

STATEMENT OF RICHARD LAMINACK
BEFORE THE HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
JULY 26, 2006

Chairman Whitfield, ranking member Stupak, and members of the Subcommittee, my name is Richard Laminack, and I am principal member of the law firm of Laminack, Pirtle and Martinez in Houston, Texas. I want to thank the Subcommittee for allowing me to appear today by video from M.D. Anderson Cancer Center in Houston, Texas. I am appearing by video-conference because I have been diagnosed with leukemia and am currently being treated by chemotherapy. My doctor has advised that I should not travel or appear in large, public gatherings due to my treatment. Again, I want to thank the Subcommittee for accommodating my current conditions.

The testimony I am providing today relates to my responsibilities and duties at my former law firm, O'Quinn, Laminack & Pirtle ("OLP") in the administration and prosecution of certain silica claims handled by the firm. I am here voluntarily and ready to answer your questions.

I have been a trial attorney for the last nineteen years and have exclusively represented individuals and their families who have sustained personal injury. The people who have and do suffer from silicosis have had a profound impact on me – their cases are that severe and that troubling. As this Subcommittee has heard over the course of its investigation, silicosis is

a lung disease caused by inhaling silica dust, which in turn causes lung damage and scarring. Silica dust is a byproduct of several industries, including, but not limited to, sandblasting, manufacturing, and construction. Silicosis exposure is more prevalent in the South due primarily to active shipping, shipbuilding, and refining industries. Silicosis is a deadly, incurable disease, and it can take decades for the full effects of silicosis to show up in a person.

My first experience with silicosis was in the late 1980s when I represented a small group of workers – 12 I recall – against their employer claiming they had been exposed to silica on the job. It took a number of years to bring those cases to final resolution. What really bothered me about that case is that the workers had been seeing the company doctor and at no time did that physician tell these workers that they had scarring on their lungs even though they had symptoms that were consistent with silicosis. Every single one of them has since died of silicosis and it upsets me to this day. I tell you this Mr. Chairman not because I am looking for some kind of redemption, but rather I know first hand what silicosis can do to a person and their family. Because I know this, I would never knowingly bring a silicosis claim on behalf of an individual that does not have the fundamental proof of such a claim.

I would like to take this opportunity to share my views about the O'Quinn law firm's silicosis practice during my tenure at the firm.

As I stated earlier, I handled my first silicosis cases almost fifteen years ago as young attorney with the O'Quinn law firm. Silicosis cases are complex and require certain elements of proof and require a commitment of resources that not all firms and attorneys want to take on. Since the disposition of those early cases the O'Quinn firm moved away from silicosis work and concentrated its time and resources elsewhere for the better part of the late 1980s and 1990s. This did not include asbestos work.

It was not until early 2000 that OLP became more involved in silicosis cases again. Around that time, other law firms began approaching OLP and offering to refer silicosis cases. These inquiries were directed at O'Quinn because of our reputation for successfully handling complex toxic tort litigation involving large numbers of plaintiffs and defendants. What was not done at any time, and I can't stress this enough, was the "re-treading" of old asbestos cases into new silicosis cases. When I refer to "re-treading" I mean the practice of taking any and all of your firm's asbestos claims and converting them into new silicosis claims with or without the benefit of new medical testing of the alleged claimant. The O'Quinn firm never had an asbestos docket and therefore could not and did not re-tread those cases.

Rather, on a referral basis the O'Quinn firm began taking on silicosis cases. Some of these cases, namely a class of cases called the Alexander class that landed in Judge Jack's court room in Corpus Christi as part of the federal MDL, caused the spotlight to be shown on the O'Quinn firm. A spotlight that should have been extinguished when Judge Jack ruled that she never had subject-matter jurisdiction over the Alexander case to begin with. After Judge Jack decided the Federal Courts lacked jurisdiction, a local court of original jurisdiction found that the O'Quinn firm handled itself and the cases in compliance with the law.

There are some basic elements that I would the Subcommittee to keep in mind about how the O'Quinn firm managed its silicosis cases.

First, the O'Quinn firm and myself personally have always taken our clients' health issues seriously. Throughout the course the O'Quinn firm's representation of its clients it had a policy of advising clients that any initial screenings that they participated in were for the purposes of filing a legal claim only, and that any and all medical issues that may have arisen from any results of the screening process should be addressed to clients' personal physicians.

Second, because the overwhelming majority of the O'Quinn firm's cases were referrals, we relied on screening companies, screening physicians

and B-readers, the referring attorney, and the client when we moved forward with a case. While I was not personally involved in any aspects of the screening process, I did understand that most of O'Quinn's clients had already been screened and diagnosed before the clients were referred. I was not personally aware of any problems with screening diagnoses or B-reads by doctors or screening companies for O'Quinn clients until one fateful day in Corpus Christi when Dr. Ray Harron asserted his 5th Amendment rights and refused to testify in Judge Jack's courtroom.

Had I or anyone else at the O'Quinn firm been aware of problems with doctors or screening companies, we would not have used them and would have brought in different screeners and doctors, which is exactly how the O'Quinn firm responded to the hearing held by Judge Jack. As I told Judge Jack during one of the many hearings in front of her, if there are cases that don't belong here then I don't want them here either. Subsequent to the proceedings in Judge Jack's court, the O'Quinn firm had every client in the Alexander class re-screened. The substantial majority re-tested positive for silicosis and still have active silicosis claims today.

Finally, I think the Committee needs to consider the role that screening plays in silicosis and other mass tort litigation. Screening is done at a very early stage, before a lawsuit is even filed, and is intended to

identify indications that a person may have silicosis, to allow lawyers to determine whether there is enough evidence to file and pursue a claim. Screening is never intended to determine how ill a person may be, what the person's medical treatment should be, or to provide a thorough scientific basis for pursuing a claim. A positive screening would not only justify a lawsuit, but also would always lead to much more comprehensive medical testing and examinations. Believe me, the Defendants that choose to settle the cases demand that comprehensive medical proof before they agree to pay any money for a person's claim.

In conclusion, I again would like to thank the Subcommittee for accommodating my medical condition today.