

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610226

JOSE SALGUERO	CLAIMANT
SUPERIOR INDUSTRIES	RESPONDENT
CROCKETT ADJUSTMENT, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 25, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAMES EVANS, JR., Attorney, Springdale, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 18, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 20, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On October 13, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate based on an hourly wage of \$10.97 having worked forty hours per week which would entitle him to an average weekly wage of \$438.80. This

would entitle him to a temporary total disability rate of \$293.00 and a permanent partial disability rate of \$219.00.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injury due to inhalation of toxic fumes.

2. Related medical.

All other issues were reserved by the claimant.

In regard to the foregoing issues the claimant contends that he was injured in January 2005 and August 2005. His lungs, chest and throat were injured by his inhaling muriatic acid and other chemicals.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury as defined in the Arkansas Workers' Compensation Act.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1, Claimant's Exhibit No. 2, and Claimant's Exhibit No. 3. The respondents submitted medical records marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

Daniel Huaracho testified that he currently is working for Northwest Arkansas Careers but did work for the respondent from August 1999 to August 2006. Mr. Huaracho testified that he worked with the claimant on the cooper and nickle line. Mr. Huaracho

testified that the claimant does not speak English and there were many time that he would interpret for the claimant particularly when the claimant needed to communicate with his supervisor, Jeff Linson. Mr. Huaracho testified that he interpreted for the claimant when he would be complaining to his supervisor about having chest pain. This witness testified that the claimant also complained about his throat itching, having problems swallowing, and his throat hurting. This witness testified that one day a drum with hydrochloric acid was placed in the area where people were working and the claimant got most of the fumes. Mr. Huaracho testified that there was another event when a pipe popped off and chemicals were spilled all over. This witness testified that four of the people who were working in that area went to human resources to report this incident but nothing was done about it. Mr. Huaracho remembered that Pablo Ayalla, Pedro Castro, and the claimant were the employees that complained to HR. Mr. Huaracho testified that for a period of time he worked in solution management and he had recommended that the respondent get a scrubber for the fumes from what they call the "bake tank" but nothing was ever done about it. Mr. Huaracho testified that some people when they come to work in that department get itchy all over and then when they go to another department they do not have this problem. Mr. Huaracho testified that he has interpreted for the claimant more than ten times and each time it would be to Jeff Linson because that was the rule. Mr. Huaracho testified that when the complaints were made to Mr. Linson he would say that he would

report it to the safety supervisor, Larry Massey, but that nothing was ever done about it. Mr. Huaracho testified that there was one time he was interpreting for the claimant to Jeff Linson about how the claimant was feeling and later on in the morning Mr. Linson gave the claimant a piece of paper with a phone number on it and said the claimant had an appointment at the Diagnostic Clinic. Mr. Huaracho testified that when he called to verify the appointment the clinic told him that the claimant would have to come around to the front desk to make arrangements for payment because the respondent was not going to pay for anything.

On cross examination, Mr. Huaracho testified that the scrubbers that the respondent does have in their plant are old and are not in areas where they are needed. Mr. Huaracho testified that he bases this opinion on his eighteen years of working for the respondent. This witness testified that there have been times when he and others have tried to go and look at the books on the chemicals that are used at the respondent's plant but when they would go to look at the books their supervisor or lead would call them back to work. Mr. Huaracho testified that he did not interpret on behalf of the claimant concerning the situation where there was a fan that blew fumes on the claimant. Mr. Huaracho testified that the first time he interpreted for the claimant to Mr. Linson was when the pipe popped off. Mr. Huaracho testified that he was sure it was fumes from hydrochloric acid in a drum that blew onto the claimant. This witness testified that the claimant

complained about his throat hurting, having problems swallowing, and his chest hurting.

On redirect examination, Mr. Huaracho testified that during the nineteen years he worked for the respondent he knew about what chemicals were used by the respondent. This witness testified that the respondent used nitric acid, alum G, phosphoric acid, alkaline 77, and there was a bath that they called a sink which contained a small amount of potassium cyanide. Mr. Huaracho testified to his knowledge these are common chemicals used in a wheel finishing business. Mr. Huaracho testified that the man who works with the chemicals wears protective clothing and a fume mask. Mr. Huaracho testified that he never requested the use of protective clothing, a mask, an apron, or gloves but that the employees who work in solution maintenance wear this kind of equipment. Mr. Huaracho testified that when he first began to work for the respondent he worked in solution maintenance. Mr. Huaracho testified that there were labels on the barrels of chemicals used by the respondent and that all chemicals are dangerous. Mr. Huaracho testified that there was always warning labels on the barrels of chemicals.

