

CAMPBELL, CHERRY, HARRISON, DAVIS & DOVE, P.C.
WRITTEN STATEMENT BEFORE
THE SUBCOMMITTEE OF OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE

July 26, 2006

I. Background.

Good morning, Chairman Whitfield, Congressman Stupak, Members of the Subcommittee. My name is Billy H. Davis, Jr. and I am a shareholder in the law firm of Campbell~Cherry~ Harrison~Davis~Dove, P. C. (“CCHDD”). The firm consists of seven lawyers and 27 staff members, with offices in Waco, Texas and Jackson, Mississippi. The firm engages primarily in a plaintiff's civil practice with a focus in the area of personal injury law.

The attorneys and staff of the firm are dedicated to providing quality legal services to individuals and businesses needlessly harmed by the conduct of others. We are committed to the preservation of the right of every citizen to a trial by jury, as guaranteed by the Seventh Amendment to the United States Constitution. We believe that every citizen should have equal access to the courts of our judicial system.

I am testifying here today on behalf of the firm.

II. CCHDD's Entry into Silica Litigation.

The firm has represented Plaintiffs in various types of personal injury litigation including injuries caused by asbestosis, silicosis, pharmaceutical products, automotive products, and trucking and automobile accidents.

In 2000 and 2001, some of the firm's previous and current clients, including asbestos clients, began contacting the firm asking if the firm was representing individuals in silica litigation. At that time the firm was not, but it was aware of the increase in silica litigation that

had begun earlier and knew that many of its asbestos clients had worked in trades and industries in which they may have also been exposed to silica. In response to inquiries from many of its clients, the firm sent a letter to many of its current and former clients concerning silica exposure and silicosis. The firm notified its clients to call N&M, Inc., an experienced Mississippi medical screening company, to set up a medical screening if they felt they had a silica claim. The firm understood that N&M would test anyone, including our clients, who called them and had appropriate silica exposure. It was up to the individual to determine if he had been exposed to silica and wanted to be tested. If so, that individual would engage N&M to perform the medical screening. It was then up to the doctors to determine if the individual had a silica related injury. Generally, only after that happened, did our firm accept the representation of the individual for a silica claim, and advance that client's cost to N&M for the medical screening.

The law firm filed two actions in Noxubee County, Mississippi in 2002. These actions were filed in Mississippi because the overwhelming majority of the firm's silica Plaintiffs was located in the southeastern United States and the Mississippi joinder and procedural rules applicable at that time made Mississippi an attractive forum in which to file these actions. Since that time, due to changes in Mississippi procedural law, applied retroactively by the courts, many of the Plaintiffs claims in these actions have been voluntarily dismissed. Their dismissals have nothing to do with the merits of their claims, but rather, are based on a retroactive change in Mississippi procedural rules making Mississippi an improper forum for these Plaintiffs to bring suit.

The firm exercised due diligence in filing and prosecuting silica claims and believes that the silicosis claims it filed are valid, legal claims.

III. The Silicosis Claims Filed By CCHDD Are Valid.

A. Prior to filing suit, CCHDD established criteria to ensure that its clients had *bona fide* claims for silicosis. CCHDD was reasonable in relying on that process.

For substantially all of its silica clients, the firm had a reasonable basis for believing that its plaintiffs had a *bona fide* claim for silicosis before it ever accepted them as silica clients and before suit was filed on their behalf. Specifically, the firm established conservative criteria to screen persons it might represent. The conservative criteria were to ensure that individuals had *bona fide* diagnoses of silicosis before the firm accepted them as silica clients.

The conservative criteria defined by the firm included the following:

First, the firm required that its potential clients have at least two years of occupational exposure to silica prior to 1980. N&M established that the firm's potential clients met such exposure criteria even before they came to the medical screening, and then again at the medical screening. This initial screening for exposure helped eliminate from the medical screening process individuals who could not have been diagnosed with silicosis due to a lack of silica exposure.

Second, after the requisite silica exposure history was verified, N&M's qualified technicians performed a chest x-ray on each potential client. The x-ray was then read on site by a NIOSH certified B-reader physician, hired by N&M, to determine if the x-ray showed radiographic changes consistent with silicosis.

Third, if the NIOSH certified B-reader physician found the x-ray showed radiographic changes consistent with silicosis, a qualified physician on site, hired by N&M, would take a medical history and perform a target physical examination. Based on the exposure history, x-ray findings, medical history and physical exam, the NIOSH certified B-reader physician hired

by N&M, Inc. would make a diagnosis. If the diagnosis was silicosis, the doctor would communicate that to the potential client, in person, at the screening.

Fourth, potential clients diagnosed with silicosis were sent to perform pulmonary function tests administered by N&M's qualified technicians. These tests helped to determine the degree of lung impairment for each potential client.

Generally, all of the above mentioned steps occurred before the potential client ever met with any representative of the firm, and before they became a silica client of the firm.

Following this screening process performed by N&M, and the physicians hired by N&M, if a potential client had a positive silicosis diagnosis, and satisfied all of the above criteria and requested the law firm to represent him or her, the potential client signed a contract of representation with the firm. However, as a general rule, the firm did not file suit until receiving a second positive x-ray finding and a second diagnosis of silicosis for the potential client. For substantially all of the firm's silicosis clients, the firm required N&M to obtain a second positive x-ray reading from a NIOSH certified B-reader physician, and a second diagnosis of silicosis by a second qualified physician. This was generally done within 4-6 weeks after the initial diagnosis and prior to the filing of a silica case on behalf of the client. This conservative practice of having two diagnoses for each client before filing suit had been used by the firm in its asbestos litigation long before it began representing silica plaintiffs.

