CRYSTAL GOOD vs. WEST VIRGINIA AMERICAN WATER CO.
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CASE NO. 2-14-01374 (COPENHAVER, J.)

[redacted] CLAIM ID: 10364741

Claimant.

APPEAL ADJUDICATOR'S DETERMINATION

I. INTRODUCTION

A. Factual Background

The claimant, [redacted], was an employee of the State of West Virginia who worked at the Culture Center in January, 2014. While at work on January 13, 2014, she allegedly washed her hands thinking the ban on use of the water for that purpose had been lifted. On January 14, 2014, she allegedly was exposed to vapors or odors from the contaminated water.[1] According to a written statement from co-worker Carolyn Kender, there was a "lingering smell of the chemical from the chemical leak that permeates the building." Another co-employee stated that Mrs. [redacted] was shaking, winded, coughing, ashen in complexion and complained about a scratchy throat, itchy eyes and dizziness. It appears that sometime during work hours on January 14, 2014, Mrs. [redacted] husband came to the Culture Center and transported her to the Emergency Department at Thomas Memorial Hospital ("TMH").

Mrs. [redacted] responded to steroids and was discharged without being admitted to the hospital. The notes from the Emergency Department state that the diagnosis was acute asthma exacerbation secondary to chemical exposure.

Ms. [redacted] had two subsequent visits to Dr. Sheth, her primary care physician, on January 21, 2014, and January 27, 2014. Notes from those visits indicate shortness of breath and at least on January 21, 2014, she was given steroids and nebulizer as treatment. Dr. Sheth appears to have referred her to the Emergency Department on the January 27, 2014, visit.

Ms. [redacted] was admitted to TMH on January 27, 2014, for increased shortness of breath over the last twenty-four (24) hours. The notes reflect poor air exchange on exam with mild expiratory wheezing in both lungs. Pulmonary function testing on January 28, 2014, shows FEV1 at 25% and FVC at 47%. She was discharged on January 29, 2014.

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[1]While in the Emergency Department on January 14, 2014, her symptoms included dyspnea, a cough and wheezing that started on the day before.

Mrs. [redacted] was treated once again in the Emergency Department at TMH on February 20, 2014, with complaints of dyspnea for several days with chest tightness. Dr. Sheth, her primary care physician, also examined her at this time and noted her prior hospitalization several weeks earlier due to asthma exacerbation that may have been related to odor from the water. Pulmonary testing on February 21, 2014, show FV1 21% of predicted and FEC 39% of predicted.

She was hospitalized twice following the January 14, 2014, exposure and never returned to work. The Social Security Administration, on June 9, 2014, issued a "Notice of Award" finding Mrs. [redacted] was disabled under "our rules" on January 14, 2014. The notice states that to qualify for disability benefits, "you must be disabled for five full calendar months in a row."

By January 2014, and before any exposure to contaminated water from the Incident, Mrs. [redacted] suffered from a severe respiratory condition even if the diagnosis is in dispute between the parties. If not earlier, but at least by November, 2012, she received medical treatment for respiratory complaints with nocturnal wheezing. In late February, 2013, she presented for treatment for shortness of breath that had been ongoing since January. In March, 2013, she informed Dr. Sheth that she had not gotten any better and it appears that she was hospitalized.

On January 28, 2013, she was examined by Dr. Wade, a pulmonologist in Charleston. Dr. Wade noted a normal lung exam but also conducted pulmonary function tests and also obtained a CT scan. Dr. Wade raised the concern and related in the differential diagnosis that she may have bronchiolitis obliterans - a permanent and incurable condition. Dr. Wage prescribed prednisone at a high dose (60 mg/day orally) to be tapered to 10mg. Dr. Wade noted that the pulmonary function test results were very abnormal and out of proportion to the radiograph findings.

On March 11, 2013, she returned to Dr. Sheth with complaints of severe shortness of breath. On March 13 she was examined by Dr. Kayi, a pulmonologist. Testing demonstrated FEV1 0.98 (31%), FVC 1.93 (50%), total lung capacity 4.14 (80%), residual volume 2.28 (16.5%) and DLCO 16.54 (57%). Dr. Kayi believed she had severe asthma.

Thereafter, Mrs. [redacted] continued to see Dr. Sheth with the notes indicating ongoing shortness of breath. Beginning in April, 2013, and for approximately the next year thereafter, she received pulmonary therapy. Her pulmonary therapist, Kelli Smith, RN., LRTR, prepared a letter dated March 19, 2014, to the Social Security Administration noting Mrs. [redacted]' improvement in her respiratory condition until the exposure to "MCHM flushing at her place of employment" .

II. PROCEDURAL BACKGROUND

Mrs. [redacted] has filed an Individual Review Claim - Other Medical Issues Disability Claim. By letter dated February 1, 2019, the Settlement Administrator issued an Eligibility Letter which classified her claim as an Other Medical Issues claim, valued at $1,000,000.00. WVAW objected to this Eligibility Determination and requested a Second Review

Determination. By letter dated August 23, 2019, the Settlement Administrator issued the Second Review Determination. This Determination states in pertinent part:

> **Claim Type:** Medical
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> **Second Review Determination:** The claim is eligible for $164,512.00 for the following reason:
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> **Second Review Determination Reason:** Your claim is ineligible as an Other Medical Issues Disability Claim. As required under the Amended Settlement Agreement, a consulting medical expert was retained to assist in resolving the objection. The medical expert has determined with a reasonable degree of medical certainty that your contamination exposure did not cause additional damage to your lungs. Your claim is, however, eligible as an Other Medical Issues Other Injury/Illness claim for the exacerbation of your existing condition beginning on 1/14/2014 through 3/10/2014. Past qualifying medical costs were determined as $33,628 with 6 qualifying nights of hospitalization.

Mrs. [redacted] has filed this Appeal of the Second Review Determination with the Appeal Adjudicator. Mrs. [redacted] disability claim consists of $580,000.00 representing the base award of $380,000.00 plus $200,000.00 ($10,000.00 x 20 for the twenty (20) years from age of disability at age of forty-two (42) and the sixty-two (62) year cut-off age). The balance of the claim is for medical expenses incurred.

III. DISCUSSION

A. Applicable Provisions of the Amended Settlement Agreement and Distribution Protocols

DP §VIII.B states that in regard to an "Other Medical Issues Claim", each claim will be addressed individually to determine the type of illness and whether there is a credible, documented causal relationship between exposure to contaminated tap water and the illness and if the condition is deemed to be causally related, and the appropriate compensation based upon the expenses the claimant has incurred.

DP §VIII.B.2. states that "An Eligible Medical Claimant must provide proof for an Other Medical Issues Claim that is and is intended to be more stringent than the proof required to demonstrate a Contemporaneous Medical Treatment Claim.

DP §VIII.B.3(ii) states that "the Claimant must submit a contemporaneous medical record which documents that the claimant sought and received medical care for an illness or injury, or exacerbation of an existing condition, which a treating licensed health care provider diagnosed

and which is documented to be causally related to exposure to contaminate water from the Incident. ..."

DP §VIII.B.3.(iv) requires the following:

> [t]he Claimant must submit an affidavit or sworn declaration of a qualified medical expert which clearly sets forth that the illness or injury, or exacerbation of an existing condition, is causally related to exposure to contaminated water resulting from the Incident as stated in Section VII.B.3(i) above. For purposes of this section, a "qualified medical expert" is a physician who engaged in a specialty relevant to the Other Medical Issues Claim or engaged in relevant scientific research. The affidavit or declaration must set forth the qualifications of the expert and must include (a) information about the nature and degree of exposure to contaminated water the Claimant experienced, (b) the medical condition from which the Claimant suffers and the basis for the diagnosis of that condition, (c) the qualified medical expert's opinion to a reasonable degree of medical probability as to how the medical condition was causally related to exposure to contaminated water resulting from the Incident, and (d) the materials reviewed by the expert. To prove the illness or injury, or exacerbation of an existing condition, can generally be caused by exposure to contaminated water resulting from the Incident, the Claimant may rely on the affidavit or declaration of a qualified expert who expresses the opinion to a reasonable medical or scientific probability.

DP§VIII.D.2. provides in pertinent part:

> "A Medical Claim based on total occupational disability may only be compensated if a governmental agency has found the Claimant to be occupationally disabled because of a specific medical issue . . . on which the Claimant has based his or her Medical Claim. For purposes of this section, a "governmental agency includes the Social Security Administration."

ASA §6.2.5.8. states "The Appeal Adjudicator's decision shall be based on the claim record, including the submissions for review and second review by the Settlement Administrator, and the Appeal Adjudicator shall remain bound at all times and in all decisions by the terms, interpretations, and decision-making processes contained in the Amended Settlement Agreement Distribution Protocols, and guidance provided by the Claims Oversight Panel."

B. Claimant [redacted]' Position

As with several other medical claimants, Mrs. [redacted] joined in the Omnibus Brief filed wherein those claimants contend that the Settlement Administrator exceeded the authority granted under the ASA, that Dr. Brick, the Settlement Administrator's retained medical

consulting expert, was unqualified and that the ASA required only that the claimants present a prima facie case of the causal relationship requirement in order to be awarded the claims.

Mrs. [redacted] also contends that the Second Review Determination mistakes critical facts from her medical history and misunderstands the concept of "exacerbation" as a basis for recovery.[2] As an example, Mrs. [redacted] notes that Dr. Brick states in his report that she was hospitalized on January 9, 2014. Instead, Mrs. [redacted] notes she had a "follow-up" visit with Dr. Sheth and that a lung examination conducted that day revealed that her lungs were doing well. She was not admitted to the hospital until January 27, although she did go to the Emergency Department on January 14. Mrs. [redacted] further notes discrepancies between Dr. Brick' understanding of the circumstances surrounding washing her hands at work and taking a shower at home prior to the exposure at work and her version of those same events.

Mrs [redacted] further emphasizes Dr. Allen's expertise on the "controlling issue of exacerbation", her thorough review of the medical record and her high level of confidence that Mrs. [redacted] exposure to contaminated water on January 14, 2014 - in vapor form - caused her to suffer a pulmonary insult causing exacerbation of her underlying pulmonary disease on that date, and which continues to this date. Dr. Allen, an occupational physician with a masters degree in public health, also notes the improvement that Mrs. [redacted] made in the pulmonary function testing from the date of initial onset in early 2013 through the end of 2013 - but which abruptly reversed after the January 13, 2014, exposure and that in her opinion Mrs. [redacted] never recovers to her previous pulmonary function.

Mrs. [redacted] further notes that the Notice of Award from the Social Security Administration finding her disabled as of January 14, 2014, for an Adult Respiratory Disorder - is the date of her exposure to the contaminated water vapor.

Finally, Mrs. [redacted] contends that WVAW's experts Drs. Govert and Krieger, both "cherry pick" her medical records to conclude that her described exposure to MCHM caused only an acute reaction or exacerbation (at most), after which her health returned to her pre-exposure baseline. Specifically, she contends that the single most important documented medical report is the Pulmonary Test Function (PTF) on September 5, 2013 (after the adult onset of asthma in March 2013) and before her exposure on January 13 and 14, 2014. Critically, she contends that Drs. Govert and Krieger ignore the importance of that finding. Mrs. [redacted] contends that the September 2013, PTF was entirely omitted from the chronology of medical records recounted by Drs. Govert and Krieger.

Mrs. [redacted] further contends without considering the PTF results on March 14, 2013, WVAW and its experts are able to argue that the results are lower than the post exposure PTF results on January 28, 2014. Considering the PTF results of September 5, 2013, according to her,

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[2]Mrs. [redacted] states that the Second Review Determination is dated July 8, 2014, but not reviewed until August 23, 2014. For ease of reference, this Determination uses the August 23, 2014, date.

shows that she was improving with treatment and abruptly declined post exposure. She also contends that Dr. Krieger ignores her visit to Dr. Sheth on January 9, 2014, for a routine follow-up that showed she was in stable health with normal breath sound.

C. West Virginia American Water's Position

WVAW places significance on Mrs. [redacted] pursuing two other claims related to the Elk River Chemical spill: a workers' compensation claim and an employment discrimination suit. Both of these claims were denied. On appeal, the West Virginia Supreme Court affirmed both denials. WVAW contends these claims are relevant because Mrs. [redacted] made certain factual and medical assertions that are not made in this claim.

