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THE \$40 BILLION SCAM

How slick lawyers have turned a genuine health crisis into a ripoff you won't believe | BY JOHN M. WYLIE II

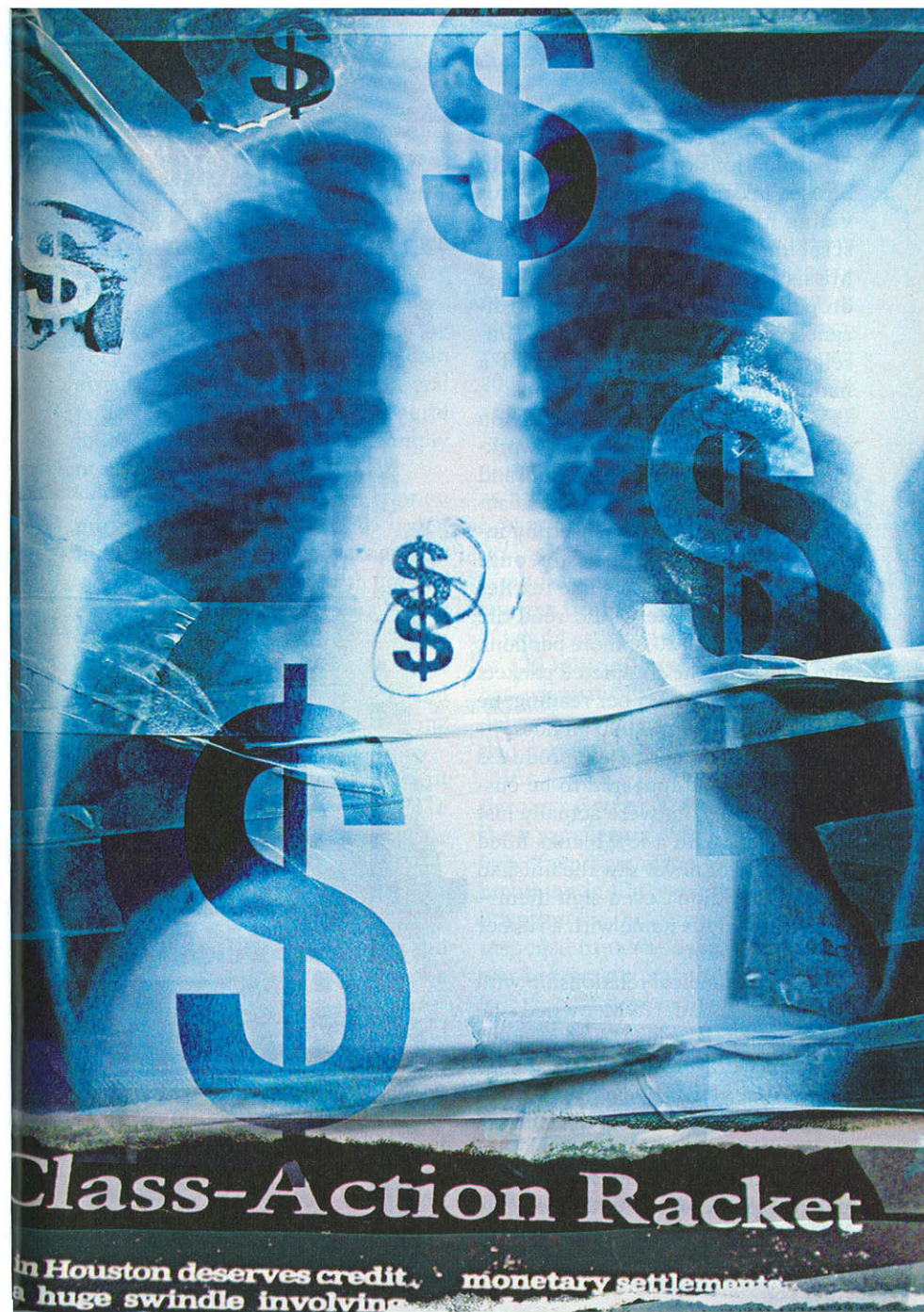
DR. GEORGE MARTINDALE blinked, shifted his body in his chair and kept his voice steady with frequent sips of water. It was an October afternoon two years ago, and Martindale sat across from attorney Daniel Mulholland in a Marriott hotel meeting room in Mobile, Alabama. The deposition seemed more like two friends discussing trends in medicine than a legal proceeding. But a whole lot was at stake.

