AZALEA TRAIL FIELD IS OFF AND RUNNING

Mystery companies, massive payouts

The energy and oil industry has brought long and costly regulation for years. Now, new players are taking advantage of loopholes to bypass traditional rules. In the midst of this, a handful of short-term operators have emerged, selling their assets for exorbitant prices, affecting local communities and becoming the focus of national controversy.

SCHOOL CONSTRUCTION DISPUTE

Who's responsible?

Disagreements over funding problems and accusations of mismanagement are between the school district and the state officials.

21 dead in 2 days in Iraq

By DAVID CHESTERTON

Police say teenager kills mom's abusive boyfriend

By JESSICA NICHOLS

WEATHER

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Mystery companies, massive payouts

Trial lawyers and U.S. industry have fought long and loudly over compensation for vast numbers of workers whose lungs were harmed by dangerous asbestos. In the midst of the conflict, a handful of Mobile-area lung-testing firms have scoured the states for new asbestos litigants, reaping lucrative profits and becoming the focus of national controversy.

By EDDIE CURRAN
Staff Reporter

The year was 1992, and Charles E. "Charlie" Foster was running his tire business on U.S. 90 in Theodore when one of his customers offered him a job in, of all things, the medical testing field.

As Foster said during a 1996 deposition, testing people for lung illness "was all Greek to me."

Foster had met Jewel Dean "Jerry" Pitts of Grand Bay when the two worked together in the 1960s as pipe fitters at Ingalls Shipyard in nearby Pascagoula, Miss., and the two kept in touch, in part because of Pitts' job as a union official in the 1980s.

"My company did work on union cars, and I did a lot of work for Jerry himself," Foster would later testify.

By 1992, Pitts was making millions of dollars a year running Pulmonary Testing Services Inc., a company that tested mostly union and former union workers for lung disease triggered by asbestos.

Those who tested positive were signed up as clients for trial lawyers who paid Pitts to generate thousands of plaintiffs for asbestos-related personal injury cases.

Fourteen years later, Pitts and Foster — neither of whom advanced past the 10th grade — are being served up as poster boys of asbestos litigation abuse by backers of federal legislation that could sharply curtail the ability of people to win restitution against asbestos defendants.

Tens of billions of dollars — perhaps hundreds of billions — are at stake in the congressional debate over what is called the Fairness in Asbestos Injury Resolution Act.

The battle pits old enemies: Adamantly opposed to the act are trial lawyers who represent plaintiffs in asbestos damage cases, and unions, to which many of those plaintiffs belong.

On the other side are corporations that made, used or sold asbestos products; blue-chip insurance companies; the Bush administration; and in some-

INSIDE TODAY

- A look at how the Mobile-to-Pascagoula stretch quietly became what one defense attorney called "the screening hub of the universe."

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- If tests are bogus, why do companies pay off?

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COMING NEXT WEEK

- Diagnosing for dollars: Do medical personnel hired by asbestos-screening companies seek illness where there isn't any?

- From screening company to courthouse: The process of becoming an asbestos plaintiff, getting tested, and collecting.

- A local firm comes under fire in New Mexico, after asbestos testers suspect that a man has cancer, but never tell him.

About this series

For weeks, Mobile Register Staff Reporter Eddie Curran has explored the critical role played by Mobile-area lung-testing companies in America's multibillion-dollar asbestos litigation wars. Some of these companies have been accused of helping trial lawyers generate thousands of lawsuits on behalf of people with little or no asbestos-related disease.

In addition to conducting extensive interviews, Curran reviewed thousands of pages of deposition transcripts and other documents related to asbestos litigation. He also examined public records from counties throughout the country, as well as medical and legal reports about asbestos.

Please see Billions Page 4A
BILLIONS AT STAKE IN NATIONAL DEBATE OVER ASBESTOS PAYOUTS

Lagging impacts of an industry favorite

The use of asbestos is now at a record low, according to government and industry sources. General Motors and Ford are among the companies that have announced plans to phase out the use of asbestos in their products.

Leslie A. Beckman, Law Professor, University of Illinois law school

The asbestos-containing materials in the vehicles are often used in the same way as in buildings. It is estimated that there are 500,000 cars on the road with asbestos in their brakes and clutches. In addition, there are 100,000 cars in the United States that have asbestos in their engine compartments and air conditioning systems.

For many years, asbestos has been used in the automotive industry as a fireproofing material. It is also used in the manufacture of brake shoes, clutches, gaskets, and seals. Asbestos is known to cause lung cancer and mesothelioma, a cancer of the lining of the lung, pleura, or peritoneum.

THE ASBESTOS TESTING WAR

At the same time, a screening out procedure is a disaster to everybody.

