The social security number and dates of birth have been redacted from this opinion.

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
WORKERS' COMPENSATION BOARD OF MAGISTRATES

****

DANIEL C. BARKS,
SSN: XXX-XX-XXXX,

Plaintiff,

vs.

IAC PORT HURON, LLC and
AMERICAN-ZURICH INSURANCE COMPANY,

and vs.

SECOND INJURY FUND (VOCATIONALLY HANDICAPPED PROVISION),

Defendants.
_____/

OPINION & ORDER

APPEARANCES:

For Plaintiff: Francesco L. Partipilio (P31650)

For Defendants IAC and American-Zurich: Denice M. LeVasseur (P32137)

For Defendant Second Injury Fund: Daniel M. Bridges (P31155)

HEARING DATES:

Trial of this matter was conducted on October 30, 2018.

CLAIM:

Plaintiff's current Application for Mediation or Hearing - Form A ("AFH") was filed with the Workers' Compensation Agency on October 24, 2016. Therein it was claimed that he sustained a personal injury arising out of and in the course of his employment with Defendant on August 11, 2016 "& LDW". The nature of the injury and disability resulting therefrom alleged in the addendum to paragraph #25 was as follows:

> "As a result of being exposed to certain chemicals at the plant, plaintiff developed occupational asthma. Nature of disability- occupational asthma and sequelae thereof."

Additionally, Plaintiff sought all benefits he may be entitled to under the act, including attorney fees and penalties along with a claim for medical benefits the amount of which at that point were "unknown" but included attendant/nursing care services, mileage, etc. No form of alternative benefits were acknowledged to have been received at that point.

An Application for Hearing-Form C was subsequently filed by Defendants IAC Port Huron and American-Zurich adding the Second Injury Fund ("SIF") to the litigation, in particular under the "Vocationally Handicapped Provision."

Responsive Pleadings were timely filed by counsel for Defendants IAC Port Huron and American-Zurich which came in the form of a Carrier's Response, Answer and Affirmative Defenses in the nature of a general denial of liability. The SIF likewise filed a Carrier's Response and Appearance by counsel on its behalf.

At the outset of Trial, the AFH-Form C filed by Defendants IAC Port Huron and American-Zurich Insurance adding the SIF was withdrawn, with no objection thereto by Plaintiff. Accordingly, an Order of Dismissal as that party only was prepared and signed on the October 30th Trial date, prior to proceeding with the taking of Stipulations and admission of testimony and evidence in connection with Plaintiff's case-in-chief.

STIPULATIONS:

The parties stipulated that both the employer and employee were subject to the Workers' Disability Compensation Act ("WDCA") on the date of the alleged injury, Defendant Zurich-American Insurance Company was on the risk at the time and Mr. Barks was in the employ of IAC Port Huron, LLC on the alleged date of injury. The timeliness of Notice and Claim were also admitted by Defendants. Dual employment was agreed to be inapplicable herein.

Defendants denied that Plaintiff sustained a personal injury which arose out of and in the course of employment on the date alleged. The claimed relationship of the disability being due to the alleged injury was also denied.

An average weekly wage ("AWW") of $625.86 (without fringes) was stipulated by both parties. Fringe benefits in the amount of $413.93 per week were also agreed to, with the date on which same stopped (as asserted by Defendant) to have been February 11, 2018. It was denied that workers' compensation benefits were previously paid to Plaintiff.

Receipt of alternative benefits in the form of Short Term Disability ("STD") was averred by Defendant for the period from August 18 to October 15, 2016, with the amount "to be determined". Plaintiff claimed one dependent, his spouse, Donna, and a tax filing status of "Married Joint".

WITNESSES TESTIFYING AT TRIAL:

Plaintiff: Daniel C. Barks

Defendant: None

WITNESSES TESTIFYING BY DEPOSITION:

Plaintiff: See Exhibit # 1

Defendant: See Exhibit I.

EXHIBITS:

Plaintiff:

1. Deposition of Ali H. Haidar, MD, FCCP taken on 9/26/18.
2. Job Search Logs (Banker's box full) from 8/11/16-10/27/18.
3. Subpoenaed medical records of Dr. Ali H. Haidar (withdrawn).
4. Defendant's Personnel File re: Daniel C. Barks.
5. Medical records of Dr. Richard Ilka (McLaren Industrial Health Clinic).
6. Material Safety Data Sheets re: HB Fuller Swift Bond.
7. A & B. Photos of "Operation #1" at Defendant's facility.
8. Photos of the "Hardening Machine" at Defendant's facility.

Defendant:

A. Subpoenaed medical records of Lisa Scheel, DO/Physicians Healthcare from 8/4/15-6/4/18.
B. Letter from Rory Huddas, Industrial Hygienist of Mich. Dept. of Licensing & Regulatory Affairs dated 4/24/18 re: MIOSHA inspection conducted at IAC Port Huron on 1/30/18.
C. Photo of Defendant IAC Port Huron parking lot taken from a vehicle.
D. Hartford Insurance record of STD payments to Plaintiff from 9/1/16-10/16/16.
E. Letters and communication concerning Air Quality & Industrial Hygiene Studies at IAC Port Huron for various dates in, 2013, 2014, 2015 & 2017, along with communication re: respiratory devices in 2011 (admission of which was taken under advisement).
F. Photo of Catalyst with exhaust pipe

G. Medical records from St. Clair Family Practice for select dates for the period between 9/30/11 and 6/7/12.
H. Medical record of River District Hospital ER for date 4/7/10.
I. Deposition of John J. Bernick, MD taken on 9/28/18.
J. Medical record of River District Hospital Emergency Dept. 6/27/16.
K. FMLA Medical Form dated 7/26/16 signed by Dr. Lisa Scheel.
L. Photo of Eissman Automotive Sign (withdrawn).

LAY TESTIMONY:

Daniel C. Barks

Mr. Barks indicated that he was born xx/xx/xx and presently resides in St. Clair, Michigan. He has been married since July 1983 to Donna Marie. As of the claimed date of injury she was employed at St. Paul's Episcopal Church, making $11.00 per hour. However, she only worked seven hours per week. She also was paid approximately $900.00 per month by the Federal government for tasks associated with taking care of plaintiff's daughter. His tax filing status has always been married filing joint with his spouse.

Plaintiff went on to indicate that he was last employed with IAC Port Huron in 2016. His wages were approximately $16.60 per hour and would normally work approximately 40 hours per week. He last worked for this company August 11, 2016. He stopped when a representative of management, plant manager Dan Barr, brought him to the office. Same was associated with symptoms Mr. Barks was having in relation to breathing. This occurred near the end of the shift on this date. He sat in the office for a while to "cool down". Either later that day or the following day he went to the McLaren Port Huron Clinic having been instructed to go there by either human resources or Gail. He was seen at the clinic by a Dr. Ilka.

Mr. Barks went on to describe the job which he had been performing on his last date of work and which he had previously done. Same involved "laying up" foam on a glue roller which was then placed with the adhesive on the foam and subsequently being attached to a fabric-type substance (basically making headliners for motor vehicles). Photographs of these machines or work stations were offered and admitted (**Plaintiff's Exhibit # 7A, 7B and 8**). The roll coater process (identified in the photographs #**7A** and #**7B**) he had been doing for about one year prior to August 16, performing this task approximately 80% of the time in connection with his work duties. He went on to further explain the process of having the glue coated on the pieces of foam by the machine. There was also a need to wipe down the rollers approximately once a week to clear off whatever glue residue was left. He also spoke about some "spills" which occurred approximately once a month. Glue would somehow end up on the floor and that would have to be cleaned up. The line leader would frequently ask Mr. Barks to undertake that task. Same was accomplished with the use of rags. He performed spill clean-up approximately once a month in the preceding year and a half before his last date of work.

Mr. Barks went on to describe another position done approximately 20% of the time which involved the water jet bucket. There was also an "oven" in proximity of these machines and which presumably baked the glue onto the fabric headliner. He reiterated that approximately 80% of the time he would be on those work stations depicted in the photographs, being **Plaintiff Exhibits 7A, 7B and 8**.

When Mr. Barks was initially hired by defendant in 1998 same was as a truck driver. He stopped in approximately 2008 or thereabouts, returning to this employer approximately two years thereafter. Upon resuming work at that point in time, although he did drive a truck, he performed other activities such as the production type of work he had previously described laying up the foam and so forth. The latter job involved being in the plant performing such activities rather than in a vehicle as a truck driver.

On the injury date alleged he indicated that he experienced breathing problems which occurred around the lunch time. He continued to work thereafter and it was between 1:45 and 2:15 p.m. that the supervisor observed him experiencing difficulties which resulted in him having been taken to the office as previously described. Mr. Barks acknowledged having experienced some breathing problems prior to August 11, 2016, going back to date in either 2013 or 2014, indicating that they were similar, but characterizing them as not being as severe.

After being seen at the McLaren Occupational Clinic and receiving treatment from Dr. Ilka he was subsequently referred to a Dr. Haidar who ordered or performed a number of breathing tests on him.

Mr. Barks testified that he did not go back to work with the defendant after August 11, 2016. However, there was an occasion he subsequently went to visit the plant in the summer 2017 to speak with Gail about some paperwork. He was standing outside of a large door to the plant facility itself and while talking to this other individual stated that he had to step away from the door because he was experiencing respiratory symptoms. He went on to state that during the course of driving home, approximately three to four miles away from the plant, he had to pull over to "catch his breath". He related that at some point thereafter his breathing did return to normal.

The defendant has not offered him any other work since he last was employed in August, 2016. Mr. Barks further denied having had any employment since last working for the defendant. He state that since then he has filled out applications for a number of other jobs and completed "job search logs" for quite some time. He normally looked for three to four jobs on a weekly basis and kept such records up through the current date, the Saturday, October 27, 2018 which preceded his appearance for trial. Plaintiff went on to indicate that he has not confined his search for work to any specific geographical area, but primarily looked in the St. Clair, Macomb and Wayne County regions, along with a couple of other nearby counties. Mr. Barks added that he did not believe he would be able to return to any job at the IAC Port Huron facility, including those which he had done before, because "he likes breathing". With respect to any other physical impairments he stated that his back does get sore on and off. It comes and goes, with some days better

than others. These bouts occur approximately once a month and can last up to a week at a time. The extent of his activity also affects the degree or onset of symptoms.

Mr. Barks went on to indicate that the nature of treatment he has received from Drs. Ilka and/or Haidar have consisted of inhalers or similar modalities. He stated that at the present time he is not treating for his breathing condition.

As for jobs before going to work for the defendant Plaintiff testified that these included running machines such as CNC lathes, and also welding hubs. He worked at Borg Warner Sterling Heights plant for a period of approximately five years. Prior to that he was at a company called BioPro that made prosthetics and he was involved in the machining process of those items. Going further back in time he indicated that he had graduated from St. Clair High School and that most of his jobs subsequent to that were involved with machining. He had some courses at Macomb College associated with that, as well as truck driving school and which ultimately enabled him to initially secure the job as a truck driver for IAC. He denied further training or education with respect to any specific vocations apart from the machining and truck driving type positions.

Mr. Barks further testified that he applied for Social Security Disability and is collecting same at present. He currently has private health insurance but stated that he will have Medicare effective February 1, 2019. As it relates to any other benefits previously received he acknowledged having been paid some form of sick and accident benefits from Hartford for a couple of months beginning in September 2016, but which were terminated not long after they began. He understood that there may be some form of repayment obligation concerning same.

On cross-examination plaintiff was first questioned concerning his use of inhalers. In reference to his trouble breathing he stated that he did not re-experience difficulties after leaving work until the one instance he had talked about which occurred upon going back to the plant to discuss an issue with one of the managerial individuals, Gail. This raised the question as to whether he was using any inhalers after he last worked in 2016. He did use same for a period of one to two months subsequent to leaving work, along with an instance in 2017. He reiterated that his breathing problems started 2013 to 2014.

Plaintiff was then challenged with information contained in Dr. Ilka's records about onset of these issues dating to a motor vehicle accident some years ago when an airbag deployed in connection with a motor vehicle accident. In response Mr. Barks clarified that he had seen smoke when the airbag deployed and therefore reached the conclusion that this had been responsible for the onset of these problems, or at least what he believed caused them at the time.

After initially being seen for treatment following the last day of work Mr. Barks was re-seen by Dr. Ilka August 26, 2016 for pulmonary function testing. He was challenged on historical information as to when, if ever, he had gone to the hospital and complained about difficulties breathing or otherwise telling a supervisor about these problems which he claims to have been experiencing for the three or so years before 2016, denying that

he had ever voiced these to either. He was also questioned about what complaints he had made when in the ER about six weeks (on or about June 27, 2016) prior to his last date of work. He was also questioned about a matter concerning the possibility of Dr. Ilka correcting or changing history about the prior incident with the vehicle, whether he had in fact experienced breathing problems before that, and things of that nature. He was also asked about history with respect to his starting to wear a mask and or reliance upon Vicks VapoRub for relief.