B. CCHDD was diligent in utilizing the screening company.

The company that tested the firm's clients was an experienced Mississippi medical screening company. In addition, N&M's testing equipment was inspected and certified by the State of Mississippi. Moreover, the on-site physicians and technicians on our firm's cases, who were selected, hired and paid by N&M to screen potential clients for silicosis were licensed by

the State of Mississippi. The firm had used N&M before, and reasonably relied upon the medical screening performed by N&M for potential clients.

C. CCHDD was diligent in relying on the screening company doctors' silicosis diagnoses.

The firm was also reasonable in relying on the medical doctors hired by N&M for x-ray reads, physical exams, and silicosis diagnoses. Importantly, all of the firm's clients were diagnosed with silicosis by NIOSH certified physicians. While the firm advanced medical screening costs to N&M only for testing of individuals diagnosed with silicosis who satisfied the above criteria and that the firm accepted as a client, it was and is the firm's understanding that N&M paid its physicians the same dollar amount for every x-ray read, and for every physical exam performed, and for every diagnosis made, regardless of whether the individuals were diagnosed with silicosis whether or not they became clients of the firm. Accordingly, the physicians who read the x-rays, or performed the physical exams or who ultimately made the silicosis diagnoses for all of the firm's clients were not biased by the firm's method of compensation to N&M.

IV. Asbestosis and Silicosis are not Mutually Exclusive and there are many Industries in which there is Both Silica and Asbestos Exposure.

Medical experts recognize that individuals may contract both asbestosis and silicosis. Some of the industries that the government (NIOSH) has recognized as having both asbestos and silica exposure include: (1) abrasive blasting; (2) foundry work; (3) dry wall hanging; (4) automotive repair; (5) construction; and (6) pottery. Many of the firm's clients diagnosed with both silicosis and asbestosis worked in one or more of these industries.

Notably, only a small percentage of the firm's asbestos clients were ultimately diagnosed with silicosis. Specifically, out of approximately 20,000 firm asbestos clients, only

approximately 3,500 were subsequently diagnosed with silicosis and represented by the firm. Moreover, approximately 700 of the firm's silica clients were not asbestos clients of the firm. Many of the firm's asbestos clients worked in industries in which they were exposed to both silica and asbestos or worked in different industries in which they were exposed to asbestos in one industry and silica in another. Less than 1 out of 5 of the firm's asbestos clients was diagnosed with silicosis, and by 2 separate doctors. This fact in no way supports an inference that these clients do not have silicosis or that the firm's representation of these individuals is improper.

V. Summary.

We believe that our firm required and relied upon more extensive criteria to screen for silicosis than did others. For substantially all of its silica plaintiffs, prior to the filing of silica claims, the firm had evidence of at least 2 years occupational exposure to silica, current x-rays read positive as consistent with silicosis by two NIOSH certified B-reader physicians, medical history and physical exam taken by a qualified physician, diagnosis of silicosis by two qualified physicians, and an on-site communication of the diagnosis to the client by one of the diagnosing physicians. Every diagnosing doctor relied upon by the firm has testified that they stand behind their silicosis diagnoses of our firm's silica plaintiffs, except for Dr. George Martindale. However, Dr. Martindale has testified before you that he stands behind his x-ray readings of our silica plaintiffs that show radiographic changes consistent with silicosis. The firm's reliance on the screening company and the x-ray readings, physical exams, and diagnoses of silicosis by the qualified physicians hired by the screening company was and continues to be reasonable. The firm believes that the silicosis diagnoses of its clients are real and that the claims it brought on behalf of its silica plaintiffs are valid, legal claims.

Summary of Written Statement of Campbell, Cherry, Harrison, Davis & Dove, P.C.

1. For substantially all of the firm's silica plaintiffs, the following criteria was satisfied prior to each plaintiff becoming a silica client of the firm and prior to such plaintiff's case being filed:
 - A. Evidence of occupational exposure to silica for at least 2 years prior to 1980 was provided by the plaintiff;
 - B. Current chest x-rays taken of the plaintiff;
 - C. Positive x-ray finding consistent with silicosis by a NIOSH certified B-reader;
 - D. Medical history taken and physical exam of the plaintiff by a qualified physician;
 - E. Diagnosis of silicosis by a qualified physician communicated in person to the plaintiff;
 - F. A pulmonary function test on the plaintiff to determine degree of lung impairment;
 - G. Second positive x-ray finding consistent with silicosis by a second NIOSH certified B-reader; and
 - H. Second diagnosis of silicosis by a second qualified physician.
2. The firm advanced the testing costs only for individuals satisfying this criteria and that the law firm accepted as a client.
3. Many of the firm's clients worked in industries recognized by the government as having both asbestos and silica exposure. Less than 1 out of 5 of the firm's asbestos clients were diagnosed with silicosis and represented by the firm. These clients had 2 diagnoses of silicosis. Asbestosis and silicosis are not mutually exclusive.
4. Physicians relied upon by the firm that diagnosed the firm's silica plaintiffs stand behind their diagnoses except for Dr. George Martindale who still stands behind his x-ray readings that show radiographic findings consistent with silicosis.
5. Silicosis diagnoses of the firm's silica plaintiffs are real, and the plaintiffs' claims are valid, legal claims.