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STATE OF MICHIGAN

IN THE BUREAU OF WORKERS' DISABILITY COMPENSATION

VADA MURRAY,

Plaintiff,

v

CITY OF ANN ARBOR,

Defendant.

COPY

VIDEO DEPOSITION

of **VADA MURRAY**, a witness called by Plaintiff, taken before
Kristie L. Dickinson, CSR-4667, Certified Shorthand Reporter
and Notary Public for Firm #8453, [REDACTED]
Ann Arbor, Michigan, on March 3, 2011, noticed for the hour
of 2:00 p.m.

APPEARANCES:

On behalf of Plaintiff: OTIS, PC
2500 Lake Lansing Road, Suite A
Lansing, MI 48912
BY MICHAEL J. OTIS (P26332)
(517) 372-5700

On behalf of Defendant: STROBL & SHARP, PC
300 E. Long Lake Rd., Suite 200
Bloomfield Hills, MI 48304
BY MURRAY R. FELDMAN (P23274)
(248) 540-2300

Also present: Shelby Danford, Sarah Murray, and
John Zawacki.

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EXHIBITS

For Defendant:

A	Three pages of Dr. Franzblau's report	
	Identified	37:12

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Ann Arbor, Michigan
Thursday, March 3, 2011
At 1:55 p.m.

R E C O R D

THE VIDEOGRAPHER: Today's date is March the 3rd, 2011, and we are on the record at 1:54 p.m. This is a video deposition of Vada Murray. We are at [REDACTED] [REDACTED] Ann Arbor, Michigan. This matter is pending in Michigan in the Workers' Compensation Bureau, Murray versus City of Ann Arbor.

Counsel, would you please put your appearance on the record?

MR. OTIS: I am Michael Otis, P26332, appearing on behalf of the Plaintiff, Vada Murray.

MR. FELDMAN: And I am Murray Feldman, P23274, on behalf of the City of Ann Arbor and its insurance carrier.

THE COURT: Would the reporter please swear the witness in?

VADA MURRAY,
after having first been duly administered an oath, was examined and testified as follows at 1:56 p.m.:

THE WITNESS: I do.

MR. OTIS: Let the record reflect this is the time and place scheduled for the deposition of Vada

1 Murray and taken de bene esse to be used for all
2 purposes allowed by the Michigan Court Rules.

3 Mr. Feldman, any objection to the Notice of
4 the time, place, or purpose of the deposition?

5 MR. FELDMAN: Yes, I have several objections
6 I'd like to make at this point, as I've discussed with
7 Mr. Otis before we went on the record. I'll ask that
8 these objections be continuing in nature.

9 And I'll indicate that, by my appearance here
10 and perhaps some questions of Mr. Murray on
11 cross-examination, I'm not waiving any of these
12 objections. Nor do I believe my appearance here and
13 participation in the deposition waives them. I intend
14 to pursue them at the time this deposition is offered.

15 So, first of all, I object to the deposition
16 for the reason that there is no provision in the
17 Michigan Workers' Disability Compensation Act which
18 provides for the deposition of lay witnesses, even
19 Mr. Murray, who is the Plaintiff in this case.

20 Mr. Otis and I have discussed this issue on
21 multiple occasions with multiple magistrates, and I
22 have always expressed my objection to this process.

23 To the extent that the Michigan Court Rules
24 apply, assuming they do, I'll leave it to the
25 magistrate to determine whether or not they are

1 applicable to this case and provide any basis for this
2 video de bene esse deposition. I, however, believe
3 they do not. And, at this point in time, I'd further
4 indicate that I've not received any medical
5 information, nor to the best of my knowledge has any
6 medical information been provided to any magistrate
7 suggesting that it is necessary this deposition be
8 taken, either as a deposition or as a video deposition.

9 And, thus, even assuming that the Michigan
10 Court Rules are applicable, even assuming that they
11 would authorize this deposition, even assuming,
12 although no provision exists in the Workers' Disability
13 Compensation Act for a de bene esse deposition, a
14 magistrate were to find the process acceptable, I don't
15 believe there's a sufficient foundation which would
16 allow for the admissibility of this deposition.

17 On that basis, I'm moving to quash it.

18 Secondly, the Workers' Comp Act specifically
19 provides that -- and the case law, that the Plaintiff
20 has the burden of proof. As of this date, I have not
21 been provided with any medical information whatsoever
22 from Mr. Otis which in any way establishes any alleged
23 relationship between Mr. Murray's employment and his
24 condition.

25 At this point, as of January 12th, 2010, I

1 sent to Mr. Otis a copy of the report of my expert,
2 Alfred Franzblau, the report being dated January 6th,
3 2010.

4 At this point I've been provided with
5 absolutely no report from him. Thus, in the event that
6 some physician at some later date were to attempt to
7 testify with regard to any relationship between
8 Mr. Murray's present condition and his employment
9 duties and this deposition were to be permitted to be
10 introduced, I would be denied the opportunity to
11 cross-examine Mr. Murray with regard to any information
12 contained in the history of that report, be denied the
13 opportunity to discuss with Mr. Murray any details in
14 that report, assuming there were any details regarding
15 his alleged exposure, and denied the right to
16 cross-examine him on any issues which in any way would
17 relate to any medical being offered or attempted to be
18 offered by Mr. Otis at that time. I think that's
19 prejudicial to my client and my client's rights.

20 Therefore, with regard to this issue, I am
21 moving that either the deposition be quashed or, if for
22 some reason a magistrate were to accept it, that
23 Mr. Otis, slash, Mr. Murray, be denied the opportunity
24 and precluded from the opportunity of submitting any
25 additional or any medical information of any kind on

1 any issue regarding any alleged relationship between
2 Mr. Murray's employment and his condition on the basis
3 that I have been prejudicially denied the opportunity
4 to cross-examine him with regard to that.