Further cross-examination was then directed towards information contained in the records of St. Clair Family Practice, Dr. Scheel. Same included things such as asthma in late 2010 and treatment for chronic airways obstruction in 2011. There was also treatment for acid reflux and problems secondary to same which were associated with his having to have his right lung aspirated in September 2014. Other issues with respect to medical treatment and reasons he has been seen by Dr. Scheel included being on an antidepressant and other work issues in May 2015, as well as requesting that this physician limit the number of hours he could work secondary to the same and/or the gastroesophageal disorder ("GERD") problems. During this timeframe he was very tired and given history to Dr. Scheel of him being found passed out, half in and half out of his car in mid-June 2015, was also brought into question. This included things such as medication and a change of antidepressant to Zoloft in July of that year and then Celexa in January of 2016. As it relates to the latter he had experienced shoulder pain and went to the ER, and then when Celexa was no longer effective, saw an orthopedic surgeon in May 2016 relative to such health problem. Additionally, in late-July 2016 he requested Dr. Scheel fill out Family Medical Leave Act ("FMLA") paperwork for right low back and right leg pain a couple of weeks before the last date of work on August 11. He acknowledged having seen this physician for low back pain prior to that date. He was questioned concerning issues he was also having at home with respect to caring for his special needs child and the tasks in which he engaged associated with this.

As far as other pre-existing health problems plaintiff acknowledged that although previously hired as a truck driver, at some point he had an accident of a personal nature which resulted in losing sight in one eye and therefore could no longer work in this type of capacity. With respect to his driving he acknowledged having been both hi-lo and truck driver, even after experiencing the problems with his eyesight. The incident when he injured his eye occurred in approximately 2006 and lost sight in that eye in 2008.

Seemingly contrary to his earlier testimony that he had not treated much for respiratory issues after last working, there were a couple of months in 2016 and an instance in 2017 where he was challenged with information in the records which showed him having been prescribed an Albuterol Nebulizer in April 2018 as well as Proventil at around the same time. He eventually acknowledged using the nebulizer on a couple of occasions. He was unsure what his prescription for Combivent was used for. There was then reference to his medications in late-September 2011, including Symbicort, two puffs twice daily, as well as taking other medications at that time, one for COPD and another for acid reflux in 2014. He was also questioned concerning exactly what historical information he had told Mr. Fuller (the vocational expert) about difficulties with odors, dust,

etc., occurring even a year or more subsequent to leaving work. More recently, in 2018, he had seen Dr. Scheel three to four times annually for complaints which included fatigue, coughing and wheezing on and off, etc. Nevertheless, at that point he did not see a need to return for any treatment relative to the respiratory complaints with Dr. Haidar since he had been out of the plant for a period of approximately one year and nine months (mid-April 2018). Other more current complaints in 2018 included difficulties with concentration, follow-up on his mood problems, feeling down, depressed, difficulty focusing and also anxiety. In January 2018 there was some question of him having been seen in a hospital in Fort Lauderdale, Florida in an effort to be weaned off of or withdraw from the medication Adderall.

Further cross-examination touched upon plaintiff having himself been a part of the industrial hygiene study which was conducted at defendant's facility in June 2013, other issues associated with co-employees and what job or jobs he was performing during that timeframe. As it relates to the other work he had done for the defendant he acknowledged not having to do anything associated with the "oven" and the water jet job had a significant portion done by robots which cut the product by electronically directed jet spray.

As for efforts undertaken in terms of a job search, plaintiff stated that despite same he had not received any calls back from prospective employer over the last two years. This job search effort is done primarily if not exclusively on-line. He was questioned as to whether or not he had sought work at any other industrial facilities in the area, including a company located across the street from the defendant IAC, and which was purportedly "hiring." He was also further questioned about this "episode" which had allegedly occurred in the parking lot subsequent to his having left work. At that point he was also requested to "smell" some of the updated job search logs he brought with him to the hearing in a briefcase and which gave off an extremely musty or similar type odor (as acknowledged by all concerned at the hearing, including the undersigned Magistrate). He stated that the briefcase had been his father's and was located in the "basement" of his residence but really could not explain why this briefcase (which after the logs had been removed appeared to be the actual source of this musty odor or smell) had gotten that way on the inside.

Finally, plaintiff was asked about specific supervisory personnel, who he worked for over the course of the last number of months while employed with the defendant and so forth. He was by and large unable to recall the specifics and indicated that he really had no idea because frequently these individuals would change or switch shifts.

On re-direct plaintiff was asked to clarify what was depicted in certain of the exhibits (the exhaust pipe and catalyst) (**Defendant's Exhibit F** and **Plaintiff's Exhibit #8**). Additionally, he attempted to clarify what he intended to convey in the history given at River District Hospital in April 2010 associated with the motor vehicle accident and airbag deployment. At this point he stated that it had hit him in the chest and which may have been the reason he had in some way complained about breathing or similar difficulties at that time, not from smoke or whatever was allegedly given off in connection with this incident. As it related to his request for the 40-hour work restriction, he believed

this was associated with back complaints and occurred at a time when he was also seeing a chiropractor. As far as respirators or things of that sort he testified that the only thing available at the plant was a white mask. He denied he was able to take anything home and whatever he had been provided by the employer would have been put in his locker at work.

At this point plaintiff rested. There were a couple of additions to the **Defendant's Exhibit G** (St. Clair Family Practice records) concerning visits which had been touched upon with plaintiff during cross-exam. Defendant called no witnesses and rested based upon the exhibits and depositions which had been admitted.

Counsel for both sides made closing statements in support of their respective positions. The primary focus and issue at hand was whether the proofs supported any finding of work-related pulmonary/respiratory conditions involving plaintiff, especially in the nature of an alleged sensitization associated with claimed exposure to isocyanates used in connection with the process involving glue in the foam lay-up process.

EXPERT WITNESS TESTIMONY:

Ali H. Haidar, MD, FCCP

Dr. Haidar is board certified in internal medicine, pulmonary and critical care medicine (H5-6). He initially saw Mr. Barks on August 11, 2016 when he presented with "basic classic asthma symptoms." (H6) He diagnosed asthma, specifically asthmatic bronchitis and treated him with bronchodilators, steroids and related modalities (H6). The doctor believed that same was on referral from an industrial clinic (H6). The doctor's chart detailing his treatment from that date forward was marked and offered (Haidar Dep. Plaintiff Exhibit #1) (H9).

The doctor was then asked to go into detail concerning historical information plaintiff had provided, including reference to Mr. Barks having been exposed to lots of chemicals at work and having intermittent episodes of coughing and wheezing since 2010 (H9-10), as well as someone else having previously placed him on inhalers at that earlier date but which did not seem to fully help with his symptoms (H10). On the initial visit with Dr. Haidar an x-ray "didn't show much" (H10) and the breathing test showed a mild obstructive airway disease with some improvement in his respiratory flows after having been given an updraft treatment (H10). He also understood Mr. Barks previously had been given Combivent which he had been "taking for a long time" and this physician recommended he continue, as well as more inhalers and a course of Prednisone (H10).

When seen by Dr. Haidar in follow-up on September 6, 2016 plaintiff reported feeling much better but that every time he would go visit the job site or work he developed recurrent cough, wheezing and shortness of breath (H10-11). At that point the doctor received a history of Mr. Barks having been exposed to isocyanates (TBI). In the interim plaintiff also apparently returned to see the industrial health doctor who referred him back to Dr. Haidar for potential return to work clearance, but which he strongly recommended

against (H11). Meanwhile repeat breathing tests continued to show mild asthma but an IGE test for isocyanates came back negative (H11-12). At this point the doctor also explained that the earlier negative chest x-ray really was not of much relevance in addressing the asthma issue, but rather ruling out other possible respiratory conditions (H12). The doctor also indicated that the breathing tests showing a mild obstruction demonstrated obstructive airway disease but did not necessarily mean that it was occupational asthma (H12). The occupational portion of it was basically or strictly per the "clinical history" (H13). In this regard the doctor discussed the difference between TDI and MDI, being isocyanates and in pulmonary literature this being one of the first things which comes up with respect to etiology for occupational asthma (H13-14). Nevertheless the isocyanate testing was negative (H14) although the doctor indicated that it "would have been nice to see a positive" but the negative test does not rule out the occupational component which necessitates going back to clinical judgment (H14).

As of September 2016 Dr. Haidar did not feel that it appropriate for plaintiff to go back to the same job, although this did not mean he was "disabled" and could look for other jobs, so long as not being in that type of environment (H14-15). It was basically only that he should stay away from isocyanates, but with the doctor adding "I mean I can't say specifically." (H15, lines 22-23). When next seen on September 30th Mr. Barks advised the doctor that he was "feeling great and not even using my medicine, I am doing very well." (H16). The doctor was a bit surprised about that but discussed with him the potential of ordering a CT scan of the chest to make sure there was not something more to the issue, another study showing some abnormalities referred to as "tree and bud" but wanted to rule out infection (H16-17). He then performed a bronchoscopy, which also came back as normal, leaving the doctor to conclude that he was not missing anything (H17). Accordingly, his diagnosis remained occupational or work-related asthma (H17).

The doctor was then asked (over objection) to testify with respect to isocyanate exposure and occupational asthma, including the extent to which such asthma could ultimately be of disabling proportions (H18-19). This did not alter the doctor's opinion concerning plaintiff refraining from returning to his prior job (H19-20). Dr. Haidar felt this was reinforced by his subsequent visits which reflected that Mr. Barks was doing well as long as he was away from the environment such that he no longer had to give him Prednisone or add more inhalers (H20).

Questions were then asked of the doctor about an entity known as Reactive Airways Dysfunction Syndrome ("RADS") (H20-21). He described same as a sudden and usually large type of chemical spill or exposure which is inhaled that causes an almost violent-like reaction and akin to a severe asthma attack which it goes on to develop over the years (H20-21). They may eventually develop a positive methacholine challenge test and go back on or develop a dependence upon inhalers, with recommendations to stay away from future exposure and use respirators or masks (H21). While the mechanism of onset for exposure is different, treatment is basically the same as occupational asthma (H21) A spill with a large exposure to isocyanates could possibly also trigger RADS (H21-22).

On one visit which Dr. Haidar had with plaintiff subsequent to September 2016 his presentation was "completely normal" and from his notes the patient had no symptoms according to the entry of August 9, 2017, a year later (H22). Nevertheless, the doctor's diagnosis or treatment recommendations did not change from as previously stated (H22-23).

In response to a hypothetical question concerning whether there was a relationship between the employment and the alleged exposure (H23-24), subject to objection (H24-25), the doctor stated "yeah, could be." (H24, line 17). When asked further about this Dr. Haidar responded that he didn't know exactly what was going on and didn't go into detail about how this was inhaled, but per clinical history such relationship could exist although he "cannot say 100% it is the case." (H25, lines 18-25). Nevertheless, he believed that to be the situation within a reasonable degree of medical certainty, per the history (H26).

The doctor further explained the basis for why he would not recommend Mr. Barks returning to the type of environment he had allegedly been exposed to in connection with his employment, a fear or concern of developing further problems and an actual "disability of a permanent nature sometime down the line" (H27). The doctor also explained the purpose of methacholine challenge testing in order to ascertain hyperactivity in the lungs or airways of asthmatics (H28-29). Although not necessarily confirming asthma, a negative test will 99% of the time rule out asthma (H29). In plaintiff's case such testing was positive (H29). On this score he disagreed with the opinions of Dr. Bernick as to the results of the tests and said other physician's experience or familiarity with a methacholine challenge testing itself (H30-31). In this case Dr. Haider felt it was positive based upon other criteria, albeit in some instances might called "equivocal" based solely on the clinical history (H31). Finally, when asked about an opinion offered by Dr. Ilka in August 2016 of potential occupational asthma or RADS this witness indicated that the same could be suggestive of a spill (H31).

On cross-examination the doctor was first asked about research involving airbags and asthmatic attacks (H32-33). He acknowledged that there could be a correlation between same (even without any contact between the occupant and the airbag; test subjects being in the back seat at time of deployment) (H33). The doctor reiterated that his diagnosis in this matter of "occupational asthma" was entirely based upon historical information provided by the patient (H33-34). Different historical information could impact such opinion (H34). The doctor agreed that history Mr. Barks provided to Dr. Ilka about the airbag deployment and onset of symptoms was different or inconsistent from what Mr. Barks had provided to him (H34-35). Nevertheless, Dr. Haidar would only have modified his opinion to the extent that this went against the diagnosis of occupational asthma, as opposed to simply being "work-related asthma" (H35). It also suggested that Mr. Barks may have had pre-existing asthma but which was affected by work exposure resulting in asthmatic episodes (H35-36). In reference to RADS, Dr. Haidar agreed with Dr. Ilka that the airbag incident could have been the "sudden high exposure" responsible for that type of condition, if it existed (H36-37).

