



Vol. 13 No. 8

June 10, 2005

GRAND JURY PROBE RAISES STAKES IN ASBESTOS AND SILICA TESTIMONY

by
David Price

The Washington Legal Foundation has petitioned the Federal Trade Commission and state bar authorities to investigate attorney-sponsored mass screening programs that generate thousands of questionable claims of asbestos-related injury. Scrutiny of these programs has recently emerged from a new source: A federal grand jury in Manhattan is considering the possibility of criminal charges. Although the proceedings are confidential, news accounts suggest that the grand jury is hearing evidence of improper screening involving both asbestos-related and silica-related claims.

In asbestos cases, and more recently in silica cases, there are widespread signs of improper diagnoses and testimony on the part of "B-readers," or specialized radiologists, paid by plaintiffs' attorneys to read lung X-rays for signs of injury. As early as 1990, a federal district judge termed the process "a professional farce."

The grand jury inquiry appears to have been prompted by testimony in *In re Silica Products Liability Litigation* (S.D. Tex. No. 03-md-01553), the multi-district silica litigation consolidating the claims of some 10,000 silica plaintiffs. The presiding federal judge, Janis Graham Jack, ordered a hearing on the methodology of the plaintiffs' experts under *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993). The inquiry was triggered by deposition testimony from a Mobile, Alabama radiologist who indicated that he had signed off on more than 3,600 diagnoses of silicosis believing that he was simply giving a second opinion.

At the three-day hearing in February, Judge Jack, a former nurse, expressed grave concern about the reliability of the evidence. One doctor serving as an expert witness, who read X-rays and work histories in a trailer which sat in a restaurant parking lot, indicated he was unaware that more than half of the 237 patients he diagnosed with silicosis had previously been diagnosed with asbestosis. Another doctor terminated his own testimony and asked for a lawyer.

Although far fewer silica claims have been filed than asbestos claims, tens of thousands of silica claims have been filed. According to an April 2005 report from reinsurer General Re, the number of firms named as defendants in silica litigation is now more than 650 and continues to grow.

David Price is Senior Vice President for Legal Affairs of the Washington Legal Foundation.

About WLF and the COUNSEL'S ADVISORY

The Washington Legal Foundation (WLF) is the nation's largest non-profit, public interest law and policy center devoted to protecting and defending free enterprise principles. WLF litigates *and* publishes in order to advocate legal policies that promote economic growth, job creation, and the civil liberties of business. As a 501(c)(3) tax exempt organization, WLF relies upon the charitable support of individuals, businesses, associations, and foundations to fund its programs.

This COUNSEL'S ADVISORY is one of WLF's seven publication formats. Its purpose is to inform the free enterprise community about a development in the legal policy world that can be favorably influenced by the immediate involvement of legal experts and business and community leaders.

For more information on the Washington Legal Foundation, please contact Daniel J. Popeo, Chairman, at (202) 588-0302.