WVAW states that the West Virginia Supreme Court affirmed the denial of her workers' compensation claim "[b]ecause Mrs. [redacted] failed to show that her exposure to MCHM caused a discrete new injury, it was proper for her claim to be denied." WVAW also notes specific parts of the Court's opinion in which the Court discussed her medical condition including the Court's summary of Dr. Wade's opinion, that her condition was likely more than mere asthma as the symptoms and findings were out of proportion with asthma and that Dr. Wade believed she might have bronchiolitis obliterans which is a rare disease of the lungs that is irreversible and deadly.[3] WVAW also notes that Dr. Zaldivar, as part of the workers' compensation claim, conducted a record review and stated that whether Mrs. [redacted] true diagnosis was asthma or some as of yet undiagnosed pulmonary problem, the exposure to the contaminated water could not have resulted in any permanent damage that would have worsened her respiratory condition.

Again citing to the opinion of the West Virginia Supreme Court, WVAW notes that Dr. Hodder at WVU Medicine also examined her and "diagnosed bronchiolitis obliterans and asked her about her desire for a lung transplant." Further, Dr. Zaldivar wrote an addendum to his report and "stated that the October 6, 2015, CT scan showed bronchiectasis in all five lobes with no calcified nodules bilaterally with air trapping. He opined that this showed that more than bronchitis and asthma were at play, and he suspected she had bronchiolitis obliterans. Dr. Hodder concluded that, based on all these records, MCHM, placed no role in her asthma nor did it cause an exacerbation." WVAW further notes that the Court concluded (in part):

> "It was Mrs. [redacted] burden to show that she received an injury in the course and as a result of her employment. The Office of Judges found it was not apparent that her exposure was at work. ... More importantly, there was no evidence that her alleged exposure to MCHM would have resulted in any symptom."

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[3]WVAW does not state whether the Court specifically addressed the respiratory therapy Mrs. [redacted] received or her examination with Dr. Sheth on March 9, 2014. WVAW also does not state if the Court had the benefit of Dr. Wade's deposition testimony.

WVAW notes that Mrs. [redacted] also pursued an employment discrimination claim against her employer, the West Virginia Department of Education and Arts. Summarizing the facts, the Supreme Court stated that Mrs. [redacted] had an asthma attack in March, 2013 "that required hospitalization and bed rest for the better part of the month." When she returned to work in April, she was having trouble breathing while walking and required the assistance of co-workers and the use of a wheelchair. Her physician referred her to pulmonary rehabilitation/ respiratory therapy twice a week starting in 2013 - this is what she sought an accommodation for under the Americans with Disabilities Act - which allowed her to take time for the therapy and make up the time working from home on the weekends. Her treating physician, Dr. Sheikh (sic) stated that he did not believe her ailment would affect her job performance as her job is mostly mental utilization and only problematic if she has to undergo strenuous physical activity or exposure to chemicals, allergens or irritants. He was unsure whether she was permanently unable to perform her job since she was slowing improving.

After returning to work and the flushing of the pipes at work, Mrs. [redacted] had another attack and was treated in the Emergency Room and released. She did not return to work and resigned, informing her employer "to continue to work in this environment, without any ADA accommodation, places my health at very substantial risk" and stated that she was constructively discharged. Her subsequent lawsuit against the WVDEA resulted in summary judgment being granted to her employer. The West Virginia Supreme Court affirmed finding "the accommodation she requested was not required to enable her to complete the essential function of her job, and so cannot serve to impose liability on WVDEA under the Act."

WVAW asserts that Mrs. [redacted] lacks credibility because she made different factual claims about her exposure in those two claims. More specifically, WVAW contends that she has been inconsistent as to the date her exposure to the water vapors change depending upon what suits or fits her particular claim at the time. Further, WVAW contends that she failed to supply relevant medical evidence and instead relied upon a retained consulting physician.

WVAW retained Dr. Krieger, an occupational medicine physician and toxicologist, and Dr. Govert, a pulmonologist, as its expert. Those physicians disagree with Dr. Allen's (Mrs. [redacted] medical expert) opinion that Mrs. [redacted] exposure to MCHM exacerbated her preexisting or underlying pulmonary disease. Additionally, Dr. Krieger submitted a toxicology report and contended that Dr. Allen ignored several pertinent studies - such as the 1977 Eastman Inhalation Study and a more recent study by the National Toxicology Program - which has been analyzing the potential toxicity of MCHM since 2014. WVAW specifically is critical of the one study that Dr. Allen relied upon - the "Lethal Dose 50 Study", a 1988 oral ingestion study. According to WVAW, the Tox 21 Study that Dr. Krieger relies upon concluded that MCHM "is not a particularly toxic compound," and that such exposure "induced no airway cytotoxicity or pro-inflammatory response."

