

Welding Fume Litigation

Setting the Record Straight

A Response from Manufacturers

Editor's Note: In its July-August issue, the magazine Mother Jones published an article about welding fume litigation. That article did not include any comments from people in the welding industry or lawyers who represent welding consumables manufacturers.

Welding magazine has published numerous articles on welding fumes and the litigation concerning welding fumes, and invited Brandy Bergman to respond to the article.

Bergman, a managing director at the New York-based public relations firm Sard Verbinen & Co, serves as the spokesperson for a group of welding consumables manufacturers involved in welding fume litigation.

The information presented in the other magazine and the information that Bergman presents here can be checked for veracity in court documents that are public record.

In the court documents as well as in the following response, "plaintiff" refers to the persons and their lawyers who are suing welding electrode companies, while "defendants" refer to the welding electrode companies. The following is Bergman's response.

The article in *Mother Jones* written by Jim Morris offers a distorted account of the welding consumable industry and the welding fume litigation.

Rather than conduct an independent, objective investigation, Morris simply accepted as true mischaracterizations by a group of plaintiffs' lawyers who have sought to sue the welding manufacturers — and have been largely unsuccessful.

Notably, other journalists have written stories in far more reputable periodicals, such as the Bloomberg News Wire Service, the *Wall Street Journal* and *Forbes* magazine that have

exposed plaintiffs' suits as meritless and in some cases, even fraudulent.

The defendants agreed to cooperate with Morris's story, despite his obvious bias; nonetheless, he simply ignored defense counsel's efforts to correct the number of erroneous statements that ultimately were included in the article.

Remarkably, Morris's article ignores the real headlines of the welding fume litigation:

◆ Defendants have prevailed in 20 out of 23 welding fume trials in the last six years, including the four-plaintiff *Andre* trial in New Orleans. Morris wrote his story shortly after the *Andre* ver-

dict was delivered, but pretends as though it never occurred.

◆ Plaintiffs have been forced to drop five cases they chose for trial because they were caught lying, and two plaintiffs were found to have faked their disabilities. This critical fact is not mentioned at all in the article.

◆ When the judge responsible for the multiple district litigation over welding fume complaints lifted the lid on plaintiffs' thousands of claims and required them to obtain real medical diagnoses of their conditions, more than half of the cases in the litigation — thousands of claims — evaporated. Although this is one of the most telling facts about the welding fume litigation, it is nowhere to be found in Morris's article.

But Morris's story is not only inaccurate because of his omissions; his representations in the article are false as well.

The welding industry did not spend \$12.5 million on studies.

The main premise of Morris's article, that the industry has inappropriately "bought" science, is based on erroneous facts and a false premise.

Morris's suggestion that the industry has acted inappropriately by spending money on epidemiological and other studies is

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highly disingenuous.

The plaintiffs' attorneys in these suits conducted shoddy "medical" screenings of thousands of welders, pronounced large numbers of them ill, then announced that they had discovered an epidemic that would bring the welding industry down.

Suddenly faced with thousands of lawsuits, the companies obviously needed to defend themselves. That is why they paid to conduct studies — to refute plaintiffs' allegations.

Apparently, Morris believes that plaintiffs' lawyers should be allowed to malign manufacturers but that the defendants should not be allowed to undertake efforts to clear their name.

Morris also fails to note that one of plaintiffs' themes in their trial presentations — almost all of which have resulted in defense verdicts — is that defendants did not spend enough money on studies.

In any event, Morris has his facts wrong, as the defendants in the lawsuits explained to him before the article was published.

While the manufacturers did spend approximately \$4.5 million on scientific studies, including five epidemiological studies, the defendants had absolutely no control over the results.

These studies were conducted by some of the most prominent experts in their fields, and many of those experts have provided sworn testimony that the defendants had no control over the results of their work.

Moreover, many of the studies and articles at issue were subject to — or are in the process of being subjected to — peer review. Thus, if there were a flaw or bias in these articles, it would be un-

covered through the normal scientific process.

Of course, Morris fails to report that the findings of these "industry-funded" studies are completely consistent with findings of studies funded by European governmental and other organizations that have no involvement in this litigation. The source of the scientists' funding does not undermine the irrefutable results of their work.

Finally, Morris's suggestion that defendants have tried to hide the information about who paid for what studies is simply false.

The defendants' funding of these studies has been disclosed routinely both in the studies themselves and in the litigation. Despite Morris's suggestion otherwise, there is no smoking gun.

Juries that have been presented with these studies were fully informed of the source of funding for them, and the juries have overwhelmingly rejected suggestions of any industry bias or influence.

More probative than defendants' contributions to peer-reviewed scientific studies is the \$10,000 per day paid by the plaintiffs to Dr. Paul Nausieda to conduct five-minute screenings on thousands of welders.

Based on his cursory examinations, Dr. Nausieda diagnosed 60 percent of the welders he saw with manganism, an extremely rare neurological disorder, which before that had only been seen a handful of times in human history. To date, the plaintiffs have paid Dr. Nausieda more than \$2 million dollars for his work — far more than the half a million cited in Morris's article.

Unlike the studies funded by defendants that have been published in reputable, peer-reviewed journals, Dr. Nausieda has been unable

to publish his studies in peer-reviewed journals. This is not surprising since his findings are based on assembly-line screenings and are completely inconsistent with those of other movement disorder specialists.

The main studies that Morris suggests establish causation — Bowler's Bay Bridge welder study and Racette's Alabama welder study — were authored by people who have been funded by the plaintiffs — another fact that Morris also failed to disclose.

Considering the thesis of his article and the accusation he hurls at the defendants, Morris's failure to disclose these payments can leave no doubt as to where his bias lies.

Besides the payments to Bowler and Racette, these studies are questionable on the merits. For example, the welder screenings Dr. Racette uses as the basis for his Alabama study were entirely funded by plaintiffs' attorneys and were being used to gather claimants for lawsuits. Additionally, most of the screened welders were sent to Dr. Racette by plaintiffs' lawyers.

In fact, in a deposition conducted in January 2003, Dr. Racette acknowledged that these screenings could in no way constitute a valid scientific study. Needless to say, Morris does not disclose any of this in his article.

The bottom line is clear: notwithstanding the rhetoric from plaintiffs' counsel and the unsubstantiated and erroneous claims of a biased reporter, there is no substance to these claims or this litigation.

The plaintiffs' accusations have not panned out, and their accusations against the welding defendants — responsible companies that have acted to protect the safety of welders — are simply false. ■