Martindale's name was on several thousand documents claiming people suffered from an incurable work-related respiratory disease. Mulholland asked Martindale if he had ever intended his work to be used as an official diagnosis in a lawsuit or for any other purpose.

"No, sir," he replied.

In a gentle Southern drawl, Martindale went on to explain his role in what a federal court concluded was a massive legal scam. He had expanded

PHOTO-ILLUSTRATIONS BY ANASTASIA VASILAKIS



his radiology practice by becoming a certified "B-reader," which meant his evaluations of chest x-rays could be used in court. Martindale was providing his assessments to N&M, a screening company in Pascagoula, Mississippi, run by a junior college dropout that administered tests to diagnose silicosis or asbestosis, two unrelated diseases at the heart of a nationwide explosion of lawsuits.

Martindale was focused mainly on silicosis, which can result from workers breathing in tiny particles of sand dust (asbestosis—and the related cancer, mesothelioma—is caused by inhaling fine particles of asbestos, once widely used in products like textiles and insulation). He would read the x-rays, at a rate of 30 or more per hour, and then send the completed packets back to N&M. At \$35 per reading, he was taking in over \$1,000 an hour.

N&M took the forms and produced documents that appeared to be custom diagnoses but were actually just form letters with a few blanks filled in. The doctor never saw the finished reports and didn't even sign them—N&M affixed his name with a rubber signature stamp.

"I had no medical relationship with the patient, and N&M owned the x-ray, owned the report," he explained.

When word of Martindale's testimony reached U.S. District Judge Janis Jack in her Corpus Christi, Texas, courtroom, she was livid. Judge Jack was in charge of the 3,617 Martindale cases and over 5,000 more. She scheduled additional hearings, set

**"THESE DIAGNOSES
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U.S. DISTRICT JUDGE JANIS JACK



for February 2005, after opening an unprecedented cache of documents for Mulholland and his colleagues.

The hearings dragged on for three days. Seven doctors and two screening company owners testified, each damaging the victims' cases more than the one before.

"Your Honor, there is something very wrong here," Mulholland said about the testimony. "This is a real courtroom. You are a real federal judge. But these lawsuits are simply not real."

The judge, who is also a trained nurse, agreed. In a June 2005 order, Judge Jack wrote: "These diagnoses were driven by neither health nor justice; they were manufactured for money. The record is not clear who originally devised this scheme, but it is clear that the lawyers, doctors and screening companies were all willing participants."

With that, Judge Jack sent about 10,000 silicosis cases on their way to the dumpster.

THE JUDGE'S RULING was sweet vindication to a small band of lawyers and academics who'd been claiming for years that asbestosis and silicosis litigation had morphed into a massive tort scam. The cases spurned by the judge, however, could only hint at the dimensions of the scandal. "Over the life of the asbestos and silica litigation, I believe bogus and invalid claims will total at least \$40 billion," says Lester

Brickman, a professor of law at the Cardozo School of Law at Yeshiva University in New York.

So far, at least 79 companies have filed for bankruptcy due to asbestos litigation alone, and 60,000 workers have lost their jobs. About 8,400 companies with facilities nationwide have faced lawsuits. Meanwhile, insurance companies are out \$59 billion through 2005, with \$34 billion paid out in cash and another \$25 billion locked away in reserves. Those costs get passed along to consumers and companies as higher premiums and eventually higher prices for thousands of products and services.

And what about those plaintiff lawyers behind the flood of lawsuits? "I would estimate their fees are north of \$20 billion," says Brickman, who has exhaustively researched the scandal over 16 years. "The bottom line is that in mass torts, fraud works."

BEFORE LAWYERS SMELLED big money, there were legitimate suits filed on behalf of workers made seriously ill by breathing in fibers or dust. Asbestos litigation hit the courts first, and the response from the asbestos industry was brazen and unconscionable. Before that, starting in the 1930s, it tried to control research and suppress alarming health findings.

Johns Manville, a large manufacturer of insulation, had a policy until the 1960s of keeping company medical diagnoses of asbestosis secret from sick employees. "There is a very definite possibility that [the worker]

would become mentally and physically ill, simply through the knowledge that he has asbestosis," said medical director Kenneth W. Smith.

With ammunition like that, sick workers sued, and shell-shocked companies paid. Many opted for bankruptcy and special trusts to fund settlements.

In no time, some trial lawyers saw a gold mine and began bringing hundreds of thousands of cases, many with very weak underpinnings. Gunshy defense attorneys kept settling claims with little noise—and earning fees for themselves. Bogus claims soon overwhelmed the courts.

As lawmakers and courts tried to rein those claims in, silicosis litigation exploded. This new legal front centered on a disease that could involve everything from shortness of breath to cancer, TB and autoimmune diseases. As with asbestos, there was a history of cover-ups dating from the Great Depression era. Once again, nervous companies settled and the potential for bigger payouts grew. And a pack of lawyers, doctors and medical screeners swooped in.

THE MONEY MACHINE

As the fraud has evolved, it's come to resemble an assembly line that Henry Ford might have envied. It begins with lawyers and screening outfits soliciting patients—which they refer to as "inventory"—using radio, TV, newspaper and direct-mail ads. Workers are lured to mass screenings at no charge, often by the promise of riches if they "pass."

It's no sleek, high-tech clinic that they visit; often, it's a trailer set up in the parking lot of a megastore or a nondescript building in a strip mall. Inside, there's typically an x-ray machine and clerical workers surrounded by tables piled with forms. In some cases, "successful" visitors are steered to an on-site lawyer or paralegal.

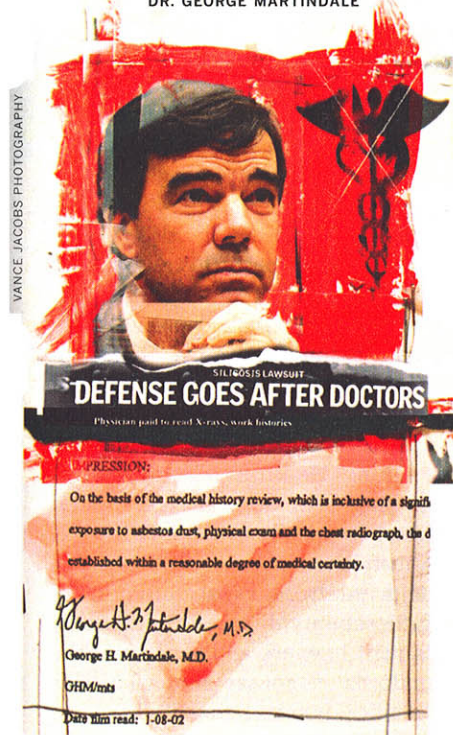
In June 2002, Royce Harmon, an investigator for the Texas Department of Health in Fort Worth, looked into a complaint that "a company was flagging people in off the street to take x-rays." Harmon arrived at a Staples store, where he found "two young women at the entrance to the parking lot holding up signs." Turns out, the women were lawyers hired by Heath Mason, the man behind N&M screening.

A work history is one of three critical steps in diagnosing asbestosis, along with an x-ray and a physical examination. No complete work history or physical exam? No problem for Mason. "To ask a doctor to take a work history would be like asking [a lawyer] to wash my car. It's very beneath him," says Mason. From 1996 until the firm shut down last year, he raked in \$25.5 million from law firms for his now discredited services.

Mason and other screeners have their place on the assembly line. Their stacks of manufactured diagnoses are used by attorneys to file mammoth lawsuits that overwhelm both the courts and companies. A few really sick patients—who would likely be

"I DID NOT INTEND TO MAKE A DIAGNOSIS OF SILICOSIS OR ASBESTOSIS BASED ON THE X-RAYS SENT [TO ME]."

DR. GEORGE MARTINDALE



awarded big bucks by a jury—are included with the phony ones, ensuring that companies cave in and pay huge universal settlements.

No part of the process is more cynical than the way plaintiff lawyers market the inventory. One blast fax to defense attorneys offered a bargain price to settle the claims.

On April 16, 2004, Houston attorney Joseph Gibson, speaking for the plaintiffs' committee, dumped a limited-time offer in 47 fax trays nationwide. Its message was clear: Settle all 9,000 cases now for \$900 million, or we'll batter you with \$1.5 billion in pretrial costs and then start picking you off one by one before a jury at millions each.

"Now is clearly the time for both sides," he wrote. Gibson said later that he wanted to "represent people I thought deserved help" and that a defense lawyer helped craft the offer.

The only space devoted to the victims in the three-page letter was a table similar to a mail-order shipping cost chart: \$50,000 for people with a minimal level of lung damage, \$100,000 for those who are slightly more affected, \$150,000 to \$750,000 for those with more advanced cases, and \$250,000 to \$2 million for those who have complicated silicosis. The deal would basically sell each of the plaintiffs for an average of \$100,000 each—\$900 million in all.

Since lawyers commonly receive a fee of 40 percent on all money collected, this meant a relative handful of law firms would split \$360 million,

while the average take for each of the 9,000 alleged victims would drop to just \$60,000.

