

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-

THE ASBESTOS TESTING WARS



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■ 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.

thing of a surprise, the usually neutral American Bar Association.

More than any others, the companies owned by Pitts, Foster and relatives of both men have been accused in lawsuits and national reports of engaging in unscientific, biased and money-driven testing procedures.

According to some estimates, testing firms — usually small, family-run companies also known as screening companies — help lawyers sign up as many as 90 percent of the plaintiffs who file non-cancer-

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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 courts throughout the country, as well as medical and legal reports about asbestos.

Billions at stake in national debate over asbestos payouts

ASBESTOS IN AMERICA

Lingering impacts of an industry favorite

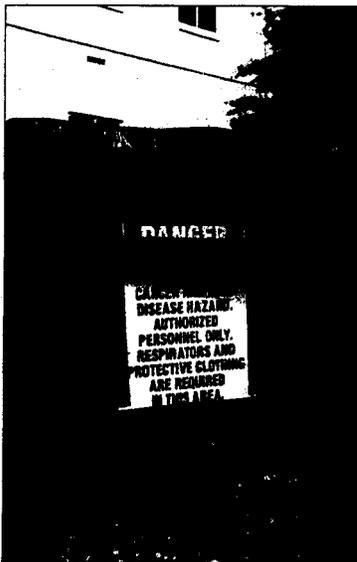
The use of the naturally occurring fibrous material known as asbestos dates back to ancient times. Like the farmers who used asbestos in building materials, modern manufacturers took advantage of its insulating and fireproofing qualities.

Rise and fall of an industry standard: U.S. asbestos usage



Asbestos production began in 1910, the first cases of asbestosis were reported in a medical journal. Usage during World War II, especially in war ships, marked the start of a decade-long popularity. Federal regulations began primarily through OSHA and the EPA. Production declined as the new industry of asbestos removal emerged.

Source: National Institute of Occupational Safety and Health, UIOS



A dumpster at an asbestos cleanup site is sealed in plastic and bears a sign warning of the danger of the material it contains.

ASBESTOS DEFINITIONS

Here are some definitions and answers to some common questions about asbestos:

Asbestos: The generic term for a group of silicate minerals that have properties — including heat resistance, mechanical strength and an ability to be easily woven into other materials — that make it valuable as a source of insulation.

Ceramic wool: An insulation for pipes and boilers; sprayed coatings for fire protection and thermal insulation; and, as asbestos-cement, in walls, gutters, roofs, fences, ventilators and ducts. Asbestos has been used in thousands of other consumer, industrial, maritime, automotive, scientific and building products.

What makes it dangerous? When disrupted, such as when asbestos-containing products are being destroyed or disposed of or fall into disrepair, the microscopic, spear-shaped fibers can be inhaled and penetrate the lining of the lungs.

Who's at risk? Most at risk are workers who mined, refined or made asbestos; construction workers who installed or removed insulation or other asbestos-containing materials, especially when buildings are demolished; shipyard workers.

How many have been exposed? The widespread use of asbestos, especially from about 1940 to the 1970s, indicates that as many as 27 million workers may have been exposed.

Asbestosis: A widespread scarring of lung tissue caused by breathing asbestos fibers. When the scarring is severe, it reduces the elasticity of the lungs, and people suffering from asbestosis can't process

as much air as normal people. Initial symptoms are mild shortness of breath and a decreased ability to exercise.

About 15 percent of people with asbestosis will develop severe shortness of breath, and some will die from respiratory failure.

Mesothelioma: In the United States, exposure to asbestos is the only known cause of this incurable form of lung cancer. Most people diagnosed with mesothelioma die within one to four years of diagnosis, and treatments including chemotherapy, radiation and surgery have little impact on the cancer.

Mesothelioma usually develops 30 to 40 years after exposure and can occur after minimal exposure.

Asbestos-related lung cancer: People with asbestosis have an increased chance of developing lung cancer. The likelihood of getting cancer is substantially increased in people who are or were heavy smokers.

Does everyone who was exposed become ill? No. It's possible for people who have worked extensively around asbestos for years to never suffer asbestos-related disease. However, asbestosis is dose related, meaning the more you inhale, the greater your likelihood of developing it.

How long does it take to asbestos-related diseases to appear? Generally, asbestos-related diseases have a latency period of between 15 to 30 years, though some people don't become ill for 40 years.

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Pitts' companies, for example, were used in 1995 by asbestos-maker Owens Corning, which had lodged accusations of racketeering and fraud. Records in a related case indicate that Pitts and his cousin from Jackson, Mich., has won \$1.2 million to settle the case.

In the telephone interviews, Brickman called the asbestos screening business a "scheme" and a "racket" that exists to produce "bogus tests." Screening companies and associated doctors practice "inventory acquisition, not medicine," Brickman said, with plaintiffs being the inventory.

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ous asbestos claims each year. Those plaintiff numbers continue to climb, with more than 105,000 new claims filed last year, by far the highest ever.

The chief criticism against testing companies — and by extension, the law firms that use them — is that two-thirds to nine-tenths of those claims were submitted by individuals who have not incurred an injury that affects their ability to perform activities of daily life. That's according to an often-cited 2002 study by the Rand Institute for Civil Justice, a respected, non-profit organization devoted to research and analysis of legal issues.

Screening companies specialize in testing and recruiting people who in most cases are older than 55 and have not been diagnosed with asbestos-related illness by their physicians.

The Mobile-area companies have tested and helped deliver asbestos litigation to some of the top plaintiff firms in the country. Typically, the companies charge lawyers substantially more for positive test results than those that reflect no sign of asbestosis, the most common form of asbestos-related disease, court records show.

Charlie Foster's Respiratory Testing Services Inc., in particular, has earned fame in the asbestos litigation world for its traveling testing trucks — 18-wheelers equipped with interview rooms, X-ray rooms, and breathing test machines.

Respiratory Testing — located on Midmost Drive, a few blocks from the Festival Centre shopping complex in Mobile — has sent its trucks and employees to union halls, hotels and other pre-arranged meeting spots in some 40 states, Foster has testified.

The Manville Personal Injury Trust, an entity created out of bankrupt asbestos-maker Johns Manville Corp., and the largest source of asbestos damage payouts, has in its 16-year history singled out five testing companies as having provided medical evidence of such low quality that it would never pay claims based on their diagnoses.

All five were asbestos screening companies operated by men from Mobile County, and three were owned by Pitts. Another was owned by Pitts' nephew, Ted Broadus, also of Grand Bay; and a fifth, American Testing Services Inc., was owned by Charlie Foster's nephew, Guy Wayne Foster.

The central role played by screening companies in the asbestos litigation wars has gone largely unnoticed in national or local media.

The Mobile Register, for example, has never published a story about Foster or Pitts, or about companies owned by them and their relatives.

The Register became aware of the companies' impact through a law review article published in January by the Pepperdine Law Review in California.

The 17-page article by Lester Brickman, a law professor at Yeshiva University's law school in New York, presents a blistering criticism of asbestos litigation, comparing it to some of U.S. history's notorious financial scandals, including the Teapot Dome affair and the Enron Corp. collapse. He devotes a substantial portion of his piece to the screening companies and the doctors who have worked for them.

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The law professor, as he acknowledges in his article and in interviews, has served as a consultant to asbestos defendants. He is conservative, and has a history of producing scholarship and making speeches that are critical of plaintiffs' lawyers.

South Carolina lawyer Joe Rice, one of the most successful trial lawyers in the country and a veteran of the asbestos litigation wars, said testing companies were borne out of necessity about 20 years ago.

"We requested that they (asbestos defendants) set up a medical monitoring program for people exposed to asbestos, and the companies refused to do that," he said in a telephone interview Thursday.

"When the companies refused to do that, a lot of unions chose to make medical screenings available for their membership," said Rice, a partner in Motley Rice LLC, the successor of the Ness Motley firm that spearheaded the national tobacco settlement.

Rice's firm has used some of the Mobile companies, including Foster's Respiratory Testing. He mentioned Jerry Pitts' company in noting that some companies have been singled out for unsavory practices, but they're the exception, Rice said.

"I've had hundreds of clients who've been diagnosed with cancer for the first time," Rice said. "Now, I differ from Mr. Brickman in his blanket attack on screen-

THE ASBESTOS TESTING WARS



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— Lester Brickman, law professor, Yeshiva University's law school

ing. At the same time, a screening not done properly is a disservice to everybody."

Carlton Carl, vice president and director of media relations for the Washington, D.C.-based Association of Trial Lawyers of America noted that Pepperdine University law school, which published the article, is widely recognized for its conservatism.

"First of all, Lester Brickman has a history of writing pro-insurance industry quasi-legal treatises like this, but to suggest, as his insurance industry friends say, that many of these people aren't asbestos victims is a total distortion of the facts," Carl said. "Most of those people that he and insurers say aren't sick enough to be compensated, the insurers say are too sick to get life or health insurance. So which is it?"

Carl fended off requests that he comment specifically on the role that screening companies play in recruiting plaintiffs, and on the criticisms of the medical criteria used by numerous of those companies to diagnose asbestosis.

"I don't know that that's true," he said of the criticisms. "But I'm not going to say I know everything about every company."

Some of the most informative portions of Brickman's article can be found in the more than 500 footnotes, which include portions of dozens of depositions and court records, many devoted to the actions of Mobile-area screening companies.

At the Register's request, Brickman provided the newspaper with copies of many of the records cited in his piece.

The asbestos nightmare

Asbestos is the generic term for a group of naturally occurring minerals that have properties — including heat resistance, strength and an ability to be easily mixed into other materials — that make them valuable as insulation.

For most of the past century, asbestos was commonly used as a sprayed coating for fire protection, as insulation for pipes and boilers, and as an element or component of a host of products, from brake pads to ovens.

Asbestos generally becomes hazardous only when disrupted, such as when it is being manufactured, falls into disrepair, or is being torn apart or disposed of. When that occurs, its microscopic, spear-shaped fibers can be inhaled and penetrate the lining of the lungs.

According to the Rand report, about 27 million workers may have been exposed to asbestos, with most of that exposure occurring from about 1940 to the late 1970s.

Almost everyone, especially those who live in urban areas, has breathed in asbestos, experts say; it can happen just walking down the sidewalk. People with relatively mild levels of exposure are considered at little risk to develop an asbestos-related disease.

By far the most deadly asbestos-related disease is mesothelioma, a cancer that eats away at a person's lung tissue, and for which there is no cure. While doctors may have difficulty differentiating between lesser forms of asbestos-related disease and other lung ailments, that's not the case with mesothelioma.

For reasons that aren't well understood, mesothelioma can strike people who have never worked with asbestos, including people who lived with asbestos workers, and inhaled it from their clothing. That appears to be why almost one in five mesothelioma victims are women.

"Most people die within a year of diagnosis," said Mobile lawyer Kevin Graham, who has been involved in about 300 mesothelioma lawsuits, first as a defense attorney, and now on the plaintiffs' side.

"It is brutal and extremely painful, not only in terms of respiratory distress, but you cannot eat," Graham said. "Ev-

erything they put in their mouth is revolting to them, so they sort of starve themselves to death."

Each year, about 2,000 to 2,500 people are diagnosed with mesothelioma, according to the National Center for Health Statistics. Given recent trends, these cases now represent about 3 percent of new asbestos claims.

Because the suffering is so profound, mesothelioma cases routinely generate jury verdicts or settlements exceeding \$1 million. In February, for example, in El Paso, Texas, jury awarded \$5.2 million to the family of a retired insulator and brick mason who died at 77, months after being diagnosed with mesothelioma.

The vast majority of asbestos-related lawsuits involve not mesothelioma, but asbestosis. The effects of the latter disease range from little or no impairment to serious, sometimes fatal, respiratory distress. Asbestosis can also be a marker for lung cancer, especially when the person was a heavy smoker.

Because asbestos was so widely used, there are dozens, if not hundreds, of occupations that exposed workers to harmful levels of the substance.

An attorney who has defended asbestos cases for years said that if he were to swap over to the plaintiffs' side, the clients he'd most want would be pipe fitters and insulators. "They worked with it every single day. Also, people who worked at textile mills on the East Coast, weaving asbestos cloth — they were heavily exposed," said the lawyer.

Like other asbestos defense attorneys interviewed by the newspaper, he agreed to comment on the condition that he would not be named, as a result of restrictions placed on him by his clients.

In 1972, the federal government issued regulations forcing companies to take measures to limit their workers' contact with asbestos. Like diseases caused by smoking, however, diseases linked to asbestos inhalation generally don't become active for 15 to 30 years, and in some cases, 40 years.

Graham, the Mobile lawyer, said he doesn't get legal cases from screening companies, but believes that critics of the companies are designed to take attention away from asbestos defendants.

People diagnosed with smoking-related disease realize that they share some responsibility for their situation, he said. But it's different for people struggling with mesothelioma. "This is something that, at the time, they had absolutely no knowledge of," the Graham said.

For the asbestos industry, "the real issue is they knew it caused these diseases, and they did absolutely nothing," Graham said. "They most consciously kept it from going public — that's why asbestos plaintiffs' lawyers have a lot of money over the years because they can prove it."

The purpose of screening companies

Anyone who regularly reads newspapers probably has seen advertisements by law firms offering free medical screenings for people who were exposed to asbestos — or even to products unrelated to asbestos.

Frequently, the ads state that workers will be tested for mesothelioma and asbestosis.

Despite what those ads say, the primary purpose of screening companies is to locate people with asbestosis, not mesothelioma, and to arrange for them to receive legal representation. People with mesothelioma would almost certainly be under the treatment of a pulmonologist and have no need to be tested to determine whether they are ill. And in all likelihood, given the value of mesothelioma lawsuits, any victim or his heirs would already be represented by an lawyer specializing in mesothelioma cases.

One such Mississippi doctor who worked for Mobile-based American Medical Testing has said he participated in tests on about 14,000 people, none of whom had mesothelioma.

A chief allegation against testing companies is that they find evidence of asbestosis when there is none. Unlike mesothelioma, asbestosis is almost impossible to diagnose with 100 percent certainty, the primary exception being an autopsy. An almost endless number of lung diseases, including those caused by smoking, share the same symptoms.

Dr. Marc S. Gottlieb, a Mobile pulmonologist, said he and his professional colleagues in the area are well aware of the testing companies, and have little regard for their work.

But, "There are certainly times when they detect bona fide problems, and that's why I'm not totally against it," Gottlieb said.

Gottlieb frequently sees people who make appointments after receiving letters from screening companies informing them they tested positive. "Unfortunately, the percentage of people who go through these testing affairs and test positive is probably real high, like 75 percent," he said.

"If they were going to clinical physicians, someone who's not trying to make a buck off of it — the percentage of those people who really have it would be on the order of 20 to 25 percent, and people who are really disabled by it, like 5 to 10 percent."

As for mesothelioma cases, he said, "In the whole Mobile area, there are probably 10 to 15 cases a year."

Another Mobile-area practitioner of medicine in Mobile since 1981, said he saw far more serious cases of asbestosis during his first 10 or 15 years than he does now.

"Thousands and thousands of men who worked in the shipyards in World War II were exposed and they have no safeguards. There were lots and lots of warships along the Gulf Coast."

"The old-timers would wrap pipe and the air was all white and they came out

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 asbestosis, it's usually a mild case with no disability or with disabilities caused by other factors, like heavy smoking, he said.

It is these 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 Fiberglass 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 asbestosis claimant was expen-

sive 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 asbestosis 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 asbestosis-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 that 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 asbestosis.

(Staff Reporter Eddie Curran can be reached at 219-5636 or by e-mail at ecurran@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 isn't talking.

"I'm retired now, and I don't want to get involved anymore," said Jewell Dean "Jerry" Pitts, a tall, imposing 70-year-old man with a head full of gray hair.

Pitts' home in the rural community rests at the end of a long, oak-lined driveway reminiscent of Spring Hill College's Avenue of the Oaks in Mobile. Visitors to the estate, which includes other homes and farmland, are welcomed by a painting of a horse on a ground-level wooden sign. It is topped by arching metal letters that spell "SouthFork."

Like the ranch of the same name from the television show "Dallas," Grand Bay's SouthFork suggests the comforts of wealth.

So does the number \$11.1 million — the amount that court records show Pitts made during a four-year stretch operating companies that tested people for asbestos-related disease on behalf of some of the most powerful trial lawyers in America.

His first company, Pulmonary Advisory Services Inc., can fairly be called the corporate father, grandfather and uncle of six similar companies, all owned and operated by Pitts, or one of his former employees, Charles E. "Charlie" Foster of Theodore, or their relatives.

Unlike with Pitts, there are no available court records reflecting the amounts of money that Foster has made. But it would appear that he, too, has done well since he formed Respiratory Testing Services Inc. in 1994.

Foster's company has a small fleet of 18-wheeler "testing vans" that have worked in 40 states. A separate entity, Foster Aviation, owns the jet aircraft that he uses to travel the country.

Without question, the Mobile-based companies have had an impact on what legal scholars describe as the longest-running, most complicated and — with the exception of tobacco cases — costliest product-liability litigation in the history of American law.

One attorney who has been involved in asbestos litigation for years said the 35-mile stretch from Mobile to Pascagoula — with an important detour through Grand Bay — is the "screening hub of the universe."

In the last 30 years, more than 700,000 people have filed claims seeking damages for asbestos-related disease against a total of more than 6,000 defendants.

Of those claims, about 500,000 have



VICTOR CALHOUN/Chief Photographer

An asbestos testing truck of Charlie Foster's Respiratory Testing Services Inc. is parked at another business owned by Foster, Mechanical & Marine Contractors on Bellingrath Road in Theodore. Respiratory Testing Services, perhaps the best-known asbestos screening business, is famous for its traveling labs, big brown 18-wheelers with giant eagles painted on their sides, which have tested workers in about 40 states.

been brought since 1990, when testing companies — also known as screening companies — emerged as a potent force in asbestos litigation. Last year, more than 105,000 new plaintiffs filed claims, about 90 percent of which stemmed from diagnoses by the screening companies, according to people involved in the claims process.

No central database shows how many plaintiffs have entered the legal system by way of the Mobile-area screening companies. Records in court cases and depositions involving these companies, however, suggest big numbers, perhaps 150,000 to 200,000.

Figures like that haven't gone unnoticed. More so than with any other screening companies in the country, the owners and employees of the Mobile-area companies have been grilled in sworn depositions by lawyers for asbestos defendants.

Their story — the history of the "screening hub of the universe" — could be said to begin in 1957, when a 23-year-old Grand Bay man went to work as a pipe fitter at Ingalls Shipyard.

A company is born

Pitts, as he testified in a 1996 deposition, worked at Ingalls in Pascagoula until the late 1960s, when co-workers elected him to represent them in the local plumbers and pipe fitters union.

In 1983, a doctor diagnosed him with the lung disease asbestosis, and six years later, he sued and won a settlement of an undisclosed amount from Johns Manville Corp., which had been the biggest manufacturer of asbestos products in the world.

In that sense, Pitts was no different from thousands of other workers na-

tionwide who had worked around asbestos before 1972 — when companies were ordered to curtail asbestos use and protect workers from exposure — and who had sued and won settlements.

The difference was that Pitts wasn't finished with Johns Manville, or with Toledo, Ohio-based Owens Corning Fiberglass Corp. and a host of other companies that had made or used asbestos products.

The company from which Pitts would make millions was formed in 1989, two years before he left his union job to work for that company, initially called Pulmonary Advisory Services Inc.

Pulmonary Advisory Services was, to a considerable degree, created by asbestos lawyers.

Mississippi records show that the company was incorporated on July 27, 1989, by Richard Fountain, a Jackson, Miss., trial lawyer involved in asbestos litigation. His is the only name on those records.

It's unclear how much Fountain participated in the company's operations. He did not return several recent telephone calls seeking comment for this report.

In what may be a coincidence — again, the available records leave gaps — Fountain's law office was next door to the accounting office of Glenn Pitts, the second cousin of Jerry Pitts.

In a 1996 deposition, Glenn Pitts said he was the president and owner of Pulmonary Advisory Services at its inception, though the company headquarters was not in Jackson, but in Pascagoula, at the Deep South Shopping Center.

His responses in that deposition reflect that he knew little about the medical procedures involved in testing

people for asbestos-related lung disease.

Like his second cousin, Glenn Pitts recently refused to talk about his years in the asbestos testing business. "I've got so many bad thoughts in my mind," he told the Mobile Register in a brief telephone conversation.

Testimony in another 1996 deposition — by Leon Hammonds, a respiratory therapist from Grand Bay — reveals that while Glenn Pitts may have been president of Pulmonary Advisory Services, someone else was doing the hiring.

Hammonds, who worked at Pascagoula's Singing River Hospital, testified that he was contacted by Dr. Larry Mitchell, a Tennessee doctor who had previously worked at the hospital.

Mitchell told Hammonds that he had decided to do some work for a new business that tested workers for lung disease. The company needed someone with experience in respiratory therapy, and would Hammonds be interested?

Hammonds was interested, he testified, and met Mitchell for his job interview at the office of David Nutt, another trial lawyer heavily involved in asbestos litigation.

Nutt — who would be one of the company's top testing customers in the years to come — told Hammonds that he and other lawyers were trying to "bring about a class action settlement" and needed a means to test people who had been exposed to asbestos.

Mitchell served as the de facto medical director for the Pittses' companies from their beginning to 1995, Hammonds testified. Court records reflect that in his part-time capacity, the Tennessee doctor earned from \$3 million to \$4 million during that stretch.

Pulmonary Advisory Services did sporadic business, but that changed in 1991, Hammonds said, when Jerry Pitts started there. That year, Jerry Pitts received a salary of \$104,000, the same as his cousin, court records show.

In 1993, Glenn Pitts deeded the company and its assets, including about \$100,000 in breathing test machines, to Jerry Pitts.

Jerry Pitts didn't have to pay anything for the company, Glenn Pitts said during a 1996 deposition.

Shortly after that, Jerry Pitts

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Pitts and Foster are being served up as poster boys of asbestos litigation abuse by backers of legislation that could sharply curtail the ability of people to win restitution against asbestos defendants. TA



"I get to fight for myself enough in depositions, eight hours at a time. ... Just read the depositions; there's plenty of history."

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

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MOBILE REGISTER

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

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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 those 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 be 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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