

LitigationWatch:

WELDING RODS

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TRACKING CASE NEWS AND RESEARCH IN EMERGING WELDING ROD AND RELATED LITIGATION

The Real Story Behind Welding Rod Litigation: Why *Elam* Is An Aberration

By D. Patterson Gloor, Esq.

The welding industry has been defending itself against welding rod/manganese fume litigation for over a decade and during this time, has amassed a very strong track record. Before the much-publicized *Elam* verdict, the industry had won eight consecutive manganese fume cases. And despite the verdict in *Elam*, the welding industry believes the primary factor driving prior victories will continue to drive defense verdicts in the future. Simply put, there is no demonstrable causal link between typical welding and Parkinson's disease, manganism or any other neurological impairment. The facts should continue to carry the day in future welding rod litigation.

From 1992 to 2000, the industry tried eight cases to defense verdicts, in eight different jurisdictions across the country.¹ In each of these cases, plaintiffs exhibited a range of symptoms such as tremors, bradykinesia (slowed movement), rigidity and postural instability (difficulty balancing). Plaintiffs alleged that manganese contained in the fumes released during the welding process was responsible for causing their condition, which they claimed was manganism.

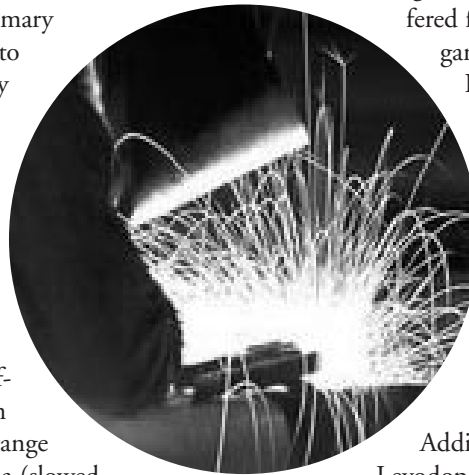
I was part of the defense team for each of these cases and the defense in each was twofold. First, we argued that the plaintiffs did not suffer from manganism, an extremely rare condition seen outside the United States among miners and smelters exposed to extremely high levels of manganese, but rather from idiopathic Parkinson's disease, which impacts close to 1.5 million people each year and is of an unknown origin. Second,

the defense argued that since there was no scientific evidence linking welding fumes to Parkinson's disease, the plaintiffs' illnesses cannot be shown to have been caused by welding.

Aiding the defense in proving that these plaintiffs suffered from Parkinson's disease, as opposed to manganism, was the fact that manganism and Parkinson's disease are distinctly different medical disorders affecting different parts of the central nervous system — and can be easily differentiated clinically, pharmacologically, pathologically, and through neuroimaging. For instance, manganism is characterized by a relative absence of tremor that, if present, does not have the typical asymmetrical and resting qualities one sees in Parkinson's patients.

Additionally, Parkinson's patients respond to Levodopa, while manganism patients do not. Moreover, PET scans confirm that damage in Parkinson's disease occurs in the *substantia nigra pars compacta*, whereas it has been shown the damage in manganism occurs in the *globus pallidus*.

Once we demonstrated that these plaintiffs suffered from Parkinson's disease, we were able to attack assertions that the condition was caused by welding fumes. Plaintiff and defense experts alike testified that there was absolutely no scientific evidence demonstrating a causal link between Parkinson's disease and welding fumes. In each case, the juries returned unanimous verdicts in favor of the defense.



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This was the lay of the land going into the *Elam* trial.² In *Elam*, the plaintiff employed a different strategy than that used by plaintiffs in prior cases. Instead of asking the jury to believe that Larry Elam was suffering from welding-induced manganism, plaintiff's attorneys acknowledged that Mr. Elam, who exhibited the classic symptoms of Parkinson's disease – resting, asymmetrical tremors, rigidity, bradykinesia and postural instability – and reacted positively to Levadopa, may indeed be suffering from Parkinson's disease. Plaintiff then alleged that the manganese contained in welding fumes was a significant contributor to the onset of Mr. Elam's Parkinson's disease.

In support of this novel theory, plaintiff relied on a 2001 study out of Washington University by a movement disorder specialist named Dr. Brad Racette. This new study, suggestively entitled "Welding-Induced Parkinsonism," hypothesized that welding fumes may cause early onset Parkinson's disease. The Racette study also suggested, despite all the scientific evidence to the contrary, that idiopathic Parkinson's disease and manganism are not necessarily different disorders. Relying on this, the plaintiff's own local doctors, who originally diagnosed Mr. Elam with idiopathic Parkinson's disease, testified that based on the Racette study, they were not as certain about their diagnosis, and that Mr. Elam could indeed be suffering from some combination of manganism and Parkinson's. This was the first published study to suggest any link between welding and Parkinson's disease and it allowed the plaintiff to argue, for the first time, that there was indeed a connection between Mr. Elam's illness – whether it be manganism,

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Parkinson's, or a combination of the two – and Mr. Elam's career as a welder.

Despite this shift in plaintiff's strategy, our defense in this case was basically the same as in the earlier cases. The defense argued that Mr. Elam had idiopathic Parkinson's disease and that there was no causal link between his affliction and welding. We attacked the soundness of Dr. Racette's study, which itself admits that "no established relationship between welding exposure and symptoms of Parkinsonism has been shown," and concludes by saying that the only way to establish a relationship between welding exposure and early onset of Parkinson's would be to undertake a "proper epidemiological study." In the end, the jury in the first *Elam* trial was undecided, and a mistrial was declared. In the second trial, the jury returned a compro-

mised verdict and awarded Mr. Elam \$1,000,000 in damages. This case is currently being appealed.