Some cases, such as that of Leroy Trotter, a 50-year-old resident of Grand Bay, Alabama, stun even those critics who assume they've seen it all.

Trotter's lungs appeared shot from years of breathing sand dust. So it was no surprise when, in 2002, lawyers packaged Trotter with 41 other workers and sued more than 60 companies for making the plaintiffs sick.

That case was ultimately dismissed, but on June 21, 2006, a fresh set of lawyers filed a new case in a Mississippi federal court. Trotter was the only plaintiff, and the list of defendants was down to 13, but the allegations were the same: Silica and silica alone made him sick. He couldn't earn a living. He had medical bills. Trotter deserved a substantial sum to re-dress 15 kinds of injuries he suffered while working in a shipyard.

But key facts about Trotter were omitted. Taxpayers had *already* provided him \$100,000 in disability benefits for another condition. His ex-wife and children got thousands more, including two four-figure overpayments that were never returned. He'd collected money from 18 defendants in deals to settle earlier lawsuits. And he got every dime based on the contention that his ills stemmed from ... asbestosis. Oops.

"Mr. Trotter is the classic double-dipper," say attorneys Fred Krutz and Jennifer Skipper. "Having sucked the asbestosis well dry, Mr. Trotter now

tries to recast his lung injuries as silicosis to receive another payday."

The full truth was even worse. Although the lawsuit described his current suffering in detail, Trotter couldn't have provided such information, because he'd been dead since March 4, three and a half months before the suit was filed. Skipper and *Reader's Digest* independently discovered his death in early October from an online obituary and a Social Security notice.

How could an attorney file a lawsuit for a dead man? Trotter's lawyer, Robert Allen Smith Jr., said, "We had no idea that he was [dead]."

Michael Minns, a Houston attorney who specializes in legal malpractice issues, says he is not familiar with this case, but in general, "if you haven't checked with your client when you file your petition, it is negligence."

THE BIG BREAKTHROUGH

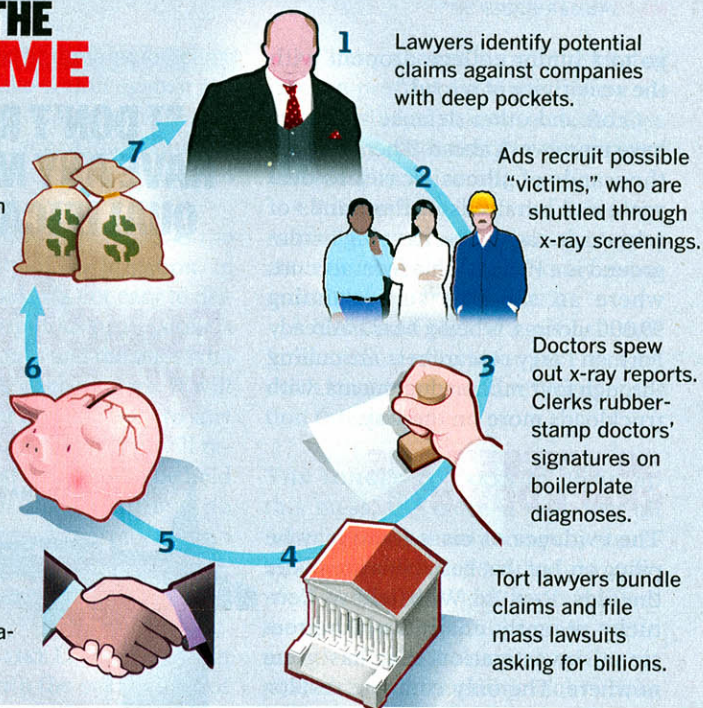
Why is the extent of this nationwide scandal only now coming to light? A big part of the answer comes from Rocket Science, literally. This computer consulting firm revolutionized asbestos defense work by turning paper documents into digital ones and attaching electronic "sticky tags," allowing fast mass analyses. That meant defense lawyers at firms like Forman Perry in Jackson, Mississippi, could finally deal with the millions of documents dumped on them by plaintiff lawyers and challenge the hundreds of thousands of asbestosis and silicosis suits being filed.

BEHIND THE SCHEME

Lawyers, experts and screening firms walk away with billions, then start the process over again.

Companies pay up. Some file bankruptcy. Retirees, workers, stockholders lose; victims get pennies on the dollar.

Defense lawyers charge big fees and advise companies to settle.