Pedro Castro testified that currently he is unemployed but had worked approximately seven or eight years for the respondent. Mr. Castro testified that he worked at the same time as did the claimant. Mr. Castro was asked if he remembers an occurrence while working for the respondent that dealt with a fan blowing fumes. Mr. Castro responded that he remembers one time when they began to smell fumes and he began to feel terrible in his throat and he had

difficulty swallowing liquids. Mr. Castro testified that the claimant was working with him and that he had the same problems but his got worse. Mr. Castro testified that they were also working with Pablo Ayala and Abdilio Mendoza. Mr. Castro was asked how long the occurrence with the fan lasted and he responded about three days. Mr. Castro testified that they complained to their supervisors and went to the human resources department. This witness testified that when they were at the HR department they spoke with Edwin Diaz about seeing Ms. Linda who is head of the HR department but they were told she was not there. Mr. Castro testified that later in the day when they were able to speak with Ms. Linda she told them that she was going to send an e-mail to the man who takes care of the chemicals. Mr. Castro testified that when they were at the human resource department they talked about needing someone to come take care of the problem with was the fumes. Mr. Castro testified that they reported that it was difficult working in that atmosphere. Mr. Castro testified that masks and safety glasses are available if they ask for them. Mr. Castro testified that he remembers that they complained three times to the HR department. Mr. Castro testified that there were two fans that were suppose to help get rid of the fumes but they did not help at all. This witness testified that he was not present when a pipe burst. Mr. Castro testified that he has interpreted for the claimant to Jeff Linson that the claimant was having trouble with his throat. Mr. Castro testified that problems are to be reported to Jeff Linson and he is to take care of the problems.

Mr. Castro testified that he last worked for the respondent on April 15, 2006. Mr. Castro testified that the three employees who went up to HR to complain about the fumes none of them are working for the respondent. Mr. Castro testified that he was laid off.

On cross examination, Mr. Castro agreed that he no longer works for the respondent because the respondent shut the chrome plant down. Mr. Castro testified that it was not just the three of them but it was something like 220 people who lost their jobs when they shut that plant down. Mr. Castro testified that there were always fumes in the plant but for approximately a three-day period of time it was much worse. Mr. Castro testified that he worked with the claimant about one or two years before the plant closed down. This witness testified that he had no idea what kind of chemicals they were working with. Mr. Castro testified that for the three days when the chemicals were really bad he does not know what caused it but he could feel things in his body. Mr. Castro testified that he did not have any idea what was going on because the respondent would not let them go see what was going on. Mr. Castro testified that the guys said there was something wrong with the fumes but they did not explain because they did not need to. Mr. Castro was asked if he knows the specific reason why the fumes were worse and this witness responded, "I imagine that the people that were in charge of the chemicals were doing something wrong." Mr. Castro was asked if there was a leak and he responded that there was no leak and that the fans were working fine.

On redirect examination, Mr. Castro was asked if the occurrence they had been talking about affected him as well as the claimant in the throat area. Mr. Castro responded, "Yes." Mr. Castro testified that he got over his problems by the weekend. Mr. Castro testified that he does not think that the claimant got better because he always looked bad.

The claimant testified that he currently is employed by Danaher and has been working there for approximately eight months. The claimant testified that before working for Danaher he worked for the respondent for five years and three months. The claimant testified that in January 2005 a kid was putting some chemicals together at the plant and a lot of fumes began coming out. The claimant testified that the kid put the fan where he was and all the fumes came directly at him. The claimant testified that these fumes caused his nose and throat to burn. The claimant testified that the kid that was working with the chemicals had a mask on. The claimant testified that they reported their problems to their supervisor, Jeff Linson. The claimant testified that he and three other guys went to report this problem to their supervisor. The claimant testified that he cannot remember the names of the gentlemen who went with him. The claimant testified that the respondent gave them little cardboard masks but they understood that these masks were for dust not for chemicals. The claimant testified that they reported to their supervisor that the fumes had been thrown their way and that he had nose and throat problems but the respondent did not tell them they were going to do anything.

The claimant testified that the man mixing the chemicals had on a rubber jacket and wore a mask that was for chemicals because it had two things on the side. The claimant testified that they reported these problems immediately to their supervisor but they went back to work in the same area with the fumes still blowing on them and the man in the protective gear was still there. The claimant testified that he thinks that it was after two weeks that he was sent to the company doctor, Dr. Thorne. The claimant testified that he saw Dr. Throne about three times before he was sent to the Diagnostic Clinic. The claimant testified that the respondent told him that they were making an appointment for him at the Diagnostic Clinic but that never happened.

The claimant testified that in August 2005 he was working in the preplate department when he started smelling something although he does not know what it was. The claimant testified that his throat would burn a lot when he would breathe and it burned all the way down into his chest. The claimant testified that when he began to smell whatever it was he started coughing and then he started hurting. The claimant testified that he, Pedro, and Pablo went to human resources to report this problem. The claimant testified that they reported to HR that there was a real bad problem, that the smell was really strong, and they could not work like that. The claimant testified that he thinks the problem was caused by chemicals but he did not know about stuff like that but they were very close to areas of chemicals. The claimant was asked about a pipe bursting. The claimant responded that one day all of a sudden

a whole bunch of yellow appearing water showed up and he did not know what it was. The claimant testified that it took the respondent a long time to get the yellow water cleaned up. The claimant agreed that the people who were sent to clean up the yellow water were in protective uniforms and wore masks. The claimant testified that these people told them that they did not understand why they were working like this. The claimant testified that he went to human resources and reported this to Edwin. The claimant testified that immediately after this last exposure he got worse because there was a lot of days before it was cleaned up. The claimant testified that Edwin took him to the plant doctor one time, that Dulio Mendoza took him one time, and another woman who he cannot remember her name took him twice. The claimant agreed that he was taken to the doctor's office from the plant. The claimant testified that the director of human resources told him that he had to have an endoscopy because he had ulcers but that after this test was run it was determined that he did not have ulcers. The claimant testified that he paid for these tests. The claimant testified that when he was seen by Dr. Rogers and by Dr. Eckles there were interpreters present. The claimant testified that he to date does not know what kind of chemicals he breathed. The claimant testified that he does not know how the doctor got the information that he was working near nitric acid, phosphoric acid, aluminum G, and alkaline 77. The claimant testified that Dr. Eckles referred him to UAMS in Little Rock. The claimant testified that there was no one to take him so he drove himself to Little

Rock. The claimant testified that he was there one day and had tests run. The claimant testified that he has a return appointment for November 14, 2007. The claimant presented a card which indicated that Dr. Mohammed is the doctor he is seeing in Little Rock. The claimant testified that at UAMS he was given x-rays and they put him on a machine and told him to blow. The claimant testified that they also gave him three prescriptions but one was for ulcers and he does not have ulcers. The claimant testified that the medicines he was prescribed made him feel very bad but he has continued to take them. The claimant testified that currently he feels bad and is in a lot of pain and does not feel as though he has gotten any better. The claimant testified that it is his understanding that more tests will be run when he is seen in November.

The claimant testified that prior to January 2005 he did not have any problems. The claimant testified that after the August 2005 event he has gotten worse but he was able to continue working for the respondent until the plant closed. The claimant testified that he did not miss any time from work except when he had a doctor's appointment. The claimant testified that even though he feels bad he has bills to pay and his family to support.

On cross examination, the claimant testified that before he was seen by Dr. Thorne he had not received any treatment for his throat, lungs, or chest. The claimant was asked about being seen by Dr. Merrill Baker on October 11 for bronchitis. The claimant testified that the director of human resources told him that he had

to go have studies done on his ears, nose, and throat. The claimant testified that that doctor said there was nothing wrong, he could not see anything and that the claimant needed to see a specialist. The claimant agreed that Dr. Thorne was the first doctor that the respondents sent him to. The claimant agreed that he had an incident in January 2005 and that he reported this incident to Jeff Linson. The claimant testified that in January 2005 Pedro Castro was not there and he does not remember the names of the guys that he was working with. The claimant was asked if in January 2005 how did this accident happen. The claimant stated that the guy showed up to mix the chemicals but when they were mixing them a lot of vapor came out, the fan was turned around to his direction and the fumes were thrown his way. The claimant testified that this lasted for about four, five, or three minutes. The claimant testified that from the January 2005 incident he was steadily reporting his problems to his supervisor and his supervisor asked if he wanted to go to a doctor and he told his supervisor yes. The claimant was asked why he did not get medical treatment at that time. The claimant testified that when he reported all this in January to his supervisor, it is like they did not want to listen to him because he was feeling really bad in his throat but that afterwards his supervisor asked do you want to go to a doctor. The claimant testified that he was sent to the plant doctor before October 2005. The claimant thinks that he saw Dr. Throne three or four times.

Continuing on cross examination, the claimant testified that in August 2005 he was working in the department of preplate when all of a sudden a lot of chemicals showed up. The claimant testified that he did not know what it was but it was very yellow water and it smelled really bad. The claimant testified that if he breathed through his nose it would burn really bad and if he breathed through his mouth it would burn all the way down into his chest and he would start coughing a lot. The claimant testified that he got worse. The claimant testified that Jeff Linson as well as human resources were talked to. The claimant testified that he discussed his breathing problems two times with Larry Massey. The claimant remembers that one of these occasions was when he spoke with the director of human resources and the other was when he started throwing up blood. The claimant testified that through his interpreter Mr. Massey told him that he could not do anything for him that it was not his problem that if he wanted to go home to go if he wanted to go to the hospital to go to the hospital but they were not going to pay for any of the expenses. The claimant testified that when he was seen by Dr. Thorne he did not tell the claimant to do anything differently at work. The claimant testified that Larry Massey told him to wear one of the cardboard masks. The claimant testified that he wore this mask until he was changed to another department.

Abdilio Mendoza testified that he currently is working for Black Auto but prior to this he had worked about three years for the respondent. Mr. Mendoza testified that he had worked these

three years with the claimant. This witness was asked if he could remember what happened at work that caused the claimant throat, nose, and chest problems. Mr. Mendoza testified that there was a big tank and a guy was throwing some of these chemicals into the tank. Mr. Mendoza testified that this guy put a fan in front of the claimant and all the fumes were being blown into the claimant. Mr. Mendoza testified that he and others went to complain to Jeff Linson about all the fumes where they were working. Mr. Mendoza testified that the people who were causing the fumes were wearing masks but they were not using masks so why were they having to work so close to the fumes. Mr. Mendoza testified that they reported this to their supervisor but nothing was done to correct the condition. Mr. Mendoza testified that there was a second event in 2005 when a hose was flowing water with chemicals. Mr. Mendoza testified that this was also reported to Jeff Linson because he was their supervisor. Mr. Mendoza testified that the line was fixed but it took them a long time. Mr. Mendoza testified that the claimant started coughing, was nauseous and told him that he really needed to talk to the supervisor because he needed to see a doctor. Mr. Mendoza testified that the respondent did send the claimant to the doctor because he was the one that took the claimant to the doctor. Mr. Mendoza testified that shortly after this he was transferred to another department and does not know anything further about the claimant.

On cross examination, Mr. Mendoza testified that he did not currently see the claimant or any other of his co-employees from

the respondent's business socially. Mr. Mendoza was asked how long it took the respondent to fix the chemical spill. Mr. Mendoza testified that he was not good with dates but it took them possibly three weeks to take care of the spill. Mr. Mendoza testified that they worked close to this spill and at the time of this incident he was working on the cooper line.

Jeff Linson testified that he has been working for the respondent for the past ten years and that his current job is in solution maintenance. Mr. Linson testified that in January through October 2005 he was the plating supervisor at the chrome plant which has now been closed. Mr. Linson agreed that in the chrome plant chemicals were used. Mr. Linson testified that there are large tanks of chemicals approximately twelve feet tall which contain chemical which the wheels are processed through. This witness agreed that to get up to these tanks you have to go up onto a catwalk. Mr. Linson testified that there was some kind of air filtration system in the plant at that time. Mr. Linson testified that there are additional storage tanks which are used to store chemicals and make additions to the tanks where the actual production was going on. Mr. Linson testified that the processing tanks are fed either by making additions to the tank itself or through pipes running from the storage tanks. Mr. Linson testified that he was the claimant's supervisor and that any accidents or injuries by any of the employees who are under his supervision are to be reported to him directly. Mr. Linson testified that if an accident occurs an accident or incident report is filled out,

followed by a drug test, and then it is determined if the employee needs to be seen by a doctor. Mr. Linson testified that the first report of injury made by the claimant was on October 13, 2005. Mr. Linson testified that the claimant was working at preplate and reported that there was a strong odor, that his throat was scratchy and his chest was hurting a little bit. Mr. Linson testified that this information from the claimant came through an interpreter and that two other employees, Pedro and Pablo Ayala, came with the same complaint. Mr. Linson testified that he made an investigation and could not smell any odor so he notified solutions management and their supervisor came over to check out the area. Mr. Linson testified that when he inspected the area he saw a one inch PEV pipe which had a small leak and there was oxidizer solution dripping on the floor. Mr. Linson testified that the deoxidizer solution contains nitric acid, phosphoric acid and alumas HG. Mr. Linson testified that there was a puddle on the floor which he would estimate to have a couple of gallons of fluid and covered an area of about two feet by two feet. Mr. Linson testified that solution maintenance was contacted to clean up the fluid but this was not done for a couple of days. Mr. Linson was asked if the claimant had made any other complaints to him at any time about problems with fumes, or chest and throat problems. Mr. Linson testified that when the claimant originally had the problem from preplate the claimant reported another incident when he was working on the nickel line when a fan blew some possible carbon or filter aid on him. Mr. Linson testified that this was the first that he

heard of this incident. This witness was asked if Pedro, Daniel, or Mr. Mendoza had ever come to him before October 13 to complain about fumes in the plant and Mr. Linson responded, "No." Mr. Linson testified that in the nickel line area there are barrels on the ground which contain the filters. Mr. Linson testified that these barrels would be opened up to dump powders into and that there are fans on these filters. Mr. Linson testified that this would blow particles into the air but there were no vapors or fumes. Mr. Linson testified that he has been around this powder and it does not have an odor but he has never breathed in any of the particles. Mr. Linson testified that after he got the report from the claimant in October the claimant was sent to the doctor and when he returned he understood that the claimant was to wear a dust mask. Mr. Linson testified that there were no other modifications recommended to be made to the claimant's job. This witness testified that the claimant did wear his dust mask the first day and briefly on the second day. Mr. Linson testified that when he noticed that the claimant was not wearing his mask he inquired through an interpreter why he was not wearing the mask and was told that the claimant did not want to wear one. This witness was asked if any other employees had come to him complaining about the fumes other than the three gentlemen previously mentioned and Mr. Linson responded, "No."

On cross examination, Mr. Linson was asked if he knew what the problems were which resulted from the inhalation of muriatic acid and hydrochloric acid. Mr. Linson responded, "I really don't

know.” After Mr. Linson was read a series of symptoms concerning the inhalation of these two chemicals, he testified that he was aware of these symptoms. Mr. Linson was then read a suggested list of treatment after inhalation of these two acids and Mr. Linson indicated that none of these treatments were provided for the men who reported a problem. Mr. Linson agreed that hydrochloric and muriatic acid are yellowish in color. Mr. Linson testified that there is also a hydrogen cyanide product which is used. Mr. Linson agreed that if the puddle had been left on the floor it becomes toxic. Mr. Linson testified that it is possible that the yellow liquid was muriatic and hydrochloric acid in a mixed solution. This witness testified that these chemicals are not in this area and the claimant and others were some twenty-five feet from the puddle. Mr. Linson testified that the leak was not yellow that it was actually white and that it was way back behind the tanks and plumbing and he was not sure if the men complaining were in the area where they could even observe the spill. Mr. Linson was asked how could the men report it if they did not see it. Mr. Linson responded that they reported that they could smell an odor but they never complained about a spill.

On redirect examination, Mr. Linson agreed that the leak which occurred in October was not muriatic or hydrochloric acid nor were the particles that were allegedly blown onto the claimant hydrochloric or muriatic acid. Mr. Linson agreed again that the leak was in an area where the employees were not working.

On recross examination, Mr. Linson testified that there are warning labels on the chemical barrels but there were none of these barrels in the area where the gentlemen were working.

On redirect examination, Mr. Linson testified that these chemical barrels with warning labels on them are kept in an area called the chemical pit and that is a separate area from where these gentlemen were working. Mr. Linson agreed that the chemicals are delivered to the storage tanks by a plumbing system.

Lynn Pate testified that he has been working for the respondent for approximately seven years and currently he is the laboratory manager/plating manager. Mr. Pate testified that he has worked in the environmental sciences field for approximately fourteen years and that he has a BS in chemistry. Mr. Pate testified that he is familiar with the chemicals used at the chrome plating plant and acknowledged that this plant was shut down in August 2006. Mr. Pate testified that he barely remembers the claimant and has no knowledge about his claim as far as what happened. Mr. Pate testified that the chemicals present where the plumbing is contained nitric acid, phosphoric acid, glycolic acid, and fluoboric salt. Mr. Pate testified that this mixture can be harmful to a person if it comes in contact with their skin because it will cause a chemical burn. Mr. Pate testified that this solution can be harmful if it comes in contact with metal which creates a vapor but if the solution does not come in contact with a metal there is no vapor. Mr. Pate was asked if the solution was dripping on a concrete floor would there be a vapor situation and