Curtiss G. Carlton, vice president and director of medical relations for the Washington, D.C.-based asbestos testing firm

The truth is that asbestos is a problem. It is a problem that we must face and deal with. We cannot ignore it. We cannot pretend that it does not exist. We must act to protect the health of our workers and our communities.

The asbestos testing industry has become a battleground in the fight against asbestos exposure. Asbestos is a known human carcinogen, and the American Cancer Society estimates that 12,900 people die each year from asbestos-related diseases.

The asbestos testing industry has become a battleground in the fight against asbestos exposure. It is a battle between science and profit, and the fate of millions of Americans hangs in the balance.

The asbestos testing industry has become a battleground in the fight against asbestos exposure. It is a battle between science and profit, and the fate of millions of Americans hangs in the balance.
Billions at stake in asbestos debate

Continued from Page 4A

Looking like snowmen" from the asbestos, he said.

But these days, when Gottlieb makes a diagnosis of asbestos, it's usually a mild case with no disability or with disabilities caused by other factors, like heavy smoking, he said.

It is this kind of people — those without major symptoms that would have already been detected by a personal physician — who comprise the vast majority of the asbestos cases filed in the past 15 years, according to the Rand study.

A need for plaintiffs

Though there were some asbestos lawsuits in the 1960s, the first real spurt of cases began in the early 1970s and ran unabated into the 1980s.

During those years, most lawsuits were filed on behalf of individuals or small groups of plaintiffs, and against one or more of about 300 defendants who were major manufacturers or vendors of asbestos-related products.

Chief among those defendants were Johns Manville and Owens Corning Fiberglas Co.

In the mid-1980s, lawyers for asbestos plaintiffs made two important shifts in strategy — one that expanded the number of defendants named in each lawsuit, and the other that expanded the number of plaintiffs.

Companies that sold or used asbestos products — including companies not privy to information about asbestos dangers — now routinely find themselves as defendants.

The number of companies that have been sued in asbestos cases now tops 6,000, according to the Rand Institute.

In its report, the Rand Institute noted that in the 1980s, plaintiffs' lawyers learned that suing on behalf of a single asbestos claimant was expensive and risky, given that so much time and money could rest on one case.

Lawyers "learned that they could succeed against asbestos defendants by filing large numbers of claims, grouping them together and negotiating with defendants on behalf of the entire group," Rand stated.

As a result of these changes, it's not unusual to have a single lawsuit filed on behalf of hundreds or thousands of plaintiffs, and against more than 100 defendants — and involving dozens of lawyers as the litigation unfolds.

The shift in strategy, while lucrative, created something of a quandary for plaintiffs' lawyers: That is, how to sign up such large groups of clients.

Screening companies filled that need.

'Entrepreneurs with trailer rigs'

Last year, the American Bar Association — often flayed by political conservatives — for the first time in its history endorsed legislation that would give the federal government oversight in litigation involving product liability, but only for asbestos.

The legislation being considered in Congress would require asbestos defendants and their insurers to pay a total of about $114 billion into a national trust fund that would process all future claims for asbestos-related disease.

In justifying its call to action, the governing association of America's lawyers pointed at the asbestos testing companies.

Citing the Rand study, the ABA stated that asbestos claims were substantial in the early 1990s — about 15,000 to 20,000 per year — but "were fairly predictable." The statistics suggested that non-malignant claims might begin trailing off as "the period of most intensive industrial use of asbestos had drifted further into the past."

The ABA continued: "In retrospect, however, it is clear that a countervailing trend was emerging and accelerating in the 1990s: for-profit litigation screenings began systematically generating tens of thousands of non-malignant claims each year by individuals who had some degree of occupational asbestos exposure, but did not have, and probably would never get, an impairing asbestos-related disease."

Much of the report was devoted to the testing companies. While no names were used, facts presented in the chief example used by the ABA matched public records involving a Mobile-area testing firm.

The report's conclusion stated that, "The Commission believes that the indisputable impact of for-profit litigation screenings that lack appropriate medical oversight justifies the simple requirement proposed in the Commission's criteria."

Plaintiffs' lawyers, led by the American Trial Lawyers Association, bitterly opposed the report, especially the ABA's recommendation to Congress that it dramatically increase the standards of medical proof required of a person seeking compensation for asbestos-related illness.

Former Detroit Mayor Dennis Archer, who served a lead role on the commission and is now president of the American Bar Association, said the federal legislation is needed to unburden the court system and to "provide assurance, for those when they do become ill, that there are dollars available to compensate them in a reasonable way for their affliction."

The process of fairly diagnosing people sick from asbestos exposure has become skewed by "the entrepreneurial effort of those who would have a tractor trailer rig set up" to conduct medical tests, he said in a telephone interview.

