

**STATE OF CALIFORNIA**  
**Division of Workers' Compensation**  
**Workers' Compensation Appeals Board**

**Case No.: ADJ9533148**

**ANTHONY TAYLOR (DECEASED),**

*Applicant,*  
vs.

**MERCED COUNTY SHERIFF'S DEPT.,  
PSI, administered by PEGASUS RISK  
MANAGEMENT,**

*Defendants.*

**ORDER NUNC PRO TUNC**

**and**

**FINDINGS OF FACT, ORDER, AND  
AMENDED OPINION ON DECISION**

**WHEREAS** the undersigned issued a Findings of Fact, Order, and Opinion on Decision, September 7, 2021,

**IT APPEARING** there is a clerical error in the Opinion on Decision, identifying the employer as Madera County Sheriff's Department, instead of Merced County Sheriff's Department; and

**IT ALSO APPEARING** there is a clerical error in the Opinion on Decision referencing Madera Irrigation District, and County of Madera, instead of Merced Irrigation District and County of Merced; and

**IT FURTHER APPEARING** there is a clerical error on page 11, in the Opinion on Decision wherein it states "home beings" instead of "homes being."

**GOOD CAUSE APPEARING;**

**IT IS SO ORDERED** that the Opinion on Decision is hereby corrected by replacing all references to Madera County Sheriff's Department, to Merced County Sheriff's Department; and

**IT IS ALSO SO ORDERED** that the Opinion on Decision is hereby corrected by replacing all references to Madera Irrigation District, and County of Madera, to Merced Irrigation District, and County of Merced; and

**IT IS FURTHER ORDERED** that the Opinion on Decision is hereby corrected by replacing "home beings" with "homes being" on page 11, with amendments to read as follows:

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**GOLDBERG & IBARRA**

By David Ibarra, Attorney at Law,  
Attorneys for Applicant;

**MICHAEL SULLIVAN & ASSOCIATES**

By Renee D. Logoluso, Attorney at Law,  
Attorneys for Defendants

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Application having been filed herein; all parties having appeared for the Trial in the above-entitled matter; and all evidence having been heard on the record and submitted, the Honorable Angelique Scott, Workers' Compensation Administrative Law Judge, now decides as follows:

**STIPULATED FACTS**

1. Anthony Taylor, Decedent, while employed during the cumulative trauma period of October 4, 1982, through July 30, 2011, by Merced County Sheriff's Department, claims to have sustained an injury arising out of and occurring in the course of employment due to exposure to toxic chemicals leading to pancreatic cancer, resulting in death.
2. At the time of the alleged injury the employer was permissibly self-insured, with workers' compensation benefits administered by Pegasus Risk Management.
3. No attorney fees have been paid and no attorney fee arrangements have been made.

**FINDINGS OF FACT**

1. The stipulations of the parties are accepted as fact.
2. Delores Taylor's testimony during her deposition on July 23, 2014, relevant to disputed medical issues of causation/compensability Panel.
3. Delores Taylor's testimony during her deposition on July 26, 2017, is not relevant as to the disputed medical issues.
4. Daniel Wentz' testimony during his deposition on August 1, 2017, is relevant to disputed medical issues of causation/compensability.
5. Applicant Attorney's proposed cover letter dated November 10, 2020, is relevant to disputed medical issues.
6. Marion Joseph Fedoruk, M.D.'s testimony during his deposition on September 18, 2020, is relevant to disputed medical issues of causation/compensability Panel.

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**ORDER**

**IT IS SO ORDERED** a copy of the Applicant Attorney's November 10, 2020, revised proposed cover may be served on Panel QME Robert Noriega, M.D., once amended letter to exclude reference to Mrs. Taylor's July 26, 2017, deposition transcript, may be served on Panel QME Robert Noriega, M.D.; and

**IT IS ALSO ORDERED** a copy of the deposition transcripts of Mrs. Delores Taylor, dated July 23, 2014, and Daniel Wentz, dated August 1, 2017, may be served on Panel QME Dr. Noriega; and

**IT IS FURTHER ORDERED** a copy of Marion Joseph Fedoruk, M.D.'s deposition transcript, dated September 18, 2020, may be served on Panel QME Dr. Noriega.

