

# industry line

MANAGING THE HAZARDS OF ENVIRONMENTAL TOXIC AND TORT LITIGATION

7.8.04

## A Change In The Wind: A \$1,000,000 Welding Rod Verdict

By Bruce A. Truex

On February 6, 2004, an Illinois Judge denied post-trial motions to vacate a One Million Dollar welding rod fume verdict in favor of Lawrence Elam. *Lawrence E. Elam v A.O. Smith Corp., et al.*, No 01-L-1213 Ill. Cir. Madison County. To date there have been eight defense verdicts in welding rod cases tried in Federal and State Courts in Wisconsin, Illinois, Indiana, Pennsylvania, and Maryland. Beginning in 1988 through 2000, the industry position has been consistently adopted by jurors. In *Elam*, the jury unanimously found Elam's Parkinson's disease to be caused by manganese, a metallic substance contained in welding rods, which is released during the welding process.

Elam was diagnosed with Parkinson's disease in 1996 when he was 56-years old. He claimed 27 years of exposure to welding fumes while working in the maintenance department at Union Electric Company. Elam further claimed that manufacturers and distributors of the welding rods used by Elam or others near him, did not adequately warn or investigate the health risks of their products. Claims for punitive damages and conspiracy counts were not

### SECRET WARDLE NOTES:

Shock waves from this verdict reverberated across the nation. The defendants have vowed to appeal the verdict claiming there is nothing in the scientific, epidemiological or toxicological literature linking Parkinson's disease with exposure to manganese fumes. Plaintiff's attorneys countered that not only is there a clear causal link, the problem of manganese exposure by welders was generally known for decades. They cite U.S. Public Service documents from the 1940's reporting on the health affects of manganese in the steel making industry. The plaintiff's bar also contends that groups such as OSHA and ACGIH consistently lowered the threshold limit for allowable concentrations of manganese fumes in the workplace. As a result, plaintiffs are currently preparing cases for filing in many states across the U.S., including Michigan. More than 3,200 cases have now been transferred to the welding rod products MDL No. 1535 in the U.S. District Court in the Northern District of Ohio.

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presented to the jury. Medical causation, however, was hotly debated.

The defense advocated a medical causation theory that distinguishes manganese poisoning as having a distinct pathological appearance from Parkinson's disease. Plaintiff's experts testified no clear pathological distinction exists and peer-reviewed literature on a small number of subjects is not definitive. Plaintiff's medical testing suggested a "continuum" of injury, which was in part attributable to environmental factors such as manganese and in part the result of brain cell loss from normal aging.

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**For an in-depth White Paper outlining the Factual Background of Welding Rod Litigation and its Evolving Issues, contact Bruce Truex at [btruex@secrestwardle.com](mailto:btruex@secrestwardle.com), or 248-539-2852.**

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We welcome your questions and comments.

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