this witness responded, "No, Sir." Mr. Pate testified that this solution could also be harmful if it becomes aerosolized. Mr. Pate explained that if the solution is placed under pressure and sprayed or if there are a lot of bubbles such as when it is working in the tank. Mr. Pate was then asked about the area which has the filters with fans blowing. Mr. Pate stated that there is a carbon or charcoal or a cellulose that is particulates. Mr. Pate was asked if a fan blew these particles into someone what were they inhaling and Mr. Pate responded, "Dust." Mr. Pate was asked about the respondents' filtration system. Mr. Pate testified that there are a lot of tanks that give off fumes and they have a little flue hood at the edge of the tanks that pull the vapors into a collection system that then goes through a scrubber system. Mr. Pate testified that these systems are over the cleaners and the acids and there were some on the cooper, nickel, and preplate line. Mr. Pate was asked if to get access to these tanks would you have to go up onto a cat walk and Mr. Pate responded, "Yes, Sir."

On cross examination, Mr. Pate stated that he was very well acquainted with material safety data sheets from Harcros Chemical, Inc. Mr. Pate agreed that if the chemical listed on that sheet were sniffed up it would be dangerous. Mr. Pate also agreed that these products would cause coughing, choking, irritations, burns, tissue ulceration, bronchitis, pneumonia, irregular heart beat, and possibly even suffocation in confined spaces. This witness agreed that these chemicals are yellow in color and that inhalation has many dangerous side affects.

On redirect examination, Mr. Pate testified that he was in charge of the chemicals being used by the respondent at that time in the tanks. Mr. Pate further testified that he was familiar with what chemicals were being used assuming that the right chemicals got in the right tank. Mr. Pate was asked what chemicals were being used in the area where there was an alleged leak. Mr. Pate testified that there was a leak around the deox filters and again testified that there were three chemicals being used, two acids, and one salt. Mr. Pate was asked if part of the deoxidizer contained hydrochloric acid and muriatic acid and this witness responded, "No, Sir."

On recross examination, Mr. Pate was asked if in August 2005 the respondent was using nitric acid, phosphoric acid, aluminum G, and alkaline 77 in the area where the claimant worked and Mr. Pate responded, "Yes, Sir." Mr. Pate testified that if someone calls and asked he would tell them what chemicals these gentlemen might have been exposed to because the respondent is required to provide MSDS sheets. Mr. Pate testified that HR is also authorized to provide this information. Mr. Pate was asked, "Hypothetically, the physician calls and asked what these guys have been sniffing up, they are going to tell them what I just read off, right?" Mr. Pate responded, "Yes, Sir."

Larry Massey testified that he had been working for the respondent a little over seventeen years and currently is in the position of safety supervisor which was the position he held in 2005. Mr. Massey explained that his position requires him taking

care of all the workers' comp issues, doctor's appointments, follow ups, new equipment, OSHA compliance, and things of that nature. Mr. Massey testified that in 2005 in the chrome plant air samples were taken around the chemical tanks as well as on the individuals working up on the catwalk. Mr. Massey explained that an apparatus is placed on different employees and over an eight-hour period of time air sample are recorded. Mr. Massey testified that after this eight hour period of time the sampling is sealed and sent to an industrial hygienist where it is then analyzed in a laboratory as to the quality of the air. This witness testified that the respondent did personnel monitoring as well as area monitoring. Mr. Massey was asked if these apparatuses were placed on employees that worked in the area where the claimant had been working and Mr. Massey responded that they put these appliances on employees who were in and out of these areas and that worked on the filter units so yes they did. Mr. Massey testified that the respondent is required by law to do this sampling. Mr. Massey was asked if the respondent had ever gotten a report back that they were not in compliance with the requirements of the law and Mr. Massey responded, "No, Sir." Mr. Massey testified that in late 2005 perhaps in August or October he received reports that the claimant was having some breathing problems. Mr. Massey testified that when he learned of the claimant's problems through the claimant's supervisor, Mr. Linson, he made an investigation of the area and found that there was a leak in one of the tanks for the deoxidizers. Mr. Massey testified that he did not smell anything

personally but they notified solution maintenance to fix and clean up the leak. Mr. Massey testified that the claimant requested to see a doctor so he was sent to Dr. Thorne and was seen two or three times by this doctor. This witness recalls that the claimant was then sent to a specialist for tests on his throat and lungs. Mr. Massey testified that after the claimant returned from seeing Dr. Thorne the claimant was required to wear a dust mask. Mr. Massey testified that he checked on the claimant after the claimant's first doctor's visit and the claimant was wearing his mask part of the time. Mr. Massey testified that he discussed this with the claimant through an interpreter and learned that the claimant was uncomfortable with wearing the mask. Mr. Massey testified that he never did get a report of an incident in January involving the claimant when a fan blew vapors or particles into his face. Mr. Massey again testified that any accident report which is made would eventually come through him.

On cross examination, Mr. Massey testified that to his knowledge air sampling equipment was never placed on any of the gentlemen who have either testified or who have been named to have been working around the claimant. Mr. Massey also testified that the claimant was never used to test for air sampling. Mr. Massey agreed that if the claimant had been given an air sampling apparatus it would indicate what was in the air surrounding the claimant while he was working.

On redirect examination, Mr. Massey testified that air sampling is done annually. Mr. Massey testified that the testing

varies from year to year as to what month the tests are run but they have to be within a twelve-month time frame. Mr. Massey testified that he did not know if testing was done in January 2005. Mr. Massey agreed that the testimony of Mr. Linson was that the first he heard of the alleged January accident by the claimant was in October.

On rebuttal, the claimant testified that the filters which had been discussed were in one area but there were plastic drums on the floor where a person would show up and add to the material in the drums. The claimant testified that when the chemicals were emptied into the drums the fumes would come up. The claimant testified that the carbon filters were in one area and the plastic drums with chemicals were in another area. The claimant testified that the fans were in front of the drums. The claimant indicated that it was from these drums that the fan blew the fumes into his face.

Mr. Massey was recalled to testify stating that the drums which the claimant was referring to are probably twenty-five to thirty feet from where the claimant would be working. Mr. Massey testified that these drums add chemicals into the filter units. Mr. Massey was asked how the chemicals get into the drums. Mr. Massey testified that they have what is called a drum pump which is a little pipe with a little hose coming off of it and you just pump the chemical into the drum. This witness was then asked if the drums were open and the chemical dumped in? Mr. Massey stated, "No."

The medical records set forth that the claimant was seen by Dr. Thorne on October 19, 2005, for complaints of overall soreness, burning in his throat, and cough. Dr. Thorne released the claimant to return to work October 19, 2005, with a return appointment. The claimant was seen by Dr. Thorne on October 24, 2005, with continuing complaints of itching in his throat. The claimant was diagnosed with esophagitis and an upper endoscope was recommended as well as a GI. The claimant was returned to work that same day. There is an EGD report dated November 3, 2005, which indicates that the claimant has erythema in the glottis and crico-pharyngeus. This report sets forth that there is normal mucosa in the whole stomach and whole esophagus. Dr. Michael Johnson who read this report writes that he suspects that the majority of the symptoms of the claimant are coming from the airway rather than from the GI track due to the inhaled nature of the caustic chemical. Dr. Thorne writes on November 14, 2005, that he has reviewed the claimant's EGD report and notes that the claimant is still complaining of a chronic cough and chest pain. Dr. Thorne referred the claimant to a pulmonologist and recommended that he continue with his medications. Dr. Thorne returned the claimant to work that day. The claimant was seen by Dr. Michael Eckles on December 6, 2005, for complaints of possible occupational lung exposure. Dr. Eckles notes that the claimant reports that in January 2005 he had an approximately one minute exposure where a fan was blowing hydrochloric muriatic acid in his direction. Dr. Eckles notes that the claimant reports that he started having burning, itching, and

some shortness of breath at that time but did seem to recover from this event. The doctor writes that in August 2005 the claimant worked for approximately three weeks near open vats of a mixture of muriatic acid, phosphoric acid, alum G, and alkaline 77. Following this exposure the claimant had significant pain with breathing and shortness of breath. Dr. Eckles notes that an EGD done on November 3, 2005, demonstrated erythema in the glottis and crico-pharyngeus but otherwise a normal study with regard to the claimant's GI track. Dr. Eckles writes that the claimant is unable to complete the spirometry secondary to his cough. After examination, Dr. Eckles diagnosed the claimant with having occupational exposure to fumes likely causing mucosal irritation. Dr. Eckles notes that it is unusual to have this degree of pain and inflammation so far out from the exposure and the doctor recommended treating with a tapering dose of Prednisone. Dr. Eckles recommended that the claimant be seen in two weeks and if he is still having significant pain they will consider airway survey with bronchoscopy and high resolution CT scan. The claimant underwent a CT scan of his chest on December 14, 2005, which revealed a solitary pulmonary nodule in the middle lobe measuring 2.0 times 3.5 millimeters. Dr. Murray Harris recommended that this be looked at again in six to twelve months and saw no other abnormalities with no explanation seen for the claimant's hemoptysis. The claimant underwent a bronchoscopy on December 16, 2005. Dr. Eckles writes after conducting this test that the claimant's airways were normal except for small venous ruptures submucosally left greater than right. Dr. Eckles writes