**OPINION ON DECISION**

This matter proceeded to trial to adjudicate whether Applicant can serve Panel QME Robert Noriega a copy of Applicant Attorney's proposed cover letter dated November 20, 2020, along with the deposition transcript of Dolores Taylor and Daniel Wentz, and, whether Defendant can serve Dr. Noriega a copy of the deposition transcript of Dr. Marion Joseph Fedoruk. Medical reports and documents were received into evidence. The matter was submitted based on the evidentiary record, absent any witness testimony.

**BACKGROUND**

Anthony Taylor, Decedent, was employed as a correctional sergeant for Merced County Sheriff's Office, when he expired on August 22, 2012. The Certificate of Death identified the cause of death as septicemia, biliary track obstruction and pancreatic carcinoma. On July 10, 2014, Merced County Sheriff's Department's adjusting agent, Innovative Claims, filed an Application of Adjudication of Claim of Death Benefits on behalf of the Applicant, Delores Taylor, Decedent's widow. On July 23, 2014, Defendant deposed Mrs. Taylor, and again July 26, 2017.

Internist Roger Noriega, M.D. was designated to serve as the Panel QME to render a medical opinion as to causation, pursuant to Labor Code §3212.1, issuing a report dated August 22, 2019. Each party provided Dr. Noriega with records, some of which were duplicative. Included in the records were documents from Decedent's personnel file, along with medical records, including but not limited to subpoenaed records from Mercy Medical Center and UC Davis Medical Center, as well as varying medical reports and report from various diagnostic studies, some of which were summarized in the report. Dr.

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Noriega interviewed Mrs. Taylor July 24, 2019, to obtain information regarding the nature and extent of claimed injuries. Dr. Noriega noted he studied the International Agency for Research on Cancer<sup>1</sup> monographs, volumes, references and documents of carcinogenic risk with relation to occupational exposures and pancreatic cancer. Dr. Noriega conducted additional research on the topic of primary site of cancer and latency, listing the literature and research of pertinent information relied on when formulating his medical opinion. And, while Mrs. Taylor provided a history of potential carcinogenic exposures from a wood processing plant, Dr. Noriega noted he had not been provided any documentation to demonstrate such exposure and remained amendable to review any information regarding unusual or extraordinary exposures at the worksite due to the groundwater or environmental contamination. Dr. Noriega diagnosis included metastatic adenocarcinoma of the pancreas, which he determined to be the cause of death, which he found to be confirmed by liver biopsy. Based on evidence provided and reach conducted, Dr. Noriega concluded there was inadequate evidence to conclude that industrial factors contributed to Decedent's pancreatic cancer. However, Dr. Noriega went on to opine, being that Decedent's pancreatic cancer developed during Decedent's employment as a correctional sergeant with the Merced County Sheriff's, as such Labor Code § 3212.1 presumption would apply, as there is sufficient evidence to establish Decedent was exposed to a Group 1 carcinogen, connected to occupational exposure.

When the parties deposed Dr. Noriega March 3, 2020, Dr. Noriega could not recall whether Mrs. Taylor raised allegations of Chromium-6 exposure. Applicant's counsel presented Dr. Noriega with several hypotheticals. Applicant's counsel first hypothesized whether it would be important to review documentation, such as jury verdicts, jury instructions and expert evidence, if there was a class action lawsuit which alleged Chromium-6 was being leaked into areas surrounding the Belcher Facility, where Decedent worked. Dr. Noriega affirmed that when there is a toxic exposure claim to the development of a type of cancer, then agents, and the cause or exposure to certain types of chemicals, are of importance to the evaluator and should be taken into consideration if being a so-called a proximal cause. Applicant's counsel also hypothesized whether it would be important to review evidence from Decedent's coworkers, such as medical records and deposition transcripts, which proved two of Decedent's coworkers were also

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<sup>1</sup> Labor Code §3212.1, provides in pertinent part that for peace officers, as defined in Section 830.1, which specifically designates sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, the term "injury," includes cancer that develops or manifests itself during a period in which the member is in the service of the department, if the member demonstrates exposure while in the service of the department, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

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diagnosed with pancreatic cancer in the same one year span time frame, worked at the same facility where Applicant alleges Chromium-6 was in the groundwater, air and soil, and the ate food farmed from the land Applicant alleges to be exposed by Chromium-6. Dr. Noriega affirmed that it would.

