



For Immediate Release

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## Paper Analyzes Landmark Ruling on Mass Production of Class Action Suits

For the past several months, proponents of legal reform have been rightfully touting their successes both in Congress and the state legislatures. Some would argue, however, that the most significant reform development of 2005 came not from elected officials, but from a federal trial court judge in Texas. As a new Washington Legal Foundation (WLF) publication relates, Judge Janis Graham Jack's June 30, 2005 opinion, *In Re Silica Prod. Liab. Litig.*, "changes how we look at mass torts."

The publication, **SILICA LITIGATION: SCREENING, SCHEMING & SUING**, was authored by **Nathan R. Schachtman**, a partner in the Philadelphia office of the law firm *McCarter & English LLP*. Mr. Schachtman is a nationally recognized trial and appellate expert on mass tort litigation and the presentation of and opposition to expert scientific testimony. The paper is the latest installment in WLF's educational WORKING PAPER series.

The "scheme" noted in the paper's title, Mr. Schachtman states, was "the assembly-line production of dubious or fraudulent diagnoses," which "has become an important business model for many plaintiffs' lawyers in the field of mass torts." The paper explains how the claims of thousands of alleged silicosis sufferers ended up in Judge Jack's court, and what methods she utilized to expose the questionable actions of the plaintiffs' lawyers and doctors involved. Mr. Schachtman analyzes each step Judge Jack followed in her scrutiny of the plaintiffs' cases. He explains how the lawyers and screeners in *In Re Silica* failed to demonstrate harmful exposure, provided unreliable medical testing evidence, and did not adequately explore alternative causes for the alleged harm. Judge Jack sent a very clear message in her opinion, summarized by Mr. Schachtman as "Physicians cannot abandon the methodology they use in the clinic when they step into a courtroom."

The second part of the WORKING PAPER focuses on the profound medical, legal, and social implications of Judge Jack's opinion. The plaintiffs' medical experts and screeners, Mr. Schachtman argues, maintained the cynical belief that "anything goes" in mass tort litigation, to the point where many of the witnesses stated that in diagnosing silicosis, they were not in fact "practicing medicine." Their actions went far beyond what is ethical according to the most basic medical standards, and the author calls on medical societies to take appropriate action in light of these

transgressions. The attorneys involved must also be held accountable for their actions, Mr. Schachtman demands: “Some will find curious irony in the discovery that the plaintiffs’ bar, which has touted itself as a safety brake on the free market, has revealed itself as ruthlessly driven by the profit motive, flouting professional ethics and the law.” At the least, Mr. Schachtman concludes, Judge Jack’s opinion should cast deserved ethical and legal doubt on litigation-driven mass screenings.

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Copies of this educational paper, WLF WORKING PAPER, Number 135 (December 2005), can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.