on January 3, 2006, that he has seen the claimant for occupational lung fume exposure and they have done a bronchoscope which demonstrated only submucosis area of venous rupture. Dr. Eckles notes that this was likely the source of the claimant's hemoptysis and notes that the claimant's cough is much improved but still has some pain in his chest when he deep breaths or stretches. Dr. Eckles writes that it is his opinion the claimant's problems are a direct result of his breathing fumes at work and the doctor recommended that he find another job where the exposure to fumes is much reduced.

The claimant was seen at the University of Arkansas Medical School on July 24, 2007. Dr. Mohammad Al-Hamed writes that the claimant reports a history of two years of breathing problems which started after a heavy exposure of chemical fumes for one minute where he worked. The claimant reports that he has a burning tightness in his chest all the time and a cough that gets worse with deep breathing with yellow sputum and sometimes hemoptysis. It is noted that the claimant reports that he has wheezing all the time. After examination, Dr. Al-Hamed writes that the claimant most likely has reactive airways disease syndrome secondary to his chemical exposure. Dr. Al-Hamed made treatment recommendations as well as a return visit in three months. Dr. Larry Johnson with UAMS writes on July 26, 2007, that he has examined the claimant and reviewed the assessment of Dr. Al-Hamed and concurs with Dr. Al-Hamed's notes. Dr. Johnson notes that the claimant has mild airway obstruction with a waxing and waning course that began following

chemical irritant exposure in 2005. Dr. Johnson notes that this course is most consistent with reactive airways dysfunction syndrome and notes that the treatment of choice is inhaled corticosteroids. Dr. Johnson writes that the claimant also appears to have symptoms for GERD which they will treat beginning with empiric therapy. Dr. Johnson writes that if the claimant does not respond to this therapy after several months they will consider performing an methacholine challenge test.

After a complete review of this entire record, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury while working for the respondent in January 2005 and then again in August 2005 when he was exposed to toxic chemicals. The less biased testimony in this matter clearly indicates that the claimant as well as other employees worked in an area where chemicals were being used and at times additives were added to the tanks containing the chemicals in their work area. It is not questioned that the respondent at their chrome plant used numerous chemicals which included muriatic acid, phosphoric acid, alum G, and alkaline 77. The respondent's chemist testified that the chemical being used by the respondent at the time the plant was closed in August 2006 consisted in part of nitric acid, phosphoric acid, glycolic acid, and fluroboric salt which can be harmful if it comes in contact with a person's skin or if it becomes airborne and inhaled. Dr. Eckles in his report dated December 6, 2005, sets forth that in January 2005 the claimant reports that he was exposed to hydrochloric muriatic acid and that again in August 2005 the

claimant was exposed for a three week period to muriatic acid, phosphoric acid, alum G, and alkaline 77. It is noted that the claimant does not speak English nor does he read English and has testified that he did not know what chemicals he worked around. Mr. Pate has testified that he has the authority as does the HR department to give out the chemicals used in their departments when asked. The claimant has demonstrated objective medical findings of injury as based on his EGD performed on November 3, 2005, which indicated that he had erythema in the glottis and crico-pharyngeus. In Dr. Eckles' office notes dated December 6, 2005, he notes that after review of the claimant's EGD, examination of the claimant, and the claimant's history he assesses the claimant with having occupational exposure to fumes likely causing mucosal irritation. When the claimant was seen at the University of Arkansas Medical School in July 2007 Dr. Al-Hamed writes that the claimant has reactive airways disease syndrome secondary to his chemical exposure. I find, therefore, that the respondents should pay for all reasonable and necessary medical care for this claimant's compensable chemical exposure injuries.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On October 13, 2005, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a compensation rate based on an hourly wage of \$10.97 having worked forty hours per week which

would entitle him to an average weekly wage of \$438.80. This would entitle him to a temporary total disability rate of \$293.00 and a permanent partial disability rate of \$219.00.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury due to chemical exposure while working for the respondent in January 2005 and again in August 2005. See discussion above.

5. The respondents have controverted this claim in its entirety.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained compensable injuries due to chemical exposure while working for the respondent in January 2005 and then again in August 2005.

The respondents should pay for all reasonable and necessary medical care for this claimant's compensable exposure injuries.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE