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BEFORE THE APPEALS OFFICER APPEALS OFFICE

In the Matter of the Contested
Industrial Insurance Claim of:

Claim No: 2008-0291

Appeal No: 64469-GS

KEVIN EVANS,

Claimant

DECISION AND ORDER

This matter came on for hearing before Appeals Officer, GERALDINE SCHWARTZER, ESQ. on January 4, 2010. The Claimant, KEVIN EVANS, was present and was represented by his attorney, NORMAN TY HILBRECHT, ESQ. of Hilbrecht & Associates. The Self-Insured Employer, City of Las Vegas, was represented by DANIEL SCHWARTZ, ESQ. of Lewis, Brisbois, Bisgaard & Smith, LLP also present for the Employer was JANE C. LUCAS.

The Claimant has appealed the Hearing Officer's Decision and Order, dated May 13, 2009, which affirmed the determination of the Self-Insured Employer, dated January 22, 2009, to deny Claimant's claim for Industrial Insurance benefits. The following were admitted into evidence:

Claimant's Exhibit 1

Claimant's Exhibit 2

Employer's Exhibit A

The Appeals Officer, having duly considered the evidence, fully considered the law, being fully advised in the premises, and good cause appearing, makes her Findings of Fact, Conclusions of Law and Order as follows:

I.

FINDINGS OF FACT

1. Claimant was employed by the City of Las Vegas as a full-time salaried Firefighter on October 25, 2004. STIPULATED FACT 7.

2. Claimant has spent his entire service career with Las Vegas Fire and Rescue in fire

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0000465

1 suppression. STIPULATED FACT 8.

2 3. Claimant was diagnosed with brain cancer on November 28, 2008, when he
3 underwent scans at Summerlin Hospital that revealed a brain tumor. At that time Claimant had not
4 yet been employed in this State as a full-time salaried Firefighter for 5 years or more.

5 4. Claimant filed his claim for cancer benefits with his Self-Insured Employer on
6 December 9, 2008, and signed the Claim for Compensation C-4 form on January 9, 2009.

7 5. According to the C-4 form and the evidence at the hearing, Claimant was exposed
8 to toxic chemicals and smoke while in the course and scope of his duties as a City Firefighter
9 employee on numerous occasions. STIPULATED FACTS 1, 2, 3, 4, 5, 6, 9, 10, 11, and 12.

10 6. It was stipulated that Claimant's supervisor during many of his fire suppression runs,
11 Fire Captain Steven Reincke, would testify, if called that he had observed Claimant's exposure to
12 soot, smoke and combustion by-products on a number of occasions. STIPULATED FACTS 4, 5 and
13 6.

14 7. It was stipulated that Claimant participated in the "Philips Supper House fire"
15 reported in EXHIBIT 2 TABS 1, 2, 3, pp 11 through 20, was rotated into the aerial ladder in the
16 smoke plume for over 20 minutes, and EXHIBIT 2 TAB 3, depicts Claimant on the aerial ladder in
17 the smoke directing water into the fire. STIPULATED FACT 11.

18 8. Claimant began suffering from disabling headaches, and on November 26, 2008,
19 consulted a physician, who directed him to go to a hospital for a scan. STIPULATED FACT 13.

20 9. On November 29, 2008, at Valley Hospital, it was determined that surgery would be
21 required, and on December 4, 2008, Dr. Nagy performed a right-sided craniotomy for tumor removal.
22 STIPULATED FACTS 14 and 15. EXHIBIT 1 TAB 7, at pp 32 through 66.

23 10. The pathology report, following Claimant's surgery on December 4, 2008, contained
24 a diagnosis of Glioblastoma Multiforme, a type of brain cancer. STIPULATED FACT 15; EXHIBIT
25 1 TAB 7.

26 11. Claimant was released to the follow-up care of Dr. Paul E. Michael and UCLA Neuro
27 Oncology Clinic following his December 4, 2008, surgery. STIPULATED FACT 16.

12. Claimant's initial follow-up treatment consisted of radiation therapy followed by chemotherapy at Comprehensive Cancer Centers, after which he was released to return to duty as a Firefighter with continuing chemotherapy on 28 day cycles and monthly visits to UCLA for scans and physician consultations. STIPULATED FACT 17.

13. If called to testify Claimant would have testified that his doctors have advised him that because of the aggressive type of brain tumor he has, it will be necessary to have regular follow-up care, probably with some chemotherapy for at least 2 years, and probably for the rest of his life. STIPULATED FACT 18.

14. Claimant's occupational health and toxicology expert, Dr. James M. Melius, was a credible witness, despite his work and former testimony on behalf of Firefighters, there having been presented insufficient evidence that his testimony was tainted by bias or was unreliable; and his testimony and opinions were corroborated in the record by other expert testimony and scholarly research literature. Tr p 6 line 6 through p 42 line 7.

15. Claimant's oncologist, Dr. Paul E. Michael, was a credible witness, whose testimony and opinions were supported by scholarly research literature and 5-8 years of active clinical practice dealing with brain cancer patients. Tr p 43 line 22 through p 78 line 25.

16. Claimant's occupational health expert, Dr. James M. Melius, testified that his review of Claimant's call-out reports, which describe Claimant's participation in various types of fire scenes, coupled with his knowledge of the medical literature led him to the finding that Claimant had been exposed to three specific chemicals that are known human carcinogens listed by the International Agency for Research on Cancer and the National Toxicology Program that have been linked to brain cancer, namely: acrylonitrile, vinyl chloride and formaldehyde. EXHIBIT 1 TAB 4, p 19 EXHIBIT 2 TAB 6, p 30; Tr p 14 line 10 through p 18 line 11.

17. Claimant's occupational health expert, Dr. James M. Melius, an MD/Toxicologist, testified that Claimant's work for the Las Vegas Fire Department reported in his call-out reports EXHIBIT 1 TAB 10, pp 101 through 297 and EXHIBIT 2 TAB 1, pp 11 through 20 caused him to have significant exposures to several carcinogens, including vinyl chloride, acrylonitrile and

1 formaldehyde which resulted in the development of his brain cancer. EXHIBIT 1 TAB 4, p 19
2 EXHIBIT 2 TAB 6, p 30; Tr p 20 line 17 through p 21 line 11.

3 18. Claimant's occupational health expert, Dr. James M. Melius, testified that Claimant's
4 brain cancer followed as a natural incident of his work as a Firefighter, as the result of his exposures
5 to carcinogens occasioned by the nature of his employment as a Firefighter. Tr p 21 lines 15 through
6 25; p 22 lines 1 through 4.

7 19. Claimant's occupational health expert, Dr. James M. Melius, testified that it was his
8 opinion to a reasonable degree of medical certainty that Claimant's brain cancer was caused by his
9 work as a Firefighter. Tr p 20 lines 24 through 25; p 21 lines 1 through 14.

10 20. Claimant's occupational health expert, Dr. James M. Melius, testified that he was not
11 aware in his research and experience of any other occupation, aside from firefighting that hires its
12 workers expressly for the purpose of regularly exposing themselves to fire and smoke often having
13 high intensities and mixtures of carcinogens that have been shown to cause brain cancer. Tr p 22
14 lines 5 through 25; p 23 lines 1 through 25; p 24 lines 1 through 2.

15 21. Claimant's oncologist, Dr. Paul E. Michael, testified that while everyone in the work
16 force and the population at large is exposed to environmental toxins from carcinogens linked to brain
17 cancer, such as formaldehyde and vinyl chloride, his familiarity with the medical studies and his 5-8
18 years experience treating brain cancers lead him to the opinion that Firefighters' exposures to these
19 compounds are unique, and much more intense as the result of the combustion atmosphere in which
20 they work than are the exposures of the general work force or the general population, so that workers
21 in firefighting can be exposed in a time period of 20 to 30 minutes to the amounts of toxins, a
22 workman or person outside firefighting would only experience over a 30 to 50 year period. Tr pp
23 59 line 18 through p 60 line 15.

24 22. Claimant's oncologist, Dr. Paul E. Michael, testified to a reasonable degree of
25 medical certainty that Claimant's exposures to formaldehyde and vinyl chloride encountered in the
26 course of his employment as a Firefighter caused his brain cancer. Tr p 60 line 16 through 22.

27 23. Claimant's oncologist, Dr. Paul E. Michael, testified he was familiar with Claimant's
28

1 call-out reports and with Exhibits 1 and 2, and had researched the medical literature, including the
2 so-called San Francisco study, which together with his 5-8 years experience treating brain cancer and
3 the fact of Claimant's young age, led him to the opinion that Claimant's brain cancer was caused by
4 his exposures to carcinogens in fire smoke, fumes and combustion residue that he encountered in the
5 course of his employment as a Firefighter. EXHIBIT 1 TAB 6, p 31, Tr p 57 line 8 through p 58 line
6 14.

7 24. Claimant's oncologist, Dr. Paul E. Michael, testified and stated in his written opinion
8 that he believed the exposures Claimant suffered to carcinogens from combustion by-products,
9 including acrylonitrile, benzene, formaldehyde and vinyl chloride are unique to Claimant's
10 employment as a Firefighter and do not affect the general workforce or the public. EXHIBIT 1 TAB
11 6, p 31; Tr p 75 lines 3 through 11.

12 25. Claimant's oncologist, Dr. Paul E. Michael, testified that the type of cancer that
13 afflicted Claimant, Glioblastoma Multiforme, did not generally occur in persons at Claimant's
14 youthful age but rather at ages 60 to 70 which corroborated the conclusions he developed from his
15 review of Claimant's work records and the medical literature that his cancer was caused by his
16 exposures as a Firefighter. Tr p 67 lines 17 through 24; Tr p 78 lines 2 through 8.

17 26. Should any Findings of Fact be deemed more appropriately denominated a
18 Conclusion of Law, it should be so interpreted.

19 II.

20 CONCLUSIONS OF LAW

21 1. Claimant developed brain cancer (Glioblastoma Multiforme) which was diagnosed
22 November 28, 2008, and disabled him from December 4, 2008, when his debulking surgery was
23 preformed, until his eventual return to duty after follow-up care in February of 2009.

24 2. Because he had not been employed as a full-time, salaried Firefighter in this state for
25 5 years or more at the time he became disabled, Claimant did not qualify for coverage under NRS
26 617.453.
27

1 3. NRS 617.453 does not exclude a Firefighter from proving a claim under the general
2 occupational disease statute provisions of NRS 317.358 and 617.440; however the rebuttable
3 presumption contained in NRS 617.453 that a disabling cancer developed or manifested itself out
4 of and in the course of the employment of a Firefighter is not available under either NRS 617.358
5 or 617.440.

6 4. The purpose for the reference to NRS 617.453 in NRS 617.440(5) is to clarify that
7 the itemized elements of proof which a claimant must establish to sustain a claim under NRS
8 617.440 are not applicable to claims filed under NRS 617.453.

9 5. Claimant timely filed his Notice of Occupational Disease under NRS 617.342 when
10 he filed his C-1 form on December 9, 2008, which was within 7 days of his diagnosis of brain
11 cancer.

12 6. Claimant's claim for compensation was timely filed under NRS 617.344 when the
13 C-4 form was completed and filed by the treating physician within 90 days after Claimant's tumor
14 removal surgery on December 4, 2008.

15 7. The STIPULATED STATEMENT OF FACTS, establishes that Claimant's entire
16 service with Las Vegas Fire and Rescue Department had been spent in fire suppression.

17 8. The STIPULATED STATEMENT OF FACTS, establishes that Claimant
18 participated in fighting hundreds of fires where he manned aerial ladders, entered burning structures
19 containing hazardous chemicals such as synthetic enamels and lacquers, gun powder, primers and
20 solvents and engaged in overhaul procedures after the fires had been extinguished.

21 9. The reliable, probative and substantial evidence derived from the written opinions
22 and the testimony of Claimant's experts, James M. Melius, M.D., an expert in occupational
23 epidemiology and toxicology and his medical oncologist, Paul E. Michaels, M.D. established that
24 there was a direct causal connection between Claimant's brain cancer and his multiple exposures to
25 various listed carcinogens contained in the fire smoke and other combustion by-products while
26 engaged in fighting fires in the course and scope of his employment as a Las Vegas Firefighter.

27 10. The reliable, probative and substantial evidence derived from the written opinions
28

1 and the testimony of Claimant's experts, James M. Melius M.D., and Paul E. Michael, M.D.
2 established that Claimant's development of brain cancer can be seen to have followed as a natural
3 incident of the Claimant's work as a Las Vegas Firefighter which resulted in his repeated and
4 multiple exposures to combustion by-products of structure, chemical and other fires occasioned by
5 the nature of his employment.

6 11. The reliable, probative and substantial evidence based upon the testimony of
7 Claimant's oncologist, Dr. Paul E. Michael establishes that Claimant's brain cancer can be fairly
8 traced to his employment as a Las Vegas Firefighter as the proximate cause, and not as incidental
9 to recreational or similar exposures to cooking or campfire smoke.

10 12. The reliable, probative and substantial evidence adduced from the written opinions
11 and the testimony of Claimant's experts Dr. James M. Melius and Dr. Paul E. Michael as well as the
12 testimony of his immediate superior, Fire Captain Steven Reincke in the STIPULATED
13 STATEMENT OF FACTS demonstrated that Claimant's brain cancer was incidental to the character
14 of his employment as a Las Vegas City Firefighter and was not independent of the relationship of
15 employer and employee.

16 13. The reliable, probative and substantial evidence established through the expert
17 testimony and written opinions of Dr. James M. Melius and Dr. Paul E. Michael that Claimant's
18 brain cancer had its origin in the risk of repeated exposures to carcinogens such as acrylonitrile,
19 formaldehyde and vinyl chloride, which have been scientifically linked to brain cancer, which is
20 inherent in his employment as a Firefighter; and its development flowed as a natural consequence
21 of those exposures.

22 14. Claimant's evidence established all of the elements of fact set forth in NRS 617.440
23 required to establish that his industrial disease, brain cancer, should be deemed to have arisen out
24 of and in the course of his employment as a Las Vegas Firefighter.

25 15. Claimant established, by demonstrating all of the elements of fact set forth in NRS
26 617.440, by a preponderance of the reliable, probative and substantial evidence that Claimant's
27 occupational disease arose out of and in the course of his employment.

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16. The Self-Insured Employer offered no evidence which disproved Claimant's evidence that his industrial disease arose out of and in the course of his employment as a Las Vegas Firefighter.

17. Should any Conclusion of Law be deemed more appropriately denominated a Finding of Fact, it should be so interpreted.

FILED

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ORDER

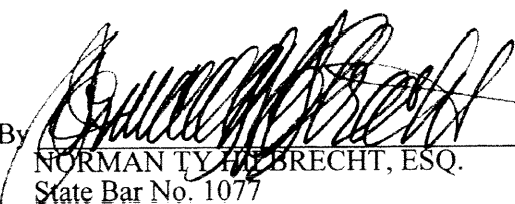
APPEALS OFFICE

IT IS HEREBY ORDERED, that the Hearing Officer's Decision and Order, dated May 13, 2009, which affirmed the determination of the Self-Insured Employer, dated January 22, 2009, denying Claimant's claim for Industrial Insurance benefits be reversed, and the Self-Insured Employer is ordered to accept Claimant's Industrial Insurance Claim pursuant to the provisions of NRS Chapter 617 for all appropriate benefits.

DATED and done this 29th day of July, 2010.


APPEALS OFFICER

Prepared and submitted by:
HILBRECHT & ASSOCIATES

By 
NORMAN TY HILBRECHT, ESQ.
State Bar No. 1077
723 So. Casino Center Blvd.
Las Vegas, NV 89101-6716
(702) 384-1036
Attorneys for Claimant

NOTICE:

Pursuant to NRS 233B.130, should any party desire to Appeal this Final Determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service by mail of this decision.