The new Rocket Science technology was able to turn suspicion into hard evidence. Forman Perry attorney Daniel Mulholland knew that asbestosis and silicosis almost never occur in the same person, they scar the lungs in very different ways, and the scarring remains over a lifetime. So if a plaintiff's doctor had claimed he saw one kind of scarring, but on later examination decided it was the other kind instead, something was up. "If I could show that happened not only once or twice but hundreds of times, I'm where I need to be," Mulholland says.

The Rocket Science program began spitting out asbestos "retreads," people who already had an asbestosis

claim and now were part of silicosis suits. It was this hard data that helped destroy the doctors' testimony back in February 2005 and sealed the plaintiffs' fate before Judge Jack.

Defense attorney Marcy Croft savored the outcome in Jack's court, but remains steamed about the complicity of lawyers, doctors and screeners in those cases. "They weren't conducting screenings, they were selling widgets," she says. "It just happened that the widgets were human beings." The damage to companies ultimately negatively affects employees' wages, pensions and job security. "It's the people on the factory floor we're working for. Money shouldn't

go to a junior college dropout with the sensitivity of a toad."

Croft and other defense attorneys have more work ahead. There are still thousands of silicosis cases to deal with, and hundreds of thousands of asbestosis cases. The next big battleground is a Philadelphia federal court, where an asbestos suit, claiming 99,000 victims, is being heard. Already Forman Perry researchers are culling through four million documents, with truckloads more on the way.

SO WHERE'S THE CRACKDOWN?

The evidence of mass fraud may be piling up, but that hasn't lit a fire under the feds. Rep. Ed Whitfield of Kentucky recently chaired a Congressional investigation that has gone nowhere. The only concrete results: Two screening company owners and four doctors used their Fifth Amendment rights to avoid testifying.

A 30-month probe by a federal grand jury in New York appears more promising. In addition to the FBI and the U.S. Attorney's Office, U.S. Postal Inspectors are now working the case, searching for mail fraud. In response to a subpoena issued by the grand jury at the request of the Postal Inspectors, Dr. Martindale was required to provide reams of documents ranging from tax returns and canceled checks to medical records and invoices from subcontractors. The grand jury is investigating "conspiracy to defraud the United States."

For its part, the American Medical

**"I DON'T REALLY
HAVE ANY MEDICAL
QUALIFICATIONS.
[MY
EDUCATION]
WAS TRIAL
BY FIRE."**

HEATH MASON



VANCE JACOBS PHOTOGRAPHY

Association tried to force state licensing boards to take action against the doctors whose diagnoses were rejected by Judge Jack. Almost none of the boards even bothered to reply to the AMA's letters.

The biggest hurdle, perhaps, is the sheer complexity of the litigation. In a system run amok, it's not easy to distinguish the scrupulous professionals from the shady ones and the ones who simply didn't dig deep enough. It will take government investigators to sort that out. And until they do, it will remain unclear just who should be held accountable. In the meantime, no lawyers have been disbarred, and no doctors or screening companies have had their licenses yanked.

LEGAL ANALYSTS LIKE Lester Brickman are impatient with the snail's pace of government action and are ready with suggested reforms. Among his ideas:

- There should be a "national data bank" of asbestos claims that identifies retreads, suspect doctors, and those shopping for extra money from multiple bankruptcy trusts.

- Courts need to permit the kind of intense pretrial evidence review allowed by Judge Jack, to catch and toss out phony cases early in the process and identify the wrongdoers.

- Alternatives like arbitration are needed to weed out bad cases, reduce attorney fees and get money more quickly to the truly injured.

- New laws should establish uniform medical criteria for patients who don't have cancer, and set compensation thresholds.

THE LONGER IT TAKES to clean up this mess, the more it will cost all Americans—not only company shareholders and employees, but also genuine victims who get that much less money when big bucks go to settle meritless claims. No one is more disgusted by the ongoing racket than Judge Jack, who said in a statement dripping with sarcasm, "The law says if you're going to sue for a disease, you've got to have it."

Adopting that simple standard would finally derail the gravy train.

Additional reporting by LORA J. HINES

YOU'RE NOT GETTING OLDER, YOU'RE GETTING BARGAINS

The telemarketer did his best to convince me to renew my subscription for another year. "At this price, it's really a great bargain," he said.

"I'm elderly," I laughed. "I might die before the subscription ends."

"No problem," he assured me. "You'll get a refund." EDNA HAZELTON

Our motor vehicle registration renewal form did double duty renewing dog licenses. "The fee," it said, "is \$6.50 for altered, \$9 for unaltered and \$2 for citizens over 65."

JOHN O'BRIAN JR.