5 So I am moving at that -- based on that
6 specific objection, either to quash the deposition or
7 to preclude any medical testimony.

8 For those -- based on those two objections, I
9 am moving to quash the deposition as indicated and/or
10 preclude the submission of additional medical
11 testimony.

12 As previously indicated, I will participate
13 in the deposition; but, in doing so, I do not waive any
14 of these objections or rights that my client has.
15 That's my statement, I'm asking that the depositions --
16 the objections, Mr. Otis, be deemed continuing so I
17 need not continue to make them.

18 MR. OTIS: I have no objection to that.

19 Okay?

20 MR. FELDMAN: Okay.

21 MR. OTIS: Did you swear in Mr. Murray?

22 THE REPORTER: Yes.

23 DIRECT EXAMINATION

24 BY MR. OTIS:

25 Q Okay. Would you state your name?

1 A Vada Murray.
2 Q And what is your address?
3 A [REDACTED] Ann Arbor, Michigan, 48103.
4 Q And, Mr. Murray, is your date of birth 7-30, 1977?
5 A '67.
6 MR. OTIS: '67. And I would ask that the
7 petition be amended to reflect that.
8 Q (BY MR. OTIS) Are you married?
9 A Yes, sir.
10 Q And what's your wife's name?
11 A Sarah.
12 Q And you live with Sarah?
13 A Yes, I do.
14 Q How long have you been married to Sarah?
15 A Ten years.
16 Q Okay. And do you have any children?
17 A Yes, we do.
18 Q And do you have children other than with Sarah?
19 A I have a son from my first marriage.
20 Q And is that Derek Murray?
21 A Yes, sir.
22 Q And his date of birth is 11-24-98?
23 A Yes.
24 Q And then you have two daughters?
25 A Yes.

1 Q And that's Kendall Murray?
2 A Yeah.
3 Q She's June 10, 2002?
4 A Yes.
5 Q And Harper Mary Murray?
6 A Yeah.
7 Q She is February 24, 2005?
8 A Yes.
9 Q And do Kendall and Harper live with you?
10 A Yes, they do.
11 Q And do you pay support on Derek?
12 A Yes, I do.
13 Q Is that court ordered?
14 A Yes, it is.
15 Q All right. Are you currently employed?
16 A Yes.
17 Q By the City of Ann Arbor?
18 A Yes, sir.
19 Q What do you do for the City of Ann Arbor?
20 A I'm a patrol officer but, since the incident where I
21 have lung issues, they have moved me to the Detective
22 Bureau.
23 Q And are you currently working?
24 A I'm off right now due to medical issues.
25 Q Okay. And my understanding is that around January 31st

1 was your last day of work?

2 A Yeah.

3 MR. FELDMAN: I don't mind you leading the
4 witness on foundational issues.

5 MR. OTIS: I won't do anything further.

6 Q (BY MR. OTIS) Mr. Murray, where were you raised?

7 A Cincinnati, Ohio.

8 Q Okay. And did you live with your parents?

9 A Yes, I did.

10 Q Did either of your parents smoke?

11 A They did not smoke.

12 Q The house you grew up in, did anybody smoke?

13 A No.

14 Q And where did you go to high school?

15 A A school called Muller High School.

16 Q Cincinnati Muller High School?

17 A Yeah.

18 Q Famous. And did you play any athletics there?

19 A I played basketball and football.

20 Q And, when you were growing up in high school years, was
21 athletics an important part of your life?

22 A Yes.

23 Q Were you active in athletic-type endeavors?

24 A Year round.

25 Q And how do you happen to be in Ann Arbor?

1 A I was given a football scholarship to go to Michigan.
2 Q So you came up to Ann Arbor on a football scholarship?
3 A Yeah.
4 Q When was that?
5 A '85.
6 Q 1985. And, going back to where you lived in
7 Cincinnati, can you describe the neighborhood you grew
8 up in?
9 A A middle -- middle class neighborhood.
10 Q Were you around any industrial areas?
11 A No, there was no industrial factories, there was just
12 houses and just schools.
13 Q And how was your parents' health? Were they healthy?
14 Were they sickly?
15 A My mom never got sick. My dad just, I'd say six years
16 ago, was diagnosed with -- I want to say prostate
17 cancer.
18 Q Were there any lung issues in your family background
19 that you're aware of?
20 A No, sir.
21 Q No pulmonary problems?
22 A No, sir.
23 Q No problems with cancer other than your father's
24 prostate cancer?

25 MR. FELDMAN: To the extent of the witness'

1 knowledge.

2 MR. OTIS: Sure.

3 THE WITNESS: That's it.

4 Q (BY MR. OTIS) That's the only cancer that you're aware
5 of?

6 A Yeah.

7 Q But was there any pulmonary problems?

8 A No.

9 Q Anybody have any lung problems?

10 A No.

11 Q So you came to Ann Arbor to go to the University of
12 Michigan?

13 A Correct.

14 Q Did you matriculate through and graduate from the
15 University of Michigan?

16 A Yes, I did.

17 Q Did you play football for the University of Michigan's
18 football team?

19 A Yes, I did.

20 Q Did you have any problems with your lungs or injuries
21 to your chest during --

22 A No, sir.

23 Q -- your football days?

24 A No.

25 Q When you were in high school or in college, did you

1 hang around or live with people that smoked?