Hilbrecht & Associates
723 South Casino Center Boulevard
Las Vegas, Nevada 89101-6716
(702)384-1036

CERTIFICATE OF MAILING

I hereby certify that I am an employee of THE STATE OF NEVADA; that service of the foregoing DECISION AND ORDER was made this ____ day of _____, 2010, by depositing a true and correct copy of the same in the United States Mail at Las Vegas, Nevada, addressed as follows:

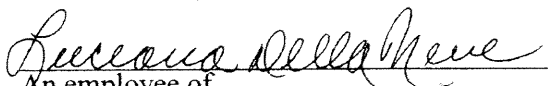
DANIEL L. SCHWARTZ
LEWIS, BRISBOIS, BISGAARD & SMITH, LLP.
400 S. FOURTH STREET SUITE 500
LAS VEGAS, NV 89101

JANE C. LUCAS
CITY OF LAS VEGAS
400 EAST STEWART AVE.
LAS VEGAS, NV 89101

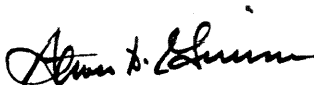
KEVIN EVANS
413 CHERRY MEADOWS CT.
LAS VEGAS, NV 89145

NORMAN TY HILBRECHT
HILBRECHT & ASSOCIATES
723 SOUTH CASINO CENTER BLVD.
LAS VEGAS, NV 89101-6716

DATED this ~~29th~~ day of July 2010.


An employee of
THE STATE OF NEVADA

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CLERK OF THE COURT

DANIEL L. SCHWARTZ, ESQ.
Nevada Bar No. 5125
LEWIS BRISBOIS BISGAARD & SMITH
400 S. Fourth St. Ste. 400
Las Vegas, NV 89101
(702) 893-3383
Attorney for Petitioner,
CITY OF LAS VEGAS

DISTRICT COURT
CLARK COUNTY, NEVADA

CITY OF LAS VEGAS,

Petitioner,

vs.

KEVIN EVANS; and the STATE OF NEVADA,
DEPARTMENT OF ADMINISTRATION,
HEARINGS DIVISION, APPEALS OFFICE, an
Agency of the State of Nevada,

Respondents.

A- 10- 623471- J

CASE NO.:

DEPT. NO:

VI

PETITION FOR JUDICIAL REVIEW

COMES NOW the Petitioner, CITY OF LAS VEGAS (hereinafter referred to as "Employer"),
by and through its attorneys, DANIEL L. SCHWARTZ, ESQ., of LEWIS BRISBOIS BISGAARD &
SMITH LLP, in the above-entitled Petition for Judicial Review and petitions this Court for judicial
review of the decision of the Appeals Officer filed on July 29, 2010, a copy of which is attached hereto
as **Exhibit "1."**

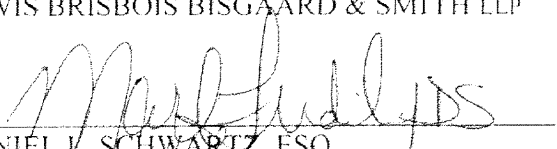
The instant Petition for Judicial Review is filed pursuant to NRS Chapter 616C.370, which
mandates that judicial review shall be the sole and exclusive authorized judicial proceeding in contested
industrial insurance claims for compensation for injury or death and pursuant to NRS 233.130, et seq.

1 The decision of the Appeals Officer was in violation of constitutional or statutory provisions, was
2 in excess of the authority of the Appeals Officer, was based upon errors of law, is arbitrary or capricious
3 in nature, and constitutes an abuse of discretion. Petitioner specifically requests, pursuant to NRS
4 233B.133, that this Court receive written briefs and hear oral argument.
5

6 DATED this 18 day of August, 2010.

7 Respectfully submitted,

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

9
10 By: 
11 DANIEL L. SCHWARTZ, ESQ.
12 Nevada Bar No. 005125
13 400 South Fourth Street, Suite 500
14 Las Vegas, NV 89101
15 Phone: (702) 893-3383
16 Fax: (702) 366-9689
17 Attorneys for Petitioner
18 CITY OF LAS VEGAS
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CERTIFICATE OF MAILING

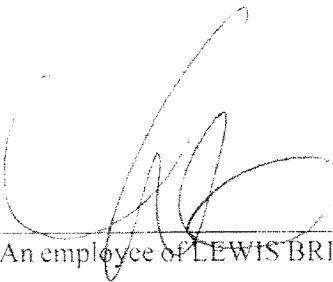
Pursuant to Nevada Rules Civil Procedure Rule 5(b), I hereby certify that I am an employee of the law firm of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that, on the 19th day of August, 2010, I served the attached **PETITION FOR JUDICIAL REVIEW** by depositing a true copy of the same in the U. S. Mail at Las Vegas, Nevada, postage prepaid, addressed as follows:

Kevin Evans
413 Cherry Meadows Court
Las Vegas, NV 89145

Jane Lucas
City of Las Vegas
400 E. Stewart Ave.
Las Vegas, NV 89101

Norman Ty Hilbrecht, Esq.
723 S. Casino Center Blvd.
Las Vegas, NV 89101

Geraldine Schwartzer, Esq., Appeals Officer
Nevada Dept of Administration
Hearings Division
2200 S. Rancho Dr. Ste. 220
Las Vegas, NV 89102



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding PETITION FOR JUDICIAL REVIEW in Case
No. _____.

☒ Does not contain the Social Security number of any person.

- OR -

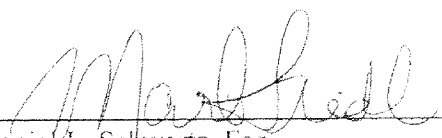
☐ Contains the Social Security number of a person as required by:

A. A specific state or federal law, to wit:


(State specific law.)

- or -

B. For the administration of a public program or for an application
for a federal or state grant.



Daniel L. Schwartz, Esq.
Attorneys for Petitioner
CCMSI



Date

EXHIBIT 1

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BEFORE THE APPEALS OFFICER APPEALS OFFICE

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4 and physician consultations. STIPULATED FACT 17.

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22 14. Claimant's evidence established all of the elements of fact set forth in NRS 617.440
23 required to establish that his industrial disease, brain cancer, should be deemed to have arisen out
24 of and in the course of his employment as a Las Vegas Firefighter.

25 15. Claimant established, by demonstrating all of the elements of fact set forth in NRS
26 617.440, by a preponderance of the reliable, probative and substantial evidence that Claimant's
27 occupational disease arose out of and in the course of his employment.

CERTIFICATE OF MAILING

I hereby certify that I am an employee of THE STATE OF NEVADA; that service of the foregoing DECISION AND ORDER was made this ____ day of _____, 2010, by depositing a true and correct copy of the same in the United States Mail at Las Vegas, Nevada, addressed as follows:

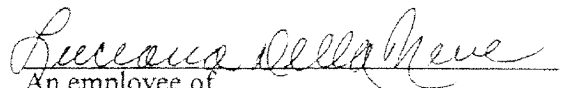
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KEVIN EVANS
413 CHERRY MEADOWS CT.
LAS VEGAS, NV 89145

NORMAN TY HILBRECHT
HILBRECHT & ASSOCIATES
723 SOUTH CASINO CENTER BLVD.
LAS VEGAS, NV 89101-6716

DATED this ~~29th~~ day of July 2010.


An employee of
THE STATE OF NEVADA

HILBRECHT & ASSOCIATES
723 South Casino Center Boulevard
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 CLERK OF THE COURT

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Attorney for Respondent: KEVIN EVANS

DISTRICT COURT

CLARK COUNTY, NEVADA

CITY OF LAS VEGAS,

Petitioner,

vs.

KEVIN EVANS, and THE STATE OF NEVADA
 DEPARTMENT OF ADMINISTRATION,
 HEARINGS DIVISION, APPEALS OFFICE,
 An Agency of the State of Nevada,
 Respondents.

CASE NO: A-10-623471-J

DEPT. NO: XXXI

ORDER


This matter was submitted for decision by order of the court after notice of hearing was filed by the Petitioner, City of Las Vegas.

The court reviewed the Record on Appeal, submitted by the Department of Administration, and considered the arguments of counsel raised in briefs filed with the court.

Pursuant to the provisions of NRS 233B.135, the court has conducted its review, and finds that the Appeals Officer's decision was not affected by an error of law. Further, the court finds that substantial evidence supports the Appeals Officer's decision which held that Kevin Evans' industrial insurance claim was compensable.

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Slip Dis	<input checked="" type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS
<input type="checkbox"/> Involuntary (Stat) Dis	<input type="checkbox"/> Slip Jdgmt	<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Time Limit Expired
<input type="checkbox"/> Jdgmt on Arts Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Dismissed (with or without prejudice)
<input type="checkbox"/> Win or Dis (by deflt)	<input type="checkbox"/> Transferred		<input type="checkbox"/> Judgment Satisfied/Paid in Full

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07-11-11P12:18 RCVD 

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1 Accordingly, it is hereby **ORDERED, ADJUDGED and DECREED**, that the
2 Petition for Judicial Review filed by the City of Las Vegas be and hereby is **DENIED**.
3
4

5 DATED this 18 day of July, 2011.

6 *[Signature]*
7 JOANNA, KISHNER, DISTRICT COURT JUDGE
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23

24 Submitted this 11 day of July, 2011.

25 *[Signature]*
26 MARVIN S. GROSS, ESQUIRE
27 KING, GROSS & SUTCLIFFE, LTD.
28 3017 W. CHARLESTON BLVD., #50
LAS VEGAS, NV 89102
(702) 870-3555

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1 Q Okay. What else causes brain cancer besides
2 fighting fires?

3 A Radiation.

4 Q What else?

5 A There's been a theory that cell phones. That
6 was poo-pooed just in the last year. There was a large
7 study that did not show a high incidence of brain
8 cancer with cell phone use. There is with microwaves
9 and radioactive people that work in food processing.
10 Butchers have a higher incidence of brain cancer
11 thought to be perhaps due to some of the chemicals in
12 the meat processing.

13 So there's quite a few lists that -- and also
14 infections. People who've had encephalitis or
15 meningitis have a higher chance. The idea that if
16 you've had a scar on the brain, if you've had brain
17 injury or brain trauma, be it an infection or
18 otherwise, scarring on the brain may lead to abnormal
19 healing of the tissue, and that can turn into brain
20 cancer as well.

21 Q Of your 25 patients in the last eight years,
22 list out for me what's caused all their brain cancers.

23 A In the eight years?

24 Q I don't want names obviously.

25 A Of the 25 patients I've seen, half of those

1 patients are elderly. So the normal etiologic
2 incidence of age-related brain cancer accounts for half
3 of those patients.

4 Q Okay. But age -- so you're saying just
5 becoming old?

6 A Because you're -- that's right. If you live
7 long enough, you have a higher chance of getting brain
8 cancer. Of the other people, Kevin is the third
9 youngest brain cancer patient I've taken care of.

10 Q Okay. What about the other two that are
11 younger than him?

12 A The other two --

13 Q Where is theirs from?

14 A Yeah. The 22-year-old young man who I'm
15 taking care of now, his father had been a firefighter.
16 So there's a possibility of exposure to whatever the
17 father might have brought home with his clothing. The
18 dad is not a patient, but the son of a firefighter is
19 my patient. And the other young man is 26, and I don't
20 remember any exposure history on him.

21 Q So where did his --

22 APPEALS OFFICER SCHWARTZER: I'm sorry.
23 You're just an adult oncologist. You don't handle
24 pediatrics?

25 THE WITNESS: Well, no. Pediatrics is pretty

1 much under the age of 20, 21.

2 APPEALS OFFICER SCHWARTZER: Okay.

3 THE WITNESS: But I've had two patients
4 younger than Kevin in my 50 brain tumor patients.

5 APPEALS OFFICER SCHWARTZER: So your patients
6 are from the ages of approximately 20 on?

7 THE WITNESS: Yes.

8 APPEALS OFFICER SCHWARTZER: And before that
9 they would go to a pediatric hematologist oncologist?

10 THE WITNESS: Yes. And those kids with brain
11 cancers have some different kind of brain cancer. They
12 don't have gliomas. Glioma is an adult brain cancer.
13 So pediatric kids have brain cancers, but they're a
14 different kind of brain cancer. Glioma is different.

15 APPEALS OFFICER SCHWARTZER: Pediatric never
16 gets --

17 THE WITNESS: The glioblastomas is very rare.
18 They get medulloblastomas. They get retinoblastomas.
19 There's a whole different series of cancers of the
20 brain that are just as dangerous as GBM, but gliomas
21 and GBM is an adult cancer and the peak incidence
22 begins in the fifties. So the average age of my GBM
23 patients is probably 60 to 70.

24 APPEALS OFFICER SCHWARTZER: Okay. Thank you.

25 ///

1 BY MR. SCHWARTZ:

2 Q What did you tell the 26-year-old who you
3 don't have any source of the cancer? What did you tell
4 him?

5 A It was terrible. It's just bad luck.

6 Q Well, no. Okay.

7 A There's no etiology.

8 Q Just so we're clear, cancer is terrible. I
9 understand that.

10 A That's right.

11 Q I'm not meaning did you tell him, "This is a
12 great thing you have." I mean, I'm sure the person
13 said, "Why do I have this?"

14 A Half of my patients probably there is no -- of
15 all my cancer patients, half probably don't have a
16 direct reason that they got cancer.

17 Q Okay. And you're saying that Kevin can't be
18 one of those people?

19 A I think because of his age and his history of
20 a firefighter exposure, I think that's less likely,
21 yes.

22 Q Did you -- I didn't see it, but maybe you did
23 it.

24 In the records that you submitted did you take
25 a history of his life before he was a firefighter?

1 A I did. I asked -- all patients who come to me
2 with brain cancer, lymphoma, and leukemia, I always ask
3 about radiation exposure. If I have a radiologist --
4 and I've taken care of a 40-year-old radiologist with
5 brain cancer. His job most likely caused his brain
6 cancer.

7 Q Did Kevin go camping before he met you?

8 A I have no idea.

9 Q Do people do campfires?

10 A Oh, sure. Well, I'm sure we've all been
11 exposed to wood smoke. That's not a concern for brain
12 cancers.

13 Q There's nothing in what people put in
14 campfires that would cause combustion? I mean, you're
15 assuming just wood.

16 A I'm assuming just wood. I think some people
17 might put certain plant products which is definitely a
18 cancer risk, marijuana smoke.

19 Q Any studies done on those artificial logs that
20 you throw in campfires?

21 A Interesting question. Like for a fireplace?
22 I don't have any data on that.

23 Q I don't mean a fireplace. I mean the
24 artificial logs you throw in a campfire.

25 A No, I don't.

1 Q The ones that come wrapped up.

2 A I don't have any data.

3 Q Okay. Now, have you ever spoken -- and
4 I don't mean today, but have you ever spoken to
5 Dr. Melius?

6 A I've never talked to him or met him before,
7 no.

8 Q Okay. Can you look at your report, please?

9 A Yes.

10 Q You indicate -- I'm looking at the third
11 paragraph down.

12 A Yes.

13 APPEALS OFFICER SCHWARTZER: I'm sorry. What
14 page was that?

15 MR. SCHWARTZ: It's Tab 6, Page 31 of
16 Claimant's Exhibit 1.

17 APPEALS OFFICER SCHWARTZER: Thank you.

18 BY MR. SCHWARTZ:

19 Q Third paragraph down, "Based on my review of
20 the literature."

21 When you wrote this what literature had you
22 reviewed?

23 A I reviewed the article from the -- the one I
24 spoke of, the American Journal of Industrial Medicine,
25 the article that was provided to me by Mr. Hilbrecht,

1 which I believe came to him from this other doctor. I
2 believe he told me he had worked with doctors in the
3 past.

4 APPEALS OFFICER SCHWARTZER: Mr. Hilbrecht,
5 I'm sorry. Don't shake your head.

6 MR. HILBRECHT: I'm sorry.

7 MR. SCHWARTZ: I'm about to show you that's
8 not correct but . . .

9 APPEALS OFFICER SCHWARTZER: Okay. Just, you
10 know, he was shaking his head yes. I just asked him to
11 please not do that.

12 BY MR. SCHWARTZ:

13 Q So let me back up before you give me the --
14 when you wrote this letter you had already been
15 contacted by Mr. Hilbrecht?

16 A Yes.

17 Q Okay. Had you already read Dr. Melius'
18 opinions?

19 A I can't remember, but I'd seen some articles
20 that had been submitted from Mr. Hilbrecht's office,
21 yes, in regards to this.

22 Q Okay. Other than the article that we
23 currently have, which is in that big packet, Tab 11,
24 do you remember the names of any of those articles?