The industry believes that this verdict will prove to be an aberration. Since the *Elam* trial, Dr. Racette, upon who plaintiffs rely so heavily, has affirmed that "no established relationship between welding exposure and symptoms of Parkinsonism has been shown." A careful reading of Dr. Racette's study reveals that, once the groups used by Dr. Racette are matched for age and gender, there is no meaningful correlation at all between age of onset of Parkinson's and occupation as a welder.

The bottom line is there exists no scientifically sound epidemiological studies demonstrating that typical welding causes Parkinson's disease, manganism or any other neurological disorder. Welding has a solid track record of safety. In close to a century of welding activity, the medical community has not raised any broad-based neurological concerns relating to welding and there have been no epidemiological studies showing that welders get Parkinson's disease, manganism or any other neurological impairment at a greater rate than the public at large. Doctors and regulators aren't driving this issue; lawyers are. In fact, the vast majority of plaintiff welders in these cases were solicited by plaintiffs' attorneys with advertisements promising welders money if they could show symptoms of illness.

We believe the plaintiffs are relying on junk science that will ultimately be rejected by both judge and jury. Nowhere is this more apparent than in the screenings being conducted by another key plaintiff witness, Dr. Paul Nausieda. These welder "screenings" being sponsored and cited by the plaintiffs' counsel as supposed scientific studies do not provide the basis for any scientifically valid conclusions. Dr. Nausieda has testified for the plaintiff on

11 different times, before these screenings began and is paid \$10,000 a day by plaintiff's lawyers to conduct the screenings. Many of those screened by Dr. Nausieda were recruited by extensive advertising campaigns seeking people with symptoms such as headaches, irritability and sleeplessness – complaints that all of us have from time to time and could be caused by just about anything.

The trial lawyers' bets on manganese litigation are misplaced. The welding industry will continue to defend itself vigorously against these meritless claims, trying those cases not dismissed on other grounds. The welding industry is confident it will ultimately prevail in these cases.

Footnotes

¹The trials were as follows: *Kallenbach v. Lincoln Electric, et al.*, Case No. 91-C-1012-S (W.D. Wis. – defense verdict on November 23, 1992); *Siddens v. Lincoln Electric, et al.*, Case No. 90-2273 (C.D. Ill. – defense verdict on March 16, 1994); *Canfield v. Lincoln Electric, et al.*, Case No. 92-C-0517 (E.D. Wis. – defense verdict on November 6, 1995); *Jones v. Lincoln Electric, et al.*, (N.D. Ind. – defense verdict on December 11, 1995); *Caldwell v. Lincoln Electric, et al.*, Case No. 231-1991 (Clarion County, Pennsylvania – defense verdict on August 12, 1997); *Griffith v. Lincoln Electric, et al.*, No. 94-L-16855 (Circuit Court of Will County, Illinois – defense verdict on November 6, 1997); *Walker v. Lincoln Electric, et al.*, Case No. 95-L-785 (Circuit Court for Madison County, Illinois – defense verdict on January 12, 2000); and *Scheiner v. Lincoln Electric, et al.*, Case No. 96089005 (Baltimore, Maryland – defense verdict on April 24, 2000).

²*Elam v. Airco, et al.*, Case No. 01-L-1213 (Circuit Court for Madison County, Illinois)

About the Author

D. Patterson Gloor is one of the founders of Cassiday, Schade & Gloor, and has also served on the firm's Executive Committee. Mr. Gloor specializes in civil litigation with an emphasis on toxic tort and environmental litigation, professional negligence, products liability, and insurance coverage. He has had extensive trial experience in complex cases involving toxic torts, welding, products liability, medical malpractice, and insurance coverage.

Mr. Gloor has tried to verdict over 100 cases in federal and state courts in Illinois as well as Iowa, Indiana, and Kentucky. He is presently handling products liability cases for various manufacturers of welding products, motors and boats, asbestos, underground storage tanks, and other industrial products. These cases are pending in Arizona, North Dakota, Wisconsin, Iowa, Nebraska, Indiana, and Kentucky. He has also handled many other types of suits seeking compensation for personal injury or property damage. Since 1987, Mr. Gloor has acted as Midwest regional counsel to the welding industry, which is comprised of various welding products. He has responsibility for the coordination and trial of approximately 250 cases pending in the Midwest. In that capacity he is in charge of the management of all aspects of the litigation, including document review, written discovery, examination of fact and industry witnesses, and interviewing and presenting expert witnesses on behalf of the welding industry. He has successfully tried many cases to verdict in Kentucky, Iowa, Indiana, and Illinois on behalf of the welding industry.

He recently tried an underground storage tank case in Mt. Pleasant, Iowa, an asbestos exposure case in Louisville, Kentucky, and a case involving claimed neurological damage in downstate Illinois. He also tried in U.S. District Court in Chicago, Illinois a suit by a former asbestos manufacturer against its insurers. This suit included alleged insurer bad faith.

Mr. Gloor also renders opinions on insurance coverage matters and handles declaratory judgment suits seeking judicial declaration of rights and responsibilities under insurance policies. Mr. Gloor is part of a team of lawyers which handles nationally first-party environmental insurance coverage questions.

Mr. Gloor has authored articles on subject matter jurisdiction and various aspects of discovery for the Illinois Institute for Continuing Legal Education.

He has taught the products liability course at the Chicago Kent School of Law and has been a frequent lecturer and speaker at legal seminars. The most recent dealt with Illinois tort reform and was sponsored by ICLE and chaired by Justice Michael Gallagher of the Cook County Circuit Court. (Justice Gallagher, a former partner at Cassiday, Schade & Gloor, was appointed to the Illinois Appellate Court.)

Mr. Gloor is a member of the Chicago Bar Association, the Illinois State Bar Association and the American Bar Association.