of Dalton Anderson

Other important dates:

Jan 8, 1998. OSHA Respiratory Protection Code 29 CFR 1910.134 released, calling for cartridge change out schedules. 63 FR 20098

The corrections became effective April 23, 1998. 71 FR 16672

Spoke with Julie Anderson Wed. April 16, 2008 4:00 PM – 4:40 PM

More than half of the time Julie would mix the paints.

The amount of time that it took to prepare the mixes depended on the mix and if you have to dump the mix. Perhaps had to remix 1 of 10 times due to color etc.

The difficulty of the mix determined how long the mix took, but at a minimum it was 15 minutes

The more difficult mixes took approximately 30 minutes.

Did not get any respirators till Rick Callewaert's first visit. July 7, 8 1998 "respirator training" by Rick Callewaert, Azko Nobel.

Keith was irritated that Rick Callewaert wanted respirators. Said that we could have "expired ones" and some got the "unexpired" ones. All were new in a package, but there was an expiration date on the package.

After mixing the paint with the respirator after July training, perhaps some time between July 8 and July 17th a respirator was issued. Julie stored the respirator in the plastic bag that it came in. in mixing room—bag that it had come in.

She wore it each time, along with gloves. She did notice paint odor at the first but it went away, even before she was give the respirator. Others would visit and tell her of the large odor in the area. This included her ex husband and the Fire Marshall.

2 different temporary works quit because the smell was making them nauseous.

The 3m tester badge was used to sample in three independent areas after the WISHA L & I inspection.

Of the 3 badges:

One for sampling in the unload damage merchandise area.

One sample was over by the demo shelf

One was with the paint mixing area. This sampling was conducted by Joy Smith Ms. Anderson did not supervise this area sampling.

Spoke with Julie Anderson Tues. April 22, 2008 9:35 AM – 9:55 AM

Julie Anderson stated that while she and the other workers were officially issued the respirators in July 1998, almost no one wore them. She estimated that she opened the respirator package and used the respirator a few times between July 1998 and when she first learned she was pregnant. It was not until a driver asked about her painting while pregnant and said that in other

jobber stores if you are pregnant you cant work mixing paint.

Since the training class had not covered the exact storage requirements of the respirator in plastic bag she does not recall if she made sure that the respirator was "sealed" inside the ziplock bag that it came in. She said she had no idea at that time that the cartridges "breathed".

She mixed two types of paint. The Autocryl had a clear coat built into the paint and the Auto Base had to have a clear coat applied to the coat of paint. About once per month she would clean the mix room, using acetone as a solvent. She recalls the brand name was something like "5 Step Solvent". The latex gloves she had been issued would deteriorate and "poof- up" and expand.

Rick Gleason, CIH, CSP

Rick Gleason, MS, CIH, CSP

Certified Industrial Hygienist

Gleason Safety

8240 19th NE

Seattle, Wa. 98115

(206) 856-6660

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ricgleason@aol.com

1
2
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5
6
7 THE HONORABLE HARRY MCCARTHY

8
9 SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

10 JULIE ANDERSON, individually and on behalf
11 of the Estate of DALTON ANDERSON, and
12 DARWIN ANDERSON, individually,

NO. 07-2-10209-4 SEA

13 Plaintiffs,

**DECLARATION OF LINCOLN C.
BEAUREGARD**

14 v.

15 AKZO NOBEL COATINGS, INC., and KEITH
16 CROCKETT, a Washington resident,

17 Defendants.

18 Lincoln C. Beauregard declares and states:

- 19 1. I am the attorney for the Anderson family.
- 20 2. Akzo Nobel is making some seriously misleading assertions in its briefing to
21 the Court. For example, with regard to the reference to the memo documenting that the
22 headquarters safety manager told the local manager that respirators were not required to be
23 used when mixing paint, Akzo Nobel implies that the local manager may not have ever
24 received the memo. This is flagrant discovery gamesmanship. The local manager was
25 deposed months before the headquarters safety manager, and the memo was withheld by

26
DECLARATION OF LINCOLN C. BEAUREGARD - 1 of 5

 **COPY**

**Law Offices of John R.
Connelly, Jr.**
2301 N. 30th Street
Tacoma, Washington 98403
(253) 593-5100 - FAX (253) 593-0380

1 Akzo Nobel until after the local manager was deposed. In the middle of the headquarters
2 safety manager's deposition, the memo was produced for the first time. The headquarters
3 safety manager has subsequently admitted not telling the truth about the circumstances
4 surrounding withholding what the Anderson family now refers to as a "smoking gun" memo.
5

6 3. I have inquired as to Akzo Nobel's willingness to reconvene the local
7 manager's deposition in order to ask about this "smoking gun" memo. In response, I have
8 only received resistance, and Akzo Nobel clearly does not want the local manager asked about
9 this "smoking gun" memo while under oath. Akzo Nobel is playing serious games with key
10 records in this case and refusing to afford reasonable accommodations thereafter and is doing
11 so in order to prejudice the merits of the Anderson's family's very strong case.
12

13 4. With respect to medical records production, the Anderson family has produced
14 everything that has been requested. Ms. Anderson has identified, in good faith, every medical
15 provider that she can recall, and supplemented the list when she was able to remember others.
16 All of the most relevant medical records have been produced, and the medical records related
17 to the pregnancy have been in Akzo Nobel's possession for months. Moreover, the doctor
18 that treated Ms. Anderson during her pregnancy has already been deposed. In that deposition,
19 the doctor noted that Ms. Anderson smoked during pregnancy:
20

21 Q. So July 22, 1999 was Ms. Anderson smoking half pack a
22 day?

23 A. That would be my interpretation, yes.

24 And that same doctor could not identify and other possible medical cause of Dalton's injuries
25 other than workplace exposures to toxins:
26

1 Q. Okay. Based on the information that you have received
2 about this case, and having recently at least taken a look -- I
3 realize you didn't read it verbatim, but taking a look at your
4 March 2003 letter, do you feel any differently with regard to
5 your ability to link Dalton's condition to exposure to chemicals
6 at Ms. Anderson's work?