25 A I've stated the one, yes.

1 Q The one you have the loose copy of; correct?

2 A Right, right, right. There was an article,
3 this text that was so-called provided from -- the text
4 from the Johns Hopkins group. That was the other
5 article that I remembered seeing.

6 Q Because, just so you're aware, the date of
7 this letter is before Dr. Melius' letter.

8 A Right. I believe Mr. Hilbrecht had this in
9 his file from other firefighters.

10 Q Okay.

11 A This was not the first -- this is not the
12 first firefighter that he had represented.

13 Q Is it the first firefighter that you had dealt
14 with him on a case?

15 A That is, yes.

16 Q In that same paragraph on Page 31 of Exhibit 1
17 you also say, "Based on my review of the literature
18 with the presumptions established by Nevada statutes."

19 What's that?

20 A This is the idea that he had been employed as
21 a firefighter for the past five years.

22 Q You know that's not correct; right?

23 A I was told after the fact that he had not
24 quite met the qualifications of five years.

25 Q So now that you know that, we can just take

1 that out; right?

2 A Well, yes. That was the -- the expectation
3 was his original claim was made under 430- -- the other
4 statute.

5 Q Okay. But it seems to say that the literature
6 along with the presumptions.

7 A And the presumptions meaning he was employed
8 as a firefighter.

9 Q No. I understand what the presumptions are.
10 I guess what I'm trying to find out, Doctor,
11 is now that we've told you you don't get to use those
12 presumptions, your opinion hasn't changed?

13 A That's correct.

14 Q Okay. You say his brain cancer is reasonably
15 associated in that same sentence.

16 A Yes.

17 Q Where does that word come from, "reasonably"?

18 A I've done many depositions and affidavits over
19 the past 25 years. So usually I would use or it would
20 be reasonable to use reasonable medical probability.
21 That's a term that I've used many times.

22 Q So why did you use the term "reasonably
23 associated"?

24 A I'm looking at the last sentence?

25 Q No. I'm looking at -- I'm just working my way

1 through that paragraph. I asked you about the
2 literature. I asked you about the presumptions.

3 A Well, "reasonably" means I cannot be definite,
4 but with greater than a -- let's say greater than a
5 50/50 percent chance.

6 Q Okay. That's your understanding in this case?

7 A My testimony has always been over many legal
8 issues is if it's greater than a 50 percent
9 probability, that's reasonable, reasonable medical
10 probability.

11 Q That's your opinion today?

12 A That is my opinion.

13 Q Okay. It's just a coincidence that that's the
14 -- those words, "reasonably associated," happened to be
15 in every provision of the other statute that we've
16 already established doesn't apply?

17 A Well, that's because at the time I wrote the
18 letter, that was what the appeal was being made on. So
19 it was reasonably associated with those statutes, yes.

20 Q So again, the presumption language and the
21 reasonably associated language you put in because we're
22 trying to meet the criteria of a different statute?

23 A That is correct.

24 Q Okay. The sentence that starts "I believe
25 these exposures," do you see that? Same paragraph.

1 It's about three lines up.

2 A Yes, I do.

3 Q Okay. It says, "I believe these exposures are
4 unique to the employment as a firefighter and do not
5 affect the general work force in this state."

6 A That is correct.

7 Q Okay. You do realize that the question isn't
8 whether someone's affected in the workplace. It's the
9 question of whether they are exposed, period.

10 You do understand that; right?

11 A Yes.

12 Q Okay. So I'm going to ask you whether or not
13 you believe that there are exposures outside and inside
14 of the workplace. Well, let's rephrase that.

15 You believe there are exposures outside of the
16 workplace that lead to the development of brain cancer?

17 A Yes.

18 Q Okay. Do you believe there are exposures
19 outside the workplace that lead to the development of
20 the type of brain cancer that Mr. Evans has?

21 A Yes.

22 Q They just didn't affect Mr. Evans?

23 A They did not affect Mr. Evans, no.

24 Q And you can -- well, next sentence says, "I
25 believe to a reasonable degree of medical probability."

1 We've established that your opinion of that
2 standard is more than 50 percent.

3 A Yes.

4 Q Correct? "That these exposures caused or
5 contributed."

6 What do you mean by "caused or contributed"?

7 A That means that they were singularly more
8 important than any other factor in his development of
9 cancer, his age, prior history, whatever else. That
10 was the singular most important issue in developing his
11 brain cancer. It may not have been the sole cause, but
12 that was the primary cause. So another way to say that
13 would be primarily contributed.

14 Q Another way to say caused or contributed would
15 be primarily contributed?

16 A Uh-huh. That's another way I could state it.

17 Q Okay. You read -- you said you studied
18 Mr. Evans' run reports?

19 A Yes, I did.

20 Q How many fires did he fight during the time
21 period that was in there?

22 A Oh, there was probably over 100. I think
23 there was two or -- usually an average of one to two or
24 sometimes three reports per page.

25 Q Okay. So in those years that you have the

1 studies, which is Tab 10, there's over 100 fires he
2 fought?

3 A I believe so.

4 Q You believe.

5 A I believe so, yes.

6 Q And again, I'll ask you the same question I
7 asked Dr. Melius.

8 There are other people on the engines with
9 Mr. Evans?

10 A That's correct.

11 Q You kind of can tell it from there. When you
12 match the two packets together it's easier to tell.

13 A Right. He's not the only firefighter exposed
14 to these chemicals.

15 Q And if one of them came into you, same age as
16 Kevin, same age as Mr. Evans, excuse me, and said --
17 and you found out he had brain cancer, you would come
18 to the conclusion it's due to his job?

19 A The theory is that there are certain genetic
20 predispositions. In other words, five people could be
21 exposed to the same carcinogens. Two people develop a
22 cancer. Three people don't. Why don't people get
23 cancer after smoking 20 pack years of cigarettes? They
24 don't. So there's a genetic predisposition among every
25 patient. That's why there's variability among

1 exposure.

2 So if I had a firefighter who was 55 or 60,
3 he'd worked a normal long life and had been a
4 firefighter 30 years, his brain cancer could be due to
5 that and it could possibly be due to his age. Much
6 less likely the age factor is a critical point in
7 Kevin's case because he is so young. Glioblastomas are
8 rare in his age group.

9 Q Except for your other patient who you said you
10 don't know.

11 A That's right.

12 Q So of the three patients you have under 50 --

13 A Under 40, yeah.

14 Q Under 40. One you think may be due to the
15 fact that his father was a firefighter?

16 A Yes.

17 Q And if it's not due to that, then it's
18 unknown; correct?

19 A God smiting someone, yes.

20 Q Okay. One definitely as far as you're
21 concerned is God smiting someone. Your words.

22 A Yes, yes.

23 Q And then Kevin?

24 A Yes.

25 MR. SCHWARTZ: Okay. I don't have any other

1 questions, your Honor.

2 MR. HILBRECHT: I have no further questions.

3 APPEALS OFFICER SCHWARTZER: Thank you very
4 much, Doctor.

5 THE WITNESS: Thank you, your Honor.

6 APPEALS OFFICER SCHWARTZER: We appreciate you
7 coming down to testify.

8 And can I excuse him at this moment?

9 MR. HILBRECHT: Yes.

10 THE WITNESS: And this is --

11 MR. SCHWARTZ: None of those are mine.

12 MR. HILBRECHT: These are mine.

13 THE WITNESS: Okay.

14 MR. HILBRECHT: That one is yours. This one
15 is mine.

16 APPEALS OFFICER SCHWARTZER: Thank you.
17 Mr. Hilbrecht.

18 MR. HILBRECHT: Yes.

19 APPEALS OFFICER SCHWARTZER: Any other
20 witnesses?

21 MR. HILBRECHT: No. Based on the tentative
22 stipulation we made at the outset of the hearing, I
23 would not offer -- I am assuming we can stipulate that
24 Mr. Evans would testify that that is indeed his picture
25 up in the photograph, things of that kind; that he

1 indeed --

2 APPEALS OFFICER SCHWARTZER: Was on the run --

3 MR. HILBRECHT: Correct, reports.

4 MR. SCHWARTZ: The run reports -- we can tell
5 from the run reports. I mean, they actually tell you
6 who is --

7 MR. HILBRECHT: And the reason for -- there is
8 perhaps one explanation needed, and I don't think you
9 argued this. For some reason when he pulled up his run
10 reports, which are usually quite inclusive, they
11 omitted the first several days of his service. And as
12 luck would have it, the picture that's in the exhibit
13 occurred during that period of time. So we had to get
14 a special report for that. However, it's been supplied
15 to Counsel along with --

16 APPEALS OFFICER SCHWARTZER: It's in
17 Claimant's 2.

18 MR. HILBRECHT: Yes.

19 MR. SCHWARTZ: Right, but I didn't --

20 MR. HILBRECHT: It is not a part of what we
21 identified in the large document as his run reports.

22 MR. SCHWARTZ: I apologize. The runs start
23 March 10th.

24 MR. HILBRECHT: Yes.

25 MR. SCHWARTZ: In the big packet.

1 MR. HILBRECHT: Yes.

2 MR. SCHWARTZ: And this says March 5th. I
3 thought it was later in time.

4 MR. HILBRECHT: No, it's not.

5 APPEALS OFFICER SCHWARTZER: And I think you
6 explained that when you filed your supplement. You
7 indicated --

8 MR. HILBRECHT: I tried to, but that's not
9 part of the record. So I thought I better state it for
10 the record.

11 APPEALS OFFICER SCHWARTZER: Well, it is in
12 the sense that it is with the file, and if it goes
13 anywhere, you know, from here, it would go with the
14 file. It's just not considered your statements and
15 your --

16 MR. HILBRECHT: They're argument.

17 APPEALS OFFICER SCHWARTZER: It's argument and
18 wouldn't be considered as evidence.

19 MR. HILBRECHT: I'm willing to make it
20 evidence if that is a component if Counsel is unwilling
21 to stipulate because I have the witness here to make it
22 evidence.

23 MR. SCHWARTZ: Am I willing to stipulate that
24 something happened on March 5th?

25 APPEALS OFFICER SCHWARTZER: Yes.

1 MR. SCHWARTZ: It's in the piece of paper.

2 APPEALS OFFICER SCHWARTZER: Right.

3 MR. HILBRECHT: You don't object to that?

4 APPEALS OFFICER SCHWARTZER: No.

5 MR. SCHWARTZ: I'm reasonably sure that they
6 can't change the dates on these things. So I don't
7 think somebody went in and changed it, the date on the
8 picture.

9 APPEALS OFFICER SCHWARTZER: I would hope they
10 wouldn't. Let's put it that way.

11 Okay. So with that understanding -- and then
12 the parties indicated that they would be briefing the
13 issue.

14 You had no witnesses, right, Mr. Schwartz?

15 MR. SCHWARTZ: Correct, your Honor.

16 APPEALS OFFICER SCHWARTZER: The legal issue
17 regarding the application of 617.440 and 617.453. So
18 it's my understanding that you're going to be supplying
19 legal memorandum regarding whether 453 preempts the use
20 of 440?

21 MR. SCHWARTZ: Right.

22 MR. HILBRECHT: I suppose that's correct. I
23 would be interested in seeing -- ordinarily I would
24 argue that we ought to have a blind brief, but the
25 difficulty is I don't exactly understand what the

1 theory of exclusion is with respect to 440 in view of
2 the fact that in footnote it recognizes the fact that
3 453 exists and simply says the restrictions contained
4 in that section do not apply to it.

5 How on earth if we're not talking about
6 firefighters would they refer to the firefighters
7 statute?

8 APPEALS OFFICER SCHWARTZER: All right. Well,
9 he's --

10 MR. HILBRECHT: So I don't understand what the
11 argument is.

12 APPEALS OFFICER SCHWARTZER: I think it's
13 going to be statutory construction.

14 MR. SCHWARTZ: Correct, your Honor, and it
15 doesn't say restrictions. It says requirements
16 but . . .

17 APPEALS OFFICER SCHWARTZER: So all right.
18 How much time?

19 MR. SCHWARTZ: Well, I don't know. What do we
20 do? How much time for what?

21 APPEALS OFFICER SCHWARTZER: For you to do
22 your opening brief on the issue.

23 MR. SCHWARTZ: I thought -- we're not going to
24 just brief everything? We're just going to brief that
25 one issue? Then what are we going to do?

1 APPEALS OFFICER SCHWARTZER: Well . . .

2 MR. HILBRECHT: What else do you want to
3 brief?

4 MR. SCHWARTZ: Are we going to argue?

5 APPEALS OFFICER SCHWARTZER: No. I was going
6 to ask you, do you want to do argument afterwards? I
7 can do --

8 MR. SCHWARTZ: I'd just as soon we do it all
9 in one fell swoop. I don't necessarily need blind
10 briefs, but I just assumed we --

11 MR. HILBRECHT: We can do closing argument in
12 our briefing.

13 MR. SCHWARTZ: Well, that's what I kind of --

14 APPEALS OFFICER SCHWARTZER: Right.

15 MR. SCHWARTZ: Well, unless we're coming back.

16 APPEALS OFFICER SCHWARTZER: No. I would
17 rather you do it in your brief.

18 MR. SCHWARTZ: Okay. That's what I assumed.

19 APPEALS OFFICER SCHWARTZER: Okay.

20 MR. SCHWARTZ: So I kind of thought
21 Mr. Hilbrecht, since we're not doing blind briefs,
22 would like to go first.

23 APPEALS OFFICER SCHWARTZER: First.

24 MR. SCHWARTZ: Then I'll go. Then he can
25 address whatever legal argument I have about a

1 preclusion and any factual argument about the case
2 itself.

3 APPEALS OFFICER SCHWARTZER: All right. Why
4 don't you discuss it because you were going to do a
5 stipulated fact statement.

6 MR. SCHWARTZ: Right. We have to do that
7 first.

8 APPEALS OFFICER SCHWARTZER: And why don't you
9 do that and then e-mail me telling me the potential
10 dates. I mean, quite frankly, I think his argument --
11 the facts of what has occurred is pretty well out there
12 as far -- documented as far as, you know, the run
13 reports and that he was not an employee for five years
14 when --

15 MR. HILBRECHT: That's right.

16 APPEALS OFFICER SCHWARTZER: -- he was
17 diagnosed with the cancer. So I really think the legal
18 memorandum is going to be something that I really need
19 to take a look at and then whatever further argument
20 that you want to do in the nature of whether it should
21 be accepted under 440.

22 So, I mean, one of the ways we can do it is,
23 Mr. Schwartz, you can do your legal memorandum on that
24 issue and do your closing, and then he could just
25 reply.

1 MR. SCHWARTZ: Except that I don't get to see
2 his closing on the merits.

3 APPEALS OFFICER SCHWARTZER: Okay.

4 MR. SCHWARTZ: You understand? I mean . . .

5 APPEALS OFFICER SCHWARTZER: No, I understand.
6 I'm just trying -- because I don't -- I think the facts
7 are pretty well laid out there. You know? I mean, I'm
8 really interested in the operation of 440 and 453, and
9 then you may want to argue regarding the doctors and
10 what their opinions have been. I mean, I understand
11 that would be there, but I don't see you arguing that
12 he wasn't a firefighter.

13 MR. SCHWARTZ: No. That's what we were going
14 to stipulate to the facts, I assume.

15 APPEALS OFFICER SCHWARTZER: Right, right.

16 MR. HILBRECHT: What I will do, what I propose
17 to do is furnish you expected testimony that I would
18 have gotten from both the captain and him, and you tell
19 me if you have areas of objection.

20 MR. SCHWARTZ: Fine.

21 APPEALS OFFICER SCHWARTZER: That's the
22 stipulated facts.

23 MR. HILBRECHT: Yes.

24 APPEALS OFFICER SCHWARTZER: What he's
25 requesting is that you do your final argument and then

1 he would reply to it as well as --

2 MR. HILBRECHT: I understand that. I
3 understand that, yes. He would reply to that or he
4 would answer that. And for the first time I would see
5 what his argument on 440 is, and I would perhaps have
6 an opportunity to respond, to reply.

7 APPEALS OFFICER SCHWARTZER: I think it's
8 pretty clear what he's going to argue. I mean, I don't
9 know for sure. And I don't want to put words into your
10 mouth, Mr. Schwartz.

11 MR. SCHWARTZ: Well, I mean, I haven't given
12 him any case law. So I assume he would want to see
13 that and look at it.

14 APPEALS OFFICER SCHWARTZER: Right.

15 MR. HILBRECHT: Yes, I would.

16 APPEALS OFFICER SCHWARTZER: But from what,
17 you know, I reviewed, I just considered the legal issue
18 on the argument was regarding, as I said, whether or
19 not you could utilize 440 or 453.

20 MR. SCHWARTZ: Right, but every case that I've
21 had with Mr. Hilbrecht in this area we've briefed. So
22 I didn't give you a ton of information in my appeal
23 memorandum figuring we were briefing it.

24 APPEALS OFFICER SCHWARTZER: Well, but when I
25 read through it, I mean, this is what I -- when I

1 looked at it, I said, oh, this is what I see that the
2 Employer is going to argue.

3 MR. SCHWARTZ: Right.

4 APPEALS OFFICER SCHWARTZER: You know. I
5 mean, I thought it was pretty clear, but I would like
6 the briefs on it.

7 So okay. Mr. Hilbrecht, you'll go first. You
8 put together your legal memorandum and your final
9 argument. Ship it off to Mr. Schwartz.

10 Mr. Schwartz, you go head and do your final
11 argument and your legal memorandum.

12 And then, Mr. Hilbrecht, if it appears that
13 he's argued something that you didn't expect as far as
14 that legal memorandum or fact, you would be able to
15 then --

16 MR. HILBRECHT: Do a reply.

17 APPEALS OFFICER SCHWARTZER: -- do a reply.
18 Okay. So back to how much time do you think you're
19 going to need or if you want to think about it and just
20 e-mail me after the two of you get together and decide
21 on the stipulated facts and how much time you want.

22 I just need to know about when I can expect
23 everything in so I can look at the file and render the
24 decision. You don't have to do it right now. You can
25 discuss it.

1 MR. HILBRECHT: Okay. I'll call you.
2 MR. SCHWARTZ: Okay.
3 MR. HILBRECHT: And leave a message and you
4 can call me.
5 MR. SCHWARTZ: Leave a message.
6 APPEALS OFFICER SCHWARTZER: Mr. Evans.
7 MR. HILBRECHT: Give me an e-mail and we'll
8 get the --
9 APPEALS OFFICER SCHWARTZER: Good luck.
10 THE CLAIMANT: Thank you.
11 MR. HILBRECHT: My job at this stage will
12 simply be to list facts that I would like a stipulation
13 to.
14 APPEALS OFFICER SCHWARTZER: I'm going to go
15 off record now. Okay? Because I don't think that has
16 to be on the record because we've already discussed
17 that.
18 (Proceedings concluded at 3:45 p.m.)
19
20 * * *
21
22
23
24
25

C E R T I F I C A T I O N

TITLE: KEVIN EVANS

DATE: January 7, 2010

LOCATION: Las Vegas, Nevada

The below signature certifies that the
proceedings and evidence are contained fully and
accurately in the tapes and notes as reported at the
proceedings in the above referenced matter before the
Department of Administration, Appeals Office.



KELLY PAULSON



DATE

CERTIFIED COURT REPORTER #628

Kelly Paulson CCR #628

1 Q Now, Doctor, you've testified, as I understood
2 it, that you have determined that Mr. Evans has been
3 exposed in the course of his employment as a
4 firefighter based on his run reports with at least
5 three carcinogens that are related to brain cancer, and
6 I think you've described the constituency of the smoke.

7 But how do you reasonably associate
8 formaldehyde, vinyl chloride, and acrylonitrile with
9 brain cancer?

10 A There are studies in humans and animals that
11 make this -- you know, document this association
12 between exposure to each of these chemicals and cancer,
13 including brain cancer. I have included three of
14 those, a reference for each of the three in my letter
15 report. So that's one component of it.

16 The second component of it is that we also
17 know, as I said earlier, that there are studies showing
18 that firefighters have an increased risk of developing
19 brain cancer. These are studies that have looked at
20 either -- or the deaths among firefighters or looked at
21 the occurrence of cancer among firefighters and have
22 found that there's an increased risk of cancer for
23 firefighters.

24 Q Didn't you --

25 A Specifically of brain cancer for firefighters.

1 Q Excuse me, Doctor. Can you describe what the
2 San Francisco study on brain cancer in firefighters is?

3 A Yes. The San Francisco study is among the
4 most recent ones done. What that was was a study of
5 brain cancer in parts of California where they looked
6 at the -- I believe it's almost several hundred cases
7 of brain cancer and looked at what type of work those
8 people had done over their, you know, lifetime, over
9 their occupations. They followed back and got that
10 information.

11 And that study showed that firefighters had
12 roughly a five-fold increase of developing brain cancer
13 as opposed to people who weren't firefighters; that is,
14 that they had, you know, five times the risk of
15 developing brain cancer as those, you know, people who
16 hadn't worked as firefighters.

17 Q Doctor, can I ask you to refer again for just
18 a moment to Exhibit No. 2, that is, the amendments to
19 the appeal memorandum and your opinion letter for a
20 moment?

21 A Yes.

22 Q That's Tab 6. You state on the final page of
23 your letter -- and I'm just going to state the final
24 paragraph. In summary, I can state with a reasonable
25 degree of medical certainty that Mr. Evans' work for

1 the Las Vegas Fire Department caused him to have
2 significant exposures to several carcinogens, including
3 vinyl chloride, acrylonitrile, formaldehyde -- and
4 formaldehyde which resulted in the development of his
5 brain cancer.

6 Did you prepare that report?

7 A Yes, I did. That was my conclusion based on
8 my review -- my scientific knowledge, my review of the
9 literature, and my review of his medical records and
10 other information I had about his work as a
11 firefighter.

12 Q Does that mean it's your -- it's your opinion
13 that his work as a firefighter caused his brain cancer?

14 A Yes.

15 Q Doctor, do you have a -- is it your opinion,
16 Doctor, that the brain cancer then, based on the
17 San Francisco study, appears to you to be a natural
18 incident of the occupation of firefighting as a result
19 of these exposures you discussed?

20 A I think the answer to that would be yes in the
21 sense that these exposures are part of a -- a
22 firefighter would be unavoidably exposed as part of
23 their workplace exposures. As part of their routine
24 duties as a firefighter, they would be exposed to these
25 chemicals, these carcinogens.

1 Q In other words --

2 A And so yes, I think it is part of their
3 everyday exposure and, you know, arises out of that,
4 their work as a firefighter.

5 Q Based on your studies in environmental and
6 occupational health, do you have an opinion whether
7 there's any other occupation that would expose its
8 employees to a similar level of risk resulting from
9 exposures to smoke carcinogens?

10 A I'm not sure if I quite understand the
11 question, but I'm not aware of another occupation
12 outside of firefighting that would expose them to this
13 particular mix of chemicals in this way.

14 Q In other words, they're just hired to do this,
15 aren't they?

16 A Oh, correct. I mean, I think it's important
17 to understand that they -- because these chemicals are
18 so commonly found in fire smoke, and it's part of their
19 duties to respond to fires and it's part of their
20 everyday exposure.

21 And even though there is some protective
22 equipment, that protective equipment does not provide
23 complete protection, nor is it designed to provide
24 protection for the entire time that they are working on
25 a fire and have these exposures. So at least under our

1 current circumstances they are, as I said, unavoidably
2 exposed to these chemicals as part of their everyday
3 work environment.

4 Q And would the consistent or repeated exposures
5 over a period of several years make this causal
6 relationship more likely?

7 A Yes, though -- yes, it would. To some extent
8 it's how much exposure accumulates, but one of the
9 things we know with firefighting and some other types
10 of work, that it's also how they can have very high
11 exposures, and those very high exposures during a
12 particular incident may not be recognized at the time
13 and can also -- a single high exposure can lead to the
14 development of, you know, a brain cancer or other types
15 of cancer.

16 So it does appear general, you know, that
17 repeated human -- how much or sort of the sum of their
18 exposures is important, but also how high they may be
19 exposed in a particular incident is also important and,
20 again, something we're particularly concerned about
21 with firefighters because of the nature of what they
22 have to respond to and how intense those exposures can
23 be in short time periods.

24 Q So if I understand what you just said, you
25 said perhaps even one or two exposures to very high

1 levels of carcinogens could have the same result?

2 A Correct.

3 MR. HILBRECHT: I have nothing further of the
4 doctor.

5 APPEALS OFFICER SCHWARTZER: Mr. Schwartz.

6 MR. SCHWARTZ: Can I approach, your Honor?

7 APPEALS OFFICER SCHWARTZER: Yes.

8

9 CROSS-EXAMINATION

10 BY MR. SCHWARTZ:

11 Q Doctor, what's the scenario with Mr. Evans?
12 Is it one or two exposures at a high level or many
13 exposures?

14 A We don't -- there's no way of distinguishing
15 that.

16 Q How many exposures did Mr. Evans have to fires
17 in his years with the City of Las Vegas firefighting?

18 A He had repeated exposures to fires. I mean, I
19 didn't try to count all of them up.

20 Q Give me your best estimate.

21 A As I said, I didn't try to count up or
22 estimate, again, what to me looked like -- from going
23 through his run records he had a -- as part of -- given
24 how the shifts work and so forth, it was a common part
25 of his work exposures.

1 Q And how many of those were high level
2 exposures?

3 A I would say many of them, but I didn't --
4 again, it wasn't something that I -- again, he worked
5 for a significant period of time and so had a
6 significant number of exposures but . . .

7 Q What's your definition, Doctor, of
8 "significant"?

9 A My definition of "significant" would be that
10 it would be a measurable -- we have the ability and
11 capability of measuring these exposures. Certainly the
12 formaldehyde would have been something that would be
13 exposed at every fire that he went to.

14 Q Okay. Let me ask it this way.

15 When you said he had a significant number of
16 years, what's your definition of "significant"?

17 A Meaning that it would be more than a few, a
18 few incidents.

19 Q Okay. What's "a few"?

20 A Few is between one and five incidents, not
21 years.

22 Q Okay. Doctor, did you ever meet Mr. Evans?

23 A Not that I'm aware of.

24 Q Have you ever spoken to him on the phone?

25 A Not that I'm aware of.

1 Q Do you know what his hobbies are?

2 A No, I do not.

3 Q Do you know what he did before he was a
4 firefighter?

5 A Don't recall.

6 Q Well, I mean, you only have as far as I can
7 tell -- well, let me ask you this question then.

8 With regard to Mr. Evans, other than
9 Claimant's Exhibit 1, which is a document entitled
10 "Claimant's Appeal Memorandum," and Claimant's
11 Exhibit 2, which is a document entitled "Amendments to
12 Claimant's Appeal Memorandum," do you have any other
13 documents concerning Mr. Evans?

14 A No, I do not believe -- I do not.

15 Q Okay. If I told you that there's nothing in
16 these two documents that tells us what Mr. Evans did
17 prior to coming to the City of Las Vegas as a
18 firefighter, do you have any reason to believe you have
19 some other source of that information?

20 A No, I do not. I didn't see -- I didn't see
21 anything noted in his records. I do not recall seeing
22 anything of that noted in his records.

23 Q Okay. This San Francisco study that we keep
24 talking about, did they come up with a number of years
25 that the firefighters they tested had worked as

1 firefighters?

2 A Their definition of the people that they
3 included in their study was someone that had at least a
4 year.

5 APPEALS OFFICER SCHWARTZER: I'm sorry. Did
6 you say at least one year?

7 THE WITNESS: Excuse me. At least one year of
8 work as a firefighter. They looked at every occupation
9 that people had, but their definition was that they had
10 to have at least one year of work in that occupation.

11 BY MR. SCHWARTZ:

12 Q Okay. You have the study with you, I assume.

13 A I have it, the summary of it, nearby, yes.

14 Q Okay.

15 A I don't have the actual study, I don't think,
16 handy right here.

17 Q Okay. Now, I do have one other question.

18 You gave us your work address, but you didn't
19 indicate, and is this still correct, that your actual
20 work address is at the New York State Laborers Health
21 and Safety Trust Fund?

22 A Correct. Yes, it is.

23 Q Okay. Now, Doctor, how many times have you
24 testified for Mr. Hilbrecht's cases regarding cancer as
25 an occupational disease in firefighters?

1 A My guess is it's between five and ten times,
2 but probably closer -- I think closer to ten but . . .

3 Q Okay. How many times has Mr. Hilbrecht
4 consulted you about your opinion concerning cancer as
5 it relates to a relationship to employment as a
6 firefighter?

7 A About that number of times.

8 Q How many times in those cases have you told
9 Mr. Hilbrecht you did not believe someone's cancer was
10 a result of their exposure as a firefighter?

11 A I don't recall any.

12 Q Okay. In the 30 years you've been working in
13 the study of relationships between firefighting and
14 other -- and the development of diseases, how many
15 cases have you come across where you do not believe
16 that the person's cancer is a result of their
17 firefighting duties?

18 A I would -- are you talking about -- I want to
19 try to give you an estimate of that, but I'm just
20 trying to be precise or more precise. If it's
21 regarding compensation cases I've been asked about,
22 then I would say there are certainly several times
23 where that's occurred.

24 Q What's a compensation case?

25 A This would be where it's an individual case

1 that someone approaches me about writing a letter in
2 regard to -- a letter of causation in regard to that
3 particular case.

4 Q Well, isn't that what you've done in this
5 case?

6 A Yes.

7 Q Okay. So you're saying in a particular --
8 what else have you done? I mean, if you're telling
9 me -- I guess I'm confused.

10 A No, no. I'm back to your -- to my
11 understanding, your question was how many times have I
12 said that there was not a relationship, and I'm trying
13 to answer that original question.

14 So in reference to those types of situations,
15 then I know there's been several times. I don't have
16 an actual, actual count, and these are cases where
17 either there is not evidence that associates that
18 particular cancer with work as a firefighter or there
19 may be information about that particular case that I
20 believe does not warrant causation.

21 Q Okay. Can you turn to Claimant's Exhibit 1
22 which is entitled "Claimant's Appeal Memorandum,"
23 Page 13 or Tab 2?

24 A Correct.

25 Q You see those lists, that list that in Nevada

1 our legislature has indicated certain exposures are
2 reasonably associated automatically with certain
3 cancers?

4 A Correct.

5 Q So if I understand your testimony correctly,
6 if somebody is able to match these two up, you're going
7 to say it's causally connected; is that correct?

8 A Well, that -- well, I believe it -- I've never
9 reviewed this in a comprehensive way.

10 Q Okay, but look -- just look at subsection --

11 A Can I finish answering the question?

12 Q Absolutely. Sorry, Doctor.

13 A Yes. I never reviewed this in a comprehensive
14 way but, you know, when glancing through it quickly, I
15 would say that for most of these that are listed on
16 that Page 13 in Tab 2, there is scientific evidence
17 that would support that association.

18 So I would say that -- I would answer your
19 question in the affirmative, that if someone approached
20 me about one of -- a case about one of these cancers in
21 a firefighter, I would be supportive of a causative
22 finding if they met the criteria there.

23 Q Okay. So, for example, Subsection 2(b) lists
24 out three types of carcinogens and then says they shall
25 be deemed to be known carcinogens that are reasonably

1 associated with brain cancer.

2 Am I reading that correctly?

3 A Correct.

4 Q So if you have someone who comes to you, like
5 in this case Mr. Evans, and he shows you run sheets
6 that show he was in fires, your knowledge of the
7 literature and the science is that these are three
8 types of items that come out of fires; correct?

9 A Correct.

10 Q So, therefore, you're going to say it's
11 causally connected; correct?

12 A Correct, and if it -- if there wasn't a kind
13 of presumptive list like this, if it was another
14 jurisdiction where this type of presumption did not
15 apply, then I would say the same because I believe that
16 these three carcinogen -- these chemicals that are
17 found in fire smoke firefighters would be exposed to
18 are those that increase the risk of brain cancer among
19 firefighters.

20 Q Now, in the run reports that are in this same
21 exhibit, you're given the run reports for the
22 individual engines as well; correct?

23 A Correct.

24 Q So if Mr. Evans has a co-worker who was with
25 him on every one of those runs and he develops brain

1 cancer, you can say right now without even knowing
2 anything else that it was related to those runs;
3 correct?

