



A case study on tort reform

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Six thousand claimants in Texas silica lawsuits await their day in court. For most, that day will never come. Though it seems like justice is not being served, this is actually good news for courts and these claimants.

Silica is a naturally occurring mineral used in industrial processes and products. In its finest form, silica is dangerous to inhale and can cause serious damage to the lining of the lungs — and death in extreme cases. This danger has been known for so long that safety respirators and special work procedures have been required with silica's use for more than 60 years. Despite the effort towards safety, roughly 50 people each year are affected with silicosis.

However, in the 1990's, there was an explosion of lawsuits filed on behalf of thousands of claimants alleging they had been exposed to silica and were suffering from silicosis.

No medical or safety-related explanation existed for why silica exposure would have increased so dramatically. There is a darned good explanation why the number of lawsuits claiming silica exposure jumped suddenly.

Mobile trailers containing x-ray machines and paramedical personnel used to set up in mall parking lots screening for "patients." Remarkably, almost everyone screened was determined to have silicosis. Rather than being sent to doctors, the newly determined silicosis "patients" were referred to lawyers, at which time they became silicosis plaintiffs.

The reason these people sought out lawyers rather than doctors was that few, if any of them, were actually sick. Federal District Judge Janice Jack, the multi-district litigation judge in charge of the silica cases in federal court, held a multi-day hearing and determined that most, if not all, of the claims were fraudulent. She also found that several doctors who had examined many of these patients a decade before and diagnosed them with asbestosis were now submitting new reports based on the original x-rays and proclaiming the patients now had silicosis.

These new patient/plaintiffs each sued dozens of defendants. Since the medical and factual evidence was paper-thin, the goal of the plaintiff's attorney was to settle each case for an aggregate amount of \$150,000 — collected \$500 to \$1,500 at a time per defendant. The defendants found it cheaper to settle for small amounts than to go to trial.

Because of the multitude of silicosis cases being filed, the Texas Legislature in 2003 created a multi-district litigation rule, which placed all of the pending silica cases before one judge. After Judge Jack's hearing, the Texas Legislature in 2005 adopted a legal standard requiring anyone claiming to have silicosis show, by objective evidence in court, an actual physical impairment. In other words, plaintiffs must file a medical report establishing an illness before they could go to trial.

Amazingly, the prognosis for the 6,000 claimants suddenly improved. One attorney wrote his client that the attorney would no longer handle the lawsuit: "We had an independent physician re-read your x-ray and I'm sorry to inform you that you are not sick."

Such is the case for most of the claimants pending in the state multi-district litigation case. Their attorneys, who were once willing to settle with as many defendants as they sued for \$500 each, are no longer willing to file a report saying that their client is actually sick.

This news is obviously good for the healthy claimants, but it is equally good news for those few claimants, less than 10, with legitimate claims whose cases have moved forward in courts no longer clogged by thousands of meritless lawsuits.

In a few months, the state district judge in charge of the silica MDL is required to submit a status report to the Texas Legislature on the effectiveness of the statute which created the medical criteria.

It will be interesting to read the judge's report. One thing is certain: neither courts nor clients should be upset for getting a clean bill of health.

Nixon is a senior fellow with the Texas Public Policy Foundation and served six terms in the Texas House of Representatives.