7 MR. BEAUREGARD: Objection; form. Go ahead.

8 THE WITNESS: Okay. My -- like I sort of indicated at the
9 beginning, from my position the thing that I would need would
10 be to be able to say, okay, there is enough information there in
11 terms of what's known about the impact of those particular
12 solvents and what have you on a developing fetus that the
13 problems that Dalton demonstrates are, in fact, consistent with
14 that kind of exposure in any case. Because maybe it's not
15 typical for that kind of malformation with that kind of exposure.
16 Again, you know, I'm really not knowledgeable about hat other
17 than what I've read in these documents. The second part of that
18 would be that I would have to look, as an obstetrician, at the
19 pregnancy from the standpoint of among the other things that
20 occurred during that pregnancy, have any of them been
21 demonstrated to be associated in any convincing way with the
22 kind of presentation that Dalton has. And, you know, that is
23 probably as close as I can come to making any kind of
24 comment. And so I guess I would say that from what I've read,
25 it looks to me that there have been reports in the literature that
26 those kinds of exposures have produced the kinds of things that
Dalton has. I don't have any information on how strong an
association that is, but if the articles that I read were accurate
then there seems to be that association.

Q When you said "articles" --

MR. BEAUREGARD: If you could let him finish.

THE WITNESS: And then secondly, you know, in going back
over the course of the pregnancy, admittedly, you know, we all
know that there are any number of birth defects that occur in
children that are completely unexplained, we just don't know
why they occur. Probably the majority of them, maybe, are that
way. But in looking back at the course of the pregnancy, the
other thing that I cannot do is I can't point to any specific event
during the course of the pregnancy to where I can say with any
degree of confidence that "I believe it's entirely possible that

1 this event caused these problems" or "that event did." You
2 know what I'm saying?

3 Q. Uh-huh.

4 A. So I guess in looking at it all together in terms of one big
5 picture, I would say, well, from what I can tell -- and, again, not
6 being an expert -- **it seems more plausible to me that there**
7 **might be a connection with the solvents than there is with**
8 **anything else that occurred during the pregnancy.** But that's
9 as far as I feel comfortable going.

10 Q. That's fine. Let me phrase it to you this way, then. Are you
11 able to conclude on a reasonable basis of medical certainty that
12 Dalton's condition was caused by exposure to solvents?

13 A. I'm not in a position to say that because I'm not an expert.

14 Q. Okay.

15 A. So, you know, as close as I can come is to make the
16 observation that A) I can't rule it out, and B) **I can't**
17 **demonstrate anything else in the pregnancy that would**
18 **account for it.**

19 Ms. Anderson's doctor was aware of the smoking during pregnancy, and ruled it out as a
20 possible cause of Dalton's malformations. The deposition excerpts and relevant medical
21 record are attached. A declaration from Sohail Khattak, M.D., is also attached. Akzo Nobel
22 has had the corresponding medical records and admissions about smoking for several months,
23 and there is no additional discovery identified or needed in relation to this topic.

24 5. Akzo Nobel requested that medical information pertaining to the Anderson
25 family's other children be produced. Those medical records are privileged, and the other
26 children are not parties to this lawsuit. Even if the medical records were not privileged,
ordering the production of innocent children's medical records for Akzo Nobel to conduct a
fishing expedition would be inconsistent with CR 26 and fundamentally wrong. Also, prior to

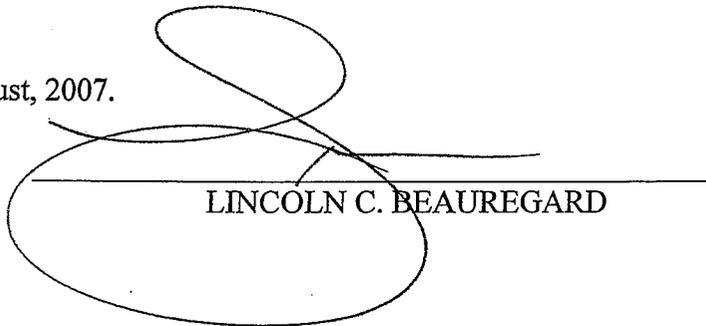
DECLARATION OF LINCOLN C. BEAUREGARD - 4 of 5

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1 the revised deadline for submitting a response to this motion, the written discovery requests
2 pertaining to the father, Darwin Anderson, were already produced. On January 12, 2007,
3 Akzo Nobel already received a 120 day continuance pertaining to liability and discovery
4 issues.

5
6 DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
7 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

8
9 Dated this 26 day of August, 2007.

10
11 
12 LINCOLN C. BEAUREGARD

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JULIE ANDERSON, individually and on)
behalf of the Estate of DALTON ANDERSON)
Plaintiffs,)
vs.) No. 07-2-10209-4
AKZO NOBEL COATINGS, INC., and KEITH)
CROCKETT, a Washington resident,)
Defendants.)

DEPOSITION OF JOSEPH A. ROBINETTE, M.D.

July 19, 2007

Tacoma, Washington

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Joseph A. Robinette
July 19, 2007

1 Q Why is that relevant?

2 A It would be relevant probably only to the extent that
3 we'd want them to determine whether or not there was any
4 reason to suspect that she had active infections still.
5 But usually from the history you can go back and clarify
6 when it occurred and what was done when it occurred, so
7 it doesn't always mean anything. It's probably more
8 relevant, really, in the context of fertility, a past
9 history, because it can cause tubal damage sometimes.