Dr. Krieger concluded that the "alleged MCHM exposure is possible but entirely uncorroborated by any objective measurement data." That Mrs. [redacted] had an "entirely self-limiting episode and was seen and discharged from the emergency room the same day."[4]

Unlike Dr. Krieger, Dr. Govert, after reviewing the same medical records, acknowledges that Mrs. Burns' exposure to MCHM "exacerbated her underlying severe airways disease." Dr. Govert concluded that "based on the available literature, it appears that the effect of [MCHM] and [PGP] on the human respiratory system generally appeared to be mild and relatively short lived."

WVAW also notes that the Settlement Administrator's consulting medical expert, Dr. Brick, concluded that Mrs. [redacted] exposure did not cause additional permanent damage to her lungs - relying in part upon his opinion that there was no significant difference in her breathing tests from 2013 to 2015.

Finally, WVAW contends that Mrs. [redacted] simply ignores the reports and opinions of Dr. Krieger and Dr. Govert.

D. Claimants Reply to WVAW

Mrs. [redacted] attacks WVAW's assertion that she had an incurable disease (bronchiolitis obliterans - BO) prior to the January 14, 2014, exposure to MCHM and consequently that disease could not have been exacerbated by the exposure. Mrs. [redacted] contends that WVAW's position is entirely dependant on comments from Dr. Zaldivar (in the workers' compensation case) and Dr. Hodder in the ADA case.[5] Mrs. Burns argues that Dr. Zaldivar's and Dr. Hodder's opinions are based on a "non-existent purported diagnosis of BO attributed to Dr. William Wade, a treating physician."

Mrs. [redacted] cites to and highlights pertinent deposition testimony of Dr. Wade. Mrs. [redacted] argues that although Dr. Wade suspected that Mrs. [redacted] had BO, he had never made that diagnosis - or any other "definitive" diagnosis. Further, Mrs. [redacted] contends that since the causation opinions of Dr. Zaldivar and Dr. Hodder are based upon the assumption or impression that Dr. Wade made the diagnosis of BO and since he did not make that diagnosis, then causation opinions of those two physicians are wrong. Mrs. [redacted] also places significance on the deposition testimony of Dr. Wade that if a person (such as Mrs. [redacted]) had been suffering from BO, then pulmonary therapy would likely not have increased the results from FEV1 from 22% to 38%.

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[4]WVAW does not specify what "objective measurement data" Dr. Krieger was referring to.

[5]The Appeal Adjudicator assumes Mrs. [redacted] means her workers' compensation claim.

Concerning Dr. Hodder's testimony in the ADA case, Mrs. [redacted] notes that although he believes she had BO as of his May, 2017, deposition, he could not state whether she had that illness prior to the January 14, 2014, exposure. Mrs. Burns further points out that Dr. Hodder testified BO is a very rare illness and that he had treated very few patients with BO. She also points out that Dr. Hodder testified BO can be caused by a chemical exposure although he did not render a causation opinion.

In regard to the ADA case that Mrs. [redacted] filed against her employer, she notes that the Supreme Court simply upheld the Circuit Court's summary judgment since her treating physicians concluded that she could perform her work - whether at home or her office - without an accommodation. According to Mrs. [redacted] the Supreme Court made no comment regarding her injuries or illness.

IV. Appeal Adjudicator's Determination

DP§VIID.2. provides in pertinent part:

> A Medical Claim based on total occupational disability may only be compensated if a governmental agency has found the claimant to be occupationally disabled because of the specific medical issue or failure to get treatment as a result of water interruption on which the Claimant has based his or her Medical Claim.

The Social Security Administration determined Mrs. [redacted] was disabled on January 14, 2014. This determination was made upon the initial application. Although the Notice of Award dated June 9, 2014, does not state the exact medical issue that serves as the basis of the award, other documents produced in the submitted record establish that the Disability Evaluation involved an Adult Respiratory Disorder. Moreover, WVAW does not challenge that the disability determination involves a respiratory disorder.

Clearly, the ASA and DP's place significance and importance upon a governmental agency such as the Social Security Administration finding a claimant to be totally occupationally disabled based upon the specific medical issue upon which the claim is based. Although such a finding does not necessarily equate with an automatic approval of the claim, failure to have such finding is fatal to the claim.

It is important to note that the Social Security Administration found that Mrs. [redacted] disability started on January 14, 2014 - the exact date that she experienced symptoms at work after exposure to chemical vapors due to a flushing of pipes at work. Up to that date, Mrs. [redacted] was working full-time albeit with the occasional assistance of co-employees and a wheelchair. Further, it is important to note that the records from the Emergency Department on January 14, 2014, contain the diagnosis of an acute asthma exacerbation secondary to chemical exposure. Thus, the remaining issue to be determined is whether the exacerbation caused or was a substantial contributing factor to her total occupation disability.

It is undisputed that Mrs. [redacted] suffered from a significant pulmonary and respiratory illness before January 14, 2014. The illness started no later than March, 2013. The medical experts seem to be in two camps in regard to her diagnosis in 2013 - either she suffered from severe asthma or an even more sinister illness such as BO - a progressive and incurable illness. Mrs. [redacted] and WVAW have devoted significant efforts - not to mention expense - in setting forth arguments as to whether she suffered from severe asthma or an illness such as BO. Although the answer is not absolutely certain, the record does reflect that no physician actually diagnosed her as suffering from BO before January 14, 2014. Thus, the more reasonable conclusion based upon the submitted record is that she suffered from severe asthma during that time period. This conclusion is also supported by the fact that at least one physician testified he would not expect the improvement that she made in her pulmonary function in 2013 (with medication and pulmonary therapy) if she had the incurable and progressive BO.

In terms of underlying or preexisting condition and an exposure to MCHM, a significant pulmonary or respiratory illness seems the most likely to suffer an exacerbation - including a significant exacerbation - as the result of such an exposure. Mrs. [redacted] was the poster child of the "thin-skull" claimant prior to March 14, 2014. In reviewing the reports from Drs. Allen, Krieger and Govert, there are discussions about studies and literature involving MCHM exposure and the residual effects from exposure. However, there is little, if any, discussion of what those studies found or indicated in how an MCHM exposure would effect an individual such as Mrs. Burns, with her significant underlying respiratory illness.

Dr. Allen acknowledges that Mrs. [redacted] respiratory illness was likely to progress at some point even in the absence of the chemical exposure. However, as she states what is unknown is when such an exacerbation would occur and the extent of such an exacerbation. Dr. Allen acknowledges that while in most individuals the CHM and PPH mixture effects would have been short lived, Mrs. [redacted] decompensated rather quickly after the chemical exposure. Additionally, she experienced a significant drop in her pulmonary function after the exposure. Although her pulmonary function numbers are similar to pre-exposure, she requires oxygen and more medications to maintain that level of function.

Dr. Govert acknowledges the likelihood that the chemical exposure exacerbated Mrs. [redacted] underlying respiratory illness. Dr. Govert is careful and guarded in his assessment that the effects of MCHM and PPH on the human respiratory system "generally" appear to be mild and relatively short lived based upon the available literature (which is limited according to all experts).

After careful, thorough and mature consideration, the Appeal Adjudicator has determined the more probative, compelling and convincing evidence in the submitted record supports Mrs. [redacted] position. When the record is viewed and evaluated within the context of the ASA and DP requirements, it supports the determination and conclusion that Mrs. [redacted] exposure to vapors

from the contaminated water on January 14, 2014, caused or was a substantial contributing factor in the exacerbation of her severe asthma resulting in her total occupational disability.[6]

Mrs. [redacted]' claim value is $1,000,000.00. The base award is $380,000.00 plus an additional $200,000.00 ($10,000.00 x 20) representing the 20 years from her age (42) at the time of the disability and the 62 year-old cut off age. The eligible and qualifying medical bills total $88,690.95 multiplied by 5 results in $443,454.75. Adding $443,454.75 to the $580,000.00 total $1,023,454.75 which exceeds the $1,000,000.00 cap under the ASA and DP's. Therefore, the award to Mrs. [redacted] is $1,000,000.00.

DATED: This 26th of March, 2020.

S. DOUGLAS ADKINS
APPEAL ADJUDICATOR

[6]Whether the exposure was on January 13 or 14 is essentially irrelevant.