4 A Most likely, yes.

5 Q Okay. Now, you're not an oncologist; correct?

6 A Correct.

7 Q Have you ever treated a cancer patient?

8 A Yes. In the past I've had cancer patients
9 under my care when I used to practice primary care,
10 family practice.

11 Q Did you ever treat a brain cancer patient?

12 A No. I'd probably say no. I've referred brain
13 cancer patients to oncologists or to people providing
14 radiation therapy but -- and I've continued to provide
15 other care for them, but not I guess direct treatment
16 of a person with brain cancer.

17 Q Okay. In all the research and literature that
18 you've provided us have you come across anything that
19 indicates any other source of the cause of brain
20 cancer?

21 A There are other -- certainly other exposures
22 that would.

23 Q Nonoccupational. I mean, it's not your
24 testimony, correct, that only people who are working
25 develop brain cancer? Correct?

1 A Correct.

2 Q So people who just one day have brain cancer,
3 what are the other sources other than something that
4 happened on the job?

5 A There are some other factors that have -- some
6 thought to be associated. Sometimes a head trauma is
7 thought to be associated with brain cancer. I think
8 that would probably be the main association.

9 Again, I think it's important to understand
10 that the studies are done to compare firefighters with
11 people in the general population, the nature of how
12 these studies are done. So to some extent when we say
13 that there's an increased risk of brain cancer among
14 firefighters, we're taking into account the presence of
15 those other factors.

16 Q But I guess what I'm trying to determine,
17 Doctor, is you're not -- I don't believe you're
18 testifying that only firefighters get brain cancer.
19 I'm assuming other people get brain cancer.

20 And so far you've told me that your
21 understanding of brain cancer outside of firefighting
22 exposure is that one of the main sources is head
23 trauma.

24 A Well, I said it's a risk factor. There are
25 not off the top of my head a lot of strong risk factors

1 for the development of brain cancer. A strong risk
2 factor would be something like association between
3 cigarette smoking and lung cancer.

4 Q So those people who --

5 A So that -- and there are many cases of brain
6 cancer that we do not know what the causative agents
7 are or the causative factors are, a better way of
8 putting it.

9 Q So is it possible that Mr. Evans just
10 developed brain cancer like all those other people you
11 just talked about?

12 A Yeah, but I've testified, you know, with a
13 reasonable degree of medical certainty that I believe
14 that his exposures as a firefighter contributed to the
15 cause of his -- or contributed to the development of
16 his brain cancer.

17 Q But with regard to Mr. Evans --

18 A Cancer is a complicated disease and, you know,
19 there may be other factors in individuals that
20 contribute. These factors interact with each other.
21 So they're not just a single factor.

22 In this case, in the case of Mr. Evans, it may
23 not be a specific chemical. I believe you asked this
24 earlier. It may be the combination of these chemicals
25 or these chemicals acting together in some way.

1 So it's very hard to give sort of yes or no
2 answers to some of these questions, and all I can do is
3 answer with, you know, what I believe to be that the
4 scientific literature is demonstrated. And that is
5 that firefighters have an increased risk and it's
6 related to these chemical exposures.

7 Q Do people who live or interact normally with
8 smokers have a higher risk of developing cancer because
9 of secondhand smoke?

10 A There's some, though the strongest
11 information -- the strongest relationship for
12 secondhand smoke is usually with things like lung
13 cancer that are, you know, cancers that are associated
14 with primary exposure to smoke firsthand. So I think
15 that brain cancer is not something that there's been a
16 strong or consistent relationship between smoking and
17 brain cancer.

18 Q No. I'm just trying to draw an analogy for my
19 own mind, Doctor, to try to get some -- get my hand
20 around what -- or my hands around what you're saying.

21 And I guess my question is if I'm -- in your
22 opinion, you deal with exposures and those types of
23 things, if my employment dictates that I'm around
24 smoke, by "smoke" I mean cigarette smoke, and I'm to
25 develop lung cancer, would you be of the opinion that

1 that lung cancer came from being around smoke,
2 cigarette smoke?

3 A Well, in the case of lung cancer there are
4 other risk factors. There's other information that I
5 would want to have from you. I'd want to know
6 something about how long you were exposed to secondhand
7 smoke, how old you were at the time you were exposed to
8 secondhand smoke.

9 I'd want to know had you ever smoked yourself
10 for a period of time and when that occurred. I'd want
11 to know if you had been exposed to various lung
12 carcinogens such as asbestos, for example. I'd want to
13 know something about where you had lived because of
14 concern about possible exposure to radon. I'd want to
15 know something about radiation exposures.

16 So I'd want to know about those factors
17 because of what we know about exposures to smoke,
18 secondhand smoke. Although it is associated with some
19 increased risk of lung cancer, that relationship is
20 relatively weak, meaning it's not as -- does not cause
21 as great an increase in lung cancer obviously as
22 firsthand exposure to smoke, cigarette smoke would,
23 meaning if you were a smoker.

24 Q And that laundry list of exposures you would
25 want to know when we're dealing with brain cancer, is

1 there a laundry list or is there just --

2 A Oh, as I said, there's not. And the
3 relationship between brain cancer and firefighting
4 exposures, again, in my medical opinion is strong
5 enough and the risk is high enough that I do not think
6 of any other circumstance or exposure that would take
7 away or would change my opinion, I guess is a way of
8 putting it.

9 Q So what does the good oncologist who's sitting
10 in the office with us right now tell his patients who
11 are not firefighters who develop brain cancer?

12 What does he tell them when -- what would you
13 feel would be the right answer as to why they have
14 brain cancer? We just don't know? Is that right?

15 A Most of the time what we have told people in
16 the past and certainly what I've told people when I was
17 practicing primary care, I believe what most
18 oncologists tell them, that they -- that we don't know.

19 Q Okay.

20 A And that oncologists will often ask and seek
21 out whether they have other -- have exposures that may
22 contribute and we have. Many oncologists make a good
23 effort to do this, but in cases we -- there are cases
24 where we don't know or where they can't identify the
25 source of the exposure.

1 Q And with Mr. Evans have you explored with him
2 or in these documents the other exposures that you're
3 talking about?

4 A As I said earlier, I have not talked to him.
5 So I have not and I didn't see any reference to these
6 in the other documents. As I said, I didn't think that
7 that would alter my opinion because I thought I had
8 enough -- I had enough information to base my opinion
9 on.

10 Q Okay. Now, last question, Doctor.

11 In the Tab 6 of Claimant's Exhibit 2, which is
12 your December 17th, 2009, letter, do you have that?

13 A Yes.

14 Q Okay. Can you look at the other packet and
15 keep that open?

16 A Yes.

17 Q Tab 4, Page 19 of the other packet, any
18 particular reason why you wrote the same letter twice
19 with two different dates on it?

20 A Yeah. I think there was a typo in this
21 letter.

22 Q Can you point that out to me?

23 A I believe that the typo was -- one was in the
24 last paragraph. I used the wrong name. I used a
25 Ferguson in the first sentence of the last paragraph.

1 Q Okay. So on Page 20 of Claimant's Exhibit 1
2 you said Mr. Ferguson's work?

3 A And I believe I also left out one of the
4 chemicals.

5 Q So did you have Mr. Evans confused with
6 someone named Mr. Ferguson or was this just a template
7 you used?

8 A It was a tem- -- it was a template and
9 apparently I didn't proofread it.

10 MR. SCHWARTZ: I don't have any other
11 questions.

12 APPEALS OFFICER SCHWARTZER: All right. Thank
13 you. Mr. Hilbrecht?

14 MR. HILBRECHT: I just have a few very brief
15 questions.

16
17 REDIRECT EXAMINATION

18 BY MR. HILBRECHT:

19 Q You were asked -- tell her Honor, is it not
20 true that the New York State Laborers Health, Safety --
21 Health and Safety Trust Fund is a joint management and
22 labor agency?

23 A Correct. I work for a board of trustees that
24 have equal numbers of construction contractor
25 representatives and labor union representatives, and my

1 work with the Laborers Health and Safety Fund is mainly
2 directed in two areas. One is the development and work
3 on better job site safety in the construction industry
4 in New York, and secondly, to promote a better health
5 wellness among our union members and their families.
6 But all my work is done on a labor management
7 cooperative basis.

8 Q Doctor, there was discussion about the other
9 appearances that you've made on behalf of clients of
10 mine, that is, Mr. Hilbrecht, and I might say that the
11 majority of them I believe Mr. Schwartz has been
12 involved in those cases.

13 Has there been any of those cases where there
14 has not been at least one other corroborating physician
15 who offered testimony?

16 A I believe in all those cases there was an
17 additional physician, usually one of the treating
18 physicians, as I recall.

19 Q Doctor, you were asked about the list of
20 specific carcinogens mentioned in your opinion letter.

21 Were those in this case, which we both know is
22 not a 617.453 case that you were asked to look at where
23 a presumption is involved, was your opinion derived
24 from your experience with that statute or with your
25 familiarity with the scientific papers?

1 A It was based on my familiarity with the
2 scientific literature, not referring to any particular
3 statute. As I said, I believe the statute's well based
4 in terms of the science behind it, but these are the
5 known agents that -- chemical agents, probably the best
6 known chemical agents associated with the development
7 of brain cancer, and they're certainly the three that
8 would be chemicals that would be commonly found in fire
9 smoke. There are other chemicals that could be on this
10 list, but I think those would be the three leading ones
11 based on the available scientific literature.

12 MR. HILBRECHT: I have no other questions.
13 Thank you, Doctor.

14 APPEALS OFFICER SCHWARTZER: Mr. Schwartz?

15 MR. SCHWARTZ: Nothing further, your Honor.

16 APPEALS OFFICER SCHWARTZER: Does anybody have
17 the San Francisco study or at least the summary of it?

18 MR. HILBRECHT: Doctor, before you get off,
19 would it be possible for you to provide us the summary
20 that you talked about? I'm sure her Honor doesn't want
21 to read the entire study or maybe show does. I
22 shouldn't say that.

23 APPEALS OFFICER SCHWARTZER: Let me look at
24 the summary first.

25 THE WITNESS: Okay. What I will do, I can do

1 now, is print up or print off the summary, and then
2 I'll fax it to Mr. Hilbrecht's office. I have your
3 fax.

4 MR. HILBRECHT: Her Honor can give you a
5 number here, I believe. You can fax it directly here.

6 THE WITNESS: Okay.

7 APPEALS OFFICER SCHWARTZER: No. Why don't
8 you get the copy, Mr. Hilbrecht, and then make a copy
9 for Mr. Schwartz and then file it with me. All right?

10 MR. HILBRECHT: Certainly.

11 APPEALS OFFICER SCHWARTZER: Because I'm sure
12 you would like to see it as well.

13 MR. SCHWARTZ: I would.

14 APPEALS OFFICER SCHWARTZER: Okay. Thank you,
15 Doctor. I appreciate your willingness to testify. I'm
16 going to end the call at this time.

17 THE WITNESS: Okay. Thank you.

18 APPEALS OFFICER SCHWARTZER: Thank you. And
19 we'll go off record, and you can take care of your
20 other matter. It shouldn't be long.

21 (Off the record)

22 APPEALS OFFICER SCHWARTZER: We're back on
23 record in the matter of the contested industrial
24 insurance claim of Kevin Evans. He's present in the
25 courtroom. He's represented by Mr. Hilbrecht.

1 Representing the City of Las Vegas is Mr. Schwartz.

2 Ms. Lucas is present.

3 And if you could raise your right hand. Do
4 you solemnly swear or affirm that the testimony you're
5 about to give in this matter will be the truth and
6 nothing but the truth?

7 THE WITNESS: I do.

8 APPEALS OFFICER SCHWARTZER: Thank you. Could
9 you state your name and spell your last name for the
10 record.

11 THE WITNESS: Paul Michael, M-i-c-h-a-e-l,
12 M.D.

13 APPEALS OFFICER SCHWARTZER: All right. Could
14 I have a stipulation regarding his credentials or do
15 you want some background?

16 MR. HILBRECHT: We have a CV in Exhibit 2.

17 MR. SCHWARTZ: I'll accept that, your Honor.

18 APPEALS OFFICER SCHWARTZER: Okay. Thank you.
19 Mr. Hilbrecht.

20 MR. HILBRECHT: Thank you, your Honor.

21

22 DIRECT EXAMINATION

23 BY MR. HILBRECHT:

24 Q Please state your occupation and your business
25 address, Dr. Michael.

1 A I'm a hematologist and medical oncologist. My
2 group is called Conference of Cancer Centers of Nevada.
3 I currently work at an office on 9280 West Sunset in
4 Southwest Las Vegas.

5 Q Do you have -- you mentioned that you're a
6 hematologist and oncologist.

7 Do you have a specialty in those fields?

8 A Well, in my group we have developed several
9 areas of clinical interest, and over the last eight
10 years I have become one of the primary physicians
11 seeing brain cancer patients within the practice.

12 Approximately eight years ago I developed a
13 relationship with Dr. Tim Cloughesy who heads the
14 neuro-oncology program at UCLA. We have been
15 partnering with UCLA for about 12 years doing clinical
16 studies, clinical trials. As an outreach from that, we
17 have had a close working relationship with the brain
18 cancer group with Dr. Cloughesy for the last five
19 years.

20 Q And you're familiar with Kevin Evans, the
21 Claimant in this proceeding?

22 A He is one of my patients, yes.

23 Q So he certainly wasn't the first brain cancer
24 patient you've seen.

25 A Over the 24 years I've been practicing in

1 Las Vegas I've seen close to 50 brain cancer patients.

2 Q And you are board certified in medical
3 oncology, are you not, Doctor?

4 A Yes, I am.

5 Q Referring for a moment to what I have marked
6 as Tab 4 in Exhibit 2, just for the record, would you
7 look at --

8 THE WITNESS: Thank you.

9 MR. SCHWARTZ: You're welcome.

10 BY MR. HILBRECHT:

11 Q No. Let me give you Exhibit 2. That's, I
12 think, Exhibit 1 that you're looking at. This is
13 Exhibit 2.

14 A Okay.

15 Q That's the amendments to the -- would you
16 identify that document for the record, please?

17 A This appears to be one of my recent CVs.

18 Q All right, Doctor. And then to go back to the
19 document that you -- and is that still accurate as of
20 this date, Doctor?

21 A Yes, it is.

22 Q Now, returning to what is marked as tab or
23 Exhibit 6 to Exhibit No. 1, the large document that
24 Counsel has furnished you, can you identify that
25 document?

1 A Tab 6 was a letter I was asked to produce;
2 i.e., an affidavit of sorts for my patient in regards
3 to his going before the board to claim disability from
4 his brain cancer. It was dated April 30th.

5 Q And how did Mr. Evans present to you, Doctor,
6 and when, if you recall?

7 A My colleague at UCLA, Dr. Nghiemphu, who's a
8 female brain oncologist, had called me and asked that
9 we see him primarily in Las Vegas. He had gone to UCLA
10 following his brain surgery, which was early December
11 of 2008, following his surgery and subsequent
12 evaluation at UCLA, a course of action quite typical
13 for a high grade -- the highest grade of brain tumor,
14 which Kevin had. And that consists of a combination of
15 chemotherapy pills and radiation outlined by
16 Dr. Nghiemphu, and I was going to be his local contact.

17 APPEALS OFFICER SCHWARTZER: For the record,
18 although I know it's in the document, but because we
19 have an oral record, if you could just spell
20 Dr. Nghiemphu's name.

21 THE WITNESS: Sure. Yes. Well, that's true.
22 It's N-g-h-i-e-m-p-h-u, M.D. Her first name is Leia or
23 she goes by Leia, L-e-i-a.

24 APPEALS OFFICER SCHWARTZER: Thank you.

25 ///

1 BY MR. HILBRECHT:

2 Q And does Dr. Nghiemphu have a -- just so that
3 we can cross this bridge before we get any farther,
4 have an associate at UCLA who also counseled with Kevin
5 Evans?

6 A Well, the chief of the department also reviews
7 charts. He may not have seen Kevin at the initial
8 visit, but Dr. Tim Cloughesy, C-l-o-u-g-h-e-s-y, is the
9 head of the program and pretty much reviews all records
10 and patient files with Dr. Nghiemphu.

11 Q And what type of cancer medically did
12 Mr. Evans report to you?

13 A Well, since I was not involved in his care
14 during his initial surgery, the records indicated he
15 had a fairly large six-centimeter, which is close to
16 three-inch diameter, tumor involving the right
17 posterior portion of his brain that had presented with
18 fairly abrupt symptoms.