On November 10, 2020, Applicant sent Defendant a copy of a cover letter Applicant proposed to send to Dr. Noriega, which indicated Applicant was enclosing a copy of the deposition transcript of Dr. Marion Joseph Fedoruk dated September 18, 2020, deposition transcripts of Delores Taylor dated July 26, 20217 and July 24, 2014, and deposition transcript of decedent's coworker Daniel Wentz date August 1, 2017. Applicant's proposed letter asked Dr. Noriega to review the deposition transcripts in their entirety, and provide a supplemental report. No other substantive information was included in the proposed letter.

On December 4, 2020, Defendant sent Applicant a letter dated November 24, 2020, objecting to Applicant's letter regarding a proposed letter to be sent to Dr. Noriega, including various non-medical records dated November 24, 2020.<sup>2</sup>

The record demonstrates at some undisclosed point of time, a civil lawsuit was filed in the United States District Court, Eastern District of California, by plaintiff Raul Valencia Abarca, along with likely 2,000 other party plaintiffs, against defendant Merck and Company, Inc., and possibly Merced Irrigation District, along with several other defendants, wherein plaintiffs' alleged causes of action to the affect that there was contamination of the air, drinking water and surface water, caused by companies conducting business on property located in Merced County located near the Belcher Facility. While the date of lawsuit was not identified in the evidentiary record, nor the date the causes of actions are alleged to have occurred, on March 31, 2011, the jury impaneled in the lawsuit, issued a verdict finding in part that there was chemical from a wood treating facility reached locations where plaintiffs could have been exposed to such chemicals at concentration levels exceeding established regulatory standards for drinking and surface water, and at concentration hazardous to human health for the air. The jury found "CR6" chemical exposure by way of air in the Beachwood Neighborhood, commencing in 1965, which was present for 25 years. The jury further found "CR6" chemical exposure by way of (1) flood water in the "Beachwood Neighborhood," commencing in April 2006, and ongoing, through the time of the jury verdict, (2) canal water exposure at the "canal," commencing 1969 through 2006, and (3) private domestic wells exposure at "M&A-1 and M&A-2," commencing 1992 and 1993, present 1992 through 1996. The jury found no chemical exposure by way of the "Meadowbrook Well 2."

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<sup>2</sup> Applicant's November 24, 2020, letter was not offered into evidence.

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**DISPUTED NON-MEDICAL RECORDS**

Any party may provide to the qualified medical evaluator selected from a panel records prepared or maintained by the employee's treating physician(s), and medical and nonmedical records relevant to the determination of a medical issue. (*Labor Code § 4062.3*) An applicant may provide a Panel QME non-medical records relevant to determination of medical issues in dispute, after compliance with subdivision c, of section 35, of Title 8, of the California Code of Regulations. Additionally, either party may use discovery to establish the accuracy or authenticity of non-medical records or information prior to the evaluation. (*Labor Code §4062.3; C.C.R. 35*). Disputes over what information to provide to a panel QME are to be presented to the WCAB if the parties cannot informally resolve the dispute. (*Suon v. California Dairies, 83 Cal. Comp. Cases 1803, 1805, 1814*)

While Dr. Noriega explained that given the nature of Decedent's job, executing police and corrections work, which would have included field duty and transporting inmates, he would have been exposed to Group 1 carcinogens, sufficient to establish that his cancer, which developed during the course of employment, to find Decedent's cancer to be connected to occupational exposure, pursuant to Labor Code §3212.1, the issue of causation of Decedent's cancer, resulting in his death, remains a contested issue. Applicant contends Decedent was exposed to multiple carcinogens related to his employment; contending a fabrication plant near the Belcher Facility, where Decedent worked, released carcinogen Chromium-6 into the air, water and land, in which Applicant alleges Decedent was exposed. Applicant seeks to serve Dr. Noriega with a copy of the deposition transcripts of Mrs. Taylor and Decedent's former coworker Daniel Wentz, non-medical records.