2 A No.

3 Q Did you have an aversion to smoke, meaning you didn't
4 like to be around smoke?

5 A I didn't smoke, I don't like smoke.

6 Q Were you ever in a situation during college or high
7 school where you were regularly exposed to secondhand
8 smoke?

9 A I kept myself away from smoke.

10 THE REPORTER: I'm sorry.

11 THE WITNESS: I kept myself away from smoke.
12 I'd leave.

13 Q (BY MR. OTIS) After graduation from college, did you
14 get a job?

15 A Yes, I did.

16 Q What was your first job out of college?

17 A Hired by the City of Ann Arbor to be a police officer.

18 Q So is that your only full-time employment from the time
19 you graduated from college until now?

20 A Yes.

21 Q I --

22 A Yes.

23 Q Yes. And have you had or had any other employment,
24 concurrent employment?

25 A I had a part-time job for about four or five years

1 working at the -- the police academy as the head PT
2 instructor.

3 Q PT being physical training?

4 A Physical training.

5 Q All right. Since you've been working for the City of
6 Ann Arbor, has the Police Department been in the same
7 place?

8 A Yes.

9 Q Where is that?

10 A 100 North Fifth Avenue.

11 Q And is that a building that houses more than the Police
12 Department or --

13 A It houses basically the entire city, budget/payroll,
14 Water Department, the Police Department, Detective
15 Bureau. It pretty much was -- everything was in one
16 building. So...

17 Q What portion of the building is the Police Department
18 in?

19 A Two floors. The basement, which is the Detective
20 Bureau property, the second floor where briefing is and
21 things like that, also the locker room is in the
22 basement too.

23 Q What shift did you normally work as an Ann Arbor
24 policeman?

25 A I worked -- I worked midnights.

1 Q And what time does the midnight shift start?

2 A It was 11 p.m. to seven a.m.

3 Q And would you have a regular arrival time for your
4 work?

5 A I had -- I had a routine.

6 Q Okay. What is that routine?

7 A Briefing started at 11. I'd always get to work about
8 an hour before a briefing, the reason being the big
9 joke with me is he lives three blocks away from City
10 Hall, but he comes to work an hour early. So they
11 would always give me a hard time. I'd get -- I'd do my
12 routine, get dressed. By that time it was time to come
13 upstairs and get dressed for -- I'm already dressed for
14 roll call. We'd have roll call, which would take us
15 from 11 till 11:30; and then, after roll call was over,
16 you know, we -- you know, they'd have you check your
17 e-mails before you went back on the road -- or went on
18 the road. So, after that, check the e-mail, call-in
19 service, and go to work.

20 Q And when you say, "go to work," you mean go out?

21 A Answer calls, yes.

22 Q And then that's an eight-hour shift?

23 A It's an eight-hour -- eight-hour shift. You know, we
24 would, throughout the night, or I would throughout the
25 night, you know, you come in, you've got to do reports

1 or, if you have an arrest, a lunch break, your
2 20-minute break. Sometimes you have to go to the
3 bathroom and take care of business. So I mean you were
4 in and out of the building a lot.

5 Q Okay. So, when you would come back for lunch --

6 A Yes.

7 Q -- you would come back to the Police Department?

8 A Yes, sir.

9 Q Sometimes you would come back to go to the bathroom,
10 you would come back to the Police Department. When you
11 arrest someone, you bring them back to the Police
12 Department. You talked about these breaks --

13 A Yeah.

14 Q -- that you would do those at the Police Department?

15 A Yes.

16 Q Okay. And when you would come to work initially this
17 hour beforehand, where would you go in the Police
18 Department?

19 A In the basement.

20 Q You said there's a locker room in there?

21 A Yes, sir.

22 Q So, when you would come to work, you were dressed in
23 civilian clothes, if you were; and you would change
24 into a uniform?

25 A I would come to work with my work pants only on. I

1 didn't like coming to work fully dressed, so I'd come
2 to work with my work boots, my pants, I'd go in the
3 basement and get dressed fully.

4 Q So, if you come in normally an hour before your shift
5 starts, where would you spend most of that hour?

6 A In the basement about 20 to -- 20 to 11.

7 Q Okay. And the briefing was not in the basement?

8 A Correct.

9 Q Okay. That was in a room on , like, a first --

10 A Second floor.

11 Q -- second? Do you identify the floors in the Police
12 Department as basement, first floor, second floor --

13 A Yeah.

14 Q -- or basement --

15 A Basement, first floor.

16 Q Okay. And so the briefing room was two floors above
17 the basement?

18 A No, the basement is in the basement.

19 Q Mm-hmm.

20 A And then you'd go up the first flight of steps, and
21 that's considered the first floor.

22 Q Okay. And is that where the briefing room is?

23 A Yes.

24 Q Okay. And, when you brought someone in for an arrest,
25 what -- where would you take them?

1 A We would bring them in through the sally port and
2 security, and that was already on the first floor.
3 Q Okay.
4 A And bring them in the security and, you know, depended
5 on if you are with a partner or by yourself, you'd have
6 to go get the boss and tell him you've got an arrest;
7 but then you'd stay in security.
8 Q When you would come for lunch break, where would you go
9 in the Police Department?
10 A The briefing room.
11 Q All right. And the break?
12 A Briefing room.
13 Q And, if you came back to use the bathroom facilities?
14 A Basement.
15 Q Basement. Were your patrol duties centered around a
16 patrol car as opposed to a walking or a riding a
17 bicycle or anything else?
18 A Patrol cars.
19 Q Okay. And do you normally have a partner?
20 A Yes.
21 Q Okay. Have there been occasions during your tenure
22 with the Ann Arbor Police where the partner smoked?
23 A No.
24 Q So you never rode around with a smoking partner?
25 A Oh, no.

