



Vol. 14 No. 8

May 19, 2006

BILKED ASBESTOS PLAINTIFFS SUE FLORIDA BAR ASSOCIATION

by
John Stadler

Numerous litigation abuses have been associated with the “elephantine mass” of asbestos lawsuits that have inundated the federal and state courts over the past several decades. Those abuses, especially in the form of litigation-driven mass medical screenings and “manufactured for money” diagnoses, were methodically exposed by Judge Janis Graham Jack in her decision last year in *In Re Silica Products Liability Litig.*, 2005 WL 1593936 (S.D. Tex.). Judge Jack found that, as a consequence of medical fraud and plaintiff attorneys’ “micro-management of the diagnostic process,” a substantial number of persons filing asbestos claims have been misdiagnosed with asbestos or silica-related lung injuries or, incredibly, both. Medical audits conducted over the past few years by various asbestos bankruptcy trusts have also revealed rampant erroneous, and possibly fraudulent, diagnoses in asbestos claim submissions. See Roger Parloff, *Mass Tort Medicine Men*, AMERICAN LAWYER, Jan. 2003 at 98. One of the unfortunate but least publicized effects of such litigation abuse is that many plaintiffs participating in x-ray screenings may become unnecessarily alarmed when told that they have a serious asbestos-related illnesses when no such conditions exist. See *Beware the B-Readers*, WALL ST. J., Jan. 23, 2006, at A14.

It now appears that unscrupulous litigation practices may have gone beyond front-end intake of screening-generated clients to back-end handling of settlement payments. The latter is the focus of a class action recently filed in Florida federal court on behalf of some 4,000 people for whom Miami plaintiff lawyer Louis Robles had filed asbestos lawsuits, had received settlement payments from defendants, but then allegedly never paid plaintiffs any of the settlement proceeds before he filed for bankruptcy and was disbarred for misappropriating clients’ settlement funds. See *Alexander v. The Florida Bar*, No. 06-20046 (U.S.D.C., S.D. Fla., filed Jan. 10, 2006). The class action was brought against the Florida Bar Association after it refused the class plaintiffs’ claims for restitution from the Florida Bar Client Security Fund, a fund created by the Florida Bar to compensate victims of fraud and defalcations by members of the Florida Bar.

In *Alexander*, the class plaintiffs allege they are entitled to recover from the Security Fund because from 1992 to 2002 attorney Robles misappropriated some \$13.5 million in settlement proceeds that he obtained from defendants in exchange for submitting releases signed by his clients, the class plaintiffs. The allegedly misappropriated funds far exceed the \$3 million now in the Security Fund. See *Asbestos Clients Sue Florida Bar For Millions*, MIAMI HERALD, Jan. 11, 2006 at 1B. In their complaint, the class plaintiffs assert that Robles told them that settlements had been reached in their particular cases but that they would not receive any money until sufficient funds had been received to pay all of his asbestos clients. The *Alexander* plaintiffs further allege that while making these representations to his unsuspecting clients, Robles embezzled the funds and used them “to support his flagrant lifestyle and his production of a series of ‘B’ movies.”

According to their filing, the *Alexander* plaintiffs began complaining to the Florida Bar about Robles' activities as early as 1998, but the Florida Bar did not file a formal complaint for misconduct against Robles until May 2001. The Florida Bar later filed specific disciplinary charges against Robles in which it asserted that he had misappropriated over \$800,000 in settlement funds earmarked for 296 of his asbestos clients and that he had charged his asbestos clients with excessive and improper costs in violation of the Florida Bar's rules. In May 2003, some eleven years after Robles allegedly began stealing settlement funds from his clients, and five years after his clients first complained, the Florida Bar finally ordered Robles disbarred. At the same time, the Florida courts appointed an Inventory Attorney to take physical possession of the files of the Robles clients. The Inventory Attorney subsequently conducted a review of the Robles' firm records and, as alleged in the *Alexander* complaint, "determined that Robles has stolen over \$13.5 million in settlements from 4,393 clients [from December 1992 to September 2002]..."

Unfortunately, the *Alexander* plaintiffs and the Florida Bar will now try to sort through the mass tort mess left behind by Robles. Such an effort promises to be a large undertaking as, according to the *Alexander* complaint, "[i]n October of 2002, when the exposure of his fraud was imminent, Robles closed his law firms and dumped his client files in a warehouse. Client x-rays, vital to the clients' remaining asbestos claims, were left in a pile on the concrete warehouse floor." Whether those x-rays and related reports can now be recovered and, if so, whether there is any medical or scientific merit to support plaintiffs' claims, remains to be seen. Moreover, if those claims were generated from the type of for-profit mass screenings criticized by Judge Jack and others, the medical basis for the claims may be open to serious question. In these circumstances, defendants who have not yet reached settlements on such cases will likely take great care in determining whether they are legitimate and worthy of any compensation.

John S. Stadler is Counsel in the Boston office of the law firm Nixon Peabody LLP.

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