10 Q And then to the right of that there's two columns, the
11 first one starts with "nicotine"?

12 A Yes.

13 Q And indicates -- is that saying "half pack"?

14 A Yes, that's what I read.

15 Q Does that mean half pack a day?

16 A Yes.

17 Q So July 22, 1999 was Ms. Anderson smoking half pack a
18 day?

19 A That would be my interpretation, yes.

20 Q And then what are the check marks next to these various
21 categories?

22 A What they indicate is that -- this part of the prenatal
23 record is actually an intake history that's done by one
24 of the nurses. And so when they go through this list if
25 they check it, what they're saying is that "I asked about

1 an exhibit.

2 MR. WALSH: I'd appreciate that very
3 much, thank you.

4 So we don't have to come back and bug you again.

5 THE WITNESS: That would be good.

6 Q (By Mr. Walsh) Yeah. Do you recall having any
7 communications with a Dr. Glen C. Tripp? Do you know
8 Dr. Tripp?

9 A I don't know him, no.

10 Q Don't know him. And so you therefore don't recall --

11 A I have no recollection of a conversation with him.

12 Q Okay. Based on the information that you have received
13 about this case, and having recently at least taken a
14 look -- I realize you didn't read it verbatim, but taking
15 a look at your March 2003 letter, do you feel any
16 differently with regard to your ability to link Dalton's
17 condition to exposure to chemicals at Ms. Anderson's work?

18 MR. BEAUREGARD: Objection; form.

19 Go ahead.

20 THE WITNESS: Okay. My -- like I
21 sort of indicated at the beginning, from my position the
22 thing that I would need would be to be able to say, okay,
23 there is enough information there in terms of what's
24 known about the impact of those particular solvents and
25 what have you on a developing fetus that the problems

1 know, in going back over the course of the pregnancy,
2 admittedly, you know, we all know that there are any
3 number of birth defects that occur in children that are
4 completely unexplained, we just don't know why they
5 occur. Probably the majority of them, maybe, are that
6 way. But in looking back at the course of the pregnancy,
7 the other thing that I cannot do is I can't point to any
8 specific event during the course of the pregnancy to
9 where I can say with any degree of confidence that "I
10 believe it's entirely possible that this event caused
11 these problems" or "that event did." You know what I'm
12 saying?

13 Q Uh-huh.

14 A So I guess in looking at it all together in terms of one
15 big picture, I would say, well, from what I can tell --
16 and, again, not being an expert -- it seems more
17 plausible to me that there might be a connection with the
18 solvents than there is with anything else that occurred
19 during the pregnancy. But that's as far as I feel
20 comfortable going.

21 Q That's fine. Let me phrase it to you this way, then.
22 Are you able to conclude on a reasonable basis of medical
23 certainty that Dalton's condition was caused by exposure
24 to solvents?

25 A I'm not in a position to say that because I'm not an

1 expert.

2 Q Okay.

3 A So, you know, as close as I can come is to make the
4 observation that A) I can't rule it out, and B) I can't
5 demonstrate anything else in the pregnancy that would
6 account for it.

7 Q Okay. And when you were talking about literature you
8 kind of were pointing to the documents that we were
9 talking about today. Are you talking about the '99 JAMA
10 articles?

11 A Yeah, yeah.

12 Q Any other articles or publications?

13 A There were a couple of other ones that were indicated in
14 the bibliography on that particular article that I
15 glanced at quickly online, but that's the only one I
16 read.

17 Q Okay. You didn't actually read the articles that you
18 looked at?

19 A No.

20 MR. WALSH: Okay. Those are all the
21 questions I have. I'm sure Mr. Beauregard has some
22 questions for you, but I appreciate your time today.

23 THE WITNESS: Okay.

24

25

GIFT Clinic

502 South M Street, #200
Tacoma WA 98405
R.Z. Mc Lees, M.D.

Joseph A. Robinette, M.D.

P.O. Box 8550
Tacoma WA 98418
Theresa L. Froelich, D.O.

March 5, 2003

ATTN: Kimberly C. Dodds
Law Office of R. Randall Harrison
610 South J Street
Tacoma, Washington 98405

RE: Julie Anderson

Dear Ms. Dodds:

I have reviewed your letter dated February 21, 2003 regarding Julie Anderson and Dalton Anderson, and will forward to you the requested information. As you stated, Julie's pregnancy was complicated in several ways, first being that she was noted at the initial confirmation of her pregnancy to have a marginal level of progesterone and we believe this to be a risk factor for potential early miscarriage. As a result, she was started on progesterone supplementation at that time. There was also in the early portion of the gestation a small area of subchorionic hemorrhage. However, this was minor and it is my impression that this was not a specific factor in terms of the long-term prognosis for the pregnancy. Progesterone support in Julie's pregnancy was also felt to be advisable given the fact that there was a prior history of miscarriage as well.

At a slightly later time the patient's pregnancy was complicated because of concerns over threatened pre-term labor, this on the basis of increased uterine activity and evidence on ultrasound surveillance of significant shortening in the length of her cervix, which is felt to be a marker for potential pre-term delivery. This necessitated the patient's period of bed rest and diminished activity that you alluded to in your letter.

Finally, of course, was the diagnosis during the mid portion of the patient's pregnancy of the problem with the multicystic kidney, which was then monitored through the remaining portion of the pregnancy.

Telephone: 253-475-5433

Facsimile: 253-473-6715

Kimberly C. Dodds
RE: Julie Anderson
March 5, 2003
Page 2

Specifically with regard to your question as to whether there could be any correlation between these complications in Julie's pregnancy and the threatened pre-term labor and the low progesterone, I can only answer that by saying that we see a significant percentage of pregnancies that are complicated by low progesterone and the need for pregnancy support, and also pregnancies that are associated with risk for pre-term delivery, and the latter can occur for a variety of different reasons. However, I am not aware of any case in my own personal experience, nor am I aware of any reported case, where there was a suggested association between initial low progesterones in a pregnancy, a threatened pre-term labor, and the diagnosis of multicystic kidney and /or congenital brain malformation. As a result, it would be my medical opinion that there is no likely causal relationship between a low progesterone, threatened pre-term labor, and the problem with the congenital brain and this type of kidney disease.

I would also suspect that the minor problem that the patient experienced early in the pregnancy with bleeding secondary to the slight placental separation would not have been a likely explanation for these later problems with the infant either. I say that based on the fact that we see pregnancies that are complicated by areas of placental separation and varying degrees of bleeding with some regularity and we have had no prior occurrence of this problem in infants at the time of subsequent delivery.

The knots in the umbilical cord are not an infrequent occurrence during pregnancies normally. It was somewhat unusual that in this particular case there were two knots in the umbilical cord, but again this is generally not believed to be a significant risk factor regarding the pregnancy unless there is associated evidence that the knot in the cord is in some fashion compromising blood flow in terms of exchange between the fetus and the placenta. I do not believe that this was ever suspected or documented on the basis of the multiple ultrasounds that were performed during Julie's pregnancy.

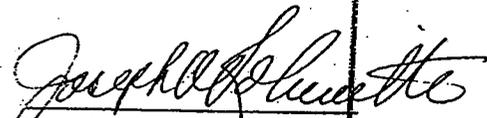
Regarding Julie's medical condition, as you stated in your letter she did have a hysterectomy performed in May 2000 and the indication for this procedure was a marked degree of uterine prolapse which started troubling the patient at and after her delivery. Uterine prolapse is one manifestation of a more generalized condition that we refer to as pelvic relaxation syndrome and it is recognized to be a fairly common occupational hazard, if you will, of childbirth. Varying degrees of relaxation probably occur in most women. In some instances it can become severe enough to necessitate the performing of a surgical procedure such as was the case with Julie.

Kimberly C. Dodds
RE: Julie Anderson
March 5, 2003
Page 3

Whether or not the potential toxin exposures that you are investigating had anything to do with making the patient more predisposed to this particular problem is something about which I have no specific information. I have no real expertise in the areas of toxicology or teratology, and so it would require an opinion from someone with much more experience in those fields to comment on that definitively. I think it is probably fair to say, however, that the exact manner in which potential toxins can impact negatively on one's health are not very well understood. Almost all the information that we do have has been gleaned from animal studies and whether they accurately predict what the impact will be on humans is still not entirely clear. Thus, the potential that in some fashion her chemical exposures would have predisposed her to other problems certainly exists, I just cannot comment as to how likely that might be.

I hope this letter addresses your questions satisfactorily.

Sincerely,



Joseph A. Robinette, M.D.

JAR/kbs

THE HONORABLE HARRY MCCARTHY

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JULIE ANDERSON, individually and on behalf
of the Estate of DALTON ANDERSON, and
DARWIN ANDERSON, individually,

Plaintiffs,

v.

ARZO NOBEL COATINGS, INC., and KEITH
CROCKETT, a Washington resident,

Defendants.

NO. 07-2-10209-4 SEA

DECLARATION OF SOHAIL
KHATTAK, M.D.

Sohail Khattak, M.D. declares and states:

1. I am over the age of eighteen and competent to testify to the matters herein.
2. My field of medical expertise includes extensive education, training, and experience in the field of identifying and assessing teratogenic risks in relation to workplace organic solvent exposures, pregnancy, and unborn children. A copy of my curriculum vitae is attached to this declaration. I was a leading researcher and author of an article that was published in March of 1999 in the Journal of American Medical Association (JAMA) titled

DECLARATION OF SOHAIL KHATTAK, M.D. - 1 of 6

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Tacoma, Washington 98405
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Pregnancy Outcome Following Gestational Exposure to Organic Solvents a copy of which is attached to this declaration.

3. I have been asked to review, evaluate, and opine in relation to the medical cause of the *in utero* malformations that are/were suffered by Dalton Anderson. Included amongst Dalton's malformations are bilateral subcortical heterotopia and other cortical malformations (brain abnormalities) as well as dysplastic kidney. In reaching my medical conclusions, I have reviewed extensive medical records of both Julie and Dalton Anderson, records produced and/or related to Akzo Nobel, statements produced by Ms. Anderson and others, and based upon the materials that I reviewed, I am able to render a medical opinion, more probably than not and within a reasonable degree of medical certainty, as to the cause of Dalton's malformations as being *in utero* workplace exposure to Julie Anderson while employed with Akzo Nobel.

4. By way of background, it is understood that Ms. Anderson conceived Dalton on or about Friday, May 21, 1999. Ms. Anderson worked the following week at Akzo Nobel and was involved in paint handling and mixing operations. The Andersons went on a Memorial Day weekend getaway and, not long after returning in early June, it was learned that Ms. Anderson was pregnant with Dalton. Prior to this timeframe, Ms. Anderson had been instructed that respirator usage was not required during paint mixing operations. Subsequent to becoming pregnant, Ms. Anderson inquired of Keith Crockett, her supervisor, as to whether a respirator was needed when mixing paint, and Mr. Crockett suggested that she may want to wear a respirator given the pregnancy.

5. After conferring with Ms. Crockett about the need for using a respirator, Ms. Anderson continued to participate in paint handling and mixing operations while using a respirator. Ms. Anderson was not trained the proper manner in which to determine a respirator change out schedule, and, as a consequence, she utilized the same respirator for the duration of time that she was pregnant and involved in paint mixing operations. Later, in 2003, after a WISHA investigation and a 3M consultation, Ms. Anderson determined, when acting in the capacity as the HSE coordinator, that, according to 3M guidelines, respirators used during daily operations should have been switched out after no longer than eight (8) hours of usage.

6. With respect to the hazards associated with paint handling/mixing operations, it is understood that in 1998 and 1999 air monitoring was conducted utilizing an "area monitoring" process in the paint mixing room that determines chemical risks levels by mounting an air monitor in a room for approximately eight (8) hours and then sending out for the exposure level results. The 1998 and 1999 testing results suggested that the risks associated with chemical exposure were low. By comparison, in 2003, Ms. Anderson conducted "personal monitoring" which is completed by having an employee wear an air monitor while engaged in operations and determined that the corresponding exposure levels were extremely high. In any given workplace, the daily tasks are likely to vary, but for an accurate determination as to the associated hazards, "personal monitoring" versus "area monitoring" must be conducted in order to properly factor the associated risks and render a determination as to the effectiveness of the safety equipment to include a respirator filter/cartridge service life.

DECLARATION OF SOHAIL KHATTAK, M.D. - 3 of 6

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1 7. Akzo Nobel's change out schedule was previously documented as being that
2 employees would only change out respirators upon the detection of vapors through the
3 filters/cartridges. This is a grossly substandard policy to the extent that it does not require
4 employees to change out filters/cartridges until employees are already inhaling toxins, and
5 does not provide for the fact that some toxins are odorless, does not provide for the fact that
6 some toxins can be being inhaled at low enough levels that are harmful though not detectable
7 to the sense of smell, and employees that are routinely exposed to the smell of the vapors in
8 workplace operations typically develop a lack of sensitization to the smells associated with
9 the chemicals/toxins.

10 8. An internal memo that was drafted by Rick Callewaert notes that it was
11 purportedly safe to not use respirator at the Pacific, Washington facility to the extent that the
12 ventilation system was working properly. Mr. Callewaert admitted, and it is documented, that
13 in July 1999, via an audit process, it was learned that the ventilation system was not working
14 in the paint mixing room. At the time it was learned that the ventilation system was not
15 operational on July 14, 1999, Ms. Anderson would have been approximately 7-8 weeks
16 pregnant. This discovery is noteworthy in that the kinds of malformations that are suffered by
17 Dalton are typically a consequence of exposure that occurs at some point in time during the
18 first trimester of pregnancy, i.e. before the 12th week of pregnancy.

19 9. It is noteworthy that the treating physicians involved in Julie and Dalton's care
20 evaluated and ruled out the possibility of alternative causes in relation to the injuries at issue.
21 For example, according to Joseph A. Robinette, M.D., Julie's treating physician during the
22 pregnancy with Dalton, alternative causes such as increased uterine activity, progesterone

treatment, placental separation, and umbilical cord knots can be medically ruled out as possible causes given Dalton's presentation and what is known about the circumstances. Genetic testing during Julie's pregnancy with Dalton also ruled out potential genetic abnormalities as possible causes. I am in agreement with Dr. Robinette as to these medical evaluations.

10. It is my understanding that in early 2004, Dalton's cardiologist, Christopher B. Stefanelli, M.D., noted in a medical note that Dalton's significant medical problems may "very likely" be as a result of "significant exposure to organic solvents while in utero." It is my understanding from the medical records that genetic testing was ordered and relied upon Dr. Stefanelli in reaching his conclusions. That genetic testing did not identify any irregularities as suggestive causes of Dalton's malformations.

11. With respect to the more specific facts of the case, it is my understanding that while working at Akzo Nobel, Ms. Anderson was involved in assorted operations that included handling and mixing paint. It is indicated in Akzo Nobel's MSDS sheets, *i.e.*, documentation noting the chemical compounds and some corresponding risks and hazards, that chemicals such as xylene, toluene, Ethyl benzene, and others were amongst ingredients of the paint that was handled and mixed. It is commonly understood in the relevant medical community and also recognized by government agencies, such as the Department of Health and Human Services - Agency for Toxic Substances and Disease Registry, that the noted chemicals are specifically associated with impacts upon neurological and liver development. Based upon the information that I have reviewed, and my training and experience in the field of teratology, it is my opinion, more probably than not and within a reasonable degree of

DECLARATION OF SOHANIL KHATTAK, M.D. - 5 of 6

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medical certainty that Dalton's malformations were caused by Ms. Anderson's workplace exposure to organic chemicals at Akzo Nobel.

12. A single significant exposure to the chemicals at issue at any time during the early phases of pregnancy, i.e. first trimester, can cause the types of malformations suffered by Dalton, as can a prolonged exposure to lower levels of those same chemicals during that same time frame. And so it follows that, more likely than not and within a reasonable degree of medical certainty, Dalton's malformations were caused by either the lack of respirator usage during the early phase of the pregnancy which would and/or could have been exacerbated by Ms. Anderson's unprotected exposure to chemicals over time, and/or the exposure to chemicals by virtue of the deterioration/saturation as to the effectiveness of the respirator (and/or corresponding filters/cartridges) which was being used during paint mixing operations during the pregnancy which may have also been exacerbated by the lack of proper ventilation thereby increasing the level of toxins in the air in the paint mixing room.

DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Dated this 23rd day of August, 2007.


SOHAIL KHATTAK, M.D.

SOHAIL KHATTAK MD., FRCP(C)

CITIZENSHIP: CANADIAN

BUSINESS ADDRESS: The Kids Clinic
Suite 402, 220 Dundas Street West
Whitby, Ontario, Canada
L1N 8M7

TELEPHONE: (905) 666-4400

FAX: (905) 668-2881

E-MAIL: skhattak@thekidsclinic.com

BLACKBERRY: skhattak@qualiaclinical.com

- 1994 - 1995 Residency in Pediatrics at The Hospital for Sick Children, Toronto, Ontario, Canada
- 1995 - 1996 Clinical fellow Pediatrics/Emergency services at The Hospital for Sick Children, Toronto, Ontario, Canada
- 1996 - 1998 Clinical Fellow Division of Clinical Pharmacology And Toxicology at The Hospital for Sick Children, Toronto, Ontario, Canada

APPOINTMENTS:

- 1998 - To date Assistant Professor, Department of Pediatrics University of Toronto, Ontario, Canada
- 2001 - To date Pediatrician in Chief, The Kids Clinic, Whitby, Ontario, Canada
- 2005 - To date President & CEO, Qualia Clinical Service Inc., Ontario, Canada
Omaha, Nebraska, USA

HOSPITAL AFFILIATIONS

- 1999 - 2000 Consultant Pediatrician Burnt Wood Regional Health Authority, Thompson, Manitoba
- 1998 - 2002 Consultant Pediatrician at the Scarborough Grace Hospital Scarborough, Ontario, Canada.
- 1998 - 2003 Consultant Pediatrician at the Rouge Valley Health System Ontario, Canada.

AWARDS AND PRESENTATIONS:

Physician Services Incorporated grant for research (1997-1998).

Physician Services Incorporated Young Investigator Grant (1999-2001).

Best paper presented at the 6th annual meeting of International Drug Information Association. (Toronto, Feb 1998).

Hoffman-La Roche award for the best paper of the year in Clinical Pharmacology.

Presented paper in 6th annual meeting of International Drug Information Association. (Toronto, Feb 1998).

Presented my paper at American Society of Clinical Pharmacology Annual meeting at New Orleans Marriott Hotel in March of 1998.

Presented a Paper at Teratology and Organization of teratogen information services annual meeting in San Diego in July of 1998.

I was invited guest speaker at CEHN annual meeting, titled Pediatric environmental health: Putting into practice San Francisco (June 4-7, 1999)

Key Note Speaker at an International conference on reproductive health hazards held in Toronto, Ontario, Canada. September 2000)

I have conducted numerous grand rounds and educational rounds. I lecture year round on Drugs and chemicals in pregnancy. These are CME events held in Ontario, Canada

- **Sohail Khattak, Dirk Huyer, Shinya Ito, Gideon Koren.** A approach to the diagnosis of pediatric Munchausen by Proxy. *Can J of Clin Pharm.*, 1996; 3(1)
- **Sohail Khattak, John W. Rogan, B. Fred Saunders, Jochen G.W. Theis MD., Gerald S. Arbus, Gideon Koren.** The efficacy of amlodipine in pediatric bone marrow transplant patients. (*Clinical Pediatric* 1998 Jan;37(1):31-5).
- **Rogan JW, Lyszkiewicz DA, Blowey D, Khattak S, Arbus GS, Koren G.** A randomized prospective crossover trial of amlodipine in pediatric hypertension. *Pediatr Nephrol.* 2000 Oct;14(12):1083-7.
- **Loebstein R, Atanackovic G, Bishai R, Wolpin J, Khattak S, Hashemi G, Gobrial M, Baruchel S, Ito S, Koren G.** Risk factors for long-term outcome of ifosfamide-induced nephrotoxicity in children. *J Clin Pharmacol.* 1999 May;39(5):454-61.
- **Malcolm Higgins, Leah Harrington, Sohail Khattak.** True incidence of occult scaphoid fractures in children. (submitted for publication)
- **Sohail Khattak, P Levin, Gideon Koren,** Briminodine induced toxicity in children after topical use. (submitted for publication)
- **Michael Iskedjian, Bridget Maturi, John Walker, Thomas R. Einarson, Sohail Khattak, Greg Carter** Cost-effectiveness analysis of atomoxetine treatment in children with Attention Deficit Hyperactivity Disorder (ADHD). (submitted for publication)
- **Khattak S, Carter G, Maturi B, Walker JH, Einarson TR, Iskedjian M,** Patient preferences for non stimulant therapy over stimulants in attention deficit hyperactivity disorder: A Pharmacoeconomic pilot study.

13. Drug administration errors during simulated resuscitation in a pediatric Emergency Department. (Study in progress)

14. Pimozide toxicity in Children (In Progress)



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Vol. 281, pp. 1106-1109, Mar. 24/31, 1999

Pregnancy Outcome Following Gestational Exposure to Organic Solvents

A Prospective Controlled Study

Sohail Khattak, MD, FRCPC
Guiti K-Moghtader, BSc
Kristen McMartin, MSc
Maru Barrera, PhD
Debbie Kennedy, MD
Gideon Koren, MD, FRCPC

Context Numerous women of childbearing age are exposed occupationally to organic solvents. Previous retrospective studies have reported conflicting results regarding teratogenic risk.

Objective To evaluate pregnancy and fetal outcome following maternal occupational exposure to organic solvents.

Design A prospective, observational, controlled study.

Setting An antenatal counseling service in Toronto, Ontario.

Patients One hundred twenty-five pregnant women who were exposed occupationally to organic solvents and seen during the first trimester between 1987 and 1996. Each pregnant woman who was exposed to organic solvents was matched to a pregnant woman who was exposed to a nonteratogenic agent on age (± 4 years), gravidity (± 1), and smoking and drinking status.

Main Outcome Measure Occurrence of major congenital malformations.

Results Significantly more major malformations occurred among fetuses of women exposed to organic solvents than controls (13 vs 1; relative risk, 13.0; 95% confidence interval, 1.8-99.5). Twelve malformations occurred among the 75 women who had symptoms temporally associated with their exposure, while none occurred among 43 asymptomatic exposed women ($P < .001$). (One malformation occurred in a woman for whom such information was missing.) More of these exposed women had previous miscarriage while working with

organic solvents than controls (54/117 [46.2%] vs 24/125 [19.2%]; $P < .001$). However, exposed women who had a previous miscarriage had rates of major malformation that were similar to exposed women who had no previous miscarriage.

Conclusions Occupational exposure to organic solvents during pregnancy is associated with an increased risk of major fetal malformations. This risk appears to be increased among women who report symptoms associated with organic solvent exposure. Women's exposure to organic solvents should be minimized during pregnancy. Symptomatic exposure appears to predict higher fetal risk for malformations.

JAMA. 1999;281:1106-1109

- ✓ Methods
- ✓ Results
- ✓ Comment
- ✓ References

Many women of childbearing age are occupationally exposed to organic solvents. The most important women-dominated occupations with potential chemical exposures are health care professions and work tasks in the clothing and textile industries, all of which involve exposure to organic solvents.[1,2]

Many industrial solvents are teratogenic in laboratory animals. There are reports of limb and central nervous system defects in mice, marked developmental toxic effects and retardation of skeletal growth in rats, and congenital malformations in rabbits.[3-10] However, the animal studies typically use high doses of single solvents and a variety of routes of administration. In the occupational setting, exposure usually occurs to a multitude of solvents at much lower doses by inhalation, making extrapolation from animals to humans problematic.

A recent meta-analysis of studies in humans detected an apparent increased risk of major malformations and a trend toward increase in rates of miscarriage[11] in women who self-reported occupational exposures to solvents. However, all available published experience is based on retrospective studies.[12-14] The present study is the first to prospectively evaluate pregnancy and fetal outcome following maternal occupational exposure to organic solvents.

METHODS

The study group consisted of all pregnant women occupationally exposed to organic solvents and counseled between 1987 and 1996 by the Motherisk Program at the Hospital for Sick Children in Toronto, Ontario. Each mother who was occupationally exposed to organic solvents was paired with a pregnant woman who was exposed to a nonteratogenic agent, attended the Motherisk clinic, and matched the index woman on age (± 4 years), gravidity (± 1), and smoking and drinking status. A nonteratogenic agent was defined as a medicinal or environmental substance that has been proved not to increase the baseline risk for major malformations or miscarriages. Organic solvents to which women were occupationally exposed included aliphatic and aromatic hydrocarbons, phenols, trichloroethylene, xylene, vinyl chloride, acetone, and related compounds.

During the initial assessment (at or up to several weeks after the point at which pregnancy was determined), we collected all available data on exposure during pregnancy to medicinal and recreational drugs, smoking, alcohol, lifestyle, medical and nutritional status, and sexually transmitted diseases. Other reproductive hazards were elucidated by taking a detailed medical, genetic, and obstetric history. Although we recorded the medical history of the father of the child and his use of drugs, most fathers did not work with organic solvents and were not exposed to medications. Details concerning the time of exposure to organic solvents were recorded for determination of temporal relationship between exposure and conception. The details on chemical exposure were recorded, including occupation, chemicals involved, duration of exposure, type of protective equipment used, and other safety features, including ventilation fans. Adverse effects were defined as those known to be caused by organic solvents (eg, irritation of the eyes or respiratory system, breathing difficulty, headache). Temporal relationship to exposure was investigated to separate these symptoms from those associated with pregnancy.

The postnatal assessment occurred between 6 and 9 months after the expected date of confinement. During this interview, the mother was questioned about the course of her pregnancy subsequent to the first meeting. This included verification of length of exposure to organic solvents during pregnancy. Possible medical or obstetric complications and details about the birth and the prenatal period were collected. All major malformations were recorded and corroborated by a written report from the physician caring for the child. The attainment of developmental milestones was recorded with the use of the Denver Scale from the maternal reports.

The following cases were excluded from the cohort of organic solvent exposure: paternal exposure only; short-term maternal exposure that did not occur in an occupational setting (eg, household painting); women whose main task at work included heavy lifting, which might increase the rate of miscarriages; cases in which during the first interview it became apparent that the exposure to organic solvents had occurred only before conception; any case in which during the first interview (ie, during the first trimester) or the second interview (postnatally) it became evident that the woman was exposed to known teratogen(s) or neurotoxin(s) during the index pregnancy; and any case in which the mother refused to give consent for participation in our follow-up program. The time of conception was verified by identification of the last menstrual period. When the time of the last menstrual period was questionable, an ultrasonographic examination was performed following the counseling session.

The primary outcome of interest was the rate of major malformations. A major malformation was defined as any anomaly that has an adverse effect on either the function or the social acceptability of the child. The expected rate is 1% to 3%. Secondary outcomes of interest were the rates of minor malformations, miscarriages or therapeutic abortions, and premature births (<37 weeks' gestation); birth weight and gestational age at delivery; and presence of fetal distress or other neonatal complications. A minor malformation was defined as a structural anomaly that does not pose any significant health or social burden. Fetal distress was defined as the presence of meconium and/or abnormal fetal heart rate monitoring during delivery or the requirement of resuscitation or a

neonatal intensive care unit. Neonatal complications were defined as health complications that were not structural in nature. This analysis was approved by the hospital's research ethics board. The physician who counseled the woman, as well the consultation letter sent to her physician, introduced the planned follow-up program. At the time of follow-up, subjects were asked for their consent for the follow-up interview. Rates of major malformations in the study group were compared with those in the matched control group by χ^2 analysis. Relative risk was calculated with 95% confidence intervals. Secondary end points (ie, rates of miscarriage, prematurity, and birth weight) were compared by χ^2 or Mann-Whitney rank sum test whenever appropriate. All data are expressed as mean (SD).

Table of Contents

RESULTS

Between 1986 and 1996, 256 women were seen in the Motherisk Program because of occupational exposure to organic solvents. Of these, 42 women (16.4%) were not pregnant at the time of the study, 26 (10.2%) were lost to follow-up, 18 (7%) refused to consent to participation in the study, and 45 (17.6%) were excluded from the study, based on our exclusion criteria. The remaining 125 women were matched to 125 control women. All exposed women worked with organic solvents for at least the entire first trimester of pregnancy. The most common occupations were factory worker (n=37), laboratory technician (n=21), professional artist/graphic designer (n=16), and printing industry worker (n=14) (Table 1). The organic solvents most commonly involved were aliphatic and aromatic hydrocarbons, phenols, trichloroethylene, xylene, vinyl chloride, acetone, and related compounds.

Table 1—
Breakdown of
Occupations...

Table 2—
Characteristics
of Subjects
Exposed to
Organic
Solvents...

The characteristics of subjects in the 2 groups are shown in Table 2. There was a statistically significant difference in the rates of previous miscarriage between women in the exposed vs control groups. Subanalysis revealed that in most women, the previous miscarriages occurred during occupational exposure to organic solvents. Previous miscarriage occurred prior to such work in only 8 cases, yielding a significantly higher rate of previous miscarriage among those working with organic solvents (Table 2). As a result, women exposed to organic solvents had a lower parity prior to the index pregnancy despite similar gravidity (Table 2). However, for the rest of the characteristics, there were no differences between the 2 groups (Table 2). During the index pregnancy, there were significant differences in the birth weight and rates of fetal distress and neonatal complications (mainly eczema) (Table 3).

Table 3—
Pregnancy
Outcome...

There were significantly more major malformations among the exposed women compared with the control group (Table 3). The relative risk of major malformation among the exposed women was 13.0 (95% confidence interval, 1.8-99.5). The major malformations in the study group are detailed in Table 4. Rates of major malformations did not differ between women who had a previous miscarriage while working with organic solvents vs those who did not have a previous miscarriage.

Table 4—
Major
Malformations...

Among the 125 women occupationally exposed to organic solvents, 75 reported symptoms temporally associated with their exposure, 43 were asymptomatic, and in 7 cases, such information was missing. Twelve of the 13 major malformations occurred among the symptomatic women vs 0 among the 43 asymptomatic women ($P < .001$). In a further subanalysis, women exposed to organic solvents were stratified according to whether they were exposed to organic solvents for more than 7 months or for 3 to 7 months. Sixteen women who were exposed for more than 7 months had labor with fetal distress requiring resuscitative measures vs only 1 among those with shorter exposures ($P = .002$). Also, birth weights were lower among those with longer exposure (mean [SD], 2975.2 [976.2] g vs 3431.4 [579.3] g; $P = .03$). Gestational age was also lower, although differences were not significant (mean [SD], 38.0 [7.41] weeks vs 40.0 [1.86] weeks; $P = .60$).

Table of Contents

COMMENT

There are controversial reports regarding fetal outcome following prenatal exposure to organic solvents. Among them are increased rates of miscarriage, central nervous system and cardiovascular malformations, fetal solvent/gasoline syndrome, and perinatal mortality; in addition, maternal fertility is reduced. [2,3,10,13,15-19] Fat-soluble organic solvents can pass through biological membranes, including the placenta. [10] There is a paucity of information regarding the impact of in utero exposure to organic solvents on the developing brain. Animal studies have clearly shown that a variety of solvents readily cross the placenta and that maternal inhalation of organic solvents results in neurodevelopmental deficits in neonatal rodents. [3-8]

Our recent meta-analysis has found that occupational exposure to organic solvents is associated with increased risk of major malformation. [11] We have also shown a trend toward more miscarriages, although it failed to reach statistical significance. [11] Yet, none of the eligible studies was prospective. Recall bias may affect the accuracy of assessment of fetal outcome in such studies. Moreover, the retrospective design of these studies does not allow validation of crucial details regarding the nature or extent of the exposure; or of symptoms associated with the exposure. Also, most available retrospective studies did not match patients for smoking, alcohol use, and other potentially confounding reproductive risks.

The Motherisk protocol has allowed us to record in a systematic manner all exposure data and other maternal and paternal medical details at the time of exposure during the first trimester of pregnancy and to follow up pregnancy outcomes prospectively in this cohort. The control group was assessed in an identical manner.

This prospective study confirms the results of our recent meta-analysis. [11] Women exposed occupationally to organic solvents had a 13-fold risk of major

malformations as well increased risk for miscarriages in previous pregnancies while working with organic solvents. Moreover, women reporting symptoms associated with organic solvents during early pregnancy had a significantly higher risk of major malformations than those who were asymptomatic, suggesting a dose-response relationship. Other factors (eg, type of solvent) might have accounted for the presence of symptoms in some women.

Although some human teratogens have been shown to cause a homogeneous pattern of malformation(s), in other cases no specific syndrome has been described.[19] No homogenous pattern of malformations is obvious from the present study. However, organic solvents, although traditionally clustered together, are a diverse group of compounds that should not be expected to cause similar patterns of reproductive toxic effects.

Although more prospective studies will be needed to confirm the present results, it is prudent to minimize women's exposure to organic solvents during pregnancy. Moreover, symptomatic exposure appears to confer an unacceptable level of fetal exposure and should be avoided by appropriate protection and ventilation. Health care professionals who counsel families of reproductive age should inform their patients that some types of employment may influence reproductive outcomes.

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Funding/Support: This study was supported by a grant from Physician Services Inc, Toronto.

Table of Contents

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Table of Contents

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Table 4. Major Malformations in the Organic Solvent-Exposed Group

- Aortopulmonary window, tethered umbilical cord, hemivertebrae
- Ventricular septal defect
- Laryngomalacia (required multiple hospitalizations)
- Congenital deafness and bilateral pelvic-ureter junction obstruction requiring nephrostomy
- Clubfoot requiring correction
- Diaphragmatic hernia
- Neuronal migration defect and focal cortical dysplasia - Has this heterotopia
- Laryngotracheomalacia (patient required hospitalizations with every episode of cold)
- Neural tube defect
- Congenital hydronephrosis (required nephrectomy) - Has multicystic Dysplastic Kidney
- Left inguinal hernia requiring surgery
- Cloacal extrophy, spina bifida; or pregnancy terminated because of these anomalies
- Micropenis

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