1 Q Were there occasions where you would be assigned a car
2 where someone else had been smoking in it?

3 A Yes.

4 Q And how frequently was that?

5 A Once every three or four months.

6 Q Is there a policy in the Ann Arbor Police Department
7 about smoking in cars?

8 A There's no --

9 MR. FELDMAN: Foundation, but you can a
10 answer.

11 THE WITNESS: Sorry?

12 MR. FELDMAN: I just made my objection, but
13 you can answer.

14 THE WITNESS: I'm sorry.

15 Q (BY MR. OTIS) So what's the policy regarding smoking?

16 A You're not allowed to smoke in cars.

17 Q Has that been true the whole time you worked there?

18 A No, I don't believe so.

19 Q Okay. So that's a newer policy at the Ann Arbor
20 Police?

21 MR. FELDMAN: Again, objection, foundation.
22 What does "newer" mean and when?

23 Q (BY MR. OTIS) Do you know how long it's been that
24 there's been no smoking in police cars?

25 A I'd say about maybe nine years now. I'm not sure.

1 Q Has there been a time where you developed problems with
2 your lungs?

3 A Yes.

4 Q When did that occur?

5 A Around October of 2008.

6 Q And what occurred that made you feel you had a problem?

7 MR. FELDMAN: You're asking him about
8 symptoms rather --

9 MR. OTIS: Yes.

10 MR. FELDMAN: Okay.

11 MR. OTIS: Mm-hmm.

12 THE WITNESS: I would work out, and I'd be on
13 the treadmill, and I would struggle breathing. I mean
14 I couldn't run a lap. And I was just like, "God dog,
15 what is wrong with me? I'm out of shape." So, you
16 know, I just tried the to gut it through. You know, I
17 just -- I'd play with pain. So I kept going and kept
18 going and just -- I just wasn't making it. So I'd get
19 home at night sometimes from work, and I'd wake up, and
20 my left chest is just killing me. I couldn't breathe.
21 So finally I called my doctor.

22 Q (BY MR. OTIS) Who is that?

23 A Carl Brenner. And I'd say, "Something is wrong with
24 me." I said, "I don't feel well, I'm having trouble
25 breathing." So he said, "Well, come in, come see me."

1 So I go see him, and he -- I told him, I said, "Maybe I
2 pulled a muscle in my stomach or something that's
3 causing me not to breathe." He says, "Well, Vada,
4 let's give it a week. You know, rest, don't work out,
5 let's give it a week." So not even a week goes by, it
6 was like two or three days. I said, "Dude, something
7 is wrong." So he -- he told me to come in, and he gave
8 me an order to go over to St. Joe to get, like, a scan,
9 a CT scan, I think.

10 Q St. Joe the hospital?

11 A Yeah. And so he gave me a -- let me back up. The
12 first thing he did was he ordered an ultrasound. And
13 the ultrasound showed nothing. And then he said, "All
14 right, let's -- let's do a CT scan." So we do a CT
15 scan; and I don't know, you know, a week later my phone
16 rings and I see -- I see his name on the caller ID; and
17 I say, "Shit." And I said, "This ain't good, is it?"
18 He says, "No." And that's when he said -- this ain't
19 fair, this ain't fair. It's not fair. (Whereupon the
20 witness cries.) He says there's -- "Looks like there's
21 a mass on your heart." He said, "I need you to come
22 pick up the disk and get over to St. Joe." Well, I go
23 to St. Joe, and they're waiting for me. And so they
24 keep me overnight, and they do some other scans, and
25 the doctor says, "I think that we're going to need

1 surgery," you know, just -- the mass. And so we --
2 they schedule surgery. Do you want me to go on or
3 stop? Thanks.

4 Q What doctor did you see? Who was the surgeon?

5 A Her name is -- she just got married so -- but her name
6 was Vita Sullivan. Vita Sullivan. Vita, right? She
7 can't talk, forgot. Vita Sullivan. So she met with me
8 and my wife, and she explained what she was going to
9 do. She would go in, take it out, test it; and she was
10 pretty confident that, due to my background, my health,
11 this is a cakewalk. So they cut me open and, from what
12 my wife said, they were no longer in my chest a half an
13 hour; and, when I came through, she told me I had
14 cancer. I'm like, "Cancer? What the fuck you mean
15 cancer?" You know? She said, "You have -- you have
16 what's called adenoma-carcinoma.

17 THE REPORTER: You have? It's called what?

18 THE WITNESS: It's called adenoma-carcinoma.
19 And she said they found pre-cancer cells -- does that
20 sound right? -- throughout my chest, my pleura. And
21 that's what it was.

22 Q (BY MR. OTIS) And so Dr. Sullivan was the surger --
23 surgeon?

24 A Yes, yeah.

25 Q And then did you get referred to other physicians?

1 A Coach Carr came to see me and said that -- you know, he
2 said, "You're out of here. You're going to U of M."
3 And he hooked me up with a -- he set things up with the
4 head oncologist at U of M.

5 Q So you -- you went then to the University of Michigan?

6 A Went to U of M, went through chemo, chemo; and I don't
7 know how long. Maybe a year or less I was at U of M.
8 Things were going well, and then things -- the cancer
9 started to grow. And they were trying to find the
10 right combination to get it under -- get it under --
11 get it under control. So in the meantime -- I'm sorry.

12 Q That's all right, we can stop.

13 A It ain't fuckin' fair. You know, this is going to get
14 real kind of fuzzy because I'm losing my train of
15 thought. My doctor at U of M, his name is Gregory
16 Kalemkerian. He happens to be good friends with a
17 Karmanos oncologist named Gadgeel. And what happened
18 was a new clinical trial came out through Dana --
19 Dana-Farber up in Boston. And the key -- the key was
20 that you had to have a certain tissue mutation in your
21 body to apply for this clinical trial. And you only
22 had a five percent chance of having this tissue. So
23 they thought I -- they thought I had qualified for it.
24 Well, sure enough, I have the tissue, which is good.
25 And so they got me in this clinical trial, things were

1 going great, and then the pills just stopped -- my body
2 stopped reacting to the pills. And so now I got out of
3 the clinical trial --

4 Q This is recently that you --

5 A Recently.

6 Q -- that it stopped working and you were --

7 A Yeah.

8 Q -- taken out of the trial?

9 A Yeah.

10 Q Was that -- well, how recently was that?

11 A I'd say four weeks ago.

12 Q Okay.

13 A So we -- Dana-Farber requested another tissue sample
14 from me, it's in Boston right now; and they want to
15 test my tissue because they -- they want to know why --
16 they said, "You're the prime candidate." They want to
17 know why, what the hell's going on. So Dana-Farber
18 wants to test my tissue, along with some other
19 medications that they think will -- will save me.