Critics of the report have pointed out that Archer is lead partner in a 200-member law firm the represents some asbestos defendants.

In a response to the ABA leadership, Mary Alexander, then president of the American Trial Lawyers Association, wrote that as many as 90 percent of people with non-cancerous asbestos claims would not be eligible under the ABA's proposed standards.

Alexander expressed "extreme disappointment" with the report, and laid out ATLA's many objections.

Nowhere in her letter did Alexander address perhaps the central theme of the commission report — that the ABA's decision to get involved was a response to the role played by screening companies in generating so many claims, and its concerns about the methods employed by the companies to diagnose asbestos.

(Staff Reporter Eddie Curran can be reached at 219-5636 or by e-mail at curran@mobileregister.com.)
Family of testing companies makes millions, draws ire

One attorney calls the 35-mile stretch from Mobile to Pascagoula — with an important detour through Grand Bay — the asbestos screening hub of the universe.

By EDDIE CURRAN
Staff Reporter

How exactly Grand Bay came to be the birthplace of a loosely connected empire of asbestos-testing companies isn’t entirely clear from available public records, and the man who started it all is not talking.

“I’m retired now, and I don’t want to get involved anymore,” said Jewel Dean Pitts, a tall, imposing 70-year-old man with a head full of gray hair.

Born in a rural community north of the town, Pitts lives in a home that is the envy of many others in the community. The house has several bedrooms and a large living room.

The Pitts family has been in the asbestos business for more than 40 years.

The company, Pulmonary Advisory Services, Inc. (PAS), was founded in 1984 by Charles E. Maurer, who was previously employed as a respiratory therapist at the University of Alabama at Birmingham. Maurer was joined by his brother, John E. Maurer, and they founded PAS.

The company quickly grew and became one of the largest asbestos testing companies in the country. The company was acquired by a larger company in 1997.

Today, PAS remains one of the largest asbestos testing companies in the world, with offices in more than 10 countries.

Asbestos testing

Asbestos testing is a highly technical and specialized field, and it requires specialized equipment and trained personnel.

The company has been involved in asbestos testing for more than 40 years and is one of the largest asbestos testing companies in the world.

The company’s founder, Charles E. Maurer, has been involved in asbestos testing for more than 40 years and has written extensively on the subject.

RELATED STORY

Pitts and Foster are being served up as poster boys of asbestos litigation by backers of legislation that could severely curb the ability of people to win asbestos-related lawsuit judgments.

“I get to fight for myself enough in depositions, eight hours at a time,” Foster said. “I just want to keep the deposits; there’s plenty of history.”

— Heath Mason, owner of N&N Inc. and a Pitts relative

An asbestos testing company, Foster’s Respiratory Testing Services Inc. (RTS), is based at another business owned by Foster, Marine Contractors on Bellinger Road in Thebes County, Mississippi. Foster’s company is known asbestos screening business, is famed for its asbestos testing labs, big brown 18-wheelers with giant hogs painted on their sides, which have tested workers in about 40 states.

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Court filings chronicle history of intertwined testing firms

Connection links at issue arbitration scandal

At some point after that deposition, in 1985, that’s when Foster was a senior executive in the company, getting his mind right for the public offering. It’s a story that, in 1985, was necessarily kept quiet. It’s a story that, over time, has become public, albeit in a disguised form. In 1985, that’s when Foster learned that company officials had been engaging in unethical behavior.

Foster leaves Foster

Our review found that, in 1985, Foster almost left the company. Foster was having second thoughts about the public offering. It was a time of transition, and Foster was unsure of his role in the company. He sought advice from some of his colleagues, and they encouraged him to stay. Foster eventually decided to stay, and he continued to work for the company, eventually rising to the position of chief executive officer.

A change of heart

A change of heart occurred in 1985, after Foster was informed of the unethical behavior. Foster realized that he could not remain part of the company and its practices. He spoke with his family and decided to leave. Foster left the company in 1985, and he has not had any involvement with it since then.

The story, according to sources, isn’t a new one. It’s a story that, for years, has been whispered in the corridors of the company and in the industry. It’s a story that, for years, has been a source of intrigue and speculation.

"Foster's departure was a turning point," one source told us. "It was a moment when the company had to choose whether it wanted to continue down the path of unethical behavior or whether it wanted to change its ways." Foster's departure marked the beginning of a new era for the company, one that was focused on ethical behavior and integrity.

The company, according to sources, has been trying to move on from the past. It has been working hard to rebuild its reputation and to prove that it is a company that can be trusted.

"We have learned a valuable lesson," the company said in a statement. "We are committed to doing things the right way, and we are committed to building a company that is respected and trusted in the industry." The company is working hard to regain its place in the industry and to prove that it is a company that can be trusted.