19 He had had a fairly successful surgical
20 excision at Valley Hospital, and the records from that
21 pathology report at Valley Hospital also, which is
22 confirmed by the UCLA pathologist, is that he had a
23 Grade 4 glioma, which is called glioblastoma or the
24 common term is GBM, and this was confirmed by the two
25 institutions.

1 Q And in reading the material, particularly
2 Pages 70 and 71 of Exhibit 1 in front of you --

3 A Pages? I'm sorry.

4 Q Pages 70 and 71.

5 A Okay.

6 Q It appears that there is an ongoing shared
7 treatment regime set up with respect to Mr. Evans
8 between you and the UCLA medical -- what do they call
9 it? Neurologic oncology department?

10 A Yes, that is correct.

11 Q Or clinic. I'm sorry.

12 A In other words, let's say if Kevin had been my
13 patient exclusively and had not gone out of town, we
14 would typically see the patient every month. You would
15 review their blood test, evaluate the patient
16 physically as well as laboratory, and continue with a
17 monthly treatment.

18 In Kevin's case it was a shared
19 responsibility. He would usually go to UCLA on an
20 every-other-month basis, I believe. Most of the
21 scanning was always monitored and evaluated by UCLA.
22 So I would see Kevin pretty much monthly to evaluate
23 the side effect or the toxicity of his treatments.

24 Dr. Nghiemphu or her associates would see
25 Kevin, if not every month, every other month for

1 overall judgment of his success of the treatment, were
2 things going according to plan or not.

3 Q Now first, Doctor, tell me what the medical
4 reports showed you with respect to the results of the
5 surgery and the excision of the tumor?

6 A Well, as all patients who have an aggressive
7 form of brain cancer, a wide excision or an attempted
8 excision of all the tumor is done. This is usually not
9 possible because of the nature of glioblastoma. The
10 tumor spreads with fingers, almost not a well-confined
11 or well-circumscribed tumor.

12 But a fairly extensive but subtotal resection
13 of Kevin's tumor was obtained. He did have a
14 complication a few months after the surgery. He had a
15 fairly large pocket of fluid collect under his scalp
16 which caused a minor complication. He had to have
17 another drainage of this fluid, which is not serious,
18 but it was completed and so at that time the treatment
19 continued.

20 He had not suffered any major sequela. That
21 means he did not have any serious complication
22 nerve-wise. His speech, his motor strength was quite
23 good after the surgery and the radiation.

24 Q My understanding in reading the report of the
25 surgeon was that a rind was left?

1 A Well, the rind is just a word for what can
2 often be seen, and I believe you all have records of
3 his scans postoperatively too. Typically all patients
4 who undergo a brain resection have a rind or a cavitary
5 appearance to this hole in the brain, but on the edges
6 is the problem. The edges may contain cancer or may
7 not contain cancer, but this area of abnormal tissue is
8 what's monitored most closely in the months and years
9 following cancer.

10 The assumption is that the cancer is not
11 completely resected. The amount of brain tissue that
12 would be required to render Kevin definitively and
13 pathologically free of cancer would devastate him. He
14 would be a wheelchair paralyzed victim. So you cannot
15 sacrifice so much brain to ensure a negative margin,
16 but this rind tissue has always been the onus of
17 follow-up and care of these patients.

18 Q And was that therefore -- in the adjunct
19 treatment rendered by you at UCLA, was that the first
20 priority, that is, dealing with those cells?

21 A Assuming for most patients as Kevin that
22 you've removed 80 to 90 percent of the tumor bulk, you
23 need to eliminate that remaining 10 to 20 percent of
24 tumor by a radiation which takes about six weeks.
25 Concurrently with that radiation we always now give an

1 oral drug, the chemotherapy drug called Temodar.

2 After the six weeks you hopefully have
3 sterilized that cavity, this hole in the brain, and
4 then for the next one to two years pretty much all
5 patients go on a course of oral chemotherapy five days
6 a month.

7 It still has side effects. You have to
8 monitor the patient monthly for blood tests and things
9 like that. And Kevin has done very well with
10 completing his first year of that treatment.

11 Q And does UCLA share the results of the scans
12 that are done monthly and now I guess bimonthly?

13 A Usually Dr. Nghiemphu will e-mail me a
14 follow-up note or we get a written report from their
15 clinic.

16 Q And conversely would you report to them if
17 there were any irregularities or reason to do so?

18 A As we share several patients, I will usually
19 call or e-mail Dr. Nghiemphu directly if there is an
20 unusual, unexpected incidence, an outcome, a symptom, a
21 physical finding. And so far with Kevin, other than
22 the exception of this postoperative fluid pocket that
23 developed in his scalp, he's had no untoward,
24 unexpected effects.

25 Q Doctor, it's my understanding that you have

1 written a release for Kevin to full duty as a Las Vegas
2 firefighter.

3 A Yes. As I remember correctly, we wanted to
4 get him through that initial six or seven weeks of the
5 radiation. So I believe it was probably in the spring
6 of 2009 he was released to go back to full duty,
7 realizing that with FMLA papers or a need to visit
8 doctors from time to time, perhaps to miss a day if he
9 had to have a brain scan. This is typical for most
10 cancer patients.

11 Q So my understanding is that Kevin's work, so
12 far as you know, is interrupted only by his occasional
13 medical visits to UCLA, the neuro-oncology center
14 there?

15 A I don't know exactly what Kevin's travel plans
16 are, but it probably is a day or two to go there and
17 back.

18 Q You, on the other hand, visit with him how
19 many times a month?

20 A I see Kevin usually once a month, and he
21 usually stops by the office for blood tests two to --
22 two times a month for monitoring his white blood
23 counts. These can still be affected by the
24 chemotherapy pills he's on.

25 Q So this is just monitoring possible side

1 effects of the chemotherapy?

2 A That is correct.

3 Q Doctor, I've furnished you with a couple of
4 statutes. The one, I guess, that relates here is
5 617.440 which provides for the requirements for
6 eligibility to qualify as an occupational disease.

7 Have you seen those and read those documents?

8 A I have.

9 Q Or that document.

10 A I have seen Nevada Revised Statute 617.440,
11 which I believe is the working statute that we're here
12 for today.

13 Q Yes. I have also furnished you, I think, with
14 copies of the appeal memorandum which Counsel has
15 furnished you and the amendments to his appeal
16 memorandum, have I not?

17 A I believe I glanced at this second -- this
18 Exhibit No. 2 which is the appeal.

19 MR. SCHWARTZ: Your Honor, just so we're clear
20 for the record, all I did was grab the memorandum and
21 gave it to the doctor. It was his copy in the back.

22 MR. HILBRECHT: I understand.

23 MR. SCHWARTZ: He keeps saying I furnished it
24 to him. All I did was handed it to him so he wouldn't
25 have to stand up.

1 MR. HILBRECHT: I'm not suggesting any
2 hanky-panky.

3 MR. SCHWARTZ: No, I know. I just want to
4 make sure.

5 APPEALS OFFICER SCHWARTZER: No, no. It's
6 fine. It clarifies the record because it did sound
7 like you --

8 MR. SCHWARTZ: No, I did. I grabbed it off
9 the chair in the back of the room and handed it to the
10 doctor in the front of the room so he didn't have to
11 get up.

12 APPEALS OFFICER SCHWARTZER: Okay. Thank you.
13 BY MR. HILBRECHT:

14 Q Doctor, have you had an opportunity -- and I'm
15 addressing now in particular the Exhibit 1 document,
16 the large document.

17 Have you had an opportunity to review what are
18 identified there as the run reports or incident reports
19 and in that connection as well in Exhibit No. 2 the
20 so-called Phillip's Supper House incident report?

21 A Yes. I had studied Exhibit 1 for several
22 weeks prior to our visit today. I had just looked at
23 this Exhibit 2 briefly a few days ago which included
24 pictures under Tab 2 or 3 and 4 -- or 2 and 3.

25 Q Were you advised by Mr. -- by the Claimant,

1 Mr. Evans, that -- I believe it's Tab No. 3 or 4 that
2 depicts him --

3 A Yes. This was reported to be Mr. Evans on the
4 ladder.

5 Q I mean, Tab 3, I guess it is.

6 A Yes. Yes, I was informed that this was
7 Mr. Evans at the scene of the fire.

8 APPEALS OFFICER SCHWARTZER: Page 22 on the
9 bottom?

10 THE WITNESS: Yes.

11 APPEALS OFFICER SCHWARTZER: Thank you.

12 BY MR. HILBRECHT:

13 Q And does that have any significance with
14 respect to the opinion you eventually made in his case
15 concerning the cause of his cancer?

16 A Well, my assumption would be I certainly hope
17 this is not his typical run. In other words, there was
18 probably over 100 events listed in these 200 pages of
19 documents previously. I would suspect that this is a
20 major serious event; depending on the length of his
21 exposure on that ladder that he was in a dangerous and
22 toxic environment.

23 Q Have you also had an opportunity to review
24 Dr. Melius' opinion as well as the articles attached to
25 Exhibit 1 as Tab 11 or marked Exhibit 11 on that

1 document, I believe?

2 A Yes. I did review his subsequent letter,
3 Tab 6 under the second exhibit, and I did review the
4 article that was taken from this text or this
5 description of the group out of Johns Hopkins with the
6 combustion products and what the identifiable toxins
7 were in fire smoke.

8 Q Now, Doctor, before writing your opinion you
9 also consulted other studies, have you not?

10 A Well, with Kevin's unique history of a
11 firefighter and his young age, yes, I had investigated
12 some other articles on my own and have searched -- not
13 a thorough, but I've looked at the literature.

14 Q And did you find anything corroborative of,
15 for example, the San Francisco study?

16 A Yes. I had seen mention of the San Francisco
17 study. There's also an article that I found in the
18 American Journal of Industrial Medicine which looked at
19 a fairly comprehensive review of firefighters in
20 Stockholm, Sweden.

21 In particular, two previously lower recognized
22 tumors, that is stomach cancer and brain cancer, were
23 found to be at a much higher incidence among -- I
24 believe it was a 50-year history in Sweden.

25 Q Among firefighters from the general

1 population? Is that --

2 A The incidence of death from brain cancer in
3 this one particular article is listed as four deaths.
4 The expected cancer death was less than one.

5 Q So that's about the five-to-one that
6 San Francisco reported?

7 A Yes.

8 Q Would you please look or tell us again about
9 Page 31 of Claimant's No. 1? That's the appeal
10 memorandum. And I'd like you to describe what evidence
11 you reviewed in developing your opinion letter there
12 aside from your -- well, your own experience, I
13 suppose, as well, Doctor.

14 A Well, I was asked to describe basically
15 Kevin's disease, his presentation, the fact that he was
16 such a young man, his incidence of getting brain cancer
17 in his mid thirties to late thirties is much less than
18 the known incidence of brain cancer which rises sharply
19 in the sixth and seventh decade of life.

20 I was also asked to describe some of the
21 byproducts that he could have been exposed to; in my
22 opinion most likely formaldehyde, which also has a very
23 strong incidence of causing nasopharyngeal cancers.

24 In fact, people who live in motor homes have
25 about a 20-fold incidence of getting nasopharyngeal

1 cancer compared to people who live in normal housing;
2 so, in other words, this modular housing, modular
3 furniture. Plastics is a very common form of
4 formaldehyde.

5 I reviewed briefly his run report. He had
6 told me his occupation. I also had reviewed his
7 exposure to radiation because at this time radiation is
8 the number one recognized incidence of causing brain
9 cancer. Kevin did not have any significant
10 occupational exposure to radiation.

11 And so I was able to basically form an opinion
12 that his firefighting capacity for five years or prior
13 to his seeing us in 2009 was a major cause of his
14 developing brain cancer.

15 Q Doctor, is there any physiological reason that
16 might explain why firefighters might suffer five times
17 the amount of brain cancer than the average population
18 because they inhale smoke?

19 A Well, I think for many years the thought was,
20 for example, most people who are working as chemical
21 workers get exposed perhaps through the skin or there's
22 a thought that inhalational -- chronicity of
23 inhalational environments can cause a problem, for
24 example, well known with asbestosis.

25 The unique problem with firefighters is that

1 they also inhale through the nasal passages soot,
2 smoke, byproducts, either combustion or aerosolized
3 products. And the nasal pharynx, unfortunately,
4 there's an extension of the brain called the olfactory
5 lobe, which is actually also considered the first
6 cranial nerve.

7 So there's actually a piece of brain that is
8 exposed at the top of the nasal passages. That's how
9 we smell. And, therefore, there is a direct route
10 without going through the lung, without going through
11 the skin, without going through the blood stream.
12 Firefighters inhalational nasal exposure has a direct
13 access to the brain.

14 All these factors, not only discounting the
15 regular inhalation through lung or blood stream and
16 perhaps skin, skin exposure, all those firefighters are
17 at risk for.

18 Q Now, Doctor, in your experience in treating
19 brain cancer over 25 years have you an opinion as to
20 the medical probability that the exposures of a
21 firefighter are not encountered by the Nevada work
22 force in general?

23 A Oh, I think absolutely. I think even the idea
24 of these -- the three that were outlined in the
25 doctor's deposition, the other doctor. The polyvinyl

1 or vinyl chlorides, we think of them as PVCs, the
2 nitrile compounds, and the formaldehyde, those three
3 some people may be exposed to in a haphazard fashion.

4 In fact, working in an office building there
5 may be PVC and there may be formaldehyde in the ceiling
6 tiles. In fact, we're all being exposed to
7 formaldehyde as we sit in this room.

8 However, the nature of the combustion, I
9 firmly believe that these compounds are put into a much
10 more potent environment through smoke and inhalation so
11 that -- versus the normal person who might be exposed
12 to toxic compounds over a 30 to 50 year period, a
13 firefighter may be exposed to extremely high amounts in
14 a 20 to 30 minute period despite all the other
15 precautions, breathing apparatus, et cetera.

16 Q And so it is your opinion that it is the
17 exposures to these carcinogens that you mentioned in
18 your report which the Claimant encountered in the
19 course of his employment as a firefighter that caused
20 his brain cancer?

21 A To a reasonable degree of medical certainty I
22 believe that, yes.

23 MR. HILBRECHT: I have no further questions.

24 APPEALS OFFICER SCHWARTZER: Mr. Schwartz.

25 ///

CROSS-EXAMINATION

BY MR. SCHWARTZ:

Q Doctor, how many brain cancer patients do you have right now that you monitor?

A Oh, right now I have about 10 to 12 patients undergoing care.

Q How many have you had since you developed this -- it's not a technical specialty.

A Right. It's a clinical interest. I have assumed more care in my practice. So over the last eight years I've probably taken care of half of those 50 patients. I've probably seen 20 to 25 people in the last five to eight years.

Q Who's seeing the other 25 patients in the 50? Who sees them?

A Oh, no. Me. I've seen 50 patients since I started practicing.

Q Okay. I'm sorry. I didn't understand what you said the clarification was between 50 and 25. What was --

A No. I've seen half of those brain cancer patients in the last eight years since I've developed a clinical interest. We all see brain cancer patients. None of us -- I have a few doctors who specialize in breast cancer only, but the majority of us see all

1 kinds of cancers. I have an interest in brain cancer.

2 Q In those patients that you've seen that are
3 brain cancer patients, how many are firefighters?

4 A Two.

5 Q So of the 50 you've seen two are firefighters?

6 A That's right.

7 Q How many are under the age of 40?

8 A None other than Kevin.

9 Q So even the other firefighter is not under the
10 age of 40?

11 A That's right.

12 Q Okay.

13 APPEALS OFFICER SCHWARTZER: I'm sorry. Is it
14 two firefighters including Mr. Evans?

15 THE WITNESS: Yes. He is the second one.

16 APPEALS OFFICER SCHWARTZER: Thank you.

17 BY MR. SCHWARTZ:

18 Q Let me clarify one other thing. Mr. Hilbrecht
19 was asking you about work interruptions and things of
20 that nature.

21 You've reviewed Mr. Evans' medical file;
22 correct?

23 A Yes. I am producing his medical file.

24 Q Okay. When he had his brain surgery done was
25 he able to work?

1 A Not for the days he was in the hospital.

2 Q So like the day he was getting the brain tumor
3 cut out he obviously didn't go to work?

4 A Obviously, yes.

5 Q I just wanted to make sure I was clear on
6 that.

7 But you did say he could go back to work full
8 duty; correct?

9 A When we -- he wanted -- yes, he can go back to
10 full duty now.

11 Q Okay. Well, help me understand this. If
12 you're saying as we sit here today that the reason why
13 he got brain cancer is because of what he was exposed
14 to while working as a firefighter, aren't you putting
15 him right back in the same exposure?

16 A And we have talked about that, yes.

17 Q You don't have a problem with that?

18 A I do. I think that's -- it's an environmental
19 hazard for Kevin, yes, and a lot of other firefighters,
20 but yes.

21 Q This picture, Page 22 in the pictures.

22 A Yes.

23 Q On the ladder here -- and I hope I'm using the
24 right term, the thing that looks like a big ladder on
25 the right-hand --

1 A Yes.

2 Q It's the bottom but the right-hand side.

3 Is that two people as far as you can tell?

4 A It looks like, yes, there's one person holding
5 the hose and there might be a second person behind him.

6 Q Okay. One of these we've established that you
7 believe is Kevin.

8 A It's Kevin, yes.

9 Q Okay. The other person, if he comes and sees
10 you tomorrow with brain cancer, is it due to this fire?

11 A I would be very concerned if he was a young
12 man. If he was a 50-year-old firefighter, the
13 incidence of brain cancer goes up the older you get.
14 If he's a young --

15 Q I didn't ask you if it was -- I'm saying if he
16 comes to you, whoever he was, and you have a picture
17 like this are you going to say it was due to fighting
18 fires?

19 A If that was his first day on the job, no, but
20 if he had been a firefighter for more than a year, I
21 would definitely think that's a high risk, yes.

22 Q I'm not asking you whether it was a risk. I'm
23 asking you whether you would say it's due to fighting
24 fires.

25 A Yes.

MR. MCALLISTER:

The way that this came out, this mock-up came out, or actually it was drafted, we were not aware of some of the provisions where we added in Mr. Fry brought them to our attention; I'll let him address those with the ability possibly to delete one part of this and add-amend in a different number.

Electronically Filed
Dec 22 2011 02:17 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

JIM FRY (Risk Management Division, Department of Administration):

Mr. Chairman, Jim Fry, State Risk Management, for the record. In section 4, sub 5, it has a listing of quite a few NRSs that are presumptive benefits, except for one is not a presumptive benefit, and it affects all employees. It's not for just police/fire, and it's on the contagious disease and where they have to go be tested to show that it was in the scope and course of employment. So having it excluded from this would not apply to 617.440, which is what it's being added to. There is also another statute-well, first let me point out-617.485 is the hepatitis presumption for peace officers, non-state; in other words, county, municipalities. Point four eight seven is the hepatitis statute for state peace officers.

CHAIR TOWNSEND:

"Wait a minute, slow down, slow down. Okay. Four eight five is hepatitis for non-state peace officers. Okay. What's the next one?"

MR. FRY:

"Four eight seven is for state peace officers: highway patrol, P&P, NDI correctional officers."

CHAIR TOWNSEND:

"Okay. Mr. Ostrovsky, are you following this as well, or does this does not-you don't represent any of the municipalities on this? Well, City of Las Vegas, correct?"

MR. OSTROVSKY:

"For the record, Bob Ostrovsky, representing the City of Las Vegas. But we agree with Mr. Fry's assessment that one of those should be removed and one should be added. We should be deleting 617.481." Senate Committee on Commerce and Labor May 18, 2007 Page 30

CHAIR TOWNSEND:

"Which is?"

MR. FRY:

"That is the contagious disease which is for all employees; it's not just for police/fire."

MR. OSTROVSKY:

"And we should be replacing it with 617.487, which is state peace officers."

MR. FRY:

"I just feel we'd be back here next session adding that on."

CHAIR TOWNSEND:

"481 is contagious diseases for all employees?"

MR. FRY:

"Yes."

CHAIR TOWNSEND:

"Okay. And then you want to put in—"

MR. FRY:

"617.487."

CHAIR TOWNSEND:

"Which is—"

MR. FRY:

"The state peace officers."

CHAIR TOWNSEND:

"And that's contagious diseases for state peace officers?"

MR. FRY:

"That's the hepatitis."

CHAIR TOWNSEND:

"Okay, got it. Okay. That was—" Senate Committee on Commerce and Labor May 18,
2007 Page 31

MR. FRY:

"That was painful."

CHAIR TOWNSEND:

No, it's fine, it's—you know, as the experienced folks know, the hardest thing to read is the one that makes references in the back of a bill, because it means you've got to go flip to those things, and that's why—The toughest ones for a long time were the insurance ones, where every single—you know, 685A, 685B, 649C, E, and the bill's this long, and you've got to look up every single one of them to make sure you know who you've affected. So the requirements set forth in this section do not apply to claims pursuant to, and then it lists—we're going to take out contagious diseases for all employees; we're going to add state peace officers, hepatitis. So we take one out, put one in. Is that correct?

MR. FRY:

"Yes."

CHAIR TOWNSEND:

"Take out 481 and put in 487."

MR. FRY:

"Yes, sir."

CHAIR TOWNSEND:

Any questions? So Senator Heck, you would—your amendment would include all of this language, additionally adding on page 3, "claim has been denied in whole or in part," probably in 2 lines, I would think, line 16, line 20. And then over on page 5, we would remove, under sub 5, 617.481, and replace it with 617.487. Is that correct? All right. Committee?

SENATOR CARLTON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 496 WITH THE STATED AMENDMENT.

SENATOR HARDY SECONDED THE MOTION. Senate Committee on Commerce and Labor May 18, 2007 Page 32

THE MOTION PASSED UNANIMOUSLY.

COPY

RECEIVED

JAN 12 2010

HEARING
DEPARTMENT

BEFORE THE APPEALS OFFICER

In the matter of the Contested
Industrial Insurance Claim of:

Claim No. 2008-0291

KEVIN EVANS,

Appeal No. 64469-GS

Claimant.

STIPULATED STATEMENT OF FACTS

The parties by and through their respective Counsel, pursuant to Order of the Appeals Officer, stipulate as follows:

1. THAT EXHIBIT 10 PAGE 101 (TAB 10) TO CLAIMANT'S EXHIBIT 1 IS AN OFFICIAL RECORD OF ALL CALL-OUT RESPONSES BY FIREFIGHTER KEVIN EVANS BETWEEN 10/25/2004 AND 12/12/2008 KEPT BY THE LAS VEGAS FIRE AND RESCUE DEPARTMENT IN THE ORDINARY COURSE OF BUSINESS.

2. THAT PAGE 11 TAB 1 TO CLAIMANT'S EXHIBIT 2 IS AN OFFICIAL RECORD OF THE CALL-OUT RESPONSE BY FIREFIGHTER KEVIN EVANS TO THE STRUCTURE FIRE IDENTIFIED AS INCIDENT 2005-5043555-000 (KNOWN AS "THE PHILIP'S SUPPER HOUSE FIRE") WHICH OCCURRED ON MARCH 5, 2005 AT 12:28:23.

3. THAT PAGE 21 TAB 2 AND PAGE 22 TAB 3 TO CLAIMANT'S EXHIBIT 2 ARE ACCURATE PHOTOGRAPHS OF THE "PHILIP'S SUPPER HOUSE FIRE", AND THAT ONE OF THE TWO FIREFIGHTERS DEPICTED ON THE AERIAL LADDER ON PAGE 22 (TAB 3) IS CLAIMANT, KEVIN EVANS.

4. THAT IF CALLED CAPTAIN STEVEN REINCKE WOULD TESTIFY THAT KEVIN EVANS HAD BEEN A MEMBER OF HIS SUPPRESSION CREW AT "100'S OF FIRE SCENES", AND THAT KEVIN EVANS MANNED THE AERIAL LADDER IN THE "PHILIPS SUPPER HOUSE FIRE".

5. THAT IF CALLED, CAPTAIN STEVEN REINCKE WOULD TESTIFY THAT KEVIN EVANS PARTICIPATED IN FIRE EXTINGUISHMENT AND SALVAGE AND

1 OVERHAUL ASSIGNMENTS IN NUMEROUS SMOKEY, AND TOXIC ENVIRONMENTS
2 INCLUDING INCIDENT NO. 5074544, EXHIBIT A PAGE 106 STRUCTURE FIRE IN AN
3 AUTO PAINT SHOP, WITH SYNTHETIC ENAMELS AND LACQUERS AND INCIDENT NO.
4 5103899 EXHIBIT 1 PAGE ¹¹³~~31~~ WHERE A BUILDING USED FOR RELOADING
5 AMMUNITION IN THE REAR OF A HOME BURNED CONTAINING LARGE AMOUNTS OF
6 GUN POWDER, PRIMERS AND SOLVENTS.

7 6. THAT IF CALLED CAPTAIN STEVEN REINCKE WOULD TESTIFY THAT
8 THE CREW RETURNS TO THE STATION IN A SMALL CAB THAT ALSO CONTAINS ALL
9 THEIR CONTAMINATED GEAR WHICH "OUT GASSES"; AND OFTEN THEY ARE CALLED
10 OUT AGAIN BEFORE THEIR TURNOUT AND PROTECTIVE GEAR CAN BE CLEANED OR
11 REPLACED.

12 7. KEVIN EVANS DATE OF HIRE BY THE LAS VEGAS FIRE AND RESCUE
13 DEPARTMENT IS OCTOBER 25, 2004.

14 8. ALL OF KEVIN EVANS' SERVICE WITH THE LAS VEGAS FIRE AND
15 RESCUE DEPARTMENT HAS BEEN SPENT IN FIRE SUPPRESSION.

16 9. EXHIBIT 10 TO CLAIMANT'S EXHIBIT 1 PP 101-297 AND TAB 1 TO
17 CLAIMANT'S EXHIBIT 2 PP 11-20 ARE OFFICIAL RECORDS OF THE LAS VEGAS FIRE
18 AND RESCUE DEPARTMENT KEPT IN THE ORDINARY COURSE OF BUSINESS KNOWN
19 AS RUN REPORTS IN WHICH KEVIN EVANS PARTICIPATED IN THE RESPONSES.

20 10. THAT, IF CALLED, KEVIN EVANS WOULD TESTIFY THAT DURING MANY
21 OF THE RESPONSES LISTED IN THE RUN REPORTS, HE WAS EXPOSED TO SMOKE,
22 SOOT, DIESEL EXHAUST AND OTHER COMBUSTION BY-PRODUCTS.

23 11. THAT, IF CALLED, KEVIN EVANS WOULD TESTIFY THAT AT THE
24 "PHILIPS SUPPER HOUSE FIRE" REPORTED IN TAB 1 OF CLAIMANT'S EXHIBIT 2 PP 11-
25 20 HE WAS ROTATED INTO THE AERIAL LADDER IN THE SMOKE PLUME FOR OVER
26 20 MINUTES, AND THAT TAB 3 OF CLAIMANT'S EXHIBIT 2 PP 22 DEPICTS KEVIN
27 EVANS ON THE AERIAL LADDER DIRECTING WATER ONTO THE FIRE.

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(702)384-1036

1 12. THAT, IF CALLED, KEVIN EVANS WOULD TESTIFY THAT HE
2 PARTICIPATED IN RESPONSES TO MANY CAR FIRES, TRASH AND DUMPSTER FIRES,
3 AND AUTO PAINT SHOP FIRE AND A FIRE IN A SHED USED FOR AMMUNITION
4 RELOADING, WHERE HE WAS EXPOSED TO MANY DIFFERENT IRRITATING AND
5 TOXIC SUBSTANCES IN SMOKE, VAPOR AND PARTICLE FORMS.

6 13. THAT KEVIN EVANS BEGAN SUFFERING FROM BAD HEADACHES IN
7 NOVEMBER OF 2008, AND CONSULTED A QUICK CARE DOCTOR ON NOVEMBER 26,
8 2008, WHO ADVISED HIM TO GO TO A HOSPITAL FOR A SCAN.

9 14. THAT ON NOVEMBER 28, 2008, KEVIN EVANS WENT TO SUMMERLIN
10 HOSPITAL FOR A SCAN THAT SHOWED HE HAD A BRAIN TUMOR AND HE WAS
11 REFERRED TO VALLEY HOSPITAL, WHERE ON NOVEMBER 29 AND 30 AFTER
12 ADDITIONAL SCANS IT WAS DECIDED SURGERY WOULD BE REQUIRED.

13 15. THAT ON DECEMBER 4, 2008, DR. AURY NAGY PERFORMED A RIGHT-
14 SIDED CRANIOTOMY FOR TUMOR REMOVAL, WHICH LEFT A RESIDUAL RIND OF
15 TUMOR CELLS TOO CLOSE TO VITAL REGIONS OF THE BRAIN FOR REMOVAL, AND
16 THAT THE MEDICAL RECORDS OF THAT SURGERY ARE MARKED EXHIBIT 7 TO
17 CLAIMANT'S EXHIBIT 1 AT PP 32-66 AND SHOW THE TUMOR TO HAVE BEEN A
18 GLIOBLASTOMA MULTIFORME.

19 16. THAT FOLLOWING HIS SURGERY, KEVIN EVANS WAS REFERRED TO
20 THE UCLA NEURO ONCOLOGY CLINIC AND TO DR. PAUL E. MICHAEL OF
21 COMPREHENSIVE CANCER CENTERS FOR FOLLOW-UP CARE.

22 17. THAT KEVIN EVANS WAS INITIALLY TREATED BY DR. MEOZ, A
23 RADIATION ONCOLOGIST AT COMPREHENSIVE CANCER CENTERS AND THEN BY DR.
24 MICHAEL FOR CHEMOTHERAPY AFTER WHICH HE WAS RELEASED TO FULL DUTY
25 AS A FIREFIGHTER, WITH CHEMOTHERAPY ON 28 DAY CYCLES AND MONTHLY
26 VISITS TO UCLA FOR SCANS AND PHYSICIAN CONSULTATIONS.

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18. IF CALLED, KEVIN EVANS WOULD TESTIFY THAT HIS DOCTOR'S HAVE ADVISED HIM THAT BECAUSE OF THE AGGRESSIVE TYPE OF BRAIN TUMOR HE HAS, IT WILL BE NECESSARY TO HAVE REGULAR FOLLOW-UP CARE. PROBABLY WITH SOME CHEMOTHERAPY FOR AT LEAST 2 YEARS AND PROBABLY FOR THE REST OF HIS LIFE.

Dated this 12th day of January, 2010

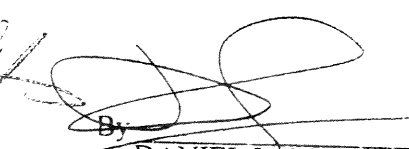
HILBRECHT & ASSOCIATES

SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON

By


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Counsel for Claimant

By


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(702) 791-0308
Counsel for Employer

ORIGINAL

BEFORE THE APPEALS OFFICER

In the Matter of the)	
Contested Industrial)	
Insurance Claim,)	
)	
of)	Claim No.: 2008-0291
)	
KEVIN EVANS,)	Appeal No.: 64469-GS
)	
Claimant.)	
)	

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

HONORABLE GERALDINE SCHWARTZER

APPEALS OFFICER

Thursday, January 7, 2010

1:45 p.m.

2200 South Rancho Drive, Suite 220

Las Vegas, Nevada 89102

Ordered by: Daniel L. Schwartz, Esq.
Lewis, Brisbois, Bisgaard & Smith
400 South Fourth Street, Suite 500
Las Vegas, Nevada 89101

FILED
JAN 14 2010
10:48:26 AM
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

A P P E A R A N C E S

On behalf of the Claimant:

Norman Ty Hilbrecht, Esq.
Attorney at Law
723 South Casino Center Boulevard
Las Vegas, Nevada 89101

On behalf of the City of Las Vegas:

Daniel L. Schwartz, Esq.
Lewis, Brisbois, Bisgaard & Smith
400 South Fourth Street, Suite 500
Las Vegas, Nevada 89101

Also present:

Jane Lucas

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I N D E X

EXAMINATION	DIRECT	CROSS	REDIRECT	RECROSS
JAMES MELIUS	7	24	39	
PAUL MICHAEL	43	61		

EXHIBITS	IDENTIFIED	IN EVIDENCE
EMPLOYER'S A	4	4
CLAIMANT'S 1	4	4
CLAIMANT'S 2	4	4

* * *

P R O C E E D I N G S

APPEALS OFFICER SCHWARTZER: We're on record in the matter of the contested industrial insurance claim of Kevin Evans. The Claimant is present. He's represented by Mr. Hilbrecht. Representing the City of Las Vegas is Mr. Schwartz. Also present is Ms. Lucas from the City of Las Vegas. This is a Claimant's appeal from a Hearing Officer's decision. The Hearing Officer affirmed the January 22nd, 2009, claim denial.

Prior to going on the record I discussed with the parties and they've agreed that I can mark into evidence Employer's A consisting of 52 pages, and Claimant's 1 consisting of 313 pages and Claimant's 2 consisting of Pages 11 through 31. The parties indicated that there's no further documents.

Is that correct, Mr. Hilbrecht?

MR. HILBRECHT: That's correct, your Honor.

APPEALS OFFICER SCHWARTZER: And Mr. Schwartz?

MR. SCHWARTZ: Correct, your Honor.

APPEALS OFFICER SCHWARTZER: We're going to begin with testimony. I understand it's the claim denial of the cancerous brain tumor.

So, Mr. Hilbrecht, your first witness is?

MR. HILBRECHT: Dr. James Melius by telephone,

1 your Honor.

2 APPEALS OFFICER SCHWARTZER: Oh, by telephone.

3 Now, we have somebody else in the courtroom and --

4 MR. HILBRECHT: Yes, we do. This is the
5 treating oncologist, Dr. Michael.

6 APPEALS OFFICER SCHWARTZER: Okay. Thank you.

7 MR. SCHWARTZ: And, your Honor, I would like
8 Dr. Michael to wait outside while we take Dr. Melius'
9 testimony.

10 APPEALS OFFICER SCHWARTZER: He's the expert
11 witness. You know expert witnesses can stay in while
12 other witnesses are testifying so . . .

13 MR. SCHWARTZ: I thought Mr. Hilbrecht said he
14 was his treating physician.

15 MR. HILBRECHT: Yes.

16 MR. SCHWARTZ: If he's being called as an
17 expert, then obviously I want to voir dire him before
18 we start.

19 MR. HILBRECHT: Well, he's being called as an
20 expert. He also did treat, yes.

21 MR. SCHWARTZ: Well, there's two different
22 things, a treating physician or an expert physician,
23 your Honor.

24 APPEALS OFFICER SCHWARTZER: Your request is
25 denied at this time.

1

1 MR. SCHWARTZ: Okay.

2 APPEALS OFFICER SCHWARTZER: And,
3 Mr. Hilbrecht, is it long distance?

4 MR. HILBRECHT: Yes, it will be.

5 APPEALS OFFICER SCHWARTZER: And you have a
6 way of calling the person? A calling card?

7 MR. HILBRECHT: Well, I have a credit card or
8 whatever you want from my office.

9 APPEALS OFFICER SCHWARTZER: I'm going to go
10 off record while you get him on the phone.

11 (Off the record)

12 APPEALS OFFICER SCHWARTZER: All right. I
13 just looked at my meter on our recording, and it
14 appears that everything I just said was not recorded.
15 So I'm going to quickly state this to you again.

16 THE WITNESS: Okay.

17 APPEALS OFFICER SCHWARTZER: All right. This
18 is in the matter of the contested industrial insurance
19 claim of Kevin Evans. Present in the courtroom is
20 Mr. Evans, his attorney, Mr. Hilbrecht, Mr. Schwartz,
21 who represents the City of Las Vegas, Ms. Lucas, who's
22 with the City of Las Vegas, and Dr. Michael.

23 My name is Geraldine Schwartz. I will be
24 making the decision. Do not hang up until I tell you
25 to hang up, and please, only you can provide the

1 answers and you understand that.

2 I have sworn you in; is that correct?

3 THE WITNESS: Correct.

4 APPEALS OFFICER SCHWARTZER: All right. So
5 Mr. Hilbrecht.

6 MR. HILBRECHT: Thank you, your Honor.

7

8 DIRECT EXAMINATION

9 BY MR. HILBRECHT:

10 Q Can you hear me, Doctor?

11 A Yes, I can.

12 Q Doctor, would you state your full name and
13 business address and occupation?

14 A My full name is James Malcolm Melius. My home
15 address is Post Office Box 70 in Copake, C-o-p-a-k-e,
16 Falls, New York, area code 12517. My business address
17 is at 18 Corporate Woods Boulevard in Albany, New York
18 12211.

19 Q Now, Doctor, have I furnished you previously
20 with a document entitled "Claimant's Appeal Memorandum"
21 and later a document entitled "Amendments to Claimant's
22 Appeal Memorandum"?

23 A Yes, you have.

24 Q And in the event I should forget, the first
25 document, that is the appeal memorandum, has been

1 marked as Exhibit 1 and the amendments as Exhibit 2.

2 A All right.

3 Q I'd ask you first, Doctor, please to turn to
4 Page 21 of the appeal memorandum that is Exhibit 1.

5 A I've done so.

6 Q And identify that document, if you would.

7 A That is my curriculum vitae as of
8 January 2009.

9 Q Are there any matters that you deem should be
10 added for the purpose of this proceeding?

11 A Nothing that would be significant for this
12 proceeding.

13 Q Doctor, I notice that your curriculum vitae
14 includes the position of Professor of Environmental
15 Health and Toxicology at the State University of
16 New York.

17 Is that accurate?

18 A Yes. I served for several years as professor
19 at the School of Public Health at the State University
20 of New York in Albany.

21 Q Would you please state your familiarity with
22 Kevin Evans' workman's compensation claim arising out
23 of his brain cancer?

24 A Correct. I've over the last few months
25 reviewed a number of documents related to Mr. Evans. I

1 believe all of these were you included in the appeal
2 memos or in the original filing for his workers'
3 compensation case.

4 These include a number of his medical records
5 related to his cancer. They also included records
6 related to his work as a firefighter for the City of
7 Las Vegas, in particular what I'll refer to as his run
8 reports, which are records of the individual responses
9 of the fire units to which he was assigned over the
10 time period that he worked with the City of Las Vegas.

11 Q And for the record, you would be referring to
12 documents contained in Exhibit No. 1?

13 A Correct. I believe those are all in Exhibit
14 No. 1.

15 Q All right. And, Doctor, were you engaged to
16 establish whether or not Mr. Evans had been exposed to
17 combustion byproducts in his employment that could be
18 reasonably a causative factor for his brain cancer?

19 A Yes, I've been so employed.

20 Q And at the time you were engaged had you
21 evaluated workman's comp claims arising raising similar
22 issues?

23 A Yes. I've evaluated some similar types of
24 claims in the past, both in the State of Nevada as well
25 as in other jurisdictions.

1 Q And over what period of time have you been
2 involved in evaluating exposures to carcinogens
3 resulting in cancer problems?

4 A I've been working in occupational medicine in
5 epidemiology since the late 1970s. I've been involved
6 in the study of occupational health problems, including
7 cancer among firefighters, since the early 1980s. So
8 almost 30 years now.

9 I've published scientific articles regarding
10 this and conducted a number of studies related to this
11 and worked in the general area of firefighter
12 occupational health issues/disease issues for, as I
13 said, almost 30 years now.

14 Q I note that you indicate that you've
15 participated in a committee studying the effects of the
16 9-11 disaster on first responders.

17 Can you explain what that means?

18 A Yes. For the last several years I have
19 chaired a steering committee for the medical monitoring
20 and treatment program that is providing medical
21 examinations and treatment for the thousands of
22 firefighters and other workers who were exposed in
23 responding to or in the cleanup and recovery
24 activities related to the 9-11 terrorist action.

25 Responders, emergency responders,

1 firefighters, police, construction workers all
2 developed a variety of illnesses because of exposures
3 during that work, and there's a large federally funded
4 medical program in the New York City area that provides
5 medical examinations and medical treatment for those
6 individuals.

7 And I work on -- I chair the steering
8 committee, essentially the oversight committee for that
9 program, and have done so for at least the last five
10 years.

11 Q Dr. Melius, did you agree to evaluate and
12 offer an opinion whether there was a causal connection
13 between Mr. Evans' brain cancer and his exposures to
14 carcinogens to which he was exposed in the course of
15 employment as a firefighter with Las Vegas?

16 A Yes, I did.

17 Q And would you describe how such an evaluation
18 was done and how you were able to render an opinion?

19 A Yes. Well, first I reviewed his medical
20 records which clearly establish that he had developed a
21 brain cancer. I then reviewed his records, what I
22 referred to earlier as run records. These are records
23 that provided sort of a diary of his activities of his
24 fire units over the period of time that he worked as a
25 -- or continues to work as a Las Vegas firefighter.

1 And then based on my knowledge and experience
2 in studying firefighters, including the exposures that
3 firefighters experience during their everyday
4 activities as a firefighter, I was -- and based on the
5 run records was able to reach conclusions about his
6 exposures as a firefighter and how those exposures
7 would provide -- would be causally related to his
8 development of his brain cancer.

9 Q Now, Doctor, is it true that you have shared a
10 portion of the library upon which you relied in
11 Exhibit 11 to Exhibit 1 or I'll call it Tab 11 to
12 Exhibit 1?

13 A Correct. That includes one article. I
14 reference a number of studies in the letter that I
15 wrote summarizing my opinion regarding Mr. Evans' brain
16 cancer. Those included an article that summarizes the
17 various types of exposures that firefighters can
18 receive as part of their everyday activities.

19 It also includes references to a number of
20 studies that document the increased risk of brain
21 cancer among firefighters; that is, that firefighters
22 have a significantly higher risk of developing brain
23 cancer than do members of the general population.

24 Exhibit No. 11 is an article entitled
25 "Combustion Products and Other Firefighter Exposures"

1 which are taken from a scientific compendium that I
2 edited on firefighter occupational safety and health
3 and it's a summary of -- the title of the article is
4 "Combustion Products and Other Firefighter Exposures."
5 It's written by an industrial hygienist and
6 toxicologist at the Johns Hopkins University School of
7 Public Health.

8 Q Doctor, I think perhaps I would like to refer
9 you at this time to Exhibit No. 2, which is the
10 amendments, and the final document which appears to be
11 an opinion letter dated December 17, 2009, Pages 30 and
12 31 of that document.

13 Would you turn to those, please?

14 A Yes.

15 Q And first referring to the references or the
16 authorities that you've relied upon, I noticed --

17 APPEALS OFFICER SCHWARTZER: I'm sorry. I
18 don't want to interrupt you, but what pages are you
19 looking at? Pages 30 and 30- --

20 MR. HILBRECHT: I'm looking at Exhibit No. 2,
21 Pages 30 and 31, which is Tab 6, I believe.

22 APPEALS OFFICER SCHWARTZER: Okay. Thank you.

23 MR. HILBRECHT: Tab 6, yes, to Exhibit No. 2.

24 APPEALS OFFICER SCHWARTZER: Okay.

25 MR. HILBRECHT: I'm sorry, your Honor.

1 APPEALS OFFICER SCHWARTZER: Thank you.

2 BY MR. HILBRECHT:

3 Q Doctor, turning to Page 31, I note a number of
4 footnotes.

5 Do those footnotes relate to the authorities
6 you've just been discussing?

7 A Yes, they do.

8 Q Do you have that document in front of you?

9 A Yes, I do.

10 Q Okay. And you've identified I think in that,
11 as I understand it, in your December 17, 2009, letter,
12 Tab 6 to Exhibit No. 2, several carcinogens that you
13 believe based on the scientific data the Claimant was
14 exposed to and relate to his condition.

15 Is that accurate?

16 A Correct. I referred to three specific
17 carcinogens that are related to -- that are found that
18 firefighters may be exposed to as part of their
19 workplace exposure to fire smoke and that are also
20 known to be associated with a higher risk -- or
21 exposure to these chemicals associate with a higher
22 risk of developing brain cancer.

23 Those three chemicals are formaldehyde,
24 acrylonitrile, a-c-r-y-l-o-n-i-t-r-i-l-e, and vinyl
25 chloride, v-i-n-y-l, separate word, c-h-l-o-r-i-d-e.

1 Q And do the studies disclose that these
2 carcinogens are found frequently in fire smoke?

3 A Correct. Formaldehyde is found -- is released
4 in the smoke from nearly every fire. It's a breakdown
5 product, combustion product, that's released into the
6 air in very significant amounts from burning of wood,
7 in almost any material that burns.

8 Vinyl chloride and acrylonitrile are
9 carcinogenic chemicals that are released from the
10 burning of synthetic materials. Particularly common
11 forms of plastic materials would release these two
12 chemicals.

13 I think we know how commonly synthetic
14 materials, plastic types of materials, are now used in
15 furniture and other materials found in homes, cars, and
16 so forth. These are common exposures, also common
17 exposures for firefighters.

18 Q Now, are these carcinogens simply found in
19 fire smoke or are they found in other combustion
20 byproducts?

21 A Well, fire smoke is sort of a shorthand way of
22 describing the mixture of what is released when
23 materials combust and what, you know, firefighters
24 would be exposed to. So it would be sort of a
25 component of the fire smoke, but they're somewhat

1 independent of the fire smoke in the sense that they're
2 chemicals that are vaporized into the air.

3 To some extent they would be in the -- smoke
4 is really made up of small particles and those small,
5 you know, microscopic particles, some of the chemicals
6 would be on them, but some of these chemicals would
7 also be essentially vaporized, evaporate, and would be
8 in the air from the burning of these materials that
9 would release these chemicals.

10 Q Are they found in byproducts such as ash or
11 soot?

12 A Yes. In those cases they would be attached to
13 the particles. When the particles that are in smoke
14 are -- you know, deposit on the ground, they fall to
15 the ground, then they become components of the ash and
16 the smoke.

17 So they would be adhering to those particles,
18 but they're -- so some of the exposure would be through
19 the contact with the ash and the smoke, but some would
20 also be from exposure to the airborne exposure also.

21 Q Doctor, based on your knowledge, training, and
22 experience, and familiarity with the scientific
23 articles that you've cited, is it your opinion that
24 it's necessary for a firefighter to carry a dosimeter
25 into a fire to see whether or not he was exposed to

1 carcinogens?

2 A Actually not. We have enough information on
3 what's contained in fire smoke, what's released during,
4 you know, fire combustion, during the combustion of
5 various products. We also have studies that show that
6 these materials can be released when -- these chemicals
7 can be released when materials are burned, and we do
8 have some studies that have actually put dosimeters or
9 ways of measuring chemicals on firefighters during
10 actual fires.

11 How those studies are -- or that type of
12 monitoring is not practical to do on an everyday basis
13 with each fire, nor is it necessary because the studies
14 that have been done have shown how commonly found these
15 chemicals are.

16 Formaldehyde, for example, is found in nearly
17 every -- the smoke is released from nearly every -- the
18 burning of nearly every material, meaning every time
19 that a firefighter or a person is exposed to smoke from
20 a fire, they would be exposed to formaldehyde in
21 significant amounts.

22 Q Doctor, I'm curious. Are these three
23 carcinogens you've identified in this case listed as
24 known carcinogens by any research or technical agency?

25 A Yes. They're all recognized as being

1 carcinogenic by the Environmental Protection Agency, by
2 the National Institute for Occupational Safety and
3 Health, the International Agency for Research on
4 Cancer agency that's commonly referred to as IARC and
5 is considered, you know, to be one of the -- you know,
6 a knowledgeable general source on determining whether
7 or not a material is carcinogenic.

8 In fact, formaldehyde was just recently
9 re-reviewed by IARC and, again, affirming that it was a
10 Class 1 or the strongest type of -- strongest
11 classification for carcinogens.

12 Q Now, Doctor --

13 A By IARC.

14 Q Excuse me. Now, Dr. Melius, do you serve in
15 any advisory capacity with any of these agencies?

16 A I have in the past served on advisory really
17 to all of these agencies including on panels for IARC
18 in the past.

19 Q By IARC do you mean the International Agency
20 for Research on Cancer, Doctor?

21 A Yeah, correct, and recently just completed
22 serving as a scientific advisor to IARC on the conduct
23 of a large epidemiological study that they are just
24 reporting on, a study of asphalt exposed workers in
25 Europe and Israel.