20 Q Have you had any further clinical tests, X-rays, CAT
21 scans, CT scans, MRI scans?

22 A I had one today.

23 Q And have you become aware that the cancer's spread?

24 A Yeah. Well, I have -- I have -- I have one in my L3,
25 my back; and then they found two small, small lesions

1 on both sides of my head.

2 Q In your brain?

3 A Brain, yeah. Ain't nothing up there anyway.

4 Q So who's in charge of your treatment now? Dana-Farber?

5 A Honestly, I don't know.

6 Q Dana-Farber is a hospital, a cancer center?

7 A Yes, yeah.

8 Q It's not a person, it's a center?

9 A Yeah. I would say there's two people in charge of my
10 treatment, Dr. Kalemkerian at U of M and Dr. Gadgeel at
11 Karmanos. They consistently communicate back and
12 forth.

13 Q The places you've actually been for treatment for
14 cancer, St. Joe's Hospital, University of Michigan
15 Medical Center, Karmanos?

16 A And -- and we flew down to M.D. Anderson in Houston for
17 an opinion.

18 Q When did you go to M.D. Anderson?

19 A I don't know.

20 Q Last year?

21 A Two years ago.

22 Q Okay. And then Dr. Brenner, does he still see you?

23 A No.

24 Q Your family doctor?

25 A He's still my family doctor, yeah.

1 Q Okay. Did you used to go to him on a regular basis for
2 annual physicals?

3 A Yes.

4 Q Since you've been up in Ann Arbor?

5 A Yeah.

6 Q Okay. After you were out of the University of Michigan
7 and not playing intercollegiate athletics, did you
8 continue to exercise?

9 A Yes, sir.

10 Q Physical activity remained a big part of your life?

11 A Yes, sir.

12 Q All right. Are you looking for something? You need
13 something?

14 A My water. I'm getting cotton mouth. Sorry.

15 Q At any time from now back to as long as you can
16 remember, have you ever had any exposure to smoking?

17 A No.

18 Q Any exposure to industrial pollutants in close at hand?

19 MR. FELDMAN: And I'll only object to the
20 extent that the witness can tell us what he believes.
21 What medical knowledge is and what conclusions can be
22 drawn from various tests and test results we leave to
23 the experts.

24 Q (BY MR. OTIS) Are you aware of what radon -- radon gas
25 is?

1 A I can't give you a definition of it, but I know it's
2 not good.

3 Q Right. Are you aware of anything that would indicate
4 you were exposed to radon gas when you were a child?

5 A No.

6 MR. FELDMAN: And I'm going to object to any
7 testimony with regard to alleged exposure to radon gas
8 as regards his employment with the City of Ann Arbor
9 based on foundation and based on any -- there -- we've
10 got no medical opinion from any physician suggesting
11 there was sufficient exposure and that there's no proof
12 that there is -- there was any significant exposure.
13 For those reasons, I'll move to strike any references
14 with regard to the city or his employment with the
15 city. Ask for a continuing objection so I don't have
16 to interrupt.

17 MR. OTIS: You have that.

18 Q (BY MR. OTIS) Are you aware of any exposure or radon
19 problem in any house or apartment that you lived at?

20 A No.

21 MR. FELDMAN: And, again, foundation.

22 Q (BY MR. OTIS) How long have you lived in this house?

23 A Ten years.

24 Q And have you actually had this tested for radon, this
25 house?

1 A Yes.

2 Q And was that test negative or positive?

3 MR. FELDMAN: Foundation.

4 THE WITNESS: It was fine.

5 Q (BY MR. OTIS) And how about asbestos? As a child,
6 were you aware of any exposure to asbestos?

7 MR. FELDMAN: Can I have the same
8 objections --

9 MR. OTIS: Sure.

10 MR. FELDMAN: -- I previously made --

11 MR. OTIS: Sure.

12 MR. FELDMAN: -- with regard to radon, in
13 regard to asbestos, and they be continuing?

14 MR. OTIS: Sure.

15 Q (BY MR. OTIS) As a child, are you aware of any
16 exposure to asbestos?

17 A No.

18 Q Are you aware of any exposure to asbestos in any house
19 you've lived in up until now?

20 A No.

21 Q Okay. Describe the Ann Arbor Police Department
22 basement for us. Is it a nicely finished-off place?
23 Is it a new, up-to-date facility?

24 MR. FELDMAN: Objection, relevance.

25 You can answer.

1 THE WITNESS: You go down the concrete
2 stairs, concrete walls, the ceiling is tile.
3 Q (BY MR. OTIS) Acoustic tile?
4 A Like the tile -- you know the tiles you can move?
5 Q Yeah.
6 A Little square ones. Most of them were wet due to
7 leakage from the ceiling.
8 Q Now when you say, "wet," and you're not talking about
9 stain from water in the past, you're talking about
10 still wet?
11 A I'm talking about both.
12 Q Mm-hmm.
13 A You could -- some guys used to get so mad because, you
14 know, stuff was leaking on them. They'd take their
15 nightsticks and jab it, and it would just come
16 crumbling down. Water dripping down the wall. There's
17 pipes with stuff around them that you wouldn't --
18 wouldn't want to touch. You can tell it's not good.
19 Q Well, when you say you don't want to touch it, why?
20 Does it look bad?
21 A They're green.
22 Q Okay.
23 A It's green. Green, yellow, all that stuff. You know,
24 and I mean you can -- you can see where water was
25 dripping, then you come back the next day, you can see

1 how it dried up. There's always busted tiles in the
2 locker room.

3 Q Is that only in the basement that it's that bad?

4 A That bad.

5 MR. FELDMAN: Again, I'm going to object to
6 the term "that bad."

7 MR. OTIS: Oh, I'm sorry. It was "that nice"
8 would you prefer?

9 MR. FELDMAN: There's no foundation for that,
10 and we'll let the magistrate make his determination as
11 -- or her determination as to whether it's even
12 significant, let alone whether it's good or bad.

13 THE WITNESS: The basement is the worst.

14 Q (BY MR. OTIS) Okay. And what about the first floor in
15 the Police Department?

16 A Water was leaking from the ceiling too. There were
17 times where you'd come in, and there's eight or nine
18 buckets throughout the floor catching water.

19 Q Was this a true description of the Police Department
20 from the time you started?

21 A Yes.

22 Q Have they ever fixed it?

23 A Well, it was my understanding that there were
24 50-something buckets in the ceiling to catch the water.
25 You know, you can't take a -- I guess best way to put

1 it, you can't take 25 bucks and try and fix a \$100,000
2 ceiling.

3 Q When you last worked, did you go in the basement of the
4 Police Department?

5 A The last time I worked?

6 Q Well, when -- during that period of time up to your
7 last day of work, would you go into the basement still?

8 MR. FELDMAN: His last day of work was a
9 month ago.

10 MR. OTIS: I know.

11 MR. FELDMAN: Okay.

12 THE WITNESS: I didn't go in the basement.

13 Q (BY MR. OTIS) Okay. When did you stop going in the
14 basement?

15 A When I got out of the hospital back in '08, the chief
16 told me I'm -- I'm ordered not to go in the basement.

17 Q So the basement was off limits after '08 to you?

18 A Yep.

19 Q All right. So any work that you did in the -- for the
20 Police Department would be in the first floor or on the
21 road?

22 MR. FELDMAN: And of course I'd make a
23 hearsay objection to anything the chief allegedly said,
24 that I couldn't get it in before you asked the next
25 question, and move to strike that.

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THE WITNESS: Repeat it.

Q (BY MR. OTIS) After you stopped going in the basement,
any exposure to the Police Department would either be
on the first floor or the police cars?

A Right.

Q Okay. Now, you'd said -- I don't remember whether you
testified to this or you told me otherwise, but you
were working in the Detective Bureau --

A Yeah.

Q -- after a certain point?

A Yeah.

Q So you weren't a uniformed road patrol officer?

A No.

Q When did you go to work for the Detective Bureau?

A Two years ago.

Q And then you would have an office on the first floor,
and that's where you would work out of?

A Well, we were actually working out of U of M Public
Safety. We weren't -- we weren't even in the City
Hall.

Q Okay.

A So, when I came back to work, I was at U of M Public
Safety Building. They shift -- they moved all the
detectives over there because of the construction.

Q What construction is that?

1 A The new building they got, and they were gutting it.
2 Q But not the Police Department?
3 A Right.
4 Q Okay. Are you off work as of January or February 1st
5 due to medical issues?
6 A I'm off work now due to medical issues.
7 Q And -- but you're still on the payroll --
8 A Yes.
9 Q -- of the Police Department? Would you go in the
10 basement every day before you were assigned to the
11 Detective Bureau that you were working?
12 A When I was a patrolman?
13 Q Yes.
14 A Yes.
15 Q And you gave us times, but approximately how much time
16 per -- in minutes or hours per day would you be in the
17 basement of the Ann Arbor police building?
18 A On an average day or just --
19 Q Yes, mm-hmm.
20 A I spent an hour and-a-half in the basement every night
21 getting dressed, going to the bathroom, getting
22 paperwork. You know, you're asking me the total number
23 of hours?
24 Q No, an hour and-a-half days are fine.
25 A I'd say two, two and-a-half hours.

1 Q When you leave work, when you punch out, is it a
2 reverse?
3 A Yep.
4 Q So you go back into the basement?
5 A Yes, sir.
6 Q And disrobe to a certain degree?
7 A Yep.
8 Q And was there any hanging around, interaction with your
9 pals and --
10 A There were some practical jokes going on.
11 THE REPORTER: There was some what?
12 THE WITNESS: Practical jokes. You know.
13 THE REPORTER: Oh, okay.
14 Q (BY MR. OTIS) So it wasn't simply that you would come
15 back into the station, change quickly, and leave?
16 A No, no.
17 Q And that went on right up until the time you went into
18 the hospital in 2008?
19 A (The witness nods his head.)
20 Q I'm not sure if I asked, but when did you start working
21 for the City of Ann Arbor?
22 A December of '90.
23 Q '90?
24 A '90 or... Yeah, '91, '91.
25 MR. FELDMAN: At least that's what you told

1 Dr. Franzblau.

2 Q (BY MR. OTIS) And I have on my application for
3 hearing --

4 THE WITNESS: I can breathe.

5 THE REPORTER: Wait, one at a time.

6 Q (BY MR. OTIS) I have on my application for hearing
7 February of 1991, but when did you graduate?

8 A December, December of '90.

9 Q And it was a few months after that that you started
10 with the --

11 A Yeah. I --

12 Q -- City of Ann Arbor?

13 A Yeah.

14 MR. OTIS: I don't have any other questions
15 of Mr. Murray.

16 CROSS-EXAMINATION

17 BY MR. FELDMAN:

18 Q All right, Mr. Murray. As you know, I represent the
19 City of Ann Arbor; and I'm now going to ask you just a
20 few questions. Before this deposition began, as you'll
21 recall, I met with your attorney, Mr. Otis, and
22 provided him with copies of three pages of the report
23 of Dr. Franzblau. Do you recall you and your wife had
24 the opportunity to meet with and talk to Dr. Franzblau?