**Deposition Transcript of Dolores Taylor**

Defendant deposed Mrs. Taylor July 23, 2014, and July 26, 2017. When deposed July 23, 2014, Defendant specifically inquired Mrs. Taylor as to how she believed Decedent's employment caused his death. Mrs. Taylor explained Decedent worked for the employer at the Belcher Facility for seven years where she believes he was exposed to the cancer causing chemicals Hexavalent Chromium-6. (*Delores Taylor Deposition Transcript, 7/23/2014, page 12, lines 10~19*) She also alleged two of Decedent's coworkers, Daniel Wentz, and another named individual, were also exposed to chemicals due to their employment at the same worksite and both were diagnosed with pancreatic cancer about the same time. (*Taylor Depo. Transcript, 7/23/2014, p. 12, lines 21~22, p. 15, lines 1~8, 13~17*) Mrs. Taylor also

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acknowledged she was not aware of any doctor informing them their employment caused their cancers. (*Taylor Depo. Transcript, 7/23/2014, p. 15, lines 9~12*) No other testimony was elicited from Mrs. Taylor during the deposition further elucidating Decedent's alleged exposure to Chromium-6 associated with working at the Belcher Facility worksite.

Applicant contends Mrs. Taylor's deposition transcripts are relevant to medical issues in dispute and should be served on Dr. Noriega. Mrs. Taylor's deposition transcripts are neither responsive nor aligned with Applicant counsel's first hypothetical posed to Dr. Noriega during his deposition as neither arose from a class action lawsuit, nor are they documentation equivalent to either a jury verdict or jury instructions, which Applicant's counsel also intimated existed. And, Mrs. Taylor's deposition transcripts would in no way constitute expert evidence as to the contested medical issues at hand. As to Applicant's counsel second posed hypothetical, Mrs. Taylor's testimony on July 23, 2014, is not found to be dispositive to this trier of the fact to demonstrate that either the ground water, air or soil, around Decedent's worksite has been proven to be contaminated by Chromium-6 exposure. While Dr. Noriega could not specifically recall whether Mrs. Taylor informed him about alleged Chromium-6 contamination near Decedents' worksite, seemingly, Mrs. Taylor raised the issue of some type of alleged potential carcinogenic exposures from a wood processing plant when interviewed by Dr. Noriega, however, whatever was discussed appears to have been insufficient for Dr. Noriega to render a medical opinion addressing the alleged potential exposure. Nevertheless, Dr. Noriega explicitly advised that he would be amenable to review any information regarding unusual or extraordinary exposures at the worksite due to the groundwater or environmental contamination. Nevertheless, Dr. Noriega testified when there is a toxic exposure claim to the development of a type of cancer, it would be important for the evaluator to take into consideration agents which are alleged to be so-called proximal cause of the cancer. Dr. Noriega further acknowledge he had not considered Chromium-6 in his decision rendered in his report and that based on the new information provided, it should be reconsidered as a contributing factor for the development of cancer. In order for Dr. Noriega to consider whether Chromium-6 was a potential contributing factor contributing to Decedent's cancer and/or death, he must first be informed it is being alleged. Mrs. Taylor's July 23, 2014, testimony sets forth her specific allegation (Decedent's employment caused Decedent's cancer), as well as how/why she alleges causation (contends there was Chromium-6 exposure at near Decedent's worksite). Therefore, it is found that Mrs. Taylor's July 23, 2014, deposition testimony, which

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is non-medical record, is relevant to the determination of the disputed medical issue, of causation/compensability.

When deposed July 26, 2017, no questions were posed of Mrs. Taylor as to Decedent's alleged exposure to carcinogens at his worksite, nor was any testimony elicited from Mrs. Taylor as to Decedent's alleged carcinogenic exposure at his worksite. As such, it is unclear why Applicant's counsel proffered the transcript. Therefore, it is found that Mrs. Taylor's July 26, 2017, deposition testimony is not relevant to the determination of the disputed medical issue, of causation/compensability.

**Deposition Transcript of Daniel Wentz**

On August 1, 2017, Applicant deposed Decedent's coworker, Daniel Wentz. Mr. Wentz commenced employment as a Correctional Officer for Merced County Sheriff's Department in 1982. (*Daniel Wentz Deposition Transcript, 8/1/2017, p. 11, lines 7~8*) The Belcher Facility was his primary work site, where he worked 5 days a week, 8 hours a day, throughout his employment, less the one year he worked at the main jail, in the city of Merced. (*Wentz Depo. Transcript, 8/1/2017, p. 11, lines 9, p. 16, lines 7~8*) The employer had a farm across the street from the Belcher Facility where crops were grown and harvested, then used in the meals prepared for inmates and staff.<sup>3</sup> (*Wentz Depo. Transcript, 8/1/2017, p. 14, lines 1~14*) He last worked at Belcher Facility in 1990, when it was shut down, then retired in 1994. (*Wentz Depo. Transcript, 8/1/2017, p. 11, lines 7~8, p. 16, lines 17~20*) Mr. Wentz and Decedent were high school friends and started working for Merced County Sheriff's Department as Correctional Officers the same year. (*Wentz Depo. Transcript, 8/1/2017, p. 14, lines 20~24*) They worked together at the Belcher Facility. (*Wentz Depo. Transcript, 8/1/2017, p. 14, lines 15~17; p. 15, lines 20~22*) He believes Decedent worked at Belcher Facility for seven years and also worked at the main jail for year. (*Wentz Depo. Transcript, 8/1/2017, p. 16, lines 7~16*) Decedent was a correctional officer when he started working at the Belcher Facility, but promoted to Correctional Sergeant by the time Decedent retired. (*Wentz Depo. Transcript, 8/1/2017, p. 17, lines 1~4*) Mr. Wentz was diagnosed with stage 3 pancreatic cancer in 2012. (*Wentz Depo. Transcript, 8/1/2017, p. 17, lines 9~10, 19~22*) The Decedent was diagnosed with pancreatic cancer before him. They had another coworker from the Belcher Facility who was also diagnosed with pancreatic cancer and passed away. (*Wentz Depo. Transcript, 8/1/2017, p. 17, lines 11~18, 23~25*) Mr.

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<sup>3</sup> During Mr. Wentz' deposition, Applicant's counsel had Mr. Wentz review two maps, in which Mr. Wentz made demarcations as to where the Belcher Facility was located and where inmates farmed crop. (*Wentz Deposition Transcript, 8/1/17, page 11, line 17 ~ p. 13, line 17*) Neither map was included with the transcript offered into evidence as Applicant's Exhibit 5.



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Wentz was made aware that Pritchard, a fabrication plant near the Belcher Facility, leaked Chromium-6 carcinogen in the surrounding area. (*Wentz Dep. Transcript, 8/1/2017, p. 18, lines 15~23*) Mr. Wentz was a plaintiff in a Beachwood lawsuit against the County, and Merced Irrigation District, which ended in 2012, for which he received a confidential settlement. (*Wentz Depo. Transcript, 8/1/2017, p. 22, line 13 ~ p. 23, line 10*)

Applicant contends Mr. Wentz' deposition transcript is relevant to medical issues in dispute and should be served on Dr. Noriega. Mr. Wentz deposition transcript is neither responsive nor aligned with Applicant counsel's first hypothetical: transcript did not arise from a class action lawsuit, and is neither a jury verdict nor jury instruction. Nor does Mr. Wentz' deposition transcript constitute expert evidence. However, as to Applicant's counsel second posed hypothetical, Mr. Wentz is a coworker, who worked at the same facility as Decedent, and was also diagnosed with pancreatic cancer. Mr. Wentz testimony provides background as to shared working conditions with Decedent at the Belcher Facility, demarcation of Belcher Facility in context with the alleged areas of exposure, as well as information as to being a plaintiff in a Beachwood lawsuit against the County of Merced and Merced Irrigation District, which may be probative, in light of Dr. Noriega's advisement that he would be amenable to review any information regarding unusual or extraordinary exposures at the worksite due to the groundwater or environmental contamination. Therefore, it is found that Mr. Wentz' testimony during August 1, 2017, deposition, which is non-medical record, is found to be relevant to the determination of the disputed medical issue, of causation/compensability.

**Applicant Attorney's November 10, 2020 Proposed Cover Letter**

Applicant seeks to serve Dr. Noriega with a copy of Applicant Attorney's November 10, 2020, proposed cover letter. While the proposed cover letter does not contain impermissible information, it does indicate a copy of Mrs. Taylor's July 26, 2017, deposition transcript, which is not found to be sufficiently probative to be relevant to a disputed medical issue, to send to Dr. Noriega. Therefore, to the extent Applicant attorney's proposed cover letter dated November 20, 2020, is amended to exclude reference to Mrs. Taylor's July 26, 2017, deposition transcript being provide, it may be served on Dr. Noriega.

**Deposition Transcript of Marion Joseph Fedoruk**

In the event the deposition transcripts of Mrs. Taylor and Mr. Wentz are found to be relevant for Panel QME, Dr. Noriega to review and consider in determining disputed medical issues, Defendant seeks

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to serve Dr. Noriega with a copy of the deposition transcript of Marion Joseph Fedoruk, M.D. Dr. Fedoruk is physician toxicologist industrial hygienist, where is employed as a clinical professor of medical and the Medical Director at the University of California, Irvine, and employed as a principal scientist for a consulting company called Exponent. (*Fedoruk Depo Transcript, 9/18/2020, p. 10, lines 10~14*)

Prior to Dr. Fedoruk's deposition, Defendant provided Dr. Fedoruk with an engagement letter, along with copies of report of Dr. Noriega and Mrs. Taylors transcribed interview statement. Dr. Fedoruk and Defendant spent several hours in communication about Dr. Noriega's assessments and opinions, medical toxicology and going over questions to be posed at deposition. Defendant obtained Dr. Fedoruk to provide background as to the civil lawsuit filed by plaintiff Raul Valencia Abarca, et al., against defendant Merck and Company, Inc., et. al., with allegations focused largely on Hexavalent Chromium. (*Fedoruk Depo Transcript, 9/18/2020, p. 20, lines 8~14*). Defendant did not obtain Mr. Fedoruk to render a medical legal opinion as to causation in Decedent's workers' compensation claim. (*Fedoruk Depo Transcript, 9/18/2020, p.61, lines 19~22; p. 68, lines 13~15*) He was not tasked by Defendant to determine whether Decedent's death is compensable. (*Fedoruk Depo Transcript, 9/18/2020, p.62, lines 4~11*) He is not certified as a qualified medical evaluator. (*Fedoruk Depo Transcript, 9/18/2020, p.69, lines 8~10*) Dr. Fedoruk testified substantially as to the following as it pertains to what he recalls from his participation in the *Abarca* lawsuit:

Plaintiffs' lawsuit against Merck and Company, Inc., et al., included allegations focused largely on Hexavalent Chromium. (*Fedoruk Depo Transcript, 9/18/2020, p. 20, lines 8~14*) There were 2,000 or more plaintiffs in the lawsuit, alleging health problems and property damage related to Chromium usage stemming from the BAC Facility, also known as the Pritchard Facility. (*Fedoruk Depo Transcript, 9/18/2020, p. 18, lines 1~24*) The facility housed varying businesses over the years from 1930 through the 1960's, eventually used to treat wood with arsenic copper chromate. (*Fedoruk Depo Transcript, 9/18/2020, p. 19, lines 1~14*) The plaintiff's alleged different methods of exposure over varying decades, including ingestion due to swallowing water swimming in a canal, drinking contaminated groundwater coming from a canal, airborne exposure from dust particulates blown round neighborhood onto plants, and flooding form the canal in April 2006. (*Fedoruk Depo Transcript, 9/18/2020, p. 34, line 14~ p. 36, line 13*)

There were approximately three to four expert witnesses for plaintiffs and seven to eight expert witnesses for the various defendants. (*Fedoruk Depo Transcript, 9/18/2020, p. 73, lines 7~13*). Dr. Fedoruk served as an expert witness for defendant Merck & Company, assigned to evaluate a sample

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representative group of 7 plaintiffs and assess the significance of chromium exposure related to emissions from the Baltimore Air Cooling Facility (BAC). (*Fedoruk Depo Transcript, 9/18/2020, p. 7, lines 13~17; p. 17, lines 3~18; p. 21, lines 16~25*) He reviewed multiple documents, including medical reports and state health department report. (*Fedoruk Depo Transcript, 9/18/2020, p. 22, line 1 ~ p. 23, line 8*) None of the plaintiffs he was assigned to evaluate had pancreatic cancer. (*Fedoruk Depo Transcript, 9/18/2020, p. 19, lines 23~25; p. 51, lines 14~16*) There were plaintiff expert witnesses who provided rebuttal opinions to his. (*Fedoruk Depo Transcript, 9/18/2020, p. 74, lines 18~20*).

There were several phases in the lawsuit. The first phase dealt with exposure, the second with general causation, while the third phase was intended to deal with specific causation. (*Fedoruk Depo Transcript, 9/18/2020, p. 20, line 20~ p.21, line 1; p.40, lines 3~18*) Phase one addressed whether there was any exposure warranting even going forward with the lawsuit. (*Fedoruk Depo Transcript, 9/18/2020, p.41, lines 9~15*) Dr. Fedoruk was assigned to participate in the second phase, litigating general causation. (*Fedoruk Depo Transcript, 9/18/2020, p. 21, lines 16~25*) He did not participate in the first phase, litigating exposure so is unaware of whether there was a legal finding in the first phase of the lawsuit finding actual contamination. (*Fedoruk Depo Transcript, 9/18/2020, p.49, lines 22~25*).

A jury verdict was rendered in the first phase. (*Fedoruk Depo Transcript, 9/18/2020, p. 21, lines 10~13*) The jury found that there was no regulatory standard established for airborne chemical exposure from the wood treating facility which could have reached locations where plaintiffs could have been exposed, but did find there to be a regulatory standard established for water; 50 parts per billion for California. (*Fedoruk Depo Transcript, 9/18/2020, p. 43, lines 3~16; p. 45, lines 3~22*) The jury also found that plaintiffs proved there could have been airborne exposure due to particulate dust of chromium 6 exposure at the Pritchard Facility, to the Beachwood neighborhood from 1969, onwards for 25 years, which could have posed a hazard to human health. (*Fedoruk Depo Transcript, 9/18/2020, p. 43, line 21~ p. 44, line 1*) The jury further found that plaintiffs proved the Beachwood neighborhood could have been exposed to Chromium-6 by way of flood water from April 2006, through to the time of the March 11, 2011, jury verdict. (*Fedoruk Depo Transcript, 9/18/2020, .p 44, lines 8~23*). The jury found that the plaintiff's proved by a preponderance of the evidence that chemical from the wood treating facility reached locations by air where plaintiffs could have been exposed to the chemical at concentrations hazardous to human health. (*Fedoruk Depo Transcript, 9/18/2020, p. 42, line 11 ~ p. 43, line 5*) The jury found that the plaintiff's proved by a preponderance of the evidence that chemical from the wood treating facility

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reached locations where plaintiffs could have been exposed to the chemical at concentrations exceeding regulatory standards, and where no standard, at concentrations hazardous to human health. After the jury verdict issued in phase one, a settlement was reached resolving the lawsuit in phase two. (*Fedoruk Depo Transcript, 9/18/2020, p.21, lines 11~13*)

There was actual contamination at the Pritchard Facility because it underwent remediation, but he is unaware of any homes being contaminated from the Pritchard Facility, nor does he believe the neighborhood underwent remediation for contaminants. (*Fedoruk Depo Transcript, 9/18/2020, p.48, line 3~p. 49, line 3*) He has no knowledge if there was water contamination at the Belcher Facility, where Decedent was employed. (*Fedoruk Depo Transcript, 9/18/2020, p.51, lines 7~9*)

Noting that no evidence was introduced to demonstrate either Decedent, or Mrs. Taylor were plaintiffs in that *Abarca* lawsuit, it appears Mrs. Taylor allegations of Decedent's industrial chromium-6 exposure while working at the Belcher Facility, relates to the *Abarca* lawsuit in which Dr. Fedoruk participated as an expert witness. And, while Mr. Wentz appears to have been a plaintiff in the *Abarca* lawsuit, he had imperfect recollection of specifics related to the lawsuit. Based on Defendant's and Dr. Fedoruk representations, that Dr. Fedoruk's testimony is offered for limited purpose of providing context as to the *Abarca* lawsuit filed by plaintiffs alleging Chromium- 6 exposure from the Pritchard Facility, and is not being offered to render a medical legal opinion as to disputed medical issues, of causation and/or compensability of Decedent's workers' compensation claim, it is found that Dr. Fedoruk's September 18, 2020, deposition testimony as to background in the *Abarca* lawsuit, is relevant to the determination of the disputed medical issue of causation/compensability.

DATE: October 8, 2021



Angelique Scott  
**WORKERS' COMPENSATION**  
**ADMINISTRATIVE LAW JUDGE**

Electronically served via electronic mail, by  
the WCAB pursuant to *WCAB In Re:*  
*COVID-19 State of Emergency* 2020 MISC.  
NO. 260 (*En Banc*)

ON: 10/8/2021

BY: A. SCOTT