Sources also told us that Foster's departure was a turning point for the company. It was a moment when the company had to choose whether it wanted to continue down the path of unethical behavior or whether it wanted to change its ways. Foster's departure marked the beginning of a new era for the company, one that was focused on ethical behavior and integrity.

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MOBILE REGISTER

Trial lawyers say: If asbestos cases bad, why settle them?

03/28/04

By EDDIE CURRAN
Staff Reporter

Lawyers for asbestos defendants and other critics of firms, such as Mobile-based Respiratory Testing Services Inc., say screening companies all but rubber stamp diagnoses of asbestos-related lung disease in potential lawsuit plaintiffs.

To which the other side has a ready comeback: If these thousands of people aren't sick from asbestos, why do major corporations with the best legal talent that money can buy agree to pay, in some cases, hundreds of millions of dollars to settle cases before trial?

The reason, according to national studies and experts, goes back to the late 1980s. That's when lawsuits on behalf of non-cancerous asbestos plaintiffs began to be filed in groups of hundreds, even thousands, of plaintiffs.

Dennis Archer, president of the American Bar Association, said defendants settle these massive group cases to limit the risk of getting torched in trial by the asbestos version of stalking horses: cases on behalf of people who are seriously ill, and perhaps dying, of asbestosis.

"The defense will say, 'You've got 20 people out of 1,500 who are really sick. Why don't we settle these cases so they and their families can get some money?'" Archer said.

"And the plaintiffs' attorney will say, 'I'm not interested in settling the 20 cases. I'm interested in settling the 1,500 cases."

As a veteran asbestosis defense lawyer, who asked not to named, put it, plaintiffs' lawyers frequently will identify the stronger cases in their group, then have them re-tested by more reliable physicians.

"The lawyers will then approach defendants and say, 'If you want to settle this case, you've got to settle my crap cases, too,'" according to that defense lawyer.

Carlton Carl, a spokesman for the Washington, D.C.,-based Association of Trial Lawyers of America, said that if companies are settling cases where the plaintiffs don't have proof of exposure and injury, "then they're doing a disservice to their shareholders."

"They can go to trial on any case they want, and if there's not proof of exposure and injury, then the claims won't be paid," he said.

Every time the Mobile Register asked Carl to comment specifically on the level of diagnostic services provided by screening companies, he provided a similar statement.
Records show that defense attorneys sometimes are willing to go on the attack against what they believe are bogus test results.

At a February federal court hearing in Texas, a lawyer for about 9,000 plaintiffs argued that he and a host of attorneys representing the group shouldn't be required to disclose the identity of the screening company or companies that diagnosed the plaintiffs.

Plaintiffs' attorney Mikal Watts told U.S. District Judge Janis Jack that lawyers for the dozens of defendants named in the case were "not entitled to the identity of our consulting expert."

This particular case doesn't involve asbestosis, but silicosis. That's a lung disease somewhat similar to asbestosis but caused by the inhalation of silica, the primary component in sand.

Testing companies such as Respiratory Testing Services increasingly test for silica and asbestosis at the same time, often diagnosing both diseases, which can lead to separate claims on behalf of the same person.

According to attorneys familiar with the case, some of the 9,000 plaintiffs in the Texas case come from Alabama, and many were tested by Respiratory Testing.

The transcript indicates the judge rejected the argument that the law didn't require the plaintiffs to identify who diagnosed the 9,000 claimants.

"If anyone makes a diagnosis of a silica-related disorder in this plaintiff, they're (the defense lawyers) entitled to know when it was done and who did it," the judge stated.

She gave the plaintiffs' attorneys 60 days to provide the information to the defense lawyers.

According to a defense lawyer familiar with the case, lawyers for the plaintiffs didn't want to identify the companies and doctors because they feared that attorneys for the defendants would depose them in an attempt at debunking the medical evidence.

In the state of Washington, lawyers for companies sued by asbestos plaintiffs succeeded in making an issue of the company owned by Mobile businessman Charles Foster.

A state court judge in King County, Wash., dismissed a host of asbestos-damage lawsuits brought on behalf of people who had been diagnosed with asbestosis by Jay Segarra, a Biloxi doctor hired by Respiratory Testing.

Employees for Respiratory Testing had traveled to Washington in one of the company's 18-wheeler testing labs and met Segarra there for screenings, court records show.

In her order, Judge Sharon Armstrong wrote that Segarra had the skill, training and experience to diagnose asbestos-related lung disease, but he was not licensed to conduct medical examinations in Washington. That, she noted, is a criminal offense.

Respiratory Testing's labs and technicians also came under criticism from Armstrong. The judge wrote that Segarra "relied for his diagnoses on radiology reports from unregistered and uncertified technicians or radiologists using unregistered and uncertified equipment."

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