25 A Yes, sir.

1 Q And you are aware that he did write a report, render an
2 opinion in this case. You're aware of that as well,
3 correct?

4 A Yes, sir.

5 Q Okay. Now, before he rendered his opinion in this
6 case, he met with you and your wife, and he asked you a
7 series of questions, and you provided him with
8 responses to those questions, correct?

9 A Yes, sir.

10 Q Okay. And, when you met with him, whatever question he
11 asked you, you gave him the appropriate, honest
12 straightforward answer, correct?

13 A Yes, sir.

14 Q Okay. Now, before the deposition I asked Mr. Otis to
15 have you and your wife read Pages 6, 7, and 8, that is
16 that portion of Dr. Franzblau's report in light of a
17 single question, okay? Is the information that you
18 provided to Dr. Franzblau as reflected on Pages 6, 7,
19 and 8 of his report the truth; and is it consistent
20 with what you told him; and is it consistent with what
21 you testified here to today?

22 A Yes, sir.

23 Q Okay. So the information you've testified here today
24 with regard to your experience with the Police
25 Department and your general life history, what you gave

1 Dr. Franzblau is consistent with what you testified to
2 today, correct?

3 A Yes, sir.

4 Q Okay. The information that he had as reflected on
5 Pages 6, 7, and 8 of his report then would be the right
6 information or the correct information for him to use
7 to form opinions regarding your condition, correct?

8 A Yes, sir.

9 Q Okay. A couple of questions with regard to that.

10 MR. FELDMAN: And at this point, Mr. Otis,
11 I'm going to offer this three-page document as
12 Defendant's Exhibit A based on your witness's
13 testimony. That is Pages 6, 7, and 8 only with regard
14 to that portion which reflects the interview.
15 Obviously I intend ultimately to introduce
16 Dr. Franzblau's complete report through his testimony.

17 Q (BY MR. FELDMAN) All right. Now, Mr. Murray, I'm
18 going to draw your attention to -- and I know you've
19 been sitting here a while and answering a bunch of
20 questions; so let's take our time, make sure that you
21 have time to review this. I'm showing you Page 2 of
22 Dr. -- strike that. I'm showing you Page 7 of
23 Dr. Franzblau's report. You should give this to
24 Mrs. Murray so she can follow along. All right. And
25 he says you told him you spent about seven or eight --

1 on average about seven or eight hours per week in the
2 basement of City Hall. That's true, right?

3 A Mm-hmm.

4 Q Okay. All right. Now, I do not see anywhere in these
5 three pages, unless I am missing it, Defendant's
6 Exhibit A, that you told him anything about the
7 ceilings in either the basement or the first floor.
8 Can you look through this and, Mrs. Murray, I know that
9 you've looked through it as well. I don't see anything
10 with regard to that. Am I missing it, or do you recall
11 whether he either asked you or whether you told him?

12 A I don't remember him asking me. He may have asked me.

13 Q Okay.

14 A But which page do you want me to read?

15 Q It looks like it would probably be on Page 7, which is
16 that portion where you're describing your situation at
17 the Police Department.

18 A It's not in there.

19 Q It's not in there?

20 A Right.

21 Q All right. But that's probably because he didn't ask
22 you or for some reason you didn't recall that as a
23 significant fact at the time?

24 A To the best of my recollection, I don't know -- I can't
25 remember if he asked me that or not.

1 Q But certainly, even without that information,
2 everything else in this three-page document,
3 particularly on the bottom of Page 6 and the balance of
4 Page 7, is a completely accurate description of your
5 recollection of your time in the police building and
6 where you spent it and what you did, et cetera,
7 correct?

8 A Yes, sir.

9 Q Okay. All right. Now, since your initial diagnosis,
10 you've been able to work as a police officer, whether
11 it be a patrol officer or as a director for --

12 MR. OTIS: Detective.

13 Q (BY MR. FELDMAN) -- a detective for a significant
14 period of time, correct?

15 A Yeah.

16 Q And the City has always made work available for you
17 when you can do it, correct?

18 A Correct.

19 Q And certainly, if you are able to perform any of those
20 duties, you know that there's a position available for
21 you, correct?

22 A I would hope so.

23 Q Yeah. Well, there is. And the City has been -- poor
24 choice of words, I can't think of a better one -- as
25 cooperative as it can be in assisting you,

1 understanding your --

2 A One hundred percent --

3 (Overlapping speaking.)

4 Q -- medical situation in returning you to work and
5 making sure that --

6 A Absolutely.

7 Q Okay. You understand that the City is denying that
8 there's any relationship between your condition and
9 your employment --

10 A I understand.

11 Q -- but, to the extent of non-work-related benefits,
12 making work available, providing you with any benefits
13 that they can, would you agree that they've gone out of
14 their way to do everything they can for you?

15 A They're very accommodating.

16 MR. OTIS: That was the word you were looking
17 for.

18 MR. FELDMAN: Indeed.

19 Q (BY MR. FELDMAN) Okay. Now, with regard to these
20 tiles, I guess I have to ask about this in the ceiling.
21 You never were asked to clean them up, correct?

22 A No.

23 Q Okay. You were never asked to take them down?

24 A No.

25 Q You were never asked to put them up?

1 A No.

2 Q Okay. You were never asked to put buckets underneath
3 them or remove the buckets, correct?

4 A Correct.

5 Q Okay. All right. And you had never had any exposure
6 to that water to the extent that you had to wash in it,
7 hold it, dump the buckets, or anything else?

8 A No.

9 Q Okay. All right. Not to belabor the point. I'm on
10 Page 8 of Dr. Franzblau's report. In his number four
11 he says that, when you were in the PAL program, you
12 reported spending half of each shift in the basement,
13 half in the community. Dr. Franzblau assumed that your
14 exposure while in the community was a mixture of indoor
15 and outdoor exposures. Was that a reasonable
16 assumption?

17 A Yes.

18 Q Okay. All right. In number six Dr. Franzblau
19 indicated you told him, when you were a police officer,
20 you served as a road patrolman and half your time was
21 spent out on patrol; is that correct?

22 A Yes.

23 Q Okay. All right. May I draw your attention to Page 7
24 of Dr. Franzblau's report. Just trying to confirm that
25 your recollection now is the same as it was then. He

1 says you told him during your shift you would
2 intermittently return to City Hall to file reports
3 after calls were completed. The frequency varied, but
4 this might happen three or four times a week, and that
5 each report might vary from 30 minutes to up to 2 and 3
6 hours. Again, is that your recollection?

7 A Yeah.

8 Q That was accurate when you told him? Okay. All right.
9 Again, prior to the deposition, you had a chance to
10 look at this, three portions of Dr. Franzblau's report.
11 Is there anything about what he reported you and your
12 wife told him that is any different than you recollect
13 telling him?

14 A Not to my knowledge.

15 MR. FELDMAN: Okay. All right, I don't think
16 I have any further questions at this point.

17 REDIRECT EXAMINATION

18 BY MR. OTIS:

19 Q Mr. Murray, just so it's clear, you have confirmed to
20 Mr. Feldman that what is contained in Dr. Franzblau's
21 description is correct; but you have added some things
22 when we were talking --

23 A Right.

24 Q -- in your testimony. And that's not to say that those
25 are not true --

1 A Right.

2 Q -- just that they weren't brought up during
3 Dr. Franzblau's interview?

4 A Conversation, yeah.

5 RECROSS-EXAMINATION

6 BY MR. FELDMAN:

7 Q Okay. Well, not to belabor the point, it appears to
8 me, Mr. Murray, that you've only added one thing, and
9 that is these -- this -- these allegations with regard
10 to the ceiling in the basement and on the first floor.
11 Not to belabor the point; but, if you compare what
12 Dr. Franzblau wrote down you told him with what you've
13 testified to here today, do you have any recollection?
14 Is the only thing that's different your testimony with
15 regard to the ceiling of the basement on the first
16 floor?

17 A Break that down.

18 Q Sure. Mr. Otis just asked you a question, what you
19 told Dr. Franzblau was true, plus you've added some
20 things today.

21 A Okay.

22 Q I'm not sure you've added some things. I think the
23 only thing you've testified to that is any way in
24 addition to what Dr. Franzblau knew was this
25 information with regard to the ceiling in the basement

1 on the first floor. Can you recall anything else that
2 you've testified to today that you think is in addition
3 to what Dr. Franzblau says in his report?

4 A Okay.

5 Q I know it's a long question and please --

6 A No, it's a long --

7 Q -- feel free to look at that if you would like.

8 A That was a long time ago.

9 Q I understand. He saw you in January of 2010. Yeah,
10 it's primarily Page 7.

11 A Yeah, I just caught on to that. Nothing.

12 Q Nothing, correct?

13 A Right.

14 MR. FELDMAN: Okay, I don't have any
15 additional questions. Thank you.

16 MR. OTIS: I don't have any other questions.

17 MR. FELDMAN: Okay.

18 THE VIDEOGRAPHER: This deposition is
19 concluded at 2:47 p.m.

20 (At 2:49 p.m. - Off the record.)

21 (At 2:50 p.m. - Proceedings resume.)

22 THE VIDEOGRAPHER: We are going back on the
23 record at 2 -- 2:49 p.m.

24 REDIRECT EXAMINATION

25 BY MR. OTIS:

1 Q Okay. Mr. Murray, I explained to you why we're taking
2 your deposition?

3 A Okay.

4 Q And you understand that I'm doing it to preserve your
5 testimony?

6 A Correct.

7 Q That there has been information adduced that you are at
8 risk of death?

9 A Yes.

10 Q And that you may not be available at the time of the
11 trial in this matter?

12 A Yes.

13 Q And so we're preserving your testimony so you can
14 appear through this deposition?

15 A Yes.

16 Q And that was your understanding also?

17 A Yes.

18 MR. OTIS: Okay.

19 MR. FELDMAN: I'd just indicate for the
20 record I don't have any of that information and, thus,
21 while Mr. Otis has made these statements and the
22 witness had agreed -- has agreed, I am not agreeing to
23 any of those statements, merely acknowledging that
24 Mr. Otis made them.

25 Q (BY MR. OTIS) And just for additional information,

1 your employer is aware of your status medically, is he
2 not?

3 A Yes, they are.

4 Q All right.

5 MR. FELDMAN: Again, objection, foundation,
6 whatever.

7 MR. OTIS: I don't have any other questions.
8 Thanks.

9 MR. FELDMAN: Okay. I have no questions,
10 thank you.

11 THE VIDEOGRAPHER: This deposition is
12 concluded at 2:50 p.m.

13 (At 2:51 p.m. - Deposition concluded.)

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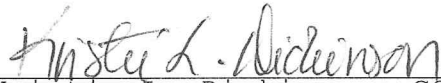
1 STATE OF MICHIGAN)
2)
3 COUNTY OF INGHAM)

4 I certify that this transcript, consisting of
5 47 pages, is a complete, true and correct record of the
6 testimony of VADA MURRAY, held in this case on March 3,
7 2011.

8 I also certify that, prior to taking this
9 deposition, VADA MURRAY was duly sworn to tell the truth.

10 I also certify that I am not a relative or
11 employee of or an attorney for a party; or a relative or
12 employee of an attorney for a party; or financially
13 interested in the action.

14
15 March 11, 2011



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