Dr. Haidar also reaffirmed that based upon clinical examination plaintiff was not physically disabled in that there is nothing specifically wrong with his lungs and that whatever exposure-related episodes he had did not cause any progression or damage (H36). The doctor indicated that regardless of whether it is RADS or asthma, with the history of the patient having episodes every time he goes on the job or visits the site, he would still recommend that he shouldn't return to that type of exposure (H37). The doctor discounted the likelihood of plaintiff's coming up with such a correlation between work exposure and symptoms due to secondary gain or misrepresentation (H37-38).

With respect to IgE testing concerning isocyanate the plaintiff did not twitch whatsoever (H38-39), although the doctor reiterated that a negative test does not rule it out (H39). He was then asked about historical information concerning symptoms inclusive of coughing, wheezing and shortness of breath in relation to other exposures, such as mowing the lawn (H39-40), consistent with later historical information referencing his not having been at the plant since September 2016, but experiencing the same symptoms while engaging in that activity (H40). Assuming that to be the case the doctor would not necessarily believe this to be occupational (H40), although if it was RADS or a pre-existing asthma certain other stimuli, including things such as exercise or inhaling any type of fumes, could trigger an asthma attack (H41). In further commenting on whether the job exposure in such situation could act as a "trigger" (H41) which produced symptoms he would further refine this component as "not occupational-induced, but occupational-provoked." (H42, lines 4-5). It appears that he also would then conclude that under such circumstances it would not be 'occupation aggravated' (H42), but that such exposure could trigger or provoke an episode which later reverts to the underlying *status quo* (H42-43). This doctor had not been made privy to historical information about Mr. Barks experiencing such an episode after pushing a lawn mower approximately 100 feet (H43).

With respect to previously-prescribed medications Dr. Haidar did not know who had given him the Combivent (H43-44). This medication is only used for asthma or COPD (H44). From the initial visit it appeared that the only information Mr. Barks provided was exposure to a number of chemicals at work, as well as a history of smoking until he quit in 1987, with no mention of documented asthma or COPD since that time, but also relating that the symptoms having been present for approximately 10 years, from 2010, which included chronic shortness of breath, intermittent cough and wheezing (H44). This suggested that sometime between 2010 and 2016 he was diagnosed with asthma or COPD and prescribed Combivent, which this physician continued, adding Prednisone (H45). Concerning Combivent Dr. Haidar was questioned as to whether or not that could cause triggers if Mr. Barks had related he was allergic to same (H45-46). In response he indicated that Mr. Barks had not provided such history to him, rather that such medication was helpful (H47). At that point a note under the letterhead of McLaren Port Huron Industrial Health dated August 15, 2016 referencing Mr. Barks and purportedly signed by him specifically listed medication allergies to include Adderall, Combivent and Regimat (Haidar Deposition Defense Exhibit A) (H47-48).

In reference to medical records which Dr. Haidar was provided he was unsure whether having received the entirety of information from Dr. Ilka, or even reviewing any

such information (H48). The doctor also had no historical information of Mr. Barks having previously been diagnosed and received medications for reflux (H48) and which can could act as a trigger for asthma (H49). The doctor then located some information in his records where there had been a mention of reflux and asthma, but the patient's not having been on medication (H49). With respect to other factors the doctor admitted that obesity could affect a restrictive, but not obstructive component of lung function, something which plaintiff did not have (H50). He agreed that cigarette smoking affects lung function (H50). The doctor did not believe information concerning Mr. Barks having been seen at a hospital in Florida to get off Adderall was in any way connected with the problems for which he had been seeing him (H50). Nevertheless, the doctor was then challenged with additional information per the records of Dr. Scheel concerning plaintiff's complaint in April 2018 about shortness of breath, fatigue and complaining of wheezing and cough, on an off since November, requesting referral to a different specialist for pulmonary review and having used a relative's Albuterol nebulizer which reportedly helped (H50-51). However, Dr. Haidar opined that notwithstanding the fact that Mr. Barks had not been in the plant for about two years prior to that time would not rule out the existence of an occupational triggering asthma, but it suggested that there apparently was another trigger or potentially having numerous triggers assuming the existence of an underlying asthmatic condition (H51). Thus, in this instance, Mr. Barks may have multiple triggers, including; exercise or mowing the lawn, potentially uncontrolled or poorly controlled reflux as well as medication, but still not necessarily ruling out others or the one which started the problem (H51). The doctor agreed with the analogy of an individual experiencing a skin rash upon putting cream on and for which the remedy is to stop using that substance (H52). The doctor also conceded that in general individuals suffering from depression may have more complaints, but he was unable to say one way or another whether that applied to Mr. Barks (H52). In terms of treatment for these symptoms or condition he would not have recommended an individual put Vick's VapoRub in a dust mask and wear that all day (H52).

On re-direct the doctor stated that the information about Mr. Barks having related an allergy to Combivent made no sense, especially since this doctor continued that medication (H53). Further, he did not believe that history of a previous gastric bypass surgery, reflux or obesity was involved with respect to Mr. Barks' situation (H53-54).

John J. Bernick, MD, PhD

Dr. Bernick is board certified in occupational and preventive medicine, as well as having a limited allergy practice (B5-6). He has been practicing for approximately 30 years and maintains an active treating practice (B6). The balance of his qualifications are set forth in his curriculum vitae (B7-12). This included publications associated with the American Academy of Asthma and Immunology (B9) and presentations through the Michigan Occupational and Environmental Medical Association on Occupational Asthma and Allergic Diseases (B11) as well as Wayne State University School of Medicine and the Michigan Safety Council pertaining to occupational asthma (B12).

Dr. Bernick evaluated Mr. Barks January 3, 2017 (B13). In addition to obtaining historical information, conducting an examination and having pulmonary function testing performed he also reviewed medical records (B13). Following same he prepared a narrative report dated January 30th and an addendum on February 17, 2017 (B13-14). A further final report was issued September 10, 2018 following review of additional records (B14). Those respective reports were made a part of the deposition record in the chronological order of their preparation (B15-36), subject to objection concerning hearsay aspects thereof (B15).

The detailed historical information included plaintiff's having started to smoke in approximately 1972 (B17), but which he discontinued in the mid to late 1980s (B17-18). It also included his employment history prior to working for the defendant (B17-18). Specifics of the work at defendant IAC was also provided by Mr. Barks (B18-20). Medical problems during that tenure included the injury to the right eye which later caused blindness as well as gastric bypass surgery (B18). It was recorded that Mr. Barks described the air as "okay" although there was some dust and reported odor of glue, with the temperature described as hot in the summer and cold in the winter (B19). Among personal protective equipment, one included a mask (B20). In approximately 2012 Mr. Barks started complaining of respiratory symptoms on and off, along with shortness of breath which continued to worsen, including occasional wheezing (B20). It was reported that his symptoms improved when outside and stated that he had talked to his human resources manager about the issue (B20). He was later sent to safety and HR, then referred to a physician at McLaren Hospital Industrial Health (B20-21). He was seen by Dr. Haidar and his primary care physician Dr. Scheel (B21). He last worked for the defendant on or about August 11, 2016. During this timeframe he had symptoms both at home and at work which he associated with exposure to perfume, smoke, cologne and fresh paint (B21). A couple of trips to the emergency room were also reported as was diagnostic testing including bronchoscopy and chest imaging (B21). Other past medical and social history along with things such an environmental history and allergy related complaints were also recorded (B21-23).

On the date Dr. Bernick evaluated him Mr. Barks reported that his status at that time was "not so bad, but I was tight yesterday." (B21). His allergy-related complaints also included wheezing, cough and chest tightness, but no nasal, eye or skin symptoms (B22). His home environment did not include pets or smokers (B23). After a review of systems in general (B23-24) the clinical findings on physical examination were covered (B24-26). As it related to respiratory components nasal turbinates were pink and firm with no polyps and nares patent bilaterally. The sinuses transilluminate well and were without tenderness. The lungs were clear to percussion but distant to auscultation with exhalation prolonged and chest diameter increased (B25).

Pulmonary function testing reflected his effort being inconsistent and complaints of shortness of breath doing said testing (B26). Nevertheless, the forced vital capacity and forced expiratory volume at one second were normal, with no evidence of significant obstructive or restrictive lung dysfunction (B26). Accordingly, despite the quality of testing the results were normal (B26).

Additionally, Dr. Bernick reviewed medical records of Drs. Ilka and Haidar and tests which were done, such as spirometry on August 22, 2016 (normal) and the methacholine challenge testing on September 30, 2016 (B26-27). There was some discrepancy between the interpretations of Dr. Bernick and those reached by Dr. Haidar (B26-27). Specific allergy antibodies to TBI were not detected (B27). The doctor did not appear to conclude there were any abnormalities as the result of the bronchoscopy with biopsy or CT scanning of the lungs. (B27).

In addition, both industrial hygiene studies in mid-June 2015 and a trio of Material Safety Data Sheets (MSDS) for the SwiftBond 2U010 were reviewed (B27-28).

As a result of this evaluation Dr. Bernick arrived at the conclusion that plaintiff presented with a normal clinical examination as was also the case for the results of pulmonary function testing (B28). He was also of the opinion that there was no evidence of occupational lung disease nor any impairment which would disable him from his usual job (B28). The doctor went on to explain certain aspects of the overall assessment process, how various testing came into play with respect to reaching the conclusions which he had, including both clinical and pulmonary function testing, as well as the methacholine challenge testing (B29-30). Dr. Bernick was of the opinion that Mr. Barks had some features of seasonal allergy disease and may benefit by further evaluation for same (B30). There were also features of anxiety and depression noted but no evidence of any occupational type lung disease (B30).

Following receipt of additional records Dr. Bernick authored an addendum report on February 17, 2017 (B31-32). After identifying and reviewing same, which included numerous chest x-rays and lab studies along with an ER visit, it did not alter the medical opinion he had expressed in his initial report (B32).

In September 2018 another addendum was authored following review of additional hygiene testing, specifically that done by MIOSHA in January 2018 as well as additional records from Dr. Ilka (B33-35), along with other medical records and industrial hygiene studies (B35-36). MSDS for the SwiftBond was also again reviewed (B36). Based upon all this information, including industrial hygiene results, led Dr. Bernick to conclude that Mr. Barks' clinical findings and occupational history were not consistent with occupational asthma (B36, lines 17-22).

On further direct examination the doctor indicated the purpose of his evaluation and briefly explained what can be termed or called "occupational asthma" (B37-38). Consideration was also given to plaintiff's overall occupational history, including the last job with IAC (B38-39).

At the time of the evaluation Mr. Barks' primary complaints included chest tightness but more on an acute basis as well as a belief that symptoms were associated with exposures to different things in the environment (B39). Historically he understood Mr. Barks to have last worked in August 2016 and noted that if in fact there was some

connection to workplace exposures, not having been in that environment for a period of time, would in the usual course result in the absence of reoccurrence of findings of these types of complaints (B39-40). And, as it specifically related to a predominant issue involving occupational asthma, this can be associated with the group of chemicals called diisocyanates, something with which the doctor was well familiar (B40). In such case and with a true sensitization there would be reaction to that specific exposure, but nothing else (B40). In that regard, over objection relating review of the industrial hygiene testing, the doctor opined that in this particular instance from an exposure perspective the same was "quite clean with minimal workplace exposure and no anticipated adverse health effects" (B41-42).

In reference to the clinical examination Dr. Bernick covered in depth what he was looking for and what was ascertained as a result of same and the various tests (B43-44). In a nutshell he indicated that these were essentially normal (B44). Further, upon his review of methacholine challenge test results (B44-45) concluded that these too were basically normal, which also appeared to have been the pulmonary lab's report of this test, both of which seemed to be inconsistent with comments by Dr. Haidar who reported them as positive (B46-47). The significance of lab studies was also covered (B47-48), as well as the purpose and results of bronchoscopy (B48). Apart from some features of anxiety Dr. Bernick was of the opinion that on clinical examination everything was essentially normal (B49). And, despite the question with respect to the performance on the pulmonary function testing the results themselves demonstrated normal air flow rates and no evidence of an airway obstruction (B49), consistent with the clinical exam. The doctor further explained the grounds for his conclusion there was no evidence of occupational lung disease (B49-50). Dr. Bernick likewise elaborated on his impression of plaintiff's presentation having features of seasonal allergic disease (B51). In sum, based on all the information he had available Dr. Bernick opined that Mr. Barks did not have any evidence of occupational induced asthma (B51-52). The additional medical records and hygiene studies confirmed such initial impression (B52-53). Accordingly, the doctor reiterated what he indicated in his report; that he did not feel it necessary to impose any medical restrictions on Mr. Barks with respect to this pulmonary/respiratory system (B53-54) and such lack of limitation from this perspective would apply to any employment including the work he had performed at defendant IAC (B53-54).

On cross-examination Dr. Bernick conceded that in the event Mr. Barks did have occupational asthma induced and/or a result of sensitivity to isocyanates he would not put him back in that type of environment (B54). He also agreed that the "gold standard" for a challenge in terms of sensitivity or reaction would be in a before and after work situation (B54-55). The doctor went on to indicate that he could have same performed assuming he had access to the workplace and to which plaintiff counsel made a request of defendant for same to be undertaken (B55).

On clinical exam the doctor conceded that while it was normal, if in fact Mr. Barks had occupational asthma, after having been off work for about six months that would be as expected (B56).

The doctor explained the differentiation between MDI and TDI their chemistry, including the relative volatility and other particulars (B56-57). The MDI is the more recent formulation with less volatility and exposures are not that common (B57). The doctor agreed that the various studies, done either by MIOSHA or the other entities did disclose that isocyanates were used in the plant (B57). And, while he was unfamiliar with the "layup job" if that involved a glue solution then same likely contained the isocyanates (B57). In reference to whether such exposure could result in development of an asthmatic condition over time the studies were not clear as opposed to a single high dose exposure which could trigger sensitization (B58). The doctor likened the exposure sensitivity to pregnancy, either you are or are not (B58). However, this does not necessarily mean that once exposed, it will start an asthmatic reaction, but can potentially affect other target organs (B58-59). The doctor was unsure at what point he was made aware of the studies or MSDS information in terms of before or after his evaluation of Mr. Barks (B59). There may also be a difference associated with whether the material is heated and thus more vapor, in comparison to ventilation to abate any exposure (B59-60). It was not necessarily a precise threshold of units of exposure above or below which could create the problem (B60). Dr. Bernick indicated that Mr. Barks did not advise him as to the existence of any spill exposure which plaintiff was required to clean (B60). However, even in the event he were to be made aware of further details concerning the rollers and the need to periodically clean up the glue once every week or two this was not necessarily something which, in his opinion, could have precipitated the beginning of the process of an occupational asthma to diisocyanates (B60-61). The distinction is whether the chemical is volatile (B61). In reference to the substance at issue, SwiftBond 2 U010 it does appear to contain Methylene Diphenyl dye isocyanates also known as "MDI" (B62).

The doctor was further questioned concerning some of the diagnostic testing performed on Mr. Barks, including the purpose of a bronchoscopy and biopsy (B62-63). He disagreed with counsel's suggestion that unless there was an active inflammation as the result of an acute exposure the test results would be normal, responding that is not the case since asthma is a "chronic disease" (B63). Dr. Bernick later indicated that same would measure bronchial hyperresponsiveness in terms of effectively a methacholine challenge, but which is non-diagnostic of a specific disease (B69-70).

As far as the doctor's practice, he acknowledged having engaged in performance of independent medical evaluations for a number of years, dating back to the last 80s (B63-64). While those may be more frequent from the employer's side, he also has an active treating practice with patients (B64). His own practice is more akin to being part general practice seeing patients, conducting health assessments for various conditions and being sent patients by employers, somewhat akin to an occupational health facility (B70-71). He sees individuals beyond asthmatics but is not specifically a pulmonologist, albeit having expertise in pulmonology relative to the work place (B71).

With respect to the records he reviewed, same included those from Dr. Haidar (B64-65). He was aware of that physician's diagnosis of occupational asthma as a result of exposure to isocyanates (B65). In essence, said physician's conclusion was that Mr. Barks had asthma related to work (B65). Whether under such circumstances a

person would be allowed to go back to that situation was dependent upon whether or not the exposure was part of the problem or under a very controlled kind of setting (B65-66). Dr. Bernick was also aware of plaintiff having been seen by Dr. Ilka of Michigan Occupational Health Associates (B66). This included a comment he made in a September 10, 2018 report which referenced Dr. Ilka also having diagnosed occupational asthma caused by isocyanates (B66-67). Dr. Bernick himself did not find evidence of occupational asthma (B67). He also indicated that based upon the history it would be reasonable to consider a before and after work challenge (B67). With respect to the previous hygiene studies this witness was unfamiliar with who had arranged for or paid the other entity, SevenGen, to do such testing but suspected it was likely the plant or factory (B67-68). He was unaware how many times MIOSHA had tested the environment during the relevant time period (B68). And, while the doctor conceded the performance of such testing represented a "snapshot" of what the situation was at any particular time, it was unlikely that since factories were engaged in making a product and the process for doing so was fairly constant it was unlikely air testing would be grossly different from one day to another (B68-69). Dr. Bernick was unfamiliar with Dr. Haidar's qualifications or experience in performing a methacholine challenge testing (B70).

SUMMARY OF EXHIBITS:

A synopsis of pertinent information contained in the exhibits of the parties is set forth below. To the extent that certain exhibits have already been identified or adequately discussed in preceding sections of this Opinion (when discussing lay and expert witness testimony) same are not reiterated herein.

Plaintiff:

Exhibit #2. Job Search Logs:

This exhibit consists of voluminous documents represented by plaintiff to be the job search logs he prepared covering a period from the alleged date of injury/last day of work up through and until trial. To the extent that these items would be relevant only in the event a conclusion were to be reached that plaintiff sustained an injury arising out of and in the course of his employment or otherwise occupational disease under the WDCA, same would be of little, if any, relevance. Accordingly, details of these various and numerous logs are not set forth in this section of the Opinion, but rather will or would be discussed later in the appropriate section of the Analysis: Findings of Fact and Conclusions of Law, specifically relating to "disability" to the extent that same is or may be necessary.

Exhibit #4. Defendant's Personnel File Re: Daniel Barks:

The Personnel File which Defendant IAC Port Huron maintained on Plaintiff Barks is rather extensive. It was reproduced part in hard copy form as well as on a disc (digitally), the latter by/through Record Copy Services. Pertinent portions and information contained within these records is briefly summarized in the paragraphs which follow. It

also bears mention that the defendant company appears to have gone through some corporate changes over the past 20 years or so. In that regard records appear on three (3) separate letterheads or forms; United Technologies Automotive ("UTA"), Lear Corporation and American International Automotive (AIC).

The CD/ROM (digital reproductions) consists of 223 pages. A substantial portions of same relate to typical human resources and personnel matters, including acknowledgment of receipt of employee handbooks, records of pay grades over the years, certifications or licensures for certain work activities (in this case including a hi-lo /fork truck driver's license) etc. These documents in general date back to the late 1990s when plaintiff was initially hired by what then was UTA or Lear Corporation. Also included therein are numerous notations with respect to temporary lay-offs associated with customer requirements, inclusive of one for the period beginning July 18, 2016 with a return to work date of July 25, 2016. There also are a number "bids" by plaintiff for certain jobs which presumably may have been available from time to time pursuant to union contract. There is also an employee warning issued July 27, 2015 relative to multiple absences or tardiness from work during a specific time period prior thereto. As a result plaintiff was placed upon a 90 merit program for one year through July 25, 2016. There were other similar warnings given to plaintiff based upon disciplinary points he had accumulated on dates which preceded late-July 2015. Same occurred in 2015–2016. Earlier ones appear to date back numerous years prior, in 2006 and even earlier in 1999. It also contains various documents referencing emergency contact information, his application for employment which appears to have started with UTA as well as his resume and references including a letter from a predecessor employer (Borg Warner), etc.

The "hard copy" of the personnel file consists of various and numerous other documents pertaining to Mr. Barks apart from the wage, hour, attendance, disciplinary citations and other similar or financial-related documents pertaining to the employment relationship. The exact number of pages contained in this portion of the exhibit was not specifically counted but is substantial, measuring an inch and a half to an inch and three-quarters in height. Pertinent or relevant items contained therein are of mentioned in the following paragraphs.

This second section predominately consists of documents which concern medical matters, inclusive of medical records and disability slips from physicians or health care providers, leave requests associated with health or other reasons and things of that nature. The same date back a number of years, but not necessarily all the way back to the commencement of his employment at this site *circa* 1999 or thereabouts. Given the volume of records in this section only pertinent items will be reviewed. Further, to the extent that certain information of a medial nature is summarized or otherwise covered in an exhibit or expert testimony the same will not be reiterated here.

The most recent document is a "Change in Status" form dated 2/1/18 reflecting plaintiff's effective termination as a result of a failure to return from medical leave dating back to his last day of work on 8/11/16. Prior to that the medical from McLaren Port Huron Industrial Health (Dr. Ilka) and McLaren Port Huron Critical Care & Sleep Medicine (Dr. Haidar) generated from August 2016 onward (summarized

elsewhere in this Opinion) is also contained in this exhibit. It also contains an Attending Physician's Statement on the Hartford letterhead signed by Dr. Ilka 8/25/16. There is also FMLA paperwork (Section 3 Healthcare Provider) dated 8/26/16 and signed by Dr. Ilka. The balance of the documents in this portion of the exhibit pre-date plaintiff's LDW of 8/11/16. Same include return to work notes by Dr. Scheel for time lost in June and July 2016. Also, a note from Dr. Scheel dated 5/31/16 relating to FMLA paperwork dating to August 2015, together with copies of same at which time he was limited to a 40 hour work week. Similar documents generated earlier in 2015 are also contained therein and which relate to the basis for the limitations to be associated with a low back pain radiating towards the right hip and down the right leg in March, 2015. There is also medical from Marshall Family Chiropractic (Jennifer Pavlov, DC and/or Eric J. Marshall DC) in late 2014 concerning work limitations which appear to be associated with treatment of his spine. Additional FMLA paperwork from Dr. Scheel (Physician's section) exists associated with heartburn, shortness of breath and flu like symptoms causing absences in late September 2014. A note from Dr. Scheel with a period early-June 2014 limiting his hours is also contained herein, as are other documents from Marshall Family Chiropractic to that affect in 2010 and 2011, again all relating to the right lower back and right leg. There is also substantial paperwork of a medical and other leave-related (FMLA, etc.) nature in 2008 associated with plaintiff's retinal detachment. Similar paperwork is noted relating to a hernia and surgical repair which took place in mid-2005. There is FMLA and other paperwork for Lear Corporation associated with plaintiff's request for leave in 2006 relating to Mr. Barks' daughter (cerebral palsy with developmental delay). Medical documentation in 2010 relative to plaintiff's inability to operate a "hi-lo" due to blindness in the right eye and other testing relating to hearing. There also appears to have been periodic testing of that nature associated with plaintiff's commercial driver "fitness for duty" determination(s) for dates preceding 2006, a copy of Mr. Barks' CDL is also reviewed. For whatever reason there are also a number of items relating to pension and receipt of various other financial-related documents associated with the employment and fringe benefits, etc. contained in this packet. Statements of benefits paid through the Hartford in 2014 and earlier dates through the employer directly for various non-work related conditions over the years. Medical pertaining to plaintiff's disqualification from hi-lo driving in 2008 secondary to the visual issues is likewise contained therein. Numerous notes from Eyecare Center of Port Huron in 2006 and 2008 relating to his vision issues are also contained in these documents as are some Cigna short term disability related documents.

There are the physical demands analysis relating to tasks associated with the headliner production process completed by a Bradley W. Smith, CRC, CCM in October 2003. Additional records generated in late 2014 from Marshal Chiropractic concerning ongoing treatment as well as FMLA-related documents in 2014 regarding hernias are noted. There are also a number of miscellaneous disability certificates for a period in mid-2005 on what appear to be Aetna STD paperwork relating to inguinal and incisional hernias existing at that point in time. There is earlier paperwork concerning abdominal surgery in December 1990 (gastro bypass) with an estimated return in February 2000 and which is under United Technologies letterhead.

Also contained in this exhibit is email between IAC HR personnel and legal counsel about a workers' compensation claim plaintiff had pending in late 2009 and 2010, along with the employer's basic report of injury which allegedly occurred on or about October 1, 2008 involving his back, as well as same in July 2005 relating to such condition while plaintiff was employed at Lear and a communication with other defense counsel concerning that claim.

Exhibit #5. Medical Records McLaren Industrial Health Clinic–Dr. Ilka:

These records cover a period of time of approximately two months, beginning August 15, 2016 through October 14, 2016. Same consist of not only some handwritten notes, tests results (pulmonary function studies, reports from CT scanning of the chest, etc.) as well as the typed notes of Dr. Ilka during this timeframe. In the initial note it was recorded that Mr. Barks appeared for an evaluation of breathing disorder which "accelerated" last week. At the time of the exam he was "back to normal" but provided a history of having four occasions the preceding week when he felt like he was "breathing through a straw" also had a sore chest and relief with coughing phlegm. He also reported having been seen by Dr. Haidar on August 11, 2016 and treatment received. The history with respect to his occupation included 17 years with the defendant involved in a process where foam is glued to fabric and he breathes fumes from this operation, implicating being at the work site as causing the "spells". Past medical history of a motor vehicle accident in 2010 involving smelling smoke and powder out of a deployed airbag caused severe chest pain and shortness of breath which he feels has occurred since, but not as severe as more recently occurring at the workplace. On exam he was breathing quietly, and auscultation of the chest revealed good expansion and normal airflow without wheezes or rhonchi. Nose and throat examination was normal. Dr. Ilka's assessment was suggestive of the occurrence of occupational asthma, with an initial event in 2010 due to RADS. The doctor requested pulmonary function testing be done by Dr. Haidar as well as a report of the chest x-ray and (from the employer) that he be provided with Material Safety Data Sheets. In the interim he advised Mr. Barks not to return to the plant due to the potential immediate danger to his health and life.

A copy of typed results from pulmonary function testing done on September 6, 2016 at McLaren Port Huron showed specific testing; including FVC, FEV1, FEV1/FVC ratio and FEF 25-75% all within normal limits, but curvature to the flow volume loops suggesting minimal small airway disease. There was a good response following bronchodilators. Conclusions included minimal obstructive airways disease of the peripheral airway. It was also handwritten in that area of the report (but which was not entirely legible) that same may be consistent with asthma coinciding with a clinical history of TBI exposure, 'strongly suspect occupational asthma.' The report bears the signature of Dr. Haidar. Dr. Ilka responding to a form requesting fitness for duty on September 15 indicated it was not medically recommended that he return to the plant due to asthma. A copy of a note from Dr. Haidar dated September 6 relative to the issue of occupational asthma and exposure to TBI is also contained in the chart.

The type written note from Dr. Ilka as of the September 15, 2016 evaluation includes a history of plaintiff having returned to the plant to run an errand and experienced onset of breathing difficulty when there, but on the date he presented to the doctor was not in any respiratory distress and denied shortness of breath. The doctor commented upon the history and increasing episodes of shortness of breath associated with work suggestive of a potential correlation between exposure to isocyanides, but as yet undetermined. However, the doctor likewise noted pulmonary function testing done at McLaren was within normal limits. Mention was made of the results from Dr. Haidar's pulmonary function testing. History also included a reference to Dr. Haidar ordering IgE testing to isocyanides, but which was "remarkably negative". On exam this date he was in no respiratory distress although auscultation of the chest showed course rails at the bases. Concurrence with Dr. Haidar for methacholine challenge testing was indicated and also a CT scan of the chest due to the course sounds. Plaintiff remained restricted from returning to work until further notice.

A copy of the CT scan of the chest on September 20, 2016 referencing an impression of non-specific tree and bud appearance of the right lower lobe is contained in these records. There is also medical recommendation by Dr. Ilka for consultation with a pulmonologist, Dr. Haidar, same being dated 8/22/16. Copies of additional testing conducted by Dr. Haidar between mid-September and early October are also contained therein, including repeat pulmonary function testing done 9/30/16 which on this occasion the type written test results reiterated the various specific tests previously mentioned to be within normal limits, as well as airway resistance after administration of bronchodilators there would be no significant response, the conclusion being the results are within normal limits and a pulmonary function diagnosis of normal spirometry. This form was not signed by Dr. Haidar but appears to have been prepared by him, but a separate document under that same date referencing those values and signed by Dr. Haidar, including the pre- and post-methacholine challenge testing were reported as positive, consistent with asthma. Results of the bronchoscopy and trans-bronchial biopsy done 10/6/16 are also contained in these records as well as cultures obtained October 6 or October 7, 2016 and request for IgE isocyanate TBI testing.

A typed note from Dr. Ilka October 14, 2016 referenced Mr. Barks' return for a follow-up to the pulmonary problems reportedly originating in 2013 at IAC. Reports of regular attacks of wheezing included reference to the proceeding day pushing a lawn mower and walking 100 feet and having to stop due to shortness of breath and wheezing it was noted he previously described such difficulties it was so severe it felt like he was breathing through a straw and that the rescue inhaler has helped. Dr. Haidar also had him on two inhalers but no oral medications. In addition to being anxious on clinical exam it was noted auscultation of the chest revealed course breath sounds at the bases. Under assessment results of various tests which Mr. Barks had undergone in the interim were noted. Same included transbronchial biopsy that did not report significant findings. A methacholine test September 30 reported positive consistent with asthma, the spirometry prior to challenge being normal. The isocyanate IgE test was reported as "negative". Review of environmental air studies of the plant did not show evidence of isocyanate but testing at his work station did not appear to be sufficient for such conclusion. Based upon

the symptoms as well as historical information and the fact that isocyanates are utilized in the employment Dr. Ilka stated that there was sufficient basis to establish diagnosis of occupational asthma caused by isocyanates. The plan included avoidance of returning to the plant and follow up with family doctor for future asthma treatment as well as Dr. Haidar for certain prescriptions and to monitor a determination as to whether a rescue inhaler was warranted, etc.

Exhibit #6. MSDS for HP Fuller SwiftBond 2 U010:

This details characteristics of the particular product in question (yellow liquid) with certain category classifications with respect to contact (such as skin, eye, respiratory, etc.). Same also contains hazardous statement and precautions as well as prevention and response recommendations. Potential health effects associated with symptoms of overexposure are noted to include breathing difficulties. Handling and storage include recommendation for use with adequate ventilation and to avoid inhalation. Respiratory protection was recommended absent local exhaust ventilation or exposure assessment which demonstrates the same as within recommended guidelines. There is also reference to acute inhalation toxicity for a certain quantity over a finite exposure time and a test atmosphere of vapor.

Exhibit #7A. Photograph:

This photo depicts the marriage press where an MDI based adhesive is roll coated onto foam and fiberglass sheets with local exhaust ventilation provided at the point of operation. Self-explanatory from review of same.

Exhibit #7B. Close-up Picture:

This photo appears to be of the same process as in Exhibit 7A showing the rollers and some sort of a rack or a straps. Both of these photos were purportedly of the Operation #1 known as the roller coating.

Exhibit #8. Photo of the Hardening Machine:

This shows one of the other machines at defendant's facility on which the plaintiff worked. Same also appears to partially show the exhaust or ventilation tube on the right side (which is also further depicted in a more close up fashion in Defendant's Exhibit F (see below).

Defendant:

Exhibit A. Medical Records of Physician's Health Care / Dr. Scheel:

The first visit at this facility[1] occurred on August 5, 2015. History of present illness was that the patient wanted her to fill out FMLA paperwork for a 40-hour work week and he did not feel like Symbicort is helping breathing. He reported cough with occasional

[1] Dr. Scheel appears to have also been associated with another medical facility – St. Clair Family Practice, Defendant's Exhibit G, prior to and/or contemporaneously with Physician's Health Care.

mucus, shortness of breath, but no wheezing and reported fatigue off and on. Examination showed no dyspnea on respiratory effort and no rails/crackles or rhonchi on auscultation, with breath sounds normal and good air movement. There was mild expiratory wheezing. Assessment included chronic obstructive lung disease ("COPD") not elsewhere classified. An Advair discus was prescribed, one puff twice a day by inhalation. Other conditions diagnosed included depressive disorder, an iron deficiency anemia and restless legs. No mention of employment history or exposure to fumes, odors, etc. is noted therein. Next seen on 9/24/15. Medication review included the Advair discus prescribed 8/4/15 as well as a number of other medications, specifically including Proventil HFA 90 MCG Aerosol Inhaler apparently prescribed by George Diehl, M.D. and filled at CVS on 5/23/13. History of present illness appears not to have changed as it relates to COPD but no wheezing. Prior condition(s) included GERD which was stable. Clinical exam of lungs appeared normal. Assessment continued with COPD as well as others, inclusive of gastroesophageal reflux disease, depressive disorder, attention deficit disorder and a toothache.

Visit on 1/21/16 reflects medication review to include but not limited to Proventil and Symbicort as previously noted. Also Zantac dating to 9/26/14. History of present illness included ADHD follow up, anxiety/depression noting that Zoloft is not helping, and COPD per report by patient, but no current symptoms and looking into cost of Advair. Clinical exam of lungs all appear to be normal. Assessment includes COPD, iron deficiency, anemia, depressive disorder and now undifferentiated ADD as well as shoulder joint pain. Next visit 5/24/16. Similar medication information including Proventil and Symbicort. History of COPD appeared stable overall with no respiratory symptoms, but did have complaints relative to orthopedics and shoulder, as well as Celexa for mood/depression, ADD stable with Adderall helping without S/E (side effects?). Clinical exam of lungs is once again without abnormalities. Assessment again includes multiple conditions: COPD, undifferentiated ADD and depressive disorder. Next visit 6/3/16 secondary to mid-toe left foot pain and re-injury the day prior. Primary focus of visit was left middle toe, stubbing it at home preceding night, but also history of prior injury dating to age 18 or 19. Ancillary exam of lungs showed no abnormalities. When seen 6/30/16 medication review now included Combivent, Respimat 20 mcg/100 mcg actuation solution for inhalation, a number of other medications and again Proventil and Symbicort. In history the patient reports having been seen in ER associated with SOB (shortness of breath) with cough and wheezing, was given NEB treatment as well as completing steroid taper and using Combivent, further stating he noticed the symptoms more at work with warm weather and wears a mask, would like to see a pulmonologist. Examination of the lungs is normal with the exception of a mild expiratory wheezing. Assessment included acute exacerbation of chronic obstructive airways disease, with referral to pulmonologist, Proventil continued. Seen next on 7/26/16. Medications are essentially unchanged. Was seen by physician for FMLA paperwork due to right low back pain radiating towards the hip and down legs off and on with acute episodes a couple times a month, less frequently when working 40 hours per week without overtime. Also thinking about going to counseling with wife for mood. States he will be going to F/U with pulmonary for breathing issues. He reported shortness of breath off and on, but no cough and no wheezing.

Clinical exam of lungs did not note any abnormalities on this date. Assessment included low back pain, COPD, depressive disorder and undifferentiated ADD. FMLA forms were reviewed with patient and completed. Scheduled for follow up visit in late November 2016. Next visit 11/7/16. Medications largely unchanged. History of present illness included left elbow swelling since preceding Thursday or Friday with no known injury. No reported chest pain. Exam of lungs appears unremarkable. Assessment: bursitis of left elbow, undifferentiated ADD and long term drug therapy. Seen again on 11/15/16 for recurrence of left elbow swelling. Numerous medications continuing. History was of returning following left elbow swelling after being drained the preceding week. Exam of respiratory system appears unremarkable. Treatment and assessment was essentially limited to the left elbow olecranon bursitis. Seen again 11/29/16 with history of having seen ortho for elbow but not currently working and also seeing a pulmonary specialist. Lungs negative on clinical exam. Assessment limited to undifferentiated ADD and depressive disorder.

Next visit 3/28/17. Continuing medications include, among other things, Proventil and Symbicort. Main reason for visit is follow up on mood and ADD. Does report cough and wheezing (off and on) but no shortness of breath. Clinical exam of lungs consistent with earlier findings, respiratory effort no dyspnea, auscultation; no wheezing rails/crackles or rhonchi and breath sounds normal with good air movement. Assessment/Plan includes numerous conditions but not COPD. Visit of 7/28/17 does mention one of plaintiff's care team including pulmonologist, Dr. Haidar. Medication review did not include the respiratory/pulmonary medications previously noted. Primary purpose of visit was in follow up in mood and ADD with good results and stable on medications, specifically also referencing "breathing good" and being busy at home with handicapped daughter. Clinical examination of lungs appeared unremarkable. Next visit 11/28/17. Following medication review the history of present illness is for follow up to mood and ADD as well as stressors including at home with handicapped daughter, has some issues with sleep but with chest pain and reflux better as well as breathing reported as good. Lung exam appears normal. No mention of COPD or other respiratory-related condition in Assessment/Plan.

Next visit 1/11/18. Reports having been seen at hospital in Florida. Under history of present illness it references that Florida hospital was to "get off Adderall" staying eight days and then being on certain medication, etc. Once again lung/respiratory exam appears negative. Assessment/Plan only references mood disorder at this time. Next seen 3/19/18. Medication review does not appear to include inhalers or Symbicort, etc. Seen again 4/12/18. Medication review again notes Proventil among others. History of present illness has patient reporting with SOB (shortness of breath), fatigue, some coughing and wheezing off and on again since around November. Did not recently seen pulmonary (specialist?) and would like new referral for different specialist; had used a relative's Albuterol "neb" (nebulizer?) which helped and would like his own. Assessment/Plan included COPD and prescription for nebulizer with mouthpiece. Seen again 5/3/18. Following medication review it noted history of present illness including feeling down and depressed, low energy, difficulty with concentration and focus along with anxiety (had been away with his son and came back home as he was overwhelmed)

however also specifically noted that "breathing good since last visit". Clinical exam of lungs again appears within normal limits. Primary Assessment/Plan included mood disorder and depressive disorder. Last visit 6/4/18. Review of medications included, among others, Albuterol Sulfate, solution for nebulization and Proventil. History of present illness disclosed being there for follow up of mood with low or no energy, pushing himself to do things, trouble with concentration. Respiratory/lung exam once again normal. Assessment/Plan includes the two mentioned in previous visit and undifferentiated ADD (as also previously mentioned on multiple occasions in the past). No mention of COPD or other respiratory condition in that category.

Exhibit B. Letter of 4/24/18 to HR Manager at IAC:

This letter merely references a conclusion by Mr. Rory Huddas, Industrial Hygienist from the Michigan Department of Licensing and Regulatory Affairs ("LARA") that results of a January 30, 2018 MIOSHA Occupational Health Inspection at the plant resulted in no citations.

Exhibit C. Photo of parking Lot and Facility:

Little if any value can be ascribed to this photograph other than showing a building, parking lot and some vehicles outside on a partly cloudy/partly sunny day.

Exhibit D. Hartford Insurance STD Record:

This document appears to reflect Mr. Barks' claim for disability benefits through this insurer, approved at that time and paid in late-August 2016, but with benefits terminated on or about 10/16/16 when claimant no longer met definition of disability. Date of onset of disability was noted to be 8/11/16, with benefit effective date of 8/18/16, and approved through 10/15/16.

Exhibit E. MSDS & Industrial Hygiene - Air Quality Studies:

This exhibit consists of a number of Material Safety Data Sheets regarding certain chemicals utilized at the IAC facility in Port Huron. It also includes communication between certain safety engineers about products along with documents relating to plaintiff's participation in one industrial hygiene study and conducted in 2011.

Letter from Fishbeck, Thompson, Carr and Huber Inc. to Ms. Rebecca Loftus of the Michigan Department of Environmental Quality October 31, 2011 wherein said entity summarizes certain investigations which had been ongoing in an effort to identify a source of toluene detected during testing in mid-late July 2011. Same was apparently believed to have be associated with an adhesive which had been utilized by the previous plant owner (UTA or Lear) in cleaning of same with the aforementioned substance. Upon further testing for the toluene and adhesive U 0210 it did not appear that the emission violated maximum limitations or threshold levels. Ongoing efforts would be undertaken to keep track of the content on a 12-month rolling basis.

Two items relating to Mr. Barks are contained in this document. One is his acknowledgment of information for employees when using respirators when not required under the applicable standard, signed by Mr. Barks 11/9/11 and acknowledgment of his participation in an exposure monitoring June 20, 2013, together with the results. Even without the use of any personal protective equipment he may have employed during same at time-weighted average for exposure to total particulates was well below allowable amounts (being 0.12 milligrams per cubic meter when permissible amounts was up to 15 milligrams per cubic meter). The industrial hygiene survey done on said date by Zach Pasquenelli of Concentra is also attached. Same includes specific reference to TDI and HDI concentrations as below various respective standards. There was also another industrial hygiene study done by SevenGen August 5, 2014. MDI concentration was again less than allowable exposures. Another study performed through SevenGen by Mr. Pasquenelli on June 16, 2015 was likewise within allowable limits. Also included is a copy of the SwiftBond 2 U010 MSDS as updated 4/24/15. Finally, there is a further industrial hygiene study in October 2017 as reported by Mr. Pasquenelli. Plaintiff's objection to the relevance of this particular study, done approximately 13 months after plaintiff's last date of work, is reasonably well founded and would, in and of itself, lead to that conclusion. However, to the extent that same is but one of many studies done over a number of years it is given some consideration here. It essentially is consistent with the previously-mentioned air quality studies done from 2013 onward, if not to a certain extent before that date, but is not given substantial weight *per se* in light of the date same was performed in relation to plaintiff's claim herein.

Exhibit F. Photo of Catalyst with Exhaust Pipe:

This exhibit basically speaks for itself with respect to clearly showing an exhaust coil (black and appearing pliable much as one would find in a slinkey-type dryer vent exhaust hose) attached to another solid hose at the base or bottom of the machine.

Exhibit G. Office notes/records of St. Clair Family Practice:

The exhibit consists of the office notes or chart entries for selective dates during the period from September 29, 2011 up to June 5, 2012 at this medical facility. The primary provider and notes from this facility are by George F. Diehl, M.D.

Note from 9/29/11 references history of present illness as primarily follow-up for disease management, concern about his eyes and continued depression. At that time he was taking Symbicort, two puffs a day, as well as other medications including Fluoxetine. Active problem includes obstructive sleep apnea and COPD along with others. Respiratory examination appears negative. Diagnosis included COPD with continued use of Symbicort. Clinical list update 10/6/11 reiterates prescriptions for Fluoxetine and Symbicort.

Next visit 1/26/12. Aforementioned medications continue. History of present illness is simply for follow-up. Respiratory examination normal. Diagnoses

included COPD–stable. Various tests and lab studies were recommended with follow up in four months. Seen again 2/28/12. History of present illness includes patient having gotten sick beginning over the last few days with various complaints. Respiratory exam negative. Diagnoses include viral gastroenteritis–new and knee strain–stable. Referred to a Dr. Karadimas for left knee pain and to keep previously scheduled follow-up appointment. 4/16/12 note relates to call and approval of prescription for Adderall. Next seen 5/22/12. Diagnoses on said date included ADD-stable, now with benign prosthetic hypertrophy with urinary obstruction-stable and COPD–stable. He was referred to another physician for hammer toe. Fluoxetine and Symbicort as well as a couple other medications are also actively being taken. Physical examination of the respiratory system once again normal. Get refill for amphetamine–dextroamphetamine. Seen again 6/5/12 with diagnosis of external hemorrhoids secondary to symptoms in that anatomic region. External ointment prescribed for area.

Next visit 9/26/14. Dr. Scheel was provider on this date not Dr. Diehl. History of acid reflux coming up when laying down and going into right lung. Diagnoses included GERD and COPD symptoms - reason for visit secondary to heartburn episode; Zantac as well as well as Symbicort, Proventil, Celexa and amphetamine–dextroamphetamine. Physical exam of respiratory system negative. Patient was instructed to comply with GERD diet, warning signs and follow up if symptoms persist or worsen.

Next entry phone note 6/15/15. Apparently in follow up to discussions with Dr. Scheel and most recent visit 5/28/15 which reflected she stated he could have a work note indicating he was only able to work 40 hours per week and could pick it up that evening (6/15/15). Final visit at this facility 6/19/15 secondary to possible syncopal episode. Same was in follow up to having been in RDH (River District Hospital?) ER after being found in car on 6/17 at the end of his shift; a half in and half out of car. Patient stated he may have fallen asleep and doesn't remember much of incident or driving home and then went to ER 6/18 with negative work up. At this visit no SOB or dizziness although indicated he had not been getting good rest with right hip area and shoulder pain and working long hours. Physical examination of respiratory system again normal. Diagnoses included fatigue and anemia, iron deficiency.

Exhibit H. River District Hospital ER Record for 4/7/10:

This is the hospital's hand-written note with respect to plaintiff's visit at that facility April 7, 2010. Same was secondary to an MVA (motor vehicle accident) occurring at or about 22:30 hours as restrained driver in front end hit to another vehicle at approximately 50 miles per hour. Unknown if loss of consciousness. Airbag reportedly deployed but patient could not recall if inflated. No burns or abrasions, cervical collar applied. Complaint of soreness in the chest but no bruises. Collar removed by doctor and x-rays performed. Provisional diagnosis was of acute chest contusion; discharged in stable condition at approximately 01:22 hours on 4/8/10 by staff physician M. Leporado.

Exhibit J. St. John River District Hospital ED Note 6/27/16:

Patient presented with chief complaint of shortness of breath. Same was secondary to acute onset approximately one hour prior to arrival (arrival time approximately 8:21:36 hrs.). History includes COPD and use of steroid inhaler twice a day but does not have rescue inhalers. Patient stated that he began wheezing which became increasingly severe, no exposure to any new chemicals, dust or environmental agents. Clinical examination of the respiratory system was positive for shortness of breath and wheezing. Past medical history noted to include COPD. Various lab studies were performed. Was given Albuterol nebulized at approximately 23:00 hrs., Prednisone at 22:07 hrs. with sodium chloride piggy back at 22:00 hrs. Further physician notes from chest examination included labored breathing, Tachypnea, diminished breath signs and bilateral lung fields with severe expiratory wheezing bilaterally. No stridor, crackles or bronchi. Emergency department course in medical decision making reflected what was administered following presentation and examination, including the nebulizer which improved plaintiff's breathing significantly and following which he no longer had wheezing on exam. He was observed for several hours without return of symptoms, was given a prescription for Prednisone as well as rescue Combivent inhaler, use of same every 4–6 hours for the next several days and later if symptoms worsen. Final impression of COPD exacerbation, acute versus bronchospasm. He was discharged home and to follow-up with Dr. Scheel in approximately one to seven days. Physician signing off on ED report Michelle A. Wiener, M.D.

Exhibit K. FMLA Medical Form:

This form is on U.S. Department of Labor letterhead re: employee's request for Family Medical Leave due to serious health condition. Employer portion appears to have been completed by Ann Van Sickle; noting Mr. Barks' job title, work schedule and essential job functions. Section 2 lists plaintiff's name as Dan Barks. Section 3 was for the health care provider and which lists (in handwriting) Lisa Scheel, D.O. family practice and her telephone numbers. The Part-A of Medical Facts lists approximate date the condition commenced as 2015. Expected duration was indeterminate. Patient was not admitted for an overnight stay in hospital or other similar facility. Treatment date relative to the condition was 7/26/16 "plus during the prior year for [indecipherable] chronic medical conditions, same being more than twice in the preceding year due to the condition. Medication other than over the counter have been prescribed, including injection and had been referred to other health care providers for evaluation. It was not expressly noted that employee was unable to perform any of his job functions due to the condition. The relevant medical related to the condition for which the employee's leave was specifically noted to be "right low back pain radiating towards right hip and down right leg. Recommend no overtime over 40 hours per week to avoid aggravation". On Part-B the amount of leave needed is unclear, whether he would need any time or that possibly when he has a flare, which was also noted that when condition does cause flare-ups it would prevent him from performing his job functions and during which it would be necessary for him to be absent during same. It was estimated that such flare-ups would occur two times a month for three to four hours per episode. In reference to these it

reiterated recommendation for no overtime [undecipherable] 40 hours per week to avoid aggravation. Signed by Dr. Lisa Scheel 7/26/16.

LEGAL STANDARDS:

A. Evidentiary Standard – Burden of Proof:

The burden of proof in an employee's claim for workers' compensation benefits is on the plaintiff. MCL 418.851. The Worker's Compensation Disability Act ("WDCA") requires that the employee establish a claim for benefits against an employer by a "preponderance of the evidence". This statutory standard essentially codified prior precedent on this issue. *Aquilina v General Motors Corporation*, 401 Mich 206; 267 NW2d 923 (1978). This goes to every element of an employee's *prima facie* claim. *Aquilina, supra*, 267 NW2d at 925, including that the injury in question occurred in connection with his employment. *Hills v. Blair*, 182 Mich 20, 26; 148 NW2d 243 (1914).

In order to satisfy this requirement the employee must present legally sufficient evidence, *Knoblett v Sam's Club*, 2005 ACO #208, which the Magistrate finds credible and which preponderates in the employee's favor. Determinations of witness credibility, especially those who appear live, are primarily within the province of the trier of fact (i.e. Magistrate) to assess and evaluate based upon various factors attendant to their presentation. As the WCAC noted in *Isaac v Masco Corp.*, 2004 ACO #81:

> Although plaintiff's testimony may be sufficient to sustain (an) award, (the) Magistrate is not bound by it.[6] Unrebutted testimony is subject to (a) magistrate's credibility finding regarding witness, and is not by itself dispositive.[7] The magistrate's credibility determination is entitled to deference because the hearing officer has the opportunity to view and judge witnesses.[8] Moreover, the magistrate is not obligated to deal with the credibility issue like a light switch, turning it either on or off.[9]
>
> The magistrate's choice of which medical expert opinion or opinions to adopt is within his or her discretion and we defer to that choice, if it is reasonable.[10] The magistrate need not adopt expert opinions in their entirety but may give differing weight to different portions of testimony.[11] And, although a magistrate may give preference to a treating expert's opinion, he/she need not do so.[12]
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> [6] *Glover v Detroit Edison Co*, 1997 ACO #334.
> [7] *Calhoun v Kerr Mfg. SDDFLICF*, 1996 ACO #182.
> [8] *Wilde v Ann Arbor Public Schools*, 1997 ACO #96.
> [9] *Naserdean v Heublein, Inc.,* 1996 ACO #578; *Cebula v Jones Transfer*, 1992 ACO #135; *Valerio v Meijer Companies, Ltd.*, 1999 SVO #573.
> [10] *Wilde v Ann Arbor Public Schools*, 1997 ACO #96.
> [11] *Rice v Seniors Unlimited, Inc.,* 1997 ACO #138; *Weigland v G & L Industries, Inc.*, 1996 ACO #255.
> [12] *Kleinow v McCord Gasket Corp*., 1996 ACO #189.
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> *Isaac*, *supra*, p. 4

In a situation where two inferences or conclusions exist which could be drawn from the known facts, one favorable and on adverse to the Plaintiff, the requisite standard of proof has not been satisfied and the claim of the Plaintiff must fail. *Fries v Kalamazoo Stove and Furnace*, 338 Mich 64 (1953); *Lane v* Jones, 5 Mich App 525 (1967). The plaintiff's burden of proof goes to every element of a *prima facie* claim. *Aquilina, supra,* 267 N.W.2d 925; *Woodhams v Motor Wheel Corporation*, 1994 ACO #366, pp. 3-4; *Bishop v Ford Motor Company*, 1990 ACO #36.

B. Substantive Standards – Work Related Injury & Disability:

1. **Work Relationship:**

In the normal course it is required that an employee prove his or her case by first establishing that he/she sustained a personal injury arising out of and in the course of the employment, MCL 418.301(1) and then meet other additional criteria to demonstrate he or she is "disabled" as a result. See: MCL 418.301(4)-(9). *Motor Wheel Corporation*, 1994 ACO #366, pp. 3-4; *Bishop v Ford Motor Company*, 1990 ACO #36.

The WDCA first requires that in order to qualify for benefits the employee must have sustained a work-related personal injury:

> (1) An employee, who receives a person injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act.

MCL 418.301(1).

Where a pre-existing condition exists it is now also required that the employee establish that his or her "injury" is compensable in accord with *Rakestraw v General Dynamics Land Systems, Inc.,* 469 Mich 220; 666 NW2D 199 (2003) and *Fahr v General Motors Corp.*, 478 Mich 922; 733 NW2d 22 (2007). Under these decisions it was held that in order to clear that bar he or she must establish that such condition is "medically distinguishable" from that which had previously been present. This was later adopted in the 2011 amendments to the Act, 2011 PA #266. Incorporated into section 301(1), *supra*, and which is the current legal standard with respect to this element of a claim, is the following language:

> A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury.

MCL 418.301(1)

Another potential basis giving rise to a claim of work-related disability comes under WDCA sec. 401, the chapter entitled "Occupational Diseases and Disablements", MCL 418.401, *et seq*. In particular as it concerns what constitutes a valid basis for same under this portion of the Act it provides in pertinent part that:

> (2) As used in this chapter:
> (a) "Disablement" means the event of becoming so disabled.
> (b) "Personal Injury" includes a disease or disability that is due to causes and conditions that are characteristic and peculiar to the business of the employer and that arises out of and in the course of employment. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable. A personal injury under this act is compensable if work causes, contributes to or aggravates pathology in a manner so as to create pathology that is medically distinguishable from any pathology that existed prior to the injury.
>
> MCL 418.401(2)(a & b).

For a reasonably thorough discussion of what may constitute an "occupational disease" under chapter 4 and hence compensable under the WDCA, but in essence being so pursuant to chapter 3 thereof, MCL 418.301-391, see: *Workers' Compensation in Michigan: Law and Practice*, by Welch & Royal, February 2015 Update, sections. 9.1-9.6, pp.161-166. In essence there a certain requirements for a "personal injury" to be deemed to come under chapter 4 as an "occupational disease" or "disablement" that are not necessarily required and apart from those which may be found compensable purely under WDCA chapter 3, *supra*. Generally speaking a lung-related condition would fall under this category, but not always. Just as might be so for a condition not caused by a specific event incident but rather occurring over a period of time. *Id*, pp.162-163. In this regard it bears review of *Roberts v. Western Michigan Foundry*, 1980, WCABO 2028 as is also reproduced in its entirety in the afore-cited treatise as Exhibit 9.1 on pp.172-193.[2] And, to come under chapter 4 it is such that the "disease" or "disability" be found to result from "causes that are characteristic of and peculiar to the business of the employer. . ." There are also issues which arise where the condition might otherwise be considered to be an ordinary disease of life and whether underlying causation of the condition itself is required to come under chapter 4, excluding the potential for mere contribution, aggravation or acceleration of a condition (underlying or pre-existing) which could be considered more in the nature of something possibly compensable under chapter 3, WDCA sec. 301(1), *supra*. Clearly in this situation it requires a medically distinguishable effect or impact on the pathology or pathological process itself. So too does WDCA sec. 401(2)(b), *supra*[3] now also include such language.

2. **Disability:**

Next, essentially through judicial interpretation of the WDCA over the last decade or so and as it related to establishment of "disability", there evolved a specific analytic framework required of the parties, principally plaintiffs, which was deemed necessary in order to satisfy this component of the burden of proof. In this regard the statute was ultimately interpreted to require a number of hurdles be cleared by a plaintiff in order to qualify for weekly benefits. *See*: *Sington v Chrysler Corp.*, 467 Mich 144; 648 NW2d 624

[2] It is noteworthy that in this case Plaintiff did incorporate a claim of "occupational asthma" and the words "occupational disease" in the filings, Application for Hearing-Form 104A, per the Addendum, (page 1) in relation to paragraph/line no. 25 of said Application.
[3] Per the 2011 amendments; 2011 Act #266, eff. 12/19/11.

(2002) and *Stokes v Chrysler, LLC.*, 482 Mich 266; 750 NW 2d 129 (2008) as well as later cases further refining the criteria necessary to meet this standard and prove wage loss. *Romero v Burt Moeke Hardwoods, Inc*, 280 Mich App 1; 760 NW2d 586 (2008) and *Lofton v Auto Zone, Inc.*, 482 Mich 1005; 756 NW 2d 85 (2008) and after remand, 483 Mich 1133; 766 NW 2d 290 (2009).

The primary factors outlined during the course of the Courts' analysis as set forth in the afore-cited cases was also subsequently incorporated into the latest amendments to the WDCA by 2011 PA #266, effective 12/19/11. That statutorily codified provision specifically sets forth the standard and criteria for an employee to establish disability, either partial or total, as follows:

> (4) As used in this chapter:
>
> (a) "Disability" means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work-related disease. A limitation of wage earning capacity occurs only if a personal injury covered under this act results in the employee's being unable to perform all jobs paying the maximum wages in work suitable to that employee's qualifications and training, which includes work that may be performed using the employee's transferable work skills. A disability is total if the employee is unable to earn in any job paying maximum wages in work suitable to the employee's qualifications and training. A disability is partial if the employee retains a wage earning capacity at a pay level less than his or her maximum wages in work suitable to his or her qualifications and training. The establishment of disability does not create a presumption of wage loss.
>
> (b) Except as provided in section 302, "wage earning capacity" means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned. For the purposes of establishing a limitation of wage earning capacity, an employee has an affirmative duty to seek work reasonably available to that employee, taking into consideration the limitations from the work-related personal injury or disease. A magistrate may consider good-faith job search efforts to determine whether jobs are reasonably available.
>
> (c) "Wage loss" means the amount of wages lost due to a disability. The employee shall establish a connection between the disability and reduced wages in establishing the wage loss. Wage loss may be established, among other methods, by demonstrating the employee's good-faith effort to procure work within his or her wage earning capacity. A partially disabled employee who establishes a good-faith effort to procure work but cannot obtain work within his or her wage earning capacity is entitled to weekly benefits under subsection (7) as if totally disabled.
>
> (5) To establish an initial showing of disability, an employee shall do all of the following:
>
> (a) Disclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury.
>
> (b) Provide evidence as to the jobs, if any, he or she is qualified and trained to perform within the same salary range as his or her maximum wage earning capacity at the time of the injury.

> (c) Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training that pay maximum wages.
>
> (d) If the employee is capable of performing any of the jobs identified in subdivision (c), show that he or she cannot obtain any of those jobs. The evidence shall include a showing of a good-faith attempt to procure post-injury employment if there are jobs at the employee's maximum wage earning capacity at the time of the injury.

MCL 418.301(4)-(5)

As before, after the plaintiff has established a *prima facie* case, the defendant can rebut same. MCL 418.301(6). Further, even where the plaintiff establishes that he or she has met the threshold of establishing disability, this does not mean that he/she is automatically entitled to benefits applicable at a total disability rate based upon the AWW coupled with tax filing status and number of dependents (per WDCA sections 301(7) and 355; MCL 418.301(7) and MCL 418.355). Thus, an employee, although having some degree of impairment or level of "disability" in terms of work he or she is physically capable of performing, must still establish a causal connection between such ongoing wage loss and the impairment. In that regard, as WDCA 301(4)(c), *supra*, states: "Wage loss may be established, among other methods, by demonstrating the employee's good faith effort to procure work within his or her wage earning capacity." Indeed, the preceding sub-section of 301(4), an employee's wage earning capacity ". . . means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned." WDCA 301(4)(b), *supra.* Furthermore, it is clear from the next sentence contained in this subsection that the employee has an ". . . affirmative duty to seek work reasonably available to that employee taking into consideration the limitations from the work-related personal injury or disease." *Id*. And finally, it is only when a partially disabled ". . . establishes a good faith effort to procure work but cannot obtain work within his or her wage earning capacity is (he/she) entitled to weekly benefits under subsection (7) as if totally disabled." WDCA sec. 301(4)(c), *supra*.

ANALYSIS – FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The first and foremost issue involved in this case relates to whether plaintiff has proven that any respiratory condition from which he allegedly suffers is compensable as either an occupational disease under WDCA chapter 4, sec. 401, *et seq*. and/or chapter 3, sec. 301, et seq., or neither of them. For reasons as further set forth below I conclude that the answer to this question is the latter; plaintiff has failed to prove by a preponderance of the evidence that he has an occupational disease – so-called "occupational asthma" and even if the condition is simply asthma or COPD, that such work activities and/or exposure(s) caused, aggravated, accelerated or contributed to said condition(s). It is further found that he has not established by the requisite proofs that even if asthma and/or COPD was affected in some way, shape or form secondary to such exposure that it resulted in a "medically distinguishable" condition to the extent that the pathology of such alleged respiratory pathology was altered or otherwise changed as a

result thereof. Accordingly, to the extent it is found that plaintiff did not sustain a personal injury which arose out of and in the course of the employment, whether under chapter 4 or 3 of the WDCA, further analysis of remaining issues, most notably including whether he has proven "disability," are moot.

The initial aspect of analysis entails a review and evaluation of plaintiff's testimony itself. In that regard and although what was given on direct examination would suggest that the chronology of his developing respiratory problems could be directly related to his employment with the defendant, the actual story along with disclosure of other events and circumstances, especially when considered in connection with the medical records, paint a much different picture. The majority of those inconsistencies as well as other concessions, or at least lapses in memory on the part of Mr. Barks, were fairly well spelled out in the pertinent portion of this Opinion summarizing his testimony as set forth *supra*. In general these include what amounts to be preexisting respiratory problems predating the timeframe that he claims and testified to have first experienced these in connection with his employment. Not only did same date back to an onset in 2010 there is also little, if any, correlation between those problems and any complaints he may have had about the work environment for many years thereafter. His inability to recall who had prescribed what by way of medications, including inhalers and things of that nature, as well when, especially in light of what the medical records disclosed, clearly cause one to suspect the veracity of his testimony and thus overall credibility as to many issues. Overall, although both his testimony, various medical records and opinion of expert witnesses would support a conclusion that Mr. Barks suffers from a multitude of health conditions, including but not limited to loss of an eye, longstanding emotional or depressive type of problems as well as those involving his back and right lower extremity and ones of a respiratory nature, in light of the deficiencies with respect to his credibility in conjunction with information disclosed in the medical records and concessions offered by his own medical expert witnesses in their depositions, he fails to establish by a preponderance of the evidence that his lung or respiratory ailment was caused by his work for the defendant IAC. Similarly, there is insufficient evidence to establish that such alleged exposure, such as it was, aggravated, contributed to or accelerated the underlying condition which in turn resulted in medically distinguishable pathology of a permanent or long term nature. At best, and even this is a stretch, the evidence in this regard that might support some sort of temporal relationship between one or more occasions when he was at or around the defendant's facility and the onset of symptoms, possibly leading to a very short-lived exacerbation, but certainly nothing of a pathologic change or progression of any underlying condition(s), whether asthma or COPD. The deficiencies relating to plaintiff's credibility adversely affect his allegations of causal relationship and significantly undermine the overall legitimacy of those complaints as well as negatively impacting the extent to which his medical expert witnesses provided support for any finding such a causal relationship.

A. Occupational Disease or Disablement:

With respect to the "occupational asthma" element, and thus potential involvement of the Chapter 4 provisions contained in the WDCA, *supra,* there was virtually no proof

offered that plaintiff's disease or disability (as due to causes or conditions characteristic of and peculiar to the defendant's business). Although there was some suggestion in expert testimony to the effect that plaintiff has occupational asthma due to exposure to isocyanates, numerous other facts mitigate against this conclusion. That he has asthma may well be the case, but this is not related to that specific exposure or the chemical involved, let alone that use of such chemical is characteristic of and peculiar to the business of IAC. It is apparent that this type of exposure, whether TDI or MDI (and I think at best in this particular instance the evidence would only support MDI which is non-volatile substance) may be used in numerous industrial type of settings, not just with respect to that portion of the defendant's business herein relating to the manufacture of headliners for the automotive industry. Furthermore, the very condition of "asthma" is one normally found inside and outside of the industrial setting. And, although technically not a disease or condition of a communicable nature (such as the common cold, flu and the like) it certainly appears to cut across various strata of the population in general so as to effectively be considered an ordinary disease of life, much akin to hypertension, diseases of the aging process, such as osteoarthritis, and so forth. Accordingly, and to that degree, plaintiff's claim equally fails in that it has not shown his asthma[4] was in fact "caused" by work as opposed, or at least potentially so, having been "aggravated" by claimed employment exposure such as was discussed by Appeal Board Chairman Gilman and Roberts *supra*, and by Ed Welch and Daryl Royal and their treatise *Workers' Compensation in Michigan: Law and Practice*, *supra.* Therefore, although it was alleged by plaintiff in his Application for Mediation or Hearing–Form A that he suffered from "occupational asthma" and/or an "occupational disease" the overall facts fail to support that conclusion.

Therefore, I conclude that plaintiff's claim does not satisfy the requirements in order to find the existence of an occupational disease or disability as it is or can be defined and construed in Chapter 4, in particular WDCA Section 401, *supra*.

B. Causal Relationship; Cause, Aggravation, Acceleration or Contribution:

The next and alternative consideration of the causal relationship issue between plaintiff's condition(s) and the employment entails analysis of same under WDCA Section 301(1) *supra*. It is on this score that plaintiff's claim is somewhat stronger, although still fails to satisfy the requisite standard of meeting his burden of proof by a preponderance of the evidence. At best, and as further discussed below, there could possibly have been a correlation with some onset of his asthmatic symptoms and time at work, but that does not necessarily dictate a conclusion that it was either work exposure or a specific chemical or substance at work that may have caused an asthmatic attack, let alone even if this was the case, it resulted in any medically distinguishable condition. Therefore, under this chapter of the Act plaintiff's claim also fails.

[4] If indeed such condition is in fact the respiratory ailment with which he is afflicted, rather than Chronic Obstructive Pulmonary Disease ("COPD") which over the years, especially when these problems appear to have arisen, was diagnosed by some of his treating physicians as opposed to "asthma" which occurred later in the chronology of events.

As per that portion of the analysis set forth in the preceding few paragraphs, based upon the medical records when viewed in conjunction with the testimony of Mr. Barks with respect to the onset of his respiratory complaints, there is little doubt that same date back numerous years before his last date of work in August 2016. Notwithstanding Mr. Barks lack of memory or apparent confusion concerning having been prescribed medications for breathing problems pre-dating August 2016, in fact by many years before same, the medical records tell a different story. In particular, those of the St. Clair Family Practice (**Defendant's Exhibit G**) mainly from Dr. George Diehl (although late in those records there is reference to Dr. Scheel being associated with that practice and later continued to see Mr. Barks elsewhere from 2015 onwards) (**Defendant's Exhibit A**). In September 2011 among many of his medications was Symbicort, two puffs a day. Diagnosis included chronic obstructive pulmonary disease (COPD). Such medications continued into 2012. In 2014 there was acid reflux which had to be aspirated from his right lung (other medical suggests that reflux can play a role in respiratory problems). The River District Hospital ER records also corroborated the April 7, 2010 incident involving the motor vehicle accident when the airbag discharged (**Defendant's Exhibit H**) and as is also discussed later, Plaintiff's own expert witness opined that this could have been the sudden cause of respiratory irritant. Additionally, on June 27, 2016 a month and a half prior to August 11, he was also seen at that facility (**Defendant's Exhibit J**) when he gave a history of COPD and use of steroid inhaler. It is also reported that he began wheezing which became increasingly severe but there was no exposure to any new chemicals, environmental agents or irritants. The end result and final impression was of COPD exacerbation-acute, versus bronchospasm, was discharged home and to follow up with Dr. Scheel. Even when seen by Dr. Ilka after his last day of work in August, 2016 history, inclusive of the event back in 2010 (the motor vehicle accident with airbag deployment), was considered as a possibility for RADS.

Additionally, following Mr. Barks discontinuation of employment there were yet further occasions when he had complained of respiratory problems and bouts of asthma even though not being exposed to work, but rather simply in the general environment. Not only does this further support the lack of existence of an occupational asthma, but also asthma due to another cause and which was materially affected or altered by virtue of any exposure to things in the work environment as opposed to elsewhere in the general environment. For instance, Dr. Ilka's notes of his wheezing associated with pushing a lawnmower in mid-October 2016 as well as history to other physicians of similar episodes from time to time thereafter. All of these in combination strongly suggest that in fact plaintiff's asthma, or possibly even the existence of chronic obstructive pulmonary disease, is not associated with his employment at the defendant, but instead one of many other potential factors.

The records of Dr. Scheel at Physician's Healthcare also included respiratory type of complaints before the first visit at that facility in early August 20**15**. Same was inclusive of review of Dr. Diehl's prescription for an aerosol inhaler along with the prescription for Advair Discus prior to August 5, 2015. No mention of work as being a factor is referenced therein. In January 2016 medication review included Proventil and Symbicort. At that point he was also looking into the cost of Advair. Proventil and Symbicort are also noted

May, 2016 (months before the last date of work) with diagnoses including COPD. In June, 2016 medication review included the Combivent (which was also testified by experts to be associated with respiratory/asthma issue) as well as the Proventil and Symbicort. Assessment at that time included acute exacerbation of COPD. In late-March, 2017 his medications still included Proventil and Symbicort, same close to six months after his last date of work. At that time he also reported coughing and wheezing, although examination on that date was normal. In April, 2018 Proventil was still noted in the medication review. He also gave a history of coughing and wheezing off and on again since the preceding November (i.e. Nov. 2017) which at that point would have been well over 15 months after his last date of work. At that time he was given a prescription for a nebulizer with mouthpiece. Medication review in early June 2018 also included Albuterol Sulfate, a solution for nebulization, and Proventil.

With respect to expert testimony although the opinions expressed by Dr. Haidar did provide support for the conclusion that plaintiff's employment with defendant played a role in terms of causation viz a vis claimed chemical exposure and asthma, other factors significantly undermine the legitimacy of such conclusion. This includes the fact this physician was not entirely versed on all of the accurate historical information with respect to onset of plaintiff's breathing problems, or at least was not such until questioned extensively under cross-examination, coupled with various pulmonary-related testing which was performed on plaintiff shortly after he last worked in August 2016. This doctor conceded that, in large measure, his conclusions with respect to causation were predicated upon historical information plaintiff had initially provided to him in that regard (H33-34). It was also noted that historical information was different from what had been provided to Dr. Ilka about the airbag deployment some years back and onset of symptoms (H34-35). Additionally, that then suggested that while he may have had a pre-existing asthma it was affected by his exposure resulting in asthmatic episodes at work (H35-36). The doctor's opinion with respect to the negative IgE testing relative to the isocyanate as being the instigating factor was also challenged and in that regard undermined (H38-39). So too is the fact of plaintiff's experiencing symptomology subsequent to the removal from the plant while doing things such as cutting the lawn (H39-40). Dr. Haidar also later conceded that information could be suggestive that some work exposure could merely act as a trigger for provoking symptoms as opposed to being occupationally-induced type of asthma (H42), acknowledging that in such circumstance it would not be "occupation aggravated" (H42). Assuming such being the case, if same provoked an episode it would later revert to the underlying state of condition (H42-43). In that regard the additional information contained in the records of Dr. Scheel about plaintiff's complaints in April 2018 (over a year and a half after the last date of work) concerning shortness of breath, complaint of wheezing, cough and so forth since November, as well as using a relative's nebulizer likewise contravened the conclusion of this doctor that it was employment exposures that was/were the cause(s) of occupationally provoked asthma (H50-51). The doctor then conceded that Mr. Barks may have multiple triggers (H51). Dr. Haidar also readily agreed that Mr. Barks was not physically disabled, there being nothing specifically wrong with his lungs and furthermore that whatever exposure-related episodes he may have had up to this point did not cause any progression or damage of a permanent nature (H36).

The testimony of Dr. Bernick, as previously reviewed, pp 13-18 *supra*, speaks for itself with respect to the opinion of this physician as it relates to any respiratory condition from which plaintiff allegedly suffers. Similarly, his review of the spirometry testing done in August 2016 appeared to be normal, as was the methacholine challenge testing done September 30 (B26-27). The former testing of that nature which Dr. Bernick had done in connection with his own evaluation was likewise normal, despite some-effort related issues on the part of plaintiff (B26, 28). Furthermore, he reiterated that the specific allergy antibodies in relation to TDI (isocyanates) were not detected in the other testing which had been performed by either Drs. Ilka or Haidar (B27). Dr. Bernick remained firm that plaintiff neither suffered from any occupational asthma (as possibly considered or defined as an occupational disease) (B36) nor for that matter any other occupationally-related lung or respiratory condition (B28-30). This conclusion was reinforced upon his consideration of both the MSDS for SwiftBond 2U010 and the industrial hygiene studies conducted over the years and during relevant time period when Mr. Banks worked in the plant (B27-28) (**Plaintiff's Exhibit #6**) (**Defendant's Exhibit E**). Recall also that plaintiff had himself participated in a workplace environmental monitoring study in 2013 without adverse consequences.

The various other facts and factors which also play a part in the overall assessment of whether plaintiff Barks has proven by a preponderance of the evidence that the work for defendant IAC Port Huron either caused or was a contributing factor in connection with whatever respiratory condition(s) may ail him, some dating back many years and continuing until more recently characterized as COPD and later "asthma", occupational or otherwise, have been considered as well. These were both mentioned and fairly well summarized in earlier portions of this decision, including lay and expert testimony along with the numerous exhibits offered by both parties and admitted into evidence, without reiterating every detail and minutia thereof here, fail to adequately bolster or make up for the deficiencies in plaintiff's case in chief as discussed in the two subsections (A & B) immediately preceding this paragraph.

This includes but is not limited to the fact that the so-called "spills" and which might under certain circumstances according to the medical experts give rise to RADS and/or event which of sufficient and massive sudden exposure triggering the same or even that which would be considered enough to create a sensitization, were clearly not of the nature and extent plaintiff professed. First, as to the nature, he basically cleaned up some left over glue/goop once or twice a week by using a rag to wipe down rollers and whatever drops and dribbles accumulated on the floor. At this point the SwiftBond 2U010 was not really volatile or in a heated/unstable state which might emit fumes to any appreciable degree. Second, this product did not appear to have as a component the earlier and more offensive ingredient of TDI, as opposed to the much more stable and largely inert MDI. There is also the fact that plaintiff really had little if any interaction with the product when it was "baked" or heated in the oven, the two operations he performed being appearing to occur before and after that process, not to mention the presence of local and machine-specific exhaust systems designed to and which apparently did (per results of repeated

industrial hygiene studies) prevent or ameliorate emission of any potentially offending fumes from the heated product.

Other factors include what appears to have been repeated instances when plaintiff was off work in the year or so (which dated back a number of years prior to that as well) as a result of various and sundry problems, some of a medical nature not associated with respiratory problems or even any condition which was alleged to have been work related (his vision problem, emotional-related difficulties; ADD and depression, back problems and so forth), including efforts to have limitations placed upon him in terms of number of hours allowed to work secondary to such condition. So too, did he undertake efforts to be off work or limit his time associated with tasks which were associated with the care of his impaired or challenged daughter living at home and for whom he and his wife were responsible. These also appear to have been coming to a head in the summer of 2016.

Suffice to say that there are numerous other items which call into question the veracity of plaintiff's testimony relating to when and under what circumstances he first experienced respiratory symptoms, where, by whom and what treatment he had been afforded for such symptoms, with what outcome or result, as well as apparent continuation and recurrence of symptoms after having been out of the work environment for many months, close to 2 ½ years as of when this case was tried, etc. These factors likewise undermine grounds for plaintiff's claim of work relationship.

C. Conclusion:

The bottom line is that when all of the evidence is considered and weighed in the appropriate context, including expert medical testimony having sufficient basis for proper consideration,[5] which includes that of Dr. Bernick who was well versed on the background and facts, but which conversely limits the value of both Dr. Haidar's opinion testimony and any like conclusions reached by Dr. Ilka to the degree same are contained in his records likewise are lacking in accuracy and completeness, there is insufficient proof presented by plaintiff to establish a *prima facie* case for the existence of a work-related respiratory condition. Accordingly, plaintiff has failed to establish this very essential and of the crucial element, that being causation, for his claim seeking workers' compensation benefits.

Based upon the finding set forth above it is unnecessary to analyze or even delve into a discussion of "disability". Absent establishing the existence of a work-related condition, regardless of impairment or limitations, no basis exists to go any further.

[5] Opinions provided by experts are of little or no evidentiary value where such opinions are predicated upon untrue or incorrect information and assumptions. *Durbin v. K-K-M Corp*., 54 Mich App 38, 54-55 (1974) and *Thornton v. Berry*, 259 Mich 529, 531-32 (1932).

ORDER

IT IS HEREBY ORDERED that Plaintiff's claim for workers' compensation benefits from Defendants, IAC Port Huron, LLC and American-Zurich Insurance Company is DENIED.

WORKERS' COMPENSATION BOARD OF MAGISTRATES

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DAVID H. WILLIAMS, MAGISTRATE (253G)

Signed on this 10th day of December, 2018 at Detroit, Michigan