

28 October 2004

Mr. DRK—  
Commerce Committee  
— Road  
Baton Rouge, LA 70818

Dear Mr. K—:

Exactly one year ago today, an Illinois jury awarded 65 year-old Parkinson's patient Larry Elam an unprecedented one million dollar settlement. Elam claimed inhalation of manganese at former employer Union Electric as responsible for his illness. His award was the first, and so far the only, plaintiff's victory in a quietly growing field of litigation targeting occupational exposure to manganese in welding rods. Elam's case against three welding rod manufacturers in Illinois holds enormous consequence for industry and the economy of Louisiana.

Welding rods, also called welding electrodes, are thin lengths of metal melted to provide the connective material in a weld. Rods may contain a number of elements, including aluminum, manganese, nickel and various alloys, small amounts of which become airborne during welding operations. Theoretical parallels between the danger of exposure to manganese particles and asbestos or cigarette smoke are driving nationwide interest in welding rod litigation. Hundreds of law firms are now soliciting potential claimants, and at least forty-eight cases are currently pending against Louisiana-based welding rod distributors.

While legal parallels may be drawn to other hazardous materials claims, the medical evidence for a causal association between manganese and Parkinson's disease (PD) is weak compared to that linking asbestos or cigarettes to cancer. Evidence for a more specific link between occupational use of welding rods and PD is almost non-existent.

The scarcity of scientific support for these claims is notable. The Elam case relied heavily on a single research paper by B.A. Racette, MD, et al., tracking fifteen career welders with Parkinson's (see: [Neurology](#) Jan. 2001). Despite its prominence in the Elam suit, this study found "no difference" between welders and control groups in the severity, circumstances or symptoms of disease (including tremor, rigidity, postural instability, clinical depression, or dementia). All patients showed a "high prevalence" of Parkinson's in family history, and all responded equally well to established treatments.

#### **ISSUE HIGHLIGHTS**

- ✓ Unprecedented settlement in new class of injury claim threatens Louisiana industry
- ✓ Claim ties welding fumes to Parkinson's disease on scant evidence
- ✓ Personal injury lawyers file hundreds of new cases, targeting Louisiana venues
- ✓ Swift action on tort reform a must for Louisiana business and industry

The welders in Racette's study shared a younger average age at onset, yet beyond this, the report concludes: "no established relationship between welding exposure and development of symptoms has been shown." The authors speculate that earlier onset may be due to an "accelerating agent" associated with welding, but name no such agent. That Larry Elam was not, in fact, a career welder, but a maintenance worker who sometimes welded, makes this causal link all the more tenuous.

Though unsupported by science, the Illinois verdict nonetheless threatens Louisiana's multi-million dollar construction and manufacturing industries. According to Elam's lawyers, his successful case "turned the tide" in this previously unproductive field of toxic tort litigation. Interest in welding rod damage cases "skyrocketed" after the Elam verdict. Potential defendants in these cases include not only welding rod manufacturers and distributors, but also employers in construction, manufacturing and energy production sectors—taken together, an enormous contributor to Louisiana's economy. Without a single additional verdict passed down, insurance liability within these industries is already growing.

In response to similar threats to its business and industry, the State of Mississippi recently passed sweeping reforms in civil justice law, capping damages, limiting the practice of "venue shopping," and narrowing the criteria for proper joinder of claims, thus preventing a bandwagon approach to civil suit. Without similar and swift action by the Louisiana legislature, we risk taking our neighbor's place as Newsweek Magazine's, "worst litigation venue in the country for businesses."

Fifty thousand new cases of Parkinson's disease are reported in this country every year. The illness afflicts over one million people nationally, without regard to gender or ethnicity. Age and family history are primary risk factors. As more Americans reach retirement age, all forms of PD are expected to grow proportionally within the population. Greater incidence of the disease will come at considerable societal cost, providing impetus to the vast potential for litigation that is the chief product of our nation's legal industry.

On behalf of the millions of Louisiana citizens whose livelihoods depend on a healthy economic future for local industry, we hope you will review this important new development in tort litigation and take immediate steps to limit its potential damage.

Sincerely,

cc:

Attachments: